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“Everything has a price”: Jimmy Carter and the Struggle for Balance in Federal Regulatory Policy

On Thursday morning, December 11, 1980, in the Cabinet Room of the White House, President Jimmy Carter signed into law two bills that stood for the multifaceted legacy he wanted for his departing administration.

One of the measures, the “Superfund” law, created a new funding mechanism to facilitate the cleanup of the nation’s hazardous waste sites. The Superfund bill filled a “major gap in the existing laws of our country,” strengthening the hand of federal environmental regulators, Carter said that day. The second bill, the Paperwork Reduction Act, appeared to point in the opposite direction. The Paperwork Reduction Act aimed to “eliminate unnecessary Federal regulations” as well as “wasteful and unnecessary” federal information requirements. The law, Carter declared, would “regulate the regulators” by giving the White House Office of Management and Budget “the final word” on regulations.¹

A few months after the signing ceremony, with Carter out of office, a pitched battle began between liberal environmentalists and conservative

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antiregulatory activists. Superfund and the Office of Management and Budget's control over federal regulation were central to the conflict. The fledgling Reagan administration zealously embraced its new powers over federal regulation. With a publicly combative tone, the Office of Management and Budget provoked outcry by trying to sharply curtail environmental, health, and safety regulations. Meanwhile, congressional liberals and the White House fought over the implementation of Superfund, ultimately leading to the resignation of Reagan's first EPA administrator and the perjury conviction of her assistant administrator in charge of the toxic-waste program.

This was decidedly not the legacy that Carter intended. He had offered a different vision from this bitter strife between environmentalists and deregulators. Rather than forcing a choice between starkly different paths, the Paperwork Reduction Act and the Superfund bill represented, for Carter, two important developments of the 1970s that were compatible and should be merged.

Threats to public health, safety, and the environment demanded a governmental response. Ten years earlier, on New Years Day 1970, Richard Nixon had signed the National Environmental Policy Act, declaring that it was "now or never" for Americans to "restore the cleanliness" of the nation's air and water. In the decade between NEPA and Superfund, Congress passed the major environmental bills of the era, addressing air and water pollution, toxic chemicals, oil pollution, endangered species, forest and marine management, and energy efficiency. Federal agencies, including the new Environmental Protection Agency (EPA) and Occupational Safety and Health Administration (OSHA), sprang into action to write and enforce new rules and regulations. Superfund turned out to be the last major building block in this emerging federal environmental regulatory state.²

Yet as the federal government expanded its reach during the 1970s, many critics, particularly business leaders but also, increasingly, academic economists and policymakers, complained about the impact of regulations on the American people and on the nation's economic growth. New York Republican Frank Horton, one of the paperwork bill's House sponsors, reported being "besieged" in his district with complaints of "strangulation by regulation." Regulation and paperwork were not free goods, these critics argued. The government needed to manage the costs that it imposed on the American people.³

Carter himself embodied both of these impulses: he embraced government action to protect the environment and public health, and he also sought to make regulation less burdensome and costly. Both causes, in fact, were

personal passions. Carter had spent childhood days roaming the woods and fields in rural Georgia. “Everyone who knows me,” he said while signing the Superfund bill, “understands that one of my greatest pleasures has been to strengthen the protection of our environment.” But government efficiency also animated the president. With a background in the Navy’s nuclear submarine program, Carter was used to calculating and balancing risks and benefits for strategic purposes. As governor of Georgia, Carter also had worked to rationalize state government, abolishing and consolidating hundreds of state agencies. Now in the closing days of his presidency, Carter spoke fondly of the utterly bureaucratic cause of information management and regulatory reform. One of the “high points of my presidency,” Carter recalled, was a day in 1978 when more than nine hundred minor and outdated safety and health regulations “were stricken from the books.” Carter characterized the Paperwork Reduction Act as a defining legacy. The law, Carter said at the signing ceremony, was “embedding my own philosophy . . . into the laws of our Nation.” At his very first presidential cabinet meeting, Carter had directed his cabinet officers and agency heads to cut down the “extraordinary and unnecessary burden of paperwork” on the American people. Carter now announced with pride and a little uncertainty as he signed the paperwork law, “We’ve addressed the bureaucrats, and we’ve won, right?” The White House audience laughed.⁴

This article uses the records of Carter’s domestic policy and economic advisers and his budget office to examine a crucial lead-up to that December signing ceremony: the Carter administration’s efforts to manage the costs and burdens of federal regulation. Why did Carter and his advisers believe that improving federal regulation was so important? How did the administration’s approach to regulatory reform evolve over the course of Carter’s presidency? More narrowly, why did the Carter administration initially oppose strong Office of Management and Budget oversight of regulation and then later advocate legislation to strengthen OMB’s role? This is a story of tension and conflict as the Carter administration sought to balance regulation and reform, as well as trade-offs between agency independence and White House control. Carter’s integrated approach was, in some ways, less politically successful than Reagan’s single-minded tack. Carter’s compromises inevitably disappointed some of his own constituents, the environmental and health advocates calling for tougher regulation. Yet he also did not go far enough to win over conservatives and business advocates. Few interest groups rallied to support compromise and moderation. Yet if Carter had continued his reform

efforts in a second term, perhaps his effort to strike a balance might have set the country on a more mature regulatory path instead of an extended political stalemate.

The White House's relationship to federal agencies lay at the heart of conflicts over regulatory reform. Carter was trying to figure out how to effectively oversee the executive branch. His advisers quickly grew skeptical about designating OMB to serve as the federal government's regulatory enforcer. They instead spread regulatory oversight across several executive offices and policy groups. The White House sought to partner with the regulatory agencies to help them improve government performance with new rule-writing processes. The focus on systems and processes and the diffusion of oversight power were hallmarks of the Carter administration's regulatory reform efforts. The strategy of partnering with the agencies made the administration's accomplishments politically feasible, but it also ultimately frustrated White House policymakers and made them hunger for more effective oversight. Regulatory agencies and labor and environmental advocates in the Democratic coalition resisted and slowed the administration's progress.

By the end of Carter's term in office, the Carter administration had forcefully asserted the president's power to review, and even to overturn, agency regulatory decisions. Carter's senior staff also settled on OMB as the only viable agency to oversee regulatory reform. In its closing months, the Carter administration created the institutional framework that Reagan's OMB would use for its regulatory review efforts. The Carter administration's initial move away from OMB power and his administration's subsequent efforts to strengthen OMB's role are thus critical to understanding the rationale and origins of OMB's controversial regulatory review authority. The hostile anti-regulatory rhetoric that characterized the early Reagan years differed sharply from the Carter administration's emphasis on balanced and efficient regulation. But the central substantive thrust of Reagan's regulatory program in the early 1980s continued efforts initiated by the Carter administration in the late 1970s.⁵

Although commonly remembered as a liberal regulator, in part for his creation of the Department of Energy and his push for national energy conservation and planning, Carter more accurately should be seen as a leading *deregulator* of the twentieth century. Scholars have long documented how the Carter administration enthusiastically deregulated many long-controlled industries, including air travel, trucking, finance, and railroad shipping. The administration also laid the groundwork for the decontrol of oil and natural gas prices. Carter considered his record on industry deregulation "one of the

best success stories” of his presidency, and his domestic policy staff described it as “one of the President’s great domestic legacies.”⁶

Less closely examined than the industry-by-industry deregulatory initiatives, however, is the Carter administration’s broader effort to reform government regulation overall by embracing regulatory cost analysis and by seeking to coordinate and influence federal agency rule making. Some scholars have argued that efforts before Reagan to exert presidential control over regulation were “rather modest and unintrusive.” But well before Reagan’s election, cost-benefit analysis and centralized executive influence over agency decision-making were hotly contested issues. Economists and domestic policy advisers in the White House led the charge. Carter’s advisers struggled with what Justice Stephen Breyer later described as “the great structural problem of administrative control. . . . Who will regulate the regulators? How, through the wise use of management techniques, internal procedures, or court controls, can we assure a better regulatory product?” A close analysis of the Carter years reveals a broad and concerted administration effort to institutionalize rational, efficient government.⁷

Carter’s push for regulatory reform reflected an increasingly sophisticated understanding of the influence of the federal government in the 1970s. A simple insight yielded broad policy ramifications: the federal government increasingly shaped the economy and the environment through many activities outside the formal budget. This insight spurred federal reforms addressing tax and environmental policy, as well as government regulation.⁸

The 1969 tax reform bill, for example, incorporated the novel idea that tax breaks constituted a form of government spending. Stanley Surrey, a prominent tax scholar who advocated tax reform in the 1960s, argued that an effective and equitable tax system needed more transparent accounting for these “tax expenditures.” Federal tax deductions for mortgage interest, oil drilling, charitable giving, and state and local tax payments—these were significant components of federal “spending” that needed to be budgeted along with other federal programs.⁹

The National Environmental Policy Act, also passed in 1969, took aim at the unaccounted-for environmental costs of federal actions. NEPA’s mandated “environmental impact statements” forced federal agencies to assess the environmental consequences of their decisions. No longer would the federal government make decisions about building dams, airports, and highways as if they had no environmental costs. NEPA’s impact statements provided a potential model for similar calculations of the economic costs of federal regulation. But NEPA also provided a cautionary example: an explosion

of environmental-impact litigation in the early 1970s showed the perils of formal judicial review of agency decisions. People who urged analysis of the economic impact of federal regulations tended to call for NEPA-style impact review without creating grounds for NEPA-style litigation.¹⁰

Regulations, like tax deductions and infrastructure projects, also had costs that needed to be calculated. That process of calculating regulatory costs began almost immediately after the initial expansion of environmental regulation. President Nixon initiated a rudimentary version of cost analysis in 1971, particularly to limit the burden of new environmental rules. Under the rubric of "Quality of Life" review, the Nixon administration required agencies to submit environmental, consumer, and health and safety rules to the Office of Management and Budget before final publication. The process allowed OMB, as well as the Commerce Department and other agencies, to comment on proposed rules, and, in some cases, demand changes. In practice, the OMB primarily targeted the Environmental Protection Agency for review, a practice that angered environmentalists and that would shape policy development in the Carter administration. President Ford continued Nixon's effort to analyze individual regulatory actions, with internal reviews variously called "economic impact analyses" or "inflation impact assessments."¹¹

The Carter administration expanded these analyses of individual regulations and also started to plan the federal government's overall regulatory burden. Regulation had such a "pervasive" impact, a Carter adviser explained in 1979, that it needed to be reconceptualized as a "planning and management tool," rather than a piecemeal solution to a variety of pollution, safety, or efficiency problems. Through its regulatory actions, "the government in a real sense is 'managing' the automobile industry, the steel industry, the chemicals industry, the electric power industry, etc. But it is 'managing' these industries in an uncoordinated and *ad hoc* way." Administration proposals for a "regulatory calendar" and a "paperwork budget" aimed to subordinate individual regulations to government-wide systems for planning and allocating limited public resources. The Carter administration never endorsed creating a formal "regulatory budget" that would cap and allocate the government's regulatory burden. But the *idea* of a regulatory budget served as a metaphor for the administration's goals. "Society's resources are vast, but they are not infinite," Carter told Congress in 1979, explaining how his regulatory reform program would help manage resources effectively.¹²

The Carter administration's regulatory reform efforts thus responded to the rapid growth of federal regulation in the late 1960s and early 1970s. Regulatory reform is sometimes characterized as largely a business-led campaign

that trumped up fears of overregulation. While business lobbying boosted calls to reform and weaken regulations, the reform movement represented something greater than simply strategic business maneuvering. The efforts to review and better manage regulation were an unsurprising and logical, if not inevitable, corollary of regulatory expansion. Concerns about the economic burden of regulation had something in common with worries about the environmental costs of federal actions. Although coming from very different constituencies, both sets of concerns reflected a genuine and increasing apprehension about the far-reaching and largely unaccounted-for influence of the growing federal government. The federal government could be a force for good, yet also wasteful and inefficient. The bitter battles of the Reagan years reduced the complex balancing act facing policymakers to an unproductive dichotomy: government versus the market. Revisiting the Carter administration's struggle to find a way to make regulation more efficient—without subverting it—suggests a path not taken and speaks to challenges that persist today.¹³

CARTER'S COMMITMENT TO GOVERNMENT REFORM

Shortly after Jimmy Carter's inauguration in January 1977, EPA's acting administrator John Quarles Jr. canceled the agency's participation in the Quality of Life review process begun by the Nixon administration. Quarles had been a loyal administrator in two Republican administrations, serving as EPA's first general counsel and then as its deputy and acting administrator. But he had grown frustrated by EPA's bureaucratic struggles. EPA had been singled out by OMB's review program, which had evolved to apply "almost exclusively to EPA." Interagency review of proposed environmental regulations was overly time-consuming, shifted control from EPA to OMB, and caused EPA to miss statutory deadlines. Jim Tozzi, an OMB staff member who played a lead role in the Quality of Life program, particularly clashed with EPA staff. "It is unimaginable," Quarles wrote, "that the new Administration will continue the arrangement of having one review system for EPA and different systems for other agencies." In a symbolic gesture of independence, Quarles declared that EPA meetings with staff from other agencies, such as OMB, would now "be scheduled by EPA and held at the offices of EPA."¹⁴

Quarles had reason to hope that Carter would share his views on White House review of EPA's regulations. Carter had a strong track record on the environment as Georgia's governor, and he sharply criticized Ford's environmental policies. Carter's environmental supporters during the campaign

specifically attacked OMB for slowing EPA's regulatory efforts to a "dismal, if not deadly pace." NRDC's Gus Speth, who co-authored a report on OMB's interference with EPA, was appointed as a member of Carter's Council on Environmental Quality.¹⁵

But Carter did not abandon White House oversight of regulatory agencies. Charles Schultze, Carter's appointee to chair the Council of Economic Advisers (CEA), viewed federal regulation as frequently inefficient and overly burdensome. Schultze was a former economics professor who had served as director of the Bureau of the Budget (OMB's predecessor agency) in the Johnson administration. Schultze co-authored a 1975 book, *Pollution, Prices, and Public Policy*, that criticized pollution control laws as "excessively costly." Federal mandates, he wrote, assumed "an omniscience that a regulatory bureaucracy cannot be expected to possess." Americans, Schultze elaborated in a 1977 study, *The Public Use of Private Interest*, were increasingly "disenchanted with the ability of government . . . to function effectively." Schultze endorsed government action to clean up pollution and to protect health and safety. But he thought Americans were going about regulation in a "systematically bad way." The government needed to mobilize private self-interest to further public goals. Schultze particularly advocated regulatory methods that used price signals and pollution taxes to encourage private decision-makers to control pollution at lesser societal cost.¹⁶

Schultze, along with OMB director Bert Lance and domestic policy adviser Stuart Eizenstat, soon began planning a regulatory reform effort far more comprehensive than Nixon's Quality of Life review or Ford's inflation impact statements. In a February 1977 televised address, President Carter reiterated campaign promises to "reform and reorganize" the federal government. Government regulations would be written in "plain English" that citizens and businesses could easily understand. Carter expected Cabinet members to personally read and sign off on regulations before they were released. Carter promised to consolidate federal advisory committees and commissions and to cut White House staff. He said that the OMB would develop a plan to remove unnecessary regulations and eliminate overlap and duplication.¹⁷

For the Carter administration, this call to lessen the burden of government regulation was more than boilerplate efficiency rhetoric. Internal correspondence within the White House in 1977 reveals a strong staff-level commitment to strengthening the regulatory review process.¹⁸ Carter's staff argued that analyzing alternatives earlier in the regulatory process would improve the quality of regulations and help avoid conflicts between regulations and

between agencies. To illustrate these problems, they liked to point out how the Occupational Safety and Health Administration (OSHA) required work vehicles to emit sounds when they backed up, even while OSHA also required employees to wear earplugs to protect against noise. The “earplugs drown out the sound of the alarms, thus defeating the purpose.” They also worried about warring directives from different agencies. The Coast Guard required door sills to be high enough to prevent flooding on ships, while OSHA declared high door sills a danger to seamen who might trip. Agriculture had sued EPA over its pesticide regulations. EPA, in turn, was trying to stop utilities from burning coal to reduce air pollution, even while the Federal Energy Administration urged utilities to increase coal consumption to encourage energy independence.¹⁹

White House staff also worried that federal regulations would increase prices and inflation. High inflation rates, averaging 11 percent in 1974 and 9 percent in 1975, undermined economic growth and soured the public mood. The inflation rate dipped to under 5 percent in December 1976, but the rate immediately started to climb again as Carter took office the following month, rising to over 6.5 percent in December 1977 and peaking at over 14 percent in 1980. The Carter team struggled to identify policy actions, such as more cost-effective regulation, that might slow the rise in prices. The high cost of pollution controls, Carter’s advisers thought, had broad implications for the American “standard of living and quality of life.” The federal government needed regulations to protect health, safety, and the environment, Carter’s advisers believed, but the government also had to balance benefits against costs that could lead to inflation and slow economic growth. Because of the “pervasive impact” that regulations had on the economy, regulatory decisions could not be left only to the agencies, but had to involve White House economic policy advisers and be linked with the president’s anti-inflation program.²⁰

In addition to these internal motivations, the Carter administration pursued reform initiatives to outflank congressional proposals. A “growing public hostility to regulation” led some in Congress to seek regulatory relief. Business leaders and lobbyists pressed for greater attention to regulatory costs. Washington think tanks, including the Brookings Institution and the American Enterprise Institute, created new programs and journals to study and critique federal regulation. “Without a strong Administration program, we will be pre-empted by Congress,” OMB director Bert Lance warned Carter, describing one “pernicious” proposal that Congress grant itself the power to veto executive agency regulations.²¹ The Council of Economic Advisers warned that congressional legislation mandating formal economic impact

statements would “worsen delays by requiring analysis of all proposed regulations.” Legislation that required regulatory analysis also would “open the door to judicial review of all rule-making proceedings.” Carter aides feared that, if poorly designed, economic impact analysis requirements could spawn a wave of lawsuits against government agencies, similar to the litigation that swirled around NEPA’s environmental impact statements.²²

AN INSTITUTIONAL CHALLENGE

Carter’s economic and domestic policy advisers thus sought to reform rule making across all government agencies to encourage greater consideration of economic costs and regulatory alternatives. They considered this important to fulfilling Carter’s campaign promises. Yet they struggled to find a workable institutional process to achieve their goal. A key point of contention remained central throughout Carter’s term: What role should the Office of Management and Budget, the president’s primary economic policy and management unit, play in regulatory reform?

