
IS REGULATORY RELIEF ENOUGH?

Marvin H. Kusters and Jeffrey A. Eisenach

A PRONOUNCED DEPARTURE from the regulatory policies and practices of the past decade was certainly a reasonable expectation when the Reagan administration took office in January 1981. And indeed the administration took a number of strong actions in its early months. Since then, however, the momentum appears to have been lost. What seemed to be a clear sense of direction has given way to a disappointing drift. And in some instances reforms introduced earlier have been at least partially reversed.

Are these impressions accurate? Has what promised to be a vigorous and aggressive program of regulatory reform floundered under efforts to put it into practice? The answers are not as clear-cut as either some recent criticisms or the administration's own assessment might suggest.

Part of the difficulty in judging what has been achieved stems from the very scope and diversity of regulation itself. Unless carefully chosen to exhibit a common theme, a set of

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particular regulatory initiatives is typically so heterogeneous that it suggests either a piecemeal and opportunistic approach to reform or a lack of coherent direction. Another part of the difficulty is that it is far easier to state reform objectives than it is to apply realistic criteria to actual regulatory developments.

Murray Weidenbaum has provided a simple and straightforward statement of objectives: "(1) doing a better job of achieving regulatory goals while (2) reducing regulatory burdens" (*Regulation*, November/December 1980). For some areas of regulation, the best way to attain these objectives is to dismantle regulatory structures and rely on competition. For other areas, however, some form of regulation is called for. In those cases, agencies should avoid regulations that are either inefficient or too costly compared to the benefits they achieve, while establishing policies to deal more effectively and efficiently with the problems that gave rise to the regulatory programs in the first place. The goal of regulatory reform is the same in both areas—to achieve improved overall economic efficiency.

These criteria, of course, do not provide a simple yardstick by which to judge the Reagan program. More important, perhaps, the objectives themselves set a very ambitious and de-

manding standard for assessing regulatory actions. It would hardly be reasonable to expect them to be realized fully by any administration, even over its full term. Moreover, progress can be sustained only to the extent that broad political support can be organized and maintained. Consequently, an assessment of regulatory developments during President Reagan's first year must also take into account whether his overall policy approach promises to build support for continued reform.

Early Initiatives

The centerpiece of the Reagan administration's regulatory reform efforts has been the Presidential Task Force on Regulatory Relief, coupled with the procedures for coordination and review of regulatory policy established under Executive Order 12291. The designation of Vice President Bush as chairman of the task force gave visibility to its actions, and the review procedures provided a vehicle for dealing with specific proposals and regulations. The perception created early in the year that the White House was embarking on an aggressive program of regulatory reform is largely attributable to the activities of the task force. Indeed, from the standpoint of regulatory reform, the administration got off to a flying start. It announced the task force on its second day in office, established a sixty-day freeze on "midnight regulations" in its second week, and issued the executive order in mid-February. And the task force released its first "hit list" of existing regulations scheduled for review in March, following this up in April with a list of proposed regulatory changes for providing relief to the auto industry.

Regulatory reform initiatives during the early months of the administration were not limited, of course, to the task force. Late in January, the President removed domestic crude oil and gasoline price ceilings. He also abolished the Council on Wage and Price Stability and its wage and price monitoring program. Several agencies announced changes in existing and proposed regulations. The Department of Education withdrew its much-publicized "bilingual education" rules, the National Highway Traffic Safety Administration (NHTSA) proposed delay of passive restraint requirements

for large cars, the Occupational Safety and Health Administration (OSHA) withdrew its chemical labeling requirements, the Environmental Protection Agency (EPA) said it would reconsider garbage truck noise standards, and the Department of the Interior expressed its intent to modify strip-mining regulations. In making choices for regulatory appointments, the administration emphasized it would select officials with consistent views who could work as a team committed to reform.

That regulatory reform would take a dramatically different direction than previously followed was the unmistakable impression created by early announcements and actions. Precisely what the character of these new policies would be was less clear.

Regulatory Developments during the Year

In order to assess the main thrusts of the administration's program, it is helpful to examine several key elements of reform policy—regulatory review, budget policies, agency activities, and initiatives to achieve legislative change.

