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The coming regulatory tsunami

Feds withholding required report

By Richard Rahn - October 29, 2012

Knowledgeable officials are expecting a regulatory tsunami after the election. By law, the Office of Management and Budget (OMB) is required to publish a report each April and October about new regulations that government agencies are considering. OMB failed to publish the April report. The question is why — what is it hiding?

House Education and the Workforce Committee Chairman John Kline, Minnesota Republican, has called the OMB's actions a "flagrant violation" of the law. Susan Dudley, director of the George Washington University Regulatory Studies Center, has studied the pattern of "economically significant" regulations (those with impacts of \$100 million or more per year) from 1982 through the first half of 2012. Ms. Dudley has observed that President Obama has had a different pattern of regulations than his predecessors. She notes that his "administration published a record-setting average of 63 economically-significant final rules in his first two years," but more recently, the number of regulations has slowed to a "trickle."

What would explain the failure to publish the required report and the recent lack of new regulations? Ms. Dudley and others think we are seeing the equivalent of a "drawback" of new regulations — like the water on the beach just before a tsunami. She argues that a sign of the drawback is the backlog of regulations under review. She writes; "While historically OIRA [the Office of Information and Regulatory Affairs] reviews regulations in under 60 days, on average, currently over 70 percent of the regulations under review have been sitting at OIRA for longer than 90 days (the default review time established by executive order), and 10 percent have been there for over a year. All recent presidents, with the exception of Reagan, have issued many more regulations during the last quarter of their administration. But the Obama buildup is unprecedented."

Given the highly political behavior of the Obama White House, it is not unreasonable to suspect that because of the failure to give notice of impending regulations and the

backlog of regulations under review, there will be a tidal wave of new “midnight” regulations immediately after the election. It also is reasonable to suspect that many of the regulations may be politically unpopular and do great economic damage. If Mitt Romney wins, he may be able to pull back many of those regulations, but if Mr. Obama wins, given his rhetoric and previous behavior, a torrent of new regulations is likely.

Use of X-ray body scanners is an example of regulatory deception. If you work in the private sector and spend substantial time around machines or substances that emit radiation, you normally are required to wear tags that measure radiation doses. The Transportation Security Administration (TSA) has exempted itself from that requirement with the argument that the doses of radiation passengers and TSA employees receive from the X-ray body scanners (backscatters) at airports is so low as to cause no more than a trivial amount of extra cancers. They may well be right, but without measuring what employees and passengers actually receive from frequent and sometimes miscalibrated machines, no one knows for sure. Besides, the effect of radiation on the body is cumulative.

The European Union has prohibited backscatters, as have many countries, because of concern about health and safety. TSA has come under great criticism for the use of these machines, particularly when a safer and better technology is available. TSA has not admitted the danger but quietly has been replacing some of the backscatters with millimeter-wave scanners. These machines rely on low-energy radio waves like those in cellphones and thus are believed potentially not to damage a person’s DNA, unlike the backscatters. These new machines are faster because a computer analyzes the image, rather than a guard as with the X-ray machines. They are better at detection and provide greater personal privacy. Still, the question remains, why is TSA phasing out the X-ray machines so slowly and not providing its employees with radiation-detection tags? Private employers probably would be sued over such behavior.

Various business associations have reported that many of their members are reluctant to expand or increase hiring because of their fear of many new and costly regulations and of rules that are so vague or complex that they are almost impossible to follow. Mr. Obama has passed many regulations and says he is going to regulate more. President Reagan was serious about making sure new regulations met reasonable cost-benefit tests. Under Reagan, a mere 23 major regulations were issued per year, far fewer than under any of his successors and, particularly, Mr. Obama.

During the 13 quarters after the bottom of the recession Reagan inherited, the economy grew at an average annual rate of 5.7 percent. In the 13 quarters since the bottom of the recession Mr. Obama inherited, the economy has grown at just an average rate of 2.2 percent, or just a little more than a third of the Reagan recovery. Could it be that their

different attitudes and actions toward regulatory burdens had anything to do with this difference in performance?