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Source: *Journal of Policy Analysis and Management*, Vol. 2, No. 2, (Winter, 1983), pp. 157-173

Published by: John Wiley & Sons on behalf of Association for Public Policy Analysis and Management

Stable URL: <http://www.jstor.org/stable/3323280>

Accessed: 12/08/2008 12:24

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Presidential Oversight:

CONTROLLING THE
REGULATORS

W. Kip Viscusi

Abstract

In 1974, President Ford initiated a procedure by which the regulatory policies of federal agencies were subjected to systematic oversight. This activity continued with modest success through subsequent administrations. A substantial stiffening of oversight powers under President Reagan raises basic questions about the best means for performing effective oversight. Proposals for a so-called regulatory budget, within which each agency would be obliged to operate, could expand the oversight authority; but it is too exclusively cost-oriented. A more promising approach is to impose expiration dates on regulations, making them subject to renewal, and to reform the legislative mandates of the regulatory agencies.

In the operation of an establishment as extensive and complex as the executive branch of the U.S. government, one of the most daunting problems confronting the president is to maintain some degree of control over the activities of the multifarious departments, agencies, and commissions that are nominally accountable to him. Programs that entail large expenditures of money generally are subject to a considerable amount of control both before and after the expenditures take place. But programs that are regulatory in character have traditionally been much more free-wheeling. With the increasing recognition of the importance of such programs to the functioning of the U.S. economy, recent presidents have been attempting to devise more effective systems of oversight. But the system of oversight is still incomplete and ineffective in many fundamental aspects.

This article is based in part on Chapter 8 of the author's book, *Risk by Choice: Regulating Health and Safety in the Workplace* (Cambridge: Harvard University Press, forthcoming). Financial support for this research was provided by the Center for Study of Business Regulation.

Journal of Policy Analysis and Management, Vol. 2, No. 2, 157-173 (1983)

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Published by John Wiley & Sons, Inc.

CCC 0276-8739/83/010157-17\$02.70

**EVOLUTION OF THE
OVERSIGHT PROCESS**

When agencies are responsible for heavy expenditures of funds, they cannot escape careful scrutiny.¹ Such scrutiny begins with the initial approval of their programs by the Office of Management and Budget (OMB) and the Congress, and continues through annual budgetary reviews by these two groups. The policies of the regulatory agencies, on the other hand, were relatively free from any systematic review within the executive branch until the mid-1970s.

In some cases, this autonomy derived from the independent administrative structure Congress established for many regulatory agencies.² To endure fair regulatory decisions that would be less subject to transitory political factors than the activities of the executive departments, Congress placed much regulatory activity within independent, quasijudicial administrative structures; the role of the president in such cases was usually to appoint commission chairmen and fill vacancies on commissions, but not to exercise control over the substantive decisions and policies of the commission.

The principal functions of the earliest regulatory commissions were to govern the entry of firms in some branch of business or to control the pricing of their services. For example, the Interstate Commerce Commission sets policies affecting the rate structure and degree of competition in the railroad and trucking industries, and the Federal Communications Commission establishes regulations governing the allocation and use of radio and television broadcasting rights. More recently, independent commission status has been accorded to two agencies with much different kinds of concerns. The Nuclear Regulatory Commission and the Consumer Product Safety Commission, both of which focus on health and safety risks, were established in the 1970s.

Even regulatory agencies that did not have special status as an independent agency, such as the Environmental Protection Agency and the Occupational Safety and Health Administration (OSHA), have led a relatively autonomous existence. While the administrative budgets of such agencies were subject to the usual budgetary processes, their regulations were not subject to annual review within the Executive Office of the President. In the occasional instances in which regulations aroused some controversy, the regulatory agency exercised considerable leverage because of its superior access to information about the regulation. When regulations were questioned, agencies that were engaged in health, safety, and environmental regulation also could justify their actions by referring to their legislative mandates. As a rule, such agencies interpreted these mandates as requiring them to promote clean air, noncarcinogenic food, and job safety without taking account of their associated economic costs.³

Although the so-called independent agencies had an explicit mandate that supported their independence, it may be that they were actually less free of the influence of the presidential office than the agencies that lay within the departmental structure. The statutes that gave powers to independent agencies, such as those

engaged in rate and entry regulation, usually carried fewer restrictions, guidelines, and standards that would affect the choice of policies; hence, the president could alter the policies of these agencies substantially by a judicious selection of the key appointed officials. The deregulation of airlines and trucking under the Carter administration occurred largely through such shifts in personnel. In contrast, the principal agencies addressing health, safety, and environmental risks—none of which has the status of an independent agency—for many years have used their legislative mandates to insulate their policies from White House influence.

