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Mr. Buchen

THE WHITE HOUSE
WASHINGTON

October 10, 1974

MEMORANDUM FOR: KATHY TINDLE

FROM: DUDLEY CHAPMAN *DC*

SUBJECT: Proposed Executive Order Entitled
"Inflation Impact Statements" Log 642

I am opposed to this proposed executive order. There appears to be no reason why the requirements for inflation impact statements cannot be embodied in the executive order itself, after normal clearance procedures. The proposed order would provide no specific guidance or criteria, was obviously done hastily and would confer excessive authority on the Director of OMB.

The objective of immediate notice could be adequately served by initiating a proposal for an executive order in the normal way. This could be done, for example, by a memorandum from the Director of OMB to the heads of all departments and agencies, reminding them of the President's decision, giving notice that it is effective immediately, and requesting suggestions for specifics of the executive order within a reasonable deadline. Such a memorandum could be issued at least as promptly as the proposed executive order.

It is also highly undesirable to get into the habit of by-passing all normal clearance procedures as proposed here. The failure to get even an informal clearance from Justice is egregious.



THE WHITE HOUSE
WASHINGTON

May 9, 1975

MEMORANDUM FOR: WILLIAM CASSELMAN

FROM: PHILIP BUCHEN *P.W.B.*

Attached is a copy of a letter from Congressman Donald Clancy to the President with a copy of Vern Loen's acknowledgement.

Kindly advise on how to handle.

Attachment

*Inflation
Impact
Study*



THE WHITE HOUSE
WASHINGTON

May 9, 1975

MEMORANDUM FOR: KEN LAZARUS
DUDLEY CHAPMAN

FROM: PHILIP BUCHEN *P.W.B.*

Attached is a memo from the Attorney General
on Inflation Impact Statements.

Kindly let me have your comments.

Attachment

*Economy
&
Inflation*



THE ATTORNEY GENERAL



May 25, 1975

TO: Mr. Buchen
FROM: The Attorney General

I thought I should call the
attached to your attention



ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL
RECEIVED
OFFICE OF THE
ATTORNEY GENERAL
APR 28 1975

Department of Justice
Washington, D.C. 20530

APR 28 1975

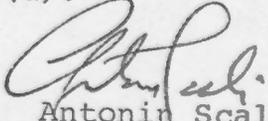
MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Inflation Impact Statements

This is in response to your April 3 request for this Office's views on the legal aspects of the OMB memorandum concerning Inflation Impact Statements required by Executive Order No. 11821. It was the conclusion of the memorandum that the required impact statements would not enable private litigants to enjoin Executive action. Our information from OMB is that this Department had no participation in the preparation of the memorandum. Apparently the legal position was developed by the General Counsel of the Wage and Stability Council.

As you are aware, a preliminary injunction has been granted in Independent Meat Packers Ass'n v. Butz, Civ. No. 75-0-105 (D. Neb. April 14, 1975), at least partially on the basis that the Inflation Impact Statement by the Department of Agriculture was insufficient (see the attached communication to the Civil Division). This preliminary injunction was affirmed by the Eighth Circuit on April 15. The initial indication is, therefore, that the failure to make, or the insufficiency of, an Inflation Impact Statement will provide a basis for enjoining Executive action. The Civil Division tells us that the case will now be heard on the merits and in that connection the Government will again argue that the impact statement is not a proper basis for judicial relief.

The court's willingness to review the impact statement is not surprising when one considers judicial reaction to the requirement of a NEPA statement. It is my estimate that, while objections to standing and jurisdiction may be upheld in particular cases, the courts will not sustain the broad proposition that the Executive order can never support the granting of an injunction. Cf. Service v. Dulles, 354 U.S. 363 (1957); 5 U.S.C. § 702, 706(2)(d).


Antonin Scalia
Assistant Attorney General
Office of Legal Counsel



Attachment



Announced 11/27/74
Stencilled
To Archives 11/27/74

EXECUTIVE ORDER

-----11821-----

INFLATION IMPACT STATEMENTS

In my address to the Congress on October 8, 1974, I announced that I would require that all major legislative proposals, regulations, and rules emanating from the executive branch of the Government include a statement certifying that the inflationary impact of such actions on the Nation has been carefully considered. I have determined that this objective can best be achieved in coordination with the budget preparation, legislative clearance, and management evaluation functions of the Director of the Office of Management and Budget.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States of America by the Constitution and laws of the United States, it is hereby ordered as follows:

Section 1. Major proposals for legislation, and for the promulgation of regulations or rules by any executive branch agency must be accompanied by a statement which certifies that the inflationary impact of the proposal has been evaluated. Such evaluation must be in accordance with criteria and procedures established pursuant to this order.

