

From: "Hook, Brian H."
To: "Bennett, Jessica C.", "Hughes, Taylor A.", "Jackson, Barry S.", "Smith, Heidi M.", "Silverberg, Kristen", "Kavanaugh, Brett M.", "West, Christal R.", "Weinstein, Jared B.", "Boyer, Matthew W.", "Kropp, Emily L.", "Katz, Jeremy L.", "Ralston, Susan B.", "Kane, Mary L."
Subject: Night Note 6/7
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[Pending Issues- 6-7.doc](#)

Attached is the Pending Issues document for June 7.

June 7, 2005

MEMORANDUM FOR ANDY CARD, KARL ROVE, JOE HAGIN, and MIKE GERSON

FROM: KRISTEN SILVERBERG, BRIAN HOOK and JEREMY KATZ

RE: NIGHT NOTE

Climate Change. Today, the national science academies of 11 countries, the United States among them, issued a statement Tuesday calling on G-8 countries to “identify cost-effective steps that can be taken now to contribute to substantial and long-term reductions in net global greenhouse gas emissions.” This statement did not have new science in it, but was instead a political call to the G8 leaders to treat this as an urgent matter requiring the G8 to accelerate actions to reduce emissions. In addition, the NYT (Andy Revkin) will be reporting tomorrow on CEQ's influence on global science program documents that were prepared two years ago. He is basing his story on leaked edits from Phil Cooney on these documents and Phil's prior employment with the American Petroleum Institute. He is also emphasizing comments from Harlan Watson of the State Dept on those drafts. CEQ believes that a disgruntled employee who resigned from the Federal global climate science office in early March is the source. OSTP and CEQ provided comments to Rivkin along the following lines: “This was a structured and deliberate interagency process that was fully adhered to – where all team members fully participate and collaborate as policy and reports are developed. The process produced a 10-year strategic plan that was widely praised, including by our own National Academy of Sciences.”

CAFE Reform. Deputies met today with representatives of DOT, DOE, EPA, and DOI to discuss CAFE policy. DOT presented its reform proposal and the other agencies offered their input, which was generally favorable. There continues to be disagreement within the EOP about the merits of DOT's approach, and DPC is working to schedule a Principals meeting for later this week in preparation for policy time next Wednesday. DOT is required by law to establish standards for these vehicles no later than April 1, 2006.

FAA Labor Negotiations. Today, FAA briefed DPC and OVP on the upcoming labor negotiations with their air traffic controllers. Since 1998 when the last contract was signed, controllers' compensation has increased 64% and FAA has seen its management flexibility erode. Unions set staffing levels, control schedules, and restrict the introduction of new technologies. FAA is looking to bring its inherited costs under control and recapture its management flexibility, and will be finalizing its specific pay and work rule proposals in July for exchange with the controllers' union. DPC will continue to monitor the negotiations.

Immigration. DPC hosted a TWP working group meeting today that achieved tentative resolution of the private accounts and family-members issues. CEA and SSA were tasked with laying out the options discussed by the group for totalization and other bilateral agreements so that the working group can discuss and finalize their recommendations at the next working group meeting on Friday.

Judges. The Senate today agreed to invoke cloture 65-32 on Janice Rogers Brown's nomination.

