
Regulating with Common Sense:

A PROGRESS REPORT ON INNOVATIVE REGULATORY TECHNIQUES



UNITED STATES REGULATORY COUNCIL

United States Regulatory Council

President Carter established the U.S. Regulatory Council in 1978 to improve coordination of federal regulatory activities and encourage more effective management of the regulatory process.

Presently chaired by Environmental Protection Agency Administrator Douglas M. Costle, the Council is composed of 38 departments and agencies with major regulatory responsibilities. Peter J. Petkas is the Director; Kate C. Beardsley is the Deputy Director.

The Council's semiannual Calendar of Federal Regulations provides a comprehensive overview of important regulations under development and a summary of the analytical basis for them. It is designed to encourage greater public participation in the regulatory process, to identify areas of multiple regulatory impact, and to assist the regulators in developing clear and cost-effective regulations.

Other Council activities include:

- organizing interagency efforts to better manage the regulatory environment of a single industry, such as the automobile industry.
- improving regulatory methods such as economic analysis and evaluation, and regulatory procedures such as permitting and licensing
- encouraging innovative, market-oriented approaches to regulation
- identifying and reducing conflicting regulations or actions affecting particular sectors, such as hospitals, coal producers and small business
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EXECUTIVE SUMMARY

Regulating With Common Sense:
A Progress Report on Innovative Regulatory Techniques
U. S. Regulatory Council
October 1980

Background

In June the President asked federal agencies with regulatory authority to review their programs to identify potential new applications of innovative regulatory techniques and to accelerate their use. He defined innovative techniques in a list of eight categories, most of them involving the use of market-type incentives that provide smarter, less burdensome solutions to regulatory problems. The categories are:

- Performance Standards
- Tiering
- Marketable Rights
- Economic Incentives
- Compliance Reform
- Enhanced Competition
- Information Disclosure
- Voluntary Standards

Examples:

- Postal Incentives: Traditional mail rates gave mailers no incentive to help the Postal Service reduce its handling costs and delays. A series of PRC actions has established economic incentives for zip-code pre-sorting for large mailings. PRC estimates that the new rates will save mailers \$800 million a year and will reduce Postal Service costs by \$1.4 billion annually.
 - Cable Television: Past FCC rulings had restricted the growth of cable television service in order to protect local broadcasters from competition. The Commission has recently removed these barriers. The result will be a richer program variety for viewers (as well as excellent set reception); new cable services commonly carry 30 or more channels, including specialized news, weather, sports, local announcements, and first-run movie channels -- about four times what the average home presently receives.
 - Renal Dialysis: HHS has introduced economic incentives to reduce the costs of renal dialysis. Formerly, medicare covered the costs of renal dialysis only if performed in an institutional setting. The Department has provided new incentives to individuals for home dialysis and incentives to institutions for other lower cost treatment. After a year, home dialysis rose by 30% and overall per capita costs are currently running 3.5% below 1978 costs.
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- Hydroelectric Power: An important and currently underused source of energy for the nation is hydro-electric power. The rapid development of thousands of currently under-developed dam sites with an installed capacity of up to five megawatts can produce a significant percentage of this source of energy. In an attempt to encourage the rapid development of this clean, cheap, and renewable resource and to speed the licensing of these facilities, FERC, under the Energy Security Act of 1980, is beginning to exempt facilities of up to five megawatts from licensing requirements. Applications from facilities of this size represent a majority of all applications currently on file with the agency.

The Report

The President asked the U.S. Regulatory Council to report to him in October.

This is that government-wide progress report. It is based on 16 interagency workshops sponsored by the Council and summary reports from 33 federal agencies. Twenty-five agencies responded in writing; their reports have been transmitted to the White House as supporting material.

The Council's report covers the following:

- A general statistical summary of results
- Analysis and examples for each of the eight techniques
- A summary of agency action to include innovative techniques in future decisions
- A "Scoreboard" of all agency initiatives (Appendix I)
- A "Scoreboard" of procedural changes (Appendix II)
- A list of agency representatives (Appendix III)

Summary of Statistical Results

The agencies report a total of 376 initiatives. Of these:

- Three agencies -- DOT, EPA and HHS -- lead the executive agencies with 40 or more initiatives each.
 - The 14 independent agencies account for one-third of all initiatives, led by ICC (50 initiatives) and FERC (23 initiatives).
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- The most frequently cited technique is enhanced competition, which includes agency actions to deregulate (101 initiatives). The second largest number is for tiering (78 initiatives).
 - About 30% of all initiatives are listed as completed. The agencies identified 45 new initiatives that surfaced during their reviews.
 - Only 3% of the initiatives will require legislative change for implementation.
 - Twenty-six agencies have initiated procedural changes to make sure that innovative techniques are routinely considered on future decisions.

Conclusions

The results reveal a fundamental recent shift in regulatory philosophy in the federal agencies. Instead of relying exclusively on sanction-oriented "command and control" regulation, agencies are now adopting smarter, more sophisticated measures that rely on a range of incentives -- private as well as governmental -- to reach regulatory goals.

This change is occurring where it counts most -- in the thinking of those in the agencies who actually write regulations. Consideration of less traditional, less detailed regulatory approaches is becoming a matter of routine.

The overall impact of innovative techniques is only beginning to be felt, partly because many of the ideas are still in the development stage. There are, however, examples of dramatic savings in costs for the regulated and the government alike. More important, ultimately, are the less tangible benefits of increased managerial flexibility in business, the removal of government from some decisions that are better left to the market place, and the removal of the costly adversarial atmosphere that blocks cooperative problem-solving between government and those it regulates.

