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process—not *at the end*, when the public has no chance to comment. In that way, due process can be guaranteed, and agencies can still be *required* to consider important national concerns—such as inflation and paperwork—in drafting their regulations.

I am convinced that our approach will increase accountability as well as the opportunity for presidential leadership. Assume, for example, that EPA proposed a regulation contrary to established national energy policies. Under our proposal, the White House could do one of two things: it could formally intervene in the process, arguing against the proposed policy; or it could propose an alternate approach which the agency would have to consider within a set deadline. In either case, the agency would certainly respond, because regulators do not operate in a vacuum. In my experience, they are highly sensitive to administration objectives—a sensitivity prompted by the President's appointment and budget powers. Serious and timely consideration would be given to the President's viewpoints, and national leadership would be asserted in a *public* context.

We must not cripple the ability of agencies to discharge their statutory duties. Nor should we lose sight of the important purposes served by health, safety, and environmental controls. What the people want is effective and efficient regulation. And that is the objective of S. 262. ■

On the New Regulatory Reformers

A More Demanding Standard: The Brown-Bentsen Bills

Clarence J. Brown

PUBLIC REACTION to burdensome regulation may turn out to be for the current Congress what Proposition 13 was to taxes and deficits in the last Congress—a force demanding change in government policy. Today, the cumulative *Federal Register* fills fifty-two large bookshelves and totals over 800,000 pages. The stack of volumes has grown in the past twenty years from ankle level to higher than I can reach—and I stand over six feet four inches tall. We are drowning in the flood of printed regulations.

Though this is a graphic illustration, shelf space for the *Federal Register* is not of course what concerns me. Rather, I am concerned about the costs these regulations impose on our economy—costs which Murray Weidenbaum's recent study for the Joint Economic Committee put at $102.7 billion (including private sector compliance costs of $97.9 billion and agency administrative costs of $4.8 billion).

No one wants to repeal regulatory policies that produce substantial benefits for the public. But some regulatory programs impose excessive and unintended costs, often far exceeding the benefits they yield.

Clarence J. Brown, elected to the House of Representatives from Ohio in 1965, has been a member of the House Government Operations Committee since 1966.

The Brown-Bentsen Bills

This is a problem we must deal with—and soon. Thus, on the first day of the ninety-sixth Congress, I introduced in the House and Senator

Lloyd Bentsen (Democrat, Texas) introduced in the Senate a package of four bills that we believe directly addresses the major regulatory problems:

- H.R. 75, "The Regulatory Cost Reduction Act," provides that federal agencies, when they promulgate regulations, must select the most cost-effective method of meeting the regulatory objectives.
- H.R. 76, "The Regulatory Budget Act," provides for a procedure under which Congress would set annually a limit on the amount of private-sector compliance costs each federal agency could require by its regulations.
- H.R. 77, "The Independent Agencies Regulatory Improvements Act," extends the economic analysis requirements of Executive Order 12044 to seventeen independent agencies which, because they are not strictly executive-branch agencies under presidential control, could not be covered constitutionally by an executive order.
- H.R. 78, "The Regulatory Conflicts Elimination Act," provides for a procedure under which conflicting and duplicative federal regulations would be eliminated, since it is senseless for a citizen to be put in the position where complying with one federal regulation requires him to violate another.

These bills should be part of any regulatory reform program enacted during this Congress. Some of the provisions they contain have been included in Senator Ribicoff's regulatory reform bill (S. 262), and many can also be found in the Carter administration's proposal (S. 755).

The main contributions of S. 262 are planning improvements and reform of the administrative procedures in federal regulation. The bill would reduce the serious delays that now plague the regulation process. It would also enhance efficiency in administration and permit better public participation in developing regulation. One of S. 262's controversial provisions is the requirement that government finance citizen group participation in the regulation-writing process. While input from consumers is certainly important, I have some doubt that we can make regulation more effective and less costly simply by supplying federal agencies with more information. Rather than adding (at taxpayer expense) to Ralph Nader's already capable lobbying efforts, we should require the agencies to meet cost-effectiveness standards. The lack of such a requirement is a major gap in S. 262.

The Ribicoff bill does take an important step forward in calling for a regulatory analysis of existing and proposed regulations, but it does not take that next important step—spelled out in H.R. 75—of requiring that agencies adopt the most cost-effective method of regulation consistent with the agency's statutory obligations. Admittedly, a cost-benefit test for government regulations, as desirable as it might be in theory, would present some calculation problems in practice. For most regulatory programs, however, it is not necessary to calculate both costs and benefits—only costs. In enacting these programs, Congress generally presumes or sets a level of benefits to be achieved, just as it does with spending programs. Determining benefit levels is not, and should not be, the business of the administering agency—for it is a legislative function. The agency's function should be to achieve congressionally mandated goals at the lowest cost. There should, in other words, be no need for them to measure benefits; their efforts should be focused on measuring costs, which can be more accurately determined.

My proposals require that regulatory objectives be achieved in the most cost-effective manner, unless the head of the agency decides that the national interest requires the use of a less cost-effective alternative, and clearly explains why. Among the alternatives that should be considered are market disciplines and such approaches as voluntary industry standards. The definition of "costs" in my bills includes both administrative costs incurred by the government and compliance costs incurred by the private sector; but it excludes normal business or record-keeping costs that would have been incurred in the absence of such federal rules or regulations.

The recent study of regulatory costs done for the Business Roundtable by Arthur Andersen and Co. is relevant here. That study identified certain features characteristic of high-cost regulations. Rules requiring a particular compliance action or imposing a product standard rather than a performance standard, rules specifying engineering solutions rather than protective devices, and rules requiring con-

tinuous monitoring—these approaches almost invariably create a heavy cost burden for the private sector. Regulators who are probing for least-cost alternatives will find this study useful.

