United States
Regulatory
Council

AN INVENTORY OF INNOVATIVE TECHNIQUES

1978 - 1980

Introduction

The Administration's reform program emphasizes the use of innovative regulatory techniques as an alternative to traditional command-and-control regulation; these techniques are generally less likely to interfere with competition. Many work by structuring incentives that will resolve regulatory problems through market mechanisms. These innovative regulatory techniques move away from centralized decisionmaking and allow industry and consumers more freedom of choice.

These market-oriented solutions have gained recent attention because they can be more cost-effective and better suited to dynamic economic and technological conditions than traditional approaches. In particular:

- Market-oriented approaches generally leave regulated entities more freedom to devise their own means of achieving regulatory goals. This puts the ingenuity and relevant expertise of the regulated sector to work at solving public problems in the most cost-effective way, and imposes fewer indirect costs of governmental intervention in private sector affairs.
- Market-oriented approaches can avoid the disincentives to develop better and cheaper solutions to regulatory problems that often result in command-and-control regulations. By specifying compliance actions in detail, command-and-control regulation unavoidably ties policy to technologies and practices available when the regulation is written—no one gains an advantage from inventing more efficient or more effective methods.
- Some market-oriented approaches accommodate change more easily, both by leaving the economy freer to make its own short-term adjustments and, in many cases, by removing the need for long adversarial administrative procedures.

Innovative techniques are not always the best way to proceed; in some situations the command-and-control approach is the only practical and responsible solution. However, Federal regulators are more frequently turning to the use of innovative techniques to replace or supplement traditional ways of regulating. Eight categories of innovative techniques are described below.

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Enhanced Competition

Sometimes it is possible to meet regulatory objectives better by removing barriers to competition.

This has long been national policy under the Sherman and Clayton Antitrust Acts although the policy of enhancing competition in regulated markets has not always been integrated into regulatory programs. Much of the economic deregulation program aims at removing Federal regulations that stifle competition. In other cases, regulatory intervention is needed but the means can be improved by focusing on market structure. For example, the government may act to eliminate private- or State-sanctioned rules that prevent competition. In other instances, the government may act to restore competition by eliminating anticompetitive measures that arise from the private sector. Enhanced competition can be an important source of savings to the economy and can lead to improved diversity of products/services.

Corporate Hauling Restrictions To Be Eased By ICC Regulation

In the past, the Interstate Commerce Commission (ICC) had prohibited affiliates of a company from carrying freight for another affiliate, even for compensation. ICC did this largely to limit monopolies and to protect smaller concerns. This "corporate family" restriction resulted in inefficient use of trucks and substantial amounts of nonproductive truck mileage—although in some cases, firms eluded the restriction by leasing their trucks to other firms for return trips.

ICC proposes to reform this policy by permitting members of a corporate family that are at least 50 percent owned by the corporate parent to haul for each other.

ICC estimates the change may reduce empty operating miles by as much as 30 percent for corporate fleet trucks, contributing to corporate savings of as much as 40 percent in overall transportation costs for a combined corporate family trucking fleet. The rules would also make it more beneficial for corporations to institute their own trucking operations, reducing costs as much as 25 percent from what it would have cost for transportation by regulated, for-hire trucking companies. The eventual savings could be passed on to the consumer.

Reform Category:

Enhance Competition

Status:

Docket No. MC122—to be published spring 1980.

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Elimination Of Prior Approval To Stimulate Intermodal Traffic

The Nation's freight railroads claim that loading a truck trailer on a train is four times as energy efficient as hauling that shipment to its destination by truck. While the trucking industry does not universally accept that figure, about 8 percent of total railcar loadings in 1978 were intermodal shipments—that is, by trailers or containers adaptable to both rail and truck use. The Interstate Commerce Commission (ICC) has determined that there are inherent energy conservation benefits in rail movements of truck trailers. But present ICC regulatory policy requires approval by ICC of all changes in price or patterns of operation of intermodal shipments—a policy which discourages intermodal movement, thus reducing flexibility and resulting in wasted fuel.

ICC is proposing to eliminate prior Commission approval of such rate or patterns-of-operation changes and to allow trucking lines and railroads to reach agreement within a broad range set by ICC. The change will encourage the use of intermodal shipments, relieving inflationary pressure in transportation rates and perhaps even reducing transportation costs.

Reform Category:

Enhance Competition

Status:

ANPRM—44 FR 49279, August 22, 1979.

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Fresh Produce Exemption Increases Rail Competition

ICC does not regulate the shipment of fresh fruits and vegetables by truck, but it had required rail shippers of that produce to come before the Commission for changes in rates, routes, and frequency of service. The paperwork ICC required, as well as the inflexibility of service that it permitted, was a disadvantage to railroads in competition for the shipment of fresh produce.

ICC adopted a rule exempting railroads from complicated regulations involving rates, routes, and service frequency, and requiring only minimal bookkeeping reports from the railroads in this traffic.

As a result, railroads have regained a significant portion of the traffic in fresh fruits and vegetables that they lost to the unregulated trucking industry. The railroads now are able to offer shippers daily price quotes for these perishables—depending upon such factors as the availability of equipment—that has tended to increase competition in the business and to hold down transportation costs.

Reform Category:

Paperwork Reduction
Enhance Competition

Status:

Final Rule—44 FR 18229, March 27, 1979.

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Electronic Telecommunications Services Speeds Mail Delivery

The Postal Rate Commission (PRC) acts on recommendations from both its staff and the U.S. Postal Service to set postage rates, establish mail classifications, and generally improve mail delivery and service to the public. PRC has considered a proposal from the Postal Service to transmit first-class mail through telecommunications media (electronic mail). The Postal Service felt, after a review of new and developing technologies, that electronic mail was the best means for speeding mail delivery and recommended contracting with a single carrier to handle all services. PRC accepted the Postal Service recommendation for entry into the telecommunications field but rejected its preference of using a single carrier.

Instead, the Commission accepted the plan of the Officer of the Commission (OOC), who represents the public in PRC proceedings, that private competing firms involved in electronic transmission send messages from customers directly to specially equipped post offices. PRC selected this decentralized and competitive approach because it believed it would foster competition in telecommunications, provide technically superior service at a lower cost, and eliminate a potential jurisdictional overlap with the Federal Communications Commission. The Commission also noted that its decision was consistent with the Administration's policy to involve the Postal Service in electronic mail and to preserve a competitive telecommunications market.

Reform Category:

Enhance Competition

Status:

The Commission issued its Opinion and Recommended Decision December 17, 1979. The Governors of the Postal Service have not yet acted on it.

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Route Flexibility, End To Interlining Could Save Truckers Fuel And Money

Among the restrictions the Interstate Commerce Commission (ICC) imposes on truckers are rules that limit them to serving specific points, authorized on a case-by-case basis, and that restrict the route used to service points. Under ICC regulations, truckers authorized to serve two cities cannot serve cities between the authorized points. This practice results in interlining—when a trucker transfers goods to another trucker with the authority to serve the midpoint cities. ICC set these midpoint service restrictions at the request of regulated trucking firms, largely as a trade-off for a trucking firm's applying to serve the same basic route as a competing trucker. Interlining and the restriction of a trucker to a specified road or series of roads between two points are inefficient practices, particularly in view of fuel shortages. About 29 percent of all general freight truck tonnage, or 66 million tons a year, is interlined—much of it inefficiently.

ICC proposes to change these rules, on a trial basis, for certain carriers. ICC will authorize general route carriers—about 1,400 of the 16,000 regulated trucking firms—to serve all intermediate points along their authorized routes. Another rule change would allow all truckers restricted to particular roadways between two points to use whichever roads they wanted, thereby encouraging use of the most efficient route.

ICC estimates that eliminating inefficient interlining could save .5 million gallons of fuel annually and that removing the road restrictions could save another 7 million gallons. Since diesel fuel currently costs about $1 per gallon, these two changes could save $7½ million annually.

Reform Category:

Enhance Competition

Status:

Interlining: NPRM—December 11, 1979; MC 132—projected for publication spring 1980.
Road restrictions: MC 136—before ICC spring 1980.

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Fare, Charter Flexibility To Aid Bus Lines And Riders

The Interstate Commerce Commission (ICC) has monitored the fare structure of interstate bus lines for years. Although the firms were free to set their own rates, they were subject to Commission review and lengthy fare increase proceedings. Due to the necessary filings and paperwork, fare increases or decreases could take months to initiate. This prevented the interstate bus industry from responding to market fluctuations, such as peak and off-peak periods, and made the industry less competitive. In addition, the bus lines had to adhere to a published tariff in quoting fares for charter service, and could not negotiate with charter organizers.

ICC is proposing a rule change that would allow the bus companies to respond quickly—within the statutory 30-day public notice period—to expected fluctuations in tariff by increasing or decreasing their fares. The Commission has not yet determined exact limits, but the regulations would allow the firms to increase fares by some percentage, and decrease them by a larger percentage, with only the 30-day notice required. The rule would allow organizers of charter parties to negotiate with the carrier for individual charter bus trips, without regard to published tariff schedules.

ICC believes the advantages of reducing burdensome regulatory restrictions for fare changes eventually could be passed on to the riders, and that charter fare negotiation will increase competition and hold down prices.

Reform Category:

Enhance Competition

Status:

NPRM—44 FR 39555, July 6, 1979.
Final Rule—expected summer 1980.

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ICC Simplifies Procedures For Transporting U.S. Government Freight

The Interstate Commerce Commission's (ICC) certification procedure for motor carriers who want to transport government freight has been time-consuming and expensive. ICC has, therefore, adopted special rules which allow truckers to use a simplified procedure to obtain a Commission license to transport government traffic. A carrier will only need to prove that his firm is "fit, willing, and able" to carry the goods. Previously, carriers had to go through extensive proceedings—which usually involved protests by competitors—and prove that the service they wanted to offer was indeed in the public interest.

Since Federal procurement regulations by and large control government transportation, the change eliminates an unnecessary regulatory barrier to entering the trucking industry. The action also eliminates a filing fee, which currently ranges between $250 and $300 for applications. The new procedures could reduce the legal cost of obtaining a certificate by several thousand dollars and reduce the time lag from approximately one year, under present procedures, to two or three months.

Reform Category:

Enhance Competition

Status:

Commission decision—issued January 18, 1980; effective March 18, 1980.

