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It's Time to Cut Government Regulations

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It's Time to Cut Government Regulations

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It's Time to Cut Government Regulations

Murray Weidenbaum and Melinda Warren

The time is ripe for a new cycle of change in the intermittent swings from regulation to deregulation and back. In the past twenty-five years, the United States has been through several cycles of regulation and deregulation. Although there is substantial variation among individual government agencies, regulation has imposed substantial costs on the U.S. economy, while deregulation has generated significant benefits to the American public. A five-point program of regulatory reform is needed — and is presented in this report.

The rapid expansion of regulatory programs through the mid-1970s was followed by an unusual spurt of deregulation. By the mid-1980s, however, the push to deregulate had ended. With few exceptions, the late 1980s and early 1990s have been a time of expanding regulation, especially dealing with the environment and the workplace.

Although generalizations are always difficult to make, there are right and wrong reasons to regulate and good and bad ways of regulating. Properly designed regulation can correct serious shortcomings in the marketplace that lead to what economists call external costs. Under the present regime of property rights, there is limited incentive for an individual or an enterprise to protect the interests of others. Where

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resources are free and open to everyone — water and air are good examples — those refraining from polluting merely increase their own costs without achieving direct benefits of offsetting magnitude. This is so, even when cleaning the air and water generates more benefits than costs to society as a whole. This situation has been frequently cited as justification for government intervention. That does not mean, however, that all rules designed to deal with environmental concerns are necessarily cost-effective or even sensible. Nevertheless, the basic justification for governmental intervention in this aspect of economic life is clear.

In contrast, regulations that stifle competition — industry-specific rules limiting entry or price — almost invariably cost the nation more than the benefits derived by the groups these rules are designed to protect. The industry-specific rules are usually labeled economic regulation while those dealing with pollution and other externalities are categorized as social regulation.

The Costs of Government Regulation

Policymakers do not start out with a clean slate. The costs of complying with existing government regulations are very high and take many forms. These costs include hiring additional workers to keep abreast of and to respond to government directives; purchasing equipment to meet government health, safety, and environmental standards; and revising production processes in response to other government requirements. Regulation also forces enterprises to change their manner of operations — to comply with workplace directives, rules on acceptable product characteristics, and prohibitions against a variety of activities. Because uncertainty raises business costs (especially in the eyes of potential investors), the frequent changes in federal, state, and local regulations — and how they are administered — represent a serious deterrent to new undertakings.

The costs of complying with existing government regulations are very high and take many forms.

The costs of government regulation are not restricted to businesses, however. Much of the rulemaking extends to all employers, be they profit or non-profit, in the public sector or in the private sector. In addition, taxpayers pay for supporting a host of government regulators; consumers pay higher prices to cover the added expense of producing goods and services under government regulation and often forego product variety; and workers bear the burden when jobs are eliminated as a result of the burdens imposed by government regulation.[1] Because of the economies of scale in complying with regulation, smaller enterprises are disproportionately affected. Regulation also diverts research and development from product creation to "defensive R&D," those efforts that try to assure that the product will not be rejected by regulators. In the process, society as a whole suffers a reduced flow of new and better products and a less rapid rise in the standard of living.

These many adverse impacts are important but subtle. They are rarely known to the public — unless they have first-hand experience in dealing with government officials. A special insight was provided by former senator and presidential candidate George McGovern. He bemoaned the government's regulatory burdens after a failed attempt to operate a small business:

> I learned by owning the Stratford Inn . . . that legislators and government regulators must more carefully consider the economic and management burdens we have been imposing on U.S. business. . . . I'm for protecting the health and well-being of both workers and consumers. I'm for a clean environment and economic justice. But I'm convinced we can pursue these worthy goals and still cut down vastly on the incredible paperwork, the complicated tax forms, the number of minute regulations, and seemingly endless reporting requirements that afflict American business. Many businesses, especially small independents such as the Stratford Inn, simply can't pass such costs on to their customers and remain competitive or profitable.[2]

McGovern concluded that, if he were back in the Senate, "I would ask a lot of questions before I voted for any more burdens on the thousands of struggling businesses across the nation."[3]

