APPROVED.

OCT 23 1974

Statement Issued 10/24/74

THE WHITE HOUSE

WASHINGTON

ACTION

Last day - Wednesday, October 23

October 21, 1974

MEMORANDUM FOR THE PRESIDENT

FROM: KEN COLE

SUBJECT: Enrolled Bill: Commodity Futures Trading Commission Act of 1974, H.R. 13113

Announced 10/23

To archives 10/24

BACKGROUND

This bill will strengthen and transfer the responsibilities of the Commodity Exchange Authority which is currently a part of the Department of Agriculture, to an independent regulatory Commission. The new Commission would have complete jurisdiction over all governmental regulations in the commodity futures area, including agriculture commodities, lumber and metals.

This legislation was not sponsored by the Administration, but we have generally supported its substantive provisions because there is a demonstrated need for increased regulation and tougher enforcement in this field.

However, the House-Senate Conference Committee added two provisions which are likely to weaken the Executive Branch's authority over this independent agency and this has led most of your advisers to recommend veto. These provisions are (1) concurrent submission to Congress and OMB of the Commission's budget requests and (2) concurrent submission of legislative proposals. The bill also contains a third provision authorizing the Commission to go directly into court to litigate their cases, bypassing the Justice Department.

All your advisers will support a bill that does not contain these three provisions.

ARGUMENTS FOR SIGNING

This bill provides needed reform to the nation's commodity futures markets. These markets have become increasingly volatile due to improper activities by some of the merchants. The present regulatory scheme within the Department of Agriculture is not adequate to cope with this problem.

ARGUMENTS FOR VETO

OMB argues that the bypass provisions of this bill will substantially weaken the ability of the Executive Department to control the budget of this new Commission, as well as present to Congress a coordinated and consistent legislative program.

The basic thrust of the bypass provision is inconsistent with the increasing need for budgetary discipline. This is an extremely bad precedent to set at a time when we are trying to further control Federal spending.

Furthermore, the litigation bypass provision would, according to Justice, seriously erode their control of Federal litigation.

STAFF AND AGENCY POSITIONS

The following recommend signature:

Phil Areeda
Department of Agriculture
Civil Service Commission

The following recommend veto and approval of the veto message which supports the reform portions of the bill and objects only to the three provisions which weaken Executive control:

Roy Ash (see attached enrolled bill memo)
Ken Cole
Bill Timmons
Justice Department

DECISION - H.R. 13113

Sign (Tab A) _________ Veto __________
(Sign veto message at Tab B which Paul Theis has also approved)

THE WHITE HOUSE

WASHINGTON

6:50 10/23

Tom:

Press Office __announced__ that President had signed HR 13113 and that a statement would be released in the morning.

Katy was advised.

Ken

TO THE HOUSE OF REPRESENTATIVES:

I am withholding my approval from H.R. 13113, the Commodity Futures Trading Commission Act of 1974.

This bill would provide for the first major overhaul of the existing Commodity Exchange Act since its inception by establishing a new regulatory structure to apply to all commodity futures trading. This is an objective which I fully support.

Unfortunately, in passing an otherwise desirable bill, the Congress has incorporated three objectionable provisions which would enable the Commodity Futures Trading Commission, which the bill would create, to bypass traditional Executive Branch functions. I find these provisions unacceptable. They represent a retreat from my goal of reduced federal spending. They will make it more difficult for me to review all requests for federal spending to insure that the taxpayers' dollars are spent prudently.

First, it would require the concurrent submission to Congress of the Commission's budget requests and documentation when these are submitted to the President or the Office of Management and Budget. This would in effect undermine the provisions of the Budget and Accounting Act of 1921 which requires the President to submit to Congress a single coordinated budget.

Second, as with the budget requests, it would require concurrent submission of the Commission's legislative proposals. Such a requirement, particularly if extended to other agencies, would make it difficult for the President to develop and present to the Congress a coherent, coordinated legislative program as well as advice on the relationship of Congressionally sponsored legislation to his program.

Third, it would authorize the Commission to bypass the Attorney General and go directly to the courts in enforcement and litigation matters. Such decentralization of litigation control would produce less objectivity, lessen the ability of the government to present the courts with uniform positions on important legal issues and limit the government's choice of important test cases.

In summary, I believe that the executive bypass provisions on the budget, legislation, and litigation represent an unacceptable erosion of Presidential and executive functions and responsibilities.

However, the bill is otherwise acceptable and desirable legislation and, therefore, I stand ready to approve a bill if it is amended to eliminate the objectionable provisions.

I am advised by the Attorney General and I have determined that the absence of my signature from this bill prevents it from becoming law. Without in any way qualifying this determination, I am also returning it without my approval to those designated by Congress to receive messages at this time.

THE WHITE HOUSE,

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OCT 17 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 13113 - Commodity Futures Trading Commission Act of 1974
Sponsor - Rep. Poage (D) Texas and 14 others

Last Day for Action

October 23, 1974 - Wednesday

Purpose

Creates an independent Commodity Futures Trading Commission to strengthen the regulation of futures trading and to bring all commodities traded on exchanges under regulation.

Agency Recommendations

Office of Management and Budget	Disapproval (Veto Message attached)
Department of Justice	Would concur in Veto recommendation
Department of Agriculture	Approval
Civil Service Commission	Approval
Department of the Interior	No objection (Informally)
Department of Commerce	No objection (Informally)
Department of the Treasury	No objection
Department of State	No objection
Council of Economic Advisers	No objection (Informally)
Securities and Exchange Commission	No position

Discussion

The present Commodity Exchange Authority (CEA) is an agency within the Department of Agriculture that is responsible for administering the Commodity Exchange Act of 1922, as amended. In this role, CEA works to protect the hedging and price functions of the Nation's commodity futures markets with respect to 18 specific agricultural commodities including cotton, butter, eggs, pork bellies, frozen orange juice, wheat, soybeans, potatoes, and rice. Accordingly, CEA seeks to assure competitive pricing and fair trading practices in the commodity groups over which it has authority.

However, over the last decade, there has been increasing concern that Federal regulation of commodity futures trading was too narrow in scope and that the present regulatory scheme was inadequate. These concerns have been heightened in more recent years as the commodity markets have become increasingly volatile and with the financial failure of various futures commission merchants who had been dealing in unregulated commodities.

H.R. 13113 would provide for the first major overhaul of the existing Commodity Exchange Act since its inception by establishing a comprehensive regulatory structure to apply to all commodity futures trading. The major provisions of the enrolled bill are set forth in the attachment and summarized as follows:

- Creates a full time, independent regulatory commission entitled the Commodity Futures Trading Commission (CFTC) with five Commissioners in place of the present Commodity Exchange Authority within USDA and the interagency Commodity Exchange Commission. The Commissioners would be appointed by the President with one designated as Chairman, by and with advice and consent of the Senate.

- Significantly enlarges the jurisdiction of the government's regulation in this area to include <u>all</u> futures trading including lumber and metals.

- Confers significantly stronger regulatory and enforcement powers on the new Commission than those held by the present Commodity Exchange Authority.

While this legislation was not sponsored by the Administration, we have supported the broader jurisdiction and stronger regulatory and enforcement powers in this field, since they appear to meet a genuine need and have widespread backing. We had hoped that the regulatory body would be retained within the USDA framework rather than being established as a fully independent commission. However, the arguments for separation from Agriculture -- especially since non-agricultural products are now to be included -- were more persuasive to Congress. The enrolled bill therefore stipulates organizational independence, but directs both Agriculture and the Commission to maintain liaison with each other through offices established in each agency for that purpose.

The Congressional choice of a fully independent Commission is understandable, and we were prepared to recommend approval of H.R. 13113, since up until the time the legislation went to conference it did not contain provisions so serious as to warrant a veto recommendation. However, the bill was amended in conference to include two features which increase the independence of regulatory bodies which we have strongly resisted in other bills. These features, which are already contained in the Consumer Product Safety Act of 1972 plus a third authorization that was contained in the Senate passed bill, weaken Presidential ability to manage the Executive Branch. They are:

- Concurrent submission to Congress of CFTC budget requests and documentation when they are submitted to OMB (i.e., budget bypass).

