Washington University in St. Louis

Washington University Open Scholarship

Murray Weidenbaum Publications

Weidenbaum Center on the Economy,
Government, and Public Policy

Formal Publication 59

11-1-1983

Regulatory Reform: A Report Card for the Reagan Administration

Murray L. Weidenbaum

Washington University in St Louis

Follow this and additional works at: https://openscholarship.wustl.edu/mlw_papers

Part of the [Economics Commons](#), and the [Public Policy Commons](#)

Recommended Citation

Weidenbaum, Murray L., "Regulatory Reform: A Report Card for the Reagan Administration", Formal Publication 59, 1983, doi:10.7936/K7W66HZD.

Murray Weidenbaum Publications, https://openscholarship.wustl.edu/mlw_papers/60.

Weidenbaum Center on the Economy, Government, and Public Policy — Washington University in St. Louis
Campus Box 1027, St. Louis, MO 63130.

Other publications available in this series:

40. **Budget Control and Indexed Entitlements: Are They Compatible?**
Clifford M. Hardin and Kenneth W. Chilton
44. **Big Government and Small Business: The Changing Relationship,**
Kenneth W. Chilton and David P. Hatfield
48. **The Economics of Retirement,** Powell Niland
49. **The Myth of Runaway Bureaucracy: The Case of the FTC,** Barry R.
Weingast and Mark J. Moran
50. **Public Policy Excesses: Government by Congressional Subcommit-**
tee, Clifford M. Hardin, Kenneth A. Shepsle and Barry R. Weingast
51. **The Political Economy of the Clean Air Act: Regional Self-Interest in**
Environmental Legislation, B. Peter Pashigian
52. **Social Security: Toward a More Equitable and Rational System,**
Martha N. Ozawa
53. **Toward a More Open Trade Policy,** Murray L. Weidenbaum
54. **The Next Step in Regulatory Reform: Updating the Statutes. 1983**
Report on Regulatory Budgets, Murray L. Weidenbaum and Ronald
J. Penoyer
55. **Company Retirement Plans Eight Years After ERISA,** Arthur T.
Denzau and Clifford M. Hardin
56. **Confessions of a One-Armed Economist,** Murray L. Weidenbaum
57. **Will an "Industrial Policy" Work for the United States?** Arthur T.
Denzau
58. **Regulation of Business by International Agencies,** Mary A. Fejfar

Additional copies are available from:

Center for the Study of American Business
Washington University
Campus Box 1208
St. Louis, Missouri 63130
Phone: (314) 889-5630

Regulatory Reform: A Report Card for the Reagan Administration

by Murray L. Weidenbaum

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.

Regulatory Reform: A Report Card for the Reagan Administration

by Murray L. Weidenbaum

CENTER FOR THE STUDY OF AMERICAN BUSINESS

Formal Publication Number 59

November 1983

Contents

Introduction	1
Expectations and Evaluation Procedure	1
Assignment One: Organizational Reform	3
<i>Evaluation</i>	4
Assignment Two: Statutory Reform	4
Deregulation of Transportation	4
Deregulation of Financial Institutions	5
<i>Evaluation</i>	6
Assignment Three: Procedural Reform	7
<i>Evaluation</i>	8
Increasing Activity	9
Assignment Four: Reducing the Economic Burden of Regulation	10
Regulatory Spending Cuts	10
The Decline in Regulatory Personnel	13
<i>Evaluation</i>	14
Summary Evaluation and Recommendations	15
References	19

Introduction

As we approach the upcoming election year, presidential hopefuls are rapidly emerging. As the candidates address the issues, they have already begun to assess the achievements of the current administration. It is therefore appropriate to present a progress report and evaluate the changes made by the Reagan Administration since there is considerable time until 1985 to offer some suggestions for the future.

So far, the third year of the Reagan Administration has not exactly been a high water mark in the movement to reform federal regulation of business. The Environmental Protection Agency has just begun to emerge from an unparalleled assault. Both the Occupational Safety and Health Administration and the National Highway Traffic Safety Administration have seen some of their key initiatives overturned in the courts. The tempo of deregulation of surface transportation has wound down. Protectionism is on the rise, and industrial policy is no longer an obscene term in the business community.

