
Lessons of the Economic Impact Statement Program

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ADDRESSING the Congress in October 1974, President Ford announced that he would require government agencies to assess the inflationary impact of their major proposed regulations and legislative recommendations. A month later he established, by executive order, an Inflation Impact Statement (IIS) Program that was to run through 1976 and apply to all executive branch agencies. At the end of 1976, Ford extended the program and changed its title to the more descriptively accurate Economic Impact Statement (EIS) Program. (In the interests of simplicity, this title and acronym will be used here, with the caveat that they should not be confused with those of the Environmental Impact Statement Program.)

Because of strong opposition from organized labor—owing especially to claims that the EIS requirement delayed regulations at the Occupational Safety and Health Administration (OSHA)—many thought that President Carter would terminate the program. Instead, he has given it strong support, most recently on April 15, when he announced several measures dealing with inflation. Specifically, he asked that full consideration be given to “the economic cost of major government regulations, through a more effective analysis of their

economic impact,” and directed the Council on Wage and Price Stability (CWPS) “to provide relevant agencies with analyses of the inflation implications of specific government regulatory and legislative actions.”

Meanwhile, support for the EIS initiative has been growing in Congress, where there is considerable interest in strengthening the program and applying it to the independent regulatory agencies as well as those within the executive branch. Bills have been introduced to require all agencies to prepare “regulatory cost/benefit assessments” of their proposed legislation and regulations having a significant economic impact (H.R. 351 and H.R. 701); to have the Congressional Budget Office prepare economic impact statements for proposed legislation and agency regulations (H.R. 1743); and to require agencies to prepare economic impact statements for proposed regulations, submit them to CWPS for comments thirty days in advance of their appearance in the *Federal Register*, and publish the analysis and CWPS’s comments along with the proposed regulation (H.R. 2100).

In view of President Carter’s interest in continuing and perhaps even strengthening the EIS program, and in view of forthcoming deliberations over such proposals on Capitol Hill, it is appropriate to review the record in order to learn what has been accomplished to date and what might be done to make such efforts more effective.*

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* A thorough assessment of the program is contained in Thomas D. Hopkins, *An Evaluation of the Inflation Impact Statement Program* (Washington, D.C.: Council on Wage and Price Stability, December 7, 1976).

Background

During 1974, rising anxiety about "double digit" inflation stimulated popular and official interest in the problem and led President Ford, in one of his first steps, to convene a series of summit conferences on inflation. These meetings produced a variety of recommendations in September and October of that year.

At the same time, the unprecedented growth in federal regulation was also causing concern. The early 1970s had seen the creation of seven new regulatory agencies, including the Environmental Protection Agency (EPA), the Consumer Product Safety Commission (CPSC), and OSHA. Between 1970 and 1974 the number of pages in the *Federal Register* had grown from 20,036 to 42,422 per year; the number of pages in the *Code of Federal Regulations* had grown from 54,105 to 69,270; and some twenty-nine major regulatory statutes had been enacted (see summary and table on page 43, this issue). Many business leaders, academics, and policy-makers were urging that regulatory activity be given closer scrutiny and that careful attention be paid to the costs and benefits of major regulations *before* rather than *after* they become effective.

These two concerns came together at two inflation summit conferences attended exclusively by economists. At the first session (Washington, September 5, 1974), there was considerable discussion about the extent to which "sacred-cow" regulations constrained economic growth, created unemployment, and caused prices to be higher than they would have been otherwise. At the second session (New York City, September 23), Thomas G. Moore, senior fellow at the Hoover Institution and an AEI adjunct scholar, circulated a petition calling for the elimination of a long list of federal regulatory and legislative restraints. Included on the list were laws restricting competition in transportation and limiting supplies of energy, as well as regulations setting the maximum interest rates payable by financial institutions and mandating safety devices on new automobiles. This petition was signed (with minor qualifications in some instances) by twenty-one of the twenty-three economists in attendance.

