Perspectives
on current developments

Issues in Airline Regulatory Reform

For the first time since the creation of the Civil Aeronautics Board in 1938, federal economic regulation of the airline industry is under sustained attack. In October 1975 President Ford sent Congress a proposal to allow more entry into the airline business, to give carriers more discretion to set fares and abandon unprofitable markets, and to limit the CAB's power to grant antitrust immunity for carriers to collude over rates and services. Earlier, in February 1975, Senator Edward Kennedy's Subcommittee on Administrative Practice and Procedure had issued a report strongly favoring liberalization of CAB regulation. On March 4 of this year, President Carter, in a special message to Congress, endorsed a reduction in federal regulation of the airlines. And in March and April, the Senate and House aviation subcommittees held hearings on the subject.

Dozens of government and nongovernment studies have shown that CAB regulation produces economic inefficiency. The fares charged by the intrastate airlines in California and Texas are traditionally 30 to 50 percent lower than CAB-regulated fares for comparable distances. Though in some ways consumers benefit from the nonprice competition that results from CAB regulation, the value of those benefits is shown in these studies to be less than the increase in fares. Estimates of the net costs of regulation, which vary considerably, range into the billions of dollars per year.

Opponents of airline regulatory reform argue that it would eliminate scheduled service to many small communities, bankrupt numerous large air carriers, and cause substantial unemployment for airline labor. Two volumes being published by the American Enterprise Institute—*Regulatory Reform*, edited by Thomas Gale Moore and Robert A. Nesser, and *Regulation of Passenger Fares and Competition among the Airlines*, edited by Paul W. MacAvoy and John W. Snow—disagree. Both point out that evidence from the unregulated commuter airlines and intrastate carriers suggests that a reduction in regulation would eventually lead to better service for small communities. In any case, the proposed reforms include provisions to ensure the continuation of service to small communities. Papers in these volumes also argue against the specter of carrier bankruptcy: The lower fares that would result should stimulate demand, so that the load factors would rise. The increased demand would, moreover, require an increase in the number of employees in the passenger service areas. Thus, though the rate of growth in air crews and other personnel supporting flights might not rise as rapidly as it has, the rate of growth in ticket agents, reservations personnel, and baggage handlers should be significantly higher than in the past.

Two approaches to airline regulatory reform are under consideration by the Congress, neither of which amounts to complete deregulation. A bill sponsored by Senators Howard Cannon and Edward Kennedy (S.689) would give the CAB a timetable for initiating specific reforms and would set limits on the extent to which the board could restrain competition. A bill sponsored by Senators James Pearson and Howard Baker (S.292)—and supported by the CAB—is more open-ended, for it would give the board general guidelines for reform but allow it considerable latitude as to how to go about achieving reform—and indeed as to how much reform will be achieved. Working under a similar discretionary plan for reforming regulation of the railroads, the Interstate Commerce Commission has come up with findings that are basically anticompetitive and consistent with the kinds of regulation it has promulgated in the past.

On Cable-TV and "Lobbying" before the Agencies

In a March 25 decision, the U.S. Court of Appeals for the District of Columbia struck down several regulations of the Federal Communications Commission restricting cable TV, the most important of which prevented subscription cable systems from competing with broadcast TV for rights to some feature films and sporting events (*Home Box Office, Inc.* v. *FCC,* 1977). The decision is a major victory for cable in the "siphoning" controversy—which involves two issues: will "free," advertiser-sponsored TV deteriorate in quality if pay-cable is permitted to bid freely for the most desirable programming, and, if so, does the FCC have authority to prevent this? Of much greater government-wide importance, the decision imposes a new prohibition against informal, off-the-record contacts with all regulatory agencies in rulemaking proceedings.

