

REGULATORY REFORM AT THE LOCAL LEVEL: REGULATING FOR COMPETITION, OPPORTUNITY, AND PROSPERITY

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EXECUTIVE SUMMARY

There is a growing realization in the United States that regulation, for all its apparent benefits, comes with significant costs as well. Long concerned with the rising costs of federal regulations, public officials are now starting to realize that the costs of state and municipal regulation are also quite substantial, and they are beginning to develop state and local regulatory reform programs.

Notable regulatory reform programs exist in San Diego, New York City, Colorado, Pennsylvania, Minnesota, New Jersey, and Virginia. But these programs have all focused on newly proposed regulations, with little attention paid to regulations already on the books. The regulatory reform program in Indianapolis stands out from these other programs because it focuses on existing regulations.

By systematically going through the city code and methodically analyzing the merits of its regulations, Indianapolis has brought sense to its regulatory structure, eliminating or modifying regulations found to be outdated or more costly than their benefits merit.

Examining what Indianapolis is doing, why they do it, and what they have learned along the way offers lessons for other cities. Our review of the Indianapolis experience offers a “how to”—and “how not to”—guide to the economics and politics of urban deregulation. The key principles of reform garnered from the Indianapolis experience are:

Create an Independent Reform Commission. Someone must have ownership of the reform process. Individual agencies are too often wedded to the status quo.

Recognize the Merits of Competition. More competitive markets are more disciplined, creating incentives for innovation, customer service, and efficiency.

Acknowledge the Existence and Influence of Interest Groups. Even if a policy change produces net gains for the community, the losers have an incentive to oppose change. Reformers can encourage groups of those burdened by existing regulations to help push for reform.

Focus on Outcomes Rather Than Process. Indirect regulations, aimed at process rather than results, increase the chances of unintended outcomes. If the concern is the safety of taxicabs, policymakers should enforce laws against negligence or publicize safe operators to help the market information process. They should not limit the number of taxi's on the theory that by controlling licenses they can induce safety. Focusing on outcomes makes the impact of a regulation more transparent and allows officials and the public to see direct effects of a regulation.

Weigh Both the Costs and the Benefits of a Regulation in Deciding its Worth. The success of a regulation should be tied to its intended effect, not to the behavior of regulators. It's not how many fines are levied, but how many harmful actions are prevented, and what costs to society are avoided that measures the success of a regulation.

Regulations Should Be Simple and Narrowly Focused. The broader or more complex a regulation, the more likely are unintended consequences. Also, the less likely it is that ordinary citizens can understand the rule and its impact. An opaque regulation plays into the hands of the special interests that benefit from it.

Adopt a Transparent Analytic Framework. A decision process like the one Indianapolis used (see p. 8) assures a consistent analysis on each regulation, and that no steps are overlooked. It also improves citizen and interest group visibility of the reform process, and encourages their input.

Part 1

Introduction

“Planning and competition can be combined only by planning for competition, but not by planning against competition.”

—F.A. Hayek, *The Road to Serfdom*, 1944

There is a growing realization in the United States that regulation, for all its apparent benefits, comes with significant costs as well. In response, proposals to reform the federal regulatory apparatus have proliferated.

But regulatory reform is not limited to the federal level. Analysts long concerned with the rising costs of federal regulations are now starting to reveal that the costs of state and municipal regulation are also quite substantial. State and local regulations often directly intervene in specific markets, causing greater distortions than broader federal regulations. Some policymakers are responding to these revelations with state and local regulatory reform programs.

Much of the focus of local regulatory reform is on removing impediments to competition and achieving more efficient markets. This study concentrates on such regulatory reform, examining and evaluating significant regulatory reform ideas and offering a detailed case study of the regulatory reform program in Indianapolis.

Part 2

The Need For Regulatory Reform

To advance regulatory reform first requires an understanding of the context of regulation as a policy tool: why regulations exist, how they are useful, and what problems they generate. Regulations arise from particular circumstances, either in response to a problem or to political pressure. Like all policy instruments, regulations embody tradeoffs. They may effectively resolve a problem, but give rise to new problems or to unintended consequences. To decide if regulation is the right answer, you must look at the tradeoffs between the solution and all of its consequences.

There are two popular explanations for why governments use regulation. First, regulations are presumed to prevent, control, or somehow cope with problems that free markets do not manage well, so-called market failures. Typical examples are what economists call externalities, such as pollution and “natural” monopolies, like electric and water utilities. Second, a political explanation describes regulations as emerging to benefit those willing to exert political pressure to get a regulation enacted. For example, some regulations restrict competition by limiting the number of firms in an industry or by making entry into the market expensive. Economists call this behavior “rent seeking.”

There is a third explanation, often overlooked, for why regulation is a popular policy instrument. Regulation imposes an order and certainty onto free markets that many find desirable. Free markets involve change, often rapid and vast, and the losses from change can be certain and visible, while potential gains remain uncertain, even invisible. Thus, proponents of the status quo often favor regulation that maintains it.

While regulation has successfully solved many problems, and produced real benefits for many citizens and consumers, they do not come without costs, and with problems of their own. A flood of studies have estimated the costs of regulation in the past few years. These estimates of the cost of regulations range from \$300 billion to \$1 trillion a year.¹ Taking a mid-way estimate (\$677 million) implies that the regulation costs an average household 19 percent of its after-tax income.²

¹ Estimates of the total cost of regulations in the economy come from Robert W. Hahn and John A. Hird, “The Costs and Benefits of Regulation: Review and Synthesis,” *Yale Journal on Regulation*, 1991; Thomas D. Hopkins, “Regulatory Costs in Profile,” Policy Study #132, Center for the Study of American Business, 1996; and William G Laffer III and Nancy A. Bord, “George Bush’s Hidden Tax: The Explosion in Regulation,” Heritage Foundation Backgrounder #905, 1992.

² Clyde W. Crews, *Ten Thousand Commandments: A Policymaker’s Snapshot of the Federal Regulatory State*, (Washington, DC: Competitive Enterprise Institute, 1996).

Besides direct costs, years of living with extensive regulation have made clear a number of problems that offset the beneficial effects of regulations:

Efficiency Losses. Regulations reduce competition and distort markets, which cause efficiency losses. Moreover, many regulations overlap and interact, and the cost of the whole may be greater than the cost of the sum of the parts.³

Focus on Inputs instead of Outputs. Regulations often focus on the inputs into the process that creates a problem, rather than the output that is the problem itself. Regulating inputs often dictates specific technology, reducing incentives to innovate and search for new approaches. Opportunities for greater efficiency are foregone, as a new firm with a new innovation has no market if a regulation requires the use of existing technology.

No Accountability. Regulators are often insulated from the consequences of their decisions. They receive only indirect and diffuse feedback from their actions, and human nature and politics ensure that many goals besides the explicit purpose of the agency become wrapped up into a regulatory decision. Internal goals compete with social goals to influence agency actions, and there is little pressure on regulators to revise methods that do not work or are too expensive.

The Regulatory Study Commission estimated that roughly one third of Indianapolis's resources (around \$125 million a year) goes toward fulfilling regulatory responsibilities.

Unintended Consequences. Regulatory actions often cause outcomes other than those intended by the regulators. Just as it is hard to measure the effects of a regulation, it is hard to predict how individuals and businesses will react to regulations.

Hidden Costs. Regulatory costs are often hidden, and not clear to taxpayers the way ordinary budget expenditure's are. It is difficult for taxpayers to see what benefits they get for the costs that regulations impose.

Regulation Creates a Cycle. One regulation frequently leads to more. Each use of a blunt instrument begets unintended consequences, then further intervention with a blunt instrument, and so on. Once this intervention dynamic takes life, regulatory costs rise, and the tangled web of regulation and consequence grows ever more complex and opaque, making simple market transactions increasingly complex and costly.

³ In *Regulatory Reform: Economic Analysis and British Experience*, (Cambridge: MIT Press, 1994), (pp. 108-110), authors Mark Armstrong, Simon Cowan, and John Vickers identify five ways in which efficiency gains directly result from competition: 1) Competition inevitably leads to product differentiation, giving consumers more choices and more closely matching their needs; 2) The total consumer benefit from competitive pricing is greater than the loss of profits to the monopoly; 3) In a competitive market consumers benefit because producers cannot collude to raise prices; nor can producers ignore their operating costs, since competition prevents them from freely raising prices if costs rise through inefficiency; 4) Competitive markets are not subject to problems of asymmetric information: firms charge prices very close to their marginal costs. In regulated markets, regulators often do not have accurate information about true costs or effects of innovations, so they regulate prices that vary substantially from marginal costs, a direct inefficiency; 5) The theory of excess entry assumes all firms are the same, so picking just one to serve the whole market is no problem. In reality firms differ, and in a competitive market the more efficient survive, improving the efficiency of the whole market. On this last point, also see Benjamin Zycher, "Entrepreneurship and Taxation by Regulation," Monograph, The Smith Center for Private Enterprise Studies, 1992, p.28.

Adapting Reform to Local Circumstances

There are two ways to look at how local conditions affect attempts to reform regulation. One is a matter of public institutions—the laws, political ideologies, and regulations in place in a particular locale. A regulatory reform program has to identify the most crucial local restrictions on competition and the particulars that make the local reforms unique. These details may involve a change in the law, or may simply mean using existing powers in new ways. For example, Indianapolis reformers discovered that the city had an unexercised authority to grant 30 percent more taxi licenses than were ever issued. Thus, a real increase in the competitiveness of the taxi market was possible simply by exercising for the first time the power to grant these additional licenses.

The other way to look at local circumstances is from the market side. Markets are extraordinarily complex, which is why regulations have unintended consequences, and why many nations have learned that central control of the economy is neither possible nor efficient. Competitive markets, through prices, give information about consumer values and resource availability that no amount of effort by a city council can uncover.

Part 3

Indianapolis, Indiana: A Snapshot of Local Regulatory Reform

Under the leadership of Mayor Stephen Goldsmith, Indianapolis has earned a national reputation for improving the quality of government. In addition to competitively contracting more than 70 city services over the past four years, Indianapolis embarked on the most extensive municipal deregulation effort in the United States. Examining what Indianapolis did, why they did it, and what they learned along the way offers lessons for other cities. Our review of the Indianapolis experience offers a “how to”—and “how not to”—guide to the economics and politics of urban deregulation.

