

REGULATION

19. Regulatory Rollback

Although income taxes are the most visible means by which the federal government restricts the economic autonomy and lowers the living standards of citizens, the burden of federal regulations is of the same magnitude. And although they are sometimes justified as ways to protect public health and safety, many regulations merely transfer wealth from one group to another. Others are so ill conceived that they cause far more harm than do the ills they claim to cure.

Federal regulations are now as costly, wasteful, and job-killing a burden on the economy as any tax. The regulatory reform proposals in the Contract with America, especially the requirement that the government pay compensation for regulatory takings, are important first steps to getting control of the regulatory process. But far more will need to be done. The hearings on the contract no doubt will expose the plight of victims of regulations and disclose which regulators or regulations' are responsible. That will set the stage for a more substantive regulatory rollback. The following agencies and areas are prime targets for reform during the next two years; some are treated in greater detail in later sections of this handbook.

- **The Food and Drug Administration.** By hindering the creation of new pharmaceuticals and medical devices, this agency has cost thousands of lives. Moving to private certification would better protect the public and facilitate innovation.
- **Superfund.** This program epitomizes much that is wrong with government. In the name of cleaning up toxic waste sites, it levies a tax on businesses that produce no toxic waste, mandates that businesses deal with alleged problems not of their creation in costly ways when more efficient means are available, and passes out pork. Superfund should be abolished.
- **Clean Air Act.** This act, based on demonstrably faulty data, applies draconian measures to all localities, regardless of the severity of their air problems. States and localities, which know better what standards

are appropriate for their regions, not the federal government, should determine clean air policy.

- **Safe Drinking Water.** Federal “one-size-fits-all” regulations not only impose unnecessary costs on providers of drinking water; they also force localities to devote resources to minor problems, which leaves fewer resources for major ones. Localities, not Washington, should determine their own standards and how to meet them.
- **Telecommunications.** The private sector’s success in producing personal computers, software, and user networks contrasts with a stifling telecommunications regulatory structure that dates back to earlier in this century. Complete deregulation can best ensure that America enters the 21st century with a state-of-the-art information superhighway.
- **Agriculture.** The federal government manipulates prices, planting, exports, and imports primarily through subsidies. To help consumers and efficient farmers alike, Washington should phase out this costly and failed experiment in agro-socialism.
- ◀ **U.S. Postal Service.** Even as Faxes, E-mail, and Federal Express efficiently dispatch messages around the country and the world, service from the government’s postal monopoly declines and stamp prices increase. It is time to allow private carriers to deliver first-class mail and privatize the postal service.
- **Americans with Disabilities Act.** Meant to help the handicapped, this act imposes huge costs, which bear no relation to the services delivered, on businesses and local governments and has set off an avalanche of frivolous lawsuits. The federal government should allow the states to set their own policies for the handicapped.
- **Community Reinvestment Act.** The federal government now, in effect, mandates that banks make risky loans. This state-sponsored extortion can be stopped by repeal of the act.
- **Glass-Steagall Act and Bank Holding Company Act.** The former mandates the separation of commercial and investment banking; the latter prevents banks from providing nonbank services. Both make the American economy less competitive and should be repealed.
- **Transportation.** While transportation deregulation has been a huge success, much deadwood, such as the Interstate Commerce Commis-

sion, Corporate Average Fuel Economy standards, and federal speed limits, still Utters the economic landscape. All should be disposed of.

- **Labor.** The Davis-Bacon Act mandates above-market wages on federally funded projects, and the regulations that the Occupational Safety and Health Administration imposes on employers have little to do with protecting workers and everything to do with making job creation more costly. Labor law should be reviewed and reformed.

Rationalizations for Regulations

Most federal regulations set limits on the freedom of individuals to use their own property or mandate the terms on which individuals can engage in economic or other transactions. One kind of regulation, usually called social regulation, purports to protect the public health and safety. An example might be a law barring a property owner in a residential area from keeping open garbage on his property. The rationale would be that garbage attracts rats and other vermin that, not being respecters of property boundaries, probably would infest adjacent property. But in many cases, a regime of strict property rights, enforcement of contracts, and tort law can protect health and safety just as well.

Another kind of regulation is economic regulation, including controls on wages and prices, mandated benefits, and restrictions on trade. Those regulations are ways of redistributing wealth by political means—against the will of at least one of the parties involved.

Finally, there are process and procedural regulations meant to facilitate the work of regulators. Government-mandated paperwork is the most obvious result.

Regulations' Crippling Effects

Although some regulations may originally have been well intentioned, America's regulatory regime has grown into an unwieldy, out-of-control monster that creates more economic and social harm than good. The damage falls into a number of categories.

Aggregate Economic Costs

The level of government taxing and spending is a matter of public record and debate; explicit congressional approval is required each year. But one looks in vain for the aggregate level of the regulatory burden. The federal government keeps no such accounts.

