



GENERAL COUNSEL

DEPARTMENT OF THE TREASURY
WASHINGTON

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.

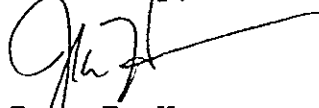
- Customs regulations restricting the importation of particular articles. For example, Customs issues regulations to restrict the importation of articles based on determinations made by the U.S. Information Agency (USIA) under the authority of the Convention on Cultural Property Implementation Act. Recently, 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

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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.