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Arnold Rochvarg
arochwarg@ubalt.edu

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STATE ADOPTION OF FEDERAL LAW—LEGISLATIVE ABDICATION OR REASONED POLICYMAKING?

Arnold Rochvarg*

I. INTRODUCTION

There is little doubt that in order to best fulfill public policy goals, coordination between the federal and state governments is desirable. Coordination has been sought over the years, for example, by federal grants-in-aid, and the enactment of federal laws which are dependent upon state law. One technique which has been employed by the states to further coordinate state and federal law is incorporation of federal law into state law. Although it is beyond question that there is no constitutional problem when a state legislature adopts existing federal law or regulations, constitutional questions do arise

*Associate Professor, University of Baltimore School of Law. B.A., University of Pennsylvania; J.D., George Washington University School of Law.


4See, e.g., Adoue v. State, 408 So. 2d 567, 570 (Fla. 1982); Lee v. State, 635 P.2d 1282 (Mont. 1981); State v. Williams, 119 Ariz. 595, 583 P.2d 251, 254 (1978); People v.
when a state attempts to adopt future federal laws or regulations. The regional reporters are replete with cases stating that statutes which incorporate future federal law are unconstitutional because they impermissibly delegate legislative power from the state legislatures to the federal government. The basic rationale of these cases is that by incorporating future federal law, the state legislatures are abdicating their legislative power because they maintain no control over Congress or any federal agency.

The purpose of this article is to discuss state adoption of future federal law. After presenting a brief introduction to the delegation doctrine, the article will analyze cases from various states which have addressed challenges on delegation grounds to state statutes which attempt to adopt future federal law. This analysis will show that statements such as that made by one state court that "the courts have uniformly and without deviation held that any attempt by the legislature to incorporate into our law future [federal] regulations is an unconstitutional delegation" is misleadingly broad in that they suggest that states can never incorporate future federal law. The article will then attempt to provide a framework which differs from the one usually employed by courts in analyzing this issue. Finally, the article will apply this approach to a few substantive areas where states have attempted to adopt future federal law.

II. THE DELEGATION DOCTRINE

The basis of the delegation (or non-delegation) doctrine is that there can be no delegation of a delegated power. Having been delegated the...
power to make laws by the electorate, a legislature, it is argued, cannot redelegate this power to another lawmaking body. Most of the cases involving the delegation doctrine concern the validity of a delegation from a legislature (a state legislature or Congress) to an administrative agency (state or federal). Case law has developed the proposition that delegations of legislative power to administrative agencies will be upheld as long as the delegation contains sufficient standards; in this way the agency is provided with guidance for the exercise of its discretion, and a court performing its review function is provided a measure against which challenged administrative action can be judged.

As mentioned above, the delegation doctrine has also been applied in cases involving state statutes adopting federal law. In order to evaluate the application of the traditional delegation doctrine to the state adoption cases, it is important to emphasize that the delegation doctrine is based on protecting the ideals of democratic political theory. The delegation doctrine ensures that important choices of social policy are made by officials who are politically responsive and accountable to the popular will. It is feared that delegations of legislative power "create repositories of power largely insulated from the constraints of the democratic process." Excessive delegation may indicate a legislature's unwillingness to make the difficult policy choices necessary to implement meaningful policy. A doctrine which limits delegation prohibits those who have sought the public trust through the electoral process to "pass the buck" to those who are not politically accountable.

III. JUDICIAL REACTION TO VALIDITY OF STATE STATUTES ADOPTING FEDERAL LAW

State statutes adopting federal law which have been challenged as improper delegations of legislative power have involved various sub-

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10 J. Locke, Of Civil Government 141 ("The legislative cannot transfer the power of making laws to any other hands: for it being but a delegated power from the people, they who have it cannot pass it over the other"), noted in B. Schwartz, Administrative Law 35 (1984).
13 Id.; Accord, Wright, Beyond Discretionary Justice, 81 Yale L.J. 575 (1972).
stantive areas ranging from migratory birds\textsuperscript{16} to branch banking.\textsuperscript{17} Although the substantive areas differ from case to case, the judicial analysis in these cases does not appear to depend on any consideration of the substantive area being regulated. As discussed below, this is a major weakness of the cases. To illustrate the current state of the law on the issue of state adoption of federal law, this article will focus on cases involving state adoption of federal drug laws, federal highway speed limits, federal tax laws, and federal price control laws.

A. State Adoption of Federal Drug Laws

In \textit{State v. Dougall},\textsuperscript{18} the issue was whether valium was a controlled substance under Washington law. Valium had not been designated a controlled substance by the Washington legislature, nor had the appropriate state agency held any rulemaking proceeding on valium. The state agency had designated valium a controlled substance, however, pursuant to a state law adopted in 1971 which provided that if a substance is designated a controlled substance under federal law, the substance similarly is controlled under Washington law effective thirty days after its publication in the Federal Register, unless within that thirty-day period, the state agency objects to the designation.\textsuperscript{19} If the agency objects, a rulemaking proceeding is required.\textsuperscript{20} If no objection is taken by the agency, however, rulemaking is not required for the federal law to become the state law. In the case of valium, the drug became controlled under federal law in June 1975,\textsuperscript{21} the state agency did not object, and in July 1975, all state prosecutors were notified of valium's designation.\textsuperscript{22} The Washington Supreme Court, however, reversed a conviction of defendant Dougall who was charged with possession of valium in 1976. The court ruled that the adopting statute was unconstitutional because of its attempt to adopt a federal law enacted after Washington's drug law had been enacted. The statute

\textsuperscript{18}Wash.2d 118, 570 P.2d 135 (1977).
\textsuperscript{19}570 P.2d at 136 citing \textit{Wash. Rev. Code} § 69.50.201(d).
\textsuperscript{20}Id.
\textsuperscript{21}Id. at 137.
\textsuperscript{22}Id. at 136. The notice informed the state prosecutors that valium had been considered a controlled substance under state law since July 2, 1975, thirty days after its designation by the federal government.
was invalid because it permitted law to become binding in Washington "without appearing in either a state statute or the state administrative code." The power to define a crime in Washington, the court reasoned, belongs solely to the Washington legislature.

State v. Thompson, which involved a Missouri drug statute, should be compared to Dougall. Although at first blush the Missouri law appears almost identical to the one struck down in Dougall, the Thompson court held it to be "significantly different," and consequently constitutional.

The Missouri statute provided that if any substance was "designated, rescheduled or deleted as a controlled substance under federal law," the state Division of Health "shall similarly control the substance" thirty days after publication in the Federal Register by issuing an order, unless the Division of Health before the thirty-day period, objected to the inclusion, rescheduling or deletion. If the state agency objected, a public hearing was required. Thompson involved the drug pentazo-
cine. That drug had been listed as a controlled substance by the federal Drug Enforcement Administration, and because the state agency did not object, it likewise became controlled in Missouri. In defense of the charge of possession of this drug, defendant Thompson argued that the "automatic inclusion of substances by inaction" of the Division of Health was unconstitutional.