Criticism of OMB’s activities during the Nixon and Ford administrations weakened the agency’s position. Quarles’s declaration of EPA’s independence from OMB symbolized the desire among environmentalists to lessen OMB’s influence. Hubert Harris, OMB’s director of congressional relations under Carter, later recalled that congressional Democrats and some senior White House policy staff viewed OMB as the “ultimate enemy” and considered the OMB staff “holdover Republican[s].” Jim McIntyre, OMB’s second director under Carter, similarly recalled a conscious decision to “de-emphasize the size and role of OMB.”²³

Rather than secure the agency’s institutional footing, Bert Lance, Carter’s first OMB director and a close friend from their Georgia days, relied instead on his personal relationship with Carter. Lance had been Carter’s “key man” in the reorganization of the Georgia state government, and the president had placed him strategically at OMB so Lance’s “tentacles would go out” to the Cabinet and the Congress in the preparation of the budget. After Lance was forced to resign in September 1977 due to a Georgia bank corruption controversy, OMB was left in “chaos and confusion.” The thirty-six-year old McIntyre had served as Carter’s budget director in Georgia, and, in Carter’s words, may have been “technically better qualified” than Lance to run the agency. But McIntyre lacked Lance’s close connection with the president and was seen as a mild-mannered rather than forceful leader. McIntyre said that it took him “at least year” to “reestablish and to recapture some of the influence that OMB

had, or should have had, in the formulation of policy.” The agency was overwhelmed with its efforts to balance the budget, reorganize the government, and address the paperwork and regulatory burden. “We really couldn’t do it with the structure that the existing OMB had,” McIntyre recalled in 1981.²⁴

By the time of Lance’s resignation in September 1977, many White House advisers doubted whether OMB could effectively oversee regulatory analysis by the agencies and they questioned whether a lead role for OMB was desirable. OMB’s record of enforcement since 1974 had been “abysmal,” a CEA staff member told Schultze that month, and the agency’s performance remained “not encouraging.” Economic impact analysis had fallen “into a mere paperwork exercise in the agencies.” Furthermore, OMB’s reputation as an obstacle to environmental regulations meant that “an OMB-directed process will be inalterably opposed by all the environmental agencies and groups.” EPA administrator Douglas Costle told Schultze that the earlier review process had been a “battleground that has left deep scars.” Schultze conveyed these views to the president. Regulatory reviews had “been abused in the past,” Schultze informed Carter in an October 1977 memo. Unless handled carefully, Schultze said, the administration’s reform efforts might be seen as “an attack . . . on environmental or health and safety standards.”²⁵

If not led by OMB, how else could regulatory reform proceed? Schultze sought to create a more open process that emphasized agency initiative and improved agency rule making. The Council of Economic Advisers would play the key coordinating role. Regulatory agencies would evaluate the economic impact of major proposed regulations and detail possible alternatives. An interagency group chaired by CEA would scrutinize some of these regulatory analyses—partly for their substantive significance and partly as an educational process for the agencies. Staff members from the Council on Wage and Price Stability, an inflation-fighting office in the White House that CEA’s Schultze also oversaw in 1977–78, would prepare the regulatory studies. To avoid targeting any particular agency, Schultze’s interagency group would review no more than four regulations from any one agency per year. Schultze, in essence, proposed an educational model to change the culture of federal regulation. “Ultimately, we want them to improve *their own* economic analysis,” Schultze explained to the president. The goal was simply to find the “most cost-effective approach,” and to use the review process as “*quality-control on the final regulatory product*.” Schultze insisted that White House economic advisers would not “dominate this process.” He didn’t want EPA, OSHA, and other agencies to see regulatory review “as a device for Treasury, CEA, OMB, Labor and Commerce to strong-arm them on particular regulations.”²⁶

SEEKING A PARTNERSHIP BETWEEN THE AGENCIES AND THE EXECUTIVE OFFICE

Carter embraced Schultze's agency-centered approach in the fall of 1977, when he proposed a new executive order on regulatory reform. After an unusual public comment process, Carter signed Executive Order 12044 in March 1978. The decision to bypass Congress with the order fit a broader political strategy to bolster Carter's standing by taking executive action on foreign affairs and on domestic issues such as government reform. Carter's executive order sought to improve government regulations through better planning and more public involvement. The White House primarily would play a consultative role. Major regulations, with more than \$100 million in economic impact, would undergo "regulatory analysis" to closely examine the cost of alternative regulatory strategies. Schultze's interagency committee, the Regulatory Analysis Review Group (RARG), would select some of these regulatory analyses for closer inspection to guide agencies and help shape critical regulatory decisions. The executive order's approach explicitly rejected a stronger OMB enforcement role. OMB director McIntyre called a more formal OMB role "undesirable and counter to the emphasis on agency accountability."²⁷

In the summer of 1978, the administration's new approach faced its first public test. Carter's economic advisers sought to persuade OSHA to redesign a regulation that would govern cotton dust in textile mills. Long-term exposure to unprocessed raw cotton fibers in textile mills can induce byssinosis, a kind of chronic bronchitis and constriction of lung capacity. The illness was called "brown lung disease" to emphasize its similarity with the "black lung" suffered by coal miners. OSHA's attempts to protect textile workers had been deferred, because of their cost, under both the Nixon and Ford administrations. Now the Carter administration, under pressure from labor supporters, sought to issue the long-delayed cotton dust regulations, and White House economic advisers wanted to assess alternative mitigation strategies.²⁸

Where OSHA advocated costly engineering changes that would increase factory ventilation and reduce dust levels, White House economists instead suggested performance standards that could be met by monitoring worker health and by using alternate worker protection strategies, such as individual respirators. At stake were hundreds of millions of dollars in capital investments to reengineer textile plants. William Nordhaus, a Yale professor on leave to serve as a member of the Council of Economic Advisers, was the council's member designated as the point person on deregulation. Nordhaus saw the

cotton dust decision as an important opportunity to show the credibility of White House regulatory reform efforts. The proposed OSHA regulation, Nordhaus warned Schultze and Eizenstat, established a dangerous standard for “*extremely high costs of health protection.*” If the same standard of expenditure for health benefit were extended to other industrial hazards, Nordhaus argued, “it would bankrupt the nation.” OSHA was operating “as if there were no checks or balances in the system,” Nordhaus asserted in a 2014 interview.²⁹

Carter ultimately was drawn into a bitter public dispute between CEA’s Schultze and Ray Marshall, the secretary of labor. After meeting with Schultze and Marshall, Carter chose a final OSHA rule less stringent than initially proposed, but which still retained the costly technological mandate opposed by Schultze. The compromise satisfied neither labor nor industry, and both immediately sued to overturn the decision. But by siding with OSHA on the technical standard, Carter delivered a stinging public defeat to Schultze and the White House economic team. The economists felt that mobilized liberal interest groups had overwhelmed reasoned policymaking with a lobbying campaign. The administration’s process-focused approach already felt, to some of its advocates, like a failure.³⁰

In the months following the cotton dust decision, Carter’s domestic policy advisers struggled to figure out how to position the president for political advantage in the context of growing antigovernment sentiment. California voters had approved the antitax Proposition 13 in June 1978. Complaints about wasteful spending and rising inflation, which hit 9 percent in late 1978, also fed criticism of the government. How, Carter’s advisers asked, could the president “*personally get on top of these closely related issues*”? White House staff worried that the administration would have little to show in the reelection campaign from its executive order on regulatory reform. “We will need, in the spring of 1980, a list of the things the E.O. has achieved,” domestic policy aide Rick Neustadt explained. Efforts to “make a good record for the president” in the area, policy aide Simon Lazarus told his boss Stuart Eizenstat in July 1978, had been “pathetically inadequate.”³¹

The White House staff blamed OMB. Given the conscious decision not to give OMB too much power and the agency’s struggles following Bert Lance’s resignation, perhaps the criticism was unfair. But White House staff now confronted the limits of diffuse authority and lack of accountability, two characteristics of a Carter administration that purposefully had no chief of staff until July 1979. Reflecting on the limited progress of regulatory reform, Simon Lazarus argued that “no cure is possible unless a prestigious and capable heavy is located in the [Executive Office of the President] to be responsible

for the program, or for significant parts of it." While the administration aspired to a consultative relationship with the regulatory agencies, the regulatory review process still needed some muscle behind it. Domestic policy chief Stuart Eizenstat alerted Carter to the "serious lack of resources devoted by OMB" to enforcing the new executive order and reiterated that OMB leadership was critical. Yet OMB had allocated only one full-time employee to the executive order, when five or ten were needed. "No one in the EOP complex or at OMB is pressing the agencies and departments to do more," Eizenstat told Carter. Two days later, Carter urged OMB director Jim McIntyre to press for more action. "I want the executive order re regulatory reform carried out. This is an OMB responsibility," Carter told McIntyre in a handwritten note.³²

Carter's push for more muscular OMB oversight coincided with efforts to better plan the overall federal regulatory burden. Secretary of the Treasury Michael Blumenthal and Council of Economic Adviser's chair Charles Schultze described government regulation as "vastly expanded" and "not subject to any effective control." Blumenthal and Schultze considered regulation a "major factor in high inflation, low productivity growth and a growing dissatisfaction with 'excessive government.'" A group of academic economists with whom Carter consulted also attributed the "pathology of our present inflation" in part to the "impact of measures designed to safeguard the environment." CEA's William Nordhaus estimated that federal regulations overall might add "up to 1% to the inflation rate each year." Nordhaus called the regulatory process "too uncoordinated" and urged a "kind of 'budget' for major regulations." The growth of federal regulation, he argued, made centralized, coordinated oversight inevitable. "*There is no real alternative to some version of the calendar-budget in the long run,*" Nordhaus wrote.³³

In order to make this coordination possible, the Council of Economic Advisers now sought to amend Carter's executive order to change OMB's role from that of a process facilitator to more of an agency enforcer. In the fall of 1978, CEA called for a consolidated federal regulatory calendar that would require agencies to submit to OMB the regulatory actions they proposed for the following year. CEA also proposed that OMB analyze *all* major regulations costing more than \$100 million, instead of just a few representative ones. In CEA's proposal, OMB also would have the power to tell agencies to defer costly regulatory actions "on the basis of the Administration's priorities." The president himself would resolve controversies between OMB and the agencies. OMB itself, however, still resisted being given too much centralized review authority. OMB just wanted to identify the most costly regulations and let the agencies themselves take responsibility for balanced analysis.

Although CEA and OMB disagreed on how tightly OMB should control the regulatory process, it is significant, in light of subsequent controversy over the activities of Reagan's budget office, that Carter's economic and domestic policy advisers agreed that OMB, and not CEA or any other unit, was the key executive agency. "OMB is the proper place to organize and enforce a 'regulatory' calendar and, later, the more comprehensive review of final regulations," Eizenstat, McIntyre, and Schultze told the president.³⁴

Even as Carter's economic and domestic policy team sought to tighten enforcement of the executive order, environmentalists and labor advocates resisted the administration's reform efforts. In a public letter spearheaded by the Natural Resources Defense Council's Richard Ayres, environmental and labor leaders criticized behind-the-scenes, off-the-record regulatory review outside of the public comment process. The administration critics attacked the Council on Economic Advisers' "obsession" with regulations, instead of other governmental actions that exacerbated inflation. They complained that regulatory review still appeared to target EPA and OSHA. Carter policy advisers considered Ayres's letter overwrought, and "found it ridiculous that these disputes could not be rationally solved in a calm atmosphere." But the politics of regulation ran very hot. Ayres reportedly told Simon Lazarus at a lunch meeting in late September that "as long as hysteria was politically useful to environmentalists," they would continue to generate it in their campaign against the regulatory review process.³⁵

Council on Environmental Quality chairman Charles Warren and his colleague Gus Speth sided with these external critics in a late September memo to the president. They told Carter that environmental regulations did not "contribute substantially to inflation," and they highlighted the high "political costs of making environmental and health regulations an anti-inflation target." Regulatory review, they argued, should focus on "ferreting out old regulations that are anti-competitive or no longer serve a useful purpose," instead of weakening new environmental and health rules.³⁶

The conflict between environmental and labor regulators and Carter's economic policy advisers deepened in anticipation of Carter's October 24, 1978, anti-inflation speech. Agency leaders were "wary and even angry" at a two-hour meeting in the White House Roosevelt Room, where Eizenstat, McIntyre, and Schultze explained the concept of a consolidated federal regulatory calendar. Citing Nixon's Quality of Life review process, the agency leaders feared that "faceless GS-11's" on the OMB or CEA staff would use a regulatory calendar to meddle with new regulations before they were issued. The regulatory agencies scrambled in the days leading up to Carter's speech

to create an alternative to strengthened OMB oversight. The agencies pressed instead for a "Regulatory Council" made up only of agency regulators, with no staff from OMB, CEA, or other economic agency. The regulators argued that the council would keep the responsibility for regulatory reform "squarely on us, your cabinet departments and line agencies." The agencies could provide a "heat shield" to protect the White House from special interest pressures. An agency-led Regulatory Council also would uphold the "tradition that all regulators are responsible for decisions made in their name" and avoid any "political problem" associated with increased oversight by OMB.³⁷

Carter's late October anti-inflation message sought to balance the ideas of his economic advisers and the concerns of his regulators. While celebrating how new laws protected Americans' health, safety, and environment, Carter also declared that "everything has a price." Consumers ultimately had to "pick up the tab" for the cost of regulations. Carter directed his agencies to "eliminate unnecessary regulations" and "analyze the costs and benefits of new ones." OSHA, Carter said, had that very day "eliminated nearly 1,000 unnecessary regulations." These included "nitpicking" standards for things like toilet-seat design, the proper height of fire extinguishers, and the composition of portable ladders. Carter announced plans for a "unified calendar" of planned major rules. But he also embraced the proposed Regulatory Council, to be chaired by EPA's Costle, to coordinate regulations to prevent overlap and duplication. In the weeks following the speech, Carter persuaded Alfred Kahn, the economist who oversaw airline deregulation at the Civil Aeronautics Board, to take a new position as White House "inflation czar."³⁸

Carter's domestic and economic policy advisers were disappointed that the president didn't go further, and they continued to push for regulatory reform. They situated their reform efforts in the context of their vision for successful Democratic Party politics. In a speech to the National Press Club, Eizenstat linked effective, efficient government to the preservation of the great Democratic accomplishments of previous decades: "If we are to build on the record of the New Deal and the Great Society, and if we are to continue to have a constituency for social programs in this country, we are going to have to convince the American people that those social programs are going to be administered in a fair and efficient way, with a minimum of red tape and an absence of fraud and abuse." An electoral strategy sensitive to the antitax "Proposition 13 atmosphere" underlay this view. A November 1978 memo on government reorganization explained that a Democratic president who demonstrated that he could "actually eliminate unnecessary or ineffective programs" would "cut off at the knees a dominant theme of the opposition."

