

# Substance Over Process

The *Federal Register* may not have the popular appeal of *Newsweek* or *Playboy*, but it has a respectable circulation of 50,000, with 42,000 of its subscribers paying \$75 a year. The Carter Administration has brought good times for the *Register* and its staff. Circulation has increased by 30 per cent, and the number of pages grew from 57,072 in 1976 to 84,003 in 1980 by the middle of last month. Seminars on how to use the *Register* have proved to be a popular form of continuing education, attracting more than 25,000 students in the past five years.

Good times for the *Federal Register* have not been good times for the economy, and some believe there is a cause-and-effect relationship there. Steadily increasing regulation of the American economy and society is the cause of the *Register's* growth, and the incoming Reagan Administration believes the trend must stop.

That the new Administration will try is certain, but its success is not. This is especially true if Reagan continues the reliance placed by his two predecessors on changes in regulatory procedure without tackling the substance of the laws that call for regulation.

Residents are forever guilty of hyperbole in describing the government's achievements, and President Carter offered a fresh example on Dec. 11 at the signing ceremony for the Paperwork Reduction Act. The act, he said, will "regulate the regulators" and is "one of the most important steps we have taken . . . to eliminate unnecessary federal regulations." By itself, of course, the act eliminates not a single regulation, nor is it likely that it will. While the Office of Management and Budget (OMB) might be able to use it as a management tool, it is hardly the answer people have been looking for.

Carter's remarks offer one last piece of evidence of his belief in better executive branch management as the best means of controlling regulatory excess. He leaves to Reagan a jumble of executive orders and White House organizations that testify to that belief: Executive Order 12044 on "Improving Government Regulations," the Regulatory Analysis Review Group, the Council on Wage and Price Stability, the U.S. Regulatory Council and now, with enactment of the paperwork law, a congressionally chartered office of information and regulatory affairs in OMB. For all of this, it would be difficult to prove that life has become simpler for the regulated or that money has been saved.

Process, process, process. That was the Carter Administration's answer. A desultory debate continues about whether control of the regulators is best lodged in the executive branch, Congress or the courts. Carter favored the first. Rep. Elliott H. Levitas, D-Ga., and others in Congress advocated the second and pushed for a legislative veto of agency rules. Sen. Dale Bumpers, D-Ark., nearly succeeded in 1980 with his bill to give the courts more power over the regulatory agencies. All process, and either ineffective or just bad ideas.

Cynics might argue that in Carter's case, the object was to appear to be doing something about the regulatory problem without really doing anything. After all, the regulations that the agencies issued were approved by Carter appointees to carry out programs enacted by the Democratic Congresses of the past decade.

But it is clear that the Reagan Administration will seek not only to improve the process but also to change the results. Rep. Dave Stockman, R-Mich., the incoming director of the Office of Management and Budget, has called for a "regulatory ventilation" involving an "orchestrated series of unilateral administrative actions to deter, revise or rescind existing and pending regulations where clear legal authority exists." In a post-election memorandum, Stockman provided a long list of candidates for revision, including all rules of the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration, the National Highway Traffic Safety Administration and the Energy Department.

He advocated a moratorium on most new rules and legislation to "insert mandatory cost-benefit, cost-effectiveness and comparative risk analyses" in the Clean Air Act and other regulatory laws.

Stockman should beware, for he is teetering on the brink of the process chasm. He is joined there by other important Reagan advisers, including Murray L. Weidenbaum, who chaired Reagan's task force on regulation. Weidenbaum and five of his panel offer their solutions to aspects of the regulatory dilemma in the new issue of *Regulation* magazine.

To be sure, the power of appointment will help Reagan exert control over the agencies, as Weidenbaum suggests. If, as rumor has it, Reagan names Rep. James G. Martin, R-N.C., as his EPA administrator, that chemistry professor's deep skepticism of the "zero risk" approach to health regulation would surely make a difference at the agency.

Requirements for cost-benefit analysis, recommended by Weidenbaum and his colleagues, would also help stem regulatory excesses, but it is worth remembering that cost-benefit analysis hasn't stopped the Army Corps of Engineers from building huge turkeys like the Tennessee-Tombigbee waterway. And the appointment of a regulatory czar in the White House, another of Weidenbaum's suggestions, might help, though that step really would amount to a reorganization of Carter's White House groups.