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Labeling And Advertising Regulations Facilitate Comparative Shopping

One refrigerator/freezer might cost $130 to operate annually while another, more efficient one of comparable size might cost only $70 to operate. Two different brands of home insulating material might advertise the same "R-value"—a measure of the ability to insulate—but actually have different values, since these measures were not standardized. And, until recently, two brands of automotive gasoline could be identical in octane, but, because two different methods of measuring octane existed, could have different ratings. Thus, the consumer who wished to shop comparatively for home applicances, insulating materials, or even gasoline often had no simple method for doing so. These were among advertising and labeling disparities which the Federal Trade Commission (FTC), the Federal agency charged with keeping competition both free and fair, sought to rectify.

Congress directed FTC to require that gasoline pumps display a standard octane rating, taking an average of the two methods most commonly used. FTC carried this out, and its regulation became effective June 1, 1979. Congress also directed FTC to develop standard disclosures of the energy efficiency of home appliances. FTC regulations require that tags on certain appliances manufactured after May 19, 1980, contain energy-efficiency ratings or average annual-cost-of-use. Efficiency ratings are required for furnaces and room air conditioners; annual energy cost figures are required for refrigerator/freezers, freezers, dishwashers, water heaters, and clothes washers.

By standardizing labeling terms in these two areas, FTC has made comparison shopping easier, enhanced competition, and maximized freedom of choice both for business and consumers.

FTC's regulations on "R-value" ratings of insulating material have met procedural and legal snags. Originally, they were to go into effect November 1979, and would require all sellers to use and disclose standard "R-values." The regulations also would impose standard labeling procedures and require certain disclosures in printed or broadcast advertisements for insulating materials. Because of litigation and Congressional action, implementation has been delayed.

Reform Category:

Enhance Competition

Status:

Octane rating—Petroleum Marketing Practices Act, Title II, June 1978.
FTC Regulation—16 CFR Part 306; effective June 1, 1979.
Appliance Energy Label Rule—16 CFR Part 305, effective May 1980.
"R-value"—44 FR 73017, December 17, 1979; 16 CFR Part 460.

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Octane and Appliance Energy

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New Savings Certificates Available At Market Rates

For over a decade, the Federal government has limited interest rates that savers can receive on their deposits in banks and savings institutions. In keeping with his commitment to eliminating inequitable and unnecessary regulations, President Carter directed an Administration task force, chaired by the Secretary of the Treasury, to review the fairness, effectiveness, and efficiency of these longstanding interest rate controls.

The Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the Federal Reserve Board created a new category of savings account that enables savers to earn interest more closely aligned with market rates. The new category is a six-month money market certificate with a $10,000 minimum deposit. The ceiling rate for the six-month instrument is tied to the average rate on similar U.S. Treasury securities.

This action provides an additional means for savers to obtain higher rates of return on their savings and increases the flow of funds to the Nation's savings institutions. It also promotes equity in the financial sector and helps insulate savings institutions from loss of deposits during periods when market rates of interest exceed other deposit rate ceilings. This new certificate increases the responsiveness of the interest rate ceilings to market rates.

Reform Category:

Enhance Competition

Status:

In June 1978, money market certificates were introduced. In March 1979, rate ceilings were adjusted to eliminate compounding of interest over the life of the instrument and to remove the quarter-point differential in rates favoring thrift institutions for Treasury bill yields in excess of 9 percent.

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FTC Moves To End Bans On Advertising By Doctors, Eye Care Providers

Professional associations have long set codes and standards for their members, and associations representing, for example, doctors, lawyers, architects, and ophthalmologists generally set the toughest ones. Among these were broad prohibitions against advertising prices and services; and over the years, associations have convinced many State legislatures to give legislative status to such prohibitions.

In the case of physicians, the Federal Trade Commission (FTC) issued a complaint against the American Medical Association (AMA) and concluded, after an administrative trial, that AMA restrained competition among its members through various restrictions on advertising. AMA has appealed that decision to the courts.

In an action seeking to lift prohibitions on advertising, FTC initiated a rulemaking proceeding involving providers of eye examinations and prescriptions and dispensers of eyeware. The regulation, which went into effect July 1978, lifted State law and private restrictions on advertising for eyeglasses, contact lenses, and eye examinations. It also required eye doctors to provide consumers with copies of their prescriptions, enabling consumers to shop comparatively for glasses.

An association of optometrists took FTC to court, questioning whether the agency had authority to overrule State law. The U.S. Court of Appeals for the District of Columbia upheld the prescription requirement but sent the remainder of the case back to FTC for further consideration of the effect the Supreme Court decision has had on State activity.

Nevertheless, recent FTC evaluation of the eyeglass market showed that retail providers are moving aggressively into the eye-care market, advertising their prices and services. The FTC study showed that while the consumer price index from July 1978 to June 1979 rose 11.3 percent, eyeglass costs rose only 5.7 percent. FTC estimates that this action will save consumers $500 million annually.

Reform Category:

Information Disclosure
Enhance Competition

Status:

AMA adjudicative proceedings—Docket No. 9064, October 12, 1979.
Eyeglass reform—16 CFR Part 456, July 13, 1978.

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Home Loan Bank Board Proposes To Revise And Simplify Branch Office Regulations

The Federal Home Loan Bank Board (FHLBB) regulates nearly all of the Nation's 4,000 savings and loan institutions (S&Ls), the country's major private source of funds to finance construction and purchases of housing. FHLBB's regulations for branch office applications are complicated, requiring considerable effort on the part of the S&Ls, and do not easily accommodate innovation. The Board responded to this problem by proposing to eliminate, revise, and simplify the text of the regulations, and eliminate artificial limitations on a branch's operations such as location, services, and hours of operation. This means an S&L would be permitted to propose any type of office it believes will best serve its community instead of conforming a desired facility to rigid regulatory guidelines. The revised regulations would also streamline the application process by reducing the regulatory criteria for establishing new branches.

The Board's action would reduce the branching regulations by 35 percent, reduce costs to industry by an estimated $29 million over a five-year period, and promote competition without hampering the safeguards designed to ensure the safety and soundness of thrift institutions. Removing artificial limitations on branch operations provides S&Ls more flexibility and encourages innovation in their customer activities. The reduced criteria will enable the Board to streamline applications by eliminating the need for much of the economic and market data now submitted with branch applications.

Reform Category:

Sunset and Review
Red Tape Relief
Enhance Competition

Status:

Proposal—published June 14, 1979.

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Home Loan Bank Board Proposes Experimental Interstate Branching

The Federal Home Loan Bank Board (FHLBB) has proposed permitting Federally chartered savings and loan (S&L) institutions in the Washington, D.C., Maryland, and Virginia Standard Metropolitan Statistical Area (SMSA) to establish branch offices throughout the SMSA. The Board currently restricts branching outside the State (or District) within which the home office is located.

The Board issued the proposal on the basis of the uniqueness of the metropolitan Washington area. The District of Columbia, consisting of 61 square miles, is highly urban. Thus the Washington SMSA is the only SMSA in the country in which S&Ls with a home office in the central city cannot expand into a suburban area.

Increased opportunities for branching in the Washington SMSA would improve competition and enhance consumer services for savers in Washington, Maryland, and Virginia without harming small competitive institutions. The Board has ample authority to prohibit additional branching in a particular area if further branching would be anticompetitive. The proposed action recognizes the potential of a competitive marketplace unrestricted by artificial political boundaries and would benefit the metropolitan area's economy. It would allow funds to be shifted easily from areas of money availability to areas of mortgage demand.

If interstate branching worked well in this area, the Board could extend it to some of the other 33 SMSAs in the country. At present, 28 S&Ls in the Washington SMSA could establish branches across jurisdictional boundaries within the market area, and 42 Maryland and 26 Virginia S&Ls that do not have an office in the Washington SMSA could become eligible once they establish an office within their State portions of the Washington SMSA.

Reform Category:

Enhance Competition

Status:

Pre-proposal—44 FR 11090, February 21, 1979; attracted nearly 9,000 comments.

Proposal—44 FR 36057, June 20, 1979; comment period extended October 4, 1979.

Final action—expected summer 1980 upon completion and review of the Department of the Treasury's McFadden study dealing with banking regulation.

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NCUA Promotes Innovative Methods For Credit Union Management

The National Credit Union Administration (NCUA) has undertaken a review of agency manuals that cover a wide range of credit union operations including the organizing of a Federal credit union; the role, responsibility, and authority of the Federal credit union's board of directors, credit committee, and supervisory committee; and the Federal credit union's accounting practices and procedures. The review was directed at identifying those manuals that may be reduced in status to nonbinding guidelines to assist (but not restrict) credit union management.

The primary effect of these changes was to allow credit unions to try innovative methods in controlling their operations (provided these methods do not violate other applicable laws, rules, and regulations or constitute unsafe or unsound practices). While these manuals remain as guidelines to assist credit union managers, those manuals that do not have the force and effect of regulations will no longer prescribe the only acceptable method of operation for credit unions.

NCUA intends that credit union management take this opportunity to employ new methods that increase efficiency, provide better service, and make the credit union more responsive to the needs of its members.

Reform Category:

Sunset and Review
Enhance Competition

Status:

Final Rule—45 FR 8280, February 7, 1980. Review of remaining manuals is continuing.

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DOC Promotes Competition In Product Liability Insurance

The Department of Commerce (DOC) has proposed the Product Liability Risk Retention Act that would enable sellers of products to form "risk retention groups" (groups composed of similar businesses that purchase product liability insurance on a cooperative basis). Under the legislation, members of these groups will be able to obtain total or partial product liability insurance.

Currently, States regulate insurance; each State may develop its own regulations and apply them to all companies within their borders. State regulation effectively prevents the formation of risk retention groups because the group usually will consist of companies from more than one State and would have to meet the regulation requirements each State imposes. The Product Liability Risk Retention Act would exempt these groups from multiple State regulation.

The Act also permits companies to form groups to obtain from a commercial insurer a blanket policy that covers their product liability risks. Although blanket policies are widely used in life and health insurance, 40 States prohibit it—through "fictitious group" statutes—in product liability insurance. Blanket policies for small risk companies will reduce commercial insurers' administrative costs and permit them to charge rates lower than would normally be available to small companies in the marketplace.

The Risk Retention Act creates an alternative mechanism for product sellers that should ensure that the insurance premiums commercial insurers charge are more closely related to the actual risks. The act will allow DOC to charter and regulate these groups. Although DOC will be concerned with monitoring the financial condition of the risk retention groups, the groups will be free to determine rates and operating procedures. No restrictions or regulations will be imposed on companies that purchase blanket insurance.

Reform Category:

Enhance Competition

Status:

The House passed the bill. The Senate Commerce Committee is expected to hold hearings spring 1980.

