THE WHITE HOUSE GLOBAL CLIMATE CHANGE INITIATIVE AND CONGRESSIONAL REVIEW ACT IMPLEMENTATION: IS OMB HIDING THE TRUTH ABOUT NEW REGULATIONS AND PROGRAMS?

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
HOUSE OF REPRESENTATIVES

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THE WHITE HOUSE GLOBAL CLIMATE CHANGE INITIATIVE AND CONGRESSIONAL REVIEW ACT IMPLEMENTATION: IS OMB HIDING THE TRUTH ABOUT NEW REGULATIONS AND PROGRAMS?

WEDNESDAY, JUNE 17, 1998

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:25 p.m., in room 2154 Rayburn House Office Building, Hon. David McIntosh (chairman of the subcommittee) presiding.

Present: Representatives McIntosh, Tierney, and Kucinich.

Staff present: Sean Cunningham, counsel; Barbara Kahlow, professional staff member; Andrew Wilder, clerk; Elizabeth Mundinger, minority counsel; and Alys Campaign, minority professional staff member.

Mr. MCINTOSH. The Subcommittee on National Economic Growth, National Resources, and Regulatory Affairs will come to order.

The purpose of today's hearing is to examine the record of the Office of Management and Budget in telling the American people the truth about how Federal programs and regulations operate. In particular, we will address two issues.

First is OMB's cooperation, or lack of cooperation, with this subcommittee's request for information regarding the White House Climate Change Initiative, including OMB's review of pending letters of response from specific agencies about that issue. Second is OMB's progress, or lack or progress, in the implementation of the Congressional Review Act.

I want to welcome Mr. Ed DeSeve, OMB's Acting Deputy Director for Management, responsible for regulatory affairs. I also want to welcome back Mr. Bob Murphy, the general counsel of the General Accounting Office. Bob testified before this subcommittee in March on CRA implementation and I want to thank you from the outset for your strong leadership and consistent commitment to this issue and the fact that you and your staff have shown that commitment to us by working with OIRA and the subcommittee to make CRA work as it is intended to work.

This hearing is about information. Congress and the American people have a right to know the facts about new regulations and

programs before those regulations go into effect. We have a right to know whether their tax dollars are going into these programs, how the new regulations and programs will affect their lives and their livelihoods. What are the costs and benefits? What will it cost families and local communities? How will it affect workers and small businesses? The American people have a right to know the answers to these basic questions.

But, in the case of the administration's climate change policies and in getting useful information about all new regulations, Congress and the public are not getting these answers. These are OMB's responsibilities and in both areas the subcommittee is concerned about the job OMB is doing. OMB has been unresponsive to the subcommittee's efforts to obtain information and documents that would justify the President's budget request for $6.3 billion in additional funding for fiscal year 1999 to fiscal year 2003 for the so-called Climate Change Technology Initiative and other funding for climate change programs and activities. These other categories include part of $1.9 billion U.S. Global Change Research Program and various other programs and activities, including $250 million requested for the Agency for International Development to award grants, contracts, loans, and loan guarantees for climate change activities presumably overseas.

Although we wrote to OMB in March, we are still seeking information and documents regarding OMB's own analysis of the President's budget request and other documents and information regarding OMB's own role in reviewing this. First, the other agencies' responses to our March oversight questions. I understand some of those are still bottled up in the White House. Second, draft testimony and agency comments thereon by administration officials who are attempting to defend the President's budget request for climate change and the Kyoto Protocol.

Only today has my office been able to review at the White House a handful of previously withheld documents in OMB's and CEQ's files which we requested in March of this year. The documents made available today include comments from Energy and Justice critical of the draft testimony of CEA Chair Janet Yellen's so-called economic analysis and some previously withheld data that underlies the administration's climate change policy options. Last, the available documents reveal that, as early as February 1996, the administration was projecting command and control regulatory mechanisms in its post-2000 climate change options. We need to know what was the deliberation that was going on in the administration prior to February 1996, what is the decision, and were those decisions made to prevent that type of command-and-control regulatory mechanism or were they put on hold for political purposes while the treaty is still pending in the Senate?

It is also clear from this review that many documents in OMB's and CEQ's files requested in March are still being withheld. For example, no post-Kyoto documents from CEQ were made available today. I find it hard to believe that in the boxes and boxes of documents, there are no CEQ documents that have been generated since the Kyoto Protocol was entered into in Japan. And the boxes and boxes of documents from other agencies are still awaiting review by the White House counsel. They don't allege executive privi-

lege because I think they know this Congress would reject that as we have in other very serious matters that we are investigating the President on, but yet they stall and they don't provide the information. We have not been able to receive sufficient information in order to review the President's budget request.

For example, despite the requirements of the Government Performance and Results Act, something that Mr. DeSeve is responsible for at OMB, the agency has identified no governmentwide program performance measures and the agencies have identified only a few outcome measures for their dozens of climate change programs, including many new activities. And, despite the requirement of the Protocol for the United States to reduce its greenhouse gas emissions by 7 percent below 1990 levels, EPA says, "Performance for these programs is not measured against a 1990 base year." Something is very wrong here when the treaty in which Vice President Gore signed the United States up for a 7 percent reduction below 1990 levels, the agency responsible chiefly for environmental protection says, and I quote again, "Performance for these programs is not measured against a 1990 base year."

How are we supposed to know whether we will even succeed if that's the case? And, they went on to say performance measures are not applicable for 1990 because the programs did not exist at that time. If the goal is to be 7 percent below 1990 emissions, it will be critical to determine whether these programs actually move toward meeting that goal; therefore, a baseline is necessary. Is Congress being asked to expend huge sums without a road map to understand exactly how they would contribute to meeting the Kyoto target?

Today, we will address OMB's performance of its responsibility to coordinate agency compliance with the Congressional Review Act, the second subject of this hearing. In particular, OIRA is responsible for overseeing and providing guidance to the agencies on compliance with the Congressional Review Act or CRA. This requires the agencies to file certain reports with Congress for each new rule before that rule can legally take effect. If it's not reported, it's not a legal rule, plain and simple, under that statute.

Now GAO, I understand, has found that, despite that law, the agencies have failed to report hundreds of rules, including many rules that have a major impact on small businesses. Regardless of what you think of the merits of those rules, it is a terrible way to run a railroad to purport to regulate when you know legally they are not binding and cannot be withheld in a procedural challenge because OMB has failed to meet its obligations in coordinating with the agencies in submitting those reports.

Here again, it is OMB's responsibility to take the lead and provide agencies with that guidance in order to facilitate the free flow of regulatory information to the American people and their elected representatives here in Congress. And, here again, OMB is the bottleneck. The subcommittee held a hearing on OIRA's implementation of CRA on March 12 of this year, to bring GAO and OIRA together to cooperate on this CRA implementation. Regrettably, OMB refused to send a politically accountable representative to that hearing. In my 3 years as chairman of OIRA's authorizing and oversight subcommittee, I've never observed a more blatant gesture

of defiance. Frankly, during my years in the administration, I would never have been imagined that when Congress wanted to have someone on the oversight committee testify that they would be denied that.

Today, Bob Murphy will report on GAO's efforts to work with OIRA in implementing the CRA since the March 12 hearing. We applaud the efforts of GAO in particular, whose staff have worked closely with the subcommittee to buildup the reporting process. But GAO can't do it all. What the agencies need most is strong leadership and guidance from OMB. By holding back key information from Congress, OMB is denying the American people their right to know the administration's real agenda on climate change and new regulations in general. Time and again, OMB has bottlenecked the flow of information from these agencies for the people's elected representatives to consider. What I want to know is what they have to hide and why they are hiding it. I will continue to investigate OMB's performance in these areas and hold hearings until the full truth about President Clinton's and Vice President Gore's climate change initiative comes to light and until CRA is fully implemented.

With that, let me turn now to the ranking member, Mr. John Tierney, for an opening statement.

[The prepared statment of Hon. David M. McIntosh follows:]

Chairman David M. McIntosh
Opening Statement
The White House Global Climate Change Initiative and
Congressional Review Act Implementation:
Is OMB Hiding the Truth about New Regulations and Programs?
June 17, 1998

The purpose of today's hearing is to examine the record of the Office of Management and Budget in telling the American people the truth about new federal programs and regulations.

In particular, we will address two issues: (1) OMB's cooperation, or lack of cooperation, with the Subcommittee's requests for information regarding the White House Climate Change Initiative, including OMB's review of pending letters of response from specific agencies; and (2) OMB's progress, or lack of progress, in implementing the Congressional Review Act (CRA).

I want to welcome Mr. Ed DeSeve, OMB's Acting Deputy Director for Management, responsible for regulatory affairs.

I want to welcome also Mr. Bob Murphy, the General Counsel of the General Accounting Office. Bob testified before the Subcommittee in March on CRA implementation. Bob, I want to thank you from the outset for the strong leadership and consistent commitment you and your staff have shown by working with OIRA and the Subcommittee to make the CRA work as it was intended to work.

This hearing is about information. Congress and the American people have a right to know the facts about new regulations and programs — **before** those regulations and programs go into effect.

They have a right to know where their tax dollars are going and how these new regulations and programs will affect their lives and livelihoods.

What are the costs and benefits?

What will it cost families and local communities?

How will it affect workers and small businesses?

The American people have a right to know the answers to these basic questions.

But, in the case of the Administration's climate change policies and in getting useful information about all new regulations, Congress and the public are not getting these answers.

These are OMB's responsibilities, and, in both areas, the Subcommittee is concerned about the job OMB is doing. OMB has been unresponsive to the Subcommittee's efforts to obtain information and documents that would justify the President's Budget request for $6.3 billion in

additional funding from Fiscal Year (FY) 99 to FY 2003 for the "Climate Change Technology Initiative" (CCTI) and other funding for climate change programs and activities. These other categories include part of the $1.9 billion U.S. Global Change Research Program, and various other programs and activities, including a $250 million request for the Agency for International Development (AID) to award grants, contracts, loans, and loan guarantees for climate change activities.

Although we wrote to OMB in March, we are still seeking information and documents regarding OMB's own analysis of the President's budget request and other documents and information regarding OMB's role in reviewing: (1) other agencies' responses to our March oversight questions and (2) draft testimony (and agency comments thereon) by Administration officials who are attempting to defend the President's budget request for climate change and the Kyoto Protocol.

Only today has my staff been able to review at the White House a handful of previously withheld documents in OMB's and CEQ's files which we requested in March. The documents made available today include comments from Energy and Justice critical of the draft testimony of CEA Chair Janet Yellen's so-called economic analysis and some previously withheld data that underlies the Administration's climate change policy options. Lastly, the available documents reveal that, as early as February 1996, the Administration was projecting command-and-control regulatory mechanisms in its post-2000 climate change options.

It is also clear from this review that many documents in OMB's and CEQ's files requested in March are still being withheld. For example, no post-Kyoto documents from CEQ were made available today. And boxes and boxes of documents from the other agencies are still awaiting review by the White House Counsel.

In short, Congress has not been provided sufficient information to evaluate the President's budget request. For example, despite the requirements of the Government Performance and Results Act, OMB has identified no government-wide program performance measures, and the agencies identified only a few outcome measures for their dozens of climate change programs, including many new activities. And, despite the requirement in the Kyoto Protocol for the United States to reduce greenhouse gas emissions 7 percent below 1990 levels, EPA says "Performance for these programs is not measured against a 1990 base year" and "performance measures are not applicable for 1990 because the programs did not exist at that time." Is Congress being asked to expend huge sums without a road map to understand how they would contribute to meeting the Kyoto target?

Today we will also address OMB's performance of its responsibility to coordinate agency compliance with the Congressional Review Act.

In particular, OIRA is responsible for overseeing and providing guidance to the agencies on compliance with the Congressional Review Act, or CRA, which requires the agencies to file certain reports with Congress for each new rule before that rule can legally take effect. If it's not reported, its an illegal rule, plain and simple.

The GAO has found that despite the law, the agencies have failed to report hundreds of other rules, including many rules that have a major impact on small business.

Here again, OMB should be taking the lead and providing the agencies guidance in order to facilitate the free flow of regulatory information to the American people and their elected representatives. Instead, here again, OMB is the bottleneck.

The Subcommittee held a hearing on OIRA's implementation of CRA on March 12 of this year to bring GAO and OIRA together to cooperate on CRA implementation. Regrettably, OMB refused to send a politically accountable representative to that hearing. In my 3 years as Chairman of OIRA's authorizing and oversight committee, I have never observed a more blatant gesture of defiance.

Today, Bob Murphy will report on GAO's efforts to work with OIRA in implementing the CRA since the March 12 hearing. We applaud the efforts of the GAO in particular, whose staff have worked closely with the Subcommittee to build up the reporting process.

But GAO can't do it all. What the agencies need most is strong leadership and guidance from OMB.

By holding back key information from Congress, OMB is denying the American People their right to know the Administration's real agenda on climate change and on new regulations in general. Time and again, OMB has bottle necked the flow of information from the agencies to the people's elected representatives.

I want to know what they're hiding, and why they're hiding it.

I will continue to investigate OMB and hold hearings until the full truth about the President Clinton and Vice President Gore's Climate Change Initiative comes to light, and until the CRA is fully implemented.

Mr. TIERNEY. Thank you, Mr. Chairman. Thank you for holding this hearing today and I'm especially pleased to see that there is a representative from the Office of Management and Budget here to answer questions and to respond to any criticisms that were lodged at the March 10, 1998, hearing.

Three months ago, Frank Raines, who was then the Director of the Office of Management and Budget, offered to make Don Arbuckle, the Acting Administrator of OIRA, available to testify on this issue. You, Mr. Chairman, refused this offer because you only wanted to hear, apparently, from some political appointee. I'm glad to see that OMB has a representative here today and I'm also pleased to see that you've asked the General Accounting Office to return so OMB can respond to their concerns directly. I only wish, Mr. Chairman, that for a matter that is purported to be of this significant interest, that other members of the majority here on the committee had bothered to show up today to express how important this might be to them, if, in fact, it is.

The Congressional Review Act is an important piece of legislation that provides expedited procedures for Congress to disapprove agency regulations. The act requires agencies to provide Congress and GAO with a copy of each rule, a description of the rule, and relevant analyses that are required by law. If the agencies don't provide this information, it's difficult for Congress to make an informed decision on whether it should disapprove a regulation. Now 3 months ago GAO testified that the agencies were not filing all of their rules with Congress. However, I understand that GAO has seen significant improvement in the last few months and that's good news.

Mr. Chairman, you may be frustrated that Congress has not disapproved the rule under the Congressional Review Act. If this is because someone isn't doing their job and Congress isn't getting enough information, then we should act to correct that situation. On the other hand, if GAO's concerns are merely procedural, and congressional committees are getting the information that they want, then we may just have to accept the fact that Congress simply chose not to disapprove any rules. This would not mean the Congressional Review Act is a failure and it would not mean that we need to create another bureaucracy like the Congressional Office of Regulatory Analysis to do yet another analysis of the analysis. It simply would indicate that Congress has not yet found the need to disapprove a rule.

Mr. Chairman, I'm also pleased that the OMB is available to describe the OMB review process, which affects both the depth and timing of the agency's responses to the subcommittee's information requests on global warming. The chairman has asked over 20 agencies to answer very detailed questions about global warming and to provide a large number of documents to this subcommittee. The breadth and the details of these requests may well have set a new precedent. Hopefully Mr. DeSeve can shed some light on how burdensome these requests are and whether the subcommittee's expectations with regard to the timing and depth of the responses are at all reasonable under the circumstances. I look forward to the testimony of these witnesses and thank the chairman for providing them here today.

Mr. MCINTOSH. Thank you, Mr. Tierney. If you're concerned about the breadth of those—let me share with you. I've worked with one of your colleagues, John Dingell, many times when he was the chairman. I still don't think our letters quite match up to the breadth and detail of his, but it is something that I think is a long history here in Congress. Does anyone else want to make an opening statement? Dennis, do you, or?

Mr. KUCINICH. Just delighted to be here, Mr. Chairman.

Mr. MCINTOSH. Let us proceed with our first witness. Mr. Ed DeSeve, Acting Deputy Director for Management at the Office of Management and Budget. Mr. DeSeve, please stay standing. We have, at the request of the chairman, a policy of asking all of our witnesses to be sworn in.

[Witness sworn.]

Mr. MCINTOSH. Let the record show the witness answered in the affirmative. Mr. DeSeve, we have a full, printed copy of your testimony which will be included in the record. I would ask you now to give us a summary of that and any points that you would like to make.

STATEMENT OF G. EDWARD DESEVE, DEPUTY DIRECTOR-DESIGNATE FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET

Mr. DESEVE. Thank you very much, Mr. Chairman. The Congressional Review Act has the strong support of President Clinton. It was signed into law on March 29, 1996. I welcome the opportunity to discuss what has happened over the past 2 years and to hear the experience of GAO in administering the law. To help us focus our discussion, we can summarize the legislation in general terms by saying that agencies are required—and you had it well put over here—that before a rule can take effect, they must submit to each house of Congress and the Controller, a report. When an agency sends a rule to Congress and GAO, the agency is to indicate whether the rule is major or not. The statute directs the Office of Management and Budget's Office of Information and Regulatory Affairs, to find out whether a rule meets the statutory definition of major, that is, whether the rule is likely to result in an annual effect on the economy of over $100 million; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or ability of the United States-based enterprises to compete with foreign-based enterprises. That's a major undertaking that OIRA has responsibility for.

The designation of a rule as major has several consequences. I want to stress that there are two distinct time periods in the statute, one, the delay in the effective date for major rules, and, two, the congressional review period. For the effective date, major rules can only take effect, with certain exceptions, 60 calendar days after submission to Congress and GAO. Nonmajor rules take effect as they normally do after submission. For the congressional review period, if within a time period a Member of Congress introduces a joint resolution of disapproval, then the joint resolution is subject to certain expedited procedures for consideration in Congress. All rules are subject to this congressional review for 60 legislative days.

What did OIRA do when this statute took effect? The Congressional Review Act took effect immediately on the day it was signed, Friday, March 29, 1996, just over 2 years ago. Most agency staff knew little about it. OIRA moved quickly. On Tuesday, April 2, 1996, the OIRA Administrator, Sally Katzen, sent an OMB Memorandum M–9619, to the heads of all agencies outlining the provisions of the new legislation and discussing the definition of major. Based on advice from OMB staff, Ms. Katzen included the addresses of the House Clerk and Secretary of the Senate.

Two weeks later, after agencies had begun to send their final rules to these officials, she received other telephone calls asking that the rules go over to the Speaker and President of the Senate. Meanwhile, as Chair of the Regulatory Working Group established under Executive Order 12088, the OIRA Administrator stressed to agencies' regulatory policy officers the importance of moving quickly to implement this new law.

During this time, OIRA staff were receiving a variety of questions from agencies about what they should do under the law. OIRA then prepared a document, "Frequently Asked Questions," which was distributed to OIRA staff and agencies to answer these questions. I have attached a copy of these memoranda at the end of this written statement.

In addition, because OIRA does not review the regulations issued by the independent regulatory agencies, OIRA had to design a process to determine whether the final rule of an independent agency is major within the meaning of the statute. OIRA invited regulatory contacts from independent agencies to discuss OIRA's April 2 memorandum and how they could best coordinate regarding OIRA's determination of major. After this meeting, the independent regulatory agencies began sending OIRA summaries of their upcoming final regulations to allow OIRA to decide whether or not these rules were major. Initially, there was a flurry of staff discussion. The process for the independents has now become routine.

For those agencies whose regulations were subject to review under Executive Order 12866, the administrator asked OIRA staff to ensure that agencies understood which rules were major. The term as defined in the statue is similar but not identical to the category covered under 3F(1) of the Executive Order 12866. The statutory definition was taken from a predecessor, Executive Order 12291. It is now routine for OIRA to implement the CRA as it reviews under Executive Order 12866. OIRA staff determined whether or not the draft rule should be considered in the course of these reviews. They also review the various analyses agencies perform to determine whether they meet appropriate standards. Where are we now?

In their testimony, GAO informs us that it has received 131 major rules and 9,052 nonmajor rules, roughly 80 per week. Overall, this indicates that the agencies are making serious efforts to comply with the statute and that the authorizing committees are receiving a lot of rules. However, agency compliance has not been 100 percent. In 1997, GAO prepared a list that pointed out that agencies, as opposed to independent regulatory bodies, had not submitted 279 final rules on a timely basis. Recently, GAO prepared another analysis that indicated that 66 final rules had not been

submitted on a timely basis. We're pleased the agencies are doing well, that the rate of compliance is increasing and that GAO and OIRA are working together to help this to happen.

We also know that compliance with CRA is not cost free. It takes effort and resources for agencies to transmit the rules to Congress, for congressional staff to process the submissions, for the authorizing committees to review them, and for GAO to keep track of all the submissions. We hope that the authorizing committees find this information useful and helpful.

Regarding your question about our cooperation with the subcommittee's request information to the White House Climate Change Initiative, we worked diligently to prepare written answers to the questions you raised on March 2 and March 6 in letters jointly sent to OMB and the Council for Environmental Quality, CEQ. You were sent responses on May 13 and June 9. You have the responses to both letters and the accompanying documents collected through a search of files of both agencies. The time it took us to respond was dictated by the length and complexity of the questions you posed.

With respect to the process for review of agency responses to the subcommittee's request for information, we followed the normal interagency review process coordinated by OMB and used for congressional reports, testimony, or for followup questions from congressional hearings. The amount of time involved in reviewing an agency's response was, in part, determined by the number of responses in the review process at any one time. Obviously, reviewing a number of agency responses, involving 80 to 100 questions and answers submitted for review at the same time, slowed down the process considerably.

I appreciate the opportunity to testify and welcome any questions that you may have.

[The prepared statement of Mr. DeSeve follows:]

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

STATEMENT OF G. EDWARD DESEVE
ACTING DEPUTY DIRECTOR FOR MANAGEMENT
AND
CONTROLLER
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES

June 17, 1998

Good afternoon, Mr. Chairman and members of this Subcommittee. Your letter of invitation asked me to discuss two topics: (1) implementation of the Congressional Review Act by OMB's Office of Information and Regulatory Affairs (OIRA); and (2) cooperation with the Subcommittee's requests for information regarding the White House Climate Change Initiative, including OMB's review of pending letters of response from specific agencies.

CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

The Congressional Review Act[1] had the strong support of President Clinton. It was signed on March 29, 1996. By passing this law, Congress acknowledged and assumed more responsibility for its continuing role in the regulatory system. For too long, Congress passed laws, taking credit for mandating clean air, or a safe workplace, only to question or even criticize the agency rule that implements the law. With this law, Congress will see what it has authorized, and can speak to any regulatory actions that it thinks are <u>not</u> true to its intent.

I welcome the opportunity to discuss what has happened over the past two years, and to hear the experience of GAO in administering the law.

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[1] 5 U.S.C. chapter 8, passed in Title II, Subtitle E, of P.L. 104-121.

1. What does the statute require?

To help focus our discussion, let me first summarize this legislation. In general terms, agencies are to send a copy of each new final rule (and certain analyses that they may undertake related to the rule) to both Houses of Congress (for transmittal to the appropriate authorizing Committees) and to the General Accounting Office (GAO) before the rule can take effect.

When an agency sends a rule to Congress and GAO, the agency is to indicate whether the rule is "major" or not. The statute directs OMB's Office of Information and Regulatory Affairs (OIRA) to find whether a rule meets the statutory definition of "major"-- that is, whether the rule is likely to result in an annual effect on the economy of over $100,000,000; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

The designation of a rule as "major" has several consequences. Unless exempted, a major rule may not take effect until 60 calendar days after it has been submitted to Congress. In addition, GAO is to provide a report to the agency's authorizing Committee on each major rule. Whether or not a rule is designated as "major," Congress has 60 legislative days during which it may use expedited procedures to disapprove the rule.

I want to stress that there are two distinct time periods in the statute -- (1) the delay in effective date for "major" rules, and (2) the Congressional review period, during which the expedited review procedures are available:

(1) Effective Date. "Major" rules can only take effect, with certain exceptions, 60 calendar days after submission to Congress and GAO. "Non-major" rules take effect as they normally do after submission. All of the rules that were submitted to Congress under this Act year went into effect according to these effective date provisions.

(2) Congressional Review Period. If, within a prescribed time period, a Member introduces a joint resolution of disapproval, then that joint resolution is subject to certain expedited procedures for consideration in Congress. All rules (both major and non-major) are subject to this Congressional review for 60 legislative days, which, depending on when Congress is or is not in session, is a time period that can extend to over one-and-a-half years. During the past two years, all the rules issued by the agencies went into effect before the expiration of the Congressional review period.

2. What did OIRA do when the statute took effect?

The Congressional Review Act took effect immediately on the day the statute was signed into law -- on Friday, March 29, 1996. Most agency staff knew little about it. To help them prepare quickly, OIRA moved quickly. On Tuesday, April 2, 1996, the OIRA Administrator, Sally Katzen, sent an OMB memorandum (M-96-19) to the heads of all agencies outlining the provisions of the new legislation and discussing the definition of "major." Based on advice OMB staff received from Congressional staff, Ms. Katzen included the address of the House Clerk and the Secretary of the Senate as the place to which agencies should send their final rules.

Two weeks later, after agencies had begun to send their final rules to these officials, she received telephone calls asking that final rules go to the Speaker of the House and the President of the Senate, and that they be transmitted with a cover letter providing certain information. On April 19, 1996, she sent another memo to the heads of Federal agencies, providing these new addresses and the content suggested for the cover letter.

Meanwhile, as Chair of the Regulatory Working Group established under Executive Order No. 12866, the OIRA Administrator stressed to agency Regulatory Policy Officers the importance of moving quickly to implement this new law. During this time, OIRA staff were receiving a variety of questions from agency staff about what they should do under the new statute. OIRA then prepared a document entitled "Frequently Asked Questions," which was

distributed to OIRA staff to answer these questions and to share with agency staff if they so desired. I have attached a copy of each of these memoranda at the end of this written statement.

In addition, because OIRA does not review the regulations issued by the independent regulatory agencies under Executive Order 12866, OIRA had to design a process to determine whether the final rule of an independent regulatory agency is "major" within the meaning of the statute. Therefore, OIRA invited regulatory contacts from the independent regulatory agencies (those not subject to Executive Order 12866 review) to a meeting on April 12, 1996, to discuss OIRA's April 2 memorandum and how they could best coordinate regarding OIRA's determination of "major." After this meeting, the independent regulatory agencies began sending OIRA summaries of their upcoming final regulations to allow OIRA to decide whether or not these rules were "major." Initially, there was a flurry of staff discussions. This process for the "independents" has now become routine.

For those agencies whose regulations are subject to review under Executive Order 12866, the OIRA Administrator asked OIRA staff to ensure that the agencies understood which rules were "major." The term, as defined in the statute, is similar, but not identical, to the category covered under section 3(f)(1) of Executive Order 12866 for "economically significant" rules. The statutory definition of "major" was taken from a predecessor Order, Executive Order 12291 (signed February 17, 1981, and revoked September 30, 1993). Accordingly, OIRA staff were told to use the same interpretation that they had relied on when carrying out their regulatory reviews under Executive Order 12291.

It is now routine for OIRA to implement the CRA as it reviews rules under Executive Order 12866. OIRA staff determine whether or not the draft rules should be considered "major" in the course of their reviews. They also review the various analyses agencies perform to determine whether they meet the appropriate standards.

3. Where are we now?

In their testimony, GAO informs us that it has received 131 major rules and 9,052 non-major final rules -- an average of roughly 80 rules a week. Overall, this indicates that the agencies are making serious efforts to comply with the statute and that the authorizing Committees are receiving a lot of rules.

However, agency compliance has not been 100% complete. In November 1997, GAO prepared a list that pointed out that agencies had not submitted 279 final rules on a timely basis. Recently, GAO prepared another list indicating that 66 final rules had not been submitted on a timely basis. We are pleased that the agencies are doing so well (97% compliance for the first check), that the rate of compliance is increasing (over 99% compliance for the second check), and that GAO and OIRA are working together so well in helping this to happen.

We also know that compliance with the CRA is not cost free. It takes effort and resources for agencies to transmit the rules to Congress, for Congressional staff to process the agency submissions, for the authorizing Committees to review them, and for GAO to keep track of all the submissions and prepare reports for major rules. We hope that the authorizing Committees find this information useful and helpful.

REQUESTING INFORMATION ABOUT THE CLIMATE CHANGE INITIATIVE

Regarding your questions about our cooperation with the Subcommittee's requests for information regarding the White House Climate Change Initiative -- we worked diligently to prepare written answers to the questions you raised in the March 2 and March 6, 1998, letters sent jointly to OMB and the Council on Environmental Quality (CEQ). You were sent responses on May 13 and June 9. You have the responses to both letters and the accompanying documents collected through a search of the files of both agencies. The time it took us to respond was dictated by the length and complexity of the questions you posed.

With respect to the process for review of agency responses to the Subcommittee's request for information, we followed the normal interagency review process coordinated by OMB and used for congressional reports, testimony, or follow up questions from congressional hearings. The amount of time involved in reviewing an agencies response was, in part, determined by the number of responses in the review process at any one time. Obviously, reviewing a number of agency responses involving 80 to 100 questions and answers submitted for review at the same time slowed down the process considerably.

* * * * *

I appreciate the opportunity to testify, and welcome any questions that you may have.

# # # # #

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

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

APR - 2 1996

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS, AGENCIES, AND INDEPENDENT ESTABLISHMENTS

FROM: Sally Katzen

SUBJECT: New Statutory Procedures for Regulations

All agencies need to be aware of the enactment, on Friday, March 29, 1996, of new provisions concerning Congressional review of regulations (enacted as Chapter 8 of Title 5, U.S. Code) and the Regulatory Flexibility Act.

Chapter 8 applies to every Executive branch "agency" as defined in 5 U.S.C. 551(1); this definition includes the independent regulatory commissions and boards. Chapter 8 applies to every final or interim final rule, with certain exclusions: e.g., any rule relating to agency "management or personnel" or agency "procedure or practice." Chapter 8 distinguishes between major and non-major rules (see definition below).

For All Final Rules: Each agency is now to submit a report -- containing a copy of each final rule, a "concise general statement" of the rule (including whether it is a "major" rule), and the rule's effective date -- to each House of Congress and to the GAO before the rule can take effect. Once this obligation is satisfied, all non-major final rules may take effect on the date provided by the agency.

Each agency needs to submit this report for any rule issued on March 29, 1996 and thereafter. When the agency submits this report, the agency is also to submit to GAO, and to make available, upon request, to each House of Congress, the analyses identified in the statute -- e.g., cost-benefit, regulatory flexibility and unfunded mandates analyses.

For All Major Final Rules: On or after March 29, 1996, for all major final rules, the effective date is generally no earlier than 60 days after the later of Congressional receipt of the material submitted or Federal Register publication. The effective date of a major rule may be sooner if the President determines in an Executive Order that the rule should take effect because such rule is necessary for certain reasons (e.g., an emergency situation). The effective date may also be sooner if the agency "for good cause" finds that "notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

"Major" rule is defined to be any rule that the Administrator of the Office of Information and Regulatory Affairs finds "has resulted in or is likely to result in an annual effect on the economy of $100,000,000 or more;" a "major" increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. This definition excludes any rule promulgated under the Telecommunications Act of 1996, and the amendments made therein. This definition of "major" is similar but not identical to the definition of economically "significant" under section 3(f)(1) of E.O. 12866. If there are questions concerning whether a rule is "major," please contact the Office of Information and Regulatory Affairs as soon as possible during the rulemaking.