The lack of presidential oversight over regulatory activities would not be an issue if the policies of such agencies never aroused widespread protest. During the 1970s, however, there was growing dissatisfaction with the efficacy of both the traditional rate-making regulations and the newer social regulations. To introduce some presidential control over regulatory policies, President Ford issued an executive order in 1974 requiring that all major regulatory initiatives be accompanied by a statement that analyzed the effect of the initiative on inflation.⁴ Any proposal whose national impact on costs would exceed a stated threshold had to include an analysis of its effect on supplies, competition, and productivity, and had to estimate the costs imposed on consumers and business. Shortly thereafter, agencies were required to review the policy alternatives.⁵ This comparison of benefits and costs, however, was not tantamount to a formal economic benefit–cost test; agencies could still pursue policies in which measurable economic costs appeared to exceed economic benefits.

To administer this oversight process, a new agency, the Council on Wage and Price Stability (CWPS), was established by law within the Executive Office of the President to oversee the inflationary aspects of the regulations. The authority of the new agency was quite broad, covering not only the agencies subject to the president's direct control but also the independent agencies such as the Interstate Commerce Commission. For all such agencies, the council was authorized to

intervene and otherwise participate on its own behalf in rulemaking, ratemaking, licensing and other proceedings before any of the departments and agencies of the United States, in order to present its views as to the inflationary impact that might result from the possible outcomes of such proceedings.

As a consequence, CWPS had the authority not only to discuss proposed regulations with the regulatory agencies but also to make its comments part of the public record in the rulemaking proceeding. These assessments, which were usually filed during the period in which public comment was invited, typically took the form of critical evaluations of the agency's impact statements. CWPS made about 50 public filings annually in the public record, a rate of activity that changed very little over the years of its existence. Table A1 in the Appendix provides a summary of this activity.

In the first year of the Carter administration, the oversight process continued as before. In 1978, it was strengthened with an executive order requiring agencies to show that "alternative approaches have been considered and the least burdensome of the acceptable alternatives have been chosen."⁶ At the same time, the Council on Wage and Price Stability was joined by an informal working group known as the Regulatory Analysis Review Group, which included representatives of the Council of Economic Advisors, the Office of Management and Budget, and various executive agencies. CWPS, in conjunction with the Council of Economic Advisors, provided the primary staff support for this effort.

President Carter established the Regulatory Analysis Review Group to increase the political leverage that could be exerted by CWPS analyses. The Regulatory Analysis Review group was formed as a vehicle for establishing a consensus in the executive branch on the most important regulatory proposals each year, so that the impact of the White House oversight effort could be enhanced. However, although the CWPS public statements helped foster debate on regulatory issues, CWPS lacked any formal powers for influencing such policy. To be sure, White House officials could draw on the CWPS analyses in attempting to influence regulatory actions; and, as I shall point out later, these analyses were not without substantial influence in many cases. But their influence was distinctly limited.

Despite the increasing complexity and formality of the oversight mechanism, the monitoring of the Carter administration followed very much the lines developed earlier in the Ford administration. During the Ford and Carter administrations, the staff responsible for the regulatory analyses remained largely unchanged, as did the substance of the analyses. Although the number of proposals considered did not increase, the direct and indirect costs to the economy associated with the proposals rose dramatically. For one class of regulation introduced for consideration in 1978—the class pertaining to health and safety risks—the estimated costs to the economy reached as high as \$200 to \$600 billion. (For a survey of costs associated with each year's proposals see Table A2 in the Appendix.)

OVERSIGHT UNDER PRESIDENT REAGAN With the election of President Reagan, the emphasis shifted to inhibiting the introduction of new regulations rather than simply promoting sounder regulatory policies. Shortly after taking office, President Reagan abolished the Council on Wage and Price Stability and shifted its regulatory review staff to the Office of Management and Budget (OMB).⁷ This relocation of the CWPS operation was not without its costs. By abolishing CWPS, President Reagan sacrificed the legal authority of the presidential office to make public filings on regulatory issues. The White House could no longer offer comments on the efforts of independent regulatory commissions, and its reviews of regulations issued by agencies within the executive branch no longer appeared in the form of regular public statements.

Nevertheless, with the shift of the CWPS staff to OMB, the oversight process was strengthened. President Reagan coupled this reorganization with the establishment of more rigid standards for the regulatory policies of executive branch agencies. Reagan established a benefit–cost test for proposed regulations, created an OMB clearance process in which approval must be given before an agency may formally propose a new regulation, and instituted a formal mechanism for determining whether existing regulations should be withdrawn. In effect, Reagan made regulatory oversight a dominant part of the formation of regulatory policies rather than a minor adjunct to this process. To limit the number of conflicts brought to the president, Vice President Bush was given broad authority over regulatory issues.

