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JOINT COMMITTEE PRINT

AN INQUIRY INTO CONFLICTING AND  
DUPLICATIVE REGULATORY REQUIREMENTS  
AFFECTING SELECTED INDUSTRIES  
AND SECTORS

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A BACKGROUND STUDY

PREPARED FOR THE USE OF THE  
JOINT ECONOMIC COMMITTEE  
CONGRESS OF THE UNITED STATES



JULY 31, 1980

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## LETTERS OF TRANSMITTAL

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JULY 28, 1980.

*To the Members of the Joint Economic Committee:*

Transmitted herewith for the use of the Joint Economic Committee and other Members of Congress is a background study prepared by the Congressional Research Service of the Library of Congress entitled "An Inquiry Into Conflicting and Duplicative Regulatory Requirements Affecting Selected Industries and Sectors."

The study documents numerous instances where Federal rules and regulations pursue conflicting goals or are duplicative. The findings presented in the study were developed through literature surveys and interviews with industry representatives for eight major industries or sectors of the American economy. While this study is a first effort at identifying examples of conflicting and duplicative government regulation, it provides a useful framework for identifying areas that need particular attention.

The views expressed in this background study are those of the authors and do not necessarily represent my views or the views of any other member of the Joint Economic Committee.

Sincerely,

LLOYD BENTSEN,  
*Chairman, Joint Economic Committee.*

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JULY 24, 1980.

Hon. LLOYD BENTSEN,  
*Chairman, Joint Economic Committee,  
Congress of the United States, Washington, D.C.*

DEAR MR. CHAIRMAN: I am pleased to submit a background study entitled "An Inquiry Into Conflicting and Duplicative Regulatory Requirements Affecting Selected Industries and Sectors," which was prepared by the Congressional Research Service of the Library of Congress and submitted to the committee on February 1, 1980.

The study documents numerous instances where Federal rules and regulations pursue conflicting goals or are duplicative. The findings presented in the study were developed through literature surveys and interviews with industry representatives for eight major industries or sectors of the American economy.

The industry and sector inquiries included in this study were prepared by the following members of the staff of the Congressional Research Service: Julius W. Allen, Consultant to the Economics Division (Iron and Steel and Automobile Industries); Mary Ellen Mogee, Analyst in Science and Technology, and Pamela W. Smith, Analyst in Life Sciences (Chemical Industry); Blanchard Randall,

Analyst in Social Science (Pharmaceutical Industry); Kathleen Reiss, Analyst in Social Legislation (Health Care); Alan Barry Carr, Specialist in Agricultural Policy (Farming); Morton J. Schussheim, Senior Specialist in Housing, and Anne M. Smith, Senior Reference Assistant (Housing); and David H. Davis, Analyst in Energy Policy (Energy).

A special word of thanks is due to Edward Knight, Specialist in Industrial Organization of the Economics Division, who prepared the summary of findings and the introductory section to the study, and who also directed, edited, and coordinated the project.

Sincerely,

JOHN M. ALBERTINE,  
*Executive Director, Joint Economic Committee.*

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# **AN INQUIRY INTO CONFLICTING AND DUPLICATIVE REGULATORY REQUIREMENTS AFFECTING SELECTED INDUSTRIES AND SECTORS**

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## **SUMMARY OF FINDINGS**

This study for the Joint Economic Committee identifies various examples of conflicting and duplicative regulatory requirements which are perceived by business interests as having an important effect on their operations in 8 major U.S. industries or sectors.

Although the focus of this study is primarily on Federal regulations, several of our industry inquiries found examples of regulatory conflict, overlap, and duplication between Federal, State and local regulations as well.

The areas of Federal regulation cited most frequently as being in conflict with one another included energy, environmental, and health and safety regulations. In a number of instances, our inquiries found that conflict may not only be among regulations themselves but with broader national economic objectives as well, such as the goals of increasing productivity, promoting economic growth, reducing inflation, conserving and allocating scarce resources, and providing affordable housing for low and moderate income families. Examples of conflict between Federal, State and local regulations cited in several of the industry inquiries mainly involved standards setting and approval requirements (permits, licenses, etc.) for the construction and siting of new plant facilities.

On the question of duplicative regulatory requirements, industry spokesmen consulted in our informal inquiries cited examples of redundancies or overlap in reporting requirements, inspections and Federal, State, and local regulations. However, they were unable to provide clear-cut examples where Federal regulations themselves actually duplicated one another.

Finally, though the focus of this study was not on the cost of regulation or the problem of regulatory delay, several examples of conflicting and/or duplicative regulatory requirements were identified by industry spokesmen as causing costly and unnecessary delays in production and as placing heavy cost burdens on their businesses. The major findings of our industry and sector inquiries are summarized below, and are treated in more detail in the body of the study.

The methodology for this inquiry is described in more detail in the introduction to the study. It is important to note, however, that the findings of this inquiry are not based on a comprehensive or rigorous survey of opinions of industry spokesmen concerning the question of conflicting and duplicative regulations. This background study seeks only to provide the Committee in short order with some rough indica-

tions of problems posed by conflicting and duplicative regulations as perceived by various spokesmen for the eight industries or sectors covered by our inquiry. Its results are limited to the perceptions of spokesmen or sources we consulted and may or may not be broadly representative of opinions of others within each industry.

## IRON AND STEEL

The iron and steel industry is subject to extensive regulation by approximately 27 different Federal agencies. A major concern of the industry with respect to conflicting regulations appears to be in the environmental and safety areas. One example cited by the industry concerns emission standards for coke ovens. The Environmental Protection Agency's regulations to reduce emissions into the atmosphere from coke ovens conflict with the Occupational Safety and Health Administration's safety standards to reduce the effects on workers of such emissions within the plant facility.

More broadly, environmental regulations, from the industry's point of view, have made it difficult for the industry to comply with other national objectives such as conserving the use of oil and natural gas, decreasing the Nation's dependence on energy imports, accelerating the shift from other fuels to coal, and reducing inflation.

Examples of conflicts between Federal and State and local regulation are also cited. In regulating air pollution, some States require non-technology-based standards which are often difficult to reconcile with Federal technology-based standards. Similar difficulties occur in water pollution regulations. Furthermore, the industry cites problems with duplicative inspections of certain industry facilities, for example, by the Occupational Safety and Health Administration and the Mine Safety and Health Administration in one instance and by the Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health, an agency of the Department of Health, Education, and Welfare, in another. While reporting requirements of regulatory agencies are perceived as substantial, the industry does not consider the burden of such requirements as significant as other types of duplication and conflict identified in this inquiry.

Finally, this study found industry concern about conflicts and duplication among various regulations affecting discrimination in employment as administered by the Office of Federal Contract Compliance in the Department of Labor, the Department of Health, Education, and Welfare, and the Equal Employment Opportunity Commission. The study notes that this is a concern of many industries, not only the iron and steel industry.

## AUTOMOBILES

The major regulatory conflicts involving the automobile industry arise primarily from the Government's attempt to pursue three national objectives simultaneously: reduced fuel consumption, reduced emission of exhaust pollutants, and improved safety standards for automobile body construction.

Required auto safety measures often increase vehicle weight, which can increase fuel consumption. Tighter restrictions on auto emissions can reduce fuel efficiency, especially in the short run. Diesel engines,

for example, can achieve greater fuel economy than gas engines, but they face considerable difficulty in meeting Federal exhaust emissions standards.

The industry does not argue that safety and emission control regulations lack merit, or that they are more or less important than regulations mandating greater fuel economy. The industry expects continued progress over time in meeting improved standards in all three areas of national concern. However, for the short run there are, in the industry's view, limits on the extent to which these objectives can be achieved simultaneously. Trade-offs are inescapable.

In the area of worker safety, several States have vacated their own safety programs in order to cut costs and avoid duplication and conflict with Occupational Safety and Health Administration standards. However, some States have not. For example, California and Michigan, major centers of auto manufacturing, have maintained workplace safety standards that differ from Federal standards. Thus, from the industry's perspective, there remains some duplication and conflict between Federal and State safety regulations.

Reporting requirements of the Environmental Protection Agency, the National Highway Traffic Safety Administration, and the Occupational Safety and Health Administration often involve duplication of effort, according to industry spokesmen, but the burden of such duplication is minor compared to difficulties created by the conflicting regulatory objectives noted above.

### CHEMICALS

The inquiry into the chemical industry covered establishments that produce basic chemicals and manufacture products by predominately chemical processes, but excluded petroleum refining and pharmaceuticals.

Air pollution, water pollution, and solid waste disposal regulations are typical sources of regulatory conflicts for this industry. Residues accumulated from scrubbing stack gases to comply with the Clean Air Act will likely present waste disposal problems as the hazardous waste provisions of the Resource Conservation and Recovery Act are implemented. Conflicts will also likely occur with disposal of solid wastes derived from treatment of waste water in accordance with the Federal Water Pollution Control Act.

On the matter of worker safety, regulatory conflicts reportedly exist between certain Occupational Safety and Health Administration and Equal Employment Opportunity Commission requirements. For example, according to Federal safety standards, respirators or masks required for certain workers must fit tightly around the mouth, a requirement making it difficult for employees with beards to wear these devices. Equal Employment Opportunity Commission requirements, however, prohibit discrimination in job assignments and prevent the company from requiring employees to be clean-shaven.

There is also reportedly a major conflict between energy and environmental regulations. Companies have been encouraged by the Department of Energy to continue using coal, or to switch from oil to coal, to conserve energy. The Environmental Protection Agency, on the other hand, encourages firms to switch to oil, because continued



use of coal would cause them to violate sulfur dioxide standards of the Clean Air Act.

Industry sources have also reported regulatory conflicts between: Federal and State labeling and registration requirements for chemical products; Occupational Safety and Health Administration and Department of Transportation standards relating to transportation of hazardous materials (especially vinyl chloride); and Department of Transportation and Environmental Protection Agency regulations regarding reportable quantities for chemical spills. The industry has also expressed concern over potential regulatory conflicts involving several Federal agencies relating to identifying and controlling carcinogens and other toxic substances and labeling of chemicals.

In constructing new facilities, companies are often faced with delays and duplication in obtaining a multitude of permits from Federal, State and local governments. Duplication also results from the financial reporting requirements of the Internal Revenue Service, the Securities and Exchange Commission, the Bureau of the Census and the Federal Trade Commission, all of which require similar information in different forms. This is a concern of other industries as well.

Though representatives of the industry complain about conflicting and duplicative regulatory requirements, the inquiry concludes that most such requirements affecting the industry are nuisance items, although some pose major obstacles to industrial production. According to industry spokesmen, in only a few cases are regulations in such conflict that it is impossible to satisfy both or all simultaneously. The main concern is with the costs, inconveniences, and inefficiencies imposed by the regulations, features which are sometimes significantly increased by the combined effect of multiple regulations.

#### PHARMACEUTICALS

According to the Pharmaceutical Manufacturers Association, manufacturers of drugs do not necessarily believe they are seriously burdened with conflicting or duplicative regulation. Their primary concern is complying with the requirements of the Food, Drug and Cosmetic Act concerning the testing and marketing of new drugs.

The Association did, however, cite three instances of potentially conflicting regulation (or more appropriately in some cases, jurisdictional overlap) which can present problems to the industry. One is the area of drug labeling, where State and Federal requirements can differ.

The second is the regulation of ethylene oxide, a chemical used in the sterilization of medical equipment as well as the fumigation of certain crops. Currently three agencies are concerned about the use of this compound. The Environmental Protection Agency is exploring possible environmental hazards of this substance. The National Institute for Occupational Safety and Health and the Occupational Safety and Health Administration are concerned about health hazards to workers. Also the Food and Drug Administration may take action to limit residues of the chemical on drugs and medical devices. The industry is not only concerned about increased regulation of the chemical compound but also with the problem of regulatory duplication and conflict that might occur from multi-agency regulation.

