
Rhetoric vs. Reality

New Jersey Regulatory Reform

Dana C. Joel

When Christine Todd Whitman took office in 1994, she became chief executive to one of the most highly regulated states in the nation. Extending far beyond the original intent to protect the health, education, and welfare of the public, New Jersey's regulations are a costly intrusion in taxpayers' everyday lives. This is a state that fined a nun at a parochial school \$9,000 because she failed to meet the state's environmental paperwork requirements. This is a state that charged a manufacturing plant \$5,000 for not mowing the lawn.

Decades of debilitating rules and regulations—afflicting everyone from nuns to school teachers, small firms to large corporations, property owners to shop owners, not to mention consumers who pay for regulations in the form of higher prices—prompted the New Jersey Institute of Technology (NJIT), a private university research institution, in its *Review of the Economic Impact of Environmental Statutes, Rules and Regulations on New Jersey Industry* to conclude that “New Jersey has more inclusive or stricter regulations than those adopted at the federal level and most other states.”

Many voters were hopeful in 1994 that Governor Whitman's election would solve desperate regulatory problems. Several indicators supported this widespread optimism. For one thing, Whitman appeared truly committed to turning the tide and making regulatory reform her top priority after tax reform. “Make no mis-

take about it, we are in a battle for jobs with Pennsylvania, the Carolinas and the Sun Belt every single day,” she stated in her inaugural speech in January 1994. “One of the main reasons we've been losing that battle is state government. We must cut through the needless overregulation that drives businesses out of New Jersey and discourages new firms from locating here.”

A second reason for optimism was that New Jersey's governor has some of the most extensive powers of a state chief executive in the nation. The only statewide elected official, New Jersey's governor has authority to appoint all judges, authorities, and commissions; to veto many decisions made by authorities and commissions; and to veto legislation through line-item and conditional veto power. A third positive sign was Whitman's exceptional popularity with New Jersey voters. This not only made her one of the most powerful governors nationwide, but gave her powerful leverage over the state legislature. And a fourth good omen was that the legislature was in the hands of her own Republican Party.

But little of Whitman's rhetoric has translated into reality. The governor must show a much stronger commitment to repealing the many costly and burdensome rules and regulations if she is to fulfill her promise to the electorate.

Evidence of Economic Damage

The most apparent indication of how damaging regulations have been is the state's employment situation. During the 1980s, New Jersey was one

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of the leading industrial states, surpassing the rest of the nation in economic growth and prosperity. From 1980-89, New Jersey's gross state product (GSP), in constant dollars, grew 48 percent compared to the national average of 31 percent. Moreover, 625,000 jobs were created in New Jersey from 1982-89, averaging close to 100,000 jobs annually, compared to only 50,000 jobs created per year in the expansive post-World War II period.

Today New Jersey is in an economic slump, lagging far behind other states in job creation. New Jersey's annual unemployment rate aver-

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aged 5.7 percent from 1982-89, compared to the national average of 7.3 percent. (The national unemployment rate dropped from 9.7 percent at the beginning of that period to 5.3 percent at the end.) But between 1990-95, New Jersey's average annual rate was 6.8 percent compared to a national rate of 6.4 percent. By 1995 the state's unemployment rate stood at 6.4 percent while the national rate had dropped to 5.6 percent. Further, the state is far ahead of others in business failures. While nationwide there were fewer business failures in 1995 than 1994, the reverse is true in New Jersey. As many as 27 percent more companies closed their doors in the Garden State in 1995 than in 1994.

Manufacturing, which includes the chemical, pharmaceutical, electronics, and textile industries, and which is New Jersey's number one employer, has been particularly harmed by the state's regulatory climate, especially its environmental regulations. Its struggles prompted the *NJIT Review* to conclude, "The state's emphasis on being first among other states to respond to environmental issues and the practice of having the strictest regulations, has increased the cost of doing business in New Jersey and has been a particularly heavy burden on manufacturing. Those costs contribute to the perception that New Jersey is not friendly to business. Most of the industrial participants in this study, both small

and large businesses, indicated that the uncertainties related to the environmental process led them to decide not to expand in New Jersey. Time and again, participants claimed that compared to surrounding states, New Jersey is more inflexible and less willing to exercise discretionary authority to assist industry and manufacturing when such assistance could be provided without compromising environmental standards."

The chemical industry, which employs more workers in New Jersey than in any other state, and produces more chemicals in New Jersey than in all but one other state, has been one of the industries most severely affected by state regulations. Manufacturing jobs in the chemical industry, the state's largest employer, have fallen 30 percent since 1980. Corporate giants that have been forced either to close down or downsize since 1992 include Bristol-Myers Squibb Company, Pioneer Pharmaceuticals, American Cyanamid Company, Ciba-Geigy Corporation, Arsynco, E.I. duPont de Nemours & Company, Reichhold Chemicals Inc., Oxy Petrochemicals, Inc., and most recently, Hoffmann-La Roche Foundation and American Home Products Corporation. State regulations cannot escape a major part of the blame.

