Readings
of particular interest

A Convenient Compendium

Regulation of Entry and Pricing in Truck Transportation, edited by Paul W. MacAvoy and John W. Snow (Ford Administration Papers on Regulatory Reform), American Enterprise Institute, 1977.

This collection of studies on motor-carrier regulation begins with an overview by John W. Snow, deputy undersecretary of transportation in the Ford administration and a member of the Domestic Council Review Group. He argues that motor-carrier regulation is needlessly complex and produces rates that are "high, inflexible, irrational, and discriminatory." Route regulation gives operating certificates a market value, which can only result from restrictions on entry. Rate regulation has led to identical rate structures for all shippers—whether they have balanced or unbalanced, stable or unstable, traffic—which can only reduce economic efficiency. Restrictions on the services that private and exempt carriers can offer results in needless waste, while certification of regulated carriers to serve small communities does not ensure that these communities are served.

In part two, an ICC cost/benefit analysis of surface transport regulation disagrees with conclusions published in 1971 by Thomas Gale Moore and presents estimates of substantial net benefits from regulation. This analysis is critically appraised by Bruce Allen of the University of Pennsylvania and Edward Hymson of the Department of Transportation, who argue that the ICC study suffers from "arithmetic errors and numerous unsupported assertions" and that it fails to distinguish between income transfers and net social benefits.

Part three deals with the probable effects of regulatory reform upon market structure, service to small communities, and the value of operating certificates. On the first, Richard Klem of the Department of Transportation argues that freer entry into the trucking market would reduce the incentive for end-to-end mergers that now leads to the formation of inefficiently large firms. On the second, R. L. Banks and Associates (consultants) suggest that carriers serving small communities succeed because they are themselves small and can offer specialized services that are uneconomic for larger carriers—and that, if anything, deregulation would improve small-community service. On the third, Snow and Stephen Sobotka (a transportation consultant) suggest ways of minimizing the impact of deregulation on current certificate-holders.

The fourth part discusses the impact of regulatory reform on energy use. Paul Roberts and James Kneafsey of MIT argue that rail traffic would be shifted to trucks, leading to increased use of energy, while Sobotka and Thomas Domencich (another consultant) conclude that this shift would not occur and that reform would improve trucking efficiency, thereby reducing energy use.

In part five, Norman Jones, now on the staff of the House Subcommittee on Economic Stabilization, analyzes proposals to eliminate backhaul restrictions (no loads on return trips) and "gateway" requirements (shipments from one regional authority to another must pass through certain "gateway" points, often requiring a circuitous route). He concludes that, without rate flexibility, the benefits of eliminating the restrictions would be small. Bruce Allen looks at the effect of expanding the Philadelphia Commercial Zone (the "commercial zone" of a city being that area in and around the city within which trucking is not ICC-regulated). In his view, expansion would improve operating efficiency for truck-load shipments.

Finally, agricultural economists Walter Miklius of the University of Hawaii and Kenneth Casavant of Washington State University examine the rates at which firms enter and leave agricultural trucking, which is exempt from ICC regulation, and conclude that the

exempt portion of the industry is as stable as the portion subject to ICC regulation.

ICC Staff Task Force Report

Improving Motor-Carrier Entry Regulation: Report and Recommendations of a Staff Task Force (George M. Chandler, chairman), Interstate Commerce Commission, July 6, 1977.

On June 2, 1977, ICC Chairman A. Daniel O'Neal established a staff task force to recommend ways for improving motor-carrier entry regulation. It was a response, as this report notes, to the "wide-spread feeling that there should be more competition in motor transportation" and to the "startling" increase that had occurred since October 1976 in applications for motor-carrier certificates. The report has thirty-nine recommendations, ranging from ways for providing easier entry into the regulated trucking industry to procedures for simplifying the operations of the ICC itself.

Addressing application proceedings first, the report recommends more rapid "summary grant procedures" for the 25 to 35 percent of motor-carrier applications that are unopposed, a new format for protests to weed out those that are essentially frivolous, the use of cost/price data in application cases, a procedure for identifying areas of insufficient competition, treatment of similar applications concurrently, and efforts to standardize commodity descriptions.

