

A White House office called OIRA polices regulations by other agencies in the executive branch. OIRA essentially performs the role of a traditional regulator - it issues regulations that bind other agencies, and agencies need OIRA approval before they can issue their own regulations. Essentially, then OIRA regulates agencies like EPA the same way that those agencies regulate industry. Issuing regulations and permits is a very traditional form of regulation, often called command and control.

There are a number of well-known criticisms of command-and-control regulation for being "one size fits all," too rigid, unable to take advantage of information held by the regulated entities, and economically inefficient. One might predict that OIRA's own regulations would suffer from similar flaws. To the extent that OIRA is trying to overcome these problems in other agencies, it might do well to reexamine its own activities applying the same standards.

OIRA pushes agencies toward greater consideration of the costs of their mandates and toward consideration of alternatives to command and control. But maybe OIRA should turn some of its scrutiny inward to see how well it lives up to its own standards.

[Executive Order 13563](#) imposes these requirements on regulations by other agencies:

[A proposed regulation] must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.

The Order also states that regulations should "to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt"; and "assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public."

How do OIRA's own regulations stack up against these requirements? Not very well:

**Use of Cost-Benefit Analysis.** So far as I am aware, OIRA has not published an estimate of the total cost of complying with its cost-benefit requirements, let alone performed a cost-benefit analysis of its mandates. The cost would include: (1) direct costs such as additional agency staff or diversion of existing staff from other projects, (2) delay in issuing regulations

that are ultimately approved, resulting in additional environmental harm, health risks, or other harm, (3) increased compliance costs and regulatory uncertainty for industry in some situations, (4) inability of agencies to address other pressing needs because more resources must be devoted to each regulation. These costs may be especially difficult to justify where the ultimate regulatory decision cannot be based on cost-benefit analysis under the governing statute. In any event, the empirical evidence so far raises some doubts about whether use of CBA actually works effectively to improve regulatory economics.

**Use of Performance Standards.** CBA requirements are laid out in considerable detail, rather than simply setting a standard of economic rationality and leaving agencies flexibility about how to reach it. For example, the regulations do not allow the use of declining discount rates, which many economists now favor.

**Alternatives to Regulatory Mandates.** OIRA has not considered the use of possible incentives for agencies rather than regulatory mandates. An obvious possibility would be for OMB to consider agency's efforts to avoid excessive compliance costs when reviewing agency budgets. In particular, agencies that repeal unnecessary or unduly burdensome regulations might be rewarded with some percentage of the savings in the form of budget increases. OIRA also does not seem to have considered the alternative of simply providing information to agencies, or of having agencies themselves use alternatives to OIRA review such as peer review of regulatory impact analysis by economists. Finally, OIRA hasn't considered the possibility of "nudging" agencies rather than giving them order.

Overall, OIRA (and the executive orders that govern it) seems to reflect a very old-fashioned view of how to achieve policy outcomes (in this case, improving the economics of regulation). Maybe it's time for some new thinking.