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APPENDIX A:

SUMMARY COMMENTS ON SELECTED INDIVIDUAL IIS ANALYSES



Inflation Impact Statements for Regulatory Proposals

Department of Agriculture -- 12 IIS

Revised Beef Grade Standards

This IIS analyzes the proposed revision in grade standards whose purpose is to improve the precision in identifying beef. The principal benefit of the proposal is seen as increased pricing accuracy. Some additional benefits are reduced feeding costs and the potential for increased efficiency of beef production and reduced expenditures throughout the market system. The backup for these assertions is not provided, and quantitative estimates of costs and benefits are not presented. There is no way to determine from a reading of the IIS whether this is a major proposal. This proposal has been adopted.

To Make Commodities Available for Public Law 480 Programming during Fiscal Year 1976

This summary IIS analyzes the effects of exports of certain commodities under P.L. 480. It contains estimates of 1976 prices for the affected commodities and compares them with 1975 prices, but does not present estimates of the effect of the program itself on prices, costs to consumers, or other costs. No significant inflationary impact is expected. However, beneficiaries are stated to include U.S. producers, processors, and suppliers as well as the recipient nations. It cannot be determined from a reading of the IIS whether the action is major or not. This program has been carried out as proposed.

Support Levels and Method of Support for Tobacco

This is a mandatory program under which the levels of support must be determined in accordance with a formula described in the Agricultural Act of 1949, as amended. The summary IIS contains a brief description of the state of the industry and of the effects (expected not to be large) of the change in support levels on producers, manufacturers, and consumers. Benefits are described in terms of guaranteed returns to producers. Since the level of support is determined by a formula described by law, no alternatives are considered. Though the action is assumed to be major, this cannot be determined, given the information provided in the IIS. This program has been carried out as proposed.

Determine the Minimum National Average Support Level for 1975 Crop Peanuts as Amended and Passed by Congress

Legislation requires the level of support to be between 75 and 90 percent of parity. This summary IIS considers the effect of supporting the price at the minimum level of 75 percent. The IIS briefly considers the status of the industry and the effects of the change in the support price. Included in this are estimates of the increased cost to manufacturers,

increased returns to producers, increased costs to consumers and to the government, and changes in production and exports. Benefits are described in terms of increased prices to producers and costs in terms of increased prices to consumers and manufacturers, and increased outlays by government. Alternative government sales policies are considered. However, no alternative support level is considered since the recommended level is the minimum available by law. Though the action is assumed to be major, this cannot be determined given the information supplied in the IIS. This program has been carried out as proposed.

Revised Inflationary Impact Statement -- CCC Exports

This summary IIS is on the impact of an increase in the CCC Export Credit Sales Program's export financing budget from \$450 million to \$1 billion. Estimates of the increase in exports of various commodities as a result of the increased CCC credit are presented. While it is stated that the inflationary impact and the effect on retail prices of this proposal would be insignificant, a principal benefit would be to support producer prices. Other benefits relating to the transportation industry, the balance of payments, and the reduced need for government support payments are also mentioned. The program is viewed as having no adverse effects and as being better than any other alternative. The IIS does not consider the costs of subsidized lending. This program has been carried out as proposed.

Price Support Level for Manufacturing Milk

This summary IIS considers the effect of raising the support price to 80 percent of parity as against the alternative of maintaining the status quo. Estimates of the effect of this action on dairy prices, returns to producers, and CCC purchases are presented. The benefits are stated to be increased prices for producers and the assurance of a more adequate supply of milk for consumers. However, a complete discussion of social costs and benefits is not provided. Given the estimates presented, the proposal can be seen to be major. The support level was increased to 80 percent of parity.

Information Panel and Nutritional Labeling for Meat and Poultry Products

This IIS contains estimates of the short- and long-run costs of complying with the regulations. These costs are due to such items as label redesign, nutritional testing, and chemical analysis. The cost estimates show the regulation to be major. A discussion of the benefits of the program is included, though no quantitative estimates are presented. A reference to a discussion of alternatives, presented elsewhere, is included. The proposal has been adopted.

Major Provisions of 1976-Crop Upland Cotton Program

The major provisions of this program are the establishment of a national production goal, a national base acreage allotment to determine the acres eligible for payments, a national average loan rate, set-aside and conserving base requirements, CCC sales policy, target prices and payment rates, and seed cotton loan program. For most of these provisions, there is little leeway and most of them would appear to have little incremental impact. The seed cotton loan program, however, is not mandatory, and more analysis should have been done on it. There is no indication that this is a major program. These provisions have been adopted as proposed.

Quantities of Agricultural Commodities Projected to be Available for Programming under Public Law 480 Programs for Fiscal Year 1976

This summary IIS analyzes the effect of an increase in funding for P.L. 480 exports. It is concluded that, for all the affected commodities (with the possible exception of peanuts), the proposed changes will have an insignificant effect on supplies and on prices. This conclusion does not appear to be adequately explained. Benefits and alternatives are not discussed. The program has been carried out as proposed.

To set the Support Level for Manufacturing Milk at 80 Percent of Parity 4/1/76, the Beginning of the Marketing Year

This summary IIS provides estimates of the effect of the increase in support prices on CCC purchases and expenditures, retail prices, commercial consumption, and consumer expenditures on dairy products. The derivation of the estimates is not explained and does not provide an adequate measure of costs to consumers or to society. Benefits are not discussed. The alternative implicitly considered is maintaining the status quo. Support prices have been increased as proposed.

Proposed Modifications and Revisions of Food Stamp Program Regulations

This summary IIS outlines the effects of changes in the regulations which are expected to reduce Federal expenditures in this area. Expected declines in receipts by the agricultural industry are also discussed. This program has not been carried out.

Support Levels and the Method of Support for 1976 Crop of Various Kinds of Tobacco

This is a mandatory program. The summary IIS describes the effect of the increase in prices, costs to manufacturers, consumer expenditures, and CCC expenditures. A complete analysis of costs to consumers and social costs is not presented. Benefits are not discussed. Alternatives are also not discussed due to the mandatory nature of the program. The estimates provided suggest this program to be major. The program has been carried out.

Make Commodities Available for P.L. 480 Programming in Fiscal Year 1977

This summary IIS discusses the effects of P.L. 480 exports on the various commodities included in the program. While these exports apparently would not have a significant impact on domestic supplies or prices, the beneficiaries are expected to include the agricultural industry as well as the recipient nations. The discussion of costs, benefits, and alternatives are not complete, and the program cannot be determined to be major given the information provided. The program has been carried out as proposed.

Department of Defense -- 1 IIS

Dredge and Fill Permits

These regulations, promulgated by the Department of Defense, vastly expanded the requirements of permits to engage in the dredging and/or filling of navigable waters and wetlands. The IIS, in the judgment of CWPS, was totally inadequate. The analysis was purely qualitative except for some very elementary administrative costs. In addition there was no consideration of any alternatives except to do nothing. In brief, the entire analysis was conspicuously weak.

Environmental Protection Agency -- 12 IIS

Pesticide Registration Requirements

Pursuant to the Federal Insecticide, Fungicide and Rodenticide Act, EPA promulgated in the Spring of 1975 regulations establishing requirements for the registration of pesticides. EPA is still in the process of finalizing its revisions of the original economic analysis which was judged by CWPS to be weak in its coverage of benefits, costs, and consideration of alternatives.

Drinking Water Standards and Surveillance Guidelines

EPA has issued two sets of proposed regulations regarding primary drinking water standards required by the Safe Drinking Water Act of 1974. The economic impact of these regulations is comprehensive and includes most of the criteria set forth in OMB Circular A-107. However, there should be some quantification of benefits to be weighed against the costs and the inflationary impact analysis should include the sampling and surveillance costs.

Motorcycle Emissions

A Notice of Proposed Rulemaking on motorcycle emissions was published in the Federal Register by EPA on October 22, 1975. The proposed regulation would establish initial levels of permissible emissions for on-road motorcycles manufactured beginning in 1978. A later emissions standard

for 1982 was also proposed. This latter standard was much more stringent and would have lowered the levels of motorcycle emissions per mile comparable to that for automobiles. EPA performed analysis of the impact that this proposed regulation would have upon the motorcycle industry, as well as the regulation's effect upon the supply, demand, and prices for road bikes. Nonetheless, the Council expressed its concern that the 1982 standards, in particular, did not appear to be cost effective and that the costs increases to meet these higher standards -- which would be reflected in increased prices -- may well result in the greater sale of off-road bikes that EPA could not now currently regulate. The EPA is currently reviewing the proposed standard in light of the comments submitted by interested parties. A final decision on the proposed rule should be forthcoming shortly.

Offshore Gas & Oil Effluent Regulations

The regulations would establish 1977 and 1983 water effluent limitations for new and existing offshore gas and oil extractors. EPA's cost estimates are at levels which should require EPA to complete a comprehensive inflationary impact analysis consistent with OMB Circular A-107 along with an accompanying IIS certification. Although the analysis completed by EPA is relatively complete, it is limited to an industry impact study. The analysis should be expanded to project the impacts on the economy generally. These cost levels indicate that a benefit analysis should be completed to determine the extent of aggregate inflationary pressures. As in all effluent guidelines, these regulations are in attempt to internalize social costs. However, to determine whether these standards are economically justified, their costs should be weighed against the benefits.

Maintenance of Ambient Air Quality Standards

Pursuant to the Clean Air Act, EPA promulgated these standards in February 1975. The standards set up procedures for Air Quality Control Regions to use in monitoring air emissions to insure that there would be no degradation in ambient air quality levels. Based solely on the administrative costs, the action was judged to be "not major." The economic analysis, however, did not consider the economic impacts, such as reduced expansion, industrial dislocation, and other economic costs, which would make the actions "major." There was no discussion of benefits.

Coal Mining Effluent Guidelines

These guidelines would establish 1977 and 1983 standards for the control of water effluents from the coal mining industry. These 1977 standards were issued as interim final guidelines without a prior comment period and are being studied by EPA for possible revision. The 1983 standards

are presently proposed standards. EPA completed an adequate economic analysis of costs but failed to give comprehensive treatment to benefits and alternatives.

Evaporative Hydrocarbon Test Standards

The regulations would change test procedures for measuring hydrocarbon (HC) evaporative emissions from light duty vehicles and light duty trucks. The regulations changed test procedures from canisters to an enclosure and would have eventually reduced allowable emissions from 6 grams of HC per test to 2 grams of HC per test. At the present time, the 6 gram standard and change in procedures have been promulgated. The 2 gram standard is being reevaluated by EPA. EPA's analysis of the costs and cost-effectiveness of the 2 gram standard was subject to question. The analysis gave a good discussion of benefits in terms of tons of HC that would be controlled. The analysis also compared the standards with further exhaust emission control of other mobile sources.

Effluent Guidelines for the Organic Chemical Industry

The proposal set effluent guidelines and issued interim guidelines for the significant organic products segment of the organic chemical manufacturing industry. In the IIS the costs estimates were made in 1973 dollars. There is a major objection to this in view of the overall inflation between 1973 and 1975. There was an even greater inflation in the cost of pollution control equipment therefore these estimates should be restated in 1975 dollars, particularly if the public is to be made aware of the appropriate costs of the regulations. In sum, more explicit attention might have been given to benefits and alternatives.

Light Duty Truck Emission Standards

These regulations which are now out for interagency review prior to promulgation will change the definition of light duty trucks to include trucks of 6000-8500 GVWR but with curb weights less than 6,000 pounds and will reduce the allowable emissions from all light duty trucks. EPA's cost analysis was subject to question. However, the analysis did make some comparisons of costs with alternative mobile source control but not with stationary sources. The analysis also provided some evaluation of benefit of alternative actions to the proposed action.

Effluent Guidelines for Phase II Paper Industry

The regulations would establish 1977 and 1983 water effluent guidelines for the Bleached Draft, Groundwood, Sulfite, Soda, Deinked and Non-Integrated Paper Sectors of the Pulp and Paper Industry. Significant (incremental) costs are associated with compliance with the proposed

standards. However, EPA does not estimate the total costs of compliance with the New Source Performance Standards (NSPS). Land costs have been excluded from the calculation of capital costs. EPA has estimated the cost of compliance for typical new sources that are likely to be built, but the analysis has refrained from combining these costs estimates with the demand analysis to arrive at the total incremental capital costs of compliance mandated for new sources. Also, EPA does not discuss in a detailed manner the expected benefits of the paper industry effluent limitations. Estimates might have been provided regarding the pollution level of affected waters, the paper industry's contribution to the problem, and the extent to which the proposed effluent guidelines would lessen the problem.

Iron and Steel Effluent Guidelines

The regulations would have established 1977 and 1983 water effluent guidelines for steel firms discharging into navigable waters. At the present time, these guidelines are under intensive internal review at EPA following the receipt of responses during the comment period subsequent to the proposed guidelines. EPA provided a comprehensive analysis of the aggregate economic impact of these guidelines. However, there were serious questions regarding (a) the cost-effectiveness of specific process standards, (b) the incremental benefit of the 1983 standards relative to the incremental costs, and (c) the possibly excessive requirements of the 1977 standards.

Proposed Water Effluent Standards for the Photographic Processing Industry

These proposed water effluent guidelines for the photographic processing industry will be a major action based on EPA's projected unit cost increase of 5.2 percent of the selling price for small firms. Although most of the 20 firms affected could meet the 1977 guidelines; 17 firms (3.5% of total industry production) would have to close rather than meet the 1983 standards. If EPA feels that the benefits of these guidelines justify the cost impacts then a better comparison between benefits and costs than EPA has completed to date is necessary if the inflationary impact is to be properly addressed.

Federal Energy Administration

-- 4 IIS

Preliminary Findings and Views Concerning the Exemption of Residual Fuel Oil from the Mandatory Petroleum Allocation and Price Regulations

This regulation exempted residual fuel oil from mandatory price and allocation controls. The document was specifically prepared for Congress and served double-duty as an IIS. The IIS predicted the impact of deregulation on residual fuel prices. Though the analysis of supply and demand was adequate, there was no evaluation of the costs and benefits of the

regulation. The fact that prices were predicted to either remain the same or fall, suggests that costs would be zero. Benefits, which were not mentioned, would include elimination of the costs of regulation and, possibly increased incentives due to decontrol. The analysis failed to develop any of these points. The regulation was promulgated without change.

State Energy Conservation Plan Guidelines

The IIS presents estimates of the costs and benefits, in terms of energy savings, of State compliance with the provisions of the program contained in these guidelines. The estimates suggest that the benefits would outweigh the costs. However, the cost estimates seem incomplete and, at times, arbitrary, and the benefits may be understated, leading to the conclusion that the analysis does not provide an accurate indication of the program's ultimate impact. The alternative of State taxes on gasoline is dismissed as being inflationary. This may or may not be the case, but the analysis presented is misleading. These regulations are expected to be promulgated shortly.

Inflation Impact Evaluation of a Proposal Regarding Definition and Allocation of Non-product Cost Increases

This regulation expanded the categories of non-product costs that refiners are allowed to pass through. Like other FEA analyses, this effort predicted the impact of the regulation on the price of petroleum products. For this purpose the analysis was fair. Benefits were not analyzed, nor were alternatives reviewed. The analysis sent to CWPS was a draft; it appears that a final analysis was not completed. The regulation was promulgated without a significant change.

Proposed Gasoline and Diesel Fuel Rationing Contingency Plan

This regulation established a contingency gasoline rationing plan to be implemented in the event of another oil embargo. The analysis predicts the impacts of the proposed plan on the national economy, vital industrial sectors, States and regions and on competitive conditions. With respect to impacts the analysis was quite good. The analysis served double-duty as a report to Congress and as an IIS. The analysis of costs of the regulation was adequate though benefits were not analyzed or mentioned. The regulation has not yet been promulgated.

Department of Health, Education and Welfare -- 4 IIS

DES

The FDA proposed to ban the use of diethylstilbestrol (DES) in cattle feed as a growth stimulant because of its suspected carcinogenicity. The IIS estimated the costs of the ban in an adequate fashion. The FDA

noted that it had no alternative but to ban the use of DES because of the existing legislation concerning the use of carcinogens in food. The benefits of the ban were admitted to be minute if any existed. Studies showing the carcinogenicity of DES were cited. The ban is currently in effect.

Discrimination Against Handicapped Persons

The requirements of the rules dealt with recipients of HEW funds and required that access to jobs, accessibility to programs, and accommodation for handicapped people be provided. Thus, there were many rules dealing with recruitment of employees and students, changes in work schedules and physical structures, alteration of academic programs and facilities, and the provision of services so as to place handicapped people on an equal basis with others.

The IIS made a valiant effort to deal with the proposed rules and their impact. The author drew on several studies of handicapped workers and students and attempted to show the benefits which would be obtained if the handicapped had equal access to educational facilities (by and large the education sector would be the affected sector). An effort to quantify overall benefits and costs was made. The author also pointed out the problem areas in the IIS, noting the paucity of data and the heroic nature of certain assumptions.

Medicaid Nursing Home Reimbursement

The IIS contains an estimate of the cost impact of the proposal to change reimbursement for nursing services, which assumes essentially that the government will be paying higher prices for nursing services now being rendered. Since the proposal might result in a change in the quality or quantity of services rendered, there may be some real costs to consumers or producers of nursing services. These are not considered. Moreover, the IIS does not present any estimates of benefits or costs and benefits of alternatives. The regulations are in effect.

Nitrofurans

This IIS is similar to the one for DES since nitrofurans are suspected carcinogens used as a growth stimulate for poultry. This ban is more costly than the one on DES because there are no substitutes for nitrofurans.

Department of Housing and Urban Development -- 2 IIS

Mobile Home Construction Safety Standard

This IIS contains estimates of the increased cost of a mobile home and, assuming a given output level, the total cost of the standard. The cost

to those who would be priced out of the market is not included. Various components of the standard are aimed at making mobile homes more energy-efficient and at making them safer and improving their quality in general. With the exception of the energy conservation proposals, no estimates of the benefits of the standard are provided. Later drafts did address other benefits, but they were not available before promulgation.

The final statement, submitted February 1976, was too late to have any impact on the decisionmaking process. The final standard was promulgated in September 1975.

Reactivation of the Section 235 Program: a program to subsidize interest costs for low income home buyers

On November 6, 1975, HUD completed an IIS for a proposed reactivation of a previously suspended housing subsidy program. The proposal was considered "major" by HUD because it was supposed to have a positive impact on jobs.

One half of the twenty page analysis was concerned with determining whether the proposal was major while the remainder considered the costs, benefits and alternative actions. The cost and benefit sections relied almost completely on the results of an evaluation of the old suspended program. Thus this IIS involved no additional data gathering or analysis. To the extent that the earlier study which was a major effort was adequate, and that the proposed changes in the program were minor, the IIS can be deemed adequate on the cost and benefit side. The only alternative considered was non-reactivation of the program. Thus the alternatives section was definitely inadequate.

One interesting note is that the IIS pointed out that the previous study had calculated a benefit to cost ratio of 0.82 and that the new program might fall to 0.80. (This of course does not reflect non-quantifiable benefits which may exist.) The program was proposed despite the fact that the IIS admitted that it was not likely that benefits would exceed costs.

It is clear that the IIS had little impact upon policy. It is also clear that a negligible amount of additional analysis resulted because of the existence of the IIS program. However, this result is probably due to the existence of an earlier cost-benefit evaluation on the same program. The contrary conclusions of that study coupled with the eventual reactivation of the 235 program casts doubt in this instance on the efficacy of the IIS program to produce careful and systematic decisionmaking given strong external pressures. The regulation was promulgated as proposed.

Department of Labor -- 3 IIS

Coke Oven Emissions: a proposal to protect coke oven workers from the carcinogenic emissions of coke ovens by mandating specific engineering controls and performance standards

OSHA commissioned D.B. Associates of Salt Lake City, Utah to complete the IIS. It was impossible for us to judge the quality of the cost side data since the disaggregated data were not provided and in any case we are not cost engineers. It is our understanding that the data were mainly provided by the steel firms leading to the possibility that the costs may be overstated. We certainly feel that the cost side data could have been presented more adequately in order that those parties qualified to evaluate the cost estimates could have been able to do so.

On the benefit side, although an attempt was made at quantifying the health benefits of the proposed standard, several errors of logic were made. However, enough information was provided so that we could reproduce and correct their benefit estimates.

The major weakness of the IIS was that alternatives to the proposed standard were not considered. Furthermore no attempt was made to systematically compare costs and benefits of the proposed standard so that the cost-effectiveness of alternatives could be compared. However, we were able to attempt the comparison and suggest some alternatives.

I feel that the benefits would not have been quantified and the cost data would not have been systematically collected so that third parties could compare them if it had not been for the IIS program. Even with the program it was obvious that there was a reluctance to provide data which implied a dollars and life comparison.

The regulation was promulgated with changes on October 20, 1976. The changes will likely decrease the cost-effectiveness of this standard.

Economic Impact Analysis of Proposed Noise Control Regulation: a proposal to protect workers from hearing loss by retrofitting noisy equipment

This statement was not considered an IIS by OSHA since the proposed regulation preceded the IIS program implementation date. There was also an economic impact analysis of the proposed regulation computed before the IIS program took shape. However, the April 1976 Economic Impact Statement was proposed partly in response to CWPS (as well as EPA's) criticism of the earlier statement at hearings held last summer. The same consultant (Bolt Beranek and Newman) prepared both reports. DOL also stated that although the report was not to be considered an official IIS, it was prepared as if it were one.

Costs, benefits, and the alternatives were also treated adequately; in fact, much better than the "real" coke oven IIS. The major analytical problems were that costs and benefits were not explicitly compared to each other for the major alternatives, although the information presented allowed us to do so, and that the base line for analysis was assumed to be perfect compliance with the present standard rather than the actual situation which is quite different from the ideal.

Although the statement is not an official IIS, the existence of the program probably increased the quality of the analysis and influenced the form and structure of the presentation. This conclusion is best seen by comparing the pre- and post-IIS program Economic Impact Analyses. The later statement represents a major improvement in quality and breadth of analysis.

Final action has as yet not been taken on the proposal.

Inorganic Arsenic

The Labor Department proposed a standard limiting worker exposure to inorganic arsenic. The standard also prescribed the use of engineering controls to the extent technically feasible and then, when necessary, compliance would be attained by revised work practices and personal protective devices. The cost analysis was fairly extensive for some industries but laced with guesswork and analogy for other less concentrated industries. The incremental benefits of the proposed standard as opposed to the existing or alternative standards and means of enforcing them (namely personal protective equipment) were ignored. Studies of the excess risk of industrial exposure to arsenic exposure were cited.

OSHA refused to quantify the benefits of the proposal in terms of either dollars or lives saved. The proposal is now under department review following hearings held in September 1976.

Department of Transportation -- 2 IIS

Occupant Crash Protection -- FMVSS 208

Passive restraints such as air bags are being considered as mandatory equipment on new cars. The IIS analysis of this proposal was thorough and methodologically sound, with only minor exceptions. A cost-benefit framework was used in comparing alternative proposals, and the analysis incorporated a range of plausible assumptions about unresolved issues. No final decision has been made yet on this proposal.

Section 505 of RRRR Act of 1976

Sections 505 and 511 of the 4R Act provide funds -- up to \$600 million -- for the rehabilitation and improvement of railroad facilities. Federal Railroad Administration (FRA) concludes in its Inflation Impact Statement that the slight inflationary potential of these expenditures is more than offset by the substantial expected benefits of improved railroad services. The discussion of costs and benefits is necessarily expansive and qualitative, since the mix and identity of the actual projects to be funded is unknown. The proposed regulations implement procedures for disbursement of Section 505 funds; the IIS perfunctorily examines the ability of various industrial sectors to accommodate increased demand without severe shortages or price changes. No attention is given to the effects of alternative implementation policies. Final regulations implementing Section 505 appeared in the October 8, 1976 Federal Register, indicating little change in the assessment of inflationary impact.

Inflation Impact Statements for Legislative Proposals

Department of Transportation

Motor Carrier Reform Act

DOT asserted that the effects of this legislation would be highly deflationary and thus did not require an IIS. The background report to determine the necessity of an IIS analysis compared the likely effects of the bill with threshold criteria. This was simply a narrative which did not quantify any impacts and only gave a very shallow textual report. Particularly, the energy impact comments were superficial and not related to substantive data.

Aviation Act of 1975

Although this analysis does attempt to examine the industry (profits and output) and employment effects of the bill, it concludes that it is not possible to gauge whether they would increase or decrease. It does state with some hesitation that the differences in profits, output and employment would be small. There is not an adequate treatment of the effects on energy demand or supply. Nor is there consideration of the economic effects of alternatives to any of the bill's provisions.

Northeast Corridor Rail Passenger Service Improvements

The proposed legislation would authorize the expenditure of funds over a 5-year period to upgrade passenger rail service between Washington and Boston. Although the analysis is not very extensive, it does at least

indicate that alternatives to the proposed provisions were considered and that the bill was the most cost-effective approach of several possibilities. Again, the analysis is simply a descriptive narrative with little substantive data.

Department of Commerce

Patent Modernization and Reform Act

This analysis focused primarily on the Federal costs of enacting the patent reform bill and changes in the system of granting patents. The analysis seems to be somewhat cursory, with cost data more the result of speculation than evidence. There is no analysis of the economic effects of alternatives to any of the bill's provisions. Although the analysis concentrates on Federal costs, it should be remembered that the IIS requirement was designed to focus attention on the off-budget costs of regulatory and legislative proposals. The analysis of off-budget impact is not very adequate.

APPENDIX B:

SUMMARY OF PUBLIC COMMENTS ON
IIS PROGRAM AND REGULATORY PROBLEMS

1. Federal Register Notice Inviting Public Comments on
IIS Program (August 3, 1976)
2. Summary of Public Responses to Federal Register Notice
3. Statement on Regulatory Problems at Economists Conference
on Inflation (September 5, 1974)

COUNCIL ON WAGE AND PRICE STABILITY

INFLATION IMPACT STATEMENT PROGRAM

Intention To Appraise

This notice is intended to announce that the Council on Wage and Price Stability (CWPS) and the Office of Management and Budget (OMB) are jointly undertaking an appraisal of the Inflation Impact Statement (IIS) program initiated in November 1974 by Executive Order 11821. As explained in greater detail below, interested individuals and organizations are requested by August 30, 1976 to provide information called for in this notice and to submit additional comments on the IIS program to CWPS.

