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9:45 AM

THE WHITE HOUSE

WASHINGTON

April 5, 1979

MEMORANDUM FOR THE PRESIDENT

FROM: Frank Moore

SUBJECT: Your Meeting with Senator Ribicoff  
at 9:45 a.m., Friday, April 6

Before your meeting with Senator Ribicoff Friday morning, it is important that you have a few bits of information not included in the briefing paper:

- Senator Ribicoff had originally scheduled a hearing on our regulatory reform proposals for 10:00 a.m. Friday. Because of his meeting with you at 9:45 a.m., he has delayed the hearing until 11:00 a.m.
- The Senate Governmental Affairs committee agenda is replete with Administration initiatives and issues. We are in frequent contact with his staff in an effort to prevent bottlenecks and conflicting demands. Among the issues currently before Ribicoff's committee, or scheduled to come before the body this year, are:

\* Reorganization Plans

- Natural Resources
- Alaska gas pipeline
- Foreign assistance
- Economic Development
- Surface Transportation

\* Authorizations

- Office of Federal Procurement Policy
- President's Commission on Pension Policy

\* Confirmations

- John White, Deputy Director, OMB

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\* Confirmations (Cont.)

-- Scotty Campbell, Director, OPM

-- Adm. Freeman, Administrator, GSA

\* New Initiatives

-- Federal Compensation Reform

-- Regulatory Reform

- The information on the Department of Education contained in the briefing paper has been superceded by new developments this afternoon. The Department of Education bill was brought up on the Senate floor today and most of the opening statements were completed. However, Senator Helms introduced a surprise, unprinted amendment repealing Supreme Court jurisdiction over school prayer issues. The motion to table the amendment lost on a 43-43 tie vote. On the vote on the amendment itself, the amendment carried 47-37. We are working with Senators Byrd, Kennedy, Ribicoff, Judiciary and Government Operations committee staffs to win the vote on a motion to reconsider. That vote will be shortly after Noon on Monday. If we are unsuccessful in that effort, it could be a fatal blow to the Department of Education bill this year.

**THE WHITE HOUSE**

WASHINGTON

April 5, 1978

MEETING WITH SENATOR ABRAHAM RIBICOFF

Friday, April 6, 1979  
9:45 a.m. (15 minutes)  
The Oval Office

From: Frank Moore

I. PURPOSE

To talk to Senator Ribicoff about DNR and other subjects.

II. BACKGROUND, PARTICIPANTS & PRESS PLAN

A. General Background

(a) General

The Senator will probably want to discuss subjects other than DNR with you today, although he is aware your primary interest is in discussing the reorganization plan. He is likely to discuss MTN, trade matters and the Middle East, and may give you a progress report on the Department of Education bill.

On DNR, we have provided you a speech the Senator inserted in the Congressional Record stating his position on the issue of legislation vs. plan. We have also attached Senator Byrd's letter and a memorandum prepared by Harrison Wellford justifying your use or reorganization authority in this instance.

At the end of the briefing paper, we have added a section on Ribicoff's interest in trade matters, the Middle East and on the legislative status of the Department of Education.

B. Participants: The President, Senator Ribicoff, Secretary Andrus, Jim McIntyre and Frank Moore

C. Press Plan: White House photo only.

### III. TALKING POINTS

#### A. Opening Position - Use of Plan Only

For the past month, we have been negotiating with the Senate and House Government Operations Committees on the timing and legislative vehicle to accomplish the natural resources reorganization. Also during this time, DPS has been trying to drum up support among the timber industry.

Ribicoff continues to oppose our proposal to reorganize Interior, the Forest Service and NOAA into the Department of Natural Resources by using reorganization alone. Specifically, Ribicoff believes that our proposal is so extensive that it would have the effect of creating a new department. Reorganization authority permits the transfers of functions among departments and the renaming of departments, but not the creation of departments. Ribicoff has enlisted the support of 12 of the 17 members of his Committee, as well as Senator Byrd who has written you (attached).

We recommend you try to convince him to accept a plan. His agreement is critical because any attempt to submit our most ambitious plan over his objection would be overwhelmingly defeated on procedural grounds. Arguments you can use include:

1. One of the major campaign commitments was to reorganize the government. The Congress gave you this authority to meet this commitment and you want to use it.
2. Under the best of circumstances, legislation could not be enacted until the end of the session. A plan takes 60 legislative days. It will be important to accomplish natural resources reorganization early so that the Senate can turn its attention to matters such as SALT and MTN.
3. An inevitably lengthy legislative process will cause the most program and bureaucratic disruption - at substantial costs to resource developers and users.
4. Our proposal is pure reorganization. We propose to transfer the functions and offices of Forest Service and NOAA to Interior, change its name to Natural Resources, and reorganize some internal Interior agencies. We do not propose to change the missions of programs or create or abolish functions. (A more detailed argument based

on the Wellford memorandum would be appropriate here.)

5. As we have done with the other reorganizations, we will work very closely with his committee in fashioning the reorganization plan. Furthermore, we will provide whatever detail is necessary for his hearings so there will be a full legislative history.

#### B. First Fallback - "Bare Bones" Plan

Based on our conversations with Ribicoff's staff, we believe he will be unlikely to change his mind. A first fallback position would be to offer a "bare bones" plan that only transfers the Forest Service and NOAA and changes the name to Natural Resources. The other reorganizations to reform the rest of Interior would be deferred. With this option, we could lose support among those interest groups who believe Interior needs to be reformed and who question moving two efficient agencies into a less efficient Interior Department. Arguments you can use include:

1. This option responds to your objection about wholesale revamping of the organizational structure at Interior. For the most part, this option would retain the existing structure at Interior and simply add the Forest Service and NOAA as companion agencies to many of those that exist within the Department now.
2. Although the plan would be less sweeping under this option, it would accomplish my basic objectives and not subject the proposal to immense complications that are likely if we use legislation.
3. Later, additional reorganization within DNR may be necessary but those decisions would be deferred and would not be proposed without Congressional consultations.

#### C. Second Fallback - Plan and Legislation

Should Ribicoff refuse your request to use plan alone, a second fallback position would be to introduce both plan and legislation. While this compromise has problems, it is preferable to either forcing a plan on Ribicoff over his objections or proceeding by legislation alone.

Ribicoff would have to agree to mark-up the legislation very quickly, and we would incorporate his mark-up in the plan we submitted to the extent possible. Ribicoff would report out the plan and the Senate would vote on the plan first. In the event of a positive vote on the plan, then the legislation could go forward.

The legislation would include material already in the plan, as well as additional proposals (mission, new functions, etc.). Should the Senate later amend the legislation unacceptably (e.g., not transfer the Forest Service) you would have to veto it. Preliminary indications from Ribicoff's staff are that the Senator might accept this.

The major risk in this strategy is that other members of the Senate may be unwilling to deal with a plan on the Senate floor when legislation is pending in the committee. Thus, we would have to work with Ribicoff to gain the commitment of Byrd, Jackson, Magnuson and other key leaders to this strategy. If Ribicoff agrees to a strategy using both plan and legislation, he may insist that we convince Jack Brooks to follow the same strategy. However, Brooks has shown little enthusiasm for this dual track strategy because he believes a plan has a greater chance and we agree. You should not promise to "deliver him".

#### Department of Education - Status

You should thank Chairman Ribicoff for his enthusiastic support of the Department of Education bill.

The bill came up on the Senate floor Thursday. Ribicoff and Byrd are trying hard to get a time agreement. The Republicans are stalling, hoping to delay the bill until after the recess

#### Middle-East

Emphasize to Senator Ribicoff the urgency of moving legislation as quickly as possible. While he is not on any of the committees handling this legislation, we should seek his help on the floor.

SENATOR ABRAHAM RIBICOFF

Wife: Lois

Administration Support:84.8%

Committees: Governmental Affairs, Chairman  
Finance (3)  
Select Committee on Ethics  
Joint Committee on Taxation

REASONS FOR USE OF THE REGULAR LEGISLATIVE PROCESS TO CREATE A DEPARTMENT OF NATURAL RESOURCES

• Mr. RIBICOFF. Mr. President, as chairman of the Committee on Governmental Affairs, I should like to state my views regarding the administration's proposal to create a new Department of Natural Resources.

The Reorganization Act of 1977 prohibits the use of reorganization plans to create new executive departments. Legal questions aside, it is my belief that large-scale cabinet-level reorganizations, which involve major policy and organizational shifts, are too complicated substantively and politically to be handled through the Reorganization Act authority.

Last week, the administration proposed the establishment of a new Department of Natural Resources by use of Reorganization Act authority. Such a department would be responsible for the Nation's oceanic, atmospheric, and public land programs, including timber, atmospheric, and public land programs, including timber, wildlife, mineral and energy resources. In these vital areas, it will be asked to make difficult, complex decisions in balancing the competing claims for the use of public resources. For this reason, every document supplied to the Congress by the OMB Reorganization Task Force has stressed the necessity of accompanying natural resource consolidation with a strong and clear statement of mission for the new Department. Thus, the OMB stated:

Our natural heritage involves a vital, continuing and interrelated portion of the total public interest, warranting creation of a Cabinet department to assure the key policy and management for natural resources. The establishment of a clear statement of mission and mandate to the new Department is a key element of this option.

