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BRIDGING THE GAP BETWEEN ACADEMIC IDEAS AND REAL WORLD PROBLEMS
MERCATUS RESEARCH

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

The regulatory authority Congress grants to government agencies is an immensely powerful tool for altering behavior in the marketplace. But while 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.

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

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

In short, regulations are imposed prematurely, without any realistic examination of whether alternative approaches—differently crafted regulations, actions by state or local authorities, or market forces—would be more effective or efficient at solving the problems. This "ready, fire, aim" approach assumes the federal government is the only problem-solver in all cases and that the first solution is automatically the best. The result has been an ill-informed, inefficient, and unnecessarily costly regulatory state.

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.

> 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.*

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

The nation's dire economic and fiscal situation and concern about a wave of new regulations has spurred policy makers to reform 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.

REGULATORY ANALYSIS: HOW IT'S SUPPOSED TO 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 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 can't 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 regulations. 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: *Regulatory Oversight—The Basics of Regulatory Impact Analysis*; *Improving Pre-Proposal Regulatory Analysis (testimony before the House Judiciary Committee)*; and *Assessing the Quality of Regulatory Analysis*.

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