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POLICY BRIEF

How Regulatory Overload Can Make Americans Less Safe

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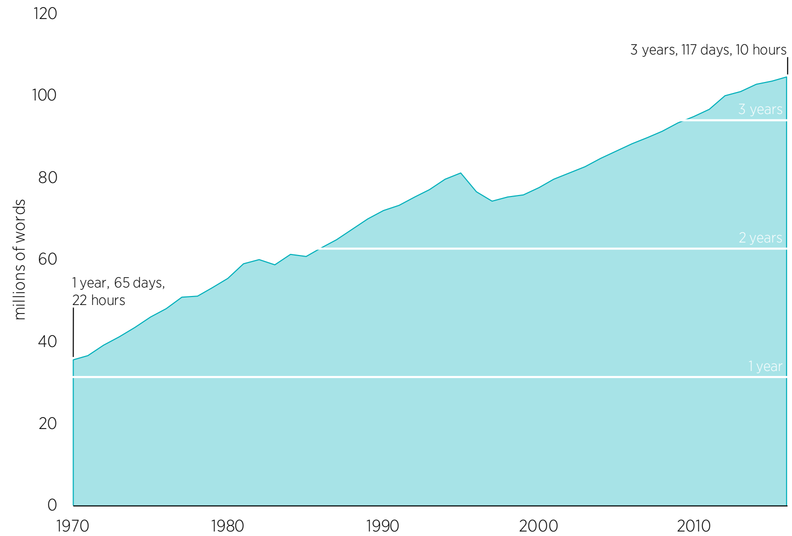
Until recently, the number of federal regulations has consistently grown for three and a half decades. Since President Donald Trump took office, however, the growth of regulation initially slowed and more recently has turned negative.[1] As measured by RegData US, a project at the Mercatus Center at George Mason University, in 1970 you could read the US *Code of Federal Regulations* (CFR) in slightly less than a year (assuming you read 250 words per minute, 40 hours a week, and 50 weeks a year). By 2016, the time required to get through the CFR had increased to three years, 177 days, and 10 hours. Figure 1 shows this increase.

Even after the net decrease in the amount of regulatory restrictions on the books that has occurred since January 2017, the time required to read the CFR today remains ludicrously long: three years, 108 days, and four hours.[2] As the number and length of regulations have grown, so has the challenge in understanding and complying with them. State regulations add another layer of complexity to the regulatory landscape. This regulatory accumulation—the piling of rules on top of rules—is not a benign phenomenon. Its unintended consequences can have far-reaching and negative effects, not just on our economy but on our health and safety too.

REGULATORY ACCUMULATION

Policymakers generally pay little attention to the long-term buildup of rules—and agencies (with budgets arguably tied to the amount of rules they create or enforce) lack incentives to analyze the effectiveness of those rules. This leads to duplicative, obsolete, conflicting, and even contradictory rules, with no formal culling process to modify or eliminate them. The multiplicity of regulatory constraints complicates and distorts the decision-making processes of businesses operating in the economy.

Figure 1. Number of Words and Length of Time to Read the CFR, 1970–2016



Source: Patrick A. McLaughlin and Oliver Sherouse, RegData US 3.0 Annual (dataset), QuantGov, Mercatus Center at George Mason University, Arlington, VA, 2017, https://quantgov.org/regdata-us/.

This regulatory accumulation has serious consequences for Americans' standard of living. It may mean that consumers pay more, workers receive less, retirement savings grow more slowly, and that Americans have less privacy or personal freedom. The perpetual accumulation of regulations slows US economic growth rates by nearly one percentage point a year. Regulatory accumulation since 1980 cost the United States roughly $4 trillion in GDP (nearly $13,000 per person) in 2012 alone.[3]

Reasonable people can differ about how much economic growth they are willing to sacrifice to obtain the benefits that regulations promise. After all, we expect regulations to do many things—like protecting the country from financial fraudsters, preventing workplace injuries, preserving clean air, and deterring terrorist attacks. Regulations require tradeoffs. Some will argue that these economic consequences, while unintended, are the price we have to pay.

But there may be other unintended consequences of regulatory accumulation. In short, too many regulations can reduce compliance and ultimately make Americans less safe.

MORE RULES, LESS COMPLIANCE

Some regulators assume that more rules mean more safety. But behavioral analysis suggests this is not always the case. Rules are effective only when people follow them.

Workers who are subjected to too many rules often forget, cannot prioritize, or simply ignore many of them. This is particularly true when they find rules overly complex, contradictory, outdated, or inapplicable to their specific jobs. Confronted by an increasing number of such regulations, workers are less likely to comply. And when they do comply, they often focus on passing inspections rather than on improving safety.

