

BRIEFLY NOTED

Trade as ‘Social Dumping’

◆ BY PIERRE LEMIEUX

As anybody familiar with the academic literature of the last 250 years knows, it's difficult to make sound economic arguments against free trade. It is easier to make light and fuzzy political arguments, like the ones offered by Peter Navarro (now head of President Trump's National Trade Council) and Greg Auty in their 2011 book *Death by China*. However, the social-political argument recently offered by Harvard economist Dany Rodrik in his *Foreign Policy* article "It's Time to Think for Yourself on Free Trade" (January 27, 2017) is worth a look. He has made similar arguments elsewhere.

Foreign trade, Rodrik notes, generates economic and social changes, but he doesn't argue against change per se. After all, technology produces a lot of it—and, we might add, technology is probably responsible for the bulk of employment disruptions that America and other societies are experiencing.

What concerns Rodrik is that "trade violates norms embodied in our institutional arrangements." "Certain kinds of competition," he writes with foreign competition in mind, "can undermine domestic norms with regards to what's an acceptable redistribution. ... This brings us to a different social and political objection to trade—that trade violates norms embodied in our institutional arrangements."

I think he is trying to square the circle—to make an argument against international competition without attacking competition per se. That is not an easy task. To pull it off he tries some fuzzy contractarian norms and invokes the dubious concept of "social dumping."

Disrupting social norms/ Rodrik writes that "trade may undercut the social bargains struck within a nation and embedded in its laws and regulations," and that the consequences of trade generate "stresses

... for our social compacts." The plural of "social bargains" and "social compacts" suggests that he is not thinking of a conceptually unanimous social contract in the sense of James Buchanan or even John Rawls. It is very unlikely that anything like a unanimous social contract could grant Leviathan the power to forbid the importation of fishing rods from China, cars from Mexico, or clothes from Bangladesh.

To rescue his domestic norms, Rodrik argues for broadening the idea of fair trade "to include social dumping." The concept of "social dumping" has been used by the left as the social equivalent of ordinary "trade dumping," which is the selling of goods at prices deemed to be below cost. But what's wrong with that? It would mean that the importing country is getting a bargain that is paid for by the exporting country. Hence the notion that dumping is bad is problematic in any consistent theory of trade. In practice, "dumping" usually refers to foreign suppliers selling at a price that domestic competitors do not match for whatever reason. Dumping may not be good for the domestic suppliers, but it is good for domestic consumers. As Paul Krugman has written approvingly, "The economist's case for free trade is essentially a unilateral case—that is, it says that a country serves its own interests by pursuing free trade regardless of what other countries may do."

"Social dumping" is even more problematic. A blurb on one of the European Union's websites admits that "there is still no clear, universally accepted definition of 'social dumping,'" though it cites "unfair competition" as one possible definition. In this view, a poor country with lower wages would, by its exports, dump

its social problems on rich countries. But again, that doesn't seem like a bad thing for consumers. So we are back to the idea that social dumping amounts to selling at a price that competitors in rich countries do not match.

Rodrik admits that low productivity—that is, the exporting country's low wages are the result of its having a low-skilled workforce or less capital—is not sufficient to justify the charge of social dumping. He wants to make "a clear distinction between situations where a trade partner's low wages are due to low productivity, and the abuse of worker rights (including, say, the absence of collective bargaining, or freedom of association)." In other words, the comparative advantage of a poor trading country has to be corrected with what some "domestic norms" in the importing country consider an abuse of worker rights.

These ideas are difficult to fit in the economist's toolbox and we can sympathize with Rodrik's struggle. The theory of comparative advantage and its contemporary extensions (by economists such as Eli Heckscher and Bertil Ohlin) suggest that poor countries will specialize in the production of labor-intensive goods precisely because their wages (and other working conditions) are low enough to compensate for their generally bad labor productivity. These countries are poor precisely because they have low productivity. Their specialization, combined with the specialization of developed countries in more capital-intensive goods or goods requiring highly skilled labor, will allow the residents of all trading countries to enjoy more goods and services.