1. Of course, the most critical issue in the siphoning dispute is whether, given deleterious effects upon "free" TV, the FCC has authority to prevent competition for programming. The court does not conclude this issue. It finds that the commission relied upon inadequate grounds of authority, but suggests that it would support FCC intervention (given a proper factual showing of harm) if only the commission would base its action upon statutory authority to regulate the content of entertainment programming. In an earlier decision (*Citizens Committee to Save WEFM* v. *FCC,* 1974), the present court found that such authority exists, but the FCC has obstinately refused to use it, persisting in what the present opinion disapprovingly calls "the *laissez faire* approach."

The siphoning ruling rests, for the most part, on evidentiary grounds. The court held that the FCC had not produced sufficient facts to show that the public interest requires the preservation of "free" broadcasting as the basic national service. The latter point involves the long-standing contentions of broadcasting advocates that the quality of the present system must be preserved (1) because much of the nation can never be "wired" since the costs would be prohibitive in some places (rural and inner-city areas) and (2) because the poor would not be able to pay for cable programs. The cable industry's replies include the assertions that fiber-optics will dramatically reduce wiring costs in the next decade; that new technology will soon enable rural areas to be served by direct-broadcast satellites instead of local stations; that "free," advertiser-sponsored programs will exist in the wired nation as well; and that if the poor need special assistance it should be given directly, rather than through suppressing a new technology.

It seems clear that when enough households are "wired," cable will be able to outbid advertiser-sponsored TV for certain programs. Advertiser sponsorship means that only the *breadth* of a program's audience appeal, not its *intensity,* can be effectively turned into a profit—since the advertiser pays on the basis of estimated total audience, no matter how ardent the enthusiasm of the audience may be. Pay TV, on the other hand, by charging a high fee for a program that is intensely popular, can capitalize upon the depth as well as the breadth of appeal. This has the advantage of making commercially feasible the sort of programming that attracts a limited but highly enthusiastic audience. Thus the Metropolitan Opera might be televised to a relatively small audience at a relatively high fee. But it also means that programs which are *both* widely *and* intensely popular and which are now shown on "free" TV (for example, the World Series) will be more lucrative to cable entrepreneurs, who might charge, let us say, 50 cents per viewer, than to commercial broadcasters, who are only able to exact a few cents per viewer from advertisers. The issue which the present court finds not resolved on the basis of the evidence adduced in the FCC rulemaking is whether such siphoning will occur to a degree that affects the overall caliber of "free" TV.

2. In the last portion of its opinion, the court found the FCC proceeding to be invalidated by "ex parte contacts" (roughly equivalent to off-the-record discussions of the issues) between persons outside the agency and FCC commissioners and staff. Such contacts have not hitherto been thought unlawful in rulemaking proceedings, unless there are special agency-imposed restrictions. The new prohibition will have a far-reaching impact upon rulemaking throughout the federal government. Some of its probable effects will be (1) to reduce substantially the voice of the regulated

industry in rulemaking, particularly in one-industry agencies such as the FCC where staff and the commissioners have frequent informal contacts with industry representatives; (2) to reduce the influence of the congressional committees with substantive jurisdiction over the agencies, whose chairmen and members are often consulted (or volunteer their views) informally; (3) to increase substantially the power of agency staff members who draft proposed rules, since they alone among all the participants in the proceedings will have informal access to the decision-makers; (4) to impede, to some extent, agency acquisition of the expertise that comes from constant informal discussion with the regulated industry —since even the most generalized issues (for instance, in the present case, the anticipated growth rate of cable) may be relevant to a pending rulemaking and thus not a proper subject of discussion; and (5) to cause agencies to examine proposed rules more carefully *before* issuing them for comment (since it is only upon issuance that the ex parte prohibition attaches), with the result that the task of persuading a regulatory commission to change a proposed rule will be harder than it is now.

