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Carter's Assault on The Costs of Regulation

The President is going to find that fighting inflation by holding down the costs of federal regulation is easier said than done.

BY TIMOTHY B. CLARK

If President Carter seriously expects to cut down on the inflationary consequences of federal regulation, he will have to endure the outrage of important constituent groups, hostility from congressional powers resistance from the bureaucracy—and a very long wait.

The first three problems may be tolerable, though progressively less so as the 1980 election draws closer. But the last may be a political impossibility. Before Carter reaps any benefits from his efforts, he will antagonize a lot of interest groups.

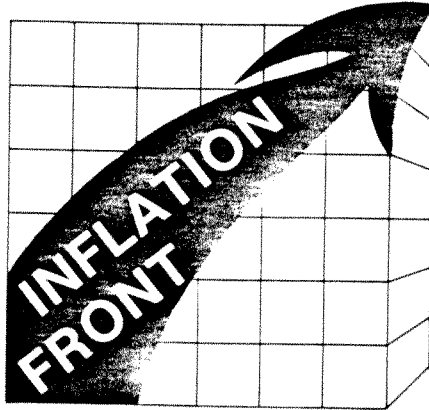
For reform in the growth industry of federal regulation is a long-term proposition. A noticeable reduction in the rate of inflation directly attributable to changes in the regulatory process will not be achieved in the short term—in fact, the volume of federal regulation and its cost to the economy are virtually certain to grow in the decade ahead.

But if the changes Carter has made in the regulatory process are not likely to reduce the cost of living, they may well provoke controversy by producing a bias within the Administration against federal regulation.

Already, a coalition of labor and environmental groups has complained to Carter that his new regulatory review process represents "a serious threat to . . . the environmental, labor and consumer protection movements." At the same time, the Business Roundtable and other business groups have praised the President for instituting the new process.

Carter's assault on the inflationary impact of regulation got off the ground this spring, when the President became directly involved in a decision on standards to protect textile workers against "brown lung" caused by exposure to cotton dust.

The dispute pitted the Labor Department



and its Occupational Safety and Health Administration (OSHA) against the President's economic advisers, led by Charles L. Schultze, chairman of the Council of Economic Advisers (CEA).

A compromise was struck between Labor, whose chief concern was safety for the workers, and Schultze, who feared the cost of the proposed regulation. Even if the highly publicized flap is soon forgotten, the controversy illustrated both the willingness of Carter to become personally involved in regulatory issues and the potential of the new process he has instituted to bring those issues to his attention.

The cotton dust case focused public attention for the first time on the Regulatory Analysis Review Group created by the Administration late last year to improve the quality of the analysis of proposed regulations that will have a significant impact on the economy.

Chaired by the CEA, the group intends to play a formal role in the rule-making process on major regulations. As demonstrated by the cotton dust case, it will also provide a mechanism for less formal involvement of Administration economic aides and the President himself.

Because the regulatory review group

intends to examine no more than 10 or 20 regulations a year, it hopes to set examples for the agencies to follow with regulations that escape White House review.

The group represents one effort to implement the executive order that Carter signed on March 23 to ensure more thorough analysis of the consequences of proposed regulations. Agencies must prepare semiannual agendas of regulations under consideration, conduct early economic analyses of proposed regulations, provide for more public participation in rule making and regularly identify existing regulations for review. The order applies to executive branch departments and agencies but not to the independent regulatory agencies.

Among forthcoming regulations likely to go to the Regulatory Analysis Review Group are the following, according to those close to the operations of the group:

- Environmental Protection Agency regulations governing the kind of technology new coal-fired power plants must install to reduce air pollution and setting new air quality standards for lead;
- Interior Department regulations on reclamation of lands ravaged by strip mining;
- Agriculture Department decisions on price supports for major commodities—wheat, feed grains and cotton;
- Transportation Department rules on auto safety and fuel efficiency. Already under review is a proposed regulation, costing \$1.8 billion, on access for the handicapped to public transit;
- Energy Department regulations on conversion of power and industrial facilities from oil and natural gas to coal, and proposals for mandatory efficiency standards for equipment;
- A Council on Environmental Quality proposal to make major exports subject to a requirement for preparation of en-

vironmental impact statements;

- A variety of Labor Department issues, most notably OSHA's attempt to establish a general framework for regulating cancer-causing substances in the workplace. The regulatory review group, in its first formal comment, has criticized OSHA's economic analysis on control of exposure to the chemical acrylonitrile;

- Treasury Department regulations on treatment of the handicapped under the revenue sharing program.

