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A PROCESS FOR CLEANING UP FEDERAL
REGULATIONS: Insights from BRAC and the Dutch
Administrative Burden Reduction Programme

Joshua Hall and Michael Williams



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Mercatus Center
George Mason University
3351 North Fairfax Drive, 4th Floor
Arlington, VA 22201-4433
(703) 993-4930
mercatus.org

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ABOUT THE AUTHORS

JOSHUA HALL is the Elbert H. Neese, Jr. professor of economics at Beloit College in Beloit, Wisconsin. He earned his bachelor's and master's degrees in economics from Ohio University and his PhD from West Virginia University. Formerly an economist for the Joint Economic Committee of the US Congress, he is a coauthor of the widely cited *Economic Freedom of the World* reports. In addition, he is author of over 50 articles in journals such as *Contemporary Economic Policy*, *Journal of Economic Behavior and Organization*, *Journal of Economic Education*, *Journal of Labor Research*, *Southern Economic Journal*, *Public Finance Review*, and *Journal of Public Administration Research and Theory*.

MICHAEL WILLIAMS is a 2012 graduate of Beloit College with degrees in anthropology and economics. Michael's research interests lie primarily in the intersections between technology, economics, and culture.

ABSTRACT

THIS PAPER SUGGESTS a process to identify, evaluate, and eliminate inefficient regulations. Employing lessons from two successful government reform programs—the Base Realignment and Closure (BRAC) program in the United States and the Administrative Burden Reduction Programme in the Netherlands—the proposed framework would identify the regulatory costs associated with a historical piece of legislation and create a target for reduction in regulatory costs. An independent commission would then evaluate the benefits associated with each regulation and the package of regulations as a whole before sending it for congressional and presidential approval.

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I. INTRODUCTION

AS NUMEROUS COMMENTATORS have pointed out, the growth of regulation is a big problem for the US economy.¹ In 2011, for example, there were more than 165,000 pages of federal regulations with which American companies had to comply.² Concern over increased regulation has led to increased policy-maker focus on the retrospective analysis and review of regulations, including three important executive orders issued by President Obama beginning in 2011.³ Retrospective review is important because, unlike the private sector, where the allure of profits and the push of competition force companies to constantly reevaluate internal rules, the public sector has no internal incentive structure to reevaluate regulations for cost-effectiveness. As Senator Mark Warner (D-VA) stated in a recent conference, “Where is the process to clean up regulations?”⁴ In many ways the root cause of the current state of affairs is not the growth of new regulations, but rather the lack of an efficient and effective regulatory review process.

This paper suggests a process to identify, evaluate, and eliminate inefficient regulations. Combining lessons from two successful government reform programs—the Base Realignment and Closure Act in the United States and the Dutch Administrative Burden Reduction Programme—the proposed framework would identify the regulatory costs associated with a historical piece of legislation and create a target for reduction in regulatory costs. Because of its ability to remove politics from the reform process, BRAC-like approaches to reform have been suggested for reforms in many areas. For example, 2008 Republican presidential candidate John McCain proposed a BRAC-style process to eliminate government waste, and the San Antonio Express suggested that Medicare and Social Security be reformed

1. See, for example, Alex Tabarrok, *Launching the Innovation Renaissance: A New Path to Bring Smart Ideas to Market Fast* (TED Books, 2011). See also Andrew Hale, David Borys, and Mark Adams, “Regulatory Overload: A Behavioral Analysis of Regulatory Compliance,” *Mercatus Center Working Paper No. 11-47* (Arlington, VA: Mercatus Center at George Mason University, November 2011).
2. Hale et al., “Regulatory Overload.”
3. The executive orders are nos. 13563, 13579, and 13610.
4. Sen. Mark Warner, “Where Is the Process to Clean Up Regulations?” Regulations in a 21st Century Economy, Mercatus Center Conference, Arlington, VA, Mercatus Center at George Mason University, March 3, 2011, <http://mercatus.org/video/where-process-clean-regulations>.

using a BRAC-style process.⁵ More recently, and directly related to the issue of regulatory reform, Michael Mandel from the Progressive Policy Institute proposed an independent Regulatory Improvement Commission explicitly patterned after the BRAC Commission.⁶

Our paper proceeds as follows. Section 2 describes the Dutch Administrative Burden Reduction Programme and how it has reduced and eliminated inefficient regulations in the Netherlands. In section 3, we discuss the Base Realignment and Closure Act, the reasons why it has been so successful in leading to base closures and realignments, and how it has served as an example for other countries. Section 4 combines elements of these two programs into a two-step process for identifying and eliminating outdated and inefficient regulations. Section 5 concludes.