Indianapolis has moved aggressively to reform regulation as part of a commitment to use competition to reinvigorate the local economy. Often the least justifiable regulations have been those that hurt lower income citizens more than anyone else.

Indianapolis’s regulatory reform program has two unique features. First, it focuses on existing regulation, using a formal process to analyze the current regulatory code and develop reform proposals: it is not limited to screening proposed new regulations. Second, the program is comprehensive and holistic in ways exceeding other local regulatory reform efforts. City officials plan to continue the review until they have analyzed every part of the local code and implemented necessary reforms. They also link the program to companion competitive government programs, especially plans to expand public-private partnerships.

The goal of regulatory reform in Indianapolis is to help make the city more competitive and successful. Like other cities, the Indianapolis government had previously imposed cost premiums and service deficiencies on its citizens through its excessive control and regulation of local markets. To remedy these problems, the administration employed a series of related initiatives—regulatory reform, privatization, and other reforms—to restore a market orientation and enhance local competitiveness.

This holistic approach to municipal government—which emphasizes opening up public services to competition and encouraging competition in the private sector—has earned Indianapolis national acclaim for its approach to urban management.⁴

⁴ While some have criticized the program, notably associations representing those business that flourish under regulation, the reforms have helped Indianapolis win recognition as one of the “best run cities in America” by *Financial World Magazine*, and one of the “top five cities to start a career” by the *Wall Street Journal Magazine*, and number of similar accolades.

A. History of the Regulatory Study Commission (RSC)

In 1991, mayor Goldsmith commissioned a survey of existing Indianapolis businesses. The results confirmed suspicions that local regulations were a significant impediment to business opportunities, and that many rules seemed to serve little or no purpose. The survey elicited suggestions for how to make Indianapolis a more attractive business environment. The survey questioned 1,600 local businesses of all sizes asking them what they viewed as the chief external “impact on profits.” The results: 1) taxes; 2) environmental regulations; and 3) “all other regulation.”

This information stimulated the formation of the Regulatory Study Commission (RSC), charged with weeding out bad regulations and doing cost-benefit analysis on all new ones. The RSC’s first task was to articulate a set of regulatory principles that could serve as the basis for future actions. Although not cast in stone, the following principles—unaltered in five years—have stood the test of time:

- 1) The cost of a regulation should be no greater than the value of the benefit created for the community;
- 2) Regulations must be written to insure the imposition of the minimum possible constraints upon the community;
- 3) Regulations must be simple, fair and enforceable; and
- 4) Local regulations should not exceed federal and state standards unless there is a compelling and uniquely local reason.

Based on these principles, the first task was to calculate the cost of regulations, which included enforcement costs and the costs to business payrolls. Because “regulation” is a term that often defies clear definition, it is impossible to know precisely what percentage of the city budget is dedicated to municipal regulatory functions. However, using projections of the cost of federal regulations as a guide, the RSC estimated that roughly one third of the city’s resources (around \$125 million a year) goes toward fulfilling regulatory responsibilities.

The direct costs imposed by regulation on businesses and consumers depend on the circumstances. They were calculated on a case-by-case basis when the RSC began to look in detail at the city code. Also, regulations prevent some market transactions from occurring at all. These so-called “dead weight losses” are not measurable, so the RSC did not attempt to factor them in.

The benefits of reforming a given regulation were calculated much like the costs—specific to each regulation examined. The RSC concentrated on regulations where the benefits were clearly very small or nonexistent. This was easy in cases where regulations addressed conditions that no longer existed, due to technological or other changes. Other regulations clearly did not serve the public interest.

The RSC needed three things to make a regulatory reform program successful: community support, political will, and sound economic analysis.

Community Support. The RSC and the mayor’s office invested considerable time and effort in laying out their plans and intentions to the city council and the citizens, and in answering community concerns. This made the reform process a part of the public debate and helped garner support for the RSC proposals.

Political Will. Even with community support, one needs a great deal of political will to embark upon any meaningful reform.⁵ Reform efforts involve hard political choices. Regulatory reforms create losers as well as winners. However, some regulations can be costly to everyone while benefiting only a few. Reform requires the political will to end benefits for a minority at the expense of the majority—a difficult achievement since benefits of restricted competition are concentrated, while the benefits of reforming regulations are diffused. They accrue to almost everyone, but only indirectly through small price decreases and expanded services. Those who enjoy the concentrated benefits of regulation have every incentive to protect those benefits. The many who pay slightly higher prices as a result of each regulation do not. If the interests of the latter are not heard, then real reform is not likely. Standing up to the special interests in Indianapolis required carefully choosing battles and making meticulous cases in support of reform.

Economic Analysis. The third requirement for success was sound economic analysis. Sloppy economic analysis provides a tool for special interests to use against a reform effort. Even more important was the need for a sound economic framework to assess regulations and determine where effort should be directed. Properly applied, such analysis made the need for many reforms self-evident, easing the political task of enacting the reform. The RSC chose to use a simple and uniform type of cost-benefit analysis to measure each regulation considered for reform. (See Box)

The RSC plunged into the nearly 2,800 single-spaced pages of municipal regulations in order to break them down into manageable groups. Each regulation was placed into one of two chief categories: 1) regulations that affected business operations; and 2) noncommercial regulations that affected citizens.

While this exercise was important, the RSC had neither the political nor financial resources to weigh the costs and benefits of each regulation. Instead, they first identified the regulations affecting the greatest number of citizens and most significantly hindering job creation. The result was a set of regulations related to ground transportation, business and occupational licensing, development and housing, and health and hospital services. The RSC decided to concentrate on these areas.

The next step was to develop a process for determining which specific regulations needed reform. To this end the RSC developed an analytic framework that included economic and political tradeoffs, as well as potential alternatives. (See Box) The process filters each regulation through a series of questions to identify those that need to be eliminated and those that could be improved.

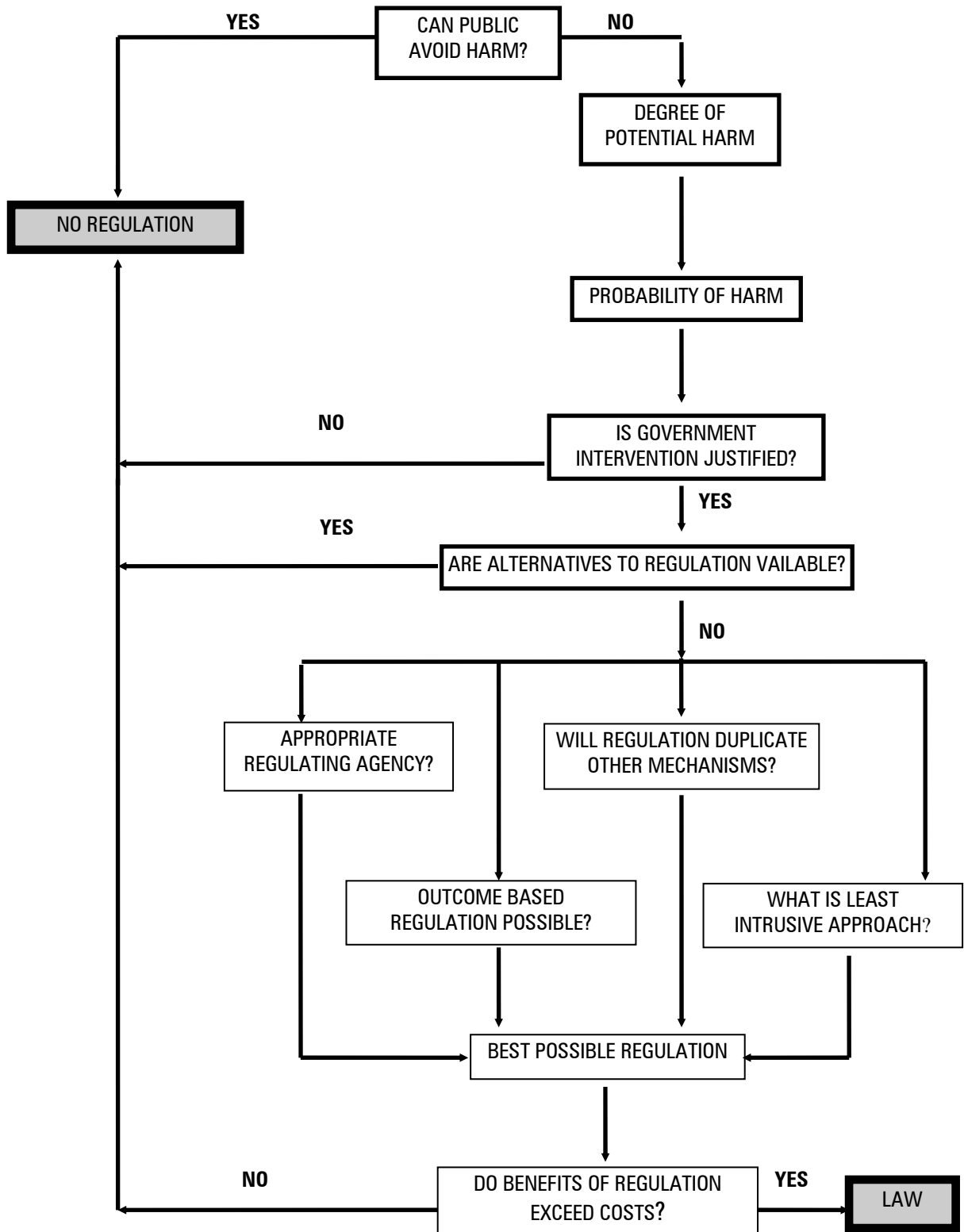
RSC Simple Cost/Benefit Analysis

1. How does the regulation benefit the consumer/public?
2. How does the regulation benefit the regulated parties?
3. How does the regulation cost the consumer/public?
4. How does the regulation cost the regulated parties?
5. What administrative or enforcement costs are paid by taxpayers?



⁵ Initially, the RSC was composed of a cross-section of volunteer Indianapolis business, community, and legislative leaders. This group turned out to be very conservative and wedded to the status quo. Realizing that the program required new thinking, the mayor decided to have the research and analysis conducted by his staff, and leave the politics of reform to the RSC and the city-county council. It was only after this change that the program succeeded.

