Despite much talk and some action in recent years about deregulation, excessive government rulemaking is still a major problem.

By Henry L. Schweich

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The bubbles of American business companies have been steadily bursting with increasing regularity during the past decade. They have been bursting not due to any lack of intelligence, innovation, energy, or productivity on the part of working Americans, but because the U.S. government, along with its army of administrative bureaucracies, is literally breaking the back of the American worker and his company.

The U.S. government has unnecessarily skyrocketed costs and has become the major factor in making the American worker non-competitive in world markets. And, by far, the worst is yet to come.

Every responsible businessman, worker, and citizen recognizes the desirability and need to conduct economic activity in both a safe and environmentally sound manner. The objectives of legislation passed to achieve these results are excellent, both morally and from a business standpoint.

In the legislation itself, however, all sense of balance and proportion has been lost. Rather than set objectives for the agencies to follow, Congress has saddled them with impossible technical standards and impossible timetables to be achieved at unknown, impossible, and limitless costs. This loss of perspective is destroying the American worker, his job, and the industrial base.

The magnitude of the destructive impact of the government on the competitive position of the American manufacturing worker is hard to exaggerate. Information obtained from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) indicates that between 1979 and 1986, there has been a loss of almost two million manufacturing jobs.

This number is confirmed by the U.S. Department of Labor, which states that more than one million manufacturing jobs have been lost during the last five years alone, half of them the result of plants or companies moving or closing down.

The effects of this destruction of the manufacturing base by the U.S. government are also illustrated when..."
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The scope and growth of regulatory activity is also difficult to imagine. In 1969, 36 major federal regulatory agencies were staffed by approximately 28,000 people and operated on less than $850 million per year. By 1979, there were 57 major federal regulatory agencies employing 88,000 people and costing $5 billion per year to operate. Today staffing exceeds 100,000 with operating costs estimated at more than $9 billion per year.

During the ten years between January 1976 and September 1986, 667,620 pages of regulations were published in the Federal Register, an average of 60,693 pages per year. A business manager trying to comply with just new regulations alone would have had to read through 25 ft. of finely printed proposed and final rules and guidelines during the decade.

From 1982 to 1984, an average of 16 final rules documents per day were issued by federal agencies under an administration that was pledged to get regulations off the back of business. Of much greater significance to the deteriorating competitive position of the American worker is the cost of compliance. Although many of these costs are unknown or unknowable, authoritative estimates place the cost at more than $100 billion per year.

In real terms, this is approaching half the national defense spending, and more than $400 per year for every man, woman, and child in the country.

The competitive position of American industry cannot and will not survive these burdens. Look at two examples. In 1970, Congress created both the Occupational Health and Safety Administration (OSHA) and the Environmental Protection Agency (EPA). The enabling legislation set unattainable objectives, with impossible timetables, and provided no cost limits whatsoever to the burdens that would be borne by the American economic system.

Trivial to Frivolous

Much has been written on OSHA. In 1970, the agency was given the mandate “to assure so far as possible every working man and woman in the nation safe and healthful working conditions.” Not mentioned in its enabling legislation was what OSHA standards should apply, what character
they should take, how stringent they should be, how they should be enforced, or, most importantly, how much they should cost.

As a result, when OSHA began to promulgate its regulations, its underlying philosophy was to consider costs only at that point where the agency’s actions might threaten the viability of the affected firm.

Given little direction either from the public or elected officials, OSHA concluded that its mandate could be met through narrow, technology-based regulations, which identified hazards that were relatively easy to find and correct.

The common complaint that OSHA “regulates the trivial in exquisite detail” is well-grounded. For example, OSHA devotes 21 pages exclusively to ladders with conclusions, such as, “the bracing on the back legs of step ladders is designed solely for increasing stability and not for climbing.”

It is not surprising OSHA has become the object of bitter ridicule.

The underlying regulatory philosophy is to consider costs only when compliance threatens the viability of the affected firm.

The agency spends 75 percent of its budget for compliance and enforcement (versus 5 percent to identify, analyze, and remedy health hazards) of rules that are so detailed, with such little room for variance, that they breed contempt and defiance.