In issuing this report card, I have assigned expectations to key aspects of regulatory reform which needed to be addressed when this administration took office. To clear the air at the outset, I do not equate regulatory reform with minimizing the costs of complying with regulation. Nor do I view the task as maximizing the burden of regulation or attempting to use the regulatory process to punish business for its various sins of commission or omission. Rather, I view reform in terms of optimization, of moving to a more efficient regime of regulatory activity. Adopting a less burdensome method of achieving regulatory goals is a way of enhancing support for this type of governmental activity. Regulatory reform can help lead us to a more productive economy, one whose industries are more competitive in world markets, and one which delivers a better living standard to its citizens.

Expectations and Evaluation Procedure

To evaluate the progress and changes made during the past few years, we need to define the original expectations for regulatory reform so that we have a base for comparison. To do this, I would like to refer to the Report of the Task Force on Regulatory Reform which I submitted as chairman to President-elect Ronald Reagan shortly after the 1980 presidential election. A public (sanitized) version of that report was published in the November / December issue of *Regulation*.¹

Dr. Murray L. Weidenbaum is Director of the Center for the Study of American Business at Washington University in St. Louis. He is a former Chairman of the Council of Economic Advisers. This report is reprinted with permission from *California Management Review*, Fall 1983 (350 Barrows Hall, University of California, Berkeley, CA 94720).

In it we urged a “new approach” to government regulation that pursues two objectives simultaneously: doing a better job of achieving regulatory goals while reducing regulatory burdens. We provided some specific guidance to the new administration. The variety of regulatory activities requires a varied approach to regulatory reform. In the case of economic regulation, we proposed dismantling of controls to enhance consumer

Regulatory reform can help lead us to a more productive economy, one whose industries are more competitive in world markets

welfare. In the case of social regulation, we urged seeking out the most effective and least burdensome methods of achieving the desired objectives. For some regulatory programs, such as efforts to reduce product hazards, we suggested that, rather than government standards, the provision of better information enables consumers themselves to make more sensible trade-offs between safety and price.

We stated that the selection of new appointees to regulatory agencies requires great care. We specifically urged that they be “people who are sympathetic with the important social objectives to be achieved.” As we also noted, the fundamental problems of government regulation result more from statutory shortcomings than from deficiencies on the part of executive branch agencies. Citing an urgent need to change the fundamental regulatory statutes, we also proposed a one-year moratorium on new regulations. Such action would provide a breathing spell in which to adjust to the rapid proliferation of regulatory rules and programs which were promulgated in recent years.

In addition, we advocated the imposition of a cost-benefit test requiring each agency to demonstrate, before a new rule is issued, that at least a reasonable relationship exists between the costs imposed and the benefits produced. In terms of organizations, we recommended that the President abolish the Regulatory Council, which we described as a protective association for the regulators, who constituted its entire membership. We urged establishing a new White House office to spearhead the regulatory reform effort.

In the words of our public article in *Regulation*, “these proposals . . . do not constitute a Neanderthal plea to ignore the real problems of pollution, discrimination, and so on. Precisely to the contrary, they are offered in the belief that every task government undertakes should be performed ably. . . .”

The purpose of this evaluation is to determine the extent to which these bright and bold expectations have been met since the Reagan Administration took office. Because most of the factors involved are not subject to

“[Reform] proposals . . . do not constitute a Neanderthal plea to ignore the real problems of pollution, discrimination, and so on. . . . They are offered in the belief that every task government undertakes should be performed ably.”

measurement, the findings of necessity will primarily be subjective, and at times impressionistic. This examination will assess the administration’s performance in terms of four assignments:

- the key organizational reforms affecting regulatory policies and practices;
- statutory reforms to reduce the burden or improve the effectiveness of regulation;
- procedural reforms affecting the issuance of regulation;
- reducing the burdens of federal regulation of private economic activity.

Assignment One: Organizational Reform

Early in the Reagan Administration, important organizational changes were made in order to better coordinate and direct regulatory policy. To demonstrate clearly the importance of regulatory reform, the President appointed the Vice President to head up a cabinet-level Task Force on Regulatory Relief. The Task Force was given the assignment of providing leadership to the Administration’s regulatory efforts and to serve, in effect, as a court of appeals for controversies which would emerge from the day-to-day review of proposed regulations by the Office of Management and Budget.

The President quickly abolished the Regulatory Council, the Council on Wage and Price Stability (and moved its regulatory review staff to OMB), and did not activate the Regulatory Analysis Review Group, which was so prominent in the previous administration. In their stead, he directed OMB to set up a detailed regulatory review function. In order to assure close coordination, the OMB official in charge of regulatory activities was also designated to serve as the Executive Director of the Task Force on Regulatory Relief. Executive Order 12291, signed by the President in February 1981, has governed the regulatory relief effort of the Administration since then.

