

BRIEF ANALYSIS

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Five Steps to Effective Regulatory Reform

Almost everyone agrees that the federal regulatory regime is cumbersome and produces top-down, one-size-fits all regulations that are inefficient and ineffective. The regulations impose enormous costs on businesses, increase the cost of goods and services, reduce economic growth, are unfair to property owners and, perhaps most importantly, fail in what they are supposed to do. Yet, despite repeated congressional attempts to rein in the excesses of federal regulatory agencies and produce meaningful reform, regulations are increasingly pervasive. In 1994 alone, for example, 70,000 pages of regulations were added to the Federal Register. In addition:

- The private sector annually spends more than \$668 billion, or more than \$6,000 per household, to comply with federal regulations.
- Billions more are spent by government to study, produce and enforce regulations.
- Since 1977 the cost of social regulation (by, for example, the Occupational Safety and Health Administration and the Consumer Products Safety Commission) has doubled and the cost of environmental regulation has quadrupled.
- An estimated \$1.3 trillion in U.S. economic activity is lost each year due to federal regulations.

If social and environmental regulation were effective in protecting human health, enhancing individual safety or preventing environmental degradation, the enormous costs might be justified. However, critics on both the left and the right recognize that most regulation is neither efficient nor effective. Part of the support for the election of a Republican majority to Congress came in response

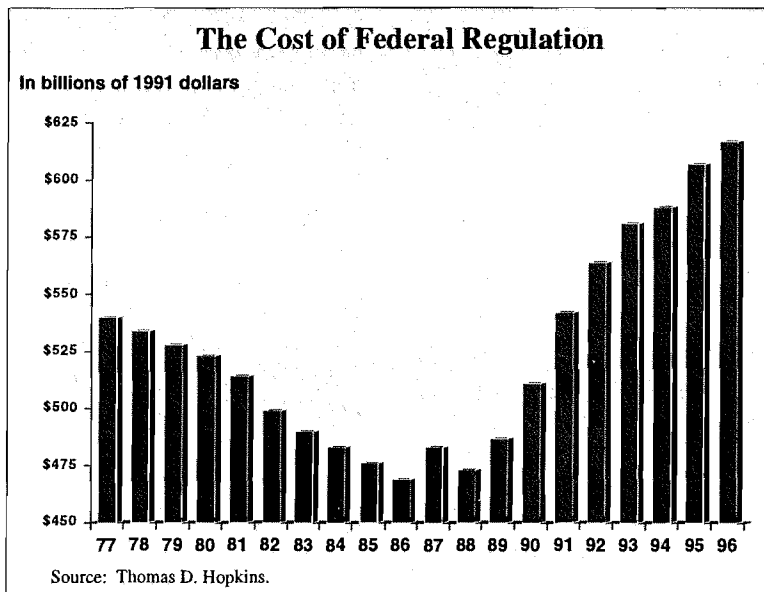
to the promise to produce meaningful regulatory reform. So far, the change in Congress has brought more rhetoric than reform. Reduced government regulations have proven an illusory goal.

Congressional (In)action. With the change in the makeup of Congress, many expected fairly radical regulatory change would be forthcoming, but this has not occurred. Except for the issue of unfunded state mandates from the federal government, Congress has been unable to agree on how best to achieve reform, and has approved only modest steps.

However, the recently enacted bill that increases the debt limit contained two provisions that point toward regulatory reform. The first allows small businesses, local governments and other small entities to challenge — in court — agency findings on the impact of regulations. Small businesses have been the primary engine driving economic growth and increased employment

for the last decade, but they are often the hardest hit by new regulations. In addition, over the last 20 years local governments have diverted increasing resources from traditional functions of public safety, education and infrastructure maintenance to implement, enforce and comply with federal regulations.

