

MEMORANDUM OF AGREEMENT

TREASURY AND OMB IMPLEMENTATION OF
EXECUTIVE ORDER 12291

I. General

Treasury economists will be responsible for:

- (a) Identifying economic issues in Treasury regulations.
- (b) Preparing Regulatory Impact Analyses, when required.

II. Regulations

Internal Revenue Service
Bureau of Alcohol, Tobacco and Firearms
U.S. Customs Service

- (a) (1) The review procedures of the Executive order are waived with respect to all regulations except legislative regulations that are "major" as defined in the Executive order.
 - (2) The procedures specified in section II(c) of this agreement do not apply to major legislative regulations, regulations defined in section 1(a)(1)-(3) or subject to section 8 of the Executive order, advance notices of proposed rulemaking, regulations which are not reviewed or subject to approval by an Assistant Secretary prior to issuance, regulations concerning the establishment or designation of geographical viticultural areas, and technical corrections to previously published regulations. OMB may exempt additional regulations or classes of regulations from these procedures.
- (b) Treasury will be responsible for alerting OMB to:
- (1) any major regulation for which Executive order review has been waived.
 - (2) any non-major regulation that reasonably could be expected to have a significant economic impact.
- (c) Prior to publication of a regulation in the Federal Register, and at such times as Treasury may determine, Treasury will provide to the appropriate OMB desk officer three (3) copies of a statement that:

- (1) Identifies the title of the regulation;
- (2) Indicates the stage of rulemaking;
- (3) Briefly describes what the regulation will require and identifies any significant policy changes proposed or resulting from the regulation; and
- (4) Indicates the basis for determining that the regulation is not a major regulation or, in the case of an interpretative regulation, explains why the regulation is considered interpretative.

Treasury will not publish any regulation subject to this subsection until OMB review has been completed. OMB review will be deemed to be completed in 10 calendar days (or, if required with respect to a specific regulation, within such lesser time as may be agreed by OMB and Treasury) unless, prior to such time, OMB advises Treasury that either review has been completed or requests, pursuant to subsection II(d), to review the regulation under the terms of the Executive Order.

- (d) OMB reserves the right to review the economic impact of any regulation under the terms of the Executive order. Requests for such review may be made orally, and shall be confirmed in writing by the Administrator or Deputy Administrator for Information and Regulatory Affairs. Any review under the terms of the Executive order will be deemed to be completed 10 calendar days from the date OMB received the materials required for review, unless prior to such time:

- (1) OMB orally notifies Treasury that review has been completed; or
- (2) OMB orally notifies Treasury that it is extending review pursuant to section 3(f) of the Executive order. Any such notice shall be confirmed in writing by the Administrator or Deputy Administrator for Information and Regulatory Affairs.

Treasury will not publish any such regulation until OMB review has been completed under the terms of the Executive order.

Bureau of Public Debt

The review procedures of the Executive order are waived with respect to all circulars and regulations issued by the Bureau of Public Debt which implement, through the exercise of the general borrowing power, the fiscal policies of the United States.

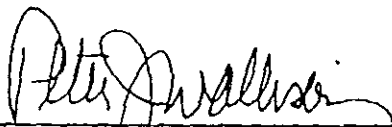
.. Rulings

Internal Revenue Service
Bureau of Alcohol, Tobacco and Firearms
U.S. Customs Service

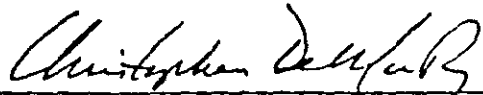
- (a) The review procedures of the Executive order are waived with respect to revenue rulings, revenue procedures, Customs decisions, legal determinations, and other similar ruling documents.
- (b) Treasury will be responsible for alerting OMB to any ruling document that reasonably could be expected to have a significant economic impact, particularly rulings in which there is a wide range of options with varying degrees of economic impact.
- (c) In accordance with the procedures of section II(d), OMB reserves the right to review the economic impact of a particular ruling under the terms of the Executive order. Treasury will not publish any such ruling until OMB review has been completed under the terms of the Executive order.

IV. Effective Date

These procedures will become effective 30 days after the date of this agreement, and will continue for one year or until 90 days after either OMB or Treasury notifies the other that the agreement is terminated, whichever date is later. The Memorandum of Agreement between OMB and Treasury, dated April 28, 1982, shall continue in effect until the effective date of this agreement.



Peter J. Wallison
General Counsel
Department of the Treasury



Christopher DeMuth
Administrator for Information
and Regulatory Affairs

DATED: APR 29 1983



DEPARTMENT OF THE TREASURY
WASHINGTON

GENERAL COUNSEL

November 4, 1993

The Honorable Sally Katzen
Administrator, Office of Information
and Regulatory Affairs
Executive Office of the President
Office of Management and Budget
Washington, D.C. 20503

Dear Sally:

The purpose of this letter is to restate my understanding, based on our previous conversations and your October 12 guidance memorandum, that E.O. 12866 does not apply to regulatory actions of the Department of the Treasury that were not subject to review under the terms of E.O. 12291 or the Treasury-OMB memorandum of agreement (MOA) implementing that Order.

