
State Regulatory Measures

Edward L. Hudgins

Much of the concern over job- and business-killing regulations focuses on Washington dictates. The costs of these regulations are indeed huge, estimated at \$600 billion annually. But state governments implement an equal number of suicidal regulatory policies, which too often are masked by the effects of federally imposed regulatory burdens.

The Republican-controlled Congress has had little success in rolling back substantive regulations. (See my "Regulatory Report Card" in *Regulation*, 1996 No. 1.) Even process reforms such as regulatory budgeting and risk-assessment/cost-benefit analysis have stalled. Yet for the first time in decades, serious talk of decentralizing power is reverberating in the halls of the federal and state congresses. And the 1994 election saw the number of governor's mansions controlled by Republicans increase from 20 to 39, and the number of state legislatures from 8 to 19. Many of these Republicans have promised to lighten the regulatory burden.

While regulatory horror stories often result from federal rules and statutes, the states certainly are responsible for situations that range from the silly to the seriously damaging. For example:

- There are no signs indicating places of lodging off the exits on the 100 miles of the New Jersey Turnpike between New York City and Delaware, nor are there motels or hotels. This means travelers are inconvenienced, that tired

travelers are more prone to accidents, and that New Jersey loses business and tax revenues.

- New Jersey and Oregon do not allow customers to pump their own gas. Requiring all stations to be full-service inflates prices and inconveniences customers.
- Michigan's Mackinac Center for Public Policy reports that in-state enterprises moving household goods over a distance of less than eight miles face few regulations. But past that magic distance, moving companies face a long list of regulations, including mandated high wages, that make relocating a far more costly proposition.
- Oregon's Cascade Policy Institute reports that in Portland, the Union Gospel Mission allowed HealthBridge, a nonprofit group founded by doctors to help the homeless, to operate an overnight clinic at the mission. But the state's department of health mandates 24-hour nursing for such facilities, something the health group could not afford. The private clinic was forced to close.

If the federal regulatory burden is reduced and responsibility devolved to the states, the mask on state regulations could be slowly peeled away. The differences among state regulatory regimes would become more pronounced. It would make a substantial difference whether a business is located in more-regulated California or less-regulated Arizona.

And even if attempts to roll back regulations in Washington stall, states will have a growing incentive to reform their own regulatory regimes

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to stimulate job growth. In part, this is due to the fact that state industrial policies that grant subsidies, tax breaks, or free services to statewide enterprises are increasingly costly, and often have negligible or nonexistent returns.

Thus, it is time for policy analysts to compare the virtues and vices of the 50 states, highlighting the former and criticizing the latter. Ideally, this enterprise should culminate in a system to rate the states on their regulatory regimes.

Asking the Right Questions

Little systematic work has been done to compare regulatory regimes among the states, in part because of the difficulty of quantifying or assigning orders of preference for the disparate policies that make up regulations. This contrasts with state tax and spending policies that are quantifiable by their very nature and thus, easier to rate. The Cato Institute's Steve Moore and Dean Stansel provide such a rating annually.

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The enterprise of evaluating state regulations can usefully focus on five areas:

1. **State vs. Federal Jurisdiction:** Identify the regulatory areas that traditionally are or should be handled by state rather than federal government;
2. **Magnitude of the Burden:** Quantify or otherwise make clear how much of the regulatory burden in each state results from federal and state regulations respectively;
3. **Categories and Ratings:** Identify the policies to be evaluated and a methodology for rating them;
4. **Efforts to Reform:** Evaluate the efforts of governors and state legislatures to correct bad regulatory policy;
5. **Administrative Efforts:** Evaluate the efforts of governors to administer current regulations in the least burdensome and intrusive way possible.

It is useful to take each of these tasks in order and evaluate the standards that might be used.

State vs. Federal Jurisdiction

Theoretically, sorting out jurisdiction should be a straightforward task. Article I, section 8 of the Constitution enumerates the powers of Congress. These include the powers to coin money, punish counterfeiters, grant patents, and set uniform standards for naturalizing citizens. Most significant for the economy is the clause that allows the federal government "To regulate Commerce with foreign Nations, and among the several States." Historically, this was understood to mean removing barriers to trade between states, such as tariffs. The Tenth Amendment to the Constitution states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Especially since the 1930s, the federal government has interpreted the Commerce Clause as granting power to regulate all economic activity. And for the most part, the federal courts have backed federal preemption of state policies.