Some of the costs associated with regulatory programs are extremely frivolous and clearly unnecessary from the viewpoint of achieving any serious public policy objective. Here are just a few examples of the many absurd requirements imposed on U.S. businesses:

- A Kansas City bank was ordered by regulators to put a Braille keypad on a drive-through ATM.[4]

- In Boise, Idaho, a plumbing company was penalized by the Occupational Safety and Health Administration (OSHA) because "proper" safety precautions were not taken by the employees who successfully rescued a suffocating construction worker from a collapsed trench. The $7,875 OSHA fine was eventually rescinded due to public outrage.[5]

- USDA has required California farmers to dispose of millions of pounds of otherwise good peaches and nectarines simply because they were smaller than federal standards permitted. Fruit that could have been sold or given away to the needy had to be left to rot.[6]

- John Pozsgai, a self-employed truck mechanic in Morrisville, Pennsylvania was fined $202,000 and sentenced to 3 years in jail for hauling away 7,000 old tires and rusting car parts and placing clean fill on his own, occasionally wet, property without a federal permit. The EPA argued that the property was a wetland because a stream — dry for most of the year — was partly trapped by the discarded junk and created several standing pools of water.[7]

The Direct Costs of Regulation

The historical trend of regulatory activities can be measured by changes in the size of the total work force of the federal regulatory agencies (see Table 1). After rapid growth in the decade of the 1970s (a 74 percent rise from 1970 to 1980), the regulatory wave crested. A 16 percent decline in the staffing of these activities, from 121,791 positions in 1980 to 102,192 in 1985, reflects the substantial cutbacks in the early years of President Ronald Reagan's administration. During the Bush presidency, employment at federal regulatory agencies started an upward trend that has continued into the Clinton administration. In 1993, the regulatory headcount was an all-time high of 129,760.[8]

Table 1

Personnel of Federal Regulatory Agencies
(Fiscal Years, Full-Time Equivalent Employment)

Area of Regulation	1970	1975	1980	1985	1990	1991	1992	1993
Social Regulation	52,693	80,523	95,533	79,293	87,351	91,170	96,085	98,244
Economic Regulation	17,253	21,720	26,258	22,899	27,289	27,349	29,581	28,571
Total	69,946	102,243	121,791	102,192	114,640	118,519	125,666	129,760
Percent increase (decrease)		46%	19%	(16%)	12%	3%	6%	3%

Source: Center for the Study of American Business, Washington University, St. Louis, Missouri.

The growth in regulatory staffing is reflected in the budgets of the federal regulatory apparatus (see Table 2). After reaching $8.8 billion (in constant 1987 dollars) in the last year of the Carter administration, these costs were decreased in President Reagan's first term. Federal regulatory budgets then rose slowly during his second term in office. President George Bush stepped up spending on regulation and President Bill Clinton has continued this trend. Nearly $12 billion (in constant 1987 dollars) were spent in 1993 to fund U.S. regulatory agencies.[9]

Another widely used proxy used to measure the trend of government regulation is the number of pages in the *Federal Register*, the publication in which regulations are listed. The size of this publication shrunk from approximately 87,000 pages in 1980 to about 53,000 in 1988. By 1991, the number of pages had grown to 67,700.[10]

Using any or all of these measures, government regulation in the United States is on the upswing once again. Of course, the cost of regulation only begins with funding and staffing federal agencies. In several early efforts to quantify the larger impacts, the Center for the Study of American Business estimated that the cost of complying with federal regulations was $63 billion in 1976 and $103 billion in 1979.[11] Later research reveals that these costs are continuing to increase rapidly. In 1990, Rochester Institute of Technology economist Thomas Hopkins estimated the overall annual cost of federal regulation at roughly $400 billion, an average of $4,000 per household.[12]

Given the absence of a comprehensive data base on the subject, such measures are only indicative at best. Nevertheless, there is no evidence to suggest that the costs of complying with regulation have declined since 1990 — or even stabilized. A recent report from the Busi-

Table 2

Budgets of Federal Regulatory Agencies
(Fiscal Years, Millions of Constant 1987 Dollars)