While there has been continuous talk of the need to bring more jobs to the state and to cut "needless overregulation," enterprises still view New Jersey as a bad place to do business. Two years after Governor Whitman promised to address the regulatory problem, businesses still view regulations as one of the biggest impediments to doing business in the state. According to the "Business Outlook Survey," conducted in January 1996 by the industry group New Jersey Business and Industry Association, state regulations—tied with property taxes—are viewed by business as the third biggest problem with operating in New Jersey. Environmental compliance ranked as the fourth biggest problem. When asked to list the problems that they believe are worse in New Jersey than in other states, 86 percent of businesses listed the cost of regulatory compliance, 79 percent listed the issuance of permits, 73 percent listed uncontrolled health-care spending, and 67 percent listed problems in attracting new business. The survey also found that of the 15 percent who said they were planning to expand operations out of state, 24 percent said it was due to New Jersey's unfriendly regulatory climate.

On a more positive note, the survey did find that 51 percent of the companies polled felt Governor Whitman had made progress over the last year in easing regulations. In 1994 only 40 percent felt Whitman had made progress. In 1993 only 19 percent felt that then-Governor Florio had made progress.

Environmental Regulations

New Jersey's environmental laws are the most crippling of all the regulations in the state. From exorbitant fees and fines to heavy paperwork requirements and steep compliance costs, the Garden State's green laws have made it difficult for many businesses to operate in the state. In fact, business and industry continuously list environmental regulations and related costs as one of the worst problems associated with doing business in New Jersey.

These oppressive rules and regulations hit small businesses, one of the most crucial sectors for new job creation, particularly hard. Many small businesses, with a fraction of the operating budgets of large corporations, must comply with many of the same costly environmental regulations and paperwork requirements. And unlike other firms, they often cannot afford costly lawyers and consultants to get them through the compliance process. Small electronics firms are particularly vulnerable to environmental regulations.

According to NJIT, since 1976 New Jersey has enacted as many as 20 major environmental laws. Today, these laws and hundreds of other rules and regulations are enforced by 3,300 Department of Environmental Protection (DEP) employees at a budgeted cost of \$168 million per year. A state where regulations frequently exceed federal requirements, New Jersey contains some of the most costly regulations in the nation.

The *NJIT Review*, in a published study commissioned by the state legislature in 1994, concluded that "state government must move from a distrustful culture that views all businesses as potential violators to a client-oriented culture committed to educating and assisting all citizens and businesses to avoid dangerous health, environmental and safety risks." The report identified nine problem areas, including:

1. Excessive fees and fines;
2. Overly adversarial relationship to business and industry;
3. High compliance costs;

4. Burdensome paperwork;
5. Overlapping and redundant regulations;
6. Unnecessary, state-of-the-art technology requirements;
7. Obstacles to research and development activities;
8. Costly and burdensome right-to-know labeling and reporting requirements;
9. Regulatory burdens on small businesses and manufacturers.

Shortly after taking office, Governor Whitman publicly announced her commitment to easing regulations by championing a new state "open

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for business." Reading like a page from a Ronald Reagan speech, her statements warned that New Jersey's economic "strengths won't count for much if state government doesn't remove the barriers that stifle economic expansion and make it too costly to do business here."

Whitman's agenda for reform is outlined in the *STARR Report: Strategy To Advance Regulatory Reform*, a document the Governor released last summer to identify specific reform goals. The report lists 16 "Priorities for Action" to be "implemented immediately in order to provide regulatory relief to the state's businesses that will translate into immediate cost-savings and new jobs." These goals are a beginning but stop short of unraveling 30 years of suffocating rules and regulations.

The "one-stop shopping" action item was enacted under Florio but enforcement only began under Whitman, so she included it in the *STARR Report*. This reform, which would streamline the permit process, could provide some relief of the cumbersome, bureaucratic, and costly system. But only about 20 industries will be able to consolidate numerous environmental permits into one. This reform needs to be implemented quickly and should not be restricted to a limited number of manufacturers. Schering-Plough Corporation was the first firm to participate, combining 60 different permits—including water pollution permits, air pollution

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their usage. Reform legislation also would have eased oppressive reporting rules that require manufacturers to list every detailed step of the production process. The reforms would have required reporting only the steps in the production process in which hazardous chemicals are actually used. The bill passed the Assembly 50 to 26, but failed to gain needed support in the Senate. It might have been a different situation had Governor Whitman thrown her support behind these reforms. But her office never took a position, despite the fact that the DEP, acting independently, supported the measures. When asked if she supported the reforms, she was noncommittal, stating simply, "We are watching it very carefully." This legislation, that at the very least would have allowed manufacturers to follow standards the federal government finds permissible, died in committee in the Senate.

