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8:30 AM - EPB

Wednesday, December 15, 1976

JMC  
Quern

ECONOMIC POLICY BOARD  
EXECUTIVE COMMITTEE

Proposed Agenda

JMC altered  
JMC

Monday, December 13, 1976 PRINCIPALS ONLY

- 1. New Estimates of Economic Potential CEA
- 2. Tax Policy Review Treasury

Tuesday, December 14, 1976

No Executive Committee Meeting

Wednesday, December 15, 1976

JMC  
& Spencer  
Johnson

- 1. Evaluation of Inflation Impact Statement Program OMB/CWPS
- 2. Review of the Causes of Rising Health Care Costs and Alternative Solutions CWPS

Thursday, December 16, 1976

No Executive Committee Meeting

Friday, December 17, 1976

JMC

- 1. Economic Outlook Troika II



THE WHITE HOUSE

WASHINGTON

December 7, 1976

MEMORANDUM FOR

THE EXECUTIVE COMMITTEE  
ECONOMIC POLICY BOARD

FROM: WILLIAM F. GOROG *WFG*

SUBJECT: Update of Selected Economic Statistics

1. Money Stock Measures

Change in October from	M <u>1</u>	(%Change)	M <u>2</u>
July 1976	6.6		11.6
April 1976	5.4		10.1
October 1975	5.6		10.7

2. Total Industrial Production (Real Terms, seasonally adj.)

(Index: 1967 = 100)	Index	% Change
October 1976	130.4	-0.5
September 1976	131.0	-0.2
August 1976	131.3	+0.5
July 1976	130.7	+0.5
June 1976	130.1	+0.4
May 1976	129.6	+0.9
April 1976	128.4	+0.2
March 1976	128.1	+0.6
February 1976	127.3	+1.3
(October 1975 - October 1976)		+6.7

3. Retail Sales (Current dollars, seasonally adj.)

Total:	\$ Billions	% Change
September 1976	54.60	+0.1
August 1976	54.53	+1.4
July 1976	53.75	-0.4
June 1976	53.98	+2.1
May 1976	52.87	-1.5
April 1976	53.70	+0.7
March 1976	53.34	+1.4
(September 1975 - September 1976)		+10.0



4. Housing Starts and Building Permits (Seasonally adj.)

Starts (annual rates):		Units	% Change
October	1976	1,792,000	-3.6
September	1976	1,858,000	+20.5
August	1976	1,542,000	+11.6
July	1976	1,382,000	-8.5
June	1976	1,510,000	+6.2
May	1976	1,422,000	+4.0
April	1976	1,367,000	-3.5
March	1976	1,417,000	-8.4

(October 1975 - October 1976) +25.2

Permits (annual rates):

October	1976	1,437,000	-4.5
September	1976	1,504,000	+16.0
August	1976	1,296,000	+6.7
July	1976	1,215,000	+5.7
June	1976	1,150,000	-0.7
May	1976	1,158,000	+7.0
April	1976	1,082,000	-4.6
March	1976	1,188,000	-

(October 1975 - October 1976) +29.3

5. Employment and Unemployment (Seasonally adj.)

Civilian Labor Force (CLF): Millions of Persons - 16 yrs.+

November	1976	95.89
October	1976	95.34
September	1976	95.20
August	1976	95.49
July	1976	95.33
June	1976	94.64
March	1975	91.88
December	1974	91.64

Employment:

November	1976	88.13
October	1976	87.77
September	1976	87.82
August	1976	87.98
July	1976	87.91
June	1976	87.50
March	1975 (low)	84.11
December	1974	85.05

Unemployment:

	<u>Millions of Persons</u>	<u>% of CLF</u>
November 1976	7.77	8.1
October 1976	7.57	7.9
September 1976	7.38	7.8
August 1976	7.51	7.9
July 1976	7.43	7.8
June 1976	7.14	7.5
May 1975	8.25	9.0
December 1974	6.59	7.2

Unemployment:

<u>Heads of Households:</u>		<u>(% of Group)</u>
November 1976	-	5.4
October 1976	-	5.4
September 1976	-	5.4
August 1976	-	5.2
July 1976	-	5.4
December 1975	-	5.7
May 1975	-	6.1
December 1974		4.6

6. Manufacturers' Shipments and Orders (current dollars, seasonally adj.)

<u>Total Shipments:</u>	<u>\$ Billions</u>	<u>% Change</u>
September 1976	93.864	-0.7
August 1976	94.48	+0.6
July 1976	93.91	-0.4
June 1976	94.24	-0.1
March 1976	93.05	+2.3
 <u>Total Inventories:</u>		
September 1976	154.61	+1.2
August 1976	152.74	+0.6
July 1976	151.82	+0.6
June 1976	150.91	+1.2
March 1976	148.15	+0.6
 <u>Total New Orders:</u>		
September 1976	93.56	-1.5
August 1976	95.00	+0.2
July 1976	94.80	-0.8
June 1976	95.60	-0.2
March 1976	93.39	+3.5

7. Consumer Price Index

All Items - 12 mos. previous to:		<u>% Change</u>
October	1976 (+0.4% for month)	+5.3
September	1976 (+0.4% for month)	+4.8
August	1976 (+0.5% for month)	+5.6
July	1976 (+0.5% for month)	+5.4
June	1976 (+0.5% for month)	+5.9
March	1976 (+0.2% for month)	+6.1
September	1975	+7.8
June	1975	+9.3
March	1975	+10.3
December	1974	+12.2

8. Wholesale Price Index

All Commodities - 12 mos. previous to:		<u>% Change</u>
November	1976 (+0.6 for month)	+4.2
October	1976 (+0.6 for month)	+3.5
September	1976 (+0.9 for month)	+3.9
August	1976 (-0.1 for month)	+4.0
July	1976 (+0.3 for month)	+4.9
June	1976 (+0.4 for month)	+5.4
March	1976 (+0.2 for month)	+5.4
September	1975	+6.3
June	1975	+11.6
March	1975	+12.5

9. Gross National Product (constant 1972 dollars)

Change from previous Quarter:		<u>% Change</u>
Third Quarter	1976	+3.8
Second Quarter	1976	+4.5
First Quarter	1976	+9.2
Fourth Quarter	1975	+3.3
Third Quarter	1975	+11.4
Second Quarter	1975	+5.6
First Quarter	1975	-9.9

10. Real Spendable Earnings

12 Months previous to:		<u>% Change</u>
October	1976	+0.4
September	1976	-0.7
August	1976	-0.4
July	1976	+0.5
June	1976	-0.2
March	1976	+4.5
December	1975	+3.8
September	1975	+1.6
June	1975	+0.2
March	1975	-4.6

11. Personal Income (current dollars, seasonally adj.)

Annual Rate:	<u>\$ Billions</u>	<u>%Change</u>
October 1976	1,401.9	+0.6
September 1976	1,391.7	+0.4
August 1976	1,385.5	+3.4
July 1976	1,380.8	+0.8
June 1976	1,370.4	+0.6
March 1976	1,341.9	+0.8
December 1975	1,308.2	+13.4
December 1974	1,153.3	-

12. Composite Index of Leading Indicators

Change from previous month:	<u>% Change</u>
October 1976	-
September 1976	-0.9
August 1976	-0.8
July 1976	+0.1
June 1976	+1.0
May 1976	+0.7
April 1976	+0.5
March 1976	+0.9
February 1976	+0.6
January 1976	+1.6

FOR OFFICIAL USE ONLY

# Business Conditions Report

**December 10, 1976**



**U.S. Department of Commerce  
DOMESTIC AND INTERNATIONAL  
BUSINESS ADMINISTRATION  
Bureau of Domestic Commerce**

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orders decline in October.

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in November, paced by 2.3 percent rise in crude materials;  
industrial materials rise 0.8 percent; farm products up  
0.2 percent.

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products rise 0.6 percent; coal rises marginally.

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SOFTWOOD PLYWOOD AND LUMBER PRICES..... 7-5  
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price continues stable; copper scrap unchanged in week;  
ferrous scrap rises 2 percent.

For further information contact:

Mr. Murray S. Scureman, 377-5491  
Mr. Charley M. Denton, 377-5223

Enquiries and suggestions are welcomed.

INDUSTRY HIGHLIGHTS

CAPITAL SPENDING: REAL INVESTMENT INCREASE INDICATED FOR 1976

CURRENT ° Capital spending for 1976 is expected to total \$121.2 billion, 7.5 percent above 1975, according to a survey conducted in late October and November by Department of Commerce. (See chart in Business Indicators.) Based on a 4 percent price increase trend for capital equipment in first 3 quarters of this year, the indicated "real" investment would be about 3 percent above 1975.

AUTOMOTIVE: NOVEMBER NEW CAR SALES UP 8.4 PERCENT

CURRENT ° New car sales rate for November 1976 increased 8.4 percent from last year's level.

- ° Domestic new car sales in November totaled 721,000 units, in line with most recent forecasts, but down considerably from 800,000 level forecast in October. Sales rate for last 10 days of November showed a 21 percent gain over a year earlier.
- ° Domestic car sales for 1976 are now expected to total slightly less than 8.6 million units, 21 percent above 1975 but 12 percent below peak year, 1973.
- ° Auto manufacturers apparently expect the October and November lull to be of short duration, and are scheduling production of almost 2.6 million cars for first quarter 1977. First quarter production would be second highest in history, exceeded only by record 2,708,000 units in 1973.
- ° Some observers believe auto makers are overly optimistic and predict schedules will be cut back by 200,000 to 250,000 units.

MOBILE HOMES: MODERATE RECOVERY CONTINUES

- ° Mobile home shipments slumped in 1975 to 213,000 units from 329,000 in 1974, 567,000 in 1973, and 576,000 in peak year 1972.

CURRENT ° Mobile home shipments in October 1976 were 22,220 units up 1,380 units or 7 percent from October 1975.

- ° On seasonally adjusted annual rate basis, October shipments were 269,000, second-highest month this year. Seasonally adjusted shipments were 255,000 in September and 235,000 in October 1975.

- Cumulative shipments for first 10 months 1976 totaled 216,520 units, slightly more than was shipped in all of 1975. Shipments in 10-month period were 19 percent ahead of same 1975 period.

RETAIL TRADE: MODEST CHRISTMAS SALES EXPECTED

- CURRENT
- Retail sales through November 27 (latest reporting period) are ahead of comparable 1975 period by 11 percent, reflecting strong automotive sales (up 23 percent to date) and weaker non-automotive sales (up 8 percent).
    - 8 percent non-automotive gain represents mixture of strong growth sectors (building materials, hardware and farm equipment dealers, up 12 percent, eating and drinking places, up 10 percent; and department stores, up 11 percent) and categories showing smaller year-to-year gains (apparel stores, up 7 percent; and foods, up 6 percent).
  - During the Thanksgiving-Christmas period 1975, total sales increased about 14 percent, reflecting return of consumer confidence that was lacking earlier in year. High level of sales during 1975 holiday period will make it difficult for retailers to increase sales by a significant amount this year.
    - Sales of building materials have started to moderate, reflecting seasonal construction activity. There was no gain in sales during the last 4 weeks, although year-to-date sales in 1976 are 12 percent over same 1975 period.
    - Department stores are expected to maintain year-to-date growth of 11 percent, aided by in-depth inventories and a willingness to reduce prices to move slow selling merchandise.
  - Overall gains of 8 percent are expected for 1976 Christmas selling season, based on anticipated department store sales strength and maintenance of growth levels of non-department store categories.

APPAREL RETAIL: SALES EXPAND SLIGHTLY OVER 1975

- Retail apparel sales boomed in December 1975; retailers relied on consumer enthusiasm to order heavily for 1976 spring season.
- Sudden drop in consumer spending in second quarter 1976 left retailers overstocked and hesitant about remainder of year.

- CURRENT** ° Comparative growth in apparel sales this holiday season is beginning to reflect effects of last year's sales. Sales increased only 5 percent for week ended November 27 over comparable 1975 week; sales are up only 7 percent from 1975 for last 4 weeks and year-to-date.
- ° Percentage gains are significantly lower than October-November 1976 gains, which were 10 to 12 percent above 1975 comparable periods.
  - ° Apparel retailers have profited from abnormally cold weather over most of the country; however, retailers generally agree that additional stimuli are needed if 1976 end-of-year sales are to match same 1975 period.

**MACHINE TOOLS: EXPORTS MAINTAIN FAVORABLE BALANCE**

- ° Machine tool exports are an important factor in U.S. balance of trade, consistently on the plus side. Machine tool exports in 1975 were \$708 million; production was \$2,304 million.
  - ° U.S. machine tool exports increased by 146 percent between 1965 and 1975.
- CURRENT** ° Value of U.S. machine tool exports during third quarter 1976 was \$125 million, a drop of 10.7 percent from second quarter levels.
- ° Total exports of machine tools in first 9 months 1976 reached \$415 million, equal to year-to-date totals of last year. Traditionally strong end-of-year shipments are expected to reach last year's fourth quarter.
  - ° Exports of metal forming machines showed strong growth trends in past 2 years. Exports of metal forming types in third quarter reached \$62.1 million, 1.5 percent below second quarter. Year-to-date total is \$199 million, 25.7 percent above comparable total last year, with indications 1976 metal forming exports will exceed 1975 record rate.
  - ° Exports of metal cutting machine tools in third quarter 1976 declined to \$62.6 million, down 18.3 percent from the second quarter. Total metal cutting tool exports for first 9 months 1976 were \$215 million, a drop of 16.2 percent below 1975 record rate.
  - ° Value of U.S. machine tool imports reached \$93 million during third quarter 1976, an increase of 34 percent over the second quarter. Total machine tools imported in first 9 months 1976 amounted to \$235 million, down 3.2 percent from 1975.

- Export and import data reflect continued concentration of U.S. industry on production of sophisticated machine tools, which are exported, to detriment of manually operated models which are imported.

SCREW MACHINE PRODUCTS: ORDERS AND SHIPMENTS STRONG

- CURRENT
- September shipments index for screw machine products increased 4 percent from August to 170 (1967=100). January through September 1976 average of 158 exceeded the 1975 monthly average by 22 percent and was only 6 percent below the 1974 peak of 167. (See chart in Business Indicators.)
  - Although orders booked index in September dipped slightly to 170 (1967=100) from 175 in August, year-to-date average monthly index of 169 is a record level, 2 points above previous peak of 167 recorded in 1974.
  - High level of activity in this industry is an indication of some upturn in user markets.

FORGINGS: OCTOBER ORDERS INCREASE

- The impression die forging industry supplies vital components to many important industries. In 1975, aircraft and aerospace industries accounted for 27 percent of total value of forging shipments; automotive, 19 percent; construction, mining and materials handling equipment, 15 percent; farm machinery and equipment, 5.4 percent; ordance, 5 percent; plumbing fixtures, valves, and fittings, 5.4 percent; and railroad equipment, 4.3 percent.
- October 1976 orders for impression die forgings, estimated at \$161 million, were 13 percent above \$143 million recorded in September 1976 and 71 percent over those reported in October 1975.
- Year-to-date bookings of \$1,354 million were 64 percent over first 10 months 1975. Record was set in 1974, when \$2,110 million orders were booked.
- Shipments of forgings in October, estimated at \$151.2 million, were 2 percent above September 1976 value and 2 percent above October 1975 shipments.
- Year-to-date shipments through October of \$1,407 million were 1 percent below first 10 months 1975. However, 1976 volume is expected to exceed slightly the \$1,644 million reached in 1975, the peak year.

PUBLISHING: 10-MONTH BOOK EXPORTS REACH \$250 MILLION

- 1975 exports of U.S. books totaled \$269 million, an 11 percent gain over 1974 shipments.
- CURRENT ◦ Through October 1976, foreign purchases of U.S. books were \$250 million, 11 percent above 10-month 1975 sales of \$226 million.
- Canada is largest U.S. book market, with 10-month 1976 demand totaling \$123 million. Textbook sales to Canada accounted for \$34 million, while sales of technical, scientific, and professional books reached \$13 million.
- Largest export category was trade (general) books -- novels, biographies, non-fiction, etc. -- with foreign sales of \$104 million through October 1976. Primary markets for these books were Canada (\$59 million), United Kingdom (\$11 million), Australia (\$8 million), and Japan (\$5 million).

HEALTH CARE: HIGHER MEDICARE HOSPITAL DEDUCTIBLE

- Hospital costs have been increasing twice as fast as overall cost of living during past year; Medicare beneficiaries, therefore, will have to pay more of their hospital bills next year.
- In late 1976, cost of an average hospital stay under Medicare was about \$1,600 compared with \$1,100 a year earlier.
- CURRENT ◦ Effective January 1, 1977, Medicare hospital deductible which is tied automatically to hospital costs under Social Security legislation, will rise 19 percent, from \$104 to \$124.
- For hospital stays of more than 60 days, Medicare beneficiaries will pay \$31 a day for 61st through the 90th day, up from current \$26 a day.
- Medicare deductible for post-hospital stays in a skilled nursing facility will increase to \$15.50 per day from current \$13 per day after a 20-day stay.

CHEMICALS: NEW DETERGENT BUILDER ANNOUNCED

- Sodium tripolyphosphate was backbone of synthetic detergent industry for many years.



- In 1972, phosphates were denounced as causing destruction of water resources due to accelerated growth of algae leading to premature aging of waterways into which municipal and industrial wastes and agricultural run-off discharged.
- As a result, detergent manufacturers either voluntarily or in compliance with local ordinances cut back amount of phosphate in standard detergents and sought alternative detergent systems.
- New detergents were not as effective as former high-phosphate formulations.
- CURRENT ◦ Both Procter & Gamble and Henkel (in Germany) have announced development of a new aluminosilicate detergent builder, which is said to permit further reduction of 50 percent in phosphate content of detergents.
- New builder does not counteract water hardness resulting from magnesium compounds. Hence, some phosphate must remain in the formulation.
- Production of sodium tripolyphosphate, already reduced by about 30 percent from the 1971-72 high of more than a million short tons, will probably suffer further losses as the new builder comes into use.
- Suppliers of the new builder will have to construct plants for its production in the volume required by detergent industry.

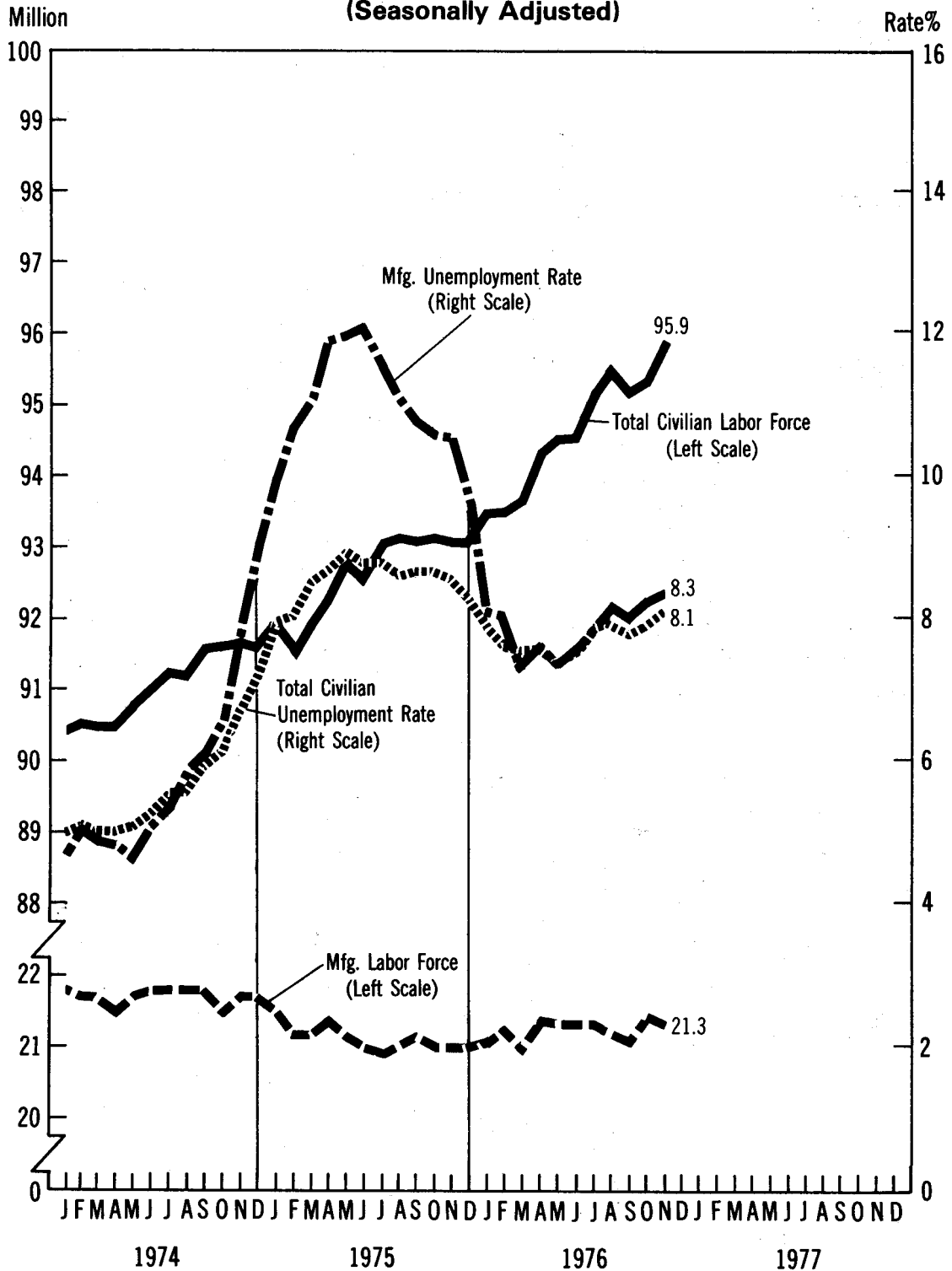
COLOR TELEVISION RECEIVERS: HIGH INVENTORIES  
RESULT IN PLANT SHUTDOWNS

- Retail sales of color television receivers have begun to recover from lows experienced during recent months. Sales in 1976 through November 12 were 16 percent ahead of sales during same 1975 period. However, almost all of increase was accounted for by increase in imports. (See Business Conditions Report, November 26, 1976.)
- Inventories are about 2.4 million sets, which manufacturers consider excessive, in view of total domestic market of only about 7.5 million sets for 1976.
- CURRENT ◦ High inventory level has led 3 major U.S. producers to announce temporary production shutdowns, ranging from 2 weeks to 1 month, to reduce inventories.
- In addition, Sylvania will cease color TV assembly operations permanently at its Batavia, N.Y. plant.
- Many other manufacturers are adding extra days to the traditional December holiday closings.

# BUSINESS INDICATORS

## LABOR FORCE AND UNEMPLOYMENT RATES

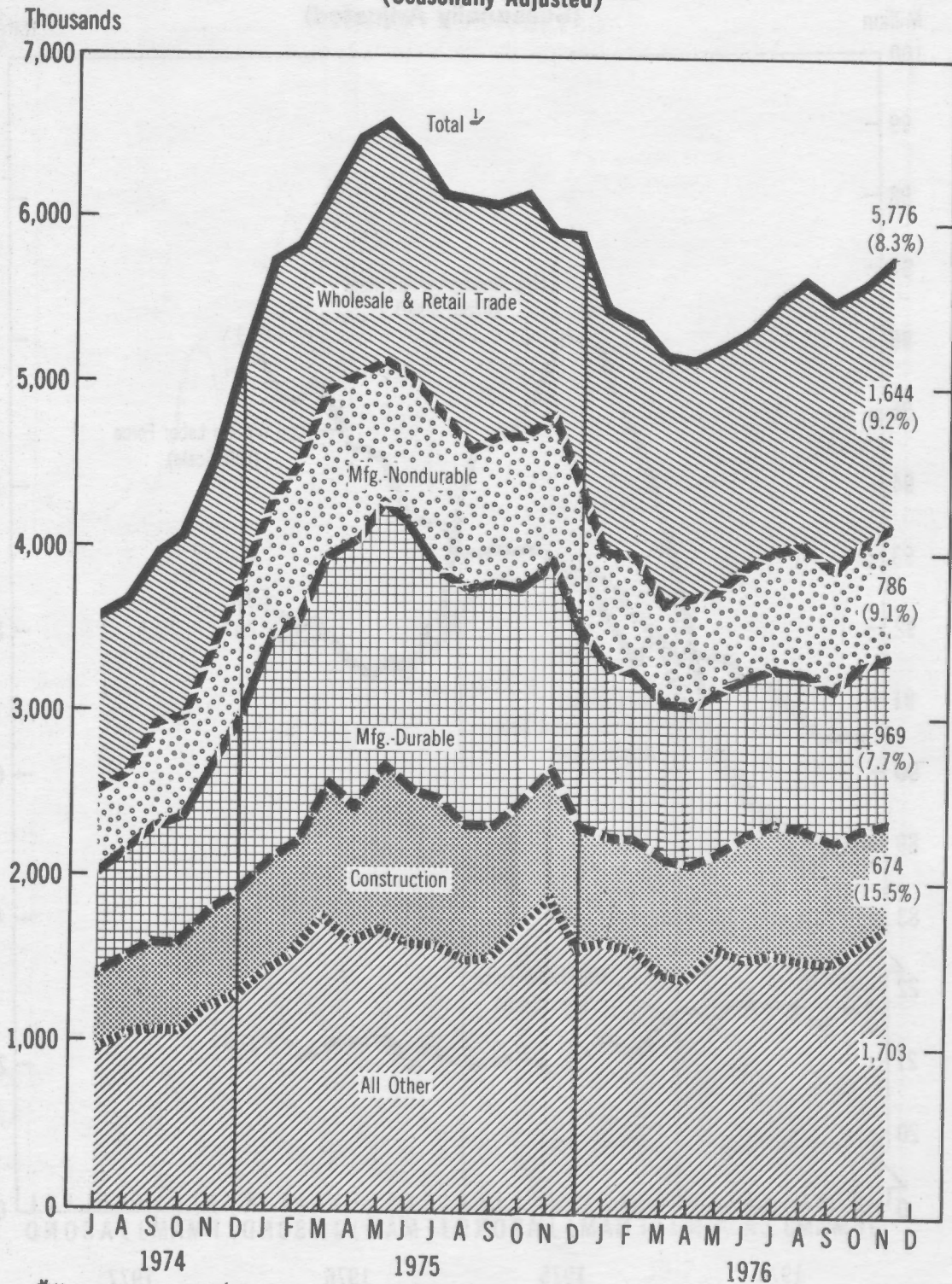
Household Data  
(Seasonally Adjusted)



Source: Bureau of Labor Statistics

# UNEMPLOYMENT - SELECTED INDUSTRIES

Household Data  
(Seasonally Adjusted)

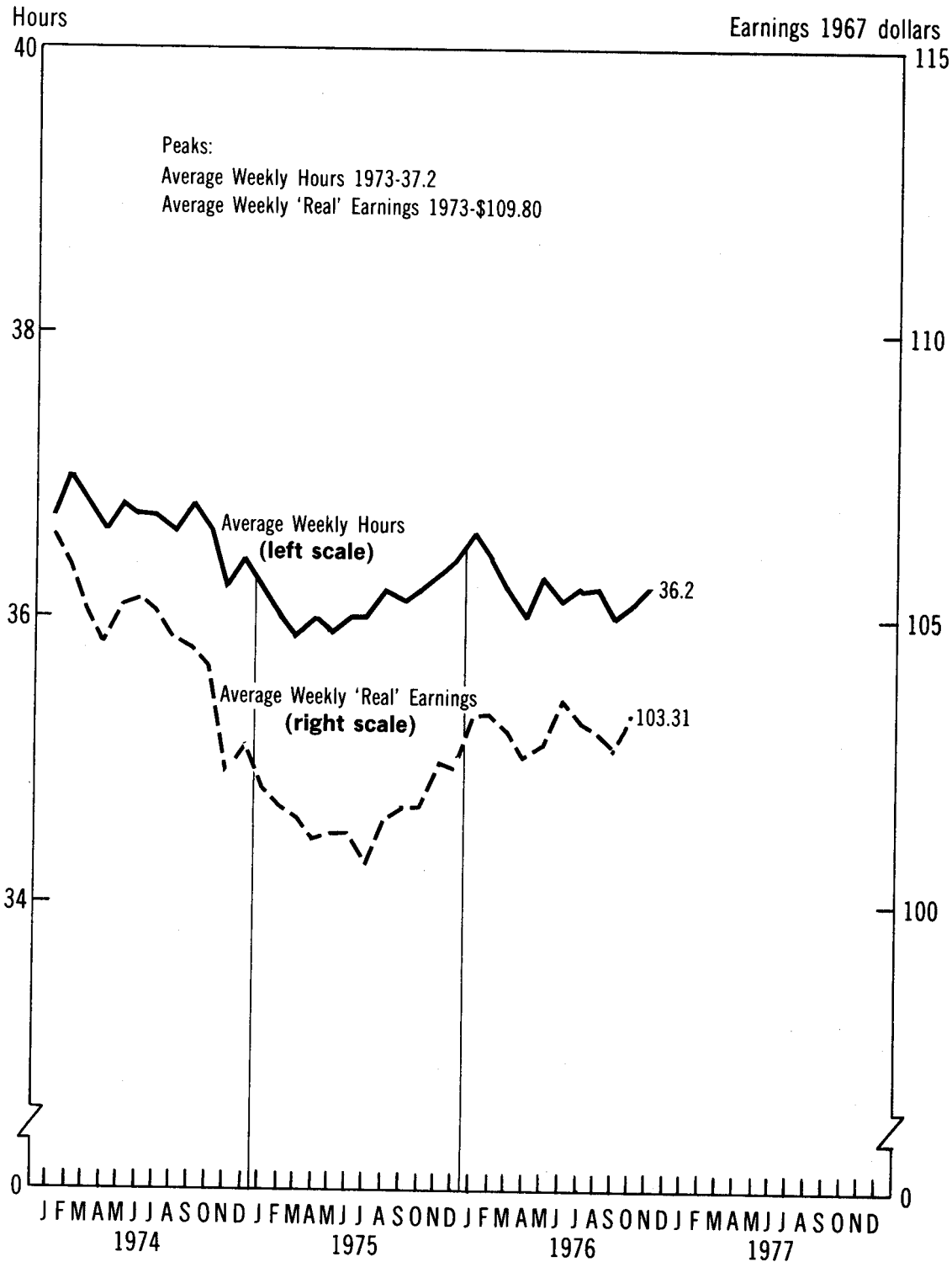


\* Unemployment rate † Nonagricultural private wage and salary workers.