RSC Analytic Framework



Part 4

Reforms Plans

Applying the RSC analytic framework led to detailed proposals to reform specific regulations and a comprehensive program to create political and popular support for the changes.

A. Ground Transportation: Indianapolis Reform in Action

The first area the RSC tackled was ground transportation, a heavily regulated area important to the city's economy. After analyzing existing regulations, the RSC developed a game plan for both the legal and political initiatives needed to bring about successful reform, initiatives that harmonized the influence of principle, economics, and politics. This model guided future efforts.

1. Why Reform Taxi Regulations?

Like other large U.S. cities, Indianapolis's ground transportation industry had been heavily regulated for decades.⁶ Taxis and other transportation services were tightly controlled, making the market more designed to meet regulatory requirements than the competitive needs of the marketplace (see Box).

The Indianapolis Taxi Market before Reforms

- The quality of "called for" taxi service was poor in Indianapolis. Long waits were common after calling for a taxi; and sometimes taxis did not respond at all. Service was especially poor for locations from which most calls are short trips.
- Four taxi companies (holding 270 vehicle licenses) had computer dispatch equipment. Some other companies had radio dispatch equipment. Smaller taxi companies relied on cellular phone equipment.
- Taxi fares for long trips were higher in Indianapolis than in many other major cities.
- A small number of companies dominated the Indianapolis taxi market. One company held 201 of the 392 existing licenses, and the five largest companies held a total of 326 of the licenses.
- A very substantial number of the 392 licensed taxis were not "on the street" at most times on an average day.



⁶ Bill Styring in "How Indianapolis Won the Taxi Wars," *Indiana Policy Review*, December, 1994, describes the regulations in Indianapolis prior to reform.

Only 392 cabs were permitted to operate in the city. One company controlled more than half of those licenses, and competition among cabs was limited. Special services for the disabled, especially wheelchair accessible vans, were classified as “taxis” by the city. Owners of a taxi license make most of their money from regular fares, so investing in wheelchair accessibility made no sense. The city did not allow specialized service, so the disabled had to use expensive private ambulances for door-to-door trips.

Each of these regulations has its own justifications. Limits on entry into the taxi market are often based on the argument that taxis are a “natural monopoly”—meaning one firm can provide service for lower costs than two. But there is no empirical evidence of economies of scale that would support this argument. Nor does there appear to be any “destructive competition”—too many taxis competing for business and driving down costs by cutting service quality and safety—thus driving away customers. In most cities that have deregulated taxis, service quality has not suffered, or has even improved.⁷ Moreover, this argument ignores the benefits of many taxis in the market. With more taxis, people do not have to wait as long for a taxi to come. Also, more taxi licenses mean more jobs. There are always many would-be taxi drivers in the wings awaiting an opportunity. A start in the taxi business doesn’t require a lot of education or money—just a good car, license and insurance, a knowledge of the city, and a willingness to work. These are assets that many of those most in need of work can easily acquire

The key barrier to reform would be the existing taxi companies and their ability to pressure members of government.

Also, restricted taxi markets are notorious for underserving the lower income neighborhoods of cities.⁸ These are the very areas where fewer people own cars, and more must rely on taxis and other mass transportation.⁹

Regulations that fix taxi prices distort the market almost as much as entry restrictions. Regulators fix the price taxis may charge because they fear that people who don’t know the market price will be ripped off by taxi drivers.¹⁰ However, the problem is overstated. Customers of arranged services can call several companies

⁷ Mark W. Frankena and Paul A. Paulter. *An Economic Analysis of Taxicab Regulation*, Federal Trade Commission, Washington, DC, 1984. With regard to service quality, Peter Suzuki, “Unregulated Taxicabs,” *Transportation Quarterly*, 49, 1995, argues persuasively that illegal taxis are widespread in most regulated cities, and with deregulation they become legal and their quality rises. The existing studies of taxi deregulation do not account for this component in measuring changes in quality. In fact, most studies in their cost-benefit analysis do not account for *any* of the benefits of formerly illegal taxis beginning to operate legally. For more on taxi deregulation, Daniel Klein, Adrian Moore, and Binyam Reja, *Curb Rights: A Foundation for Free Enterprise in Urban Transit*, (Washington, DC: Brookings Institution, 1997).

⁸ Peter T. Suzuki, “Vernacular Cabs: Jitneys and Gypsies in Five Cities,” *Transportation Research A*, 19A, 1985, pp. 337-47; Marc Lacey, “City Maps Better Cab Service for Neglected Areas,” *Los Angeles Times*, September 3, 1994, B1; “Hailing the American Dream,” *Wall Street Journal*, February 1, 1993; “The New Civil Rights Activists,” *Wall Street Journal*, April 20, 1994.

⁹ Taxis carry at least 40 percent more passengers nationwide than all other mass transit combined, according to Sandra Rosenbloom, “Urban Taxi Policies,” *Journal of Contemporary Studies*, Spring 1981, and Martin Wohl, “Increasing the Taxi’s Role in Urban America,” *Urban Transportation: Perspectives and Prospects*, ed. Herbert S. Levinson and Robert A. Weant (Westport, Conn.: ENO Foundation, 1982), p. 329. According to Wohl, taxi fares average five times more per passenger mile than fares of other transit services. Taxis must offer something that other transit modes do not. And, Edward Wiener, “The Characteristics, Uses, and Potential of Taxicab Transportation,” *Urban Transportation: Perspectives and Prospects*, ed. Herbert S. Levinson and Robert A. Weant (Westport, Conn.: ENO Foundation, 1982), pp. 324,327, reports that the poor account for a much higher share of taxi trips than their share of the population.

¹⁰ There can be real information problems where it is hard for customers to know the market price for a taxi trip. Someone hailing a taxi at the curb cannot easily comparison shop. Arriving visitors at the airport are likely to be unaware of local prices.

asking prices, and at taxi stands they can compare the prices of the taxis waiting there. For visitors, an information campaign and a requirement to post fare schedules on cab doors should solve most of the problem.¹¹

In light of all these issues, the RSC determined that existing regulation of taxi licenses and fares needed revision. At the same time, some type of regulation was still needed, especially at the airport, and regarding safety and insurance. They also realized that the key barrier to reform would be the existing taxi companies and their ability to pressure members of government.

2. Major Initiatives

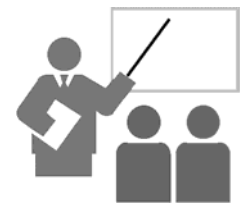
The RSC set out to rewrite Indianapolis taxi regulations with an eye to boosting competition. The objective was to create regulatory policy that imposed as few burdens as possible without compromising public safety.

Legal and Administrative Changes. The proposed changes to transportation regulations were grounded in economic analysis and conformed to the RSC principles discussed above. The preexisting licensing scheme failed to pass the cost-benefit test. The limit on licenses, combined with fixed fares, pushed both potential taxi drivers and passengers out of the market. It also created longer wait times for passengers, and gave the taxi companies an incentive to waste time and money defending limits on competition. The benefits were limited to higher profits for a few taxi company owners, and higher wages for the drivers. The RSC decided the costs of the limits outweighed the benefits.

Existing regulations also violated the RSC’s “minimum possible constraints” guideline. If service and safety issues were real concerns in the taxi market, then they should be regulated directly, rather than through the back door of entry restrictions.

RSC Initial Reform Recommendations

- Remove the overall limitation on the number of taxis and limousines that can be licensed.
- Allow taxi fares to be set by taxi companies, with some constraints on maximum fares.
- Regulate limousine companies and drivers at the municipal level, not at the state level.
- Retain the ability of the city to ensure vehicle safety, but allow greater flexibility in how this is done.
- Eliminate provisions that constrain taxi and limousine business operations without community benefits.
- Delete the provision forbidding taxis to “cruise” to find customers.
- Allow special taxis to carry passengers in wheelchairs. Allow jitney businesses greater operational flexibility. Allow jitneys to pick up passengers within a broad corridor between origin and destination points and allow jitney businesses to provide a “charter service.”



¹¹ Another problem with taxi fare regulation is that it fails to recognize that the taxi market is really three separate markets: 1) the cab-stand market, where taxis and customers know they can find each other, 2) the arranged market, where a customer calls for a cab by phone, and 3) the hail market, where cabs drive around empty waiting to be hailed. Both passengers and taxi drivers put different values on an exchange in each market. That means that the natural market price and quantity of taxi trips in each market are different. A taxi driver who has to cruise around looking for a fare would like to charge more than those waiting for a phone call. Passengers who arrange a ride can call around and price-shop, so they expect a better deal. When a city sets a single fixed price for all taxi services, as Indianapolis did, taxi drivers will respond by either over- or undersupplying each type of service.

The RSC’s initial reform proposal was fairly broad (see Box). RSC then focused on the most important elements in the reform legislation. First, they eliminated the cap on the number of outstanding licenses.¹² This proposal was designed to achieve open access. Any applicant who could meet the license requirements—driver and vehicle safety standards, insurance requirements, and a \$102 fee—could operate a taxicab in Indianapolis. Second, they included a requirement for random vehicle inspections and enhanced background checks on drivers.

A third legal change was to minimize price restrictions. The RSC proposed creating a “maximum fare ceiling” that allowed taxi operators to offer prices lower than the published maximum but did not allow them to charge more than the maximum. The ceiling allowed the city to encourage price competition while taking steps to prevent customers not familiar with the workings of the local taxi marketplace from being “gouged.” An unregulated “pickup” or “flag-drop” charge, stated up front to all passengers, was allowed in order to encourage short trips and cruising for hails where per-mile rates are often not remunerative.

Fourth, a host of arbitrary rules governing how taxis can operate were eliminated, such as requiring taxi drivers to wear a special badge and cap, and specifying the number of seats taxis and limousines could have, and the number of passengers per seat. All of these rules governed inputs rather than outputs, and only indirectly affected the quality of taxi service. Eliminating these rules improved quality and reduced enforcement costs, offsetting the enforcement costs of stronger safety rules and inspections.

The disabled and minorities had much to gain from a competitive taxi market.

