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THE ROLE OF ECONOMISTS IN THE FEDERAL REGULATORY PROCESS

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EVERY PROPOSED HEALTH and safety regulation offers both costs and benefits. To an economist, the desirability of a new regulation rests squarely on whether the latter outweighs the former. Cost-benefit analyses are the economist's workhorse in determining the likely efficiency of a given policy change. However, economists must compete to be heard among others within federal health and safety agencies—while wrestling with legal, political, and social constraints on the regulatory process.

Although economists themselves generally make up a small share of the relevant agency staff, they occupy an important and perhaps increasingly recognized role. Since 1981, executive orders have dictated that decision makers take economic regulatory analysis into account. But what does that mean? Decision makers are largely free to affix any weight they wish to the economic analysis that makes up one of any number of competing analyses.

In order to understand the role that economic analysis actually plays in the regulatory process, one can look to a recent survey of senior economists within seven federal agencies with a significant regulatory purview: the Food and Drug Administration (FDA), U.S. Department of Agriculture (USDA), Consumer Product Safety Commission (CPSC), Department of Labor (DOL), Environmental Protection Agency (EPA), Department of Homeland Security (DHS), and Department of Transportation (DOT).[1]

Though the sample of economists is non-random, it represents the collective experience and knowledge working on most of the major public health regulations of the past decade.

ECONOMISTS' VIEW OF THEIR OWN ROLE

Since the study of economics largely focuses on how to allocate resources efficiently, it makes sense that economists believe their primary responsibility is to advise policy makers on the best allocation of resources. Unfortunately, according to the survey, nearly all respondents believe that the biggest problem with regulations is that they too often result in a misallocation of resources within their agencies.[2]

Likely tied to this perception of inefficient allocation is the fact that all but one respondent believe they—or rather, economic analysis—should have more influence on regulatory decision-making witin their organizations.[3] Even the economists themselves typically admit their biases toward giving economic analysis greater influence when asked to describe the context in which decisions should be made. For example, one economist said, "I think that decision makers ought to be aware of the benefits and costs and make a decision and have to live with that decision having been informed," while another explained that, "if you had a circle, you would want to have a strong scientific foundation, be within the legal requirements, and have the assumptive and coalescing properties of economic analysis to deliver the message home." In other words, many economists simultaneously believe their analyses should be given more deference and that other (non-economic) factors ought to enter into the decision maker's calculus.[4]

TABLE 1: ECONOMISTS' ACTUAL VS. DESIRED INFLUENCE

INFLUENCE			
ACTUAL	DESIRED	DIFFERENCE	
2.0	10.0	8.0	1=Rarely any Influence 10=Frequent Influence
2.5	5.0	2.5	
3.5	5.0	1.5	
5.0	more	N/A	
5.0	7.0	2.0	
6.0	6.5	0.5	
5.0	8.0	3.0	
5.0	9.5	4.5	
5.0	10.0	5.0	
7.0	8.0	1.0	
7.0	9.0	2.0	
10.0	10.0	0.0	

Source: Richard Williams, "The Influence of Regulatory Economists in Federal Health and Safety Agencies" (working paper 08-15, Mercatus Center at George Mason University, July 2008), 7 .

ECONOMICS IN THE ORGANIZATION

The degree of influence that economists have over regulations strongly depends on the organizational culture, particularly how open the management and other agency employees are to new ideas. In this dimension of the economists' agency perception, their responses reflect several interlocking aspects. Several mentioned how difficult it is to bring in "fresh thinking," while others emphasized agency reliance on the use of precedents to drive current decisions, exemplifying the dominant legal approach to public-safety regulations. Some economists pointed out that the typical regulatory attorney's concern is to avoid changing existing regulatory policy that has (legally) worked before. This sentiment is mirrored by one economist who said, "We do what we always do, just trotting out the same old thing. We just come up with the same regulations in different areas." Several respondents noted their agencies award employees who are "mainstream" and do not challenge the status quo.[5]

Incentives largely drive the organizational culture, or rather the behavior of decision makers. As one economist put it, "They have incentives to do something, they have incentives to get people off their backs, and they have incentives to move things. [But] the incentives to make good decisions are extremely weak—as long as you are doing something, you are going to be okay." Another said, "Success is putting out ten regulations a year and bigger regulations are bigger successes. They don't say 'we examined ten regulations and we decided that eight did not warrant regulation,' which would be better." Others remarked that the nature of political appointees is such that they must try to accomplish as much as they can within a relatively short amount of time.[6]

TABLE 2: ECONOMISTS' SHARE OF AGENCY EMPLOYMENT

	EMPLOYEES SEPT. 2007	ECONOMISTS FEB. 2008	EMPLOYEES PER ECONOMIST
Federal Trade Commission	1,131	70	16
Federal Communications Commission	1,804	60	30
Consumer Product Safety Commission	395	9	44
Environmental Protection Agency	18,119	200	91
Department of Agriculture	103,923	220	472
Food and Drug Administration	10,000	20	500
Department of Homeland Security	159,447	10	15,945

Source: U.S. Office of Personnel Management, available at http://www.opm.gov/feddata/html/2007/september/table2.asp; and Jamie Belcore and Jerry Ellig, "Homeland Security and Regulatory Analysis: Are We Safe Yet?" (working paper 08-13, Mercatus Center at George Mason University, June 2008).