Sec. 2(a) The Director of the Office of Management and Budget is designated and empowered, to the extent permitted by law, to develop criteria for the identification of major legislative proposals, regulations, and rules emanating from the executive branch which may have a significant impact upon inflation, and to prescribe procedures for their evaluation.



(b) The Director, in carrying out the provisions of this order, may delegate functions to the head of any department or agency, including the Chairman of the Council on Wage and Price Stability, when appropriate in the exercise of his responsibilities pursuant to this order.

Sec. 3. In developing criteria for identifying legislative proposals, regulations, and rules subject to this order, the Director must consider, among other things, the following general categories of significant impact:

- a. cost impact on consumers, businesses, markets, or Federal, State or local government;
- b. effect on productivity of wage earners, businesses or government at any level;
- c. effect on competition;
- d. effect on supplies of important products or services.

Sec. 4. Each Federal department and agency must, to the extent permitted by law, cooperate with the Director of the Office of Management and Budget in the performance of his functions under this order, furnish him with such information as he may request, and comply with the procedures prescribed pursuant to this order.

Sec. 5. This order expires December 31, 1976, unless extended prior to that time.

Gerald R. Ford

THE WHITE HOUSE,

NOV 27 1974



5. No legislative proposal, regulation or rule shall be ^{alleged or actual} delayed, invalidated, or otherwise impeded by failure to comply with the terms of this order. Enforcement of the requirements herein shall be ~~enforced~~ effected exclusively through the supervisory powers of the President and the Office of Management and Budget. No judicially enforceable duty is imposed ~~by~~ by this order, the terms of which shall be automatically suspended as to any official or agency ~~upon~~ against whom or which a suit is filed on the basis of this order, effective on the filing of such suit.

THE WHITE HOUSE

WASHINGTON

May 19, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: DUDLEY CHAPMAN *DC*

RE: Scalia Memo on Inflation
Impact Statements

I think Nino's conclusion is correct that we cannot foreclose the possibility of injunctive suits based on the inflation impact statements. I believe the most useful way to ward off such suits is by including a provision in the Executive Order expressly providing that the exclusive means of enforcement is through the supervisory power of the President, and that no judicially enforceable obligation is imposed.



THE WHITE HOUSE
WASHINGTON

May 9, 1975

MEMORANDUM FOR:

KEN LAZARUS
DUDLEY CHAPMAN ✓

FROM:

PHILIP BUCHEN *P.W.B.*

Attached is a memo from the Attorney General
on Inflation Impact Statements.

Kindly let me have your comments.

Attachment



ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL
RECEIVED
OFFICE OF THE
ATTORNEY GENERAL
APR 28 1975

Department of Justice
Washington, D.C. 20530

APR 28 1975

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Inflation Impact Statements

This is in response to your April 3 request for this Office's views on the legal aspects of the OMB memorandum concerning Inflation Impact Statements required by Executive Order No. 11821. It was the conclusion of the memorandum that the required impact statements would not enable private litigants to enjoin Executive action. Our information from OMB is that this Department had no participation in the preparation of the memorandum. Apparently the legal position was developed by the General Counsel of the Wage and Stability Council.

As you are aware, a preliminary injunction has been granted in Independent Meat Packers Ass'n v. Butz, Civ. No. 75-0-105 (D. Neb. April 14, 1975), at least partially on the basis that the Inflation Impact Statement by the Department of Agriculture was insufficient (see the attached communication to the Civil Division). This preliminary injunction was affirmed by the Eighth Circuit on April 15. The initial indication is, therefore, that the failure to make, or the insufficiency of, an Inflation Impact Statement will provide a basis for enjoining Executive action. The Civil Division tells us that the case will now be heard on the merits and in that connection the Government will again argue that the impact statement is not a proper basis for judicial relief.

The court's willingness to review the impact statement is not surprising when one considers judicial reaction to the requirement of a NEPA statement. It is my estimate that, while objections to standing and jurisdiction may be upheld in particular cases, the courts will not sustain the broad proposition that the Executive order can never support the granting of an injunction. Cf. Service v. Dulles, 354 U.S. 363 (1957); 5 U.S.C. § 702, 706(2)(d).



Antonin Scalia
Assistant Attorney General
Office of Legal Counsel



Attachment



THE WHITE HOUSE
WASHINGTON

Date 5/21/75

TO: Phil Buchen

FROM: DUDLEY CHAPMAN

Draft language as you requested. OCC may want to fiddle with the language, but the normal E.O. clearance process should take care of that. This idea has many other applications, which may occur to a few people as this is cleared. Some may question its efficacy, but I think it worth trying. Referral to OMB General Counsel will start the process.