Regulatory Review and Oversight. The coverage and force of the review requirements established by the executive order are probably about as sweeping as was feasible from administrative and legal points of view. The order includes more specific requirements for economic analysis and the weighing of benefits, costs, and alternatives than any of its precursors. Assigning the review function to an OMB office created under the obscure Paperwork Reduction Act of 1980, with the administrator responsible for monitoring both regulation and related paperwork and information collection programs, provides a powerful fulcrum for exerting bureaucratic leverage. Assigning overall responsibility for regulatory policy to the cabinet-level task force raised the character of the process from what might be called guerrilla forays by small bands of economists, frustrating the efforts of heads of agencies and departments, to a broad reform strategy that cabinet-level officials themselves were responsible for carrying out.

Thus, in the new procedures, the Task Force on Regulatory Relief had an important tool for exercising its oversight responsibilities

on an ongoing basis. But it is easier to count the results than to characterize them.

OMB reviewed more than 2,700 regulations and regulatory proposals between February 17 (when the executive order was signed) and the end of 1981. Almost all of them were approved as submitted; fewer than 5 percent went back to the agencies for more work. Forty-two were designated "major" regulations, and regulatory impact analyses were performed for twenty-one of these.

The executive order covers, of course, not all federal regulations, but only those issued by executive branch agencies. Over half of all regulations issued during the year were immune from review, most of them because they were issued by the independent agencies, but some because they were either emergency regulations or concerned "housekeeping" matters. During the months of March through December, more than 8,000 proposed and final regulations were published in the *Federal Register*, and only about a third of these went through the review process.

Comparison with levels of activity in earlier years clearly indicates that volume declined markedly in 1981 (Table 1)—whether measured in terms of new proposals, final regulations, or pages in the *Federal Register*. Although these data provide insight into the scope of federal regulation, the coverage of the executive order, and the volume of regulation, they tell us little, by themselves, about what effects the review process may have had.

Does the decline reflect success in weeding out regulations that could not withstand careful benefit-cost analysis? Has the process discouraged regulators from forwarding proposals unlikely to survive such scrutiny? Or has activity only been temporarily slowed while agencies get their bearings and work out ways of

Worth Noting-

"There is a famous Sherlock Holmes story in which the decisive clue was the fact that the dog did not bark. Similarly, the most significant development on the regulatory front last year may be the event that did not happen. Not a single major new regulatory law was enacted during the year, nor was a major new regulatory program promulgated by a federal agency. It was the first year in several decades that the federal dog did not bark."

Murray L. Weidenbaum

meeting the newly imposed requirements for review? These questions are not easily answered, even by an examination of the particular regulations that were affected.

The process apparently did succeed in screening out regulations with large potential costs and smaller benefits. The fact that examples of such regulations have so far failed to come to public attention lends credence to this judgment. This is a significant achievement. (Murray Weidenbaum makes a similar point—see box.) The review process has placed the onus on agencies to document the impact of their major regulations. And the focusing of public attention on the demonstrated worth of regulations has undoubtedly had a constructive influence, even though there will inevitably be legitimate differences in opinion about whether this has been adequately demonstrated for particular regulations.

Identification of existing regulations for review has been another aspect of the task force's activity. The twenty-seven items on the March 25 "hit list" appear to be significant in terms of their impact on the economy, but otherwise, as with lists of proposed regulations returned to agencies after OMB review,

Table 1
MEASURES OF REGULATORY ACTIVITY

	Monthly Averages		
	Number of proposed rules	Number of final rules	Pages in <i>Federal Register</i>
1977-80	415	613	6,070
1980	446	647	7,251
1981*	276	471	4,856
Percent change, 1980-81	-38	-27	-33

*Data on monthly averages for 1981 exclude January.

it is difficult to discern any salient theme. Judgment on how much improvement might actually be achieved must await the outcome of the reviews and follow-up actions.

Regulations subsequently selected for review are somewhat easier to characterize. These were set forth in two lists—the April 6 list of “Actions to Help the Auto Industry” (involving NHTSA and EPA programs) and the August 12 list of 39 regulatory and paperwork initiatives that was compiled in response to suggestions from state and local government and the private sector. A total of 100 regulations were targeted for review in 1981, and some action had been taken on 38 of them by year end. A third list of existing regulations suggested for review by small business was announced in February 1982.