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FERC Promotes Competition Between Intrastate And Interstate Pipelines

Under the Natural Gas Policy Act, which is a major portion of the 1978 National Energy Act, interstate gas pipelines may transport natural gas supplies for intrastate gas pipelines and local gas distribution companies. Intrastate gas pipelines may similarly transport gas supplies for interstate pipelines and local distribution companies. This transportation is authorized by a simplified "one-time blanket certificate" and covers short-term arrangements up to a period of two years. This simplified process replaces FERC regulatory decisions with free-market competition between interstate and intrastate pipelines for short-term gas supplies.

Nevertheless, interstate pipelines remained at a competitive disadvantage since they could not transport for other interstate pipelines without submitting to the full, time-consuming FERC certification process. In November 1979, FERC extended the same simplified blanket certificate program to interstate pipelines seeking to transport new supplies of gas through other interstate pipelines. This means that interstate pipelines seeking to attach new short-term supplies are no longer forced to deal only with intrastate pipelines, but can now "shop" for the best bargain offered by either intrastate or interstate pipelines. To date 25 interstate pipelines hold blanket certificates.

Reform Category:

Red Tape Relief
Enhance Competition

Status:

Final Rule—44 FR 68819, November 30, 1979; effective November 21, 1979. 18 CFR 284.221.

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Marketable Rights

Regulation frequently takes the form of allocating scarce resources. The traditional approach is for the government to decide, case-by-case, who is permitted to undertake particular activities—and who is barred.

An alternative approach is to create rights to conduct these limited activities and then to allow the rights to pass by trade or sale among bidders. This approach can remove the government from difficult and contentious decisions about who can "best" use the limited resource. The market, not the government, allocates rights according to which users can derive the most value from their use, and which can make relatively easy substitutions for the scarce resource. A marketable rights scheme has the further advantage that it stimulates both the most efficient use of limited resources today and encourages appropriate innovations for future use; it can also accommodate changing economic and technological conditions with fewer administrative burdens and delays than traditional programs.

FCC Considers Market Approach To Radio Spectrum Assignment

The frequency spectrum is the entire frequency of radio wavelengths used for the broadcast of such signals as radio, television, CB radio, mobile and marine radios, and even microwave transmission of long-distance telephone calls. The Federal Communications Commission (FCC) believes the spectrum is inefficiently used—some frequencies are over-used, some are under-used, and some are not used at all. Under present requirements, any assignment or reassignment of a spectrum license now must come before the FCC for a time-consuming comparative hearing.

The President's 1979 Message on Communications called for legislation and regulatory action to eliminate many of these hearings and provide incentives for more efficient use of the spectrum. FCC is now considering a reform of spectrum assignments, which, under law, are owned by the government and leased to users. Possible reforms include a marketable approach to allocation, which allows the free sale and transfer of frequency allocations; an auction of spectrum assignments; or the imposition of spectrum fees. The National Telecommunications and Information Administration (NTIA), in the Department of Commerce, is developing legislation and regulatory proposals.

The reforms should produce a more immediate allocation and assignment of the spectrum, as well as more economically efficient use of it.

Reform Category:

Deregulation
Marketable Rights

Status:

Feasibility study under way. NTIA proposals will be announced in November 1980.

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EPA Explores Marketable Permit Strategy For Chlorofluorocarbons To Cut Compliance Costs

Chlorofluorocarbon (CFC) emissions reduce the protective ozone layer in the stratosphere, increase ultraviolet radiation that reaches the Earth's surface, and cause increased skin-cancer incidence as well as reduced agricultural productivity. Although EPA has banned use of CFCs as propellents in aerosol spray cans, these chemicals remain widely used in such products as refrigerants, automobile air conditioners, home insulation, and furnishings. CFCs also escape into the atmosphere during manufacturing processes and after products are discarded.

Instead of direct regulation of non-aerosol CFC uses, EPA is considering a marketable permits strategy which would limit each industrial CFC user to a specified amount of material for production, with the total permit amount calculated to achieve an acceptable atmospheric concentration. Producers could receive permits initially either by allocation or by auction, with auction prices reflecting the market value of CFCs to the bidding firms. After allocation, firms would have a continuous incentive to find substitutes for CFCs or reduce emissions in all possible ways, since they could sell any such reduction to other firms for profit.

EPA estimates that controlled trading of marketable permits for CFCs would reduce compliance costs by as much as 50 percent over the cost of mandatory controls between 1980 and 1990. Marketable permits would also provide a continuous incentive to reduce emissions by innovative means, since any reductions a firm could obtain would be saleable.

Reform Category:

Marketable Rights

Status:

EPA is still exploring the viability of this approach. Before initiating the reform, the agency must determine an acceptable ozone depletion level, the total emissions necessary to limit depletion to that level, and the safety of likely substitute substances.

A revised version of the contractor study of economic and institutional issues will be completed by spring 1980, with an implementation study by summer 1980. EPA expects to publish a policy statement outlining a regulatory strategy by September 1980.

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FAA Promotes Competition Among Airlines For Landing Privileges

For reasons of safety, the maximum number of landing "slots"—the number of airplanes allowed to land at a particular airport in a given time period—is fixed. The present system of allotting landing slots, which is run by scheduling committees of the airlines, presents a risk of anticompetitive allocations. The Department of Transportation is considering, as one alternative, assigning these slots through rights that can be traded or sold among airlines. These slots may be initially distributed by auction. One benefit of such a policy is that free trade in slots will reduce a potential entry barrier to the industry. In addition, voluntary transactions may be far more efficient in adapting to changing conditions than discretionary centralized allotments.

Reform Category:

Marketable Rights

Status:

A proposal to try this approach at Washington National Airport is expected spring 1980.

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Offset Banking Permits Controlled Trades Over Time

Before 1977 there was no incentive for unregulated air pollution sources to control emissions, or for regulated sources to reduce their emissions more than the law required. The cost of additional reductions could hurt the firm's competitive position and would return nothing tangible on that investment.

Now companies which reduce emissions below the level required by law can "bank" such reductions for their own future expansion, for sale to new sources in offset transactions or for cost-saving internal changes in pollution control under the Bubble Policy.

For example, if a source that must limit its annual hydrocarbon emissions to 1,000 tons a year can reduce its emissions to 700 tons, it could bank the additional 300-ton reduction. If area firms later needed to increase industrial capacity, or a major new facility wanted to locate in the area, these banked emissions would be available to offset emission increases, avoid decreased air quality, and permit planned economic growth.

Banking encourages existing sources to reduce further emissions at the cheapest time—usually when the firm replaces its current pollution-reducing controls—and have the State air control agencies certify the new controls in advance of their use in specific transactions. A foundation of offset trading and brokerage institutions will create a market in emission reduction credits through which firms can freely and efficiently buy and sell offsets.

Banking also reduces the cost of buying or selling offsets; promotes easier accommodation of new industrial growth; ensures new firms that they can obtain necessary offsets without delay; stimulates pollution control innovations by providing a continuous market for cheap extra reductions; and allows firms to finance modernization by selling the offsets that more efficient production can generate.

Reform Category:

Marketable Rights
Economic Incentives

Status:

Banking was authorized by the 1977 Clean Air Act Amendment and a 1979 EPA ruling published 44 FR 3274, January 16, 1979.

As part of its "controlled trading" initiatives, EPA has established an Emission Offsets, Banking and Trading Project which has been helping States and localities develop rules and institutions to promote banking and trading of emission reductions.

Some of the cities and regions assisted to date include Boston; Buffalo; Chicago; Evansville, Indiana; Houston; Indianapolis; Louisville, Kentucky; Philadelphia; Portland, Oregon; Puget Sound, Washington; San Diego; and San Francisco. At least two banks—in Louisville and San Francisco—are operating; more are on the way.

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New Source Offset Policy Encourages Industrial Growth And Jobs

Under the Clean Air Act of 1970, areas of the country which did not meet national air quality standards by 1977 would have been prohibited from allowing new industrial growth, since any new plant would have caused or contributed to an air quality violation. EPA's Emission Offset Policy allows new major sources of air pollution to locate in such areas by paying, or persuading, existing sources to reduce their emissions. The reduction must be an amount greater than the emissions the new source will add after it installs required pollution controls. Only emission reductions beyond levels required by law are eligible as offsets.

This process of "controlled trading" permits the country's major urban areas to promote new industrial growth with improved air quality. Offsets also generate cost-effective emission reductions, since new sources will seek the least expensive emission reductions available. For example, in Oklahoma City General Motors (GM), with the help of the city's Chamber of Commerce, reached an offset agreement with local oil companies that enabled GM to build a new automobile assembly plant. The oil companies agreed to install emission controls on their storage tanks and GM agreed to use a new low-emission painting process. The transaction reduced the overall level of hydrocarbon emissions and allowed GM to build a $400-million plant employing several thousand people.

Reform Category:

Marketable Rights

Status:

EPA's December 1976 Offset Ruling was approved by Congress in the 1977 Clean Air Act Amendments. About 600 offset transactions have occurred since January 1977.

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Urban Demonstration Grants To Foster Controlled Trading, Other Innovative Approaches To Pollution Control

To help urban areas attract new industries and revitalize present ones while meeting clean air requirements, four Federal agencies are sponsoring a $4-million demonstration grant program.

The Environmental Protection Agency, the Department of Commerce, the Department of Housing and Urban Development, and the Department of Transportation awarded grants of up to $500,000 to Boston, Bridgeport-Waterbury, Buffalo-Erie County, Chicago, Elizabeth, New Jersey, Minneapolis-St. Paul, Philadelphia, and Portland. The agencies based selections on the cities' commitment to attain air quality standards, the imaginative quality of their proposals, and the projects' potential to continue after funding stops.

Under the grant program, these urban areas will develop innovative apporaches to promote both economic growth and better control of air pollution, including use of offset banking and trading (e.g., Boston) and emission-density zoning (Minneapolis). These alternatives to traditional regulation promote economic growth while attaining air quality objectives more cheaply and efficiently. They will be buttressed by such activities as redesigned industrial siting policies, emission offset information clearinghouses, unified permit systems, and methods for allocating government-generated offsets in the most beneficial manner.

At the end of the two-year program in May 1981, successful activities will continue as part of local air pollution control and economic development programs.

Reform Category:

Interagency Coordination
Marketable Rights
Performance Standards

Status:

First grant—awarded May 1979. The projects are now in various stages of development.

