The original documents are located in Box C54, folder "Presidential Handwriting, 1/10/1977" of the Presidential Handwriting File at the Gerald R. Ford Presidential Library.

[1/10/77]

THE WHITE HOUSE
WASHINGTON

Ed

Can I have a

copy to take with me?

&

Congratulations

THE PRESIDENT HAS SEEN

THE WHITE HOUSE

WASHINGTON

January 10, 1977

Dear Mr. President.

In June 1975 you created the Domestic Council Review Group on Regulatory Reform to help coordinate your government-wide regulatory reform program. Under your leadership this inter-agency effort developed both legislative and administrative recommendations for your decision.

Paul MacAvoy and I have had the pleasure of serving as the Chairmen of this effort and as a result of your continued interest in taking the many difficult actions necessary to reform Government regulations, we have had the continued cooperation of the departments and agencies.

The issue of regulatory reform which you raised in the first weeks of your Presidency has, under your leadership, become a matter of keen National interest. Increased congressional attention has been devoted to this program. Universities, business and labor associations, and public interest groups have begun to focus attention and resources on the complicated and pervasive problems of Government regulation. Several Ford Administration reform proposals have been enacted into law and others have been given a serious hearing by the Congress. The independent regulatory agencies have begun concerted efforts to reform their internal processes and procedural improvements have been made in many agencies so that better analysis and fairer and more understandable regulations are promulgated.

Despite these gains, much remains to be done. Although there is great concern about the fairness, effectiveness and efficiency of government regulation, there is little agreement on the specific problems or the possible solutions. To assist the future debate in this area of critical public policy, the Domestic Council Review Group on Regulatory Reform has prepared the attached report. It summarizes what we have learned in working on your program and outlines the history of regulation, our perceptions of the problem, and possible future directions.

In closing, we want to thank you for your courage and wisdom in the past thirty months in beginning a debate which will be a central concern of public officials in the years ahead.

Sincerely,

Edward C. Schmults
Deputy Counsel to the President

The President
The White House
Washington, D.C. 20500

THE WHITE HOUSE
WASHINGTON

TO: BOB LINDER

FROM: TRUDY FRY

The attached is sent to you for review before it is forwarded to the President.

R

The Challenge of Regulatory Reform

A Report to the President

from the
Domestic Council
Review Group
on Regulatory Reform

January 1977

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INTRODUCTION

In September 1974, President Ford convened a Summit Conference on Inflation. The President had brought to Washington bankers and economists, farmers and labor leaders, businessmen and consumers, as well as leaders from state and local government. The purpose of this conclave of national, state, and local leaders was to obtain a broad range of views on the causes and possible cures for the Nation's current economic problems.

One of the most striking revelations produced by the Conference was the almost unanimous agreement among its participants that government regulation was contributing to our economic ills. Most conferees held that, while regulation had achieved important benefits, it had also extracted a price from the economy, often in higher prices or fewer jobs.

In his economic message to Congress on October 8, 1974,[1] President Ford announced his intention to give a high priority to the issue of regulatory reform. Since that time, the President has consistently sought to make sure that essential regulations benefit the general public, not just special interests; and has emphasized that the credibility of government regulatory activity can be restored only if regulatory laws are equitably enforced.

To assist in developing solutions to the Nation's regulatory problems, President Ford in June 1975 established a Domestic Council Review Group on Regulatory Reform (DCRG).[2] This group was composed of representatives from the Office of the Counsel to the President, the Domestic Council, the Office of Management and Budget, the Council of Economic Advisers, the Council on Wage and Price Stability, and executive departments and agencies which have important regulatory responsibilities (Justice, Transportation, Treasury, Labor, and several others). The Review Group met regularly to develop reform proposals for the President's consideration, and to oversee implementation of the President's decisions.

This report is the DCRG's attempt to describe its work over the past two years. It is not intended to add significantly to the existing body of specialized economic or legal research on the subject, but rather to summarize our observations and experiences as an aid to future reform efforts.

We believe that there is need for thoughtful, balanced and comprehensive review of the regulatory reform issue. Much that has previously appeared on this issue has been overly technical, biased, or shortsighted. We hope this report is successful in taking the longer view.[3]

CHAPTER I Regulation: History and Definition

An Historical Perspective

Government regulations, in simple terms, are rules designed to direct private sector action. The Federal Government's use of regulation as a tool to achieve the Nation's social and economic goals dates back to the earliest days of American history. In 1789, a government agency was established to "regulate" the duties collected on imported goods. In that same year, President Washington established a new federal agency to "regulate" the payment of pension benefits for Revolutionary War veterans.

The first major burst of federal regulation began, however, in the closing decades of the nineteenth century. In 1887, Congress, responding to pressures from some consumer groups—and with some quiet encouragement from the railroads themselves — established the Interstate Commerce Commission (ICC).

In the early 1900's, the Federal Government took some initial steps toward legislating to protect public health. The Food and Drug Act was passed in 1906 and the Packers and Stockyards Administration was set up in the Agriculture Department in 1916.

In the 1930's, as a result of the Great Depression, the use of regulation was expanded dramatically. At this time, such agencies as the Civil Aeronautics Board (CAB), the Federal Communications Commission (FCC), the Federal Maritime Commission (FMC), the Federal Power Commission (FPC), the Securities and Exchange Commission (SEC), the Federal Deposit Insurance Corporation (FDIC), the Federal Home Loan Bank Board (FHLBB), and the National Labor Relations Board (NLRB) were created.

Between 1940 and 1960, the establishment of new agencies slowed. In this period, some previously established agencies were given additional responsibilities.

Since 1960, a rash of new legislation has created new regulatory agencies, or substantially expanded the regulatory authority of existing agencies. Many of these new agencies, unlike most of their earlier counterparts, were established primarily to pursue social objectives rather than to meet economic needs. Civil rights, the environment, workplace conditions, private pension benefits, and consumer protection have become principal targets for regulation. Agencies such as the Equal Employment Opportunity Commission (EEOC), the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA), and the Consumer Product Safety Commission (CPSC) have swung into

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action to carry out their broad legislative mandates.[1] The impacts of these new agencies have tended to be more pervasive than those of the older regulatory bodies because their powers often touch all industries and even exert authority over public institutions. For example, regulations aimed at achieving equal employment and clean air cover not only most businesses and manufacturing firms, but also hospitals, universities, and state and local governments.

The general public has become increasingly aware of government regulation and its effects. Today, it is hard to think of a single aspect of American life that is not touched by federal regulation.

Why Government Regulates

Most federal regulation was originally undertaken as a response to legitimate economic and social problems. Purposes for which regulation has been used have included:

Control of monopoly. The regulation of industry to protect the public interest is a concept adopted from the provision in English common law permitting the control of rates and services of inns and stagecoaches—potentially powerful monopolists in the time before railroads. In the United States, the creation of the Interstate Commerce Commission in 1887 was an early example of regulation to prevent monopoly. The ICC was set up for several reasons: to prohibit railroad monopolies from controlling the movement of goods to America's expanding western frontier; to overcome discriminatory rate and service regulations by individual states; and to head off proposals for nationalization of one or more major railroads (as was actually recommended by a special Senate investigatory committee).

Protection of public health and safety. The Federal Government's role in protecting public health and safety dates back to the passage of the Food and Drug Act of 1906. Since that time, the protection of health and safety has provided much of the impetus for expanding government regulation. In 1931, the Food and Drug Administration was established to help assure the purity, safety, and labelling accuracy of certain foods and drugs. In 1953, the Agriculture Department's regulatory role was expanded through the creation of the Animal Plant Health Inspection Service to set and enforce standards relating to meat and poultry. The 1970's saw a surge of new and expanded health and safety regulation with the creation of such agencies as EPA in 1970, CPSC in 1972, OSHA in 1973, and the Nuclear Regulatory Commission (NRC) in 1975.

Maintenance of public trust and confidence in the economic system. Trust and confidence are particularly critical in the financial sector of the economy. The traumatic experiences associated with bank closings and the rapid liquidation of private savings during the Depression led to the establishment of such agencies as the FHLBB in 1932, the FDIC in 1933, and the SEC in 1934. These agencies help to assure that our financial

system is reliable and stable, and that financial dealings are conducted openly.

Allocation and protection of scarce natural resources. As far back as 1824, the Army Corps of Engineers was assigned the duty of regulating construction on navigable waterways. Other agencies established to help protect natural resources include the Bureau of Reclamation in the Interior Department and the Forest Service in the Agriculture Department. Most recently, the national energy crisis in 1973 prompted creation of the Federal Energy Administration (FEA) to help maintain the Nation's supply of energy resources.

Promotion of equal opportunity. The EEOC was created in 1964 to enforce Title VII of the Civil Rights Act, regarding equal employment opportunity. The Civil Rights Act of 1968 resulted in the establishment of a responsibility within the Department of Housing and Urban Development to help assure fair housing opportunities. The Office of Federal Contracts Compliance in the Labor Department, established in 1967, helps to promote non-discrimination in work carried out under government contracts.

A Definition of Regulation

In the Review Group's effort to assist in developing the Administration's reform program, we found it important to reach a common understanding of what regulation is, how it has been applied, and how it relates to other tools government uses to achieve its goals. In dealing with regulation, it is important first to recognize that it is only one of several ways that government attempts to achieve social and economic objectives. Other means available to the Federal Government for carrying out public policy include:

Direct services, such as government operation of hospitals to care for disabled veterans, and provision of law enforcement services through such agencies as the FBI.

Direct financial assistance to groups or individuals, through such programs as mass transit or education grants, general revenue sharing, and social security.

Tax credits and exemptions to stimulate particular economic activities, such as industrial investment, or state and local government spending; or to reduce tax liabilities for special categories of taxpayers, such as blind persons and senior citizens.

Special credit treatment to individual industries or industrial sectors to stimulate investment in such areas as small business or housing construction.

Allocation of federal procurement for such purposes as encouraging small businesses or assisting the handicapped.

The five policy tools listed above may be distinguished from regulation in at least three respects: their costs are identifiable, their economic effects are at least broadly predictable, and they are subject to annual examination by the Executive Branch and Congress as part of the budget process. These three characteristics enable federal policymakers to make relatively informed judgments on trade offs involved in the adoption of particular policies.

With regulation, such informed judgments have rarely been possible. Although the administrative costs of regulation, such as salaries paid to government regulators and their staffs, are identifiable, the more important costs of regulation — those borne by the private sector in order to comply with federal regulation — usually are not. Also, there is no organized system through which regulations are periodically examined or modified. As a consequence, regulation normally proceeds without clear understanding of the trade offs involved, leading to unique public policy problems.

Almost everything government does requires the prescribing of rules. Many such rules, however, apply only to internal government procedures (such as civil service regulations) or are associated with federal procurement or grant activities. Regulation, in the sense we are discussing, differs from rules of this kind in that *it places substantial cost burdens on private sector organizations and individuals in addition to the taxes they pay.*

Federal regulation, then, may be defined *as federal laws or rules imposing government established standards and significant economic responsibilities on individuals or organizations outside the federal establishment.* Regulation is carried out through such means as: setting or approving prices, fares, profits, interest rates, or wages; awarding licenses, franchises, certificates, or permits; and establishing and enforcing standards of behavior such as worker safety rules, requirements for disclosure of financial or other information, and prohibitions of racial, religious, or sexual discrimination. (See Appendix A for further discussion of this definition and an inventory of 90 federal agencies with regulatory authority.)

Regulation may produce economic effects through control of market behavior. For example, ICC restrictions on motor carriers specify what commodities may be transported, which roads must be travelled, and what rates can be charged for different services. Such restrictions directly affect the price of most goods. Other examples include FCC limitations on the growth of cable television, and restrictions on price competition in brokerage commissions which were maintained prior to 1975.

Regulation also influences economic costs through standards imposed on certain production processes, such as the EPA requirements that coal-burning industries install stack scrubbers to reduce air pollution. Other costs rise out of quality controls, such as Federal Housing Administration (FHA) design and construction standards, which affect the production of all building materials and household appliances.

In many cases, regulation is *not* the most effective policy tool to achieve desired social and economic results. But in some instances, regulation clearly represents the best approach. In such instances, crucial questions remain. For example, how are government regulations to be enforced?

Different methods of regulation require varying degrees of federal involvement. In some areas, government relies on essentially private action to enforce federal law. A law is written, penalties are designed to correspond to real damages suffered, and the law is then enforced in the courts through private or class action. This is the case with certain areas of antitrust law such as the Robinson-Patman Act.

In other instances, the Federal Government relies on state and local governments to provide the necessary enforcement. The federally mandated 55-m.p.h. speed limit, for instance, is enforced by the individual states. When a state adopts more stringent worker safety standards than those established by OSHA, the state assumes primary responsibility for enforcement.

Most regulation, however, is enforced through direct federal action. For example, the CAB establishes economic controls over prices and entry in the airline industry, and monitors them through certification and ratemaking procedures. EPA sets standards for water quality and conducts periodic inspections to see that they are met. The SEC requires full and fair disclosure of information on a company's financial condition to protect investors.

With these underlying characteristics of regulation in mind, we may now proceed to consideration of some of the problems that have been encountered or caused by government regulation in the United States.

CHAPTER II The Regulatory Problem

As government has increasingly relied on regulation to achieve public policy objectives, some flaws in the regulatory process have become glaringly clear. Too much public attention, however, has been directed toward the more visible regulatory abuses and not enough consideration devoted to the underlying problems.

For example, the formal nature of the rulemaking process often leads to cumbersome, confused, and legalistic regulation. Undue focus on the symptoms of delay and complexity, however, tends to divert attention from the examination of alternatives to regulation that may offer more effective means to accomplish a given purpose. Relieving the caseload backlog in the ICC would be a beneficial management step, helping to reduce some of the costs and frustrations with the current process. But exclusive concentration on how the ICC can make speedier decisions begs the question of whether it makes sense at all for the Commission to rule on all new applications and to set rates.

Of course, we recognize that many symptoms must be treated without waiting for more fundamental cures — if for no other reason, because symptoms often can be dealt with administratively, while fundamental reforms generally require legislation. The Ford Administration has carried out many administrative and procedural reforms. At the same time, President Ford has consistently insisted that major reform can come only by addressing fundamental issues.

We should note before beginning a discussion of the problems of regulation that our conclusions are heavily influenced by our experience over the last two years. The DCRG devoted much of its efforts to examining substantive issues of economic regulation in such fields as transportation, finance, and communications where there was a respectable body of data available. We also looked at some other areas such as agriculture, insurance, environmental protection, and safety, but our work in these areas was less complete. We recognize, therefore, that our conclusions may have been skewed by our areas of concentration.

We realize that we are dealing with problems of great complexity. The natural complexity of these issues is aggravated by the fact that the regulatory system has been designed by specialists — lawyers, economists, and scientists—who have some interest in making it difficult for the lay public to assess the system's strengths and weaknesses. In our efforts to penetrate this morass, we may at times have fallen into the vice of over-simplification. We believe that this risk has been worth taking if we can enlarge public understanding of regulation.

Problems of Management

Conventional wisdom holds that most of the shortcomings in regulation result from unqualified personnel,[1] cumbersome organizational structure,[2] or inefficient operating procedures.[3] While we believe that the basic trouble with regulation lies deeper, we concur that reforms are needed in these management areas.

Personnel

The criticism is frequently made that political considerations play too large a role in selection of regulators.[4] It has also been charged that many regulators are subject to conflicts of interest — either through direct financial interests in the industries they regulate; or through the so-called "revolving door" process under which regulators are recruited from the industries they are to regulate, serve in government for a period of time, and then return to positions either as direct employees of a regulated company or as legal counsel or consultants to one or more regulated firms.[5]

Questions have also been raised about the overall impartiality and independent judgment of regulatory agencies. Critics have pointed out that regulators often become captives of the industries they regulate. In part, this is because federal agencies often must rely on industries for data and other information.

Some critics have focused on the need to establish improved pay scales and career opportunities that will encourage first-rate scientists, economists, and other experts to serve in government.[6] Some identify the cumbersome operation of the civil service system as a barrier to attracting better people.

While most regulators and their staffs are capable and committed people, there is some justification for all these criticisms. The Ford Administration has made substantial progress in dealing with many of the personnel problems which critics have raised. But even more should be done, both administratively and legislatively, to secure the best possible personnel for regulatory agencies.