Dudley:

Could you mark up on copy of Executive Order ~~11821~~ 11821 how you think it should be changed. Thanks.

P.

THE WHITE HOUSE
WASHINGTON

*Inflation
Impact
Statement*

May 22, 1975

MEMORANDUM FOR

THE HONORABLE ANTONIN SCALIA
ASSISTANT ATTORNEY GENERAL

After reading your memo to the Attorney General of April 28 on the Inflation Impact Statement, I asked for suggestions in my office as to what might be done to overcome or limit the possibility that the requirement for impact statements would enable private litigants to enjoin executive action.

The proposal I received from Dudley Chapman suggests including a new paragraph in the President's Executive Order to be inserted between the present sections 4 and 5. The language suggested is as follows:

No legislative proposal, regulation or rule shall be delayed, invalidated, or otherwise impeded by alleged or actual failure to comply with the terms of this order. Enforcement of the requirements herein shall be effected exclusively through the supervisory powers of the President and the Office of Management and Budget. No judicially enforceable duty is imposed by this order, the terms of which shall be automatically suspended as to any official or agency against whom or which a suit is filed on the basis of this order, effective on the filing of such suit.

P. W. B.

Philip W. Buchen
Counsel to the President



THE WHITE HOUSE
WASHINGTON

Dudley:

Please follow
up on this —
including a solicitation
~~of~~ for substitute
names.

P.



THE WHITE HOUSE
WASHINGTON

Date 6/13

TO: Phil Buchen

FROM: DUDLEY CHAPMAN

I agree with Mine's
conclusions. My suggestion
of an automatic suspension
was in the nature of
making assurance doubly
sure. I think we can accomplish
the purpose without it.

Changing the label would
help if it is politically feasible.



ASSISTANT ATTORNEY GENERAL



June 13, 1975

Honorable Dudley Chapman
Associate Counsel
The White House
Rm. 106, OEOB
Washington, D.C. 20500

Dear Mr. Chapman:

Enclosed herewith is my memorandum to
Mr. Buchen with regard to the Inflation
Impact Statement, dated June 13, 1975.

Sincerely,


Antonin Scalia

Encl.



JUN 13 1975

MEMORANDUM FOR HONORABLE PHILIP W. BUCHEN
COUNSEL TO THE PRESIDENT

Re: Inflation Impact Statement

With respect to Dudley Chapman's suggestion for amending the Presidential Order concerning inflation impact statements: I have some reservations concerning the effectiveness of the very last clause, which purports to suspend the Order automatically with respect to any official or agency against which suit is filed.

It seems to me clear that the courts are not going to permit the Executive branch to avoid the legal necessity of acting in conformance with its own regulations by the simple device of suspending those regulations whenever suit is brought. The willingness of the courts to accept such a provision will depend entirely upon whether they deem that the Executive branch requirement in question establishes a judicially enforceable requirement--which will depend in part (though doubtless not entirely) upon whether the Executive branch intended it to do so. In other words, I do not believe that the automatic suspension provision adds anything beyond that provision of the proposed amendment which states that "no judicially enforceable duty is imposed by this order." It seems to me the suspension provision is more likely to get the courts' back up than to contribute any additional effect to the President's intent.

I would suggest one further modification of the Order, which in my view is more important than anything else which could be done: The name "Inflation Impact Statement" should be changed to something else--almost anything else except Adolph Hitler. The current appellation simply begs for parity of treatment with environmental impact statements. Mankind, including judges, tends to operate on the proposition that if something is called a duck it is a duck. Legal labels and categories are such convenient devices to avoid renewed analysis



for each new situation that it is extremely difficult, by whatever explicit means, to induce judges to look behind them.

I have spoken to Dudley about this matter, and I think he is aware of my views.

Antonin Scalia
Assistant Attorney General
Office of Legal Counsel

Some items in this folder were not digitized because it contains copyrighted materials. Please contact the Gerald R. Ford Presidential Library for access to these materials.

June 17, 1975

To: Dudley

From: Eva

Mr. Buchen asked if
you would give him a
call on the attached
article from the
National Journal.



Economic Report/Agencies slow in producing inflation impact statements

by Joel Havemann

892

6/14/75
NATIONAL
JOURNAL
REPORTS
©1975

I will require that all major legislative proposals, regulations and rules emanating from the executive branch of the government will include an inflation impact statement . . .

President Ford, Oct. 8, 1974

Eight months after the President launched the inflation impact statement as one way to fight what he then called "domestic public enemy No. 1," the federal bureaucracy still has not made his campaign a reality.



June 17, 1975

To: Dudley

From: Eva

Returned as requested.