Thus, worry over inflation—and over regulation as a factor contributing to it—was the

major reason the EIS program was established. But the officials responsible for the program were after more than a simple tracing through of the cost impact of proposed regulations and legislative recommendations.* They wanted to use the requirement to improve agency decision-making, and this meant getting the agencies to address the costs and benefits of their proposals. What program officials wished to avoid was the tendency for agencies to serve special constituent interests, often at great cost to the general public; to view the objects of their regulations as natural enemies, to be dealt with punitively; to forge ahead with regulatory and legislative proposals without knowing enough about the problem being addressed or the effects of the proposed solution; and to resist suggestions for alternative, more efficient ways of dealing with economic problems.

In briefings on the program, agencies were told that a proposal need not be considered inflationary simply because it might generate costs. Rather, if the proposal would increase real output (that is, generate tangible and intangible benefits in excess of costs), then in a real sense it was *anti-inflationary*, but if the action would decrease real output (that is, generate costs in excess of benefits), it was inflationary. Agencies were not required under the program to place exclusive, or even primary, reliance in their decision-making on cost-benefit calculations, for such a requirement could have been imposed only through legislation. Nevertheless it was believed that requiring agency officials to address costs and benefits systematically would make them more sensitive to these issues.

A first step in the program was to establish criteria for determining whether a proposed regulation or legislative recommendation should be considered "major." Obviously, to attempt assessments of *all* proposals would spread resources far too thin. So a principal

* These officials were under no illusion that the program would *solve* the inflation problem, or even make a substantial contribution for that matter. In contrast with fiscal and monetary policy, regulation has a very small effect on the rate of inflation. But for a given impact on that rate, regulation often has a greater effect upon consumer welfare because it operates directly upon the real supply of goods and services rather than working through aggregate demand.

objective was to flag for analysis (and possible reconsideration) those proposals having costs greatly exceeding benefits. Since it tends to be easier to make a preliminary estimate of costs than benefits—especially at the initial stage of a proposal—the criteria focused on this aspect. Although supplemental criteria were developed, nearly every EIS issued during the first two years of the program was triggered by a preliminary finding that the proposal would cost \$100 million during the first year it would be in effect or \$150 million during the first two years.

Each EIS was required to analyze the proposal's estimated costs *and* benefits. These estimates were to include intangibles as well as tangibles and were to be expressed in dollar terms whenever possible. The EISs also had to review the costs and benefits of alternative approaches for achieving the same goal.

The administration of the EIS program was decentralized. Each agency was responsible for determining which of its proposals was major and for preparing the statements. Upon request, statements on proposed legislation were given to the Office of Management and Budget (OMB) and those on regulatory proposals were given to CWPS. Eventually, agencies were required to certify in the *Federal Register* that the inflationary impact of their proposed regulations had been considered and, in the case of major proposals, that an EIS had been prepared; also, upon request, agencies had to explain to CWPS why, in their judgment, a proposal was not major.

Finally, since the program was a presidential initiative established by executive order, it applied only to executive-branch agencies, and not to the independent regulatory agencies such as the Interstate Commerce Commission (ICC) and the Civil Aeronautics Board (CAB). The independents were urged to conform with the program, but each invoked its right not to be bound by it. Also, unlike its sister program, the Environmental Impact Statement, the EIS did not provide grounds for court action. As ultimately resolved in the *Independent Meat Packers* case (8th Circuit, 1975), an agency's failure to complete an EIS when required or to prepare one conforming to the specifications of the program could not be used to overturn a regulatory decision. In essence, conformance with the program de-

pendent on agency support and "policing" by CWPS and OMB.

Experience with the Program

As of mid-April 1977, a total of sixty-five EISs had been prepared—fifty-seven for proposed regulations and eight for proposed legislation. The table (see page 20) lists the date each of these analyses was completed, the responsible agency, the subject matter, and whether the proposal was regulatory or legislative. As can be seen, most EISs have been prepared by a handful of agencies—notably the U.S. Department of Agriculture (USDA), EPA, and OSHA. This reflects the important role these agencies have played recently in generating regulations and legislative proposals.