Chapter 8 establishes special Congressional procedures for disapproval of rules. The Congressional disapproval procedures apply to all major final rules that were promulgated between March 1, 1996 and March 29, 1996, and to all final rules (major or not) promulgated thereafter.

Submissions to Congress should be sent to both Houses: the House Clerk, Ms. Robin H. Carle, H-154, the Capitol, Washington, D.C. 20515-6601, and the Secretary of the Senate, Mr. Kelly D. Johnston, S-208, the Capitol, Washington, D.C. 20510-7100. GAO requests that agencies send their submissions to Mr. Robert P. Murphy, General Counsel, General Accounting Office, Room 7175, 441 G Street, N.W., Washington, D.C. 20548. As agencies start sending material to the Congress, they should consider creating a tracking system, both to permit them to demonstrate compliance and also to enable agencies to provide (when requested) data on what was sent.

Chapter 8 took effect on the date of enactment. In addition, the same law made amendments to the Regulatory Flexibility Act -- in part to provide for judicial review. These amendments take effect 90 days after enactment (i.e., June 27, 1996).

* * *

I appreciate that there is much that has to be done quickly -- both the submission of particular materials and the institution of an ongoing process. I welcome your comments and suggestions on how best to implement this new law to make it useful for Congress and workable for the agencies.

A copy of the text of Chapter 8 is attached.

Attachment

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

ADMINISTRATOR
OFFICE OF
INFORMATION AND
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APR 19 1996

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS, AGENCIES, AND INDEPENDENT ESTABLISHMENTS

FROM: Sally Katzen

SUBJECT: Revised Instructions, Effective Immediately, for Submission of Agency Regulations for Congressional Review

On April 2, 1996, I sent you a memorandum stating that the reports for final rules should be sent to the Secretary of the Senate and the House Clerk, as well as GAO. Those Offices have since requested that the reports go to the President of the Senate and the Speaker, viz. --

The Honorable Al Gore, the President of the Senate, S-212, the Capitol, Washington, D.C. 20510;

The Honorable Newt Gingrich, the Speaker, H-209, the Capitol, Washington, D.C. 20515; and

Mr. Robert P. Murphy, the General Counsel, General Accounting Office, Room 7175, 441 G Street, N.W., Washington, D.C. 20548.

This morning we received a call stating that each transmittal must include a letter, addressed specifically to the identified individuals, and signed by an agency official at an appropriate level for transmitting documents to the Congress. They also asked that the cover letter include a contact person and telephone number in case they have any questions concerning the rule. We understand that some of the reports that have already been submitted are being returned or are being held because of the absence of an appropriate transmittal letter.

CONGRESSIONAL REVIEW OF AGENCY RULEMAKING
5 U.S.C. Chapter 8
Enacted in P.L. 104-121 (March 29, 1996)

Frequently Asked Questions

I. SUBMISSION OF RULES TO BOTH HOUSES OF CONGRESS AND GAO.

1. Which agencies have to submit their rules to Congress and GAO?

   A: Chapter 8 applies to every Executive branch "agency" as defined in 5 U.S.C. 551(1); this definition includes the independent regulatory commissions and boards.

2. Do agencies submit all rules before they can take effect?

   A: Agencies are to submit all final or interim final rules, with certain exemptions.

   Agencies do not need to submit proposed rules.

3. What are these exemptions?

   A: In its definition of "rule," the statute excludes "any rule of particular applicability" (§ 804(3)(A)); any rule relating to agency "management or personnel" or agency "procedure or practice that does not substantially affect the rights or obligations of non-agency parties" (§§ 804(3)(B) & (C)); and any rule concerning monetary policy issued by the Federal Reserve Board (§ 807).

4. Are there any other exemptions?

   A: No. There is no other exemption from the requirement to submit final and interim final rules to Congress.

   Not only do agencies have to submit to Congress and the GAO the "significant" and "economically significant" final and interim final rules that OIRA reviews under E.O. 12866, but agencies have to submit to Congress and the GAO the non-significant final and interim rules that OIRA does not review as well as the general categories of final and interim final rules that OIRA has exempted from centralized regulatory review.

5. Do agencies have to submit to Congress and GAO more than the text of the rule?

   A: Yes. Each agency is to submit a "report" containing a copy of each rule, a "concise general statement" of the rule (including whether it is a "major" rule), and the rule's effective date.

   No particular format is required for this report, although each report has to be in the form of, or covered by, a formal

transmittal letter. The transmittal letter has to be addressed specifically to the identified individuals, and signed by an agency official at a level appropriate for transmitting documents to the Congress. The cover letter also has to include a contact person and telephone number in case they have any questions concerning the rule.

Submissions are to be sent to both Houses of Congress and GAO:

The Honorable Al Gore, the President of the Senate, S-212, the Capitol, Washington, D.C. 20510;[1]

The Honorable Newt Gingrich, the Speaker, H-209, the Capitol, Washington, D.C. 20515; and

Mr. Robert P. Murphy, the General Counsel, General Accounting Office, Room 7175, 441 G Street, N.W., Washington, D.C. 20548.

6. Does the agency have to send anything else to the GAO?

A: Yes. When an agency submits this "report" to Congress and the GAO, the agency is also to submit to GAO, and to make available, upon request, to each House of Congress the analyses prepared as part of the rulemaking. These include:

Any cost-benefit analysis [and, if the risk assessment is set forth as document separate from the benefit analysis, the risk assessment];

Any Regulatory Flexibility Analysis (including any certification that such an analysis is not needed);

Any action under Title II of the Unfunded Mandates Reform Act of 1995 (i.e, the required written statement and attendant selection of the "least costly, most cost-effective or least burdensome alternative"); and

"Any other relevant information or requirements under any other Act [e.g., Paperwork Reduction Act of 1995] and any relevant Executive Orders."

Agencies are to send these analyses to GAO and make them available to Congress for <u>all</u> rules, not just those designated as "major."

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[1] Administrator Sally Katzen's April 2, 1996, memorandum suggested that submissions to the Senate and House should be sent to the Secretary of the Senate and the House Clerk. Those Offices have since requested that submissions go to the President of the Senate and the Speaker. That change in addressees is set forth in Sally Katzen's April 19, 1996, memorandum.

7. When did 5 U.S.C. Chapter 8 take effect?

A: Chapter 8 took effect on March 29, 1996.

Each agency needs to submit the report to Congress and GAO (and the related analyses to GAO) for any final and interim final rule issued on March 29, 1996, and thereafter.

Note: Section 802(e) makes any major final rule "promulgated" between March 1, 1996, and March 29, 1996, subject to the Congressional disapproval procedures in § 802; it does not appear that these major rules need to be submitted to the Congress or GAO. This appears to be the only provision applicable to final rules issued before March 29, 1996.

II. EFFECTIVE DATES.

8. When do "non-major" rules take effect?

A: As a general matter, most rules (rules other than those designated as "major") may take effect at the time designated by the agency, if the agency has previously (or on the same day) submitted the rule to Congress (§ 801(a)(4)).[2]

9. When do "major" rules take effect?

A: As a general matter (and assuming that the Congress has not passed a joint resolution of disapproval during the first 60-days), "major" rules may take effect no earlier than 60 days after the later of Congressional receipt of the material submitted[3] or Federal Register publication. "Major" rules may take effect later if the agency so desires.

A major rule may take effect before the 60-day time limit under two circumstances: (1) if the President determines in an Executive Order that the rule should take effect because such rule is necessary for certain reasons (e.g., an emergency situation) (see § 801(c)); or (2) if the agency "for good cause" finds that "notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest" (see § 808(2)).[4]

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[2] Note: for non-major rules, the statutory requirement is that the agency "submit" the rule (§ 801(a)(1)(A)).

[3] Note: for major rules, the statutory requirement is that "Congress receives the report submitted..." (§ 801(a)(3)).

[4] The effective date may also be sooner if the rule relates to "hunting, fishing, or camping" (§ 808(1)).

10. Several statements in recent press stories have suggested that a rule may not take effect until Congress has completed its review. Is this accurate?

A: No. Agency final and interim final rules take effect as described above. Congressional review does not change the effective date of an agency rule unless and until Congress pass a joint resolution of disapproval.

11. What is a "major" rule?

A: "Major" rule is defined to be any rule that the Administrator o the Office of Information and Regulatory Affairs finds "has resulted in or is likely to result in an annual effect on the economy of $100,000,000 or more;" a "major" increase in costs o prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or "significa adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.[5]

This definition of "major" is similar but not identical to the definition of economically "significant" under Section 3(f)(1) E.O. 12866. For those agencies subject to E.O. 12866 regulator review, an agency should indicate whether it considers the rule as "major" when it submits the proposed rule for OIRA review. there are, in other cases, questions concerning whether a rule "major," agencies should contact their Desk Officer in the Offi of Information and Regulatory Affairs (OIRA) as soon as possibl in the rulemaking.

12. In case of general questions, who in OIRA should agencies contact?

A: Jefferson B. Hill, 395-3176.

* * * * *

Note: A few days ago, extended statements appeared in the Congressions Record from the House and Senate sponsors discussing this statute. These were inserted by Senator Nickles on April 18, at page S3683, and by Congressman Hyde on April 19, at page E571.

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[5] This definition excludes any rule promulgated under the Telecommunications Act of 1996.

Mr. MCINTOSH. Thank you for that summary, Mr. DeSeve. Let me start with the last point you made. We may have responses, but they are not responsive and I understand that we still have not received from OMB a statement that we have received all of the documents that are relevant to those inquiries. Is that correct?

Mr. DESEVE. I believe you sent us an additional letter, I am going to say it was May 27, it might have been May 29. We're in the process of responding to that letter right now, where you asked for additional information.

Mr. MCINTOSH. My understanding is that the letter clarified that the earlier response was not adequate on the initial request and we still haven't received all of the documents. When will we receive those?

Mr. DESEVE. The only documents I know of that you have not received were those that were by OMB and CEQ deemed to be related to White House affairs and they are with the general counsel of the White House, Chuck Ruff. You'll have to ask him about the timing of those. They are not within our possession.

Mr. MCINTOSH. You don't have a copy of those?

Mr. DESEVE. I don't have a copy of those. I don't run the legislative clearance process. All of the documents that we had in our files that were deemed relevant were, as I understand it, were turned over to counsel. I don't have a copy of those documents myself.

Mr. MCINTOSH. OMB does not?

Mr. DESEVE. I don't know the answer to that.

Mr. MCINTOSH. OK, I'd like to know that since, if we don't receive them, we'll be requesting a subpoena from Chairman Burton and we'll need to know who to address it to.

Mr. DESEVE. We'll certainly answer that question for the record.

Mr. MCINTOSH. Are you saying that the White House counsel is asserting executive privilege with respect to those?

Mr. DESEVE. That's not my understanding, but you'd have to talk to the White House counsel.

Mr. MCINTOSH. As I understand it, unless they are planning to do that, we're insisting they send the documents, so it's just another stall tactic.

Mr. DESEVE. I think it is appropriate to ask the White House counsel that question.

Mr. MCINTOSH. We would like to know if you have copies of those. With respect to the budget on the global climate change, my staff has identified and told me about several errors that they've worked with OMB on. For example, the differences between the published tables on the science and technology chapter and the environment chapter for the requested climate change funding. How is it that OMB expects us to fund these programs when the published information is not accurate?

Mr. DESEVE. I'm not familiar with the question you raise, I'm sorry.

Mr. MCINTOSH. OK. There are two different numbers there and the resolution was that one of them was closed out and they wouldn't correct it before they printed the budget. What's being done to make sure that the numbers are accurate on the budget justifications?

Mr. DESEVE. I can't answer the specific question for this budget justification. There are a series of review processes that are conducted by the resource management offices, by the agencies, and by the budget review division that typically examine the literally millions and millions of numbers in the budget, but I don't have cognizance of the specific question you ask.

Mr. MCINTOSH. OK, if you could get an answer for us, we'd appreciate it.

Mr. DESEVE. I would certainly be happy to do that.

Mr. MCINTOSH. The other problem that we've got with the budget requests is there don't seem to be any performance measures and I don't know if they are available now, but the staff prepared for me a chart that went through agency by agency to list the number of performance measures, performance criteria for each request and in the overwhelming number of cases, there were none. There were a few here and now. What is OMB doing to ensure that there are performance measures so that we can tell in Congress whether this money is being well spent?

Mr. DESEVE. That's a good question. I'd like to give you a general answer. We have worked with agencies since the submission of their strategic plans last September and their first-draft performance plans to continue to perfect those plans. They were updated and included in the President's budget this year to the extent that they were part of the governmentwide performance plan and an agency's plans to the extent that they were part of the agency's budget submissions, as they should have been. We will continue in the resource management offices to work with agencies to make their plans better. Recently several of your colleagues on the Republican side have sent us a letter requesting us to continue to work with Congress and we're delighted to do so.

Mr. MCINTOSH. But they don't seem to be reflected in the fiscal year 1999 budget request.

Mr. DESEVE. I'd have to look at that. I don't have that information in front of me; I'll be happy to examine the table your staff has prepared.

Mr. MCINTOSH. And, specifically what I'd like to know is by what time will you commit that we'll get a full set of performance measures for the global climate change request?

Mr. DESEVE. We've asked agencies generally, I can't make a specific commitment. We've asked agencies generally that as they prepare their fiscal year 2000 budgets, that as necessary they amend their performance plans to reflect their conversations with Congress and any changes they know about in their levels of authorization for funding. A performance plan is contingent on the amount of funding an agency may get, so there will always be changes in that plan as congressional deliberation goes forward, so I can't answer your specific question. Our expectation is that the plans will be modified as necessary based on congressional action and consultation.

Mr. MCINTOSH. When would we be able to see that up in Congress?

Mr. DESEVE. You can certainly request it and as soon as the agencies have it——

Mr. MCINTOSH. I think we have requested it. We haven't gotten any performance criteria.

Mr. DESEVE. I don't know of any updated performance plans. At this point, it's in a sense, premature. The initial performance plans were submitted with the budgets and I believe you have those. If you don't, I can give you——

Mr. MCINTOSH. So your position is that Congress should spend all this money without any performance criteria?

Mr. DESEVE. No, my position is that Congress should continue to ask the agencies; appropriators, authorizers, oversight committees should continue to ask the agencies questions about performance in the normal course of appropriation and authorization hearings. And that, to the extent that the information is not available, then they've got to ask some hard questions about performance. That's been my testimony in this room and Mr. Horn asked the same question.

Mr. MCINTOSH. What do you plan to do when the agencies fail to meet that? For example, when EPA says we don't set up performance standards for global warming because we don't measure back to 1990.

Mr. DESEVE. I don't have enough information to answer that question. I don't have the specifics to answer that question.

Mr. MCINTOSH. We'll take that, go from the general to the specific—from the specific to the general. What do you plan to do if an agency just doesn't come up with performance criteria? Are you going to continue to let their funding requests go through? Are you going to increase them, which is appeared to be is what happened when the White House got a hold of the global climate change? I mean, there's a disconnect between the use of these criteria and what happens in the budget.

Mr. DESEVE. What we're trying to do in each of the agencies is to make the performance plans as good and reflective as possible and we encourage Congress to have that same colloquy with the agencies about those plans.

Mr. MCINTOSH. Let's go back to some of the documents, such as the cost/benefit and economic data relating to the climate change policies and the budget requests there. Will you ensure, work to ensure, that we can receive those documents—I mean, I think it's important that White House counsel hear from you on your opinion on whether those should be made available to the Congress.

Mr. DESEVE. One of the first rules of the executive branch, sir, and I think you probably know this, is that you look to your counsel for advice and sometimes you follow their advice very, very closely, other times you follow it even more closely. Rarely do we give counsel advice. Counsel in this process looks at the documents, reviews them, and makes a decision——

Mr. MCINTOSH. Let me put it this way. If they tell you there is no legal impediment to those documents being sent to Congress, will you ensure that they are sent to Congress?

Mr. DESEVE. I assume that they will be sent to Congress if Congress has requested it. I don't know the specific answer, but if you asked for them, and counsel finds there is no legal impediment, it would seem logical that they be sent. But, I would really ask you to ask counsel that question——

Mr. McINTOSH. Will you join me in asking that they resolve that in the next week?

Mr. DeSEVE. I will certainly ask them to expedite the review of those documents. Yes, sir, I will definitely do that.

Mr. McINTOSH. And that, if there's no legal reason they can't be sent, they should be sent?

Mr. DeSEVE. I'll work to make sure that they do everything that is necessary.

Mr. McINTOSH. The other problem we've been having is difficulty in getting the responses from some of the 22 different agencies. Did OMB provide any guidance to the agencies in responding to these requests on global climate change?

Mr. DeSEVE. I know of no guidance they've provided.

Mr. McINTOSH. Were there any conference calls?

Mr. DeSEVE. I was not involved in any; I have no knowledge of any conference calls.

Mr. McINTOSH. Could you go back——

Mr. DeSEVE. That's not to say there weren't any; I simply don't know of any.

Mr. McINTOSH [continuing]. Could you go back and find out from the staff if there were and if so, what type of guidance was given out on those?

Mr. DeSEVE. Sure.

Mr. McINTOSH. Did OMB advise the agencies about releasing not-yet-publicly available documents on economic or environmental data?

Mr. DeSEVE. I'm sorry. I just don't know the answer because I wasn't involved in those issues.

Mr. McINTOSH. OK. If you can take that back, and I've got a couple of other questions too that we'll give to you in writing to find out.

Mr. DeSEVE. That will be great and we'll make sure that—someone, I'm sure, is writing these down now. We'll look at the early draft of the transcript and whatever you send us down we'll move quickly to deal with those.

Mr. McINTOSH. The other thing I understand is it has taken an unusual amount of time for OMB clearance on these. What is the average OMB clearance time for agency responses to congressional inquiries?

Mr. DeSEVE. From my experience, with my experience only, it can be very rapid turnaround, from a day or two, to very long turnaround. OMB clearance involves the legislative review process, which allows other agencies to comment. It allows counsels within the White House to comment. It's seldom that it is OMB itself in the legislative review process that is holding it up. It is typically a reconciliation of one department or agency's concern with another department or agency's concern. I have seen things held up for several months in that process, trying to resolve such concerns, particularly legislative matters.

Mr. McINTOSH. Now, did OMB make any changes or suggest changes to the agencies in their responses?

Mr. DeSEVE. I don't know the answer to that question; I wasn't involved in the process.

Mr. MCINTOSH. OK, if you could find that out for us, that would be important, particularly if there budget details that were suggested to be changed. And then let me ask you, and I'll make the whole list available, but from at least 15 of the 22 agencies, we have not gotten complete answers. Are you aware of any of the responses that are still at OMB?

Mr. DESEVE. I believe the Agriculture response is still at OMB and is about to be cleared. Other than that, I don't know of any that are still at OMB to be cleared.

Mr. MCINTOSH. So, as far as you know, at the OMB, are there any other that are——

Mr. DESEVE. Only Agriculture, as far as I know.

Mr. MCINTOSH [continuing]. Are there any that you've cleared, that OMB have cleared but are at White House counsel?

Mr. DESEVE. I don't know the answer to that.

Mr. MCINTOSH. That would be important to know. Sounds like we might have to get White House counsel up here on this one. So you say Agriculture is about to be cleared, you think by the end of this week?

Mr. DESEVE. I don't know the answer, but I'll get you that answer quickly.

Mr. MCINTOSH. OK. I think it would be important if it is anything other than that. Now, the other interesting thing is we did get a response from HUD that indicated that its budget in fiscal year 1999 and prior years does not contain funds for research identified as part of the President's Climate Change Technology Initiative. And yet, in OMB's budget submission, there's a request for $10 million for HUD's PATH program for climate change. Did the agency not want to have global warming funds?

Mr. DESEVE. I don't know because there is a case where the OMB clearance process did not work. According to the little note that I have here, we did not review the HUD request; it was sent directly to the committee. So, unfortunately, I can't answer that. I wouldn't be able to anyway, because I don't know the answer but——

Mr. MCINTOSH. Forgive me if I seem overly paranoid, but it sounds to me like that, when we get a response that hasn't been whitewashed through OMB, we find out some more details that are pretty critical. In this case, HUD doesn't particularly think it's a high priority. Now is this an initiative that the agencies came up with or was it something the White House said stick it in their budget and we'll justify it later?

Mr. DESEVE. I honestly don't know the answer to that.

Mr. MCINTOSH. That's the way it is beginning to look. Well, let us know the position on that request from HUD and whether it is part of the initiative or not. I have some questions on the CRA, but since we didn't start the clock right away, let me turn to Mr. Tierney and see if he has any questions and then I'll come back to those on CRA.

Mr. TIERNEY. Mr. Chairman, thank you. It's not that I'm absolutely not riveted by all that we're discussing here today. I'm almost as fascinated as all of the other members that showed up to get this important colloquy going. And I'm somewhat a little bit curious to know just how we have so many interested people down

in the front row, I assume on somebody's payroll, busily scribbling notes, but none of the interested parties on the majority here bothered to listen, never mind taking notes.

Let me just ask, sir, when you were asked to testify today, did you not tell the chairman that there were some areas that you might not have all the information he'd want?

Mr. DESEVE. Yes, sir. I think we did.

Mr. TIERNEY. And offered to bring other people that might be helpful in that regard?

Mr. DESEVE. Correct.

Mr. TIERNEY. And were told, no, don't bring anybody else?

Mr. DESEVE. No, we were allowed to bring someone, but it was only in an advisory capacity.

Mr. TIERNEY. But not to testify?

Mr. DESEVE. Right.

Mr. TIERNEY. So, all the times I hear you say that you might not have that information, I want to make it clear to those that may be interested enough to be listening here today that it's not for want of—your part, on your part to want or desire to give the answers, you expressed your limitations and were refused the opportunity to have other people testify with you?

Mr. DESEVE. Correct.

Mr. TIERNEY. What areas, in particular, might you have some limitations on in terms of knowledge that the chairman has sought?

Mr. DESEVE. In terms of running a clearance process, that's not within my jurisdiction. I don't run the clearance process; I don't participate in budget decisions around environmental or regulatory matters, or any budget decisions, for that matter. On the CRA side, I certainly do have oversight of that area, but I don't do global warming.

Mr. TIERNEY. Are you fairly satisfied that your agency is being as responsive as it possibly can be to the requests that have been put forth?

Mr. DESEVE. We certainly have been working as hard as we can and have been as responsive as we can. We get an enormous number of requests, not just from this committee, but from many others, and it requires us to try to work as hard as we can and work very long hours, so, yes, I am satisfied with our responsiveness.

Mr. TIERNEY. Did I hear you mention that you think you've had some 80 to 100 different responses that you've had to review?

Mr. DESEVE. I've been provided information that says that this committee has sent us about 44 oversight requests so far to the 22 different agencies, asking approximately 485 questions. The best estimate from the staff is that over 4,000 staff hours have been spent responding to these, that 22,000 pages have been provided to the subcommittee and 150,000 pages of documents are under internal review.

Mr. TIERNEY. And still, apparently, not enough. Do you have other committees also requesting information?

Mr. DESEVE. Yes, I do. Mr. Kucinich and I both appear quite often before Congressman Horn on the Government Oversight Committee.

Mr. TIERNEY. On the management, is that the management subcommittee?

Mr. DESEVE. Right. And others.

Mr. TIERNEY. How—is this adversely affecting the ability of your department to live up to its other responsibilities?

Mr. DESEVE. It makes people work overtime. It just gives us a lot of extra work to do. We certainly don't degrade our service, we just work harder and longer hours.

Mr. TIERNEY. And do most of your people get overtime for the extra hours that they serve?

Mr. DESEVE. Some do, some don't.

Mr. TIERNEY. So it's impacting our budget also on this end. I don't have any other questions at this time.

Mr. MCINTOSH. Thank you, Mr. Tierney. Mr. DeSeve let me switch now to the Congressional Review Act. Last year in the budget my committee worked very closely with the Treasury-Postal Subcommittee on the Appropriations Committee to increase OIRA's funding by $200,000 for the specific purpose of implementing the Congressional Review Act. Now despite very clear report language and a floor statement, it appears that OIRA has continued its business-as-usual approach to CRA implementation and has used that extra money for other purposes of their own choosing. What, specifically, has OIRA done, if anything, to improve the performance since receiving this additional funding?

Mr. DESEVE. That's a good question, Mr. Chairman. I think that in the testimony Mr. Murphy is about to give today, he outlines the improvement in rules being submitted to GAO and our work both to encourage the agencies through Mr. Arbuckle's letters, as well as having desk officers make specific calls on behalf of GAO at GAO's request about specific rules has really lead to, along with increased familiarity with the act, has led to better performance by the agencies over time since the roughly 2 years the act has been in place. So we at the desk officer level, at the branch chief level, as well as at the acting administrator level, have paid closer attention since the hearings that you held last year, as well as this year, to CRA. But I think the degree of compliance is actually quite high, given the relative newness of the statute. But nothing less than 100 percent is acceptable and we'll continue to work with GAO to that end.

Mr. MCINTOSH. Were the funds used to hire additional staff for this purpose?

Mr. DESEVE. No, sir, I don't believe they were. I don't know the exact appropriations history and I could certainly find it out and give you an accounting for the funds.

Mr. MCINTOSH. Yes, I would like to know—you have no idea what that $200,000 was for?

Mr. DESEVE. I'd be happy to get back to you on that. I wasn't prepared to talk about that today.

Mr. MCINTOSH. Do you want to check with some of the people that you did bring for advice?

Mr. DESEVE. No, I'd be happy to get you that information I just don't have it.

Mr. MCINTOSH. And none of them have it?

Mr. DESEVE. I don't know. We try to let the witness testify and——

Mr. MCINTOSH. Flounder on his own. I find that incredible——

Mr. TIERNEY. That you didn't allow the witnesses to testify?

Mr. MCINTOSH. No, no. I'm letting him ask them right now, but he doesn't want to and he doesn't know——

Mr. TIERNEY. Well, I don't blame him, I mean——

Mr. MCINTOSH. Well, the way I figure it, what he is saying that $200,000 that his agency was specifically appropriated for a specific purpose, he has no idea where the money went. Are you willing to make that back to the taxpayers yourself because it's been mismanaged?

Mr. DESEVE. No, I'll be very happy to supply the full detail of the OIRA budget and I'll be happy to look at the full appropriations history——

Mr. MCINTOSH. And you came up here without any clue as to what those are today? That is outrageous.

Mr. DESEVE [continuing]. To see whether that is an earmark in the appropriation or whether it was additional funding. I just don't know; I don't have that information——

Mr. MCINTOSH. I remember it was additional funding of $200,000.

Mr. DESEVE [continuing]. That wasn't specific to the hearing today.

Mr. MCINTOSH. Wait a second. This is an oversight hearing of OIRA——

Mr. DESEVE. Right.

Mr. MCINTOSH [continuing]. And OMB's performance on the Congressional Review Act, which is done by OIRA, and you're telling me you don't know their budget? And you don't want to ask one of your staff what their budget——

Mr. TIERNEY. Can I just interject a question here, Mr. Chairman? Wasn't the language that $200,000 was for all of their activities, including OIRA, not specifically and limited only to OIRA?

Mr. MCINTOSH. The report language made it clear that it was for implementation of CRA.

Mr. TIERNEY. Including CRA, but it covered the gamut——

Mr. MCINTOSH. Right, but what I want to know——

Mr. TIERNEY. So you want to know where every dime went——

Mr. DESEVE. The confusion that you and Mr. Tierney are having is precisely what I want to check and report back. I just don't know the answer in that context. I know there was additional funding specified in report language. I'm happy to get back to you with a full history of that.

Mr. MCINTOSH. Has OIRA done anything to, since that appropriation, to define what a rule is under the Congressional Review Act?

Mr. DESEVE. Not to my knowledge.

Mr. MCINTOSH. How about the definition of a good cause exemption?

Mr. DESEVE. Not to my knowledge.

Mr. MCINTOSH. Is it any wonder that the agencies have difficulty implementing this when OIRA, which is the central clearing agen-

cy, won't even provide them guidance about some key definitions in the end?

Mr. DESEVE. I don't know that the agencies are having the kind of difficulty that you specify. Again, I'll ask Mr. Murphy to please testify to the problems that he's seen. My belief is that the definition of a rule is relatively idiosyncratic in this area to particular agencies. What is a rule for one agency working with their authorizing committee, may not have the same characteristics. So trying to find a one-size-fits-all definition of the word rule is extremely difficult. We've asked the agencies to work with their authorizing committees which receive the CRA information and to try to get an understanding with them through practice as well as through statute what constitutes a rule.

Mr. MCINTOSH. And yet, there's been nothing published, you know, on an agency-by-agency basis.

Mr. DESEVE. That's correct. OMB would not do it on an agency-by-agency basis.

Mr. MCINTOSH. You wouldn't give specific guidance to an agency that this is a rule and it needs to be——

Mr. DESEVE. If they asked us, we would try to work with them and with their counterparts in the Congress to seek such clarification, but we have not, to my knowledge, you know——

Mr. MCINTOSH. The statute is different in its definition of a rule than the President's Executive order. Is that right?

Mr. DESEVE. I believe it is, yes.

Mr. MCINTOSH. And it's different than the Administrative Procedure Act definition of a rule?

Mr. DESEVE. I don't know the answer to that.

Mr. MCINTOSH. I'm pretty sure that's the case——

Mr. DESEVE. I'm just not a lawyer, I'm not familiar with that.

Mr. MCINTOSH [continuing]. Because it was a broader definition because Congress wanted to have more information about what was being used. The key thing that I think the agencies need to know is which things they are required to submit and if they don't know that, then they are going to choose not to submit things for the process because it's less work. Thank you very much, Mr. DeSeve. Do you have any more questions?

Mr. TIERNEY. Mr. DeSeve, I want to thank you for putting up with this and I appreciate the job that you've done, thank you.

Mr. DESEVE. Mr. Chairman, thank you very much. Mr. Tierney, thank you.

Mr. MCINTOSH. Let's proceed to the next witness' testimony and then we'll recess for a vote. Our next witness is Mr. Robert Murphy who is the general counsel at the General Accounting Office.

[Witness sworn.]

Mr. MCINTOSH. Thanks, Mr. Murphy. Welcome back again. Give us an update from your March testimony on exactly what's happening under the Congressional Review Act.

STATEMENT OF ROBERT P. MURPHY, GENERAL COUNSEL, GENERAL ACCOUNTING OFFICE

Mr. MURPHY. Thank you, Mr. Chairman, Mr. Tierney, members of the subcommittee. I am pleased to be here today to discuss GAO's experience in fulfilling its responsibilities under the Con-

gressional Review Act or the CRA. Since I testified before this subcommittee on March 10, in some areas we have seen enhanced cooperation from OIRA in implementing the CRA. In additional, executive branch and independent agencies appear to be more cognizant of their responsibilities under the requirements of the CRA. However, we do have remaining areas of concern. I will discuss what progress has been made in four areas during the past 3 months.

