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REGULATION was first published in July 1977 "because the extension of regulation is piecemeal, the sources and targets diverse, the language complex and often opaque, and the volume overwhelming." REGULATION is devoted to analyzing the implications of government regulatory policy and its effects on our public and private endeavors.

A Second Look at Regulation's Cost

The Mercatus Reports section of the Spring 2004 issue of *Regulation* includes a discussion of OMB's draft 2004 Report to Congress on the Costs and Benefits of Federal Regulation. The discussion refers to a Mercatus Center study that "found that in 2000, U.S. manufacturers spent an average of $2.2 million to comply with federal workplace regulations, or an average of $1,700 per employee. Small and medium sized firms (less than 100 workers) bore a greater burden, with costs of $2,500 per employee — 68 percent higher than the costs of larger firms with 500 or more employees." (This last sentence misquotes their study, which stated that small-sized firms had costs of $2,500 per employee. The cost per employee for medium-sized firms according to the study was about $1,400 per employee.)

The cost figures cited above are highly questionable, particularly the supposed $2.2 million average cost per manufacturer. The referenced Mercatus study, "Compliance Costs of Federal Workplace Regulations: Survey Results for U.S. Manufacturers," was written by W. Mark Crain and Joseph M. Johnson and released in late 2001. In addition to the per-employee and per-manufacturer estimates, they estimated the manufacturing sector spent $32 billion in 2000 to comply with federal workplace regulations.

Crain and Johnson developed their estimates from a survey of manufacturing firms conducted in 2001 in cooperation with the National Association of Manufacturers (NAM). The survey form was mailed to 3,000 NAM members. Only 100 members responded to the survey, for a response rate of about 3 percent. This is an extremely low response rate and calls into question the reliability of the results. The authors acknowledged the possibility of potential biases on the part of respondents and the need for an expanded sample size to follow up on certain issues. However, they did not conduct an analysis of whether the respondents were representative of NAM's membership or, more importantly, representative of all manufacturing firms.

A review of their data demonstrates that the sample is not representative of the manufacturing sector and, as a result, there are substantial inconsistencies in the results. For example, the aggregate cost figure for the manufacturing sector should be the same whether calculated using cost per employee or cost per firm. Crain and Johnson's $32 billion aggregate estimate for all workplace regulations appears to have been generated by multiplying the cost per employee by the number of employees in the manufacturing sector. However, multiplying the authors' reported $2.2 million cost per firm by the roughly 300,000 manufacturing firms in 2000 (according to the Small Business Administration's Web site), yields an aggregate cost estimate of $660 billion — 20 times higher than the estimate generated using cost per employee.

The inconsistency arises because large firms comprise a far greater proportion of Crain and Johnson's sample of 100 firms than they do of all manufacturing firms. Firms with 500 or more employees account for 28 percent of the sample but only about 1.5 percent of all manufacturing firms (again, using numbers from the SBA's Web site). In addition, a closer look at the sample indicates that within each size class the sample also is biased toward large firms. Using data in the authors' Table 1 (dividing the cost per firm by the cost per employee), the sample firms had an average of 55, 197, and 4,779 employees in the three size categories (fewer than 100 employees, 100 to 499 employees, and 500 or more employees), respectively. This compares with 15, 179, and 2,053 employees in those size categories in the manufacturing sector (SBA Web site).

In addition to sample response problems, the study mistakenly includes a large state-based program — workers' compensation — in its list of 25 statutes and executive orders encompassing "all significant workplace regulations promulgated by the federal government" (to borrow from Crain and Johnson's Executive Summary). Inclusion of this program could have increased the per-employee cost estimate by several hundred dollars. A National Academy of Social Insurance study by Cecili Thompson Williams, Virginia P. Reno and John F. Burton Jr., "Workers' Compensation: Benefits, Coverage, and Costs, 2001," estimates employer costs for workers' compensation at $466 per covered worker in 2000; the study did not break out costs by industry or firm size (the estimates in this study include federal workers' compensation programs, which account for about 5 percent of aggregate workers' compensation costs).

