

Ten Regulatory Process Reforms President-Elect Trump Could Undertake

President-elect Trump has promised to “reform the entire regulatory code to ensure that we keep jobs and wealth in America.”¹ To that end, scholars at the George Washington University Regulatory Studies Center offer a list of 10 reforms to regulatory processes that could be accomplished through executive action. While other potential reforms could be achieved through the courts or by working with congress, these reforms focus on actions that are within the purview of the executive branch.

1. Restore vigorous oversight of regulatory decisions.

The President will be responsible for critically important decisions made by dozens of different regulatory agencies under his supervision. He needs to ensure that there is an effective mechanism to keep regulators accountable for their actions. The Office of Information & Regulatory Affairs (OIRA) reviews draft regulatory proposals and their supporting analyses, and conducts interagency consultations.² Yet, its staffing has been steadily declining while regulatory agency staffing has increased.³ When it was formed in 1981, OIRA had 97 analysts; despite increases in its responsibilities, staffing levels are less than half of what they were then.⁴ Returning staffing and budget levels to at least what they were in 1981 would increase the President’s ability to control regulatory activity and save taxpayers and citizens money. It would improve regulatory review and, ultimately, regulatory outcomes.⁵

2. Retain E.O. 12866 and 13563 and extend them to cover independent regulatory agencies.

Executive Orders 12866 and 13563, issued by Presidents Clinton and Obama, contain widely-accepted principles and procedures for regulatory analysis and review. Maintaining them conveys a strong bipartisan message, and they should not be rescinded or replaced. Instead, agencies should be directed to follow them rigorously. Further, the orders should be extended to cover independent regulatory agencies, which would also benefit from careful economic analysis and centralized oversight.⁶

Susan E. Dudley, Brian F. Mannix, Marcus Peacock, Sofie E. Miller & Daniel Pérez contributed to this list. It reflects the views of the author, and does not represent an official position of the GW Regulatory Studies Center or the George Washington University. The Center’s policy on research integrity is available at <http://regulatorystudies.columbian.gwu.edu/policy-research-integrity>.

3. Implement a “Two-for-One” rule for regulations.

President-elect Trump has said that “for every one new regulation, two old regulations must be eliminated.”⁷ A two-for-one policy would provide agencies incentives to evaluate the costs and effectiveness of regulations that have accumulated over the years and determine which have outlived their usefulness.⁸ The Netherlands, Canada, Australia, and the United Kingdom have all adopted requirements to offset the costs of new regulations by removing or modifying existing rules of comparable or greater burden.⁹ Analytical and operational challenges will have to be addressed,¹⁰ but a two-for-one policy has the potential to impose some needed discipline on regulatory agencies, generate a constructive debate on the real impacts of regulations, and ultimately lead to more cost-effective achievement of public priorities.¹¹

4. Require each new rule to be examined for its effect on competition & innovation.

Benefit-cost analysis, as required by existing executive orders, is an important tool for examining individual rules, but it is at its core a central planning exercise. Competition can be the best regulator, as companies compete for consumers, employees, and investors. Unfortunately, regulation too often undermines competition and stifles innovation. A mechanism for ensuring that new regulatory proposals take into account their effects on market forces, competition, and innovation could improve regulatory outcomes.¹² The new administration could give the competition agencies, such as the Federal Trade Commission and the Department of Justice’s Antitrust Division, a greater role in examining regulatory effects at both the federal and state levels. It could also incorporate new criteria into the OIRA review process, with a focus on competition, innovation, and entrepreneurship.

5. As part of a broader effort to promote evidence-based policy, require each proposed rule to include a plan for evaluation once implemented.

Agencies should be required to plan for retrospective review when a regulation is first being developed: clearly identifying the problem the regulation is intended to address,¹³ laying out the causal linkages between the regulatory intervention and desired outcome, planning to collect data on the outcomes of interest, and establishing a framework for empirical testing of assumptions and hypothesized outcomes.¹⁴ For recurring rules, such as the Environment Protection Agency’s national ambient air quality standards or the Department of Energy’s appliance efficiency rules, agencies should be asked to provide evidence that previous rules had achieved projected outcomes before issuing revised standards.

6. Improve the rigor of regulatory impact analyses.

Regulatory agencies have incentives to inflate their benefit-cost analyses to pass regulatory review, and regulations are sometimes based on dubious accounting of benefits (including “co-benefits” and “behavioral” benefits).¹⁵ A proper application of the principles of E.O. 12866 would result in the rejection of regulations if agencies cannot demonstrate that they advance the public interest, using reasonable assumptions about their actual effects.¹⁶

7. Engage in analysis of alternatives earlier in the rulemaking process.

Regulatory impact analyses are often developed after decisions are made and used to justify, rather than inform, regulations. To get broader feedback before decisions are locked in, agencies could be required to conduct earlier “back of the envelope” analyses that consider a wide range of alternatives.¹⁷ For regulations with particularly significant effects, advanced notices of proposed rulemaking could be valuable for soliciting input from knowledgeable parties on a range of possible policy options.¹⁸