AGENCY ACRONYMS

ACUS - Administrative Conference of the United States
CAB - Civil Aeronautics Board
CFTC - Commodity Futures Trading Commission
CPSC - Consumer Product Safety Commission
DOC - Department of Commerce
DOE - Department of Energy
DOI - Department of the Interior
DOJ - Department of Justice
DOL - Department of Labor
DOT - Department of Transportation
ED - Department of Education
EEOC - Equal Employment Opportunity Commission
EPA - Environmental Protection Agency
FCC - Federal Communications Commission
FDIC - Federal Deposit Insurance Corporation
FEC - Federal Election Commission
FEMA - Federal Emergency Management Administration
FERC - Federal Energy Regulatory Commission
FHLBB - Federal Home Loan Bank Board
FMC - Federal Maritime Commission
FMSHRC - Federal Mine Safety and Health Review Commission
FRS - Federal Reserve System
FTC - Federal Trade Commission
GSA - General Services Administration
HHS - Department of Health and Human Services
HUD - Department of Housing and Urban Development
ICC - Interstate Commerce Commission
NCUA - National Credit Union Administration
NLRB - National Labor Relations Board
NRC - Nuclear Regulatory Commission
OSHRC - Occupational Safety and Health Review Commission
PRC - Postal Rate Commission
SBA - Small Business Administration
SEC - Securities and Exchange Commission
TREAS - Department of the Treasury
USDA - Department of Agriculture
USITC - United States International Trade Commission
VA - Veterans Administration

INTRODUCTION

Background For This Report

This report covers the most recent major element of the Carter Administration's regulatory reform program: innovative regulatory techniques. The innovative techniques effort is an outgrowth of the President's March 1978 executive order on regulatory reform, "Improving Government Regulations."

On June 13, 1980, President Carter directed the heads of major federal regulatory agencies to employ innovative regulatory techniques wherever possible. The President noted that in implementing his executive order, many federal agencies had developed new approaches that provide flexibility and decentralize decisionmaking -- approaches that, because they take advantage of incentives that are already in place, represent "smarter," and usually less burdensome, ways to achieve the objectives of regulatory programs.

The President listed eight such techniques:

- Performance Standards
- Tiering
- Marketable Rights
- Economic Incentives
- Compliance Reform
- Enhanced Competition
- Information Disclosure
- Voluntary Standards

To enhance the appreciation and use of these approaches among all federal agencies, he asked the 38 agencies affiliated with the U. S. Regulatory Council to conduct a review of their programs to see where innovative techniques might apply. To assist the agencies in conducting these reviews, in July the Council held a government-wide conference on innovative techniques. The conference provided a forum for regulators to roll up their sleeves and go beyond general philosophizing to exchange information on current practices with particular innovative techniques across the government.

Thirty-three agencies provided progress summaries to the Regulatory Council for use in compiling this report. The process the agencies used to conduct their program reviews varied widely. One of the most comprehensive responses was undertaken by HHS. Meetings were held throughout the Department with those who develop regulations and those who review them to discuss the techniques and explore their present and future applications in various program areas. Senior HHS representatives met with other agencies to exchange ideas. Following these meetings, and after reviewing all their regulations under development, each major sub-agency of the Department prepared reports describing in detail its use of innovative techniques. These reports, which served as the basis for the Department's final report to the Regulatory Council, will be compiled into an Inventory of Innovative Techniques and will be distributed for future use as an educational tool within the Department.

Other agencies used selected components of HHS' approach; for example, at Treasury, GSA, ED, DOC and FDIC the agency head distributed the Presidential directive and support materials throughout the agency. DOT, DOE, EPA and DOI were among the agencies in which operating programs conducted their own reviews. CPSC, PRC, and DOL organized small management groups to review programs for past and potential applications of innovative techniques.

Due to the nature of their regulatory missions (for example, some agencies review regulatory decisions but do not themselves issue regulations), USITC, FEC, FMSHRC, NLRB and OSHRC are not included in this summary. The VA reviewed its programs and determined that no innovative techniques are appropriate to its mission.

An Overview of Results

The agency reports demonstrate a pervasive new interest in innovative techniques across the government. Because much of the work is still in the development stage, it is too early to assess its overall impact. Specific examples demonstrate dramatic cost savings; for example, incentive discounts for the presorting of mail is expected to save the Postal Service \$1.4 billion annually, while reducing mailers' costs by \$800 million a year. Directly measurable cost savings, however, are only part of the story. It is the subtler effects -- the substitution of decentralized business judgement for centralized bureaucratic decisions, the increased flexibility afforded to regulated entities, the movement from adversarial business-government relations toward cooperative problem-solving -- that may prove most significant over the long term.

The agencies reported 376 specific applications of innovative techniques. A few of these have been in place for several years. Many more arose in the period after the President's March 1978 executive order, which required the deliberate consideration of alternatives.

The three executive agencies with the greatest experience and interest in innovative techniques are DOT, EPA, and HHS; each reported forty or more initiatives, and each reported initiatives for all eight techniques; FERC and CAB have experience with seven. Among the independent agencies, the ICC listed 50 initiatives (many of them ramifications of recent legislation deregulating trucking) and FERC reported 23. Together the 14 independent agencies reporting accounted for over one-third of all initiatives, a strong showing in view of the small relative size of their regulatory programs.

The agencies' reports show that innovative techniques can be applied across the entire range of regulatory missions. As would be expected, many of these market-oriented techniques have been applied by agencies that have themselves been heavily involved in regulating particular markets; for example, agencies that regulate

transportation and communications (e.g., ICC, CAB, FCC) accounted for over one-quarter of all initiatives. Adding two other fields of economic regulation, energy (DOE, FERC) and finance/banking (e.g., FRB, NCUA, FHLBB) brings the total to over 50%. What is surprising is that the other programs contributed such a large share. Together, agencies whose missions are to protect health, safety and the environment (e.g., EPA, OSHA, NHTSA, FDA) and agencies that cover human resources (e.g., HHS, HUD, EEOC) accounted for over 120 initiatives. Another unanticipated result is that activities regulated through government funding programs (e.g., medicare, education grants) appear to be amenable to a variety of innovative techniques, although the total number of this type of application is smaller at this stage.

