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The Council on Wage and Price Stability: A Retrospective

Abstract: Applying benefit-cost analysis in the White House regulatory oversight process served as a basic mission of the Council on Wage and Price Stability (CWPS) during its seven-year lifespan (1974–1981). This paper reviews that CWPS experience, which involved filing comments in over 300 proceedings at more than 25 federal regulatory agencies. The paper draws on those CWPS public comments (filings), identifying persistent and pervasive deficiencies in the economic analysis regulators then and now often use as support for new regulation. CWPS filings fostered greater acceptance of benefit-cost analysis in regulatory decisions; such analysis is now required by executive order.

Keywords: benefit-cost analysis; law and regulation; regulation; regulatory burden; regulatory oversight; regulatory reform.

JEL classifications: D04; D61; D62; D7; H00; K2; K30; K4; L38; L51.

The present U.S. regulatory setting is in many ways far more complex than that of four decades ago. Entirely new regulatory agencies with ambitious agendas have sprung up, and new layers of regulatory oversight are now in place. The Department of Homeland Security, the Consumer Financial Protection Bureau, and the Office of Information and Regulatory Affairs (OIRA) are but a few of today's players that did not exist in 1974. Indeed, much of the U.S. regulatory system is new and different.

Yet changes made to federal regulation during the 1970s were just as controversial and hardfought as those being considered at present. Despite all that has changed in the regulatory system, there may be enough commonality in issues and practices to warrant another look at a regulatory oversight experiment that took place during the years 1974–1981. That experiment was the regulatory intervention program of a small agency located in the Executive Office of the President – the Council on Wage and Price Stability (CWPS). This paper explores the extent to which the CWPS program may have continuing relevance for regulatory decision-making.

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Before 1974, federal regulations were largely the individual provinces of agencies that sought to implement federal laws. Such laws typically delegated substantial and open-ended regulatory powers to agencies.[1] The president had virtually no role in the regulations emanating from independent agencies (whose agency heads do not serve at the pleasure of the president). For executive branch agencies, such as the departments of agriculture and labor, the president, through his White House staff, had authority to offer guidance to regulators but rarely became involved in particular regulations. Regulatory oversight came primarily from judicial review and from intermittent interaction between congressional oversight committees and regulatory agencies.

In 1974, President Ford signed the Council on Wage and Price Stability Act, which provided congressional authorization for a new unit within the White House, charged, among other things, to intervene directly in specific rulemakings of all federal agencies. This law directed CWPS to "focus attention on the need to increase productivity in both the public and private sectors. . . and present its views as to the inflationary impact that might result" from regulatory actions.[2] CWPS lacked the power to force change, but because CWPS interventions took the form of public comments (often termed "filings") during the development of a new regulation, they offered a novel form of oversight and White House influence. Its statute's implication that many regulations had inflationary impacts gave CWPS filings added leverage. Private parties and the news media could and did buttress many CWPS filings, raising the cost to regulators of ignoring the messages conveyed.

The basic thrust of those CWPS filings was a straightforward application of microeconomics. A small staff of economists, reporting to the CWPS director, a presidential political appointee, wrote the filings. With respect to executive branch agencies, CWPS was guided both by its statute and by a succession of executive orders (EOs) each president issued. These EOs outlined criteria and considerations that regulations and their analyses should reflect.[3] In dealing with independent agencies, CWPS was guided only by the wording of its statute.

1 For example, consider the language from a key statute for the Department of Labor, Section 2(b) of 29 U.S.C. Section 651 (1970), "authorizing the Secretary of Labor to set mandatory occupational safety and health standards." The agency, faced with virtually no further statutory guidance nor constraints, was to create "safe and healthful working conditions" for all.

2 Pub L. No. 93-387, as amended, Sections 3(a)(5), 3(a)(7), and 3(a)(8). CWPS had two largely unrelated roles: regulatory oversight (the focus of this paper) and private-sector wage–price monitoring (not considered here). While the two roles were staffed and structured separately, public concern about inflation was an important driver for each.

3 Issued by President Ford: Exec. Order 11821, 39 Fed. Reg. 41501 (Nov. 27, 1974); Exec. Order 11949, 42 Fed. Reg. 1017 (Dec. 31, 1976). Issued by President Carter: Exec. Order 12044, 43 Fed. Reg. 12661 (March 23, 1978); Exec. Order 12221, 45 Fed. Reg. 44106 (June 27, 1980).

The first of the regulatory oversight EOs, Ford's 1974 EO 11821, declared that executive branch agencies must henceforth prepare "Inflation Impact Statements" for every major new regulation proposed, and CWPS filings reviewed these agency documents along with the corresponding regulatory proposals themselves. Concern about inflation continued throughout the Ford and Carter presidencies. While no one ever contended that regulation was high on the list of inflation causes, the following view prevailed at CWPS (Hopkins, 1978, p. 20):

> Regulation contributes to inflation in two different ways. First, regulation often directly results in a service or product selling at a higher price, thereby boosting the CPI. Secondly, regulation can lessen competition, productivity and efficiency or otherwise impede the economy's ability to adjust to shocks of various kinds – i.e., rigidities are introduced which indirectly result in higher prices. . . . The basic issue in appraising regulation. . . Is the regulation accomplishing a worthwhile objective in the least costly manner possible?. . . the regulatory process today gives far too little attention to this question. As a result much well-intentioned regulation creates needless but serious cost pressures, with inflationary results.

During CWPS's seven-year existence, it is noteworthy that its seven directors all were economists who shared similar views on regulatory principles underlying CWPS filings.[4] The CWPS director reported to an eight-member CWPS consisting of key administration economic policymakers; the CWPS chairman generally delegated decision-making responsibilities to the CWPS director.[5]

During the Carter administration, the preparation and submission of CWPS filings were augmented by the creation of the Regulatory Analysis Review Group (RARG). This White House entity brought together economists from the Council of Economic Advisors (CEA), the Office of Management and Budget, and several cabinet agencies whenever particularly important regulatory proposals were pending. CWPS then filed the group's reports. The RARG process was in place 1978–1980, which corresponded to Alfred Kahn's tenure as CWPS chair. Kahn, who previously had been highly effective in pushing for airline deregulation, and CEA chair Charles Schultze added credibility to this regulatory oversight process. Moreover, since RARG reports "reflected the consensus view of the major branches of the

4 CWPS directors, in chronological order, were Albert Rees, George C. Eads, Michael H. Moskow, William Lilley III, Robert W. Crandall, Barry Bosworth, and R. Robert Russell.

5 CWPS chairmen, in chronological order, were William E. Simon, W. Michael Blumenthal, Charles L. Schultze, Alfred E. Kahn, and again C. L. Schultze. The eight-member council itself was not active and held no meetings after 1976. While Kahn served as CWPS chairman, 1978–1980, he also held a cabinet-level post of Advisor to the President on Inflation and took an active role in setting CWPS policy.

