



THE REGULATORY PROCESS

Regulations are the fundamental tool the federal government uses to safeguard the American public. Federal agencies have issued regulations, for example, that cut air pollution, protect drinking water, prevent disease outbreaks from contaminated food, and keep kids' toys safe. Agencies can issue regulation only to the extent allowed (or, in some cases, required) by Congress in statute, and regulations can often be challenged in court. In the 112th Congress, a number of bills were introduced to change the regulatory system in fundamental ways that would have made it more difficult or impossible to protect the public. Studies have repeatedly concluded that the benefits of federal safeguards—in lives saved, sick days avoided, etc.—far exceed the costs.

I. PRIMARY STATUTES AND AUTHORITIES

■ ADMINISTRATIVE PROCEDURE ACT

This 1946 statute sets out the fundamentals of the regulatory process for all agencies under all regulatory statutes, including the basics of proposing a rule, getting public comments on it, then promulgating a final rule that, at that point, may be open to court challenges.

■ CONGRESSIONAL REVIEW ACT

Congress inherently has the authority to alter or overturn any regulation. This 1996 statute sets up expedited procedures for Congress to repeal major rules within a limited period after the rule has been made final.

■ EXECUTIVE ORDER (EO) 12866: REGULATORY PLANNING AND REVIEW

This EO, initially issued under President Bill Clinton, and renewed and revised by each of his successors, requires agencies to undertake cost-benefit analysis and risk assessment when proposing rules. It also makes the White House Office of Information and Regulatory Affairs (OIRA—part of the Office of Management and Budget) the gatekeeper for the promulgation of all significant rulemakings.



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III. MAJOR CONCERNS

- Decades of efforts to prevent “regulatory overkill” have left the regulatory process with so many requirements that it can take years, even decades, to issue a new safeguard. These include requirements for additional analyses to predict a rule’s impacts on states and local communities, and on small businesses, on why a market failure requires the particular rule and on whether the proposal is the least costly alternative.

IV. UPCOMING ISSUES

Several bills from the last Congress that would have seriously weakened the regulatory system could be re-introduced:

- In 2012, the House passed a bill that would have fundamentally altered the regulatory system by requiring Congressional approval of any major regulation. The bill, known as the “Regulations from the Executive in Need of Scrutiny (REINS) Act, would literally return the regulatory system to 19th Century procedures and would effectively kill any new major safeguards. Under the bill, major new safeguards would have to be approved by both house of Congress, effectively allowing either house to block a new rule.
- Another bill, the Regulatory Accountability Act, would weigh down the regulatory system with more requirements that collectively would make it nearly impossible to finalize a regulation. For instance, one additional requirement would mandate that agencies perform a cost/benefit analysis on every single regulatory alternative that anyone submits. These are time consuming and expensive analyses.
- Additional hurdles to regulations that protect the public and the environment that may be re-introduced include:
 - Adding other additional cost/benefit analysis and allowing court challenges of such economic studies.
 - Allowing critics of regulations additional grounds to challenge agency decisions in courts.
 - Requiring independent agencies—agencies that are run by bipartisan commissions such as the Securities and Exchange Commission, which oversees Wall Street—to come under the White House regulatory review, encroaching on their statutory independence.
 - Freezing the regulatory process for a year or more.

Other problematic proposals would seek to make it harder for public interest groups to challenge government action by, for example, limiting or eliminating the payment of legal fees to successful challengers of some government decisions.

II. MAJOR POSITIVE EFFECTS OF EXISTING LAW

- Under existing law, we have a relatively open regulatory system, with many opportunities for review, under which agency experts can act within the parameters set by Congress and the courts. Those regulations have resulted in a cleaner environment, safer workplaces, a more reliable food supply, and a more stable economy, among other benefits. From banning smoking on airplanes to requiring health standards for imported food, these standards protect the public, increase our quality of life and help protect responsible companies from unfair competition from those that cut corners.
- The Bush White House estimated that Environmental Protection Agency (EPA) regulations promulgated between 1997 and 2007 cost between \$32 billion and \$35 billion. But their report found that the health benefits of those regulations were between \$83 billion and \$592 billion, a rate of return of 2.5 to 1 to 16 to 1. In the first three years of the Obama Administration, net benefits of EPA regulations have been estimated to exceed costs by \$91 billion.

PUBLIC OPINION

The public may question the need for regulations in the abstract, but are very supportive of regulations when asked about specific safeguards. For instance, rules that protect public health, such as air and water standards have overwhelming support. For example, an American Lung Association poll found 72% agreeing with the statement that it is possible to protect our air quality and public health and have a strong economy with good jobs at the same time, while only 21% believed that environmental regulations will increase costs, hurt our economic recovery and destroy jobs.