OMB's Jim McIntyre conceded that regulatory reform, improved management, and government reorganization did not "bring traditional Democratic audiences to their feet." But Americans had "reached the limit in their open-ended support of big government." To sustain initiatives such as federal energy policy, Democrats needed to "restore public confidence in government action itself." Carter's White House advisers thus took sides on a fundamental choice in Democratic Party politics: Was it better to pursue a centrist path that softened critiques of government and built support for a moderate, sustainable progressive politics, or did it make more sense to offer a full-throated defense of government and reject the fundamental premises that energized conservative critiques?³⁹

FORMALIZING OMB OVERSIGHT, 1979–1980

As 1979 began, the Carter administration proposed new legislation to overhaul the regulatory process. There was a sense among some within the administration that regulatory management was a "shambles." The legislation proposed to codify the provisions of Carter's Executive Order and to extend them to independent economic agencies, such as the Federal Communications Commission, that still lay largely beyond the president's control. The legislation also would consolidate and strengthen regulatory oversight by creating a single office of regulatory policy. Jim McIntyre grandiosely called the administration's plans "the most sweeping change in regulatory management in our nation's history." The central element of the legislative proposal, McIntyre told an audience of business leaders in Washington, D.C., would be "a centralized method of regulatory review." The new legislation would "demand a review of every government regulation within a specific time period." The administration's bill also would facilitate greater public participation in the shaping of regulations.⁴⁰

White House plans for regulatory reform legislation coincided with fresh controversy over efforts by Carter's economic advisers to reduce the cost of several major pending rules, but without "sacrificing the main regulatory objectives." Clean-air advocates became furious over a final ozone rule that weakened EPA's proposed health standard, following input from White House economists who sought to save an estimated \$1–2 billion per year on a \$6–7 billion rule governing particulate emissions. Environmental groups also sued to try to block the White House from interfering with the Department of the Interior's strip-mining rule-writing process. EPA administrator Costle clashed with White House advisers over toxic water pollution rules. Costle generally

supported the administration's regulatory reform efforts, including the modified ozone rule, and he proudly touted EPA's regulatory innovation and greater reliance on market incentives. But Costle also resisted encroachment on his agency's autonomy and pressure to weaken rules beyond what he thought was appropriate. Costle's mixture of enthusiasm and resistance underscored the creative tension at the heart of Carter's regulatory reform program.⁴¹

Senator Edmund Muskie, the Maine Democrat who had helped write key environmental legislation like the Clean Air Act and chaired a Senate subcommittee on environmental pollution, helped lead the charge against the White House. In a February 1979 speech at the University of Michigan, Muskie declared that the "princip[al] threat to the environment" was not a new pollutant, an industry or an interest group, but "the mood of the anti-regulators who claim it is too costly and burdensome to protect people from the hazards of pollution." Muskie demanded detailed reports on contacts between Carter's economic advisers and EPA officials to document inappropriate White House influence. Warning of a White House "assault on regulations," Muskie called Carter's regulatory reform bill "a bone tossed to industry by bureaucratic economists." Muskie presciently declared, "These are battles that will flow into the next decade."⁴²

Environmental opposition to regulatory review was hardening. Critics testifying before Muskie's subcommittee on environmental pollution opposed any expansion of White House economic influence. They questioned the political reasoning of Carter's team and criticized the administration in language similar to later attacks on the Reagan administration. Environmental attorney Richard Ayres denounced Carter's "economic gunslingers," guilty of "bald-faced speaking for special interests" and insensitive to "anything more subtle than narrow conservative economics." Environmental Defense Fund lawyer Robert Rauch similarly lamented that a Democratic administration aimed "to rewrite the nation's environmental laws by administrative decree." When Leon Billings and Karl Braithwaite from Muskie's staff met with Simon Lazarus and other White House staff in February 1979, Lazarus heard "profound hostility to the regulatory reform draft and to all the regulatory reform activities of the administration." Muskie's aides refused to suggest ways to improve the administration's regulatory reform bill, fearing that giving advice "would 'get them pregnant' with the proposal." Instead, Lazarus reported, Billings promised an all-out fight against the legislation, saying, "There is nothing I prefer more than to kick the shit out of an administration." Muskie would brand Carter's legislation "an industry-oriented device to destroy the

regulatory process.” When Lazarus complained that this characterization would be unfair and inaccurate, Billings supposedly retorted, “To oppose unsound and inappropriate legislation, we will have to use unfair and inaccurate tactics.”⁴³

Texas congressman Robert Eckhardt also held hearings on what he called the “use and abuse of cost-benefit analysis by regulatory agencies.” Consumer advocates Ralph Nader, Mark Green, and Norman Waitzman shared a report called *Business War on the Law* with Eckhardt’s committee, documenting the many benefits of regulation. They dismissed complaints about “excessive cost” as simply a “power play by corporations.” Inflated claims of the cost of federal regulation, Nader told Congress, were “consumer fraud” and “ideological arithmetic.” “These people that are lobbying you are elitists, remote,” the ascetic Nader told the congressmen. “They live in air-conditioned buildings. They are never next to the blood and carnage and disease that afflict America.” Nader’s harsh comments showed how liberals demanding more regulation rejected the premises of regulatory reform—even Carter’s balanced effort—and instead cast its proponents simply as corporate shills.⁴⁴

Charles Schultze—characterized by Muskie’s aides as “someone who wants to trade lives for dollars”—articulated the administration’s differing and more complex view of regulatory reform in an April 1970 speech at the Commonwealth Club. Schultze rejected simplistic stories about government either “strangling the private sector” or “standing idly by while the air is poisoned, the water is fouled, workers are maimed, and consumers bilked and injured.” No one could “legitimately deny the need” for regulation, he said. But policymakers faced difficult choices about how much and what kind. “Cleaner air, cleaner water, better health, and greater safety are not free,” Schultze argued. Regulation cost the government itself fairly little. The public instead paid for “cleaner air and water and safer workplaces, not by higher taxes but by higher prices,” Schultze said. The challenge of regulation, Schultze said, lay in “striking a *better balance* between costs and benefits and searching for ways to achieve the benefits at lower costs.” The federal government needed to improve individual regulations and to set regulatory priorities. “The choices cannot be avoided, and they are quite difficult.” OMB’s McIntyre concurred with Schultze’s assessment of the difficulty, acknowledging that managing federal regulation was “not sexy”: there were “no ribbons to cut, no bands to lead, no simple or easy answers.”⁴⁵

OMB’s unsexy role in regulatory reform was central to policy discussions in the spring of 1979. The Regulatory Reform Act that Carter proposed in March 1979 gave OMB greater oversight responsibility while extending the

president's executive order to independent agencies, such as the Federal Communications Commission (FCC). An organizational study of OMB in late 1978 or early 1979 spoke of the importance of building OMB's "capacity to analyze regulatory programs."⁴⁶ OMB continued to take most of the blame within the executive office for inadequate agency compliance. Carter himself complained to McIntyre, "OMB not doing enough to monitor. I want a fresh, accurate, specific report ready to use before cabinet meeting 5/21."⁴⁷ In June 1979, Eizenstat arranged to meet with OMB's deputy director to discuss regulatory reform. "The key to this lunch," Eizenstat's aide Richard Neustadt informed him, was to get OMB to "move *now* to get someone good assigned full time to generating regulatory reform results." Neustadt described OMB as the major institutional obstacle to generating stories of successful reform that would help Carter politically. "As long as regulatory oversight is handled by the current people through the current process," Neustadt told Eizenstat, "it will fail." Neustadt insisted that OMB "get tougher" about enforcing the Executive Order.⁴⁸

As the regulatory reform bill developed in Congress, OMB's enhanced role was central to the administration's legislative priorities. McIntyre himself explained to Senator Abraham Ribicoff in early 1980 that "fixing accountability is one of the central aims of the Administration's regulatory reform program." For this reason, McIntyre explained, the administration sought to locate "responsibility for regulatory oversight" in the Office of Management and Budget. McIntyre and Eizenstat similarly explained to Senator Edward Kennedy that the "natural and appropriate place to locate oversight authority is where President Carter has assigned it, to OMB, the essential right arm of all Presidents for managing the Executive Branch."⁴⁹

McIntyre's embrace of responsibility and the administration's efforts to strengthen OMB, however, did not change their desire for agencies to internalize regulatory review. The primary purpose of interagency review, CEA member George Eads reiterated in October 1979, "is to encourage agencies to do a better job of regulating." The White House's review process did not provide a "substitute analysis" but rather sought to identify the "strengths and weaknesses in the agency's efforts." The White House insisted that the president had the power to overrule agency heads on regulatory decisions. But Schultze emphasized that the president's advisers "do not write the regulation, nor do they approve it, nor do they sign off on it, nor do they dictate what they may be." Given sufficient tools and information, a 1979 briefing book on regulatory reform explained, "The agency head is best qualified to make balanced choices among regulatory alternatives." The regulatory review

process focused on “helping agencies to develop a few good analyses as models for others.” Carter’s challenge was to devise a regulatory review process that could be implemented principally by agencies, but that had strong enough enforcement so that agencies would comply. With no teeth, the reform program would go nowhere; too much centralized power, by contrast, would undermine agency autonomy and raise alarms about White House meddling. Carter’s balanced program was less a system of harmony than one of tension between legitimate competing objectives.⁵⁰

The Carter administration pressed ahead with its efforts to coordinate federal regulation and further bolster White House control. In late November 1979, Carter issued an executive order on paperwork that established an “information collection budget” for agencies in terms of “burden hours” imposed by government on citizens and businesses. As an internal narrative of OMB’s relationship to regulation explained, the agency had taken an “obscure function under the Federal Reports Act of 1942—clearing government requests for information . . . and turned it into a tool to review regulations and paperwork burdens.” Managing federal paperwork demands thus became a key mechanism for managing government regulation as a whole, to the chagrin and consternation of the regulatory agencies.⁵¹

Regulators upset by OMB’s expanded control over agency information requests had grounds to suspect OMB’s intentions. In December 1979, lower-level OMB regulatory staff circulated a draft “Regulatory Cost Accounting Act.” The cost-accounting measure would have moved the federal government closer to a regulatory budget that would cap the costs that agencies could impose on the private sector. With comprehensive cost accounting, the president could provide Congress with a consolidated annual report on regulatory costs that would enable the government to time, and in some cases defer, regulatory requirements so as not to overburden specific industries. Eizenstat and McIntyre, however, informed Carter that there was “no reliable, uniform means of estimating costs” and a rigid budgetary framework was “more likely to lead to phony estimates and litigation than to meaningful reforms.” As Schultze pointed out, economists had enough difficulty “trying to determine the *past* costs of *past* regulations,” much less calculate their uncertain future cost. Neither OMB’s leadership nor the White House approved the draft cost-accounting legislation and the administration never formally proposed it.⁵² While declining to embrace a formal regulatory budget or regulatory cost accounting, Carter did continue to push to tally the federal government’s activities, calling for a “credit budget” to explicitly calculate government expenditures on loans and loan guarantees.⁵³

As the 1980 election approached, the Carter administration sought another kind of credit: recognition for the administration's accomplishments in government reform. Carter's domestic policy advisers were panicky about their seeming inability to establish Carter's reform credentials. Domestic policy staff complained to CEA's George Eads that regulatory review "seems to be grinding to a halt. . . . What's next? Surely there are major rules about to be proposed?"⁵⁴ The White House was anxious to be seen as responsive to a perceived antigovernment, antitax sentiment in the nation. In February 1980, Stuart Eizenstat asked Eads to "explore quietly a number of 'dramatic' actions that the President might take on regulation." White House advisers briefly contemplated the very kinds of actions that they had long deliberately avoided, such as developing a "quick list of discretionary regulations that may be deferrable or killable." Budget examiners at OMB could be tasked with finding agency statutes that "may need overhaul." White House aides could look for "any vulnerable USDA regs." Carter could demand that agency heads identify "a list of discretionary regs. they are killing or deferring." The worst predictions of the administration's liberal critics seemed to be coming true.⁵⁵

Yet even as they explored these possibilities, White House aides noted the jarring inconsistency with their previously measured and thoughtful approach to regulatory reform. "We have worked extremely hard to avoid giving the impression that regulation is responsible for inflation," George Eads reported back to Eizenstat. The administration's program was based on the idea that reform is "nothing more—and nothing less—than sensible government." Progress on regulatory reform had come largely through "quiet, behind-the-scenes prodding of agencies. We have carefully avoided a heavy-handed approach where we appear to bludgeon recalcitrant agencies into submission." A six-month moratorium on new regulations, Eads also pointed out to Eizenstat, might "win plaudits" from some interest groups, but would be "illegal and probably counterproductive." Arbitrarily blocking regulations would put agencies in contempt of court-ordered deadlines, prompt a wave of new litigation, and produce costly uncertainty for industry. Offering a prototype regulatory budget or highlighting statutes that precluded cost considerations would simply stir controversy and generate expectations that couldn't be met.⁵⁶

Guided both by the principle of "sensible government" and by a fear of controversy and liberal backlash, Carter's economic policy team resisted the temptation to grasp for high profile, politically driven attacks on regulation. That approach instead would be embraced in the first months of the Reagan administration, which imposed a freeze on regulations and demanded that

staff identify regulatory targets.⁵⁷ Carter instead chose to try to showcase what his administration had done so far, and to highlight his administration's emphasis on innovative regulatory techniques. He also continued to call on Congress to pass his regulatory reform and paperwork bills.⁵⁸ Internally, however, the administration grew increasingly pessimistic that Congress would produce suitable reform legislation. Carter didn't want his name on a "really bad bill which slips through because it's an election year." There were many threats, including legislative proposals for judicial review of "binding regulatory analysis," calls for a legislative veto of regulations, and demands for a formal regulatory budget. The Carter administration feared that even if it succeeded in getting a clean bill out of committee, the regulatory legislation might get saddled with "some or all of this baggage on floor of either House." In May 1980, the administration finally asked their Senate allies to slow the bill down and, ultimately, table it.⁵⁹

In the final six months of his presidency, Carter pressed forward with other regulatory reform efforts. In September, Carter signed the Regulatory Flexibility Act, directing agencies to design regulations to meet differing constraints faced by small businesses, local governments, and nonprofit organizations. The flexibility act, Carter said, "adds another piece to the far reaching regulatory reform record" of his administration.⁶⁰

During the lame duck session following Carter's defeat, the administration also successfully pushed through the Paperwork Reduction Act, which required agencies to submit for OMB's approval any rule that requires agency information collection requests. The legislation sought to reduce the federal paperwork burden by 25 percent by October 1983. The law contained some restrictions on OMB's use of paperwork reduction as a means for substantive intervention in regulatory rule making. But at the same time, the measure joined oversight of federal rule making and of paperwork reduction by establishing the Office of Information and Regulatory Affairs (OIRA) within OMB. The paperwork measure thus strengthened OMB institutionally and gave it additional tools to influence federal agencies. Shortly after taking office, Reagan moved the Council on Wage and Price Stability's regulatory staff members, who had staffed Carter's interagency review efforts, into OIRA. The consolidated staff resources, coupled with the paperwork law's expansion of authority, bolstered OMB's ability to oversee agency regulatory activities. The Paperwork Reduction Act, OMB's McIntyre explained in 1981, "gave OMB a legal hook to get into the regulatory oversight." The Reagan administration used these staff resources and tools immediately after taking office, but in ways that went beyond the Carter administration's vision for them.⁶¹

In the final months of his presidency, Carter also pressed for new legislation to clean up the nation's thousands of hazardous waste sites. Efforts to address the hazardous waste problem had stalled for several years. During the 1980 presidential campaign, the furor over toxic chemicals at Love Canal in New York intensified calls for federal action. In early October, at the height of the 1980 campaign, Carter traveled to Niagara Falls to announce federal funding to help New York State buy the homes of Love Canal residents. After the election, Congress rushed through the "Superfund" legislation. The new law, technically known as the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), created a mechanism to finance remediation of hazardous waste sites and to impose liability for cleanup costs.

The hastily passed Superfund law did not go through extensive review either in Congress or within the administration. As a legislative measure, rather than an agency regulation, the Superfund bill escaped regulatory analysis by either OMB or Carter's interagency regulatory review group. Prior to Superfund's passage, however, Carter's economic advisers expressed skepticism about whether the proposed measure's funding and liability approach suited the hazardous-waste problem. In a 1979 staff memo responding to EPA's legislative proposal, OMB questioned the economic gains from hazardous-waste cleanups, noting that many sites might not be worth remediating to such a high level. In cases like Love Canal, an OMB staff member wrote, "it may be cheaper to pay people to move away." OMB also asked whether taxes on current chemical and petroleum producers, which would finance the Superfund, made sense as a way to pay to fix sites contaminated by thousands of other polluters. Many problems and questions associated with the bill's design soon plagued Superfund's implementation. How clean was clean enough? Which sites should be prioritized? Would strict liability provisions correctly allocate responsibility? How much money would businesses and governments spend on lawsuits and engineering studies? The controversy that swirled around Superfund in the early 1980s underscored the challenge of designing efficient regulations to address complex environmental problems such as abandoned hazardous waste sites.⁶²

CONCLUSION

That day in December 1980 when Carter signed into law the Superfund hazardous-waste bill and the Paperwork Reduction Act constituted a symbolic turning point, but what kind of juncture was it?

