

# Regulatory Partnerships: Good or Bad?

By John M. Kamensky

Regulatory partnerships between government regulators and industry evolved in the 1990s as a way of increasing compliance while reducing administrative burdens. Several recent high profile cases have put into question the benefits of such partnerships. In a *Washington Post* article, “How the Minerals Management Service’s Partnership with Industry Led to Failure,” the authors chronicle the evolution of the Minerals Management Service (MMS) and the unusual relationship it cultivated with the industry it was charged to regulate. In the end, the article points out that “industry innovation, as it often does, had outrun and overpowered the government’s regulatory prowess, with disastrous results. They were partners, but they were not equals.”

Three recent IBM Center reports present a different perspective, showing the value of regulatory partnerships. These reports offer lessons learned on how to create and effectively maintain regulatory partnerships so they don’t result in the failures highlighted in the *Post* article on the now-defunct MMS (replaced by the Bureau of Ocean Energy Management, Regulation, and Enforcement).

## Why Regulatory Partnerships?

Regulatory partnerships are not new; they first rose to prominence in 1995 when their use was promoted by Vice President Al Gore’s National Partnership for Reinventing Government (NRP). Up to that point, most regulatory reform efforts focused on the development of new regulations. Gore’s effort shifted the reform efforts from regulatory development to an emphasis on how existing regulations are implemented. An online history of “Reinventing Regulation,” written by NRP, stated:

“Our focus is primarily on the relationships that exist between regulators and their regulated communities because we can meet important social goals—like ensuring clean air and safe food—more effectively if we target our reinvention efforts at those folks who are responsible and want to comply.... And, at the same time, we can better target those places for which a more aggressive strategy is needed.”



In a recent IBM Center report on the benefits of voluntary regulatory partnerships, Russell Mills provides further background on the strategic use of such approaches, and the fears accompanying them:

“[G]overnment managers in regulatory agencies can choose either a deterrence or a collaborative enforcement style. Deterrence enforcement styles are marked by a traditional command-and-control style of setting regulatory benchmarks, conducting inspections to ensure benchmarks are met, and issuing penalties if they are not. In an environment of shrinking budgets, deterrence enforcement becomes increasingly difficult to sustain and threatens to produce an adversarial relationship between government and firms....

“....The optimal environment for government and firms is one in which the government engages in cooperation while firms self-police, as costs to both are minimal. Governments may fear that relaxed regulatory requirements will be taken as an indication of “capture” or as an open invitation to exploit a weak enforcement environment.”



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## Where and When Are Regulatory Partnerships Used?

President Bill Clinton's 1995 memo to the heads of regulatory agencies, "Regulatory Reinvention Initiative," forcefully de-emphasized the fears they might have about partnerships, and directed them to "Negotiate, Don't Dictate:"

"While many laws and rules that limit the ability of regulators to talk with those being regulated were imposed to curb abuse, they now often serve as a barrier to meaningful communication between the regulators and the regulated. To address this problem, and to promote consensus building and a less adversarial environment, I direct you to review all of your administrative ex parte rules and eliminate any that restrict communication prior to the publication of a proposed rule...."

Gore's Reinventing Government initiative worked with more than 60 regulatory agencies, encouraging them to adopt new approaches to regulating, where it made sense. These included the regulation of the environment, small business, food safety, biotech drugs, worker safety, and pensions, among other areas.

This approach was uncomfortable to many, both inside and outside government. The head of the Food and Drug Administration (FDA), David Kessler, opposed efforts within his own agency to work more collaboratively with drug companies to streamline the FDA's approach to drug approvals. Unions opposed efforts by the Occupational Safety and Health Administration (OSHA) to work jointly with companies to improve their safety records rather than just impose fines for infractions. Some environmental groups opposed efforts by the Environmental Protection Agency (EPA) to use incentives to reduce air pollution in lieu of new regulatory standards.

Bob Stone, the head of Gore's reinvention effort, consistently pushed back. In a 1997 speech to The Conference Board, Stone declared:

"We want to change the regulatory game. Now it's like a see-saw....Nobody gets anywhere, nobody wins. We need to find a way to let both win. And, we know that this is possible. You've been through this in your own companies...."

"But to work together as partners, government and business have to focus on our common interests. To begin, we must be willing to stipulate that the public and private sectors are both after the same result—that none of us wants our children breathing unsafe air, or eating contaminated food, or exposed to the drug trade."



## Is This Approach Effective?

While the experience of the Minerals Management Service demonstrates the dangers of allowing industry domination of the regulatory agenda, a partnership approach does have advantages when engaged properly. For example, Stone noted in 1998 that: “In Kansas City, the OSHA team offered training and a voluntary self-inspection to meat-packing companies with high injury rates. Working in partnership with OSHA, these companies reduced lost workdays by 15 percent. Even better, in response to their training, the employees identified and corrected 840 workplace hazards—far more than [OSHA] inspectors ever could.”

