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The Next Step in Regulatory Reform: Updating the Statutes, 1983 Report on Regulatory Budgets

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The Next Step in Regulatory Reform: Updating the Statutes

1983 REPORT ON REGULATORY BUDGETS

by Murray L. Weidenbaum
and Ronald J. Penoyer

Center for the Study of American Business
Washington University · St. Louis

This booklet is one in a series designed to enhance the understanding of the private enterprise system and the key forces affecting it. The series provides a forum for considering vital current issues in public policy and for communicating these views to a wide audience in the business, government, and academic communities. Publications include papers and speeches, conference proceedings, and other research results of the Center for the Study of American Business.

The Next Step in Regulatory Reform:

Updating the Statutes

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Note: This report is a continuation, in a new format, of the *Directory of Federal Regulatory Agencies,* which was published annually by the Center for the Study of American Business during 1978-1982.

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I. Updating the Statutes That Establish Regulation

The Spring of 1983 is an appropriate time to take stock of progress on regulatory reform and to develop the future agenda. What has been accomplished? It is clear that significant and perhaps fundamental improvements have been made in recent years in controlling the flow of new regulations. A series of Presidential directives in three administrations, culminating in Executive Order 12291 of February 17, 1981, has established a comprehensive and fairly effective system for reviewing pending rulemaking. A major advance has been the incorporation of formal benefit-cost analysis in the review process. The Reagan Administration has estimated that its reviews to date have reduced the cost of compliance with federal regulation by $9-11 billion in terms of capital outlays, and $6 billion a year on a continuing basis.

Surely, additional improvements in administrative procedures are desirable and possible. Benefit-cost analysis is a developing mechanism, especially as it is applied to regulation. Nevertheless, it seems clear that, at this point, the major obstacles to further substantial improvement in the regulatory process are the requirements and limitations in the basic statutes governing regulatory activities. After all, every regulation is issued pursuant to an act of Congress and every regulator is paid from a congressional appropriation.

Recent experience confirms the belief that the fundamental shortcomings of government regulation result more from statutory than from executive deficiencies. For example, the current leadership of the Occupational Safety and Health Administration has been trying to reduce the burdens of its rule-making. However, the courts have struck down several specific changes on the grounds that the proposals were inconsistent with the statute under which the agency operates. The inherent desirability of OSHA's proposals seems clear—to achieve health and safety objectives in a more cost-effective manner. Thus, revisions in the law now inhibiting such improvements become high priorities.

In general, laws that mandate the pursuit of unrealistic goals or unreasonable methods for social regulation are attractive candidates for revision. Such regulation ranges from the "zero discharge" goal of the Clean Water Act to the "zero risk" provision of the Delaney Amendment of the Food, Drug and Cosmetic Act. The expiration of the Clean Air Act and Clean Water Act provides striking opportunities for incorporating desirable changes along these lines. Surely, recent experiences in the

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environmental area demonstrate the need for regulators to conform to existing statutes, whatever their shortcomings may be. That experience also points up the need to update statutory requirements rather than introduce arbitrary administrative changes.

In the area of economic regulation, we have seen in the case of the Civil Aeronautics Board that statutory change is the most effective means of pursuing a deregulation strategy. Other candidates exist in the array of economic regulatory agencies that abound in Washington. In general, the emphasis in any deregulation approach should be on proposed laws that phase out economic controls which interfere with competition in the marketplace. Many of the existing regulatory agencies, especially in the transportation and energy areas, either create artificial monopolies or otherwise inhibit the operation of the basic market forces that truly protect the consumer.

The major obstacles to further improvement in the regulatory process are the requirements and limitations in the basic statutes governing regulatory activities.

During the past year, especially, it also has become apparent that onerous federal intervention is not limited to domestic economic activity. It also covers much of this nation's international trade and investment flows. A variety of often interrelated tax, regulatory, and programmatic laws restricts either our imports or our exports.

Without underestimating in any way the importance of improving administrative review of existing as well as proposed regulations, the present time is appropriate for embarking on a second phase of regulatory reform: the review and revision of the substantive laws governing the regulatory process. In this report we focus on statutory problems in the following key areas:

1. The environment, specifically renewal of the Clean Air Act and the Clean Water Act.
2. Occupational health and safety.
3. Surface transportation, with a view toward deregulation.
4. Energy, also with a view toward deregulation.
5. Foreign trade, focusing on the renewal of the Export Administration Act.
6. Banking, notably the McFadden Act.
7. Marketing practices, specifically the Federal Trade Commission.

Federal outlays to operate regulatory activities will total $6.5 billion in 1984, more than eight times the sum spent in 1970.

Greater attention is also needed to the process whereby Congress enacts the appropriations that finance regulatory activities. Because the individual regulatory programs are dispersed all through government, it is hard for Congress to see the totality of resources involved. As shown in greater detail in Part II of this report, federal outlays to operate regulatory activities will total $6.5 billion in 1984, more than eight times the sum spent in 1970. When the data are converted to dollars of constant purchasing power (see Table 1), a more than three-fold increase is seen to have taken place since 1970. This amount, of course, is dwarfed by the much larger sums expended in the private sector and by state and local governments to comply with the directives of federal regulatory agencies.

TABLE 1
Regulatory Outlays in Brief
(Fiscal Years, in Billions)

Year	Current Dollars	Constant 1970 Dollars
1970	$0.8	$0.8
1975	3.2	2.3
1980	5.9	3.0
1981	6.5	3.0
1982	6.2	2.7
1983	6.4	2.7
1984	6.5	2.6

Source: Center for the Study of American Business. See Table 5.

As a start to an improved information base, it would be helpful if a comprehensive tabulation of the expenditures of all federal regulatory programs be added to the *Special Analyses* volume that accompanies the annual U.S. budget document. Meanwhile, Parts II and III of this report are designed to fill that gap.

Within the context of statutory reform, the selection of new appointees to regulatory agencies is a related and vitally important function. The experiences of recent years in several administrations demonstrate the need to select people who take a balanced approach to the benefits and burdens of regulation.

Appointing uncritical enthusiasts for expansion of government regulation inevitably produces a regulatory regime characterized by excessive burdens and cavalier disregard of economic impacts. Similarly, regulators

who lack a basic sympathy toward the programs they administer—or who, through lack of sensitivity, project such a negative image—are also counterproductive.

Regulatory activities that are deemed worthy of continuation should be managed by people who are both sympathetic to the important social objectives to be achieved and equally concerned with minimizing the burdens they impose on individual citizens as taxpayers and consumers. The leadership of regulatory agencies—as well as of other governmental activities—should understand that good policymaking means a careful balancing of a variety of important considerations—such as clean air *and* high employment, healthier working conditions *and* greater productivity. Today, however, the most urgent need is to convince members of Congress to demonstrate such a sense of balance when they write the basic regulatory laws.

The leadership of regulatory agencies should understand that good policymaking means a careful balancing of a variety of important considerations.

Environmental Regulation

Amid the urgent and at times strident concern for improved environmental quality that characterized the past decade, important economic factors frequently got lost in the rush to regulate. In considering changes in the Clean Air Act and the Clean Water Act, the primary issue is not whether environmental controls are needed. Rather, it is how to improve the effectiveness of the billions of dollars expended each year on pollution abatement and control. Unfortunately, that important goal has been obscured by the plethora of disturbing reports on administrative shortcomings in EPA. In retrospect, many of those administrative problems arose from misguided attempts to work around extremely onerous statutory requirements. The undramatic but serious business of environmental cleanup requires attention to be focused on those shortcomings in existing law.

Revising the Clean Air Act

The Clean Air Act is one of the most costly pieces of regulatory legislation in history. Its incremental costs—expenditures beyond those that the private sector would voluntarily spend—totaled $22 billion in 1979. According to the Council on Environmental Quality (CEQ), expenditures of nearly $300 billion will be needed to meet Clean Air Act requirements during the period 1979 to 1988 (measured in 1979 dollars). The annual cost for air pollution control, paid by the consumer in the form of higher utility rates and higher prices for goods and services, amounted to $400 for a family of four in 1979.

Clean air regulation generates additional costs to the economy that are not captured in CEQ estimates. These effects include increased construction costs due to delays in granting permits, lags in initiating new projects due to potential environmental challenges, and reduced progress in reaching the goal of increasing U.S. energy independence.

The undramatic but serious business of environmental cleanup requires focusing attention on the shortcomings of existing law.

Lags in productivity-enhancing investment caused by clean air regulations interfere with the achievement of the goals of the Clean Air Act itself. In areas where air quality is better than the national standards (designated as Prevention of Significant Deterioration areas), delays of two and sometimes three years in obtaining building permits are commonplace, resulting in greatly increased construction costs. For example, it now takes eight to ten years to construct a 1,000-megawatt coal-fired power plant, whereas it took only four to five years to construct such a facility a decade ago. More than half the $1 billion cost of such an installation is due to requirements for scrubbers and the interest and related expenses incurred during the four- to five-year period of extra delay.

But, in addition, these delays postpone the time when aging, less efficient, and more polluting factories can be replaced with more productive and less polluting new facilities. In this way, some of the provisions of the Clean Air Act are self-defeating—retarding efforts to reduce air pollution.

