

MEMORANDUM

To: David G. Marwell
From: T. Jeremy Gunn
Date: June 9, 1995
Re: Requirements Imposed by E.O. 12866
File: 3.3.2

Executive Order 12,866, 5 CFR. § 601 (E.O.), imposes certain responsibilities on the Review Board.¹

We should have complied with this regulation immediately upon startup. This memorandum identifies the E.O.'s requirements and suggests specific actions we should take in order to comply promptly.

1. **Rule:** we should prepare an agenda for all of our proposed regulations under development or review to OMB's Office of Information and Regulatory Affairs (OIRA). Sec. 4(b). The description for each proposed regulatory action should include:

- a regulatory identifier number,
- a brief summary of the action,
- the legal authority for the action,
- the legal deadline for the action, and
- the name and telephone number of a knowledgeable agency official.

Action: I will prepare a letter (for your signature) to Maya Bernstein of OIRA that identifies the following regulations and proposed regulations:

¹The E.O. applies to "agencies" as defined in 44 U.S.C. 3502(1). Although an argument could be made that the Assassination Records Review Board is not such an agency, I am assuming for the purpose of this memorandum that it is.

Not discussed below is the requirement that agencies submit a "Regulatory Plan." I include no discussion here inasmuch as such Plan is described as applying to "the most important significant regulatory actions" Sec. 4(c). The E.O. elsewhere defines "significant regulatory actions" in such terms that would apply to regulations having a significant effect on the economy or on lives. I am therefore interpreting this regulation not to apply to any anticipated Review Board action, although we may wish to confirm this independently with Maya Bernstein. Similarly, I include no discussion of Sec. 6(a)(E) which imposes additional requirements on agencies issuing "significant" regulations.

- (a) Definition of "assassination records," 36 CFR 1400.
- (b) Sunshine Act, 36 CFR 1405.
- (c) Freedom of Information Act, 36 CFR 1405.
- (d) Privacy Act, 36 CFR 1410.
- (e) Notice of Description of Organization, 36 CFR 1415.

The letter will mention that we intend to issue (b)-(d) for comment as soon as we have her authorization. We will issue (e), which does not need to be issued for comment, as soon as the Board votes and we have Ms. Bernstein's authorization.

The E.O. requires OIRA to respond to our letter within 10 days. Sec. 6(b).

2. **Rule:** we should provide the public with a "meaningful" opportunity to comment on proposed regulations. The E.O. suggests that this be at least 60 days. The standard comment period for such regulations has, heretofore, been 30 days. Sec. 6(a)(1).

Action: We should ask Ms. Bernstein whether OMB seeks an extended comment period for the Sunshine Act, FOIA, and the Privacy Act.

3. **Rule:** the Review Board's "head" should designate a Regulatory Policy Officer who shall report to the agency head. The Regulatory Policy Officer is responsible for developing, implementing, and coordinating agency regulatory activities. Sec. 6(a)(2).

The regulation is not clear as to whether the Executive Director or the Chairman is the "head."

Action: It makes sense for the Executive Director to perform the function of "head" for the purpose of the E.O.

4. **Rule:** we should send a list of our proposed regulations to OIRA combined with an analysis of whether there is any "significant" rule among them.² Sec. 4(b).

Action: Because we will not be issuing a "significant" rule, this requirement tracks that of number 1 above.

5. **Rule:** we should make an annual report to OIRA, on June 1 of each year, to describe our anticipated rulemaking. Sec. 4(f)(2).

²See footnote 1 above. I again am assuming that none of our proposed regulations is "significant" within the meaning of the E.O.

Action: our letter to Ms. Bernstein should satisfy this requirement for 1995-96. I have put this issue on our calendar for June 1, 1996.

6. **Rule:** we should attend the annual "Agencies' Policy Meeting." (Sec. 4(a)).

Action: This appears to be an unimportant requirement for which we can await notification from OIRA.