Many of the federal regulations on these lists affect other units of government rather than the private sector. The credibility of the administration’s effort to relieve states and municipalities of regulatory burdens is significantly enhanced by parallel efforts under way. Grant consolidation, for example, could reduce the need for detailed and voluminous federal regulations.

There is also considerable merit in the effort to set priorities by selecting regulations for review because of their costs or their impact on an industry buffeted by competitive pressures. However, announcing the auto industry actions in the midst of the congressional debate on import protection for the beleaguered domestic producers made it difficult to place sufficient emphasis on the importance of determining the individual worth of the regulations involved. The risk that these initiatives would be viewed as intended chiefly to help industry instead of being in the interest of consumers and society as a whole was underscored by the emergence of a voluntary import limitation agreement.

In selecting regulations for review, the task force seems to have focused mainly on providing relief from burdensome requirements—a useful proximate criterion, but one that fails to encompass other dimensions of reform essential for reaching our regulatory goals more effectively. To the extent that selection was not guided by a clear view of goals for reform, the hit lists could not be seen as significant steps in a strategy for achieving those goals and thus

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could do little to improve public understanding of their merits.

The Budget. Significant reduction in regulatory agency budgets was clearly a key element of the administration’s policies on regulation. President Reagan has succeeded in reversing the steady growth in both budgets and employment that occurred during the Carter administration and in earlier years (Table 2). Perhaps the most striking comparison is that between the Reagan and Carter budgets for fiscal year 1982: regulatory agencies will be approximately 10 percent smaller this year, overall, than they would have been under President Carter’s budget. In general, these agencies have absorbed far deeper cuts than has the federal government as a whole.

How these cuts will affect regulatory activity is not entirely clear. In many cases, a strong argument can be made for reducing federal resources devoted to regulatory activities, including resources for developing new regulatory proposals. It should also be recognized, however, that for some important programs the great bulk of the total cost of regulation

Table 2
EMPLOYMENT AND BUDGET TRENDS FOR
TWENTY-FOUR REGULATORY AGENCIES

Fiscal Year	Employment	Budget (\$ 000s)
1980	72,835	8,828
1981	69,480	8,541
1982	66,782	8,582
1983	64,813	7,632
Percent difference in 1982 proposed budgets:		
Reagan vs. Carter	-10.4	-9.6
Annual average percent change:		
Regulatory agencies		
1977-80	+2.6	+9.9
1980-83	-3.5	-4.3
Total federal government		
1980-83	+0.1	+9.3

consists of compliance costs imposed on firms, individuals, and state and local governments. Hence, budget cuts could be small and largely symbolic compared to potential off-budget savings to be realized from more efficient and less burdensome regulations. Moreover, analytical resources supported by the federal budget could play an important role in achieving the off-budget savings.

A more immediate effect of the budget reductions is reduced activity at the regulatory agencies. In addition to producing fewer regulatory proposals in 1981 (as shown in Table 1), many agencies have reduced the volume of their enforcement activities—with CPSC recalling fewer products, OSHA making fewer inspections, NHTSA spotlighting fewer defects, EPA bringing fewer enforcement actions, and so on. Rumors of reductions in force have been rampant at the agencies, and there are strong indications at some that actual professional activity has fallen off much more sharply than budget and personnel ceilings. Thus the clear message of budget and personnel policies is a major redirection of federal regulation. For some agencies, however, new directions and goals have been slow to take shape.

The Agencies. However important White House review and analytical guidelines may be, the agencies must necessarily play an active role in establishing the character and direction of policy. This is clear from even a cursory look

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at the number and variety of regulations published during the year, the proportion not covered by the new oversight process, and the complexity of technical and legal details applicable to the typical regulation. The capabilities of any relatively small oversight staff would be overwhelmed if its responsibilities extended much beyond general review of initiatives set in motion by the agencies. Not only does the ultimate legal responsibility for regulatory de-

isions rest with the agencies, but their policies have historically played a pivotal role in bringing about reform. In the case of airline deregulation and later the reform of trucking and railroad regulation, for example, the agencies took the lead in developing reform policies, putting them into effect, and explaining them to the Congress and the public.