The Missouri Supreme Court, en banc, rejected this claim stating that defendant "overlooked" the role that the Division of Health played in classifying drugs. The court viewed the statute not as an automatic adoption statute, but one which required the state agency to "act affirmatively" in deciding whether to object to the federal decision. The Washington statute held invalid in Dougall differed from the Missouri statute in that, pursuant to the former statute, if the

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23Id. at 137.
24Id. at 138. The court cited State v. Emery, 55 Ohio 364, 45 N.E. 319 (1896) which involved a prosecution for the sale of drugs which were not controlled under standards promulgated by the United States Pharmacopoeia which existed at the time an Ohio law was enacted, but had only become listed as a controlled substance under a later revision of the Pharmacopoeia's list. The court reversed a conviction obtained under this statute stating that "to hold that the sale could thus be made unlawful would be equivalent to holding that the revisers of the book could create and define the offense—a power which belongs to the legislative body and cannot be delegated." 45 N.E. at 320.
25627 S.W.2d 298 (Mo. 1982).
26Id. at 301.
27Id. at 302.
28Id.
29Id. at 299.
30Id. at 301.
31Id. at 302-03.
32Id. at 301.
federal government classified a drug, then "the substance shall be controlled," while with the Missouri law, if the federal government classified a drug "the Division of Health shall similarly control" the substance.\textsuperscript{35} The court stated that because a substance could be controlled in Missouri only if the state agency decided not to object, "no delegation of power to control substances in Missouri has been delegated to the federal government."\textsuperscript{34} Unlike the Washington statute which empowered a federal agency to classify drugs in Washington, in Missouri it "is the Division of Health, not a federal agency which schedules a substance."\textsuperscript{35}

**B. State Adoption of Federal Highway Speed Limits**

During the energy crisis of 1974, Congress enacted legislation which in effect denied federal highway funds to any state which had a maximum highway speed limit in excess of 55 miles per hour.\textsuperscript{36} In response to these federal acts Montana, in 1974, enacted a statute providing that the attorney general shall declare by proclamation a speed limit in the state whenever the establishment of such a speed limit by the state is required by federal law as a condition to the state's continuing eligibility to receive funds authorized by the Federal Highway Act of 1973 and all acts amendatory thereto or any other federal statute.\ldots The attorney general shall by further proclamation change the speed limit adopted pursuant to this section to comply with federal law.\textsuperscript{37}

In 1974, the attorney general of Montana issued a proclamation setting a 55 miles per hour speed limit. The Montana Supreme Court in Lee v. State,\textsuperscript{38} held the statute unconstitutional because of its "mandatory directions to the attorney general to proclaim a speed limit not less than that required by federal law," and "to terminate such proclaimed speed limit whenever such a speed is no longer required by federal law."\textsuperscript{39}

\textsuperscript{35}Id. at 302.

\textsuperscript{34}Id.

\textsuperscript{35}Id.


\textsuperscript{38}635 P.2d 1282 (Mont. 1981). Plaintiff alleged a violation of his right to drive in excess of 55 mph "as he was accustomed to doing prior to the issuance of the proclamation." Id. at 1284.

\textsuperscript{39}Id. at 1286. The court distinguished Masquelette v. State, 579 S.W.2d 478 (Tex. Crim. App. 1979), State v. Dumler, 221 Kan. 386, 559 P.2d 798 (1977), and State v. Padley, 195 Neb. 358, 237 N.W.2d 883 (1976) on the grounds that those jurisdictions had adopted statutes which committed the decision whether to adopt the new federal law to
This violated the principle followed "almost without exception" that a state legislature cannot adopt as state law "changes in the federal laws or regulations to occur in the future."^40

The Montana situation should be compared to that in Kansas, where in order to be eligible for federal highway funds under the 1974 federal acts, the legislature enacted a series of laws establishing a 55 miles per hour maximum speed limit, but with the provision that "in the event that the Congress of the United States shall establish a maximum speed limit greater or less than 55 mph, the state highway commission may adopt" a different speed limit. Moreover, the Kansas legislature provided that the law "shall expire on the date when the Congress of the United States shall remove all restrictions on maximum speed limits."^41 The defendant in State v. Dumler,^43 challenged the law as "an unlawful delegation and surrender of the legislative power of the state of Kansas to the Congress of the United States,"^44 arguing that "Congress dictates the Kansas maximum speed limit" and "will continue to do so until it elects to return the power to the Kansas legislature, if ever."^45 The Kansas Supreme Court upheld the statute, reasoning that the state legislature had not delegated to Congress the authority to set speed limits in Kansas; the legislature had merely enacted a law to become operational upon the happening of a contingency. The court stated that the congressional decision to set a new speed limit in order for states to qualify for federal funds did not establish a speed limit for Kansas, but only authorized the state highway commissioner to establish a new speed limit, and thus was not an impermissible delegation.47

state agencies. The Montana court stated, "No state that we can find has approved a delegation of sovereign power involved here for mandatory action in the future, based upon federal law." 635 P.2d at 1286.

^40Id. The court remarked that a "more blatant handover of the sovereign power of this state to federal jurisdiction is beyond our keen." The court, however, stopped short of invalidating the statute completely because to do so would "invite chaos" on the highways, and do grave damage to the state by disqualifying it from receiving federal funds. Id. at 1287. The court retained jurisdiction until the statute was properly amended.

^41State v. Dumler, 559 P.2d 798. Prior to 1974, the maximum speed limits in Kansas were 70 mph during daylight and 60 mph at night on roads and highways outside cities, and 75 mph during daylight and 70 mph at night on interstate highways. 559 P.2d at 800.

^42559 P.2d at 801.

^43Id.

^44559 P.2d at 802.

^45Id.

^46Id. at 803–04.

^47The Kansas court found the reasoning in City of Pittsburgh v. Robb, 143 Kan. 1, 53 P.2d 203 (1936), and State v. Padley, 237 N.W.2d 883 persuasive. Robb involved a legislative enactment authorizing municipalities to issue industrial revenue bonds to fund public utility construction. The law was enacted in order that Kansas municipalities
C. State Adoption of Provisions of the Federal Tax Code

Anderson v. Tiemann\(^49\) involved a challenge to Nebraska's state income tax also on grounds of impermissible delegation. Pursuant to authority granted by a constitutional amendment which provided that "the legislature may adopt an income tax based upon the laws of the United States,"\(^49\) the Nebraska legislature enacted a comprehensive income tax act. Section one of the Act provided that any term in the Act "shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes,"\(^50\) and that "laws of the United States" included the Internal Revenue Service regulations as "may be or become effective, at any time or from time to time, for the taxable year."\(^51\) Although the court agreed with the challenger that this section made future tax laws of the United States automatically effective as part of Nebraska tax law, the court disagreed that this therefore constituted an unlawful delegation of legislative power to the federal government. The determining factor was the constitutional amendment. Although the court reaffirmed an earlier decision which held adoption of future federal law improper,\(^19\) in this case, the intent of the

could qualify for federal funds. This law was challenged as an unconstitutional delegation of legislative power to Congress because the continuing existence of Kansas law depended not upon the Kansas legislature but upon Congress. The Robb court rejected the challenge stating that the effectiveness of a statute may be made to depend on the coming into existence of some future fact, event or condition capable of identification or ascertainment as long as the action is complete in itself as an expression of the legislative will and itself determines the propriety and expediency of the measure. 53 P.2d at 208.

Padley involved a Nebraska statute fixing the highway speed limit at 55 mph, but also providing that when the President terminated the Emergency Highway Energy Conservation Act, the permissible speed limit would be 75 mph. The statute also provided that if Congress amended the conservation act, the maximum speed should be 75 mph "or such speed as Congress requires for compliance with such act, whichever is the lesser." The court upheld the statute. It first stated that a legislature can make a law operative on the happening of a certain contingency. 237 N.W.2d at 885. Second, it rejected defendant's position that the statute would not have been adopted had Congress not made federal road funds contingent upon a 55 mph limit, and that this "coercion" rendered the statute unconstitutional. Id. The court stated that it is the "privilege of Congress to fix the terms upon with federal money allotments to the state shall be made and it is entirely optional with the states to accept or reject such offers. Id.

\(^{182}\) 182 Neb. 393, 155 N.W.2d 322 (1967).