The various organizational changes provide, in effect, for a three-layered review of proposed rulemaking. The first level (or set of levels) is in the agency or department conducting the regulatory activity. The agencies are responsible for conducting the basic regulatory review required by Executive Order 12291 (to be described below). OMB conducts the second

level of review, focusing on the required analysis of benefits and costs. The final review point — unless the matter is appealed to the President — is the Vice President's Task Force. Clearly, the formal structure of regulatory review provides several key check points to ensure the consistency of regulatory activities with the Administration's regulatory policies — subject, as always, to legislative restraints and individual discretion.

Evaluation—I give the Administration high marks for acting quickly and decisively in setting up an effective mechanism to spearhead and conduct regulatory reform on a continuing basis. Obviously, this evaluation represents less than total objectivity, to the extent that my advice was taken.

Assignment Two: Statutory Reform

With reference to changes in regulatory statutes since January 1981, I must report that the results have been disappointingly few. The flagship of environmental regulation, the Clean Air Act, contains a timetable that provides for renewal, and hence review, in 1981. To some extent, the Administration was reluctant to propose substantial change for fear that Congress would be unsympathetic. Although there was substance to that concern, the fact of the matter is that the Administration proved to be extraordinarily timid.

Acting after the matter had been reviewed with the President in the Cabinet Council on Natural Resources and Environment, the EPA sent to Congress some general guidelines for reviewing the Act, instead of proposing the specific language changes that were anticipated. Even the guidelines were diluted—not containing, for example, the benefit/cost or cost-effectiveness requirement that was championed during the 1980 election campaign. The EPA director contended that, given the expected difficulty of obtaining Congressional approval for significant statutory change, it would be wiser to rely on her ability to modify enforcement procedures. The rest is history, unfortunately.

Deregulation of Transportation—In 1982, several specialized but positive statutory changes were enacted to advance the cause of regulatory reform.³ Following the pattern of earlier Congresses in deregulating the airline industry and reducing the scope of regulation in trucking and railroads, the 97th Congress passed a statute substantially reducing regulation in the passenger bus industry. The Bus Regulatory Reform Act of 1982 (P.L. 97-861) eased conditions for market entry and preempted many state regulations that have restricted interstate bus operation.

The 1982 law authorizes the Interstate Commerce Commission to issue a certificate for regular-route transportation if the applicant is merely “fit, willing, and able to provide” the service. Fitness only means adequate insurance and safety provisions. The sole criterion for denying a certificate is a finding by the ICC that the authorization would not be consistent with the public interest. The burden of proof is on those objecting to issuing the certificate.

Many of the previous obstacles to entry are knocked down. Thus, the public interest test may not be used to reject an applicant if the service is for a community not regularly served by passenger bus service, if the proposed service replaces discontinued air or rail transportation, or if the motor carrier serving the community has filed to decrease or discontinue service.

Some operating restrictions are also removed. The 1982 law allows carriers on interstate routes to serve intermediate points if this does not conflict with commuter bus operations. It permits, but does not require, round-trip operations where previously only one-way trips had been authorized. It also authorizes carriers to transport charter passengers and regular passengers intrastate in the same vehicle.

The Bus Reform Act also establishes a zone of rate freedom within which fares may be raised or lowered without ICC approval. The size of the rate zone will be allowed to increase gradually; prices will be totally deregulated in 1985 except for rates set collectively through rate bureaus. The ICC still can suspend “predatory” special or charter rate proposals. Thus, bus regulation continues, but the reduction in the intensity of regulation surely represents progress in advancing the cause of deregulation.

For a while, it seemed that some backsliding might be occurring from the progress made in prior administrations in reducing the extent of railroad regulation. But the appointment of several reform-minded commissioners to the ICC has helped. Some modest evidence is available on that score. For example, the number of contracts negotiated between rail carriers and shippers — a measure of the operating flexibility granted by the Staggers Rail Act of 1980 — increased from 580 in fiscal year 1980 to 2,907 in fiscal 1982. In terms of output, railroads have increased their share of total freight traffic. They also have substantially increased their shipments of some commodities, such as fruits and vegetables, that previously were carried almost exclusively by trucks.⁴ The next round of appointments to the commission will be a key to determining the future thrust of deregulation of surface transportation.