The most frequently reported techniques are enhanced competition (101 initiatives) and tiering (78 initiatives). The smallest category contained 21 marketable rights initiatives.

While about 30% of the initiatives are listed as completed, those listed as pending are at all steps of development. Some are only at the idea stage, while others have been formally proposed. The agencies reported 45 new initiatives that first surfaced during the period of the agency reviews (twelve of these were reported by HHS, nine by EPA, and six by ED).

Nearly all of the initiatives -- 97% -- can probably be implemented without legislative change. The low incidence of initiatives related to legislation may reveal agencies' reluctance to entertain new ideas if Congressional approval is needed to implement them. About 87% of the initiatives can be implemented through new or revised regulations; the other 10% do not require formal rulemaking.

The following section provides an analysis of progress for each of the eight techniques. The specific examples were chosen to reflect the range and variety of recent initiatives. A guide to the agency acronyms used throughout the report appears on page i.

Appendix I provides an agency-by-agency scoreboard for all 376 initiatives; it shows the name, category, status, and type of action required for each. If you would like further information on a particular agency's report, or information on specific agency initiatives, contact the agency representative listed in Appendix III. For information on the general innovative techniques program, contact Lawrence McCray, Associate Director, U.S. Regulatory Council, Washington, D. C. 20503.

FINDINGS

1. PERFORMANCE STANDARDS

Performance standards involve regulating according to general performance criteria, rather than by detailed specification of the means of compliance. Performance standards permit more freedom of action to regulated concerns, reducing compliance costs and providing more freedom to discover new and more efficient compliance technologies. Sixteen agencies reported 58 applications of performance standards.

Many traditional regulatory programs have used performance standards. For example, several DOT programs (including auto safety) have been performance-oriented, most EPA air and water pollution regulations involve performance (discharge rate) standards, and CPSC as a matter of policy and law uses performance standards whenever feasible.

Many other programs are now moving toward performance standards, often (examples were supplied by HHS, DOT, DOL, and EPA) using them as direct replacements for existing specification standards.

The most interesting new trend is the recent development of "industry-averaged" performance standards. Examples include the corporate-average fuel economy approach that DOT is currently seeking to extend through legislative change, and EPA's "bubble" policy for air pollution, which gives plant managers new freedom to design and implement cost-minimizing strategies to meet existing pollution reduction goals.

EXAMPLES

- Worker Safety: OSHA (DOL) has begun a sweeping program to systematically replace its existing design-specific occupational safety standards with performance standards. The first set of performance standards, for fire protection, was recently published.
- Motor Vehicle Pollution: EPA is considering applying a "bubble" type policy to nitrogen oxide (NO_x) emissions from certain types of vehicles. The Agency may change its policy to allow particular light- and heavy-duty truck engines to exceed NO_x emissions standards, as long as the overall average is not exceeded for the manufacturer's fleet. This policy would give industry flexibility to adopt least-cost control strategies by reducing emissions most where controls are cheapest.

- Urban Mass Transit: DOT is considering a shift to performance standards in three areas of its urban mass transit program: safety standards, financial assistance rules, and procurement/testing standards.
- Hiring Discrimination: EEOC's guidelines for employer selection incorporate a "bottom-line" philosophy that provides that as long as an employer's overall selection process has no adverse impact on protected groups, the individual components of the process will not be monitored. An employer who successfully combines several selection mechanisms generally will not be subjected to enforcement action based on the adverse impact resulting from any one such mechanism.
- Occupational Respirators: HHS currently tests and certifies respirators used to protect workers against workplace hazards. The Department is giving preliminary consideration to replacing its detailed design specifications with performance-based requirements, a shift that could increase user confidence and give manufacturers flexibility to make any design and manufacturing changes that do not adversely affect performance.
- Water Pollution: EPA is evaluating the cost-effectiveness and potential benefits of allowing water pollution sources subject to effluent limitations to relax controls where costs are high in exchange for more control where costs are low. This would extend the innovative concepts EPA has used in air pollution to a new medium; here, too, an averaged performance standard may replace source-by-source controls.

2. TIERING

Tiering is the tailoring of regulatory requirements to fit the size or nature of the regulated entity. Tiering is beginning to be used extensively throughout government. Seventy-eight applications of tiering have been identified by ten executive and seven independent agencies. Tiering is used primarily by the agencies to reduce unnecessary regulatory burdens associated with federal recordkeeping and reporting requirements, compliance responsibilities, and the meeting of eligibility requirements for government funding programs. Tiering is most frequently identified with small business; the majority of agency applications are in this area.

EXAMPLES OF SMALL BUSINESS TIERING

- Worker Health and Safety: The OSHA (DOL) is tailoring, where appropriate, its reporting requirements and compliance schedules to the size of the business and has eliminated all reporting requirements for employers with fewer than ten employees (except for a small number of firms that participate in an annual survey).
- Trucking: The ICC tiers according to the size of trucking companies in setting its reporting requirements, which affect approximately 700 small trucking firms throughout the nation. A firm may save up to \$12,000 a year in accounting costs. The DOT's Federal Highway Administration is relieving small trucking companies of some inspection, reporting and logging requirements.
- Hydroelectric Power: In an attempt to simplify and speed the development of small hydroelectric power plants, FERC is proceeding to exempt facilities of up to 5 megawatts capacity from licensing requirements. Facilities of this size represent two-thirds of all applications on file with the agency.
- Banking: FDIC has undertaken a comprehensive study of its regulations to identify areas where tiering can be used to reduce regulatory burdens on small banks. FRS has given banks with under \$100 million in assets the option of reporting on a considerably abbreviated form and in some cases has exempted banks below a certain size from reporting at all.
- Education Grants: ED is considering exemptions to administrative regulations for grants that are under \$50,000.
- Airlines: The CAB is tiering its recordkeeping regulations based on the amount of carrier revenue. The Board estimates this will result in a \$400,000 saving to industry.

