CANCER!

SLIDE 1

CANCER

(what the public is led to believe)

THE DEATH RATE DUE TO CANCER IS INCREASING RAPIDLY.

WE ARE IN THE MIDST OF AN EPIDEMIC OF CANCER.

80-90% OF CANCER IS CAUSED BY OUR ENVIRONMENT.

WE ARE DROWNING IN A SEA OF CARCINOGENS.

OUR MANUFACTURING PLANTS POLLUTE OUR ENVIRONMENT AND CAUSE CANCER.

SLIDE 2

MEDICAL AND REGULATORY CLICHES

THERE IS NO SAFE LEVEL FOR A CARCINOGEN. (A SINGLE MOLECULE CAN CAUSE CANCER TO A RARE SUSCEPTABLE PERSON.)

USE OF CARCINOGENS SHOULD BE BANNED OR REDUCED TO THE LOWEST FEASIBLE LEVEL. (DEPENDS ON AGENCY STATUTORY AUTHORITY.)

WHERE A SUBSTITUTE FOR A CARCINOGEN IS AVAILABLE THE CARCINOGEN IS BANNED.

PRESENT REGULATORY CLIMATE

1. TWO RECENT EVENTS HAVE MADE IT A WHOLE NEW BALL GAME -

   a. THE SUPREME COURT BENZENE DECISION

   b. THE ELECTION

2. SUPREME COURT BENZENE DECISION -

   a. Puts the burden of proof on the agency to demonstrate that an "unreasonable risk" exists before a regulation can be promulgated.

   b. Applies specifically to OSHA but has broad implications.

3. THE PRESIDENTIAL ELECTION

   a. Extensive philosophy of less rather than more regulation.

   b. Executive Order 12291

   c. Clean out of the activist political appointees from the previous administration at policy making levels.

   d. Lower level (and critically important) bureaucrats still remain.

SLIDE 4

OSHA

BACKGROUND

1. EMERGENCY ASBESTOS STANDARD DECEMBER 1971; FINAL JUNE 1972; MODEST CHANGES.
2. PROPOSAL ON OCTOBER 9, 1975. 0.5 FIBERS/CC (GENERAL INDUSTRY ONLY, CONSTRUCTION UNCHANGED).
3. NIOSH 0.1 FIBERS/CC BASED ON ANALYTICAL LIMITATIONS.

RECENT MOVES

1. BACK BURNER SINCE 1975.
2. NEW TECHNICAL PUBLICATIONS SUGGESTING 1 FIBER/CC OR LESS.
3. NEW INTERPRETATION RE SMOKING - ASSITIONAL RISK.
4. EPA INITIATIVES FORCE THEM TO PROTECT THEIR TURF (1979).
5. BEEN UNDER ACTIVE STUDY FOR PAST TWO YEARS. (BENZENE DECISION PRESENTS MAJOR PROBLEM.)

EXPECTED FUTURE ACTIONS

1. MAJOR CHANGES IN REGULATORY APPROACH MUST BE DEVISED.
2. NEED TO INCLUDE THE CONSTRUCTION INDUSTRY. (VERY OBJECTIVE ADVISORY COMMITTEE TO CONTEND WITH, PROBABLY SPLIT OUT ALL CONSTRUCTION INDUSTRY STANDARDS.)
3. MUST PRESENT EXTENSIVE JUSTIFICATION UNDER EO-12291.
4. NO NEW ACTION FOR AT LEAST 7 MONTHS.
5. GOOD POSSIBILITY OF A LEVEL IN THE 0.5 - 1 FIBER/CC RANGE IN THE NEXT COUPLE OF YEARS FOLLOWED BY UNION COURT CHALLENGE.

EPA

1. PRESENT REGULATIONS

   A. CLEAN AIR ACT

      1. 1973 - NO VISIBLE EMISSIONS OF ASBESTOS-CONTAINING MATERIALS.
      2. 1974 - WASTE DISPOSAL TO CONTROLLED LANDFILL.
      3. 1975 - BAN ON SPRAYING OF CERTAIN FRIABLE MATERIALS (WETTED AND ENCAPSULATED ASBESTOS NON INCLUDED).

   B. RECRA

      1. 1980 - LISTED AS A HAZARDOUS WASTE UNDER SECTION 261.33f. (COMMERCIAL ASBESTOS FIBER ONLY - 1000 KG/MONTH EXCEPTION)
      2. - SUBSEQUENTLY WITHDRAWN (TEMPORARILY) FOR STUDY IF PRESENT CLEAN AIR ACT REGULATIONS ARE ADEQUATE.

   C. TSCA

      1. ASBESTOS BEING USED AS A "TRIAL HORSE" TO DETERMINE THE LIMITS OF THEIR AUTHORITY.
      2. "CRADLE-TO-GRAVE APPROACH".
      3. OPTIONS UNDER CONSIDERATION

         a. OUTRIGHT BAN IN FAIRLY NEAR FUTURE (SEVERAL YEARS) ALL USES WHERE THEY DEEM SUITABLE SUBSTITUTES ARE AVAILABLE.

         b. LIMITS ON TOTAL USAGE. STEADILY DECREASED WITH TIME TO VIRTUAL BAN.

         c. BAN STARTING IN 1985 AND FULLY IN PLACE IN 1990. ONLY EXCEPTIONS ARE ESSENTIAL USES MEETING THREE CRITERIA. NO REASONABLE WAY TO GET AN EXCEPTION. BURDEN OF PROOF ON USER.

      4. ADVANCED NOTICE OF PROPOSAL RULEMAKING - OCTOBER 20, 1980

         a. REQUESTS MASSIVE AMOUNTS OF INFORMATION - GENERALLY NOT SUPPLIED.

         b. GENERAL ORDER UNDER SECTION 8(a) TO FORCE SUBMISSION OF INFORMATION. PROPOSED SEVERAL MONTHS AGO.

            MUST BE FILED BY PRODUCERS, DISTRIBUTORS AND USERS OF ASBESTOS-CONTAINING PRODUCTS.

      5. PROPOSAL TARGET HAS BEEN LATE 1981, UNDOUBTEDLY SLIP FURTHER

         a. HAVE VERY SIGNIFICANT PROBLEMS FROM THE BENZENE DECISION TO WORK AROUND.

         b. AIA/NA HAS BEEN IN CONTACT LAYING GROUND WORK FOR A NEGOTIATED SETTLEMENT.

            PROBLEM - ADMINISTRATOR AND ASSISTANT ADMINISTRATOR FOR EPA HAVE NOT BEEN CONFIRMED.

      6. OPTIMISTIC THAT IMPACT WILL BE SCALED DOWN AND LARGELY BLUNTED.

CPSC

1. PUBLISHED ANPRM OCTOBER 20, 1980
2. GENERAL ORDER, MUCH REDUCED IN SCOPE, HAS BEEN PUBLISHED AND COLLECTION OF INFORMATION IS IN PROGRESS.
3. IMPACTS UCC MAINLY VIA CUSTOMERS WHO MANUFACTURE TEXTURED COATINGS.
4. CPSC IN MAJOR TROUBLE IN THE NEW ADMINISTRATION'S ATTITUDE ON REGULATIONS.
   a. Greatly reduce scope or shut down as ineffective.
   b. Confine actions to immediate hazards.
5. NO SIGNIFICANT IMPACT ANTICIPATED.

SLIDE 7

SUPERFUND

1. LEGISLATION PASSED AT END OF LAST SESSION OF CONGRESS.
2. EPA TO DEVELOP IMPLEMENTING REGULATIONS.
3. CONFUSION IN INTERPRETATION
   a. UCC Transportation people say any asbestos spill of more than one pound must be reported by the transporter.
   b. AIA/NA - Not in effect until implementing regulations promulgated.

SLIDE 8

STATE ACTIVITIES

1. SHIFT IN ACTIVIST PRESSURES FROM THE FEDERAL TO THE STATE LEVELS.
2. DIVIDE AND CONQUER - MUCH MORE DIFFICULT TO RESPOND TO PROPERLY.
3. NEW YORK
    a. Proposed legislation to ban all asbestos-containing products in the state.
    b. Hearing on April 11. AIA/NA and UCC to attend.
    c. Problem - Will active opposition attract attention to a bill which may die by itself.
4. CONNECTICUT
    a. Effective ban on Asbestos-Cement Pipe

SLIDE 9

INDUSTRY ACTIONS -
EPA AND OTHER REGULATIONS

PAST POSITION

1. ALREADY CONVICTED. REASON WILL NOT PREVAIL.
2. ONLY POSSIBILITY TO ALLEVIATE EXCESSIVE AND UNNEEDED REGULATIONS IS THROUGH THE COURTS.
3. HIRED A HIGHLY QUALIFIED AND EXPERIENCED WASHINGTON LAW FIRM - ORGANIZATION AND PREPARATION OF RESPONSES.
4. FIGHTING THE BATTLE STEP-BY-STEP.
5. BASIC POSITION:
    - A. STATUTORY AUTHORITY EXCEEDED (BENZENE DECISION).
    - B. ADMINISTRATIVE PROCEDURES NOT FOLLOWED.
    - C. REGULATORY OPTIONS ARE NOT THE "LEAST BURDENSOME" (EO12044).
6. THE BENZENE DECISION STILL PRESENTS A VERY HIGH HURDLE.

PRESENT POSITION

1. REASON MAY PREVAIL.
2. NEED TO WORK ACTIVELY TO GET REALISTIC, WORKABLE REGULATIONS IN PLACE.
3. STILL MAINTAIN CAPABILITY TO FOLLOW EARLIER STRATEGY. (Could be fighting same battle <u>in conjunction</u> with the agencies vs. the activists.)