In short, the cost figures cited by Mercatus as the burden incurred by manufacturers to comply with federal workplace regulations is flawed because of severe sampling problems and the mistaken inclusion of costs properly attributable to a non-federal program.

S. Kovitch
McLean, Va.

Reconsidering highway financing

Alan Pisarski is probably the most acute observer of the U.S. transportation scene, so his support of unending federal financing of state roads has to be taken seriously. Nevertheless, I am not convinced by his proposition ("Reconsidering the FHTF," Spring 2004) that the federal financing of state roads needs to be "reformed" rather than "abolished."

Before dealing with his objections, I should point out that support for de-emphasizing the federal role in highway financing is not confined to "libertarians and free market advocates." In July 2002, before he became chairman of the Senate's subcommittee on Transport, Infrastructure and Nuclear Safety, Sen. James Inhofe (R-Okla.) introduced a bill consistent with the proposals in my article. Sen. Connie Mack (R-Fla.) and Rep. Jack Kasich (R-Ohio) — both within the mainstream — introduced legislation 12 years ago that proposed to reduce the federal share of highway financing to two cents a gallon. Pisarski himself has "very real concerns" about the nation's current system of financing surface transportation and favors reducing the federal share to "perhaps five or 10 cents."

I should emphasize that my objection is essentially to the federal government's financing of state roads, and to its using its financing powers to influence state policies, e.g., prohibiting the tolling of roads built with federal assistance. There is little objection to the federal financing of federal roads (e.g., on federal lands) or to laying down common roadway standards, e.g., that all traffic should drive on the right. So the difference between Pisarski's position and mine might be less than indicated in his article.

In his article, Pisarski objects to my call for abolishing the Federal Highway Trust Fund (FHTF). (See "Road Policy for the Future," Spring 2003). His objection seems to be based on three points:

- Because the states already have powers to finance roads, I was wrong to argue that highway financing powers should be "restored" to them.
- I ignored "truly national needs," e.g., that "national policy and transportation needs should pursue some funding of local programs."
- The existence of the FHTF inhibits attempts by government to introduce crippling, European-style taxes on mobility.

On the first issue, Pisarski is technically correct. States do have the power to finance roads, and my wording was inaccurate. The point I was trying to make was that, if the federal taxes dedicated to highways were abolished, the states would have the power to impose those taxes themselves without increasing the tax burden on road users. When we discuss school vouchers as "empowering" parents to send their children to private schools, we imply that many parents do not have the power to do so without the vouchers. Of course, we know that parents already have the "power" to choose private education for their children, but we also know that many do not have the funds.

As for "national needs," all proposals to "turn back" highway financing to the states allow for the continuation of some federal activities — I myself mentioned "those relating to research, standardization and innovation." It is not easy to discern "truly national needs" in the current programs. What national interest is served by expenditures in the District of Columbia and Alaska, which enjoy the largest returns from the FHTF in proportion to their contributions? D.C. has a highly congested road network, the costs of which should reasonably be charged to the users. Alaska may not have enough traffic to support its transportation networks and may merit subsidies, but would these qualify as meeting "truly national needs"? Moreover, do urban mass transit systems or Amtrak qualify as "national needs"? If Pisarski wishes to pursue this line, he should identify the "national needs" that exist following the completion of the Interstate Highway System, and explain how they are likely to be financed under the system he seeks to perpetuate. And "defense" need not come under this category, as expenditures required for this important governmental function should come out of the defense budget.

Pisarski suggested that a case could be made "for some level of cross subsidy, particularly from metropolitan areas to rural areas … to support the need to traverse long distances across unpopulated regions." It is not obvious that federal financing is needed to meet such an objective. If he has in mind rural links in the Interstate system that argument no longer applies, as the rural elements of the system are complete. Furthermore, the effect of current FHTF cross subsidies is to take money from users in the relatively unpopulated southern states and send it to the more highly populated northern ones.

Pisarski's third concern is that the abolition of the FHTF would de-link taxes on road use from expenditures on highways, thus opening the door to increased fuel taxes for the benefit of general revenues. I agree that this would be a calamity.