THE WHITE HOUSE

WASHINGTON

June 16, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: DUDLEY CHAPMAN *dc*

SUBJECT: Inflation Impact Statements

As you requested, I have prepared a proposed revision of Executive Order 11821 on the basis of my draft and Nino's comments (Tab A).

I have adopted Nino's oral suggestion that the term "economic assessment" be substituted for "inflation impact." In order to carry through this change in label as a concept different from that of "impact statements", I have made a number of other drafting changes as indicated by the markup at Tab B.

These changes include a change in substance to differentiate this requirement from true impact statements. The existing order calls for a certification that the inflationary impact of a proposal has been evaluated. Such a conclusory statement is rather futile if there is no way of enforcing it, which would give the appearance of backing off and provide an incentive for courts to find a way of enforcing it.

My revision, therefore, would require the submission of an economic assessment itself, rather than a certificate that such an evaluation had been made. Regulations as well as legislation would have to be submitted to OMB for this purpose, which is also a new requirement. These changes would also emphasize that the nature of the requirement is a matter of internal budget procedures, as they are characterized by the new Section 5.



TAB
A



EXECUTIVE ORDER

ECONOMIC ASSESSMENTS

In my address to the Congress on October 8, 1974, I announced that I would require that all major legislative proposals, regulations, and rules emanating from the executive branch of the Government include a statement certifying that the inflationary impact of such actions on the Nation has been carefully considered. I have determined that this objective can best be achieved in coordination with the budget preparation, legislative clearance, and management evaluation functions of the Director of the Office of Management and Budget.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States of America by the Constitution and laws of the United States, it is hereby ordered as follows:

Section 1. Major proposals for legislation, and for the promulgation of regulations or rules by any executive branch agency must be submitted to the Office of Management and Budget and accompanied by an economic assessment of the possible inflationary effect of the proposal.

Sec. 2(a). The Director of the Office of Management and Budget is directed to develop criteria for the identification of major legislative proposals, regulations, and rules emanating from the executive branch which may have a significant effect on inflation, and to prescribe procedures for their evaluation.

(b) The Director, in carrying out the provisions of this order, may delegate functions to the head of any department or agency, including the Chairman of the Council on Wage and Price Stability, when appropriate in the exercise of his responsibilities pursuant to this order.



Sec. 3. In developing criteria for identifying legislative proposals, regulations, and rules subject to this order, the Director must consider, among other things, the following general categories of significant inflationary effects:

- a. cost to consumers, businesses, markets, or Federal, State or local government;
- b. effect on productivity of wage earners, businesses or government at any level;
- c. effect on competition;
- d. effect on supplies of important products or services.

Sec. 4. Each Federal department and agency must, to the extent permitted by law, cooperate with the Director of the Office of Management and Budget in the performance of his functions under this order, and furnish him with such information as he may request.

Sec. 5. No legislative proposal, regulation or rule shall be delayed, invalidated, or otherwise impeded by alleged or actual failure to comply with the terms of this order. Enforcement of the requirements herein shall be effected exclusively through the supervisory powers of the President and the Office of Management and Budget.

Sec. 6. This order expires December 31, 1976, unless extended prior to that time.

THE WHITE HOUSE,



TAB
B

GERALD R. FORD LIBRARY

EXECUTIVE ORDER

ECONOMIC ASSESSMENTS
INFLATION IMPACT STATEMENTS

In my address to the Congress on October 8, 1974, I announced that I would require that all major legislative proposals, regulations, and rules emanating from the executive branch of the Government include a statement certifying that the inflationary impact of such actions on the Nation has been carefully considered. I have determined that this objective can best be achieved in coordination with the budget preparation, legislative clearance, and management evaluation functions of the Director of the Office of Management and Budget.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States of America by the Constitution and laws of the United States, it is hereby ordered as follows:

Section 1. Major proposals for legislation, and for the promulgation of regulations or rules by any executive branch agency must be submitted to the Office of Management and Budget and ~~must be~~ accompanied by ~~a statement which certifies that~~ an economic assessment of the possible inflationary impact- effect of the proposal, ~~has been evaluated.~~ -- Such ~~evaluation must be in accordance with criteria and procedures established pursuant to this order.~~

Sec. 2(a). The Director of the Office of Management and Budget is ~~designated and empowered, to the extent permitted by law,~~ directed to develop criteria for the identification of major legislative proposals, regulations, and rules emanating from the executive branch which may have a significant ~~impact upon~~ effect on inflation, and to prescribe procedures for their evaluation.

(b) The Director, in carrying out the provisions of this order, may delegate functions to the head of any department or agency, including the Chairman of the Council on Wage and Price Stability, when appropriate in the exercise of his responsibilities pursuant to this order.



