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Regulation: It's the American way

University of Maryland law professor says in new book that regulatory failure is at the heart of food contamination, oil spill



Prof. Rena Steinzor, professor at the University of Maryland School of Law. She is co-author of a book examining the top federal regulatory agencies and how they are held back by industry, legislators and lack of funding. (Baltimore Sun photo by Kim Hairston / September 8, 2010)

By Liz F. Kay, The Baltimore Sun
5:10 p.m. EDT, September 17, 2010
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The way Rena Steinzor sees it, the nationwide **egg recall**, the Gulf oil spill, the lead discovered in children's toys, Toyota cars suddenly accelerating — these incidents are all related.

Steinzor, a University of Maryland law professor and author, contends that the recalls and catastrophes all stem from a systemic regulatory breakdown in the U.S. She and Sidney A. Shapiro of Wake Forest University just published the book, "The People's Agents and the Battle to Protect the American Public: Special Interests, Government, and Threats to Health, Safety, and The Environment."

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Their research began after **Mattel recalled** Elmo, Dora the Explorer

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and other toys covered in lead paint during the Christmas season in 2007, Steinzor said. After years of policymakers trying to protect children from lead — by taking it out of paint, for instance — these toys were coming from abroad and were rarely inspected. "People should be safe and protected, but they're clearly not," she said.

Steinzor has concluded that drastic measures are needed. If regulators don't have the resources to inspect imports, then importers of dangerous products should be prosecuted criminally, she said. The culpable should go to jail, she said, citing incidents that included the West Virginia mine explosion that left more than two dozen dead this year and a peanut plant where dead rodents and bird feathers were found.

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The Baltimore Sun recently spoke with Steinzor about her research, which examined problems at five regulatory agencies, including the Food and Drug Administration and the Consumer Product Safety Commission.

What is the government's responsibility?

People expect the government to make sure that all the consumer products that we buy are safe, including toys because kids are so vulnerable, extending probably to cars ... to the food we eat — we don't expect food to be tainted or poisonous — to medicine we take.

We may be a little bit more cynical about the air we breathe because many of us live in cities like Baltimore that are very smoggy, but we expect the government to be making efforts to clean it up, and the water we drink.

We expect all these things and yet with the government's ability to deliver, there is a growing chasm.

We also expect to be safe at work. ... That's people's expectation, and yet workplace safety is something that is weakening and failing as we speak.

Question: What are the key challenges these agencies are facing?

Answer: If I were to put clippings on this table about all the things people will remember: eggs, peanut butter, spinach, tomatoes, lead in toys, the Aqua Dots — those beads that had the date rape drugs — the Gulf spill, the mine disaster, Toyota and the sudden acceleration in their cars ... we could pull out from them maybe three or four themes that are completely unified, that show problems across the board.

One is underfunding. One is outmoded laws — the FDA does not have the ability to order a recall of food. They have to get people to do it voluntarily.

Third is lack of political will. We've spent way too many years screaming about excessive regulation instead of talking about the need for regulation, the advantages of regulation. We're still doing it — we're still bashing the regulators today.

Then demoralized staff. People who are very idealistic when they go in, but then don't feel as if they can really work to accomplish the agency's mission, and they get very discouraged.

Q: Can you talk about that concept of agency capture?

A: Agency capture is a term from the political science literature. It means the bureaucrat is beholden either to the industry it's regulating — that the bureaucrat has undue sympathy, can't be neutral. Or it has been used to mean capture from the left, so that all the bureaucrats at the **EPA** are secret members of the Sierra Club who hug trees.

The problem is the people who work in the agencies, not the circumstances in which they work. I believe that was probably true of some of the people in the agency responsible for supervising oil rigs. Clearly there were a couple of them who had become so close in their social relationships with the oil industry executives that they couldn't be neutral anymore. But that is a small, tiny part of this problem.

The real problem is people who don't believe they can do their jobs, so they go to work every day, but they are so overwhelmed by the amount of information they're deluged with. ... And they don't have adequate resources or legal authority.

Q: How do you make a decision about what you eat, what you buy?

A: It is really hard for consumers to protect themselves. If I had young children — my children are grown — and I had read about what had happened with Mattel ... they'd be playing with wooden spoons. ... It would have been very hard for me to find toys that were not manufactured in places where there are no controls.

Q: Have you done anything differently in your own life now that you've researched this book?

A: I'm eating much less meat and much less fish. I will ask my doctor about where the drugs I take are manufactured. I subscribe to consumer magazines. I don't use pesticides around the house.

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Can these cars keep up with innovation?

A: An example is Toyota. Most cars now are driven by computerized systems. It's called "drive by wire." The brakes and acceleration and steering are all driven by a computer chip, not mechanically. ... And the **National Highway Traffic Safety Administration** had no engineer who understood computerized drive-by-wire systems on their staff up until the problem with Toyota.

These have been in place for a long time. There was a problem with BMW in the '80s. BMW installed a system that's a brake override. If you step on the brake and the accelerator simultaneously, it stops the car.

Toyota could have done that really easily. They didn't. Chose not to do it. It completely went over [the National Highway Traffic Safety Administration's] head because they didn't have an expert who understood.

Q: How much should personal responsibility factor into safety?

A: I draw the line at blaming the victim. Yes, they need to educate kids about safe handling of food and not to eat meat that has not been thoroughly cooked and to wash their hands before handling food.

We all have a responsibility to do that, but people like to eat eggs sunny side up. And we shouldn't have a situation where we are saying, "It's fine to have salmonella in the egg if only people would only stop eating them sunny side up."

That's where I would start drawing the line.

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