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State and Federal Regulatory Reform: A Comparative Analysis

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Executive Summary

Like the Federal government, many of the states have become conscious of the burdens, as well as the benefits, of government regulations. This paper provides a comprehensive assessment of state efforts to eliminate or change burdensome or foolish regulations and to use economic analysis to produce more sensible results. While the approaches differ widely and no generalizations are possible, it is clear that the results have been mixed at best. A number of states claim that improvements in the regulatory process have brought about more effective and less costly regulations, but the analytical support for such claims is often weak.

More than half the states have undertaken initiatives of some kind to improve regulation. Nearly one-third of the states, for example, require a review of all existing regulations. Some states have adopted various types of oversight mechanisms to ensure state agencies comply with the requirements for review and, in some cases, for cost-benefit analysis. However, the effectiveness of this oversight and enforcement in the day-to-day world of rulemaking is often doubtful. As in the case of the Federal government, state agencies have devised ways to avoid doing what they do not want to do. In Illinois, for example, a statute requires agencies to review all rules every five years, but the agencies have not completed a review in more than a decade.

To supplement information provided by the National Association on Administrative Rules Review the author researched efforts in all fifty states, and chose to conduct a survey of the twenty states with the most comprehensive ongoing reform efforts. The paper contains a full-scale account of these activities and an assessment of results achieved in four states with particularly ambitious programs of regulatory reform – California, New York, Florida, and Virginia.

In these four states, as in other states and in the Federal government, the pressures of politics often obstruct change to specific regulations to reduce the burden on the economy. Also like the Federal government, there is a widespread distrust of the use of economic analysis to improve regulation, as many decision makers who are suspicious of reform fear that such analysis may be misused.

In general, the review of state reform efforts reveals that efforts are most effective when there is a strong, well-funded, central oversight mechanism with active political support, and when review requirements are clear and provide agencies with specific guidelines. Governors and legislatures in several states have sought to establish such a structure, but most states have not yet recognized the importance of oversight and clear statutory guidelines to regulatory reform. Until significant resources and political support are devoted to reform efforts, real-world progress in regulatory reform is not likely to be great.

STATE AND FEDERAL REGULATORY REFORM: A COMPARATIVE ANALYSIS

*ROBERT W. HAHN**

Abstract

This paper provides a comprehensive assessment of state efforts to eliminate or change burdensome regulations and to use economic analysis to produce more sensible results. More than half the states have undertaken initiatives of some kind to improve regulation, including oversight mechanisms and the use of cost-benefit analysis. However, the effectiveness of oversight and enforcement of regulatory reform initiatives in the day-to-day world of rule making is often doubtful. As in the case of the federal government, state agencies have devised ways to avoid doing what they do not want to do. Generally, regulatory reform initiatives are most effective when they have active political support, a strong, well-funded oversight mechanism, and states provide clear, specific guidelines to implementing agencies. While several states have sought to establish such a structure, most states have not. Until significant resources and political support are devoted to reform efforts, real-world progress in regulatory reform is not likely to be great.

I. Introduction

In recent years, many states have recognized that overly burdensome regulations can adversely impact business and citizens.[1] In response to problems with excessive regulation, some states have initiated administrative reforms

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[1] There is no widely accepted definition of regulation. The Office of Management and Budget (OMB) defines regulation as a statement by an agency to implement, interpret, or prescribe law or policy or to describe the procedure or practice of an agency. See OMB, Report to Congress on the Costs and Benefits of Federal Regulation 24 (1997). The federal government and the states use similar definitions to establish requirements for the analysis and review of administrative rule making. Therefore, although regulations are generally perceived as agency rules that constrain the behavior of individuals or business, the legal definition of regulation also includes internal agency management. In this paper, the terms ''regulation'' and ''rule'' are used interchangeably.

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that expand the use of economic analysis to assess the impact of existing and proposed regulations.[2] While the economics literature deals extensively with the use of economic analysis as a mechanism to inform federal regulatory decision making, the literature does not emphasize comparable efforts at the state level. This is a serious oversight because states are often responsible for the implementation of federal regulation and pass many regulations based on their own laws.

This paper provides the first critical analysis of comprehensive reform initiatives at the state level.[3] It makes five important contributions to the existing literature. First, it reviews the evolution of comprehensive state and federal regulatory reform initiatives. Second, it examines several state reform efforts in detail, highlighting important characteristics of these efforts. Third, it evaluates the current application of economic analysis in federal and state regulatory decision making processes. Fourth, it analyzes the political forces shaping regulatory reform initiatives. Fifth, it offers some observations on the effectiveness of these reforms.

State governments use many different mechanisms to encourage agencies to identify rules that the agencies should repeal or modify and consequently reduce the regulatory burden. Nearly one-third of the states has initiated comprehensive reviews of all existing regulations. Some of these states conduct a page-by-page review of all regulations, similar to the federal government. Some states also have modified the administrative rule-making process to require analysis of the impacts of new regulatory activity and often strongly encourage the use of benefit-cost analysis and cost-effectiveness analysis. Over half of the states require agencies to assess the economic impact of all proposed rules. A legislative, executive, or independent entity reviews proposed rules in most states, and some of these entities must review the agency's analyses of the potential economic impacts. This paper explores the efficacy of these and other mechanisms in an effort to guide the regulatory reform efforts of decision makers.

The effectiveness of regulatory reform mechanisms varies from state to state, depending on the nature of statutory guidelines and requirements. If the statutory mandate is not clear, agencies may only superficially analyze the costs and benefits of regulations or may manipulate analyses to achieve political ends. To increase agency compliance, states have established over-

[2] Proposed regulations are new regulations or modifications of existing regulations.

[3] Some analysts have evaluated various attempts to reform specific types of state regulation, but no one has systematically examined comprehensive reforms. For example, Kristin Loerzel, State Regulatory Reform Initiatives (1996), and Alexander Volokh, Lynn Scarlett, & Scott Bush, Race to the Top: The Innovative Face of State Environmental Management (Policy Study No. 239, 1998), highlight recent attempts designed to reform state environmental regulation. Richard Whisnant & Diane DeWitt Cherry, 31 Wake Forest L. Rev. 693 (1996), reviews the use of economic analysis in selected states.

sight processes and increased the specificity of statutory requirements. A state may, for example, require agencies to balance costs and benefits. The impact of oversight processes and more stringent requirements varies greatly and is difficult to determine because funding for such improvements is often limited relative to the size of the task and because the requirements are generally new and relatively untested. Some states claim their regulations are more effective and less costly as a result of improvements to the regulatory process, but the analytical support for such claims is generally weak. Some states, however, appear to have made some progress.

Regulatory review activities at the federal and state level are examined in Section II. Section III describes the federal regulatory review process and analyzes examples of state-level regulatory review. Finally, Section IV summarizes the major conclusions of this study.

II. An Overview of Federal and State Regulatory Reform

This section examines federal statutes, state statutes, and executive orders that require analysis and/or review of rule-making actions by executive agencies. The purpose is to introduce the reader to the federal regulatory review process and provide an overview of comprehensive state regulatory reform efforts. Generally, comprehensive reform efforts introduce analysis and review requirements that apply to several regulatory agencies. Comprehensive reform efforts do not include reform efforts to overhaul specific agencies or deregulate specific industries.

No comprehensive source of state regulatory reform initiatives exists. I therefore interviewed state officials in all states, acquired and analyzed available state information, searched state web pages, and used survey data. State information includes administrative procedures acts, executive orders, and reports published by various agencies and legislative committees.[4] The primary source of survey data was the National Association on Administrative Rules Review (NAARR), which compiled information provided by state officials on current requirements and procedures for review of administrative rules.[5] In addition, I conducted a survey of 20 states for the purpose

[4] For an overview of state initiatives, see New York Governor's Office of Regulatory Reform, A Review of State Regulatory Initiatives (1995).

[5] See National Association on Administrative Rules Review, 1996–97 Administrative Rules Review Directory and Survey (1996). The survey was sent in May 1996 to 126 individuals across the 50 states and territories involved in some aspect of the rules review process. The NAARR received 60 usable responses, representing 49 states and Puerto Rico. Ten states provided multiple survey submissions, but in most cases only a single individual responded to the survey. Although most of the answers provided by individuals from the same state were identical, there were some discrepancies that the NAARR resolved by communicating directly with the respondents. The NAARR made no efforts, however, to validate the responses from states with individual respondents beyond calling the respondents for clarification of particular answers.

TABLE 1

SUMMARY OF ADMINISTRATIVE RULES REVIEW SURVEY RESULTS: ANALYTICAL REQUIREMENTS

	NUMBER OF STATES EMPLOYING:		
	Benefit-Cost Analysis	Risk Assessment	Economic Impact Analysis
Application of review requirements:			
All rules	10	4	27
Selected rules	7	4	10
Rules with costs above dollar threshold	3	1	7
Rules from specific agencies	2	4	5
At the request of review entity	11	6	17
None of the above	28	37	9
Responsibility for requirements:			
Promulgating agency	28	12	36
Executive entity	5	3	9
Legislative entity	3	2	7
Reviewing entity	1	2	3
Other	2	2	1
None of the above	20	36	12

SOURCE.—National Association on Administrative Rules Review, 1996–97 Administrative Rules Review Directory and Survey (1996).

NOTE.—Columns do not sum to 50 because some states marked more than one answer in each; 49 states were surveyed.

of this analysis. The results of the NAARR survey are presented independent of the author's survey because of differences in the scope and methodology of the two surveys.

The NAARR survey, which includes information from all states except Rhode Island, shows that state regulatory reform initiatives follow some general trends. The survey also shows that the states employ a variety of mechanisms to achieve reform. The results of the survey are summarized in Tables 1 and 2. Table 1 shows that 27 states responded that they require economic impact analysis for all rules. Table 2 shows that 32 states report that agencies consider the adequate completion of economic and other technical analyses in the regulation process. In most states the promulgating agency is primarily responsible for conducting these analyses. Three-quarters of the states identified at least one government entity—legislative, independent, attorney general, or other—responsible for overseeing proposed rule making.

While states generally require agencies to analyze the economic impact of rules, most states shy away from more stringent requirements, such as benefit-cost analysis and risk assessment. According to Table 1, 10 states

TABLE 2

SUMMARY OF ADMINISTRATIVE RULES REVIEW SURVEY RESULTS: OVERSIGHT PROCEDURES

	Number of States Employing:		
	Proposed Rules	Existing Rules	Veto Power
Oversight responsibility:			
Legislative committee	27	17	12
Independent review agency	8	2	6
Attorney general	13	5	9
Other	21	12	28
None of the above	13	26	10
Oversight considerations:			
Statutory authority	44		
Intent of legislature	40		
Clear unambiguous terms	35		
Reasonably necessary to fulfill statutory mandate	33		
Promulgated according to proper procedures	40		
Conflict with or duplicate existing statutes or rules	39		
Balancing of costs and benefits	23		
Adequate completion of analyses	32		

SOURCE.—National Association on Administrative Rules Review, 1996–97 Administrative Rules Review Directory and Survey (1996).

