

**AFL-CIO \* Clean Air Watch \***  
**Government Accountability Project \***  
**OMB Watch \* Public Citizen \***  
**Public Employees for Environmental Responsibility \***

July 10, 2007

The Honorable Richard Durbin  
Chairman, Financial Services and General Government Subcommittee  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

The Honorable Sam Brownback  
Ranking Member, Financial Services and General Government Subcommittee  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Brownback:

President Bush's Executive Order 13422 usurps congressional power, requires new analyses by federal agencies, and places the power to stop regulations in the hands of unconfirmed presidential appointees.

E.O. 13422 and the Good Guidance Practices Bulletin issued in January require all federal agencies to identify "market failures" before proposing a rule and give the budget office the power to assess these analyses. In other words, if the White House budget office believes the agency has not demonstrated a market failure, it can decide that a rule is not needed. This flies in the face of congressional mandates and common sense, and it could seriously impact the effectiveness of agency regulations.

The order will also extend the White House budget office's review to agencies' guidance documents – generally interpretive statements used to clarify regulatory obligations to industry or explain technical matters – for the first time. This can only further delay implementing health, safety, and environmental protections.

Strikingly, Bush's order also makes the Regulatory Policy Officer in each agency a kind of political overseer. The executive order forbids any rulemaking, or even the consideration of rulemaking, from taking place unless the Regulatory Policy Officer is involved in the process, and that Officer must be a political appointee. This is a continuation of the administration's pattern of replacing sound science and expert knowledge with political judgments that benefit corporate special interests.

The White House budget office is also granted the authority to interfere with federal rulemaking to a much greater extent than before. Bush's directive allows the office to slam the door on proposed rules listed on each agency's annual Regulatory Plan before the American public even has a chance to participate in the rulemaking process.

Supporters of the executive order say that Bush's move will make the rulemaking process more transparent. However, it is likely that transparency will actually suffer under the order, as the White House will be able to kill regulations without public input and without a record of the process.

Those who uphold the order as an example of "good government" also claim that Bush has the authority to exert greater control over federal rulemaking because he is the head of the executive branch. Of course, centralizing power in the White House further politicizes the process. And it misses the point that in our system of constitutional government, Congress also has a say in the operation of federal agencies, and this executive order is another step toward shutting Congress out of the process.

The White House has further consolidated power within its walls, and it should be held accountable. We support Congress's efforts to use its appropriations power to stop this executive power grab. We fully support any language included in the Senate's Fiscal Year 2008 Financial Services and General Government Appropriations bill that would prohibit funds from being used for implementation of these changes.

Sincerely,

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Clean Air Watch  
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