All of this may do some good. But the situation will not be fundamentally changed unless the new Administration is able to persuade Congress to change the laws that engender the regulations. As Antonin Scalia, a visiting professor at Stanford Law School, argues in *Regulation*, "one of the Reagan Administration's first tasks" should be to seek amendments to various agencies' statutory charters. That would be attacking substance, not process. If Reagan does not keep his eye on substance, he will have great difficulty in reducing government's regulatory role. □

# If Reagan Wants to Trump the Regulators, Here's OMB's Target List for Openers

The Office of Management and Budget has prepared a list of 242 regulations, including 110 marked for early attention, for its incoming director, Dave Stockman.

BY TIMOTHY B. CLARK

The staff of the Office of Management and Budget (OMB) has prepared a list of 242 regulations, some already in force and others under development, that it thinks the Reagan Administration might want to eliminate or revise.

The list, made available to *National Journal* by an OMB political appointee, lists out 110 regulations for early attention by the new Administration.

On the list are dozens of regulations mandating environmental protection, energy conservation and nondiscriminatory practices. Among the targets of many of the regulations are the auto, steel, chemical and health care industries.

Incoming OMB director Dave Stockman, the recipient of the list, has already advocated strong steps to reduce federal regulation. In a November memo, he called for an "orchestrated series of unilateral administrative actions to defer, revise or rescind existing and pending regulations where clear legal authority exists." He also suggested omnibus legislation that would allow the Administration to impose a moratorium on new regulations.

Short of such drastic measures, the new Administration will have the authority to revise rules proposed by its predecessor but not put into final form as of Jan. 20. For existing rules, it may try to suspend some until economic conditions improve and to seek legislation to relieve it of the responsibility to enforce others.

But the new Administration will face many obstacles if it attempts the kind of regulatory "ventilation" that Stockman has in mind. Its discretion to alter regulations will often be limited by laws and court orders. Interest groups are sure to take the government to court

to protest any suspension of rules that benefit them. And congressional committees will not be eager to roll back regulatory programs they oversee.

OMB's staff is continuing to refine and expand its list. While it has included all 13 Cabinet departments except Defense and State and two major executive branch regulatory agencies (the Environmental Protection Agency and the Equal Employment Opportunity Commission), it did not list regulations under preparation in the independent regulatory commissions such as the Interstate Commerce Commission and the Federal Communications Commission.

The 242 regulations on OMB's list would impose estimated annual costs of \$25 billion and one-time costs of \$8 billion on the private sector. EPA is the most prominent agency, with 44 of the 242 regulations and 16 of the 110 singled out for early review.

The list is sure to be an important source of information to Stockman, who also has his own ideas about regulations in need of revision and will also receive recommendations from Reagan's transition staff and new agency officials.

During the transition, Washington University economist Murray L. Weidenbaum chaired a task force on regulation. Weidenbaum advocated a one-year moratorium on most new rules, but the new Administration has not decided which of the task force's recommendations to adopt.

Edwin Meese III, who will be counselor to the President, has said the Administration will "freeze" all pending regulations, and a spokesman for the Reagan transition said on Jan. 9 that a moratorium was still "being looked at."

In his confirmation hearings, Stockman called for a requirement for cost-benefit analyses of agency rules and

for legislation allowing congressional vetoes of proposed regulations, a step recommended by last year's Republican platform but opposed by some other Reagan advisers.

The new Administration's best opportunity to overhaul regulations will come as major laws expire, requiring agencies to ask Congress for new regulatory authority. The Clean Air Act is among the most important such laws expiring in 1981.

Authority for oil price and allocation controls also expires this year, as do agricultural laws authorizing regulation of food safety and quality. Other laws up for renewal in the first two years of Reagan's term include those authorizing the government to control water pollution, run consumer product safety programs and protect endangered species. (For a list of expiring laws, see *NJ*, 11/22/80, p. 1979.)

But OMB staff's list and Stockman's transition memo indicate that the new Administration will not wait for the expiration of laws to attempt changes in regulatory directions.

Stockman's memo includes an illustrative list of 14 regulatory changes he said could be made to cut costs imposed on the private sector. Eight of them were also on the OMB staff's list of 110 targeted regulations and three more were on the longer OMB list.

The OMB list does not include some regulations that have been recommended for change by Reagan transition teams assigned to individual agencies. The Transportation Department team, for example, proposed an overhaul of rules requiring renovation of bus and subway systems to serve wheelchair users.

What follows on the next four pages is the list of 110 regulations that the OMB staff has targeted for immediate review.