But the proposition that bad systems should not be reformed because they could be replaced by worse ones is, in general, not convincing. In this particular case, the ship has already sailed — a nickel of the federal tax on a gallon of fuel already goes to general revenues, and another penny is dedicated to "transit." Pisarski, who wants assurances that "all user-fee dollars paid into the FHTF are … spent on transportation projects" (he does not limit them to highway projects), seems to have accept-

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ed the latter diversion. I do not.

The federal government is constrained from taxing fuel not by the existence of the FHTF, but by the potential wrath of road users who, fortunately, are politically stronger in the United States than are their counterparts in other countries.

In light of these considerations, I hope Pisarski will see his way to support the abolition, rather than the reform, of the federal financing of state roads.

Gabriel Roth
Chevy Chase, Md.

Shrinking the FHTF by attrition

Recent articles by Gabriel Roth ("Road Policy for the Future," Spring 2003) and Alan Pisarski ("Reconsidering the FHTF," Spring 2004) call to mind what happened when Patrick J. McCue, executive director of the local toll road authority in Tampa, Fla., invited Rep. Don Young (R-Alaska), chair of the House Transportation and Infrastructure Committee, down to Tampa about two years ago to look at some proposed projects. The major one was a spur off Interstate-4 that would run south through Ybor City to the Crosstown Expressway and the port of Tampa. The lanes to the port would be for trucks only; those to the expressway would be for a mix of cars and trucks.

Young was intrigued by the trucks-only lanes and said he wanted that project as a federal demonstration project. McCue said the trucks could finance their part of the project with tolls, but the interchange at I-4 needed federal grant money. Young replied that there would be no tolls on the truck lanes if Tampa wanted money for the interchange. So there will be no tolls on those lanes. The trouble is, this greatly complicated the permitting of the project and increased the cost. And it delayed the project too, because while the chairman promises the money, no one really knows whether and when he can deliver it.

The I-4 spur is a good highway project. It will enhance freight movement efficiency, improve safety by giving trucks their dedicated route, and improve the local environment of Ybor City. By taking tractor-trailers off local streets, it will assist the revival of an old industrial area that is just starting to get new bricked sidewalks, upscale lofts, trendy clothes stores, restaurants, and boutiques. But as a federal grant project, it is going to cost a lot more (probably a third more) and take much longer than it would have if it were a toll project.

This happens all the time. Projects that are perfectly financeable with tolls get embraced by politicians like Young who do not want users paying for them. The politicians want to claim credit for delivering the pork. It is a rotten system for financing and choosing road projects.

In their financing, tolls at least require some estimate of prospective traffic and of willingness of motorists to pay. Thus, tolls tend to attract money to the better projects. The government-grant process, on the other hand, depends on interest groups working the influence system in Washington, D.C. and in state capitals. Projects that get funded are those that provide major benefits to a few who can afford the required lobbying. Costs are spread over many via the gas tax, license fees, or local sales taxes. Many poor projects get funded via the pork system, and many good ones do not, while the good ones that do get funded end up costing more than necessary. A good quarter of motorists' money goes to expensive rail transit projects that are always sold as highway congestion relievers. The notion that Americans can be gotten out of their cars in any significant numbers has proved a fantasy. But it is a fantasy that still draws significant motorist tax money into fruitless passenger rail projects and away from roads.

Why do we not charge directly for road use? Until about 1990, tolls were expensive and inconvenient to collect because they involved the handling of coins and bills. As a result, they were a financing method of last resort. Advances in solid-state circuitry now mean tolls can be collected with short-range wireless data transponders — fancy garage door openers, really — as the motorist whizzes by, underneath an antenna. Satellite location finding (GPS) will soon provide another technology for tolling.

This technology supports the flexibility to vary price by time of day, or even dynamically, so that road-service providers can manage entering volumes into tollways to guarantee free flow. When entering volumes are unmanaged and exceed about 2,000 vehicles per hour per lane, we get the familiar breakdown in flow and stop-and-go, creep-and-crawl traffic. Just when motorists need the highway to be operating at peak throughput, capacity declines abruptly to 1,000 or 1,200 vehicles per lane per hour, and average speeds plummet from 55–70 mph to 15–30 mph. It takes hours for the traffic flow to recover, even if entering volumes drop.

