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Health and Safety

W. Kip Viscusi

MY REVIEW of recent risk regulation policies necessarily starts with the new oversight group within the Office of Management and Budget (OMB), because it has been the dominant force for improvement thus far. Unfortunately, OMB's efforts have not been matched by a similar commitment at the agency level.

OMB Oversight. In one of his first actions, President Reagan moved the regulatory oversight function from the Council on Wage and Price Stability (CWPS) to OMB. He also strengthened oversight in several ways—by having the reviews occur earlier in the rulemaking process before the parties were locked into their positions, by converting oversight from a nonbinding advisory activity to an institutional mechanism for screening regulations, and by establishing more stringent criteria for acceptable regulations.

These are all important and

beneficial changes—except for two things. First, the OMB group needs more regulatory analysts to handle its increased responsibilities. Indeed, the distribution of its analytical capability—more paperwork personnel than policy analysts—gives one the impression that the administration is more concerned with the regulatory burden per se than with the overall merits of particular regulations.

Second, Congress should give the oversight group the same authority to file comments on the public record that it formerly extended to CWPS. Filing authority is essential for three reasons—to increase public understanding of and respect for the process, to create public debate on the issues, and to provide a check on the staff analysts, who will, I'm convinced, take their work far more seriously if they know it will be open to public scrutiny.

The benefit-cost criteria laid down in the executive order are

quite good in theory and represent an important advance in centralized regulatory oversight. But the effort to put them into practice has been undercut by the Supreme Court's ruling in the cotton-dust decision that the Occupational Safety and Health Administration (OSHA) can't do benefit-cost analyses for its regulations on toxic substances and harmful physical agents. If the mandates of other risk regulation agencies are also interpreted narrowly, the present regulatory reform effort will be seriously hampered.

The full implications of the decision are not yet entirely clear. For example, is noise a harmful physical agent? And what are we to make of the fact that the cotton-dust standard upheld by the Court was *not* set at the "lowest feasible level," the concept the Court endorsed, but varied in stringency according to the stage of processing? More generally, how are regulators to proceed, given that it's impossible to define technical feasibility independent of cost considerations? Since the courts have refused to resolve these issues satisfactorily, it is clear that legislative changes are essential if the requirement that regulations pass a benefit-cost test is to become fully effective.

Until such changes occur, the question becomes: what criteria should OSHA and the other agencies use to pick regulatory targets and set standards? As for targets, in the benzene case the courts told us to focus on "significant" risks. But what is a significant risk? Isn't significance determined by the level of the risk, the number of people affected, and how severely? If we are going to calculate all of these things, why not simply calculate the overall benefits? As for standard-setting, the cotton-dust court laid down the rule of technical feasibility. But, as I've already said, this cannot be divorced from cost considerations. And, if we are going to start getting into cost considerations, why not do cost-effectiveness analysis? And if we're going to do that, and also calculate benefits, why not simply do an overall benefit-cost test?

In its first year, OMB has been applying benefit-cost criteria both to regulatory proposals and to re-

cently promulgated regulations. Most of its sunset actions have been based on analyses by the now defunct CWPS, which did excellent work but often did not have sufficient political authority to halt the undesirable policies. As the OMB group gets past the recent batch of regulations, it should begin to delve much more deeply into the huge body of older regulations, which will mean doing *ex post* evaluations in order to learn which rules have been effective and which have not. This will require a substantial expansion in OMB's policy analysis capability.

In some of the sunset actions taken so far, Congress or the agency itself has taken the initiative. It was Congress, for example, that forced the CPSC to relax its lawn mower standard a bit. For the most part, however, OMB has led the way, with the agencies cooperating more than they used to but still much less than a regulatory reformer would like.

Agency Performance and Policies.

Let me now turn briefly to the risk regulation agencies. First, the agency I know best, OSHA. Under its new leadership, there has been a most welcome decrease in the agency's antagonism toward the business community, and there has been, largely at OMB's urging, greater emphasis on regulatory analysis. But OSHA Administrator Thorne Auchter's biggest change has been to exempt low-risk firms from inspections. While well-intended, this is the wrong approach. A scheme for targeting inspections is desirable and long overdue, but accident statistics are not, by themselves, a sufficient guide to where we want to enforce health and safety standards. OSHA should be emphasizing health, not safety, and accident statistics primarily reflect safety. In addition, rather than simply focusing on the overall accident rate, OSHA should start worrying about the compliance costs it is imposing. Technological efficiency matters, and an efficient industrial technology may be high risk rather than low risk.

It is interesting to note that, even with OMB largely determining the agenda for changes in OSHA

standards, we do not yet see any new approaches to job risk regulation. Instead, the agency has been weeding out some of its most ill-conceived individual regulations. But those are not always the most damaging ones. For example, the diving standard is a bad regulation by almost any criterion, but it's not very consequential in the total scheme of things. The lead standard is a good target for sunset review, but that task is not nearly as important as revamping all of the agency's safety standards. And the agency's decision to review its carcinogen policy was a better idea before the cotton-dust decision than after it. Nevertheless, especially since the potential cost of this policy is in the hundreds of billions, I still think it's important to lay out policy criteria in this area. These should include information as an alternative to regulation.