We note, also, that part of the problem in attracting first-rate personnel is that many agencies are so constrained by outmoded procedures that top professionals do not view them as good places to work. Also, the Congressional confirmation process has tended to place such emphasis on detailed knowledge of how the agencies currently operate that the Executive has sometimes felt inhibited from selecting persons with fresh viewpoints.

Organization and Accountability of Agencies

Many critics of regulation have concentrated on how regulatory agencies are organized. The history of regulation shows no consistent pattern of organization and accountability for regulatory functions. Consequently, such agencies as the FDA and OSHA are located within executive departments. Others, like the ICC, SEC and FCC, were set up as so-called "independent agencies," under the direction of multi-member commissions. Still others, like FEA and EPA, are executive agencies, under the direction of a subcabinet level administrator.

Each of these arrangements has its unique strengths and weaknesses, but no one arrangement appears in all cases to lead to substantially better performance.

Critics of regulation also point to instances of overlapping and conflicting regulatory jurisdictions and mandates. In many cases, such overlaps appear to lead to waste of resources, both by government and by the businesses that must comply with differing and often conflicting rules. Agencies with relatively narrow jurisdictions, such as the Federal Railroad Administration, are often in sharp conflict with agencies having broader jurisdictions, such as OSHA, regarding particular safety and health regulations.[7] These conflicts involve the Executive Branch in time-consuming arbitration of jurisdictional disputes. Sometimes such disputes may even lead to the inappropriate situation of having the Supreme Court decide which Executive Branch agencies should regulate what.[8]

Organizational structure of the regulatory system can be greatly improved. The problems involved in developing a more effective structure are more complex, however, than they may at first seem.

Concentrating regulatory authority in a single place may not always be desirable. For example, several reorganization proposals have suggested that three transportation regulatory agencies (ICC, CAB, FMC) be combined, in order to develop a single, balanced, coordinated system of regulation for transportation. Some experts, however, have proposed an exactly opposite course: creation of separate regulatory commissions for each mode of transportation. Although the latter approach would lead to more rather than fewer agencies and higher administrative cost, it might also provide cheaper, more efficient transportation for the consuming public. Separate agencies regulating competing branches of the transportation industry might be more anxious to encourage innovation and cost-cutting so that their branch of the industry would remain competitive. Similarly, those who argue against consolidating the major federal bank regulators point out that the existing structure allows banks some measure of competitive flexibility.

Regulatory accountability problems have become more severe as regulation has grown increasingly complex. Many believe that neither the Executive Branch nor the Congress possess effective oversight mechanisms to deal with the growing complexity of regulation. One reason for inadequate oversight, as noted earlier, is that regulation is not subject to the same scrutiny that other programs receive through the budget process.

In the Executive Branch, interagency coordination of regulatory pro-

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grams potentially provides a vehicle for more effective oversight. At present, however, coordination often does not go much beyond the opportunity of agencies to comment on regulations proposed by other agencies once they are published in the *Federal Register*. OMB, through the "Quality of Life" review process,[9] has been able to encourage some interagency coordination of regulations dealing with environmental issues. Even this limited form of coordination has been strongly attacked by Congressional subcommittees and environmental groups as unwarranted interference in the agencies' prerogatives.[10]

Our own Review Group played some role in encouraging more effective interagency coordination. However, we usually avoided involvement in administration of specific regulations, since our mission was more broadly framed. Agencies represented on the Review Group, such as DOT, CWPS, and the Antitrust Division, have intervened in agency proceedings as appropriate.

Congressional oversight of regulation has also been inadequate. The problem is due in part to conflicting committee jurisdictions which impede comprehensive review of regulatory issues. For example, regulation of transportation falls under the purview of at least six different House committees.[11] Even when committee responsibility is clear, Congress has generally failed to follow up once a regulatory program has been established. Oversight of regulatory programs has been given low priority among competing and more highly visible issues, particularly those involving a substantial budget impact.

Effective oversight and follow-through should not involve Congress in reviewing or second-guessing agency decisions. But Congress should give more attention to the basic regulatory statutes which guide the regulatory agencies.

Other critics of the federal regulatory system see the problem of oversight and accountability in a different light. They believe that "the central problem with all regulatory agencies is their unresponsivness to public concerns, and not their lack of accountability to the highest levels of the Federal Government."[12]

These critics recommend more openness and direct democracy in the regulatory process including some form of government support for public advocates — either through an "advocate agency" or the appointment or compensation of public interest counsel.[13] However, we are not convinced that such methods can substitute for more effective Executive and Congressional oversight, and fundamental legislative reform, in assuring a responsive and accountable regulatory system.

Agency Procedures

Procedural problems have attracted more interest and attention than other regulatory management problems. Much criticism has been directed at the growing backlog of cases, not only in the independent commissions, but also in many executive departments and agencies. The ballooning requests for citizen band radio licenses, the trillion rates on file

with the ICC, or the increasing demand for more OSHA inspections are all visible evidence that the system is becoming overburdened.[14] Public attention has been drawn to the legendary time delays in agencies where dockets over a dozen years old remain unresolved — recalling the interminable legal actions in the British courts described by Dickens in *Bleak House*. Many in industry, Congress, and the general public now believe procedural concerns to be the heart of the regulatory problem.

The chronic backlog problem is attributable in part to a legal process which often requires enormous volumes of paper to be submitted prior to and during an agency's consideration.

The procedural complexity of the regulatory system has grown partly as the result of a fundamental change in our legal system. Traditionally, regulatory agencies were viewed as a "mere transmission belt for implementing legislative directives in particular cases."[15] The system was designed to minimize judicial involvement in the administrative process.

In the 1960's, these agencies were attacked on the grounds that they had been given overly broad discretion in the interpretation of legislative mandates and that their decisions were often neither objective nor in the public interest. The response by the courts was increased involvement in the decisions of all the regulatory agencies in order to assure that all interested parties are heard. This has greatly increased the administrative and litigative costs of regulation and has contributed to the problem of delays and backlogs. For example, between 1961 and 1976, civil cases regarding major regulatory statutes have increased nearly sixfold.[16] Agency and judicial proceedings often require over a decade to approve or disapprove. Many now believe that continued unrestrained growth of this process for resolving economic and social issues may result in legal and administrative chaos.

Another procedural problem is that regulatory decision-makers are plagued by lack of mechanisms to ensure that all relevant information is used to evaluate costs and benefits of regulatory decisions. In part, this is due to the current lack of systems for assessing costs and benefits of regulation. Also, however, many agencies have been reluctant to perform such analyses, even when effective methods of analysis are available, because data must come from sources with a strong interest in the outcome of regulatory decisions. In some cases, agencies are even prohibited from applying economic analyses since the analysis might conflict with their basic statutory responsibilities to protect public health or safety. Only in the most recent regulatory legislation, such as that establishing CPSC, has there been an explicit mandate for agencies to conduct rigorous economic analyses of their regulations.

Some regulatory agencies still give little consideration to the views of consumer groups and other public interest organizations. The sheer growth in the *Federal Register* and the specialized, legalistic language used to describe new proposals often makes participation by public interest groups, not to mention the general public, extremely difficult.

All of these management problems urgently demand solutions. But, it will be noted, these problems concern how the agencies carry out their responsibilities, rather than what their responsibilities should be. Not enough attention, we believe, has been paid to the effects, as distinguished from the process, of regulation.

Some others who have begun by addressing procedural problems have recently begun to reach this same conclusion. Both the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee and the CAB undertook special studies to find ways to improve the CAB's regulatory practices.[17] Both initially placed heavy emphasis on procedural problems. In the end, however, both reached the conclusion that what was really needed was fundamental change in the nature of economic regulation of the airlines.

Major Issues Underlying Regulation

Attention to the process of regulation has tended to obscure many of the major and more fundamental shortcomings of the regulatory system. The Review Group devoted most of its attention to the underlying problems and reached three fundamental conclusions about the current regulatory system.

First, we believe that some regulation simply no longer makes sense. In some cases the original rationale for regulation has been overtaken by economic or technological change. Almost regardless of underlying reality, regulation, once established, tends to grow. This growth of regulation is in no way deterred by new developments that may have made regulation unnecessary. This bureaucratic hardiness is particularly a quality of economic regulation, through which innovative competition often is curtailed as a means of protecting vested interests.

Second, we have concluded that in areas where federal intervention is needed, much regulation has been ineffective or inefficient because the agencies have not been using appropriate tools. Much social regulation falls into this category.

Third, we have concluded that far greater efforts are needed to determine the social and economic effects of regulation. We recognize the extreme difficulty of developing such analyses, but we strongly feel that more information is essential if regulation is to play a rational role in our society.

Where Regulation Is No Longer Useful

Generally, government becomes involved in regulation because the market system in some way seems inadequate — for instance, competition, because of the nature of the activity, is not efficient; or consumers lack, or believe they lack, the means to make informed decisions. Once established, regulation develops a life, and a constituency, of its own. Very rarely, we have found, does anyone — certainly not the regulators themselves — ask the question: Does this particular form of regulation still serve any useful purpose?

A classic example of regulation that has outlived its usefulness is the application of inflexible price and entry controls to the airline industry. In 1938, the CAB was created to regulate and promote aviation, through establishment of a uniform pricing structure and strict controls over routes and market entry. The objectives of regulation were to assure a stable economic condition for the industry, and to encourage the building of a nationwide system of interstate carriers.

Now, almost forty years later, overall business conditions and the economics of the airlines have drastically changed. Aviation has grown and developed into a major U.S. industry. If the types of economic controls imposed on an infant industry had some past justification, and many believe they did not, these controls clearly are far less justifiable in light of current economic conditions.

Virtually all objective studies[18] of the effects of airline industry regulation have concluded that CAB price and entry regulation now increase the price of airline service far above what consumers would otherwise pay — without even increasing profits for the airline companies themselves!

In competitive industries, like air transportation, regulation often perversely distorts competition. For example, the CAB controls the price of air transportation service, but does not regulate the quality of service — such things as flight frequency and amenities like meals and entertainment. As a result, airlines compete in the only way they can — on service. Also, strict regulatory controls by the CAB prevent airlines from making rapid adjustments to meet changing market conditions. Inflexible regulation, therefore, has become a burden to both the consumer and the industry.

Another example of counter-productive regulation is the Federal Power Commission's effort to control the price of natural gas. The jurisdiction of the FPC is limited to interstate sales. As a result, natural gas has increasingly been sold and consumed in the same states where it was produced, often at prices four or five times the regulated price. The natural consequence has been shortages of gas in the non-producing states.

Part of the FPC's problem has been the complexity of the industry it has been trying to regulate. Using traditional regulatory tools, the FPC began in 1954 to regulate the price of natural gas by determining "just and reasonable" rates for each of the more than 3,000 individual producers. By 1960, the sheer backlog of proceedings had swamped the Commission and it was compelled to simplify the process drastically by lumping all producers together into fewer than a dozen "areas." But such an approach bore little relationship to the cost and profit profile of the individual producer, and pervasive inequities inevitably developed.[19]

In addition to becoming inflexible, regulation has a tendency to spread. For example, regulation was introduced into the trucking industry, not because anyone believed that there was a threat of monopoly in the industry itself, but because regulated railroads felt threatened by unregulated competition. Because the fundamental question of the necessity for regulation of trucking was never seriously raised, today a rigid set of price and entry controls dominates the major business decisions of an industry of some 15,000 individual firms. In addition, the system prevents another 85,000 unregulated carriers from carrying specific types of commodities. The result has been the creation of a web of government restrictions which discourage innovation, promote inefficient transportation, and artificially distort rates and fares.

Finally, regulatory approaches have sometimes failed to keep up with developments in technology. The Communications Act of 1934 authorized federal regulation of the growing telephone and broadcasting industries. Congress gave the FCC the mandate to "make available a rapid, efficient, nationwide and worldwide wire and communications service with adequate facilities at reasonable charges." The Act also provided for FCC allocation of the radio spectrum to ensure balanced use of this national resource.[20]

In terms of its original goal, the FCC has been a successful instrument of regulation. After forty years, telephone, radio, and TV are nearly universal. The radio spectrum has been scrupulously apportioned to reflect public needs and tastes.

Now, however, the FCC is caught in a regulatory paradox. In order to fulfill its mandate for providing universal telephone service and impartially managing the limited spectrum resource, the FCC has been very slow in approving use of new technology which seems to threaten vested interests in the common carrier and broadcasting industries, and has inhibited the growth of cable TV which has potentially unlimited broadcasting capability. The FCC, adhering to its original mandate and attempting to satisfy all parties, metes out incremental regulatory decisions which aid one side or the other, but never addresses the fundamental question of whether or not regulatory principles hallowed by tradition are still viable. Obviously, the Executive and Congress must share some of the blame for the confused role in which the FCC now finds itself.

Where Regulation Has Been Ineffective

In many areas where federal intervention may be necessary, regulation has been conducted in such a way that it has been ineffective. Often, this has been because agencies have not been using proper tools — either because they have proceeded on faulty assumptions, or because of legislative constraints.

A good example of an agency proceeding on wrong assumptions is offered by the early experience of OSHA. When the Occupational Safety and Health Act was enacted in 1970, few fundamental questions were asked about how OSHA was to achieve the goal of bringing about improved health and safety conditions for workers. The drafters of the law

and the early administrators of the agency seem to have assumed that better health and safety could rather easily be achieved by setting up and enforcing detailed standards to deal with well-defined and clear-cut hazards in industrial plants.

As a result of this assumption, OSHA during its first few years focused its efforts on areas where it had least to contribute.[21] Too much attention was devoted to developing detailed standards covering relatively minor matters — for instance, minute prescriptions for the location of plant toilets. Too little thought was given to finding means for encouraging private industries, unencumbered by ponderous due process requirements, to work out their own ways for dealing with the simpler and more obvious kinds of hazards. In consequence, both workers and management began to regard safety regulation as a burdensome nuisance. More recently, OSHA has been concentrating on finding ways to deal with more complex health hazards—an area in which regulation potentially can play a more effective role.

Regulatory agencies, we have found, tend to favor regulation through specific directives or standards. Agencies rarely consider the possibility that better information or improved incentives may be more effective means of achieving desired goals than rigid regulatory approaches.

Some agencies, such as the Food and Drug Administration, have made successful use of enforcement through sampling techniques in place of continuous on-site monitoring. Other agencies, however, have been reluctant to experiment with such approaches, often for no apparent reason other than lethargy and lack of precedent.

Many regulatory agencies are required by law to rely on cumbersome and inadequate enforcement procedures, that tend to encourage delaying tactics. For example, a large steel plant in a mid-west state was found to be violating a pollution emission standard. After some negotiation, the company was given three years to take some significant control action. At the end of the three year period, the company received a one year extension while "making no pretense of intending to cooperate with the original emission control requirements." The EPA then sued the company. The court fined the company $5,000 — and the firm continued to pollute.[22]

Many similar examples could be given of cases in which the cost of non-compliance with the law is simply too low. In many cases, it is only the threat of legal costs and time lost in the process of litigation, plus the normal desire of most companies to obey the law that encourages compliance.

In some cases, agencies should be given tougher enforcement powers. In many cases, however, better results will be obtained by putting more emphasis on economic incentives and less on application of detailed standards.

Reliance on incentives, however, requires that individuals and firms be permitted to make choices based on the costs of achieving objectives. In the environmental area, for example, effluent charges, putting a "price" on each unit of pollution, would permit each company to work out its own least-cost mix of pollution controls and charges. Numerous studies have shown that the effluent charge approach can achieve a given pollution control objective at substantially less cost—sometimes less than half—than approaches that require every company to achieve the same level of pollution abatement, regardless of cost to the individual firm.[23]

The Need for Better Analysis

Even if perfectly appropriate regulatory tools were available and in use, policy makers would still be faced with difficult problems. Political scientists have written that making choices between competing, desirable objectives is the essence of government. Such choices are basic to the budget and appropriation processes. Similarly, systems of taxation depend on tradeoffs among competing values. Credit programs are designed to give some groups preferential treatment by permitting them special advantages in getting limited capital. In these areas, we identify and weigh benefits and costs.