Summarizing the role of the agencies is difficult because they are so numerous and so diverse. The opportunity to appoint or designate new agency heads and senior regulatory staff officials is the primary tool for placing the administration's imprint on regulatory policy. In some instances, of course, the influence of a new agency head has been diluted somewhat by the presence of other members on collegial boards or commissions, and in others new appointees were chosen and confirmed only after considerable delay. Development and explanation of new agency goals may have lagged executive branch policies and review procedures for these reasons.

Partly reflecting budget policy and White House review policies, the dominant thrust of agency activities has been to cut back the momentum of regulation. In addition to delaying or withdrawing proposals for review, agencies have removed a number of initiatives from their agendas. Examples include passive restraint requirements for autos (NHTSA), the cereals case and children's advertising (FTC), the IBM and AT&T cases (Antitrust Division, Department of Justice), and public transportation access requirements for the handicapped (Department of Transportation). Agencies have also devoted fewer resources to activities ranging from new regulation development to inspections and enforcement.

In some cases, retrenchment and regulatory moderation have been accompanied by emphasis on new themes. These include increased sympathy for economic development, as illustrated by the Interior Department's strip-mining and oil-leasing policies, and for market development, as illustrated by the CFTC-SEC accord on futures market trading. Efforts to assume a posture emphasizing cooperation instead of confrontation are evident in OSHA's new inspection policies and in CPSC's increased effort to work with industry in setting standards. Relief from costly regulatory requirements, especially under new regula-

tions, has also been an important, perhaps even predominant, theme.

The review framework established by the executive order bears more directly on social regulation than on economic regulation, in part because the logic of weighing benefits and costs is more closely applicable to the decisions of the social regulatory agencies and in part because more of these agencies are within the executive branch. The change in policy direction has been most pronounced at these agencies.

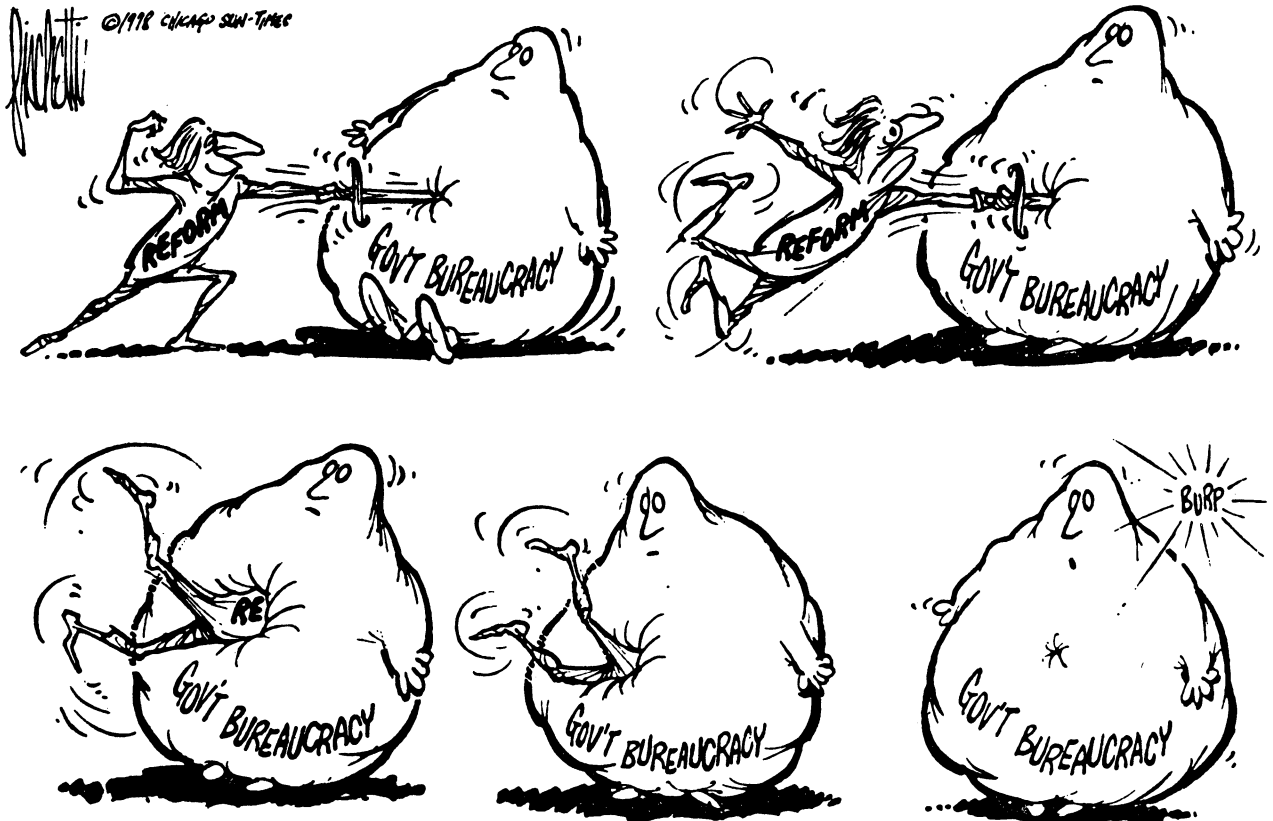
For economic regulation, the picture is more mixed. Early and complete deregulation of crude oil prices represented a clear departure, but no proposal to remove natural gas price ceilings has been advanced. The thrust of policy in antitrust has clearly shifted toward economic efficiency criteria. In transportation, on the other hand, most observers see more stringent regulation as the predominant direction of change; and in agriculture, finance, and international trade, reform efforts have been less evident than in the social regulatory area. This pattern could be interpreted in various ways. Retrenchment in reforming transporta-

