

THE BOOK ON JOBS

Regulation and the Search for a Unified Theory

By G. Tracy Mehan III

The clear majority view of the contributors, mostly economists and a few lawyers, to this substantive book on regulation and employment effects is this: There is little empirical evidence for claims of significant layoffs or growth in green jobs, say from rules promulgated under the Clean Air Act to take just one prominent example. However, there is greater uncertainty among them on the question of whether or not employment effects, positive and negative, should be factored into regulatory benefit-cost analysis, or BCA, when such calculations might tip the balance for or against the regulation or compel substantial revisions. This debate is of some moment given the lingering hangover from the Great Recession, globalization, and shrinking incomes.

In *Does Regulation Kill Jobs?* editors Cary Coglianese, Adam Finkel, and Christopher Carrigan, all well-regarded experts in the fields of BCA and quantitative risk assessment, assemble an impressive cadre of 22 academic and other researchers to work through the pros, cons, and outstanding questions relating to the role that job loss or creation should have in regulatory decisionmaking. In the real world, regulators track job impacts. Yet, jobs are still excluded from BCA, the most important element in the process of rulemaking.

This is a challenging book for the non-expert, but one well worth the effort. Professionals engaged in the rule-making process or practice will profit from this work of cutting-edge scholarship.

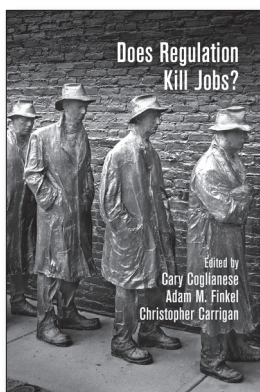
Employment impacts are often assessed in separate supporting documents in rulemaking. Yet, traditionally, BCA does not encompass employment effects given “general equilibrium analysis,” which looks at the economy, including labor markets, as a whole. In other words, BCA assumes full employment. Jobs may be lost in one sector or business but are offset by hiring in another. Moreover, the massive health benefits, for instance of many Clean Air Act regulations, easily swamp the costs of job losses in impacted industries. And, sometimes, green jobs are created in the effort to control pollution-gen-

employment effects and their inclusion in BCA, as a means of restoring political legitimacy to the regulatory process — even if it is not justified in most cases. It would bring salutary transparency to rulemaking.

Despite the paucity of data showing significant employment effects from regulation, either positive or negative, the editors concede the plausibility of the argument “given the size of the overall regulatory burden in the United States.”

“The Office of Management and Budget has reported that the estimated annual costs imposed by major regulations adopted from October 2002 through September 2012 totaled between \$57 and \$84 billion in 2001 dollars — hardly a trivial number in absolute terms,” write Coglianese and Carrigan in their very helpful introductory chapter. While OMB estimates that benefits of regulations amply outweigh costs, “the sheer magnitude of the costs at least reinforces the plausibility of the theoretical expectation that regulation discernibly affects employment.” But, again, there is little research or empirical evidence documenting such effects.

Still, when someone loses his or her job, there are costs — relocation, retraining, adverse health impacts, alcoholism, and, according to Jonathan Masur and Eric Posner, two other contributors to this

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erating offsetting benefits, although not as many as are often claimed.

It is becoming harder and harder for agencies, especially EPA, to ignore the ambient political environment. Since 2007 the term “job-killing regulation” underwent a 174-fold increase in usage in American newspapers from four per year to 700 in 2011 according to the Institute for Policy Integrity. And the agency has appeared next to “job-killing” in 701 recent news stories. Indeed, the political rhetoric has reached such a fever pitch that one contributor to this volume argues for the monetization of

volume and intellectual provocateurs of this debate, the loss of an average of \$100,000 in wages over the course of the laid off worker’s lifetime. This is, in and of itself, a significant loss of human and social capital. Masur and Posner stoutly argue for including these employment-related effects in BCA, rather than in a separate document or “jobs impact analysis,” because such documents fail to “specify the threshold at which job loss is excessive and do not explicitly make trade-offs between employment effects and social gains.”