- Prohibition of OMB review or clearance of CFTC's legislative proposals or comments on legislation -- concurrent submissions of legislative recommendations would also be required (i.e., legislative bypass).

- Authorization for the CFTC to bypass the Attorney General and go directly to the courts in enforcement and litigation matters.

Because of our serious objections to these bypass amendments and in light of the questionable manner that the budget and legislative provisions (these were not contained in bills as passed by both Houses) were added in conference, the

Administration attempted to have the bill returned to conference for deletion of the offensive provisions, but this effort was defeated.

The requirements for concurrent submission would, if allowed to become law, eliminate Presidential authority to review and control budgetary and legislative proposals originating from the new agency, and would be a further precedent for similar provisions in all Federal regulatory agency legislation if not executive agencies in general,

Budget bypass problems

Congress and the Executive Branch have long recognized the problems of handling separate appropriations requests submitted separately and independently by the multitude of Federal organizations. To avoid this chaotic situation, the Congress enacted the Budget and Accounting Act of 1921 which barred the direct submission of budgets by individual organizations and directed the President to present a unified and coordinated Executive Branch budget.

That Act still requires that the President present to the Congress a coordinated budget which has been evaluated to eliminate duplication and meet program objectives in the most effective, efficient and economical way. Direct agency submissions would eliminate one of the President's means of controlling the budget and promote excessive expenditures at a time when Congress itself has moved toward a more unified approach in its consideration of the budget by enacting the Congressional Budget and Impoundment Control Act of 1974. Under this new law Congress has a statutory right to obtain, following submission of the President's Budget to Congress, the appropriate budget requests and supporting information, as now is voluntarily provided.

The budgets of the independent commissions and the programs they support have important relationships with those of other agencies and programs of the Government. Such relationships cannot be seen or evaluated until the entire budgetary picture is revealed when the President sends the Budget to Congress. Premature disclosure of certain agency budget requests would encourage a narrowly-focused, disjointed consideration of such requests and deprive the Congress of other related budgetary information.

In addition, early disclosure would also most likely affect the budget estimates. For example, an agency, knowing of a difference of opinion between the President and many members of the Congress, could hardly help being influenced by that fact. This could also attract external pressures for more spending to a far greater extent than at present.

Legislation bypass problems

The requirements to submit to the Congress any proposed legislation, testimony, or comments on legislation that are submitted to the President are undesirable for reasons similar to those given for premature disclosure of budgetary requests. Such requirements would make it difficult for the President to develop and present to the Congress a coherent, coordinated legislative program.

OMB's coordination of legislative proposals and reports by the various executive agencies serves several important purposes for the agencies, the Administration, and the Congress. Among other purposes, it encourages the various agencies to take the problems, concerns, and expertise of other agencies into account; it facilitates the development of a consistent Presidential or Administration position on legislation; and it assures that the Congress gets coordinated and informative agency views on legislation under consideration and is thus able to anticipate more effectively the impact of such legislation.

In adding the budget and legislation bypass provisions in conference, no explanation was given by the conferees for their action. When OMB subsequently enlisted Representative Baker's help in seeking to recommit the bill to conference with instructions to strike these provisions, Representative Poage, the bill's sponsor, attempted to downplay their significance as he stated: "The gentleman from Tennessee (Mr. Baker) is unduly alarmed, because the bill does not require anything more than merely the sending of a copy of the Commission's budget request to the House and the Senate."

We cannot agree with the Congressional view that these provisions would not make substantial differences in current practice. First, it must be reemphasized that when such precedents are further permitted they are likely to spread rapidly to other program areas where the costs and consequences are much greater than with this bill considered separately. Second, the publicity which would often attend the preclearance submissions would make departures from such submissions much more difficult both for the President and the Congress. Finally, the submissions would be made in the context of isolated programs and needs of the Commission and would not be viewed in the context of related program and overall resource needs.

Litigation bypass problems

Somewhat paralleling those problems cited above, the authority for the CFTC to bypass the Attorney General and go directly to the courts in enforcement and litigation matters would set yet another precedent for increasing the autonomy of other regulatory agencies, and would seriously erode the control of Federal litigation by the Department of Justice.

In summary, we believe that the executive bypass provisions on the budget, legislation, and litigation represent an unacceptable erosion of Presidential and executive responsibilities and prerogatives. Accordingly, we strongly recommend that you veto H.R. 13113.

However, in that the enrolled bill is otherwise acceptable and desirable legislation, we have prepared, for your consideration, the attached veto message which notes that while you find the three bypass provisions unacceptable, you stand ready to approve a new bill that does not contain these objectionable provisions. In the event that you decide to approve the enrolled bill in its present form, we have also prepared, for your consideration, a signing statement which notes your serious concern over the objectionable features.

Director

Enclosures

THE COMMODITY FUTURES TRADING COMMISSION ACT OF 1974

TITLE I - Commodity Futures Trading Commission

1. Establishes an independent agency of the U. S. Government - CFTC - composed of a chairman and four other Commissioners appointed by the President by and with advice and consent of Senate.

2. Specifies five year staggered terms, no more than three members of the same political party and membership to include, but not be limited to, persons of demonstrated knowledge in futures trading or its regulation, and in the production, merchandising, processing or distribution of commodities which are futures traded.

3. Sets Chairman at Level III and members at Level IV.

4. Provides a Level V General Counsel, appointed by Commission, and not subject to Senate confirmation.

5. Provides a Level V Executive Director appointed by the Commission and subject to confirmation by Senate.

6. Assigns executive and administrative functions to the Chairman - subject to general policies of the Commission.

7. Requires CFTC to set up a separate office to maintain liaison with USDA. Similarly the Sec. of Agriculture is directed to set up a separate liaison office of CFTC.

8. Directs CFTC to concurrently transmit copies of budget estimates or requests to House and Senate Agriculture Committees - when submitting to President or OMB.

9. Directs CFTC to concurrently transmit any legislative recommendations, testimony or comments to the House and Senate Agriculture Committees when submitting to President or OMB.

10. Prohibits any requirement for prior review or clearance of CFTC legislative proposals, testimony or comments by any officer or agency of the U.S.

11. Authorize CFTC to promulgate rules and regulations.

12. Authorize CFTC to hire employees and consultants - up to daily rate of a GS 18 - enter into contracts, acquire space.

13. Authorizes appropriations of such sums as may be required for each fiscal year through June 30, 1978.

14. Directs CFTC to submit an annual report within 120 days after the end of each fiscal year.

15. Directs Comptroller General to conduct reviews and audits of CFTC and requires CFTC to furnish all necessary information.

16. Authorizes and directs transfer of CFTC of all personnel of CEA, property, records and unexpended funds available for administration of Commodity Exchange Act.

TITLE II - Regulation of Trading and Exchange Activities

1. Extends regulation of all futures markets, including markets in currently unregulated agricultural commodities, e.g., coffee, sugar, cocoa and lumber; metals, e.g., gold, silver and copper; foreign currencies, e.g., Japanese yen, British pound and Deutschemark.

2. Gives the Commission exclusive jurisdiction over all futures transactions.

3. Requires the Commission, in approving any bylaw, rule or regulation of a contract market, to take into consideration the public interest to be protected by the antitrust laws.

4. Provides regulation for margin or leverage transactions for the delivery of gold and silver bullion and coins.

5. Provides a customer's reparation procedure for handling customers' complaints which arise from violations of the Act.

6. Regulates commodity trading advisors and commodity pool operators and sets fitness standards for persons engaged in these activities.

7. Extends fitness standards now applied to floor brokers and principals of futures commission merchant firms to all persons handling customers' accounts.

8. Directs the Commission to determine whether floor brokers and futures commission merchants may trade for their own account and for customers and, if so, under what conditions.

9. Authorizes the Commission to establish additional delivery points for futures contracts to diminish price manipulation, market congestion, or the abnormal movement of commodities in interstate commerce if, after a request by the Commission, a contract market fails to establish such points.