A return to the Constitution would require the federal government to refrain from interfering with state regulations that do not have a direct interstate component. In the environmental arena, the federal government, at most, might act as referee for disputes between states, such as disputes created by air pollution.

In practice, regulation of certain activities has remained more in the hands of the states. These have included zoning, insurance, and occupational licensing.

Magnitude of the Burden

A governor no doubt would get the attention of his legislature and citizens if in his annual State of the State address he could report: "Our state, with a population of 3 million and a workforce of 1.5 million, currently suffers under an annual regulatory burden of \$12 billion. Of this, we have no control over the \$8 billion in regulatory costs that are imposed from Washington. The costs of state regulations are \$4 billion. The total reduction in employment in our state from combined federal and state regulations is about 125,000 jobs."

One of the difficulties of reforming or rolling back regulations, unlike taxes or government

spending, is that regulatory costs often are hidden. Holding these costs clearly before the eyes of the public and policymakers creates pressure to rationalize or eliminate the regulations that produce them.

An easy way to assess the magnitude of regulations is to count the number of bureaucrats engaged directly in regulatory tasks, or to compare the number of bureaucrats per capita among the states. Calculations can be made to quantify how many of the 3.5 million state government employees work full time as regulators, or the number of regulators per citizen.

But while such an approach is instructive, it does not provide a measure of the real magnitude of damage done by regulations, nor does it highlight the areas that most need reform.

The numbers in the example of the governor's State of the State address on p. 26 are not completely fanciful. They are based first on estimates by Thomas Hopkins of the Rochester Institute of Technology that the annual federal regulatory burden is over \$600 billion, or about \$5,000 for each of America's 120 million workers. The example also assumes that since the tax burden imposed by the states is about half that imposed by the federal government, that a similar ratio exists for the regulatory burden.

But such calculations are problematic, to say the least. Hopkins for example, bases his calculations on proxy indicators for certain areas of regulations. The numbers probably indicate the magnitude of the regulatory burden. But it is not possible to impute the burden of a particular regulation, such as federal clean air regulations, from Hopkins's calculations.

The Republican Contract With America featured a more direct means to gauge regulatory costs—regulatory budgeting—but it was not found in the final bill to pass the House. It has been reintroduced by Rep. Lamar Smith (R-Tex.). This approach would require the president to submit estimates on how much each regulation would cost in the same way that the regular budget requests certain sums for specific uses.

This approach would help expose the costs of regulations, and make clear to the public and policymakers that regulations impose a heavy burden on the economy. But putting a dollar value on a specific regulation is often problematic.

Further, this approach does not address the issue of exactly what sort of regulatory regime the country or the states should have. Consider

an example. A restriction on dumping pollutants in a river that runs through an owner's land could generate the need for a more costly form of disposal—a cost that might appear in a regulatory budget. A clear property-rights law might force the owner to assume equal or even greater costs of disposal. But in such a situation, cost is no object. This is because an owner does not have a right to ruin a river running through a neighbor's property. The real issue is not one of costs, but one of rights.

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Indexes of Freedom. In recent years, two indexes have been issued in an attempt to gauge the level of economic freedom in countries throughout the world. Among the set of factors rated in each index is regulatory burden. The author of this piece was involved in the production of both of these indexes. And this state regulatory index is meant to build on these earlier measures of economic freedom.

The concept for the Heritage Foundation's index was developed by this writer during his tenure at the institute, with the help of Bryan Johnson. Johnson went on to operationalize the index, which is in its second edition. This index principally sought to study less developed countries to demonstrate that economic liberty rather than foreign aid is the cause of economic growth and prosperity. Regarding regulation, Johnson looks at the obstacles that a business will face in acquiring permission to operate. The factors used to make this determination include government corruption (for example, the need for businesses to pay bribes), the degree to which regulations are applied uniformly, and the degree to which a government sets production limits, quotas, or other controls on business output. Accounting and consulting firm evaluations of the various countries provided the data for these measures.

The second index, published in conjunction with a number of institutes including Cato, was principally the work of James Gwartney of

Florida State University, with help from Walter Block and Robert Lawson. Their index combines and weighs factors by three different methods and produces three scores for each country. Of the 17 factors in the index, the ones relating directly to regulations are price controls, freedom to enter and compete in markets, and the operation of the legal system. The market-entry factor would examine, for example, licenses or other obstacles faced by entrepreneurs.