Source: Bureau of Labor Statistics

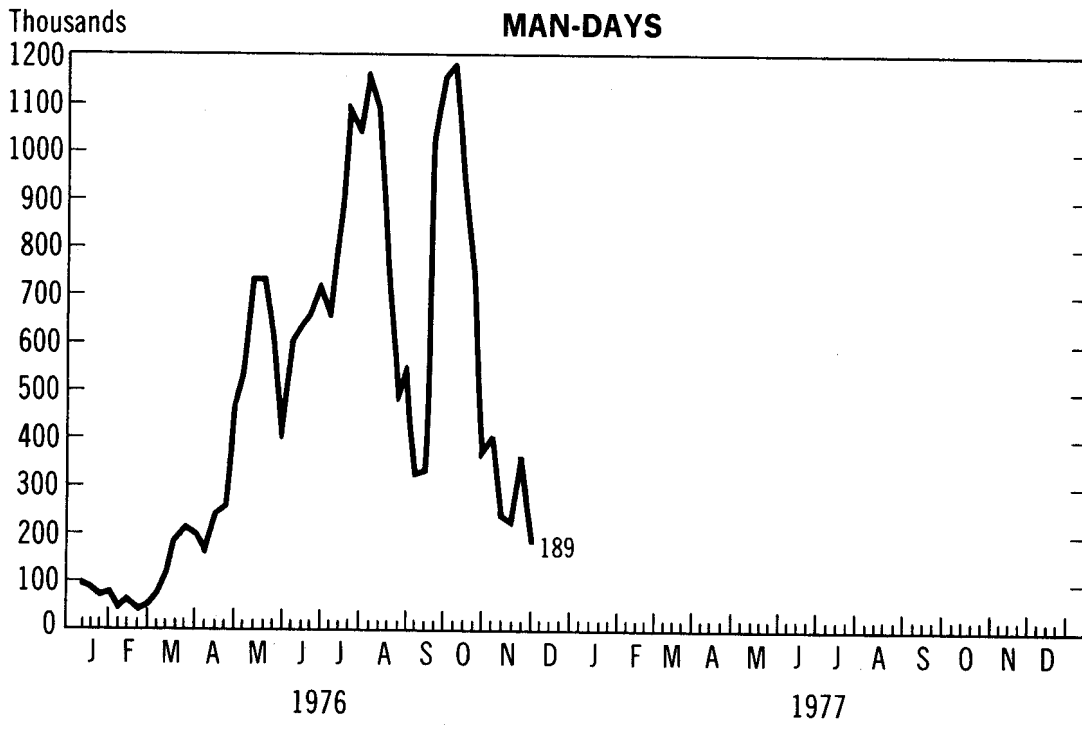
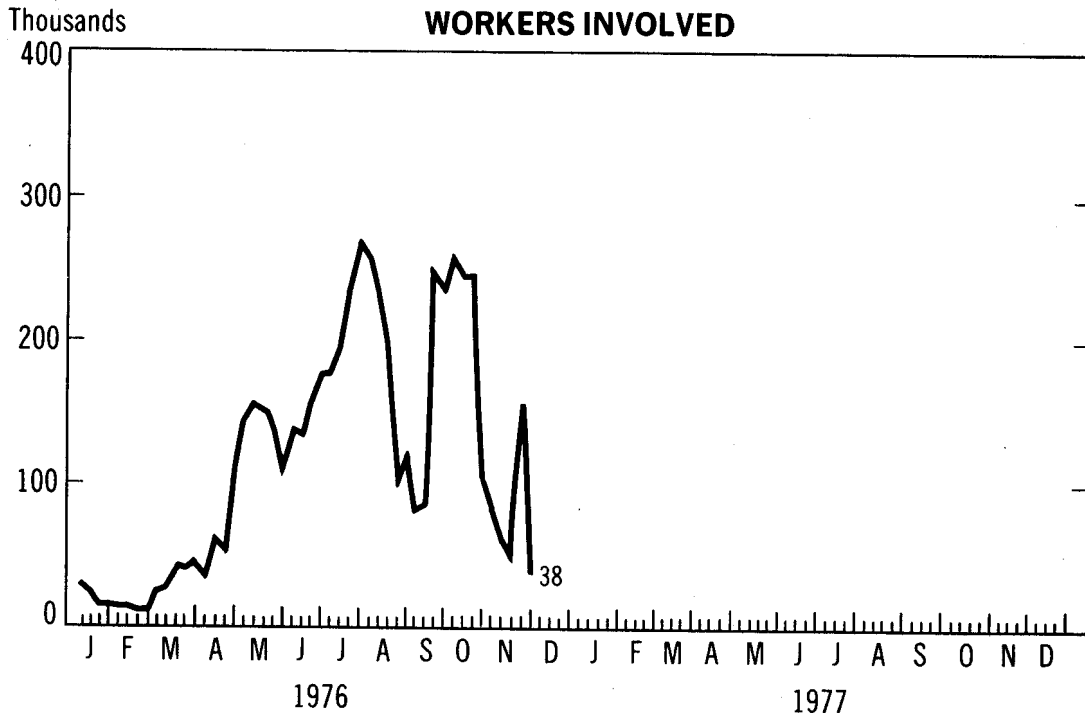
# WEEKLY HOURS AND EARNINGS

(Seasonally Adjusted)



Source: Bureau of Labor Statistics

# WORK STOPPAGES DURING WEEK



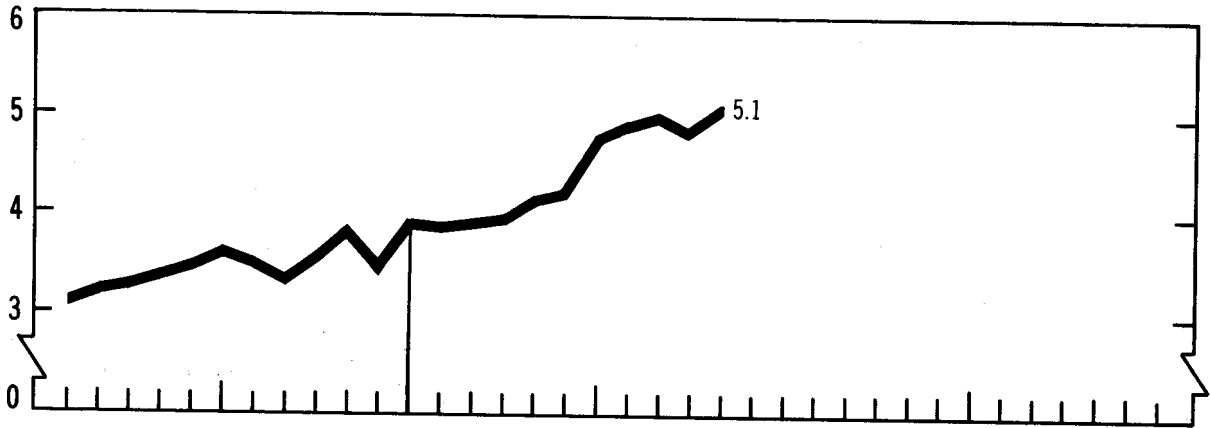
Source: Department of Labor

# MANUFACTURERS' EXPORT SALES AND ORDERS OF DURABLE GOODS (Excluding Motor Vehicles and Parts)

(Seasonally Adjusted)

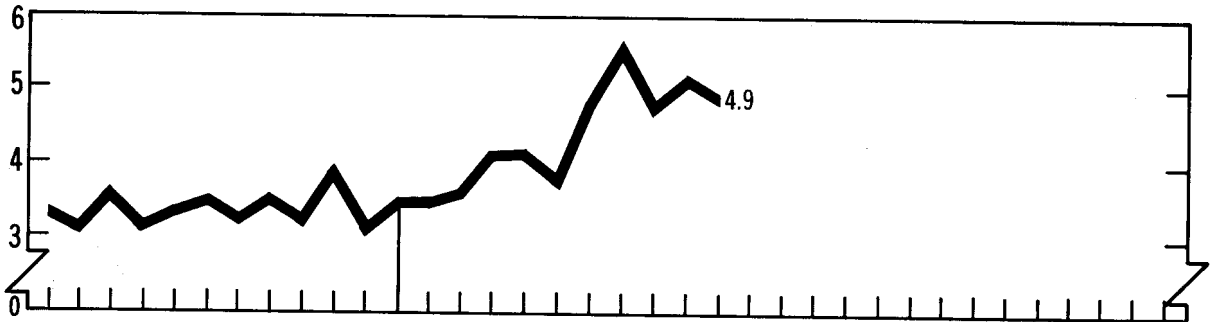
## EXPORT SALES

Billions of Dollars



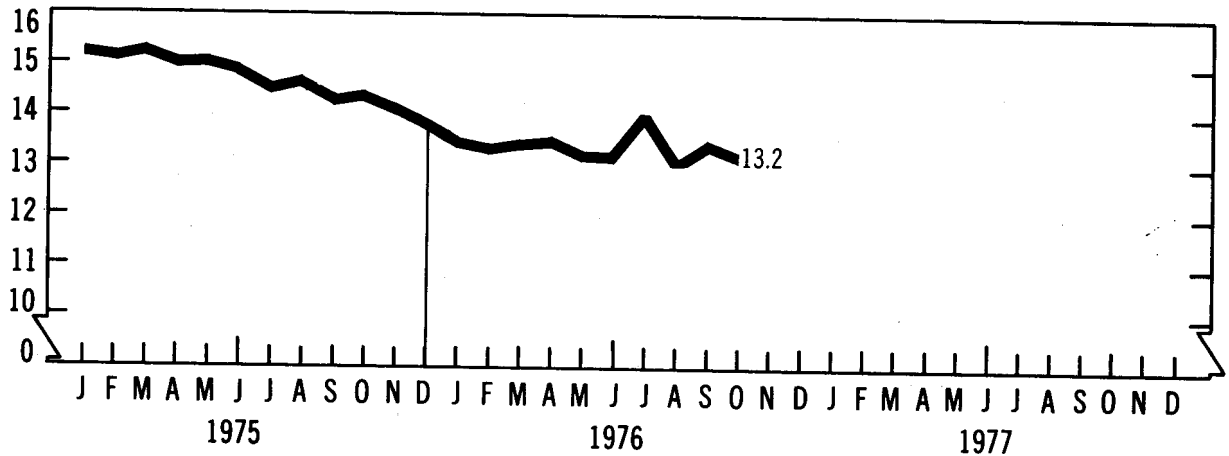
## EXPORT NEW ORDERS

Billions of Dollars



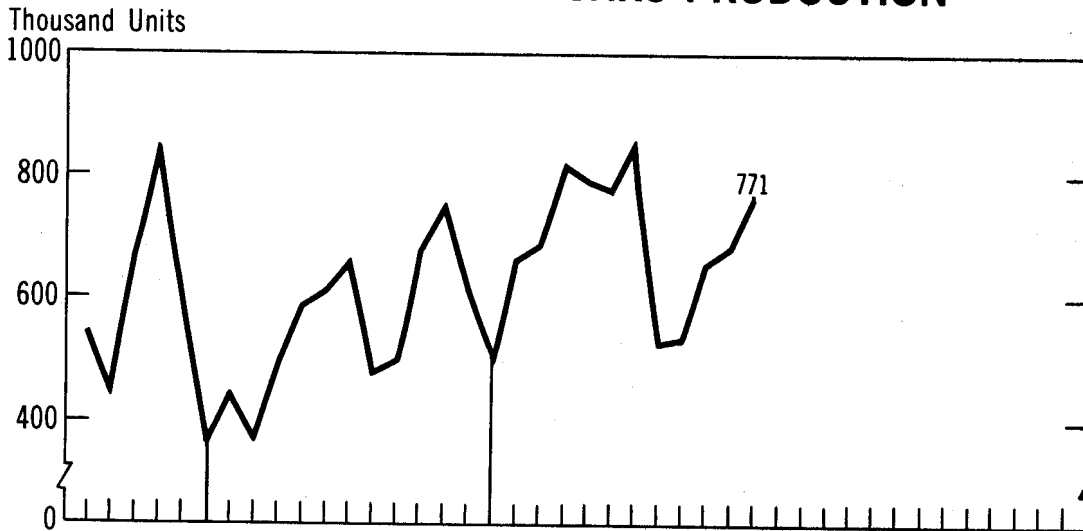
## EXPORT UNFILLED ORDERS

Billions of Dollars



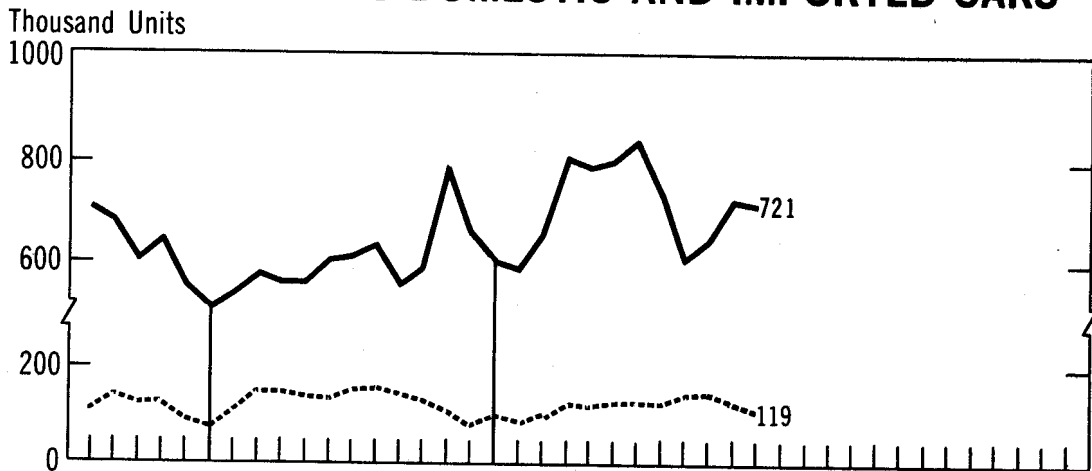
Source: Bureau of the Census

## NEW PASSENGER CARS PRODUCTION



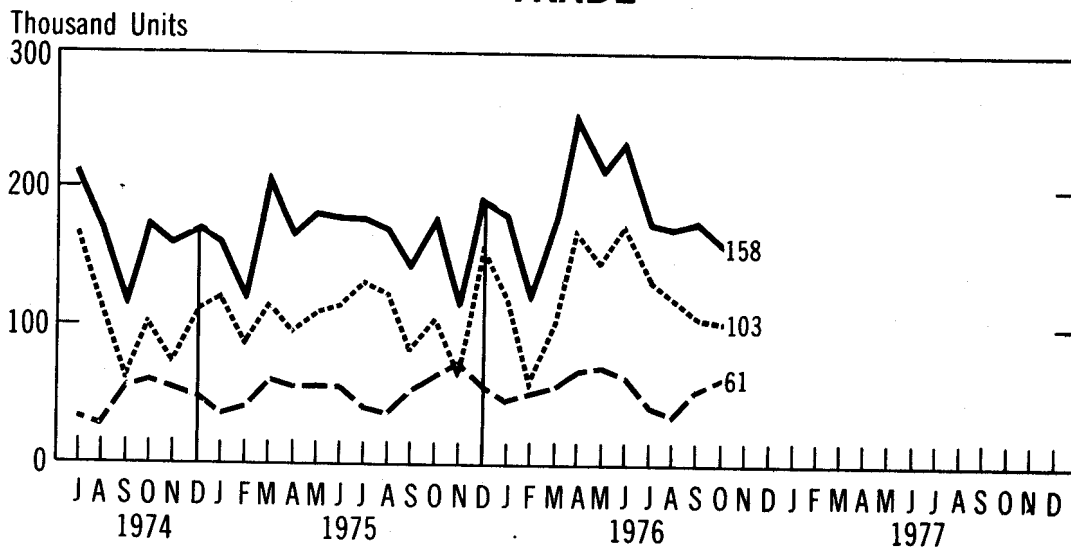
Source: Motor Vehicle Manufacturers Association; Bureau of the Census

## RETAIL SALES DOMESTIC AND IMPORTED CARS



Source: Motor Vehicle Manufacturers Association; Wards Automotive Reports

## TRADE



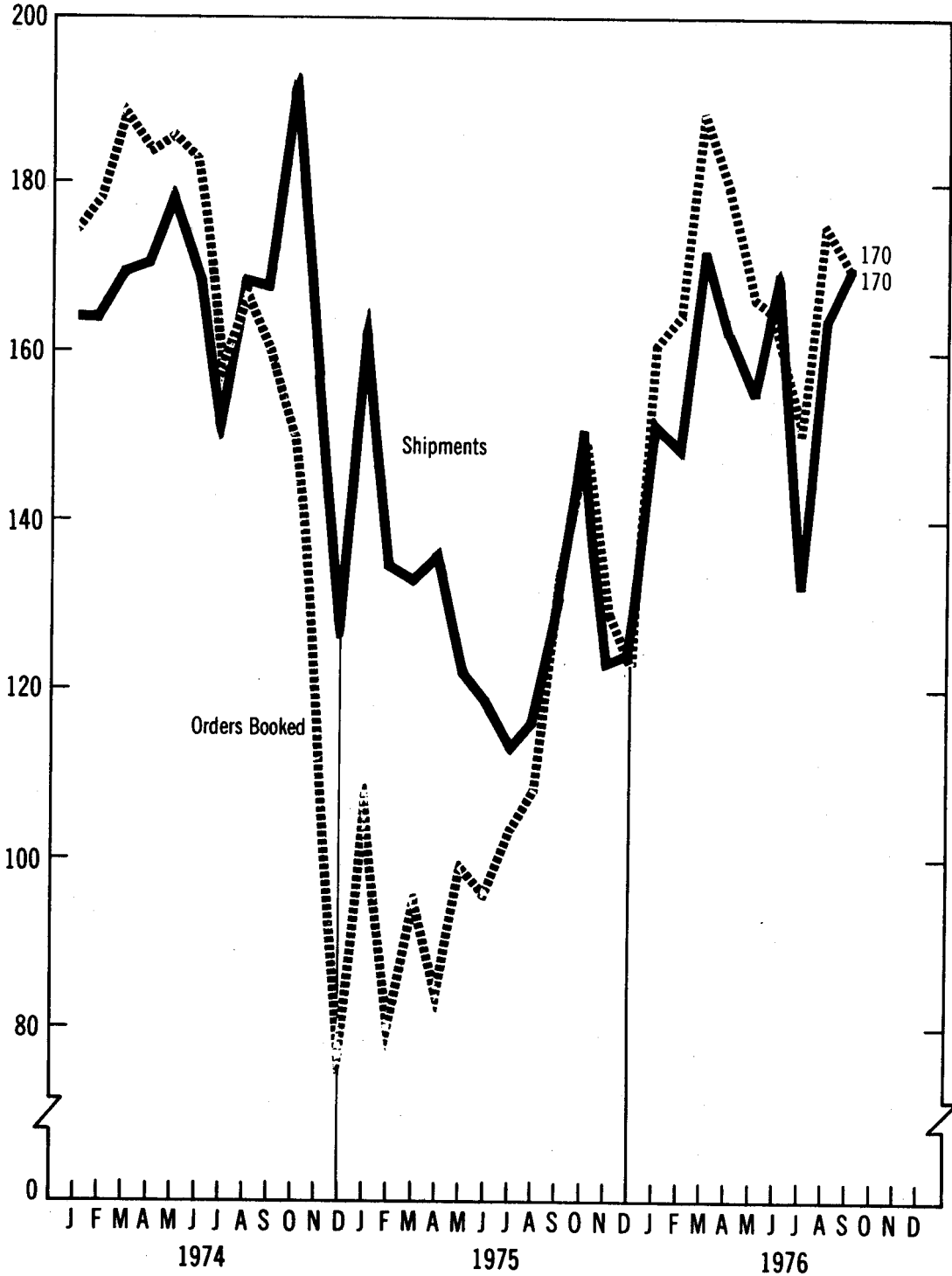
Source: Motor Vehicle Manufacturers Association; Bureau of the Census



# SCREW MACHINE PRODUCTS

## SHIPMENTS AND ORDERS

Index 1967 = 100

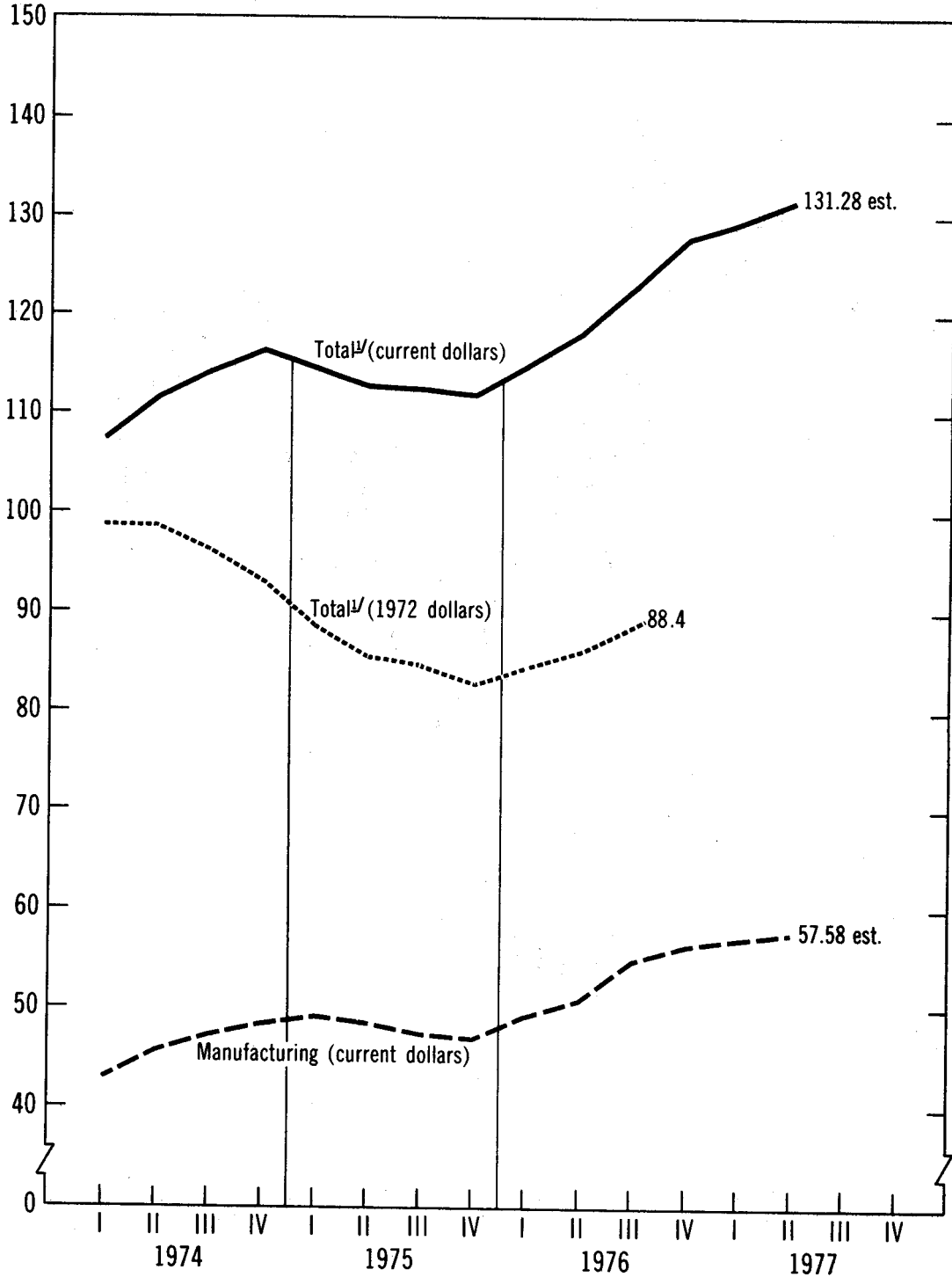


Source: Office of Business Research & Analysis  
U.S. Department of Commerce

# PLANT AND EQUIPMENT EXPENDITURES

(Seasonally Adjusted)

Billions of Dollars



∩ Excludes agricultural business; real estate operators; educational, and cultural services; and non-profit organizations.

Source: Bureau of Economic Analysis

ENERGY

PETROLEUM: U.S. OILFIELD DRILLING NEAR CAPACITY

- CURRENT ° Approximately 1,869 oilfield drilling rigs are currently operating in U.S., a utilization rate of 85 percent. 1,771 rigs were operating in same 1975 period.
- ° Average number of rigs operating in first 46 weeks of 1976 was 1,630. For same 1975 period, average was 1,645.
- ° Hughes Tool Company, a leading U.S. manufacturer of drilling bits, expects U.S. drilling footage to reach 188 million feet in 1976, a 7 percent increase over 1975.

ENERGY RELATED WHOLESALE PRICE INDEXES

- CURRENT ° Crude petroleum price was unchanged in November as refined products rose 0.5 percent; coal rose marginally. (See chart in Price Indicators.)

SUPPLY

PETROCHEMICALS: INTERNATIONAL CHEMICAL GROUP TO  
ESTABLISH RAW MATERIAL BASE IN U.S.

- Chemical building blocks made from petroleum feedstocks provide organic chemical industry with over 80 percent of its raw materials. Most important building blocks are ethylene, propylene, benzene, butadiene, and xylenes.
  - Large plants, utilizing naphtha feedstocks, produce over one billion pounds per year of ethylene and substantial quantities of propylene, butadiene, benzene and other chemicals.
  - A necessary element in operation of such large "chemical refineries" is ability to market surplus petroleum products, which amount to about one-half of plants' output.
- CURRENT
- Major foreign chemical companies, through U.S. affiliates, have reported plans to construct a large chemical refinery at Corpus Christi, Texas. Construction is to start in 1977 and plant start-up is slated for 1980.
  - ICI of London, Solvay of Belgium and United Pacific Corporation, parent company of Champlin Petroleum Company, will combine to produce basic chemicals in the \$600 million project. ICI America and Soltex Polymer Corporation will produce chemicals and Champlin will supply naphtha and buy back unused petroleum fuels. Sales of chemicals to third parties also are planned.
  - This major move by foreign companies creates a raw material base in the U.S. for their U.S. affiliates.
  - Joint venture is another example of continuing policy of major chemical producers to integrate vertically to assure supplies of necessary raw materials.

NONRUBBER FOOTWEAR: IMPORTS CONTINUE TO RISE

- CURRENT
- Nonrubber footwear imports in October 1976 of 27.3 million pairs were 5 percent above October 1975 imports of 26.0 million. Value of October 1976 imports, \$106.8 million, was 18 percent higher than October 1975 value of \$90.2 million.
  - January through October 1976 imports, totaling 342.2 million pairs valued at \$1.2 billion were 29 percent in quantity and 28 percent in value above the same 1975 period.

- In January through October 1976, compared with same 1975 period:
  - leather footwear imports (154.2 million pairs; \$879.4 million) rose 25 percent and 24 percent, respectively;
  - vinyls (135.6 million pairs; \$281.0 million) were up 41 percent and 49 percent in quantity and value; and
  - other types of nonrubber footwear, including disposable slippers (52.4 million pairs; \$51.5 million) rose 15 percent in quantity and 26 percent in value.
- Reopened International Trade Commission escape clause investigation on nonrubber footwear includes a public hearing scheduled to start December 7, 1976.

ALUMINUM: YEAR-TO-DATE SHIPMENTS

- CURRENT
- Net shipments of aluminum ingot and mill products for first 9 months 1976 (latest data available) amounted to 9,553 million pounds or 35 percent greater than 7,080 million pounds shipped in first 9 months 1975 but 12 percent below same period in peak year 1973.
  - Shipments during fourth quarter 1976 are expected to decline resulting in year-end totals 30 percent over 1975.
  - September month-end producer inventories, including ingot, mill products and scrap at 5,532 million pounds, were almost 8 percent less than 5,999 million pounds on January 1, 1976 but 8 percent higher than 5,128 million pounds on January 1, 1975.
  - As a result of increased demand and recently terminated 5-month Canadian strike, U.S. primary aluminum producers have stepped-up their operating rate from 72 percent at year-end 1975 to 85 percent as of November 1, 1976.
  - Production of primary aluminum in first 10 months 1976 at 6,930 million pounds was 7 percent greater than same 1975 period but about 18 percent less than in first 10-months of peak year, 1974.
  - U.S. foreign trade also increased during first 3 quarters 1976. Total imports (scrap, unwrought ingot and mill products) were 1,236 million pounds, up 65 percent over 9-month 1975 imports of 751 million pounds and 36 percent over same 1974 imports of 909 million pounds. Exports of 784 million pounds were 31 percent higher than 9-month 1975 at 600 million pounds but almost 12 percent less than 875 million pounds exported during same 1974 period.

LABOR

WAGES: MEDIAN RAISE TO DATE

- CURRENT ° All-industries median first-year pay increase negotiated to date in 1976 is 44.5 cents per hour, down 10.8 cents from year ago, according to The Bureau of National Affairs, Inc.
- ° Excluding construction settlements, all-industries median in manufacturing is 40.3 cents, down 2.0 cents, while nonmanufacturing median is 45.1 cents, up 1.1 cents.
  - ° Construction median is 54.6 cents, 20.6 cents lower than last year.

COLLECTIVE BARGAINING: 1977 SCHEDULE

- CURRENT ° Major collective bargaining agreements covering approximately 4.9 million workers are set to expire or have wage reopening clauses in 1977.
- ° Some industry-wide agreements which will be renegotiated in 1977 are:

Major Oil Companies and the Oil Workers, 38,000 workers;

Basic Steel Industry and the Steelworkers, 365,000 workers;

Bell Telephone System and the Communication Workers and IBEW, 650,000 workers;

Railroads and Railroad Unions, 456,000 workers;

Mine Companies and United Mine Workers, 125,000 workers; and

Clothing Manufacturers Assn. and the Clothing and Textile Workers, 110,000 workers.

STRIKES

(Source: Federal Mediation and Conciliation Service)

- During week ending December 1, approximately 147,500 employees were involved in 316 work stoppages throughout U.S.
- Above totals include 7 work stoppages in construction industry, involving 3,383 employees.
- 16 work stoppages were in major and/or significant category, where 1,000 or more employees were in the bargaining unit.
- During approximately same year-ago period, 315 work stoppages were in effect, involving 75,918 employees. 14 stoppages were in the major and/or significant category.

NEW, SETTLED, AND CONTINUING MAJOR STRIKES

(Source: Federal Mediation and Conciliation Service)

- New: Jefferson County School Board  
and Jefferson County Teachers Assn.  
Jefferson County, Kentucky  
5,849 employees; began 11/30/76
- Settled: Port Authority Transit and  
Amal. Transit Union  
Pittsburgh, Pennsylvania  
1,700 employees; 12/1/76 through 12/6/76  
  
Springday Company and the  
Rubber Workers  
Springfield, Missouri  
1,172 employees; 10/2/76 through 12/5/76  
  
Firestone Tire and Rubber  
Company and the Rubber Workers  
Des Moines, Iowa  
2,294 employees; 10/27/76 through 12/1/76



◦ Tentative agreement:

United Parcel Service Company  
and the Teamsters  
15 Eastern States and DC, except NYC  
18,000 employees; began 9/15/76

PRICES

SOFTWOOD LUMBER AND PLYWOOD: MOST NOVEMBER PRICES RISE

CURRENT ° November bellwether softwood lumber mill prices were:

-- Early December average was \$188 per thousand board feet (MBF) for 11 Western softwood lumber items, 7 percent above \$175 per MBF early November average and 34 percent above \$140 per MBF a year ago.

-- Average of 2 Southern pine lumber items was down about 1 percent from \$172 per MBF in early November to \$170 per MBF in early December, but almost 31 percent above early December 1975 average of \$130 per MBF.

° Bellwether softwood plywood mill prices were:

-- 1/2-inch standard Western sheathing was \$205 per thousand square feet (MSF) in early December, compared to \$194 per MSF in early November, up 6 percent. Current average exceeds year-ago level of \$155 per MSF by 32 percent.

-- 1/4-inch AD sanded plywood was \$170 per MSF in early December compared to \$162 per MSF in early November, up 5 percent. Current average prices are up 16 percent from \$146 of year ago.

° Price increases reflect recovery in construction industry. Some industry sources project continued rising prices for wood products in 1977.

BUILDING MATERIALS: NOVEMBER PRICE RISE  
SMALLEST THIS YEAR

° All-construction materials wholesale price index rose 9 percent in 1973, 16 percent in 1974 and 8 percent in 1975.

CURRENT ° November 1976 all-construction materials index rose to 192.7 (1967=100) from 192.6 in October, smallest monthly percentage increase this year. November index was 9.6 percent greater than November 1975.

° Largest component price increases were prefabricated structural wood members, and warm air furnaces, up 1.4 percent; clay brick, up 2.0 percent; and softwood plywood, up 3.3 percent.

ETHYLENE OXIDE: PRICE DECLINES

- Ethylene oxide is an important basic chemical used to make ethylene glycol for antifreeze and for polyester man-made fibers. In 1976 some 4 billion pounds will be produced, valued at \$1 billion.

- CURRENT
- Largest domestic producer of ethylene oxide with 40 percent of total capacity has announced a 2 percent price reduction, from 28.5 cents a pound to 28 cents a pound. Also, sales will be on terms of freight allowed.
  - Price weakness is judged largely from a decline in sales of man-made fibers. Weakness also reflects fact that antifreeze inventories, which were depleted in winter 1974-75 and were adequate in mild winter of 1975-76, are now back to normal.
  - Current early severe cold spell has not been sufficient to harden ethylene oxide prices.
  - Production of ethylene oxide in 1976 will be down 10 percent from 1975. Current operating rates are about 60 percent of capacity.

CATTLEHIDES: PRICES CONTINUE SLIGHT DECLINE

- CURRENT
- November 1976 composite price of cattlehides (light native steers, heavy native steers, butt-branded steers) dropped to 29.49 cents, nearly 2 cents per pound below October 1976 price of 31.37 cents per pound, and almost equal November 1975 average of 29.32 cents.
  - Hide prices started the month at a relatively low level and although prices rose from 2 to 4 cents per pound during month, this was not sufficient to maintain prices at October level, especially since leather business continued to be slow.
  - U.S. exports of 2.0 million hides in October 1976 brought January through October exports to 20.9 million hides, an increase of 18.8 percent over same period 1975 exports of 17.6 million.
  - Hide production from commercial slaughter totaled 35.6 million units in first 10 months 1976, 5.6 percent above production of 33.7 million hides in comparable 1975 period.

- ° Exports accounted for 59 percent of 1976 U.S. hide production, up from 52 percent in 1975.
- ° In first 10 months 1976, U.S. hide production was 1.9 million units greater than same 1975 period, but exports were greater by 3.3 million hides.

FERROUS SCRAP: PRICES INCREASE

- CURRENT
- ° Published prices for No. 1 heavy melting scrap through weekly period ending December 6 increased as Eastern 3-city composite price advanced 2.1 percent to \$66.00 per gross ton.
    - Pittsburgh price gained \$1.00 to \$68.00 per ton and Chicago price increased 4.8 percent to \$65.00 per ton. Philadelphia quote was steady at \$65.00 per ton.
  - ° On West Coast, San Francisco price increased 9.7 percent to \$56.50 per ton.
  - ° On a broader geographic basis for period November 23 through December 2, composite prices were steady in New England and in Southern region at \$39.00 and \$58.50 per ton, respectively.
    - Eastern composite increased 4.5 percent to \$66.00 per ton and Western composite, prior to more recent gain in San Francisco, had eased 1.3 percent to \$50.17 per ton.