REGULATION AND INFLATION

By itself, Carter's regulatory reform effort can hardly make a dent in the double-digit inflation that has returned in recent months. But the President hopes his campaign will symbolize his determination to do everything in his power to control inflation, and he is doing his best to publicize it.

"We must cut inflationary costs which private industry bears as a result of government regulations," he said in his April 11 speech on inflation. "I am determined to eliminate unnecessary regulations and to ensure that future regulations do not impose unnecessary costs to the American economy."

It sounds simple: reduce the costs of regulation borne by industry, and industry will cut the costs of the goods and services it provides to the public. However, it may not be so simple.

There is no question that the costs imposed by regulation on the private sector have multiplied in recent years, although estimating the actual costs is a very imprecise science.

The most widely cited figures are those of Murray L. Weidenbaum, director of the Center for the Study of American Business at Washington University in St. Louis, and his associate, Robert DeFino. They estimate that in fiscal 1979, the cost of complying with the regulations of 41 federal agencies will total \$98 billion—and Weidenbaum says his estimate is probably understated.

A recent analysis by Warren B. Buhler, former director of the defunct Federal Paperwork Commission, concludes that the total cost of complying with federal regulations will probably approach \$200 billion in fiscal 1979.

Estimates of the cost of future regulations range even higher. James Miller, in a report submitted to OSHA for the Vistron Corp., calculated that the cost to business of controlling the 1,500 substances identified by the government as possible cancer-causing agents could conceivably reach \$400 billion a year—or 20 per cent of the nation's current gross national product.

The truth is that no one knows how



Council of Economic Advisers member William D. Nordhaus: "It'll take a decade, assuming we can do it," to cut down on the inflationary consequences of federal regulation.

much regulation costs. And though it's not clear that reliable estimates can ever be made, the Commerce Department is trying to develop a "regulatory budget" that would show the costs to the economy of regulations issued by all government agencies. Such a budget might possibly be used to allocate costs among programs and agencies—allowing, for example, an increase of 5 per cent for OSHA in a given year. OSHA then would have to set priorities and consider costs more carefully.

Clearly, federal regulation has had an enormous impact on business. Edward F. Denison, a senior fellow at the Brookings Institution, estimated that pollution abatement requirements and health and safety regulations (as well as a rise in crime) have cut productivity by half a percentage point—a significant number in light of the fact that over-all productivity has been rising by only about 2 per cent annually in recent years.

Barry P. Bosworth, director of the Council on Wage and Price Stability, calculates that regulation contributes as much as three-quarters of a percentage point annually to the increase in the consumer price index, and that compensatory increases (as in wages and prices) "double the original impact within two years."

But unfortunately for Carter, there may not be much the President can do to reduce the impact of regulation on business. Most regulations are required by law, and Congress is not showing any signs of cutting back on the number of

laws requiring federal regulation. In fact, the departments and agencies will have to promulgate many more regulations just to comply with recently enacted laws.

For example, current air quality standards for new power plants would cost electricity consumers some \$36 billion from 1983 to 1990. To comply with changes enacted in 1977 in the Clean Air Act, the EPA staff has proposed new standards that would cost, according to the Energy Department, an additional \$26 billion to \$37 billion. The Council on Environmental Quality estimated last December that requirements imposed since 1970 would add \$290 billion in the decade beginning in 1976 to the cost of the total federal pollution control effort.

Another very expensive regulation in the works is OSHA's proposal for noise control. The proposed standards would cost an estimated \$18.5 billion in capital costs and billions more in annual operating costs.

Thus Carter can hardly hope to reduce federal regulation on his own authority. As one Administration official said, the changes that Carter has adopted in the regulation-making process are "simply not credible as a tool against inflation."

Simon Lazarus, who is in charge of regulatory reform on the White House Domestic Policy Staff, said the greater benefit of the Administration's attempts to restrain inflation through regulation will lie in their symbolic value.

"No one is silly enough to pretend that these efforts will affect the consumer price index by half a point," Lazarus said. But in an Administration "which is not contemplating mandatory [wage and price] controls," he said, "we are trying hard to show that government is doing what it can to restrain inflation, and so to convince the private sector, which is responsible for most of the inflation, to restrain itself."

CONTROLLING REGULATION

Carter is not the first President to worry about the mounting cost of regulation, nor the first to attempt to make the regulatory agencies pay more attention to the economic consequences of their actions.

After two "inflation summit conferences," President Ford in November 1974 issued an executive order to require agencies to prepare inflation impact statements for all major regulations. Just before leaving office, at the end of 1976, Ford extended the life of inflation impact statements, changing their name to "economic impact statements." Carter's new executive order requiring "regulatory analyses" is the latest extension of the idea.

