

FOR THE RECORD

More Economic Freedom in the Music City

In the Summer 2013 issue, I discussed regulations that had been imposed on “black car” livery services by the municipal government of Nashville, Tenn. (“Nashville’s Anticompetitive ‘Black-Car’ Regulations”). Black car companies use high-quality sedans to provide rides to passengers who arrange for service by phone or online. Nashville’s black car regulations harmed residents and tourists in order to increase the profits of taxi and limousine company owners. The worst of the regulations was a \$45 minimum fare requirement for black cars. A suit brought by the Institute for Justice that asked a federal court to strike down the regulations on constitutional grounds, as unjustified restrictions on economic liberty, went to trial in January 2013 but was unsuccessful.

Fortunately for people wanting to use black car service in Nashville, last January, with 29 of its 40 members voting in favor, the Nashville Metropolitan Council reversed itself. It effectively eliminated the required minimum fare for black cars by reducing it to \$9—slightly below the \$10 to \$13 minimum fares that black car companies decided to charge. In a conversation with a manager of a black car company, two Metro Council members attributed the reversal “in part” to my *Regulation* article.

Ali Bokhari, who owns Metro Livery, Nashville’s largest black car company, immediately expanded his fleet by four cars, and within a week was providing twice as many rides. His company is now providing rides between the downtown and the airport in luxury sedans for \$22, below the \$25 taxi fare.

Another development in Nashville played a role in bringing Metro Council

to its senses. In December 2013, Uber and Lyft, two companies that provide ride-share services in numerous U.S. cities, began offering those services in Nashville. Drivers are vetted, do not have taxi permits, use their own cars, and receive 80 percent of fare revenue. Riders use smartphones to summon the cars and pay for rides.

The two companies have used promotional pricing to attract customers. Last December the services were essentially free, and on January 31, Uber announced that for the following two weeks new riders would get 100 free rides. Aside from its promotional prices, UberX, as the Uber ride-share service is called, charges a \$2.19 base fare plus 20¢ per minute while the car is traveling slowly and \$1.22 per mile while the car is traveling fast, with a \$4.80 minimum total fare. UberX may charge higher fares to maintain reasonable wait times when demand is very high, a practice that is efficient in allocating existing cars and in providing an incentive for additional drivers and vehicles to supply UberX services for which riders are willing to pay. Lyft uses a similar structure for its “suggested” prices. Those ride-share services offer substantial competition to taxis.

In December, Uber, which also supplies black car services in numerous cities, pushed for relaxation of Nashville’s black car restrictions. Uber posted online a petition addressed to the mayor and Metro Council and obtained 2,519 signatures in favor of relaxation. Two days after the Metro Council relaxed the restrictions, Uber introduced its own black car service with professional drivers and luxury cars that are called with smartphones. UberBlack, as this service is called, charges a \$5.95 base fare plus 30¢ per minute while the vehicle is traveling slowly and \$2.60 per mile while it is traveling fast, with a \$13 minimum total fare. A large majority of UberBlack rides are in fact provided by Metro Livery. As a result, by the end of January Metro Livery was supplying three times

as many luxury sedan rides as before the reduction in the required minimum fare. There is now a shortage of luxury sedans and drivers providing black car services in Nashville, and Bokhari plans to purchase additional sedans and hire additional drivers as quickly as he can obtain capital.

On January 23rd, Nashville’s Transportation Licensing Commission further relaxed regulation of transportation services by approving 370 new taxi permits for the eight incumbent cab companies and three new ones: Magic, Pink, and Nash Vegas. However, the government still limits the number of taxicabs.

There has been incredible change for the better in Nashville’s vehicle-for-hire marketplace. The recent reduction in the minimum fare for black cars, expansion of black car service, increase in the number of taxi permits and companies, and introduction of two ride-share services, together with the use of smartphones to obtain quick service and pay for rides, are making Nashville residents and visitors substantially better off, and are making the city a more attractive destination.

—Mark Frankena
Alexandria, Va.

The EPA and Risk Analysis

In the pages of *Regulation*, there have been many discussions of risks caused by toxic chemicals, and the proper procedures for regulating those chemicals. The discussions have been very helpful, but they stop short of explaining how inadequate—and even mad and dangerous—the U.S. Environmental Protection Agency’s procedures for risk analysis are, and why and how they must be modified.

