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The Regulatory Conundrum



When Robert Johnson, founder of Black Entertainment Television, wanted a \$190,000 Ferrari 360 Spider, he went to a German dealer, since it would have taken two to three years to obtain one from a domestic dealer. But it had to be modified to meet U.S. environmental and safety standards. That took 15 months.

If this were the only inefficient, silly, wasteful regulation, there'd be little cause for concern. But Washington is a regulatory behemoth, supplemented by state monsters of various sizes.

Last year Clyde Wayne Crews of the Cato Institute published his annual "Ten Thousand Commandments." For the first time in years there was modest good news. For instance, the *Federal Register* in 2001 ran 64,431 pages, down 13.2 percent over the last full year of the Clinton administration. Also in 2001, 4,509 new regulations were working their way through the system, a reduction of 4 percent over the year before.

Still, the news is good only relative to how bad it has routinely become. The regulatory burden remains staggering. Perhaps the best estimate, from analysts W. Mark Crain and Thomas D. Hopkins, is that federal regulations cost the American people \$854 billion, roughly 46 percent of the total \$2 trillion in federal outlays this year. That's about 8.4 percent of GDP.

It's almost as much as collected by both the corporate income tax and the personal income tax. Per family it comes to \$7,410. That means government is basically taking another fifth of the median two-earner income after direct taxes have been paid.

Moreover, the claimed advantages are often impossible to verify. For instance, the American Enterprise Institute and Brookings Institution's Joint Center for Regulatory Studies estimates that roughly half of environmental regulations saves lives, but often at costs far disproportionate to the likely benefits achieved. And, incredibly, in about half the cases "regulations specifically aimed at saving lives actually resulted in a net increase in deaths," according to the Center's Robert Hahn and Patrick Dudley.

In another Center publication, Hahn and Cass Sunstein of the University of Chicago Law School, review some of the most perverse rules. The Environmental Protection Agency's municipal solid-waste regulations generate costs of \$100 million annually with no benefits. Pulp and effluent guidelines start at a net zero benefit at best and range up to a \$150 million annual loss. The EPA's ozone standards are already wracking up annual net losses in the hundreds of millions, with the potential of exceeding \$9 trillion in a few years.

Some regulations are completely irrational. Consider Corporate Average Fuel Economy (CAFE) standards, by which the federal government mandates that auto manufacturers achieve an arbitrary level of fuel economy. It's not clear that CAFE even

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saves energy. After all, raising fuel economy lowers the marginal cost of driving. Moreover, by forcing people into smaller autos, which lose in accidents with bigger ones (as well as vans, SUVs, and trucks), CAFE kills.

John Graham, formerly of Harvard University and now head of the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA), and Robert Crandall of Brookings have estimated CAFE's annual death toll at between 2,200 and 3,900. In the mid-1990s the Competitive Enterprise Institute figured that between 2,700 and 4,700 people were dying because of CAFE.

Even when some benefits might occur, there remains the problem of opportunity costs. Where an existing life is at stake it is tempting to say that every life is priceless. But when we are dealing with risks, no life is priceless. Every expenditure involves a trade-off. The true cost of any activity is its opportunity cost, the value of forgoing some other activity. To spend \$40 billion to save one potential life means that \$40 billion is not available to improve roads and traffic signals or to do something else.

Americans desperately need a wide-ranging program of regulatory reform. The executive branch can help. Graham has emphasized the importance of weighing costs as well as benefits and of considering "nonquantifiable factors such as fairness, privacy and personal freedom." As part of its budget, the administration proposed additional changes in how benefits and costs are balanced. Agencies would have to compare different strategies for achieving the same ends, better address the issue of risk, and offer several estimates of benefits and costs for expensive rules based on "uncertain science."

Crews, Hahn, and others propose a variety of other steps that would pare and improve regulatory policy. They start with reducing congressional delegation of power to regulatory agencies, further streamlining legislative procedures to overrule regulations, creating a congressional office of regulatory assessment (as an analog to the Con-

gressional Budget Office), and setting statutory standards for regulatory disclosure, assessment, and oversight.

Just Say No

However, the most important "reform" would be the willingness to say no. Not every problem is worth regulating. Some cannot be solved by regulating. And many are not worth the expense of doing so. Besides, the free market is the most powerful "regulator" of all.

Reform in Washington isn't enough. States have taken on an increasingly aggressive, and counterproductive, role. Particularly problematic is the increasing tendency of state attorneys general, almost all governor wannabes, to try to set policy independent of the federal government, such as their jihad against Microsoft.

People routinely refer to America as a free country. And compared to Europe, it is. There a frustrated European Commission recently declared that only through more economic reform could the continent catch up with America. Yet in 2002 the Washington-based Americans for Tax Reform pegged July 1 as "Cost of Government Day"—when we finally stopped paying to fund and comply with government. Of the 181 days spent working for the government, 38 went to cover the cost of federal regulation and 23 for state rules.

Then there's the loss of simple personal freedom. For instance, Americans are not allowed to buy Kinder Surprise Eggs, chocolate eggs with tiny toys inside, which are available in Europe and elsewhere. Fanciers have to import them illegally through the Internet since both the Consumer Product Safety Commission (the toys pose a choking danger) and the Food and Drug Administration (the toys are an "embedded" non-food item) ban them here.

America, though it possesses the world's leading economy, nevertheless faces some daunting problems. In such a world, it makes no sense to waste so many resources on trivial concerns. □