



Under-Regulated?

Big Business Fights Health, Safety Standards That Save Lives, Money

By David Vladeck

Since the early days of the Reagan presidency, the prevailing mythology has been that our federal regulatory agencies are careening out of control, placing needless and unwarranted burdens on American business that stifle economic growth. This mythology was hardly put to the test in the 2000 presidential election. Both the Republican and Democratic nominees accepted as gospel the idea that regulation has mushroomed beyond reason and both pledged to shrink the size of government.

The anti-regulation forces may be pressing hard to win the rhetorical battle about regulation, but they are not close to winning the war. Why? For one simple reason: Because our society needs sensible regulation, and the American people understand that.

The facts are these: Preventative regulation is cheaper than after-the-fact fixes; good regulation avoids expensive litigation and counterproductive blame-laying when bad products fail; smart regulation results in the development of better and more efficient products; and above all else, reasonable regulatory measures save lives and preserve our environment.

Take three examples. First, prior to the early 1980s, there were as many as 5,000 cases of Reye's Syndrome — a disease that causes death and brain damage in children — each year. When it became apparent that there was a link between Reye's Syndrome and aspirin, Public Citizen led the charge to have aspirin-containing products labeled to warn parents not to give them to children with the flu or chicken pox. As a result of those warnings, Reye's Syndrome is virtually unheard of today. Second, in the mid-1980s, Public Citizen waged a campaign to have the Occupational Safety and Health Administration (OSHA) place strict controls on the workplace use of ethylene oxide — a potent carcinogen. Although it took eight years of litigation, we won, and a tough standard went into effect in 1989, reducing permissible exposures

a hundred-fold. As a result, 100,000 American workers who previously had been exposed to ethylene oxide on the job are now safe. Third, in 1988 OSHA, again at our urging, issued a rigorous standard that limited worker exposure to benzene — a highly toxic solvent. Tire companies bitterly opposed this action, not because they disagreed about the gravity of the health risks, but because they had serious problems controlling benzene exposures. Shortly after the OSHA standard was issued, however, scientists found a substitute for benzene that was safer for the workers and better for the tire companies. Everyone gained.

These success stories may become relics. Due to massive cutbacks in the Reagan/Bush years, which continued at a slower rate during the Clinton administration, we are now actually facing a crisis of under-regulation. Our federal regulatory agencies have been cut to the bone. As a result, the pace of regulation has slowed to the point where serious, acknowledged health and safety threats go unregulated, to the peril of those exposed, and enforcement efforts are crippled by inadequate resources.

Consider OSHA, often the poster-child of the anti-regulatory forces. Today, OSHA's staffing has been so severely cut that it has fewer than 100 people working on developing workplace standards for the thousands of toxic substances used in the workplace and for the untold safety hazards that lurk in chemical plants, factories and manufacturing facilities. Because of this skeletal staff, the Clinton administration did far less in terms of promulgating new standards than any past administration. Highly toxic and carcinogenic substances, such as hexavalent chromium — a metal used widely in auto-making, manufacturing and metal plating — are essentially unregulated, even though hundreds of thousands of American workers are exposed to it every day on the job and even though its serious health effects are beyond dispute. This is but one example of regulatory work that desperately needs to be undertaken but will not be completed for years.

Consider the Food and Drug Administration (FDA), the consumer's main line of defense against ineffective drugs, unsafe medical devices and tainted foods. With

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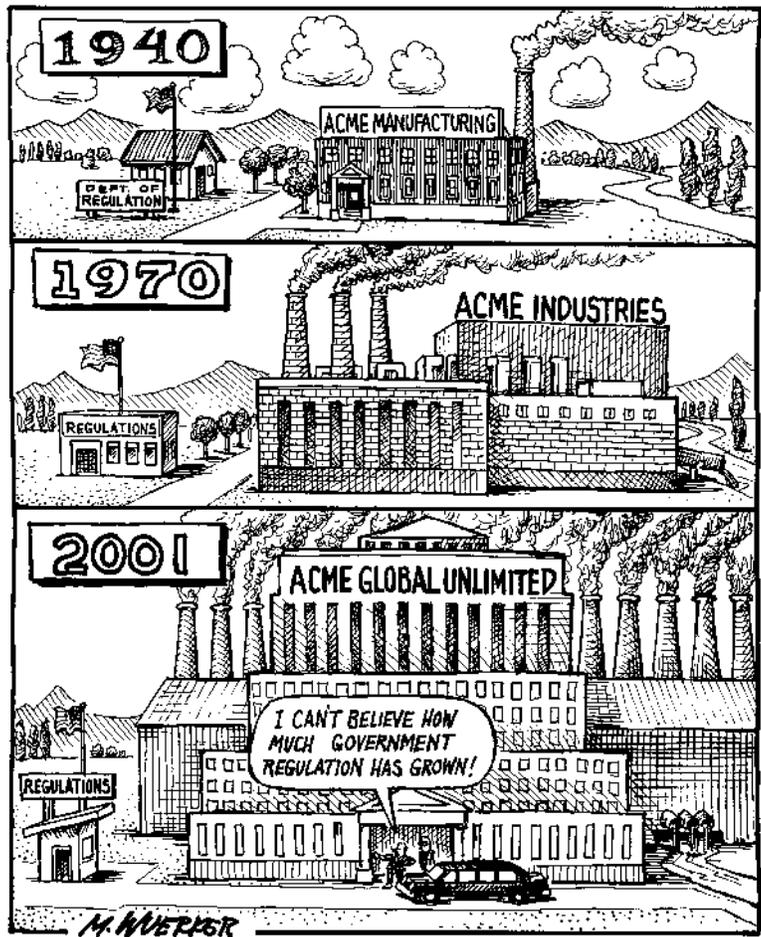
fewer than 10,000 employees nationwide, the FDA regulates one-quarter of the American economy. With those employees, it is responsible for inspecting virtually every food and drug production facility in the nation and virtually all food and drug products imported into the United States. It sets standards for safety in almost all food and cosmetic products and approves prior to marketing every drug and medical device sold on the American market.