This year, both the Senate and the Assembly have introduced separate bills to amend sections of the Pollution Prevention Act. Similar to last year's bill, the Assembly's version, sponsored by Assembly majority leader Paul DiGaetano, would permit manufacturers to recycle or treat chemicals in situations where prevention is not feasible. The Senate's bill, introduced by Senator John Scott, would ease many of the overly burdensome paperwork requirements of small business, including pollution prevention reports, summaries, and progress reports. Again, the governor has stood on the sidelines rather than taking action.

Whitman could show much more leadership on regulatory reform by championing reform measures rather than remaining quiet until they come across her desk for signature. Granted, powerful environmental groups have been very successful in swaying public opinion and stopping reform efforts. Their activities have included a \$100,000 media ad campaign in which they warned the public that Governor Whitman is going "soft on polluters." They also released a report card earlier this year giving her a C- on protecting the environment.

Governor Whitman must not allow popular misconceptions and fads perpetrated by environmental propaganda artists to sway crucial policy decisions. Rather, as the New Jersey Institute of Technology recommends, policies should be "based on unbiased observations, analyses and measurements of the potential risk for harm to

health, safety or environmental integrity presented by an activity, process or substance."

A Cleaner Garden State

Despite what the environmental special interests would lead one to believe, New Jersey is not a particularly polluted state. New Jersey ranks low nationally—seventh—in the amount of toxic emissions in the air and water, per 100,000 residents. Furthermore, the annual Toxic Release Inventory report issued by the EPA reveals that the amount of chemicals released in air, water, and land has been falling steadily since 1987, despite a steady rise in chemical production. Finally, NJIT reports that there has been a decline in air and water pollution of up to 80 percent.

Many manufacturers have been doing their part to protect the environment. Over the last decade, pharmaceutical companies have invested heavily in company-created environmental programs that have reduced the level of pollution. For example, one company invested \$28 million from 1982-94 on capital improvements to reduce the amount of chemicals released into the air. Similarly, New Jersey's textile industry voluntarily has replaced the use of carcinogenic "benzene" dyes with the more costly water-based dyes, absorbing the cost internally. As NJIT observes, these voluntary efforts have "resulted from an increased awareness and improved technology, and not from increased environmental regulations."

Auto Insurance

New Jersey's auto insurance debacle provides an example of what happens when government's heavy hand intervenes in the marketplace; preventing businesses from setting their own prices and choosing their own customers, and consumers from choosing for themselves how much insurance to buy. For more than two decades, New Jersey's command-and-control policies have placed an enormous financial burden on consumers and taxpayers. Premium rates—at \$1,094—are the highest in the nation and have been for all but one year since 1989. Efforts throughout the years to solve the problem have been short-sighted quick fixes that have only made a bad situation worse.

Governor Whitman and the legislature have publicly supported some reforms that would give

consumers greater options. Sadly lacking from their reform agenda, however, is any kind of plan to end 20 years of government control over the industry. For example, "prior approval" laws prevent companies from increasing their rates without either appealing to the insurance department for a rate change or waiting it out for the annual inflation adjustment. Other laws controlling the level of profits—a dirty word within the New Jersey Department of Insurance—force companies that earn a pretax profit of 7.8 percent or greater to refund the excess to policy holders. Regulations also force insurance companies to accept any driver who has fewer than eight points for traffic violations even though some companies might prefer not to insure drivers with fewer points. Finally, insurance companies that find they cannot operate profitably selling automobile policies in New Jersey are not permitted to close that operation if they wish to continue offering other forms of insurance in the state. These are only some of the current laws that restrict free enterprise in the automobile insurance industry, causing premium rates to soar and insurance companies to locate anywhere but in the Garden State.

New Jersey's problems date back to the early 1970s, when the state passed laws requiring drivers to purchase more insurance than was needed by the typical driver. Not surprisingly, this caused the price of insurance to spiral. Attempting to control rising premium rates and make insurance more affordable, lawmakers adopted policies that artificially lowered rates. Specifically, they established the Joint Underwriting Association (JUA), a residual or "involuntary" market, that is, a state-run insurance company for bad drivers. But rather than allow the market to set prices—albeit prices that would be comparatively high, given bad drivers' high risk—lawmakers held rates below the market level in an effort to make insurance affordable for drivers in the pool.

This perpetuated a spiral of disasters. As prices in the assigned-risk pool were held down, prices for drivers in the "voluntary market" continued to rise. In effect, the good, low-risk drivers were subsidizing the bad, high-risk drivers. As premiums for good drivers continued to rise, an increasing number of drivers left the voluntary market for the more affordable JUA pool. By 1990, more than half of all drivers were in the assigned-risk pool, up from 39 percent at the end of 1983.

JUA's depressed rates and ballooning population created a serious financial shortfall as claims began to exceed the revenues collected from premiums. Lawmakers' solution to the problem was to slap policy holders with a surcharge, in an effort to cover the shortfall.