SLIDE 10

JUDGEMENTS RE NEW ASBESTOS
REGULATORY ACTION

1. OSHA

    a. 0.5 - 1 fiber/cc Standard in 1 - 2 years.

2. EPA - TSCA

    a. Substantial moderation in broad-based ban and mandatory substitutes approach.

    b. Possible increased labelling and limited bans (friable products) as a compromise.

3. EPA - RECRA

    a. Possible, at least partial inclusion under RECRA such as permits and specific waste disposal requirements. Small generator exemptions still in place.

    b. Numerical emission standard.

4. CPSC

    a. Minimal activity.

5. SUPERFUND

    a. Some spill reporting requirements with workable cut-off level.

6. STATES

    a. New battleground - Could have important local impacts.

federal register

Thursday
February 19, 1981

Part III

The President

Executive Order 12291—Federal Regulation

Federal Register
Vol. 46, No. 33
Thursday, February 19, 1981

Presidential Documents

Title 3—

The President

Executive Order 12291 of February 17, 1981

Federal Regulation

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to reduce the burdens of existing and future regulations, increase agency accountability for regulatory actions, provide for presidential oversight of the regulatory process, minimize duplication and conflict of regulations, and insure well-reasoned regulations, it is hereby ordered as follows:

Section 1. *Definitions.* For the purposes of this Order:

(a) "Regulation" or "rule" means an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of an agency, but does not include:

(1) Administrative actions governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code;

(2) Regulations issued with respect to a military or foreign affairs function of the United States; or

(3) Regulations related to agency organization, management, or personnel.

(b) "Major rule" means any regulation that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(c) "Director" means the Director of the Office of Management and Budget.

(d) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), excluding those agencies specified in 44 U.S.C. 3502(10).

(e) "Task Force" means the Presidential Task Force on Regulatory Relief.

Sec. 2. *General Requirements.* In promulgating new regulations, reviewing existing regulations, and developing legislative proposals concerning regulation, all agencies, to the extent permitted by law, shall adhere to the following requirements:

(a) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action;

(b) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society;

(c) Regulatory objectives shall be chosen to maximize the net benefits to society;

(d) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and

(e) Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

Sec. 3. *Regulatory Impact Analysis and Review.*

(a) In order to implement Section 2 of this Order, each agency shall, in connection with every major rule, prepare, and to the extent permitted by law consider, a Regulatory Impact Analysis. Such Analyses may be combined with any Regulatory Flexibility Analyses performed under 5 U.S.C. 603 and 604.

(b) Each agency shall initially determine whether a rule it intends to propose or to issue is a major rule, *provided that,* the Director, subject to the direction of the Task Force, shall have authority, in accordance with Sections 1(b) and 2 of this Order, to prescribe criteria for making such determinations, to order a rule to be treated as a major rule, and to require any set of related rules to be considered together as a major rule.

(c) Except as provided in Section 8 of this Order, agencies shall prepare Regulatory Impact Analyses of major rules and transmit them, along with all notices of proposed rulemaking and all final rules, to the Director as follows:

(1) If no notice of proposed rulemaking is to be published for a proposed major rule that is not an emergency rule, the agency shall prepare only a final Regulatory Impact Analysis, which shall be transmitted, along with the proposed rule, to the Director at least 60 days prior to the publication of the major rule as a final rule;

(2) With respect to all other major rules, the agency shall prepare a preliminary Regulatory Impact Analysis, which shall be transmitted, along with a notice of proposed rulemaking, to the Director at least 60 days prior to the publication of a notice of proposed rulemaking, and a final Regulatory Impact Analysis, which shall be transmitted along with the final rule at least 30 days prior to the publication of the major rule as a final rule;

(3) For all rules other than major rules, agencies shall submit to the Director, at least 10 days prior to publication, every notice of proposed rulemaking and final rule.

(d) To permit each proposed major rule to be analyzed in light of the requirements stated in Section 2 of this Order, each preliminary and final Regulatory Impact Analysis shall contain the following information:

(1) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits;

(2) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, and the identification of those likely to bear the costs;

(3) A determination of the potential net benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms;

(4) A description of alternative approaches that could substantially achieve the same regulatory goal at lower cost, together with an analysis of this potential benefit and costs and a brief explanation of the legal reasons why such alternatives, if proposed, could not be adopted; and

(5) Unless covered by the description required under paragraph (4) of this subsection, an explanation of any legal reasons why the rule cannot be based on the requirements set forth in Section 2 of this Order.

(e) (1) The Director, subject to the direction of the Task Force, which shall resolve any issues raised under this Order or ensure that they are presented to the President, is authorized to review any preliminary or final Regulatory Impact Analysis, notice of proposed rulemaking, or final rule based on the requirements of this Order.

(2) The Director shall be deemed to have concluded review unless the Director advises an agency to the contrary under subsection (f) of this Section:

(A) Within 60 days of a submission under subsection (c)(1) or a submission of a preliminary Regulatory Impact Analysis or notice of proposed rulemaking under subsection (c)(2);

(B) Within 30 days of the submission of a final Regulatory Impact Analysis and a final rule under subsection (c)(2); and

(C) Within 10 days of the submission of a notice of proposed rulemaking or final rule under subsection (c)(3).

(f) (1) Upon the request of the Director, an agency shall consult with the Director concerning the review of a preliminary Regulatory Impact Analysis or notice of proposed rulemaking under this Order, and shall, subject to Section 8(a)(2) of this Order, refrain from publishing its preliminary Regulatory Impact Analysis or notice of proposed rulemaking until such review is concluded.

(2) Upon receiving notice that the Director intends to submit views with respect to any final Regulatory Impact Analysis or final rule, the agency shall, subject to Section 8(a)(2) of this Order, refrain from publishing its final Regulatory Impact Analysis or final rule until the agency has responded to the Director's views, and incorporated those views and the agency's response in the rulemaking file.

(3) Nothing in this subsection shall be construed as displacing the agencies' responsibilities delegated by law.

(g) For every rule for which an agency publishes a notice of proposed rulemaking, the agency shall include in its notice:

(1) A brief statement setting forth the agency's initial determination whether the proposed rule is a major rule, together with the reasons underlying that determination; and

(2) For each proposed major rule, a brief summary of the agency's preliminary Regulatory Impact Analysis.

(h) Agencies shall make their preliminary and final Regulatory Impact Analyses available to the public.

(i) Agencies shall initiate reviews of currently effective rules in accordance with the purposes of this Order, and perform Regulatory Impact Analyses of currently effective major rules. The Director, subject to the direction of the Task Force, may designate currently effective rules for review in accordance with this Order, and establish schedules for reviews and Analyses under this Order.

Sec. 4. *Regulatory Review.* Before approving any final major rule, each agency shall:

(a) Make a determination that the regulation is clearly within the authority delegated by law and consistent with congressional intent, and include in the **Federal Register** at the time of promulgation a memorandum of law supporting that determination.

(b) Make a determination that the factual conclusions upon which the rule is based have substantial support in the agency record, viewed as a whole, with full attention to public comments in general and the comments of persons directly affected by the rule in particular.

Sec. 5. *Regulatory Agendas.*

(a) Each agency shall publish, in October and April of each year, an agenda of proposed regulations that the agency has issued or expects to issue, and currently effective rules that are under agency review pursuant to this Order. These agendas may be incorporated with the agendas published under 5 U.S.C. 602, and must contain at the minimum:

(1) A summary of the nature of each major rule being considered, the objectives and legal basis for the issuance of the rule, and an approximate

schedule for completing action on any major rule for which the agency has issued a notice of proposed rulemaking;

(2) The name and telephone number of a knowledgeable agency official for each item on the agenda; and

(3) A list of existing regulations to be reviewed under the terms of this Order, and a brief discussion of each such regulation.

(b) The Director, subject to the direction of the Task Force, may, to the extent permitted by law:

(1) Require agencies to provide additional information in an agenda; and

(2) Require publication of the agenda in any form.

Sec. 6. *The Task Force and Office of Management and Budget.*

(a) To the extent permitted by law, the Director shall have authority, subject to the direction of the Task Force, to:

(1) Designate any proposed or existing rule as a major rule in accordance with Section 1(b) of this Order;

(2) Prepare and promulgate uniform standards for the identification of major rules and the development of Regulatory Impact Analyses;

(3) Require an agency to obtain and evaluate, in connection with a regulation, any additional relevant data from any appropriate source;

(4) Waive the requirements of Sections 3, 4, or 7 of this Order with respect to any proposed or existing major rule;

(5) Identify duplicative, overlapping and conflicting rules, existing or proposed, and existing or proposed rules that are inconsistent with the policies underlying statutes governing agencies other than the issuing agency or with the purposes of this Order, and, in each such case, require appropriate interagency consultation to minimize or eliminate such duplication, overlap, or conflict;

(6) Develop procedures for estimating the annual benefits and costs of agency regulations, on both an aggregate and economic or industrial sector basis, for purposes of compiling a regulatory budget;

(7) In consultation with interested agencies, prepare for consideration by the President recommendations for changes in the agencies' statutes; and

(8) Monitor agency compliance with the requirements of this Order and advise the President with respect to such compliance.