During the Ford Administration,

agencies typically prepared impact statements for major regulations after proposals already had been developed. Thus the analyses became tools to justify the course of action the agency had already decided to take.

Carter, with his Executive Order 12044, is seeking to force the agencies to weigh regulatory alternatives earlier in the process, and unlike Ford, he is asking for a review of regulations already on the books.

As a first step in implementing the new order, agencies were required to publish descriptions of their procedures for developing regulations. Forty agencies complied, filling 240 pages of the *Federal Register* with 235,000 words. Another 26 agencies claimed they were exempt from the order because they issue few regulations. Public comments are being received on the agencies' submissions, and final procedures are due to be published by Sept 15.

The Regulatory Analysis Review Group, created by Carter to implement the executive order, is chaired by CEA chairman Schultze, who has assigned day-to-day responsibility to CEA member William D. Nordhaus. The group includes the principal economic and regulatory agencies of the government. The economic members are the CEA, the Office of Management and Budget (OMB) and the Commerce, Labor and Treasury Departments. Regulatory members are the Agriculture, Energy, Health, Education and Welfare, Housing and Urban Development, Interior, Justice and Transportation Departments and the EPA.

The group intends to review 10 to 20 regulations each year, with the issues picked by an executive committee whose members are the CEA, OMB and two other agencies.

Nordhaus said the group has no formal agenda of regulations to be reviewed, though it is aware of major regulations under development in the agencies. As a matter of process, however, regulations are not considered for review until they are formally proposed by the agencies.

Once an issue is chosen for review, the Council on Wage and Price Stability prepares a report focusing on the economic consequences of the proposed regulation. In most cases, recommendations apparently will not be made, but the analysis will be entered into the agency's record before the comment period is closed.

If, however, Schultze determines that the wage-price council review militates strongly for a course of action that is contrary to the agency's intentions, he can press his case with the agency head and, as a last resort, take the issue to Carter.

COTTON DUST

The full regulatory review process, including selection of a regulation shortly after it is proposed and the development of a formal comment by the Council on Wage and Price Stability, has been used only once, in OSHA's acrylonitrile case.

But the regulatory review group, on a more informal basis, has brought about changes in some other regulations. The most controversial case concerned cotton dust.

Unions representing some 600,000 textile workers have been trying for better than a decade to force companies to reduce exposure to the dust, which, according to Labor Department estimates, already has afflicted some 35,000 people with a respiratory illness called byssinosis, or "brown lung."

With a cotton dust regulation in the offing, textile executives were among the heaviest contributors to Richard M. Nixon's 1972 reelection campaign, and OSHA pledged that, as an aid to Nixon's campaign, "no highly controversial standards, i.e. cotton dust, will be proposed by OSHA."

In 1975, in response to a union court suit, OSHA proposed a cotton dust standard estimated to cost industry some \$2.7 billion in capital investment. Predictably, the companies protested, and the case continued under Labor Department review until final standards were published on June 23, 1978. During the review, OSHA modified its proposed standard and cut costs; the final regulation is estimated by the Labor Department to cost \$656 million in capital investment and \$206 million in annual expenditures.

Schultze became interested in the issue late in the review process. Though OSHA had promised a federal judge it would publish a standard by May 31, Schultze told the Regulatory Analysis Review

Group in a May 2 memo that because of Carter's concern about inflation, "it is important to ensure that any new regulations do not impose unnecessary or uneconomic costs on American industry." He said he and Robert S. Strauss, the President's inflation counselor, would like the standard delayed to make time for a study of "its likely economic impact."

OSHA's proposal relied on installation by industry of engineering controls within factories, but in a May 18 memo, the wage-price council said that \$125 million in compliance costs could be saved by greater reliance on medical surveillance and heavier use of respirators. Schultze, with the President's consent, told Labor Secretary Ray Marshall that revisions in the standard were desirable.

This produced a blast from Marshall; in a five-page memo to the President, he directly challenged the right of CEA and the wage-price council to delay enforcement of the cotton dust standard and said that delay "will cause a major political upheaval among such groups as textile

Industry favors using respirators in meeting standards for exposure to acrylonitrile.





CEA and wage-price council chairman Charles L. Schultze: "It is important to ensure that any new regulations do not impose unnecessary or uneconomic costs on American industry."

unions, the AFL-CIO, the Brown Lung Association, public interest groups and Congress."

Carter and Vice President Walter F. Mondale met on June 7 with Schultze, Marshall and other Administration officials. Backtracking from his earlier stand, Carter decided essentially to support the Labor Department, although two changes were made in the OSHA proposal. A firm, four-year timetable for compliance was established (instead of leaving the deadlines to OSHA) and the regulations were amended to permit the normal OSHA procedure of allowing variances if alternatives to engineering controls could achieve the same health benefits.