10. Authorizes the Commission to approve, disapprove, or require a contract market to make changes in its rules where necessary or appropriate for protection of the public interest.

11. Authorizes the Commission to go into court to obtain injunctions to prevent violations of the Act or restraint of trade.

12. Authorizes the Commission to direct a contract market to take action in an emergency situation to maintain or restore orderly trading in futures contracts.

13. Authorizes penalties up to $100,000 in administrative proceedings for violations of the Act.

14. Increases the criminal penalties from $10,000 to $100,000 for violations of the Act.

15. Authorizes the Commission to determine whether option trading is to be permitted in the currently unregulated commodities and, if so, under what conditions.

16. Directs the Commission to define "bona fide" hedging.

17. Authorizes the Commission to require contract markets to file with the Commission daily reports showing the details of all trades, including the time of execution and identification of the parties thereto.

18. Authorizes the Commission to discipline a member of a contract market if the contract market fails to do so and to review, upon appeal, and set aside disciplinary action of a contract market against a member.

TITLE III - Enabling authority for creation of National Futures Associations

1. Authorizes the Commission to approve and set the standards for voluntary associations established by the commodity trading business to regulate the practices of members.

TITLE IV - Miscellaneous Provisions

1. Requires the Commission to establish and maintain research and information programs to investigate new technology which might be used to strengthen or improve futures trading, e.g., trading by computer.

2. Requires the Commission to investigate the need for an insurance program to protect customers against losses caused by the financial failure of futures commission merchants.

3. Provides for an additional 20 supergrade positions for CFTC.

4. Provides for an effective date of the Act 180 days after its enactment with exceptions stated having to do generally with facilitating implementation.

To Warren Hendriks
10-18-74
11:25 a.m.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 17 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 13113 - Commodity Futures Trading Commission Act of 1974
Sponsor - Rep. Poage (D) Texas and 14 others

Last Day for Action

October 23, 1974 - Wednesday

Purpose

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Agency Recommendations

Office of Management and Budget	Disapproval (Veto Message attached)
Department of Justice	Would concur in Veto recommendation
Department of Agriculture	Approval
Civil Service Commission	Approval
Department of the Interior	No objection (Informally)
Department of Commerce	No objection (Informally)
Department of the Treasury	No objection
Department of State	No objection
Council of Economic Advisers	No objection (Informally)
Securities and Exchange Commission	No position

Discussion

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However, over the last decade, there has been increasing concern that Federal regulation of commodity futures trading was too narrow in scope and that the present regulatory scheme was inadequate. These concerns have been heightened in more recent years as the commodity markets have become increasingly volatile and with the financial failure of various futures commission merchants who had been dealing in unregulated commodities.

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- Significantly enlarges the jurisdiction of the government's regulation in this area to include <u>all</u> futures trading including lumber and metals.

- Confers significantly stronger regulatory and enforcement powers on the new Commission than those held by the present Commodity Exchange Authority.

While this legislation was not sponsored by the Administration, we have supported the broader jurisdiction and stronger regulatory and enforcement powers in this field, since they appear to meet a genuine need and have widespread backing. We had hoped that the regulatory body would be retained within the USDA framework rather than being established as a fully independent commission. However, the arguments for separation from Agriculture -- especially since non-agricultural products are now to be included -- were more persuasive to Congress. The enrolled bill therefore stipulates organizational independence, but directs both Agriculture and the Commission to maintain liaison with each other through offices established in each agency for that purpose.

The Congressional choice of a fully independent Commission is understandable, and we were prepared to recommend approval of H.R. 13113, since up until the time the legislation went to conference it did not contain provisions so serious as to warrant a veto recommendation. However, the bill was amended in conference to include two features which increase the independence of regulatory bodies which we have strongly resisted in other bills. These features, which are already contained in the Consumer Product Safety Act of 1972 plus a third authorization that was contained in the Senate passed bill, weaken Presidential ability to manage the Executive Branch. They are:

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- Prohibition of OMB review or clearance of CFTC's legislative proposals or comments on legislation -- concurrent submissions of legislative recommendations would also be required (i.e., legislative bypass).

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Because of our serious objections to these bypass amendments and in light of the questionable manner that the budget and legislative provisions (these were not contained in bills as passed by both Houses) were added in conference, the

Administration attempted to have the bill returned to conference for deletion of the offensive provisions, but this effort was defeated.

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Litigation bypass problems

Somewhat paralleling those problems cited above, the authority for the CFTC to bypass the Attorney General and go directly to the courts in enforcement and litigation matters would set yet another precedent for increasing the autonomy of other regulatory agencies, and would seriously erode the control of Federal litigation by the Department of Justice.

In summary, we believe that the executive bypass provisions on the budget, legislation, and litigation represent an unacceptable erosion of Presidential and executive responsibilities and prerogatives. Accordingly, we strongly recommend that you veto H.R. 13113.

However, in that the enrolled bill is otherwise acceptable and desirable legislation, we have prepared, for your consideration, the attached veto message which notes that while you find the three bypass provisions unacceptable, you stand ready to approve a new bill that does not contain these objectionable provisions. In the event that you decide to approve the enrolled bill in its present form, we have also prepared, for your consideration, a signing statement which notes your serious concern over the objectionable features.

Director

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3. Sets Chairman at Level III and members at Level IV.

4. Provides a Level V General Counsel, appointed by Commission, and not subject to Senate confirmation.

5. Provides a Level V Executive Director appointed by the Commission and subject to confirmation by Senate.

6. Assigns executive and administrative functions to the Chairman - subject to general policies of the Commission.

7. Requires CFTC to set up a separate office to maintain liaison with USDA. Similarly the Sec. of Agriculture is directed to set up a separate liaison office of CFTC.

8. Directs CFTC to concurrently transmit copies of budget estimates or requests to House and Senate Agriculture Committees - when submitting to President or OMB.

9. Directs CFTC to concurrently transmit any legislative recommendations, testimony or comments to the House and Senate Agriculture Committees when submitting to President or OMB.

10. Prohibits any requirement for prior review or clearance of CFTC legislative proposals, testimony or comments by any officer or agency of the U.S.

6. Regulates commodity trading advisors and commodity pool operators and sets fitness standards for persons engaged in these activities.

7. Extends fitness standards now applied to floor brokers and principals of futures commission merchant firms to all persons handling customers' accounts.

8. Directs the Commission to determine whether floor brokers and futures commission merchants may trade for their own account and for customers and, if so, under what conditions.

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10. Authorizes the Commission to approve, disapprove, or require a contract market to make changes in its rules where necessary or appropriate for protection of the public interest.

11. Authorizes the Commission to go into court to obtain injunctions to prevent violations of the Act or restraint of trade.

12. Authorizes the Commission to direct a contract market to take action in an emergency situation to maintain or restore orderly trading in futures contracts.

13. Authorizes penalties up to $100,000 in administrative proceedings for violations of the Act.

14. Increases the criminal penalties from $10,000 to $100,000 for violations of the Act.

15. Authorizes the Commission to determine whether option trading is to be permitted in the currently unregulated commodities and, if so, under what conditions.

16. Directs the Commission to define "bona fide" hedging.

17. Authorizes the Commission to require contract markets to file with the Commission daily reports showing the details of all trades, including the time of execution and identification of the parties thereto.

18. Authorizes the Commission to discipline a member of a contract market if the contract market fails to do so and to review, upon appeal, and set aside disciplinary action of a contract market against a member.

TITLE III - Enabling authority for creation of National Futures Associations

1. Authorizes the Commission to approve and set the standards for voluntary associations established by the commodity trading business to regulate the practices of members.

TITLE IV - Miscellaneous Provisions

1. Requires the Commission to establish and maintain research and information programs to investigate new technology which might be used to strengthen or improve futures trading, e.g., trading by computer.

2. Requires the Commission to investigate the need for an insurance program to protect customers against losses caused by the financial failure of futures commission merchants.

3. Provides for an additional 20 supergrade positions for CFTC.

4. Provides for an effective date of the Act 180 days after its enactment with exceptions stated having to do generally with facilitating implementation.

