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Regulatory Reform - Legislation

Regulatory reform-legislation

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

THE DIRECTOR

MAR 6 1998

The Honorable Fred Thompson
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing to provide the Administration's views on S. 981, the Regulatory Improvement Act of 1998. The Administration commends the thoughtful effort by both you and Senator Levin to address numerous concerns raised by the Administration and by others about the bill as introduced.

The Administration believes strongly in responsible regulatory reform. President Clinton's issuance of Executive Order No. 12866 was predicated on his belief that government should do a better job of assessing risks and evaluating costs and benefits before issuing major rules. While we have been skeptical of the need for further comprehensive regulatory reform legislation at this time, we have sought to work with the Committee to ensure that any bill advances the President's regulatory reform principles without creating unwarranted costs to taxpayers or needless burdens on agencies acting to protect human health, safety, or the environment.

The substitute bill issued earlier this month contains significant improvements over last summer's draft. We very much appreciate this effort. While the substitute is responsive to many of our concerns, there are still serious issues remaining. One of the problems with comprehensive legislation is that so many different kinds of rulemaking are affected. We want to be sure that any new law meets a simple test: that it truly improves the regulatory system, and does not impair -- by creating more litigation, more red tape, and more delay -- the agencies' ability to do their jobs. We are interested in working with you to see if we can find the common ground.

After a full review of the substitute to S. 981, we have concluded that the bill does not yet meet the test we have articulated, and therefore the Administration would oppose the bill if it were to be adopted in its current form. Our concerns are briefly outlined below, and we have developed and enclosed for your consideration a set of modifications to the bill that would remedy these and other concerns while remaining faithful to the sponsors' intent. As you know from our past conversations, many of these are critical to achieving an acceptable result.

1. Judicial Review. The Administration remains concerned that the judicial review provisions would promote tactical litigation over errors that were not material to the outcome of a particular rulemaking. We know that this conflicts with the sponsors' intent, as reflected in earlier hearing discussions. To avoid additional litigation over major rules, the troubling ambiguity in the current version of the bill should be eliminated.

2. Implicit Supermandate. We have been pleased that the sponsors of S. 981 consistently have agreed with the view that regulatory reform legislation should not alter or modify the substantive reach of particular statutes designed to protect human health, safety, or the environment. We remain concerned that the current language of the bill would be construed to narrow the range of discretion available to agencies under their existing statutory mandates to protect human health, safety, or the environment. The range of discretion available to agencies under current law must be expressly preserved to avoid an implicit supermandate.

3. Risk Assessment. The Administration believes that, while there have been improvements in Section 624, this section needs to be revised still further to eliminate the imposition of burdensome requirements where those requirements will not enhance major rules. For example, section 624 includes in its sweep an unbounded category of agency actions that are not rulemakings, as well as major rules where Congress has not predicated regulatory standards on risk assessment. These should be excluded. In addition, the requirement for revision of risk assessments threatens an endless and costly analytical process, reopened with each new study, that would provide additional fodder for protracted litigation. We also remain concerned that certain provisions are too specifically tailored to analysis of cancer risks, and are thus ill-suited to other objectives, such as an evaluation of risks related to environmental and natural resource protection, worker safety, or airworthiness.

4. Peer Review. The Administration is very concerned about requiring peer review in contexts where the process would add significantly to costs and delays of the regulatory process without any foreseeable benefit. For example, the requirement that cost-benefit analyses be subject to peer review would add little to the review already performed by the Office of Management and Budget in our regulatory review process. In addition, the requirement that peer review be entirely independent of the regulating agency would displace well-established and credible peer review mechanisms, while making good peer review virtually impossible in highly specialized subject areas (e.g. nuclear safety). We also believe that the statute should require no more than one round of peer review for each major rule.