NOTE.—Columns do not sum to 50 because some states marked more than one answer in each category; 49 states were surveyed.

claimed to require benefit-cost analysis of all rules, and seven states require benefit-cost analysis of selected rules. Twenty-eight states did not use benefit-cost analysis. Only four states require risk assessment for all rules, and another four states require risk assessment for selected rules. Table 2 shows that states also seem hesitant to establish comprehensive oversight processes. While most states have some form of oversight entity, these entities are not typically responsible for review of the agency's economic analysis. Instead, the oversight entity generally focuses on issues related to the legality of the rule, such as statutory authority and adherence to proper procedures.

The NAARR survey data are sometimes misleading because they credit states for initiating potentially ineffective reform efforts. In Connecticut, for example, agencies use benefit-cost analysis to develop regulations without considering private-sector impacts, an egregious error because of the potentially large neglected costs.[6] Connecticut also requires agencies to consider modification of rules to reduce the adverse impact on small businesses but

[6] Conn. Gen. Stat. §§ 4-168, 4-168a (1999).

does not require agencies to quantify that burden. Finally, Connecticut does not require agencies to quantify or even identify the benefits of a rule. So, although the NAARR survey reports that Connecticut uses benefit-cost analysis, in practice Connecticut's efforts fall far short of widely accepted standards for such analysis. The NAARR survey is still useful, however, because it documents state-level requirements for review of existing regulations, analysis of proposed rule makings, and oversight of agency efforts.[7] Conclusions about state regulatory reform programs could not be drawn solely from the survey data, however, so the author conducted a more detailed survey of state efforts.

Analysis and Review of Proposed Regulation

Many states, as well as the federal government, require the analysis of proposed regulations, although they require varying amounts of detail. Table 3 presents the results of my survey of 20 states, chosen because of their significant statutory requirements for analysis and review of proposed regulation.[8] The table lists the various provisions mandated by statute or executive order and the different oversight mechanisms employed by the states.[9]

States consider and emphasize different regulatory reform initiatives. Some states are very specific about the content of analyses, while others are fairly open-ended. Many states have mechanisms to review the overall rule package, but very few seem to have an entity that conducts a review of the actual content of an agency's analysis. In almost all states, agencies are primarily responsible for preparation of the analysis. Nearly all states require some analysis of the rule's fiscal impact on state government and economic impact on the private sector and require agencies to assess the impact of the rule on small businesses and local governments. Less frequently, states require agencies to assess the impact of the rule on employment and on record-keeping and reporting responsibilities.

Some states require agencies to analyze the impact of all proposed regulations. The federal government, on the other hand, requires agencies to an-

[7] The NAARR survey may have overlooked some programs, but the major programs have been identified.

[8] The 20 states in the survey were chosen because significant reform efforts are underway in all of these states, whereas investigation of the other 30 states revealed little emphasis on regulatory reform. The author does not contend that his survey is exhaustive, however, as it was conducted without the methodological rigor necessary to make such an assertion. The author is confident, however, that he identified the major regulatory reform programs and has characterized them accurately.

[9] For more detailed information on individual states, see Robert W. Hahn, State and Federal Regulatory Reform: A Comparative Analysis (Working Paper No. 98-3, AEI-Brookings Joint Ctr. for Reg. Stud. 1998).

TABLE 3

SUMMARY OF STATE INITIATIVES FOR REVIEW OF PROPOSED REGULATIONS

	All Rules	Selected Rules
Statutory requirements (20 states surveyed):[a]		
Assess fiscal impact on state government	12	5
Assess economic impact on the private sector	11	8
Assess impact on small businesses	12	3
Assess fiscal impact on local government	11	3
Assess impact on state employment	5	0
Assess impact on paperwork burden[b]	5	2
Analyze alternatives[c]	5	3
Balance costs and benefits[d]	2	2
Ensure rules less strict than federal standards	1	3
Executive order requirements (five states surveyed):[e]		
Assess impact on state employment	1	0
Assess economic impact on the private sector	1	0
Analyze alternatives	4	1
Balance costs and benefits	3	0
Ensure rules less strict than federal standards	2	0
Oversight mechanisms (20 states surveyed):		
Executive branch guidelines	4	0
Standard form for presentation of analysis	3	0
Statutory review by independent entity	7	3
Executive order review by independent entity[f,g]	3	1

SOURCES.—State statutes, executive orders, government reports, and interviews with state officials. See Robert W. Hahn, State and Federal Regulatory Reform: A Comparative Analysis (Working Paper No. 98-3, AEI-Brookings Joint Ctr. for Reg. Stud. 1998).

NOTE.—Values given are number of states of those surveyed.

[a] The states surveyed are Arizona, California, Colorado, Connecticut, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Nebraska, New Jersey, New York, North Carolina, Pennsylvania, Virginia, and Washington.

[b] The ''paperwork burden'' consists primarily of recordkeeping and reporting requirements.

[c] States are included in this category if they require the agency to analyze alternatives or to choose the ''least burdensome'' or ''least onerous'' alternative to a regulation, including nonregulatory alternatives such as economic incentives.

[d] A balancing test implies that the statute required the benefits to ''justify,'' ''outweigh,'' or ''exceed'' the costs. The three words imply different levels of stringency for cost-benefit tests, where ''exceed'' is the most stringent and ''justify'' is the least stringent. States that require agencies to ''consider'' or ''assess'' costs and benefits are not included in this category.

[e] Five states out of the 20 surveyed issued executive orders: Massachusetts, Michigan, New York, Pennsylvania, and Virginia.

[f] Five states surveyed.

[g] Two of the five states that issued executive orders created a separate Office of Regulatory Reform to review agency analyses, two rely on internal governmental offices to review analyses, and one did not establish an oversight mechanism.

alyze rules likely to have a significant economic impact, defined as rules that will cost the economy over $100 million. Only 4 percent of the rules analyzed by the federal government are designated ''significant'' because most federal rules pertain to daily operations, such as quarantine orders by the Department of Agriculture or government grant announcements.[10] Many states do not distinguish between significant and insignificant rules. States should not examine insignificant rules beyond supplying a concise statement of the objectives and a list of the likely benefits and costs, unless it is possible to improve such rules at low cost. More detailed analysis may consume resources that agencies could spend reviewing rules with larger economic impacts.

An agency may comply with the requirement to estimate the costs and benefits of a proposed rule, but nevertheless choose a policy that is less cost-effective or efficient than alternatives. States employ different mechanisms to address this problem. Eight states require agencies to analyze alternatives. Some of these states require an agency to review various policy options, choose the ''least burdensome'' alternative, and explain its decision if it does not choose the least burdensome alternative. Four states require agencies to balance the costs and benefits of a rule. Finally, four states require agencies to justify state standards that are more stringent than federal requirements to discourage agencies from promulgating more stringent rules that may not pass a benefit-cost test.

Furthermore, a mandate to analyze proposed regulations does not ensure that agencies will comply. Vague statutory language and a lack of oversight often allow agencies to comply only partially with requirements or not comply at all. A study in Virginia, for example, found that agencies complied with review requirements less than 20 percent of the time before recent reforms.[11] In addition, although 32 states claimed in the survey to consider whether the agency adequately completed an analysis when they review proposed rules, only 10 states established an independent entity to review the content of the analyses.

Most states have not attempted to increase compliance, but those that are trying to correct the problem employ a number of methods. These include the establishment of oversight processes, the use of executive orders to strengthen legislation, and the provision of specific guidelines for analysis. The extent to which states use each of these methods varies. The use of

[10] OMB, More Benefits, Fewer Burdens: Creating A Regulatory System That Works for the American People, A Report to the President on the Third Anniversary of Executive Order 12866, at A-1 (1996).

[11] Joint Legislative Audit and Review Committee, Review of Virginia's Administrative Process Act to the Governor and the General Assembly of Virginia (1993).

oversight processes is perhaps the best way to ensure compliance with review requirements. A few states have an independent oversight committee to review agency analyses, but most review analyses internally. Some states have an entity that ensures rules are consistent with statutory mandates, although these entities do not critique the methodology or content of analyses. Other states create oversight entities with the authority to delay the rule-making process if agency analyses are unsatisfactory, although none of them have the power to officially veto a rule. In short, most states need to develop more effective means through which to hold agencies accountable for their analyses.

More stringent statutory language or formal guidelines can also increase agency compliance. Five states out of the 20 in the survey use executive orders to strengthen statutory review requirements, while the rest rely solely on legislative efforts. Three of these five states require states to balance the benefits and costs, and all of the states require agencies to analyze alternatives to the proposed regulation. Two states require agencies to ensure the state regulations are less stringent than federal regulations. The executive orders also contain oversight provisions. Two of the five states create an Office of Regulatory Reform to review agency analyses. Two states give internal agencies the authority to review analyses, while one state does not provide an oversight mechanism. In addition, some states provide agencies with guidelines for analysis and/or standard forms for presentation of the analysis. California, New York, and Virginia provide a handbook with detailed instructions for analysis. California, Michigan, and Pennsylvania provide standard forms to summarize analyses. It appears that governors tend to use executive orders to supplement statutory requirements. Executive orders typically require analysis of alternatives or review of agency analyses, which are often not included in statutory review provisions.

Review of Existing Regulations

State- and federal-level review of existing regulation is a relatively recent addition to the regulatory process. At the federal level, President Bush and President Clinton established regulatory review requirements in 1992 and 1995, respectively. Similarly, at the state level only five states out of the 20 in the survey required review of existing regulation before 1994. Thirteen states required review after 1994. The other two states do not require review. States use a variety of approaches to review existing regulations, some of which differ significantly from federal requirements.[12] Although

[12] See Hahn, *supra* note 9, for additional information on individual states. It includes information on administrative procedures, entities primarily responsible for coordination, and the measurable results of the review.

some of these approaches seem comprehensive, the actual impact of state requirements is not clear because they are relatively untested and difficult to enforce and because most states do not consistently or accurately document the impact of the changes on the regulatory process.

States generally require agencies to identify regulations the agency should modify or repeal, similar to the federal government. The federal government requires a one-time review by executive order, while 10 states require a one-time review and nine states require periodic reviews.[13] Twelve states use executive orders and seven states rely on legislation to require reviews.[14] All states with legislative mandates require a periodic review, but most executive orders require a one-time review. Michigan, New Jersey, and Virginia, however, require periodic review by executive order. As is clear from these examples, states use an array of tools to review existing regulations.