Size, however, is not the only consideration in defining classes to be tiered. Tiering applications take into account a wide variety of other factors.

EXAMPLES OF OTHER TIERED CLASSES

- Social Services: Under several programs, HHS is tailoring its regulations to reflect (a) the amount of federal funding received by facilities and (b) distinctions between new and old entities.
- Pesticides: EPA considers the market potential of certain pesticides in setting tiered registration requirements.

- Health Risk: HHS' Food and Drug Administration ranks regulated products by the degree of potential risk to consumers and applies less stringent requirements to lower-risk products.
- Hazardous Waste: EPA has exempted approximately 695,000 generators of small amounts of hazardous wastes (less than 1 metric ton per month) from all reporting requirements for the hazardous waste program under the Resource Conservation and Recovery Act of 1976.

3. MARKETABLE RIGHTS

Regulators are increasingly finding that they can meet their goals by setting overall limits to regulated activities, and then letting those who wish to engage in the restricted activity bid among themselves for the right to do so. The exchange of these limited rights through market or market-like arrangements provides strong incentives toward efficiency and innovation -- and can get government out of the process of deciding just who can do what.

Seven agencies reported 21 diverse recent or potential applications of marketable rights approaches in dealing with the allocation of scarcity. In some cases it is a natural scarcity (e.g., mineral leases on federal lands, radio communications frequencies) and in other cases scarcity is artificially imposed for regulatory purposes (e.g., limits on the number of hospital beds in a local area, frequency of airport landings and takeoffs).

EXAMPLES:

- Airport Landing and Takeoff Slots: The CAB and DOT are evaluating the allocation by auction of airport of take-off and landing "slots," which must be limited for safety reasons. These rights could be transferable. This approach could reduce perceived inefficiencies of the current system, under which carriers themselves allocate slots through an antitrust exemption.
- Hospital Services: In health planning, HHS is in the initial stage of considering the use of interfacility trading to encourage more efficient distribution of health care resources such as hospital beds and CAT scanners. One possible approach may be to encourage health care institutions to negotiate for allocation of resources to their facilities within parameters established by local health systems agencies.
- Electromagnetic Spectrum: Believing that radio communications frequencies are inefficiently used (some are overcrowded and others not used at all), the FCC and DOC are evaluating the possibility of assigning some frequencies by auction or the free sale or transfer of assignments. Many assignments are presently granted through complicated administrative procedures and cannot be freely traded.

4. ECONOMIC INCENTIVES

Instead of directly requiring regulated entities to undertake specified actions -- and then policing their behavior -- ten agencies reported they are using economic inducements (typically fees or subsidies) to encourage these activities. They cite 48 specific applications.

Economic incentives are relatively common in the U.S. energy program. DOE and FERC listed fifteen initiatives -- eight in the field of conservation and solar energy programs alone -- that represent decisions to encourage energy efficiency through subsidies rather than command and control measures.

Less fully appreciated is the extent to which health and other regulatory programs are turning to economic incentives. HHS listed seven initiatives, ranging from renal dialysis to children's health screening, intended to produce quality health care at lower cost. Applications of this technique have also been made in communications (PRC), banking (NCUA), environment (EPA and DOI), and worker health (DOL).

EXAMPLES

- Postal Services: The PRC has taken a series of actions to provide economic incentives to reduce postal costs by encouraging bulk mailers to pre-sort their mail. The PRC staff estimates that, overall, the actions it has taken will save mailers \$800 million a year -- while reducing Postal Service operating costs by \$1.4 billion annually. Most recently, the Commission recommended a three-tier rate structure for third class mail, providing incremental savings to mailers who pre-sort according to three-digit zip code, five-digit zip code, or carrier route.
- Hospital Care Costs: HHS is proposing economic incentives in two regulations as a means of encouraging efficient delivery of health services, thereby reducing health care costs. These regulations would set prospective levels of federal medicare and medicaid payments for rural health clinics and end-stage renal disease facilities. Clinics or facilities that find ways to improve their efficiency and reduce costs may keep the difference between their actual costs and their pre-set federal reimbursements. In addition, HHS is exploring ways to make health maintenance organizations (HMOs) more competitive. For instance, to encourage medicare and medicaid beneficiaries to enroll in HMOs, the Department is testing the use of economic incentives such as returning HMO savings to the beneficiaries. HMOs, which emphasize preventive health care and cost containment, can reduce national expenditures on health.

- Coal Leases: To ensure coal development, DOI stipulates that once they start operation, holders of federal coal leases should stay in production. However, to permit reasonable flexibility without removing the production incentive, lease holders can discontinue operations if they pay advance royalties for a limited period of non-operation.
- Air Pollution: EPA is exploring the use of emission fees (charges based on the amount of pollution emitted), among other options, as a component of its strategy for controlling new air pollution in areas that are now cleaner than nationwide standards. Emission fees raise the cost of each unit of pollution discharged and provide an ongoing incentive to both reduce the total amount of pollution and develop new least-cost controls, for which traditional standards provide no incentive.

5. COMPLIANCE REFORM

Even when conditions dictate a strong standards-oriented regulatory program, many agencies are finding ways to introduce market-oriented reforms in their compliance programs. These reforms replace or supplement strict governmental monitoring and enforcement with other mechanisms, including third-party monitoring, penalties that reflect the degree of non-compliance, and supervised self-certification. Such measures can improve compliance incentives while curtailing costs to the taxpayer.

Initiatives in this area were reported by 17 agencies, led by DOT with 13 applications. A majority of the 54 federal examples involve supervised self-certification. The regulators are finding that, at least in some cases, they can provide adequate compliance incentives without deploying vast armies of federal inspectors. Self-certification -- and/or compliance monitoring by non-governmental entities -- can be managed to produce reliable compliance.