In an address to Congress on October 8, 1974, President Ford announced that Executive-branch agencies would be required to consider the possible inflationary implications of their major actions. To this end, the President issued Executive Order 11821 on November 27, 1974, directing Executive-branch agencies to prepare IIS's before proposing major legislation and before issuing proposals for major rules and regulations. The Executive Order also empowered the Director of OMB to develop criteria and procedures for implementing this directive. Accordingly, OMB issued Circular A-107 on January 23, 1975, specifying in more detail guidelines for the development of criteria and the procedures agencies were to follow. The Circular also delegated certain responsibilities for the IIS program with respect to rules and regulations to CWPS.

A major objective of the IIS program is to improve the quality of agency regulatory and legislative decisions. While the IIS requirement applies to major legislative and regulatory proposals, it does not apply to existing rules, regulations, and legislation, nor does it apply to proposals with minor consequences. Moreover, the independent regulatory agencies have interpreted the Executive Order as not applying to them.

Responsibility for developing and implementing the requirements of Executive Order 11821 was delegated to department and agency heads in order to allow each agency to adopt procedures that would match the nature of its mission and its organization. According to the OMB Circular, agency heads were made responsible for developing criteria to determine when a proposal is major. These criteria were to take into account: (1) Cost impact on consumers, businesses, markets, or Federal, State, or local government; (2) effect on productivity of wage-earners, businesses, or government; (3) effect on competition; (4) effect on supplies of important materials, products, or services; (5) effect on employment; (6) effect on energy supply or demand. Each agency's criteria were submitted to OMB for approval. Agencies that do not propose major rules, regulations, or legislation were exempted from the program.

According to the OMB Circular, if a proposal is identified as major under the approved criteria, the agency is responsible for preparing an IIS which includes: (1) An analysis of the principal cost and, where practical, secondary cost and price effects; (2) a comparison of the anticipated benefits and estimated costs; and (3) a review of alternatives to the proposed action. When major legislative proposals are submitted to OMB for review and clearance, agencies, upon OMB request, are required to furnish the appropriate IIS data and analysis. When major proposals for rules and regulations are announced in the Federal Register, agencies are required to submit to CWPS a brief summary of the possible inflationary impact.

Recently implemented modifications in the IIS program require agencies to: (1) State in the Federal Register announcement that proposals which are minor have been reviewed and do not require an IIS; (2) provide upon request from CWPS, a brief justification for determining a proposal to be minor; and (3) upon announcement of major proposals for rules or regulations, submit to CWPS a complete IIS analysis rather than a summary.

Because the IIS is an attempt to improve agency decision-making with a new, previously untried mechanism, an expiration date of December 31, 1976, was included in the Executive Order. Thus, opportunity was provided for appraisal of the effectiveness of the IIS program, and provision was made for its termination unless a specific decision were made to extend or modify the Executive Order.

The Council and OMB are evaluating the IIS program and will submit recommendations based on this evaluation to the President. This joint CWPS-OMB evaluation, to be completed this fall, will include an examination of the following issues, among others:

1. Quality of IIS analyses. (For example, do analyses compare costs with anticipated benefits, and are alternatives appropriately analyzed? Has the quality of the analyses improved over time?)
2. Are all important legislative and regulatory proposals being analyzed? (For example, are the criteria thresholds established at levels which permit identification of all proposals with major economic impacts, are the criteria being used effectively, and are agencies preparing the analyses?)
3. Should IIS analyses be made available for public inspection, to what degree have they been, to what use have they been put by the general public, and what effect, if any, has their being made public (or not being made public) had on the quality of agency decisions?
4. What impact, if any, has the IIS program had on the process of drafting legislation and of developing and implementing new regulations? (For example, has it generated significant delays?)
5. What impact, if any, has the IIS program had on the quality of agency legislative proposals and regulatory decision-making?

6. What are the direct costs of the IIS program over and above those expenses government agencies would have incurred otherwise?

7. What alternatives to the IIS program exist for improving the quality of legislative proposals and regulatory decision-making, and how do they compare with the IIS program? (Alternatives might include, for example, a legislative mandate for agencies to review costs and benefits.)

8. Should the IIS program be: (1) Terminated, (2) extended in its present form, or (3) modified (and if so, how)?

Interested individuals and organizations are requested to provide information on the effectiveness of the IIS program by responding specifically to the above questions and by submitting any additional comments on the program they may care to make. Such communications should be addressed by August 30, 1976 to:

Thomas D. Hopkins, Deputy Assistant Director for Government Operations and Research, Council on Wage and Price Stability, Room 4005, 726 Jackson Place, N.W., Washington, D.C. 20566. Telephone: 22-456-5510.

WILLIAM LILLEY III,
Acting Director.

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SUMMARY OF PUBLIC RESPONSES TO
FEDERAL REGISTER NOTICE

AFL-CIO George Meany: The program is a "macabre charade of the administrative hearing" permitting businesses to exaggerate regulatory compliance costs and postpone needed health standards.

A.F. Meyer and Associates, Inc.: There is a need to continue and enhance the principle of examination of economic and social consequences of Federal legislation and Federal regulation. However, better organization of the documentation required i.e., "a social impact statement" rather than an EIS and IIS, is needed.

Air Products and Chemicals: Supports mandatory compliance of all government agencies with the program.

American Hospital Association: The program should be continued. Analyses should be made available to the public and encouraged in periodic reviews of existing regulatory programs. Cost analysis should be required during rather than after the development of formal proposals.

American Iron and Steel Institute: Although current IIS methodology does not seem sufficiently advanced to insure an accurate assessment of total costs and benefits, the Institute is in general agreement with the objectives of the IIS. The program should continue as an Executive branch administrative activity.

Amoco: Greater public input at an early stage in the development of proposed rulemakings via public disclosure of the IIS is desirable. Final IIS should be submitted to an appropriate clearance officer as "a standard of comparison for performing a later evaluation of the new rulemaking's actual inflationary impact."

Barry Wright Corporation: The IIS requirement should be uniformly applied to all regulatory agencies. The procedures for determining the cost impact of proposed legislation are not adequately defined.

Bethlehem Steel Corporation: All agencies should be required by legislative mandate to analyze "the costs and benefits of proposed and existing major legislation and regulatory decisions." Past experience with the program is insufficient to adequately assess the impact of the analyses.

Congress: Joint Economic Committee, Senator Hubert H. Humphrey: see attached letter.

E.I. DuPont De Nemours & Company: DuPont prefers "a more permanent IIS program established by legislative mandate and covering a wider range of agencies." A central mechanism to collect data on an industry-by-industry basis should be considered.

Ford Motor Company: Ford endorses the IIS program and supports its continuation. Ford believes the program should be strengthened by legislation to include all agencies and to clarify legal status and enforceability questions.

General Motors Corporation: The IIS program should be strengthened by requiring additional agency participation and public disclosure of all economic impact statements.

Health Industry Manufacturers Association: HIMA recommends that the IIS program be modified to drastically lower the threshold for requiring statements and expanded to include all Federal agencies.

Lennox Industries: Lennox "completely supports the concept of IIS." It should be extended to include all agencies.

Manufacturing Chemists Association: MCA supports the continuation of the IIS program and its extension to the independent agencies.

Massey-Ferguson Inc: The IIS program should be continued and expanded to include all agencies.

Michigan Municipal League: The IIS program should be continued and modified; to date, however, the program "seems to have been ignored, or observed pro forma or complied with internally without public disclosure of agency evaluations."

Milk Industry Foundation International Association of Ice Cream Mfrs.: Support the IIS program and favor expanding and improving the program.

Motor Vehicle Manufacturers Association: The Association supports continuation and modification of the IIS program. The title of the program should be redesignated, the scope extended by legislation, and the analyses opened to public review. Failure to conduct an IIS should be grounds for judicial reversal of an agency action.

National Canners Association: NCA believes the program should be retained but needs improvement. All Federal agencies should be included in the program. The order should be revised to impose some means of enforcement.

National Council of Agricultural Employers: NCAE supports the concept of the IIS but fails to see any impact of the program on agency decisionmaking.

National Electrical Manufacturers Association: NEMA supports the continuation of the IIS program and its extension to the independent agencies.

National League of Cities: The program "should be continued -- expanded and strengthened." The impact statements could be afforded greater public visibility. More attention should be directed explicitly toward public sector inflationary impacts.

Northern Indiana Public Service Company: The IIS program should apply to all agencies in the review of both existing and newly proposed rules and regulations.

Pacific Gas and Electric Company: PG&E generally supports the intent of the program and recommends "that legislative, as well as Executive branch agencies be included in an expanded Inflation Impact Statement Program. Analyses should be made available for public inspection.

Pharmaceutical Manufacturers Association: Limited experience with the program to date suggests that it should be continued. Analyses should be made public and the requirements extended to include review of existing regulations by all government agencies.

Private Truck Council of America: All analyses should be made available for public inspection. The program should be continued and extended to include review of existing regulations.

The Proprietary Association: The Association "wholeheartedly support(s) the IIS program and urge(s) its renewal as a potentially valuable means of identifying and assessing the costs to the consumer of government regulation."

Smith Kline and French Laboratories: Suggests that the program be extended in its present form.

TRW Inc.: Analyses reviewed by TRW have been simplistic and one-sided, but "with further experience...the Inflationary Impact Analysis Program will gain the depth and sophistication necessary to make a valuable contribution to the regulatory process."

UAW Lenard Woodcock: The UAW believes that the IIS program is an illegal political ploy designed to aid employers and delay the decisionmaking process.

United States Steel Corporation: USS "strongly supports the intent of the IIS program" and suggests that independent review by CWPS and OMB be continued under Executive Order, rather than a legislative mandate.

Professor Martin J. Bailey: The IIS program "should be pushed hard, perhaps under a new name, such as "Economic Impact Statement Program." Paper attached, entitled "Proposed Standards for Inflation Impact Statements."

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JOHN R. STARK,
EXECUTIVE DIRECTOR

Congress of the United States

JOINT ECONOMIC COMMITTEE

(CREATED PURSUANT TO SEC. 1(a) OF PUBLIC LAW 384, 79TH CONGRESS)

WASHINGTON, D.C. 20510

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August 31, 1976

1976SEP-2 PM 4:04

The Honorable William Lilley, III
Acting Director
Council on Wage and Price Stability
726 Jackson Place, N.W.
Washington, D.C. 20506

Dear Mr. Lilley:

This is in response to the request by the Council on Wage and Price Stability (CWPS) and the Office of Management and Budget (OMB) for public comments on the Inflation Impact Statement program.

At my request, the Joint Economic Committee staff has been following this program since its inception in November, 1974. They have found the overall quality of CWPS' analysis of the impact statements to be thorough and constructively critical of the analysis in question. Additionally these reviews appear to have been done on the most important regulatory proposals. In short, CWPS appears to be doing a good job in this area.

However, I am concerned with the response of specific Federal agencies to the comments submitted to them by CWPS. In some instances it appears that agencies pay little attention to the comments they receive or disregard them altogether.

In instances where an agency pays little attention to or completely disregards the comments it receives, it is obvious that procedure for analysis and review is not working properly, meaning that adequate regard is not being given to the inflation impact of a regulatory proposal. As a result, I believe that it may be necessary to make these agencies review their analysis in light of CWPS comments and change or justify their analysis accordingly. This could be accomplished by Executive Order and would, in my view, make the comments much more authoritative.

The Honorable William Lilley, III
August 31, 1976
Page 2

In sum, the inflation impact statement program is valuable. Not only should it be continued, but it should be strengthened by requiring agencies to be more responsive to the comments they receive.

I hope this will be of assistance to you in your review of the Inflation Impact Statement program.

Best wishes.

Sincerely,


Hubert H. Humphrey
Chairman

The
Economists
Conference
on Inflation

Report
VOLUME 1

September 5, 1974
Washington, D.C.

September 23, 1974
New York, New York



TO: FELLOW CONFEREES

We hereby record ourselves as endorsing a package approach to the adoption of the 22 proposed items listed in Thomas G. Moore's memo, with such reservations and exceptions as we list after our names:

Milton Friedman (no exceptions)
 Arthur Okun (I prefer #1 and #18 omitted--they're aimed at financial reform)
 Paul A. Samuelson (with qualifications for transient effects)
 Paul W. McCracken
 Herbert Stein (including part II)
 Beryl Sprinkel
 Marina v.N. Whitman
 Robert Nathan (I agree in principle with the general purposes but not each and every item)
 A. G. Matamoros (expand Part II list)
 Carl Madden (no exceptions--expand Part II list)
 Walter S. Hoadley (all in the interest of having each one justified or removed)
 David L. Grove (as a general approach with no commitment to any of the single items)
 Thomas Moore
 Walter W. Heller (support broad thrust)
 C. Jackson Grayson, Jr. (expand Part II list)
 Walter J. Levy (with some exceptions)
 Andrew F. Brimmer (I would reserve on a few individual items, but I support the broad thrust of proposals)
 Richard N. Cooper (each of us might have reservations about several of the individual views. In addition item #2 and #15 should be omitted.)
 Arnold R. Weber (I reserve on individual items but support the general principle)
 Harold Carter (I endorse careful study of each item and possibly others not listed)
 Nancy Teeters (except #2)

Not signed as being irrelevant to the problem of inflation.

John Kenneth Galbraith
 Nat Goldfinger

A list of the proposals is attached.



Part I

- (1) Repeal the interest rate ceiling on long-term government bonds.
- (2) Repeal of the private express statutes that provide the post office with a monopoly of first class mail.
- (3) Outlaw state prorationing of oil and gas.
- (4) Repeal the Connolly Hot Oil Act.
- (5) Terminate the embargo on uranium imports.
- (6) Amend marketing-order legislation to prohibit restrictions on the interstate movement of specified types of agricultural products, supply controls for products, state fluid milk price and output control, and production quotas on individual producers.
- (7) Repeal the meat import act.
- (8) Repeal import quotas on dairy and other farm products.
- (9) Remove all route and commodity restrictions imposed on ICC licensed motor carriers.
- (10) Approve automatically railroad and truck rates within a zone of reasonableness.
- (11) Repeal the antitrust exemption of railroads and trucking rate bureaus.
- (12) Reduce or eliminate entry barriers into trucking.
- (13) Abolish rate and entry controls for inland water carriers and freight forwarders.
- (14) Approve automatically all air fares, including discount fares, within a zone of reasonableness.
- (15) Authorize existing CAB licensed carriers to extend their operations into any markets while at the same time permitting them to withdraw from unprofitable or undesired markets.
- (16) Authorize charter carriers to wholesale seats to travel agents.
- (17) Make capacity-limiting agreements among the airlines subject to the antitrust laws.
- (18) Eliminate regulation Q and other regulations which prevent savings institutions from paying competitive rates for deposits.
- (19) Terminate the "voluntary" quota agreements for steel and textiles.
- (20) Make merchant and passenger ship firms subject to the antitrust laws for any conference agreements.
- (21) End "voluntary" quotas on other foreign exports to U.S.
- (22) Prohibit resale price maintenance.



Part II

- (a) Repeal legislation now preventing the sale of surpluses from the stockpile.
- (b) Prohibit unreasonable restrictions on union membership, such as prior apprenticeship and excessive entrance fees.
- (c) Abolish union operated hiring halls.
- (d) Repeal the Davis-Bacon Act and similar laws concerning wages paid under government contracts.
- (e) Repeal legislated further increases in the minimum wage.
- (f) Deregulate the wellhead price of natural gas:
- (g) Terminate crude petroleum allocation and oil price controls.
- (h) Repeal the Jones Act governing coastal shipping.
- (i) Abolish subsidies for ship construction and operation.
- (j) Make such auto safety devices as the seat belt interlock system, heavy duty bumpers, and air bags voluntary rather than mandatory.



APPENDIX C:

BASIC IIS DOCUMENTS

1. Executive Order 11821 (November 27, 1974)
2. OMB Circular A-107 (January 28, 1975)
3. OMB Memorandum to Agencies on Uniform Criteria and on Negative Declaration for Legislative Proposals (June 3, 1975)
4. OMB/CWPS Interim Evaluation of IIS Program (March 31, 1976)
5. OMB Memorandum Changing IIS Requirements (June 11, 1976)
6. Federal Register Notice of IIS Certification Language (October 1, 1976)

Inflation Impact Statements

Executive Order 11821. November 27, 1974

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,
November 27, 1974.

[Filed with the Office of the Federal Register, 12:09 p.m.
November 27, 1974]





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

January 28, 1975

CIRCULAR NO. A-107

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Evaluation of the Inflationary Impact of Major
Proposals for Legislation and for the Promulgation
of Regulations or Rules

1. Purpose. This Circular prescribes guidelines for the identification and evaluation of major proposals for legislation and for the promulgation of regulations or rules.

2. Authority. Executive Order No. 11821 provided that major proposals for legislation and for the promulgation of regulations or rules by any Executive branch agency shall be accompanied by a statement which certifies that the inflationary impact of the proposal has been evaluated. The Director of the Office of Management and Budget (OMB) was designated to develop criteria and prescribe procedures for carrying out the Order.

3. Coverage. For purposes of this Circular major proposals for legislation and for the promulgation of regulations or rules for which evaluations will be required will be determined by criteria developed by each Executive branch agency and approved by the Director of OMB in accordance with this Circular. Agencies which do not propose legislation or promulgate rules or regulations may be exempted from the requirements of this Circular (pursuant to Section 4(e)).

4. Requirements.

a. Agency heads are responsible for the development of criteria to determine which proposed legislation, regulations, or rules originated by the agency are "major" and therefore require evaluation and certification. In developing criteria, each agency head shall consider, among other things,

(No. A-107)



(1) cost impact on consumers, businesses, markets, or Federal, State, or local government;

(2) effect on productivity of wage-earners, businesses, or government;

(3) effect on competition;

(4) effect on supplies of important materials, products or services;

(5) effect on employment;

(6) effect on energy supply or demand.

b. Each agency shall develop procedures for the evaluation of proposals identified by application of approved criteria. The evaluation should include, where applicable,

(1) an analysis of the principal cost or other inflationary effects of the action on markets, consumers, businesses, etc., and, where practical, an analysis of secondary cost and price effects. These analyses should have as much quantitative precision as necessary and should focus on a time period sufficient to determine economic and inflationary impacts.

(2) a comparison of the benefits to be derived from the proposed action with the estimated costs and inflationary impacts. These benefits should be quantified to the extent practical, and

(3) a review of alternatives to the proposed action that were considered, their probable costs, benefits, risks, and inflationary impacts compared with those of the proposed action.

c. Agencies should comply with the requirements of this Circular with existing resources and personnel.

d. Identification criteria established by each agency shall be submitted to the Office of Management and Budget within 30 days of the issuance of this Circular for review and approval by OMB in consultation with the Council on Wage and Price Stability. Each agency shall designate an official to be responsible for compliance with this Circular

(No. A-107)



and shall also notify OMB and the Council within the 30 days of that officer's name and title.

e. Agencies that do not propose major legislation, rules, or regulations, may be exempted from the requirements of this Circular by the Director of the Office of Management and Budget, acting in consultation with the Council on Wage and Price Stability. Requests for exemption should be submitted to OMB within 30 days of issuance of this Circular.

5. Disclosure.

a. As provided in Executive Order No. 11821, major proposals for legislation and for the promulgation of regulations or rules by any Executive branch agency shall be accompanied by a statement which certifies that the inflationary impact of the proposal has been evaluated. The statement of certification should be repeated whenever the proposal is published or issued. Upon request, agencies shall provide the Office of Management and Budget with the information necessary to ascertain that the approved criteria and procedures are adequately implemented.

b. When legislative proposals determined to warrant evaluation are forwarded to OMB for review and clearance pursuant to OMB Circular No. A-19 (Revised), agencies should furnish upon request appropriate data and analyses.

c. After a legislative proposal is forwarded to the Congress, economic data and analyses developed in evaluating the inflationary impact of the proposal along with other data and analyses concerning the overall impact of the proposal will, of course, be furnished to the Congress, as part of the overall justification of the proposal.

d. With respect to major proposals for rules or regulations, the proposing agency shall also, at the time it first certifies it has evaluated the inflationary impact of the proposal, submit to the Council on Wage and Price Stability a copy of the proposed rule or regulation, the accompanying certification, and a brief summary of the agency's evaluation pursuant to Section 4(b) above.



6. Responsibilities.

a. Council on Wage and Price Stability. Each Executive branch agency should be prepared to respond to requests for information from the Council on Wage and Price Stability, or from other authorized agencies, concerning the identification or evaluation of a major proposal for legislation, rule, or regulation or of a particular class of proposals.

b. The Office of Management and Budget. The Office of Management and Budget will cooperate with the agencies in developing criteria and evaluation procedures in compliance with this Circular.

c. Interim Provisions. In the interim prior to final approval of criteria, agency heads are responsible for identifying which proposed legislation, regulations, or rules originating from their agency require evaluation and certification. In making such determinations, agency heads shall consider the categories of impact in Section 4(a) of this Circular. For assistance, agencies may consult the following: for legislative proposals, the Assistant Director for Legislative Reference (OMB), telephone 395-4864; or for proposed regulations or rules, the Assistant Director for Government Operations and Research (Council on Wage and Price Stability), telephone 456-6493.

7. Inquiries. Inquiries and requests for other assistance should be directed to the Associate Director for Economics and Government (OMB), telephone 395-4844 (code 103).

ROY L. ASH
DIRECTOR

(No. A-107)





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

JUN 3 1975

MEMORANDUM FOR SELECTED DEPARTMENT AND AGENCY HEADS

Subject: Inflation Impact Criteria

We have completed our review of the inflation impact criteria you submitted under Circular A-107. This review was conducted in consultation with the Council on Wage and Price Stability. Staff of OMB and the Council have prepared a number of comments on your proposed criteria. These are attached. *[excluded from this appendix]*

We request you prepare a revised set of criteria for final approval. We would appreciate receiving your revised criteria for approval not later than one week from the date of this letter.

The basis for these comments is our agreement with the Council on Wage and Price Stability on a range of reasonableness of criteria, after a review of all agency criteria submitted. The comments are intended to make agency criteria more specific and usable. They also establish general consistency among principal departments' and agencies' criteria. This is important to ensure careful analysis of all legislative or regulatory proposals above a certain impact level.

There may be instances where your concerns require adopting a different and perhaps more stringent criterion. If you believe any specific criterion should depart significantly from the attached comments, please provide appropriate justification with your submission.

We have received a number of inquiries concerning public disclosure of criteria and impact analyses which, I believe, require discussion. The President's Executive Order on inflationary impact statements emphasizes careful consideration of the economic impact of major proposals in the decisionmaking process. This is an Executive Branch initiative to concentrate internal attention on the economic consequences of major proposed actions. Nevertheless, we believe that disclosure of

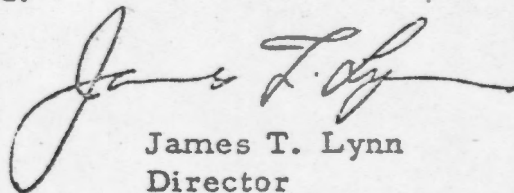


inflation impact information, to the full extent permitted by law, is consistent with the purpose of the order. We believe this policy will contribute to more effective deliberation of major proposals.

As regards disclosure to State and local governments, we have concluded the provisions of Circular A-85 do not apply to the development of inflation impact criteria. However, we recommend that you consult with State and local governments concerning your agency's criteria after they have received final OMB approval. Should these consultations indicate modifications to criteria, these may be made after notifying OMB. This approach adopts the objective of consultation without requiring rigid procedures.

Similarly, where a major proposal is identified as having a significant impact on State and local governments, we recommend that the inflation impact analysis or a summary be circulated with the proposal, to the extent permitted by law.

Finally, as a short-term measure, we request that all legislative proposals submitted to OMB under Circular A-19 be accompanied by a statement (a) indicating whether or not the proposed legislation is considered by the agency to be a major proposal under Executive Order No. 11821 and Circular A-107 and, if it is so considered, (b) certifying, as now required by Circular A-107, that the inflationary impact of the proposal has been evaluated.



James T. Lynn
Director

Attachments





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

March 31, 1976

MEMORANDUM FOR THE ECONOMIC POLICY BOARD

FROM: JAMES T. LYNN
MICHAEL MOSKOW

SUBJECT: Inflation Impact Statement Evaluation

Attached is a first year evaluation of the Inflation Impact Statement process. The purpose of this interim report is to evaluate the implementation of the President's policy that agencies consider the economic impact of their actions on consumers, businesses, and governments. Recommendations are proposed to improve second year operations and analytical quality. Major policy and procedural questions have been deferred until December 1976 when the current executive order expires. Postponement of any major modifications will permit agencies to concentrate on the execution of current requirements and will also provide a wider data base of operating experiences from which decisions regarding future efforts can be made.

OMB and CWPS are developing a working plan to guide IIS activity during the second year and to prepare for the evaluation at the end of the year which will lead to recommendations concerning the future of the inflation impact requirement. The working plan articulates CWPS' and OMB's responsibilities for the remainder of this year.

The interim evaluation recommends that CWPS and OMB work with individual agencies to review their procedures for complying with E.O. 11821 and improving the quality of their analyses. To strengthen the monitoring and control function, we also recommend that agencies be required to: (a) certify in the Federal Register for regulations or in correspondence to OMB for legislation that proposed actions which do not exceed their criteria have been reviewed and that a full analysis is not required; (b) upon request from CWPS, justify briefly why a proposed action is not major; and (c) submit copies of Inflation Impact Statements (rather than summaries thereof) to CWPS whenever major rules and regulations are proposed.

Attachment



Background of Inflation Impact Statement Initiative

The intention to create an Inflation Impact Statement requirement was outlined by the President in a speech to the Congress on the economy delivered on October 8, 1974. The President indicated that he would have all the executive branch agencies analyze the external cost implications of their major actions as a step toward removing inflationary pressures induced by the Federal government.

To execute this policy, the President issued Executive Order 11821 on November 27, 1974. The option to implement the policy with an Executive order was chosen because it could be done quickly and it was believed that it would avoid the problems of litigation associated with legislation (as is the case with Environmental Impact Statements). Also, an Executive order would mandate that the executive branch agencies carry out the policy and would thus carry greater weight than other less formal communications, such as a letter.

The intent of the Executive order was to improve the agencies' consideration of cost impacts in decisionmaking and not to develop a new paperwork and compliance system which would generate perfunctory performance. The specific objectives were to: 1) improve agencies' decisionmaking by having them include indirect cost effects of their actions in the analytical process; 2) reduce Federal government induced cost pressures on the economy; and 3) provide OMB and the Council on Wage and Price Stability with a better tool to review the indirect, off-budget cost effects of proposed rules, regulations and legislation.