Both indexes do a good job of rating the overall economic liberty of countries. But to examine states or industrialized countries in more detail requires a broader set of factors.

But more important than quantifying the cost of regulations is determining what kind of activities the states *should* regulate.

Thus, quantifying the burden of regulation or the limits on economic freedom might be useful for state policymakers who wish to make clear to the public that regulations come with huge costs in jobs and economic growth. But more important than quantifying the cost of regulations is determining what kind of activities the states *should* regulate.

Categories and Ratings

The heart of any index designed to gauge the costs of state regulations consists of the categories that are evaluated and the methods of evaluation.

Types of Regulations. In general, regulations can be classified in three broad categories. Economic regulation is government control over the terms under which business can be conducted. Such regulation includes controls on wages, benefits that employers are required to give employees, advertising restrictions, and limits on hours of business. In general, there should be no economic regulations, neither at the state nor federal level. To the extent that state governments interfere with the rights of citizens to make voluntary contracts, they should be downgraded.

Procedural regulations are those requirements

or limits placed on the regulatory power of governments. Loose procedural regulations allow for arbitrary and contradictory rulemaking and regulatory enforcement. Often the costs of rules made with poor procedural safeguards will outweigh any possible resulting benefits, or will be the most costly and intrusive approach when less costly approaches are available.

Procedural regulations should not be included initially in this index of state regulations, since the index means to focus on the substance of regulations. But the regulatory reviews and reforms by a number of governors treat procedures as the regulations most tightly under their control. These are discussed under part five below.

Social regulations purport to protect public health and safety. One of the difficulties in comparing these regulatory regimes is that the particular conditions and problems in different states and localities mean that what might be a reasonable approach to protecting public health and safety in one state might not be appropriate in another. But in general, public health and safety can be protected by strict enforcement of property rights and contracts, and a sound tort-law regime, rather than command-and-control regulation.

Methodological Problems. A regulatory rating system faces a number of difficult methodological challenges, including the choice of factors to be evaluated. Such factors should be chosen with several goals in mind. The factors should cover all significant state regulations. Further, any one factor should have as little overlap as possible with other factors to avoid counting the same regulations more than once. For example, a state minimum wage law is an economic regulation that does not overlap with occupational licensing. But one of the more illustrative and popular ways to illustrate the regulatory burden, determining the average cost and time that it takes to establish an enterprise, could be used to take account of both of these aspects.

A second methodological challenge is to choose factors that can be measured or operationalized with available data sources. In some cases such as state minimum wage laws, the measure will be easy to acquire and it will be easy to compare one state with another. In other cases, such as tort law or environmental regulation, analysts will run into difficulties. For these it could be necessary to use proxy measures.

A third methodological challenge concerns

whether to give each factor equal weight. Ideally, an index would present one summary number for each state to allow comparison among all states. But since a number of factors go into the score, the question arises whether they should be treated equally or whether they should be given different weights. This need would suggest some validity to the enterprise of gauging the adverse impacts of different regulatory elements.

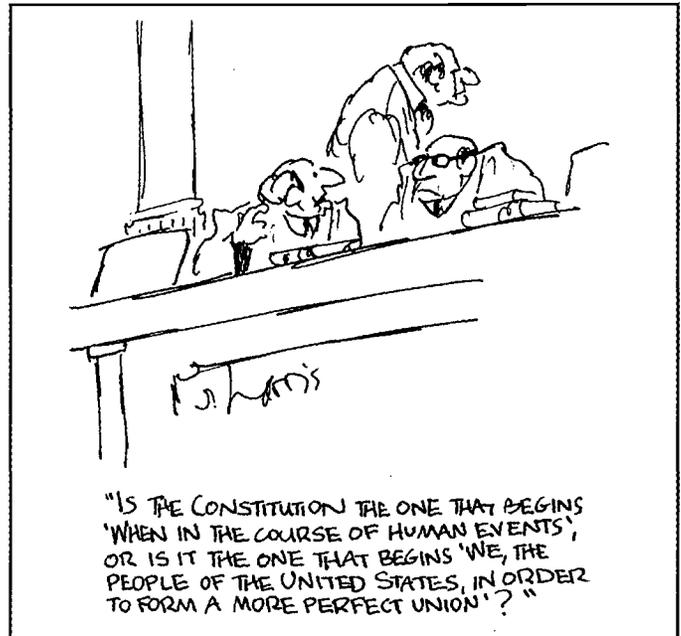
The Ratings List. With the caveats above, the following categories are offered as the factors that would best indicate the degree of regulation of freedom in the states.