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Economic Incentives

Many regulatory programs were set up to correct for the failure of the economic sector to satisfy public expectations. In some cases, this has been due to the fact that, for certain activities, the costs or benefits to a firm did not accurately represent the overall costs or benefit is to the Nation. Pollution is only one example—an air polluter incurs no direct cost from its emissions, but downwind communities must pay for the resulting health and materials damage.

In such cases the traditional regulatory response is to compensate by eliminating or directly restricting the unwanted activity and assessing fines against violators. In contrast, the economic incentives approach attempts to correct the problem at its source—a price that gives the wrong signals to firms—by means of direct price correction through fees or subsidies. This category includes both the case of government involvement in pricing (through taxes or public subsidies) and the case of government-sanctioned payments between private parties.

One difficulty in using economic incentives is knowing how large the pricing correction should be. Another problem relates to the inherent uncertainty in using prices where public safety is involved. In such cases, it may be preferable to set a strict quantity limit and allocate use of the substance with a marketable rights approach. However, economic incentives have several general advantages. In comparison with regulation, economic incentives can encourage improvement beyond a particular standard, thereby reaching regulatory goals faster or fostering new technologies for better longer-term performance. They also can work with much less need for continual governmental involvement in business practices.

CAB Targets Small Communities For Air Service Subsidies

Airline service to small communities has always suffered because it often is not profitable for airlines. In order to ensure that small- and medium-sized communities receive essential air service, CAB has provided subsidies to airlines providing these flights. But by statute this program was limited to major air carriers, and CAB based the subsidy on the financial needs of an airline's entire system, rather than of the particular route. This regulatory system created the incentive for airlines to acquire larger aircraft, ill-suited to serving small points. As part of the general deregulation of airlines in 1978 this broad subsidy program was discontinued and the major air carriers began dropping service to a number of small communities. While service has been picked up in many instances by smaller commuter airlines, these airlines are not eligible for the subsidy.

CAB has developed a new subsidy program concentrating on the commuter carriers that use smaller aircraft better suited to small communities.

The new subsidy program will help ensure that essential air service is available to small communities, and may lower the amount of subsidies necessary since the commuter lines use smaller, more efficient equipment than the major carriers.

Reform Category:

Economic Incentives

Status:

NPRM—expected May 1980.

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DOE Considers Use Of Incentives For Energy Conservation

Significantly decreasing industry's dependence on foreign fuels and increasing energy efficiency requires a direct and concentrated effort. The Department of Energy (DOE) is considering a program that would provide incentives for companies to reduce oil and gas consumption. A trust fund—that industry primarily would administer and fund—would be the source of grants and loans for companies to install energy-saving techniques, do energy audits with the Federal government sharing half the cost, and undertake research and development activities. The Federal government would contribute a small share to the fund. This approach provides incentives for industry to conserve energy and decrease foreign fuel dependence with little cost to the taxpayer.

Reform Category:

Economic Incentives

Status:

Proposed legislation—recently drafted and being reviewed by DOE.

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FERC Reforms Help Speed Development of Hydroelectric Energy

The Federal Energy Regulatory Commission (FERC) is responsible for licensing most non-Federal hydroelectric projects. FERC has taken a number of steps to speed the licensing process, to reduce any institutional barriers to the development and availability of this clean and abundant source of energy.

In 1978, FERC decided to reform its requirements and procedures for all hydroelectric license applications. It developed simplified license application requirements for small hydroelectric facilities in order to maximize speedy development of this under-used, generally pollution-free, and renewable resource. The new "short-form" application covers minor hydroelectric projects of 1.5 megawatts (MW) or less. In October 1979, FERC clarified and simplified its general procedural regulations governing all preliminary permit and license applications, and simplified the application requirements for preliminary permits. In 1979, FERC also issued regulations to simplify applications for hydroelectric projects larger than 1.5 MW at existing dams.

Also, under § 213 of the Public Utility Regulatory Policies Act of 1978 (PURPA), FERC has discretion to exempt hydroelectric facilities of up to 15 MW from licensing if the facilities are located on man-made water conduits. To date, three facilities have applied for the exemption and FERC has granted exemption to all of them. In spring 1980, FERC will issue final regulations governing applications for exemption, including automatic exemption if FERC does not act explicitly on an application within 90 days.

These simplified procedures will avoid delays in construction of hydroelectric dams, cut costs, and should ensure that the Nation speedily makes maximum use of renewable hydroelectric energy.

Reform Category:

Red Tape Relief
Economic Incentives
Tiering

Status:

Minor license applications—adopted September 11, 1978; published 43 FR 40215.

General regulations governing preliminary permit and license applications and preliminary permit application requirements—adopted Octobe 22, 1979; published 44 FR 61328.

License applications and major projects at existing dams—adopted November 19, 1979; published 44 FR 67644.

Proposed rule establishing procedures for gaining conduit hydroelectric facility exemption—April 20, 1979; Final Rule—expected spring 1980.

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EPA Uses Federal Procurement To Promote Quieter Products

As an alternative to mandatory requirements that products meet noise emission standards, the Environmental Protection Agency (EPA) has begun a program that uses government's substantial purchasing power as an incentive for manufacturers to develop quieter products. The "Buy Quiet" Program encourages Federal, State, and local government to buy quieter products. For example, the Federal government purchased and loaned quieter industrial lawn mowers to selected local governments to demonstrate that they can be as competitively priced and effective as noisy ones.

The Buy Quiet Program will serve as a model for local government purchases of a wide variety of products. Relying on government to create a demand for quieter products reduces the need to develop and enforce noise-emission standards.

Other activities under the program include development of a data bank which will provide information on quiet products to local purchasing agents, and development of Buy Quiet guides.

Reform Category:

Economic Incentives

Status:

The Buy Quiet Program is part of the President's Urban Noise Program. It is under way now.

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"Bumping" Procedures Reformed To Give Break To Passengers

Airlines have traditionally overbooked certain flights to allow for late cancellations and no-shows. CAB has accepted this practice because it allowed the airlines to fly with fuller passenger loads, increasing revenue and efficiency, and thereby reducing inflationary pressures. Formerly, when airlines had overbooked a particular flight, the last passengers to check in were "bumped"—not allowed to take that flight. The bumped passengers received no compensation unless the airline could not get them to their destination within two hours of their original arrival time (four hours on international flights). However, many passengers did not think they were adequately informed or compensated for this inconvenience.

Under new CAB regulations, airlines must give passengers more information in advance about bumping procedures. Before bumping passengers, airlines now must ask for volunteers who are willing to give up their seat in return for payment in an amount bargained between the airline and the passenger (American Airlines routinely offers $100; for a recent month the industry average was $124). If there are not enough volunteers, additional passengers may be bumped—generally those checking in last—but they receive compensation equal to the price of their ticket, up to $200, plus space on the next available flight. If that flight does not arrive within the two- and four-hour limits, the compensation is double the ticket price, up to a $400 maximum, as well as space on the flight.

Passengers now either will fly according to their reservations or receive adequate compensation. The rule still permits overbooking, but encourages airlines to reduce involuntary bumping to the lowest practical amount. Of the approximately 19,000 passengers bumped in October 1979, nearly half gave up their seats voluntarily. Under the Airline Deregulation Act of 1978, there are no provisions for the rule to continue after CAB dissolves in 1985, but Congress could preserve the rule.

Reform Category:

Economic Incentives
Information Disclosure

Status:

Final Rule—43 FR 24277, June 5, 1978.

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Gasohol Incentives To Increase

As an incentive to companies entering the gasohol producing industry, the Department of Energy (DOE) is considering a special allotment to gasohol blenders of unleaded gasoline, one necessary ingredient for gasohol. Since the supply of unleaded gasoline is limited, a special allotment is a form of economic incentive that will increase the output of ethanol, the other necessary ingredient for gasohol, from the present production of 60 million gallons per year to as much as 300 million gallons per year. Gasohol use could eventually reach three billion gallons per year, or three percent of present gasoline consumption.

The uncertainty involved in applying this innovative technique to a new industry is that DOE is unable to judge how many companies will enter the market at different amounts of unleaded gasoline allotment. The Secretary of Energy is considering several alternatives and action awaits his decision.

Reform Category:

Economic Incentives

Status:

NPRM—expected spring 1980.

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Noncompliance, Nonconformance Penalties Promote Clean Air More Effectively and Fairly

A firm may commit many air pollution violations due to technical or financial problems, or due to noncompliance, which can be far less expensive than the capital and operating investment needed to comply. Where sources can save money by investing in litigation rather than in control equipment, they gain a competitive advantage because they can produce more cheaply than competitors who have complied.

Noncompliance penalties remove this advantage by assessing penalties equal to the amount saved by not complying, including capital, interest, operation, and maintenance savings. This step removes a major incentive for delayed installation of pollution control equipment.

Nonconformance penalties deal with mobile source violations resulting from technical problems rather than from calculated noncompliance.

Under this system, manufacturers will pay a penalty for heavy-duty truck diesel engines marketed after 1984 that do not meet emission standards. Violators can continue to sell their engines but must pay a graduated penalty based on the amount the standard is exceeded. EPA will increase the penalty periodically to prevent manufacturers from using the penalty as a permanent substitute for compliance. Under no circumstances will emissions be allowed to exceed a designated maximum limit.

Noncompliance penalties will eliminate the incentive to avoid emission standards becasue a competitive advantge is secured. Nonconformance penalties will encourage compliance without undue disruption to firms that cannot immediately meet EPA emission requirements.

Reform Category:

Economic Incentives
Compliance Reform

Status:

Noncompliance Penalties:
Proposed—44 FR 17309, March 21, 1979; final rules projected for May 1980.

Nonconformance Penalties:
Proposed—44 FR 92164, February 13, 1979; revised proposal to be published mid-1980.

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FERC Relies On Market For More Efficient Natural Gas Allocation

Since the passage of the Natural Gas Act in 1938, the wellhead prices of natural gas purchased by interstate pipelines have been subject to regulation. In the late 1960's and early 1970's, the rate of natural gas discoveries began to fall behind the rate of gas production. Shortages developed, and the price that unregulated intrastate pipelines were willing to pay for gas went considerably higher than the price interstate pipelines were allowed to pay. The result was that gas shortages have been focused almost entirely onto the interstate market.

FERC has two programs aimed at achieving efficient allocation of natural gas during periods when demand exceeds supply. The first is an incremental pricing curtailment plans which program which specifies that the high costs of new gas supplies be allocated to industrial users up to the price of alternative and more abundant fuels. This could induce some gas users to switch to lower cost available alternative fuels. The second program is the Commission's administration of pipeline determine the manner in which interstate pipelines will allocate natural gas to their customers during a shortage.

