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MEMORANDUM FOR: Chairman Palladino

MAR 2 8 1985

FROM: William J. Dircks
Executive Director for Operations

SUBJECT: JANUARY 4, 1985 MEMORANDUM FROM THE PRESIDENT ON REGULATORY PROGRAMS

This is in response to your February 28, 1985 request for my recommendation on a proposed course of action on Executive Order 12498, Regulatory Planning Process, and President Reagan's memorandum of January 4, 1985, forwarding the Executive Order to Heads of Executive Departments and Agencies. Under Executive Order 12498 (Enclosure A), each agency covered by the order was required to submit to the Office of Management and Budget (OMB) by February 19, 1985, a "Draft Regulatory Program," that explains the agency's significant regulatory actions and demonstrates how these actions are consistent with the Administration's regulatory principles. The "Draft Regulatory Program" will be reviewed by OMB and, when approved, will be published as part of the "Administration's Regulatory Program for 1985." OMB Bulletin 85-9 (Enclosure B) implements Executive Order 12498.

Those agencies covered by the Executive Order are enumerated by Section 4 on page 2 of the Bulletin. Independent regulatory agencies, including NRC, are not covered by the Bulletin. Also, unlike Executive Order 12291, independent regulatory agencies have not been requested to comply voluntarily with Executive Order 12498, and this position has been confirmed in discussions with OMB officials. Moreover, the Commission, as a matter of policy, on September 21, 1981, declined to voluntarily comply with the Administration's request to submit draft regulations to OMB for review (Enclosure C), and we would not recommend, as a matter of policy, that the agency voluntarily submit a "Draft Regulatory Program" to OMB pursuant to Executive Order 12498.

The Commission should be aware that recently the trade press has carried several articles indicating that the Administration may seek to bring certain independent agencies, e.g., the Consumer Products Safety Commission, within the coverage of Executive Order 12498. I will keep the Commission informed of any further developments on this subject; however, I do not recommend any action at this time.

(Signed) William J. Dircks

William J. Dircks
Executive Director for Operations

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Federal Register
Vol. 80, No. 5
Tuesday, January 8, 1985

Presidential Documents

Title 3—

The President

Executive Order 12498 of January 4, 1985

Regulatory Planning Process

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to create a coordinated process for developing on an annual basis the Administration's Regulatory Program, establish Administration regulatory priorities, increase the accountability of agency heads for the regulatory actions of their agencies, provide for Presidential oversight of the regulatory process, reduce the burdens of existing and future regulations, minimize duplication and conflict of regulations, and enhance public and Congressional understanding of the Administration's regulatory objectives, it is hereby ordered as follows:

Section 1. *General Requirements.* (a) There is hereby established a regulatory planning process by which the Administration will develop and publish a Regulatory Program for each year. To implement this process, each Executive agency subject to Executive Order No. 12291 shall submit to the Director of the Office of Management and Budget (OMB) each year, starting in 1985, a statement of its regulatory policies, goals, and objectives for the coming year and information concerning all significant regulatory actions underway or planned; however, the Director may exempt from this Order such agencies or activities as the Director may deem appropriate in order to achieve the effective implementation of this Order.

(b) The head of each Executive agency subject to this Order shall ensure that all regulatory actions are consistent with the goals of the agency and of the Administration, and will be appropriately implemented.

(c) This program is intended to complement the existing regulatory planning and review procedures of agencies and the Executive branch, including the procedures established by Executive Order No. 12291.

(d) To assure consistency with the goals of the Administration, the head of each agency subject to this Order shall adhere to the regulatory principles stated in Section 2 of Executive Order No. 12291, including those elaborated by the regulatory policy guidelines set forth in the August 11, 1983, Report of the Presidential Task Force on Regulatory Relief, "Reagan Administration Regulatory Achievements."

Sec. 2. *Agency Submission of Draft Regulatory Program.* (a) The head of each agency shall submit to the Director an overview of the agency's regulatory policies, goals, and objectives for the program year and such information concerning all significant regulatory actions of the agency, planned or underway, including actions taken to consider whether to initiate rulemaking: requests for public comment; and the development of documents that may influence, anticipate, or could lead to the commencement of rulemaking proceedings at a later date, as the Director deems necessary to develop the Administration's Regulatory Program. This submission shall constitute the agency's draft regulatory program. The draft regulatory program shall be submitted to the Director each year, on a date to be specified by the Director, and shall cover the period from April 1 through March 31 of the following year.