The following changes in the Clean Air Act would produce a salutary effect on the economy without sacrificing air quality objectives crucial to public health:

(1) EPA should be required to establish standards that will protect the public against "unreasonable risk of adverse health effects." In determining "unreasonable risk," the EPA administrator should be required to consider the nature and extent of the risk, the attainability of the standard, economic values, and other important public interests.
(2) Secondary (non-health-related) air standards should be set by individual states.
(3) "Prevention of Significant Deterioration increments" for allowable air quality degradation should apply to national park areas only (Class I areas).
(4) All mandated control technologies should follow the procedures for "best available control technology" (BACT).
(5) States should be allowed to substitute emission fees for current offset procedures in nonattainment areas. In general, market incentives should be substituted for

command and control regulation when possible. The need for statutory change is underscored by the recent ruling of the U.S. Court of Appeals for the District of Columbia that innovations such as the "bubble concept"—treating pollutants for a whole plant rather than by individual smokestacks—are "impermissible" according to current law.

(6) Deadlines for attainment, and concomitant construction ban penalties, should be eliminated. Such requirements are clearly unrealistic; approximately 150 counties are currently threatened by legal requirements to impose such a ban.

(7) An independent scientific review of mobile source emission standards should be commissioned immediately, since more restrictive auto pollution control costs appear to far outweigh potential health benefits.

(8) New emission sources and modified sources should not be required to install additional control equipment—absent newly discovered health threats—within ten years of installation of approved equipment to control a particular pollutant.

(9) Research on the causes of "acid rain" should be accelerated. No inflexible legislative requirements should be set without sufficient scientific evidence and cost/benefit analysis.

America's resources are vast but not unlimited. We can indeed afford to protect our citizens from unreasonable exposure to unhealthful air pollutants. But it is imperative that the laws governing how we accomplish this important task be designed to encourage the most effective and least disruptive means of achieving these important environmental objectives. Reauthorization of the Clean Air Act gives Congress the opportunity to do just that.

Revising the Clean Water Act

The Clean Water Act, like its costly cousin the Clean Air Act, was scheduled to be reauthorized or revised by October 1, 1981. But it remains unchanged to date. The Act appears to have arrested the degradation of water quality. Yet the evidence that it has actually improved water quality is largely anecdotal. There is no doubt, however, that the Act has been costly. According to the latest published figures from the Council on Environmental Quality (CEQ), incremental costs for industries and municipalities totaled over $12 billion in 1979—$6 billion in public spending (financed by taxpayers) and more than $6 billion in private expenditures (paid by consumers). The CEQ report for 1980 also estimated that the cumulative incremental costs for the period 1979-1988 will total nearly $170 billion.

The two primary goals of the Clean Water Act (established in the 1972 law) are to: 1) eliminate the discharge of pollutants by 1985, and 2) make

Evidence that the Clean Water Act has actually improved water quality is largely anecdotal. There is no doubt, however, that the Act has been costly.

all lakes and streams fishable and swimmable by July 1, 1983. Both goals are widely acknowledged by environmentalists, as well as by regulators and regulated parties, to be unattainable. Since these are goals and not legal requirements, supporters of the current law see no need to change them. Nonetheless, unrealistic goals do have consequences. For instance, recent efforts by the Environmental Protection Agency to allow more state control over designation of the use of a particular stream has been challenged on the grounds that it is an abandonment of the "fishable/swimmable" goal.

The existing legislation, last amended in 1977, is very complex. But many of the technical difficulties that municipal treatment plants and private industry are experiencing in complying with the act elicit a "ho hum" response from the public and Congress. Thus far, it has been the public sector rather than the private sector that has been faced with the greatest problems in meeting effluent requirements. Although it is widely agreed that 96 percent of industry is in compliance with current guidelines, estimates of municipal compliance vary widely—from 50 percent to 75 percent. One General Accounting Office sampling of 242 new and modified municipal waste treatment plants taken in November 1980 found 87 percent were violating effluent limits and 31 percent were in "serious violation."

Three primary Clean Water Act requirements will create much confusion if not modified soon. First of all, the July 1, 1984, deadline for installation of Best Available Technology (BAT) for toxic pollutants and Best Conventional Technology (BCT) for conventional pollutants cannot be met. According to the Act, the EPA must specify BAT for 129 toxic substances used in 34 different industries. Thus far the agency has been able to promulgate regulations for only 3 industries—inorganic chemicals, timber processing, and iron and steel. In short, deadlines for advanced technology controls cannot be met by industry, public waste treatment authorities, or the EPA itself.

Furthermore, rigidly proceeding to new, more costly standards may not be necessary in many cases. Current cleanup methods for conventional pollutants have proved to be effective for removing a high percentage of heavy metals and other toxics. In light of these facts, the deadlines should be extended to July 1, 1988, as EPA has urged.

The 1977 amendments to the Clean Water Act also require "pretreatment" of toxic substances that are discharged by industry into publicly owned treatment works. National categorical standards are required for 129 toxics and 34 industries. But only requirements for electroplaters and timber products have been set to date. Industry, the EPA, and the U.S. House Subcommittee on Oversight and Review of the Committee on Public

Works and Transportation all concur that this approach should be abandoned in favor of local control over usage of sewage facilities on the basis of the current permitting system.

Deadlines for advanced technology controls cannot be met by industry, public waste treatment authorities, or the EPA itself.

The third major Clean Water Act provision needing immediate revision is the permitting system itself, the National Pollution Discharge Elimination System. Between 1972 and 1976, EPA and the states issued approximately 65,000 "first round," five-year permits based on Best Practicable Technology. The second round of permits were to be based upon the more stringent Best Available Technology (BAT) requirements. Thus far 30,400 permits have expired. Over the next three years, the remainder of first round permits will expire. According to recent Congressional testimony by the Deputy Administrator of EPA, "with 5-year permits the backlog can never be reduced at current permit issuing levels. Before the permitting authority can complete permit issuance of existing expired permits, the reissued 5-year permits will begin expiring once again." The EPA, industry, and the House Oversight Subcommittee recommend that permits should have a longer life—eight to ten years.

An alternative and more fundamental reform of the Clean Water Act would make it a market-based system. Rather than specifying effluent standards based upon some presumed level of technology, the EPA (or the state permitting authority) would levy a tax (or effluent charge) per unit of effluent. This approach would use the price system to provide the incentive for reducing pollution. The price system would stimulate innovation in pollution abatement techniques and would be more cost-effective.

Although both business and government tend to favor uniform standards over economic incentives, economic approaches to pollution problems can produce savings for taxpayers and consumers. A study of the Delaware Estuary, for example, showed that effluent fees could achieve the desired level of water purity for dissolved oxygen at half the cost of the conventional approach. The Washington representative of the Sierra Club has been quoted as saying, "In retrospect, we would have accomplished more if we'd simply taxed pollution and then left compliance in the hands of businessmen rather than regulators."

"In retrospect, we would have accomplished more if we'd simply taxed pollution and then left compliance in the hands of businessmen rather than regulators."

Regulation of Job Health and Safety

The Occupational Safety and Health Act of 1970 created one of the most controversial of all federal agencies. Many critics have contended that OSHA has pursued the wrong goal—focusing on the details of on-the-job safety rather than improving occupational health. In addition, the agency has been criticized for using the wrong tools in applying broad, standards-based regulations rather than using a flexible, incentives approach.

Perhaps the most damning criticism of OSHA is that, although it imposes large costs on the private sector, it has accomplished little in the way of improving the conditions in which Americans work. Table 2 illustrates the trends in injuries, illnesses, and fatalities since 1972, the first year in which the agency was operational. The number of job-related illnesses and injuries per worker has been rising during this period, as has the number of lost workdays. The annual number of workplace fatalities has fluctuated without any visible trend.

TABLE 2
Worker Serious Injury and Illness and Accident Fatality Rates

Year	Lost Workday Cases (per 100 full-time workers)	Lost Workdays (per 100 full-time workers)	Total Workplace Fatalities
1972	3.3	47.7	n/a
1973	3.4	53.3	5700
1974	3.5	54.6	5850
1975	3.3	56.1	5160
1976	3.5	60.5	4480
1977	3.8	61.6	5560
1978	4.1	63.5	5490
1979	4.3	67.7	5850
1980	4.0	65.2	5360
Average Annual Increase:	2.3%	3.6%	—

n/a = not available
Source: U.S. Bureau of Labor Statistics

After a shaky start, dominated by the promulgation of a host of silly and nitpicking regulations, OSHA began to streamline its regulations. This change has reduced the day-to-day complaints on the part of those regulated. Yet the fundamental statutory shortcomings remain. If anything, they are now more visible.

Key sections of the Occupational Safety and Health Administration Act that deserve attention are the following:

- Section 3(8) of the Act defines an "occupational safety and health standard" as a standard or regulation that is "reasonably necessary and appropriate to provide safe and healthful employment."
- Section 6(b)(5) directs the Secretary of Labor to "set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity."