From all appearances, two main criteria are now being used by the OMB oversight group to gauge the effects of a proposed regulation. One is essentially an analysis of aggregate social benefits and social costs; this is a task assigned primarily to the former CWPS staff, composed of 20 persons, including support staff. The other is an analysis of the costs imposed on the regulated industries, in the form of paperwork and other costs. This aspect of the analysis is undertaken by a considerably larger OMB staff. Although the administration's formal announcements stress the benefit–cost approach, the relative size of the staffs assigned to the two activities suggests that the question of industry burden is receiving the lion's share of the administration's attention. If that is the case, it is a major shift from the emphasis of the oversight group in earlier administrations, when the benefit–cost assessment dominated.

The fact that the OMB can review the proposals of the regulatory agencies but cannot submit comments for the public record alters the oversight process in another important respect. OMB's criteria for action are not available for public scrutiny, and negotiations between the White House and the agencies have gone underground. Careful analyses may or may not be prepared for internal use in the OMB. Operationally, OMB is in a position, if it wishes, to reject all major proposals without such a record. If supporting analyses are prepared, these internal documents will not serve to stimulate public debate or to provide support for judicial actions against the regulatory agency.

The only recourse for a regulatory agency is to appeal OMB's decision to Vice President Bush's Task Force on Regulatory Relief. Since the staff director of the task force is also the head of the OMB oversight unit, there is a strong presumption that the OMB position will be upheld. Nevertheless, in the only OMB decision appealed to the vice president, a regulation proposed by the Occupational Safety and Health Administration, OSHA's position prevailed.

Even if agencies manage to make successful appeals to the vice president, the oversight policy process will represent a dramatic departure from pre-Reagan policies. The fact that an agency has to make such an appeal in order to issue a regulation that OMB opposes is in itself a major transformation. Previously the burden

was on CWPS and other White House groups to attempt to block a regulatory initiative, usually by appealing the proposal to the president. Since only a limited number of policy debates can be elevated to this level, regulatory agencies continued to operate almost without restriction. Now, however, the burden of appeal falls on the regulatory agency seeking to issue a regulation, effectively shifting the power over new regulations to the oversight unit.

There are other features of the Reagan approach that reinforce the oversight power. Particularly useful is OMB's authority to review regulations before they are proposed. By increasing the degree of oversight authority and shifting the review process to an early stage before the positions of the various actors become well established, the new oversight process should be better able to influence the final policy outcome.⁸ By reviewing regulations before they are formally proposed, OMB can limit the role of external political actors. In one of the rare cases in which CWPS and the Council of Economic Advisors appealed a regulatory policy to President Carter, a policy involving the imposition of stringent standards for the control of cotton dust in textile mills, the president upheld the standard; in this case, the fact that organized labor was solidly behind the regulation was instrumental in the decision. Regulatory agencies can still seek to establish such political support by publicly committing themselves to some stated line of policy. As in the past, the commitment could be used to gain leverage over the OMB oversight group. But the firmness of the support will not be as great, inasmuch as the details of the regulation will not be publicly known until after they are formally proposed.

The Reagan reforms also appear to have strengthened the substantive aspects of the oversight process by mandating a benefit-cost test except when prohibited by an agency's legislation. How extensively such tests will actually be imposed will depend in part on the courts' interpretation of existing legislation. The Supreme Court, for instance, has explicitly prohibited the use of a benefit-cost test for OSHA standards pertaining to toxic substances and hazardous physical agents. Since the statutory mandates in most risk-reducing legislation are written narrowly, court decisions of that kind could prove quite common. To be sure, OMB can nevertheless address benefit-cost issues in its regulatory review process; but the courts could entertain suits that would enjoin the administration from blocking regulations on benefit-cost grounds, should the reasons for the OMB decision become public.

As with the oversight mechanisms of earlier administrations, OMB's authority pertains almost entirely to new regulations. There is no retrospective assessment of the efficacy of regulations once they are in effect, nor is there a review of the accuracy of the original analyses that justified them. Most of the analyses of the impact of existing risk regulations, to the extent that they have occurred, have been performed by independent academic analysts.

Within the presidential oversight operations there has been no systematic effort to undertake policy evaluations of this type.⁹ On the cost side, a number of developments could easily render the original estimates obsolete. For example, do new regulations lead to innovative responses that reduce cost levels below the levels anticipated? Or conversely, do cost reductions that had been anticipated fail to be realized? On the benefit side, the need for retrospective analysis is even greater, particularly because of our increasing knowledge about many types of environmental risks that are the focus of regulatory policies.

In sum, the Reagan oversight procedures have increased the institutional authority of the review group over new regulatory proposals, but have severely limited the public's access to the discussions underlying regulatory decisions. The net effect of this change should be to enhance the power of those charged with the regulatory review process. But the criteria being applied to new regulations will be less transparent and the possibilities of informed public participation more limited.