Under Governor Florio, a serious problem grew even worse as he further tightened government's grip on industry and passed on the costs of irresponsible policy decisions to drivers, taxpayers, doctors, lawyers, and insurers. The Fair Automobile Insurance Reform Act, passed by the state legislature in 1990, closed the financially broke JUA, but at the same time set up another

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assigned-risk pool, the Market Transition Facility or MTF. The MTF would be different from the JUA, Florio explained to citizens. It would be financially sound because the government would restrict the number of drivers in its pool. Furthermore, the government would close JUA's \$3.5 billion deficit by requiring the insurance industry to pay for it. And the government would prevent the insurance companies from passing on any of the cost to their customers. Finally, he would forbid insurance companies operating in the state from dropping their automobile coverage businesses. Finding themselves controlled by policies more typical of a communist state than a free state, insurance companies began to flee New Jersey.

Like his predecessors, Florio's command-and-control policies had disastrous effects on the auto insurance market. When Governor Whitman took office in 1994, she found the MTF \$1.3 billion in the hole. Despite Florio's assurances, auto insurance premiums were \$964 on average, the highest in the nation, compared to the national average of \$314; and the industry was buried in state regulations.

Promising to bring down auto insurance rates, Whitman spoke of major reform. But actual reform has been minimal to nonexistent. She has done nothing to change auto insurance from a government-controlled system to a market-driven system. When questioned about her policies, she says

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she is afraid that overhauling the system will bring about the same disastrous effects that occurred under Florio. This indicates a lack of understanding on her part of the differences between disastrous command-and-control policies and policies that rely on market forces. But even the consumer-choice proposals her administration supposedly supports lack her commitment.

Her first commissioner, Drew Karpinski, advocated some incremental changes that would have increased choices for consumers. It was assumed that Whitman supported these reforms, though she did not actively campaign for them. Karpinski, for example, proposed lowering the amount of medical coverage for personal injury

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that all drivers must purchase, in an attempt to lower rates and give consumers more options. Requiring \$250,000 of medical injury protection for all drivers, New Jersey's mandate is easily the highest in the nation and at least five times higher than any other state's requirement except Michigan's. Pennsylvania requires \$5,000 in personal injury protection, and even New York requires only \$50,000.

Karpinski also proposed giving drivers the option of joining the health maintenance organization (HMO) of their insurance company's choice for receiving treatment for auto accidents. Similarly, he proposed giving consumers the option to take their cars to the auto mechanic requested by the insurance company, again as a cost-saving option for the consumer. He estimated that allowing these options could save the consumer \$120 a year in premiums.

Legislative efforts to turn these recommendations into law were all defeated last year by anti-reform legislators. Supporters of reform did raise the question of whether an insurance commissioner could implement these reforms without legislation by using discretionary power to change regulations. But Governor Whitman did not take a position on this question and remained silent on auto insurance reform through most of the year, except to say

her biggest disappointment has been her inability to bring down auto insurance rates.

Whitman's second insurance commissioner, Elizabeth Randall, appointed at the close of last year after Karpinski resigned following ethics-violation charges, has been vague and inconsistent on how she intends to solve the state's auto insurance problem. Concerning the HMO option, she first said that she had no opinion and needed to review the proposal. Then she said she was scrapping the Karpinski proposals, not because she did not believe the commission should overrule the legislature on policy regulations, but because she hoped the legislature would approve it. She added that she was leaning against this policy as well as the designated auto body shop option proposal because she did not think consumers would choose the options. She believed the options would be too confusing and thus deter policy holders from choosing them.

The few bills Whitman has signed into law this year are either cosmetic, politically driven, insignificant, or are actually anti-market. For example, she signed legislation that allows drivers to eliminate one speeding ticket from their records every three years. Her reasoning was that since drivers with fewer points on their record receive lower insurance rates, this would be a way of lowering insurance bills for consumers. While definitely popular, this does nothing to address the source of high rates, that is, the current government-controlled system. Worse, she signed a bill that requires insurance companies to give discounts to drivers who enroll in a state-approved driving course.

First and foremost, the governor and legislature need to focus on the big picture. They must end government control and enact market-driven policies. To this end, they should repeal the prior-approval regulation that requires state approval to raise rates. They should also repeal flex-rate laws. These laws control rates but allow the governor to give special exemptions to specific companies: a form of industrial policy that places power in the hands of government to pick winners and losers. Policymakers also should repeal the law that limits the amount of profit a business can earn, and laws that force insurance companies to accept drivers with fewer than eight points.

Furthermore, the government should end its

socialist policies over policy holders. Motorists, like any other consumers, should have the freedom to make their own decisions regarding what and how much insurance they purchase. If they would like to keep their rates down by agreeing to seek treatment by a designated health-care provider, or to take their automobiles to a designated body shop, or to purchase less insurance, they should be able to do so.