Because these sections are largely subjective, OSHA regulations have been widely challenged, and often overturned, in the courts. The following is a partial list of cases in which OSHA standards were ruled either technologically impracticable, economically infeasible, or both:

Love Box Co. (1975)
Reynolds Metals Co. (1976)
Continental Can (1976)
West Point Pepperell, Inc. (1977)
Castle and Cook Foods (1977)
Turner Company (1977)
RMI Company (1979)
American Petroleum Institute (1980)
American Textile Manufacturers (1981)

One of the more recent of these cases, *Industrial Union Department, AFL-CIO v. American Petroleum Institute, et. al.*, is a good example of the opinions the courts have handed down on OSHA matters. In this case, because of the well-documented causal relationship between contact with benzene and developing leukemia, then Secretary of Labor Ray Marshall reduced the standard maximum level allowed from 10 parts to 1 part benzene per million parts of air. However, the research linking airborne benzene contamination to leukemia had been conducted at levels of 400 ppm or higher. A group of manufacturers, led by the American Petroleum Institute, challenged the case in court. A lower court held that the standard was "invalid because it was based on findings unsupported by the administrative record." The Supreme Court upheld the judgment.

Perhaps the most damning criticism of OSHA is that it has accomplished little in the way of improving the conditions in which Americans work.

The implicit reasoning of the Justices who affirmed the lower court's ruling was that the benefits of the reduction simply did not justify its cost. Chief Justice Burger wrote:

> When the administrative record reveals only scant or minimal risk of material health impairment, responsible administration calls for avoidance of extravagant, comprehensive regulation. Perfect safety is a chimera; regulation must not strangle human activity in the search for the impossible.

Justice Powell wrote:

> . . . it is simply unreasonable to believe that Congress intended OSHA to pursue the desirable goal of risk-free workplaces to the extent that the economic viability of particular industries . . . is threatened. . . . Although one might wish that Congress had spoken with greater clarity, the legislative history and purposes of the statute do not support OSHA's interpretation of the Act.

The lesson to be learned is that the vagueness of the OSHA statute is now the problem which must be addressed. The urgent need to revise the statute was sharply illustrated in another Supreme Court case, *American Textile Manufacturers v. Donovan.* In March 1981, OSHA announced its intention to review the existing standard of worker exposure to airborne cotton dust, relying on an analysis of the costs and benefits of such a standard. At the same time, OSHA examined the usefulness of cost-benefit analysis in general, partly in response to the benzene decision. In June 1981, the Supreme Court effectively prohibited using benefit/cost analysis for such purposes. The implication is that, under the current statute, OSHA must uniformly apply the most stringent standards that will still allow the firm involved to operate. In the opinion of the Justices:

> Any standard based on a balancing of costs and benefits . . . that strikes a different balance than that struck by Congress would be inconsistent with the command [of the Act]. Thus, cost-benefit analysis by OSHA is not required by the statute because feasibility analysis is.

The statement that cost-benefit analysis is not required under the existing statute means that, in formulating new standards, it will not be allowed. The ambiguous phrasing of the Act itself is to blame, not the agency created under this law. The court opinions in these various cases are singularly unhelpful in establishing a consistent approach to regulation of the workplace. On the one hand, OSHA is forced to take feasibility into account, but on the other, it is prohibited from explicitly using cost-benefit analysis in that accounting. Clearly, the underlying statute needs to be made more explicit. The revision should embody three modifications:

(1) Change the basic role of OSHA from that of a legal adversary, making inspections and insisting on com-

pliance with complex detailed standards, to a safety leader. Such an organization should investigate new techniques in safety engineering, publish and disseminate information, and assist the safety departments of individual firms in solving their specific problems.

(2) Make explicit what is "reasonable" and "feasible" by allowing decisions to be made on the basis of a comparison of the benefits to workers to the compliance costs. Such analyses should include the explicit costs of safety equipment, and the implicit but substantial costs of the paperwork burdens of technical compliance.

(3) Shift the basic orientation of enforcement from punishing employers if workers do not comply to a shared system of incentives, encouraging cooperation and flexibility in responding to specific job-safety problems.

From the viewpoint of legislators, the courts, and OSHA itself, these changes will allow a much more effective pursuit of the ultimate goal: improving the safety and health conditions in which American men and women work.

Surface Transportation Regulation

The traditional regulation of surface transportation—which includes the railroad, trucking, freight forwarder, bus, and maritime industries—has no justification in today's economy. The tremendous development of technology since the Interstate Commerce Commission was established in 1887 has resulted in very substantial competition among different modes of transportation—by airplanes, passenger automobiles, buses, trucks, inland barges, ocean-going ships, and railroads. Originally, transportation regulation may have been justified by the argument that competition was limited and that the consumers needed to be protected by government from the "monopolistic" power of individual carriers.

The traditional regulation of surface transportation has no justification in today's economy.

Whatever factual basis that argument may have had, it is apparent that competition for passenger and freight business is now very keen. Indeed, many economists and political scientists have pointed out that the regulatory agencies themselves have become legal cartels thwarting competition in the regulated industries. It is not surprising, therefore, that many of the regulated carriers have often come to support this type of regulation as a means of keeping out new competitors. Of course, consumers benefit from the freedom of companies to enter or leave the industry. As shown in the recent case of air transportation deregulation, competition in the marketplace is the most effective way of keeping prices down.

The case for retiring the Interstate Commerce Commission and the Federal Maritime Commission is now a compelling one. Not only are the basic restrictions on entry and exit counterproductive in today's economy, but the more detailed regulations are not needed either. For example, in the case of the ICC, restrictions on one type of carrier owning another are no longer justified. Railroads should, if they so desire, be allowed to acquire trucking companies in order to facilitate container and piggyback operations.

Also, limitations on exit—abandonments of franchises to provide service—should be eliminated. As a result of intermodal competition, excessive capacity exists, especially in parts of the railroad industry. It makes no sense for the federal government to insist that a company continue to provide service on an uneconomical route and then face the need to subsidize the company to avoid its going bankrupt.

Cabotage laws push up living costs in Alaska and Hawaii and make Oregon lumber more expensive in California than Canadian lumber.

The appointment of more enlightened members of the Interstate Commerce Commission has resulted in less onerous regulations. But the basic mission of the agency—to control entry, exit, and rates—is counterproductive. The Interstate Commerce Act of 1887, as amended, should be phased out on an orderly basis. During the transition to full deregulation, the law should be amended to require the Interstate Commerce Commission to grant within 90 days all requests for abandoning money-losing, little-used branch railroad lines. Recent experience with the partial deregulation of railroads and trucking—achieved through the Motor Carrier Act of 1980 and the Staggers Rail Act—shows favorable results in terms of improved service and lower costs to users. Despite concerns expressed earlier, most smaller towns have continued to be served by one or more modes of transportation.

Similarly, there is no justification for the continuance of the federal maritime laws which established the Federal Maritime Commission and authorize it to regulate American shipping engaged in foreign commerce or in U.S. coastal trade. The Commission devotes much of its energy to investigating price rebating and rate-cutting. By requiring U.S. carriers to abide by rates set in international rate conference agreements—under a waiver of the antitrust laws—the Commission limits the ability of our carriers to meet price competition from companies outside the United States. Reliance on the competitive forces of the marketplace will ensure more efficient and less costly ocean transportation.

Similarly, the cabotage laws (such as the Jones Act), which restrict shipping between American ports to U.S. flag ships, should be repealed.

These restrictions on competition have many adverse side effects. For example, they push up living costs in Alaska and Hawaii and tend to make Oregon lumber more expensive in California than Canadian lumber.

Deregulation will ultimately reduce costs for consumers, both as travelers and as purchasers of products whose prices reflect costs of transportation.

All barriers to entry into the surface transportation sector of the economy should be eliminated. Any individual or company that wishes to risk capital should be free to offer services at whatever rates the market justifies. Competition will protect both the shipper and the traveler. Firms that try to exploit shippers or passengers will quickly face competition from companies that are attracted to that segment of the market. Deregulation will ultimately reduce costs for consumers, both as travelers and as purchasers of products whose prices reflect costs of transportation.

Energy Price Regulation

Recent history is instructive in the case of energy price deregulation. Despite the howls of outrage at the time, the elimination by President Reagan of price and allocation controls over gasoline and petroleum products has been followed, with the inevitable lag, by lower—not higher—prices. The deregulation of natural gas, which would require Congress to amend or repeal the Natural Gas Policy Act of 1978, is likely to have favorable results similar to those resulting from petroleum deregulation.

Still, under present law, high-priced natural gas is being imported from Canada even though cheaper U.S. supplies are in surplus. The problems in the gas market have been caused by the interaction of federal price controls and inflexible contracts between pipeline companies and producers. The contracts, in turn, were by-products of the long and convoluted history of government regulation of energy.

The basic problem is that federal regulation is too rigid to allow gas prices to reflect changing conditions. Natural gas prices are now at levels that have encouraged switching back to oil. With so much of the industry's capacity idle, it is unlikely that we would see the sharp runup in prices that some fear would result if natural gas were deregulated.

Realistic prices are the most effective stimulus to energy conservation. Deregulation of natural gas is long overdue.

The Natural Gas Policy Act was designed to raise the wellhead prices of natural gas in order to achieve a balance between supply and demand in 1988. But the legislation specified gradual price increases for various categories of natural gas, based on a projected price of oil that today is still considerably lower than current oil prices. The price disparity has prompted new inefficiencies in the allocation and consumption of natural gas. The smooth transition to a deregulated market envisioned by the framers of the Act may not occur unless Congress overrides the many contracts which have been entered into on the basis of the 1978 Act.

In restrospect, the elaborate approach of the 1978 law did not protect consumers. A series of nearly 25 different price ceilings for various categories of natural gas, in practice, provided incentives to producers to drill for the most expensive, highest-cost types of new supply. That network of price controls actually penalized increased production from lower-cost supplies.