(b) The Director, subject to the direction of the Task Force, is authorized to establish procedures for the performance of all functions vested in the Director by this Order. The Director shall take appropriate steps to coordinate the implementation of the analysis, transmittal, review, and clearance provisions of this Order with the authorities and requirements provided for or imposed upon the Director and agencies under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Paperwork Reduction Plan Act of 1980, 44 U.S.C. 3501 *et seq.*

Sec. 7. *Pending Regulations.*

(a) To the extent necessary to permit reconsideration in accordance with this Order, agencies shall, except as provided in Section 8 of this Order, suspend or postpone the effective dates of all major rules that they have promulgated in final form as of the date of this Order, but that have not yet become effective, excluding:

(1) Major rules that cannot legally be postponed or suspended;

(2) Major rules that, for good cause, ought to become effective as final rules without reconsideration. Agencies shall prepare, in accordance with Section 3 of this Order, a final Regulatory Impact Analysis for each major rule that they suspend or postpone.

(b) Agencies shall report to the Director no later than 15 days prior to the effective date of any rule that the agency has promulgated in final form as of the date of this Order, and that has not yet become effective, and that will not be reconsidered under subsection (a) of this Section:

(1) That the rule is excepted from reconsideration under subsection (a), including a brief statement of the legal or other reasons for that determination; or

(2) That the rule is not a major rule.

(c) The Director, subject to the direction of the Task Force, is authorized, to the extent permitted by law, to:

(1) Require reconsideration, in accordance with this Order, of any major rule that an agency has issued in final form as of the date of this Order and that has not become effective; and

(2) Designate a rule that an agency has issued in final form as of the date of this Order and that has not yet become effective as a major rule in accordance with Section 1(b) of this Order.

(d) Agencies may, in accordance with the Administrative Procedure Act and other applicable statutes, permit major rules that they have issued in final form as of the date of this Order, and that have not yet become effective, to take effect as interim rules while they are being reconsidered in accordance with this Order, *provided that,* agencies shall report to the Director, no later than 15 days before any such rule is proposed to take effect as an interim rule, that the rule should appropriately take effect as an interim rule while the rule is under reconsideration.

(e) Except as provided in Section 8 of this Order, agencies shall, to the extent permitted by law, refrain from promulgating as a final rule any proposed major rule that has been published or issued as of the date of this Order until a final Regulatory Impact Analysis, in accordance with Section 3 of this Order, has been prepared for the proposed major rule.

(f) Agencies shall report to the Director, no later than 30 days prior to promulgating as a final rule any proposed rule that the agency has published or issued as of the date of this Order and that has not been considered under the terms of this Order:

(1) That the rule cannot legally be considered in accordance with this Order, together with a brief explanation of the legal reasons barring such consideration; or

(2) That the rule is not a major rule, in which case the agency shall submit to the Director a copy of the proposed rule.

(g) The Director, subject to the direction of the Task Force, is authorized, to the extent permitted by law, to:

(1) Require consideration, in accordance with this Order, of any proposed major rule that the agency has published or issued as of the date of this Order; and

(2) Designate a proposed rule that an agency has published or issued as of the date of this Order, as a major rule in accordance with Section 1(b) of this Order.

(h) The Director shall be deemed to have determined that an agency's report to the Director under subsections (b), (d), or (f) of this Section is consistent with the purposes of this Order, unless the Director advises the agency to the contrary:

(1) Within 15 days of its report, in the case of any report under subsections (b) or (d); or

(2) Within 30 days of its report, in the case of any report under subsection (f).

(i) This Section does not supersede the President's Memorandum of January 29, 1981, entitled "Postponement of Pending Regulations", which shall remain in effect until March 30, 1981.

(j) In complying with this Section, agencies shall comply with all applicable provisions of the Administrative Procedure Act, and with any other procedural requirements made applicable to the agencies by other statutes.

Sec. 8. *Exemptions.*

(a) The procedures prescribed by this Order shall not apply to:

(1) Any regulation that responds to an emergency situation, *provided that,* any such regulation shall be reported to the Director as soon as is practicable, the agency shall publish in the Federal Register a statement of the reasons why it is impracticable for the agency to follow the procedures of this Order with respect to such a rule, and the agency shall prepare and transmit as soon as is practicable a Regulatory Impact Analysis of any such major rule; and

(2) Any regulation for which consideration or reconsideration under the terms of this Order would conflict with deadlines imposed by statute or by judicial order, *provided that,* any such regulation shall be reported to the Director together with a brief explanation of the conflict, the agency shall publish in the Federal Register a statement of the reasons why it is impracticable for the agency to follow the procedures of this Order with respect to such a rule, and the agency, in consultation with the Director, shall adhere to the requirements of this Order to the extent permitted by statutory or judicial deadlines.

(b) The Director, subject to the direction of the Task Force, may, in accordance with the purposes of this Order, exempt any class or category of regulations from any or all requirements of this Order.

Sec. 9. *Judicial Review.* This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person. The determinations made by agencies under Section 4 of this Order, and any Regulatory Impact Analyses for any rule, shall be made part of the whole record of agency action in connection with the rule.

Sec. 10. *Revocations.* Executive Orders No. 12044, as amended, and No. 12174 are revoked.

Ronald Reagan

THE WHITE HOUSE,
February 17, 1981.

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Carter Activists Create "Baby OSHA"

by Hank Cox

While ex-President Jimmy Carter has packed his bags and fled the banks of the Potomac to more hospitable climes, some of the social-activist officials he brought into his government have burrowed into the bureaucracy to avoid dismissal.

Nowhere is this phenomenon more obvious than at the National Institute for Occupational Safety and Health (NIOSH) where two self-appointed champions of the working class have transformed a research agency into an enforcement arm of the Occupational Safety and Health Administration (OSHA) in defiance of the law and to the detriment of occupational health research.

The controversial administrators of NIOSH are Director Anthony Robbins and his deputy John Froines, dubbed "Bad Man and Robbin" by their subordinates. Robbins came to NIOSH via the health departments of Vermont and Colorado where his radical anti-business posture endeared him to labor union officials. Though he reportedly left both state agencies "in shambles," he was able to move onward and upward through his contacts with the Oil, Chemical, and Atomic Workers Union and the personal support of the late George Meany, president of the AFL-CIO.

Froines, who worked with Robbins in Vermont, was employed at OSHA when summoned to work with Robbins at NIOSH. Froines was one of the infamous Chicago Seven who disrupted the 1968 Democratic convention. Three years later, during the 1971 May Day riots in Washington, he was heard to howl outside the Department of Justice building: "I have not come to surrender. I have come to tear down the government." It did not seem likely at that time that he would pursue his goal at the taxpayers' expense.

Past and present officials of NIOSH accuse Robbins and Froines of a variety of offenses, ranging from mismanagement to malfeasance. The General Accounting Office has been asked by more than one Congressman to conduct an inquiry, but has yet to launch a full-scale investigation.

Background

Both NIOSH and OSHA were created by the Occupational Safety and Health Act; OSHA to enforce job safety and health standards, and NIOSH to conduct long-term research into the causes of occupational disease.

Congress took great care to separate NIOSH from OSHA, placing it in a separate department, because it knew OSHA would be subject to political pressures and unable to perform objective research.

Under its first leader, Dr. Marcus Key, NIOSH became a first-class research institute. Key and his successor, Dr. John Finklea, sought to fulfill the agency's mandates by producing scientific criteria on workplace health hazards, particularly those suspected to cause cancer. It published its findings in criteria documents which were sent to OSHA to serve as a basis for standards, as required by law.

Unfortunately, OSHA was unable to issue regulations as fast as NIOSH could produce criteria documents. From 1971-78, NIOSH sent about 100 documents while OSHA issued standards for only five or six.

The reason for the disparity is the complex nature of health hazards. Under the law, NIOSH is supposed to "develop criteria dealing with toxic materials and harmful physical agents and substances which will describe exposure levels that are safe for various periods of employment, including but not limited to the exposure levels at which no employee will suffer impaired health or functional capacities or diminished life expectancy as a result of his work exposure."

This task is extremely difficult. Though much progress has been made in industrial hygiene in recent years, no one can say exactly what levels of exposure to hazardous substances are safe. The evidence against health hazards, especially cancer-causing agents, is seldom concrete.

Many scientists believe individual susceptibility is a more important factor than exposure levels in the development of occupational disease. Also, few workers are exposed to only one hazard and the problem of multiple exposures greatly complicates the issue.

The criteria documents produced by NIOSH are comprehensive analyses of all evidence against specific hazards. They state what is known and what is not known. They are scientifically sound, but make weak documentation for OSHA standards that must be defended in court.

Despite the legal shortcomings, however, the documents are the most detailed information on health hazards that exists. They are widely used by corporate medical staff, union officials, and other health professionals as guides for reducing work exposures. When a health hazard is present in the workplace, a professional's first response is usually to see if there is a NIOSH criteria document on the subject.

The Regulatory Action Network: Washington Watch

Special Supplement

With or without an accompanying OSHA regulation, the criteria document is a valuable tool in the continuing campaign against occupational disease.

The Robbins Solution

When Eula Bingham was appointed OSHA Administrator in early 1977, she quickly voiced her disapproval of NIOSH's independent, scientific approach to dealing with occupational hazards. She wanted an end to the development of criteria documents which she considered an embarrassment to her agency.

Bingham also wanted NIOSH to back up her allegation that more than 30% of all cancers are related to workplace exposures. NIOSH had conducted its own research and concluded the real figure was between one and five percent. During public hearings on OSHA's proposed new cancer policy, Bingham's officials put pressure on NIOSH to raise its estimate. "We've got to get the figure up to justify the policy," one OSHA official told NIOSH representatives.