Minimum Wage

New Jersey wins yet another dubious distinction: It has one of the highest minimum wages in the nation. Enacted by a Democrat-controlled legislature and signed into law by Florio, the minimum wage was increased in 1992 from \$4.25 to \$5.05 an hour.

New Jersey has figured prominently in the current national debate over whether to raise the federal minimum wage to \$5.15 per hour. Unfortunately, wage-hike supporters—including its chief champion Labor Secretary Robert Reich—point to New Jersey as an example of the minimum wage being raised with no ill effects. The source of their contention is a discredited study conducted by Princeton University economists David Card and Alan Krueger entitled “Minimum Wages and Employment: A Case Study of the Fast-Food Industry in New Jersey and Pennsylvania.”

Card and Krueger attempted to compare employment in the fast-food industry between New Jersey and Pennsylvania—the latter kept its minimum wage rate at \$4.25 an hour—from February 1992 to November 1992. They concluded that no jobs were lost due to the wage increase, and that in fact, there was an actual increase in employment in New Jersey among fast-food workers.

But Richard Berman, executive director of the Washington, D.C.-based research organization Employment Policies Institute, explains in a report entitled “The Crippling Flaws in the New Jersey Fast Food Study” that the Card-Krueger study contains numerous errors. The Card-Krueger research consisted of an over-the-phone survey of four fast-food restaurants in New Jersey and Pennsylvania—Burger King, Wendy’s, Kentucky Fried Chicken, and Roy Rogers. Yet Berman points out that the questions were vague and broad, asking merely “How many part-time and full-time employees are employed in your

restaurant, excluding managers and assistant managers?” In an industry where so much of the labor force works part-time, the more relevant information is the total number of hours worked. If every employee earning minimum wage suddenly got a drastic reduction in the number of hours they work, but was not terminated, Card and Krueger would have claimed no effect on their wages.

Another serious flaw is the fact that the fast-food business is seasonal, employing far more workers before the Christmas season than after. The survey, which compared employment between February and November, made no adjustment for seasonal employment. Finally, the over-the-phone nature of the survey allowed for extremely unscientific responses. There is much room for error when questions are asked of a manager or assistant manager who is not looking over payroll records.

Such a set of questions would explain why the survey showed such extreme and volatile results. Reportedly, a Wendy’s in New Jersey went from zero full-time workers in February to 35 full-time workers in November. And a Burger King in Pennsylvania decreased its full-time workers from 50 to 15. Such questionable results even prompted the fast-food companies and franchisees to call the results “ludicrous.”

Since the Card-Krueger study, other economists have compared New Jersey with Pennsylvania by getting hold of the payroll records of the restaurants surveyed by Card and Krueger. Michigan State University economist David Neumark, and William Wascher, senior economist at the Board of Governors of the Federal Reserve, found that there was an actual decline in fast-food employment in New Jersey, compared to Pennsylvania. And Nobel Prize winning economist Gary Becker has confirmed that “the Card-Krueger studies are flawed and cannot justify going against the accumulated evidence from many past and present studies that find sizable negative effects of higher minimums on employment.”

Sadly, rather than making any effort to repeal the high minimum wage in their own state, a number of New Jersey’s Republican representatives are pushing for a federal minimum-wage hike. Not surprisingly, they want to stop any flow of jobs from New Jersey to other states that have lower minimum wages, confirming the potentially adverse effects of New Jersey’s policy. Yet

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Conclusion

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cies must follow when writing new regulations. In 1993 the Joint Legislative Audit and Review Commission (JLARC), the independent audit arm of the Virginia General Assembly, reviewed problems with the administration of the law. The resulting report criticized then-Governor Douglas Wilder's administration's adherence to the law's requirements. The report stated, "In order for VAPA requirements to be effective, they must be implemented effectively by government officials and regulatory agencies."

The study called attention to numerous problems with regulatory review during the Wilder administration. First, the governor had disregarded VAPA's stipulation that new governors "adopt procedures by executive order for the review of all proposed regulations." The previous administration's executive orders had expired on June 30, 1990 and the new order was not issued until November 30, 1992. In addition, various agencies and the governor often failed to meet review deadlines; 60-day comment periods for nine of the regulations studied from 1990-91 did not occur.

Importantly, the JLARC report pointed out that agencies frequently did not adhere to VAPA's requirement that they "develop separate, concise statements" estimating the cost of a rule and how many people it would affect. In a review of 217 regulations proposed in a one-year period from 1990-91, 18 did not discuss any impact, 66 reported the number of individuals affected, and only 39, or less than one-fifth, estimated the cost of compliance. This lackluster performance was underscored in the report of a JLARC survey which showed that 75 percent of Virginia trade association respondents and 93 percent of local government respondents thought that the agencies failed to provide adequate reviews estimating the impact of the rules.

In response to these irregularities, the JLARC report made several recommendations for tightening the law. As can be seen below, Governor Allen and the General Assembly took up the task of reforming the review process.

