Playing the regulation game

Can Carter successfully cut the red tape?

By Jim Van Loozen, Editor

When a group of President Carter’s aides called a briefing on federal regulatory reform recently, the temptation was to ask “So, what else is new?”

Carter promised during his campaign to develop a program to reduce the federal paper mill, but we’ve all seen the president trod that road to good intentions with limited success. Nevertheless, if the world didn’t exactly hold its breath for word of the president’s reform package, there were clear signs emerging from Washington that some, even if limited, relief may be on the way.

After Carter assumed office, a federal directory published in 1978 proved to be one of those books without much of a plot, but an astounding list of characters. Included were 41 independent agencies and commissions, 16 regulatory agencies, and nine congressional selected commissions, which doesn’t even account for individual departments that have regulatory, policy-making or construction standard-making powers of their own. By Carter’s own admission, these numbers have grown.

Worse, consider the comments of a congressional aide we dealt with in researching the regulatory field: “You are welcome to run through our files, but it is questionable how complete a picture you’ll get. Although we receive the most current data available, there is no single source within the bureaucracy you can tap to determine the full scope or the full costs of the regulatory process. There ain’t no such animal.”

The aide’s comments, of course, represent a classic overstatement. They do, however, indicate the growing irritation with government regulations in both the public and private sectors of our economy.

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—President Carter, Message to the Congress, April, 1979.
In the recent Washington, D.C. briefing, Carter’s troops acknowledged the groundswell, pointing out that although regulatory agencies use only one percent of the total federal budget, “their rules allocate large private sector resources.” Compounding the administration’s problems was its admission “there are no reliable figures on the total cost of federal regulations.”

The administration, however, does indeed have some hard figures indicating the general character of its regulatory beast (although echoing the congressional aide’s sentiment there is no single source for computing the full scope of federal regulation).

“Census data,” the administration notes, “indicates that federal environmental rules alone imposed direct costs of $25 billion in 1979. (State and local environmental rules cost another $25 billion.) A 1979 Business Roundtable study of the impact of six major agencies’ rules on 48 large companies found incremental regulatory costs of $2.6 billion. Most guesses of total cost are in the $50 billion to $150 billion range—roughly five percent of the Gross National Product or the same ballpark as the defense budget.”

Administration figures go on to estimate that federal regulation adds about one percent annually to the inflation rate, estimates confirmed by Business Roundtable data on comparable price effects. And to further complicate the picture, administration officials point out “regulation has economic costs beyond direct compliance costs.”

**The politics of blame**

Faced with the economic realities of federal regulation, the administration is not far behind in recognizing the political significance of untangling regulatory red tape.

Its briefing comments included the notation “Given the number and importance of regulatory objectives and the difficulty of estimating their costs and benefits, we may or may not be spending ‘too much’, but the costs are large enough to merit serious attention.”

Citing another political problem with the regulatory process, a lack of public scrutiny, the briefing notes added “Regulation—like tax expenditure ($160 billion this year) and off-budget loans and loan guarantees ($70 billion)—allocates large economic resources without undergoing
the discipline, scrutiny and structured public debate of the regular budget process.”

Oddly enough, in addressing the politics of regulation, the administration says federal rules-making is a necessity born of any free enterprise system. “Regulation is the government’s primary instrument for handling the social problems caused by private enterprise,” the administration notes.

By the administration’s count, we now have 58 regulatory agencies, including 18 independent commissions, issuing about 7,000 policy statements annually, including about 2,000 legally-binding rules impacting state and local governments or the private sector. At least 100 of these rules have major economic effects.

Nevertheless, the administration turns to polls indicating strong voter interest in the regulation of the business community in its assessment of what it terms the “top priority” of regulatory reform. Administration experts are focusing on management of regulatory agencies to stem growing dissatisfaction with the system, boldly stating “One reason regulatory reform is urgently needed is to restore public confidence in regulatory tools.”

