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THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

April 13, 1979

Honorable Edmund S. Muskie
Chairman, Subcommittee on
Environmental Pollution
Committee on Environment
and Public Works
Washington, D. C. 20510

Dear Chairman Muskie:

Enclosed are my responses to the questions in your letter to me of March 12. If you have any questions, please do not hesitate to call.

Cordially,

Charles L. Schultze

Enclosure

Answers of Charles Schultze to Questions
Submitted by Senator Muskie

1. Calendars such as you requested are not kept at the Council of Economic Advisers. EPA, however, has already provided the Subcommittee with such information.

2. Increases in housing, food, medical care, and energy prices are indeed major areas of inflation. Costs mandated through regulation -- in these areas and elsewhere -- also add to the overall price index. The referenced CEQ/EPA study estimated that air and water pollution regulations issued thus far will add 0.1 percent to 0.2 percent to the annual inflation rate through 1986. The study's estimates did not include, however, the costs imposed by regulations in other areas such as occupational, food, and consumer safety or costs imposed by economic regulatory activities. Nor do the estimates include the costs to be imposed by air and water regulations that will be promulgated in the future such as EPA's recently proposed Hazardous Waste regulations and regulations to be issued under the Toxic Substances Control Act and amendments to the Federal Pollution Control Act and the Clean Air Act. If we look across the wider span, it is clear that the total cost of Federal regulation is large enough to warrant careful analysis and attention by both the Congress and the Executive Branch.

In the CEA 1979 Annual Report we discuss another reason to be concerned about the effectiveness of our regulatory effort. Measurement of regulatory costs and benefits is at the present time highly imperfect. Benefits of regulatory actions, in particular, are generally excluded from the current national income and product accounts. Nevertheless, once incurred, the costs of regulatory actions enter into the wage and price setting mechanisms of the economy. Most of these costs show up not as increased government expenditures, but as increased costs to industry. In part because economic institutions and measures of prices do not distinguish between these sources of price increase and others, many individuals and groups try to escape paying these increased costs by increasing wages and other forms of income to match the higher prices. Such attempts, of course, simply add to inflation.

Looking both at costs and benefits of regulation and at the way in which costs contribute to inflation makes clear the great impact of government regulations both to produce important social gains and to raise costs. The magnitude of this impact highlights the responsibility of all branches of government to ensure that regulations both are necessary and are efficiently designed. The RARG is only one part of this process. Its function is to help ensure that the analytical work behind selected major regulatory proposals is sound before agency action is taken. Of course, to the extent final regulations are efficiently designed, any inflationary impacts will be minimized. Anti-inflation concerns aside, however, some type of review process, whether the RARG or some other mechanism, will continue to be necessary to help ensure that the Federal regulatory effort achieves maximum benefits at the least cost.

3. Question three asks whether procedures of the Council of Economic Advisers are consistent with requirements provided by the Circuit Court of the District of Columbia in the Home Box Office case, and whether CEA has "in fact" complied with these requirements. The answer to both questions is yes. We of course consult with the Department of Justice and otherwise make every effort to assure that consultations about pending rules are conducted in a manner consistent with applicable law. In connection with the strip mining rulemaking at the Department of the Interior, the Department of Justice recently provided the Administration with an analysis of the state of the relevant law. For your information, I am enclosing a copy of the Department's analysis. It should also be noted that participation by the CEA in the rulemaking process is not ex parte.

4. The CEA endorses no particular number. Good analysis of costs and benefits does not require that the benefits be measured in dollar terms. The role of meaningful analysis is to point out to the decision maker the range of possible costs and benefits of a possible regulatory action. In particular, it is important for decision makers to be aware of incremental costs and benefits -- to know what society is getting for regulatory expenditures. In some cases, the uncertainty about costs and benefits is so large that quantitative estimates cannot play a significant role in the decision making process. In many cases, however, the range of estimates is sufficiently narrow to permit the

use of available quantitative evidence. But again, it is not necessary to measure benefits in dollar terms in order for economic analysis to play a highly useful role in making regulations more effective and more efficient.

5. We have discussed rules proposed by EPA and other Executive Branch agencies with parties inside and outside of the Executive Branch. We do not, however, routinely keep records of our contacts.

6. As is the case with all regulatory proposals reviewed by the RARG, we have discussed with EPA the proposed new source performance standards since the close of the public comment period. These discussions have focused on the issues raised by the RARG report and by other comments filed in EPA's public rulemaking record.

7. The Council participated in its normal advisory role in the development of the legislative amendments to the Clean Air, Clean Water, and Surface Mining Acts of 1977. We believe the amendments allow for an adequate consideration of costs.

8. The RARG report on EPA's Hazardous Waste proposal was filed on March 16. One person within the Executive Office worked full time, five others part-time. All of the parties who participated in the drafting of the report are economists; one also has a law degree. No discussions have been held with EPA since the comment period closed. However, it is possible, as with all regulations reviewed by the RARG, that some will be held before the final regulation is issued.

9. In the RARG report on ozone, the only citation concerning section 109(b)(2) of the Clean Air Act occurs on page 27 of the report. That page and that citation refer only to the secondary standard, which is supposed to protect "the public welfare." The report then cites section 302(h) for the explanation of "welfare."