Deregulation of Financial Institutions—In the area of regulation of financial institutions, the Congress took the initiative and passed the Garn-St. Germain Depository Institutions Act of 1982. This new law contains a

wide variety of new and expanded powers for banks and other depository institutions. The Act directs the Deposit Institutions Deregulatory Committee (DIDC) to establish a deposit account for financial institutions "directly equivalent to and competitive with money market and mutual funds." The new accounts carry no maximum interest rate and modest minimum balance requirements. The changes have had virtually instantaneous effects. Since DIDC has authorized the new type of account, the shift of deposits from money market mutual funds to commercial banks and savings institutions has been massive. Surely, the new law enables depository institutions to compete head on with money market mutual funds.

The 1982 law also accelerates the elimination of the interest rate differential allowed thrift institutions, thus helping to achieve the "level playing field" that commercial banks have been advocating. For a three-year period, the Garn-St. Germain Act authorizes interstate acquisitions of troubled financial institutions, including banks with assets of \$500 million or more. The merger of Seafirst into the Bank of America is the most dramatic example of the power of this new provision.

The degree of competition among financial institutions is far greater today than it was two or three years ago. Some of that change results from legislation passed in 1980 and prior years. The pace of change also results from technological advances and institutional innovation. But the enhanced scope of marketplace competition is occurring in a political and economic climate that is more conducive and encouraging than in the past.

Evaluation—Those of us who are enthusiasts for regulatory reform must look back with disappointment at the modest statutory changes that have been made since January 1981. It is fashionable, of course, to bemoan the lack of leadership on this score in either the Executive or Legislative Branches. Although I am not inclined to let either end of Pennsylvania Avenue off the hook, the basic problem is much deeper. It is the fact that, in many instances, the necessary foundation has not been laid in terms of public understanding and support for reducing the burdens of regulation.

*Just try to change a comma in the Clean Air Act,
and you lay yourself open to charges that you want
to "gut" environmental protection*

Unfortunately, it is a commonplace but true observation that the media are generally unhelpful or at least extremely naive in the regulatory area. Just try to change a comma in the Clean Air Act, and you lay yourself open to charges that you want to "gut" environmental protection, that

you are a green-eyeshade type who does not care about ecology. Perhaps some modern-day Shakespeare can write the script whereby a reform-minded economist declares, "If I am polluted, do I not cough?"

The sad fact is that public opinion polls show uncritical and growing support for the position of "environmental über alles." For example, a poll by the New York Times and CBS News taken in April of 1983 reported that 58 percent of the sample surveyed agreed with the following statement:

Protecting the environment is so important that requirements and standards cannot be too high and continuing environmental improvements must be made regardless of cost.⁵

Let us note that the 58 percent agreeing with that statement represents an increase from the 45 percent in September 1981. Also, of all the categories polled, the weakest support came from college graduates, of whom only 46 percent supported the statement.

Looking toward the future, it is also useful to observe the results of a survey examining whom people trust to recommend regulatory changes. In the case of the Clean Air Act, "environmental groups" received a positive 74 percent and "university professors" 72 percent. "Business and industry" was last with 39 percent, just below the "news media" with 47 percent.⁶ Perhaps, those of us in academia have been a bit too shy and have left the field of battle to the more organized and specialized interests.

Assignment Three: Procedural Reform

President Reagan's first important administrative act in the regulatory area was to put on hold the numerous so-called "midnight regulations" issued during the last month of the Carter Administration. On January 29, 1981, President Reagan ordered the 11 major Executive Branch regulatory departments and agencies to postpone the effective dates of all regulations scheduled to take effect by March 20 and to refrain from issuing any final regulations until that date. In retrospect, 196 regulations were exempt from the freeze and became effective during the 60-day period, while 72 regulations were further postponed or withdrawn.

That was just a preliminary response to the tide of new regulations. A more lasting response came in February, when President Reagan signed Executive Order 12291 on "Federal Regulation," replacing an order issued by President Carter. The new policy statement created stronger White House oversight of regulatory activity and more stringent requirements for analyzing the benefits and costs of regulation.⁷ Regulatory agencies under the President's jurisdiction are required to make their regulatory decisions according to benefit-cost and cost-effectiveness criteria, to the extent permitted by law.