On the subject of easier entry provisions, the report recommends exempting from the Interstate Commerce Act those motor-carrier operations that are not "of major significance in carrying out the national transportation policy," exempting classes of transport rather than kinds of vehicles, expanding agricultural exemptions, deregulating additional commodities, limiting the rights of competing carriers to protest new entries, reducing the need for formal applications to serve new plant sites, removing restrictions on the transfer of cargoes between trucks and water carriers, encouraging intermodal transportation, establishing limited-use authorities for the carrying of government shipments, simplifying requirements for truckers who hold dual (contract and common-carrier) authority, giving blanket grants of temporary authority, and simplifying procedures for trucking brokers to enter the market.

The recommendations on internal ICC procedures include a number of proposals relating to the granting and hearing of appeals for temporary authorities without extensive procedures. Other recommendations include revision of truck-leasing regulations—with, as a first step, "a translation of the present regulations into English"—and a possible change of policy on operating authorities (1) to prevent truckers from selling these authorities for more than they originally paid for them, (2) to prohibit the sale of authorities without the sale of physical assets, and (3) to prohibit the sale of anything less than a trucker's full operating authority.

Finally, the report recommends a study of the independent trucker, the continuation of statistical analysis of applications for permanent authority, and a comprehensive study of motor-carrier entry.

Trucking in Northern Ontario

Transportation Rates and Economic Development in Northern Ontario by N.C. Bonsor, University of Toronto Press for the Ontario Economic Council (OEC Research Studies No. 7), Toronto, 1977.

The regulation of highway carriers by the Ontario Highway Transport Board is the worst of all possible systems, according to economist Norman C. Bonsor of Lakehead University (Thunder Bay, Ontario). Ontario's trucking rates are the second highest in Canada, and indeed Ontario's transportation rates are generally higher than those in any other province except Quebec. The study examines the impact of transportation costs on regional economic development, with special reference to northern Ontario.

Entry into the for-hire trucking industry in Ontario is controlled by the Ontario Highway Transport Board. To acquire a license for a specific route, the applicant must either purchase one from an existing carrier or convince the board that a new license would be consistent with "public necessity and convenience." At present, for all practical purposes the board limits licenses to the number already in use.

Bonsor shows that rail rates are inversely correlated with the degree of competition in

the trucking industry. Where a regulatory body such as the Ontario Highway Transport Board tightly controls entry to the industry, truck freight rates rise to artificially high levels and, because of the lack of competition, rail freight rates rise correspondingly. For example, Alberta's rail rates are lower than Ontario's because, in Alberta, the railroads must compete with truck carriers—who, in turn operate in the open, competitive Alberta trucking market. The relationship between high truck rates and high rail rates results partially from the fact that the Transportation Act of 1967 gives Canadian railroads considerable flexibility in adjusting their rates (except rates for carrying grain) to meet those set for truckers.

Small-volume shippers in northern Ontario are at a disadvantage because, owing to the lack of competition among and within different modes of transportation, they must ship at high "class rates." The rate structure stymies the development of secondary (that is, support) manufacturing, so that the region is likely to continue to be almost entirely resource-oriented.

As for what might be done, the "promotion of vigorous competition in the trucking industry is, from a practical viewpoint, easier to achieve than the enactment of a transportation subsidy designed to eliminate some of the transportation cost disadvantages of a Northern Ontario location."

Trucking in Europe

Trucking Regulation: Lessons from Europe by Thomas Gale Moore (AEI-Hoover Policy Study), American Enterprise Institute, 1976.

The author, senior fellow at the Hoover Institution, examines the experience of Great Britain (which in essence has abolished economic regulation of trucking), West Germany (where trucking is strictly regulated), Belgium (where considerable deregulation has taken place), the Netherlands (which has less regulation than West Germany but more than the other countries considered), and Sweden (where partial deregulation has occurred). The examination is based to a great extent on interviews that the author carried out in late 1973 and in early 1974.

Moore notes the difficulty of isolating the effects of trucking regulation in the five countries, attributing this partly to the different regulatory approaches these countries use. For example, Sweden and Belgium regulate entry by requiring proof of ability and character, while the Netherlands requires competitive examinations to the same end, and the West German government limits the number of trucking licenses as well as requiring proof of ability and character. But these differences appear less important than differences in national character—a conclusion that the author did not anticipate. He finds that British firms really do seem to "muddle through," while German and Dutch managements are painstaking and precise in their operations. There are also differences in the geographical characteristics of the countries considered. For example, West Germany needs considerable long-haul trucking, the Netherlands needs almost none, while Sweden has a large, sparsely inhabited northland.