THE IMPACT OF THE OVERSIGHT PROCESS Because the Ford and Carter administrations left behind a rich paper record of their review procedures, it is possible to make some estimates of their effectiveness. When these activities went underground in the Reagan administration, such evaluations became more difficult; but even in the case of that administration, some preliminary judgments are possible.

Recall that during the Ford and Carter administrations the White House oversight group had no right of veto over regulations proposed by one of the regulatory agencies. The reviewing body—the Council on Wage and Price Stability—was only authorized to analyze and comment on the proposals of the regulatory agencies. The collaboration of the Regulatory Analysis Review Group in the CWPS analysis was intended to increase the degree to which these regulatory critiques were regarded as a White House consensus; but even with this endorsement, agencies did not face strong pressure to comply with all of the suggestions.

For major regulations, agencies were simply required to prepare cost and benefit estimates for alternative policies, which the White House oversight group analyzed and discussed on the public record. This analysis in turn became the substantive basis for lobbying efforts by White House officials. To evaluate the effectiveness of that process properly, ideally one would like to compare the regulations actually issued with those that would have been promulgated in the absence of the review procedures. Reliable information of this type is not available even on an anecdotal basis, since few agency officials are willing to discuss the extent to which they have been affected by the oversight activities.

Nevertheless, clues regarding the effects of the process in the Ford and Carter administrations are not wholly lacking. Over the years, agencies began to calculate the costs of a proposed regulation; and in many instances, benefits also were calculated, albeit

on a more rudimentary basis. Where risk and environmental regulations were involved, for example, benefits typically were in physical units (such as lives saved or visibility increased at national parks) rather than in monetary terms. These estimates were generally believed to be reasonably unbiased; and in instances in which a clear conceptual error was made, the supporting data were often sufficient to provide CWPS with a basis for adjusting quantitatively for the error.

While increased information about the economic implications of regulations does not ensure efficient regulation, it does provide a basis for more effective debates concerning the appropriate regulatory policy. By reducing the regulatory agency's almost exclusive control over the data pertaining to a regulation's effect and by promoting the generation of data pertinent to responsible policy evaluation, the regulatory review process served to strengthen efforts within and outside regulatory agencies to make regulations more efficient.

In some instances, the review process itself fostered this discussion. During the Ford and Carter administrations, analysts from the White House staff and their regulatory agency counterparts were in frequent contact. In cases in which a regulatory analysis was elevated to the Regulatory Agency Review Group, there were usually a number of meetings between this group and the affected agency to debate the merits of the regulation. As a result, economic analysts acquired a larger policy role within regulatory agencies; the economic consequences of regulations became a central part of most policy debates, an emphasis that differed considerably from the discussions that had existed in the period before the review process was instituted. These debates, in turn, focused on extensive and often insightful analyses that had emerged as a result of the review process. In almost all instances in which CWPS intervened in collaboration with the Regulatory Analysis Review Group, the final regulation was closer to the White House position than was the initial proposal.

The progress that was observed in the revision of regulations may understate the full impact of the regulatory analyses. Even when the recommendations of the White House were not adopted, they did provide a substantive basis for supporting future regulatory reforms. In 1980, for example, when the Carter administration undertook an economic aid program for the auto and steel industries, its agenda of regulatory changes for those industries was based largely on findings that had previously been developed in the regulatory review process. And when the Reagan administration launched its inaugural flurry of actions rescinding various regulations that had already been placed on the books, those actions too were based almost entirely on past analyses by the reviewing staff of the Carter and Ford administrations. Moreover, in all of these cases, the White House regulatory oversight staff played an integral part. Their prominent role was made possible by the expertise that had been acquired in the preparation of the regulatory analyses.

Appraising the effects of the Reagan administration's review procedures is more difficult, inasmuch as these are conducted mainly *in camera*. One thing is clear: Whether because of the changed perspective of the agencies or the changed approach of the review procedures, efforts to extend regulatory activities have been reduced abruptly. One important exception was the OSHA proposal, mentioned earlier, requiring the labeling of containers with hazardous materials. The cost of the hazard communication program over the years, it is estimated, would be \$3 billion at present value. (A much more costly proposal had been made during the last week of the Carter administration despite the strong objections of the CWPS staff.)

More significant than the nature of the OSHA proposal was the substantive debate between the OMB and OSHA over the merits of the regulation. Since there is no public disclosure of the oversight activity, there is normally no external way of determining OMB's position. In this case, however, I was actively involved in this debate and was able to assess the merits of OMB's approach.¹⁰

OMB initially rejected the OSHA proposal because of OSHA's failure to demonstrate sufficient risk reduction benefits to warrant a \$3 billion cost. More specifically, OMB correctly observed that OSHA had overassessed the cancer risks, had never shown that the existence of the warning labels would reduce the risks, and had failed to take into account the time lag before any reduction in cancer cases would occur. OSHA appealed this decision to Vice President Bush, who asked OMB and OSHA to explore these substantive differences further before making his decision.