Under the new executive order, all proposed and final regulations must be submitted to OMB for review at least sixty days prior to publication in the *Federal Register*. OMB may ask for further information and consultations before a rule is published, but its concurrence is not required. Under E.O. 12291, regulatory agencies determine which of their new regulations are "major" and submit Regulatory Impact Analyses to OMB along with their proposals. An economic impact of \$100 million a year is the designated threshold, with many exceptions and additions.

The guidelines for preparing Regulatory Impact Analyses issued by OMB do not require a dollar estimate of all regulatory efforts, but the agencies are urged to identify all effects and to quantify them where possible. A discount rate of 10 percent is recommended for analyzing future costs and benefits.

Most draft regulatory proposals pass OMB muster. For example, as of December 28, 1981, OMB found 2,412 of 2,715 submissions consistent with the executive order. Ninety-one regulations were rejected and minor changes were suggested in 134 cases. The remainder (78) was technically exempt from the order and was submitted for informational purposes. Of the 2,412 regulations approved by OMB, only 40 were considered "major." Regulatory Impact Analyses were prepared for the 19 which were not exempted from the requirement.

It seems, at first blush, that the OMB review is not normally a major obstacle to a regulatory agency desiring to issue new rulings. However, we do not know what changes the agencies made prior to submitting the proposals to OMB to obtain or expedite clearance. Also, it would seem (or at least be hoped) that OMB used its judgment to concentrate on key regulatory issues and, thus, quickly approved minor and routine rule changes. One indication of its doing so is the estimates of the reduction in the costs of compliance.

*The momentum of regulatory growth has been
slowed down since January 1981*

The Task Force on Regulatory Relief estimated that, as of August of 1982, the review process had resulted in \$9-\$11 billion savings in one-time investment costs, and \$6 billion in annual recurring costs. Those totals were described as conservative, because costs estimates were not available for all of the changes made. But in addition to these direct savings, the Administration states that it has cut 200 million hours of annual paperwork (including regulatory and other federal requirements), or 13 percent of the government-mandated paperwork that existed in January of 1981.⁹

Evaluation—I am ignoring the claims about the reduction in the number of new rules and in the number of pages in the *Federal Register*. Those numbers may be indicative of the new approach, but they remind me of the

bureaucratic response to President Eisenhower's preference for one-page memos: smaller margins, larger paper, and finer print. Nevertheless, it seems clear that the momentum of regulatory growth has been slowed down since January 1981.

Increasing Activity—A balanced appraisal needs to recognize that not all administrative actions taken since January 1981 have been aimed at reducing the burden of regulation. Quite a few have gone the other way, especially in the field of foreign trade. For example, after discussion with U.S. government representatives, Japan "voluntarily" agreed to limit the exports of automobiles to the United States to 1.68 million a year for three successive years. The decision was taken in the context of rising support for legislative proposals to establish statutory quotas on imports of cars from Japan. Indeed Japan recently agreed to a fourth year of quotas but at a slightly higher level—1.85 million units.

In May 1982, President Reagan imposed emergency sugar import quotas in order to maintain the high domestic subsidy price. Also last year, he tightened the sanctions placed originally in 1981 on American companies participating in the Soviet Natural Gas Pipeline. The 1982 extension applied to European subsidiaries of U.S. firms and foreign firms operating under U.S. licensing agreements. After many complaints from domestic firms and foreign governments, the President lifted the pipeline sanctions in November 1982.⁹

In October 1982, the President announced an agreement with the European Economic Community to limit European steel exports to the United States. In return, American steel companies dropped 42 complaints against European companies, in which they had been charged with selling subsidized steel or dumping steel in the United States below actual production costs. The self-imposed European quotas were the alternative to our Commerce Department imposing duties of up to 26 percent on imports of steel from Western Europe. Such tariffs, however, would have represented less

*Unless the competitiveness of American industry improves
substantially, an increase in regulation of foreign trade
will seem to be a politically attractive alternative*

interference with the marketplace than the firm quotas that were established.

Not all of the increase in regulation occurred in the foreign trade area. In late May 1983, for example, the Task Force on Regulatory Relief overruled OMB and gave the Labor Department the go-ahead to continue requiring engineering controls to reduce textile workers' exposure to cotton dust. OMB had contended that workers could be adequately protected by respirators and for less cost.¹⁰

Unless the competitiveness of American industry can be improved

substantially, an increase in regulation of foreign trade seems to be the most politically attractive alternative.