There were a number of other success stories as well, according to Gore’s reinvention history. For example, the EPA developed a number of voluntary partnership programs, called “33/50,” that encouraged and recognized environmentally friendly actions. In 1998 alone, these programs eliminated 7.8 million tons of solid waste, prevented the release of 80 million metric tons of carbon dioxide, and saved nearly 1.8 billion gallons of clean water. And through their voluntary efforts, EPA’s partners also saved a great deal of money—\$3.3 billion. Another example involves the Consumer Product Safety Commission (CPSC), which recognized that when it worked with responsible companies, it could do a better job of removing dangerous products from homes and the marketplace. It developed a Fast Track Product Recall program. When companies partner with CPSC to voluntarily recall their products, CPSC provides them with a streamlined process that saves time and money and prevents injuries. For example, under a traditional recall process, about 30 percent of recalled products might be returned. Under the Fast Track process, the percentage of products returned has climbed to nearly 60 percent. The program was later recognized with a Ford Foundation innovations award.

The Food Safety and Inspection Service (FSIS) also implemented the Hazard Analysis and Critical Control Points program (HACCP), a science-based, preventive system for ensuring safe meat and poultry production. In short, HACCP puts the responsibility for food safety into the hands of food producers, rather than into the hands of government inspectors. Three hundred large plants implemented HACCP in January 1998, and the improvements were seen as significant within a year. Salmonella had been reduced nearly 50 percent in chicken products, 30 percent in ground beef, and 25 percent in pork products.



## Lessons on How to Use Regulatory Partnerships Effectively

According to the *Washington Post* article mentioned previously, the Minerals Management Service was at the time seen as a successful partner with industry. However, former secretary of the Interior Bruce Babbitt admitted: “It turned out that MMS was not capable of navigating its dual relationship as regulator and industry partner....”

Are there steps that agencies can take to ensure that they can effectively work in partnership with the industries they regulate, while reducing the potential for them to be “captured,” and then lose their regulatory effectiveness over time? The partnership approach seems to have value for government (reduced oversight costs), industry (reduced burden), and citizens (more effective results). Do the potential dangers outweigh the benefits?

Three recent IBM Center reports examine what regulatory agencies might do to ensure effective regulatory oversight within a partnership framework:



In *Food Safety—Emerging Public-Private Approaches: A Perspective for Local, State, and Federal Government Leaders*, by Noel Greis and Monica Nogueira, the authors recommend the creation of new co-regulation strategies to shape food safety policies. This strategy would reflect mutual organizational and financial interests of both public and private sectors. But



it would not extend to all aspects of oversight. The authors suggest that co-regulation activities might include setting risk-based inspection standards and jointly establishing best practices, enforcement, and monitoring approaches. [The implementation of these standards and practices would be kept in government hands.]



In *The Promise of Collaborative Voluntary Partnerships: Lessons from the Federal Aviation Administration*, author Russell Mills concludes that collaborative voluntary partnerships should be viewed as a complement to agency regulatory activities rather than as a replacement for the traditional command-and-control approach to regulation. Viewing voluntary activities as complementary to traditional regulatory activities will

require a change in an organizational culture which has long considered the command-and-control approach its major regulatory option.

Based on his research and case studies at the Federal Aviation Administration (FAA), Mills offers three lessons:

- The **administrative** lessons from the study include the importance of a regulatory agency dedicating a team to focus on the development and implementation of voluntary partnerships, and the use of collaborative processes in developing meaningful corrective actions by those being regulated.
- The **regulatory** lessons include the insight that voluntary programs should be non-punitive and provide reduced regulatory oversight by those who participate and share

information openly with regulatory agencies. The voluntary programs are a complement to, not a replacement of, traditional enforcement tools.

- The **technology** lessons include the need for effective data analytic capabilities at the local and national level, along with a uniform reporting platform and a national-level database for analysis to produce safety alerts.



In *Strategies for Supporting Frontline Collaboration: Lessons from Stewardship Contracting*, author Cassandra Moseley describes collaborative partnerships created by the U.S. Forest Service and the Bureau of Land Management with both private companies and community-based nonprofit organizations, to plan and execute land management initiatives

such as ecological restorations. Moseley found, as did Mills, that collaborative approaches require a major change in organizational culture in order to be more open to working together toward common goals rather than relying on a deterrence approach alone.

The Obama administration and Congress will likely assess the lessons learned from several recent high-profile cases that have put into question the effectiveness and value of regulatory partnership with industry. This effort should not start with the premise that the partnership approach is an inherently flawed model. One insight shared among all three reports outlined in this piece underscores the need for continued managerial attention during the implementation of a regulatory private-public partnership. ■