The outcome of this policy debate was that the vice president approved the OSHA proposal after OSHA presented evidence showing that the standard was, on balance, beneficial. More specifically, although OMB's arguments were sound, OSHA had also underestimated benefits by measuring the medical costs that would be saved rather than the much larger value reflecting the avoidance of pain and death. In this case, the adjustment for the appropriate value of benefits offset the adjustments in the risk assessment.

This was an instance in which the oversight procedures led to the type of policy debate one would hope to foster in order to generate efficient regulatory policies. The actual outcome was far less important than the character of the oversight process. The policy discussion focused on the magnitude of the risk, the effect of the policy on the risk, and the value that society could reasonably place on such effects. The fact that both OMB and the regulatory agency were willing to discuss policies in these terms represented an advance over previous years. In these earlier years, too, agencies were prepared to calculate benefits and costs; but they were reluctant to engage in policy discussions which suggested that a balance between benefits and costs might be required.

Shortly after OMB's unsuccessful attempt to stop the OSHA regulation, there was a major reorganization of the OMB staff shifting the staff composition even further away from the mix of

skills that are required to apply the benefit–cost approach.¹¹ Whether the same high standards exemplified by OMB's analysis of the OSHA hazard communication proposal will characterize future OMB efforts is unclear.

IMPROVING THE OVERSIGHT PROCESS There is a general consensus among supporters of regulatory reform that the review function still needs to be strengthened in some manner, particularly in its control of existing regulations.

The Congressional Veto A particularly visible trend has been the increased advocacy of the congressional veto.¹² The popularity of congressional veto proposals may be due in part to the failure of the White House oversight process to be more comprehensive. By excluding independent regulatory agencies, the present regulatory oversight mechanism has no jurisdiction over a major segment of regulatory policy. Congress has already begun to fill this gap by taking the initiative in influencing the policies of two independent regulatory commissions, the Consumer Product Safety Commission and the Federal Trade Commission.

The movement toward a congressional veto approach may also be inspired by the perception that the present oversight effort is not sufficiently stringent. These proposals also derive much of their appeal among business lobbyists from the increased opportunities they create for opponents of a regulation to block regulatory policies—by lobbying with Congress. Since congressional veto power by its very nature is not a tool that encourages a collaborative effort in developing new regulations, the net effect of the veto would undoubtedly be to decrease the number of regulations.

Although such diffusion of authority over regulations may ultimately be desirable, a more promising approach is to develop the capabilities of the present oversight structure more fully. My skepticism regarding the efficacy of a congressional veto is based in part on Congress's disappointing performance in structuring the legislation of the regulatory agencies, which in the case of the social regulation agencies impedes efforts to promote policies on the basis of their benefits and costs. The continued inability of Congress to reach a consensus on revisions in the Clear Air Act also underscores the difficulty that Congress is likely to have if it acquires broader regulatory authority.

The Regulatory Budget A possible expansion of the current oversight framework, suggested by some analysts, is the establishment of a regulatory budget.¹³ According to this concept, OMB would assign each executive branch agency a budget for the amount of regulatory costs that the agency was allowed annually to impose on the economy. It should be noted at the outset that this focus on costs is not ideal, since benefits and costs should be considered. The cost components to be included would encompass not only the expenditures involved in implementing the regulations themselves but also the costs borne by the rest of society, including businesses and consumers. Agen-

cies would be obliged to exercise their regulatory powers within that budgetary constraint, whether the costs were arising under their existing rules or under new programs.

The principal attraction of this approach is that it would impose a systematic form of discipline on regulatory agencies. The central budgetary institution, the OMB, is already in place, is relatively effective in controlling expenditure programs, and has had some success in regulatory oversight. To be sure, the regulatory costs that would be the subject of the OMB limits would not be the same as budgetary expenditures; but they would be similar in the sense that they represented estimated costs to society. That similarity suggests in part why President Reagan vested the oversight authority in OMB.

While the concept of a budgetary limitation merits serious consideration, one should be cautious in ascribing to it all of the prospective benefits that have been claimed by some of its more enthusiastic advocates.

For one thing, the estimates of social cost that go to make up a regulatory budget by their nature are much less precise than those that make up the usual expenditure budgets of government agencies. Estimates of consumer costs or business costs generated by some proposed regulation, for instance, are often only very crude guesses. Unlike the case of expenditure budgets, the regulatory budget is never tested against actual events; some elements of the regulatory budget remain estimates forever. Certainly some monitoring mechanism can and should be established to assess the costs of regulations; such estimates are implicit, for example, in any application of the benefit-cost approach. But the accuracy of the cost measures will never be as great as expenditure cost data; nor will the cost of acquiring the information be as low.