EXAMPLES

- Worker Health and Safety: OSHA (DOL) is conducting a pilot test of occupational health and safety compliance monitoring by labor-management committees. The goal of the project is to replace regular OSHA compliance inspections with these committees. The committees identify and eliminate workplace hazards and thereby reduce the need for direct federal intervention. DOL intends to initiate more labor-management projects in the coming year.

- Air Pollution: EPA is trying to put its air pollution penalties on a more economically rational basis. Under one recent policy shift, EPA has moved away from a system of arbitrary fixed penalties that cannot reflect the relative seriousness of a particular violation. EPA now sets its penalties to systematically offset a firm's cost savings from non-compliance. EPA is also studying a graduated penalty for certain engines that fail to meet emissions standards -- an approach that would amount to an emissions fee for substandard performance.
- Transportation Rate Filings: Traditionally, new prices (tariffs) filed by transportation companies have been reviewed for compliance deficiencies by ICC staff before they could go into effect. The ICC is considering simply relying on affected parties to identify any filing irregularities.
- Consumer Product Safety: CPSC has been using consumer deputies to help monitor compliance with product safety standards. These consumer deputies are volunteers who enlist to supplement federal consumer protection efforts; over 4,100 deputies have conducted more than 17,000 surveys. To date, consumer deputy programs have covered product areas including toys, aspirin, sleepwear, oven cleaners, drain cleaners and lye, Christmas lights, bicycles, playgrounds, and upholstered furniture. The program appears to be useful in promoting cooperation with consumer interest groups, expanding local surveillance of consumer products and ensuring removal of banned or dangerous products from the marketplace.
- Nursing Homes: HHS is considering a wide range of innovative approaches to compliance monitoring in health care facilities. Its proposed nursing home regulations, for example, enlarge opportunities for patients to influence their facility's compliance by, among other things, allowing them to form resident councils to consider and refer complaints about their facility.
- Transportation Safety: DOT has had wide and varied recent experience with market-oriented compliance measures, including reliance on independent third-party inspection of emergency equipment used aboard ships, delegation of certain safety certification responsibilities to aircraft manufacturers, and certification by auto manufacturers of their compliance with federal safety standards.
- Pollution Control: EPA is examining the feasibility and potential benefits of encouraging -- or providing positive incentives for -- polluting firms to use private contractors to audit their pollution control compliance. A private

auditor program may reduce state and federal resources spent on inspections, thereby also reducing government intrusion into private operations. Private sector auditors would provide EPA with certified statements of a firm's compliance status, which EPA would then use as the basis for enforcement actions. Secondary benefits include more flexible and effective operation and maintenance of pollution control equipment, higher compliance rates, and reduced pollution.

6. ENHANCED COMPETITION

The category includes initiatives in which regulators are suggesting that they can regulate "smarter" by regulating less. Twenty agencies reported 101 actions to remove barriers to competition.

Many of the initiatives involve deregulation actions initiated by economic regulators. In some instances, the initiatives flow from agency-supported legislation; for example, the ICC listed 34 actions to augment competition, most of them related to the implementation of the Motor Carrier Act of 1980, which largely deregulates trucking.

Some deregulation initiatives, however, have been undertaken by the agencies themselves. For example, FCC actions have removed regulatory constraints on competition in virtually all the Commission's programs; cable television, pay and free television, commercial radio, local and intercity telephone service, telegraph service, and domestic and international data transmissions have all been the subject of major FCC deregulation efforts. The economic regulators, however, have no monopoly on initiatives to enhance competition as a way to promote regulatory goals. A dozen initiatives were reported by agencies with health, safety and other missions, including HHS; Treasury's Bureau of Alcohol, Tobacco, and Firearms; DOI; HUD; DOT; and EPA.

A number of actions are intended to eliminate barriers to competition that have originated within the private sector itself (e.g., through professional restrictions on price advertising, collective ratesetting).

- Postal Services: The PRC originated a plan to permit new competition in the sending of electronic mail to specially-equipped post offices where it is printed out for delivery. The Commission feels that competition will bring mail users technically superior service at lower cost.

- Medical Advertising: In an effort to increase competition, the FTC has sought to lift prohibitions on medical advertising. The Commission had determined that the American Medical Association restrained competition among its members through various restrictions on advertising. The FTC also initiated a rulemaking proceeding involving providers of eye examinations and prescriptions and dispensers of eyewear. The regulation lifted state and private restrictions on advertising for eyeglasses, contact lenses, and eye examinations. A recent FTC evaluation revealed that since enactment of this regulation, eyeglass costs have risen much less than the consumer price index; this action will save consumers \$500 million annually.
- Cable Television: The FCC has moved to abolish limits on the number and type of distant stations that cable television systems can bring into a community and has eliminated rules requiring that they delete certain programs carried by local over-the-air stations. These and other restrictions had protected local stations from competition, stifled innovation in cable services, and limited the diversity of programs available in most localities.
- Alcoholic Beverages: Current Treasury regulations restrict the items and services that suppliers can furnish to retail liquor dealers. Recent Treasury proposals would allow greater competition among suppliers of distilled spirits, wine, and malt beverages by increasing the number and kinds of services that distributors may furnish to retail dealers. For example, suppliers would be permitted to provide wine lists and inventory services to retailers. Removal of other anticompetitive restrictions will first require statutory changes that Treasury plans to pursue.
- Telephone Services: The FCC opened telephone equipment to competition several years ago. Now that strong competitors are in the field there is no more need for price regulation, so the Commission has moved to deregulate this market.

7. INFORMATION DISCLOSURE

In some instances regulatory goals can be achieved by assuring that the user of a product or service receives relevant information about the consequences of using it. Information disclosure allows users and consumers an informed freedom of choice among competing goods and services.

