



Institute for Policy Integrity
new york university school of law

52 Experiments with Regulatory Review: The Political and Economic Inputs into State Rulemakings




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Presented at the ACR Winter Meeting
February 11, 2011



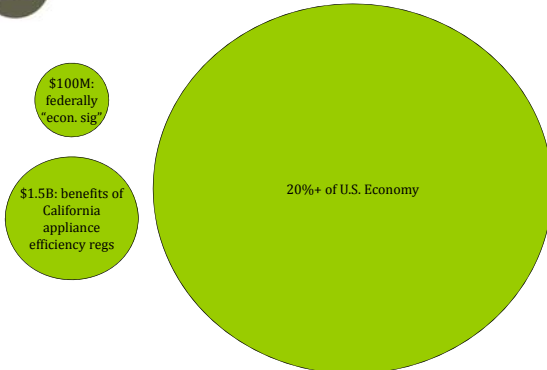
What is Policy Integrity?



The screenshot shows the website's navigation menu (HOME, ABOUT US, PUBLICATIONS, NEWS + EVENTS) and a featured article titled "52 Experiments with Regulatory Review" with a photo of a state capitol building. Other news items include "Reasonable Cost Rule" and "Obama on Regulatory Review".




What Did We Study, and Why?



The bubble chart consists of three green circles of varying sizes. The largest circle is labeled "20%+ of U.S. Economy". To its left are two smaller circles: the top one is labeled "\$100M: federally 'econ. sig'" and the bottom one is labeled "\$1.5B: benefits of California appliance efficiency regs".

What Did We Study, and Why?



A black box containing the text "Black Box of State Regulatory Review" has a black arrow pointing to a large blue question mark.


What Did We Study, and Why?

- State-Level Regulatory Review & Regulatory Impact Analyses
- 120+ Surveys & Primary Materials from 52 Jurisdictions
- Goals: Paper & Practice; Comprehensive; Updated




A stylized illustration of a detective in a blue trench coat and hat, looking through a magnifying glass at a document on a desk.

What is Regulatory Review?

(executive)  (legislature) 

Is the rule: **legal, responsive, efficient, and fair?**



(bureaucrats)

A diagram showing the executive branch (White House), legislature (Congressional chamber), and bureaucrats (two people at a table) with a central question box.

What is Regulatory Review?

(executive) (legislature)

Is [] e,

The diagram features a central icon of a hand pressing a button labeled 'VETO'. To the left is an illustration of the White House labeled '(executive)', and to the right is an illustration of the US Capitol labeled '(legislature)'. The text 'Is [] e,' is partially visible around the veto button.

What is Regulatory Review?

(executive) (legislature)

Reassess, calibrate, harmonize....

(bureaucrats)

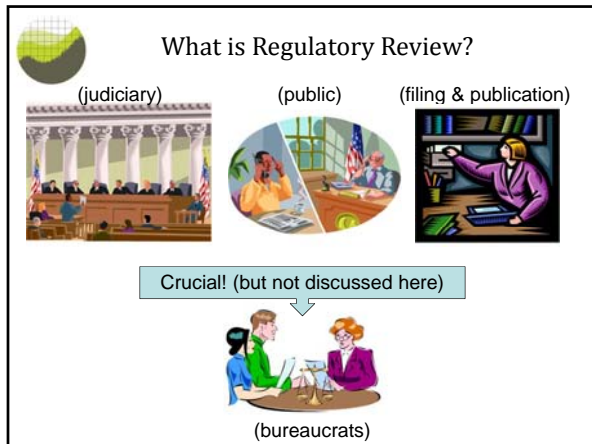
The diagram shows the executive branch (White House) and legislature (Capitol) at the top. An arrow points down to a box containing the text 'Reassess, calibrate, harmonize....', which then points to an illustration of three people (bureaucrats) sitting around a table.