II. DUTCH ADMINISTRATIVE BURDEN REDUCTION PROGRAMME OVERVIEW

IN 2003, THE Dutch made significant additions and changes to their 1994 regulatory reforms aimed at eliminating regulations burdening businesses with unnecessary costs and creating societal waste. Business regulations are intended to ensure that businesses act in accordance with society's best interests. However, in some cases these regulations are obsolete, inefficiently implemented, or just ineffective, placing costs on consumers and stockholders while providing little practical benefit to society. The Dutch program is designed to reduce this waste by developing an effective methodology for consistently measuring administrative burdens and integrating that methodology into a system that enforces the elimination of unnecessary regulation. Many factors have contributed to the success of the Dutch program, from its implementation of an independent monitoring agency and effective measurement system to its politically backed quantitative goal of reducing the cost of regulatory burdens on businesses by 25 percent cumulatively by 2007.⁷

The Dutch first attempted more efficient monitoring and management of regulatory actions when they implemented regulatory impact analysis (RIA) in 1985 as part of the country's modified Directives on Regulation. This attempt was an

5. John McCain, "Reforming Washington to Regain the Trust of Taxpayers: Bring the Budget to Balance by 2013," 2008, <http://www.johnmccain.com/Issues/JobsforsAmerica/reform.htm>; "Apply BRAC Model to Entitlement Reform," *San Antonio Express*, June 26, 2006.
6. Michael Mandel, "Reviving Jobs and Innovation: A Progressive Approach to Improving Regulation," Progressive Policy Institute, February 3, 2011, <http://progressivepolicy.org/reviving-jobs-and-innovation-a-progressive-approach-to-improving-regulation>. While developed independently, our approach and arguments are similar to those laid out by Mandel and the Progressive Policy Institute except for minor modifications to incorporate lessons from the Dutch regulatory reform experience in order to focus and minimize the costs of measuring regulations.
7. The reasoning behind the seemingly arbitrary number of 25 percent is never exactly explained, but likely it was chosen because it is a numerical goal that is attainable while still requiring significant commitment.

important first step toward reform, but ultimately the changes were ineffective for a number of reasons. The RIA program underwent significant change in 1994 as the new cabinet instituted reforms to promote “Functioning of Markets, Deregulation and Legislative Quality,” or MDW.⁸ These changes, while beneficial, still left much to be desired.⁹ The RIA quality-assessment process suffered from vagueness and inconsistency, and the strong role of third parties (rather than the regulating parties themselves) in ensuring the program’s quality robbed regulators of feelings of responsibility for conducting RIA.¹⁰ Similarly, the implementation of RIA toward the end of the process of introducing a new regulation meant that the regulation’s backers were already mostly committed to the regulation’s current form, limiting the effectiveness of RIA in preventing inefficient regulation design and in implementing changes.

The 2003 enhancements were aimed at fixing these flaws by implementing a standard method of measurement, a specific goal of reducing overall regulatory costs by 25 percent, and two new organizations. One organization, the Interministerial Unit for Administrative Burdens (IPAL), was created to manage the political side of organizing the process between the various ministries and to overcome political obstacles. The other organization, the Advisory Board on Administrative Burdens (ACTAL), was created to monitor each ministry’s measurement and reduction processes as they move toward their reduction goals.¹¹

Measuring the Cost of Regulation

THE STANDARD COST model (SCM) was developed in the Netherlands as a consistent methodology for measuring administrative costs and burdens resulting from business regulations in both ex ante and ex post situations. The model is designed to break down administrative burdens and costs to businesses, ensuring that even obligations not imposed by regulation (for example, voluntary information obligations) are measured, allowing for a complete overview of all information obligations (IOs) and simplifying the identification of unnecessary regulation.¹² The SCM strictly measures costs to businesses; it does not consider whether the regulations from

8. Organisation for Economic Co-operation and Development (OECD), *Regulatory Reform in the Netherlands* (Paris: OECD, 1999).
9. Enhancements to RIA involved ensuring more oversight by other ministries and creating a help desk staffed by members of the justice, economic affairs, and environment ministries to assist regulators in completing their RIA requirements satisfactorily. Draft legislation must pass through the Ministry of Justice for quality assessment before going to the Council of Ministers, so assessing RIA quality was added to the Ministry of Justice’s quality assessment process.
10. SCM Network, “International Standard Cost Model Manual” (2005), <https://www.oecd.org/regreform/regulatorypolicy/34227698.pdf> (accessed March 10, 2012), 26.
11. These acronyms are based on the Dutch names of the organizations, not the English translations.
12. Austrian Institute of Economic Research (WiFo) and Centre for European Policy Studies (CEPS), “Pilot Project on Administrative Burdens,” 2006, 32.