In the area of regulation, little clear knowledge on which to make informed decisions has been available. Seldom do we know the real effects of existing or proposed regulations. The report of the National Commission on Water Quality (NCWQ), for instance, estimated that existing water pollution legislation would require somewhere between $160 to $670 billion in public and private sector capital expenditures over the next decade — a differential of more than $400 billion![24] Even the NCWQ's lower estimate was more than double earlier Federal Government estimates.[25]

This lack of knowledge about the effects of regulatory activities creates two problems. First, it drastically impedes identification of the least costly means for achieving a stated goal. And second, it precludes informed decisions on social and economic tradeoffs.

Of course, regulatory agencies often recognize the need for tradeoffs. For example, last March the EPA decided to grant a variance for eight major steel mills along the Mahoning River in Youngstown, Ohio. EPA found that the application of national standards promulgated for the rest of the industry would be impractical because of the potential loss of 25,000 jobs or 14 percent of the region's workforce.[26] Therefore, the plants will be allowed to perform at a lower standard until at least 1983. Too often, however, the tradeoffs are made on an *ad hoc* basis, without any well thought out or systematic evaluation of long term effects.

In most regulatory areas, we have only begun to develop usable knowledge on social and economic effects. Policy-makers seldom have knowledge that would permit informed tradeoffs among competing priorities or any cumulative measurement of the overall regulatory cost.

This problem is not due to lack of resources that could be used to measure the impact of regulation. The Federal Government is now spending more than $500 million each year to gather economic and social statistics, and other forms of research data in areas closely related to government regulation. Very little effort, however, is now being made by either Congress, the Executive, or the regulatory agencies themselves to examine this data systematically for information that would shed light on the social or economic effects of regulation.

We believe that systematic development and objective analysis of data on regulation is one of the most important ingredients in addressing the fundamental policy problems of regulation. In the regulatory area, almost without exception, policy has been formulated in unnecessary ignorance. Decisions have been made on the basis of guesses or flimsily held beliefs, with very little attention to the actual economic or social consequences of regulation.

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Chapter III Reforming Regulation: Past Attempts and Current Status

For forty years, numerous studies and reports by businessmen, lawyers, political scientists, economists, and consumer advocates have argued that government regulation was in need of reform. Most of these studies focused on the organizational structure and the internal procedures of the regulatory agencies.

At first, experts seemed most concerned with the unique place of the independent commissions in our system of government. Under President Franklin D. Roosevelt, the Brownlow Committee criticized the constitutional ambiguities of this "fourth branch" of government and recommended that the independent regulatory commissions be fully integrated into the Executive Branch.

During the 1940's and 1950's, two Hoover Commissions, under Presidents Truman and Eisenhower, carefully reviewed the internal operations of these agencies, concentrating on their internal management and procedures.

President-elect Kennedy received a special report on the regulatory agencies which made numerous recommendations on how to achieve better quality regulatory appointments and more Presidential oversight.

In 1971, the Ash Council presented a report to President Nixon recommending that most of the collegial commissions be changed to single-headed agencies and their leaders be made responsible to the President in order to (a) attract more highly qualified administrators and staff, (b) make the agencies more accountable to the President and Congress, and (c) improve their internal management practices. However, the regulatory issue was so controversial that the Ash report was never translated into legislative proposals. (An annotated chronology of these special study commissions' findings and recommendations is included in Appendix B.)

President Ford's Program

First Steps

Despite the fact that earlier studies had led to few real changes, by 1974 there was growing sentiment that regulatory reform was needed and there was some feeling that it should deal with the broader consequences as well as the management problems of regulation. However, there were differing perceptions of how to attack the problem and which targets to choose. The economists' meeting at the 1974 Summit identified a number of regulatory restrictions which impede competition and raise prices. Twenty-one of the twenty-three participants agreed that almost two dozen "sacred cows" (long standing and politically unassailable laws and regulations) were having a detrimental effect on the economy.[1]

Partly on the basis of the recommendations from the Summit Conference, President Ford laid the groundwork for his regulatory reform program in his major economic address to the Congress on October 8, 1974. In addition to calling for expanded antitrust enforcement and increased penalties, he outlined a four-point program:

(1) The Council on Wage and Price Stability would act as "watchdog" over inflationary costs of government actions.

(2) Congress should establish a National Commission on Regulatory Reform to report in one year on unnecessary and costly rules and practices of ten independent regulatory agencies.

(3) Executive Branch agencies would conduct inflation impact analyses of their major legislative and regulatory proposals, in order to assure that adequate consideration be given to their potential economic effects.

(4) State and local governments were encouraged to reduce the inflationary effects of their regulatory activities.

The President proposed the National Commission, not just as another study, but as a vehicle for building a consensus for action in many areas where the need for reform was increasingly clear. He felt that the independent commissions required scrutiny, because many of their legislative mandates and practices were contributing to the Nation's economic difficulties.

The active participation of Congress was viewed as essential to achieving necessary reform. In November, 1974, the Senate Government Operations Committee held hearings on the National Commission proposal. No further action was taken, however, and by early 1975 it appeared unlikely that Congress would authorize or participate in any joint commission with the Executive. Nevertheless, the debate resulting from these hearings led to some very positive results. The House and Senate began their own studies of the problem, public interest in the subject increased, and many private institutions began to look at ways they could contribute to the growing public debate.

Looking for Targets of Opportunity

When it became clear that a commission approach was unlikely, Administration officials began identifying possible targets for legislative change.

The first subjects were those on which previous work had been done. The Antitrust Division of the Justice Department had developed considerable expertise in regard to the economic regulatory agencies. The Antitrust Division had regularly intervened in agencies' rulemaking processes and therefore was able to provide invaluable insights on problems as well as possible solutions. Academic research was also helpful and

the economists' list of "sacred cows" provided several potential targets of opportunity, particularly in regard to agencies with economic regulatory authorities. Finally, some departments had developed legislative proposals which could be folded into a regulatory reform effort. For example, recommendations by the 1971 Hunt Commission[2] had been used by the Treasury Department to draft the Financial Institutions Act in 1973, designed to gradually lift the ceiling on interest rates, in order to give small depositors a chance to earn a fair return on their savings. A revised version of this bill was drafted by Treasury as part of the President's program.

In those areas where more work was required, a number of *ad hoc* task forces were created. They were made up of people within the Executive Branch who had a particular interest in and knowledge of individual regulatory issues. Economists, lawyers, program managers from the departments and representatives from the newly created CWPS and from the CEA were brought together under the overall guidance of the Domestic Council and OMB. Ultimately these groups evolved into the DCRG which was formally established in June 1975.

The views of these task force participants often did not coincide, and there were sharply differing perceptions within the Administration over how much regulation was desirable or practical. The spectrum of opinion within the Administration probably paralleled the spectrum within the Congress and the general public. Some agencies argued for deregulation or outright substitution of antitrust controls for regulation. Others felt that such action was unsupportable. The actual drafting of acceptable rail, truck, and air legislation was accomplished through a series of long and arduous meetings in which the agencies discussed their separate points of view. Not only were the issues discussed within the government but informal discussions were held with industry, academics, and congressional staff.

This sharing of different perceptions was valuable and necessary in order to formulate balanced and constructive proposals. Also, this process helped the Administration to develop its case for meaningful reform. Although we believed many of these areas ripe for reform, we realized that the Administration needed a considerable amount of detailed and defensible information in order to have any chance of success. It was clear that the burden of proof would be placed squarely on the proponents of reform rather than on those who would argue to preserve the status quo.

A major target area was transportation. The Department of Transportation had been analyzing the need for changes in the railroad industry for several years. Major railroads throughout the country were in financial trouble, partly because the conditions under which they had once competed had changed radically. A combination of factors, including ICC control of their routes and rates, had led to a situation in which many of the lines, particularly in the east and mid-west, were either in bankruptcy or fast approaching it. DOT had proposed reform and financing legislation in 1973, but Congress had not acted.

Revisions were made in this earlier legislation and efforts were made to accommodate the views of other agencies while building on DOT's experience. Motor carrier and airline reform proposals were developed along the same lines.

The job of building a regulatory reform program was not easy. Considerable time was spent in obtaining reliable data. In some areas—financial institutions and railroads—the work that had already been done was most useful, but updated analysis was needed to reflect current economic developments. In some areas of transportation regulation, there was a good understanding of how regulation had actually worked over an extensive period of time and general reform proposals had been debated for a number of years. But in other areas, such as airlines, communications, insurance, and most social regulation, much less information was available, and government agencies had to carry out their own research and analysis.

The other obstacle was that well organized and effective special interests began opposing our proposals even before they were submitted to the President. These parties had been consulted and in some cases their views were reflected in the proposals. However, many felt that although the present regulatory structure left much to be desired, they would rather accept the status quo than risk change.

A related problem was that in developing most of the legislative proposals, we sought to deal with regulatory issues comprehensively. Although we believe this was substantively the right approach, it made our proposals more difficult to explain and to sell to the interest groups. For example, in the truck legislation we did not address only the backhaul problem or the unrealistic commercial zone issue. Instead, we tackled rate, route, and entry restrictions, issues regarding agricultural exempt carriage, and restrictions on private carriage. This made the proposal more complex and more open to attack.

The only counter to many of these criticisms was our hope that by helping the President develop a broad scale program, he would increase public understanding of overall regulatory problems and therefore elicit more effective public support. However, we knew that any proposal would have to run a gauntlet of specific attacks. Good supporting evidence for reform was needed in order to protect our credibility with potential supporters, and with those not yet committed to serious reform.

Despite these obstacles, considerable progress was achieved in developing a coherent regulatory policy. The Administration vigorously supported reform of regulation of financial institutions and transportation, repeal of the fair trade laws, and deregulation of natural gas, as well as amendments to create price competition in the securities industry. (A complete chronology of the program is included in Appendix C.)

In other areas further work is necessary before legislative reform can

be recommended. For example, further study is necessary in the area of statutory immunities from the antitrust laws. More work also is needed on preparing reform of the Robinson-Patman Act, which prohibits manufacturers from offering price differentials without elaborate documentation. A third area where further study is necessary is in the area of federal regulation of cable television. Although there is evidence that the growth of this industry has been restrained by federal regulation, better analysis is needed on what the consequences of deregulation would be.

Administrative Improvements

While we were developing proposals for legislative reform, work was underway on administrative improvements to streamline and improve regulatory procedures. Paperwork demands on the private sector were a growing problem, and the President called for all agencies to reduce the number of their forms by ten percent.[3] The Administration hoped that more attention would be paid to analyzing and easing the burdens of regulation placed on the private sector.

In addition, the President emphasized the need for reform during several meetings with his Cabinet. Some important innovations have resulted.

—The Secretary of Transportation directed that:[4]

- proposed regulations receive a thorough and clearly understandable analysis, complete with a discussion of alternatives;
- the Secretary become personally involved in regulatory proposals, at a point early enough to ensure that the staff receive appropriate policy guidance;
- DOT regularly review its existing regulations to determine where improvements and deletions can be made.

—The Departments of Labor and HEW have begun requiring early public notification of their intent to regulate or to revise current regulations. Labor has conducted public information meetings in various localities around the country to permit oral presentations to Department officials.[5]

—HEW is now training regulators how to write clear and understandable regulations and an office has been set up within HEW to review and coordinate all HEW regulations before they are issued.

— The Comptroller of the Currency in Treasury has issued a policy statement[6] which the agency will use in reviewing applications for new bank charters, mergers, etc. These guidelines were issued in order to provide the industry and the public with a better understanding of the basis for decisions.

In addition, the President established several short term task forces to help individual executive agencies implement internal reforms.[7] The Federal Energy Administration, the Occupational Safety and Health Administration, and the Export Control Administration in the Commerce Department were selected as initial targets because of their highly visible regulatory problems and the likelihood that administrative reforms would in fact produce significant improvements.

The President also felt it was critical to impress upon the independent commissions the importance of regulatory changes and he asked for their voluntary cooperation. In order to avoid the appearance of "meddling" with the "independence" of these agencies, the President first consulted with Congress. On June 24, 1975 the President met with a delegation of 24 Senators and Representatives, chosen by the Congressional leadership, to discuss his objectives for regulatory change and restate his commitment to work with Congress in order to secure the most lasting and beneficial results for the American people.

After further White House and Congressional staff contact, the President invited the members of ten major agencies (ICC, CAB, FMC, FPC, NRC, FTC, SEC, CFTC, FCC, CPSC) to a meeting in the East Room of the White House on July 10, 1975.[8] Representatives from the press, television, and radio were invited, not simply to bring public attention to the issue but also to help reassure Congress that the Executive was not "interfering" in the business of the independent agencies. For approximately two hours, the President listened to a constructive dialogue. Each commission described its own objectives and problems. At the close of the session, the President asked the agencies to cooperate with him on a four point program designed to:

(1) improve analysis of the economic consequences of regulations;
(2) eliminate costly regulatory delay;
(3) better represent consumer's interests; and
(4) find ways in which competition could work to eliminate some regulation.

The agencies were asked for periodic progress reports regarding steps they had taken to achieve these goals. These reports were analyzed and reviewed by the President. They were also taken into account in the formulation of the President's budget. Nine months later, on April 8, 1976, the President held a second meeting with the Chairmen and Vice Chairmen of these same agencies and further progress reports were requested.[9] In the past 18 months, the commissions have made some progress toward these procedural goals. However, much remains to be done with regard to substantive changes which will permit greater competition in the regulated industries and more effective approaches to regulation.

Costs and Benefits of Regulation

In his address following the Summit Meeting, President Ford launched a program requiring that all major proposals for new legislation or regulations be accompanied by an Inflation Impact Statement (IIS).[10] These statements would analyze the economic impact of the proposal on the economy, the costs to consumers and businesses, and the effects on productivity and competition. The IIS analysis was designed to contribute to better regulations and legislation by forcing a comparison between the costs and benefits of various alternatives.

The effectiveness of the IIS program has been uneven during the past two years. Some agencies have exhibited increased sensitivity to the economic consequences of their decisions. However, it is not clear whether the analysis is used, as intended, early enough in the decision-making process to serve as an aid to comparing alternatives. Quantifying expected benefits in a meaningful way has also proven to be a problem. While the limitations of current analytical techniques were recognized, it was nevertheless anticipated that the comparison of one set of costs and benefits with other alternatives would help produce better decisions.

The Executive Order which established the IIS program was due to expire on December 31, 1976. However, in December 1976, an evaluation of the program recommended that with several modifications that would strengthen the program (primarily in monitoring and compliance), the Executive Order should be extended. President Ford approved a one-year extension on December 31.

In addition to improving the agency analysis of individual proposals, and in order to provide a foundation for longer term reforms, we began an effort to identify the overall costs of regulation. The purpose was to increase public understanding of the cumulative costs of regulation and to try to quantify the impact of individual regulatory programs in order to set some priorities for further investigation and reform.

In an April 18, 1975 speech[11] on antitrust and regulatory reform, President Ford pointed out that:

> "Although it is difficult to come up with an exact price tag on the cost of unnecessary and ineffective government regulation, some estimates I have seen place the combined cost to consumers of government regulation and restrictive practices in the private sector at more than the Federal Government actually collects in personal income taxes each year—or something on the order of $2,000 per family . . ."

The $2,000 figure used by the President was based on an Office of Management and Budget compilation of a number of existing estimates of the cost of regulation and private sector restrictive practices. The cost figures varied in quality and in the precision with which costs had been measured. Relatively more work had been done in estimating paperwork costs and the costs of complying with environmental laws. Estimates had also been made in areas such as transportation regulation which impose costs on consumers in the form of higher than competitive prices.[12] In many other areas, little or no cost information was available. The main question raised by these figures was to what extent the costs of government regulation had grown. It was our view that regardless whether this estimate was too high or too low, the fact that neither government nor the private sector knew what the costs were was evidence enough of a regulatory problem. Others, however, believed that the question was

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inappropriately framed. A study for a congressional subcommittee investigated the basis for the statement and concluded:

"In our opinion, OMB's summary of the cost of regulation has substantial shortcomings ... The OMB approach in this effort is akin to a hypothetical corporation issuing an annual report which lists the corporate expenses in its summary statement but neglects to report the corporate revenues."[13]

This criticism is accurate as far as it goes. OMB did not attempt to quantify benefits even though it recognized that any decision on the value of regulation should balance both costs and benefits. The study's criticism applies equally to the federal budget, which also says little about the benefits of federal programs or about their effectiveness. The budget captures, in a summary statement, the level of resources drawn from the private economy to achieve various public purposes. We believe that the lack of a similar accounting for regulation is partly to blame for some of the failures of our regulatory system.