An extraordinary eight weeks after the original opinion was issued, one member of the panel expressed some second thoughts on the ex parte prohibition. In a separate concurring opinion published on May 20, Judge George MacKinnon stated his intent to limit that prohibition to rulemakings that "involve competing private claims to a valuable privilege or selective treatment of competing business interests of great monetary value." Since Judge MacKinnon's views on this point are in a minority, the categorical sweep of the ex parte prohibition remains the court's decision.

3. The FCC has acquiesced in that portion of the decision which eliminates restrictions upon the purchase of feature films, but is seeking Supreme Court review of the remainder. Because of the far-reaching importance of the ex parte point, it seems likely that the Supreme Court will accept review. Thus, the *Home Box Office* decision may give the Court an occasion to reexamine its earlier decisions concerning the scope of FCC jurisdiction over cable TV. That jurisdiction is only derivative, arising from the fact that cable systems (in addition to originating programming) acquire and transmit to their viewers the broadcast-TV signals that are the FCC's primary field of jurisdiction. In its *Midwest Video* decision (1972), the Court upheld the FCC's power, on the basis of this derivative jurisdiction, to compel cable systems to originate programming (instead of merely retransmitting broadcast signals). The decision was five to four. One of the five, Chief Justice Burger, wrote a separate concurrence, in which he acknowledged that the commission's action "strains the outer limits" of its jurisdiction, and suggested "the need of a comprehensive reexamination of the statutory scheme as it relates to [cable], so that the basic policies are considered by Congress and not left entirely to the commission and the courts." It is a real possibility that the Supreme Court will be willing to reach the issue which the court of appeals in the present case avoided: the authority of the FCC to protect "free" TV against competition from cable in the program market.

Improved UHF Reception— How Much? Who Will Pay?

Purchasers of new television sets may have to pay a premium for improved UHF reception whether they want improved reception or not. They will, if the Federal Communications Commission approves a proposed change in regulation sought by the CUB (Council for UHF Broadcasting) and others.

The CUB contends that (1) the All-Channel Receiver Act of 1962 requires that reception through UHF and VHF be comparable and that (2) since UHF reception tends to be inferior to that of its rival, "whatever can reasonably be done to improve UHF is *per se* in the public interest and should be undertaken absent a strong showing of detriment to the public." The UHF broadcasters want the FCC to require TV manufacturers to upgrade UHF tuners by lowering the permissible noise level (the "snow" in the picture) from eighteen decibels to ten over a thirty-month period. This standard could be met, they claim, with present technology at a relatively low cost.

In response, the Consumer Electronics Group, which represents all major American manufacturers of TV sets and several Japanese

companies with plants in the United States, argues that the CUB is pushing for standards that exceed the capabilities of present technology. What is more, the CEG argues, even if the standards were feasible, meeting them would be far more costly than the CUB alleges and would increase the chances of cross-channel interference. These points the CUB denies.

Comparability can be achieved, of course, in other ways. The alternative preferred by the manufacturers would be to require UHF broadcasters to increase their transmitting power. Reception would then be improved for all UHF viewers, not just those with new sets. The CUB claims that stronger signals would cause "overlapping" among neighboring stations and would be prohibitively expensive for most UHF stations.

Clearly, self-interest is involved on both sides. While both groups would gain from improved UHF reception, the manufacturers (and their customers) would bear the cost of the CUB proposal, while the broadcasters (plus their viewer/contributors or their advertisers) would bear most of the cost of the CEG alternative.

Another way to get comparability would be to spread the cost by finding an appropriate combination of increased transmitting power and higher tuner standards. Milton Kafoglis of the Council on Wage and Price Stability, working with existing data, analyzed alternative combinations for reaching a nine-decibel improvement. He concluded that it would cost roughly $300 million to achieve the first six-decibel improvement through better tuners, compared to only $80 million through increased power; for the remaining three decibels, however, better tuners would cost only $150 million, compared to over $190 million for increased power. This implies that the least-cost means of achieving comparability is through a combination of tuner improvement and increased broadcasting power. Whether such an approach will be adopted depends on the outcome of further research and on the FCC's decision.