Scholars, however, find a truly staggering total. Thomas Hopkins of the Rochester Institute of Technology places the total cost of federal regulations in 1994 at nearly \$600 billion. The largest part of that amount, around \$200 billion, is attributable to process regulation, primarily government-mandated paperwork. Some \$150 billion is due to regulation of transportation, trade, communications, and other sectors. Environmental regulations now burden the economy with well over \$100 billion in regulatory costs each year.

Hopkins's estimates are reasonable or perhaps even conservative compared to the estimates of economist William Laffer, who finds the sum to be between \$800 billion and \$1.1 trillion annually, more than the federal government collects in income taxes. Laffer takes account of secondary effects of regulations. Regulations' effect on the economy is the inverse of that of compound interest on savings. The effects of the burden, as they accumulate each year, are greater than the sum of the parts.

Uneconomical Means

Federal regulators often take no account of the costs of regulations. In effect, the government will try to address a \$10 problem with a \$1,000 solution. For example, some soil at the Rose Chemical Company's Holden, Missouri, site was found to contain a banned toxic chemical. There were three viable options for dealing with the problem: isolate the area with a \$71,000 fence; cover the soil with 10 inches of clay at a cost of \$3.7 million; or remove all the soil, which carried a price tag of \$13.6 million. The Environmental Protection Agency mandated the costliest option.

Harming Health

The costs of complying with regulations can have harmful effects beyond the inevitable economic waste. For example, some 80 percent of the cost of developing new pharmaceutical products, after certification that they will not harm public health, is attributable to Food and Drug Administration-mandated field tests that take years to complete. During the testing period many patients die for lack of the medication. Some FDA requirements were waived for AIDS drugs but still exist for other drugs.

Effect on Jobs

The money that businesses spend on complying with costly, inefficient federal regulations could be used to hire more workers.

A November 1992 study for Rep. Dick Armye (R-Tex.) by the Joint Economic Committee found that between 1989 and 1992 the government-

mandated burden for hiring each new worker had risen by 34.3 percent. Other studies found that an increase in the federally mandated minimum wage from \$4.25 per hour to \$4.75 would, by a conservative calculation, throw between 75,000 and 100,000 people out of work. A 1988 Congressional Budget Office study suggested that increasing the minimum wage to \$5.05 per hour could cost between 250,000 and 500,000 jobs. And a Republican Policy Committee report in 1987 maintained that a 10 percent hike in the minimum wage could cost between 124,000 and 619,000 jobs.

Sheer Volume and Impossibility of Comprehension

The sheer volume of federal regulations makes it impossible for any individual to understand what is legal and what illegal. The 65,000-plus pages in the *Federal Register* are only the tip of the iceberg. Each regulation has books of explanations, addenda, additions, and supplements. The owner of a sausage factory in Baltimore complained that he had nearly six feet of regulatory books in his office. The former chief economist for the U.S. Chamber of Commerce found that service station owners often simply throw the always lengthy and changing books of regulations they receive from the government in a drawer and ignore them. They assume that as a price of doing business they will occasionally be fined, just as they might from time to time be robbed.

Contradictions in Regulations

Regulations often contradict one another, creating a “damned-if-you-do, damned-if-you-don’t” situation. One bureaucrat told the Baltimore sausage factory owner that his floor must be wet mopped every two hours, and another bureaucrat told him it must be dry at all times. The Exxon Corporation reaped public scorn and billions of dollars in fines and cleanup costs after one of its tankers hit rocks in the coastal waters off Alaska, causing a giant oil spill. The company, critics said, should have known better man to allow a man with a record of alcohol abuse to pilot a ship. Yet now Exxon is being sued for employment discrimination for dismissing a tanker engineer with a drinking problem.

Discouraging Better Alternatives

Federally mandated regulations often discourage less costly means of protecting the public health and safety. For example, Amoco made a study of its refinery in Williamsburg, Virginia, with EPA participation, to discover the best way to reduce certain pollutants. It found that using

the **EPA-mandated** way, it cost \$2,500 to remove a ton of pollutants. Using the approach that Amoco favored would cost either \$500 or \$650 per ton. Another difference was that the Amoco approach would reduce pollutants in 10 or 20 times the area in which the EPA approach would. But federal regulations do not allow for flexibility. Thus the more costly, less effective method was mandated in the Amoco case.

No Relationship between Penalties and Public Interest

"Let the punishment fit the crime" is a standard of justice that often does not apply to federal regulatory policy. The owner of a small business in Arkansas had to file some 200 forms with the Internal Revenue Service. But his typewriter was 12-pitch, and the IRS requires that forms be filled out in 10-pitch type. He was fined \$10,000—\$50 per page. James and Mary Mills of New York State were fined \$30,000 for building a deck on their house because the deck cast a shadow on a wetland.

