



THE CONSEQUENCES OF REGULATORY ACCUMULATION AND A PROPOSED SOLUTION

More than 1 million restrictions in the *Code of Federal Regulations* are either duplicative, have costly unintended consequences, are obsolete, or perform poorly. For the past 30 years, presidents have promised regulatory cleanup, yet none has successfully taken on the challenge.

In a study for the Mercatus Center at George Mason University, “[The Consequences of Regulatory Accumulation and a Proposed Solution](#),” senior research fellows [Patrick McLaughlin](#) and [Richard Williams](#) analyze attempts at regulatory reform and determine the obstacles that reform faces, what features work, and how large-scale reform might be implemented in a way to remove nonfunctional rules. McLaughlin and Williams propose the creation of a Regulatory Review Commission designed to confront skewed incentives, vague criteria, and the influence of special interests.

REGULATORY ACCUMULATION HAS NEGATIVE EFFECTS

Some regulators dangerously assume that more rules translate to more safety. As the quantity and scope of regulations increases, the degree to which these regulations can negatively affect people compounds:

- *Risk management is more difficult with regulatory burdens.* The accumulation of regulations may inhibit risk managers from dynamically responding to risks or being able to prioritize risks. Managers must divide scarce resources into managing more and more regulations even though not all regulations actually reduce risk. Risk is always present, but regulations, particularly those that are unnecessary, force managers to make unwise trade-offs among safety, GDP, and international competitiveness.
- *Regulatory accumulation stunts economic growth.* Studies find that an increase in regulation is associated with a decrease in GDP. For example, the accumulation of regulation manifests in high barriers to entry for entrepreneurs, which decreases economic growth.

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- *Nonfunctional regulations prevent better systems from working.* Regulations that are no longer functional crowd out compliance with functional regulations. Nonfunctional regulations also crowd out private efforts to reduce risk by implementing systems that respond better to changing risk.

PREVIOUS EFFORTS AT REGULATORY CLEANUP HAVE FAILED DUE TO OBSTACLES

Every president since Ronald Reagan has vowed to reduce the growth rate of regulations; however, during each presidential term, there has been a net gain of pages added to the *Code of Federal Regulations*. These efforts have faced several obstacles.

- *Misaligned incentives.* Agencies lack incentives to produce information necessary to analyze rules because their budget is tied to the amount of rules they enforce.
- *Vague criteria.* A vague mission or set of criteria for elimination permits agencies to subvert reform efforts.
- *Special interests.* When rules are under review through the rulemaking processes mandated by the Administrative Procedure Act, congressional members have the incentive to act on behalf of special interests that make up their constituencies.

OVERCOMING OBSTACLES

The study highlights two examples of reform efforts that overcame these obstacles. Each of these programs achieved their intended goal by creating an independent body subject to a clear mission with guiding criteria:

- The Defense Base Realignment and Closure (BRAC) Commission resulted in the removal of unnecessary military bases. The BRAC Commission limited Congress's involvement to an opportunity to express disapproval through joint resolution at the final stage, rather than allowing individual members of Congress to have de facto vetoes, which expedited the legislative process.
- In the Netherlands, the Administrative Burden Reduction Programme reduced regulatory costs by 25 percent. The Dutch program used a simple and reproducible equation to model the costs of regulations.

RECOMMENDATIONS

The proposed Regulatory Reform Commission should emulate these successful programs with the following features:

- *Limited, independent task force.* The commission should be a limited, independent task force with a clear mission—to identify nonfunctional regulations.

- *Politically balanced appointments.* The commission should be appointed every five years with seven members. The chair of the commission would be selected by the president, and the majority leaders of both houses of Congress would select two members each. The minority leaders of both houses of Congress would select one member each.
- *Expert committees.* The commission would select committees of experts in the field to include multiple sources of information—consumers, small businesses, industry groups, and the agency—about the efficacy of regulations. Areas of review will be chosen based on a desired regulatory outcome, such as food safety.
- *Objective measurement.* The commission would use a standard objective method of assessment that is difficult to subvert and focuses on whether or not the regulation leads to its desired effect.
- *Minimum threshold.* The list of regulations for elimination or modification should be long enough so that the costs and benefits are spread widely enough that individual members of Congress have less incentive to oppose the entire set of recommended changes.
- *Congressional disapproval possible.* A joint resolution of disapproval would be required by Congress to stop the group of targeted regulations.
- *Repeat.* This review process should repeat regularly in order to counterbalance the observed tendency of regulatory accumulation.