The second reform allows Congress to review all new rules before agencies implement them and to veto those that are seriously flawed. This reform increases accountability in two ways. Regulatory agencies must now justify their rules before the body of government charged constitutionally with writing law. Thus, agencies won't be able to interpret congressional intent in ways that increase their budgets and staff and expand their power while producing little or no positive effects on human health or the environment. Second, it will not be as easy for Congress to pass the buck for bad regulations, because it will have the option of vetoing regulations before they become law. If costly and ineffective regu-



lations do become law, the voters can hold legislators accountable.

Further Regulatory Reform. Now Congress should take five more steps toward meaningful regulatory reform. The first involves revisiting and improving the reforms Congress has made. The last four represent a sharp break with the past and radically alter the federal government's future regulatory efforts.

Step One: Extend the court challenge provisions to all affected parties. Large businesses are burdened as much as small businesses by ineffective regulations, and there is no principled reason for allowing the latter, but not the former, to challenge agency (in)actions in court. Such disparate treatment is arguably unconstitutional and certainly unfair. It represents a "soak the rich, go for the deep pockets" approach to imposing regulatory costs. Regulatory costs should be based on a proportional assessment of the sacrifices necessary to protect human health and the environment relative to the potential risks posed by particular activities.

Step Two: Restore federalism. Simply put, federalism is the principle that the federal government is limited to a carefully defined, constitutionally sanctioned role in solving problems beyond the effective control of the individual states. Traditionally, the states have been responsible for environmental health and public safety. Occasionally, federal intervention has been deemed necessary to stimulate a state response to a widespread problem. However, it is widely recognized that federal health, safety and environmental bureaucracies have failed. This fact and the proven commitment and often superior ability of the states to handle such problems have removed the argument for a continued federal role. In purely intrastate regulatory matters, only the states should establish and enforce regulations.

Step Three: Implement comprehensive takings legislation. Private property rights are at the foundations of a free society and are crucial to the functioning of a market economy. They are enshrined in the "takings clause" of the Fifth Amendment to the Constitution: ". . . nor shall private property be taken for public use without just compensation." Unfortunately, over time the federal government has eroded citizens' property rights. House Republicans, in the Contract with America, committed themselves to passing comprehensive "Property Owners Protection Act(s)." Such laws would require partial compensation whenever a federal action

reduced the value of property by some set percentage and full compensation when the property was reduced in value below some low threshold. Congress should act quickly to pass takings legislation. In addition, it should require that payment come from the budget of the offending agency, creating an internal incentive to restrict regulatory actions to those that truly benefit the public.

Step Four: Require cost-benefit analysis. Cost-benefit analysis is a tool used to produce information by comparing the estimated costs of an action with the benefits it is likely to produce. All policies involve trade-offs, impose costs and produce benefits. Cost-benefit analysis provides a useful way to compare various options, all of which may be beneficial in some way but not all of which can be simultaneously undertaken. Cost-benefit analysis separates good intentions from good ideas. It does not curtail or eliminate the decision-making authority of elected officials or agency bureaucrats, but it does produce critical information that should be incorporated into all public decision making. Effective regulatory reform requires careful cost-benefit analyses before agencies take action or Congress renews programs.

Step Five: Mandate periodic reviews and sunset outdated, ineffective rules. Businesses consider a periodic review of their activities and company goals to be a sound business practice. It also makes sense for administrative agencies to periodically review regulations and eliminate or "sunset" outdated or ineffective rules. Emphasizing federalism means returning primary responsibility for environmental problems to states and localities. As they assume responsibility, they should be free from environmental statutes that dictate priorities, standards and technologies. In addition, as new environmental problems arise over time, unrecognized problems become apparent and technology improves, states should not be hampered in dealing with them by outdated environmental regulations and old programs.

Conclusion. Regulatory reform is long overdue. The widely reported rising mistrust of government corresponds with the increase in both the number and intrusive nature of federal regulations. In light of this mood of mistrust, the time is ripe to take these five steps to effective reform.

This Brief Analysis was prepared by NCPA environmental policy analyst H. Sterling Burnett.