This need not be. Variable toll rates can be used to prevent stop-and-go traffic. On two highways in California (the CA-91 Express Lanes and the I-15 HOT Lanes just north of San Diego), they maintain free flow at 60–70 mph right through the peak of the peak hour by managing flow with variable tolls. It can be done anywhere there is the will to do it.

The technology is at hand for real markets in road space, in which multiple entrepreneurial road-service providers compete to provide for different motorist needs with different combinations of toll rates and quality. Those losing money will not expand capacity and will give way to paying enterprises at lower capitalization, while those earning super profits will have the wherewithal to expand capacity or they will attract competitive provision of such.

Surely both Gabriel Roth and Alan Pisarski would welcome the prospect of such a responsive market-driven road service industry. The question is how we get to road markets from our present lousy system of roads-as-political-pork with governments as the desultory monopoly providers. If any one of us were made U.S. Road Czar, it would be easy. We would privatize the roads by auction, order the disbursement to motorists of the highway trust fund balances, and abolish the taxes that support it.

Lacking czarist powers, the most realistic strategy is to use attrition to reduce the Highway Trust Fund system and its corrupt political grants. Let inflation erode the grants' real worth; resist all moves to increase trust fund tax revenues; join taxpayer resistance to gas tax increases (and indeed in times like this with soaring prices, reductions in the gas tax are needed). The remaining trust fund monies should go entirely to maintenance and operation of existing roads. Antiquated restrictions on toll financing should be erased from federal law. The federal government should get out of the business of making grants for new road construction. If the states want to tax their citizens for new pavement, that is their business, but there should be no new federal money for road construction or expansion. That way, the federal pork at least would be dramatically shrunk.

The states will do their own stuff. Already, different patterns are emerging. Some states — notably Texas, Colorado, Minnesota, and now Maryland — say new capacity will be toll-financed or at least toll-assisted. Virginia has a trunkful of investor proposals to build toll roads. California and Florida are devolving power to the county level, and the counties are choosing differently — some tolls, some local sales taxes. Oregon is looking at a statewide "vehicle-miles traveled" charge. Some states like New York are not building much at all.

Just as airline deregulation began in California and Texas and then spread nationwide, so it is likely that the best highway market moves will spread as the benefits become evident to voters.

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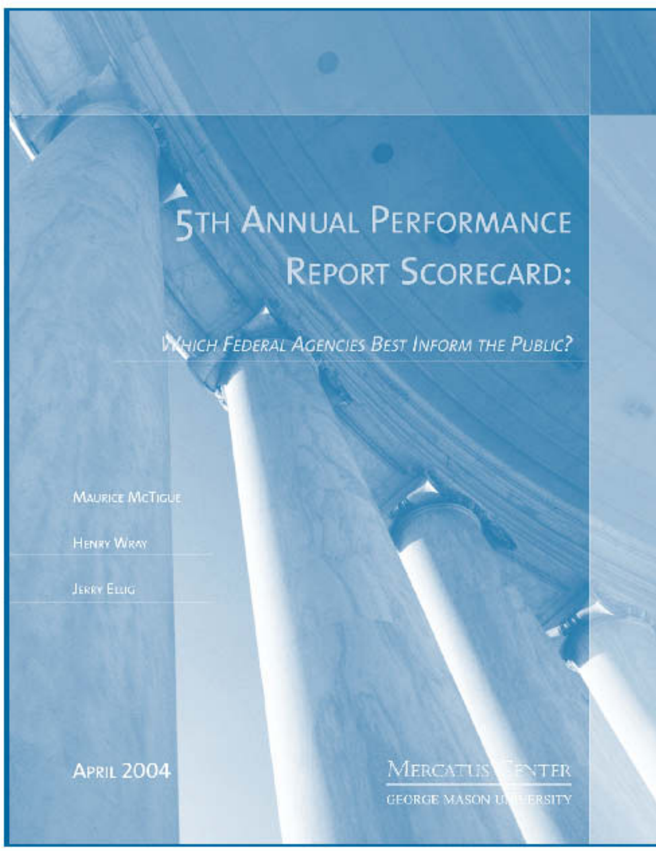

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