A Regulatory Budget

The primary contribution of the Brown-Bentsen package that is untouched by either S. 262 or the administration's proposal is the provision for a regulatory budget (H.R. 76). Current procedures fail to recognize that the goals of regulatory programs must be balanced against other national objectives. The achievement of any objective, public or private, uses resources that could be used for other purposes. The more resources devoted to one purpose, the fewer there are available for others. Even if all regulations were cost-effective, there still would be a need to establish priorities for the use of limited resources. This can best be accomplished by requiring Congress to set a regulatory budget.

In the past, the fiscal budget was quite adequate to show the impact of government on the economy, since almost all federal government activities involved direct taxation and direct spending. If one added to these the financial commitments (through loans, guarantees, and insurance) of some fourteen "off-budget" agencies, one could get a fairly clear picture of the government's influence on the economy. But with the recent rapid growth of the new regulatory agencies—the Occupational Health and Safety Administration, the Environmental Protection Agency, the National Highway Traffic Safety Administration, and many others—the fiscal budget no longer conveys a complete picture of government's impact on the economy. Most of the economic effect of regulation is hidden, since government-required private sector spending for auto safety, mine safety, pollution control, and consumer protection, plus the attendant paperwork costs, do not appear in the government's budget figures. They are cloaked in "off-off-budget" spending, required of the private sector to comply with federal regulation.

The clearest example of the need for a budget showing the economic impact of regulation on the society may be seen in the environmental regulation of electric utilities. The massive cost of a smokestack scrubber to achieve cleaner air is passed on directly to consumers, who pay higher utility bills as surely as they pay taxes. But the federal budget fails to show these higher prices. It also fails to show the higher prices consumers pay because of economic regulation by such agencies as the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Communications Commission. The costs and benefits of both social and economic regulations should be more clearly available to policy-makers and to the public.

If these costs were minor, of course, their omission from the budget would not be a serious problem. But they are not minor, and they are growing. It is important, therefore, that the Budget Act of 1974 be amended to require that Congress annually establish a regulatory budget, along with the fiscal budget, to set a limit on the costs of compliance each agency could impose on the private sector in any one year. The timetable and the process provided for developing a regulatory budget under H.R. 76 would be similar to those governing the fiscal budget concurrent resolution. There is, however, a weakness in H.R. 76: it lacks a strong enforcement provision in the event that the budget resolution ceilings are violated. I intend to remedy this weakness.

Section 1107(a) of the bill declares that it shall not "be in order in either the House of Representatives or the Senate to consider any bill, resolution, or amendment . . . if enactment . . . would cause the level of costs of compliance for any agency to exceed the maximum costs of compliance established for that agency in the concurrent resolution. . . ." I doubt Congress would violate its own law and, even if it did, I doubt it would punish itself. But the provision is primarily directed against an agency's writing a regulation that would lift compliance costs above the ceiling. I am considering some options to forestall regulatory budget busting. One option would be a procedure to permit suits against the government in such a case. Another would be to reduce the fiscal budget of any agency that imposed compliance costs in excess of its regulatory budget ceiling.

Whatever its ultimate form, a regulatory budget would provide an incentive for the regulatory agencies to limit the compliance costs

that their regulations impose. It would certainly make the agencies more conscious of those costs. But it would have other important effects as well. A regulatory budget, along with the fiscal budget, would provide a more accurate picture of the federal government's total impact on the economy, allowing Congress to determine how much of the nation's output is to be devoted to public uses and how much left to private uses. It would make possible a better balance between regulatory programs and traditional government spending programs. It would enhance the protection of the public's health and safety by requiring that the federal government establish consistent priorities in pursuing regulatory objectives. The semiannual regulatory calendar, the first of which was published by the Regulatory Council on February 28, 1979, could prove to be an important step toward a regulatory budget.

Although some regulatory costs are difficult to measure with current techniques, many costs are measurable, including the costs of required investment, paperwork, and changes in product quality. This is shown by the Business Roundtable's study. So, while I recognize that techniques for assessing regulatory costs are not fully developed, we have made some beginnings. And since the effective date of H.R. 76 would start with the fiscal year at least eighteen months after enactment, there would be time to solve the practical problems that remain. But we need the spur. H.R. 76 should be enacted as soon as possible. ■

On the New Regulatory Reformers

Reform as Totem–A Skeptical View

Ernest Gellhorn

ONE OF THE NATURAL WONDERS of the world is a place called Ayers Rock in the middle of the Australian Outback. There, rising out of a trackless desert, is the world's largest monolith. Massive and majestic, it is a sacred object of worship to the Aborigines of the Great Plateau. Though they do not know what it is for or how it got there, legend has it that the natives make frequent pilgrimages to it in order to show their reverence, which they do by scrawling primitive graffiti over its base.

Regulatory reform appears to be America's counterpart to Ayers Rock. No leader, it seems, can pass this totem without a bow of respect and a new proposal in legal hieroglyph. Few topics guarantee more attention from the press —and less understanding. It is a subject of universal favor. But it remains uncertain whether these propitiary offerings to the idol of reform will really have any effect on the problems of regulation.

Reformers have approached regulatory problems in recent times from three different directions. First, some concentrate on Congress, urging closer control of the agencies by intensifying committee oversight or adopting devices such as the one-house legislative veto. Second, others challenge the validity of entire programs, urging deregulation—as in the case of ICC controls of trucks and railroads—or proposing generic sunset laws that would allow

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