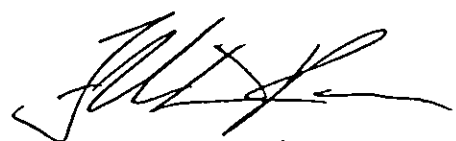
5. Review of Past Regulations. While the Committee responded to many of the Administration's earlier concerns about review of past regulations, the current version of the bill creates two different, uncoordinated and likely duplicative processes for the review of past regulations, imposing a major burden on agencies and needless expense on taxpayers. The second of these should be deleted, and the cycle of review in the first should be set at 10 years.

6. *Needless Burdens.* A number of the bill's requirements would impose substantial costs on agencies where there would be no conceivable benefit to the public or regulated entities. For example, the bill imposes its analytical requirements and review requirements even where the costs of compliance with the regulation have been incurred by the regulated community and no costs can be avoided by selecting a different regulatory option. Our proposed changes address other examples as well.

7. *Definitions and other issues.* There are several definitions and other provisions that need to be added or modified to ensure clarity, to discourage unwarranted litigation that would delay new safeguards, to protect the constitutional prerogatives of the President and the deliberative process within the Executive Branch, and to eliminate unwarranted burdens on agencies. While many of these changes appear minor, it would be difficult to overstate their importance to us in evaluating the cumulative effect of this bill.

In developing revisions to the bill that would address our concerns, we have sought to suggest changes that are consistent with our understanding of the sponsors' intent and with the spirit of our very constructive discussions with the Committee staff. We would welcome a further opportunity to work with you before the bill is reported by the Committee.

Sincerely,



Franklin D. Raines
Director

Enclosure

Identical Letter Sent to The Honorable Carl Levin

PROPOSED REVISIONS TO THE SUBSTITUTE S. 981

1. Judicial Review:

   a. Delete section 627(d) and substitute the Glenn-Chafee review language (modification in bold):

      "(d) In any proceeding involving judicial review under Section 706 or under the statute granting the rulemaking authority, the information contained in any cost-benefit analysis or risk assessment required under [sections 623,624,...] may be considered by the court as part of the administrative record as a whole solely for the purpose of determining **under the statute granting rulemaking authority** whether the final agency action is arbitrary, capricious, or an abuse of discretion, or unsupported by substantial evidence where that standard is otherwise provided by law. The adequacy of compliance or the failure to comply with [sections 623,624,...] shall not be grounds for remanding or invalidating a final agency action, unless the agency entirely failed to perform a required cost-benefit analysis or risk assessment."

   b. In 627(e), change "shall" to "may," delete reference to peer review, and add prejudicial error language (to ensure that only errors material to the regulatory outcome are a basis for remand).

   c. Provide that judicial review is not applicable to Subchapter III other than under section 706(1) of the APA.

   d. Clarify that section 627(b) is not subject to an interlocutory order.

2. Implicit Supermandate:

   a. Delete section 622(b) and replace as follows:

      "Nothing in this subchapter shall be construed to alter or modify the substantive standards otherwise applicable to a rulemaking under other statutes, or to limit the range of discretion available under, or in construing, other statutes."

3. Risk Assessment

   a. Delete section 624(a)(1)(A)(ii), which broadens the applicability of the risk assessment provisions beyond rulemaking.

   b. Delete section 624(c)(2) to prevent unending cycle of revision, or clarify that new

studies must only be considered if they are reasonably available before the agency prepares the initial risk assessment.

c. Delete the requirement in section 624(d) requiring public notice of intent to perform a risk assessment.

d. Exclude from the coverage of section 624 those major rules that are not premised on the outcome of a risk assessment (e.g. MACT, BACT).

4. Peer Review

a. Delete cost-benefit analysis from the coverage of requirements for peer review (section 625).

b. Modify section 625(b)(1)(A)(ii), so that peer review participants are independent of the "program office," rather than independent of the "agency."

c. Clarify that only one round of peer review is required, and that it should be performed at the NPRM stage.