The management concept behind the Executive order was to decentralize to the department and agency heads, the responsibility for developing and implementing the effort. This allowed each agency to adopt procedures that would match the nature of their mission and organization and not saddle them with unrealistic or overlapping requirements. Decentralization was also intended to focus responsibility and attention for the implementation of the President's policy on the agencies rather than the Executive Office of the President.

The Executive order delegated responsibility for insuring implementation of the President's policy to the Director of OMB who issued Circular A-107 on January 28, 1975.



The circular provides guidance to the agencies for developing procedures and criteria to analyze the economic impacts of proposed major legislation, rules, or regulations. The decentralization approach was continued in the circular which placed the primary responsibility for implementation largely in the agencies, with OMB and the Council on Wage and Price Stability maintaining a monitoring role. In addition, OMB had responsibility for approving the criteria which the agencies would use in determining whether an action was major and required an IIS. Neither the circular nor the executive order provided any specific mechanisms to assure compliance or a standard level of quality analysis. However, the circular did go beyond the executive order in dealing with compliance by requiring agencies to: (1) certify, whenever the proposal is published or issued, that an analysis had been performed for major actions; (2) submit brief summaries of analyses of proposed rules and regulations to CWPS; and (3) supply OMB with data when requested to determine the adequacy of criteria, procedures, or analyses.

Against this setting, OMB and CWPS staffs devoted most of their available time and effort from February until September 1975 working with the agencies to develop final criteria or exempting those agencies whose regulatory and legislative proposals would clearly not have major economic effects. This required explaining the intent of the initiative to agencies, reviewing and approving proposed criteria, commenting on procedures and reviewing various issues which developed such as public disclosure of analyses.

During this period of establishing criteria, the decisions made on these issues led to a gradual standardization of the process. The most significant effect was the development of consistent government-wide criteria. Agencies in their original drafts had submitted a wide range of criteria. However, OMB and CWPS established minimum benchmark levels for each criterion to assure that any impacts exceeding these levels would be fully analyzed. Agencies in their final submission were permitted to vary from the benchmarks but only if they could provide adequate justification. The result was that most agencies adopted the benchmarks or something very similar. Thus, the implementation of these standards led to almost all agencies adopting common criteria.



As of December, 1975, all 26 participating agencies, with the exception of FEA, had approved criteria. In the first year, 10 of these agencies have performed a total of 91 IIS analyses of which 66 were for proposed rules or regulations. The majority of OMB, CWPS, and the agencies' attention during this period was focused on establishing the process with less effort directed at compliance or the quality of the analysis. As a result most agencies have had limited experience operating with final approved criteria. Many IIS analyses were performed under interim procedures.

A workshop was held on November 7, 1975 in order to reinforce the importance of this Presidential initiative and to review policy and analytical issues involved with the Inflation Impact Statement initiative. Several examples of IIS analysis were presented. Officials from OMB and CWPS discussed the intent of the Executive Order. All participating agencies as well as representatives from the various independent regulatory agencies were invited.

Given this background, an interim evaluation of the effort has been completed. Prior to the expiration of the Executive order on December 31, 1976, a full evaluation will be performed to determine if the Inflation Impact Statement requirements should be extended, and if so, how. This interim evaluation is not intended to and will not address the issue of whether or not to continue the effort. Instead this evaluation focuses on the adequacy of general procedures, the impact the effort has had to date on getting agencies to focus on the economic effect of their decisionmaking, the costs to comply with the effort, and the problems of assuring compliance and high quality analysis. We also consider changes to improve the effort in the next year.

This interim evaluation was performed on the basis of data and information collected through the review of various agency submissions, a written questionnaire sent to agencies on October 23, 1975, direct interviews with key agency staff, and the experiences of OMB and CWPS staff in overseeing the process. While many different issues and areas of concern were raised during the evaluation, this report will focus on the 7 main issues identified during the review.



Criteria

The Circular provided for six areas to be considered in developing criteria: cost impacts and effects on productivity, competition, supplies of important materials, employment, and energy. Benchmark levels to identify major proposals were developed for each criterion. There has been significant time and attention given to the development of criteria as agencies went through the learning process of determining the types of economic effects their operations have and the relationship of these effects to the criteria.

There have been several problems in the effective use of the criteria and their appropriate benchmark levels, including:

1. The almost exclusive use of the cost criterion. This suggests that some of the other criteria may be unnecessary as screening thresholds for analysis. A few of the other criteria, for example, employee productivity and energy supply and demand, are reducible to cost levels.
2. Government-wide benchmark levels that are too high, resulting in very few complete analyses in most agencies. For example, many proposed rules, regulations and legislation are not considered major and hence do not trigger an economic analysis because their cost impacts are less than \$100 million on the national economy. As a result only a few agencies have done more than one or two analyses. There were some agencies, however, that thought the proposed levels were too low and advocated raising the benchmarks. For these agencies, (e.g. FEA and EPA), the inflation impact process has generated many analyses.
3. Benchmark levels for evaluating cost impacts on the national economy and on its component sectors and industries that are not in proportion. The benchmark level for evaluating cost impacts on economic sectors, industries, and government is proportionately far higher than the standard used for evaluating cost impacts on the national economy.



4. Difficulty in the practical application of the benchmark levels for evaluating employment impacts below the national level. It is not clear how an agency would accomplish the apparently endless iterations, e.g., at the state or local government level, necessary to determine the employment impact of a particular proposal with the current criteria benchmarks. Using a standard of 10,000 workers to evaluate the employment impacts upon industries, governments, and sectors of variable size results in biased, inequitable analyses. For example, using the threshold of 10,000 workers at the local government level effectively eliminates many local governments whose total employment levels are frequently far below the criteria.

Staff Recommendations:

We do not recommend major changes to the criteria at this time. Specifically, we suggest:

1. Retaining all six criteria since major structural changes in the IIS program at this stage would impede agency analyses. Retention of all criteria will not create any substantial problems since it seems that most agencies place their major emphasis on the cost criterion. Considerations to change criteria can be made during the evaluation for the December 1976 decision.

Agree _____ Disagree _____

If this recommendation is agreed to, no changes will be required.

2. Retaining present national benchmark levels. Establishing the criteria benchmarks and procedures for implementing the IIS program have consumed much of the past year and, hence, have shortened the time in which agencies have participated in the actual analysis process. Agencies have spent a lot of effort and time in reaching agreements on current levels. Continuation of the current national benchmark standards through the next year will provide a more reliable indication of agencies' experiences. Lowering the national benchmarks at this point in the program would be premature.

Agree _____ Disagree _____

If this recommendation is agreed to, no changes will be required.



3. Working with individual agencies where appropriate to alter the cost and employment benchmarks for impacts below the national level. However, we do not suggest making government-wide mandated changes at this time for reasons stated above. Although revising the cost and employment sector benchmarks might improve their applicability and thus their use in screening proposals, a policy change at this time probably would divert agency attention away from implementation and back to procedures. However, where these two sector criteria present problems for specific agencies, they can be modified.

Agree _____ Disagree _____

If this recommendation is agreed to, no specific action will be required at this time. Under the Procedures Issue section, there is a discussion of a proposed joint CWPS/OMB activity to work with each agency to improve procedures. This effort will include a review of the applicability of these two sector benchmarks in each agency.



Agency Procedures

Although OMB and CWPS do not review and approve agency procedures for complying with the IIS requirements, effective agency practices are essential to success. Therefore, the evaluation staff reviewed this issue and found that procedures for initially screening all proposals and performing the economic analyses for major proposals have been established by all agencies. Policy level personnel have usually been assigned responsibility for final certification of inflation impact statements and review of the analyses accompanying major proposals. Perhaps the only exception is the Department of the Interior where final certification occurs at the bureau level. In this case, the agency's monitoring efforts appear to be weakened and perhaps ineffective.

Although the procedures for program implementation are in place, it is difficult to evaluate how thoroughly most of the agencies review and substantiate the economic effects of non-major proposals since the IIS only accompanies major proposals. There has been an uneven level of agency activity in the inflation impact statement (IIS) process. A recent review of 26 agencies shows that 16 agencies (4 cabinet) have completed no IIS's while the remaining 10 agencies have completed 91 analyses. Even among these 10 the activity is very skewed with EPA having completed 40, or almost half of all analyses. Thus there is in most cases no or insufficient data to judge the procedures. While positive judgments can be made about EPA's procedures, they must be tempered by the fact that they were required by statute to do economic analyses before E.O. 11821 and that 20 of the 40 would have been done without an IIS requirement.

Initial concern that instituting the IIS process would produce costs in excess of benefits appears, thus far, unfounded. There have been no significant workload increases. The only agencies reporting more than 10 major analyses were EPA (40), USDA (15), and FEA (14). Staff costs are expected to be relatively minor. Additional consultant costs are anticipated to be under \$10 million.

The final step in procedural implementation should include submission of the analyses to CWPS and/or OMB. Although the agencies are required by A-107 to notify CWPS and OMB of all major analyses, some have been very slow in doing so. In the case of proposed regulations, the agencies are further required by A-107 to submit summaries of their analyses to CWPS. There have been further delays in the submission of these. This has created problems for the CWPS/OMB staffs in adequately reviewing the analyses and submitting comments during the review period preceding implementation of agency rules, regulations and legislation.



Some serious problems for CWPS have resulted also from inadequate agency public disclosure procedures. Generally, there are no procedures to systematically disclose inflation impact statement analyses to the public or to respond to third party requests for disclosure. Most agencies have not considered the issue and are responding on a case-by-case basis. Thus, the benefits of third party review and comment are not being consistently and fully realized.

The thrust of the entire IIS process has been to inject in the decisionmaking process a more thorough consideration of the economic effects of proposed regulations and legislation. It is difficult to know the decisionmaking impact because of the limited experience in performing analyses. However, it appears that the process, thus far, is not mature enough to have had a significant impact, although it is still too early to evaluate. It is also possible that there will be little evidence of decisionmaking impact if proposals are changed in the planning stage as a result of IIS.

Staff Recommendations:

1. We recommend that the agencies be directed to send their analyses to CWPS at the time a proposed regulation is published, rather than only summaries thereof. This would avoid the delays that result from the current procedure requiring CWPS to ask for the analyses after it has received summaries. Further, this would prevent the additional staff work entailed in preparing a summary of an analysis.

Agree _____ Disagree _____

If agreed, paragraph 5d of the OMB Circular would be amended to require that analyses, rather than summaries, be sent to CWPS at the time that the agency first certifies that it has made an inflation impact analysis.

a. We believe there is no need at this time to seek other major changes in agency procedure, apart from those outlined on page 14. However, we do recommend that CWPS and OMB, under CWPS' leadership, undertake an exploratory effort, directed toward a small sample of agencies, to review and evaluate the specific IIS procedures which these agencies have implemented. One outcome might be CWPS/OMB recommendations to



the heads of these agencies for procedural improvements. Another outcome might be CWPS/OMB sponsored seminars with the agency staffs to develop improved analytical techniques for making inflation impact analyses. Such individual agency evaluations are contemplated for the Department of Labor, the Environmental Protection Agency, the Federal Energy Administration, the Department of Agriculture and the Department of Health, Education and Welfare.

We do not have sufficient evidence at this time to draw any other conclusions about the effectiveness of agency procedures. As agencies gain experience and CWPS and OMB review their efforts, there may emerge patterns that need to be altered. Currently, we believe our primary attention should focus on the CWPS/OMB monitoring and control functions.

Agree _____ Disagree _____

If agreed, the Director of OMB and the Director of CWPS will identify appropriate members of OMB and CWPS staffs to take on the responsibility for organizing and conducting the individual agency reviews.



Legislated Inflation Impact Statements

There has been increasing discussion that inflation impact or similar type (e.g., cost, economic) analyses should be legislated. Even prior to the President's Executive order issued on November 27, 1975, there were two bills introduced in the Senate which required that the economic impacts of proposed legislation, rules or regulations be evaluated. Neither Senator Dole's bill (S.4032 - September 7, 1974) nor Senator Humphrey's bill (S.4195 - November 26, 1974) were acted upon in the 93rd Congress. There have been about 25 bills introduced during the 94th Congress requiring some type of economic evaluation of regulatory impacts.

There have been several specific cost or cost related impact requirements included in several authorization bills which have been signed into law. The recently enacted Energy Policy and Conservation Act requires that the CAB, ICC, FMC, FPC, and FAA state the probable impact of "major regulatory action on energy efficiency and energy conservation." The Defense Production Act Amendments of 1975, requires consideration of cost impacts compared to probable benefits of actions taken under the act. The Consumer Product Safety Commission is required by their authorizing statute to perform benefit cost studies of proposed regulations, and several of EPA's statutes require specific economic analysis (e.g., Effluent Guidelines Limitation and New Source Performance Standards for Air).

In light of all of the discussion surrounding legislated statements, it was suggested that the executive branch propose legislation requiring economic impact statements. By proposing a bill, the President could suggest the language and coverage of the bill and, hopefully, not create a new paperwork requirement. Attention would also be given to the problems of disclosure and litigation. Most important, the bill would reach independent regulatory agencies which the current Executive order approach does not.

Staff Recommendation:

Given the limited experience the executive branch has had to date with the IIS under Executive Order 11821, we recommend that no legislation be proposed at this time. As the agencies and the Executive Office of the President gain experience, better judgments can be made about the effort, and if need be, how to best draft a proposed bill. While legislation may put more weight behind issues of disclosure of analysis and procedural requirements, it will also open up the litigation problem (see Litigation Issue). If language



is included in the bill to remove it from judicial review, the proposed legislation would do little more than the current Executive order except to reach the independent regulatory agencies. A bill designed by the Executive specifically to reach these agencies could appear as an attempt by the Executive to limit their independence. If the bill does not include the independents it might do little more than give the impression that the President cannot manage his own Departments.

The staff suggests that legislation should be a key issue in the evaluation prepared for the December 1976 decision on the Executive order. The agencies will have had over a full year of actual operating experience to evaluate. The independent regulators will have been given ample time to demonstrate their willingness and ability to analyze the indirect cost affects of their actions, as the President requested. With this type of data, if it is decided to extend the IIS effort, a much more informed decision can be reached about legislation and the specifics of a proposed bill.

In summary, nothing is lost and much can be gained by waiting until about October 1976 to make a decision on this issue.

Agree _____ Disagree _____

If this recommendation is accepted, no changes or activities will be necessary at this time.



Litigation

There has been a great deal of concern about the potential of third party suits brought against agencies for failing to comply with Executive Order 11821. It was believed that the Inflation Impact Statement could generate the same legal problems as the Environmental Impact Statement and that some agency activities could be halted by legal actions. This threat had led some agencies to take very legalistic positions regarding IIS. Their responses to the effort were aimed at protecting themselves from court action rather than fulfilling the intent of good economic analyses. The concern was heightened by actual suits brought against the USDA and HEW.

It appeared, based on the Omaha, Nebraska District Court opinion in the suit against the Department of Agriculture (Meatpackers Case), that the courts would review an agency's compliance with IIS as a basis for stopping the agency's regulatory action. However, the Eighth Circuit Court of Appeals has rejected the lower court's findings and has argued that an agency's compliance with Executive Order 11821 is not subject to judicial review.

It is the opinion of the OMB Office of General Counsel that the threat of future litigation has probably been mitigated by the Appeals Court decision. They do point out that this opinion must be adopted by the other circuit courts and is still subject to an appeal to the Supreme Court. However, they believe the Eighth Circuit Court of Appeals' decision will be upheld.

Staff Recommendation:

It appears that the threat of litigation has been removed and that no specific action is needed at this time. The White House Counsel had suggested that one partial step to correct the litigation problem was to change the name of the Executive order from "Inflation Impact Statement" to eliminate the possible connection, in the opinion of the courts, with the legislated "Environmental Impact Statement."

While the staff believes there is reason to change the name in order to better reflect the indirect costs analysis intent of the effort, this is not the time to do so. Without litigation problems at this time a name change will probably result in confusion, offsetting any benefits derived from the change. The time to consider the name change is in December 1976 when the decision to continue the effort must be made.

Agree _____ Disagree _____
If this recommendation is agreed to no changes are necessary at this time.



Monitoring and Control

The monitoring and control function for the IIS process is divided between the Council on Wage and Price Stability and OMB. Agencies are supposed to notify CWPS of all rules and regulations which have major impacts at the time they are proposed and submit a summary of the analysis to them. CWPS can then review the analysis and make direct comments to the agencies, and if necessary, file as a third party intervener to the rulemaking.

Proposed legislation is to be initially screened by OMB's Legislative Reference Division and then by the appropriate program staff. If a proposed bill has major impacts it should have an IIS certification. If there are questions about the IIS analysis, agencies are supposed to submit detailed analysis. Agencies can be requested to modify proposed legislation if necessary under the standard procedures of A-19.

Since about 75% of all IIS's to date have been for regulations, the major responsibility for monitoring and control falls on CWPS. The problems that currently have been identified are due largely to the fact that agencies do not have to make negative or non-major impact certifications (i.e., that the impact is not major and has not been analyzed), that CWPS is not notified of all proposed rules and regulations, and that there is a large volume of rules and regulations proposed. Thus, if any agency submits a major impact regulation late or fails to submit it at all, CWPS has no way of knowing about it other than wading through the Federal Register (or other sources such as trade journals) and questioning each new proposed rule or regulation that does not have an IIS certification.

OMB, in reviewing proposed legislation, has had problems. When a proposed bill carries no certification, staff must make a judgment as to whether the bill has major impacts and the agency failed to analyze them. In order to assist in reducing this problem, agency heads were requested in a letter on June 3, 1975 from the Director to provide negative certifications on non-major bills. However, LRD reports that very few bills have carried this certification.

The problems of monitoring and control are further compounded by the limited agency experience with IIS. Since many agencies have done only a few or no analyses, there has not been an opportunity to review their efforts and provide feedback. Without the negative certifications, it is difficult to determine how carefully they are screening proposals since OMB and CWPS do not know if the agency is doing anything at all.



The lack of opportunities for feedback has limited CWPS' and OMB's ability to provide comments on quality and to give specific guidance for improvements. Many of the IIS's that have been seen have been long narratives that discuss the proposal but provide little actual cost analysis. But when an agency has done only one IIS, there is no evidence that they understand what is expected.

The split in lead responsibility has generated other problems in monitoring and control. CWPS is not always made aware of major legislative proposals that create regulatory authority.

Staff Recommendation:

We believe that major effort in the next year should be to monitor carefully the agencies' activities and work with individual agencies where problems exist. While there are no explicit control mechanisms, the Directors of OMB and CWPS should be made aware of all significant compliance problems immediately in order that they can take appropriate actions to enforce the Executive order. To facilitate this we recommend the following steps be implemented:

1. Agencies should be required to certify to CWPS and, through the Federal Register, to the public, that the impacts of proposed rules and regulations which do not exceed the benchmark criteria have been reviewed and a full inflation impact analysis is not required. This will also flag to the policy officer the need for meeting an IIS requirement.

Agree _____ Disagree _____

2. To obtain better information on the agencies' screening efforts, assure that large costs which are below agency criteria benchmarks are adequately reviewed, and provide a better indication of what those costs are, agencies should be required to provide on request from CWPS, a brief statement as to why a particular action did not meet the agency criteria and, therefore, did not require a full analysis. This is not a requirement for analysis, and given current workload and costs, should not create any significant burden on the agencies.

Agree _____ Disagree _____



If either one or both recommendations are accepted, it will be necessary to revise OMB Circular A-107 to:

- a. require, for recommendation #1, that agencies certify that a full analysis is not required for each proposed rule or regulation whose impact does not exceed agency criteria; and
- b. require, for recommendation #2, that agencies justify, when requested by CWPS, the decision that a proposal did not require a full analysis.

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CWPS' Role in Legislative Review

Part of CWPS' legislative charter is to examine government actions that are contributing to inflation and to comment on them publicly. Presently, OMB, through its legislative review process, has been responsible for evaluating IIS's for major legislative proposals, which account for about one-fourth of IIS activity. The other three-fourths of IIS activity during the past year has resulted from rules and regulations and, therefore, has been under the operational responsibility of CWPS. It would appear to make sense that CWPS should also play a principal role in reviewing legislative proposals in which an IIS has been prepared since this would be a normal adjunct of their mission and well-integrated with their oversight responsibilities with respect to inflationary problems. This could be done by requiring that LRD obtain views from CWPS on all legislative proposals for which an IIS is required.

Staff Recommendation

We recommend that OMB, specifically LRD, obtain the views of CWPS on all legislative proposals which require an IIS.

Agree _____ Disagree _____

If this recommendation is agreed to, the Director of OMB will instruct LRD to obtain CWPS' views on all legislation requiring an IIS.



BRIEF SUMMARY OF RESPONSES* TO EVALUATION

AGRICULTURE: Analysis Completed to Date: Total 15;
 Legislative 3; Rules/Regulation 12

- component agencies prepare IIS
- some previous analysis, but not much
- 45 man-weeks involved
- cost impact most important - materials least important.

COMMERCE: Analysis Completed to Date: Total 1;
 Legislative 1; Rules/Regulation 0

- responsibility at Assistant Secretary level
- workload projected at 6 man-months.

DOD: Analysis Completed to Date: Total 0;
 Legislative 0; Rules/Regulation 0

- responsibility at the Services and division head level, reviewed by Office of Secretary of Defense Comptroller
- internal directives not issued yet, but should be issued shortly pending final approval
- do not anticipate any real activity.

HEW: Analysis Completed to Date: Total 1;
 Legislative 0; Rules/Regulation 1

- review at secretarial level
- 1 IIS under preparation (shellfish not major)
- no workload impact
- cost criteria most important
- some analysis prior to IIS.

*These responses were obtained from the agencies' written comments to the October 21, 1975 questionnaire which was followed up by direct verbal communications with 17 of the agencies. They are not intended to reflect substantive evaluations of agency efforts, but rather are to illustrate the activities in each agency.



HUD:

Analysis Completed to Date: Total 2;
Legislative 1; Rules/Regulation 1

- IIS procedures in place; Asst. Sec. for Policy Dev. & Res. certifies each analysis as to procedures followed
- fairly good communication of IIS process; Under Secretary briefed; have had workshop; will issue directive within 10 days on process of identifying as major and accompanying analysis
- limited decisionmaking impact
- resource cost approximately 1-2 GS-13 staff years, but no new staff required yet; will possibly use consultants in future; economists in most offices affected; otherwise Office of Economic Affairs is resource point.

INTERIOR:

Analysis Completed to Date: Total 0;
Legislative 0; Rules/Regulation 0

- responsibility at bureau level with no higher approval or review within department
- no analysis on major impact done but claim significant analysis done to screen non-majors
- can't forecast future resource needs, but expect no real increase if no change to A-107 and criteria
- don't expect any substantive analysis.

JUSTICE:

Analysis Completed to Date: Total 0;
Legislative 0; Rules/Regulation 0

- procedures in place; Office of Policy & Planning certifies analysis
- good communication of procedural requirements
- public notification good
- may possibly have one IIS analysis coming up in connection with LEAA to reexamine criminal justice information systems; cost & competition most significant criteria; they don't expect to use others
- staff resource needs grossly estimated to include approximately 20% of 1 senior official in addition to 1 planner under him; will probably hire 1 economist in near future.



LABOR:

Analysis Completed to Date: Total 6;
Legislative 2; Rules/Regulation 4

- review by Assistant Secretary for Policy Evaluation and Research
- IIS analysis under study
- no evaluation prior to IIS
- 6 persons needed, \$4 million in contracts.

STATE:

Analysis Completed to Date: Total 0;
Legislative 0; Rules/Regulation 0

- responsibility at Assistant Secretary level with review at Deputy Under Secretary - management level
- no "major" analysis expected under current criteria--have screened several non-major actions
- initiative has been fully communicated
- no additional resources needed.

TRANSPORTATION:

Analysis Completed to Date: Total 6;
Legislative 1; Rules/Regulation 5

- responsibility at modal administration level with review at Office of Secretary
- due to prior economic/cost analysis by several administrations do not expect increase in resources; however, litigation and potential litigation may cause real need for increased resources
- effort has been thoroughly communicated throughout department
- report growing interest throughout department in IIS.

TREASURY:

Analysis Completed to Date: Total 4;
Legislative 4; Rules/Regulation 0

- responsibility at Assistant Secretary/bureau head level with review by Office of Secretary
- cost criteria triggered all 4 analyses
- initiative communicated but formal directive held up by an IRS procedures problem which was being resolved
- estimate increased resources of less than 2 staff years if litigation problem avoided and IRS rulings continue to be exempted.



CIVIL SERVICE: Analysis Completed to Date: Total 0;
Legislative 0; Rules/Regulation 0

- originating bureau does analysis, review at top level
- no IIS as yet, no workload impact
- no prior analyses done
- cost threshold is only operative one.

ERDA: Analysis Completed to Date: Total 2;
Legislative 2; Rules/Regulation 0

- procedures in place; analysis reviewed by Asst. Administrator--the intent of E.O. is understood although implementation may be difficult; (they are concerned with secondary impacts and not just primary - this large view presents difficulty in implementation) - communication very limited
- 2 legislation IIS completed; analysis triggered by cost, although they think all criteria should be relevant
- no decisionmaking impact has been determined
- no additional resource needs; want to use consultants for econometric modeling but have no funds; no litigation lodged with respect to IIS
- will make analyses available to public on demand.

EPA: Analysis Completed to Date: Total 40;
Legislative 0; Rules/Regulation 40

- claims half of proposed regulations changed due to IIS analysis
- 60 man years needed - 40 prior to E.O. 11821
- cost criteria paramount, materials least.

FEA: Analysis Completed to Date: Total 14;
Legislative 11; Rules/Regulation 3

- no approved final criteria
- claim to have performed analysis on 37 proposals that were non-major
- good procedures in place to screen and perform analysis.

GSA: Analysis Completed to Date: Total 0;
 Legislative 0; Rules/Regulation 0

- responsibility at Service level, reviewed by Assistant Administrator
- no activity to date and don't expect any.

SEA: Analysis Completed to Date: Total 0;
 Legislative 0; Rules/Regulation 0

- procedures in place - notification of OMB/CWPS specifically stated; communication of IIS process seems limited to General Counsel's office
- don't expect any criteria to be a problem, especially since they don't see any IIS work forthcoming
- no additional resource needs
- will probably make analyses available to public but have not yet confronted this problem.

OTHER AGENCIES PARTICIPATING UNDER E.O. 11821

The following agencies have approved criteria in place. Most responded to the written questionnaire indicating no IIS activity with little or no expectation of any. None reported doing any IIS analysis.