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Executive Office of the President as well as the affected regulatory agencies, they had an enhanced political appeal (Viscusi et al., 2005)." Placed in a broader context, CWPS and RARG filings also were taken seriously because of widespread perceptions that rising regulatory compliance costs probably were exacerbating inflation.

Soon after President Reagan took office in 1981, the newly created OIRA, located within the Office of Management and Budget, became the new home of the CWPS regulatory economists and their oversight activity. White House oversight henceforth operated through OIRA enforcement of new EOs that preserved and extended the economic analysis advocacy of earlier EOs.[6] Congress did not reauthorize CWPS in 1981, and the type of public filings CWPS had undertaken was discontinued. From 1981 to the present, OIRA has managed the White House role in regulatory oversight, focussing on executive branch agencies but excluding the independent ones. The 1981 transition provided continuity in the practice of regulatory oversight, because the entire CWPS regulatory review staff was moved into OIRA where they continued their scrutiny of regulatory proposals. But there was loss of scope, in that regulations from independent agencies no longer were targeted for review.

During its seven-year existence, CWPS intervened in more than 300 regulatory proceedings at over 25 federal regulatory agencies. Early in 1981, CWPS senior staff wrote a summative review assessing the record of those filings (Hopkins, Lenard, Morrall & Pinkston, 1981). That 1981 review and many of the CWPS filings themselves have been preserved by the Mercatus Center at George Mason University.[7] As a result, an intriguing opportunity exists to review this assessment with three decades of hindsight. This paper draws on those CWPS documents, identifying elements that may have continuing relevance to current regulatory activity.[8]

Three tables located in this paper's Appendix A characterize the nature and range of CWPS filings. Table A1 sorts 350 CWPS filings by year and by agency (distinguishing independent agencies from executive branch agencies). Table A2 classifies, by agency, the types of market failure (if any) the proposed regulations were intended to address. Table A3 shows, again by agency, the industries primarily affected by the regulations. Before further discussing these tables, some general considerations warrant attention.

6 Issued by President Reagan: Exec. Order 12291, 46 Fed. Reg. 13193 (Feb. 17, 1981); Exec. Order 12498, 50 Fed. Reg. 1036 (Jan. 4, 1985). Issued by President Clinton: Exec. Order 12866, 58 Fed. Reg. 51735 (Sept. 30, 1993). Issued by President George W. Bush: Exec. Order 13258, 67 Fed. Reg. 9385 (Feb. 26, 2002). Issued by President Obama: Exec. Order 13563, 76 Fed. Reg. 3821 (Jan. 18, 2011); Exec. Order 13579, 76 Fed. Reg. 41585 (July 11, 2011); Exec. Order 13610, 77 Fed. Reg. 28467 (May 10, 2012).

7 These CWPS filings are accessible at http://cowps.mercatus.org.

8 Other insightful perspectives on CWPS contributions can be found in Eads and Fix (1984), Viscusi (1995), and Graham (2008).

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Briefly put, the basic conclusions of the 1981 CWPS summative report remain disconcertingly overlooked in many regulatory areas today, although much in the regulatory landscape has changed. The 1981 CWPS report stressed that regulators frequently neglect to ask whether a significant problem exists in the marketplace that deserves policymakers' attention. This indeed should be characterized as the "first principle" of regulatory policy, and eventually, in 1993, President Clinton's Executive Order 12866 did so declare.

Unless some strong impediment exists that prevents normal functioning of reasonably competitive markets, CWPS contended, "regulatory intervention in these markets can only misallocate resources and decrease consumer welfare (Hopkins et al., 1981, p. ii)." On these grounds, CWPS found little justification for most regulation of prices, rates, and entry. This represents a success story, since whole swaths of economic regulation that CWPS considered fundamentally inefficient no longer exist. Such economic regulation had become deeply entrenched in transportation industries; indeed, nearly 90 CWPS filings were critiques of economic regulation at the Civil Aeronautics Board (CAB) and the Interstate Commerce Commission. Alfred Kahn, who in 1978 became CWPS chairman, previously had chaired (1977–78) the CAB, where he successfully led the push for "the Airline Deregulation Act of 1978, the first total dismantling of a federal regulatory regime since the 1930s".[9] Economic logic ultimately prevailed in this quarter, for the most part, and today little such regulation remains in transportation markets. This is a mark of much progress.

However, international trade restrictions are also a form of economic regulation, and in this area – which attracted 10 CWPS filings – far less headway has been made. Consumers are still denied access to less costly products and services by a staggering array of both explicit and subtle barriers that lack economic rationale. World prices for sugar, for example, are not accessible to U.S. buyers, and this is simply one among many vestiges of protectionism that now remain (Alexander, 2014; Watson & James, 2013).

Elsewhere in the regulatory universe, many concerns that CWPS articulated remain troublesome features of many regulations. We return once more to the basic question of the role of market forces. As the 1981 CWPS report noted:

> Any increase in efficiency of resource allocation allows economic welfare to be improved by increasing the ability of the economy to satisfy consumers' demands. . . Properly functioning competitive markets allocate resources efficiently, because the interaction of supply and demand guides resources into their most highly valued uses (Hopkins et al., 1981, p. 8).

9 *New York Times*, December 29, 2010, p. A21.

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But of course markets do not always function properly, and it is this theme that has spawned most of the growth in regulation since 1970.

The CWPS report acknowledged:

> Few if any markets achieve ideal competitive performance. But very few, if any, regulations achieve an ideal outcome, either. Since even imperfect markets often produce satisfactory economic results, and since their deficiencies are more likely to be self-correcting than those of government regulation, the burden of proof should be on the regulator to show that there is sufficient market failure to necessitate regulation and that the chosen regulatory action can be expected to yield a better outcome than the improperly functioning market (Hopkins et al., 1981, p. 10).

The needed economic analysis should clarify effects that a regulation will have on all those affected. This is necessary to allow both informed comment from the public and sensible decisions by the regulators.[10] While economists of all stripes find this approach perfectly reasonable, and EOs issued by all presidents since Ford have been supportive, much resistance was encountered at the outset and continues to the present. For example, in 1976, an influential congressional subcommittee issued a 700-page report whose bottom line was a strong criticism of the use of benefit-cost analysis in environmental and other forms of social regulation. Chaired by Congressman John E. Moss, the subcommittee concluded:

> The limitations on the usefulness of benefit/cost analysis in the context of health, safety, and environmental regulatory decision-making are so severe that they militate against its use altogether (House of Representatives Committee on Interstate and Foreign Commerce, Subcommittee on Oversight and Investigations, 1976).