Also at issue in this case is whether the All-Channel Receiver Act requires comparability, as the CUB asserts. This issue may have to be resolved in the courts.

OSHA and Work-Place Hazards: Cotton Dust

Only in the last few years has cotton dust come to be regarded as a major health hazard. OSHA, responding to a recommendation from the National Institute for Occupational Safety and Health, proposed last December to tighten its standard for worker exposure to cotton dust from 1.0 milligram per cubic meter of air to 0.2 milligram.

Workers exposed to the cotton dust found in most phases of textile manufacture have an above average propensity to develop respiratory ailments, particularly byssinosis (or brown lung, a condition associated only with cotton dust). In order to reduce the level of exposure, the Occupational Safety and Health Administration proposes "engineering controls"—that is, the installation of machinery to clear the air. Until these controls are installed, respirators would be required, and they would remain in use in those areas where the standard could not be met exclusively through reliance upon engineering controls.

The economic impact statement accompanying the proposed standard raises important questions. First, though the cost of the required equipment is carefully worked out—$2.7 billion in capital investment and $261.6 million in yearly operating costs, for an annualized cost of $694.9 million—the attempt to estimate benefits is decidedly weak. There is little quantification of the overall impact of byssinosis—for example, its mortality rate and the extent to which it is disabling—and no discussion of possible cures. OSHA's analysis only provides a rough partial estimate of how many cases of byssinosis would be avoided by moving from the present standard to the proposed standard—388 cases a year in yarn production and 1,361 in weaving.

Second, there is reason to wonder if OSHA's proposed standard is the least costly way to reach the objective of reducing disease and loss of life. In other words, is the proposal cost-effective?

- The data given in the economic impact statement indicate that the average cost of avoiding a case of byssinosis would be $388,000. This figure is higher than some agencies budget to avoid *deaths*—not illnesses—sug-

gesting that more deaths might be avoided if the resources were put, instead, into areas like highway safety or cancer research.

- The standard is to apply uniformly across the industry, even though the estimated annual *marginal* cost per illness avoided is $632,000 for yarn production and $1.22 million for weaving. This spread implies that a tighter standard for yarn production and a looser standard for weaving could achieve the same reduction in illness at a much lower cost.
- The economic impact statement reveals, and then ignores, an enormous difference between the costs of "personal protection devices" (in this case, individual respirators) and the costs of engineering controls. The figures point to annual savings from respirators of about $222 million—or $1,721 for each of the 129,000 workers exposed. Perhaps workers would be willing to wear respirators if some of the savings were passed along to them.
- The analysis does not discuss the possibility that medical surveillance and revised work practices might deal with the problem at a lower cost than the proposed approach. By itself, byssinosis is not fatal—and, if detected soon enough, is reversible. A program of mandatory medical exams and worker rotation seems to be an option worth considering.

Third, the proposal does not sufficiently explore the effect that costs of the magnitude contemplated in OSHA's proposal would have on the entire textile industry. Because of imports and synthetic fibers, there is not much room in this industry for price increases to accommodate large increases in cost. Since rates of return are extremely low as it is, little of the cost increase could come out of short-run profits. Thus textile manufacturers could be expected to clamor for greater protection from foreign imports, and some manufacturers could be expected to have to reduce wages or cut back on production, or both.

Trouble for White-Water Rafting?

Recent interpretations of coastwise trading laws, if enforced, will produce expense for both white-water outfitters and those who enjoy the sport. In a ruling last year, the U.S. Coast Guard held that portions of many of the treacherous rivers used for rafting are "navigable." Thereupon the U.S. Customs Service determined that the Jones Act, which requires that all commercial vessels on U.S. navigable waters be constructed in the United States, applies to white-water rafts.