However, Moore says, all five countries are at least in northern Europe and are roughly comparable. Moreover, Great Britain and West Germany on the one hand, and Belgium and the Netherlands on the other, provide excellent pairs for comparison. In each case, the more heavily regulated of the two countries being compared (1) provides monopoly profits to the carriers enjoying certification, and (2) has a far higher percentage of truck miles run empty. In West Germany, 66 percent of all miles driven by own-account carriers (that is, carriers transporting their own goods) were driven empty, while in Great Britain the figure was 30 percent.

In West Germany regulation has apparently not succeeded in its original purpose, which was to protect or promote railroad freight service. But in the Netherlands, where the purpose was to stabilize the market shares of truck and rail carriage, it has succeeded, though at some cost. No certain conclusions can be drawn on the relationship between regulation and optimum firm size. Nor is it clear whether larger firms are more efficient than smaller firms.

In general, the lessons Moore draws—preeminently from the West German case—are that regulation increases costs to shippers and discourages service to small and out-of-the-way communities. On this evidence, he recom-

mends deregulation of the U.S. motor-carrier industry.

Earlier Research Flawed?

"Minimum Rate Regulation, Modal Split Sensitivities, and the Railroad Problem" by Kenneth D. Boyer, in *Journal of Political Economy,* June 1977.

"The story that minimum rate regulation is responsible, partly or largely, for the mid-twentieth-century decline of the American railroads has an established place in the folklore of academic economics." By establishing minimum rail rates that are too high, so the story goes, the ICC has prompted shippers to switch their business from railroads to trucks. Kenneth D. Boyer of Michigan State University disagrees with this explanation. To understand why, it is necessary to look at the traditional, comparative-cost approach to analyzing competition between trains and trucks.

Much previous research has found that the long-run marginal costs of shipping by rail are less than those of shipping by truck, even after rail shipment costs are adjusted upward to reflect the fact that rail transport is slower, less reliable, and less flexible than road transport. The fact that shippers have switched from rail to road nonetheless is attributed to the ICC's setting minimum rates for rail transport higher than the adjusted long-run marginal cost of rail carriage.

Boyer argues that these earlier analyses are seriously flawed by underestimates of the size of the adjustment factor that is needed to reflect accurately the differences in the quality of train and truck services. In fact, because this adjustment has been so seriously underestimated, earlier measures of the economic loss from traffic misallocation (that is, from rail to truck) overestimate the true economic loss by a factor of twenty. Traffic shifted from the railroads to the truckers because of superior truck service and not because of ICC rate regulation.

Boyer concludes that deregulation of minimum rail rates would have "only a small effect on the intermodal traffic allocation" and that the social gains would be much smaller than many have predicted.

The Rising Tide

Government Controls and the Public Interest: An International Survey of Business Opinion and Experience by Michael Duerr and James Greene (Information Bulletin No. 21, Conference Board, June 1977).

"The rising tide in government controls over business is reaching the danger level in many parts of the world," according to the Conference Board's 1977 survey of business leaders in thirty-three countries. The executives "are nearly unanimous in deploring the trend toward government controls"—despite their general agreement on the need for government intervention in the economy. Many state that regulation, having moved past the stage of irritating business, is now at a level that hurts the very citizens it is supposed to help. Overall, the report says, this survey reflects a noticeably "grimmer" view of government's role in business than did a similar Conference Board survey done ten years ago.

Responses indicate that in many cases it is the manner, rather than the fact, of government intervention that is taken amiss. There is strong concern about the uncertainties and inefficiencies caused by government controls, about the effects of the government's increasing share of GNP, and about anti-business attitudes of legislators who recognize that businesses do not cast votes. In general, the interviewees agreed that the government actions most needed "are programs that would stimulate rather than discourage private investment."

The consensus is that, short of a crisis which turns public opinion against government intervention, the rise in controls can only be reversed by government initiative.

An Analysis of Safety Regulation

"Safety Regulation" by Nina W. Cornell, Roger G. Noll, and Barry Weingast in Henry Owen and Charles Schultze, eds., *Setting National Priorities: The Next Ten Years* (Washington, D.C.: The Brookings Institution, 1976).