PROPERTY RIGHTS AND LAND USE

The principal function of government should be the protection of life, liberty—which includes freedom of contract—and property. But too frequently governments are part of the problem they are meant to solve. Regulatory takings have been a growing problem at the federal, state, and municipal levels of government. When governments restrict the noninjurious use of private property, for example, in the name of protecting the environment, at minimum they should pay compensation as per the requirements of the Fifth Amendment to the Constitution.

In the recent case of *Dolan v. City of Tigard*, the U.S. Supreme Court, at least in part, moved back in the direction of protecting property rights. The court ruled that the Oregon city could not require a hardware store owner to construct a bike path as a requirement for permission to expand the store. The reasoning behind the decision was somewhat muddled, requiring governments to show some “rough proportionality” between the mandated dedication of land for a particular use and the adverse impact of development that the regulation seeks to offset. (See Timothy Lynch, “Property Rights and ‘Rough Proportionality,’” *Regulation*, 1994 No. 3.)

Zoning is a restriction on the use of property that does not necessarily imply a taking deserving compensation each time the property changes hands. This is because the expectation that the property’s use will continue to be limited in the future is reflected in the exchange price of the property. It is when a government changes



the property's permitted use that value either is bestowed, for example, when zoning is liberalized; or taken, for example, when the property use is restricted.

Zoning is also more of a municipal than a state government function (see the article in this issue by George Liebmann). But most state governments to a greater or lesser extent do get involved in zoning. It might even be argued that states should intervene in municipal zoning matters if it is for the purpose of liberalizing the system.

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Some land-use regulation aims specifically at protecting the rural environment. But often the regulations lack sense and consistency. Kurt Weber at the Cascade Policy Institute in Oregon relates, for example, that a small farm can run a processing facility for wine but not for grape juice, preserves, or other processed food products.

Rating factors for property rights would include:

- To what extent does the state government compensate owners for regulatory takings?
- To what extent do state zoning regulations limit the liberal use of property?

- To what extent do restrictions meant to protect safety or the environment bear any relation to their goals?

TORT LAW

A sound court system and tort law allow individuals to enforce contracts and to secure reparations for breach of contract, or for loss or damage to person or property due to the fault or negligence of another. Traditionally, tort law is established by common law or legislation in a state. Tort law reform is especially crucial for setting the legal foundation for protecting public health and safety with the law, rather than with command-and-control regulations.

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Anecdotal evidence suggests that tort law in certain states is more open to abuse than in others. For example, in Alabama, a plaintiff claimed that his "new" \$40,000 BMW was not "new" since it had been repainted for \$601.37 prior to the time of purchase. He subsequently was granted a \$4 million award. This verdict was recently overturned by the Supreme Court. And a New Mexico woman who spilled hot coffee in her lap while sitting in her car was awarded over \$1 million.

Ratings factors for tort law should include:

- How quickly and inexpensively does a state adjudicate tort cases? A particularly slow, cumbersome process would weigh against a state.
- Is there a wide disparity between decisions in similar cases, indicating arbitrary application of the law? If it really makes a difference which judge a plaintiff or the accused gets in a case, this is evidence of arbitrary application of the law.
- Does a state's tort law require losing plaintiffs to pay for the winner's legal fees? While none allow such a practice, it is important to lay this down as a marker that might be reached by a truly progressive state.

INSURANCE

States have traditionally exercised control over insurance in two ways. First, they mandate insurance for automobiles and occupations. And second, they regulate the terms of insurance. For example they can mandate prices, what types of packages can be offered, the terms under which an insurance company can refuse coverage, and the rules that will determine whether an insurance company must pay for a claim.

Insurance is crucial in allowing individuals and enterprises to deal with the uncertainties of life. But to the extent that an individual's choices and actions increase risk, it is reasonable to expect them to pay higher rates of insurance.

Questions for rating insurance regulation would include:

- To what extent does the state mandate bundling of insurance?
- To what extent does the state control pricing?
- To what extent does the state set criteria for payment of claims? For example, does it mandate no-fault insurance?