It was in part due to the lack of knowledge about the cumulative effects of regulation that the President, in the spring of 1976, began looking at approaches that would allow the Congress, the Executive, and the public at large to address important regulatory cost/benefit trade-offs.

Setting a Four Year Agenda

By the spring of 1976, we had run out of "easy" targets. We also believed that too much attention was being focused on the symptoms of the regulatory problem (such as long delays and costly paperwork), and not enough on the fundamental issue—whether there were more effective and efficient alternatives to existing regulatory approaches. We were convinced that before intelligent decisions about needed change could be made, considerably more information was required.

We needed to know more about the consequences of present regulation and about alternatives that would improve the present system, and this information had to be made accessible to the Congress and the general public. This seemed particularly true in the area of social regulation, where resistance to even considering change could only be overcome by hard facts on the costs and benefits of achieving a goal through alternative methods.

In an effort to develop and evaluate the needed information and make it accessible to the Congress and the public, the Administration submitted the Agenda for Government Reform Act in May 1976.[14] This legislation was intended to encourage more fact gathering and analysis, and to strengthen consensus within the Executive Branch, the Congress, and the general public for serious reform.

The President's legislation called for a four year timetable in which the Executive Branch, relying heavily on public participation, would analyze the impact of federal regulation on selected sectors of the economy, such as agriculture, manufacturing, and retail trade. By looking at the cumulative impact of all regulations on individual industries, we hoped to discourage the agency-by-agency review which has often led to the "box moving" syndrome (i.e. merely consolidating or reorganizing agencies) characteristic of many previous reform efforts. We hoped that a look at the total system of regulation would help to identify and resolve many of the trade-offs that need to be made. For example, if energy and environmental regulations conflict, we believed that the best way to resolve the problem would be to analyze their consequences at the level of individual industries. Sensible modifications could then be designed to insure that we achieved the most realistic goals, fully aware of their economic costs in terms of prices, jobs, and economic growth.

This sector-by-sector analysis was coupled with a call for Congress to agree that it would at least consider and vote on the President's proposals ten months after the President's submissions in January of each year. He felt that any serious attempt at a comprehensive review of Federal regulation would require some advance guarantee that Congress would not kill it through neglect.

The Agenda was intended in part to help overcome the obstacles the Administration had confronted in the earlier "targets of opportunity" approach. These targets were limited because of the small number of areas in which there had been adequate economic analysis. Moreover, the comprehensive approach was designed to help diffuse the opposition of powerful special interests which felt they were being singled out unfairly.

Simply put, the Agenda was designed to provide a disciplined approach that would encourage cooperation between Congress, the Executive, and the public (universities, citizen groups and affected interest groups) to develop the needed information and bring about reform.

The Congress

While the Ford Administration was working simultaneously on several fronts to deal with the regulatory issue, the Congress had a number of related activities underway.

Studies

After the President submitted his proposal for a National Commission on Regulatory Reform, Congress showed growing interest in regulatory reform and authorized additional studies of the regulatory "problem."

During Senate hearings on the President's proposal, it became increasingly clear that Congress views control over these agencies as its prerogative. "Independence" has become a major issue in itself, and several of these commissions now by-pass the normal budget, legislative, and litigative coordination which OMB and the Justice Department carry out to insure that Presidential policy is consistently applied. Congress has also begun to call for increased independence for single-headed agencies, such as EPA, NHTSA, and OSHA, which have important, and highly visible, regulatory responsibilities.

This Congressional concern makes it easier to understand why discussions of regulation with the Congress have focused less on *what* should be studied than on *who* should do the studying. Although the President's proposal for a National Commission was never reported from Committee, the general concept that more attention to the regulatory problem was necessary seemed to catch Congress in a receptive mood. In the past two years, many bills have been introduced to study regulation, the level of competition within industries, the need for more consumer protection, or some other variation on the main regulatory reform theme. Each of these bills called for extensive reviews, but none guaranteed that Congress or the Executive would be obliged to take any action.

Despite Congress' failure to enact any of these proposals, several committees have, by resolution, undertaken review efforts of their own. The Senate Government Operations and Commerce Committees are jointly funding a review of proposed practices in regulatory agencies, and the Subcommittee on Oversight and Investigations of the House Interstate and Foreign Commerce Committee has recently published the report of its review of nine agencies falling under its jurisdiction.[15]

It is impossible for us to predict what impact these studies will have. Clearly, they have helped to sharpen Congressional and public awareness of one or more aspects of the regulatory problem. We are disappointed, however, by their emphasis on procedural and organizational issues, at the expense of more fundamental concerns.

Management and Procedures

In addition to Congressional calls for further study, there has been a rising tide of interest in developing management and procedural improvements. The major impetus for these proposals has come from members of the Government Operations and Judiciary Committees. Unlike other committees whose legislative jurisdiction tends to correspond to the specific interests of certain constituencies (transportation companies, environmentalists, etc.), the Government Operations and Judiciary Committees have tended to take the broader view, looking at issues which cut across industry and committee lines.

During the last two years, a number of bills were introduced which would require additional Congressional oversight by making Executive Branch agencies submit their proposed regulations for Congressional veto or approval before they could take effect. In addition to Constitutional objections to this concept of a one-House override, we are concerned that such a system could lead to further confusion and delay.

There has also been a great deal of attention devoted to the management and organization of regulatory agencies. A number of bills called for changes in agency procedures. Still other bills proposed a statutory requirement for agencies to conduct an inflation (or economic) impact

analysis and to make these analyses available to the general public prior to final rulemaking.[16] We have argued consistently for better analysis, but rigid requirements could lead to substantial increases in paperwork and more delays. Another approach proposed that in the future, independent economic regulatory agencies be required to bear the burden of proof in demonstrating that their decisions do not unduly limit competition in the industries within their jurisdiction. Such a standard is intended to strike a new balance between regulatory laws and the antitrust statutes. In principle, when coupled with judicial review, it could help correct some of the bias against competition which has permeated much economic regulation by the independent agencies.

The Congressional proposals that have received most attention from the press and public have been ideas for "sunset" and "zero-base budgeting" legislation. Under these approaches, agencies would be required to justify all their programs "from the ground up," and Congress would be called on to reauthorize these programs every few years. These new requirements would apply to almost all agencies, and would affect large spending programs, such as defense, as well as smaller regulatory agencies whose budgets now receive relatively little attention. It is impossible to tell whether such a system would help to correct the present weaknesses evidenced by splintered committee jurisdictions and the tendency for authorizing committees to approve larger expenditures than they know the Appropriating Committees will sanction, or that the Nation's budget can afford. One modified "sunset" approach dealt specifically with regulatory agencies.[17] It called for a five year review of clusters of regulatory agencies, in order to see whether duplicative or contradictory programs could be eliminated. This proposal was helpful in advancing the discussion of needed reforms.

We firmly believe that some across-the-board, fundamental reviews are necessary. But we question whether wide-spread zero-base and sunset bills (or more limited versions) are politically realistic or administratively feasible unless they are selective about the issues to be addressed.

Substantive Developments

Although we question the potential effectiveness of further Congressional studies or added procedural requirements, a number of sound developments have taken place in Congress during the last two years.

First is the fact that regulatory reform has become a truly bi-partisan concern. Although the original moves were made by a Republican President, nearly 300 Senators and Representatives from both parties supported major regulatory reform legislation during the 94th Congress.

Second, Congress enacted several important pieces of legislation. The Securities Acts Amendments of 1975[18] put an end to nearly 200 years in which brokerage commission rates had been established by the industry, rather than by competitive market forces. Congress repealed the federal authorization that had permitted states to enact resale price maintenance laws.[19] These so-called "fair trade" laws in many cases resulted in higher than necessary prices for consumers. The Railroad Revitalization and Regulatory Reform Act[20] eased some of the regulatory constraints that have stood in the way of low-cost, efficient rail transportation.

Some important measures were never enacted, but received extensive hearings which helped to advance the public's understanding of complex regulatory issues. The Financial Institutions Act was reviewed by both Banking Committees, and passed the Senate, but did not receive approval in the House. A patent reform bill was passed by the Senate in February, 1976, after nearly ten years of debate, and detailed hearings on airline regulation were conducted in both houses.

Two further developments encourage us to believe that Congress may continue to pursue substantive (as opposed to procedural) improvements, particularly in areas of economic regulation. The Senate Commerce Committee has embarked on a fundamental review of aviation regulatory policy. And the House Interstate and Foreign Commerce Committee conducted hearings on cable TV and issued a report. The Committee has now concluded that meaningful decisions on cable cannot be made without comprehensively reviewing the Communications Act of 1934 which established the current FCC regulatory structure. These are examples of excellent Congressional oversight.

Not all Congressional action has been aimed at reducing anticompetitive economic regulation. For example, oil cargo preference legislation, which would have offered additional regulatory protections to the merchant shipping industry, was passed but vetoed by the President.[21] Over the past two years, Congress has also persisted in a tendency to add more regulatory laws to the books, while doing little to remove outmoded and ineffective laws. New laws, for example, have been enacted setting up federal inspection for grain,[22] and requiring federal safety and effectiveness standards for medical devices.[23] The Senate Banking Committee reported out a bill which would have required new federal regulation of investment advisers. Legislation to establish a consumer protection agency received wide support, but was not enacted.

Congressional interest in reform has increased, particularly in cases of economic regulation. Although Congress has given less attention to reforming social regulation, perhaps the results achieved through changes in economic regulation will convince Congress that equally beneficial changes should be made in other areas as well.

The Courts

The courts have played an increasingly active role in the regulatory process. Regulatory decisions must not only be consistent with statutory requirements as interpreted by the courts, but also adhere to complex and changing due process requirements. In particular, the behavior of regulatory agencies has increasingly reflected court imposed requirements that their decisions be "fair" not only to the regulated firms but to other concerned parties as well. Legal scholars have pointed to the fact that the regulatory process has moved steadily toward a more expansive balancing of the interests of many different groups affected directly or indirectly by regulatory actions.[24] While this has made regulation fairer and more equitable, it has also contributed to the complexity of regulatory problems.

Increased judicial activity also appears to have resulted from overly broad discretion exercised by the agencies and a failure of the Congress and the Executive Branch to exercise their oversight and management responsibilities. Many of the legislative proposals advanced by the Ford Administration were aimed directly at the problem of overly broad agency discretion in the exercise of economic regulatory authorities.

We were also concerned about growing problems arising out of increased court involvement in the enforcement of many of the newer regulatory statutes. Private citizens have increasingly resorted to court action against EPA for its alleged failure to assure full compliance with the law. In turn, the agency has devoted substantial resources to defending itself against more than a thousand suits, brought both by environmentalists seeking sterner enforcement and by companies seeking relief from what they regard as unfair application of the law.

Although the DCRG did not devote much attention to this aspect of the regulatory process, we did recognize the Administration's legislative reform proposals would, if enacted, be litigated in the courts. We devoted much time to trying to design proposals that would give clear legislative guidance to the courts and the regulatory agencies.

These and other problems have led to an increased awareness of the need to recognize the role of the courts and the judicial system as we explore ways of improving the regulatory system.

The Private Sector

The efforts of the judiciary to ensure more adequate representation for all interests affected by agency decisions reflect a growing public distrust of the regulatory process. Over the past two years, the general public has also become increasingly aware of the consequences of regulation and the fact that the system seems to be out of control. As a result, individuals, consumer groups, the academic community, labor groups, and businesses and their trade associations have also played an increasing participatory role in attempting to better understand and change the regulatory system.

There has been growing emphasis on more direct democracy and public participation in the regulatory process. For example, most consumer interest groups have tended to attribute the regulatory problem to a lack of consumer representatives on regulatory commissions or an inability of consumer groups to participate effectively in regulatory proceedings.

They have backed proposals to establish a separate consumer protection agency, to permit class action suits, to pay intervenors, and to appoint consumer representatives as members of the regulatory commissions. Their recent interest in procedural remedies appears to be a change from earlier activities in which some organizations concentrated on substantive changes in economic regulation and published some interesting and helpful volumes on the subject.

A few consumer groups have viewed regulatory reform as an effort to "roll back" or eliminate many of the more recent environmental, safety, and health regulatory controls. In these areas, they often have tended to be critics rather than supporters of reform. In controversial areas, such as airline and trucking legislation, we were disappointed that organized consumer groups were not more helpful in encouraging the Congress to act. Except for some help in selected areas, they provided little support.

Industry and trade associations have taken an active part on both sides of the reform debate. Companies in regulated industries, such as airlines, trucking firms, banks, and broadcasters, and some labor unions have been highly critical of any attempts to change the economic regulations which govern their operations. They are keenly aware that today's pricing and entry regulations control potential competition, thereby providing a measure of economic security. In many cases, they have paid for certificates or franchises, and are opposed to any legislation which would diminish the value of that investment.

The same firms that argue for economic protection have been highly critical of health or safety regulations which tend to raise their costs of operation. Manufacturers have generally resisted new product and/or worker safety rules, especially when they appear unreasonably expensive in relation to the experienced accident rate. However, when regulation seems inevitable, or when a number of states have begun to exercise their own authorities, these businesses have become among the most vocal proponents for pre-emptive federal standards administered by a single agency.

Labor unions have tended to reflect the economic interests of their members. The Airline Pilots Association registered complaints against the Administration's air bill, and the Teamsters objected to proposed changes in regulation of motor carriers. In both these cases, labor and management have generally been on the same side of the economic issue. Likewise, on some environmental regulations, labor and management have spoken with a single voice, recognizing that investments in pollution control equipment can cause firms to close or curtail operations, thereby threatening workers' jobs. For example, labor generally supported the environmental variances sought by steel mills in the Mahoning Valley. However, labor and management representatives have not always been on the same side of regulatory issues. There has been a clear division on some health and safety issues. For example, while management representatives have generally been quick to point out the costs of OSHA rules, labor leaders talk more about their benefits.

Lack of good data has begun to concern some of these groups. Until recently, compliance costs, and their impact on consumer prices, have been more conjecture than the result of detailed analysis. To help remedy this problem, a number of companies have embarked on detailed accounting studies of the impact which government regulations have on their operations. It is important to note, though, that those who must live with regulation, and bear its costs, are only just beginning to understand and quantify these impacts. Large industrial firms, which are accustomed to detailed accounting analyses and the "bottom line" calculation, freely admit that they have not spent enough time or money documenting the effects of government regulation. Their contribution to the data base should be very important in helping to frame the discussion of regulatory costs and benefits. Individual companies' efforts in this area have been supported by broadly-based organizations, such as the Chamber of Commerce and the National Association of Manufacturers. These industry groups have come out in favor of a long-range comprehensive review of federal regulation, and we expect them to continue contributing to the debate.

University economists, professional associations, and others in research centers have produced thoughtful analyses on particular aspects of regulatory reform. Their efforts have looked toward longer-term solutions, but often overlook transition problems or the political impediments to reform. Several university presidents have contributed to the discussion by demonstrating how federal regulations are affecting the price and quality of higher education.[25]

CHAPTER IV The Challenge Ahead

The discussion to this point has described what has been tried before, how we have looked at the regulatory reform problem, and what we have learned. We have not prescribed solutions or outlined what should be done because we believe there are no easy answers. Too many reformers have fallen into the trap of believing that there is some simple panacea which if properly legislated and implemented would solve the regulatory problem. Many of the proposed "solutions," such as better regulators, "sunshine" laws, agency reorganization, and improved economic analysis, have considerable merit. They must not, however, be oversold. We believe that lasting reform requires a comprehensive approach that not only improves the procedures but also addresses the fundamental issues of regulatory policy. In this concluding section, we will suggest a number of steps that we believe should improve the management of existing regulatory responsibilities, and also identify some preliminary actions aimed at dealing with more fundamental issues.

Improving Management

Better management of our regulatory responsibilities would make a significant contribution to restoring the integrity and confidence in federal regulatory agencies. In the simplest terms, better management means attracting the best people. It also means that regulators should be accountable for their actions and that their decisions should be based on the best information available.