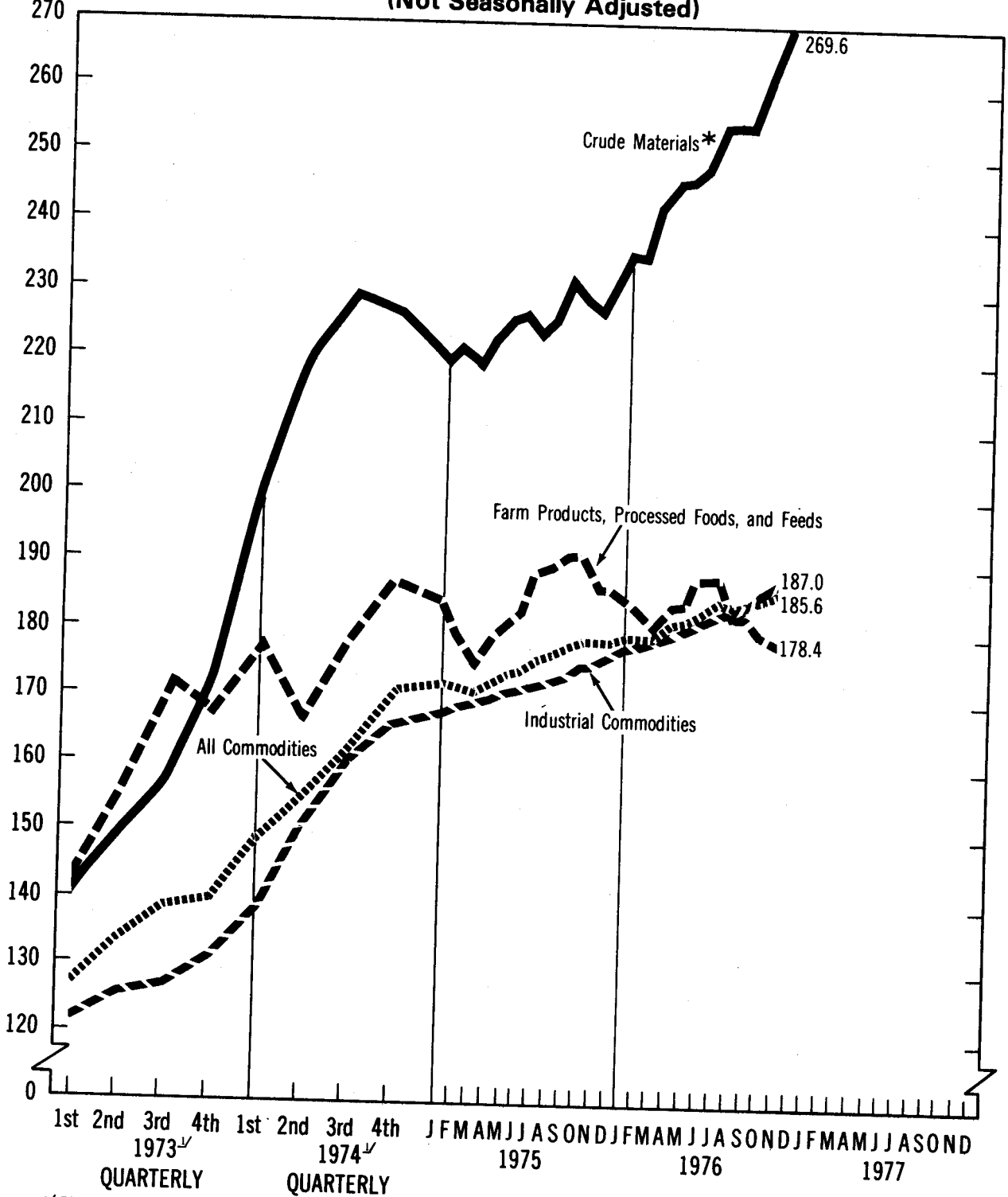
# PRICE INDICATORS

## WHOLESALE PRICE INDEXES

### MONTHLY

(Not Seasonally Adjusted)

INDEX 1967 = 100



∨ Three month average

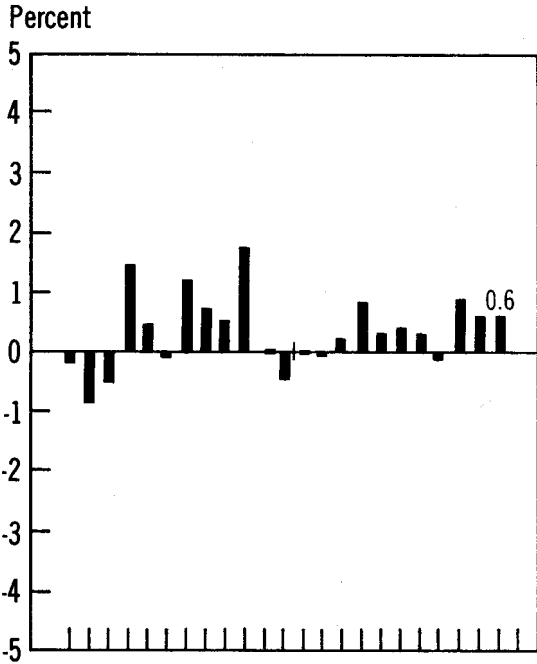
\* Excludes crude foodstuffs, feedstuffs, plant and animal fibers, oilseeds, and leaf tobacco.

Source: Department of Labor

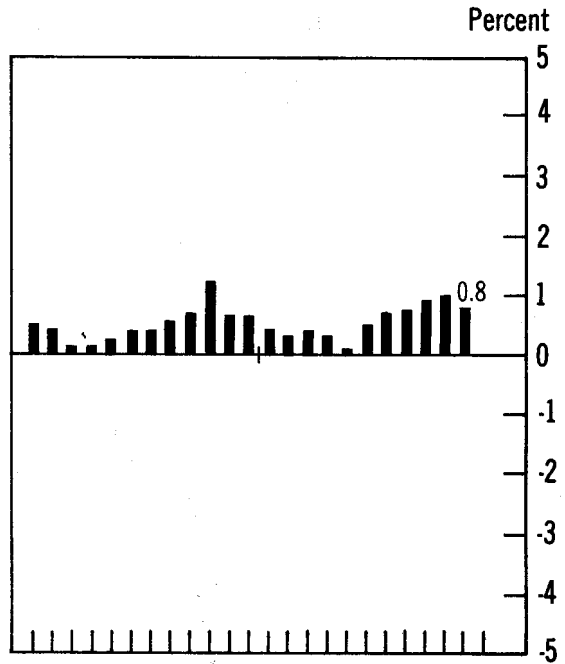
# CHANGES IN WHOLESALE PRICE INDEXES

SEASONALLY ADJUSTED

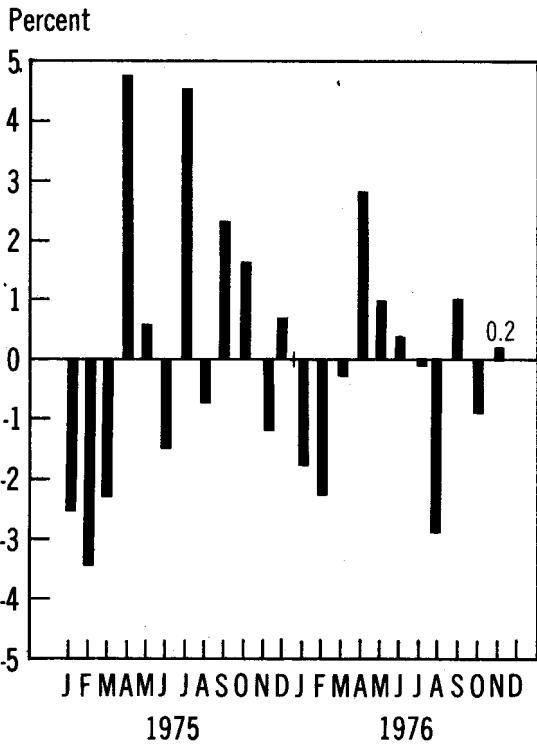
## ALL COMMODITIES



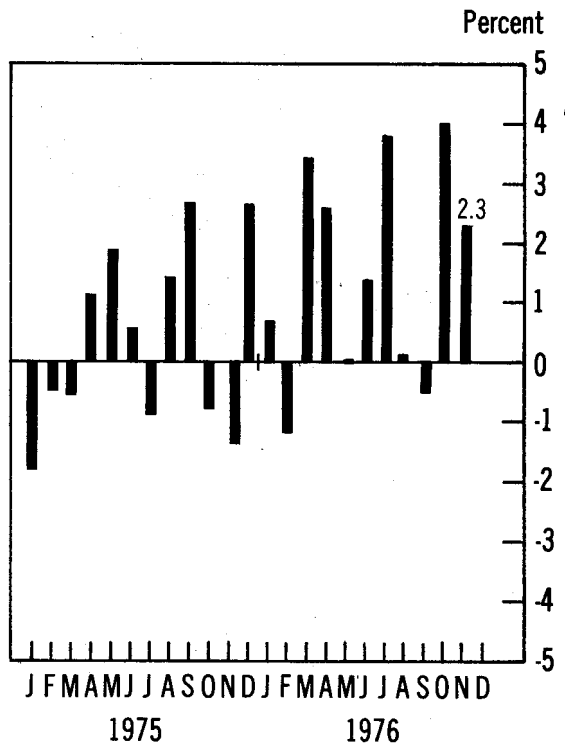
## INDUSTRIAL COMMODITIES



## FARM PRODUCTS PROCESSED FOODS AND FEEDS



## CRUDE MATERIALS\*



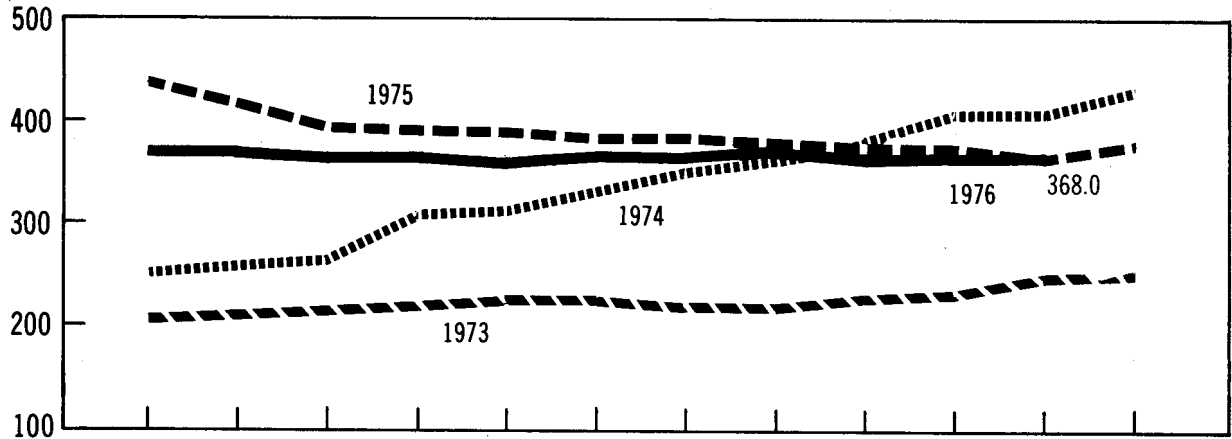
\* Excludes crude foodstuffs and feedstuffs, plant and animal fibers, oilseeds, and leaf tobacco.

Source: Bureau of Labor Statistics.

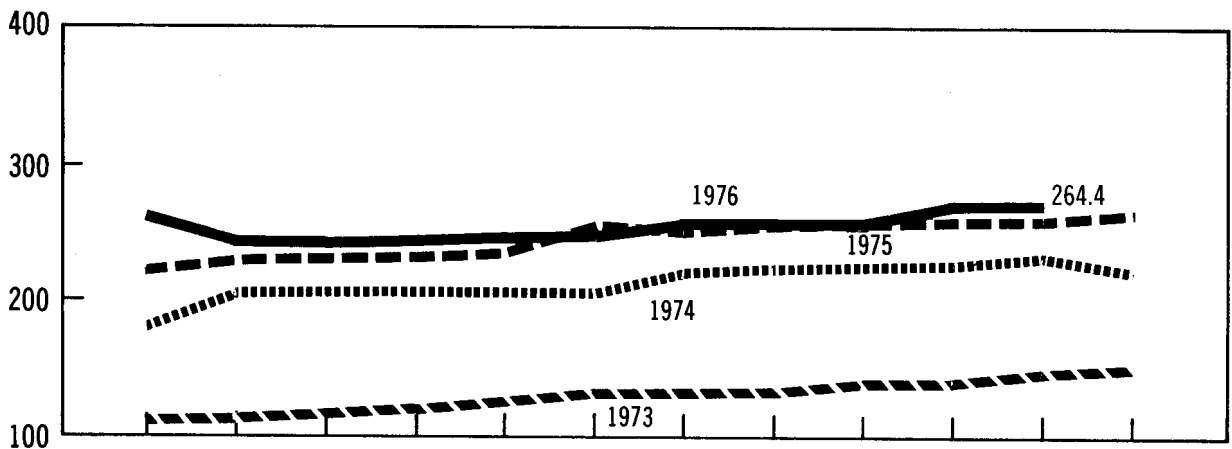
# ENERGY RELATED — WHOLESALE PRICE INDEXES

## COAL

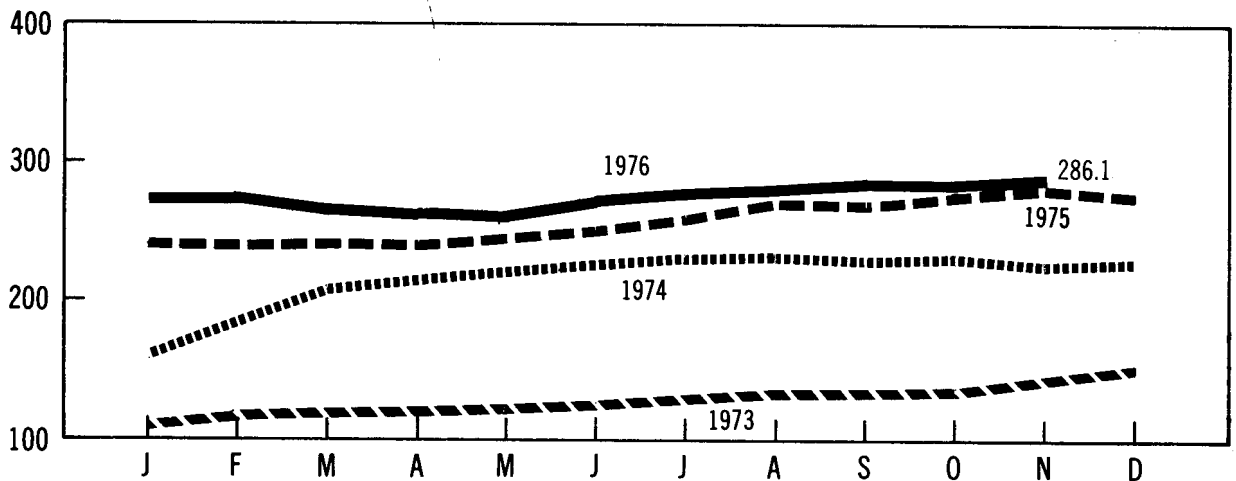
Index 1967=100



## CRUDE PETROLEUM



## PETROLEUM PRODUCTS, REFINED

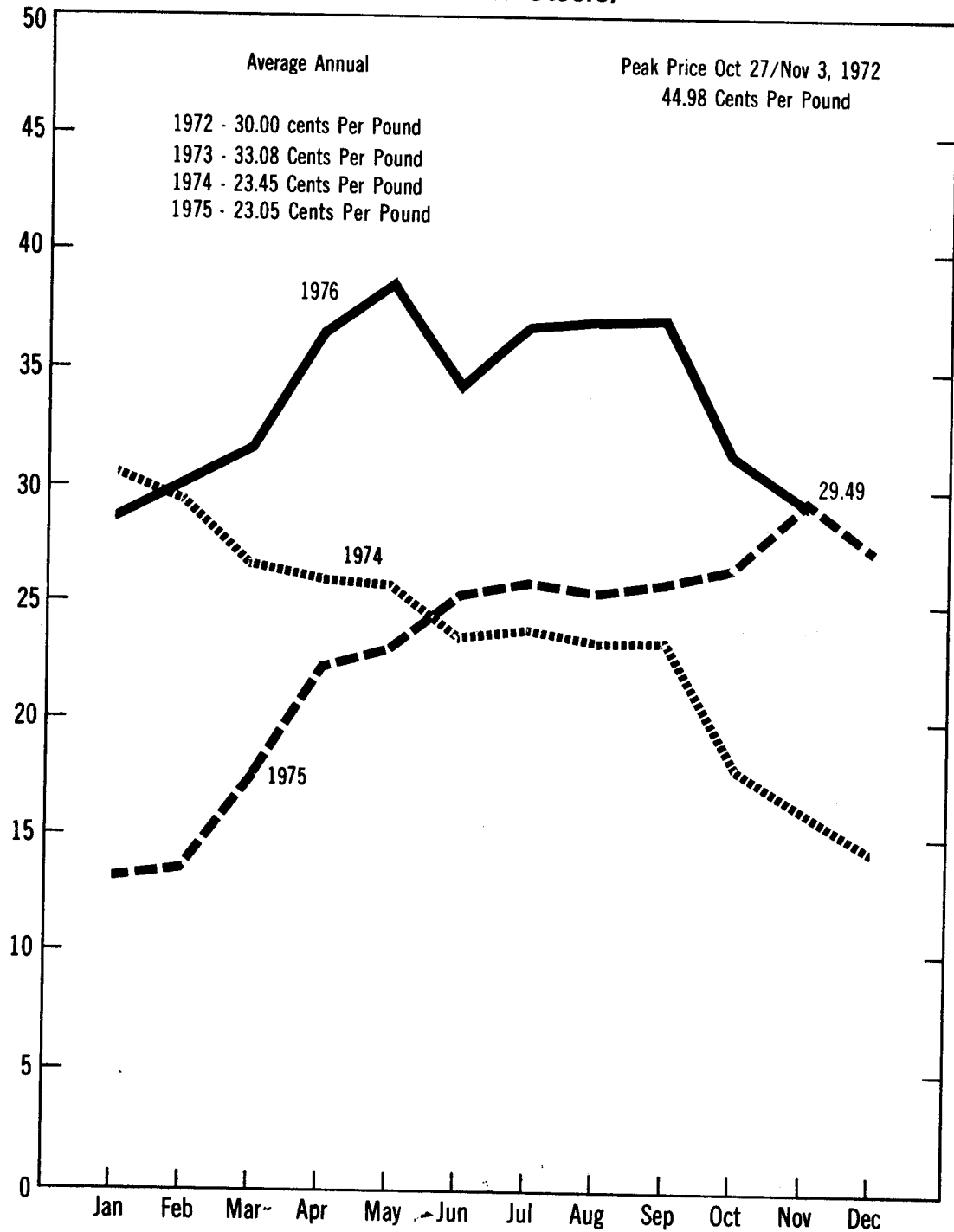


# U.S. CATTLEHIDES

## Monthly Average Prices

(Composite of Light Native, Heavy Native,  
and Butt Branded Steers)

Cents per Pound

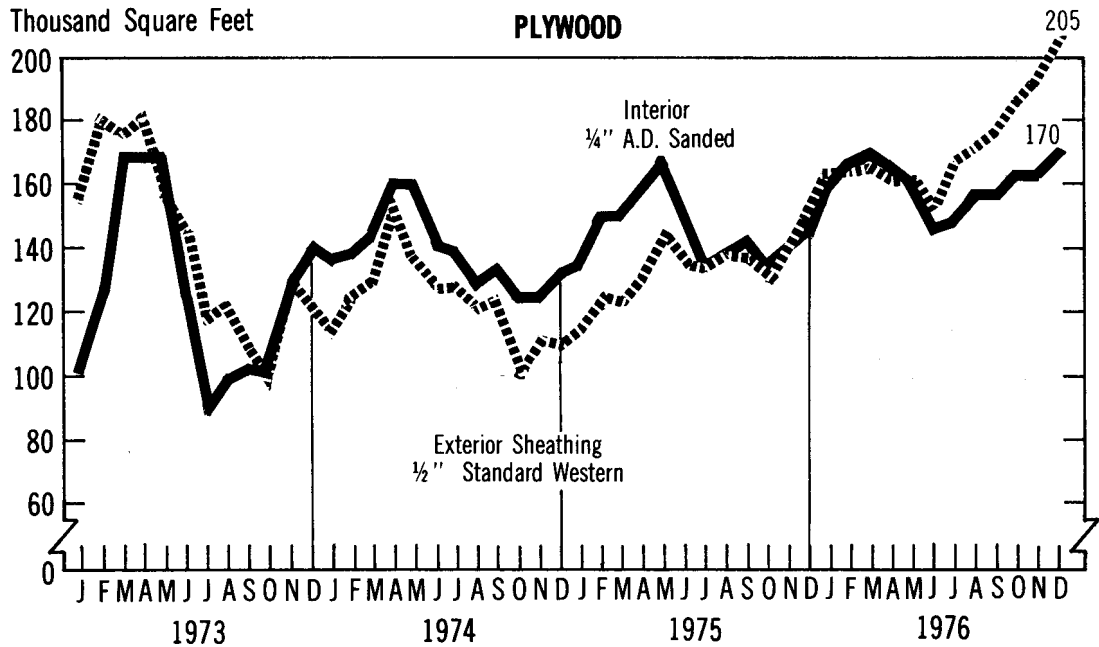


Source: Pratts Report of Daily Hide Leather Market

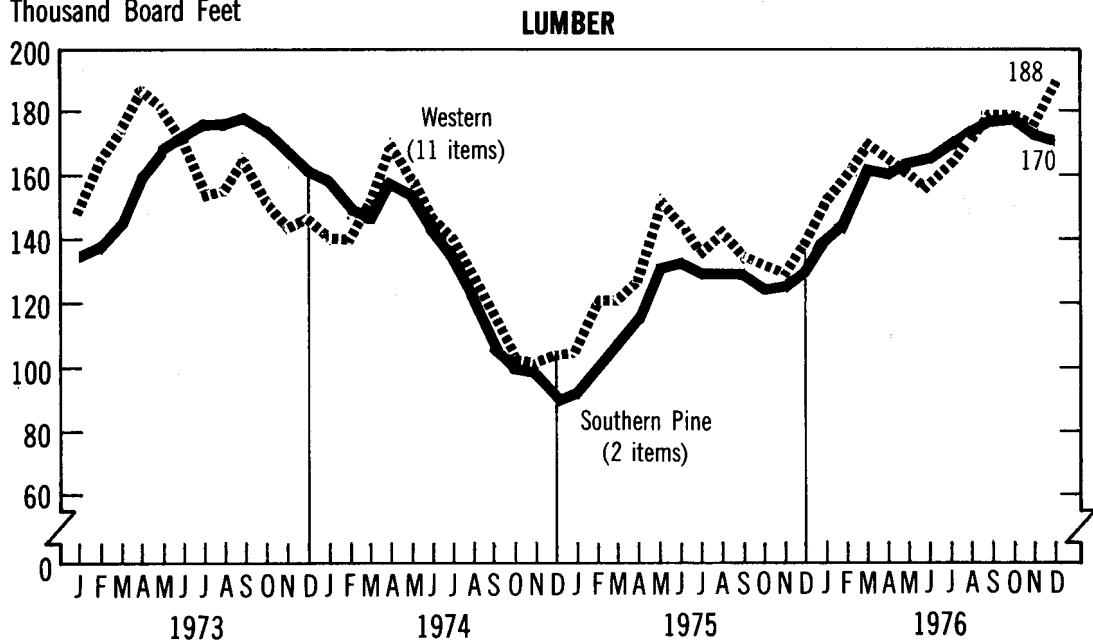


# SOFTWOOD PLYWOOD AND LUMBER PRICES

Dollars per  
Thousand Square Feet  
(As of First Week in Month)



Dollars per  
Thousand Board Feet



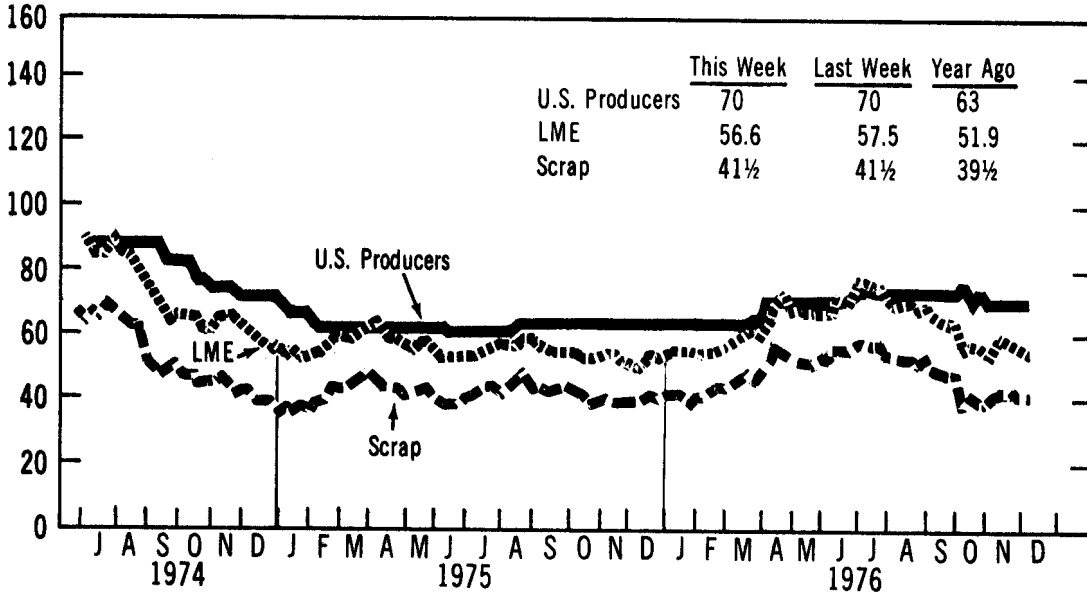
Source: Compiled by BDC/OBRA from Random Lengths

# KEY COMMODITY PRICES

## COPPER PRICES

Cents per Pound

Tuesday Price Each Week



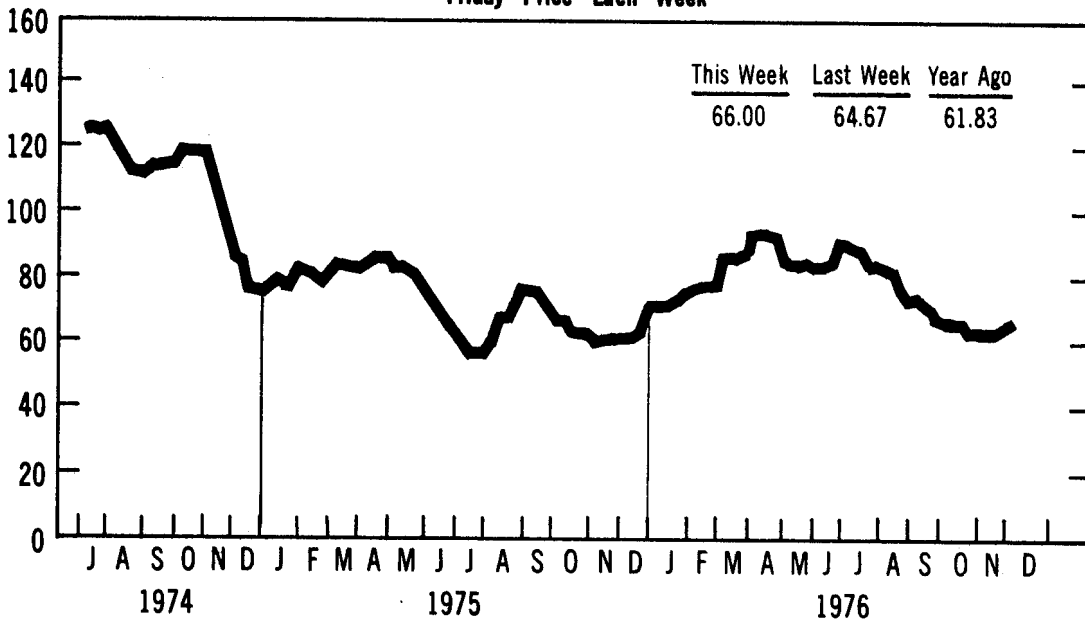
U.S. Producers, cathodes; London Metal Exchange, spot wirebars; U.S. Refiners' buying price for No. 2 Copper Scrap.

## FERROUS SCRAP

(Composite Price, No. 1 Heavy Melting Steel  
Scrap Pittsburgh, Chicago, Philadelphia)

Dollars per Gross Ton

Friday Price Each Week



Source: American Metal Market

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**FOREGOING RESTRICTIONS MAY BE REMOVED  
90 DAYS AFTER PUBLICATION**



**FOR OFFICIAL USE ONLY**

EPB Wed.

L

THE WHITE HOUSE  
WASHINGTON

December 10, 1976

MEMORANDUM FOR THE ECONOMIC POLICY BOARD  
EXECUTIVE COMMITTEE

FROM: L. WILLIAM SEIDMAN *LWS*

SUBJECT: Evaluation of the Inflation Impact Statement  
Program

Executive Order 11821, establishing the Inflation Impact Statement Program, is scheduled to expire on December 31, 1976. An evaluation of the Inflation Impact Statement Program, as requested by the EPB Executive Committee on May 17, is attached. The evaluation was performed by the staff of the Council on Wage and Price Stability and the Office of Management and Budget in consultation with several departments and agencies.

This paper is scheduled for discussion at the Wednesday, December 15 EPB Executive Committee meeting.

Attachment



AN EVALUATION OF THE INFLATION IMPACT STATEMENT PROGRAM

PREPARED FOR

THE ECONOMIC POLICY BOARD

BY THE STAFF OF

THE COUNCIL ON WAGE AND PRICE STABILITY

AND

THE OFFICE OF MANAGEMENT AND BUDGET

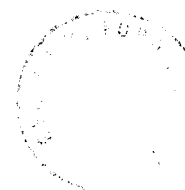
Principal author: Thomas D. Hopkins

Date: December 7, 1976



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B.	Summary of Public Comments on IIS Program and Regulatory Problems
C.	Basic IIS Documents
	Executive Order 11821 (November 27, 1974)
	OMB Circular A-107 (January 28, 1975)
	OMB Memorandum to Agencies on Uniform Criteria and On Negative Declaration for Legislative Proposals (June 3, 1975)
	OMB/CWPS Interim Evaluation of IIS Program (March 21, 1976)
	OMB Memorandum Changing IIS Requirements (June 11, 1976)
	<u>Federal Register</u> Notice of IIS Certification language (October 1, 1976)
D.	IIS Evaluation Questions
E.	Comparison of IIS with EIS
F.	Agency Comments on IIS Program
	CWPS/OMB Memorandum Soliciting Agency Views on IIS Program
	Responses to CWPS/OMB Questions
	Comments on this Evaluation Report
G.	Legislation Introduced in the 94th Congress Requiring Economic Impact Analysis

## EXECUTIVE SUMMARY

### Introduction

The Inflation Impact Statement (IIS) program was initiated in November 1974 by Executive Order (EO) 11821. Its objective is to improve agency decisionmaking by requiring agencies to consider the economic impacts of their regulatory and legislative proposals. The IIS program will expire December 31, 1976, unless a Presidential decision is made to extend EO 11821 in its present or modified form.

This report was prepared for the Economic Policy Board (EPB), which will advise the President concerning actions to take on the IIS program and EO 11821. The report evaluates the performance of the program to date and analyzes alternative courses of action, including simply extending the present program, extending the program with modifications, or simply allowing the program to expire (with or without any new initiative as a substitute). The report was prepared jointly by the Council on Wage and Price Stability's Office of Government Operations and Research (CWPS) and the Office of Management and Budget's Economics and Government Management Division (OMB). Its principal author is Thomas D. Hopkins, CWPS's Deputy Assistant Director for Government Operations and Research.

The major reason for the program was that despite the rising importance of Federal regulation and legislation, from an economic perspective the overall quality of regulatory decisions and legislative proposals increasingly was called into question. Specifically, agencies often proposed legislation or promulgated important regulations without competent analysis of the costs of the proposal, its benefits, and alternative (perhaps less costly) approaches to securing the same legislative or regulatory objective. In all too many instances there seemed to be little agency resolve to see that: (a) such analysis was performed, (b) it was performed prior to proposing the legislation or making the regulatory decision, and (c) it was taken seriously as an important input in the proposal and the decisionmaking process. Such regulations and laws were felt to be inefficient and to contribute to inflation. Thus, the IIS program was initiated to minimize the inflationary impact of new regulatory and legislative initiatives emanating from Executive-branch agencies.

The program's approach is to identify as "major" any proposal which has an impact exceeding certain agreed-upon "threshold" criteria. The threshold criteria focus agency analysis on the more important proposals, and the most significant criteria are concerned with a proposal's expected costs. However, it should be noted that to have a substantial impact on cost does not imply that the proposal would be inflationary. It merely means the proposal is big enough to merit scrutiny. The IIS which must be prepared for each "major" proposal



should enable one to judge whether the proposal would be inflationary. If, considering alternatives to the proposal, the costs identified in the IIS analysis exceed the benefits, the proposal is judged to be inflationary; on the other hand, if the benefits exceed costs, the proposal is anti-inflationary.

The specific details of the program are set out in OMB Circular A-107, which implements EO 11821. Each agency is responsible for determining which of its proposals are major and for completing an IIS for each such proposal. Each IIS is required to analyze the proposal's costs, benefits, and alternatives. Prior to submission of major legislation to Congress, an agency must complete, and submit to OMB upon request, an IIS on its proposal. Before a major regulatory proposal is published in the Federal Register, the proponent agency must submit an IIS to CWPS.

OMB has responsibility for monitoring the IIS program as a whole and for evaluating legislative IISs. CWPS has primary responsibility for evaluating IISs of proposed rules and regulations. Both agencies comment informally on the adequacy of IISs. On occasion CWPS comments publicly through its program of participating as an ordinary intervener in regulatory proceedings. The only forum for public review of legislative IISs is in hearings before the Congress.