Area of Regulation	1970	1975	1980	1985	1990	1991	1992	1993
Social Regulation	$3,170	$6,028	$7,396	$6,914	$8,325	$8,685	$9,257	$9,286
Economic Regulation	830	1,051	1,389	1,504	1,893	1,845	1,969	2,267
Total	$4,000	$7,079	$8,785	$8,418	$10,218	$10,530	$11,226	$11,553
Percent increase (decrease)		77%	24%	(4%)	21%	3%	7%	3%

Source: Center for the Study of American Business, Washington University, St. Louis, Missouri.

ness Roundtable estimates that the nation's regulatory system cost American businesses and citizens $581 billion in 1993. Without reform, this yearly burden is projected to reach $662 billion by the year 2000.[13]

The costs imposed by legislation passed in the last several years — such as the Clean Air Act Amendments, the Americans With Disabilities Act, and the Family and Medical Leave Act — are only beginning to show up in these estimates of economic impact. Additional facets of these laws await implementation that will substantially raise the cost of doing business in the United States. For example, under the ozone provisions of the new Clean Air Act, the Environmental Protection Agency can prohibit new industrial facilities in areas that are out of compliance. The loss of federal highway grants is another threat to a region that fails to meet these environmental regulations.

The Americans With Disabilities Act (ADA) gives new protections to people with disabilities and requires employers to make "reasonable accommodations" for the disabled. However, this 1990 legislation was so poorly drafted that many disability claims end up in court — and this was expected by government regulators at the outset.[14]

The Family and Medical Leave Act of 1993 was portrayed as virtually costless as it wended its way through Congress. As soon as the bill became law, however, the public was reminded that employers are required to maintain health insurance coverage for employees on leave. The General Accounting Office estimates that this provision will cost $674 million a year.[15]

The Indirect Costs of Regulation

Most of the costs of government regulation are not borne by taxpayers directly. However, in large measure these expenses show up in higher prices for the goods and services that consumers buy. These higher prices represent the "hidden tax" of regulation, which is shifted from government to the consumer. To the extent that government-mandated requirements impose similar costs on all price categories of a given product (such as catalytic converters on automobiles), this hidden tax is more regressive than other federal taxes such as the income tax. That is, federal regulation often places a heavier relative burden on lower income groups than on higher income groups.

Most of the costs of government regulation show up in higher prices for the goods and services that consumers buy.

Another indirect cost that needs to be considered is a reduction in the international competitiveness of U.S. companies. The Clean Air Act and the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) impose far more stringent regulations on manufacturing and other firms doing business in the United States than these companies would be required to meet in other nations. The average cost of cleaning up a hazardous waste site in the United States is $30 million, far greater than the average of $1 million per site reported by businesses operating in the Netherlands. In the United Kingdom, the average cost ranges from $1 million to almost $5 million.[16]

These international differences are not limited to environmental programs. The pervasive tax and regulatory obstacles placed in the way of U.S. business — especially high-tech companies — add significantly to the cost of doing business in the United States. Increasingly, many American firms are being forced to shift their investment patterns to foreign locations. Some of the best-known American companies have deployed a majority of their assets overseas — Manpower, Inc. (72%), Gillette (66%), Mobil (63%), Digital Equipment (61%), Exxon (56%), Chevron (55%), Bankers Trust (52%), and Citicorp (51%).[17] The point being made here should not be misunderstood; our criticism is limited to those instances where American-based companies would stay in the United States were it not for the disincentives of governmental regulation.

Benefits of Deregulation[18]

An unprecedented reduction of regulation occurred in the United States in the 1970s and early 1980s. It was supported by an unusual coalition of Democratic and Republican legislators, consumer advocates, and scholars in the fields of economics, law, and political science. However, these deregulatory efforts applied only to economic regulation. Social regulatory programs continued to expand.

Airline Deregulation

The passage of the Air Cargo Act of 1977 and the Airline Deregulation Act of 1978 virtually eliminated economic regulation of the domestic airline industry. The primary regulatory authority over airline routes and fares, the Civil Aeronautics Board, was abolished. It is estimated that deregulated fares are 18 percent lower than they would have been under regulation. The price of air travel fell (in real, inflation-adjusted terms) by more than 20 percent from 1978 to 1991 and accident rates declined by 48 percent during the same time period. Due to reduced regulation, consumers enjoy an annual benefit estimated in excess of $10 billion.[19]