The sooner that Congress eliminates price controls over natural gas, the sooner the adjustments to a competitive market will take place. It is clear that the problems associated with deregulation arise only because the federal government has interfered for so many years with the operation of competitive market forces in the energy sector of the American economy.

The sooner that domestic energy prices equal world market prices, the sooner will new domestic sources—conventional and unconventional, including synthetic fuel, solar energy, etc.—become competitive. Realistic prices are the most effective stimulus to energy conservation. Deregulation of natural gas prices is long overdue.

Regulation of Exports

The Export Administration Act of 1979 (EAA) expires at the end of September 1983 and can benefit from revision. This legislation gives the President the authority to impose controls on exports from the United States for either national security or foreign policy reasons. National security controls restrict exports of goods and technology which have military applications and, thus, could threaten the national security of the United States. Foreign policy restrictions, on the other hand, are very vaguely defined—those considered necessary by the President to further the foreign policy of the United States.

While a considerable consensus exists in the United States on the need for export controls for national security reasons, this agreement does not extend to controls imposed to achieve foreign policy objectives. Critics maintain that the imposition of controls on exports of U.S. firms for foreign policy reasons has resulted in the loss of export markets for the United States without any offsetting political advantages. The debate over the renewal of the EAA is focusing to a large degree on limiting the scope of Presidential authority to impose these controls. Much of that debate is

the outgrowth of the decision by the Reagan Administration to impose sanctions during December 1981 on exports of equipment to the Soviet Union used in the construction of the trans-Siberian pipeline. These sanctions were initially imposed in response to the declaration of martial law in Poland.

Controls on exports for foreign policy reasons have resulted in the loss of export markets for the United States without any offsetting political advantages.

The Reagan Administration generated further controversy when, in June 1982, the sanctions were extended to cover European subsidiaries of American multinationals and European companies producing goods under American licenses which were to be used in the construction of the pipeline. The Reagan Administration used the authority granted under the EAA to impose both sets of sanctions. The imposition of these sanctions strained economic and political relations between the United States and Europe. None of the European countries involved agreed to adhere to the sanctions. In addition, U.S. firms lost several million dollars worth of contracts. Despite these costs, there is no indication that the sanctions actually hindered the construction of the pipeline, and they have been lifted.

The success of export controls depends heavily on other suppliers withholding the sale of goods and technologies to the adversary, typically Eastern bloc countries. The sale of goods with military applications is regulated on an international basis by the Coordinating Committee (Cocom), which consists of the NATO countries (excluding Iceland) and Japan. The restriction lists agreed to by Cocom help to ensure that other Western countries do not provide the Soviet Union with military technology withheld by the United States.

Without some consensus among the Western trading partners of the Soviet Union, sanctions unilaterally imposed by one country are generally ineffective.

No such agreement, however, exists to coordinate restrictions on the sale of non-strategic goods. Without some consensus among the Western trading partners of the Soviet Union, sanctions unilaterally imposed by one country are generally ineffective. The difficulty that the United States has in reaching an agreement with Western European countries and Japan over trade with the Soviet Union is, in part, due to differences among these countries in the perception of the relationship between politics and trade. European countries (with the exception of West Germany) tend to consider politics and trade to be two distinct activities which can be kept

separate. In contrast, the first post-war U.S. legislation regulating trade with the Soviet Union, the Export Control Act of 1949, gave the President authority to embargo trade which would contribute to either the military or economic potential of the Soviet Union. Thus, any trade with the Soviet Union which would help the country economically was also considered to be of military benefit.

U.S. policy did not change until Congress passed the Export Administration Act of 1969, a law that explicitly allowed for trade in products which could contribute to the economic potential of the Soviet Union. The Act retained strict controls on goods which would contribute to the USSR's military strength. In using these controls, however, the President was required to take into account the availability of the product from alternative suppliers. The 1979 renewal of the Act includes procedural changes to expedite the granting of export licenses. The 1979 Act also explicitly states that improvement should be made in the administration of U.S. trade with the Soviet Union to reduce the uncertainty in export controls and to encourage trade.

The Act, however, leaves the President with considerable discretion to restrict trade for foreign policy purposes. Prior to establishing the controls, the President is required to demonstrate how the restrictions would achieve the intended foreign policy goals. He must also take into account four other factors: (1) the reaction of other countries to the imposition of controls by the U.S., (2) the likely effects of the controls on the export performance of the U.S., (3) the ability of the U.S. to impose the controls effectively, and (4) the foreign policy consequences of not imposing the controls.

The overall ineffectiveness of these sanctions in achieving foreign policy objectives brings into question whether the President should be granted the authority to use export controls as a foreign policy instrument. The failure of the sanctions also raises questions of extraterritoriality and whether the U.S. should regulate sales by foreign subsidiaries of U.S. firms.

Many business groups believe that export controls are often nullified by the availability of foreign products and technology. Thus, companies and workers in the United States bear the burden of the legislation, with their foreign competition gaining the benefits—and the target nations, such as the Soviet Union, go unscathed. According to the Department of Commerce, thousands of products that the United States refuses to ship to the Soviet Union are not banned by Cocom and, hence, are available to the USSR.

In the renewal of the EAA, Congress should impose more stringent criteria for the President to use in justifying the imposition of export controls and in demonstrating their probable effectiveness. Congress should reduce the overall authority of the President to restrict exports for foreign policy objectives. The intent of these changes would be to make it diffi-

cult for the Executive to impose costs on American firms by foregoing trade with the Soviet Union and other Eastern bloc countries in the absence of compensating national benefits.

Congress should reduce the overall authority of the President to restrict exports for foreign policy objectives.

Other changes in the Export Administration Act could reduce the onerousness of the bureaucratic burdens it imposes. For example, a new "comprehensive operations license" could be authorized for the use of U.S. parent companies in their transactions with foreign affiliates. The comprehensive license would eliminate the need for specific approval of each shipment to the overseas subsidiaries of U.S. firms. Ex post auditing, with the sanction of license withdrawal, could be relied on.

Other changes would be more substantive. An example is prohibiting the extension of export controls to foreign companies, including U.S. overseas subsidiaries and the licensees of U.S. corporations. This change would respond to the extraterritoriality concern raised during the ban on U.S. participation in the Soviet natural gas pipeline. Without this change, the ability to export American research and technology—a rising element of our foreign trade in an increasingly service-oriented economy—is greatly reduced.

Regulation of Banking

The past four years have seen substantial change in the regulatory atmosphere in which banks operate. Simultaneously, technological innovation has enabled other institutions, notably investment banking organizations operating money market funds, to compete more vigorously for consumer and business deposits. Two key laws—the Depositary Institutions Deregulation and Monetary Control Act of 1980 and the Garn-St. Germaine Depositary Institutions Act of 1982—substantially reduced the accumulation of detailed governmental regulation of banking.

Reforming the McFadden Act

One of the two most important elements of banking regulation on the statute books, the Glass-Steagall Act of 1933, has been modified in recent years to accommodate the reality of the 1980s in a manner which has increased competition generally among financial institutions. Some companies have been hurt by these changes, others have benefitted. On balance, consumers have been the major beneficiaries of the regulatory changes.

The time has come for a serious reconsideration of the second statutory pillar of banking regulation, the McFadden Act of 1927. In conjunction

with the Douglas Amendment to the Bank Holding Act of 1956, the McFadden Act limits the geographic expansion of commercial banks. It subjects the branching activities of national banks to the limits imposed by each state. The Douglas Amendment effectively prevents bank holding companies headquartered in one state from acquiring banks in other states.

The Garn-St. Germain Act of 1982 established procedures for interstate mergers of failing institutions, but only in "emergency" conditions or where state law specifically allows such applications. Maine and Massachusetts, for example, permit out-of-state bank holding companies to control in-state banks. Both states require the acquiring company's home state to grant reciprocal privileges. The Massachusetts statute also allows branching across state lines. But it restricts all interstate bank activity, except emergency mergers, to the other New England states.

Federal banking statutes have limited competition in local banking markets, increased concentration of institutions, and interfered with the efficient allocation of financial capital.

As in the case of much other economic regulation, the McFadden and Douglas statutes are often counterproductive. The intent of the federal banking statutes is to prevent a relatively few nationwide financial institutions from dominating banking markets. The result, in practice, has been to limit competition in local banking markets, increase concentration of banking institutions, and generally interfere with the efficient allocation of financial capital. These banking statutes have become obsolete, in part as a result of technological and organizational innovations in financial institutions. Thus, although banks are limited in their ability to take retail deposits to a given state (or designated portion of a state), they have found ways to conduct other banking activities, particularly lending, across state lines. These interstate functions include the formation of bank holding companies, loan production offices, personal finance companies, and mortgage banking companies.

As it turns out, the larger banks are more likely to engage in these acceptable methods of scaling the McFadden "walls" prohibiting direct interstate banking than are smaller and medium-size firms. The latter might be the greatest beneficiary of eliminating the artifical limitations contained in the McFadden Act and the Douglas Amendment. But, ultimately, the gains from a more efficient and more competitive banking system would be received by the customers of banks—depositors and borrowers alike.