Thirteen agencies have reported a total of 46 initiatives in this area. The initiatives they have undertaken include two basic types of programs: labeling -- programs in which producers are required or encouraged to put relevant information on labels or accompanying materials; and rating -- programs in which the government itself releases relevant information to the public. Information disclosure seems to be most widely used in health, safety and consumer areas.

Most of the initiatives reported involve the use of information disclosure as a supplement to direct regulation (intended to foster greater regulatory benefits with little additional cost) rather than as a substitution.

EXAMPLES

- Noise labeling: EPA is encouraging noise labeling by industry for products emitting noise capable of adversely affecting public health. While EPA has authority to directly regulate noise-emitting products, it has instead chosen a labeling strategy for major products.
- Health Care: HHS' program to help consumers become more effective purchasers of health care services includes a "hotline" for information about getting second medical opinions and direct efforts to educate the public on such subjects as how to choose a nursing home and alternatives to institutional long-term care.
- Auto Safety: DOT is using information disclosure in publishing booklets on its New Car Assessment Program and its Uniform Tire Quality Grading System.
- Chemical Hazards: The Toxic Substances Control Act mandates that EPA use the "least burdensome requirements" necessary to protect against unreasonable risk. Labeling is an information strategy that can protect public health by informing workers of the risks posed by different chemicals. The labeling requirement may also act as an incentive for manufacturers to develop safer products. The advantage of labeling is that it will afford some degree of protection for many chemicals at a relatively low cost.
- Product Information: The FTC is using information disclosure as its response in the following areas: used car inspections, food advertising, deceptive advertising by government agencies, advertising for vocational schools, energy usage labeling, vehicle mileage labels, and eyeglass advertising.

8. VOLUNTARY STANDARDS

Voluntary standards describes a technique in which government programs rely on regulatory standards developed by third parties or by the regulated firms themselves. Many regulators are finding advantages in this approach -- private technical knowledge can be applied directly to the problem, and cooperating firms may reach agreement faster than formal government procedures would allow.

Seventeen regulatory agencies reported a total of 46 diverse initiatives involving voluntary standards.

EXAMPLES

- Consumer Products: CPSC has been involved in the development of over 40 voluntary standards. The types of products covered by these voluntary standards range from Christmas tree lights to ladders and hedge trimmers. CPSC has developed and published a general agency policy on voluntary standards.
- College Education: ED has proposed that postsecondary educational institutions adopt voluntary standards on satisfactory academic progress that students must maintain in order to qualify for financial aid, as an alternative to further federal regulation.
- Food Grading: USDA is considering by changing food quality grade names so that they will be similar for all items, thereby employing a combination of voluntary standards and information disclosure. This would assist consumers in understanding the hierarchy of food grading.
- Hospital Costs: HHS and the Council on Wage and Price Stability recently announced a voluntary hospital expenditure guideline, aimed at slowing the rate of increase in hospital costs for 1980. The guideline is very close to the industry's own stated goal, and will be monitored by the Health Care Financing Administration in HHS.

PROCEDURAL CHANGES

Agencies have implemented or are considering a wide variety of procedural changes to ensure routine consideration of innovative techniques in future regulatory decisions and in the review of existing regulations (see Appendix II for details). Although not explicitly required in the President's directive, procedural changes have been introduced in 27 agencies. These changes provide for consideration of innovative techniques at many steps in the decisionmaking process. HHS, EPA, DOT, and DOC have undertaken the most comprehensive reforms.

(1) Special Prepublication Review

Twenty-five agencies have adopted or are actively considering changes in their analytic/review procedures in order to highlight innovative techniques. In most cases this involves a further refinement of the process that the agency has set up in response to the President's Executive Order 12044, "Improving Government Regulations." This process was established to make sure that regulations are developed in an open and orderly way, and that the impacts of regulatory alternatives (although not necessarily innovative techniques) are carefully evaluated.

Fifteen agencies are assigning staff offices (usually the office of general counsel or policy evaluation) the responsibility to review regulatory decisions during various stages of development (e.g., initial concept memo, semiannual agenda entry, proposed rule, final rule) to ensure that relevant innovative techniques have been considered and evaluated.

For example, policy analysts in USDA's Office of the Secretary work with agency analytical staff to plan the impact analyses (including identification of alternatives) as soon as significant decisions have surfaced. The Office of General Counsel, ED, reviews every regulatory decision, looking for possible innovative techniques applications, before the rule goes to the Secretary for final approval. The Office of Policy Analysis, DOI, exerts quality control and provides analytical assistance for regulatory analyses; this is a key opportunity to ensure the application of innovative regulatory techniques in rulemaking with major impacts. FERC's Office of Regulatory Analysis has been directed to review in advance all significant proposed Commission actions to determine whether innovative techniques may be applied to the proposals.

Procedures manuals to implement Executive Order 12044 are being revised by 12 agencies so that consideration of innovative techniques will become a regular part of both the regulation development process and the sunset reviews of existing regulations.

The Department of Commerce will make major changes in its procedures for both developing new regulations and reviewing existing regulations. GSA is drafting a change in its order implementing the executive order that will require GSA units to consider innovative regulatory techniques for all new regulations that are being developed and for all existing regulations that are being changed. The NCUA is revising its Final Report, "In Response to Executive Order 12044," and will include a checklist of innovative techniques as part of the guidance to those persons preparing preliminary review memorandums of proposed rules for the NCUA Board. The CFTC will include instructions concerning the use of innovative techniques in materials being developed to assure agency compliance with Executive Order 12044.

EPA reviews major existing regulations to determine whether innovative techniques may be used to more effectively and efficiently meet the regulatory objectives identified at the time the regulations were first developed.