Masur and Posner also recalculated

the BCA for EPA's past regulation limiting the use of chlorinated compounds in the pulp and paper industries to include the costs of unemployment. The agency had found the new regulation would create \$159.5 million in lifetime benefits and result in a loss of more than 5,711 jobs. However, this latter item was not included in the BCA, per usual practice.

"Recalculating the [BCA] to include the costs of these lost jobs reduces the lifetime net benefits of the regulation from \$159.5 million to -\$411.6 million," say Masur and Posner. "This does not necessarily mean that the agency should not have regulated at all. But it suggests that the agency should have considered a less stringent regulation, one that would produce smarter benefits but would also have led to less unemployment."

This divergence between national employment impacts, which may be positive in terms of net benefits, and localized impacts, which can generate a cascade of personal and community trauma, calls to mind an old joke. If you put your head in the stove and your feet in the refrigerator, on average, you are doing OK. As two other contributors, Michael Livermore and Jason Schwartz, observe, "So long as aggregate benefits outweigh harms, standard [BCA] would show such a rule to be efficient." So we are dealing with the classic problem of distributional effects, a paramount concern of environmental justice advocates.

Several contributors to *Does Regulation Kill Jobs?* question the wisdom of revamping BCA to include consideration of employment effects, at least for the nonce, given the validity of general equilibrium analysis, lack of sufficient research, the potential for double-counting, and other technical reasons. According to Ann Ferris and Al McGartland, "There is, of course, a

simple defense of the traditional position. BCA generally assumes a full-employment economy, where labor is shifted toward producing cleaner air and water, meaning that labor is no longer available to produce other products, with no overall net change in jobs." Making a strong plea for better theory and more research before changing this "traditional" approach, Ferris and McGartland argue, "Providing clear and appropriate social welfare estimates of employment impacts becomes even more complicated given the need to take into account general economic conditions at the time of the analysis, including modeling open economy dynamics. Moreover, economists currently lack

the models and data to quantify these impacts well for specific regulations."

"Economics has yet to provide a widely accepted unified theory that incorporates employment impacts into BCA," state Ferris and McGartland. "In order to address and to consider incorporating employment considerations into this traditional approach, we are in need of a unified economic theory addressing incremental employment changes associated with a particular policy and their aggregate, monetized value with the context of BCA," continue these two economists. Absent that, they would stick to current practice.

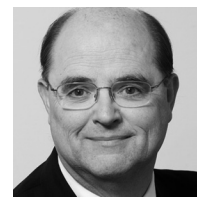
Several contributors recommend more research be conducted by an agency independent of the actual regulatory agencies such as EPA, the Occupational Safety and Health Administration, etc. This would avoid even unconscious conflicts of interest. After all, as E. Donald Elliott, a legal expert well known to readers of this publication, writes, regulatory impact analyses, now required for all rulemakings, are "advocacy documents." He recommends something like the Congressional Budget Office be established to advise agencies.

Another model is the Bureau of Labor Statistics or the National Academy of Sciences, or something like them, which could be created or reinvented to provide arms-length research on these issues. Such institutions would not only provide greater credibility or legitimacy to the regulatory process, but they would also provide a venue for long-term research on the question of cumulative jobs impacts of the relentless accretion of 45 years of regulation since the National Environmental Policy Act of 1969 and the first Earth Day.

"Infused with politics, the regulatory process within agencies is not a good place for looking at big and challenging empirical questions," observes Stuart Shapiro, another contributor to this collection. "Even the quantification of direct benefits and compliance costs for regulations has proven to be a challenge (although one that has been met with some success)."

He continues, "In addition, there seems little reason to believe that the individual regulation is the best unit to base an assessment of regulatory impacts on employment, productivity, innovation, and other variables. Even critics of regulation often cite the barrage of regulation as the problem for businesses. If this barrage exists, then it is the barrage that should be examined rather than individual regulation."

Does Regulation Kill Jobs? is a stimulating, informative guide to the important, contemporary debate on regulatory policy. It is mandatory reading for both policymakers and practitioners who need to understand the relationship between regulation and employment, one of the most resonant political and social issues of the day.



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