In retrospect, the double bill signing clearly marked the end of the 1970s as the environmental decade. In the thirty years following Superfund, Congress passed only a few significant environmental laws, such as the 1990 Clean Air Act Amendments. Unable to agree on policy reforms, Washington politicians instead continued to fight over the implementation, and legitimacy, of the environmental laws passed in the 1970s. In a simplistic rendering of that morning's events, liberals stood for Superfund and EPA regulation, while conservatives stood for Paperwork Reduction and OMB power. A national political stalemate followed.

But the juxtaposition of Superfund and paperwork reduction suggests an alternate path, perhaps the one Carter's staff sought to suggest when they paired the two events. Rather than the end of environmental legislation and the beginning of a deregulatory era, Carter wanted to unite in creative tension two competing but equally necessary social goals: on the one hand, the legitimate need for government regulation to protect health, safety, and the environment, and, on the other hand, the vital importance of government efficiency and effectiveness. Carter believed the federal government could strive for continuous improvement and efficiency while also aiming to better people's lives. Carter conveyed these principles as he sought to manage the internal tensions and struggles surrounding regulatory reform. The pairing of Superfund, a litigation-generating machine, with paperwork reduction underscored challenges inherent in this balancing act, but Carter thought it could be done.⁶³

Carter was genuinely passionate about deregulation, regulatory reform, and reorganization. Government reorganization was a hallmark of his term as Georgia governor, and he sought to bring efficiency and reform to the federal government. As president, Carter signed bills deregulating the airline, trucking, and banking industries. He set in motion the decontrol of oil and natural gas prices. He instituted Civil Service reforms and consolidated diverse federal initiatives into new departments of energy and education. Carter also introduced a formal process for regulatory analysis, limited federal paperwork demands, and pushed for a more intelligible and open approach to regulation.

Carter's economic and domestic policy advisers were convinced that the nature of the federal government had changed in the previous decade. The rapid growth of the federal government meant that its far-ranging impact needed to be better assessed and managed. Good government, in their view, entailed maximizing regulatory benefits and minimizing costs. Agencies, in

the administration's view, were poorly positioned to resolve conflicting priorities. They had little accountability for the cost of their regulatory actions. Only the president could ensure that new rules struck a balance between competing national interests in health, safety, environment, national security, and economic growth. The president, as the elected national executive, had to guide agency decision-making. "The President is the only official elected by all the people, who can best try to put the whole picture together," a set of 1979 White House talking points explained. "Regulations are the creature of individual agencies with relatively focused concerns, constituencies, and oversight committees."⁶⁴ This perspective on the presidency was hotly contested both by congressional leaders defending their legislative power and by environmental and labor advocates seeking to bolster agency independence from the White House. These critics complained that centralized oversight simply provided industry with a new way to undermine agency regulations. The internal White House policy debate during Carter's presidency, however, shows that regulatory reform was driven intellectually by a quest for balanced governance. High inflation and concern about growing antigovernment sentiment gave Carter's reform efforts political urgency.

To pursue these goals, the Carter administration initially sought an alternative to the OMB-centered review process that had taken place under Nixon and Ford and that had primarily targeted EPA. Rather than having OMB intervene late in the rule-making process to try to change agency decisions, Carter aimed to create a government-wide process that would lead to better rule making. The administration acknowledged widespread hostility toward OMB's prior role and spread review authority across several White House economic agencies. But White House staff soon realized that diffuse responsibility was not effective. As early as 1978, White House economic and policy advisers called for more aggressive OMB oversight. By the end of Carter's term in office, the White House had started to consolidate and expand regulatory review powers in the Office of Management and Budget. Although the administration failed to achieve all its legislative goals for regulatory reform, the Paperwork Reduction Act significantly expanded OMB's powers and institutional capacity.

The use of regulatory oversight tools by Reagan's OMB starting in the winter of 1981 flowed directly out of the Carter administration's experience and institutional accomplishments. When Carter's staff reviewed Reagan's deregulatory proposals during the 1980 campaign, they concluded that Reagan "does not seem to know that the President is already doing them." Reagan proposed a task force to study deregulation, but Carter had "already deregulated

the airline, trucking and banking industries.” Reagan proposed that the “economic effects of every proposed regulation be analyzed,” but Carter already had required “more stringent review by executive branch agencies over two years ago.” The president had sent legislation to Congress to codify this review for all regulatory agencies. With the regulatory flexibility bill, Carter also sought to “ease unnecessary burdens on small business.” Noting the Reagan administration’s regulatory reform efforts in a 1981 interview, McIntyre argued that the Carter administration “really prepared OMB for the significant role that it is carrying out today.” McIntyre continued, “I don’t think that the current administration could have done what it has done without that groundwork that we laid in the Carter administration.”⁶⁵

Despite the similarities, Ronald Reagan and his advisers vocally rejected Carter’s nuanced approach to regulation. During the 1980 campaign, Reagan denounced the “regulatory web that is smothering” the economy. While conceding good intentions behind health, safety, and environmental regulations, Reagan concluded, “too often regulations work against rather than for the interests of the people.” Reagan mocked “Utopian regulators” of the 1960s and 1970s for their naive belief that “we could attain a risk-free world if only they could plan it centrally and enforce the rules and regulations.” In his first inaugural address, Reagan attacked government itself, declaring that “government is not the solution to our problem; government is the problem.” Reagan’s first OMB director, David Stockman, raised hackles with calls for a “regulatory ventilation” that would block or reverse costly federal environmental standards.⁶⁶

During his first month in office, Reagan took some of the dramatic public steps that Carter had eschewed in the spring of 1980. To his critics, Reagan appeared to be trying to shut down the government’s regulatory apparatus. He ordered hundreds of new regulations postponed, and asked agency heads to review and rescind other rules. He created a new Cabinet-level task force on regulatory relief led by Vice President George H. W. Bush to identify and modify overly burdensome regulations. Reagan also issued a new executive order, E.O. 12291, to further strengthen presidential power over federal regulation. Where Carter’s executive order applied only to regulations costing over \$100 million and resulted in selective review of agency regulations, OMB now would review all proposed regulations. Reagan’s new executive order also mandated that agencies use formal cost-benefit calculations to guide their regulatory decisions. Instead of simply considering a range of options, the agencies now were directed to undertake new regulatory actions *only* if their “potential benefits to society” outweighed the “potential costs.” Carter’s economic

advisers had rejected this kind of formulaic application of cost-benefit analysis, arguing that neither costs nor benefits could be calculated accurately enough to drive final policy decisions. Carter preferred to follow Schultze's lead and to emphasize a deliberative learning process within the agencies that would lead to improved regulatory techniques.⁶⁷

In the most striking contrast to Reagan, Carter had advanced deregulation and regulatory reform while also defending the critical importance of regulation. These dual commitments helped position the pro-environment Carter to advance deregulation and regulatory reform, since Carter and his appointees enjoyed an underlying level of trust from the environmental community. Looking back from the vantage point of the mid-1990s, EPA's Doug Costle concluded that Carter's regulatory review program sought to "create a cooperative environment among the regulators . . . without the kind of political tension that had existed and has now emerged again." In Costle's view, the key to this cooperative relationship—and the major distinction from the earlier Quality of Life review and subsequent Reagan OMB oversight—was that the White House economic staff "wasn't just a hit squad trying to throttle us." Carter still faced significant opposition from Edmund Muskie, Ralph Nader, and other liberal critics suspicious of regulatory reform. But the Carter administration's approach managed to bring key regulators like Costle along, and to avoid the all-out political war that followed.⁶⁸

In retrospect, it seems possible, if counterintuitive, that Reagan's more emphatic attack on government impeded, rather than advanced, continued progress toward regulatory reform. Even though some of Reagan's actions to centralize power within OMB were the "next logical steps" and built directly on Carter's efforts and experience, Reagan's purpose seemed "completely different." Reagan's call for "regulatory relief" sparked fears that OMB was going to "eviscerate essential health, safety, and environmental protections for the benefit of big business," recalled Christopher DeMuth, who headed Reagan's Office of Information and Regulatory Affairs. The Reagan administration's antiregulatory rhetoric inflamed his liberal opposition and mobilized his conservative supporters, rather than build support for more effective government. Attempts to pass regulatory reform legislation in Congress, or to implement cost-benefit analysis within OMB, were seen as regulatory retreats and set off fierce partisan battles in the early 1980s.⁶⁹ The Reagan administration and its liberal antagonists ironically shared a common theme: they both pitted the government against the market in a mythic struggle, rather than emphasizing the challenge of balancing government regulation and efficiency. Carter aspired to something different. His middle road acknowledged both

the value and the limitations of government action. Carter's search for balance did not succeed politically, but it more accurately described the pragmatic challenge of governing.

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NOTES

1. Jimmy Carter, "Comprehensive Environmental Response, Compensation, and Liability Act of 1980 Remarks on Signing H.R. 7020 Into Law," 11 December 1980. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project* (hereafter Peters and Woolley, APP), <http://www.presidency.ucsb.edu/ws/?pid=44392>; Carter, "Paperwork Reduction Act of 1980 Remarks on Signing H.R. 6410 Into Law," 11 December 1980, Peters and Woolley, APP, <http://www.presidency.ucsb.edu/ws/?pid=44390>.

2. Richard Nixon, "Remarks on Signing the National Environmental Policy Act of 1969," 1 January 1970, Peters and Woolley, APP, <http://www.presidency.ucsb.edu/ws/?pid=2446>.

3. U.S. House, Committee on Government Operations, "Paperwork Reduction Act of 1980: Hearings," 96th Cong. 2nd sess., 7, 21, and 28 February 1980 (Washington, D.C., 1980), 96. For an important early assessment of different regulatory approaches that warned of society wasting billions of dollars on inefficient regulatory strategies, see Bruce A. Ackerman and Susan Rose-Ackerman, James W. Sawyer Jr., and Dale Henderson, *The Uncertain Search for Environmental Quality* (New York, 1974), 6, 317–30.

4. Carter, "Comprehensive Environmental Response, Compensation, and Liability Act of 1980 Remarks on Signing H.R. 7020 Into Law"; Jimmy Carter, "White House Conference on Regulatory Reform: Remarks at a Meeting of the Conference," 11 January 1980, Peters and Woolley, APP, <http://www.presidency.ucsb.edu/ws/?pid=33016>; Carter, "Paperwork Reduction Act of 1980 Remarks on Signing H.R. 6410 Into Law"; E. Stanly Godbold Jr., *Jimmy and Rosalynn Carter: The Georgia Years, 1924–1974* (New York, 2010), 189, 268. For Carter's enthusiasm for government reorganization, see Carl P. Leubsdorf, "Political Problems Delay Bureaucratic Streamlining: Analysis," *Baltimore Sun*, 4 February 1979, A1, and Thomas Oliphant, "Reorganization: Carter's Newest Headache: Ending Bureaucracy Is Easier Said Than Done, He's Finding," *Boston Globe*, 8 January 1978, A3.

5. Whether regulatory costs significantly impeded economic growth in the 1970s or worsened that decade's high inflation is a question that goes beyond the scope of this article. Some economists and historians are deeply skeptical that regulations have imposed costs sufficient to cause industrial relocation or to weaken industrial competitiveness. Others contend that regulatory costs meaningfully slowed economic growth, perhaps half a percent or a percent each year. For a skeptical assessment of regulation's impact on industrial relocation, see Bruce G. Carruthers and Naomi R. Lamoreaux, "Regulatory Races: The Effects of Jurisdictional Competition on Regulatory Standards," unpublished essay, 11 June 2013, copy in the possession of the author; for an assessment of the effects of clean-air regulation on manufacturing competitiveness, see Michael Greenstone, John A. List,

and Chad Syverson, "The Effects of Environmental Regulation on the Competitiveness of U.S. Manufacturing" (10 September 2012), MIT Department of Economics Working Paper No. 12-24; Michael Greenstone, "The Impacts of Environmental Regulations on Industrial Activity: Evidence from the 1970 and 1977 Clean Air Act Amendments and the Census of Manufactures," *Journal of Political Economy* 110, no. 6 (December 2002): 1175-1219. This article also does not address the voluminous legal scholarship on the normative value of cost-benefit analysis and enhanced presidential authority over regulation. For selections from this scholarly debate, see Elena Kagan, "Presidential Administration," *Harvard Law Review* 114 (2000-2001): 2245-2385; Cass R. Sunstein, *Risk and Reason: Safety, Law, and the Environment* (New York, 2002); Sunstein, "Cost-Benefit Analysis and the Environment," *Ethics* 115, no. 2 (1 January 2005): 351-85; Douglas A. Kysar, *Regulating from Nowhere: Environmental Law and the Search for Objectivity* (New Haven, 2010); Frank Ackerman and Lisa Heinzerling, *Priceless: On Knowing the Price of Everything and the Value of Nothing* (New York, 2004); Richard L. Revesz and Michael A. Livermore, *Retaking Rationality: How Cost-Benefit Analysis Can Better Protect the Environment and Our Health* (New York, 2008). Jonathan Wiener also has written widely on the origins and spread of regulatory oversight. See, for example, Jonathan B. Wiener, "The Diffusion of Regulatory Oversight," in *The Globalization of Cost-Benefit Analysis in Environmental Policy*, ed. Michael A. Livermore and Richard L. Revesz (New York, 2013): 123-41; Jonathan B. Wiener and Alberto Alemanno, "Comparing Regulatory Oversight Bodies across the Atlantic: The US Office of Information and Regulatory Affairs (OIRA) and the EU Impact Assessment Board (IAB)," in *Comparative Administrative Law*, ed. Susan Rose-Ackerman and Peter Lindseth (Northampton, Mass., 2010), 309-35.

6. For a profile of Alfred Kahn's efforts on airline deregulation, see Thomas K. McCraw, *Prophets of Regulation: Charles Francis Adams, Louis D. Brandeis, James M. Landis, Alfred E. Kahn* (Cambridge, Mass., 1984), 222-99. See also Laura Kalman, *Right Star Rising: A New Politics, 1974-1980* (New York, 2010), 240-41; Richard H. K. Vietor, *Contrived Competition: Regulation and Deregulation in America* (Cambridge, Mass., 1994); Miller Center, "Interview with Jimmy Carter: November 29, 1982," Charlottesville, University of Virginia, 2003, 45. Carter's staff also described deregulation as "one of the President's great domestic legacies," and as a "major turning point . . . in the way our government approaches basic industries in our country." "Exit Interview with David Rubenstein, Deputy Director Domestic Policy Staff, December 3, 1980," 7, and "Exit Interview with Robert (Bob) Thomson, December 10, 1980, 5," available from the Jimmy Carter Library at <http://www.jimmycarterlibrary.gov/library/oralhist.phtml#exit>.

7. Oliver A. Houck, "President X and the New (Approved) Decisionmaking," *American University Law Review* 36 (1987): 535-56; Stephen Breyer, "Afterword," *Yale Law Journal* 92, no. 8 (1 July 1983): 1614-20, 1614. For Breyer's examination of regulatory reform, see Stephen G. Breyer, *Regulation and Its Reform* (Cambridge, Mass., 1982). See also Eugene Bardach and Robert A. Kagan, *Going by the Book: The Problem of Regulatory Unreasonableness* (Philadelphia, 1982), and Bruce A. Ackerman and William T. Hassler, *Clean Coal/Dirty Air: Or How the Clean Air Act Became a Multibillion-Dollar Bail-Out for High-Sulfur Coal* (New York, 1981).

8. A Carter administration study of OMB explained that the regular budget had become "only one instrument for allocating resources to meet national needs. Credit programs, tax expenditures, and regulatory activities already have a greater impact than budget

decisions in many areas (e.g., environment, housing, energy)” “OMB Organization Study” n.d. (between June 1978 and March 1979), James T. McIntyre Collection, Jimmy Carter Library (hereafter McIntyre Collection), Box 9, chap. 1, p. 2. For the shift from spending programs to regulatory mandates, see R. Shep Melnick, “From Tax and Spend to Mandate and Sue,” in *The Great Society and the High Tide of Liberalism*, ed. Jerome M. Mileur and Sidney M. Milkis (Amherst, Mass., 2005), 387–410.

9. Stanley S. Surrey, *Pathways to Tax Reform; The Concept of Tax Expenditures* (Cambridge, Mass., 1973); Surrey, “The United States Income Tax System: The Need for a Full Accounting,” Speech to Money Marketeters, New York City, 15 November 1967, in *Tax Policy and Tax Reform: 1961–1969*, ed. Stanley S. Surrey (New York, 1973), 575–85; Julian E. Zelizer, *Taxing America: Wilbur D. Mills, Congress, and the State, 1945–1975* (New York, 1998), 286–99.

10. For two early accounts of NEPA’s implementation, see Richard N. L. Andrews, *Environmental Policy and Administrative Change: Implementation of the National Environmental Policy Act* (Lexington, Mass., 1976); Richard A. Liroff, *A National Policy for the Environment: NEPA and Its Aftermath* (Bloomington, 1976).

