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THE DOLE-JOHNSTON BILL: A SETBACK FOR REGULATORY REFORM?

INTRODUCTION

Facing a crowded legislative calendar, the Senate this week is rushing to complete work on landmark legislation that will reframe the process and analytical criteria that federal agencies must follow to issue regulations. For example, the bill includes a requirement that agencies should consider the costs and benefits of their regulatory actions. Remarkably, this common sense way of making a decision, used by people to make decisions in their personal lives, has been deemed too radical for the federal government to use regularly in making decisions about how to protect public health, safety, and the environment.

Federal regulatory agencies are out of control, and Congress must impose discipline on the regulatory process. Today, agencies are interpreting regulatory statutes in ways that Congress never intended. If Congress understood in advance how much some of these regulations would cost to implement, many lawmakers would never have voted for them. Presidents also have tried but failed to rein in agencies. Every President since Richard Nixon has required this kind of cost-benefit analysis by executive order,[1] but agencies have paid only lip service to the orders. Unlike the Reagan and Bush Administrations, the Clinton Administration has further weakened this effort because it actually uses Executive Order 12866 to appear to support sensible, rational rulemaking while doing little in reality to accomplish that objective. Indeed, the Clinton Administration seems to believe that federal regulatory agencies have done a fine job and should be left alone to continue to exercise discretion that thwarts the will of Congress and costs the American economy billions of dollars.

Congress must give federal regulatory agencies a rulemaking road map that includes well defined, analytical standards that all rules must meet. Abuse of agency discretion is the heart of the problem that Congress is being asked to solve. Leaving the door wide open for agencies to continue business as usual is not acceptable.

1 For a brief summary of the history of Executive Branch oversight, see "Can the Regulatory Leopard Change Its Spots? The Case for Real Regulatory Reform," Citizens for a Sound Economy, June 19, 1995, pp. 4-5.

Unfortunately, the leading Senate bill, a compromise drawn up by Senators Robert Dole (R-KS) and J. Bennett Johnston (D-LA), is seriously—and perhaps even fatally—flawed. The goal of the bill should be to achieve real reform. But, as Senator Johnston recently explained, "this is a huge and vitally important bill where each word carries tremendous meaning...."[2] Senator Johnston understands this well because he has worked tirelessly on behalf of the Clinton Administration to introduce technical language to weaken the key provisions of Senator Dole's original bill, S. 343, The Comprehensive Regulatory Reform Act of 1995, through important word changes.

The problem now is that these seemingly arcane choices of language so severely change the legislative effect of the bill that its intent will not be achieved. Indeed, such a law might actually give individual regulatory agencies greater statutory protection from citizen and even Executive Branch efforts to end ineffective or burdensome regulation. The bill contains some useful reforms. But thanks to the careful inclusion of certain language by those who generally do not support regulatory relief, the bill as it now stands could turn out to be a setback for regulatory reform.

THE DOS AND DON'TS OF EFFECTIVE REGULATORY REFORM

The current process for making regulatory decisions does not work. It allows agencies routinely to promulgate expensive rules, where the cost to individuals and businesses far outweighs the benefits. The time is ripe for legislation to make sure that regulatory policies in the future are based on sound data and analysis of the costs, benefits, and risks of regulation and create regulatory decisionmaking processes that are more open and accountable to the American people.

To achieve this objective, legislation would need to incorporate certain key elements. But it would also need to avoid certain other seeming "reforms" which would actually make the regulations more burdensome and bureaucratic. In order for legislation to achieve reform, it must include strong provisions that:

❶ Require agencies to use sound data and analysis on the costs, benefits, and risks of regulation and then apply effective criteria to this information to make sound regulatory decisions;

❷ Enhance public involvement by empowering citizens to petition agencies to review rules to see whether they meet these tests; and

❸ Hold agencies accountable for their actions by subjecting their actions to judicial review.

Specifically, regulatory reform would be characterized by the following "Dos" and "Don'ts" (section references are to the bill as published in the June 21, 1995, *Congressional Record).*

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2 *Congressional Record*, June 21, 1995, p. S8795.

1) DECISIONAL CRITERIA (Section 624)

✓ **DO require that benefits "outweigh" or "exceed" the costs.** This key element of reform would force agencies to place the appropriate emphasis on developing unbiased or expected value estimates of both the costs and benefits. Neither costs nor benefits can be known with certainty, particularly in a regulatory context where agencies are, in effect, forecasting or predicting future events involving risk. However, agencies should have to place a value on these costs and benefits that can then be reviewed.

