Viewpoint

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Has Reagan Dropped the Ball?

THE REAGAN ADMINISTRATION took office with a splendid opportunity to make major changes in federal regulation. Presidents Ford and Carter had helped clear the way by deregulating airlines and trucking and establishing White House review of major executive branch regulations. The public had increasingly come to associate regulation with declining productivity growth, persistent inflation, and mounting troubles for a number of basic industries. And Congress appeared on the verge of passing a strong general regulatory reform measure, and perhaps even sweeping changes in telecommunications and air pollution policy.

Unfortunately, despite the administration's fast start in this area, the prospects for substantive regulatory reform look dimmer today than they did nine months ago. In fact, the Reagan administration may have sacrificed much of its opportunity for major regulatory reforms—for at least three reasons. One is the pro-business tone set by its early pronouncements on the goals of its program. Another is that the White House is gambling too heavily on centralized review of rulemaking, rather than stressing fundamental change in major regulatory statutes. To date, Clean Air Act reform is the most serious casualty of this misplaced emphasis. And, finally, over at the Interstate Commerce Commission and the Federal Communications Commission, President Reagan's appointees seem inclined to reverse the movement toward deregulation in the trucking and broadcasting industries. If these unfortunate trends continue, the new administration will have forfeited any leverage it had in the regulatory arena.

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Relief or Reform?

We are less than twenty years away from Ralph Nader's *Unsafe at Any Speed.* The wave of regulatory legislation that followed the rise of "public interest" groups may have crested in 1970, but the undertow remains. If President Reagan's efforts to reform regulation are seen simply as a set of favors for corporations, a new wave of antibusiness populist sentiment may develop in the 1980s.

In its first utterances on regulatory policy, the administration has appeared willing to invite that risk. Again and again, it has announced regulatory proposals as "regulatory relief"—relief principally for industry, not consumers. While the administration's economists know that relieving industry of the more burdensome and unproductive regulatory impositions will lower consumer prices, the agencies do not advertise this as the most important effect. Instead they usually mention relief for the industry first, and then acknowledge—as a sidelight—that prices to consumers will be lowered.

In January, for example, the auto industry offered proposals for changing major environmental and safety standards affecting cars and trucks; and in April, the administration endorsed a number of these proposals in a document thoughtlessly entitled "Actions to Help the U.S. Auto Industry." Many of the items, such as eliminating the high-altitude emissions standards, seem quite sensible. But an impression has been left of wanting to do well by one's friends, not consumers in general.

The pattern of regulatory appointments also contributes to the problem of tone. For the most part, the agencies are now led by former industry employees or lobbyists, often persons

who have no experience with the regulatory programs they now inherit. Some of these appointees seem to be overwhelmingly opposed to substituting market mechanisms for command-and-control regulation. Others are attempting to slow the pace of deregulation that built up under President Carter.

None of these appointments has succeeded in arousing the opposition as successfully as Secretary of Interior James Watt. But there are now enough doubts and concerns to encourage the antibusiness populists to reassemble. And many allies of deregulation may simply lose heart if the program is defended on the sole grounds that it's good for General Motors.

White House Oversight

So far the administration has dwelt single-mindedly on the process of reviewing regulations, while avoiding or mishandling opportunities for necessary changes in the underlying statutory basis of those regulations. Obviously, added White House muscle in reviewing the rules of executive branch agencies was needed. The Carter program lacked the political clout required, particularly after reformers had lost the battles on the smog standard and won only a modest victory on the cotton-dust standard promulgated by the Occupational Safety and Health Administration (OSHA). Reagan's program will, indeed, have more leverage over the regulators.

But this leverage is of limited use. If the statutes mandated programs that were demonstrably effective in extending life or cleaning up undesirable pollution, it might be sufficient to focus on streamlining the rulemaking process. If the only problem were poor management of a reasonable program, oversight by OMB's new Office of Information and Regulatory Affairs (OIRA) might be the only cure required. But the problems run much deeper: there is no solid evidence that these regulatory programs are even modestly effective. In most instances, the statutes mandate tasks so extensive that the agencies cannot meet deadlines, enforce the rules they set, defend themselves in court, and conduct retrospective evaluations of their effectiveness. More important, the statutes often forbid the use of a cost-benefit test in standard-setting, encourage economically inefficient regulations, and contain a strong bias against economic growth.