I believe the Congress should express itself very clearly and forcefully regarding the mission and purpose of a new DNR, but no such statement of mission can legally be included in a reorganization plan. Thus, under the administration's proposal, the Nation would end up with a single, consolidated natural resources department that had no legislative guidance or direction as to priorities or the balancing of competing interests.

Further, in order to accomplish the missions that will be assigned to the new department, the administration plans to create a wholly new structure. This structure would not just build on the existing Interior Department, NOAA and Forest Service structures but would represent a completely revamped set of organizational relationships. As the OMB staff documents state:

The internal organization of the DNR has a significant bearing on how well its potential benefits are achieved. The many interrelationships among the programs comprising the DNR constitute the major premise for bringing them together in the same Department. The internal structure is an important means of capitalizing more closely on these interrelationships.

At present, it is my understanding that the administration is leaning toward the creation of five new operational programs administrations, each headed by an Administrator, as well as the creation of a new deputy secretary, an undersecretary and several assistant secretaries. This substructure, and the key interrelationships the OMB argues are so important, should be determined by Congress and not by the Executive alone. A reorganization plan would give Congress little or no say on how such interrelationships would be forged or on the manner in which particular departmental functions would be carried out.

Finally, though the Governmental Affairs Committee will attempt to move with dispatch, as it did regarding the Department of Energy, full legislative hearings should be employed so that all voices—individuals and public and private interest groups—would have a chance to be heard. This is impossible with the 30-day deadlines imposed by use of Reorganization Act authority.

Section 905(a) of the Reorganization Act of 1977 states that no reorganization plan may provide for or "have the effect of creating a new executive department." It is my belief—and the belief of a number of other Senators—that this prohibition was written into the law to cover just the kind of situation we are facing in this instance. Thus, while I think that Congress should give the President's proposal careful and prompt attention, the appropriate means for the creation of a Department of Natural Resources is through the regular legislative process. •

United States Senate  
Office of the Majority Leader  
Washington, D.C. 20510

715  
C. J. Cavanaugh  
Forest  
Cavanaugh

March 12, 1979

The President  
The White House  
Washington, D.C.

Dear Mr. President:

I am writing to express my opposition to your intention to create a new Department of Natural Resources by a reorganization plan. I urge you to submit your proposals for such a department to the requirements of the normal legislative process.

The Reorganization Act authority on which you rely permits reorganization plans which change the name of a department and transfer functions from one department to another. Since 1964, statutory restrictions written into renewals of the Reorganization Act have prohibited reorganization plans which "provide for" or "have the effect of" creating new cabinet departments. Congress has repeatedly made it clear that major reorganizations of executive departments must be handled through the full legislative process.

I have not reached any judgement about the merits of the proposed reorganization. I am familiar enough with the scope of the proposal to believe that proceeding by reorganization plan would violate the spirit, if not the letter, of the Reorganization Act. Proposals for a Department of Natural Resources have a long history, and they have excited support and aroused opposition precisely because they represented a major departure from our current approach to resource management. Transferring major agencies like the Forest Service, which includes 26 percent of the employees of the Department of Agriculture, and the National Oceanic and Atmospheric Administration, which comprises 43 percent of the Commerce Department, are the earmarks of a major reorganization. The goal of the reorganization -- the creation of one department with the mission and the power needed to manage our precious natural resources in a comprehensive and far-sighted way -- plainly indicates that a new department is envisioned.

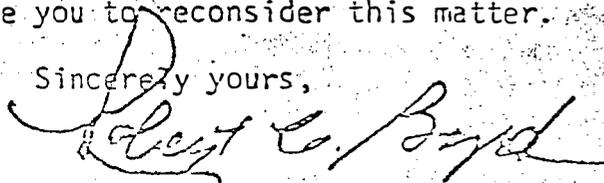
The Reorganization Act, of course, places strict time limits on Congress and ultimately permits Congress only an up or down vote on the plan submitted. For this reason, proceeding by plan precludes the kind of study and amendment, refinement and compromise that follows from full Congressional consideration. The process and its limits are well-suited to minor transfers within the Executive Branch. However, in a major reorganization, proceeding by plan improperly transfers what are essentially legislative functions and responsibilities from Congress to the White House.

Moreover, a new department created by reorganization plan is destined to be inadequate. Presumably, the Administration seeks this reorganization because our current approach to resource management evolved piecemeal over time, and the agencies are hampered by mandates which are overlapping or irreconcilable. A reorganization plan cannot include a statement of mission for the department. It cannot spell out the powers which the Secretary must have to pull together a department comprised of agencies which have traditionally been independent and sometimes antagonistic. These and other issues essential to the department's success can only be addressed through legislation.

The Administration may believe that proceeding by plan affords the best chance of success. This conclusion seems highly questionable, at best. Proceeding in this fashion gives Senators a reason to oppose the proposal, regardless of its merits. There is one other unfortunate political consequence: Supporters of the status quo will fight the idea regardless of its format, but the chance to rally the support of those who might be enthusiastic could be lost if the effort is portrayed as a major reorganization, to be brought about by plan rather than the normal legislative process.

For all these reasons, I urge you to reconsider this matter.

Sincerely yours,



Robert C. Byrd



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

April 5, 1979

TALKING POINTS  
FOR YOUR MEETING WITH SENATOR RIBICOFF --  
USE OF REORGANIZATION PLAN v. LEGISLATION  
FOR NATURAL RESOURCES REORGANIZATION --  
LEGISLATIVE HISTORY AND LEGAL POINTS

- . We propose to accomplish three things in DNR:
  - . Change the name;
  - . Transfer NOAA and the Forest Service; and
  - . Reorganize other parts of Interior.
  
- . Reorganization authority speaks to each explicitly:
  - . "change . . . the name of a [department] affected by a reorganization" -- 5 U.S.C. 904;
  - . "transfer . . . the whole. . . of an agency [such as Forest Service] -- 5 U.S.C. 903; and
  - . consolidate "a part of an agency . . . with another part of the same agency" -- 5 U.S.C. 903.
  
- . The statute (5 U.S.C. 905) prohibits a reorganization plan which "would have the effect of creating . . . a new department" -- our position is that "new" means "additional" department, such as Energy. Senator Ribicoff has himself used it in this context (see attached colloquy with Lance on Reorganization Act).
  
- . In 1977, when present Reorganization Act was passed, no legislative history has been found discussing the substance of this provision, other than Ribicoff's colloquy with Lance, above.

- . The prohibition against a "new" department was added to the reorganization legislation in 1963. The recorded debates on this point in 1963, occurred in the House, not the Senate. Congressman Brooks and others who were in the House then and now strongly support our view that "new department" has its plain English meaning, i.e. an additional department which had not previously existed.
  
- . Department of Justice has given a written opinion that a plan is legally permissible for the proposed Natural Resources reorganization (copy of opinion attached). Pages 7 and 8 of that opinion contain excerpts from the House debate.
  
- . Comptroller Staats' letter to Ribicoff of February 6, 1979 (copy attached) states:
  - . [The Department of Natural Resources plan] "is fully consistent with the present mission of the Department of the Interior, whose functions remain the core component of the expanded Department . . . ."; and
  
  - . " . . . [The] legislative process is frequently a slow one . . . I am therefore also sympathetic to the Administration's desire to make a start on achieving some long overdue changes . . . . I would regard the proposed plans as a beginning, but would rely on Congressional initiative to refine through legislation the mission and administrative structure . . . ."

In other words, the Comptroller General himself, in response to Ribicoff's question, implies that a reorganization plan could be used for the changes, but that Congress could "refine" the department later through legislation.

OUR ARGUMENTS

- . The plain words of the statute prohibit only a "new" department, not transfers into an existing one.
  
- . The Comptroller General himself seems to assume that the proposed plan is a legally permissible "beginning", and concedes that the functions to be transferred to Interior (NOAA and Forest Service) are "fully consistent" with present Interior functions.
  
- . The Congressional debates indicate that it is the creation of a new department, not transferring existing units that is prohibited. Senator Ribicoff's own example (Energy) supports this construction.
  
- . The Reorganization Act (Sections 901 and 903, copy attached) requires you as President, when you find that duplication and inefficiency exist, to submit a reorganization plan to Congress. Senator Ribicoff himself has supported the substance of a Natural Resources Department in the past (but through legislation). Senator Ribicoff should give the Senate a chance to express its views on the substance of these matters, as the Reorganization Act provides.

RIBICOFF'S ARGUMENTS

RESPONSE

. Large-scale cabinet-level reorganizations, which involve major policy and organizational shifts are "too complicated substantively and politically" to be handled by reorganization plan.

We propose primarily two changes, transferring NOAA and the Forest Service. Both duplicate or complement existing Interior functions; in fact, both once had many of their functions located within Interior.

. Massive internal changes in a cabinet department should be made by legislation.

