

AS PREPARED FOR DELIVERY

A Regulatory System for the Twenty-First Century

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As you may have noticed, the national debate over regulation has become unusually politicized and polarized.

In recent months, some people have stressed the crucial importance of regulatory safeguards – including rules that reduce deaths on the highways, prevent fraud and abuse, keep our air and water clean, and ensure that the food supply is safe.

Other people have objected to expensive regulations and burdensome mandates that impair growth, competitiveness, and innovation -- and that cost jobs.

In some contexts, both sides make exceedingly important points. The first sentence of the President's January Executive Order explicitly recognizes those points, emphasizing the need to protect public health and welfare while also promoting growth and job creation.

But in some ways, the polar positions remain stuck in outmoded and decreasingly helpful debates from decades ago – from the 1970s and before.

In recent years, we have learned a lot about regulation. We know a lot more than we did during the New Deal period and the Great Society; we also know far more than we did in the 1980s and 1990s.

Here are eight of the most important things that we have learned:

- **Cataloguing consequences.** We have developed state-of-the-art techniques for anticipating, cataloguing, and monetizing the consequences of regulation, including both benefits and costs.
- **Systemic effects.** We know that risks are part of systems. We know that efforts to reduce a certain risk may increase other risks, perhaps even deadly ones, thus producing ancillary harms. At the same time, we know that efforts to reduce a certain risk may reduce other risks, perhaps even deadly ones, thus producing ancillary benefits.
- **Flexibility.** We know that flexible, choice-preserving approaches, respecting heterogeneity and the fact that one size may not fit all, are often desirable, both because they preserve liberty and because they cost less – sometimes a lot less.
- **Small steps, large benefits.** We are aware that large benefits can come from seemingly modest and small steps – including simplification of regulatory requirements, provision of information, and sensible default rules, such as automatic enrollment for retirement

savings.

- **Public participation.** We know, more clearly than ever before, that it is important to allow public participation in the design of rules, because members of the public will have valuable and dispersed information about likely effects, existing problems, creative solutions, and possible unintended consequences.
- **Disclosure.** We know that if carefully designed, disclosure policies can promote informed choices and save both money and lives. Consider, for example, the recently redesigned fuel economy label, drawing attention to the concrete economic consequences of differences in miles per gallon, and the substitution of the clear Food Plate for the confusing Food Pyramid.
- **Evidence, not anecdotes or intuitions.** We know that intuitions and anecdotes, however compelling they may seem, and however suggestive that regulation is helpful or harmful, are both unreliable, and that advance testing of the effects of rules, as through pilot programs or randomized controlled experiments, can be highly illuminating.
- **Continuing scrutiny.** We know that it is important to explore the effects of regulation in the real-world, to learn whether they are having beneficial consequences or producing unintended harm. In short, we need careful assessments before rules are issued, and we need continuing scrutiny afterwards.

Of course it is true that people's values differ, and in some cases, the relevant values will lead in a certain direction even if the evidence is clear. What I want to emphasize here is the opposite possibility, and the neglected one – that when the evidence is clear, it will often lead in a certain direction even when there are differences with respect to underlying values.

If, for example, a regulation would save a lot of lives and cost very little, people are likely to support it regardless of their party identification; and if a regulation would produce little benefit but impose big costs on real people, citizens are unlikely to favor it, regardless of whether they like elephants or donkeys. At least this is so if we engage on the facts.

To evaluate regulation, and its actual benefits and costs, we have to do that. Consider three facts:

- In the first two years, the net benefits of rules issued in the Obama Administration have been over \$35 billion – over three times the corresponding number in the first two years of the Clinton Administration, and over ten times the corresponding number in the first two years of the Bush Administration.
- There has been no increase in rulemaking in this Administration. On the contrary, the number of significant rules reviewed by OIRA and issued in the first two years of the Obama administration is **lower** than the number issued in the last two years of the Bush administration – and indeed, the Obama Administration average is, through its first two years, lower than the Bush Administration average through its eight.

- In the past decade, the costs of economically significant rules reviewed by the White House Office of Information and Regulatory Affairs (OIRA) were highest in 2007 and 2008, not 2009 and 2010. In its last two years, the administration of George W. Bush imposed far higher regulatory costs than did the Obama administration in its first two years.

On January 18th of this year, President Obama set out a fresh approach to federal regulation – an approach that reflects a lot of the new thinking about regulation. The very first paragraph of his executive order, a kind of mini-constitution for the twenty-first century regulatory state, emphasizes the importance of “economic growth, innovation, competitiveness, and job creation.” It states that our regulatory system “must promote predictability and reduce uncertainty.” It adds that our regulatory system “must measure, and seek to improve, the actual results of regulatory requirements.”

The new approach promises, at once, to maximize net benefits and to eliminate unnecessary regulatory burdens and costs on individuals, businesses both large and small, and state and local governments.

Among other things, the President called for an unprecedentedly public, and an unprecedentedly ambitious, government-wide “lookback” at federal regulation. The lookback requires all agencies to reexamine their significant rules, and to streamline, reduce, improve, or eliminate them on the basis of that examination.

Over two dozen departments and agencies have released final plans to remove what the President has called unjustified rules and “absurd and unnecessary paperwork requirements that waste time and money.” The plans span over 800 pages and offer more than 500 proposals.

In the coming years, billions of dollars in savings are anticipated from just a few initiatives from the Department of Transportation, the Department of Labor, HHS, and EPA. And all in all, the plan’s initiatives will save tens of millions of hours in annual paperwork burdens on individuals, businesses, and state and local governments.

