

# Regulatory Reform and Science

## Restoring the role of independent science in the regulatory process

Agency experts analyze proposed public protections to ensure they are based on the best available science, will meet policy objectives, and are consistent with agency mandates. Increasingly, however, steps have been introduced in the regulatory process that slow it down and dilute the role science plays in policymaking. Slowing down the regulatory process has tremendous costs in human life and well-being: for instance, it is estimated that the delay in setting a standard for exposure to a single chemical—benzene—caused between 30 and 490 excess *leukemia deaths*. There are 40,000 chemicals on the active inventory of the Toxic Substances Control Act, and most of them have yet to be regulated.

To restore science to a central role in the regulatory process, the administration should remove unnecessary steps in the review of proposed regulations, reassess the role of cost-benefit analysis, increase transparency in rulemaking, and decrease barriers to the public's participation in the notice-and-comment process. These recommendations have strong support from science, public health, human rights, environmental, and good-government organizations.

### Background

Regulatory agencies are charged with crafting detailed rules based on broad mandates from Congress. Science has informed regulations that protect public health and safety, as well as environmental sustainability; ensure air, water, and food quality; improve consumer and worker safety; and so much more.

Promulgating regulations should be a transparent, democratic, and deliberative process that is science-based and can respond to contemporary needs in a timely fashion. However, the White House Office of Information and Regulatory Affairs (OIRA) has tremendous power to determine which proposed rules get implemented, strengthened, and weakened, and to overrule agencies' subject matter experts. Regulated industries and political actors seeking to influence regulations have found ways to use OIRA mechanisms to argue for rules that run contrary to the scientific evidence.

Another example of an impediment to efficient regulation based on the best science is the Small Business Regulatory

Enforcement Fairness Act (SBREFA). SBREFA requires the Consumer Financial Protection Bureau (CFPB), Environmental Protection Agency (EPA), and Occupational Safety and Health Administration (OSHA) to either submit each proposed rule to a "small business" panel or certify that it will not have a significant impact on small businesses. SBREFA has served as a Trojan horse for large corporate interests that have supplied "small business" representatives to these panels. Additionally, while the EPA makes its draft rules public before convening a SBREFA panel, OSHA does not, giving business interests more time to review and respond to proposed rules than other stakeholders.

Additionally, a number of nonscientific factors have been introduced into the rule assessment process. For instance, a guidance document from the Small Business Administration's (SBA's) Office of Advocacy requires agencies to provide a large amount of highly specific data, the collection of which is resource-intensive, in order to certify that a rule will not have a significant impact on small businesses. As a result, some rules that could be certified are nonetheless submitted to SBREFA panels.

Most recently, the Department of the Interior (DOI) and EPA have proposed rules that will cut science out of rulemaking unless scientists violate their privacy and confidentiality commitments to the individuals involved in research studies—actions that would also violate the conditions the federal government placed on their research funding. These new rules greatly politicize the decisions about what scientific evidence should be considered in rulemaking, using nonscientific criteria for determining what is the best available science.

To ensure regulations continue to be based on the best available science, the presidential administration that begins in 2021 should take steps to safeguard the integrity of the regulatory process.

### Recommendations for the Next Presidential Term

- 1. Issue an executive order directing federal agencies to encourage members of the public who**

**comment on proposed rules to disclose the funding sources and sponsoring organizations of research mentioned in their comments. (first 30 days)**

This will help agency personnel assess comments as they prepare regulations. Another potential benefit is being able to track which stakeholders are responding and whose voices are missing from the discussion.

**2. Direct executive agencies to give the public access to research, sources, and correspondence involving political appointees (including meetings, telephone calls, and emails) that informed the rulemaking process. (first 30 days)**

These records should be available before publication of a proposal in the Federal Register.

**3. Direct agencies to encourage diverse, widespread, and fair participation in agenda-setting and regulatory decisionmaking, especially by people with low incomes and members of marginalized racial/ethnic or other groups. (first year)**

One possible approach for agencies to explore is establishing teams of local engagement staff who would work with community leaders to obtain a comprehensive understanding of a regulation's potential community-level impacts.

**4. Issue an executive order directing OIRA to defer to agency experts' scientific analysis underpinning rulemaking. (first 30 days)**

This will reduce unnecessary delays in the regulatory process and ensure that regulations are based on science.

**5. Issue an executive order requiring agencies to put draft regulations in the regulatory docket, making them publicly available via [www.regulations.gov](http://www.regulations.gov)**

**at the same time they are being provided to "small business" panels pursuant to SBREFA. (first 30 days)**

This will ensure all interested parties get the same opportunity to see the draft text.

**6. Rescind Executive Order 13272. (first 30 days)**

*Executive Order 13272* directs agencies to "[g]ive every appropriate consideration" to comments from the SBA's Office of Advocacy. This requirement dilutes the role of science and causes delays in the regulatory process.

**7. Issue an executive order directing OIRA and agencies to use cost-benefit analysis as indicative but not prescriptive in their assessment of proposed regulations.**

This will help ensure that regulations are based on the best available science and reduce delays and revisions caused by cost-benefit analysis and other considerations not mandated by statute.

**8. Rescind any finalized DOI or EPA rules that restrict the research agency scientists can rely on. (first year)**

In the event that the *DOI* and *EPA* implement their proposed rules that use inappropriate metrics, leaders at those departments should repeal them.

**9. Propose legislation to repeal SBREFA. (first year)**

Small businesses should have the same participation in the regulatory process as any other stakeholder, without getting extra opportunities not available to others.

## Additional Resources

- *Behind Closed Doors at the White House* (2011 report from the Center for Progressive Reform)
- *Presidential Recommendations for 2020* (2020 report from the Union of Concerned Scientists)

## ENDORSED BY

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