TABLE 1. BREAKDOWN OF REGULATORY COSTS

Direct Financial Costs		<ul style="list-style-type: none"> • Taxes • Administrative charges
Compliance Costs	<i>Administrative Costs</i>	<ul style="list-style-type: none"> • Documentation and reports • Other information obligations
	<i>Indirect Financial Costs</i>	<ul style="list-style-type: none"> • Safety inspections • Installation of safety equipment
Structural Costs		<ul style="list-style-type: none"> • Structural changes or modifications required to fulfill information obligations

which the costs stem are “reasonable.” The determination of what is reasonable occurs at a later point in the process when plans for reducing costs are being formed and evaluated.¹³

The SCM divides regulatory costs into three general categories, as shown in table 1: direct financial costs, compliance costs, and structural costs. The direct financial cost category accounts for obligations on businesses to make monetary payments to the government. An example of a direct financial cost is fees for regulatory review. Compliance costs are costs related to extra actions a business must take as a result of the regulations that do not involve direct payments to the government. Compliance costs are broken down further into two categories: administrative costs and substantive compliance costs. For example, the cost of steps that must be taken to ensure that a factory meets minimum safety requirements, like having routine inspections and installations of safety equipment, falls into the category of substantive compliance costs. On the other hand, safety documentation and reports (IOs) fall under the category of administrative costs.¹⁴ Administrative burdens are considered part of compliance costs, but only those administrative burdens that are “sufficiently concrete and objective/measurable” so as to be a useful measurement in determining the total cost to businesses.¹⁵ Structural costs refer to any cost resulting from structural changes or modifications required as a result of regulation.

13. In our proposed framework, this “reasonable” standard would be applied at the BRAC-style stage of the process.

14. OECD, *International Standard Cost Model Manual*, 7.

15. To calculate the actual administrative burdens quantitatively, the time it takes to perform the enforced administrative action is multiplied by the hourly wage of the person(s) involved in performing the necessary actions to fulfill the IO. The hourly wages of the involved persons are termed “tariffs” in the SCM manual. The SCM makes a distinction between “internal tariffs” and “external tariffs.” Internal tariffs refer to employees within the firm who handle the IO, whereas external tariffs refer to outside individuals that the firm must pay to handle the IO. Internal tariffs also include the cost of physical materials and equipment required by the person(s) fulfilling the IO.

The goal of the SCM and burden reduction program is to address inefficiencies and burdens caused by government regulation; to that end, it was necessary to develop a method to avoid including in the measurement those inefficiencies that arise from the business's own operation. To achieve this goal, the program uses the "typical firm" approach, where a firm that is considered "normally efficient" is used to estimate the required time and cost of the IO.

The Process of Measurement

EACH MINISTRY IS charged with measuring the burdens traced to legislation that falls under its purview. In a case where legislation falls under the jurisdiction of multiple ministries, responsibility is divided 50/50 between the two ministries. The Dutch also recognized that IOs may affect firms of various sizes and in diverse sectors differently; thus IOs are categorized to reflect these dissimilarities in costs. As the ministries assess and measure their administrative burdens, they do so in accordance with an SCM handbook tailored by the Dutch to streamline the process of measurement. It uses the specifications described above to assess cost. To select the businesses to be used in the data-collection process for measurement, each ministry hires consultants to put together a business panel that then selects businesses to be part of the sample.

Once the sample businesses have been selected, data collection is carried out in five stages: (1) desk research is conducted to identify IOs arising from a given regulation; (2) discussions with business representatives are arranged to get feedback on the results of the desk research's identification of IO specifics; (3) face-to-face interviews are conducted to collect cost parameters; (4) more desk research is done to apply the findings on a wider, national scale; and (5) a series of experiments and interviews are conducted to get accurate time measurements on the identified IOs. Examples of some experiment methods used in the last phase include time-stamped computer registration throughout the IO process and the use of stopwatches.¹⁶

16. *Ibid.*, 36–37. Through testing, it was discovered that bottom-up approaches, like the two mentioned examples, were more effective and accurate than top-down approaches in accurately evaluating time parameters.