Some of the plans list well over fifty reforms. Many of the proposals focus on small business. Indeed, a number of the initiatives are specifically designed to reduce burdens on small business and to enable them to do what they do best, which is to create jobs.

Many of the reforms will have a significant economic impact. Here are just a few examples:

- The Department of Health and Human Services recently announced proposed and final rules that are expected to eliminate over \$1 billion in annual regulatory costs.
- The Occupational Safety and Health Administration has announced a final rule that will remove over 1.9 million annual hours of redundant reporting burdens on employers and save more than \$40 million in annual costs.

- OSHA plans to finalize a proposed rule projected to result in an annualized \$585 million in estimated savings for employers. This rule would harmonize U.S. hazard classifications and labels with those of a number of other nations by requiring the adoption of standardized terms.
- Since the 1970s, milk has been defined as an “oil” and subject to costly rules designed to prevent oil spills. In response to feedback from the agriculture community and the President’s directive, EPA recently concluded that the rules placed unjustifiable burdens on dairy farmers -- and exempted them. The exemption gives whole new meaning to the phrase “don’t cry over spilled milk.” And over the next decade, the exemption will save the milk and dairy industries, including small business in particular, as much as \$1.4 billion.
- The Departments of Commerce and State are undertaking a series of steps to eliminate unnecessary barriers to exports, including duplicative and unnecessary regulatory requirements, thus reducing the cumulative burden and uncertainty faced by American companies and their trading partners. These steps will make it a lot easier for American companies to reach new markets, increasing our exports while creating jobs here at home.
- In line with proposals from the Jobs Council, the Department of State has indicated that it will revisit current visa requirements and consider how best to promote tourism, thus promoting growth and creating jobs.

Of course, we don’t only need to look back; we also need to look ahead about how we regulate in the future.

The January Executive Order provides a series of new directives to govern future rulemaking. Emphasizing the importance of predictability and certainty, those directives are consistent with, and informed by, what we have learned about regulation in recent years. And those directives have been explicitly informing our efforts since January. You may have noticed that several rules, including some in the area of labor, have been withdrawn or are being rethought with reference to the principles in the new Executive Order.

Let me emphasize five key points.

- **Public participation.** The President made an unprecedented commitment to promoting public participation in the rulemaking process – with a central goal of ensuring that rules will be informed, and improved, by the dispersed knowledge of the public. Agencies are not merely required to provide the public with an opportunity to comment on their rules; they must also provide timely online access to relevant scientific and technical findings, thus allowing them to be scrutinized.
- **Advance consultation.** The Order directs agencies to act, even in advance of rulemaking, to seek the views of those who are likely to be affected. This group explicitly includes “those who are likely to benefit from and those who are potentially subject to such rulemaking.” Among other things, this emphasis on early involvement is an effort to

acquire relevant information and to avoid unintended harmful consequences.

- **Simplification and harmonization.** The Order specifically directs agencies to take steps to harmonize, simplify, and coordinate rules. It emphasizes that some sectors and industries face redundant, inconsistent, or overlapping requirements. In order to reduce costs and to promote simplicity, it requires greater coordination. The order also explicitly connects the goal of harmonization with the interest in innovation, directing agencies to achieve regulatory goals in ways that promote that interest.
- **Quantification.** The Order firmly stresses the importance of quantification. It directs agencies “to use the best available techniques to quantify anticipated present and future benefits as accurately as possible” – and to proceed only on the basis of a reasoned determination that the benefits justify the costs.
- **Flexibility.** The Order directs agencies to identify and to consider flexible approaches that reduce burdens and maintain freedom of choice for the public. Such approaches may include, for example, public warnings, appropriate default rules, or provision of information “in a form that is clear and intelligible.” We know that simplification of existing requirements can often promote compliance and participation and that complexity can have serious unintended consequences. We also know that flexible performance objectives are often better than rigid design standards, because performance objectives allow the private sector to use its own creativity to identify the best means of achieving social goals. To promote flexibility, we have recently issued a call to all agencies to reduce reporting burdens on small business and to eliminate unjustified complexity. We have received dozens of important initiatives in response; they were made public in September.

Our goal, in short, is not modest. It is to change the regulatory culture of Washington, first by requiring careful analysis of anticipated consequences, including unintended ones, and second by constantly exploring what is working and what isn't, with careful attention to the importance of growth, innovation, competitiveness, and job creation.

As you can see from the lookback plans, agencies have created teams to continue to review their rules – to make sure that the lookback is not just a one-time event. Every one of the twenty-six plans emphasizes this point. And very recently, we have asked agencies to report regularly on their regulatory reform efforts – not just to OIRA but to the public as a whole.

One of our hopes is that the current effort to rethink the regulatory system might inaugurate a broader and more empirical conversation about how we might promote economic growth and job creation while protecting the health and safety of the American people.

Over two centuries ago, Alexander Hamilton helped inaugurate another and even larger conversation, when the nation was in the midst of an even more passionate and polarized debate. Hamilton's own work can be found, in part, in a series of papers that came to be known as The Federalist Papers. Attempting at once to lower the volume of the discussion and to raise its level, he wrote quietly but firmly, and at the very start of The Federalist No. 1:

“It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force.”

Of course the current process of regulatory reform does not have anything like the momentousness of the decisions made by We the People in the late 1700s.

But the process is also in its way an effort not to depend on accident and force, but to promote good government by reflection and choice. In that sense, it might be seen as an effort, in one domain, to honor our founders' extraordinary achievement.

Thank you.