Assignment Four: Reducing the Economic Burden of Regulation

No recent study of the total burden of federal regulation is available to use in an examination of the changing economic costs of regulation resulting from the actions of the Reagan Administration. The oft-quoted work of the Center for the Study of American Business was based on data for 1976. For a few years after that, I made rough estimates on the bold assumption of a constant "multiplier" connecting direct federal outlays and the resultant compliance costs. Because of the many changes made in the last two years in the budgets of the regulatory agencies, I would be surprised if the "multiplier" were still the same as we found it in 1976.

An indication of the changing burden of federal regulation may be gleaned from the budgetary data and the related estimates of federal regulatory personnel. On the basis of the Federal Budget submitted to Congress in January 1983, 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 1 contains the highlights of these developments.¹¹

Personnel at the major regulatory agencies also dropped considerably in 1981 and 1982, and is estimated to fall even further through 1984 (see Table 2).

Regulatory Spending Cuts—A modest \$800 million was spent by the federal government in 1970 to administer the regulatory activities of the 42 major agencies that were then operating. By 1975 that amount had risen by 300 percent, to over \$3 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 also dramatic; regulatory budgets grew by 274 percent in real terms from 1970 to 1980, reaching nearly \$3 billion.

The long-term trend of rising federal outlays for regulation was reversed

TABLE 1
Expenditures on Federal Regulatory Activities
(Fiscal Years, Dollars in Millions)

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	\$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	-8%
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		\$2985	\$2728	\$2664	\$2561	-14%
Year to Year Real % Change		187%	30%	274%	-0.1%	-8.6%	-2.3%	-3.9%	

Source: Center for the Study of American Business

TABLE 2
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	14862	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

in fiscal years 1981 and 1982. In the first year of the Reagan Administration, modest changes were made in the 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 equaled that year's rate of inflation. In real terms, 1981 spending was just about at the level of 1980.

The drop in regulatory budgets in fiscal 1982 was clear-cut and unprecedented in recent experience. In current dollars, spending decreased 3 percent, to \$6 billion; in constant dollars it fell almost 9 percent. This turn toward austerity in the management of the federal government's regulatory agencies had not occurred for the previous twelve years (which is as far back as the Center for the Study of American Business has been compiling these data).

Preliminary estimates for regulatory spending in fiscal 1983 and 1984 show further declines in constant-dollar outlays. As indicated in Table 1, total budgets for 1982 are projected to drop 2 percent (in 1970 dollars) and another 4 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, these spending changes will amount to a 14 percent decrease. These numbers, however, do not reflect Congressional action to increase EPA's budget.

The Decline in Regulatory Personnel—The most dramatic reversal of the regulatory trends of the 1970s is shown in Table 2. It can be seen that the federal regulatory workforce peaked at 90,000 in 1980. The number of people working in full-time, permanent positions in the major agencies is projected to continue to decline through 1984, when it reaches a total of 76,000. If these estimates hold true, a five-year reduction of about 16 percent will occur. In that event, there will be one fewer regulator employed in the federal government in 1984 for every six that were employed in 1980.

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 over the decade.

However, in 1981 brakes were applied to the growth of the regulatory workforce. Personnel 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 down to nearly the number of people employed in 1975.

Only a handful of the 44 agencies for which regulatory personnel levels

can be determined 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; the Animal and Plant Health Inspection Service in the Department of Agriculture; 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); and the Economic Regulatory Administration in the Department of Energy (nearly 1,900 fewer positions).

Economic regulation will experience total personnel 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 will reduce its employment by nearly one fifth.

*Efforts to reduce the size and cost of the federal
regulatory establishment are not a substitute
for substantive changes in statutes*

Evaluation—The Reagan Administration's efforts 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 or in the rules that the agencies issue. Nevertheless, cutbacks in budgets and personnel can have important effects, but they can lead to important backlash effects as well.

However, the larger issue in this regard is the ability of regulatory agencies to perform their functions in an effective manner. Merely funding and staffing an agency does not ensure that it will perform its functions well or that the intended objectives will be achieved. Likewise, cutting a regulatory agency's budget does not necessarily reduce the burdens it imposes on the private sector. In fact, some budget cuts could have the reverse effect—to the extent, for example, that they increase delays in issuing permits needed to authorize new construction. For the time being, budgetary moderation and a small measure of austerity characterize the activities of most federal regulatory agencies.