First, with respect to unfiled rules. Before a rule can become effective, it must be filed in accordance with the statute. Prior to the March 10 hearing, GAO conducted a review to determine whether all final rules covered by CRA and published in the Federal Register were actually filed with the Congress and with GAO. Our review covered the 10-month period from October 1, 1996, to July 31, 1997. Our review disclosed that as of your March 10 hearing, 279 rules should have been filed with us and after we identified those with the agencies and called the agencies, 264 had been subsequently filed. As of today, two of those rules remain unfiled. As we noted at the hearing, OIRA did not play a role in ensuring which agencies, that the agencies which had failed to file rules were both aware of the CRA filing requirements and were complying with them.

Last week our office concluded a second review covering the 5-month period from August 1, 1997, to December 31, 1997, which we conducted in the same manner as the prior review. The initial list, which we forwarded to OIRA back in April for distribution to the concerned agencies, identified 115 rules from 21 agencies which had not been filed. On June 2, OIRA agreed to followup with the agencies that had not responded. As of June 11, 45 of the 115 rules had been filed; 25 were not subject to CRA because they were rules of particular applicability; and 24 had been previously filed and our data base was corrected. Twenty-one rules from eight agencies remained unfiled.

I would like to point out two areas which show improvement. First, the number of unfiled rules which should have been filed were 66 for the 5-month period; this is down markedly from the 279 for the prior 10-month review, thus indicating a more concerted effort on the part of agencies to fulfill their responsibilities.

Second, OIRA did become more involved and conducted the followup contacts with agencies after OIRA's distribution of the initial list. Our second area of concern has been the 60-day delay which is built into the statute. Some agencies failed to delay the effective date of major rules for 60 days as required by the act. At the time of my prior testimony, the effective date of eight major rules had not been delayed. Agencies were not budgeting enough time into their regulatory timetable to allow for the delay and were misinterpreting the good-cause exception to the 60-day delay period filed in the statute.

The good-cause exception is only available if a notice of proposed rulemaking was not published and public comments were not received. At the March 10 hearing, I described in some detail our difference of opinion with the former administrator of OIRA as to how to interpret that good-cause exception. One of the things that I can say today is that during the last 3 months, since your hearing, not

a single agency has cited the good-cause exception except in accordance with the statute.

Perhaps, more important, agencies are alerting the public in their final rule publication in the Federal Register that the 60-day effective date stated in the rule may be delayed due to the need to comply with the statute. The Health Care Financing Administration, in a recent Medicare rule, offered such a notice and since its submission of a rule was 5 days later than publication of the rule in the Federal Register, the effective date was delayed in accordance with the statute.

While these first two areas demonstrate enhanced implementation of the statute by OIRA and the agencies, the third area I'd like to address does not. It concerns the definition of rules and major rules. One early question about implementation of CRA was whether executive agencies or OIRA would attempt to avoid designating rules as major and, thereby, avoid GAO's review and the 60-day delay of the effective date. While we are not aware of any rule that OIRA deliberately misclassified, mistakes have been made in major rule classifications. CRA, as you pointed out earlier today, contains a broad definition of rule. For example, the Administrative Procedures Act defines a rule for purposes of notice and public comment to exclude those that are interpretative or that are policy statements by the agency. The rule in this statute, in the Congressional Review Act, includes those rules. Our view is that agencies are not aware of that difference.

Recently, we compared an OIRA-prepared list of important final rules that it reviewed during the first year of the CRA to the list of rules that OIRA and the agencies had identified to us as major during the same period. We found that there were 12 rules on our list of major rules that were not on OIRA's list. Subsequently, OIRA said, that they and the agencies believe that 7 of those 12 rules were not major. The OIRA list also contained 8 rules that were not on our list of 122 major rules. In fact, two of those rules had not been filed with our office at all; six had been filed, but the filing stated that they were not major rules, that they were, in fact, nonmajor rules and they were not treated as such. We are currently following up with OIRA and the agencies that issued these rules to determine whether they should be added to or subtracted from our list of major rules.

As I noted in my prior testimony, our office has been asked to determine whether certain agency actions, issuance, or policies constitute a rule under CRA. We've done that on a number of occasions. We continue to believe that for CRA to achieve what Congress intended, OIRA must assume a more active role in guiding or overseeing these types of agency actions, agency decisions.

Finally, and I'll just take a second or two for this, Mr. Chairman, we have been working with OIRA to compile a data base in a form which the agencies can use to enable us to provide information to the public and to the Congress with respect to the thousands of rules that are filed with GAO and with the Congress to make the statute more useful to the American public.

That concludes my summary of my statement. I would ask that the full statement that I have submitted be included in the record.

Mr. MCINTOSH. Seeing no objection, we shall. My proposal would be that we take a brief recess to vote and return after the vote.

[The prepared statement of Mr. Murphy follows:]

Chairman McIntosh, Mr. Tierney, and Members of the Subcommittee:

I am pleased to appear before you today to discuss the General Accounting Office's experience in fulfilling its responsibilities under the Congressional Review Act (CRA) and our efforts to coordinate implementation of the Act with the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA).

Since I testified before this Subcommittee on March 10, 1998, in some areas we have seen enhanced cooperation from OIRA in implementing the CRA. In addition, executive branch and independent agencies appear to be more cognizant of their responsibilities under the requirements of the CRA. However, there remain areas of concern. After a brief review of the operation of the statute, I will discuss what progress has been made in four areas during the past 3 months.

Under CRA two types of rules, major and nonmajor, must be submitted to both Houses of Congress and the GAO before either can take effect. CRA defines a "major" rule as one which has resulted in or is likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets. CRA specifies that the determination of what rules are major is to be made by OIRA. Major rules cannot be effective until 60 days after publication in the Federal

Register or submission to Congress and GAO, whichever is later. Nonmajor rules become effective when specified by the agency, but not before they are filed with the Congress and GAO.

GAO's primary role under CRA is to provide the Congress with a report on each major rule concerning GAO's assessment of the promulgating federal agency's "compliance with the procedural steps" required by various acts and executive orders governing the regulatory process. These include preparation of a cost-benefit analysis, when required, and compliance with the Regulatory Flexibility Act, the Unfunded Mandates Reform Act of 1995, the Administrative Procedure Act, the Paperwork Reduction Act, and Executive Order No. 12866. GAO's report must be sent to the congressional committees of jurisdiction within 15 calendar days.

Although the law is silent as to GAO's role relating to the nonmajor rules, we believe that basic information about the rules should be collected in a manner that can be of use to Congress and the public. To do this, we have established a database that gathers basic information about the 15-20 rules we receive on the average each day. Our database captures the title, the agency, the Regulation Identification Number, the type of rule, the proposed effective date, the date published in the Federal Register, the congressional review trigger date, and any joint resolutions of disapproval that may be enacted. We have made this database available, with limited research capabilities, on the Internet. I will discuss shortly our belief that this database would have more significant value to the

Congress if the executive branch agencies would cooperate with GAO and provide additional information relevant to each rule.

Since the congressional rulemaking review provisions of CRA were enacted on March 29, 1996, our Office has received 131 major and 9,052 nonmajor rules from executive branch and independent agencies.

UNFILED RULES

As noted earlier, before a rule can become effective, it must be filed in accordance with the statute. Prior to the March 10 hearing, GAO conducted a review to determine whether all final rules covered by CRA and published in the Federal Register were filed with the Congress and GAO. We performed this review to both verify the accuracy of our database and to ascertain the degree of agency compliance with CRA.

Our review covered the 10-month period from October 1, 1996, to July 31, 1997. In November 1997, we submitted to OIRA a computer listing of the rules that we found published in the Federal Register but not filed with our Office. This initial list included 498 rules from 50 agencies. OIRA distributed this list to the affected agencies and departments and instructed them to contact GAO if they had any questions regarding the list. Beginning in mid-February, because 321 rules remained unfiled, we followed up with

each agency that still had rules which were unaccounted for. OIRA did not participate in the follow-up effort.

Our Office experienced varying degrees of responses from the agencies. Several agencies, notably the Environmental Protection Agency and the Department of Transportation, took immediate and extensive corrective action to submit rules that they had failed to submit and to establish fail-safe procedures for future rule promulgation. Other agencies responded by submitting some or all of the rules that they had failed to previously file. Several agencies are still working with us to assure 100 percent compliance with CRA. Some told us they were unaware of CRA or of the CRA filing requirement.

Overall, our review disclosed, as of the March 10 hearing, that:

- 279 rules should have been filed with us; 264 of these have subsequently been filed;

- 182 were found not to be covered by CRA as rules of particular applicability or agency management and thus were not required to be filed;

- 37 rules had been submitted timely and our database was corrected; and

- 15 rules from six agencies had not been filed.

As we noted at the hearing, we believe OIRA should have played a role in ensuring that agencies were both aware of the CRA filing requirements and were complying with them.

Last week, our Office concluded a second review covering the 5-month period from August 1, 1997, to December 31, 1997, which we conducted in the same manner as the prior review.

The initial list which we forwarded to OIRA on April 2 for distribution to the concerned agencies contained 115 rules from 21 agencies. On June 2, OIRA agreed to follow up with the agencies that had not responded. As of June 11, 45 of the 115 rules had been filed; 25 were found not to be subject to CRA because they were rules of particular applicability or agency management and 24 had been previously timely submitted and our database was corrected. Twenty-one rules from eight agencies remain unfiled.

I would like to point out two areas which show improvement. First, the number of unfiled rules which should have been filed were 66 for the 5-month period. This is down markedly from the 279 for the prior 10-month review, thus indicating a more concerted effort on the part of the agencies to fulfill their responsibilities under CRA. Secondly, OIRA has become more involved and conducted the follow-up contacts with the agencies after OIRA's distribution of the initial list.

SIXTY-DAY DELAY AND "GOOD CAUSE"

Some agencies failed to delay the effective date of some major rules for 60 days as required by section 801(a)(3)(A) of the Act. At the time of my prior testimony, the effective date of eight major rules had not been delayed. Agencies were not budgeting enough time into their regulatory timetable to allow for the delay and were misinterpreting the "good cause" exception to the 60-day delay period found in section 808(2).

Section 808(2) states that, notwithstanding section 801, "any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest" shall take effect at such time as the federal agency promulgating the rule determines. This language mirrors the exception in the Administrative Procedure Act (APA) to the requirement for notice and comment in rulemaking. 5 U.S.C. § 553(b)(3)(B). In our opinion, the "good cause" exception is only available if a notice of proposed rulemaking was not published and public comments were not received. Many agencies, following a notice of proposed rulemaking, have stated in the preamble to the final major rule that "good cause" existed for not providing the 60-day delay. Examples of reasons cited for the "good cause" exception include (1) that Congress was not in session and thus could not act on the rule, (2) that a delay

would result in a loss of savings that the rule would produce, or (3) that there was a statutorily mandated effective date.

The former administrator of OIRA disagreed with our interpretation of the statutory "good cause" exception. She believed that this interpretation would result in less public participation in rulemaking because agencies would forgo issuing a notice of proposed rulemaking and receipt of public comments in order to invoke the CRA "good cause" exception. OIRA contends that the proper interpretation of "good cause" should be the standard employed for invoking section 553(d)(3) of the APA, "as otherwise provided by the agency for good cause found and published with the rule," for avoiding the 30-day delay in a rule's effective date required under the APA.

Since CRA's section 808(2) mirrors the language in section 553(b)(B), not section 553(d)(3), it is clear that the drafters intended the "good cause" exception to be invoked only when there has not been a notice of proposed rulemaking and comments received.

In the last 3 months, our Office has not reviewed a major rule that did not properly comply with the 60-day delay requirement. Also, the "good cause" exception has been properly employed in those instances where no notice of proposed rulemaking was issued or comments received. Finally, agencies are alerting the public, in the final rule publication in the Federal Register, that the 60-day effective date stated in the rule may

be delayed due to the need to comply with the CRA. The Health Care Financing Administration (HCFA) of the Department of Health and Human Services, in a recent Medicare rule, contained such a notice, and since HCFA's submission of the rule was 5 days later than the publication of the rule in the Federal Register, the effective date was delayed in accordance with the CRA.

DEFINITIONS OF RULES AND MAJOR RULES

One early question about implementation of CRA was whether executive agencies or OIRA would attempt to avoid designating rules as major and thereby avoid GAO's review and the 60-day delay in the effective date. While we are unaware of any rule that OIRA deliberately misclassified to avoid the major rule designation, mistakes have been made in major rule classifications. Also, the failure of agencies to identify some issuances as "rules" at all has meant that some major rules have not been identified.

CRA contains a broad definition of "rule," including more than the usual "notice and comment" rulemakings under the Administrative Procedure Act which are published in the Federal Register. "Rule" means the whole or part of an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy.

Recently, we compared an OIRA-prepared list of important final rules that it reviewed during the first year of the CRA to the list of rules that OIRA and the agencies had identified to us as major during the same period. We found that 12 rules on our list of major rules were not on OIRA's list. OIRA officials said that, in retrospect, they and the agencies should not have identified 7 of those 12 rules as major. The OIRA list also contained 8 rules that were not on our list of 122 major rules. Of these, OIRA officials said that all eight should have been identified and submitted to us as major rules. OIRA officials noted that all of these rules were issued in the first year of the congressional review process, and that they and the agencies were still learning how to respond to the statutory requirements. We are currently following up with OIRA and the agencies that issued these rules to determine whether they should be added to or subtracted from our list of major rules.

As I noted in my prior testimony, on occasion, our Office has been asked whether certain agency action, issuance, or policy constitutes a "rule" under CRA such that it would not take effect unless submitted to our Office and the Congress in accordance with CRA. For example, in response to a request from the Chairman of the Subcommittee on Forests and Public Land Management, Senate Committee on Energy and Resources, we concluded that a memorandum issued by the Secretary of Agriculture in connection with the Emergency Salvage Timber Sale Program constituted a "rule" under CRA and should have been submitted to the Houses of Congress and GAO before it could become effective.

Likewise, we concluded that the Tongass National Forest Land and Resource Management Plan issued by the United States Forest Service was a "rule" under CRA and should have been submitted for congressional review. There are 123 forest plans covering all 155 forests in the National Forest System. Each plan must be revised and reissued every 10 years.

OIRA stated that, if the plan was a rule, it would be a major rule. In testimony before the Senate Committee on Energy and Natural Resources and the House Committee on Resources regarding the Tongass Plan, the Administrator of OIRA stated that, as was the practice under the APA, each agency made its own determination of what constituted a rule under CRA and by implication, OIRA was not involved in these determinations.

We continue to believe that for CRA to achieve what the Congress intended, OIRA must assume a more active role in guiding or overseeing these types of agency decisions. Other than an initial memorandum following the enactment of CRA, we are unaware of any further OIRA guidance. Because each agency or commission issues many manuals, documents, and directives which could be considered "rules" and these items are not collected in a single document or repository such as the Federal Register, it is difficult to ascertain if agencies are fully complying with CRA.

We note certain congressional committees are taking an active role in overseeing agency compliance with the CRA. For example, the Joint Committee on Taxation has

corresponded with the Internal Revenue Service (IRS) as to what should be submitted. Therefore, IRS procedures, rulings, regulations, notices, and announcements are forwarded as CRA submittals. Also, in response to the request of the House Committee on Education and the Workforce, the Departments of Labor and Education deliver their CRA submissions with a monthly summary directly to the Committee, in addition to our Office and both Houses of Congress as required by the CRA.

DATABASE ENHANCEMENT

As we discussed at your March hearing, we have attempted to work with executive agencies to get more substantive information about the rules and to get such information supplied in a manner that would enable quick assimilation into our database. An expansion of our database could make it more useful not only to GAO for its use in supporting congressional oversight work, but directly to the Congress and to the public.

In the initial development of the questionnaire, we consulted with executive branch officials to insure that the requested information would not be unnecessarily burdensome. We circulated the questionnaire for comment to 20 agency officials with substantial involvement in the regulatory process, including officials from OIRA. The Administrator of OIRA submitted a response in her capacity as Chair of the Regulatory Working Group, consolidating comments from all the agencies represented in that group. It was the

position of the group that the completion of this questionnaire for each of the 4,000 to 5,000 rules filed each year is too burdensome for the agencies concerned.

On April 22 of this year we again contacted OIRA officials with a modified version of our questionnaire, which we believed addressed the major concerns raised with the initial version. We have subsequently met with officials from OIRA and a select group of executive agency officials, at their request, to explore additional ways to capture the information. We are currently reviewing an alternative, but we believe inadequate, version of the questionnaire proposed by those officials and will meet next week to continue negotiations on this matter.

We continue to believe that it would further the purpose of CRA for a database of all rules submitted to GAO to be available for review by Members of Congress and the public and to contain as much information as possible concerning the content and issuance of the rules. We believe that further talks with the executive branch, led by OIRA, can be productive and that there may be alternative approaches that address both congressional and executive branch concerns.

CONCLUSION

CRA gives the Congress an important tool to use in monitoring the regulatory process, and we believe that the effectiveness of that tool can be enhanced. Executive Order 12866 requires that OIRA, among other things, provide meaningful guidance and oversight

so that each agency's regulatory actions are consistent with applicable law. After 2 years' experience in carrying out our responsibilities under the Act, we can suggest several areas in which OIRA should exercise more leadership within the executive branch regulatory community, consistent with the intent of the Executive Order, to enhance CRA's effectiveness and its value to the Congress and the public. We believe that OIRA should:

- develop a standardized reporting format that can readily be incorporated into GAO's database providing the information of most use to the Congress, the public, and GAO;

- establish a system to monitor compliance with the filing requirement on an ongoing basis; and

- provide clarifying guidance as to what is a rule that is subject to CRA and oversee the process of identifying such rules.

Thank you, Mr. Chairman. This concludes my prepared remarks. I would be happy to answer any questions you may have.

Mr. TIERNEY. Mr. Chairman, I just request that the record be held open for 5 days for additional comments that we might be able to submit in writing. And I don't believe I'm going to be able to be back.

Mr. MCINTOSH. Yes, we will hold it open.

Mr. TIERNEY. I thank you for that. I thank the witness, and apologize that I might not be able to return.

Mr. MCINTOSH. Thank you, John. And we'll be back, hopefully, in 5 to 10 minutes.

[Recess.]

Mr. MCINTOSH. The subcommittee will come to order. Thank you, Mr. Murphy, for your patience in this. We had more than the one vote, unfortunately. Let me ask you a couple of questions, and we may have a few more for the record afterwards. First of all, let me repeat how much we appreciate your work in this area and diligence in making sure that information is out there and available and used by the agencies in complying with the Congressional Review Act. You talked about the expansion of your audit for additional rules. In your estimation, has OIRA done anything further to take the lead on bringing these rules to the attention of the agency, or what happened in that regard after the last hearing?

Mr. MURPHY. Well, as we reported at the last hearing, OIRA had not taken any—made any effort at all other than to send the rule to the agency and tell them that they could call GAO if they had questions. When we did the latest review, a 5-month study, we took that to OIRA, they distributed it to the agencies, and this time they called the agencies individually to raise the issues with them. We work with OIRA to identify the individuals so they now have a list of the key people in the agency to contact. They did so, and in fact, during the 2 weeks since they did that, we've gotten an awful lot of those rules which have not been filed that are now actually filed with GAO. I think we are probably down to 20 or 21 that are left at the moment that haven't been filed.

Mr. MCINTOSH. For both time periods?

Mr. MURPHY. Two for the prior time period; those are still outstanding—one from the National Science Foundation and one from the Small Business Administration. Those are the—those that we discussed at the last hearing and now there are probably another 21 left over that haven't been filed yet from the second study.

Mr. MCINTOSH. And that's under the narrower definition of a rule, that essentially things that are published in the Federal Register, right?

Mr. MURPHY. That's right.

Mr. MCINTOSH. Because as I understand it, your audit, out of necessity, was confined to that. Do you have any estimate of the number of other illegal rules or procedures that are not covered by the audit because they were not published?

Mr. MURPHY. Well, we know they are out there. We recently did a study after discussions with your staff to take a look at the number of forest plans which are clearly rules, and, for the most part, we believe they would be major rules although that's OIRA's determination to see how many of those had been promulgated since CRA was enacted, and there were seven of those that have come out. At the same time I know there are land management plans,

and other similar documents that have been issued by agencies that have not been filed. As I mentioned in my testimony, we did a double check to compare OIRA's list with major rules with those that had been filed with GAO and we found that eight of them were not filed as major rules; six had actually been filed as nonmajor rules, but two hadn't been filed with us at all. So while I can't tell you what the dimension of the rules that haven't been filed with GAO are, we know that there is a sizable number of them out there. And that is the reason why we have consistently advocated that OIRA assume responsibility of both monitoring the agencies and providing guidance to the agencies about what they should be filing.

Mr. MCINTOSH. And we heard from Mr. DeSeve, they haven't issued guidance on the terms of some of the statutes. Have you seen any signs that they have increased their monitoring of the agencies on new rules?

Mr. MURPHY. Not to date, other than to take our review and to check up with the agencies, although we've talked to them about the—they haven't said they would do it, but we've been talking to them about picking up the job that we are doing, which is really their job and that is to check with the agencies to make sure that they are filing.

Mr. MCINTOSH. My last question is this: what do you think in particular OIRA should be doing? I take it OIRA should be picking up some of the auditing that you are doing.

Mr. MURPHY. Oh, absolutely. One of the things that I didn't have a chance to cover in my oral testimony but it's in the written testimony, are three things that we think OIRA really should do to make the statute more fully implemented. One is to develop a standardized reporting format, which they are working with us to do. We have a meeting scheduled with OIRA and key agencies next week and we have some hope that we are going to be able to achieve that. But, second, to establish a system to monitor compliance with the filing requirement on an ongoing basis. So far GAO has been doing that, but I think that if OIRA were to do it, some agencies such as those which only file with us when we do this review and point out that we don't have any of their rules, would start sending them on a more regular basis.

And, third, to provide clarifying guidance as to what a rule is that is subject to CRA. I think that if OIRA picks up those three, one of which I think they are already committed to do——

Mr. MCINTOSH. That would go a long way.

Mr. MURPHY. Yes, that would go a long way.

Mr. MCINTOSH. And I understand that on that form, GAO had a proposal and OIRA had their version. Is their version adequate, or are there flaws?

Mr. MURPHY. No, it really isn't. It's inadequate, but, there again, my sense from—I went to OMB 2 weeks ago to personally talk to people that were working on this issue and my sense from that is that they are committed to working with the agencies and GAO to produce a survey that is acceptable and I have every hope that they will do that and I hope we don't have to have another oversight hearing in order to point out that they haven't.

Mr. MCINTOSH. Haven't done it.

Mr. MURPHY. We've been working closely with your staff on each of these issues and as soon as we have something that is acceptable, we'll certainly talk to them.

Mr. MCINTOSH. Do you have any idea of where the $200,000 has gone?

Mr. MURPHY. No, I don't, Mr. Chairman.

Mr. MCINTOSH. Let me see what answer we get back from Mr. DeSeve. At some point I want to find that out. As John indicated, there may be some additional points that they raise. We'll leave the record open for the next 5 days. If you have anything additional, you'd like to submit, we'll invite you to do that. Thank you again for coming and thank you for your good work on that.

The subcommittee is adjourned.

Mr. MURPHY. Thank you, Mr. Chairman.

[Whereupon, at 4:05 p.m., the subcommittee adjourned subject to the call of the Chair.]

[Additional information submitted for the hearing record follows:]

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INDEPENDENT

March 2, 1998

BY FACSIMILE

The Honorable Franklin D. Raines
Director
Office of Management and Budget
Washington, D.C. 20503

The Honorable Kathleen A. McGinty
Chair
Council on Environmental Quality
Washington, D.C. 20502

Dear Director Raines and Chair McGinty:

The Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs is conducting oversight of the White House Initiative on Global Climate Change.

Pursuant to the Constitution and Rules X and XI of the United States House of Representatives, please provide the Subcommittee with detailed information in response to the attached questions regarding the budget and performance measures for this initiative. Please restate each question before the corresponding answer.

Please contact Subcommittee Staff Director Mildred Webber at 225-4407 if you have any questions about this request. Please provide this information not later than 12 noon, March 24, 1998 to the Subcommittee in Room B-377 Rayburn.

Thank you in advance for your attention to this request.

Sincerely,

David McIntosh

David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs

cc: The Honorable Dan Burton
The Honorable Bernard Sanders

Enclosure

Questions on the White House Initiative on Global Climate Change

1. Please provide a table with Fiscal Year (FY) 89 - FY 99 historical budget authority, on an agency-by-agency basis, for the various components of the President's "Climate Change Technology Initiative," including the previous "Climate Change Action Program/Plan" and any other new or previously authorized Research and Development (R&D) herein (except for the U.S. Global Change Research Program included in Question 2 below). For each component, please indicate each specific budget account and a brief description of the program.

- For FY 93 and FY 95, please explain why the details in Table S-10 do not equal the totals in Table 6-2 in the Budget of the United States Government Fiscal Year 1996.

- For FY 97, please explain the difference between the published figures in the Budget of the United States Government Fiscal Year 1998 (estimated $183 million) and the Budget of the United States Government Fiscal Year 1999 (actual $743 million), including any reprogramming from other budget accounts.

- For FY 99, please explain why the published figures (the requested funding for key sectors) in Table 6-3 of the Budget of the United States Government Fiscal Year 1999 do not equal the total.

- In Section 2 ("Programmatic Details") of OMB's February 2, 1998 handout, "Climate Change Technology Initiative - 1999 Budget Briefing Materials," please provide the following information associated with each paragraph description: each affected agency and, for each agency, the associated funding in FY 97, FY 98, and FY 99. Also, for each paragraph, and for each agency, please provide evidence of any accomplishments from the FY 97 funding. Lastly, for each paragraph, and for each agency, please indicate any program performance measures for the requested funding and, for each such measure, please provide annual data for the most recent three-year period for which data are available.

2. Please provide a table with FY 89 - FY 99 historical budget authority, on an agency-by-agency basis, for the various components of the "U.S. Global Change Research Program" which were or are devoted exclusively to climate change R&D. For each component, please indicate each specific budget account and a brief description of the program.

- For FY 93 actual figures for the "U.S. Global Change Research Program," please explain the differences among the published figures in the Budget of the United States Government Fiscal Year 1996 ($1531 million), the Budget of the United States Government Fiscal Year 1997 ($1319 million), and the Budget of the United States Fiscal Year 1998 ($1464 million), including any reprogramming from other budget accounts.

- For FY 95 and FY 96, please explain why the details in Table 7-2 do not equal the totals in Table 6-2 of the Budget of the United States Government Fiscal Year 1996.

- For each agency with funding in FY 97, please provide evidence of any accomplishments from the FY 97 funding. Also, for each agency requesting funding in FY 99, please indicate any program performance measures for the requested funding and, for each such measure, please provide annual data for the most recent three-year period for which data are available.

3. Please provide a table with FY 89 - FY 99 historical budget authority, on an agency-by-agency basis, for any other components of the Administration's climate change program (i.e., in addition to those included in answer to questions 1 and 2). For each component, please indicate each specific budget account and a brief description of the program.

4. Since the Government-wide Performance Plan for FY 1999 does not include any performance measures for the Administration's Climate Change proposal, please identify all government-wide and agency-specific performance measures for the Administration's Climate Change proposal, including data for at least FY 97, FY 98, and FY 99.

- The Performance Plan in DOE's FY 99 Budget submission includes goals of reducing gas emissions by 5 percent in 2010 and reducing energy consumption by 25 percent in 2010. Please provide at least FY 97, FY 98, and FY 99 data on gas emissions and energy consumption to meet these goals.

- EPA's FY 99 Budget includes goals of reducing emissions by 40 million metric tons and reducing energy consumption by 45 billion kilowatts. Please provide at least FY 97, FY 98, and FY 99 data on gas emissions and energy consumption to meet these goals.

- Please explain whether and how DOE's and EPA's performance measures overlap — i.e., whether they relate to reductions made by only that agency's programs or by all agencies' programs in the aggregate.

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March 6, 1998

BY FACSIMILE

The Honorable Franklin D. Raines
Director
Office of Management and Budget
Washington, D. C. 20503

The Honorable Kathleen A. McGinty
Chair
Council on Environmental Quality
Washington, D. C. 20502

Dear Director Raines and Chair McGinty:

The Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs is conducting an inquiry concerning the economic, legal, and regulatory implications of the Administration's efforts to jump-start the process of reducing greenhouse gas emissions under the terms of the Kyoto Protocol.

Pursuant to the Constitution and Rules X and XI of the United States House of Representatives, please provide the Subcommittee with detailed information in response to the attached questions. In responding to this inquiry, please restate each question and subpart with each of your answers, and please follow the definitions and instructions concerning the production of records on the attached page.

Please provide your responses to the written questions and requests for production of records by March 20, 1998 to the Subcommittee's office in Room B-377 Rayburn. In addition, please contact Larisa Dobriansky, Senior Counsel, at (202) 225-4407 as soon as practicable to coordinate the timely production of the information to the Subcommittee.

Thank you for your cooperation in this matter.

Sincerely,

David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs

cc: The Honorable Dan Burton, Chairman
Committee on Government Reform and Oversight

The Honorable John Tierney, Ranking Member
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs

The Honorable Henry Waxman, Ranking Member
Committee on Government Reform and Oversight

Questions on the Administration's Global Climate Change Policy Actions

IMPLEMENTATION WITHOUT RATIFICATION

"We have no intention through the back door or anything else, without Senate confirmation, of trying to impose or take any steps to impose what would be binding restrictions on our companies, on our industry, on our business, on our agriculture, on our comerce, or on our country, until and unless, the Senate of the United States says so."

Statement of the Honorable Stuart E. Eizenstat
Under Secretary of State for Economic, Business, and Agricultural Affairs
Before the U.S. Senate Committee on Foreign Relations
February 1998

"Whether there is an agreement in Kyoto or not, the United States is prepared, under President Clinton's leadership, to unilaterally take steps that we believe should be taken in order to deal with this problem."

Statement of Vice President Gore
December 1997

Unilateral Executive Actions on a Global Issue.

1. Given that the Kyoto Protocol seeks to address a global issue, isn't it harmful to U.S. interests to proceed without the full participation of developing countries?

2. Besides being unconstitutional, isn't it also premature and possibly counterproductive for the United States to take unilateral executive branch action, without ratification, when the Administration has characterized the Protocol as a "work in progress"?

A Budget Request without Justification or Ratification.

3. How can the Administration claim that its proposed Climate Change Technology Initiative (CCTI) is not intended to implement the Kyoto Protocol, when this initiative has been made an integral part of the President's Global Climate Change Initiative, and the initiative is specifically designed to alter market behavior in furtherance of the treaty's emissions reductions targets?

4a. In a hearing before the Senate Foreign Relations Committee on February 11, 1998, Under Secretary of State Eizenstat testified that the tax incentives and research funding that the President requested in his Fiscal Year (FY) 1999 Budget proposal are necessary to place the U.S. in a "position where we will be further down the road and won't have to make the kind of drastic

reductions that otherwise might be called for." Please provide all of the economic data and analyses upon which the Administration relied for this determination. As to any analysis, please identify who prepared it and provide all records containing comments by other federal agencies on the drafts.

4b. Explain why the President decided to request $6.3 billion in his budget proposal instead of the $5 billion that he stated he would seek at the time that he announced his Climate Change Action Proposal on October 22, 1997. Was this decision affected by the fact that the Administration agreed at Kyoto to commit the U.S. to reducing greenhouse emissions by 7% below 1990 levels rather than stabilizing emissions at 1990 levels?