The Regulatory Review Reform Program

Governor George Allen took office in 1994 and quickly implemented one of the JLARC recommendations—as a new governor he issued "an executive order on the review of proposed regulations and a procedure for the periodic review of

regulations." Specifically, Allen signed Executive Order 13 in June 1994, which explained the process agencies should follow in issuing new regulations, and strongly emphasized the need to minimize regulations. Among other stipulations, agencies were required to:

- Issue only those regulations clearly mandated by law (although there is an exception for governmental, health, or safety needs);
- Opt for the least burdensome or intrusive alternative;
- Include a schedule to review the effectiveness of the rule no longer than three years after its effective date, along with a list of measurable goals if feasible.

In 1994 Allen also supported and signed legislation amending VAPA to require an Economic Impact Analysis (EIA) to be conducted on any new rule proposed by a state agency. Among the criteria required under the analysis are estimates of the cost of compliance for affected businesses and other entities, impact on employment, and the number and types of affected businesses. And in 1995, with Allen's backing, the legislature amended VAPA to require an EIA to include estimates of the impact of a proposed regulation on private property and localities.

The administration's "guiding principles" in presenting these reforms include:

- **Efficiency.** Public and private resources should be focused on those areas where Virginia will receive the greatest benefit to health, safety, and welfare.
- **Flexibility.** Regulations should avoid unnecessary interference with private enterprise and individual initiative by offering as much flexibility as possible for those being regulated.
- **Accountability.** Regulatory development must be an open process, in which citizens have full access to information on all the expected impacts of a regulation.

Economic Impact Statements

According to the Virginia Department of Planning and Budget (DPB), an Economic Impact Analysis is a tool for both quantitative and qualitative analysis that policymakers can use to make "fully informed policy judgements" and ensure that they prioritize their resources to the greatest effect. Unlike other states for example, Virginia does not require a strict cost/benefit test requiring that the benefits equal or outweigh

the costs. Such testing is problematic because it can be difficult to predict every possible result of a rule. Further, the information needed for such work often is not available. And placing a dollar value on benefits requires subjective assumptions.

However VAPA as amended spells out specific criteria that should be weighed in the analysis. These include the benefit to the public, and the number and kinds of businesses and persons affected. In addition, on September 1, 1995 the DPB issued a detailed report outlining the methodology it uses in writing assessments. As pointed out in the executive order, EIAs are required for most rules issued after January 1, 1995.

So far the DPB points out that approximately 38 EIAs have been written. To what extent these have been successful is difficult to quantify so early in the program. In addition, as has been pointed out at the federal level, the DPB notes that estimating the economic impact of a proposed rule is not an exact science. The DPB is dependent upon the regulated community to some degree for economic information.

The EIA effectively stopped a rule proposed by the Virginia State Police that would have required motorcycle riders not only to wear helmets generally, but to wear *specific* helmets. In conducting their analysis, the DPB surveyed motorcycle dealers and determined that only three of them carried the required helmets, and at a prohibitive cost of \$300 or more. The DPB found alternative helmets, ranging in price from \$50 to \$300, that carried information regarding the degree of safety. This example shows how the marketplace, without a new regulation, can provide sufficient information to consumers.

Review of Old Regulations

The Allen administration has not stopped reviewing new regulations. Equally significant as its review of current regulations, VAPA outlines procedures that agencies should follow when proposing regulations. However, as Allen pointed out in his 1994 executive order, "This framework has not been uniformly followed in the past." Believing that this inconsistency had led to a "regulatory burden of unknown magnitude . . . with uncertain benefits," the administration established a review process for all current regulations, with a target completion date of January 1, 1997. In addition, agencies are required to develop a process to review regulations on a regular basis.

Executive Order 15 (1994) required most agencies to review every existing regulation, and to recommend rules to retain, amend, or eliminate. To conduct the review, agencies must solicit public comment on the rules to be reviewed, and conduct their own analysis. The review must include a written statement to the agency's secretary and to the governor explaining: whether a rule is mandated by state or federal law or regulation; if it exceeds the minimum requirements of a state or federal mandate, and an explanation of why this is the case; whether the agency has considered the least burdensome requirements; and whether the rule is clearly written.

Agencies now are in the process of reviewing old regulations. The Department of Environmental Quality for example, is finishing its first round of reviews. As described below, the transportation department has acted already to revise outdated or unnecessary rules in order to ease compliance burdens for the industry. Many of the revisions can be made through the regulatory process, although some will require legislative changes. In addition to this process, the agencies are setting up procedures for future reviews, which include public comment. Although the savings achieved by these reviews have not been quantified, the opportunity for the regulated community to revisit existing rules cannot be underestimated.