Other Issues

- *Airline Pensions (Sharp/DPC; Hook) -- Today Senator Grassley held a hearing to examine defined benefit pension underfunding. The hearing was precipitated by United's successful pension termination last month, which left the Federal government on the hook for \$6.6 billion in benefits payments to workers. The hearing focused both on structural reforms to the pension funding rules and possible relief specifically for airlines. The CEOs of Delta and Northwest airlines both testified that their pension payments may drive them into bankruptcy without legislative relief. The airlines have a joint proposal, introduced by Senator Isakson, that would allow the airlines to stretch out their pension payments over 25 years. Senator Grassley said, "The facts are alarming. The time to act is now. Tinkering with the current rules won't do."*
- Amtrak (Sharp/DPC; Hook) – Sec. Mineta sent a letter to Amtrak President David Gunn on 5/25 warning that the railroad seemed poised to spend more in '05 than it can afford. Secretary Mineta recommended immediate costs cuts and cash conservation to moderate the cash burn rate and prevent a shutdown or government bailout.
- Appropriations (Kaplan/OMB; Silverberg) – The House has passed Energy & Water, Homeland Security, Interior, and Mil Quality of Life.
- Asbestos (Ho/DPC; Hook)
- Avian Flu (DPC; Katz) -- WH staff met last week with HHS to discuss a funding strategy for vaccines and antivirals for FY05-FY07. HHS proposes to buy as much vaccine as can be produced in FY06 and FY07. By the end of FY07, HHS would have 20 million courses of antiviral and 20 million of vaccine. HHS is still working on the funding proposal which they will share and discuss with WH staff on Wednesday.
- Byrd Amendment (Daly/NSC; Katz) – The Administration supports repeal, although congressional support for full repeal is unlikely. NSC and Treasury are reviewing other possible legislative approaches.
- CFIUS (Russell/NEC; Katz) – *Deputies met today and approved agencies initiating negotiations with the Company. Deputies plan to meet again to follow-up on the negotiations.*
- Civil Service Reform (Sharp/DPC; Silverberg)
- Clear Skies (Cooney/CEQ; Hook) – At a House Energy and Commerce Air subcommittee hearing, Connaughton and Holmstead agreed to provide some of the modeling requested by Senator Carper.
- Community College Initiative (Sharp/DPC; Hook) – DOL has sent out the first of two solicitations for grant applications (SGA) for the \$125 million in community college grants. The SGA allowed only community colleges to apply for funding. Chairman Regula believes that other entities, including workforce investment boards and one stop centers, should also be eligible for grant money. DPC is discussing with OMB and DOL the possibility of configuring the second SGA to permit such grants beyond community colleges.
- Cooperative Conservation event (Pinero/DPC; Hook) – CEQ is on schedule for a three-day conference at the end of August in St. Louis.
- Corporation for Public Broadcasting (Russell/NEC; Katz)
- Crime/Guns/Lautenberg (Ho/DPC; Hook) – DOJ/OLP formed a study group with the FBI to review the GAO report. The OLP group has developed its recommendations, which are

currently before the AG. DOJ is recommending administrative and legislative changes. DPC will review them in the near future.

- Democracy Fund (OMB; Silverberg) -- At last September's UNGA, the President called for establishment of a UN Democracy Fund to help establish institutions in emerging democracies. He committed to make an initial contribution and challenged other countries to contribute as well. We have not yet identified funds from the '05 budget for reprogramming. OMB is discussing options with the State Department.
- DHS Reorganization (Townsend/HSC; Hook) -- Following discussions with Joe, HSC will set up a briefing this week with interested WH offices. We would ask DHS to present the plan to the Chief the following week (after WH offices have resolved or crystallized any disagreements). If the proposal is ready, we would hope to brief the President next week.
- *Digital Television (Russell/NEC; Katz) – Deputies plan to meet tomorrow. Chairman Barton has stated that he is committed to seeking a hard date of December 31, 2008 for the transition. Dingell and other Democrats argued the government should provide free DTV converters to all viewers; Barton suggested he might support a narrowly targeted subsidy instead. He plans to attach legislation to the reconciliation package in September after passing it through Committee.*
- Drug Reimportation (Leggitt/DPC; Katz) – DPC hosted a meeting with OMB, OVP, OLA, CEA, Communications, FDA and HHS staff to discuss strategies for dealing with potential legislation on the Hill. A growing number of cities and states are passing laws to allow for the importation of drugs from Canada.
- EEO-1 (Sharp/DPC; Hook) – EEOC gave us a cost estimate of compliance with the proposed new form. OIRA is working with EEOC to confirm the numbers. DPC and OMB met Friday with EEOC and asked EEOC to revise their cost estimates based on concerns OMB has raised about their assumptions. Once completed, DPC will meet with Barry and others to review the numbers.
- EEOC Definition of “Applicant” (Sharp/DPC; Hook) – DOL has informally submitted an NPRM and will formally submit in the next week or two.
- Economic and Community Development (Halaska/DPC; Hook)
- Endangered Species Act (CEQ; Silverberg) – On 6/3, DPC hosted a deputies meeting with Interior officials to discuss our strategy on ESA. The decision was made to put administrative reform on hold pending legislative reform attempts this session. If the Hill makes no progress, as is anticipated, then the Administration will consider administrative reform proposals. Deputies encouraged Secretary Norton and DOI to speak more publicly on the issues surrounding ESA to build support for reform. We will also work with outside groups to do the same.
- Faith Based Initiative (Towey/OFBCI; Hook) - JCT published a report in January proposing twelve measures designed to eliminate fraud and abuse related to charities. OFBCI has concerns that a number of the provisions are unnecessary and would burden charities unfairly. Grassley is pushing to include a number of these provisions in the CARE Act. NEC hosted a meeting with Treasury’s Office of Tax Policy last week to examine the provisions. Grassley’s staff told OLA that they plan to mark up in late June or early July.
- FDIC (Warsh/NEC; Katz)
- FMLA (Sharp/DPC; Hook) – On 6/3, deputies reviewed DOL's proposed package of regulatory reforms to the FMLA. The changes would largely help employers better manage unscheduled absences. Deputies support most of the reforms, but there wasn't agreement to let DOL proceed with draft regs. The regulations would draw intense