## Pending Regulations: Reagan's Early Opportunity

Here are the 110 regulations that the staff of the Office of Management and Budget (OMB) has identified for possible early review by the Reagan Administration.

Most are new regulations at some stage of development in the bureaucracy, and the second column indicates which stage. Those that are at a "very early" stage have not yet been announced in the *Federal Register*. "ANPRM" signifies advanced notice of proposed rule making, an announcement in the *Federal Register* that the agency is preparing a regulation. "NPRM" signifies notice of proposed rule making, a regulatory proposal that is open for public comment. A regulation in "final revisions" is being modified in response to public comments. "Annual revision" denotes a regulation that must be revised each year.

Some of the listed items, denoted by asterisks, represent proposals to revise existing regulations. In many cases, reviews of these regulations have not begun. In the others, the stages of development are comparable to those shown for new regulations.

The third column shows the degree of discretion that Congress has left to the bureaucracy in writing each regulation. Agency discretion, as gauged by OMB, ranges from very little to total.

In the final column is OMB's estimate of the cost that each regulation imposes on the private sector. Most costs are recurring, and the estimates are for the annual costs. Some costs are one-time investments; these are denoted by double asterisks.

Regulation	Stage	Discretion	Cost
<b>AGRICULTURE DEPARTMENT</b>			
Reconstituted milk: would change the practice of pricing non-fat dried milk the same as fluid milk	Very early	Very little	\$50 million
Upland cotton: would set next year's stabilization level for cotton	Annual revision	Very little	\$215 million
Milk price support: would set next year's price support levels for milk	Annual revision	Very little	\$5 billion
Net weight labeling: would set standards for calculating the net weight of meat and poultry at retail	NPRM	Some	\$500,000
Food labeling: would set out standards for the labeling of food products	Very early	Total	\$100 million +
* Packers and stockyards: would subject all regulations affecting packers and stockyards to possible elimination	ANPRM	Total	?
* Loan servicing: would revise standards for servicing and monitoring business industrial loans	Very early	Very little	?
* Loan operations: would modify standards for approving business industrial loans	NPRM	Very little	?
* Slaughtering plants: would revise standards for inspecting slaughtering plants	Very early	Total	?
* Deboned poultry: would permit mechanically deboned poultry to be sold without special labeling	ANPRM	Total	?
<b>COMMERCE DEPARTMENT</b>			
Ocean thermal energy: would license facilities to extract energy from the ocean	Very early	Some	?
Deep seabed mining: would regulate exploration and mining of minerals from the sea	Very early	Some	?
Shipbuilding subsidies: would allow for the repayment of shipbuilding subsidies by builders who want to use their ships domestically	NPRM	Total	?
Industry standards: would set procedures for approving voluntary industry standards	NPRM	Some	?
* Exports: would revise rules governing export licensing, clearance and enforcement	Very early	Some	?
<b>EDUCATION DEPARTMENT</b>			
Bilingual education: would require school systems to offer bilingual instruction to non-English speaking students	NPRM	Some	Up to \$590 million
* Grant procedures: would modify common procedures to be followed by grant recipients	Not begun	Some	?
<b>ENERGY DEPARTMENT</b>			
Appliance efficiency: would set energy efficiency standards for 14 appliances	NPRM	Some	\$12 million +
Residential conservation: would expand the program to small commercial buildings and apartment buildings	Very early	Some	?
Building energy performance standards: would set standards for all new buildings	NPRM	Some	?

Regulation	Stage	Discretion	Cost
Coal leases: would require holders of federal coal leases to submit prompt exploration and mining plans	NPRM	Some	?
Gasoline rationing: would change rules for congressionally authorized program	Very early	Some	?
*Building temperatures: would modify restrictions on heating and cooling in public and private nonresidential buildings during emergencies	Not begun	Some	?
*Emergency conservation: would modify tough conservation measures to be imposed during an interruption in energy supply	NPRM	Some	?