TO THE HOUSE OF REPRESENTATIVES

I am returning without my approval H.R. 13113, the Commodity Futures Trading Commission Act of 1974.

This bill would provide for the first major overhaul of the existing Commodity Exchange Act since its inception by establishing a new regulatory structure to apply to all commodity futures trading. Briefly, the bill would:

* Create a full time, independent regulatory commission to be known as the Commodity Futures Trading Commission (CFTC) with five Commissioners in place of the present Commodity Exchange Authority within the Department of Agriculture. The Commissioners would be appointed by the President by and with advice and consent of the Senate.

* Enlarge the jurisdiction of the government's regulation of commodities to include all futures trading including lumber and metals -- at present only certain agricultural commodities are regulated including pork bellies, frozen orange juice, soybeans, wheat, and corn.

* Confer significantly stronger regulatory and enforcement powers on the new Commission than those held by the present Commodity Exchange Authority.

Unfortunately, in passing an otherwise desirable bill, the Congress has incorporated three objectionable provisions which would enable the CFTC to bypass traditional Executive Branch functions. I find these provisions unacceptable.

First, it would require the concurrent submission to Congress of CFTC budget requests and documentation when these are submitted to the President or the Office of Management and Budget. This would in effect undermine the provisions of the Budget and Accounting Act of 1921 which requires the President to submit to Congress a single coordinated budget. Ultimately, it could result in a return to the fiscal chaos that prompted the Congress to require the President to develop such a single Federal budget.

Second, as with the budget requests, it would require concurrent submission of CFTC legislative proposals and it would essentially prohibit the President and OMB from reviewing any CFTC legislative proposals or comments on legislation. Such a requirement, particularly if extended to other agencies, would make it impossible for the President to develop and present to the Congress a coherent, coordinated legislative program as well as advice on the relationship of Congressionally sponsored legislation to his program.

Third, it would authorize the CFTC to bypass the Attorney General and go directly to the courts in enforcement and litigation matters. Such decentralization of litigation control would produce less objectivity, lessen the ability of the government to present the courts with uniform positions on important legal issues, and limit the government's choice of important test cases.

In summary, I believe that the executive bypass provisions on the budget, legislation, and litigation represent an unacceptable erosion of Presidential and executive functions and responsibilities. Accordingly, I am withholding my approval from H.R. 13113.

However, in that the bill is otherwise acceptable and desirable legislation, I stand ready to approve a bill if it is amended to eliminate the objectionable provisions.

THE WHITE HOUSE

October , 1974

STATEMENT BY THE PRESIDENT

I have today signed H.R. 13113, the Commodity Futures Trading Commission Act of 1974.

This bill would provide for the first major overhaul of the existing Commodity Exchange Act since its inception by establishing a new regulatory structure to apply to all commodity futures trading. Briefly, the bill would:

* Create a full time, independent regulatory commission to be known as the Commodity Futures Trading Commission (CFTC) with five Commissioners in place of the present Commodity Exchange Authority within the Department of Agriculture. The Commissioners would be appointed by the President by and with advice and consent of the Senate.

* Enlarge the jurisdiction of the government's regulation of commodities to include all futures trading including lumber and metals -- at present only certain agricultural commodities are regulated including pork bellies, frozen orange juice, soybeans, wheat, and corn.

* Confer significantly stronger regulatory and enforcement powers on the new Commission than those held by the present Commodity Exchange Authority.

The basic objectives of this legislation have my full support. However, I regret that Congress has felt it necessary to enact the present legislation which I think is subject to the following serious objections.

First, it would require the concurrent submission to Congress of CFTC budget requests and documentation when these are submitted to the President or the Office of Management and Budget. This would in effect undermine the provisions of the Budget and Accounting Act of 1921 which requires the President to submit to Congress a single coordinated budget. Ultimately, it could result in a return to the fiscal chaos that prompted the Congress to require the President to develop such a single Federal budget.

Second, as with the budget requests, it would require concurrent submission of CFTC legislative proposals and it would essentially prohibit the President and OMB from reviewing any CFTC legislative proposals or comments on legislation. Such a requirement, particularly if extended to other agencies, would make it impossible for the President to develop and present to the Congress a coherent, coordinated legislative program as well as advice on the relationship of Congressionally sponsored legislation to his program.

Third, it would authorize the CFTC to bypass the Attorney General and go directly to the courts in enforcement and litigation matters. Such decentralization of litigation control would produce less objectivity, lessen the ability of the government to present the courts with uniform positions on important legal issues, and limit the government's choice of important test cases.

My approval of H.R. 13113 is based on the belief that the significant strengthening of commodity futures trading regulation outweighs the offensive executive bypass provisions I have referred to above. I strongly urge the Congress to refrain from further inroads on executive functions and responsibilities which long experience has taught us need to be carried out on a coordinated and unified basis.

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

OCT 17 1974

Honorable Roy L. Ash
Director, Office of
Management and Budget
Washington, D. C. 20503

Dear Mr. Ash:

In compliance with your request, I have examined a facsimile of the enrolled bill H.R. 13113, the proposed Commodity Futures Trading Commission Act of 1974.

The Department of Justice is very concerned about section 101 of the bill which would amend section 2(a) of the Commodity Exchange Act (7 U.S.C. 2,4) to authorize the General Counsel of the proposed Commodity Futures Trading Commission to represent the Commission in courts of law and section 211 of the bill which would add a new section 6c to the Act which would authorize the Commission to bring actions in United States district courts to enjoin acts in violation of the statute or enforce compliance with its provisions.

To authorize the Commodities Commission to conduct its own litigation would create an exception to 28 U.S.C. 516, which provides that, unless otherwise authorized by law, the conduct of litigation in which the United States is a party is reserved to officers of the Department of Justice under the direction of the Attorney General. With respect to appeals, 28 U.S.C. 518(a) provides that the Attorney General and the Solicitor General shall conduct and argue suits and appeals in the Supreme Court and the Court of Claims in which the United States is interested, unless the Attorney General, in a particular case, directs otherwise.

These provisions represent a Congressional determination that the Federal Government take a consistent and uniform position in its litigation and that authority for representation of the Government's interests in court derive from one source. While a few so-called independent agencies, such as the Securities Exchange Commission and the Federal Power Commission, have historically had special statutory authority to appear in court, such authority is the exception and has been narrowly confined. See Federal Trade Commission v. Guignon, 390 F.2d 323 (9th Cir. 1968). Generally, we think that even the special statutory authorizations now extant are unwise as a dilution of the centralization which necessarily best protects the Government's interests in litigation.

There are basically four major policy reasons supporting the principle of centralized litigating control. These are:

1. The presentation of a uniform position on important legal issues to the courts requiring the exercise of selectivity in the filing and presentation of cases;

2. The ability to select test cases which will present the Government's position in the best possible light since court determinations will have precedential effect beyond the particular agency involved;

3. Greater objectivity in the filing and handling of cases by attorneys who are not themselves the affected litigants, and;

4. Achievement of better rapport with the courts since there is an undeniable recognition of the judiciary's preference for litigation control by the Department of Justice.

Although this intrusion on the Attorney General's litigating responsibilities is most objectionable to this Department, the fact that this is our only objection to the bill makes us hesitate to recommend a veto. However, if there are other objections to the bill, we would recommend against Executive approval of the bill.

Sincerely,

W V Rakestraw

W. Vincent Rakestraw
Assistant Attorney General

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

October 15, 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D. C.

Dear Mr. Ash:

In reply to the request of your office, the following report is submitted on the enrolled enactment H.R. 13113, "to strengthen the regulation of futures trading, to bring all agricultural and other commodities traded on exchanges under regulation, and for other purposes."

This Department recommends that the President approve the bill.

The bill establishes a new commission, the Commodity Futures Trading Commission, which would take over the regulatory authority over futures trading in certain agricultural commodities currently granted the Secretary of Agriculture and the part-time Commodity Exchange Commission. Regulation would be extended to cover all commodities currently or hereafter traded on futures markets. The estimated value of contracts traded on futures markets exceeds $500 billion annually. The bill would also provide additional regulatory tools which would strengthen regulation of the futures markets.