The IIS program was intended to operate without a strong enforcement mechanism outside the action-proposing agency itself. Such enforcement as does exist essentially amounts to CWPS's legislative authorization to participate in agency rulemakings (which CWPS has linked with its oversight of IIS) and to OMB's general influence which derives from its oversight, management, and budget responsibilities. CWPS can focus attention on an agency's poor IIS performance through use of its public platform and OMB can affect IIS performance through its legislative clearance procedures as well as through its agency budgetary interaction.

The evaluation has encompassed solicitation of agency and public comments, appraisal of IIS analyses, and interviews at participating agencies. Seventeen Federal agencies submitted comments on the IIS program to CWPS/OMB at a preliminary stage of this evaluation. Two agencies, the U.S. Department of Agriculture and the Federal Energy Administration, found the program of insufficient merit to warrant continuation in any form. Seven agencies (Department of Commerce; Civil Service Commission; Environmental Protection Agency; Department of Health, Education, and Welfare; Department of Housing and Urban Development; Renegotiation Board; and Small Business Administration) thought the program is worthwhile and should be continued basically in its present form. Four agencies (Energy Research and Development Administration, Department of Labor, Veterans' Administration, and Department of Justice) suggested continuation in modified form. One agency (Department of Defense) sought to be exempted from the program. Other comments were mixed.

Public comments on the program were solicited by means of a notice in the Federal Register, and 31 responses were received. All 31 favored retaining and/or strengthening the IIS program; they included Senator Hubert H. Humphrey (as Chairman of the Joint Economic Committee), the National League of Cities, and business and other private organizations. On the other hand, strong opposition to the program -- as it affects the Occupational Safety and Health Administration -- has been reported in the press by George Meany (American Federation of Labor-Congress of Industrial Organizations) and Leonard Woodcock (United Auto Workers).

### Experience with the Program

#### IISs Completed

Of the 25 agencies covered by the IIS program, nine have produced formal IIS analyses -- eight for legislative proposals and 41 for regulatory proposals. Since there is wide variation in the quality and comprehensiveness of individual IISs, the number an agency has completed is not a good indicator of the agency's analytical effort or its effective use of its analysis. Below some minimum quality level, an IIS can have little or no beneficial impact on legislative or regulatory decisions. Above that minimum level an IIS analysis may vary greatly in quality without that variation having much bearing on how significantly the analysis affects decisionmaking.

Of the total 41 IISs completed for regulations, CWPS responded publicly or privately with critical comments on 23. In general, the quality of these IISs has improved over time, although the analysis of costs is consistently more adequate than the analysis of benefits, and the analysis of alternatives usually is quite skimpy and often not even attempted. The information available on legislative IISs is not sufficient to enable detailed comments. OMB, which monitors legislative IISs as part of the normal legislative review process, has not attached great importance to these documents. This was partly the result of the uniqueness of the legislative review process, as well as OMB's view of its role in the implementation of EO 11821, which was one of decentralized responsibility to the agencies without an aggressive OMB oversight role. Given the absence of any public review process comparable to that involved in agency rulemakings, legislative IISs have attracted little attention.

#### General Impact on Decisionmaking

Those who develop major regulations often pay fairly little attention to economic analysis, at least initially. However, they are aware that at some point in the later development of the proposal economic analysis will be a necessary hurdle. This awareness, which has been sharpened by the IIS program, appears to have some effect on their efforts to identify alternatives and to assess costs.

As the proposal moves toward publication, a determination is made as to whether the proposal is "major". Generally, the originating office is responsible for making this determination, with approval needed from a separate economic analysis unit. This determination generally does not require much time or effort and usually involves only a casual appraisal of the total costs anticipated. The preparation of the IIS, on the other hand, may take considerable time and resources. If, as is often true, the agency views the IIS as separate from and subsequent to the development of the proposal, delays in rule-issuance may be experienced. This is especially true in cases where the agency makes heavy use of outside contractors in preparing the IIS and where the agency's procedures for approving the IIS are especially demanding.

Typically an agency uses the IIS more as an input to the decisions that are made after the proposal is published than to those made before such publication. To the extent that the analysis is performed outside the office which develops the proposal (which is especially likely where an office has very limited analytical capability), the analysis is not apt to be an important input in the proposal's development. Furthermore, much of the work on an IIS is completed just prior to the proposal's publication, which limits the effect of the analysis in molding the initial proposal.

However, the IIS may affect modifications of the proposal between initial publication and final promulgation. One reason is that the IIS better enables critics to appraise the merits of the proposal and to argue for changes. On the other hand, this impact is fairly limited because an agency, once it publicly endorses a proposal, has some inclination to defend the proposal and to see that the IIS is so framed as to forestall criticism.

The type of enforcement which now exists places considerable reliance on OMB and CWPS, neither of whose performance has been completely satisfactory. One of the unfortunate constraints on the program's effectiveness remains poor understanding of the program's expectations. To many; the program seems misnamed; they fail to see the relevance of cost-benefit analysis to inflation, and they continue to believe the main focus of the program properly is on costs and possible changes in the Consumer Price Index or some other conventional index of prices. Thus far, CWPS and OMB have not been able to clear away this thicket of confusion.

CWPS as an outside critic has been an active and vocal intervener in regulatory proceedings. In many cases CWPS's interaction with agencies has been successful in stimulating an agency to do better analysis, although it is not yet clear whether decisions as well as analysis have improved. Moreover, CWPS's objectivity has not been

seriously questioned. But in some cases CWPS has not been very constructive; CWPS sometimes failed to communicate realistic suggestions in a way that could be expected to generate a useful response from the agency. The interaction in such cases seemed to encourage agencies to become unduly defensive and to try to avoid open discussion of the issues by ignoring CWPS's comments.

OMB has made very little effort to hold agencies accountable for competent IISs on proposed legislation. Furthermore, OMB and CWPS jointly must share much of the responsibility for getting the IIS program off to such a slow start, with a protracted period during which considerable energy was dissipated in negotiating IIS criteria.

There are two significant areas of Federal activities which the IIS requirement has not affected. First, the IIS requirement applies only to new legislative and regulatory proposals and, thus, excludes evaluation of the effects of the great body of existing regulations and legislation. The subject of the impact of existing regulations and legislation was clearly outside the scope and intent of EO 11821. The second area of activity concerns proposals of the independent regulatory commissions, certainly not intended to be excluded from the IIS requirement but, nevertheless, interpreted by those agencies as being outside of the reach of the executive order. Although OMB never conceded that the commissions were not within the scope of the executive order, it also never contested their position in order to resolve the issue. There was, however, a recognition that some of the commissions were governed by statutory requirements which were in some ways similar to the IIS requirement.

#### Impact on Individual Agencies

Individual agency experiences with the IIS program are summarized below:

At the Department of Agriculture (USDA) the IIS program has had a very small but positive net benefit on the quality of decision-making. Preparation of IISs has led to negligible delays and has not imposed significant costs on the agency. IISs from USDA are mainly repackaged analyses USDA performs independently of the program, and on the whole are not the type of cost-benefit analyses required by the program. USDA strongly opposes the program as meaningless paperwork and also questions the relevance of cost-benefit analysis. USDA's view is understandable since it perceives its mission as one of protecting farm income.

At the Environmental Protection Agency (EPA) the IIS program, coupled with significant internal support, has succeeded in getting decisionmakers to be more sensitive to economic analysis. The IIS has called forth analyses which would not have been performed (or would not have been performed as well). It also has focused EPA's attention on the need to analyze benefits. The additional costs of the IIS program are only moderate since EPA was committed to extensive economic analysis of its proposals prior to the program. The IIS program has affected the focus and quality of such research more than its cost, and regulatory delays have been minimal. EPA's IISs, particularly those completed since January 1976, have been reasonably thorough and useful analyses which generally satisfy the program's requirements. EPA believes its own efforts henceforth will be such that an IIS program will not be needed. We believe, however, that competent outside criticism and review of EPA's analysis will still be needed, and that this would be handicapped by an absence of the IIS program. While EPA has been responsive in using the IIS as a decisionmaking tool in the rulemaking process, we believe that further improvement could be made.

On balance the IIS program at the Federal Energy Administration (FEA) seems to have had negligible impact on FEA's regulatory decisions and on its economic analysis. It may have had the beneficial side-effect, however, of strengthening the role played by economic analysts in the agency. The program has not been very costly, although it could be if FEA were to prepare IISs which meet the program's expectations. For a variety of reasons (including poor CWPS-FEA communications and a reluctance of FEA to accept the program as being consistent with their objectives in analyzing the longer-term impacts of energy costs on the economy), FEA has not been in compliance with the spirit of the program. Impacts of petroleum prices are analyzed, but evaluation of benefits and alternatives in a cost-benefit framework has not been attempted.

Available evidence does not suggest that decisions at the Department of Health, Education, and Welfare (HEW) have been noticeably affected by the IIS program. IIS preparation appears to take place fairly late in the regulatory process, and the program applies to relatively little HEW activity. In much of this activity, moreover, HEW has little flexibility due to statutory requirements. However, the program probably has raised decisionmakers' sensitivity to questions of cost and of alternatives, partly because the program has made HEW's analyses more visible to outside critics. The program's additional costs are not large, due in part to HEW's own internal economic impact analysis effort, and the net benefits of the IIS program, while not large, probably exceed zero.

Decisionmaking at the Department of Housing and Urban Development (HUD) probably has not yet been affected by the IIS program. Only two IISs have been completed, and full "normal procedures" have been in place only since March 1976. Nonetheless, the program does appear promising, for two reasons. First, there is support for the effort within the agency; HUD procedures for compliance with the program appear good, and there seems to be a readiness to profit from outside scrutiny of IIS analyses. Second, the program requires analyses which otherwise would not be performed and has raised the consciousness of program staff who develop regulatory proposals about their economic impact.

At the Department of Labor (DOL) the IIS program has had little if any impact on decisionmaking but it has generated much greater concern for preparation of economic analyses and has created some delays -- perhaps six months on average. DOL's IISs are extensive analyses whose primary focus is on costs. Significant attention also is paid to benefits, but systematic comparison of costs and benefits is not presented and as a rule alternatives are not systematically explored. Most IIS work is performed by outside contractors after tentative decisions on regulatory proposals have been reached. The Occupational Safety and Health Administration's (OSHA's) experience with the IIS program has generated much controversy both within DOL and elsewhere. Organized labor strongly objects to the program, particularly because of delays induced by the IIS requirement in setting job-safety standards, and has brought suit (which is still pending) seeking to nullify EO 11821's applicability to OSHA.

The Department of Transportation's (DOT's) experience has been limited to four IISs and is rather unique due to a strong internal policy requiring economic analyses of all proposed rules and regulations (but not of proposed legislation). The combined DOT internal and IIS requirements do seem to be affecting decisions as intended, although resulting in some significant regulatory delays. Careful attention is paid costs, benefits, and alternatives, and DOT's analysis has improved the agency's as well as the public's awareness of relevant tradeoffs. Due to DOT's internal program, the IIS program per se adds negligible costs and has little impact on decisionmaking. However, the Department's internal policy requirements were established after the IIS program was initiated, and the former's continuance rests on a Secretarial memorandum which lacks permanence. Moreover, the IIS program facilitates public comment on DOT proposals and lends legitimacy to outside demands for thorough analysis.

### Conclusions

The IIS program is a fledgling initiative which is now approaching full operation at half a dozen Federal agencies and which has taken hold only quite marginally at nearly 20 more. Its impact

on regulatory decisions is difficult to discern. Its newness means we have few decisions to review which have been fully covered by the program. Its emphasis on improved decisionmaking, which is difficult to measure, means the program's stated benefits could not easily be identified even if we had more experience with the program. Nonetheless, a decision on the program's future is at hand.

As a result of our appraisal of the IIS program we have concluded that, if the public sector is to promote economic efficiency, agencies must be held accountable for the economic impacts of their decisions. We have also concluded that economic analysis can make a valuable contribution to this end. However, it would appear that four conditions must exist to assure success: (a) an absence of severe statutory constraints on the agency's use of economic analysis, (b) agency support for the effort, (c) an outside monitor and analytical critic, and (d) an executive order (or stronger directive such as legislation).

First, for economic analysis to have an impact on decisionmaking, the governing statute(s) must permit an agency to base its decisions, at least in part, on such analysis. Although this appears to be a problem in certain areas (e.g., decisionmaking at OSHA and EPA), we have concluded that in general the problem is not substantial.

Second, an agency must be committed to using the analysis and have requisite resources to perform the necessary analysis. If the agency's key executives are not enthusiastic about the program, its impact on decisionmaking will not be very significant. Such support need not be widespread so long as it is exhibited by people who have real clout in the decisionmaking process.

We have observed, however, that agency commitment to the objectives of such a program is not sufficient to assure its success. Although agency personnel have often expressed support for economic analysis, agency decisionmakers face an array of conflicting demands on their time and other resources. Given the natural proclivity of agencies to respond to what they perceive as their constituency, analysis of economic effects of major decisions tends to be viewed as a fairly low priority.

The third of our necessary conditions is an outside monitor and analytical critic, to assure that the program is given the prominence necessary to have the desired impact. External pressure can be provided by someone who impartially focuses public attention on the economic aspects of agency decisions. If this role is played effectively, the influence of those within the agency who already support the

analytical effort will be augmented, and the agency will have considerable incentive to produce and use good economic analysis to minimize its vulnerability to serious outside criticism. With respect to regulatory proposals, CWPS's activity has served this purpose. OMB, by more closely monitoring legislative proposals requiring an IIS and by encouraging the use of interagency review procedures, could improve the effectiveness of the requirement.

Fourth, the roles of the internal supporter and the outside critic are greatly facilitated by formal directives that demand agency compliance. For example, EO 11821, coupled with Circular A-107, set a demanding standard against which agency activity can be judged. Those in an agency trying to obtain better performance throughout the agency can rest their case partly on these documents. The outside critic is assisted by having access to explicit analysis which agencies are obliged by these documents to complete.

### Major Options

There would appear to be four major options regarding the future of the IIS program, plus the related issue of whether to extend a similar requirement to the independent agencies via legislation:

1. Allow EO 11821 to expire on December 31, 1976 and take no further action. This alternative would eliminate the paperwork burden which a few agencies have claimed accompanies the IIS requirement. It would also eliminate some delays in promulgating regulations which some agencies have experienced. On the other hand, allowing the executive order to expire and taking no further action would probably reduce agency efforts to more fully consider the economic impacts of their regulatory and legislative decisions -- at least for the immediate future.

The major argument for allowing the IIS program to expire on December 31, 1976, without substituting any major new initiative in its place is that the program has served its purpose: it has helped stimulate improved economic analysis in those agencies whose reaction has been constructive, and there the effort will survive to some degree without the program. In other agencies, the program is not likely to become effective -- the enforcement mechanism is just too weak. At the same time, agencies could be encouraged to mount their own internal reform initiatives. Support could be provided for those initiatives which look promising (e.g., EPA's interagency review process, DOT's Secretarial Order and the Secretary's open meetings to obtain public views, and HEW's effort to disseminate information on proposed regulations beyond the Federal Register readership). This could be quite productive, but it leaves agencies with uncertain incentives to make significant changes.



2. Extend EO 11821 (and associated requirements such as OMB Circular A-107) with no changes. This alternative would recognize the need for continued efforts to encourage agencies to evaluate the economic consequences of their major decisions. Moreover, it would result in less confusion and lag time than if agencies were again asked to adjust to changed requirements. The major argument for simply extending the executive order is that changes would be disruptive and premature. Agencies have just recently finished implementing the program's present requirements, which seem to be working at least reasonably well so far. Changes after so short a trial period would create significant administrative problems. The argument against this alternative is our belief, discussed below, that inherent weaknesses in the present program are likely to erode away its benefits.

If the program were simply extended without strengthening, we would predict a decline in whatever net benefits it now generates. When -- as surely would happen -- an agency lost interest in the program and was under little pressure to comply with it, efforts would become nominal and their impact insignificant. If compliance cannot be made more effective at those agencies which find the program less appealing, serious consideration should be given to letting the program expire and dealing with the problem to which it is addressed through alternative means. Simply extending the program "as is" would appear to pass up significant opportunities to improve the present level of effectiveness at reasonable cost.

3. Extend EO 11821, but strengthen the program. With this option the IIS program would be strengthened by the issuance of a revised EO 11821 and OMB Circular A-107, reflecting the changes outlined below. This alternative would provide more "teeth" for the program, forcing agencies to take it more seriously, securing improved compliance, and, hopefully, thereby achieving improved decisionmaking. On the other hand, changing the program would lengthen regulatory delays, tie up more agency resources, and create some transitional difficulties.

If the program is to be retained four types of changes are needed to preserve and enhance the program's contribution to better decisionmaking: better enforcement, improved communication, clarified criteria, and more suitable procedures. These changes are detailed in Section VI-C of the report, and include, among other things, changing the program's name from IIS to Economic Impact Analysis (EIA) program and strengthening the monitoring effort by OMB/CWPS.

4. Extend EO 11821 as an interim measure, and propose legislation. This would establish an extremely strong incentive for agencies to accomplish economic analysis, especially if the quality of the analysis and the agencies' utilization of it were made reviewable in

the courts. On the other hand, desirable flexibility would be lost if this were a rigid requirement. And given our experience with the legislated Environmental Impact Statement (EIS), there is some danger that the program would be viewed simply as a constraint to be met rather than an aid to decisionmaking.

Finally, a related issue is whether to propose legislation promulgating an IIS-type requirement for the independent regulatory agencies who have considered themselves beyond the reach of the EO. While we would argue against proposing legislation to require Executive-branch agencies to prepare economic analyses, we would recommend legislation to apply to the independents. The prospect of litigation for Executive-branch agencies is not one we find very desirable, given experience with the EIS program (see Appendix E). It would be difficult to specify an appropriate standard of acceptability, and delays would become a real problem. In addition, a statute once in place is inflexible and not easy to revise, and it can become outmoded rather quickly. On the other hand, we recognize that the President's requests to the independent agencies that they take full account of the economic effects of their actions, his only other feasible approach, has not elicited wholly satisfactory responses. Therefore, we recommend that legislation be considered to extend an economic analysis requirement to the independent agencies.

#### Staff Recommendation

In our view, the IIS program has generated net benefits which are increasing over time. On the whole, decisions are being made with greater sensitivity to the full range of effects they have on the efficiency with which our economy performs. Furthermore, this is being achieved without generating unduly burdensome effects on agencies or delays. Although the situation is decidedly gloomy at USDA and FEA, the program is maturing well at EPA, DOT, HUD, and HEW, and the situation at DOL, while unclear, holds considerable promise.

On balance we conclude that the most desirable course of action would be to extend the IIS program with a new name and with certain significant but not drastic changes to improve compliance. The program does cause some delays, but these should gradually be eliminated as agencies learn to better coordinate economic analysis with proposal development and to use the former at earlier stages in the decision-making process. The other costs of the program -- mainly the cost of performing economic research -- are real and do need to be funded, but they are small relative to the impact of the proposals being decided upon. The IIS program facilitates more rational decisions on proposals whose impact on the economy is substantial. It should be retained and strengthened.

## I. Introduction

### A. Reason for and objectives of the report

The Inflation Impact Statement (IIS) program was announced in an October 8, 1974 Presidential address before the Congress, and it was formally initiated on November 27, 1974, by Executive Order (EO) 11821 (see Appendix C). Its objective is to improve agency decisionmaking by requiring agencies to consider the economic impact of their regulatory and legislative proposals. Since the IIS requirements constitute a rather novel mechanism, an expiration date of December 31, 1976, was specified in the Executive Order. This served to emphasize the importance of carefully monitoring the program's impact during its initial period. The IIS program will expire on December 31, 1976, unless a Presidential decision is made to extend EO 11821 in its present or modified form.

This report provides an appraisal of the actual and potential effectiveness of the program. It was prepared for the Economic Policy Board (EPB), which will advise the President concerning actions to take on the IIS program and EO 11821. The report evaluates the performance of the program to date and analyzes alternative courses of action for EPB's consideration. These alternatives include simply extending the present program, extending the program with modifications, or simply allowing the program to expire (with or without any new initiative as a substitute). The report was prepared jointly by the Council on Wage and Price Stability's Office of Government Operations and Research (CWPS) and the Office of Management and Budget's Economics and Government Management Division (OMB). Thomas D. Hopkins, CWPS's Deputy Assistant Director for Government Operations and Research, is the principal author.

### B. Nature of the evaluation process

In preparing this report, CWPS and OMB have striven to produce a comprehensive and objective picture of the IIS program. Objectivity is an elusive goal, however, because the program must be judged in relation to how well it is accomplishing its major purpose -- the improvement of agency decisionmaking -- and such improvement is not amenable to unambiguous measurement. Given the importance and difficulty of achieving objectivity, CWPS/OMB solicited the views of a broad spectrum of concerned parties. Furthermore, CWPS/OMB circulated a draft of this report to affected agencies, giving them an opportunity to have their comments included (see Appendix F).

The evaluation process consisted principally of the following seven steps:

1. All IIS analyses prepared by agencies for their individual regulatory and legislative proposals were identified and evaluated. As to regulatory proposals, a total of 41 IISs from eight agencies

had been produced by October 10, 1976. As to legislative proposals, eight IISs were produced by four agencies. Most of these documents, the most visible product of the IIS program, were reviewed for analytical quality and for adequacy in terms of satisfying the requirements of OMB Circular A-107, which implemented EO 11821 and which was issued on January 28, 1975 (see Section IV, and Appendices A and C). Nonetheless, the caliber of these analyses is not the central focus of this appraisal. There probably is some threshold quality level of mediocrity below which an analysis could have little or no beneficial impact on regulatory decisions. On the other hand, how far above that threshold level an IIS analysis may rise does not necessarily have much bearing on how seriously the analysis impacts decisionmaking.

2. The basic IIS guidance documents (contained in Appendix C) were reviewed for possible shortcomings that might warrant changes should the program be extended.
3. Written comments on the IIS program were solicited in August from the 25 participating agencies. Responses were received from 17 of these agencies and were incorporated in the evaluation (see Section V-B and Appendix F). Written comments also were solicited in August from the general public by means of a notice in the Federal Register. Thirty-one responses were received and evaluated (see Appendix B).
4. Interviews were conducted by CWPS/OMB staff during August, September and October, 1976, with personnel in several offices in most of the agencies which have completed IISs. These interviews were with agency personnel who worked on IISs, those who reviewed IISs, and those responsible for developing and approving regulatory proposals. Questions discussed covered the IIS program and the regulatory process (see Appendix D for outline of interview questions). Information generated in the previous four steps of the evaluation process was used to focus the discussions, which in turn helped clarify the significance of that information. CWPS economists, whose normal responsibilities include monitoring the

activities of particular agencies, conducted the interviews at their regularly assigned agencies, with assistance from OMB. Thus each interviewer possessed a basic familiarity with the agency, its personnel, and its regulatory problems. Typically, four or five different interview sessions, lasting roughly an hour each, and often attended by more than one interviewee, were conducted at each agency.

5. The statutory language, if any, pertaining to the use of economic analysis by the participating agencies was reviewed in order to determine, among other things, the scope of possible changes in, or alternatives to, the IIS program which would not require new legislation.
6. A draft report was prepared by CWPS/OMB, relevant sections of which were circulated to agencies, which had been interviewed, for their review and comment.
7. A final version of the report was prepared, taking into account agency comments, and all participating agencies were given an opportunity to make comments on this version for inclusion as an appendix (see Appendix F).

## II. Background on IIS Program

### A. Objectives of IIS program

Government regulations and legislation produce many kinds of effects. Agencies which promulgate regulations do so in an effort to achieve statutorily-mandated objectives. Regulations specify, more or less precisely, certain practices, actions, or effects which are to be prohibited, attained, encouraged, or discouraged. However, regulations and legislation generally have effects beyond those that are intended, and often they can be designed to produce their intended effects in several different ways.

The principal objective of the IIS program is to induce agency decisionmakers to be more sensitive to the whole range of effects -- particularly the hidden and often very costly consequences to the consumer -- of prospective government actions. More specifically, the aim is to: (a) make agencies, in their rulemaking processes, and in developing legislative proposals, more accountable for their actions' economic effects; (b) provide a management tool of use primarily to the agency, and secondarily to CWPS/OMB, in considering how the expected costs

to society from a proposed action compare with its expected benefits, and how these compare with the costs and benefits of possible alternative government actions; 1/ and (c) reduce Federal government-induced inflationary pressures on the economy by getting agencies to make more effective use of economic analysis in their decisionmaking.

If the IIS program's objectives were completely achieved, an agency's decisionmaking process could be described as follows: (a) in those cases where an agency enjoys some statutory flexibility, major regulations and legislation are not proposed if either their costs to society exceed their benefits to society (intangible as well as tangible), or a less costly alternative exists which could generate at least equally valued benefits; and (b) before a significant proposal for new legislation or regulation is made the agency will have completed an IIS analysis which explicitly sets forth the proposal's costs, benefits, and alternatives (and their costs and benefits). Costs and benefits would be quantified to the extent practicable. In many instances, of course, no meaningful numerical cost-benefit ratio would be computed, since certain important benefits and costs are difficult to quantify with precision. In such cases, a clear statement of the nature and extent of nonquantifiable benefits or costs would provide part of the basis for the decision. In some such cases, where, for example, only one type of benefit is not quantified, a decision to adopt the proposal could reveal -- implicitly, of course -- the minimum dollar value which the decision-maker is placing on that benefit.

Certainly one thing the IIS program intended to avoid was a new paperwork and compliance system which would generate perfunctory performance or excessively burdensome hurdles for agencies. Therefore, the principle responsibility for the program's implementation was delegated to the agencies with only a monitoring role envisioned for CWPS/OMB. Also this is why the program was restricted to "major" proposals. Expecting a careful analysis for a limited number of proposals seemed more reasonable, at least for the program's first two years, than asking that all proposals be similarly scrutinized. The latter would unduly strain the limited analytical capabilities of the agencies as well as the monitoring efforts of CWPS/OMB. It also would divert attention from the truly "big impact" proposals having the greatest potential inflationary (or anti-inflationary) effects.

For somewhat similar reasons, the program did not bring within its purview existing regulations and legislation. Clearly agencies should keep such regulations under close review and make changes when suitable, and probably too little emphasis has been placed on such efforts. Nonetheless, existing regulations and legislation pose some different questions and were excluded to make the IIS effort more manageable. For example, at the proposal stage, a definite decision is being made and the IIS program can serve to influence what the decision-maker takes into account. For existing regulations, there is the further

1/ By costs and benefits to society, of course, we mean costs and benefits to consumers.

task of getting the decisionmaker to even consider making (or re-opening) a decision. A regulation, once in place, often develops its own constituency which would oppose its change; in this sense it would appear that a program such as the IIS is likely to have more influence on "new" rather than "old" regulations and legislation. 1/

The IIS program's approach is to identify as "major" any proposal whose impact exceeds certain agreed-upon thresholds, as described more fully in Section C below. 2/ Basically, these thresholds are levels of cost. However, to have a sizeable cost effect does not imply anything about whether a proposal would be inflationary. It merely means the proposal is big enough to merit scrutiny. The IIS which must be prepared for each "major" proposal enables one to judge whether the proposal would be inflationary. If the benefits identified in the IIS analysis exceed the costs, and if no less costly alternative could be used to generate these same (or greater) benefits, the proposal is anti-inflationary.

Although this approach to the inflationary effects of individual regulations is often misunderstood, it is well grounded in contemporary economics. The approach recognizes that the primary determinants of the rate of inflation are monetary and fiscal policy. However, holding these constant, any regulatory or legislative action which misallocates resources is, in and of itself, inflationary. This can be seen by observing that, if resources are misallocated, the real supply of goods and services which the economy can produce is reduced. Thus, for any given level of nominal output, the price of final goods is increased.

Take, for example, an environmental standard designed to result in cleaner water. If the increase in costs imposed by adoption of the standard is smaller than the decrease in costs realized by individuals as a result of having cleaner water, then the total cost to individuals is reduced. Resources are being used more efficiently (in this instance, devoting more resources to cleaner water is efficient), and the overall impact is anti-inflationary. On the other hand, if the costs of cleaning the environment exceed the reduction in costs to individuals, the overall impact of the regulation is inflationary.

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1/ "Old" regulations and legislation probably are more amenable to review by a different approach. For example, one could institutionalize some means of petition for reconsideration. Other such proposals are included in Appendix G.

2/ Since the program is aimed at the "hidden" or off-budget impact of government, appropriations requests, while technically proposed legislation, have not been subject to IIS procedures insofar as their costs are fully reflected in the budget.

This impact may not be reflected in the standard price indices because, in addition to other imperfections, they often do not include the value of intangibles such as clean water. <sup>1/</sup> Thus, there may exist anomalies where conventional price indices increase even if the action, in the true sense, is anti-inflationary in that it contributes to a more efficient allocation of society's resources. The converse also is possible: an action can reduce conventional price indices without being truly anti-inflationary (e.g., those types of price controls which mis-allocate resources).

B. Emergence of IIS program; its chronological development

The intention to create an Inflation Impact Statement requirement was outlined by the President in an October 8, 1974 address to the Congress. The President announced that Executive-branch agencies would be required to consider the possible inflationary implications of their major actions. This was intended to be an effort to encourage agencies to lessen inflationary pressures induced by the Federal government outside the sphere of monetary and fiscal policy.

Inflationary pressures at that time were severe, as shown in Table 1. The Consumer Price Index (CPI) increased 12.2 percent during all of 1974 and 1.3 percent during August alone. In September 1974 the President had convened a "summit conference" of a broad cross-section of the country's leaders in business, labor, public interest groups, government, and the field of economics to obtain counsel on how best to deal with the nation's economic problems. Prominent among the issues raised at that summit conference were the inefficiencies and excessive costs generated by the way in which the Federal government regulated business and State-local government activity. For example, 21 of the 23 economists in attendance signed a statement which identified a large number of serious regulatory excesses (see Appendix B).

It was in this context that the President announced, in his October address to the Congress, his intention to institute an IIS requirement. To this end, the President issued Executive Order 11821 on November 27, 1974, directing Executive-branch agencies to prepare IISs before proposing major legislation and before issuing proposals for major rules and regulations.

For several reasons, an EO was used to execute this new initiative rather than the alternative of proposing and obtaining a similar legislative requirement. The EO could get the IIS program underway more quickly. It also was more flexible than legislation in

<sup>1/</sup> To some degree many of these benefits will be translated into price effects as those benefits become capitalized in market values.



Table 1

CONSUMER PRICE INDEX: ALL ITEMS

Annual Rate of Change (Percent)

December 1973 to December 1974 (unadjusted):	12.2%
December 1974 to December 1975 (unadjusted):	7.0
December 1975 to October 1976 (seasonally adjusted) :	4.0

Percent Change from Preceding Month  
(seasonally adjusted)

	<u>1974</u>	<u>1975</u>	<u>1976</u>
January.....	1.2	0.7	0.4
February.....	1.1	0.5	0.1
March.....	1.0	0.4	0.2
April.....	0.6	0.5	0.4
May.....	1.1	0.5	0.6
June.....	0.8	0.7	0.5
July.....	0.7	1.0	0.5
August.....	1.3	0.4	0.5
September.....	1.1	0.4	0.4
October.....	0.9	0.6	0.3
November.....	0.9	0.6	
December.....	0.8	0.5	

Source: Council of Economic Advisers, Economic Indicators,  
February 1975, p. 26; February 1976, pp. 26-27;  
September 1976, pp. 23-24.

Telephone conversation with Department of Labor,  
Bureau of Labor Statistics, Consumer Price Index  
Division 523-1647.

that an EO can be amended or rescinded more easily, which seemed an advantage given the novelty of the undertaking and the unpredictability of its success. Finally, the intention was to fashion a management tool which could help agencies improve their decisionmaking. Thus it seemed wise, at least at the outset, to try to minimize the potential for costly and time-consuming litigation, which figured so prominently in the legislatively required Environmental Impact Statement (EIS) program. While an EO is less forceful than a legislative mandate, it does enable the President to place requirements on the Executive-branch agencies, and it carries greater weight than other less formal communications, such as a letter.

EO 11821 delegated responsibility for assuring implementation of the IIS program to the Director of OMB, empowering him in turn to delegate functions to the head of any department or agency. This responsibility specifically included: (a) development of criteria for use in determining which agency proposals would be identified as "major" for the purposes of the IIS program, and (b) prescription of procedures for evaluating the inflationary impact of "major" proposals.

Accordingly, on January 28, 1975, OMB issued Circular A-107, which assigned specific responsibilities to Executive agencies and provided guidance to those agencies in how these responsibilities should be carried out. The basic management concept was to decentralize to agency heads most responsibility for developing and implementing the IIS program, in order to allow each agency to adopt procedures that would match the nature of its mission and its organization.

In particular, each agency was made responsible for developing its own criteria for identifying "major" proposals, subject to approval by OMB in consultation with CWPS. Each agency also was given responsibility for developing procedures for evaluating major proposals and for certifying that it had evaluated the inflationary impact of each major proposal issued after November 27, 1974. Circular A-107 also made provision for agencies which do not propose major actions to request to be exempted from the Circular's requirements.