The third area of concern to the industry is the regulation of recombinant DNA research. The National Institute of Health has promulgated voluntary guidelines covering this type of research. In the meantime the Food and Drug Administration is considering the need to regulate the use of recombinant DNA methods in the development of new products which must receive its approval before they can be marketed. Though regulatory conflict and/or duplication could occur in this area, it is too early to speculate as to whether or not this will become a problem, given the tentative nature of Federal regulatory involvement at this time.

### HEALTH CARE

The health care industry is subject to a multitude of regulations at the Federal, State and local level. The Federal Government sponsors over 300 separate health programs, each with its own statutory requirements. A host of different State and local agencies and private organizations are also involved in regulating or standard-setting for particular components of the health care industry. Some have charged that jurisdictional overlap among these various public and private entities has led to a complex spiderweb of requirements complicated by lack of effective coordination and absence of standardized criteria.

This inquiry identified numerous recent studies of health care regulation conducted by various government agencies and private organizations. A major concern of these studies is the problem of jurisdictional overlap or conflict among Federal, State, and local regulatory agencies and private standard setting organizations in regulating health care services of hospitals and nursing homes. Areas of possible conflict and inconsistency include: life safety code requirements developed by the National Fire Protection Association for institutions participating in the Medicare program, and other standards set for hospitals and nursing homes such as State and local building and fire code rules; health inspection requirements; construction standards; and requirements concerning patients' rights and admitting procedures.

From the viewpoint of health providers, jurisdictional conflicts and overlap can present other problems. For example, a planning agency's decision to approve new facilities and services may conflict with State efforts to reduce hospital cost increases. Also, recent efforts on the part of State and Federal governments to control hospital cost increases to combat inflation could adversely affect quality of health care, spokesmen say.

Duplicative reporting requirements are considered a major problem for hospital and nursing home administrators. For example, the Federal Paperwork Commission pointed out that the forms for reimbursement under Medicare and Medicaid differ, but they request essentially the same information from reporting units. The Commission also cited duplicative on-site inspections of nursing homes by both the Department of Health, Education, and Welfare and the Veterans' Administration.

### FARMING

Government regulations of particular concern to farmers and ranchers are those pertaining to pesticides, worker safety, and pollution of

the air and water. While these regulations are often perceived as conflicting, burdensome, and at times costly, the conflict is for the most part with other business or public goals (a clean and healthy environment, a safer and more healthy workplace, and a safe food supply) rather than between or among regulations themselves.

One frequently cited example where government policies involve conflicting goals is the tobacco program. Tobacco production is protected by Government mandated supply controls and price supports. These Government activities, however, arguably conflict with other Federal programs to discourage smoking because of its deleterious effects on human health. However, there is no evidence that elimination of price supports would result in the elimination of tobacco production from the farm economy or a reduction in consumption by the public.

Farmers complain increasingly about the paperwork burden of Federal reporting requirements. They are required by law to respond to numerous information surveys of the Bureau of the Census and several agencies of the Department of Agriculture. Like other business enterprises, they must also file tax returns, social security reports, and health and safety reports. Farmers argue that these reporting requirements require much duplication of effort and the published findings of these periodic surveys are often of little value to farmers in the conduct of their operations.

#### HOUSING

Federal regulations which affect the home building industry are an addition to a large body of overlapping and sometimes conflicting State and local requirements. Builders have concerns about Federal regulations in four categories: environmental protection, resource conservation, Davis-Bacon Act requirements, and regulations affecting the supply of mortgage credit.

Federal environmental regulations, designed to prevent environmental degradation which results from improper siting of new houses, tend to restrict the amount of land available for construction (thereby increasing development costs) and may add 6 to 12 months or more to the development process. This makes for a conflict between two Federal goals: protecting the environment and providing decent housing within the means of moderate- and low-income families.

Resource conservation policies designed to assure adequate resources for future use as well as wilderness preservation and recreational facilities can conflict with other Federal objectives. For example, limitations on the cutting of timber on Federal forest lands—such as the moratorium on harvesting timber from a third of national forests in effect from 1975 through the spring of 1979—reduce the supply and sharply increase the prices of lumber and wood products, and thus conflict with Federal housing objectives.

Davis-Bacon regulations intend to insure that wages paid on Government-financed construction, including Federally assisted housing, are the same as those already prevailing in an area. In practice, according to some homebuilders, such wage standards tend to inflate construction costs. Further, the reporting requirements are repetitive, costly, and time-consuming. Hence, the claim is made that Davis-

Bacon requirements can be inflationary, and tend to run counter to the Department of Housing and Urban Development mortgage limitations and intentions to provide affordable housing for low-income households.

Actions by the Federal Reserve Board to combat inflation by restricting the availability of mortgage credit increase the cost of construction and mortgage loans, thus reducing the supply of both rental and ownership housing. This, in turn, tends to increase house prices and rents, exacerbating the impact of inflation on households and conflicting with objectives of Federal housing policies.

Examples of duplicative reporting requirements cited by homebuilders involve property appraisals of the Veterans Administration and the Federal Housing Administration; environmental impact requirements of Federal, State and local agencies; and worker safety standards.

#### ENERGY: COAL AND NUCLEAR

The National Coal Association reported that the coal industry is subject to regulation by more than 30 major organizational units in 12 departments and agencies within the Federal Government. In general, the Association asserted that regulation at the Federal level "often adversely" affects coal production, transportation and use. It pointed out that:

None of the departments or agencies has sufficient breadth of authority, responsibility or perspective to establish policies and take actions that adequately reflect a balance among the conflicting national objectives that are involved.

No one in the government is aware of the combined adverse effects of the policies being pursued by the various agencies.

Agency policies and actions are often inconsistent with agency officials' statements of support for [the] goal of increasing the use of domestic coal.

Many in government misunderstand the adverse impact of current policies, as reflected in conclusions that the problem is "lack of regulatory certainty." Frequently changing and often delayed regulatory actions are one problem but the far more serious problem is unnecessary and unreasonable stringency of requirements.

The net result is that little is now being done within the government to deal constructively with the *real* constraints on increased use of coal. Instead, agency policies and actions in pursuit of other objectives are *unnecessary and without compensating benefits*. (Italics in the original.)

The Association cited two examples where Federal regulations conflict with the objective of reducing our dependence upon oil and natural gas by increasing the use of domestic coal. In Texas, a large industrial firm cancelled the construction of three coal fired facilities because the Interstate Commerce Commission approved rates for hauling coal to the plant that were three times the rates that had been expected. Also the Texas Railroad Commission is considering withdrawing its 1975-76 order requiring utilities and large industrial energy users to use coal instead of natural gas because of high Interstate Commerce Commission-approved freight rates for coal, stringent air quality requirements, and the general confusion over Federal energy policies.

A coal industry spokesman also expressed concern about the extent to which Federal regulations can impede or delay increases in coal production. Environmental Protection Agency and State requirements for permits to discharge water from coal mines can be excessive and

duplicative and can cause considerable delays in the development of new mines or expansion of existing mining operations. Industry spokesmen contend that the process of meeting or fulfilling environmental and safety requirements can also cause considerable, and often unwarranted, delay in the construction and licensing of new coal and nuclear power plants. Such delays unnecessarily work against (or conflict with) other governmental objectives in meeting our Nation's energy needs.

A representative of the nuclear energy industry indicated that the adjudicatory procedures for licensing nuclear power facilities are proving counterproductive to the Nation's constructive use of nuclear power for meeting its energy requirements.

## INTRODUCTION

The Joint Economic Committee requested that the Congressional Research Service conduct an examination of conflicting and duplicative regulations which business interests perceive as having an important effect on their operations and economic welfare. At the recommendation of the Committee, our study focused on the following industries and sectors: steel, autos, chemicals, pharmaceuticals, health care, farming, housing, and energy. Within each industry or sector our study directed its attention primarily to two problem areas:

Federal rules and regulations which are considered to impose conflicting requirements on business enterprise; and

Federal regulations and data reporting requirements which are considered to be duplicative or potentially duplicative.

The industry and sector studies which follow were prepared by various subject specialists and analysts within the Congressional Research Service. The analysts limited their inquiries mainly to information obtained from readily available sources:

Representatives of industry trade associations;

Research organizations which might have an interest in this subject (e.g., Brookings Institution, American Enterprise Institute, American Academy of Sciences);

Recent congressional studies or inquiries which might have explored this area of regulatory concern;

Searches of recent literature; and

Appropriate Federal agencies and bodies, including certain Departments, regulatory agencies, the Regulatory Council, the Regulatory Analysis Review Group, the Council on Wage and Price Stability, the General Accounting Office, and the National Science Foundation.

The extent and comprehensiveness of these industry and sector studies vary depending upon the availability of information from these sources. No attempt was made to evaluate the accuracy of the information elicited.

It should be emphasized that this study is not based on a comprehensive survey of industry opinion concerning duplicative and conflicting regulatory requirements. Such a survey would have required considerable advance planning and development, involving the preparation of carefully designed questionnaires and the use of more rigorous procedures than were possible within the time and resources available to us. For example, to generalize from sources and spokesmen consulted in a survey, it is necessary to select the sample in a way which allows the analyst to know the probability that the results are truly representative of those persons who were not consulted. Furthermore, such a project (including design of questionnaire, pretesting, mailing and receipt of responses, and analysis of the results) would probably have required many months to complete. Given the multi-

faceted nature of the regulatory issues affecting various industries or sectors covered by our inquiries, the problems of industry definition, the large number of industries and sectors and their different problems and special characteristics, and the many social, economic and political issues posed by regulatory policies, such an inquiry cutting across so many industries and sectors would be a very complex and expensive undertaking.

Our study seeks only to provide the Committee with some rough indications of problems posed by duplicative and conflicting regulations as perceived by various spokesmen for industries or sectors covered by our inquiry. Its results are consequently limited to the perceptions of the spokesmen or sources we consulted and may or may not be broadly representative of other industry perceptions. Furthermore, the research was conducted by ten different analysts, who had access to different sources of information. Therefore, comparisons between industries based on the information presented here would be subject to a great deal of uncertainty. Consequently, this study should be considered as a "first cut" look into the question of regulatory conflict and duplication, and not as an exhaustive examination of the subject.

The CRS subject specialists who prepared the various industry or sector inquiries included in this study were: Julius W. Allen, Consultant to the Economics Division (Iron and Steel and Automobile Industries); Mary Ellen Moguee, Analyst in Science and Technology and Pamela W. Smith, Analyst in Life Sciences (Chemical Industry); Blanchard Randall, Analyst in Social Science (Pharmaceutical Industry); Kathleen Reiss, Analyst in Social Legislation (Health Care); Alan Barry Carr, Specialist in Agricultural Policy (Farming); Morton J. Schussheim, Senior Specialist in Housing and Anne M. Smith, Senior Reference Assistant (Housing); and David H. Davis, Analyst in Energy Policy (Energy).

Edward Knight, Specialist in Industrial Organization, prepared the summary of findings and the introductory section to the study. He also directed and coordinated the project. Other CRS analysts who participated as consultants to the project were Daniel Melnick, Analyst in American National Government; Harold Bullis, Specialist in Science and Technology; Barbara Miles, Specialist in Housing; and Bruce Mulock, Analyst in Consumer Affairs.

## I. IRON AND STEEL

The iron and steel industry comprises firms engaged in the manufacture of basic iron and steel products. This conforms to Standard Industrial Classification Code 331 (Blast Furnaces and Basic Steel Products).

The following graphic description of the extent of regulations affecting the steel industry was provided in 1977 by Robert Leone of the Harvard Business School:

Its inputs are strictly regulated; labor costs are controlled by State and Federal Occupational Safety and Health Administration (OSHA) agencies, the Employees Retirement Income Security Act (ERISA), and the Department of Health, Education and Welfare (HEW); the cost and availability of raw materials are regulated by the Bureau of Mines, the new Department of Energy and the Federal power authorities; and returns to capital are effectively regulated by the policies and practices of the Internal Revenue Service.