Dr. John Finklea, who was then director of NIOSH, balked at these demands. His stubborn refusal to compromise his agency's integrity for ideological purposes reportedly infuriated Bingham. Using her contacts with the White House and the labor unions, Bingham had Finklea removed and Robbins installed in his place.

Robbins quickly raised NIOSH's estimate of the impact of workplace exposure on cancer rates to conform to OSHA propaganda and shut off the flow of criteria documents. At the time, the institute had between 30 and 50 documents in various stages of development by private contractors, for which funds had already been appropriated. A single criteria document can cost up to $250,000.

NIOSH director Anthony Robbins.

One by one, the expensive and important documents were completed and sent to Robbins' office where almost all of them disappeared. Critics say Robbins has sent only one document to OSHA during his tenure at NIOSH. Robbins says the figure is three, though that is still far short of the 24 per year the institute had been sending. The case of the missing criteria documents has been a source of vigorous debate in occupational health circles for the past two years.

The suppression of this valuable information appears to be a product of the political-ideological orientation of Robbins, Froines, Bingham, and other social-activists who rose to power in the Carter Administration. Closely allied with militant labor unions and environmental groups, they seemed to regard their agencies as weapons in a class war against the private enterprise system. If the criteria documents could not be converted into regulations to use against business, they did not fit into the OSHA-NIOSH scheme of things.

The expensive documents with life-saving potential are collecting dust on NIOSH shelves. Tens of millions of tax dollars have gone down the drain. Robbins has reduced the criteria document staff from 35 to a skeleton crew of five. According to NIOSH insiders, the agency has sent very little scientific criteria of any kind to OSHA during Robbins' tenure. "If it won't lead to an OSHA standard, why bother?" one NIOSH official told *Washington Watch.*

New Directions

The all-important independence of NIOSH from OSHA, so painfully crafted by Congress and preserved by Key and Finklea, was an early casualty of the Robbins-Froines regime.

Deputy director Froines.

The result is a "Baby OSHA." As NIOSH rejected the mission assigned to it by Congress, it became a covert arm of OSHA's enforcement mechanism. Congress had given NIOSH the authority to enter workplaces and conduct investigations as part of its research function. Robbins has greately expanded this minor aspect of the NIOSH program to create an unauthorized inspection force working hand-in-hand with OSHA.

According to Phil Bierbaum, NIOSH deputy director for hazards surveillance, NIOSH inspectors automatically report all of their findings to OSHA and the labor unions. NIOSH on-site investigations, called health hazard evaluations, are used as "precursors" for OSHA inspections. If NIOSH finds what it believes to be a hazard, it orders the employer to make corrections. Then OSHA conducts a follow-up inspection and, if the alleged hazard has not been corrected, issues a willful and repeated violation citation carrying heavy penalties. In effect, NIOSH investigators are now OSHA inspectors.

This new emphasis has destroyed the institute's credibility as a scientific organization. Where once NIOSH could expect cooperation and assistance from industry, the agency now is often forced to seek Federal warrants to gain access to workplaces.

A spate of recent court decisions has upheld NIOSH's right to enter the workplace, view employee records, and obtain *ex parte* warrants. But the fact that NIOSH has been forced to go to court over these matters is itself evidence of the decline in the agency's prestige.

Fantasy Facts

Despite the curtailment of NIOSH research and his own meager experience in occupational health, Robbins is nevertheless undeterred from asserting himself as the expert on what should be done to reduce occupational disease.

His approach is awesome in its simplicity. Rather than spend the time and effort required to study a suspected hazard and develop control technology, Robbins suggests that "suspected" hazards be wholly eliminated, regardless of the impact on the economy and the loss of jobs.

A case in point is the problem of asbestos which is known to contribute to the development of cancer among workers exposed to large amounts, especially those workers who smoke cigarettes. For years, OSHA and NIOSH—along with business and labor—have wrestled with the question of how much exposure is dangerous. The problem is crucial, for asbestos is used in many consumer products. It is used in buildings as a fire deterrent, and its heat resistance and bonding properties make it uniquely suitable for automobile brakes.

In a speech before the AFL-CIO, Robbins said "There is no safe exposure limit for asbestos," a statement which cannot be true since asbestos is one of the most common minerals known to man and everyone has been exposed to it.

In a speech to an incredulous gathering of the Asbestos Information Association, Robbins said the U.S. must move to "halt completely" the use of asbestos because of its hazardous properties. To this pronouncement, David L. Kendall of Research Triangle Institute responded that while there is "no absolutely necessary use of asbestos, there is no absolutely necessary use of the automobile either."

A New Approach

In the absence of criteria documents, Robbins and Bingham came up with a new system for standards development. According to ex-NIOSH officials, OSHA decides—with advice from the unions—what the exposure level for a given substance should be, and NIOSH tries to scrape up some "scientific data" to back it up.

This cart-before-the-horse approach is probably the one creative contribution made by the activist OSHA-NIOSH cabal, but its utility to occupational health is questionable. "When conclusions are drawn before the science is in," former NIOSH deputy director Ed Baier says, "something is amiss."

What little information NIOSH has produced under Robbins and Froines has come in the form of "hazard reviews" and "current intelligence bulletins" that provide some useful information but do not begin to address the critical question of safe exposure levels. Variously described as "scanty" and "shabby" by leading experts, these reports appear to be more designed to frighten workers than accomplish any scientific purpose.

The cadre of top-flight scientists assembled by Key and Finklea in the early days of NIOSH have fled the agency in disgust at the antics of Robbins and Froines. According to one report, there is now not one board-certified industrial hygienist in a position of power at NIOSH where once there were 40.

Professional Protests

Not surprisingly, the cavalier attitude of Robbins and Froines to scientific method has aroused animosity in occupational health circles. One particularly nasty furor arose over NIOSH's studies of the hazards of beryllium.

A former epidemiologist for NIOSH, David Bayliss, who was among those who fled the Robbins regime, has taken strong offense to efforts of NIOSH to rewrite the record and establish beryllium as a human carcinogen in defiance of scientific findings. In a sharply-worded letter to the head of the Center for Disease Control, Bayliss charged that NIOSH was trying to "provide support of the proposed OSHA standard and of the position advanced by OSHA that beryllium should be treated as a human carcinogen." According to Bayliss, "the entire study should be transferred out of NIOSH and placed in the hands of a truly independent research organization whose scientific integrity is unblemished and whose objectivity is uncompromised." Clearly Bayliss, who once served as assistant chief of NIOSH's biometry section at its Cincinnati laboratory, does not have much faith left in the institute's credibility.

Another tiff involved NIOSH and the American National Standards Institute (ANSI). After participating on an ANSI committee developing a voluntary standard for use of respirators and approving the final rule, NIOSH changed its mind and criticized the standard as inadequate. According to William H. Revoir, chairman of the ANSI committee, the criticisms made by NIOSH were "based on very little research, the use of some incorrect data, questionable assumptions, and the use of some improper methods of calculations." Other members of the ANSI panel shared Revoir's opinion of NIOSH's criticisms.

Other Missing Reports

In addition to the missing criteria documents, other important NIOSH reports have disappeared. One was a major study of the Bunker Hill Smelter in Idaho, a massive investigation upon which NIOSH spent more than $500,000 of the taxpayers' money. The study was completed in 1976, but NIOSH has yet to release a final report.

Former NIOSH director Dr. John Finklea acknowledges it could have taken NIOSH two years or so to analyze the data, but that does not explain why the report is still unissued in 1981.

Of greater significance is the Standards Completion Project, a long-term effort of NIOSH to supplement OSHA's Threshold Limit Values for 380 toxic substances. Many occupational experts believe that up to 80% of worker exposures to hazardous substances are related to these 380 toxic agents. OSHA has exposure limits on the books but nothing more. NIOSH began a project to supplement these limits in 1976, developing work practice guides, sampling methods, and the usual information employers need to control exposure. Up to $10 million was spent on the project, but Robbins has released nothing.

NIOSH insiders say it is the same old problem of OSHA not wanting the information. If OSHA doesn't want it, Robbins doesn't send it. The guidelines prepared by NIOSH would be extremely valuable to employers whose workers are exposed to the 380 toxic agents. Like the criteria documents, they are collecting dust on NIOSH shelves.

Robbins also stopped publication and distribution of NIOSH's "Worker Safety and Health Guides" and "Safe Practices Manuals" which were designed to help small businesses reduce exposures. The elimination of this inexpensive and useful program is inexplicable unless it is another example of the pro-union tilt of Robbins and Froines. Small businesses are usually non-union.

Eccentric Behavior

Some observers theorize that Robbins and Froines have turned their backs on occupational health research because it takes too long and the results do not make good news stories. Anti-business rhetoric makes better news copy than quiet, painstaking research, especially when the results of that research do not support their pro-union biases.

More importantly, criteria documents are peer reviewed by scientific panels, a process that could be embarrassing to an institute that reaches conclusions prior to conducting

Former Director Key Looks Back . . .

As conceived by Congress, NIOSH is supposed to be a high-caliber research institute, not an enforcement agency, according to Dr. Marcus Key, the first director of the institute. Key, who served at NIOSH from 1971-1974, is now professor of occupational medicine at the University of Texas School of Public Health in Houston.

There should be regular feedback from OSHA enforcement to NIOSH research, Key said. NIOSH and OSHA should work together to develop priority lists of hazardous substances for study.

In the future, NIOSH will need to produce criteria documents, but not on the same scale as before, Key said. Future studies probably will not be devoted to single agents, but rather to types of industry and operations and to classes of substances.

Also, NIOSH will have to address issues of cost-benefit analysis and feasibility in future studies, Key said. "Scientists don't like cost-benefit analysis, but in the wake of the Supreme Court's decision on OSHA's benzene standard, they will have to get involved in it," he said.