11. George P. Shultz to Heads of Departments and Agencies, “Agency Regulations, Standards, and Guidelines Pertaining to Environmental Quality, Consumer Protection, and Occupational and Public Health and Safety,” 5 October 1971, online at <http://www.thecre.com/ombpapers/QualityofLife1.htm>. For an account of EPA’s experience with Quality of Life review during the Nixon administration, see Robert V. Percival, “Checks Without Balance: Executive Office Oversight of the Environmental Protection Agency,” *Law and Contemporary Problems* 54, no. 4 (1 October 1991): 127–204, 129–38; Joe Green Conley II, “Environmentalism Contained: A History of Corporate Responses to the New Environmentalism” (Ph.D. diss., Princeton University, 2006.), 159–65; for a key staff member’s account of the pre-Reagan history of regulatory review, see Jim Tozzi, “OIRA’s Formative Years: The Historical Record of Centralized Regulatory Review Preceding OIRA’s Founding,” *Administrative Law Review* 63 (Special Edition 2011): 37–69. For assessments of regulatory reform at the end of the Ford administration, see also Domestic Council Review Group on Regulatory Reform, *The Challenge of Regulatory Reform: A Report to the President* (Washington, D.C., 1977); James C. Miller III, “Lessons of the Economic Impact Statement Program,” *Regulation* 1 (1977): 14–21.

12. George C. Eads, “Testimony Before the Joint Economic Committee,” 1 August 1979, McIntyre Collection, Box 35: Memoranda to James T. McIntyre from OMB Staff and Others, [2/9/78–9/10/79]; Jimmy Carter: “Executive Order 12174: Federal Paperwork Reduction,” 30 November 1979, Peters and Woolley, APP, <http://www.presidency.ucsb.edu/ws/?pid=31759>; Carter, “Paperwork Reduction Act of 1980 Remarks on Signing H.R. 6410 Into Law.” For a call for regulatory budget and paperwork budget, see Wayne Granquist to Jim McIntyre and John White, 16 November 1979, McIntyre Collection, Box 4, Folder [Congressional Issues, 10/6/79–12/22/79]; “Regulatory Reform: Message from the President of the United States, March 27, 1979,” 96th Cong., 1st sess., Washington, D.C., 1979; see also Narrative of OMB’s relationship to regulation, 15 October 1980, McIntyre Collection, Box 18: Talking Points and Briefings [10/5/80–10/28/80].

13. Joe Green Conley shows how businesses reacted quickly in the early 1970s to emphasize the burden of environmental regulation, uncertainty of science, and need to balance costs and benefits. See Conley, “Environmentalism Contained”; for a forceful

contemporary attack on business's use of cost-benefit analysis to undermine federal regulation, see Mark J. Green and Norman Waitzman, *Business War on the Law: An Analysis of the Benefits of Federal Health/safety Enforcement*, rev. 2nd ed. (Washington, D.C., 1981).

14. "Obituaries: John R. Quarles Jr., environmental lawyer," *Washington Post*, 26 November 2012; John Quarles, *Cleaning Up America: An Insider's View of the Environmental Protection Agency* (Boston, 1976); John R. Quarles Jr. to Assistant Administrators, Office Directors, Regional Administrators, "Termination of the Quality of Life Review," 25 January 1977, online at <http://www.thecre.com/pdf/QualLifeReview8.PDF>; Alvin L. Alm to Jim J. Tozzi, "Interagency Review of EPA Regulations," 1 November 1976, viewed online at <http://www.thecre.com/pdf/QualLifeReview7.PDF>; "Office of Management and Budget Plays Critical Part in Environmental Policymaking, Faces Little External Review," *Environment Reporter*, 3 September 1976, 693–97; for Tozzi's assessment of the Quality of Life program, including his concession that "environmentalists had a legitimate gripe that EPA was singled out," see Kathryn Bernick to Jim Tozzi, 5 August 1977, viewed online at http://www.thecre.com/pdf/Carter_ABA1.PDF; Percival, "Checks Without Balance"; Nina Cornell to Charlie Schultze, "OMB's EIA Proposal," 8 September 1977, Collection JC-CEA, Charles L. Schultze's Subject Files, Jimmy Carter Library, Box 75: Folder 4. According to EPA's Douglas Costle, Quarles opted out of the Quality of Life program in order to "take the heat" before Costle took over. See Douglas M. Costle: Oral History Interview (Washington, D.C., 1996).

15. William V. Shannon, "Quiet Issue," *New York Times*, 18 September 1976: 13; Gladwin Hill, "Conservationists Expecting Carter to Open New Era for Environment," *New York Times*, 5 November 1976, 15; J. Gustave Speth, Kristine L. Hall, and J. Perrin Quarles, "OMB and EPA: Who Sets Environmental Policy?" August 1976, online at <http://www.thecre.com/pdf/QualLifeReview6.PDF> (accessed 19 May 2014).

16. Allen V. Kneese and Charles L. Schultze, *Pollution, Prices, and Public Policy* (Washington, D.C., 1975), 3; Charles L. Schultze, *The Public Use of Private Interest* (Washington, D.C., 1977), 2–5; see also U.S. Senate, Committee on Banking, Housing and Urban Affairs, "Hearing on the Nomination of Charles L. Schultze: January 11, 1977," 95th Cong., 1st sess., Washington, D.C., 1977, 26–27; for Schultze's role as the primary "impetus" for the Carter administration's regulatory review program, see William Nordhaus, interview with the author, 7 May 2014, New Haven.

17. For the distinction between Quality of Life Review process and Carter administration goals, see Bert Lance to William J. Moshofsky, 24 March 1977, viewed online at www.thecre.com/pdf/Carter_Lance.pdf; Jimmy Carter: "Report to the American People: Remarks From the White House Library," 2 February 1977, Peters and Woolley, APP, <http://www.presidency.ucsb.edu/ws/?pid=7455>; Carter reiterated these commitments in his 15 April 1977 anti-inflation program statement, Jimmy Carter: "Anti-Inflation Program Statement Outlining Administration Actions," 15 April 1977, Peters and Woolley, APP, <http://www.presidency.ucsb.edu/ws/?pid=7356>.

18. Carter conveyed his personal investment in regulatory reform with handwritten notes to aides urging them to move more aggressively. See, for example, Bert Lance to Jimmy Carter, "Regulatory Reform Initiatives," 3 August 1977, JC-CEA, Charles L. Schultze's Subject Files, Box 75:4. The Carter administration's commitment was bolstered by a January 1977 report describing regulatory decisions as too often "made on the basis of guesses or flimsily held beliefs, with very little attention to the actual economic or social

consequences of regulation.” Agencies considered regulatory analysis “another pro forma hurdle.” Domestic Council Review Group on Regulatory Reform, *The Challenge of Regulatory Reform: A Report to the President* (Washington, D.C., 1977); Stan Schneider to Dr. Press, “Material on Federal Regulation for Use in Presidential Message,” 2 March 1977, JC-DPS, Richard Neustadt’s Files, Box 70:7; Gerald R. Ford: “Statement on the Report of the Domestic Council Review Group on Regulatory Reform,” 14 January 1977, Peters and Woolley, APP, <http://www.presidency.ucsb.edu/ws/?pid=5561>. See also Council of Economic Advisers to Economic Policy Group, “Economic Impact Analysis,” 21 February 1977, JC-DPS, Richard Neustadt’s Files, Box 70:5.

19. Rick Neustadt to Si Lazarus, 28 February 1977, JC-DPS, Richard Neustadt’s Files, Box 70:7; Bruce Yandle to Robert W. Crandall, “Examples of Regulatory Action Which Could Benefit from Procedural Reform,” 24 February 1977, JC-DPS, Richard Neustadt’s Files, Box 70:7; for door sills, see McIntyre Collection, Box 8: McIntyre, Jim—Briefing Material for Confirmation Hearing, 3/18/78 [1]; Charles L. Schultze, Stu Eizenstat, Bert Lance to Jimmy Carter, “Reform of OSHA,” 27 May 1977, JC-CEA, Charles L. Schultze Subject Files, Box 75: Regulatory Reform [2].

20. Jimmy Carter, “Anti-Inflation Program Statement Outlining Administration Actions,” April 15, 1977, Peters and Woolley, APP, <http://www.presidency.ucsb.edu/ws/?pid=7356>. Stan Morris to Si Lazarus, “Economic Impact Analysis,” 24 February 1977, JC-DPS, Richard Neustadt’s Files, Box 70:5; Thomas D. Hopkins to Robert W. Crandall, “Pending Government Actions,” 9 February 1977, JC-DPS, Richard Neustadt’s Files, Box 70: 7; Stan Schneider to Dr. Press, “Material on Federal Regulation for Use in Presidential Message,” 2 March 1977, JC-DPS, Richard Neustadt’s Files, Box 70: 7. See also “Examples of Regulatory Activities That Affect Both the Consumer and Industry,” n.d., no author, JC-DPS, Richard Neustadt’s Files, Box 70:7; “The Adverse Impacts Resulting from a Select Group of Regulations Which Did Not Go Through Interagency Review,” JC-DPS, Richard Neustadt’s Files, Box 70:7; Charles L. Schultze, Stu Eizenstat, Bert Lance to Jimmy Carter, “Reform of OSHA,” 27 May 1977, Carter Library, Collection JC-CEA, Records of the Council of Economic Advisers (hereafter JC-CEA) Charles L. Schultze Subject Files, Box 75: Regulatory Reform [2]. For an overview of the administration’s larger struggle with inflation, see W. Carl Biven, *Jimmy Carter’s Economy: Policy in an Age of Limits* (Chapel Hill, 2002); for monthly inflation rates, see “Historical Inflation Rates: 1914–2015,” at <http://www.usinflationcalculator.com/inflation/historical-inflation-rates/>, based on price data found at Bureau of Labor Statistics, “CPI Detailed Report: Data for December 2014” online at <http://www.bls.gov/cpi/cpid1412.pdf>, table 24.

21. Bert Lance to Jimmy Carter, “Regulatory Reform Initiatives,” 3 August 1977, JC-CEA, Charles L. Schultze’s Subject Files, Box 75:4.

22. Council of Economic Advisers to Economic Policy Group, “Economic Impact Analysis,” 21 February 1977, JC-DPS, Richard Neustadt’s Files, Box 70:5; see also Charlie Schultz to Jimmy Carter, “Economic Impact Analysis,” 7 October 1977, JC-CEA, Charles L. Schultze’s Subject Files, Box 75:4. For cautionary warnings about NEPA as a “source of confusion and litigation,” see William D. Nordhaus to Economic Policy Group, “A Balancing Act,” 12 January 1979, JC-CEA, Charles L. Schultze’s Subject Files, Box 73:1. For the growing pressure from businesses to calculate and reduce regulatory costs, see Conley, “Environmentalism Contained,” 159–65. For the expanding Washington conversation about regulatory reform, see also Eduardo Federico Canedo, “The Rise of the Deregulation

Movement in Modern America, 1957–1980” (Ph.D. diss., Columbia University, 2008), 262–319. The new journal *Regulation*, which the American Enterprise Institute started in 1977, played an important role in facilitating this policy conversation during the Carter years. Anne Brunsdale, “About This Journal,” *Regulation* 1 (1977): 2; William H. Jones, “Corporate Regulation Said Wasteful,” *Washington Post*, 18 May 1975: N1. James C. Miller, who worked for the Council on Wage and Prices Stability during the Ford administration, co-directed the Institute’s new Center for the Study of Business Regulation. Miller and several of his former colleagues published studies of their work at COWPS in James C. Miller III and Bruce Yandle, eds., *Benefit-Cost Analyses of Social Regulation: Case Studies from the Council on Wage and Price Stability* (Washington, D.C., 1979). For sample publications charting regulatory reform activities in Washington, see American Enterprise Institute, *Major Regulatory Initiatives during 1978: The Agencies, the Courts, and the Congress* (Washington, D.C., 1978), and *Regulation and Regulatory Reform: A Survey of Proposals of the 95th Congress* (Washington, D.C., 1978).

23. Presidential Oral History Program, “Interview with James McIntyre: October 28–29, 1981,” Carter Presidency Project, University of Virginia: Miller Center of Public Affairs, 2005, 39, 43.

24. Miller Center, “Interview with Jimmy Carter: November 29, 1982,” Charlottesville, University of Virginia, 2003, 10–11; “Interview with James McIntyre: October 28–29, 1981,” 6, 39, 43, 91; James L. Rowe Jr., “A Surprise at OMB: McIntyre’s Secret: He Thinks Like Carter,” *Washington Post*, 8 January 1978: F1; Robert S. Greenberger, “Mr. Nice Guy?—Carter’s Budget Chief, Often Called Too Soft, Is Facing a Crucial Test,” *Wall Street Journal*, 30 November 1978: 1; for concern about the perception that OMB had “lost access or clout with the President,” see Bo Cutter to Jim McIntyre, “Issues, Problems, or Projects the President Might Wish to Know About,” 22 September 1977, McIntyre Collection, Box 35: Memoranda to James T. McIntyre from OMB Staff and Others, [10/21/77–12/2/77]. For Lance’s self-confidence and interpersonal skills, see Interview with Harrison Wellford, Washington, D.C., 29 July 2015. Lance would “put his big old arm around, and Carter would kind of disappear like he was absorbed into this huge mass,” Wellford recalled.

25. Nina Cornell to Charlie Schultze, “OMB’s EIA Proposal,” 8 September 1977: JC-CEA, Charles L. Schultze’s Subject Files, Box 75:4; Charlie Schultze to The President, “Economic Impact Analysis,” 7 October 1977, JC-CEA, Charles L. Schultze’s Subject Files, Box 75: Folder 4; Douglas M. Costle to Charles Schultze, “Economic Analysis Program,” 24 August 1977, viewed online at www.thecre.com/pdf/Carter_CEA.pdf.

26. “Regulatory Review Process,” September 1977, JC-DPS, Richard Neustadt’s Files, Box 70:8; Charlie Schultze to The President, “Economic Impact Analysis,” 7 October 1977, JC-CEA, Charles L. Schultze’s Subject Files, Box 75: Folder 4; Thomas Hopkins, telephone interview with the author, 5 January 2015. CEA and COWPS began to develop this interagency approach early in 1977: see Council of Economic Advisers to Economic Policy Group, “Economic Impact Analysis,” 21 February 1977, JC-DPS, Richard Neustadt’s Files, Box 70:5; Barry Bosworth to George Schultze and William Nordhaus, “Economic Impact Analysis Proposal (some clarifications?),” 2 March 1977, and Barry Bosworth to Charles Schultze, Lyle Gramley, and William Nordhaus, “Options for an Incomes Policy,” 8 February 1977 in JC-CEA, Charles L. Schultze’s Staff Files, Box 145: Bosworth, Barry [2]. For a retrospective look at COWPS’s activities, see Thomas D. Hopkins, Benjamin Miller, and Laura Stanley, “The Legacy of the Council on Wage and Price Stability,” Mercatus

Center at George Mason University, 2014. The Mercatus Center has created an online archive of hundreds of COWPS filings at <http://cowps.mercatus.org/>.

27. Bert Lance to Jimmy Carter, 23 August 1977, McIntyre Collection, Box 35: Memoranda to the President [8/1/77–8/29/77]; James T. McIntyre to Jimmy Carter, “Executive Order on Improving Government Regulations,” n.d. (March 1978), viewed online at www.thecre.com/pdf/Carter_OMBMemoMarch1978.pdf; on turn to executive action, see Stuart Eizenstat to Jimmy Carter, 21 February 1978, McIntyre Collection, Box 35: Memoranda from Administration Officials [8/27/77–1/22/79]; Jimmy Carter: “Executive Order 12044: Improving Government Regulations,” 23 March 1978, Peters and Woolley, APP, <http://www.presidency.ucsb.edu/ws/?pid=30539>; Wayne G. Granquist, “Summary and Analysis of Public Comments,” *Federal Register* 43, no. 58 (24 March 1978): 12665–70.

28. Recent studies have shown that byssinosis is likely caused by bacterial endotoxins, rather than by the dust itself, and it can be partially reversed and treated with asthma medication. The threat also can be reduced by washing raw cotton to reduce its bioactivity. But in the late 1970s, byssinosis was thought to be caused by the cotton dust itself and to result in emphysema. For discussion of the recent epidemiological literature on byssinosis, see Xiao-Rong Wang, Hong-Xi Zhang, Bi-Xiong Sun, He-Lian Dai, Lei-Da Pan, Ellen A. Eisen, David H. Wegman, Stephen A. Olenchock, and David C. Christiani, “Is Chronic Airway Obstruction from Cotton Dust Exposure Reversible?” *Epidemiology* 15, no. 6 (November 1, 2004): 695–701; Jing Shi, Amar J. Mehta, Jing-qing Hang, Hongxi Zhang, Helian Dai, Li Su, Ellen A. Eisen, and David C. Christiani, “Chronic Lung Function Decline in Cotton Textile Workers: Roles of Historical and Recent Exposures to Endotoxin,” *Environmental Health Perspectives* 118, no. 11 (1 November 2010): 1620–24; Wen-Lin Su, Yeong-Hwang Chen, Saou-Hsing Liou, and Chin-Pyng Wu, “Meta-Analysis of Standard Mortality Ratio in Cotton Textile Workers,” *European Journal of Epidemiology* 19, no. 11 (1 January 2004): 989–97; X-R. Wang, E. A. Eisen, H-X. Zhang, B-X. Sun, H-L. Dai, L-D. Pan, D. H. Wegman, S. A. Olenchock, and D. C. Christiani, “Respiratory Symptoms and Cotton Dust Exposure: Results of a 15 Year Follow up Observation,” *Occupational and Environmental Medicine* 60, no. 12 (1 December 2003): 935–41; for revision of the legal standard to include a new process for washing cotton, see OSHA, Office of Communications, “Cotton Dust Standard Amendments Effective Today,” U.S. Department of Labor, 6 April 2001, viewed online at https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=246.