\(^{155}\) 155 N.W.2d at 325.

\(^{156}\) Id.

\(^{157}\) Id.

\(^{158}\) Id. at 325–36. The Nebraska court reaffirmed its decision in Smithberger v. Banning, 129 Neb. 651, 262 N.W. 492 (1935) in which the court had invalidated a 1¢ per gallon gasoline tax to provide assistance to Nebraska citizens eligible under federal legislation for public assistance. The state law was declared unconstitutional as an impermissible delegation because at the time the state statute was passed, Congress had not enacted any laws providing for public assistance. 262 N.W. at 497.
constitutional amendment was to permit adoption of future law. The court held that if the state constitution so provides, it is not an unconstitutional delegation of legislative power for a state automatically to adopt future federal law.55

D. State Adoption of Federal Price Control Laws

In City of Cleveland v. Piskura,54 an ordinance made it a city offense to violate any commodity ceiling price fixed by the federal government pursuant to the federal Emergency Price Control Act. Following the "generally accepted principle that a state legislature cannot delegate legislative power to a federal agency,"55 the Ohio Supreme Court ruled the ordinance unconstitutional as "prices are determined by a ... federal agency over whom city council has no authority or control."56 The Cleveland case should be compared to People v. Sell,57 which upheld a Detroit statute which adopted regulations of the federal Office of Price Administration. The court ruled that there was no improper delegation of legislative power because Congress had the power to regulate prices in Detroit pursuant to its war powers under article 1, section 8 of the federal constitution.58

1. Analysis

As the cases discussed above illustrate, not all courts take the rigid approach that all attempts by states to adopt future federal law constitute an unlawful delegation of legislative power; although every court recognized that a delegation problem may exist when future federal law is adopted by a state statute, some statutes have been upheld.

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55155 N.W.2d at 327-39. Accord, Garlin v. Murphy, 51 Misc. 2d 477, 273 N.Y.S.2d 374 (1966) (construing N.Y. Const. art. III, § 22.) The Anderson court relied primarily on Alaska Steamship Co. v. Mullaney, 180 F.2d 805 (9th Cir. 1950) which discussed an Alaska statute which adopted as Alaska law the Internal Revenue Code of the United States "as now in effect or hereafter amended." Id. at 815. Although the court did not rule on the delegation issue, it noted the laudable goals furthered by the statute: legislative time saving, uniformity, and convenience to the taxpayers. Id. at 816-17. 145 Ohio St. 144, 60 N.E.2d 919 (1945).
5660 N.E.2d at 925.
5817 N.W.2d at 199. The court stated that because the ordinance merely added the city's enforcement sanction to the federal law already in force within the city, it was "merely augmentative" of the federal act. 17 N.W.2d at 199. The court distinguished Darweger v. Staats, 267 N.Y. 290, 196 N.E. 61 (1935), and Hutchins v. Mayo, 197 So. 495 on the ground that those cases involved intrastate matters entrusted to the states by the federal Constitution, and did not involve an attempt of a local government to merely cooperate in effectuating regulations already applicable to local citizens. 17 N.W.2d at 200.
However, an analysis of the reasoning employed by the courts suggests that such approaches are not useful.

In upholding the Missouri drug statute, the Thompson court distinguished Dougall (which had invalidated Washington's drug law) holding that the drug statutes from the two states were "significantly different," and that the roles of the two respective state agencies were also different. The author does not find the above reasoning persuasive. Although the statutes did differ in that the one invalidated provided that if the federal government classified a drug, "the substance shall be controlled" by the state, while the valid statute provided that "the Division of Health shall similarly control," both statutes mandated the same procedure for the state agencies to follow. In both statutes, no rulemaking proceeding was required unless the agency objected; the different result in Thompson thus cannot be justified on this ground.

Thompson also relied on the fact that the Missouri Division of Health's decision not to object was to be based on consideration of various factors such as the substance's potential for abuse, and potential for addiction,59 and therefore, the court reasoned the drug's classification was not a product of agency inaction but a result of reasoned agency consideration. There are a few problems with this reasoning. First, not only did the Missouri statute fail to require any public procedures for the Division to make a "no object" decision, but it also did not even require the Division to publish any findings for its "no object" decision; in Thompson, no reasons were ever stated.60 Faced with a bare order of no objection, the Thompson court was required to rely on a presumption of regularity that such findings were in fact made.61 Second, because the procedure for adopting federal drug laws was identical in Missouri

59The Missouri statute was based on the Unif. Controlled Substances Act § 201, 9 U.L.A. 212, 214 (1979) which provides in part that a substance shall be controlled based on the following factors:
1) the actual or relative potential for abuse;
2) the scientific evidence of its pharmacological effect, if known;
3) the state of current scientific knowledge regarding the substance;
4) the history and current pattern of abuse;
5) the scope, duration, and significance of abuse;
6) the risk to the public health;
7) the potential of the substance to produce physical or physiological dependence liability; and
8) whether the substance is an immediate precursor of a substance already controlled. See State v. Thompson, 627 S.W.2d at 301 n.5. See also State v. Ciccarelli, 55 Md. App. 150, 461 A.2d 550 (1983); Feldman, The Delegation of Powers Problem of Section 201 of the Uniform Controlled Substances Act, 9 CONTEMP. DRUG PROBS. 143 (1980); Commissioners Prefatory Note, Unif. Controlled Substances Act, 9 U.L.A. 146 (1979).
60627 S.W.2d at 301; see also 627 S.W.2d at 304 (Bardgett, J., concurring).
61627 S.W.2d at 301.
and Washington, the agency in Washington would have to go through the same decisionmaking process in its “no object” conclusion as would the Missouri agency. Therefore, the nature of the state agency’s decisionmaking process to reach a “no object” does not support the Thompson result.

The major weakness with the Thompson opinion is that it fails to address the delegation problem. A delegation issue exists in these drug cases because a federal law is made part of a state’s law without any evaluation by the state’s elected officials of the wisdom of that law when applied to its citizens. Both the Missouri and Washington statutes do not require elected officials to consider the wisdom of the federal law. Although the wording may differ, the difference is not significant because in essence, both statutes merely provide that if a state agency does not object, the drug classified by federal law is classified under state law. The distinction between the two cases cannot be justified based on the language of the statutes. The real explanation seems to be the difference in the courts’ attitudes toward the wisdom of the adoption of federal law. The Washington court’s conclusion apparently was based on its view that state adoption is unwise, while the Missouri court accepted the virtues of state adoption of federal law. A problem exists, however, in that the real issue—the application of the delegation doctrine in relation to the utility and wisdom of state adoption—was ignored by both courts in favor of an overly formalistic approach.

Based on a reading of Thompson and Dougall, one might draw the following conclusions: A statute which provides for the adoption of future federal law will not constitute an impermissible delegation of legislative power if the statute requires the state agency to do something. How small this “something” can be is not yet clear. What is clear, however, is that no public procedures need be held, no findings need be published, and as long as the order of no objection is signed, courts will not probe the mental processes of the agency to ascertain what, if anything, the agency did. Furthermore, Thompson and Dougall imply that if the statute is “carelessly” drafted to make federal law part of state law without any state agency action, the statute will be held unconstitutional even if the state agency does have a statutory role. To be valid, the statute should not speak of the law being automatically adopted, but should speak of the agency automatically adopting the federal law.

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62 See Feldman, supra note 59 at 143.
It is submitted that these conclusions do not satisfactorily address the delegation issue presented by state adoption of federal law.

