

The Regulatory Plan

INTRODUCTION TO THE FALL 2009 REGULATORY PLAN

It is . . . the policy of the United States that . . . agencies shall prioritize actions based on a full accounting of both economic and social benefits and costs and shall drive continuous improvement by annually evaluating performance, extending or expanding projects that have net benefits, and reassessing or discontinuing under-performing projects.

Executive Order 13514 on Environmental,
Energy, and Economic Performance
(Oct. 5, 2009)

Some of the nation's most important policies are implemented through regulation. In domains as diverse as energy efficiency, environmental protection, health care, occupational safety, civil rights, communications, homeland security, and many more, the government attempts to protect its citizens through regulations.

In a memorandum signed on January 30, 2009, President Obama emphasized that as a result of many years of experience, "Far more is now known about regulation – not only about when it is justified, but also about what works and what does not." He explicitly directed the Director of the Office of Management and Budget, Peter Orszag, to evaluate the regulatory review process and, among other things, to "clarify the role of the behavioral sciences in formulating regulatory policy" and "identify the best tools for achieving public goals through the regulatory process."

Director Orszag has written that behavioral economics is "one of the most important intellectual developments of the past several years. . . . By taking the insights of psychology and observed human behavior into account, we now have a fuller picture of how people actually behave – instead of just reducing them to the hyper-rational utility-maximizers of Econ 101."

A behavioral approach to regulation is straightforward. It draws on evidence of people's actual behavior. It favors approaches that are clear, simple, and easy to understand. It attempts to ensure that regulations will have good consequences.

These goals have many implications for regulatory policy. In the domain of savings for retirement, consider these words from the President's Fiscal Year 2010 Budget:

"Research has shown that the key to saving is to make it automatic and simple. Under this proposal, employees will be automatically enrolled in workplace pension plans—and will be allowed to opt out if they choose. . . . Experts estimate that this program will dramatically increase the savings participation rate for low and middle-income workers to around 80 percent."

In September 2009, the President expanded on this theme by offering a series of initiatives for increasing automatic enrollment. He said, "We know that automatic enrollment has made a big difference in participation rates

by making it simpler for workers to save – and that’s why we’re going to expand it to more people.”

In many other domains, it is possible to promote regulatory goals by selecting the appropriate default rules. And where it is not possible or best to change the default, we can have a similar effect merely by easing and simplifying people’s choices. Several of the rules discussed in this Plan reflect this aspiration. One such rule, involving hazard communication to workers and proposed by the Occupational Safety and Health Administration in 2009, is expected to increase simplicity, to reduce costs, and at the same time to save dozens of lives each year.

In the same vein, the Administration is taking a series of steps toward simplifying the Free Application for Federal Student Aid (FAFSA), reducing the number of questions and allowing electronic retrieval of information. Use of a simpler and shorter form is accompanied by measures designed to permit online users to transfer data previously supplied electronically on their tax forms directly onto their FAFSA application.

To achieve regulatory goals, it is important to understand that people are often affected by the behavior of their peers: If people learn that they are using more energy than similarly situated others, their energy use declines – saving money while also reducing pollution. In the domain of seatbelt usage, real change occurred as regulation worked hand-in-hand with emerging social norms. The Administration is well aware that if safety is to increase significantly on the highways, it must be in part because of social norms that discourage distracted driving (and other risky behavior). In October 2009, the President issued an Executive Order banning texting while driving by Federal employees; the Department of Transportation is embarking on a range of initiatives to reduce distracted driving.

Scientific integrity is critically important, in the sense that regulators cannot decide how to proceed without having a sense of what is known and what remains uncertain. Of course some risks are large and others are small. Some regulations are burdensome and some are not. Some regulations have unintended bad consequences; others have unintended good consequences.

In his January 30, 2009, memorandum, President Obama pointed to the importance of “a dispassionate and analytical ‘second opinion’ on agency actions.” He also asked the Director of OMB to address the role of three factors that are not always fully included in cost-benefit analysis: the interests of future generations; distributional considerations; and fairness. If regulation is to be data-driven and evidence-based, it must include, rather than neglect, the concerns of future generations.

Many of the regulations in this Plan reflect these concerns. In particular, environmental regulations, designed to combat the risks associated with climate change, are attentive to the interests of future generations and those who are least well-off. The Administration has recently developed interim figures for the social cost of carbon—figures that have been used for several different regulations in this Plan, involving energy efficiency in vending machines and greenhouse gas emissions from motor vehicles. The figures are based in part on a recognition of the well-established view that a high discount rate for long-term damage could lead to action that might harm future generations.

In addition, President Obama has placed a great deal of emphasis on open government. In his first weeks in office, he quoted the words of Supreme

Court Justice Louis Brandeis: “Sunlight is said to be the best of disinfectants.” President Obama explained that “accountability is in the interest of the Government and the citizenry alike.” He emphasized that “[k]nowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge.” President Obama has stressed that transparency can ensure that data is available to all – and with available data, we can greatly improve our practices.

The Environmental Protection Agency has built on these ideas with its Greenhouse Gas Reporting rule, requiring disclosure by the most significant emitters. The data will allow businesses to track their own emissions and compare them to similar facilities; it will also provide assistance in identifying cost-effective ways to reduce emissions in the future.

All this is merely a start. For example, the Executive Order on environmental, economic, and energy performance will attempt to track progress in meeting crucial goals – including greenhouse gas emissions reductions – and disclose both costs and benefits to the public.

Regulatory decisions often require complex tradeoffs, especially in the current economic environment. We are committed to ensuring that those tradeoffs reflect the best available information, respect scientific integrity, and benefit from public participation – and are rooted in a clear and transparent understanding of the human consequences.

Cass R. Sunstein

Administrator

Office of Information and Regulatory Affairs