Summary Evaluation and Recommendations

Actions on the regulatory reform front during the past two-and-three-quarter years have simultaneously failed to meet the high hopes of regulatory reform enthusiasts and the fears of the defenders of the existing body of federal regulation. The regulatory system is far from the idyllic state where it consists solely of rulings that generate more benefits than costs, nor is it about to wither away. The similarities between the regulatory system of October 1983 and that of January 1981 are far greater than the differences. Yet the spokesmen of the recently-launched counterattack against regulatory reform provide a viewpoint that is very different.

*Regulatory reform during the past two-and-three-quarter years
has simultaneously failed to meet the high hopes
of reform enthusiasts and the fears of
the defenders of the status quo*

It may be helpful to let the opponents of regulatory reform speak for themselves. That enables others to judge the relative proportions of analysis and emotion. Here is an excerpt of a recent article by Michael Pertschuk, former chairman and now member of the FTC:

A goodly number of Mr. Reagan's regulators have now spent two years dismantling the very regulations that in prior incarnations as corporate lawyers and lobbyists they had opposed . . . Their deregulatory plans are fueled by an admixture of free-market ideology and corporate sycophancy. Consumers are merely bugs on the windshield.¹²

This attack on motives rather than on substance may ultimately improve the prospects for regulatory reform because it itself is a form of pollution—in this case pollution of the intellectual environment. Because Mr. Pertschuk and so many of his allies are attorneys, I am reminded of the old legal maxim: "if the law is against you, argue the facts; if the facts are against you, argue the law; if they are both against you, bang on the table."

Surely this is not the time to rest on laurels. Only a fraction of the regulatory reforms envisioned at the beginning of 1981 have been accomplished. Most of the progress had been made in the form of administrative changes, especially in establishing a comprehensive and fairly effective system for reviewing pending rulemaking. A major advance has been the incorporation of formal benefit-cost analysis in that review process. Additional improvements in administrative procedures are both

desirable and possible. Benefit-cost analysis, especially as it is applied to regulation, continues to be a mechanism that is in a developmental stage.

It is clear, nevertheless, that the major obstacles to further substantial improvement in the regulatory process cannot be eliminated by Executive action. Those obstacles are the rigid requirements and limitations in the basic statutes governing regulatory activities. To remind us of fundamentals and perhaps also of the obvious, let us recall that every regulation is issued pursuant to an act of Congress.

Recent experience shows that the fundamental shortcomings of government regulation result more from statutory than from administrative deficiencies. For example, the current leadership of the Occupational Safety and Health Administration has been trying to reduce the burdens of its rulemaking. However, the courts have struck down specific changes on the grounds that the proposals were inconsistent with the statute under which the agency operates.

Many legislative enactments mandate unrealistic goals or unreasonable methods for social regulation and need to be revised. Such onerous 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. A word of caution: recent experiences in the environmental area demonstrate the need for regulators to conform to existing statutes, whatever their shortcomings may be. But that experience also underscores the need to update statutory requirements rather than introduce arbitrary changes via administrative action.

*It is vital to regain the momentum
of public support for improving the performance of
the nation's regulatory system*

We should not underestimate the importance of improving administrative review of existing as well as proposed regulations. Nor should we ignore the counterpressures from those who constantly seek to enlarge the federal presence in economic decision making.¹³ Nevertheless, the present time is ripe for meeting those pressures head on by developing the groundwork for a new phase of regulatory reform: the review and revision of the substantive laws governing the regulatory process. I say that with full knowledge of the danger that the ensuing debate will be reported in the national media mainly via sensational charges and countercharges that obscure the underlying issues, and possibly result in a deterioration of the status quo. Preparing the proper foundation of information and analysis is indeed a challenge to economic education—and to education generally. It is vital to regain the needed momentum of public support for improving the performance of the nation's regulatory system.

William Ruckelshaus, the once and present head of EPA, sounds a cautionary note. He contends that the current climate in Congress is not appropriate for considering changes in environmental legislation. The problem, as he puts it, is that "Congress doesn't trust the agency to do what it's mandated to do" and, thus, is not willing to look favorably on legislative changes proposed by the White House, regardless of their merits.¹⁴ Ruckelshaus' advice deserves special weight.

Ruckelshaus' statement, as well as recent events at EPA, underscores the vital role of selecting appointees to regulatory agencies. 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 counterproductive. As we have seen so vividly, they can set back the prospects for regulatory reform very substantially.