The highway speed limit cases discussed above also illustrate misplaced reliance on linguistic differences in two statutes. One statute was upheld, the other invalidated, even though the nature of the state activity required for state adoption of federal law did not differ significantly. As discussed above, the statute which provided that the attorney general "shall" set a speed limit if required to do so by the federal government in order to receive federal highway funds was held invalid as an unconstitutional delegation, while a state statute which set a speed limit but provided that it "shall expire when Congress . . . removes all restrictions on maximum speed limits" was upheld as a permissible contingent delegation. The difference in the courts' conclusions does not appear justified by the statutory language. In both states, the state highway speed limit is automatically pegged to future decisions of Congress over which neither state legislature has control. The problems of political accountability and responsibility upon which the delegation doctrine are based are not more (or less) satisfactorily resolved by one statute or the other. The drafting of the Kansas statute in contingent terms does not make it any less mandatory or any less "automatic" than the Montana statute.

Equally unsatisfying is the reasoning employed by Anderson to uphold Nebraska's tax statutes. The determining factor which upheld Nebraska's adoption of future federal tax law without requiring any action by a state agency was a provision in the Nebraska Constitution which empowered the legislature to "adopt an income tax based upon the laws of the United States." It is submitted that this language does not compel the conclusion that Nebraska can adopt future changes in the federal tax law without any consideration by the state officials of the federal changes. The more conventional interpretation of the constitutional provision would be that it limited the Nebraska legislature to enact an income tax which could only be based upon the federal tax code as it existed at the time of the amendment. Other courts consistently have interpreted statutes to deny the legislature the power to adopt future federal law in order to uphold their constitutionality.\textsuperscript{64} The Nebraska court, however, going beyond the plain language of the amendment,\textsuperscript{65} interpreted the amendment not as a limitation on the

\textsuperscript{64}See, e.g., Department of Legal Affairs v. Rogers, 329 So. 2d 257 (Fla. 1976); Ex Parte McCurley, 390 So. 2d 25, 29 ( Ala. 1980); State v. Workman, 183 N.W.2d at 913; See also Kellems v. Brown, 163 Conn. 478, 313 A.2d 53 (1972), appeal dismissed, 409 U.S. 1099, 93 S. Ct. 911, 34 L. Ed. 678 (1973).

\textsuperscript{65}155 N.W.2d at 328–32.
legislature, but as an expansion of its powers. By doing so, the court gave the Nebraska legislature broader powers in the income tax area than the legislature would be given in any other area. It is submitted that the Nebraska court's sweeping construction of the constitutional amendment without any substantive or procedural limits amounted to approval of the legislature to abdicate its legislative responsibility in the income tax area to the federal government.

The author similarly does not find the price control cases satisfying in their approaches. The Ohio statute was held invalid because of the "generally accepted principle" that state legislatures cannot delegate power to the federal agencies; yet the court failed to provide any meaningful analysis of this principle or any discussion as to whether the policies which purport to support this principle were applicable to the municipal ordinance before it. On the other hand, a similar Detroit ordinance was held valid because Congress, if it had chosen to do so, could have regulated prices in Detroit pursuant to its war powers. It is submitted that Congress' potential to regulate local activity does not justify delegation of state powers to regulate the lives of state citizens to the federal government. The mere existence of congressional powers such as the war powers or commerce power cannot justify state abdication of all policymaking to the federal government. Federalism contemplates accountability at both the federal and state level. The Michigan court's suggestion that a delegation problem is not present because the receiver of the power, i.e. Congress, already has that power, therefore should be rejected.

Other approaches to the state adoption of future federal law are equally lacking. It has been argued that state statutes automatically adopting future federal law do not constitute impermissible delegation of legislative power because the state legislature can always repeal the authority it has given. This argument is nothing less than a call for abolition of the entire delegation doctrine. Under this reasoning, all state delegations to state agencies also would have to be upheld because of the legislature's power to repeal the state agency's enabling statute. The delegation doctrine does serve useful purposes; resolution of the

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67See Anderson v. Tiemann, 155 N.W.2d at 327.
68Mermin, supra note 3, at 24–25.
state adoption issue does not require destruction of the delegation doctrine.

Another approach has been consistently to construe the statute as not adopting future federal law, but only federal law as it existed at the time the adopting statute was enacted.\textsuperscript{70} This reasoning is based on the principle that courts should construe a statute to uphold its validity, rather than try to find reasons to invalidate it.\textsuperscript{71} Related to this approach is that of severability. Here the court strikes down only the future impact of the statute, but upholds the adoption of existing federal law.\textsuperscript{72} One problem with these approaches is that legislative intent may be ignored. More importantly, however, these cases avoid the issue of the validity of state adoption of federal law rather than resolve it.

2. Summary

The reasonings which courts have employed in order to invalidate or uphold state laws adopting future federal law are unsatisfactory. Cases have been distinguished on bases which are not consequential, and significant similarities between statutes have been ignored or deemed not crucial. Courts have construed provisions of state codes or state constitutions broadly or narrowly in an inconsistent fashion in order to reach a desired conclusion yet still uphold the "general principle" that state adoption of federal law is invalid because it constitutes impermissible delegation. Rigid adherence to this general principle has led to strained reasoning and very little analysis of the policy implications of state adoption of federal law and the delegation doctrine. It is the author's opinion that what is needed is a new approach to the issue of state adoption of federal law. A proposal that courts develop a policy-oriented approach related to the substantive area of regulation is the focus of the remainder of this article.

\textsuperscript{70} State v. Workman, 183 N.W.2d 911 involved a Nebraska statute which defined depressant or stimulant drug to mean \textit{inter alia} any drug containing a derivative of barbituric acid which has been designated under section 502(d) of the federal act as habit-forming. The term "federal act" was defined to mean the Federal Food, Drug and \textit{Cosmetic Act}, and all amendments thereto. The court ruled that there would be merit to the contention that the statute properly delegated legislative power "if we were to construe the statute to include federal regulations or law promulgated or enacted after the passage of the statute." 183 N.W.2d at 913. But the court refused to do this, and upheld the statute because there can be "little question but that incorporation by reference is permitted in Nebraska if the incorporation is of an existing law or regulation." \textit{Id.}


\textsuperscript{72} See, e.g., People v. DeSilva, 189 N.W.2d 362.
IV. A NEW APPROACH TO TESTING THE VALIDITY OF STATE STATUTES AUTOMATICALLY ADOPTING FUTURE FEDERAL LAW

In all matters regarding the delegation of legislative power, there is a potential conflict between the values embodied in a democratic form of government—which emphasizes policy decisionmaking by elected officials whose accountability and responsibility to the electing citizenry legitimate the power—and the values of a bureaucratic society—which emphasize the need to accomplish certain policy objectives in an efficient, uniform, and technically accurate manner. These considerations should play a role in any analysis of the validity of state adoption of future federal law. As the next section of this article discusses, the resolution of the validity of a particular state's adopting statute should depend upon the balancing of the conflicting interests involved in a democratic, yet bureaucratic, federalist system of government.

A. Uniformity

One of the advantages of state adoption of federal law is that uniformity in regulation is achieved. Such uniformity is desirous for a few reasons. First, state adoption of federal law avoids the possibility that the state and federal laws may require conflicting behavior by regulated persons. Second, even if the state and federal laws do not conflict, but rather complement one another, the lack of uniformity could create additional burdens and expense for regulated persons in their compliance procedures. For example, reporting requirements would be simplified—and hence made less expensive—by requiring the preparation of the same form.

Not only does uniformity in law make it more convenient for the regulated party, it also promotes simplicity of administration for the government.\(^7^5\) Coordination of compliance procedures between federal and state governments benefits both government entities. The resources of the federal government will benefit the states, whereas the federal government could employ a state's enforcement machinery to improve compliance. Moreover, if various states enacted statutes

adopting federal law, uniformity would not only be achieved between federal and state governments, but also among the states themselves. The shared experiences of the states could also prove very useful in improving regulatory schemes.

