



ENVIRONMENTAL DEFENSE FUND

finding the ways that work

October 31, 2008

The Honorable George W. Bush
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Bush:

We are a diverse coalition. All of our members share a deep concern about America's regulatory state. We want to deliver a simple message: your administration should stick to its word and not issue any midnight regulations.

Your own chief of staff, indeed, made your priorities clear in a memo he sent on May 9, 2008: "Except in extraordinary circumstances, regulations to be finalized in this Administration should be proposed no later than June 1, 2008, and final regulations should be issued no later than November 1, 2008." You should follow your own policy. Indeed, following your own policy seems to imply that regulations received after June 1st and not yet finalized should be considered suspect particularly when they revise rules already in force or relate to laws passed before the 110th Congress.

The process of midnight rulemaking--something that Presidents of both parties have done with relish--does great damage to the soundness of our regulatory process and, indeed, our

democracy. The Administrative Procedure Act of 1946 establishes a regulatory process that includes opportunity for public comment, review, and investigation of regulations. Ultimately, however, enormous power rests with the regulators themselves. The people, through their votes, provide a check on unwise rulemaking. When you issue regulations as a departing administration, you do so without this check and, in some cases, against the will of the people.

On your own administration's first day in office almost eight years ago, you issued an executive order suspending the implementation of your own predecessors' last-minute regulations. Much of the rulemaking during your first years in office involved revising, revisiting, and repealing these "midnight" regulations in order to implement your agenda. You should set a good example and avoid leaving your predecessor with the type of headaches you inherited.

Your administration has already issued more regulations than any in history. For eight years, you have been able to implement your agenda on a wide array of issues. We acknowledge that *bona fide* emergency rulemaking may become necessary at times but, true emergencies-by definition-are few, far between, and pertain to a small subset of issues. In addition, the issuance of regulatory action may be compelled by court-supervised deadlines or other mandates. These regulations are different from the discretionary actions undertaken in the final rush of the administration to advance controversial policies while subverting transparency, rigor, and legitimacy in the rulemaking process.

As a coalition, we do not take a position on any particular rule but, rather, a principled stand on the proper conduct of rulemaking. Our coalition likely contains proponents and opponents of nearly every major regulation you would consider. We have different interests but share a conviction: for the next few months, you should avoid issuing all but the most urgent new regulations.

Yours truly,

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