E.O. 12291 did not apply to agency regulations "issued with respect to a military or foreign affairs function of the United States." E.O. 12866 contains a parallel exemption, but specifically includes such regulations that involve the "import or export of non-defense articles and services." It is my understanding that this limitation on the exemption is not intended to apply to Treasury regulations that were not subject to E.O. 12291. Examples of such regulations include:

- Regulations issued by the Office of Foreign Assets Control (OFAC) that implement the President's foreign policy by blocking assets and imposing economic sanctions on foreign countries. Current sanctions programs include Haiti, Iraq, Vietnam, Cuba, Iran, Libya, and Yugoslavia (Serbia and Montenegro).
- Regulations issued by the Secretary of the Treasury in his capacity as Chairman of the Committee on Foreign Investment in the United States pursuant to the Defense Production Act of 1950 (as amended by the Omnibus Trade and Competitiveness Act of 1988), providing for the national security review of mergers, acquisitions and takeovers of U.S. firms by foreign entities.
- Regulations issued by the Assistant Secretary (Economic Policy) concerning the periodic reporting of portfolio capital positions and transactions pursuant to the International Investment and Trade in Services Survey Act and the Bretton Woods Agreements Act, and the reporting of foreign currency positions of large U.S. business enterprises and their foreign affiliates pursuant to section 5315 of title 31, United States Code.

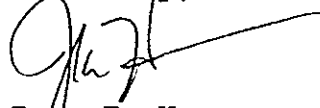
- Customs regulations restricting the importation of particular articles. For example, Customs issues regulations to restrict the importation of articles based on determinations made by the U.S. Information Agency (USIA) under the authority of the Convention on Cultural Property Implementation Act. Recently, such regulations have restricted the importation of archaeological artifacts from Mali, El Salvador and Guatemala.

The MOA exempted from E.O. 12291 review (1) all rulings documents issued by the Internal Revenue Service (IRS), the Bureau of Alcohol, Tobacco and Firearms (BATF), and the U.S. Customs Service and (2) and specified regulations issued by those bureaus and the Bureau of the Public Debt (BPD). Appendix C of your October 12 guidance memorandum, which lists regulations that are not subject to E.O. 12866 review, includes the ruling documents but omits the regulations included in the MOA. We believe this was an oversight and it is my understanding that the following continue to be exempt from review under E.O. 12866 on the basis of the statement in your memorandum that previously granted exemptions remain in effect:

- BPD regulations that implement, through the exercise of the general borrowing power, the fiscal policies of the United States.
- BATF regulations concerning the establishment or designation of geographical viticultural areas.
- IRS, Customs and BATF regulations that are not subject to the approval of an Assistant Secretary prior to issuance. For example, Customs issues regulations pursuant to certifications made by the State Department that grant vessels or aircraft of a foreign country reciprocal treatment in the United States when the foreign country provides the same treatment to U.S. vessels or aircraft; the IRS issues regulations amending the Statement of Procedural Rules, 26 CFR Part 601.
- Advance notices of proposed rulemaking (ANPRMs) issued by IRS, Customs and BATF. In the past three years, BATF issued three ANPRMs and Customs issued one, none of which contained proposed regulatory text; the IRS did not issue any ANPRMs during this period.

We would be pleased to discuss any of the above referenced regulations with you or your staff.

Sincerely,



Jean E. Hanson
General Counsel



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

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

DEC 22 1993

Honorable Jean E. Hanson
General Counsel
Department of the Treasury
Room 300
Washington, D.C. 20220

Dear Jean:

This is in response to your letter of November 4, 1993, which discussed the application of Executive Order No. 12866 to Treasury regulations.

You are correct in stating our agreement that the new Executive Order does not apply to the substantive categories of regulatory actions of the Department of the Treasury that were not subject to review under Executive Order 12291 or the Treasury/OMB Memorandum of Agreement implementing that Order. Please note, however, that the new Executive Order does apply to advance notices of proposed rules (ANPRM's) unless an ANPRM falls within one of the substantive areas that we have agreed to exempt.

In the enclosed document, we have outlined the substantive areas of regulation that we are prepared to add to the "exempt list" attached to our October 12 guidance memorandum. All other rules should be included on the lists of rules under development that is to be submitted periodically to OMB so that we can determine which are "significant" and hence warrant centralized review. Simply stated, we are continuing the Treasury Department's current exemptions from regulatory review, except for ANPRM's. If the nature of Treasury's regulatory issues should change, we will consult with you to work out any necessary adjustments.

I want to take this occasion to thank you again for the professional and expeditious way your staff has handled regulatory issues. I look forward to working with you as we implement the new Executive Order.

Sincerely,

Sally Katzen

Enclosure

ENCLOSURE

Treasury Department Regulations Not Subject to Review Under E.O. 12866 as of November 1993

- o Regulations that implement a military and foreign affairs function of the United States, including:
 - Regulations issued by the Office of Foreign Assets Control (OFAC) that implement the President's foreign policy by blocking assets and imposing economic sanctions on foreign countries.
 - Regulations issued by the Secretary of the Treasury in his capacity as Chairman of the Committee on Foreign Investment in the United States pursuant of the Defense Production Act of 1950 (as amended by the Omnibus Trade and Competitiveness Act of 1988), providing for the national security review of mergers, acquisitions and takeovers of U.S. firms by foreign entities.
 - Regulations issued by the Assistant Secretary (Economic Policy) concerning the periodic reporting of portfolio capital positions and transactions pursuant to the International Investment and Trade in Services Survey Act and the Bretton Woods Agreements Act, and the reporting of foreign currency positions of large U.S. business enterprises and their foreign affiliates pursuant to Section 5315 of title 31, United States Code.
 - U. S. Customs Service (Customs) regulations restricting the importation of particular articles.
- o Bureau of Public Debt (BPD) regulations that implement, through the exercise of the general borrowing power, the fiscal policies of the United States.
- o Bureau of Alcohol, Tobacco and Firearms (BATF) regulations concerning the establishment or designation of geographical viticultural areas.
- o Internal Revenue Service (IRS), Customs and BATF regulations that are not subject to the approval of an Assistant Secretary prior to issuance.
- o Rulings documents issued by the IRS, BATF, and Customs.