The Circular called upon agencies to submit their proposed identification criteria or their requests for exemption to OMB by February 27, 1975. There ensued a protracted period of discussion between OMB/CWPS and each affected agency. The slow progress was a function of the emphasis on decentralizing the initiative, some confusion about the intent of the program, and the predictable negotiating stances taken by each part -- an agency wanting to minimize the program's burden on its staff (particularly in view of the Circular's statement that "Agencies should comply with the requirements of this Circular with existing resources and personnel."), and OMB/CWPS wanting to give the program enough bite to force a significant increase in agencies' accountability for their actions' direct and indirect effects on the economy.

Initial proposals of criteria submitted by agencies varied widely in their stringency and coverage. After OMB/CWPS staff review of these submissions, OMB Director James T. Lynn sent a memorandum to the agencies on June 3, 1975 to guide agencies' preparation of revised criteria for final OMB approval. OMB, after consultation with CWPS, decided to establish minimum acceptable benchmarks or threshold levels for each criterion. It was decided that consistent, government-wide criteria should be adopted to ensure careful analysis of all proposals with criteria impacts in excess of a certain common level. Agencies in their final submissions were to be permitted to vary from these common levels only if they could provide adequate justification. The outcome was virtually identical criteria across most agencies, although the negotiations that led to this outcome went on for some time. As a result, relatively little attention was focused on actually doing IIS analyses until late summer and fall of 1975. Table 2 details the timing of the criteria approval.

Twenty-five agencies were given approval for their criteria, with the approval largely completed by September 1975 but dragging on until March 16, 1976 for the Federal Energy Administration (FEA) and until March 30, 1976 for the Renegotiation Board. Twenty-eight agencies were granted exemption from the IIS program requirements on the grounds that they do not propose major actions (see Table 3).

Once an agency's IIS criteria were approved, the agency faced the task of putting into effect internal procedures which would make the program work. As is discussed more fully in Section C below, OMB/CWPS were not significantly involved in this. Some agencies went to considerable effort to develop detailed operating procedures, while others went little further than providing its bureaus with the approved criteria and the A-107 Circular.

Some agencies did not have fully stated procedures in place until early 1976 -- for example, March 1976 for the Department of Housing and Urban Development (HUD). While IIS analyses were being completed during the entire period, it is reasonable to assume that the program cannot be judged to have been in full normal operation until agencies had in place both approved criteria and complete operating procedures. Thus the IIS program, which nominally began in November 1974, experienced two types of delays -- first getting criteria approved (roughly until late summer 1975), and then getting normal procedures underway (roughly until the end of 1975).

On November 7, 1975, OMB/CWPS sponsored a workshop on the IIS program. Its purpose was to reinforce the importance of this Presidential initiative and to review policy and analytical issues associated with the program. OMB/CWPS officials discussed the program's intent, and

several examples of IIS analysis were presented. All participating agencies, as well as representatives from the independent regulatory agencies, were invited.

In the early spring of 1976, OMB/CWPS completed and forwarded to the EPB an interim evaluation of the IIS program. The main thrust of the interim evaluation was to identify problems whose resolution could help improve the performance of the program in its second year of operation. Major policy and procedural questions were deferred until now.

As a result of the interim evaluation, the EPB approved three minor changes in the program which were detailed in a June 11, 1976, memorandum from OMB Director Lynn to affected agencies (see Appendix C). One of these changes involved use of clearer and more explicit language concerning the IIS analysis (if any) performed when new regulatory proposals appeared in the Federal Register. During the ensuing months, some confusion persisted due to ambiguities in the language used by agencies to certify their compliance with IIS requirements. Accordingly, on October 1, 1976, the Office of the Federal Register, after conferring with OMB/CWPS, published additional guidance for agencies, intended to reduce this confusion (see Appendix C).

Table 2

Date on which OMB Approved IIS Criteria, by Agency

<u>Agency</u>	<u>Date</u>
Department of State.....	June 3, 1975
Department of Agriculture.....	July 6, 1975
Civil Service Commission.....	July 6, 1975
Department of Commerce.....	July 6, 1975
Energy, Research, and Development Administration	July 6, 1975
National Aeronautics and Space Administration...	July 6, 1975
Tennessee Valley Authority.....	July 6, 1975
General Services Administration.....	July 15, 1975
Department of Defense.....	July 23, 1975
Small Business Administration.....	July 23, 1975
Export-Import Bank.....	July 28, 1975
Panama Canal Company.....	July 28, 1975
Veterans Administration.....	August 15, 1975
Department of Justice.....	August 15, 1975
Department of Labor.....	August 19, 1975
Department of the Treasury.....	September 15, 1975
Department of Health, Education, and Welfare....	September 17, 1975
Department of Housing and Urban Development....	September 22, 1975
Department of Transportation.....	September 22, 1975
Water Resources Council.....	September 25, 1975
Department of the Interior.....	October 20, 1975
Environmental Protection Agency.....	October 30, 1975
Equal Employment Opportunity Commission.....	December 15, 1975
Federal Energy Administration.....	March 16, 1976
Renegotiation Board.....	March 30, 1976

Table 3

Executive-Branch Agencies Granted Exemption from  
Executive Order 11821

ACTION

Administrative Conference of the U.S.  
American Battle Monuments Commission  
American Revolution Bicentennial Commission  
Appalachian Regional Commission  
Arms Control and Disarmament Agency  
Board of International Broadcasting  
Committee for Purchase from the Blind  
Community Services Administration  
Farm Credit Administration  
Federal Mediation and Conciliation Service  
Foreign Claims Settlement Commission  
Indian Claims Commission  
Inter-American Foundation  
International Trade Commission  
National Credit Union Administration  
National Foundation on the Arts and the Humanities  
National Capital Planning Commission  
National Gallery of Art  
National Mediation Board  
National Science Foundation  
Overseas Private Investment Corporation  
Railroad Retirement Board  
Selective Service System  
Smithsonian Institution  
U.S. Information Agency  
U.S. Soldiers' and Airmen's Home  
U.S. Commission on Civil Rights

To summarize, major events in the development of the IIS program occurred as follows:

- October 8, 1974 -- President announced intention to initiate new program
- November 27, 1974 -- President issued EO 11821, creating IIS requirements
- January 28, 1975 -- OMB issued Circular A-107 implementing EO 11821
- June 3, 1975 -- OMB issued memorandum prescribing minimum standards for agency criteria
- Late summer, 1975 -- criteria or exemptions have been approved for most agencies
- Year end, 1975 -- regular operating procedures are in place in most agencies
- June 11, 1976 -- OMB issued memorandum announcing minor IIS changes, followed by October 1, 1976 notice in Federal Register

C. Description of present IIS requirements

IIS criteria -- EO 11821 specified four categories of impact which, among other things, should be considered in developing criteria to identify "major" proposals:

- (1) cost impact on consumers, businesses, markets, or Federal, State, or local governments;
- (2) effect on productivity of wage earners, businesses or government at any level;
- (3) effect on competition;
- (4) effect on supplies of important products or services.

To this list, OMB Circular A-107 added:

- (5) effect on employment;
- (6) effect on energy supply or demand.

The threshold or benchmark levels now in effect for most agencies are shown in Table 4. Aside from limited exceptions, 1/ a proposal whose expected impact exceeds any one of these threshold criteria is considered "major".

1/ Agencies whose criteria differ from the general standard are as follows:

Commerce: Supplies -- change of one percent or more in usage of critical materials, products, or services. Employment -- refers solely to change of one percent or more in employment "in the activity which is the unit of focus in the proposal".

Defense: Energy -- an adverse change in the supply or demand for energy by 0.2 percent.

Export-Import Bank: Employment -- 0.5 percent or more in national employment or five percent or more in a single industry or sector.

Environmental Protection Agency: Cost -- no reference to \$150 million two-year national impact, \$50 million one year sector impact, or \$75 million two-year sector impact. EPA added one additional cost criterion: any five percent ratio of cost increase to product selling price; this serves as a surrogate criterion for employment, productivity, and competitive effects.

Federal Energy Administration: Cost -- no reference to \$150 million two-year national cost impact. Energy -- no energy criterion.

General Services Administration: Supplies -- a five percent threshold.

Department of Health, Education, and Welfare: Cost -- \$80 million one-year sector impact: No two-year cost criteria. Employment -- 0.1 percent threshold. No critical materials list is used.

Department of Housing and Urban Development: Cost -- additional criterion covering lending programs. Productivity -- increase in the number of man-hours required to produce the current level of output by 0.2 percent or more.

Department of Justice: Competition -- no criterion for competitive effects.

Department of Labor: Cost -- \$180 million two-year period national cost impact.

Panama Canal Company: Only criterion is cost impact in excess of \$50 million.

Renegotiation Board: Only the employment criterion and one additional criterion identifying increases in the number of filings required.



Table 4

Standard Criteria for Identifying Proposals as "Major"

<u>Criterion</u>	<u>Threshold</u>
Cost	<p>(a) For the national economy, increased costs of \$100 million in any one year or \$150 million in any two-year period;</p> <p>(b) For any economic sector, four-digit SIC code industry, or level of government, \$50 million in any one year or \$75 million in any two year period.</p>
Productivity	<p>Likely to result in cost impacts such as those outlined above through any of the following:</p> <p>(a) Reduction of capacity or capital investment;</p> <p>(b) Increase in required man-hours per unit of output;</p> <p>(c) Increases in barriers to substitution;</p> <p>(d) Reduced adaptation to new technologies.</p>
Competition	<p>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 country, provided that commerce in the relevant market exceeded \$100 million per year.</p>
Supplies of important materials	<p>Change of three percent in one year's annual supply of any item on a national critical materials list (currently certain minerals and metals).</p>
Employment	<p>(a) For the national economy, a direct change of 0.2 percent in total employment;</p> <p>(b) For any specific industry, level of government, or category of employees, a direct change of 10,000 or more jobs.</p>
Energy	<p>Increase in demand or reduction in supply of 0.1 percent of annual crude oil usage (25,000 bbls. per day or equivalent).</p>

In practice, almost exclusive emphasis has been placed on the national cost impact criterion, in part because it is perhaps the least difficult to address. In addition, if the cost criteria are carefully applied, most of the other criteria may well be redundant.

Each agency makes a preliminary assessment, for each contemplated proposal of a rule or regulation, as to its major vs. nonmajor status. If it is nonmajor, the proposal is to be accompanied by the following statement:

"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."

Upon request from CWPS, an agency must provide a brief description of its reasons for concluding that a proposed action is not major. Each proposal of a rule or regulation found to be major is to be accompanied by the following statement:

"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."

Upon publication of a major proposed regulation, an agency is to transmit to CWPS a copy of the IIS.

When an agency forwards a legislative proposal to OMB for review and clearance pursuant to OMB Circular A-19 (Revised), if the proposal is major, the agency is to furnish, upon request, appropriate inflation impact data and analyses. Also, since June 3, 1975, an agency must certify, for all legislative proposals, whether the proposal is major or not major.

(continuation of footnote 1 from page 14)

Department of the Treasury: Energy -- impacts on energy usage translated into price effects and cost criteria. "Financial and credit market effects" added as a seventh criterion.

Water Resources Council: Cost -- identifies sector cost impacts only.

IIS analysis required -- The analysis to be included in an IIS should, where applicable, consist of:

- (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.

Roles played by agency, OMB, CWPS -- The agency is responsible for deciding which of its proposals are major and for completing an IIS for each major proposal. The IIS, of course, is expected to be a useful input into the agency's development and disposition of major proposals. The agency also is expected to respond to requests for information from CWPS and OMB.

OMB has responsibility for monitoring the IIS program as a whole. This involves, among other things, obtaining sufficient information from agencies to ascertain whether the approved criteria and procedures are adequately implemented. OMB also retains primary monitoring responsibility for legislative IISs.

CWPS has primary responsibility for monitoring the IIS program for proposed rules and regulations. CWPS often publicly comments on agency IISs through its program of participating as an ordinary intervener in regulatory proceedings. No comparable effort is made by CWPS or OMB for legislative IISs.

The IIS program was intended to operate without a strong enforcement mechanism outside the action-proposing agency itself. Such enforcement as does exist essentially amounts to CWPS legislative

authorization 1/ to participate in agency rulemakings (which CWPS has linked with its oversight of IIS) and to OMB's general influence which derives from its budget oversight and management responsibilities. CWPS can try to focus attention on an agency's poor IIS performance through use of its public platform, and OMB can try to affect IIS performance through its legislative clearance procedures (discussed in Section III-D) as well as through its agency budgetary interaction.

Neither CWPS nor OMB has the authority to delay implementation of or require changes in a regulatory decision, and an agency need not even acknowledge CWPS criticism, much less react to it. As to legislative proposals, OMB's clearance procedures offer the opportunity to modify proposals resulting from IIS analyses. However final decisions must reflect many considerations other than IIS analyses.

1/ CWPS was created by the Council on Wage and Price Stability Act of 1974. (Public Law 93-387, as amended by Public Law 94-78, 12 U.S.C. 1904 note.) The Council's purpose under the Act is, generally summarized, to monitor the inflationary impact of activities in both the private and public sectors of the economy and to present its views on such matters. With regard to the public sector, Section 3(a) of the Act expressly directs the Council to:

(7) review and appraise the various programs, policies, and activities of the departments and agencies of the United States for the purpose of determining the extent to which those programs and activities are contributing to inflation; and

(8) intervene and otherwise participate on its own behalf in rulemaking, ratemaking, licensing and other proceedings before any of the departments and agencies of the United States, in order to present its views as to the inflationary impact that might result from the possible outcomes of such proceedings.

Such intervention is not limited to proceedings in which an IIS is involved. Indeed the majority of CWPS interventions have been where the proposal is not "major" and/or where the proposing agency is not even participating in the IIS program.

### III. Procedural Framework to Which IIS was added

This section describes the basic framework of regulatory and legislative procedures to which the program was added. The section thus provides part of the context for the program appraisal which follows. Four topics are discussed in this section:

- A. how regulatory decisions are made: a description of the basic standard setting process;
- B. role that economic analysis can play in regulatory decisionmaking;
- C. regulatory problems encountered;
- D. role of economic analysis in the legislative review process.

#### A. How regulatory decisions are made: the basic standard-setting process

The legislation which generates agency decisionmaking is sometimes defined quite specifically but more often its instructions to decisionmakers are stated rather generally. <sup>1/</sup> The agency has two basic means of fulfilling its statutory responsibilities: (a) it administers expenditure programs, and (b) it issues rules and regulations. Of course, to some degree, agency expenditures and agency regulations are substitutes. For example, the government can pay the cost of equipping a test fleet of cars with an air cushion restraint system (air bags), or it can issue a regulation which accomplishes the same thing but shifts the cost directly to firms and, ultimately, to consumers.

The extent to which an agency relies on expenditure programs is firmly established in the budget process, which involves a regular pattern of interaction among the agency, OMB, and the Congress. Economic analysis of the agency's budget has long played an important part in that process, although its form has been subject to considerable

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<sup>1/</sup> For example, at one extreme the Energy Policy and Conservation Act of 1975 requires the Secretary of Transportation (with cooperation from the Environmental Protection Agency) to regulate automobile fuel economy so as to hit very specific targets: at a minimum, average fuel economy must be 18 miles per gallon (mpg) for model year 1978 and gradually increase to 27.5 mpg by model year 1985. More typical is the Occupational Safety and Health Act's instruction to the Secretary of Labor to set standards which will prevent "material impairment" of workers' health.

change. <sup>1/</sup> An agency which chooses to spend a million dollars on project X recognizes this money will not be available for use in completing project Y. It thus has a natural incentive to provide a persuasive analysis supporting additional funding, and -- failing this -- to allocate its limited funds to the most deserving projects as it sees them. Much debate exists on how optimal these allocative decisions have been, but at least the trade-offs generally are explicitly considered.

An agency which issues a regulation has no comparable incentive to consider (nor binding constraint in terms of a ceiling on) overall expenditure implications of the regulations under its purview. There is, of course, some budgetary cost associated with developing and issuing a regulation. Generally, however, such cost is merely the tip of the proverbial iceberg. The basic constraint on an agency's use of the regulation-issuance mechanism is of a rather different nature. Essentially it is the "due process" procedural requirement, which derives largely from the Administrative Procedures Act (5 USC 101 et seq.). Additionally, a constraint is explicit in those statutes which specify certain rulemaking activities that the agency either must or must not undertake. As an example of the latter, the National Highway Traffic Safety Administration (NHTSA) is prohibited by law from promulgating a regulation which would reintroduce required ignition seat belt interlock systems in automobiles.

Thus the primary constraints on an agency's issuance of new regulations are: (a) how the courts will respond to suits alleging that in issuing a regulation the agency followed improper procedures or that the decision is inconsistent with the agency's statutory mandate; and, more generally, (b) how the Congress and the President will judge the agency's overall behavior, which in turn will influence the agency's future funding, its senior level appointments, and its statutory directive.

While procedures for deciding on new regulations are by no means identical across agencies, the following description is reasonably typical. A regulation often originates as a rather sketchy proposal which a program office believes would address a problem of concern to the agency's policymakers. Frequently the program office begins action because of a change in the law. Sometimes a third party first calls the matter to the agency's attention, but more often the agency itself generates the initial proposal. Furthermore, some regulations result from court orders, with specified timetables for promulgation.

<sup>1/</sup> During the 1960's, for example, the planning-programming-budgeting (PPB) system was applied by the President to all agencies in an effort to institutionalize systematic cost-benefit analysis in expenditure decisionmaking. Many of the PPB requirements proved too cumbersome and were cut back substantially in the early 1970's, but certain important vestiges of this controversial effort remain.

The proposal is developed by the program office, with major concern shown for the proposal's technical feasibility and merit. In most cases at least some data on costs that would be incurred by those who must comply with the regulation also are collected and reviewed. The proposal then wends its way upward to agency mid-level administrators, who provide direction as to whether the program office should proceed further, make basic changes, or defer action. Legal aspects of the proposal are carefully reviewed, and the proposal is put in a form necessary for publication in the Federal Register. The more significant the proposal, the more likely will it be routed through the agency's top administrators, although in some agencies all proposals must get the agency head's approval. Before an agency publishes a notice of a proposed rulemaking, it may choose to circulate the proposal outside the agency for comment (for example the so-called "interagency review process" is heavily used by the Environmental Protection Agency (EPA), and the Department of the Interior, and to a lesser extent by the Departments of Transportation, Labor, and Health, Education, and Welfare, and the Army Corps of Engineers).

The next step is publication as a proposal in the Federal Register. Except in unusual circumstances, the public is invited to comment on the proposal's merits during a 30- to 90-day comment period, which sometimes is extended by the agency upon request or on its own initiative. A docket is opened in which the agency's documents in support of the proposal, and all comments received after publication date, are available for public inspection. Hearings sometimes are held to elicit additional comment on the proposal.

Once the comment period closes, the agency reviews all submissions and decides whether to promulgate the rule or regulation as originally proposed, modify it in light of comments received, or reject the proposal outright. <sup>1/</sup> The final decision is announced and explained in the Federal Register. If major changes were made to the proposal, the agency may go through another public comment period prior to final promulgation. While there is considerable variation, it is not uncommon for several years to elapse between passage of a new law and implementation of an associated regulation. In cases of court ordered development of a regulation the process is modified. In this event, an agency may issue an "interim final regulation" which is enforceable before it has gathered and assessed public comment and decided what the final regulation should be.

<sup>1/</sup> Since agencies tend to have vested interests in their proposals, they seldom withdraw a proposal or modify it significantly once it appears in the Federal Register.

It should be noted that neither OMB, CWPS nor other agencies can delay implementation of or require changes in a regulatory decision.

One other requirement is important. An agency must also complete an EIS for major Federal actions with significant impact on the quality of the human environment. 1/

B. Role that economic analysis can play in regulatory decisionmaking

Statutory Requirements and Constraints -- Although agencies vary widely as to the extent to which they may or must legally use the type of economic analysis required by the IIS program, statutory constraints have not generally prevented implementation of the program. Almost all statutory programs which we have encountered permit an agency to use economic data and economic considerations in decisionmaking; thus, in most situations the IIS is a legally permissible input to the rulemaking process. In a few situations a statute administered by an agency is so worded that an IIS serves little purpose. This is either because a statute is so specific that it essentially precludes any consideration of economic analysis in the promulgation of regulations or in the execution of the statute or because it requires an economic analysis. We will briefly discuss these different situations. 2/

In most instances we have found that in promulgating a regulation an agency is addressing certain statutory goals which imply the desirability of achieving certain, usually unquantified benefits. However, in most cases the agency may consider economic analysis in its decisionmaking and may promulgate the most cost-effective standard even if, perhaps, it must promulgate a regulation which may not be cost-beneficial. 3/

An example of this type of statutory framework is the Occupational Safety and Health Administration (OSHA) standard administered by the Department of Labor (DOL). That Department administers a number of programs and Acts, including comprehensive employment development programs, employment insurance programs, employment standards programs (including minimum wage), Federal contract compliance programs, wage determinations issued under the Davis-Bacon Act (and its related prevailing wage statutes), as well as the three basic Federal worker's compensation laws. However, the major contact point between DOL and the IIS program has been OSHA, which issues regulations and standards for worker health and safety frequently involving large potential costs and benefits.

1/ See Appendix E and Environmental Impact Statements: An Analysis of Six Years' Experience by Seventy Federal Agencies (Washington: Council on Environmental Quality, March 1976).

2/ Because of time limitations it was not possible to analyze every statute administered by agencies covered by the IIS program.

3/ A cost effective standard is one which generates some given amount of benefits in the least costly fashion possible. A cost beneficial standard is a cost effective standard whose benefits exceed costs (both at the margin and in total).



The Occupational Safety and Health Act [29 U.S.C. Section 655(b)(5)] does contain language suggesting that in promulgating standards under the Act the Secretary of Labor may consider economic analysis. Section 6(b) of the Act states that:

the Secretary...shall set the standard which most adequately assures to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment [of health].... Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. ...Other consideration shall be...the feasibility of the standards....

In construing this language the United States Court of Appeals for the District of Columbia in AFL-CIO v. Hodgson, 499 F.2d 467 (1974), determined that the Secretary of Labor in promulgating standards could properly consider the problem of economic feasibility. <sup>1/</sup> Thus, a full economic analysis, although not mandatory, may be considered.

To our knowledge, there is only one situation where an agency is required by statute to perform what is similar in important respects to an IIS for most of its actions. <sup>2/</sup> The FEA is charged with carrying out certain regulatory programs responsible for the allocation and pricing of petroleum products, assuring an equitable distribution of crude oil and other petroleum products and the establishment of crude oil prices; additionally, it is charged with reducing the energy demand growth rate in the United States and developing certain energy conservation programs that promote the efficient use of energy. The Federal Energy Administration Act (P.L. 93-275) gave FEA a number of tasks, including administering pricing authority provided earlier in the Emergency Petroleum Allocation Act (P.L. 93-159) and the implementation of equitable voluntary and mandatory energy conservation programs. Section 18(a) of the FEA Act contains a requirement for the Administrator to perform analyses of certain agency actions:

<sup>1/</sup> Economic feasibility itself is a term that is still undergoing definition by the Courts. While it means that an implementing employer cannot be required to make expenditures until it is just short of bankruptcy, it is not clear beyond that just what is economically feasible. Also, until now the focus of economic feasibility is employer costs, not social costs.

<sup>2/</sup> EPA Water Effluent Guidelines require by statute some economic analysis. See 33 U.S.C. Section 1312(b).

ECONOMIC ANALYSIS OF PROPOSED ACTIONS

Sec. 18. (a) In carrying out the provisions of this Act, the Administrator shall, to the greatest extent practicable, insure that the potential economic impacts of proposed regulatory and other actions are evaluated and considered, including but not limited to an analysis of the effect of such actions on --

- (1) the fiscal integrity of State and local governments;
- (2) vital industrial sectors of the economy;
- (3) employment, by industrial and trade sectors, as well as on a national, regional, State, and local basis;
- (4) the economic vitality of regional, State, and local areas;
- (5) the availability and price of consumer goods and services;
- (6) the gross national product;
- (7) low and middle income families as defined by the Bureau of Labor Statistics;
- (8) competition in all sectors of industry; and
- (9) small business.

(b) The Administrator shall develop analyses of the economic impact of various conservation measures on States or significant sectors thereof, considering the impact on both energy for fuel and energy as feed stock for industry.

(c) Such analyses shall, wherever possible, be made explicit, and to the extent possible, other Federal agencies and agencies of State and local governments which have special knowledge and expertise relevant to the impact of proposed regulatory or other

actions shall be consulted in making the analyses, and all Federal agencies are authorized and directed to cooperate with the Administrator in preparing such analyses: Provided, that the Administrator's actions pursuant to this section shall not create any right of review or cause of action except as would otherwise exist under other provisions of law.

Essentially then, the Administrator must perform an economic analysis of certain proposed actions and proposed regulations and must include in that analysis at least those factors specifically set out above. It should be noted that the Administrator need not base his (or her) decision on whether the costs of a proposed regulation exceed the benefits, but need only be sure the effects of the proposed action are considered.

In one case the statute which an agency administers is so restrictive in its terms that a cost-benefit analysis serves no useful function as far as agency decisionmaking is concerned. Specifically, the Clean Air Act of 1970 (42 U.S.C. Section 1857) authorizes EPA to establish national ambient air quality standards to regulate air pollution from industrial and other activities. These standards are promulgated in furtherance of a statutory timetable for the attainment of reduced pollution levels. The Act requires that each State develop a State implementation plan that details how various activities in regions within the State are required to contribute to the attainment of the ambient air quality standards. The Administrator of EPA in promulgating national primary and secondary ambient air quality standards [42 U.S.C. Section 1857(c)(4)]:

"[s]hall set ambient air quality standards, the attainment and maintenance of which in the judgment of the Administrator based on such criteria and allowing an adequate margin of safety are requisite to protect the public health."

There is no mention of economic analysis or that costs are relevant to the decision. Additionally, Section 1857(c)(5), governing State implementation plans, also omits any mention or consideration of economic costs or benefits. Recently, the United States Supreme Court [Union Electric Company v. EPA (No. 74-1542, 44LW5060, June 25, 1976)] held that EPA in approving State plans cannot, in fact, consider such economic effects, although a State can make that consideration before submitting the plan for approval.

Generally, agencies have not indicated to us that their major programs are so constricted by statute that they have no discretion to use the IIS. 1/ Certain recent litigation also is pertinent to this matter.

One such case is Independent Meat Packers Association et. al v. Butz [No. 75-1486 U.S.C.A. 8th Cir. (1975)], which arose out of some revised beef grading standards issued by USDA. The Independent Meat Packers sought and were granted in U.S. District Court an order permanently enjoining enforcement of the standards [395 F. Supp. 923 (1975)]. One ground for that injunction was a finding that USDA had performed an inflationary impact analysis which was deficient and did not meet the criteria of EO 11821 and OMB Circular A-107. The Court of Appeals reversed this decision, holding that the IIS program "was intended primarily as a managerial tool for implementing the President's personal economic policies and not as a legal framework enforceable by private civil action." 2/ Thus, assuming this decision is not disturbed, the requirement to perform an IIS cannot be enforced by private parties.

Another relevant lawsuit, Oil, Chemical and Atomic Workers v. Usery [U.S.D.C. Civil 76-0365, March 3, 1976], is now pending in U.S. District Court. In that action the plaintiff seeks a declaratory judgment that the Occupational Safety and Health Act of 1970 does not permit modification of safety and health standards because of their general inflationary impact or delayed promulgation of such standards in order to assess their inflationary impact. Any decision in that case would legally bind only OSHA. However, a decision in favor of the plaintiff could, depending on its basis, suggest to agencies that they have very limited legal responsibilities under the IIS program.

Administrative policy -- An agency head who chooses to emphasize the importance of economic analysis in decisionmaking can of course institute administrative requirements to this end, independent of any EO or other outside directive. One striking example is provided by "Policies to Improve Analysis and Review of Regulations" issued in April 1976 by the Secretary of Transportation. (See 41 FR 16200.) Key passages from the Secretary's policy statement are reproduced below:

1/ Some agencies have noted that in certain factual circumstances they have no discretion. For example, the Food and Drug Administration (FDA) must ban a substance found in any quantity to be a carcinogen, from all foods, drugs, or cosmetics. It should be noted that some agencies have expressed the view that the IIS program is useful even where legally constrained because the IIS places on record information that is useful in legislative review of programs.

2/ It also struck down other grounds for the District Court's decisions.

...We must...take steps to ensure that regulations issued by the Department itself are sound and do not impose unnecessary burdens on the private sector, on consumers, or on Federal, State, and local governments. ...The strength and integrity of our regulatory framework depends on maintaining responsibility for formulation of regulatory policies in the operating elements where expertise and experience are concentrated. ...At the same time, our regulatory proposals are ultimately the responsibility of the Department as a whole. We must be certain that they are supported by adequate analysis of their anticipated costs and consequences before they are proposed or finalized.

The objectives of these Department of Transportation (DOT) policies are:

1. To improve the quality of analysis of regulatory proposals and of significant grant program requirements, with particular emphasis on consideration of their costs to the private sector; to consumers; and to Federal, State, and local governments;

2. To assure the full and early use of such analysis in the development of these proposals and requirements;

3. To provide for the timely involvement of the Office of the Secretary in the development of those regulations which are expected to have a substantial impact or to be especially controversial; and

4. To provide for regular and effective review of existing regulations and grant program requirements.

POLICY I: Prior to the issuance of a Notice of Proposed Rulemaking, the originating Departmental element shall evaluate the anticipated impacts of the proposed regulation, use the evaluation results in assessing the desirability of proposing the regulation, and include a brief summary of the evaluation in the Notice of Proposed Rulemaking. Each evaluation shall include an estimate of resulting costs to the private sector, to consumer, and the Federal, State, and local government as well as an evaluation of benefits and other impacts, quantified to the extent practicable. Prior

to the issuance of a final regulation, the originating Departmental element shall prepare a similar evaluation, use its results in formulating the regulation, and include a brief summary of the evaluation in the publication of the final regulation.

[A similar policy applies to grant program requirements.]

An evaluation is not required if the grant program requirement, or publication of the proposed regulation, is expressly mandated by statute, or if the head of the originating Departmental element determines that the expected impact of the proposed regulation or grant program requirements is so minimal that the proposal does not warrant an evaluation. Whenever a determination of minimal impact is made, the head of the originating Departmental element shall provide written notification to the Secretary.

POLICY II: For these regulations which are potentially costly or controversial, the head of the originating Departmental element shall provide the Secretary with an information memorandum at least 30 days prior to the publication of the Notice of Proposed Rulemaking. The information memorandum shall explain briefly the need for the regulation, the substance of the regulation, alternatives considered, and the results of evaluation of the proposed regulation. It shall also summarize the anticipated positions of interested parties, assess consumers' interests, address technological feasibility as appropriate, and provide such other information as is needed to apprise the Secretary of the anticipated impact of the regulation.

In addition, at least 30 days before the final issuance of any regulation which is potentially costly or controversial, the head of the originating Departmental element shall provide the Secretary with an information memorandum advising the Secretary of the impending action.

POLICY III: Each element of the Department shall establish a system by which those affected by its regulations and significant grant program requirements are provided an opportunity periodically to offer comments, through a structured process, with a view toward assessing whether existing regulations or grant requirements are effective or necessary, or need revision to accommodate changed circumstances and requirements.

Discussion of Policy I: Judgment should be exercised by the head of the Departmental element so that resources and time devoted to analysis reflect the importance of the proposal. Many proposals will not justify a highly sophisticated analysis.

Publication of summaries of the evaluations of regulatory proposals is required to provide a starting point for constructive debate about the final adoption of the proposals.

A comparison of DOT's internal policy requirement with the IIS shows the former to be the more comprehensive. As indicated, DOT requires analysis of costs, benefits and alternatives for significant regulatory proposals prior to publication, just as does the IIS program. But unlike IIS, DOT also requires such analysis for grant requirements. On the other hand, IIS, unlike DOT, requires an analysis of legislative proposals, and IIS analysis is required even when an agency has no discretion in what it must promulgate. Significantly, the DOT standard goes well beyond IIS in requiring review of existing regulations in addition to new regulations.

The DOT economic analysis is to be used both as an input in internal development of proposed regulations and -- since the analysis is summarized in Federal Register notices of proposed rulemaking -- as a way of informing public discussion of the proposal's merits. This closely resembles the intent of the IIS program. In IIS, however, an agency need not (and rarely does) summarize its economic analysis in published Federal Register notices. The agency simply states that the analysis has been completed and forwards a copy to CWPS. Public access to agency IISs is less immediate and direct than is public access to DOT analyses (although the latter may be available mainly in summary form).

This emphasis on DOT is not meant to imply necessarily that other agencies have neglected the need for careful review procedures, nor to pass any judgment on how well the DOT effort is faring. The point simply is that an agency head can do much to augment the role played by economic analysis in agency procedures.

### C. Regulatory problems

Germane to IIS -- In many instances agencies have made decisions on new regulations without prior review of competent economic analysis of costs, benefits and alternatives. Agencies have often lacked the resources and/or the will to see that: (a) such analysis was performed, (b) it was performed before making regulatory decisions, and (c) it was taken seriously as an important input in the decisionmaking process. These are problems to which the IIS program is addressed.