Unfortunately for the tiny industry that thrives on introducing novices to the thrill of shooting rapids, large numbers of the white-water rafts used come from Europe. These rafts supply a large—and apparently growing—share of the market. *Business Week* has estimated that about 60 percent of the rafts used today are imported. Zodiac of North America, Inc., a distribution subsidiary of a major foreign producer, puts imports at some 80 percent of all recently purchased rafts. Generally speaking, Europe makes the small rafts, roughly thirteen to seventeen feet long, whereas the United States makes the "grandaddies," which are up to forty feet long. Most of these large rafts are government surplus relics from World War II that have passed from owner to owner, been patched and repaired, but never cast aside.

The Jones Act, a collection of laws regulating U.S. coastwise trade, was enacted in 1920 to protect the U.S. maritime industry from foreign competition. It seems far-fetched on the face of it to think that this purpose is served by applying the act to white-water rafts. Moreover, foreign rafts do not appear to be threatening American jobs and firms, and apparently nobody has sought to bar them from the market. Most domestic producers build their large rafts as a minor sideline of their basic businesses (generally tire manufacturing), and the bulk of their production is still for the military. They seem content to leave the small raft market largely to foreign producers—whose products, incidentally, tend to be of higher quality than the closest domestic equivalents and cost up to 20 percent more.

Whereas the benefits of "protection" would be negligible, the costs would be significant. There would be shortages of the smaller rafts until prices rose sufficiently to encourage domestic production. Meanwhile, there would be disappointed customers and losses for the outfitters who rely heavily on foreign equipment. In the end customers would pay more for what they would be getting. Furthermore, the protectionist intent of the Jones Act would

eventually be circumvented as foreign manufacturers opened factories in America, which Zodiac already intends to do. The upshot might be a clamor for special taxes on these foreign-owned U.S.-based operations to "protect" the expanding domestic industry.

Gerald Jantscher observed in his study of the maritime industry (*Bread upon the Waters*, Brookings, 1975) that the least obvious, seemingly least important instances of government intervention often provide the best illustrations of regulatory costs. The application of the Jones Act of 1920 to a sport that can hardly be called maritime points out the hazards of blindly applying old regulations to new situations.

Import Restrictions on Sugar, Shoes, and TV Sets

Responding to petitions from domestic producers of sugar, shoes, and TV sets, the International Trade Commission recommended in February and March that President Carter approve import limitations to protect domestic industry. Strongly supporting the ITC's action were domestic manufacturers and organized labor. Opposed, because import limitations would mean increased prices, were some organized consumer groups.

Under the Trade Expansion Act of 1962, workers or firms suffering substantial injury because of reductions in trade barriers could apply to the Department of Labor or the Department of Commerce for adjustment assistance. Since the criteria for demonstrating injury were high, not much assistance was granted under this act. In the Trade Act of 1974, Congress liberalized those criteria. It authorized the ITC (formerly the U.S. Tariff Commission) to recommend governmental relief for any firm or labor group able to demonstrate the threat of serious injury from imports, and it scrapped the requirement that the injury be caused by reductions in trade barriers. Relief can take the form of adjustment assistance, tariffs, quotas, or some combination of the three.

In early 1976, President Ford rejected an ITC recommendation for import relief for domestic shoe manufacturers and their employees, stating that the cost to consumers did not justify such action. Later that year, the ITC reopened the question. In hearings, manufacturers and labor union representatives called attention to dramatic reductions in domestic production and employment, and a number of congressmen and senators from shoe-producing states testified on their behalf. Finding for the petitioners, the ITC recommended that President Carter impose a 40 percent tariff on shoe imports exceeding 265 million pairs annually (the present tariff ranges between 6 and 15 percent). When the domestic television and sugar industries petitioned the ITC for similar relief, the commission recommended an additional tariff of 20 percent on foreign television sets (the current tariff is 5 percent) and a quota of roughly 4.3 million tons on imports of sugar, syrups, and molasses (the current quota is 7 million tons).