✗ **DON'T allow agencies simply to contend that benefits "justify" the costs.** The use of the word "justify" by agencies today to finesse the process of weighing the costs and benefits is largely subjective. Agencies simply declare that according to their own value criteria the benefits are greater than the costs. But the whole purpose of establishing a cost-benefit standard should be to create a more *objectively* based, fairly balanced evaluation of all the competing interests involved. Legislation must do this.

✓ **DO require that agencies choose the regulatory alternative that will "maximize net benefits."** This is perhaps the most critical element of the regulatory reform discussion. A "net benefit" standard is far superior to a "least cost" standard. Even the Clinton Administration, in Executive Order 12866, includes among its principles that an agency "maximizes net benefits...unless a statute requires another regulatory approach."[3] Only if the statute does not allow a rule to satisfy the "net benefit" standard should the agency be permitted to select the "least cost" alternative.

When an agency is allowed or required to choose the least cost alternative, it may do so without ever stopping to consider whether the regulatory action is worth taking or maximizes benefits.

Example of the Application of the Least Cost Standard

	Costs	Benefits	Costs/Lives	Lives "Foregone"
Alternative One (LEAST COST)	$10 million/yr.	20 lives/yr.	$500,000	80 relative to Alt. Two
Alternative Two	$20 million/yr.	100 lives/yr.	$200,000	

The table above illustrates what could be an undesirable regulatory outcome from applying the "least cost" standard. Alternative One is the lowest cost option, but actually costs more per life saved than Alternative Two. However, the

3 See Section 1(a) of Executive Order 12866, Regulatory Planning and Review.

agency must choose Alternative One over Alternative Two at a cost of an additional 80 lives per year. In this case, the agency should be allowed to select Alternative Two, the more expensive rule which has the greater "net benefits." The "least cost" standard precludes this. In addition, if an agency has no idea of what the benefits are or is disinclined to calculate them, it can still promulgate a rule because the least cost standard merely requires it to pick the cheapest rule. There is no need to ask whether there are any benefits from taking the action at all. But a maximizing net benefits approach forces the agency to examine the cost-benefit rationale for its proposed rule.

✗ **DON'T allow agencies to get away with issuing rules based on mere assertions of benefits.** Agencies often cite tremendous uncertainty about the benefits of the regulations they propose. Unfortunately, a least cost standard allows agencies to get away with this. Consequently, agencies just assert that there are difficult-to-qualify benefits and they "justify" the costs of an action. Agencies must be required to use the best data available in performing an analysis of a rule's benefits and costs.

✗ **DON'T let the agency loopholes be bigger than the loop.** Lawmakers should not be fooled into believing there are cost-benefit decisional criteria in a statute if the legislation also gives agencies ample exemptions from using them. Agencies already argue that there are uncertainties or benefits that are nonquantifiable. A least cost approach gives them the incentive to continue doing so. Thus, regulators generally are comfortable with a least cost approach because it allows them to escape any requirement rather than attempt to determine seriously what the benefits of their action would be and compare them with the cost.

WHAT DOLE/JOHNSTON WOULD DO

Section 624 of the bill unfortunately establishes extremely weak criteria that agencies must use in making regulatory decisions. The provisions are so full of exceptions that an agency could justify almost anything it wanted to. The bill requires an agency merely to show that a rule's benefits "justify" costs. In addition, the rule the agency adopts must be the "least cost" alternative of the reasonable alternatives considered, and even what alternatives are considered appears subject to agency discretion.

Even these two troublesome criteria are further weakened because the bill allows agencies to adopt more costly rules when there are "scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety or the environment...." This plays completely into the hands of regulators, since agencies and the Clinton Administration routinely claim that benefits are often nonquantifiable. So this provision would allow agencies essentially to be able to justify whatever alternative they want, even if it is very costly and even if there are no benefits.

If a statute precludes an agency (or the agency interprets the statute to preclude it) from weighing costs and benefits, then in reality it need only meet the other criteria established. The fact that an agency must "clearly articulate" its evaluation of the relationship of costs to benefits will have little value if a particular law or the agency's interpretation of that law does not require such a relationship even to be established.