The Administration filed a report in general support of the congressional proposal for the strengthening of futures trading regulation, H.R. 11955, which later became H.R. 13113. The Administration recommended that the new regulatory authority be exercised by a part-time commission, which would include the Secretary of Agriculture or his designee. The bill, as passed by the Congress, provides for a full-time commission on which the Secretary is not represented. The enrolled bill also contains authority for the establishment of a voluntary futures association(s) which would regulate the practices of members. The Administration opposed this provision in previous reports. Other major provisions of the bill do not conflict with the Administration's recommendations. It is our opinion that the favorable aspects of this bill far outweigh the problems which the Administration foresaw in the establishment of a full-time independent regulatory commission and voluntary futures associations.

Proper operation of futures markets is essential in the production and marketing of major commodities. The markets provide an opportunity for producers, merchandisers, and processors to avoid or reduce price risks by establishing hedging positions. They further provide for the open and competitive execution of trades and establish prices which are widely used in the purchase and sale of actual commodities. By providing hedging and pricing services, futures markets aid in the movement of commodities from the producer to the consumers and permit such movement with a minimum of middleman costs, thus contributing to higher prices for producers and lower prices for consumers. Futures markets, however, are subject to abuse from price manipulation, excessive speculation, and fraud and must have strong Federal supervision if they are to operate in the public interest.

The bill provides for a 180-day period of transition, after which it is intended that the new Commission be fully operational and futures trading in all commodities be effectively regulated. To accomplish this result, certain provisions of the bill are to become effective immediately on enactment, for example: the new Commission is established; funds appropriated for the administration of the Commodity Exchange Act, as amended, are permitted to be used to implement the bill; members of the new Commission may be appointed and compensated; staff may be hired and compensated; investigations and hearings may be conducted; boards of trade may be designated as contract markets; persons may be registered; and regulations may be issued.

Certain business activities, now being carried on and intended to be regulated and not prohibited, will become unlawful on the 180th day after enactment unless certain actions have been taken by the new Commission before that 180th day; such business activities include:

(1) futures trading in commodities not now subject to the Act;

(2) being associated with a futures commission merchant or agent thereof in certain capacities; and

(3) engaging as commodity trading advisor or commodity pool operator.

If the President approves the bill, it is urgent that the Commissioners be appointed as soon as possible after enactment in view of the nature and scope of the activities and functions which can only be performed by the new Commission and which must be done during the 180-day period of transition in order to implement the new Act and prevent a serious disruption of futures market transactions.

It is believed that a total of approximately $11,000,000 would be needed under this bill for the first full year of operation. This would exceed by approximately $6,000,000 the expected cost of regulation of the markets currently under the Commodity Exchange Act. Approximately $2,500,000 would be needed for the fiscal year 1975.

Sincerely,

J Phil Campbell

J. Phil Campbell
Under Secretary

THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

OCT 16 1974

Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of H.R. 13113, "To amend the Commodity Exchange Act to strengthen the regulation of futures trading, to bring all agricultural and other commodities traded on exchanges under regulation, and for other purposes."

H.R. 13113 as passed by the House of Representatives would have authorized the proposed Commodity Futures Trading Commission to regulate all goods, articles, services, rights and interests "in which contracts for future delivery are presently or in the future dealt in." The Department, in a July 30, 1974 report to the Senate Committee on Agriculture and Forestry, opposed this broad authority and recommended an amendment to make clear that the provisions of the bill would not be applicable to futures trading in foreign currencies or other transactions involving financial instruments such as security warrants, rights, resale of installment loan contracts, repurchase options in Government securities, etc., other than on organized exchanges. The enrolled enactment incorporates the general substance of the Department's proposed amendment.

In view of the foregoing, the Department would have no objection to a recommendation that the enrolled enactment be approved by the President.

Sincerely yours,

Richard R. Albrecht

General Counsel

DEPARTMENT OF STATE

Washington, D.C. 20520

OCT 16 1974

Honorable Roy L. Ash
Director, Office of
Management and Budget
Washington, D.C.

Dear Mr. Ash:

I refer to a request from your office for the Department's comments on H.R. 13113, an enrolled bill with the title of "Commodity Futures Trading Commission Act of 1974". The bill would amend the present Commodity Exchange Act in order to strengthen the regulation of futures trading and to bring all agricultural and other commodities under the same rules and regulations.

It is our understanding that the Department of Agriculture has principal responsibility for the detailed analysis and comment on this bill. Our examination of the bill from the point of view of its effect on the foreign relations of the United States in general and international trade in the commodities to be affected by the bill lead to the conclusion that there would be no objection to its enactment.

Cordially,

Linwood Holton

Linwood Holton
Assistant Secretary for
Congressional Relations

UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

YOUR REFERENCE

October 16, 1974

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C. 20530

Attention: Assistant Director for
Legislative Reference

Dear Mr. Ash:

This is in reply to your request for the views of the Civil Service Commission on the Enrolled Bill H.R. 13113 which will establish an independent regulatory commission called the Commodity Futures Trading Commission.

The bill contains the following personnel provisions:

- The Commission will consist of a Chairman, Executive Level III and four other Commissioners, Executive Level IV, to be appointed by the President by and with the advice and consent of the Senate.

- It will have:

  o A General Counsel, Executive Level V, appointed by the Commission.

  o An Executive Director, Executive Level V, appointed by the Commission by and with the advice and consent of the Senate.

- It may employ experts and consultants in accordance with section 3109 of title 5 U.S.C. and compensate them at rates not in excess of the maximum daily rate prescribed for grade GS-18.

- It amends section 5108(c) of title 5, U.S.C. by authorizing the Commission to "place an additional 20 positions in GS-16, GS-17, and GS-18 for purposes of carrying out its functions."

The bill authorizes the new agency to engage in rule making and adjudication in a number of areas. The bill's language leaves some ambiguity as to whether its rule making and adjudication will be subject to the provisions of the Administrative Procedure Act, but this ambiguity does not appear to be of sufficient substance as to require a negative report on the bill.

If our comments on this bill had been requested at an earlier date, we would have proposed an objection to the method selected for providing for the new agency's quota supergrade needs. However, this is now an enrolled bill, and we do not believe such an objection would warrant a recommendation to veto it. Consequently, we recommend that the President sign H.R. 13113.

By direction of the Commission:

Sincerely yours,

Robert Hampton

Chairman

GENERAL COUNSEL OF THE
DEPARTMENT OF COMMERCE
Washington, D.C. 20230

OCT 18 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Ash:

This is in reply to your request for the views of this Department concerning H. R. 13113, an enrolled enactment

> "To amend the Commodity Exchange Act to strengthen the regulation of futures trading, to bring all agricultural and other commodities traded on exchanges under regulation, and for other purposes,"

to be cited as the "Commodity Futures Trading Commission Act of 1974."

H. R. 13113 would establish an independent regulatory commission, called the Commodity Futures Trading Commission, with broad authority to regulate futures trading and exchange activities.

This Department would have no objection to approval by the President of H. R. 13113.

Enactment of this legislation may involve the expenditure of additional funds by this Department if we are requested by the new Commission to furnish it with economic commodity data. However, we are unable at this time to estimate the amount, if any, of these additional funds.

Sincerely,

Karl E. Bakke

General Counsel

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

October 16, 1974

Dear Mr. Rommel:

The Council of Economic Advisers has no objections to the President's signing H. R. 13113, an Act "To amend the Commodity Exchange Act to strengthen the regulation of futures trading, to bring all agricultural and other commodities traded on exchanges under regulation, and for other purposes."

Sincerely,

Alan Greenspan

Mr. W. H. Rommel
Assistant Director for Legislation Reference
Office of Management and Budget
Washington, D. C. 20503

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

FEDERAL HOME LOAN BANK BOARD

WASHINGTON, D.C. 20552

101 INDIANA AVENUE, N. W.

FEDERAL HOME LOAN BANK SYSTEM
FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION
FEDERAL SAVINGS AND LOAN SYSTEM

OFFICE OF THE GENERAL COUNSEL

October 18, 1974

Mr. Wilfred H. Rommel
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Attention: Mr. Ronald Peterson

Re: H.R. 13113

Dear Mr. Rommel:

This will confirm the telephone conversation of October 16, 1974 between Mr. Orentlicher of this Office and Mr. Peterson indicating our views regarding H.R. 13113, the Commodity Futures Trading Commission Act of 1974.