10. Staff of the Regulatory Analysis Review Group are currently studying the matter. The RARG Executive Committee will decide in the next several weeks whether a review is warranted. If a review is undertaken the subquestions raised will have to be addressed.

11. As the Justice Department stated in its opinion to Secretary Andrus in the course of Interior's strip mining rulemaking, the President's authority to manage Executive Branch decision making is fundamental to his basic Constitutional responsibility to see that the laws are faithfully executed. Statutes conferring authority on Executive Branch agencies implicitly recognize the President's authority.

12. The question asks whether Regulatory Analysis Review Group and Council on Wage and Price Stability (CWPS) meetings with agency officials during the public comment period will be closed to the public in the future. Both RARG and CWPS operate through the filing of written comments in the public hearing record of agencies engaged in issuing regulations. These comments are available to the public, and are in all other respects the same as comments filed by private parties. Interagency meetings and consultations concerned with the development of these public written comments have generally in the past not been formal or public occasions. Especially since these comments eventually become completely public, imposing such formal rules on the drafting process would rarely if ever serve any useful purpose, and would seriously encumber the task of expeditious completion of useful analysis and recommendations.

13. Yes. The President encourages wide consultation within the government with respect to major rulemakings. The Administration believes that such consultations among concerned agencies on important issues, regarding the analysis and interpretation of information in the public record, is useful and produces better regulatory decisions. This consultation also helps to assure that, if the President ultimately becomes involved in a particular matter, his advisers will be able to give him the information necessary to make a good decision.

14. As noted above, the procedure for filing public comments by RARG and CWPS is designed to assure that the basic analysis, as well as all data or information, considered important by myself or by CWPS officials, is part of a rulemaking agency's public hearing record. Consultation with agency heads about important pending rules by myself, as well as other Cabinet members and Presdential advisers, is a useful way of helping agency heads make the best regulatory decisions. Encumbering such consultations with

formal requirements, characteristic of trial-type proceedings, is not required by any law, as I understand it, and should not be. Such formal procedural requirements could transform decision processes within the Executive Branch and make them unworkable. For example, the President's recent decisions to remedy the nation's energy problems included some important matters related to pending rulemakings at various agencies. The intra-governmental consultation which led to formulation of the energy program could not have been proceeded if quasi-judicial procedural concepts were imposed on the many meetings, conversations, and other communications, at all levels of government, which comprised this decision process. Ultimately, of course, all regulatory decisions become public, and must withstand scrutiny in administrative and judicial public forums -- which is as it should be.

15. Within the context of the relevant substantive statute, a number of questions are addressed in each RARG report. These questions, which are common to all of the RARG reports are: (1) are the proposed actions cost-effective, that is, do they achieve given objectives at minimum cost? (2) Have the stringency levels of proposed standards been adequately justified and, if possible, can the degree of stringency be tailored to particular stages of processing, to particular industries, or to pertinent groups? (3) If the proposed actions are to be phased in, is the schedule for phasing feasible? These were the questions addressed -- albeit with varying emphases -- in the reviews of each of the regulatory proposals listed.

16. Whenever legal advice in this area is needed, both CWPS and CEA turn to the General Counsel's Office at CWPS, the Office of Legal Counsel at the Department of Justice, and to the General Counsel's Offices at relevant agencies.

17. The RARG staff obtains information from the agency proposing the rule and from whatever public comments are available. The draft reports are prepared under the general framework described in the answer to Question 15 (above). The full RARG, composed of the Executive Branch agencies which issue major regulations, plus CEA, OMB, and the Office of Science and Technology Policy (OSTP), reviews the draft report, amends it, where appropriate, and issues a final report.

18. In the overwhelming majority of instances, my staff and I get our information about pending rules from the comments filed in the agency's hearing record, from agency staff, and from other Federal officials. Since RARG reports are prepared simultaneously with the preparation of comments by private parties, however, it has sometimes been necessary for the drafters to seek information from private sources before their comments are filed. We shall ensure that all such information is properly footnoted when it appears in the report. In addition, I have reaffirmed to those who prepare the reports the importance of consulting all sides to these issues in the collection of information for the report. It does not seem useful to attempt to lay out formal, rigid requirements to implement this policy of assuring that all relevant points of view are known and digested. (It should be noted that the RARG consists of nearly every domestic agency, and itself usually represents a very wide variety of views, often quite strongly held.)

Some concerns have been voiced that consultation between myself, my staff, and others with agency heads regarding pending rules could become a "conduit" for communication off-the-record between interested private parties and the decision makers. This has never been the case, and it will not be. However, to allay these concerns, I have determined that, with respect to pending rules about which I or my staff consult with agency heads after comments have been received from RARG, we will assure that the agency receives a summary of any oral communications we receive from private, nongovernmental persons interested in the rule. If we receive any information in writing about the rule, we will send that to the rulemaking agency. The agency can then place the information in its hearing record.

19. CEA employs no consultants on regulatory matters.

20. The President instructed the Interior Department to ensure that its strip mining regulations were cost-effective. He also requested his advisers, including the Chairman of the CEA, to monitor the development of the regulations and to examine a final draft version before the regulations were issued. Representatives of CEA and the Interior Department discussed the proposed regulations on several occasions between November 27, 1978 and January 5, 1979. CEA participated in the decision making process in its role as adviser to the President on important economic matters.

Attachment