Attracting Better People

Many proposals for improving the quality of regulatory personnel have been made, including such things as the creation of a regulatory service corps, advance publication of upcoming commission vacancies, and allowing outside groups to submit nomination suggestions to the President. However, none of these would appear necessary if (1) the Executive felt freer to nominate the best people regardless of background, and (2) the Congress carefully exercised its confirmation responsibilities.

Related to the quality of people is the issue of conflict of interest. If the public is to have confidence in its regulatory agencies, regulators obviously must function impartially and in the public interest. We believe this area deserves further exploration in order to assure that an appropriate policy is fairly and consistently applied across the government.

Finally, we believe that every effort should be made to attract first-rate career people into regulatory agencies, and to obtain a better mix of skills in these agencies, particularly in complex areas involving social regulation.

Organization and Accountability

Improved selection of personnel is only part of the answer to better management. The best way to assure that regulatory agencies act fairly and in the broadest public interest is constantly to keep the spotlight of public attention on their behavior. In the past two years, President Ford has devoted significant time and attention to the regulatory agencies. Oversight hearings in the Congress have increased. The general press has begun to assign full time staff to cover these agencies. It would be unfortunate if this attention subsided and the agencies returned to the quiet somnolence that existed before. While the recent "sunshine" legislation should make it easier to observe closely the workings of these agencies, Congress, the Executive, and the press should continue to carry out their respective responsibilities for assuring that these agencies are, in fact, held publicly accountable.

In addition to keeping public attention fixed on these agencies, there are some organizational changes that could improve accountability. Such changes should not be made the centerpiece of regulatory reform, but they could play an important supporting role. For example, the multi-headed commission structure has inherent flaws, as the Ash Commission pointed out. This concept of the commission structure by its very nature leads to avoidance of ultimate accountability. If accountability is to be clear, perhaps single-headed agencies, responsible to the President, coupled with the opportunity for court review of their actions, would be preferable.

This, however, is not the direction that has been taken in recent years. Congress has increasingly attempted to reduce the President's authority and accountability for regulatory agencies. Elimination of the President's budget and legislative review powers over some of these agencies has tended to confuse rather than clarify accountability. Steps should be taken to sort out better Executive and Congressional responsibilities in these areas.

Another cause for confusion is the fact that so many federal agencies are empowered to intervene before these regulators. The Council on Wage and Price Stability, the Federal Trade Commission, the Antitrust Division, the Department of Transportation, and others regularly argue their cases before these agencies. The proposed consumer protection agency would add yet another intervenor. In addition, offices of "public counsel" are being created and government funding of increased public participation is practiced by or proposed for many agencies. Clearly, the disparate views of government agencies and their constituencies should be reviewed on the record. However, we believe that creating new organizations is a "second best" solution that avoids dealing with the heart of

the problem and may in fact permit the responsible agency to avoid accountability.

Procedural Improvements

Even if regulatory agencies were staffed with the best people and made clearly accountable for their actions, public frustration with regulation will continue unless there are marked improvements in the regulatory process itself. For example, there is considerable room for innovations which would streamline what have become highly legalistic and cumbersome ratemaking and licensing procedures. The application of better case management, expediting measures, and more use of the "management by exception" principle could help to eliminate the chronic backlog problem found in many agencies. For example, the ICC has only very recently begun to mechanize its complex system of establishing commodity rates. Even now, most of the effort to look up and calculate a rate for a particular product moving between specific points must be done manually. But these simple improvements can only go so far.

A much more difficult aspect of the procedural problem is the lack of mechanisms to ensure that all relevant information on which to base regulatory decisions is available. There is a critical need for good analysis of the economic impact of alternative regulatory decisions. The Inflation Impact Statement requirement was only a partial answer to this problem. It did not assure that better measurements of private sector compliance costs would be developed or that the state of the economic art in measuring costs and benefits would be advanced.

More thorough consideration of the impact of regulatory decisions will require the establishment of more effective interagency review procedures for new regulatory proposals. This could aid decisionmakers by bringing different views to the agency prior to locking in publicly on one alternative. Although the "Quality of Life" review has been criticized by some environmentalists, it has been effective in helping EPA decisionmakers "test the water" before going public in the *Federal Register.*

Achieving Fundamental Reform

The foregoing suggestions, if pursued, could help to improve existing regulatory practices. But they fall short of resolving some of the more fundamental issues concerning whether or not regulation is in fact the best way to achieve a desired objective. In almost every area of regulatory activity, we believe, there is a need for careful review and revision of legislative mandates.

Two basic questions must be addressed:

First, to what extent is a particular regulatory activity justified in light of current economic and technological realities?

Second, to what extent would a better balance with other policy tools, public and private actions, and legal remedies be more effective in meeting our economic and social goals?

We believe that formulation of clear answers to these questions will lead to a better regulatory system. For example, a better balance between competition and responsible economic regulation is needed in many areas where our current approach to regulation no longer makes sense. We are convinced, for example, that a combination of fewer ICC controls over motor carrier rates, coupled with the removal of antitrust immunity which now sanctions collusive ratemaking activities, would result in a more competitive, more efficient trucking industry. Similarly, a more creative balance between federal regulation and private sector ingenuity is desirable in many areas of public health and safety. Environmental regulation, we believe, could be made more effective through more use of incentives, and less reliance on standards enforcement.

Economic Regulation: Balancing Competition and Regulation

In such industries as transportation, energy, communications, and finance, regulation has traditionally been used as a substitute for competition. In the future, it would be useful to move toward a better balance between competition and responsible regulation in those industries. Industry executives are better able and equipped than government agencies to make decisions needed to adjust to changing market conditions. Techniques such as more vigorous enforcement of the antitrust laws are in many cases preferable to detailed regulation. There is considerable resistance, however, to change—resistance not only from affected interests that are concerned about the "unknowns" associated with increased competition, but also from those who are reluctant to rely on less direct federal regulation in any industry they do not believe can be made competitive.

In addition, even where the need for change is recognized, concern over the potential dislocation during a transition period often becomes a barrier to reform. For example, soon after the Aviation Act of 1975 was submitted, critics attacked the bill with the charge that such reform would end service to smaller communities. DOT argued that liberalized entry would permit the formation of new companies that might specialize in serving small communities. The DOT did extensive studies which indicated that fewer than a dozen communities might actually lose airline service. However, not until the Administration amended the bill to provide a ten year guarantee of service to such communities through direct federal subsidy were these criticisms muted.

Similar concerns arise regarding the cross-subsidization and the redistribution of income that accompanies much present regulation. We originally had difficulty, for example, in formulating proposals that would permit more competition in the insurance industry in a manner that would satisfy those concerned with the problem of assuring the "availability" of insurance.

These concerns, however, must not prevent realization of the basic objective — more competition which will permit people to get the best goods or services for their money.

In the area of economic regulation, the challenge ahead can be viewed in terms of three major tasks:

First, in some areas, such as regulation of financial institutions, airlines, and motor carriers, the current issue appears to be not whether reform is needed, but how far reform should go, and how quickly it should proceed. In these instances, the job ahead is to explain the various transition measures that have been designed to ease the effect of moving from one regulatory scheme to another. For example, in the Aviation Act of 1975 various reform measures would be carefully phased in over a period of years to allow the industry to adjust gradually to the new regulatory environment.

Second, in other areas, such as communications and maritime regulation, an acceptable case for reform has not been built. Here, more thought needs to be given to short-term indemnification and safeguards to protect those who might be adversely affected by regulatory changes, such as rural communities and affected workers. Considerable data regarding the transition problems that might be experienced in these areas must be developed and specific measures must be designed to alleviate them.

Finally, continuing attention must be given to identifying other areas where economic regulation is not producing desirable results. In addition, care must be taken to assure that economic regulatory controls are not expanded unnecessarily. For example, pressure is now building to bring commuter airlines and exempt agricultural carriers under the reign of the CAB and the ICC. It is our firm conviction that direct economic controls should be considered only as a last resort.

Social Regulation Improving Incentives

Relatively little attention has so far been given to reform of social regulation. In dealing with social as well as economic problems, we believe that direct federal involvement should be minimized. Federal involvement in social regulation comes about because it is felt that non-federal institutions — the states, the private market, insurance, etc. — are failing to deal adequately with a social problem. Unfortunately, the performance of the regulatory agency often is looked at in isolation from the important roles that others may be playing in achieving a goal. For example, there are major constraints other than federal regulation to discourage manufacture of shoddy products. The consumer will not buy them, and if he does and is injured, he may sue. Or the manufacturer may be forced to repair the product under warranty at considerable cost.

State and local governments can play major roles in protecting their citizens, but the Federal Government often preempts this action or creates disincentives to their involvement. Organized special interest groups by and large resist relying on non-federal solutions as do the regulatory agencies and many Congressional committees. This opposition, however, should not stand in the way of looking for ways of better involving other institutions in determining how best to achieve the Nation's social goals.

First, we can achieve better enforcement within the existing framework. It is our view that more effective enforcement can be achieved by relying less on detailed federal intervention in specifying industry practices. For example, we need to move toward the "performance standards" approach in lieu of detailed agency standard-setting. This will permit individual firms or industries to select the best means of achieving the desired result.

However, we must recognize that any method of standard setting has problems which arise out of rulemaking and adjudicatory procedures. Therefore, we should try to move toward regulatory strategies that increase the responsibility of the parties involved in drawing up relevant regulations, sometimes through direct negotiations and collective bargaining.[1] Where possible, we should try to rely more on voluntary standard setting bodies, which often can design fairer, more flexible, and more effective standards and are able to encourage voluntary compliance.

Second, regulatory agencies should be encouraged to assess the advantages and disadvantages of alternative enforcement and compliance approaches. In addition to more reliance on sampling techniques and private certification, where appropriate, we should be working toward the development and application of enforcement tools that can be applied within the framework of current regulation and which will improve the incentives for compliance. These might permit a decreasing reliance on cumbersome and unwieldy techniques of legal compulsion and move toward more innovative regulatory approaches. For example, the State of Connecticut has experimented with a system of fines for air and water pollution violations which take into account the cost of complying with regulatory standards and other economic factors.[2] In those cases where it is clear we have sound laws that ought to be complied with, we must consider economic incentives, including a better structure of judicial and possibly administrative fines and penalties which can create the economic incentive for compliance.

In other areas, agencies could begin to redirect resources to addressing problems of uncertain health hazards the private market cannot handle as opposed to easily identifiable risks which the market often can. Too often regulators assume that the market and the legal system cannot handle a problem. The failure is often largely one of lack of information. By developing and providing more information, the government might encourage the private market and legal system to deal with certain hazards better than regulation, particularly if known risks are insurable, and the information can be easily gathered and understood by users.[3]

Regulators also must not lose sight of the fact that if information or other strategies they can implement do not work, then more efforts to

improve the system that has failed may be more desirable than imposing direct controls through a standard setting process.

We recognize that relying on alternatives such as better incentives and liability rules may lead to problems. For example, resorting to the courts is costly and complex; it may be difficult to quantify damages; incentives are often difficult to design.

Even where these issues can be adequately addressed, there are often other difficulties. The 1970-1973 experience in designing a sulphur tax proposal is a good case study of the kind of problems that must be met. The constraints included administrative problems of levying a tax, the short-run transition from the existing situation to one where a full tax was in effect, and the manageability of regional variations in the tax.[4]

Future Directions

This report has tried to lay out our view of the problem. We have suggested areas that require attention and we have cautioned against simple panaceas. The question that no doubt comes to mind is whether the Federal Government has the wisdom and tenacity to address these problems and bring about real and lasting reform. If one is optimistic and believes that reform is possible, the question becomes how we organize to do the job.

The regulatory agencies have been given broad discretion to carry out their mandate. The extreme complexity of the regulatory process, through which numerous and diverse agencies promulgate thousands of regulations each year, has made effective Congressional oversight or Executive leadership difficult. Unlike other complex areas of government policy, such as defense, foreign affairs, economic affairs, or even social programs, there is no mechanism for systematic policy review.

Efforts should be initiated to begin pulling together information about the size and cost of the regulatory bureaucracy and about the costs that these programs are imposing on the private sector. This will allow the President and Congress to gain a comprehensive understanding of regulatory activities and their costs and consequences. Government should begin to measure the total costs of regulation and make informed trade-offs in a fashion not dissimilar from the current budget process.

Bringing the regulatory system under control and disciplining it will require a comprehensive and systematic reexamination of all federal regulatory activities as they affect different activities of the private sector. We cannot hope to achieve this discipline by continuing to look at the issues in a fragmented, piecemeal way.

The need for a fundamental reassessment has not been widely accepted and encouraged because many allege that it is too complicated to be dealt with in the political process. But complexity is no excuse for continuing to allow the regulatory system to run unchecked. The Executive and Congress can and should design a timetable for reform. We believe that a disciplined agenda is an essential ingredient in assuring a more responsive, effective, and understandable Federal Government.

Thirty to forty years of government regulation cannot be changed in a few months or even a few years. However, the time has come to take a broader look at the full effect of government on the private sector. This will require careful and comprehensive research efforts to examine statistics and other data.

Much remains to be done. We hope that the efforts of the past two and a half years provide a beginning.

Notes To Text

Introduction

1. U. S. President, *Public Papers of the Presidents of the United States* (Washington, D. C.: Office of the Federal Register) National Archives and Records Service, (August 9 to December 31, 1974) Gerald R. Ford, 1974, pp. 228-38.

2. "National Federation of Independent Business: The President's Remarks at Federation's Washington Conference." *Weekly Compilation of Presidential Documents* 11 (June 17, 1975): 640-43.

3. The DCRG is indebted to Mr. James Reichley for his valuable assistance in the editing of this report.

Chapter I

1. For a comprehensive overview of the establishment and expansion of Federal regulatory agencies, see the individual agency entries in the *U.S. Government Manual*, Office of the Federal Register, National Archives and Records Service (Washington, D. C.: U. S. Government Printing Office, May 1976).

Chapter II

1. As Judge Landis observed in his report to President-elect Kennedy, "poor men will wreak havoc with good laws," although it is also true that bad laws create problems for good people. *Report on Regulatory Agencies to the President-Elect* (Landis Report), Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary, 86th Congress, 2nd Session (Comm. Print 1960), p. 66.

2. In addition to the Landis Report, supra., the Brownlow Committee and the Ash Council called for a broad reorganization of the regulatory agencies. See *Report of the President's Committee on Administrative Management* (Washington, D. C.: U. S. Government Printing Office, 1937) and *Report on Selected Regulatory Agencies*, The President's Advisory Council on Executive Organization (Washington, D. C.: U. S. Government Printing Office, 1971).

3. See *Federal Regulation and Regulatory Reform*, report by the Subcommittee on Oversight and Investigation of the Committee on Interstate and Foreign Commerce, House of Representatives, 94th Congress, Second Session, (Washington, D. C.: U. S. Government Printing Office, 1976).

4. See *Federal Regulation and Regulatory Reform*, supra., Chapter 12.

5. Common Cause, *Serving Two Masters, A Common Cause Study of Conflict of Interest in the Executive Branch* (Washington, D. C., October, 1976).

6. Address of Senator Edward M. Kennedy to the Greater Boston Chamber of Commerce, Boston, Mass., February 9, 1976.

7. The Federal Railroad Administration and OSHA's conflict arose over the imposition of occupational safety standards on railroads, which was resolved by the Supreme Court (see footnote 8). Another good example of jurisdictional conflict was between FDA and CPSC, regarding jurisdiction over such food-related articles as pressure cookers, refrigerators and home canning equipment. See 41 FR 34342-43 (1976).

8. Southern Railway Co. v. Occupational Safety and Health Review Commission, Cert. denied December 7, 1976, 45 US LW 3410.

9. An October 5, 1971 memo from the Director of the Office of Management and Budget to the Heads of Departments and Agencies established the first formal procedure for interagency review of regulatory actions in the Executive Branch. It called for an interagency coordination of proposed regulations, standards, and guidelines pertaining to environmental quality, consumer protection and occupational and public health safety.

10. *Federal Regulation and Regulatory Reform*, supra., p. 148.

11. Interstate and Foreign Commerce, Public Works, Merchant Marine, Government Operations, Appropriations, and Ways and Means have jurisdiction over transportation regulation in the House of Representatives.

12. Simon Lazarus and Joseph Onek, "The Regulators and the People," *Virginia Law Review*, 57:1069-1108 (1971). Simon Lazarus, *The Genteel Populist* (New York: Holt, Rinehart and Winston, 1974).