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Sec. 4. Each Federal department and agency must, to the extent permitted by law, cooperate with the Director of the Office of Management and Budget in the performance of his functions under this order, and furnish him with such information as he may request. ~~and comply with the procedures prescribed pursuant to this order.~~

Sec. 5. No legislative proposal, regulation or rule shall be delayed, invalidated, or otherwise impeded by alleged or actual failure to comply with the terms of this order. Enforcement of the requirements herein shall be effected exclusively through the supervisory powers of the President and the Office of Management and Budget.

Sec. 6. This order expires December 31, 1976, unless extended prior to that time.

THE WHITE HOUSE,



4/15

THE WHITE HOUSE
WASHINGTON

Dudley:

Please follow
up on this —
including a solicitation
~~of~~ for substitute
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P.

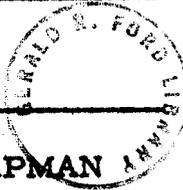
economic
assessment out
effect
in relation

THE WHITE HOUSE
WASHINGTON

Date 6/13

TO: Phil Buchen

FROM: DUDLEY CHAPMAN



I agree with Nino's
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of an automatic suspension
was in the nature of
making assurance doubly
sure. I think we can accomplish
the purpose without it.

Changing the label would
help if it is politically feasible.

ASSISTANT ATTORNEY GENERAL



June 13, 1975

Honorable Dudley Chapman
Associate Counsel
The White House
Rm. 106, OEOB
Washington, D.C. 20500

Dear Mr. Chapman:

Enclosed herewith is my memorandum to
Mr. Buchen with regard to the Inflation
Impact Statement, dated June 13, 1975.

Sincerely,

A handwritten signature in cursive script, appearing to read "A. Scalia".

Antonin Scalia

Encl.

Department of Justice

Washington, D.C. 20530

JUN 13 1975

MEMORANDUM FOR HONORABLE PHILIP W. BUCHEN
COUNSEL TO THE PRESIDENTRe: Inflation Impact Statement

With respect to Dudley Chapman's suggestion for amending the Presidential Order concerning inflation impact statements: I have some reservations concerning the effectiveness of the very last clause, which purports to suspend the Order automatically with respect to any official or agency against which suit is filed.

It seems to me clear that the courts are not going to permit the Executive branch to avoid the legal necessity of acting in conformance with its own regulations by the simple device of suspending those regulations whenever suit is brought. The willingness of the courts to accept such a provision will depend entirely upon whether they deem that the Executive branch requirement in question establishes a judicially enforceable requirement--which will depend in part (though doubtless not entirely) upon whether the Executive branch intended it to do so. In other words, I do not believe that the automatic suspension provision adds anything beyond that provision of the proposed amendment which states that "no judicially enforceable duty is imposed by this order." It seems to me the suspension provision is more likely to get the courts' back up than to contribute any additional effect to the President's intent.

I would suggest one further modification of the Order, which in my view is more important than anything else which could be done: The name "Inflation Impact Statement" should be changed to something else--almost anything else except Adolph Hitler. The current appellation simply begs for parity of treatment with environmental impact statements. Mankind, including judges, tends to operate on the proposition that if something is called a duck it is a duck. Legal labels and categories are such convenient devices to avoid renewed analysis



for each new situation that it is extremely difficult,
by whatever explicit means, to induce judges to look
behind them.

I have spoken to Dudley about this matter, and I
think he is aware of my views.



Antonin Scalia
Assistant Attorney General
Office of Legal Counsel



Department of Justice
Washington, D.C. 20530

JUN 13 1975

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COUNSEL TO THE PRESIDENT

Re: Inflation Impact Statement

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I have spoken to Dudley about this matter, and I think he is aware of my views.



Antonin Scalia
Assistant Attorney General
Office of Legal Counsel



EO -
Inflation
Impact
statement

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

July 9, 1975

MEMORANDUM FOR: PHILIP W. BUCHEN
FROM: CALVIN J. COLLIER
SUBJECT: Revision of the Executive Order
on Inflation Impact Statements

We have reviewed the changes you proposed to the Executive Order requiring Inflation Impact Statements. While we are in complete agreement with the objective of curtailing litigation over this matter, we have some problems with the approach you have taken and some concern over timing of any changes in Executive Order No. 11821.

We are pessimistic about the chance of either the change of name for the initiative, or the enforcement paragraph having any significant effect on litigation. Furthermore, these changes could result in a public impression that the President is no longer supporting the program and a corresponding reaction, and lessening of effort, by Departments and agencies. Given the high visibility that the program has been given, a name change would subject us to ridicule.