Although both industry and labor are challenging the cotton dust standard in the courts, Carter seems pleased by it. In a June 8 statement, he said a solution had been found "to control this threat to the health of the workers in textile mills, but with a greatly reduced over-all cost."

OTHER CASES

The Regulatory Analysis Review Group also played a role in modifying standards issued June 13 by EPA to limit increases of air pollution in clean air areas of the country.

Following the provisions of 1977 legislation, the agency last November proposed rules that would have required new or modified pollution sources to install the best available pollution control technology if their emissions would ex-

ceed 100 tons per year without pollution controls. Some 4,000 new sources per year were to be affected.

Nordhaus and Bosworth took an early interest in the case, holding meetings and exchanging memos with EPA officials during the first half of this year.

Partly as a result of their efforts, EPA moved to exempt any source that would emit less than 50 tons of pollutants with a lesser degree of control. This cut the number of sources to 1,600 per year.

CEA wanted to restrict the standards further, so that only 900 new sources would be subject to the stringent requirements. But EPA administrator Douglas M. Costle argued against this step in a meeting with Schultze (during which he cited other concessions EPA had made to CEA), and Schultze decided not to take the issue to the President.

The formal review process has been applied so far only to an OSHA proposal to regulate worker exposure to acrylonitrile, a chemical that produces cancerous growths in animals and probably humans as well.

E. I. duPont de Nemours & Co. and three other companies produced 1.5 billion pounds of the chemical in 1976, and according to OSHA, 5,130 workers inhale the substance. It is used in the manufacture of dozens of products, including clothing and brake linings.

In its published proposal, OSHA asked for comments on three possible ceilings that could be set on exposure to acrylonitrile: 2 parts per million parts of air, 1 part per million and 0.2 parts per million. An economic impact statement filed with the proposal estimated capital costs to the companies at \$109 million for the first, \$198 million for the second and \$698 million for the third.

On May 22, Bosworth, on behalf of the Regulatory Analysis Review Group, sent OSHA a review of the agency's economic analysis of the proposed regulation.

The review asked how regulations should be set when the gains—in this case, the reduced risk of cancer—cannot be definitely quantified. Criticizing OSHA for failing to undertake a risk assessment, the review estimated it would cost \$4 million to prevent a single cancer death under OSHA's least stringent standard, \$29 million under the middle standard and \$170 million under the strictest standard. The latter, said the review, seemed too high.

The review took issue with OSHA's official position that estimates of risk reductions are not necessary so long as some risks can be reduced, and that exposure to risk should be reduced to the lowest level feasible. "Simply knowing that the lower the permissible exposure level, the lower the risk of cancer, is not information enough on which to base a standard unless it is intended to eliminate immediately all risks regardless of the consequences. Although as a long-range goal this may describe the intent of the OSHA act, as an operational procedure it is empty, since in order to eliminate all risks forthwith, industry would have to shut down."

The regulatory review group also addressed an issue that frequently arises in OSHA cases: the merits of mandated engineering technologies as opposed to so-called performance standards. In general, the economic advisers favor the latter, on the grounds that if industry is told it must perform up to a given level, it will find the most cost-efficient way to do so.

OSHA, by contrast, traditionally has favored specific standards dictating engineering controls. With cotton dust, acrylonitrile and other substances, industries might be able to meet performance standards (limiting worker exposure) by providing personal respiratory devices to their employees—a step often less costly than redesigning the workplace but one that is fiercely resisted by OSHA and by organized labor.

Whether the acrylonitrile review will have an impact on OSHA's decision cannot be predicted; the final regulations will not be published for several weeks.

In late June, the Regulatory Analysis Review Group chose a second issue for formal consideration: a Transportation Department draft regulation to make public transportation accessible to people in wheelchairs. The group questioned whether the most efficient way to meet this goal was to install elevators in existing subway stations at a cost of \$1.8 billion, as the department suggested.

OPPOSITION

The regulatory review process has encountered suspicion and hostility from environmental and labor groups, the bureaucracy and some Members of Congress.

On Aug. 3, 31 organizations sent a letter to Carter calling for elimination of the regulatory review program on the grounds that it "threatens important commitments you have made to the health and welfare of the American people, with little or no effect on inflation or government efficiency." Signatories included representatives of the Natural Resources Defense Council Inc., the AFL-CIO, the United Auto Workers, the United Mineworkers of America, the United Steelworkers of America, the Environmental Defense Fund Inc. and the Sierra Club.