Not germane to IIS -- It is important to be clear about what the existing IIS program can and cannot hope to accomplish. Those regulatory problems which are not amenable to resolution through the IIS program as presently constituted include:

- (1) Existing regulations (and legislation) which may contribute to economic inefficiency and inflation.
- (2) Individual regulations which are logically part of a larger, generically similar group of regulations. In some cases a particular proposal is a piece of a regulatory mosaic and properly should be seen from a broader perspective than IIS requires. This may be a situation involving only one agency; for example, OSHA's "Standards Completion Project" involves over 300 individual regulations designed to protect workers from exposure to certain chemical substances. CWPS and OSHA have engaged in inconclusive discussions about the merits of analyzing these on other than a piecemeal basis. While it is conceivable that this type of problem could be addressed within the IIS program when only one agency's regulations are at issue, the problem probably is beyond the reach of IIS.
- (3) Monitoring of new regulations. The manner in which a regulation is interpreted and enforced can greatly influence its real impact. IIS analysis is predicated on assumptions about enforcement and other matters which may turn out to have been unrealistic. Follow-up analysis, and reconsideration of the initial decision when warranted by such analysis, is not part of the IIS program.
- (4) Constraining agency policies and procedures. Agency organizational structures which have evolved over many years may be well-suited for some purposes and not for others. An outside, superimposed set of requirements such as IIS may be rendered ineffective by a well-established decisionmaking structure unless that structure itself is changed. Such change may well require a change in the agency's constraints and incentives beyond what IIS can accomplish.
- (5) Procedure. Protracted and costly proceedings, possible lack of adequate representation of some important groups, et cetera are problems that require an approach other than IIS.

To sum up this section's main theme, the IIS program is a new overlay on a long-standing set of institutionalized practices and procedures. As such, it is one of several possible ways to resolve certain kinds of regulatory problems. Thus Sections II and III should



be seen as providing the background on the IIS program and on the regulatory environment, respectively, for this report's appraisal of the program.

D. Role of Economic Analysis in the Legislative Review Process

The Inflation Impact Statement requirement was designed, as explained earlier, to require decisionmakers to scrutinize the economic effects of their major proposals for both regulations and legislation beyond the direct effects on the budget. The process by which legislative proposals are made by Executive-branch agencies differs from the procedures followed when proposing regulations. It is that difference which explains much of the challenge in assuring that economic analyses affect decisions regarding legislative proposals.

The IIS requirement for proposed legislation was intended to be a part of the normal legislative clearance process followed by agencies in accordance with OMB Circular A-19. According to those procedures, an agency submits its proposed legislation to OMB, accompanied (where applicable) by a number of supporting documents, including: (a) an analysis of the provisions of the proposal; (b) a comparison with existing law; (c) a comparison with earlier agency proposals on Congressional bills; (d) a statement of other agencies' interests; (e) an indication of any consultation with other agencies in the development of a proposal; (f) an indication of the impact on State and local governments, where significant; and (g) information required by statute or by Administration policies. This last item includes consideration of the effects of civil rights laws and directives, environmental impact concerns, cost analyses, including five-year estimates of expenditures and manpower (in certain cases), and the IIS requirement.

Agencies must also include an estimate of the budget authority and budget outlays needed for each of the first five years to carry out responsibilities under the proposed legislation. In addition, if the legislation would affect savings, increase or decrease Federal revenues, or affect the receipts or outlays of trust or special funds, then agencies must include estimates of these changes.

Although formal documentary requirements seem to emphasize analysis of the impact on Federal policies, this does not mean that economic analyses are not done in the legislative development process. In some cases quite elaborate analyses are carried out and alternatives discussed in relationship to the economic impact. Thus, when the IIS requirement was initiated it was an effort to assure that impacts on the nation's economy of all major proposals would be addressed and the scope of an agency's present analyses would be broadened.

Within OMB, the review of legislative proposals follows prescribed procedures from the initial phase of processing and review by the Legislative Review Division through the preliminary action and

analysis by the lead division (i.e., the one primarily concerned with the substance of the legislation) to the final transmittal of advice to the agencies. According to the original intent of the IIS program, such analysis would become part of the evidence on which legislative proposals would be formulated.

OMB Circular A-107 directed agencies to submit their IIS analyses for major legislative proposals only on request from OMB, a requirement designed to minimize the flow of paper. Therefore compliance often was difficult to ensure. Time constraints and previous policy decisions, at times, have made it quite difficult to undertake a major analysis. This may be a greater problem in the legislative development process than in the regulatory process.

Often the decision to develop a new legislative proposal is made during the development of the President's Budget and announced in one of his regular or special messages. In other cases an alternative is being developed to a congressional proposal. Once an Administration policy decision has been made, often with an eye to the economic consequences and backed by economic analysis, but in some cases not, the appropriate agency drafts the legislation. At this juncture, while agency resources are being devoted to drafting the legislation and accompanying documents, a full economic analysis, including an examination of the effects of various alternative proposals, may be viewed in some sense as gratuitous, since it can not be useful in formulating those proposals whose details already have been decided upon previously. Moreover, the extensive requirements for economic analysis sometimes exceed the present capability of some agencies. Nonetheless the usefulness of having such analysis on the public record is of obvious benefit in ultimately affecting Congressional decisions.

The best time for an IIS analysis to be completed is during the early stages of policy formulation and decision. The IIS procedures do not assure this happens and in cases where legislation was initiated by the Executive Office of the President probably could not be expected to. This has contributed, in some part, to the failure to prepare an IIS on some major legislative proposals and the inadequacy of such statements in other cases.

In many cases, disputes regarding the necessity of an IIS have not centered around whether a proposal was indeed major, but over whether the circumstances (i.e., the timing or a previous policy decision) made it feasible to complete an IIS. Although these exigencies have, at times, pre-empted the adequate consideration of the economic impacts, it seems apparent that even an ex post analysis (i.e., after the policy proposal decision has been made) might be of value in some cases in the ensuing Congressional consideration and in fully understanding the expected consequences.

In summary, statutory requirements dictate, to a large degree, the depth and breadth of Federal actions, including regulatory activities. Legislative proposals are the seed of many of those activities,

and thus, should be formulated in full recognition of their economic impacts. The IIS requirement established guidelines designed to ensure that the economic effects of those legislative proposals were considered. The fundamental problems of time constraints and political realities discussed above, combined with compliance problems, have inhibited the effectiveness of the IIS requirement regarding legislation.

#### IV. IIS Product -- How Good, How Many, By Whom

##### A. IIS for regulatory proposals

Of the 25 agencies covered by the IIS program (listed in Table 2), eight have produced IIS analyses for regulatory proposals during the two-year period which has elapsed since EO 11821 was signed in November 1974. These agencies and the IISs each completed are shown in Table 5. The number of IISs an agency has done is not a good indicator of the analytical effort to which an agency went, because there is wide variation in the quality and comprehensiveness of individual IISs. This is detailed in Appendix A, which provides a brief appraisal of most of these IISs. As shown in Table 5, of the total 41 IISs completed for regulations, CWPS responded with critical comments on 23. <sup>1/</sup> In 11 cases, CWPS' comments were in the form of a publicly released, formal filing submitted to the agency during the public comment period in the rulemaking proceeding. In the other 12 cases, CWPS comments were sent to the agency in the form of a letter or memorandum.

In general, the quality of IISs submitted to CWPS has improved during this period, as was to be expected. Particularly competent and responsive analyses have been performed by EPA and DOT, and a serious effort has been mounted by OSHA. The analysis of costs is consistently more adequate than is that of benefits; analysis of alternatives usually is quite skimpy and often not even attempted. Of course, as stated in OMB Circular A-107, an IIS analysis is supposed to encompass costs, benefits, and alternatives.

<sup>1/</sup> Obtaining an accurate count of IISs has not been easy, since not all were sent to CWPS and since agencies have not always clearly distinguished IIS from other economic analyses. Our approach has been to count as IISs only those analyses completed for proposals which are major in terms of the established IIS criteria and which were published after the EO was signed. This excludes many analyses of minor proposals which CWPS has received from agencies and some analyses of major proposals not required by the program since they pre-dated the EO.

Table 5

Inflation Impact Statements Completed  
for Major Regulatory Proposals

November 1974 - October 1976

<u>Date IIS Completed</u>		<u>CWPS Response</u>
<u>Department of Agriculture -- 12 IISs</u>		
March 1975	Estimated Inflationary Impact of Revising Beef Grade Standards	None
May 1975	P.L. 480 recommendation. CCC docket regarding FY 1976 commodity availability which was presented to the CCC Board on April 25, 1976	None
May 1975	Support levels and method of support for tobacco	None
June 1975	Determine the minimum national average support level for 1975-crop peanuts as amended and passed by Congress	None
July 1975	Revised Inflationary Impact Statement -- CCC exports	None
October 1975	Price support level for manufacturing milk	None
October 1975	Two statements (1) Information Panel & Nutrition labeling for meat and poultry products (2) Determines major provisions of 1976 crop upland cotton program	
January 1976	Inflationary Impact Statement which sets forth quantities of agricultural commodities projected to be available for programming under Public Law 480 programs for fiscal year 1976	None
March 1976	To set the support level for manufacturing milk at 80 percent of parity on 4/1/76, the beginning of the marketing year	Filing
March 1976	Proposed modifications & revisions of Food Stamp Program Regulations	None
May 1976	Statement which determine the support levels and method of support for 1976 crop of various kinds of tobacco	None
August 1976	Make commodities available for P.L. 480 programming in FY 1977	None
<u>Department of Defense -- 1 IIS</u>		
March 1976	Dredge and Fill Permit Regulations	Interagency review

Date IIS Completed

CWPS Response

Environmental Protection Agency -- 13 IISs

July 1975	Pesticide Registration Regulations	Interagency review
September 1975	Drinking Water Standards and Surveillance Guidelines	Interagency review
October 1975	Motorcycle Emissions	Filing + Interagency review
October 1975	Offshore Gas & Oil Effluent Regulations	Interagency review
November 1975	Maintenance of Ambient Air Quality Standards	Interagency review
November 1975	Coal Mining Effluents	Interagency review
January 1976	Effluent Guidelines for Phase II Paper Industry	Interagency review
February 1976	Evaporative Hydrocarbons Test Standards	Filing + Interagency review
February 1976	Effluent Guidelines for the Organic Chemical Industry	Interagency review
March 1976	Light Duty Truck Emissions	Filing + Interagency review
June 1976	Iron and Steel Effluent Guidelines	Filing + Interagency review
June 1976	Proposed Water Effluent Standards for the Photographic Processing Industry	Interagency review
September 1976	Interim Final Guidelines for the Pesticides Chemicals Manufacturing Industry	Interagency review

Federal Energy Administration -- 4 IISs

February 1976	Preliminary Findings and Views concerning the Exemption of Residual Fuel Oil from the mandatory Petroleum Allocation and Price Regulations	None
June 1976	State Energy Conservation Plan Guidelines	Filing
July 1976	Inflationary Impact Evaluation of Proposal Regarding Definition and Allocation of Non-Product Cost Increases	None
September 1976	Proposed Gasoline and Diesel Fuel Rationing Contingency Plan	None

Date IIS Completed

CWPS Response

Department of Health, Education and Welfare -- 4 IISs

January 1976	DES	None
February 1976	Discrimination Against Handicapped Persons	Filing
April 1976	Medicaid Nursing Home Reimbursement	Letter
April 1976	Nitrofurans	None

Department of Housing and Urban Development -- 2 IISs

June 1975	Mobile Home Construction Safety (Revised analysis submitted February 1976)	Letter
November 1975	Reactivation of Section 235 Program (Mortgage insurance and assistance)	None

Department of Labor -- 3 IISs

February 1976	Coke Oven Emissions	Testimony
April 1976	Economic Impact Analysis of Proposed Noise Control Regulation	Testimony
April 1976	Inorganic Arsenic	Testimony

Department of Transportation -- 2 IISs

May 1976	Section 505 of RRRR Act of 1976	None
July 1976	Occupant Crash Protection: MVSS 208	Testimony

Based on CWPS' appraisal of the quality of individual IIS analyses (discussed more fully in Appendix A) overall agency performance in meeting the requirements of OMB Circular A-107 can be summarized as follows:

Department of Agriculture (USDA) IISs address costs (though without providing good measures of social costs) but slight alternatives and generally ignore benefits; a cost-benefit framework is not employed. The IISs are quite brief and of little use to someone outside the particular agency trying to understand the economic impacts.

The Department of Defense (DOD) completed only one IIS, and this was almost entirely qualitative (the only exception was a few casual estimates of some administrative costs), with no consideration of alternatives. This IIS appeared to be of no value to decisionmakers.

Environmental Protection Agency IISs, particularly those completed since January 1976, have been reasonably thorough and useful analyses which generally satisfy the program's requirements.

Federal Energy Administration (Office) IISs have not been responsive to the OMB Circular's requirements and appear to reflect a basic misunderstanding of the program. Impacts on the price of petroleum products have been analyzed, but evaluation of benefits and alternatives in a cost-benefit framework has not been attempted.

Department of Health, Education and Welfare (HEW) IISs have been roughly average in quality and generally have been in conformance with the program's requirements.

The Department of Housing and Urban Development has completed only two IISs, both in 1975. Both had some basic weaknesses, but they did represent a serious effort to meet the program's requirements.

Department of Labor IISs, the work of OSHA, are extensive analyses whose primary focus is on costs; significant attention also is paid to benefits, but systematic comparison of costs and benefits is not presented, and as a rule alternatives are not systematically explored.

The Department of Transportation has completed only two IISs. One (for the Occupant Crash Protection proposal) was of high quality, and the second appeared just adequate.

#### B. IIS for legislative proposals

Because the process by which legislative proposals are made and the requirements for submission of legislative IISs have differed from those followed for regulatory IISs, there is insufficient evidence to

comment broadly on the quality of legislative IIS analyses. This was partly the result of the uniqueness of the legislative review process, as well as of OMB's view of its role in the implementation of EO 11821, which was one of decentralized responsibility to the agencies without an aggressive OMB oversight role. It has been difficult to obtain an accounting of the total number of legislative IISs since Circular A-107 only required their submission to OMB on request. This stipulation, combined with limited monitoring of IIS in the legislative clearance process, as well as the absence of any public review process comparable to that affecting agency rulemakings, has resulted in a dearth of data on legislative IIS activity. However, it appears that the same problems found in regulatory IIS analyses also accompany legislative IISs (i.e., inadequate analysis of alternatives and a general lack of comparison of costs with benefits). Available information on legislative IISs is presented in Table 6 and Appendix A. So far as we can determine, four agencies completed IISs for legislative proposals:

Department of Commerce -- 1  
Federal Energy Administration -- 3  
Department of Labor -- 2  
Department of Transportation -- 3

V. IIS Impact on Agency Decisionmaking --  
Impressions of the Program's Effects

A. Decisionmaking impact -- general observations

The IIS program cannot yet be characterized as having had a pronounced and broad impact on regulatory decisions. But the paucity of available evidence makes it difficult to attach much confidence to this conclusion. Although the program is nearly two years old, very few regulations have been promulgated to date whose development began after the program started. Any regulation which had been proposed prior to EO 11821 was exempted from the IIS program, and it is not unusual for several years to elapse between initial proposal and final promulgation of a major regulation. Furthermore, many agencies have had policies in place fully implementing the IIS program only for the past few months. Agencies were of course responsible for compliance with the program for the full period and used interim procedures for that purpose. Nonetheless, "normal operations" -- which are what we want to evaluate -- have been in effect far less than two years. Finally, even for regulations proposed after EO 11821 took effect, their development may have been fairly well advanced before that time. In such cases, the economic analysis requirement was imposed too late to have much influence on the development of the regulation, although it still could influence the final decision.

We have found that experience with the IIS program varies sharply from agency to agency, and our detailed observations are presented on an agency basis in Section C below. In some agencies some



Table 6

Inflation Impact Statements  
for Legislative Proposals

Commerce	Patent Modernization and Reform
FEA	Electric Power Facility Construction Incentive Act of 1975 Weatherization Assistance for Low Income Persons Energy Independence Authority
Labor	Unemployment Insurance Improvements Work Incentive Program Amendments
Transportation	Aviation Act of 1975 Northeast Corridor Rail Passenger Service Improvements

decisions appear to have been improved as a result of the IIS program. We base this statement primarily on comments made during our agency interviews, but it must be carefully qualified, for many factors go into shaping a regulatory decision and their influence cannot easily be disentangled. In some cases, a regulation was altered prior to final promulgation in ways that the IIS analysis seemed to support, but the changes were supported too by other influences such as evidence provided by private parties. In addition, certain regulatory alternatives probably were dismissed before the formal proposal stage was reached because the relevant program office either found less costly substitutes or decided the regulation would not be cost-beneficial. The IIS program probably has helped raise agencies' sensitivity to the importance of considering economic impact at an early stage, but we have little hard evidence to document this.

It is our impression that those who begin development of a major regulation generally pay fairly little attention to economic analysis. However, they are aware that at some point in the later development of the proposal economic analysis will be a necessary hurdle. This awareness, which has been sharpened by the IIS program, may have some small effect on their efforts to identify alternatives and to assess costs.

As the proposal moves toward publication, a determination is made as to whether the proposal is "major." Generally, the originating office is responsible for making this determination, with approval needed from a separate economic analysis unit. The determination rarely requires much time or effort and usually involves only a casual appraisal of the total costs anticipated. Since the June 1976 requirement that an agency must be prepared to explain to CWPS its reasons for finding a regulation to be nonmajor, some agencies have devoted more resources to this determination. In isolated instances, this determination may have affected the proposal; if a slight change permits a proposal to be declared nonmajor, the agency's work load can be eased.

For a major proposal, preparation of an IIS does take time and resources. If, as is often true, the IIS is seen as separate from and subsequent to development of the proposal, an agency may experience delays in issuing rules. This is especially likely if the agency makes heavy use of outside contractors in preparing an IIS and/or if the agency's procedures for IIS approval are demanding.

Typically an agency treats an IIS analysis as being more useful in the decisions that are made after publication as a proposal than in those made before such publication. To the extent that the analysis is performed outside the office which develops the proposal, which is especially likely where an office has very limited analytical capability,

the analysis is not apt to be an important input in the proposal's development. Furthermore, much of the work on an IIS is done just before the proposal is published, which limits the usefulness of the IIS as an input into deciding what to publish as a proposal.

Nonetheless, this leaves open the possibility that the IIS can markedly influence the way the agency revises the proposal between its initial publication and its final promulgation. Some such influence probably exists, particularly since the IIS better enables critics to appraise the merits of the proposal and to suggest changes. On the other hand, an agency, once it publicly endorses a proposal, has some inclination to defend the proposal and to see that the IIS is so framed as to forestall criticism of the proposal.

In general, the program seems to have been more effective where the agency itself has been persuaded that this initiative makes sense and where the agency has taken initiatives on its own (e.g., DOT's policy requirement). In some agencies both conditions exist, in some neither, and in some one or the other. Pro forma compliance, at some cost but with little benefit, has sometimes been observed, given the absence of strong enforcement measures.

The type of enforcement which now exists places considerable reliance on OMB and CWPS, neither of whose performance has been completely satisfactory. One of the unfortunate constraints on the program's effectiveness remains poor understanding of the program's expectations. To many, the program seems misnamed: they fail to see the relevance of cost-benefit analysis to inflation, and they continue to believe the main focus of the program properly is on costs and changes in the CPI. CWPS/OMB have not been able to clear away this thicket of confusion.

CWPS as an outside critic has been an active and vocal intervener in regulatory proceedings. In many cases CWPS's interaction with agencies seems to have been successful in stimulating an agency to do better analysis, although it is not yet clear whether decisions as well as analysis have improved. Moreover, CWPS's objectivity has not been seriously questioned. But in some cases CWPS has not been very constructive; CWPS has sometimes failed to communicate realistic suggestions in a way that could be expected to generate a useful response from the agency. The interaction in such cases seemed to encourage agencies to become unduly defensive and to try to avoid open discussion of the issues by ignoring CWPS's comments.

As to OMB, its monitoring of legislative IISs could be improved. OMB has made only limited effort to hold agencies accountable for competent IISs on proposed legislation. Furthermore, OMB and CWPS jointly must share much of the responsibility for getting the IIS program off to such a slow start, with the protracted period during which too much energy was dissipated in negotiating IIS criteria.

B. Agency and public views

In response to CWPS/OMB request for comments during an early stage of this evaluation, 17 Federal agencies submitted their views. These, along with other agency comments, are included in Appendix F. Table 7 summarizes these agency comments. Two agencies, the U.S. Department of Agriculture and the Federal Energy Administration, found the program of insufficient merit to warrant continuation in any form. Seven agencies (Department of Commerce; Civil Service Commission; Environmental Protection Agency; Department of Health, Education, and Welfare; Department of Housing and Urban Development; Renegotiation Board; and Small Business Administration) thought the program is worthwhile and should be continued basically in its present form. Four agencies (Energy Research and Development Administration, Veterans' Administration, Department of Labor and Department of Justice) suggested continuation in modified form. One agency (Department of Defense) sought to be exempted from the program. Other comments are mixed.

Public comments on the program were solicited by means of a notice in the Federal Register, and 31 responses were received (see Appendix B). All 31 favored retaining and/or strengthening the IIS program; they included Senator Hubert H. Humphrey (as Chairman of the Joint Economic Committee), the National League of Cities, and the array of business and other private parties listed below:

A. F. Meyer and Associates, Inc.  
Air Products and Chemicals  
American Hospitals Association  
American Iron and Steel Institute  
Amoco (Standard Oil Company of Indiana)  
Professor Martin J. Bailey  
Barry Wright Corporation  
Bethlehem Steel Corporation  
E.I. DuPont De Nemours and Company  
Ford Motor Company  
General Motors Corporation  
Health Industry Manufacturers Association  
Lennox Industries  
Manufacturing Chemists Association  
Massey-Ferguson Inc.  
Michigan Municipal League  
Milk Industry Foundation  
Motor Vehicle Manufacturers Association  
National Cannery Association  
National Council of Agricultural Employers  
National Electrical Manufacturers Association  
Northern Indiana Public Service Company  
Pacific Gas and Electric Company  
Pharmaceutical Manufacturers Association  
Private Trucking Council of America  
The Proprietary Association  
Smith Kline and French Laboratories  
TRW Corporation  
United States Steel Corporation

Table 7: Agency Comments

Agency/Official	Quality of IIS	Analysis of legislative & regulatory proposals	Availability of IIS	Impact on drafting new legislation, etc.	Impact on quality of final regulations, etc.	Cost of program	Alternatives to IIS	Recommendation.
USDA Dawson Ahalt	Quality of analyses have progressively improved	Many minor as well as all major proposals have been subjected to	Available through established agency channels; few requests; public avail-	Little impact, but could create serious delays. Directive should be rescinded.	Negligible	Program has been carried out with existing resources	More conventional and effective means of evaluation should be used to improve	Terminate asap
		scrutiny, detracting agency resources from necessary emphasis on important issues	ability influences analysis				staff and administrative decisionmaking	
CSC Walter Townsend	No IISs have been done	Heads of originating bureaus and offices responsible for identification of major proposals	Should be made public	No delays	Tends to widen range of proposal alternatives	Minimal	No mandatory alternative applicable to CSC	Extend in present form
Commerce Robert Milligan	Only one done and thought of good quality		No objection to public disclosure; note that this does change thrust of program	May have a dampening effect on creative or innovative government policies; time delays deplorable				if extended, need additional resources to accommodate program.
	General comments:	Extend program, Specific guidelines and participation	and make sure EPA complies. Personnel must be assigned to carry out the program. Specific guidelines (as in EIS) concerning techniques and coverage are needed. Public awareness should be promoted.					
Defense John Beach for Clifford Miller	General comments:	Program is sound in principle but major DOD proposals are screened through budget review process and no latter reason, DOD should be exempted from the program.		difficult to implement, because of unspecific guidelines. Virtually all IISs have been prepared. For this				



Agency/Official	Quality of IIS	Analysis of legislative & regulatory proposals	Availability of IIS	Impact on drafting new legislation, etc.	Impact on quality of final regulations etc.	Cost of program	Alternatives to IIS	Recommendation
ERDA Emil Nelson	General Comments:	The program has Inflationary impact objectives. An econometric model for use by participating agencies to insure relevant sector impacts, while central agency works out national effects.	had little impact on ERDA decisionmaking and should be given weight in a systematic analysis and developed by central coordinating agency (i.e., CEA, CWPS, or OMB) to insure systematic, uniform analysis. Participating agencies should evaluate			be continued in its present form. long with other policy		
FEA Al Cook	Progressive improvement over time	All major proposals screened; criteria for "major" determination may be set too low	Should be made available for public inspection	No impact in drafting legislation, marginal influence in developing new regulations (required by statute). Main impact in amending (established) regulations.	Marginal	Requires 6-7 analysts, with more probably needed in the future	Integrate price and cost concerns in normal administrative process. No need for separate IIS program	terminate
	General comments:	Change title to "Price and Cost Impact"; "IIS" is a misnomer. Congressional legislative proposals should be subjected to price and cost scrutiny.						
EPA Al Alm	Progressive improvement noticeable; until all agencies perform satisfactory analysis, selective extension of requirements may be desirable. Expectations too high regarding benefits.					The costs of the program are burdensome and additional resources should be allocated.		IIS as a formal mechanism is superfluous and should be terminated with provision for adequate public participation and routine inter-agency review



Agency/Official	Quality of IIS	Analysis of legislative & regulatory proposals	Availability of IIS	Impact on drafting new legislation, etc.	Impact on quality of final regulations etc.	Cost of program	Alternatives to IIS	Recommendation
HEW William Morrill	HEW statements have been of "reasonable quality"	All major proposals have been screened, with the cost criteria most often cited	Analyses should be made public as a matter of principle	Little impact, although some proposals have been dropped because of impact	Little impact, since HEW 1. had little discretion or 2. determined that proposal was cost-beneficial	Minimal costs, probably in the "tens of thousands" of dollars	Enclosure describes serious reservations concerning legislative mandate for IIS,	Possibly worth or extending
							in view of potential for serious paperwork burden in some draft bills	Change title to "consumer cost assessment"
HEW-FDA Gerald Barkdoll	Progressive improvement over time; valuable learning experience	All FDA proposed regulations are screened prior to FR publication	All IISs have been made public	No delays, but no changes in proposed regulation. Portions of one legislative proposal were altered	Little impact	Less than 5 man-years of effort	Alternatives can best be dealt with "in the halls of Congress."	no need to continue, although it has been a valuable learning experience.
HUD Richard Clemmer for John Weicher	Only 2 "major" analyses, so evaluation is difficult. Given personnel constraints, quality has been satisfactory	Same as above -- all must be screened; if they are to be published in the FR	All analyses should be made public	Some delays, although not significant	Difficult to answer, although program seems to have impact in raising the consciousness of those who draft regulations		An analysis can not be performed, based on present knowledge of the IIS program	Extend present form





Agency/Official	Quality of IIS	Analysis of legislative & regulatory proposals	Availability of IIS	Impact on drafting new legislation, etc.	Impact on quality of final regulations, etc.	Cost of program	Alternatives to IIS	Recommendation
Labor Jerome Staller	Tendency to use outside contractors who can "take the heat" if the analysis of a proposed rule or the rule itself proves hard to justify	Attention has been directed to hitherto ignored "off budget areas"		Actual specific analysis has tended to be done at the latter stages of the process, rather than at the point when a wider range of possible rules could be considered. This is due in part to the cost of analysis		"Relatively costly," although no specific estimates ventured		IIS objectives are not met (implying some changes are necessary)
Justice Ed Jones	General comments:	No proposals to date have met the Register certification procedure, is needed if the program is to be		criteria for a major action. Until the recent modifications in the Federal Register certification procedure, Justice has relied upon rather informal screening procedures. More flexibility				
EEOC Ethel Walsh	General comments:	The agency has had no experience with the IIS program. They have not proposed any substantive rules.						
Export-Import Bank of U.S. Stephan Minikes	General comments:	No appraisal of the IIS program is possible because the Eximbank has not proposed any proposals for rules or regulations.						
Panama Canal Co. Thomas Constant	General comments:	No comments because the company has not proposed any "major" actions requiring evaluation under Executive Order 11821 or OMB Circular A-107.						





Agency/Official	Quality of IIS	Analysis of legislative & regulatory proposals	Availability of IIS	Impact on drafting new legislation, etc.	Impact on quality of final regulations, etc.	Cost of program	Alternatives to IIS	Recommendation
The Renegotiation Board Dr. George Lenches	General comments:	Due to the limited benefits on the proposals.	ed experience of the program's focusing	the Board no technical	comments were filed.	However, they see significant aspects of legislative	and regulatory	
SBA George Grant, Jr.	General comments:	Not able to fully impact on legisla	tive proposals.	question in FR because of the office's	limited exposure to IISs which would	However, no proposals for legislation have changed on this basis of analysis.		
VA Conrad Hoffman						Minimal-only because they have had no reason to perform IIS	P.L. 93-508 which requires VA to review all programs in terms of cost-benefit	extend modify by compressing the scope of analysis which an agency must make



On the other hand, strong opposition to the program as it applies to the Occupational Safety and Health Administration has been reported in the press by George Meany (American Federation of Labor-Congress of Industrial Organizations) and Leonard Woodcock (United Auto Workers). Unfortunately, comments were not received from a number of other groups, particularly public interest organizations.

C. Agency-specific experiences with IIS

The experiences of individual agencies vary so widely that they warrant individual review. There follow the observations of the CWPS/OMB economists who interviewed agency personnel. The agency's own official views, which were summarized in Section B above and attached as Appendix F, in some instances differ rather sharply from those expressed in this section.

Department of Agriculture --

Summary. The IIS program has had a very small but positive net impact on USDA decisionmaking. Increased outside scrutiny may have encouraged somewhat greater sensitivity to cost issues and to alternatives. Preparation of IISs has led to negligible delays and has not imposed significant costs on USDA. IISs from USDA are mainly repackaged analyses USDA performs independently of the program, and on the whole are not the type of cost-benefit analyses called for by OMB Circular A-107. USDA strongly opposes the program as meaningless paperwork and apparently does not find cost-benefit analysis to be useful. Given the efficiency focus of the program, and of cost-benefit analysis generally, USDA's view is understandable since its mission is basically the distributional one of protecting farm incomes.

Details. USDA has submitted a large number of IISs relative to other agencies. These include IISs on a wide range of proposals emanating from a variety of program agencies within USDA. The program agencies involved include the Agricultural Stabilization and Conservation Service, the Animal and Plant Health Inspection Service, the Food and Nutrition Service, the Foreign Agriculture Service, and the Office of the General Sales Manager.

Approximately one-third of USDA's IISs relate to provisions of fruit and vegetable marketing orders. These IISs are technically not required, since the proposals appear to be "nonmajor" under the criteria agreed to by USDA. Nevertheless, a decision was made within USDA to prepare IISs on provisions of 13 fruit and vegetable marketing orders. With the exception of these, it has been USDA's intention only to prepare IISs for "major" proposals.

A decision on the need for an IIS is usually made by the program agency involved. Responsibility for its preparation also lies with the program agency. However, there is often input from economists in the Economic Research Service (ERS). This may take the form of participation in the gathering and generation of the basic data, consultation during the preparation of the IIS, and review of the completed IIS.

The IIS must be approved prior to the commencement of a regulatory proceeding by the Director of Agricultural Economics. In the absence of the IIS requirement the Director's office would not generally review the available economic analysis at this stage but may at some other stage. For example, as a member of the Board of the Commodity Credit Corporation (CCC), the Director of Agricultural Economics would review the entire docket relating to changes in price supports.

A considerable amount of economic analysis is done by USDA, irrespective of the IIS requirement. This includes estimating the price, income, and budgetary effects of various programs. With respect to most commodities, estimates are made of the various components of supply and demand and the effect of program changes on them. Estimates of farm prices, retail prices, cash receipts, and CCC expenditures are also made when appropriate. It should be noted that the ERS has a statutory responsibility for the economic analysis of supply, demand, and program effects. In addition, some economic analysis is required for particular programs -- for example, the marketing order programs.

When required, an IIS is prepared by putting the existing analysis into a form which is thought to comply with the IIS requirements. Though all the analysis contained in the IIS would probably be done in the absence of the requirement, the implications concerning the inflationary impact of a program change may not be drawn in the same way.

It should be emphasized that the IISs submitted by USDA do not conform with the basic provisions of OMB Circular A-107, which require, insofar as possible, estimates of the costs and benefits of a proposed action and of alternatives to that action. While USDA does provide a variety of estimates and projections concerning their programs, the IIS requirement has not been successful in inducing them to undertake cost-benefit analysis. As a consequence, regulatory decisions are not based on a comparison of the relevant social costs and social benefits.

An evaluation of the impact of the IIS requirement (i.e., its costs and benefits) on USDA is necessarily tenuous. Several institutional factors should be taken into account. First, most of the programs administered by USDA are old (most were initiated in the 1930's

and 1940's) and are specifically aimed at raising farm income. Consequently, the aims of the USDA programs are often essentially distributional, while the focus of the IIS program is on efficiency questions. On the other hand, the present philosophy within USDA, at least with respect to many of its programs, is to stress the free market and to reduce the Department's support of given industries.

Given these and other factors, we would conclude that the impact of the IIS program on the economic analysis done within USDA and on USDA decisionmaking is small, but that the net benefits may be positive. It appears that the program has not induced USDA to undertake much economic analysis other than what is already being done. In particular, the IIS requirement has not resulted in the type of cost-benefit analysis which would be desirable. Correspondingly, however, the cost of the IIS requirement to USDA is minimal and consists only of the cost of reworking the existing analysis. In connection with this it should be noted that the program is unpopular within USDA and is considered by many to be just extra paper work.

