

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

March 30, 2009

Honorable Peter R. Orszag
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Mr. Orszag:

We are writing to express concern over possible changes to Executive Order 12866, which currently forms the basis for OMB review of proposed federal rules and regulations.

For 16 years, E.O. 12866 and subsequent amendments have served to help reduce regulatory duplication and inconsistency. They have empowered OMB to review significant regulations before federal agencies can finalize them.

We strongly support reducing burdensome, costly rules and regulations that can destroy jobs, increase costs for consumers and businesses, and weaken America's global economic competitiveness. Rules issued by government agencies have the effect of law, and should be used sparingly. In developing those rules, agencies must abide by several overarching principles: (1) they must be beneficial for the public; (2) they must also be developed in an open and transparent manner; and (3) the benefits they place on our nation must outweigh the burdens. These principles are important components of E.O. 12866. Any proposed improvements to the regulatory process must include these basic principles if America's taxpayers are to be well served.

The concept of openness underlies the trust the American people have in our system of government. If anything, we need to see more openness, disclosure and review in our regulatory system, not less. Anything you can do to encourage agencies to provide the public more complete and timely information about their rulemaking would serve to promote public involvement and participation.

Moreover, the principles behind E.O. 12866 should also apply to all Executive Branch officials who are currently outside the agency rulemaking process but who may be involved in the development of new regulations. We refer specifically to individuals who are commonly referred to as "czars," and who oversee broad policy areas. While not subject to confirmation and legislative oversight, they may nevertheless be playing key roles in the shaping of agency decisions. If we are to promote openness and transparency in government, these individuals and their involvement should also be covered by the President's rulemaking directives.

As for the burden that regulations place on the economy, we must continue to weigh their costs against their benefits. Cost-benefit analysis is a method of determining whether to proceed with a given course of regulatory action. Doing such analysis helps keep regulators focused on the consequences of their decisions and provides a built-in check against excesses. We may take issue with some specific cost-benefit determinations, but we cannot think of a better mechanism to test the reasoning and assumptions behind proposed regulations. We hope this provision will not be dropped along the way during your review of E.O. 12866.

We would further emphasize the importance of the authority E.O. 12866 grants to OMB for regulatory action that “will likely result in a rule that may have an annual effect on the economy of \$100 million or more.” We would ask that you take into account the current condition of our struggling economy when reviewing this executive order and consider a slight decrease from the \$100 million threshold to coincide with the current condition of our economy. This slight decrease would ensure a greater emphasis on regulations’ impact on the economy during these troubling economic times.

Finally, we trust that regulatory review will emphasize the need to test proposed rules against the best available information and science. Rigorous scientific analysis should be applied to underlying assumptions before OMB ratifies regulatory decisions affecting millions of Americans for years to come.

The principles guiding the current system of regulatory review have long been in place and are widely accepted. Any revisions to the process must keep the basic tenets that have served our nation well. We urge that any proposed changes to E.O. 12866 enhance executive branch review of regulations, while maintaining the best of the current system.

Sincerely,



Senator James M. Inhofe
Ranking Member
Committee on Environment and
Public Works



George V. Voinovich
United States Senator