criticism from employer and women's groups, and some question the commitment of the employer community to fighting legislative attempts to undo the regulations. There are also communications challenges associated with any perceived change to cut back FMLA leave. DPC will convene a principals meeting in the coming weeks to develop a recommendation on FMLA reform.

- GSEs (Warsh/NEC; Katz)
- G-8 (Shirzad/NSC; Silverberg) –
- Head Start (Halaska/DPC; Hook) – The bill was marked up by Enzi's committee on 5/25. DPC and OLA have serious concerns that the policy does not contain enough reform, and the authorization levels are far above what was in our budget. The committee does plan to continue working and will offer another manager's amendment on the floor, but OLA doesn't hold much hope that we will get what we want.
- *Health IT (NEC; Katz) -- We hope to have the draft AHIC charter from HHS by Wednesday. We plan to put the charter through staffing.*
- Helping America's Youth Initiative (Medina/DPC; Hook)
- Highway Bill (McMillan/OMB; Silverberg) – A letter from Sec. Mineta to the highway bill conferees went through staffing on 5/31.
- *Indian Trust/Cobell (Ho/DPC; Hook) – DPC will host a deputies meeting on Friday to discuss draft principles for resolving Indian trust challenges. DOI is proposing legislation to allow it to buy out Indian lands using a loan from Treasury. Treasury would be paid back over 50 years from proceeds from the land. DOJ, DOI, and Treasury planned to submit a formal proposal to OMB on 6/2. Senator McCain is very focused on the issue and is expected to introduce legislation soon.*
- Job Training Reform (Sharp/DPC; Katz) – The Senate is hoping to schedule floor time on WIA in June or July. The bill does not include our reforms and has bad religious hiring language.
- Medical Liability (Ho/DPC; Silverberg) - House Democrats Baird, Moran and Ruppertsberger introduced medical liability legislation on 5/25. Their bill would cap non-economic damages at \$800,000 and allow that figure to fluctuate with inflation.
- *Medicaid Commission (NEC; Katz) -- HHS has submitted its proposed members to the WH. Barry plans to call HHS today to communicate WH concerns over the list's current state.*
- Medicare Drug Implementation (Jackson; Katz)
- Methamphetamine (Ho/DPC; Katz) -- DPC held a deputies meeting with HHS, DOJ, ONDCP, OLA, WHC, and CEA on potential steps to restrict pseudoephedrine availability. In addition to quantity-of-purchase restrictions, DOJ supports treating pseudoephedrine as a Schedule V-like drug and restricting sales to pharmacies -- as the proposed Talent-Feinstein bill would do. HHS had strong concerns with this proposal regarding availability of widely used pseudoephedrine products. A potential middle ground would require pseudoephedrine products to be held behind store counters, but not limit sales to only pharmacies. DPC is trying to reschedule Wednesday's Principal meeting. A Senate hearing on the subject is set for June 28th.

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- *Native Hawaiians (Ho/DPC; Silverberg) – Senate action on the bill is likely before August. Senator Kyl will not block a floor vote on the bill, though he will oppose it. OMB believes strongly we should go on record with Administration concerns; OPA believes strongly we should weigh in only if necessary. We have asked OMB to draft a views letter,*

and will solicit Principals' views once the draft is prepared. DOJ briefed Senator Coburn's staff on Friday.