The Moss subcommittee conclusion was in part a reaction to the fact that CWPS had been an early and enthusiastic advocate of using benefit-cost analysis in regulatory decision-making. As the Ford administration was nearing its end, CWPS prepared an evaluation of the regulatory oversight program then in place, noting that the requisite economic analysis of proposed regulations should incorporate the following:

10 For example, EO 12866 states, "Each agency shall... provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials)". 58 Fed. Reg. 51735 (Sept. 30, 1993).

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- an analysis of the principal cost. . . of the action. . .
- a comparison of the benefits to be derived from the proposed action with the estimated costs, and
- a review of alternatives to the proposed action, [and] their probable costs, benefits, and risks. . . compared with those of the proposed action (Hopkins et al., 1976).

CWPS's continuing encouragement of benefit-cost analysis was evident in most of its filings. Consider two examples. In 1978, CWPS filed comments on a Department of Transportation proposal to reduce allowable hours of driving by both truck and bus drivers, asserting:

> Even if the benefits outweigh the costs of a particular proposal, that plan should not necessarily be implemented. If there are other plans that yield a greater excess of benefits over costs, they should be considered as well. Normally, the approach yielding the greatest excess of benefits over costs should be chosen (Pinkston et al., 1978, p. 15).

The second example comes from a 1980 filing on a proposed rule to require the removal from food-processing plants of equipment containing fluid polychlorinated biphenyls (PCBs). CWPS recommended that the agency should "compare the benefits with the cost of compliance" before deciding on a final rule – the agency's economic analysis had not done so (Pinkston et al., 1980*b*, p. 11).

CWPS's use of benefit-cost analysis reflected a rather expansive interpretation of the four successive EOs under which it operated – Ford's 11821 and 11949 and Carter's 12044 and 12221. In 1976 the initial "Inflation Impact Statement" label was changed to "Economic Impact Statement" (EO 11949), better reflecting the economic efficiency perspective CWPS was applying in its filings, and in 1978 the name changed again to "Regulatory Analysis" (EO 12044). Objections and concerns about benefit-cost analysis, such as those in the 1976 Moss subcommittee report referenced above, did slow its broad acceptance. By contrast, cost-effectiveness analysis faced less criticism.

Yet eventually the language of EOs caught up with the approach CWPS had advocated in its filings. Benefit-cost analysis was endorsed explicitly for the first time in President Reagan's 1981 EO 12291, signed just as the CWPS regulatory oversight function and economists were moving into OIRA within the Office of Management and Budget, and again in President Clinton's EO 12866, which remains in effect today.

In the years since 1976, thanks largely to the EOs noted above, executive branch regulatory agencies have provided – for major new regulations proposed – economic analyses that contain at least certain elements of benefit-cost analysis. Regulators, who sometimes act as advocates for particular needs or constituencies, were

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slow to see the value of analysis having an economy-wide context. Such reluctance to undertake more extensive economic analysis was reinforced by the way in which many regulatory statutes were worded.[11] Regulators often were directed to base decisions on factors other than benefits and costs, so they had little incentive to fund analysis they saw as having little if any relevance to their decisions.

Yet headway gradually was made. Among the most impressive later examples, a well-crafted benefit-cost analysis at the Environmental Protection Agency (EPA) made the case for the elimination of lead from gasoline much stronger and far more persuasive (Environmental Protection Agency, 1985). Indeed it is reasonable to conclude that the resulting "decrease in lead emissions is perhaps the major environmental success story of the 1980s (Viscusi, 1995)."

Unfortunately, most agency analyses remained deficient in important ways, as CWPS filings documented, lessening their value for guiding regulatory improvement. The majority of CWPS filings included at least one of the following conclusions: the regulatory agency either failed to estimate benefits or had done so incorrectly, the agency either failed to estimate costs or had done so incorrectly, and the agency should have examined different regulatory options. Such conclusions certainly apply to a set of 11 case studies drawn from CWPS filings completed during 1975 and 1976 that James C. Miller III and Bruce Yandle published in 1979 (Miller & Yandle, 1979). The subsequent 1981 CWPS summative report (discussed above) details 31 more cases drawn from 1978, with similar conclusions (Hopkins et al., 1981, App. B).

To gain a better sense of the entire body of CWPS work, it may be helpful now to return to the Appendix A tables introduced earlier in the paper. Table A1, sorting CWPS interventions by year and by agency, shows that independent agencies attracted 43% of all filings, while executive branch agencies accounted for 52%. The EPA had 16%. And 25% of all CWPS filings addressed regulations at the Civil Aeronautics Board and the Interstate Commerce Commission, two transportation regulatory agencies that no longer exist. Most of these last filings have no contemporary applicability, fortunately, given our nearly complete deregulation of pricing in transportation markets.

Table A2, which classifies CWPS filings by the type of market failure motivating each agency's proposed regulations, finds that 24% involved externalities, the single most common driver of all regulations that CWPS reviewed. CWPS concluded that no market failure existed in 22% of its interventions, contending that deregulated markets would deliver more efficient outcomes.

11 For example, the Clean Water Act called for technology-based standards requiring no benefit-cost analysis; the Clean Air Act [42 U.S.C. Sections 109 and 1857(c)(4)] was not seen as making costs relevant to EPA decisions; the Food and Drug Administration bans carcinogens without regard to benefit or cost estimates, thanks to the Delaney Clause of the Federal Food, Drug, and Cosmetic Act.

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Table A3's further breakdown of CWPS filings lists those industries most affected by each agency's regulations. Not surprisingly, given the importance of transportation regulation during much of CWPS's life, some 34% of CWPS filings (viewed by table column, not row) addressed transportation regulatory issues, far more than any other industry. The next largest shares were for manufacturing (18%); and for mining, quarrying, oil and gas (11%).

The following five examples of CWPS work, drawn from those filings now available on the Mercatus Center website, highlight some of the most common issues CWPS economists found in dealing with regulatory agencies.

Example 1: market failure not demonstrated at the Securities and Exchange Commission, 1976

In 1976, CWPS commented on a Securities and Exchange Commission (SEC) proposal to disseminate securities information (Securities and Exchange Commission, 1976). The SEC had been concerned that buyers and sellers might not always be able to obtain the "best" price due to inadequate and inferior information. The agency was also concerned that the same security might have different prices in different markets. The SEC proposal therefore was to create a composite quotation system to ensure better pricing. However, market mechanisms, such as arbitrage, already acted to resolve the rare occurrences of different prices. This led CWPS to observe:

> No evidence has been presented to justify this claim or to justify the claim that the benefits of the additional information that would be produced are sufficient to outweigh the costs of generating and disseminating that information. To our knowledge, the [Securities and Exchange] Commission has neither analyzed the benefits of the proposal nor its costs, nor has it documented the existence of a problem in need of remedy (Lenard et al., 1976).

CWPS concluded that the SEC had not shown that there was a problem in need of a solution. Intuitively, trying to fix a nonexistent problem would incur costs that exceeded any possible benefits. In CWPS's view, if the costs exceeded benefits, then the regulation would be inflationary as well as inefficient, and it should not be implemented.

