

BRIEF ANALYSIS

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Regulating the Regulators: The 1997 Regulatory Improvement Act

In 1997 the federal government, which had demanded that manufacturers equip new cars and vans with passenger-side air bags, did an about-face. Until 1997, government regulators had claimed air bags would save thousands of lives. They failed to disclose evidence that passenger air bags posed a threat to infants, children and small adults. As mandated, air bags were installed and children died as a result. In response to a public outcry, the government announced that with a waiver from the National Highway Traffic Safety Administration (NHTSA), vehicle owners can disconnect their air bags.

However, even with a waiver from the NHTSA, finding an automotive repair shop willing to do the work is difficult because shops fear legal liability should future owners be harmed in accidents involving vehicles with disabled air bags. Shops that will disable air bags charge as much as \$1,000 to do the work.

In response to this and other examples of hazardous regulations, a bipartisan group of senators, led by Fred Thompson (R-Tenn.) and Carl Levin (D-Mich.), introduced the Regulatory Improvement Act of 1997. The bill is a first step in the right direction.

Case for Change. Senate proponents argue that costly, ineffective and even harmful federal regulations are increasingly pervasive. For example:

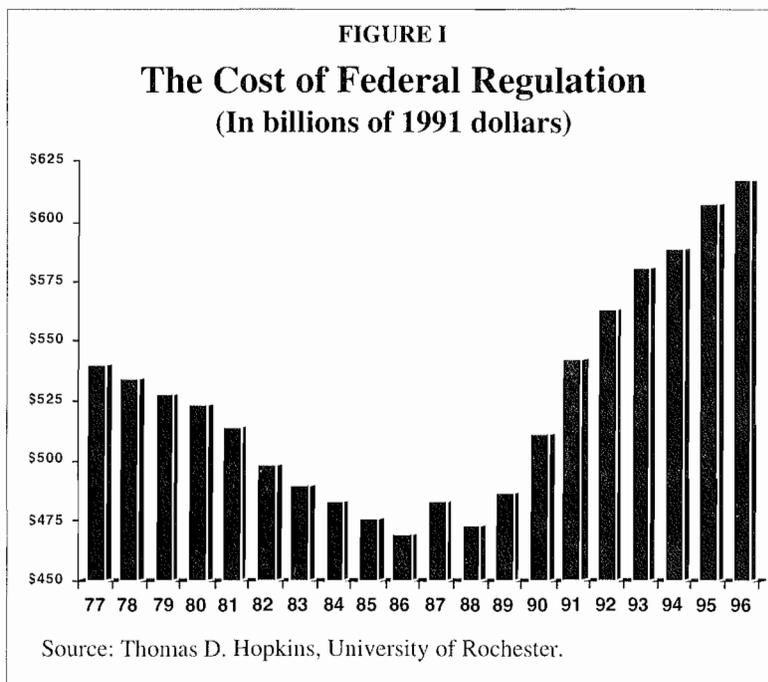
- In 1994 alone, 70,000 pages of new regulations were added to the federal register.
- Businesses and private citizens spent more than \$6,000 per household on these regulations, paying more for

goods and services and spending resources on compliance and paperwork [see Figure I].

The money lost is unavailable for other important concerns such as education, health care or retirement.

Of course, if a regulation protects human health or prevents environmental degradation, enormous costs may be justified. But instead, human lives often are lost. For instance:

- A Harvard University/Brookings Institution study found that the weight shaved off new cars to meet mandatory fuel economy standards causes an additional 2,200 to 3,900 highway deaths a year [see Figure II].



- Researchers, using the U.S. Office of Management and Budget estimate that for every \$9 million to \$12 million decline in aggregate personal income one life is lost, determined that new ozone rules could result in 7,000 deaths per year.

- Dr. John Graham of the Harvard School of Public Health did a risk-benefit analysis of many regulations and found that allocating the funds available for health, safety and environmental regulations differently could save an additional 60,000 lives a year.

Needed Reform: Telling Citizens What They Have a Right To Know. The Thompson-Levin bill would ensure that major regulations — those with an economic impact of more than a \$100 million — are enacted only after three types of information are gathered and publicly disclosed. First, the bill says that citizens have a right to know what regulations are intended to accomplish and at what cost. Thus a cost-benefit analysis would be required for major regulations, allowing citizens to compare the estimated costs of a regulation with the benefits it is likely to produce. This would enable people to compare various options, all of which may be beneficial but not all of which can be simultaneously undertaken.

Second, the bill says that regulatory agencies should choose the least costly methods available to fix particular health, safety and environmental problems. If regulators choose more expensive solutions, the public has a right to know why.

Third, the act says the public has a right to know what relative risks the regulations are meant to reduce, what scientific evidence was used to estimate these risks and what risk the regulations themselves pose. By making the science transparent, the legislation hopes to head off the kinds of acrimonious charges made about recent clean air regulations. In that case opponents charged that “junk science” was used to justify regulations and that relevant scientific data not supportive of the regulations were hidden. By requiring the types of analysis carried out by Dr. Graham, the Thompson-Levin bill could discourage regulations that combat trivial rather than substantial risks.

Further Regulatory Improvements: Restoring Federalism. Another step to improving regulations would be to restore federalism. Federalism is the principle that the federal government is limited to 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, federal health, safety and environmental bureaucracies have often failed to accomplish their purported goals. 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.

Further Regulatory Improvements: Sunsetting Outdated Regulations. Federal bureaucracies also should review their policies’ effectiveness. Businesses

consider a periodic review of their activities to be key to continued success. It 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, health and safety problems to states and localities. As they assume responsibility, they should be free from statutes that dictate priorities, standards and technologies. As new problems arise over time, unrecognized problems become apparent and

technology improves, states should not be hampered by outdated regulations and old programs.

Further Regulatory Improvements: Requiring Congressional Approval for New Regulations. Several legislators have argued that Congress should review and affirm by vote *all* new regulations, including those written to carry out past legislation. This would increase accountability in two ways. First, regulatory agencies could no longer interpret congressional intent in ways that increase their budgets

and expand their power without improving human health or environmental conditions. Second, Congress could not continue blaming regulatory agencies for bad regulations. If costly and ineffective regulations became law, the voters could hold legislators accountable.

Conclusion. Regulatory reform is long overdue. The Thompson-Levin bill is a small step in the right direction. The regulatory state was not built in a day; it is unlikely to be substantially improved in two sessions of Congress, much less in one bill. But if the 1997 Regulatory Improvement Act becomes law, future legislators might be emboldened to race on to more comprehensive regulatory reform.

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