ENCLOSURE

(b) The overview portion of the agency's submission should discuss the agency's broad regulatory purposes, explain how they are consistent with the Administration's regulatory principles, and include a discussion of the significant regulatory actions, as defined by the Director, that it will take. The overview should specifically discuss the significant regulatory actions of the agency to revise or rescind existing rules.

(c) Each agency head shall categorize and describe the regulatory actions described in subsection (a) in such format as the Director shall specify and provide such additional information as the Director may request; however, the Director shall, by Bulletin or Circular, exempt from the requirements of this Order any class or category of regulatory action that the Director determines is not necessary to review in order to achieve the effective implementation of the program.

Sec. 3. *Review, Compilation, and Publication of the Administration's Regulatory Program.* (a) In reviewing each agency's draft regulatory program, the Director shall (i) consider the consistency of the draft regulatory program with the Administration's policies and priorities and the draft regulatory programs submitted by other agencies; and (ii) identify such further regulatory or deregulatory actions as may, in his view, be necessary in order to achieve such consistency. In the event of disagreement over the content of the agency's draft regulatory program, the agency head or the Director may raise issues for further review by the President or by such appropriate Cabinet Council or other forum as the President may designate.

(b) Following the conclusion of the review process established by subsection (a), each agency head shall submit to the Director, by a date to be specified by the Director, the agency's final regulatory plan for compilation and publication as the Administration's Regulatory Program for that year. The Director shall circulate a draft of the Administration's Regulatory Program for agency comment, review, and interagency consideration, if necessary, before publication.

(c) After development of the Administration's Regulatory Program for the year, if the agency head proposes to take a regulatory action subject to the provisions of Section 2 and not previously submitted for review under this process, or if the agency head proposes to take a regulatory action that is materially different from the action described in the agency's final Regulatory Program, the agency head shall immediately advise the Director and submit the action to the Director for review in such format as the Director may specify. Except in the case of emergency situations, as defined by the Director, or statutory or judicial deadlines, the agency head shall refrain from taking the proposed regulatory action until the review of this submission by the Director is completed. As to those regulatory actions not also subject to Executive Order No. 12291, the Director shall be deemed to have concluded that the proposal is consistent with the purposes of this Order, unless he notifies the agency head to the contrary within 10 days of its submission. As to those regulatory actions subject to Executive Order No. 12291, the Director's review shall be governed by the provisions of Section 3(e) of that Order.

(d) Absent unusual circumstances, such as new statutory or judicial requirements or unanticipated emergency situations, the Director may, to the extent permitted by law, return for reconsideration any rule submitted for review under Executive Order No. 12291 that would be subject to Section 2 but was not included in the agency's final Regulatory Program for that year; or any other significant regulatory action that is materially different from those described in the Administration's Regulatory Program for that year.

Sec. 4. *Office of Management and Budget.* The Director of the Office of Management and Budget is authorized, to the extent permitted by law, to take such actions as may be necessary to carry out the provisions of this Order.

Sec. 5. *Judicial Review.* This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person.

Ronald Reagan

THE WHITE HOUSE,
January 4, 1985.

[FR Doc. 85-623
Filed 1-4-85, 4:06 pm]
Billing code 3195-01-M

Editorial note: The President's memorandum of Jan. 4, 1985, for the heads of executive departments and agencies on the development of the administration's regulatory program is printed in the *Weekly Compilation of Presidential Documents* (vol. 21, no. 1).

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

January 10, 1985

BULLETIN NO. 85-9

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: The Administration's Regulatory Program--1985

1. Purpose. This Bulletin establishes guidelines and procedures for developing and publishing the Administration's Regulatory Program for 1985. The information required by this Bulletin will be used to create a statement of the regulatory policies, goals, and objectives of each agency covered by this Bulletin, and a description of the Administration's significant regulatory actions underway or planned, for the Reporting Year beginning in April 1985. Development of this regulatory policy document is intended to create a coordinated process for developing on an annual basis the Administration's Regulatory Program, establish Administration regulatory priorities, increase the accountability of agency heads for the regulatory actions of their agencies, provide for Presidential oversight of the regulatory process, reduce the burdens of existing and future regulations, minimize duplication and conflict of regulations, and enhance public and congressional understanding of the Administration's regulatory objectives.