**HEALTH AND HUMAN SERVICES DEPARTMENT**

PCB controls: would restrict the use of polychlorinated biphenyls in the food industry	NPRM	Total	\$100 million + **
Food labeling: would require additional information on food labels	ANPRM	Total	?
Nursing homes: would stiffen medicare and medicaid eligibility requirements	NPRM	Some	Up to \$80 million
Sprinkler systems: would require such systems in new nursing homes	NPRM	Total	\$15 million**
Nursing home patient funds: would require nursing homes to offer "checking accounts" to patients	Final revisions	Total	?
Annual hospital reports: would require hospitals to keep uniform accounts and report costs annually	NPRM	Some	\$50 million
Uniform welfare services: would require states to provide some uniform services to welfare recipients	ANPRM	Some	?
Nondiscrimination: would require grant recipients to have bilingual employees available for non-English speaking persons whom they serve	ANPRM	Total	?
*Health care certification: would reduce the regulatory burden on institutions seeking government certification for medicare and medicaid	Very early	Some	?
*Hill-Burton compliance rules: would modify requirements imposed on hospitals built with federal funds	Very early	Some	?
Screening, diagnosis and treatment: would modify rules requiring state medicaid agencies to offer early and periodic checks for children	Not begun	Some	?
*Construction standards: would modify minimum standards for health care institutions	Not begun	Some	?
*Handicapped discrimination: would modify prohibitions of discrimination against the handicapped by grant recipients	Not begun	Some	?
*Patient package inserts: would modify requirements that information accompany prescription drugs	Not begun	Total	\$80 million
*Mentally retarded: would modify standards for intermediate care facilities for the mentally retarded	Not begun	Some	?

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Lead-based paint: would require owners of HUD-assisted housing to remove lead paint from chewable surfaces	Very early	Total	\$600 million**
*Construction standards: would modify standards for HUD-assisted housing for one and two families	NPRM	Total	?
*Construction standards: would modify standards for HUD-assisted multi-family housing	Not begun	Total	?

**INTERIOR DEPARTMENT**

Park roads: would establish criteria for granting rights of way in national parks	Very early	Total	?
Strip mining: would include more companies under surface mining rules	Very early	Total	?
Acreage limitation: would limit federally supplied water to small landowners	Very early	Some	?
Alaska lands: would determine how much land is available for energy development and how much for wilderness	Very early	Some	?
*Mining on public land: would modify criteria under which public land is declared unsuitable for mining	Not begun	Total	?
*Land withdrawal: would modify rules under which public lands can be withdrawn from energy development and other uses	Not begun	Some	?

Regulation	Stage	Discretion	Cost
<b>JUSTICE DEPARTMENT</b>			
discrimination enforcement: would set government-wide standards for enforcing nondiscrimination programs	NPRM	Some	?
<b>LABOR DEPARTMENT</b>			
Grain handling: would set safety and health standards for grain handling	Very early	Total	\$100 million +
Chemical labeling: would require chemical companies to provide hazard warning information on their products	Very early	Total	Up to \$473 million
Walk-around pay: would require employers to pay employees for time spent accompanying safety and health inspectors	NPRM	Total	\$8 million
Discrimination in benefits: would prohibit federal contractors from providing unequal fringe benefits to women	NPRM	Total	—
Service Contracts Act: would extend the act, which defines wages paid under some government contracts, to new industries	NPRM	Total	\$68 million
* Ladders and scaffolds: would modify safety standards	Very early	Total	?
* Contractor discrimination: would modify obligations of federal contractors not to discriminate	NPRM	Total	?
* Affirmative action: would modify federal contractors' affirmative action requirements	Very early	Total	?
* Davis-Bacon Act: would modify rules by which federal construction contractors must pay their employees on the basis of "prevailing wages"	NPRM	Total	?
* Fair labor standards: would modify tests for determining whether certain classes of workers should be exempt from required overtime pay	NPRM	Total	Up to \$149 million
<b>TRANSPORTATION DEPARTMENT</b>			
Tank barges: would set standards designed to prevent oil pollution	NPRM	Some	?
Oil transfer workers: would certify workers who transport or transfer bulk oil cargoes	NPRM	Some	?
Flying time: would limit airplane pilots' flying time and increase mandatory rest time	NPRM	Some	\$19.8 million
Highway repair: would add flexibility to standards for highway rehabilitation	NPRM	Some	?
Buy American: would require use of domestic steel in major highway and mass transit projects	NPRM	Some	?
Truckers' responsibility: would set insurance standards for operators of federally regulated trucks	ANPRM	Some	?
Fuel economy: would set higher automobile fuel economy standards after 1985	NPRM	Total	\$10 million
Truck and bus brakes: would set long-term plan for rules governing the brakes of trucks, buses and trailers	Very early	Total	\$75 million
Truck and bus rims: would establish performance standards for multipiece rims	ANPRM	Total	\$100 million
Pedestrian protection: would require redesign of automobile bumpers, grills and hoods	Very early	Total	\$400 million
Crash test results: would require car manufacturers to publish test results	NPRM	Total	?
* Flight procedures: would modify operating requirements for major airlines	Not begun	Total	?
* Highway construction: would modify design standards for new highways	NPRM	Some	?
* Water project roads: would revise procedures for coordinating road construction at federal water projects	NPRM	Total	?
Traffic control: would modify procedures for developing automobile traffic control systems	NPRM	Some	?
* Fuel economy: would modify automobile mileage standards for 1982-85	Very early	Some	\$4.9 million**
Bumpers: would revise rule requiring that bumpers permit no damage in crashes of five miles an hour	Very early	Total	\$10 million
* Passive restraints: would modify requirements for automatic seatbelts or airbags	Very early	Total	\$46.5 million
* Gasoline tank safety: would modify rigid performance standards for fuel systems during crashes	Very early	Total	\$10 million