tion regulation could be viewed as temporary and selective tacking in order to alleviate short-term adjustment strains; voluntary import agreements could be viewed as necessary to deflect pressures for more draconian measures;

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and so on. Nevertheless, even tactical retreat tends to weaken the moral force of a balanced and comprehensive reform program and, in this case, it has led to questions about agency and White House goals for economic regulation.

Only a partial and incomplete picture of administration goals for social regulation can be drawn on the basis of agency actions. What such a picture would *not* contain—costly and burdensome regulations, ambitious new regula-



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tory initiatives, and pursuit of regulatory goals without regard to costs—is in most instances clearer than what it *would* contain. Precisely how agencies propose to do a better job of achieving such broadly supported goals as curbing air and water pollution, reducing the health hazards from exposure to toxic substances, or dealing with hazardous wastes has received less

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attention. However these goals are pursued, cost-effectiveness analysis and cost-benefit balancing can make a worthwhile contribution, but in many instances the tasks of refining the goals and developing quite different regulatory approaches may be even more critical.

Legislative Developments. Knowledgeable critics frequently place much of the blame for faulty and inefficient regulation on the basic enabling legislation. In particular, they argue that the statutes establishing the various social regulatory programs provide agencies with little or no scope for taking costs into account. In view of this line of criticism and the administration's emphasis on weighing benefits and costs, it is surprising that the administration's program has not included proposals for significant legislative change.

There are explanations, of course. The primary thrust of the administration's legislative strategy was certainly budget and tax changes, which were sought and enacted. Developing proposals to revise regulatory statutes might have diluted this emphasis. Moreover, it can be argued that urging the agencies to proceed with initiatives within the range of their permissible discretion under existing legislation might be a more effective way of eventually getting desirable changes in the statutes. This is the strategy that was successfully pursued in reforming airline and later trucking regulation.

The case for not adding new items to the agenda for legislative change is stronger, how-

ever, than the case for failing to develop specific proposals for legislation that would in any event be on that agenda—for example, the Clean Air Act. It was virtually certain that proposals for major change in the Clean Air Act would be controversial, and it was probably unlikely that the present Congress would enact significant changes. Nevertheless, by failing to develop coherent proposals for at least modest—and much needed—changes, an opportunity was lost for explaining the administration's intentions and goals for environmental regulatory policy. Reports of proposals under consideration aroused controversy, which was not dispelled by either official proposals or the eleven vague "principles" that were eventually announced, leaving the administration's policy intentions uncertain and the prospects for constructive legislative change dimmed.