2. Background. On January 4, 1985, the President issued Executive Order No. 12498, Regulatory Planning Process, and a Memorandum for the Heads of Executive Departments and Agencies entitled Development of Administration's Regulatory Program, pursuant to which the Administration will develop and publish a Regulatory Program for each year. The Order also delegated to the Director of the Office of Management and Budget (OMB) authority to take such actions as may be necessary to implement this process.

This process is intended to complement the existing regulatory planning and review procedures of the executive branch, including the procedures established by Executive Order No. 12291.

The Regulatory Program will cover "significant regulatory actions," that are defined as certain actions for which review under Executive Order No. 12291 is anticipated during the Reporting Year, and certain regulatory actions and decisions that occur prior to the initiation of rulemaking procedures, including actions taken to consider whether to initiate rulemaking, requests for public comment, and the development of documents that may influence, anticipate, or could lead to the commencement of significant rulemaking proceedings.

ENCLOSURE B

The Executive Order directs the head of each executive agency to ensure that all their regulatory actions, including reassessments of existing regulations, are consistent with the goals of the agency and of the Administration, and are appropriately implemented. To assure consistency with the goals of the Administration, the head of each agency is to adhere to the regulatory principles stated in Section 2 of Executive Order No. 12291, and the regulatory policy guidelines set forth in the August 11, 1983, Report of the Presidential Task Force on Regulatory Relief, Reagan Administration Regulatory Achievements.

3. Authority. The Budget and Accounting Act of 1921, as amended (31 U.S.C. Chapter 11); the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; Executive Order No. 11541, as amended (Prescribing Duties of the Office of Management and Budget and Domestic Council, 35 Fed. Reg. 10737, July 2, 1970); Executive Order No. 12291 (Federal Regulation, 46 Fed. Reg. 13193, February 19, 1981); Executive Order No. 12498 (Regulatory Planning Process, 50 Fed. Reg. 1036, January 8, 1985); and Memorandum for the Heads of Executive Departments and Agencies entitled Development of Administration's Regulatory Program, dated January 4, 1985.

4. Coverage. All agencies subject to Executive Order No. 12498 are subject to Sections 1(b) and 1(c) of that Order. Pursuant to Section 1 of the Order, the following agencies, to the extent they are subject to Executive Order No. 12291, are hereby made subject to Sections 1, 2, 3, 4, and 5 of Executive Order No. 12498 and the provisions of this Bulletin:

Department of Agriculture
Department of Commerce
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of Transportation
Department of the Treasury
Environmental Protection Agency
Equal Employment Opportunity Commission
General Services Administration
Office of Personnel Management
Small Business Administration
Veterans Administration

5. Definitions.

a. A "prerulemaking action" is any important action taken to consider whether to initiate, or in contemplation of, rulemaking; publication of advance notices of proposed

rulemaking and all similar notices, publications, and requests for public comment; and development or dissemination of draft guidelines, policy proposals, strategy statements, and similar documents that may influence, anticipate, or could lead to the commencement of rulemaking proceedings at a later date.

b. A "rulemaking action" is the publication of any notice of proposed rulemaking, final rule, or other statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy.

c. A "significant regulatory action" is any prerulemaking action or rulemaking action that would be a step toward adoption of a rule that is or would be:

(1) a "major rule" as defined by Section 1(b) or 3(b) of Executive Order No. 12291;

(2) a priority of the agency head;

(3) subject to a statutory or judicial deadline;

(4) of unusual interest to other Federal agencies;

(5) of unusual public interest;

(6) likely to establish an important new policy or legal precedent; or

(7) designated by the Director of the Office of Management and Budget to warrant review as a significant regulatory action.

d. "Reporting Year" means the 12-month period from April 1, 1985 to March 31, 1986.

5. Agency Submission of Draft Regulatory Program for the Period from April 1, 1985 through March 31, 1986.

a. Each agency head shall submit a draft overview of the regulatory policies, goals, and objectives that it proposes to pursue during the Reporting Year. This overview should discuss how these policies, goals, and objectives are consistent with the Administration's regulatory principles, as stated in Section 2 of Executive Order No. 12291, and the August 11, 1983, Report of the Presidential Task Force on Regulatory Relief, Reagan Administration Regulatory Achievements, and include a discussion of the most important regulatory actions it will take. The overview should specifically discuss the significant regulatory actions of the agency to revise or rescind existing rules. The overview should

include the regulatory policies, goals, and objectives of the agency as a whole, as well as of the major subjects selected as specified in subsection b.

b. Each agency head shall also complete and submit information in the Format attached to this Bulletin for each significant regulatory action that the agency proposes to pursue during the Reporting Year. In submitting this information, the agency shall divide its significant regulatory actions into major subjects that are most closely related to the programs of the agency. For example, the major subjects may be divided by program office, authorizing statute, regulatory authority, or subject area. The agency shall then further categorize all such significant regulatory actions as follows:

(1) "First Administration review" means that the significant regulatory action has not been previously reviewed by the Administration, for example, (i) pursuant to deliberations of an appropriate Cabinet Council, (ii) under Executive Order No. 12291, or (iii) under Executive Order No. 12498.