Moreover, the issue of not analyzing the costs and benefits warranted attention. A benefit-cost analysis provides useful information about the effects a regulatory decision will have. Without it, the quality of the decision suffers, and third parties are less able to offer useful comments on the proposal. The CWPS filing argued:

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> In the absence of an analysis of the proposal's costs and benefits, an informed decision on the proposal cannot be made. The Council would therefore recommend that a decision be postponed until such information can be developed (Lenard et al., 1976).

In 1977, the SEC released an updated version of the rule and responded to various public comments, including the CWPS filing. Its updated proposal stated that the SEC had carefully considered the costs and benefits of the regulation and had determined that, although difficult to quantify, the benefits outweighed the costs (Securities and Exchange Commission, 1977). While the SEC changed the method of exchange quotation collection, the basic regulatory approach of the earlier proposal was retained and the proposal was adopted in 1978 (Securities and Exchange Commission, 1978).

The CWPS filing, in this case, seems to have raised the acceptability of benefit-cost analysis somewhat. But little headway was gained in making analytical findings transparent, and the extent of efficiency gains from the final rule, if there were any, could not be determined.

Example 2: benefits not estimated at the Environmental Protection Agency, 1978

In 1978, the EPA proposed new drinking water regulations. These regulations would require any community water systems serving 75,000 or more people to reduce the level of organic chemicals in public drinking water (Environmental Protection Agency, 1978*a*). The EPA proposal contained no analysis of the benefits of alternative performance standards, no analysis of alternative population-size cutoffs, and no analysis of the costs or the benefits of alternative design standards (Broder et al., 1978, p. 1). CWPS concluded that there was a considerable amount of uncertainty about both the costs and the benefits of the alternatives. The EPA was relying on excessively uncertain evidence to impose costly regulations on local communities (Broder et al., 1978, p. 2).

CWPS made preliminary calculations to show the benefits of doing a benefit-cost analysis of alternative options. The results suggested an alternative that could save more lives with no increase in costs. By not exploring the various options available, the EPA had been working with incomplete information that led to an inefficient and costly solution.

After reviewing public comments, the EPA revised its cost estimates of the treatment plan and published an updated proposal (Environmental Protection Agency, 1978*b*). The new version included higher cost estimates of the required

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treatment plan and called for additional input from the public. Then in November 1979 the EPA issued a final rule that was even more stringent than the initial proposal (Environmental Protection Agency, 1979). The EPA did not incorporate benefit-cost analysis of alternative treatment options, contending that the additional information the agency gathered supported its original proposal, and it kept intact fundamental aspects of the proposal. CWPS's argument for better cost analysis appeared to have borne some fruit, but the EPA nevertheless disregarded the core of the CWPS filing.

Example 3: cost-effectiveness analysis not used at the Department of Transportation, 1978

In 1978, the Bureau of Motor Carrier Safety (BMCS), a part of the Department of Transportation, proposed extensive changes in the rules governing how many hours commercial bus and truck drivers could remain on duty and behind the wheel of their vehicles (Department of Transportation Bureau of Motor Carrier Safety, 1978). The proposed changes would be very costly. One industry spokesman estimated that intercity trucking companies could see costs increase from $2.7 billion to $5.5 billion (due to a 15%–30% reduction in the productivity of drivers and equipment) (Pinkston et al., 1978, p. 9). These changes would have varying effects and costs on the companies within the truck and bus industry. The BMCS regulatory proposal did not explore whether equal or greater benefits might be produced by alternative, less burdensome solutions (Pinkston et al., 1978, p. 3).

The varying degree by which individual companies and subdivisions of the industry would be affected by the proposed regulation complicated assessing the cost of the proposal. However, CWPS urged the BMCS to further analyze the effect the proposed regulation would have on costs to the several subsectors of the industry. CWPS recognized the difficulty of determining a benefit in monetary terms when that benefit is increased safety and possibly saving human lives. CWPS therefore suggested that, instead of benefit-cost analysis, the BMCS undertake a cost-effectiveness analysis of the proposed regulation.

Again, CWPS identified a problematic lack of alternatives, concluding that the BMCS should undertake both studies of alternative methods of improving safety and an analysis of their potential costs and benefits (Pinkston et al., 1978, p. 18). Due to the diversity of effects the proposed regulation had across the truck and bus industry, CWPS suggested that the BMCS look into tailoring regulation to the specific subindustries. For example, if the majority of accidents came from one sector of the industry, the regulation should focus on that sector. Ultimately, the

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lack of information gathered and options examined led CWPS to comment that the BMCS was not heading in a cost-effective direction with the proposed regulation.

After reviewing the CWPS filing and other public comments on the proposed regulation, the BMCS determined that none of the proposed options could be supported and began to conduct more extensive benefit-cost analysis. The BMCS developed three new options to regulate hours of service for drivers, but the rulemaking was terminated in September 1981 (Department of Transportation, Federal Motor Carrier Safety Administration, 2000). CWPS had not been alone in its criticism of the 1978 BMCS proposal, but its comments contributed to avoiding an ill-considered and very costly regulation. Nonetheless, in succeeding years, substantial further action has taken place in regulating driver hours of service, a topic to which this paper later returns.

Example 4: costs inaccurately estimated at the Federal Aviation Administration, 1979

In 1979, the Federal Aviation Administration (FAA) proposed an increase to aircraft and airport security for certain air taxi operators and small airplane operations (20–30 passengers) in order to deter airplane hijacking (Federal Aviation Administration, 1979). The proposed regulation would force small airports and small airplane providers to have the same security measures as certificated carriers (commercial airlines). These security measures included installing metal detectors and X-ray machines to screen passengers and their baggage, enclosing airports with fences, and hiring specially trained security personnel (Pinkston et al., 1980*a*, p. 3).

The FAA cost estimates appeared to ignore important categories of costs. For instance, the FAA assumed that police officers and operators of security screening machines could be hired for a half-hour at a time. Yet, in many cases, a four-hour shift is the shortest period for which such personnel can be employed (Pinkston et al., 1980*a*, p. 5). Also, the FAA did not consider additional potential costs that would arise from the unintended consequences of its decision. For example, commuter airlines might start to operate smaller aircraft in order to avoid the constraints created by the FAA's proposal. Yet the smaller aircraft could limit the number of communities that the airlines could serve (Pinkston et al., 1980*a*, p. 6).

CWPS concluded "because of its potentially severe effect on the commuter air carrier industry, the proposal should be subjected to careful cost-benefit or cost-effectiveness analysis (Pinkston et al., 1980*a*, p. 8)." CWPS suggested that the FAA examine alternatives to the proposed regulation that would yield the benefits desired at a smaller cost. These alternatives included targeting regulation to high-risk

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airports, having random screenings instead of screening every passenger, or phasing in the additional security measures instead of requiring them all at once.