13. Presently, one agency—the Federal Trade Commission—has been authorized by Congress to pay for counsel representing views that may have an important bearing on agency decisions and might not be otherwise reflected in those decisions.

14. Citizens Band radio license applications rose from approximately 70,000 per month in January 1975 to 400,000 per month in January 1976. By the end of FY 1978, it is anticipated there will be 10-12 million CB licenses outstanding (Source: Federal Communications Commission, *Budget Estimates for Fiscal Year 1978).* See also, "Computers Can't Handle Existing Total of 1.44 Septillion Rates," *Traffic World*, January 8, 1966, pp. 26-28.

15. See Richard Stewart, "Reformation of the American Administrative Law." *Harvard Law Review* 88:1667-1813 (1975).

16. 1976 *Annual Report of the Director of the Administrative Office of the United States Court*, (Washington, D.C.: U.S. Government Printing Office, 1976), p. 78.

17. Hearings before the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, United States Senate, 94th Congress, 1st sess., (1975).

18. See George Douglas and James C. Miller III, *Economic Regulation of Domestic Air Transport* (Washington, D.C., Brookings, 1974). George Eads, "Competition In The Domestic Trunk-Airline Industry: Too Much or Too Little" in Almarin Phillips (ed.) *Promoting Competition In Regulated Markets:* 13-54. (Washington, D.C., Brookings, 1975).

19. For a study of the effects of FPC regulation of natural gas, see Stephen Breyer and Paul MacAvoy, *Energy Regulation by the Federal Power Commission* (Washington, D.C., Brookings, 1974) and MacAvoy, "The Effectiveness of the Federal Power Commission," *The Bell Journal of Economics and Management Science*, 1: 273-303 (1970).

20. Communications Act of 1934, P.L. 415, 73rd Cong., 2nd sess., Ch. 562, 48 stat. 1064 (1934).

21. See Roger Noll, Nina Cornell and Barry Weingast, "Safety Regulation" in Henry Owen and Charles L. Schultze, (eds.) *Setting National Priorities: The Coming Decade:* 457-504 (Washington, D.C., Brookings, 1973). Nicholas A. Ashford, *Crisis In The Workplace: Occupational Disease and Injury*, A Report to the Ford Foundation (Boston, MIT Press, 1976).

22. Edward Greer, "Obstacles to Taming Corporate Polluters: Water Pollution Politics in Gary, Indiana," *Environmental Affairs*, 3, No. 2: 199-221 (1974).

23. Alan Kneese and Charles L. Schultze, *Pollution, Prices and Public Policy* (Washington, D.C., Brookings, 1976).

24. National Commission on Water Quality, *Report to the Congress by the National Commission on Water Quality*, (Washington, D.C.: U.S. Government Printing Office, 1976).

25. *Environmental Quality—1975*, The Seventh Annual Report of the Council on Environmental Quality (Washington, D.C., U.S. Government Printing Office, 1976).

26. *Environmental Reporter*, Vol. 61, pp. 1968-1972.

Chapter III

1. The *Economists Conference on Inflation Report*, Volume 1 (Washington, D.C., September 5, 1974: 11-18).

2. *Report of the President's Commission on Financial Structure and Regulation*, Reed O. Hunt, Chairman (Washington, D.C.: U.S. Government Printing Office, 1971).

3. "Data Collection by the Federal Government; Text of the President's letter to Heads of the Departments and Agencies. Dated March 1, 1976. Released March 3, 1976." *Weekly Compilation of Presidential Documents* 12 (March 5, 1976): 324-5.

4. 41 FR 16200-201 (1976).

5. 41 FR 18394-396 (1976).

6. 41 FR 47934-938 (1976).

7. "The President's Remarks at a President Ford Committee Breakfast Reception. April 10, 1976." *Weekly Compilation of Presidential Documents* 12 (April 19, 1976): 620.

8. "Transcript of Meeting between President Gerald R. Ford, Vice President Nelson A. Rockefeller and Members of the Cabinet and Commissioners of the Ten Independent Regulatory Agencies." White House Press Office, July 10, 1976.

9. "Meeting on Regulatory Reform; Remarks of the President and Chairmen of Ten Regulatory Agencies and Administration Officials, April 8, 1976." *Weekly Compilation of Presidential Documents* 12 (April 19, 1976): 591-603.

10. Executive Order 11821, Nov. 27, 1974, 3 CFR 1974 Comp. 203. See also U.S. Office of Management and Budget Circular A-107.

11. "White House Conference on Domestic and Economic Affairs; the President's Remarks at the Conference in Concord, New Hampshire." *Weekly Compilation of Presidential Documents* 11 (April 18, 1975): 403-6.

12. The estimates, however, have been extremely controversial and subject to much debate. See Thomas G. Moore, "Deregulating Surface Freight Transportation" in *Promoting Competition in Regulated Markets* (Washington, D.C., Brookings, 1975) and *A Cost and Benefit Evaluation of Surface Transportation Regulation*, Interstate Commerce Commission, Bureau of Economics, 1976.

13. *An Economic Evaluation of the OMB Paper on "The Costs of Regulation and Restrictive Practices,"* by the General Accounting Office, Subcommittee on Oversight and Investigations Print, Staff Paper prepared for the Subcommittee on Oversight and Investigations. (Washington, D.C.: U.S. Government Printing Office, 1975).

14. S. 3428, 94th Cong., 2d Sess. (1976). See also "Agenda for Government Reform: the President's Message to the Congress Transmitting the Proposed Agenda for Government Reform Act. May 13, 1976." *Weekly Compilation of Presidential Documents* 12 (May 17, 1976): 871-872.

15. *Federal Regulation and Regulatory Reform*, supra.

16. In this area alone, more than twenty bills requiring one form or another of "impact statements" were proposed.

17. S. 2812, 94th Cong., 2d Sess. (1976).

18. P.L. 94-29, 89 Stat. 97 (1975).

19. P.L. 94-145, 98 Stat. 801 (1975).

20. P.L. 94-210, 90 Stat. 31 (1976).

21. *Public Papers of the President of the United States* (August 9 to December 31, 1974), supra., p. 782-83.

22. P.L. 94-582, 90 Stat. 2867 (1976).

23. P.L. 94-295, 90 Stat. 539 (1976).

24. Stewart, "The Reformation of the American Administrative Law," supra.

25. *Report of the President to the Members of the Board of Overseers*, 1974-1975, (Cambridge, Harvard University Press, 1976). See also "Red Tape in Academe," *The Wall Street Journal*, Jonathan Spivak, 8 December 1976, p. 46.

Chapter IV

1. "The Limits of Legal Compulsion" a paper prepared by then Secretary of Labor, John Dunlop and released by the Department of Labor.

2. *Economic Law Enforcement*, Connecticut Enforcement Project (U.S. Environmental Protection Agency, September 1975).

3. See Noll, et. al, "Safety Regulation," supra.

4. The 1970-73 experience with the design of the sulphur tax was reviewed in an unpublished OMB/Treasury report to the DCRG on the desirability and feasibility of environmental tax incentives. The 1971 *Economic Report of the President* discusses the merits of environmental tax incentives.

APPENDIX A: Definition of Regulation and Inventory of Regulatory Agencies

INTRODUCTION

In Chapter I, we pointed out that the Federal Government uses a variety of tools (tax laws, credit programs, income transfers) to try to achieve social and economic goals. Most of these programs, however, have substantial budgetary consequences and receive periodic review within the Executive and the Congress. Regulations, on the other hand, are unique insofar as their immediate budget consequences are small (in contrast to tax or grant programs) and they are usually not subjected to the same degree of Congressional and Executive scrutiny.

DEFINITION

In defining regulation, we have tried to recognize that almost everything the government does carries with it a rule or regulation. However, many of these apply only to internal government procedures (e.g., civil service regulations) or are associated with the many procurement and grant activities of federal agencies. Our definition tries to isolate those regulations which have the greatest impact on organizations and individuals *outside* the Federal Government, because it is in the private sector (as well as state and local governments) that the ultimate costs of regulations must be borne.

Accordingly, for purposes of the DCRG work, and for this report, we have defined regulation as: *federal laws or rules which impose government established standards and significant economic responsibilities on individuals or organizations outside the federal establishment.*

Regulation is carried out by federal agencies through such means as setting or approving prices, rates or fares, profits, interest rates, and wages; awarding licenses, franchises, certificates, and permits; or establishing and enforcing standards of behavior such as worker safety rules, air quality levels, public disclosure of financial information, or prohibitions of price, racial, religious, or sexual discrimination.

APPLYING THE DEFINITION

In looking at the universe of federal agencies, we recognize that all federal regulatory activities are not the same. Consequently, we have developed a taxonomy which tries to group agencies according to the degree to which they may be commonly perceived as regulators. The three groups are:

Group I

This group includes eighteen organizations all of which have a collegial body of administrators appointed for a fixed term. In most cases, there are restrictions on the number of commissioners which may come from any one political party. One commissioner generally serves as Chairman at the pleasure of the President. Members may not be removed prior to their term, except for negligence or malfeasance.

These agencies' authorities include the ability to: set rates of profit (CAB); limit the number of industry participants (FCC); require disclosure of financial information (SEC); set minimum safety requirements (CPSC); or approve hiring and promotion practices (EEOC).

Their authority to issue rules is subject to broad statutory mandates and the Administrative Procedures Act. Their fact finding and adjudicatory powers give them authorities usually reserved to executive or judicial bodies (but not both). Their decisions carry the weight of law, subject to review, on appeal, by the courts. They may levy fines and other sanctions on violators.

Group II

This includes thirty-one bureaus within executive departments, and three separate agencies, with major regulatory responsibilities. Some are exclusively regulatory (in the sense of our definition) e.g., MESA, OSHA, ESA. Others have a regulatory responsibility, together with others duties which we have excluded from our definition. For example, FAA employs some people who set the standards for airworthiness of planes, performance requirements for pilots, mechanics, or design of airports. FAA also employs air traffic controllers, who, though they have jurisdiction over movement of aircraft, are not considered regulators but more as law enforcers. Similar examples are the Coast Guard (which sets marine safety standards and polices the waterways) or the Bureau of Alcohol, Tobacco, and Firearms (which prescribes labeling and packaging restrictions on liquor and cigarettes, but which also works in concert with the FBI to detect and prosecute terrorists who use explosives).

Group III

This final group has been divided into three sub-groups. The first consists of four agencies, such as National Transportation Safety Board, which have authority to investigate and make recommendations, but which do not have final rulemaking authority. However, experience has shown that their recommendations consistently affect regulatory outcomes.

The second sub-category lists fourteen agencies which have a substantial impact on various sectors of the private economy by virtue of the scope of their grant-making or programmatic responsibilities. For example, the Social Security Administration, through its Medicare program,

influences the design and operation of almost all medical care institutions. Likewise, because FHA insurance is so pervasive, housing design and construction standards developed in that agency impact suppliers of building materials and household appliances to such a degree that we have included this agency, and thirteen others in the inventory.

The final sub-category lists twenty specialized agencies which have a substantial impact on certain geographic regions or more specialized types of enterprise. These include the TVA and SBA, which respectively set hydro-electric power rates in the Tennessee Valley and license small business investment companies.

Major Exclusions

In developing this inventory, we have excluded those agencies (or those functions within the named agencies) which carry out:

a. Administrative requirements used to establish eligibility to receive federal assistance funds or contracts, e.g., requirements for contractors or grantees to adopt special accounting procedures, security systems, etc.
b. Design or engineering standards which assure that the government receives product quality or durability e.g., concrete thickness for interstate highways.

These two categories of regulations have not been included in our definition because they are essentially requirements that try to insure that the government receives full value for its funds. For example, an FAA rule, which required certain kinds of competitive bids or professional experience, *would be excluded* because it was designed to ensure quality work at reasonable cost. However, related FAA rules on the space around an airport, or noise levels of aircraft *would be counted* because these are primarily designed to protect public health and safety.

It is important to note that we have also excluded from our definition those government activities which are designed to achieve a specific economic or social goal, unrelated to the purpose of the grant or procurement. These are requirements that generally apply across the board to all grant and contract activities. Examples are the Davis-Bacon Act, which requires federally funded projects to pay prevailing wages, or equal employment rules applied to all contractors or grantees. All federal agencies must insure that their contractors or grantees meet these kinds of requirements. Only if an agency has some broader regulatory mandate has it been counted in our list. For example, when an agency such as the Bureau of the Mint purchases equipment, it must make sure that the contractor meets a number of standards unrelated to the performance of the equipment. However, because the Bureau does not impose a regulatory burden in our sense of the definition, it is not included in the attached inventory of 90 federal agencies.

The accompanying list gives the agency name, the year in which it was established and summarizes briefly the agency's major regulatory responsibilities.

Federal Regulatory Organizations
(As of December 1976)

I. Regulatory Agencies Headed by Collegial Bodies

Organization	*Year Established**	*Primary Regulatory Functions*
Board of Governors of the Federal Reserve System	1913	Determines monetary and credit policy for the system and regulates member commercial banks.
Board of Governors of the U.S. Postal Service	1970	Determines postal rates and classifications.
Civil Aeronautics Board	1938	Promotes and subsidizes air transportation and regulates airline routes, passenger fares, and freight rates.
Commodity Futures Trading Commission	1975	Licenses all futures contracts and the brokers, dealers and the exchanges trading them.
Consumer Product Safety Commission	1972	Establishes mandatory product safety standards and bans sale of products which do not comply.
Equal Employment Opportunity Commission	1964	Investigates and rules on charges of racial and other discrimination by employers and labor unions.
Farm Credit Administration	1971	Supervises and regulates all activities of credit disbursed through Farm Credit System.
Federal Communications Commission	1934	Licenses civilian radio and television communication, and licenses and sets rates for interstate and international communication by wire, cable, and radio.
Federal Deposit Insurance Corporation	1933	Insures deposits of eligible commercial banks and supervises certain insured banks.
Federal Home Loan Bank Board	1932	Provides credit reserves for and regulates federally chartered savings and home-financing institutions.
Federal Maritime Commission	1936	Regulates fares, rates and practices of steamship companies engaged in United States foreign commerce.
Federal Power Commission	1930	Regulates wholesale rates and practices in interstate transmission of electric energy and regulates transportation and sale of natural gas.

*Indicates the year in which the organization, by the current name, was first established. In some cases, the functions of these agencies predate the present organization (e.g., the AEC was created in 1946, and superceded by NRC in 1975).

I. Regulatory Agencies Headed by Collegial Bodies—Continued

Organization	*Year Established*	*Primary Regulatory Functions*
Federal Trade Commission	1914	Administers some antitrust statutes, and laws concerning advertising misrepresentation, flammable fabrics, packaging, and labeling of certain products.
Interstate Commerce Commission	1887	Regulates rates, routes, and practices of railroads, trucks and bus lines, oil pipelines, domestic water carriers and freight forwarders.
National Labor Relations Board	1935	Conducts union representation elections and regulates labor practices of employers and unions.
Nuclear Regulatory Commission	1975	Issues licenses for design, construction, and operation of all civilian aspects of nuclear energy.
Occupational Safety and Health Review Commission	1970	Adjudicates all enforcement actions when OSHA rulings are contested.
Securities and Exchange Commission	1934	Requires financial disclosure by publicly held companies; regulates practices of stock exchanges, brokers and dealers; regulates certain practices of mutual funds, investment advisers and public utility holding companies.

II. Executive Departments and Agencies

DEPARTMENT OF AGRICULTURE		
Agricultural Marketing Service	1937	Sets grades and standards for most farm commodities; inspects egg production; licenses and bonds warehouses; determines minimum milk prices in some areas.
Agricultural Stabilization and Conservation Service	1953	Sets acreage allotments, marketing quotas, and price support loan levels for some commodities.
Animal and Plant Health Inspection Service	1953	Sets standards, inspects, and enforces laws relating to meat, poultry, and plant safety.
Foreign Agricultural Service	1974	Determines eligibility, prices and terms of payment for commodities allocated to export markets, and issues licenses under various agricultural import quotas.