States do not always comply with requirements for review of existing regulations. An Illinois statute, for example, requires agencies to review all rules at least every 5 years. Agencies have not, however, completed a review in over a decade. The legislative committee responsible for enforcement cited a lack of staff and funds as the reason for its negligence.[15] Options to improve compliance include stricter statutory language and the establishment of effective oversight mechanisms.

States can increase the stringency of requirements to review existing regulations in a number of ways, but the most common method is the sunset provision. A sunset provision requires the automatic expiration of a law or regulation after a designated amount of time. The legislature or agency must therefore review the regulation before they reinstate it. Indiana, New Jersey, and Tennessee currently have such sunset provisions. Tennessee and New Jersey enacted the provisions in 1982 and 1978, respectively, but Indiana only established the provision in 1996. Tennessee and New Jersey therefore provide some information about the effectiveness of the sunset provision. Indiana's first expiration deadline is not until 2002, so no information about the impact of the requirement is available at this time.[16] In

[13] The two categories do not add up to 18 because New York is counted in both categories. New York implemented a one-time review in 1995 and enacted a provision to require a periodic review in 1996.

[14] Again, the two categories do not add up to 18 because New York is counted in both categories. The governor of New York ordered a one-time review by an executive order, and the periodic review requirement is a statutory provision.

[15] Telephone interview by Fumie Yokota, research assistant, American Enterprise Institute, with Clare Eberle, Joint Committee on Administrative Rules (October 6, 1997).

[16] Ind. Code § 4-22-2.5-2 (1999). The legislature must review all rules in force as of December 31, 1995, in 2002.

Tennessee, the legislature routinely votes to eliminate the expiration date of the sunset provision, defeating its original purpose.[17] New Jersey requires the expiration of all rules within 5 years of adoption.[18] If an agency wishes to continue enforcement of the rule, it can reinstate it by complying with the extensive analysis and review requirements of the Administrative Procedures Act. New Jersey has not, however, assessed whether this requirement has increased the efficiency and efficacy of regulation. In practice, therefore, it is not clear whether sunset provisions encourage legislatures to vote periodically on the reinstatement of rules as intended. It seems, however, that sunset provisions may give legislators more opportunities to review rules critically than standard review requirements.

The establishment of effective oversight mechanisms may also increase compliance. Legislative committees, independent review agencies, and the office of the attorney general are among the entities to which states give oversight responsibility, although many states have no oversight mechanism at all. In addition, some states require agencies to report their findings to a coordinating office. These offices do not, however, necessarily review the agency's analysis. Agencies may therefore omit vital information from their analyses, make unnecessary mistakes, and overstate the benefits of a rule if it will help them achieve their political objectives. The establishment of an oversight process to review agency analyses would minimize these problems.

Determining which reform initiatives are most effective is difficult because states generally do not accurately document the impact of regulatory reform efforts. Most states and the federal government document the impact of initiatives by counting the number of rules or pages of regulation the government eliminates. Such a measure is not meaningful because the repeal of a rule may not change the behavior of regulators. The legislature, for example, may repeal a rule, and the agency may consolidate its requirements with existing regulations. Although the state reduces the absolute number of rules, the overall level of regulation remains the same. Florida, for example, defines a rule as a ''rule section'' of the Florida Administrative Code. Florida could, in theory, reduce the number of regulations by simply merging sections of the Administrative Code.[19] California, New

[17] In 1997, for example, the legislature allowed only seven rules adopted in 1996 to expire. Six of the rules were regulations regarding fees by various medical boards, and the seventh was a regulation of book-keeping procedures for the Registry of Election Finance. See 1997 Tenn. Pub. Acts 433, tit. 4, ch. 5 (1996).

[18] Exec. Order No. 66, N.J. Reg., 1978 N.J. Laws. The Order exempts rules the state adopted to comply with federal law and rules that contain requirements that would violate a state or federal law.

[19] See Section III for a more detailed discussion.

York, and Virginia are the only states that attempt to accurately document the economic impact of some regulatory changes. In particular, New York has made an effort to document the impacts of its reform program, but the quality of the analyses is suspect.[20] The analyses do not seem to identify a clear baseline, nor do they distinguish between transfers of wealth and actual efficiency gains.[21] The actual impact may therefore be much smaller than New York claims, although it seems the economy benefits from the changes. Still, the documentation provided by California, New York, and Virginia provides some useful information on the impact of reform measures.

Proponents of federal regulatory reform often advocate the use of oversight processes or other legal mechanisms to further reform efforts. Experience at the state level shows that a statutory review requirement is not necessarily sufficient to ensure ongoing review. Even when agencies conduct reviews, the results are often disappointing because the state does not require them to clearly document the effects of their actions. Further oversight or stricter statutory language is necessary to improve the review process. In short, some states have started down the road toward reform, but their current efforts are insufficient to achieve significant improvements.

III. Regulatory Reform: Some Individual Cases

The general survey of state regulatory reform efforts presented in the first part of this paper suggests that states can improve analyses of proposed and existing regulations if they increase oversight of agency analyses, employ stricter statutory requirements, and document the impact of their efforts. The general survey does not, however, show conclusively that improved analyses will improve regulatory outcomes. One administrative law official in New Jersey suggested the quality of the analysis of proposed rules had improved since the state introduced a review requirement. The official has seen no evidence, however, that the requirement has had any substantive impact on the content of rules.[22] Politics, for example, can prevent decision makers from using information on costs, benefits, and alternatives to improve regulation. A distrust of economic analysis as a tool for decision making may also prevent the use of the results of such analysis. This section carefully examines state- and federal-level reform efforts, highlights

[20] See Section III for a more detailed discussion.

[21] These problems also arise at the federal level, but federal agencies generally treat them with more care (see, for example, Robert W. Hahn, Government Analysis of the Benefits and Costs of Regulation, 12(4) J. Econ. Persp. 201 (1998)).

[22] Telephone interview by Fumie Yokota, research assistant, American Enterprise Institute, with Anthony Miragliotta, New Jersey Office Administrative Law (October 6, 1997).

their strengths and weaknesses, and shows how political forces can influence reform initiatives. Although this section provides some useful information, additional research is necessary to develop a more complete theory of the impact of politics on reform efforts.

A widely accepted view of regulatory politics is that Republicans want to scale back regulation to ease the burden on industry and Democrats want to increase regulation to help their preferred constituencies, including labor and environmentalists. In the absence of detailed information about regulatory reform initiatives and their potential impact on the economy and social welfare, the general public and the regulatory community will assume the party advocating reform is motivated by these political agendas. The result is often a lack of public support for reform initiatives or partisan wrangling that stymies reform efforts. Ironically, some degree of public approval and high-level political support are essential for the success of reform efforts. Without them, significant reform initiatives will languish. A partial solution to this problem is to increase the transparency of the regulatory process, so politicians are held more accountable for the regulations that result from the laws they pass. Transparency, coupled with stricter requirements for regulatory analysis and oversight, will help the public see how regulatory reform can benefit society. States and the federal government can improve regulatory accountability if they recognize that transparency increases accountability and that accountability builds the public and political support necessary for effective reform.

Although politics is perhaps the most serious impediment to regulatory reform, faith in the use of economics for regulatory decision making is another potential obstacle. While many states advocate the use of economic analysis to review regulations, legislators and academics still hotly debate the extent to which economics should influence decisions. Since economic analysis is an emerging tool in the regulatory arena, it is still relatively untested. The general public and lawmakers are therefore often wary of requiring it because they fear it may be misused. The result, as the individual case studies in this section make clear, is that states commit to varying degrees of economic analysis. Until the positive impact of economic analysis is consistently and clearly documented, states will probably not enact comprehensive reforms.

California, Florida, New York, and Virginia are the focus of this section because these states have initiated significant regulatory reform efforts in recent years and have also documented some of their progress and results.[23]

[23] Other states, such as Arizona, Massachusetts, and Michigan, have noteworthy programs. This paper does not review them because there was little or no information available on the economic impact of their efforts, although assessments of the number of rules amended or

These four states, in addition to the federal government, provide excellent illustrations of the extent to which (1) politics can impede the use of agency analyses and (2) the distrust of economic analysis can result in varying analysis requirements.

Federal Government

When regulation represented only a small part of the activity of the federal government, there was no pressing need to evaluate its overall impact. Since the late 1960s, however, regulatory policy has played an increasingly important role in many areas of everyday life. To address the dramatic increase in regulatory activity, the last six presidents have introduced different analysis requirements and oversight mechanisms with varying degrees of success.

In 1971, President Nixon established a Quality of Life Review of selected regulations. The new initiative stemmed from concern that some recently enacted environmental regulations were ineffective or excessively costly. The Office of Management and Budget (OMB) administered the process and required agencies issuing health, safety, and environmental regulations to coordinate their activities. President Ford formalized and expanded the review process in Executive Order No. 11,821. The order required agencies to prepare, and the OMB to review, inflation impact statements for major rules, defined as rules whose annual impact typically exceeded $100 million.

In 1978, President Carter strengthened executive regulatory oversight by issuing Executive Order No. 12,044, which required agencies to conduct detailed regulatory analyses of proposed rule makings and required the OMB to review the analyses. In addition, he established two interagency groups. The Regulatory Analysis Review Group, composed of representatives from the Executive Office of the President and regulatory agencies, examined a limited number of proposed regulations expected to have substantial regulatory impact. The Regulatory Council, comprised of the heads of federal regulatory agencies, was asked to publish a *Calendar of Federal Regulations,* to summarize major regulations under development.[24]

The Reagan administration sought to further strengthen executive regulatory oversight. Just after entering office, President Reagan announced the formation of his interagency Task Force on Regulatory Relief chaired by

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repealed were available. Florida lacks information on the economic impact as well, but Florida shows that the rule review process can lead to some undesirable results.

[24] The purpose of the *Calendar* was to point out regulatory overlap and provide information on the benefits and costs of proposed actions.

Vice President Bush. The task force reviewed existing regulations and would, in the president's words, ''cut away the thicket of irrational and senseless regulations.'' President Reagan also issued Executive Order No. 12,291, requiring agencies to conduct benefit-cost analyses for all major rules. The OMB could not veto agency rules, but it could send the analysis back to the agency for improvement. A second executive order required annual publication of the *Regulatory Program of the United States,* a review of proposed regulations to determine whether they conformed to administration policy and priorities. The approach of the Reagan administration was unique because of the scope of the regulatory review and the formal requirement to estimate benefits for major rules. President Bush continued Reagan's policies, although he replaced the Task Force on Regulatory Relief with the Council on Competitiveness, headed by Vice President Quayle.