President Carter rejected the ITC's recommendations. In April, he directed Special Trade Representative Robert Strauss to negotiate "voluntary" agreements to reduce exports of shoes and TV sets to the United States. In May, he announced that he would grant domestic sugar producers "deficiency payments" of up to 2.0 cents per ton when the market price fell below 13.5 cents per ton. Later in May, Mr. Strauss announced that Japan had voluntarily agreed to limit its exports of TV sets to 1.75 million a year, compared with 2.96 million during 1976.

A key problem with import restrictions is that the value of the aid to domestic producers is less than the increased costs borne by consumers. Under a quota system, domestic producers receive a higher price for their product, as do the importers fortunate enough to fall within the quota. Under tariffs, domestic producers receive a higher price, but the importers' potential higher returns are given over to the U.S. Treasury. Generally, economists favor relief in the form of adjustment assistance since, in theory at least, it does not have significant efficiency costs: commodities are obtained from the cheapest source, domestic or foreign, and manufacturers and workers are helped to adjust to the results of changes in the comparative advantage between domestic and foreign production of those commodities.

These concepts are illustrated in testimony given before the ITC by two economists of the

Council on Wage and Price Stability. John F. Morrall estimated that a 20 percent tariff on shoes (only half the tariff proposed by the ITC) would cost consumers about $2.4 billion a year. Of this, $1.85 billion would be received by the shoe industry, $400 million would be collected as tariff revenue and $150 million—representing the amount consumers not in the market would be willing to pay for the option of purchasing shoes at the lower price—would constitute a "dead weight loss to society." The number of jobs saved would be about 8,500, and the cost of saving a job would be about $18,000 per year. With respect to TV sets, Morrall maintained that the cost of saving one job through an additional tariff of 10 percent (again only half the ITC's recommended level) would be about $17,000 a year.

Thomas Lenard, in his testimony, estimated the annual results of a 4 million ton sugar quota as follows: the benefits to domestic and foreign producers would range between $57.6 million and $323 million; the increased cost to consumers and the reduction in U.S. government tariff receipts would be between $63.5 million and $333.8 million; and the net cost to society (that is, the excess of total cost over total benefits) would be between $5.9 million and $10.8 million.

Voluntary export agreements—President Carter's solution for shoes and TV sets—have the same overall effect as a quota: consumer costs are higher than the aid given to domestic producers and their employees. In addition, they permit returns to be reaped by those controlling the exports to the United States—presumably the foreign governments with whom the agreements are reached. Not surprisingly, foreign governments usually prefer this approach to tariffs or quotas.

The major alternative to import restriction, adjustment assistance, is opposed by management and organized labor. Both would naturally prefer to have their positions guaranteed than be assisted into other positions. Nevertheless, their criticism has merit. While the number of claims certified for assistance has risen dramatically under the Trade Act of 1974, processing the claims takes so long that most of the assistance goes to firms and individuals who have already reestablished themselves in other businesses and other jobs. Even with rapid processing, moreover, adjustment assistance would still work as a disincentive by impeding the adjustment process. This has led some to suggest changing the program so as to grant lump-sum payments at the initial stage of the transition, and to allow market forces to speed the adjustment process. This approach would appear to meet the equity concerns over firm and employee dislocation, while being more efficient than the existing program of adjustment assistance—and far more efficient than import restraints.

Containing Hospital Costs

The Carter administration is developing a new program of government regulation in an effort to slow the rapid rise in health care costs. The first step is the proposed Hospital Cost Containment Act of 1977, which would limit revenue increases for acute-care hospitals to approximately 9 percent in the first year and place a national ceiling on capital expenditures by these hospitals. The next step, now promised for 1978, would be more extensive controls as part of a national health insurance plan.

The cost of an average hospital stay increased by 15 percent in 1976 and, if not restrained, is expected by many to do the same in 1977. Currently the largest share of health care expenditures—40 percent—is for hospital care. By slowing the projected increase in hospital revenues to 9 percent, the Carter administration expects net public and private savings of $1.9 billion in the program's first year.

