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OP-ED

Obama's Rules Revelation

The era of big regulation is over. Or is it?

President Obama took to these pages yesterday to announce a new executive order to restore "balance" to federal regulation and root out rules that impede job creation and economic growth. If he means it, this will be one of the great policy walkbacks in American history. The rest of us should stay in a Missouri state of mind.

Substance aside, Mr. Obama's new order is a significant symbolic concession. The White House is admitting that after an historic voter rebuke due in part to its regulatory overkill, it must show some willingness to pull back the throttle. The President is gradually conceding the conservative and business critique of his first two years, even if the concessions so far are mostly in style and rhetoric.

This rules rethink is akin to the Democratic Congress's vote to extend all the Bush-era tax rates while being forced to admit that raising them would hurt the recovery. Liberals have spent years dismissing warnings that their agenda created uncertainty and harmed the economy, and then they wake up to find their leader on the Wall Street Journal editorial page disowning "unreasonable burdens on business—burdens that have stifled innovation and have had a chilling effect on growth and jobs."

The real test will be how Mr. Obama defines "unreasonable." The executive order he signed yesterday instructs federal agencies to weigh the costs and benefits of proposed rules and choose the least burdensome alternative. Yet that merely reiterates an executive order President Clinton signed in 1993 and that was supposed to be governing the Obama Administration all along. Mr. Obama also ordered a "retrospective analysis" of all rules to streamline or repeal the damaging ones.

One example Mr. Obama cited yesterday is a now-defunct EPA rule that treated saccharin like hazardous waste, as if the current problem is archaic rules. But growth isn't lethargic because there are still colonial laws on the books about when livestock are allowed to graze on the village green. The real problems are those his own Administration and its allies have created—the regulatory blowout of the 111th Congress and the laws his appointees are now abusing to bypass democratic consent.

The nearby chart shows the cost of the "major" regulations (those with an effect on the economy beyond $100 million) promulgated by year since 1981. The previous high was $20 billion in 1992, when many of the Clean Air Act amendments of 1990 kicked in.

The four years of the Pelosi Congress have been the most costly since that year, according to the White House budget office. And based on filings in the Federal Register, Heritage Foundation analysts estimate that 2010 will top them all at $26.5 billion. Some 195 other major rules are currently on the docket—up four merely since last week.

This surge will continue. Sarbanes-Oxley delegated 16 rule-makings to the executive branch, yet the Dodd-Frank financial law calls for literally hundreds of new rules by dozens of agencies, and two entirely new agencies. The Congressional Research Service reports that ObamaCare "gives federal agencies substantial responsibility and authority to 'fill in the details' of the legislation," a process that may take "years, or even decades" to complete.

Other hyperactive regulators include the Federal Communications Commission (net neutrality), the Food and Drug Administration (food safety, medical devices) and the Labor Department (the SEIU's wish list). But the worst offender is the Environmental Protection Agency, which is rewriting environmental law with almost no scrutiny.

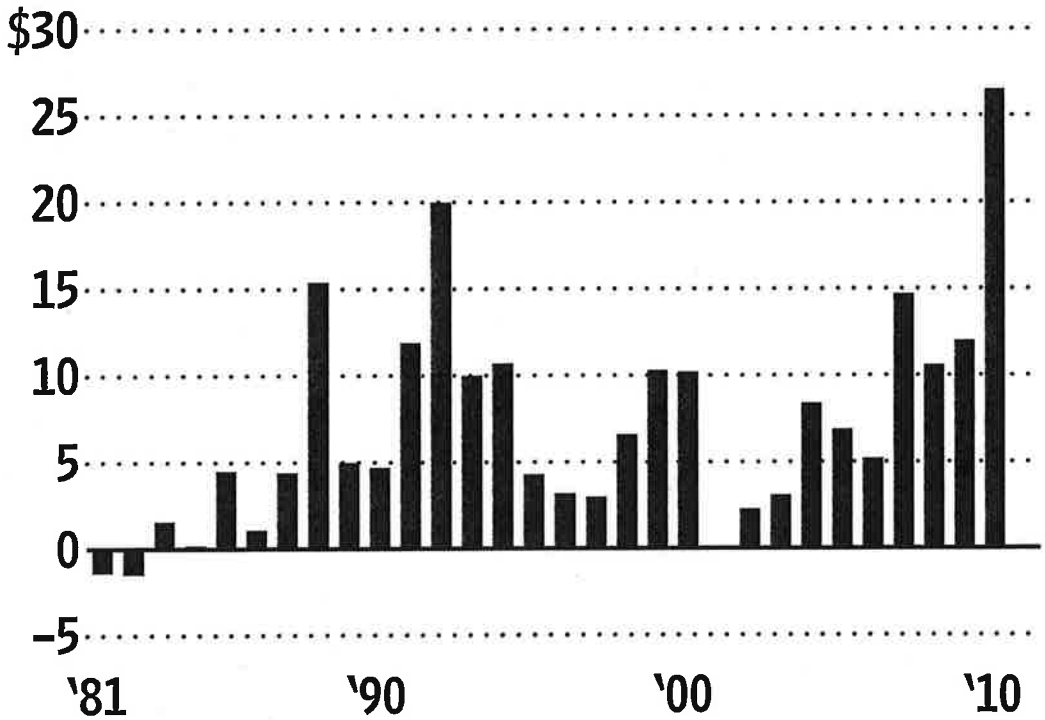
The EPA's goal is to impose carbon emissions limits that even Democrats in Congress rejected, in particular through its "endangerment finding"—which unless Congress intervenes will become the costliest regulation in government history. EPA is also re-regulating conventional air pollutants, often bypassing the usual notice and public comment. It isn't a good omen that Mr. Obama singled out the EPA and its carbon-emissions rules (as related to auto fuel efficiency) as a model of "smart" regulation.

Still, the spectacle of this White House declaring "least burdensome" as its default position really is something to behold. As the old line goes, the surprise is not that it's done well, but that it's done at all.

If Mr. Obama wants to capitalize on this epiphany, he'll go along with attempts in Congress to temper his Administration's regulatory boom, including wholesale review of new rules. As the President now concedes, over-regulation robs the private economy of resources that could go to create jobs and new businesses.

The Regulation Boom

Cost of new major federal rules of more than $100 million each, in billions adjusted for 2009 dollars, since 1981



Sources: OMB (1981-2009), Heritage Foundation (2010)