Reforming Social Regulation of Banking

In recent years, numerous specialized social regulations have been

enacted in the banking area. Studies to date do not show that the very real costs they impose on the banking system are matched by actual consumer benefits. Typically, these new banking statutes have high-sounding names and, at first blush, worthy objectives. Following the enactment of the popular Truth-in-Lending Act of 1968, Congress passed in the 1970s a wide variety of social legislation in the banking field. Examples include the Fair Credit Reporting Act of 1970, the Fair Credit Billing Act of 1974, the Equal Credit Opportunity Act of 1974, the Real Estate Settlement Procedures Act of 1974, the Federal Trade Commission Improvements Act of 1975, the Home Mortgage Disclosure Act of 1975, the Equal Credit Opportunity Act Amendments of 1976, the Consumer Leasing Act of 1976, the Debt Collection Practices Act of 1976, the Financial Institutions Regulatory Act of 1978, and the Community Reinvestment Act of 1979.

Each of these measures has a laudable objective and a high-minded title. The earlier statutes were designed to increase the information available to borrowers. The subsequent laws focused more on influencing banking practices to make them more "fair." A close look, however, shows that they impose substantial reporting and regulatory costs on the banking system. Perhaps the Community Reinvestment Act (CRA) is the best—or worst—example of well-intentioned regulation that is used by special interests for other purposes. This statute, a response to the "red-lining" issue, directs that banks meet the "legitimate" credit needs of their communities.

In determining whether it is meeting this fuzzy objective, a bank must carefully define its community. It must then gather and keep extensive records on: the community; credit inquiries, applications, and rejections; loans made; and the bank's source of deposits. A bank's community reinvestment record is taken into account by regulatory agencies that allow or prevent the creation of new bank branches, the relocation of facilities, and entry into mergers or acquisitions. Various interest groups can demand a hearing.

Congress should reconsider the host of social regulations that have been enacted in the banking field. Statutes that generate more costs than benefits should be amended or repealed.

One unintended but nonetheless harmful effect of this procedure is that existing banks can and do use it to oppose the entry of new banks. Often, community activists in a low-income area use the threat of opposition to gain a subsidy from the bank. It is not obvious that the depositors in low-income areas agree with the activists that their deposits be invested in highly risky investments in their general community; they would likely

prefer to diversify their risk, just like other investors. Moreover, banks in other areas may be willing to spread their risks over a wide geographic territory, including the one in question. The Community Reinvestment Act is a classic example of Congress trying to do what it thinks is good—but with other people's money—and, in the process, reducing competition and benefitting specific organized groups.

When the results are examined, CRA and other social regulations seem to generate more deficiencies than those which existed under the unregulated situation the laws were designed to replace. Competition in the marketplace is the most effective way of protecting consumer interests. Congress should reconsider the desirability of the host of social regulations that have been enacted in the banking field. Despite the attractiveness of the labels attached to them, those regulatory statutes that generate more costs than benefits should be amended or repealed.

Regulation of Marketing

The most basic question concerning the Federal Trade Commission is determining the Commission's role in the economy. The present time is opportune for Congress to examine this question and to re-evaluate the FTC.

Over the decade of the 1970s, the FTC interpreted its mandate as being a consumer "cop" for the economy. Rulemaking powers were seen as a means of restructuring the way in which entire industries did business. Examples include requirements for self-regulation of professions by their own membership organization, controls over the marketing of used cars, and standards for advertising aimed at children ("kid-vid"). In addition, the Commission opened major antitrust cases involving the nation's largest breakfast cereal manufacturers and the largest oil producers. This role deemphasized, but did not replace, previous FTC policy which defined unfair practices as those which harmed existing competitors.

Neither of these policy regimes promotes competition. Policy should be grounded in sound principles of avoiding consumer harm and maintaining competition. Thus, in contrast to the approach taken in the 1970s, the Commission should no longer attempt to be a third party to every major transaction in our economy. There are significant benefits from competition, but these cannot be attained by imposing restrictions that mandate only one particular form of competitive interaction.

Over the decade of the 1970's, the FTC interpreted its mandate as being a consumer "cop" for the economy.

The example of professional self-regulation illustrates this principle. Significant evidence accumulated by economists and other social scientists

reveals that this type of regulation—supported by state laws—goes well beyond protection of uninformed users of professional services. It also includes laws restricting competition which lead to higher consumer prices (and higher professional incomes) with little concomitant benefits for quality maintenance.

To its credit, the FTC realized that these restrictions on competition harmed consumers, so it launched a plan to challenge those aspects of state regulatory control. However, the Commission's actions went well beyond this. Under the guise of "deregulation," the Commission sought not simply to dismantle this type of regulation, but also to introduce regulation of its own. Instead of promoting competition, the Commission attempted to replace state limitations on competition with its own restrictions. A recent example was the attempt to specify the methods of price display to be used by undertakers.

Congress should define the FTC's role as the promotion of competition, knowing that, in a healthy economy, individual firms and industries come and go.

The Commission's earlier policy was equally flawed. By equating the promotion of competition with the protection of competitors, that policy created an economic "museum." This insulation of existing firms from the competitive, evolutionary process halts the natural rise and decline of firms and industries in a developing economy. Preserving an existing structure—making it harder for new firms with modern technology or with better ways of satisfying consumer demand to replace older firms—means that, every year, our economy is a little more outdated relative to the techniques used in other nations. Policies of this type have contributed, and will continue to contribute, to this nation's difficulties in maintaining its competitiveness in world markets.

As a second example, consider the FTC's advertising substantiation program. While there is a legitimate issue involving fradulent advertising, the basic question about restrictions should involve whether consumers are harmed. Under current rules, million-dollar law suits are brought when there is no obvious issue of consumer harm. For example, a recent case involved a grocery chain which claimed that it was selling at the lowest prices in the area. The data tended to support the claim. Yet the technical legal issue involved whether the grocer could prove this, particularly when different stores carry slightly different merchandise. The legal aspect aside, it is difficult to show that any consumer is harmed by such claims.

Congress should define the Commission's role as the promotion of competition, with full knowledge that, in a healthy economy, individual

firms and industries come and go. This means acknowledging that mandating the specific form of competition is inconsistent with promoting competition in a dynamic economy. Moreover, attempting to maintain the status quo inevitably results in economic retrogression.

The status quo in federal regulation is dominated by interventions that generate more costly government failure than the "market failure" they are designed to correct.

Conclusion

The task of updating regulatory statutes is not a simple one. Desirable changes vary with the nature of existing regulation, the specific regulatory mechanisms currently in use, and the degree, if any, of shortcomings in the unregulated private economy. Rather than developing a uniform response, each of the regulatory laws cited here needs to be examined individually—as we have tried to do. Nevertheless, in the aggregate, greater reliance on competition and market forces is extremely desirable. The status quo in federal regulation is dominated by those types of interventions that generate more government failure (the costs of regulation) than the market failure they are designed to correct (the potential benefits of regulation).

It is also increasingly clear, from the foregoing examination, that government intervention generates pressures for more government intervention. Thus, regulatory reform—by curtailing or eliminating regulations that generate more costs than benefits—could result in cumulative advantages to taxpayers and consumers alike.

II. Highlights of New Regulatory Data

Data in the January 1983 federal Budget (covering the period through September 1984) provide for an updated review of trends in federal outlays for regulation. On the basis of the Budget submitted to Congress, it appears that reductions in total regulatory spending made in fiscal year 1982 (a 3 percent cut) have been followed by a pattern of far more modest increases than those which characterized the decade of the 1970s.

That, at least, is what the "nominal" data show. In "real" terms, when the numbers are adjusted to eliminate the effect of inflation, a pattern is revealed of reductions in every year since 1980, aggregating to a 14 percent decrease in the real level of federal regulatory outlays over the five-year period 1980-84. Table 3 contains the highlights of these trends, and supporting detail is presented in Table 5 in the Statistical Appendix.

Similarly, staffing at the major regulatory agencies dropped considerably in 1981 and 1982, and is estimated to fall even further through 1984. Table 4 shows that the federal regulatory workforce peaked at 90,000 in 1980. It is scheduled to decline by 16 percent by 1984, when it reaches a total of 76,000. Details are contained in Table 6 in the Appendix.

Cutbacks in Regulatory Spending

Table 3 illustrates that in 1970, a relatively modest $800 million was spent by the federal government to administer the regulatory activities of the 42 major agencies that were then operative. By 1975 that amount had risen by 300 percent, to over $3.2 billion. By 1980 regulatory outlays had risen even further, to nearly $6 billion. Total spending by the major agencies grew more than sixfold over these eleven years—a period during which other budget items such as outlays for the Defense Department and total annual Social Security benefit payments rose by only 74 percent and 278 percent, respectively. In constant dollars, adjusted for inflation, this growth was equally dramatic; regulatory budgets grew by 274 percent in real terms from 1970 to 1980, reaching nearly $3 billion in 1970 dollars.

The long-term trend of rising federal outlays for regulation was reversed in fiscal years 1981 and 1982. In the first year of the Reagan Administration, modest changes were made in regulatory outlays slated by the Carter Administration. The total of $6.5 billion represented a 9 percent increase over 1980 (rather than a projected 10 percent) and roughly equalled that year's rate of inflation. In real terms, 1981 spending actually represented a 0.1 percent decrease over that of the previous year.