The industry's processes are also heavily regulated; not only must U.S. Steel reduce water pollution, but it must do so using the best available technology. Safety hazards cannot be eliminated by strict discipline and organizational control; they must be "engineered out."

Outputs are even more closely controlled. The size of the market available to domestic producers of steel is regulated by foreign trade policies; price levels are controlled—albeit implicitly—by jawboning. Even product characteristics are effectively dictated by the purchasing criteria of the nation's biggest consumer—the Federal Government.

As if these controls were not enough, the government also regulates the general business environment in which the steel industry operates through its anti-trust powers, enforcement of corporate law, and other activities that directly limit the scope of private decision making. In short, the government controls the steel industry's inputs, processes, and outputs as well as its overall business environment.<sup>1</sup>

Regulations affecting the steel industry, as well as many other industries, have been catalogued by the Council on Wage and Price Stability under the following categories: water and air pollution, occupational safety and health, discrimination in employment, industrial relations antitrust, foreign trade, income tax, energy, and miscellaneous.<sup>2</sup>

### REGULATORY CONFLICTS AND DUPLICATION

Considering the scope and breadth of these regulatory programs, some overlap and conflict is to be expected. Further, the divergent objectives of some of the regulatory agencies make some conflict virtually inescapable. For example, efforts to assure good air quality for workers inside a plant, as mandated by the Occupational Safety and Health Administration, can come into conflict with efforts of the Environmental Protection Agency to lower the emission of air pollutants

<sup>1</sup> Leone, Robert A. The Real Costs of Regulation. *Harvard Business Review*, v. 55, November-December 1977: 57-58.

<sup>2</sup> U.S. Council on Wage and Price Stability. *Catalog of Federal Regulations Affecting the Iron and Steel Industry*. Washington, December 1976. 235 pp.



into the atmosphere. Also, the Environmental Protection Agency's goals of reducing sulfur oxide emissions from point sources, including boilers, may conflict with the Department of Energy's goal of promoting greater use of coal in boilers. Similarly, the Department of Energy's interest in promoting energy conservation may conflict with the Occupational Safety and Health Administration's requirements that the work place be brightly lit.<sup>3</sup>

The chief concern of the iron and steel industry with respect to conflicting regulations clearly appears to be in the environmental area. In the catalog of regulations cited above, the Council on Wage and Price Stability noted, for instance:

The classic example in the steel industry of conflict is between regulatory programs regarding emissions from coke ovens. EPA, which is interested in reducing emissions into the ambient air, has favored placing hoods over coke ovens to gather and treat these emissions. On the other hand, OSHA, which is concerned with worker health, opposes hoods on coke ovens because they would increase the concentration of coke oven emissions breathed by the workers.<sup>4</sup>

While this issue has been resolved to a considerable extent, a new coke oven emission problem has arisen; the Environmental Protection Agency wants spilled coke to be shoveled directly into ovens; the Occupational Safety and Health Administration, however, requires spilled coke to be shoveled into special containers.

#### THE IMPACT ON PRODUCTIVITY AND COSTS

In a broader sense, the environmental regulations of the Environmental Protection Agency have had a negative impact on efficiency within the steel industry, with resulting increases in production costs. This in turn has made it more difficult for the industry to comply with such other national objectives as conserving the use of oil and natural gas, decreasing the Nation's dependence on energy imports, accelerating the shift from other fuels to coal, and curbing inflation.

The Environmental Protection Agency's restrictions in coke oven emissions illustrate the problem. As reported by the American Iron and Steel Institute, reduction of emissions can be accomplished by retrofitting existing batteries with "stage charging", or by increasing the coking cycle, from 15 to 20 hours. Retrofitting existing batteries dilutes the coke oven gas, making it less efficient for use as a substitute for natural gas. Increasing the coking cycle from 15 to 20 hours decreases the productivity of the coking battery by 25 percent.<sup>5</sup>

One result of these restrictions has been for the steel industry to increase its purchases of coke from outside suppliers, mostly foreign, and to use more oil, again largely imported, natural gas, and electricity.

Some economists have argued that whereas capital investments for modernization of plant and for expansion of capacity yield additional output and productivity, capital investments for pollution control do not. In fact, as a rule, capital requirements for pollution abatement, by reducing the amounts available for modernization and expansion, have the result of lowering productivity and increasing costs, thus

<sup>3</sup> *Ibid.*, p. 217.

<sup>4</sup> *Ibid.*, p. 217.

<sup>5</sup> Letter of Apr. 23, 1979 from Howard C. Lacy, Metallurgical Engineer, American Iron and Steel Institute, to author.

providing added reason for price increases that tend to have inflationary effects on the economy in general.<sup>6</sup>

According to the U.S. Department of Commerce, the expenditures for pollution abatement, as a proportion of total new plant and equipment expenditure in the steel industry (blast furnaces and steel works), rose from 12.2 percent in 1974 to a planned 19.5 percent in 1978.<sup>7</sup>

### CONFLICTS AMONG FEDERAL, STATE, AND LOCAL REGULATIONS

The steel industry also has difficulties with conflicting and overlapping environmental regulations at the Federal, State and local levels. The problems are multiplied for those companies that operate facilities in several States, as is commonly the case within the steel industry. A 1975 Arthur D. Little, Inc. study, for example, notes that the Clean Air Act of 1979 (Public Law 91-604) permits State and local authorities to impose more stringent air quality standards than those required under Federal law. Sometimes these State and local standards are technically impractical or are formulated on a different basis from Federal standards.<sup>8</sup> Thus, some States use a nontechnology-based standard, such as a requirement for "no visible emissions" which may be difficult to reconcile with Federal technology-based standards. Similar difficulties are found in water pollution abatement regulations. As the Arthur D. Little study observes:

Beginning with new source performance standards under the Clean Air Act and expanding to most water effluent standards under the 1972 Water Law, federal discharge limitations have been increasingly based upon the application of specific types of control technologies. However, as noted above, discharge standards set at the state or local level are not always required to reflect a technology-related approach. For example, in the absence of or in place of technically based standards, several states have employed "catch-all" or "nuisance" provisions, including phrases such as "no air pollution" or "no water pollution" as a basis for enforcement actions.<sup>9</sup>

Even within technology-based standards, a degree of conflict still arises. For example, some Federal pollution standards are based upon units of pollution per volume of production, and are intended to be incentives for adoption of more advanced technology. On the other hand, many States, tending to be more directly concerned with improving the quality of water in streams and air in the atmosphere, have adopted standards based on concentration of pollutants in the discharge medium.<sup>10</sup>

Representatives of the iron and steel industry have pointed to other specific areas of conflict and duplication. Operations in sand and gravel pits have come under the purview of both the Occupational Safety and Health Administration and the Mine Safety and Health Administration. Duplicating inspections are reported to have been performed by both the Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health, a com-

<sup>6</sup> See, for example: Curry, Leonard. *Steel Executives Predict Shortage, Saying U.S. Rules Curb Expansion*. Washington Star, May 25, 1974, p. D-11.

<sup>7</sup> *Survey of Current Business*, vol. 58, June 1978, pp. 34-35.

<sup>8</sup> Arthur D. Little, Inc. "Steel and Environment: A Cost Impact Analysis." Cambridge, Mass., 1975, p. V-3.

<sup>9</sup> *Ibid.*, p. V-6.

<sup>10</sup> *Ibid.*, p. V-13, and oral statement by Stanley V. Margolin, project manager for The A. D. Little study.

ponent of the Center for Disease Control, Public Health Service, U.S. Department of Health, Education, and Welfare.

It also needs to be recognized that not only are there conflicts and duplication among Federal, State and local regulations, but also considerable variation in the manner in which such laws are administered and enforced. Variations are due to such factors as different attitudes toward administration and enforcement by regional administrators and State and local officials, and the nature and extent of consultation and negotiation with industry spokesmen, all of which change over time.<sup>11</sup>

A 1978 Iron Age article contends that much of the conflict could be avoided if Federal standards consistently took precedence over State and local standards.<sup>12</sup> It cites a chief legal counsel of a major primary metals maker as follows:

No one can keep track of all of the states' rules. It's impossible. There are rules in some cases that are all different, Federal, state, county, and municipal. They're even *enforced* with varying degrees of emphasis . . . Almost everybody is violating the law; a large corporation is violating a ton of them. Much could be removed with the end of duplication by having the Federal Government claim *supremacy* over state laws. Not *supremacy unless more strict*. (Italics in original.)<sup>13</sup>

#### OTHER ISSUES AFFECTING THE IRON AND STEEL INDUSTRY

While the reporting requirements of regulatory agencies are substantial—in 1977 United States Steel Corporation reported that the steel industry is subject to regulations of 27 different Federal agencies—duplicative reporting requirements are not as significant a burden to the industry as other types of duplication and conflict identified in this inquiry.

An area important not only to the iron and steel industry but to all of American industry is that of discrimination in employment. The Equal Employment Advisory Council, a private nationwide organization of companies and trade associations, has pointed to various areas of conflict and duplication among regulations of the Office of Federal Contract Compliance in the Department of Labor; the Department of Health, Education, and Welfare; and the Equal Opportunity Commission.

The whole subject of employment discrimination regulation is in fact faced with some uncertainty as a result of court cases dealing more or less directly with non-discrimination statutes. The most prominent of these are the Weber case (Weber v. Kaiser Aluminum Corporation) and the Bakke case. In addition, the case brought by Sears Roebuck, although dismissed in May 1979, reflects the position that there are conflicts between provisions of law giving preference to veterans and other government programs designed to end discrimination against women and blacks.

<sup>11</sup> Arthur D. Little, Inc. op. cit., pp. V-16—V-18.

<sup>12</sup> Welmer, George A. Life in the State Regulatory Jungle and How It Has Business in a Blind Iron Age., vol. 221, Apr. 10, 1978.

<sup>13</sup> Ibid., p. 69.

## II. AUTOMOBILES

For purposes of this inquiry, the automobile industry comprises United States firms engaged in the manufacture of passenger motor vehicles. The industry is dominated by four corporations: General Motors, Ford, Chrysler, and American Motors. These same firms also dominate to an only slightly lesser degree the production of trucks and buses. However, as far as government regulation is concerned, the focus of this study is limited to passenger automobiles.

### REGULATORY CONFLICTS FACING THE AUTOMOBILE INDUSTRY

Probably the most important examples of conflicting government regulations concerning the automobile industry arise from the simultaneous pursuit of three objectives: lower fuel consumption, lower emission of exhaust pollutants, and body construction offering greater safety to automobile drivers and passengers. As a 1977 Department of Commerce report states:

Elimination of environmental pollution, conservation of petroleum—of which vehicles are an important consumer—and requirements for vehicles of safer design are being mandated by various regulations. Unfortunately these regulations sometimes have conflicting consequences. For example, designs for safer vehicles sometimes increase vehicle weight which in turn increases fuel consumption.<sup>1</sup>

The report then raises another issue:

How may the Federal Government effectively balance the sometimes conflicting objectives of reduced energy, increased safety, and improved environmental quality in the requirements it imposes on the automotive manufacturers and their products, especially when these requirements are imposed by several independent agencies with separate authorities?<sup>2</sup>

The Congress has passed legislation mandating that the automobile industry both increase fuel efficiency and lower the emission of pollutants. The Energy Policy and Conservation Act of 1975 (Public Law 94-160) sets the minimum acceptable average fuel economy for automobiles manufactured by any manufacturer in a given model year. For the model year 1980 the average fuel economy for the passenger automobile fleet manufactured by each manufacturer is to be no less than 20 miles per gallon; this rises to 27.5 miles per gallon by 1985 with most of the gains required before the model year 1983.

At the same time, the Clean Air Act (Public Law 91-604, as amended) sets emission control standards. Standards affecting the automobile industry have been established for emissions of carbon monoxide (CO), hydrocarbons (HC), and oxides of nitrogen (NO). In addition, standards for particulates have been proposed.