Clearly, the greatest shortcoming of the regulatory budget is that its advocates view the budget approach as a means of avoiding the difficult task of defining and estimating the benefits of alternative regulatory policies.¹⁴ OMB needs only to set cost levels by agency, after which regulations will be designed by the regulatory agencies on a decentralized basis. Because benefits need not be considered, however, there is no assurance that, for any given expenditure level, agencies will select the most beneficial regulatory programs. Almost all CWPS analyses, for example, turned up possible regulatory approaches that were different in principle from those being proposed by the regulatory agency. Some quite innovative policy designs emerged during this period of CWPS oversight. Most noteworthy is the EPA "bubble policy" whereby EPA now regulates total emissions from polluting plants as if they were surrounded by an artificial bubble. Previously, each smokestack within the plant was subject to a pollution standard, imposing a larger cost on the firm than a system in which a firm could concentrate its efforts on pollutants that could be reduced inexpensively. By ignoring such issues of program structure, the pivotal role of regulatory oversight in fostering innovative approaches to regulation will be lost.

Even if agencies could be relied upon to pick their programs wisely, OMB could not establish meaningful regulatory budgets by examining costs alone. If regulatory budgets are ever to serve as more than an arbitrary form of political discipline, OMB needs some estimate of the benefits associated with different levels of expenditure.

Expanding OMB's Oversight Powers Some less radical modifications of the present oversight framework would go far to remedy the existing inadequacies in regulatory oversight. The principal weakness to be remedied in OMB's inability to influence the nature of regulations once they have been adopted. To be sure, OMB can designate specific regulations to be considered by the appropriate agency for possible termination; but there is no means for ensuring that the regulations will actually be reviewed and revised.

One possible means for creating more effective control is to give OMB the power to designate regulations for mandatory sunset review. This is a step that would appear on the surface to expand OMB's authority substantially. To respond effectively to such enlarged powers, OMB would have to develop a staff capacity to assess existing regulations on a retrospective basis and to review the sunset candidates. If such a review concluded that the regulation should be eliminated, however, it would be up to the agency administrator to take the necessary action, inasmuch as OMB has no legal authority to alter or abolish existing regulations. The resistance that agency administrators have shown to sunset proposals by OMB under the Reagan administration suggests that substantial political pressure from the White House would be required to generate any significant regulatory reform by this means.

An alternative approach that would be less selective in its choice of sunset targets is to fix an expiration date for each major regulation at the time it is issued. Agencies would be required to reassess the justification for the regulation periodically and to renew the regulations that survived the reassessment. To limit the analytical burden, the length of the period of validity could be varied according to the nature of the regulation, as could the level of analysis required for renewal.

A useful adjunct to any expanded oversight effort would be the development of independent sources of scientific data relevant to the many regulations pertaining to risk and the environment. At present, the participants in the review process seldom have the capacity to assess the accuracy of the regulatory agency's assertions, such as claims regarding the consequences of different exposure levels to cancer-causing materials. The regulatory agencies themselves usually summarize and interpret the available scientific evidence, and oversight groups are usually in no position to develop independent scientific evidence. A scientific support unit to which the OMB oversight unit could regularly turn would be a valuable resource for the oversight activity.

More generally, the government should pursue opportunities for

greater independent funding of policy-related scientific research. The emphasis of present funding on contracts between researchers and regulatory agencies, which often have a strongly defined policy orientation, may produce less reliable scientific research than if the research funds were allocated by an independent agency, such as the National Science Foundation.

A final change would be to restore to the oversight unit the legal authority to file public statements before regulatory agencies that contained the unit's views regarding pending proposals. This change would foster greater public debate and accountability and would provide some assurance that OMB's actions were based on benefit-cost criteria and that these criteria were being applied objectively.

The Need for Legislative Reform Even with all such changes in place, it is questionable whether a dramatic improvement in regulatory policies would occur. For those like myself, who believe that the benefit-cost test should be a primary criterion in the selection of such policies, the change that would be produced in agencies with restrictive legislative mandates is likely to appear particularly slow.

These legislative mandates vary in content. But in the extreme instances, no comparisons are permitted between benefits and costs. The Delaney amendment to the Federal Food, Drug and Cosmetic Act of 1938 requires the Food and Drug Administration to prevent the use of all food additives that entail carcinogenic risks, irrespective of the level of the risk. The Clean Air Act specifically prohibits the Environmental Protection Agency from considering costs when setting air quality standards. In the case of OSHA, the agency is legally obligated to set standards that will "assure safe and healthful working conditions." While it has long been hoped that the courts would interpret the responsibilities of these agencies to include benefit-cost tradeoffs, in its landmark decision on the OSHA cotton dust standard, the U.S. Supreme Court ruled that OSHA's legislation prohibited benefit-cost tests for regulations pertaining to toxic hazards and harmful physical agents.¹⁵ This outcome should serve as a general signal to those who were hoping that the judiciary would force regulatory reforms after Congress and the executive branch had failed to do so.