Transportation Department Successes

One area in which Governor Allen's efforts have borne some small fruit is in the Virginia Department of Transportation (VDOT). In December 1994, Transportation Secretary Robert Martinez outlined a strategic plan for the "future direction" of transportation in Virginia, which included reviewing current regulations and considering privatizing functions that do not belong in government hands. As Martinez pointed out, 10 Virginia government agencies are responsible for writing and enforcing motor carrier rules, which increases the cost of compliance, reduces the industry's efficiency, and constrains the flexibility of local government. Regulatory reform clearly was needed.

The reforms so far are not the flashy actions that make headlines or good press releases, but they improve the everyday workings of state government and significantly ease the compliance burdens placed on the regulated community. In most cases, Martinez solicited help from mem-

bers of the affected industries and, in several instances, formed task forces to recommend changes. Changes have been made in the following areas:

Hazardous Materials Transportation Rules at Bridge-Tunnel Facilities. This document was reduced from 150 single-spaced pages to less than five pages. A second version of the document is available on a one-page 8 1/2 x 11 inch plastic-laminated card. The revision brought restrictions into conformity with federal law, and listed the actual hazardous materials by class rather than by individual material. Moreover, by reducing a book of requirements to a one-page card, the state made it much easier, or even possible, for laymen to understand the rules.

Development of Subdivision Streets. In Virginia the state, rather than the counties, is responsible for secondary roads. To ensure that roads are safe, VDOT's subdivision street requirements must set minimum standards that are compatible and consistent with other rules applied to secondary roads. In 1993 the Allen administration became more aware of the significant problems associated with a 1990 revision of the subdivision street requirements due to complaints from developers, landowners, and residents. They objected to the costs of implementing the 1990 revisions, as well as provisions suited more for highways than residential communities, such as speed limits, pavement widths, and sidewalk space. One concerned party commented, "Subdivision streets are local streets and should be neighborhood streets, not neighborhood highways."

In consultation with local communities, VDOT revised the rules to widen sidewalks, lower speed limits, and make other state requirements compatible with residential needs.

Automobile Dealer Restrictions. The Department of Motor Vehicles (DMV) reviewed 13 regulations and proposed eliminating four. One of the regulations regulated the size of an automobile dealer's showroom, including ancillary facilities. Now the Allen administration has established a board chaired by the DMV head to regulate new- and used-automobile dealers. Although moves to allow self-regulation were met with criticism in the General Assembly, the board moved to toughen standards for the exam which qualifies individuals to be auto dealers by eliminating the practice of an open-book exam. Virginia is the first state in the

country to establish such a board, which allows auto dealers, not government bureaucrats, to regulate themselves.

Railroad Modernization. Although this required legislative action, the Allen administration was able to eliminate obsolete regulations governing the railroad industry. The state had not addressed the issue thoroughly since 1919, and federal law had changed significantly since then. The governor's review found 42 sections of the Virginia code obsolete in general because they regulated outdated operating practices—these were eliminated. Another 33 sections duplicated federal law—these were eliminated.

Battling the Federal Government. A rallying cry heard often during the early days of the Allen administration was federalism. In 1995 the legislature passed and Governor Allen signed the "Implementation of Federal Mandates Act." The act committed the executive branch to conducting a critical review of any state law or action taken to satisfy a federal mandate, or based on an interpretation of a federal law, so that the state government could pursue the "most efficient" method of implementing the mandate by considering cost and the "long-range public health, safety, and welfare" of Virginians. As the act stated, "the state government has an obligation to the public . . . to protect the rights of Virginia citizens under federal law while minimizing or eliminating any additional cost or regulatory burden." This law, which maintains that "current federal regulatory mandates often do not reflect the realities" of the state, indicates that the Allen administration intends to hold Washington to the Tenth Amendment to the U.S. Constitution.

Virginia's determination to challenge Washington on these issues is demonstrated clearly in its fight with the Environmental Protection Agency (EPA) over how the state should implement the Clean Air Act (1990). On this issue, as with other deregulatory initiatives, Virginia is one of the leading states trying to moderate the Clean Air Act's most excessive and cumbersome provisions. Three particular provisions were targeted for debate. First were the centralized emission requirements spelled out by the EPA that required northern Virginians to have their cars inspected at centralized inspection stations rather than at certified service stations (where required repairs can be made). Second were the Title V operating permit provi-

sions that required states to detail their plans to implement an operating permit program for stationary sources of air emissions. And third were the low-emission vehicle standards which required that autos sold in northern Virginia meet specified standards.

The Allen administration's federalist fervor was demonstrated most dramatically by the 1995 lawsuit that Virginia filed against the EPA over the implementation of the three Clean Air Act provisions mentioned above. Governor Allen declared, "We're not going to continue to just be jerked around like serfs." Allen filed the lawsuit arguing that the Tenth Amendment gives states the right to determine how to regulate with respect to the environment. Following Missouri's example, Virginia was the second state to sue the EPA over these issues.