Finally, to deal with the particular problems that often occur with taxis at airports, the RSC authorized the airport authority to impose stricter rules on taxi trips originating at the airport—if it found such rules to be necessary. The RSC figured that the airport authority would have greater incentives and better information than the city in ensuring high quality ground transportation service for its customers.

Political Initiatives. The RSC’s first step after developing a draft of its reforms was to brief all city councilors, individually and in their party caucuses. Some offered useful feedback that was incorporated into the proposals.

Once the RSC knew the views of the city councilors, it held public hearings to give people the opportunity to make their case for and against change. While complaints about local taxi service were legion (logs of them were kept by the city controller’s office), they had never been heard in a public forum. These fact-finding hearings exposed wide public doubt and resentment about the way the taxi industry was being regulated.

Senior citizens complained about sporadic bell service, restrictions on cruising cabs, and poor service. Inner-city residents complained they could not get any taxi service because their neighborhoods—often low-income, high-crime areas—were redlined by dominant taxi providers. The very people that needed reliable and affordable taxi service the most were forced to find other means of transport.

¹² A great deal of entry could occur without even changing the law, which allowed up to 600 permits to be issued. The long-running cap of 392 licenses was an artifact of an arbitrary regulatory decision based on “public convenience and necessity.”

The RSC found powerful support for its reform efforts from two unexpected groups: the disabled and minorities, both groups have a much to gain from a competitive taxi market. The disabled, who are often transit-dependent, complained that few licensed taxis were wheelchair accessible. Price regulations eliminated the incentive to take on the expense of converting cabs to be wheelchair accessible.¹³ If taxis in a competitive market were able to charge for vehicle improvements like wheelchair lifts, and for the extra service provided a disabled passenger, they would offer the disabled better service and shorter waits for a taxi.

Support from minorities came mainly from the Urban League. The restrictions on taxi licenses, fares, and service levels all but prevented low-income drivers from starting their own cab companies. These drivers quickly became a powerful force for taxi reform. The RSC supported the drivers by helping arrange media exposure, assisting in the writing of opinion and editorial pieces, and offering advice on how to contact and lobby city-county councilors. Their personal stories of hardship and sacrifice spoke volumes that the council and the media could not ignore.

The James Chatman Story

James Chatman was a cab driver in Indianapolis for more than 25 years, and he had been trying for years to own his own cab business. He argued, “Because I’ve driven so long in this city, I think I know our streets as well as anyone, and I know that no one knows my customers better than I do.”

Chatman was consistently denied a license by the city, in spite of his hard work, good record, and obvious entrepreneurial spirit. Frustrated by the city’s refusal, Chatman personified the good guy wronged by a bad system. “[W]hy can’t I try to make a go of it? The worst thing that can happen is that I will fail. And really, all I am asking of the city-county council is the right to succeed or fail based on me—my decisions, my service, my prices, and my hard work,” he complained.

The RSC knew that stories like Chatman’s would go a long way towards persuading the council and the public. With RSC support, Chatman spent the week prior to the council vote rushing from one television studio to the next touting the proposal as the ordinance that would give him the right to make a living.



Business-hungry entrepreneurs like James Chatman (see Box), combined with the policy briefings provided by the RSC staff, helped shift the balance of the city council toward the reform proposal. Initially, much of the city council sided with existing taxi companies in the name of the “public interest.” However, the support of reform by seniors, the inner-city poor, minorities, the Urban League, and the disabled soon brought many of them over to the RSC’s side. The RSC expected little support from Democrats on the council, but the strong support for deregulation from their traditional constituents turned the tide. Also, it became apparent that a total elimination of price regulation was unacceptable to too many council members. Though the RSC was not certain that price controls were necessary, the price cap rule was included to secure passage of the reforms. In the end, the reforms passed with a 21-7 vote.

3. Results of a Deregulated Taxi Market

¹³ In yet another example of how regulation begets regulation, in many cities where fare restrictions make serving the disabled a money loser, the city has had to pass laws requiring taxi companies to have a certain number of wheelchair accessible vehicles.

Within 30 days of adopting the new open-entry and price-competition ordinance, the number of licensed cab companies increased by 50 percent. Fares among the new companies were nearly 10 percent less than those offered by the dominant providers. Service from all companies, old and new, improved. Waiting times dropped. Customer complaints about poor service directed to the controller’s office dried up. Nearly overnight, dress codes for taxi drivers were transformed from ripped T-shirts and shorts to collared shirts and sometimes even ties. Cabs became noticeably cleaner and more visible on city streets.

In the two years since the new ordinance was adopted, the numbers have continued to improve (see Box). According to data collected by city officials, the number of licensed companies has nearly tripled from 26 cab companies before deregulation to over 70 today. Minorities or women now own more than 40 of the companies. Fares average around seven percent less than before the regulatory changes, and service quality is up. The total number of cabs on the street has nearly doubled. While there were 392 taxi licenses outstanding prior to deregulation, only about 225 of those licenses were attached to working cabs. The rest were “warehoused” by the dominant providers to prevent the licenses from being issued to anyone else. Since deregulation erased any value of a nonworking license, now all licenses are attached to working cabs. Today there are around 500 taxis working the streets of the city.

Though the number of cabs operating each day has almost doubled, the number of complaints registered with the city has declined. Waiting times for arranged service have dropped from an average of 45 minutes before deregulation to about 20 minutes today. Likewise, now that taxis are allowed to cruise the downtown area, waits for cruising cabs, especially on rainy days, are reportedly shorter.

B. Business and Occupational Licensing—Fair Fees for Small Business in Indianapolis

Collectively, states regulate more than 1,000 separate occupations.¹⁴ The average state issues dozens of different types of occupational licenses including for barbers, doctors, lawyers, and embalmers. In North Carolina, barbers must complete more than 1,500 hours of study from an accredited school, pass both a written and practical exam, and serve as a barber’s apprentice for a year before they can be licensed by the state—the people of North Carolina should have the nation’s best-cut hair.¹⁵

Indianapolis, like most cities, targets some industries for special regulation, while leaving others alone. The industries singled out for special municipal regulation are usually those that at one time were considered a potential threat to public health, safety, or community standards if not carefully monitored.

Taxi Reform Results

1. Number of taxis working the streets increased from ≈ 225 to ≈ 500
2. Number of taxi companies increased from 26 to 70, and 40 are owned by minorities or women
3. Fares decreased
4. Service complaints declined



¹⁴ John Hood, “Splitting Hairs,” *Carolina Journal*, June 1995.

¹⁵ *Ibid.*

5. Average waiting time for arranged service has gone from 45 minutes to 20 minutes

Source: City of Indianapolis.

1. Why Reform Business and Occupational Licensing?

Occupational licensing laws are justified on the basis of protecting public health and safety. Licensing requirements are supposed to ensure that incompetent, untrained, or otherwise unfit practitioners of various professions don't take advantage of their customers. The assumption is that the government is better able to determine the fitness of a business than are customers. One can imagine that customers indeed might have a hard time judging qualifications for some professions, such as doctors or dentists. After all, not everyone knows what the good medical schools are, and the doctor or dentist is not likely to tell the patient how many times he has been sued for malpractice.

However, there is evidence that the government cannot judge qualification much better than customers. Government licensing requirements often appear arbitrary and vary from place to place, suggesting that there is no one ideal criterion. For example, many governments require twice as much training for X-ray technicians, and eight times as much training for dental assistants as the military does.¹⁶

“The chance to earn an honest living without arbitrary government interference is the hallmark of the American experience.”

Perhaps more important, though, is the effect licensing has on the individuals who simply want to start or run a small business. By raising the cost of starting a business, licensing fees and arbitrary license requirements restrict the opportunity to succeed which has long been a tradition in America. As Chip Mellor, President of the Institute for Justice, put it, “The chance to earn an honest living without arbitrary government interference is the hallmark of the American experience.”¹⁷

The problem is compounded when municipal regulations restrict opportunities for individuals to start new small businesses in those areas most available to a city's poorest residents. Youths, minorities, and others who already suffer from the limitations that poverty or a lack of education often impose on job opportunities, find themselves further hemmed in by the licensing requirements imposed by the city.¹⁸

Examples of such regulations abound. Cities charge large fees for licenses to sell food, operate vending carts, shine shoes, remove and dump snow, repair VCRs, etc. New York City charges over \$1,000 for a license to operate a newsstand, and is considering a new system that will raise the fees.¹⁹ These type of high fees and other licensing requirements discourage many budding entrepreneurs from getting started at all, and drive many others to operate illegally. Like other limits on entry, licensing fees and requirements create black markets with all of their incumbent problems. Black-market transactions, since they are illegal anyway, often

¹⁶ Daniel B. Hogan, “The Effectiveness of Licensing: History, Evidence, and Recommendations,” *Law and Human Behavior*, 7, 1983, p. 129.

¹⁷ William H. Mellor, *Is New York City Killing Entrepreneurship?*, Washington, D.C., Institute for Justice, p. 1.

¹⁸ Elton Rayack, *An Economic Analysis of Occupational Licensure*, Washington, D.C., U.S. Department of Labor, Employment and Training Division, 1975.

¹⁹ Mellor, p. 17.

lack other civilizing influences. Warranties, guarantees, and honesty are no longer enforced. Since both buyer and seller are violating a minor law (no business license or permit), they rarely are willing to appeal to the law if one of them commits a larger crime (such as robbery) against the other.

Business and Occupational Licensing Reforms

“Fair Fees for Small Business I” reformed regulations for many businesses, including:

- Hotels and Motels
- Movie and Live Entertainment
- Secondhand Dealers

“Fair Fees for Small Business II” included:

- Amusement Devices
- Carriage Businesses
- Commercial Parking Lots
- Junk Dealers
- Kennels, Grooms, and Stables
- Sidewalk Cafes



If neither customers nor budding entrepreneurs benefit from business and occupational licenses, who does? The answer, as with other limits to entry, is incumbent businesses. A number of studies have concluded that the most common benefit of occupational and business licensing is to protect existing businesses from competition.²⁰ Far from benefiting city residents as a whole, business and occupational licenses often benefit a small minority, and drive up prices for consumers while depriving many individuals of the opportunity to start a business.