After considering comments from CWPS and others, the FAA in January 1981 issued a final rule that was markedly less costly than the originally proposed rule would have been (Federal Aviation Administration, 1981). The agency agreed with critics that its initial economic analysis had been inadequate and that its proposed "full security program need not be implemented" for small planes. Small airports and small airplane operators were spared costly adjustments, while overall safety benefits were still achieved.

Example 5: alternatives overlooked and benefit-cost analysis neglected at Food and Drug Administration, Department of Agriculture, and Environmental Protection Agency, 1980

In 1980, CWPS commented on a joint regulation by the Food and Drug Administration, the Department of Agriculture, and the EPA (Department of Agriculture Food Safety and Quality Service, 1980). The joint proposal would establish a requirement that equipment or machinery (with few exceptions) in food-related industrial plants could no longer contain fluid PCBs. The proposal aimed to reduce the risk to human health from accidental spills or leakage of PCB fluid that could contaminate food.

CWPS summarized its concerns as follows:

> We question whether there has been sufficient analysis of the current proposal and its ramifications to ensure that it is the best available course of action. In particular we fear that the proposal could have the perverse effect of increasing the risk, through improper disposal, of PCB contamination. We also believe that alternative ways of protecting human health should be examined more carefully (Pinkston et al., 1980*b*, p. 2).

CWPS noted that the three agencies gave little attention to unintended consequences that the regulation could have. The proposed removal and disposal process could very well inadvertently increase PCB exposures (Pinkston et al., 1980*b*, p. 6). Because the potential increase in exposure was not taken into account, the benefits of the proposed regulation were overstated. Moreover, CWPS concluded that the costs of the proposal would be substantially higher than the regulators had estimated (Pinkston et al., 1980*b*, p. 15).

CWPS suggested four additional options. First, a "wait and see" approach: wait until a new technology was created to decontaminate PCB fluids at the plant site,

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thereby eliminating both the risk and expense of transporting PCBs to approved disposal sites and also saving the decontaminated oil (Pinkston et al., 1980*b*, p. 16). The second option was a targeted phaseout program, where the equipment most likely to cause contamination would be phased out first. The third option would involve equipment inspections that looked for PCB fluid leaks, and the final option was a combination program of inspections and a targeted phaseout program.

The situation was unusually complex procedurally because three agencies were involved and the proposal was part of an interconnected series of actions aimed at reducing risks from PCBs. The criticisms from CWPS and others did not by any means lead the agencies to embrace benefit-cost analysis. But skepticism about the proposal was sufficient to lead the EPA in April 1981 to drop the proposal ("hold [it] in abeyance") while restarting a rulemaking to gather fuller information (Environmental Protection Agency, 1981).

Recurring issues

These five examples reflect recurring issues that CWPS found in most of the proposed regulations examined: inadequate analysis of benefits, costs, and alternatives. Often what this paper refers to as the "first principle" issue – whether any compelling market failure existed – was entirely overlooked. In some cases, CWPS concluded that states or localities were better suited to solve the issue or that the data used were inapplicable or out of date.

As noted earlier in this paper, presidents from Ford to Obama have issued EOs that call for reviewing proposed regulations for these types of issues, and OIRA has made numerous efforts in the post-CWPS era to encourage regulators to improve the quality of their analyses, even providing guidance in many different forms.[12] Progress has occurred, albeit unevenly, and analyses with many impressive attributes can be found.[13]

Yet it is also not difficult to find more recent instances of regulatory decision-making that reflect the same weaknesses that CWPS highlighted decades earlier. For example, the Securities and Exchange Commission in 1999 proposed new regulation of market information as a response to "a concern that monopolistic

12 One promising guide is a 2010 document that if followed would result in improved outcomes. "Agency Checklist: Regulatory Impact Analysis", OIRA, accessed July 30, 2014, http://www.whitehouse.gov/sites/default/files/omb/inforeg/regpol/RIA_Checklist.pdf.

13 Two noteworthy examples are for regulations from the EPA: its 2008 National Ambient Air Quality Standards for Lead (73 Fed. Reg. 66964) and its 2010 proposal to reduce interstate transport of fine particulate matter and ozone (75 Fed. Reg. 45210).

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pricing of information could diminish access for, or discriminate against, retail investors" (Regulatory Studies Program of the Mercatus Center, George Mason University, 2000). However, a submission provided by Jerry Ellig and S. Brown-Hruska observes "the Commission offers no cost-benefit analysis. . . and there is strong reason to believe that the costs of the guidelines would exceed their benefits" (Regulatory Studies Program of the Mercatus Center, George Mason University, 2000, Appendix 1).

In other cases today, regulators do provide credible estimates of net benefits of options considered, but the "first principle" is still overlooked. In December 2010, the Department of Transportation proposed to further revise the requirements concerning truck drivers' hours of service (continuing in the tradition of example 3 discussed earlier in this paper). An analysis of this rulemaking from the Mercatus Center concludes "no market failure or systemic problem was identified" by the regulator (Mercatus Center Regulatory Report Card for Commercial Motor Vehicle Hours of Service Proposed Rule, 2011).

The truck driver rule warrants closer inspection because it encompasses many of the issues that are central to this paper. The 2010 proposal led to a new final regulation in December 2011; the agency summarized the outcome as follows:

> [The Federal Motor Carrier Safety Administration] revises the hours of service (HOS) regulations to limit the use of the 34-hour restart provision to once every 168 hours and to require that anyone using the 34-hour restart provision have as part of the restart two periods that include 1 a.m. to 5 a.m. It also includes a provision that allows truckers to drive if they have had a break of at least 30 minutes, at a time of their choosing, sometime within the previous 8 hours. (Federal Motor Carrier Safety Administration, 2011*a*).

The final rule, which took effect in July 2013, resulted in limiting "the average work week for truck drivers to 70 hours" (Department of Transportation, 2013). The regulator contended that this new rule "will reduce the likelihood of driver fatigue, fatigue-related crashes, and fatigue-related health effects." Yet the agency recognized that a significant "decline in crashes and crash rates for both trucks and cars started in the late 1970s and has continued for both types of vehicles (Federal Motor Carrier Safety Administration, 2011*b*)". It noted:

> [The] motor carrier industry argued that the declining fatality rate for truck-related crashes since 2004 demonstrates that the [2003] HOS rule is safe and should not be changed. . . and that changing the rule would produce serious economic consequences for carriers, drivers, shippers, receivers, and consumers. . . . The industry generally disagreed with the notion that drivers

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are not getting sufficient sleep and that chronic fatigue is a problem (Federal Motor Carrier Safety Administration, 2011*c*).

Indeed, over 20,000 comments both from the private sector and from state and local governments were submitted during the public comment period (Federal Motor Carrier Safety Administration, 2011*d*). The sources of the comments ranged from individual truck drivers to the National Turkey Federation and the U.S. Chamber of Commerce, and many of them were highly critical of the proposal.