TABLE 2. THE DUTCH REGULATORY MEASUREMENT PROCESS

PHASE	STEP	DESCRIPTION	MINISTRY(IES)	CENTRAL COORDINATING UNIT	CONSULTANT(S)	OTHER/ BUSINESSES
Phase 0	0	Identification of business-related regulation to be included in the analysis	x		x	
Phase 1	1	Identification of IOs/DFs/administrative activities and classification by origin	x		x	
	2	Identification and demarcation of related regulation	x		x	
	3	Classification of information obligations by type	x		x	
	4	Identification of relevant business segments	x		x	x
	5	Identification of population, rate, and frequency	x		x	
	6	Business interviews vs. expert assessment	x		x	x
	7	Identification of relevant cost parameters	x		x	x
	8	Preparation of interview guide				
	9	Expert review of steps 1–8	x	x	x	x
Phase 2	10	Selection of normally efficient business	x		x	x
	11	Business interviews			x	x
	12	Completion and standardisation for each segment by activity	x		x	x
	13	Expert review of steps 10–12	x	x	x	x
Phase 3	14	Extrapolation of validated data to national level	x	x	x	x
	15	Reporting and transfer to database	x	x		

Source: Austrian Institute of Economic Research (WiFo) and Centre for European Policy Studies (CEPS), "Pilot Project on Administrative Burdens," 2006.

Table 2 is taken from the Austrian Institute for Economic Research (WiFo) and Center for European Policy Studies (CEPS) 2006 pilot study review. It lays out the organizations and people involved in every step of the measurement process.

Organizational Structure Changes

ACTAL AND IPAL form the central monitoring and coordinating agencies of the administrative burden reform initiative in the Netherlands. Both of these organizations were created between 2000 and 2003 to help enhance the administrative burden reduction program. IPAL was set up to facilitate coordination between the Ministry of Finance and the Ministry of Economic Affairs, with the minister of finance in charge. IPAL was placed in charge of developing the SCM manuals used

by each ministry, and IPAL representatives also sit in at various stages throughout each ministry's measurement process.

ACTAL, by contrast, was created to ensure that reform goals are actually being met. It was established as an independent entity outside any ministry. It monitors the progress of reform as well as the efforts of individual ministries, keeping them on task and moving toward their reduction goals.¹⁷ ACTAL also advises the Dutch government on regulatory reduction efforts and examines the measurement results obtained through the measurement process outlined above for each new law before that law reaches the Council of Ministers to obtain approval. This role is similar to those of the justice ministry and the help desk during the RIA days of the Dutch's first reform attempt. Effective monitoring and guidance is an important part of the program since ministers are charged with making the reduction policy for their own ministries. After the enhancements to the program in 2003, ACTAL's monitoring of the progress of these reforms became integrated into the budget cycle, which includes the annual Budget Memorandum and the Ministerial Budgets.¹⁸ Keeping bureaus independent from the regulating agencies that are charged with ensuring regulatory efficiency and coordination, such as ACTAL and IPAL, helps to overcome the incentives bureaus have to drag their feet on regulatory reviews.¹⁹

Results of the 2003 Enhancements and Applicability to the United States

THE 2003 ENHANCEMENTS to the Dutch Administrative Burden Reduction Programme have been so effective that the rest of Europe is borrowing lessons from the Dutch reform program. The SCM developed by IPAL is now used by a number of countries, such as the United Kingdom, Germany, and Norway, as well as by the European Commission.²⁰ The World Bank Group reports that the Dutch reached their 25 percent reduction goal, though this figure counts both actual reductions and *committed* reductions, the results of which only time will tell. The Dutch successfully reduced the administrative burdens placed on businesses by €4 billion and become the first country to make such a large reduction in regulatory burdens.²¹ The World Bank Group, as well as other organizations, credits this success to the effective monitoring of ACTAL, the coordination provided by IPAL, the substantial political support across the Dutch parliament, and the clear quantitative burden

17. Ibid., 29–30.

18. Ibid.

19. OECD, *Regulatory Reform in the Netherlands*, 13.

20. World Bank Group, "Review of the Dutch Administrative Burden Reduction Programme" (2007), <http://www.doingbusiness.org/-/media/FPDKM/Doing%20Business/Documents/Special-Reports/DB-Dutch-Admin.pdf> (accessed March 11, 2012).

21. Ibid., 4.

reduction target of 25 percent.²² The Dutch program provides a good example to learn from and improve upon in efforts to reduce regulatory burdens.