Comparative advantage explains why Mississippi specializes in agricultural products and California in high-tech gear. It would make no sense for California's government to limit imports from Mississippi under the excuse that average wages are 40% lower in Mississippi or that it is a right-to-work state. But if social dumping isn't invoked to restrict Mississippi exports to California, then why do some people want to invoke it to restrict Bangladeshi exports to the United States?



Ideally, in Rodrik's perspective, the "social compacts" are the norms imposed by a national majority. His general theory of politics and welfare is rather rudimentary, as it ignores contemporary theories of public choice, welfare economics, and social choice. In practice, the norms will enforce the privileges that special interests grab. One way or another, these norms must not be challenged by individuals importing what they want from abroad. Free trade must not be allowed to interfere. Domestic norms and cartels must be protected.

Conclusion / Rodrik does not succeed in reconciling free trade and arbitrary national norms that interfere with trade. It is just protectionism reformulated in "social" terms. To be fair, he

It is true that Mississippians can freely move to California if they want to, contrary to Bangladeshis, but this is not an argument against free trade. On the contrary, the capacity of Bangladeshis to export goods to the United States is a substitute for free immigration. Rodrik seems to prefer more temporary immigration, but why let a Bangladeshi who is temporarily working in the United States provide clothes to American consumers but not let him do so if he's working in Bangladesh? This would be like forcing Mississippians to work in California if they want to produce stuff for Californians.

The norms underlying the concept of social dumping appear to be essentially national and nationalistic. Social dumping comes from international trade that challenges what Rodrik, in the last paragraph of the book, calls "the prerogatives of the national state."

Favoring the tribe / The very term "social dumping" is baffling. As Hayek argued, "social" has become "the most confusing expression in our entire moral and political vocabulary." It serves largely as an indicator

that whatever it is modifying is deemed very good if it is already considered good—e.g., social justice, social awareness, social responsibility. "Dumping" mostly describes bad things, however—e.g., roadside dumping, trade dumping, dumping on one's friends, patient dumping. So "social dumping" becomes a sort of sacrilege.

Go beyond the alchemy and social dumping seems to be whatever people close to power do not like, whether these people represent special interests or a tyranny of the majority. And the more tribal or (in its modern incarnation) nationalistic a society is, the more things and ideas coming from outside will be considered social dumping.

Rodrik thinks of trade as "not merely a market relationship, but an intervention into domestic institutions and an instrument for reconfiguring them to the detriment of certain groups." Consider the implications of this characterization. When the national Leviathan does not act to stop what it dislikes, its inaction is nonetheless considered intervention because it lets private "interventions" run their course. There is little place for free trade in this context.

claims that he wants only limited restrictions on trade and he believes those limitations would keep populist demands and demagogues at bay. But "social dumping" is the stuff of what mission creep is made. It is another voice for open-ended populism.

I think that Rodrik's approach is similarly mistaken from a moral perspective. Any policy proposal is ultimately based on normative values. Free trade, based on "capitalist acts between consenting adults" (to borrow from Robert Nozick) and on the individual's liberty to make his own bargains, is certainly easier to defend. As Anthony de Jasay would say, this idea "demands far less of our moral credulity."

R

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Regulatory Budgets

BY RICHARD A. WILLIAMS

In a 1979 message to Congress calling for regulatory reform, President Jimmy Carter noted: “Our society’s resources are vast, but they are not infinite. Americans are willing to spend a fair share of those resources to achieve social goals through regulation. Their support falls away, however, when they see needless rules, excessive costs, and duplicative paperwork.” Nearly four decades later, hundreds of agencies and thousands of programs are not producing the results they promise in their Regulatory Impact Analyses or budget justifications to Congress. As a result, social costs are higher and net social benefits are lower than they should be.

To reduce the costs of new regulations, agencies should face a regulatory budget constraint. Heads of regulatory agencies already face budgetary choices with the resources appropriated to them by Congress for staff, office space, supplies, and travel. But the agencies do not face an explicit constraint on the regulatory compliance costs they impose on firms and consumers. Congress has noticed this and has passed bills, particularly through the House of Representatives trying to implement the concept of a regulatory budget. To date, the results of these efforts have been disappointing to say the least.