WORKERS' COMPENSATION

This form of insurance deserves to be treated separately, since the level of state government involvement is usually much more direct than for other forms of insurance. Ideally, worker safety should be worked out between the workers and their employers. Further, a sound application of common law or tort principles such as "reckless endangerment" and "negligence" should provide the legal basis for protecting workers. Competing insurance companies could set the actual workplace standards in cooperation with business owners.

Workers' compensation insurance originated to offer workers pay during periods of recuperation after on-the-job injuries. Benefits paid under these programs have grown from \$5 billion in 1960, to \$21 billion in 1970, to \$62 billion in 1992. This increase has occurred as accidents and injuries on the job have gone down. A major reason for the increased costs is ever-expanding legislative definitions of what is covered.

In most cases, workers' compensation is supposed to protect enterprises from lawsuits by workers. But in fact, employees will often aim their legal ammunition at the manufacturers of machines and tools in the factories. Frivolous lawsuits are not

eliminated, but rather shifted to different victims. And with the advent of the Americans With Disabilities Act (ADA), injured workers have another avenue for lawsuits. The largest single category of suits under the ADA consists of those brought by workers with back and similar injuries.

But while the states follow interventionist workers' compensation policies, there is considerable difference between the economic soundness of the various policies. California has had one of the most costly and arbitrary systems. For example, it has classified stress as a workers disability. Now California is considering privatizing the system altogether.

Some issues to examine with regard to state workers' compensation thus might be:

- To what extent does the state allow private provision of workers' compensation insurance?
- Does the insurance cover demonstrable workplace physical injuries or illnesses, or does the state government mandate coverage of stress, mental illness, or other nonphysical problems?

LABOR

State labor policies often mirror the errors of federal policy. States, for example, can mandate wages or other benefits. And many states maintain minimum wage laws higher than those set by the federal government. New Jersey's 1992 minimum wage hike to \$5.05 per hour, compared to the \$4.25 federal rate, helped depress New Jersey's rate of teen-age employment. (See the article by Donald Deere, et. al. on the minimum wage in *Regulation*, 1995 No. 1.)

States also can have their own version of the federal government's Davis-Bacon Act. The act requires private companies receiving federal contracts to pay the "prevailing wage," which in practice means a high union wage. The city of Baltimore, for example, recently established a minimum wage of \$7 per hour for workers employed by private firms on city contracts.

Ideally, worker safety should be guaranteed by contractual understanding between employer and employee, and through such reasonable tort and common law principles as "reckless endangerment." But states that do not have their own versions of the federal Occupational Health and Safety Administration (OSHA) are covered by that agency.

States that have their own OSHAs are required to enforce federal OSHA rules, and

can add stricter rules if they wish. Such states have latitude concerning the enforcement of regulations. Thus, a state could maintain its own OSHA, add no more rules than the federal standards, but through more reasonable enforcement policies, shield its enterprises from harsh or arbitrary federal enforcement. Under the Maine-200 program for example, the 200 firms with the worst safety records in Maine were given a choice: to discover their own workplace hazards and work with the state to correct them, or to be subject to federal standards. Those enterprises choosing cooperation with the state found eight times the problems the regular OSHA inspection-and-fine approach found.

One might ask why governments should certify the competence of professionals to begin with. After all, the safety of consumer products is certified by independent laboratories such as Underwriters Laboratories, not by governments.

Questions regarding state labor standards would include:

- Does the state mandate a minimum wage above the federally mandated level?
- Does the state have its own version of the Davis-Bacon Act?
- Does the state allow employment-at-will?
- Does the state maintain OSHA standards that are harsher than federal regulations?
- Does the state agency practice more flexible enforcement than OSHA?

OCCUPATIONAL LICENSING

Occupational licensing of everything from doctors, dentists, and lawyers to beauticians has traditionally been a state or local matter.

One might ask why governments should certify the competence of professionals to begin with. After all, the safety of consumer products is certified by independent laboratories such as Underwriters Laboratories, not by governments.

Certification for suppliers of medical services varies widely between states, and can have significant effects on both the costs and availability of medical services. For practitioners other than

physicians, one important issue is precisely *what* they are certified to do. For example, an article in the *New England Journal of Medicine* of November 10, 1994 rated regulations on physician assistants, nurse practitioners, and certified nurse midwives in all 50 states. The three criteria used were: recognition of their license or title, including whether or not they must be supervised by a physician; whether they can accept direct reimbursement; and to what extent they can prescribe or order medicine.