I believe it would be a mistake to anticipate that a new name for the program will have a substantial impact on court action. While it is unfortunate that a term was initially used which was so comparable to that used in the environmental statutes, the comparison is likely to remain even if the order is recaptioned.

The new Section 6, while purporting to limit judicial intervention, may have little or no effect on the courts. I doubt that it is sufficient to preclude judicial consideration of an agency's compliance with the order.

In regard to the timing of a change in Executive Order No. 11821, the agencies are just developing experience with the initiative. Any substantive revisions at this time would delay our full implementation schedule and could not reflect any insights which may be gained by continuing as presently structured for another few months.

RECORD LIBRARY

OMB could have serious problems with the proposed revision of Section 2. This would require copies of all major proposals and their economic analyses to be submitted to OMB. While likely to inundate OMB with paper, the purpose of this submission is not clear and the potential for various interpretations is obvious.

I am enclosing a memorandum prepared by the General Counsel of the Council on Wage and Price Stability, which I think will be of interest to you.

Finally, it is my understanding that Nino Scalia may have some new thoughts on ways to solve the litigation problem without undermining the progress we are making to implement the President's program.

Enclosure



THE WHITE HOUSE
WASHINGTON

*inflation
subject
stmt.
(?)*

June 23, 1975

MEMORANDUM FOR:

JIM LYNN

FROM:

PHILIP BUCHEN

P.W.B.

SUBJECT:

Your Memo to the President
on Inflation Impact
Statement Initiative

You may wish to consider postponement or modification of your proposed memorandum in view of the change in the Executive Order proposed in my memorandum to you dated June 20, 1975. Now I see, however, that our redrafted Order may also have to include specific exemptions or allow for the President to grant exemptions without further amendment to the Order.

cc: Judy Johnston



THE WHITE HOUSE

WASHINGTON

June 20, 1975

*inflation
impact
stmt.
(?)*

MEMORANDUM FOR: JIM LYNN
FROM: PHIL BUCHEN *P.W.B.*
SUBJECT: Revision of the Executive Order on
Inflation Impact Statements

The existing Executive Order on inflation impact statements has generated litigation which obstructs the functioning of the executive branch and has to some extent proved too formal and burdensome.

The proposed revision of that Order (Tab A) has been drafted in my office in collaboration with the Office of Legal Counsel in the Department of Justice, with the primary objective of ending litigation to enforce this requirement. It was for this purpose that the term "impact statement" has been replaced by "economic assessment." The specific label is not crucial, but it is desirable legally to avoid use of the word "impact." The less formal requirement should be easier to tailor to the nature of individual proposals.

A marked up copy of the existing Order showing the changes is attached at Tab B.

This matter has obvious political sensitivity, as indicated by the article at Tab C. The policy is that quoted from Secretary Weinberger on page 895 of the National Journal article -- to provide a simplified, efficient means of focusing people's attention on inflationary consequences of government actions.

Please initiate the normal clearance procedure for Executive Orders.



EXECUTIVE ORDER

ECONOMIC ASSESSMENTS

In my address to the Congress on October 8, 1974, I announced that I would require that all major legislative proposals, regulations, and rules emanating from the executive branch of the Government include a statement certifying that the inflationary impact of such actions on the Nation has been carefully considered. By Executive Order No. 11821, I directed that major proposals for legislation and the promulgation of regulations or rules by any executive branch agency must be accompanied by an inflation impact statement. Experience has shown that formal requirements associated with legislatively required impact statements designed for different purposes could render the inflation impact statement too cumbersome and costly, and detract from my purpose in requiring it. I have determined that a less formal instruction calling for economic assessments for the internal use of executive officials, and not subject to litigation that impairs the accomplishment of government business, is needed.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States of America by the Constitution and laws of the United States, it is hereby ordered as follows:

Sec. 1. Executive Order No. 11821 is revoked.

Sec. 2. Major proposals for legislation, and for the promulgation of regulations or rules by any executive branch agency must be submitted to the Office of Management and Budget and accompanied by an economic assessment of the possible inflationary effect of the proposal.

Sec. 3(a). The Director of the Office of Management and Budget is directed to develop criteria for the identification of major legislative proposals, regulations, and rules emanating from the executive branch which may have a significant effect on inflation, and to prescribe procedures for their evaluation.



(b) The Director, in carrying out the provisions of this order, may delegate functions to the head of any department or agency, including the Chairman of the Council on Wage and Price Stability, when appropriate in the exercise of his responsibilities pursuant to this order.