(2) Intra-agency Education

In 13 agencies special efforts are being made to inform and educate those agency personnel involved in regulation development about innovative techniques. For instance, background information on innovative techniques and their applications has been forwarded to the principal regulation drafting offices within HUD and FEMA. Every division director in the SEC is being given copies of the President's guidelines for innovative techniques and has been strongly urged by the Chairman to consider possible applications. As a means of introducing consideration of innovative techniques into the regulatory development process, EPA will provide all senior managers and each intra-agency work group dealing with significant regulations an extensive Checklist of Regulatory Alternatives describing regulatory alternatives to traditional "command and control" regulations. EPA's rule writers also routinely receive the Checklist when they begin work on a new regulation.

With the completion of its September innovative techniques report, HHS began using it to demonstrate the applicability to HHS programs of the various techniques. In addition, meetings of HHS policymakers and their counterparts from other federal agencies will be held frequently to share ideas and stimulate thinking about new uses of the techniques. ED, DOL and NCUA are planning to sponsor seminars or revise regulation writing courses so that innovative techniques can be discussed in small group settings.

(3) Involving the Public

Several agencies believe that potential new applications of innovative techniques will be generated by the public. Eight agencies reported that they have proposed or implemented new ways to ensure early public input on innovative techniques in their regulatory process. These take the form of public meetings and hearings at DOL and EEOC. DOT has already placed a public notice in its semi-annual agenda requesting comments on potential uses of innovative techniques, and Treasury and SBA plan to routinely request public comments on possible innovative techniques when they issue Advanced Notices of Proposed Rulemaking.

SUMMARY AND CONCLUSION

Thirty-two agencies report a total of 376 actions to examine and adopt innovative regulatory techniques. DOT, HHS, EPA and ICC report the largest number of initiatives -- 40 or more each. The independent regulatory agencies, despite generally smaller programs, account for one-third of the reported initiatives, led by the ICC and FERC.

Applications are found in all types of regulatory programs. Agencies that regulate the economic activities of particular business sectors account for over one-half of the initiatives, led by transportation and communications agencies, which account for one-quarter of the total. However, it is significant that health and safety and human resources programs report a similar number of initiatives, bringing some of the benefits of deregulation to fields where deregulation itself is inappropriate. A surprising number and variety of applications have been reported in agencies that regulate private behavior through federal grant and reimbursement programs.

The initiatives are fairly evenly distributed across technique categories:

Enhanced Competition	101
Tiering	78
Performance Standards	58
Compliance Reform	54
Economic Incentives	48
Information Disclosure	46
Voluntary Standards	46
Marketable Rights	21

Thus, while the process is far from complete, a fundamental shift in thinking is evident in the way federal regulators go about their business. In the past, agencies instinctively reached for a single tool -- "command and control" regulation -- to solve any regulatory problem that arose. Traditional regulation was time-consuming, costly to both business and government, and imposed disincentives to industrial innovation. Regulatory programs rested almost entirely on a solitary negative incentive: an administrative sanction imposed through formal enforcement procedures.

This report demonstrates that agencies are both practicing and actively seeking smarter, sophisticated new approaches to regulation. The new approach is one in which regulators examine the full range of available incentives -- private as well as governmental -- to get the job done most efficiently. Progress can be measured by the number of federal programs involved, the variety of techniques being applied, and the real benefits to the regulated community that result from less government intervention in the regulatory process.

The new procedures now being put in place ensure that a higher level of imagination will be systematically applied to regulatory decisions from now on.

APPENDIX I

INNOVATIVE TECHNIQUES SCOREBOARD

This appendix contains summary information from detailed reports given to the U.S. Regulatory Council by 32 agencies. The entries are intended to provide additional detail on federal applications of innovative techniques. However, they are necessarily brief and are not meant as a substitute for the agency submissions themselves. For further details on agency initiatives, contact the agency representative listed in Appendix III. For general information on this report or the broader innovative technique program, contact:

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The 45 new potential applications of innovative techniques that surfaced during the summer agency reviews are marked as "new" in the left column. These actions are in the early stages of development. The "Status" column for each of these entries is therefore blank.

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INNOVATIVE TECHNIQUES SCOREBOARD

AGENCY		AGENCY ACTION	INNOVATIVE TECHNIQUES										STATUS		
			Performance Standards	Tiering	Marketable Rights	Economic Incentives	Compliance Reform	Enhanced Competition	Information Disclosure	Voluntary Standards	Statutory Change Required	New or Revised Regulation	Other Administrative Action Required	Pending	Completed
DOL		MSHA develops civil money penalties for mine violations													
	[New]	OFCCP to offer exemptions from reporting requirements to firms based on size													
DOT		NHTSA considers more flexibility in industry-averaged fuel economy standards													
		CG uses performance standards for waterfront facilities operations													
		CG sets performance standards for ship navigation lights													
		FHWA sets safety performance standards for commercial motor vehicle steps and decks													
		NHTSA publishes new car assessment program information													
		NHTSA uniform tire quality grading system program uses disclosure approach													
		FAA requires airplane flight placards													
		CG requires disclosure of information for personal flotation device characteristics													
		CG permits self-certification in manufacture of pressurized containers													
		CG establishes third-party inspection of life saving equipment													
		FAA uses advisory circular on hang glider safety													
		Self-certification of federal safety standards by auto manufacturers is allowed													
		Compliance self-certification by aircraft manufacturers permitted													
		FAA delegates pilot physicals to private sector													
		Changes may be approved by aircraft manufacturers													
		FAA eliminates unnecessary recertification of experimental aircraft													
		RSPA uses performance standards for cryogenic container safety													
		FAA considers size in exempting businesses from certain responsibilities													
		RSPA considers size in exempting businesses from certain responsibilities													
			A - I - 7												

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INNOVATIVE TECHNIQUES SCOREBOARD

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INNOVATIVE TECHNIQUES SCOREBOARD