FERC is considering linking these programs. This initiative allows each industrial user to choose ar alternative. Industry would use this as a basis for determining service and cost. That is, users choosing a low priced alternative fuel for incremental pricing purposes would receive correspondingly low priority status so that their natural gas allocations will be curtailed before users choosing higher priced alternative fuels.

This proposal seeks to use market forces rather than regulations to create a stable and fair system for allocating supplies and cost of natural gas and may lessen administrative and economic burdens.

Actions on these issues will directly affect thousands, if not millions, of parties with different and often competing interests.

Curtailment issues, existing since the early 1970's, are among the most heavily litigated subject areas at the Commission.

Estimates show that the present curtailment system may be responsible for $2 to $4 billion in efficiency losses nationwide. That is, many users able to obtain and use low priced alternative fuels are receiving natural gas at the same time that other users, whose alternative fuel costs are higher, cannot acquire sufficient natural gas to meet their requirements. The result is unintended, unfair, and economically wasteful. The self-regulating market system approach outlined above offers the potential for significant anti-inflationary impact, along with equally significant reduced regulatory burdens.

Category:

Economic Incentives

Status:

Notice of Inquiry—44 FR 38857, July 3, 1979.

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Performance Standards

Even within traditional regulatory approaches there may be room to decrease government interference in firm decisionmaking. Regulatory requirements occupy a continuum extending from those that specify detailed compliance action (prescribing, for example, exactly what technologies must be used) and those that set general performance levels and permit regulated entities flexibility to find and use the best ways of complying. Performance standards allow firms to minimize their costs of compliance. One general difficulty with performance standards is that compliance may be more difficult or expensive to monitor than specific design standards. Some of the most interesting uses of performance standards have been those that allow firms new freedom to adjust regulatory requirements among their products or processes—EPA's "Bubble" policy for air pollution is a notable example—as long as they stay within firmwide or plantwide averages.

EPA Considers Flexibility For Auto Manufacturers To Meet Emission Standards

Under the Clean Air Act, the Environmental Protection Agency (EPA) has subjected automobile pollution to detailed regulation, requiring each car to meet the same emission standard despite variations in compliance costs among different models. In the coming months, EPA will evaluate an emission-averaging approach for regulations being developed to control emissions of nitrogen oxides, prime ingredients of smog, from engines in heavy-duty vehicles—generally trucks of more than 8,500 pounds.

EPA now requires that all heavy-duty engine emissions for manufacturers remain at or below a specified fleet-wide average. EPA is considering changing the requirement to allow some heavy-duty vehicle engines to exceed mandated fleet averages, so long as the overall average is not exceeded for the entire heavy-duty fleet. This would give manufacturers the flexibility to adopt least-cost control strategies by reducing emissions more on engines where control is cheapest. Proponents claim it would reduce overall compliance costs and spur innovation in cost-effective control technologies, without increasing overall levels of automobile pollution.

Reform Category:

Performance Standards

Status:

NPRM—expected late summer 1980.

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OSHA Moves Toward Performance Standards

A significant ingredient of the Occupational Safety and Health Administration's (OSHA) overall response to the issue of regulatory reform is its move toward more performance-oriented standards. OSHA has examined hundreds of pages of current standards that were originally adopted as national consensus standards, all based on detailed design-specific language. The agency has rewritten these standards into much shorter, simpler performance-oriented language. These revisions will be final soon for two major subparts of the OSHA standards dealing with fire protection and electrical safety. For example, the old regulations specified the exact height and placement of fire extinguishers. The new formulation calls for fire extinguishers to be accessible, but permits firms several ways of providing this accessibility. The revised standards will permit more flexibility in compliance, thus permitting better use of resources.

Reform Category:

Performance Standards

Status:

Final Rule—expected April 1980.

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DOT Considers More Flexibility For Auto Manufacturers To Meet Fuel Economy Standards

The Department of Transportation (DOT) is taking steps to permit automobile manufacturers more flexibility to find less costly ways to meet the rigorous fuel-economy standards the Department sets under statutory requirements. DOT is preparing legislation that would permit eligible manufacturers to accrue fuel-economy "credits" for a three-year period (either retroactively or in future models). This would permit the manufacturers to make engineering changes more efficiently without sacrificing ultimate gains in fuel economy. DOT already regulates fuel-economy averages for a manufacturer's fleet. This gives the manufacturer the discretion to allow some models to fall below the average if improvement would be excessively costly—as long as other models exceed the required standards.

Reform Category:

Performance Standards

Status:

Senate Committee has held hearings.
House Committee hearing scheduled for spring 1980.

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EPA Cleans Air At Reduced Costs With A"Bubble"

EPA recognizes that regardless of how carefully it develops general rules to control pollution, the rules often impose extra costs because they cannot take into account differences in control costs among individual sources.

EPA's "Bubble Policy" responds to this problem by encouraging States to allow existing sources of air pollution to propose alternative mixes of controls that would achieve the required emissions reductions at lower cost. If a firm can find ways to reduce emissions—either within its own plant or at a neighboring plant—at a cost of $5 a pound for a given pollutant, then it need only reduce half as many $10-a-pound emissions. Thus firms will have the flexibility to relax controls at emission points with high control costs, in exchange for extra controls on emission points with low control costs, so long as the overall impact on air quality remains the same.

The Bubble Policy is one of a series of "controlled trading" steps designed to reduce pollution control costs while stimulating technological innovation. Preliminary evidence suggests that bubbling will let such sources as petroleum refineries and chemical plants reduce control costs by millions of dollars each year. Such savings can give business a powerful incentive to find better, more efficient pollution control technologies, since cheap extra reductions at some emission points can translate to large amounts of freed capital. A study done for Dupont, but not independently confirmed by EPA, showed that Dupont might save $81 million (1979 dollars) or 60 percent in annual compliance costs by using the Bubble at 52 of their domestic plants. Accelerating the rate of control-technology innovation is essential to avoid continual increases in the cost of controlling air pollution as the country's population, economic base, and number of emitting sources grow.

Reform Category:

Performance Standards

Status:

Bubble Policy—44 FR 71780, December 11, 1979.

EPA is engaged in extensive outreach to the business community and State and local officials to encourage use of the policy, demonstrate its full potential, and help get bubble applications approved.

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Information Disclosure

In some cases regulatory goals can be enhanced by making sure that the user or consumer of a product or service receives relevant information on the consequences of using it. Information disclosure allows users and consumers an informed freedom of choice among competing goods and services. To the extent that disclosure techniques are effective, there should be less pressure to protect users and consumers through direct government restrictions on the goods and services themselves.

Disclosure includes two types of programs: labeling—programs in which suppliers are required or encouraged to put relevant information on labels or accompanying materials; and rating—programs in which the government itself releases information (e.g., EPA automobile mileage figures, FTC data on cigarette tar content) to the public.

FTC Moves To End Bans On Advertising By Doctors, Eye Care Providers

Professional associations have long set codes and standards for their members, and associations representing, for example, doctors, lawyers, architects, and ophthalmologists generally set the toughest ones. Among these were broad prohibitions against advertising prices and services; and over the years, associations have convinced many State legislatures to give legislative status to such prohibitions.

In the case of physicians, the Federal Trade Commission (FTC) issued a complaint against the American Medical Association (AMA) and concluded, after an administrative trial, that AMA restrained competition among its members through various restrictions on advertising. AMA has appealed that decision to the courts.

In an action seeking to lift prohibitions on advertising, FTC initiated a rulemaking proceeding involving providers of eye examinations and prescriptions and dispensers of eyeware. The regulation, which went into effect July 1978, lifted State law and private restrictions on advertising for eyeglasses, contact lenses, and eye examinations. It also required eye doctors to provide consumers with copies of their prescriptions, enabling consumers to shop comparatively for glasses.

An association of optometrists took FTC to court, questioning whether the agency had authority to overrule State law. The U.S. Court of Appeals for the District of Columbia upheld the prescription requirement but sent the remainder of the case back to FTC for further consideration of the effect the Supreme Court decision has had on State activity.

Nevertheless, recent FTC evaluation of the eyeglass market showed that retail providers are moving aggressively into the eye-care market, advertising their prices and services. The FTC study showed that while the consumer price index from July 1978 to June 1979 rose 11.3 percent, eyeglass costs rose only 5.7 percent. FTC estimates that this action will save consumers $500 million annually.

Reform Category:

Information Disclosure
Enhance Competition

Status:

AMA adjudicative proceedings—Docket No. 9064, October 12, 1979.
Eyeglass reform—16 CFR Part 456, July 13, 1978.

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Federal Reserve Board Seeks To Simplify Truth-In-Lending Regulations

The Federal Reserve Board (FRB) administers the Truth-in-Lending Program which requires financial institutions to provide clear disclosure of credit terms to consumers. FRB, in an effort to simplify and streamline the regulations and the disclosure statement required under the program, submitted draft legislation to Congress.

Simplified disclosure of credit terms will assist consumers in understanding the important features of proposed credit transactions. Simplification of the regulatory requirements will help creditors comply with the technical provisions of the regulations and reduce unnecessary burdens that the program places on them.

Legislative change was required for any changes in the existing regulations because most current disclosure requirements are mandated by statute.

Reform Category:

Sunset and Review
Information Disclosure

Status:

Simplification of Truth-In-Lending is contained in Title VI of the Depository Institutions Decontrol Act of 1980, which was signed into law March 31, 1980.

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Market Surveys Now Available From USITC

The United States International Trade Commission (USITC) provides a legal forum for determining whether imports that are dumped by foreign exporters or subsidized by foreign governments cause injury to competing domestic manufacturers. By making the results of market research conducted by agency staff available to persons interested in testifying at Commission hearings, witnesses can relate their experiences to the analysis of the market competition described in the staff documents, and take positions with regard to preliminary staff findings. In the past, this information was not available to the public until after a final agency decision had been published. The dollar value of dumped or subsidized imports investigated by the Commission exceeded $600 million in 1978. The Commission anticipates that the dollar value of imports subject to future investigations will be even higher.

New regulations require the Commission to place its staff report on the particular investigation on the administrative docket prior to a hearing on the matter. This enables participants at hearings to rebut the assumptions or data in the report, and to relate the experiences of their individual firms to the market conditions described. Moreover, interested persons unable to afford market research surveys now have access to such information prior to the publication of opinions justifying final agency actions. A wide array of comprehensive marketing information is now available and provides an authoritative source on the changing economic conditions in domestic product markets.

Reform Category:

Information Disclosure

Status:

Policy—effective
January 1, 1980.