29. Although the cotton-dust regulation predated Carter’s 1978 executive order and thus did not go through a systematic regulatory analysis, Nordhaus advocated White House intervention to “show in a dramatic and confrontational way the Administration’s commitment to less burdensome regulations.” William Nordhaus to Stu Eizenstat, Charlie Schultze, and Robert Strauss, “OSHA Cotton Dust Standard,” 22 May 1978, JC-CEA, Charles L. Schultze’s Subject Files, Box 162 (Nordhaus): Folder 1; William Nordhaus, interview with the author, 7 May 2014, New Haven.

30. Perspectives on Current Developments,” *Regulation: AEI Journal on Government and Society* (January–February 1981): 5–6; Peter Behr, “Cabinet Cotton-Dust Row Put Decision up to Carter,” *Baltimore Sun*, 11 June 1978, A4; Helen Dewar, “Carter Clears Way for Issuance of Cotton Dust Limit,” *Washington Post*, 8 June 1978, A9; George C. Eads and Michael Fix, *Relief or Reform? Reagan’s Regulatory Dilemma* (Washington, D.C., 1984), 58–59; for a comparison of the cost of the proposed versus final cotton-dust standards, see

Thomas Hopkins to Barry Bosworth, William Nordhaus, and Charles Schultze, "OSHA Lead Standard," 6 July 1978, JC-CEA, Charles L. Schultze's Subject Files, Box 73:2; David Burnham, "Cotton Dust Rule Issued; Both Sides Are Unhappy: Union Goes to Court," *New York Times*, 20 June 1978: D3; for overview of CEA's involvement in developing the cotton-dust standard, see Elmer B. Staats to Paul G. Rogers, 4 October 1978, viewed online at www.thecre.com/pdf/Carter_GAOLeti00478.pdf; Reagan also sought to reverse the cotton-dust rule and push for respirators, but his OSHA appointee resisted and ended up prevailing on engineering controls. Dick Kirschten, "The 20 Years War," *National Journal*, 11 June 1983, viewed at http://www.thecre.com/pdf/20_Years_War.pdf; "Supreme Court Upholds OSHA's Cotton Dust Standard, Deals Setback to Cost-Benefit Analysis," 11 *Environmental Law Reporter* (1981): 10163; Stephan Wermiel and Robert S. Greenberger, "Justices Uphold Exposure Limits on Cotton Dust: Decision, a Big Victory for Labor, Undercuts Reagan Bid to Curb OSHA," *Wall Street Journal*, 18 June 1981, 3.

31. Jack Watson and Bruce Kirschenbaum to Jimmy Carter, "Proposed Initiative for De-Regulation," 13 July 1978, JC-DPS, Richard Neustadt's Files, Box 70:8; Rick Neustadt to Diane Steed, 28 August 1978, Comments on your August 19 Memo on Evaluating E.O," in JC-DPS, Richard Neustadt's Files, Box 70:12; Si Lazarus to Stu Eizenstat, "Watson/Kirschenbaum Draft on De-regulation Proposal," 14 July 1978, JC-DPS, Richard Neustadt's Files, Box 70:8; "Historical Inflation Rates: 1914–2015," at <http://www.usinflationcalculator.com/inflation/historical-inflation-rates/>.

32. Lazarus to Eizenstat, "Watson/Kirschenbaum Draft on De-regulation Proposal"; Si Lazarus to Rick Neustadt, 29 August 1978, in JC-DPS, Richard Neustadt's Files, Box 70:12; see also Neustadt's criticism of OMB's "failure to provide adequate oversight," in Rick Neustadt to Stu Eizenstat, "Attached Action Memo on Regulatory Reform," 28 August 1978, in JC-DPS, Richard Neustadt's Files, Box 70:12; Stu Eizenstat to the President, "Regulatory Reform Enforcement," 2 September 1978, in JC-DPS, Richard Neustadt's Files, Box 70:12; Jimmy Carter to Jim McIntyre, 4 September 1978, JC-DPS, Richard Neustadt's Files, Box 70:13.

33. W. Michael Blumenthal and Charles L. Schultze to Lawrence R. Klein, 5 August 1978, JC-CEA, Charles L. Schultze Meetings Files, Box 142:14; George W. Ball, William G. Bowen, Lawrence R. Klein, Arthur M. Okun, and Robert V. Roosa to Jimmy Carter, "Suggestions for Dealing with Inflation and the Dollar," 20 September 1978, JC-CEA, Charles L. Schultze Meetings Files, Box 142:14; William Nordhaus, "Memorandum on the Regulatory Review Process," 16 August 1978, JC-DPS, Richard Neustadt's Files, Box 70:8; William Nordhaus to Charlie Schultze, "Regulation in the Anti-Inflation Proposal," 7 September 1978, JC-CEA, Charles L. Schultze's Subject Files, Box 163 (Nordhaus): Folder 2; William Nordhaus, interview with the author, 7 May 2014, New Haven.

34. Draft Memo to President, n.d. (likely September or October 1978), JC-DPS, Richard Neustadt's Files, Box 70:8; Stu Eizenstat, Jim McIntyre, and Charlie Schultze to the President, 8 October 1978, JC-DPS, Richard Neustadt's Files, Box 70:8.

35. White House economic advisers argued that the emphasis on EPA and OSHA reflected their "heavy rule-making calendar" and that many traditional economic agencies necessarily escaped review since they had quasi-independent status, not subject to Carter's Executive Order. See George Eads to All Regulatory Analysis Review Group Participants, "Possible Items of RARG Interest for the Remainder of Calendar Year 1979," 1 May 1979, JC-CEA, Charles L. Schultze Briefing Book Files, Box 130: [2]; Merrill Brown, "Economic

Advisers Zeroing in on Costs of Proposed Rules,” *Washington Star*, 11 May 1979, JC-CEA, Charles L. Schultze’s Subject Files, Box 9; for concern about balance among types of regulations reviewed, see Charlie Schultze to Stu Eizenstat, Fred Kahn, Jim McIntyre, and Frank Press, 17 April 1979, JC-CEA, Charles L. Schultze’s Subject Files, Box 74:9; Si Lazarus to Charlie Schultze and Stu Eizenstat, “Lunch Conversation with Dick Ayers,” 25 September 1978, JC-DPS, Richard Neustadt’s Files, Box 70:8.

36. Charles Warren and Gus Speth to Jimmy Carter, “Inflation and Environmental and Health Regulations,” 18 September 1978, JC-DPS, Richard Neustadt’s Files, Box 70:8. Carter caused consternation among his domestic policy staff by scrawling a cryptic “I agree” on the top of Warren and Speth’s memo. For agitated response from other White House advisers, see William Nordhaus, “Memorandum on the Regulatory Review Process,” 16 August 1978, JC-DPS, Richard Neustadt’s Files, Box 70:8; Si Lazarus to Bill Nordhaus, “Your 9/21 Draft of Memo on Warren/Speth,” 25 September 1978, JC-DPS, Richard Neustadt’s Files, Box 70:8.

37. Report on Meeting regarding Regulatory Calendar, 18 October 1978, JC-DPS, Richard Neustadt’s Files, Box 70:8; Walter S. Mossberg, “Key U.S. Regulatory Officials Propose Interagency Council to Issue New Rules,” *Wall Street Journal*, 20 October 1978; Helen Dewar, “Regulatory Curbs Weighed in Anti-Inflation Plan,” *Washington Post*, 18 October 1978, A4; Paul G. Rogers et al. to Jimmy Carter, 20 October 1978, viewed online at www.thecre.com/pdf/Carter_CongLet1078.pdf; Barbara Blum to Stu Eizenstat, Jim McIntyre, and Charlie Schultze, 19 October 1978, McIntyre Collection, Box 35: Memoranda to James T. McIntyre from OMB Staff and Others, [2/9/78–9/10/79]; Ad Hoc Council of Regulatory Agencies to Stu Eizenstat, Jim McIntyre, and Charlie Schultze, 19 October 1978, McIntyre Collection, Box 35: Memoranda to James T. McIntyre from OMB Staff and Others, [2/9/78–9/10/79]; Hubert Harris, OMB’s liaison with Congress, later recalled his shock at the agencies’ assertion of independence: “It was to [m]e an astonishing point of view that people who had been appointed by the President, who ostensibly worked for the President—if not in fact, at least in theory—telling him that he couldn’t control their actions.” “Interview with James McIntyre: October 28–29, 1981,” 17.

38. Jimmy Carter, “Anti-Inflation Program Address to the Nation,” 24 October 1978, Peters and Woolley, APP, <http://www.presidency.ucsb.edu/ws/?pid=30040>; Jimmy Carter “Strengthening Regulatory Management,” 31 October 1978, JC-CEA, Charles L. Schultze Subject Files, Box 75: Regulatory Reform [2]; “OSHA Scraps 928 Rules It Brands as ‘Nitpicking,’” *Los Angeles Times*, 25 October 1978, E14; “EPA Chief Will Direct New Panel to Monitor Effects of Regulations,” *Wall Street Journal*, 1 November 1978, 41. Carter’s generalities and his relatively mild tone disappointed his economic advisers, who had sought a much more forceful statement committing the administration to specific action. See, for example, Bill Nordhaus to Charlie Schultze, “Regulation,” 6 October 1978, JC-CEA, Charles L. Schultze’s Subject Files, Box 163 (Nordhaus): Folder 1; Rick Neustadt to Those Working on the Regulatory Announcement, 11 October 1978, JC-DPS, Richard Neustadt’s Files, Box 70:8. Although Nordhaus called the regulatory calendar a first step toward “a procedure to budget the regulatory burden,” Nordhaus ultimately concluded that regulatory budgeting was useful only as an “analogy,” not as a practical tool to allocate regulatory costs. See Robert E. Litan and William D. Nordhaus, *Reforming Federal Regulation* (New Haven, 1983), 5. Eizenstat, McIntyre, and Schultze also wanted Carter to explicitly assert the president’s authority to determine the timing and content of agency regulations to

ensure that a “proper balance is struck between regulatory objectives and economic costs.” Environmental groups “claim that you have no such authority,” they explained, and Carter needed to assert his power over executive branch agencies. See Stu Eizenstat, Jim McIntyre, and Charlie Schultze to the President, 8 October 1978, JC-DPS, Richard Neustadt’s Files, Box 70:8; Bill Nordhaus to Charlie Schultze, “Public Relations on the Big Five,” 29 November 1978, JC-CEA, Charles L. Schultze’s Subject Files, Box 163 (Nordhaus), Folder 1. For the administration’s view that the president had the inherent authority to direct executive agencies, and did not need new statutory authority, see also Richard M. Neustadt to David Ginsburg, 27 July 1979, JC-DPS, Richard Neustadt’s Files, Box 70:9; Lloyd Cutler to Martin Tolchin, 8 January 1979, JC-DPS, Richard Neustadt’s Files, Box 70:9; for Kahn’s appointment, see Miller Center, “Interview with Alfred E. Kahn: December 10–11, 1981,” Charlottesville, 2003. While Kahn formally oversaw the Council on Wage and Price Stability staff who worked on regulatory analysis, he focused primarily on wages and prices, and the Council on Economic Advisers continued to play the primary leadership role on regulation. Thomas Hopkins, telephone interview with the author, 5 January 2015.

39. Hobart Rowen, “The President’s New Priorities,” *Washington Post*, 30 November 1978, A15; President’s Reorganization Project, “Reorganization and Management Strategy 1979,” 3 November 1978, McIntyre Collection, Box 35: Memoranda to James T. McIntyre from OMB Staff and Others, [2/9/78–9/10/79]; James T. McIntyre Jr., “Remarks Before the Business Council, Hot Springs, Virginia,” 13 October 1978, McIntyre Collection, Box 8: [McIntyre, Jim—Remarks, 10/13/78–10/28/78].

40. Rick Neustadt, draft memo from Stu Eizenstat and Jim McIntyre to Jimmy Carter, “Regulatory Reform—1979 Legislative Program,” 15 December 1978, JC-CEA, Charles L. Schultze Subject Files, Box 75: Regulatory Reform [2]; “Key Regulatory Reform Initiatives,” Draft, n.d., JC-CEA, Charles L. Schultze Subject Files, Box 75: Regulatory Reform [2]; “Certain Regulatory Problems,” Draft, 1 December 1978, JC-CEA, Charles L. Schultze Subject Files, Box 75: Regulatory Reform [2]; “Remarks of James T. McIntyre, Jr. Before the Business Council,” 15 February 1979, McIntyre Collection, Box 2: Folder Business Council Remarks—Washington, D.C., [2/15/79]; for a brief overview of the administration’s regulatory review legislation, see Wayne G. Granquist, “The Role of the Office of Management and Budget,” in *Reforming Regulation*, ed. Timothy B. Clark, Marvin H. Koters, and James Clifford Miller (Washington, D.C., 1980), 137–39.

41. Stu Eizenstat, Fred Kahn, Jim McIntyre, and Charlie Schultze to Jimmy Carter, “Actions on Major Regulatory Proposals,” 20 November 1978, JC-DPS, Richard Neustadt’s Files, Box 70:8; Ben A. Franklin, “Lawsuit Is Filed to Bar White House Advisers from Intervening in Writing Regulations on Strip Mines: Thought to Be First,” *New York Times*, 14 January 1979; Peter Behr, “Is Worker Protection Too Expensive?” *Baltimore Sun*, 30 October 1978, A1, 14; Steven Rattner, “Environmental Agency Softens Rules in Bid to Be More Moderate and Efficient,” *New York Times* 19 January 1979, A8; Margot Hornblower, “Muskie Criticizes White House Meddling with EPA Rules,” *Washington Post*, 27 February 1979, A2; Rick Neustadt to Stu Eizenstat, “Status Report: Oversight of Major Regulations,” 13 April 1979, Carter Library, Collection JC-CEA, Records of the Council of Economic Advisers, Charles L. Schultze Briefing Book Files, Box 130: Briefing Book: Regulatory Reform 11/79 [2]. In another case addressing the problem of sulfur emissions, proposed Clean Air Act regulations would have required power plants to remove 90 percent of the sulfur content from all kinds of coal, regardless of whether it was low- or high-sulfur coal.

White House economists argued that a lower percentage reduction (70 percent) from low-sulfur coal could accomplish a similar pollution-control goal while saving over a billion dollars per year. Handicap accessibility presented another controversial issue. The Department of Transportation's original proposal mandated accessibility for *all* new and existing urban mass-transportation facilities and vehicles. The revised proposal extended the schedule for achieving the goal, and excluded some existing transit stations where "extraordinary costs" were involved. According to one administration estimate, the policy change meant savings of \$600 million on a rule estimated to cost \$1.6 billion, with only a relatively modest loss in service. Memo to Charlie Schultze, "DOT: Non-Discriminatory Access by Handicapped Persons to Federally-Assisted Transportation Programs," and Rick Neustadt to Stu Eizenstat, "Status Report: Oversight of Major Regulations," 13 April 1979, in Carter Library, Collection JC-CEA, Records of the Council of Economic Advisers, Charles L. Schultze Briefing Book Files, Box 130: Briefing Book: Regulatory Reform 11/79 [2]. For background on Costle's emphasis on innovation at EPA, see Timothy B. Clark, "New Approaches to Regulatory Reform—Letting the Market Do the Job," *National Journal* 32 (11 August 1979): 1316–22; "Costle, Douglas," in *American Environmental Leaders: From Colonial Times to the Present* (Amenia, N.Y., 2008), http://search.credoreference.com/content/entry/ghael/costle_douglas/o (accessed 8 May 2014); Ernest B. Furgurson, "Doug Costle: Hard-headed at the EPA," *Baltimore Sun*, 14 May 1978, K5; Rich Jaroslovsky, "Douglas Costle's Balancing Act," *Wall Street Journal*, 11 April 1980, 20; Douglas Martin, "Dealing in Dirt: EPA Ponders Letting Concerns Buy and Sell 'Right' to Pollute Air," *Wall Street Journal*, 15 December 1978, 1; for Costle's "regulatory reform guru" William Drayton's overview of regulatory reform initiatives, see William Drayton Jr., "A Tougher Job Requires Smarter Regulation," in Environmental Protection Agency, Office of Planning and Management, "Regulatory Reform Initiatives: Progress Report," October 1979, Collection JC-AINFL, Records of the Office of the Special Adviser to the President on Inflation, 1977–81, Ron B. Lewis Subject Files, Box 79: Folder Executive Order 12044 [Improving Government Standards], 3/78–7/80, Carter Library. IMG_8091; Costle, Oral History Interview; Miller Center, "Interview with Alfred E. Kahn: December 10–11, 1981," Charlottesville, University of Virginia, 2003. Drayton earlier explored the idea of economic incentives as a regulatory strategy for tobacco in William Drayton Jr., "The Tar and Nicotine Tax: Pursuing Public Health Through Tax Incentives," *Yale Law Journal* 81, no. 8 (1 July 1972): 1487–1516. For challenges inherent in market-based regulation, see Ackerman et al., *Uncertain Search for Environmental Quality*, esp. 260–81.