There is one major reason to think that an exact replica of the Dutch program in the United States would not be as effective. The United States has had bad experiences in the past with regulatory agencies being susceptible to capture by powerful special interests, and there is little reason to believe that organizations like ACTAL and IPAL would not similarly fall prey.²³ At first glance this argument might seem odd, because it is often thought that business interests would want to get rid of old regulations. However, once the fixed costs of regulation have been incurred by businesses, they act as a barrier to new entrants into the market.²⁴ Thus, business interests generally are not in favor of removing old and inefficient regulations. The same is true of regulatory agencies, which often do not want to eliminate any regulations because the benefits of a regulation are often visible and consistent with the preferences of the regulator, while the costs of regulation are often diffuse and borne by groups that regulators are less concerned about, like business owners. For that reason, it does not seem advisable to create any new bureaucracies that could be captured by regulatory agencies or by special interests. Instead, we suggest taking lessons from the Dutch regulatory measurement process and integrating them into a Base Realignment and Closure Act–style process that would leave as little room as possible for special interests to prevent the regulatory review process from attaining its goals of unbiased, cost-cutting, efficiency-enhancing regulatory reduction. We will return to this topic in section 4 after discussing the success of the Base Realignment and Closure Act in section 3.

III. THE BASE REALIGNMENT AND CLOSURE ACT

ONE OF THE great government reform success stories of the past thirty years is the Base Realignment and Closure (BRAC) Act of 1988. The act created a multiple-stage process to facilitate military base closure and realignment.²⁵ In stage 1, the Department of Defense (DoD) creates a list of prospective base closures and realignments based primarily on military factors. The DoD’s incentives are straightforward: it wants to change the structure of military bases to improve military operations and create cost savings that could possibly be used elsewhere. In

22. World Bank Group, “Review of the Dutch Administrative Burden Reduction Programme”; WiFo and CEPS, “Pilot Project on Administrative Burdens.”

23. On the issue of regulatory capture in general, see Ernesto Dal Bó, “Regulatory Capture: A Review,” *Oxford Review of Economic Policy* 22, no. 2 (2006): 203–225.

24. Hale et al., *Regulatory Overload*.

25. Realignment involves substantive changes to a base and its mission. In 2005, for example, Fort Wainwright in Alaska was realigned. The Cold Regions Test Center, which was headquartered at Fort Wainwright, was moved to Fort Greely, also in Alaska.

stage 2, the 1988 act created an independent commission,²⁶ whose stated mission is to assess whether the DoD's recommendations adhere to the criteria that Congress laid out for determining the value of each military installation. In addition, this stage requires that "the Commission will also take into account the human impact of the base closures and will consider the possible economics, environmental, and other effects on the surrounding communities."²⁷ The third and final stage occurs after the commission makes its changes to the DoD's recommendations. The commission's recommendations are then sent to the president for approval or disapproval. If the president approves the list (he cannot make any changes to it), it is sent to Congress. Congress then has 45 days to pass a resolution of disapproval. If Congress does not pass such a resolution of the entire list of recommendations, then the BRAC commission's recommendations become final.

At first glance, this might seem like an unnecessary process by which to close and/or realign military bases. Why can't the military just decide which bases to close? That is exactly what the DoD did in the 1960s in an effort to contract the size and scale of the US Armed Services following World War II and the Korean conflict.²⁸ Then—secretary of defense Robert McNamara was given the job of downsizing and reorganizing the US Armed Forces, and the DoD closed 60 bases during the decade.²⁹ Over time, however, the political implications of base closure and realignment for members of Congress became more apparent and the DoD was stripped of autonomy over the base closure process in 1977. In that year, Congress passed Public Law 95-82, which required the DoD to inform Congress of any possible adjustments to military base size and gave Congress time to respond.³⁰ The result of this change was that Congress acquired a direct hand in the minutiae of military base changes. The law effectively gave all members of Congress veto power on base changes affecting their congressional districts, with the predictable result that from

26. The 1988 BRAC Act and its subsequent iterations lay out the process for selecting the commission and its staff. The president, with the consent of the US Senate, appoints each of the nine commissioners. In doing so, the president chooses three members independently and is expected to consult with the Speaker of the House regarding the nomination of two members, the Senate majority leader regarding two members, the House minority leader for one member, and the Senate minority leader for one member. For more information, see <http://www.brac.gov/docs/BRAC05Legislation.pdf>.
27. Defense Base Closure and Realignment Commission, "2005 Defense Base Closure and Realignment Commission Report," <http://www.brac.gov/> (accessed April 28, 2012). Quote comes from webpage introduction.
28. Scott Beaulier, Joshua Hall, and Allen Lynch, "The Impact of Political Factors on Base Closures," *Journal of Economic Policy Reform* 14, no. 4 (2011): 333–342.
29. Ibid.
30. Lawrence Korb, "Base Closings Meant to Bypass Politics," *Hartford Courant*, May 27, 2005, <http://www.americanprogress.org/issues/2005/05/b717091.html> (accessed April 28, 2012).