On the benefits side, a general sensitivity to the inflationary impact of regulatory actions, in part a result of the IIS program, may have had some impact on actions taken. There is no evidence of a decision's being changed as a result of the program. However, since approval of the IIS by the Director of Agricultural Economics is prerequisite to the commencement of a proceeding, the existence of the IIS requirement may have had an effect on actions proposed. There is some feeling that this may have occurred in the case of milk price supports and also in the case of some market order provisions (though we should note again that market order provisions will generally fall outside of the domain of the IIS program).

In conclusion, while any estimate of the beneficial effect of the IIS requirement on USDA activities is necessarily tenuous, if the program has any effect at all it would probably be sufficient to outweigh its cost, which appears to be negligible.

#### Department of Commerce --

Summary. The Department of Commerce (DOC), having issued only one Inflation Impact Statement (on patent reform legislation), has had insufficient operating experience on which an extensive evaluation could be based. However, DOC's interest in encouraging the use of economic analysis in decisionmaking, which seems primarily motivated by a desire to avoid imposition of significant costs on any one industry, provided the basis for several comments. Generally, support was given to extending the IIS requirement but tightening several IIS loopholes in the legislative review process.

Details. DOC's procedures provide that heads of operating units and staff offices analyze the inflation impact of proposals originating in their organizations and obtain clearance for any certifications with the Chief Economist for the DOC. DOC's staff thought that agencies providing comment on proposed congressional legislation should be required to analyze its economic impacts. This requirement would be in addition to comments and analysis provided by agencies responsible for implementing proposed legislation. Staff members emphasized the need for stronger monitoring of the legislative review process in OMB, suggesting that clearance be withheld until proposed legislation was accompanied by an analysis of its economic impacts. It was also suggested that criteria for legislative proposals differ from those for regulatory proposals, although specific details were not provided.

There are a number of activities regarding the issuance of voluntary standards by the National Bureau of Standards which seem to escape the IIS requirement. These voluntary standards are not issued as regulations and, therefore, no analysis of their economic effects is made. However, a number of these standards become incorporated either in municipal codes or other Federal regulations. To the extent that they affect the issuance of regulations in other agencies, their economic impacts would be examined under the IIS procedures in that agency. However, this loophole does mean that some standards may eventually have the effect of a mandatory regulation, e.g., if adopted by national organizations or municipalities, and yet never be analyzed.

Although DOC individuals appear to strongly advocate the use of economic analysis in regulatory and legislative proposals, it is significant that such advocacy has not been demonstrated in their use of the IIS requirement to a greater extent.

#### Environmental Protection Agency --

Summary. The IIS program, coupled with significant internal support, has succeeded in getting decisionmakers to be more sensitive to economic analysis. The IIS has called forth analysis which might not otherwise have been done as well (e.g., where EPA's statutes do not mandate extensive economic analysis). It also has increased the emphasis on EPA's analysis of benefits. EPA's IIS program costs, probably under \$3 million annually, are as low as they are primarily because EPA was committed to extensive economic analysis prior to the onset of the program. The IIS has had more impact on the focus and quality of such research than on its cost, and regulatory delays have been minimal. EPA believes its own efforts henceforth will be such that an IIS program will not be needed. We believe, however, that competent outside review will still be needed, and that such a review would be handicapped by the absence of the IIS program despite EPA's interagency review procedures. Generally, we

believe that EPA has shown continued responsiveness to the IIS program through its implementation of the criteria, its improved economic analyses, and its use of the IIS as a decisionmaking tool in the rule-making process. However, we believe that further improvement could be made by EPA generally and in some program offices particularly.

Details. The IIS requirement, as it has impacted EPA, must be evaluated within a framework which recognizes that EPA's use of economics in rule-making procedures is somewhat unique, in three respects. (See Section III-B.)

First, EPA's statutes require EPA to consider, to one degree or another, the economic costs associated with proposed rules, standards, and/or regulations. Because of these legislative requirements, 1/ all proposed rules and regulations are routinely accompanied by both a background development document and an economic impact analysis. 2/ (The economic analysis is sometimes part of the background document.) There is, however, wide variation in the quality of these analyses ranging from the high quality, comprehensive analyses of water effluent guidelines to the less detailed analyses of mobile source air emission standards.

Second, and perhaps more importantly, EPA is unique also in the sense that, through the Economic Analysis Division of the Office of Planning and Evaluation, EPA's internal procedures provide for quality control over the economic impact analyses completed by the program offices and ensure that economic impacts are given due consideration in determining final standards and/or proposed standards and guidelines. This quality control review has been most noticeable in procedures for determining the so-called BPT ("best practical technology") and BAT ("best attainable technology") water effluent guidelines for industry point sources. These two factors together contribute to what appears to be a relatively intensive use by EPA of economic analysis throughout the entire rulemaking process even in the absence of the IIS requirement. (It should not be inferred, however, that the IIS requirement has not had some positive impacts. There have been some very encouraging changes noted in the economic analyses completed by each of the program offices within EPA. The impacts of the IIS program on each individual major program office are discussed below.)

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1/ This legislation includes the Clean Air Act, Federal Water Pollution Control Act, Noise Act, Solid Waste Management Act, the Federal Insecticide Fungicide and Rodenticide Act, and the Safe Drinking Water Act.

2/ In part EPA's need to be able to defend its regulations in court has stimulated its interest in economic analysis.

Third, a very open and cooperative working relationship has been established between the CWPS staff and the staff of EPA's Economic Analysis Division. EPA's extensive use of interagency reviews facilitated development of this relationship, which in turn has contributed greatly to implementing and achieving the requirements and objectives of the IIS program.

The IIS program appears to have required the Office of Mobile Source Air Pollution Control to complete more detailed economic analyses than would otherwise have been completed for mobile source air emission standards. It appears that two principal types of inhouse economic analyses are completed routinely as an integral part of the standard-setting process. The first is the use of cost-effectiveness analysis to select among alternative policy options for gaining mobile source emission control. However, economic considerations are only one set of factors used to determine specific standards. Economic impacts are traded off against political and equity considerations. For example, to effect further control of hydrocarbons, further control of a mobile source may be less cost-effective (costs per ton of hydrocarbon removed) than further control of a stationary source. EPA staff stated that the mobile source control may be selected over the stationary source control because the costs would be spread over a larger number of people with a smaller increase in per unit costs. EPA staff indicated such compromises are made because of the greater flexibility of mobile source control relative to stationary source control as well as for purposes of avoiding undue concentration of major economic impacts on one sector of the economy.

The second type of analysis involves costing out various technologies of meeting mobile source air emission standards. For example, assume, for purposes of exposition only, that to get some further incremental hydrocarbon control from light duty vehicles at the present time would increase the price of an automobile by \$150. However, if the standards were to be delayed two years, a new technology may be on line that would reduce the price increase to only \$30. In this case, the implementation of the standard might be delayed.

The IIS requirement has necessitated the completion of additional economic analyses to determine the annual costs to consumers and the impacts on employment and competition. Apparently many soft numbers and assumptions are used to generate the numbers required in the IIS. Consequently, the conclusions derived in the IIS are ones (a) in which

EPA admittedly has no confidence, and (b) that have no impact on final decisions. Generally, the IIS requirement is considered a "thorn in the side" of the mobile source air control office. It is further viewed as a requirement which prolongs rulemaking procedures and provides industry with an additional means to combat proposed standards. This office's general feeling is that the requirement should be terminated.

EPA's Office of Air Quality Planning and Standards is primarily responsible for setting new source air emission standards for new stationary sources of air pollution and establishing ambient air quality standards. The office is also responsible for establishing emission standards for hazardous substances.

The IIS program appears to have had very little if any impact on the economic analyses of these programs. The standards that are issued by this office are routinely accompanied by an economic analysis either because of a legislative requirement or because of EPA's internal policies. To the extent that economic effects have any impacts on the standards developed by this office, it would be in the area of new source performance standards where closure rates are considered. The standards for hazardous materials, according to EPA's and the Courts' interpretations of the Clean Air Act, are to be set solely on the basis of health and cannot be modified due to economic impacts. However, economics apparently is gradually being used to define what constitutes a "reasonable" margin of safety in determining ambient air quality standards.

Individuals interviewed in this office were mixed in their reactions to the IIS program. One individual felt quite strongly that the requirement should be terminated since economic analyses are being performed already and the IIS program, by introducing into the proceedings another party that must be satisfied, only serves to delay the promulgation of standards.

One interesting comment was received regarding the five percent price increase criterion for identifying a major proposal. It was stated by one interviewee that this guideline had been interpreted by this office to mean that price increases in excess of five percent are somehow undesirable. Therefore, some pressure may have developed within the office to propose standards that would not cause this threshold to be reached. This could lead to undesirable effects because some regulations could fall short of the level which would maximize net benefits.

For water effluent guidelines, EPA's interpretation of the Federal Water Pollution Act has resulted in the completion of comprehensive economic impact analyses that incorporate virtually all the



provisions of OMB Circular A-107 except for benefits. These analyses, completed primarily by outside contractors, have been accepted by CWPS in lieu of a separate IIS. Consequently, the IIS requirement apparently has not resulted in any economic analyses that otherwise would not have been completed.

Economics is used at all stages in the water effluent guidelines development process. The economic analysis is started at the same time as the technical standards are being developed. Economic impact is one of the variables used initially to determine, early in the rule-making process, industry subcategories and feasible control technologies. Further down the line, economic impacts, such as price increases, plant closures and unemployment, are some of the considerations used to determine both the 1977 BPT control levels and the 1983 BAT control levels. There are some indications that the less strict 1977 BPT standards tend to be established at the control level where the costs per ton of pollutant removed tend to escalate rapidly and/or closures are not considered to be "intolerable." Much of the internal analysis, used partially as a basis for modifying standards, is increasingly the cost-effectiveness among subcategories and among different control levels.

In the area of noise regulations the impact of the IIS requirement is somewhat ambiguous. Some EPA sources indicated that EPA's interpretation of the Noise Act does not require noise regulations to be either cost-effective or "cost-reasonable." The only requirement is that the costs of the regulation be evaluated. Therefore, these sources feel that the IIS requirement of a comparison of benefits and costs and CWPS' suggested proposal changes based on this comparison would force the EPA noise office to violate its Congressional mandate. Consequently, because of the limited economic analysis "required" of EPA by the Noise Act (as interpreted by EPA), it appears that the IIS requirement has not generated any economic analysis beyond what otherwise would have been completed in the studies by outside contractors. However, the IIS requirement has provided more strength to internal EPA pressures for the Noise Office to improve its analyses.

Because of the limited number of major actions in these areas, there has been only limited experience with pesticide, solid waste management, radiation, and water supply programs. Not a single IIS has been completed by these offices. Consequently, there has been very little explicit impact from the IIS requirement. However, there have been some very limited preliminary assessments completed in the course of explaining "not major" certifications.

In general, the IIS requirement, per se, appears only to have had nominal impact on decisionmaking within EPA. The more significant factor has been the response of CWPS to particular standards through

filings and interagency comments. It appears that CWPS' statutory authorization to intervene in any agency's rulemaking procedure is critical to whatever success the IIS program has had. However, it should be noted that EPA's IISs are often relied upon heavily by CWPS when making comments in these proceedings.

Explicit impacts of the IIS requirement are, of course, difficult to determine. There has been a noticeable improvement in the quality of the analyses that the EPA program offices have been submitting to CWPS. This improvement has been particularly noticeable in the analyses submitted in support of the water effluent guidelines and mobile source air emission standards. These analyses have improved in terms of both detail and rigor.

In terms of specific regulations, there have been modifications in some standards between the time of their proposal and the time the standard was promulgated. Most noticeable was EPA's decision to promulgate a noise standard of 80 dB(A) for medium and heavy duty trucks rather than implement immediately a stricter 75 dB(A) as had been proposed. Although this regulation was quite controversial and numerous interested parties responded during the public comment period, the IIS process apparently made a marginal contribution to implementation of a standard less stringent than 75 dB(A). In addition, there are indications that the IIS process may have led to further EPA internal review of the recently proposed iron and steel industry effluent guidelines. This internal review is based apparently on the cost-effectiveness of the proposed standards among process subcategories.

Third party intervenors have reviewed intensively EPA's IISs, but IISs have not generally been used as a means of attempting to have EPA set aside a regulation. However, third parties do hold up the Council's filings before EPA as additional support for their positions against the standards. This was particularly the case with the CWPS filing on motorcycle emission standards and the medium and heavy duty truck noise standards.

EPA spends about \$4-\$5 million annually on economics-type contract research, of which roughly one-fourth to one-third might be attributed to the IIS requirement. In addition, as a rough approximation, about one-fourth to one-third of the 50 man-years (annually) of the agency's economics staff might be allocated to the IIS requirement.

Although varying between program offices, for EPA on a whole about 75 percent of economic analyses are conducted by outside contractors and about 25 percent are completed inhouse. The inhouse capability is good in the water guidelines and stationary source air emission offices, but weaker in the noise and mobile source air emission offices. The noise office, for example, does not have a full-time economist. Finally, apparently due to EPA's internal planning process, no regulations have been delayed.

During the interviews held at EPA there were diverse reactions to the IIS requirement depending on the particular program office and its enabling legislation. The answers given by economists in these offices indicated a support for the IIS requirement and a hope that it would be continued. However, the branch chiefs indicated considerably less enthusiasm.

Some of the adverse reactions of the EPA staff toward the IIS program are understandable from the agency's standpoint. The program does put another hurdle into rulemaking procedures. However, from the viewpoint of CWPS, such reactions on the whole suggest the IIS program is proving successful, for two reasons. First, IIS has forced the various EPA program offices to elaborate in greater detail, in a public forum, what the total costs and benefits of the standards will be to the public, particularly costs to the consumer. This gives the public, at a minimum, more information that can be used to determine whether or not the benefits are worth the costs. Second, the requirement results in economic analyses for public scrutiny that explicitly reveal the implicit value that EPA is assigning to the benefits associated with specific standards. Moreover, apparently due to EPA's internal planning process, the IIS program has caused only minimal delays in issuing regulations.

#### Federal Energy Administration --

Summary. On balance the IIS program seems to have had negligible impact on FEA's regulatory decisions and on its economic analysis. It may have had some beneficial side-effect, however, of strengthening the role played by economic analysts in the agency. The program has not been very costly, although it could be if FEA were to prepare IISs which meet the Circular's expectations. For a variety of reasons, (including poor CWPS-FEA communications and a reluctance of FEA to accept the program as being consistent with their objectives in analyzing the longer-term impact of energy costs on the economy) FEA has not been in full compliance with the program.

Policy level staff at FEA believe that EO 11821 should be allowed to expire. Other FEA staffers think that the IIS program is evolving and that a continuation of present policy would eventually yield improved results.

Improved communication between FEA and CWPS is needed to clarify the meaning and interpretation of criteria and to diminish the problems that have arisen as a result of short lead times.

Details. As in most agencies, there is no fixed or well-defined procedure for originating rules and regulations in FEA. To a significant degree, rules and regulations are in response to fairly specific Congressional mandates. The basic legislation governing FEA activity reduces significantly the degree of internal discretion in rulemaking and determines, to a large extent, the type of economic analysis that is carried on within the agency. In addition to the basic legislation which specifically mandates a significant proportion of FEA regulations, petitions from industry play an important role in the origin and development of rules and regulations. Regulations are sometimes generated from within the organization, but this is the exception rather than the rule.

According to staff economists interviewed, economic analysis does not appear to play a significant role in the initial stages of rulemaking, with the Office of General Counsel and the Office of Regulatory Development playing the dominant roles at this stage. FEA's economics staff indicated that there is a need to incorporate economic analysis at an earlier stage in the rulemaking process and reported that progress is now being made along these lines. Only recently has the Office of Economic Impact been included on panels that draft regulations. Economic staff generally seemed to agree that, although economic analysis did not exert a powerful influence in the rulemaking process in the past, it does seem to be having an increasing impact over time. The trend toward greater involvement by staff of the Office of Economic Impact in the rulemaking process has been the result of (1) the Office of Regulatory Program's willingness to receive the economic input and (2) the Office of Economic Impact's constructive approach in dealing with their counterparts in FEA program offices.

There is little economic analysis of existing regulations nor is the cumulative impact of regulations examined. The failure to review and evaluate cumulative economic impacts was cited by one individual as an important shortcoming of the regulatory process. FEA staff is well aware of the fact that piecemeal evaluation of changes in regulation may tend to mask their total impact and indicated a desire to cooperate with CWPS in order to address this problem insofar as it affects the IIS program.

Only a few modest IISs of major regulatory proposals have been prepared in direct response to the EO. Other major analyses which have been submitted to CWPS/OMB (usually on request) were prepared in response to legislative directives and served a dual purpose. 1/ About 15 very

1/ In addition to the specific IIS analyses that have come to the attention of CWPS/OMB, FEA has prepared a number of IIS-type analysis for other purposes. These analyses are not included in the Appendix.

brief analyses justifying the classification of a regulation as minor have also been submitted to the Council.

The FEA analyses make an effort to measure costs, but do not evaluate either benefits or alternatives. One of the major problems is that the nature of the IIS as described by OMB Circular A-107 was not understood or was poorly understood. Some members of the FEA staff have had the impression that brief appraisals of impacts on the gross national product, the CPI, total employment and a few other variables constituted the necessary analysis. The measurement of such impacts is facilitated by the sophisticated modeling techniques employed by FEA. However, FEA's basic models are not capable of producing the type of benefit measurement or evaluation of alternatives that are contemplated by OMB Circular A-107. It appears that OMB/CWPS share some responsibility for this lack of communication over the requirements of OMB Circular A-107.

FEA staff feel that a great deal of confusion has been created by the term "inflationary", and it appears that this confusion has not been completely eliminated. FEA staff economists are well aware of the fact that impacts on the CPI are an inadequate guide in judging the inflationary impact of a regulation, but have been under the impression that this is the basic measurement required by the EO. However, there is no disagreement concerning the guidelines set forth in OMB Circular A-107. Indeed, FEA staff responded with interest to the possibilities suggested by a cost-benefit analysis. Nevertheless, there seems some hesitation, particularly at the policy level, to alter significantly the methods of analysis employed in order to accommodate the IIS program as it is perceived by CWPS/OMB. Reasons for this hesitation are described in a subsequent section.

It is generally agreed that the IIS program has not had a substantive impact on FEA's rulemaking process. Inflationary impact analysis is not an integral part of ongoing economic analysis nor is it closely related to the decisionmaking process; at FEA it seems to be "tagged on" after the regulation has been drawn up in virtually final form. No regulations or legislative initiatives have been modified, deferred or terminated as a result of the IIS requirement. Thus, the IIS is basically an ex post justification that has not proved to be useful as an internal tool or as a basis for outside intervention.

Though the IIS program seems to have had little impact on either the regulatory process or the economic analysis, some individuals at the staff level felt that the IIS requirement had strengthened the role of economic analysis in the agency. For example, it was noted that the program has provided a "bureaucratic" case for more and better economic analysis, buttressing requests for resources and leading to a greater role for economic analysis in the regulatory process. It should

be noted that the role of economic analysis in the total FEA program seems to be evolving in a direction which could foreshadow a greater impact for the IIS program in the future. According to a staff member this welcome trend is liable to be abruptly halted and reversed, since top management of the Office of Energy Information and Analysis shows little inclination or understanding of the reasons, history and role of the IIS program.

It has been noted that the type of economic analysis carried on in FEA is not easily related to the requirements of the IIS program. FEA's economic analysis is governed by its own needs, especially as defined by Congressional mandates. The focus at FEA is on supply-demand relationships and on price projections, not on cost-benefit considerations. Frequent reports are made to Congress, and the basic FEA legislation is unusually specific, leaving the agency relatively little discretion. In the light of these fairly specific mandates, the IIS program seems to many to involve either a useless duplication of effort or a bureaucratic burden which should be disposed of with a minimum use of resources. In short, the IIS program does not seem consistent with the major functions of FEA. In the words of one policy level economist, "the IIS is not in the mainstream of FEA activities and cannot effectively compete for resources." Indeed, it is felt by some that the IIS program has absorbed an excessive amount of resources.

FEA has excellent capabilities for the development of economic analysis. The Office of Economic Impact has about 40 economists, over half of whom hold the doctorate. About two-thirds of the staff is absorbed by the Project Independence model and problems of decontrol. Computer capability at FEA is impressive and sophisticated modeling tools have been developed. As noted at an earlier point, the types of analysis that have been developed are geared largely to the analytical requirements imposed by legislation. Though the FEA staff indicates an interest in the type of analysis required by OMB Circular A-107, individuals at the policy level emphasize that their own internal resource constraints may prevent much additional work in this direction.

One official at FEA has asserted that the IIS work has absorbed about five professionals. Analyses received by the Council do not confirm this amount of resource expenditure on the IIS program. CWPS has received about 15 minor analyses. Of the major analyses received by CWPS, no more than two could have been specifically prepared for IIS purposes and these were rather modest efforts. Viewed from the vantage point of analysis received, it is estimated that no more than two professionals could have been absorbed by IIS work during the past year. The work actually received may not, of course, adequately measure the work actually carried on within the agency. Nevertheless, there does not appear to have been a deep resource commitment to the IIS program. This reflects the fact that the IIS program has not become an integral

part of the overall program of economic analysis at FEA. Reasons for this have already been suggested -- they include resource constraints at FEA, the fact that cost-benefit analysis does not dovetail easily with ongoing programs at FEA, and the view that the IIS requirement contributes little of substance to the FEA program that has not already been provided for in existing legislative mandates. FEA management has, therefore, been reluctant to allow continuing substantive work in areas where IISs might be expected to be performed.

A very large proportion of FEA regulations are certified as "minor". There are a number of reasons for this. Many of the regulations involve a transfer of resources within the industry (e.g., the entitlements program) and, though they are significant from many points-of-view, the magnitudes tend to net out. In addition, the basic legislation often involves magnitudes, like \$7.66 per barrel, which remain fixed in the aggregate so that no overall change in total cost is predicted. Nevertheless, rather important changes can occur on a sectoral or regional basis.

FEA's own internal guidelines for responding to the IIS program tend to categorize some regulations as minor which might otherwise be described as major. <sup>1/</sup> For example, FEA's IIS guidelines list types of proposals which are not usually subject to evaluation under the IIS program. These exclusions include "proposals implementing a statute or Presidential proclamation requiring or directing the promulgation of conforming regulations...." If such proposals are in fact ruled out, it seems that most of the regulations promulgated by FEA would be excluded from consideration. However, a more careful reading of other sections of the FEA document suggests that such items should, nevertheless, be considered if they are "major". Thus, there is an ambiguity in the guidelines, which may have been interpreted in a manner which excludes a large proportion of the regulations from consideration. In general, there seems to be a bias in interpreting criteria and evaluating regulations which may lead to an excessive number of "minor" certifications.

FEA regulations during the past year have been promulgated under a considerable amount of pressure created by deadlines specified in the basic legislation. Thus, lead times for public comment are typically about two weeks from the date of publication in the Federal Register. Since, according to agreement between FEA and CWPS, IIS

<sup>1/</sup> "Evaluation of the Inflationary Impact of Major Proposals for Legislation and for the Promulgation of Regulations and Rules -- Statement of Procedures Submitted to the Office of Management and Budget," FEA, February 1976.

evaluations usually lag by at least a week, this leaves almost no time for CWPS to react in a manner which might have some impact on the final regulation.

Typically, CWPS staff must inquire about an IIS after the regulation is published. And response from FEA requires a number of days, often as long as a week. One reason for these delays is that FEA seems to have no definite procedure for processing IISs, and no definite point of contact exists to promptly handle inquiries.

An effort was made to explore with FEA staff possible changes in the IIS program. Some expressed the view that the criteria were inappropriate to the tasks of FEA, but were unable to provide any practical alternatives. Although very few regulations have been classified as major, it was suggested that the thresholds for major projects were too low (i.e., too many are identified as "major").

The view was also expressed that CWPS was not sufficiently flexible with respect to the type of analysis that was acceptable and that this made it difficult to relate the IIS program to the ongoing economic analysis of the agency. The inability to integrate the IIS program into the ongoing program is a recurring theme that appears in a variety of forms. Though the general attitude at FEA was quite cooperative, one person stated that CWPS's method of monitoring the IIS program through filings and publicity tended to diminish FEA's incentive to develop the IIS program.

Department of Health, Education and Welfare --

Summary. Available evidence does not suggest HEW decisions have been noticeably affected by the IIS program. IIS preparation appears to take place fairly late in the regulatory process, and the program applies to relatively little HEW activity. In much of this activity, moreover, HEW has little flexibility due to statutory specificity. However, the program probably has raised decisionmakers' sensitivity to questions of cost and of alternatives. This is because the program has made HEW's analysis more visible to outside critics and probably has strengthened somewhat the internal influence of HEW economic analysts. The program's incremental costs are not large, due in part to HEW's preexisting economic impact analysis efforts, and the benefits of the IIS program, while not large, probably exceed zero.

Details. The process of formulating and approving regulations begins at the lowest levels in the individual bureaus of the Food and Drug Administration (FDA) or in program offices of the Public Health Service (PHS), the Social Security Administration, the Office of Civil Rights, et cetera. Congress usually has enacted some legislation that must be



implemented at the program level, or else a difficulty with existing regulation will have been perceived at this level. At this point a draft regulation will be considered on the basis of all the pros, cons, and alternative means of accomplishing the same ends. Economic impact, particularly with respect to cost and the effect on competition, is considered in the normal course of rule formulation. However, this kind of economic impact analysis is done by non-economists, for the most part, and is not geared to a formal comparison of costs and benefits. Rather, in essence the proposal's originators will have decided upon a means to solve the perceived problem (or implement a program already decided upon by Congress), and the economic analysis consists of a search through the proposal and alternatives to identify possible future trouble in obtaining approval or in implementation because of cost or of radical consequences to the institutions affected, such as the structure of an industry in the case of FDA proposals and State or local governments in the case of other HEW proposals. The costs that are primarily considered are those that impact directly on the HEW budget, while those borne by society are of secondary concern. It is at this stage that an initial determination is made as to whether or not the proposal will require an IIS. If it does require an IIS, work will begin here on the document; if it does not, all HEW bureaus except FDA will simply certify that the proposed regulation is nonmajor. (FDA writes up a short itemization of costs in the form of an Inflation Impact Assessment for all proposed regulations.)

In both cases the proposal, along with background documents, is sent to the Secretary's office (the Commissioner's Office in the case of FDA), where it is circulated to the various offices of the assistant secretaries for intra-agency review. At FDA, the Office of the Assistant Commissioner for Planning and Evaluation serves the same role as that of the Assistant Secretary of Planning and Evaluation in HEW in criticizing the proposal if it has ignored less costly alternatives or if its originators have ignored some severe cost consequence of implementation. These two offices are also responsible for assuring that no major proposal is approved without an IIS being prepared. The assistant secretaries may send the proposal back to the originating bureau for revision but cannot require such revision. If differences are not ironed out it is up to the Secretary (or the Commissioner) to approve and allow publication in the Federal Register or to disapprove the proposal and require changes to be made. These Offices of Planning and Evaluation sometimes aid the originating bureau in preparing the IIS or, in some cases, actually prepare the analysis.

HEW maintains that it has little or no discretion in formulating the bulk of its regulations that apply to the administrative details of "On-budget" items such as medicaid, medicare, and education grants because such programs are usually accompanied by very specific Congressional directions about how HEW is to spend the money. To the extent

that HEW is limited in its discretionary power to formulate regulations, it is unable to make any use of the IIS analysis. This sort of inflexibility due to a detailed legislative mandate is particularly important in the case of FDA and its ban on the use of DES and Nitrofurans in animal feeds. Those two actions were exceedingly costly and the benefits were not clear, but FDA felt it had absolutely no discretion in the matter. In a few areas of responsibility, such as those of the Office of Civil Rights or FDA labeling requirements, HEW appears to have much more leeway in drafting regulations.

It seems to be the almost universal opinion at HEW that the IIS program has not improved the quality of agency regulatory proposals primarily because of its limited applicability. In those few cases when the IIS requirement applies the analysis is usually an ex post justification which follows the preparation of the regulation. Contrary to what the IIS program envisioned, viable alternatives are not explicitly considered beyond the initial process of thinking through ways to solve the perceived problem. The IIS preparation (or certification as non-major) is viewed as mere paperwork that must be accomplished before the proposal is made and promulgated. HEW staffers steadfastly maintained that agency rulemaking takes full account of economic impact independently of the IIS program. They argue that HEW's consideration of cost and competitive impact was taking place before EO 11821 was issued and will continue to take place whether or not the IIS program is changed or abolished. The public comment period after publication of a proposal in the Federal Register is seen as the arena in which any unforeseen costs of a regulation will surface, and revisions of the proposal or direct responses to such comments show that consideration is given to economic impact wherever possible.

Of the criteria listed in OMB Circular A-107, only the ones pertaining to cost and competition are viewed as relevant for HEW since the other criteria essentially are redundant. Since budgetary items and transfers are excluded, most sizeable HEW programs and regulations escape formal economic analysis under the IIS program. Presumably these HEW programs are carefully scrutinized in the appropriations and budgetary review processes.

FDA has probably expended about one man-year in preparing cost analyses for all minor regulations. The two major FDA analyses (DES and Nitrofurans) entailed no incremental cost since they would have been done anyway despite the lack of discretion granted the agency on the issue of carcinogens. The incremental cost to HEW of preparing the Maximum Allowable Cost of Drugs IIS and the Nursing Home Reimbursement IIS was also negligible since they were based on studies that would have been prepared even if the IIS program had not been in effect. The fifth

major IIS issued by the Department was prepared by a private contractor to the Office of Civil Rights for about \$12,000. Thus, the IIS program has not thus far caused major expenditures of resources on the part of HEW.

HEW does not wish to see the program expanded by altering criteria to increase the number of regulations under the "major" designation. Staff point out that any very substantial lowering of thresholds would multiply by many times the costs of screening proposals and would produce a few more marginally useful IISs. Since analytic resources are scarce, this would reduce resources available for analysis of budget proposals which have a more significant impact in the HEW context. However, as individuals, HEW staffers see a value in requiring all Federal agencies (especially the independent regulatory authorities) to perform cost-benefit analyses of their actions. The staff does not see any significant consequences to HEW of either a continuation of the program in its present form or its abolition.

Department of Housing and Urban Development --

Summary. HUD's decisions probably have not been affected thus far by the IIS program, but it is not easy to be sure. Only two IISs have been completed, and full "normal procedures" have been in place only since March 1976. Nonetheless, the program does appear promising at HUD for two reasons. First, there is support for the effort within the agency; HUD IIS compliance procedures now look good, and there seems to be a readiness to profit from outside scrutiny of IIS analysis. Second, the program does require analysis which otherwise probably would not be performed; these requirements have "raised the consciousness" of program staff who develop regulatory proposals as to their probable economic effects.

Details. Very clear procedures for dealing with the IIS program have been established in HUD. Under the direction of the Office of the Assistant Secretary for Policy, Development and Research, a HUD handbook, "Inflation Impact Statements" (3601.1, July 1976) and a very straightforward form, "Inflation Impact Determination" (HUD-3112, May 1976) have been developed.

The IIS process in HUD is designed to work as follows:

- (1) When new rules or regulations are being prepared for announcement, the program office has the responsibility of making an initial IIS determination. Using the HUD handbook, an Inflation Impact Determination (IID) form is completed. This initial determination considers the OMB criteria and reflects the program officer's judgment concerning his (or her) proposed rules and their impact.

(2) The completed IID form is then submitted to the HUD Office of the Assistant Secretary for Policy, Development and Research. Within that office is located the Office of Economic Affairs, which has the responsibility of reviewing the IIS process. On receipt of the IID, it is reviewed carefully by an economist who can accept or reject the initial determination.

(3) If the IID is accepted by the Office of Economic Affairs, the indicated steps will be taken. That is, if required, an IIS will be prepared or the proposed rules will be announced indicating an IIS review has shown the proposal to be "nonmajor."

(4) The particular program officer who develops the regulatory proposal has the responsibility of preparing an IIS, where required. During the IIS development process there is regular interaction between the affected office and the Office of Economic Affairs. This interaction involves a "consultant-client" relationship, with economists reviewing the IIS methodology and finally accepting a final draft which is then sent to CWPS. The announced proposal, of course, contains the appropriate language indicating that an IIS has been prepared.

(5) CWPS review of the HUD IIS would involve the particular program officer and the members of his (or her) staff which prepared the IIS.

(6) There is no institutionalized interagency review of proposed rules at HUD. Similarly, there is no institutionalized procedure whereby outside intervenors might use an IIS or petition for a change in existing rules.

In practice, there appears to have been little, if any, decisionmaking impact caused by the two IISs completed by the agency. In one case, some qualitative changes may have been made in the final draft of the IIS as a result of CWPS comments. But the substance of the rules did not change. Yet in general HUD staff appear to believe there could be impact from the IIS process in the future. Furthermore, there apparently would be no systematic economic analysis of regulation were it not for the IIS program.

The work on IISs at HUD has not been very costly. Two to three man-weeks was a ball-park estimate, recognizing that certain basic engineering-cost analysis would take place even without the program.

#### Department of Labor --

Summary. The IIS program apparently has had little if any impact on DOL decisions, but it has generated much greater concern for preparation of economic analyses. Most IIS work is performed by outside contractors after tentative decisions on regulatory proposals have been reached.

Details. All of DOL's IISs for regulatory actions have been completed by OSHA. However, other parts of DOL may be required to perform IIS analyses in the future, particularly in the pension area. Additionally, legislative IISs have been performed for unemployment insurance and work incentive improvement proposals. We will concentrate here on the way in which the IIS program has functioned in OSHA.