Equal Employment Opportunity Commission
Export-Import Bank of the United States
International Trade Commission
National Aeronautics and Space Administration
Panama Canal Company
Renegotiation Board
Tennessee Valley Authority
Veterans Administration
Water Resources Council





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

June 11, 1976

MEMORANDUM TO CERTAIN HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: JAMES T. LYNN

SUBJECT: Inflation Impact Statement Program

A preliminary evaluation of the Inflation Impact Statement (IIS) program was recently discussed at the Economic Policy Board. The following minor changes have been agreed to by the EPB and should be implemented immediately:

1. Agencies must state in the Federal Register at the time of publication that minor rules and regulations (that is, those whose impacts do not exceed the IIS criteria) have been reviewed and do not require an IIS. A similar statement should be made in correspondence to OMB for legislative proposals determined to be minor.
2. Upon request from the Council on Wage and Price Stability (CWPS), an agency must provide a brief description of its reasons for concluding that a proposed action is minor.
3. Agencies should transmit to CWPS a complete Inflation Impact analysis upon publication of a proposed rule or regulation rather than submitting an IIS summary.

These changes are being made to further carry out OMB's oversight responsibilities under E.O. 11821. We do not intend to amend Circular A-107 at this time to reflect these changes as a complete evaluation of the IIS program will be undertaken in the coming months. The evaluation will result in recommendations on the future direction of this effort. The following issues will be reviewed by CWPS and OMB in conducting the evaluation: 1) the quality of the analyses; 2) the effect of the analyses on improving agency decisions; 3) the total cost of the program and 4) recommendations for program improvements.

I look forward to working with you and your staff in completing the upcoming evaluation of this important Presidential initiative.



OFFICE OF THE FEDERAL REGISTER
INFLATION IMPACT STATEMENTS
 Revision of Publication Guidelines

The Office of the Federal Register (OFR) announces revised guidelines for the publication in the FEDERAL REGISTER of documents that implement the Inflation Impact Program. This revision is in response to an Office of Management and Budget (OMB) memorandum of June 11, 1976.

Under Executive Order 11821 (39 FR 41501, November 29, 1974), every Federal agency that proposes a "major" rule or legislation must evaluate its potential inflation impact and prepare an Inflation Impact Statement (IIS).

Under the authority given by E.O. 11821, OMB issued Circular A-107 which contained initial guidelines for the development of criteria and procedures agencies were to follow. Each agency then developed its own criteria on cost impacts, effects on productivity, competition, supplies of important materials, employment and energy. These criteria are used to determine when a proposed rule, regulation, or legislation is major and, thus, requires further analysis and preparation of an IIS.

At the request of OMB, the OFR issued guidelines on June 23, 1975 (40 FR 26312) and October 20, 1975 (40 FR 48979). Under those guidelines, an agency certifies in its FEDERAL REGISTER document that it has evaluated the inflation impact only for "major" proposals.

The OMB memorandum of June 11, 1976, adds to the requirements in Circular A-107 by requiring an agency to state in the FEDERAL REGISTER that minor rules (that is, those whose impacts do not exceed the agency's IIS criteria) have been reviewed and do not require an IIS.

The OFR and OMB have determined that each Federal agency shall use the following language for proposed and final rules which the agency determines to be minor:

The (insert agency name) has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

The OFR and OMB have determined that each Federal agency shall use the following language for proposed and final rules which the agency determines to be major:

The (insert agency name) has determined that this document contains a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107 and certifies that an Inflation Impact Statement has been prepared.

To facilitate the finding of the required language within a document, the language shall be placed immediately above the signature of the authorizing official. Sample excerpts of typed documents which show the proper placement of the required language follow:

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 418]
EFFLUENT GUIDELINES
 Fertilizer Manufacturing

The purpose of this document . . .
 Authority . . .

The Environmental Protection Agency has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

RUSSELL TRAIN,
Administrator.

[40 CFR Part 418]
EFFLUENT GUIDELINES
 Fertilizer Manufacturing

The purpose of this document . . .
 Authority . . .

The Environmental Protection Agency has determined that this document contains a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107 and certifies that an Inflation Impact Statement has been prepared.

RUSSELL TRAIN,
Administrator.

Persons with comments or questions concerning this notice may direct them to the Director of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

Dated: September 28, 1976.

FRED J. EMERY,
Director of the Federal Register.
 [FR Doc.76-28807 Filed 9-30-76;8:45 am]



APPENDIX D:

IIS EVALUATION QUESTIONS

I. Questions to identify problems with regulatory procedures

A. Regulatory process

1. How are regulatory decisions made? Describe agency's basic standard setting process.
2. Are there guidelines for types of analysis which should be done? Are they appropriate? Are they implemented? If they are not available, are they needed or is current practice acceptable?
3. How does the agency discuss proposed regulations with others?
 - a. Is there interagency and intra-agency review of proposals?
 - b. Are advisory groups and other non-federal entities' views solicited in addition to Federal Register notice?

B. Statutory requirements

1. What statutory requirements govern agency rulemaking procedures? What statutory deadlines are imposed on agency actions? How broad is guidance in the statutes with respect to the issuance of regulations?
2. How is use of analysis (including IIS) affected by external factors such as enabling legislation, Administrative Procedures Act, executive orders, congressional and executive requirements for evaluative reports and the prospect for judicial review?

C. Existing regulations -- to what extent does agency review existing regulations and past regulatory decisions?

D. Regulatory Procedural Problems --

1. What is major regulatory procedural problem?
2. What steps are being taken to address administrative problems? Would you recommend any changes. In the APA requirements?
3. Does IIS contribute to or detract from addressing problems?

II. Questions to determine IIS effectiveness

A. Decisionmaking Impact

1. Has there been any change in the quality of agency legislative and regulatory proposals since IIS has been required?
 - a. does analysis affect decisions or is it an ex post justification? Is IIS prepared interactively with development of a regulation or does IIS follow preparation of regulation?
 - b. are viable alternatives considered explicitly?
 - c. what specific directions or restrictions are imposed on the agency that affect consideration of economic impacts in rulemaking?
2. Because of IIS, have any regulations or legislative initiatives been modified, deferred, or dropped? (at any stage -- before formal proposal, before final promulgation, or later)
3. What decisionmakers (at what level) use IIS? How?
4. Is IIS used by outside intervenors?
5. Is there any systematic follow-up evaluation of economic effects after promulgation?

B. Scope of IIS requirement

1. Are there any important legislative or regulatory proposals that have not been analyzed? (are criteria thresholds at effective levels)
2. For IIS's which were actually major, if E.O. 11821 and A-107 requirements were absent, would analysis:
 - a. have been done for other reasons (e.g., legislative mandate, agency policy, etc.)
 - b. have been less extensive (e.g., not covered alternatives or benefits) or of lesser quality
 - c. have been less visible or circulated less widely (e.g., would it have been sent to other agencies)

C. Impact on Agency

1. What have been direct costs of IIS -- over and above what agencies would have otherwise incurred (costs with respect to staff, consultants, regulatory delay)?
2. What is agency's economic analysis capability? Has this imposed constraint on fulfillment of IIS requirement? Has there been heavy reliance on consultants?

D. Monitoring by CWPS/OMB

1. Did CWPS, OMB, or others outside of agency (specify) have any impact (if so, what) on:
 - a. decision to do the IIS
 - b. quality or nature of the IIS
2. If such impact existed, how was it felt or communicated (CWPS filings, letters, calls)

III. Alternatives

- A. Terminate: E.O. 11821 expires on December 31.
- B. Extend the expiration date of the executive order:
 1. with changes in criteria, review procedures
 2. as is, to allow task force review based on fuller accumulation of evidence on effectiveness (trial period has been too short)
- C. Expand the scope of current IIS to require agency inspection of existing major regulations and analysis of their economic impacts. This could include expansion of intervenor authority so that independent Federal intervenor could petition agency to review the economic impact of major existing regulation as well as proposed regulations.
- D. Legislate a requirement that agencies analyze the economic impact of major proposed regulations. Such a legislated requirement would: (a) cover the independent regulatory agencies, and (b) permit court review of agency regulations vis-a-vis their economic impact.

- E. Rely on individual agency reform initiatives to insure consideration of the economic effects of agency rulemaking (e.g., EPA's efforts to get interagency review of proposed regulations, D.O.T. Secretary's open meetings to solicit public views, and HEW's action on wider dissemination of information on proposed regulations, beyond just Federal Register).

APPENDIX E:

SUMMARY COMPARISON OF THE IIS PROGRAM AND
THE ENVIRONMENTAL IMPACT STATEMENT (EIS) PROGRAM

Compared to the IIS program, more Federal agencies are required to prepare EISs for a wider range of legislative and administrative actions. Section 102 of the National Environmental Policy Act (NEPA) requires the participation in the EIS program of all Federal agencies proposing legislation and other major actions "significantly affecting the quality of the human environment". EPA voluntarily participates in the program, despite several court rulings acknowledging the satisfaction of NEPA requirements with analyses prepared under separate EPA statutes. Executive Order 11821 constitutes the principal authority for the IIS program, and the independent agencies have chosen not participate in the absence of a legislative requirement.

The scope of the IIS is further limited in the type of Federal actions covered. OMB Circular A-107 limits the IIS requirements to "major proposals for legislation and for the promulgation of rules or regulations". NEPA's requirement covers new and continuing projects and programs. This latter category includes Federal contracts, grants, subsidies, loans, leases, permits, and licenses. Although NEPA and the associated Executive Order 11514 require the evaluation of ongoing programs having

environmental impacts, no procedures for monitoring compliance have been established. Consequently, there has been little agency effort to review existing programs under the EIS program. These differences in the extent of coverage have resulted in the preparation of considerably more EISs than IISs -- CEQ receives approximately 120 draft and final EISs each week, compared to fewer than 50 IISs prepared during the program's entire two year existence.

The breadth of analysis required in an EIS is quite wide. Analysis should include the physical, aesthetic, historic, cultural, social, and economic dimensions of the environmental impact, with both qualitative and quantitative evaluations. ISS analysis by contrast is limited to an economic evaluation of the costs and benefits of the proposal and feasible alternatives. IIS type analysis is included as part of their EIS analysis by approximately one-third of the 33 departments, subunits, and agencies with major NEPA responsibilities. */

The EIS evaluation is primarily interdisciplinary, requiring the synthesis of staff efforts in a number of different fields of expertise. Lacking the sizeable staff needed to review the large number of EISs being produced, ^{CEQ} delegates responsibility for the review of EISs with other groups. CWPS review of the more manageable number of IISs is aided by limiting required expertise to the evaluation of economic impacts.

*/ Council on Environmental Quality, Environmental Impact Statements: An Analysis of Six Years' Experience by Seventy Federal Agencies, p. 49.



Disclosure differences also are pronounced. Agencies are required to send an IIS to CWPS when a "major" proposal is certified and published in the Federal Register. Subsequent CWPS comments are entered in the public record during the usual comment period before promulgation. Disclosure of an EIS is much more extensive. An EIS is first prepared in draft form and reviewed by Federal, Federal-State, State, and local agencies and the public. Draft EISs for proposed rules or regulations should be circulated by the time of publication in the Federal Register. After receiving the views of interested parties, the originating agency is required to prepare a final EIS and allot a sufficient review period for the final statement. Occasionally, these final EISs serve as the basis for court review of a disputed agency action.

NEPA requires such disclosure: according to section 102(c)(2) of the statute, Federal agencies with jurisdiction and affected state and local agencies must comment on environmental impact statements.*/ For some agencies, this requirement dovetails with existing statutory responsibilities. Section 309 of the Clean Air Act requires EPA to comment on agency actions related to air or water quality, noise abatement and control, pesticide regulation, solid waste disposal, and other provisions involving the authority of the EPA Administrator.**/ Other agencies have complained that these commenting responsibilities place undue strain on the existing staff. Agencies often allocate staff time to preparation of their own EISs first and to comments on other EISs a distant

*/ Ibid., p. 38.

**/ 38 FR 20555.



second. */ The IIS program requires only CWPS or OMB review of IIS.

CWPS/OMB and CEQ have encountered somewhat similar problems in identifying "major" or "significant" Federal actions. Impacts exceeding a certain threshold of significance require the preparation of an impact statement; in general, these thresholds are rather arbitrary. The IIS program relies upon numerical criteria for cost, productivity, competition, employment, important materials, and energy usage impacts. In practice, individual agency criteria are fairly uniform and are interpreted in terms of cost impact. CEQ has adopted a comparatively less specific definition of "major actions significantly affecting the quality of the human environment". Agencies have adopted varying formal and informal approaches to the definition of "significance": general principles for determining significance, lists of actions normally considered significant or insignificant for the purposes of NEPA, some numeric thresholds to measure the magnitude of impact, and lists of the types of impacts to be considered in judging significance. **/ CEQ guidelines instruct "each agency [to] review typical classes of actions that it undertakes and, in consultation with CEQ, develop specific criteria and methods for identifying those actions likely to require environmental statements. . . ." ***/ In practice this

*/ CEQ Evaluation, op. cit., p. 38.

**/ Ibid., p. 50.

***/ 38 FR 20552.



amounts to a catalogue of the environmental impacts of all principal types of agency actions.

Although the impact of an individual Federal action may be minor, the cumulative effect of a number of related actions can be rather significant. It is conceivable that the preparation of an IIS can be avoided by breaking down a program into a number of minor components. The EIS program attempts to correct this problem by grouping and classifying catalogued Federal actions on the basis of geographical, generic, or other common factors.^{*/} This approach has not proved wholly effective: less than one-half of the 32 departments and subagencies have developed principles for grouping and assessing related program activities. ^{**/}

^{*/} CEQ Evaluation, op. cit. p. 15.

^{**/} Ibid., p. 12.



APPENDIX F:

AGENCY COMMENTS ON IIS PROGRAM

1. CWPS/OMB Memorandum Soliciting Agency Views on IIS Program
2. Responses to CWPS/OMB Questions
3. Comments on This Evaluation Report

UNITED STATES GOVERNMENT

Memorandum

DATE: August 6, 1976

TO :

FROM : James C. Miller III, Assistant Director
Government Operations and Research
Council on Wage and Price Stability

Stanley E. Morris, Deputy Associate Director
Economics and Government Management Division
Office of Management and Budget

SUBJECT: Inflation Impact Statement Evaluation

As you know, Executive Order 11821, requiring Inflation Impact Statements (IIS's), expires on December 31, 1976. The Economic Policy Board has asked the Council on Wage and Price Stability and the Office of Management and Budget to evaluate the IIS program and, on the basis of this evaluation, to submit recommendations this fall to be presented to the President.

We have begun to examine the program with regard to several issues, including the impact of the program on agency decisionmaking; the analytical quality of the statements, resource demands, and possible future directions and alternatives. As part of our evaluation effort, we placed the attached notice in the August 3rd Federal Register requesting comments from interested individuals and organizations on a number of IIS issues by August 30th.

For obvious reasons, a key input into our evaluation would be your personal appraisal of the effectiveness of the program. Overall, we would like to know, based on your experience, what the program's major problems and benefits have been, whether the IIS requirement should be continued, and what improvements or alternatives you would recommend. Your comments on the effect of IIS's on agency decisionmaking would be especially useful.

So that we may have an opportunity to make full use of your thoughts, please give us your written comments (including, if possible, specific responses to the questions listed in the Federal Register notice) by August 20th. Subsequently, we hope to visit a number of agency heads to discuss the program, but would first like to receive the benefits of your personal comments.

Attachment .



A third problem arises because the bill does not define (or give the President authority to define) "significant impact on costs", and thereby make its threshold and coverage operational and clear. A similar (though probably unavoidable) lack of clarity has engendered endless difficulty in preparing environmental impact statements. For example, there have been literally hundreds of lawsuits revolving around what is "major", what is "environmental", and what is an "action" under the National Environmental Policy Act. We believe that a definition such as "would cause an increase in total cost or price of goods or services to the nation of \$100 million or more in any year within five years of enactment or promulgation" would be reasonable. This is the basic type of criterion and level of impact used in the current Inflation Impact procedure. (The current procedure also involves other criteria such as impacts on energy usage or on specific industries or localities which would be inappropriate given the basic purpose of this bill.) In addition, the definition would need to parallel the Inflation Impact procedure further by excluding purely macro-economic effects of spending per se from triggering the benefit-cost study requirement. Such effects are best analyzed through analysis of the total effects of all spending and taxing, and are far beyond the purview of each Federal Agency acting alone. Moreover, such analyses would be highly duplicative. Without clarifications such as these, any process of this kind would involve endless confusion, dispute, and litigation over its intent.





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

August 25, 1976

SUBJECT: Inflation Impact Statement Evaluation

TO: Thomas D. Hopkins, Deputy Assistant Director
Government Operations and Research
Council on Wage and Price Stability

This memorandum is an evaluation summary of the Inflation Impact Statement program in response to the notice published in the Federal Register on August 3, 1976.

1. Quality of IIS analyses. There has been improvement in quality, particularly on the part of some agencies in the Department. Quality depends upon the analytical tools and expertise of the agencies involved. As time progresses, all agencies should make improvements in these areas regardless of the IIS program.

2. Analysis of important legislative and regulatory proposals. The existing criteria thresholds result in all important legislative and regulatory proposals being analyzed as well as far too many of minor importance. The result is that some agencies allege that they cannot place the necessary emphasis on some of the more important issues.

3. Availability of IIS analyses. Analyses are available to the public in accordance with existing rules and regulations. Outside of a few requests by Congressional staff members and several public interest groups, only a few other requests are known to have been made. The fact that the analyses may be subject to outside scrutiny may have affected the types of alternative actions considered and analyzed.

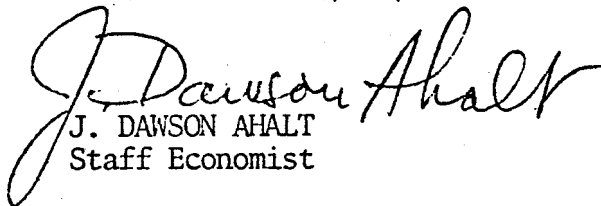
4. Impact on drafting new legislation and implementing new regulations. Very little. To date, only minor delays have been encountered. However, filing a complete IIS with the CWPS for new rule or regulation proposals would create several serious problems resulting in delays including increased demands on analysts and clerical staff for preparation and review of the document, and possible lack of expertise in some agencies to produce the details CWPS might desire. We believe this directive should be rescinded.

5. Impact on quality of legislative proposals and regulatory decisionmaking. The impact has been negligible. In most cases the Department had previously placed considerable emphasis on economic and budgetary analyses of new legislation and rule and regulatory changes.

6. Costs of IIS program. The program has been carried out with existing resources and drawing on technical support from within the Department. Any move to expand reporting or other requirements would meet considerable resistance.

7. Alternatives to the IIS program. Since economic conditions have changed considerably since implementation of the IIS program, it appears that the original objective has also been drastically altered. If the current objective is to improve the decisionmaking capabilities of program administrators and their staffs, then reliance should be placed on the more conventional and effective means of evaluation.

8. It is recommended that the IIS program be terminated as soon as possible.


J. DAWSON AHALT
Staff Economist

UNITED STATES DEPARTMENT OF AGRICULTURE
ECONOMIC RESEARCH SERVICE
WASHINGTON, D.C. 20250

Office of the Administrator

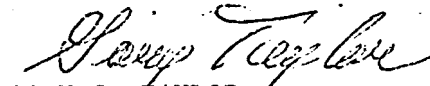
August 27, 1976

SUBJECT: Inflation Impact Statement Evaluation

TO: James C. Miller III, Assistant Director
Government Operations and Research
Council on Wage and Price Stability

Stanley E. Morris, Deputy Associate Director
Economics and Government Management Division
Office of Management and Budget

Reference your memorandum of August 6, 1975. Your request was also sent to Dawson Ahalt, see response attached. His response was based on staff work done in this agency while I was out of the office. I have discussed the matter with those involved and I am satisfied that I have nothing additional to contribute to the evaluation.



GARY C. TAYLOR
Assistant Deputy Administrator

Attachment

Memorandum

Subject: Inflation Impact Statement Evaluation

Date: AUG 10 1976

In Reply Refer To:

From: *Walter L. Townsend*
Walter L. Townsend, Acting Chief
Office of Policy Analysis and Coordination

Your Reference:

To: James C. Miller III, Assistant Director
Government Operations and Research
Council on Wage and Price Stability

and

Stanley E. Morris, Deputy Associate Director
Economics and Government Management Division
Office of Management and Budget

This is my response to your request for my comments on the Inflation Impact Statement program. I am following the format listed in the Federal Register Notice.

1. Quality of IIS analyses.

The Civil Service Commission has not yet identified a proposal as major so no IIS analysis has been done.

2. Are all important legislative and regulatory proposals being analyzed?

Within the Civil Service Commission, the heads of bureaus and offices that originate regulatory and legislative proposals are responsible for including in the developmental process questions which would identify proposals as being within/without the criteria for identifying major proposals.

3. Should IIS analyses be made available for public inspection? etc.

Where a proposal is identified as major and an analysis is made, it seems fair to allow the interests that would be affected by the proposal to read it and to offer counter positions. I am certain that the knowledge that an IIS might be made public would tend to improve its quality.

Keep Freedom in Your Future With U.S. Savings Bonds

4. What impact, if any, has the IIS program had on the process of drafting legislation and developing and implementing new regulations?

No delay or other constraining influence has been blamed upon the IIS program.

5. What impact, if any, has the IIS program had on the quality of legislative proposals and regulatory decision-making?

The tendency of the IIS requirements are to force a widening of the range of proposal alternatives to develop the best compromise between the policy objectives and inflation impact.

6. What are the direct costs of the IIS program over and above those expenses government agencies would have otherwise incurred?

Direct costs attributable to the IIS program have been minimal and have not been measured.

7. What alternatives to the IIS program exist for improving the quality of legislative proposals and regulatory decision-making?

There is no mandatory alternative to the IIS program that is applicable to the Civil Service Commission.

8. What should be the future of the IIS program?

The IIS program should be extended in its present form. The requirements of the program are such that agencies must perform the analyses only for those agency actions which would have significant cost impact on some public. The screening process which agencies must use to determine what proposals, if any, meet the criteria for major proposals forces a wider, longer look at the costs and the cost/benefit ratio of proposals and their possible components.



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Policy
Washington, D.C. 20230

AUG 25 1976

MEMORANDUM FOR James C. Miller III, Assistant Director
Government Operations and Research
Council on Wage and Price Stability

Stanley E. Morris, Deputy Associate Director
Economics and Government Management Division
Office of Management and Budget

From: Robert S. Milligan *CSM for*
Deputy Assistant Secretary for
Policy Development and Coordination

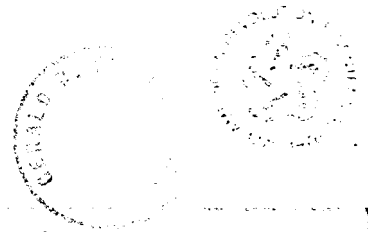
Subject: Inflation Impact Statement Evaluation

The following remarks were proposed in response to your request for comments to assist in evaluating the Inflation Impact Statements' program.

General Comments

The Department of Commerce is unable at this time to respond to all of the questions raised because of the short deadline; however, we do have some general observations:

- (1) The Inflation Impact Statement (IIS) program's major problem is a present lack of understanding of what the program was intended to accomplish. Initially, it was a program to screen regulations and legislative proposals to make sure there was adequate information presented to evaluate inflationary impact. After some months OMB and CWPS indicated informally that there should be full-scale economic analyses of all these proposed regulations and legislation. This shift in the program was clearly not implemented by most agencies since the original OMB order did not allow personnel to be assigned to carry out or coordinate the IIS program. This attempt to increase output with no increased input has led to little, if any, gain.
- (2) The IIS program should be continued. The Environmental Protection Agency (EPA) is explicitly exempted from having to prepare Environment Impact Statements (EIS's) in



connection with the development of regulations under both the Clean Air Act and the Federal Water Pollution Control Act with minor exceptions. Although EPA had volunteered to prepare environmental assessments for proposed major regulatory actions, it has been lax in doing so. Currently, the only means for assessing the economic impacts of EPA's proposed legislative and regulatory actions is the requirement to prepare IIS's pursuant to Executive Order No. 11821.

- (3) Specific guidelines dealing with techniques and coverage have not been provided. We believe that guidelines such as those promulgated by the Council on Environmental Quality for Environmental Impact Statements (EIS) would ensure uniform application. In particular, any guidelines should require that development of the IIS begin at an early stage of regulatory development and the two paths be coincident. This would assure early and continuing cost assessments as a regulation was being developed.
- (4) More public awareness of and participation in the IIS process would promote better understanding of the cost of a particular regulation.

Improved guidelines along the lines of those recommended above would enable decisionmakers and the public alike to arrive at a better understanding of the potential impacts of the proposed action on the quality of the total human environment.

Specific Comments

The following comments are directed to the eight questions contained in the IIS program announcement printed in the Federal Register, August 3, 1976:

- (1) The first question concerns the quality of the IIS analyses. We do not believe that these analyses are of a uniformly high quality in terms of cost-benefit comparisons and appropriate alternatives. This may be due to the fact that, in many cases, economic analyses are called for which agencies may not have sufficient personnel resources to provide. We have had only one IIS analysis, relating to the Patent Reform Legislation, and it was of good quality.
- (2) As concerns the third question, we have no objection to making inflation impact statements available to the public. In fact, such an action may have positive benefits in increasing public awareness of the consequences of legislative and administrative actions. However, this

represents a policy shift away from the role of an executive branch information collection device toward a full-scale economic impact report program. Much of the information prepared for the former type of program is already carried out in response to public and/or Congressional inquiries.

- (3) Our general observations concerning questions four and five would be that a possibility exists that the IIS program may have a dampening effect on innovative or creative governmental policies. Where major new program initiatives are concerned, the complicated and time-consuming analyses which may be required could cause considerable delays in implementing timely responses to social problems. The Patent Reform IIS effort resulted in some delays, but primarily consisted of reassembly of information prepared during the legislative development process.

Finally, if the IIS program is to be extended, we suggest that serious consideration be given to accommodating changes in personnel ceilings to enable thorough analysis and review.



COMPTROLLER

(Program/Budget)

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

AUG 18 1976

MEMORANDUM FOR: James C. Miller III, Assistant Director
Government Operations and Research
Council on Wage and Price Stability

Stanley E. Morris, Deputy Associate Director
Economics and Government Management Division
Office of Management and Budget

SUBJECT: Inflation Impact Statement Evaluation

This is in response to your memorandum of August 6, 1976 in which you requested a personal appraisal of the effectiveness of the inflation impact statement program.