NIOSH cannot stick with the dose-response approach to studying hazards, Key said. In the future, criteria documents may be part of industry-wide studies. Many top-notch occupational health scientists have never been in an industrial plant, he added. To that extent, they are "babes in the woods." Participation in industry-wide studies will enable them to gain practical experience in the workplace.

Key added that he hated to see NIOSH become politicized. "I hope professionalism will win out over the adversary relationship," he said. □

research.

As friends of Jane Fonda, Tom Hayden, and others in the anti-nuclear power movement, Robbins and Froines are very interested in nuclear power plants. They possess little expertise in the subject and NIOSH is expressly forbidden by the Occupational Safety and Health Act from interfering with authority of other agencies. Nuclear power plants are under the authority of the Nuclear Regulatory Commission and thus out of bounds for NIOSH, but "Bad Man and Robbin" are undaunted by such legal refinements.

When the nuclear accident occurred at Three Mile Island in Pennsylvania, Robbins quickly dispatched a NIOSH investigator to the scene. What the investigator was supposed to do is anyone's guess. In the words of one NIOSH official, he "mucked around and asked stupid questions," much to the annoyance of the Nuclear Regulatory Commission, the Bureau of Radiological Health, and other government agencies that had a legitimate reason to be there.

According to one eyewitness, Robbins summoned a subordinate to give him a quick briefing on nuclear energy. Robbins than called the Pennsylvania health commissioner and demanded the immediate evacuation of the Three Mile Island area. Fortunately, the state official had sufficient presence of mind to ignore the demand which Robbins had no authority to make.

Froines has reportedly used his office and facilities to assist in political campaigning, albeit not on behalf of Jimmy Carter. The object of Froines' admiration and support was Governor Jerry Brown of California. Three former NIOSH officials have confirmed to *Washington Watch* that Froines spent an inordinate amount of time on the telephone to California, at government expense, in stategy sessions with other Brown supporters.

Another questionable Robbins move was the assignment of a NIOSH official, Dr. Joseph Wagoner, to perform full-time work for the Environmental Defense Fund for two years. The assignment of a Federal employee drawing government salary to work for a private sector activist group is highly irregular. NIOSH officials report they know of no other incident of a public health officer being so used.

Robbins also has reportedly instructed NIOSH personnel to conduct research into the value of transcendental meditation as a means of relieving stress among white collar employees. Considering Robbins' own allegations about the seriousness of workplace carcinogens, this does not appear a worthwhile expenditure of the agency's resources.

Robbins' latest ploy is to extend his influence by getting involved in the much-publicized "Superfund" that the Environmental Protection Agency will administer to clean up chemical waste sites. Congress gave NIOSH no role to play in this project, but once again the lure of publicity has tempted him beyond his agency's jurisdiction boundaries.

A Private Consultant's Report . . .

In late 1978, NIOSH retained a private contracting firm—Policy Research, Inc. (PRI)—to identify problems with criteria documents and recommend improvements in the program that would enhance their effectiveness in reducing occupational disease.

The viewpoints of 45 occupational safety and health experts from labor, industry, academe, and Federal and state government agencies were solicited. Their comments were analyzed and summarized in a report prepared by PRI.

Acknowledging that the criteria documents "make a helpful contribution to the national effort to protect the health and well-being of the workers," the report suggested the criteria document program be divided into two parts: one to serve as a basis for OSHA standard, and the other to provide information to concerned groups such as OSHA, industry, and labor.

While some of the experts thought OSHA's inability to issue standards in response to criteria documents meant the documents were not useful for that purpose, others thought it had more to do with OSHA's own internal problems. Many of the experts reported they had used the documents as reference sources for information on health hazards, and that they were very useful for this purpose, regardless of their utility in standards-setting.

Almost all of the experts agreed that criteria documents should contain information on what the workers can do to protect themselves while on the job, and that this section should be written in understandable language so it can be used by workers and small businesses.

The experts were very critical of NIOSH's on-site investigations—health hazard evaluations—recommending that such visits be conducted by "knowledgeable people," which, they said, was not standard NIOSH practice. □

Burrowing In

While sabotaging NIOSH's long-term health research program and dabbling in nuclear energy and transcendental meditation, Robbins and Froines took care to insulate themselves from possible removal in the wake of election reverses such as occurred on November 4. Neither is a Schedule C political appointee and neither can be easily fired by the Reagan Administration.

Froines is a GS-15 in the Civil Service. He can be transferred but not fired. The taxpayers will be supporting him indefinitely.

Robbins has the best deal of all. With union backing, he obtained the status of Assistant Surgeon General and membership in the Commissioned Corps, a quasi-judicial military organization available only to Public Health Service officers. He has the status of an 0-7, equivalent to a one-star general, and draws a salary in excess of $70,000 a year, much of it in tax-free medical incentive and housing allowances.

Robbins has vowed to fight any efforts to remove him from office. His wife is a lawyer in the general counsel's office of the Department of Health and Human Services, of which NIOSH is a part, so he knows the rules as well as anyone.

Epilogue

As of this writing, Robbins and Froines are still in command at NIOSH. Unlike OSHA, NIOSH is far down in the bureaucratic chain and draws little attention from the media. Also, the issues are so complex that few people outside the occupational health profession are aware of what they have done to the institute.

Ironically, Robbins and Froines draw their political support from the same unions that orchestrated the smear campaign against Sen. Richard Schweiker (R-PA) last year when the Senator introduced a bill to curb OSHA's power. Schweiker is now Secretary of Health and Human Services. Robbins and Froines are his employees.

Apparently more concerned with his inflated salary than his leftist ideology, Robbins is sounding more like a conservative Republican every passing day. In a January 19 speech in Texas, he said NIOSH and OSHA will no longer be able to rely on regulatory powers to fulfill their missions, but will have "to work harder to demonstrate significant risk" of health hazards.

In the light of the Supreme Court's benzene decision of last summer, that is an understatement. In the future, OSHA will need NIOSH's research capability more than ever. In order to protect workers from hazardous substances, OSHA will have to prove the substances are in fact hazardous. To obtain that information, NIOSH will have to resume its research role and, more importantly, regain its reputation for scientific integrity. That is not likely to happen with Robbins and Froines in control. □

A hard apprenticeship for Labor's Donovan

Can an ardent salesman for a conservative Republican President succeed as Labor Secretary? Raymond J. Donovan, President Reagan's new Labor Secretary, says he can. But he faces an uphill battle. Donovan's experience and his instincts indicate that he will be a skilled manager and will do well in promoting smooth collective bargaining, one of the three key responsibilities of the department. But in the other two major areas, manpower development and regulation, Donovan has barely begun to learn. And he still lacks the experienced subordinates he will need if he is to take charge of the politically sensitive department.

Donovan survived bitter confirmation hearings in which allegations of deals with organized crime were declared unsubstantiated. Now he must walk what a Republican former Labor Secretary calls a "very difficult tightrope" between Reagan and labor. His first attempt to "build bridges," on Feb. 20, was an awkward one. After meeting with the AFL-CIO's executive council, he said, somewhat nervously, that perhaps half of the council at least partly supported Reagan's new economic plan. But Lane Kirkland, the federation's president, said Donovan was "mistaken" and privately called his overselling of the council's support "fairly miserable."

UPI

Secretary Donovan: Controversial aides and an early run-in with the AFL-CIO.

Not a 'referee.' But the soft-spoken Donovan has an ambitious agenda, and he is turning first to issues with which he feels most comfortable, improving the management of his department. "We want to do what you do with any business, get the lines of communication running out and down into the bowels of the department," he says. Some of this must wait, however, because Donovan and the White House have yet to name an Under Secretary and three assistant secretaries, appointments that he hopes will be made within a few weeks.

Donovan hopes to offset his first run-in with the AFL-CIO with a bargaining approach he hopes will please labor. "Our job is to facilitate bargaining, to lend our offices and services, but not to become a referee," Donovan told BUSINESS WEEK. He has a reputation as a skilled bargainer among the building trades, with whom he negotiated in New Jersey as executive vice-president of Schiavone Construction Co. He feels that in most cases "there is not enough communication in advance" of negotiations, and he will work behind the scenes to remedy this and push for the creation of labor-management committees.

Donovan lacks experience in key areas: Manpower development and regulation

But Donovan's positions on other matters of Labor Dept. policy seem unlikely to ingratiate him with workers, whose interests he is charged by law with protecting. He admits that he is still learning on issues of employment and training. Nevertheless, he wants to eliminate more than 300,000 public service jobs for disadvantaged workers and put more federal money into business-sponsored programs that train these workers for jobs in private companies. Donovan sees a "great opportunity" to rewrite the Comprehensive Employment & Training Act (CETA) when it comes up for renewal in 18 months to make it more "result oriented." He also plans to cut Labor's budget by at least $6.8 billion, or 18%.

On regulation, Donovan echoes Reagan. "We have been on a regulatory binge," he says, promising to change the Occupational Safety & Health Administration so that it creates "less confrontation" with business. He also promises strong prosecution of union officials who violate federal labor law.

Controversial aides. Appointments the new Secretary has made so far are also attracting criticism. Despite the reluctance of some White House officials, he insisted on Albert Angrisani, a 31-year-old former loan vice-president at Chase Manhattan Bank and a fellow campaigner for Reagan in New Jersey, to be assistant secretary for employment and training. He also chose Thorne G. Auchter, 35, a construction executive from Jacksonville, Fla., to administer OSHA. Neither man is an expert is his new field. But Donovan chose both because he thinks they are good managers, which, he says, is more important than what either "knows about the product."