Not all changes in regulatory policy have been benign. For the crucial decade 1979-1989, Congress shifted the responsibility for airline antitrust enforcement from the Department of Justice to the Department of Transportation (DOT). In a misguided effort to help the airline industry, DOT rubber-stamped every airline merger during the 1980s, usually over the vehement objection of the Antitrust Division of the Justice Department. The result is an unexpected high degree of market concentration in the airline industry. The share of U.S. airline traffic held by the three largest carriers rose from 37 percent in 1981 to 56 percent in 1992. This development undercut the basic rationale underlying economic deregulation: competition does a better job of protecting the consumer than regulation. A study of airline mergers during 1985-88 reported that these consolidations increased air fares by an average of 9 percent relative to routes unaffected by these mergers.[20]

Another factor adversely affecting the results of deregulation is the failure of government — which owns the airports and manages the air navigation system — to keep pace with rising demand and to manage its functions sensibly. The result has been congestion in airports and in the sky causing delays and other problems for the traveling public. Avoidable congestion arises because landing fees for executive, personal, and other small aircraft are lower than the costs such planes impose on the air transportation system. Eliminating the subsidy of "light" airplanes by raising their fees for using the major airports would encourage their operators to shift to smaller, less frequently used facilities. Moreover, most aircraft accidents involve at least one "light" (*e.g.*, private) airplane. However, when Logan Airport in Boston tried to raise the fees charged to small aircraft, the pressures from the owners and operators were so intense that the U.S. Department of Transportation forced an indefinite delay, ostensibly so that the matter could be "studied."

Nevertheless, on balance, the public has achieved positive results from airline deregulation. The most compelling evidence of the benefit of airline deregulation is the fact that the portion of the national population that travels by air has increased very substantially. Economists John Warner and Richard McKenzie estimate that between 1979 and 1986, airline deregulation increased air travel by an annual average of 11 percent.[21]

Competition does a better job of protecting the consumer than regulation.

Deregulation of Surface Transportation

Substantial deregulation of surface transportation also took place in the 1980s. The Staggers Act of 1980 provided for substantial deregulation of the railroads. As a result of the changes that companies were allowed to make without going through the elaborate regulatory process, railroads reduced operating costs as well as rates to shippers. Researchers estimate that deregulation of the rail industry saves shippers between $3 billion and $5 billion a year. Railroad accidents have declined 70 percent since the late 1970s. Although operating revenues have fallen, expenses have declined even faster, making it more profitable for the railroads to operate.[22]

The Motor Carrier Act of 1980 eliminated the barriers to entry, price discrimination, and price fixing that had characterized the trucking industry since the 1930s. Between 1980 and 1992, the number of carriers increased from about 18,000 to more than 48,000. The total number of jobs in the trucking industry rose by about 30 percent. Savings to the economy are estimated to be on the order of $8 billion a year. Also, the fatal accident rate per 100 million vehicle miles shrank 40 percent between 1978 and 1989.[23] Recent decontrol of state trucking is likely to produce additional savings.

Deregulation of the rail industry saves shippers between $3 billion and $5 billion a year.

Until deregulation, interstate trucking was a textbook case of how government power was used to protect the "ins." Regulation by the Interstate Commerce Commission (ICC) prior to 1980 insulated existing trucking firms and their employees from potential competition by making it very difficult for new trucking companies to enter the business. The redistribution of income brought about by deregulation was to consumers in general from the owners, managers, and employees of the regulated industry. Moreover, the reduction of ICC regulation in recent years has also resulted in substantial transfers of income and wealth from the traditionally regulated portion of the industry to new entrants.

Financial Institutions Deregulation

Banking deregulation is a more controversial area. Significant reduction in the regulation of financial institutions took place in the late 1970s and early 1980s, but substantial government involvement remains. In the 1970s, interest rates on deposits of $100,000 and over were deregulated. As securities firms took advantage of that "loophole," banks responded with a new round of innovation. A process was set in motion that has resulted in the lifting of interest-rate ceilings of all deposits, payment of interest on consumer-demand deposits, and greater competition among financial institutions. However, a substantial government role — and liability — remained, especially in deposit insurance.