(2) "Previously reviewed: not changed" means that the specific significant regulatory action has been reviewed by the Administration, as above.

(3) "Previously reviewed: changed" means, with respect to a significant regulatory action that has been previously reviewed by the Administration, as above, that additional relevant information is available; that there has been (i) a material change in either the substance of the action or the agency's plans for pursuing it, or (ii) subsequent actions, since the action was previously approved; or that, in the case of a rulemaking, it will progress to a new regulatory stage (e.g., from a notice of proposed rulemaking to a final rule).

c. The agency head shall further divide significant regulatory actions according to whether the next action that the agency expects to take during the Reporting Year is a: (1) prerulemaking action; (2) publication of a notice of proposed rulemaking; or (3) publication of a final rule.

d. The agency head shall separately describe each significant regulatory action in the Format attached to this Bulletin (categorized as specified in subsections b and c). The agency head shall precede all of these individual descriptions with a table of

contents, listing each significant regulatory action by title, according to the categories and subdivisions of subsections b and c.

7. Functions of Draft Regulatory Program. The submission by each agency head of a draft regulatory program is intended primarily to ensure that each proposed significant regulatory action is well planned and is consistent with the priorities of other agencies and of the President. Review of prerulemaking as well as rulemaking actions is intended to ensure that agency heads have greater opportunity to be involved earlier in the regulatory management process when policy options are broadest; that significant regulatory actions are completed in a timely manner; that agency resources and Executive Order No. 12291 reviews can be concentrated on matters of greatest importance to the Administration; and that, to the extent permitted by law, agency resources will not be expended on regulatory actions that are not consistent with the regulatory goals of the agency head and of the President.

8. Internal Agency Management. Each agency's draft regulatory program should be the result of a comprehensive agency process that integrates analysis, planning, evaluation, and budgeting; and reflects:

   a. the express regulatory policies of the President;

   b. the missions, goals, and objectives of the agency; and

   c. consideration of appropriate roles for Federal, State and local governments, as well as the private sector, with respect to the activity covered.

9. Review, Compilation, and Publication of the Administration's Regulatory Program for 1985.

   a. The draft regulatory program required by Section 6 shall be submitted to the Office of Management and Budget no later than February 19, 1985. Three copies of each submission, and of any subsequent submission, shall be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3236, New Executive Office Building, Washington, D.C. 20503.

   b. Agencies shall provide additional information about regulatory plans, policies, or priorities, and individual regulatory actions as the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, may request. In addition, as necessary, arrangements will be made to convene meetings with agency officials to discuss their draft regulatory programs.

c. OMB review of the draft regulatory program of each agency will (1) consider the consistency of the draft regulatory program with the Administration's policies and priorities and the draft regulatory programs submitted by other agencies; and (2) identify such further regulatory or deregulatory actions as may be necessary in order to achieve such consistency. In the event of disagreement over the content of the agency's draft regulatory program, issues may be raised for further review by the President or by such appropriate Cabinet Council or other forum as the President may designate.

d. Following the conclusion of this review process, each agency head shall submit, on a date to be specified by the Director, the agency's final regulatory program for compilation and publication in the Administration's Regulatory Program for 1985. OMB will circulate a draft of the Administration's Regulatory Program for 1985 for agency comment, review, and interagency consideration, if necessary, before publication. Nothing in this Bulletin shall be construed as displacing the agencies' responsibilities delegated by law.