- NCLB (Medina/DPC; Hook)
- Northwest Airlines Mechanics Negotiations (Sharp/DPC; Hook) -- Northwest Airlines has asked the National Mediation Board (NMB) to release them from mediation. If the NMB agrees that negotiations with the Aircraft Fraternal Mechanics Association have reached impasse, a vote to release the parties will trigger a 30-day cooling off period, following which the union may strike or the airline may lock out workers. The President can convene a Presidential Emergency Board to temporarily avoid a work action and attempt to broker a settlement. The NMB will meet with the union in the coming weeks to determine if an impasse has been reached.
- "Open Loop" Technology (Hannegan/CEQ; Katz)
- Personal Stockpiles (Rapuanano; HSC; Silverberg) – HHS has prepared a proposal, which Secretary Leavitt will briefly discuss at the HSC Principals meeting.
- Postal Reform (Sharp/DPC; Hook) –
- Protection of Lawful Commerce in Arms Act (Ho/DPC; Hook) -- House Judiciary Committee reported the bill last week. There is some discussion that the House may wait on a vote and let the Senate act, but there is also a possibility that the House will have a vote after recess.
- Real Estate Settlement Procedures Act (Halaska/DPC; Katz) - Secretary Jackson will begin outreach to solicit public reaction to various options (including the rule we considered in 2004).
- School Choice (Medina/DPC; Hook) –
- Secure Flight (Sharp/DPC; Hook) – TSA is expecting to issue an Interim Final Rule in mid-June compelling airlines to submit their passenger manifests.
- *Space (Sharp/DPC; Katz) - The Administration's Space policy directs NASA to complete and operate the space station (ISS) consistent with our obligations to our international partners. The commitment was kept vague (e.g., there is no definition of a "completed" ISS configuration) to allow NASA to negotiate with the partners on a potential rescope of the ISS configuration that was mutually satisfactory. This rescope could reduce the number of shuttle flights required and free up resources to accelerate other parts of the vision. Next week, Administrator Griffin, will be at the Paris Air Show and is likely to meet with many of his international counterparts. He would like to informally broach this subject. NASA has drafted talking points to outline his discussions. The Space working group has cleared the talkers (DPC, OMB, OSTP, NSC, State, DOD).*
- Steroids (Ho/DPC; Hook) – Chairman Davis's "Clean Sports Act" steroids bill passed the House Government Reform Committee. Davis' staff know that we do not support the bill. Another steroids bill is going through the House Commerce Committee. The two panels will consult and possibly combine the two bills.
- *Strategic Petroleum Reserve (Hutto/NSC; Katz) - DOE briefed NSC, CEA, OMB and CEQ last week on a model to determine the optimal size of the reserve.*
- Tax Reform (NEC; Katz) – The tax reform panel was planning on issuing a report at the end of July. Karl has asked that they wait to issue the report until September.
- TRIA (Warsh/NEC; Katz) – NEC held a deputies meeting with Treasury, OMB, CEA and WHC to review a Treasury report recommending a two year extension of TRIA. The report won't be released until June 30th, and WH staff envisions significant revisions in the lead up to the report's release. WH staff is skeptical of reading too much into the results of the report. NEC will prepare a memo in preparation for a Principals meeting on

Wednesday. OMB will take the draft Treasury report and submit it through the formal staffing process no later than June 16th in preparation for policy time with the President.

- Tricare Rx (Leggitt/DPC; Katz) – The Coalition for Government Procurement filed suit against the DOD/VA in U.S. District Court on March 24.
- Union Financial Transparency (Sharp/DPC; Hook) – OIRA has begun its review of the proposed rule and has asked DOL for stronger justification. OMB is working with DOL to improve the rule in anticipation that it will undergo OMB clearance.
- *Universal Service Fund (Russell/NEC; Katz) - Following up on the Principals telecom meeting, we are developing options on USF. NEC hosted a meeting on 5/31 where we reviewed options for modernizing USF and ERATE from OMB, CEA, Education and Commerce. The working group plans to meet again on Thursday.*
- *Veterans (Leggitt/DPC; Katz) – WH staff hope to have a revised document consisting of answers to a survey that VA sent out to their 21 Veterans Services Networks by tomorrow which we believe will be ok to release. Mansfield met today with Majority staff of the House VA Committee and staff have suggested that VA release the survey as part of a broader hearing on budget modeling that the House VA could conduct. WH is currently considering this proposal.*
- Voting Rights Act (Ho/DPC; Silverberg) – In advance of the anniversary of the VRA, we will need to settle on policy regarding reauthorization of Section 5. DPC will begin a policy process to resolve the issue.
- VNRs (Brosnahan/WHC; Silverberg)
- Welfare Reform (Halaska/DPC; Hook) – The next extension needs to be passed by June 30, 2005. DPC continues to work with Congress on how best to proceed.