The daily driving limit for truckers had been 10 hours for a half-century before 2003 when it was changed to 11 hours, coupled with several new restrictions. Since 2003, this area of rulemaking has been a quagmire of procedural complexities, including a 2007 court decision vacating portions of the 2003 rule followed by continuing litigation, which was held in abeyance while the 2011 rulemaking was completed (Owner-Operator Independent Drivers Association, 2007).

The agency's notice of proposed rulemaking (NPRM) for the 2011 rule stated a likely preference for tightening the restriction once again to 10 hours while retaining the other 2003 restrictions. It is important to note that, in addition to guidance through EO, this regulatory agency operates under a statute requiring it to consider the costs and benefits of proposed rules.[14] In consequence, the agency stated that "this rule does not include a change to the daily driving limit because the Agency is unable to definitively demonstrate that a 10-hour limit – which it favored in the notice of proposed rulemaking (NPRM) – would have higher net benefits than an 11-hour limit" (Federal Motor Carrier Safety Administration, 2011*b*).

After reviewing three alternative courses of action, the agency decided on a rule whose "benefits could easily be substantial, and are on the same scale as the costs" (Department of Transportation Federal Motor Carrier Safety Administration, 2011). It put the 2011 final rule's range of net benefits annually from a negative $250 million to a positive $770 million. The annualized cost itself was put at $470 million, an amount that the agency describes as a mere 3-cents-per-gallon increase in fuel costs. The agency decided against a more stringent regulation (the 10-hour limit) based at least in part on benefit-cost considerations. The industry, not surprisingly, believes the net benefits are far smaller and, indeed, negative.[15]

In response to concerns from the industry, Congress subsequently included an amendment to suspend two provisions of the regulation in the Consolidated and Further Continuing Appropriations Act of 2015 that was passed on December 16, 2014. The spending bill included short-term delays of provisions requiring a driver's 34-hour restart time period to include two 1 a.m. to 5 a.m. periods and

14 39 U.S.C. 31136(c)(2)(A) and 31502(d).
15 See 76 Fed. Reg. 81143 (2011) and the agency's regulatory impact analysis summarized in 76 Fed. Reg. 81175, 81175–80 (2011).

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limiting the use of the 34-hour restart to once per week. The Department of Transportation released a Notice of Suspension of Enforcement on December 22, 2014 announcing the suspension of the relevant provisions (Federal Motor Carrier Safety Administration, 2014). The delays will remain intact until the spending bill expires at the end of the fiscal year on September 30, 2015.

Some of the conundrums presented by this rulemaking are as follows: What reason exists to think that truck drivers and their employers lack the incentive to reduce fatigue risks? What market failure exists here? And if the truck accident record is steadily improving, as the agency acknowledges, what is the motivation for new regulation?

More generally, the adequacy of the economic analysis that regulators provide for new regulations has been the focus of numerous reviews since 2000, and basically all reviewers conclude that analytical weaknesses are commonplace.[16] These weaknesses span the array of concerns CWPS had noted earlier. In part they reflect inherent challenges in producing accurate estimates both of benefits and of costs, where data are difficult to obtain and far from certain. Additionally, contending parties have natural incentives to overstate or understate effects, depending on their particular interests in the regulation under review. Those most knowledgeable about compliance costs, for example, may be firms whose interests are best served by exaggerating them. In a sense, this reality constitutes a form of information market failure, where conflicting incentives complicate achieving sound outcomes.

Most recently, the Mercatus Center has begun systematic and ongoing assessments that rank and classify problems with the analyses that accompany new regulations. This Mercatus Regulatory Report Card project so far includes all significant regulatory analyses completed from 2008 through 2012, and the results are not encouraging. The quality of most regulatory analyses remains disappointing (Ellig & McLaughlin, 2012; Ellig, McLaughlin & Morrall, 2012; Ellig, 2013).

Yet analyses completed by some agencies, the EPA being a prominent example, have at least become more elaborate and comprehensive. Consider the two regulations referred to in footnote 13 above. The Regulatory Impact Analysis accompanying the 2008 National Ambient Air Quality Standards for Lead scored 42 (of a maximum possible 60) on the Mercatus Regulatory Report Card, while the average regulation rated that year received a score of 27 (Mercatus Center Regulatory Report Card for National Ambient Air Quality Standards for Lead Proposed Rule, 2008). The 2010 Regulatory Impact Analysis accompanying the Interstate Transport of Nitrogen Oxides and Sulfur Dioxide also received a relatively high score of 39, while the average regulation rated that year received a score of 30

16 Among the more prominent are Harrington, Morgenstern and Nelson (2000), Harrington (2006), Hahn et al. (2000), Hahn and Dudley (2007), Hahn and Litan (2005) and Hahn and Tetlock (2008).

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(Mercatus Center Regulatory Report Card for Interstate Transport of Nitrogen Oxides and Sulfur Dioxide Proposed Rule, 2010).

The work of CWPS focussed primarily on regulations at the proposal stage; this remains a promising point at which critical analysis should be brought to bear. The OIRA, now the key player in White House regulatory oversight, is able to engage executive branch agencies even earlier in the process, which should be a considerable advantage. The OIRA is able to interact with regulators before the public release of a proposed rule, at a time when the supporting analysis is still taking shape. Yet outcomes generally fall short of consistent adherence to key principles of benefit-cost analysis.

Treatment of market failure concerns is probably the most telling example. As Christopher DeMuth has pointed out, "cost-benefit analysis is supposed to be a tool for correcting market failures, not the personal failings of individual citizens" (DeMuth, 2012). Yet many of the most costly new regulations in recent years rest their claims of positive net benefits on forecasts that compliance will return substantial private benefits to purchasers. No clear market failure is apparent. Without market failure, there is good reason to believe that individuals could make their own decisions quite sensibly. That surely is the case with energy efficiency standards from the EPA, the Department of Transportation, and the Department of Energy, where "paternalistic benevolence" is passing muster with executive branch reviewers (Gayer & Viscusi, 2013).

A return to "first principles" of benefit-cost analysis is overdue in the oversight process. John F. Morrall III and James W. Broughel articulate what this will entail in a 2014 report for the Mercatus Center (Morrall & Broughel, 2014). In addition, a strong case can be made for supplementing more demanding oversight prospectively with the types of retrospective reviews that EOs 13563 and 13610 endorse but have rarely secured.[17]

The issues observed by CWPS starting in 1974 have been revisited repeatedly, with much the same findings. Moreover, setting to one side the body of regulation from the Civil Aeronautics Board and the Interstate Commerce Commission, those agencies and industry-specific regulations that came in for heaviest CWPS criticism are still very much in the forefront of regulatory debate today. Perhaps the basic lesson is that a more independent and economic-efficiency-driven review mechanism would be constructive. Independent peer review with public access is missing from the current system of regulatory oversight, and it could be a significant step forward, one that would be made appreciably easier were congressional support to be gained. Until and unless this proves feasible, the U.S. regulatory system will continue to fall well short of achieving available efficiency gains.