The requirements for massage therapists vary widely, usually taking some two years to acquire full accreditation. This year Maryland legislators are even considering requiring two years of college as a prerequisite to accreditation.

There is no reason why private haulers cannot collect trash, and private companies dispose of garbage, whether through nonpolluting landfills, smokeless incinerators, or recycling.

In some states a dental hygienist is authorized to perform only a handful of tasks more than a dental assistant. But the hygienist is required to attend years of schooling and receives significantly more pay than the assistant, who in some cases can be trained solely by the employer.

Controversy has arisen recently in some states over certification for hairdressers and beauticians. For the former profession, for example, requirements that practitioners be trained to recognize scalp diseases seem excessive and would probably drive out of business many women who run small enterprises out of their homes.

Another important issue for occupational licensing is whether each profession maintains its own certification board or whether larger boards control a combination of professions.

But if it is assumed that the states should, or at least for all practical purposes will, continue to issue licenses, the problem arises as to how regulations should be gauged.

Some questions to pose might be:

- Which professions are covered?
- Is licensing centralized in a state board or do different professions (such as doctors, nurses,

dentists) maintain their own boards and licensing standards?

- Do states accept certification by other states? This usually concerns the scope of practices for which a practitioner is approved.
- Does the state mandate or micromanage treatments that doctors can offer?

BANKING

While much banking is regulated by the federal government, the states retain some say, especially over the banks that they charter. Just as the federal government until 1994 essentially prohibited banks from opening branches outside of the state in which they were established, state governments have placed restrictions on branching within states. Perhaps the most notorious case demonstrating the consequences of such a restriction is Illinois' limit on banks to one branch. This restriction certainly contributed to the bankruptcy of Continental Illinois in 1984, which resulted in a federal takeover and bailout costing billions of dollars. The competition created when federal restrictions on interstate banking were eased has forced liberalization of state regulations. Still, states maintain many restrictions.

Further, banks can charter with the state rather than with the federal government. Thus states can set more or fewer restrictions on banks, for example, allowing them to offer insurance and other services.

Questions for judging state banking regulations would include:

- Does the state limit bank branching?
- To what extent are state chartered banks allowed to offer insurance or other services?

TELECOMMUNICATIONS

The Telecommunications Act of 1996 has altered the existing mix of federal and state jurisdiction over telephones, television transmissions, and other forms of communication, preempting many state regulatory functions, though in many cases to good ends. But states still have certain powers in this area, as well as the ability to slow implementation of sound reforms.

Questions used to evaluate state telecommunications regulations would include:

- Does the state mandate universal service that subsidizes certain users at the expense of others, such

as residents at the expense of businesses, or rural residents at the expense of urban dwellers?

While the federal government has preempted much cable regulation, states still can make trouble for competitors. For example:

- Does the state allow competition between service providers or does it allow grants of exclusive monopolies to one provider?

TRUCKING

Municipalities, rather than state governments, often regulate local bus and rail transportation as well as taxis. But while federal trucking deregulation occurred beginning in the late 1970s, states still retain various restrictions on trucking. Thus the principal question for state transportation is:

- To what extent does the state control trucking?

ELECTRICITY

Like other utilities, the generation and transmission of electricity have been heavily regulated by state governments. Generally, one enterprise is the monopoly provider of transmission, providing and maintaining lines, poles, underground cables, and other infrastructure. This provider also is the principal generator of power, though in past decades such providers have purchased electricity from private enterprises.

Now there are serious moves, led by California, to allow any supplier of electricity to sell to any purchaser without going through the major provider. But the electricity would have to be transmitted on the major supplier's grid. This has become the principal stumbling block to establishing true free markets for electricity. Questions to look at include:

- Does the state allow or have a schedule for moving to electricity wheeling?
- Does the state allow the principal transmitter of electricity to charge higher rates to cover stranded costs?

ENVIRONMENT: SOLID WASTE

The federal government has preempted much of the states' environmental jurisdiction. But some states try to maintain reasonable policies to the extent that they can, while others use federal regulations as a base on which to

add their own economically unsound policies.