Unless these legislative mandates are changed through a modification of the enabling legislation of the agencies concerned with environmental risks, it is doubtful whether an oversight process or regulatory reform act can be fully effective. Any agency that is subject to legislative mandates may argue that it is obligated to pursue policies quite different from those advocated by the regulatory oversight group.

THE FUTURE OF REGULATORY OVERSIGHT The difficulties of regulatory reform can be traced to two fundamental problems. First, the restrictive legislation of many regulatory agencies has greatly impeded efforts by agency officials and outside critics to change these policies. Second, there has been no

fully effective means for providing an independent check on these efforts.

Only with the changes instituted by the Reagan administration has there begun to be any effective control over regulatory activities, and then only with regard to new regulatory proposals. Any assessment of whether this greater control has improved policy outcomes is necessarily speculative because of the lack of any public record on the oversight process.

Once the issue of adequate authority is resolved, the desired focus of the oversight process will become a more salient issue. The emphasis of oversight has gradually evolved from a review of program impacts, to cost-effectiveness tests, to a benefit–cost test. The imposition of a benefit–cost requirement is by no means uncontroversial, wholly apart from its incompatibility with agencies' legislative mandates. Even if one espouses a benefit–cost criterion for policy design, as I have done here, there is the practical problem of estimating the magnitudes involved. These evaluation problems are endemic to debates over policies of all kinds, not simply those pertaining to regulation. An expanded and strengthened oversight unit will only provide the institutional context for raising these issues; it will serve to foster policy debate rather than eliminate it.

APPENDIX A numerical summary of the CWPS filings from 1975 to 1980 is provided in Table A1. CWPS filings on behalf of the Regulatory Summary of Public Filings by the Council on Wage and Price Stability Analysis Review Group are also included. The two agencies most frequently referred to in this article, the Environmental Protection Agency and the Occupational Safety and Health Administration, are shown separately. The number of filings averaged 50 per year, with roughly one-third of these analyses devoted to activities related to health, safety, or the environment, which are grouped under the risk regulation heading in the table. The number of nonrisk filings reached its peak in 1979–1980, a period in which deregulation efforts in transportation and energy were particularly active.

There also was a noticeable falling off in risk regulation activity beginning in 1978. This drop is not to be attributed to the impact of earlier CWPS filings in slowing down regulatory activity, but stems instead from uncertainty regarding the Supreme Court's interpretation of the agencies' legislative mandates. Moreover, the number of regulations may not be indicative of the actual level of regulatory activity, particularly for 1978.

An alternative measure of the volume of regulatory activity is the dollar costs they impose. I have made such a tally for all agencies engaged in health, safety, and environmental regulations. Similar estimates were not possible of other types of regulation, such as rate and entry regulations, since available cost data were not comprehensive in these cases. My cost estimates differ from other widely cited estimates of the regulatory burden, which are based on an assumed level of cost on the economy for each dollar in the agency's budget¹⁶; instead, mine are based on actual cost

Table A1. Council on Wage and Price Stability public sector releases regarding risk regulations, 1975–1980.^a

Agency	1975	1976	1977	1978	1979	1980	Total
EPA	7	4	4	5	14	15	49
OSHA	2	4	5	2	—	1	14
Other risk	12	10	5	1	1	4	33
Total risk	21	18	14	8	15	20	96
Total nonrisk	31	35	30	28	36	46	204
Total filings	52	53	44	34	51	66	300
Risk share of total	0.40	0.34	0.32	0.24	0.29	0.30	0.32

^aSource: Tabulations by the author using CWPS files.

Table A2. National costs of proposed risk regulations reviewed by the Council on Wage and Price Stability, 1975–1980 (range in billions of dollars).^a

Agency	Year of proposal						Total
	1975	1976	1977	1978	1979	1980	
CPSC							
Low		1.1	2.3				3.4
High		1.8	3.4				5.2
EPA							
Low	8.5	6.1	0.8	148.1	27.7	26.4	217.7
High	26.2	6.5	0.8	196.4	37.1	29.4	296.4
FDA							
Low	0.6	.02	1.2		0.9	0.3	3.0
High	0.6	.02	1.2		4.0	0.4	6.2
NHTSA							
Low	0.7			2.8		11.1	14.5
High	1.4			2.8		23.5	45.6
OSHA							
Low	17.3	2.7	4.4	69.2			93.6
High	17.3	2.7	24.1	448.2			492.3
Other							
Low	0.1					0.02	0.1
High	0.8					0.02	0.8
Total							
Low	27.2	9.9	8.7	220.1	28.6	37.8	332.3
High	46.3	11.0	29.5	665.3	41.1	53.3	846.5

^aSource: Calculations by the author using CWPS filings and supporting data. All dollar figures are based on prices current in the designated year.

estimates for each regulatory proposal. To ensure comparability, I recalculated all estimates using a 10% interest rate and used the cost estimate for the policy actually adopted in cases where several options were considered.