<sup>1</sup> Weaver, Charles R. "Impact of Environmental, Energy, and Safety Regulations and of Emerging Market Factors upon the United States Sector of the North American Automotive Industry." U.S. Department of Commerce, Domestic and International Business Administration, August 1977, p. 1-4.

<sup>2</sup> *Ibid.*, pp. 1-9.

The major automobile manufacturers have expressed concern about the difficulties in meeting both the fuel efficiency standards and the emission standards which tend to act as trade-offs, especially in the short run. This is well illustrated by plans to utilize diesel engines extensively in passenger automobiles in the 1980's. General Motors Corporation in testimony submitted to the Energy and Power Subcommittee of the House Committee on Interstate and Foreign Commerce on March 14, 1979, claimed that the diesel engine consistently achieves an average fuel economy improvement of 25 percent over gasoline engines when compared in vehicles of comparable size and equipment. However, there is considerable question as to the ability of diesel engines to meet certain of the emission standards.

Before 1977, the proposed nitrogen oxide standard was 0.4 grams per mile, considered to be unattainable by diesel engines. In 1977, a standard of 2 grams per mile for 1981 models and 1 gram for 1982 models (with a possible waiver to 1.5 grams per mile through 1983 models) was approved, which the Jet Propulsion Laboratory of the California Institute of Technology has maintained is achievable by diesel engines. However, at the House Commerce Committee hearings in March 1979 cited above, spokesmen for General Motors, Ford, and Chrysler all expressed doubt that the industry can manufacture diesel powered cars, except for the smallest models, that simultaneously meet the 1985 nitrogen oxide standard and the 1983 proposed diesel particulate standard. Achieving the nitrogen oxide goal would require utilization of an exhaust gas recirculation device that would increase the emission of particulates above the proposed limit of 0.6 grams per mile in 1981 models and 0.2 grams per mile in 1983 models.

Similarly, A. B. Shuman, a representative for Mercedes-Benz, the German producer of most of the diesel powered passenger cars currently in use in the United States, concurred that "the proposed particulate matter standard of 0.2 gm./mile for 1983, combined with the 1.0 gm./mi/NO standard for 1985 will be a difficult combination to meet, not only for Mercedes-Benz but for all manufacturers producing diesel-powered cars." On the other hand, he claimed that Mercedes-Benz diesel passenger cars would be able to meet the 1.5 gm./mi/NO (waiver) standard for 1981-1984 model year cars with an add-on exhaust recirculation system, and the proposed 0.6 gm./mi particulate matter standard in the 1981 models.<sup>3</sup>

The Council on Wage and Price Stability, in its April 20, 1979 comments to the Environmental Protection Agency concerning proposed standards for particulate emissions for diesel automobiles, stressed that the Environmental Protection Agency should consider the technical trade-offs between emission controls of particulates and of NO in developing its particulate standard. It also recommended adopting a Corporate Average Particulate Emissions for Diesels approach as more cost-effective than the absolute standard being proposed.

More generally, the same kind of conflict in regulatory objectives is revealed in the conflicts between the tightened automobile and light

<sup>3</sup> Letter of Apr. 19, 1979 from David K. Willis, Policy Analysis Department, Motor Vehicle Manufacturers Association to author, pp. 4-6.

truck emissions standards beginning with model year 1980 and required future increases in fuel economy. Chrysler has estimated that the higher emission standards required for the 1980 model year over the 1979 model year will lower Chrysler's corporate average fuel economy by about 5 percent, and that meeting California standards will cut fuel economy at least 10 percent. General Motors projects a similar loss in fuel economy, with a further 3 percent loss for the 1981 emission standards, compared to a 1979 base. Ford's projections are similar.<sup>4</sup> The fact that California emission control standards are in several instances more stringent than Federal regulations creates numerous research, production, scheduling, and marketing problems for the automobile industry.

Automobile manufacturers, with the support of the National Highway Traffic Safety Administration, have taken the position that the use of lubricants whose slipperiness has been enhanced through the use of additives, such as graphite (so-called slippery oil), would increase average fuel economy 2 percent by 1981. However, it has been found that some of these slippery oils have an adverse effect on catalyst performance. The standards of the Environmental Protection Agency for model year 1981 do not permit any loss of catalyst performance, which may prevent use of such oils. In addition the use of slippery oils has been further impeded by the refusal, thus far, of the Environmental Protection Agency to permit the use of these lubricants in fuel economy certification testing.<sup>5</sup>

It also seems clear that the objectives of greater fuel economy and of greater safety for drivers and passengers of passenger automobiles are to some degree in conflict. Small cars tend to be more vulnerable to accidental damage and injury to passengers than large cars. However, weight reductions by means of smaller engines, lighter weight transmissions, and axle revisions have been partially offset by addition of heavier safety requirements in the form of side, roof, front and rear beams and bumpers.<sup>6</sup>

A 1975 Kidder, Peabody, Inc. study, "Analysis of Future Automotive Materials," cited the following examples of the impact of Federal regulations on weight of automobiles and consequently on fuel economy:

Between 1965 and 1974 the weight of an average compact car produced by American Motors Corporation increased 310 pounds, that is 12 percent. Only 26 pounds were the result of product features whereas the remainder was necessitated by Government regulations. At the same time greater weight and emission control apparatus reduced fuel economy 25 percent. Between 1971 and 1975 Ford Motor Company's Pinto gained 243 pounds caused by heavier bumpers, emission hardware and safety features which in turn led to an additional 120 pounds of weight. During this period the Pinto lost 10 percent of fuel economy.<sup>7</sup>

It is not argued that regulations requiring adoption of various safety and emission control features are lacking in merit, or that they are of greater or lesser importance than other regulations mandating greater fuel economy in automobile performance. In fact, over time, one can

<sup>4</sup> Ember, Lois. *The Diesel Dilemma, the Environment Protection Agency's Difficult Decision*. Environment, vol. 21, March 1979, p. 20.

<sup>5</sup> *Ibid.*, pp. 6-7.

<sup>6</sup> Weaver, Charles R., *op. cit.*, pp. 7-17.

<sup>7</sup> Cited in Weaver, Charles R., *op. cit.*, pp. 7-21.

anticipate continuing progress in meeting improved standards of fuel economy, automobile safety, and emission control. In the short run, however, there are clearly limits on the extent to which these objectives can be achieved simultaneously. As shown above, trade-offs are inescapable.

#### THE PROBLEM OF CONFLICTING FEDERAL AND STATE REGULATIONS

An area of some conflict as well as duplication is that resulting from Occupational Safety and Health Administration standards on the one hand and State regulations on the other. When the Occupational Safety and Health Act was established, several States vacated their safety programs to cut costs and avoid duplication, but this was not true of all States. In particular, Michigan and California, both of which are major centers of automobile manufacture and assembly, have maintained State safety regulations which often differ from the Occupational Safety and Health Administration standards. Thus, there is some duplication and conflict between State and Federal safety regulations, which affect the automobile industry adversely.

#### THE BURDEN OF DUPLICATIVE REPORTING REQUIREMENTS

As already noted, the automobile industry is affected by many major Federal regulatory programs, among them such relatively new ones as those of the Environmental Protection Agency, the National Highway Traffic Safety Administration, and the Occupational Safety and Health Administration. These agencies have imposed reporting requirements that involve some additional costs to automobile manufacturers, with some degree of duplication in the information to be supplied. However, according to spokesmen of both the Motor Vehicle Manufacturers Association and the U.S. Department of Commerce, the burden of duplication of reporting requirements by various agencies was relatively slight when compared to the difficulties created by conflicting regulations, such as those discussed above.

#### CONFLICTS WITH BROADER NATIONAL OBJECTIVES

Finally, it is worth noting that while specific Federal regulations are often in conflict with each other, the aggregate of many regulations affecting the automobile industry may also work to offset other Federal goals. For example, the increases in the price of automobiles due directly to safety, emission control, and fuel economy regulations contribute to the inflation that the government is attempting to contain. Further, since the burden of regulation falls more heavily on some manufacturers than on others, it may be a factor in increased layoffs, counter to Federal attempts to prevent increases in unemployment, and in increased concentration of firms within the industry, counter to the nation's antitrust goals.

### III. CHEMICALS

For the purposes of this inquiry, the chemical industry is defined as Standard Industrial Classification Major Group 28—Chemicals and Allied Products. This group includes industrial establishments that produce basic chemicals and establishments that manufacture products by predominantly chemical processes. It does not include petroleum refining or Group 283—Drugs—which is examined in another section of this study.

#### THE INDUSTRY'S PROBLEMS WITH CONFLICTS AND DUPLICATION

Regulations covering air pollution, water pollution, and solid waste are a typical source of perceived conflicts for this industry. For example, residues that are accumulated from scrubbing stack gases in accordance with the Clean Air Act, or pollutants that are removed in the treatment of waste water in accordance with the Federal Water Pollution Control Act, frequently accumulate as solid wastes that present disposal problems that will probably become more complex as the hazardous waste provisions of the Resource Conservation and Recovery Act are implemented. An example is the sulfur dioxide residue which is removed from coal-burning power plants.

Most chemical plants make a variety of products, and under both the Clean Air Act and the Federal Water Pollution Control Act, wastes for each individual product must be treated with the "Best Available Technology." In a multiproduct plant, a spectrum of individual treatment operations is usually required to achieve the best available technology, thus preventing the development of large, economical waste treatment operations using a single technology that could treat all products.

Robert Polack, of the General Counsel's Office at Reilly Tar and Chemical Company in Indianapolis, cited a conflict his plant had faced. The Occupational Safety and Health Administration has requirements concerning respirators or masks that employees must wear to prevent inhaling of dangerous substances. This regulation states that such devices must fit tightly around the mouth, a condition that cannot be satisfied by any employee with a beard. The company is also subject to regulations of the Equal Employment Opportunity Commission, however, which prohibits discrimination in job assignment and prevents the company from requiring employees to be clean-shaven.

The chemical industry views itself as facing conflicting forces with respect to fuel use. Joseph Bervirt, Manager for Regulatory Cost Studies at Dow Chemical, noted that the Department of Energy wants Dow to keep using coal because of the current crisis in petroleum supplies. However, the Environmental Protection Agency says they



should switch to oil because air inversions and high humidity conditions might cause them to violate the sulfur dioxide standards of the Clean Air Act. Other companies which made the switch earlier from coal to oil are being encouraged to switch back. Each of these changes carries a very high price tag.

#### OTHER CURRENT REGULATORY PROBLEMS FOR THE CHEMICAL INDUSTRY

In general, State regulations that vary from Federal regulations can create packaging and distribution problems for firms that carry on multi-state business. Oregon, for instance, banned fluorocarbon propellants before the Federal Government outlawed them, so firms selling aerosols could not market that type in Oregon. The problem is especially burdensome with State labeling requirements that do not conform to Federal standards, and with State requirements for regulation of products that have already been approved at the Federal level.

Industries involved in the transportation of hazardous materials have recently criticized regulations issued by the Occupational Safety and Health Administration and the Department of Transportation pertaining to vinyl chloride. As a result of these regulations, it is claimed, two sets of shipping papers are required as well as differing sets of loading, unloading, labeling, and placarding requirements.<sup>1</sup> Industry spokesmen have also testified against proposed Department of Transportation regulations which they say are inconsistent with Environmental Protection Agency rules regarding reportable quantities for spills. The Chemical Manufacturing Association feels that the Department of Transportation's failure to set a "sensible limitation" for reportable quantities makes it impossible to dovetail the Department's program with the Environmental Protection Agency's.