**Regulatory horror stories**

President Carter himself set the tone for reform-by-management in an April Message to Congress. The President drew attention to the fact that while the massive regulatory structure was being built, the process of regulation was ignored:

“When Congress established these programs, it usually focused on isolated objectives,” Carter said. “There was little effort to coordinate overlapping agency mandates or to assess cumulative impact. Little attention was given to analyzing the benefits and costs of proposed rules or to using regulatory approaches which could reduce the cost of achieving the goals. Many regulatory programs were allowed to continue unreviewed for decades, in spite of changing conditions. Some rules, such as certain rules affecting transportation rates and routes, came to do more harm than good by crippling competition. The last comprehensive legislation to improve regulatory procedures was passed more than 30 years ago.”

Recognizing the financial burden the current regulatory system creates for business, Carter continued: “We can no longer afford this neglect. Our society’s resources are vast, but they are not infinite. Americans are willing to spend a fair share of those resources to achieve social goals through regulation. Their support falls away, however, when they see needless rules, excessive costs and duplicate paperwork.”

Administration experts backed up the Carter pledge “To give the people their money’s worth” in the regulatory process with further evidence of
The Ballpark guesses of cost are $50-$150 billion

the need for regulatory management reform.

“Too many rules are needlessly rigid, or are written in legal gobbledegook, or conflict with other rules,” they noted. “Too many forms have to be filled out, and too many licenses and permits take years to issue. Dozens of regulatory horror stories have undermined the legitimacy of regulation as a means of setting policy and have contributed to the public’s cynicism about government.”

Hitchcock would blush

Some of the examples trotted out during the recent briefing would have embarrassed Alfred Hitchcock, the king of bizarre plots. A few of the highlights included these case histories:

• The Rudd, Iowa, Public Library was nearly compelled to add ramps for handicapped persons at a cost nearly equal to the library’s annual budget. No handicapped persons live in Rudd.
• Federal rules require Baltimore, Md., hospitals to keep hot water in patients’ rooms at no more than 110 degrees, while the city’s ordinances require the temperature to be not less than 110.
• A meat packer was told by one agency to wash its floors several times daily, while another agency told them to keep the floor dry at all times in the interest of employee safety.
• The steel industry has to comply with 5,600 regulations administered by 25 federal agencies, all in addition to state and local rules.
• Four federal agencies require coal mine operators to furnish production data, and all four require different breakdowns.
• Until recently, OSHA regulated the design of toilet seats and the height of fire extinguishers from the floor.
• The FCC recently rewrote a 34-word rule on CB radio license applications to this plain-English translation: “If you are an individual, you must sign your application personally.”

The list goes on and on.

Says the administration: “These sorts of foul-ups and the heavy publicity they often draw have eroded public support for regulation.”

Some success stories

Ever-mindful of eroding public support for regulatory mandates, the administration still believes the answer to regulatory reform is better management of its many agencies.

They point with some assurance to comparative polls indicating “The public reaction seems to be moderate so far. An Opinion Research Poll found that in 1977, 50% felt that regulation was a good way to make business responsive to public needs, down from 60% in 1973. A 1979 Harris poll found 46% want less regulation, 25% favor the present amount, and 22% want more,” they noted.

And, in restating the major focus of the Carter reform effort, the following notation was made: “More detailed findings indicate the public still wants to achieve the goals of regulation—especially in environment, health and safety—but wants the process better managed.”

In a 1979 message, Carter offered assurances he believes in the concept of government regulation, if not specifically in its current application. “Goals such as equal opportunity, a healthy environment, a safe workplace and a competitive and truthful marketplace cannot be achieved
through market forces alone,” the president said.

Offsetting the roster of horror stories, the administration’s forces were not without success stories to back up the president’s view that government regulation is necessary. Some examples:

• In 1933, bank failures ran at the rate of 40%. Federal regulation has cut that rate to less than one percent, and depositors are insured against losses.