Donovan initially gained points with Kirkland and other union leaders by promising to emulate James P. Mitchell, President Eisenhower's Labor Secretary, who was extremely popular with organized labor. Mitchell contemporaries point out that he, too, chose his aides primarily for their management ability. But Mitchell was also well-known to labor when he was appointed in 1953, and he was a strong advocate for worker interests, earning the title of the "social conscience" of the Eisenhower Administration. "If Donovan wants to be like Mitchell, he's got his work cut out for him," says Walter C. Wallace, a top Mitchell aide for seven years who is now in private business. "Mitchell was his own man in every way." ■

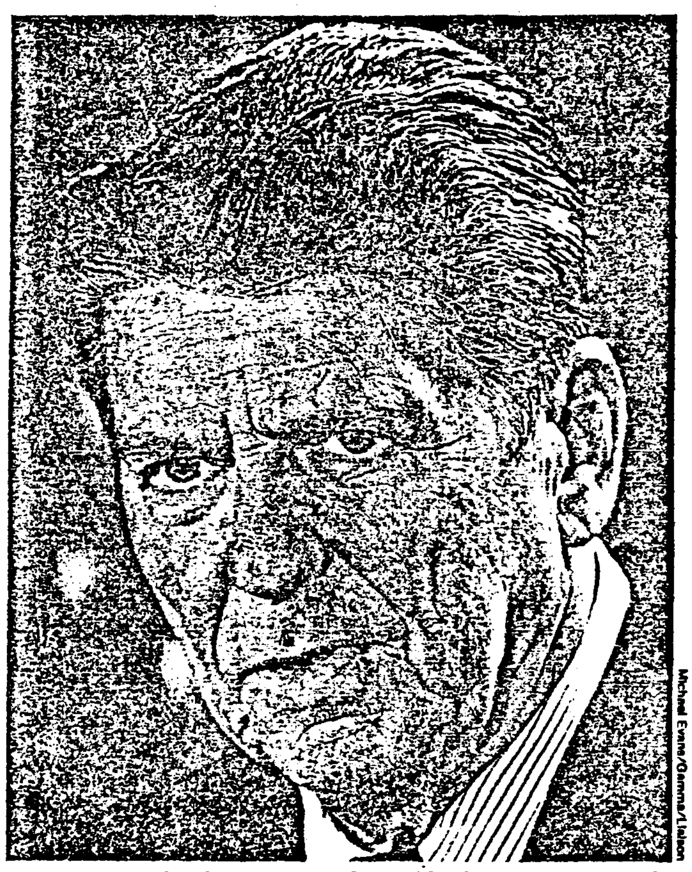
DEREGULATION

A fast start for the Reagan strategy

"Government regulations impose an enormous burden on large and small business in America, discourage productivity, and contribute substantially to our current economic woes.... It is my intention to curb the size and influence of the federal establishment"

Less than six weeks after taking office, the Reagan Administration is bringing into focus its strategy for combating a problem that candidate Reagan proclaimed one of the most serious besetting the U. S.: overregulation. As it begins its war against the tens of thousands of rules, restrictions, and requirements that affect American business, the White House is mindful that the success of the Reagan Presidency will be measured in large part by its ability to reverse the half-century-long wave of federal intervention into nooks and crannies of American enterprise.

Of course, most recent Presidents have decried the panoply of business regulation that hampers efficient production and job creation. Former President Jimmy Carter even made significant strides in deregulating certain industries—airlines, trucks, railroads, and financial institutions. The new Administration will seek to remove still more price and entry restrictions, but its eye is on bigger game: the pervasive social regulation that affects business large and small. Reagan is betting that he can take the political heat and risk of slowing social progress in such areas as workplace safety and health, equal employment, environmental cleanup, and consumer protection.



Michael Evans/Gamma/Liaison

The core of the Administration's regulatory philosophy is that government intrusion in the private sector is justifiable if—and only if—it produces benefits that outweigh the costs and the regulation chosen is the least expensive of the alternatives. These economic notions provide the standard against which to measure the ultimate success of the effort to deregulate. And they represent the personal views of the most deregulation-minded President ever to hold office. Reagan has felt for more than 20 years that most regulation is intrinsically burdensome, inefficient, and counterproductive. As one close aide describes Reagan's frame of mind: "He's seen the way regulations haven't worked. You don't have to read that in a book."

Although Reagan believes that the case against most regulation can ultimately be made on economic terms, cost-benefit analysis—a technique economists use for measuring the costs and benefits to society of government programs—is inherently uncertain and hugely time-consuming. For that reason, the Administration has moved quickly to seize control of the regulatory process.

On Jan. 29, Reagan froze all "midnight" regulations that became final but not effective in Carter's last days. Then on Feb. 17, Reagan issued an executive order concentrating in the Office of Management & Budget a veto-and-rewrite power over executive agencies; the order also requires the agencies to perform an extensive economic analysis of present and proposed rules. Further, Reagan designated Vice-President George Bush to lead a White House task force to oversee the deregulation effort.

The Administration's strategy for regulatory control boils down to this: appoint regulators who clearly support Reagan's determination to reduce government intervention; use the power of the executive order and seek budget cuts to rein in agencies under the President's direct control; and ask Congress to enact fundamental reforms that would also apply to independent agencies not under executive control.

Obviously, all this will not be easy. There is politically potent opposition to virtually every change in rules that Reagan wants to make. The first test is the forthcoming debate over renewal of the Clean Air Act and of sewage treatment provisions of the Clean Water Act. Nevertheless, a combination of factors gives Reagan a better-than-even chance of achieving substantial regulatory reform:

- The mood in Congress, where many of the reforms must be approved, is running in Reagan's favor. With a Republican Senate and a relatively conservative Democratic House, even many liberal legislators are now ready to prune the bureaucracy.
- Unlike Carter, Reagan owes little to the traditional constituencies of regulation—unions, environmental interests, and consumer groups. He has much more political freedom, for example, to

These principles will guide Reagan's deregulation push

- ➤ Impose regulations only if benefits exceed costs
- ➤ Choose least-expensive methods to achieve regulatory goals
- ➤ Eliminate rigid compliance rules by relying on economic incentives and penalties to encourage companies to meet standards
- ➤ Tailor regulatory burdens to the size and nature of companies affected
- ➤ Reduce unnecessary paperwork and regulatory delays
- ➤ Shift regulatory control to the states
- ➤ Support 'sunset' legislation requiring Congress periodically to assess the current relevance of regulatory laws
- ➤ Consider supporting legislation making it easier for Congress or the President to veto or delay regulations

apply cost-benefit analysis to proposed rules.

■ Business groups are firmly behind Reagan's deregulation goals and are poised for a massive lobbying effort to persuade Congress to limit the authority of such bodies as the Environmental Protection Agency.

Reagan's regulators and their initial actions reflect the ideological goals of his Administration. Housing & Urban Development Secretary Samuel R. Pierce Jr., for example, froze all his department's proposed and pending rules two days after the inauguration and seven days before the President's governmentwide freeze. Likewise, Labor Secretary Raymond J. Donovan has already withdrawn a proposed rule that would have required the labeling of all hazardous workplace materials.

Much of the detailed work will be in the hands of the regulators. "The new appointees will solve a lot of problems, problems we hope will never surface to the task-force level," says task-force counsel and Bush aide Boyden Gray.

For this reason, potential appointees to the Reagan Administration have undergone personnel screenings unprecedented in their ideological emphasis. For instance, John W. Hernandez, newly named deputy administrator of the EPA, spent four hours being grilled by domestic policy chief Martin C. Anderson and at least four more with OMB officials.

"We want to make sure each individual is philosophically committed to making the decisions he will have to make when he gets in the job," White House personnel director E. Pendleton James says. "Once he's appointed and once he's confirmed, we're locked in."

But drastically changing the goals of agencies with thousands of employees in both Washington and field offices around the country will take more than an expression of adherence to the new regulatory philosophy by top administrators. For that reason, the second prong in Reagan's deregulation strategy gives his White House more official control over agencies and their bosses than any President has ever had. "Sometimes you don't know your appointees until after they're in," says a White House official.

This control was made concrete by Reagan's executive order. It gives the OMB the power to rewrite or veto rules that are in early stages of proposal by executive agencies such as the EPA, OSHA, and the National Highway Traffic Safety Administration. By one estimate, these rules account for 70% of the costs imposed on the private sector by regulation. Although the legality of putting those agencies so firmly under the thumb of the White House will almost certainly be challenged in the courts, Administration officials maintain that a law Congress enacted last fall reducing government paperwork gives the White House that authority.

Enlisting the help of Congress in his antiregulation drive, Reagan will soon propose revamping the process by which rules are created. He wants his executive order enacted in a statute that will extend OMB review authority to independent agencies, such as the Federal Trade Commission and the Equal Employment Opportunity Commission.