Most health, safety, and environmental regulators, for example, are empowered to control thousands upon thousands of different sources of a potential threat to health or safety. The Environmental Protection Agency (EPA) must regulate both new and existing chemicals, thousands of different sources of water pollution, hazardous wastes, motor vehicle emissions, stationary-source air pollution, pesticides, often making detailed determinations of "best" or "reasonable" technology for each type of source. The Food and Drug Administration admits that it is already so burdened with the licensing of new drugs that it cannot be equally thorough in evaluating older drugs. OSHA has similarly vast responsibilities. Administrative burdens of this sort overwhelm most of these agencies.

This is not the place to discuss the feasibility of cost-benefit analysis or the appropriate locus of a regulatory oversight procedure (on those matters, see "Harnessing Regulation" by George Eads, *Regulation*, May/June 1981). It is clear, however, that centralized review will not overcome poor agency performance. One measure of OIRA's success will be the degree to which it stimulates thorough and consistent analysis at the agencies. It is still too early to tell whether the agencies' analytical capabilities are getting better or worse. In most cases budget reductions and the usual problems of a political transition have combined to make hiring difficult. At best, all one can say is that nine months have not brought about revolutionary change at any of these agencies.

What gains have been made under the review process? There has been very little new regulation since the freeze was lifted in late April, with fewer than twenty-five major new regulations having emanated from the entire government in that time. Administrators apparently feel that inactivity (or at least caution) is *de rigueur* in the new Washington. Given current statutes, this willful failure to act will inevitably lead the pro-regulatory forces to sue the agencies in an effort to force action. But, surely, court-imposed deadlines are not preferable to the agency's own schedule.

Perhaps more distressing is the absence of any results from the review of existing regula-

tory programs. Once again it is probably too early to judge, but it does not appear that existing rules are being scrutinized thoroughly. The task force's invitations to agencies to review existing rules have not yet been followed by agency action. There is no evidence that OSHA, EPA, the National Highway Traffic Safety Administration, or other agencies have begun the needed overhaul of programs under existing statutes or the drafting of new legislation.

Even with more time, it is extremely unlikely that OIRA's review process can make up for the poor design of regulatory statutes in the health, safety, and environmental areas. Without legislation, OIRA will only be nipping at the agencies' heels. And if the administration treats future legislative opportunities as it has treated the Clean Air Act, all hope may be lost.

Stumbling over Clean Air

Federal clean-air policy costs our society more than $20 billion a year and returns benefits that are modest at best. The rate of improvement in measured air quality has generally been lower since EPA was established in 1970 than it was in the decade of the sixties. Expensive controls on automobiles have not led to any discernible improvement in average smog levels. Most problems of interstate transport of dangerous air pollutants have not even been addressed. In short, there is little doubt that EPA's rules on clean air are among the most expensive and inefficient regulatory programs.

As luck would have it, the Reagan administration's first major legislative opportunity in the regulatory area was the 1981 deadline for reauthorizing the Clean Air Act. The possible targets for reforming this baroque statute are mind-boggling. One could begin by scrapping the ludicrous rule that all utilities use scrubbers and the tight technology-based standards for new sources (which discourage new investment), as well as most of the "nondegradation" policy (which is designed primarily to prevent industry from leaving the tired industrial regions of the country). Provision could be made for more trading of pollution-control obligations among firms so as to lower the overall cost of control. To reduce auto emissions and compliance costs, a program of relaxing new car standards, while taxing or buying up old cars, could be mandated. Finally, the illogical and exceedingly complicated penalties for noncompliance could be replaced by the simpler approach of penalizing excess emissions.

These options and a few others could have been assembled in a legislative package and sent to Congress by early spring, along with an analysis showing persuasively that they would produce cleaner air at much lower cost. Unfortunately, this did not happen. EPA spent months awaiting its new leadership and months more trying to draft a proposal. It finally gave up in August with the announcement that it would offer only "principles." Leaked copies of draft legislation were disowned, and the administration's stand was left obscure.

