

The Thomas A. Roe Institute for Economic Policy Studies

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## GEORGE BUSH'S HIDDEN TAX: THE EXPLOSION IN REGULATION

### INTRODUCTION

*He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.*

Thomas Jefferson,  
*The Declaration of Independence*

What Thomas Jefferson wrote of King George III might just as well have been written of the federal government under President George Bush. The reason: America has experienced an enormous growth in regulation over the last three years, due almost entirely to legislation signed by Bush, and to the decisions of officials he has appointed. This burgeoning red tape hinders the economy's recovery and jeopardizes future economic progress. President Bush belatedly recognized the explosion of re-regulation on January 28, when he declared a ninety-day moratorium on new regulations and instructed federal agencies to review the efficiency of old regulations. In light of the findings that various government agencies indeed could streamline regulations, the President extended the moratorium for an additional 120 days.

A slowdown in regulation is desperately needed. Under George Bush:

- ✕ The total annual length of the *Federal Register*, in which all new regulations are published, has grown from 53,376 pages in 1988, President Ronald Reagan's last year, to 67,716 in 1991—the third highest total ever.

This study is part of series focusing on the problems of government regulation of the economy, and on policies to improve American competitiveness. Earlier studies on these topics have included: Bryan T. Johnson, "Forging Alliances To Bust Into the Japanese Market," *Background* No. 876, January 31, 1992; Bryan T. Johnson, "Why Bush Failed In Japan," *Executive Memorandum* No. 317, January 13, 1992; Bryan T. Johnson, "Making America More Competitive With Foreign Investment," *Background* No. 864, November 6, 1991; Bryan T. Johnson, "Increasing Competitiveness Through Strategic Alliances," *Background* No. 857, September 26, 1991. Future studies will focus on America's trade policy on dumping, the regulatory process, and relate horror stories of regulatory abuse.

- ✘ The number of federal employees devoted to issuing and enforcing regulations has risen from 104,360 in Reagan's last year to a new all-time high of 124,994, surpassing the previous record of 121,706 under President Jimmy Carter.
- ✘ The amount of money that the federal government spends each year administering its regulatory programs has increased by 18 percent under Bush, from \$9.558 billion in 1988 to \$11.276 billion in 1992, measured in constant 1987 dollars.

As a result, regulation now is costing Americans somewhere between \$881 billion and \$1.656 trillion annually, or between \$8,388 and \$17,134 per household. By way of comparison, Americans will pay an estimated \$1.053 trillion in federal taxes in 1992, or about \$10,897 per household. Thus, it is possible that the total cost of regulation now exceeds the total cost of taxation.

This surge in red tape did not happen in the face of Administration opposition. In fact, the White House is directly responsible for a good deal of it. For one thing, much of the growth in regulation stems from new laws that were supported and signed by the President, including the Clean Air Act Amendments of 1990, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, and the Nutrition Labeling and Education Act of 1990. For another, many of Bush's appointees have been far more enthusiastic about creating and enforcing rules than their predecessors in the Reagan Administration.

**Example:** Just days after George Bush was sworn in as President, the Army Corps of Engineers and the Environmental Protection Agency (EPA) significantly expanded the scope of federal regulation of wetlands. As a result, thousands of landowners were told that they could not use their own land because federal regulators now considered it to be a wetland protected under the Clean Water Act.

**Example:** While receiving considerably less attention than the EPA, officials in the civil rights and antitrust divisions of the Department of Justice, and antitrust officials at the Federal Trade Commission, have been expanding the scope of their enforcement activities well beyond that of their predecessors in the Reagan Administration.

**Example:** The Department of Justice under Attorney General Richard Thornburgh, and the Department of Transportation under Secretary Samuel Skinner, seemed to go out of their way to make their regulations under the Americans with Disabilities Act as onerous as possible.

This new regulatory build-up is taking an increasing toll on the economy. It is like a hidden tax. And just like a tax, regulation:

- ✓ raises the prices paid by consumers;
- ✓ lowers wages and increases unemployment;
- ✓ hurts the country's international competitiveness;

- ✓ increases uncertainty for businesses and reduces investment; and
- ✓ impairs innovation.

In large measure, the growth in regulation and its burden has been due to a failure on the part of the President, Congress, and the regulatory agencies to view regulation properly. In their desire to "do good" in a particular area, they often fail to take sufficient account of the broader consequences of their actions. Even when they consider the costs of regulation, they generally fail to focus on the burdens caused by regulation taken as a whole. In other words, they fail to recognize that the whole is greater than the sum of the parts. To remedy this, government officials must avoid focusing simply on the benefits and costs (let alone on the benefits alone) of each particular regulation viewed in isolation; instead they must weigh the expected benefits of each regulation against its added contribution to the overall burden of all regulation.