2. Major Initiatives

In examining the city’s rules governing business licenses, the RSC discovered that, over the years, Indianapolis had created a series of business and occupational-licensing requirements that did little more than protect current practitioners from new competition. While few people question the need to license surgeons or airline pilots, members of the RSC wondered why hotel owners and junk dealers had to meet demanding licensing requirements of their own.

Legal and Administrative Changes. Regulations identified by the RSC as offering no net benefit to the community were slated for elimination in a series of initiatives called “Fair Fees for Small Business.” In the first round of reforms, in 1994, the RSC eliminated the most obviously unnecessary components of the licensing code, such as rules governing shuffleboard tables and milk cows.

The next round of reforms identified more than 40 types of business and consumer licenses for elimination. The first regulations targeted for removal were those still in force long after the original purpose of the regulations had either vanished or been absorbed by other codes. The annual licensing requirements for hotels and motels, motion picture theaters, second-hand goods dealers, and legitimate live entertainment

²⁰ Milton Friedman, *Capitalism and Freedom* (Chicago, Ill: University of Chicago Press, 1982), p. 148; Benjamin Shimberg, Barbara F. Esser, and Daniel H. Kruger, *Occupational Licensing and Public Policy: Final Report to the Manpower Administration of the US Department of Labor*, Washington, D.C., U.S. Department of Labor, Employment and Training Division, 1972, p. 343; New York State Bar Association, *New York State Regulatory Reform*, 1982, p.27.

theaters passed neither the cost/benefit analysis nor the “least possible community restraint” principles of the RSC.

Among the rules eliminated were those requiring hotels and motels to pay an annual fee based on a per-bed sliding scale. This measure had resulted in little public benefit, because it was enforced only against the larger hotels and motels, and because it subjected reputable businesses to unnecessary expense and red tape. The original RSC proposal called for eliminating hotel and motel licenses entirely. Public safety officials objected on the grounds it would deprive them of an important tool against prostitution and drug dealing. In response, the RSC agreed to replace the annually renewable license and sliding-scale fee with an automatically renewable license.

The case of second-hand goods dealers (most of whom were minority or women-owned businesses), legitimate live entertainment theaters, and movie theaters was more straightforward, because these activities presented no threat to public safety. As proof of how long it had been since these licenses were evaluated for relevance or cost-effectiveness, there was no direct evidence, either written or oral, to indicate the original intent of licensing.

Fair Fees for Business II. In late 1996, the city passed Fair Fees For Small Business Part II freeing almost 2,036 local businesses from the burden and expense of annual licensing by requiring a one time, no-fee registration instead of a license. Fair Fees II replaced annual fee-based licensing with a one-time, automatically renewable registration for businesses ranging from horse-drawn carriages, commercial parking lots, vending and amusement machine operators, junk dealers, transient merchants, used car dealers, and pet store operators.

The freedom to operate a small business in Indianapolis should be an economic right, not a political favor to be granted by government officials.

The RSC used the same process to determine which licenses to eliminate for Fair Fees II as they did for Fair Fees I. By studying enforcement and application histories, they could determine how often enforcement actions were taken against licensed businesses and how many businesses actually applied for and received city licenses. The licenses selected had seen almost no enforcement activity against license holders in the previous decade. In the case of second-hand-motor-vehicle operators, less than 20 percent of those companies listed in the yellow pages under “used cars” had obtained the proper city licensing, yet not a single enforcement action had ever been taken against an unlicensed used car dealer.

Political Initiatives. The RSC had to observe three principal political dictates in trying to pass the Fair Fees initiatives: public-safety questions, fiscal impacts, and political favors. The RSC's initial analysis addressed the public-safety questions, and critics were mostly satisfied. The question of fiscal impact came down to a matter of principle. Eliminating the fees collected from the 425 affected businesses would mean \$85,000 less fee revenue for the city, with no clear offset. The RSC argued that the fiscal loss was acceptable, because the fees themselves were not justifiable. Furthermore, eliminating these petty and arbitrary burdens on firms would improve the business climate and stimulate entrepreneurship.

The issue of political favors turned out to pose the biggest problem. Demonstrating that political power often has more to do with control than it does with ideology, the opponents of the Fair Fees measures were mostly council Republicans. The power to grant, renew, and deny a business license could be wielded by the city

and council as an appeal for direct political support. Relinquishing the power to license was tantamount to relinquishing the ability to leverage this power into political support. The RSC simply maintained that the freedom to operate a small business in Indianapolis should be an economic right, not a political favor to be granted by government officials.

Leading the fight in support of the proposal was a city-county councilor who represented a section of Indianapolis where job growth depended on the kinds of small businesses that existing licensing policies were hurting. The RSC launched a media and grassroots campaign for Fair Fees that closely mirrored the taxi campaign. It prepared briefing materials for the editors of all the local newspapers and encouraged editorials in support of the Fair Fees Initiative. It also garnered tremendous support from the regulated businesses. Nearly 300 of the 425 affected businesses wrote letters of support to their city-county councilors. While 300 letters means little at the federal or state level, locally they make a huge difference. As one councilor remarked, “When we get more than two phone calls from constituents on an issue, it is a big deal.”

The support generated by these efforts created a tremendous groundswell in favor of the regulatory reform package, and the proposal passed unanimously.

3. Results of Reforming Business and Occupational Licensing

The direct effect of Fair Fees for Small Businesses was an \$85,000 reduction in fees. The RSC has not been able to measure how many new businesses have emerged as a result of the reforms. However, what started as a few house-cleaning items became a cornerstone of the administration’s small business development agenda. Fair Fees II affects almost ten times the number of businesses as Fair Fees I and will save business customers roughly \$437,000 each year in direct and associated costs.

C. Building and Construction Permitting

Most local governments regulate development, including not just construction of new homes, but also improvements and changes to existing homes. One common form of regulation is to require a permit to build or significantly modify a structure. Significant modifications include installing bathroom ventilation fans, adding windows and widening doors. The rationale for requiring a permit is to ensure compliance with local ordinances and to protect the safety of homeowners. Problems arise, however, when the requirements make simple home modifications a tangle of red tape, or increase costs by requiring a licensed contractor to do the work.

1. Why Reform Building and Construction Permitting?

Indianapolis ordinances demanded permits for even the smallest of property-owner tasks. A large number of property owners were affected by rules and regulations dictating when and how they could improve or repair their property. Reforming these regulations would have a direct impact on more people than previous RSC reforms.

The city’s permit requirements imposed significant costs on property owners. Homeowners who wanted to legally perform any significant work on their own house had to obtain one or more permits from the city. The often arduous process required submitting an application and waiting up to eight weeks while the site plan was reviewed and approved by as many as four separate city agencies. One local bank president who

tried to put an awning on his new downtown branch spent more than twice as much money winning bureaucratic approval for his plan to beautify his business than it cost him to buy the awning.

If property owners are unwilling to deal with these bureaucratic hassles, their legal alternative is to hire a licensed contractor, who will secure the permits as part of the job. Hiring a contractor, however, is much more expensive than the property owner doing the work himself (Not surprisingly, licensed contractors are great supporters of the property-owner work permit requirements.) Thus the consequences of the permitting process and associated costs may deter property owners from repairing or improving their property.

Another option for the property owner is to do the work illegally. The RSC estimated that less than one percent of homeowners in Indianapolis comply with the permit regulations.²¹ There is no evidence that this permit avoidance has resulted in any incidence of injuries or accidents. With such a low compliance rate, and the absence of a measurable safety problem, the RSC concluded that the permit in itself was not vital to citizen protection.

The low compliance rate indicated another cost of the city's permit rules as well. As one RSC member pointed out, such widespread disobedience of a rule implies that almost all citizens do not think the rule is justified. By encouraging this type of disobedience, these regulations undermine respect for the law.²² Regulations are far more likely to be obeyed if they are deemed reasonable and just by the populace.

The work of licensed contractors does not escape city regulation either. Local regulations impose extensive fees and permits on almost all work performed by contractors. In most cases, each subcontractor must go through their own fee and permit process, often increasing construction costs. These rules distort housing markets, especially across jurisdictional boundaries where fee and permit requirements differ. As one local contractor put it:

*"To us, each permit requirement is an invitation for the government to hassle us, tie us up, slow us down and drive us crazy. We understand the need for permits, but why are there are so damn many of them?"*²³

The Indianapolis Homeowner Freedom Act

Six major changes to the Indianapolis "procedural building code":

1. Eliminate building permits for construction activity that creates no significant health or safety risk.
2. Simplify issuance of building permits for major construction projects by allowing general contractors to obtain a "master building permit" for structural, electrical, heating and cooling, plumbing, and wrecking work.
3. Allow employees and agents to apply for building permits.



²¹ This number was calculated by multiplying an estimated number of windows per house by an estimated total number of homes. That figure was divided by the average life of a window to get a total number of annual window replacements. Compliance was calculated by comparing the average number of annual window replacement with the total number of annual window replacement permit requests processed by the city.

²² Clint Bolick, *Grass Roots Tyranny*, (New York: Free Press, 1994).

²³ Comments of Indianapolis builder were made to Mayor Stephen Goldsmith at a June 19, 1995 meeting arranged by the Building Development Task Force of the Regulatory Study Commission of Indianapolis.

4. Allow owners of residential and commercial buildings to secure building permits for construction work to be done by their employees or by subcontractors that the owners hire.
5. Authorize the city to charge a re-inspection fee where contractors do not cooperate with city inspection policies.
6. Enhance consumer protection by increasing the city's ability to police illegal contractors and contractors who violate building code provisions.

As with property owner work permits, there is little evidence that contractor fees and permits have a significant impact on the quality of work and compliance with local codes. Direct inspections for code compliance, with direct punishment for infractions, regulate outcomes rather than inputs and are far more effective. Permit requirements should be limited to ensuring compliance with zoning laws and other such broad community concerns.

2. Major Initiatives

On balance, the RSC concluded that many of the fees and permits required by local development regulations did not pass the cost/benefit analysis, nor the RSC principle of minimum constraints on markets. Many of the rules exceeded state and federal requirements for no discernible reason.