Table A2 summarizes the cost levels for these agencies. In addition to EPA and OSHA, the agencies include the Consumer

Product Safety Commission (CPSC), the Food and Drug Administration (FDA), and the Department of Transportation's National Highway Traffic Safety Administration (NHTSA). EPA and OSHA are, as one might expect, the dominant agencies in terms of cost imposed. The wide cost range for OSHA, \$93.6–\$492.3 billion, stems from the open-ended nature of OSHA's 1978 proposal concerning its approach to carcinogen regulation. In terms of overall cost, 1978 was by far the most important year for risk regulations, even though there were few policy proposals.

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- NOTES**
1. An alternative perspective is provided by the current head of the Reagan oversight group, DeMuth, Christopher, "Constraining Regulatory Costs—Part I: The White House Review Programs." *Regulation*, 4 (1980a): 13–26.
 2. For a historical review of the evolution of regulatory policy, see Kahn, Alfred E., *The Economics of Regulation* (New York: Wiley, 1971), and MacAvoy, Paul, *The Regulated Industries and the Economy* (New York: W.W. Norton, 1979), who also addresses the role of regulatory oversight. Two recent series of essays covering a wide range of regulatory policies and their development are the series of CWPS's regulatory analysis edited by Miller, James C., III, and Yandle, Bruce, *Benefit–Cost Analyses of Social Regulation* (Washington, DC: American Enterprise Institute, 1979) and a series of essays edited by Wilson, James Q., *The Politics of Regulation* (New York: Basic Books, 1980).
 3. For a comprehensive textbook treatment of the role that costs and benefits should play in the formulation of public policy, see Stokey, Edith, and Zeckhauser, Richard, *A Primer for Policy Analysis* (New York: Norton, 1978), especially Chaps. 9 and 13.
 4. Executive Order No. 11821, November 24, 1974.
 5. Office of Management and Budget Circular A-107, January 28, 1975.
 6. Executive Order No. 12044, March 24, 1978.
 7. This action seems to have been motivated more by a desire to terminate the CWPS pay/price standards program than to alter the regulatory oversight process. Abolition of the agency obviously had greater political appeal than scaling it down drastically.
 8. The importance of taking policy actions before the stakes and stands of political players are established is a central theme of Model III in Allison, Graham, *Essence of Decision: Explaining the Cuban Missile Crisis* (Boston: Little, Brown, and Co., 1971).
 9. The principal exception is the critical survey of research on the Occupational Safety and Health Administration by John Morrall, a leading official in the OMB and CWPS oversight efforts, *OSHA after Ten Years* (Washington, DC: American Enterprise Institute, forthcoming).
 10. My involvement was that of an outside advisor called upon to settle the factual differences between the two agencies. My analysis of the OMB–OSHA dispute, which in turn became part of the substantive

debate over the regulation, is provided in Viscusi, W. Kip, "Analysis of OMB and OSHA Evaluations of the Hazard Communication Proposal," report submitted to Secretary of Labor Raymond Donovan, March 15, 1982. The influence of this report and the economic merits of the regulation on the final policy decision by Vice President Bush is discussed in the *New York Times*, March 23, p. 13 (national edition). That account is consistent with the favorable assessment that I provide of both the OMB oversight process and OSHA's regulatory analyses.

11. This reorganization occurred in May 1982. To maintain the illusion that there was no reduction of the economic analysis staff, a computer programming group was merged with the economics group to fill the vacancies left by the reduction in economists.
12. See Gilmour, Robert S., "The Congressional Veto: Shifting the Balance of Administrative Control." *The Journal of Policy Analysis and Management*, 2(1) (Fall 1982): 13–25. One concrete legislative proposal along these lines is Senate bill S.1080, 97th Congr., 1st Sess., which was passed in 1982.
13. For a statement that gives much stronger support to the regulatory budget concept see DeMuth, Christopher, "The Regulatory Budget." *Regulation*, 4 (1980b): 29–43; and Lave, Lester, *The Strategy of Social Regulation* (Washington, DC: Brookings Institution, 1981). Lave and others credit Charles Schultze, Chairman of President Carter's Council of Economic Advisers, with development of the regulatory budget approach.
14. Lave (1981) and DeMuth (1980b) emphasize this factor and the ability to set in motion a decentralized process for making regulatory policy.
15. *American Textile Manufacturers Institute v. Donovan*, 452 U.S. 490 (1981).
16. This is the approach followed by Weidenbaum, Murray, *The Future of Business Regulation: Private Action and Public Demand* (New York: American Management Associations, 1979).