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ECONOMIC PERSPECTIVES

"READY, FIRE, AIM!" A FOUNDATIONAL PROBLEM WITH REGULATIONS

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The regulatory authority Congress grants to government agencies is an immensely powerful tool for altering behavior in the marketplace. Intended to solve problems that otherwise would not be addressed, the regulatory process often yields excessively broad and burdensome rules that fail to achieve the desired public objective or provide hoped-for benefits to the public.

When addressing problems through regulation, all too often, a federal regulatory agency:

1. decides what it wants to do;
2. writes up a proposed regulation; then
3. performs analysis to justify the regulation.

Regulations are imposed prematurely, without a clear understanding of the root cause of the problem or whether alternative approaches—differently crafted regulations, actions by state or local authorities, or market forces—would result in more effective solutions. This "ready, fire, aim" approach assumes the federal government is the default problem-solver. The result has been an ill-informed, inefficient, and unnecessarily costly regulatory state.

A succession of executive orders since the 1970s and several narrowly drawn procedural reforms have tried but failed to correct the practice of "ready, fire, aim" rulemaking by federal agencies. It is time to pursue comprehensive statutory reforms that require agencies to conduct and use regulatory analysis for informed and effective problem solving.

ATTEMPTS TO REGULATE THE REGULATORS

For decades, presidents have issued executive orders instructing agencies to identify systemic problems and analyze alternative solutions to ensure that regulations produce public benefits at an acceptable cost. These orders direct agencies to conduct real, comprehensive regulatory analyses before determining if, how, and with what to respond to potential problems and to "own" responsibility for ensuring their decisions continue to be the most beneficial options. The most recent iteration is President Obama's Executive Order 13563:[1]

> Section 1. General Principles of Regulation. *(a) Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.*

"Regulatory analysis must identify alternative ways of achieving the desired outcomes . . . and assess the effectiveness and costs of each. An analysis that fails to address alternatives seriously was likely written to justify decisions made for other reasons."

Neither this executive order nor the ones before it have fixed the problem.[2] The Mercatus Center's Regulatory Report Card,[3] an in-depth evaluation of the quality of the regulatory impact analyses for major regulations, found that since 2008 agency regulatory analysis earned the equivalent of a grade of "F" on average. The very best analysis earned just a B−.

Concern about a wave of new regulations has spurred policymakers to discuss reforming the federal regulatory process, along with the federal government's other unsustainable institutions and practices. One key to fashioning a regulatory system that consistently serves to "protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation" would be full and complete regulatory analysis that actually is used to make decisions about regulations.

REGULATORY ANALYSIS: HOW IT SHOULD WORK

The key steps in true regulatory analysis look much like the basic steps of "decision-making 101."

1) **Define the problem.** Identify a significant, persistent, systemic problem using empirical evidence. The problem must be widespread (not local or regional), documented by data (not merely anecdotes), and traced to a defect in the rules that govern behavior, rather than to the faults of a few "bad actors" that can be dealt with on a case-by-case basis.

2) **Identify the desired outcome.** Identify the beneficial outcomes of solving the problem (e.g., improved health, time savings from reduced traffic congestion, etc.). A complete regulatory analysis provides a coherent explanation, with supporting evidence, of how a proposed course of action will produce the desired outcomes.

3) **Consider alternatives.** Regulatory analysis must identify alternative ways of achieving the desired outcomes (e.g., alternative regulations or actions, local law, market solutions, no action) and assess the effectiveness and costs of each. An analysis that fails to address alternatives seriously was likely written to justify decisions made for other reasons. To project the effects of a regulation (both benefits and costs), an agency also must compare it to a realistic baseline—or how things would look absent the regulation. In other words, regulatory analysis cannot assume the world is static; it must measure the likely effects of a proposed solution against a realistic projection of how the market would respond to a problem absent regulation.

4) **Assess tradeoffs.** Regulations seek to produce good results, but regulations also require sacrifices. For this reason, regulatory analysis must include a thorough assessment of tradeoffs. This is critical so that both rule makers and the public can fully understand what is received from (benefits) and what is given up for (costs) any proposed regulation.

5) **Define and measure progress.** Federal agencies sometimes "review" existing regulations, but they rarely conduct retrospective analysis—or an assessment of what those regulations have accomplished and at what cost. Without this vital information, any reliable measure of regulatory effectiveness is nearly impossible.

Decades of executive orders have not fixed the fundamental problems with the federal government's regulatory practice. Statutory reform requiring agencies to conduct regulatory analysis is necessary to ensure a regulatory process that more consistently produces its intended results.

For an in-depth discussion of regulatory analysis and other aspects of the federal regulatory process, please see the following Mercatus publications: "Comprehensive Regulatory Impact Analysis: The Cornerstone of Regulatory Reform"[4] (testimony before the Senate Committee on Homeland Security and Governmental Affairs); and "Improving Regulatory Impact Analysis Through Process Reform"[5] (testimony before the Joint Economic Committee).

LINKS

1. https://www.whitehouse.gov/the-press-office/2011/01/18/executive-order-13563-improving-regulation-and-regulatory-review

2. http://mercatus.org/publication/regulatory-impact-analysis-four-decades-foibles

3. http://mercatus.org/reportcards

4. http://mercatus.org/publication/comprehensive-regulatory-impact-analysis-cornerstone-regulatory-reform

5. http://mercatus.org/publication/improving-regulatory-impact-analysis-through-process-reform

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