Legal and Administrative Changes. The RSC created a subcommittee to improve the local permitting system. Consisting of citizens from all walks of life, they spent more than a year devising a program balancing the need for reform with consumer safety concerns (see Boxes). The result was the “Indianapolis Homeowner Freedom Act,” which had two main purposes: First, it eliminated many of the restrictions, fees, and permit requirements on low-impact property-owner repairs and improvements. Second, it dramatically reengineered the local building-permit process by reducing the number of annual transactions required of citizens and developers and by allowing more freedom and flexibility for contractors while strengthening customer protection.

To encourage ease of use the Homeowner Freedom Act allows a developer to obtain one master building permit on a new project rather than requiring all subcontractors to be individually permitted. This reduces the time and money spent by the contractor to meet requirements and increases the time and resources they can devote to building new homes and businesses.

Common Jobs for Which the Homeowner Freedom Act Eliminated Permits and Fees

- Window and Door Replacement
- Home Remodeling, including:
 1. Replacing Kitchen Cabinets
 2. Hanging Dry Wall
 3. Installing Flooring
 4. Closet Construction
 5. Knocking Down Interior Wall
 6. Erecting Interior Wall
 7. Fixed Bookshelves
- Replacing Stairs
- Fence Construction
- Installing and Repairing Siding
- Heating and Cooling Duct Work
- Fire Sprinkler Installation
- Replacing Bathroom, Attic, or House Fans



- Decks
- Window Awnings
- Patio Covers
- Most Roofing Jobs
- Chimney Repair
- Gutter Replacement and Repair
- Replacing Plumbing Fixtures

Finally, to improve the process of dealing with the permit bureaucracy, each permit request is assigned to a specific employee in much the same fashion that a case worker is assigned to a family in a social services department. The job of the “permit caseworkers” is to help the applicant do all that is required to obtain his or her permit.

Political Initiatives. The Homeowner Freedom Act’s journey through the city-county council was relatively smooth. The RSC’s most effective point was that the “re-categorization” of low-impact building permits would eliminate more than 7,200 annual permits and the associated hassles of getting them (see Box). Representatives of local contractor and remodeling associations argued that the reforms would hurt quality control by allowing unqualified “trunk-slammers” to work, leaving the consumer with no recourse if work were improperly performed. The RSC believed that consumers could judge quality and reliability on simple repair and construction work as well as a city inspector could. Nonetheless, to assuage concerns, the RSC increased penalties for shoddy work and for violating agreements and toughened enforcement mechanisms. The reforms passed easily.

Regulations are far more likely to be obeyed if they are deemed reasonable and just by the populace.

3. Results of Reform

The fiscal impact of eliminating a broad range of permit and fee requirements for low-impact property-owner improvements was significant. Based on typical levels of construction, the RSC estimated that property owners are saving approximately \$750,000 in fees and associated costs each year. And, over time, the freedom to repair and improve property should increase property values and, thus, increase property tax revenues.

D. Future Reform Initiatives

Indianapolis is continuing to target additional areas for reform. In 1997, the most extensive review focused on the city and county health code. The Marion County Health and Hospital Corporation (HHC) is an independent municipal corporation not directly answerable to any elected city or county official. It is governed by a seven-member board of trustees appointed by the mayor, the city-county council, and Marion County commissioners. HHC’s formal powers are formidable. In the interest of preserving and protecting public health, HHC can close businesses, destroy homes, and order arrests.

The RSC analyzed the county health code and developed a comprehensive reform package. Political opposition to these reforms, however, has been fierce, and by mid-1997 only a few reforms had been enacted, and they were but minor or watered down changes. The RSC continues to identify new areas to

tackle, and some have suggested they look into such areas as parking requirements built into the zoning ordinances, and regulations governing home-based business, including childcare.

E. Conclusion

Indianapolis's regulatory reform program has focused on existing regulations, using a formal process to analyze the current regulatory code and develop reform proposals. Not being limited to new regulations made it much easier for the RSC to garner grass roots and political support for reform.

Putting together political support for reforms proved to be a crucial strategy, since there are always interest groups organized to defend the status quo—be they taxi drivers or building contractors. By directly involving those who suffer under misguided regulations, the RSC forced the city/county council to face those who pay for regulations as well as special interests who benefit from them.

Regulatory reform programs that review existing regulations upset those with an interest in the status quo.

The result was a series of successful reform efforts that changed the face of the taxi market, business licensing, and development and building licenses in Indianapolis. Residents of Indianapolis get noticeably better service from the city's taxis, and are even able to start a taxi business if they so desire. Small business owners and workers, who no longer have to pay burdensome licensing fees, are saving over half a million dollars a year. And those residents who want to build new homes or improve their existing ones no longer have to wade through mountains of red tape, wasting untold hours and higher costs to get a permit.

Part 4

Lessons for Regulatory Reform Programs

Philadelphia Mayor Ed Rendell likes to quote a local professor at the University of Pennsylvania, Theodore Hershberg:

“All of America is on greased skids. What differentiates one city from another is the angle of descent.”

In order to stop the skid of urban decline, city governments have begun to acknowledge the many current structural incentives that foster the very decline that threatens them. In Indianapolis, and other cities, ill-conceived regulations are an important component of that decline.

A. Principles of Regulatory Reform

While many of the regulatory burdens that constrain urban areas are well understood, policymakers have had less success figuring out how to reduce this regulatory burden. The example of Indianapolis and others with regulatory reform have demonstrated a number of principles that help make a regulatory reform plan successful.

1. **Create an independent reform commission.** Someone must have ownership of the reform process. Individual agencies are too often wedded to the status quo.
2. **Recognize the merits of competition.** More competitive markets are more disciplined, creating incentives for innovation, customer service, and efficiency.
3. **Acknowledge the existence and influence of interest groups.** Even if a policy change produces net gains for the community, the losers have the incentive to oppose change. Politicians need to resist special interests and act on behalf of the silent majority. Reformers can encourage groups of those burdened by existing regulations to help push for reform.
4. **Focus on outcomes rather than process.** Indirect regulations, aimed at process rather than results, increase the chances of unintended outcomes. If the concern is the safety of taxicabs, policymakers should enforce laws against negligence or publicize safe operators to help the market information process. They should not limit the number of taxis on the theory that by controlling licenses they can

improve safety. Focusing on outcomes makes the impact of a regulation more transparent and allows officials and the public to see direct effects of a regulation.

5. **Weigh both the costs and the benefits of a regulation in deciding its worth.** The success of a regulation should be tied to its intended effect, not to the behavior of regulators. It's not how many fines are levied, but how many harmful actions are prevented, and what costs to society are avoided, that should determine the success of a regulation.
6. **Adopt a Transparent Analytic Framework.** A decision process like the one Indianapolis used (see p. 8) assures a consistent analysis on each regulation, and that no steps are overlooked. It also improves citizen and interest group visibility of the reform process, and encourages their input.

Regulations should be simple and narrowly focused. The broader or more complex a regulation, the more likely are unintended consequences. Also, the less likely it is that ordinary citizens can understand the rule and its impact. An opaque regulation plays into the hands of the special interests that benefit from it.

It is crucial to keep in sight the efficiency gains from fully implemented reform and increased competition.

B. Barriers to Reform

The greatest barrier to regulatory reform is resistance to change by existing firms who enjoy a protected market. The fear of competition—of failure or diminished success—leads some firms to oppose regulatory reform. Those firms which do well in a regulated environment—who know how to work the system—may not be as good at serving customers.

A second source of opposition to reform comes from those who simply believe that greater government control improves public welfare. They will oppose replacing regulation with competition for intellectual and ideological reasons.

Regulatory reform efforts are usually controversial. To succeed a reform program needs a well-articulated goal and a plan to get there. A plan must analyze the political dynamics associated with each reform option, and select the option that offers the most gains for an acceptable level of effort. Reformers need to assess their “political capital,” and determine how to expend it to get the most reform. This is an efficiency consideration. Better to embark upon a well-considered campaign of selective reforms for which sound arguments can be made, and perhaps less violent opposition will be provoked.

However, a number of studies show that small, marginal changes towards greater competition may actually decrease efficiency. Efficiency gains emerge only once competition is significantly increased.²⁴ This is called the “marginal adjustment trap,” and implies that reformers need to work through the short term problems with an eye on the ultimate goal. It is crucial to keep in sight the efficiency gains from fully implemented reform and increased competition.

²⁴ Fred Thompson and L.R. Jones, *Regulatory Policy and Practices: Regulating Better and Regulating Less*, (New York: Praeger, 1982), pp. 104–105.

Part 5

Conclusion

The Indianapolis experience demonstrates the power of regulatory reform to improve the local competitive environment and reduce the burdens on individuals and businesses. Removing outdated or overly costly rules and requirements increases individual opportunities and makes simple things like improving a home or getting a taxi ride easier and less costly.

Other local governments can learn from and emulate the Indianapolis regulatory reform program. The first step is to recognize that visible results come from effectively representing the interests of the usually-silent majority that are burdened by excessive or flawed regulations. Then, the key to a successful program, as Indianapolis learned, is to establish a well thought-out, simple and transparent process for identifying regulations that are in need of reform and to devise political initiatives to push for each proposed change. Combining political savvy with a sound methodological administrative process enables reformers to successfully take on the special interests that defend the status quo.

Part 6

About the Authors

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For more information on regulatory reform, see the RPPI website at www.reason.org, and RPPI's Urban Futures project at www.urbanfutures.org.

Appendix A

Regulatory Reform Programs Around the Country

States and cities nationwide are exploring and experimenting with regulatory reform. Some programs are ambitious; others are tentative. A virtue of these experiments is that each presents a lesson that others can learn from, each adapts to some special local circumstance, furthering our knowledge of how regulations function.

These regulatory reform programs present several common themes. The most important is the distinction between reforming *existing* regulations and setting up systems for analyzing or controlling *new* regulations. The latter is less politically controversial, and hence, more common. Programs that review existing regulations upset those with an interest in the status quo. Also, it requires considerable resources to review the existing regulatory code and to develop reform proposals.

Most state and local regulatory reform programs do not extend to existing regulations, though some intend to do so in the future. Two exceptions are San Diego and Indianapolis.

San Diego. Under the initiative of Mayor Susan Golding, in 1993 the San Diego City Council initiated periodic “Regulatory Relief Days”—which the Council devotes to reviewing existing and proposed regulations. The goal: eliminating unnecessary regulation and red tape. (The 104th Congress adopted a similar program at the federal level.)