42. "Remarks of Senator Edmund S. Muskie," University of Michigan, 14 February 1979, JC-CEA, Charles L. Schultze's Subject Files, Box 73:1; see also Edmund S. Muskie, "Regulation," Week of April 23, 1979, JC-CEA, Charles L. Schultze's Subject Files, Box 73: 1; Margot Hornblower, "Muskie Criticizes White House Meddling With EPA Rules," *Washington Post*, 27 February 1979, A2; Edmund Muskie to Douglas M. Costle, 26 March 1979, JC-CEA, Charles L. Schultze Briefing Book Files, Box 130: [2]; see also Edmund Muskie to Charles Schultze, 17 January 1979, viewed online at www.thecre.com/pdf/CarterSenMuskieLeto11779.PDF; Edmund S. Muskie to Charles L. Schultze, 12 March 1979, JC-CEA, Charles L. Schultze Briefing Book Files, Box 130: [2]; for discussion of desirable procedures for executive branch involvement in rule making, see William Nordhaus to Joan Davenport, 6 December 1978, JC-CEA, Charles L. Schultze's Subject Files, Box 74: Regulation: Surface Coal Mining [2]; John M. Harmon to Nina Cornell

and Simon Lazarus, "Proposed Procedure for Reviewing the Economic Impact of Major Regulations," n.d., JC-CEA, Charles L. Schultze's Subject Files, Box 74: Regulation: Surface Coal Mining [2]; for the OMB general counsel's analysis of executive-office involvement in agency rule making, see William M. Nichols to the Deputy Director, "EOP Involvement in Agency Rulemaking," 1 February 1979, viewed online at www.thecre.com/pdf/Carter_OMBGenCounselMemo020179.pdf; for the Office of Legal Counsel's guidance and approval of executive office participation in the Office of Surface Mining's regulation development, see Larry A. Hammond to Cecil D. Andrus, "Consultation with Council of Economic Advisers Concerning Rulemaking under Surface Mining Control and Reclamation Act," JC-CEA, Charles L. Schultze Briefing Book Files, Box 130: [4]; for GAO's earlier assessment of economic agencies involvement in agency rule making, see Elmer B. Staats to Paul G. Rogers, 4 October 1978, viewed online at www.thecre.com/pdf/Carter_GAOLet100478.pdf. See also Paul R. Verkuil, "Jawboning Administrative Agencies: Ex Parte Contacts by the White House," *Columbia Law Review* 80 (1980): 943–89.

43. Margot Hornblower, "Muskie Criticizes White House Meddling with EPA Rules," *Washington Post*, 27 February 1979, A2; U.S. Senate, Committee on Environment and Public Works, "Executive Branch Review of Environmental Regulations: Hearings Before the Subcommittee on Environmental Pollution," 96th Cong., 1st sess., Washington, D.C., 1979, 27, 29, 175. See also Edward Cowan, "Economic Advisers' New Role: A Look at Performance," *New York Times*, 10 May 1979: D1; Si Lazarus to Regulatory Process Bill File, "Meeting with Karl Braithwaite and Leon Billings," 16 February 1979, JC-CEA, Charles L. Schultze's Subject Files, Box 73:1. Billings considered cost-benefit analysis a kind of "witchcraft" and a "fraud." Leon G. Billings, "Cost Benefit Analysis," 3 February 1975, in Edmund S. Muskie Papers, Bates Library, Series V: Subseries C, Box 74:10.

44. Committee on Interstate and Foreign Commerce, "Use of Cost-Benefit Analysis by Regulatory Agencies: Joint Hearings Before the Subcommittee on Oversight and Investigations and the Subcommittee on Consumer Protection and Finance, July 30, October 10 and 24, 1979," 96th Cong., 1st sess., Washington, D.C., 1980, 1, 3–4, 119, 123–24; Bob Eckhardt to James T. McIntyre Jr., 28 October 1980, viewed online at www.thecre.com/pdf/Carter_CongrLet102880.pdf. In November 1979, Green led twenty-five consumer, labor, and environmental organizations in urging Carter to oppose formal cost-benefit analyses and a rigid requirement that the least burdensome alternative be chosen. Steven Rattner, "Coalition Opposes Regulatory Change," *New York Times*, 4 November 1979, 46; Mark Green et al. to Jimmy Carter, 2 November 1979, JC-CEA, Charles L. Schultze Briefing Book Files, Box 130: [2]. For Green's broader critique of cost-benefit analysis, see also Green, "The Faked Case Against Regulation: Business Propaganda Focuses on Costs, Ignores Savings in Health and Safety Laws," *Washington Post*, 21 January 1979, C1; and Green and Waitzman, *Business War on the Law* (first edition, 1979). The AFL-CIO also strongly opposed the Carter administration's regulatory reform initiatives, complaining that the White House had acted "by fiat," encroaching on Congress's power to direct agency actions through legislation. Carter's Executive Order merely served "as an escape valve from pressures of private business which has no other goal than to escape regulation entirely." See Kitty Bernick to George Eads et al., "FYI: AFL-CIO Views on RARG and E.O. 12044," 2 April 1980, Staff Office: Council of Economic Advisers, George C. Eads's Meetings Files, Carter Library (hereafter Eads Files), Box 266: 4/9/80, Wed. 10 a.m. Meeting on RARG issues. The White House economic staff heard similarly scornful attacks on regulatory

analysis in an “acrimonious meeting” with Department of Labor staff regarding the Service Contract Act. Department of Labor staff members “accused us of representing the corporate interests of America (and the mainline economics profession’s support of these interests),” reported one of Eads’s staff members. “When I suggested that the function of such a regulatory analysis was analogous to the budgetary process for expenditures, there were amused smiles on the faces of the assembled throng.” The White House staff, in turn, thought that the Labor Department’s approach to regulatory analysis was “senseless” and largely “worthless” in its methodology. Dan Saks to George Eads, “Staff level meeting with ESA on the Regulatory Analysis for the proposed Service Contract Regulations,” 2 June 1980, Eads Files, Box 266: 6/10/80, Tues. 12 p.m. Meeting with Wayne Granquist; Bob Goldfarb, Tom Hopkins, and John Morrall (COWPS) and Dan Saks (CEA) to Craig Barrington and Roland Droitsch, 2 June 1980, Eads Files, Box 266: 6/10/80, Tues. 12 p.m. Meeting with Wayne Granquist.

45. Si Lazarus to Regulatory Process Bill File, “Meeting with Karl Braithwaite and Leon Billings,” 16 February 1979, JC-CEA, Charles L. Schultze’s Subject Files, Box 73:1; Charles L. Schultze, “Social Regulation: The New Challenge,” Remarks before the Commonwealth Club of California, 13 April 1979, JC-CEA, Charles L. Schultze Briefing Book Files, Box 130: [2]; see also Council of Economic Advisers, *Annual Report* (Washington, D.C., 1979), 85–91; James T. McIntyre Jr., “Remarks Before the Edison Electric Institute,” 11 April 1979, Atlanta, McIntyre Collection, Box 9.

46. “OMB Organization Study,” n.d. (between June 1978 and March 1979) McIntyre Collection, Box 9, chap. 1, p. 4. OMB sought to fulfill some of this oversight role with a spring 1979 report on how the individual agencies had been fulfilling their responsibilities under Carter’s executive order. See “Agency Regulatory Performance Assessment,” April/May 1979, in JC-DPS, Richard Neustadt’s Files, Box 70:13; see also Charlie Schultze and Fred Kahn to Jimmy Carter, “OMB’s Status Report on E.O. 12044, Improving Government Relations,” 4 May 1979, Carter Library, Collection JC-AINFL, Records of the Office of the Special Adviser to the President on Inflation, 1977–81, Ron B. Lewis Subject Files, Box 79: Folder Executive Order 12044 [Improving Government Standards], 3/78–7/80.

47. Jimmy Carter note on James T. McIntyre Jr. to President, “Status Report on E.O. 12044, Improving Government Regulations,” 30 April 1979, in Carter Library, Collection JC-DPS: Records of the Domestic Policy Staff, 1976–81 (hereafter JC-DPS), Richard Neustadt’s Files, Box 70:13.

48. Rick Neustadt to Stu Eizenstat, “Talking Points for Lunch with John White on Regulatory Reform,” 19 June 1979, JC-DPS, Richard Neustadt’s Files, Box 70:9. For the lack of enforcement power inherent in the Carter regulatory review process, see Robert E. Litan and William D. Nordhaus, *Reforming Federal Regulation* (New Haven, 1983), 67–79.

49. James T. McIntyre Jr. to Abraham Ribicoff, 20 February 1980, viewed online at www.thecre.com/pdf/Carter_LegPropo22o80.pdf; James T. McIntyre and Stuart Eizenstat to Edward M. Kennedy, 24 July 1980, viewed online at www.thecre.com/pdf/Carter_WhiteHouseLeto72480.pdf.

50. George C. Eads, “Testimony Before the Committee on Oversight and Governmental Management,” 10 October 1979, JC-CEA, Charles L. Schultze Briefing Book Files, Box 130: [2]; “Briefing Book- Regulatory Reform, 11/79 [2],” JC-CEA, Charles L. Schultze Briefing Book Files, Box 130: [2]. In an illustration of the process strategy at work, the secretary of labor wrote to the departments’ executive staff in January 1979 to outline new regulatory

procedures that would help ensure that “all regulations published by the Department are of high quality and can be defended.” The new procedures stipulated a written development plan for each regulation, including a clear statement of need, regulatory alternatives, and significance, and noting whether a full regulatory analysis was required. Secretary of Labor to Executive Staff, “Regulatory Procedures within the Department,” 30 January 1979, JC-CEA, Charles L. Schultze’s Subject Files, Box 73:1; Si Lazarus to Chuck Knapp, DOL Regulatory Procedures,” 13 February 1979, JC-CEA, Charles L. Schultze’s Subject Files, Box 73:1. For a discussion of the ways that agencies could use the internalization of regulatory analysis to protect themselves from external review, see Jennifer Nou, “Agency Self-Insulation Under Presidential Review,” *Harvard Law Review* 126 (May 2013): 1755–1837.

51. Narrative of OMB’s relationship to regulation, 15 October 1980, McIntyre Collection, Box 18: Talking Points and Briefings [10/5/80–10/28/80]; Morton Mintz, “Order to Trim Paperwork Has the Agencies Howling,” *Washington Post*, 13 July 1980, A1; Jimmy Carter: “Executive Order 12174: Federal Paperwork Reduction,” 30 November 1979, Peters and Woolley, APP, <http://www.presidency.ucsb.edu/ws/?pid=31759>. For a legal history and early assessment of the Paperwork Reduction Act and earlier federal initiatives, see William F. Funk, “The Paperwork Reduction Act: Paperwork Reduction Meets Administrative Law,” *Harvard Journal on Legislation* 24, no. 1 (1987): 1–116; for EPA pushback against OMB’s use of Federal Records Act as way to clear regulations, see Henry E. Beal to Diane Steed, 13 November 1980, viewed online at www.thecre.com/pdf/Carter_EPAMemo121380.pdf; for industry and OMB’s use of reporting requirements to challenge EPA’s noise regulations governing garbage compactors, see James T. McIntyre Jr. to Douglas Costle, n.d. (September–October 1980), viewed online at www.thecre.com/pdf/Carter_OMBLetSept-Oct80.pdf; for the effort to constrain EPA contractors collecting data on hazardous waste, see James T. McIntyre Jr. to Douglas Costle, 2 October 1979, viewed online at www.thecre.com/pdf/Carter_OMBLet100279.pdf.

52. Timothy B. Clark, “Making Regulation Pay,” *National Journal*, 26 July 1980, 1239 in McIntyre Collection, Box 18: Talking Points and Briefings [10/5/80–10/28/80]; Merrill Brown, “Proposed Bill Asks Agencies to List Major Rules’ Costs,” *Washington Post*, 25 March 1980: F1; “EPA Fears Proposal to Tally Costs Will Result in ‘Regulatory Budget,’” *Environment Reporter*, 9 May 1980, 38; Wayne Granquist to Herky Harris and Jim Frey, “Regulatory Cost Accounting Act,” 25 March 1980, viewed online at www.thecre.com/pdf/Carter_OMBMem0032580.pdf. For the Commerce Department’s call for a regulatory budget, see C. L. Haslam to Cecil D. Andrus, 10 October 1979, viewed online at www.thecre.com/pdf/Carter_DOCLet101079.pdf; for the Commerce Department’s broader advocacy for a regulatory budget, see Juanita M. Kreps to Jimmy Carter, “Regulatory Reform,” 26 May 1978, McIntyre Collection, Box 35: Memoranda from Administration Officials [8/27/77–1/22/79]; for the idea that cost accounting could lay the groundwork for future regulatory budget, see also Lester M. Salamon to Philip S. Hughes, 5 August 1980, viewed online at www.thecre.com/pdf/Carter_UrbanInstituteLet080580.pdf; Stu Eizenstat and Jim McIntyre to Jimmy Carter, “Regulatory Reform—1979 Legislative Program,” Richard Neustadt Draft, 1 November 1979, JC-CEA, Charles L. Schultze Meetings Files, Box 142:18; Charles L. Schultze, “Social Regulation: The New Challenge,” Remarks Before the Commonwealth Club of California, 13 April 1979, JC-CEA, Charles L. Schultze Briefing Book Files, Box 130: [2]; for a discussion of the challenge of estimating regulatory costs and frequent overestimation by the government, see Winston Harrington,

Richard D. Morgenstern, and Peter Nelson, "On the Accuracy of Regulatory Cost Estimates," *Journal of Policy Analysis and Management* 19, no. 2 (Spring 2000): 297–322.

53. Jimmy Carter: "Budget Message to the Congress Transmitting the Fiscal Year 1981 Budget," 28 January 1980, Peters and Woolley, APP, <http://www.presidency.ucsb.edu/ws/?pid=32851>; Art Pine, "Defense Rises, Deficit Falls in Carter Budget," *Washington Post*, 29 January 1980; "Excerpts from Fact Sheet on Program," *New York Times*, 15 March 1980, 34; for a contemporary critique of excess federal credit and its impact on the economy, see "Controlling Federal Credit," *Wall Street Journal*, 18 March 1980, 24; Eileen Alt Powell, "Carter Sees Federal Loan Programs As a Threat to Private Capital Markets," *Wall Street Journal*, 16 January 1981, 5; see also George Break, "Government Spending Trends in the Postwar Period," in *The Federal Budget: Economics and Politics*, ed. Aaron B. Wildavsky, Michael J. Boskin, and James W. Abellera (San Francisco, 1982), 39–62, 58–60; for an analysis of the utility of credit budgets and Reagan's use of them for the 1982 budget, see U.S. Congressional Budget Office, *Federal Credit Activities: An Analysis of President Reagan's Credit Budget for 1982*, Staff Working Paper, April 1981.

54. Stu Eizenstat and Rick Neustadt to Jimmy Carter, 31 October 1979, "Regulatory Reform," McIntyre Collection, Box 35: Memoranda from Administration Officials [1/22/79–7/25/80]; Kitty Bernick to George Eads and Ron Lewis, "RARG Inactivity," 26 March 1980, Eads Files, Box 266: 4/9/80, Wed. 10 a.m. Meeting on RARG issues. Eads insisted that there was no "inactivity" and assured Bernick, "You find them; I'll RARG them." George Eads to Kitty Bernick, "RARG 'Inactivity,'" 1 April 1980, Eads Files, Box 266: 4/9/80, Wed. 10 a.m. Meeting on RARG issues. RARG reviews were fewer than originally anticipated because the "pace of issuing significant new regulations has slowed considerably," Schultze explained to Carter in June 1980. Charlie Schultze to Jimmy Carter, "Extension of the Life of the Regulatory Analysis Review Group (RARG)," 26 June 1980, JC-CEA, Charles L. Schultze's Subject Files, Box 74:9. Eads previously explained to Schultze, "No, the 'watchdog' is not asleep. There just haven't been any serious burglary attempts." George Eads to Charlie Schultze, "Update on Major Upcoming Regulations—or, 'Where Is RARG?'" 20 September 1979, Folder 6.