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Bureau Of Alcohol, Tobacco, and Firearms Chooses Public Awareness Rather Than Direct Regulation To Limit Alcohol Use By Pregant Women

Scientific evidence indicates that women who drink heavily during pregnancy could bear children with mental and physical defects. This condition is known as the Fetal Alcohol Syndrome. The effects of moderate or light drinking are uncertain. Although a safe level cannot be established, it is important that women are aware of the dangers involved.

In January 1978, the Bureau of Alcohol, Tobacco, and Firearms (ATF) solicited public comment from scientists, doctors, women's organizations, and consumers. In November 1978, the Food and Drug Administration (FDA), within the Department of Health, Education, and Welfare (HEW) asked ATF to consider issuing regulations which would require a warning label on all alcoholic beverage containers to alert the public to the risks of alcohol consumption by pregnant women.

As an alternative to direct regulation in this case, ATF and the alcoholic beverage industry developed a campaign to increase public awareness of the dangers of alcohol consumption by pregnant women. This approach was a less costly method of informing the public and perhaps a more effective method of bringing a message to the public.

The program includes: distribution of a report on the effects of alcohol on the fetus, public service announcements, brochures to the public and medical profession, and educational programs in schools. ATF, in cooperation with HEW, is currently sponsoring a national television message on Fetal Alcohol Syndrome and distributing a pamphlet aimed at teenagers. The alcoholic beverage industry has placed ads in magazines, provided funds for newsletters, and sponsored mailings to doctors.

Reform Category:

Interagency Coordination
Information Disclosure

Status:

ANPRM—43 FR 2186, January 16, 1978.
Progress report—44 FR 8233, February 9, 1979.
Report to the President and the Congress—to be sent summer 1980.

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Voluntary Standard Setting

In some cases, it is preferable for government programs to rely on regulatory standards devised by regulated firms themselves. The advantages of a voluntary approach are that private technical knowledge can be applied directly to the problem, and cooperating firms may reach agreement faster than government procedures would allow. Some regulators are concerned, however, that there should be some sort of public representative when such voluntary standards are developed, to ensure that voluntary standards reflect public value judgments and do not represent a de facto barrier to market entry.

NRC Accepts Voluntary Standards In Regulating The Medical Use Of Radioisotopes

The Nuclear Regulatory Commission (NRC) regulates when necessary to provide for the radiation safety of the general public. This regulatory activity includes licensing physicians and hospitals that use radioisotopes.

NRC developed and published a policy stating that NRC will rely generally on voluntary standards set by physicians rather than issue mandatory standards to control the medical use of radioisotopes. This would minimize intrusion into medical judgments and other areas traditionally part of the practice of medicine, while still considering the health risk to the patient.

Under the formal policy, if NRC finds that the physicians' voluntary standards adequately provide for radiation safety and that the physicians are complying with their standard, NRC will not issue regulations. For example, instead of setting standards for the professional certification of physicians, NRC accepts certification provided by certain physician organizations.

However, NRC will regulate the medical use of radioisotopes if it finds that the voluntary standards do not guard against the health risk to the patient. For example, because of the health risk to the patient, NRC regulates the use of radiation therapy. Finding voluntary compliance inadequate, NRC is considering a regulation that requires physicians to report to NRC if they misadminister radioactive materials to patients.

Reform Category:

Voluntary Standard Setting

Status:

Policy Statement—44 FR 8242, February 9, 1979.
NPRM for Misadministration of Radioactive Material—43 FR 29297, July 7, 1978.
Final Rule—spring 1980.

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EPA Promotes Voluntary Noise Labeling Instead of Direct Regulation

Noise—one of the least publicized forms of pollution—can have serious public health effects. While EPA has authority to mandate disclosure of noise effects, regulations requiring such disclosure data for all major products would impose heavy burdens on the Federal government and on many industries.

EPA encourages voluntary noise labeling by industry for two types of products: those emitting noise capable of adversely affecting public health; and those sold wholly or in part on the basis of their effectiveness in reducing noise. To be acceptable, voluntary labeling for the latter must include data on effectiveness in reducing noise.

This step improves the cost-effectiveness of noise control by minimizing the amount and cost of recordkeeping and Federal monitoring activities for industries that adopt voluntary noise labeling programs that meet EPA's standards. By adopting voluntary noise labeling, the industries could avoid mandatory standards.

Reform Category:

Voluntary Standard Setting

Status:

Final Rule—44 FR 56120, September 27, 1979; 40 CFR 211 Subparts A and B.

Contact:

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FDA Proposes Voluntary Standards Policy For Medical Devices

Industry and government will cooperate to promote innovations in the development of safe medical devices under the Food and Drug Administration's (FDA) new Voluntary Standards Policy. FDA will be involved in the development, support, endorsement, and use of voluntary performance standards, while reserving the right to issue mandatory standards when necessary. FDA believes that endorsing adequate voluntary standards will encourage manufacturers, voluntary standards organizations, and other interested groups to develop performance standards. FDA believes the policy will expedite the development of standards while decreasing the drain on FDA resources. FDA will evaluate the standards and endorse those that are found adequate. Once a voluntary standard has been endorsed, FDA will promote the standard to consumers.

Reform Category:

Voluntary Standard Setting

Status:

Notice for comment—45 FR 7474, February 1, 1980.

Contact:

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CPSC Implements Voluntary Approach To Reduce Furniture Fires

The Consumer Product Safety Commission (CPSC) estimates that 45,000 upholstered furniture fires occur each year and result in 3,200 injuries and 800 deaths. At a minimum, 1,700 of these injuries and 500 of the deaths were caused by cigarettes igniting the furniture, producing $25 million of property damage.

To reduce the number of injuries and deaths from fires caused by smoldering cigarettes dropped on upholstered furniture, CPSC considered imposing a mandatory flammability standard. This standard could reduce injuries and deaths by 80 percent and would cost the industry $175 million annually to comply, according to a CPSC estimate. Industry groups, however, estimate that the mandatory standard would add $1 billion annually to manufacturing costs, and offered a voluntary standard that CPSC estimated would reduce injuries and deaths by 60 to 70 percent. CPSC and industry estimates of the voluntary program range from $30 to $39 million. Manufacturers representing about 70 percent of total sales have agreed to participate in the program.

CPSC agreed to defer its mandatory standard for one year while closely monitoring the less burdensome voluntary practice program to ensure that the furniture meets the safety standards. CPSC believes the voluntary standards might succeed in reducing manufacturers' costs without compromising consumer safety.

Reform Category:

Voluntary Standard Setting

Status:

CPSC deferred for one year its action on the mandatory standard November 28, 1979.

Contact:

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CPSC Works With Industry To Reduce Dangers From Christmas Tree Lights

The Consumer Product Safety Commission (CPSC), through its program of defective product identification (requiring manufacturers to inform CPSC of unsafe products), determined that miniature Christmas tree lights caused fires and electrical shocks resulting in deaths and injuries and so proposed a mandatory safety standard for the manufacture of these lights. At the same time, Underwriters Laboratory, a private standard-setting organization that conducts safety tests, published a voluntary standard consistent with the CPSC mandatory standard. The National Ornamental and Electrical Light Christmas Association, an industry group, also published a more stringent voluntary standard than Underwriters Laboratory that is consistent with industry technology.

A voluntary standard allows the industry more freedom to work within its existing technology and reduces government costs in developing mandatory standards, recording industry compliance, and enforcing the standard. Experimenting with voluntary rather than mandatory standards, CPSC postponed issuing a mandatory standard for one year while it monitors industry's conformity to the voluntary standard. CPSC will analyze the overall level of safety achieved and determine whether a mandatory standard is necessary to reduce adequately the potential dangers from miniature Christmas tree lights.

Reform Category:

Voluntary Standard Setting

Status:

Proposed mandatory standard—43 FR 19136, May 3, 1978. CPSC postponed issuing the standard until March 15, 1981, when it completes the study of the voluntary standard, 44 FR 13040.

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CPSC Works To Reduce Dangers From Public Playground Equipment Through Voluntary Program

Every year 93,000 children need emergency-room treatment because of accidents associated with public playground equipment. From 1973 through 1977, playground accidents resulted in 36 deaths.

To reduce the dangers of death and injuries, the Consumer Product Safety Commission (CPSC) plans to issue a safety handbook to promote the design and manufacture of safer equipment and to engage in an educational campaign to promote safer use.

The safety handbook contains equipment guidelines developed by the National Bureau of Standards (NBS) that will provide guidance, without imposing mandatory standards, to industry in designing equipment and will assist purchasers in selecting equipment. CPSC funds basic research on various surfacing materials for public playground equipment and makes the results of these studies available to purchasers to help them decide the appropriate type of surfacing for their geography, budget, and use patterns.

Reform Category:

Voluntary Standard Setting

Status:

CPSC requested comments on NBS reports—44 FR 57352, October 4, 1979. CPSC will publish the safety handbook at the end of 1980.

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Compliance Reform

This category of reform includes the use of market-oriented techniques to ensure compliance with regulatory requirements. In general, reforms in this area replace or supplement government compliance monitoring and enforcement with other mechanisms, such as third-party monitoring, supervised self-certification, and economically-based penalites.

While there has been less general discussion of this set of regulatory techniques, there has been considerable past experience with it—for example, the Department of Justice relies heavily on private enforcement of antitrust policies. A recent application of this technique is the Department of Agriculture's reform of its quality-control inspection program to allow food packing plants to develop their own quality-control systems. Market-oriented compliance programs can encourage wider compliance with less cost to the taxpayer for Federal enforcement.

OSHA Uses Labor-Management Committees To Monitor Workplace Safety

In the search to find more effective methods for achieving worker health and safety, OSHA is examining the use of labor-management committees as an alternative to on-site compliance inspections. One such alternative is already in operation as a pilot demonstration project. It is the result of an agreement between a major national construction firm and a State building and trades council, giving a labor-management committee at a multimillion dollar construction site the authority to monitor the workplace safety and health conditions and to resolve any disputes that occur. OSHA assumes a consultative role, making no compliance inspections or citations unless a catastrophe occurs or the labor-management committee cannot resolve problems of health and safety. This arrangement will, it is hoped, keep OSHA from developing adversarial enforcement-oriented interactions with companies; it also brings labor and management together so they can work out problems without resulting in costly OSHA enforcement proceedings. The early results of the demonstration project appear very promising.

Reform Category:

Compliance Reform

Status:

OSHA plans to extend this concept to general industry in the next year.