Perhaps one reason why we don't yet have major innovations from OSHA is that they are still bottled up within the new regulatory oversight process. For example, the chemical labeling regulations, which OMB is now considering, could be the best OSHA policy ever. Chemical labeling focuses on health and not safety, and it works through the market by providing information. For this approach to be useful, however, it should utilize an easily understood hazard-warning system (like that now employed by the paint industry) rather than formidable listings of chemical compounds (as proposed by OSHA in January 1981). Moreover, OSHA should couple any chemical labeling policy to a commitment to forswear the substance-by-substance regulation it has pursued in the past. The decision it makes on chemical labeling will signal the degree to which the agency is charting a new course instead of simply tinkering with its arsenal of existing regulations.

The National Highway Traffic Safety Administration (NHTSA) has also been relatively active. Most recently it rolled back its passive restraint standard. The question I have as an outsider is, why did it do this? An analysis by economist William Nordhaus of Yale showed that

the benefits of air bags would exceed the costs. Does NHTSA have some other analysis that showed the opposite? By justifying its decision on the grounds that previous studies had reached conflicting conclusions, NHTSA opened itself to the charge that it is more interested in helping the auto industry than in trying to select policies on their merits where the evidence is unclear, as the evidence usually is. At the least, what we have here is an instance of failing to articulate clearly the economic rationale behind its policies.

NHTSA has been much less venturesome when it comes to shifting its overall regulatory approach: it still refuses to calculate the cost per life of any of its regulations. Unlike OSHA, it has not yet placed its regulatory analyses on a sound basis by insisting, at the very minimum, that cost-effectiveness tests be performed.

On the brighter side, NHTSA is reconsidering its standard to make bumpers withstand a five-mile-per-hour impact. I should emphasize that this standard has no safety effect whatsoever and is intended only to save consumers money. Yet, its costs so clearly exceed its benefits that it is hard to justify from a consumer welfare standpoint. More fundamentally, NHTSA has never provided any evidence that the market doesn't work in this area. And finally, in a classic case of bureaucratic confusion, even as NHTSA has been pursuing more durable bumpers it has also been thinking about making bumpers softer so that they won't injure pedestrians. Clearly NHTSA ought to forget about bumpers altogether.

Moving on to the Consumer Product Safety Commission (CPSC), I find it a unique case among the health and safety agencies. Its budget has been cut the most, about in half over the last few years. And unlike the other agencies, it is locked in not by its legislation, but by its leadership—its five commissioners. The CPSC could, but does not, stop using its Section 15 authority under the Consumer Product Safety Act, which gives it *carte blanche* to ban or recall any product at will (without issuing regula-

"THANKS, PAL—NOW IS THERE ANY WAY YOU CAN KEEP THOSE TRICKY JAPANESE AUTO MAKERS FROM INSTALLING THEM IN THEIR CARS?"



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tions to guide businessmen). It could, but does not, abandon its reliance on risk as the paramount policy concern in favor of recognizing the important trade-offs that need to be made. Moreover, it has a positive mandate, stated clearly in the act, to pursue informational strategies as an alternative to command-and-control regulations. But it has largely ignored this mandate. To repeat, the only real constraints on the CPSC are its commissioners. As yet, none of them has shown any vision on how the agency's policies should be redirected.

At the Nuclear Regulatory Commission and the Food and Drug Administration (FDA), policy reform has moved slowly, pretty much as in the past. The FDA seems to be speeding up the approval time for new drugs, but its overall emphasis on risk reduction rather than benefit-cost balancing has remained intact.

Let me briefly turn to the policy changes I'd like to see. First the CPSC should be reorganized into an executive branch agency (perhaps within the Department of Commerce), led by a single admin-

istrator. This would be much more effective than the present chaotic rule by committee. In addition, if any agency needs close regulatory oversight, this one is it. The reorganized agency should base its regulations on a benefit-cost test and rely on informational alternatives to standards.

For the rest of the risk regulation agencies, we need two things. First, as for statutory changes, there are problems not only with the Clean Air Act, but also with the Occupational Safety and Health Act, the Delaney amendment, and so on. These problems are related, and dealing with them requires a clearly articulated policy statement from the White House. In particular, the administration should call for the abandonment of risk-based regulation.

Second, it is not sufficient for these agencies simply to exhibit less antibusiness bias, do less, and end up with fewer regulations on the books. We need to bring about a basic shift in approach—one that limits interventions to situations of market inadequacy, that emphasizes working with rather than against market forces (for example, providing information instead of imposing rigid standards), and that experiments with innovative strategies. In the case of OSHA, we should focus on health hazards rather than safety hazards. For auto safety, we should calculate the cost-effectiveness of all of NHTSA's and the Transportation Department's policies on safety—from roads to cars to guard rails—and try to reallocate resources across these areas efficiently.

Getting such a new long-term direction for regulatory policy is perhaps most important of all. At present, many of these administrators seem so unclear about where they ultimately want to take their agencies that one wonders if they even know themselves.

WITH RESPECT to an overall report card, NHTSA and OSHA merit fair marks on an absolute scale, which is an improvement over past years; NRC and the FDA should get pretty much the same grade as before; and the CPSC continues to fail, maybe even more completely than in the past. ■