Executive Order No. 11821 sought to make everyone in the position of proposing legislation or rules and regulations more conscious of the direct and indirect costs imposed upon the public by a specific action. The order was sound in principle but difficult to implement and more difficult to enforce because of the lack of specificity in the guidelines.

The Department of Defense participated in all the workshops and established specific criteria for inflation impact statements to comply with OMB Circular A-107. However, since virtually all major DoD proposals for legislation are screened through the normal budget review process, no inflation impact statements have been prepared.

The mission of the Department of Defense is to provide for the security of the United States. Therefore, inflation considerations cannot be controlling, or indeed, examined independent of requirements stemming from our national security objectives. However, we are committed to every means of halting inflation short of reducing readiness posture. All practical means and measures will be used to minimize or avoid actions which contribute to inflation.

As you know, Defense legislation enacted annually by the Congress caps several months of joint Congressional/DoD/OMB examination and review of Defense budget elements and priorities. It is during this process that the alternatives and least costly way of achieving the same benefits must be explored.



For these reasons, we recommend that consideration be given to the exemption of the Department of Defense from the provisions of Executive Order 11821 should it be continued beyond December 31, 1976.

John W. Beach

For Clifford J. Miller
Deputy Comptroller for Plans and Systems



UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

August 18, 1976

MEMORANDUM

TO: James C. Miller III, Assistant Director
Government Operations and Research
Council on Wage and Price Stability

FROM: Emil L. Nelson, Assistant Director for Economic
Analysis
Office of Planning, Analysis, and Evaluation

SUBJECT: Inflation Impact Statement Evaluation

Your memorandum of August 6, 1976 asked for my personal appraisal of the effectiveness of the IIS program and my views on its continuation.

For a variety of reasons the program has not been effective, and I do not believe that it should be continued in its present form. The analysis performed has had little effect on decisionmaking in ERDA and the other energy agencies. Price increases in energy products have been evaluated by several additional criteria relating, for example, to conservation, environmental quality, and expansion of supply. These generally were judged more significant than inflationary effects due to energy price increases.

At the same time, this variety of policy objectives could, in principle, be considered in a systematic analysis where inflationary impacts are given proper weights and are duly evaluated with the others. This requires at least two major guidelines: first a proper definition of policy priorities, and second, a prescribed system of analysis for relatively uniform assessment of effects. The separate agencies are not equipped to develop these guidelines, and furthermore they should be centrally directed by OMB and the Council.

More specifically, in assessing inflationary impacts, there needs to be a systematic analytical methodology to measure price increases and inflationary forces in a limited specific area and to study their broader influences via general price and economic indicators. The econometric models and other analytical tools necessary to conduct such studies ought to be available through the Council of Economic Advisors, the CWPS or OMB. Without this type of systematic study, the IIS program cannot provide decisionmakers the analysis necessary to give proper weight to price and inflationary impacts.



Mr. James C. Miller III

- 2 -

If the program is to be continued, the proposing agencies should be required to study and specify the primary cost and market impacts. The secondary cost and price effects and the importance of these in terms of broader price and inflation policies should be evaluated by the agencies more directly responsible for economic and monetary policy. In the absence of this type of evaluation, decisionmakers in the mission agencies have inadequate knowledge of the eventual impacts or information necessary to factor them into the decision process.

cc:

Mr. Stanley E. Morris
Office of Management and
Budget



FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

SEP 28 1970

MEMORANDUM FOR JAMES C. MILLER, III
ASSISTANT DIRECTOR
GOVERNMENT OPERATIONS AND RESEARCH
COUNCIL ON WAGE AND PRICE STABILITY

STANLEY E. MORRIS
DEPUTY ASSOCIATE DIRECTOR
ECONOMICS & GOVERNMENT MANAGEMENT DIVISION
OFFICE OF MANAGEMENT AND BUDGET

FROM: ALVIN A. COOK, JR. *Alvin A. Cook Jr.*
DEPUTY ASSISTANT ADMINISTRATOR
FOR ECONOMIC IMPACT ANALYSIS

SUBJECT: INFLATION IMPACT STATEMENT EVALUATIONS

In August you forwarded to me a memorandum requesting comments on the Inflationary Impact Statement Program, specifically comments in response to questions listed in the Federal Register notice of August 3. Since then I have discussed the program with Jim Miller and have provided him with my impressions with respect to the IIS Program. However, I thought it would be appropriate for me to recapitulate my thinking and to provide these thoughts in writing.

In general, as you know, I feel that the basic premise underlying the Inflationary Impact Evaluation Program is important and worthwhile. The idea of encouraging government agencies to analyze the impact of proposed programs, whether legislative or regulatory, and to have this analysis as an integral part of the decision process is an important one. The economic impact analysis of regulations and proposed legislation within the Federal Energy Administration has improved over the past year. Initially, the program imposed severe resource constraints on FEA; however, the Office of Economic Impact Analysis has been able to increase its resources devoted to the analysis of proposed programs. To a large extent this has been possible because Congress has



legislated economic impact analyses, and hence inflationary impact analyses, of the particular programs that it has implemented over the last year. These programs invariably require the promulgation of new regulations or the altering of old regulations. Because of this evolution, it is very hard to determine whether the IIS Program or the Congressional mandate has been responsible for the greater involvement of economic analysis in FEA's decision making process. In general, however, I feel that in the face of the Congressional mandates, the IIS Program with respect to FEA is not needed.

Specific Comments:

1. Quality of Analysis. There has been an improvement over time in the quality of the analyses mainly because of greater allocation of professional resources and greater awareness on the part of FEA of the importance of providing such analyses.
2. Are all important legislative and regulatory proposals being analyzed? By and large, yes. If anything, the criteria for major proposals are set at too low a level.
3. Should IIS analyses be made available for public inspection? Certainly.
4. What impact, if any, has the IIS program had on the process of drafting legislation and of developing and implementing new regulations? None on the process of drafting legislation (whether by the Administration or Congress), and marginal on developing and implementing new regulations, since these are usually mandated by statutes. The main impact has been on amendments to regulations.
5. Impact on quality of agency legislative proposals and regulatory decision-making. Marginal. The FEA is very conscious of price impacts of regulation development for reasons other than Executive Order 11821.
6. Direct Costs of the IIS. At present, it is requiring from 6-7 professionals in the Office of Economic Impact Analysis. The trend indicates need for more.

7. Alternatives to the IIS Program. The price and cost impacts of proposals can easily be made an integral part of program justification. There is no need to have separate IIS analyses. The need for economic analysis in program justification is more or less met by the current requirement to provide environmental impact statements. Elimination of a separate IIS would streamline and reduce cost of program analysis and evaluation.
8. The IIS Program should be terminated.,

General Comments:

1. "Inflationary Impact" should be changed to "Price and Cost Impact." The current terminology is a misnomer.
2. Legislative proposals coming out of Congress should also be analyzed for price and cost impact. Indeed, this is more important than analyzing regulations mandated by statute.

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

SEP 24 1976

Mr. James C. Miller, III
Assistant Director
Government Operations and Research
Council on Wage and Price Stability
726 Jackson Place, N.W.
Washington, D.C. 20506

Dear Jim:

Thank you for your communication of August 30, 1976, concerning Mr. Zarb's reported remarks about the Inflationary Impact Evaluation Program. The following are some reflections on the program which I offer in the hope that we may continue our dialogue:


1. As you know, FEA administers a complex body of regulations necessitating frequent changes in them. Almost every one of these undergoes an Inflationary Impact Evaluation. In the first six months of calendar year 1976, there were about 40 such evaluations. Although most of these were non-major, almost all had to be analyzed, since the determination of whether a particular change in the regulations is or is not major requires practically the same basic analysis. Consequently, this work has absorbed the efforts of about five professionals in this office. The burden of these analyses can, of course, be judged only in relation to the overall resource availability of the Office of Economic Impact Analysis, and to the net benefits derived from this allocation of professional resources.
2. We have been aware that piecemeal evaluation of regulation changes may possibly mask the impact of the totality of changes over a period of time. I do not know how this problem can be solved, but it is in my judgment one that needs to be addressed by you, as well as by the individual governmental agencies.

3. I am certainly in agreement with you that a wider interpretation of the Inflationary Impact Evaluation Program is appropriate, namely, that a benefit-cost analysis of a particular action or change in the regulations is called for rather than an analysis of price impact. Parenthetically, "inflationary" impact is perhaps a misnomer, since it is relative prices (and costs) that are relevant, rather than absolute price changes, which are essentially monetary phenomena. If this view is correct, then it follows that an Inflationary Impact Evaluation analysis merges into Program Evaluation and Environmental Impact Analyses which are more elaborate and more deliberate. So long as this is not realized, the tendency to regard Inflationary Impact Evaluations as superfluous and duplicative work will persist.

4. I am sure you realize that the history of Executive Order 11821 does contribute to an over-emphasis on price impact in the short-run and less emphasis on long-run impacts on output and efficiency--both of which are very hard to measure. This, coupled with the widespread notion that the purpose of the Mandatory Price and Allocation Regulations is to keep price from rising, gives rise to a bias against changes that produce price increases in the short-run.

5. I also agree that aggregative simulation models are generally not appropriate from predicting price effects of deregulation. A principal impetus for this type of approach, however, is inherent in some of the recent legislation which places emphasis on employment, GNP, price level and distribution effects. I would welcome any opportunity to discuss with you how we may cope with these legislative demands.

Sincerely yours,



Alvin A. Cook, Jr.
Deputy Assistant Administrator
for Economic Impact Analysis



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 31 1976

OFFICE OF
PLANNING AND MANAGEMENT

Mr. James C. Miller, III
Assistant Director
Government Operations and Research
Council on Wage and Price Stability
Washington, D.C. 20506

Dear Mr. Miller: *Jim*

This letter is in response to your request for comments on the Inflation Impact Statement (IIS) program, as part of the current review of the program. These comments reflect Paul Brands' and Roy Gamse's feelings about the program as well as my own.

By and large we think the IIS program as it has affected EPA has been reasonable and successful. I think we were better prepared for it as a result of the economic analysis we were already doing as required by our legislation or on our own initiative. I understand though that some other agencies are not as far along as EPA in doing economic analysis. I think therefore that a temporary extension of the program until all agencies are doing adequate economic analysis is reasonable; but once that point is reached, the utility of the IIS program will decline. Then I think that the IIS program as a formal mechanism will be superfluous and it should be ended, with adequate public participation and interagency review of routinely performed economic analysis serving to protect the public interest.

One issue which the Office of Management and Budget and the Council on Wage and Price Stability have never adequately addressed is the resource requirements of the IIS program. To do extensive economic analysis sufficient for decision-making takes significant amounts of manpower and contract resources. To be fully responsive to the IIS requirements takes even more. This requirement being placed on the agencies with no increase in resources has squeezed us when we are already being squeezed by the expanding program requirements of our legislation and relatively fixed resource limits. It is no wonder that various agencies and programs have been slow to fulfill the IIS requirements. If it is worth spending the resources to perform economic

analyses and document them in the form of IIS's, then those resources should be consciously allocated to do so. If the program is not deemed to be worth the resources, then it should be terminated.

Finally, as we have discussed before, there are definite limitations in the state-of-the-art of benefits estimation in the environmental areas, as I suspect there are in other areas. While you and your staff seem to have more appreciation for these limitations recently, I still believe your expectations are too high concerning what benefits information can be derived with available time and resources. I hope that any future IIS program will recognize these practical limitations to this type of analysis rather than striving for a theoretical but unrealizable ideal of what can be accomplished.

Sincerely,

A handwritten signature in dark ink, appearing to be 'Alm' with a stylized flourish.

Alvin L. Alm
Assistant Administrator
for Planning and Management



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20201

SEP 8 1978

1978 SEP 10 PM 3:50

William Lilley, III
Acting Director
Council on Wage and Price Stability
726 Jackson Place, N.W.
Washington D.C. 20506

Dear Mr. Lilley:

This is in response to your request for comments on the effectiveness of the Inflation Impact program. While I have not attempted to canvass the various HEW agencies to develop an official HEW position, this appraisal reflects my vantage point as the official chiefly responsible for Inflation Impact compliance within the Department. My conclusions are, I believe, virtually identical to those reached by FDA, which has responded separately to your request.

First, I would like to say that the program has not had a significant impact on this Department. It was originally our expectation that very few HEW regulations and legislative proposals would in fact be "major" within the meaning of the Executive Order and OMB Circular. This has been confirmed by experience. Only five Inflation Impact Statements have been prepared by the Department, all on regulations. This outcome reflects the fact that HEW is primarily a spending rather than regulating department. It was not, however, automatic. It was only by establishing clear, reasonable, and workable criteria for screening -- distinguishing "major" from all other actions -- that this result was achieved. Enclosure A illustrates some of the issues involved, and demonstrates how important it was to preserve some agency flexibility. The Inflation Impact process could have become highly burdensome and litigious. That it did not was due in large part to hard work and good will among OMB, CWPS and HEW staff involved in setting up the details of the program.

As to the specific questions raised by your notice, I would respond as follows:

1. It is our belief that the HEW Inflation Impact Statements have been of reasonable quality. No adverse comments have been received from CWPS as a result of its reviews of the first three of the five statements.
2. As far as we know all proposals with major impacts have been analyzed. In addition, in the case of FDA, a large number of analyses have been voluntarily prepared on proposals with less

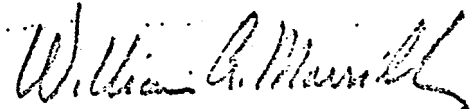
than "major" impacts. We believe that several of the present criteria for defining "major" are largely redundant to the basic cost criterion of \$100 million, and that the basic cost criterion is at the right level. We would strongly endorse keeping the number and details of criteria to a minimum, and preserving the \$100 million threshold. The requirement for preparing formal benefit-cost studies should be reserved for truly exceptional cases.

3. We believe that the analyses should be public as a matter of principle. All HEW analyses have been made available to the public. Our analyses have, however, received little direct attention from the public.
4. The program has had little impact on the drafting of legislation and regulations which have been proposed. Time delays have been minimal. However, several possible proposals have been dropped, or deferred pending analysis, because major cost impacts were identified or suspected. No complete documentation of this type of indirect effect is available.
5. In the cases in which an IIS was prepared, it has had little influence on policy because either (a) the Department had little or no discretion or (b) the proposal was cost-beneficial. It should be remembered that in HEW, unlike many other agencies, the degree of executive discretion is often quite limited by statute.
6. The additional costs of the program to HEW have been minimal, probably in the tens of thousands, rather than hundreds of thousands of dollars. This was partly fortuitous, since the FDA, the agency most severely impacted, had already decided to install an economic analysis staff.
7. There are many alternatives to the IIS Program available. A number of these are discussed in enclosure B. Most of these alternatives are considerably less attractive than the present program. With respect to a legislative mandate, the enclosure demonstrates that its details would be all important. Careless drafting and/or seemingly innocuous requirements could impose a disastrous and ineffectual paper-work burden. For example, without restrictions to (a) major and (b) off-budget costs the program would result in thousands of benefit-cost studies for HEW alone.

8. Experience to date suggests that with respect to HEW programs, the program could be either terminated or extended in its present form without serious repercussions. Direct costs and benefits are both low. It is, of course, possible that in some future HEW case the program would make a substantial contribution to better policy. Government-wide the equation may look very different and we would defer to others' judgments. Certainly the program establishes an important principle, and it appears that in a few cases it may well have prevented imposition of unwarranted cost burdens on the public. Extension of the program to independent regulatory agencies would, we assume, be both desirable and require legislation. However, unless the legislation met the criteria of enclosure B, we would probably oppose it. I would also add that the title of the program has always been misleading, since it implies a focus on macroeconomic effects rather than on microeconomic effects. If the program is continued it might be better termed "consumer cost assessment" or some equivalent.

Thank you for the opportunity to comment.

Sincerely,



William A. Morrill
Assistant Secretary for
Planning and Evaluation

cc: Stan Morris, OMB

Enclosures:

- A. Extract from correspondence on HEW Inflation Impact Criteria
- B. Approaches to the Efficient Requirement of Benefit-Cost Analysis

Enclosure A

DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20540

July 2, 1975

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

Enclosed is a copy of the Department's revised inflation impact procedures and criteria. Your memorandum of June 3 and the OMB staff comments it transmitted were most helpful, and we have made most of the changes suggested. In several cases our criteria differ slightly from those suggested by OMB, and these differences are justified in the enclosed staff summary.

Sincerely,

/s/

Secretary

Enclosures

cc: Albert Rees,
Chairman, Council on Wage
and Price Stability.



June 23, 1975

Justification for DHEW Deviations from OMB Suggestions for
Inflation Impact Criteria

1. Time Cut-off

OMB is silent on the question of how far in the future impacts could occur and still be considered inflationary. HEW suggests 5 years, on the grounds that any major impact not appearing within such a period would necessarily be speculative. This does not mean, of course, that analysis would cut off at five years for actions with a major impact within that period but extending beyond it.

Probably the only practical consequence of the change is to alert HEW staff, and provide HEW a defense, against allegations of purely speculative impacts.

2. Size of Market Under Competition Criterion

HEW's earlier draft used \$100 million as the market size below which anti-competitive impact would not be considered. OMB has accepted this limit. On second thought HEW believes that \$1 billion would be more consistent with the other criteria. This is because creation of even a seriously monopolistic industry would be unlikely to cost the consumer more than (say) 10% in excess burden. Ten percent of \$1 billion would be \$100 million, just the size of the other criteria.

We believe that the change has little practical consequence, not only because there are likely to be no HEW actions meeting this criterion, but also because even \$1 billion is actually quite a small annual "market".

3. Disaggregation and Reduction of the Cost Threshold

OMB endorses HEW's \$100 million annual cost threshold, but then recommends that we set a criterion of \$75 million in two years in any "sector". This

is tantamount to making the threshold in annual costs \$37.5 million for most HEW actions. HEW proposes to retain a simple \$100 million criterion, effectively reduced, if OMB wishes, to \$90 million by a supplementary provision of \$10 million over two years.

We believe that our approach is preferable:

- (a) Because in practice most actions will impact primarily on a single sector, the OMB suggestion lowers the de facto threshold to only one-third of what we apparently both regard as major, thereby multiplying the number of cases and requiring the devotion of excessive time to small impacts under a process which ought really to focus on multi-hundred million dollar items.
- (b) \$37.5 million is so small that an informed judgment of, say, "\$30 million plus or minus \$ 10 million" would have to be followed by a study proving that we were below the cut off. Since precision in such estimates is extremely difficult, this would consume substantial staff resources in analyzing actions which would not cross even the lower threshold.
- (c) If we must identify precise sectors impacted just to determine if our criteria are met this will substantially complicate analysis. Sectoral estimates and data are often much more difficult to obtain and manipulate than are national data, requiring, for example, use of input-output techniques to identify sectors affected. This is particularly true in the human service areas with which HEW deals — e.g. most higher education statistics do not differentiate

between private and public institutions in the detail which might be necessary for inflationary impact analysis targeted to "levels of government". Thus, a requirement for disaggregation would complicate the analysis considerably in many cases, over and above the increased coverage of the lower threshold and the increase in precision needed solely because of the lower threshold.

- (d) The OMB suggestion would not only require a manifold expansion of staff analysis devoted to marginal impacts, it would also probably destroy the basic lynch-pin of the HEW managerial approach -- the use of informed staff judgment by the hundreds of non-economists, scattered through dozens of agencies and bureaus who are responsible for drafting regulations and legislation. Just to use the language of "economic sector" and "4 digit SIC Code" would make the criteria unintelligible to the very people we routinely rely on for staff analysis. Moreover, HEW really has no alternative within existing staff resources for the simple reason that precisely because we rarely have substantial industry cost impacts, we have developed few staff competent in such analysis throughout the Department. Even counting such a "high impact" agency as FDA, the Department as a whole probably has many times the number of actions, many fewer major inflationary impacts, and fewer still economic analysts, than, for instance, Interior or EPA.
- We have had a similar problem under NEPA, and have handled it primarily, but not very satisfactorily, by pre-screening all possible actions, for each of our 300 programs, and exempting whole programs and agencies from future screening or analysis of individual actions.

This alternative would, we assume, be as unsatisfactory to OMB as to us for inflation impact. In sum, the seemingly innocuous cost criterion suggestions of OMB would create the gravest problems for this Department's ability to comply with the inflation impact procedure, with no corresponding benefit.

4. Employment Threshold

For reasons essentially identical to the above, we have not disaggregated the employment threshold. We have, however, lowered the national threshold to .1%, one-half of the OMB suggestion. Unlike the cost case, such a substantial reduction has no adverse practical consequence for the Department.

5. "Important" Supplies

OMB suggested that HEW deal with supply shortages by Secretarial designation of which services and materials are of the highest "importance", and gives insulin as an example. Instead, we propose in effect to assume that all HEW type services and supplies are important, but to exempt supply changes for which disruption would not occur. Our approach is superior for HEW because:

(a) It would be virtually impossible politically and analytically to argue that any of tens of thousands of health, welfare and education-related drugs, services, professions, etc. are not important.

(b) The OMB approach would implicitly require substantial staff work and Secretarial decisions, as a separate and time-consuming exercise, on the details of a criterion.

- (c) Assuming that HEW considered virtually anything important, the 3% supply change threshold would be violated routinely in probably hundreds of cases without the HEW disruption threshold. Indeed, failure to renew individual grants for e.g., training orthopedic-specialized gym teachers would arguably come under such a criterion.
- (d) The "disruption" provision does in fact focus on the basic intent, and while not as unambiguous as a list is easy for staff to grasp qualitatively and less ambiguous than some euphemism such as "all drugs necessary for human health".

6. Burden Shifts

OMB questions the HEW exclusion of "burden-shifting" as opposed to "inflation-causing" cost changes. While this issue is to some extent moot because the exclusion of budgetary actions and service level changes would in practice eliminate virtually all such proposals, and while we are somewhat unsure as to the extent of the disagreement, we suspect that an important principle is involved.

HEW is basically in the business of redistributing the burdens of poverty, taxes earned income, health, inflation, etc. To cover such actions as major changes in Medicare financing not affecting hospital costs significantly, but affecting the benefits of millions of persons, could be tantamount to changing the purpose and coverage of the Executive Order from inflation to "social welfare". HEW would perforce be in the business of writing "social impact" rather than inflation impact statements, but for the budget loophole.

This would be a course fraught with danger, muddying the relatively clear concept of increases in total cost to the nation as a whole. In this connection, we note that many Administration proposals, including the ill-fated Food Stamp regulations, the specific mix by income class of tax cuts proposed, and the proposed limit on Civil Service salary increases were burden-shifting hundreds of millions or billions of dollars, but were never perceived as requiring Inflation Impact Statements.

OMB's staff comments say that regulation typically involves shifting a cost from the government to consumers. Regulation much more typically involves creation of a cost where none existed before (brake safety standards, banning of DES, prohibitions on airline price competition, etc.). Moreover, the government, or different levels of government, get their funds from the same consumers. When HEW proposes to abolish a grant-in-aid program, the direct impact on state and budgets is of great political moment, but of virtually no economic moment to consumers since total taxes are likely to be about the same.

The essential difference between increasing total costs to consumers versus reducing costs to some while increasing costs to others seems to us to be an important one to preserve. Indeed, to provide one specific example, the Administration proposed last year to reduce "first day" hospital coverage under Medicare, a benefit reduction which if enacted would have tended to reduce slightly unnecessary hospitalization. This proposal (which would

have been exempt because it was both a service reduction and a budget proposal) would have saved the government several hundred millions and

cost aged hospital users a slightly lesser amount, for a net saving of costs. It is this type of proposal which we believe should not be covered by the criteria. This would be especially important if the exemption for actions shown in the budget does not stand up--and it is an exemption not directly stated in either the Executive Order or the Circular.

We appreciate that the alternative concept -- "cost to any group in excess of ..." may be more palatable politically.

This issue may be overdrawn in the discussion above, and we have in any event reworded the section in dispute to attempt to defuse the problem.

Office of the Assistant Secretary for Planning and Evaluation
Department of Health, Education, and Welfare
July, 1976

APPROACHES TO THE EFFICIENT REQUIREMENT OF BENEFIT-COST ANALYSIS--
A Staff Analysis of H.R. 14591, The "Regulatory Cost
Impact Act of 1976"

Introduction

A large number of bills are now pending in the Congress which would in one fashion or another require the preparation of assessments of the benefits and costs of proposed government actions. These include S. 1169, H.R. 10568, H.R. 10587, S. 2028, S. 1394, portions of S. 200, and H.R. 10921. (H.R. 14591 appears to be a revised version of H.R. 10921, the "Consumer Cost Evaluation Act of 1975"). At the same time, the Inflation Impact evaluation procedure already put in place by Executive Order 11821 also requires such assessments.

This staff analysis discusses several criteria for a successful approach to such assessments, largely by reference to E.O. 11821. It compares H.R. 14591 to these criteria, and finds that it has many strengths but several significant defects. This analysis reaches no conclusions as to the desirability of enacting permanent legislation, a question depending on several considerations not addressed herein. However, inasmuch as H.R. 14591 as currently drafted would not meet all of the suggested criteria, this analysis reaches the conclusion that it should not be favorably considered in its present form even if these additional considerations did not exist.

While this analysis focuses on H.R. 14591, it is intended to provide a broader framework against which other similar proposals could be analyzed. It would appear, for example, that H.R. 14591 is superior



to some other proposals in many respects, including its limitation of requirements for benefit-cost analyses to the minority of actions with "significant" costs.

Among the larger considerations which this paper does not address in detail is the relationship of a requirement for benefit-cost assessment of government actions to the review requirements of S. 2925, the so-called "Sunset" or "Zero-base budget" proposal, and of H.R. 13793, the Administration's "Agenda for Government Reform Act." These three proposals all would involve a focus on the costs and benefits of government law and regulation. Their essential differences are, however, significant. The "Sunset" approach would require retrospective review of each government program, but not review of each derivative regulation or of prospective changes. The "Agenda for Government Reform Act" would also involve retrospective review of entire programs, but would focus primarily on the cumulative effects of regulatory programs. A requirement for benefit-cost assessments of major proposed actions on an individual basis such as that involved in this bill and in the existing Inflation Impact process, would be much more limited in scope and more highly targeted. However, H.R. 14591 includes an additional provision for review, at citizen request, of existing regulations. This provision would overlap substantially with H.R. 13793 and S. 2925. It would appear that enactment of all three approaches would be duplicative and unworkably burdensome, and that careful coordination in their consideration by the Congress is necessary.