The quality of the individual EISs varies considerably. Some are quite detailed, broad in scope, and analytically sophisticated. But altogether too many are unduly brief, fail to address the relevant issues, and contain grossly defective analysis. Part of the explanation is that some agencies—for example, EPA and the Department of Transportation—have devoted substantial analytical resources to the task, while others—for example, USDA and the Food and Drug Administration (FDA)—have not. This, in turn, reflects the agencies' relative commitment to the program. While some have given it strong support, others have been hostile to it or, at best, have viewed it as a necessary hurdle.

Overall, the analyses contain reasonably good estimates of costs, but their assessments of benefits are weak, and alternatives are usually ignored. Typically, of course, costs are easier to analyze than benefits and alternatives. But the reluctance of some agencies to go beyond analyzing costs appears to be caused more by pressures from constituents than by an inability to cope with the technical problems of economic analysis. This seems particularly true of OSHA, which, despite repeated criticism from CWPS and OMB, steadfastly refuses to attempt monetary estimates of benefits or to analyze alternatives. Apparently, organized labor believes that its interests are better served by detailed, stringent standards, even though such standards may prove very costly, and objects to having OSHA, or anyone else, perform careful benefit estimates or analyze alter-

natives, either of which might make the proposed standards seem less desirable. For instance, taking a strong position on approaches for reducing worker exposure to harmful substances, organized labor supports the installation of "engineering controls" (exhaust fans, enclosed transport, et cetera) rather than the use of "personal protective devices" (respirators, gloves, special suits, et cetera). Research by CWPS economists indicates that almost invariably the latter approach can reduce worker exposure at a small fraction of the cost of engineering controls.

Has the EIS program improved agency decision-making? It may be too early to tell. Since the gestation period for a proposed regulation or law is generally several years and since the program has been in full swing for only two years, we do not have enough cases to make a definitive judgment. Furthermore, in evaluating the program we are dealing with a very subjective output—the quality of decision-making. Also, even if adequate "before" and "after" comparisons were possible, we must be careful about attributing changes solely to the program; obviously, many factors could have intervened, such as worse or better regulatory appointments, political pressures from the administration and the Congress, and changes in the relative effectiveness of adversaries in regulatory proceedings. These problems make rigorous evaluation impossible at this stage, leaving us with personal and unsystematic appraisals from those who have observed the program or participated in it.

On August 3, 1976, CWPS asked for public comments on the EIS program by means of a notice in the *Federal Register*. Thirty-one replies were received, all favorable. These included comments from Senator Hubert H. Humphrey (then chairman of the Joint Economic Committee of the Congress) and a number of manufacturers and trade organizations. No replies were received from labor organizations, but it was widely reported in the press that certain labor leaders, including George Meany and Leonard Woodcock, were openly hostile to the program, especially as it affected OSHA.

About the same time, CWPS solicited the views of key personnel at the agencies, and followed up with a score of in-depth inter-

views with agency staff members responsible for the program. In addition, several agencies commented on various drafts of the report prepared by an evaluation team headed by Thomas Hopkins of CWPS. From these various comments we learned several things about how the program is functioning.

First, officials at all of the agencies, except for two, wished the EIS program to continue. Generally, they found the analyses helpful to them in weighing the component parts of a proposal and in making trade-offs to reduce the cost of meeting a given objective. They also found the analyses useful in defending a decision not to adopt as strong a regulation or legislative proposal as some of their more extreme constituents would have liked. This appears to be the primary reason why OSHA supported the program, albeit reluctantly.

The two agencies that formally opposed the program were USDA and the Federal Energy Administration (FEA). Indeed, in late August 1976 the USDA unilaterally stopped complying with the program, arguing that it represented "meaningless paperwork" and denying that regulation could have any impact on inflation. Such an attitude is, perhaps, understandable since, by their very nature, many USDA regulations that come under the EIS program—agricultural marketing orders, price support programs, and the like—can be shown to generate costs in excess of benefits. The reason for the FEA's strong opposition to the EIS program was different. At that agency the program was viewed as an impediment to the deregulation of petroleum prices, despite efforts by those responsible for the program to assure FEA officials that in a relevant sense such action would be *anti-inflationary*—that is, it would stimulate production and reduce excess demand. A major problem was FEA's dependence on macroeconomic, econometric models for predicting the outcomes of policy changes. Such models, by their very design, indicate a price-enhancing effect for deregulation. Moreover, officials were concerned about the public's perception of the effects of deregulation, and in their view the EIS simply drew attention to rising petroleum prices.