As indicated by Mr. Orentlicher, the Bill itself does not appear to affect the substantive program of this agency. The Board would not therefore have any objection to approval of the bill by the President. (This is on the assumption, of course, that the term "commodity", as used through the Bill, will continue to refer only to agricultural commodities. We do have a program involving future commitments as to the purchase of mortgages, which could be adversely affected should any subsequent amendment of the proposed Act make its provisions applicable to non-agricultural commodities.)

As was also indicated, we do want to call attention to the breadth and scope of the proposed section (9), as set forth in Section 101(a) of the Bill. The final sentence of the proposed Section (9)(B) could, if it is accepted as a precedent, seriously affect interchange of views between government agencies generally.

File

Also as a matter of general policy and possible adverse precedential effect, we find troublesome the provision in Section 211 (at page 14 of the enrolled bill) which includes a proposed new Section 6c relating to judicial action in protection of the program provided for in the Act. Our concern relates to the proviso that "no restraining order or injunction for violation of the [any] provisions of this Act shall be issued ex parte". In this respect also the objective is understandable, but given the public interest features of the proposed program as stressed throughout the Bill, there may well be instances where emergency action is clearly necessary if the public interest involved is to be adequately protected. Some qualification on ex parte orders may be in order; it is another matter to bar them altogether regardless of the showing made to the Court as to need.

Sincerely,

Charles E. Allen
General Counsel

William T. Nachbaur

By: William T. Nachbaur
Associate General Counsel

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 17 1974

Dear Mr. Ash:

This responds to your request for our views on the enrolled bill H.R. 13113, "To amend the Commodity Exchange Act to strengthen the regulation of futures trading, to bring all agricultural and other commodities traded on exchanges under regulation, and for other purposes."

With respect to the matters contained in H.R. 13113 which affect the Department of the Interior, we have no objection to the President's approval of the enrolled bill. With regard to all other matters contained in the bill, we defer in our views to the Department of Agriculture, the Securities and Exchange Commission, and any other agency directly affected by the provisions of H.R. 13113.

H.R. 13113, which amends the Commodity Exchange Act (7 U.S.C. Section 1 et. seq.), has four titles. Title I creates an independent regulatory commission called the Commodity Futures Trading Commission, consisting of a chairman and four other commissioners. The commissioners are appointed by the President, with the advice and consent of the Senate. H.R. 13113 directs the President to establish and maintain a balanced Commission containing persons of demonstrated knowledge in the production, merchandising, processing or distribution of one or more of the commodities covered by the bill. This provision envisions the creation of a commission whose members will have a broad range of expertise. This Department anticipates that the range as projected will encompass mineral knowledge and expertise.

Title I further provides that all existing authority under the Commodity Exchange Act which is presently vested in the Secretary of Agriculture and the Commodity Exchange Commission will be transferred to the new Commission.

Title II provides broad authority to the new Commission to regulate futures trading and exchange activities. All goods, articles, services, rights and interest traded for future delivery are brought under Federal regulation. The legislative history indicates that this coverage extends to all commodities regardless of whether they are "grown or mined." (Remarks of Senator Talmadge, Cong. Rec. S. 16128, daily ed., Sept. 9, 1974.) Section 217 of title II vests authority in the Commission to regulate transactions for the delivery of gold and silver bullion pursuant to standardized margin or leverage account contracts. We have no objection to the provisions of title II, or to those of the other titles, which include minerals in the Act's coverage.

Title III provides enabling authority at the discretion of the Commission for persons registered under the Commodity Exchange Act and in the commodity trading business to establish voluntary associations for regulating the practices of the members. The Commission's annual reports to the Congress are to include information concerning the futures associations registered pursuant to title III, and the effectiveness of such associations in regulating the practices of the members.

Title IV makes a number of technical and conforming changes in present law designed to expand the ability and authority of the Commission to conform with the amended Act, as well as to make other necessary changes in existing laws. Section 402(c) of title IV gives the Commission the authority to set different terms and conditions for different markets. The legislative history states that there are some unique differences that are characteristic of the "world commodities." The bill provides the Commission with the authority to differentiate among commodities, and provides further authority to treat different commodities differently. (Remarks of Senator Talmadge, Cong. Rec. S. 16130, daily ed., Sept. 9, 1974.) We are satisfied that this flexibility will apply to trading limits on minerals with respect to foreign mineral exchanges.

Although we have no strong objections to the bill as it affects Interior's mission, we are nonetheless concerned that this regulatory device could be used to decrease competition rather than increase it. Also, we are concerned that inappropriate regulations could be developed which would reduce the efficiency of commodity trading. The distortions caused by other regulatory bodies are constant reminders of this possibility. We strongly recommend, if the President signs the bill, that precautionary steps be taken through selection of Commission members and budgetary and other oversight mechanisms to reduce the possibility of these problems.

Sincerely yours,

Jack W Carlson

Assistant Secretary of the Interior

Honorable Roy L. Ash, Director
Office of Management and Budget
Washington, D.C. 20503

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

OFFICE OF
THE CHAIRMAN

OCT 17 1974

Honorable Wilfred H. Rommel
Assistant Director for
Legislative Reference
Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Mrs. L. Garziglia
7201 New Executive Office Building

Re: Enrolled Bill H.R. 13113

Dear Mr. Rommel:

This will acknowledge receipt of a copy of the above-referenced enrolled bill, together with your request for the Commission's views and recommendations with respect to the bill.

As its title indicates, the bill would create a Commodity Futures Trading Commission and would vest in that Commission certain authority to regulate trading in agricultural and other commodities.

Prior to the passage of this bill by the Congress, the Securities and Exchange Commission informally advised members of the staffs of the Senate Committee on Agriculture and Forestry and the House Committee on Agriculture that the bill appeared to have unintended impacts on the jurisdiction of this Commission in certain areas. We were assured, however, that the bill was not intended to affect our jurisdiction in the areas with which we were concerned. The assurances we received subsequently were confirmed in statements made both by Senator Talmadge and Congressman Poage at the time the conference committee report and the bill were considered by the Senate and the House, respectively.

Accordingly, in the light of these assurances that the bill will not adversely affect our jurisdiction, this Commission takes no position on the question whether the President should approve the enrolled bill.

Sincerely,

Ray Garrett, Jr.

Ray Garrett, Jr.
Chairman

TO THE HOUSE OF REPRESENTATIVES:

I am withholding my approval from H.R. 13113, the Commodity Futures Trading Commission Act of 1974.

This bill would provide for the first major overhaul of the existing Commodity Exchange Act since its inception by establishing a new regulatory structure to apply to all commodity futures trading. This is an objective which I fully support.

Unfortunately, in passing an otherwise desirable bill, the Congress has incorporated three objectionable provisions which would enable the Commodity Futures Trading Commission, which the bill would create, to bypass traditional Executive Branch functions. I find these provisions unacceptable. They represent a retreat from my goal of reduced federal spending. They will make it more difficult for me to review all requests for federal spending to insure that the taxpayers' dollars are spent prudently.

First, it would require the concurrent submission to Congress of the Commission's budget requests and documentation when these are submitted to the President or the Office of Management and Budget. This would in effect undermine the provisions of the Budget and Accounting Act of 1921 which requires the President to submit to Congress a single coordinated budget.

Second, as with the budget requests, it would require concurrent submission of the Commission's legislative proposals. Such a requirement, particularly if extended to other agencies, would make it difficult for the President to develop and present to the Congress a coherent, coordinated legislative program as well as advice on the relationship of Congressionally sponsored legislation to his program.

Third, it would authorize the Commission to bypass the Attorney General and go directly to the courts in enforcement and litigation matters. Such decentralization of litigation control would produce less objectivity, lessen the ability of the government to present the courts with uniform positions on important legal issues and limit the government's choice of important test cases.

