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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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