In 1982, the Garn-St. Germain Depository Institutions Act provided a wide variety of new and expanded powers for banks and other depository institutions. The law enables banks to establish deposit accounts competitive with money-market funds and other mutual funds. These new accounts carry no maximum interest rate and modest minimum balance requirements. The changes had powerful and almost instantaneous effects. The great majority of personal bank accounts were moved to the new, competitive types. A substantial (but far from complete) shift occurred from money-market mutual funds to bank accounts.

The deregulation of savings and loan associations (S&Ls) in the early 1980s is frequently cited as a cause of the thrift crisis and the ensuing S&L bailout. In retrospect, the timing of the deregulation was most unfortunate. Eliminating interest rate ceilings and permitting thrifts to invest in a wider range of assets was an appropriate response to the financial risk that accompanied wide swings in inflation and interest rates; such deregulation enhanced the competitive positions of the S&Ls. Unfortunately, however, the government waited until the S&Ls were locked into low-yield long-term mortgages and only then permitted them to pay market rates of interest for their borrowings (usually called deposits). This combination of forces — lending long-term at low interest rates while borrowing short-term at high rates — was a recipe for financial disaster.

In 1994, Congress passed a new banking law, the Interstate Banking and Branching Efficiency Act. When it becomes effective, this statute will go a long way to eliminate the McFadden Act, the basic law restricting interstate banking. The new legislation has two major parts. The interstate *banking* section allows bank holding companies, beginning in the fall of 1995, to acquire banks in other states. This provision overrides state laws that bar out-of-state institutions.

The interstate *branching* provisions of the new law are more complicated. Beginning in June 1997, banks and holding companies can consolidate their multi-state holdings into a single branch network. However, states can opt out of interstate branching before the new rules take effect by passing a law forbidding such action. Over a period of years, the result of the 1994 statute is likely to be fewer independent banks, more branch offices, and greater diversification of banking risk.[24]

Despite the reduction in economic regulation, Congress has not relented in increasing social regulations imposed on financial institutions. Examples in force include the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, the Truth-in-Lending Act, the Fair Credit Billing Act, the Fair Credit Reporting Act, the Consumer Leasing Act, the Real Estate Settlement Procedures Act, and the Community Reinvestment Act (CRA). The 1994 Banking Law contains significant new "community reinvestment" provisions, prohibiting out-of-state banks from using interstate branches "primarily for deposit production" rather than for helping to meet community

credit needs. This provision runs counter to the thrust toward national banking. It also perpetuates the myth pushed by CRA supporters that banks should lend primarily in their localities. That runs counter to the desires of depositors who seek the highest risk-adjusted returns. It is another example of trying to do good with other people's money.

Other Deregulatory Efforts

A reduction has occurred in the activities of many other economic regulatory agencies. In 1975, the Securities and Exchange Commission ordered an end to fixed brokerage fees for stock market transactions. In 1981, President Reagan decontrolled crude-oil prices and petroleum allocations. Contrary to much contemporary criticism, the subsequent trend of energy prices in the United States has been clearly downward. The Bus Regulatory Reform Act of 1982 permitted bus companies to change routes and fares.

In 1984, the Shipping Act enabled individual ocean shipping companies to offer lower fares and better service than so-called "shipping conferences" (really cartels). Also in 1984, the Federal Communications Commission (FCC) eliminated rules that required TV stations to keep public records of the shows they air and to determine the programming needs of the communities in which they operate. Thus far, the changes have mainly resulted in less paperwork, because most stations provide more news and public affairs than the FCC requires and fewer than the maximum of commercials previously allowed.

In the telecommunications industry, the government-forced breakup of AT&T has led to a rationalization of rates. Charges for individual services now approximate more closely the cost of service. The adjustments required to meet competition have reduced subsidies for some consumers — particularly customers in rural regions — while lowering rates substantially for users of long distance telephone service. In reducing the cross-subsidization bred by regulation, the balance of benefit is surely positive. The burst of competition in this hitherto closed industry has set in motion an unprecedented wave of technological innovation which has produced a continuing expansion in the variety of telecommunication services available to the public.

In one key area — the regulation of foreign trade — some backsliding has occurred amidst major progress. During the 1980s, the federal government renewed or extended restrictions on the import of automobiles, meat, motorcycles, sugar, steel, and textiles. With the end of the Cold War, however, export controls on national security grounds have been eased substantially.

