

EXECUTIVE OFFICE OF THE PRESIDENT

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TO: OCONNOR_J
FROM: Jill M. Blickstein
CC: KELMAN_S
CC: Jacob J. Lew
SUBJECT: OFPP NPRM to be published September 9

File
Could be huge problems (asked for more info)

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This is just a heads up that we'll be looking for your concurrence on an OFPP NPRM to be published in the Federal Register two Mondays from now (a statutory deadline). Jack Lew has not seen the proposal yet, but I wanted you to be aware it was coming, because we'll be looking for clearance by next Wednesday, the 4th.

The most recent procurement reform law requires OFPP to consider whether it would be appropriate to waive certain requirements and certifications for Federal agency procurement of commercial, off-the-shelf items (about 10-15% of all Federal procurements). In April, OFPP published as an ANPRM the list of requirements we would consider waiving; on the 9th, we are required to publish a Notice of Proposed Rulemaking with lists of what we propose to waive and not to waive. Because we do not have agency concurrence on a few items -- including a few labor items -- we plan to include a third category: items for which we will seek further public comment.

The labor items OFPP has considered waiving (but will only seek comment on waiving on the 9th) include:

the Buy America requirement;

the requirement that Federal agencies make special efforts to hire Vietnam veterans and the disabled, and

a certification in the Right of First Refusal for Building Workers Executive Order. (The EO required contractors to produce a list of employees in seniority order; the list has to be certified, and waiving the certification would not eliminate the requirement to produce the list.)

All 3 of these items were included in the ANPRM in April, and the labor unions did not comment. The Defense Department strongly supports waiving these requirements; the Labor Department has opposed waiving the first 2 and we are waiting for their comment on the third.

Let me know if you have any immediate concerns about this approach. We will send you the draft NPRM summary when it's ready. Thanks.

(Jack -- There is also an EPA issue that Steve Kelman will raise separately with CEQ and TJ's staff.)