5. Other

a. Narrow definitions, procedures and disclosure provisions to protect the constitutional prerogatives of the President and the deliberative process.

- Delete section 641.

- In section 642(a) after "Such process shall be . . ." add "determined by the President and shall be . . ."

- In section 643(a) after "subchapter" add "as determined by the President." Delete 643(a)(1) through 643(c).

b. Regarding "look back" reviews, delete section 644(b) (amending section 610 of title V), which duplicates the review of rules section, and delete other references to section 610 in the bill. In section 632(a)(1), change "5th" to "10th." In section 631(1), incorporate the definitions in 621 by reference (to capture rule exclusions) and limit to major rules.

c. Modify post-promulgation analysis requirements (section 623(f)(2)) by striking everything after ". . . unreasonable."

d. Delete section 628(c)(2) requiring OMB and OSTP to contract for research studies,

and delete section 629 risk based priorities study.

e. Add the following sentence at the end of 623(d)(1)(B): "Consistent with subsections 621(2) and 621(3), net benefits analysis shall not be construed to be limited to quantified values."

f. Definitions:

- substitution risk (section 621(11)): insert word "unavoidably" ("...to result **unavoidably** from...")

- modify section 621(10)(J) to exclude a rule: "that authorizes **or bars** the introduction into commerce, or recognizes **or cancels recognition of** the marketable status of, a product."

- add exemption from the definition of rule for rules related to international trade.

Regulatory reform - legislation

W. Post 2/27/98 Editorial

Closer on Regulatory Reform

SENS. FRED Thompson and Carl Levin have introduced a new regulatory reform bill. It is a clear improvement over the measure by the same name that the Senate rightly set aside in the last Congress. That one was an open effort to delay and even reverse the regulatory process with minimal concern for the social and environmental consequences. This is a much more serious undertaking, flexibly written, better balanced and in need of only some moderating changes.

The legislation is already in trouble, however, partly on grounds it is too moderate. The wings of neither party like it. Conservatives see it as a sellout whose likely effect would be to legitimate regulation that they seek to ease or rescind. Liberals see it as the same old effort to block what they regard as sound regulation, only in sophisticated and moderate disguise. Both parties are therefore split, and Senate Majority Leader Trent Lott appears reluctant to bring up the bill, in part on grounds that if it passed, his side would lose the issue without winning the victory. Among much else, Republicans are said to fear that the president would find a way to embrace the bill and thereby preempt another of what they regard as their issues, even though the official administration position right now appears to be in opposition. What a basis on which to make fundamental national regulatory policy.

These bills seek to restructure the regulatory process by forcing agencies to pay more systematic attention to the cost of the rules they impose. It's a laudable goal, but the previous effort went too far. It included a so-called super mandate, an overriding regulatory standard whose effect would have been to rewrite through the back door almost all the major regulatory statutes—clean air, clean water, occupational safety and health and the like. The mandate was written in such a way as almost inescapably to weaken the statutes. The bill also provided all sorts of new opportunities to take regulatory agencies to court to delay if not halt their work.

The new legislation fixes much of this, though not quite all. It creates a requirement to pay closer heed to costs, and costs vs. benefits, that would likely affect the behavior of regulatory agencies, and is meant to, but which is also flexible and can be overcome. It is not much different from the current Clinton administration executive order in that respect. An agency would have to take cost into careful account but wouldn't be bound by cost considerations. That's reasonable. Likewise, an agency could be taken to court for failure to carry out the cost-benefit analyses and risk assessments that the bill prescribes, but the court could strike down its final action only if, on the strength of the entire record, it appeared arbitrary or capricious, a pretty narrow basis of review. That's the core of the bill, and with perhaps a little further tuning here and there, it seems fair to us—at least as likely to strengthen as to weaken the case for needed regulation.