• Workplace health standards protect workers exposed to substances determined to have cancer-causing effects, such as asbestos, arsenic and vinyl chloride.

• Auto safety devices are believed to save 9,000 lives annually.

• Mine accident deaths have dropped 47% between 1970-77.

• Fuel economy standards are reducing gasoline consumption.

• Progress is being made in water pollution abatement. Salmon are swimming in the Connecticut River for the first time in almost 200 years.

• Child-proof containers mandated for numerous household products and medicines have prevented as many as 200,000 accidental poisonings of children.

“In many cases, we need more regulation, not less,” the administration noted. “The lesson of the Three Mile Island accident is that the regulation of nuclear plants must be tougher. One dangerous pesticide was regulated only after a group of workers who made it noticed that almost all of them had become sterile. In the 1980’s, regulation will need to deal with the huge problem of the increasing number of chemicals in the environment and our increasing knowledge that many of them are dangerous.”

Addressing the reforms

Meeting the demands for a more effectively-managed regulatory system has been a mixed bag for the administration. The cynical “what else is new” reaction to the recent briefings may well have been based in a general perception questioning Carter’s specific leadership abilities.

However, the record indicates that Carter has had a leading hand in the past two years in at least starting on the road to achieving regulatory reform.

During the last 30 years, very little was done to alter the growing regulatory process’ management system. In the past 24 months, however, Carter’s minions and their congressional counterparts have utilized a wide range of maneuvers to effect changes in the regulatory climate.

The program includes three laws already passed, nine bills that are pending, three executive orders, the establishment of two new oversight institutions and hundreds of agency-level actions. Administration officials say the program boils down to a very simple proposition: “Get rid of rules we do not need and manage those we do.”

The first prong of the Carter attack is aimed at regulations that force decisions the marketplace can handle for itself. Carter’s approach here has been the use of deregulation legislation.

Carter has also been seeking reforms in areas the administration considers government regulation necessary to police the activities of the business community. Reforms aimed at these programs cover both the policy-making process and the process of administering and enforcing those policies.

Part of the administration’s problem in affecting its policy-making reforms is built into the bureaucracy.

President Carter has targeted regulatory reform as a major component of his administration. The first element in his program is to eliminate agencies that have, in Carter’s words, “outlived their usefulness.” Another element of the program is to make other agencies more flexible in their approach to regulation. Rules-making language is being cleaned up, duplications eliminated and the trend is to have the agencies write rules, not specific methods by which compliance must be achieved. Carter has also developed three oversight groups to strengthen the management of the regulatory system: The Regulatory Council, The Regulatory Analysis Review Group and The Office of Management and Budget.

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At one time, OSHA regulated toilet seats

Once Carter has legislative action, he plans to have agencies work up an agenda of the various proposals they will make in the immediate year, which would be presented on a semiannual basis. A key element of this proposal is to not only compile a “calendar” of regulatory action, but a qualification of estimated costs for new regulations.

The new process also attacks the rigidity of some federal rules. Under the process proposed by the administration, agencies will have to explore such alternative rule-making avenues as performance standards, marketable rights, product information techniques, use of voluntary standards, tiering of regulations to balance their effect on large and small businesses, and providing economic incentives, such as special taxes or fees or tax credits for implementation of the new rules.

Says the administration, “The common theme is flexibility . . . flexible techniques provide incentives to innovate and reduce the cost of compliance.”

Carter also proposes to expand the numbers of regulatory actions that must be presented to the public for comment, refine the process under which agency personnel affect decisions, and set out a number of review options, which include actions by the Congress and the courts.

Perhaps the most controversial aspect of regulatory reform is sentiment for setting up an overall regulatory budget. Carter’s troops note “the advantages of a process to debate and set priorities (as part of a budgetary process) are political as well as economic. Americans seem willing to brook only so much direction from Washington, especially when it takes the form of regulation instead of more legitimate-seeming legislation.” But realizing the cumbersomeness of the Congress’ current budgeting processes, Carterites concede “The regulatory budget idea clearly needs more study and public

At one time, federal regulation delegated OSHA the power to regulate the shape of toilet seats as a safety measure.