10. Undertaking a Regulatory Action During the Reporting Year Not Included in, or Inconsistent with, the Administration's Regulatory Program for 1985.

a. After development of the Administration's Regulatory Program for 1985, if the agency head proposes to take a regulatory action subject to the provisions of Section 6 of this Bulletin and not previously submitted for review under this process, or if the agency head proposes to take a regulatory action that is materially different from the action described in the agency's final regulatory program for the Reporting Year, the agency head shall immediately advise the Director of OMB in writing, and submit the action to OMB for review by describing it in the Format attached to this Bulletin.

b. Except in the case of unanticipated emergency situations or statutory or judicial deadlines, the agency head shall refrain from taking the proposed regulatory action under review pursuant to this Section until the OMB review of this submission is completed.

c. As to any proposed regulatory action that is not submitted under Executive Order No. 12291, i.e., a prerulemaking action, OMB shall be deemed to have determined that the proposal is consistent with Executive Order No. 12498 within 10 days of its submission, unless the agency is notified to the contrary within that 10 days.

d. As to any proposed regulatory action that is submitted under Executive Order No. 12291, i.e., a draft notice of proposed rulemaking or final rule, OMB shall be deemed to have concluded review of a significant regulatory action submitted pursuant to this Section within the appropriate time limit stated in Section 3(e)(2) of Executive Order No. 12291, unless the agency is notified to the contrary within that time limit. No separate filing under Executive Order No. 12498 is required under this circumstance.

e. Absent unusual circumstances, such as a new statutory or judicial requirement or an unanticipated emergency situation, OMB may return for reconsideration any rule submitted for review under Executive Order No. 12291 during the Reporting Year that would be subject to Section 6 of this Bulletin but was not included in the agency's final regulatory program for the Reporting Year; or any other planned steps or actions that are materially different from the action described in the Administration's Regulatory Program for 1985.

11. Exemptions. Pursuant to Section 2(c) of Executive Order No. 12498, the Director is authorized to exempt from the requirements of the Order and this Bulletin any class or category of regulatory actions as to which the Director determines that review is not necessary in order to achieve the effective implementation of the regulatory planning process. Requests for such exemptions should be submitted to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget.

12. Information Contact. For further information on the requirements of this Bulletin, each agency may contact the appropriate Desk Officer in the Office of Information and Regulatory Affairs, Office of Management and Budget.

13. Amendment of this Bulletin. OMB will review the requirements of this Bulletin after publication of the Administration's Regulatory Program for 1985. After assessing the implementation of this Bulletin, OMB will amend it to provide a time schedule and any additional guidance for preparation of the Administration's Regulatory Program for 1986.

David A. Stockman
Director

Attachment

ATTACHMENT 1 BULLETIN NO. 85-9

FORMAT FOR THE
AGENCY DESCRIPTION OF EACH
PROPOSED SIGNIFICANT REGULATORY ACTION
PURSUANT TO EXECUTIVE ORDER NO. 12498

(IMPORTANT--Read the instructions following this Format before completing it.)

Date of Submission:

I. IDENTIFICATION

1. Department/Agency and Bureau/Office Issuing Regulation:

Agency Code:

2. Name of Person Who Can Best Answer Questions Concerning this Proposal:

Telephone:

3. Title of Regulatory Action:

RIN:

4. Existing Rule:

RIN:

5. Legal Authority:

6. a. Statutory Deadline: Yes _____ No _____

b. Judicial Deadline: Yes _____ No _____

c. Other Legal Mandate: Yes _____ No _____

(If the answer to any of the above is "Yes," specify the deadline and the mandate.)

II. STATUS

7. a. Indicate Whether this Proposed Significant Regulatory Action is Categorized as:

First Administration Review_____

Previously Reviewed Under Executive Orders No. 12291 or No. 12498_____

Previously Reviewed by a Cabinet Council or Other Body in the Executive Office of the President_____

b. Describe Previous Review:

Date:

c. Indicate Whether the Previously Reviewed Action has:

Not Changed ____ Changed ____

(If it was previously reviewed under Executive Orders No. 12291 or No. 12498, and has not been changed, omit Parts III, IV, and V; if it has changed, omit Parts III and IV.)

(If it was previously reviewed by another body in the Executive Office of the President, and has not been changed, omit Part V; if it has changed, complete all Parts.)