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INNOVATIVE TECHNIQUES SCOREBOARD

INNOVATIVE TECHNIQUES SCOREBOARD		INNOVATIVE TECHNIQUES										STATUS						
AGENCY	AGENCY ACTION	Performance Standards	Tiering	Marketable Standards	Economic Rights	Compliance Incentives	Enhanced Incentives	Information Reform	Voluntary Competition	Statutory Disclosure	Statutory Standards	Statutory Change	New or Revised Regulation	Other Administrative	Action Required	Pending	Completed	Ongoing
FERC	Rule prevents artificial barriers to whole-sale customers' use of alternative suppliers					•						•					•	
	New competition in electricity markets from cogeneration facilities promoted					•						•					•	
	New competition in electricity markets from small power production facilities promoted					•						•					•	
	Deregulation phased in for certain natural gas prices and sales					•						•					•	
	"Incentive rate of return" for Alaskan natural gas pipelines set					•						•					•	
	Oil backout deregulation program instituted					•						•					•	
	"White market" sales of conserved natural gas allowed to encourage residential energy efficiency programs					•						•			•			
	Licensing exemptions and incremental pricing implemented					•						•					•	
	More integrated natural gas pipeline network implemented by deregulation					•						•					•	
	Regulatory exemptions to hydroelectric power plants granted based on size	•										•				•		
Conduit hydroelectric facilities exempted from licensing requirements based on size	•										•					•		
FHLBB	Rules proposed to allow S&LAs to make consumer loans and second liens on real estate					•						•				•		
	Rules proposed to allow S&LAs to offer NOW accounts					•						•				•		
	Rules proposed to permit savings and loan association (S&LA) to offer graduated payment, renegotiable rate, and shared appreciation mortgages					•						•				•		
	Rules proposed to allow S&LAs to invest in commercial paper and corporate debt securities					•						•				•		
	Rules proposed to give S&LAs trust powers					•						•				•		
	Interstate branching by S&LAs in D.C., MD., and VA proposed	•				•						•				•		
	Area restrictions on S&LAs lending to be lifted					•						•				•		
	S&LAs permitted to issue credit cards					•						•				•		
	Third-party payment systems for S&LAs expanded					•						•				•		
	A - I - 15																	

INNOVATIVE TECHNIQUES SCOREBOARD

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INNOVATIVE TECHNIQUES SCOREBOARD

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INNOVATIVE TECHNIQUES SCOREBOARD

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INNOVATIVE TECHNIQUES SCOREBOARD

AGENCY	AGENCY ACTION	INNOVATIVE TECHNIQUES										STATUS		
		Performance Standards	Tiering	Marketable Rights	Economic Incentives	Enhanced Incentives	Information Reform	Voluntary Disclosure	Statutory Change	Required	New or Revised Regulation	Other Administrative	Action Required	Pending
ICC	Reporting requirements (annual reports) are tiered based on size of carrier	•								•			•	
	Income level of truckers is classified for reporting purposes	•								•			•	
	Entry and pricing policy liberalized for trucking				•					•			•	
	Industry-developed cost methods used					•				•			•	
	Classification levels indexed	•								•			•	
	Emergency rerouting of rail hauls to be allowed					•								
	Tariff examination process is revised			•										
[New]	Household goods carrier regulations are revised			•										
NRC	Voluntary standards are used in regulating medical use of radioisotopes					•				•				•
PRC	Electronic telecommunications services to speed mail delivery are implemented				•					•				•
	Mail pre-sort is incentives introduced			•						•				•
SEC	Rules shift responsibility for investment company decision-making onto directors			•		•				•				•
	Self-regulation of investment advisors is under consideration			•		•				•				•
	Self-regulation of accountants is encouraged			•		•				•				•
	Off-board trading restrictions are curtailed			•		•				•				•
	Reporting and disclosure requirements are reduced based on size of aggregate offerings	•								•				•
	Considering is given to establishing classes of small issuers that might have different reporting and other obligations	•								•				•
	Regulation S-K revised to improve disclosure					•								•
	Integrated program is established to eliminate duplicative reporting	•												•
[New]														

APPENDIX II

PROCEDURAL CHANGES TO ENSURE ROUTINE CONSIDERATION OF INNOVATIVE TECHNIQUES

APPENDIX II

PROCEDURAL CHANGES TO ENSURE ROUTINE CONSIDERATION OF INNOVATIVE TECHNIQUES

PROCEDURAL CHANGES TO ENSURE ROUTINE CONSIDERATION OF INNOVATIVE TECHNIQUES	EXECUTIVE AGENCIES																INDEPENDENT AGENCIES																	
	ACUS	USDA	DOC	ED	DOE	HHS	HUD	DOI	DOJ	DOJ	DOT	TREAS	EPA	EEOC	FEMA	GSA	NCUA	SBA	CAB	CFTC	CPSC	FCC	FDIC	FERC	FHLBB	FMC	FRS	FTC	ICC	NRC	PRC	SEC		
A. <u>Special Prepublication Review</u>																																		
Revise procedures that implement Executive Order 12044			
Include consideration of innovative techniques alternatives in new regulatory proposals, semiannual agenda entries, and regulatory analyses for proposed and final rules						
Require special agency head/staff office review				
Consider in annual regulatory review program		
Initiate procedural changes in particular operating administrations									
B. <u>Intra-Agency Education</u>																																		
Revise regulation writing course; conduct seminars and/or workshops to discuss innovative techniques	
Develop and distribute innovative techniques information checklist to agency personnel			
Confer with innovators from other federal agencies				.																.	.													
C. <u>Public Involvement</u>																																		
Solicit public comment on innovative techniques through semiannual agenda				
Solicit public comment when issuing specific ANPRM/NPRM								
Hold meeting/hearings with the public																												

APPENDIX III
AGENCY CONTACTS

APPENDIX III

AGENCY CONTACTS

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