5a. Article 3.2 of the Kyoto Protocol states: "Each Party included in Annex I, by 2005, shall have made demonstrable progress in achieving its commitments under this Protocol." Please explain how the Administration is interpreting this provision of the treaty.

5b. Does the Administration believe that its Global Climate Change Initiative, including the CCTI, will enable the U.S. to make demonstrable progress in achieving its commitments under the Kyoto Protocol?

5c. Please provide and document the Administration's annual performance measures for its 5-year Climate Change Technology Initiative (CCTI). In this regard, provide the following: the 1990 U.S. emissions level, data on actual emissions reductions for Fiscal Year 1997, and then projected emissions reductions beginning with Fiscal Year 1997 and then for each year up to and including Fiscal Year 2003.

5d. Please specify the annual greenhouse gas emissions reductions that the Administration estimates will occur between FY 1999 and FY 2005 from implementing each element of its Global Climate Change Initiative.

6a. The Administration has maintained that the CCTI is a "no-regrets" proposal; that is, regardless of whether or not there is a real threat of global warming, this proposal is justified on its own merits as good energy and environmental policy. In view of this claim, please demonstrate the need for this initiative based on reasons other than facilitating greenhouse gas emissions reductions.

6b. In this regard, provide the environmental and economic data and analyses that support this request on its own merits.

6c. Can the Administration point to a significant market failure or demonstrate a compelling public need that necessitates $3.6 billion of new tax incentives and a 73 percent increase in funding to accelerate the development and diffusion of more energy efficient technology? According to OECD data, U. S. energy efficiency since 1980 has improved more than that of most industrialized countries.

6d. Please provide a detailed explanation of and produce all records indicating the alternative policy options that the Administration analyzed, including more broadly-based options, such as integrated pollution prevention, performance-based regulation, and multi-media regulation. In this regard, did the Administration evaluate whether existing regulation may be a significant barrier to improving energy efficiency and the environment?

6e. Please explain in detail and fully document the cost-effectiveness of the Administration's proposal when compared to other available options for improving energy efficiency and the environment.

6f. Please explain in detail and fully document the opportunity costs of committing such a significant amount of our nation's resources in this manner.

6g. As to any analysis provided, identify who prepared it and provide all records of comments by other federal agencies.

7. How realistic and achievable are the targets and timetables that the U.S. delegation agreed to at Kyoto, if it is necessary to take unilateral executive branch actions prior to Senate ratification in order "to get us in a position where we will be further down the road and won't have to make the kind of drastic reductions that otherwise might be called for"?

8. Under section 102 of the **National Environmental Policy Act**, the federal government is required to provide a detailed environmental impact statement (EIS) and to follow specified procedures for review and comment whenever it is recommending to Congress legislation that "affects the quality of the human environment". Please provide any EIS (or draft EIS, if not finalized) that was prepared in connection with the Administration's requests for tax incentives and research funding to facilitate greenhouse gas emission reductions. With respect to any EIS, identify who prepared the document and provide all records of written and oral comments from other federal agencies.

The Inescapable Regulatory Backdoor.

9. In its 1997 U. S. Climate Action Report under the current Framework Convention on Climate Change, the Administration made this statement: "Recognizing that even the most draconian measures would likely be insufficient to reverse the growth in greenhouse gases and return U.S. emissions to their 1990 levels by the year 2000, new U.S. efforts are focusing most intensively on the post-2000 period." Based on this assessment, how can the President assert that the U.S. commitments under the Kyoto Protocol are achievable with minimum economic costs? Provide any economic and legal analyses that demonstrate that U.S. obligations can be met without constraining U.S. economic growth and without imposing onerous and costly regulation. Also, please provide two copies of the 1997 U.S. Climate Action Report.

10a. In testimony before the Senate Foreign Relations Committee on February 11, 1998, Ambassador Eizenstat stated that the only legislation that would be required to enable the U.S. to abide by the Kyoto Protocol would be legislation authorizing emissions trading; otherwise, he indicated that the U.S. could rely on existing legislation. In this regard, please provide all legal and policy analyses performed by the State Department and other federal agencies on whether, and to what extent, new implementing legislation would be required to meet the U.S. commitments under the Kyoto treaty and provide all comments thereon by other agencies.

10b. Also, please provide any and all legal and policy analyses developed by the State Department or other federal agencies regarding the applicability and availability of existing legislation to implement the Protocol and all comments thereon by other agencies.

11. To the extent that analyses have been performed, describe any differences between the legislation and regulations that would have been needed to implement the President's October 1997 Climate Change Action Proposal and that which would be needed to implement the Kyoto Protocol.

12. Is there an agency or interagency group that is developing recommendations on the need for implementing legislation? If so, please identify the persons who have been charged with coordinating this effort and the names of the agency representatives who are participating.

13a. Please identify all environmental and energy regulations that are being developed, have been proposed, or have been issued since 1992 that have or will have the effect of reducing greenhouse gas emissions (whether or not that is the intended purpose of the particular regulation). As to those regulations that are being developed or that have been proposed, provide an estimated timetable for each stage of the rulemaking.

13b. Has OMB or any other federal agency prepared, contracted to have prepared, or considered any studies that: (1) Have calculated the potential cumulative costs of environmental and energy regulations that are presently planned or being developed, have been proposed, or already have been issued since 1992 that have or will have the effect of reducing greenhouse gas emissions (whether or not this is the intended purpose of the regulation); and (2) Have assessed the cumulative effects of these regulations, or any combination of them, on the U.S. energy system and economy? If so, please provide any such analyses and all federal agency comments on any drafts. If not, please indicate why this has not been done. This Subcommittee believes that this information is vitally needed and is requesting that such an analysis be performed.

13c. Please provide any analyses that have been performed or considered by the Administration concerning the potential combined effects on the U.S. economy and energy system of such Clean Air Act regulations, as the recently issued National Ambient Air Quality Standards for particulate matter and ozone, and regional haze proposal; the Administration's proposed measures for implementing the requirements of the Kyoto Protocol; and its planned legislative proposal for restructuring the electrical industry.

POLICIES WITHOUT ECONOMIC ANALYSIS

> "By providing incentives for early action to reduce emissions, attacking domestic energy inefficiencies, and putting in place a market-based emissions trading system, we can reach [our emission reduction targets] with minimum economic costs."
>
> Statement of President Clinton
> Climate Change Proposal
> October 1997

The Administration's Repeated Failure to Conduct Economic Analysis.

14a. Given the significant economic costs projected by private sector studies, why did the Administration abandon a year and a half-long effort to develop cost estimates of the President's proposed policies to reduce greenhouse emissions? In testimony before the House Subcommittee on Energy and Power on July 15, 1997, the Chair of the Council of Economic Advisers, Dr. Janet Yellen, stated that President Clinton's top priority since his first days in office "has been revitalizing the U.S. economy, creating jobs, and investing in people and technology to enhance long-term growth."

14b. How can the Administration defend its policy actions based on the results of climate models that must take into account significant uncertainties surrounding the effects of human activities on the climate, yet nevertheless consider economic modeling to be "futile" (Dr. Yellen's expression at the House Commerce hearing on July 15, 1997)?

15a. In testimony before the House Commerce Committee in 1997, former Under Secretary of State Timothy Wirth stated that an interagency "economics team" was formed to analyze the impacts of climate change policies.

15b. Please provide the following background information regarding that group: when it was formed, the names of the participants and their agencies, the head of the team, the scope of the group's responsibilities, and to whom the group reported.

15c. Please produce records of all meetings of this group and information on any workshops conducted. Also, produce all analyses performed by the group and provide all records of written or oral comments from other federal agencies on the team's analyses and advice.

16. In developing its positions for the Conference in Kyoto, did the Administration at any point renew its efforts to estimate the costs of various policies to reduce greenhouse gas emissions? If so, please provide all economic analyses that were prepared for the Administration and the U.S. delegation to review. As to each analysis, please indicate who prepared the analysis

and provide all records containing comments from other federal agencies. If not, please explain fully why not.

17. Is there currently in place an interagency body that is analyzing the economic impacts on the U.S. of the mandatory restrictions specified in the Kyoto Protocol and evaluating alternative domestic policies to achieve those requirements? If so, please provide the same type of information about this group, as well as produce the same type of documents, which were requested in question number 15 above with respect to the "economics team."

18. During its deliberations prior to Kyoto, did the Administration consider whether an agreement to stabilize emissions at 1990 levels or to reduce emissions below 1990 levels would result in lower economic growth? If so, how much lower economic growth did the Administration consider as acceptable in exchange for a treaty that would have at best only a marginal impact on reducing emissions? Please produce all records of such deliberations and all economic analyses and comments thereon (from federal agencies and private parties) that the Administration considered.

19. If the Administration did not prepare cost estimates of the impacts on the U.S. economy and the American people, how did the Administration determine its policy position first to stabilize emissions at 1990 levels by 2008-2012 and then later to deviate with confidence from that position and commit the U.S. to reducing emissions by 7 percent below 1990?

20. At what point prior to or during the negotiations, did the Administration decide that emissions reductions below the 1990 baseline were acceptable? Who in the Administration and in Congress were consulted in making this decision? Did the Administration examine any public or private analyses in reaching this decision? If so, identify and provide the analyses upon which the Administration relied, with all comments that were submitted by any federal agency.

21. If economic analyses were prepared internally to support positions that the Administration intended to take at the Conference, why weren't these analyses made available to Congress and the American public, who all have a right-to-know the potential economic consequences of the President's climate change policies?

22. Did the Administration review any private sector analyses completed prior to Kyoto? If so, please provide all records of comments thereon by federal agencies.

23. The Clinton Administration indicated its recognition of Senate Resolution 98 (the Byrd-Hagel Resolution). Please describe in detail and document the steps that the Administration already has taken and intends to take to assure compliance with each provision of that Resolution.

No Cost/Benefit Analysis of the Kyoto Treaty.

24a. Please provide any and all analyses that the Administration or any federal agency prepared (or is preparing) of the costs and benefits of imposing on the U.S. the binding targets and timetables set forth in the Kyoto Protocol for reducing greenhouse gas emissions, taking into account the global implications of the way in which this agreement is structured. Also, please analyze and document the following:

24b. Whether the benefits of implementing this Protocol are justified by the costs;

24c. Evaluate the effectiveness of this agreement by comparing the marginal abatement costs of the most plausible alternative scenarios for meeting the Kyoto targets, given the way in which this agreement is structured, with the marginal costs of other reasonable alternative compliance schemes;

24d. With respect to each scenario that is analyzed, identify the assumptions used, explain any uncertainties concerning the assumptions, and examine the sensitivity of net benefits to the different compliance strategies, using a range of plausible assumptions about future economic development and about fundamental climate processes;

24e. Evaluate the opportunity costs of pursuing the Administration's strategy for the abatement of greenhouse gas emissions under the terms of the treaty; and

24f. Evaluate how the benefits and burdens of complying with this treaty would be distributed on the national and household levels, describing, among other things, the disparate regional and industrial sector impacts, and the effects on different income levels.

25a. In evaluating alternative scenarios, please examine the following:

25b. Compare the economic and environmental effects of not including developing countries in the effort to reduce global emissions (with the potential for binding developed countries to even greater obligations, without limiting developing countries) against the effects of addressing greenhouse gas mitigation on a global scale by the international community.

25c. Compare the economic and environmental effects of complying within the timeframes set forth in the Kyoto Protocol with the effects of complying over a longer time period.

25d. Compare the impacts of reducing greenhouse emissions using international emissions trading, joint implementation, and the Clean Development Mechanism with the impacts of relying upon domestic emissions permit trading. In this regard, evaluate alternative international trading scenarios: trading only between Annex I countries, trading that extends to a number of "key" developing countries, and trading in which all countries are fully participating.

26. With respect to any analysis provided, please identify and explain the basis for assumptions used regarding such factors as the rate of improvement in energy efficiency, the effectiveness of market incentives in increasing the market share of fuels that emit less carbon, and economic and demographic growth. Also, explain fully any assumptions on how emissions reductions will be achieved, as for example, through the early retirement of coal plants or nuclear plant life extensions.

27. In considering the opportunity costs, evaluate the extent to which the Administration's climate change strategy will require the diversion of funds from savings and/or investments which would have provided other benefits, such as saving social security, or more funding for education, health care, etc.

28. In assessing the impacts on the U.S. of complying with the Kyoto targets and timetables, please explain in detail the potential effects on the following indicators of economic performance: gross domestic product (GDP), per capita GDP, unemployment, income and real wages, trade competitiveness, and energy prices.

29. In assessing the benefits of complying with the Kyoto treaty, please evaluate fully the potential offsetting negative effects of exempting developing countries and of "carbon leakage." Also, if the economies of developed countries experience reductions in economic growth, evaluate the impact that this will have on the ability of emerging countries with export markets to transition to more energy efficient technologies.

30. President Clinton has suggested that the U.S. economy can continue to grow under this agreement. Please indicate at what rate the Administration expects that the economy will continue to grow during the next ten to 20 years if the treaty is ratified and at what rate it is expected to grow if the treaty is not ratified.

31. Have any of the cost/benefit analyses performed by the Administration or any agency been peer-reviewed? If so, please identify the reviewers provide their comments on the analyses. If not, does the Administration plan to do so? Please describe fully the steps that the Administration plans to take.

32. Please describe in detail the strengths and weaknesses of the methodology of any economic models used. Also, indicate the differences between the models used in any of the cost/benefit analyses performed post-Kyoto and those used in any prior analyses performed by the Administration.

33. In connection with these cost-benefit analyses, fully explain how the baseline(s) against which costs and benefits were calculated was determined.

34a. Please provide all records of written or oral comments from other federal agencies on each of the cost/benefit analyses that were performed.

34b. Please provide all records of comments submitted by federal agencies on Dr. Janet Yellen's draft testimony about the economics of Kyoto for the hearing before the House Commerce Committee on March 4, 1998.

International Emissions Trading: Not a Panacea.

35. As a practical matter, until the Conference of the Parties makes all of the decisions that it is empowered to make under Article 17 of the Kyoto Protocol concerning the establishment of rules and procedures for international emissions trading, isn't it premature for the Administration to forecast definitively that the agreement would result in, at most, modest energy price hikes?

36a. With respect to the rules and procedures for international emissions trading that have yet to be developed, what are the minimum requirements that the Administration is seeking to assure an efficient and effective system for lowering the costs of emissions reductions?

36b. Does the Administration intend to confer with Congress and obtain comments from Congress and the public in developing negotiating positions for Buenos Aires on rules and procedures for an international emissions trading system and for obtaining joint implementation project credit, including the Clean Development Mechanism?

37a. Why does the Administration believe it can obtain meaningful participation by developing countries and what steps is the Administration taking to achieve this? What indications of potential meaningful participation have been shown by developing countries that prompt this optimism?

37b. In particular, what are the steps being taken with respect to China, India, Mexico, Brazil, and South Korea and what indications of potential meaningful participation has the Administration received from these countries?

37c. Which countries does the Administration consider "key," in assuring that "meaningful participation" is secured?

38. Why does the Administration maintain that the U. S. acid rain program experience "clearly demonstrates how programs like international permit trading, joint implementation and the Clean Development Mechanism will lead firms to find cheaper ways of reducing emissions that can lead to unexpectedly low costs"? Is it appropriate for the Administration to extrapolate from that experience to the global arena? Won't the effectiveness of the international system, joint implementation, and the Clean Development Mechanism depend on such factors as the rules and procedures governing these mechanisms, the extent of participation by other countries, including developing countries, etc?

39a. Even assuming that effective rules and procedures can be developed for an international emissions trading system and for joint implementation projects and that key developing countries agree to participate, isn't there a real risk that these mechanisms could effect an enormous transfer of wealth and jobs out of this country overseas, especially to the countries of the former Soviet Union and emerging countries (i.e., that this system would be essentially a foreign aid program)? Some studies have estimated that more than 50% of our reductions would have to be purchased from other countries.

39b. Please provide and document estimates of the percentage of U.S. emissions reductions that might have to be purchased from other countries to minimize the costs of reducing emissions and which countries likely would be the beneficiaries.

Definitions and Instructions for the Production of Records

1. When a request calls for the production of records, the Subcommittee requests all responsive records that EPA has in its possession, custody, or control through the date of the final submission of records to the Subcommittee, unless the request clearly states that the Subcommittee is only interested in records EPA received during a particular time period.

2. Please sequentially number all records that you produce to the Subcommittee, and indicate the source of any record if the source is not accurately reflected on the record itself. Please submit all records on single-sided paper and submit an inventory of records produced if the volume is more than 100 pages.

3. To the extent practicable, please organize the records or documents in tabbed binders or folders that indicate which records are responsive to which requests for information.

4. For the purposes of this and related requests in the future, the word "record" or "records" shall include any and all drafts, originals, and non-identical copies of any item whether written, typed, printed, electronically recorded, transcribed, punched, or taped, however produced or reproduced, and includes but is not limited to any writing, transcription, or recording, produced or stored in any fashion, including any and all computer entries, memoranda, notes, talking points, letters, journal entries, reports, studies, calendars, manuals, press releases, opinions, documents, analyses, messages, summaries, bulletins, e-mail messages (in hard copy and electronic forms), disks, the text of any alphanumeric messages or other electronic paging devices, briefing materials, cover sheets or routing cover sheets and any other machine readable material of any sort whether prepared by current or former officers and employees, agents, consultants or by any non-employee without limitation. "Record" or "records" shall also include redacted and unredacted versions of the same record.

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

May 13, 1998

Honorable David M. McIntosh
Chairman, Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
Committee on Government Reform and Oversight
House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

This is a joint Office of Management and Budget and Council on Environmental Quality response to your letter requesting detailed information on budget and performance measures related to the President's climate change initiative.

In accord with your request, we have provided information on the President's FY 1999 Climate Change Technology Initiative and the U.S. Global Change Research Program. We have also included some examples of performance measures related to the climate change initiative from the Government-wide Performance Plan for FY 1999. Some agencies have included additional information on performance measures for the climate change initiative in the budget justifications they provide to the Committees on Appropriations. We understand that you have requested performance information from agencies directly in separate letters you have sent them. You should know that we will be working with agencies to develop more comprehensive performance measures for the President's climate change initiative.

We hope the information is helpful to the Subcommittee in its work to review the President's climate change initiative.

Sincerely,

Kathleen McGinty
Chair, Council on Environmental Quality

Franklin D. Raines
Director

Enclosures

cc: The Honorable John F. Tierney, Ranking Member
Subcommittee on National Economic Growth
Natural Resources, and Regulatory Affairs

Enclosure

Response to Chairman David M. McIntosh
Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs

Question 1. Please provide a table with Fiscal Year (FY) 89-FY 99 historical budget authority, on an agency-by-agency basis, for the various components of the President's "Climate Change Technology Initiative," including the previous "Climate Change Action Program/Plan" and any other new or previously authorized Research and Development (R&D) herein (except for the U.S. Global Change Research Program included in Question 2 below). For each component, please indicate each specific budget account and a brief description of the program.

Response. Attachment 1 is a table with historical budget authority by agency for Fiscal Years 1995-1999 for the President's Climate Change Action Plan and the Climate Change Technology Initiative. Fiscal year 1994 was the first year for the Climate Change Action Plan. Funding for the Department of Energy's (DOE) programs include most of the Energy Conservation appropriation account (except for the low-income weatherization and State energy grant programs) and all of the Solar and Renewable R&D appropriation account. This change was made to better account for those programs most directly related to reducing greenhouse gas emissions. Funding for DOE's programs in the Climate Change Action Plan are included in the totals provided for DOE.

A brief description of the programs in the Climate Change Action Plan is included in Appendix A of Attachment 2, U.S. Climate Action Report - 1997. Attachment 3 are FY 1999 budget materials that provide a brief description of the programs in the Climate Change Technology Initiative.

Question 1A. For FY 93 and FY 95, please explain why the details in Table S-10 do not equal the totals in Table 6-2 in the Budget of the United States Government Fiscal Year 1996.

Response. The difference between the details in Table S-10 and the total in Table 6-2 in the FY 1996 Budget for the climate change action plan are due to the timing, availability of data, and the source of the data. Table S-10 is generated from a central computer database where agencies provide the data, whereas Table 6-2 is prepared manually by OMB staff. Also, the timing of when the data is available and whether adjustments can be made is limited in the central computer database while manual changes can be made to Table 6-2 up to the time the table is printed. This allows for last minute adjustments to numbers in Table 6-2 that cannot be made to the central computer database which is locked so the Budget Appendix and related documents can be printed in time to transmit the budget to Congress. The printing of the President's Budget requires a staggered schedule so certain materials have different print dates that make it difficult to accommodate last minute changes for programs located in different sections of the budget.

Question 1B. For FY 97, please explain the difference between the published figures in the Budget of the United States Government Fiscal Year 1998 (estimated $183 million) and the Budget of the United States Government Fiscal Year 1999 (actual $743 million), including any reprogramming from other budget accounts.

Response. The larger number ($743 million) in the FY 1999 Budget includes most of the Department of Energy's Energy Conservation appropriation account (Energy Efficiency and Conservation, Federal Energy Management Program, Partnership for a New Generation of Vehicles, and Municipal Energy Management) and the entire Solar and Renewable R&D appropriation account. The smaller number ($183 million) in the FY 1998 Budget includes only those programs identified as part of the President's 1993 Climate Change Action Plan. The shift in the FY 1999 Budget to using the more complete accounts better represents the level of funding related to programs that help reduce greenhouse gas emissions.

Question 1C. For FY 99, please explain why the published figures (the requested funding for key sectors) in Table 6-3 of the Budget of the United States Government Fiscal Year 1999 do not equal the total.

Response. The $1 million difference between the published figures and the total for FY 1999 is a result of rounding. This minor discrepancy is common in many budget documents where several numbers are rounded and the total may not equal the sum of the parts. The total of $1,292 million for FY 1999 is the correct budget authority number for the Climate Change Technology Initiative.

Question 1D. In Section 2 ("Programmatic Details") of OMB's February 2, 1998 handout, "Climate Change Technology Initiative - 1999 Budget Briefing Materials," please provide the following information associated with each paragraph description: each affected agency and, for each agency, the associated funding in FY 97, FY 98, and FY 99. Also, for each paragraph, and for each agency, please provide evidence of any accomplishments from the FY 97 funding. Lastly, for each paragraph, and for each agency, please indicate any program performance measures for the requested funding and, for each such measure, please provide annual data for the most recent three-year period for which data are available.

Response. The February 2, 1998, paper on the Climate Change Technology Initiative is a brief summary of the major components of the initiative and was not intended to be an exhaustive description of every program or action taken by an agency to reduce greenhouse gas emissions. In many instances, we identified the lead agency or agencies, the level of funding requested, and the increase over the FY 1998 enacted level for the major programs or actions. The paper also includes several views or perspectives on the initiative -- by agency, by type of activity, and by sector or technical topic.

More details regarding the specific agency program, performance measures, and accomplishments are normally provided in agency budget justifications and shared with the Committees on Appropriations of both Houses of Congress. Additional information about the accomplishments of the programs in the President's Climate Change Action Plan are discussed in Attachment 2, U.S. Climate Action Report -- 1997.

Question 2. Please provide a table with FY89-FY99 historical budget authority, on an agency-by-agency basis, for the various components of the "U.S. Global Change Research Program" which were devoted exclusively to climate change R&D. For each component, please indicate each specific budget account and a brief description of the program.

Response. The U.S. Global Change Research Program, an interagency program established by the Global Change Research Act of 1990, produces an annual report to Congress entitled "Our Changing Planet." Attachment 4 is an appendix from the draft FY 1999 report that will be published shortly that lists the agency contributions by program. Attachment 5 is a table containing the 10-year funding history.

Question 2A. For FY 93 actual figures for the "U.S. Global Change Research Program," please explain the differences among the published figures in the Budget of the United States Government Fiscal Year 1996 ($1,531 million), the Budget of the United States Government Fiscal Year 1997 ($1,319 million), and the Budget of the United States Fiscal Year 1998 ($1,464 million), including any reprogramming from other budget accounts.

Response. The differences in the published figures for FY 1993 in the three budgets (FY 1996, FY 1997, and FY 1998) you cited reflect changes in the definition of what agencies were asked to report as contributions to the U.S. Global Change Research Program (USGCRP). The actual figures for FY 1993 were then recalculated using the new definition for the program. For example, the cost of launch vehicles for NASA satellites was not originally included in NASA's contribution to the USGCRP. Beginning in FY 1998, launch vehicles were included in the definition and FY 1993 actuals were corrected to reflect the new definition. Similarly, some Department of Energy environmental technology programs originally included in the USGCRP were no longer counted in USGCRP totals because of changes in the definition of what should be included.

Question 2B. For FY 95 and FY 96, please explain why the details in Table 7-2 do not equal the totals in Table 6-2 of the Budget of the United States Government Fiscal Year 1996.

Response. As discussed in the response to Question 2A, the differences between the USGCRP totals in Table 7-2 (the Science and Technology Chapter) and Table 6-2 (the Environment Chapter) are a result of several agencies recalculating their numbers based on the new definition of what should be counted as part of the USGCRP, and an earlier printing schedule for Table 6-2 that did not allow for last minute changes to the numbers. The printing of the President's Budget requires a staggered schedule so certain materials have different print dates that make it difficult

to accommodate last minute changes for programs located in different sections of the budget. The figures in Table 7-2 are correct.

Question 2C. For each agency with funding in FY 97, please provide evidence of any accomplishments from the FY 97 funding. Also, for each agency requesting funding in FY 99, please indicate any program performance measures for the requested funding and, for each such measure, please provide annual data for the most recent three-year period for which data available.

Response. Attachment 6 is a summary of key accomplishments of the U.S. Global Change Research Program for FY 1997, and performance goals for FY 1999. This information will be published later this year in the report entitled "Our Changing Planet." We also expect that agencies will focus more on their performance plans as we continue to implement the requirements of the Government Performance and Results Act (GPRA). Some agencies already include performance measures for their programs (e.g. the Earth Science Enterprise within NASA).

Question 3. Please provide a table with FY89-FY99 historical budget authority, on an agency-by-agency basis, for any other components of the Administration's climate change program (i.e., in addition to those included in answers to questions 1 and 2). For each component, please indicate each specific budget account and a brief description of the program.

Response. The major budget components of the Administration's climate change program are provided in the answers to questions 1 and 2. Attachment 7 is a report on Federal climate change expenditures transmitted by the President to the Congress on March 10, 1998, pursuant to Section 580 of Public Law 105-118, "Foreign Operations, Export Financing, and Related Agencies Appropriations Act of FY 1998" that includes the international programs directly related to climate change.

Question 4. Since the Government-wide Performance Plan for FY 1999 does not include any performance measures for the Administration's Climate Change proposal, please identify all government-wide and agency-specific performance measures for the Administration's Climate Change proposal, including data for at least FY 97, FY 98, and FY 99.

Response. The attached February 2, 1998, budget briefing paper on the Climate Change Technology Initiative included as Attachment 3, provides some performance measures related to specific programs in the initiative. Attachment 8 includes a brief discussion of performance measures for DOE's energy conservation program and its solar and renewable program -- key programs in the Climate Change Technology Initiative -- from the Government-wide Performance Plan for FY 1999. More specific details on performance measures are included in agency budget justifications provided to the Committees on Appropriations. We will be working with the agencies to develop more comprehensive performance measures for the initiative to be included in future reports to Congress.

Question 4A. The Performance Plan in DOE's FY 99 Budget submission includes goals of reducing gas emissions by 5 percent in 2010 and reducing energy consumption by 25 percent in 2010. Please provide at least FY 97, FY 98, and FY 99 data on gas emissions and energy consumption to meet these goals.

Response.. We do not have the information you requested on gas emissions and energy consumption related to the Department of Energy's Performance Plan. We suggest you contact the Department of Energy directly to obtain this information.

Question 4B. EPA's FY 99 Budget includes goals of reducing emissions by 40 million metric tons and reducing energy consumption by 45 billion kilowatts. Please provide at least FY 97, FY 98, and FY 99 data on gas emissions and energy consumption to meet these goals.

Response. We do not have the information you requested on gas emissions and energy consumption related to the Environmental Protection Agency's (EPA) FY 1999 Budget. We suggest you contact EPA directly to obtain this information.

Question 4C. Please explain whether and how DOE's and EPA's performance measures overlap--i.e., whether they relate to reductions made by only that agency's programs or by all agencies' program in the aggregate.

Response. It is our understanding that the DOE's and EPA's current performance measures do not overlap and that each agency has performance measures specific to its own programs. Where a program may be jointly administered by DOE and EPA, efforts are made by the two agencies to track progress made separately. In future years, as performance measures focus more on broad outcomes beyond the control of individual agencies, there will be even more need to coordinate such tracking.

Climate Change Action Plan/Climate Change Technology Initiative
(Budget Authority in Millions of Dollars)

	1994 Actual 1/	1995 Actual	1996 Actual	1997 Actual	1998 Estimate	1999 Proposed
Energy 2/	774	859	684	657	729	1,060
Environmental Protection Agency	43	102	81	86	90	205
Housing and Urban Development	---	---	---	---	---	10
Commerce	---	---	---	---	---	7
Agriculture	---	8	6	---	---	10
Army Corps of Engineers	---	1	---	---	---	---
Total	817	970	771	743	819	1,292

Notes:
1/. Actual refers to appropriations enacted in that fiscal year and reprogramming of funds. It does not include prior year obligations carried forward into another fiscal year.
2/. Funding for Energy has been reconfigured to include most of the funding in the Energy Conservation appropriation account (with the exception of the low-income weatherization and State energy grant programs) and all of the Solar and Renewable R&D appropriation account. Funding for the Climate Change Action Plan is included in the total for each year.

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Congress of the United States

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COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

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BERNARD SANDERS, VERMONT
INDEPENDENT

May 27, 1998

BY FACSIMILE

The Honorable Jacob J. Lew
Acting Director
Office of Management and Budget
Washington, D.C. 20503

Dear Acting Director Lew:

The Office of Management and Budget's (OMB) May 13, 1998 letter to me is unacceptable as a response to the inquiries of the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs relating to the White House Initiative on Global Climate Change. The Subcommittee insists on complete answers to its March 2, 1998 letter. This letter explains why OMB's May 13th answers are inadequate and, in some cases, restates the questions to assist you in providing complete answers.

First, question 4 in my March 2nd letter asked for all performance measures related to climate change. OMB's May 13th cover letter states "We have also included some examples of performance measures related to the climate change initiative" (emphasis added). Clearly, "some" is not "all." Please identify all government-wide performance measures (including emissions reductions from the 1990 base year) and agency-specific performance measures, including data for at least Fiscal Year (FY) 1997, FY 98, and FY 99.

Second, OMB's May 13th letter failed to respond fully to my questions about funding for three separate categories of climate change programs and activities. The first category covered the Climate Change Technology Initiative (CCTI) and any predecessor programs for the activities included in CCTI. The second category covered the U.S. Global Change Research Programs **devoted exclusively** to climate change (emphasis added). The third category covered **any other** climate change programs and activities, including related salaries and expenses accounts (emphasis added).

OMB's May 13th letter also failed to address fully question 1 in my March 2nd letter which asked for historical budget authority from FY 89 to FY 99 for the first category of funding. Were any climate change activities funded in the first category between FY 89 and FY 93 or were all climate change activities newly initiated in FY 94 or subsequent years? Please

provide the specific budget account and a brief description of the program for all activities between FY 89 and FY 93. OMB's answer to question 1C is in error since the published figures differ from the total by $19 million, not $1 million due to rounding. Please explain this discrepancy.