For example, one study found that the growth in regulation in the nuclear power industry actually reduced safety.[4] New regulations only distracted workers from their most important duties. In such circumstances, it became harder for workers to focus on averting the greatest risks, as an increasing share of their attention was diverted to recalling all the rules they were supposed to follow.

Other studies on safety regulations have reinforced these findings. Some 95 percent of Dutch railroad workers reported that they could not do their jobs if they followed all the rules.[5] More than half of British railroad workers admitted that more than half of all rule breaches were intentional.[6] Workers in the Australian mining industry became less concerned with evaluating situations of actual safety and more concerned with avoiding sanctions.[7]

Workers' lost sense of ownership of safety procedures has serious repercussions. Although they can identify problems more easily than regulators, they become less motivated to find solutions. At best, workers focus on simply following the rules, even if they are not safety enhancing. At worst, they focus on how to break the rules without getting caught.

CONSUMER BEHAVIOR

Regulatory overload can also affect consumers, and even helpful rules can become harmful if they obscure more important rules. For instance, road signs announcing important but relatively minor risks can distract a driver long enough to miss the stop light. One behavioral analysis of regulatory compliance costs puts the issue this way: "A regulation mandating a warning label for some real but minor risk may, when viewed in isolation, provide benefits. However, that additional warning might distract consumers from more important warnings and thus, when taken as part of the whole system, increase risk."[8]

Despite ambitious behavior-altering goals, the US Food and Drug Administration's labeling rules have not improved the health of Americans. The FDA assumes a simple linear progression—from more information on individual food attributes to changes in behavior to improved public health outcomes. Those assumptions have not proven true. Since the early 1990s, obesity rates have risen from 28 percent to more than 35 percent, with one in six children ages 2 to 19 now obese.[9]

OUTCOMES, NOT INTENTIONS

In their efforts to better protect workers, consumers, and the environment, regulators write ever more, and ever more prescriptive, rules. But evidence suggests that constantly expanding the regulatory code has the opposite effect: the difficulty of complying with such complex regulations makes people less safe. By threatening to overwhelm Americans, regulation can confuse ends and means, diverting attention away from improved safety and toward compliance to avoid sanctions.

Under normal market conditions, businesses have a direct incentive to prevent accidents that damage their property or harm employees. For example, over the past 40 years, US freight rail has experienced dramatic improvements in safety levels.[10] But this resulted more from economic deregulation than from actual rail safety regulations. By restoring market incentives, firms pursued safety measures and innovations that improved safety more than regulatory mandates had previously.

Regulators can make Americans safer by writing clearer, simpler rules and eliminating those that are ineffective. Instead of telling businesses how to solve problems with prescriptive regulations, regulators should define outcomes and let businesses devise their own solutions. When it comes to keeping Americans safe and healthy, it shouldn't be the good intentions that matter (the road to hell is paved with them). It should be outcomes that count.

ABOUT THE AUTHOR

Patrick A. McLaughlin is the director of Policy Analytics and a senior research fellow at the Mercatus Center at George Mason University. His research focuses primarily on regulations and the regulatory process. He created and leads the RegData and QuantGov projects, deploying machine-learning and other tools of data science to quantify governance indicators found in federal and state regulations and other policy documents. McLaughlin has authored more than a dozen peer-reviewed studies in diverse areas, including regulatory economics, administrative law, industrial organization, and international trade.

NOTES

1. QuantGov, "RegData U.S. Regulation Tracker," accessed November 8, 2018, https://quantgov.org/federal_regulation_tracker/.

2. QuantGov, "The QuantGov Regulatory Clock," accessed November 8, 2018, https://quantgov.org/charts/the-quantgov-regulatory-clock/.

3. Bentley Coffey, Patrick A. McLaughlin, and Pietro Peretto, "The Cumulative Cost of Regulations" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2016).

4. Richard Williams and Mark Adams, "Regulatory Overload" (Mercatus on Policy, Mercatus Center at George Mason University, Arlington, VA, February 2012).

5. Williams and Adams, "Regulatory Overload."

6. Williams and Adams.

7. Williams and Adams.

8. Patrick A. McLaughlin, Jonathan Nelson, Jim Pagels, and Oliver Sherouse, "The Impossibility of Comprehending, or Even Reading, All Federal Regulations," Mercatus Center at George Mason University, October 23, 2017.

9. Richard Williams and Catherine Konieczny, "It's Time to Rethink the Nutrition Facts Panel" (Public Interest Comment, Mercatus Center at George Mason University, Arlington, VA, January 29, 2018).

10. Jerry Ellig and Patrick A. McLaughlin, "The Regulatory Determinants of Railroad Safety," Review of *Industrial Organization* 49, no. 2 (2016): 371–98.