In fiscal 1982, the drop in regulatory budgets was clear-cut and unprecedented. In current dollars, spending decreased 3 percent, to $6.2 billion; in constant dollars it fell 8.6 percent. This turn toward austerity in the management of the federal government's regulatory agencies had not

TABLE 3

Expenditures on Federal Regulatory Activities

(Fiscal Years, Dollars in Millions)

Area of Regulation	1970	1975	1980	% change 1970 to 1980	1981	1982	(Estimated) 1983	(Estimated) 1984	% change 1980 to 1984
Social Regulation									
Consumer Safety and Health	$326	$1279	$2279	599%	$2476	$2363	$2462	$2465	8%
Job Safety and Other Working Conditions	62	379	734	1084%	775	758	803	832	13%
Environment and Energy	85	967	1926	2166%	2122	2048	2023	2032	6%
Total Social Regulation	473	2625	4939	944%	5373	5169	5288	5329	8%
Economic Regulation									
Finance and Banking	106	186	290	174%	352	371	410	428	48%
Industry-Specific Regulation	125	222	366	193%	403	369	341	344	-6%
General Business	96	169	309	222%	325	341	384	394	28%
Total Economic Regulation	327	577	965	195%	1080	1081	1135	1166	21%
Grand Total	$800	$3202	$5904	638%	$6453	$6250	$6423	$6495	10%
Year to Year Nominal % Change		300%	84%		9%	-3%	3%	1%	
Total in 1970 $	$800	$2300	$2988	274%	$2985	$2728	$2664	$2561	-14%
Year to Year Real % Change		187%	30%		-0.1%	-8.6%	-2.3%	-3.9%	

Source: Center for the Study of American Business

TABLE 4

Staffing for Federal Regulatory Activities

(Fiscal Years, Permanent Full-Time Positions)

Area of Regulation	1970	1975	1980	% change 1970 to 1980	1981	1982	(Estimated) 1983	1984	% change 1980 to 1984
Social Regulation									
Consumer Safety and Health	5786	28333	33599	481%	32481	29071	27929	27864	−17%
Job Safety and Other Working Conditions	3921	11893	14952	281%	14910	13633	13205	13196	−12%
Environment and Energy	n/a	11872	17838	—	16252	14882	14357	13778	−23%
Total Social Regulation	9707	52098	66389	584%	63643	57586	55491	54838	−17%
Economic Regulation									
Finance and Banking	6203	7413	9305	50%	8933	8850	8831	8797	−5%
Industry-Specific Regulation	5874	7215	7352	25%	6953	6394	6215	5965	−19%
General Business	5877	7280	7449	27%	7137	6915	6880	6789	−9%
Total Economic Regulation	17954	21908	24106	34%	23023	22159	21926	21551	−11%
Grand Total	27661	74006	90495	227%	86666	79745	77417	76389	−16%
Year to Year Nominal % Change		168%	22%		−4%	−8%	−3%	−1%	

Source: Center for the Study of American Business

occurred in data collected by the Center for the Study of American Business for the previous twelve years.

Estimates for regulatory spending in fiscal 1983 and 1984 show further declines in constant-dollar outlays. As indicated in Table 3, total budgets for 1983 are projected to drop 2.3 percent (in 1970 dollars) and another 3.9 percent in fiscal 1984. In current-dollar terms, spending should rise 3 percent and 1 percent in these years, respectively. In the five-year period 1980-1984, the estimated administrative cost of regulation is projected to rise 10 percent, not accounting for inflation, to almost $6.5 billion. In constant dollars, however, the decrease will amount to 14 percent.

In constant dollars, regulatory budgets nearly quadrupled between 1970 and 1980.

Specific details of the regulatory budgets are worth noting. For example, between 1970 and 1980, spending on various forms of social regulation increased over nine-fold, far outstripping outlays for the traditional forms of economic regulation, which rose 195 percent. Thus, emphasis was placed during the 1970s on regulation of business activities that affect society at large—consumer safety and health, job safety, environmental conditions—rather than on control of the economic activities of specific industries such as airlines, trucking, communications, and banking and financial institutions. In the first half of the 1980s, however, federal outlays for economic regulation are continuing to rise rapidly (up 21 percent), while budgets for social regulation will be rising more slowly, up only 8 percent.

Spending for Economic Regulation

Details of specific agency budgets in the category of economic regulation can be found details shown in Table 5 in the Appendix. The following are highlights of spending trends for economic regulation.

1. Regulation of *finance and banking* will show a 48 percent increase in spending, the largest proportional rise of any budget category. Much of this increase may be attributable to the current state of the economy. For example, the Federal Home Loan Bank Board (FHLBB) will increase outlays by 250 percent—the largest rise for any federal regulatory agency. One arm of this agency is the Federal Savings and Loan Insurance Corporation (FSLIC), which examines savings and loan institutions. Sizeable growth is also planned for the Farm Credit Administration (with a 75 percent increase in spending), the National Credit Union Administration (up more than 35 percent), and the Comptroller of the Currency (up nearly 38 percent), which regulates national banks.

2. *Industry-specific regulation* is an exception to the increased emphasis on economic regulation in 1980s, since budgets in this area are projected to decline in 1984 by 6 percent over 1980. However, much of this decrease is attributable to cutbacks at the only two federal agencies experiencing substantial deregulation. The Civil Aeronautics Board (CAB), with a budget drop of more than one third over the five years, is continuing to phase out its operations under the Airline Deregulation Act of 1978. The agency will be abolished as of January 1, 1985. The Interstate Commerce Commission (ICC) will reduce its spending by more than one fourth over this period, in accordance with deregulatory actions affecting surface transportation brought about by the Motor Carrier Act of 1980, the Staggers Rail Act of 1980, the Household Goods Transportation Act of 1980, and the Bus Regulatory Reform Act of 1982.

Two industry-specific agencies will increase spending substantially. The budget for Commodity Futures Trading Commission (CFTC) in 1984 will be 50 percent larger than it was in 1980 in order to increase surveillance of and research on commodity and options markets and to broaden its investigative and litigative actions. Also, the Federal Energy Regulatory Commission (FERC), which regulates the interstate pricing of natural gas and the hydroelectric, oil pipeline, and electric power industries, will receive an increased budget of nearly 40 percent over this five-year period.

Regulatory agency budgets are on the decline in the 1980s—a 14 percent reduction in real terms from 1980 to 1984.

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3. The broad category of *general business regulation* will show a budget increase of more than one fourth by 1984—from $310 million to $390 million—part of which will derive from a stronger policy emphasis on U.S. trade in world markets. Spending for the International Trade Commission (ITC) will rise 50 percent between 1980 and 1984 to strengthen research, investigations and reports relating to international trade and economic policy. Budgets for the International Trade Administration in the Department of Commerce will likewise rise 50 percent in this period in order to focus greater attention on the improper transfer of U.S. technology worldwide and to develop a computerized tracking system for export licensing applications. In a separate area, the Patent and Trademark Office, also within Commerce, will increase spending by 62 percent to reduce its backlog of patent and trademark applications through extensive use of automation.

Budget Trends in Social Regulation

Areas of social regulation include several of the largest, most prominent and most heavily funded regulatory agencies in the federal government.

In general, growth in these areas will be modest, and in some cases significant budget cutbacks are projected. The much slower growth in social regulation is partly due to the budget slowdown at the Department of Energy. Other details (derived from Table 5) follow.

4. Several agencies in the category of *consumer safety and health* will experience cuts in spending by 1984. The Consumer Product Safety Commission (CPSC) will undergo a budget reduction of more than 20 percent from the 1980 figure. In spite of this, the Commission will actually increase spending by more than one fourth in the areas of "hazards programs" and "information and education" between 1981 and 1984. The National Highway Traffic Safety Administration (NHTSA) will reduce spending by one fifth in the five-year period, but this cut is projected for the agency's general administration outlays rather than in programs for rulemaking, enforcement, research and highway safety. A cutback of one third in the Federal Highway Administration's budgets reflects, in large measure, the phasing out of the highway beautification program. Overall, consumer safety and health programs will increase slightly (8 percent) in current dollar terms, from $2.3 billion to $2.5 billion.

The EPA, the largest of all regulatory agencies in terms of both budgets and staffing, will experience a 1.3 percent increase in its regulatory outlays by 1984.

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5. Spending on regulation of *job safety and other working conditions* will rise by 13 percent by 1984, the largest increase of any area of social regulation. Budgets for both the Occupational Safety and Health Administration (OSHA) and the Equal Employment Opportunity Commission (EEOC) will increase about one sixth during the five-year period. The largest percentage rise in outlays (22 percent) will be at the National Labor Relations Board.

6. The only agency in the category of *environmental and energy* regulation to be slated for substantial funding increases is the Office of Surface Mining Reclamation and Enforcement in the Department of the Interior. Its outlays will increase from $85 million in 1980 to $180 million in 1984.

The Environmental Protection Agency (EPA), the largest of all federal regulatory agencies in terms of both budgets and staffing, will experience only a 1.3 percent increase in its regulatory outlays by 1984, bringing its budget (excluding construction grants) in that year to $1.3 billion. Outlays for environmental regulation programs will be significantly lower than they were in 1981. In fact, in the period 1981-84, the agency's spending on research and development will drop well over one fourth, and budgets for

major pollution and abatement programs—air, water, hazardous wastes, pesticides, and toxic substances—will all decrease, some by as much as 20 to 24 percent. Cuts in the water quality program will total 47 percent.

A related agency, the Council on Environmental Quality (CEQ), will be subject to an 83 percent cut in spending, the largest percentage decrease of any regulatory agency shown in Table 5. The endangered species program of the Fish and Wildlife Service in the Department of the Interior will be reduced by 15 percent.

