The Daily Dish

# A New Approach to Retrospective Review

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**Eakinomics: A New Approach to Retrospective Review**

The notion that one ought to vet new regulations to see whether they are "worth it" – i.e., benefits exceed costs – seems uncontroversial, even if there is not always agreement on how to execute the analysis. For some reason, however, the notion that one ought to do a retrospective review – a look back at an existing regulation – to see if it really was, and remains, "worth it" somehow remains a lightning rod.

Nearly every president has issued an executive order directing agencies to get rid of unneeded regulations – with little impact. More recent is the Sunset Rule, proposed by the Trump Administration's Department of Health and Human Services. It would require every rule to be reviewed every 10 years to determine whether it still merited being on the books. The rule was finalized on January 19, litigated immediately thereafter, and subsequently delayed for a year by the Biden Administration. Now the Sunset Rule is threatened with removal by the Congressional Review Act (CRA), which would also mean that no new retrospective review rule could be put in its place.

The common characteristic of these ongoing failures is that they put the onus of identifying failed rules on the same people who issued them. The alternative would be to let those being regulated identify the offending regulation(s). That's the approach of the Utah regulatory "sandbox." As explained by Dan Bosch and Thomas O'Rourke, "Last month, the Utah House of Representatives passed House Bill (HB) 217, which would expand the scope of the state's regulatory sandbox program beyond the financial services, insurance, and legal services industries." The legislation was passed by the Utah Senate and signed by the governor on March 22, making it the first sandbox program of its kind to be available to all businesses, regardless of industry.

Specifically, Utah would create the Office of Regulatory Relief (ORR). Businesses could identify to the ORR specific regulations that they wish to be waived. In order for an exemption to be granted, the business must demonstrate how doing so will benefit consumers and promote innovation. "Applicants will also have to identify potential risks that may arise due to the exemption, and what measures they will take to limit possible harms. Following the ORR's receipt of an application, each effected agency will be required to review the waiver request to assess the costs and benefits of the proposed relief. Following review, each agency will be required to formally recommend whether to waive the specified regulations. If approved by the ORR, following consultation with every relevant agency, the business will be exempted from the given regulations for a duration of one year and may reapply for a one-year extension."

The key here is to eliminate non-working regulations and thus reduce the regulatory burden. It is also intended to reward effective regulation that demonstrate benefits to consumers. This approach is an important and innovative strategy that bears watching. If the early returns are promising, it also makes sense to strengthen the sandbox by extending the period of regulatory relief. Indeed, in a fully implemented version, the regulation would be removed entirely.