The desirability of uniformity in regulation, however, cannot be assumed in every instance. In some areas, uniform regulation would be contrary to policy concerns which a state legitimately seeks to further. Uniformity could stifle regulatory innovation. In the alternative, even assuming the fact that uniformity has some benefit to the regulatory scheme under consideration by the state for adoption of future federal law, the benefits of uniformity might not outweigh the loss of political responsibility and accountability on the part of the state legislature that may result from adoption of federal law. Moreover, uniformity might be achieved equally as well by other—perhaps less drastic—methods, e.g., through cooperation with the National Conference of Commissioners on Uniform State Laws.

The degree of uniformity desired and the method to accomplish uniformity should depend upon the substantive area being regulated. The more uniformity will benefit a particular regulatory framework, and the less likely that these benefits can be achieved without the automatic adoption of future federal law, the more useful is a state mechanism which depends upon automatic adoption of future federal law. A lack of need for uniformity in a particular substantive area, or the ability of other mechanisms to accomplish the desired amount of uniformity, should argue against automatic adoption.

B. Consistency In Policy

A related factor which must be considered in analyzing a state's decision automatically to adopt future federal law is the need for consistency in policy between the federal government and the states, and between the states themselves. When the subject being regulated does not involve purely local concerns, but rather involves matters that similarly impact both the national and local level, there is greater justification for automatic state adoption of future federal law. This point was emphasized in Ex Parte Lasswell which upheld California's Industrial Recovery Act which, in general, made the National Industrial Recovery Act applicable to intrastate commerce in California.

73 See Wallace v. Commissioner of Taxation, 289 Minn. 220, 184 N.W.2d 588, 591 (Minn. 1971); Hutchins v. Mayo, 197 So. 495.
74 Cf. Graves, supra note 73, at 521, 537 (state adoption statutes work better than National Conference of Commissioners on Uniform State Laws).
75 1 Cal. App. 2d 183, 36 P.2d 678 (1934).
That court stated that cooperative effort between state and federal governments was justified because there was a "nationwide business collapse" and the "disease is but one and the patient is but one." The court also held that coordination was required because if only the federal code existed, a business doing interstate commerce would be at a disadvantage in competition with the same type of business that would be unregulated if it engaged in only intrastate business. When there is one "evil," and the goals of both the federal and state governments are the same, automatic state adoption of future federal law may be especially useful.

On the other hand, when the goals sought to be achieved are different on the federal level than those on the state level, state adoption of federal law would be unjustified. One reason why automatic state adoption of future federal law is disfavored is that changes in the federal law may not fit the policy of the state which is adopting it. In such circumstances, the citizens of that state are being denied the benefit of the considered judgment of their elected officials. Hence, when the policy to be furthered by the federal scheme is different from a policy deemed appropriate by the state, automatic adoption of federal law is inappropriate.

A possible example of this is *Crowley v. Thornbrough* involving an Arkansas minimum wage law which required government contractors in Arkansas to pay wages based upon wages that "will be determined by the Secretary of Labor of the United States to be prevailing for the corresponding classes of laborers and mechanics" on similar federal projects. A list which the Secretary of Labor maintained pursuant to the Davis-Bacon Act was used by the Arkansas State Labor Department. The Arkansas Supreme Court held the statute invalid because it "failed to establish a standard" for formulating a wage scale; it merely "delegated to the Secretary of Labor of the United States the right to fix the minimum wage scale" in Arkansas. This conclusion is warranted if the law had been adopted without consideration by the Arkansas legislature of the policy implications of the Davis-Bacon Act in relation to federal construction projects, and whether these policy implications

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736 P.2d at 687.
78Id.
79Id.
80Wallace v. Commissioner of Taxation, 184 N.W.2d at 591; Dawson v. Hamilton, 314 S.W.2d 532.
81226 Ark. 768, 294 S.W.2d 62 (1956).
82Id. at 63–64.
84294 S.W.2d at 66.
conformed to the needs of Arkansas. Without consideration of these policy implications, the Arkansas legislature would be abdicating its legislative function to the federal government by enacting the adopting statute. If, however, the Arkansas legislature had considered how the Davis-Bacon Act and future changes in the act would impact upon Arkansas, and if the legislature decided that the policies being pursued by the federal government under the Davis-Bacon Act were the policies which it wanted Arkansas to pursue, adoption of the federal scheme, even as amended in the future, would be appropriate. A reasoned decision by a state legislature to conform state policy to federal policy is not an abdication of responsibility.\textsuperscript{85}

On the other hand, it would be inappropriate for a state to adopt, as its regulatory scheme, law enacted by the federal government in furtherance of an unrelated federal regulatory interest. Two cases involving state adoption of Interstate Commerce Commission (ICC) regulations illustrate this point. \textit{Cheney v. St. Louis Southwestern Railroad Co.}\textsuperscript{86} involved an Arkansas tax law which taxed railroads after allowing deductions "to be determined under the ICC Act pursuant to the ICC's standard classification of accounts."\textsuperscript{87} One basis of the court's holding that the statute was invalid was that the ICC's standard classification of accounts was promulgated in order to improve the reporting requirements of railroads to help the ICC monitor possible rate fixing agreements. Since the ICC regulations were not based on any income tax policy considerations, adoption of these federal standards for state tax law purposes was improper.\textsuperscript{88} The second case, \textit{Dawson v. Hamilton},\textsuperscript{89} involved a Kentucky statute which fixed the standard time in Kentucky as the standard time fixed by "Act of Congress or by any order of the ICC."\textsuperscript{90} Part of the Kentucky court's reasoning in invalidating the law

\textsuperscript{85}See Rinzler v. Carson, 262 So. 2d 661 (Fla. 1972) where the court construed a statute which exempted from a Florida gun possession and registration statute firearms "lawfully owned and possessed under provisions of federal law." \textit{Id.} at 664. The court discussed this provision saying:

\begin{quote}
  it would seem reasonable that the Legislature would want to exempt from the penalties of the statute weapons owned and possessed by an ordinary law-abiding citizen, whose law-abiding character may be inferred from the fact that such citizen took the trouble to register his weapon with the proper federal authority. It is reasonable to assume that a person owning such weapons with criminal intent would not register the same, thereby according an opportunity for his identity to become known if such weapon is later found to have been involved in a criminal offense.
\end{quote}

\textit{Id.} at 667. See also State v. Hotel Bar Foods, N.J., 112 A.2d at 732.

\textsuperscript{86}239 Ark. 870, 394 S.W.2d 731 (1965).

\textsuperscript{87}\textit{Id.} at 733.

\textsuperscript{88}\textit{Id.}

\textsuperscript{89}314 S.W.2d 532 (Ky. 1958).

\textsuperscript{90}\textit{Id.} at 534.
was that the ICC regulations were based upon considerations of inter­
state trucking and railroading which had no relationship to the interest
of Kentucky in setting time zones. 91 Future changes by the ICC would
be based on considerations of interstate commerce, not on what was
best for Kentucky. Because the problems being addressed by the
federal government were different than those purportedly being
addressed by the Kentucky statute, the court held it to be improper for
the Kentucky legislature to adopt the federal law.

