

# REAGAN'S EPA: BALANCING RULES WITH THE BUDGET

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"Balance" has become a favorite word in Washington regulatory circles as the Reagan Administration seeks to change many of the things done or started by the Carter Administration. It's a good word to use, for although it can mean different things to people of different political viewpoints, in the current atmosphere of economic crisis there has been a remarkable fusion of differences to the point where "balance" is seen, generally speaking, in the same light by both Republicans and Democrats.

The people with the longest Washington memories scratch their thinning gray hair these days to remember a time when a President had the benefit of such consensus within the regulatory establishment. Was it Eisenhower, or does it go all the way back to FDR? That itch under everybody's saddle, the Washington bureaucrat, has undergone an astonishing change of demeanor since November 4. Unlike the cynical stereotype of past Administration changes, the average bureaucrat today is not thirsting to teach all these newcomers how Washington works — he's as anxious as the rest of the country to bring about "balance."

The Environmental Protection Agency, regulator of herbicides, pesticides, and fungicides among a bewildering array of toxic and other environmentally sensitive substances and processes, had not even fully completed its first decade of existence when the people expressed their will on November 4. Thus, there are no graybeards at EPA who remember how things were in the agency in Eisenhower's or FDR's time. But many worked in other agencies, and they're girding for what they expect will be an exciting, challenging, and simultaneously frustrating time as regulatory "balance" is swung into position.

The first instrument of this historic process came on February 17, just before Denver conservative Republican Anne M. Gorsuch was nominated to head EPA. On that day, President Reagan signed Executive Order 12291, an extraordinarily detailed and sweeping edict that stopped virtually every substantive pending and proposed regulation dead in its tracks, except those required by national security or court order. Included were some 38 final EPA rules that had either just come into effect or were about to soon become enforceable.

Among those were two dealing with the use of pesticides. Both were permissive rules sought by industry, and are not considered likely to be killed as a result of the review rigors to which they will be subjected under Executive Order 12291. More about them later.

The executive order, immediately remarkable for the high degree of bureaucratic approval it informally received as soon as it was issued, establishes a 25-step "regulatory impact analysis and review" procedure for all affected regulations. This procedure is so intensive that most informed observers agree that its first effect will be to significantly delay the practical onset of any of the affected regulations, and that its second will be to make the going so tough for many rules that agencies will simply just scrap them.

The President's stated rationale for the executive order is "to reduce the burdens of existing and future regulations, increase agency accountability for regulatory actions, provide for presidential oversight of the regulatory process, minimize duplication and conflict of regulations, and insure well-reasoned regulations." Wonderfully, the bureaucrats and rule-writers who have been responsible all along for those very ills are today among the heartiest applauders of that rationale.

Of course, bureaucrats are like regular people in that they have political beliefs too. Some are Republicans of anti-regulatory bent, and some are Democrats with opposite views. Many don't fit either stereotype. But it's both strange and reassuring to hear so many voluntarily declare, as one top regulation-writer of 20 years' standing declared to me, in speaking of Executive Order 12291: "I think it's wonderful, fantastic. We've got to turn the country around, or else we'll all go down the tubes without the Russians firing a single shot."

That bureaucrat, and literally thousands upon thousands of others like him, is already suffering all of the following fallouts from Executive Order 12291: Diminished job satisfaction, heavier workload, more frustration, less office help due to the hiring freeze, and harder personal finances resulting from the spending freeze that curbs pay hikes. Yet, strangely, many — if not most — of these bureaucrats are enjoying themselves more, in a perverse kind of way, than they did when it was they who called the shots; they see themselves as saving the country, and that's a heady feeling.

Look at some of the things Executive Order 12291 requires of each regulation, proposed, pending or final:

- Its potential benefits to society must outweigh its potential costs;
- Its objectives will be so chosen as to maximize net benefits to society;
- Among the alternatives to the rule's objective, that involving the least net cost to society *shall be chosen*;
- The rule's place in an agency's schedule of regulatory priorities must take into account the condition of particular industries affected, the condition of the national economy and other regulatory actions contemplated for the future;
- A special "regulatory impact analysis" must be prepared for and this must be sent to the Office of Management and Budget at least 60 days before it is to be officially proposed, to provide OMB with a chance to advise whether or not it wishes to comment — if it does wish to comment, the rule must be withheld until the comment is received.

These and many other delay-inducing requirements are also required of all "major" rules already in effect. Such rules are defined as those which are likely to result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers,

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individual industries, federal, state, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The immediate reaction to the executive order, both within government agencies and without, was that it affected virtually everything in the pipeline, and possibly most out of it as well. Certainly, arguments could — and likely would — be made to review everything. The *Federal Register*, that hefty daily tome that publishes all regulations and associated notices, would have to go on a crash diet, cutting down on its average 250-pages-a-day consumption of newsprint. All it would likely publish from now on would be inconsequential procedural notices mandated by law, rules required as a result of explicit court orders — and a succession of notices staying the implementation of already-final rules, extending deadlines for comments on proposed rules, and proposing withdrawal of prior proposals.