The first proponent of a regulatory budget was Robert Crandall of the Brookings Institution, and the first legislative attempt at this idea was offered by Sen. Lloyd Bentsen (D-Texas) and Rep. Clarence “Bud” Brown Jr. (R-Ohio) in 1979. John Morrall III, then the top career staffer in the Office of Information and Regulatory Affairs, suggested in a 1992 paper that a regulatory budget should result in 1) a more cost-

effective allocation of society’s resources, 2) require an explicit consideration of the cost of private resources and, 3) rely more on decentralized decisionmaking.

The very fact that there have been academic articles and legislation supporting regulatory budgets for almost 40 years would suggest that it is difficult to get bipartisan agreement on such measures. Certainly one objection might come from economists who would argue that net benefits—i.e., regulatory benefits minus regulatory costs—are the appropriate measure rather than just costs. But to determine net benefits, agencies would actually have to conduct cost-benefit analyses accurately and then pay attention to them, which the evidence suggests they do not do.

I believe the federal government can initiate a regulatory budget without new legislation from Con-

gress. True, Congress should begin to exercise its proper role under Article 1, Section 1 of the Constitution that states that all power to make laws are vested in the Congress, while carrying out those laws is vested in the executive. But budgeting—whether for the agencies’ own resources or how they prioritize what they will regulate—rests squarely in the hands of the administrators of those agencies.

In 1978 the Senate Governmental Affairs Committee concluded in Vol. VII of its *Study of Federal Regulation* that agencies should issue statements of goals and priorities, including specific objectives for actions in their respective programs including “projected dates for their accomplishment, along with proposed resources allocations for these areas, sufficient to accomplish each objective by the specified date.” Agency administrators (politically appointed department secretaries and commissioners) can establish their own regulatory budgets for their agencies as a way to constrain the total expenditures they impose on regulated entities and, more importantly, on American consumers. If done at the agency level, the administrator may determine the best way for her particular agency to carry out such a budget.

These budgets could be considered “pilot” projects and, over time, agencies could try different ways to budget their expenditures of social resources. There are multiple ways in which these budgets may be enacted, such as the “one-in, two-out” rule recently adopted by the Trump administration (where, for every new regulation, two older ones must be removed) or an overall social cost budget. This could be done for the agency overall, by program, or even by authorizing legislation. These tools could be developed entirely inside the agency with help from the Office of Management and Budget or by sharing plans for budgets and prioritization with the regulated

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public (asking for comment). The latter is illustrated by the Consumer Product Safety Commission's policy of sharing potential prioritization of annual rules with both the entire staff of the CPSC and the public for comment.

Over time and with experience, agencies could develop regulatory budgets as a matter of good governance and Congress, as it proceeds with its deliberations, could use the results to better inform its efforts to constrain the growth of the administrative state. It can insist on annual reports describing what appears to be working and what does not, and ultimately can establish budgets that square up with what it tasks agencies to do in authorizing legislation.

One immediate effect of such budgeting perhaps would be for agencies to focus on, as Adam Finkel has written, "Worst Things First." A secondary effect might ultimately be that bad regulations (those that don't accomplish much) don't crowd out compliance with good regulations.

The point is, as part of good management, agency leaders can start now under their own volition or simply under command from a presidential memo to properly budget their own resources and the ones they command from us. President Trump has already issued one order intended to improve regulation. More such efforts would be welcome. R

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Obama's Record-Setting 'Midnight'

BY SAM BATKINS AND IKE BRANNON

What could motivate the Obama administration to publish more than a year's worth of regulatory burdens in its last 48 days? Most analysts would credit this to "midnight regulation," the outgoing White House's attempt to issue rules it favors before leaving office, especially when the incoming administration

is from the opposing political party. Defenders of the Obama administration claim its midnight regulations were typical of the waning moments of any administration. On this they are not quite right; though previous outgoing administrations had similar tallies for the "midnight" period ranging from Election Day to the inauguration, Obama's administration still set a record for regulatory output in December and broke its own record for major regulations issued in a calendar year.

That uptick was just the beginning, however. In December, OIRA concluded review of 99 regulations, more than double its average monthly pace and more than in any December since 1993. What's more, comparing rules in 1993 and previous years to today is misleading because back then OIRA typically scrutinized all

Previous outgoing administrations have had similar "midnight" tallies, but Obama's administration set a record for regulatory output in December.