III. PURPOSE OF PROPOSED SIGNIFICANT REGULATORY ACTION

8. a. Problem the Proposed Significant Regulatory Action is Intended to Solve:

b. Explanation of Why Private Action or Possible Action by Other Level of Government Would Not Be Adequate:

9. a. Potential Policy Issues to be Resolved:

b. Supporting Analyses to be Used:

c. Likely Problems of Implementation:

d. Benefits and Costs that have been Identified (In Dollars, if Practical):

10. Alternative Federal Regulatory (and Nonregulatory) Solutions under Consideration, including their Major Advantages and Disadvantages, and the Incidence of their Significant Benefits and Costs:

11. Information Collections that may be Involved in Pursing Alternatives Described in Question 10, and Analyses Described in Question 9:

IV. CONSISTENCY WITH ADMINISTRATION REGULATORY POLICY

12. a. "Significance" Of Regulatory Action:

    b. Applicable Element(s) in Definition In Section 5c of this Bulletin, e.g., "(1)"-"(7)" _____

13. Consistency With Administration Regulatory Principles:

14. Constraints that may Cause Inconsistency with Administration Regulatory Principles:

V. CHANGES IN PLANNED STEPS OR ACTIONS CONCERNING THE SIGNIFICANT REGULATORY ACTION SINCE PREVIOUS ADMINISTRATION REVIEW

15. Nature of the Change:

16. Reasons for Change:

17. a. Administrative Discretion Available:

    b. Specific Statutory Or Judicial Constraint(s):

VI. TIMETABLE (Identify at least three future steps.)

18.

Planned Steps or Actions	Date of Initiation	Date of Completion

ATTACHMENT 1

BULLETIN NO. 85-9

INSTRUCTIONS TO COMPLETE AGENCY DESCRIPTION OF EACH PROPOSED SIGNIFICANT REGULATORY ACTION PURSUANT TO EXECUTIVE ORDER NO. 12498 IN THE FORMAT REQUIRED

Coverage

Pursuant to Sections 6 and 10 of this Bulletin, the head of each agency covered by this Bulletin shall submit information concerning each proposed significant regulatory action (grouped as specified in subsections b and c of Section 6 of this Bulletin) in the Format attached to this Bulletin.

General Instructions

Each agency shall answer each question concisely but completely, taking as much space as needed after each question listed in the Format. Retype each question. If the question is not applicable, then type "N/A." On the top of the second and succeeding pages describing a significant regulatory action, state on the top of the page the agency, the title of the proposed significant regulatory action, and the Regulation Identifier Number (RIN), if any, previously assigned by the Regulatory Information Service Center to describe the action in the Unified Agenda of Federal Regulations.

Definition of "Significant Regulatory Action"

Section 5 of this Bulletin defines a "significant regulatory action" to include certain "prerulemaking actions" (defined in Section 5a) and certain "rulemaking actions" (defined in Section 5b).

In applying the definition of a "significant regulatory action," it is important to note four basic features.

First, while the definition applies to rulemaking actions--the drafting and publication of a notice of proposed rulemaking (NPRM) or of a final rule--it is meant to include only the relatively small proportion of all NPRMs and final rules that the agency or OMB considers to be the most important rulemakings (for the reasons stated in the definition). As a result, an agency should not describe as "significant regulatory actions" all the NPRMs and final rules that the agency will list in its Unified Agenda of Federal Regulations, or even all that would have been previously classified as "priority" for purposes of the Unified Agenda. Because the definition in Section 5 of this Bulletin is in some respects broader than the definition of "priority" in the Unified Agenda, an agency could describe as "significant" more NPRMs and final rules than the agency has previously designated as "priority" for publication in the Unified Agenda. On the other hand, in reviewing its list of "priority" rulemakings (as

included in the Unified Agenda) an agency may decide that not all of them are "significant" within the meaning and purpose of this Bulletin. In this regard, the application of the term "significant regulatory action" should be influenced by the number of such actions that would be included by the interpretation of that term. This must be a manageable number and yet one that carries out the purposes of Executive Order No. 12498. Agencies are encouraged to consult with their OIRA Desk Officers in developing the list of "significant regulatory actions."

Second, the definition of "significant regulatory action" also includes prerulemaking regulatory activities, which are not included in the Unified Agenda. Specifically, both Executive Order No. 12498, in Section 2(a), and this Bulletin stress that agencies are to include a description of prerulemaking actions that would be a step toward adoption of a rule that would meet any of the criteria set forth in Section 5c(1)-(6) of the Bulletin, including actions taken to consider whether to initiate, or in contemplation of, a significant rulemaking. For example, the decision to create an agency task force to evaluate the need for a regulation that, if proposed, would be a "significant regulatory action," or to undertake a study to assess an economic problem related to possible regulatory action that would be "significant," or to analyze health and safety risks concerning a hazard the regulation of which would be "significant," should all be considered as significant prerulemaking activities.

