

EDITORIAL: Real Regulatory Reform *Boston Herald*; Boston, Mass.; May 1, 1995;

In its next 100 days, Congress will take up "regulatory reform." There's new evidence that only Congress can do the job and the executive branch can't reform itself.

Congress has been discussing three approaches, which might be combined in greater or lesser degree: impose a moratorium on regulations to think up new approaches; require cost-benefit analyses and give the courts more power to set regulations aside; or give Congress a veto on the major regulations. This last is a short step from an approach we've endorsed, make Congress vote on the big ones.

The Clinton administration already is arguing that the president's executive order of October 1993 took care of the problem.

This order requires, among other things, agencies to prove the need for a regulation, to determine that the benefits of the regulation "justify" its costs (both benefits and costs to be quantified as far as possible, but there's no requirement that the benefit number be higher than the cost number) and to consider alternatives.

The Office of Management and Budget is supposed to ride herd on the process, as it was charged with doing in the executive order of President Reagan that Clinton replaced.

The Institute for Regulatory Policy reported last week that the government's most active regulator, the Environmental Protection Agency, has largely ignored the order. The institute is financed by trade associations, which means a lot of activists will try to discredit its work as nothing more than an apology for greedy businesses. This is a shame, for the work was directed by Jim Tozzi, a veteran of OMB with long experience in overseeing regulatory agencies.

Here is what the institute found: Of 45 significant EPA rules issued between April and September last year, in only 19 was the need for the regulation evaluated (in 16 of those cases, a federal law required it, or the rule was required to interpret a federal law).

Costs were assessed in 31 cases, and benefits quantified in 15. Alternatives were assessed only nine times.

OMB rejected nothing. This is not surprising. OMB is tough on the agencies if the president of the day wants it to be; this one doesn't.

How does EPA get away with it? Well, the president doesn't care and there's no penalty for not complying - and all the pressure on the bureaucrats is to push the regulations out the door.

Until Clinton, every president since Nixon groped for some mechanism to bring the regulatory agencies under closer White House scrutiny. Agencies are part of the "iron triangle" of congressional committees, interest groups and bureaucracy that, by longevity and trading of personnel, can hunker down and outlast reform efforts.

Regulations are laws in everything but name. You can be punished for disobeying them. No agency has the authority that Congress has to make compromises and trade-offs and to command assent to the final product.

Far better for Congress to treat proposed major regulations as drafts of a statute, to be debated, amended and voted on. For this reason, we hope the Senate's close approach to this position - letting major regulations be exposed to possible veto - prevails.