Since regulations are implemented as statutes, it takes new statutory action to substantively change the standards. Carter’s program does not alter the standards, but instead, creates procedures intended to generate more efficient management of the system. Carter has used his executive order powers to affect most of the changes that have occurred in agency procedures.

Carter is also depending on support from the operation of the Regulatory Analysis Review Group and the Regulatory Council, as well as from a series of “sunset” legislative proposals before the Congress. Carter’s troops point out, however, “while administrative action is helping, only legislative reform can solve all of the problems of overlap and inconsistency.”

Some legislative options

Carter’s people point out that if the regulatory statutes are ineffective, the administration of the regulations will follow suit. They hope to implement a systematic approach of regular statute review. To overcome problems with reviews stalling in Congress, the administration hopes to write into the reviews specific dates for triggering Congress into action.

Congress is already considering several bills that would achieve the administration’s goals. The original sunset bill entered by Sen. Edward Muskie sets a 10-year review. Its action-triggering mechanism is the termination of congressional authorization, which forces the Congress to vote on reauthorization bills.

Carter gained an ironic boost from his primary opponent, Sen. Edward M. Kennedy, who has introduced a concept he calls “High Noon.” The bill establishes a review schedule for federal agencies. When the review period arrives, the president submits legislation for the reform of the agency and its policies to Congress, which has the option to write its own legislation. If a committee fails, however, to report out a bill, the president’s legislation goes directly to the floor for a vote.

A third piece of legislation, offered by Rep. Gillis Long, offers many of the features of the Muskie proposal, but deletes Muskie’s automatic termination feature. Under Long’s bill, the Congress would work up a list of agencies to be reviewed in the first session of the Congress, then would introduce legislation on the agencies’ reform in the second session.

Sen. Jacob Javits and Sen. Charles Percy have worked up their own alternative bill, which is similar to Long’s, and also deletes the automatic termination feature of Muskie’s legislation.

The administration is clear in its intention to utilize congressional activity to put force behind Carter’s reform package: “Contrary to some of the sunset rhetoric, the goal is structured review, not wholesale termination of the agencies,” they note. “The aim is to ensure that Congressional oversight and legislative reform covers all programs—including regulation-in an orderly way.”
debate. It should be considered with other off-budget programs that shift large private resources.”

**The key pitchwords**

“Federal regulation is caught in a cross-fire,” the administration notes. “We need to recognize the complexity of the problem and the need to tailor solutions to varied elements. Some regulatory programs can and should be eliminated, but the answer for most is a combination of statutory improvements and effective management tools. These reforms will not make all regulations popular—the decisions regulators face are inherently controversial—but they will help make regulation the legitimate and effective tool that modern society needs.”

Since the administration takes the view that private enterprise is incapable of achieving goals such as equal opportunity, a healthy environment and a safe workplace on its own, it would appear such construction-regulation oriented agencies as the EPA, FTC, the Civil Rights Commission, the EEOC and OSHA will remain in the picture for some years to come.

When the average small businessman endeavors to roll the dice in the regulation game, the major determination of his wins and losses will depend largely on increased effectiveness in cutting back on federal paperwork. Carter’s administration claims it has cut federal reporting requirements by 15% since 1977, but the underlying facts indicate the president, and regulatory reform, have only begun to scratch the surface.

As the president pushes his reform package, he confronts a paper mountain of some 5,000 government reporting requirements requiring, at the federal level alone, about 786 million man-hours a year to respond to. That equates to about 19,650,000 full-time jobs annually.

Although about 73% of that awesome workload involves tax forms (which are regulatory themselves), the total proportion of those hours devoted to other regulatory agencies is a key factor in the public’s unhappiness with government regulation.