C. Efficiency

Another factor to be considered is the extent to which automatic
state adoption of federal law promotes governmental and regulatory
efficiency. Some subjects of government regulation involve areas
which are highly technical or require a high degree of expertise in
order to be effectively regulated. Just as in some areas, where the need
for expertise has justified delegation of state legislative power to a state
agency, the need for expertise may justify the delegation of state
legislative power to the federal government. 92 Automatic state adop­
tion of future federal law perhaps should be favored in those matters
where the federal government possesses expertise far greater than that
possessed by any state agency, or in those matters where it is more
reasonable that the federal government will obtain the necessary ex­
pertise. Moreover, in those areas where a national experience is ben­
eficial in order to best determine a regulatory posture, state adoption of
federal law may be desirable. In addition, where effective regulatory
policy can only be developed by the allocation of resources which are
beyond the ability of a state, but are available on the federal level, state
adoption of federal law may be advisable. Even if costs are not impos­
sible for the state to handle, efficient use of resources may indicate that
state reliance on federal law is preferable. On the other hand, if the
matter is within the technical and financial ability of a state, there
would seem to be no reason why the state legislature should delegate
legislative power to the federal government.

A related factor is the need for constant monitoring and possible
revision. 93 If this monitoring function can be better handled by the
federal government due to its superior expertise or resources, auto­

91Id. at 536. Cf. Dearborn Independent v. City of Dearborn. 331 Mich. 447, 49 N.W.2d
370 (1951) (statutory requirement that newspapers used to publish legal notices shall
have been admitted by the U.S. Post Office department for transmission as mail matter of
the second class was invalidated).

92Anderson V. Tiemann, 155 N.W.2d at 328; State v. Hotel Bar Foods, 112 A.2d at
731; Cf. Crowley v. Thornbrough, 294 S.W.2d at 64.

93Anderson V. Tiemann, 155 N.W.2d at 328.
matic state adoption of federal law may be preferable than sole state control. As one court wrote in upholding a state statute adopting federal drug laws:

The legislature is not constantly in session, and, therefore, even if its members were all trained chemists and pharmacists, it is impossible for them to keep abreast of the constantly changing drugs and medications and their inherent dangers... By enacting [the adoption statute], the legislature indicates that it if had the time and expertise it would control all substances controlled by the federal government.94

Other courts have upheld state adoption of federal law because in "an increasingly complex society... it is impractical, if not impossible, to summons the legislature to meet every new contingency."95 This may be especially true in areas where quick action is needed. If automatic adoption were not permitted, the lag between the time the federal government recognized a need to change a regulatory scheme and the adoption of that change by the state may defeat or at least hamper the

94State v. Thompson, 627 S.W.2d at 303.
95Mason v. State, 12 Md. App. 655, 280 A.2d 753, 766 (1971); Accord, State v. Ciccarelli, 461 A.2d 550 where the court rejected an argument that a statute which classified substances as controlled dangerous substances when that substance was classified by federal authorities and no objection was made by the Maryland Department of Health and Mental Hygiene was an unconstitutional delegation of power by the General Assembly to the U.S. government. MD. CODE ANN. § 278(c) (repl. vol. 1982) provided that any new substance which is designated as controlled under federal law shall be similarly controlled under this subheading unless the Department objects to such inclusion or rescheduling. If an objection was made, a public hearing would be held. The defendants argued that this section allowed the federal agency to create state law. The court began its analysis of the issue by stating that... "unless the power to delegate is specifically conferred upon it by the constitution, the Legislature may not abdicate its lawmaking role to another. Nevertheless, it is well settled that the Legislature may delegate to subordinate officials the power to carry laws into effect, even though such delegation requires the exercise of a certain amount of discretion which may be regarded as police power." 461 A.2d at 554. The court also explained that a delegation is valid as long as it "guides and restrains the discretion vested in the subordinate official by standards sufficient to protect the citizen against arbitrary or unreasonable exercise." Id., quoting, Tighe v. Osborne, 149 Md. 349, 360, 131 A.2d 801 (1957). The court cited approvingly State v. Thompson, 627 S.W.2d 298; Ex Parte McCurley, 390 So. 2d 25; State v. King, 257 N.W.2d 693 (Minn. 1977) and Brown v. State, 398 So. 2d 784, 787, cert. denied, 398 So. 2d 787 (Ala. Ct. App. 1981). The court rejected State v. Dougall, 89 Wash. 2d 118, 570 P.2d 135 (1977) because "if the Washington court's views were to prevail, the maxim of ignorancia juris non excusat, would be meaningless." Id. at 556. The court also distinguished State v. Rodriguez, 330 So. 2d 1084 in that the statute there had provided that the state agency shall add any substance as controlled if the U.S. DEA so classified it. That statute made the state agency a 'rubber stamp,' 461 A.2d at 555 n.4. See also Feldman, supra note 55, at 155-61.
state's regulatory interests. The public health field has been mentioned by a few courts as an example where more flexibility in applying the delegation doctrine may be appropriate.96

The delegation of power to the federal government where expertise is involved also may enhance the integrity of the regulatory process. Reliance on federal experience and expertise in an area may make state regulation more acceptable to regulated persons. An attempt by the state to do things differently than the federal government may cause problems of accuracy, and create confusion. On the other hand, a federal regulatory program which itself has been inconsistent or of questionable utility should not be adopted by a state government.

D. Burden on Regulated Parties

Another consideration is whether automatic adoption of federal law would create additional significant burdens on regulated parties. In those areas where persons already are obligated to conform their actions in accord with federal standards, the effect of state adoption only would be to grant the state a power to enforce federal standards in state court. In such areas of concurrent regulation, this additional enforcement power would not be a significant burden upon regulated persons.97 If, however, the area of regulation is one where the federal regulation has been developed to apply only to a limited segment of the industry or populace which Congress could have selected to be regulated, and the state's decision to regulate is based on its conclusion that the scope of the federal regulation is not broad enough, consideration must be given to the additional burden being placed on newly regulated persons in analyzing a state law adopting federal law.

V. THE PROPOSED APPROACH

The state adoption of federal law issue should be addressed in terms of the governmental policies being sought, and the substantive area

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96 Mason v. State, 280 A.2d at 766; State v. Ciccarelli, 461 A.2d at 554.
97 Cf. McHenry State Bank v. Harris, 61 Ill. Dec. 547, 89 Ill. 2d 542, 434 N.E.2d 1144 (Ill. 1982), where plaintiff contended that the Illinois General Assembly had unlawfully delegated to the Federal Reserve Board the power to define branch banking. The Illinois Bank Holding Act provided that in certain situations the transferor of shares in a bank shall be deemed to be in direct control of its transferee unless the Board of Governors of the Federal Reserve Board determines that the transferor is not actually capable of controlling the transferee. 434 N.E.2d at 1148. Ill. ANN. STAT. ch 17, § 2502(d)(4)(iii) (Smith-Hurd 1981). The court rejected the attack on the statute because the Act did not purport to confer powers on the Federal Reserve Board which it did not already have under the Federal Bank Holding Company Act of 1956. See also Samson v. State, 27 Md. App. 326, 341 A.2d 817 (1975).
being regulated. In matters where uniform regulation among the states and the federal government is desirable in order to implement a consistent national and local policy, to further identical state and federal goals, and to combat one “evil” which impacts on both the national and local level equally, and where the area being regulated involves matters which are highly technical, requires a level of expertise beyond that available to the states, requires a commitment of resources greater than what can be allocated by the states, and requires constant revision and quick response to new developments, state adoption of federal law should be encouraged. This is especially true if the state adoption of federal law would not create additional significant burdens on regulated persons, and if the efficiency of the regulatory process would be improved by state adoption. On the other hand, in those matters where local interests differ from national policy goals, where the federal law being adopted is premised on policy goals unrelated to the state regulatory scheme, where the states do have the expertise and resources to develop their own policy without a significant loss in regulatory efficiency, or where the burden on regulated persons is vastly increased with no concomitant increase in policy achievement, automatic state adoption of federal law should be discouraged.