Safety regulation—its rationale and its practice—is analyzed in this study by Nina Cornell of the Council of Economic Advisers and Roger Noll and Barry Weingast of the California In-

stitute of Technology. Their analysis of why private market transactions will produce insufficient safety forms the context for assessing the performance of two federal agencies concerned with safety issues, the Consumer Product Safety Commission and the Occupational Safety and Health Administration.

Federal safety regulation presumably reflects a judgment that, in its absence, sufficient preventive measures are not taken to provide the level of safety that people would be willing to pay for as consumers and workers. The basis for this judgment is examined by analyzing the safety levels that would emerge in a purely private market system. If information on hazards were complete and costless, decisions by consumers and workers would result in prices and wages that would exactly compensate for the risks they chose to assume and fully reflect the costs of preventive measures. But when the development and dissemination of information on hazards is costly, a completely private economy will provide too little information. In addition, the authors note that complicated and technical information is not easily translated into practical conclusions, particularly when the risks are uncertain.

Liability laws and insurance systems contribute to higher safety levels by creating incentives to take preventive measures; moreover, they can contribute to a more equitable sharing of losses. The limitations of liability laws result mainly from uncertainty about causes of damage and from compensation that does not in general match losses. Similarly, insurance systems do not create proper incentives for preventive measures if there is too much uncertainty to permit appropriate premium levels to be set.

For these and other reasons discussed by the authors, the market system together with liability laws and insurance systems does not ensure that enough attention and resources are devoted to preventive measures or that the costs of damages and losses are dealt with efficiently and equitably. Consequently, regulation by setting standards is warranted, particularly when information that serves as a basis for decisions is complex and costly and when the nature of the hazard and the chances that losses will occur are highly uncertain.

Turning to an examination of safety regulation as practiced by the Consumer Product Safety Commission and the Occupational Safety and Health Administration, the authors observe that information development and dissemination receives too little emphasis, that the establishment of priorities has been unsatisfactory, and that both standards development and compliance and enforcement activities are subject to criticism on various grounds. They note, however, that the emphasis and approaches of these agencies have apparently been strongly influenced by congressional attitudes and actions. One major problem is the assumptions underlying the legislation: that "well-defined clear-cut hazards" are the essence of the safety problem, that with "brief, cursory investigation" remedies can be identified, and that "'bad acts' by unethical businessmen" are the principal cause of inadequate product and occupational safety. Safety regulatory agencies have tended as a result to "focus on issues to which they have least to contribute."

Cornell, Noll, and Weingast recommend more reliance on information strategies by the safety regulatory agencies. Congress should shift the focus of their regulatory activities toward problems the market is least able to solve, such as health hazards that are complex and only partly understood, and toward more use of incentives to induce compliance. The authors conclude that, while safety regulatory agency practices "are not designed to deal effectively with the very types of cases in which standards are appropriate," there are, nonetheless, occasions "when efficient government intervention in the form of standard setting regulation is called for."

Labor Criticizes OSHA

"OSHA: The Urgency of Revival" by Russ Bargmann, in *The AFL-CIO American Federationist,* June 1977.

Russ Bargmann, a research associate of the AFL-CIO, maintains that "Nixon-Ford mismanagement," reliance on state-administered plans, inadequate resources, procedural logjams, and industry pressures have prevented the Occupational Safety and Health Administration from realizing its full potential. There is, consequently, an urgent need for reform.

According to Bargmann, OSHA acts too slowly and the standards it adopts are often inadequate. Thus, there were only five occupational health standards in force as of May 1977—those five covering asbestos, thirteen carcinogens, vinyl chloride, coke-oven emissions, and benzene—and they were established only after concerted effort by the unions. Also, OSHA's recently proposed standard on cotton dust accepts worker exposure up to a level at which 13 percent of all exposed workers become ill.

The requirement for economic impact analyses of proposed regulations contributes to OSHA's ineffectiveness by causing delay and subjecting proposed standards to the Council on Wage and Price Stability's disregard of "positive health effects." Bargmann argues that cost estimates "fail to consider all the beneficial aspects of health and safety standards," such as gains in worker efficiency as well as the lower product prices that can result from reduced workers' compensation premiums.