There are other, less central provisions of the bill that would likely add for no good reason to the already intolerably long time it takes to reach a major regulatory decision, or would otherwise deplete agency resources. The peer review section is one of several that ought to be made less prescriptive; likewise, a section calling for the review of existing regulations could have the effect of tying agencies down. The review process ought not itself be reviewable in court unless the agency decides to amend a regulation, the equivalent of issuing a new one. The sponsors should reassure the critics by fixing these things.

This bill concerned with the assessment of risks presents risks of its own. But our sense of it is that a somewhat adjusted version would help achieve the goal of reasonable regulation—would block the excessive without impeding the good.

Regulatory reform - Legislation

Bruce - FYI. Did anyone send this to us before it went in?

Elena

THE WHITE HOUSE
WASHINGTON
March 3, 1998

MR. PRESIDENT: 3 4 98

The attached memo seeks your guidance on a strategy for the regulatory reform bill sponsored by Sens. Thompson and Levin. The memo, which I recommend you read, is a product of a meeting convened yesterday by Erskine. He wanted you to see it today as a markup is scheduled for Thursday.

Background. The bill is better than the Dole bill we defeated in the last Congress, but it still presents significant problems. Labor, enviros and other public interest groups strongly oppose it. The business community is strongly for it. The Congressional politics are complicated with Senators on both sides of the aisle lining up in different places. The key vote here is Sen. Daschle's, who will likely support Levin even if all of Daschle's changes are not in the bill.

Options. Three are presented -- they all assume we will oppose the bill unless our concerns are met. *Option 1:* present a set of "high bar" proposals that Levin and Thompson are unlikely to accept. Satisfies labor/enviros but diminishes our negotiating posture and may result in veto-proof bill. *Option 2:* present a list of fixes to address major concerns. Would be well received by Levin/Thompson and will improve bill but may not get all we want and will be opposed by groups. *Option 3:* present expanded list of fixes that go beyond Option 2 but are below Option 1. Gives us more negotiating room to insist on Option 2 fixes as our bottom line.

Daschle prefers 2 or 3. Erskine, Larry Stein, OMB, Gene and Sally prefer 2. The VP, Podesta and Katie prefer 3.

___ Opt 1 ___ Opt 2 ___ Opt 3 ___ Discuss

(Need to see Phil Caplan's memo to get best possible up. If it is likely to pass w/ veto proof majority - Bc

copied

Gene S
Sally K.
Bowles
Podesta
Stein
VP
Kagan

THE WHITE HOUSE

WASHINGTON

March 2, 1998

MEMORANDUM FOR THE PRESIDENT

THROUGH: GENE SPERLING

FROM: SALLY KATZEN

SUBJECT: Regulatory Reform Legislation

This memorandum seeks your guidance on the Administration position on S. 981, the Thompson-Levin regulatory reform bill.

ACTION-FORCING EVENT: On Thursday, March 5, the Senate Governmental Affairs Committee will be holding a markup on the bill. We currently have several serious concerns with the bill. Your advisors all agree that the Administration should register our views before the markup. The number and tenor of the objections we present will depend on your preferred strategy and end game.

BACKGROUND. Senators Levin and Thompson have been working over the past 18 months on a regulatory reform bill that seeks to avoid some of the excesses in the Dole regulatory reform bill, which we defeated three times in the 104th Congress and which proved a rallying point for many of our constituencies in the 1996 election.

The most recent version of S. 981, revised after informal consultation with agencies and White House offices, responded to a number of our previous concerns. There are, however, significant problems remaining in the bill even as revised. We believe that some of these flaws could be fixed to our satisfaction; others may not. Several agencies believe that even if all of these flaws are fixed, this bill in any form will add significant administrative burdens that will interfere with their ability to issue regulations to protect health, safety, and the environment, including some of your major initiatives.

Labor unions, environmental organizations, and other public interest groups are adamantly opposed to any bill of this type -- even if moderate or benign -- and have presented this as a significant test of our credibility in protecting public health and the environment. For all of these groups, defeat of this bill is a high priority. By contrast, the business community has consistently pushed for a regulatory reform bill and is prepared to accept any version that essentially codifies your executive order governing review of regulations by OMB, although they have been disappointed by the number of concessions that Thompson has made to gain Levin's support.