With respect to question 1D, OMB's May 13th letter did not provide detailed information to support each paragraph in the 1999 Budget briefing handout on CCTI. OMB's answer that "In many instances, we identified the lead agency or agencies" is not responsive to my request for a full identification of all agencies and their associated funding request. Please provide all of the requested information for each paragraph and for each agency so that we can fully understand the President's budget request for climate change funding.

OMB's May 13th letter also did not answer question 2 which asked for historical budget authority for the second category of funding, *i.e.*, only for programs devoted exclusively to climate change, not for the entire U.S. Global Change Research Program. Please indicate each specific budget account and a brief description of each program devoted exclusively to climate change. Question 2C asked OMB to provide evidence of any accomplishments from FY 97 funding in this second category and the associated performance measures, including annual data for the most recent three-year period for which data are available. Please provide the requested information.

OMB's May 13th letter also ignored most of question 3 which asked for historical budget authority for the third category of funding, *i.e.*, for any other climate change programs and activities; instead, OMB addressed only "major budget components." On an agency-by-agency basis, please indicate each specific budget account and a brief description of each activity, including all salaries and expenses accounts used for climate change programs and activities.

With respect to questions 4A and 4B, if, as OMB's May 13th letter claims, OMB truly does not have the information to answer these questions, then OMB is failing to meet its responsibilities for coordinating government-wide implementation of the Government Performance and Results Act (GPRA) and for ensuring that the agencies' budget documents submitted to Congress are consistent with the President's budget request. Therefore, please answer questions 4A and 4B by obtaining the necessary information from the Department of Energy and the Environmental Protection Agency.

Finally, I note that OMB's letter does not mention the status of the information and the production of the documents requested in my March 6, 1998 letter. As you know, I have raised with Chairman Burton the possibility of issuing a subpoena for the documents because it has been nearly three months since my initial request. Unless OMB can commit to a full and prompt production of documents, I will pursue further the issuance of a subpoena.

Please contact Subcommittee Senior Counsel Keith Ausbrook at 225-4407 to discuss the production of documents and any other questions you may have regarding the Subcommittee's

requests. Please provide the information requested in this letter not later than noon on Friday, June 5, 1998 to the Subcommittee staff in Room B-377 Rayburn House Office Building.

Thank you in advance for your attention to this request.

Sincerely,

David McIntosh

David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs

cc: The Honorable Dan Burton
The Honorable John Tierney

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

June 9, 1998

The Honorable David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
House Committee on Government Reform and Oversight
B-377 Rayburn House Office Building
Washington, DC 20515-6143

Dear Mr. Chairman:

Thank you for the opportunity to respond to your letter to Office of Management and Budget (OMB) Director Frank Raines and myself regarding the President's climate change initiative. I regret the delay in responding to your questions.

Enclosed you will find the answers I have prepared and OMB has reviewed in response to your questions. This letter represents the response for both OMB and CEQ and the documents included as part of the response were collected through a document search of the files of both agencies. Some of the documents responsive to your request implicate the confidentiality of Executive Office of the President deliberations and decision-making. You should contact the Counsel to the President to discuss these additional documents. I hope you will find the information helpful. If you have any questions or require clarification, we will be happy to respond further.

Again, thank you.

Sincerely,

Kathleen A. McGinty
Chairman

KAM/rsk
Attachments
cc: The Honorable Bernard Sanders
Ranking Minority Member

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QUESTIONS FOR THE RECORD FROM DIRECTOR FRANKLIN D. RAINES AND CHAIRMAN KATHLEEN A. McGINTY FOR CHAIRMAN DAVID M. McINTOSH

IMPLEMENTATION WITHOUT RATIFICATION

> "We have no intention through the back door or anything else, without Senate confirmation, of trying to impose or take any steps to impose what would be binding restrictions on our companies, on our industry, on our business, on our agriculture, on our commerce, or on our country, until and unless, the Senate of the Unites States says so."
>
> Statement of the Honorable Stuart E. Eizenstat
> Under Secretary of State for Economic, Business, and Agriculture Affairs
> Before the U.S. Senate Committee on Foreign Relations
> February 1998

> "Whether there is an agreement in Kyoto or not, the United States is prepared, under President Clinton's leadership, to unilaterally take steps that we believe should be taken in order to deal with this problem."
>
> Statement of Vice President Gore
> December 1997

Unilateral Executive Actions on a Global Issue.

QUESTION 1 **Given that the Kyoto Protocol seeks to address a global issue, isn't it harmful to U.S. interests to proceed without the full participation of developing countries?**

ANSWER 1 As Undersecretary of State Stuart Eizenstat testified before Congress recently, the President will not seek to implement the Kyoto Protocol without the advice and consent of the U.S. Senate. The President has made it clear that the Protocol does not yet include the meaningful participation of key developing countries. Until it does, he will not submit it for Senate approval.

QUESTION 2 **Besides being unconstitutional, isn't it also premature and possibly counterproductive for the United States to take unilateral executive branch action, without ratification, when the Administration has characterized the Protocol as a "work in progress"?**

ANSWER 2 The President indicated in his October 22, 1997 announcement of his policy (see enclosures) that he believes it is in the best interest of the U.S. to begin taking long-term steps to

reduce domestic emissions without regard to the achievement of a climate change agreement. Towards that end, he proposed a five year, $6.3 billion Climate Change Technology Initiative (CCTI) in the FY 1999 budget to enhance U.S. research and development, technology development, and deployment for a variety of energy intensive sectors. This initiative has the benefits of improving basic economic productivity, reducing dependence on foreign energy, enlarging our competitiveness, and reducing greenhouse gas emissions without in any way relying on binding domestic obligations.

A Budget Request without Justification or Ratification.

QUESTION 3 **How can the Administration claim that its proposed Climate Change Technology Initiative (CCTI) is not intended to implement the Kyoto Protocol, when this initiative has been made an intergral part of the President's Global Climate Change Initiative, and the initiative is specifically deisgned to alter market behavior in futherance of the treaty's emissions reductions targets?**

ANSWER 3 Please refer to Answer 2.

QUESTION 4a **In a hearing before the Senate Foreign Relations Committee on February 11, 1998, Under Secretary of State Eizenstat testified that the tax incentives and research funding that the President requested in his Fiscal Year (FY) 1999 Budget proposal are necessary to place the U.S. in a "position where we will be further down the road and won't have to make the kind of drastic reductions that otherwise might be called for." Please provide all of the economic data and analyses upon which the Administration relied for this determination. As to any analysis, please identify who prepared it and provide all records containing comments by other federal agencies on the drafts.**

ANSWER 4a Dr. Janet Yellen, Chair of the Council of Economic Advisers (CEA), provided congressional testimony recently on this issue and we have enclosed a copy of her testimony for your information. We are producing information concerning your request. Some other information implicates the confidentiality of Executive Branch deliberations and decision-making and has been referred to the Counsel to the President of the United States.

QUESTION 4b **Explain why the President decided to request $6.3 billion in his budget proposal instead of the $5 billion that he stated he would seek at the time that he announced his Climate Change Action Proposal on October 22, 1997. Was this decision affected by the fact that the Administration agreed at Kyoto to commit the U.S. to reducing greenhouse emissions by 7% below 1990 levels rather than stabilizing emissions at 1990 levels?**

ANSWER 4b As indicated in response to question number 2, the President's $6.3 billion CCTI request is based on the benefits of unilateral domestic action, and is not tied to Kyoto.

QUESTION 5a Article 3.2 of the Kyoto Protocol states: "Each Party included in Annex I, by 2005, shall have made demonstrable progress in achieving its commitments under this Protocol." Please explain how the Administration is interpreting this provision of the treaty.

ANSWER 5a The U.S. opposed efforts by some nations to mandate early control actions by 2005. It is our position that the article 3.2 provision regarding "demonstrable progress" is a general and non-binding provision.

QUESTION 5b Does the Administration believe that its Global Climate Change Initiative, including the CCTI, will enable the U.S. to make demonstrable progress in achieving its commitments under the Kyoto Protocol?

ANSWER 5b As stated by the President in his October 22, 1997 policy announcement, the CCTI is a domestic initiative that is both good for our economy and good for the environment. It will enhance our economic productivity while helping the U.S. reduce greenhouse gas emissions and reduce economic and environmental risks associated with inaction.

QUESTION 5c Please provide and document the Administration's annual performance measures for its 5-year Climate Change Technology Initiative (CCTI). In this regard, provide the following: the 1990 U.S. emissions level, data on actual emissions reductions for Fiscal Year 1997, and then projected emissions reduction beginning with Fiscal Year 1997 and then for each year up to and including Fiscal Year 2003.

ANSWER 5c The President's 1999 Budget Request and an attached fact sheet by the Office of Management and Budget (OMB) contain details about the CCTI as do submissions by the various Federal department and agencies responsible for pieces of the CCTI.

QUESTION 5d Please specify the annual greenhouse gas emissions reductions that the Administration estimates will occur between FY 1999 and FY 2005 from implementing each element of its Global Climate Change Initiative

ANSWER 5d We anticipate the ability to answer such questions after Congress has enacted the President's program and it is in place. Analysis of this sort prior to achieving consensus on this program would be premature.

QUESTION 6a The Administration has maintained that the CCTI is a "no-regrets" proposal; that is, regardless of whether or not there is a real threat of global warming, this proposal is justified on its own merits as good energy and environmental policy. In view of this claim, please demonstrate the need for this initiative based on reasons other than facilitating green house gas emissions reductions.

ANSWER 6a Significant improvements in economic productivity and national energy security

would obviously be of benefit to the U.S. and therefore worthy of consideration, whether that be in association with climate change actions or independent of them. Voluntary activities under the existing Climate Change Action Plan are estimated to result in energy savings of $50 billion annually in 2010 along with reductions in greenhouse gas emissions of 170 million metric tons of carbon equivalent.

QUESTION 6b **In this regard, provide the environmental and economic data and analyses that support this request.**

ANSWER 6b Please see Answer 5d.

QUESTION 6c **Can the Administration point to a significant market failure or demonstrate a compelling public need that necessitates $3.6 billion of new tax incentives and a 73 percent increase in funding to accelerate the development and diffusion of more energy efficient technology? According to OECD data, U.S. energy efficiency since 1980 has improved more than that of most industrialized countries.**

ANSWER 6c Increasing the productivity of and reducing costs for American industries and taxpayers cannot help but benefit the U.S. economy. Opportunities to enhance our economic well-being through increased energy R and D are detailed in a recent report on this topic prepared by the President's Committee of Advisors on Science and Technology.

QUESTION 6d **Please provide a detailed explanation of and produce all records indicating the alternative policy options that the Administration analyzed, including more broadly based options, such as integrated pollution prevention, performance-based regulation, and multi-media regulation. In this regard, did the Administration evaluate whether existing regulation may be a significant barrier to improving energy efficiency and the environment?**

ANSWER 6d OMB and CEQ did not analyze, nor do we have records on, the specific alternative policy actions listed above. Various Departments and agencies have programs in the additional areas you mention and may have supporting documentation for these programs. The Administration would be delighted to receive the Committee's ideas on additional or alternative methods to clean the environment and improve energy efficiency.

QUESTION 6e **Please explain in detail and fully document the cost-effectiveness of the Administration's proposal when compared to other available options for improving energy efficiency and the environment.**

ANSWER 6e Please see Answer 6d.

QUESTION 6f **Please explain in detail and fully document the opportunity costs of committing such a significant amount of our nation's resources in this manner.**

ANSWER 6f Please see answers to Question 6a, 6c, 6d and 6e.

QUESTION 6g As to any analysis provided, identify who prepared it and provide all records of comments by other federal agencies.

ANSWER 6g N/A

QUESTION 7 How realistic and achievable are the targets and timetables that the U.S. delegation agreed to at Kyoto, if it is necessary to take unilateral executive branch actions prior to Senate ratification in order "to get us in a position where we will be further down the road and won't have to make the kind of drastic reduction that otherwise might be called for"?

ANSWER 7 The Administration believes strongly that the targets and timetables agreed to at Kyoto are both realistic and achievable, especially because the targets are accompanied by flexible compliance measures that have the benefits of significantly reducing compliance costs (please see Dr. Yellen's testimony). Once again, actions now to reduce emissions or increase efficiency will reduce future costs and are justified on their own merits as exemplified by the over 5,000 U.S. industries, public organizations, and state and local governments participating in voluntary action and advocating investments in efficiency and new technology development.

QUESTION 8 Under section 102 of the National Environmental Policy Act, the federal government is required to provide a detailed environmental impact statement (EIS) and to follow specified procedures for review and comment whenever it is recommending to Congress legislation that "affects the quality of the human environment". Please provide any EIS (or draft EIS, if not finalized) that was prepared in connection with the Administration's requests for tax incentives and research funding to facilitate greenhouse gas emissions reductions. With respect to any EIS, identify who prepared the document and provide all records of written and oral comments from other federal agencies.

ANSWER 8 Under section 102 of the National Environmental Policy Act, "all agencies of the Federal Government shall . . . include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on –(I) the environmental impact of the proposed action . . . . " Therefore, "federal agencies" must prepare NEPA documents for "proposals for legislation and other major Federal actions." While all federal agencies are subject to NEPA, the NEPA regulations clearly state that the President is not. (See 40 CFR 1508.12, which provides that a "federal agency" does not mean "the Congress, the Judiciary, or the President.") The NEPA regulations further define the types of "legislation" intended to be subject to NEPA. "Legislation" includes "a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations." 40 CFR 1508.17.

The Inescapable Regulatory Backdoor.

QUESTION 9 In its 1997 U.S. Climate Action Report under the current Framework Convention on Climate Change, the Administration made this statement: "Recognizing that even the most draconian measures would likely be insufficient to reverse the growth in greenhouse gases and return U.S. emissions to their 1990 levels by the year 2000, new U.S. efforts are focusing most intensively on the post-2000 period." Based on this assessment, how can the President assert that the U.S. commitments under the Kyoto Protocol are achievable with minimum economic costs? Provide any economic and legal analyses that demonstrate that U.S. obligations can be met without constraining U.S. economic growth and without imposing onerous and costly regulation. Also, please provide two copies of the 1997 U.S. Climate Action Report.

ANSWER 9 The statement in the Climate Change Action Report referred to the year 2000, well before the 2008 - 2012 timetable set out in the Kyoto agreement. Please refer to Dr. Yellen's testimony. Two copies of the 1997 U.S. Climate Action Report are attached. The Report is also available on the internet at *www.state.gov/www/global/oes/97climate_report/.*

QUESTION 10a In testimony before the Senate Foreign Relations Committee on February 11, 1998, Ambassador Eizenstat stated that the only legislation that would be required to enable the U.S. to abide by the Kyoto Protocol would be legislation authorizing emissions trading; otherwise, he indicated that the U.S. could rely on existing legislation . In this regard, please proved all legal and policy analyses performed by the State Department and other federal agencies on whether, and to what extent, new implementing legislation would be required to meet the U.S. commitments under the Kyoto treaty and provide all comments thereon by other agencies.

ANSWER 10a CEQ and OMB have no such analysis.

QUESTION 10b Also, please provide any and all legal and policy analyses developed by the State Department or other federal agencies regarding the applicability and availability of existing legislation to implement the Protocol and all comments thereon by other agencies.

ANSWER 10b CEQ and OMB have no such analysis. We are aware of an EPA legal opinion on the authority to regulate pollutants emitted by electric power generation sources and understand that this document was provided to you by EPA.

QUESTION 11 To the extent that the analyses have been performed, describe any differences between the legislation and regulations that would have been needed to implement the President's October 1997 Climate Change Action Proposal and that which would be needed to implement Kyoto Protocol.

ANSWER 11 N/A

QUESTION 12 Is there an agency or interagency group that is developing recommendations on the need for implementing legislation? If so, please identify the persons who have been charged with coordinating this effort and the names of the agency representatives who are participating.

ANSWER 12 The Administration has no plans to submit legislation or regulations that would be aimed at implementing the requirements contained in the Protocol prior to its submission to the Senate for its advice and consent.

QUESTION 13a Please identify all environmental and energy regulations that are being developed, have been proposed, or have been issued since 1992 that have or will have the effect of reducing greenhouse gas emissions (whether or not that is the intended purpose of the particular regulation). As to those regulations that are being developed or that have been proposed, provide an estimated timetable for each stage of rulemaking.

ANSWER 13a To our knowledge, there is not a consolidated list of regulations issued since 1992 that have or will have the effect of reducing greenhouse gas emissions.

QUESTION 13b Has OMB or any other federal agency prepared, contracted to have prepared, or considered any studies that : (1) Have calculated the potential cumulative costs of environmental and energy regulations that are presently planned or being developed, have been proposed, or already have been issued since 1992 that have or will have the effect of reducing greenhouse gas emissions (whether or not this is the intended purpose of the regulation); and (2) Have assessed the cumulative effects of these regulations, or any combination of them, on the U.S. energy system and economy? If so, please provide any such analyses and all federal agency comments on any drafts. If not, please indicate why this has not been done. This Subcommittee believes that this information is vitally needed and is requesting that such an analysis be performed.

ANSWER 13b We are not aware of any studies of the cumulative costs of environmental and energy regulations that reduce greenhouse gas emissions. It is possible that such studies may exist at agencies, or outside organizations may have performed their own analysis of specific environmental or energy regulations that have the effect of reducing greenhouse gas emissions.

QUESTION 13 c Please provide any analyses that have been performed or considered by the Administration concerning the potential combined effects on the U.S. economy and energy systems of such Clean Air Act regulations, as the recently issued National Ambient Air Quality Standards for particulate matter and ozone, and regional haze proposal; the Administration's proposed measures for implementing the requirements of the Kyoto Protocol; and its planned legislative proposal for restructuring the electrical industry.

ANSWER 13c CEQ and OMB have no such analyses.

POLICIES WITHOUT ECONOMIC ANALYSES

> "By providing incentives for early action to reduce emissions, attacking domestic energy inefficiencies, and putting in place a market-based emissions trading system, we can reach [our emission reduction targets] with minimum economic costs."
>
> Statement of President Clinton
> Climate Change Proposal
> October 1997

The Administration's Repeated Failure to Conduct Economic Analysis.

QUESTION 14a Given the significant economic costs projected by private sector studies, why did the Administration abandon a year and a half-long effort to develop cost estimates of the President's proposed policies to reduce greenhouse emissions? In testimony before the House Subcommittee on Energy and Power on July 15, 1997, the Chair of the Council of Economic Advisers, Dr. Janet Yellen, stated that President Clinton's top priority since his first days of office, "has been revitalizing the U.S. economy, creating jobs, and investing in people and technology to enhance long-term growth."

ANSWER 14a Please refer to Dr. Yellen's testimony.

QUESTION 14 b How can the Administration defend its policy actions based on the results of climate models that must take into account significant uncertainties surrounding the effects of human activities on the climate, yet nevertheless consider economic modeling to be "futile" (Dr. Yellen' s expression at the House Commerce hearing on July 15, 1997)?

ANSWER 14b Acting in the face of uncertainty is an affliction of the human condition, but we, at least, have put to rest our doubts about the merits of pursuing economically sound, voluntary actions that have multiple benefits for the economy and the environment as part of a "no regrets" strategy to begin to prepare for the future.

15a In testimony before the House Commerce Committee in 1997, former Under Secretary of the State Timothy Wirth stated that an interagency "economics team" was formed to analyze the impacts of climate change policies.

QUESTION 15b Please provide the following background information regarding that group: when it was formed, the names of the participants and their agencies, the head of the team, the scope of the group's responsibilities, and to whom the group reported.

ANSWER 15b The team to which former Undersecretary Wirth may have been referring was called the Interagency Analytic Team, a group composed of a variety of members designated by various federal agencies. There is no formal list of members but we have included meeting attendance lists found in our files.

QUESTION 15c Please produce records of all meetings of this group and information on any workshops conducted. Also, produce all analyses performed by the group and provide all records of written or oral comments from other federal agencies on the team's analyses and advice.

ANSWER 15c We are producing information responsive to your request. Some other information implicates the confidentiality of Executive Branch deliberations and decision-making and has been referred to the Counsel to the President of the United States.

QUESTION 16 In developing its positions for the Conference in Kyoto, did the Administration at any point renew its efforts to estimate the costs of various polices to reduce greenhouse gas emissions? If so, please provide all economic analyses that were prepared for the Administration and the U.S. delegation to review. As to each analysis, please indicate who prepared the analysis and provide all record containing comments from other federal agencies. If not, please explain fully why not.

ANSWER 16 In preparing for Kyoto the Administration did consider various issues and relied on reports from agency analysts to respond to specific questions. We are producing information responsive to your request. Some other information implicates the confidentiality of Executive Branch deliberations and decision-making and has been referred to the Counsel to the President of the United States.

QUESTION 17 Is there currently in place an interagency body that is analyzing the economic impacts on the U.S. of the mandatory restrictions specified in the Kyoto Protocol and evaluating alternative domestic policies to achieve those requirements? If so, please provide the same type of information about this group, as well as produce the same type of documents, which were requested in question number 15 above with respect to the "economics team."

ANSWER 17 There is no such group.

QUESTION 18 During its deliberations prior to Kyoto, did the Administration consider whether an agreement to stabilize emissions at 1990 levels or to reduce emissions below 1990 levels would result in lower economic growth? If so, how much lower economic growth did the Administration consider as acceptable in exchange for a treaty that would have at best only a marginal impact on reducing emissions? Please produce all record of such deliberations and all economic analyses and comments thereon (from federal agencies and private parties) that the Administration considered.

ANSWER 18 The Administration was well aware that details of any global warming agreement have economic ramifications. That is why the Administration worked hard to implement the considerable number of flexibility mechanisms now in the Kyoto Protocol. Please refer to the economic analysis contained in Dr. Janet Yellen's testimony for an analysis of the outcome achieved by the inclusion of the flexibility mechanisms contained in the Protocol combined with the binding targets and timetable of the Protocol. In addition, we are producing information responsive to your request. Some other information implicates the confidentiality of Executive Branch deliberations and decision-making and has been referred to the Counsel to the President of the United States.

QUESTION 19 If the Administration did not prepare cost estimates of the impacts on the U.S. economy and the American people, how did the Administration determine its policy position first to stabilize emissions at 1990 levels by 2008-2012 and then later to deviate with confidence from that position and commit the U.S. to reducing emission s by 7 percent below 1990?

ANSWER 19 The U.S. drew from a broad body of public information concerning its current and future potential emissions and the costs associated with making such reductions. As Dr. Yellen has emphasized in her testimony, no one model, study, or analysis could serve as the basis for these decisions.

QUESTION 20 At what point prior to or during the negotiations, did the Administration decide that emissions reductions below 1990 baseline were acceptable? Who in the Administration and in Congress were consulted in making this decision? Did the Administration examine any public or private analyses in reaching this decision? If so, identify and provide the analyses upon which the Administration relied, with all comments that were submitted by any federal agency.

ANSWER 20 The Administration consulted broadly with Congress and within the Administration both before and after the President's October 22, 1997 policy announcement and in Kyoto. Indeed, meetings with a variety of interested parties continued up to and including the meeting of the Conference of the Parties. It would be impractical, if not impossible, to attempt to assemble the specifics of these numerous conversations and consultations.

QUESTION 21 If economic analyses were prepared internally to support positions that the Administration intended to take at the Conference, why weren't these analyses made available to Congress and the American public, who all have a right-to-know the potential economic consequences of the President's climate change policies?

ANSWER 21 CEQ and OMB have no economic analyses prepared internally to support positions that the Administration intended to take at the Conference.

QUESTION 22 Did the Administration review any private sector analyses completed prior to Kyoto? If so, please provide all records of comments thereon by federal agencies.

ANSWER 22 Analyses by private sector and non-profit organizations on climate change were provided to us for information purposes. Copies of those studies are enclosed. No records of comments exist in our files.

QUESTION 23 The Clinton Administration indicated its recognition of Senate Resolution 98 (the Byrd-Hagel Resolution). Please describe in detail and document the steps that the Administration already has taken and intends to take to assure compliance with each provision of that Resolution.

ANSWER 23 The Administration respects and supports Senate Resolution 98. We fully intend to provide supporting documentation related to potential impacts in the context of sending the treaty to the Senate and we have an extensive effort underway to advance our goal of achieving meaningful participation by key developing countries. The President's recent joint statement with his counterpart in Chile in support of this position is an example of the types of efforts currently underway.

No Cost/Benefit Analysis of the Kyoto Treaty.

QUESTION 24a Please provide any and all analyses that the Administration or any federal agency prepared (or is preparing) of the costs and benefits of imposing on the U.S. the binding targets and timetables set forth in the Kyoto Protocol for reducing greenhouse gas emissions, taking into account the global implication of the way in which this agreement is structured. Also, please analyze and document the following:

ANSWER 24a Dr. Yellen, Chair of the Council of Economic Advisers, provided congressional testimony on this issue and we have enclosed a copy of her testimony for your information. As indicated elsewhere in this letter, several analyses have been produced or otherwise implicate the confidentiality of Executive Branch deliberations and decision-making and have been referred to the Counsel to the President of the United States.

QUESTION 24b Whether the benefits of implementing this Protocol are justified by the costs;

ANSWER 24b Please refer to the answer to question 24a.

QUESTION 24c Evaluate the effectiveness of this agreement by comparing the marginal abatement costs of the most plausible alternative scenarios for meeting the Kyoto targets, given the way in which this agreement is structured, with the marginal costs of other reasonable alternative compliance schemes;

ANSWER 24c Please refer to the answer to question 24a.

QUESTION 24d With respect to each scenario that is analyzed, identify the assumptions used, explain any uncertainties concerning the assumptions, and examine the sensitivity of net benefits to the different compliance strategies, using a range of plausible assumptions about future economic development and about fundamental climate processes;

ANSWER 24d Please refer to the answer to question 24a.

QUESTION 24e Evaluate the opportunity costs of pursuing the Administration's strategy for the abatement of greenhouse gas emissions under the terms of the treaty; and

ANSWER 24e Please refer to the answer to question 24a.

QUESTION 24f Evaluate how the benefits and burdens of complying with this treaty would be distributed on the national and household levels, describing among other things, the disparate regional and industrial sector impacts, and the effects on different income levels.

ANSWER 24f Please refer to the answer to question 24a.

25a In evaluating the alternative scenarios, please examine the following:

25b Compare the economic and environmental effects of not including developing countries in the effort to reduce global emissions (with the potential for binding developed countries to even greater obligations, without limiting developing countries) against the effects of addressing greenhouse gas mitigation on a global scale by the international community.

25c Compare the economic and environmental effects of complying within the time frames set forth in the Kyoto Protocol with the effects of complying over a longer time period.

25d Compare the impacts of reducing greenhouse emissions using international emissions trading, joint implementation, and the Clean Development Mechanism with the impacts of relying upon domestic emissions permit trading. In this regard, evaluate alternative international trading scenarios: trading only between Annex I countries, trading that extends to a number of "key" developing countries, and trading in which all countries are fully participating.

ANSWERS 25a-d Dr. Janet Yellen's testimony considers the positive effects of issues such as developing country participation and the use of mechanisms providing flexibility such as emissions trading, joint implementation, and the Clean Development Mechanism. Please refer to Answer 24a.

QUESTION 26 **With respect to any analysis provided, please identify and explain the basis for assumptions used regarding such factors as the rate of improvement in energy efficiency, the effectiveness of market incentives in increasing the market share of fuels that emit less carbon, and economic and demographic growth. Also, explain fully any assumptions on how emissions reductions will be achieved, as for example, through the early retirement of coal plants or nuclear plant life extensions.**

ANSWER 26 Please refer to the answer to question 24a.

QUESTION 27 **In considering the opportunity costs, evaluate the extent to which the Administration's climate change strategy will require the diversion of funds from savings and/or investments which would have provided other benefits, such as saving social security, or more funding for education, health care, etc.**

ANSWER 27 Please refer to the answer to question 24a.

QUESTION 28 **In assessing the impacts on the U.S. of complying with the Kyoto targets and timetables, please explain in detail the potential effects on the following indicators of economic performance: gross domestic product (GDP), per capita GDP, unemployment, income and real wages, trade competitiveness, and energy prices.**

ANSWER 28 Please refer to the answer to question 24a.

QUESTION 29 **In assessing the benefits of complying with the Kyoto treaty, please evaluate fully the potential offsetting negative effects of exempting developing countries and of "carbon leakage." Also, if the economies of developed countries experience reductions in economic growth, evaluate the impact that this will have on the ability of emerging countries with export markets to transition to more energy efficient technologies.**

ANSWER 29 Please refer to the answer to question 24a.

QUESTION 30 **President Clinton has suggested that the U.S. economy can continue to grow under this agreement. Please indicate at what rate the Administration expects that the economy will continue to grow during the next ten to 20 years if the treaty is ratified and at what rate it is expected to grow if the treaty is not ratified.**

ANSWER 30 Please refer to the answer to question 24a.

QUESTION 31 **Have any of the cost/benefit analyses performed by the Administration or any agency been peer-reviewed? If so, please identify the reviewers and provide their comments on the analyses. If not, does the Administration plan to do so? Please describe fully the steps the Administration plans to take.**

Answer 31 Please refer to the answer to question 24a.

QUESTION 32 Please describe in detail the strengths and weaknesses of the methodology of any economic models used. Also, indicate the differences between the models used in any of the cost/benefit analyses performed post-Kyoto and those used in any prior analyses performed by the Administration.

ANSWER 32 Please refer to the answer to question 24a.

QUESTION 33 In connection with these cost-benefit analyses, fully explain how the baseline(s) against which costs and benefits were calculated was determined.

ANSWER 33 Please refer to the answer to question 24a.

QUESTION 34a Please provide all records of written or oral comments from other federal agencies on each of the cost/benefit analyses that were performed.

ANSWER 34a Please refer to the answer to question 24a.

QUESTION 34b Please provide all records of comments submitted by federal agencies on Dr. Janet Yellen's draft testimony about the economics of Kyoto for the hearing before the House Commerce Committee on March 4, 1998.

ANSWER 34b This information implicates the confidentiality of Executive Branch deliberations and decision-making and has been referred to the Counsel to the President of the United States.

International Emissions Trading: Not a Panacea

QUESTION 35 As a practical matter, until the Conference of the Parties makes all of the decisions that it is empowered to make under Article 17 of the Kyoto Protocol concerning the establishment of rules and procedures for international emissions trading, isn't it premature for the Administration to forecast definitively that the agreement would result in, at most, modest energy price hikes?

ANSWER 35 Clearly, a failure to attain effective emissions trading would raise compliance costs with a ratified and implemented Protocol. That is why getting the "rules of the road" in place and working hard on the diplomatic front are such important U.S. priorities.

QUESTION 36a With respect to the rules and procedure for international emission trading that have yet to be developed, what are the minimum requirements that the Administration is seeking to assure an efficient and effective system for lowering the costs of emissions reductions?