1977 to 1988, no military bases were closed or realigned—despite strong sentiment from the DoD in favor of closures.³¹

In the late 1980s, there was a strong sense that reform was needed. Even though the Soviet Union had yet to collapse, the Cold War was winding down and there was a need to shrink the military and close obsolete bases.³² According to former assistant secretary of defense Lawrence Korb, in the mid-1980s the Pentagon had 40 percent excess capacity in its military bases.³³ In response to political gridlock surrounding the closure and realignment of domestic military bases, the Base Realignment and Closure Act of 1988 was passed. The first BRAC commission ended up recommending that 86 military facilities be closed and another 59 be realigned, for an estimated annual savings of just under \$700 million.³⁴ Since the first round of closures in 1988, there have been four more rounds, and according to the DoD, these five BRAC rounds have resulted in the closure of 125 major facilities and 225 minor ones, and the realignment of over 100 bases, saving taxpayers in excess of \$24 billion.³⁵

The transformation of the US military combined with the cost savings is why the BRAC process is viewed as such a success. The BRAC process overcame the problem of concentrated costs and dispersed benefits that existed from 1977 to 1988.³⁶ It did so not by eliminating the entrenched interests of areas with military bases, but by aggregating the benefits of reform into one set of recommendations and placing them into a political framework that minimizes political influence while still leaving some role for public input and deliberation.³⁷

31. Charlotte Twight, “Institutional Underpinnings of Parochialism: The Case of Military Base Closures,” *Cato Journal* 9 (1989): 73–105.

32. Richard Armev and Barry Goldwater, “Close the Obsolete Military Bases,” *Washington Post*, May 7, 1987.

33. Korb, “Base Closings Meant to Bypass Politics.”

34. Defense Base Closure and Realignment Commission, *Final Report to the President*, September 8, 2005, 311, <http://www.brac.gov/docs/final/BRACReportcomplete.pdf> (accessed April 28, 2012).

35. US Department of Defense, Base Realignment and Closure 2005, “Frequently Asked Questions” (2008). <http://www.defenselink.mil/brac/faqs001.html>.

36. Mancur Olson provides the classic statement of this problem in *The Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge, MA: Harvard University Press, 1965).

37. Beaulier et al. in “The Impact of Political Factors on Base Closures” find no evidence for traditional politics playing a role in the process. Richard Bernardi finds evidence that politics still plays a role on some margins in “The Base Closure and Realignment Commission: A Rational or Political Decision Process,” *Public Budgeting and Finance* 16 (1996): 37–48. However, regardless of whether political factors are able to still play a role in the BRAC process, the status quo is still far more successful than what existed from 1977 to 1988.

IV. THE PROPOSED PROCESS

THE CURRENT STATE of the US regulatory review process is similar to that of the Dutch regulatory review process pre-2003. Ex-post analysis of existing regulations is inconsistent, vague, and mostly useless for relevant benefit-cost analysis due to incomplete measurement of costs, benefits, or both.³⁸ Building on the Dutch example, we propose a reformed US regulatory review process similar to BRAC. The first stage would create a single organization, similar to ACTAL but focused entirely on consistent measurement of regulatory costs, not just monitoring. This organization, in addition to measurement, could create and maintain a standard method for measurement to be used in all of its measurement duties to ensure consistency in analyzing costs. The agency's sole task would be to analyze costs, giving it expertise that most current federal agencies lack under retrospective analysis and review. The creation of an independent agency would also create built-in impartiality that is lacking in the current regulatory review framework following from Executive Order 13563.³⁹ The ACTAL-style organization would be in charge of carrying out the actual regulatory cost measurement process, taking the process out of the hands of the specific agency to ensure that a thorough, unbiased, and proper retrospective cost analysis is completed.

The second stage would be the creation of a one-shot independent commission for each major piece of legislation that is under review. There are two main reasons for the creation of such a commission. The first is to allow public input and discussion of the benefits of the regulations under consideration. Recall that the ACTAL-style organization's only job is to measure certain types of costs. One purpose of the independent commission would be to measure and assess the benefits of regulations for which retrospective cost analysis has been completed. The types of evidence that the commission would be allowed to consider for benefits would be left open. This arrangement would give all interested parties—regulatory agencies, businesses,

38. Randall Lutter, "The Role of Retrospective Analysis and Review in Regulatory Policy," *Mercatus Center Working Paper* No. 12-14 (Arlington, VA: Mercatus Center at George Mason University, 2012), http://mercatus.org/sites/default/files/Lutter_Retrospective_v1-2.pdf. Lutter notes this lack of consistency and rigor in his review of attempts by regulatory agencies to comply with presidential orders regarding retrospective analysis of regulation. His paper provides ample evidence that self-review is not working in the United States any better than it did in the Netherlands prior to the 2003 enhancements to its regulatory review program. Examples of proper ex post analysis of regulation in the United States are few and far between. More often, if the analysis is even carried out, it is done in such a way that the responsible agency is clearly just going through the motions rather than providing a comprehensive analysis of the regulation under review. The Environmental Protection Agency's review of the Clean Air Act is a cogent example; Lutter describes the EPA's attempt at retrospective analysis as "less a retrospective analysis of the Clean Air Act, and more an analysis of the implications for health and the environment of observed emissions trends relative to the implications of hypothetical alternative trends in emissions." The report lacked information and detail about the actual costs and benefits of specific rules of the Clean Air Act, drastically reducing the report's usefulness for making any kind of judgment about the efficiency of the regulation.