Under this approach, the legislature's function is to determine, based on its own independent evaluation, whether the factors discussed above indicate that adoption of federal law is desirable. The legislature in order to fulfill its legislative duty must consider and evaluate these factors to determine whether state policy goals can be best served by laws not dependent upon the federal government. Additionally, to ensure that the state legislature's decision to delegate legislative power to the federal government does not amount to an abdication of its legislative responsibility, it is submitted that the legislature should not only be required to make findings on each factor, but also to include in such findings an explanation why state adoption of federal law best serves local needs. This findings requirement should be seen as satisfying the requirement of the delegation doctrine that basic policy choices be made by politically responsible officials.

In its determination whether state adoption of federal law is appropriate, the state legislature also might consider modified adoption approaches. For example, a state statute could be drafted which adopts federal law, but it could also require periodic review of the federal law by the state. In matters where the balance of factors leans toward but does not compel state adoption, the statute perhaps should be drafted so that the federal law does not become effective as state law
until the federal law is accepted by either the legislature or a state agency after public procedures. Alternatively, instead of a statute which requires the state to accept the federal law, the statute could be drafted so that the federal law becomes effective as state law unless the legislature or state agency after public procedure rejects it. A legislature's decision to enact an "accepting-adoption" or "rejecting-adoption" statute should be based on the balancing of factors discussed in this article. A "rejecting-adoption" scheme would be preferable in cases where there is a close issue as to whether adoption of federal law is appropriate. An "accepting-adoption" statute may be preferable in matters where the balance of factors makes a more persuasive showing in favor of adoption. Clear cases in favor of adoption could lead to an automatic adoption mechanism. In all cases, legislative findings and explanations would be required.

The judicial function under the proposed approach is to ensure that the appropriate findings have been made by the legislature, and that these findings have rational support in the legislative record. The judicial role is necessarily limited in order that it not usurp the legislature's role of determining state policy. The court's inquiry should end once it is satisfied that the appropriate factors have been considered, and that the legislature's analysis of these factors and consequent conclusions are reasonable.

VI. APPLICATION OF THE PROPOSED NEW APPROACH

The first part of this article discussed the analyses which courts have employed in testing the validity of state statutes adopting federal drug laws, federal highway speed limit laws, federal tax laws, and federal price control laws. Dissatisfaction with the courts' analyses led to a proposed new approach. This section will apply this new approach to these four regulatory areas.

A. State Adoption of Federal Drug Laws

As discussed earlier, various state laws make drugs controlled by the federal government controlled drugs under state law. Applying the proposed analysis presented in this article, it would appear that state adoption of federal drug laws is legitimate for a few reasons. The impact of uncontrolled dangerous drugs is the same on the state and federal level. There is one evil being combatted by both governments. The goals of both the state and federal government in their decisions to regulate dangerous drugs are identical. The decision to control a
particular drug is based on similar scientific factors, e.g., potential for addiction. 98 These scientific decisions are most likely better made by federal agencies which have better technical facilities and greater resources to study the impact of drugs. Because of the recent rapid increase in drug activity, and technological advances in recent years, effective regulation of drugs requires constant review and the ability to respond quickly to developments. 99 Uniformity as to what drugs are controlled on the state and federal level does not impose a burden on regulated persons beyond that imposed if the state did not follow the federal scheme. 100 The threat of federal prosecution is a sufficient conduct regulation mechanism so that state enforcement would not be imposing a new burden on regulated persons. Likewise, if the laws were not uniform, regulated persons' conduct would not be any different if the laws were uniform; every person would have to conform to the more onerous law. Uniformity would also promote the integrity of the regulatory scheme. When the same drugs are classified as dangerous in every jurisdiction, the public acceptance of the correctness of that classification is enhanced as compared to when different jurisdictions treat the same drugs differently. Enforcement of the law is also benefitted by such uniformity of law. Cooperation between law enforcement officials is benefitted by the same drug classification system.

State adoption of federal drug laws therefore should be favored. A state decision to adopt federal law should not be held invalid as long as the legislature's decision is based on full consideration of the goals sought by the state, and a decision that these goals are best achieved by adoption of federal law. At the least, statutes which empower a state agency to object to the drug's inclusion on a state's dangerous drug list after being so classified by the federal government should be upheld. This mechanism of state review should be seen as a sufficient control by the state over the decisions of the federal government so that a delegation argument should be rejected. 101

98 See generally supra, note 58.
99 Mason v. State, 280 A.2d at 766; State v. Ciccarelli, 461 A.2d at 554.
100 Samson v. State, 341 A.2d at 823.
101 State v. Kellogg, 98 Idaho 541, 568 P.2d 514 (1977) involved an Idaho statute which provided that no person except listed medical professionals shall dispense drugs required by the laws of Idaho or the U.S. to be sold on a prescription order. An Idaho Board of Pharmacy regulation provided that "a legend drug is one which contains on its immediate, original container, the legend 'Caution: Federal Law Prohibits Dispensing without Prescription.'" Id. at 515, n.2. The court rejected an improper delegation argument stating that any delegation claim must be "tempered by due consideration for the practical context of the problem sought to be remedied, or the policy sought to be effected." Id. at 516, quoting Dept. of Citrus v. Griffin, 239 So. 2d 577 (Fla. 1970). Moreover, "regulation of drugs demands particular regard for practical considera-
B. State Adoption of Federal Highway Speed Limits

Analysis of the validity of state statutes adopting federal highway speed limits involves a different balancing than in the analysis of statutes adopting federal drug laws. Unlike the drug area, regulation of highway speed limits by the state may involve different policy concerns than those involved in its regulation by the federal government. The federal government's decision to impose a 55-mile-per-hour speed limit was primarily an energy conservation statute enacted in response to the Arab oil embargo. Congress decided that in order to lessen the nation's dependence on unreliable sources of foreign oil, conservation measures were needed. Although after the reduction of the speed limit on federal highways, traffic deaths did decline, the federal decision was mostly a conservation measure and not a safety regulation. On the other hand, regulation by state governments of highway speed limits primarily is based on safety factors and the transportation needs of its citizens. State decisions on the regulation of speed limits depend not on foreign oil embargoes, but on population density, terrain, distances between transportation points, lighting, and other transportation factors.

Because the impact upon regulated persons on the national and state level may be disproportionate, uniformity in regulation may not be desirable. Different states have different transportation needs because of their size, their terrain, the distance between their population centers, the condition of their roads, and the type of traffic which uses the roads. Drivers in Wyoming have different transportation needs than drivers in Connecticut. A federal highway policy cannot differentiate between these needs. It is the duty of state legislatures to legislate based on local conditions and needs; adoption of federal highway law does not allow for these considerations.
Nor would there be any additional expense to regulated persons if the laws were not uniform. Drivers are accustomed to checking speed limits whenever they enter upon a new road or cross over into a new jurisdiction. Nor would a driver be subject to conflicting regulations simultaneously, as he would either be on a state or a federal highway. State adoption of federal highway law is also not justified by the expertise of the federal government. Highway regulatory policy should be based on local conditions and needs which are within the expertise of state transportation agencies. Other factors such as the need to constantly monitor the regulated subject area and the ability to respond quickly to new developments do not apply to highway regulation, and thus countenance against state adoption of federal law. The integrity of the regulatory process would also not be diminished by different laws since drivers are accustomed to differing speed limits based on different types of roads. Nor are there any additional burdens placed on regulated persons by having to change the speed of their vehicles when changing from a federal to a state highway.