II. Executive Departments and Agencies—Continued

Organization	*Year Established*	*Primary Regulatory Functions*
Packers and Stockyards Administration	1916	Regulates fair business practices in livestock and processed meat marketing.
DEPARTMENT OF COMMERCE		
National Bureau of Standards	1901	Researches and establishes standards for building materials, flammable fabrics, and basic measurement systems.
National Oceanic and Atmospheric Administration	1970	Administers ocean resource and marine mammal programs and establishes commercial and recreational fishing limits within 200 mile zone.
Patent Office	1836	Establishes eligibility of applicants and issues patents and trademarks.
DEPARTMENT OF DEFENSE		
Army Corps of Engineers	1824	Issues permits for all construction in navigable waterways; constructs and maintains river and harbor improvements.
DEPARTMENT OF HEALTH, EDUCATION AND WELFARE		
Food and Drug Administration	1931	Establishes regulations concerning purity, safety, and labeling accuracy of certain foods and drugs, issues licenses for manufacture and distribution.
Office for Civil Rights	1964	Sets standards for and approves affirmative action plans for recipients of federal financial assistance, educational and health care institutions; investigates and rules on complaints of discrimination in these areas.
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT		
Office for Consumer Affairs and Regulatory Functions	1968	Oversees programs which (a) set mobile home construction standards; (b) regulate interstate land sales contracts; and (c) develop disclosure requirements under RESPA for all federally related mortgage loans.
Office for Fair Housing and Equal Opportunity	1968	Investigates and determines cases of discrimination in federally sponsored housing.
DEPARTMENT OF THE INTERIOR		
Fish and Wildlife Service	1871	Manages fish and wildlife conservation programs by setting regulations for commercial and recreational limits.

Organization	*Year Established*	*Primary Regulatory Functions*
Mining Enforcement and Safety Administration	1973	Sets and enforces mine safety standards.
DEPARTMENT OF JUSTICE		
Antitrust Division	1903	Enforces federal antitrust statutes.
Drug Enforcement Administration	1973	Regulates legal trade in narcotics, dangerous drugs, and other controlled substances.
DEPARTMENT OF LABOR		
Employment Standards Administration	1933	Sets and administers standards under laws relating to minimum wages, overtime, nondiscrimination, etc.
Employment and Training Administration	1933	Certifies state unemployment insurance plans; reviews and regulates states' plans for implementing veterans' preference hiring laws.
Labor-Management Services Administration	1963	Determines (with Treasury) eligibility of employee welfare and pension plans and sets standards for financial disclosure.
Occupational Safety and Health Administration	1973	Develops and enforces worker safety and health regulations.
DEPARTMENT OF TRANSPORTATION		
Coast Guard	1915	Sets and enforces safety standards for merchant and recreational vessels; prescribes license requirements for merchant seamen.
Federal Aviation Administration	1948	Certifies airworthiness of aircraft, licenses pilots and other aviation personnel; sets safety standards for airports.
Federal Highway Administration	1966	Establishes equipment and operating safety regulations for commercial interstate motor carriers.
Federal Railroad Administration	1966	Prescribes safety standards for all areas of rail operations.
Materials Transportation Bureau	1975	Issues equipment and operating safety regulations for transportation of all materials by pipeline and all hazardous materials, by any mode.
National Highway Traffic Safety Administration	1970	Establishes safety standards for trucks and automobiles and certifies compliance with emission standards for pollution control.

II. Executive Departments and Agencies—Continued

Organization	Year Established	Primary Regulatory Functions
DEPARTMENT OF THE TREASURY		
Comptroller of the Currency	1863	Licenses and regulates national banks.
Internal Revenue Service	1862	Administers federal tax laws and prosecutes tax cases.
Bureau of Alcohol, Tobacco and Firearms	1972	Enforces A.T.F. laws and regulates legal flow of these materials.
Customs Service	1927	Enforces anti-dumping regulations; regulates flow of cargo, mail, and people in and out of U.S.; determines legal ports of entry, licenses warehouses in non-tariff trade zones.
ENVIRONMENTAL PROTECTION AGENCY	1970	Develops environmental quality standards, approves state abatement plans, and rules on acceptability of environmental impact statements.
FEDERAL ENERGY ADMINISTRATION	1973	Regulates price and allocation of certain petroleum products under emergency energy laws.
NATIONAL CREDIT UNION ADMINISTRATION	1970	Charters, supervises, and examines all federal credit unions.

III. Other Government Agencies With Some Regulatory Functions

In addition to those agencies identified above, we have tried to include organizations which have an impact on private decisionmaking and the over-all economy. For purposes of this analysis, we have put them in three categories:

A. Agencies with authority to investigate and make recommendations, which may not have the status of a final regulation, but which over time have proven to carry significant weight in an ultimate regulatory decision.

Organization	Year Established	Primary Regulatory Functions
Commission on Civil Rights	1964	Makes recommendations to the President and Congress on the status of equal opportunity in education, employment, housing, etc.
International Trade Commission	1975	Investigates cases of alleged dumping and makes recommendations on remedial action and/or restitution to damaged parties.
National Transportation Safety Board	1975	Investigates accidents in all modes of transportation and makes recommendations to federal and state agencies.
Postal Rate Commission	1970	Recommends postal rates and classifications to the Governors of the Postal Service.

III. Other Government Agencies—Continued

B. Agencies whose funding programs or control of government assets are so large that their regulations have pervasive impacts on the affected industries.

Organization	Year Established	Primary Regulatory Functions
DEPARTMENT OF AGRICULTURE		
U.S. Forest Service	1905	Manages U.S. forest resources by determining amounts of land eligible for harvest, conditions of cutting, need for reforestation, etc.
DEPARTMENT OF COMMERCE		
Maritime Administration	1936	Determines eligibility for merchant marine subsidies, and regulates construction and operation of certain merchant ships.
DEPARTMENT OF HEALTH, EDUCATION AND WELFARE		
Health Services Administration	1973	Evaluates and approves formal review plans submitted by PSRO's and develops regulations relating to their duties and functions.
Social Security Administration	1933	Determines certification standards and reimbursable expenses for all participating health care providers under Medicare.
Social and Rehabilitation Service	1967	Determines eligibility standards and approves state Medicaid programs.
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT		
Federal Housing Administration	1934	Sets and enforces construction financing standards for federally insured residential properties.
Federal Insurance Administration	1968	Sets standards for all companies participating in federally sponsored programs of flood and riot insurance.
DEPARTMENT OF THE INTERIOR		
Bureau of Indian Affairs	1824	Establishes regulations and licenses all non-tribal persons doing business on Indian reservations.
Bureau of Land Management	1946	Classifies, manages use of, and disposes of all public lands.
Bureau of Reclamation	1902	Establishes criteria for use, development, and pricing of resources obtained from reclamation projects.
U.S. Geological Survey	1879	Sets regulations for exploration contracts for the discovery of domestic minerals by private industry with federal assistance.
Ocean Mining Administration	1975	Supervises leasing of ocean resources and regulates ocean mining.

III. Other Government Agencies—Continued

Organization	*Year Established*	*Primary Regulatory Functions*
DEPARTMENT OF TRANSPORTATION		
Urban Mass Transportation Administration	1964	Establishes safety and design standards for all equipment and structures built with UMTA assistance.
VETERANS ADMINISTRATION	1930	Prescribes standards for schools, state approving agencies, accrediting associations, and eligible veterans under all VA education programs.

C. Other federal agencies which have some regulatory impact on specified geographical regions or parts of the economy.

Organization	*Year Established*	*Primary Regulatory Functions*
Appalachian Regional Commission	1965	Approves state plans for projects in Appalachia before requests for federal funds can be made.
Bonneville and Three Other Power Administrations	1937-67	Sets prices and markets federally generated hydro-electric power.
Commodity Credit Corporation	1933	Determines eligible warehouses and elevators for storage of surplus commodities; regulates foreign and domestic surplus sales under farm stabilization programs.
Delaware River Basin Commission	1961	Develops and/or approves all plans for control and utilization of water resources in Delaware River Basin.
Foreign-Trade Zones Board	1934	Grants authority to public or private corporations to establish and/or utilize foreign trade zones within U. S.
General Services Administration	1949	Establishes critical needs for national stockpile and regulates purchase/sale of these materials.
Interim Compliance Panel	1969	Grants permits for non-compliance with health standards in underground coal mines.
Mississippi River Commission	1879	Approves plans for and constructs flood control projects in lower Mississippi River Basin.
National Mediation Board and National Railroad Adjustment Board	1926	Conducts union representation elections and mediates labor-management disputes in the railroad and airline industries.
Office of Telecommunications Policy	1970	Sets standards for broadcast technology and performance and assigns federal telecommunication frequencies.
Panama Canal Company	1948	Determines regulations (including rates) for use of waterways, harbor terminals, electric, telephone and water systems within Canal Zone.

Organization	*Year Established*	*Primary Regulatory Functions*
Pension Benefit Guaranty Corporation	1974	Administers pension plan insurance systems and rules on adequacy of assets prior to the termination of any plan. PBGC may also institute termination proceedings on its own.
Railroad Retirement Board	1935	Administers Retirement and Insurance acts for railroads and rules on eligibility of retiring or disabled workers.
St. Lawrence Seaway Development Corporation	1954	Establishes (jointly with its Canadian counterpart) rates for use of the Seaway, and controls regulations for traffic, general safety, and power development in its jurisdiction.
Small Business Administration	1953	Licenses, regulates, and makes loans to SBIC's and MESBIC's.
Susquehanna River Basin Commission	1970	Develops and/or approves all plans for utilization and control of watershed resources in Susquehanna Basin.
Tennessee Valley Authority	1933	Operates river control systems and sets rates for power generated from TVA hydroelectric projects.

APPENDIX B: Previous Presidential Efforts to Achieve Reform

During the past forty years, Presidential commissions and study groups have counseled Presidents on problems associated with regulatory agencies.

President Franklin Roosevelt established the President's Committee on Administrative Management (the Brownlow Committee) to look at the organization and functioning of the Executive Branch of government, including the independent regulatory commissions. In its report to President Roosevelt in 1937, the Committee concluded that:

> "The independent regulatory commissions constitute a serious and increasing problem. They exist as areas of complete irresponsibility within which important policy-determining and administrative functions are being carried on. By that very irresponsibility they obstruct effective over-all management in the Executive Branch of the National Government. They hinder coordination of policy and coordination of administration."
>
> Report, 1937

To remedy this situation, the Committee proposed to integrate all of the programs of the independent commissions into Executive Branch departments. In the departments, these functions would be divided between an administration section, under the direction of a single administrator who would be a career civil servant, and a judicial section, which would be administered by the department but otherwise independent of it in making regulatory determinations.

In 1939 President Roosevelt requested the Attorney General appoint a committee to investigate the "need for procedural reform in the field of administrative law." Although the report of the Attorney General's Committee on Administrative Procedure was issued in 1940, the recommendations of the Committee were the subject of great debate until the passage of the Administrative Procedures Act in 1946. The APA clarified, strengthened, and increased the judicial nature of the procedures used in the administrative process of the regulatory agencies.

President Truman vetoed legislation Congress enacted to exempt surface transportation carriers from antitrust and competition. His veto message issued clear warning to the Congress and the American people.

> "[This legislation] would permit an important segment of the economy to obtain immunity from the antitrust laws, and would do so without providing adequate safeguards to protect the public interest... Acting through these bureaus, groups of carriers could exercise a powerful

deterrent influence upon the filing by an individual carrier of proposed rates which might benefit the public ... Legislation furthering the exercise of this power by private groups would clearly be contrary to the public interest ... [Regulation] cannot be an effective substitute for the affirmative stimulus toward improved service and lower rates which competition provides."

Veto Message, June 12, 1948

Congress overrode his veto. President Truman also established the Commission on the Organization of the Executive Branch of Government (the first Hoover Commission) which included the independent regulatory commissions in its studies. According to the Commission, problems in the regulatory agencies were caused by:

—appointment of some inadequately qualified commissioners
—imposition of purely administrative duties on commissions
—neglect of promotional and planning functions
—insufficient delegation to staff
—lack of sufficient authority in commission chairmen to plan and guide commission activity
—lack of uniformity in statutory provisions governing tenure and removal of commissioners
—unnecessary red tape causing useless delay and expense, and loose, casual, and sometimes nonexistent coordination between commissions and the general program of the executive departments.

To improve the effectiveness of these agencies, the Commission recommended that administrative responsibility be placed in the chairmen of the commissions, and that commissioners of all agencies be removable only for cause. Additional administrative forms were also recommended and carried out.

President Eisenhower continued to address the problems of government regulation. To improve regulatory proceedings and reduce delays, he convened the first Administrative Conference of the United States, bringing together the regulatory commissioners, professors of administrative law, and practicing lawyers. He also established within the Department of Justice an Office of Administrative Procedure to address regulatory problems.

In 1953, President Eisenhower convened the second Commission on the Organization of the Executive Branch of Government (the second Hoover Commission). In the report of its Task Force on Legal Services and Procedure, emphasis was placed on the improvement of internal procedures and separation of prosecuting functions from the investigatory function. The Commission also proposed the creation of an administrative court with three specialized sections for taxes, trade, and labor that would decide cases at the trial level that were currently being handled by the administrative agencies.

In 1954, President Eisenhower also formed a Presidential Advisory

Committee on Transport Policy and Organization. In its report, the Committee concluded that government regulation of transportation was outdated and unnecessary.

"Paradoxically, the underlying concept of [transportation] regulation has continued to be based on the historic assumption that transportation is monopolistic, despite the fact that the power of individual transportation enterprises to exercise monopoly control has been rapidly eliminated by the growth of pervasive competition. The disclosures which have emerged from this intensified competition, on the one hand, and the restraining effects of public regulation on the other, have borne heavily on the common carrier segment of the transportation industry. The shipper and ultimately the consuming public pay the costs of this dislocation. The consequent loss to the public, while incapable of exact estimate, is believed to amount to billions of dollars per year, and calls for prompt and decisive action."

Report, 1955

In 1955, the Attorney General's National Committee to Study the Antitrust Laws reported to the Attorney General on the importance of antitrust law, including its relationship to regulated industries. In its recommendations on how to maintain a competitive American economy, the Committee recommended the repeal of the federal laws that allowed states to enact the so-called fair trade laws.

"On balance, we regard the Federal statutory exemption of 'Fair Trade' pricing as an unwarranted compromise of the basic tenets of national antitrust policy ... [We therefore recommend repeal of these laws] thereby subjecting resale-price maintenance, as other price-fixing practices, to those Federal antitrust controls which safeguard the public by keeping the channels of distribution free."

Report, 1955

President Kennedy, prior to his inauguration, commissioned James M. Landis to write a report on the regulatory agencies. Judge Landis concentrated on organizational and administrative problems associated with the regulatory agencies. He recommended that particular attention be paid to appointing qualified personnel, that the terms of commissioners be lengthened, and that the President establish a more effective means of coordinating regulatory agency policies by establishing within the Executive Office of the President coordinating officers for transportation, communications, and energy as well as an Office for the Oversight of Regulatory Agencies.

Within the regulatory arena, one of President Kennedy's principal areas of concern was transportation regulation. In his Special Message to Congress, he criticized federal regulation of transportation:

"A chaotic patchwork of inconsistent and often obsolete legislation and regulation has evolved from a history of specific actions addressed to specific problems of specific industries at specific times. This patchwork does not fully reflect either the dramatic changes in technology of the past half century or the parallel changes in the structure of competition... This Administration's study of long-range transportation needs and policies convinces me that current Federal policies must be reshaped in the most fundamental and far-reaching fashion."

Special Message on Transportation 1962

President Johnson established the Administrative Conference of the United States in 1964 as a permanent government agency to accomplish reform of the regulatory process. In 1968, he formed the Neal Task Force on Antitrust Law. In its report the task force stressed the need for greater competition in regulated industries.

"The antitrust laws reflect our Nation's strong commitment to economic freedom and ... a preference for private decision-making; a major value of competition is that it minimizes the necessity for direct Government intervention in the operation of business, whether by comprehensive regulation of the public utility type or by informal and sporadic interference such as price guidelines and other ad hoc measures."

Report of the White House Task
Force on Antitrust Policy, 1968

President Nixon, soon after his election, appointed the Nixon Task Force on Productivity and Competition, headed by George Stigler. The task force criticized the regulatory process as rigid, overly concerned with trivial details and unable to achieve important results. The task force urged the President to work toward freer entry into regulated markets and abandonment of minimum rate controls.