## THE PURPOSE OF REGULATION

Government regulations ostensibly are intended to protect the public.<sup>1</sup> Proponents of new regulation might claim that they wish, for example, to protect workers from avoidable injuries on the job, or to shield the public from pollution that could endanger their health, or to prevent harm to consumers from defective products. While these goals are admirable, policy makers often fail to ask whether a new regulation will in fact accomplish its goals in the most cost-effective manner. In particular, they may overlook less costly ways to achieve the same result, enabling the public to gain more protection for each dollar spent. They fail to ask whether the costs in lost jobs or slower economic growth that result from regulations are worth the amount of protection that accrues to the public. And they do not fully consider market solutions that will serve the public interest without imposing on the private sector the heavy costs associated with traditional "command-and-control" regulation. When examining regulations, policy makers must take account of their full costs and impact if they are to determine whether the regulations help or harm the public.

The beneficial effects of much regulation are hard to find. Economists Robert Hahn of the American Enterprise Institute and John Hird of the University of Massachusetts at Amherst recently conducted a survey of all existing studies on the benefits and costs of regulation, and found only two major areas in which regulation produces total benefits that probably exceed total costs—environmental regulation and highway safety regulation.<sup>2</sup> Even in these two areas, there is strong evidence to suggest that equal or greater benefits could be obtained at a substantially lower cost to society.

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- 1 Economists normally distinguish between "economic regulation" and "social regulation." Economic regulation is the regulation of the prices or quantities of the goods or services provided in a particular industry, or of other economic factors such as the number of firms in an industry or the freedom of firms to enter or leave an industry. The term social regulation normally refers to regulation affecting health, safety, or the environment, but generally can be used to describe any regulation that is not economic. Whereas most forms of economic regulation are industry-specific, social regulation usually applies to many different industries.
  - 2 Robert W. Hahn and John A. Hird, "The Costs and Benefits of Regulation: Review and Synthesis," *Yale Journal on*

**Uniformly Ineffective.** Outside these two areas, regulation has been found to be uniformly ineffective. For example, numerous studies of the regulation of workplace safety by the Occupational Safety and Health Administration have found no significant effect on accident rates, worker injuries, or illnesses.<sup>3</sup> Likewise, a 1973 study of the Food and Drug Administration's drug approval process, undertaken by University of Chicago economist Sam Peltzman, found no reduction in the proportion of unsafe or ineffective drugs reaching consumers.<sup>4</sup> Similarly, numerous studies have found that the Consumer Product Safety Commission has had no significant impact on product safety.<sup>5</sup> The evidence indicates that the ban on cigarette advertisements on radio and television imposed in 1970 reduced competition between brands—especially by eliminating ads containing health information—and thereby slowed the introduction of new brands lower in tar or nicotine.<sup>6</sup> Similarly, there is no evidence that civil rights legislation has increased employment opportunities for minorities or women. With the increase in employment-related litigation and record-keeping costs that has resulted from the legislation, it is quite possible that civil rights laws now actually reduce employment opportunities for all people, including minorities.