Inspection and compliance procedures also contribute to ineffectiveness. Bargmann notes that at the 1976 rate of 41,000 *new* inspections (out of a total of 76,600 inspections), it will take OSHA 100 years to survey all the nation's work places. As for compliance, when firms are cited for violations, the case often drags on for years before the Occupational Safety and Health Review Commission and the courts, while the hazardous conditions continue unchanged. Because the expenditures required to improve safety conditions are generally much higher than fines assessed (which average $11.94 for minor violations and $544.94 for serious violations), many employers find it "cost-effective" to pay the fines and "flout the law."

Addressing the businessman's complaint that the cost of compliance could lead to bankruptcies, Bargmann makes these points, among others: (1) the OSHA order to cut down the exposure of rubber workers to airborne carcinogen vinyl chloride has forced no companies out of business, despite dire predictions to the contrary; (2) an analysis by the American Foundryman's Society found no instance where OSHA alone was responsible for the closing of a foundry; (3) the fact that business capital expenditures for health and safety equipment increased less than inflation in the 1972-1975 period indicates that OSHA has not overburdened employers.

Cancer and the Environment

"Contribution of the Environment to Cancer Incidence: An Epidemiologic Exercise" by Ernst L. Wynder and Gio B. Gori, in *Journal of the National Cancer Institute,* April 1977.

"With the increasing number of news reports regarding hazardous components, the average citizen considers himself immersed in an uncontrollable sea of carcinogens." But, according to this guest editorial, it is individual lifestyles, including excessive smoking, alcohol consumption and "overnutrition," that are the major environmental factors contributing to the incidence of cancer.

Physician Ernst L. Wynder of the American Health Foundation and microbiologist Gio B. Gori of the National Cancer Institute review the epidemiologic literature based on intercountry and intracountry differences, incidence differences between men and women, and time trends, and conclude that 90 percent of the cases of human cancer can be ascribed to environmental factors—that is, to factors "originating wholly or largely outside the host's body." The remaining 10 percent of the cases are considered the "baseline," meaning they are the number of cases attributed to genetic, viral, and radiation factors.

The authors conclude that the most significant environmental factors are tobacco use and nutrition. Epidemiological evidence for the contribution of tobacco use to the development of cancer is overwhelming. For example, lung cancer rates for populations such as the Seventh Day Adventists who are nearly all nonsmokers are more than 80 percent lower than the rates for the U.S. population in general. And, although "specific carcinogens play a minimal role in the relationship between nutrition and the development of cancer . . . nutritional deficiencies and/or excesses are of great importance as sources of procarcinogens. . . ."

Less significant but often-cited carcinogenic factors are air-and-water pollution, occupational exposure, and perhaps drugs (here the evidence is sketchy). According to Wynder and Gori, studies that control for smoking and

the other factors that contribute to lung cancer find no significant relationship between cancer and air-and-water pollution; further research is needed. There is no question, however, that certain occupational exposures (asbestos and uranium dust, for example) increase the risk of particular cancers. Various estimates put the occupational contribution to total cancer incidence between 1 percent and 5 percent for males and between 1 percent and 10 percent for the general population.

Finally, comparisons of morbidity and mortality rates for different countries indicate that most cancers are related to individual lifestyles. Nevertheless, people tend to ignore their own responsibilities and lay the blame on carcinogenic exposure from outside forces. The authors conclude that although society must make every effort to correct those general environmental factors that contribute to cancer incidence, self-regulated individuals can significantly limit their own risks by appropriately altering their own lifestyles.

Regulation and Hospital Costs

"The High Cost of Hospitals—and What to Do about It" by Martin Feldstein, in *The Public Interest,* Summer 1977.

From 1950 to 1976, the average cost per patient-day for hospital care rose by more than 1,000 percent, eight times the rise in the consumer price index. Economist Martin Feldstein of Harvard University regards this exorbitant inflation in hospital costs as the "central problem of our national health-care policy."

The author finds the four "traditional" explanations of increasing costs—hospital inefficiency, increases in labor costs, poor technical progress, hospital supply not meeting demand—to be incorrect. The true explanation is that increased insurance has induced hospitals to upgrade their product by providing more sophisticated, more expensive care. As Feldstein explains it, private and government health insurance now pays so much more of the hospital bill than it did twenty-five years ago—88 percent in 1975, up from 49 percent in 1950—that in *real* terms the cost to the patient at the time of illness has not increased at all. This situation had made expensive forms of medical care attractive to physicians, administrators and patients, and the hospitals have responded by providing it.