17 For a succinct statement urging more retrospective review, see Coglianese (2013).

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Supplementary material

To view supplementary material for this article, please visit http://dx.doi.org/10.1017/bca.2015.41.

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Appendix A. The nature and range of CWPS filings

Sources for all tables: CWPS filings from the Council of Wage & Price Stability Archive, Mercatus Center at George Mason University, http://cowps.mercatus.org; Thomas D. Hopkins, Thomas M. Lenard, John F. Morrall III, and Elizabeth A. Pinkston, Appendix A in "A Review of the Regulatory Interventions of the Council on Wage and Price Stability, 1974–1980" (Council on Wage and Price Stability, Washington, DC, January 1981), available at http://cowps.mercatus.org/2014/07/17/cwps-review-1974-1980/; accompanying spreadsheet (see Appendix B).

Table A1 CWPS Filings, 1974–1981, by year and by agency.

	1974	1975	1976	1977	1978	1979	1980	1981	Total
I. Executive Branch Agencies									
Dept. of Commerce	–	–	1	–	–	–	2	–	3
Dept. of Defense	–	–	–	1	–	–	–	–	1
Dept. of Energy	–	3	2	2	3	9	10	–	29
Dept. of the Interior	–	–	2	–	1	5	5	1	14
Dept. of Labor	–	2	5	5	3	–	3	–	18
Dept. of Transportation	1	10	3	4	4	–	6	1	29
Environmental Protection Agency	–	8	4	4	7	14	17	1	55
Dept. of Health, Education & Welfare*	–	6	6	1	–	2	4	–	19

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Table A1 (Continued).

Dept. of Housing and Urban Develop.	–	1	1	–	–	–	1	–	3
Dept. of Agriculture	–	2	2	2	–	–	5	1	12
Subtotal	1	32	26	19	18	30	53	4	183
II. Independent Agencies									
Architectural & Transportation Barriers Compliance Board	–	–	–	–	–	–	2	–	2
Civil Aeronautics Board	–	16	8	4	–	–	–	1	29
Commodity Futures Trading Commission	–	–	–	2	1	–	–	–	3
Consumer Product Safety Commission	–	1	4	1	–	–	–	–	6
Federal Communications Commission	–	2	–	2	1	1	6	–	12
Federal Deposit Insurance Corporation; Federal Reserve Board	–	–	2	–	1	2	–	–	5
Federal Home Loan Bank Board	–	–	–	–	–	1	–	–	1
Federal Maritime Commission	–	–	–	–	–	–	1	–	1
Federal Power Commission	–	3	–	1	1	2	1	–	8
Federal Trade Commission	–	1	4	1	–	1	1	–	8
Interstate Commerce Commission	–	–	8	12	14	16	10	–	60
International Trade Commission	–	2	2	1	2	2	1	–	10
Postal Rate Commission	–	–	1	–	–	1	–	–	2
Securities & Exchange Commission	–	–	2	1	–	–	–	–	3
Tennessee Valley Authority	–	–	–	–	–	2	–	–	2
Subtotal	–	25	31	25	20	28	22	1	152
III. Other									
Other CWPS reports	–	7	2	2	–	2	2	–	15
IV. Total									
Total CWPS filings	1	64	59	46	38	60	77	5	350

*In 1979, this department split into the Department of Education and the Department of Health and Human Services.

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Table A2 CWPS Filings, 1974–1981, by market failure addressed and by agency.

	Asymmetric information	Externality	Monopoly	Public good	No market failure: deregulation	No market failure: international	Social goals: fairness/ redistribution	Multiple market failures	Total
I. Executive Branch Agencies									
Dept. of Commerce	1	1	–	1	–	–	–	–	3
Dept. of Defense	–	–	–	1	–	–	–	–	1
Dept. of Energy	4	3	6	7	4	3	1	1	29
Dept. of the Interior	1	2	2	7	–	–	2	–	14
Dept. of Labor	4	9	–	1	1	–	2	–	17
Dept. of Transportation	2	9	4	3	3	–	4	2	27
Environmental Protection Agency	1	43	–	7	–	–	–	4	55
Dept. of Health, Education & Welfare*	7	6	–	1	–	–	4	1	19
Dept. of Housing and Urban Develop.	2	–	–	–	1	–	–	–	3
Dept. of Agriculture	5	–	–	1	–	–	5	1	12
Subtotal	27	73	12	29	9	3	18	9	180

Continued on next page.

Table A2 (Continued).

II. Independent Agencies									
Architectural & Transportation Barriers Compliance Board	–	–	–	–	–	–	2	–	2
Civil Aeronautics Board	–	–	6	–	23	–	–	–	29
Commodity Futures Trading Commission	1	–	1	1	–	–	–	–	3
Consumer Product Safety Commission	1	4	–	1	–	–	–	–	6
Federal Communications Commission	–	1	7	3	1	–	–	–	12
Federal Deposit Insurance Corporation; Federal Reserve Board	–	–	–	1	4	–	–	–	5
Federal Home Loan Bank Board	–	–	–	–	1	–	–	–	1
Federal Maritime Commission	–	–	–	–	1	–	–	–	1
Federal Power Commission	2	–	2	2	1	–	2	–	9
Federal Trade Commission	5	–	2	–	1	–	–	–	8
Interstate Commerce Commission	2	1	29	–	27	–	–	–	59

Continued on next page.

Table A2 (Continued).

International Trade Commission	1	–	–	–	–	5	4	–	10
Postal Rate Commission	–	–	1	1	–	–	–	–	2
Securities & Exchange Commission	1	–	1	1	–	–	–	–	3
Tennessee Valley Authority	2	–	–	–	–	–	–	–	2
Subtotal	15	6	49	10	59	5	8	–	152
III. Other									
Other CWPS reports	1	2	4	4	1	–	–	–	12
IV. Total									
Total CWPS filings	43	81	65	43	69	8	26	9	344

*In 1979, this department split into the Department of Education and the Department of Health and Human Services.
Note: Six entries could not be identified by market failure. In total, there are 350 entries.

Table A3 CWPS Filings, 1974–1981, by industry affected and by agency.