## REGULATION FROM NIXON TO REAGAN

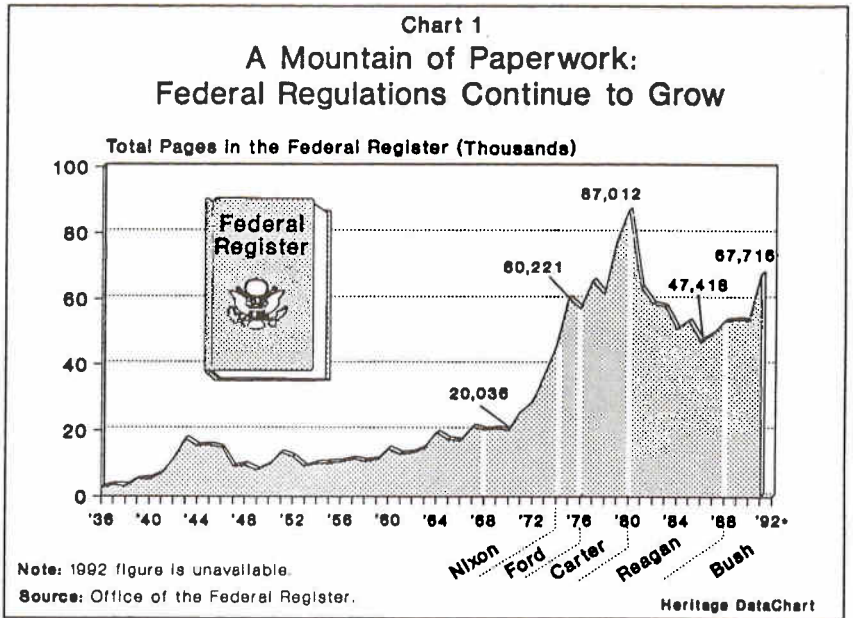
The great explosion in federal regulation began when President Richard Nixon created a host of new regulatory agencies, including the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), the Consumer Product Safety Commission, and the National Highway Traffic Safety Administration. Nixon also signed a number of major pieces of regulatory legislation, including the 1970 Clean Air Act and the 1973 Endangered Species Act, and imposed specific controls on areas ranging from noise pollution, to pension programs, to general wages and prices.<sup>7</sup> The brief Presidency of Gerald Ford continued and expanded the red tape of the Nixon years, although Ford did remove most of Nixon's wage and price controls.

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Regulation, Vol. 8, No. 1 (Winter 1991), p. 256.

- 3 W. Kip Viscusi, "The Impact of Occupational Safety and Health Regulation, 1973-83," *Rand Journal of Economics*, Winter 1986, pp. 567-580; Daniel P. McCaffrey, "An Assessment of OSHA's Recent Effects on Injury Rates," *Journal of Human Resources*, Winter 1983, pp. 131-146; W. Kip Viscusi, "The Impact of Occupational Safety and Health Regulation," *Bell Journal of Economics*, 1979, pp. 117-140; Robert S. Smith, "The Impact of OSHA Inspections on Manufacturing Injury Rates," *Journal of Human Resources*, Spring 1979, pp. 145-170; John Mendeloff, *Regulating Safety: An Economic and Political Analysis of Occupational Safety and Health Policy* (Cambridge, Massachusetts: M.I.T. Press, 1979).
- 4 Sam Peltzman, "An Evaluation of Consumer Protection Legislation: The 1962 Drug Amendments," *Journal of Political Economy*, September 1973, pp. 1049-1091.
- 5 See, e.g., W. Kip Viscusi, "Consumer Behavior and the Safety Effects of Product Safety Regulation," *Journal of Law and Economics*, Vol. 28, No. 3 (October 1985), pp. 527-553; Paul H. Rubin, R. Dennis Murphy, and Greg Jarrell, "Risky Products, Risky Stocks," *Regulation*, No. 1 (1988), pp. 35-39.
- 6 John E. Calfee, "The Ghost of Cigarette Advertising Past," *Regulation*, November/December 1986, pp. 35-45; Lynne Schneider, Benjamin Klein, and Kevin Murphy, "Government Regulation of Cigarette Health Information," *Journal of Law and Economics*, December 1981, pp. 572-612.
- 7 The core of what later became the Clean Water Act—the Federal Water Pollution Control Act Amendments of 1972—also became law while Nixon was President, but over his veto.

Jimmy Carter's record was a mixed one. Carter tightened environmental regulations, created the Department of Energy, and tried to impose race and sex quotas on businesses through civil rights enforcement. Yet Carter also championed significant deregulation of air travel, railroads, and trucking. Further, he removed restrictions on the rate of interest that banks and other depository institutions could pay to their depositors, and took the first important steps toward the eventual decontrol of oil prices.



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Ronald Reagan proposed relatively little deregulatory legislation. His main legislative strategy was to try to block —usually successfully, through the use or threat of his veto—legislation that would have increased red tape and slowed economic growth. More important, Reagan took steps to reduce the volume of administrative rules issued by government officials. Among the most important actions, Reagan:

- ✘ Issued Executive Order No. 12291, requiring all Executive Branch agencies to estimate the benefits and costs of any new regulations they wished to issue;
- ✘ Designated the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) as a central office for conducting all cost-benefit review of regulations;
- ✘ Established a Task Force on Regulatory Relief, headed by then Vice President George Bush; and
- ✘ Appointed to most cabinet departments and independent agencies individuals who favored a reduction in regulation, and significantly reduced the staffing of most regulatory agencies.

8 OIRA was created under Carter; Reagan expanded its mission.

## RE-REGULATION UNDER BUSH

Although George Bush projects himself as an avid foe of regulation, his Presidency has seen an enormous resurgence of regulation.