We propose modernizing the Interior structure, but would consult closely with Ribicoff on all details if he likes.

. The prohibition against a "new" department "was in response to President Kennedy's abortive reorganization plan to create a Housing department."

But HUD, like Energy and Education are additional departments.

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1977  
c.v

# TO RENEW THE REORGANIZATION AUTHORITY

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U.S. Congress.

Reorganization act of 1977

## HEARING BEFORE THE COMMITTEE ON GOVERNMENT OPERATIONS UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

S. 626 *LN*

TO ESTABLISH THE PERIOD WITHIN WHICH THE PRESIDENT MAY TRANSMIT TO THE CONGRESS PLANS FOR THE REORGANIZATION OF AGENCIES OF THE EXECUTIVE BRANCH OF THE GOVERNMENT, AND FOR OTHER PURPOSES

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FEBRUARY 8, 1977

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Printed for the use of the Committee on Government Operations



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1977

Again, I cannot be specific in this instance, but I am sure there are a lot of programs in Government that are out of date, and when you measure against zero-based budgeting, against Government reorganization, against sunset legislation, that they are no longer serving your purpose. I think something ought to be done about them.

Senator ALLEN. Is it possible to have greater efficiency with fewer employees and at less expense?

Mr. LANCE. Yes, sir, I think so.

When you start talking about less expense, it depends in whether you are talking in total dollars, or if you are talking about a relationship of dollars to what you are actually doing, then I think you can always argue about what constitutes the definition of less expense.

Let me give you an example, in the Georgia reorganization, as Senator Percy said, there has been a lot of comment about the reorganization of the Georgia government.

I can relate to you my experience in the State highway department, which we turned into the department of transportation, which I happen to think is one of the finest departments of transportation anywhere in the country. Now, at the time when I went there in December 1970, we had 8,500 employees.

It was the biggest department in the State government.

The annual contracts totaled something under \$100 million.

Today, 7 years later, 6½ years later, they have 7,000 employees, and annual contracts that are in excess of \$300 million. So if you measure that in response to your question, then the uncategorical answer is: Yes, it can be done.

Senator ALLEN. How long will it take for the administration to complete its reorganizational plan?

Mr. LANCE. The plan and implementation, or just the plan?

Senator ALLEN. The plans that would be submitted to the Congress.

Mr. LANCE. I think that is fairly hard to estimate, depending on how fast we can move along in the different agencies and departments of Government.

As far as the number goes, I cannot say it will exceed this number or that number.

I think it will be significant, and I think we all have to keep busy at it, but the thing I would like to say about reorganization, that I think is a truism, as it relates to the practical problems of dealing with that, the longer you stretch it out, the more difficult it becomes to bring about. For that reason, I think the great thrust has to be early on in dealing with the problem, and the quicker we do it, the easier, and the better we are going to be able to do it, because if you say, we are going to take care of that 2 years from now, then that creates a problem out there that is very, very difficult to deal with, so I think the sooner the better.

Senator ALLEN. Would the reorganization plan sometimes entail creating new programs?

Mr. LANCE. As you know under the legislation, we cannot create new departments.

That has to come under separate legislation, and so again depending on—

Senator ALLEN. The efforts, the powers, the authority, and powers to regulate, would additional burdens be placed upon the citizens of our Nation or upon the taxpayers with the reorganizational plan?

Mr. LANCE. No, sir, I would hope we are moving in the other direction, that we are not creating additional burdens, but we are removing burdens already created, already on the people.

Chairman RIBICOFF. The administration is not asking for the authority to create new departments. That would definitely have to come up in the ordinary form of statutory legislation.

The Department of Energy I understand will be sent up by March 1, for our consideration. That would not be a reorganization plan under the authority now being considered. That would be sent up in the normal way as legislation. We would have full hearings and consider the proposal in the same way as any other legislation.

Senator ALLEN. I understand.

Would you anticipate that the net effect of the reorganization plan, as they would be put into effect, would result in an increase or in a decrease in the number of employees in the Federal bureaucracy?

Mr. LANCE. I would hope we would see some decline.

I think this is important. We have made the statement, and the President has pledged that no employee will lose his or her job as a result of the reorganization process.

I think it is important to point out. Also, the attrition rate of the Federal Government is relatively high.

It is about 10 percent, and provides a great deal of flexibility in being able to deal with that problem.

There would not be any proposed increase in the number of employees related to the reorganization.

Senator ALLEN. The question I believe the President has said something to this effect, and possibly this is a little afield from the immediate question. He has said that no new programs would be created until the Federal budget is in balance.

Is that in substance what the President is saying?

Mr. LANCE. I think he said, about major new programs, that it is important that we have a balanced budget coming on stream, at the same time we are talking about major new programs.

I do not think he said definitively no new programs would be started.

I do not think that broad a statement was made.

Senator ALLEN. I rather imagine, if we wait for that, with all due respect, we will be frozen in concrete for many years to come.

Mr. LANCE. No, sir, I would beg to take exception to that statement.

We have a commitment to a balanced budget by fiscal year 1981, and we ought to be able to program and plan from a budgetary standpoint and from an administration standpoint in conjunction with reorganization, zero-based budgeting, and sunset legislation, toward being able to say we are going to have a balanced budget by that period of time.

Senator ALLEN. I will help in every way I can to reach a balanced Federal budget. I am just wondering if we are moving in that direction, with some \$30 billion stimulus to the country proposed in 2 years, which would have to come from borrowed money, in addition to the deficit, and all of that.



United States Department of Justice  
Washington, D.C. 20530

ASSISTANT ATTORNEY GENERAL  
OFFICE OF LEGAL COUNSEL

28 MAR 1979

Mr. F. T. Davis, Jr.  
General Counsel  
President's Reorganization Project  
Office of Management and Budget  
Washington, D. C. 20503

Dear Mr. Davis:

This responds to your letter of March 14, 1979, asking us to evaluate the legality, under the Reorganization Act of 1977, of OMB's proposal to rename and add functions to the Department of the Interior. We understand that the reorganization proposal would:

- (1) Transfer to the Department of the Interior
  - (a) all functions of the Secretary of Commerce authorized by the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 et seq.;
  - (b) all functions of the Secretary of Commerce authorized by 33 U.S.C. §§ 883a, 883b relating to the Coast and Geodetic Survey;
  - (c) from the Department of Commerce all functions of the National Oceanic and Atmospheric Administration (NOAA);
  - (d) from the Department of Agriculture all functions of the United States Forest Service; and
- (2) Rename the Department of the Interior the Department of Natural Resources (and conform the titles of personnel within the Department to the new name).

The proposal raises three questions under the Reorganization Act of 1977 ("Act"): 1/

- (1) whether the Act permits a reorganization plan to change the name of an executive department;
- (2) whether the proposed transfers are permissible under the Act;
- (3) whether the proposal as a whole has "the effect of . . . creating a new executive department," in violation of 5 U.S.C. § 905(a)(1).

We conclude that, upon the facts stated above, the proposal is lawful under the Act. While the authority of the President to reorganize existing executive departments is not without limits, we believe that the proposed reorganization is well within these limits.

#### Name Change

Section 904 of title 5 provides: "A reorganization plan transmitted by the President . . . may change, in such cases as the President considers necessary, the name of an agency affected by a reorganization . . . ." "Agency" is defined by the Act to include "an Executive agency" (5 U.S.C. § 902(1)), and "Executive agency" is defined elsewhere in the title to include "an Executive department." 5 U.S.C. § 105. Thus, the proposed name change for the Department of the Interior would be authorized by the Act. This conclusion is strengthened by the fact that the Reorganization Act of 1949 deleted a provision found in the Reorganization Acts of 1939 and 1945 that prohibited a reorganization plan from "changing the name of an executive department." 2/ Reorganization Acts after the 1949 Act have not revived the prohibition against name changes.

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1/ Pub. L. No. 95-17, 91 Stat. 29 (1977), codified at 5 U.S.C. §§ 901-912.

2/ Compare Reorganization Act of 1939, Pub. L. No. 76-19, § 3(c), 53 Stat. 561, 562 and Reorganization Act of 1945, Pub. L. No. 79-263, § 5(a), 59 Stat. 613, 615 with Reorganization Act of 1949, Pub. L. No. 81-109, § 5(a), 63 Stat. 203, 205.

## Transfer of Functions

We find the proposed transfers outlined above unobjectionable. The central purpose of the Reorganization Act, as made explicit in 5 U.S.C. § 901, is to achieve economy and efficiency in the executive branch by consolidating and coordinating agencies and functions with similar purposes and by eliminating overlapping and duplicative structures of government. 3/ The transfers to Interior appear to fulfill this purpose by consolidating in one department functions concerning natural resource use and conservation now scattered through various departments and agencies. The Interior Department has been involved in similar reorganizations in the past. Reorganization Plan No. II of 1939 4/ transferred to the Department the functions of the National Bituminous Coal Commission, the Bureau of Insular Affairs of the War Department, the Bureau of Fisheries of the Commerce Department and the Bureau of Biological Survey of the Agriculture Department. 5/

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3/ See H. Rep. No. 105, 95th Cong., 1st Sess. 4 (1977) (quoting Report of the House Committee on Expenditures in the Executive Departments on the Reorganization Act of 1949):

There is an ever-present need for making such change in the organization of executive agencies as will make the executive branch of the Government more manageable, promote better coordination in the development and execution of Government programs by removing sources of confusion encountered by a citizen in dealing with scattered and overlapping agencies and facilities the conduct of his business with the Government, and otherwise promote efficiency and economy.