As our Regulatory Reform Task Force urged in 1980, 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—must 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.

*Perhaps the most urgent need is to convince members of Congress
to demonstrate a sense of balance when they write
the basic regulatory laws*

Thus, it is sad to read of the boasting of a group of ex-regulators in the Carter Administration that say they will use networks of civil servants at their former agencies to oppose the Reagan Administration's regulatory relief efforts. "These people will tip off the former administrators," says Robert Nelson, research director of the self-styled Regulatory Audit Group. "Yes, . . . the network exists," states group member Joan Claybrook, former head of the National Highway Traffic Safety Administration.¹⁵ Managing a regulatory agency under such circumstances (which approach guerilla warfare) is quite a challenge. Public understanding is helpful, and a stronger statutory foundation for more balanced regulation becomes essential.

Perhaps the most urgent need is to convince members of Congress to demonstrate a sense of balance when they write the basic regulatory laws. The task of updating regulatory statutes is not easy. The types of changes that should be made depend on the nature of existing regulation, the specific regulatory mechanisms currently in use, and the shortcomings, if any, in the unregulated private economy. A simple or uniform response is not appropriate. Each regulatory law should be examined individually and carefully and—despite the counterattacks by the true believers—dispassionately.

Professor George Steiner of UCLA, an experienced observer of business-government relations in the United States, has provided what may prove to be a realistic appraisal of what can be expected in the near term.

The most optimistic assessment of success for the Reagan Administration's regulatory reform efforts will not spell more than a marginal diminution of the massive pile of present-day regulation. Nor will regulatory reform blunt the strong pressures for more government regulation of business. The best that can be hoped for is a slowing down of the trend of growing government regulations and a reduction in specific unwise, unjust, and unnecessary regulations.¹⁶

The reason for Professor Steiner's relative pessimism is that he expects a continuation of the growth in numbers and strength of special interest groups. He concludes that it is unlikely that most of these groups will be more compromising in the future than at present.¹⁷ Nevertheless, in contrast to the rapid growth and expansion mode of the recent past, federal regulatory activity has taken a more modest path in the Reagan Administration.

References

1. Murray L. Weidenbaum, "Reforming Government Regulation," *Regulation* (November/December 1980), pp. 15-18.
2. *Ibid.*, p. 18. See also "On saving the Kingdom — Advice for the President-Elect from Eight Regulatory Experts," *Regulation* (November/December 1980), pp. 14-35.
3. Center for the Study of Government Regulation, *Major Regulatory Initiatives During 1982* (Washington, D.C.: American Enterprise Institute, 1982), pp. 86-95.
4. *Economic Report of the President, February 1983* (Washington, D.C.: Government Printing Office, 1983), p. 111.
5. "Attitudes on the Environment," *The New York Times* (17 April 1983), p. 17.
6. "Opinion Roundup," *Public Opinion* (February/March 1982), p. 37.
7. Center for the Study of Government Regulation, *Major Regulatory Initiatives During 1981* (Washington, D.C.: American Enterprise Institute, 1982), pp. 63-64.
8. Presidential Task Force on Regulatory Relief, *Reagan Administration Achievements in Regulatory Relief* (August 1982), p. 1.
9. Murray L. Weidenbaum with Michael C. Munger and Ronald J. Penoyer, *Toward a More Open Trade Policy* (St. Louis: Washington University, Center for the Study of American Business, 1983), Chapter I.
10. Joann S. Lublin, "OSHA Upholds Exposure Rules for Cotton Dust," *The Wall Street Journal* (20 May 1983), p. 4.
11. For detail, see Murray L. Weidenbaum and Ronald J. Penoyer, *The Next Step in Regulatory Reform: Updating the Statutes* (St. Louis: Washington University, Center for the Study of American Business, 1983), pp. 33-43.
12. Michael Pertschuk, "The Case for Consumerism," *The New York Times Magazine* (29 May 1983), p. 26.
13. "A Bipartisan Swing Back to More Regulation," *Business Week* (30 May 1983), pp. 74-75.
14. Andy Pasztor, "EPA Chief Says Tougher Pollution Laws are Possible, Concedes White House Erred," *The Wall Street Journal* (21 June 1983), p. 2.
15. "The Moles of NHTSA," *Fortune* (18 April 1983), p. 40.
16. George A. Steiner, *The New CEO* (New York: Macmillan, 1982), pp. 13, 105.
17. *Ibid.*, p. 105.