In 1993, President Clinton replaced the Reagan Executive Order No. 12,291 with Executive Order No. 12,886, which requires similar regulatory analyses but changed the standards for review and analysis. President Clinton also initiated a National Performance Review (NPR) to help ''reinvent government.''[25] The NPR, led by Vice President Gore, published a report with recommendations to improve the federal government, including cutting the federal work force by 252,000 employees, cutting internal management regulations in half, and requiring agencies to set customer performance standards.[26] President Clinton focused his attention on existing regulations in a memorandum to heads of departments and agencies in 1995.[27] The memorandum ordered each executive agency to conduct a page-by-page review of its existing regulations and to eliminate or modify rules in need of reform. During the 3-month review period, agencies identified 31,000 pages of the Code of Federal Regulation to modify and 16,000 pages of obsolete rules to eliminate.[28] The annual NPR reports identify cost savings from general reinvention, such as streamlining the executive branch bureaucracy, but offer no assessment of the economic effects of the regula-

[25] For a review of some efforts to ''reinvent government,'' see Inside the Reinvention Machine: Appraising Governmental Reform (Donald F. Kettl & John J. DiIulio, Jr., eds. 1995).

[26] See Al Gore, Creating a Government That Works Better and Costs Less: Report of the National Performance Review (1993).

[27] See William J. Clinton, Regulatory Reinvention Initiative: Memorandum for Heads of Departments and Agencies (March 4, 1995). President Bush also asked agencies to review existing regulations and suggest methods to streamline them. See OMB, Regulatory Program of the United States Government: April 1, 1992–March 31, 1993, at 9–10 (1993).

[28] National Performance Review, The Best Kept Secrets in Government: A Report to President Bill Clinton 173 (1996).

tory reform initiatives. Therefore, it is not clear if these ''reinventions'' have increased the economic efficiency of regulations.

In spite of these executive efforts to reform regulation, dissatisfaction with the burdens of regulation persists. Following the Clinton initiatives, the 104th Congress made passionate pleas to design smarter, more efficient regulation. Unfortunately, the rhetoric fell short of the reality. Several comprehensive regulatory reform bills, which called for greater use of benefit-cost analysis and improved risk assessment, failed to pass—partly out of concern that the bills would ''roll back'' regulations designed to help protect health, safety, and the environment.[29] These reforms also failed because some lawmakers hesitated to support regulatory reform bills that applied to all statutes and superseded requirements already in place. After over 2 decades of command-and-control regulation, these lawmakers were simply not ready to support such seemingly dramatic changes in the regulatory process—even though they may have liked the idea of using economic analysis to improve regulation. As a result of such political factors, Congress settled for less far-reaching legislative reforms. Language was added to individual statutes to increase congressional oversight and provide more information on the benefits and costs of regulation. Table 4 summarizes the analysis and review requirements mandated by each piece of legislation. While the thrust of each piece of legislation differs, they share one common theme—the requirement that agencies use economic analysis to assess the benefits and costs of different kinds of regulations.

The incremental efforts to strengthen the influence of economic analysis on regulatory decision making fall into two categories: accountability mechanisms and analytical requirements. Both are designed to improve on the efficiency of the status quo. Accountability mechanisms include peer review, judicial review, sunset provisions, regulation budgets, and requirements to provide better information to Congress. Analytical requirements include benefit-cost analysis, cost-effectiveness analysis, and risk-risk analysis.[30] As is clear from Table 4, Congress created statutory requirements in both of these categories. In the accountability mechanism category, the

[29] See Risk Assessment and Cost-Benefit Act of 1995, H.R. 1022, 104th Cong., 1st Sess. (February 23, 1995); Comprehensive Regulatory Reform Act of 1995, S. 343, 104th Cong., 1st Sess. (February 2, 1995).

[30] By risk-risk analysis, I mean an evaluation of potential increases in health risks that may arise from efforts to combat a targeted health risk. Such an evaluation can help decision makers compare policies. See, for example, Lester Lave, The Strategy of Social Regulation (1981). Farmers, for example, may increase the use of an equally toxic alternative pesticide if use of the original pesticide is restricted or banned to prevent drinking water contamination. For more detailed examples of such trade-offs, see Risk vs. Risk: Tradeoffs in Protecting Health and the Environment (John D. Graham & Jonathan B. Wiener eds. 1995).

Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to submit final regulations to Congress for review. The Telecommunications Act of 1996 requires the Federal Communications Commission to conduct a biennial review of all regulations promulgated under the Act. The Regulatory Accountability provisions, discussed further later in this section, require the Office of Management and Budget to assess the benefits and costs of existing federal regulatory programs and recommend programs or specific regulations to reform or eliminate. While these statutes represent a step toward more comprehensive reform measures, they cover only a fraction of all regulations.

The addition of analytical requirements has generally received more attention than the addition of policy reforms, partly because of their prominence in the Reagan and Clinton executive orders and partly because of controversy regarding their impact. The Reagan executive order required agencies to promulgate regulations for which the benefits ''outweigh'' the costs, and the Clinton executive order superseded that requirement with language that the benefits must ''justify'' the costs. The variation of the language and the type of analysis required in each of the statutes listed in Table 4 reflect the results of the ongoing controversy regarding analytical tools, which takes place every time Congress debates requiring their use. Some statutes require only cost-effectiveness analysis, some require full-fledged benefit-cost analysis, and some combine a form of benefit-cost analysis with risk-risk analysis. The Unfunded Mandates Reform Act of 1995, for example, requires agencies to choose the ''most cost-effective'' alternative and to describe the costs and benefits of any unfunded mandate but does not require the benefits of the mandate to justify the costs. The Safe Drinking Water Amendments of 1996 require the administrator of the Environmental Protection Agency to determine whether the benefits justify the costs of a drinking water standard, but the administrator does not have to set a new standard if the benefits do not justify the costs.[31] Amendments in 1996 to the pipeline section of the Transportation Act, on the other hand, require the secretary of transportation to propose a standard for pipeline

[31] The Amendments also require some form of risk-risk analysis. They require the administrator of the Environmental Protection Agency to set maximum levels for contaminants in drinking water at a ''feasible'' level, defined as feasible with the use of the best technology and treatment techniques available, while ''taking cost into consideration.'' The administrator must ignore the feasibility constraint if the feasible level would result in an increase in the concentration of other contaminants in drinking water or would interfere with the efficacy of treatment techniques used to comply with other national primary drinking water regulations. If the feasibility constraint does not apply, the administrator must set the maximum level to minimize ''the overall risk of adverse health effects by balancing the risk from the contaminant and the risk from other contaminants.'' Safe Drinking Water Act (PHSA), 42 U.S.C.S. § 300g-1(a)(5)(B)(i).

TABLE 4

RECENT REGULATORY REFORM LEGISLATION

Legislation	Description
Unfunded Mandates Reform Act of 1995	Requires the Congressional Budget Office to estimate the direct costs of unfunded federal mandates with significant economic impacts. Requires agencies to describe the costs and benefits of the majority of such mandates. Requires agencies to identify alternatives to the proposed mandate and select the ''least costly, most cost-effective, or least burdensome alternative'' that achieves the desired social objective.
Small Business Regulatory Enforcement Fairness Act of 1996	Requires agencies to submit each final regulation with supporting analyses to Congress. Congress has 60 days to review major regulations and can enact a joint resolution of disapproval to void the regulation if the resolution is passed and signed by the president. Strengthens judicial review provisions to hold agencies more accountable for the impacts of regulation on small entities.
Telecommunications Act of 1996	Allows the Federal Communications Commission to grant exemptions from regulations in certain cases and requires the consideration of the costs and benefits of specific provisions. Allows the Commission to grant waivers to buy out prohibitions on local telephone companies if the anticompetitive effects are ''clearly outweighed'' by the benefits to the community of the transaction. Requires the Commission to conduct a biennial review of all regulations to determine whether any regulations are no longer necessary as a result of ''meaningful economic competition'' between providers.
Food Quality Protection Act of 1996	Eliminates the Delaney Clause of the Food, Drug, and Cosmetic Act, which set a zero-tolerance standard for pesticide residues on processed food. Establishes a ''safe'' tolerance level, defined as ''a reasonable certainty of no harm.'' Allows the administrator of the Environmental Protection Agency to modify the tolerance level if use of the pesticide protects consumers from health risks greater than the dietary risk from the residue or if use is necessary to avoid a ''significant disruption'' of the food supply. Amends the Federal Insecticide, Fungicide, and Rodenticide Act by requiring a reevaluation of the safe tolerance level after the administrator determines during the reregistration process whether a pesticide will present an ''unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.''

TABLE 4 (*Continued*)

Legislation	Description
Safe Drinking Water Act Amendments of 1996	Amends the procedure to set maximum contaminant levels for contaminants in public water supplies. Adds requirement to determine whether the benefits of the level justify the costs. Maintains feasibility standard for contaminant levels, unless feasible level would result in an increase in the concentration of other contaminants or would interfere with the efficacy of treatment techniques used to comply with other national drinking water regulations. Requires the administrator to set contaminant levels to minimize the overall risk of adverse health effects by balancing the risk from the contaminant and the risk from other contaminants in such cases.
Amended Gas Pipeline Safety Standards, 1996	Requires the secretary of transportation to consider the benefits and costs expected to result from implementation of a safety standard and to propose a standard only if the benefits justify its costs. The benefit and cost estimates are based on a risk assessment, for which the secretary must identify regulatory and non-regulatory options and must explain the selection of the standard in lieu of other options.
Regulatory Accountability Provision of 1996, 1997, and 1998	In separate appropriations legislation in 1996, 1997, and 1998, Congress required the Office of Management and Budget to submit an assessment of the annual benefits and costs of all existing federal regulatory programs to Congress for 1997, 1998, and 2000, respectively. The Office of Management and Budget already must review and approve analyses submitted by agencies estimating the costs and benefits of major proposed rules. The annual report provisions build on this review process.

safety *only* if the benefits justify the costs. Other statutes simply require the agency to ''consider'' costs and benefits.

Another significant difference between the requirements listed in Table 4 is the applicability of the requirements. Some of the statutes contain economic analysis provisions that apply only to specific provisions in the statute. The Telecommunications Act of 1996, for example, states that the Federal Communications Commission can grant waivers to buyout prohibitions on local telephone companies only if the anticompetitive effects are clearly outweighed by the benefits to the community. Similarly, other statutes are directed at specific safety standards, such as pipeline safety or clean drinking water. In contrast, statutes such as the Small Business Regulatory Enforcement Act and the Unfunded Mandates Reform Act contain economic analysis provisions that apply to all regulations under the jurisdiction of the legislation. These statutes are much more far-reaching in their approach to reform, as they pertain to large groupings of regulations instead of specific provisions or safety standards.