Sec. 4. In developing criteria for identifying legislative proposals, regulations, and rules subject to this order, the Director must consider, among other things, the following general categories of significant inflationary effects:

- a. cost to consumers, businesses, markets, or Federal, State or local government;
- b. effect on productivity of wage earners, businesses or government at any level;
- c. effect on competition;
- d. effect on supplies of important products or services.

Sec. 5. Each Federal department and agency must, to the extent permitted by law, cooperate with the Director of the Office of Management and Budget in the performance of his functions under this order, and furnish him with such information as he may request.

Sec. 6. No legislative proposal, regulation or rule shall be delayed, invalidated, or otherwise impeded by alleged or actual failure to comply with the terms of this order. Enforcement of the requirements herein shall be effected exclusively through the supervisory powers of the President and the Office of Management and Budget.

Sec. 7. This order expires December 31, 1976, unless extended prior to that time.

THE WHITE HOUSE,



EXECUTIVE ORDER

ECONOMIC ASSESSMENTS
INFLATION-IMPACT STATEMENTS

In my address to the Congress on October 8, 1974, I announced that I would require that all major legislative proposals, regulations, and rules emanating from the executive branch of the Government include a statement certifying that the inflationary impact of such actions on the Nation has been carefully considered. By Executive Order No. 11821, I directed that major proposals for legislation and the promulgation of regulations or rules by any executive branch agency must be accompanied by an inflation impact statement. Experience has shown that formal requirements associated with legislatively required impact statements designed for different purposes could render the inflation impact statement too cumbersome and costly, and detract from my purpose in requiring it. I have determined that a less formal instruction calling for economic assessments for the internal use of executive officials, and not subject to litigation that impairs the accomplishment of government business, is needed. I have determined that this objective can best be achieved in coordination with the budget preparation, legislative clearance, and management evaluation functions of the Director of the Office of Management and Budget. */

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States of America by the Constitution and laws of the United States, it is hereby ordered as follows:

Sec. 1. Executive Order No. 11821 is revoked.

Sec. 2. Major proposals for legislation, and for the promulgation of regulations or rules by any executive branch agency must be submitted to the Office of Management and Budget and must be accompanied by

*/ This sentence is consistent with the theory of the revised order, but since it is associated with the earlier version and is not essential, it appears preferable to delete it.



~~a statement which certifies that~~ an economic assessment of the possible inflationary impact effect of the proposal. ~~- has been evaluated. - Such evaluation must be in accordance with criteria and procedures established pursuant to this order.~~

Sec. 3(a). The Director of the Office of Management and Budget is ~~designated and empowered, to the extent permitted by law,~~ directed to develop criteria for the identification of major legislative proposals, regulations, and rules emanating from the executive branch which may have a significant ~~impact upon~~ effect on inflation, and to prescribe procedures for their evaluation.

(b) The Director, in carrying out the provisions of this order, may delegate functions to the head of any department or agency, including the Chairman of the Council on Wage and Price Stability, when appropriate in the exercise of his responsibilities pursuant to this order.

Sec. 4. In developing criteria for identifying legislative proposals, regulations, and rules subject to this order, the Director must consider, among other things, the following general categories of significant impact inflationary effects:

- a. Cost ~~impact on~~ to consumers, businesses, markets, or Federal, State or local government;
- b. effect on productivity of wage earners, businesses or government at any level;
- c. effect on competition;
- d. effect on supplies of important products or services.

Sec. 5. Each Federal department and agency must, to the extent permitted by law, cooperate with the Director of the Office of Management and Budget in the performance of his functions under this order, and furnish him with such information as he may request. ~~and comply with the procedures prescribed pursuant to this order.~~



Sec. 6. No legislative proposal, regulation or rule shall be delayed, invalidated, or otherwise impeded by alleged or actual failure to comply with the terms of this order. Enforcement of the requirements herein shall be effected exclusively through the supervisory powers of the President and the Office of Management and Budget.

Sec. 7. This order expires December 31, 1976, unless extended prior to that time.

THE WHITE HOUSE,



Economic Report/Agencies slow in producing inflation impact statements

by Joel Havemann

892

I will require that all major legislative proposals, regulations and rules emanating from the executive branch of the government will include an inflation impact statement...

President Ford, Oct. 8, 1974

Eight months after the President launched the inflation impact statement as one way to fight what he then



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: June 20, 1975

Time: 900am

FOR ACTION: Bill Seidman
Max Friedersdorf
Paul Leach
Dick Parsons
Ken Lazarus

cc (for information): Jim Cavanaugh
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: Saturday, June 21

Time: noon

SUBJECT:

Status of Inflation Impact Statement Initiative (Lynn Memo 6/19/)

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor 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.