#### POSSIBLE FUTURE CHEMICAL INDUSTRY PROBLEMS

In several areas, the chemical industry is concerned over potential regulatory conflicts that may yet emerge. One example involves various agency proposals for a generic policy on identifying and controlling carcinogens. The Occupational Safety and Health Administration has promulgated a proposal which is scheduled to become final sometime later this year (1979). The Environmental Protection Agency, the Consumer Product Safety Commission, and other agencies will then act on their own proposals, which have been reported to be similar to the Occupational Safety and Health Administration's, but perhaps not identical.

Several of the industry respondents expressed concern over potential duplications or conflicts that may arise during the Environmental Protection Agency's implementation of the Toxic Substances Control Act. Congress gave the Environmental Protection Agency broad and somewhat loosely defined authority under the Act, in part to plug any

<sup>1</sup> Rothberg, Paul. Effects of Hazardous Materials Transportation Regulations on the Delivery of Energy Products. In U.S. Library of Congress. Congressional Research Service. "National Energy Transportation, vol. III—Issues and Problems." Prepared at the request of the Senate Committees on Energy and Natural Resources and on Commerce, Science, and Transportation. 95th Congress, 2d session. Washington, U.S. Government Printing Office 1978 (Committee Print) p. 81.

regulatory gaps that have arisen in existing chemical health and safety law. Although the industry has had relatively few complaints concerning the limited number of final regulations that have been promulgated under this Act, they have expressed strong concern over the Environmental Protection Agency's proposed premanufacturing notification procedures. The Environmental Protection Agency's request for comment on a preproposal discussion of premanufacture testing policy has also attracted industry concern over any formal actions that the Agency may take.

A third area of potential conflict is regulation of the labeling of chemicals. At present, the Environmental Protection Agency, the Occupational Safety and Health Administration, the Food and Drug Administration, and the Consumer Product Safety Commission have product-specific labeling requirements for chemicals, while the Department of Transportation has generic standards, so industry officials anticipate inconsistencies and contradictions in certain labeling proposals.

#### PAPERWORK PROBLEMS

Some duplicative paperwork requirements affect a broad range of industries, including the chemical industry. Industry spokesmen point out that many companies constructing new facilities are faced with delays and duplication in obtaining permits from a variety of jurisdictions. For instance, Dow Chemical gave up a project to construct a petrochemical plant in California after spending more than two years and \$4.5 million on the regulatory paperwork. At that time they had obtained only four of the 65 permits necessary to receive Federal, State, local, and regional approval for the plant.

Another area of duplicative reporting requirements affecting a broad range of industries involves financial reporting. The Bureau of the Census, the Internal Revenue Service, the Securities and Exchange Commission, and the Federal Trade Commission, all require similar information in different forms. These agencies also have different rules on confidentiality which further complicate the preparation of their forms.

#### CONCLUDING OBSERVATIONS

Among conflicting and duplicative regulations affecting the chemical industry, most are nuisance items, although some pose major obstacles to industrial production, according to industry spokesmen. In only a few cases are regulations in such conflict that it is impossible to satisfy both or all simultaneously. The main concern is with the costs, inconveniences, and inefficiencies imposed by the regulations, features which are sometimes significantly increased by the combined effect of multiple regulations. For instance, the classic case is often cited where the Occupational Safety and Health Administration will not allow pollutants to remain in the working area, while the Environmental Protection Agency will not allow them to be dispersed into the environment until the firm complies with approved disposal procedures.

There is significant concern about proposed regulations, especially those that may be formulated under the Toxic Substances Control Act. In addition to the concern over duplication or conflict between regula-

tions, there is great concern over "crippling" costs that may be imposed by new requirements. Industry people state that their ability to plan for the future is severely compromised by continual change in governmental policies, and they anticipate a great deal of uncertainty about the financial commitments that future regulations will require of them.

The industry believes that as more agencies and levels of government become involved in regulating chemicals, the likelihood of conflict and duplication rises. The process of regulatory development is meant to allow for public comment and to eliminate potential conflicts and duplications. It is reasonable to question, however, in the light of the current concern for regulatory reform, whether present coordination mechanisms are functioning adequately.

In a study such as this, it is impossible to determine the magnitude of the problems that conflicting and duplicative regulations may pose for the chemical industry. However, a possible problem is that the multitude of permits from Federal, State, local and regional governments needed to construct a new plant can have a major impact on the expense of constructing a new industrial plant and perhaps cause delay in economic expansion. Of even greater concern to the chemical industry is the belief that the costs imposed by regulatory requirements, and the possible public disclosure of confidential testing and marketing data, may stifle innovation in the industry.

## IV. PHARMACEUTICALS

Unlike other industries examined in this study, the manufacturers of pharmaceutical preparations do not believe they are burdened with conflicting or duplicative regulations.<sup>1</sup> In the process of seeking approval to market a new medicine, drug firms must adhere to the requirements of the Food, Drug and Cosmetic Act as enforced by the Food and Drug Administration. According to the Pharmaceutical Manufacturers Association, a nonprofit trade association representing 140 member firms, just complying with these stringent regulations is enough of a burden.<sup>2</sup>

### DRUG REGULATION: DIFFERING VIEWPOINTS

According to the Food, Drug, and Cosmetic Act, Section 505(b) :

Any person may file with the Secretary an application with respect to any drug subject to the provisions of subsection (a). Such person shall submit to the Secretary as a part of the application (1) full reports of investigations which have been made to show whether or not such drug *is safe for use and whether such drug is effective* in use (italics supplied); (2) a full list of the articles used in components of such drug; (3) a full statement of the composition of such drug; (4) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (5) such samples of such drug and of the articles used as components thereof as the Secretary may require; and (6) specimens of the labeling proposed to be used for such drug.

The key requirement of this section of the Act is that a drug, in order to achieve Food and Drug Administration approval, must be proven both safe and effective for its indicated use. While drug safety was mandated by the 1938 amendments to the Food, Drug and Cosmetics Act, proof of effectiveness was not required until passage of the Kefauver-Harris Amendments in 1962 (S. 1552, 87th Congress, 1st session, later retitled the "Drug Industry Act"). Some critics have argued that meeting Food and Drug Administration efficacy requirements has led to a substantial increase in the money and time needed to discover, receive approval, and market a new chemical entity.<sup>3</sup> In line with this reasoning, it is also argued that, as a result, fewer chemical compounds can be screened, thus lowering the probability that a new drug will be discovered to treat a new or existing pathology. Proponents of this view, citing interference with medical practice and clinical investigations, claim that the general health and welfare of the public has been adversely affected.

The Food and Drug Administration, in contrast, blames this on a drying up of the scientific knowledge and innovation that led to a major breakthrough in such drug categories as antibiotics, steroids,

<sup>1</sup> Pharmaceutical Manufacturers Association, Personal Communication. June 1979.

<sup>2</sup> *Ibid.*

<sup>3</sup> Burger, Alfred. Behind the Decline in New Drugs. Chemical and Engineering News, Sept. 22, 1975, p. 37.

and psychotropics. In a *Journal of the American Medical Association* article, Dr. Donald Kennedy, former Commissioner of the Food and Drug Administration, stated that, "this wave of miracle drugs has not, unfortunately, been followed by a second wave comprising drugs that can treat with the same degree of effectiveness such difficult afflictions as: cancer, arthritis, cardiovascular disease, and a number of viral diseases."<sup>4</sup>

According to the Food, Drug and Cosmetics Act (section 505(d)), drug testing data, required to demonstrate proof of safety and efficacy, must show "substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling thereof." Furthermore, the Act states that this evidence "means evidence consisting of adequate and well controlled investigations." While these regulations appear realistic, the pharmaceutical industry believes it is overly burdened by such requirements.<sup>5</sup> Testifying before the Subcommittee on Health and Scientific Research of the Senate Committee on Labor and Human Resources, C. Joseph Stetler, former president of the Pharmaceutical Manufacturers Association, stated that, "we have long advocated a more flexible definition of drug efficacy, one that would not lessen the need for proof of effectiveness, but which would allow the Secretary of Health, Education and Welfare, on the advice of qualified experts, to exercise discretion."<sup>6</sup>

Staff attorneys for the Pharmaceutical Manufacturers Association maintain that drug safety and efficacy are within reasonable expectations for new drug development. Although the Association has taken issue with many facets of the Food and Drug Administration's approval process, it claims that it is the relationship between the industry and the Food and Drug Administration that is viewed as time consuming and expensive.

#### PROBLEMS WITH JURISDICTIONAL OVERLAPS

In the areas of duplicative and conflicting regulations, the Pharmaceutical Manufacturers Association offered three examples where jurisdictional overlap becomes a problem. First, in the area of drug labeling, State and Federal statutes can differ. This can be further complicated by the fact that the Food and Drug Administration regulates prescription drug labeling and advertising, while the Federal Trade Commission has jurisdiction over the advertising of over-the-counter medications, but not the labeling.

A second example of possible overlap involves the regulation of chemicals such as ethylene oxide. Ethylene oxide is used in the sterilization of medical equipment as well as the fumigation of certain crops. According to an article in *Chemical Week*, this chemical is a "target of the Environmental Protection Agency's 'rebuttable presumption against registration' action, under which the risks and bene-

<sup>4</sup> Kennedy, Donald. A Calm Look at Drug Lag. *Journal of the American Medical Association*, Jan. 30, 1978, vol. 239, No. 5, p. 423.

<sup>5</sup> *Ibid.*, p. 423, No. 5, p. 423.

<sup>6</sup> Stetler, C. Joseph. Testimony before Congress. U.S. Senate, Committee on Labor and Human Resources. Subcommittee on Health and Scientific Research. Drug Regulation Reform Act of 1979, May 18, 1979. Not yet printed.

fits of chemicals are analyzed if the agency suspects them of being health hazards.”<sup>7</sup>

The National Institute for Occupational Safety and Health, as well as the Occupational Safety and Health Administration, are interested in examining human exposure levels of ethylene oxide and the possible risks involved. The Food and Drug Administration may take some action in the form of regulations limiting residues of the chemical on drugs and medical devices.<sup>8</sup>

The third area of growing concern involves the regulation of recombinant DNA research. The National Institutes of Health has promulgated guidelines covering this type of research, but pharmaceutical manufacturers claim that compliance under the guidelines could lead to the disclosure of proprietary information to potential competitors. Compliance under the National Institutes of Health guidelines is voluntary at this time, and restricts research to no more than 10 litres of culture. As progress in this field continues, companies will want to “scale up” their efforts and go beyond the 10 litre limit. In order to do so the manufacturers will need National Institutes of Health exemption, but before an exemption can be granted the Institutes’ Director must know of the manufacturer’s procedures, thus risking possible disclosure. According to the journal *Nature* (March 29, 1979, p. 386), “the pharmaceutical companies are now focusing attention on the form of regulations which Food and Drug Administration is likely to bring in, following its announcement last December that it was proposing to require any firm seeking approval of a product ‘requiring the use of recombinant DNA methods in its development or manufacture’ to demonstrate its compliance with the requirements of the National Institutes of Health guidelines.”<sup>9</sup> The article further stated that drug companies are not confident that the Food and Drug Administration can protect proprietary information, and “indeed are challenging whether the Food and Drug Administration has the right to regulate the process, in addition to the product, of research.”<sup>10</sup>

### CONCLUSION

The regulatory process between the pharmaceutical industry and the Food and Drug Administration appears complicated, expensive, and time consuming. Attempts, such as drug regulatory reform legislation, have been made and are continuing in an effort to achieve compromises between the Food and Drug Administration and the industry that will hasten drug innovation and at the same time protect health care consumers.

<sup>7</sup> Chemical Week. The Environmental Protection Agency Eyes Sterilant. Feb. 8, 1978, p. 20.

<sup>8</sup> *Ibid.*, p. 20.

<sup>9</sup> Dickson, David. U.S. Drug Companies Push for Changes in Recombinant DNA Guidelines. *Nature*, vol. 278, Mar. 29, 1979, p. 385.

<sup>10</sup> *Ibid.*, p. 386.