The commonwealth's challenges reflect not only the administration's general distaste for cumbersome requirements but also the governor's fierce battle with the EPA and environmental groups in the state over centralized emissions testing and Virginia's operating permit program. One disputed issue is whether the program should allow citizen groups that believe state permits do not adequately protect the environment to challenge administration-issued clean air operating permits in court. At one point, the EPA threatened to take over the Title V operating program due to the state's opposition to citizen suits. The EPA maintained that the Clean Air Act requires the state to allow the public to challenge environmental permits in court. Virginia has some of the tightest restrictions in the country on court challenges, allowing them only if the plaintiff can show an immediate financial loss resulting from a permit. Even before Allen became governor, environmental groups in Virginia sought to allow more challenges in the courts. But until this year, they and their allies in the General Assembly had been unsuccessful.

In March 1996, the Fourth Circuit Court of Appeals threw out Allen's suit, stating that the Clean Air Act did not violate the Constitution and Virginia's program did not conform to federal law. The governor recently agreed to back down on the citizen suit issue, dropping his opposition to legislation passed by the General Assembly allowing judicial review of Virginia's failed suit. However, Allen still will be able to appeal his case to the Supreme Court before the new rules take effect.

Despite the adverse Fourth Circuit Court decision, Virginia has waged a successful fight against the EPA's position on centralized vehicle inspection and maintenance requirements. These standards would require car owners to have emissions tested at one facility and repairs made at a second facility. Virginia and several other states want to ensure that citizens retain the option to do both at the same place, that is, at privately owned and operated service stations. After two years of lawsuits and recriminations, the EPA finally allowed Virginia to conduct a one-year pilot project on decentralized testing.

Allen filed the lawsuit arguing that the Tenth Amendment gives states the right to determine how to regulate.

The EPA will review the state's performance after the pilot program and determine if the facility can continue operation. Interestingly, the results of Maryland's year under centralized testing will be available for comparison around the same time.

A New Enforcement Approach

Another area in which the Allen administration is breaking new ground and creating new controversy is its approach to enforcing environmental protection laws. The management of programs protecting Virginia's natural resources, environment, and historic parks is the responsibility of the Department of Environmental Quality (DEQ). To head this cabinet-level department, Allen appointed Becky Norton Dunlop. Even before Dunlop was sworn into office, she was attacked by some environmental groups chiefly because of her record at Reagan's Interior Department. A recent *Roanoke Times & World News* article stated that "her political mantras—'sound science,' 'regulatory reform,' and 'private property rights' were appalling to traditional environmentalists."

Thus far, Secretary Dunlop has worked steadfastly to reorganize the DEQ, trying to privatize when possible, to foster greater cooperation between regulators and business, and to push positive legislative reforms through the General Assembly. She explained the overall philosophy

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on the federal government if the Department of Defense opts to purchase cheaper electricity from a provider other than Virginia Power. This legislation sets a precedent by which the SCC could assess penalties on residential and other commercial customers that choose to shop for the lowest price for their electric service.

Unfortunately, the package of bills supported by Virginia Power passed the General Assembly and was signed by Governor Allen. This took place before the SCC completed its study on electricity regulation in Virginia, which is expected to be released this summer. Allen made minor amendments to some of the legislation but backed the measures, which had strong bipartisan support and which were backed by many of the governor's allies in the General Assembly. Allen chose not to resist the political pressure from Virginia Power and its legislative friends, or to reject the spurious arguments about captive ratepayers required to pay the utility's shareholders their "guaranteed" profit. One potential bright spot is that the Assembly passed legislation calling for a study of the benefits of competition.

Electricity bills for Virginia residential customers in 1994 averaged \$84 per month. According to a study released recently by the Citizens for a Sound Economy Foundation, competition would reduce the average electric bill by nearly \$22 per month or \$263 annually. According to the report, the average annual savings for commercial and industrial customers is even more substantial, approximately \$1,300 and

\$38,700 respectively. Hopefully, when the studies by the Assembly and the SCC are released, Allen and the state legislature will take a second look at electricity deregulation and back reforms that will help the commonwealth's consumers.

Conclusion

The Allen administration has stressed repeatedly that its top priority is to create a stronger state economy with increased job creation. In an effort to reach this goal, the administration has undertaken regulatory process reform, revised environmental policy, and sought to reclaim authority over regulatory affairs in accordance with the Tenth Amendment to the U.S. Constitution. The state's fight, along with efforts by several other states, to oppose the EPA's interpretation of the Clean Air Act amendments is particularly noteworthy.

In the next two years it will be possible to make a more comprehensive assessment of Allen's efforts to review existing regulations and to thoroughly assess new ones. Further, the success and value of efforts to decentralize regulation and to provide more flexible environmental enforcement strategies will become clearer. This last area in particular could provide fodder for the debate at the federal level over what kinds of reform policies can protect the environment *and* the economy.

Allen's efforts provide a model for other states. And his future struggles could make Virginia not only a leader in reform, but a leader in prosperity.

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