A second thing we learned from comments by agency officials and the public is that the program is not well integrated into the proc-

ess of formulating proposals and making decisions about them. Typically, an EIS is prepared *after* a proposal has been drawn up and thus the analysts' task becomes one of justifying the approach taken. One reason for this is that usually the initiative for a new regulation or legislative proposal is taken not by the agency's economists or policy analysts, but by its lawyers and administrators. Their focus tends to be upon meeting the procedural requirements of timeliness, due process, the weighing of constituent interests, and defensibility in the courts, rather than upon the economic costs and benefits of their actions. Thus, the decision-making process often proceeds along two, almost distinct tracks—one for the decision-makers and one for the analysts. It is especially lamentable that typically the EIS is not relied upon as an input at the proposal formulation stage, since that is the time when information on costs, benefits, and alternatives is most likely to affect the ultimate decision. Once an agency has gone into print with its original proposal, the chances it will take a new direction are very slim.

Not surprisingly, then, a third major thing we learned is that the program receives higher marks from agency economists and policy analysts than from lawyers and administrators more directly responsible for the decisions. The lawyers' interest is to ensure ample discretion for the ultimate decision-maker and to minimize the risk that decisions will be challenged and perhaps overturned in court. They see the EIS as narrowing that discretion and as providing a potentially damaging piece of evidence in court. (For this reason, there is some reluctance to make EISs public.) On the other hand, economists and policy analysts generally see the EIS as strengthening their hand within the agency. It may give them somewhat more influence on policy decisions, and it often leads to an increase in their share of agency resources. The program also tends to be supported more strongly by senior officials in the agencies than by junior officials—partly because it is regarded as a means of "controlling the bureaucracy" and partly because it is a presidential program. Senior officials, as political appointees, are more apt to reflect presidential concerns about policy and the responsiveness of the bureaucracy than are employees protected by the Civil Service system.

The fourth thing we learned is that the program costs the agencies little in terms of resources. One reason is that the OMB circular promulgating the program stated that it would be met within the existing budget. The argument was that agencies already possessed a capability for economic analysis and that the EIS program would merely redirect that effort. Predictably, this has proved to be a bone of contention, and nearly every agency has urged that this policy be reconsidered. It appears, however, that few additional resources have been required. Existing policy staffs have been utilized a bit more intensively than they were, with their efforts supplemented on occasion by other personnel in the agency. The major exception is OSHA, which has contracted out its EISs, often at six figures. But even at OSHA *some* economic analysis would have been done in the absence of the EIS program.

On the basis of these conclusions and my own experience with the program, a tentative assessment may be made. First, as noted, the costs of the program appear to be low. Second, despite wide variations among agencies, there is some evidence, albeit highly subjective, that the program is having a substantial effect. Policy-makers now appear to be taking the economic implications of their proposals more seriously than they used to. In agency discussions and in formal proceedings, the EIS is serving as a rallying point for those arguing that regulation should be consistent with economic efficiency. The EIS is often an important component of CWPS filings before regulatory agencies—and, because CWPS is part of the Executive Office of the President and because its interventions are highly publicized, it has considerable clout. Moreover, although agencies seldom alter their proposals once announced, there have been cases where, arguably, the EIS and the attention drawn to it have caused the ultimate outcome to be different than it otherwise would have been. More important, an agency's concern that its EIS may be criticized and that the analysis may undercut, rather than support, its proposal has led to closer coordination between the lawyers and economists at the proposal formulation stage—and, therefore, to more carefully considered proposals and better analyses. Thus, summing up, it appears that the benefits of the program substantially outweigh the costs.

Where Do We Go from Here?

When contemplating the future of the EIS program, one should keep in mind that economic analysis is merely one instrument for improving the quality of decision-making and that there are others—including better regulatory appointments, greater oversight by OMB and the Congress, and revisions in the Civil Service system to improve the quality and accountability of agency staff. While the EIS program alone cannot produce perfection, it can be—and, as we have seen, has been—a useful device. It should be continued. It should also be improved.