Although prospects are now dim that the Department of Energy (DOE) will be dismantled, the President's order to decontrol the pricing and distribution of petroleum (issued in January 1981) has substantially reduced the Department's regulatory expenditures. Outlays for energy regulation will drop 77 percent by 1984, to less than $40 million.

There will be one fewer regulator employed in the federal government in 1984 for every six that were employed in 1980.

The Decline in Regulatory Staffing

The most dramatic reversal of the regulatory trends of the 1970s is shown in Tables 4 and 6. The number of people working in full-time, permanent positions in the major agencies is projected to continue to decline through 1984. If estimates hold true, there will be one fewer regulator employed in the federal government in 1984 for every six that were employed in 1980—a five-year reduction of 16 percent.

This decline in manpower contrasts sharply with the overall trend of the 1970s. In the period 1970-1975, staffing at the major agencies increased 168 percent, growing from over 27,600 positions to just over 74,000. Further increases in the next five years brought total staffing to an all-time high of 90,500 in 1980—more than a twofold increase.

In 1981, however, brakes were applied to the growth of the regulatory workforce. Staffing dropped by 4 percent in that year and by an additional 8 percent in fiscal 1982. Further reductions in force of 3 percent in 1983 and 1 percent in 1984 are expected to bring staffing at the major agencies to below 76,500—nearly the number of people employed in 1975.

Of the 44 agencies (shown in Table 6 in the Appendix) for which regulatory staffing levels can be determined, only a handful plan increases. Overall, staffing in areas of social regulation will decline by one sixth from 1980 to 1984. Only four social regulatory agencies plan modest increases—the Nuclear Regulatory Commission (NRC), the Animal and Plant Health Inspection Service, the National Labor Relations Board and the Inspector for the Alaska Natural Gas Transportation System. The largest reductions are projected for the various agricultural inspection services (3,600 fewer employees), the Bureau of Alcohol, Tobacco and

Firearms (approximately 1,000 fewer employees), the Occupational Safety and Health Administration (a reduction in force of 660), the Economic Regulatory Administration in the Department of Energy (nearly 1,900 fewer positions), and the Environmental Protection Agency (nearly 2,000 fewer employees).

Administration efforts to reduce the size and costs of the regulatory establishment are not a substitute for substantive changes in the statutes that empower agencies.

Economic regulation will experience total staffing cuts of roughly one tenth during the period 1980-1984. Only one agency, the Patent and Trademark Office in the Department of Commerce, will increase employment—by 550 employees, or 20 percent of the 1980 staffing. The largest personnel reduction, in percentage terms, will be made in the soon to be abolished Civil Aeronautics Board, where staffing will be cut in half. The Interstate Commerce Commission will have the largest reduction in force, however. It will reduce its staffing by 740 employees, or one third its 1980 level. The Securities and Exchange Commission (SEC) will reduce its employment by nearly one fifth (400 fewer personnel).

The Outlook for Regulatory Growth

The efforts of the Reagan Administration to reduce the size and costs of the federal government's regulatory establishment are not a substitute for making substantive changes in the statutes that empower the agencies. Nevertheless, cutbacks in budgets and staffing can have important effects. The public's increasing awareness of the exceptional growth of the nation's regulatory bureaucracy has alerted many policymakers to the need for a sense of balance in federal activities that control the workings of private enterprise.

If current trends hold, the 1980s will constitute a new era of restraint in the financing of regulation and the workforce devoted to it.

The larger issue in this regard, however, is the ability of regulatory agencies to perform their valid functions in a manner that does not bring about the wasteful use of valuable resources or create adverse effects that outweigh the benefits. Elected representatives and their constituents have come to realize that merely funding and staffing an agency does not ensure

that it will perform its functions well or that the intended objectives will be achieved.

The course of future regulation of the private sector is no more predictable now than it has been in the past. For the time being, however, budgetary moderation and a small measure of austerity now characterize the activities of federal agencies that often exercise great control over people and jobs, products and incomes, and profit and loss. The data presented in this section of this report indicate that the 1980s will constitute—if current trends hold—a new era of restraint in the financing of regulation and the workforce devoted to it.

III. Statistical Appendix

Note on the Data

Budget figures for the 55 major regulatory agencies shown in Table 5 (and summarized in Table 3) consist of outlays for fiscal years. These expenditures are rounded to the nearest million. Total regulatory budget figures are slightly underestimated, since regulatory outlays for three agencies cannot be identified separately. These are the Small Business Administration, the Foreign Agricultural Service in the Department of Agriculture, and the Materials Transportation Bureau in the Department of Transportation.

All staffing figures shown in Table 6 (and summarized in Table 4) consist only of permanent, full-time positions in each agency. Total staffing is also underestimated, since the number of employees assigned to regulatory activities in 14 agencies cannot be identified separately from aggregate figures for the agencies. In other cases, regulatory staffing for certain agencies in certain years was not available (shown as n/a).

Budget and staffing data are compiled from the annual issues of the *Budget of the United States Government*, including the Appendix.

Agencies that primarily perform taxation, subsidy, and credit functions are excluded from these regulatory data. Examples of these organizations are the Internal Revenue Service, the Commodity Credit Corporation, and the Federal Housing Administration. Agencies that administer federal contracts and procurement procedures are likewise excluded. In data previously compiled in the Center's *Directory of Federal Regulatory Agencies* (of which this document is an extension), the Agricultural Stabilization and Conservation Service in the Department of Agriculture had been included in Table 5. Budgets for this agency have since been eliminated.

TABLE 5

Expenditures by Federal Regulatory Agencies

(Fiscal Years, Millions of Dollars)

Agency	1970	1975	1980	1981	1982	(Estimated) 1983	1984
SOCIAL REGULATION							
Consumer Safety and health							
Consumer Production Safety Commission	—	$ 34	$ 44	$ 41	$ 34	$ 35	$ 35
Department of Agriculture:							
Agricultural Marketing Service	131	36	40	44	52	51	48
Animal and Plant Health Inspection Service	—	343	263	306	316	280	237
Federal Grain Inspection Service	—	—	26	29	11	6	7
Food Safety and Inspection Service (a)	—	—	360	377	320	329	335
Packers and Stockyards Administration	—	—	—	—	8	9	9
Subtotal	$131	$379	$689	$756	$707	$675	$636
Department of Health and Human Services:							
Food and Drug Administration	68	201	326	337	340	357	379
Department of Housing and Urban Development:							
Consumer Protection Programs (b)	—	—	13	5	4	8	6
Department of Justice:							
Antitrust Division	9	18	49	49	43	44	45
Drug Enforcement Administration	n/a	12	13	13	15	16	16
Subtotal	$ 9	$ 30	$ 62	$ 62	$ 58	$ 60	$ 61

Agency	1970	1975	1980	1981	1982	(Estimated) 1983	1984
Consumer Safety and Health (cont.)							
Department of Transportation:							
Coast Guard	$ 57	$ 162	$ 444	$ 571	$ 580	$ 610	$ 646
Federal Aviation Administration	n/a	178	252	269	263	303	292
Federal Highway Administration	n/a	36	36	31	22	30	24
Federal Railroad Administration	4	9	28	29	25	31	27
National Highway Traffic Safety Administration	32	75	105	125	82	87	84
Subtotal	$ 93	$ 460	$ 865	$1025	$ 972	$1061	$1073
Department of the Treasury:							
Bureau of Alcohol, Tobacco and Firearms (c)	n/a	$ 95	$ 146	$ 147	$ 143	$ 151	$ 159
Customs Service	20	71	116	85	88	96	96
Subtotal	$ 20	$ 166	$ 262	$ 232	$ 231	$ 247	$ 255
National Transportation Safety Board	5	9	18	18	17	19	20
Total—Consumer Safety and Health	$ 326	$1279	$2279	$2476	$2363	$2462	$2465
Job Safety and Other Working Conditions							
Department of Labor:							
Employment Standards Administration	n/a	$ 72	$ 114	$ 116	$ 106	$ 114	$ 120
Labor-Management Services Administration	12	27	52	56	55	56	63
Mine Safety and Health Administration	n/a	68	142	152	139	155	149
Occupational Safety and Health Administration	—	90	178	195	194	203	207
Subtotal	$ 12	$ 257	$ 486	$ 519	$ 494	$ 528	$ 539

Agency	1970	1975	1980	1981	1982	(Estimated) 1983	1984
Job Safety and Other Working Conditions (cont.)							
Equal Employment Opportunity Commission	12	56	131	134	138	146	154
National Labor Relations Board	38	61	109	114	119	123	133
Occupational Safety and Health Review Commission	—	5	8	8	7	6	6
Total—Job Safety and Other Working Conditions	$ 62	$ 379	$ 734	$ 775	$ 758	$ 803	$ 832
Environment and Energy							
Council on Environmental Quality	n/a	3	6	3	2	2	1
Department of Defense:							
Army Corps of Engineers	2	16	41	42	45	47	47
Energy Activities [Department of Energy]:							
Economic Regulatory Administration	—	6	132	62	65	52	25
Petroleum Regulation	—	—	—	69	17	14	12
Subtotal	$ —	$ 6	$ 132	$ 131	$ 82	$ 66	$ 37
Department of Interior:							
Fish and Wildlife Service	n/a	6	20	22	19	21	17
Office of Surface Mining Reclamation and Enforcement	—	—	85	131	119	141	180
Subtotal	n/a	$ 6	$ 105	$ 153	$ 138	$ 162	$ 197
Environmental Protection Agency	71	850	1259	1360	1324	1270	1275
Nuclear Regulatory Commission	12	86	378	417	442	466	467
Office of the Federal Inspector for the Alaska Natural Gas Transportation System	—	—	5	16	15	10	8
Total—Environment and Energy	$ 85	$ 967	$1926	$2122	$2048	$2023	$2032
TOTAL SOCIAL REGULATION	473	2625	4939	5373	5169	5288	5329