A limit on annual revenue increases would force hospitals to economize on the services they offer. This feature of the plan represents a form of controls less restrictive than outright wage and price controls, but restrictive nonetheless. Except for the wages of nonsupervisory personnel, a hospital would not be able to use higher costs to justify increases in revenue beyond the 9 percent cap. The exception could be significant: with only labor costs being passed through, the use of labor might increase in some areas, while at the least the incentives to keep labor costs down would be weak.

A national ceiling on capital expenditures would add a new *federal* layer of controls to existing restraints on expenditures for hospi-

tal expansion or improvement. The ceiling, expected to be set at about half the $5 billion spent for this purpose in 1976, would be distributed among the states according to population factors, construction costs, and the need for expansion or modernization. The states would ration their quotas to hospitals through federally required certificate-of-need programs.

In short, the plan—if enacted—would subject a major segment of the health care industry to a system of controls that strongly resembles public utility regulation. Controls on capital expenditures would be administered by local health systems agencies, controls on revenue increases through existing third-party payers (Medicare, Medicaid, Blue Cross, state agencies, and private insurers). The Carter administration expects that, by using these review mechanisms, only a small federal bureaucracy would be needed to run the program.

The proposal is, at best, a partial or quick-fix nostrum for the problem it is designed to remedy. There are three main causes of rising hospital costs: (1) the use of retrospective reimbursement, (2) the costs of keeping up with rapid advances in medical technology, and (3) the third-party reimbursement system. The hospital cost containment bill addresses the first and the second, but not the third—which is generally considered the most important. In the case of the first—the fact that payment comes after services have been performed and is based on their cost, so that hospitals have little incentive to economize—the proposed limits on revenue increases would lead hospital managements to find ways to limit their costs. In the case of the second—the costs associated with new technology—the proposed ceiling on capital expenditures would strengthen existing arrangements designed to keep hospitals from buying equipment that will be underutilized and whose purpose is mainly to attract medical staff.

For the third major cause—the problems introduced by third-party payment—the bill would do nothing. About 90 percent of all hospital bills are now paid through public and private insurance. When patients pay little or none of their hospital bill directly, they tend to accept more expensive services where cheaper would do—for example, in-patient care where out-patient treatment would be equally appropriate. Third-party payment has grown, among other reasons, because rising incomes have given families and individuals more money to spend for health insurance premiums. Also, income tax laws that allow individuals to deduct their health insurance premiums and businesses to deduct the cost of the health benefits they provide have made nontaxed health benefits more valuable (at some income levels) than equal amounts of taxable income. Finally, the federal programs of Medicare and Medicaid, which now account for 60 percent of the federal health budget, include restrictions that encourage the use of expensive hospital services at times when nursing homes, out-patient clinics, and home health care would do.

In addition to the fact that the bill does not deal with third-party payments, there is a subsidiary difficulty. Many metropolitan hospitals, whose out-patient services often provide the only medical care available to poor and needy big-city residents, might have to cut back some of these money-losing services.

Government health programs and tax laws have been the major forces behind rising hospital costs, and these costs, in turn, have made the programs more expensive and created political pressures to solve the problem. Rather than adjusting the incentives in its programs and tax laws to induce more cost-conscious behavior, the government's response is to apply a regulatory tourniquet. Experience with revenue control regulation in other industries has been that, in the long run, it leads to more comprehensive controls and creates vested interests that can be expected to resist changes in technology, regulation, or consumer preferences.

Saccharin and the Public Interest

Of all the regulatory bombshells of recent years, few have burst so noisily as the Food and Drug Administration's proposal of April 15 to ban most uses of saccharin. The action followed Canadian tests showing that massive doses of saccharin led to bladder tumors in rats. Given this evidence, the FDA had no choice. The Food, Drug, and Cosmetic Act and, more particularly, its 1958 Delaney amendment, compel the agency to prohibit food additives that cause cancer in humans or animals

(that is, are carcinogenic), however remote the risk for humans and however great the offsetting benefits. This exacting standard does not apply to drugs—which the FDA is permitted to judge on a risk/benefit basis.