Perhaps the most significant recent step toward incorporating economic analysis into the regulatory process occurred in 1996, when the Congress showed a greater interest in requiring the OMB to assess the economic impact of regulation—partially because of new estimates that federal regulation costs several hundreds billion dollars annually.[32] In 1996 Senator Ted Stevens added an unprecedented amendment to the Omnibus Consolidated Appropriations Act, listed in Table 4 as the Regulatory Accountability Provision of 1996, that could significantly impact the assessment of regulations in the future. The amendment required the director of the OMB to provide Congress with estimates of the total annual benefits and costs of all federal regulatory programs as well as individual regulations.[33] The OMB produced its first report on the benefits and costs of regulation in response to the Stevens amendment in 1997[34] and published an improved second report in the fall of 1998.[35] The OMB will publish the third report in the year 2000. Congress will probably appropriate funding for additional reports, although it is unclear whether OMB will issue the reports on an annual or biennial basis.

Formal consideration of economic benefits and costs in regulatory decision making will likely persist, at least as long as the Republicans maintain a majority in Congress since they have incorporated regulatory reform into their policy agenda. As a result, an important concern is whether analysis and oversight actually affect policy decisions. It is difficult to determine, primarily because it is hard to predict the outcome of many regulations in the absence of oversight. More research may reveal the extent of the influence of the attempts to incorporate economic analysis into decision making sketched in Table 4. Nevertheless, it is clear that agencies could design many regulations more intelligently. Some regulations are even counterproductive. Research suggests more than half (57 percent) of the federal gov-

[32] See Thomas D. Hopkins, Cost of Regulation: Filling the Gaps, Report Prepared for the Regulatory Information Service Center (1992).

[33] Regulatory Accounting Provision—Stevens Amendment—was included in the Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208 § 645 Stat. See Robert W. Hahn & Robert E. Litan, Improving Regulatory Accountability (1997), for a discussion of the implication of this provision.

[34] See OMB, Report to Congress on the Costs and Benefits of Federal Regulation 24 (1997).

[35] See OMB, Report to Congress on the Costs and Benefits of Federal Regulation (1998).

ernment's regulations would fail a strict benefit-cost test using the government's own numbers.[36] Moreover, ample research suggests that the government could significantly improve regulation to save more lives with fewer resources.[37] According to one study, a reallocation of mandated expenditures toward regulations with the highest payoff to society could save as many as 60,000 more lives a year at no additional cost.[38]

Some scholars have argued that the regulatory analysis and oversight have influenced policy outcomes.[39] In certain instances, such optimism is justified. One must, however, be careful about generalizations from a small sample.[40] At this point, knowledge about the effects of oversight and analysis is limited. In particular instances, oversight has made a difference. At the same time, it is not obvious how regulatory activities would have evolved in the absence of such oversight.

California

California has a long history of reform efforts.[41] In 1979, the legislature recognized the excessive burden imposed on business and individuals by regulation in the California Administrative Procedures Act (CAPA).[42] The CAPA requires agencies to assess the economic impact of rules and review proposed rules. In addition, Governor Pete Wilson issued executive orders to expand and supplement the CAPA analysis and review requirements and to create a means through which to obtain suggestions from the regulated community for reform of the rule-making process.

[36] Reviving Regulatory Reform: A Global Perspective § 11 (Robert W. Hahn ed. 2000, in press).

[37] See John F. Morrall, A Review of the Record, Regulation, November–December 1986, at 25–34; and W. Kip Viscusi, The Dangers of Unbounded Commitments to Regulate Risk, in Risks, Costs, and Lives Saved: Getting Better Results from Regulation (Robert W. Hahn ed. 1996).

[38] See Tammy O. Tengs & John D. Graham, The Opportunity Costs of Haphazard Social Investments in Life-Saving, in Hahn ed., *supra* note 37.

[39] See Economic Analyses at EPA: Assessing Regulatory Impact (Richard D. Morgenstern ed. 1997).

[40] Analysis is often used to justify political ends. See, for example, Janet Yellen, Testimony of Janet Yellen, Chair, Council of Economic Advisers, before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry on the Economics of the Kyoto Protocol (Council of Economic Advisers, March 5, 1998).

[41] For a detailed review of California regulatory review initiatives, see California Trade and Commerce Agency, Regulation Review Unit, Improving Regulations and Rulemaking (1997).

[42] Cal. Gov't Code § 11340 (1999). In California, laws normally identified as ''statutes'' in other states are designated as ''codes.''

The original CAPA created the Office of Administrative Law (OAL) to conduct an ''orderly review of adopted regulations'' to reduce the number of regulations and improve the quality of adopted regulations.[43] The OAL can veto rules that violate the procedural requirements of the CAPA. According to the OAL, this review saves the state an estimated $500,000 to $2 million annually in avoided lawsuits.[44] The OAL serves an important function because it reviews the legality of rules, but it does not evaluate whether agencies select the most efficient method to achieve legislative goals. The office staff are mainly attorneys and paralegals who typically do not have the expertise to review a rule's economic impact. In the past, such expertise was unnecessary because the law did not require the analysis of economic effects of regulation. California law now, however, requires state agencies to assess significant adverse effects of regulations on business or individuals.[45] In the early 1990s, the legislature passed a series of amendments with detailed analysis requirements. In 1991, for example, the legislature passed a bill requiring agencies to assess the potential impact of regulation on small businesses,[46] the first state mandate to consider the economic effects of a regulation on the private sector. The legislature expanded the requirement to include all businesses in 1992 and later added other requirements, such as a 1993 provision to assess the impact of regulation on statewide employment and the competitiveness of California enterprises with businesses from other states.[47]

The California Administrative Procedure Act requirements generally apply to all rules, but there are some stricter requirements for certain agencies and certain types of rules. In 1993, the legislature added a provision to the Act to allow the California Environmental Protection Agency (Cal EPA), Resources Agency, and the Office of the Fire Marshall to adopt a regulation that is substantially different from federal requirements only if it is authorized by state law or the agency shows that the costs are justified by the benefits.[48] The CAPA does not require an agency to compare benefits and costs anywhere else in the statute. Another provision enacted in 1993 required the Cal EPA to evaluate, for all major rules, whether a less costly alternative exists that would achieve the same level of environmental pro-

[43] Cal. Gov't Code § 11340.

[44] See California Trade and Commerce Agency, *supra* note 41, at 20. The date and derivation of the cost-savings estimate is not documented.

[45] Cal. Gov't Code § 11346 (1999).

[46] 1991 Cal. Stat. 794.

[47] 1992 Cal. Stat. 1306; and 1993 Cal. Stat. 1038, 1063.

[48] 1993 Cal. Stat. 1046.

tection as the proposed policy.[49] The provision thus expanded the CAPA's existing requirement to describe alternatives for all rules.[50]

Since the Office of Administrative Law does not evaluate the economic impact of proposed rules, the legislature introduced a statutory oversight mechanism to ensure such analysis played a role in the regulatory process.[51] The bill established the secretary of trade and commerce as an advisor to the review process. It authorized the secretary to review an agency's evaluation of the impact of its proposed regulation and to submit written comments to the agency explaining any observed deficiencies. The Regulation Review Unit (RRU) of the Trade and Commerce Department performs these tasks. The unit helps agencies decide which information the agencies should use for their analyses and include in the final report and also is a resource to the agencies on the practical application of benefit-cost analysis.[52] The unit can help agencies conduct better analyses, but it cannot veto rules. If the analysis is deficient, the Regulation Review Unit can only communicate its concerns to the agency. Only the Office of Administrative Law can veto a regulation if it is not ''acceptable.'' States must have oversight entities with the power to evaluate the economic analysis, as well as the legality, of a rule to truly achieve regulatory reform.

The Regulation Review Unit was established in December 1995, so it is too early to evaluate its long-term impact on the regulatory process. There are, however, some early examples of the unit's positive contributions to the process. In one case, the RRU identified an adverse annual impact of tens of million of dollars from a proposed rule to restrict the use of state property.[53] The agency intended the regulation to restrict vendors, such as hot dog stands and coffee carts. It would have prohibited other commercial activities, such as filming, on state property—an impact the promulgating agency did not originally consider. Subsequent to the RRU's comments, the agency modified the rule. This case illustrates that review by outside parties may help agencies correct many obvious, unintentional errors. Even if the monetary benefits of these interventions are somewhat overstated, the expe-

[49] 1993 Cal. Stat. 418.

[50] A major regulation is a rule with an impact on the private sector that exceeds $10 million. See 1993 Cal. Stat. 418 § 57,005 (a).

[51] 1993 Cal. Stat. 418.

[52] See California Trade and Commerce Agency, Regulation Review Unit, Bringing Economic Sense to Regulation: Impact Assessment Information and Criteria, Draft Report (1996); and California Trade and Commerce Agency, Regulation Review Unit, Economic Impact Statement Instructions: California State Administrative Manual § 6680 (1998).

[53] California Trade and Commerce Agency, Regulation Review Unit, Improving Regulations and Rulemaking 22 (1997).

rience in California illustrates the potential benefits of holding regulators accountable by assigning an oversight function to an entity with economic expertise.

Beyond the statutory mandates for analysis and review, Governor Wilson has signed numerous executive orders to encourage further regulatory reform. In 1995, he signed an executive order that required agencies to review each regulation and identify all rules suitable for repeal.[54] This process identified 3,900 regulations for repeal and 1,700 for modification.[55] As with all other states, there is no comprehensive assessment of the economic impact of these activities. A 1996 executive order required the formation of a regulatory review task force to conduct public meetings and make specific recommendations to further reform the regulatory process. The Governor's Office of Planning and Research coordinated regional hearings, collected comments and recommendations from more than 300 individuals, and presented 10 recommendations.[56] These recommendations ranged from the expansion of a one-stop permit program to better enforcement of existing regulations.[57]

The governor appeared to take the recommendations seriously. He addressed half of the recommendations from the regulatory review task force to some extent in an executive order issued in January of 1997.[58] To partially address the request for periodic sunset reviews, for example, the governor ordered a one-time sunset review of all existing regulation by 1999.[59] This is perhaps the most significant provision in the executive order because it states an explicit goal to reduce total compliance costs by 5 percent per year. The governor previously had ordered a review of all regulations with only a vague goal to reduce the excessive burdens from regulation.[60] Other

[54] Cal. Exec. Order No. W-127-95 (1995). In 1996, Governor Wilson issued another executive order to require agencies to submit all regulations the agency recommended for repeal or modification to the Office of Administrative Law for appropriate regulatory action (Cal. Exec. Order No. W-131-96 (1996)).

[55] Cal. Exec. Order No. W-131-96.

[56] California Governor's Office of Planning and Research, Recommendations from the Regulatory Review Roundtables (1996).

[57] *Id.*

[58] Cal. Exec. Order No. W-144-97 (1997).

[59] Other recommendations implemented by the executive order include the publication of a Consolidated Regulatory Program that expands the annual Regulatory Calendar to include information on the estimated costs of all proposed regulations, a review of all existing statutes and administrative provisions to help adjust the severity of fines for minor violations of regulations that do not endanger public health or safety, and customer service surveys implemented by each agency to ensure continuous feedback from the regulated community on how to improve the regulatory process.

