

Moving the Lamp Post

Regulatory Reform, Regulatory Budgeting, and Smart Regulation

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Why Reform?

SUBSTANTIVE REASON:

--BOTH THE NUMBER AND CUMULATIVE COST OF FEDERAL REGULATIONS HAVE INCREASED OVER TIME

POLITICAL REASON:

--ELECTIONS HAVE CONSEQUENCES

Categories of Reg Reform

PRIMARYLY UNDER LEGISLATIVE CONTROL:

- MODERNIZE THE APA
- EXPAND CONGRESSIONAL DISPENSATION OF NEW RULES
- CREATE A BIPARTISAN REGULATORY REVIEW COMMISSION
- AMEND EXISTING BURDEN-REDUCING STATUTES

Categories of Reg Reform

PRIMARILY UNDER EXECUTIVE CONTROL:

- **STRENGTHEN PROSPECTIVE REVIEW OF NEW RULES**
- **STRENGTHEN RETROSPECTIVE REVIEW OF EXISTING RULES**
- **ENHANCE TRANSPARENCY OF NEW REGULATORY ACTIONS**
- **ESTABLISH AN INCREMENTAL REGULATORY BUDGET**

Regulatory Budget

- **A REGULATORY BUDGET IS A LIMIT ON THE AMOUNT OF REGULATORY COSTS THAT CAN BE IMPOSED BY REGULATORS IN A GIVEN TIME PERIOD.**
- **ANALOGOUS TO A FISCAL BUDGET THAT LIMITS GOVERNMENT SPENDING, A REGULATORY BUDGET LIMITS THE COST OF GOVERNMENT REGULATIONS.**

Trump Reg Budget (EO13771)

AN INCREMENTAL REGULATORY BUDGET

- FOR FY₁₇, A “NO GREATER THAN ZERO” INCREMENTAL COST TARGET, AND
- REQUIRE THAT FOR EVERY NEW REGULATION, TWO PRIOR REGULATIONS BE ELIMINATED OR MODIFIED (ONE IN, TWO OUT).
- THE HISTORICAL ANNUAL GROWTH OF FEDERAL REGULATORY COST IS ROUGHLY 2%. EO13771 AIMS TO CAP THIS GROWTH AT A LOWER LEVEL FOR FY₁₇.

In Practice, a Narrow Scope

- SIGNIFICANT REGULATIONS FROM
- EXECUTIVE BRANCH AGENCIES
- TRANSFER RULES EXCLUDED
- AS ARE RULES WITH *DE MINIMIS* COSTS
- EXCLUSIONS FOR RULES RELATING TO A MILITARY, NATIONAL SECURITY, OR FOREIGN AFFAIRS FUNCTION; OR INTERNAL AGENCY MANAGEMENT.
- ONLY A PORTION OF THE FISCAL YEAR FOR FY₁₇
- BUT DE-REGULATORY ACTIONS ARE MORE EXPANSIVE

An Important Analogy



Moving the Lamp Post

- **THE TRUMP REGULATORY REFORMS WILL SHIFT MORE OF REGULATORS' ATTENTION FROM NEW RULES TO EXISTING RULES.**
- **THE RESULT WILL BE FEWER AND LESS COSTLY NEW RULES AND MORE CHANGES TO EXISTING RULES TO MAKE THEM LESS COSTLY.**

What Does the Evidence Show

COMPARING THE FIRST NINE MONTHS IN OFFICE,
1/20-9/17, FOR THE LAST THREE PRESIDENTS:

| | FINAL RULES | MAJOR RULES |
|-------|-------------|-------------|
| TRUMP | 656 | 17 |
| OBAMA | 2,049 | 44 |
| BUSH | 2,219 | 36 |

Opportunity Cost

- UNDER EO13771, "COST" = OPPORTUNITY COST
- OPPORTUNITY COST IS THE SOCIETAL COST FOREGONE FROM A NEW REGULATORY CHANGE.
- THE CONCEPT OF OPPORTUNITY COST IS WELL KNOWN IN ECONOMICS, BUT EVEN TRAINED ECONOMISTS DON'T ALWAYS UNDERSTAND IT WELL.

Pop Quiz

Clint paid \$40 to go to an Ed Sheeran concert. He would have paid \$50. At the last minute, Clint was given a free ticket to a U2 concert and so he ditched Ed Sheeran in favor of U2. What is Clint's opportunity cost of going to the U2 concert?

A: \$0

B: \$10

C: \$40

D: \$50

Opportunity Cost is a Net Concept

INCREASING NET BENEFITS = REDUCING OPPORTUNITY COST

MAXIMIZING NET BENEFITS = MINIMIZING OPPORTUNITY COST

Which De-Regulatory Actions Reduce Opportunity Cost?

- **OUTDATED REQUIREMENTS,**
- **REDUNDANT OR DUPLICATIVE REQUIREMENTS,**
- **INEFFECTIVE REQUIREMENTS,**
- **REQUIREMENTS THAT PENALIZE GOOD PERFORMANCE**

Promising De-Regulatory Actions

OPPORTUNITY COST IS ESPECIALLY HIGH WHEN REGULATORS PREVENT MARKET ENTRY.

- **FAA regulation of unmanned aerial vehicles (UAVs, or drones) for commercial uses.**
- **NHTSA regulation of highly automated vehicles (HAVs).**
- **FDA, EPA, USDA pre-market review of some biotechnology products (such as transgenic organisms).**

What do “Experts” Recommend?

FROM AN INFORMAL SURVEY OF REGULATORY EXPERTS:

- Modify EPA regulations for New Source Review.
- Eliminate statutory authority for country of origin labeling (COOL), which is a requirement for retailers to notify consumers of covered commodities as to country of origin.
- Modify 14 CFR 250 mandating procedures that commercial airlines use when a plane has been overbooked.
- Eliminate the Volcker rule (Title VI, Section 619 of Dodd-Frank).

Checklist for Regulators

1. ARE YOUR RULES COVERED UNDER THE EO?
2. IF NOT, DO YOUR OUTS COVER YOUR INS?
3. IF NOT, CAN YOU LOWER THE COST OF YOUR INS AND/OR INCREASE THE COST SAVINGS OF YOUR OUTS?
4. IF NOT, CAN YOU TRADE WITHIN YOUR AGENCY TO ACHIEVE COMPLIANCE?
5. IF NOT, CAN YOU TRADE WITH ANOTHER AGENCY (WITH OMB PERMISSION)?
6. IF NOT, OBTAIN AN OMB WAIVER.

Plea for Smart Regulation

- **BOTH BENEFITS AND COSTS MATTER.**
- **REDUCING OPPORTUNITY COST IS THE RIGHT CONCEPT.**
- **AN INCREMENTAL REG BUDGET REQUIRES A SUFFICIENT SUPPLY OF INEFFICIENT EXISTING RULES.**
- **YOU CAN'T SPEND MORE THAN WHAT YOU HAVE IN YOUR CHECKING ACCOUNT.**

Thank You!

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