



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

AUG 24 1977

OFFICE OF
PLANNING AND MANAGEMENT

MEMORANDUM

TO: Honorable Charles Schultze
Chairman
Council of Economic Advisers

SUBJECT: Economic Impact Analysis Program

CEA's memorandum of August 1, 1977 emphasizes the importance of economic analysis in developing responsible regulations. We concur in the importance of economic considerations in rulemaking, and we have established comprehensive procedures in EPA to ensure that good analysis is done.

As you know the "Quality of Life Review" as practiced by the last Administration did little to improve government regulation; instead it became a battleground that has left deep scars. Many in EPA and in Congress, for example, perceived that it was used more to frustrate EPA in the pursuit of its legal responsibilities than to ensure responsible economic analysis. We must take care not to reopen these old scars now. Justified or not, these historical memories leave a series of sensitivities with which any system legitimately designed to encourage good economic analysis must deal.

I appreciate the sensitivity the CEA's draft proposal shows to some of these concerns. Its assurance that no more than four of any one agency's regulations could be reviewed in a year is, for example, obviously responsive to EPA's sense that it was singled out for attention by the Quality of Life Review.

I also appreciate several of the new emphases your draft suggests. Your suggestion that new regulatory actions be routinely preceded by a review of alternative methods of reaching the public's objectives, non-regulatory approaches as well as traditional standard-setting-plus-enforcement, makes especially good sense to me. I have already moved to ensure that just this question is asked early in the development of all of EPA's new initiatives.

We recognize that White House review of line Agencies' economic impact analyses can be useful. We would be happy to send CEA and/or CWPS our economic impact analyses and standards support documents as soon as they are available for your review and advice. We would also welcome your staff's participation in the working groups that develop major EPA regulations when you feel their potential economic impact warrants it.

As you know, here at EPA we have put a strong emphasis on doing good economic impact assessments on our regulations, and we have a deservedly good reputation for this. Our emphasis has been on considering economic factors at the start of the rule-making process. This has been supplemented by a program of involving all interested groups at the start and keeping them involved throughout. We have recently begun requiring alternatives to be specified in proposals and have extended the comment period on major regulations to allow greater public scrutiny of our reasoning.

I am deeply concerned by several aspects of the draft proposal:

- The current system is described as being "less successful... than had been hoped" but it does not describe the specific shortcomings, nor how this plan will solve them. Nor are any alternatives other than CEA's plan proposed, let alone analysed for their resource and time impacts. The suggested processes for CEA's plan are complex and would require significant new resources (although no new resources are proposed.)
- It is difficult from the paper to determine the various roles for CEA, CWPS, OMB, "The President" (Domestic Council? Other staff?) and the originating agency. Such lack of precision obscures public accountability and could cause redundant and overlapping reviews and increased costs in staff time and delays.
- I think the structure and "votes" associated with the "Executive Committee" are unwise and inappropriate. The regulatory agencies should have voting membership, perhaps with either fractional or rotating votes if you would like to keep a majority for the economic agencies. It is important not to make this process adversarial in either reality or appearance.
- The proposed processes could delay rulemaking significantly, but we doubt they will improve the quality of regulation. The second objective on p. 1 mentions not impeding the timely and orderly development of regulations. Our current comment

period for major regulations is 60 days. There is significant likelihood that the proposed review procedure will last longer than that, despite the best intentions of the participants, especially where time is needed to allow meetings of the Agency heads or appeals to the President. I am skeptical that even a rule that the process cannot hold up closure of the public comment period or promulgation of regulations will prevent these delays from occurring.

- The Interagency Coordination plans described in part D are unnecessary. We now publish Advanced Notices of Proposed Rulemaking which give all interested parties early warning of our plans and the opportunity to get involved in the regulation development effort. Direct involvement by other agencies in the working groups which develop regulations would provide a far more effective process for consultation between interested agencies than would the approach of Part D.2. EPA now involves other agencies in just this way. Involving interested agencies in developing regulations from the start is far preferable to bringing them in after the regulations have been drafted and the economic studies completed. We strongly recommend that you omit this section on interagency review completely. It is redundant to our current practices, and it calls into question the EPG's intent in proposing this review procedure.
- Further, because Part D is rather non-specific it could become an open-ended source of dispute. Given the history with which we must deal, many have already read the worst possible implications into this vagueness.

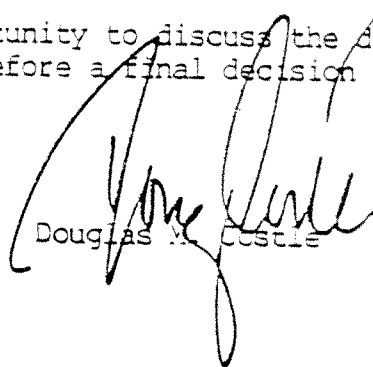
We would like to work with you to develop a process which could achieve the goals for all Federal agencies listed on the first page of the CEA proposal. I believe that the elements of such a program would include:

- Approval by the agency head before a regulation development process is initiated.
- Required development of a public participation plan prior to development of each regulation.
- Regular notice in the Federal Register of regulations under development.
- Opportunities for representatives of other interested Federal agencies (and State or local agencies, as well, where appropriate) to participate from the beginning in working groups developing specific regulations.

- Required assessment of the economic impacts of all regulations with potentially significant impacts (not just the major actions under Executive Orders 11821 and 11949).
- Consultation between agencies, first at the staff level, then at the Assistant Secretary/Assistant Administrator level, at the request of any agency interested in issues related to specific regulations.
- Required 60-day public comment periods, unless prevented by statute or court order.
- Agency comments on regulations to be filed on the record during the public comment period.

These procedures, most of which are current practice in EPA, should accomplish the objectives identified in your proposal without the delays or inefficiencies it would entail.

I would appreciate the opportunity to discuss the differences in our recommended approaches with you before a final decision is made.



Douglas M. Costle