[60] Cal. Exec. Order No. W-127-95.

states with a quantitative goal focus on the reduction of the total number of rules, which has an ambiguous effect on the regulatory burden because agencies can combine regulations to reduce the total number.[61] California is, therefore, the only state with an explicit goal that may reduce the regulatory burden.[62]

The criteria agencies must use to review existing regulations are similar to the California Administrative Procedures Act requirements for proposed regulations. The agencies must review the authority, necessity, and cost-effectiveness of rules,[63] update the fiscal and economic effects of the rules, minimize duplication and inconsistencies with federal and local regulations, and consider less burdensome alternatives to achieve regulatory goals. Each agency must also calculate cost savings from their efforts and show it has achieved a 5 percent reduction in compliance costs.[64] The results of the review are unclear since the process is still in progress. If the agencies comply with the requirements of the 1997 executive order, California will have an estimate of the total costs of state regulation. This data would be invaluable to decision makers attempting to assess the effectiveness and efficiency of existing regulatory programs and could help guide them toward economically efficient reform efforts in the future.

The executive order also requires agencies to provide an Economic and Fiscal Impact Statement as part of the rule-making record, a requirement that builds on previous efforts to incorporate a standard economic impact statement into the rule-making process. The Economic and Fiscal Impact Statement is not a substitute for the analyses and documentation required by the California Administrative Procedures Act, but a supplement designed to provide a clear and concise summary of the economic effects identified in the analyses.[65] California had a standard format for the Economic and Fiscal Impact Statement before the executive order but had no equivalent form for the economic impact assessment required by the CAPA. The Department

[61] For example, Florida has a goal to halve the number of rules in the Administrative Code. See the next case study for a detailed discussion.

[62] The executive order directs the agencies to change regulations by considering alternative approaches that are less intrusive or more cost-effective. This order does not explicitly require that rules maintain the same level of regulatory protection. Therefore, if a rule is modified to reduce compliance costs and the social benefits from the regulation are also reduced, the net effect may be to reduce economic efficiency.

[63] Specifically, agencies must show that the benefits from a different requirement exceed the additional costs of a more stringent state regulation.

[64] The executive order allows agencies to include the cost savings from actions taken under Cal. Exec. Order No. W-131-96.

[65] The Office of Regulatory Reform in Michigan and the Independent Regulatory Review Commission in Pennsylvania both require agencies to complete a similar form.

of Finance issued a four-page form for the new impact statement to help agencies comply with the requirement, and the Regulation Review Unit developed explicit instructions to help agencies fill out the form.[66]

A standard form forces California agencies to clearly state their findings about various types of economic effects. The new statement allows qualitative responses in some cases, but it does not allow responses such as ''inapplicable'' or ''unknown'' without further information to clarify the response.[67] One of the major problems with regulatory impact analysis at the federal level is a lack of consistency in the presentation of information.[68] Even if an agency develops a regulatory impact analysis, the process through which an agency arrives at its final calculations is often unclear. The agency also does not usually provide a concise summary statement of the findings from the analysis.[69] A standard form will allow the Regulation Review Unit, as well as other interested parties, to easily review an agency's economic impact estimates. If the Regulation Review Unit determines the analysis is deficient, it can provide comments that the agency must address in writing. The Economic and Fiscal Impact Statement therefore helps increase transparency and accountability in the regulatory process.

No documentation of the actual efficiency gains from the recent reform efforts currently exists. Evidence suggests, however, that California is moving in the right direction. Statutory requirements do not ensure compliance, but California has laid a solid foundation by amending the California Administrative Procedures Act to encourage agencies to analyze the economic effects of regulation and to improve oversight processes. Governor Wilson has complemented these efforts with several initiatives to increase the use of economic analysis for both proposed and existing regulations and has made an effort to incorporate suggestions from the regulated community on improving the regulatory process. The actual economic impact deserves further study as the changes begin to take hold.

[66] California Trade and Commerce Agency, *supra* note 52.

[67] It also discourages the use of vague descriptions such as ''few,'' ''minor,'' and ''occasional'' without further explanation. See *id*. at 1.

[68] For a detailed review of federal regulatory impact analyses, see Robert W. Hahn, Regulatory Reform: What Do the Government's Numbers Tell Us? in Hahn ed., *supra* note 37.

[69] For a summary of economic information contained in recent Federal Register notices and suggestions for improvement of the presentation and content of that information, see Robert W. Hahn, How Changes in the Federal Register Can Help Improve Regulatory Accountability (AEI-Brookings Joint Center for Regulatory Studies Working Paper No. 98-1, 1998).

Florida

Florida enacted the Florida Administrative Procedures Act (FAPA) with provisions for economic analysis in the early 1970s, but major efforts to overhaul the rule-making process did not occur until 1995.[70] Democratic Governor Lawton Chiles was noticeably silent on regulatory reform issues prior to his reelection in 1994. He made the issue a top priority with his inaugural speech in January of 1995, however, in part to build bridges with reform-minded Republicans who made major gains in the state legislature in the 1994 election. Governor Chiles identified two primary goals for the reform effort: (1) to reduce rules and regulations by 50 percent within 2 years and (2) to reduce the inflexibility of rules by increasing agency discretion in the rule-making process.[71]

To achieve his two goals, the governor signed two executive orders and the 1996 amendments to the FAPA into law. The two executive orders directed all agencies to conduct a page-by-page review of all rules and to eliminate and revise them as necessary.[72] The 1996 amendments, which the legislature passed after the governor vetoed less rigorous amendments in 1995, also furthered the effort to reduce the number of regulations because they contain provisions to hold agencies more accountable for the economic impact of regulations. The accountability provisions include language that requires agencies to choose the ''least-cost'' alternative subject to judicial and internal review, limitations on agency rule makings without explicit legislative authority, and a sunset provision for existing rules.[73] The amendments also shift the burden of proof to agencies if regulated parties challenge the rule. All of these provisions make it more difficult for agencies to promulgate regulations and therefore are consistent with the governor's commitment to reducing the number of Florida rules.

The 1996 amendments also reflect the governor's agreement with the sentiments of *The Death of Common Sense* by Philip Howard, who argued that government could constructively reform regulation through greater agency discretion.[74] The 1996 amendments contained a ''waiver'' provision to allow agencies to grant exceptions to rules and therefore supposedly increased the flexibility of agency rule making. The statute requires the

[70] Jim Rossi, The 1996 Revised Florida Administrative Procedure Act: A Rulemaking Revolution or Counter-revolution? 49 Admin. L. Rev. Am. U. 362 (1996).

[71] *Id*.

[72] Fla. Exec. Order Nos. 95-74 & 95-256 (1995).

[73] Rossi, *supra* note 70, at 353.

[74] See Phillip K. Howard, Death of Common Sense: How Law Is Suffocating America (1994).

agency to grant waivers when the rule creates a ''substantial hardship'' or when the purpose of the statute can be achieved by ''other means.''[75] The governor's personal frustration with government bureaucracy supported the waiver provision, as he frequently told the story of the red tape he encountered when he attempted to add a cook shack to his log cabin in the woods.[76]

Despite the amount of political muscle devoted to reform in Florida, it appears that the initiatives have had less substantive impact on policy than originally hoped for by the governor and other legislators. The governor's goal to reduce the number of rules by 50 percent has not resulted in the expected reduction in the regulatory burden, although agencies purged many outdated regulations from the record. Florida defines a rule as a rule section of the Florida Administrative Code.[77] As a result, Florida eliminated regulations in response to the governor's mandate by simply merging sections of the Administrative Code. Florida also repealed many procedural and technical rules that did not substantively affect the agency's original policies.[78] Florida repealed close to 10,000 rules and was in the process of repealing almost 500 more by mid-1997,[79] but it appears that few substantive changes to regulations have been made. The staff of the Committee on Governmental Rules and Regulations systematically reviewed 5 percent of the repealed rules to determine whether the policy followed by the agencies changed as a result of the repeals.[80] Of the 251 rules in the sample, agencies did not use 44 percent, integrated 26 percent into new or existing rules, and moved 6 percent to agency policy or procedure. Approximately 4 percent exist in some other form.[81] If this sample is any indication of all repealed rules, it is clear that the so-called repeal of rules did not necessarily result in the expected policy changes.

Although it is perhaps too soon to tell, the waiver provision and the accountability provisions in the 1996 FAPA amendments also may not work as intended. The legislature enacted the waiver provision to help agencies avoid difficulties stemming from inflexible regulation, similar to those en-

[75] Fla. Stat. § 120.54 (2) (1996).

[76] Lawton Chiles, Inaugural Address (Office of the Governor, State of Florida, January 3, 1995).

[77] Fla. Exec. Order No. 95-74.

[78] Personal communication by Petrea Moyle, Research Associate, AEI-Brookings Joint Center for Regulatory Studies, with Jim Rossi, Florida State University College of Law (November 23, 1998).

[79] Committee on Governmental Rules and Regulation, Rules Reduction Efforts in Florida: Florida House of Representatives, Government Responsibility Council 2 (1997).

[80] The staff ordered all of the repealed rules by their Florida Administrative Code chapter number and included every twentieth rule in the sample. See *id*. at 4.

[81] The status of over 20 percent of the rules could not be determined.

countered by the governor when he built his cook shack.[82] Interest groups may, however, influence the regulatory agency by exerting pressure for waivers, and the agency may mold policy using the waiver system to suit its own agenda. The agency could, for example, grant waivers for environmental projects because of internal agency bias toward environmental protection measures. These unintended effects of the waiver provision are in part possible because Florida did not create an oversight mechanism to hold the agencies accountable for their actions when it enacted the waiver provision. Moreover, the move to increase agency discretion is contrary to the original intent of Section 120.535 in FAPA, which was added in 1991 to reduce agency discretion because of the failure of agencies to publish rules they enforced.[83,84] The governor wanted the legislature to repeal this provision because he views such mandates as an ''effort by the legislature to micromanage the whole government.''[85] The legislature would not repeal the provision, so the governor eventually compromised and agreed to the waiver provision in the 1996 amendments.

Although some of the regulatory reform efforts in Florida appear unsuccessful, Florida is still ahead of other states in its drive to integrate economic analysis into the rule-making process. The 1996 FAPA amendments require a statement of estimated regulatory impact, which replaced the economic impact statement required in the original 1974 Act.[86] The FAPA encourages agencies to develop regulatory impact statements for almost all rules.[87] The agency must produce a regulatory impact statement when a ''substantially affected'' person submits a lower cost alternative that achieves the same statutory goal.[88] The statement must contain specific information, including the number of individuals and entities likely to be affected, budgetary costs to state and local government agencies, compliance costs to individuals and entities, and an analysis of the effects on small

[82] Rossi, *supra* note 70, at 354.

[83] Fla. Stat. § 120.54 (1)(a) (1996).

