

REGULATORY REFORM

The American free enterprise system is the greatest engine of wealth creation in history, yet the economy has been underperforming for years and millions of people still are underemployed or jobless. Taxes are a primary factor, but regulatory excess increasingly inhibits economic growth. Unless constrained, the regulatory state will overwhelm America's entrepreneurial spirit and diminish the freedoms upon which this nation was founded.

MAJOR POINTS

- In exercising its legislative powers under the Constitution, Congress, as the elected representatives of the people, should not delegate policy decisions to executive agencies.
- Congress and the public frequently lack objective information about the impacts of regulation. Too often, agencies fail to properly perform scientific and economic analyses before imposing rules, and many of the analyses that are conducted are biased toward regulation. Regulators selectively pick findings from the academic literature to justify their actions and ignore evidence that contradicts their agenda.
- Reforms are needed to impose accountability on regulatory agencies *and* Congress. Failure to do so will mean ceding even more control of our lives to unelected and unaccountable bureaucrats.

APPROPRIATIONS

Congress should prohibit agencies from expending any funds for:

- Any regulatory activity not specifically authorized by legislation.
- Any regulation that has been promulgated on the basis of research that does not meet federal information-quality standards.

- Any regulation for which agencies have failed to minimize paperwork burdens as required under the Paperwork Reduction Act.
- Research (including risk assessment, benefit-cost analysis, and regulatory impact analysis) that does not conform to information-quality standards.
- Research used in decision-making (including risk assessment, benefit-cost analysis, and regulatory impact analysis) without public disclosure of all data, models, and methods used in research.

LEGISLATION

To achieve the necessary statutory reforms to improve federal regulation, Congress must:

- Require a regulatory impact analysis of legislation that contains major regulatory provisions before a bill can advance to a floor vote (“major” to be defined by statute). All such analyses must meet the standards of the Information Quality Act (to be codified by Congress).
- Require all new major regulations of both executive branch and independent agencies to be explicitly approved by Congress in order to take effect.
- Require a regulatory impact analysis (including benefit-cost analysis) for all major regulations.
- Establish a sunset date for all new major regulations to enable routine retrospective review. Each major regulation would expire on the prescribed date if not explicitly reissued by the relevant agency (through a notice and comment rulemaking) and subsequently approved by Congress.
- Codify and enforce information-quality standards on rulemaking, including regulatory impact analyses undertaken by executive branch agencies *and* independent agencies. Congress shall make compliance with such standards subject to judicial review, and explicitly state that noncompliance will cause regulation to be deemed “arbitrary and capricious.”
- Require all publicly funded research to adhere to information-quality standards if utilized in rulemaking and related decision-making, including risk assessment, benefit-cost analysis, and regulatory impact analysis.

- Require full public disclosure of all data, models, and methods of all research used for risk assessment, benefit-cost analysis, and regulatory impact analysis.
- Limit by statute the presumption of objectivity granted by regulatory agencies to peer-reviewed research used in rulemaking. Such presumption is to be rebutted by a showing, based on a preponderance of the evidence, that peer reviewers did not address information-quality standards, or any identified deficiencies in information quality were uncorrected before the research was used by the agency.
- As a condition of funding, require agencies to subject proposed settlements of litigation or threatened litigation to public notice and comment, as well as to congressional scrutiny. Proposed settlements must meet information-quality standards.
- Prohibit enforcement actions based on deviation from agency guidance. Codify provisions of the “Good Guidance Practices” bulletin from the Office of Management and Budget.³⁹
- Reduce the number of regulatory violations defined as federal crimes. Require *mens rea*⁴⁰ as an essential predicate for any violations treated as crimes, and codify due process requirements in regulatory enforcement. Adopt a “Mistake of Law” defense for any alleged regulatory violation treated as a crime.
- Increase professional staff levels within the Office of Management and Budget’s (OMB) Office of Information and Regulatory Affairs (OIRA) to be proportionate to the reasonable worst-case volume of new major regulations produced annually. The cost of staffing shall be borne by regulatory agencies, through a scaled fee levied on each regulation submitted to OIRA for review.

OVERSIGHT SUBJECTS

Congress should examine the following:

- Federal agencies’ adherence to and OIRA enforcement of information-quality guidelines.
- Federal agencies’ abuse of guidance.
- Federal agencies’ violations and OIRA enforcement of the Paperwork Reduction Act.