James H. Cavanaugh
For the President





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

JUN 19 1975

MEMORANDUM FOR: THE PRESIDENT
FROM: JAMES T. LYNN
SUBJECT: Status of Inflation Impact Statement Initiative

You have given a high priority to the inflation impact statement initiative in your major speeches, most recently your April 28, 1975, address to the Chamber of Commerce. Therefore, we will be providing you a regular report on its progress.

Implementation Progress

Executive agencies have responded to your Executive order of November 29, 1974, in mixed fashion. Those familiar with economic analyses, such as EPA, have completed thorough analyses of major proposed rules and legislation. Other agencies have had to establish analytical capabilities. Despite these and some legal concerns, we believe progress of Cabinet departments and agencies is on schedule. We expect to have approved criteria--to determine which proposals are major and require full evaluation--in place for all participating agencies by June 20.

We have reached agreement with the Council on Wage and Price Stability on a definition of "major" proposed legislation or regulations. Briefly, we agree that a proposal should be characterized as major and given full economic evaluation if its prospective cost impacts exceed \$100 million on the Nation in any year, or \$50 million on a sector of the economy in any year. Comparable criteria have been identified for impact on productivity, competition, critical supplies, employment, and energy. Together, these criteria ensure consistency among the agencies in determining which proposals are major.



After careful consideration of our policy on agency disclosure of impact analyses to the public, we have concluded that full disclosure of agency criteria and analyses is in the public interest. We have recommended that the agencies adopt this policy. This approach should ensure greater agency care in conducting the economic analyses without seriously slowing the clearance of legislation or issuance of regulations.

We have also recommended that the agencies consult with State and local governments on the impact analyses. This responds to considerable interest shown by the National Governors' Conference.

Problems

We have had difficulty keeping the emphasis of inflation impact analyses on careful decisionmaking, rather than legal procedures. We have had a primary objective of keeping the inflation impact analysis from producing delays in the decisionmaking process characteristic of the environmental impact statement. This means keeping out of the courts.

However, the U.S. District Court for Nebraska has enjoined the Department of Agriculture from implementing regulations, in part because of allegedly inadequate compliance with your Executive order. The regulations were to establish new beet-grading standards, with increased costs of grading to packers and indeterminate (possibly favorable) cost changes to retail consumers. The court action undermines our objective and we are recommending that the Department of Justice appeal.

A second matter you should be aware of: the Council on Wage and Price Stability has had difficulty in obtaining inflation impact analyses which FEA had prepared on the major pieces of your energy program. Within the past week this problem appears largely to have been solved, and the Council has now received and is evaluating the FEA analyses.

Legislative Developments

You are aware that the House has amended its rules to require inflation impact analyses for any bills reported out of committee. The effectiveness of this effort has thus far been criticized by Barber Conable, Jr. and others. However, we see evidence of improvement there also.

A number of bills have been introduced in the Senate to legislate some form of economic or inflation impact statement requirements. These bills fall into two groups: one would require the Congressional Budget Office to develop economic analyses of proposed legislation; the second



would require Executive agencies to develop economic analyses before taking any major actions. Principal among the former bills is S. 15 proposed by Senators Dole, Buckley, Hansen, Taft, and Thurmond. The Dole bill has recently been attached as an amendment to the Agency for Consumer Advocacy bill, S. 200, which has also passed the Senate. This would require Executive agencies to perform "cost and benefit" assessments for any major actions, similar to your Executive order.

Exemption Requests

On April 15, 1975, you approved the exemption of a number of agencies from the inflation impact requirement. (A final summary of departments and agencies participating is provided at the tab.) We recommended agencies be exempted on grounds that they proposed no significant legislation or regulations in the past, and were unlikely to do so in the future. Similarly we recommend you approve exemption of the following agencies:

American Battle Monuments Commission
 American Revolutionary Bicentennial Commission
 Committee for Purchase from the Blind and Severely Handicapped
 Community Services Administration
 Farm Credit Administration
 Inter-American Foundation
 Overseas Private Investment Corporation
 Railroad Retirement Board
 Selective Service System

Decision

Approved _____

Disapproved _____

Attachment



ATTACHMENT

INFLATION IMPACT STATEMENTS PARTICIPATING AGENCIES

Agriculture
Commerce
Defense
Health, Education, and Welfare
Housing and Urban Development
Interior
Justice
Labor
State
Transportation
Treasury
Civil Service
Equal Employment Opportunity Commission
Environmental Protection Agency
Energy Research and Development Administration
Export-Import Bank
Federal Energy Administration
General Services Administration
International Tariff Commission
National Aeronautics and Space Administration
Panama Canal Zone
Renegotiation Board
Small Business Administration
Tennessee Valley Authority
Veterans Administration