2016 in perspective /

Before the election, the Obama administration's rulemaking was not dissimilar to other final years of previous administrations. The Office of Information and Regulatory Affairs (OIRA), which is charged with reviewing and approving executive agency actions, discharged an average of 45 rulemakings per month during the last eight years. During the first 10 months of 2016 that average held constant, with 45 rules leaving OIRA per month.

Immediately after the election and the surprise defeat of Hillary Clinton, the rate of new rules ratcheted up a bit, with 57 in November. That isn't dramatically above the average, but it included some controversial actions, including new fracking rules from the Department of Interior and the renewable fuels standards for 2017 and 2018.

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regulations, not just rules deemed "significant" (meaning they would have an economic effect of \$100 million or more) or could be significant, as is the practice today.

Last December, there were several days of breakneck regulatory output: on December 2nd, OIRA approved nine regulations, including a \$12.3 billion direct final rule (which means there was no earlier proposal) that adds efficiency standards for central air conditioners. On December 16th, OIRA discharged nine additional regulations, including a \$630 million proposed rule to limit beryllium exposure. In all, the administration issued 19 economically significant regulations in December 2016 compared to just 11 the previous December.

The final days of the Obama administration produced more rules at the same frenzied pace. In just 12 working days in

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January, it published 65 regulations totaling \$13.5 billion in long-term costs—more than \$1 billion in regulatory burdens per day. Taken together, the Obama administration's regulators released \$157 billion in regulations in the last two months of its existence, with \$41 billion from final rules alone. The Obama administration imposed more regulatory costs post-election than it did in all of 2013.

Historical norms / Every White House rushes out last-minute regulations before departing; the only difference is the extent of this push. Figure 1 displays the aggregate number of regulations released and the amount of significant regulation in the midnight period.

The last three outgoing administrations are almost carbon copies of each other. The Obama administration put out slightly more last-minute regulations than did the Clinton administration, but the rush to regulate just before the White House changes political party is profound and independent of party.

The significant increase in regulation at the tail end of 2016 helped the Obama administration garner a second record for most major regulations in a term in office. The Clinton administration averaged roughly 71 major rules annually. That number dropped to 62 major regulations per annum during President George W. Bush's tenure. Although the tally is not yet complete, President Obama's White House averaged 86 major rules, a figure driven by 2010's then-record 100 major rules, which the administration went on to surpass in 2016 with 115 major rules. For comparison's sake, it is worth noting that total is more than double the number of major rules produced in 2002.

No midnight at all? / Over the final months of 2016, some—

the group Public Citizen, for one—have attempted to dispel the notion that administrations issue more regulations in their waning days or that the Obama administration did anything of the sort. To provide some relevant data on this debate, we contrast the regulatory activity in October 2012, the month before President Obama's reelection, with December 2016.

While career staffers, ostensibly independent of political forces, do the bulk of the work on any administration's regulatory agenda, the political actors control the output and timing of federal rules. These two months demonstrate how the political winds control the floodgates for federal rules. In October 2012, immediately preceding the election, OIRA approved a mere four regulations, and only one significant regulation that was from the Department of Education. No doubt, that helped the president avoid controversy just before Americans went to the polls. By December 2012, after President Obama was safely reelected, the administration released 34 rules, a pace approaching a "normal" month of regulation. Fast forward to December 2016, after

the unexpected election of Donald Trump, and regulators moved 99 rules and 19 significant measures through the process.

If policy and the wisdom of technical experts at agencies held sway, the regulatory output would have little correlation with the political cycle. A cursory observation of the data is all that is necessary to realize this is certainly not the case.

Rushed regulations / Some of the recent debate over midnight regulation centers around whether midnight rules are "rushed," reducing their quality. The data suggest that several rules went through the process in recent months in an unusually short period. During the last two months of the Obama administration, regulators issued nine interim final rules and two direct final rules, three of which were significant. The total cost of those rules eclipsed \$18 billion, including two expensive energy efficiency measures for air conditioners and pool pumps. None of these allowed for any prior comment period.