Despite an attempt to rebuild the credibility of the agency, “there has not been a dramatic change in the structure of OSHA standards since OSHA’s initial standard-setting efforts.” Even when its goals are sound, OSHA still presents solutions without regard to the cost of compliance.

In spite of significantly increased costs imposed upon American industry by OSHA, available evidence shows that “OSHA has had no substantial impact on worker safety.”

Drowning In Applause

The objectives stated for EPA generally draw applause from the public sector, industry, and politicians. And yet, the regulatory program administered by EPA creates much more serious and frequently fatal difficulties for American businesses.

Established in response to legitimate, widespread concern about the deteriorating quality of the environment, EPA was mandated to substantially reduce toxic substances in the air, water, and soil. Like OSHA, however, EPA was not permitted in its authorizing statutes to take the costs of pollution control directly into account. Efforts to apply economic curbs to the creation of environmental regulations have demonstrated the difficulty of measuring benefits, but have hardly reduced direct and indirect costs borne by industry and consumers.

Though benefits cannot be measured, Congress continues to respond
to public pressure for additional environmental action at any cost. EPA continues to grow in size and complexity each year as new laws add layers of regulations.

Many businesses have been pushed over the brink of survival by the economic impact of EPA’s sweeping mandate of technology-based requirements that can be costlier than equally effective alternatives, and failure to appreciate the difficulties of complying with copious, inflexible, and often impossible rules.

With strong regulatory sentiment among voters, in the press, in Congress, and within EPA itself, it is difficult for businesses to make known their legitimate concerns without appearing to be self-centered antienvironmentalists. Yet, the impact of environmental laws and EPA regulations on individual companies, workers, taxpayers and consumers is devastating. Huge administrative and compliance costs are borne in the form of lost investment capital, lost jobs, and higher taxes and prices to achieve benefits that are often negligible or that could be achieved in less costly, more efficient ways.

One of the most notorious, costly areas administered by the EPA is toxic waste cleanup under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA, commonly known as Superfund). Introduced in 1980, Superfund was reauthorized in 1986—at a level of $9 billion—more than five times greater than before, and twice the level even EPA says they can effectively spend.

While cleanup of the worst toxic waste sites is an environmental necessity that will be extremely expensive, the law’s effects fall equally heavily on major polluters, minor polluters, and innocent nonpolluters. Again, the new law in many ways ties EPA’s hands.

In reenacting the law, Congress not only mandated severe and impossible timetables and standards on EPA and others, but established minimum levels
on staffing and requires that minimum flows of funds be spent in specific years.

Neither culpability, negligence, nor even knowledge of hazardous substances is required for liability to attach to innocent companies or individuals. Neither fairness, cost, or the destructive effect on the American workers’ competitive position are considered.

Multiple rights to sue are established and extended to states, groups, and individuals. The Superfund legislation as written should appropriately be called the Lawyers Guaranteed Full Employment Act.

**Look and Despair**

Given the extreme difficulties the American worker already faces in competing world markets, it is absolutely unconscionable that the government has become the major factor in destroying America’s competitive position. Government must acknowledge its responsibility in expediting the declining industrial base, because excessive regulations not only generate higher prices for consumers, and higher taxes for the taxpayer, but lost investment opportunities for business, and lost jobs.

There has been much discussion recently as to whether the United States should have a better developed national industrial policy. Many in Congress feel American companies need protection from foreign competitors.

The national industrial policy critically needed now by the American worker is a recognition by government that, regardless of his productivity and quality, it is unnecessarily high costs of regulation that have buried him. The only protection the American worker needs is from the unnecessary costs imposed by his own government.

Congress should carefully note the poet Shelley’s story of the ancient Egyptian King who, while building the largest and most impressive structure then known to mankind, exulted, “‘My name is Ozymandias, King of Kings: look on my works, ye Mighty, and despair!’”

But while there is time, let us not forget also the last lines which read: “Round the decay, Of that colossal wreck, boundless and bare, the lone and level sands stretch far away.”

**About the Author.** Henry Schweich is president of Cerro Copper Products Company, Sauget, Ill. This article is reprinted with permission of the author.