A bill that would have required agencies to analyze the economic effects of proposed major rules died in the 96th Congress, but this year's legislators are expected to be more receptive to virtually any move

Reagan's regulatory hit list

Agency	Action
Environmental Protection Agency	Move away from technology-forcing standards, such as smokestack scrubbers for all coal-fired plants, toward performance standards
Occupational Safety & Health Administration	Emphasize personal-protection devices rather than costly engineering controls to achieve workplace safety
Consumer Product Safety Commission	Emphasize dangerous-product warnings over product regulation
Food & Drug Administration	Review the law that prohibits food additives that may cause cancer—no matter how low the risk
Agriculture Dept.	Ease meat-labeling requirements
National Highway Traffic Safety Administration	Postpone rule requiring air bags or passive seat belts in autos
Energy Dept.	Relax requirements for utilities and industry to convert to coal power
Interior Dept.	Accelerate leasing of mineral and energy resources on federal land
Nuclear Regulatory Commission	Streamline licensing of nuclear power plants
Securities & Exchange Commission	Prosecute major offenders vigorously rather than file numerous cases now often settled out of court
Urban Mass Transportation Administration	Review requirement that subways and buses be fully accessible to the handicapped
Federal Energy Regulatory Commission	Speed up decontrol of natural gas
Equal Employment Opportunity Commission	Look for case-by-case discriminatory practices rather than seek industrywide patterns of discrimination

to soften the economic impact of regulation. "Gradually, there has been a realization that regulation can damage very important interests. Even the more progressive members of my party understand that," says Senator Carl M. Levin (D-Mich.).

However, the difficulties that tripped up the legislation last year may persist and thereby impair the chances of Reagan's new proposals. Congress was not averse to reining in the regulators, but it wanted its own control over specific regulations. And the so-called legislative veto, which in its most extreme form would permit either house to overturn without the signature of the President any proposed rules, is expected to be attached to the regulatory reform bill again this year. The Administration may thus find itself forced to share power with the legislative branch to get its procedural changes.

Any regulatory-reform legislation that passes Congress, moreover, is likely to include provisions requiring agencies to perform cost-benefit analysis on proposed rules. This is politically controversial. Environmentalists and others contend that the benefits of a particular regulation—fewer cases of cancer or cleaner air, for instance—cannot be mathematically balanced against the cost of achieving those socially desirable goals.

Reagan's economic advisers agree that some benefits of regulation cannot be expressed in dollar figures, but they deny that cost-benefit analysis is intended to be a mere numbers game. "To be against cost-benefit analysis is to be in favor of regulating with less information," says James C. Miller III, administrator of the OMB's Office of Information & Regulatory Affairs and executive di-

Bush: 'We must get this country back to work'

As one of his first official acts, President Reagan created a Presidential task force on regulatory relief and named Vice-President George Bush to head it. Serving with Bush on the regulatory task force are seven members with Cabinet rank. Following are excerpts from an interview in which Bush discussed the Administration's regulatory goals with Herbert W. Cheshire, deputy bureau chief of the McGraw-Hill World News bureau in Washington, and correspondent Anne Swardson.

What strategy will the Administration follow in trying to achieve its goal of lessening regulation?

The goal is regulatory reform and relief, obviously, and the strategy is simply to go through the channels available. That would include executive orders, legislation, and working with various individuals in various levels of the federal bureaucracy. We think something can happen with this task force. We aren't going to write a 500-page report and file it.

What will the task force be doing in the next few months?

Drafting a legislative package of regulatory reform proposals and formulating executive orders to the agencies, which the President will enthusiastically sign . . . [and] working with people who share the President's view on excessive regulation. So some of [the solution] is people, some of it is executive action, some of it is law.

The past relationship between business and regulatory agencies has been adversarial. What's the best word for what that relationship is going to be now?

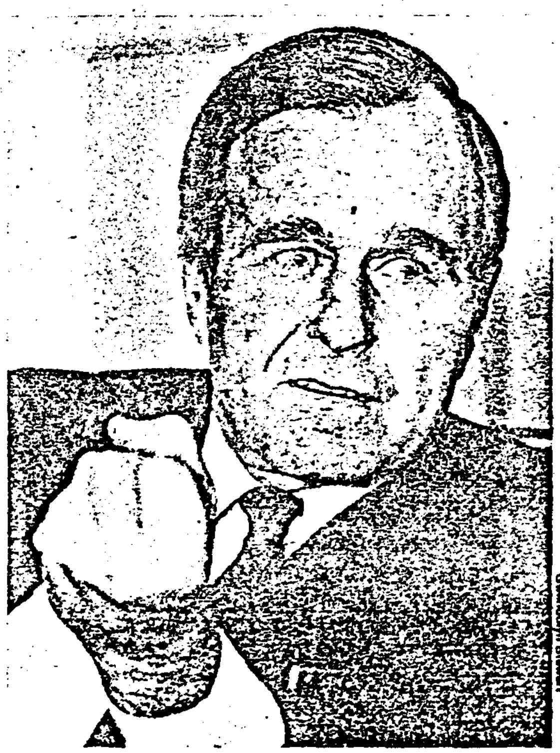
We're going to welcome suggestions, not just from businesses that are regulated but [also] from those groups which have other interests as their prime concern. We are going to act in an evenhanded fashion as best we can and do things to encourage real growth and real productivity. So I would expect that business should be excited about this prospect.

Labor, environmental, and consumer groups are already gearing up for opposition drives.

They geared up for an opposition drive against us in the election, a strong one; a lot of them, not all. But many of these people are reasonable. . . . We've already met with some of the top labor leaders. They feel very, very strongly about certain provisions of laws affecting safety in working places. But every single one has acknowledged that in some areas there have been excesses.

It's our perception that everybody in this country knows that we've got some enormous economic problems and that we've got to compete abroad and we've got to produce again. Even those in some of the special interest groups you're talking about must understand that. We're not looking for a fight. We're not out to rape, pillage, or plunder the environment or anything else. And it's not all pure dollars and cents. There are human components to be considered. But we must get this country back to work.

"The goal is regulatory reform and relief. . . . We aren't going to write a 500-page report and file it"



When might we see results from the Administration's deregulation drive in terms of helping the economy—one year, two years?

It all depends. If a regulation can be removed that totally holds up the construction of some kind of productive facility, it could happen pretty fast. In general, I think regulatory relief will have a rather quick impact on the economy. Part of it will come from the anticipatory effect. If an investor is convinced the President is really determined to bring regulatory relief, that in itself will have an effect.

rector of the Bush task force. "Cost-benefit analysis is not a panacea, but it's way ahead of what we have today," Miller says.

None of these changes will come without a tough fight. The AFL-CIO's Industrial Union Dept. (IUD), for example, has joined several environmental groups to form political action committees in 12 states and to organize grass-roots backing to publicize the benefits of regulation. Says Howard D. Samuel, president of the IUD: "We think there are a lot of people in Washington who are not aware of the constituent support" for health and environmental laws.

Reagan will also find that changing regulatory laws already on the books—especially when it comes to undoing such hard-won past compromises as the Clean Air Act amendments of 1977 and scheduling the phaseout of natural gas price controls—will open a Pandora's box on Capitol Hill. "The laws and regulations we now have represent the perfect expression of the political conflict of ideas and pressures," says a former Carter Administration official. "Can Ronald Reagan really develop a national constituency to override the provincial and sectoral political power centers?"

Headed for court

Nor is modifying existing regulations an easy process. If a rule has become final—and OSHA's $1 billion standard to control workplace lead exposure is a prime example—it can be changed only through the same administrative process by which it was created: a series of proposals, hearings, written comments, and negotiations that often takes years. "Our major problems are with regulations that are already in place," says Reagan health adviser and Washington (D.C.) lawyer C. Joseph Stetler.

The Reagan deregulators will ultimately fight their battles in an arena until now used primarily by industry in opposing regulations: the courts. Congress has written many of the major environmental and health laws in detailed fashion specifically to deny the implementing agencies room to maneuver. These laws also open the way for citizens to complain to the courts if the statutes' mandated goals are not fully carried out. Several laws administered by the EPA, for example, dictate the levels of technology required to achieve clean air or water, instead of leaving the method to the agency's discretion. Many of these same laws include provisions making it easier for people to sue. "It's a serious possibility that the courts could prevent the Administration from achieving its deregulatory ends," says Ronald Levin, administrative law expert at Washington University in St. Louis.

Within reason, however, Reagan regulators may be able to circumvent court scrutiny on changing a rule by enforcing the regulation little or selectively; judges are generally reluctant to override prosecutorial discretion.

Important as the debate over procedure is, the make-or-break issues for specific industries will come as Congress moves to rewrite each particular statute and reform particular agencies. Especially significant are the 1970 Clean Air Act and its 1977 amendments, together the most sweeping environmental statute ever enacted by Congress. The Clean Air Act has spawned hundreds of regulations, and hundreds more are in the offing. It has significantly reduced air pollution—but, if industry is to be believed, at the price of thousands of jobs and widespread plant closings.

The steel and coal-mining industries maintain that complying with the law forces companies to invest huge sums of cash that could be spent on modernizing plants. William J. De Lancey, chairman of Republic Steel Corp., says that environmental spending last year equaled $20 for each ton of steel the company produced. In 1977 the industry's cost for

How lawsuits might slow deregulation

Even if, as expected, the executive branch curtails its role as overseer of business, it does not follow that companies are off the regulatory hook. The courts will almost certainly find private litigants calling on them to act as substitutes to enforce existing rules and regulations.

This would not be a new trend. Increasingly during the past decade, Congress and the courts have been inviting individual citizens to sue corporations to redress violations of regulations. A number of lawyers in diverse fields indicate now, however, that private parties will more and more accept that invitation in the years immediately ahead.

In pollution controversies, for example, "the fact that the federal government is cutting back its litigation may very well increase private litigation," predicts Washington attorney James A. Hourihan, chairman of the environmental litigation committee of the American Bar Assn. Winn Newman, general counsel of the International Union of Electrical Workers (IUE), expects the next big frontier in sex discrimination cases—equal pay for comparable women's and men's jobs—to be pushed by private litigants rather than by the Equal Employment Opportunity Commission. And a host of other laws—including truth-in-lending and pension security—give private parties the explicit right to sue.