First, steps should be taken to improve the overall quality of EISs. Specifically, minimal standards should be established. Clearly, decision-making is not aided if the analysis on which it is based is incompetent. This objective could be addressed by requiring that regulatory agencies, before taking action, obtain CWPS or OMB approval for the quality of their analysis (not the desirability of the proposal). Any impasse between CWPS or OMB and the initiating agency could be resolved by the Economic Policy Group (EPG) or some other representative designated by the President. Changes of this kind might require legislation.

Second, steps should be taken to ensure that the EIS is utilized as an input into the regulatory decision-making process—especially at the proposal formulation stage. One way of bringing this about would be to require agencies to submit their EIS evaluations to CWPS (or perhaps some other group like the EPG) *prior* to publication in the *Federal Register*. This would give proposal formulators the opportunity to draw upon outside expertise and would provide an extra incentive for them to utilize the analyses.

Third, the EISs should be made public and should be featured more prominently by the agencies. As mentioned earlier, the possibility that an EIS will be criticized spurs agencies to improve their analyses and make better use of them. Formal EISs should accompany major legislative proposals sent to the Congress by the administration. In the case of regulatory proposals, the formal EIS (or, if lengthy, an executive summary) should be published in the *Federal Register*.

Fourth, the program needs to be extended to *existing* regulations and programs. This could be done without legislation, utilizing OMB in its normal management and budget roles. Or, to maintain flexibility and avoid undue bureaucratization, CWPS and/or OMB might be given explicit authority to request from each agency each year a limited number of analyses of existing regulations or programs.

Fifth, the program should also be expanded to include the independent regulatory agencies—for example, the ICC, the CAB, the Federal Power Commission, the Federal Communications Commission, and the Federal Trade Commission. These agencies generate important legislative and regulatory proposals whose overall quality could be enhanced by a rigorous application of economic reasoning. This recommendation also would require legislation.

Sixth, all agencies should have the discretion to consider costs and benefits in developing their regulatory proposals and in making their decisions. This would mean, for example, (1) repealing the “Delaney amendment” to the Food, Drug, and Cosmetics Act (which requires the FDA to ban any food additive found to be carcinogenic, regardless of the benefits and costs of such a ban) and (2) modifying the Clean Air Act (which, as it is interpreted by EPA, requires the agency *not* to consider costs and benefits in certain instances).

Seventh, Congress should require that, according to reasonably informed judgment, major new regulations have favorable cost-benefit ratios and meet their given objectives at the lowest cost, considering all the available alternatives. Along with this, Congress might grant interested parties the right not only to appeal in the federal courts but to have the regulatory decision determined in the courts (that is, *de novo* review) if there were clear and convincing evidence that the agency had failed to consider the benefits and costs of the proposal.

IN PRACTICE, regulatory decision-making and legislative proposal-making fall far short of the theoretical ideal. Our objective should be to make them as rational as possible, and the EIS technique is an important contribution to that end. To attain its full usefulness, however, it should be strengthened by administrative action and supplemented by legislation.