The congressional politics of the issue are problematic. Levin is a moderate, is well-respected on

issues of administrative law, and is perceived as unlikely to support a bill that would adversely affect health, safety, or environmental regulations. He has attracted as co-sponsors Senators Glenn, Rockefeller and Robb. Senator Daschle feels that he has held Levin back to avoid a division in the Democratic caucus, but that he cannot do so much longer. There are at least four Democrats on the committee (led by Senators Torricelli and Durbin), and others in the Senate as a whole, who want to fight because they believe it is a good issue for Democrats and because they are under strong pressure from environmental, labor, and public interest groups. In the House, S. 981 is likely to divide Democrats along the very fault lines that emerged in the fast-track debate.

The Republican politics are also complex. The most conservative wing of the party is ideologically wedded to a far stronger version of regulatory reform legislation than Thompson has developed with Levin, and may want to preserve regulatory reform as an issue to use against Democrats. Other Republicans are willing to enact a moderate bill in order to deliver something for their constituents in this Congress.

Your advisors believe that it is likely that if the bill reaches the floor with Senator Daschle's support, it would pass the Senate with as many as 70 votes. It is generally thought the House would then send it to your desk as passed by the Senate (although House leadership will likely face pressure from the right to make the bill more extreme).

There are three options that your advisors have been discussing. They all presuppose that we will oppose the bill unless our concerns are met.

Option 1. Present a set of "high-bar" proposals that we know Levin and Thompson are unlikely to accept.

Pros: This would attempt to satisfy the expectations of labor, environmental, and public interest groups on an issue that these groups have identified as their highest priority.

Cons: This would diminish the likelihood that we can negotiate needed changes if the bill moves forward despite our strong opposition, and we could be presented with a veto-proof bill that is more burdensome than we would otherwise have been able to negotiate. Also, if the drafters fix a few of our criticisms, we run the risk of appearing to be negotiating in bad faith.

Option 2. Set forth a list of the changes to address the major concerns that the agencies and White House offices agree on.

Pros: This approach would be well received by Levin and Thompson, avoid positioning you as an opponent of any reform, and substantially improve the bill.

Cons: This will disappoint labor, environmental, and public interest groups. This approach also presents the risk that Levin and Thompson will accept only some of our changes, leaving major concerns unaddressed while depriving us of a principled ground for opposition.

Option 3. Set forth an expanded set of changes that go beyond those in Option 2. Not all of these changes would be essential to a signable bill, but the bar would not be as high as in Option 1.

Pros: This approach would give us the negotiating room to insist on the changes in Option 2 as our bottom line. This additional negotiating room will enhance our credibility with the groups in opposition, even if they would have us ask for more.

Cons: They could pick and choose among our suggestions but avoid meeting our most important concerns. This would allow them to trumpet their willingness to compromise, while casting us as unreasonable if we continue in our opposition. By raising the bar higher than Option 2, a final acceptable bill would look like more of a loss than it actually is.

We understand that Senator Daschle has given Senator Levin a number of changes which are essentially a subset of our Option 2 list. We further understand that Daschle would ask Levin to work with us to incorporate our changes in the bill. Senator Daschle will likely support Levin even if all of his own changes are not made. Senator Daschle would either favor Option 2 or 3.

DECISION

____ Option 1 ____ Option 2 ____ Option 3 ____ Let's Discuss

Attached is a brief statement of the major concerns we would seek to address under Option 2.

