

Deleting regulations

Of Sunstein and sunsets

Many barriers impede regulatory reform. The poor quality of the laws Congress produces is among the biggest

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CHEERS greeted Barack Obama's hiring of Cass Sunstein away from the University of Chicago. Mr Sunstein, a lawyer, now head of the Office of Information and Regulatory Affairs, is in charge of lifting the heavy hand of regulation from America's economy. Known for his clever economics, Mr Sunstein favours a "libertarian paternalism"; policies that nudge, but do not force, people to do the right things. For example, making people opt out instead of opting in to pension plans makes many more sign up, to their benefit. And Mr Sunstein has been involved in redesigning dietary recommendations and fuel-efficiency stickers for cars, making formerly confusing information more useful.



The busy nudgemeister

Mr Sunstein is now in charge of overseeing a year-old executive order from Mr Obama telling every agency to slim its rule book. Mr Sunstein says every one has complied, with 580 proposals received from the departments under his purview.

(Independent agencies like the Securities and Exchange Commission are not among them.) And he says real savings are on the way. Lifting a requirement for states to require pollution vapour-recovery systems will save \$400m in five years. Making it easier for doctors and hospitals to participate in the Medicare programme for the elderly will save \$5 billion. He adds that agencies have responded not grudgingly (the old stereotype of bureaucrats loth to surrender cash or power), but eagerly.

But the Obama administration has added to the rule book at the same time as it is trimming. And many of the rules are big: 194 of them, each with an economic impact (not necessarily a net cost) of \$100m or more, have been published in the Federal Register. In George Bush's first three years, 141 hit the books. Even if most have more benefits than costs, as the agencies' economists calculate, the scope of regulation is not shrinking. The overall cost of regulation is unknown, and measurement controversial. One

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study for the Small Business Administration found that regulation cost \$1.75 trillion a year in 2008, though many object to the analysis. It relies on a methodology, invented at the World Bank, which one of the bank's researchers says was misused, and Mr Sunstein dismisses it as "an urban myth".

Meanwhile, the executive agencies are accused of minimising costs by counting only hours spent on paperwork or money spent on kit to comply with regulation. The real costs may be found in the hard-to-calculate perversion of behaviour that over-regulation causes. At the same time, the benefits tallied up by regulators may be overvalued (see [article](#)). The agencies calculate their own numbers, using their own methodologies. But what no one doubts is that compliance with the ever-expanding rule book is wearisome and hard.

Furthermore, the politics of removing regulations is harrowing. Each removal must go through the same cumbersome process it took to put the regulation in place: comment periods, internal reviews and constant behind-the-scenes lobbying. Ironically, regulated industries may actually not want regulations removed. They have sunk costs into compliance, and do not want those costs taken away to the benefit of upstart competitors.

Many proposals are floated to deal with this last problem. One, supported by the Republican candidate Mitt Romney, is to remove one regulation for each new one that is proposed. A second idea is to create a truly independent scorer for regulatory costs and benefits, modelled on the widely respected Congressional Budget Office. A third is to create a board of outside grandees to help break political deadlocks, like the Base Realignment and Closure commission, which was able to prod Congress to shut down military bases. And yet another is creating a full-time advocate for regulatory rollback: one state, Kansas, has created an "Office of the Repealer", which aggregates complaints and suggests repeals to the governor and legislature. Lastly, automatic "sunsets" of laws have their fans, though Congress could mindlessly reauthorise laws gathered up in omnibus bills (and a bitterly divided Congress might allow good laws to lapse).

Finally, one bad idea is the REINS bill. Passed by the House, it would involve Congress more heavily in rule-making. If there is a body worse than the executive agencies at this kind of thing, it is Congress. A 1999 study by the OECD found that poorly written laws, not subsequent rule-writing, were at the heart of America's regulatory woes. (No one has been foolish enough to suggest that Congress has become wiser since then.) Jim Cooper, a Democratic House member from Tennessee, says of his colleagues: "People vote on things they have not read, do not have the time to read, and cannot read." He further despairs of the power of special interests to bend Congress's will: "There is a pimento lobby," he says of those who fight for the interests of those who grow the small red peppers served inside olives. "You do not want to cross the pimento people." In such an environment, getting things undone is at least as hard as getting them done, and perhaps harder still.

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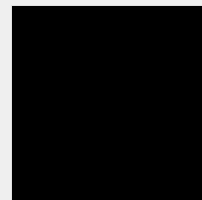
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