## V. HEALTH CARE (Hospitals and Nursing Homes)

The health system is comprised of numerous different health facilities and health personnel, ranging from 1000-bed teaching hospitals in urban centers to small rural clinics run by specially trained nurse practitioners, as found in the hills of Appalachia. For purposes of this inquiry, attention is focused on regulations affecting the Nation's more than 7,000 hospitals and 18,300 nursing homes. Taken together, expenditures for hospitals and nursing home care account for over 48 percent of total national health spending and over 63 percent of total public health spending.

Although hospital and nursing home administrators face an ever mounting array of regulatory requirements, no definitive nationwide study is available which analyzes the extent or impact of Federal health regulations in general or delineates specific areas of duplication or inconsistency. In this context, it should be noted that the Federal Government currently sponsors over 300 separate health programs, each with its own statutory and regulatory requirements. In addition to Federal regulatory requirements, a host of different State and local agencies and private organizations are also involved in regulating or standard-setting for particular components of the health industry. Some have charged that jurisdictional overlap among such entities has led to a complex spiderweb of requirements which is complicated by lack of effective coordination and absence of standardized criteria.

The quantity and complexity of regulations applied to hospitals and nursing homes require that this section of the inquiry focus primarily on examples of inconsistent physical plant codes and duplicative reporting requirements. The following sections reflect the findings of studies currently underway or already completed by various public and private agencies or organizations.

### GOVERNMENT INVESTIGATIONS OF REGULATORY DUPLICATION OR INCONSISTENCY

At the request of the Senate Finance Committee, the General Accounting Office is examining selected regulatory requirements imposed on hospitals with respect to the Life Safety Code (developed by the National Fire Protection Association and incorporated as a condition of participation in Medicare). Initial findings appear to confirm anecdotal reports of inconsistency between Life Safety Code requirements and other standards a hospital must meet, such as State or local building or fire code rules. It also appears that, in some cases, various regulatory authorities use different annual editions of the Life Safety Code itself, thereby applying conflicting requirements with respect to a hospital's physical plant.

The General Accounting Office is also examining hospital reporting requirements and inspections. Preliminary findings reveal that the extent of duplication may not be as extensive as certain earlier studies

by various State hospital associations (referred to later in this review) indicate. In particular, the General Accounting Office is trying to determine whether the information needed to satisfy Federal reporting requirements is readily available or would be developed naturally in the course of a hospital's operations, regardless of Federal regulatory requirements.

An Office of Health Regulation has been created in the Health Care Financing Administration of the Department of Health, Education and Welfare to conduct cost effectiveness analysis and behavioral incentive analysis on selected existing and proposed regulations, including regulations issued by the Department as well as major health regulations of the Department of Housing and Urban Development, the Veterans' Administration, the Department of Commerce, and the Occupational Health and Safety Administration. Although not specifically charged with identifying duplication or inconsistency among regulations, the Office of Health Regulation has completed a draft compilation of Department of Health, Education and Welfare statutes and regulations affecting health care facilities and is presently developing a matrix which will organize such regulations with regard to the following tentatively defined areas: (1) Data requirements; (2) capital regulations; (3) personnel regulations; (4) patient management; (5) conditions of participation; and (6) benefits-payments limitations. The Office of Health Regulation is also examining an inventory of the Health Care Financing Administration's policy issuances to determine the role that action transmittals, administrative memoranda, intermediary manuals, etc., play in interpreting regulatory intent.

It should also be noted that, as part of the Administration's efforts on behalf of regulatory reform, the staff of the Regulatory Council, created in October 1978, has undertaken a study of duplication and inconsistency between Federal, State, and local statutory requirements as it pertains to the health care industry.

The 1977 report of the Federal Paperwork Commission provides numerous examples of duplicative reporting requirements in Federal health programs. The Commission's studies on Medicare and Medicaid singled out, among other things, the use of different claims forms as a case in point:

In 1975 Medicare and Medicaid collectively processed over 200 million claims. The compilation and processing of the data on 200 million claims is a massive operation the complexities of which are compounded by the use of claims forms which differ between Medicare and Medicaid and which, within the Medicaid program, differ from State to State. The situation is further aggravated by the fact that most insurance companies require their own company forms. It is not unusual, therefore, for a single hospital to deal regularly with 90 to 100 separate reimbursement forms differing widely in format, but containing essentially the same information.

In another instance, the Commission noted that the Veterans' Administration and the Department of Health, Education and Welfare perform redundant on-site surveys of nursing homes:

The 2,810 facilities recognized by the Veterans Administration also participate in Medicare and Medicaid and hence are surveyed doubly. The similarities between the Department of Health, Education and Welfare and VA survey programs are striking. Their goals are identical and their standards, survey instruments, and formats are nearly so. The resulting duplication in paperwork and repeated costs is considerable.



PERSPECTIVES ON HEALTH REGULATION : STUDIES BY PRIVATE INTEREST GROUPS

Several State hospital associations have conducted studies which identify, for particular States, the range of public and private regulatory or standard-setting authorities which affect hospitals. One of the major problems identified in these studies is the overlap or conflict between Federal standards on the one hand and State or local requirements on the other.

A study in 1976 by the Hospital Association of New York State revealed that 40 Federal agencies, 96 State agencies, 18 city and county agencies, and 10 voluntary and quasi-public agencies—a total of 164 agencies—regulate some facet of hospital operations in New York. Some 109 areas of hospital operations are regulated by the 164 agencies, and most areas are regulated by more than one agency. Of the 109 areas, 82 are monitored by at least 10 different agencies. For example, reports and inspections on patients' rights are monitored by 33 agencies, 15 of which are State; admitting procedures are reviewed by 25 agencies, 324 of which are State.<sup>1</sup>

While not all States regulate hospitals as extensively as New York, substantial burdens may nonetheless be imposed even in less heavily regulated States. A study prepared in 1977 for the Michigan Hospital Association noted that more than 60 different entities establish and/or enforce standards for hospital construction, ranging from the National Fire Protection Association to the Michigan Board of Pharmacy and the Detroit City Electrical Department.<sup>2</sup>

The Michigan study indicated the extreme difficulty hospitals face in complying with certain code provisions that conflict with one another. As a consequence, many hospitals apparently decide to abide by the stricter interpretation, or wait for the inspections to be performed that identify or define the specific areas of noncompliance.

Further complications arise from uneven interpretation of compliance, since inspection requires the exercise of judgment by individual inspectors of varying perspectives and degrees of expertise. A report developed by the American Hospital Association in 1977 as part of its "Project Impact" cited the following experience:

In 1974, the Social Security Administration conducted a series of hospital inspections that were intended to "validate" earlier inspections of the same hospitals conducted by the Joint Commission on Accreditation of Hospitals. Recommendations and approvals made in the JCAH inspection were frequently negated by the SSA inspection. A study of the validation surveys of 97 of the hospitals indicated that the SSA teams made 4,300 recommendations, whereas the JCAH made 2,993—and only 7 percent of the recommendations were similar.

The differences were attributed to variation in size and composition of the inspection teams. The disparate findings were also attributed to reliance on different sets of standards, such as the use of different editions of the Life Safety Code of the National Fire Protection Association.<sup>3</sup>

<sup>1</sup> Hospital Association of New York State. Report of the Task Force on Regulation. Albany, N.Y., 1976. 54 pp.

<sup>2</sup> Michigan Hospital Association. Hospital Costs Attributable to Government Regulations. Prepared by Arthur Young and Co., December 1977. 2 pts. 278 pp.

<sup>3</sup> American Hospital Association. Hospital Regulation: Report of the Special Committee on the Regulatory Process. Chicago, May 1977: 22-23. Note: AHA is presently in the process of developing a compendium of duplicative and/or conflicting Federal, State, and local regulations drawn from survey questionnaires submitted to AHA member hospitals. According to AHA sources this report is several months away from completion.

In some localities, differing codes have resulted in unusual conflicts. For example, in Chicago, compliance with the Life Safety Code requirement that hospital fire alarms be connected to the fire department was found to be in direct violation of city fire laws. A local fire department on Long Island required New York City Standard threads on all hospital fire hoses; the county fire department required another, incompatible system—National Standard threads. In another case, Occupational Safety and Health Administration requirements for plastic liners in waste cans conflicted with fire safety standards.

In a 1978 report, the Maryland Hospital Association referred to additional examples of what it considered the contradictory, redundant, or imprecise rules hospitals are often obliged to follow:

Twelve different bodies in Maryland regulate the area of waste disposal. One of these, the Maryland Water Resources Administration, requires hospitals to put waste matter through a special steaming process to purify it. A second State agency, the Division of Licensure and Certification prohibits use of this special process and requires use of a different procedure.

For years, all the State's hospital administrators were faced with the virtually impossible task of ensuring that the water temperature in patients' rooms was kept at exactly 110 degrees Fahrenheit, since the State requires that it cannot drop below that and the Federal Government decrees that it must not exceed the same 110 degrees.<sup>4</sup>

In one of the few surveys of regulatory problems facing nursing homes, the National Council of Health Care Services (representing nursing home interests) has identified 30 typical inspection visits which a nursing home may be subjected to annually and more than 520 detailed Federal requirements a skilled nursing facility must meet to participate in Medicare and Medicaid.

#### CONCLUDING OBSERVATIONS

Due to the quantity and complexity of regulations currently faced by hospitals and nursing homes, examples discussed herein have been drawn primarily from accounts of inconsistent physical plant codes and duplicative reporting requirements. However, other regulatory activities may also present dilemmas for institutional health care providers.

For example, health planning agency decisions to approve new hospital facilities or services may conflict with efforts by a State's rate setting authority to control future hospital cost increases; or a planning entity's request for utilization data may conflict with a Professional Standards Review Organization's obligation to maintain confidentiality of patient data. In other cases, certain broadly-stated national objectives or goals may appear to be in direct conflict with one another. For example, some feel that recent Government attempts to control hospital cost increases through revenue limitations or a moratorium on capital investment may adversely affect quality of care or deny the benefit of medical advances to certain segments of the population.

Albeit fragmentary, the examples used in this inquiry also attempt to illustrate the nature of certain difficulties arising from multi-agency jurisdictional overlap, particularly between Federal regulatory activities on the one hand and State or local authorities on the other.

<sup>4</sup> Saperstein, Sandra. The Crushing Burden of Regulation: Maryland Hospital Governed by 108 Agencies, Sue Over Report. Washington Post, Jan. 2, 1979: C1-2.

## VI. FARMING

For the purpose of this inquiry the agricultural sector is considered to be comprised of farms and ranches engaged in the production of raw agricultural products of either crop or livestock origin. The industry consists of some 2.4 million farms and ranches, according to the Bureau of the Census definition, which counts only those with sales of \$1,000 or more in a year.

Farmers have found regulations pertaining to pesticides, worker safety and pollution of air and water burdensome, and at times costly. The fact is that these regulations do constrain the production decisions of farm managers, in order to achieve certain public goals (a clean and healthy environment and workplace as well as a safe food supply). These regulations also frequently impose an added cost to the production of food and fiber. However, to the extent the results obtained are of benefit to society, these regulations are in effect internalizing costs that previously escaped the market price system. And while it may be difficult for farm managers to appreciate the benefits of regulations in the short run, it can be argued that they often contribute to higher productivity in the long run.

Farming and ranching have a tradition of entrepreneurial independence, and farm families in the past have enjoyed an unusual degree of freedom from societal constraints and government regulations. Urbanization, however, is rapidly extending into rural areas, and technological change is more closely integrating the farm sector with other sectors of the national economy. As a result, farmers perceive an increasingly regulated business environment. Many farmers consider the direct or indirect impact of these regulations to be conflicting, but the conflict is for the most part with other personal business or public goals rather than between or among regulations themselves.