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FAA Lifts Unnecessary Recertification Of Experimental Aircraft

The Federal Aviation Administration (FAA), within the Department of Transportation, certifies the proper construction and safety of experimental aircraft. Formerly, FAA inspected, certified, then annually recertified the same aircraft. Because the process was time-consuming and rarely resulted in the recertification's being denied, FAA decided to eliminate the annual recertification. Now, the agency issues experimental certificates for exhibition, racing, and amateur-built aircraft. These experimental certificates are valid for up to three years and allow the builders to perform "condition inspections" of their own aircraft to determine whether they meet FAA certification standards.

By eliminating annual inspections, FAA saves builders and operators of experimental aircraft the time and expense of frequent recertification without compromising safety. As of 1978 there were 10,206 registered experimental aircraft in the United States.

Reform Category:

Compliance Reform

Status:

Final Rule—44 FR 46778, August 9, 1979.

Contact:

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OSHA's New Direction Program Trains Employers And Workers

In the past, the Occupational Safety and Health Administration (OSHA) relied entirely on its inspectors to ensure proper working conditions, but limited manpower created the need for new inspection methods. One method is to train employers and workers to identify safety and health hazards. To help provide that training, OSHA established a grant program supporting a broad range of activities, depending on the organization's needs. The four categories for grant awards are: trade unions, trade associations serving small businesses, colleges and universities, and non-profit organizations. In most instances $50,000 is the maximum funding level for one-year planning grants, and $250,000 annually the maximum for a development grant.

In September and October of 1978, OSHA awarded 86 planning and development grants. These grants helped develop technical expertise for about 8,680 workers as of the first quarter of fiscal year 1980. The increasing capability of workers and employers to identify and resolve workplace hazards leads to a healthier and safer workplace and reduces dependence on OSHA inspectors.

Reform Category:

Compliance Reform

Status:

Grant program—43 FR 16140, April 14, 1978; and 44 FR 47176, August 10, 1979. Grants first awarded October 6, 1978; new grants will be awarded during 1980.

Contact:

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Coast Guard Permits Self-Regulation In The Manufacture Of Pressurized Containers

The U.S. Coast Guard (USCG) is responsible for ensuring the proper construction of containers or cylinders that store materials that are under pressure on boats or ships in navigable waters. These containers are called pressure vessels. In the past, USCG inspected pressure vessels during assembly and again after construction was completed before granting certification. This process was time-consuming and costly to both USCG and the manufacturer. The Department of Transportation (DOT) has proposed new procedures that will permit inspection and certification by the American Society of Mechanical Engineers in place of USCG. The Society would inspect pressure vessels on a sample basis during assembly only. The reform will save time and eliminate scheduling problems without compromising construction standards.

The action will save the pressure-vessel industry 7,000 person-days annually, representing a $500,000 savings, and will save Coast Guard inspectors 5,000 person-days. The move to self-regulation also reduces paperwork and speeds up the management process by not requiring manufacturers to submit to USCG inspection.

Reform Category:

Paperwork Reduction
Compliance Reform

Status:

NPRM—to be published May 1980.

Contact:

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Coast Guard Institutes Third-Party Inspection Of Lifesaving Equipment

The U.S. Coast Guard (USCG) sets and enforces minimum safety standards for lifesaving equipment. In the past, USCG has inspected the factories where the equipment is manufactured in order to enforce these standards. The Department of Transportation (DOT) has instituted a new program to eliminate USCG inspection of such lifesaving equipment as flares and line-throwing devices. DOT is phasing in a program of inspection by third parties that permits the industry to police itself.

While there will be small cost increases (approximately $120,000 per year) to manufacturers from this action, these will be passed on to consumers rather than to all taxpayers. This reform helps eliminate unnecessary steps in the approval process but does not jeopardize the reliability of the equipment.

Reform Category:

Red Tape Relief
Compliance Reform

Status:

Final Rule—44 FR 73055, December 17, 1979.

Contact:

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Department of Agriculture Simplifies Meat and Poultry Inspection To Improve Results

The Food Safety and Quality Service (FSQS), within the Department of Agriculture (USDA), regulates by inspection the meat, poultry, and egg industries involved in interstate and foreign commerce to ensure wholesome meat and poultry products.

In the past, government inspectors, assigned to packinghouses, inspected meat and poultry. This inspection system proved very effective for many years. However, economic growth, technological advancement, industrial competition, and social changes altered the meat and poultry products market, but government regulations remained essentially unchanged. Inspection cost, moreover, increased by 130% between 1970 and 1979.

FSQS has initiated reform of its meat and poultry regulations to meet the needs of today's industry. The new regulations, acknowledging improved technology, allow packinghouses to develop their own quality-control systems. If FSQS determines that the system is adequate and complies with the requirements of inspection laws, it will approve the system. The new regulations will allow processors to label the food as having been prepared under an approved quality-control system and to advertise that fact.

These regulations could affect some 6,900 meat and poultry plants currently subject to USDA inspections. FSQS estimates that initial start-up costs to medium-sized firms that opt to participate could be approximately $1,000 per plant. Costs could be even less for the many plants which already have acceptable quality-control programs. The Department estimates that its evaluation and approval of individual quality-control systems would cost approximately $440,000 per year, but reduce its routine inspection costs by $1 to $2 million per year.

Reform Category:

Compliance Reform

Status:

NPRM—44 FR 53526, September 14, 1979. Final action—planned for spring 1980.

Contact:

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HUD Certification Helps Cut Housing Costs

The Department of Housing and Urban Development (HUD) is responsible for programs dealing with housing needs and improving and developing the Nation's communities.

Previously, HUD analyzed all proposed residential subdivision construction for which developers and prospective homeowners were seeking Federal Housing Administration (FHA) insured mortgages. This was time-consuming, costly, slowed housing construction, and raised housing costs.

Under HUD's new rules, HUD will either certify the local government's standards for residential subdivision construction or require certification of these standards by the developer. If the local environmental criteria and construction standards are acceptable, HUD certifies the local jurisdiction so that subdivisions need not obtain environmental assessments or impact statements. In areas where local governments are not certified, HUD conducts environmental reviews and developers may certify that they meet HUD construction standards so that HUD review of these standards is unnecessary.

The new certification requirements have been tested in nine jurisdictions with large amounts of HUD-FHA mortgage insurance. Most of the communities qualified for full or conditional certification. This has eliminated substantial overlap between Federal and local environmental reviews and, most important, has helped save time and money in completing housing subdivisions.

Reform Category:

Red Tape Relief
State/Local Coordination
Compliance Reform

Status:

Reform implemented November 1979.

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Noncompliance, Nonconformance Penalties Promote Clean Air More Effectively and Fairly

A firm may commit many air pollution violations due to technical or financial problems, or due to noncompliance, which can be far less expensive than the capital and operating investment needed to comply. Where sources can save money by investing in litigation rather than in control equipment, they gain a competitive advantage because they can produce more cheaply than competitors who have complied.

Noncompliance penalties remove this advantage by assessing penalties equal to the amount saved by not complying, including capital, interest, operation, and maintenance savings. This step removes a major incentive for delayed installation of pollution control equipment.

Nonconformance penalties deal with mobile source violations resulting from technical problems rather than from calculated noncompliance.

Under this system, manufacturers will pay a penalty for heavy-duty truck diesel engines marketed after 1984 that do not meet emission standards. Violators can continue to sell their engines but must pay a graduated penalty based on the amount the standard is exceeded. EPA will increase the penalty periodically to prevent manufacturers from using the penalty as a permanent substitute for compliance. Under no circumstances will emissions be allowed to exceed a designated maximum limit.

Noncompliance penalties will eliminate the incentive to avoid emission standards becasue a competitive advantge is secured. Nonconformance penalties will encourage compliance without undue disruption to firms that cannot immediately meet EPA emission requirements.

Reform Category:

Economic Incentives
Compliance Reform

Status:

Noncompliance Penalties: Proposed—44 FR 17309, March 21, 1979; final rules projected for May 1980.

Nonconformance Penalties: Proposed—44 FR 92164, February 13, 1979; revised proposal to be published mid-1980.

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Noncompliance

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Nonconformance

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TIERING

It is not always sensible to impose a single regulatory standard for all applications. In many cases agencies find it possible to achieve the same results with less regulatory burden by "tiering" these requirements for different classes of firms. The most notable cases of tiering involve relative relief for smaller firms. To strengthen the small business sector of the economy, the President has directed Executive agencies to minimize the burdens imposed on small business. Regulatory requirements that are imposed without reference to the size and nature of the businesses being regulated tend to have a disproportionate effect on small businesses and may restrict their ability to compete. Tiering entails tailoring implementation requirements to the needs of small business, although such adjustments should not jeopardize the social and economic goals the regulations are designed to promote.

FCC Deregulation Would Aid Small Telecommunications Firms

Under current FCC regulations, certain rules and practices pertain to the filing of rate schedules and the authorization for the use of telecommunication facilities. These rules and practices that now apply to dominant domestic telecommunications common carriers—such as AT&T—apply also to competitive carriers not holding a dominant position in the marketplace. Thus, a nondominant carrier such as Southern Pacific Communications has to make a detailed filing with FCC for a technological innovation affecting its rate structure. This gives notice to AT&T of the new technology and reduces Southern Pacific's competitive position.

FCC is inquiring into proposals that would free nondominant telecommunications carriers from detailed filing regulations; it also is considering the possibility of freeing certain carriers from all regulations.

FCC believes that deregulation of small carriers will allow marketplace forces to ensure competition in the industry.

Reform Category:

Deregulation
Red Tape Relief
Reduce Small Business Burden
Tiering

Status:

Competitive Common Carrier—Docket No. 79252.
NPRM–44 FR 67445, November 26, 1979.

Contact:

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Comptroller Reduces Small Bank Burden

To assure the soundness of national banks, the Comptroller of the Currency requires reporting of certain financial information. Upon review of its information needs, the Comptroller determined that the amount of financial information required of small commercial banks (assets less than $100 million) was not essential to fulfilling its regulatory mission. The Comptroller thus reduced the reporting burden on small commercial banks, replacing the standard form with an abbreviated version. The Federal Reserve and the Federal Deposit Insurance Corporation also made these changes. National banks with less than $100 million in total assets now report 40 percent less financial information to the Comptroller of the Currency.

Reform Category:

Paperwork Reduction
Reduce Small Business Burden
Tiering

Status:

Implemented December 1978.

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SEC Eases Capital Raising For Small Business

The Commission recognizes the importance of small businesses to the American economy and the particular difficulties they face in acquiring capital. Through its Office of Small Business Policy, SEC has held extensive public hearings on this issue and has been examining the effect of its own rules on the high cost to small firms of raising capital on public markets.