[84] Fla. Stat. § 120.54 (7) (1996).

[85] The governor vetoed a bill to revise the Administrative Procedures Act in 1995, criticizing the legislature for not repealing these provisions. See Veto Message from Governor Chiles to Hon. Sandra Mortham, Secretary of State (July 12, 1995), cited in Stephen T. Maher, The Death of Rules: How Politics Is Suffocating Florida, 8 St. Thomas L. Rev. 316, 340 (1996).

[86] The original Florida Administrative Procedures Act, passed in 1974, contained a requirement for agencies to prepare an economic impact statement for all proposed rules. The requirement was modified in 1992 to limit the coverage to rules agencies determine have a significant adverse impact or when the governor, a corporation, or at least 100 people filed a written request. See Rossi, *supra* note 70, at 362–63.

[87] Fla. Stat. § 120.54 (3) (b) (1996).

[88] Fla. Stat. § 120.54(1) (1996).

businesses, counties, and cities.[89] The agency also must show a rule is preferable to the proposed alternative.[90] The state may veto the rule if the agency does not choose the least-cost alternative that accomplishes the statutory goal.[91] Thus, although the FAPA does not mandate a benefit-cost test, it requires a cost-effectiveness test for which the agencies are accountable.[92]

No significant gains in economic efficiency are likely to result from the governor's efforts to reduce the number of rules and to increase agency flexibility because they are not coupled with adequate oversight to ensure that agencies reduce the regulatory burden. The state may, however, benefit from the recent changes to the FAPA that induce agencies to apply cost-effectiveness criterion as they develop regulations. Without an oversight entity to check an agency's regulatory impact statement for potential problems, however, the use of cost-effectiveness analysis may also not achieve desired improvements in the regulatory process.

New York

New York has long promoted regulatory reform and has increased the level of its reform efforts in recent years. The state first required a regulatory impact statement for certain rules in 1980 by an executive order and later incorporated it into the New York Administrative Procedures Act (NYAPA).[93] The legislature has expanded the analysis requirements in the NYAPA steadily over the past 2 decades to include specific considerations, such as regulatory flexibility analysis to reduce disproportionate effects on small businesses and localities.[94]

The central executive branch office has reviewed proposed rules since the early 1980s. The legislature created the Office of Business Permits in 1980 to serve as a central clearinghouse for information about the numerous state permit requirements, changed the name of the office to the Office of Busi-

89 Fla. Stat. § 120.54(2) (1996).

90 Fla. Stat. § 120.541 (1) (b) (1996).

91 Fla. Stat. §§ 120.52 (8) (g), 120.541 (1) (c) (1996).

92 For a detailed discussion, see Rossi, *supra* note 70, at 365–67.

93 N.Y. Exec. Order No. 100 (1980); and New York State Administrative Procedures Act § 202-a (1999). For a detailed discussion of the New York State Administrative Procedures Act, see Patrick J. Brochers & David L. Markell, New York Administrative Procedure and Practice (1995).

94 New York State Administrative Procedures Act § 202-b. Other requirements include rural area flexibility analysis for reducing disproportionate impact on rural areas and job impact analysis to assess the impact on employment. See New York State Administrative Procedures Act § 202-bb and § 201-a.

ness Permits and Regulatory Assistance,[95] and expanded its responsibilities to include the review of required regulatory analyses.[96] Changes to the NYAPA codified the regulatory review functions of the Office of Business Permits and Regulatory Assistance.[97] The NYAPA required the office to determine whether each rule (1) is clearly written; (2) is consistent with the legislative purpose, existing statutes, and existing rules; (3) is a duplication of an existing state statute, federal statute, or rule; and (4) has been analyzed adequately by the appropriate entity. The state did not require the Office of Business Permits and Regulatory Assistance to balance the benefits and costs of rules.

The state renamed the office again in 1993 to the Office of Regulatory and Management Assistance and expanded its functions. Governor Cuomo expanded the Regulatory Reform Program initiated in 1988 and designated the Office of Regulatory and Management Assistance as the coordinating office.[98] The Office of Regulatory and Management Assistance's functions were similar to those of the federal government's Office of Information and Regulatory Affairs in the Office of Management and Budget.[99] The Office of Regulatory and Management Assistance did not have veto power, but the NYAPA required agencies to respond to its comments and objections or the Office could force the agencies to withdraw the rule.[100]

Even with statutory requirements for analysis and review and gubernatorial initiatives to reform the regulatory process, the burdens of regulation in New York continued to grow. In response to the public's growing discontent with an unwieldy bureaucracy and burdensome regulatory requirements, Governor Pataki made regulatory reform a top priority upon taking office in 1995.[101] As one of his first actions as governor, he signed an executive order that placed a 90-day moratorium on new rules and directed state regulatory agencies to evaluate the economic effects of all existing regulations.[102] Later that year, he established the Governor's Office of Regulatory

[95] See N.Y. Exec. Law § 878 (1999).

[96] See N.Y. Exec. Order No. 131 (1989).

[97] See New York State Administrative Procedures Act § 202-c (1995). This section expired on December 31, 1995.

[98] See N.Y. Exec. Order Nos. 108 (1988) & 108.1 (1993).

[99] Brochers & Markell, *supra* note 93, at 105.

[100] See New York State Administrative Procedures Act § 202-c(6) (1995). This section expired on December 31, 1995.

[101] See, for example, George E. Pataki, Inaugural Address (Office of the Governor, State of New York, 1995).

[102] N.Y. Exec. Order No. 2 (1995). The moratorium was later extended by N.Y. Exec. Order No. 7 (1995).

Reform (GORR) as the central office to review the effects of proposed regulatory activities, taking over the function of the Office of Regulatory and Management Assistance.[103] He also expanded requirements for agencies to assess the economic impact of proposed rules.[104]

Some measurable outputs resulted from the executive orders and the GORR's efforts over the last 3 years. A database of ''regulatory successes'' shows that the GORR's intervention in the proposed rule-making stage of the process has led to annual compliance cost savings of over $200 million.[105] Table 5 summarizes four interventions by the GORR, two of which account for almost all of the cost savings. The first is an effort by the GORR and the Department of Environmental Conservation to overhaul the draft of a rule to implement a Clean Air Act regulation. The review reduced industry costs by $5.5 million compared to the original draft of the regulation. The second was the GORR's rejection of a proposed regulation to make buildings more earthquake resistant. The GORR rejected the rule twice because of a lack of adequate scientific data to support a stricter building code. The agency finally withdrew this rule, which would have increased new construction costs by $220 million annually.

The GORR may also have contributed to real cost savings totaling $600 million annually resulting from the review of existing regulations.[106] Table 6 summarizes 10 of these rules. The state repealed, for example, an archaic regulation restricting hearses from traveling on certain parkways. The regulation cost funeral home owners $8 million annually in increased transportation and travel time costs. The state also repealed a 1994 regulation requiring the installation of reflective signs on the *bottom* of hotel and dorm room doors to indicate the room number. The rule was a result of a suggestion from a concerned sixth grader who believed the signs would aid people crawling through the halls during an evacuation. The agency implemented the rule without any scientific evidence to show its dedication to improving safety. The repeal of this rule produced a one-time compliance cost savings of $340,000 and annual savings of $11,000.

[103] The statutory authority of Office of Business Permits and Regulatory Assistance/Office of Regulatory and Management Assistance expired on December 31, 1995. See N.Y. Exec. Law § 893 (1999).

[104] N.Y. Exec. Order No. 20 (1995). An amendment to the State Administrative Procedures Act in 1996 now requires that the state review all rules adopted after the effective date of the section every 5 years. See 1996 N.Y. Laws § 262, codified in New York State Administrative Procedures Act § 207.

[105] Governor's Office of Regulatory Reform's web page, Success Stories in Regulatory Reform, http://www.state.ny.us/gorr/success.html (August 3, 1997). A lack of formal documentation prevented the identification of the precise basis for the cost savings estimates.

[106] *Id.*

TABLE 5

EXAMPLES OF COST SAVINGS FROM NEW YORK'S REVIEW OF PROPOSED REGULATION

Regulation	Summary	Agency Action	Savings
Building Code	Proposed regulations to make buildings more earthquake resistant were twice rejected by Governor's Office of Regulatory Reform (GORR) for lacking adequate scientific evidence. The proposal was finally withdrawn.	Withdraw	The proposed regulation would have added 3%–4% to the cost of new construction, approximately $220 million a year.
Clean Air Act Regulation	A cooperative effort between GORR and Department of Environmental Conservation (DEC) overhauled a draft regulation to comply with federal Clean Air Act requirements.	Amend	The amendments saved industry $5.5 million.
Fishing	GORR worked with DEC to withdraw a proposed regulation requiring fisheries to tag every black bass. This regulation strove to curb trafficking of illegal bass. An effective but less burdensome alternative was the use of identifiable containers.	Withdraw	The proposed regulation would have caused each fishery operator $20,000 a year to comply.
Food-Processing Waste	DEC circulated a draft regulation imposing new restrictive permitting requirements for food-processing waste and sludge. Instead of implementing the regulation, regulators and stakeholders developed voluntary protocol for the beneficial use of these by-products.	Withdraw	N.A.

SOURCE.—Estimates are from the Governor's Office of Regulatory Reform's web page, Success Stories in Regulatory Reform, http://www.state.ny.us/gorr/success.html (August 3, 1997).

NOTE.—N.A. = not applicable.

TABLE 6

EXAMPLES OF COST SAVINGS FROM NEW YORK'S REVIEW OF EXISTING REGULATION

Regulation	Summary	Agency Action	Savings
Medicaid Reimbursement for Clozapine	This rule changes the cumbersome prior approval process for Medicaid reimbursement to allow easier access to the drug Clozapine. It allows more schizophrenic patients to avoid confinement in psychiatric centers.	Amend	Prior approval was required due to the high cost of Clozapine, but the avoided psychiatric center costs will save taxpayers at least $17 million a year.
Telephone Billing	The rule change proposed by the Department of Public Service allows telephone companies to validate proof of identity for applicants. It also requires phone bills to clearly list the name of the billing company and a contact number.	Amend	This rule allows phone companies to validate the identity of applicants, saving an estimated $12.5 million yearly in uncollected bills.
Licensing of Cosmetologists	The Department of State eliminated the requirement for cosmetologists to have a doctor's signature verifying that he/she has no communicable disease when renewing a license.	Amend	Removing this requirement saves $8.6 million a year in doctors' fees, in addition to the time saved.
Highway Travel Restrictions for Hearses	The Department of Transportation and the Governor's Office of Regulatory Reform (GORR) are working to eliminate a regulation that prohibits hearses from traveling on selected parkways.	Repeal	Elimination of this rule saves $8 million a year in added transportation costs.