In the past few years, Congress has directed the agency to speed drug reviews to get new drugs on the market more quickly. As a result, the FDA has had to do triage on its other priorities. Because of under-staffing, it took the agency four years to enact a simple rule to protect children from the worst poisoning risk they face: the iron tablets that their parents take. Each year, 100,000 children are made ill, some quite seriously, because they mistake their parents' vitamins for candy. The FDA wanted to impose rules to redesign the packaging of these products to safeguard children. But with all of the obstacles that are placed in any agency's rulemaking path, the process was so slow that more than four years elapsed, while children remained at risk.

Perhaps the easiest way to see the problem of under-regulation is to look at the recent Ford/Firestone tire recall. It is likely that standard-setting would have prevented this tragedy and perhaps many or all of the 148 deaths and more than 500 injuries attributed to Firestone tire tread separations and blowouts. The government's safety standards for tires and for roof-crush protection haven't been updated for 30 years. And the agency has spent 15 years "considering" a rollover standard but has never issued one. And what about the recall process? The National Highway Traffic Safety Administration (NHTSA) is a tiny agency, with only 625 employees (just 15 investigators) to regulate the entire motor transportation industry and administer grants to aid state highway safety programs. NHTSA's budget is 30 percent lower today than in 1980. Its resources are stretched so thinly that, if the industry is less than candid with the agency — as both Firestone and Ford were — there is little NHTSA can be expected to do about it, and tragedies like the one we see unfolding are bound to occur again.

What should be done to prevent these lapses in the future?

First, we need to unshackle our regulatory agencies. The rulemaking process, which was designed to respond swiftly to emerging health and safety threats, has become so encrusted with procedures that it now takes OSHA an



average of eight years to issue a new standard. Opponents of regulation have paralyzed the rulemaking process by layering on multiple new requirements that agencies must meet in order to issue new rules. Before taking even the first step of publishing a proposal, agencies must obtain approval from the White House's Office of Management and Budget (OMB) to gather data; conduct mini-cost/benefit analyses; meet with representatives of small business; consider the possible impacts on entities as diverse as local governments and Indian tribes; and ultimately must get OMB clearance to proceed.

Then, as the rulemaking progresses, agencies must again consult with a wide array of "stakeholders," perform numerous "impact" analyses and satisfy OMB as to the economic rationality of the rule. All of these analytical steps take time, and, while the agencies diligently produce this mountain of paperwork (much of which goes unread), the public remains unprotected from the risks of children being poisoned or workers being exposed to known carcinogens. If one were to subject the current procedure-laden regulatory process to cost/benefit analy-

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sis, it would flunk. We need to streamline the regulatory process and let our health and safety agencies do their jobs.

Second, we need to restore resources to these agencies. The idea that fewer than 2,200 OSHA employees can inspect our nation's six million workplaces, design and implement new standards, and enforce the law is laughable; just as the notion that 625 NHTSA employees can effectively police the auto industry. If we want the things that regulation can bring us — safer cars, effective drugs, pure foods and less dangerous workplaces — we need to restore the ability of our agencies to do their work.

And finally, we need to end the pointless rhetoric about the horrors of regulation. To be sure, in any system as complex as ours, one can point to regulatory efforts that seem unproductive or counterproductive. Take air bags. Air bags were poorly designed by manufacturers in many vehicles (1988-2000 models), which

resulted in 200 unnecessary deaths. This required NHTSA to issue a new air bag safety standard last year. Despite the controversy over their safety, would any of us really conceive of letting our families drive or ride in a car without an air bag? I surely wouldn't. The fact remains, regulation spares us needless death, injury, suffering and expense.

Consider the alternative. Suppose the regulatory state withered away, as many business leaders say they would like to see. The only discipline on the market would be the liability system, and we would depend on jury verdicts to provide disincentives to manufacturing unsafe cars. (But of course these same companies want to severely curtail lawsuits, as well.) What sense does it make to have an after-the-fact system that is designed principally to compensate injured people to substitute for a regulatory system that is designed to prevent injuries before they occur? None. But the controversy still rages. It is time to recognize that, although not perfect, the regulatory system is and will remain society's first line of defense, and the time has come to fortify it, not tear it down. |PC|