In the 1970s, the EPA proposed a risk assessment and regulations for a number

of industrial solvents based on toxicity tests on laboratory animals (rats and mice). The EPA assumed that the animal results could simply be “scaled up” mathematically to estimate toxic levels for humans, and those calculations would thus yield meaningful regulations. In addition, because the lab experiments entailed a degree of uncertainty about the toxicity levels for the broader rat and mice populations, the EPA assumed the upper end of the uncertainty range when making those calculations.

Regulation requires that exposure levels for chemicals be kept low enough that the calculated risk (under uncertainty) of premature death be below 1-in-1 million over a lifetime. If one takes the average uncertainty of the animal experiments rather than the upper limit, this requirement implies a 1-in-10 million lifetime risk. A single dose of two cigarettes in a lifetimes would satisfy that criterion! For another comparison, the risk that a wayward asteroid strikes the earth is just somewhere between 100 and 1,000 times greater. Another comparison is the risk posed by a number of naturally occurring chemicals, such as arsenic or mercury; that risk is about 10,000 times the EPA’s permitted level.

Ideally, we should use a cautious approach when regulating health and safety, and regulate in a pessimistic manner. If further research indicates that the calculated risk is too pessimistic, then it could be lowered. But that has not happened.

The risk assessment for industrial solvents was challenged by academics as early as 1979 as being arbitrary and capricious, and therefore illegal. In principle, industry could use that academic judgment to challenge the EPA in court, but industry does not have the stomach for such a suit.

If the 20 or so industrial solvents from 1979 are regulated in such an arbitrary manner, what about other chemicals? Currently, there is no good way to establish the risk posed by most of the 80,000 chemicals that are used in American commerce. Only a very few (20 or so) of those chemicals have been directly studied in people, so that those chemicals’ exposure risk has been established with some reliability. Only a few thousand

have been measured in laboratory animals, and only a few hundred measured carefully enough that a reasonable attempt can be made at using the animal results to estimate human toxicity levels. Of the remaining 60,000 or so chemicals that haven’t been studied, we know almost nothing.

What should we do in the absence of such knowledge? And what has the EPA done? We can perceive the EPA position if we consider its response to the U.S. decision over a decade ago to dispose of nerve

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gases such as sarin. The proposed disposal procedure is incineration. But what about the risks posed by burning some of the most dangerous chemicals known to man? To determine that risk, a test burn was conducted and the resultant chemicals examined. Of those products, only a handful were on the EPA’s list of toxic chemicals (the Integrated Risk Information System), so the EPA set the risk from exposure to the burn chemicals at ZERO! Yet a moment’s thought should tell us that the combustion products are likely to be more dangerous than anything on the EPA list! In 2002, I was asked by the U.S. Justice Department to defend that risk assessment in court; needless to say, I declined.

This discussion is especially topical today. The January chemical leak near Charleston, W.Va., that entered the Elk and Kanawha rivers affected hundreds of thousands of people. At least one of the involved chemicals is among the 60,000 chemicals for which the EPA has no meaningful risk assessment. As a result of the leak, the media devoted some attention to how little we know about the consequences of exposure to many substances used in commerce. But none of those reports called attention to the complete failure of the EPA and other agencies to

address the lack of information logically and scientifically. When the public is asking, “Is it safe?” and they’re answered with talk about one-in-a-million lifetime risk of premature death—as if such a low lifetime risk estimate were even meaningful—is to mislead the public badly.

Of course, all of this raises an important question: what is it to be “safe enough”? The best response to that question can be found in the late Aaron Wildavsky’s 1979 paper, “No Risk Is the Highest Risk of All”

(American Scientist 67 [1]: 32–37). He argued that attempts to bring one risk down to zero inevitably involve actions that *increase* other risks. It is obvious that whenever one discusses the future, there is uncertainty,

which must enter into the discussion. But the media duck this question. Official responses are no better.

Americans deserve better from their government. The EPA should have a sound, logical, and scientific justification for its chemical exposure regulations. As part of that, agency officials need to accept that they are sometimes wrong in their policymaking, and that they need to change defective assessments and regulations.

The first head of the EPA, William Ruckelshaus, appointed by President Richard Nixon, tried to get the agency to pursue such sound, logical, and scientific policymaking. When President Ronald Reagan bought him back to the agency, he redoubled those efforts, understanding the problems that the EPA was experiencing. But the bureaucracy has been hard to change.

Over the years, *Regulation* has published several papers on this subject; I agree with some and disagree with others. Outside of *Regulation*, I find few meaningful discussions. I applaud *Regulation* for raising this topical issue in print. Maybe those discussions will force a change. It may not be too late.

—Richard Wilson

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