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Overall Approach



The performance of most federal regulatory agencies is abysmal. This failure can be traced to two major causes: (a) inadequacies in the enabling statutes, and (b) the way agencies use their discretion. Many of the statutes are conflicting and overlapping. Some force agencies to promulgate regulations that make little sense (the Delaney Clause is an example). Other statutes give the agencies extremely broad discretion--which they, in turn, use in a perverse manner. The statutes should be reformed. They should not force agencies to promulgate inefficient regulations; but they should prevent agencies from doing this on their own. The agencies should be reformed so that different priorities will be set and discretion will be used to achieve efficient regulation.

Within days of inauguration, President Reagan, by executive order, should establish a moratorium on new rules and regulations not specifically mandated under existing legislation. While there could be substantial political opposition, and possibly even court challenges, the move would receive wide support, especially if phrased as giving the President's new team time and opportunity to get on top of the issues. The moratorium would also be a device for putting pressure on Congress to revise the enabling statutes (see below). Of course, the President's moratorium would apply only to the executive-branch agencies; however, he and members of his Administration should attempt to persuade the independent agencies to abide as well.



Second, President Reagan should send to the Senate en masse his nominations for key executive-branch regulatory positions. These include, obviously, the administrators of the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), the Equal Employment Opportunity Commission (EEOC), and the National Highway Traffic Safety Administration (NHTSA); included also should be the proposed chief executives of the lesser-known regulatory agencies as well as the second and third tiers of executives at the more important agencies. The President should also designate immediately those he wishes to serve as the chairmen of the independent agencies; he should nominate new appointees where vacancies exist, or otherwise select a chairman from the existing membership.

The major reason for quick action is that during the honeymoon period following inauguration a president can usually obtain confirmation of individuals who would be too controversial at a later point in time. And, of course, we envision that the individuals nominated would be controversial in the sense that they would not be whole-heartedly endorsed by the agencies or by their constituents on the Hill or in the private sector. The second reason for moving swiftly is to commence work immediately on the substantive reforms described below.

To accomplish an en masse set of nominations, of course, would require substantial work between the time of election and inaugura-





tion. Since we view regulatory reform as a high priority, we recommend that immediately following the election the President-elect name a blue-ribbon task force to search out candidates for these regulatory positions, review their credentials, and make recommendations. It is highly important, we believe, that this group of appointees be true believers in regulatory reform, who would be willing to work cooperatively toward that end.

Once ensconced, this group of new regulators would be expected to accomplish several tasks. First, working together under the direction of a senior White House official, they would hammer out the Administration's recommendations for statutory changes. It is key that these individuals be involved in the process, for two reasons: first, they and their agencies would presumably have the requisite information on which to formulate the specifics of the reform proposals, and second, they must be relied upon to work with the relevant committees on the Hill to achieve passage of the recommended legislation. It should be made clear to each (executive-branch) regulatory appointee that participation in and support of this overall regulatory reform effort is a condition of acceptance of the position and a condition for continued employment.

The second major role of this group is that each would push reform to the limits of the enabling legislation. (The old saw about there being two kinds of lawyers--those that tell you why you can't do what you want and those that can tell you how to accomplish it--





is certainly relevant here.) By advancing the reforms on their own, they would provide important evidence on how regulation could work more efficiently. This would allay fears in Congress and thus ease passage of the Administration's proposals.

Finally, in conjunction with the activities described above, we would recommend the following actions be taken. First, revoke President Carter's Executive Order 12044, which enables the current regulatory analysis program but it is so weak as to be counterproductive. Second, abolish the U.S. Regulatory Council. For the most part, this organization--whose membership, in large part, is drawn from the regulatory administrators (it is chaired by the Administrator of EPA)--has been used to obstruct true reform while serving as a soapbox for reform rhetoric. Third, take the few useful functions of the Regulatory Council, and the very useful functions of the public sector monitoring group at the U.S. Council on Wage and Price Stability, and fold these into a new division of the Office of Management and Budget which would be charged with "budgeting" the regulatory agencies, possibly through a formal "regulatory budget" process. (We also recommend the abolition of the Council on Wage and Price Stability.)