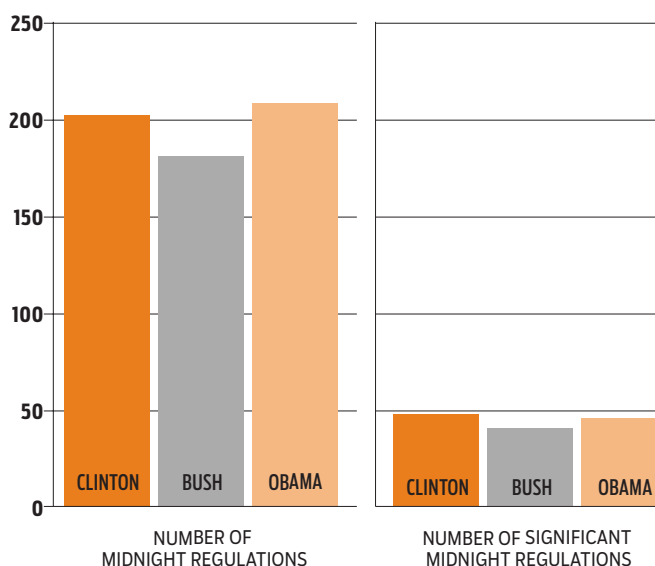
The average OIRA review period for these measures was just 39 days, which is roughly half the average review time in 2016. Such truncated review isn't unique to the Obama administration. The George W. Bush administration issued 20 interim final rules in its waning days, including five economically significant measures. The average OIRA review time for those rules was 37 days, compared to a 2008 average of 61 days.

The average review time for midnight rulemakings during the entire Obama era was 82 days, a reasonable period typical during other administrations that in no way suggests any "rush" through OIRA. There were, however, several rules that had been in the process for months, generating "outlier" review periods that lasted longer than 300 days. These lingering rulemakings

FIGURE 1:

MIDNIGHT REGULATIONS BY ADMINISTRATION

Number of midnight regulations and "significant" regulations under the last three presidents



NOTE: "Significant" regulations are regulations with an estimated impact of \$100 million or more.

drove up the average, as the median review time was 59 days.

Rules linger in regulatory purgatory for numerous reasons. Sometimes the delay owes to political machinations or an agency prioritizing other efforts elsewhere, or to waiting for new data or trying to figure out how to address an obvious deficiency. The confluence of these factors, combined with political exigencies, made it a historic time for midnight regulation.

Yet, the examples above demonstrate that for some rules, quick review times and direct final rules are necessary to implement the last vestiges of administration policy. On net, it's true the average length of time for completion of a midnight rule is little different than a non-midnight rule. But the sheer volume of regulation often masks the outliers, the direct and interim final rules that highlight the midnight period. That roughly a dozen rules during the Obama era were rushed without public comment should be enough to convince the public that midnight regulation is no myth and provide sufficient motivation for Congress to scrutinize and perhaps repeal these measures.

Nothing new under the sun / Four years ago in these pages, our article "No Midnight After this Election" highlighted the lack of regulatory output following the 2012 election. We explained that lack indicated the Obama administration's confidence in reelection and policy continuation. In contrast, the surprise election of Trump—a candidate from the opposition political party who promised to undo much of the Obama agenda—provided more than enough motivation for the outgoing administration to double its average monthly output of rules.

We find it troubling that some commentators explicitly dismissed the Obama administration's rushed regulatory agenda in the final days. Even a cursory examination of the data show that this was precisely what was happening, just as previous administrations had done the same. It's troubling to think why this was disputed—and why the media largely chose to ignore it.

Improving Regulatory Impact Analysis

BY KEITH B. BELTON

Every U.S. president in modern history has required that regulators conduct a cost-benefit analysis as part of the promulgation of "economically significant" regulations. Major new regulatory proposals by executive branch agencies must be supported by a Regulatory Impact Analysis (RIA), a requirement introduced in President Ronald Reagan's Executive Order 12291. Each RIA's content and methodology are reviewed by the Office of Management and Budget (OMB) to ensure quality. According to the OMB, the goals of an RIA are "(1) to establish whether federal regulation is necessary and justified to achieve a social goal and (2) to clarify how to design regulations in the most efficient, least burdensome, and most cost-effective manner."