4/ Reprinted at 5 U.S.C. App. p. 710 (1976 ed.).

5/ Compare Reorganization Plan No. 4 of 1970, reprinted at 5 U.S.C. App. p. 832 (1976 ed.), which established NOAA in the Department of Commerce by consolidating functions relating to commercial fisheries, marine minerals, and hydrographic surveying previously located in Interior, the Department of Defense, and the National Science Foundation.

## Establishment of a New Executive Department

Section 905(a) of title 5 provides:

A reorganization plan may not provide for, and a reorganization under this chapter may not have the effect of --

(1) creating a new Executive department . . . .

We conclude that, as the proposed plan has been presented to us, it comports with the requirements of the Act and does not violate this provision. The prohibition against the creation of new executive departments has had a checkered history in the Reorganization Acts. The 1939 Reorganization bill as introduced in the House did not prohibit in explicit terms the creation of an executive department, although its sponsors asserted that such action was barred by the bill. On the floor of the House, Representative Ludlow proposed making the prohibition explicit in order to "make it absolutely clear to everybody in this House that there is no intention of establishing any new department. It would relieve the bill altogether of its ambiguity in respect to the determination of Congress that no new departments shall be created . . . ." 6/ Representative Warren, the floor manager, responded that "this bill specifically provides that no new department of the Government may be created. In order to absolutely clarify that, if there is any possible doubt, I will say that we will very gladly accept the amendment . . . ." 7/ Accordingly, the bill, as enacted, provided "[n]o reorganization plan . . . shall provide . . . for the establishment of any new executive department." 8/

The 1945 Act renewed the prohibition and added new language. It provided:

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6/ 84 Cong. Rec. 2413 (1939).

7/ Id.

8/ Pub. L. No. 76-19, § 3(a), 53 Stat. 561 (1939).

No reorganization plan shall provide for, and no reorganization under this Act shall have the effect of

(1) . . . establishing any new executive department . . . . (emphasis supplied).

The addition of the "shall have the effect" language resulted from the combination of two similar sections 9/ of the 1939 Act. 10/

In 1949, Congress deleted the prohibition against the creation of a new executive department. The proponents of the bill, relying upon the views of ex-President Hoover and the report of the Hoover Commission, argued that the restriction was unnecessary because the Act already forbade the President from creating new functions. 11/ Since creation of an executive department could only occur by consolidating existing programs and offices, it seemed no different than other types of reorganizations permissible under the Act. They pointed out that the Federal Security Agency, which had been created by a reorganization plan, was a department in everything but name and argued that the President should have the flexibility to evaluate it to departmental status. Although these arguments did not prevail in the House (which amended the Administration bill to include the deleted prohibition), the Senate bill gave the President the authority to create an executive department. In the ensuing conference,

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9/ Id. §§ 3, 6.

10/ See S. Rep. No. 638, 79th Cong., 1st Sess. 8 (1945).

11/ See Reorganization of Governmental Agencies: Hearings on H.R. 1569 Before the House Committee on Expenditures in the Executive Departments, 88th Cong., 1st Sess. 18 (1949) (statement of Frederick Lawton); id. at 141 (statement of President Hoover) ("[The bill] requires the President to build whatever he builds out of existing timber. It does not give him new timber to build anything with; no new functions in the Government.")

the Senate version was adopted. 12/

The new authority to establish an executive department was used by President Eisenhower to designate the Federal Security Agency the Department of Health, Education and Welfare. 13/ The Reorganization Act of 1949 was extended in 1953, 1955, 1957 and 1961 without altering the authority of the President to create a new executive department.

The Reorganization Act of 1964 14/, however, reinstated the prohibition against the creation of new executive departments. The dispute concerning the proper reach of the President's reorganization power had its roots in substantive political concerns. In 1961, the Kennedy Administration submitted a bill to Congress providing for the establishment of a Department of Urban Affairs and Housing (DUAH). The bill was reported out of the House Committee on Government Operations but was never granted a rule by the House Rules Committee. To break the log jam, the President transmitted to Congress Reorganization Plan No. 1 of 1962, proposing creation of DUAH by reorganization. The plan failed when it was rejected by the House.

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12/ The House conferees rationalized acceding to the Senate by pointing out that under the Conference bill a reorganization would not go into effect if disapproved by a constitutional majority of either house. (The 1945 Act required passage of a concurrent resolution by both houses for disapproval.) Thus, explained Representative Holifield, "[y]ou give [the President] with the one hand but you take away more from him with the other." 95 Cong. Rec. 7839 (1949).

13/ Reorganization Plan No. 1 of 1953, reprinted at 5 U.S.C. App. p. 762 (1976 ed.) The Plan was transmitted to Congress on March 12, 1953. To expedite initiation of the Plan, the Senate and House adopted a joint resolution which made the reorganization effective as of April 11. In 1963, proponents of limiting the President's power to create new departments pointed to the joint resolution to demonstrate that HEW was created by "organic law" to support their argument that no new department had ever been created under the President's reorganization power. See 109 Cong. Rec. 10070 (1968) (Rep. Anderson).

14/ Pub. L.No. 88-351, 78 Stat. 240 (1964).

When the Reorganization Act came up for renewal in 1963, opponents of the proposed DUAH and other Congressmen concerned with increasing Presidential prerogatives proposed a "clarifying" amendment that would explicitly prohibit the creation of a new executive department by reorganization. The supporters of the amendment asserted that it only spelled out more precisely what the bill already prohibited; they argued that since the bill did not permit the President to create new functions, he could not have the authority to establish an executive department. It was said:

We are merely bringing into the act the internal consistency that ought to be there when we amend it along the lines suggested. I do not think it is possible to have it both ways. We cannot, as we say in one section of this act, have a bar or a prohibition against the creation of new functions by virtue of a reorganization plan - and at the same time permit the creation of a new department. I submit that those two concepts are entirely inconsistent. Therefore, this would be in a sense a clarifying amendment. 15/

To these members of Congress, creation of an executive department was a matter of substance even if the proposed reorganization merely consolidated existing agencies. 16/ As Representative Anderson stated:

The issue is a simple one. Is the creation of a new executive department sufficiently important to warrant the Congress reserving the right to determine the department's structure, its functions, the number of under secretaries, assistant secretaries, their compensation, duties and so forth?

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15/ 109 Cong. Rec. 10070 (1963)(Rep. Anderson).

16/ See 109 Cong. Rec. 10062 (1963)(Rep. Brown)(creating new department is a change "in the basic structure of the federal Government.").

Or must these matters be determined in their entirety by the executive branch without the right of the Congress to amend or modify them?

Creating a new executive department is an important substantive step in the development of the executive branch. It is important enough to dictate the employment of the full legislative process. Surely, the Congress in 1949 when the Reorganization Act was first enacted must have assigned a special role to the status of the executive departments because the act contained a prohibition against use of a reorganization plan to abolish an executive department, or to consolidate two existing departments.

The amendment that will be offered not only preserves but strengthens this special regard which the Congress for many years - and the administration - has consigned to the status of executive departments. 17/

Opponents of the amendment, adopting President Hoover's statements of 1949, argued that the President should retain the flexibility to create an executive department by simple reorganization. They contended that the power to reorganize did not include the power to create new functions and that a new department could only be created from existing entities. 18/ The bill, to them, represented no derogation of Congress' legislative function.

The House adopted the amendment proposed, and the Senate approved the House bill without discussion of the reactivated limitation on the President's authority. Congress renewed the President's reorganization authority in 1965, 1969, 1971 and 1977 without altering the restriction.

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17/ 109 Cong. Rec. 10071 (1963). See H. Rep. No. 311, 88th Cong., 1st Sess. 18-19 (1963) (Additional Views of Representatives Brown, Anderson and Horton).

18/ See 109 Cong. Rec. 10066 (1963) (Rep. Holifield) ("Creating an executive department is not creating new functions, merely combining or integrating existing functions and agencies."); id. at 10069 (Rep. Rosenthal); H. Rep. No. 311, 88th Cong., 1st Sess. 4-5 (1963).

It cannot be disputed that the statute does not permit the creation of an additional executive department. This is so even though establishment of a new department could not include the creation of new programs or functions. Although the President may create complex agencies with a variety of functions (if Congress does not disapprove), the addition of an executive department is deemed to be of such importance that it must be accomplished through normal legislative channels.