When this was written, it was not immediately clear what would be the fate of two relatively non-contentious EPA final rules published in the dying weeks of the Carter Administration. These announced (1) That EPA would, from now on, establish pesticide residue tolerances, when requested, for replacement or rotational crops — rather than establish proscriptions on agricultural practices to insure that products bore zero pesticide residues; and (2) That state government could register, subject to EPA veto, certain pesticide uses and products not specifically included in EPA labeling, to meet special local needs.

The former, being more a statement of policy than the “final rule” it was termed by EPA, is so in harmony with Republican philosophy that Executive Order 12291’s impact on it is almost certain to be short-lived. The latter, while still being generally in harmony with Republican thinking — encouraging a degree of state and local autonomy — will likely have to go through all the paces stipulated by the executive order.

One reason for looking carefully at this state registration regulation is the universal reluctance of industry to develop separate labels for each state or local jurisdiction. The rule could, conceivably, result in a plethora of special local and state uses and new products, each with slightly different labeling.

When the rule was proposed in August, 1979, this provision apparently failed to provoke great anxiety. For example, only one firm took EPA to task over it, a solitude that the agency took advantage of in rejecting the objection. “This commenter,” EPA said pointedly, “apparently stands alone, even though other members of the pesticide manufacturing industry might benefit economically if the commenter’s suggestion were adopted by EPA.”

Potential economic benefit, of course, is what Executive Order 12291 is most interested in. EPA will doubtless be thinking long and hard about this before it so lightly dismisses such objections in the future, be they from a lone commenter or not.

Many matters, small and large, are changing in such manner at EPA. President Reagan’s choice for Administrator will see to that, starting with her selection of

some 24 deputy assistant administrators. She may — and doubtless will — retain many of the incumbents, since industry has not been clamoring for a wholesale cleanout; in addition, most are “career” people rather than political appointees, and as such can only be moved sideways, not fired.

Gorsuch’s track record in her home state of Colorado, where she had been both a corporate attorney for Mountain Bell Telephone and an outstanding member of the state legislature, is one of strong decision making and dedication to state rights. Like the other Coloradoans who have been brought to Washington by Mr. Reagan, Gorsuch has critics in the environmental and friends-of-nature camps. News of her nomination was greeted by the Colorado Open Space Council with the observation that “She’s hard-working and conscientious, but she’s not particularly sympathetic to environmental concerns.” In her first two years as a state legislator, the council rated her 33 and 8 respectively on its 100-point scale of environmental consciousness. By 1980, she had rehabilitated herself to 72 by sponsoring automobile inspection and maintenance legislation aimed at controlling Denver’s air pollution.

Clean water and clean air will be her main concerns at FDA, she told me, ducking an opportunity to discuss more down-to-earth issues like pesticides, herbicides and fungicides. Had she no experience with such matters? “I didn’t say that,” Gorsuch replied stiffly.

If she hasn’t had such experience, she will soon get it — in spades. The burning issue of the moment — if not the decade — in EPA’s Toxic Substances Division is whether to ban outright all uses of 2,4,5-T and Silvex, contaminated by the teratogenic, abortifacient, carcinogenic “unavoidable” chemical Dioxin or TCDD. The contentious herbicide’s fate is currently before an administrative law judge of the EPA, and whichever way his decision goes, Gorsuch will come under pressure to exercise her authority to overrule it. She may even come under immediate pressure to stop the judge’s hearings — and she has the power to do that, too.

This pressure, whenever it comes, will inevitably call for a delicate value judgment from a woman who prides herself in having the capacity to make “hard decisions.” Gorsuch is unlikely, observers say, to be unduly swayed by the teratogenic and abortifacient findings; as a woman who, activists allege, turned her back on the women’s movement in Colorado, she may be expected to view the data unemotionally.

Which is to say, in the current parlance of Washington, she will apply “balance” to her deliberations. That should be good news to all but the most single-minded of EPA’s many diverse publics.

Indeed, despite the inevitable political skirmishing that’s going on over the Reagan budget cut proposals, most of what this new Administration is doing is meeting with general approval. As already stated, the most remarkable aspect of this general approval is the zeal with which harassed and otherwise frequently obstructive bureaucrats have rallied to the cause.

This is not the stuff of newspaper headlines, and television specials. Indeed, the news media — at least in Washington — can sometimes now be seen coyly admitting that it prefers to carp and to criticize, and that, yes, maybe it does overdo it now and again. **WTT**