One frequently cited example of where government policies involve conflicting goals is the tobacco program. Tobacco is one of the farm commodities protected by government mandated supply controls and price supports administered through programs of the U.S. Department of Agriculture. Many find it difficult to understand how the tobacco program can continue to be justified in the face of strong programs by HEW and other Federal agencies to discourage smoking because of its deleterious effects on human health. On the other hand, there is no evidence that elimination of price supports would result in the elimination of tobacco production from the farm economy or a reduction in consumption by the public. This dilemma was discussed in a recent article entitled "U.S. Tobacco Policy: Burning at Both Ends," which appeared in the November 1979 *Farm Index*, a publication of the U.S. Department of Agriculture:

USDA experts say the price support program does not encourage tobacco use. Nor would its elimination greatly affect smoking, they add. In fact, that would probably decrease the retail price of cigarettes slightly. So if doing away with the program would affect consumption of cigarettes in any way, it would increase it.

### DUPLICATIVE REPORTING REQUIREMENTS

Every five years the Bureau of the Census conducts a nationwide census of agriculture. The 1974 agricultural census began on December 28, 1974, when the Census Bureau mailed out 4.1 million forms, each consisting of 26 pages of questions and instructions. Between December and June of 1975, the Bureau mailed out 13 million additional pieces of mail to about 3 million farmers. At the conclusion of the census, one out of every ten farmers and ranchers had failed to respond even though threatened with criminal prosecution. The Bureau of Census estimates that it took an aggregate of 3.4 million hours for respondents to fill out the forms for the 1974 census of agriculture.

The census of agriculture is only one of a number of government information surveys affecting farmers. They are called upon frequently by several agencies of the U.S. Department of Agriculture, particularly the Economics, Statistics, and Cooperative Service and the Agricultural Stabilization and Conservation Service, to provide information on their operations. In addition, farmers must file annual tax returns, social security reports, and health and safety reports. Other Federal and State programs and regulations also place information demands on the farmer. These reports require much duplication of effort on the part of farmers. Though the various reports serve different objectives, many ask for substantially the same information. However, because of a lack of consistency among reports, farmers must recompute the information each time. In addition, Federal laws requiring that agencies maintain the confidentiality of data preclude the exchange of information among agencies.

Farmers' complaints about their increasing paper burden resulted in legislative proposals in the 94th and 95th Congress to overhaul the agricultural census. Several bills simply mandated a 50 percent reduction in the paperwork required of census respondents. Other proposals called for greater use of sampling techniques, rather than complete enumeration, for census data collection. Yet other proposals would have transferred responsibility for the census of agriculture to the Department of Agriculture.

In testimony before the Subcommittee on Census and Population of the House Committee on Post Office and Civil Service, William Kibler, Administrator of the United States Department of Agriculture's Statistical Reporting Service, estimated that a 25 percent sample, involving 700,000 to 800,000 farms, would produce adequate and accurate census data. Such a change would reduce the estimated cost of the 1978 agricultural census from \$40 million to \$9 million and save over 2 million hours of farmer's time.<sup>1</sup>

Representative Neal Smith, in testimony before the same Subcommittee, pointed out that the Statistical Reporting Service of the De-

<sup>1</sup> Agricultural Census. Hearings before the Subcommittee on Census and Population of the Committee on Post Office and Civil Service, House of Representatives, 94th Congress, 2d session, June 22 and 23, 1976. Serial No. 94-76.

partment of Agriculture has a full field staff of trained enumerators that could be used to collect census data. The Service also has compiled and maintained a general purpose list of farm operator names and addresses, which the Bureau of the Census recreates for itself each 5 years.

John Stencel, President of the Rocky Mountain Farmers Union, in testimony before the Subcommittee, observed that county Agricultural Stabilization and Conservation Service offices have most of the data needed and sought by most government agencies. He advocated a greater effort toward exchange of information among various government agencies as a way of reducing the burden on farmers.

Government surveys and reports are often justified as being of value primarily to farmers. However, a survey of readers by *Successful Farming* magazine cast doubt on the entire Department of Agriculture crop and livestock reporting system. The magazine said 75 percent of more than 3,000 farmers who responded to the survey believe the crop and livestock reports published by the Department of Agriculture and mailed to most farmers are worthless, because of inaccuracy and lateness.

In summary, farmers complain about the increasing reporting requirements placed upon them by the Census of Agriculture and by several data collection and program administration agencies of the Department of Agriculture. Critics of these programs claim that the reporting requirements are duplicative and the published reports of little value to farmers. Supporters of these programs point out that the Census of Agriculture is the only reliable published source of county level agricultural data. Census data are published for States and localities and provide considerable data about farms as economic units.

## VII. HOUSING

The focus of this inquiry is on conflicting and duplicative Federal regulations that have an important effect upon the homebuilding industry.

Housing construction is generally viewed as a high-cost low-productivity industry. Builders themselves seem to accept this characterization, and place some of the blame on government regulations. A recent industry report states:

One of the important contributing factors in the rising cost of new homes is overly restrictive government regulations and codes. Not only do regulations vary from area to area, but they are imposed by all layers of government—local, State and Federal. Some regulations, of course, are necessary for safety and health, but others are not. Nevertheless, all add to the price of housing.<sup>1</sup>

House building is a relatively small scale activity that is carried out within local markets and local jurisdictions. In his day-to-day operations, the builder deals with local zoning ordinances and subdivision requirements, local restrictions on burning, and local requirements on provision of facilities and services.

In the financing of single-family homes, only one-fourth of the units involved Federal loans or guarantees, according to an industry survey of 1976 production.<sup>2</sup> Still, national concerns embodied in Federal laws and regulations constitute a framework within which housing is produced in the United States. Four principal concerns that affect housing production are discussed below: environmental protection, resource conservation, labor requirements, and monetary policy. Certain requirements imposed by the Federal Housing Administration, the Veterans' Administration, and the Farmers Home Administration are also noted.<sup>3</sup>

### PROBLEMS WITH ENVIRONMENTAL PROTECTION REGULATIONS

Over the past ten years home builders have faced a growing number of governmental restrictions that limit the supply of developable land and stretch out the development and building process. The start of this period roughly coincided with passage of the National Environmental Protection Act in 1969. The general heading of "environmental protection" here includes not only environmental impact reviews but coastal zoning, flood plain zoning, and noise assessment requirements. Such measures are intended to prevent environmental degradation and improper siting of new housing developments. At the same time, they restrict the amount of land available for construction and may add six

<sup>1</sup> Profile of the Builder, National Association of Home Builders, 1979, p. 74.

<sup>2</sup> *Ibid.*, p. 79.

<sup>3</sup> And regulations bearing on the financing, transfer and operation of existing residential real estate. These are not addressed in this inquiry.

to twelve months or longer to the development process. This makes for a conflict between two Federal concerns: protecting the environment and providing decent housing within the means of moderate- and low-income families. A Federal Task Force observed:

Costs to the developer as a result of unscheduled regulatory delay can include increased carrying charges for land, increased overhead cost, increased costs of labor and materials due to inflation, and a loss of sales from changes in the market . . . Federally-assisted housing projects above a certain threshold size must be reviewed for potential environmental impact. HUD Noise Assessment guidelines, Army Corps of Engineers dredge and fill permits, and various EPA requirements and permits are among the other Federal regulations which affect development.<sup>4</sup>

An example of the conflict between environmental concerns and housing needs is found in Montgomery County, Maryland, just outside the Nation's capital. Portions of this county have been placed under development moratoria at various times during the past ten years as a result of inadequate sewage treatment capacity. So limited are the waste treatment facilities currently serving the county that if all unused capacity were assigned to new housing, only 1,000 homes could be built. A study by the areawide Council of Governments estimated a need to produce about 9,500 units a year in Montgomery County during the 1970's. Actual construction has fallen far short of this level, partly due to the lack of sewerage facilities. (It is interesting to note that the Environmental Protection Agency turned down a county request for financial assistance for a new facility partly on grounds that the proposed plant provided some excess capacity for future growth; the Environmental Protection Agency views its mandate as helping localities pay for projects to clean up the water but not to facilitate further development.)

#### RESOURCE CONSERVATION VERSUS LUMBER REQUIREMENTS

Lumber and wood products make up about 14 percent of the total sales price of a typical new single family house. Federal policies or actions that result in restrictions on the harvesting of timber are viewed by home builders as detrimental to their industry and a cause of higher housing prices. Home builders have complained recurrently about limitations on timber cutting on Federal forest lands, which contain more than half of the timber standing on U.S. soil.

Behind current complaints of home builders is a longstanding conflict between conservationists, who want to keep the Federal forest lands in wilderness, and commercial lumber producers. In 1970, the Forest Service of the Department of Agriculture undertook a major inventory of the roadless areas in the National Forest system for the purpose of recommending to Congress which of these lands should be designated as wilderness. Any forest land so designated cannot have any timber harvested from it or be developed for any purpose.

Neither the lumber producers nor the conservationists were satisfied with the recommendations of the first study, so a second roadless area review and evaluation study was undertaken in 1977. During

<sup>4</sup> Final Report of the Task Force on Housing Costs. U.S. Department of Housing and Urban Development, May 1978, p. 28.

the term of the study a moratorium was placed on the harvesting of timber from vast acreages of national forest lands (this was largely lifted in the spring of 1979). The recent moratorium applied to some 62 million acres of Federal forest land, or more than a third of all such lands.

Meanwhile, the price of lumber and wood products escalated sharply—by 56 percent between 1975 and 1978. This compares with a 22 percent increase in the producer price index for all industrial commodities during the same period. Thus, Federal policies for the conservation of natural resources such as timber can conflict with the Federal objective of bringing housing within the means of moderate- and low-income families.

### LABOR REQUIREMENTS AND HOUSING COSTS

Labor costs are perceived as a significant problem by many builders. An industry survey covering 1976 activities found that more than half of the builders considered labor costs (or problems) a serious difficulty and one out of eight listed it as the most significant problem.<sup>5</sup>

A focal point of builder discontent in this area is with the Davis-Bacon Act. Under this law, the Department of Labor determines the "prevailing wages" that must be paid for the various crafts on certain types of federally financed or assisted construction, including subsidized multifamily housing. Disputes arise not only with regard to the wage determinations but also with the classification of workers among the various skills. Producer groups are currently engaged in efforts to secure repeal of all or portions of this law.

Builders associated with the National Association of Home Builders estimate that the added labor costs and reporting requirements (employers must submit reports weekly on their wage payments) of the Davis-Bacon Act increase the cost of a federally-subsidized rental housing development by 5 to 10 percent. As an example, a 34-unit rental assistance project financed under Section 8 cost \$600,000; the builder estimated that compliance with Davis-Bacon prevailing wage requirements added about \$42,000. This will be reflected in higher rents and subsidies over the economic life of the project.

Builders may challenge the Department of Labor's wage determinations, but few are individually prepared to do so. The Department does adjust the rates from time to time, but not always to the satisfaction of the producer. One builder appealed a series of determinations he reported as follows: In April 1975 the Department of Labor determined the prevailing wage rate for plumbers in his area to be \$4.71 per hour. In May 1976 the rate (including fringe benefits) was set at \$10.75; in June 1977 the rate was lowered to \$6.50. This builder requested the \$6.50 rate on an ongoing project but was required to pay \$10.75, the rate prevailing at the time construction was started.

The actual impact of Federal wage requirements on housing costs and prices may be less serious than industry spokesmen say. Builders themselves reported using union labor in only 8 percent of single-family houses and 17 percent of multifamily developments. Moreover, on-

<sup>5</sup> Profile of the Builder, op. cit., pp. 61-63.



site labor costs are now estimated to account for about 17 percent of the sales price of a new one-family house, compared with about 30 percent in the 1940s. Still, Federal wage determinations are viewed by some builders as a factor in the high costs of providing housing for moderate- and low-income families.