Feldstein identifies the tax treatment of health insurance premiums—which permits individuals and employers to deduct their respective costs for health coverage from taxable income—as a major reason for the growth of private health insurance and a significant contributor to the underlying problem of excessive insurance.

Public-utility-type regulation of hospital costs, currently under consideration in Congress (see "Containing Hospital Costs," in *Regulation,* July/August), demonstrated its weaknesses during the Economic Stabilization Program of 1971-1974. Limits on increases in wages and fees for service "were constantly being confounded" by rapid increases in the quality or sophistication, and therefore the price, of services and eventually had to be replaced by limits on the increase in the cost per patient-day. The American Hospital Association then filed suit against the Cost of Living Council on the grounds that its mandate did not include regulation of the quality of hospital care, an issue that became moot when the stabilization program expired.

Public-utility regulation is inappropriate for containing hospital costs, according to Feldstein, because (1) there is no "technically correct" way to set standards on the maximum quality of care, (2) the only limits on health-care quality that patients will tolerate are those they set for themselves, and (3) regulation that requires all hospitals to have the same quality of care would force many families to pay for more expensive care than they wished to have and would deny many others the opportunity to purchase the higher quality care they would prefer.

The solution, in the author's view, is to provide every family with comprehensive major-risk insurance that eliminates coverage for relatively inexpensive health care and gives complete coverage for major care (unlike many insurance plans now). This plan would make families "sensitive to the costs of additional health spending while still limiting each family's maximum out-of-pocket expenditures to 10 percent of income or less." The program would be administratively simple, bypassing the tedium of regulation that other plans for national health insurance would entail, and

would increase government spending by only $19 billion over the 1976 level.

Milking the Consumer

"The Cost of the U.S. Dairy Price Support Program: 1949-1974," by Dale Heien, *Review of Economics and Statistics,* February 1977, pp. 1-8.

The federal government supports the incomes of dairy farmers in a variety of ways, the main ones being the milk price support program (which mostly involves purchases of milk products by the Commodity Credit Corporation) and the federal milk marketing order system (which allows dairy cooperatives to set minimum prices for fluid-grade milk). Federal expenditures for CCC purchases of dairy products, notes Dale Heien, a private consultant in Washington, D.C., totalled $7 billion during the 1949-1973 period. In addition to this burden borne by the taxpayer, another burden—that of the increased costs of dairy products at the supermarket—was shouldered by consumers. This study estimates the 1949-1974 impact *on consumers* of the price support program and of the federal milk-marketing order system.

Heien obtains his estimates by constructing an econometric model of the U.S. dairy industry which contains twenty behavioral equations, twelve identities, and fifty-six variables. He divides the model into three sectors to deal with retail demand, retail price formation, and farm output and price determination.

To compute the cost to consumers of federal dairy price suport programs during the twenty-five year period, the author compared differences in solutions based on his model. First, all variables were given their actual historical values. For comparison with this baseline solution, it was assumed that no dairy products had been removed from the market by Commodity Credit Corporation purchases—that is, it was assumed that no CCC purchases had been made. Comparison of the consumer price indexes implied by the two solutions permitted Heien to estimate the market cost of the price support programs to the consumer at $3.4 billion for the 1949-1974 period, or an average of $131 million a year. A similar exercise designed to measure the impact of the federal milk-marketing order system produced an estimate of $4.6 billion as the cost to the consumer from that system during 1949-1974, or an average annual cost of $175 million.

Standards and Industry Self-Regulation

"Standards and Industry Self-Regulation" by Ernest S. Rosenberg, in *California Management Review,* Fall 1976 (also in R. N. Katz, ed., *Protecting Consumer Interests: Private Initiative and Public Response,* Ballinger, 1977).

Standards—defined here as conditions and requirements governing commerce between buyers and sellers—have an enormous impact on society and the economy. Ernest S. Rosenberg—formerly on the staff of the Federal Trade Commission and now with the Environmental Protection Agency—says there are over 20,000 industry standards and 36,000 government standards in effect in the United States, and more than 400 organizations are at work developing these standards. The National Bureau of Standards (NBS) of the Department of Commerce carries out research but has no regulatory authority, while the American National Standards Institute (ANSI), a private body—albeit with governmental members—acts as a standards clearinghouse.