"We recommend that the President issue a general policy statement (a) establishing the Antitrust Division as the effective agent of the Administration in behalf of a policy of competition within the councils of the Administration and before the independent regulatory commissions; (b) urging those commissions to enlarge the role of competition in their industries; (c) marshaling public support for the policy of competition."

Report, 1969

President Nixon also established the President's Advisory Council on Executive Organization (Ash Council). One of the Council's reports focused on the federal regulatory agencies. In this report, the Council noted the failure of the independent regulatory commissions to respond to economic, technological, structural, and social change. The Ash Council believed that this ineffectiveness could be attributed to the collegial organization, the judicial cast of agency activities, and the misalignment of certain functional responsibilities. To rectify these problems, the Ash Council recommended that all multiheaded commissions except the Federal Communications Commission be headed by a single administrator responsible to the President, that some regulatory agencies be combined, and that an administrative court be established.

President Ford, in his first request to the Congress, asked for the creation of a Council on Wage and Price Stability. This Council was to have the coequal responsibilities of monitoring not only actions in the private sector that were inflationary but also actions of the government, including the regulatory agencies, that were having an inflationary impact on the economy.

Soon after the creation of CWPS, President Ford received a report from the economists who attended the Summit Conference on Inflation. Included in their recommendations were actions the government should take to eliminate outdated, inefficient, and inflationary regulatory policies. Some of the actions recommended were:

—Amend marketing order legislation to prohibit restrictions on the interstate movement of specified types of agricultural products, supply controls for products, state fluid milk price and output controls, and production quotas on individual producers.

—Remove all route and commodity restrictions imposed on ICC licensed motor carriers.

—Approve automatically railroad and truck rates within a zone of reasonableness.

—Repeal the antitrust exemption of railroads and trucking rate bureaus.

—Reduce or eliminate entry barriers into trucking.

—Approve automatically all air fares, including discount fares, within a zone of reasonableness.

—Eliminate Regulation Q and other regulations which prevent financial institutions from paying competitive rates for deposits.

—Make merchant and passenger ship firms subject to the antitrust laws for any conference agreements.

—Prohibit resale price maintenance.

Since that time President Ford has carried out an unprecedented, wide-ranging program to reform regulatory policies and activities of government. (For a discussion of the program and its effects, see Chapter 3. For a chronology of the President's regulatory reform program, see Appendix C.)

APPENDIX C: Chronology of the Regulatory Reform Program

The reform of government regulation has been a principal goal of President Ford for more than two years.

> "We must reassess, as I see it, the archaic, and often times rigid, regulations which hamper the economy of the United States and directly affect the American consumer . . . Meaningful reform of our present regulatory system must be a part of the current effort to respond to the consumer."
>
> White House Conference on Domestic & Economic Affairs,
> April 18, 1975

> "Regulations do not automatically expire when they have outlived their usefulness. There is no systematic pattern of review and even when it is acknowledged that changes are warranted, procedural delays often result in obsolete rules remaining in force for years. In short, while the intention of regulation is to protect consumers, it sometimes does just the opposite."
>
> Chamber of Commerce Annual Meeting,
> April 28, 1975

From the very beginning of the Ford Administration, action has been taken by the President, by the Congress, by the regulatory agencies, and by private groups to further the reform of regulatory activities and policies. The following chronology of events highlights the range of these activities carried out over the past two years. The chronology is not intended to be exhaustive, but it tries to illustrate the national interest in regulatory reform that was sparked by President Ford's program.

Aug. 1974 Council on Wage and Price Stability

As one of the first acts of his Administration, President Ford asked the Congress to authorize a Council on Wage and Price Stability to monitor inflationary action on the part of the Federal Government as well as the private sector. Congress passed this legislation and the Council was signed into law on August 24, 1974.

Sept. 1974 Summit Conference on Inflation

A series of conferences on the basic causes of inflation were conducted. A number of economists endorsed the reform of twenty-two government regulatory policies that were outdated and inefficient and that were having an inflationary impact on the economy.

Oct. 8, 1974 President's Message to Congress on the Economy

The President's message announced a four-point program designed to reform federal regulatory activities. The program included; 1) assigning the Council on Wage and Price Stability a watchdog role on inflationary costs of government actions; 2) proposing a National Commission on Regulatory Reform to examine the independent regulatory agencies; 3) requiring agencies to prepare Inflation Impact Statements for major regulatory and legislative proposals they make; and 4) encouraging state and local governments to review their own regulations.

Nov. 1974 National Commission on Regulatory Reform

The Senate Government Operations Committee held hearings on the proposed National Commission on Regulatory Reform. No action was taken.

Dec. 23, 1974 Antitrust Penalties

The President signed into law a major increase in the penalties for violation of antitrust laws.

Dec. 27, 1974 Commission on Federal Paperwork

The President signed a bill establishing the Commission on Federal Paperwork to address the problems caused by excessive federal paperwork requirements.

Jan. 29, 1975 Fair Trade Laws

The President issued a statement endorsing legislation which would repeal the fair trade enabling laws which restrain competition and result in higher consumer prices. Congress held hearings on fair trade laws throughout the spring of 1975.

Jan. 30, 1975 Energy Independence Act of 1975

The President proposed the Energy Independence Act of 1975, designed to increase the domestic energy supply and availability and to deregulate new natural gas. Various elements of the Act were the subject of congressional hearings throughout the 94th Congress.

Feb. 1975 Reform of CAB Regulation of the Airlines

Senator Kennedy began extensive hearings on CAB regulation of the airlines. The House also held hearings in 1976 on the financial conditions of the airlines and needed regulatory reforms.

Feb. 1975 Antitrust Immunities Task Force

Under the leadership of the Department of Justice, a Task Force was formed to examine the various exemptions from antitrust laws that had

been given to regulatory activities within the Government. The Task Force was instructed to examine any exemption that could no longer be justified under current economic conditions and to recommend areas that might be allowed to return to the competitive marketplace. During 1975 and 1976 the Task Force conducted extensive investigations into the insurance industry, ocean shipping conferences, cable television regulation, and the Robinson-Patman Act. Public hearings and consultations were held during these investigations and reports from the Task Force will be published in the near future.

March 19, 1975 President's Message to Congress on Reform of Financial Institutions

The President sent a message to Congress resubmitting proposed legislation on the reform of financial institutions. Such legislation would benefit consumers by revising regulations which now constrain competition, enable small savers to earn more competitive returns on their savings, and provide a wider choice of financial services to all customers. From May to June, 1975, the Senate Banking Committee held hearings on the Financial Institutions Act. On December 11, 1975, the Senate passed legislation similar to most of the Administration's proposals. Beginning in December 1975 and continuing through the summer of 1976, the House Banking Committee held hearings on financial institutions in the Nation's economy. The House reform bill was not passed out of the full committee before adjournment. Both the Senate and the House also considered the consolidation of the banking regulatory agencies but both Houses agreed to defer any legislation to consolidate the agencies.

March 1975 Patent Reform

Patent reform legislation was introduced in the Senate. This bill was designed to streamline and modernize the patent system.

May 1975 Cable Television

The Senate Judiciary Committee began a series of hearings on regulation of the cable television industry. The House Commerce Committee also held hearings on cable television regulations and issued a report stating that current regulations served to protect large broadcasters and stifle competition.

May, 19, 1975 President's Message to Congress on Railroad Revitalization and Regulatory Reform

The President sent a message to Congress transmitting the Railroad Revitalization and Regulatory Reform Act, the first of several major legislative proposals seeking fundamental and far-reaching reform of the regulatory practices governing the economics of the transportation industry. The legislation was designed to: 1) improve regulations under which the railroads operate and promote economic efficiency and competition; 2) provide necessary financial assistance to improve and modernize rail facilities; and 3) encourage restructuring of the Nation's railroads and improve their long-term viability. Both the Senate and the House held extensive hearings on the legislation and the financial conditions of the railroads.

June 5, 1975 Securities Acts Amendments of 1975

The President signed the Securities Acts Amendments of 1975 restoring price competition to the securities industry after nearly two hundred years of regulated prices. This legislation was supported by the Securities and Exchange Commission which has also ordered all stock exchanges to abolish rules preventing price competition through member firms trading in listed securities off the exchange floors.

June 25, 1975 Meeting with Representatives from Congress to Discuss Regulatory Agencies

The President and Members from Congress met to discuss proposals to reform and modernize the regulatory agencies. There was a broad consensus in the area of economic regulation that more flexible pricing was needed, that a redefinition of the objectives of those regulatory agencies was long overdue in some cases and, that in other areas more ease of entry was needed.

July 10, 1975 Meeting with Chairmen and Commissioners of Ten Independent Regulatory Agencies

As part of his program to reform federal regulatory activities, the President met with the chairmen and commissioners of ten independent regulatory agencies. The President called for follow-up action in four major areas which would improve the effectiveness of federal regulatory activities: 1) increase the use of cost/benefit analysis in major regulatory programs; 2) eliminate regulatory delays; 3) revise procedures to ensure responsiveness to the legitimate consumer interests; and 4) consider fundamental changes to restore competition to areas of the economy currently being regulated by the government. All of these agencies have taken steps to improve their regulatory functions. Two of the agencies, the CAB and the ICC, appointed Blue Ribbon Task Forces to recommend improvement in agency practices. Other agencies have undertaken their own reforms of specific areas of regulation (e.g. FCC revision of rules governing broadcasting) and in their internal procedures (e.g., CAB self-imposed deadlines for Board actions).

July 1975 Senate Study of Regulatory Reform

In July 1975, the Senate approved S. Res. 71 to fund a joint study of regulation by the Government Operations and Commerce Committees. The study will cover: eliminating unnecessary delay; eliminating or modifying inconsistent or overlapping regulatory functions; increasing public participation; insuring agency independence; upgrading the quality of regulators; determining the appropriateness of regulation; and improving Congressional oversight. The deadline for the report has been extended to February 28, 1977. The House Commerce Committee has also been studying the regulatory agencies.

July 11, 1975 Federal Forms Reduction

The President, in remarks delivered at the Mid-American Committee for International Business and Government Cooperation dinner, called for a reduction of 500 government forms by next year to address the problem of the federal paperwork burden.

July 16, 1975 Executive Branch Reform

In his cabinet meeting on July 16, 1975, the President instructed six Executive Branch agencies (Labor, HEW, Agriculture, Transportation, FEA, and EPA) to examine and reform their own regulations and regulatory processes. Several of these agencies set up special offices to review and improve agency regulations, called for greater economic analysis of proposed regulation and more careful attention to how regulations are written.

Oct. 8, 1975 President's Message to Congress Transmitting the Aviation Act of 1975

The President transmitted the Aviation Act of 1975 to Congress. This was the second in a wide-ranging three part series of legislative proposals designed to provide comprehensive reform of transportation regulation. The bill provided for a more efficient airline system in order to assure the best possible service at the lowest cost. It would increase real competition in the airline industry, remove artificial and unnecessary regulatory constraints, and ensure continuance of a safe and efficient system.

Nov. 13, 1975 President's Message to Congress Transmitting the Motor Carrier Reform Act of 1975

The President transmitted this third piece of major transportation regulation as part of his overall program to reform and modernize regulation of the Nation's transportation system. The bill would stimulate competition in the trucking industry, increase the freedom to adjust rates and fares to changing economic conditions, eliminate restrictions requiring empty backhauls, underloading or circuitous routing, and enhance enforcement of safety regulation. The House held hearings on the bill in September 1976. The Senate did not hold hearings but asked instead for written comments on the bill.

Dec. 12, 1975 Repeal of the Federal Enabling Legislation for Fair Trade Laws

By repealing the federal laws which allowed the states to have fair trade laws, the President permitted consumers in all states to benefit from discounts on brand-name merchandise. Beginning in March 1976, it was illegal for manufacturers to fix the price of their merchandise. Prices are now determined by competitive market forces.

Dec. 1975 Hearings on Regulatory Problems

During December 1975 and January 1976, the Commerce Department held hearings around the country on regulatory concerns and issues.

Jan. 19, 1976 State of the Union Message

The President reemphasized the need to eliminate costly government regulations which constrain productivity and waste billions of taxpayers' and consumers' dollars.

Jan. 26, 1976 President's Message Transmitting the Economic Report

The President commented on the undesirable effects of regulation and the need for a more effective combination of regulation and competition.

Feb. 5, 1976 Railroad Revitalization and Regulatory Reform Act of 1976

This omnibus bill provided the first significant reform of regulation governing the railroads since 1887. The Act made it possible to reorganize the bankrupt northeast and midwest railroads, and authorized necessary financial assistance for upgrading rail facilities. The regulatory reforms provided for an increased reliance on market competition and improvements in a number of ICC regulatory procedures.

Feb. 25, 1976 Patent Reform

By voice vote, the Senate passed a compromise patent reform bill.

March 1, 1976 Center for the Study of Government Regulation

The American Enterprise Institute established a Center for the Study of Government Regulation.

April 1976 Study of Regulations Governing the Steel Industry

In April 1976, the Council on Wage and Price Stability announced that it would undertake a major study of the impact of federal regulation on the steel industry. The study will include an inventory of regulations affecting the steel industry and the development of a methodology of evaluating costs and benefits as well as an examination of the effect of regulations on the industry.

April 8, 1976 Meeting with Chairmen of Ten Independent Regulatory Agencies

In the second meeting of the President and representatives of the regulatory commissions, the President continued his emphasis on the need for reform of these agencies. He specifically asked that they submit a report to him giving special consideration to: 1) how regulations and the progress toward reform can be made more understandable; 2) listing priorities for agency reforms; and 3) achieving a ten percent reduction in the number of forms required by these agencies.

May 1976 National Conference on Regulatory Reform

The National Center for Productivity and the Quality of Working Life and the Center for Policy Process sponsored a National Conference on Regulatory Reform. Following the Conference, NCPQWL announced that it was organizing task forces made up of management, labor and government representatives to study the impact of regulations on productivity in the steel, rubber, and paper industries.

May 13, 1976 Presidential Task Forces to Streamline Regulations

The President announced creation of short-term Presidential task forces to simplify and streamline government regulations beginning with OSHA, FEA and the Export Control Administration in the Department of Commerce.

May 13, 1976 President's Message to Congress Transmitting the Agenda for Government Reform Act

This far-reaching legislation would establish a time-table for the President and Congress to make comprehensive and fundamental changes in government regulatory activities which affect the American economy. The legislation would provide a four-year schedule during which the President would assess the cumulative effects of government regulatory activities on major economic sectors and require the development of proposals for changes in specific agencies. The purpose of this legislation was to: eliminate excessive regulatory constraints on the economy; develop better, less costly ways to protect public health and safety; reduce federal paperwork requirements; eliminate excessive delay; and streamline the costly regulatory bureaucracy. Hearings on the Agenda were held in the Senate.

July 1976 NSF Studies of the Cost and Benefits of Regulation

On July 6, 1976, the National Science Foundation announced the awarding of contracts for the study of the costs and benefits of regulations governing the price, supply, and quality of copper wire, ground beef, and consumer financial services. NSF also awarded nine grants to study the impact of government regulations on productivity.

July 23, 1976 Reduction in Federal Forms

The President announced the reduction by 12.5% in the number of federal forms, surpassing his target of 10 percent. In addition, the President announced the second phase of his paperwork reduction program which will require each executive branch agency to reduce by 5% the number of work hours that are necessary to fill out agency forms by the end of FY 1977 and to recommend ways in which an additional 15% reduction can be achieved by the end of FY 1978.

Sept. 13, 1976 Government in the Sunshine Act

The President signed into law the Government in the Sunshine Act which requires collegial agencies to conduct open meetings and to keep transcripts of their meetings for public review.

Sept. 30, 1976 Antitrust Improvements Act

On Sept. 30, 1976 the President signed into law the Antitrust Improvements Act of 1976 which increased civil investigatory powers of the Justice Department as proposed by the Administration.

Oct. 1976 House Commerce Committee Report on Regulatory Reform

The House Commerce Committee announced the conclusions of its reports on the performance of nine regulatory agencies under the Committee's jurisdiction.

Dec. 31, 1976 Inflation Impact Statements

After reviewing an evaluation of two years' experience under the Inflation Impact Statement program, the President extended Executive Order 11821 until December 31, 1977.

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