8. Establish procedures to ensure risk assessment used to support regulation is transparent & unbiased.

Risk assessments necessarily involve assumptions and judgments along with purely scientific inputs, yet they often generate precise-sounding predictions that hide not only considerable uncertainty about the actual risk, but policy judgements. Procedures and incentives are needed to make more transparent the underlying studies, models, and factors considered, their interpretation, and the effect different assumptions and judgments have on the range of expected benefits and costs of regulatory alternatives.¹⁹

Charge questions directed to scientific advisory boards should clarify which aspects of decisions are matters of science (on which their advice is valuable) and which are matters of policy (on which scientific advisors do not have a particular expertise).²⁰

9. Defer to the States whenever possible and design rules to facilitate experimentation and learning.

Regulations should recognize that states have a core interest in meeting the health and safety needs of their residents (whether it is environmental quality, workplace safety, etc.). Experimentation and competition among states can be a powerful force for improving environmental and other outcomes and our practical knowledge of what works. Federal regulators should avoid needlessly substituting national rules for state actions, and should find other ways to encourage competition and allow for experimentation – including natural experiments²¹ where the outcomes of different policy choices can be observed.²²

10. Respect consumer decisions and avoid setting standards that constrain choices.

Whenever possible, regulatory approaches should be designed to encourage innovation and competition, and maintain choice in the marketplace. Regulation that bans or withholds from the market products that consumers value disregards consumer preferences²³ and hinders innovation, experimentation, and knowledge discovery.

Innovation and learning are stifled by unilateral mandates, such as regulations that require product specifications or delay the adoption of new technologies.²⁴ Recognizing this relationship, regulations should be designed in ways that do not prevent consumers from making their own decisions regarding technology, risk, and household preference.

¹ <https://www.donaldjtrump.com/policies/regulations/>

² For more information on OIRA, visit <https://www.whitehouse.gov/omb/oira>.

³ Lili Carneglia, “Regulators’ Budget Report: OIRA Shrinks as Responsibilities Grow,” the George Washington University Regulatory Studies Center. July 19, 2016. <https://regulatorystudies.columbian.gwu.edu/regulators-budget-report-oira-shrinks-responsibilities-grow>.

⁴ Jason A. Schwartz and Caroline Cecot, *Strengthening Regulatory Review: Recommendations for the Next Administration from Former OIRA Leaders*, NYU Institute for Policy Integrity. November 29, 2016. <http://policyintegrity.org/publications/detail/strengthening-regulatory-review>

⁵ Stuart Shapiro and John Morrall, “Does Haste Make Waste? How Long Does It Take to Do a Good Regulatory Impact Analysis?” *Administration & Society* (2013): 0095399713498745.

⁶ Dudley, Susan E. “Improving Regulatory Accountability: Lessons from the Past and Prospects for the Future.” 65 *Case Western Reserve Law Review* (2015). <http://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1006&context=caselrev> See also Schwartz & Cecot 2016.

⁷ Video message, https://www.youtube.com/watch?v=7xX_KaStFT8&wpsrc=nl_daily202&wpm=1

⁸ Michael Mandel & Diana G. Carew, Progressive Policy Inst., Regulatory Improvement Commission: A Politically-Viable Approach to U.S. Regulatory Reform (2013), http://www.progressivepolicy.org/Wp-Content/Uploads/2013/05/05.2013-Mandel-Carew_Regulatory-Improvement-Commission_A-Politically-Viable-Approach-To-Us-Regulatory-Reform.Pdf.

⁹ Susan E. Dudley, “Can Fiscal Budget Concepts Improve Regulation?” *NYU J. Legislation & Public Policy*. Vol. 19:259 (2016) <http://www.nyujlpp.org/wp-content/uploads/2016/06/Dudley-Can-Fiscal-Budget-Concepts-Improve-Regulation-19nyujlpp259.pdf>.

¹⁰ Marcus Peacock, “Implementing a Two-for-One Regulatory Requirement in the U.S.” The George Washington University Regulatory Studies Center. December 7, 2016. <https://regulatorystudies.columbian.gwu.edu/implementing-two-one-regulatory-requirement-us>

¹¹ Susan Dudley, “President-elect Trump’s Two for One Plan to Reduce Regulatory Accumulation,” *Forbes* <http://www.forbes.com/sites/susandudley/2016/11/23/president-elect-trumps-two-for-one-plan-to-reduce-regulatory-accumulation/>. November 23, 2016

¹² Sofie E. Miller, Daniel R. Pérez, Susan E. Dudley & Brian Mannix, “Public Comment to the National Economic Council on The President’s Executive Order 13725: Steps to Increase Competition and Better Inform Consumers and Workers to Support Continued Growth of the American Economy,” <https://regulatorystudies.columbian.gwu.edu/public-comment-national-economic-council-president%E2%80%99s-executive-order-13725-steps-increase>. May 12, 2016. Susan E. Dudley, Competitive markets Need a Neutral Referee not a Cheerleader. *Forbes*. May 16, 2016. <http://www.forbes.com/sites/susandudley/2016/05/16/competitive-markets-need-a-neutral-referee-not-a-cheerleader/>

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- ²¹ Francesca Dominici, Michael Greenstone and Cass R. Sunstein, “Calculating the costs of pollution.” *LA Times*. <http://www.latimes.com/opinion/op-ed/la-oe-sunstein-mercury-regulation-pollution-epa-20140425-story.html>
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