2) COST-BENEFIT ANALYSIS (Section 621)

✓ **DO require agencies to look at "incremental" costs and "incremental" benefits.** "Incremental" is another key term in regulation. There may be diminishing returns in taking a regulatory action. Analyzing the "incremental" effect would require agencies to apply cost-benefit analysis to assess the utility of each further increment of control or action. For example, EPA should not be able to develop a new clean air rule and simply state that the rule achieves the desired benefit. There are lots of things that help make the air cleaner. What EPA should be forced to show is that the additional improvements in clean air are directly attributable to the rule with the additional cost. That makes it more difficult for an agency to choose actions that have very high incremental costs but little added benefit.

✓ **DO require agencies to analyze clearly for the public record what they consider to be the nonquantifiable costs and benefits.** The American people have a right to know what value judgments federal bureaucrats have made on their behalf. In particular, agencies must be able to show some reasoning behind their selection of nonquantifiable costs and benefits.

✗ **DON'T let agencies off the hook from explaining to the public the relationship between benefits and costs, both quantifiable and nonquantifiable.** This is particularly important if, as the Clinton Administration has argued, cost-benefit analysis is a necessary mix of scientific and value judgments. In the period for reviewing and commenting on proposed regulations, the American people have a right to know what the relationships are between the quantifiable and *non-quantifiable* costs and benefits and the importance the agency has given to each of them.

✓ **DO require agencies to include the analysis of a range of alternatives that can educate Congress and the public about regulation and its consequences.** Such a provision in reform legislation becomes even more important if the law unwisely requires a least cost standard, because the consequences of the rule must be fully understood. Agencies should be required to include a discussion of the costs and benefits of a range of regulatory alternatives, even if the underlying statute may preclude the adoption of one or more of the alternatives. Some of the overzealous and expensive regulatory actions taken by agencies are done because Congress has prescribed it in law—with lawmakers often unaware of the alternatives at the time. Unless Congress takes the position that it always has the best information available when it makes these kinds of decisions, agencies should be required to provide information to Congress and the public about regulatory alternatives that may be preferable to what is prescribed in law. That would allow Congress the option of modifying the law.

✓ **DO require agencies to assess the cumulative burden of a rule and the burden on small business.** Agencies must be required to assess the cumulative burden of their regulatory actions and the burden on small businesses. The Clinton Administration wisely considered these important enough to include this item in the regulatory principles of E.O. 12866.[4] Unfortunately, agencies routinely ignore the Regulatory Flexibility Act, which requires agencies to assess

specifically the impact of their regulations on small business. As the Clinton Administration puts it, regulatory agencies "still tend to draft one-size-fits-all" regulations.[5] Small businesses are extremely vulnerable to heavy regulatory compliance costs. Congress thus must require agencies to be flexible in crafting rules to minimize the burden on smaller firms.

What Dole/Johnston Would Do

Unfortunately, rather than require agencies to focus on the incremental costs or benefits, the definitions in the bill appear to allow an agency to attribute almost any benefits to a rule that may not, in reality, be the result of that rule but of some other "agency action." True, an agency is allowed to do the same for "cost," but regulators have no incentive to do so. What this means is that agencies have wide freedom to find unrelated benefits to justify the costs of a rule.

Section 622 of this bill does require agencies to include cost-benefit analysis as part the proposed and final rulemaking processes. It restricts an agency's discussion of reasonable alternatives solely to those the agency has the authority to consider. In addition, the bill appears to limit further the benefits of examining reasonable alternatives by allowing an agency to choose which alternatives it will consider rather than all of them (as specified in the bill). There appears to be no requirement that an agency must include in its cost-benefit analysis either an assessment of the cumulative impact or the impact on small business.

Agencies are allowed, under the bill, to issue a major rule for effect without the cost-benefit analysis if the agency "for good cause finds that conducting the cost-benefit analysis is impracticable due to an emergency *or* health or safety threat that is likely to result in significant harm to the public or natural resources." This is an extremely broad exemption, which may even be broader than what is currently permissible under the Administrative Procedures Act. How broadly can agencies interpret "health or safety threat"? Can a regulatory action designed to save one hypothetical life be justified here? This exemption should be exercised only rarely, or it would become a huge loophole. This weak provision can be strengthened by requiring the agency head to make the "good cause" determination only in emergencies and to justify it directly to Congress.

