

Ronald Reagan Presidential Library

Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection:

Cohen, Benedict S.: Files

Folder Title:

Stratospheric Ozone-Authority to Enter International
Agreement

Box: CFOA 1338

To see more digitized collections visit:

<https://www.reaganlibrary.gov/archives/digitized-textual-material>

To see all Ronald Reagan Presidential Library Inventories, visit:

<https://www.reaganlibrary.gov/archives/white-house-inventories>

Contact a reference archivist at: **reagan.library@nara.gov**

Citation Guidelines: <https://reaganlibrary.gov/archives/research-support/citation-guide>

National Archives Catalogue: <https://catalog.archives.gov/>

WITHDRAWAL SHEET

Ronald Reagan Library

Collection: COHEN, BENEDICT: Files
Box/OA: 19229
File Folder: STRATOSPHERIC OZONE-Authority to Enter
 International Agreement

Archivist: loj/loj
FOIA ID: F00-013, Metzger
Date: 09/20/2000

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
Entire Folder			
1. memo	Arthur Culvahouse to Ralph Bledsoe, re Stratospheric Ozone—Authority to Enter International Agreement, 3p	9/1/87	PS CB 10/19/00

RESTRICTIONS

P-1 National security classified information [(a)(1) of the PRA].
 P-2 Relating to appointment to Federal office [(a)(2) of the PRA].

P-3 Release would violate a Federal statute [(a)(3) of the PRA].
 P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
 P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
 P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

C. Closed in accordance with restrictions contained in donor's deed of gift.

F-1 National security classified information [(b)(1) of the FOIA].
 F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
 F-3 Release would violate a Federal statute [(b)(3) of the FOIA].
 F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
 F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
 F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
 F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
 F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

WITHDRAWAL SHEET

Ronald Reagan Library

Collection: COHEN, BENEDICT: Files
Box/OA: 19229
File Folder: STRATOSPHERIC OZONE-Authority to Enter
 International Agreement

Archivist: loj/loj
FOIA ID: F00-013, Metzger
Date: 09/20/2000

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
Entire Folder			
1. memo	Arthur Culvahouse to Ralph Bledsoe, re Stratospheric Ozone—Authority to Enter International Agreement, 3p	9/1/87	P5

RESTRICTIONS

P-1 National security classified information [(a)(1) of the PRA].
 P-2 Relating to appointment to Federal office [(a)(2) of the PRA].

P-3 Release would violate a Federal statute [(a)(3) of the PRA].
 P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
 P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
 P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

C. Closed in accordance with restrictions contained in donor's deed of gift.

F-1 National security classified information [(b)(1) of the FOIA].
 F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
 F-3 Release would violate a Federal statute [(b)(3) of the FOIA].
 F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
 F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
 F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
 F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
 F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].


THE WHITE HOUSE

WASHINGTON

September 1, 1987

CLOSE HOLD

MEMORANDUM FOR RALPH C. BLEDSOE
SPECIAL ASSISTANT TO THE PRESIDENT FOR
POLICY DEVELOPMENT

FROM: ARTHUR B. CULVAHOUSE, JR. 
COUNSEL TO THE PRESIDENT

SUBJECT: Stratospheric Ozone--Authority to Enter
International Agreement

You have asked for my advice concerning whether the President's negotiating instructions regarding the protocol for control of ozone-depleting chemicals, promulgated after review by the Domestic Policy Council, obviate the need for the Secretary of State to follow the requirements of Foreign Affairs Manual Circular 175 in granting full powers to the United States negotiators in Montreal. Alternatively, you have suggested that a Circular 175 memorandum could be sent to the Secretary of State without the concurrence of other interested agencies. For the reasons set forth below, I do not believe either alternative is advisable.

Circular 175, as codified at Chapter 710 et seq. of the Foreign Affairs Manual, recites that it "is intended solely as a general outline of measures and procedures ordinarily followed which, it is recognized, cannot anticipate all circumstances or situations that may arise. Deviation or derogation from the provisions of this chapter will not invalidate actions taken by officers nor affect the validity of negotiations engaged in or of treaties or other agreements concluded." 11 FAM 710. This provision therefore by its own terms preserves the discretion of the Secretary of State to determine the circumstances and procedures under which, subject to the direction of the President, he may

grant full powers to a person or persons to sign international agreements on behalf of the United States. 1/ As a strictly legal matter, therefore, either the President or the Secretary could grant full powers without following all, or any, of the requirements of Circular 175.

As a matter of policy, however, I strongly advise against either course. Robert Dalton, the Assistant Legal Adviser for Legal Treaties, has informed us that he is unaware of any occasion on which a treaty has been signed by anyone other than the President or the Secretary of State in which full powers were not granted pursuant to Circular 175, which dates back to the 1950's. 2/ To depart from such a settled course of practice could create misunderstanding of the reasons for the extraordinary procedure among the interested agencies or the public. Moreover, as a practical matter, the decision whether to depart from the requirements of Circular 175 would rest with the President or the Secretary of State. The Secretary has already indicated his desire to follow the full Circular 175 procedures. To elevate the issue to the President would again create the potential for misunderstanding or misconstruction of the Administration's decision-making process. It is also possible that such a truncated deliberative process would be objectionable to the other interested agencies.

My staff has discussed intensively with you and the Legal Adviser's Office a third alternative: that the United States Delegation could be granted full powers pursuant to a full Circular 175 clearance procedure after the conclusion of the final round of negotiations on September 8-11 and before the signing ceremony on September 16. Such a procedure would avoid two clearances of the document--one before the final September 8-11 negotiating session pursuant to Circular 175, to confer the full powers, and one after that session, to determine whether to exercise them. It also would ensure that the interested agencies were passing on a more nearly final document than the nonfinal draft protocol that the State Department proposes to circulate at this time.

1/ Thus, I believe that those cases which hold that agencies must comply with regulations while they are in force, even though such regulations are wholly revocable, would not constrain the Secretary to follow the procedures set forth in Circular 175. In addition, the treaty-making power is so central a part of the President's exclusive constitutional authority in foreign affairs that it is questionable whether it could constitutionally be constrained by internal Executive branch regulations. See United States v. Curtiss-Wright Export Corp.

2/ Under international law, the President and the Secretary of State do not require full powers to sign international agreements.

After consultation with the State Department, however, I have concluded that such a procedure would be inadvisable. First, the State Department has strongly stated that it would deny the U.S. Delegation the leverage in negotiations that would be conferred by possession of full powers to sign before the opening of the final negotiating session. Second, the State Department has advised that Secretary Shultz's meeting with the Soviet Foreign Minister on September 16 will make it impossible for the Secretary to approve the grant of full powers during the September 12-September 15 period available between meetings in Montreal. Finally, the Department has stated that a two-step consideration of the draft protocol is necessary to ensure appropriate consideration of the many complex issues raised by the protocol. It does not believe that the interested agencies will be able adequately to consider the final draft of the protocol over the Labor Day weekend unless they have earlier had the opportunity to consider the issues in the context of approval of a grant of full powers.

Though I believe that the State Department's objections to all of these proposals are substantially correct, I appreciate your concern that protracted interagency clearance of the protocol could complicate rather than simplify the final decision on the agreement. I also agree with your views of the importance that should be attached to maintaining the confidentiality of the President's negotiating instructions. Accordingly, my staff has informed the Assistant Legal Adviser of your decision that neither the President's decisional memorandum nor his negotiating instructions should be attached to or referenced in the Circular 175 memorandum.

Thank you for bringing this matter to my attention.