The congressional passage of the North American Free Trade Agreement (NAFTA) is an example of basically positive legislation with a few serious shortcomings. The main thrust of NAFTA advances regulatory reform by reducing trade and investment barriers between the United States, Canada, and Mexico. The agreement, however, also contains stringent "national origin" requirements in the case of automobile imports. During the 1980s, this restriction on open trade had failed to gain congressional approval on its own "merits." However, the overwhelming congressional approval of the General Agreement on Tariffs and Trade (GATT) in late 1994 represents a major move toward a more open world trading environment.

Summary

It is evident that a considerable portion of the traditional economic regulatory apparatus has been cut back — at the same time that

newer forms of social regulation have been on the rise. Reduced economic regulation — ranging from outright deregulation to simplification and streamlining of rule making — has enabled the competitive process to work better. More people are traveling by air at lower real costs. Depositors in financial institutions are receiving higher returns on their money, as a greater variety of companies compete for their business. Long-distance telephone users are finding that greater competition has resulted in lower rates, while subsidies to local service have been reduced.

A lack of concern with adverse economic impacts has accompanied the most rapid expansion in environmental and workplace regulation in American history.

The reverse trend has been experienced in the area of social regulation. A lack of concern with adverse economic impacts has accompanied the most rapid and costly expansion in environmental and workplace regulation in American history.

Renewed Regulatory Expansion

On the basis of public reaction to developments in government during the 1980s, a different policy climate for business has taken shape during the Clinton administration. It is an external environment less hospitable than that existing during the Reagan or Bush presidencies. This business climate is not a return to the 1970s, when business was almost uniformly portrayed as the villain and subjected to a host of new government restrictions and regulations. But it is a step away from the relatively pro-business environment of the 1980s, to a more hostile or at least more ambivalent position.

Soon after becoming president in early 1993, Bill Clinton blasted "shocking" drug prices. The President's top political strategist, in discussing proposed changes in the health care system, was quoted as saying, "Those who get in your way, you try to run over by saying they are putting their self-interest against the national interest."[25] This harsh talk was quickly followed by tax increases on corporations generally and new limits on the tax deductibility of the compensation of chief executive officers.

Although the push to effectively nationalize the health care system was derailed during the last Congress, the Clinton administration has tightened regulation in many other instances. In the civil rights area an enforcement drive has been enacted that will affect an array of industries nationwide. For example, banks are being required to open more branches and make more investments and subsidized loans in black neighborhoods. Investigations of charges of lending discrimination have dramatically increased.

One of the most controversial civil rights issues being pursued by the current administration is "environmental justice." EPA has been ordered to come up with a plan to protect poor minority communities from an unfair share of pollution. As is the case in many other regulatory areas, the very existence of an "environmental justice" problem is a controversial issue. Several recent studies have questioned the research upon which the entire environmental justice movement is based.[26] Researchers have not adequately analyzed the

population composition of an area prior to the siting of an industrial plant or hazardous waste facility. Often, major population changes have occurred after the building was constructed. Thus, reduced property values around a new waste disposal site often encourage more low-income — in many cases, minority — families to move to the area *after* the facility becomes operational.

Federal regulators are stepping up enforcement with a fervor that has not been seen since the 1970s.

Federal regulators are stepping up enforcement with a fervor that has not been seen since the 1970s. The head of the Occupational Safety and Health Administration (OSHA), Joseph Dear, is moving forward with one of the most ambitious regulatory agendas in the agency's history. It includes an indoor-air quality proposal that OSHA estimates would cost $8 billion a year.[27]

Mary Schapiro, the new head of the Commodity Futures Trading Commission (CFTC), has promised to expand her agency's reach. Repeal of the antifraud regulatory exemptions for some hybrid commodity products and the formulation of a policy on financial derivatives are two of the initiatives she plans to adopt during her tenure at the CFTC. She is quoted as saying that industry can expect "a real dedication to enforcement, unlike any other chairman the agency has had."[28]

The Antitrust Division of the Justice Department is reviving its enforcement of resale-price maintenance, an area of antitrust law that had seen no new cases since the 1970s. Scrutiny of vertical mergers between a manufacturer and distributor of the same product has been revived. The division is hiring 25 new lawyers, after adding 34 attorneys and 60 paralegals since mid-1992.[29]