What is less clear are the limits on the authority of the President to distribute existing functions and agencies among existing departments. It is black letter law that all parts of a statute must be given effect if possible. Thus the language prohibiting reorganizations which "have the effect . . . creating a new department" must be read to forbid reorganizations beyond those that create additional departments. At some extreme point, as a result of a wholesale transfer of functions, a department might take on an appearance and purpose so distinct from the mission it was given at its creation as to be considered a "new department" for purposes of the Act. The legislative history of the Act evidences Congress' belief that departments are qualitatively different from other executive agencies, 19/ and thus places limitations on the President's power to alter existing departments. Of course, as a practical matter, the procedures under the Reorganization Act ensure that Congress can express its opinion on the legitimacy of the President's proposal and that that opinion will be final.

Admittedly there is much gray area between the simple transfer of functions and a total change of mission which could "have the effect of . . . creating a new department."

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19/ This is also evident in that the Act prohibits the merging of two departments but permits the merging of two agencies. Compare 5 U.S.C. § 905(a)(1) with id. § 903(a).

We believe that the appropriate line-drawing may be accomplished by focusing on the major purposes and missions of the department as established by law and analyzing whether the functions transferred into the department complement and/or supplement these purposes or missions. 20/

Applying these general principles to the facts as we understand them, we find the proposed reorganization well within the limits of the law.

The Department of the Interior is currently charged with conservation and management of mineral, animal, plant and water resources. Its major constituent parts include the Bureau of the Mines, the Ocean Mining Administration, the United States Geological Survey, the United States Fish and Wildlife Service, the National Park Service, the Bureau of Indian Affairs, the Bureau of Reclamation, the Bureau of Land Management, and the Office of Water Research and Technology. It is thus clear that analysis, preservation, and management of natural resources is the central mission of the Department. The proposed reorganization furthers this mission.

(1) Transfer of NOAA

NOAA, established by Reorganization Plan No. 4 of 1970, was endowed with the functions of the Bureau of Commercial Fisheries and other functions relating to the marine species and minerals by transfer from Interior. It was placed in the Commerce Department primarily because its largest component, the Environmental Science Service Administration, was located there. See Message of the President, July 9, 1970, reprinted at 5 U.S.C. App. p. 829. NOAA's mandate is to "improve our understanding of the resources of the sea, and permit their development and use while guarding against the

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20/ It should be noted that the relative ease with which Congress may disapprove a plan militates in favor of broad authority for the President to rearrange existing programs and structures, both as a practical matter and as a factor in statutory construction.

sort of thoughtless exploitation that in the past laid waste to so many of our precious natural assets." Id. at 832. The transfer of NOAA to the Interior Department appears to further the core purposes of that Department and to complement its existing components charged with the study of natural resources and phenomena.

(2) Transfer of other functions of the Secretary of Commerce

Under the Endangered Species Act, the Secretary of Commerce must identify endangered and threatened species "[w]ith respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan No. 4 of 1970 [which established NOAA]." 16 U.S.C. § 1533(a)(2). Under Reorganization Plan No. 2 of 1965, responsibility for preparation of the Coast and Geodetic Survey and other analyses under 33 U.S.C. §§ 883a and 883b was vested in the Secretary of Commerce, and the Coast and Geodetic Survey was merged into the new Environmental Science Services Administration. This Administration was abolished by Reorganization Plan No. 4 of 1970 and its functions were transferred to NOAA. Thus a complete transfer of NOAA to the Interior Department requires transfer of these functions now vested in the Secretary of Commerce.

(2) Transfer of the Forest Service

Management of federal forests was originally vested in the Department of the Interior. Control of the forest preserves was transferred to the Department of Agriculture in 1905 in order to consolidate various forestry programs. See H. Rep. No. 48, 58th Cong., 2d Sess. (1903). The Forest Service currently manages national forests and regulates logging, mining and recreation activities thereon. The return of the control of national forests to the Department of the Interior appears entirely consistent with the mandate of that Department.

In sum, we believe that the proposed reorganization does not exceed the limits placed on the President by the Reorganization Act. The planned transfers should not be deemed to have the effect of creating a new department. The central purposes and missions of the Interior Department remain and appear to be strengthened by the reorganization. 21/

Sincerely,



John M. Harmon  
Assistant Attorney General  
Office of Legal Counsel

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21/ We note that your draft proposal leaves blank the part on transferred positions and further note that Senator Ribicoff objects to the proposal partially on the ground that it will lead to the creation of a new management structure within the Department. Without the specifics of these planned structural changes, we cannot opine on the question of whether they have "the effect" of creating a new department. Of course, the Reorganization Act, to be an effective tool for ending redundancy and inefficiency in the executive branch, must permit a fair amount of flexibility in altering the operational structure of affected departments.



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-194028

February 6, 1979

The Honorable Abraham Ribicoff  
Chairman, Committee on  
Governmental Affairs  
United States Senate

Dear Mr. Chairman:

Senator Percy and you in your letter of January 25, 1979, ask for my views on the position paper of a panel of the National Academy of Public Administration which argues that two draft Presidential reorganization proposals should be accomplished through legislation rather than through use of the President's Reorganization Act authority.

I have studied with interest the rationale offered by the Office of Management and Budget's Reorganization Task Force for the formation of a newly constituted Department of Natural Resources and a Department of Development Assistance. These concepts are not new. I have long advocated such a consolidation, particularly with respect to natural resource functions, in testimony before your Committee and others, but always in the context of specific legislative proposals. Looking over my past bill reports and other statements, I note that none of the bills was completely satisfactory, in my view, from an administrative standpoint. This is entirely understandable, given the enormous complexity of such a major reorganization. By comparison, the two Office of Management and Budget (OMB) staff proposals provide only the outlines of the major transfers and realignments of functions. It is not possible to assess the efficacy of the plans at this early state because so little information is provided about administrative implementation.

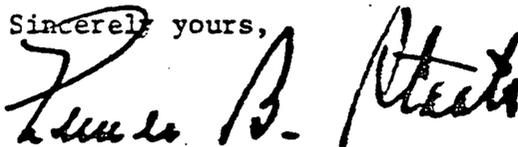
In the Department of Natural Resources plan, many of the functions concerning natural resource use and conservation, which are now scattered among a number of independent agencies, will be consolidated. This is fully consistent with the present mission of the Department of the Interior, whose functions will remain the core component of the expanded Department. Similarly, the Department of Development Assistance appears to build on present Housing and Urban Development (HUD) programs, but will add to them other economic development and community facilities programs now housed in four other agencies.

The Academy position paper has no fundamental objection to the nature of the restructuring of functions proposed. One of the Academy's objections is that the great complexity of the task involved makes it impossible to get the degree of congressional intervention and consideration necessary to

create a successful department within the time-frame allowed for examination of a reorganization plan. Moreover, the Academy points out, a new Department should have an organic charter and legislative mandate. Its mission and functions should reflect congressional policies and objectives, arrived at through the process of legislative negotiation and compromise with the Executive Branch.

I agree completely with all these points. There is much in the two plans, as presently written, that raise questions of managerial feasibility, and, as I mentioned earlier, the implementation omissions are of equal concern. Moreover, the effect on two existing Departments - Agriculture and Commerce - which will lose major functions has not been satisfactorily addressed. I am sure that the Congress will wish to consider a number of the problems raised by the Academy and others about the way these two new Departments should operate during the course of this legislative session, even if the plans are not disapproved. However, the legislative process is frequently a slow one, in view of competing priorities and other public pressures. I am therefore also sympathetic to the Administration's desire to make a start on achieving some long over-due changes in the way services are delivered to the public in these two important areas. I would regard the proposed plans as a beginning, but would rely on congressional initiative to refine through legislation the mission and administrative structure of the proposed new departments.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "F. B. Steeds". The signature is written in dark ink and is positioned to the right of the typed name.

Comptroller General  
of the United States

NATIONAL ACADEMY  
OF PUBLIC ADMINISTRATION  
1225 Connecticut Avenue, N.W. Washington, D.C. 20036  
202-659-9165

January 17, 1979

TO: U.S. Senate Committee on Governmental Affairs

FROM: The National Academy of Public Administration  
Ad Hoc Panel on Natural Resources Reorganization  
(Alan Dean; Paul Dembling; Dwight Ink; Harold Seidman)

SUBJECT: Panel Findings on the Proposed Plan for a  
Department of Natural Resources

Whether or not the Administration can justify legally the use of a reorganization plan in this instance, it is the belief of the Panel that a new Department of Natural Resources can best be established by legislation. We feel that the Congress should establish, by law, the policies and objectives for the new department as a part of the process of creating it and that should accompany the department into existence. The main reason for these views is summarized below. Brief backgrounds of the panel members are appended to the summary.

The members of the Panel are strong supporters of a Department of Natural Resources, but we feel that its success or failure may depend upon the approach taken in bringing about the reorganization. Our beliefs are based on experience with the reorganization plans in the seven previous administrations and an examination of the proposed reorganization plan for the Department of Natural Resources.

1. It is essential to obtain the partnership and understanding of Congress in this major restructuring of executive departments, because there are significant policy as well as management implications.