ECONOMIC IMPACT STATEMENTS COMPLETED BY FEDERAL AGENCIES

Date EIS Completed	Agency	Subject	Nature of Proposal
March 1975	DOC	proposed Patent Modernization and Reform Act	legislation
March 1975	USDA	standards for beef grading	regulation
April 1975	FEA	proposed Energy Conservation and Production Act	legislation
May 1975	USDA	support for U.S. agricultural exports	regulation
May 1975	USDA	tobacco price supports	regulation
June 1975	USDA	peanut price supports	regulation
June 1975	HUD	construction standards for mobile-home safety	regulation
July 1975	FEA	proposed Electric Power Facility Construction Act of 1975	legislation
July 1975	USDA	U.S. agricultural export program of Commodity Credit Corporation	regulation
July 1975	DOL	proposed Unemployment Compensation Amendments Act	legislation
July 1975	EPA	registration of pesticides	regulation
August 1975	DOL	proposed Work Incentive Program Amendments Act	legislation
September 1975	EPA	drinking water standards	regulation
October 1975	EPA	motorcycle emissions	regulation
October 1975	EPA	effluents from offshore gas and oil production	regulation
October 1975	USDA	milk price supports	regulation
October 1975	USDA	labeling of meat and poultry products	regulation
October 1975	USDA	support and regulation of cotton crop program	regulation
October 1975	DOT	proposed Aviation Act of 1975 (regulatory reform)	legislation
November 1975	EPA	maintenance of ambient air quality standards	regulation
November 1975	EPA	coal mining effluents	regulation
November 1975	HUD	mortgage insurance and assistance	regulation
November 1975	DOT	proposed Northeast Regional Railroads Additional Service Act	legislation
January 1976	USDA	support for U.S. agricultural exports	regulation
January 1976	EPA	effluent guidelines for paper industry	regulation
January 1976	HEW/FDA	ban of diethylstilbestrol (DES) in cattle feed	regulation
February 1976	HEW	discrimination against handicapped persons	regulation
February 1976	DOL/OSHA	worker exposure to coke-oven emissions	regulation
February 1976	FEA	exemption of residual fuel oil from mandatory petroleum allocation and price regulations	regulation
February 1976	EPA	standards for measuring evaporative hydrocarbon emissions from automobiles	regulation
February 1976	EPA	limitations on organic-chemical effluents	regulation
March 1976	USDA	milk price supports	regulation
March 1976	USDA	modifications in food stamp program	regulation

ECONOMIC IMPACT STATEMENTS COMPLETED BY FEDERAL AGENCIES (continued)

Date EIS Completed	Agency	Subject	Nature of Proposal
March 1976	DOD/CE	permits for dredge-and-fill operations	regulation
March 1976	EPA	emissions from light-duty trucks	regulation
April 1976	HEW	Medicaid reimbursements to nursing homes	regulation
April 1976	HEW/FDA	banning of nitrofurans in chicken feed	regulation
April 1976	DOL/OSHA	worker exposure to industrial noise	regulation
April 1976	DOL/OSHA	worker exposure to inorganic arsenic	regulation
May 1976	FEA	proposed Energy Independence Authority Act	legislation
May 1976	USDA	tobacco price supports	regulation
May 1976	DOT	financing of rehabilitation of railroad facilities	regulation
June 1976	EPA	guidelines for iron and steel effluents	regulation
June 1976	EPA	effluents from photographic processing	regulation
June 1976	FEA	guidelines for federal support of state energy conservation plans	regulation
July 1976	DOT/NHTSA	occupant crash protection (air bags)	regulation
July 1976	FEA	definition and allocation of nonproduct cost increases	regulation
August 1976	USDA	support for U.S. agricultural exports	regulation
September 1976	EPA	effluents from pesticides	regulation
September 1976	FEA	contingency plan for gasoline and diesel-fuel rationing	regulation
November 1976	EPA	limits on polychlorinated biphenyl (PCB) effluents	regulation
November 1976	FEA	exemption of motor gasoline from mandatory allocation and price controls	regulation
December 1976	EPA	guidelines for effluents from onshore oil production	regulation
December 1976	EPA	noise emissions for wheel and crawler tractors	regulation
January 1977	EPA	dust emissions from grain elevators	regulation
January 1977	DOC	guidelines for federal support of coastal energy impact programs	regulation
January 1977	DOL/OSHA	occupational exposure to sulfur dioxide	regulation
January 1977	DOT/FAA	abatement of airport noise	regulation
February 1977	FEA	allocation of increased costs to gasoline	regulation
February 1977	FEA	entitlements program for strategic petroleum reserve	regulation
February 1977	DOL/OSHA	occupational exposure to lead	regulation
March 1977	FEA	incentives for industry to switch from oil and gas to coal	regulation
April 1977	USDA	milk marketing order in the New York-New Jersey area	regulation
April 1977	HEW/FDA	banning of saccharin and its salts	regulation
April 1977	FEA	consistent control treatment for Californian and Alaskan crude oil	regulation

Source: Council on Wage and Price Stability and Office of Management and Budget.