Background

Numerous commentators have observed, and often documented, the sometimes substantial and often unforeseen adverse cost burdens of Federal regulation.



These burdens are borne by the public, and do not appear in any systematic accounting structure such as the Federal budget. They are usually completely unmeasured. While existing processes of government such as the legislative and formal rule-making processes are intended, in part, to ensure full consideration of potential cost impacts, this does not always happen. Moreover, it rarely happens systematically.

In 1974 the President issued Executive Order 11821, requiring in effect that all legislative and rule-making proposals of the executive branch be screened, and that those few with a major "inflation impact" be formally evaluated. The implementing OMB Circular No. A-107 makes clear that what is required is a benefit-cost analysis, including consideration of alternatives, for all proposals with a major adverse cost impact on the public. These evaluations are made available to the public for review.

In addition, the Council on Wage and Price Stability (CWPS) reviews agency rule-makings and inflation impact statements to ensure compliance. In a number of cases CWPS has detected errors in analysis and has recommended further consideration of alternatives.

While this paper does not attempt to evaluate the overall merit of the current process, two features of the Inflation Impact process as it now exists stand out as especially important. First, the process requires formal, in-depth assessment only for the small minority of actions which have "major" cost impacts. Second, the process involves an institutionalized and professional review point, thus providing a form of quality control to assure compliance with the spirit of the process. These features, taken



together, keep the current process relatively lean and effective. Because any process of this kind is potentially paper-laden, time-consuming, and cosmetic, this is a major advantage.

It should be understood, however, that any process of this sort is subject to certain inherent limitations on effectiveness. There are virtually always unquantifiable "public interest" and "political" arguments both pro and con on any action. Such arguments can and will dominate most decisions. Moreover, most regulations are substantially dictated by law, and an analysis of the regulation will not necessarily or even likely result in reopening the legislation--particularly at the early stages of program implementation when the most significant regulations are usually drafted. Finally, benefit-cost analysis is in practice a very flimsy tool for dealing with many questions, particularly broad policy questions, and may mislead almost as often as it informs.

This last point is crucial. Benefit-cost analysis is subject to many pitfalls in application. There are many actions whose consequences either cannot be well-predicted or cannot be easily valued in dollar terms. Past and possible future examples might include national health insurance, campaign reform, creation of new regulatory agencies and powers, tax reform, and NEPA. Second, benefit-cost analysis of future actions is relatively easy to slant either in favor or against, depending on the precise assumptions made. Until a program is in operation, and assumptions can be proved or disproved in practice, a benefit-cost analysis



is often highly speculative and rarely authoritative. (Even after the fact this problem often remains.) Third, the selection of alternatives against which an action is to be compared will usually determine whether or not it is cost-beneficial. And there are usually a myriad of alternatives whose selection for comparison is an art rather than a science. The alternative selected for comparison will often dictate the results. Fourth, there are many technical issues which often affect conclusions significantly but which are in dispute in benefit-cost analysis, including the "correct" social discount rate, value to place on a human life, and weight to give to income redistribution effects.

Taken as a whole, these problems have major implications for the efficiency of any universal or quasi-universal imposition of a requirement for benefit-cost analysis. Even if highly qualified staff are available, many analyses will be error-ridden or controversial. Few will make a conclusive difference in the appraisal of proposals. Unless a mechanism is provided for review and feedback on the quality of studies, incentives for improving performance over time will be weak at best. Finally, the sheer volume of work, and general absence of mechanical rules for producing high quality analysis, could result in a large volume of weak studies requiring a great deal of staff time and effort and of little utility in improving decision-making.

Criteria

It is difficult to argue against a process intended to improve government's cost-effectiveness, particularly when all agree in principle that major room for improvement exists. However, any process can be ineffective



or excessively costly in reaching its nominal goals. Processes depending on the production of paper are particularly vulnerable to such problems. Many commentators, for example, believe that the PPBS system fell of its own weight by attempting to require the unmeasurable and the impossible. Therefore, the criteria which follow are suggested as necessary if any process to routinely require assessment of benefits and costs of actions is not to fall prey to the very evil it seeks to prevent.

1. Agency Coverage

A benefit-cost analysis requirement can cover all, most, or some agencies and programs. The Inflation Impact process, for example, covers only executive branch agencies and not the Congress or the independent regulatory agencies. The Regulatory Cost Impact Act would cover the entire Federal government (except for the judiciary) subject to exclusions for military or foreign affairs functions.

Agency coverage is not, per se, a crucial criterion. A program need not cover all agencies to be effective with respect to those it covers. Indeed, we would observe that H.R. 14591's coverage of the legislative branch may present severe implementation and timing problems for the Congress, whose committee staffs do not now include substantial expertise in benefit-cost analysis. In any event, H.R. 14591's coverage is reasonable, and its coverage of the independent regulatory agencies would fill a major gap—one of particular importance because of the quasi-legislative role and often significant cost impact of these agencies.



2. Types of Actions Covered

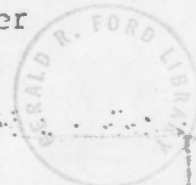
Some proposals for assessment procedures would require screening or assessments of all Federal actions. Because there are tens of thousands or millions (depending on how far one breaks them down) of actions each year, most of them of trivial economic effect, such proposals would drown the government in a sea of useless benefit-cost studies. H.R. 14591, like the Inflation Impact process, would solve this problem by requiring assessment of only the small minority of actions with a "major" or "significant" cost. In addition, both approaches eliminate from coverage, and hence time-consuming screening, actions other than legislation or rule-making (e.g., exclude individual grant awards). Such excluded actions would rarely, if ever, involve a significant cost impact, other than the impact inherent in all spending. Any proposal without these limitations would be impossibly burdensome and inefficient, would require the employment of thousands of economists and other analysts, and would produce countless studies of no practical utility.

However, H.R. 14591 contains several significant coverage problems.

First, the provision that any citizen can require an agency to perform a benefit-cost analysis of any existing regulation likely would create a staggering work load. This Department alone has some 370 programs and thousands of regulatory provisions involving some 12 1/2 volumes of

the Code of Federal Regulations. Moreover, the provision as written has a lower threshold than that for new proposals, since it requires a

full-benefit cost study in all cases in which there is a "substantial disparity between the costs" to any "segment" of the public and the benefits it receives. As drafted, the language would appear to cover



any case in which one party is inconvenienced for the benefit of another (e.g., all criminal statutes involve harm to felons and benefits to a different segment of the public--law abiding citizens). This condition may arguably occur in most regulations. While we are sympathetic to the need for review of already existing cost burdens (the Inflation Impact process does not include such a procedure), and while the bill does provide for a less than exhaustive initial review of such requests, the work load from this provision alone could be many times larger than for the rest of the bill. The staffing does not exist to permit the zero-base review of all existing government regulations which affected interests would no doubt request. This problem could be alleviated by tightening the criterion (perhaps by providing for a higher threshold than for new proposals) and by limiting the number or proportion of such reviews required of each agency to a small number in any one year.

Second, perhaps inadvertently, H.R. 14591 does not exclude budgetary proposals from coverage. Because appropriations are technically laws, the bill as drafted would require both OMB and the Congress to write benefit-cost studies each year on each "significantly" costly appropriation. This would not only be totally unworkable, but also unnecessary and duplicative of the budgetary process. The budgetary process already exposes the budget costs of government, and the underlying need is

for a focus on the hidden, off-budget costs. This problem is handled under the Inflation Impact process simply by excluding from coverage actions whose principal cost impacts are shown by appropriation requests.



A third problem arises because the bill does not define (or give the President authority to define) "significant impact on costs", and thereby make its threshold and coverage operational and clear. A similar (though probably unavoidable) lack of clarity has engendered endless difficulty in preparing environmental impact statements. For example, there have been literally hundreds of lawsuits revolving around what is "major", what is "environmental", and what is an "action" under the National Environmental Policy Act. We believe that a definition such as "would cause an increase in total cost or price of goods or services to the nation of \$100 million or more in any year within five years of enactment or promulgation" would be reasonable. This is the basic type of criterion and level of impact used in the current Inflation Impact procedure. (The current procedure also involves other criteria such as impacts on energy usage or on specific industries or localities which would be inappropriate given the basic purpose of this bill.) In addition, the definition would need to parallel the Inflation Impact procedure further by excluding purely macro-economic effects of spending per se from triggering the benefit-cost study requirement. Such effects are best analyzed through analysis of the total effects of all spending and taxing, and are far beyond the purview of each Federal Agency acting alone. Moreover, such analyses would be highly duplicative. Without clarifications such as these, any process of this kind would involve endless confusion, dispute, and litigation over its intent.



3. Integration with the Normal Decision Processes of Government

Several proposals would involve creation of separate review processes or agencies. One, for example, would have the Congressional Budget Office handle the entire process. Like the Inflation Impact process, this bill largely avoids the difficulties of such proposals. It places responsibility for analysis with the originating and presumptively expert agency and integrates its procedural requirements with the normal rule-making process and the legislative process.

One aspect of the bill's procedural requirements would be both troublesome and unnecessary. The bill requires that both proposed regulations and proposed legislation go through a public comment process on the required benefit-cost study. For regulations, public comment on a draft benefit-cost study prior to final promulgation is easily handled pursuant to the normal rule-making process. However, for legislation proposed by the executive branch such a public comment procedure would add a step not now in existence. More importantly, this step is unnecessary because public comments can and would be obtained during the conduct of Congressional hearings. Any major corrections or clarifications shown necessary by public comment could then be addressed by the benefit-cost study to be prepared by the Congress.

4. Content of Analysis

Several extant proposals require preparation only of "cost" statements. Like the Inflation Impact process, this bill would require an analysis of benefits and of alternatives as well as of costs, and hence would lead to complete analyses from which reasoned and responsible decisions could be made.



5. Administrative Discretion

Any universal process of this sort will necessarily encounter many problems and situations in which deviations from normal procedures or clarifications are necessary. The bill recognizes this problem by its provision for emergency procedures in cases in which the public health or safety or national security is endangered. However, other types of unforeseen problems may arise. Therefore, any process of this type--and it is, after all, a paper requirement with no direct impact on fundamental rights of citizens--should provide a more general form of administrative discretion.

For example, the President or his designee should have specific authority to modify coverage and procedures in the interests of the government's expeditious conduct of its business, and based on experience in administration of the program. In addition, emergency procedures would need to extend not only to public health or safety and national security, but also to cases in which delay would itself impose a "significant" cost.

In this same context, the judicial review procedures of the bill appear rather too broadly drawn (and unnecessary in any event given existing judicial power to review rule-making.) The judiciary is not well equipped to judge the technical adequacy of benefit-cost studies, and it can be predicted that the bill would produce substantial litigation and possibly some unintended judicial interpretations. The review procedures

discussed below would appear to be a far better approach to assuring technical integrity in the process, and administrative discretion would be essential to dealing with any counter-productive legal quagmires which might develop.

6. Assuring High Quality Analysis

Because benefit-cost analysis is subject to many errors and pitfalls at best, and most especially when it is prospective (and hence speculative) rather than retrospective, any program of this sort should include procedures for general evaluation and for case-by-case review.

The bill does not provide for any general feedback mechanism on the workings of the procedure, nor a requirement for critique of completed analyses. It does require routine consultation at the drafting stage with the Office of Management and Budget, but OMB itself is not expert in benefit-cost analysis. Nor is review of proposed regulations within OMB's traditional role or present staffing capabilities. Nor will public comment on draft benefit-cost studies fully assure their excellence, since most persons and organizations commenting on any given rule-making are not and will not be expert at discerning technical problems in benefit-cost analysis.

A program of this type should include provision for technical review and feedback on quality of assessments, research on whether benefits and costs occur as originally predicted, technical assistance, and perhaps annual report. Such authority would best be vested in the President for his delegation. For example, under present circumstances CBO and OMB might each perform some of these functions—but that decision and additional alternatives should be left to careful consideration after enactment.

Summary and Conclusions

Viewed against the criteria and considerations set forth above, H.R. 14591 has many strong points, particularly its coverage of independent regulatory agencies, its use of a screening approach to focus attention on the most costly actions, and its integration of a new process with existing review processes. It would be fair to conclude, however, that it would have significant disadvantages as currently drafted when compared to the Inflation Impact process. For example, the provisions for review of existing regulations would create an unsupportable work load. A larger question arises because even if the bill's problems were rectified, it would have to be judged against a context in which several other major proposals with similar objectives though quite distinct means are being considered by the Congress. The analytic resources for producing or digesting all the information required by all of the proposals under consideration simply do not exist. H.R. 14591 is a strong candidate for consideration in this context.



MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
PUBLIC HEALTH SERVICE
FOOD AND DRUG ADMINISTRATION

TO : James C. Miller, III, Assistant Director
Government Operations and Research
Council on Wage and Price Stability

Stanley E. Morris, Deputy Associate Director
Economics and Government Management Division
Office of Management and Budget

FROM : Gerald L. Barkdoll
Assistant Commissioner for Planning and Evaluation
Food and Drug Administration

SUBJECT: Inflation Impact Statement Evaluation

DATE: August 25, 1976

I appreciate the opportunity to respond on the subject of the evaluation of the Inflation Impact Statement (IIS) program. Prior to the issuance of Executive Order 11821, the Food and Drug Administration (FDA) had formed a small unit in the Commissioner's office to conduct economic analyses. Our particular concern then, and now, was to assess the probable impact of Agency policy decisions and major regulatory actions and to provide a valuable new perspective to decision making, of course always keeping in mind that FDA's mission is consumer protection.

The requirement for inflation impact assessments under Executive Order 11821 came at an opportune time, enabling us to proceed with implementing our plans perhaps on a slightly faster time scale. We did implement a formal procedure for inflation impact review of proposed regulations and proposed legislation. This procedure was developed by our office with input from throughout the Agency and then we carefully worked out its implementation with all units of the Agency that would be involved. We had the full support and encouragement of the Commissioner and the Policy Board.

Our process of inflation impact review has been successfully implemented. I believe this success stems from several factors including: (1) support from Agency management; (2) wide participation in development of the process; (3) formally constituting the process with all aspects of the process worked out, documented, and distributed; (4) ensuring that all affected regulations and legislation were assessed for inflation impact; (5) making a positive statement of the results of our review in each proposed regulation prepared for Federal Register publication; (6) providing a summary of the review in each Federal Register statement; and (7) making all inflation impact assessments publicly available and easily obtainable. I believe the effort our group of economic specialists put into doing the first few assessments was also vitally important to the success of the new process. These early analyses provided clear and complete models for the operating units to follow thus dispelling most of the concerns they had over this new requirement.



James C. Miller, III
Stanley E. Morris

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I said that our process has been successfully implemented but it is harder to quantitatively or qualitatively demonstrate the benefits of the process. During one ten-month period (May 1975 - February 1976), the Agency prepared 62 inflation impact assessments. All were documented and made publicly available. Only two proposed regulations required IIS's as a result of their estimated major impact. In neither case was the decision to take the regulatory action changed by the IIS. In both cases safety considerations and our compliance with the law dictated the actions to be taken. The IIS only provided information on what the estimated economic impact would be.

The vast majority of FDA regulatory actions involve safety (one recent exception being Drained Weight Labeling) for the consumer based on the mandate of legislation. Thus, seldom will economic considerations dictate or even directly influence whether or not we will take action. In taking regulatory actions, however, we can utilize an economic impact review to address alternative means to achieve the same degree of protection for the consumer. The IIS program has enabled us to instill these considerations into the program decisions for regulatory action. For whatever that achieves, we and the consumer have benefited from the IIS process.

We did not have any particular problems internally (in FDA or HEW) in implementing our inflation impact review process. The burden for conducting these reviews is well spread and we have been able to absorb the increased workload. Our main problem with this process has been with people and groups outside of the FDA who do not understand what our mission requirements are and what role an inflation impact assessment plays.

You also asked whether we would recommend continuance of the IIS program and if so, what modifications were needed. Based strictly on the benefits derived and recognized by the Agency, I could not justify program continuance. It has enabled us to demonstrate, in a highly visible form, our concern for lowering the cost or burdens of regulations. This, in a time of real public concern for a lowering of government burdens on the people, is well worth some additional effort. I believe that economic analysis will continue in FDA with or without the program since (1) we had started similar analysis prior to the Executive Order, and (2) the rigors of the process have been established and have become a way of life. It may be wise to continue the program as a defensive measure since it could be replaced by a legislatively mandated program. These new requirements could well be more burdensome and costly without necessarily being more effective.

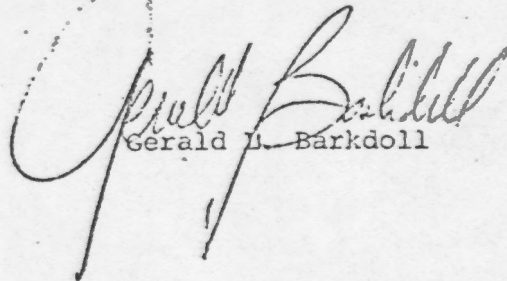


James C. Miller, III
Stanley E. Morris

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I have attached some specific responses to each of the eight questions asked in the August 3, Federal Register.

We look forward to discussing the IIS program and your evaluation at any time in the future.


Gerald L. Barkdoll

Enclosure

3

8. Question: Should the IIS program be: (1) terminated, (2) extended in its present form, or (3) modified (and if so, how)?

Response: We see no real need for continuance of the program, per se. It has been a valuable learning experience and many of the analytical activities precipitated or supported by the program will be continued independent of its continuation.



RESPONSE TO EIGHT SPECIFIC
QUESTIONS IN THE AUGUST 3, 1976
FEDERAL REGISTER

1. Question: (What about the) Quality of IIS analyses? (For example, do analyses compare costs with anticipated benefits, and are alternatives appropriately analyzed? Has the quality of the analyses improved over time?).

Response: FDA is pleased with and proud of the quality of the inflation impact analyses it has conducted. FDA does an Inflation Impact Assessment (IIA) on all affected regulations and legislation. If the impact is major, according to the OMB approved HEW criteria, then an IIS is prepared. In an IIA only costs are considered, benefits are not assessed. In an IIS costs and benefits are assessed and alternative strategies (but not end results) are analyzed. Benefits from regulations designed to enhance health and promote safety are difficult to assess. This is the main deterrent to cost/benefit analyses of FDA regulations. The quality of our inflation impact review process has improved over time as we have gained experience. It has been a valuable learning experience from that perspective.

2. Question: Are all important legislative and regulatory proposals being analyzed?

Response: All FDA proposed regulations and legislative proposals are analyzed. The Federal Register writers office will not accept a proposed regulation for publication without a written assessment of inflation impact, including a comprehensive summary and a statement of its public availability.

3. Question: Should IIS analyses be made publicly available for public inspection, to what degree have they been, and to what use have they been put by the general public, and what effect, if any, has their being made public (or not being made public) had on the quality of Agency decisions?

Response: All inflation impact analyses are made publicly available. We receive many comments on our proposals, many relating to economic impact. For example, our proposed Drained Weight Labelling regulations (mainly economic in their benefits) received 6,426 responses! Obviously, this kind of public attention reemphasizes to the Agency that the public is interested in our decisions.



4. Question: What impact, if any, has the IIS program had on the process of drafting legislation and of developing and implementing new regulations? (For example, has it generated significant delays?)

Response: In one case we withdrew portions of a legislative proposal because impact and alternatives had not been sufficiently considered. To my knowledge no proposed regulations have been changed as a direct result of the IIS program. In addition no regulation has been delayed because of the IIS program.

5. Question: What impact, if any, has the IIS program had on the quality of Agency legislative proposals and regulatory decision-making?

Response: See response to question number 4. With regard to quality of decision-making, it has had little impact. FDA decisions are carefully weighed in a well-defined regulatory atmosphere. It has promoted some additional thinking of alternative approaches in a few instances for program personnel, however, it has not changed ultimate Agency decisions in any identifiable way.

6. Question: What are the direct costs of the IIS program over and above those expenses government agencies would have incurred otherwise?

Response: All analyses have been conducted by in-house personnel. No new positions were authorized. Some responsibilities were realigned. The burden on the Agency is less than 5 man-years of effort.

7. Question: What alternatives to the IIS program exist for improving the quality of legislative proposals and regulatory decision-making, and how do they compare with the IIS program? (Alternatives might include, for example, a legislative mandate for agencies to review costs and benefits.)

Response: We have commented elsewhere on the various proposed legislative possibilities. The question in its broadest sense is well beyond the scope of this response. It can best be dealt with in the halls of Congress and in a continued effort by all government executives involved in regulatory activities.



MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY

TO : The Secretary

DATE:

Thru: US _____
ES _____

FROM : Assistant Secretary for Planning and Evaluation

SUBJECT: Subject: Departmental Response to Request for Comments on
H.R. 14591, the Regulatory Cost Impact Act of 1976

Attached for your signature is a technically unfavorable but unusually long and encouraging response to this draft bill. This memorandum is to provide you our reasoning on this matter.

First, this bill would in large part enact into law what is now somewhat misleadingly called the Inflation Impact procedure. You will recall that Inflation Impact analysis, as required by Executive Order, is a major aspect of our "Deregulation" arsenal, and has both substantive and political merit. It has not created major problems for the Department. Hence, we would not be inclined to oppose good legislation on this subject.

Second, legislation of this sort may create a disastrous and ineffectual paperwork burden and encourage litigation. Were it not for the fact that only with permanent legislation is it possible to cover the "independent" regulatory agencies, which are the main regulatory culprits on a government-wide basis, any legislation should probably be opposed on the grounds that the Inflation Impact process does the job.

Third, while this bill has several such burden problems, it is in most respects the best of a large number of bills already introduced on this subject, and our detailed response to this one may help prevent unconsidered endorsement or enactment of either this bill in its present form or a more paper- and litigation-laden alternative.

C concurs with this position. ORR would prefer an even more favorable response, but accepts our argument that OMB would not agree to a favorable bill report.

William A. Morrill

Attachment



Tom H

Regulatory Cost Impact Act of 1976: Following is a statement by Rep. Charles Thone (R-Neb.) regarding his legislation, H.R. 14591. This requires agencies to prepare cost/benefit analyses of regulations which might significantly affect public costs. CWPS has been asked for comments on the bill.

**REGULATORY COST IMPACT ACT
OF 1976**

HON. CHARLES THONE
OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES
Wednesday, July 21, 1976

Mr. THONE. Mr. Speaker, on June 28 I introduced, with FRANK HORTON, the "Regulatory Cost Impact Act of 1976." The public outcry over the size and cost of the Federal bureaucracy and the heavy handedness of its regulators is growing louder daily. Each new issue of the Federal Register provides additional reasons for this outrage.

During the last decade and a half, the public demanded quick, simple answers to a multitude of problems. Most of the problems, in retrospect, were too complex for these deceptively "simple" solutions. But our elected leaders, as they continued to attempt to respond to this thirst for answers, continued to jerry-build solutions. They were often overlapping, many times created duplication and were almost never discontinued. But always they were held out as the answer—neatly packaged solutions for the complex continuum of social and economic ills. And never were they analyzed from a cost-benefit perspective. At no time did we even attempt to determine their net public benefit.

The result was an exploded, engorged bureaucracy which has become an ever-present daily factor, and often irritant to the lives of every American. We cannot and shall not tolerate this lumbering, unresponsive, titling behemoth. Government must do its job, but in a way that helps people and the economy.

This plethora of laws passed by Congress, the rules implementing them, and the bureaucracy enforcing them, have had a tremendous effect on the cost of doing business and consumer prices. In a sense, this is a bill to regulate the regulators as it applies very stringent but sensible standards to Federal decision-making procedures. Federal officials would be forced to evaluate their proposals in much the same way the Fed-

eral Government requires State and local government, businesses, schools, and individuals to evaluate their intentions and performances in meeting Federal requirements.

This bill is not designed to attack the bureaucracy—rather to force it to improve by ever reminding it of the importance of keeping the public need first in government decisions. We believe if proposed regulations are not cost effective or do not reflect congressional intent, they should not be implemented.

Certainly, as a result of this, the impact of Government programs on the costs of goods and services in this country has become a source of ever-increasing concern to many of us. Regulatory reform has moved from nice to talk about to how do we implement. Deregulation, zero-based budgeting, sunset laws, and congressional review of executive branch rulemaking are concepts now receiving renewed attention and careful study.

This bill provides a framework so costs imposed on the public by Government laws and regulations can be compared with the benefits the public receives. For the first time in our history, it would be Government policy for Federal regulations or statutes, where a significant economic impact on public costs can be projected, to provide public benefits commensurate with those costs. Those which entail potentially excessive or unreasonable costs in relation to derived benefits would receive extreme, careful scrutiny before they are implemented.

In order to insure Federal statutes, regulations and policies do provide equivalent public benefits, proposed Federal agency regulations with projected significant economic impacts would be accompanied by a regulatory cost-benefit assessment analyzing public costs and benefits. The assessment would study short- and long-term, direct and indirect costs and benefits—quantifying when possible and listing when immeasurable. The assessment would evaluate the net public benefit of the proposal by examining the relationship between its costs and benefits and the reasonable alternatives to it, their respective costs and benefits and the relationship of their

costs and benefits. The final regulatory cost/benefit assessment would be prepared after the public and other agencies had had an opportunity to comment on a draft assessment published in the Federal Register. A Federal regulator would thus have to carefully consider the balance between costs and benefits before issuing the final regulation.

Conceptually, this bill consolidates the efforts of a variety of activities during the last 2 years. Executive Order 11821, as promulgated by President Ford on November 27, 1974, requires agencies to certify they have evaluated the inflationary impact of regulatory proposals. Congressional rules now require a detailed analytical statement on those bills which might have an inflationary impact on the prices and costs. S. 200 and H.R. 7575 which called for cost assessment statements in certain circumstances have passed their respective Chambers during this Congress.

The time has come to weigh anticipated public benefits against public costs.

No longer is it fair to saddle the public with excessive costs for untold, intangible public benefits. Costly new laws and regulations should provide substantial benefits to workers, consumers, and the public. These benefits must be carefully balanced against the real costs to the economy and if they do not, we should know why they do not. The public is no longer willing to pay a hidden price tag that obscures and confuses what it is paying for. H.R. 14591 provides the vehicle.

We believe the only sensible standard which Government policymakers, lawmakers, and regulators can follow in carrying out the responsibilities the people have bestowed on us is the net public benefit. Each Government action should be predicated on the basis that it will provide more in benefits to people than it removes in costs—and these must be costs in their broadest sense. Only then, in the highest order of social good should be allowed to avoid this test.