ANSWER 36a The key principles underlying U.S. support for emissions trading are environmental effectiveness and economic efficiency: emissions trading will allow those Parties that assumed binding emissions targets to reach the Kyoto Protocol's environmental goals at the lowest cost. We believe that a credible emissions trading system depends on strong national measurement, reporting and compliance regimes, and that trading rules can be used to strengthen incentives for such regimes. The U.S. favors a simple set of rules and guidelines for trading that (1) promote cost-effective achievement of the agreed Kyoto targets, (2) promote compliance with the Protocol's requirements for accurate measurement, complete reporting, and target attainment, and (3) address national compliance incentives and risk issues.

QUESTION 36b Does the Administration intend to confer with Congress and obtain comments from Congress and the public in developing negotiating positions for Buenos Aires on rules and procedures for an international emissions trading system and for obtaining joint implementation project credit, including the Clean Development Mechanism?

ANSWER 36b The Administration sincerely welcomes input from Congress, industry, and other interested parties and opportunity for dialogue on trading and CDM rules, given the importance of these issues to the U.S. economy and our industries and citizens.

QUESTION 37a Why does the Administration believe it can obtain meaningful participation by developing countries and what steps is the Administration taking to achieve this? What indications of potential meaningful participation have been shown by developing countries that prompt this optimism?

ANSWER 37a A number of delegations from developing nations indicated in Kyoto that they regarded an agreement by Annex 1 parties to undertake binding commitments as a necessary precondition for their negotiation of binding commitments. Since the Kyoto Protocol succeeded in achieving this very type of Annex 1 agreement, we believe this barrier to key developing nations negotiations has been removed. In agreeing to CDM projects and the creation of an Annex B, developing nations also helped create essential mechanisms for cooperation between developed and developing nations on emissions reductions, and a mechanism for upward graduation to binding commitments. Recent congressional testimony on this subject by Undersecretary of State Stuart Eizenstat may be helpful to you, and is attached.

QUESTION 37b In particular, what are the steps being taken with respect to China, India, Mexico, Brazil, and South Korea and what indications of potential meaningful participation has the Administration received from these countries?

ANSWER 37b Please refer to the answer to question 37a.

QUESTION 37c Which countries does the Administration consider "key," in assuring that "meaningful participation" is secured?

ANSWER 37c Please refer to the answer to question 37a.

QUESTION 38 Why does the Administration maintain that the U.S. acid rain program experience "clearly demonstrates how programs like international permit trading, joint implementation and the Clean Development Mechanism will lead firms to find cheaper ways of reducing emissions that can lead to unexpectedly low costs"? Is it appropriate for the Administration to extrapolate from that experience to the global arena? Won't the effectiveness of the international system, joint implementation, and the Clean Development Mechanism depend on such factors as the rules and procedures governing these mechanisms, the extent of participation by other countries, including developing countries, etc?

ANSWER 38 The success of the U.S. acid rain program in reducing compliance costs over alternative command and control programs is well documented. Past experience suggests that it is possible to construct rules and financial structures that commoditize pollution reductions.

Experience with Joint Implementation demonstration programs under the 1992 Framework Climate Change Convention suggests that international offset programs are also feasible. For instance, The Nature Conservancy, American Electric Power Company, and British Petroleum structured a rain forest preservation program with Bolivia for $0.37 per ton CO_2 reduction.

In addition, speculative option markets for offsets are emerging in the U.S. that suggest broad market feasibility. Two of the more active participants in this market are the Chicago Board of Trade, and Kenner Financial.

We believe the effectiveness of trading and CDM programs will be significantly affected by rules and governance of these mechanisms, and international participation. The Administration welcomes dialogue and input from Congress, U.S. firms, and non-government organizations that are interested in the design of effective policy in this area.

QUESTION 39a Even assuming that effective rules and procedures can be developed for an international emissions trading system and for joint implementation projects and that key developing countries agree to participate, isn't there a real risk that these mechanisms could effect an enormous transfer of wealth and jobs out of this country overseas, especially to the countries of the former Soviet Union and emerging countries (i.e., that system would be essentially a foreign aid program)? Some studies have estimated that more than 50% of our reductions would have to be purchased from other countries.

ANSWER 39a Trading and joint implementation will only be utilized if U.S. corporations feel that they present business opportunities. The Administration strongly believes that using market mechanisms to achieve environmental goals can reduce costs substantially. In addition, we have a extraordinary opportunity to lead the world in marketing American technology and innovation to markets in great need. We view this as an economic opportunity, and clearly, U.S. businesses

on the cutting edge of efficient technologies do as well.

QUESTION 39b **Please provide and document estimates of the percentage of U.S. emissions reductions that might have to be purchased from other countries to minimize the costs reducing emissions and which countries likely would be the beneficiaries.**

ANSWER 39b All countries have the potential to benefit from trading, including the U.S. Trading is a market-based mechanism that allows emissions to be reduced cost-effectively. The percentage of U.S. emissions reductions that might be purchased from abroad depends upon a number of factors, including the marginal abatement cost in each country.

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ONE HUNDRED FIFTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

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INDEPENDENT

June 22, 1998

BY FACSIMILE

The Honorable G. Edward DeSeve
Acting Deputy Director for Management
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. DeSeve:

Thank you for testifying on June 17, 1998 before the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs on the White House Initiative on Global Climate Change and implementation of the Congressional Review Act. During the hearing, you agreed to respond promptly both to questions posed for which you were unable to provide answers and to additional questions which we did not ask based on your responses to the questions we did pose.

After you departed, Congressman John Tierney, Ranking Minority Member of the Subcommittee, asked that the record be left open so that additional information could be provided. Please provide the information requested in this letter not later than noon on Monday, July 6, 1998 to the Subcommittee staff in Room B-377 Rayburn House Office Building.

Please contact Subcommittee Senior Counsel Keith Ausbrook at 225-4407 if you have any questions. Thank you in advance for your attention to this request.

Sincerely,

David McIntosh

David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs

cc: The Honorable Dan Burton
The Honorable John Tierney

Attachment

CLIMATE CHANGE QUESTIONS

Admitted Errors in the Published Budgets

Q1. My staff identified to OMB several errors, which OMB has now admitted, for climate change program funding in the last four budgets prepared by OMB.

- Does OMB expect the Congress to fund these programs when even the published information of what the President wants is inaccurate?

- What is being done to ensure that budget numbers are accurate?

Absence of Performance Measures

Q2. Despite the Government Performance and Results Act (Results Act) requirement that agencies establish program performance measures for each program in each agency, the agencies have identified only a handful of such measures for the dozens of climate change programs. And OMB has not identified any government-wide program performance measures for the President's climate change initiatives, as required by the Results Act.

With respect to the most obvious measurement, the expected reductions in greenhouse gas emissions from the 1990 base year in the Kyoto Protocol, OMB told the Subcommittee in writing that those measures would be identified after the program is enacted.

- Without program performance measures, how can Congress and the American people properly evaluate the President's proposals? Should Congress just approve programs without knowing what are the expected outcomes, i.e., what they are expected to achieve? Was this the intent of the Results Act?

- Since OMB is the coordinating agency for the Results Act, what efforts has OMB taken to identify a full set of government-wide and agency-specific measures for Congress' consideration of the President's FY 99 budget request for climate change funding?

- By what date will you commit to submitting a full set of performance measures to us?

- Since the agencies do not have data for the 1990 base year, what is OMB doing to ensure that data are available for the 1990 base year for each of the government-wide and agency-specific program performance measures?

Incomplete Replies to Oversight Questions

Q3. OMB has yet to answer fully our March requests regarding the President's requests for FY99 funding for climate change. For example, OMB has still not answered our request for historical budget authority for climate change programs that are not part of the $6.3 billion that the President has identified as the Climate Change Technology Initiative (CCTI), such as part of the $1.9 billion U.S. Global Change Research Program.

- Why has OMB been unable and/or unwilling for over 3 months to provide complete answers to our legitimate oversight questions?

- When will Congress receive complete replies so that we can fully evaluate the President's requested funding for climate change, including not only CCTI but also other requested funding for climate change, some of which are very substantial, such as the Agency for International Development (AID), which is requesting $250 million in FY 99 for grants, contracts, loans and loan guarantees for climate change activities? This amount even exceeds the $205 million requested for EPA.

Q4. OMB has not produced the **documents**, such as environmental, cost-benefit, and/or economic data and analyses relating to the Administration's climate change policies and the Kyoto Protocol that we requested in March.

- Don't you believe that Congress and the American public have a right to know the full range of risks that the United States may face in entering into this agreement and the potential economic consequences of the President's climate change policies?

- Isn't our review of these documents essential to Congress's role to ratify and implement the Protocol?

- When will these documents be produced?

Guidance to the Agencies & Review of Agency Replies

Q5. We have had difficulty in getting responses from most of the 22 agencies from which we requested documents and information about their climate change activities.

- What guidance, if any, did OMB provide the agencies on responding? How many conference calls did OMB have with agency staff? When? What was concluded?

- Did OMB advise the agencies about release of not-yet-publicly-available documents containing economic and environmental data and analyses and agency comments on them?

- Did OMB advise the agencies about release of their comments on draft testimony by Administration officials on climate change, including the draft testimony by CEA Chair Janet Yellen's so-called "economic analysis"?

- Did OMB advise the agencies about disclosure of funding for the U.S. Global Change Research Program activities that are devoted exclusively to climate change?

Q6. We understand that most, but not all, of the agencies sent their replies to OMB for clearance and that many were in clearance within OMB for a considerable amount of time.

- What was the longest review time for OMB clearance of an agency's climate change response and for which agency?

- What specific changes did OMB make to each of the agencies' intended replies?

- Why did OMB remove some budgetary detail, such as in NSF's reply, from some of these intended replies?

Q7. We have not received complete replies from at least 15 of the 22 agencies. We still do not have any answers to many questions from the following agencies: Agriculture (Q1-14), Commerce (Q8-14), Defense (Q8-14), Energy (Q7-45), Interior (Q6-14), State (Q8-14), AID (Q8-14), EPA (Q8-14, 30 & part of 18), NASA (Q7), CEA (Q8-34), and the NEC (Q1-14). We still do not have the bulk of the requested documents from: OMB, CEQ, CEA, OSTP, State, and Treasury.

- Which of these replies are currently in OMB and/or White House Counsel clearance? Which agencies have documents that are currently in OMB and/or White House Counsel clearance? How long have they been under review? What factors are being used to determine if a substantive answer or a document requires confidentiality?

- Since OMB is responsible for preparing and presenting the President's budget request, what is OMB doing to ensure prompt completion of agency responses to our March inquiries?

Questions about 4 of the 5 Agencies in the President's $6.3 billion CCTI

Q8. We have still not received any reply from one of the five agencies included in CCTI - the Department of **Agriculture**. We understand that Agriculture's partial reply has been in OMB clearance since April 20th.

- What is holding up OMB's clearance?

Q9. Secretary Andrew Cuomo of the Department of Housing and Urban Development (**HUD**) replied that "HUD's budget for FY 1999 and prior years do [sic] not contain funds for research identified as part of the President's Climate Change Technology Initiative." In follow up, HUD stated "The HUD Office of Policy Development & Research Budget Request for FY99 ... did not discuss Climate Change. That must have been added subsequently. Also attached is the formal program plan of PATH [Partnership for Advancing Technologies in Housing] developed jointly with private industry. Note that there is no discussion of global warming anywhere in this plan ... PATH is not a global warming program ... During the planning process, carbon emission and climate change has never even come up."

- Since the Secretary did not request funds for climate change and since HUD says that PATH is not a global warming program, why does the President's initiative request $10 million for HUD's PATH program for climate change?

Q10. The Chief Counsel for Special Matters replied for the Department of Commerce that "**The NIST mission does not specifically include efforts to study the global climate**; however, its laboratories have performed standards and measurement research to improve climate observations, improve energy efficiency, and identify greenhouse gas alternatives" (emphasis added).

- Since Commerce did not receive prior funding from FY 93 through FY 98 under the Climate Change Action Plan and is newly included in CCTI for FY 99, under what authority is NIST requesting its share of the CCTI funding and is this request consistent with NIST's principal statutory mission?

Q11. One of the FY 98 "expected accomplishments" in Environmental Protection Agency's (EPA) reply was a "Design Clean Development Mechanism (CDM) project in six developing countries."

- Isn't this implementation of the Protocol prior to ratification because the Clean Development Mechanism is a creature of the Kyoto Protocol?

- Ambassador Eizenstat promised that there will be no implementation by the Administration prior to Senate ratification. Will OMB direct EPA not to expend FY 98 funds for this purpose?

Q12. EPA's reply revealed over $85 million in grant and contract awards to one organization -- ICF, Inc. -- from FY 93 to FY 97. Additionally, EPA awarded over-$500,000 contract awards to 9 other organizations and over-$500,000 grant awards to 20 other organizations in this 5-year period. For example, LISBOA, Inc. received a contract for $3,030,830. These are huge awards.

- Were all awards to ICF, Inc. made through competition? Were all over $500,000 contract and grant awards made through competition?

- Has OMB reviewed the final reports from each of these huge awards?

- Has OMB reviewed the scope of work and deliverables for EPA's $389,409 grant (5/1/97-11/30/98) to the World Resources Institute for "building business support for action on climate change"? Is any part of this grant essentially implementation prior to Senate ratification?

Questions about Other Agencies

Q13. The National Science Foundation (NSF) volunteered that OMB deleted specific funding level ($5 million) in its intended reply to our question. Instead, the revised reply merely stated "There are, however, some significant activities supported -- at the National Center for Atmospheric Research (NCAR) for example -- which are directed exclusively at climate change, that were not reported in the summary."

- Why did OMB remove the specific funding level information?

- For which other agencies, did OMB remove specific funding level information?

Q14. NSF's reply revealed that it was "directed by the Office of Management and Budget to transfer funds" ($1,366,000) to assist developing countries and countries with economies in transition formulate their climate change policies.

- Were other agencies also directed by OMB to transfer funds to assist developing and/or other countries with climate change? If so, which agencies and for how much funding? Were other agencies directed by OMB to transfer funds for any other climate change purpose? If so, which agencies, for what purpose, and for how much funding?

Q15. In response to our question for historical climate change funding, the Tennessee Valley Authority's (TVA) replied that "Our investigation determined that ... TVA has not been correctly updating its original budget estimates to actual expenditures."

- When did OMB become aware of this problem?

- Are the "actuals" reported by any other agency for climate change also in error? Has OMB checked to be sure?

Q16. Has OMB advised the key agencies involved in the development of the President's climate change initiative -- including CEQ, CEA, State, and Treasury -- not to provide the requested information about their considerable salaries and expenses (including overseas travel) incurred to date and requested for FY 99?

CONGRESSIONAL REVIEW ACT QUESTIONS

Use of Additional Funds Intended for CRA Implementation

Q17. Our subcommittee worked closely with the Appropriations Committees last fall to increase OMB's funding by $200,000 for the specific purpose of implementing the Congressional Review Act (CRA). Despite clear report language and floor statements, it appears that OMB has continued its business-as-usual approach to CRA implementation and has used the extra money for other purposes of OMB's own choosing. What specifically has OMB done, if anything, to improve its performance since receiving this additional funding?

Q18. If any of the additional funding was used for purposes other than CRA implementation, please identify the specific activities or programs for which such funding was used.

Q19. What has OMB done to improve its implementation of the CRA since the Subcommittee's March 10, 1998 hearing on CRA implementation?

OMB Coordination of Reporting of Previously Unreported Rules

Q20. According to the GAO, the agencies have violated the CRA by failing to report hundreds of new rules.

(a) What steps has OMB taken to ensure that all unreported rules identified by GAO are reported?

(b) Has OMB taken a leadership role in coordinating and overseeing agency compliance with the rule reporting requirements of the CRA?

(c) Is it the position of OMB that GAO, not OMB, is responsible for ensuring that the agencies report unreported rules?

OMB Guidance on CRA Compliance

Q21. In many cases, it appears that the agencies are not even sure which rules are covered by the statute — and they are apparently not receiving any guidance on this issue from OMB. Other than the brief memorandum and question-and-answer sheet on CRA that OMB issued shortly after the CRA became law, what oversight and guidance, if any, has OMB provided the agencies to ensure their full compliance with the CRA? Specifically, what guidance has OMB provided regarding:

(1) the definition of a "rule" (§ 804(3));

(2) the requirement that no rule can legally take effect until it is reported to Congress (§ 801(a)(1)); and

(3) the meaning of the "good cause" exemption (§ 808(2))?

Q22. To the extent that OMB has not issued guidance on definition of a rule, the legal effect of the reporting requirement, and the good cause exemption, what are OMB's plans to develop and issue guidance on these issues?

Q23. The CRA's definition of a rule is not limited to agency statements for which the notice and comment procedures of 5 U.S.C. § 553 are required. Rather, the CRA's definition tracks the much broader definition of 5 U.S.C. § 551, which covers any agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy. The legislative history of the CRA makes clear that Congress chose the broader definition of § 551 to ensure that the agencies would report not only notice-and-comment rules, but also policy statements, guidances, enforcement manuals, interpretative rules, and other rules of whatever format. What steps is OMB taking to ensure that the agencies are aware of the breadth of coverage of the CRA and are fully complying with the reporting requirements for all rulemaking formats, including policy statements, guidances, and other formats?

Q24. The Forest Service's Department of Agriculture has openly and deliberately refused to report its land and resource management plans (LRMPs) to Congress, despite the fact that the plans fall well within the CRA's broad definition of a rule. For example, as the GAO has testified, the Tongass National Forest Plan is an agency statement of general applicability and future effect, designed to implement Forest Service policy and is, therefore, a rule for the purposes of the CRA.

(a) What steps has OMB taken to ensure that the Forest Service reports these plans to Congress as the law requires?

(b) Has OMB provided, formally or informally, any opinion or advice to the Forest Service on the applicability of the CRA to the Tongass plan or any other LRMP?

(c) Has the Department of Agriculture or the Forest Service submitted any forest or land management plan to OMB for review pursuant to Executive Order 12866? Please identify any such plan and describe any action taken by OMB with respect to such plan.

Q25. To make the CRA rule reporting process work efficiently, OMB should be working closely with GAO to establish a consistent format for providing all pertinent information to Congress.

(a) What steps has OMB taken to develop uniform, government-wide procedures for the reporting of all new final rules to Congress and a standard rule reporting form that best facilitates the development of GAO's database of new rules?

(b) What are OMB's plans to work with GAO to develop a standard form this fiscal year?

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

July 10, 1998

The Honorable David McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Chairman McIntosh:

Attached please find a response to your questions stemming from the hearing held on June 17, 1998 at which G. Edward DeSeve, Acting Deputy Director for Management, testified. The questions related to the Congressional Review Act have been answered in full. The questions related to the Climate Change Initiative have been answered in part. We will continue to work on the answers to these questions and will forward them to you as soon as they are complete.

Please contact Elizabeth Gore (395-4790) if you have any questions.

Sincerely,

Charles Kieffer
Acting Associate Director
for Legislative Affairs

CONGRESSIONAL REVIEW ACT QUESTIONS

Use of Additional Funds Intended for CRA Implementation

Q17. Our subcommittee worked closely with the Appropriations Committees last fall to increase OMB's funding by $200,000 for the specific purpose of implementing the Congressional Review Act (CRA). Despite clear report language and floor statements, it appears that OMB has continued its business-as-usual approach to CRA implementation and has used the extra money for other purposes of OMB's own choosing. What specifically has OMB done, if anything, to improve its performance since receiving this additional funding?

Regarding the $200,000 provided to OMB, please see our response to Question 18, below.

Regarding implementation of the CRA, OMB has not only fully met its responsibilities under the Act, but has gone beyond these responsibilities over the past year working with agencies and GAO to help them meet their duties under the Act. As I described in my testimony, the sole statutory responsibility of OIRA under CRA is to determine whether an agency's final rule is "major" and thus subject to certain procedures and General Accounting Office (GAO) oversight under the CRA. Those "major rule" procedures are in place and are now implemented routinely. The CRA does not confer on OMB any statutory authority or responsibility to oversee compliance with the Act.

OIRA is also working cooperatively with GAO. For example, last October, GAO started to monitor whether agencies were submitting to Congress and the GAO all the final rules that they should. GAO provided OIRA with a list of 498 final rules that agencies had published in the Federal Register, but that apparently had not been submitted to GAO (and presumably to Congress) under the CRA. (None of the 498 final rules was a "major" rule.) OIRA forwarded this GAO list to the agencies listed, and encouraged them (1) to discuss with GAO what was or was not a "rule" as defined in the CRA, and (2) to submit those "rules" that had mistakenly not been transmitted to Congress. Agencies found that in some cases rules had in fact been submitted to GAO and the Congress; in some cases items on the list were not rules under the Act; and in some cases they had not submitted rules. In this latter case, agencies took corrective action. By the spring of 1998, all but a handful of these rules had been submitted as required by the CRA.

This April, GAO sent OIRA another list of 115 final rules that had been published in the Federal Register during a second time period and not submitted to GAO (only one of which was a "major" rule, a rule issues by an independent agency). Again, OIRA sent the list to the appropriate agencies. In addition, through the interagency Regulatory Working Group, OIRA urged agencies to ensure that they submit all final rules, reminding them that under the CRA a rule cannot take effect until it is submitted to Congress and GAO. OIRA staff also followed up by calling agency staff to urge them to work with GAO to ensure complete, timely submissions. As of July 10th, there were

only 6 rules from this April list whose status was still in question. Given the progress agencies have made in establishing administrative systems to ensure that all final rules covered by the CRA are properly submitted, we expect that GAO's next review will identify significantly fewer rules that require submission, and that the status of any such rules will be quickly resolved.

In addition, OIRA worked last year, and has been working since January of this year with the agencies and GAO to develop a common form that agencies could use to submit their final rules to GAO and Congress. We have been making substantial progress in this effort. Agencies have developed a wide variety of regulatory tracking and management systems and we have been working with them to develop a common form that does not increase administrative burdens, but rather streamlines work and will make the process for submitting rules to Congress and GAO under the Act more effective and efficient. OIRA and the agencies have developed a draft common form and have shared it with GAO for discussion purposes. (See response to Question 25 below as well.)

Q18. If any of the additional funding was used for purposes other than CRA implementation, please identify the specific activities or programs for which such funding was used.

As noted in a colloquy with Chairman Kolbe on the House floor on September 30, 1997, the conferees for the FY 1998 Treasury, Postal Service, and General Government Appropriation bill increased the OMB budget by $200,000 "in order to help OMB facilitate their oversight and coordination of both new and ongoing statutory responsibilities, including the Congressional Review Act." Consistent with this expressed intent, the additional funds provided by Congress were used for a broad range of activities. Some of the funds were used to prepare the report on the Northeast Interstate Dairy Compact mandated by the FY 1998 Agriculture and Related Agencies Appropriations Act. One of the reasons the Congress approved these additional funds was to fund this mandated report, which was not part of OMB's original request to Congress. Consistent with the stated intent, the remaining funds have been used to support "new and ongoing statutory responsibilities," such as Y2K compliance efforts, OIRA information systems modernization efforts (related to the Paperwork Reduction Act), and work on OMB's mission critical budget system.

In addition, under the CRA, as I described in my testimony, it is the statutory responsibility of OIRA to determine whether an agency's final rule is "major," and thus subject to certain procedures and GAO oversight under the CRA. OIRA has taken special care to assure that OIRA staff carry out this CRA responsibility. The computerized regulatory review worksheet that OIRA staff fill out when they conclude review of a draft regulation now includes a "yes/no" box for their determination of whether the rule is "major." In addition, OIRA has gone beyond this specific statutory responsibility to help GAO and the agencies meet their responsibilities under the Act, as

we describe in the answers to Questions 17 and 25.

Q19. What has OMB done to improve its implementation of the CRA since the Subcommittee's March 10, 1998, hearing on CRA implementation?

As described in my answer to Question 17, OIRA has worked with the agencies and with GAO to help ensure that they submit the final "rules" subject to the CRA to GAO and the Congress. As noted above, OIRA has been active in this cooperative work this spring, transmitting the GAO lists of unsubmitted rules to agencies and utilizing the interagency Regulatory Working Group (RWG) to urge careful compliance by agencies with the Act. Through the RWG, OIRA has also pointed out that unless submitted under the CRA, rules cannot take effect. In addition, OIRA has followed up by repeating these concerns to staff regulatory contacts. As described in my answers to Questions 17 and 25, OIRA is working with the agencies and GAO to develop a common form that agencies could use to submit their final rules to GAO and Congress.

OMB Coordination of Reporting of Previously Unreported Rules

Q20. According to the GAO, the agencies have violated the CRA by failing to report hundreds of new rules.

(a) What steps has OMB taken to ensure that all unreported rules identified by GAO are reported?

As I indicated in some detail in my response to Question 17, OIRA has worked with GAO to provide agencies with the lists developed by GAO; has worked through the Regulatory Working Group to urge agencies to consult with GAO to assure that rules subject to the CRA are submitted; and has followed up with telephone calls to agency staff to repeat this concern. OIRA has urged agencies to pay particular attention to meeting their responsibilities under the CRA by reminding them that rules cannot take effect until they are submitted to Congress and GAO.

(b) Has OMB taken a leadership role in coordinating and overseeing agency compliance with the rule reporting requirements of the CRA?

Under the CRA, as I described in my testimony, it is the statutory responsibility of OIRA to determine whether an agency's final rule is "major," and thus subject to certain procedures and GAO oversight under the CRA. Those procedures are in place and now implemented routinely. In addition, OIRA has sought to work cooperatively with GAO and the agencies to encourage submission to Congress and GAO of the final rules subject to the CRA and to develop a more efficient common reporting form. (See answers to Questions 17 and 25.) As to agency compliance, it is important the agencies themselves remain fully responsible for complying with the provisions of the Act that apply to them. While as described above, agencies have had some initial difficulty developing

management systems to ensure submission of the enormous number of rules that are sent to GAO and the Congress (over 9,500 to date), it appears that their performance is improving.

(c) Is it the position of OMB that GAO, not OMB, is responsible for ensuring that the agencies report unreported rules?

Each agency is responsible for submitting its final rules to its authorizing committees under the CRA. In other words, it is the responsibility of each agency to ensure that it is in compliance with the CRA. Under the CRA, GAO is obligated to report to authorizing committees on the major rules that it receives. GAO, because it knows what it receives on a daily basis, can compare what it receives with what is published in the Federal Register. OIRA, given its daily interaction with agencies on regulatory matters, encourages agencies to implement the CRA responsibly.

<u>OMB Guidance on CRA Compliance</u>

Q21. In many cases, it appears that the agencies are not even sure which rules are covered by the statute -- and they are apparently not receiving any guidance on this issue from OMB. Other than the brief memorandum and question-and-answer sheet on CRA that OMB issued shortly after the CRA became law, what oversight and guidance, if any has OMB provided the agencies to ensure their full compliance with the CRA? Specifically, what guidance has OMB provided regarding:

(1) the definition of "rule" (§ 804(3));

(2) the requirement that no rule can legally take effect until it is reported to Congress (§ 801(a)(1)); and

(3) the meaning of the "good cause" exemption (§ 808(2))?

Section 804(3) defines "rule," with some exceptions, by making reference to the definition of "rule" that is found in the 1946 Administrative Procedure Act (APA) -- "the whole or a part of an agency statement of general ... applicability and future effect designed to implement, interpret, or prescribe law or policy, ..." In 1947, the Justice Department issued the <u>Attorney General's Manual on the Administrative Procedure Act</u>, in which the Department provided to the agencies its interpretation and guidance on the APA's definition of "rule." Since then, the rulemaking agencies and the Justice Department have had five decades of experience identifying "rules" under the APA, defending those decisions in the courts, and applying the courts' rulings. In light of the experience that the agencies and the Justice Department have gained during 50 years of applying the APA's definition of "rule" in the context of particular Federal programs, OIRA does not have the institutional expertise to provide general legal guidance to the agencies on this issue.

OIRA has reiterated that no rule can legally take effect until it is reported to Congress and GAO under the CRA in staff to staff discussions with agencies and in discussions with the Regulatory Working Group. For example, when OIRA sent the GAO list of final rules to agencies on April 8, 1998, Acting Administrator Don Arbuckle reemphasized that, "under the CRA, a final rule has to be submitted to Congress and the GAO before the rule can take effect." Agencies are well aware of this provision and appear to be taking appropriate steps to ensure proper submission of final rules to GAO and Congress so that rules can take effect as planned.

OIRA has also made available, on request, the April 28, 1997, letter signed by former OIRA Administrator Sally Katzen to Chairman George W. Gekas, which discusses the meaning of the "good cause" exemption in § 808(2) of the CRA. (OIRA staff provided this material to subcommittee staff some months ago.) In that letter, the former OIRA Administrator suggested that § 808(2) could be interpreted to permit an agency to waive the 60-day delay in implementation even if the major rule had been published for public comment. The former OIRA Administrator explained that, even if the agency has "good cause" to have the final rule take effect more quickly, the rule will likely be a better rule because it has been subject to public notice and comment. Public comment can assist the rulemaking agency, and improve the decision-making process, by providing new factual information, by offering different perspectives on an issue, and by suggesting alternative approaches for addressing a problem.

Q22. To the extent that OMB has not issued guidance on the definition of a rule, the legal effect of the reporting requirement, and the good cause exemption, what are OMB's plans to develop and issue guidance on these issues?

OMB does not have plans at this time to issue additional guidance to the agencies. However, OMB would of course be interested in providing guidance should we conclude that there was a problem developing that should be addressed and is not adequately addressed by existing guidance. With the exception of the recent GAO report on the use of "interim final" rules, we have not seen evidence that there is a potential problem in these areas.

Q23. The CRA's definition of a rule is not limited to agency statements for which the notice and comment procedures of 5 U.S.C. § 553 are required. Rather, the CRA's definition tracks the much broader definition of 5 U.S.C. § 551, which covers any agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy. The legislative history of the CRA makes clear that Congress chose the broader definition of § 551 to ensure that the agencies would report not only notice-and-comment rules, but also policy statement, guidance, enforcement manuals, interpretive rules, and other rules of whatever format. What steps is OMB taking to ensure that the agencies are aware of the breadth of coverage of the CRA and are fully complying with the reporting

requirements for all rulemaking formats, including policy statements, guidance, and other formats?

OIRA notified agencies of the full scope of the CRA in its original April 2, 1996, memorandum to the agencies. As I indicate in my answer to Question 20(c), and given the nature of the CRA, it is the responsibility of the agencies, working with their respective authorizing committees, to ensure compliance with the CRA. It is my understanding that certain committees have asked certain agencies to submit particular kinds of material to them to satisfy their needs under the CRA. Otherwise, I am unaware of complaints to the agencies from their authorizing committees about the scope and kind of material that they are receiving.