Agency	1970	1975	1980	1981	1982	(Estimated) 1983	1984
ECONOMIC REGULATION							
Finance and Banking							
Department of the Treasury:							
Comptroller of the Currency	$ 32	$ 65	$ 113	$ 121	$ 129	$ 144	$ 150
Farm Credit Administration	4	6	12	13	15	18	21
Federal Deposit Insurance Corporation	39	66	116	124	131	142	149
Federal Home Loan Bank Board	21	33	20	60	63	70	70
Federal Reserve System Board of Governors	3	6	12	13	13	14	15
National Credit Union Administration	7	10	17	21	20	22	23
Total—Finance and Banking	$ 106	$ 186	$ 290	$ 352	$ 371	$ 410	$ 428
Industry-Specific Regulation							
Civil Aeronautics Board	$ 48	$ 81	$ 117	$ 147	$ 110	$ 79	$ 72
Commodity Futures Trading Commission	—	1	16	18	21	22	24
Federal Communications Commission	24	48	76	81	80	83	86
Federal Energy Regulatory Commission	18	34	67	70	80	81	93
Federal Maritime Commission	4	7	11	12	11	12	11
Interstate Commerce Commission	27	46	79	75	67	64	58
Renegotiation Board (c)	4	5	—	—	—	—	—
Total—Industry-Specific Regulation	$ 125	$ 222	$ 366	$ 403	$ 369	$ 341	$ 344
General Business							
Cost Accounting Standards Board (d)	n/a	1	1	—	—	—	—
Council on Wage and Price Stability (e)	—	—	9	6	*	—	—
Department of Commerce:							
International Trade Administration	—	4	26	30	35	39	39
Patent and Trademark Office	49	71	103	112	129	154	167
Subtotal	$ 49	$ 75	$ 129	$ 142	$ 164	$ 193	$ 206

Agency	1970	1975	1980	1981	1982	(Estimated) 1983	1984
General Business (cont.)							
Federal Election Commission	—	*	10	9	9	10	10
Federal Trade Commission	20	39	68	70	68	65	60
International Trade Commission	4	8	14	16	17	21	21
Library of Congress:							
Copyright Office	1	2	4	4	4	5	5
Securities and Exchange Commission	22	44	74	78	79	90	92
Total—General Business	$ 96	$ 169	$ 309	$ 325	$ 341	$ 384	$ 394
TOTAL—ECONOMIC REGULATION	327	577	965	1080	1081	1135	1166
GRAND TOTAL	$ 800	$3202	$5904	$6453	$6250	$6423	$6495

* = less than $500,000
— = agency was not operational
n/a = not available

Notes:
(a) Formerly Food Safety and Quality Service. The budget for this agency has been revised to exclude "Funds for Strengthening Markets, Income and Supply (Sec. 32)."
(b) Budgets for 1980-81 are for the Office of Neighborhoods, Voluntary Associations, and Consumer Protection, since abolished.
(c) Renegotiation Board abolished in 1979.
(d) CASB abolished in 1980.
(e) COWPS abolished in 1981.

Source: Center for the Study of American Business

TABLE 6

Staffing of Federal Regulatory Agencies

(Fiscal Years, Permanent Full-Time Positions)

Agency	1970	1975	1980	1981	1982	(Estimated) 1983	1984
SOCIAL REGULATION							
Consumer Safety and Health							
Consumer Product Safety Commission	—	890	871	812	631	577	542
Department of Agriculture:							
Animal and Plant Health Inspection Service	—	14613	4398	4610	4592	4592	4533
Federal Grain Inspection Service	—	—	821	659	76	113	153
Food Safety and Inspection Service (a)	—	—	13213	12411	9951	9902	9902
Packers and Stockyards Administration	—	—	—	—	207	200	200
Subtotal	—	14613	18432	17680	14826	14807	14788
Department of Health and Human Services:							
Food and Drug Administration	4152	6206	7419	7521	7377	7185	7188
Department of Justice:							
Antitrust Division	595	712	939	939	829	742	704
Department of Transportation:							
Federal Highway Administration	n/a	229	292	271	271	271	271
Federal Railroad Administration	246	369	484	431	421	445	445
National Highway Traffic Safety Administration	518	881	874	797	686	617	617
Subtotal	764	1479	1650	1499	1378	1333	1333

Agency	1970	1975	1980	1981	1982	(Estimated) 1983	1984
Consumer Safety and Health (cont.)							
Department of the Treasury:							
Bureau of Alcohol, Tobacco and Firearms	—	4123	3900	3671	3671	2950	2974
National Transportation and Safety Board	275	310	388	359	359	335	335
Total—Consumer Safety and Health	5786	28333	33599	32481	29071	27929	27864
Job Safety and Other Working Conditions							
Department of Labor:							
Labor-Management Services Administration	860	1353	1325	1308	1040	1117	1248
Mine Safety and Health Administration (b)	—	2940	3857	3808	3763	3408	3184
Occupational Safety and Health Administration	—	2471	3015	3009	2354	2354	2355
Subtotal	860	6764	8197	8125	7157	6879	6787
Equal Employment Opportunity Commission	780	2384	3433	3412	3137	3000	3100
National Labor Relations Board	2281	2573	3157	3213	3213	3213	3213
Occupational Safety and Health Review Commission	—	172	165	160	126	113	96
Total—Job Safety and Other Working Conditions	3921	11893	14952	14910	13633	13205	13196
Environment and Energy							
Council on Environmental Quality	n/a	50	32	16	15	15	13
Department of Defense:							
Army Corps of Engineers	n/a	613	800	800	750	725	700

Agency	1970	1975	1980	1981	1982	(Estimated) 1983	1984
Environment and Energy (cont.)							
Energy Activites [Department of Energy]:							
Economic Regulatory Administration	—	n/a	2161	1383	597	441	300
Department of Interior:							
Office of Surface Mining Reclamation and Enforcement	—	—	1025	1036	735	731	731
Environmental Protection Agency	n/a	9203	10678	9799	9364	9125	8669
Nuclear Regulatory Commission	n/a	2006	3041	3029	3315	3280	3235
Office of the Federal Inspector for the Alaska Natural Gas Transportation System	—	—	101	189	106	40	130
Total—Environment and Energy	n/a	11872	17838	16252	14882	14357	13778
TOTAL—SOCIAL REGULATION	9707	52098	66389	63643	57586	55491	54838
ECONOMIC REGULATION							
Finance and Banking							
Department of the Treasury:							
Comptroller of the Currency	1920	2546	3331	3071	3071	2925	2905
Farm Credit Administration	225	229	245	267	284	287	287
Federal Deposit Insurance Corporation	2669	3164	3691	3554	3435	3554	3554
Federal Home Loan Bank Board	933	904	1388	1440	1447	1451	1437
National Credit Union Administration	456	570	650	601	613	614	614
Total—Finance and Banking	6203	7413	9305	8933	8850	8831	8797

Agency	1970	1975	1980	1981	1982	(Estimated) 1983	1984
Industry-Specific Regulation							
Civil Aeronautics Board	685	718	743	650	498	434	366
Commodity Futures Trading Commission	—	496	550	550	550	550	550
Federal Communications Commission	1637	2020	2153	2004	1862	1896	1896
Federal Energy Regulatory Commission	1162	1320	1605	1607	1516	1667	1701
Federal Maritime Commission	250	319	361	306	306	290	252
Interstate Commerce Commission	1907	2142	1940	1836	1662	1378	1200
Renegotiation Board (c)	233	200	—	—	—	—	—
Total—Industry-Specific Regulation	5874	7215	7352	6953	6394	6215	5965
General Business							
Cost Accounting Standards Board (d)	n/a	42	28	—	—	—	—
Council on Wage and Price Stability (e)	—	41	233	115	—	—	—
Department of Commerce:							
Patent and Trademark Office	2795	3014	2734	2834	3036	3140	3286
Federal Election Commission	—	62	251	235	219	234	234
Federal Trade Commission	1385	1569	1665	1587	1322	1168	1131
International Trade Commission (f)	265	408	438	438	413	438	438
Securities and Exchange Commission	1432	2144	2100	1928	1925	1900	1700
Total—General Business	5877	7280	7449	7137	6915	6880	6789
TOTAL ECONOMIC REGULATION	17954	21908	24106	23023	22159	21926	21551
GRAND TOTAL	27661	74006	90495	86666	79745	77417	76389

* = less than $500,000
— = agency was not operational
n/a = not available

Notes:
(a) 1980 figure is for the Food Safety and Quality Service.
(b) 1975 figure is for the Mining Enforcement and Safety Administration.
(c) Abolished in 1979.
(d) Abolished in 1980.
(e) Abolished in 1981.
(f) 1970 figure is for the Tariff Commission.

Source: Center for the Study of American Business