S. 981 -- REGULATORY IMPROVEMENT ACT OF 1998 (Substitute)

Summary Statement of Administration Position: In S. 981, Senators Levin and Thompson have made a thoughtful, good faith effort to draft comprehensive regulatory reform legislation. The substitute bill issued earlier this month contains significant improvements over last summer's draft. We applaud this effort. While the substitute is responsive to many of our concerns, there are still serious issues remaining. One of the problems with comprehensive legislation is that so many different kinds of rulemaking are affected. We want to be sure that any new law improves the regulatory system, and does not impair -- by creating more paperwork, more red tape, and more delay- - agencies' ability to do their jobs. We are interested in working with the Congress to see if we can find the common ground.

OVERVIEW OF MAJOR AGENCY CONCERNS

Below we have distilled from agency comments the most serious and legitimate concerns. Proposed fixes follow. It bears emphasis, however, that agencies are concerned not only with the specific, major issues noted below, but with the total burden imposed by those and other provisions in the bill. Most agencies believe that this bill is unnecessary -- from their own rulemaking perspective it is certainly unwanted -- and will only add to the time, resources, and difficulties that currently attend rulemaking.

Judicial Review

- The judicial review provisions raise the prospect of tactical litigation over errors that were not material to the outcome of a particular rulemaking. This risk is compounded by the mandate that courts "shall" remand or invalidate regulations whenever an agency fails to perform the required analysis, the failure to specify that remand or invalidation is appropriate only where the agency "wholly" fails to perform the analysis, or the elimination of any judicial discretion to uphold a rule where an asserted error is not prejudicial to the outcome of the rulemaking.

Implicit Supermandate

- The bill would likely be construed to narrow the range of discretion available to agencies under their existing statutory mandates to protect human health, safety, or the environment. The purported "savings clause," providing that its terms not "be construed to supersede any requirement for rulemaking or opportunity for judicial review," exacerbates this risk. Many statutes permit agencies to promulgate more protective standards than those that would meet S. 981's analytical benchmarks (benefits justify costs, net benefits are maximized, and the rule is the most cost-effective option). But this authority often is conferred in terms that cannot be deemed a "requirement for rulemaking." Accordingly, courts may well reconcile any ambiguity in existing regulatory statutes to the policies in S. 981. This reading would compel agencies to exercise their discretion within the narrow range of options that are cost-justified and that maximize net benefits -- an implicit supermandate.

Risk Assessment

- The substitute continues an effort to codify science and analytical approach at a level of detail and in terms that are likely to prove inconsistent with the best science in this evolving field. This is especially problematic in the case of provisions tailored to analysis of cancer risks, which are ill-suited to an evaluation of risks related to environmental and natural resource protection, worker safety, or airworthiness.

- The substitute expands statutory risk assessment requirements beyond major rules to any risk assessment that OMB "determines is anticipated to have a substantial impact on a significant public policy or the economy." This could be applied to a new and unbounded category of agency actions that are not rulemakings.

- The requirement that agencies revise risk assessments whenever new and reliable information becomes available threatens an endless analytical process, reopened with each new study. Agency decisions concerning whether and how to revise a risk assessment would provide new fodder for protracted litigation.

Peer Review

- The bill would require peer review in contexts where the process would add significantly to costs and delays of the regulatory process without any foreseeable benefit. For example the requirement that cost-benefit analyses be subject to peer review would add little to the independent review OIRA already performs in our regulatory review process.

- The requirement that peer review be entirely independent of the regulating agency would render well-established and credible peer review mechanisms like EPA's Science Advisory Board unable to perform their assigned functions. This requirement also would make good peer review impossible for those agencies that have a virtual monopoly on experts in highly specialized subject areas (e.g. nuclear safety).

Other

- By codifying certain definitions, procedures, and disclosure requirements that President Clinton has imposed as a matter of discretion in Executive Order 12866, the bill would interfere with the President's prerogatives in overseeing the Executive Branch.

- The bill contains two different, uncoordinated and likely duplicative processes for the review of past regulations, imposing a major burden on agencies (sections 632 Review of rules, and 644(b) Periodic review of rules.).