In summary, I believe that the executive bypass provisions on the budget, legislation, and litigation represent an unacceptable erosion of Presidential and executive functions and responsibilities.

However, the bill is otherwise acceptable and desirable legislation and, therefore, I stand ready to approve a bill if it is amended to eliminate the objectionable provisions.

I am advised by the Attorney General and I have determined that the absence of my signature from this bill prevents it from becoming law. Without in any way qualifying this determination, I am also returning it without my approval to those designated by Congress to receive messages at this time.

THE WHITE HOUSE,

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 677

Date: October 18, 1974 Time: 12:00 Noon

FOR ACTION: Michael Duval
Phil Buchen
Bill Timmons
Paul Theis

cc (for information): Warren K. Hendriks
Jerry Jones
Norm Ross

FROM THE STAFF SECRETARY

DUE: Date: Monday, October 21, 1974 Time: 2:00 p.m.

SUBJECT: Enrolled Bill H.R. 13113 - Commodity Futures Trading Commission Act of 1974

ACTION REQUESTED:

____ For Necessary Action

____ Prepare Agenda and Brief

____ For Your Comments

_XX_ For Your Recommendations

____ Draft Reply

____ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

TO THE HOUSE OF REPRESENTATIVES

I am returning without my approval H.R. 13113, the Commodity Futures Trading Commission Act of 1974.

This bill would provide for the first major overhaul of the existing Commodity Exchange Act since its inception by establishing a new regulatory structure to apply to all commodity futures trading. Briefly, the bill would:

* Create a full time, independent regulatory commission to be known as the Commodity Futures Trading Commission (CFTC) with five Commissioners in place of the present Commodity Exchange Authority within the Department of Agriculture. The Commissioners would be appointed by the President by and with advice and consent of the Senate.

* Enlarge the jurisdiction of the government's regulation of commodities to include all futures trading including lumber and metals -- at present only certain agricultural commodities are regulated including pork bellies, frozen orange juice, soybeans, wheat, and corn.

* Confer significantly stronger regulatory and enforcement powers on the new Commission than those held by the present Commodity Exchange Authority.

Unfortunately, in passing an otherwise desirable bill, the Congress has incorporated three objectionable provisions which would enable the CFTC to bypass traditional Executive Branch functions. I find these provisions unacceptable.

First, it would require the concurrent submission to Congress of CFTC budget requests and documentation when these are submitted to the President or the Office of Management and Budget. This would in effect undermine the provisions of the Budget and Accounting Act of 1921 which requires the President to submit to Congress a single coordinated budget. Ultimately, it could result in a return to the fiscal chaos that prompted the Congress to require the President to develop such a single Federal budget.

Second, as with the budget requests, it would require concurrent submission of CFTC legislative proposals and it would essentially prohibit the President and OMB from reviewing any CFTC legislative proposals or comments on legislation. Such a requirement, particularly if extended to other agencies, would make it impossible for the President to develop and present to the Congress a coherent, coordinated legislative program as well as advice on the relationship of Congressionally sponsored legislation to his program.

Third, it would authorize the CFTC to bypass the Attorney General and go directly to the courts in enforcement and litigation matters. Such decentralization of litigation control would produce less objectivity, lessen the ability of the government to present the courts with uniform positions on important legal issues, and limit the government's choice of important test cases.

In summary, I believe that the executive bypass provisions on the budget, legislation, and litigation represent an unacceptable erosion of Presidential and executive functions and responsibilities. Accordingly, I am withholding my approval

However, in that the bill is otherwise acceptable and desirable legislation, I stand ready to approve a bill if it is amended to eliminate the objectionable provisions.

THE WHITE HOUSE

October , 1974

THE WHITE HOUSE

WASHINGTON

October 18, 1974

MEMORANDUM FOR: WARREN K, HENDRIKS

FROM: WILLIAM E. TIMMONS

SUBJECT: Action Memorandum - Log No. 677
Enrolled Bill H.R. 13113 - Commodity
Futures Trading Commission Act of 1974

The Office of Legislative Affairs concurs with OMB's recommendation of a veto and of the proposal that the President indicate in his signing statement that he will sign the bill if the three objectionable provisions, which are not directly related to Futures Trading, are removed.

File

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 677

Date: October 18, 1974 Time: 12:00 Noon

FOR ACTION: Michael Duval
Phil Buchen
✓Bill Timmons
Paul Theis

cc (for information): Warren K. Hendriks
Jerry Jones
Norm Ross

Rush

FROM THE STAFF SECRETARY

DUE: Date: Monday, ~~October 21, 1974~~ ~~Time: 2:00 p.m.~~ Fri Oct 18 COB

SUBJECT: Enrolled Bill H.R. 13113 - Commodity Futures Trading Commission Act of 1974

ACTION REQUESTED:

____ For Necessary Action

____ Prepare Agenda and Brief

____ For Your Comments

XX For Your Recommendations

____ Draft Reply

____ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

TO THE HOUSE OF REPRESENTATIVES

I am withholding my approval from H.R. 13113, the Commodity Futures Trading Commission Act of 1974.

This bill would provide for the first major overhaul of the existing Commodity Exchange Act since its inception by establishing a new regulatory structure to apply to all commodity futures trading. This is an objective which I fully support.

Unfortunately, in passing an otherwise desirable bill, the Congress has incorporated three objectionable provisions which would enable the Commodity Futures Trading Commision, which the bill would create, to bypass traditional Executive Branch functions. I find these provisions unacceptable. [insert]

First, it would require the concurrent submission to Congress of the Commission's budget requests and documentation when these are submitted to the President or the Office of Management and Budget. This would in effect undermine the provisions of the Budget and Accounting Act of 1921 which requires the President to submit to Congress a single coordinated budget.

Second, as with the budget requests, it would require concurrent submission of the Commission's legislative proposals. Such a requirement, particularly if extended to other agencies, would make it difficult for the President to develop and present to the Congress a coherent, coordinated legislative program as well as advice on the relationship of Congressionally sponsored legislation to his program.

Third, it would authorize the Commission to bypass the Attorney General and go directly to the courts in enforcement and litigation matters. Such decentralization of litigation control would produce less objectivity, lessen

the ability of the government to present the courts with uniform positions on important legal issues and limit the government's choice of important test cases.

In summary, I believe that the executive bypass provisions on the budget, legislation, and litigation represent an unacceptable erosion of Presidential and executive functions and responsibilities.

However, the bill is otherwise acceptable and desirable legislation and, therefore, I stand ready to approve a bill if it is amended to eliminate the objectionable provisions.

I am advised by the Attorney General and I have determined that the absence of my signature from this bill prevents it from becoming law. Without in any way qualifying this determination, I am also returning it without my approval to those designated by Congress to receive messages at this time.

THE WHITE HOUSE

WASHINGTON

October 22, 1974

MEMORANDUM FOR JERRY JONES

FROM: MIKE DUVAL

Ken Cole would like the following language added to the third paragraph of the veto statement.

insert "They represent a retreat from my goal of reduced federal spending. They will make it more difficult for me to review all requests for federal spending to insure that the taxpayers' dollars are spent prudently."

THE WHITE HOUSE

WASHINGTON

October 21, 1974

MEMORANDUM FOR: MR. WARREN HENDRIKS

FROM: WILLIAM E. TIMMONS BT

SUBJECT: Action Memorandum - Log No. 677
Enrolled Bill H. R. 13113 - Commodity Futures Trading Commission Act of 1974

The Office of Legislative Affairs concurs in the attached proposal and has no additional recommendations.

Attachment

NOTE: I would beef up the Message by praising the intent of the legislation, its need, etc. Emphasize P would sign if objectionalle features are removed.

BT

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 677

Date: October 18, 1974 Time: 12:00 Noon

FOR ACTION: Michael Duval
Phil Buchen
Bill Timmons
Paul Theis

cc (for information): Warren K. Hendriks
Jerry Jones
Norm Ross

FROM THE STAFF SECRETARY

DUE: Date: Monday, October 21, 1974 Time: 2:00 p.m.

