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RESEARCH SUMMARY

THE LEGACY OF THE COUNCIL ON WAGE AND PRICE STABILITY

Regulation in the United States became far more complex over the past several decades as new regulatory agencies with ambitious agendas were created. In response, Congress and recent presidents have implemented new regulatory oversight measures, with varying success. Regulatory agencies are often required to produce benefit-cost analyses for proposed changes to the regulatory landscape, but the quality of these analyses is usually disappointing. Even when the analyses are accurate, agencies sometimes forget the "first principle" of regulation: it ought to identify and correct a failure in the market being regulated. In the absence of a market failure, there is no need to regulate.

In a new study for the Mercatus Center at George Mason University, economists Thomas D. Hopkins, Benjamin Miller, and Laura Stanley look at regulatory history from the 1970s and '80s to identify common themes. Using more than 300 filings of the Council on Wage and Price Stability (CWPS), most of which are now available on the Mercatus website, the authors detect persistent deficiencies in the economic analysis regulators often use to justify new regulation. They conclude that issues similar to those addressed by CWPS 40 years ago are at the forefront of the regulatory debate today. If regulatory agencies were to perform bona fide benefit-cost analysis while also identifying a market failure, this would be a constructive and significant step toward achieving greater regulatory efficiency.

For the complete study, see "The Legacy of the Council on Wage and Price Stability."

THE COUNCIL ON WAGE AND PRICE STABILITY

Before 1974, federal regulations were implemented by agencies to which Congress had delegated substantial and open-ended power, with oversight coming from judicial review and congressional committees. The president had minimal interaction with executive branch agencies on specific regulations and virtually no role in overseeing independent agency rulemaking. President Ford signed the Council on Wage and Price Stability Act in 1974, which provided congressional authorization for CWPS to intervene in specific rulemakings of all federal agencies. While CWPS lacked

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power to force change, the public nature of its filings allowed the media, private parties, and the White House to make it costly for regulators to ignore a CWPS message.

CWPS consisted of economists reporting to a presidentially appointed director. President Carter set up the Regulatory Analysis Review Group to bring together economists from an array of executive branch agencies, and CWPS filed the group's reports, often reflecting a consensus across the executive branch. CWPS applied microeconomic theory to regulation during its seven-year existence, intervening in more than 300 proceedings at more than 25 federal regulatory agencies. In 1981, CWPS wrote a summary review of its filings, concluding that regulators often neglected to

- identify a significant problem in the marketplace,
- perform adequate benefit-cost analysis, or
- consider market alternatives as superior to government intervention.

When President Reagan took office in 1981, the recently created Office of Information and Regulatory Affairs (OIRA) became the new home of CWPS economists and continued the council's regulatory oversight of executive branch agencies, while excluding independent agencies.

EXAMPLES OF CWPS REGULATORY FILINGS

A review of five regulations proposed during the CWPS era elucidates the role CWPS played in challenging the economic analysis (or lack thereof) for those regulations, highlighting how regulators of today are addressing similar regulatory issues without performing adequate benefit-cost analysis.

- 1976: CWPS commented on a proposal by the **Securities and Exchange Commission** (SEC) to generate and disseminate securities pricing information in a composite system. CWPS exposed the SEC's failure to demonstrate a need for the remedy and pointed out the lack of a benefit-cost analysis, which would have provided useful information about the effects of the proposed regulation.
- 1978: The **Environmental Protection Agency** (EPA) failed to provide an analysis of alternatives such as population-size cutoffs or performance and design standards when proposing new regulations to reduce the level of organic chemicals in public drinking water. CWPS suggested that an alternative could save more lives with no increase in costs. The EPA disregarded CWPS comments and issued an even more stringent standard.
- 1978: CWPS urged the Bureau of Motor Carrier Safety (BMCS) within the **Department of Transportation** to undertake a cost-effectiveness analysis of proposed extensive changes to rules for commercial bus and truck driver hours. The original proposal did not explore alternative, less burdensome solutions. Following the public comment period, the BMCS dropped its proposal altogether.
- 1979: CWPS commented on a proposal by the **Federal Aviation Administration** (FAA) to impose on small airports and airplane providers the same security measures facing

commercial airlines. CWPS concluded that the proposal ignored important categories of cost, such as security staffing costs and unintended consequences, and suggested that the FAA consider alternatives at a lower cost. The FAA issued a final rule that was markedly less costly than the original rule.

- 1980: A joint regulation by the **Food and Drug Administration**, the **Department of Agriculture**, and the **Environmental Protection Agency** to prohibit machinery in food-related industrial plants from containing fluid polychlorinated biphenyls (PCBs) aimed to reduce the risk of contamination from accidental spills or leakage. CWPS expressed concern that the proposal would increase risk through improper disposal of PCBs. CWPS also suggested that alternative measures be considered. The EPA dropped the proposal in order to gather more information.

RECURRING ISSUES

Inadequate analysis of benefits, costs, and alternatives is a common theme that CWPS encountered when commenting on the proposed regulations. While every president since Gerald Ford has issued executive orders requiring agencies to review regulations for benefits, costs, and alternatives, and OIRA has encouraged regulators to improve the quality of their analyses, there are still weaknesses in regulatory decisions. For example, in 1999 the SEC proposed new regulation of market information that offered no benefit-cost analysis.

Moreover, regulators may provide a benefit-cost analysis but fail to address the “first principle” of regulation: there must be a market failure to correct. For example, in 2010, the Department of Transportation proposed revising requirements for truck drivers’ hours, in the same spirit as the 1978 proposal. A Mercatus Regulatory Report Card concluded that “no market failure or systemic problem was identified” by the regulator warranting the proposed regulation.

While OIRA is able to engage executive branch agencies much earlier in the regulatory process than CWPS, regulatory outcomes often fall short of consistent adherence to key principles of benefit-cost analysis. Many costly regulations in recent years claim positive benefits but do not address an actual market failure. Individuals could make their own decisions in the absence of a market failure. For example, energy efficiency standards issued by the EPA and the departments of Transportation and Energy exhibit “paternalistic benevolence,” which is now acceptable to executive branch reviewers.

CONCLUSION

The basic lesson from examining the work of the CWPS, as well as recent regulatory developments, is that better consideration of a proposed rule’s economic efficiency by executive branch reviewers, as well as an independent peer review process with public access, would be a significant step toward achieving efficiency within the US regulatory system. These reforms would encourage regulators to adhere to key principles of benefit-cost analysis and to identify an actual market failure worthy of government regulation, if one exists.