3) Risk Assessment

✓ **DO require agencies to generate and disclose central tendency estimates of risk.** Some agencies focus entirely on "worst-case," "upper-bound," or "high-end" estimates of risk. These estimates are not necessarily wrong or always inappropriate for decisionmaking. However, they are always wrong, inappropriate, and misleading when they are provided as estimates of "the" risk. Further, such estimates cannot be properly used in cost-benefit analysis—except where an agency seeks to show that, under even the most favorable circumstances, the benefits of a proposed regulation do *not* justify the costs. Where they are propos-

4 E.O. 12866, Section 1(b)(11).

5 Administration's annual report on E.O. 12866, p. 23.

ing to regulate, agencies should be prohibited from providing estimates only of the "worst-case," the "upper-bound," or the "high-end."

✓ **DO encourage agencies to generate as much of the full risk distribution as possible.** Risks are never uniform across the population, and all risk estimates suffer from considerable uncertainty. Most risk experts agree that it is better to ascertain the entire risk distribution rather than to rely on single-valued point estimates. While it is not possible to do this perfectly, every effort ought to be devoted to doing it as well as possible. Legislation should provide incentives that encourage both regulatory agencies and regulated entities to estimate more the risk distribution than just the central tendency.

✓ **DO require agencies to disclose fully the assumptions, data, models, and inferences that underlie their risk assessments.** The public cannot be expected to comment intelligently upon (or successfully challenge) agency risk assessments that are cryptic or inadequately documented. Risk experts agree that transparency is key to effective review and oversight. Only those who fear being held accountable oppose consistent, firm, and unyielding demands for full disclosure.

✗ **DON'T allow agencies to get out of performing risk assessments for major rules by asserting vague claims of impending health, safety, or environmental catastrophe.** Such claims are implausible on their face without a credible risk assessment, for how would an agency head know that a catastrophe lurks without scientific evidence? It is important to permit agencies to respond to real emergencies without first performing a sound risk assessment because time is of the essence. However, once this response is in place, there is no legitimate reason for waiving normal analytic requirements. Emergency action promulgated without risk assessment (or cost-benefit analysis) should automatically sunset when agencies fail to fulfill their analytic and procedural requirements in a timely fashion.

WHAT DOLE/JOHNSTON WOULD DO

The discussion draft incorporates many important principles for risk assessment and risk characterization, and risk assessments performed in accordance with its spirit will be better than current practice. Unfortunately, the draft falters in too many places where reasonable performance standards could easily be articulated and may provide loopholes that are too numerous and too large.

Section 633(f)(1) directs agency heads to express risk estimates in terms of ranges or distributions, but fails to express a preference for the latter. Ranges are not nearly as useful as distributions, and in many instances they will be highly misleading.

Section 632(c)(1)(A) allows agencies to evade the risk assessment requirements entirely by asserting vague "health or safety threat[s]...likely to result in significant harm." Regulations imposing billions of dollars in cost and preventing a mere handful of hypothetical cancer cases have nevertheless been issued on the ground that such risks are "significant." With this history, it is hard to be optimistic about agencies' willingness to foreswear this huge loophole.

4) JUDICIAL REVIEW (Sections 553, 706)

✓ **DO include a strong judicial review provision that makes agencies accountable to the public.** The only way agencies will perform the analyses required by a strong standard for cost-benefit and decisional criteria is if the courts can check them. The courts must be allowed to consider whether or not the agency followed the legal procedures for public notice and comment and the extent to which the analyses required by the regulatory reform legislation relate to the agencies' decisional responsibilities as specified in the law.

A strong judicial review provision is needed to force agencies to comply more strictly with a reform statute. But such a provision means little if the cost-benefit standard and decisional criteria are weak, for an agency can happily comply with legislation with a weak standard.

The Administration and Senate Democrats, who generally have supported the aggressive use of regulation, understandably do not want strong judicial review. But they also know that they can weaken the effect of judicial review by watering down the cost-benefit standard and the decisional criteria. In doing so, the courts will have a hard time finding fault with an agency's chosen action.

WHAT DOLE/JOHNSTON WOULD DO

The standards for review in Section 625 allow courts to set aside an action which is "arbitrary and capricious or an abuse of discretion (or unsupported by substantial evidence where the standard is otherwise provided by law)." The problem is that, given the weak nature of other provisions of the bill, there will be very few cases where the courts will be able to set aside an agency rule on these grounds. Indeed, the bill seems to enhance—rather than control—an agency's ability to exercise its discretion, and the public will have difficulty challenging it in court.