Transfer of Foreign Nationals	The proposed changes create uniform procedures for the voluntary transfer of incarcerated foreign nationals.	Amend, repeal	This will create an annual savings to New York of $6.3 million.
Nursing Home Regulations	The Health Department is eliminating a rule that requires a 30-day notice before moving a resident to a different room.	Repeal	This change reduces delays in admitting new patients that could save them $1.5 million a year.
Hospital Volunteers	The Health Department proposes a less stringent medical check than currently required for people interested in volunteering.	Amend	The new requirement will save hospitals $1.6 million per year.
Newborn Foot Printing	The Health Department eliminated the requirement for all newborns to be foot printed and their mothers fingerprinted. Footprints were rarely used for identification and new technology makes this method obsolete.	Repeal	Repealing this requirement saves hospitals $1.5 million a year.
Termite Control	The proposed rule lowers the restrictions for the application of termite control chemicals.	Amend	The changes will produce a savings of $1.4 million per year for homeowners.
Hotel Room Signs	A 1994 regulation required the installation of reflective signs on the doors of hotel and dorm rooms. The rule was based on the suggestion of a sixth grader concerned about fire safety. The rule was repealed.	Repeal	The removal of the rule produced a one-time savings of $340,000 and an annual savings of $11,000.

SOURCE.—Estimates are from the Governor's Office of Regulatory Reform's web page, Success Stories in Regulatory Reform, http://www.state.ny.us/gorr/success.html (August 3, 1997).

The cost savings estimates must be interpreted carefully, however, for two reasons. First, many of these costs represent potential regulatory costs and not an actual reduction in a regulatory burden. Second, it is difficult to determine which policy the agency would have implemented absent the GORR's intervention. For example, the agency may have redesigned a rule with large compliance costs as a result of the notice and comment process. Although agencies do not seriously consider all comments during the notice and comment process, they do tend to incorporate suggestions from interested parties with significant political clout. The agency may therefore have switched to a less burdensome alternative during this process, even without the existence of the GORR.

New York's reform efforts show that analysis and review requirements do not necessarily result in cost-effective regulation. Even with the reform initiatives in place during the 1980s and early 1990s, agencies adopted rules like the requirement for reflective door signs. The New York Administrative Procedures Act and executive orders provide the necessary authority to implement a reform program, but it took a central agency with the political backing of the governor to have a noticeable impact.

Virginia

The Virginia Administrative Process Act (VAPA) has required agencies to assess the compliance costs of regulations since 1977,[107] but in the early 1990s agencies presented compliance cost estimates for less than 20 percent of rules in the state *Register*.[108] To improve compliance with statutory requirements, the legislature passed amendments to the VAPA to change the structure of the analysis and review process. In addition, newly elected governor George Allen signed executive orders to facilitate the implementation of these changes and called for the analysis and review of existing regulations.[109] These efforts led agencies to some improved documentation of regulatory benefits and costs.[110]

A 1994 VAPA amendment shifted the responsibility for conducting the

[107] Va. Code § 9-6.14:7.1 (1999).

[108] Since 1989, Virginia's Administrative Process Act has required the publication of a concise statement of estimated regulatory effects. See Va. Code § 9-614:7.1(C). The Joint Legislative Audit and Review Committee reviewed all 217 rules proposed in the 1990–91 regulatory year and found that only 16 percent of rules provided estimates of compliance costs to regulated entities. See Virginia General Assembly, Joint Legislative Audit and Review Committee, Review of Virginia's administrative Procedures Act: House Document No. 51, at 48–51 (1993).

[109] Va. Exec. Order Nos. 14 & 15 (1994).

[110] Virginia Dep't of Planning and Budget, A Comprehensive Review of Existing State Regulations 3 (1997).

economic impact analysis from individual agencies to the Department of Planning and Budget (DPB).[111] The DPB now coordinates with the agencies to prepare economic analyses for all rules. These analyses must contain information such as the projected costs to affected businesses and the projected number of affected businesses and local governments. The state further amended the VAPA in 1995 to require agencies to include an estimate of the fiscal impact on localities[112] and the impact on the use and value of private property.[113] The DPB reports that agencies' compliance with the cost-reporting requirements is now 100 percent, compared with 20 percent just a few years ago.[114]

Virginia is the only state that designates a central entity to review agency data and prepare an analysis of regulatory effects. To assess the quality of the state's completed analyses, copies of all economic impact analyses that the DPB produced from September of 1995 through April of 1997 were obtained. A database was then constructed that contains summary information about each of the rules along with the DPB's economic impact estimates if available. The database also scores each rule on whether the DPB assessed costs or cost savings, quantified benefits, and monetized benefits.[115] In addition, the database notes whether the DPB believed the rule would produce net benefits to the state.

Table 7 presents the scorecard for the DPB's preparation of economic impact analyses. In almost all cases, rules either affect very few firms or they change minor procedures and do not result in a significant change in compliance costs. Many rules actually have cost savings because they are modifications to existing regulations in response to Governor Allen's review of existing regulations discussed below. The DPB, however, presents estimates of costs or cost savings or states that there are no costs or cost savings in only 55 percent of the economic impact analyses. In 26 percent of the economic impact analyses, DPB found zero costs or cost savings. These rules represent nearly half of all rules for which DPB assesses the cost or cost savings. Only 5 percent of economic impact analyses quantified benefits, and only 4 percent monetized benefits.

In general, the analyses qualitatively describe the economic effects but

[111] 1994 Va. Acts ch. 938.

[112] This analysis requirement was added by 1995 Va. Acts ch. 790.

[113] This analysis requirement was added by 1995 Va. Acts ch. 677.

[114] Virginia Dep't of Planning and Budget, *supra* note 110, at 3.

[115] Costs include compliance costs experienced by the regulated entity or administrative costs to the regulator. Cost savings refer to a reduction in these compliance or administrative costs. Although cost savings can be viewed as a benefit, the economic impact analyses do not seem to consider them a benefit. Monetized benefits are quantified benefits converted to a dollar value.

TABLE 7

VIRGINIA'S REGULATORY SCORECARD

	Economic Impact Analyses
Costs or cost savings quantified:	
DPB found nonzero costs or cost savings	32 (29%)
DPB found zero costs or cost savings	29 (26%)
DPB did not state costs or cost savings	50 (45%)
Benefits quantified:	
DPB quantified positive benefits	6 (5%)
DPB found zero benefits	33 (30%)
DPB did not state benefits	72 (65%)
Benefits monetized:	
DPB monetized positive benefits	4 (4%)
DPB found zero benefits	33 (30%)
DPB did not state benefits	74 (67%)
DPB states the benefits are likely to exceed the costs[a]	50 (45%)

NOTE.—Values are based on author's review of 111 economic impact analyses (EIAs) prepared by the Department of Planning and Budget (DPB).

[a] An EIA qualified for this category if the DPB attempted to determine whether benefits exceed costs. Since the data are uncertain, the DPB expressed varying levels of confidence in their conclusions.

provide no quantitative support. Many analyses note that the cost of quantifying the effects would be prohibitively large. Only in a few cases are the estimated effects clearly presented in a tabular format. Often analyses use vague language and present a few numbers without putting these numbers in context or noting the most likely economic effects. The analyses often do not provide the base year for the impact, the year dollar for the cost estimates, or probabilities of the likelihood of the outcome. As these are basic components of a thorough economic impact analysis, it appears that no oversight entity critically reviewed the agency evaluations. The DPB's assertion that 45 percent of the regulations it assessed produce net benefits to the state is therefore questionable.

Although some of the DPB analyses are obviously inadequate, the information presented in many of the analyses seems sufficient given the purpose of the rules. Rules that change fees slightly or require a slightly different procedure for applying for a license, for example, may require only a concise statement of the objectives of the rules and the potential benefits and costs. It is not clear, however, that the state allocates enough resources for review of regulations with more significant effects.

Although analyses of more ''significant'' rules are generally longer than the analyses of rules with lesser economic impact, they do not appear much more sophisticated. Because the DPB has reviewed rules for only a few years, the quality of analysis will probably improve over time. The more important question is whether the analyses have had any impact on policy. The DPB states that the analyses have ''been widely cited and have actively fueled public debate on specific regulatory initiatives,''[116] but the actual impact of the analyses is not well documented.

Governor Allen's 1994 executive order resulted in some documented savings because it directed agencies to review all existing regulations to reduce the regulatory burden.[117] Over a 3-year period, the agencies reviewed 1,457 regulations and recommended the elimination of 30 percent of the rules and the modification of 41 percent of the rules. The cost savings reported in many of the economic impact analyses resulted from these reforms. The DPB did not compile an aggregate savings estimate from its efforts in its report on the comprehensive review of existing regulations, but it did present examples of economic analyses prepared for rules modified under the direction of the executive order.[118] Only two of the 25 analyses estimated the expected cost savings, which combined account for close to $2 million annually. Although Virginia's documented cost savings do not compare to the cost savings claimed by New York, the review efforts have reduced the regulatory burden.

The Virginia example shows that a lack of oversight results in a lack of compliance. The state now has an independent agency conducting the economic analysis, which presumably presents a more balanced assessment than an agency would, although it is not clear to what extent it challenges the assumptions of the agency. The assessment of the economic analyses shows that agencies can improve the analyses, but the DPB is making progress.

IV. Conclusion

The examination of regulatory reform initiatives at both the federal and state level reveals their strengths and limitations. Efforts to improve regulation are least effective when requirements are vague and lack specific guidelines and when states do not establish adequate oversight mechanisms. Regulatory reform efforts are most effective when they have active political support and a strong, well-funded, central oversight mechanism exists. Practiced artfully, structured and careful analysis of regulations can help achieve desired social objectives at a lower cost. It can also help agencies

[116] Virginia Dep't of Planning and Budget, *supra* note 110, at 3–4.
[117] Va. Exec. Order No. 15 (1994).
[118] See Virginia Dep't of Planning and Budget, *supra* note 110, app. B.

compare the economic costs and benefits of different goals and objectives and will increase the accountability of regulators and lawmakers.

States use different reform mechanisms with varying degrees of effectiveness. All states, however, can improve upon current efforts. Few states assess the economic impact of most rules in detail, even when laws or executive orders encourage or require such analysis. Many states do not systematically review regulations at all. States with ongoing programs should improve them by using stricter statutory language, more detailed guidelines, and more comprehensive oversight mechanisms. States without programs should establish them. All states should carefully document the impact of reform measures to provide much needed information on the effectiveness of reform.

If analysis of the economic impact of rules plays a more prominent nationwide role in the regulatory process, the effectiveness of analytical requirements will most likely increase. As agencies take their analysis and review responsibilities more seriously because of increased oversight and stricter requirements, the quality of analyses will improve. Policy makers will therefore integrate the new information into the decision-making process faster and more willingly than if they suspect the analyses are academically weak or politically motivated. A transparent, well-designed review process will encourage regulators to pursue more efficient policies.