- The bill imposes its analytical requirements even where the costs of compliance with the regulation have been incurred by the regulated community and no costs can be avoided by selecting a different regulatory option. This is a major burden on the agencies with no conceivable benefit to the public or regulated entities.

- The substitute requires OIRA, with help from OSTP and CEA, to conduct a series of new studies for which there is neither funding nor need.

- There definitions of "major rule" and "substitution risk" should be modified to conform to current practice.

- Exemptions needed:
  - rules to implement international trade agreements or other agreements concerning foreign affairs;
  - rules withdrawing products from market to protect human health, safety or the environment (currently, S. 981 only exempts rules authorizing product entry).

PROPOSED FIXES TO SUBSTITUTE S. 981 (Partial List)

1. Judicial Review:

    a. Change "shall" to "may," and delete reference to peer review (page 24, lines 12-13)

    b. Delete section 627(d) and substitute Glenn-Chafee review language:

> "(d) In any proceeding involving judicial review under Section 706 or under the statute granting the rulemaking authority, the information contained in any cost-benefit analysis or risk assessment required under [sections 623,624,...] may be considered by the court as part of the administrative record as a whole solely for the purpose of determining whether the final agency action is arbitrary, capricious, or an abuse of discretion, or unsupported by substantial evidence where that standard is otherwise provided by law. The adequacy of compliance or the failure to comply with [sections 623,624,625...] shall not be grounds for remanding or invalidating a final agency action, unless the agency entirely failed to perform a required cost-benefit analysis or risk assessment.

    c. Add prejudicial error language to sec. 627(e), to ensure that only errors material to the regulatory outcome are a basis for remand.

2. Implicit Supermandate:

    a. Delete section 622(b) and replace as follows:

> "Nothing in this subchapter shall be construed to alter or modify the substantive standards otherwise applicable to a rulemaking under other statutes, or to limit the agency's range of discretion in construing other statutes."

3. Risk Assessment

    a. Delete section 624(a)(1)(A)(ii), which broadens applicability risk assessment beyond rulemaking.

    b. Delete the requirement in section 624(d) requiring public notice of intent to perform a risk assessment

    c. Delete section 624(c)(2) to prevent unending cycle of revision, or clarify that new studies must only be considered if they are reasonably available before the agency prepares the initial risk assessment.

    d. Exclude from the coverage of section 624 those major rules that are not premised on the outcome of a risk assessment.

4. Peer Review

    a. Delete cost benefit analysis from coverage of requirement for peer review (section 625,

line 3,4)

b. Modify section 625 line 14 so that peer review participants are independent of the "program office," rather than independent of the "agency."

c. Clarify that only one round of peer review is required, and that it should be performed during the comment period on the proposal.

5. Other

a. Narrow definitions, procedures and disclosure provisions to increase Presidential discretion.

- Delete section 641 definitional constraints on what the President may review

- Modify section 643, public disclosure requirements, so that the President has maximum flexibility (concerning the scope and timing of disclosure, for example), and so that the integrity of deliberative process is maintained.

b. Regarding "look back" reviews, delete section 644(b) (duplicates review of rules section). In section 632, change cycle of review from 5 to 10 years (page 29, line 19 and page 38, line 13).

c. Modify both "lookback" and post-promulgation analysis requirements (section 623(f)(2) to exclude rules where the costs of compliance have been substantially incurred.

d. Delete section 628 guidelines, interagency coordination, and research and section 629 Risk based priorities study. Alternatively, make these requirements contingent on the availability of appropriations.

e. Definitions:

Delete "...in reasonably quantifiable costs" from page 5 lines 14,15.

- substitution risk: inset word "unavoidably" on page 8 line 19 ("...to result **unavoidably** from...")

- modify section 621(J) to exclude a rule: "that authorizes **or bars** the introduction into commerce, or recognizes **or cancels recognition of** the marketable status of, a product."

- add exemption from definition of rule for rules related to international trade.