From both a theoretical and practical perspective, an RIA is a valuable tool because it helps to improve regulation. For example, the Environmental Protection Agency's phase-out of lead in gasoline—a significant public health success story—was informed strongly by cost-benefit analysis.

However, not all regulatory agencies produce RIAs as part of major rulemakings. So-called "independent" agencies (e.g., the Federal Reserve, Federal Communications Commission, and Securities and Exchange Commission) are not subject to EO 12291. Those agencies are responsible for approximately 20% of all major rules. Even for agencies covered by the order, RIAs have only a limited effect on rulemaking. The analyses are rarely revisited to assess their accuracy after a regulation goes into effect. A handful of academic studies show that agencies can significantly under- or overestimate actual costs and benefits. The biggest problem with the RIA process, however, relates to something fundamental: objectivity. A regulatory agency is not unbiased. It has every incentive to develop

RIAs that support its preferred regulatory approach. And because regulatory agencies are designed to regulate, RIAs seldom (if ever) conclude that federal regulation is not needed.

Fortunately, the OMB can—and often does—hold agencies accountable for deficient RIAs. But the OMB is not the optimal watchdog because it reports to the president and therefore is subject to political decisions that are not always consistent with objective analysis of regulatory effects. In addition, the OMB does not opine publicly on the quality of agency analysis.

Over the years, observers of this process have suggested many ways to improve the quality of RIAs. These suggestions fall into a few general categories: requiring greater or earlier OMB review of agency analysis, requiring a more searching judicial review of agency analysis, or establishing a new federal agency to conduct RIAs on behalf of regulatory agencies.

Each of these proposed solutions has its merits. But each also has its critics, and their arguments (e.g., delays in achieving public protections, higher cost to the government) have been sufficient to prevent reform. There is an additional argument that lies just below the surface: reform would change the balance of power among the three branches of government, and no branch will support a lessening of its influence.

A proposal / How, then, can we improve the objectivity of regulatory analysis? We can start by considering the source of the problem. Federal regulatory agencies have

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a monopoly position on the production of RIAs. There is no competition and—just like a market where a single producer controls supply—the result is an insufficient quantity of insufficient quality at too high a price.

To inject needed competition into the RIA market, the government could leverage external expertise on cost–benefit analysis. Specifically, consider the following proposal: During the public comment period on a proposed major rule, if an agency receives a public comment in the form of an RIA for the proposed rule, then it must submit that public comment to the OMB. The OMB would then determine whether the submitted RIA comports with its established guidelines on regulatory analysis (as outlined in OMB Circular A-4, for instance) and, if not, provide an explanation for why the RIA falls short. The OMB must then send its determination back to the agency, which must include it in the rulemaking record as part of the agency's final action.

Although this proposal can be described in just four steps (the public submits an RIA, the regulatory agency submits the public comment to the OMB, the OMB makes a determination, and the regulatory agency includes this determination in the rulemaking record), some points are important to stress:

- The agency should not be allowed to evade its requirement to share such a public comment with the OMB. It must send the comment to the OMB within a prescribed period of time (say, within two weeks of receipt).
- The OMB should not evade its responsibility to make a yes/no determination or opine why a submitted RIA does not comport with its established guidelines. A terse and indecipherable explanation from the OMB would do little to foster improved quality.
- The threat of judicial scrutiny is critical. If this policy were established via presidential executive order, it would not allow a private party to sue a

recalcitrant agency for failing to comply. Therefore, the policy is best established through an act of Congress.

Such a policy would be considered a “nudge” in the sense used by Richard Thaler and Cass Sunstein. As Sunstein wrote in his 2013 book *Simpler*: “An analysis of costs and benefits is an important way to nudge regulators. Indeed, requiring such analysis is a way of creating a good choice architecture for those who make the rules.”

Getting the incentives right / One way to evaluate this proposal is to consider the incentives of such a requirement on each

To inject needed competition into the RIA market, the government could leverage external expertise on cost–benefit analysis.

of the major actors in this drama: the regulatory agency, the OMB, the courts, and the public.