From the agencies, particularly EPA, has come a defense of regulatory programs. In an April 27 speech, Costle said that although a recent study by Chase Econometrics had concluded that EPA programs add 0.3 to 0.4 percentage points a year to the consumer price index (CPI), "an estimated increase in the CPI does not mean that environmental regulations are inflationary. The CPI ignores improvements to public health, reduced property damage, increased crop yields, etc., that result from pollution control spending." If the CPI measured these "savings to the consumer, then pollution control spending would not appear inflationary," Costle said.

Deputy EPA administrator Barbara Blum, in July 26 congressional testimony, said EPA "would prefer that they [the Regulatory Analysis Review Group] work with us earlier in the future on selected regulations to gain a fuller understanding of the constraints and trade-offs and to suggest alternatives when they are less likely to delay final decisions on our regulations."

Others in EPA worry about the possibility that the regulatory review program could be abused. Assistant administrator William Drayton Jr. recalled that the last Administration had created a "quality of life" review program in OMB, which he said had been used to "muzzle" EPA and to "suggest that economic interests had a special access and could come in and influence the agency's decisions."

"For us," said Drayton, "regulatory independence is absolutely imperative, and it is entirely inappropriate to have any group with special access." He said that while it was unlikely, "we could slip back

! have an arrogant, imperial White House trying to dictate our responsibilities."

At the Labor Department's OSHA, worries about the review program are at least as strong. Marshall's explosion over Schultze's intervention in the cotton dust case was one indicator.

In defense of their regulations, agency spokesmen cite the OSHA law, which requires that workplace hazards be reduced to the lowest level technically and economically feasible. OSHA has long resisted the kind of cost-benefit analysis favored by White House economists on grounds that it is impossible to calculate the benefits. "How do you quantify the benefits of saving a human life, or preventing the loss of a limb?" asked Charles B. Knapp, a special assistant to Marshall.

Knapp said that the department viewed the regulatory review program "with no fear" but that he hoped the program would turn out to be "more supportive and less adversarial. If it turns out to be combat over every regulation, that will be a problem."

In Congress, Members seem to guard the regulatory programs they enacted as fiercely as they do spending programs. When Carter published a draft of his new executive order last November, he proposed to apply it not only to agencies reporting to him but also to the independent regulatory agencies. This provoked a hands-off letter from 13 senior Senators, and the proposal was dropped from the final order.

In reaction to the cotton dust controversy, 16 members of the House Education and Labor Committee on

Labor Secretary Ray Marshall directly challenged the right of CEA and the wage-price council to delay enforcement of the cotton dust standard.



June 7 sent a letter to Carter saying that White House intervention "threatened to undermine the basic procedures" mandated by Congress in the OSHA statute.

Rep. Paul G. Rogers, D-Fla., a leading congressional health expert, on June 14 asked the General Accounting Office to investigate whether the regulatory review group was acting legally and whether it was adequately assessing "the potential impact on inflation of failure to undertake maximum feasible efforts to prevent . . . 'environmentally-related' diseases."

Yet other Members are worried about the proliferation of regulation. Their concern is reflected in the increasing tendency of Congress to add amendments to bills providing for legislative vetoes of agency rules.

In the Senate, two committees have approved a "sunset" bill (S 2) authored by Sen. Edmund S. Muskie, D-Maine, requiring periodic review of spending programs. If it comes to the floor, Sen. Charles H. Percy, R-Ill., will try to add a requirement for regular "sunset" reviews of regulatory agencies.

OUTLOOK

The regulatory review program is likely to generate more controversy and attract increased public attention. It also could cut some regulatory costs. Nordhaus estimates potential savings could amount to a few billion dollars a year, though others working with the program say that is optimistic.

But the review group, with small staff resources and a commitment to examine only 10 to 20 regulations a year, cannot by itself hope to make a major dent in the costs of regulation.

Agencies in 1975 considered some 10,000 regulations and actually issued more than 7,000, and the trend does not seem to be moderating appreciably. Nordhaus estimates the prospective costs of regulations to be issued under existing laws at \$20 billion to \$50 billion "over the next few years."

The main hope for more cost-effective regulation lies in persuading agencies to take the President's executive order seriously, with the review group setting examples for them to follow. But that will be a long and difficult task. "It's a feudal war, fought with tunnels and trenches," said one OMB official.

And Nordhaus said, "We're not going to turn the beast around in a year. It'll take a decade, assuming we can do it."

But Nordhaus emphasized the Administration's intention to make the necessary effort, saying the program has the full support of the President, the Vice President and "the major officers of the government." □