- o It is impossible to get the degree of congressional intervention and consideration necessary to create a successful department within the time-frame allowed for the examination of a reorganization plan
- o An "all-or-nothing" situation exists for the approval or rejection of the plan

- o The method and mode of a plan's transmittal do not allow for any compromise or give-and-take on the contents of the proposal

2. An executive department cannot be created satisfactorily (including a new charter and a statement of policy) by a reorganization plan.

- o Only through legislation can the broad policy goals and objectives be articulated which should guide the approach to managing and organizing the operating elements of the Department
- o The existing Department of Interior has no organic charter and has suffered as a consequence
- o Existing Agencies must be brought into a new Department of Natural Resources (Forest Service, for example), but that requires a well-articulated departmental policy
- o Legislation is necessary to develop an organizational and operational framework, or else the department becomes a "holding company" for autonomous bureaus
- o A plan could create an administrative and managerial nightmare for the Secretary if he is unable to control subordinates; e.g., HEW's lack of capacity to manage the Office of Education
- o Its process does not allow the effective legislative compromises and negotiation between:

houses of Congress;  
the executive and legislative branches

- o It will be difficult to convince agencies and constituencies outside of the present Interior Department (such as Forest Service and elements of the Corps of Engineers) that they will become part of a viable executive department with a fresh approach if a reorganization plan is used
- o Mandates and requirements for specific reports to Congress must be expressed in law
- o The new operating elements must be made part of some overall management and operating strategy and this requires the creation of a genuinely new department not a renamed Department of the Interior
- o Unless adequate managerial functions are vested in the Secretary, the department will remain difficult or impossible to manage effectively
- o Mission and need should dictate the initial organization of the department. An incremental approach to the reorganization of natural resources functions is undesirable and may be difficult to bring about

January 17, 1979

Page 3

TO: U.S. Senate Committee on Governmental Affairs

- o The new department needs necessary statutory authority in some special areas
- o The administrative arrangements and field structures are often provided for in law
- o Presidential succession of the Secretary can only be prescribed through law

3. Proceeding by reorganization plan raises serious political problems while producing few benefits.

- o An old department, such as Interior, needs to be seen as being replaced by a genuinely new, strong, and well-endowed department to win support
- o It undermines the case for a new department if the old traditions and bureaucratic practices are expected to continue
- o The use of a reorganization plan increases the likelihood of congressional rejection of the new department
- o The use of a reorganization plan will shift attention from substance to process
- o Proceeding by plan will inevitably produce a legislative history which would stand in the way of achieving the full benefits desired from a Department of Natural Resources

## OVERSIGHT FINDINGS

No oversight findings and recommendations were made inasmuch as this legislation has been inoperable since April 1, 1973.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

No new budget authority or tax expenditures are required by this legislation.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

## CHAPTER 9 OF TITLE 5, UNITED STATES CODE

## CHAPTER 9—EXECUTIVE REORGANIZATION

- Sec.
901. Purpose.
902. Definitions.
903. Reorganization plans.
904. Additional contents of reorganization [plans.] plan.
905. Limitations on powers.
906. Effective date and publication of reorganization plans.
907. Effect on other laws, pending legal proceedings, and unexpended appropriations.
908. Rules of Senate and House of Representatives on reorganization plans.
909. Terms of resolution.
910. [Reference of resolution to committee.] Introduction and reference of resolution.
911. Discharge of committee considering resolution.
912. Procedure after report or discharge of committee; debate[.]; vote on final disapproval.
- [913. Decisions without debate on motion to postpone or proceed.]

## § 901. Purpose

(a) The Congress declares that it is the policy of the United States—

(1) to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;

(2) to reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Government;

(3) to increase the efficiency of the operations of the Government to the fullest extent practicable;

(4) to group, coordinate, and consolidate agencies and functions of the Government, as nearly as may be, according to major purposes;

(5) to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof as may not be necessary for the efficient conduct of the Government; and

(6) to eliminate overlapping and duplication of effort.

(b) Congress declares that the public interest demands the carrying out of the purposes of subsection (a) of this section and that the purposes may be accomplished in great measure by proceeding under this chapter, and can be accomplished more speedily thereby than by the enactment of specific legislation.

(c) It is the intent of Congress that the President should provide appropriate means for broad citizen advice and participation in restructuring and reorganizing the executive branch.

[(c)] (d) The President shall from time to time examine the organization of all agencies and shall determine what changes in such organization are necessary to carry out any policy set forth in subsection (a) of this section.

## § 902. Definitions

For the purpose of this chapter—

(1) "agency" means—

(A) an Executive agency or part thereof; and

(B) an office or officer in the executive branch; [and]

[(C) any and all parts of the government of the District of Columbia other than the courts thereof;]

but does include the General Accounting Office or the Comptroller General of the United States;

(2) "reorganization" means a transfer, consolidation, coordination, authorization, or abolition, referred to in section 903 of this title; and

(3) "officer" is not limited by section 2104 of this title.

## § 903. Reorganization plans

(a) Whenever the President, after investigation, finds that changes in the organization of agencies are necessary to carry out any policy set forth in section 901(a) of this title, he shall prepare a reorganization plan specifying the reorganizations he finds are necessary. Any plan may provide for—

(1) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of another agency;

(2) the abolition of all or a part of the functions of an agency, except that no enforcement function or statutory program shall be abolished by the plan;

(3) the consolidation or coordination of the whole or a part of an agency, or of the whole or a part of the functions thereof with the whole or a part of another agency or the functions thereof;

(4) the consolidation or coordination of a part of an agency or the functions thereof with another part of the same agency or the functions thereof;

(5) the authorization of an officer to delegate any of his functions; or

(6) the abolition of the whole or a part of an agency which agency or part does not have, or on the taking effect of the reorganization plan will not have, any functions.

✓ The President shall transmit the plan (bearing an identification number) to the Congress together with a declaration that, with respect to

THE SPECIAL REPRESENTATIVE FOR  
TRADE NEGOTIATIONS

WASHINGTON

20506

April 5, 1979

MEMORANDUM TO THE PRESIDENT

FROM: Robert S. Strauss 

RE: Your meeting with Senator Ribicoff

BACKGROUND

Senator Ribicoff has been very helpful and constructive throughout the negotiation of the trade agreements and in our consultations with the Finance Committee, where he chairs the Trade Subcommittee. However, on Wednesday he threatened to remove himself as floor leader for the package because of one issue (wine gallon assessment, noted below); and he might yet assert linkage between the MTN and his proposal for a separate Department of Trade.

Wine Gallon: We have agreed to end a 110-year practice of assessing excise taxes on bottled distilled spirit imports as though the contents were 100 proof, even though they usually are less than that; whereas imported bulk spirits and domestic bulk and bottled are taxed strictly on the alcoholic content. This practice has rankled trading partners for many years, and consequently was of great trading value. The Europeans treat grain-based spirits as an agricultural product, so we traded a conversion to all proof-gallon assessment for many agricultural concessions, chief of which was tobacco. U.S. distillers who do not also import have waged a strong and sometimes nasty campaign to have the Congress block our agreed conversion. Heublein, located in Connecticut has been on the front edge of this, and has gotten Ribicoff to a point of high concern.

- The wine gallon conversion is the key to agriculture, which is the key to the MTN;
- There is a revenue loss involved, but this is true of almost every trade liberalization step;
- We also have secured trade practice concessions for the distilled spirit industry so they will be able to sell abroad, where some markets have been extremely difficult in the past;
- We are examining a possible change in the date of collection of the excise taxes, which currently is to the disadvantage of the domestic distillers;
- Senator Ribicoff surely cannot let this issue keep him from managing the trade package on the floor, when he knows it so well and is so closely identified with it.

Department of Trade: Senators Ribicoff and Roth have one bill in for such a department, Robert Byrd has another, and there appears very strong support for this concept in the Senate. The Senate Finance Committee has voted in favor of a Department of Trade in connection with their review of the MTN.

- The idea of consolidating many or all trade functions in a single agency has appeal, and has been the subject of a reorganization study; there is a task force working on this under OMB direction;
- The task force will look at your bill as part of its study, and will report to me within a month or so with recommendations;
- Since there may be several versions introduced in the Congress, we should look at them all and the Congress should weigh them all;
- This process should not delay in any way Congressional action on the MTN, even though it is in some way complementary.

THE CHAIRMAN OF THE  
COUNCIL OF ECONOMIC ADVISERS  
WASHINGTON

EYES ONLY

April 5, 1979

MEMORANDUM FOR THE PRESIDENT

From: Charlie Schultze *CLS by RSD*  
Subject: Employment and Unemployment in March

Tomorrow (Friday, April 6) at 9:00 a.m., the Bureau of Labor Statistics will release the figures on employment and unemployment in March. Employment rose by 195,000; the unemployment rate was unchanged at 5.7 percent.

Among whites, the unemployment rate inched up from 4.9 percent in February to 5.0 percent in March; the rate for whites has hovered around 5 percent since October. For blacks, the unemployment rate in March dropped back to 11.2 percent (the January level) from 11.9 percent in February. On average, the rate for blacks has been about 11-1/2 percent since October. More generally, unemployment rates over the past half year have been relatively stable for all major groups in the labor force.