One typical Regulatory Relief Day eliminated several types of permitting penalties, allowed certain types of low-grade construction without a permit, reduced the requirement for expensive geologic reports on several types of development projects, and eliminated the requirement for temporary signs.

One review uncovered a rule requiring large warehouses to use an antiquated system of fire suppression. The city changed the regulation and allowed warehouses to replace old systems with newer methods, which saved warehouse permit holders an estimated \$150,000 to \$400,000 a year. The program continues, and is helping reduce costs and foster competition in the city.

New York City. In 1994 Mayor Rudolph Giuliani formed the SWAT Team on Regulatory Reform whose mission was to lighten the burden of regulation on New York City businesses.²⁵ The SWAT team’s approach was to target unnecessary rules for elimination, improve enforcement efforts, and improve rule-making policy.

In one case, the city was regulating movie projector operators because decades ago film was made of combustible nitrates, and theater fires were a real threat to lives. The technology has since changed but the regulations remained. Enforcement was costly and wasteful for both the city and projector operators. The SWAT team eliminated the license requirements for projector operators, as well as for auctioneers, billiard employees, and fancy dress balls. Annual savings totaled \$4.1 million.

The SWAT team also streamlined regulatory and citizen-service processes. Many overlapping and redundant codes were eliminated, and enforcement, inspection and information services were consolidated to avoid wasteful duplication.

By eliminating the a few licensing requirements, the New York SWAT team saved \$4.1 million annually.

Colorado. The State of Colorado established the Office of Regulatory Reform (ORR) in 1981 primarily to review proposed regulations and identify duplicative, burdensome, and unnecessary requirements. The ORR also serves as a one stop information and assistance center for business on regulatory issues.

While the ORR doesn’t systematically review existing regulations, it does act on recommendations from businesses or other groups. In one case, Colorado bed and breakfast (B&B) establishments complained about rules governing alcoholic beverages. To serve liquor to their customers, they were required to have an expensive permit and to serve *all comers*, not just their B&B guests. (In a sense, they had to become a bar.) The ORR developed a new \$50 permit strictly for owner-occupied B&Bs allowing them to serve alcohol only to guests.

In another case, the ORR discovered that state codes required the Department of Health to inspect all mattresses. The rule was an artifact of bygone days when mattresses were stuffed with old clothing, much of it from the dead at local morgues. At that time there was a public health interest in ensuring the cleanliness of the stuffing. Though the technology of mattress filling has changed, the state still employed mattress inspectors and required inspection of every mattress. Eliminating this outdated rule reduced the cost of every mattress sold in Colorado between \$10 and \$15.

Pennsylvania. Since 1983 the Pennsylvania Independent Regulatory Review Commission has reviewed proposed regulations.²⁶ Over the last 14 years the commission has eliminated or modified over 1,000 regulations. In one case, the commission helped to kill a proposal by the Labor and Industry Department to broaden existing prevailing wage rules, imposing higher cost, above-market wage rates on a wide range of construction projects.

²⁵ “Reengineering Business Regulation,” Report of the SWAT Team on Regulatory Reform, New York City, September, 1994.

²⁶ Independent Regulatory Review Commission, Commonwealth of Pennsylvania, *1993 Annual Report*.

The commission's goal is not to prevent regulation, but to ensure that regulations meet the legislative intent and serve the public interest at the least possible cost. The commission does not review existing regulations.

Minnesota. The Minnesota Board of Government Innovation and Cooperation was created in 1993 to oversee local experiments in regulatory reform. Any local unit of government can apply to the board for a temporary waiver from a regulatory requirement. If their program accomplishes its goals, the Board can propose legislation to make the change statewide. The virtue of this program is that experiments with reform are local, minimizing the consequences of mistakes. Almost 40 waivers have been approved, most of them too recently to permit evaluation of their results.

New Jersey. In 1995 New Jersey released the STARR (Strategy To Advance Regulatory Reform) Report, which proposed a regulatory review program and a streamlining of government processes.²⁷ To date little substantial reform has come out of this process.²⁸ The program does not entail review of existing regulations.

Virginia. Gov. George Allen of Virginia required in 1994 a review of all proposed regulations to see if they were necessary, and if they used the least burdensome method available. He also required a review of each regulation for effectiveness within three years of its starting date. His intent was to prevent enactment of ill-conceived or heavy-handed regulations and to institutionalize the termination of ineffective regulations.

The chief instrument for evaluating proposed regulations is the Economic Impact Analysis (EIA), which incorporates criteria such as employment effects, number of individuals or business effected, and estimated compliance costs. The program is still new, and the state has not evaluated the overall impact of EIA, but there are examples of success. In one case an EIA stopped a rule proposed by the State Police that required motorcycle riders to wear a helmet, and specified the type of helmet.²⁹ The EIA revealed that the specified type of helmet was available in very few shops, and cost \$300 or more. Alternative helmets were found with prices ranging down to \$50, each of which was rated for its degree of safety. The market was already providing sufficient information to consumers without need of regulation.

Gov. Allen further directed all agencies to review existing regulations on a regular basis, and recommend retaining, amending, or eliminating them. Agencies must solicit public comments and must measure each regulation against the criteria of efficiency, flexibility, and accountability. To date some outdated and duplicative rules have been eliminated, but state agencies are just beginning to follow up on their analyses.

²⁷ "STARR: A Progress Report on Regulatory Reform," Department of State Office of the Business Ombudsman, State of New Jersey, July 1996.

²⁸ Dana C. Joel, "Rhetoric vs. Reality: New Jersey Regulatory Reform," *Regulation*, #2, 1996, pp. 53–62.

²⁹ Susan Eckerly, "Virginia's Deregulatory Challenge: A Promising Start," *Regulation*, #2, 1996, pp. 63–70.

Appendix B

A Regulatory Reform Toolbox

Two approaches can facilitate regulatory reform. The first is to look for an alternative to regulation to mitigate a particular problem. In many cases, tort law or institutional changes can address the problem without need for recourse to regulation. A second option is to design the regulation in a way that reduces or eliminates the problems and unintended consequences that often accompany them.

A. Alternatives to Regulation

The most pervasive alternative to regulation is competition. A competitive market disciplines participants, punishing inefficient behavior. If consumers can readily turn to an alternative source, a producer is not likely to get away with behavior customers dislike. Ensuring that markets are competitive goes a long ways towards reducing the need for regulation.

When competition is not sufficient to prevent a harm, an alternative is simple tort and common law.³⁰ Many regulations seek to protect consumers from “harmful” competition or from unsafe or inadequate service providers by limiting the ability of new businesses to enter the market. Yet such behavior in the absence of government complicity is rare. Antitrust law can usually provide more than adequate protection for one firm against another’s illegal or anticompetitive practices. Likewise, safety is enforceable by negligence law, and competence to provide a service is a matter of contract between buyer and seller, enforceable in the courts. Regulation takes the case out of the courts and resolves it by fiat. This may be particularly harmful since, in court, the particulars of each case have great bearing. Regulation imposes blanket prohibitions and overrides the particulars of each case, and preempts opportunities for evolution and discovery of new resolutions.

Another tool for resolving problems with perceived market failures is enforcement of property rights. Economist Ronald Coase has suggested that, if the cost of negotiation is low enough, then giving any one party in a dispute a clear and enforceable property right will lead to an efficient outcome. They will be able to trade, so whoever values the good the most will obtain or keep it. In recent years, economists have led the drive to broaden use of property rights to address “commons” problems. For example, tradable permits in various types of pollution emissions have created more flexible and efficient emissions reductions activities in the United States.³¹

³⁰ An excellent discussion of legal alternative to regulation is provided by Stephen Breyer, *Regulation and its Reform*, (Cambridge: Harvard University Press, 1982).

³¹ On the use of property rights to control pollution, see Robert W. Hahn, “Market Power and Transferable Property Rights,” *Quarterly Journal of Economics*, 99, 1984, pp. 753-65 and “Economic Prescriptions for Environmental Problems: How the Patient Followed the Doctor’s Orders” *Journal of Economic Perspectives*, 3, 1989, pp. 95-114.

Property rights can also resolve many of the problems associated with natural monopolies. If we break down the different elements of a natural monopoly, there may only be economies of scale or network economies in one element of the industry. Property rights can allocate a commodity so that the market can function competitively. For example, the electric industry is often thought of as a natural monopoly. One may argue that we do not want competing companies running parallel power lines down the streets when all the electricity is most efficiently carried in one system. However, if property rights are established for packets of electricity, then power generating and marketing can be competitive—only the actual transmission network—the power lines—need be a regulated monopoly.³² This process is one of the more popular options being considered by states looking to deregulate their electric utilities. A similar idea can be applied to water, natural gas, and urban transit.³³

Competition often achieves the desired outcome more effectively than the most well-intentioned and finely crafted regulation.

Any of these alternatives to regulation may resolve a potential problem in a much less costly manner than regulation. The key is recognizing which approach is best, and that depends on the given situation. The primary focus must be on devising a framework that fosters competition, and competition often achieves the desired outcome more effectively than the most well-intentioned and finely crafted regulation. To foster efficient competitive markets in which governments primarily enforce property rights and contracts, policymakers need to focus on removing barriers to competition.

B. Tools for Regulatory Reform

When choosing a regulatory reform tool, policymakers should consider the principles of regulatory reform described earlier, including recognizing the positive impact of competition on service quality, acknowledging the influence of special interest groups on the process, focusing on outcomes rather than inputs, and keeping regulations as simple and focused as possible, and using a transparent and well-defined process to analyze regulations.

Several useful regulatory reform tools warrant special consideration. If you re-examine the analytic framework on page 8, you can easily see where each tool can be applied.

1. Cost/Benefit Analysis

Cost/benefit analysis (CBA) offers a direct approach to analyzing a regulation's effects. CBA involves adding all the costs of a regulation, adding all of its benefits, and comparing the two totals. Reform efforts should focus on those regulations in which costs outweigh the benefits. Note that some of the costs or

³² Arguably, even the transmission system can be competitive. A municipality could retain ownership of the transmission network and contract operation of it in divided parts to different companies. Competition for each contract would maintain discipline on costs and prices and encourage innovation. Alternative, if the political costs of putting in parallel transmission lines could be lowered, it might be economically feasible for electric companies to compete head to head. This is the case in several towns in America today.

