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March 12, 2009

The Honorable Peter Orszag
Director
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

Dear Mr. Orszag:

On January 30, 2009, President Obama issued an Executive Order revoking two previous Executive Orders: Executive Order 13258 and Executive Order 13422. Both of these Executive Orders amended Executive Order 12866 on regulatory review. On January 30, 2009, he also signed a "Memorandum For the Heads of Executive Departments and Agencies" (Memorandum) requesting that you consult with representatives of regulatory agencies and produce within 100 days a set of recommendations for a new Executive Order on Federal regulatory review, presumably to replace and improve Executive Order 12866.

As Ranking Member of the House Oversight and Government Reform Committee, which has legislative jurisdiction over the Paperwork Reduction Act, legislation that created the Office of Information and Regulatory Affairs (OIRA), I am very interested in your efforts to revisit E.O. 12866. This executive order has governed inter-agency review of regulations since 1993. As you are aware, it is also the product of decades of regulatory reform. Any change to this directive should be approached with caution and with an eye towards improving regulatory effectiveness while minimizing regulatory burden.

I support the President's recognition that regulatory decisions can have significant consequences for the health and welfare of our country as well as its economic prosperity. However, overly prescriptive and burdensome regulation can harm the recovery and resurgence of American business and undermine job creation and economic growth.

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Modernizing Regulatory Review

This opportunity to rethink our system of regulation is timely, as the regulatory institutions and approaches of the 20th Century are becoming decreasingly relevant and effective in the 21st Century. Our modern, global, knowledge-driven economy is increasingly burdened by a regulatory system designed for a bygone era. Today's system of regulation suffers from several problems, including the lack of a consistent framework for evaluating the performance of regulations; a harmful suspicion of new technologies; and a lack of transparency that enables interest groups to pressure regulators to design regulations to their advantage and to their competitors' disadvantage.

There are several potential solutions to these problems that you should consider while revising Executive Order 12866. First, it is essential that our regulatory system be performance-based and outcome oriented. Every regulation should be clear in stating how it will produce concrete public benefits and how the agency issuing it will measure whether the regulation is or is not achieving its stated objective. Thus, a revised executive order should require agencies to identify, for each regulation, the outcome the regulation is designed to achieve, long-term performance metrics that measure whether the regulation is successful, and to report on the regulation's performance each year.

Second, a revised regulatory framework should recognize that biotechnology, nanotechnology, and other new technologies have the potential to improve the state of the world in many ways. While these technologies also carry some amount of risk, they must be evaluated in a reasoned process, rather than a process driven by stigma and emotion. Thus, a new regulatory framework should prohibit regulatory discrimination against a product based on the process by which it was produced and judge the product based solely on the evidence of the risk of the product itself.

The Role of Science

Another key area for consideration while revising Executive Order 12866 is the role of science. Difficult scientific questions underpin many key rulemakings. The need for accuracy, objectivity and transparency in the analysis of potential risks is of paramount importance to the rulemaking process and effective decision making. While some have expressed concern over the politicization of science, it is also clear that allowing scientific positions on major issues to stand without review and appropriate scientific vetting from other scientists within the government and stakeholder community may also be a mistake. I ask you to give this issue special consideration as you move forward to revise this important Executive Order.

Enhanced Transparency

Finally, increased transparency in the regulatory process is necessary. The vast regulatory bureaucracy often operates in relative secrecy while imposing significant costs on our economy. In addition, a lack of transparency enables well-connected firms to utilize regulation as a tool to give themselves a competitive advantage in the marketplace

or even eliminate competitors altogether. There are several ways that you could increase transparency in the regulatory process. You could direct the Office of Information and Regulatory Affairs (OIRA) to develop and publicize a score card that rates the quality of the analysis supporting all major regulations as well as create a publicly accessible wiki-style version of each proposed regulation that allows the public to make comments and suggestions. In addition, you could direct each agency to perform an assessment of the effects of each major regulation on competition.

Currently, agencies are required to publically disclose changes in a regulation that occur as a result of formal review by OIRA. However, extensive discussions can occur between an agency and OIRA staff during the informal review period. As the Obama Administration is seeking to establish a new level of transparency and openness, I call on you to require agencies to make public all changes that arise as a result of both the formal and informal review process.

I also respectfully request that the Administration conduct any revision of E.O. 12866 in an open process that allows for and invites public participation and comment. As the Memorandum states, changes to Executive Order 12866 should encourage public participation and should provide guidance on disclosure and transparency. The most appropriate way to signal this transparency and the encouragement of public participation would be to allow the public to comment on any recommended changes to Executive Order 12866 before they are finalized. While I fully recognize the prerogative of the President to issue and revise Executive Orders as necessary, I believe this step of allowing public participation in the review and revision of Executive Order 12866 will produce an improved document that will have broader support of the American public.

Conclusion

As you are aware, the American economy is in a perilous state. Accordingly, it is now more important than ever that the Administration understand the full implications new regulations will have on the economy before they take effect, as well as understand what current regulations are working and what regulations are failing to achieve their objectives. A centralized, rigorous, and transparent review process, focusing on regulatory performance and outcomes, is the best way to weed out ill conceived regulations that can do more harm than good.

Sincerely,



Darrell Issa
Ranking Member

cc: Edolphus Towns
Chairman