

21st Century Regulation: Discovering Better Solutions for Enduring Problems

Summary of Recommendations

The start of a new administration will offer the country's next president the opportunity to put his stamp on regulation and the regulatory process. Every president in the last generation has modified the way the federal government utilizes regulation as a tool to solve problems that all Americans care about, including a healthy environment, stable financial markets, safe consumer goods, and workplace health and safety.

As a university-based research center, the Mercatus Center works to blend theory and practice to advance new knowledge that can help to improve public policy. The Mercatus Center has engaged leading scholars in its academic network to examine various reforms and new approaches to regulation that the next president could implement. Some of the key reforms proposed in the Mercatus research include:

[PERFORMANCE-BASED REGULATIONS, BY HENRY WRAY](#)

In order to assess whether the government should continue or modify current federal regulations, federal policy makers and the public need to understand whether these rules are performing well. An executive order should lay out clear requirements for performance metrics and align incentives with performance goals. Such an order would require agencies to:

- Develop verifiable indicators of progress toward long-term goals for each rule, a benefit analysis demonstrating the effect of the rule on intended outcomes, and long-term performance goals that specify the outcome the rule is designed to achieve.
- Develop performance metrics along with the Office of Management and Budget (OMB) and in consultation with stakeholders.
- Report on performance measures each year.
- Adopt personnel practices (managerial contracts) that create incentives for agency management to support outcome-oriented performance measurement.

[LESSONS FOR NEW TECHNOLOGIES, BY GARY E. MARCHANT](#)

In order to ensure that regulation is based on sound science rather than fear and discrimination with respect to innovative and beneficial new technologies, the following policies should be pursued:

- Weigh the risks of old technology on equal footing with the risks of new technology so that policy doesn't prevent better solutions simply because they're new.
- Adopt a principle of non-discrimination that would prohibit regulatory discrimination against a product based on the process by which it was produced. Under this framework, regulation would be based solely on the evidence of risk of the individual product and not the technology used to produce it.
- Create a voluntary health and safety certification program. New and novel technologies, even if they are treated neutrally by regulators, may still inspire public hesitation and calls for oversight due to media portrayals and activist-group pressure. In order to provide public confidence without unfairly burdening the emerging technology, the government could offer a voluntary certification for manufacturers that undertake specific health and safety testing programs.

[FACILITATED MARKET SOLUTIONS FOR SOCIAL PROBLEMS, BY RICHARD A. WILLIAMS AND ANDREW PERRAUT](#)

Mediation firms facilitate coordination within an industry to solve social problems by bringing together different stakeholders and providing them the opportunity to create contract-based solutions to problems that are often cheaper, faster, and more effective than regulatory alternatives.

- Rules designed to prevent industrial collusion unintentionally hamper this type of facilitated market solution.
- Agencies should create the space for these solutions, when appropriate, prior to issuing notice of new rules and evaluate whether regulation is necessary after they've been given a chance to work.

[RETHINKING PROTECTION OF COMPETITION AND COMPETITORS, BY BRUCE YANDLE](#)

Too often regulations promote the narrow interest at the expense of the public interest. In order to prevent regulatory capture:

- Regulatory agencies should be required to consider voluntary solutions (such as performance standards and economic incentives) before command-and-control options and present analysis to justify their selection.
- Agencies should be required to perform an assessment of the effects of major regulation on competition.
- Independent regulatory agencies should be subject to a congressional oversight unit, similar to the Office of Information and Regulatory Affairs.

[IMPROVING THE REGULATORY PROCESS THROUGHOUT ITS LIFE CYCLE, BY SCOTT FARROW](#)

The regulatory process is the result of several decades of rules passed on top of rules. Straightening out the process will help improve its performance.

- An agency should define at least two Government Performance Results Act (1993) performance measures when a major regulation is proposed and at least one must be related to economic performance such as cost-effectiveness or benefit-cost assessment.
- OIRA should develop and make public a report/score card that identifies the actionable elements of its guidance, rates major proposals on each item, and explains any failures or inconsistencies that are below its standard.
- Regulations that impose costs of more than \$100 million per year should be approved by the relevant portion of Congress after the rule has been passed.
- OMB should work with the BEA to determine whether a supplemental account to the National Income and Product Accounts can be developed for regulatory impacts, costs, benefits, and other features of regulatory impacts.

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