All these factors indicate that state legislatures should retain for themselves the policy decisionmaking powers in the highway field, and not enact statutes which automatically adopt federal highway law. Of course, if the legislature, based on its own analysis, determines that federal policy also best serves local interests, state highway law could track federal law. An important component of this analysis will obviously be the fact that the federal government could withdraw highway funds from those states that do not conform with federal speed limits. But this coordination does not depend upon automatic adoption. Reliance upon an automatic adoption method without thorough state scrutiny of federal and state highway policy goals and the impact of withdrawal of federal funds would be improper.

C. State Adoption of Federal Tax Laws

When assessing the validity of state statutes adopting federal tax laws, the balancing of the various policy factors suggests that adoption of federal law would be an abdication of legislative responsibility. The most significant factor arguing against permitting states to adopt federal law is that the federal tax code is based on numerous political and social as well as revenue producing considerations. The same political and social considerations which may be significant to federal tax policy are not necessarily significant to a state's tax collection program. Unlike the drug law area, the federal and state govern-

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105 Wallace v. Commissioner of Taxation, 184 N.W.2d at 591.
106 Id.
ments are not necessarily attacking one evil. The federal tax code is designed not only to produce revenue for the government, but also to further various social goals. Before a state legislature enacts legislation adopting the federal tax law, it must carefully analyze the policies of the federal tax law, and then decide whether these policies will serve the interests of its state. It must also predict whether future changes in the federal tax laws will be best for the state. Because of the complexity of the federal tax law, and the myriad of social policies and political considerations upon which it lies, it may be impossible for a state legislature to be able to evaluate how federal policy will relate to the needs of its state. Faced with the difficult task of balancing all the social, political and economical considerations which go into a tax code, abdication to the federal government, while it may be tempting to the state legislature, should be seen as improper.

Moreover, because the policies being furthered by the federal government in its tax laws may be different than those desired by the states, any expertise developed by the federal government is not relevant to the state experience. The federal Internal Revenue Service has expertise in federal tax policy, but none in state tax policy. Moreover, the vast resources of the IRS would not significantly benefit the states. Analysis of state tax goals may not benefit from studies relating to federal tax policy. It might be argued that the integrity of the tax collection system would be advanced if the state and federal tax laws were uniform in that consistency between the two could negate an attitude of the tax laws' arbitrariness. However, this theory would be negated if taxpayers understood that different policies were being furthered by the two tax programs.

Tax law is also not an area where change needs to be made quickly. Deliberation by state decisionmakers may be more appropriate than automatic adoption of changes in the federal tax law. In fact, consistent tax policy to encourage long range planning may be more desirable than quick reaction to a changing economic scene. The impact of a particular tax law may also differ significantly on the federal level rather than on the state level. A minor tax revision appearing as part of a large tax reform bill may have a devastating impact on a local industry if also incorporated into the state code.

There are reasons, however, which may support state adoption of federal tax law. It has been noted that since taxpayers already would be aware of the provisions of the federal tax law, it would be less confusing to have the terms mean the same thing to a taxpayer subject to both federal and state tax laws.\footnote{City Nat'l Bank of Clinton v. Iowa State Tax Comm'n, 102 N.W.2d at 389.} The cost of compliance would also be
lessened if the tax laws were uniform because of fewer recordkeeping demands. Another possible benefit of state adoption of federal tax law is that the taxpayer would not be subjected to potentially conflicting demands. Lack of coordination between state and federal tax codes could present the taxpayer with situations where whatever decision was made would create an additional tax burden.

The balance of factors seems to argue against automatic state adoption of federal tax law. State legislatures should focus on the policies they want to further, and then develop a tax policy consistent with those policies. In the event, however, after careful state analysis, it is concluded that the federal-tax laws do further the same policies sought by the state, uniformity may be appropriate. A mechanism which requires tax policy analysis by a state agency before new federal tax law is incorporated, however, would be preferable to an automatic adoption provision. At the least, a provision not adopting changes in the federal law until public hearings are held by the state should be encouraged. Political accountability and responsibility involved in tax decisions should not be avoided by state legislators through an automatic adoption statute. This has special importance in the tax field where potentially unpopular decisions must be made. It may be easier for state legislators to push the responsibility to the federal decisionmakers so that the state legislators, when faced with criticism of the state tax laws, can blame the federal government for such laws. In the area of tax law, however, state legislators should not be able to pass their duty to establish policy to the federal government.

D. State Adoption of Federal Price Control Laws and Other Trade Regulation Statutes

These types of statutes for the most part involve state decisions to regulate businesses which are left unregulated by federal standards either because the businesses do not engage in interstate commerce, or because they fall below some sort of statutory minimum, e.g., income level. In evaluating this area, careful analysis must be made by the state legislature of the policy goals being sought by federal regulation, and whether the regulation of local businesses by the state based on federal standards would significantly further the achievement of these goals without inordinately burdening local businesses.

State regulation in these trade areas clearly will increase the burden on regulated persons since without state regulation these businesses

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would go unregulated. In order to determine whether this burden is justified, the state legislature first must determine whether the policy goals of the federal regulatory scheme are consistent with the policy goals of the state. If an inconsistency exists, adoption is clearly unwarranted. For example, a state may wish to ease environmental regulations in order to attract new businesses; a state could decide to create jobs at the expense of a clean environment. On the other hand, if the state and federal goals are consistent, then the state legislature must determine the impact on local businesses. For example, worker safety regulations under federal standards may create such a burden on small local businesses not covered by the federal standards that state adoption of these federal standards would destroy these small businesses. Consideration must also be given to the fact that increased costs incurred to comply with the regulations would be passed on to local consumers. The state legislature in order to fulfill its legislative duty should be required to consider each federal regulatory enactment to decide whether the federal standard is appropriate to the state's policy interests. Because automatic adoption does not permit this, automatic adoption statutes are inappropriate in trade regulation areas when state adoption of federal law means expanding federal regulation to cover businesses which the federal government has left unregulated. Automatic adoption is also undesirable in these areas because it places even more power in the hands of entities powerful enough to effect federal legislation and federal regulations while concomitantly disenfranchising local businesses which can assert influence only on the local level. A federalist system calls for political accountability and responsibility at both the federal and local levels. To the extent automatic adoption of federal law serves to disenfranchise groups which can only be effective at the local level, automatic adoption should be avoided.

VII. CONCLUSION

The issue of state adoption of federal law should be considered in light of the regulatory policies sought to be furthered by the state and federal governments in relation to the substantive area being regulated. The overly technical application by the courts of the delegation doctrine to cases involving state statutes adopting federal law do not do this. Although it would be an abdication of legislative power for a state legislature to take the naked position that what is good for the federal

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109See State v. Reader's Digest Ass'n Inc., 81 Wash. 2d 259, 501 P.2d 290 (1972); Dept. of Legal Affairs v. Rogers, 329 So. 2d 257; Rinzler v. Carson, 262 So. 2d 661.
government is good for its state, if the legislature engages in thorough and reasoned analysis of the regulatory consequences of adoption of federal law, and if it makes appropriate findings explaining why adoption of federal law best serves the interests of the citizens of its state, adoption of federal law should not be seen as an impermissible delegation of legislature power from the states to the federal government.

This article has attempted to identify those factors which the legislature should consider in its determination whether it should adopt federal law. The essential point is not that states should automatically adopt federal drug laws, as opposed to federal tax laws; the essential point is that the issue of state adoption of federal law is one of substantive regulatory law, and not one which can be adequately handled by an overly technical application of the delegation doctrine. The dearth of commentary on this issue is surprising considering the importance and scope of state statutes which adopt federal law. Hopefully, the approach suggested by this article will prove useful to achieving a better understanding of the validity and utility of state adoption of federal law.