(more)





DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

OFFICE OF THE ASSISTANT SECRETARY
FOR POLICY DEVELOPMENT AND RESEARCH

AUG 31 1976

IN REPLY REFER TO:
TEP

Mr. Thomas D. Hopkins
Deputy Assistant Director for
Government Operations and Research
725 Jackson Place, N.W., Room 4005
Washington, D.C. 20506

Dear Mr. Hopkins:

In order to respond to your request for comments regarding the inflation impact procedure, we have prepared these answers to the questions published in the Federal Register on August 3.

1. (Quality of the IIS analysis). HUD has only had two "major" programs since the procedure has been in place, so no valid inferences can be drawn regarding any time trends. The two inflation impact statements that have been prepared were honest attempts at assessing the benefits and costs of the actions through time. It must be kept in mind that OMB Circular A-107 specified that no new personnel be hired to comply with the IIS requirement. Therefore, the analyses could not be conducted by an in-house staff of cost benefit analysts. Further, even with such a staff, time pressures may dictate a less thorough study than might be otherwise desirable. However, given the constraints, the quality of the IIS's has been quite good.

2. (Are important actions covered?) At HUD, all items that are published in the Federal Register must be evaluated with respect to potential inflation impact. Thus all legislative proposals and rules and regulations are subject to scrutiny. Routine items can be handled fairly easily, although even these are re-evaluated and certified by the Office of Policy Development and Research. In all cases where there is a remote chance that the action may be major, special care is taken to insure that such actions are properly evaluated.



3. (Should IIS evaluations be made available to the public?) Our opinion is that they should be made available, if they are not already part of the public domain. As mentioned previously, one drawback to a careful analysis is the pressure of time. Even if an IIS is not made available at the early stages of a proposed action, it should be available to interested parties so that it might aid in rational discussion of the proposal later, even after an action is taken. A finding that an action is major does not put the kiss of death upon it, but rather identifies it as an action that should receive special scrutiny. Even if the benefits of an action are outweighed by the costs (those that we can measure) this does not imply we necessarily must not adopt the program, since there may be other factors involved. The findings of the IIS should help decision makers to better evaluate the action however, even after the fact, when there may be an opportunity to rescind the action.

4. (Impact of IIS on drafting of legislation and regulations). There have been some delays involved in the procedure, in that an additional clearance is required. However, we have taken steps to ease the burden of compliance, so that this delay is held to a minimum. It should be noted that delays are imputed to the process in excess of those that actually occur. It becomes almost irresistible to shift the blame for slow action onto a clearance process. However, with our new handbook and forms (attached), the process seems to cause minimal delays.

5. (Impact on quality of legislation and regulations). In some sense, this is unanswerable, in that there is no control group of comparable actions with which we can compare our analyses. Thus we can offer only impressionistic evidence. Overall, the IIS procedure has had some impact in terms of "raising the consciousness" of those who draft regulations. That is, since they know actions which involve price or cost impacts will come under scrutiny, they may tend to consider these factors to a greater extent than otherwise. On the other hand, a majority of items published in the Register involve minor changes in existing regulations, and for such items, the IIS procedure is only an additional burden. We have taken the approach that if the procedure is easy to comply with for such items, this



additional burden is justified, in that we can be more certain that potentially major actions are identified.

6. (What are the direct costs of the IIS program?) Given that we have done everything in-house, the costs are expressible in terms of foregone work on other items of government business. Additional outlays may be incurred if IIS's are farmed out to independent contractors, however, but we have not done this as yet.

7. (What are the alternatives for improving the IIS program?) There are several ways this could go, but one should keep in mind that considerable start up costs were involved in the IIS program, in terms of staff time in drafting criteria, gaining clearance for forms and handbooks, and the like. Unless an alternative is shown to be clearly superior, then change should be conducted in the framework of the existing IIS program. Within this framework, we could tighten the net and make the requirements for major proposals lower, or try to engage in more thorough evaluations of the costs and benefits of proposed actions that do qualify as major. More thorough analyses could only be done through outside contracting or through setting up special inflation impact offices whose function was to conduct cost benefit analyses of proposed actions. The course to follow is not obvious. Perhaps a prudent policy would be to attempt to verify the results of future IIS's by contracting for cost benefit analyses on the same actions. In any event, we do not feel that we really know enough at this point to be able to say whether the criteria for "major" programs should be changed, or whether more thorough studies should be undertaken of proposed actions. These questions in themselves should be considered in the framework of potential costs and benefits, but we do not feel that the analysis can be performed based on present knowledge of the IIS program.

8. (The future of IIS). In a sense, although the program has been around for more than a year and a half, it is still a fledgling in that not enough



experience has been gained in order to fully assess its efficacy. In this Department, clearance and printing and drafting of IIS procedures are only just now fully in place. Our IIS handbook was finally published in July of this year, although we were operating under interim procedures prior to this. It is our opinion that the IIS procedure should be continued in its present form, at least until we have developed enough experience to be able to make a reasoned judgment as to whether it should be continued, altered in some way, or terminated.

There is one further area of concern that was not covered by your questions, namely the problem that many small actions which may not in themselves constitute major impacts can in the aggregate amount to a very major impact. While this is indeed a problem, and points out the arbitrary nature of assigning a certain level as determining major impact, the solution is not obvious. "Tightening the net" might be one way of countering this problem, but it would not eliminate it unless a major program were defined as one that affected any of the criteria at all, for example a cost increase of 50¢. While this sounds quite extreme, a majority of the actions are such that they still would be non-major, since many actions involve minor changes in working with no policy significance. However, such a change should be made only after there has been enough experience to be able to assess whether this would be worth the additional effort.

In conclusion, our feeling is that the IIS program has been of some utility thus far. We do not favor scrapping it in favor of another approach, and we feel the best course to follow at present is to extend it in its present form, until we can justify changing or terminating it.

Sincerely,

Richard B. Clemen
For John C. Weicher
Deputy Assistant Secretary
for Economic Affairs

Enclosure



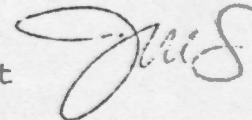
U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

16 AUG 1976

MEMORANDUM FOR: JAMES C. MILLER III, Assistant Director
Government Operations and Research
Council on Wage and Price Stability

STANLEY E. MORRIS, Deputy Associate Director
Economics and Government Management Division
Office of Management and Budget

FROM: JEROME M. STALLER
Senior Staff Economist



SUBJECT: Inflation Impact Statement Evaluation

As you are aware the Department of Labor has been actively involved in the Inflationary Impact Statement (IIS) program. We have prepared impact analyses for both major legislative proposals as well as major regulatory proposals. Our evaluation of the IIS program is based on our observations of the preparation and use of these statements during this past year. The focus of these comments is on the use of IIS in the rule making since this is the area where we have had the most experience.

In general we have found that the IIS emphasis on cost/benefit analysis has begun to encourage the agencies to direct their attention to off budget areas which heretofore have largely been ignored in the rule making process. In particular agency managers are more likely to ask if the regulations are producing a net economic benefit. They are also likely to ask what information do we need to demonstrate the way in which a proposed rule would affect various groups in the economy. Further, are there alternative rules which would be as effective but less costly? While attention has been focused on a cost benefit approach to regulation, the actual specific analysis has tended to be done at the latter stages of the rule making process rather than at the point



when a wider range of possible rules could be considered. There appear to be a number of reasons for this lack of integration between the IIS and the process evaluation of alternative rules early in the planning process with the aid of some type of cost benefit framework:

- (1) The IIS process is a relatively costly undertaking which can only take place after the details of a proposal have been fairly well demarcated. This means that decision making on broad choices for a rule will generally precede the preparation of an IIS. In essence the high cost of a formal study by an outside contractor makes it difficult to analyse the costs and benefits of several alternative options.
- (2) The use of outside contractors to prepare IIS results in a lack of agency internalization of the cost benefit approach to the rule making process and agency decision making. Further, agencies have strong incentives to use outside contractors who can "take the heat" if the analysis of a proposed rule or the rule itself turns out to be difficult to justify.

As Frank Stafford noted in his memorandum of April 9, 1976 (attached) while the IIS process is designed to encourage better planning and management within government it is not clear that these objectives are being met.

Attachment





OFFICE OF
POLICY AND PLANNING

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

August 26, 1976

MEMORANDUM FOR: James C. Miller, III
Assistant Director
Government Operations and Research
Council on Wage and Price Stability

Stanley E. Morris
Deputy Associate Director
Economics and Government Management Division
Office of Management and Budget

FROM : Edward D. Jones, III *EDJ*
Senior Economic Adviser
Office of Policy and Planning

SUBJECT : Inflation Impact Statement Evaluation

This memorandum responds to your request of August 6, 1976 that the Department of Justice comment on the effectiveness of the Inflation Impact Statement program.

As background, the Department of Justice in July 1975 developed criteria for the evaluation of the economic impact of its major proposals for legislation and for promulgation of regulations or rules in accordance with the requirements of Office of Management and Budget (OMB) Circular No. A-107. The Department's criteria were approved by OMB and the Council on Wage and Price Stability in August 1975.

In November 1975, the Department of Justice responded to OMB Director Lynn's questionnaire relating to agencies' experiences on implementing the provisions of OMB Circular No. A-107. At that time, the Department indicated that it had developed a set of formal evaluation procedures which were to be implemented by Order of the Attorney General. For the reasons outlined below the Department continued its informal evaluation policy:



- * the Department of Justice rarely advances proposals for legislation and for the promulgation of regulations or rules that can be considered major according to the approved criteria;
- * potentially major proposals are reviewed routinely by several components in the Department familiar with OMB Circular No. A-107 and the Department's criteria; and
- * the implementation of a formal procedure when informal procedures were sufficient to insure compliance with Executive Order 11821 and OMB Circular No. A-107 would have been unnecessarily costly in terms of human resources, time, and paper work.

However, the recent modifications to OMB Circular A-107, in particular the one requiring a statement published in the Federal Register indicating that all minor proposals have been reviewed and do not require Inflationary Impact Statements, dictate that the Department implement its formal procedures for evaluation. The Order of the Attorney General (see attachment) for so doing is now being implemented, and shortly will be published in the Federal Register.

With the apparent change in intent in OMB Circular A-107, namely, from not only identifying and evaluating major proposals, but also to insuring that a minor proposal is indeed minor, the Department of Justice must now incur the costs noted above. At this time, no estimate is available as to the extent of the costs. However, for an agency such as the Department of Justice with no proposals to date meeting the criteria, there appears to be little benefit derived from such action.

The Department of Justice is cognizant of the need to include cost factors in policy decision-making. In fact, the Department frequently assesses the economic impact of its legislative proposals that would not be considered major on the basis of the criteria. Analyses of this type can be expected to continue.



To the extent that OMB Circular No. A-107 has promoted economic analysis as an important factor in policy decision-making, especially in agencies where it would not occur otherwise, the program can be deemed to have had a positive impact. More flexibility is needed, however, if the program is to be extended beyond its expiration date of December 31, 1976. If there is not to be such flexibility, the Department of Justice may request exemption from the program based upon its special circumstances as primarily a non-program agency.

Attachment





Order

DOJ 3100

Subject: ECONOMIC IMPACT STATEMENTS

1. **PURPOSE.** This order prescribes the policies and procedures for Department of Justice compliance with Office of Management and Budget (OMB) Circular No. A-107 entitled Evaluation of the Inflationary Impact of Major Proposals for Legislation and for the Promulgation of Regulations or Rules.
2. **SCOPE.** The provisions of this order apply to all organizations in the Department of Justice.
3. **AUTHORITY.** Pursuant to Executive Order 11821 of November 27, 1974, OMB has established, in OMB Circular No. A-107, the requirement that all executive departments and agencies of the Federal Government evaluate the economic impact of their major proposals for legislation and for the promulgation of regulations or rules. Such proposals must be accompanied by a statement certifying that an evaluation has been performed.
4. **ECONOMIC IMPACT CRITERIA.** In compliance with the Circular, the Department of Justice has developed six economic impact criteria with which to evaluate its proposals. These criteria relate to cost, competition, productivity, employment, strategic material usage, and energy. When a proposal initiated in the Department of Justice meets any of the criteria outlined below, it shall be classified as "major" in accordance with OMB Circular No. A-107, and shall be accompanied by a statement certifying that the economic impact of the proposal has been assessed. The criteria are as follows:
 - a. **Cost.** Proposals which may cost in excess of \$50 million in any one-year period or \$75 million in any two-year period at any sector, industry, or government level, or \$100 million in any one-year period or \$150 million in any two-year period at the national level.
 - b. **Competition.** Proposals which may have the effect of substantially lessening competition or of tending to create a monopoly in any line of commerce in any section of the country, if the total commerce in the relevant market exceeds \$100 million.

Distribution: OBD/H-1 BUR/H-1

Initiated by: Office of Policy
and Planning

- c. Productivity. Proposals which may adversely restrict industry capacity or investment, increase labor man-hours per unit of output, increase barriers to input substitution, or restrict adaptation to new technologies, equipment, or skills.
- d. Employment. Proposals which may result in an employment change of 10,000 workers in a one-year period at any sector, industry, or government level.
- e. Strategic Material Usage. Proposals which may decrease the supply of, or increase the demand for, any National Stockpile or otherwise officially designated strategic material by more than 3 percent in a one-year period.
- f. Energy. Proposals which may decrease the supply of, or increase the demand for, energy resources by 10,000 barrels per day, or the equivalent, in a one-year period.

5. EVALUATION.

- a. Responsibility. Evaluation shall be the responsibility of the office, board, division, or bureau within the Department of Justice initiating the proposal. When more than one organizational unit is involved, the primary initiator shall be responsible for conducting a joint evaluation.
- b. Criteria. The initiator in each case shall apply the criteria to determine if the proposed legislation, regulations, or rules are major and therefore require evaluation and certification. If so, the initiator shall be responsible for performing an evaluation which should include, where applicable:
 - (1) An analysis of principal costs and price effects of the proposed action on markets, businesses, and consumers;
 - (2) A comparison of the estimated costs and price effects with the benefits to be derived from the proposed action; and
 - (3) A comparison of the costs and benefits of considered alternatives with the costs and benefits of the proposed action.



An evaluation shall evidence as much quantitative precision as possible and shall focus on a time period sufficient to determine relevant economic impacts.

6. CERTIFICATION.

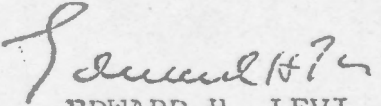
- a. Responsibility. The Director of the Office of Policy and Planning (OPP) shall be responsible for compliance with OMB Circular No. A-107. To ensure compliance, Form DOJ-367, Economic Impact Evaluation Certification, shall be attached to each proposal for legislation, regulations, or rules. The initiator of the proposal shall designate on Form DOJ-367 whether the proposal is major, based upon the criteria.
- b. Non-major proposal. If the proposal does not meet any criterion, the following procedures shall apply:
 - (1) Proposals for Legislation. The proposal and Form DOJ-367 shall be sent by the initiator to the Office of Legislative Affairs (OLA) which shall be responsible for transmittal. Prior to transmittal, OLA shall forward the proposal and Form DOJ-367 to OPP for review. If the Director of OPP believes that an evaluation is not warranted, he shall sign Form DOJ-367 indicating that the proposal is not major. Form DOJ-367 shall be forwarded as a permanent part of the proposal.
 - (2) Proposals for the Promulgation of Regulations or Rules. The proposal and Form DOJ-367 shall be sent by the initiator to OPP for review. If the Director of OPP believes that an evaluation is not warranted, he shall sign Form DOJ-367 indicating that the proposal is not major. Form DOJ-367 shall be forwarded as a permanent part of the proposal. A proposal to be signed by the Attorney General shall be forwarded by OPP to the Office of Legal Counsel (OLC), and a proposal to be signed by the head of an organizational unit within the Department shall be returned to the initiator.
- c. Major Proposal. If the proposal is designated as major, an evaluation shall be performed by the initiator. Upon completion of the evaluation, the following procedures shall apply:



- (1) Proposals for Legislation. The proposal, together with Form DOJ-367 and the evaluation, shall be sent by the initiator to OLA which shall be responsible for transmittal. Prior to transmittal, OLA shall have the evaluation of the economic impact of the proposal certified by OPP. After the Director of OPP signs Form DOJ-367 indicating that an evaluation has been performed by the initiator and that the evaluation has been reviewed by OPP, Form DOJ-367 shall be forwarded as a permanent part of the proposal.
- (2) Proposals for the Promulgation of Regulations or Rules. The proposal, together with Form DOJ-367 and the evaluation, shall be sent to OPP for certification. After the Director of OPP signs Form DOJ-367 indicating that an evaluation has been performed by the initiator and that the evaluation has been reviewed by OPP, Form DOJ-367 shall be forwarded as a permanent part of the proposal. A proposal to be signed by the Attorney General shall be forwarded to OLC, and a proposal to be signed by the head of an organizational unit within the Department shall be returned to the initiator.

7. EXTERNAL LIAISON.

- a. OMB. Upon request, the Director of OPP shall send to OMB appropriate data and analyses used in evaluation of major proposals for legislation and for the promulgation of regulations and rules.
- b. Congress. The data and analyses developed in evaluating the economic impact of a major legislative proposal shall be furnished to the Congress as part of the overall justification of the proposal.
- c. Council on Wage and Price Stability. For each major proposal for rules or regulations, the Director of OPP shall send to the Council on Wage and Price Stability a copy of the proposed rule or regulation, the accompanying Form DOJ-367, and the evaluation. Upon request, the Director of OPP shall provide the Council on Wage and Price Stability a brief summary of the reasons for concluding that a proposal is not major.


EDWARD H. LEVI
Attorney General



DEPARTMENT OF JUSTICE
ECONOMIC IMPACT EVALUATION CERTIFICATION

DATE

1. PROPOSAL DESCRIPTION

2. INITIATING OFFICIAL AND ORGANIZATIONAL UNIT

3. ECONOMIC IMPACT CRITERIA

Check ANY of the economic impact criteria as set forth in applicable Department directives which apply to this proposal:

<input checked="" type="checkbox"/> Cost	<input checked="" type="checkbox"/> Competition	<input checked="" type="checkbox"/> Productivity
<input checked="" type="checkbox"/> Employment	<input checked="" type="checkbox"/> Strategic Material Usage	<input checked="" type="checkbox"/> Energy

4. NON-MAJOR PROPOSAL

I have determined that this proposal is not a major proposal and does not require further evaluation because it does not meet ANY of the economic impact criteria listed in item 3.

Signature of Initiator

Date

I have reviewed this proposal and concur that it does not meet ANY of the economic impact criteria listed in item 3.

Signature of Director, Office of Policy & Planning

Date

5. MAJOR PROPOSAL

I have determined that this proposal is a major proposal and requires the attached evaluation because it meets one or more of the economic impact criteria indicated in item 3.

Abstract of Evaluation:

Signature of Initiator

Date

I certify that the initiator of this proposal has conducted an evaluation of its economic impact and that the evaluation has been reviewed by this office.

Signature of Director, Office of Policy & Planning

Date



EXPORT-IMPORT BANK OF THE UNITED STATES

WASHINGTON, D.C. 20571

August 19, 1976

CABLE ADDRESS "EXIMBANK"
TELEX 89-461

Mr. James C. Miller, III
Assistant Director
Government Operations and Research
Council on Wage and Price Stability
Room 4005
725 Jackson Place, N.W.
Washington, D.C. 20506

Dear Mr. Miller:

This is in response to your memorandum of August 6, 1976. It is difficult for me to provide an overall appraisal of the effectiveness of the Inflation Impact Statement Program or to answer any of the specific questions included in your attachment because Eximbank has not proposed any major legislation or issued proposals for major rules and regulations during the period and, consequently, did not have to prepare an Inflation Impact Statement.

Sincerely,

A handwritten signature in dark ink, appearing to read "Stephan M. Minikes", is written over the typed name.

Stephan M. Minikes
Senior Vice President





OFFICE OF THE
VICE CHAIRMAN

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

AUG 24 1976

MEMORANDUM FOR:

✓ James C. Miller III, Assistant Director
Government Operations and Research
Council on Wage and Price Stability

Stanley E. Morris, Deputy Associate Director
Economics and Government Management Division
Office of Management and Budget

Subject: Inflation Impact Statement (IIS) Evaluation

This is in response to your memorandum of August 6, 1976.

The Equal Employment Opportunity Commission has had no experience with the Inflationary Impact Statement because this agency has not proposed any legislation, major or minor, and has not promulgated any substantive rules and regulations. The rules and regulations we have issued have been procedural in nature.

Ethel Bent Walsh

Ethel Bent Walsh
Vice Chairman



PANAMA CANAL COMPANY
SUITE 312 PENNSYLVANIA BUILDING
425-13TH STREET NW.
WASHINGTON, D.C. 20004

OFFICE OF
THE SECRETARY

August 20, 1976

Mr. James C. Miller III
Assistant Director Government
Operations Research
726 Jackson Place, N.W.
Washington, D. C. 20506

Dear Mr. Miller:

This is in reference to your memorandum of August 6, 1976, requesting an appraisal of the effectiveness of the Inflation Impact Statement program based on our experience to date.

Please be advised that under criterion approved by the Office of Management and Budget on July 28, 1975, there have been no rules, regulations, or legislation proposed by the Panama Canal Company which have met the criteria to be considered as "major" actions requiring evaluation and certification under Executive Order 11821 and OMB Circular A-107. This is also true for the Canal Zone Government. Regretfully, therefore, we are not in a position to furnish you with any substantive comments or suggestions concerning the Inflation Impact Statement program.

Sincerely yours,

Thomas M. Constant
Secretary





U.S. GOVERNMENT
SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

August 20, 1976

Mr. James C. Miller III, Assistant Director
Government Operations and Research
Council on Wage and Price Stability
Washington, D. C. 20506

Mr. Stanley E. Morris, Deputy Associate Director
Economics and Government Management Division
Office of Management and Budget
Washington, D. C. 20503

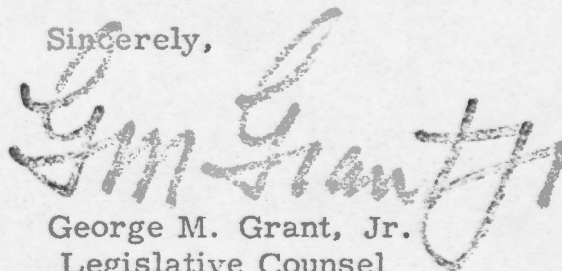
Gentlemen:

Reference is made to your memorandum of August 6, 1976, requesting a personal appraisal of the effectiveness of the Inflationary Impact Statement Program.

As requested, I am forwarding herewith my response to the Inflationary Impact Statement Evaluation. I am also including, as a reference, SBA's prior response to an Inflation Impact Questionnaire (letter with attachments of November 3, 1975).

Please do not hesitate to contact this office with any questions or comments you may have.

Sincerely,


George M. Grant, Jr.
Legislative Counsel

Enclosure



INFLATION IMPACT STATEMENT EVALUATION

The requirement of Executive Order 11821 (E.O. 11821) that major proposals for legislation and for the promulgation of regulations and rules be accompanied by an Inflationary Impact Statement (IIS) has not caused substantial problems, subsequent to the formulation of the IIS criteria.

In response to the Inflation Impact Questionnaire, questions 1 and 5, circulated by your office it was answered that the flow of a proposal identified as "major" had been charted, and that it was anticipated that existing personnel would be able to comply with the requirements of E.O. 11821 and OMB Circular No. A-107. Further, in answer to question 6 of the same questionnaire, it was reported that no litigation was pending against SBA on inflationary impact grounds. (Letter, with attachments, from Louis F. Laun to Stanley Morris, Nov. 3, 1975).

No new or additional facts have been reported to change those responses.

My independent judgment is that the goal of the IIS program is worthy of continued support.

In answer to question 4 of the Inflation Impact Questionnaire, letter supra at 4, it was inferentially stated that the IIS program had affected decisionmaking. Prior to E.O. 11821 SBA did not analyze the external economic costs of proposals within the scope of E.O. 11821, i.e., "major proposals," when and if such proposals did in fact originate with the Agency.

I am unable to fully comment on the questions propounded in the Federal Register (41 F.R. 32463 (1976)) because of this office's limited exposure to IIS's which would impact on legislative proposals. I can, however, say that no proposals for legislation have changed on this basis of analysis.



NOV 7 1975

Mr. Stanley Morris
Deputy Associate Director
Office of Management and Budget
Economics and Government
Management Division
Room 9201
New Executive Office Building
17th and Pennsylvania Avenue, N. W.
Washington, D. C. 20503

Dear Mr. Morris:

As requested by Director Lynn's October 23, 1975 memorandum, we are forwarding herewith the response of the Small Business Administration to the Inflation Impact Questionnaire.

We look forward to participating in the workshop discussion on November 6, 1975.

Sincerely,

(Signed) Louis F. Laun

Louis F. Laun
Acting Administrator

Enclosure



INFLATIONARY IMPACT QUESTIONNAIRE

1. Describe briefly the flow of a major proposal for:

(1) legislation, and (2) regulations, from identification as major, to final agency sign-off and transmittal (to OMB or Federal Register). For example, "Bureau X identifies proposal with criteria and sends forward to headquarters Office of Economic Analysis for full IE analysis, etc." At what levels can decisions be made to change the proposal based on the analysis? Who is highest ranking official who regularly reviews analyses? What provisions exist for outside interest group or state and local government comment?

Response

(1) Legislation

The Office of General Counsel would make the initial identification of proposed Agency legislation as major under the SBA Criteria for Determination of Economic Impact (Appendix I). The proposal is then presented to the Assistant Administrator for Advocacy, Planning and Research for detailed analysis and concurrence. Upon completion of detailed analysis and concurrence that the proposal is major, the General Counsel certifies that the inflationary impact of the proposal has been evaluated. The legislative package with certification is reviewed by the Office of General Counsel and the Deputy Administrator and, when signed by the Administrator, is transmitted to the Office of Management and Budget.

(2) Rule or Regulation

The office originating the rule or regulation would make the initial identification of the proposal as major under the SBA Criteria for Determination of Economic Impact.

The proposal is then presented to the Assistant Administrator for Advocacy, Planning and Research for detailed analysis and concurrence. Upon concurrence from Advocacy, Planning and Research and certification by the General Counsel that the inflationary impact of the proposal has been evaluated, the originating office prepares SBA Form 606 "Correspondence Digest or Memorandum" and the document to be published in the Federal Register accompanied



by the statement certifying that the inflationary impact of the proposal has been evaluated. This package is then cleared by the Office of General Counsel, other concerned offices and the Deputy Administrator and sent to the Administrator for signature.