On June 17, after two months of public debate focusing largely on the relevance of animal tests results for humans, the FDA claimed support for its proposal from a new Canadian study. This one surveyed 480 men and 152 women with bladder cancer and found a higher incidence in men who use saccharin than in men who do not. As we go to press, bills are moving through Congress to delay the ban so that the evidence may be more fully evaluated.

Americans use over 6 million pounds of saccharin a year, roughly one-tenth of this in the form of pills and table-top sweeteners and the balance as an additive in foods, beverages, and nonfood products (such as lipstick, toothpaste, and drugs taken orally). The FDA's proposed regulation would ban all use of saccharin as an additive. It would, however, permit its reclassification as a single-ingredient over-the-counter drug—thus making it available in pill form and for table use—*if* and when the manufacturer demonstrates its effectiveness for medical uses. (Meanwhile, saccharin could be sold over the counter in containers displaying cancer warnings.) Observers doubt the manufacturer will be successful, because saccharin's only benefit is that it is a sugar-free sweetener. This is a kind of efficacy not previously acceptable as grounds for approving a new drug.

Views about the proposed ban turn on interpretations of the data, assessment of costs and benefits, and the matter of free choice.

(1) On the Canadian animal tests, critics claim the results are irrelevant for humans, since a person would have to drink 800 diet sodas a day to match the saccharin intake of the test animals. In reply, FDA scientists and others argue that such doses are a valid way to determine carcinogenicity in a short period, and insist that a significant incidence of cancer in test animals strongly implies some incidence in humans after normal long-term use.

On the new Canadian survey, critics question its finding of a link between saccharin and cancer and cite similar surveys by the American Health Foundation and by researchers at Johns Hopkins that found no such link.

(2) Projections of the incidence of cancer that would be avoided by the ban vary widely: the Office of Technology Assessment, a congressional agency whose report called saccharin a "weak" carcinogen, estimates that 15 to 15,000 cases would be avoided annually, while the FDA *now* (after the new Canadian survey) puts the maximum at 2,400. (Both estimates assume a lifetime consumption of one diet drink per day by 200 million people.)

The estimated costs of the ban are less uncertain. The FDA's economic impact statement shows lost sales of saccharin products running from $607 million to $2 billion annually, depending on public response to "low-calorie" natural sweeteners, how fast industry can adjust its production to these sweeteners, and the rapidity with which current stocks of saccharin products are depleted. Use of sugar instead of saccharin in human and animal foods would raise the annual costs of these foods by $98 million and $10 million respectively, until an equivalent chemical substitute for saccharin is found. (The only plausible candidate, Aspartame, is still several years away from approval.) The Council on Wage and Price Stability says these figures are low—by roughly $144 to $182 million—because they put no value on what consumers would pay, above market price, to have an artificial sweetener.

There are other, less measurable costs. For example, without saccharin, many medicines that are taken orally could not be made palatable, because sugar is either not sweet enough to do the job or incompatible with the active ingredients. In the view of the Pharmaceutical Manufacturers Association, a saccharin ban would "create a serious health hazard" for children. There is also concern about the effects of unsweetened toothpaste upon dental hygiene. Finally, a ban would make it more difficult for the obese and the diabetic to stay on a regimen of sugar control. This cost, alone of those that would be imposed by the FDA's action, would be eased if saccharin could be reclassified as an over-the-counter drug.

(3) Six witnesses testifying for OTA split evenly on the proposed ban. The three opponents advised that consumers be allowed to decide for themselves whether the benefits of saccharin were worth the risks. Given the Delaney amendment, this route is not open to the FDA.