³³ On mass transit see Klein, Moore, and Reja (1997); on natural gas see Rodney T. Smith, Arthur S. DeVaney, and Robert J. Michaels, "Defining a Right of Access to Interstate Natural Gas Pipelines," *Contemporary Policy Issues*, 8, 1990.

benefits might not be quantifiable in monetary terms, and must be subjectively evaluated against some criterion of the public good.

The use of cost-benefit analysis can be controversial. Calculating costs and benefits is a process full of assumptions that generate disagreements. For example, the analyst must consider indirect as well as direct benefits, and make broad assumptions, especially when predicting future effects. The analyst must also take care to avoid counting transfers from one person to another as either social benefits or costs.³⁴ Regulations interact with one another, and the effects of changing one rule can spill over into others. Each change should be looked at as part of a broader reform, though this context expands the scope, difficulty, and expense of the analysis. A successful regulatory reform program needs to be inclusive, so many individuals and groups will be identifying costs or benefits, and there is a tendency to inflate both. A high-quality analysis can be expensive and time consuming, and the results are usually ambivalent, especially if one includes nonquantifiable factors.³⁵

Some argue that these limits on CBA reduce its utility. Critics note that if we could command all the information needed for a complete cost/benefit analysis, we could as easily design a perfect and problem-free regulation. The difficulty, indeed impossibility, of assembling and analyzing all relevant information makes both regulation and CBA problematic.

But CBA need not give a precise answer to a policy problem—it can provide critical information to help assess options. As the case study of Indianapolis shows, in many cases the benefits of increasing competition in a market will be obvious from rudimentary, semi-quantified CBA.

The distributional effects of a regulatory reform can be at least as important as the efficiency effects. Impacts on equity carry considerable emotional and political weight and often eclipse efficiency concerns. However, the distinction between efficiency and equity is a false dichotomy. Greater efficiency increases the size of the pie. At best, inefficient regulations give each person a more equitable share of a smaller pie.³⁶ Government policy should avoid redistribution that creates disincentives to produce. Removing barriers to competition is one means of fostering a larger economic pie.

2. Risk Analysis

Risk analysis should be part of a cost/benefit analysis, but as a tool it deserves separate examination. A risk analysis is simply a means of evaluating the likelihood of different risks. Given limited resources, it makes sense to concentrate more resources on measures to reduce large risks rather than smaller ones.³⁷

Regulatory Reform Tools

- Cost/Benefit Analysis
- Risk Analysis
- Legal Tools
- Sunset Clauses and Reviews
- Regulatory Budgets
- Administrative Simplification



³⁴ Hahn and Hird (1991) found that in many US industries deregulation generated more transfers than real costs.

³⁵ For a thorough discussion of pitfalls of CBA, see Hahn and Hird (1991). For a guide to doing simple CBA and avoiding the pitfalls, see Edith Stokey and Richard Zeckhauser, *A Primer for Policy Analysis*, (New York: Norton, 1978).

³⁶ Robert A. Leone, *Who Profits: Winners, Losers, and Government Regulation*, (New York: Basic Books, 1986), talks extensively about the conflict between equity and efficiency in regulatory reform.

³⁷ Risk analysis suffers from some of the same difficulties as CBA. See Stephen Breyer, *Breaking the Vicious Circle*, 1993, and Adam Finkel, "Who's Exaggerating?," *Discover*, May 1996. Nonetheless, risk analysis, like CBA, can help a policymaker assess alternatives.

Very few regulatory programs make such comparisons. The philosophy often is: if it poses any risk at all, it should be regulated. Yet limited resources mean we cannot regulate away all risk. Risk analysis can help prioritize risks so that resources can be expended on high-risk activities.³⁸

3. Legal Tools

The existing legal system can be used in several ways to control or reform regulation and foster competition. These methods have the advantage of minimizing direct government involvement in market processes. However, to be effective legal tools require forbearance on the part of policymakers. The more policymakers regulate the market, the less recourse there is to legal remedies.

One suggested remedy is that legislation authorizing regulation might include a “competitive presumption,” that is, that more competition is explicitly in the public interest.³⁹ This presumption would force regulatory agencies to weigh effects on competition in their decisions and give the courts a basis to interpret the law and regulatory actions in a manner favorable to competition. This kind of pro-competition legal policy would complement limited legislation preventing private, anticompetitive practices. The two provisions combined would form the basis for a legal structure that significantly promotes an openly competitive economy.

Another legal tool is the rational-basis test, a method long used by courts to determine whether a regulatory agency’s actions reasonably meet the intent of the legislature.⁴⁰ This method involves either 1) direct checks to see if legislation authorizes a specific regulation, or 2) attempts to extrapolate from the legislation to assess whether a regulatory action meets the intent of the legislators.

Traditionally, the courts have been lenient, granting agencies broad leeway in interpreting legislative intent and avoiding substantive questioning of executive agency decisions.⁴¹ This restraint began to change in the 1980’s.

First, a number of court decisions have found local regulations, such as those restricting entry into markets or forbidding certain trades, to be either unreasonable or unconstitutional.⁴² By holding regulatory agencies to similar strict standards, citizens might improve their control over regulation.

Second, courts have concluded that attempts to reform or eliminate regulation must avoid being “arbitrary and capricious”. This test is a mirror image of the rational-basis test. The courts have held that a regulatory agency may not decide to rescind, rewrite, or fail to enforce a regulation unless authorized to do so by legislation.⁴³ What this means is that the regulatory agencies cannot on their own decide to undertake systematic regulatory reform—the impetus must come from the legislature or executive branch.

³⁸ Tammy Tengs, “Dying Too Soon: How Cost-Effectiveness Can Save Lives,” NCPA Policy Report #204, 1996, provides a good example of how relative risks can be compared.

³⁹ Edwin M. Zimmerman, “The Legal Framework of Competitive Policies toward Regulated Industries,” *Promoting Competition in Regulated Markets*, ed., Almarin Philips, (Washington, DC: Brookings Institution, 1975), pp. 373–375.

⁴⁰ Merrick B. Garland, “Deregulation and Judicial Review,” *Harvard Law Review*, 98, 1985.

⁴¹ See for example, *Munn v. Illinois*, 94 U.S. (4 Otto) 113 24 L.Ed. 77.

⁴² For example, courts overthrew restriction on shoe-shiners and hair-braiders in Washington, DC, limits on taxi licenses in Denver, and the ban on jitneys in Houston.

⁴³ Garland (1985), pp. 512–519.

4. *Sunset Clauses and Reviews*

A sunset clause is a provision built into a law or regulation that limits its effective lifespan. Generally, sunset clauses come in two types. The most common is a requirement that the legislature or agency review the regulation after a set time period has passed. This insures that a rule will not be passed and then forgotten, living on even after its usefulness has passed.

On its face, this practice should promote the elimination or reform of regulations found to be ineffective or too costly. In practice, sunset clauses are not always as effective as expected. A requirement for review does not insure that the review will be complete or serious, nor does it change the incentives of the players. Those who will lose if the rule is revised or eliminated will still have more incentive to become involved than the general public, resulting in a bias towards the status quo—automatic re-authorization of the regulation.⁴⁴

A second type of sunset clause, much less used, terminates a law or regulation when a specific date or circumstance is reached. This is potentially a more powerful tool, since it is harder for the legislature or agency to treat the sunset lightly—they must actually introduce and pass a new version of the rule or law.⁴⁵ This regular renewal process institutionalizes considering changes, such as in technology or local circumstances, that may have significant impact on the value of a regulation.⁴⁶

5. *Regulatory Budgets*

Most regulatory costs are not paid from the public purse at all, but by participants in the market. This makes the cost of regulations much harder to see, and much less directly attributable to government action. Legislators have no direct incentive to keep down regulatory costs, since they have no explicit limit on how much regulation they can impose.

A regulatory budget places a limit on the amount of costs an agency can impose, leaving the agency free to allocate where those costs will generate the most benefits. One virtue of this approach is that it would make explicit the costs of regulatory actions—allowing comparisons and tradeoffs of different efforts much like we have with regular budget expenditures.

Implementing a regulatory budget requires measuring the costs of regulation—a difficult process subject to the challenges discussed earlier. Agencies would have incentives to underestimate the costs of regulations and compliance costs, while regulated parties would have an incentive to overestimate the same costs. Nonetheless, a regulatory budget might be useful in forcing regulators to set priorities.⁴⁷ A regulatory budget makes the process of allocating and imposing regulatory costs more direct and visible, and more subject to review and public scrutiny, without necessarily requiring time-consuming, exhaustive, cost/benefit analyses.

⁴⁴ Breyer (1982), pp. 365–366; Thompson and Jones (1982), pp. 137–138.

⁴⁵ Of course, this would mean that each time the law is up for consideration, resources would be expended in the political battle. This may be an unavoidable cost of keeping regulations from outliving their usefulness or popular support.

⁴⁶ Vern McKinley, “Sunrises without Sunsets: Can Sunset Laws Reduce Regulation?,” *Regulation*, #4, 1995. McKinley contends that argues that these “drop-dead sunsets” are more effective than weaker sunset clauses. However, he points out that laws with strong sunset provisions are still very often automatically renewed, with very little debate or discussion of possible changes in circumstances.

⁴⁷ Clyde W. Crews, *Promise and Peril: Implementing a Regulatory Budget*, (Washington, DC: Competitive Enterprise Institute, 1996).

6. Administrative Simplification

Regulatory agencies sometimes have overlapping power and authority and fail to coordinate their actions. This means regulated businesses can sometimes end up caught in the middle of conflicting regulatory requirements. For example, a private water utility might be ordered to upgrade its treatment equipment by one agency. But, another agency may control the utility's ability to pay for the new equipment by borrowing money or raising rates. If the latter does not approve a means of raising the funds, the utility is forced to violate the mandates of one agency or the other.

This problem can be minimized by reducing regulatory overlap. Reform efforts should evaluate regulations and assign related responsibilities consistently to one agency. For those situations where overlap cannot be avoided, a process for quick and efficient appeal to a higher authority for adjudication is necessary.

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