The proposed rule or regulation, with certification, is sent to the Federal Register. A copy of this submission and a brief summary of the Agency's evaluation pursuant to section 4(b) of OMB Circular A-107 is sent to the Council on Wage and Price Stability.

The Administrator may make changes in the proposed legislation, rule or regulation based on the inflation impact analysis. The Administrator is the highest official regularly reviewing inflation impact analyses. There are no provisions for state or local government or outside interest group comment in these procedures.

2. Currently, how many inflation impact analyses have been completed? List for legislation, regulations or rules where possible. How many are underway? Approximate number for legislation, regulations or rules. Were any proposals for legislation changed or cancelled on the basis of the analysis or external cost concerns? (Examples).

Response

The Small Business Administration has not completed any inflation impact analyses; none are underway. No proposals for legislation were changed or cancelled on the basis of the analysis or external cost concerns.

3. Sample analyses. Submit brief summaries of three inflation impact analyses for either legislation or regulation proposals. These should represent the most complex analysis performed, the most extensive, and time-consuming analysis. Provide copies.

Response

No analyses have been completed.



4. Prior to Executive Order No. 11821, did your agency analyze the external economic costs (external to Federal budget) of major proposed actions (legislation, regulations, adjudications, other)? If so, were actions systematically identified for analysis? Who performed the analysis? Who reviewed it? Were alternative actions analyzed? Were proposed actions ever cancelled or changed on the basis of the analysis? (Examples).

Response

Prior to Executive Order No. 11821, SBA did not analyze the external economic costs of major proposals, if such "major" proposals did in fact originate with the Agency prior to Executive Order No. 11821.

5. Identify the personnel requirements to comply with E.O. 11821 and Circular A-107 - what percentages are devoted to proposed identification, analysis, legal review, final proposal review. How many of these personnel would be required without either the order or the OMB circular. Which criterion is most often the cause for designating a proposal "major"? Which least often?

Response

The Small Business Administration should be able to comply with the requirements of OMB Circular A-107 and E.O. 11821 with existing resources and personnel.

6. List and very briefly describe any litigation against your agency on inflation impact grounds. Please identify plaintiffs, provisions of the Executive Order or the OMB circular involved, and any decisions rendered on your agency by a District Court or other tribunal.

Response

There has been no litigation against the Small Business Administration based on inflation impact grounds.



SEA CRITERIA FOR DETERMINATION
OF MAJOR COST IMPACT

Any proposed rule, regulation or piece of legislation originating with SEA will be determined to be "major" if it meets any of the following criteria:

1. Cost Impact. Likely to produce increased costs to consumer businesses, or Federal, State, or local governments exceeding:
 - \$100 million in any 1 year or \$150 million in any 2-year period for the national economy.
 - \$50 million in any 1 year or \$75 million in any 2-year period on any economic sector, industry, or level of government.
2. Effect on Productivity. Likely to result in the cost impacts outlined above (cost impact criteria) through any of the following:
 - reduction or restriction of industry (output) capacity or capital investment,
 - increase in labor man-hours per unit of output,
 - increase in barriers to substitution of processed or raw material supplies,
 - reduction or restriction in adaptation of new technologies, equipment, processes, or skills.
3. Effect on Competition. Likely to substantially lessen competition, limit market entry, restrain market information increase concentration or tend to create a monopoly or monopolistic market power in any line of commerce, in any section of the United States or its Territories, provided that commerce in the relevant market exceeded \$100 million per year.



4. Supply of Important Materials. Likely to cause increase in any one year in demand or decrease in supply availability, for any important material, product or service, in excess of 3% of supply in the year of enactment or implementation. In this instance, important materials, products, or services shall include:

- components of the National Stockpile,
- materials or services identified as critical by either the NSC, Economic Policy Board or Council on International Economic Policy (currently chromium, platinum and bauxite).

5. Effect on Employment. Likely to result in a decrease of employment in any year of 0.2% (170,000 workers) at the national level, or of 10,000 workers at the sector, industry, or State or local government levels.

6. Effect on Energy Supply--Demand. Likely to cause in any one year increase of demand for (usage of) or decrease in supply (availability) of petroleum or other forms of energy by 25,000 bbls. per day or equivalent (around 0.1%).

meaningful technical comments except that we see significant benefits in the program's focusing of agencies' attention on the cost aspects of legislative and regulatory proposals.

Sincerely,

George Lenches

Dr. George Lenches
Director, Office of Planning
and Development

cc: James C. Miller III
Assistant Director, Government
Operations and Research
Council on Wage and Price
Stability





WASHINGTON, D.C. 20446

August 17, 1976

Mr. Stanley E. Morris
Deputy Associate Director
Economics and Government Management
Division
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Morris:

This is with reference to your memorandum of August 6, 1976, in which you requested that we give you our personal appraisal of the effectiveness of the IIS program.

On April 3, 1975 the Renegotiation Board submitted to the Office of Management and Budget its proposed identification criteria for the IIS program. The criteria were approved by OMB, as submitted, on March 30, 1976.

Since the establishment of the IIS program by OMB Circular No. A-107, of January 28, 1975, the Board had only one opportunity to file an Inflationary Impact Statement and that was in connection with its proposal to extend and amend the Renegotiation Act of 1951. That statement was filed with OMB on March 27, 1975 and stated that the Board's legislative proposals were anti-inflationary in character.

Since that time the Board made no legislative proposals. Rules and regulations subsequently published by the Board were of a character that did not require the filing of an Inflationary Impact Statement.

In view of the very limited experience of the Board with the IIS program, we are in no position to provide you with





VETERANS ADMINISTRATION
OFFICE OF CONTROLLER
WASHINGTON, D.C. 20420

AUG 20 1976

IN REPLY
REFER TO: (042A)

Mr. James C. Miller, III
Assistant Director
Government Operations and Research
Council on Wage and Price Stability
Washington, D. C. 20506

Dear Mr. Miller:

The memorandum on the subject of inflation impact statement evaluation, which you and Stanley Morris addressed to me on August 6, 1976, requests my personal comments including, where possible, specific responses to the questions in the August 20th Federal Register notice. The opportunity to offer comments is welcome, but it is only fair to stress at the outset that the activities of the Veterans Administration, which necessarily influence the nature of many of my comments, probably are not typical or wholly representative of the Government-at-large in the matter of inflationary impacts. The Veterans Administration's programs are large and consequential, of course, but tend toward an on-going and routine nature; that is, they are subject to infrequent and modest change. Accordingly, the new legislation and new rules which the agency proposes from time to time are rarely characterized by major inflationary impact.

Given these facts:

a. Federal Register Questions One through Five are not answerable from Agency experience. The agency hasn't performed any IIS analyses, although all legislative and rule proposals have been reviewed as they've arisen (and found to have minor or non-existent impact). Any important and inflationary proposals would have been analyzed in detail but this has been unnecessary. Public inspection is, in our case, also not applicable. Similarly, the IIS program has occasioned no significant delays in drafting new legislative and rule proposals, although performing IIS studies for major proposals (if we'd had to do any) might well have delayed such activities. Finally, the IIS program has not, in the case of the Veterans Administration, affected proposal quality.

b. The costs of the IIS program to the Veterans Administration (in answer to Federal Register Question Six) have been minimal, but only because we have not needed to perform inflation impact studies. The review of a proposal to determine whether it warrants further study is, of course, a relatively cursory process which involves neither extraordinary workload burdens nor great technical expertise. However, the performance of IIS studies, had such been appropriate, might have had exactly the opposite effect.



Mr. James C. Miller, III

c. Public Law 93-508 requires the Veterans Administration to evaluate all of its programs, over the next few years, in terms of benefit versus cost. This requirement would be an appropriate alternative to the IIS program, if, as Federal Register Questions Five and Seven imply, the purpose of the IIS program were to improve the quality of agency legislative proposals and regulatory decision-making. But is this the purpose of the IIS program? Or is the program's purpose to monitor and thus combat inflation? Questions five and seven appear to confound benefit-cost impact with inflationary impact, notwithstanding that the two are different almost to the point of mutual exclusivity. The approach of treating them as synonymous, whether stemming from the understandable haste with which the anti-inflation program had to be put together, or from a desire to make the anti-inflation program a multi-purpose tool, has blurred the IIS program's focus from inception and, in so doing, has all but forestalled development of the program's potential as an instrument of anti-inflation policy.

d. My response to Federal Register Question Eight is to suggest (inasmuch as the nation's inflationary plight hasn't abated sufficiently to justify confidence that its steam is gone), that the IIS program be extended, but in modified form. The type of modification which I envision would sharpen, and drastically compress the scope of, any analysis that an agency might be called upon to make in anticipation of possible inflationary effects. Such analyses would not be triggered by legislative or rule proposals, but by anticipated significant program changes or proposed new programs. The analysis in each case would indicate whether in the affected agency's view the proposal might reasonably be expected to:

- (1) Decrease productivity in the private sector (and, if so, by how much), or
- (2) Decrease the private sector's production of goods (whether products or services) intended for the private marketplace (and, if so, in what fields and by how much), or
- (3) Expand the money supply more than it (the new or changed program) would stimulate the private sector's goods production for the marketplace (and, if so, by how much).

Any study which indicated one or more of these three inflationary dangers might also include a statement identifying the overriding considerations of governmental policy which explain how and why the proposal's importance outweighs the threat of intensified inflation. As has been implied earlier, questions of cost and quantification of "benefit" ought not to be included in studies of the type suggested here. The cost of a new or changed program becomes immaterial once inflationary consequences can be foreseen from its adoption. Similarly, no measure of benefit to a restricted constituency




Mr. James C. Miller, III

(such as most agencies serve) can outweigh inflationary consequences -- because the latter are adverse to the entire citizenry. Only a matter of surpassing policy significance could justify governmental adoption of an inflationary proposal. But such matters in most cases defy measurement in dollars (i.e., quantified benefit calculations), and usually do not fall within the mission confines of individual agencies.

To forestall any notion that the approach suggested above may be too narrow on grounds of disregarding the government's own purchases of short-supply items, let me emphasize that the omission is deliberate. It is predicated upon the view that unless governmental purchases expand spendable income in some demonstrably abnormal way, they probably shift relative prices rather than raising the general price level. Expressing this thought another way, if spendable income hadn't already risen markedly, in advance of the government's purchase of short-supply items, any resultant increase in the price of the items affected would probably be met by declines in the prices of all other items, because people with relatively stable spendable incomes, if forced to spend more in one direction must, of necessity, spend less for other things. The effect, therefore, would not be inflationary overall, but would only raise some prices while forcing others to decline.

Nothing in these comments should be construed as suggesting that the collection of data on energy should cease, assuming that either CWPS or OMB continues to find the data useful.

Sincerely yours,


CONRAD R. HOFFMAN
Controller



Comments on This Evaluation Report

(to be supplied)



APPENDIX G:

LEGISLATION INTRODUCED IN THE 94th CONGRESS

REQUIRING ECONOMIC IMPACT ANALYSIS



LEGISLATION INTRODUCED IN THE 94TH CONGRESS
REQUIRING ECONOMIC IMPACT ANALYSIS

Findley Amendment to Clean Air Act Amendments: This amendment required EPA to prepare an economic impact statement before publishing notice of proposed rulemaking under specified sections of the Clean Air Act. The statement, and an explanation of how much the Administrator considered it in drafting the proposed rule, would be made public.

The amendment required EPA to analyze 14 factors when preparing the economic impact statement, including compliance costs, potential inflationary or recessionary effects, productivity, employment and competitive effects and alternative methods.

The amendment was adopted by the House when it passed the Clean Air Act amendments. However, consideration of the Clean Air Act amendments was blocked by opponents of the bill in the waning days of the Senate. Findley will reintroduce the amendment when the Congress considers the Clean Air Act amendments in the new session.

V
S. 2861, Inflation Impact Act of 1976. Introduced by Senator Humphrey, this required the JEC to prepare inflation impact statements for legislation and the CEA to prepare inflation impact statements for rules and regulations. This requires CEA to prepare an IIS for each proposed rule and regulation,



with no cut-off point. The IIS shall be distributed to Members of Congress, and shall include an analysis of:

1. short and long-term effects of regulation on inflation, real income, employment, and production
2. the costs likely to be incurred or the savings likely to be realized in the budget.

It is further stipulated that the IIS cover not only the fiscal year for which it is proposed, but for five fiscal years afterwards (or the length of the program's authorization, if less).

This bill died in the Senate Government Operations Committee.

H.R. 10568, introduced by Representative Mark Andrews, directs OMB to prepare an inflation impact statement for any legislation, rule or regulation which, if implemented, would have a "significant impact on the economy."

Federal agency, as used in this act, means "any agency, department, corporation, establishment, or other entity of the executive branch."

The IIS must include:

1. cost impact on consumers, business markets, and federal and state governments
2. the proposal's effect on productivity

3. the proposal's effect on business competition
4. the proposal's effect on supply
5. any unavoidable adverse economic effects should the proposal be implemented
6. any irreversible economic effects should the proposal be implemented
7. alternatives to the proposal and comparative economic impacts of same

The bill was referred to the House Government Operations Committee where it died.

S. 2878, The Congressional Office of Regulatory Policy Act, was introduced by Senator Jacob Javits. Among other things, the new Office of Regulatory Policy would review rules and **regulations** issued by federal agencies to determine any benefits and/or possible adverse effects, and would then recommend to the Congress whether or not a certain rule should be overturned.

[In May 1976, the Senate Government Operations Committee held four days of hearings on this and several other bills dealing with Congressional oversight of regulatory agencies, but no action was taken. Any further impetus will probably be stymied until the Committee completes its study of regulatory reform, due March 1. At this time, a spate of

new legislation implementing the proposals can be expected.

One of the several task forces, Eramework of Economic Regulation, is addressing cost-benefit analysis.]

H.R. 10587, introduced by Representative Garry Brown, requires each agency to estimate total costs and benefits of each new rule before it is adopted. The bill did not specify any limits on the regulations to be considered, although Brown did declare in his introductory remarks, "The legislation must be enacted in a practical form, taking into consideration that some programs would have a relatively minor impact and should not be required to submit such an analysis.

The bill died in the House Judiciary Committee.

new legislation implementing the proposals can be expected. One of the several task forces, Framework of Economic Regulation, is addressing cost-benefit analysis.]

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The bill died in the House Judiciary Committee.

**Legislation Requiring Economic Evaluation of
Regulatory Impacts**

A. Legislation proposing general Executive Branch responsibility:

CONSUMER COST EVALUATION ACT OF 1975 (H.R. 10921, Mr. Thone, 12/1/75, Gov. Ops.) - To establish a national policy for prevention of unreasonable or excessive costs to consumers from government programs and for priority consideration of proposals that can be expected to provide greater benefits in relation to costs to consumers, to require preparation of a consumer cost assessment for proposals for legislation or regulations which may have a significant impact on costs to consumers.

COMPETITION IMPROVEMENTS ACT OF 1975 (S. 2028, Mr. Kennedy, 6/6 & 6/26/75, Judiciary) - Sec. 4(b)(1). Each department and agency shall make detailed competitive impact statement to accompany all proposals for legislation (including public benefits to be derived from proposed legislation).

REGULATORY REFORM ACT (S. 2792, Mr. Fannin, 12/16/75, Judiciary) - Makes every government agency demonstrate to Congress that economic benefits of a proposed rule or regulation exceed its anticipated costs to the public (for both executive branch and independent regulatory agencies). Also, requires House and Senate to approve every major regulation proposed by agencies.

ECONOMIC ADJUSTMENT ASSISTANCE ACT OF 1975 (S. 612, Mr. Pearson, 2/7/75, Gov. Ops.) - To regulate commerce by establishing Economic Adjustment Administration to reduce adverse economic impact on public of certain Federal decisions. All Federal departments and agencies, except regulatory agencies in performance of certain functions prescribed by Administrator, shall prepare economic impact statement before implementing actions resulting in significant adverse economic impact. If Administration determines such proposed action adverse, then department must set aside up to 10 percent of amount appropriated to satisfy objectives of this act.

REGULATORY REFORM ACT OF 1976 (S. 2812, Mr. Percy, 12/18/75, Gov. Ops., Rules, Admin.) - To reorganize the Executive Branch of the Federal Government to eliminate excessive, duplicative, inflationary, and anti-competitive regulation. To require President, over period of 5 years, to submit plan designed to eliminate unnecessary or harmful regulation because such regulation has led to inflationary consumer prices, reduction of competition in providing important goods and services, and other economic inefficiencies.

REGULATORY REVIEW ACT OF 1976 (S. 2903, Mr. Beall, 1/29/76, Gov. Ops.) - Requires all proposed Federal rules or regulations be submitted to Congress 60 days prior to their implementation. During that time, either Senate or House may disapprove, in whole or in part, thus preventing proposal from going into effect. Regulatory agency proposing rule must give Congress estimate of costs to be incurred by Government, private sector, and individuals, and its effect on interstate commerce.

B. Legislation proposing specific Executive Branch agency responsibility:

OCCUPATIONAL SAFETY AND HEALTH REFORM ACT OF 1975
(H.R. 11094, Mr. Archer, 12/10/75, Educ. & Labor) -
Sec. 6(b)(2): Secretary shall not propose rule promulgating new OH&S standard before: (1) reviewing and publishing in Fed. Reg. the financial impact of such proposal; and (2) determining that benefit justifies proposal. Must also have statement that financial benefits justify costs to be incurred.

Sec. 6(i)(1): Secretary shall prescribe as part of each standard the estimated average and maximum cost per unit to average employer subject to that standard.

BUDGET INFORMATION ALLOCATION ACT OF 1975 (H. R. 661, Mr. Murphy, 1/14/75, Gov. Ops.) - To require the President to include in budget transmitted to Congress additional information showing regional impact of budget proposals by State and Congressional districts.

TEMPORARY NATIONAL ECONOMIC COMMITTEE ACT OF 1975
(S. 2724, Mr. Bayh, 12/1/75, Banking, Housing & Urban Affairs, Commerce, the Judiciary, Labor & Public Welfare, Gov. Ops., Finance) - The Committee shall make a full and complete study and investigation of all of American economy, including structure of Federal, State, and local government finances and impact of government fiscal, monetary, tax and regulatory policies upon structure of national economy.

CONSUMER PRODUCT SAFETY COMMISSION IMPROVEMENTS ACT OF 1975 (H.R. 6844, Mr. VanDeerlin, 6/24/75, Interstate and Foreign Commerce) - In determining the effect of a State or political subdivision requirement on interstate commerce the commission shall consider and make appropriate findings on the technological and economic feasibility of complying with such requirement, the cost of complying..., the geographic distribution of the substance to which the requirement would apply, the probability of other States or political subdivisions applying for an exemption...for a similar requirement, and the need for a national, uniform requirement under this act for such a substance (or its packaging).

C. Legislation proposing Congressional responsibility:

ECONOMIC IMPACT STATEMENT ACT OF 1975 (S. 1394, Mr. Beall, 4/9/75, Gov. Ops.) - Provides under the Congressional Budget Act of 1974, that the requirement that the Director of the Congressional Budget Office include a cost estimate for each reported public bill and resolution be modified to require that such estimates of costs be those which would be incurred by the Federal Government, by State and local governments, and by non-governmental entities. (To amend Sec. 403 of C.B. Act of 1974 to require cost estimates of proposed legislation covering a 5-year period and to include costs to be incurred by non-governmental entities).

ECONOMIC IMPACT ACT (H.R. 8535, Mr. Whitehurst, 7/10/75, Rules) - Requires the Director of the Congressional Budget Office to prepare an economic impact statement for each bill or joint resolution reported in the Senate or the House of Representatives, each amendment proposed on the floor of Congress, and each rule or regulation proposed by any Federal agency. Provides that such a statement shall cover the fiscal year in which the bill or rule is proposed and each of the five following fiscal years, or the authorized duration of the bill's provisions, and shall analyze specific economic and social factors.

Directs Federal agencies to provide all necessary assistance to the Director in carrying out his duties under this Act.

ECONOMIC IMPACT ACT OF 1975 (S. 1169, Mr. Humphrey, 3/12/75, Gov. Ops.) - To amend Congressional Budget Act of 1974 to require Cong. Budget Office to prepare economic impact statements in connection with legislation reported by congressional committees and in connection with rules and regs. proposed by Federal agencies.

INFLATIONARY IMPACT STATEMENT ACT OF 1975 (S. 15, Mr. Dole, 1/15/75, Gov. Ops.) - To amend Congressional Budget Act of 1974 to require Cong. Budget Office to prepare inflationary impact statements in connection with legislation reported by Senate or House committees. (IIS covering fiscal year in which legislation is to become effective and each of four fiscal years following such FY.)

TO AMEND LEGISLATIVE REORGANIZATION ACT (S. 2516, Mr. Dole, 9/11/75 & 10/9/75, Gov. Ops.) - To provide for further assistance to Senate Committees in conducting evaluations of the efficiency and economy of Federal Government programs and their operations. The Comptroller General, in consultation with the CBO and the Committee on Govt. Ops. of the Senate shall develop and report to Senate on or before June 1, 1976, a standard methodology, content, and format to be used by Senate Committees in evaluating government programs and activities. Methodology is to assess total benefits and costs of each program and shall include best available techniques of quantifying identified costs and benefits, along with other techniques for assessing program efficiency and effectiveness.

TO AMEND LEGISLATIVE REORGANIZATION ACT OF 1970 (S. 2409, Bentsen, 9/11/75 & 9/24/75, Gov. Ops.) - To require reports on proposed legislation (by Senate or House) to contain statements of the reporting and recordkeeping requirements which will be imposed in private business as a result of enactments of such proposed legislation.

TO AMEND RULE XIII OF RULES OF THE HOUSE (H.Res.33, Ms. Holt, 1/14/75, Rules) - To require reports accompanying each bill or joint resolution of a public character (except revenue measures) reported by a committee to contain estimates of the costs, to both public and nonpublic sectors, of carrying out the measure reported.

TO AMEND RULES OF HOUSE OF REPS (H.Res.96, Mr. Talcott, 1/23/75, Rules) and (H.Res.288, Mr. McCollister, 3/11/75, Rules) - With respect to the estimated cost to the public and nonpublic sectors of legislation and proposed administrative rulemaking.

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D. Legislation With Marginal References to Economic Evaluations

TRUTH IN SPENDING ACT OF 1975 (H.R. 7524, Archer, 6/3/75, Rules) - To require that estimates for average cost for each taxpaying family be included in all bills and resolutions of a public character introduced and reported in the Senate and House. (Amends Title IV of Congressional Budget Act of 1974.)

DEFENSE ECONOMIC ADJUSTMENT ACT (H.R. 7010, Bingham, 5/14/75, Armed Services, Educ. and Labor, Ways and Means, Banking, Currency, Housing, Gov.) - To facilitate economic adjustment of communities, industries, and workers who may be substantially and seriously affected by reductions in Defense contracts and facilities which are undertaken to realign Defense expenditures with broad national security requirements and to prevent ensuing dislocations from contributing to or exacerbating recessionary effects on these groups.

SOCIAL RESEARCH AND DEVELOPMENT OVERSIGHT ACT OF 1975 (S. 2766, Roth, 12/10/75, Gov. Ops.) - To establish procedures for oversight of social research and development by Federal agencies, to coordinate and reduce duplication in social research and development by Federal agencies.

CLEAN AIR ACT AMENDMENTS (H.R. 10498, Rodgers, 10/31/75, Interstate & Foreign Commerce) - An independent scientific review committee, appointed by the administrator, shall advise the administrator of any adverse public health, welfare, social, economic or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards. (Sec. 110a (2) (c)). Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from issuance of any requirements under this act... (Sec. 319 (a)). The standard of performance with respect to any air pollutant emitted... reflects the degree of emission reduction achievable through the application of the best technological system of continuous emission reduction... (taking into consideration the cost of achieving such emission reduction...). (Sec. III).

CONSUMER PROTECTION ACT OF 1975 (S. 200) - To establish an agency for consumer protection in order to secure within the Federal Government effective protection and representation of the interests of consumers. Functions include: 1. conducting economic surveys concerning needs, interests, and problems of consumers which are not duplicative in significant degrees of similar activities conducted by other Federal agencies; and 2. information gathering to discover substantial economic injury to consumers.

E. Laws Requiring Economic Evaluations of Regulatory Impacts

DEFENSE PRODUCTION ACTS AMENDMENTS OF 1975 (P.L. 94-152) -
 "in promulgating such standards and major rules and regulations for implementation of such standards, the Board shall take into account...the probable costs of implementation, including inflationary effects, if any, compared to probable benefits; including advantages and improvements in pricing, administration, and settlement of contract."

RULE XI, §713(f) effective 1/3/75 (H.Res. 988, 93rd Congress)
 - Amended Rules of the House of Reps. to require each report of a committee on each bill or joint resolution of a public character reported by committee to contain detailed analytical statement as to whether enactment of such a bill or joint resolution into law may have inflationary impact on prices and costs in operation of national economy.

ENERGY POLICY AND CONSERVATION ACT (P.L. 94-163) - Sec. 382(6) CAB, ICC, FMC, FPC, and FAA shall include in any major regulatory action taken by each agency a statement of probable impact of such major regulatory action on energy efficiency and energy conservation.

FEDERAL ENERGY ADMINISTRATION ACT OF 1974 (P.L. 93-275)
 - Sec. 18(a) in carrying out provisions of this act, administrator shall...insure that potential economic impacts of proposed regulatory and other actions are evaluated and considered....(b)...develop analyses of economic impact of various conservation measures on states or significant sectors thereof, considering impact on energy for fuel and energy as feed stock for industry; (d) administrator, together with secretaries of Labor & Commerce, shall monitor economic impact of any energy actions taken by administrator, and shall provide Congress with a report every 6 months on impact of energy shortage and the administrator's actions in employment and the economy.

CONGRESSIONAL BUDGET & IMPOUNDMENT CONTROL ACT OF 1974 (P.L. 93-344) - The Committees on the Budget of the House and Senate shall make continuing studies of the effect on budget outlays of relevant existing and proposed legislation and report results of such studies to the House and Senate on a recurring basis.

VIETNAM ERA VETERANS' READJUSTMENT ASSISTANCE ACT OF 1974
(P.L. 93-508, Dec. 3, 1974) - The V.A. administrator shall measure and evaluate...the impact of all programs authorized under this title, in order to determine their effectiveness in achieving stated goals in general, and in achieving such goals in relation to their cost, their impact on related programs, and their structure and mechanisms for delivery of services. (Sec. 213, 219).