President Obama issued an executive order last week mandating that existing regulations be periodically examined to determine whether they deliver their promised benefits at a reasonable cost. This seemingly innocuous directive is part of the most fundamental shift in regulatory policy in more than three decades. This regulatory revolution offers the promise of finding a better balance between our health and safety and our economic growth, and two further changes would help to guarantee its success.

To understand why the president’s efforts are so critical, imagine that the Food and Drug Administration approved new drugs without ever having tested them on people — that it approved drugs knowing only in theory how they were likely to interact with the human body. Further imagine that such drugs remained on the market for years, or even decades, without their effects ever being subject to evaluation.

This path is simply inconceivable, but until recently was how the vast majority of government regulations were treated.

And make no mistake — inadequate regulatory policy can be, as with drug approvals, a life-or-death issue. Regulations determine the pollutants in the air we breathe, the quality of the water we drink, the safety of our workplaces, the cars we buy, the investments we make and much more.

A bit of history: U.S. regulations used to be designed essentially in the dark. Then, in 1981, President Ronald Reagan issued an executive order institutionalizing the idea that regulatory action should be implemented only in cases when, among other provisions, “the potential benefits to society for the regulation outweigh the potential costs to society.” It sounds obvious. But this idea of applying cost-benefit analysis in the regulatory arena fundamentally altered the way in which regulations were considered.

In 1993, President Bill Clinton outlined more specific guidelines for prospective analysis of cost-benefit trade-offs. And yet, the regulatory review process was still operating with one hand tied behind its back. As a general matter, a regulation’s likely benefits and costs were considered only before the proposal was enacted — the point when the true costs and benefits cannot be known and any estimates must rest on many unverifiable and potentially controversial assumptions.
Once a regulation passed through a prospective analysis and went on the books, it could remain there for decades without any further evaluation.

Some regulations work out exactly as intended, but some, of course, do not. For example, an air pollutant may prove to be more harmful than was understood. Or innovation may lead to a new and less expensive pollution-abatement technology. In our rapidly changing world, regulations can and should adapt to change.

In January 2011, President Obama took a critical step forward by looking backward. He issued an executive order requiring that agencies routinely reevaluate the costs and benefits of existing regulations and identify whether the goals of a regulation could be achieved through less expensive means. Beginning this process of retrospective analysis was a significant move in the right direction.

Last week’s executive order institutionalized several aspects of retrospective regulatory review. The order mandates that existing regulations be queued up for retrospective reviews prioritized by the potential benefits of their reform. Additionally, agencies are required to issue regulatory review updates to the public and allow for public participation in the review process.

Two further reforms could aid this revolution in regulatory reform.

First, the president could require that all economically significant regulations be automatically reviewed within five to 10 years of implementation. In cases where the actual benefits or costs materially differ from those projected before implementation, the rule should automatically be considered for modification or repeal. Public announcement of the review date upon the rule’s initial release would facilitate this process.

Second, I recommend the creation of an independent organization charged with conducting regulatory impact evaluations. Many agencies do not have the staff, expertise or resources necessary to undertake these reviews. Further, self-evaluation is challenging for all organizations, as it requires complete objectivity. And history is unkind to organizations of all types that fail to get outside reviews of their work.

There are several ways to structure such an organization, but there is a good case for housing it in the Congressional Budget Office (CBO), which has built an excellent reputation for nonpartisanship and independence. Since its founding in 1974, the CBO has greatly enhanced the quality of budgetary analysis because its work is generally of a high quality and because other analysts know that their own work must stand up to the CBO’s scrutiny.

Implementation of these proposals would require resources and funding — a stipulation not to be taken lightly these days. But it is highly likely that the proposals would pay for themselves many times over. In fact, along with Obama’s executive order last week, the White House announced savings of $6 billion due to retrospective reviews.

Obama should continue to push forward by looking back at old regulations. By doing so, the administration can improve our health and safety while expanding the economy.
Let’s keep Obama’s regulatory revolution going - The Washington Post

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