Q24. **The Department of Agriculture's Forest Service has openly and deliberately refused to reports its land and resource management plans (LRMPs) to Congress, despite the fact that the plans fall well within the CRA's broad definition of a rule. For example, as the GAO has testified, the Tongass National Forest Plan is an agency statement of general applicability and future effect, designed to implement Forest Service policy and is, therefore, a rule for the purposes of the CRA.**

On July 9, 1997, the former OIRA Administrator Sally Katzen testified before the Senate Committee on Energy and Natural Resources and the House Committee on Resources to discuss the applicability of the CRA to the final draft of the Tongass Land Management Plan. (OIRA staff provided this testimony to subcommittee staff some months ago.) She stated:

> "[I]n preparation for this testimony, I sought to ascertain whether the Forest Service has decided that the Tongass Land Management Plan is or is not a 'rule' as defined in the Congressional Review statute. I was advised that the Forest Service does not consider this Land Management Plan a 'rule' within the meaning of the Congressional Review statute. Since that statute passed on March 29, 1996, the Forest Service has issued six revisions of Land Management Plans, none of which was treated as a 'rule' under the Congressional Review statute. Nor, I understand, has the Forest Service ever treated its Land Management Plans as 'rules' subject to the APA's informal rulemaking procedures under 5 U.S.C. 553.
>
> "I would note that under Executive Order No. 12866, and its predecessor Orders, Nos. 12291 and 12044, OIRA (or its predecessor) has been given the responsibility to review agency rulemakings. I am advised that OIRA has never reviewed Forest Service Land Management Plans under these Orders. During my tenure, OIRA has not reviewed any Forest Service Land Management Plans, nor do we disagree with the Forest Service's conclusion that these Plans do not constitute 'rules.' " (pp. 3-4)

(a) What steps has OMB taken to ensure that the Forest Service reports these plans to Congress as the law requires?

Given the fact that OIRA did not disagree with the Forest Service's conclusion that these Plans do not constitute rules, OIRA has taken no steps to ensure that these plans are submitted to Congress under the CRA. It is my understanding, however, that the interested committees have received copies of Forest Service land management plans for their review and consideration.

(b) Has OMB provided, formally or informally, any opinion or advice to the Forest Service on the applicability of the CRA to the Tongass plan or any other LRMP?

No.

(c) Has the Department of Agriculture or the Forest Service submitted any forest or land management plan to OMB for review pursuant to Executive Order 12866? Please identify any such plan and describe any action taken by OMB with respect to such plan.

OIRA has not reviewed any Forest Service land management plan under E.O. 12866.

Q25. To make the CRA rule reporting process work efficiently, OMB should be working closely with GAO to establish a consistent format for providing all pertinent information to Congress.

(a) What steps has OMB taken to develop uniform, government-wide procedures for the reporting of all new final rules to Congress and a standard rule reporting form that best facilitates the development of GAO's database of new rules?

In the past several months, an interagency group has discussed and drafted a common form that agencies could use to submit final rules to Congress and GAO. Agencies have developed a wide variety of regulatory management and tracking systems, and the goal of the group has been to develop a common form that would not create additional burden to any of these systems. The group has been working toward development of a common form that would reduce the burden on agencies and make submission of rules to GAO and Congress under the Act OIRA more effective and efficient. The group has submitted a discussion draft of a common form to GAO, and discussions are ongoing to explore the details of what information that form should display, the possibilities of electronic submission, and the compatibility of the draft new form with the existing computerized tracking systems already developed in the agencies.

(b) What are OMB's plans to work with GAO to develop a standard form this fiscal year?

Our efforts are ongoing with the interagency group and GAO. As indicated above, we believe we are making progress. We do not know how long it will take to resolve all the various detailed issues.

CLIMATE CHANGE QUESTIONS

Q4. OMB has not produced the documents, such as environmental, cost-benefit, and/or economic data and analyses relating to the Administration's climate change policies and the Kyoto Protocol that we requested in March.

(a) Don't you believe that Congress and the American public have a right to know the full range of risks that the United States may face in entering into this agreement and the potential economic consequences of the President's climate change policies?

(b) Isn't our review of these documents essential to Congress's role to ratify and implement the Protocol?

(c)When will these documents be provided?

These documents have been produced. The June 7 letter from Council on Environmental Quality chair McGinty produced both CEQ's and OMB's documents in response to the subcommittee's March 7 request, which was sent jointly to CEQ and OMB.

Q8. We have still not received any reply from one of the five agencies included in CCTI - the Department of Agriculture. We understand that Agriculture's partial reply has been in OMB clearance since April 20th.

What is holding up OMB's clearance?

The Department of Agriculture's response has been cleared by OMB, and was subsequently sent to the Subcommittee on June 22, 1998.

Q16. Has OMB advised the key agencies involved in the development of the President's climate change initiative -- including CEQ, CEA, State, and Treasury -- not to provide the requested information about their considerable salaries and expenses (including overseas travel) incurred to date and requested for FY 99?

No.

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

July 27, 1998

The Honorable David McIntosh
Chairman
Subcommittee on National Economic Growth
Natural Resources, and Regulatory Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find a response to your latest set of questions stemming from the hearing held on June 17, 1998, at which G. Edward DeSeve, Acting Deputy Director for Management, testified.

This completes the responses to your questions that we referred to in our July 10, 1998, letter to you.

Please contact Elizabeth Gore (395-4790) of my staff if you have any questions.

Sincerely,

Charles Kieffer
Acting Associate Director
for Legislative Affairs

Enclosures

Response to Chairman David M. McIntosh
Subcommittee on Natural Economic Growth, Natural Resources, and Regulatory Affairs

Admitted Errors in Published Budgets

Question 1. My staff identified to OMB several errors, which OMB has now admitted, for climate change program funding in the last four budgets prepared by OMB.

Question 1A. Does OMB expect the Congress to fund these programs when even the published information of what the President wants is inaccurate?

Response. The information prepared by OMB and published in the President's FY 1999 Budget for the Climate Change Technology Initiative did not include errors. A less than $1 million rounding matter is not an error. As discussed in OMB's May 13, 1998, letter to the Subcommittee, rounding discrepancies of this kind are common in many budget documents and are generally not of a concern to the Appropriations Committees when evaluating the President's Budget.

Where minor number differences were identified in prior year budgets, the May 13th letter to the Subcommittee provided detailed explanations as to why certain numbers change from year to year. In all cases, OMB provided the Subcommittee with the correct budget information so it can perform its oversight responsibilities related to the President's climate change initiative.

Question 1B. What is being done to ensure that budget numbers are accurate?

Response. OMB takes pride in preparing the President's Budget and providing Congress with accurate information on which it can perform its appropriations and oversight responsibilities. In most cases, the information provided in the President's Budget is the most accurate available at the time the budget documents are printed. In those rare instances where we discover a discrepancy after documents are printed, OMB or the relevant agency provides the appropriate committee with the correct information. In the case of funding related to climate change, OMB's May 13, 1998, letter provided the Subcommittee with a full explanation of any discrepancies in prior year budget documents. The Subcommittee can be assured that it has accurate budget information on the President's Climate Change Technology Initiative.

Absence of Performance Measures

Question 2. Despite the Government Performance and Results Act (Results Act) requirement that agencies establish program performance measures for each program in each agency, the agencies have identified only a handful of such measures for the dozens of climate change programs. And OMB has not identified any government-wide program performance measures for the President's climate change initiatives, as required by the Results Act.

With respect to the most obvious measurement, the expected reductions in greenhouse gases emissions from the 1990 base year in the Kyoto Protocol, OMB told the Subcommittee in writing that those measures would be identified **after** the program is enacted.

Question 2A. Without program performance measures, how can Congress and the American people properly evaluate the President's proposals? Should Congress just approve programs without knowing what are the expected outcomes, i.e., what they are expected to achieve? Was this the intent of the Results Act?

Response. OMB's May 13, 1998, letter to the Subcommittee provided performance information on the climate change initiative that was in OMB's possession, including detailed performance information from the most recent evaluation (U.S. Climate Action Report -- 1997) of the programs in the President's Climate Change Action Plan. Many of these same programs are included in the FY 1999 Budget under the Climate Change Technology Initiative. In addition, the Subcommittee has been provided directly by the agencies with climate change programs performance information from agency annual plans. OMB also provided additional performance information on climate change programs in its response to the Subcommittee's May 27, 1998, letter. While we have not developed a comprehensive set of measures, each of the component programs that make up the Initiative have their own set of measures and justifications which have been provided by the agencies to the Subcommittee. We believe that these measures and justification materials fully support and provide sufficient justification for Congress to fully fund the President's proposals.

Question 2B. Since OMB is the coordinating agency for the Results Act, what efforts has OMB taken to identify a full set of government-wide and agency-specific measures for Congress' consideration of the President's FY 99 budget request for climate change funding?

Response. The President's FY 1999 Budget, which includes the Government-Wide Performance Plan, includes specific programs that support the Climate Change Technology Initiative (see examples in chapter 15, Energy, *Government-Wide Performance Plan, FY 1999*, 2/27/98). In addition, OMB's May 13, 1998, letter to the Subcommittee (attached) provided performance information on the climate change initiative that was in OMB's possession. Additional performance information is provided in the response to the Subcommittee's May 27, 1998, letter. Agencies also provided specific climate change performance information directly when responding to the Subcommittee's letters. We will be working with the Department of Energy and the Environmental Protection Agency in the coming year to develop more comprehensive performance information for the climate change initiative as part of the FY 2000 budget process.

Question 2C. By what date will you commit to submitting a full set of performance measures to us?

Response. OMB has provided the Subcommittee with all of the performance information on the climate change initiative that is in our possession through the May 13, 1998 letter and the

response to the May 27, 1998, letter. While we believe that the information we have provided fully justifies the President's FY 1999 Budget, we expect to have improved measures in the FY 2000 Budget.

Question 2D. Since the agencies do not have data for the 1990 base year, what is OMB doing to ensure that data are available for the 1990 base year for each of the government-wide and agency-specific program performance measures?

Response. We will be working with the Department of Energy and the Environmental Protection Agency in the coming year to develop more comprehensive performance information for the climate change initiative. In the interim, the U.S. Climate Action Report -- 1997, is the best evaluation of the progress made to date in reducing greenhouse gas emissions to 1990 levels by the year 2000 through the programs in the President's Climate Change Action Plan.

Incomplete Replies to Oversight Questions

Question 3. OMB has yet to answer fully our March requests regarding the President's requests for FY 99 funding for climate change. For example, OMB has still not answered our request for historical budget authority for climate change programs that are not part of the $6.3 billion that the President has identified as the Climate Change Technology Initiative (CCTI), such as part of the $1.9 billion U.S. Global Change Research Program.

Question 3A. Why has OMB been unable and/or unwilling for over 3 months to provide complete answers to our legitimate oversight questions?

Response. OMB has responded in good faith to the Subcommittee's numerous requests for funding information on climate change through three separate letters. We regret that even with all of the time and effort OMB has devoted to providing the Subcommittee with information, you do not consider our responses to be adequate. OMB has used very considerable time and resources responding to the Committees requests.

Question 3B. When will Congress receive complete replies so that we can fully evaluate the President's requested funding for climate change, including not only CCTI but also other requested funding for climate change, some of which are very substantial, such as the Agency for International Development (AID), which is requesting $250 million in FY 99 for grants, contracts, loans and loan guarantees for climate change activities? This amount even exceeds the $205 million requested for EPA.

Response. OMB has provided the Subcommittee through three separate letters budget information related to climate change programs that is in our possession. We understand that many agencies with climate change programs, like AID, have also provided the Subcommittee with budget information. We hope that the Subcommittee can appreciate the amount of work at OMB and the agencies that is going into providing it with the volumes of budget information

related to climate change.

Question 4. OMB has not produced the documents, such as environmental, cost-benefit, and/or economic data and analyses relating to the Administration's climate change policies and the Kyoto Protocol that we requested in March.

Question 4A. Don't you believe that Congress and the American public have a right to know the full range of risks that the United States may face in entering into this agreement and the potential economic consequences of the President's climate change policies?

Response. Answer provided in July 10, 1998, letter to the Subcommittee.

Question 4B. Isn't our review of these documents essential to Congress's role to ratify and implement the Protocol?

Response. Answer provided in July 10, 1998, letter to the Subcommittee.

Question 4C. When will these documents be produced?

Response. Answer provided in July 10, 1998, letter to the Subcommittee. Additional documents provided on July 7, 1998, and July 27, 1998.

Guidance to the Agencies & Review of Agency Replies

Question 5. We have had difficulty in getting responses from most of the 22 agencies from which we requested documents and information about their climate change activities.

Question 5A. What guidance, if any, did OMB provide the agencies on responding? How many conference calls did OMB have with agency staff? When? What was concluded?

Response. OMB staff advised agencies that responses to questions should be cleared through the normal interagency review process. Questions about documents should be referred to individual agencies, or to the White House Counsel's Office insofar as the documents reflect confidential White House decision-making. OMB staff participated in two or three conference calls organized by the White House Climate Change Task Force to update agencies on the status of clearing their responses.

Question 5B. Did OMB advise the agencies about the release of not-yet-publicly-available documents containing economic and environmental data and analyses and agency comments on them?

Response. No.

Question 5C. Did OMB advise the agencies about release of their comments on draft testimony by Administration officials on climate change, including the draft testimony by CEA Chair Janet Yellen's so-called "economic analysis"?

Response. No.

Question 5D. Did OMB advise the agencies about disclosure of funding for the U.S. Global Change Research Program activities?

Response. The U.S. Global Change Research Program (USGCRP) is an interagency program and includes a representative from OMB. The USGCRP program coordination office and participating agencies discussed the possibility of identifying what activities are devoted exclusively to climate change. OMB staff were involved in those discussions.

Question 6. We understand that most, but not all, of the agencies sent their replies to OMB for clearance and that many were in clearance within OMB for a considerable amount of time.

Question 6A. What was the longest review time for OMB clearance of an agency's climate change response and for which agency?

Response. No formal log was kept that tracked the review time for agency responses to the Subcommittee. Agencies were notified of any comments through the normal review process coordinated by OMB.

Question 6B. What specific changes did OMB make to each of the agencies' intended replies?

Response. Besides OMB's role in coordinating the interagency review process, OMB staff reviewed the agency responses for consistency with the President's budget. Where funding information differed from the President's budget, OMB staff notified the agency of the discrepancy.

Question 6C. Why did OMB remove some budgetary detail, such as in NSF's reply, from some of these intended replies?

Response. OMB did not remove specific funding information. OMB staff work with various agencies and offices in reviewing responses for Congress and other parties. In this case, preliminary material was prepared by the NSF program office and reviewed by other NSF offices, the Global Change Research Program office, and OMB staff. NSF decided to remove the reference to specific funding levels because providing budget information associated exclusively with climate change was considered arbitrary and misleading.

Question 7. We have not received complete replies from at least 15 of the 22 agencies. We still not have any answers to many questions from the following agencies: Agriculture (Q1-14),

Commerce (Q8-14), Defense (Q8-14), Energy (Q7-45), Interior (Q6-14), State (Q8-14), AID (Q8-14), EPA (Q8-14, 30 & part of 18), NASA (Q7), CEQ (Q8-34), and the NEC (Q1-14). We still do not have the bulk of the requested documents from: OMB, CEQ, CEA, OSTP, State, and Treasury.

Question 7A. Which of these replies are currently in OMB and/or White House Counsel clearance? Which agencies have documents that are currently in OMB and/or White House Counsel clearance? How long have they been under review? What factors are being used to determine if a substantive answer or a document requires confidentiality?

Response. We can only provide you with information on agency responses submitted to OMB for interagency review since OMB is not reviewing other agencies' documents. As of July 22, 1998, the following agency responses are being reviewed: EPA (Q8-14, 18-19, 30), DOE (8, 14, 19, 20, 27, 31, 41, 43), and Treasury (Q8-14). The EPA reply has been in and out of the review process for about a month as changes are made; the DOE and Treasury responses two weeks or less. Questions about what factors are being used to determine whether documents require confidentiality should be referred to the White House Counsel's Office.

Question 7B. Since OMB is responsible for preparing and presenting the President's budget request, what is OMB doing to ensure prompt completion of agency responses to our March inquiries?

Response. It is our understanding that all agencies have responded to the Subcommittee's questions about the President's budget.

Questions about 4 of the 5 Agencies in the President's $6.3 billion CCTI

Question 8. We have still not received any reply from one of the five agencies included in CCTI -- the Department of Agriculture. We understand that Agriculture's partial reply has been in OMB clearance since April 20th. What is holding up OMB's clearance?

Response. The response to this question was provided in the July 10, 1998, letter to the Subcommittee.

Question 9. Secretary Andrew Cuomo of the Department of Housing and Urban Development (HUD) replied that "HUD's budget for FY 1999 and prior years do [sic] not contain funds for research identified as part of the President's Climate Change Technology Initiative." In follow up, HUD stated "The HUD Office of Policy Development and Research Budget Request for FY 99 . . . did not discuss Climate Change. That must have been added subsequently. Also attached is the formal program plan of PATH (Partnership for Advancing Technologies in Housing) developed jointly with private industry. Note that there is no discussion of global warming anywhere in this plan . . . PATH is not a global warming program. . . During the planning process, carbon emission and climate change has never even come up."

Question 9A. Since the Secretary did not request funds for climate change and since HUD says that PATH is not a global warming program, why does the President's initiative request $10 million for HUD's PATH program for climate change?

Response. PATH recognizes that energy use in building accounts for more than one-third of the carbon emissions that are impacting the global climate. As a result, improving the energy efficiency of our Nation's housing is a core component of PATH's overall strategic mission. However, PATH's mission -- defined in response to input from the home building industry and from PATH's Federal agency partners -- extends well beyond energy concerns to address a full range of issues of housing affordability, durability, performance, and quality. These issues are of direct concern to the builders, developers, and product manufacturers who make up PATH's core constituency.

Because the PATH program will, if successful, substantially reduce energy consumption, the Administration considers it to be a component of the President's overall climate change technology strategy. However, in addition to improving the energy efficiency of homes, PATH seeks to enhance affordability, durability, safety, and comfort. This is the broader missions embraced by PATH's industry partners, a mission fully consistent with HUD's ongoing effort to expand homeownership and affordable housing opportunities.

Question 10. The Chief Counsel for Special Matters replied for the Department of Commerce that "The NIST mission does not specifically include efforts to study the global climate: however, its laboratories have performed standards and measurement research to improve climate observations, improve energy efficiency, and identify greenhouse gas alternatives" (emphasis added).

Question 10A. Since Commerce did not receive prior funding from FY 93 through FY 98 under the Climate Change Action Plan and is newly included in CCTI for FY 99, under what authority is NIST requesting its share of the CCTI funding and is this request consistent with NIST's principal statutory mission?

Response. NIST's portion of the Climate Change Technology Initiative would fund NIST research and development yielding basic scientific measurements and data on emerging technologies and materials that hold potential for reducing greenhouse gas emissions. Such activities are entirely consistent with NIST's existing statutory authority under 15 U.S.C. 272-273. NIST has broad authority to assist in the development of new or improved industrial technologies; develop measurement and testing methods; study physical constants and properties; and invent new measurement devices that serve national needs. In conducting this work and disseminating its results, NIST may work with Federal agencies, the private sector, state and local government, educational institutions, and other organizations interested in manufacturing, standards, or measurement. The relevant sections of 15 U.S.C 272-273 are shown below.

15 U.S.C.
Chapter 7: National Institute of Standards and Technology

§ 272. Establishment, functions, and activities

(a) Establishment of National Institute of Standards and Technology

There is established within the Department of Commerce a science, engineering, technology, and measurement laboratory to be known as the National Institute of Standards and Technology (hereafter in this chapter referred to as the "Institute").

(b) Functions of Secretary and Institute

The Secretary of Commerce (hereafter in this chapter referred to as the "Secretary") acting through the Director of the Institute (hereafter in this chapter referred to as the "Director") and, if appropriate, through other officials, is authorized to take all actions necessary and appropriate to accomplish the purposes of this chapter, including the following functions of the Institute --

(1) to assist industry in the development of technology and procedures needed to improve quality, to modernize manufacturing processes, to ensure product reliability, manufacturability, functionality, and cost-effectiveness, and to facilitate the more rapid commercialization, especially by small- and medium-sized companies throughout the United States, of products based on new scientific discoveries in fields such as automation, electronics, advanced materials, biotechnology, and optical technologies; . . .
(4) to provide United States industry, Government, and educational institutions with a national clearinghouse of current information, techniques, and advice for the achievement of higher quality and productivity based on current domestic and international scientific and technical development;
(5) to assist industry in the development of measurements, measurement methods, and basic measurement technology;
(6) to determine, compile, evaluate, and disseminate physical constants and the properties and performance of conventional and advanced materials when they are important to science, engineering, manufacturing, education, commerce, and industry and are not available with sufficient accuracy elsewhere;
(7) to develop a fundamental basis and methods for testing materials, mechanisms, structures, equipment, and systems, including those used by the Federal Government; . . .
(9) to cooperate with other departments and agencies of the Federal Government, with industry, with State and local governments, with the governments of other

nations and international organizations, and with private organizations in establishing standard practices, codes, specifications, and voluntary consensus standards;

(10) to advise government and industry on scientific and technical problems; and

(11) to invent, develop, and (when appropriate) promote transfer to the private sector of measurement devices to serve special national needs.

(c) Implementation activities in carrying out the functions specified in subsection (b) of this section, the Secretary, acting through the Director and, if appropriate, through other appropriate officials, may, among other things --

(1) construct physical standards;

(2) test, calibrate, and certify standards and standard measuring apparatus;

(3) study and improve instruments, measurement methods, and industrial process control and quality assurance techniques; . . . .

(6) prepare, certify, and sell standard reference materials for use in ensuring the accuracy of chemical analyses and measurements of physical and other properties of materials;

(7) in furtherance of the purposes of this chapter, accept research associates, cash donations, and donated equipment from industry, and also engage with industry in research to develop new basic and generic technologies for traditional and new products and for improved production and manufacturing;

(8) study and develop fundamental scientific understanding and improved measurement, analysis, synthesis, processing, and fabrication methods for chemical substances and compounds, ferrous and nonferrous metals, and all traditional and advanced materials, including processes of degradation; . . . .

(10) determine the atomic and molecular structure of matter, through analysis of spectra and other methods, to provide a basis for predicting chemical and physical structures and reactions and for designing new materials and chemical substances, including biologically active macromolecules; . . . .

(16) undertake such research in engineering, pure and applied mathematics, statistics, computer science, materials science, and the physical sciences as may be necessary to carry out and support the functions specified in this section;

(17) compile, evaluate, publish, and otherwise disseminate general, specific and technical data resulting from the performance of the functions specified in this section or from other sources when such data are important to science, engineering, or industry, or to the general public, and are not available elsewhere; . . . .

(22) undertake such other activities similar to those specified in this subsection as the Director determines appropriate.

(d) Management costs

In carrying out the extramural funding programs of the Institute, including the programs established under sections 278k, 278l, and 278n of this title, the Secretary may retain reasonable amounts of any funds appropriated pursuant to authorizations for these programs in order to pay for the Institute's management of these programs.

§ 272a. Technology services

In addition to such other technology services and technology extension activities which may be mandated or authorized by law, and in order to help improve the use of technology by small and medium-sized industrial firms within the United States, the Director of the National Institute of Standards and Technology, as appropriate, shall --

(1) work directly with States, local governments, and other appropriate organizations to provide for extended distribution of Standard Reference Materials, Standard Reference Data, calibrations, and related technical services and to help transfer other expertise and technology to the States and to small businesses and other businesses within the States; . . . .
(3) provide support for workshops on technical and entrepreneurial topics and share information developed through the Malcolm Baldrige Quality Award Program; and
(4) work with other Federal agencies to provide technical and related assistance to the States and businesses within the States.

§ 273. Functions; for whom exercised

The Institute is authorized to exercise its functions for the Government of the United States and for international organizations of which the United States is a member; for governments of friendly countries; for any State or municipal government within the United States; or for any scientific society, educational institution, firm, corporation, or individual within the United States or friendly countries engaged in manufacturing or other pursuits requiring the use of standards or standard measuring instruments: Provided, That the exercise of these functions for international organizations, governments of friendly countries and scientific societies, educational institutions, firms, corporations, or individuals therein shall be in coordination with other agencies of the United States Government, in particular the Department of State in respect to foreign entities. All requests for the services of the Institute shall be made in accordance with the rules and regulations herein established.

Question 11. One of the FY 98 "expected accomplishments" in the Environmental Protection Agency's (EPA) reply was a "Design Clean Development Mechanism (CDM) project in six developing countries."

Question 11A. Isn't this implementation of the Protocol prior to ratification because the Clean Development Mechanism is a creature of the Kyoto Protocol?

Response. The Administration has stated numerous times that it will not implement the Kyoto Protocol prior to Senate ratification, so it is unclear what was intended in EPA's response to the Subcommittee. Since 1995, EPA has traditionally supported energy efficiency and renewable energy projects funded as part of the U.S. Initiative on Joint Implementation. Many of these projects take place in developing countries and have proven to be successful at reducing greenhouse gas emissions.

Question 11B. Ambassador Eizenstat promised that there will be no implementation by the Administration prior to Senate ratification. Will OMB direct EPA not to expend FY 98 funds for this purpose?

Response. The Administration has stated that it will not implement the Kyoto Protocol prior to Senate ratification.

Question 12. EPA's reply revealed over $85 million in grant and contract awards to one organization -- ICF, Inc. -- from FY 93 to FY 97. Additionally awarded over $500,000 contract awards to 9 other organizations and over $500,000 grant awards to 20 other organizations in this 5-year period. For example, LISBOA, Inc. received a contract for $3,030,830. These are huge awards.

Question 12A. Were all awards to ICF, Inc. made through competition? Were all over $500,000 contract and grant awards made through competition?

Response. We believe EPA is in a better position to answer your questions about contracts it has with the private sector and suggest you contact them directly.

Question 12B. Has OMB reviewed the final reports from each of these huge awards?

Response. It is unclear from the information in your question what specific work EPA had performed under contract, so it is difficult to know whether EPA staff have reviewed the final reports associated with these projects. OMB does not receive copies of all reports contracted out by agencies.

Question 12C. Has OMB reviewed the scope of work and deliverables for EPA's $389,409 grant (5/1/97-11/30/98) to the World Resources Institute for "building business support for action on climate change"? Is any part of this grant essentially implementation prior to ratification?

Response. OMB staff have not reviewed the scope of work and deliverables for EPA's grant to the World Resources Institute and have no information on this project.

Questions about Other Agencies

Question 13. The National Science Foundation (NSF) volunteered that OMB deleted specific funding level ($5 million) in its intended reply to our question. Instead, the revised reply merely stated "There are, however, some significant activities supported -- at the National Center for Atmospheric Research (NEAR) for example -- which are directed exclusively at climate change, that were not reported in the summary."

Question 13A. Why did OMB remove the specific funding level information?

Response. OMB did not remove specific funding level information. OMB staff work with various offices in Federal agencies in clearing material for release to Congress and other parties. In this case, preliminary material was prepared by the program office within the National Science Foundation. OMB, the U.S. Global Change Research Program office, and the NSF Office of Legislative and Public Affairs worked to clarify the information that was developed by the program office. Following these discussions, NSF decided to remove the reference to specific funding levels, because identifying funding levels associated exclusively with climate change is arbitrary and misleading.

Question 14. NSF's reply revealed that it was "directed by the Office of Management and Budget to transfers funds" ($1,366,000) to assist developing countries and countries with economies in transition to formulate their climate change policies.

Question 14A. Were other agencies also directed by OMB to transfer funds to assist developing and/or other countries with climate change? If so, which agencies and for how much funding? Were other agencies directed by OMB to transfer funds for any other climate change purpose? If so, which agencies, for what purpose, and for how much funding?

Response. I am not aware of any directive by OMB to other agencies to transfer funds to assist developing countries with climate change.

Question 15. In response to our question for historical climate change funding, the Tennessee Valley Authority's (TVA) replied that "Our investigation determined that...TVA has not been correctly updating its original budget estimates to actual expenditures."

Question 15A. When did OMB become aware of this problem?

Response. TVA notified OMB staff in early July and have provided the correct information. If TVA had submitted their response to OMB for clearance like most of the other agencies, the error might have been discovered before it was sent to the Subcommittee.

Question 15B. Are the "actuals" reported by any other agency for climate change also in error? Has OMB checked to be sure?

Response. OMB staff are not aware of similar problems with other agencies' numbers.

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Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

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March 13, 1998

BY FACSIMILE

The Honorable Janet Yellen
Chairman
Council of Economic Advisers
Old Executive Office Building
Washington, D. C. 20500

Dear Chair Yellen:

The Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs is conducting oversight of the Administration's global climate change policies and its initiatives to jump-start U.S. efforts to achieve the Kyoto Protocol greenhouse gas emissions reductions targets.

Pursuant to the Constitution and Rules X and XI of the United States House of Representatives, please provide the Subcommittee with detailed information in response to the questions in sections A and B of the attached inquiry, to the extent that they are applicable to your agency, and the questions in sections C through E. In responding to this inquiry, please restate each question and subpart with each of your answers, and follow the attached definitions and instructions concerning the production of records.

Please provide your responses to the written questions and requests for production of records not later than 12 noon, April 7, 1998 to the Subcommittee in Room B-377 Rayburn. In addition, please contact Larisa Dobriansky, Senior Counsel, at (202) 225-4407 as soon as practicable to coordinate the timely production of the information to the Subcommittee.

Thank you in advance for your attention to this request.

Sincerely,

David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs

cc: The Honorable Dan Burton
The Honorable John Tierney

Enclosure

Questions Regarding Global Climate Change Policies and Initiatives

A. Budget Information and Performance Measures

1. Please provide a table with Fiscal Year (FY) 89 - FY 99 historical budget authority for your agency for the various components of the President's "Climate Change Technology Initiative," including the previous "Climate Change Action Program/Plan" and any other new or previously authorized Research and Development (R&D) herein (except for the U.S. Global Change Research Program included in Question 3 below). For each component, please indicate each specific budget account, the specific legislative authority (including the specific statute, the section citation, and the language of the section) for the program, and a brief description of the program.

2. In Section 2 ("Programmatic Details") of OMB's February 2, 1998 handout, "Climate Change Technology Initiative - 1999 Budget Briefing Materials," please provide the following information associated with each paragraph description in which your agency has been funded or is requesting funding: the associated funding in FY 97, FY 98, and FY 99. Also, for each paragraph, for the requested funding in FY 99, please provide evidence of any accomplishments from the FY 93 - FY 97 funding, if any. Lastly, for each paragraph, please indicate any program performance measures for the requested funding, and, for each such measure, please provide data for the 1990 base year and annual data for the most recent three-year period for which data are available.

3. Please provide a table with FY 89 - FY 99 historical budget authority for your agency for the various components of the "U.S. Global Change Research Program" which were or are devoted exclusively to climate change R&D. For each component, please indicate each specific budget account, the specific legislative authority for the program (including the specific statute, the section citation, and the language of the section), and a brief description of the program.

- If funded in any of FY 93 - FY 97, please provide evidence of any accomplishments from these dollars. Also, for requested funding in FY 99, please indicate any program performance measures for the requested funding, and, for each such measure, please provide data for the 1990 base year and annual data for the most recent three-year period for which data are available.

4. Please provide a table with FY 89 - FY 99 historical budget authority for your agency for any other components of the Administration's climate change program (i.e., in addition to those included in answer to questions 1 and 2). For each component, please indicate each specific budget account, the specific legislative authority for the program (including the specific statute, the section citation, and the language of the section), and a brief description of the program.

5. For the FY 99 request, please provide a table showing what part is funding to continue initiatives funded in FY 98 or prior years and what part is brand new activity. For each component, please indicate each specific budget account, the specific legislative authority for the program (including the specific statute, the section citation, and the language of the section), and

a brief description of the program. For each brand new activity, please indicate expected requested funding annually through FY 03.