The March employment increase in the household series (195,000) was only about half the size of the average monthly increase in January and February. However, the figures on payroll employment of business establishments, which are less volatile from month to month, did not show a slowdown. Payroll employment rose 324,000 in March, compared with an average monthly rise of 275,000 in January and February, and a 370,000 monthly rise in the fourth quarter. Construction employment rebounded in March because of improving weather; and employment increased strongly again in manufacturing, especially in durable goods industries.

Electrostatic Copy Made  
for Preservation Purposes

The length of the workweek went up in March, and with employment also increasing, aggregate hours worked rose by 0.8 percent for the total private nonfarm economy, 0.7 percent in manufacturing, and 4.4 percent in construction.

These figures on employment and hours worked indicate that the pace of economic expansion continues to be robust. First quarter real GNP growth will be held down by the effects of adverse weather on construction in January and February, but a rebound in that sector is now underway. Unless the figures on retail sales for March that become available early next week are weak, our concern that the economy is growing too fast early this year will be confirmed.

THE WHITE HOUSE  
WASHINGTON

4/6/79

Fred Khan

The attached was returned in the  
President's outbox today and is  
forwarded to you for appropriate  
handling.

Rick Hutcheson

cc: The Vice President  
Stu Eizenstat

(If Option 1a is selected, please see page 3)

Dear Secretary Bergland:

Extreme inflation in the price of food is imposing a heavy burden on every American. Beef prices in particular are so high that many people can no longer afford to buy it.

The reason for high inflation rates in beef -- shortages caused by the five-year decline in the cattle herds -- will persist until farmers and ranchers have an opportunity to build their herds, a long and slow process.

There is a strong probability, therefore, that beef will remain in short supply and prices will remain high at least through 1980.

Fortunately, there are good high protein substitutes available at prices that make it possible to stretch the shrinking food dollar and still provide equally nutritious meals. I'm certain the American shopper will be taking advantage of these better buys in the months ahead.

I believe the Federal Government should be a prudent shopper, too. The Department of Agriculture is the second largest buyer of beef in the Government. Last year you bought 134 million pounds for the Federal school lunch program. This year, I am informed, you have reduced this total to 106 million pounds, a cut of almost 21%, in your continuing effort to maintain high protein school lunches within your budget.

Secretary Bergland

- 3 -

of Federal food expenditures. Early completion of this action will eliminate from Federal food procurement the unnecessary inconsistencies that prevent us from getting the maximum benefit from the Federal food dollar.

(If Option 1a is selected, insert 15% in place of 25% in the second paragraph, page 2, and add the following paragraph thereafter.)

I want you to review your progress with Alfred Kahn at the end of six months to consider whether additional reductions will be possible.

(If Option 1a is selected, please see page 3)

Dear Secretary Brown

Extreme inflation in the price of food is imposing a heavy burden on every American. Beef prices in particular are so high that many people can no longer afford to buy it.

The reason for high inflation rates in beef -- shortages caused by the five-year decline in cattle herds -- will persist until farmers and ranchers have an opportunity to build their herds, a long and slow process.

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Fortunately, there are good high protein substitutes available at prices that make it possible to stretch the shrinking food dollar and still provide equally nutritious meals. I'm certain the American shopper will be taking advantage of these better buys in the months ahead.

I believe the Federal Government should be a prudent shopper, too. This means reducing beef purchases in the face of very high prices and a continuing decline in available supplies.

The Department of Defense is the largest buyer of beef in the Government. Last year you bought 108.5 million pounds; this year you project purchases of about 126 million pounds, a 16% expansion at an average price 17 percent higher than you paid last year.

I direct you to reduce your purchases of beef for the remainder of this year and for Fiscal Year 1980 by at least 25% from this planned level. You may however phase in this reduced purchase rate during the rest of Fiscal Year 1979 to minimize unreasonable disruption of your food service operations.

You should at the same time make certain that this reduction in no way dilutes the high nutritional and quality standards the Department of Defense has established for its food service program.

I understand that your Food Planning Board has just approved the use of a 20 percent soy extended ground beef product. I applaud this kind of innovative diet planning that maintains high protein standards and assures that our armed services personnel continue to enjoy the same high quality meals they have enjoyed heretofore.

I am issuing similar directives to the Secretary of Agriculture and the Administrator of Veterans Affairs to

reduce their beef purchases this year and next. In addition, I am asking you to work more closely with them in the coming months under the government-wide food quality assurance and specifications management program that we started last year, to produce more rapid improvements in the cost-effectiveness of Federal food procurement. To accelerate that effort, I have directed the Secretary of Agriculture to complete unification by the end of Fiscal Year 1980 of the high dollar specifications which account for more than 80% of Federal food expenditures. Early completion of this review will eliminate from Federal food procurement the unnecessary inconsistencies that prevent us from getting the maximum benefit from the Federal food dollar. I know you will give the Secretary your full support.

(If Option Ia is selected, insert 15% in place of 25% in the second paragraph, page 2, and add the following paragraph thereafter.)

I want you to review your progress with Alfred Kahn at the end of six months to consider whether additional reductions will be possible.

(If Option Ia is selected, please see page 3)

Dear Mr. Cleland:

Extreme inflation in the price of food is imposing a heavy burden on every American. Beef prices in particular are so high that many people can no longer afford to buy it.

The reason for high inflation rates in beef -- shortages caused by the five-year decline in cattle herds -- will persist until farmers and ranchers have an opportunity to build their herds, a long and slow process.

There is a strong probability, therefore, that beef will remain in short supply and prices will remain high at least through 1980.

Fortunately, there are good high protein substitutes available at prices that make it possible to stretch the shrinking food dollar and still provide equally nutritious meals. I'm certain the American shopper will be taking advantage of these better buys in the months ahead.

I believe the Federal government should be a prudent shopper, too. This means reducing beef purchases in the face of very high prices and a continuing decline in available supplies.

The Veterans Administration is the third largest buyer of beef in the Government. Last year you bought 8.4 million pounds of beef to feed the patients under your care in the

Veterans Administration hospital system. This year, you project purchases of about the same amount of beef, but at an average price per pound 25 percent higher than you paid last year.

I direct you to reduce your purchases of beef for the remainder of this year and for Fiscal 1980 by at least 25 percent from this planned level. You may, however, phase in this reduced purchase rate during the rest of Fiscal Year 1979, to minimize unreasonable disruption of your food service operations.

You should at the same time make certain that this reduction in no way dilutes the high nutritional and quality standards the Veterans Administration has established for its food service program.

I understand that earlier this year you reduced the number of beef meals served in Veterans Administration hospitals from 10 to 7 per week for normal diets, and from 14 to 10 for selective diets. I applaud this kind of initiative and urge you to continue to pursue innovations in diet planning that maintain high protein standards while assuring that our veterans continue to enjoy the same high quality meals they have enjoyed heretofore.

I am issuing similar directions to the Secretary of Defense and the Secretary of Agriculture to reduce their beef purchases this year and next. In addition, I am

asking you to work more closely with them in the coming months under the government-wide food quality assurance and specifications management program that we started last year, to produce more rapid involvements in the cost-effectiveness of Federal food procurement. To accelerate that effort, I have directed the Secretary of Agriculture to complete unification by the end of Fiscal Year 1980 of the high dollar specifications which account for more than 80 percent of Federal food expenditures. Early completion of this action will eliminate from Federal food procurement the unnecessary inconsistencies that prevent us from getting the maximum benefits from the Federal food dollar. I know you will give the Secretary your full support.

(If option Ia is selected, insert 15% in place of 25% in the second paragraph, page 2, and add the following paragraph thereafter.

I want you to review your progress with Alfred Kahn at the end of six months to consider whether additional reductions will be possible.)

Dear Secretary Bergland:

Extreme inflation in the price of food is imposing a heavy burden on every American.

Fortunately, there are some substitutes available at prices that make it possible to stretch the shrinking food dollar and still provide equally nutritious meals. I'm certain the American shopper will be taking advantage of these better buys in the months ahead.

I believe the Federal Government should be a prudent shopper, too. I know the Department of Agriculture has been working hard and successfully to reduce purchases of high-priced, short-supply items in the commodities it buys for the Federal school lunch program, and to shift to lower priced substitutes that maintain the high quality of school lunches.

I applaud this progress. I believe, however, that a greater effort is necessary in the face of very high food prices and the probability of continuing shortages.

I want you to review, in consultation with Alfred Kahn and my other advisors, your food purchase plans for the rest of this year and next in light of the inflation rates that have been occurring in the major commodities you plan to buy, and the outlook for supplies and relative prices of available substitutes. Please report to

me by April 15 the results of this review, including the specific changes you intend to make in the quantities you purchase of various pertinent foods. You should at the same time make certain that these reductions in no way dilute the high nutritional standards and quality of the lunches we provide to our country's 26.5 million participating school children.

I ask you and your dedicated staff to accept my appreciation of your continuing efforts to find ways of improving the high protein value of the school lunch menu in ways that get the most for your budget dollar.