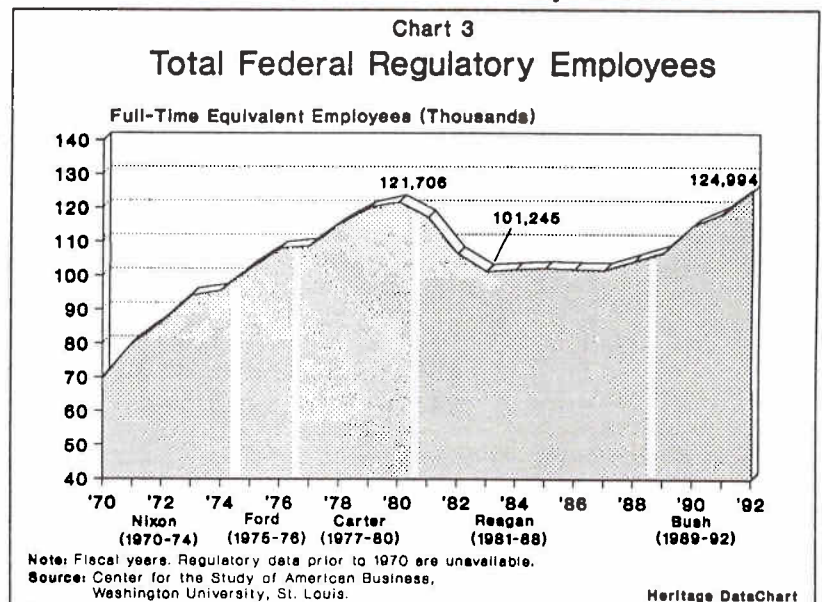
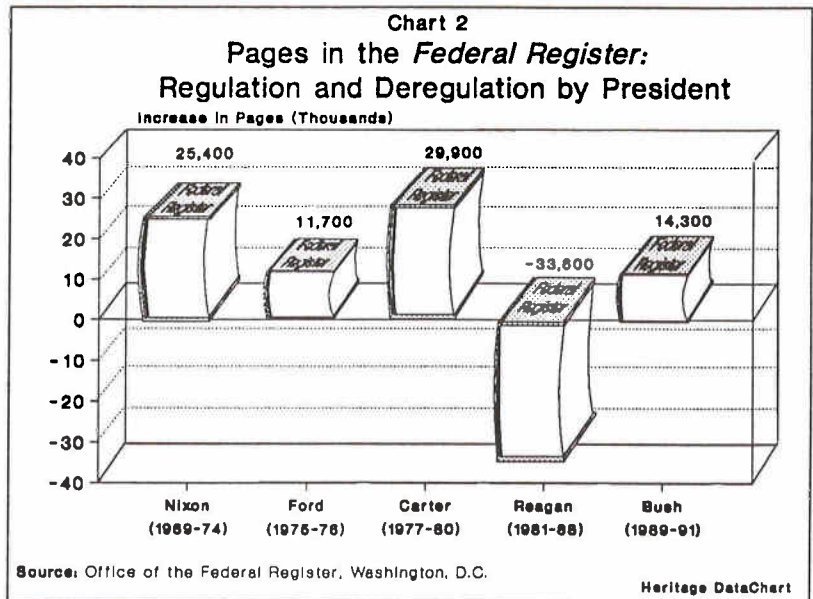
**Example:** The total annual length of the *Federal Register*, in which all new regulations are published, declined during the eight-year tenure of Ronald Reagan by 33,636 pages, from an all-time high of 87,012 in Jimmy Carter's last year, 1980, down to 53,376 in 1988.<sup>9</sup> In less than four years, the annual number of pages under the Bush Administration has

risen by 14,340 pages. Last year's total of 67,716 pages was the third highest ever, surpassed by only two of Carter's four years.

**Example:** The staffing level of federal regulatory agencies has increased sharply. The number of federal employees devoted to issuing and enforcing regulations fell by 17,346 under Reagan, from a then record 121,706 in Carter's last year down to 104,360 in 1988.

Under Bush, however, 20,634 new bureaucrats have been added, for a new all-time high of 124,994 regulatory employees.

**Example:** The amount of money that the federal government spends each year administering its regulatory programs also has soared. Measured in constant 1987 dol-



<sup>9</sup> All figures reported in this study for the number of pages in the *Federal Register* either were obtained from, or else calculated on the basis of data provided by, the Office of the Federal Register.