ECONOMISTS: UNHEARD AND MISUNDERSTOOD

Decision makers within regulatory agencies exhibit much variability in terms of how they view and use economic analysis. Some economists said that lack of understanding is "a huge problem," while others singled out resentment among decision makers who have to abide by executive orders mandating cost-benefit analysis when they may in fact be highly trained in a field other than economics. On the other hand, respondents viewed some decision makers as being quite comfortable with economics, or at least comfortable enough to understand the results of such analysis, if not the methods. Understanding only results, however, may not be adequate because decision makers are likely reluctant to publicly defend results they cannot fully explain.

The respondents were about evenly split when asked whether decision makers are actually prejudiced against using economics in decision making. A number of those who felt this was a major problem attributed it to "a public-health mindset [that] permeates the agency" or in some way or another, a full consideration of benefits without due regard for costs.

The economists noted that some decision makers view the economic analysis of proposed regulations as simply "to put a nice neat packaging on it," or otherwise as just a way to keep the Office of Management and Budget off their backs.

A CASE STUDY

One particular example may be useful in understanding the use of economics in the regulatory process. When the FDA was promulgating the seafood Hazard Analysis Critical Points (HACCP) regulation, it was obvious to both epidemiologists and economists from the beginning that there would be very few benefits.[7] Having been written in the commissioner's office (as opposed to the program center), it was made clear that the motivation for the rule was prevent Congress from moving the seafood program from the FDA to the USDA. Eventually, with costs outweighing benefits on the order of ten to one, the chief economist was pressured (at the expense of his job) to change the numbers. With cost and benefits estimates changed dramatically to justify instituting the new regulation, those in the OMB who thought the estimates were poorly calculated were told to back off by the White House. This experience mirrors what other economists described as "having to hold your nose and assume you can fight another day"[8] or as one put it, "Every once in a while there was a small—perhaps not small, perhaps I only rationalized it as small—compromise with integrity."[9]

CONCLUSION

Along with the legal profession, economics is perhaps the most entrenched discipline within the regulatory policy-making community. But the use of economic analysis in regulatory decision-making was not necessarily a natural outgrowth of the desire to make quality decisions, but rather the result of an exogenous mandate from the executive branch. As a result, while economists certainly have much to offer in the way of ensuring the efficient use of resources devoted towards health and safety, their analyses are not always welcome or practically understood.

In this recent survey of senior regulatory agency economists, there is much variation in the use and prejudice against economic analysis in agency decision-making. The reason for this variation comes from poor understanding of economics among managers, an organizational culture which discourages new approaches, and the nature of political appointments. However, the economists spoke with near unanimity when expressing a desire to have a larger amount of influence on decision making.

> While economists certainly have much to offer in the way of ensuring the efficient use of resources devoted towards health and safety, their analyses are not always welcome or practically understood.

In order to reconcile the need to utilize economic analysis with the failure to do so, agencies must make necessary changes, which in some cases may require new laws or executive orders to prod recalcitrant agencies.

Specific recommendations include:

- Economic teams should be organizationally separate from program offices and should be managed, at least at the first level, by economists.
- New decision-makers should receive training on how to use economic analysis for decisions. Economists should be trained on how to present their results to decision makers.
- Decision makers should be given incentives to reward innovative ideas and consideration of multiple options.

- Laws that require individual agencies to consider benefits and costs are likely to have a huge impact on the quality of decisions in those agencies.

To find out more about this survey of senior regulatory economists and their views on economic analysis in the regulatory process, read the influence of *Regulatory Economists in Federal Health and Safety Agencies*, number 08-15 in the Mercatus Center working paper series.

ENDNOTES

1. Richard Williams, "The Influence of Regulatory Economists in Federal Health and Safety Agencies" (working paper 08-15, Mercatus Center at George Mason University, July 2008), 3.
2. *Ibid*, 4.
3. The one exception believed he already had—and should have—maximum influence.
4. Several economists seem to indicate that even decisions that do not pass a benefit-cost analysis are sometimes acceptable, such as when the protection of highly sensitive or highly exposed population subgroups is the primary objective, or when Congress effectively mandates the decision.
5. Williams, "The Influence of Regulatory Economics," 7–8.
6. *Ibid*, 8.
7. HACCP is a paperwork-based process control mechanism that requires manufacturers to look for places where hazards may be controlled, set tolerance limits at those places, and take corrective action when tolerance limits are exceeded.
8. William R. Allen, "Economics, Economists and Economic Policy: Modern American experiences," *History of Political Economy* 9, no. 1 (1977): 63.
9. *Ibid*, 60.

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