The Daily Dish

Really Modern Regulation Review

DOUGLAS HOLTZ-EAKIN | APRIL 14, 2023

Our long national nightmare is over. President Biden issued an executive order on the day of his inauguration directing the Office of Management and Budget to “modernize” the practice of regulatory review, but the response was crickets for two years. Sure, the administration managed to set a first-year record with over $200 billion in regulatory costs. And, yes, it has managed to burden the economy with $360 billion in costs thus far. But it was all done in such a pedestrian, old-fashioned manner. When, oh when, would this sleeker, 21st century red tape appear?
On April 6, Eakinomics’ prayers were answered and the modernized review process was unveiled. AAF’s Dan Goldbeck digs through the details. Here are some of the highlights.

Let’s begin with what this is not. The original executive order had included the directive to incorporate “unquantifiable benefits” into the analysis. Eakinomics immediately envisioned an unvarnished gutting of the discipline of benefit-cost analysis, with the administration putting its thumb on the scale to help its (unquantifiable) political allies. That is not in the procedures. Yes, there is consideration of unquantifiable aspects during the discussion of uncertainty, but it is on both the benefit and cost sides. Eakinomics put its tinfoil hat back in the closet and kept reading.

There are three major changes. The first is to raise the threshold for an “economically significant” rule from $100 million to $200 million in costs and adjust it for inflation every three years. One can think of this as simply technocrats improving the process. But it also puts less scrutiny on the Biden regulatory agenda.

The second is to reduce the discount rates used in regulatory analyses. Discount rates translate the value of benefits and costs through time and capture the phenomenon that future benefits are less valuable than immediate ones. The higher the rate, the bigger the discount of the future. At the other limit, a zero percent discount rate means that all benefits or costs count the same, even if some are hundreds of years from now. The modernization lowers discount rates. Again, the technocratic explanation is that – recent months notwithstanding – this is a lower interest rate era and analysis should reflect that fact. The conspiracy theorist notes that typically costs are up front and benefits occur in the future. This will have the tendency to count more benefits and push more regulatory initiatives into the black.

The final change is to improve access to the rulemaking comment process by traditionally underserved communities. Goldbeck’s take on this is: “The most meaningful changes here involve: A) how agencies solicit initial input from such communities, and B) how OIRA schedules and conducts meetings with relevant stakeholders on a given rulemaking under review (so-called ‘EO 12866 meetings’).” Eakinomics is still unclear on this one, having not once ever heard someone complaining about being excluded from reviewing the analysis of a preliminary rule. But it does raise the image of the administration herding its (unquantifiable) allies into a meeting room at OIRA and assaulting the regulatory arithmetic.

Thoroughly modern regulatory review has arrived! Sit back and enjoy.