Solid waste disposal, principally trash pick-up and disposal, ideally should not be a government function. There is no reason why private haulers cannot collect trash and private companies dispose of garbage, whether through nonpolluting landfills, smokeless incinerators, or recycling. Federal regulations now preempt most local regulations over landfills. Principal state discretion is over collection and disposal. Thus regulatory indicators in this area would be:

- Does the state maintain a monopoly over solid-waste collection and disposal?
- Does it grant exclusive contracts to private haulers?
- To what extent does the state mandate recycling?

TOXIC CHEMICALS

The federal government is active in this area as well. Indicators of state policy would include:

- To what extent does the state pressure companies to reduce the use of toxic chemicals further than required by federal mandates?
- To what extent does the state fix costs or liability for cleanup of toxic waste on parties other than those responsible for the waste? New Jersey has particularly bad laws in this area.

LABELING

States often require so-called green labeling, in accordance with regulators' opinions about the ecological desirability of various products. Other labeling requirements include those mandated by California's Proposition 65, which required labeling of any product with any chemical content, no matter how minute, associated with cancer. In the state, bags of common beach sand must be labeled carcinogenic. An indicator of the severity of state regulations in this area would be:

- Does the state require labeling of products with content deemed hazardous, or green labeling?

CORRECTION PROCEDURES

When enforcing environmental laws, some states treat businesses as adversaries to be punished, while others seek a cooperative relationship. An

indicator of this might be:

- Does a state allow an environmental audit privilege that suspends fines for companies that discover and correct their own paperwork or technical violations of environmental laws?

OTHER CANDIDATES FOR INCLUSION

- **Schools.** George C. Leef, an adjunct scholar with Michigan's Mackinac Center for Public Policy, is one of a number of policy analysts who would include education on the list of sectors that suffer under state regulations. Restrictions on charter schools, homeschooling, and other alternatives might be considered regulatory abuses.
- **Tom McClintock** of California's Claremont Institute suggests that state affirmative action efforts be included as a form of regulation. California state regulations cost nearly \$345 million.

Efforts to Reform

An obvious question to ask when evaluating state regulations is: To what extent are efforts being made to eliminate or replace unsound regulations? And here the answer will involve both an evaluation of the state's governor and its legislature. Clearly, in states in which different political parties hold the statehouse and governor's mansion, one branch of government could be working for change while the other resists. Republican Governor George Allen of Virginia, considered a leading regulatory reformer, faces this situation. When the governorship and state legislature belong to the same party, however, more legislative reform can be expected. Republican Governor Christine Todd Whitman of New Jersey, with the legislature in her party's hands, therefore can be held to higher expectations.

In any case, since regulatory reform involves a major overhaul of the entire government in most states, the governor is in the best position to exercise leadership in this area, educating the legislature and public about regulatory problems and solutions.

It is not surprising that until recently, governors have not put forth major legislative plans for regulatory reform. What is needed first are major reviews of state regulatory policy on which a legislative agenda could be built.

Ongoing reviews by some governors ideally should point to legislative changes.

Administrative Efforts

Governors and their executive appointees have considerable discretion with regard to how they administer current regulations. They can usually make certain that rules implement legislation in the least burdensome, costly, and intrusive ways possible. Executive reforms could include establishing internal review procedures that always take account of costs and benefits, and allowing appeals by citizens that are abused by regulators.

Such efforts are important first steps in regulatory reform. And important reviews are being or have been made, notably in Virginia (see article in this issue by Susan Eckerly), New Jersey, (see article in this issue by Dana Joel), New York, and California (see my Current in this issue).

Conclusion

Measuring state regulations and comparing the costs among the various states is a formidable task. Yet the resulting information could focus the attention of the public and policymakers on both the state role in regulation and the directions that reform should take.

State public policy institutes, whose comments on the proposed index were most valuable, are in a good position to help refine the index's list of indicators, and to use the resulting intellectual ammunition to fight reform battles in their own state capitals. And as the states seek to free themselves from self-imposed regulations, they will certainly fight to reduce the federal role, serving as valuable outside-the-beltway allies for those fighting the battle in Washington.

Selected Readings

- Gwartney, James, et. al., *Economic Freedom of the World*, (Vancouver: Fraser Institute, 1996) Co-published with the Cato Institute and public policy research groups in nine other countries.
- Johnson, Bryan T., Sheehy, Thomas P., *Index of Economic Freedom*, (Washington: The Heritage Foundation, 1996).