6. Please identify the full set of your agency-specific performance measures for the Administration's Climate Change proposal (besides those indicated in response to questions 2 and 3), including data for at least the 1990 base year, FY 97, FY 98, and FY 99. Also, please identify how any of your agency-specific measures (including those in response to questions 2 and 3) relate to those for any other Federal agency. Lastly, please describe any interagency efforts to identify and relate the entire set of climate change performance measures, including which agencies are involved and the names of the agency representatives.

7. Please provide a table for FY 93 - FY 97 identifying all assistance (including grants, cooperative agreements, and other transactions) and contract awards to non-profit and for-profit organizations for any climate change activity, including the date, amount of the award, name of the organization, purpose of the award, and a summary of any result(s) from the award. Please provide a copy of any final report from these awards.

B. Economic, Policy, and Legal Analyses

8. Since January 1993, has your agency participated in any interagency effort(s) relating to climate change in any of the following areas: (a) review of current legislation and/or the need for any new legislation; (b) review of current rules, any needed revisions to current rules, and/or any needed new rules; (c) production or review of any environmental data and/or analyses; (d) production or review of any cost-benefit data or analyses; and/or (e) production or review of any economic data and/or economic analyses? If so, please identify the interagency effort, its member agencies, its membership not only from your agency but also from other Federal agencies and/or any non-Federal parties, all drafts and analyses from the effort(s), and any comments from your agency on any drafts.

9. Has your agency either prepared or reviewed any environmental, cost-benefit, and/or economic data and analyses relating to the White House Initiative on Global Climate Change? If so, please provide a copy of all data, analyses, and any comments by your agency.

10. Did your agency comment on any of the draft testimony on climate change by Administration witnesses since the President's 1998 State-of-the-Union address? If so, please provide a copy of the draft testimony and any comments by your agency.

11. Has your agency suggested any alternative policy options for climate change? If so, please provide a copy of all drafts and supporting analyses and any comments from other Federal agencies on your alternatives.

12. Does your agency plan to revise any existing legislation or propose any new legislation relating to climate change (including legislation that will have the effect of reducing greenhouse

gas emissions whether or not that is the intended purpose of the legislation)? If so, please identify and describe all such initiatives, including a timetable for their development and submission to Congress. Also provide any and all legal and policy analyses regarding the applicability and availability of existing legislation to implement the Kyoto Protocol and any comments from other Federal agencies on the analyses.

13. Does your agency plan to revise any existing rules or propose any new rules relating to climate change (including regulatory actions that will have the effect of reducing greenhouse gas emissions whether or not that is the intended purpose of the regulatory action)? If so, please identify and describe all such initiatives, including any cost-benefit analysis, and a timetable for their development and promulgation. Also, provide any and all analyses that were prepared or considered of the cumulative effects on the U. S. economy and/or energy system of all or any combination of regulations that were issued since 1992, that were proposed, and that are being developed that have or will have such effects.

14. Has your agency participated in discussions or reviewed any documents relating to international emissions trading, joint implementation, and/or the Clean Development Mechanism? If so, please provide a copy of all drafts and any comment provided by your agency.

C. Dr. Yellen's Testimony before the House Commerce Committee on March 4, 1998

15. Please provide any and all analyses that support the Administration's conclusion that impacts on the U.S. economy of complying with the terms of the Kyoto Protocol "are likely to be modest." Also, explain fully how the Administration can make such a forecast responsibly when, as Dr. Yellen stated, "it is not yet possible to provide a full authoritative analysis" of the Kyoto Protocol. Among other things, Dr. Yellen noted that there is still "much that we do not know" because much has been left unresolved by this treaty (for example, implementation issues, the rules and procedures governing international emissions trading, joint implementation projects, and the Clean Development Mechanism, and future emissions reductions obligations). Moreover, Dr. Yellen asserted that, to her knowledge, " no [economic] model -- whether used inside the government or not -- has yet been set up to analyze the implications of the Kyoto Protocol, since this agreement is only a few months old. . . ."

16. In her testimony, Dr. Yellen supported the Administration's conclusion that "economic impacts are likely to be modest" with other optimistic conclusions about the effects of the Kyoto treaty "flexibility" mechanisms and U.S. electricity restructuring, and about the rate of technological progress. Please provide any and all analyses that support the following estimates:

16a. U.S. electricity restructuring "will offer approximately $20 billion in cost savings."

16b. Emissions trading among Annex I countries "can reduce the cost to the United States of achieving its targets for 2008-20012 emissions by about half."

16c. Emissions trading among a subset of Annex I countries (for example, the United States, Australia, Canada, New Zealand, and Russia) "can reduce costs by an estimated 60-70 percent." Also, based on the estimates presented in Dr. Yellen's testimony, please explain and fully document how more limited trading among this subset of countries would produce greater cost reductions than from either trading among all Annex I countries or trading with the full participation of non-Annex I countries.

16d. The Clean Development Mechanism "might shave costs by roughly another 20 to 25 percent."

16e. Overall costs "would reach roughly one tenth of one percent of projected GDP in 2010" (resource costs of achieving Kyoto targets for emissions reductions were estimated to be $7 to $12 billion per year in 2008 to 20012). Also, please explain how it is possible that compliance with the Kyoto Protocol, which has been projected by independent economists to be the most expensive environmental undertaking ever, could cost less than compliance with the recently issued U.S. air quality rules for particulate matter and ozone (the final Regulatory Impact Analysis for those rules estimated costs of $46 billion).

16f. The assumption that the rate of improvement in energy efficiency (Autonomous Energy Efficiency Index) will be 1.0 percent per year (which is greater than that assumed by the Energy Information Administration). In particular, please reconcile this assumption with the statement of the Council of Economic Advisers in its 1998 Annual Report that, "[u]ntil an emissions cap and trading system are in place, however, the economic incentive to use [technologies supported by the Administration's budget] may be low." Is the Administration assuming that such a system will be put into place in the short-term?

16g. The estimated effect on energy prices will range from "$14 to $23 per ton of carbon equivalent."

16h. "In energy-intensive sectors some employment reduction could occur, although given the very small predicted change in energy prices, impacts in most such sectors are apt to be minimal. Furthermore, a large number of jobs will be created in other sectors--many of them high-tech jobs paying high wages."

16i. As to each analysis, please indicate who prepared the analysis and provide all records of comments from other federal agencies.

17. Please provide any and all analyses that support the Administration's estimate that benefits relating to traffic congestion, highway accidents, and air pollution unrelated to climate change "could offset approximately a quarter of the resource cost of the climate change policy." As to each analysis, please indicate who prepared the analysis and provide all records of comments from other federal agencies.

18a. In her testimony, Dr. Yellen stated that, in evaluating the "likely net economic impact of the Kyoto Protocol," the Administration has "drawn upon a broad array of analytical tools" and a "wide range of models of the energy sector and economy over the next 25 years" to assess the various possible costs and non-climate benefits of the Administration's emissions reduction policy. Please specify all of the models and analytical tools that the Administration has used and describe in detail their strengths and weaknesses.

18b. According to the testimony, the Administration has relied particularly on the Second Generation Model (SGM) of Battelle Laboratories for many of its estimates. However, the Interagency Analytical Team report indicated that the SGM model "focuses on long-term transitions and measures the economy in five-year intervals," so that "it risks racing past short-term transition issues," such as GDP loss and impacts on specific industries. Specify all of the Administration's estimates that were derived by this model. Also, indicate why many of the Administration's key estimates were derived from this model? Finally, please identify the corresponding estimates derived from each model that the Administration has used in assessing the impacts of the Kyoto Protocol.

19. What are the 1990 baseline, the Fiscal Year 1997, 1998 and1998 data, and the annual outyear estimates until 2012 for the following outcome performance measures mentioned in Dr. Yellen's testimony: morbidity rates for some diseases, mortality rates for some causes, monetary damages from temperature increases, consequences from some catastrophes, traffic congestion, highway accidents, and air pollution unrelated to climate change?

20. Why does the Administration maintain that the U. S. acid rain program experience "clearly demonstrates how programs like international permit trading, joint implementation and the Clean Development Mechanism will lead firms to find cheaper ways of reducing emissions that can lead to unexpectedly low costs"? Why does the Administration believe that it is appropriate to extrapolate from that experience to the global arena? Won't the effectiveness of the international system, joint implementation, and the Clean Development Mechanism depend on different factors, such as the rules and procedures governing these mechanisms, the extent of participation by other countries, including developing countries, etc?

21a. In her testimony, Dr. Yellen stated that part of doing it smart (i.e., lowering the costs of reducing greenhouse gas emissions) under the Kyoto Protocol means "taking serious and responsible steps in the short run to prepare us to meet our obligations in the longer term." She indicated that these steps include a $6.3 billion program of tax cuts and R&D investments, industry-by-industry consultations to prepare emission reduction plans in key industrial sectors, and legislation to restructure the electrical industry. Under what authority is the Administration pursuing this unilateral executive branch course of action in furtherance of the treaty's emissions reductions targets and without Senate ratification?

21b. If the Administration is delaying the submission of the treaty to the Senate until it obtains "meaningful participation" by developing countries, doesn't that decision also require the

Administration to delay any unilateral executive branch action to address global warming until that cooperation is forthcoming?

21c. Given that the Kyoto Protocol seeks to address a global issue, isn't harmful to U.S. interests to proceed without the full participation of developing countries?

21d. Besides being unconstitutional, isn't it also premature and harmful to U.S. interests to take such unilateral actions, without ratification, when the Administration has characterized the Protocol as a "work in progress" -- a Protocol that "is not yet fully complete nor ready for the President's submission to the Senate"?

D. Cost/Benefit Analysis of the Kyoto Treaty

22a. Please provide any and all analyses that the Administration or any federal agency prepared (or had prepared) or is preparing (or is having prepared) of the costs and benefits of imposing on the U.S. the binding targets and timetables set forth in the Kyoto Protocol for reducing greenhouse gas emissions, taking into account the global implications of the way in which this agreement is structured. Also, please analyze and document the following:

22b. Whether the benefits of implementing this Protocol are justified by the costs;

22c. Evaluate the effectiveness of this agreement by comparing the marginal abatement costs of the most plausible alternative scenarios for meeting the Kyoto targets, given the way in which this agreement is structured, with the marginal costs of other reasonable alternative compliance schemes;

22d. With respect to each scenario that is analyzed, identify the assumptions used, explain any uncertainties concerning the assumptions, and examine the sensitivity of net effects to the different compliance strategies, using a range of plausible assumptions about future economic development and about fundamental climate processes;

22e. Evaluate the opportunity costs of pursuing the Administration's strategy for the abatement of greenhouse gas emissions under the terms of the treaty; and

22f. Evaluate how the benefits and burdens of complying with this treaty would be distributed on the national and household levels, describing, among other things, the disparate regional and industrial sector impacts, and the effects on different income levels.

23a. In evaluating alternative scenarios, please examine the following:

23b. Compare the economic and environmental effects of not including developing countries in the effort to reduce global emissions (with the potential for binding developed

countries to even greater obligations, without limiting developing countries at all) against the effects of addressing greenhouse gas mitigation on a global scale by the international community.

23c. Compare the economic and environmental effects of complying within the timeframes set forth in the Kyoto Protocol with the effects of complying over a longer time period.

23d. Compare the impacts of reducing greenhouse gas emissions using international emissions trading, joint implementation, and the Clean Development Mechanism with the impacts of relying upon domestic emissions permit trading. In this regard, evaluate alternative international trading scenarios: trading only between Annex I countries, trading that extends to a number of "key" developing countries, and trading in which all countries are fully participating.

24. With respect to any analysis provided, please identify and explain the basis for assumptions used regarding such factors as the rate of improvement in energy efficiency, the effectiveness of market incentives in increasing the market share of fuels that emit less carbon, and economic and demographic growth. Also, explain fully any assumptions on how emissions reductions will be achieved as, for example, through the early retirement of coal plants or nuclear plant life extensions.

25. In considering the opportunity costs, evaluate the extent to which the Administration's climate change strategy will require the diversion of funds from savings and/or investments which would have provided other benefits, such as saving social security, or more funding for education, health care, etc.

26. In assessing the impacts on the U.S. of complying with the Kyoto targets and timetables, please explain in detail the potential effects on the following indicators of economic performance: gross domestic product (GDP), per capita GDP, unemployment, income and real wages, trade competitiveness, and energy prices.

27. In assessing the benefits of complying with the Kyoto treaty, please evaluate fully the potential offsetting negative effects of exempting developing countries and of "carbon leakage." Also, if the economies of developed countries experience reductions in economic growth, evaluate the impact that this will have on the ability of emerging countries with export markets to transition to more energy efficient technologies.

28. President Clinton has suggested that the U.S. economy can continue to grow under this agreement. Please indicate at what rate the Administration expects that the economy will continue to grow during the next ten to 20 years if the treaty is ratified and at what rate it is expected to grow if the treaty is not ratified.

29. Have any of the cost-benefit analyses performed by the Administration or any agency been peer-reviewed? If so, please identify the reviewers and provide their comments on all drafts of

the analyses. If not, does the Administration plan to do so? Please describe fully the steps that the Administration plans to take.

30. In connection with these cost-benefit analyses, fully explain how the baseline(s), against which costs and benefits were calculated, was determined.

31a. Please provide all records of written or oral comments from other federal agencies on each of the cost-benefit analyses that were performed.

31b. Please provide all records of comments submitted by federal agencies on Dr. Janet Yellen's draft testimony about the economics of Kyoto for the hearing before the House Commerce Committee on March 4, 1998.

32a. Given the significant economic costs projected by private sector studies, why did the Administration abandon a year and a half-long effort to develop cost estimates of the President's proposed policies to reduce greenhouse emissions?

32b. Please identify any and all private parties that are currently performing economic analyses of the Kyoto treaty or any aspect of it for the Administration. Describe their work and provide all products of their work in draft or final form.

E. International Emissions Trading

33a. Even assuming that effective rules and procedures can be developed for an international emissions trading system and for joint implementation projects and that key developing countries agree to participate, isn't there a real risk that these mechanisms could effect an enormous transfer of wealth and jobs out of this country overseas, especially to the countries of the former Soviet Union, China, India, South Korea, Brazil, and Mexico (i.e., that this system would be essentially a foreign aid program)? Some studies have estimated that more than 50% of our reductions would have to be purchased from other countries.

33b. Please provide and document estimates of the percentage of U.S. emissions reductions that might have to be purchased from other countries to minimize the costs of reducing emissions and which countries likely would be the beneficiaries.

34. What real incentives do developing countries have to participate in the international emissions trading system, which would require them to commit to mandatory reductions, when they can transfer emissions reductions credits in connection with joint implementation projects and obtain financing through the Clean Development Mechanism?

Definitions and Instructions for the Production of Records

1. When a request calls for the production of records, the Subcommittee requests all responsive records that are in the agency's possession, custody, or control through the date of the final submission of records to the Subcommittee, unless the request clearly states that the Subcommittee is only interested in records received during a particular time period.

2. Please sequentially number all records that you produce to the Subcommittee, and indicate the source of any record if the source is not accurately reflected on the record itself. Please submit all records on single-sided paper and submit an inventory of records produced if the volume is more than 100 pages.

3. To the extent practicable, please organize the records or documents in tabbed binders or folders that indicate which records are responsive to which requests for information.

4. For the purposes of this and related requests in the future, the "record" or "records" shall include any and all drafts, originals, and non-identical copies of any item whether written, typed, printed, electronically recorded, transcribed, punched, or taped, however produced or reproduced, and includes but is not limited to any writing, transcription, or recording, produced or stored in any fashion, including any and all computer entries, memoranda, notes, talking points, letters, journal entries, reports, studies, calendars, manuals, press releases, opinions, documents, analyses, messages, summaries, bulletins, e-mail messages (in hard copy and electronic forms), disks, the text of any alphanumeric messages or other electronic paging devices, briefing materials, cover sheets or routing cover sheets and any other machine readable material of any sort whether prepared by current or former officers and employees, agents, consultants or by any non-employee without limitation. "Record" or "records" shall also include redacted and unredacted versions of the same record.

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INDEPENDENT

June 3, 1998

BY FACSIMILE

The Honorable Janet L. Yellen
Chair
Council of Economic Advisers
Washington, D.C. 20500

Dear Chair Yellen:

Your May 18, 1998 partial response to the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs' March 13, 1998 oversight questions about the White House Initiative on Global Climate Change was incomplete with respect to question 4 and failed to provide other requested information and documents. Accordingly, this letter restates that question and renews my request for the information and documents responsive to my original request.

Question 4 asked you to provide a table with FY 89 - FY 99 historical budget authority for your agency for any other components of the Administration's climate change program. My question was intended for you to include not only program dollars but also salaries and expenses account dollars since they account for most of your agency's expenditures. In fact, because your agency has been a major participant in the Administration's climate change policy development process, your staff time has probably been considerable.

Finally, while I appreciate your agency's effort to develop answers and locate responsive documents for my remaining questions, it has already taken more than two and one-half months to conduct a search. I have specifically excluded the Council on Economic Advisers (CEA) from my requests for subpoenas from Chairman Burton in the hope that CEA would be responsive. Unless you can commit to a full and prompt response and production of documents, I will pursue the issuance of a subpoena from Chairman Burton.

Please contact Subcommittee Senior Counsel Keith Ausbrook at 225-4407 to discuss the production of documents and any other questions you may have regarding the Subcommittee's requests. All responses and documents should be produced to the Subcommittee office in Room B-377 Rayburn House Office Building.

Thank you in advance for your attention to these matters.

Sincerely,

David McIntosh

David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs

cc: The Honorable Dan Burton
The Honorable John Tierney

DAN BURTON, INDIANA
CHAIRMAN

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BERNARD SANDERS, VERMONT
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June 4, 1998

The Honorable David McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
B-377 Rayburn House Office Building
Washington, DC 20515

Dear Chairman McIntosh:

Yesterday, you wrote Dr. Janet Yellen, Chair of the Council of Economic Advisors (CEA), to threaten the issuance of a subpoena if she does not "commit to a full and prompt response and production of documents" related to U.S. policies on global warming.

Your approach is inappropriate. Many of the documents you request relate to ongoing international negotiations. The Administration is rightly concerned that releasing information that outlines the U.S. negotiating position and its objectives would undermine the ability of our negotiators to do their job effectively.

Despite those genuine concerns, in response to a request by Rep. Schaefer, the Chairman of the Subcommittee on Energy and Power, and in response to your request, the CEA has made relevant documents available to Congress for review. The minority staff of the Government Reform and Oversight Committee viewed these documents at the CEA's offices before the hearing on May 19, 1998. It is my understanding that your staff did not take advantage of this opportunity. The Administration has also indicated that they will continue to make every effort to provide necessary information.

The cooperative effort of the Clinton Administration stands in stark contrast to the actions you took as Executive Director of the White House Council on Competitiveness during the Bush Administration. As you know, the Council on Competitiveness was formed to coordinate and review the Administration's regulatory policy. During your tenure, the Council intervened to weaken or delay numerous regulations to protect workers and the environment. According to an article by Bob Woodward in the *Washington Post* in 1992, the Council operated with a "no

fingerprints" policy.[1]

Despite requests from several congressional committees, the Bush Administration's Council on Competitiveness refused to provide Congress with even the most basic information about its activities. For example:

- The Council refused to provide Congress with a list of reviewed regulations. According to the *Washington Post* article, the Council reviewed approximately 50 regulations annually. However, when Rep. Skaggs, then Chairman of the Subcommittee on Treasury, Postal Service, and General Government, requested the list of regulations in which the Council had significant involvement, he received virtually no information. The Council refused to provide him with a list, claiming that it would impose an "extraordinary burden" on Council staff.[2]

- The Council refused to provide copies of written communication between its staff and rulemaking agencies. The Council claimed that "disclosure of these communications would inhibit the candor of those participating in the process, and as a consequence, injure the quality of decision making." The Council also noted that, "consistent with Administration policy," these types of communications were not disclosed.[3]

- The Council even refused to provide Congress with the identities of outside interests that had contacted the Council to seek relief from regulations. The Council took the position that its communications with groups seeking regulatory relief were "pre-decisional and deliberative in nature," and claimed that "it is Administration policy that these types of communications are not disclosed."[4] The Council took this position even though no court has ever extended the deliberative process privilege to communications with outside groups.

I have enclosed copies of relevant documents that provide further detail on the refusal of the Council on Competitiveness to cooperate with Congressional oversight activities during your tenure there.

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[1] "Quayle's Quest: Curb Rules, Leave 'No Fingerprints'," *The Washington Post*, January 9, 1992.

[2] Office of the Vice President, Response to Questions Submitted For the Record Submitted by Mr. Skaggs, p. 2, April 29, 1992.

[3] Ibid., p. 2.

[4] Ibid., p. 3.

The Honorable David McIntosh
June 4, 1998
Page 3

I hope that you and your staff take the opportunity to view the documents that the Administration has made available. Subpoenaing and publicly disclosing sensitive documents would be unreasonable and constitute an attack on the Administration during its ongoing negotiation of the Kyoto Protocol. It would also be inconsistent with the approach you followed while at the White House Council on Competitiveness.

Sincerely,

Henry A. Waxman

Henry A. Waxman
Ranking Minority Member

cc: Members of the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs

The attached document is the response by the Office of the Vice President to questions for the record submitted by the Subcommittee on Treasury, Postal Service and General Government for the Subcommittee's March 17, 1992, hearing.

It was submitted to the Subcommittee on April 29, 1992 by the Office of the Vice President.

QUESTIONS FOR THE RECORD SUBMITTED BY MR. SKAGGS

White House Office

What criteria is used in determining whether a Presidential trip is for "offici business" or political/campaign purposes? Who makes this decision? Is there ar independent oversight of this decision?

White House officials evaluate each proposed trip to determine whether it is offici or political in nature. Among the criteria considered are the individual(s) or group(making the invitation, those individuals or groups meeting with the President or Fir Lady, and the nature of the remarks.

Following the trip, the actual schedule of the trip and remarks by the President ai reviewed to ensure that events occurred as planned. This final review determine the actual designation of the trip (ie. official vs. political). Since itineraries ma change once a trip begins, the final review is critical. When the trip is designate as political or mixed (official and political), a trip summary is approved and is signe off by the appropriate official with the White House Counsel's Office, Advanc Office, Political Affairs Office, and White House Operations. The Deputy Assistar to the President for White House Operations approves and signs a trip summary fc trips designated as 100% official.

Regardless of the nature of the trip, certain individuals are designated as offici travellers at all times. In addition, a travel authorization form for each traveller i prepared and signed by the Deputy Assistant to the President for White Hous Operations for each and every trip.

The General Accounting Office (GAO) periodically reviews the White House trave expenses and trip summaries for the accounting of official charges. In the pas GAO has found the methods in accounting for travel expenses to be appropriate.

Special Assistance to the President

How many of the Office's requested 26 FTEs are assigned to the Council o Competitiveness? How much are you requesting to fund these FTES?

There are no full-time staff dedicated to the Council. Two of the twenty-six FTE requested by the Office of the Vice President would devote a substantial amount c their duty hours (approximately 70 to 80 percent) to supporting the Council. Th funding required is $86,000.

Please submit a complete list of regulatory proposals or other cases in which th Council on Competitiveness has been involved. What criteria does the Council us in choosing which cases to work on?

The Council is involved in a wide range of regulatory and competitiveness issues Among the more significant are those described in the attached fact sheets an press releases that discuss the Council's activities to date. The President ha directed that the Council serve as the coordinating body for regulatory review unde Executive Orders 12291 and 12498. These executive orders also contain the criteri that the Office of Management and Budget (OMB) and the Council use in reviewin regulations and discussing regulatory policy.

The Council's regulatory review activities involve working closely with OMB in carrying out that agency's regulatory review program. Normally, the items it considers are those that present difficult issues requiring Cabinet-level attention, and particularly where there is a policy disagreement among agencies who have an interest in the regulatory issues. The Council recently acted to coordinate activities during a 90-day regulatory review period for all Federal regulations. In requesting agencies to undertake this review, the President also established criteria to be used in evaluating regulations. The relevant executive orders and a copy of the President's memoranda are attached.

Please describe each regulatory proposal as it came before the Council or its staff and then describe the position advocated by the Council or its staff regarding the regulation. Finally, please describe all changes in proposed regulations, as they were finalized, reflecting the comments of the Council and its staff.

The broad scope of this request would require by its literal terms a description of every proposed regulation reviewed by the OMB since the inception of the Council in its present form on March 31, 1989. Under the process established by Executive Orders 12291 and 12498, the Office of Information and Regulatory Affairs (OIRA) reviews approximately 2,200 regulations each year, although the figure reached 2,523 in 1991. This request also encompasses various drafts of the regulations and a description of positions taken by various agencies during the review process. The process of identifying, gathering and reviewing these materials for release would impose an extraordinary burden on the limited staff resources of the Council and OMB. The Council would be happy to respond to particular questions about particular regulations that may be of interest to the subcommittee.

Please submit a copy of all written communications made by the Council or its staff to all departments and agencies on any of these proposals.

Council staff frequently meets with OIRA on regulatory issues that are being coordinated and these meetings often involve interested agency staff. No detailed records are kept of communications that occur on these occasions, particularly where oral deliberations are involved. In addition, telephone conversations take place during the review process and no records are kept of routine communications of staff members.

Those written documents that are generated in the course of deliberations on a regulatory issue are pre-decisional and deliberative in nature. Disclosure of these communications would inhibit the candor of those participating in the process and, as a consequence, injure the quality of agency decision making. Consistent with Administration policy, these types of communications involving Cabinet-level bodies are not disclosed except in extraordinary circumstances. However, if the subcommittee has specific questions concerning particular regulatory issues, the Council will seek to provide responsive information.

For each of the regulatory cases that the Council has considered, please list all communications that the Council has received -- oral or written -- from outside interests. Please provide the Committee a copy of any written materials received.

Council staff frequently meet with interests outside the government on regulatory issues that are being coordinated. No detailed records are kept of communications that occur on these occasions, particularly where oral deliberations are involved. In addition, telephone conversations take place during the review process and no records are kept of routine communications of staff members.

Those written documents that are generated in the course of deliberations on regulatory issue are pre-decisional and deliberative in nature. Disclosure of thes communications would diminish the candor of those participating in the process an therefore injure the quality of agency decision making. It is Administration polic that these types of communications are not disclosed except in extraordinar circumstances. However, if the subcommittee has specific questions concernin particular regulatory issues, the Council will seek to provide responsive information

When the Council reviews regulations and receives communications from outsid parties during that review, are the factual communications included in the rulemakin docket? Are the Council's own comments to the regulatory agency included in th docket? If not, why not?

It should be emphasized that the Council itself does not engage in rulemaking Instead, it assists in the coordination of the Administration's review of regulation being promulgated by Executive Branch agencies and departments. The agencie and departments involved retain the statutory responsibility for making their decision based upon the record that is developed. The Council works with them to ensur compliance with all of the relevant provisions of the Administrative Procedure Ac that are required for implementing regulations. Where meetings with outside parties are involved as a result of the Vice President's policy to be available to all member of the public who wish to communicate with him or his staff on policy matters, Council staff is available to work with the agency. This helps ensure that the rule issued by the agency are based on information and data placed in the rulemaking docket where required as of the date of promulgation.

OMB's practice is to invite the rulemaking agency to all meetings that OMB staff has with outside interests. Does the Council follow this practice? If not, why not?

The practice of the Council is to invite staff of the rulemaking agency to participate in deliberations when the agency has an interest in the regulatory agency being discussed. When Council staff meets with persons outside of government, they may or may not invite representatives from various agencies. Agency representatives may not be invited on some occasions simply because it would be inconvenient o inapropriate. This practice is consistent with the general policy followed for all meetings in the Office of the Vice President.

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ONE HUNDRED FIFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

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BERNARD SANDERS, VERMONT
INDEPENDENT

June 5, 1998

The Honorable Henry Waxman
Ranking Member
Committee on Government Reform and Oversight
U.S. House of Representatives
Room B-350A Rayburn House Office Building
Washington, D.C. 20515

Dear Ranking Member Waxman:

I am in receipt of your June 4, 1998 letter regarding your concerns with the Subcommittee's requests for documents from the Council on Economic Advisors (CEA).

Your letter mistakenly suggests that the documents made available by CEA to the Subcommittee staff that are responsive to requests from the Subcommittee on Energy and Power are the same documents that are responsive to this Subcommittee's March 13, 1998 request. They are not. Indeed, at the end of the Subcommittee hearing on May 19, 1998, Dr. Yellen expressly acknowledged that CEA was "working very hard at getting the answers" to the Subcommittee's inquiries. May 19, 1993 Hearing Transcript at 123.

Moreover, neither the White House Counsel's Office nor the CEA has ever suggested to the Subcommittee that the documents requested in the Subcommittee's March 13, 1998 letter cannot be released because doing so might undermine the Administration's position in international negotiations. Again, Dr. Yellen testified at the May 19 hearing that only "the documents <u>that we have offered you access to</u>" implicate the Administration's negotiations. May 19, 1998 Hearing Transcript at 55 (emphasis supplied). These documents are only the documents responsive to the Subcommittee on Energy and Power's request, not this Subcommittee's request.

I also fail to understand how the documents that the Subcommittee has requested could undermine the United States negotiating position. For example, there is no basis for withholding economic analyses on which the Administration relies (or chooses to disregard) for its claims that the impact of implementation of the Kyoto Protocol on American jobs and the economy would be "modest." Yet CEA continues to withhold this material.

The Subcommittee can only make an informed decision with respect to CEA's withholding of documents if CEA identifies with particularity those documents that it intends to withhold and the reasons for withholding them. To date, CEA has not produced the requested documents or any valid explanation for not producing them. Thus, raising the possibility with

CEA of obtaining a subpoena at this time is not only appropriate but also the only responsible way to conduct oversight on these issues.

The Subcommittee is seeking to fulfill its Constitutional responsibilities on behalf of the American people who are entitled to know the facts concerning the Administration's efforts on global warming. I know that you do not want to be a party to concealing those facts.

As always, I appreciate your continuing interest in the work of the Subcommittee.

Sincerely,

David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs

cc: The Honorable Dan Burton
The Honorable John Tierney

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BERNARD SANDERS, VERMONT
INDEPENDENT

June 16, 1998

The Honorable David McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
B-377 Rayburn House Office Building
Washington, DC 20515

Dear Chairman McIntosh:

I am writing in response to your June 5, 1998, letter. I regret that you did not address my main point, which is that the Council of Economic Advisors under this Administration has been much more responsive to requests for information than the Council on Competitiveness was under the Bush Administration.

Moreover, you are simply wrong when you assert that the documents made available by CEA to the Subcommittee on Energy and Power are not responsive to your Subcommittee's request. While it is true that you have asked for some information not provided to the Subcommittee on Energy and Power, the fact is that there is substantial overlap between the information you seek and the information sought and provided to the Energy and Power Subcommittee -- and made available to you. For example, the Subcommittee on Energy and Power requested analysis and documentation that supported Dr. Yellen's testimony regarding the cost of complying with the Kyoto Protocol. Similarly, the main thrust of your request is for back-up and documentation of the economic conclusions reached by CEA.

On May 18, 1998, CEA provided responses to questions 1-7 of your request and they are continuing to respond to your Subcommittee's request. It thus seems clear that their cooperative effort stands in contrast to the precedent followed by the White House Council on Competitiveness during the Bush Administration.

Sincerely,

Henry A. Waxman
Ranking Minority Member

cc: Members of the Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs

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