Performance-Based Regulation: Enterprise Responsibility for Reducing Death, Injury, and Disease Caused by Consumer Products

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US Annual Death Data

conservative estimates in some cases

• Tobacco – 400,000
• Junk Food (fat/sugar) – 100,000
• Too much Salt – 100,000
• Alcohol – 80,000
• Motor Vehicles – 35,000 (13,000 drunk drivers)
• Guns – 30,000 (11,000 homicides)

• Hospital accidents – 80,000
• Work place accidents – 5,000
• Total = more than 800,000 of 2.4 M deaths
Framing by Industry

• We wash our hands of these matters – they are not our problem
These harms are “Collateral Damage” for which we are not responsible
For the consumer products that cause these harms, according to industry, it is a:

• User problem -- people smoke, drink and eat too much of the wrong thing (fat, sugar, salt), drive badly, and

• User abuse -- (second-hand smoke, drunk drivers, criminal gun shooters)
Typically, industry favors only information/warning strategies
I Propose a Re-Framing

• 1. Enterprises need to take responsibility for the negative social consequences – the large scale public health disaster – caused by just these few consumer products.

• 2. They profit from the sale of these products; they know these harms will occur from the use of their products; and the price of the product does not reflect these harms.

• 3. They have moral obligations not just because their products cause harm. Many victims were taken advantage of as children (and became addicted); many of these industries misbehave in their marketing.

• 4. As a social engineering matter, these industries are typically well-positioned to reduce harm.
PBR - My Proposed Strategy:

Enterprises are given responsibility for reducing the negative consequences of their products through “Performance-based Regulation” which legally imposes reduced-harm targets on them. The core ideas are:

1. Firms are given financial incentives (penalty threat; bonuses) to serve the public good.
2. Firms are not told what to do. Firms can be nimble, experiment, engage in innovation, competition to best figure out how to solve their problem, and can claim credit if they meet their goal.
To Review: What is PBR? Firms are given a harm reduction target backed up with real consequences.
Performance-based Regulation

• What sort of targets?
  – 50% reduction in deaths by the end of 7 years (with interim goals)
  – 50% reduction in consumption/customers

• What sort of payment if targets are not met?
  – Call it a fee, fine, penalty, or tax
  – Substantial in amount to provide needed incentive
  – ALSO: If firms do better than their targets, provide them with a bonus
Public authorities measure whether target has been achieved
If so, firms are praised
Performance-based Regulation Matching/Measuring

• Tobacco – sales by maker
• Vehicles – death by model
• Salt – retailer sales
• Junk food – identify schools with high childhood obesity levels, allocate schools to firms based on market share of responsibility
• Drunk driving – allocate portion of the country based on market share
• Guns – homicides by brand of gun

• Hospitals – death by location (adj. for treatment)
• Work place – death by location v. industry
Performance Based Regulation
Instead of or In Addition to What?

• Command and control regulation
• Taxes
• Litigation
• Voluntary Corporate Social Responsibility
Performance-based Regulation Concerns

- Better outcomes but also other worse outcomes – less obesity, more anorexia (agency veto right)
- Inaccurate measuring – keep obese kids home on weigh-in day (auditing)
- Can regulated firms really help solve the problem? (contracting out)
- What is an appropriate target? (50% in 7 years?)
- What is the appropriate penalty? (social cost, but what is it?)
- Competing, conflicting policies at the same time
- Temptation to order solutions (consult v. impose)
Still

- Performance-based regulation is how we are likely to attack “climate change”
- Performance-based approaches are being used for schools and for other public contracts
- Command and control plus traditional taxes just don’t seem to get us what we want (e.g., tobacco control policies and taxes help but not enough)
- Litigation has perhaps exposed wrongdoing but what else?
- Corporate Social Responsibility in Win/Win cases but otherwise?
Why Do I Promote Performance-Based Regulation?

• Public health community needs to open itself up to considering new ideas
• My idea is to use private firms to promote the public good – business need not be the “enemy”
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