Reforming Government Regulation

Over the years, many efforts have been made to improve the process of government regulation. However, virtually all of the changes have focused on executive branch rulemaking. Truly reforming government regulation means far more than just revising the way regulatory agencies carry out the tasks assigned to them by Congress. In order to reduce the very large and often avoidable economic burdens imposed by regulation, policymakers need to focus on the birth stage of the rulemaking process. The crucial action occurs, for example, when Congress enacts an 800-page Clean Air Act with unrealistic timetables and an almost endless array of requirements. No amount of Executive Branch analysis performed afterwards can deal with the problem.

It is up to Congress itself to weigh carefully the benefits and costs before it enacts a regulatory statute and also to make sure that, if a new law is required, its provisions are as cost-effective as feasible. Congress should also examine the cumulative effects of government regulation on the performance of the economic system. The expansion of regulation in the United States has passed the point of diminishing returns. Far too often, those returns are negative.

In the past, economists have written about the discouraged worker, who gives up the job search in the belief that no suitable job opening is available. We now have the phenomenon of

the discouraged employer. Most policymakers and their advisers, however, ignore an obvious symptom of this unfortunate situation: overtime is now at an all-time peak. Many employers pay the penalty rate of time-and-a-half for overtime rather than hire an additional worker. The reason all too often lies in government regulation and mandates.

Congress should carefully weigh benefits and costs before it enacts a regulatory statute.

Small businesses provide the clearest examples of the discouraged employer. Companies with a work force of 49 report that they avoid hiring "number 50." If they did so, they would become subject to the requirements of the affirmative action program and other federal regulation. The health reforms proposed by the Clinton administration in 1994 also would have affected firms with 50 or more workers.

Comprehensive Approach Is Needed

With hundreds of regulatory statutes on the book, it is not feasible to renew and revise each of them. Instead, Congress should write one new law which will reform regulation across-the-board. Five key provisions would be especially helpful:

1. *A requirement for benefit-cost analysis in each key stage of the regulatory process — from writing the statutes to issuing regulations and reviewing the operation of regulatory programs.* Congress and the regulatory agencies should avoid an "at-any-cost" approach to achieving

regulatory goals. A zero-based review of existing regulations is long overdue.

2. *When a statute requires citizens or organizations to obtain a permit, a fixed timetable should force the agency to act in a timely fashion.* If the agency is not able to process an application by the deadline, the permit should be granted automatically. The private sector should not be punished for the shortcomings of the public sector.

3. *Legislation should emphasize objectives sought rather than precise methods to be used for each regulatory program.* Detailed laws that place "legislative handcuffs" on agency administrators prevent more cost-effective solutions. On the other hand, legislators should avoid writing laws so vague that they know in advance that the courts will have to wrestle with the details. Congress should also refrain from passing regulatory laws with requirements that they know are not reasonably attainable. The notion of writing laws that are "technology-forcing" is wasteful of economic resources.

4. *The federal government should use risk assessment to help set priorities for achieving greater protection of health, safety and the environment in the most cost-effective manner.* All risks are not equally serious. Government should focus on the most serious hazards. Sound science and comparative risk analysis should be drawn upon during the legislative drafting process. Regulating trivia harms the society by diverting resources away from more productive use.

5. *Congress should promote regulatory justice.* Legislators and regulators should avoid imposing costs on innocent parties. Where regulation substantially reduces property rights, compensation should be paid. Retroactively applying laws to parties who met previous legal requirements should be avoided.

Conclusion

Now is an especially propitious time for Congress to embark upon significant reform of government regulation in the United States. Such action would respond to the widespread citizen dissatisfaction with the high cost and limited benefits of many governmental activities.

Government decisionmakers overlook an important fact when adopting new or expanded regulatory requirements: government intervention often does more harm than good. Policymakers should not ignore the tremendous ability of individuals and private organizations to deal with the shortcomings that inevitably arise in a modern economy.

Notes

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4. Bonar Menninger and Dan Margolies, "Regulatory Overkill is Pushing America's Businesses to the Brink," *Kansas City Business Journal*, November 18-24, 1994, pp. 1, 52.
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