Regulation	Stage	Discretion	Cost
<b>TREASURY DEPARTMENT</b>			
Adjustable rate mortgages: would allow banks to vary the rates for home mortgages according to prevailing interest rates	NPRM	Total	?
Segregated schools: would revoke tax-exempt status of segregated private schools	Very early	Very little	?
Lobbying: would revoke business expense deduction for grass-roots lobbying costs	NPRM	Some	?
"Windfall profits" tax: would implement the law imposing an excise tax on crude oil	NPRM	Very little	?
Dwelling units deduction: would stiffen the conditions for deducting expenses involved with units held for investment	NPRM	Very little	?
*Bank activities: would revise procedures by which banks apply to carry out their activities	Very early	Total	?
*Inventory indexes: would establish indexes to determine inventory value under "last in-first out" accounting	Very early	Total	?
<b>ENVIRONMENTAL PROTECTION AGENCY</b>			
Truck pollution: would require a 75 per cent reduction in nitrogen dioxide emissions by trucks in 1985	NPRM	Some	\$100 million + **
Industrial boilers: would limit sulfur dioxide and nitrogen oxides from boilers	ANPRM	Total	\$100 million + **
Benzene: would limit benzene emissions from various sources	NPRM	Total	?
Bus noise: would set standards for new vehicles	NPRM	Total	\$70 million**
Railroad noise: would limit noise from interstate rail carriers	NPRM	Total	?
Pulp and paper mill pollution: would require the use of the best available and best conventional technology to control water pollution	NPRM	Some	\$900 million**
*Nitrogen dioxide standard: would revise the existing standard	Very early	Very little	?
*Diesel pollution: would modify rules by which light diesel vehicles obtain waivers from nitrogen oxide standards	Not begun	Some	?
*Prevention of significant deterioration: would revise monitoring requirements to ensure that clean air stays clean	Not begun	Some	\$100 million**
National park pollution: would modify air pollution rules for plants whose discharges can be seen from national parks	Not begun	Total	?
*Truck noise: would modify current standards	Not begun	Total	?
*Garbage truck noise: would modify current limits	Not begun	Total	\$30 million
*Motorcycle noise: would modify current limits	Not begun	Total	\$100 million
*Industrial water pollution: would modify definition of "best conventional technology" for controlling pollution	Very early	Some	?
*Pretreatment: would modify requirement for initial treatment of effluents discharged into public treatment plants	Not begun	Some	?
*Permit procedures: would modify procedures for obtaining EPA permits	Not begun	Some	Below \$100 million
<b>EQUAL EMPLOYMENT OPPORTUNITY COMMISSION</b>			
Reproductive hazards: would determine when an employer would deny a woman a job involving exposure to reproductive hazards	NPRM	Total	?
Elderly worker pensions: would require employers to continue to pay into the retirement plans of workers beyond retirement age	ANPRM	Some	?
*Discrimination: would modify rules defining discrimination on the basis of national origin	Not begun	Total	?
<b>OFFICE OF MANAGEMENT AND BUDGET</b>			
Paperwork: would require a reduction in the paperwork burden on the private sector	NPRM	Some	?
Domestic assistance programs: would set rules for managing programs	NPRM	Total	?
Dispute resolution: would set policies for resolving federal disputes over assistance applications	NPRM	Total	?
Grant programs: would provide guidance to agencies implementing Federal Grant and Cooperative Agreement Act	Very early	Total	?
Cost principles: would revise definitions of federal cost principles for aid recipients	Very early	Almost total	?
*Voluntary standards: would redefine conditions under which the federal government can develop and use voluntary standards	Not begun	Total	?