Rosenberg argues that the process of developing and certifying standards should serve the useful purposes of facilitating commerce, reducing prices, and increasing the safety and quality of products and services without impeding competition or innovation. But sometimes the process leads instead to abuses, ranging from consumer deception to restraint of trade.

The difficulty lies in the process. Proposed standards are drafted by experts and, although they are then reviewed by interested parties and not approved until a consensus has been reached, they are generally so technical that deficiencies can go undetected at the approval stage. Normally, the source of the deficiencies is not industry venality, but rather the fact that the proposal drafters cannot see problems from all perspectives and rarely consider the overall economic and social-welfare effects of what they are doing. Thus, accord-

ing to Rosenberg, the solution is to open up the drafting process to consumer and policy viewpoints.

The author discusses the four major types of standards, noting the benefits and dangers of each. Standard definitions, nomenclature, and classifications are needed to facilitate communication, but may lead to hidebound thinking (lack of innovation) and consumer confusion (when comparable products have widely differing classifications). Standard methods of testing enable comparisons between products, but result in faulty data if test designs are deficient. Performance specifications present the fewest problems, the major one being that minimum performance standards may be set too high or too low. Lastly, design or construction specifications are the most restrictive. Because they tell manufacturers not only what performance level must be met, but also how to meet it, they tend to freeze technology, deter R&D, and preclude competition.

In Rosenberg's view, "the key to reforming standards is somehow to monitor and police the first stage of drafting" without having "the government supplant the voluntary standards-writing organizations." He recommends (1) giving the proposed agency for consumer advocacy the power to represent the consumer in standards-setting processes; (2) making the National Bureau of Standards into an independent agency with research, coordination, and monitoring responsibilities; (3) bringing the functions of the American National Standards Institute largely under government control to ensure conformity with NBS criteria; and (4) forming a Bureau of Standards Review within the FTC to advise the NBS.

More on Self-Regulation: Lawyers

"The Evolving Concept of Professional Responsibility" by Thomas D. Morgan, in *Harvard Law Review,* February 1977.

Not all regulation comes in the form of active government intervention. Sometimes it comes, instead, in the form of government ratification of, or acquiescence in, self-regulation—which is the case with the state bar associations' regulation of the legal profession.

As law professor Thomas D. Morgan of the University of Illinois points out, the public interest in justice, the private interest in legal advice at reasonable cost, and the lawyers' personal interest in a rewarding livelihood are all affected by the role of the private bar. Morgan considers whether the public interest and the private interest are served by the self-regulation accomplished through the Code of Professional Responsibility of the American Bar Association. He concludes that, to a great extent, the ABA's code promotes the interests of lawyers over those of the larger public and at the expense of the interests of clients.

To be sure, there are complex issues at stake, not the least of which is the problem that lay clients have in attempting to assess the professional competence of lawyers. Morgan finds the code gives clients little help in this matter when it unnecessarily requires the use of lawyers to handle matters like real estate contracts, debt collection, and uncontested divorce and probate cases, but does not require special expertise of lawyers' offering services like tax counseling and representation before specialized agencies. This problem is magnified in that the private bar (with state ratification of the code) creates monopolies for lawyers in areas where nonlawyers might serve equally well. Another problem is that the code rarely requires lawyers to maintain a higher standard of ethics than the law in general requires. For instance, it admonishes them not to communicate outside of court with jurors or to counsel clients to break the law. A third problem is that the code's restriction on advertising by lawyers inhibits price competition for legal services.

The basic difficulty with the code is not so much that lawyers intentionally drafted a self-serving document, but rather that they made no provision for interested nonlegal parties to participate in the drafting. Thus, even issues containing potential conflicts between lawyers and clients or lawyers and the public interest were decided by lawyers. Over time this procedure allowed biases to develop.

Morgan foresees substantial changes to make the legal profession more responsible, the major ones being an end to the bar's monopoly of legal services, increased solicitude for client interests occasioned by increased competition through such devices as advertising, and the use of malpractice suits against lawyers.