



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

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THE ADMINISTRATOR

Mr. William M. Nichols
General Counsel
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Nichols:

This is in reply to your request for comments on the proposed Executive Order "Improving Regulatory Practices." EPA is in complete agreement with the Order's objective of improving the quality of present and future regulations while retaining flexibility for individual agencies to develop plans suitable to each regulatory program. In fact, many of the concepts included in this proposal were originally developed and adopted by EPA. As the Federal agency which has published more regulations than any other in recent years, we have consistently attempted to refine all aspects of our regulatory development process, ranging from the degree of participation by the public and by other interested Federal agencies and the kinds of analysis required before a regulation is developed to the internal EPA review given a regulation through our detailed regulatory review process. It is our judgment that broad, formal requirements such as those in the draft Executive Order can be effective in improving regulatory decisions only if they are seen as reasonable and flexible by affected parties. The application of the provision of the Order should not, therefore, be allowed to complicate or prolong decision-making in cases of emergency, imminent hazard, statutory or court deadlines for action, or when statutes themselves specify how policy decisions should be made. We do have a number of specific comments on the Executive Order which we believe will make it more workable.

Our most important comment pertains to section 3(c), which sets out the type of regulatory analysis to accompany each regulation. This section explicitly repeals Executive Orders 11821 and 11949 and substitutes in place of them a requirement that a regulatory analysis must be prepared for all regulations with a potential economic impact of \$25 million per year or \$50 million in any two-year period. While

the requirements of the regulatory analysis to be done are spelled out only in general terms, a recent memo (September 20, 1977) from Chairman Schultze of the Council of Economic Advisors to the President addresses similar issues. Therefore, our comments on section 3(c) are made with that memo in mind. We continue to be concerned about review of regulations by an interagency Committee chaired by the Council on Economic Advisors and including OMB because of its resemblance to prior interagency review procedures, which we believe to have been inappropriate and detrimental in certain respects. We understand that there will be a thorough evaluation of any trial of such a review process, and we hope that the regulatory agencies are an integral part of this evaluation.

We strongly object to reduction of the criterion for actions that require economic impact analyses from an annual cost of \$100 million to \$25 million cost in any one year. It is most important to recognize that, because of the nationwide scope of many of the regulations EPA proposes, some regulations which have minor impacts will result in \$25 million in impacts in one year. For example, any motor vehicle regulation which imposes a cost of \$2.50 per automobile will trigger the \$25 million limitation. This requirement will impose an unnecessary workload on the few agencies with many regulatory actions. If the intention of reducing the \$100 million limitation to \$25 million is to insure protection of small industries for which small total costs may have large impacts, then a preferable way of pinpointing regulations deserving further analysis would be to retain the current \$100 million limitation and add to it another criterion currently used by EPA: an increased cost per unit that exceeds five percent of product price. This would limit the number of regulatory analyses required and target them to the most critical regulations.

A second general comment we have is that the Order is, in many instances, ambiguous and therefore subject to interpretation. If interpretation is left to the Agency, as we believe it should be, this would satisfy the spirit of the Order. However, if interpretation is delegated to OMB, flexibility would probably be lost and an unreasonable resource burden and delay could result. Examples of these ambiguities are found in subsection 3(c)(4) which is drafted to require that agencies address "all salient points to the maximum extent possible" and the subsection 3(e) requirement that review of regulations be conducted by "policy" officials.

Specific Comments

Section 2 requires periodic review of existing regulations "to determine whether or not they are achieving their intended purpose." Periodic reviews, of course, improve the quality of the regulation under review, as well as improving the quality of new proposals. However, this section offers little guidance as to the nature and extent of the review required. In addition, if retrospective reviews must be done for most or all major regulations, we believe there will be a serious drain on the Agency's analytic and policy-making resources. We, therefore, believe that guidelines for the selection and scheduling of reviews by each agency should be left to that agency.

Section 3(a) includes a requirement that agencies issue agendas of regulations on a semi-annual basis. EPA currently is issuing agendas and finds that they have served as useful planning devices both within the Agency and for interested members of the public. We support this section's inclusion in the Order.

Likewise, we support the idea of a "regulatory work plan" as established in section 3(b). We are not, however, able to distinguish clearly between points (1) and (2). Oftentimes, the need for a regulation is close to or identical with its objectives. We suggest, as an alternative, that point (1) be "the problem or requirement to which the regulation is addressed" and point (2) be "the objective to be accomplished through compliance with the regulation."

In addition to our earlier comments on subsection (c) (1), we believe that subsection (c) (2) as presently drafted may be too burdensome for effective implementation in many cases. As presently drafted, the section requires "an analysis of the economic consequences of the proposed regulation and major alternative approaches." We believe that an analysis of realistic and practical alternatives is appropriate for inclusion, but that an analysis of all the major alternatives would in some cases be unduly resource consuming and could delay regulations more than is intended. EPA's statutory authorities sometimes restrict freedom to choose whether to regulate, limit available alternatives, restrict the range of options that may be considered in reaching decisions, and specify decision procedures. In such cases, the Agency should be free to exercise discretion to consider only those practical alternatives from which to choose.

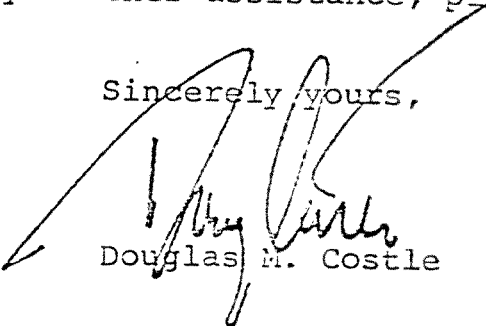
Our second concern about section 3(c)(2) is that it not become limited in scope to simply serve as an "inflationary impact analysis." This could be avoided by expanding the regulatory analysis to include consideration of expected benefits, equity considerations, the degree of additional administrative burden on affected groups, and important economic effects, besides those of inflation.

Also, it is unclear exactly what is required under subsection (e)(6). Requiring that every regulation include "criteria and a schedule" for its evaluation represents a sharp departure from current agency practice. We, of course, believe that there ought to be a government-wide commitment to the review of regulations and that this should be specified. A requirement that there be a "commitment to and plan for evaluation of the regulation at a subsequent time," would accomplish the same purpose without locking us into a requirement for evaluation criteria in each regulation.

Our final comment pertains to the schedule for implementation. The proposal requires that each agency submit to the Office of Management and Budget a draft report by November 30, 1977, detailing changes to the process by which it develops regulations. We believe that it would be impossible to comply by the November deadline. A more realistic target (assuming immediate publication of this Order) would be February 1978.

Thank you for the opportunity to comment on the proposed Order. If I may be of any further assistance, please contact me.

Sincerely yours,



Douglas M. Costle