I am issuing similar directives to the Secretary of Defense and the Administrator of Veterans Affairs to make their food purchasing decisions more price sensitive for the remainder of this year and for 1980. In addition, I am asking them to work more closely with your Department in the coming months under the government wide food quality assurance and specifications management program that we started last year, to produce more rapid improvements in the cost-effectiveness of Federal food procurement. To accelerate that effort, I am directing you to complete unification by the end of Fiscal Year 1980 of the high dollar specifications,

which account for more than 80% of Federal food expenditures. Early completion of this action will eliminate from Federal food procurement the unnecessary inconsistencies that prevent us from getting the maximum benefit from the Federal food dollar.

Dear Secretary Brown:

Extreme inflation in the price of food is imposing a heavy burden on every American.

Fortunately, there are good substitutes available at prices that make it possible to stretch the shrinking food dollar and still provide equally nutritious meals. I'm certain the American shopper will be taking advantage of these better buys in the months ahead.

I believe the Federal government should be a prudent shopper, too. I know the Department of Defense has been working to reduce purchases of high-prices, short-supply items in the commodities it buys for your food service program, and to shift to lower priced substitutes. I understand, for example, that your Food Planning Board has just approved the use of a 20 percent soy extended ground beef product. I applaud this kind of innovative diet planning that maintains high protein standards and assures that our armed services personnel continue to enjoy the same high quality meals they have enjoyed heretofore.

I believe, however, that a greater effort is necessary in the face of very high food prices and the probability of continuing shortages. I want you to review, in consultation with Alfred Kahn and my other advisors, your food purchase plans for the rest of this year and next in light of the inflation rates that have been occurring

in the major commodities you plan to buy, and the outlook for supplies and relative prices of available substitutes. Please report to me by April 15 the results of this review, including the specific changes you intend to make in the quantities you purchase of various pertinent foods.

You should at the same time make certain that this reduction in no way dilutes the high nutritional and quality standards the Department of Defense has established for its food service program.

I am issuing similar directives to the Secretary of Agriculture and the Administrator of Veterans Affairs to reexamine their food purchase plans this year and next and to report to me on the results. In addition, I am asking you to work more closely with them in the coming months under the government-wide food quality assurance and specifications management program that we started last year, to produce more rapid improvements in the cost-effectiveness of Federal food procurement. To accelerate that effort, I have directed the Secretary of Agriculture to complete a unification by the end of Fiscal Year 1980 of the high dollar specifications which account for more than 80 percent of Federal food expenditures. Early completion of this action will eliminate from Federal food procurement the unnecessary inconsistencies that prevent us from getting the maximum benefits from the Federal food dollar. I know you will give the Secretary your full support.

Dear Mr. Cleland:

Extreme inflation in the price of food is imposing a heavy burden on every American.

Fortunately, there are good substitutes available at prices that make it possible to stretch the shrinking food dollar and still provide equally nutritious meals. I'm certain the American shopper will be taking advantage of these better buys in the months ahead.

I believe the Federal government should be a prudent shopper, too. I know the Veterans Administration has been working to reduce purchases of high-priced, short-supply items in the commodities it buys for your hospital food service program, and to shift to lower priced substitutes. I believe, however, that a greater effort is necessary in the fact of very high food prices and the probability of continuing shortages.

I want you to review, in consultation with Alfred Kahn and my other advisors, your food purchase plans for the rest of this year and next in light of the inflation rates that have been occurring in the major commodities you plan to buy, and the outlook for supplies and relative prices of available substitutes. Please report to me by April 15 the results of this review, including the specific changes you intend to make

in the quantities you purchase of various pertinent foods. You should at the same time make certain that these reductions in no way dilute the high nutritional and quality standards the Veterans Administration has established for its food service program.

I urge you to pursue innovations in diet planning that maintain high nutrition standards while assuring that our veterans continue to enjoy the same quality meals they have enjoyed heretofore.

I am issuing similar directives to the Secretary of Defense and the Secretary of Agriculture to reexamine their food purchase plans this year and next and to report to me on the results. In addition, I am asking you to work more closely with them in the coming months under the government-wide food quality assurance and specifications management program that we started last year, to produce more rapid improvements in the cost-effectiveness of Federal food procurement. To accelerate that effort, I have directed the Secretary of Agriculture to complete a unification by the end of Fiscal Year 1980 of the high dollar specifications which account for more than 80 percent of Federal food expenditures. Early completion of this action will eliminate from Federal food procurement the unnecessary inconsistencies

Secretary Cleland

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that prevent us from getting the maximum benefits from the Federal food dollar. I know you will give the Secretary your full support.

1:45

THE WHITE HOUSE

WASHINGTON

April 6, 1979

MEETING WITH REPRESENTATIVES OF  
MAJOR OIL CORPORATIONS

Friday, April 6, 1979

1:45 p.m. *Cabinet Room*

From: Anne Wexler *AW*  
Stu Eizenstat *Stu*

I. PURPOSE

To encourage the major oil producers to increase oil production and to seek their support of the total energy package.

II. BACKGROUND

The American Petroleum Institute's convention is presently occurring in New Orleans so that the chief executive officers could not attend this meeting. Instead, the Washington representatives of the major oil companies and trade associations are attending and will carry the message back to their chief executives.

III. TALKING POINTS

Talking points are attached.

IV. PARTICIPANTS, AGENDA AND PRESS PLAN

A. Participants: Representatives of the seven big oil companies, Exxon, Mobil, Chevron, Texaco, Gulf, Shell, BP, and ARCO; and of the American Petroleum Institute and Mid-Continent Oil and Gas Association (list attached).

- B. Agenda: You will open the meeting. Following your remarks, Stu Eizenstat and Eliot Cutler will conduct a detailed briefing.
- C. Press: No press will attend.

April 6, 1979

Talking Points

- Last night I announced an energy program that follows the position that all of you have been advocating - the decontrol of oil prices.
- I took that step, at considerable political and inflationary risk, because I am convinced decontrol is in our country's best economic and energy interests.
- You now have the power and ability to prove that my judgment was correct. Your decisions from today forward will determine whether decontrol is just a pricing mechanism to increase energy costs for consumers or truly a system that will lead to greater domestic oil exploration and production. Your credibility with the American people, as well as mine, is at stake if oil exploration and development in this country does not increase substantially.
- I believe you are greatly concerned about our energy future and security, and you will begin efforts to expand your domestic exploration and production. I want you to take advantage of the pricing increases to look for new oil, to use enhanced recovery techniques, to put all of our unused rigs back into operation. In short, I would like a commitment from you that you will greatly step-up your domestic production efforts.
- The policy I announced last night will work if we have not only your increased exploration and development but also your public support. I am not seeking your public praise, or to get votes in certain parts of the country. I am seeking your public assurances to the American people that, in your expert view, the decontrol policy will lead to greater production and energy security for the country.
- I certainly recognize that one of the effects of decontrol will be to transfer, over the next three years, about \$16-18 billion in revenues away from consumers and to you. I could not sanction such a transfer unless there was a mechanism to give some of that money back to the American people, through a "windfall profits" tax. The tax I have proposed still leaves you with substantial revenues for increased domestic exploration and development. But I cannot justify letting you have all of the additional revenues.
- I have taken a great political risk in proceeding with decontrol without making it contingent on a tax. I did not do so because I was concerned that a direct linkage would have produced no tax and therefore no decontrol.

- Despite the fact that I have not explicitly tied the tax with the decontrol, I am determined to fight for the tax with all my resources and powers. I believe the American people will be strongly supportive of the tax - both because of their concern about undue profits and their recognition that the use of the funds for energy research and development will ultimately make us energy secure.
- I believe it is in both your long term and short term interests to support the tax in the form I have proposed. Oil company profit statements will be coming out soon. Whatever you believe about the profit level, you will have a credibility problem even before we decontrol one drop of oil.
- I do not want a dangerous, drawn-out battle with you over the tax, but I am fully prepared for it if you are going to oppose the tax. I think your opposition to the tax will not only hurt your public image and your relationships with my Administration, but it will create further opposition throughout the country to decontrol and could lead to Congressional efforts to soften the decontrol path I have proposed.
- I would like to know whether you can support the tax. If you cannot let me know now, I would like you to send me a letter as soon as possible with your position.
- I do not enjoy taking on another major legislative battle. But I am prepared to do so if you do not support the tax. I urge you to do so.
- I hope that in the future we can work together closely to put into place a sound energy policy for our country. Working together, we can ensure such a policy.

PARTICIPANTS

Charles Sandler  
Federal Relations Director  
American Petroleum Institute

Wayne Gibbens  
President  
Mid Continent Oil and Gas Association

Donald Smiley  
Vice President  
Exxon

John Philbin  
Manager, Government Relations, U.S. Marketing and Refining  
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Robert Kenney  
Assistant to the Senior Vice President  
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Frank Bradley  
Vice President  
Chevron

L. Hill Bonin, Jr.  
Vice President and Executive Director  
and  
Wayne Harmon  
Director, Federal Agency Relations  
Gulf

David Gross  
Vice President  
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Roberta Severo  
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BP

Hollis Dole  
Washington Representative  
ARCO