Politicized Regulations

The **command-and-control** regulatory regime is based in part on the mistaken premise that, in reaction to alleged market failures, expert bureaucrats, insulated from politics, can develop and execute policies to correct those failures. In fact, an iron triangle exists among federal bureaucrats, members of Congress, and special-interest groups, ensuring that, to some extent, regulations will be politicized. Bureaucrats seek to expand their control over those they regulate and their staff and budget levels. Members of Congress, who derive part of their power from overseeing federal programs, like to make certain that interest groups that will support their reelection receive special favors. And interest groups naturally seek government handouts or regulations that favor them or harm their competitors.

One example of a seemingly **nonpolitical** attempt to protect the environment was the 1977 regulation requiring smokestacks in coal-burning facilities to be equipped with special scrubbers to reduce sulfur emissions. This example is indicative of how regulations are really made in Washington. Before the mandate, facilities had a strong incentive to purchase low-sulfur coal to meet environmental standards, which meant reduced use of more polluting coal, produced mainly in West Virginia. That state's Democratic senator Robert Byrd sponsored the scrubber mandate because, if that **costly device** were used, emissions from a smokestack would have an equal sulfur content no matter which kind of coal was used. That, of course, meant that the high sulfur content would not deter those wishing to purchase West Virginia coal.

The support of the E.I. du Pont de Nemours for a ban on air conditioner coolants containing chlorofluorocarbons (CFCs) is another example of a politicized regulatory process. CFCs supposedly harm the ozone layer. Yet all air conditioner coolants, including the ones traditionally produced by du Pont, contain CFCs. But du Pont holds the patent on the only current alternative to CFC-based products. Thus, by supporting the ban, the company can rid itself of competitors and corner the market with its new product.

The Enterprise of Deregulators

The Western industrialized democracies are experiencing a slow-motion version of what happened in Eastern Europe and the Soviet Union. The contradictions of intrusive government regulations, **command-and-control** rule, high taxes, and welfare handouts have produced economic, social, and political crises that cannot be mitigated by the policies that caused them to begin with. Western Europe has gone down that road further than has the United States. America may have stopped at the brink.

Policymakers should think of their enterprise as a small-scale version of the undertaking of the leaders of the former Soviet empire. The new Congress has the opportunity to back the country out of socialism. Incremental changes or "reinventing government" will not be adequate to make the transition from a regulatory welfare state back to a free market.

Virtues of the Contract

The changes proposed in the Contract with America would be important steps toward getting a handle on the regulatory crisis. Most provisions would reform the process of making and enforcing regulations. The public dialogue over the contract will call attention to the lack of good accounting of the costs of regulations.

The most important measure proposed by the contract would require that the federal government pay owners compensation for reductions in the value of their property properly caused by restrictions on the otherwise lawful use of that property. That measure simply ensures citizens' rights under the Fifth Amendment of the Constitution that requires the government to pay for property that it takes for public use.

Targets after the Contract

Although the regulatory planks of the contract constitute an important start to dealing with the regulatory plague, ultimately they only scratch

the surface. Truly reducing the regulatory burden will require amending or repealing major laws already on the books.

The hearings associated with the contract can lay the groundwork for a more radical regulatory rollback. First, those hearings should be used to focus attention on the victims of regulation. Government restrictions ruin the lives and destroy the dreams of real flesh-and-blood individuals. Committee hearings can help, not only to pass the contract, but to sensitize the public to the need for more substantive reform.

Hearings also should be used to discover the exact sources of abuses suffered by regulations' victims. If individual regulators, through disregard for the rights of the citizens, are responsible, they should be called to task. The hearings should send an unmistakable message to regulators that their abuses will bring congressional review and sanctions. If regulators show that abuses arise from poorly conceived laws that leave them little discretion, Congress can begin to draw up a list of laws to be reformed or repealed. And if neither Congress nor regulators can discover the causes of abuses, if responsibility is spread so nebulously through agencies that no one is accountable, then policymakers and the public should know the gravity of the situation: the country is experiencing a breakdown in the rule of law as agents of the state act on doubtful authority against the citizens.

The hearings should not aim so much at taking revenge on particular regulators as at demonstrating clearly the need for more extensive changes by legislators to ensure that the lives, liberty, and property of citizens are protected from government abuse.

After hearings and votes on the contract, Congress should move on to genuine regulatory rollback. Political realities will determine which regulations should be the first targets, but policymakers might find it useful to ask four questions to help them determine which targets to choose:

- o Which regulations place the greatest burden on the economy?
- o Which regulations have been the subject of the most scrutiny and scholarly study, that is, for which regulations do good data bases exist?
- o Which regulations are most easily understood by the public and policy-makers as in need of change?
- o Which regulations is it politically realistic to change in the next two years?

Using those criteria, the 104th Congress can target needed reforms.

Suggested Readings

- Boskin, Michael J., David McIntosh, C. Boyden Gray, and John Robson. "Reflections on the Bush Regulatory Record." *Regulation*, no. 3, (1993).
- Hopkins, Thomas. *Regulatory Policy in Canada and the U.S.* Rochester, N.Y.: Rochester Institute of Technology, 1992.
- Hudgins, Edward L. "West at the Crossroads." In Joint Economic Committee. 1994 Annual Report. May 3, 1994.

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