Thus, the most important opportunity to make a case for legislative change seems to have contributed more to harming the atmosphere for constructive dialogue than to improving prospects for reforming regulation of the environment. Most other legislative activities affecting regulation, such as proposals to abolish the Consumer Product Safety Commission, to "sunset" the Civil Aeronautics Board, and to eliminate the antitrust responsibilities of the Federal Trade Commission were not really critical in terms of overall regulatory policy.

A potentially significant legislative proposal, the omnibus regulatory reform bill (S.1080) passed the Senate unanimously on March 24; the House version (H.R. 746) is awaiting floor action. Among other things, the bill would provide statutory authorization for the review process now carried out under the executive order, and it would extend review authority to the independent regulatory agencies. The administration has kept a low profile on this matter, perhaps in part out of concern that the bill might come out of Congress so encumbered by the legislative veto and other questionable provisions as to be unacceptable.

What Was Achieved?

There is no doubt that the Reagan administration has succeeded in introducing considerable change in regulatory policy. This is a significant accomplishment, particularly in view of the

traditional resistance of the federal bureaucracy to change. Much of the change has also been constructive—notably, the establishment of White House review of regulatory policy and the development of the analytical guidelines, the slower pace of new regulation, the shift in emphasis from confrontation to cooperation, and the heightened receptivity to new ideas—including those from outside the federal government.

Several seemingly disparate regulatory developments—the benefit-cost framework for review, the cuts in paperwork, budget, and personnel, the review and withdrawal of existing regulations, and the decrease in new proposals—can be viewed as elements in a coherent overall reform approach. Critics of a tight benefit-cost test for regulatory decision making have feared that fewer and less stringent regulations would result. Their fears were well founded. This does not mean, however, that benefit-cost analysis is not the neutral tool that its proponents claim it to be. What it means is that the application of a neutral tool to decision making by single-mission agencies—agencies with narrow legislative mandates that often fail to provide for balancing their particular regulatory goals against all of the other goals of society—will keep some regulations from even being proposed and limit the stringency of those that are issued. Introducing balance is, of course, what regulatory reform is designed to accomplish.

It was to some extent inevitable that the early momentum established by the regulatory reform program would be slowed. The previous administration's regulatory proposals can only be frozen once, and the continued grinding of a review process is less dramatic than its creation. Once the most obvious targets for change have been attacked, the more difficult tasks of maintaining coherence and integrity in regulatory policy and establishing new policy directions must be addressed. A long and complicated war succeeds the initial invasion, and occasional reverses are to be expected.

To continue the analogy, insufficient attention to explaining the strategy and goals of the war has invited the charge of lost momentum. The reform program has taken on a stop-gap character because little further development of its rationale has been communicated to the public as time has passed. Regulatory policy

has proceeded as if the invasion were still under way—and perhaps it is. Unfortunately, progress toward durable reform is likely to depend importantly on the administration's ability to make a strong case for its goals as well as its process for achieving them in the many areas affected by regulation.

TO RETURN to Murray Weidenbaum's statement of objectives, the Reagan administration has been more successful in "reducing regulatory burdens" than in "doing a better job of achieving regulatory goals." To be sure, careful benefit-cost analysis contributes to the latter, but because the full rationale has not been well explained, the program has been perceived as

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primarily regulatory relief. What is needed now is a coordinated White House-agency effort that eschews the piecemeal regulation-by-regulation approach and relates action to a broad strategy for reform. To be seen as elements in such a strategy, agency agendas should be shaped by the contribution they can make to articulating regulatory goals, instead of being driven largely by staff-generated timetables or court-ordered deadlines. Issues on the legislative agenda—clean air regulation (which still must be addressed), along with clean water, natural gas, and financial institution regulation—will provide further opportunities to explain the case for constructive reform. In putting forward a coherent strategy, an effort should be made to maintain a reasonable balance, not only between benefits and costs in social regulatory programs, but also between policies in the social and the economic areas of regulation.

Regulatory reform was off to an auspicious start in the first part of 1981. Regaining the initiative will undoubtedly be difficult. But it deserves high priority, because it holds the promise of large payoffs in the long run. ■