Third, in determining whether a regulatory action is sufficiently "significant" to report, the agency should assess the overall importance of the regulatory action, not just the specific steps or actions that are planned during the Reporting Year. For example, during the Reporting Year, the agency may only plan to initiate a research contract, or to hold further public hearings to gain certain kinds of information. Although the individual steps or actions planned in the Reporting Year may not be a priority of the agency head or otherwise considered to be "significant," the fact that these are steps toward a regulatory action, or regulatory actions that, in the aggregate, are likely to be such a priority or otherwise "significant" warrants treating the overall effort as a "significant regulatory action."

Fourth, once the "significant regulatory action" has been identified, the agency should report the major steps or actions that the agency proposes to take on such "significant regulatory action" during the Reporting Year. Only the important steps or actions--or changes in important steps or actions--should be reported, i.e., those types of steps or actions for which this program is intended to ensure coordination and consistency with Administration policies and priorities. In cases of doubt as to whether a planned step or action is major, agencies are encouraged to consult with the OIRA Desk Officer.

Exemptions

In cases where full reporting would not serve the purposes of this program, and after consultation with the appropriate OIRA Desk Officer, an agency may request an exemption from the requirement that it answer the questions set forth in Parts II through VI of this Format for regulatory actions that are "significant" only because they are subject to a statutory or judicial deadline. The agency will still be required to complete all applicable Parts of this Format with respect to any regulatory action that meets any other criterion of Section 5c of the Bulletin in addition to Section 5c(3).

Instructions for Part I--IDENTIFICATION

1. Give the complete name for the Department/Agency and the Bureau/Office responsible for implementing the proposed significant regulatory action. Record the 4-digit Agency Code that OMB/OIRA has assigned to your agency for reviews pursuant to Standard Form 83. For example, the Food Safety and Inspection Service has been assigned the number 0583; and the Occupational Safety and Health Administration has been assigned the number 1218.

2. Identify the individual who is familiar with the proposed significant regulatory action and who can answer questions on behalf of the agency concerning such action. For example, this individual would often be the Branch or Office Chief responsible for implementing the significant regulatory action.

3. Use the full title of the significant regulatory action. If the action has not previously been given a formal title, use a short, descriptive phrase to describe the significant regulatory action. If this regulatory action has been described previously by answering the questions set forth in the Format attached to this Bulletin, or in the Unified Agenda of Federal Regulations, either use the same title or indicate in parentheses the previously used title. If a RIN has not been assigned, place "N/A" in the space provided.

4. If the proposed significant regulatory action is to revise an existing rule, identify the existing rule, provide either its FR or CFR cite (preferably, the CFR cite, if there is one), and its RIN, if any. If appropriate, indicate the portion of the existing rule planned to be revised. For example, a concise but complete answer would be: "'Health Requirements for Travel Abroad;' 14 CFR 9999, Subpart 6; proposed regulatory action to amend the definitions concerning food preparation in Subpart E, Sections 9999.502-9999.508. RIN: 2700-ZZ49."

5. State the legal authority for the regulatory action. Use the same format for doing so as is required by the Unified Agenda. For example, a legal authority could be cited as 42 USC 121; PL 91-190, Sec. 203; or E.O. No. 12291.

6. Indicate whether there is any statutory or court-ordered deadline, or other legal mandate requiring regulatory action by a date certain. A statutory or court-ordered deadline would include a requirement that the agency issue rules to implement a specific program by a given date; or a requirement that unless an agency issues rules to accomplish a given goal by a specific date, a specific consequence would take effect. A statutory or court-ordered deadline would not include an agency obligation to accomplish general goals, or a statement that the agency should protect the public from a general kind of problem. "Other Legal Mandate" refers to any other explicit legal obligation to act by a date certain, e.g., absent agency regulatory action by a specified date, the regulatory authority transfers to another agency; or funding to implement a given program expires by a date certain. If there is such a deadline or mandate, describe it, giving the current citation.

Instructions for Part II--STATUS

7. Section 6b of this Bulletin requires all significant regulatory actions to be divided into three categories, "First Administration review," "Previously reviewed: not changed," and "Previously reviewed: changed." If there has been previous Administration review, briefly identify it. Such review may have been conducted by a Cabinet Council, by OMB under Executive Order No. 12291, or under Executive Order No. 12498. Include in the description the organization in the Executive Office of the President that conducted the review, the date, and a brief summary of the results of the review.