5) ADMINISTRATIVE PROCEDURES (Section 553)

✗ **DON'T let agencies off the hook easily for providing public notice and disclosure and following public procedures.** Exemptions from such requirements should be the exception, not the norm. Today, agencies continue to stretch compliance with requirements of the Administrative Procedures Act. Agencies must recognize that the public has a right to this information and the fact that it is perhaps inconvenient or takes time to provide it is not an acceptable excuse from doing it. Demonstrating that the public notice and procedures are "contrary to the public interest" appears to be a sufficient standard. If an agency feels that is compelled to circumvent public notice and comment and/or cost-benefit analysis, this choice must be made at the highest levels of the agency and only for true "good cause." In addition, if an agency uses the exemption, it should be required to go back later and follow the appropriate public procedures. Even the Paperwork Reduction Act requires agencies that have sought emergency exemptions from OMB review to go back and submit a proper request for approval and make any changes required based on public comment and OMB review. Regulations should be held to at least the same, if not a higher, standard than paperwork.

✗ **DON'T allow agencies to issue conflicting or duplicative rules.** Agencies should be expected before issuing a final rule, to the extent permitted by law, to make sure it is not incompatible with or duplicative of any other rules already in force. Agencies are notoriously bad at coordinating their regulatory actions. OIRA has played a critical role in doing this for them. However, it is not without a tremendous amount of effort. Again, even the Clinton Administration in E.O. 12866 includes among its regulatory principles instructions to agencies "to avoid regulations that are inconsistent, incompatible or duplicative with other regulations or those of other federal agencies."[6] At a minimum, an agency should explain in its proposed and final rules what steps it has taken to work with other agencies to resolve conflicting policies or duplicative efforts.

WHAT DOLE/JOHNSTON WOULD DO

Section 553 addresses the administrative procedures agencies must use to promulgate rules. It outlines what agencies must include in their proposed and final rules, and the ways in which agencies may go about gathering information about a proposed action. These changes are important because agencies are required to disclose to the public important information, including information regarding any cost-benefit analysis, and alternative methods of compliance. However, there is a "good cause" exemption, and it does not appear to require an agency that has an exemption to go back later, follow public procedures, and make any necessary changes.

Section 553 also gives interested persons the right to petition for the "issuance, amendment or repeal of a rule." The petition process for major rules is further addressed in Section 623(j).

6) PETITIONS (Section 623)

✓ **DO require a strong public petition process and keep it separate from the agency's "look-back" timetable.** The public should be given the right to demand that an agency reexamine any aspect of a "major" rule after it has gone into effect, including the underlying cost-benefit analysis or risk assessment. Today, the public can comment on a rule only before it is promulgated. Affected individuals and industry should have the ability to petition agencies and/or the President to reexamine regulations, to the extent permitted by law. This should include petitions targeted at specific types of regulations, to repeal agency guidance enforced as regulation, to examine alternative methods of compliance or waive compliance with rules, or to reexamine the risk assessment or cost-benefit analyses performed. However finely the petition process is structured, it should include: 1) an advisory committee of experts in the agency's area of responsibilities to help review and advise the agency; 2) clear deadlines for when an agency must respond to petitions; and 3) a prohibition on the consideration of additional similar petitions for a reasonable period once a decision is made.

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6 E.O. 12866, Section 1(b)(10).

Until an agency makes a decision regarding an existing rule in response to petitions submitted, the agency should not limit the number of petitions submitted. The petition process should be seen as operating for existing rules in a manner similar to the way in which the public comment process works for proposed future rules. An agency may receive hundreds or thousands of public comments on a regulation during the proposed rule stage. Today, an agency cannot limit the number of comments it receives on a proposed rule because there might be too many. That is the whole point of the public comment process; people have a right to participate in regulatory decisions that affect them. Similarly, an agency should not limit the number of petitions submitted for fear of getting too many. The fact that there might be 1,000 identical petitions filed should be a message to the agency that there is a serious problem that deserves its attention and soon. There is a frightening arrogance in taking the position that the government does not have to be responsive to the needs of the people because it will make too much work for government bureaucrats.

The right to force a reexamination by petition should not depend on the agency's timetable for reviewing its own rules (the "look-back" process). Linking the petition and look-back process would give agencies ample opportunity to avoid or delay addressing petitions or reviewing rules in a timely manner.