Because the effort was never accompanied by a clearly stated policy, the impression was created, perhaps inaccurately, that the White House wanted to relieve industry of compliance burdens, whatever the implications for clean air. EPA's espousal of the administration's new federalism led to a proposal for handing enforcement over to the states, a proposal widely viewed as a means of simply reducing compliance with EPA standards. There was discussion of loosening automobile standards but, when questioned, Administrator Gorsuch could not explain how that squared with air quality goals. With the administration suffering from the despoiler image of Secretary Watt, such a poorly articulated legislative strategy invited damaging misinterpretation. By late September, all chance of getting major Clean Air Act reform this year was gone.

Nor is there any sign of activity on other legislative fronts. For instance, in light of the recent Supreme Court decision on the cotton-dust standard, clearly the administration should now be pushing for major changes in the Occupational Safety and Health Act. In addition, legislation could be prepared to give state and local authorities the regulatory responsibilities that belong in their hands. The cumbersome and inefficient national program of registering hazardous wastes is one candidate for such an approach. Superfund financing for the clean-up of chemical dumps, a policy that will surely create all of the usual prob-

lems of the federal pork barrel, could be replaced by a state program. Finally, properly structured state workmen's compensation laws could provide safety protection for workers more effectively and at less cost than the present system. If the administration is truly concerned with restoring federalism, it should be drafting legislative proposals now, while the constituency for such changes still exists. Unfortunately, in its handling of the Clean Air Act, it has squandered political capital and created serious doubts that reform of environmental, health, and safety regulation is possible.

Backsliding at the Independent Agencies

As if the above problems were not enough, the administration's appointments to at least two major independent agencies suggest that it does not wish to pursue economic deregulation as aggressively as did the Carter administration. At the Federal Communications Commission (FCC), and particularly at the Interstate Commerce Commission (ICC), there has been dangerous backsliding.

Throughout 1980, the Carter ICC moved vigorously to implement the Motor Carrier Act of 1980. Piggyback rates were deregulated and large numbers of trucking firms were allowed to enter new routes and markets. Trucking appeared on the way to total decontrol, a result clearly dictated by the evidence that rate-and-entry regulation is mainly a force for cartelizing truckers. The only major opponents were, of course, the truckers and the Teamsters.

During the 1980 campaign, candidate Reagan had made statements suggesting he would slow the pace of deregulation. He did not, however, say that a truckers' cartel was good policy. Once elected, he appointed a pro-regulation chairman to the ICC. Now it appears that the commission will attempt to constrain new operating authority for truckers and limit new entry into the industry wherever possible. ICC officials are talking about the "common carriage" responsibilities of carriers in language that smacks of the pre-1980 days when such notions were the excuse for cartelizing the industry. The new ICC chairman has even suggested that rate regulation and entry controls are necessary to ensure efficient energy use. The Reagan White House must be cringing.

At the FCC, the posture of the new chairman is less clear, but at least one major decision augurs poorly for competition in broadcasting. The FCC has rejected a proposal drafted during the Carter administration to reduce the spacing in the AM band so as to increase the number of radio stations in major markets. Other Carter proposals on radio deregulation, which are mostly devoted to reducing the licensee's formal obligation to act in specified ways, appear more likely to be implemented. They make eminent sense but, in the absence of a decision to increase competition by increasing the number of stations, they inevitably have a special interest taint.

These early episodes may not constitute a general trend. But the ICC alone has already done enough to undermine any administration claim to have restored as much economic activity as possible to the discipline of the market. If the ICC persists in recartelizing trucking, the White House will find itself on shaky ground should it begin to pursue deregulation in other markets, such as natural gas, international aviation, or the merchant marine.

IN POLITICS, AS ELSEWHERE, first impressions are important. Had the President been faint-hearted when his tax or budget programs came before Congress, the prospects for his other policies would be much dimmer today. Similarly, if he allows his regulatory program to take on the appearance of goodies for business, he will lose the momentum for making much-needed changes in health, safety, and environmental policies.

Making a dent in the burden of regulation will take more than an enhanced regulatory review process. People will continue to demand safe work environments, clean water and air, and safe products, amenities that can be delivered without the incredible costs our current programs impose. But if the administration allows its EPA administrator to discard market alternatives in favor of technology-based standards, if the independent commissions seek to hold back deregulation, and if a few more months pass without important administration initiatives, the bold program of January will look very empty indeed. Then, as new problems grab the attention of busy legislators, regulatory reform may become the zero-based budgeting of the 1980s. ■