Considering the Cumulative Effects of Regulation

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Longstanding executive and legislative directives require agencies to analyze the expected impact of new regulatory requirements before they are issued. While important, this ex-ante regulation-by-regulation analysis may not account for the cumulative effect of regulations on society or specific sectors of the economy. As OMB notes, “regulated entities might be subject to requirements that, even if individually justified, may have cumulative effects imposing undue, unduly complex, or inconsistent burdens.”

Regulatory accumulation

As Michael Mandel & Diana Carew of the Progressive Policy Institute observe, “the natural accumulation of federal regulations over time imposes an unintended but significant cost to businesses and to economic growth.” (Regulatory Improvement Commission: A Politically-Viable Approach to U.S. Regulatory Reform, Policy Memo, May 2013)

Executive Orders 12866 and 13563 thus direct each agency to “tailor its regulations to impose the least burden on society, … taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.” (emphasis added)

Estimating cumulative burdens

To improve our understanding of these cumulative impacts, agencies should, when estimating the impacts of new regulations, explicitly consider the costs of existing regulations in the affected sector. Original estimates of regulatory costs (developed when existing regulations were first issued) could serve as the starting point for measuring current costs. Examination of the actual impacts of existing regulations (both their costs and their benefits) would supplement the ex-ante estimates. Program evaluation techniques, used regularly in the fiscal budget context to examine the costs and effectiveness of on-budget programs, would be applicable for evaluating regulatory outcomes (costs and benefits), and useful for estimating cumulative impacts of existing regulations. Having this information would be invaluable, not only for understanding cumulative burdens, but also for designing more cost-effective regulations going forward.

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1 These reflections were triggered by insightful questions for the record posed by Senator Joni Ernst after a joint hearing of the Senate Budget and Homeland Security and Government Affairs on June 23 Senate testimony on Accounting for the True Cost of Regulation: Exploring the Possibility of a Regulatory Budget.
Targeted analysis

Studies of the effects of certain classes of regulation, or the burdens felt by certain sectors of the economy might be more manageable than economy-wide studies, and yield important insights. While the relevant “cost” when evaluating regulatory policy is the social cost of opportunities foregone as a result of regulations, focusing on direct compliance costs, at least initially, could be a reasonable proxy in many sectors, such as electric utilities. In some areas, such as pharmaceuticals, however, direct compliance costs would be a poor proxy for the true opportunity costs to consumers and patients, and a more robust measure might be needed.

More research needed

Despite the recognition that cumulative impacts matter and the existence of executive requirements to take them into account, regulatory agencies rarely examine the total cost of regulations on society as a whole, or individual regulated sectors. This is in part due to statutory and procedural incentives to focus on the incremental impact of new regulations, but also because the methods for estimating cumulative effects are not very robust. Both agencies and outside researchers could begin to address this weakness by investing in developing better tools for understanding the aggregate impact of regulations.