A preferable adversary. The concept of private attorneys general dates back to the Clayton Act of 1914 and is so well embedded in antitrust law that last year individual plaintiffs brought 37 such cases for every one brought by the federal government. During the 1970s the notion gained general popularity in Congress. Thus, when the lawmakers in 1974 gave the Federal Trade Commission new power to regulate product warranties, they also gave consumers authority to sue directly manufacturers who do not live up to FTC rules. Amendments to the Equal Credit Opportunity Act opened the way in 1976 for suits by borrowers whose loans were rejected because of sex bias. Amendments to the federal product safety law also encourage private action. Now, expecting soft government enforcement in other areas, some activists are suggesting that litigation will test whether citizens can bring private suits under such laws as the Occupational Safety & Health Act, where enforcement has generally been assumed to be a government monopoly.

For corporations, there are clear differences between fighting the government and a private plaintiff. Most who have been involved in both kinds of battles opt for the latter. "I would rather face a private litigant any day than the government," says Clearwater (Fla.) lawyer F. Wallace Pope Jr., co-director of the publications division of the ABA's litigation section. He finds that private litigants want to bring cases to some conclusion, while "the government's just like a giant slug. It just sits there."

More important, the government usually tries to establish a general principle, forcing a single target company to defend a practice for the entire industry. "In government litigation, you generally can't just pay them off and get rid of them. They want a lot more than that," explains Peter B. Freeman of Chicago, an expert on consumer litigation. A broad order won by the government may force a company to alter the way it hires, bills, or prices. That result may be far more expensive than the consequences of a private suit, in which, says Mozart G. Ratner, a Washington (D.C.) labor lawyer, "private plaintiffs are understandably more interested in the bucks."

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Calculating the cost of government regulation

In his televised report to the nation on the economy on Feb. 5, President Reagan said that "altogether, regulations . . . add $100 billion or more to the cost of the goods and services we buy."

Reagan's estimate—which is highly controversial—had its genesis in the computations of Robert DeFina, an economist formerly with the Center for the Study of American Business at Washington University in St. Louis and now at the Federal Reserve Bank of New York. According to Murray L. Weidenbaum, the new chairman of the Council of Economic Advisers and a former director of the St. Louis center, DeFina made a "pioneering effort" in 1976 to compute an aggregate measure of the total cost of regulation.

In the book *The Future of Business Regulation: Private Action and Public Demand*, Weidenbaum wrote that DeFina "culled from the available literature the more reliable estimates of the costs of specific regulatory programs. By using a conservative estimating procedure, he put the figures on a consistent basis and aggregated the results. He found the total [for 1976] to be approximately $66 billion, consisting of $3 billion of taxpayer costs to operate the regulatory agencies and $63 billion, or 20 times as much, for business to comply with regulations. Thus, on the average, each dollar that Congress appropriates for regulation imposes an additional $20 of costs on the private sector." The compliance costs included an estimated $25 billion for paperwork alone.

Multiply by 20. In a paper published last November, Weidenbaum prepared a "rough update" of the DeFina estimate by applying the multiplier of 20 to budgeted administrative costs for more recent years. He came up with total compliance costs of $115.5 billion for 1979 and $126 billion for 1980, including paperwork costs.

The total is, of course, an approximation that does not stem from a rigorous cost-analysis. Moreover, the offsetting economic benefits of regulation—usually more difficult to measure than costs—play no part in the calculation.

every additional 1% reduction in airborne pollution was $45 million, according to the American Iron & Steel Institute. The industry claims that it has now removed 96% of the air pollutants and that the cost for each additional 1% will be $1.2 billion by 1982.

Congress must decide by Sept. 30—the Clean Air Act's expiration date—what changes it will make. Utilities, steel producers, and coal companies say they believe in the goal of the act and do not want it dismantled. However, industry will ask for some significant changes—for example, relaxation of air-pollution compliance deadlines, simplification of some technology-forcing standards, and far more reliance on independent panels of scientists to set standards. But Representative John D. Dingell (D-Mich.), chairman of the House Energy & Commerce Committee, and his counterpart, Senator Robert T. Stafford (R-Vt.), chairman of the Environment & Public Works Committee, are opposed to major changes in the law's goals.

Protecting consumers

No matter what Congress does with the clean air law, Reagan can have a significant effect on the EPA, which by midsummer must issue more than 100 new regulations, all of them extensive and complicated. He has already taken the first step by appointing Ann M. Gorsuch, a Colorado attorney who has participated in suits against EPA regulations, as administrator. Through his executive power over the agency, Reagan can also to some degree control the course of environmental rules.

But Reagan has far less power over the agency that will confront Congress with its second major debate on deregulation: the Consumer Product Safety Commission. Unlike the EPA, the CPSC is wholly independent of the executive branch, although Reagan can appoint a new chairman. Hearings begin this month on renewing the CPSC's funding, which expires on Sept. 30. There is serious talk on Capitol Hill of abolishing the agency altogether or limiting it to an educational body that would perform studies and print brochures about dangerous consumer products but would not have power to set regulatory standards. Senator Robert W. Kasten Jr. (R-Wis.), chairman of the Senate Commerce Committee's consumer subcommittee, has asked Reagan not to appoint a new CPSC chairman until the agency's fate is decided.

Reagan's biggest regulatory headache is likely to be OSHA because that agency touches more individual companies than does any other arm of government except the Internal Revenue Service. Congress will do little to untangle OSHA's myriad regulations this year. Senate Labor Committee Chairman Orrin G. Hatch (R-Utah) says he is taking a wait-and-see attitude. Likewise, OSHA's new administrator, Thorne G. Auchter, talks only in general terms of trimming back.

But economists including the OMB's Miller have long argued that worker protection can be most efficiently achieved through personal-protection devices such as earplugs or respirators and not through OSHA's approach: altering the workplace by means of noise-dampening equipment and emission-reducing devices. The Supreme Court will take up this issue for the first time when it rules this year on OSHA's $656 million cotton-dust standard, which orders the textile industry to install controls to reduce chronic lung disease among workers. The industry contends that respirators are enough.

The case for personal protection, however, has been significantly weakened by the National Institute for Occupational Safety & Health's recent recall of 300,000 faulty firefighting and mining respirators. And on Feb. 17, a NIOSH-funded study found that some hazardous substances can easily penetrate protective gloves used by millions of workers.

Reagan's deregulation strategy will also affect most other areas of government:

ENERGY. As one of his first acts on becoming President, Reagan eliminated price controls for oil, and he is planning to speed up the decontrol of natural gas wellhead prices. The Administration also wants Congress to weaken the 1978 Fuel Use Act, which requires utilities and large industrial plants to convert from oil and gas to coal. Until Congress acts, the Energy Dept.'s Economic Regulatory Administration (ERA) will ease up on enforcing the programs and be more generous in allowing companies temporary exemptions to use natural gas.

In the nuclear area, the Administration will move to promote wider use of nuclear-generated electric power by streamlining the Nuclear Regulatory Commission licensing process, which now takes as long as seven years.

AUTOS. The industry is asking the Reaganites to roll back some emissions standards from 1981 to 1980 levels, streamline the process for certifying compliance with those standards, and freeze safety regulations. Ford Motor Co. estimates that these changes would save the industry as much as $5 billion annually by 1985. Says Thomas A. Staudt, vice-president of marketing at American Motors Corp.: "We've carried the biggest burden in the world market in regulations on the production of vehicles. We see a far greater future pros-

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pect for an alliance [with government]."

FOOD. Congress is likely to modify the Delaney Amendment, which bans food additives bearing any trace of substances that have been shown to cause cancer in animals.

EMPLOYMENT. The EEOC is likely to change its course by defending individuals rather than pursuing its recent policy of suing on behalf of large classes of workers. "We'll be claims adjusters, pure and simple," says a commissioner. The EEOC can also be expected to move away from hiring goals and timetables.

TRANSPORTATION. The department's urban mass transportation rule requiring that mass transit be accessible to handicapped and disabled persons—which has the effect of compelling expensive subway modifications and new bus purchases in many cities—is a prime target of the Bush task force.

ECONOMIC REGULATION. Under the Carter Administration, substantial price-and-service deregulation was achieved in the airline, trucking, railroad, and banking industries. Communications will undoubtedly be next, though the initiative will come more from Congress, especially from Senate Commerce Committee Chairman Bob Packwood (R-Ore.), who is particularly interested in the broadcast area. The Administration is likely to delay action on telecommunications deregulation, however, until the six-year-old antitrust lawsuit against American Telephone & Telegraph Co. is finally resolved.

The Securities & Exchange Commission will probably continue streamlining and simplifying disclosure processes. Chairman-designate John S. R. Shad is likely to downplay corporate governance and put greater emphasis on the ability of companies to raise money. Business would like to see the SEC push for weakening the Foreign Corrupt Practices Act and prod its Enforcement Div. to concentrate on major violations of securities law rather than pursuing and often settling many minor cases. Controversial Enforcement Div. chief Stanley Sporkin may stay on.

If all these regulatory changes are made, the effect on the economy and on the operating environment for business could be enormous. And even though the political process will doubtless force modifications in the grand design, the chances of substantial reform are nevertheless bright. Says Alexander B. Trowbridge Jr., president of the National Association of Manufacturers: "I don't think the election was a mandate to undo the entire framework of regulations. But it was a general statement that we've overdone this process and overburdened the private sector. This Administration will push that view far more than [have] previous ones." ■