If the significant regulatory action is categorized as "First Administration Review," the agency should complete Parts I, II (Question 7a), III, IV, and VI. If it was previously reviewed under Executive Orders No. 12291 or No. 12498, and not changed, the agency should complete Parts I, II, and VI; if it has changed, the agency should complete Parts I, II, V and VI. If it was previously reviewed by another body in the Executive Office of the President, and not changed, the agency should complete Parts I, II, III, IV, and VI; if it has changed, the agency should complete all Parts.

Instructions for Part III--PURPOSE OF PROPOSED SIGNIFICANT REGULATORY ACTION

General Instructions Concerning A Proposed Significant Regulatory Action That Was Subject To A Previous Administration Review. If the agency has previously answered the questions set forth in this Part of this Format, identify and describe any changes or additions to the information previously provided.

The amount of information that the agency can provide to answer the questions set forth in Part III of this Format will vary, depending upon the stage of the prerulemaking or rulemaking action. In some cases, especially at the earliest stages, the agency may not have the information needed to answer some of the questions set forth in this Format. In such instances, the agency should provide what it reasonably can but should not embark on costly or time-consuming analyses solely for the purpose of supplying more information.

8. Summarize the market failure or other problem that is creating the need for possible Federal regulatory action. Explain why actions by the private sector or other levels of government are not adequate to solve the problem. For example, explain why private interests are not taking sufficient action, and why State or city governments are unwilling or incapable of solving the problem.

9. Identify and describe the analyses that have been used or are planned to quantify or otherwise evaluate the magnitude of the problem. Identify any potential policy issues or likely problems of implementation the agency foresees. To the extent that the costs of agency implementation, and compliance by those being regulated, have been identified, so indicate. Likewise, indicate the benefits expected from solving the problem by regulation.

10. Summarize the Federal regulatory solutions that are being considered, including the major advantages and disadvantages of each, and any groups of persons, firms, or political jurisdictions that would receive a significant benefit or bear a significant cost if that solution is adopted. Include, as well, a summary of any nonregulatory solutions being considered, including Federal grants, or other forms of direct Federal aid; redirection of efforts to enforce existing regulatory programs; and any other form of Federal activity that does not involve a new regulatory action. Describe any related guidelines anticipated or currently in effect.

11. Identify any collections of information that may be involved in conducting any of the planned analyses or regulatory solutions being considered.

Instructions for Part IV--CONSISTENCY WITH ADMINISTRATION REGULATORY POLICY

12. Section 5c of this Bulletin defines a "significant" regulatory action by reference to seven criteria, any one of which is sufficient to require coverage. Explain briefly why this regulatory action is "significant," and refer specifically to all criteria that are applicable to it. Note that actions deemed "significant" solely by reason of criterion (3) in Section 5c may be eligible for an exemption. See "Exemptions," above.

13. Describe how this regulatory action is consistent with the Administration's regulatory principles set forth in Executive Order No. 12291 and the 1983 Task Force Report.

14. Describe any limitations or circumstances that may reasonably cause the agency to take a regulatory action that is not fully consistent with all Administration regulatory principles, policies, and priorities. Identify all regulatory principle(s) of Executive Order No. 12291 and the Task Force Report with which it may not be consistent. Include a specific reference to any statutory constraints that may cause this action to be inconsistent with an Administration principle, policy, or priority.

Instructions for Part V--CHANGES IN PROPOSED SIGNIFICANT REGULATORY ACTION SINCE PREVIOUS ADMINISTRATION REVIEW

15. Describe the nature of the change in the agency's proposed regulatory activity since the previous Administration review. For example, identify any option or regulatory approach, such as the use of marketable rights, an auction, etc., that has been added or deleted from those previously under consideration.

16. Describe the reasons for the change in the agency's previously proposed regulatory activity. Identify new information concerning the problem to be addressed, such as a new risk assessment, or new evidence suggesting that a new risk assessment should be conducted; new and unusual interest expressed by private or public groups; or any other factor causing the change in the previously proposed regulatory activity, including any change in applicable law that may require such change.

17. Specifically indicate whether and in what way the change may have the effect of limiting the administrative discretion available to the agency and the range of regulatory solutions being considered. Administrative discretion refers to the full range of administrative actions available to the agency as a whole, including other regulatory authority or coordinated efforts with other agencies.

Instructions for Part VI--TIMETABLE

18. State the nature of the next regulatory steps or actions planned for the "significant regulatory action,"--prerulemaking or rulemaking as defined in Sections 5a and b of this Bulletin--regardless of whether they are likely to occur during the Reporting Year ending on March 31, 1986. Give their expected dates of initiation and completion.