39. *Ibid.*, 13.

consumers, nonprofit groups, and the public at large—the opportunity to make their case for retaining the regulation, and have it considered by the commission. The commission would have the flexibility to use whatever criteria it deemed important in evaluating regulations. This type of flexibility is important since many benefits of regulation are hard to quantify and reasonable people can disagree regarding the true benefits and costs of regulations. The combination of public input and the commissioners’ latitude to use different types of evidence in their decision-making process would legitimize the commission’s final recommendation. Regardless of what criteria the commission used in evaluating each specific regulation, the commission would be constrained by an explicit mandate that it must forward to Congress a list of regulatory changes totaling at least 25 percent of the total compliance costs that were estimated during the measurement process.⁴⁰ Congress would then be required to approve or reject the entire list of changes.

In addition to the opportunity for public input into the process and consideration of the benefits of regulation, the creation of the commission inserts an independent, nonpartisan body into the regulatory review process. Compared to the current process, where the regulated agencies themselves play a prominent role, having an impartial body decide which regulations to eliminate offers several important benefits. The process by which the commission would be created ensures bipartisanship. While there would be no litmus test regarding the qualifications of each commissioner, the process used to select each of the nine commissioners would ensure that they would be well qualified and represent a wide variety of viewpoints. As under the BRAC Act process, the president would be required to seek the advice of the House and Senate majority leaders (two commissioners each) and minority leaders (one commissioner each) for a total of six of the commissioner slots. The president would choose the last three commissioners, then forward his nominations to the Senate for confirmation. Once the commissioners were in place, they would choose a director and professional staff in a manner similar to the one laid out in the BRAC Act.

A final benefit of the independent, one-shot commission and the ACTAL-based cost measurement organization is that both have narrowly defined missions. In the case of ACTAL, its only duty is to perform consistent and rigorous compliance cost measurement, which reduces its desirability as a target for regulatory capture.⁴¹ By not being a part of the decision-making process by which regulations get selected for

40. The commission could not forward to Congress a list of regulatory changes totaling less than the 25 percent goal. If the commission did not send such a list to Congress after a period of time sufficient to hear all deliberations (to be set in statute), then an entirely new committee would be appointed.

41. The assumption that ACTAL avoids desirability as a target for regulatory capture by having a narrowly defined duty is based on two factors. First, government agencies with clearly defined missions such as the Government Accountability Office or Congressional Research Service seem better able to maintain their independent nature. Second, the measurement of costs is not directly related to whether a particular regulation gets forwarded to Congress by the commission. Thus special interests are likely to focus their attention on the commission and later on Congress.

elimination, ACTAL is free to specialize in the measurement of regulatory costs. The creation of an independent commission with a mandate to send Congress a list of regulatory changes equaling at least 25 percent of the total compliance costs associated with a piece of legislation makes explicit the goal of the entire process. The explicit mandate, combined with the commissions' transitory nature, limits the special interest influence over the commission by creating a zero-sum rent-seeking game, where one special interest can only gain at the expense of another special interest.

We suggest that this process be applied to a specific piece of legislation, such as the Elementary and Secondary Education Act (ESEA). We chose this piece of legislation for five reasons. First, the major pieces of legislation, like the ESEA, are the sources of regulation—thus it is natural to start with them. Second (and perhaps most importantly), given the time-consuming and costly nature of measuring regulatory costs, it makes sense to limit the scope of each commission round to a specific piece of legislation. Third, there are likely to be economies of scope in measuring regulations, at least in some areas. For example, many ESEA compliance costs are borne by local school districts, so evaluating at one time all of the various ESEA regulations affecting local school districts makes economic sense. Fourth, focusing on just one piece of legislation allows each commission to be comprised of individuals with an interest and expertise in the legislation in question. Finally, focusing on a specific piece of legislation creates a natural timetable for each evaluation of a major piece of legislation. A natural time to evaluate the ESEA would be in 2015, on the 50th anniversary of its passage. Subsequent evaluations could be made at regular intervals, such as every five or ten years.⁴²

