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# OMB Asserts Contacts Need Not Be Logged

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The Reagan administration has issued a brief memorandum on Office of Management and Budget communications with outside parties and federal agencies that does not require OMB to log contacts with outsiders on regulatory issues or notify concerned agencies of such contacts.

The OMB memo does little to allay public interest groups' fears that extensive contacts between administration officials and lobbyists could lead to life-or-death decisions on proposed rules without any public knowledge that a rule was ever discussed.

OMB was catapulted into the center of regulatory decision-making with the issuance of the Reagan administration's Executive Order 12291. That order created a presidential task force on regulatory relief and empowered the task force—using the OMB Office of Information and Regulatory Affairs staff—to review proposed rules before their publication to determine whether agencies had adequately explored the rules' costs, benefits, and other effects.

These developments have prompted concern that the administration had essentially forced the informal rulemaking procedure underground. "Since this Order provides no explicit safeguards to protect the integrity of the process or the interests of the public against secret, undisclosed, and

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# OMB Asserts Broad Latitude on Ex Parte Contacts

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unreviewable contacts, it may be argued that the Order, on its face, deprives participants of essential elements of fair treatment required by due process," said a study of the issue completed by the Library of Congress analytical staff last week.

## No Apparent Requirements

The guidelines on contacts with OMB, contained in the memo released June 13, impose no apparent requirements for making records of such communications. The five-paragraph memo states that "the public and the agencies should understand that the primary forum for receiving factual communications regarding proposed rules is the agency issuing the proposal." Accordingly, the memo says "factual materials" sent to

the task force or OMB "should indicate that they have also been sent to the agency."

The task force and OMB will advise "those members of the public with whom they communicate that relevant factual materials submitted to them should also be sent to the agency for inclusion in the rule-making record," the document states. Agencies should "take care" that such materials should be placed in the record, the memo adds.

If OMB or the task force receives or develops factual materials that they believe should be considered by an agency during rulemaking, such materials will be submitted to the agency with the notation that they are appropriate for the record of agency rulemaking.

The guidelines briefly state that procedures will be consistent with the holding of the D.C. Circuit in *Sierra*

*Club v. Castle* (No. 79-1565, April 29, 1981). In that holding, the court took a broad view of presidential authority to influence decision-making through contacts with the agencies during rulemaking, after the close of the public comment period.

Although the guidelines do not elaborate on this point, some observers have questioned the degree to

guidelines, does not appear to cover oral communications, which are the primary means of communication at OMB. "They do things by phone," he said. "They don't want anything on the record."

The term "factual materials" also does not seem to include policy analysis, he added. "If a company calls them up and says, 'We want to get

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which the ruling applies to the type of contacts that may occur frequently as a result of the executive order. The D.C. Circuit opinion comments in a footnote that it does not apply to "so-called 'conduit' communications, in which administration or inter-agency contacts serve as mere conduits for private parties in order to get the latter's off-the-record views into the proceeding."

## What They Mean

"We don't know from the face of

rid of a rule,' that's not covered," he said. Galloway said submissions such as lengthy legal arguments against a particular rule would also apparently escape coverage.

The Reagan memo is a marked departure from a nine-page memorandum on the subject of outside contacts developed by the Carter administration in connection with Council of Economic Advisers' contacts with the Interior Department on a strip-mining rule.

Those guidelines advised CEA staff

## KEEPING UP

### Paperwork Guidelines Set

The Office of Management and Budget has issued its guidelines for reduction of the Federal Government's

### OFCCP Targets Withheld

U.S. District Judge June L. Green has decided to withhold, under the Freedom of Information Act, all