### EFFECTS OF MONETARY POLICY

Since the mid-1960s, the homebuilding industry has suffered three marked declines in production. The most severe drop in recent times was from an annual rate of 2.4 million starts in the fourth quarter of 1972 to a 995,000 rate in the first quarter of 1975, a 59 percent decline. These sharp fluctuations in housing production have been associated with actions taken by the monetary authorities to stimulate the economy (as in most of 1972) or to reduce inflationary pressures (as in 1973 and 1974). Sharp rises in short-term interest rates have usually drained funds from thrift institutions that make the bulk of home mortgage loans, thus leading to a decline in homebuilding.

Cyclical fluctuations in availability of mortgage credit are believed to be a major cause of rising home production costs. The uncertainty discourages many homebuilding firms from expanding their operations and securing economies of scale in materials purchasing and specialization of labor. In fact, an industry survey found an increase in subcontracting and a reduction in average number of workers per construction firm between 1969 and 1976.<sup>6</sup>

High interest rates associated with efforts of the Federal Reserve to contain inflation in the economy at large are quickly reflected in higher construction loan charges to builders (16 to 18 percent in November 1979) and higher prices to homebuyers. Long-term mortgage interest rates of 11 to 12 percent (the current range) require monthly payments that are too high for some moderate-income families who would like to buy homes, particularly young first-time buyers.

Recognizing the sensitivity of their business to rising interest rates, the homebuilder groups have from time to time urged more reliance upon fiscal policy or other measures to curb inflation, rather than primary emphasis on monetary policy.

#### APPENDIX. SOME EXAMPLES OF DUPLICATIVE OR EXCESSIVE REPORTING REQUIREMENTS AS PERCEIVED BY HOUSING PRODUCERS<sup>7</sup>

1. The VA will not accept the FHA appraisal on a property because they approach value in a slightly different direction. Certain things can be included in the FHA evaluation such as closing costs, but they cannot be in the VA evaluation. FHA will accept the VA evaluation. (This entails a duplication of effort on the part of the applicant.)

2. Environmental reviews prepared by State agencies are not (1978) accepted for purposes of NEPA environmental reviews even when consistent with procedures followed by Federal agencies.

<sup>6</sup> Profile of the Builder, op. cit., p. 61.

<sup>7</sup> U.S. Congress. House Committee on the Budget. Government Regulations of FHA Subsidized Programs. Hearings before the Task Force on Tax Expenditures, Government Organization, and Regulation, 95th Congress, 1st session, May 19 and 20, 1977. Washington, U.S. Government Printing Office, 1977. Statement by Carl A. S. Coan, Jr., Legislative Counsel, National Housing Conference.

3. Multifamily projects which have already received environmental approval from a local government in conjunction with community development block grants applications still undergo an environmental assessment from HUD.

4. HUD, VA, and FmHA have different standards for requiring Environmental Impact Statements. HUD's threshold requires an EIS for a multifamily project of 500 units or more. Smaller HUD-assisted projects can use an environmental clearance procedure in which an abbreviated assessment is undertaken. VA and FmHA have lower thresholds but more discretion in requiring an environmental assessment or a more involved environmental impact statement.

5. Included among the reporting requirements are weekly certified payroll forms to verify compliance with the Davis-Bacon prevailing wage rate provisions; monthly reports to the Office of Federal Contract Compliance, which looks at the utilization of minorities and women; data collection for affirmative action programs, such as the number of minorities and women hired and fired, what efforts have been taken to attract these people to the firm and the industry, and what training programs are available for minorities and women; Occupational Safety and Health Administration recordkeeping logs are required at each site.

## VIII. ENERGY: COAL AND NUCLEAR

This inquiry examines the problems of duplication and conflicts among regulation affecting two major segments of the energy industry—coal and atomic energy. Much of the section is based on material supplied by two associations: the National Coal Association and the Atomic Industrial Forum.

### PROBLEMS FACING THE COAL INDUSTRY

The National Coal Association wrote to the President on April 3, 1979, to inform him that the Nation was likely to fall short of its goal of doubling coal use by 1985, due primarily to unnecessary adverse effects of certain Government policies and actions. The Association pointed out that:

More than 30 major organizational units in 12 departments and agencies now have activities which affect coal production, transportation and use—often adversely.

None of the departments or agencies has sufficient breadth of authority, responsibility or perspective to establish policies and take actions that adequately reflect a balance among the conflicting national objectives that are involved.

No one in the government is aware of the combined adverse effects of the policies being pursued by the various agencies.

Agency policies and actions are often inconsistent with agency officials' statements of support for the goal of increasing the use of domestic coal.

Many in government misunderstand the adverse impact of current policies, as reflected in conclusions that the problem is "lack of regulatory certainty." Frequently changing and often delayed regulatory actions are one problem but the far more serious problem is unnecessary and unreasonable stringency of requirements. The net result is that little is now being done within the government to deal constructively with the *real* constraints on increased use of coal. Instead, agency policies and actions in pursuit of other objectives are *unnecessary and without compensating benefits*. (Italics in the original.)

As an example of problems the coal industry faces, the Association noted two recent developments in Texas:

A large industrial firm which had planned to build four coal-fired facilities has cancelled plans for three of them after the Interstate Commerce Commission (ICC) approved rates for hauling coal to the plants that were about three times the rates that had been expected.

The Railroad Commission of Texas (which is responsible for regulating electricity and natural gas) is in the process of withdrawing its 1975-76 order to utilities and large industrial users to use coal instead of natural gas. Texas was the national leader in moving to coal. Some 30 of the approximately 250 coal-fired utility units expected to come on line in the next 10 years are in Texas. In explaining the proposed rescission, the Commission cited high ICC approved freight rates for coal, stringent air quality requirements, lack of decisive leadership on energy elsewhere, and confusion in the Federal policy over the use of natural gas, which could lead to the export of a Texas-produced resource to other areas.

In testimony May 14, 1979, before the Senate Small Business Committee, Jerry L. Lombardo, of the Island Creek Coal Co., pointed out

that 28 laws regulate production in the four States in which his company operates. He elaborated on the problems of water:

We use very little water in coal mining. Perhaps five (5) percent of the water we handle every day is actually put to use. The rest is an unwanted intruder which must be diverted or pumped away for the safety of men and equipment.

When we pump water from a deep mine or impound water at surface mines, we have created "point sources" which are regulated under the Federal Water Pollution Control Act (P.L. 92-500). Thus, we must apply for a national pollutant discharge elimination system (NPDES) permit created under that Act to be allowed to discharge water. In three of the four States in which we mine, this means applying to the U.S. Environmental Protection Agency. To date, only Virginia, of these four States, has been given primacy by the Environmental Protection Agency to issue NPDES permits.

Issuance of a NPDES permit by the EPA constitutes a "major Federal action" and thus comes under the authority of the National Environmental Policy Act (NEPA) which, as you know, requires an environmental assessment to predict the impact such an action may have on the environment. We had been assured by EPA that only "new sources" will come under NEPA scrutiny and one would think that under this concept, that the application of NEPA to our discharges would be narrowed considerably, but that turns out not to be the case. When promulgating "new source performance standards" (NSPS) for the coal industry (40 CFR 434, FR 2586), January 12, 1979), EPA imposed several conditions (they call them "events") under which an *existing* mine could be declared a new source. (This absurd concept became known in the industry as "snowmelt and the seven events" because EPA, at about the same time, began including snowmelt as a consideration to sizing runoff ponds.) I won't bore you with listing all seven. One, however, includes the mere construction of a new shaft as a condition which could throw an existing mine into the new source category.

Now, we have deep mines which are 25 to 30 years old in some cases. As the mine develops and expands, we must drill new shafts to provide fresh air to men underground. In constructing the shaft, we are apt to intercept aquifers. To keep this water uncontaminated, devices called "water rings" are built into the shaft to route water to the shaft bottom where it is pumped away to the surface. This activity also requires a water discharge permit. At that point, EPA could declare that this 25 year old mine is a new source calling for an environmental assessment before permit approval can be granted. The assessment could take up to a year of data gathering. Now, what could an environmental assessment show in an area where mining has been going on for 25 or more years? How could we establish or even estimate what the baseline conditions were prior to mining? As to social and economic effects, the miners have been hired, more than likely a townsite has sprung up and any supporting community developments have already taken place. Well, one might presume, that in cases of this type, EPA could easily issue a "negative declaration" and not require a full-blown environmental impact statement. EPA does nothing easily. There are built-in time delays inherent in the application review process and public notice procedures for both the intent to issue a negative declaration and permit approval.

It is a well-known fact that there are well-organized groups who are dedicated in their opposition to our industry who jump at every chance to lodge protests during public notice periods regardless of the permit involved and with little regard for the merit of their protests. As you know, all recent legislation, both State and Federal, include extensive public participation provisions and well they should. But these provisions have become an area of abuse by a vociferous few who use them as delaying tactics whenever possible. And as you know, delays in their opposition to our industry who jump at every chance to lodge protests permitting requirements are costs which must be accounted for even though admittedly it may be difficult to estimate what those costs really are.

Another witness at the hearing, James R. Jones, of the Peabody Coal Co., cited a conflict between two environmental requirements:

The Tennessee Valley Authority recently arrived at an agreement with the EPA concerning sulfur dioxide emissions from its power plants. A part of that

court settlement required further cleaning of coal presently supplied to TVA. It required construction of a coal washing plant for our Camp No. 9 complex in West Kentucky. We designed a closed circuit water system for the preparation plant and when we submitted the NPDES permit application, we were told by EPA that we would have to submit extensive environmental information. EPA further advised that it might take them as much as 24 months to complete the review process. We submitted the permit application on June 8, 1978, and in accordance with the TVA court order, were to begin construction of the preparation plant by August 15, 1978. Faced with the potential delays outlined, we had to advise TVA that we would be unable to begin construction in the time frame specified by the court order. Six months after submittal of the permit application, the development and submittal of environmental data, we were notified that a full environmental impact statement would not be required.

Arthur W. Murphy listed three reasons for the excessive delay in building coal and nuclear power plants.<sup>1</sup> First, in the American federal system, duplication by national and State governments is inherent. Second, case by case decisionmaking through adjudication fosters delay. Third is the incipient movement toward limiting economic growth, soft technology, and control of nuclear technology. Murphy placed the blame on Congress:

The problems that these provisions create for the licensing of power plants are, in large part, a function of (a) Congress' failure to conduct anything more than a general balancing of the specific public interest to be served by a particular statute (e.g., protection of public health or of an endangered species) against the statute's impact on other important public interests (e.g., energy needs) and (b) Congress' failure to consider the cumulative impact of its statutes.

#### A BRIEF NOTE ON NUCLEAR INDUSTRY PROBLEMS

John S. Ward made a similar criticism at the Atomic Industrial Forum Conference on Legal and Legislative Affairs meeting at Las Vegas on January 15, 1979:

I know of no true scientist or engineer who believes that the truth can be arrived at through adjudicatory procedures, yet that is the nature of the nuclear regulatory system.

At the last conference on Legal and Legislative Affairs in Miami, Harold Green made an eloquent statement regarding the frustrations posed by the present hearing process upon applicant and intervener alike. In his discussion, he points out the greatest problem with the use of the adjudicatory system in nuclear plant licensing hearings. He argued that while the NRC's regulations do indeed provide ample opportunity for public participation, they so severely restricted the scope of permitted topics for adjudication that an intervener is prevented from discussing his real concerns. These real concerns are associated with national policy, human morality, socio-economic planning, etc. Faced with procedural rules that prevent intervention on these issues, the intervener's only choice is to intervene on technical grounds of public safety, for which he is ill-prepared to make a defensible case. He cannot match the technical resources available to the Commission and the applicant and therefore must seek ways to assure procedural delays. If Harold Green is correct, and I believe there is considerable merit in this thesis, the intervener seeks to incur sufficient delay to make the project cost-ineffective.<sup>2</sup>

<sup>1</sup> The Licensing of Power Plants in the United States. Seven Springs Center of Yale University, January 1978, pp. 2-3.

<sup>2</sup> *Ibid.*, p. 40.