55. Rick Neustadt to George Eads, Ron Lewis, and Jim Tozzi, "Regulatory Reform Program," 22 February 1980, and Ron Lewis to George Eads, Si Lazarus, Rick Neustadt, and Jim Tozzi, "Discretionary Pending Regulations," 25 February 1980, in Eads Files, Box 266: 4/9/80, Wed. 10a.m. Meeting on RARG issues.

56. Si Lazarus to George Eads, Ron Lewis, Jim Tozzi, and Rick Neustadt, "Regulatory Reform," 25 February 1980, Eads Files, Box 266: 4/9/80, Wed. 10 a.m. Meeting on RARG issues; George Eads to Stu Eizenstat, "Actions That Could be Announced Re: Regulatory Reform," 25 February 1980, Eads Files, Box 266: 4/9/80, Wed. 10 a.m. Meeting on RARG issues.

57. For David Stockman's rhetorical attack on environmental regulations, see, for example, Peter Behr and Merrill Brown, "One-Year Moratorium Recommended on New Regulations," *Washington Post*, 9 November 1980, G1; David Stockman and Jack Kemp, "Memo to Reagan: 'Avoiding an Economic Dunkirk,'" *New York Times*, 14 December 1980, F19; for OMB's development of a "target" list of regulations for scrutiny, see Jim J. Tozzi, Deputy Administrator, OIRA, to Deputy Associate Directors, "Further Guidance on Reporting Federal Employment and Cost Savings Due to Reduction in Regulation," 10 February 1981, National Archives, College Park, OMB OIRA Folder 3.95 #3, 1981–82 Regulatory Management 51-87-41, Box 3.

58. Jimmy Carter: "Regulatory Reform Statement on Receiving a Report from the Regulatory Council," 28 April 1980, Peters and Woolley, APP, <http://www.presidency.ucsb.edu/ws/?pid=33338>; Jimmy Carter: "Alternative Approaches to Regulation Memorandum from the President," 13 June 1980, Peters and Woolley, APP, <http://www.presidency.ucsb.edu/ws/?pid=44568>. See also Peter J. Petkas to Regulatory Reform Message/Speech Planners, 9 April 1980, Eads Files, Box 266: 4/10/80, Thurs. 4 p.m. Regulatory Council Initiatives (Rick Neustadt); Memorandum to Agency Heads, "The Use of Innovative Techniques in Regulatory Programs," Draft 4, April 1980, Eads Files, Carter Library, Box 266, 4/10/80, Thurs. 4 p.m. Regulatory Council Initiatives (Rick Neustadt); U.S. Regulatory Council, "An Introduction to Innovative Techniques," May 1980, Eads Files, Box 266, 4/10/80, Thurs. 4 p.m. Regulatory Council Initiatives (Rick Neustadt).

59. Talking Points for Ribicoff Meeting," 19 May 1980, McIntyre Collection, Box 18: Talking Points and Briefings [5/5/80-5/28/80]. Anticipating that there would be no regulatory reform bill to sign, Carter formally renewed his executive order on regulatory reform in June. Wayne Granquist to Jim McIntyre, "Meeting of the President with Regulatory Council," 13 June 1980, McIntyre Collection, Box 18: Talking Points and Briefings [6/2/80-6/30/80]; Charlie Schultze to Jimmy Carter, "Extension of the Life of the Regulatory Analysis Review Group (RARG)," 26 June 1980, JC-CEA, Charles L. Schultze's Subject Files, Box 74:9; Jimmy Carter: "Executive Order 12221: Improving Government Regulations," 27 June 1980, Peters and Woolley, APP, <http://www.presidency.ucsb.edu/ws/?pid=44672>; In July, Carter also announced modest changes in regulatory schedules and requirements that would save auto companies \$600 million over the next four years. Timothy B. Clark, "Making Regulation Pay," *National Journal*, 26 July 1980, 1239 in McIntyre Collection, Box 18: Talking Points and Briefings [10/5/80-10/28/80]. For the administration's fulfillment of its regulatory promises, see Jose A. Gomez-Ibanez to Charlie Schultze, "Regulatory Promises Made to the Auto Industry," 16 January 1981, JC-CEA, Charles L. Schultze's Subject Files, Box 74: Regulatory Activities. Carter's auto industry regulatory relief was more modest than the industry hoped, in part because of the administration's forecasting of fuel prices and demand for more efficient vehicles. An OMB review of auto industry regulatory expenditures anticipated for the 1980-85 period examined thirty-six EPA and forty-two NHTSA pending or existing regulations and found that almost 80 percent of the projected expenditures were attributable to fuel economy standards. Wayne Granquist, Kitty Bernick, George Eads/Dave Harrison to Jim McIntyre, Stu Eizenstat, and Charlie Schultze, "OMB Review of Auto Regulations," 23 May 1980, Eads Files, Box 266: 5/30/80, Fri. 5 p.m. Meeting on Auto Regulations (McIntyre/Granquist). Anticipating continued high gasoline prices, OMB argued that the administration could offer little meaningful regulatory relief to the automobile companies, since most of the fuel economy expenditures would occur "in the absence of federal regulations because of the increasing consumer demand for more fuel efficient automobiles." Van Ooms to James T. McIntyre, 13 May 1980, McIntyre Collection, Box 18: Talking Points and Briefings [5/5/80-5/28/80].

60. Jimmy Carter: "Regulatory Flexibility Legislation Statement on House of Representatives Approval of the Legislation," 9 September 1980, Peters and Woolley, APP, <http://www.presidency.ucsb.edu/ws/?pid=45018>; Jimmy Carter: "Regulatory Flexibility Act Remarks on Signing S. 299 Into Law," 19 September 1980, Peters and Woolley, APP, <http://www.presidency.ucsb.edu/ws/?pid=45087>. For administration views on earlier flexibility

proposals, see James T. McIntyre Jr. to James Abourezk, 8 September 1978, in JC-CEA, Charles L. Schultze Briefing Book Files, Box 130.

61. Presidential Oral History Program, "Interview with James McIntyre: October 28–29, 1981," Carter Presidency Project, University of Virginia: Miller Center of Public Affairs, 2005, 5, 69–70, 111; Funk, "The Paperwork Reduction Act." For the OMB staff's key role pushing the legislation through in the lame duck session, see Peter Behr, "If There's a New Rule, Jim Tozzi Has Read It," *Washington Post*, 10 July 1981, A21; for the crucial importance of OIRA and its predecessor division's staffing and structure to Reagan's deregulatory initiatives, see Jim Tozzi, "OIRA's Formative Years: The Historical Record," *Administrative Law Review* 63 (Special Edition 2011): 37–69, 52; for consolidation of COWPS staff into OIRA, see Thomas Hopkins, telephone interview with the author, 5 January 2015; for a skeptical view of how OIRA would operate, see George Eads, "Harnessing Regulation: The Evolving Role of White House Oversight," *Regulation* 5 (May–June 1981): 19–26.

62. In contrast to the U.S. emphasis on assessing the impact of regulatory rules, impact assessment in the European system has primarily involved draft statutes rather than rules, although this distinction is changing. For the French case, see Susan Rose-Ackerman and Thomas Perroud, "Impact Assessment in France: U.S. Models and French Legal Traditions," *European Public Law* 20, no. 4 (2014): 649–79; for the European Union, see Susan Rose-Ackerman, Stefanie Egidy, and James Fowkes, *Due Process of Lawmaking: The United States, South Africa, Germany, and the European Union* (Cambridge, 2015), 231–33; Frank P. Grad, "A Legislative History of the Comprehensive Environmental Response, Compensation and Liability ('Superfund') Act of 1980," *Columbia Journal of Environmental Law* 8 (1982): 1–36; Jimmy Carter, "Niagara Falls, New York Remarks on Signing the West Valley Demonstration Project Act and the Love Canal Agreement," 1 October 1980, Peters and Woolley, APP, <http://www.presidency.ucsb.edu/ws/?pid=45190>; Carter, "Health and Medical Care for Love Canal Area Residents Statement on a Request to Congress for Appropriations," 24 October 1980, Peters and Woolley, APP, <http://www.presidency.ucsb.edu/ws/?pid=45364>; James Salzman and Barton H. Thompson, *Environmental Law and Policy*, 3rd ed. (New York, 2010): 220–39; Stanley E. Morris, "Memorandum for Distribution," 15 May 1979, in George Eads Meetings Files, JC-CEA, Box 256: 5/24/79 Thurs. 1 p.m. Superfund Meeting [1]; "Staff Analysis of Superfund Legislation," in George Eads Meetings Files, JC-CEA, Box 256: 5/24/79 Thurs. 1 p.m. Superfund Meeting [1]; George Eads to Eliot Cutler, "Superfund," 1 June 1979, George Eads Meetings Files, JC-CEA, Box 256: 5/24/79 Thurs. 1 p.m. Superfund Meeting [1]; Larry White to Charlie Schultze and George Eads, "Draft Legislation on Oil Spills, Hazardous Substance Spills, and Abandoned Dumps," 14 May 1979, in George Eads Meetings Files, JC-CEA, Box 256: 5/24/79 Thurs. 1 p.m. Superfund Meeting [1]; Anthony J. Parisi, "Who Pays? Cleaning Up the Love Canals: The Dumps Around Us: Who Will Pay to Clean Up All the Other Love Canals?" *New York Times*, 8 June 1980, F1; "Superfund Superrush," *Wall Street Journal*, 20 November 1980, 26; I. Peterson and L. Garmon, "EPA in the Dumps: Superfund Squabbles," *Science News* 123, no. 9 (26 February 1983): 132–34. For a discussion of Superfund's problematic design and high costs relative to program benefits, see E. Donald Elliott, "Superfund: EPA Success, National Debacle?" *Natural Resources & Environment* 6, no. 3 (1 January 1992): 11+; James T. Hamilton and W. Kip Viscusi, "How Costly Is 'Clean'? An Analysis of the Benefits and Costs of Superfund Site Remediations," *Journal of Policy Analysis and Management* 18, no. 1 (1 January 1999): 2–27; Richard L. Revesz and Richard B. Stewart, eds., *Analyzing Superfund: Economics, Science, and Law*

(Washington, D.C., 1995); Harold C. Barnett, *Toxic Debts and the Superfund Dilemma* (Chapel Hill, 1994); Jan Paul Acton, *Understanding Superfund: A Progress Report* (Santa Monica, 1989). Reagan's advisers reportedly acquiesced in passing the Superfund bill during the lame duck session in order to settle the controversial toxics issue before Reagan took office. The administration soon struggled with the legislation's mechanisms and costs, however, and with its own ambivalence toward implementing the law. Reagan's OMB director, David Stockman, had criticized the legislation extensively prior to its passage. Rita Lavelle, the assistant administrator of EPA appointed to implement Superfund, had close ties to the chemical industry. In 1984, after an extended public controversy over Superfund, Lavelle was sentenced to six months in prison for lying to Congress about potential favoritism toward a former employer accused of disposing toxic wastes at the Stringfellow Acid Pits in Riverside, California. "On Nod From Reagan, 'Superfund' Resurrected," *Hartford Courant*, 23 November 1980, A10; Philip Shabecoff, "Rita Lavelle Gets 6-Month Term and Is Fined \$10,000 for Perjury," *New York Times*, 10 January 1984, A1.

63. For more on Carter's effort to balance these competing ideas, see his 1979 State of the Union speech, as discussed in J. Brooks Flippin, *Jimmy Carter, the Politics of Family, and the Rise of the Religious Right* (Athens, Ga., 2011), 208. For the legal activity spurred by Superfund, see Lawrence Hurley, "Lawyers Still Cleaning Up over Superfund Sites," *New York Times*, 3 January 2011; Revesz and Stewart, eds., *Analyzing Superfund*, 8–10.

64. Memo for Donald Kennedy, Charlie Schultze, and John White, 9 May 1979, JC-CEA, Charles L. Schultze Briefing Book Files, Box 130: [2].

65. "Talking Points: Reagan Economic Announcement," 9 September 1980, Collection JC-CEA, Charles L. Schultze Subject Files, Box 72. In a similar spirit, on a copy of a September 1980 speech by Reagan, a Carter staffer, most likely Richard Neustadt, wrote "we've done this" next to Reagan's call to "review regulations that affect the economy, and change them to encourage economic growth." Ronald Reagan, "A Strategy for Growth: The American Economy in the 1980s," Speech to the International Business Council, Chicago, 9 September 1980, Collection JC-CEA, Charles L. Schultze Subject Files, Box 72; Presidential Oral History Program, "Interview with James McIntyre: October 28–29, 1981," Carter Presidency Project, University of Virginia: Miller Center of Public Affairs, 2005, 5, 69–70, 111; see also Charlie Schultze to Jimmy Carter, "Major Economic Themes for the Debate," 23 October 1980, Collection JC-CEA, Charles L. Schultze Subject Files, Box 72.

66. Reagan, "A Strategy for Growth; Reagan, "Government & Business in the '80s," *Wall Street Journal*, 9 January 1981, 18; Reagan: "Inaugural Address," 20 January 1981, Peters and Woolley, APP, <http://www.presidency.ucsb.edu/ws/?pid=43130>; David Stockman and Jack Kemp, "Memo to Reagan: 'Avoiding an Economic Dunkirk,'" *New York Times*, 14 December 1980, F19.

67. Ronald Reagan, Memorandum to Cabinet, 29 January 1981, online at <http://www.thecre.com/pdf/ReaganMemo.PDF>; Executive Order 12291, 17 February 1981, 46 FR 13193, 3 CFR, 1981 Comp., 127. James Miller, who headed the Office of Information and Regulatory Affairs during Reagan's first year in office and then led OMB during Reagan's second term, recalled in a 2001 interview that he and C. Boyden Gray pushed Executive Order 12291 through very quickly in the administration's first weeks, taking the regulatory agencies "completely by surprise," before their political appointees were fully established. The executive order was presented to agency general counsels as a finalized document already

signed by the president. Miller Center, "Interview with James Miller: November 4, 2001," Charlottesville, University of Virginia, 2005, 21.

68. Costle, Oral History Interview.

69. For "next logical steps," and "completely different," see William Nordhaus, interview with the author, 7 May 2014, New Haven. For "eviscerate," see Christopher DeMuth, telephone interview with the author, 19 November 2012. To the OMB staff members actually trying to implement regulatory reform in the Reagan administration, some of whom had simply moved over from COWPS, the heated rhetoric and political polarization was "endlessly infuriating," DeMuth said. For a related account of how the Reagan administration's regulatory relief rhetoric "posed problems for the progress of benefit-cost analysis," see also Thomas Hopkins, telephone interview with the author, 5 January 2015. See also Costle, Oral History Interview. For a similar argument that Reagan's "antiregulation approach . . . dissipated much of the political momentum for regulatory reform," see W. Kip Viscusi, "The Misspecified Agenda: The 1980s Reforms of Health, Safety, and Environmental Regulation," in *American Economic Policy in the 1980s*, ed. Martin Feldstein (Chicago, 1994), 453–504, 501; see also Susan Rose-Ackerman, *Rethinking the Progressive Agenda: The Reform of the American Regulatory State* (New York, 1993), 9; Percival, "Checks Without Balance," 174. Carter economic adviser George Eads called Reagan's abandoned relief effort a "long, expensive detour," in George C. Eads and Michael Fix, *Relief or Reform? Reagan's Regulatory Dilemma* (Washington, D.C., 1984), 6, 11. Reagan economic adviser Murray Weidenbaum largely blamed the "strong language and public stands" of James Watt and Anne Gorsuch for arousing environmental opposition, but conceded that the concept of "regulatory relief" rather than "reform" may "have set the wrong tone." Murray L. Weidenbaum, "Regulatory Reform Under the Reagan Administration," in *The Reagan Regulatory Strategy: An Assessment*, ed. George C. Eads and Michael Fix (Washington, D.C., 1984), 17–18. Efforts to pass regulatory reform legislation, for example, which would have explicitly extended regulatory analysis requirements to independent agencies, met strident opposition and failed to proceed. For recent continuing efforts to extend regulatory analysis requirements to independent regulatory agencies, see S. 1173, "Independent Agency Regulatory Analysis Act of 2013," 113th Congress, and Administrative Conference of the United States, "Benefit-Cost Analysis at Independent Regulatory Agencies, Administrative Conference Recommendation 2013–2," adopted 13 June 2013, online at <https://www.acus.gov/recommendation/benefit-cost-analysis-independent-regulatory-agencies>. For the assertion that independent agencies should already be subject to regulatory review requirements, see Peter L. Strauss and Cass R. Sunstein, "The Role of the President and OMB in Informal Rulemaking," *Administrative Law Review* 38, no. 2 (1 April 1986): 181–207.