WHAT DOLE/JOHNSTON WOULD DO

While Section 553 gives the public the right to petition for "the issuance, amendment or repeal of a rule," Section 623 appears to undermine seriously the effectiveness of this petition process. Under this Section, one of the reasons a petition to amend or repeal a major rule would be rejected is if the rule has already been included as part of the agency's final review of rules schedule.

So if an agency has already decided that a major rule will not be reviewed for, say, another ten years, the petition will not be granted. The only recourse the affected party has is then to petition to change the priority the agency has assigned to the review of the rule. But that agency petition review process alone could take anywhere from 18 to 36 months without anything being done to change the schedule for reviewing the rule, let alone changing the rule itself. The same procedures would apply to petitions to review interpretive rules, general statement of policy, and guidance. These provisions thus appear to allow agency bureaucracy to thwart providing any kind of timely regulatory relief for the most expensive, burdensome rules.

7) AGENCY REVIEW OF RULES (Section 623)

✓ **DO require agencies periodically to review existing regulations and do it frequently.** In E.O. 12866, the Clinton Administration included a "look-back" mechanism.[7] To date, the success of this effort has been limited. Agencies should be required by statute to work in conjunction with OIRA to establish schedules for the review of major rules. Some proposals have suggested that

7 E.O. 12866, Section 5(a).

agencies should wait ten or more years to review rules. This makes no sense. These federal regulatory agencies have tens of thousands of employees who handle these program rules every day: they, as well as the public, know what rules do not work. The Vice President's "reinventing regulation" reports have begun to ask them. The American people should not have to wait more than ten years to change or eliminate rules that the federal government itself has already decided are unwise. Thus, while regulatory reform legislation should improve standards for future rulemakings, it also should provide a more timely mechanism for reassessing existing regulations.

WHAT DOLE/JOHNSTON WOULD DO

Section 623 gives federal agencies, rather than the affected public, the ability to determine when burdensome regulations will be reviewed and perhaps changed. This provision appears to allow agencies to take as long as 14 years to revise a regulation. Thus, under the bill, agencies possibly could be allowed to take until 2010 even to consider changing rules that the Clinton Administration already may have identified as ineffective or excessive through its "reinventing government" efforts.

Specifically, agencies are required by the bill to solicit comment on a preliminary schedule of review of rules they have identified within one year (and every subsequent five years) after enactment of this law. Interpretive rules and guidance, which may have the force and effect of rules and can be used to get around rulemaking requirements, also can be added to the list. A final schedule must be published a year later, addressing public comment. This final schedule can be revised if the agency grants a petition requesting a change in the priority of a rule or to amend or repeal a major rule. The deadline for the review of any rule cannot be longer than ten years from the date of the initial publication of the final schedule. However, the agency head can extend the deadline for review of any rule by up to two additional years (i.e., total agency review time alone can be 12 years). Two years before the deadline for review, the agency must notify the public and solicit comments on the rule and address these comments in a published notice within a year before the deadline. The agency still has two years after the deadline for review to promulgate a revised rule if that is the action that the agency chooses to take. If no action is taken within the two years, the rule would expire.

Opponents of "look-back" provisions argue that it would be a cumbersome, costly process for agencies. Unfortunately, Section 623 adds a provision that requires the President's budget for each agency to "identify as a separate sum" the amount requested to implement the section. If an agency does not want to carry out this provision of the law, it may fail to request money for implementation, which the President and Congress may support. This provision—at the heart of regulatory relief—is seriously weakened by allowing it to be undermined through the budget process.

CONCLUSION

For regulatory reform legislation to be effective, it must force regulatory agencies to behave differently. It must force them to base their regulatory decisions on costs, benefits, and actual risks faced by Americans and force them to use sound data to make these calculations and state clearly what non-measurable factors shaped the de-

sign of the regulation. Once a regulation is promulgated, reform legislation must give the public much greater power to force reviews of existing rules that do not meet these tests. And legislation must hold agencies accountable, under judicial review, for their regulatory actions.

Senator Dole was doing regulatory reform the right way before the Senate Democrats and the Clinton Administration got in the way. While the intent of most sponsors of the current Senate draft is a bill that would achieve the objectives of real reform, the language of the bill itself is so flawed that it would not achieve these intentions. Indeed, in many areas the language actually would insulate agencies further from proper accountability. The Dole/Johnston bill as currently drafted could be a setback for regulatory reform.

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