Several commentators at the hearings identified a number of problems for small issuers that inadvertently impair their capital-raising efforts. In response to those concerns, the Commission has recently taken several measures to ease certain regulatory burdens imposed on small business by the Federal securities laws. As an example, the Commission has adopted a rule to permit certain corporations to offer and sell up to $2 million of their securities in any six-month period to an unlimited number of accredited investors, defined as institutional purchasers, officers and directors, and purchasers of $100,000 or more of the company's securities, and 35 non-accredited investors without registering. The action would liberalize significantly the sale of restricted securities to make small offerings more viable.

In addition, the Commission adopted a new registration statement to allow small issuers to sell up to $5 million in securities without incurring the full range of disclosure and reporting burdens imposed upon other issuers. For example, the modified registration statement calls for less extensive narrative disclosure and requires the issuer to provide audited financial statements for two years—prepared in accordance with generally accepted accounting principles—compared with three years audited financial statements prepared in accordance with the detailed regulations required under the traditional registration form. Issuers may file the modified form either with SEC's regional office nearest the place where the company's principal business operations are conducted, or in Washington, D.C., where the traditional registration statements must be filed and reviewed. The Commission believes the reduced disclosure and financial statement requirements and the regional filings should reduce the costs of the registration process for small issuers and thereby ease their entry into the public capital markets.

Reform Category:

Red Tape Relief
Reduce Small Business Burden
Tiering

Status:

Rule 242 (exemption from registration)—published September 11, 1979; adopted with some revisions January 10, 1980; effective February 25, 1980.
Modified registration form (S–18)—adopted April 10, 1979.

Contact:

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Federal Trade Commission Rescinds Unnecessary Rules

The Federal Trade Commission (FTC), in an effort to streamline and improve its regulatory program, completed a review of 152 trade practice rules and guides to determine which ones were outdated. FTC provided the public with the opportunity to comment on staff recommendations with regard to each of the rules. The Commission, upon completion of its review, rescinded 145 of the 152 trade rules listed in the *Code of Federal Regulations.*

In 1977, the Commission reduced the reporting requirement in its Quarterly Financial Report (QFR) program by eliminating 2,200 small firms from the sample of businesses it uses to compile the report. In 1978, FTC also raised the threshold for wholesaling, retailing, and mining companies automatically included in the program from $10 to $25 million in assets.

These actions have resulted in a decreased regulatory burden on the marketplace and have streamlined agency operations.

Reform Category:

Sunset and Review
Paperwork Reduction
Tiering

Status:

Trade Practice Rules Reduction—44 FR 11176, February 27, 1979.
Threshold increase—FTC internal procedure.

Contact:

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Regulatory Tiering, Early Warning System Used To Aid Small Businesses

The Environmental Protection Agency's (EPA) nationwide pollution control requirements often affect small businesses more heavily than large ones due to the small firm's lack of regulatory expertise and inability to spread compliance costs over large numbers of products or to pass them on to customers.

EPA is acting in the procurement, management and analysis, and financial and technical assistance areas to help small businesses. The agency has provided small business exemptions from, or less stringent pollution control requirements to, more than 50 regulations. It works with the Small Business Administration (SBA) and the Economic Development Administration (EDA) to support small businesses with procurement contracts and provide technical assistance to help them meet pollution control standards. It also encourages small businesses to use EDA and SBA grant and loan programs to help meet pollution control costs, and provides an early warning system to alert other agencies of plants threatened with closing as a result of pollution control costs, so that these closings may be averted.

Some 37 percent of EPA's contracts are with small businesses, compared to 8 percent governmentwide. Since 1977, small business coordination among EPA, SBA, and EDA has saved more than 800 jobs in the textile, mining, steel, rug manufacturing, oil refining, food, cement, and foundry industries, while the early warning system has prevented several potential plant closures.

Reform Category:

Reduce Small Business Burden
Interagency Coordination
Tiering

Status:

Ongoing.

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FTC Broadens Reporting Exemption For Smaller Mergers

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 requires advance notification to the Federal Trade Commission (FTC) and the Department of Justice (DOJ) of company mergers or acquisitions. It stipulates waiting periods of up to 30 days during which the two agencies determine whether there is a potential violation of Federal antitrust statutes. The act allowed the agencies to make exemptions for certain small acquisitions or mergers, which they did on July 31, 1978.

During 1979, companies reported a total of 868 merger or acquisition transactions to FTC and DOJ—far more than the agencies had anticipated. The agencies found virtually no potential antitrust violations among the smaller transactions.

To reduce the number of filings, FTC and DOJ increased the dollar value of the transactions eligible for exemption from the reporting requirement—a complicated series of formulas involving assets, percentage of voting securities acquired, and value of voting securities. FTC estimates that companies will be required to report about 20 percent fewer merger or acquisition transactions in 1980 as a result.

Reform Category:

Paperwork Reduction
Tiering

Status:

Final Rule—44 FR 66781, November 21, 1979.

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Income Level Reclassification: Financial Burden Reduced For Small Truckers

ICC requires carriers of property under its jurisdiction to file financial and accounting reports of their business. ICC determines the amount of detail they require in these reports by the annual gross revenues of the firms involved. ICC has three classifications of earnings: up to $500,000; $500,000 to $3 million; and more than $3 million. For the first classification ICC required only a simple financial form, while for the latter two it required detailed statements that ICC estimated could cost carriers up to $12,000 a year in accounting fees. Because of inflation in recent years, a great many small carriers—which are generally trucking firms, since rail lines are almost invariably large concerns—had moved into the second or third classification, which placed a heavy financial burden on them.

ICC adopted a rule in which they changed the classification ranges to up to $1 million; from $1 million to $5 million; and more than $5 million. ICC estimated that 700 small trucking firms moved into the lowest of the three income levels, and each one could save approximately $12,000 a year in accounting costs.

Reform Category:

Paperwork Reduction
Reduce Small Business Burden
Tiering

Status:

NPRM—44 FR 55585, January 11, 1979. Docket No. 36137, September 14, 1979, effective January 1, 1980.

Contact:

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Agencies Work To Reduce Small Business Burden

On November 16, 1979 in an effort to reduce the increasing burden of Federal regulation on the Nation's small business community, the President directed all Federal agencies to: issue new rules and regulations that will take the size and nature of the regulated businesses and organizations into account, where permitted by statute; review existing regulatory and reporting requirements for similar purposes; identify in the semiannual agendas and the *Calendar of Federal Regulations* those regulations for which flexible alternatives are being considered; and assign oversight responsibility to a senior agency official.

The Regulatory Council, the Office of Management and Budget (OMB), and the Small Business Administration (SBA) now have responsibility for working with the agencies to implement the directive.

Reform Category:

Reduce Small Business Burden
Interagency Coordination
Tiering

Status:

The agencies submitted plans for implementing the directive December 15, 1979. Many agencies will merge this effort with other reform efforts, such as those required under Executive Order 12044.

The Regulatory Council, the Office of Advocacy of SBA, and OMB will continue to monitor these efforts and will periodically report to the President and the public.

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FERC Reforms Help Speed Development of Hydroelectric Energy

The Federal Energy Regulatory Commission (FERC) is responsible for licensing most non-Federal hydroelectric projects. FERC has taken a number of steps to speed the licensing process, to reduce any institutional barriers to the development and availability of this clean and abundant source of energy.

In 1978, FERC decided to reform its requirements and procedures for all hydroelectric license applications. It developed simplified license application requirements for small hydroelectric facilities in order to maximize speedy development of this under-used, generally pollution-free, and renewable resource. The new "short-form" application covers minor hydroelectric projects of 1.5 megawatts (MW) or less. In October 1979, FERC clarified and simplified its general procedural regulations governing all preliminary permit and license applications, and simplified the application requirements for preliminary permits. In 1979, FERC also issued regulations to simplify applications for hydroelectric projects larger than 1.5 MW at existing dams.

Also, under § 213 of the Public Utility Regulatory Policies Act of 1978 (PURPA), FERC has discretion to exempt hydroelectric facilities of up to 15 MW from licensing if the facilities are located on man-made water conduits. To date, three facilities have applied for the exemption and FERC has granted exemption to all of them. In spring 1980, FERC will issue final regulations governing applications for exemption, including automatic exemption if FERC does not act explicitly on an application within 90 days.

These simplified procedures will avoid delays in construction of hydroelectric dams, cut costs, and should ensure that the Nation speedily makes maximum use of renewable hydroelectric energy.

Reform Category:

Red Tape Relief
Economic Incentives
Tiering

Status:

Minor license applications—adopted September 11, 1978; published 43 FR 40215.

General regulations governing preliminary permit and license applications and preliminary permit application requirements—adopted Octobe 22, 1979; published 44 FR 61328.

License applications and major projects at existing dams—adopted November 19, 1979; published 44 FR 67644.

Proposed rule establishing procedures for gaining conduit hydroelectric facility exemption—April 20, 1979; Final Rule—expected spring 1980.

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FDIC Minimizes Small Bank Burden

The Federal Deposit Insurance Corporation (FDIC) regulates and insures the deposits of commercial banks and mutual savings banks. In the past, many small banks—those having assets of $25 million or less—felt that their regulatory burdens were excessive. About 65 percent of the 8,827 insured State nonmember banks fit into this small bank category.

As part of its general regulatory reform, FDIC initiated specific provisions to reduce regulatory burdens on small banks. To accomplish this, FDIC has two reform programs. The first program consists of FDIC compliance seminars which FDIC regional office personnel conduct. They explain FDIC enforced regulations, the purpose behind them, and the standards used to measure compliance. The second program amends the FDIC policy statement on regulations to require FDIC personnel to consider and accommodate differences between small and large bank regulating requirements. FDIC will prepare a small bank impact statement for new regulations and conduct periodic reviews of its existing regulations to determine how to revise them to reduce the small bank burden.

The compliance seminars help both small banks and FDIC to understand each other's needs. Accordingly, small banks should be able to minimize their compliance costs without adversely affecting the quality of FDIC's oversight. The new regulation development and review procedures will ensure that FDIC drafts regulations to minimize burdens on small banks.

Reform Category:

Sunset and Review
Reduce Small Business Burden
Tiering

Status:

FDIC conducted two compliance seminars in the Chicago and Richmond regions; about 220 bankers attended and evaluated them. Once FDIC analyzes the reports, it plans to implement a nationwide program.

Amendments to policy statement on regulations—adopted December 20, 1979; published 44 FR 76858, December 28, 1979.

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