SUBJECT: Enrolled Bill H.R. 13113 - Commodity Futures Trading Commission Act of 1974

ACTION REQUESTED:

___ For Necessary Action

XX For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

___ For Your Comments

___ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

THE WHITE HOUSE

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Warren K. Hendriks
For the President

TO THE HOUSE OF REPRESENTATIVES

I am withholding my approval from H.R. 13113, the Commodity Futures Trading Commission Act of 1974.

This bill would provide for the first major overhaul of the existing Commodity Exchange Act since its inception by establishing a new regulatory structure to apply to all commodity futures trading. This is an objective which I fully support.

Unfortunately, in passing an otherwise desirable bill, the Congress has incorporated three objectionable provisions which would enable the Commodity Futures Trading Commision, which the bill would create, to bypass traditional Executive Branch functions. I find these provisions unacceptable. [insert]

First, it would require the concurrent submission to Congress of the Commission's budget requests and documentation when these are submitted to the President or the Office of Management and Budget. This would in effect undermine the provisions of the Budget and Accounting Act of 1921 which requires the President to submit to Congress a single coordinated budget.

Second, as with the budget requests, it would require concurrent submission of the Commission's legislative proposals. Such a requirement, particularly if extended to other agencies, would make it difficult for the President to develop and present to the Congress a coherent, coordinated legislative program as well as advice on the relationship of Congressionally sponsored legislation to his program.

Third, it would authorize the Commission to bypass the Attorney General and go directly to the courts in enforcement and litigation matters. Such decentralization of litigation control would produce less objectivity, lessen

the ability of the government to present the courts with uniform positions on important legal issues and limit the government's choice of important test cases.

In summary, I believe that the executive bypass provisions on the budget, legislation, and litigation represent an unacceptable erosion of Presidential and executive functions and responsibilities.

However, the bill is otherwise acceptable and desirable legislation and, therefore, I stand ready to approve a bill if it is amended to eliminate the objectionable provisions.

I am advised by the Attorney General and I have determined that the absence of my signature from this bill prevents it from becoming law. Without in any way qualifying this determination, I am also returning it without my approval to those designated by Congress to receive messages at this time.

THE WHITE HOUSE

WASHINGTON

October 22, 1974

MEMORANDUM FOR JERRY JONES

FROM: MIKE DUVAL

Ken Cole would like the following language added to the third paragraph of the veto statement.

insert "They represent a retreat from my goal of reduced federal spending. They will make it more difficult for me to review all requests for federal spending to insure that the taxpayers' dollars are spent prudently."

STATEMENT BY THE PRESIDENT

I have today signed H.R. 13113, the Commodity Futures Trading Commission Act of 1974.

This bill would provide for the first major overhaul of the existing Commodity Exchange Act since its inception by establishing a new regulatory structure to apply to all commodity futures trading. Briefly, the bill would:

* Create a full time, independent regulatory commission to be known as the Commodity Futures Trading Commission (CFTC) with five Commissioners in place of the present Commodity Exchange Authority within the Department of Agriculture. The Commissioners would be appointed by the President by and with advice and consent of the Senate.

* Enlarge the jurisdiction of the government's regulation of commodities to include all futures trading including lumber and metals -- at present only certain agricultural commodities are regulated including pork bellies, frozen orange juice, soybeans, wheat, and corn.

* Confer significantly stronger regulatory and enforcement powers on the new Commission than those held by the present Commodity Exchange Authority.

The basic objectives of this legislation have my full support. However, I regret that Congress has felt it necessary to enact the present legislation which I think is subject to the following serious objections.

First, it would require the concurrent submission to Congress of CFTC budget requests and documentation when these are submitted to the President or the Office of Management and Budget. This would in effect undermine the provisions of the Budget and Accounting Act of 1921 which requires the President to submit to Congress a single coordinated budget. Ultimately, it could result in a return to the fiscal chaos that prompted the Congress to require the President to develop such a single Federal budget.

Second, as with the budget requests, it would require concurrent submission of CFTC legislative proposals and it would essentially prohibit the President and OMB from reviewing any CFTC legislative proposals or comments on legislation. Such a requirement, particularly if extended to other agencies, would make it impossible for the President to develop and present to the Congress a coherent, coordinated legislative program as well as advice on the relationship of Congressionally sponsored legislation to his program.

Third, it would authorize the CFTC to bypass the Attorney General and go directly to the courts in enforcement and litigation matters. Such decentralization of litigation control would produce less objectivity, lessen the ability of the government to present the courts with uniform positions on important legal issues, and limit the government's choice of important test cases.

My approval of H.R. 13113 is based on the belief that the significant strengthening of commodity futures trading regulation outweighs the offensive executive bypass provisions I have referred to above. I strongly urge the Congress to refrain from further inroads on executive functions and responsibilities which long experience has taught us need to be carried out on a coordinated and unified basis.

TO THE HOUSE OF REPRESENTATIVES:

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Unfortunately, in passing an otherwise desirable bill, the Congress has incorporated three objectionable provisions which would enable the CFTC to bypass traditional Executive Branch functions. I find these provisions unacceptable.

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In summary, I believe that the executive bypass provisions on the budget, legislation, and litigation represent an unacceptable erosion of Presidential and executive functions and responsibilities. Accordingly, I am withholding my approval from H.R. 13113.

However, in that the bill is otherwise acceptable and desirable legislation, I stand ready to approve a bill if it is amended to eliminate the objectionable provisions.

THE WHITE HOUSE,

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THE WHITE HOUSE,

FOR IMMEDIATE RELEASE OCTOBER 24, 1974

Office of the White House Press Secretary
(Des Moines, Iowa)

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I am pleased to announce that I have signed into law H.R. 13113, the Commodity Futures Trading Commission Act of 1974.

This act will provide the first major overhaul of the existing Commodity Exchange Act since its inception by establishing a new regulatory structure to apply to all commodity futures trading. This is an objective which I fully support.

This legislation was prompted by increasing concern that Federal regulation of commodity futures trading is too narrow in scope and that the present regulatory system is inadequate. In the past few years, the Federal Government has disposed of large accumulations of minerals and agricultural commodities. But present stocks are not large enough to stabilize prices. The recent market situation has been characterized by widely swinging prices. The futures markets have become increasingly important to our marketing system -- with the value of futures trading now totaling $500 billion annually.

The increased trading has attracted more speculators and vastly increased the potential for unethical and illegal practices. This has resulted in failures of financial firms and losses by innocent investors.

Consumers also have suffered since the gyrations of the futures markets have, in some cases, driven up prices to consumers.

It is important that futures trading take place under conditions in which traders and the public have full confidence in the system. This new law is an important step in this direction.

Unfortunately, in passing an otherwise desirable bill, the Congress has incorporated three objectionable provisions which would enable the new Commodity Futures Trading Commission to compromise traditional Executive Branch functions. I find these provisions unacceptable as well as being unnecessary for the effective operation of the Commission.

The first one would require the concurrent submission of Commission budget requests to Congress and to the President or to the Office of Management and Budget. This would in effect undercut the provisions of the Budget and Accounting Act of 1921 which requires the President to submit to Congress a single coordinated budget. It also represents a retreat from my goal of reduced federal spending, since it will make it more difficult for me to review all requests for federal spending in advance of submission to Congress.

Second, as with the budget requests, it would require concurrent submission of the Commission's legislative proposals. If extended to other agencies, such a requirement would make it difficult for me to develop and present to the Congress a coherent, coordinated legislative program.

Third, the Commission is empowered to appoint an Executive Director by and with the advice and consent of the Senate. This raises serious constitutional questions, by providing for an Executive Branch appointment in a manner not contemplated by the Constitution. This encroachment on the separation of powers can easily be corrected by deletion of the request for Senate confirmation of the Executive Director.

MORE

Nevertheless, because of the need for better regulation of commodity futures trading, I have signed H.R. 13113, notwithstanding my strong objections to these three provisions which erode necessary Executive control. I will submit to the Congress legislation which would correct these three provisions and I will strongly urge its passage during this session of the 93rd Congress.

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