I. Executive Branch Agencies

	Accommodation and food services	Agriculture	Construction	Finance	Health care	Manufacturing	Mining, quarrying, oil and gas
Dept. of Commerce	–	–	–	–	–	1	2
Dept. of Defense	–	–	–	–	–	–	–
Dept. of Energy	–	–	1	–	1	3	13
Dept. of the Interior	–	1	–	–	1	1	9
Dept. of Labor	–	–	1	–	1	7	2
Dept. of Transportation	–	–	–	–	–	10	2
Environmental Protection Agency	–	2	–	–	2	21	7
Dept. of Health, Education & Welfare*	4	1	–	–	6	4	–
Dept. of Housing and Urban Develop.	–	–	3	–	–	–	–
Dept. of Agriculture	5	3	–	–	–	–	–
Subtotal	9	7	5	–	11	47	35

	Public administration	Retail trade	Transportation	Utilities	Wholesale	Multiple	Total
Dept. of Commerce	–	–	–	–	–	–	3
Dept. of Defense	–	–	–	–	–	1	1
Dept. of Energy	–	1	3	4	–	3	29
Dept. of the Interior	2	–	–	–	–	1	15
Dept. of Labor	–	–	–	–	–	7	18

Continued on next page.

Table A3 (Continued).

Dept. of Transportation	–	–	14	2	–	1	29
Environmental Protection Agency	1	–	9	9	–	4	55
Dept. of Health, Education & Welfare*	1	2	–	1	–	2	21
Dept. of Housing and Urban Develop.	–	–	–	–	–	–	3
Dept. of Agriculture	–	–	–	–	–	4	12
Subtotal	4	3	26	16	–	23	186

II. Independent Agencies

	Accommodation and food services	Agriculture	Construction	Finance	Health care	Manufacturing	Mining, quarrying, oil and gas
Architectural & Transportation Barriers Compliance Board	–	–	2	–	–	–	–
Civil Aeronautics Board	–	–	–	–	–	–	–
Commodity Futures Trading Commission	–	–	–	3	–	–	–
Consumer Product Safety Commission	–	–	1	1	–	3	–
Federal Communications Commission	–	–	–	–	–	–	–
Federal Deposit Insurance Corporation; Federal Reserve Board	–	–	–	5	–	–	–
Federal Home Loan Bank Board	–	–	–	1	–	–	–
Federal Maritime Commission	–	–	–	–	–	–	–
Federal Power Commission	–	–	–	1	–	1	–
Federal Trade Commission	–	–	–	–	–	–	–
Interstate Commerce Commission	–	–	–	–	–	1	–
International Trade Commission	–	–	–	–	–	6	1

Continued on next page.

Table A3 (Continued).

Postal Rate Commission	–	–	–	–	–	1	–
Securities & Exchange Commission	–	–	–	2	–	–	–
Tennessee Valley Authority	–	–	–	2	–	–	–
Subtotal	–	–	3	15	–	12	1

	Public administration	Retail trade	Transportation	Utilities	Wholesale	Multiple	Total
Architectural & Transportation Barriers Compliance Board	–	–	–	–	–	–	2
Civil Aeronautics Board	–	–	29	–	–	–	29
Commodity Futures Trading Commission	–	–	–	–	–	–	3
Consumer Product Safety Commission	–	–	1	–	–	–	6
Federal Communications Commission	–	–	–	12	–	–	12
Federal Deposit Insurance Corporation; Federal Reserve Board	–	–	–	–	–	–	5
Federal Home Loan Bank Board	–	–	–	–	–	–	1
Federal Maritime Commission	–	–	1	–	–	–	1
Federal Power Commission	–	–	–	3	1	3	9
Federal Trade Commission	–	8	–	–	–	–	8
Interstate Commerce Commission	–	–	57	–	–	1	59
International Trade Commission	–	2	–	–	–	1	10
Postal Rate Commission	–	–	–	–	–	–	1
Securities & Exchange Commission	1	–	–	–	–	–	3

Continued on next page.

Table A3 (Continued).

Tennessee Valley Authority	–	–	–	–	–	–	2
Subtotal	1	10	88	15	1	5	151

III. Other

	Accommodation and food services	Agriculture	Construction	Finance	Health care	Manufacturing	Mining, quarrying, oil and gas
Other CWPS reports	–	–	–	1	–	3	1

	Public administration	Retail trade	Transportation	Utilities	Wholesale	Multiple	Total
Other CWPS reports	–	1	3	1	–	–	10

IV. Total

	Accommodation and food services	Agriculture	Construction	Finance	Health care	Manufacturing	Mining, quarrying, oil and gas
Total CWPS filings	9	7	8	16	11	62	37

	Public administration	Retail trade	Transportation	Utilities	Wholesale	Multiple	Total
Total CWPS filings	5	14	117	32	1	28	347

*In 1979, this department split into the Department of Education and the Department of Health and Human Services.
Note: Three entries could not be identified by industry. In total, there are 350 entries.

Appendix B. Guide to spreadsheet 05092014, accompanying this paper

The spreadsheet can be found at http://mercatus.org/publication/legacy-council-wage-and-price-stability.

- Data are from CWPS filings from the Council of Wage & Price Stability Archive, Mercatus Center at George Mason University, http://cowps.mercatus.org; Thomas D. Hopkins, Thomas M. Lenard, John F. Morrall III, and Elizabeth A. Pinkston, Appendix A in "A Review of the Regulatory Interventions of the Council on Wage and Price Stability, 1974–1980" (Council on Wage and Price Stability, Washington, DC, January 1981), available at http://cowps.mercatus.org/2014/07/17/cwps-review-1974-1980/.
- Entries for 160 filings that can be found in the Mercatus collection include information on the submission date, title, type of document, the agency, the filing addresses, the topic, and key points. Also noted are the type of market failure the regulation addresses and the industry the regulation impacts.
- In addition, 15 binary variables offer information on the economic analysis provided by the regulator. We posed a series of questions about this analysis, for example, "The agency has either failed to estimate benefits or has done so incorrectly." An "X" entry indicates a yes and a blank cell indicates a no.
- Entries for 190 other filings include the submission date, title, agency, industry affected, and type of market failure the regulation addresses. The information for these entries comes from Appendix A of the above-cited 1981 CWPS report, "Review of the Regulatory Interventions."
- Three worksheets are included: the first is segmented by type and sorted by year within type; the second is sorted by year; the third is sorted by agency.
- Column headings:

  A Author
  B Date
  C Title
  D Type of document
  E Binary variable 1 – no market failure
  F Binary variable 2 – benefit estimation problem
  G Binary variable 3 – cost estimation problem
  H Binary variable 4 – alternatives neglected
  I Binary variable 5 – proposal will not solve problem
  J Binary variable 6 – state or local governments should handle
  K Binary variable 7 – law exceeded

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L Binary variable 8 – one party favoritism
M Binary variable 9 – an existing rule should suffice
N Binary variable 10 – data deficient
O Binary variable 11 – reduces U.S. competitiveness
P Binary variable 12 – regulator uses sound economic analysis
Q Binary variable 13 – a price monitoring initiative
R Binary variable 14 – inflationary concern
S Binary variable 15 – an administrative or another document
T Agency issuing the proposal
U Topic/issue involved
V Key points/quotes
W Notes/other comments
X Type of market failure
Y Industry mainly affected

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