Consider a regulatory agency that is not required to conduct an RIA for a proposed major rule. The threat of a publicly submitted RIA is very concerning. Perhaps the proposed rule, which the agency has taken years to develop, does not fare well when subject to an objective RIA. In such a case, the agency risks losing in court because its failure to undertake a cost–benefit analysis is more likely to be seen as arbitrary and capricious by a judge who examines the rulemaking record, including the positive OMB determination on a publicly submitted RIA. This possibility—that a court may overturn a rule not supported by objective analysis—is likely to increase the odds that a non-covered regulatory agency will conduct its own high-quality RIA.

An agency covered by the RIA requirement already must develop its own analysis, but it will also be concerned. Should the OMB make a negative determination on a publicly submitted RIA that mirrors closely the agency RIA, then the agency will have

a strong incentive to address the deficiency in its own RIA before it issues a final rule. Alternatively, should the OMB issue a positive determination on a submitted RIA that calls into question the proposed rule, the agency will have a strong incentive to alter its proposed rule as it crafts a final rule.

Now consider the role of the OMB. Its economists have been evaluating the quality of agency RIAs for more than 35 years. They know how to do this and they can quickly determine whether a publicly submitted RIA comports with established guidelines. (An experienced OMB economist or desk officer can spot a poor-quality RIA very quickly.) But let's consider a situation where the public

submits an RIA that mirrors an agency RIA except in just one aspect, and that aspect represents a vast improvement in quality over the agency RIA. No matter the OMB determination (positive

or negative) on the quality of the original RIA, the OMB will be signaling to the agency to improve its own RIA. An agency would be foolish to ignore this signal as it works on a final rule. So even though the OMB will be given a new task, it will also be given additional power—not a bad tradeoff from an OMB perspective.

The courts should also benefit. Judges are seldom trained as economists versed in the intricacies of cost–benefit analysis. They are ill-equipped to review an RIA in the rulemaking record to determine if an agency acted in an “arbitrary or capricious” manner. But judges are very good at determining whether an agency followed procedures required by statute. A judge is likely to give weight to an OMB determination, especially if it calls into question the merits of an agency's final rule.

Last but not least, consider the public. It is not unusual for public comments to criticize an agency RIA. With the proposed law in place, the public can make this point with greater emphasis because it might have concurrence from the OMB. But the public might also receive a rebuke from

the OMB. This possibility, along with the cost of developing an RIA, will temper would-be public commenters such that the number of submitted RIAs is likely to be relatively low.

Consider the analogous case of the Information Quality Act of 2001. That legislation allows the public to submit a correction request to an agency for disseminating information that does not meet certain quality standards. Critics thought agencies would be flooded with requests for correction; in fact, agencies have received very few such requests.

By examining the incentives the proposed law creates, one concludes that the aggregate effect is to improve upon the quality and objectivity of the RIA. The proposal also avoids problems that plague other proposals to improve cost-benefit analysis. For instance, there is no significant cost imposed on the federal government; the public will bear the cost of conducting an RIA and will do so only if it

is in the interest of the commenter. The law will not delay the time it takes for an agency to issue a major rule; the same timeframe will hold. The OMB is not being required to review the rules or RIAs from non-covered agencies, which were created to have some degree of independence from the president. Nor is the judiciary asked to delve into the minutia of a cost-benefit analysis. The balance of power between the branches of government will not shift.

It is possible, of course, that this proposal creates unique concerns. For example, estimates of costs and benefits for a major rule are often highly uncertain. In such cases, the agency RIA and a publicly submitted RIA may differ in their conclusions even though both conform to established quality guidelines. But is this really a major concern? Such a situation makes explicit the uncertainty in an analysis that would otherwise go unnoticed. Uncertainty can be frustrating to regulators seeking a clear choice among

regulatory options, but regulators ought to know the risk of making a bad choice. The other actors in our drama (Congress, judges, the public) should also know the certainty under which regulatory decisions are made.

Although this proposal is rather modest in terms of cost, it should have a relatively positive effect on the behavior of regulatory agencies responsible for considering the expected consequences of major rules. In other words, this proposal would pass a cost-benefit test. R

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