As a brief example of the proposed process in action, let us imagine the ESEA going through a regulatory review in 2015. Stage 1 would require that the new agency charged with measuring the direct compliance costs (capital and operating costs, paperwork costs, time costs) would measure them for every element of the ESEA.⁴³ During stage 2, the list of regulations and their direct compliance costs would be sent to the nine-member independent commission. The commission would then create a list of regulations whose compliance costs total at least 25 per-

42. Focusing on a specific piece of legislation is not the only way to limit the scope of regulatory review, however. Instead, the entire set of regulations under the purview of a specific agency could be reviewed. This approach would be somewhat similar in approach to regulatory review under Executive Order 13563, and thus might be more familiar to policy makers. It would also have all the advantages described earlier regarding the benefits of focusing on one piece of major legislation. The key thing, regardless of whether the unit of analysis is the regulatory agency or the piece of legislation, is to limit the scope of review so that the ACTAL-style body can effectively measure regulatory costs and the independent commission can be filled with individuals with expertise in a particular area in order to better evaluate information provided to the commission.

43. After measuring these direct compliance costs, presumably the agency would move on to the next regularly scheduled review of another piece of major legislation.

cent of total ESEA compliance costs.⁴⁴ To better understand the trade-offs involved, the commission would solicit public comment and hold hearings on the regulations. Individuals, businesses, and special interests would bring to the table their expertise regarding the benefits and costs of particular regulations. In addition, the commission could ask its professional staff to estimate the benefits of specific regulations. After receiving public input and deliberating over the evidence, the commission would forward to Congress a list of regulatory changes totaling at least 25 percent of the ESEA's entire direct compliance costs as provided to them by the ACTAL-style agency.⁴⁵ Similarly to the BRAC process, members of Congress would then be required to approve or reject the entire list of regulatory changes.

This proposal would solve two major problems currently inherent in regulatory review. First, regulatory review is difficult, time-consuming, and costly. The Dutch Administrative Burden Reduction Programme overcomes these problems by focusing on direct compliance costs. The second problem is political. Public choice analysis and experience show that it is often not in the best interests of agencies to be successful at reducing regulations via regulatory review. In addition, while the economy as a whole benefits when inefficient regulations are removed, many businesses have already incurred the fixed costs associated with current regulations and thus view outdated regulations as beneficial because they may discourage market entry by new competitors. Finally, the benefits of reform are often indirect and in the future, while any potential downsides to regulatory reform tend to be current and visible. These three problems make it politically difficult to eliminate regulations one at a time. By moving all regulations simultaneously, as in the BRAC process, the problem of concentrated benefits and diffuse costs becomes less severe and politicians can more directly see the large short- and long-run benefits. The comprehensive, bipartisan process also minimizes the costs from any short-run problems.

V. CONCLUSION

POLICY MAKERS IN the United States must realize that an effective process is needed to review and reduce the burden of federal regulations. In this paper, we have outlined such a process, drawing upon the success of the Administrative Burden Reduction Programme in the Netherlands and the Base Realignment and Closure Act in the United States. Our process would create an independent federal agency tasked with the sole responsibility of evaluating regulatory costs using the frame-

44. The 25 percent number is arbitrary. We chose it because it is the same number used in the Dutch reform model. There is no reason a different percentage could not be chosen for each commission. In particular, it might make sense to change the threshold for a subsequent round of revisions on the same piece of legislation based on lessons learned the previous time. We thank a helpful referee for bringing this issue to our attention.

45. After submitting its list to Congress, the commission would be disbanded.

work of the Dutch program. After the evaluation of the regulatory costs for a specific piece of legislation, the federal agency would forward the information to a non-partisan commission tasked with evaluating the benefits of the regulations being reviewed. After public hearings and testimony, the nine-person commission would send Congress a list of regulatory reforms equal to at least a 25 percent reduction in total regulatory costs as estimated by the independent agency. Congress then would vote on the regulatory reductions.

This framework has several advantages. First, it allows for specialization in measuring the costs of regulation and in the decision-making process across different regulations associated with a piece of legislation. Second, the 25 percent reduction constraint forces the commissioners to decide which regulations provide the most value. Third, the pooling of regulations into one review, when combined with the 25 percent reduction constraint, forces special interests into a rent-seeking war that might change which regulations get cut but does not allow for deviation from the goal of reducing and eliminating outdated and ineffective regulations. Fourth, sending the entire package to Congress for an up or down vote minimizes the opportunity for special interests to play a role at the congressional level but still gives members an opportunity to vote against regulatory reductions they think are problematic.