Standards are selected for development and possible promulgation by the Assistant Secretary for OSHA. Selection is based on the "criteria documents" or recommendations sent to OSHA by the National Institute of Occupational Safety and Health (NIOSH), a part of HEW, as well as on information submitted by special advisory groups or other interested parties. NIOSH bases its recommendations on the severity of the health or safety hazard (i.e., the benefit side). An estimated two-thirds of the standards selected by OSHA for development come from the NIOSH recommendations.

The Assistant Secretary then assigns a project officer who is responsible for the development of the standard. Once the major options (usually consisting of alternative exposure levels for health standards) are reviewed and the language drafted, the Division of Technology Assessment has an "economic impact assessment" prepared to determine whether the proposal is major and therefore whether it requires an IIS. Presently the consulting firm of Arthur Young performs the assessments and oversees the full statements that OSHA contracts out to various consulting firms that have expertise in the required areas.

During this review process, the Solicitor's Office of DOL is involved with both the development of the IIS and the technical and legal drafting of the standard. The Solicitor's Office is particularly concerned with what the IIS information provides on the issues of technical and economic feasibility. However, the Solicitor also looks at the information from the broader perspective of the IIS program (i.e., both the costs and benefits, and, therefore, the inflationary impact of the program). It is the Solicitor's Office that has the major responsibility for the drafting of the final standard.

So far eight assessments and three statements have been completed. There are an additional 14 underway that should be completed in about six months. A rough estimate is that on average an assessment costs \$30,000 and a statement \$100,000 in contract expenditures.

OSHA's three IISs have been discussed extensively by CWPS, private trade and union groups, and OSHA staff at public hearings. The Secretary utilizes the public record of the hearings and filings as well as other information in determining the final standard. As of October 26, 1976, there has been only one final promulgation of any of these proposed standards --that of the Coke Oven Standard on October 20, 1976.

There appears to be a difference of opinion among OSHA, the Solicitor's Office, and the Office of the Assistant Secretary for Policy, Evaluation, and Research (ASPER) in their assessments of the amount and quality of economic analysis that was being performed by OSHA on proposed regulations before the initiation of the IIS program. The ASPER economists who now have oversight authority over the department-wide program stated that very little economic analysis of high quality was done by OSHA before the IIS program; what was done was on the technical feasibility of proposed standards, with some attention paid to cost considerations particularly for the industrial noise standard. Hardly any attention was paid to quantifying the benefits of regulatory proposals. The OSHA statute does require consideration of feasibility which has been interpreted to mean both technical and economic feasibility.

OSHA staff claimed that economic studies were being done before the IIS because without their own cost studies OSHA would have had to rely on exaggerated industry estimates. The studies that were done by OSHA on costs and the impact on jobs were done by outside contractors since OSHA did not, until recently, have any economists on its staff. The Solicitor's Office sees the major benefit of the IIS program as its provision of much improved and more detailed information on the costs of various proposals.

Apparently, then, the IIS program has resulted in OSHA's paying attention to both the cost and benefit sides as opposed to just considering the costs to firms or to adverse affects as employment. However, the benefit side is still the weak part of the IIS analyses that have been completed to date (i.e., industrial noise, arsenic, and coke ovens). A spokesman for the Solicitor's Office stated that analyzing benefits is difficult, if not impossible, and that such an effort is not very relevant to OSHA's mission.

Another major shortcoming of OSHA's IISs is that the discussions of costs and benefits are presented as separate chapters and are never systematically compared. In addition, the provision of OMB Circular A-107 calling for cost and benefit analysis of alternative rules has never been adopted by the Secretary of Labor in implementing the IIS program. As a consequence, OSHA's IISs do not contain such analyses.

The cost-benefit analyses of the proposed regulations that have been performed on OSHA regulations have been done by other Federal agencies such as CWPS and EPA. If DOL's IISs were structured so as to reveal explicitly the costs and benefits of alternative proposals it would be stronger evidence than is presently available that OSHA views its IIS analysis as a management tool for improving regulatory decision-making rather than as a hurdle to overcome in promulgating regulations.

OSHA does appear to be quite conscious of its image and its critics and thus the public hearing format has been instrumental in improving the quality of the analysis of the proposed regulations. CWPS's participation in four public hearings over the past year and a half has apparently had a major impact on the quality of these analyses. Both ASPER and OSHA representatives mentioned OSHA's sensitivity to CWPS's public criticism.

Only one final standard has been promulgated since the commencement of the IIS program. Preliminary review of this regulation and its supporting statement indicates that the IIS program has had little impact on the final outcome.

An important question is "Would the IIS program continue in spirit if the EO were not renewed?" The ASPER economists have doubts that it would. The Assistant Secretary of OSHA is on record as opposed to the explicit use of cost-benefit analysis in setting health standards. ASPER now has a quality control role over the IISs and thus exerts some influence over the economic rationality of OSHA's regulatory decisions. If the EO were not renewed ASPER might lose some or all of its influence.

Both OSHA and ASPER representatives expressed a desire to have the IIS program continue as is without modification. However, the Solicitor's Office spokesman recommended that EO 11821 not be renewed since he feels that it could be used to reduce OSHA's discretionary control over the standard-setting process. He doesn't feel that this has happened yet.

There is no firm estimate as to the impact of the IIS program on OSHA's resources since it is not clear how much money would have been spent on economic analyses in the absence of the program. Also, as discussed above, it is not at all clear whether, if the IIS program is terminated, resources would be released for other uses.

The OSHA Office of Technology Assessment contracts out about \$3 million a year for technical feasibility and economic studies. A lot of this goes to Arthur Young which maintains from seven to eight people at the Department of Labor to oversee the IIS program. As mentioned above, the estimate of the average cost per IIS is \$100,000 and \$30,000 per economic impact assessment. In addition to the extensive contract funding, one full-time person each at OSHA and at ASPER works on the IIS program. In addition, the Solicitor's Office spends about two man-years per year on the program. The public hearings conducted on the IISs and presided over by the Solicitor's Office presumably cost quite a significant amount (e.g., both the noise and coke oven hearings lasted about a month).

It is hoped that the virtually complete reliance on outside contractors for the IIS will be modified over time. OSHA is said to be attempting to build up its in-house capabilities but has been slow in so doing.

OSHA personnel estimate that initially the IIS program may have added from six to nine months to the regulatory lag. However, once the program has been in place and fully incorporated into the regulatory process so that IISs can be prepared concurrently with other standards development functions, the extra lag should diminish if not disappear. This might occur if the IIS procedures were begun earlier in the standards development process, perhaps when they are first proposed by NIOSH. This procedure would also have the benefit of allowing examination of a greater number of options or alternatives earlier and perhaps reduce the number of cost-effective alternatives that may be inadvertently overlooked under the present procedures. However, the procedure would also most likely add to the cost of performing IISs.

Department of Transportation --

Summary. DOT's experience has been limited -- four IISs have been completed -- and rather unique, due to DOT's strong internal policy requirements (discussed in Section III-B above). The combined DOT internal and IIS requirements do seem to be affecting decisions as intended, although resulting in occasional regulatory delays. DOT's analysis pays careful attention to costs, benefits, and alternatives, and this has improved DOT's as well as the public's awareness of relevant tradeoffs. Because of the relative stringency of DOT's internal requirements, the IIS program per se adds negligible costs and has little impact on decisionmaking. However, it does facilitate useful outside review of DOT proposals. Moreover, a complete analysis rather than merely a summary is required by the IIS program, and the IIS lends legitimacy to outside demands for thorough analysis.

Details. Interviews were held with the staff of four branches of DOT whose economic analysis or impact CWPS had previously had occasion to comment upon. These were the Coast Guard (CG), the Bureau of Motor Carrier Safety (BMCS), the Federal Aviation Administration (FAA), and NHTSA. All four are involved primarily with promulgating and enforcing safety standards for public and private modes of transportation. None of the four is required by statute to perform any formal economic analysis although each is required to make a determination as to the reasonableness or feasibility of the proposed rule or regulation.

In all four cases, staffers reported that as a matter of course economic impact or cost-effectiveness analysis had been performed in the past and would continue in the future irrespective of the IIS



program's future. All agreed that because of the greater concern for inflation as well as the interest generated by the IIS program, more attention (and administrative emphasis) had been placed on producing better and more timely economic analyses. As a consequence, it was felt that decisionmaking had improved at the departmental level.

The most important requirement affecting DOT's economic analysis of proposed rules and regulations is the Secretary's policy requirements published in the Federal Register of April 16, 1976 and discussed in Section III-B. These guidelines to a great extent incorporate the basic thrust of the IIS program. One major exception is that legislative proposals are not covered by the Secretary's order. DOT is the only agency to our knowledge that has attempted to make such guidelines a part of its decisionmaking process. Given the Secretary's initiative, the responses provided by staff personnel were understandably influenced by the overlapping of the two programs. Overall, most claimed that the IIS program was not unduly burdensome, given that economic analysis had been part of the regulatory process and was now even more formalized under the Secretary's initiative. The staff interviewed at FAA expressed particularly strong feelings that the IIS program is redundant and should be allowed to expire in December. Others were less inclined to view the program in a negative manner, although they did suggest that the Department be exempted from the IIS program in light of the Secretary's policy guidelines (assuming the latter are retained).

In the view of those interviewed at BMCS, the IIS program has had some impact in that it has focused more concern on the economic consequences of proposed rules and regulations and has led to greater coordination between branches of DOT. Although the BMCS is not specifically directed by its statute to perform economic analysis, the agency is concerned with costs in establishing whether a proposed rule or regulation is feasible; this procedure apparently would continue even if the IIS program were to expire. At present BMCS has little in-house economic expertise, although it occasionally seeks such economic assistance from the Federal Highway Administration (FHWA). Generally, when economic analysis is necessary, it relies on outside consultant assistance and would continue to do so in the future. These consulting expenses, however, would probably occur even without the IIS program since the analysis would have to be performed in meeting the Secretary's order. In view of the Secretary's policy, BMCS views the IIS program as involving little additional burden.

Those interviewed at BMCS felt that mandatory public disclosure of economic analysis might be a good idea, although that might present problems in some instances. For example, it was felt that delays in the promulgation of rules and regulations might arise if there

are no uniform procedures or analytical benchmarks by which to judge the adequacy of the analysis. Also, the question of costs and price data submitted by private firms to the agency might raise proprietary information problems and result in companies' being less cooperative in supplying such data on a voluntary basis during future Advance Notices of Proposed Rulemaking. The Bureau's staff felt these problems could be addressed in the future if public disclosure were deemed necessary.

Those staff members interviewed at CG felt that the IIS program has had little effect upon their organization. Almost all of the regulations they have proposed in the past two years have been minor, and this situation is likely to continue. The agency's staff indicated that it closely evaluates the economic impact of proposed regulations because their statute requires them to establish that there is a demonstrated need for the regulation and that it would be reasonable. Moreover, the proposed regulations and accompanying analysis are closely reviewed by the National Boating Safety Advisory Council, which is made up of public, State government, and boat manufacturer representatives, and therefore the agency's economic analyses usually reach those directly affected by the proposal. In sum, because of these requirements, CG felt little impact from the IIS program.

At the FAA, it was the general consensus of staff members interviewed that the IIS program should be allowed to expire on December 31st or that broad policy guidelines be established so that the Secretary's internal requirements would justify exempting DOT from the program. The FAA staff members see the IIS program as a duplication of effort on the part of the agency. Although not specifically mandating that the agency perform a formal and complete economic evaluation of every proposed regulation, the legislative statute under which the FAA operates requires that proposed regulations, among other things, must be economically reasonable. Consequently, the staff members interviewed stated that economic analysis of a high quality has been an integral part of past FAA regulatory rulemaking and would continue in the future even if the IIS program were allowed to expire. (Yet it is important to note that "economically reasonable" is a far less demanding standard than that embodied in the IIS program.) A concern was also expressed that possible future court interpretations of the IIS program might lead to increased administrative rigidity and a burden of paperwork. Already the agency is confronted with overlapping programs -- environmental impact statements, consumer representation, the Secretary's policy requirements, and the IIS program. The general feeling was that some or all of these programs could be consolidated. The staff members interviewed see continuation of the IIS program as possibly leading to the need for a separate economic and legal staff as well as to further delays in rulemaking. They view these developments as a distinct possibility if economic impact statements were legislated, something they

strongly oppose. However, the FAA staff could not provide estimates of the additional manpower and other costs (including regulatory delay) which the current IIS program has created.

The NHTSA staff members interviewed expressed the opinion that the IIS program has focused attention on the economic ramifications of proposed rules and regulations. This in turn is believed to have contributed to better agency decisionmaking. The staff also believes that the quality of economic analyses has improved over the last few years, with the IIS program contributing somewhat to this change. To date NHTSA has performed only one formal IIS, although CWPS staff has reviewed economic impact analysis pertaining to three other major proposed rules which were initiated prior to the effective date of EO 11821. Although not advocating an exemption, the staff reported that an exemption from the program would lessen the administrative burden they now experience. The agency publishes a summary of their economic analyses (including IISs) in all Notices of Proposed Rulemaking, and makes the complete analyses available to the public.

At this time NHTSA's staff attributes little delay to the IIS program per se. Rather, where delays have occurred, it is because better analysis has generally raised important questions that needed to be answered. On balance, NHTSA staff viewed the IIS program in a favorable light but thought it may now be redundant in view of the Secretary's guidelines on the preparation of economic analyses.

#### IIS and the Independent Regulatory Commissions --

There are two significant areas of Federal activities which the IIS requirement has not affected. First, the IIS requirement applies only to new legislative and regulatory proposals and, thus, excludes evaluation of the effects of the great body of existing regulations and legislation. The subject of the impact of existing regulations and legislation was clearly outside of the scope and intent of EO 11821. The second area of activity concerns proposals of the independent regulatory commissions, certainly not intended to be excluded from the IIS requirement but, nevertheless, interpreted by those agencies as being outside of the reach of the executive order. Although OMB never conceded that the commissions were not within the scope of the executive order, it also never contested their position in order to resolve the issue. There was, however, a recognition that some of the commissions were governed by statutory requirements which were in some ways similar to the IIS requirement. It is the independent regulatory commission activities which are of interest in this section because of their significant role in regulating our economy.

The ten independent regulatory commissions include the Interstate Commerce Commission, Civil Aeronautics Board, Federal Maritime Commission, Federal Power Commission, Nuclear Regulatory Commission, Federal Trade Commission, Securities and Exchange Commission, Federal Communications Commission, Commodity Futures Trading Commission, and Consumer Product Safety Commission. These commissions operate under statutes authorizing their regulation of specific aspects of our economy, e.g., regulation of the nation's railroads, financial institutions, commodity trading, etc. However, there are few statutory dictates requiring regulation to be formulated with regard to its general economic effects and consonant with a reasonable balancing of costs and benefits. Generally, each commission is focused on assuring the orderly functioning, and sometimes the protection, of particular industries and sectors. It is thus with some concern that their non-participation in the IIS program is viewed.

The President, recognizing the impact of these regulatory commissions on our economy and the need for their most efficient and effective functioning, met with the commission chairmen twice during the past year. He asked, particularly, that they seek reform of their internal regulatory activities, including an improved use of economic analyses in regulatory decisions. He also requested that they submit reports indicating their progress in meeting his goals. There is only some evidence in the recent commission reports to suggest that any progress in using cost/benefit analysis in decisionmaking has been achieved. Although several agencies do indicate the presence of additional economists and a number of economic analyses of actions and programs, there is an absence, generally, of guidelines to dictate that such analyses should be used in the formulation stages of major agency proposals to increase the awareness of economic repercussions.

Based on their reports to the President, the progress of the ten commissions toward the improved use of economic analysis in formulating major agency actions is briefly summarized below:

ICC: Although the ICC completed several studies of the applicability of cost/benefit analysis as a technique for some commission activities, there is little quantitative data regarding the accomplishments of the newly reorganized Bureau of Economics.

CAB: The Board has indicated several areas of future activity which will make use of economic analysis, particularly in the formulation of any legislation affecting service to small communities and commuter carriers. However, they do not indicate that recent or proposed analyses will actually be a comparison of the costs and benefits of various alternative proposals.

FMC: Although the commission has several major data collection and modelling efforts underway, there is no evidence that the analysis of the economic impacts of their regulatory activities is being considered in regulatory decisions.

FPC: The commission points out several examples of its use of economic analysis but appears to have no comprehensive or systematic procedure by which analysis of the effects of their proposals are integrated into the decision process. They do indicate one study in which a new technique for cost/benefit analysis was used to evaluate alternative proposals for bringing Alaskan gas to the lower 48 States.

NRC: The commission appears aware of the necessity to consider the economic impacts of its decisions and has used value-impact analyses extensively to weigh the merits of proposed regulations. Although they have drafted guidelines for conducting such analyses, their report to the President is not detailed enough to judge the sufficiency of such guidelines. They state that during the past year, all significant revised or new regulations and regulatory guides included value-impact assessments in their development. They have not indicated how they define "significant" regulations, however.

FTC: The commission states that an economist is assigned to an investigation before a trade regulation is formally proposed and, additionally, an evaluation committee screens staff proposals for commission action at their inception for economic soundness. The adequacy of these measures is difficult to appraise since no details on the scope or guidelines of the economic analyses performed is provided. However, the FTC, under the Magnuson-Moss Warranty-FTC Improvement Act (P.L. 93-637) is required to issue a statement of basis and purpose with "rules which define with specificity acts or practices in or affecting commerce..." That statement must include "a statement as to the economic effect of the rule, taking into account the effect on small business and consumers." Although this requirement appears to meet the concerns expressed in EO 11821 it does not establish the rigorous framework of comparing the costs and benefits of alternative proposals which the IIS requirement does.

SEC: The commission has made extensive use of economic analysis to determine the effects of a number of its regulatory actions. They state that the SEC has made a commitment to examine the economic consequences before a major regulatory action is taken and to subsequently monitor its economic impact. Although a number of the economic analyses being undertaken appear connected to broad regulatory policy areas, the SEC report does not indicate what the specific internal procedures are which govern regulatory proposals.

FCC: The FCC has indicated no procedures to ensure that the economic impacts of its major proposals are considered before action is taken.

CFTC: The commission report, while indicating areas where economic analysis and research are used, did not indicate any efforts underway to insure that analysis of the impacts of proposed actions are considered in the formulation stage.

CPSC: The CPSC has developed a framework for cost/benefit analysis to be used in examining alternative strategies of commission action.

Experience with the IIS program over the past two years indicates that there is considerable public interest in requiring the independent regulatory agencies to examine their economic impacts. Yet it appears that the only way to guarantee such consideration is to legislate such a requirement.

## VI. Conclusions -- Alternatives and Recommendations

### A. Necessary conditions for ensuring consideration of the economic effects of major decisions

As a result of our appraisal of the IIS program we have concluded that, if the public sector is to promote economic efficiency, agencies must be held accountable for the economic impacts of their decisions. We have also concluded that economic analysis can make a valuable contribution to this end. However, it would appear that four conditions must exist to assure success: (a) an absence of severe statutory constraints on the agency's use of economic analysis, (b) agency support for the effort, (c) an outside monitor and analytical critic, and (d) an executive order (or stronger directive such as legislation).

First, for economic analysis to have an impact on decision-making, the governing statute(s) must permit an agency to base its decisions, at least in part, on such analysis. Although this appears to be a problem in certain areas (e.g., decisionmaking at the Occupational Safety and Health Administration and EPA), we have concluded that in general the problem is not substantial. Indeed, several statutes positively direct the agency to consider economic impact to some degree, as noted in Section III-B.

The second necessary condition is that an agency must be committed to using the analysis and have requisite resources to perform the necessary analysis. If the agency's key executives are not enthusiastic

about the program, its impact on decisionmaking will not be very significant. Such support need not be widespread so long as it is exhibited by people who have real clout in the decisionmaking process.

We have observed, however, that agency commitment to the objections of such a program is not sufficient to assure its success. Although agency personnel have often expressed support for economic analysis, agency decisionmakers face an array of conflicting demands on their time and other resources. Given the natural proclivity of agencies to respond to what they perceive as their constituency, analysis of economic effects of major decisions tends to be viewed as a fairly low priority.

The third of our necessary conditions is an outside monitor and analytical critic, to assure that the program is given the prominence necessary to have the desired impact. External pressure can be provided by someone who impartially focuses public attention on the economic aspects of agency decisions. If this role is played effectively, the influence of those within the agency who already support the analytical effort will be augmented, and the agency will have considerable incentive to produce and use good economic analysis to minimize its vulnerability to serious outside criticism. With respect to regulatory proposals, CWPS's activity has attempted to serve this purpose. OMB could play a similar role for legislative proposals by strengthening its oversight of agency economic analysis and including this analysis as a part of its interagency review process.

Fourth, the roles of the internal supporter and the outside critic are greatly facilitated by formal directives that require agency compliance. For example, EO 11821, coupled with Circular A-107, set a demanding standard against which agency activity can be judged. Those in an agency trying to obtain better performance throughout the agency can rest their case partly on these documents. The outside critic is assisted by having access to explicit analysis which agencies are obliged by these documents to complete.

#### B. Major Options

There would appear to be four major options regarding the future of the IIS program, plus the related issue of whether to extend a similar requirement to the independent agencies via legislation:

1. Allow EO 11821 to expire on December 31, 1976 and take no further action. This alternative would eliminate the paperwork burden which a few agencies have claimed accompanies the IIS requirement. It would also eliminate some delays in promulgating regulations

which some agencies have experienced. On the other hand, allowing the executive order to expire and taking no further action would probably reduce agency efforts to more fully consider the economic impacts of their regulatory and legislative decisions -- at least for the immediate future.

The major argument for allowing the IIS program to expire on December 31, 1976, without substituting any major new initiative in its place is that the program has served its purpose: it has helped stimulate improved economic analysis in those agencies whose reaction has been constructive, and there the effort will survive to some degree without the program. In other agencies, the program is not likely to become effective -- the enforcement mechanism is just too weak. At the same time, agencies could be encouraged to mount their own internal reform initiatives. Support could be provided for those initiatives which look promising (e.g., EPA's interagency review process, DOT's Secretarial Order and the Secretary's opening meetings to obtain public views, and HEW's effort to disseminate information on proposed regulations beyond the Federal Register readership). This could be quite productive, but it leaves agencies with uncertain incentives to make significant changes.

2. Extend EO 11821 (and associated requirements such as OMB Circular A-107) with no changes. This alternative would recognize the need for continued efforts to encourage agencies to evaluate the economic consequences of their major decisions. Moreover, it would result in less confusion and lag time than if agencies were again asked to adjust to changed requirements. The major argument for simply extending the executive order is that changes would be disruptive and premature. Agencies have just recently finished implementing the program's present requirements, which seem to be working at least reasonably well so far. Changes after so short a trial period would create significant administrative problems. The argument against this alternative is our belief, discussed below, that inherent weaknesses in the present program are likely to erode away its benefits.

If the program were simply extended without strengthening, we would predict a decline in whatever net benefits it now generates. When -- as surely would happen -- an agency lost interest in the program and was under little pressure to comply with it, efforts would become nominal and their impact insignificant. If compliance cannot be made more effective at those agencies which find the program less appealing, serious consideration should be given to letting the program expire and dealing with the problem to which it is addressed through alternative means. Simply extending the program "as is" would appear to pass up significant opportunities to improve the present level of effectiveness at reasonable cost.



3. Extend EO 11821, but strengthen the program. With this option the IIS program would be strengthened by the issuance of a revised EO 11821 and OMB Circular A-107, reflecting the changes outlined below. This alternative would provide more "teeth" for the program, forcing agencies to take it more seriously, securing improved compliance, and, hopefully, thereby achieving improved decisionmaking. On the other hand, changing the program would lengthen regulatory delays, tie up more agency resources, and create some transitional difficulties.

If the program is to be retained four types of changes are needed to preserve and enhance the program's contribution to better decisionmaking: better enforcement, improved communication, clarified criteria, and more suitable procedures. These changes are detailed in Section VI-C of the report, and include among other things, changing the program's name from IIS to Economic Impact Analysis (EIA) program and strengthening the monitoring effort by OMB/CWPS.

4. Extend EO 11821 as an interim measure, and propose legislation. This would establish an extremely strong incentive for agencies to accomplish economic analysis, especially if the quality of the analysis and the agencies' utilization of it were made reviewable in the courts. On the other hand, desirable flexibility would be lost if this were a rigid requirement. And given our experience with the legislated Environmental Impact Statement, (EIS) there is some danger that the program would be viewed simply as a constraint to be met rather than an aid to decisionmaking.

Finally, a related issue is whether to propose legislation promulgating an IIS-type requirement for the independent regulatory agencies, who have considered themselves beyond the scope of the EO. As discussed in an earlier section, it would appear worthwhile to approach the problem of independent agency decisionmaking in this manner.

While we would argue against proposing legislation to require Executive-branch agencies to prepare economic analyses, we would recommend legislation to apply to the independents. The prospect of litigation for Executive-branch agencies is not one we find very desirable, given experience with the EIS program (see Appendix E). It would be difficult to specify an appropriate standard of acceptability, and delays would become a real problem. In addition, a statute once in place is inflexible and not easy to revise, and it can become outmoded rather quickly. On the other hand, we recognize that the President's requests to the independent agencies that they take full account of the economic effects of their actions, his only other feasible approach, has not elicited wholly satisfactory responses. Therefore, we recommend that legislation be considered to extend an economic analysis requirement to the independent agencies.

C. Staff recommendation: extend EO 11821 and strengthen the program

In our view, the IIS program has generated net benefits which are increasing over time. On the whole, decisions are being made with greater sensitivity to the full range of effects they have on the efficiency with which our economy performs. Furthermore, this is being achieved without generating unduly burdensome effects on agencies or delays. Although the situation is decidedly gloomy at USDA and FEA, the program is maturing well at EPA, DOT, HUD, and HEW, and the situation at DOL, while unclear, holds considerable promise.

We do conclude, however, that four types of changes are needed to preserve and enhance the program's contribution to better decision-making: better enforcement, improved communication, clarified criteria, and more suitable procedures.

Enforcement

As presently constituted, the program's success depends too heavily on support within the affected agencies. Such support is lacking in some agencies (e.g., USDA and FEA) and is weak in others. Compliance with the program is inadequate, as the following indicates.

An agency is supposed to provide a complete IIS to CWPS when first publishing a major regulatory proposal. When minor, the reasoning used by the agency is supposed to be explained to CWPS upon request. In every published regulatory proposal, an agency is supposed to use the language described in Section II-C. In practice, CWPS still sometimes receives the IIS late, although recently this is less of a problem than it has been in the past. The IIS certification language appearing in published proposals, is often not that prescribed by the October 1, 1976, directive (see Section II-C). Moreover, explanations as to why a proposal is minor are often inadequate. A more significant problem -- deficiencies in the IIS analysis -- can elicit CWPS public criticism but in fact CWPS has made comments on only 23 of the 41 IISs completed for rules and regulations. An agency of course need not even acknowledge CWPS criticism, much less react to it. CWPS's public pleadings, based on objective analysis, are not likely to prevail over an agency which is unimpressed by cost-benefit analysis. This is especially likely given the OMB Circular's admonition that agencies accomplish the IIS program's objectives without additional resources.

An agency is supposed to forward to OMB a certification that the proposal is "major" or "minor" when it submits proposed legislation for OMB clearance. For major legislative proposals, the agency is supposed to forward the complete IIS, upon request from OMB. In practice, few proposals carry any IIS certification and in general IIS compliance should be strengthened.

Unless more serious effort is made to obtain compliance, agencies may learn that they can safely ignore the economic ramifications of their regulatory actions and legislative proposals. If the program is extended, CWPS/OMB need to develop a more potent and coordinated enforcement effort to resolve some of these problems. To that end, we recommend that OMB/CWPS markedly step up their monitoring efforts as follows:

- (a) instances of inadequate agency IIS performance should be criticized publicly by CWPS more often -- to date CWPS has commented on little more than half the IISs prepared for regulatory proposals;
- (b) OMB should request IISs for all major legislative proposals and critically appraise them as received;
- (c) OMB also should actively support CWPS efforts upon request by directing agencies to revise an inadequate IIS and to provide an IIS if CWPS disagrees with an agency's finding that a proposal is not major.

#### Communication

Closely related to the enforcement issue is the need for better communication between CWPS/OMB and the agencies. Much misunderstanding about the program's intentions remains. To improve communication, the name "Inflation Impact Statement" should be changed to "Economic Impact Analysis" (EIA). Also CWPS/OMB should make an effort, through small working seminars which focus on promising analytical approaches being used by participating agencies, to help agencies learn from experiences other agencies have in preparing IISs (or EIAs).

#### IIS criteria

The purpose of the criteria is to facilitate detecting those proposals where questions of economic efficiency are particularly important and where economic analysis might contribute toward more rational decisionmaking. Obviously, any set of criteria is going to be imperfect in certain instances and should be reviewed periodically. However, within this framework, the present criteria appear to be satisfactory; basic changes are not needed, although certain alterations may be desirable. The criteria should not be "tightened" at this juncture, although this question, like several others, should be open to careful, periodic review. The temptation to require more analyses needs to be restrained by the fact that agency analytical capability is limited. Requiring more analysis could strain that capability and reduce the overall net impact of the program. The present criteria levels appear suitable inasmuch as they challenge, but do not overwhelm agencies.

As discussed in earlier sections, the cost criterion has been used almost exclusively in determining whether an IIS is needed; the other five criteria have rarely been utilized. The other criteria tend to be more difficult to apply and would appear worth retaining only if their elimination would permit agencies to avoid useful scrutiny of some important regulations. One sensible course might be to recognize explicitly the general appropriateness of prevailing practice -- that an agency should place primary focus on the cost criterion; but that the other five criteria should be retained pending OMB/CWPS discussion with agencies concerning desirable alterations. In this connection, we believe the cost criterion should be specified in terms of "annual" rather than "annualized" costs. Otherwise an industry required by a new regulation to spend \$150 million for capital changes in one year may be neglected by an IIS program which labels the impact as a nonmajor \$20 million in annualized costs.

The cost criterion now has two foci -- aggregate costs and sector costs. The sector cost threshold of \$50 million in one year (\$75 million in two years) is, in effect, "tighter" than the aggregate threshold of \$100 million in one year (\$150 million in two years). This reflects a presumption that a given percentage cost increase borne by one sector has more serious repercussions than that same percentage cost increase spread across all sectors. While this may be reasonable, this matter should be reviewed periodically.

Questions also could be raised about the appropriateness of having a single cost criterion apply to all agencies. The consequence is to require some agencies, such as EPA, to prepare more IIS analyses than other agencies. While this creates an uneven workload for agencies, the practice seems warranted given the program's objective of lessening economic inefficiency from whatever source.

### IIS procedures

Agency procedures for compliance with IIS program requirements are not subject to OMB or CWPS approval. In general this has posed few problems, but there are exceptions. DOL procedures do not direct DOL divisions to include analysis of alternatives in their IISs. As a result, OSHA's IISs have neglected alternatives despite the clear expectations set forth in OMB Circular A-107.

At FEA, as noted in Section V-C, the agency's procedures can be interpreted as exempting those proposals over which the FEA has negligible discretion. This is not consonant with the program's intent. More suitable is this statement taken from HEW's procedures:

"Cases will arise in which legal constraints make certain alternatives (including no action) impossible under existing law. Legal constraints are not to be assumed immutable and elimination of legal barriers to mitigation of an impact are among the important options to be considered."

There may be cases where an IIS cannot influence what an agency must promulgate in a specific situation, but even in this extreme case the IIS can document the economic consequences to lead to better informed agency planning and discussions with (and proposals for) the Congress.

Agency procedures also sometimes exempt types of programs -- e.g., HUD exempts loan guarantee programs -- which could have important consequences for economic efficiency. Such exemptions should be reconsidered.

Another important procedural issue is that of making IISs more accessible to the public. It is not always easy for the public to learn whether an IIS has been completed or to obtain IISs. OMB should establish a generally applicable public disclosure policy for IISs, in our view. This would better enable public debate on proposals to rest on the best available evidence. A clearinghouse point is needed at each agency where IISs can be obtained, and the Federal Register should publish on a monthly basis lists of proposals by type of certification (major and nonmajor).

One further problem is the present program's inability to catch small, closely related, incremental regulations which are "minor" individually but "major" when considered as a group. EO 11821 and OMB Circular A-107 should be revised in such fashion that an agency cannot avoid responsibility for an IIS simply because an action or program is divided into several individual regulatory proposals. At CWPS/OMB request, an agency should be required to provide an integrated, single analysis for a group of related proposals or for one proposal coupled with closely related existing regulations.

Finally, and more broadly, OMB probably should specifically take responsibility for reviewing and requiring changes in agency procedures to the extent that these types of problem areas are identified in the course of monitoring the program.

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Thus on balance we conclude that the most desirable course of action would be to extend the IIS program with a new name, Economic Impact Analysis (EIA) program, and with certain significant but not drastic changes to improve compliance. The program does cause some

delays, but these should gradually be eliminated as agencies learn to better coordinate economic analysis with proposal development and to use the former at earlier stages in the decisionmaking process. The other costs of the program -- mainly the cost of performing economic research -- are real and do need to be funded, but they are small relative to the impact of the proposals being decided upon. The IIS program facilitates more rational decisions on proposals whose impact on the economy is substantial. It should be retained and strengthened.