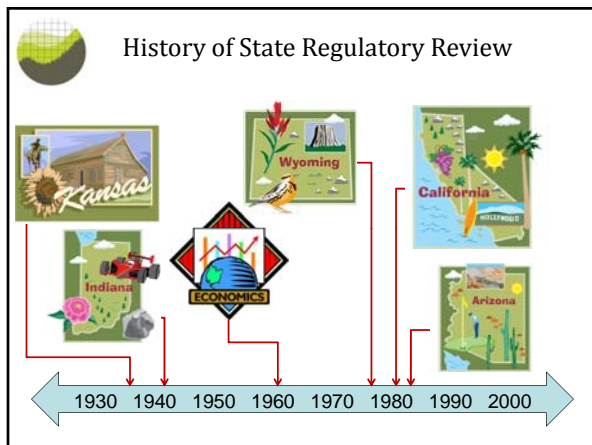
What is Regulatory Review?

...or delay, frustrate, distort

(bureaucrats)

The diagram features an illustration of a man in a suit with a red tie and a briefcase, appearing to be in motion. Below this is the executive branch (White House) and legislature (Capitol). An arrow points down to a box containing the text '...or delay, frustrate, distort', which then points to an illustration of three people (bureaucrats) sitting around a table.





History of State Regulatory Review

- **The Rise and Fall of the Legislative Veto**
 - **Death?**: Alaska, Connecticut, Kansas, Michigan, Missouri, Montana, New Hampshire, New Jersey, Oregon, West Virginia, Kentucky, Tennessee, Virginia
 - **Reprieve**: Idaho, Wisconsin, North Carolina; Illinois, North Dakota
 - **Revival**: Michigan, South Dakota, Connecticut, Iowa, Nevada, New Jersey
 - **Creative Revival**: West Virginia, Colorado, Tennessee

An illustration showing a person in a suit standing on a platform, gesturing towards a large, ornate structure that resembles a legislative chamber or a complex regulatory framework.



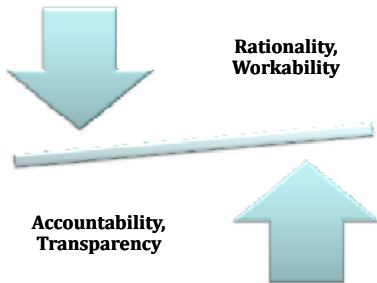
History of State Regulatory Review

- Influence of Model Rules
 - MSAPA: Original & 1981
 - 2010 MSAPA Revision
- Model RFA and SBA's "Successful" Advocacy
 - 44 states full or partial, through legislation or EO
 - Refinements and additions every year
 - But is this the whole story?





Why Do Regulatory Review?





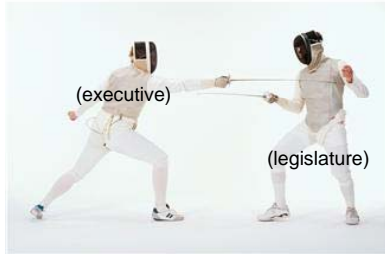
Why Do Regulatory Review?

- Cons: Resources, data, expertise, delays
- Empirical Evidence of Effects: New Jersey, Colorado, Perception
- Alternative: increase transparency and legitimacy?
- Open question: would better quality change effects?





How to Structure Regulatory Review?



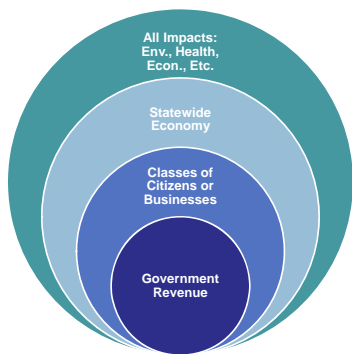


How to Structure Regulatory Review?





How to Structure Regulatory Review?





Regulatory Flexibility Analyses

- Reality Doesn't Match Official Story
 - "Partial" statutes may have practically no requirements
 - Some review offices were never active
 - Some review offices have become inactive
 - Some key positions at SBA remain unfilled under Obama



Regulatory Flexibility Analyses

- Reality Is Somewhat Different
- Are RFAs a Good Idea?
 - Good use of limited resources?
 - Washington, Utah limit application of full analysis
 - Do small businesses need protection?
 - Exemptions "without limitation"?
 - Delaware, Wisconsin, Michigan require consideration of cost of exemptions
 - Rhode Island, Vermont require consistency with healthy, safety, and environmental welfare



Guiding Principles

Table 4	Number of States Achieving Each Guiding Principle
Principle #1	Reasonable Requirements Given Resources: 11 states
Principle #2	Structure Calibrates Rules, Does Not Just Check Them: 11 states
Principle #3	Protection Against Delaying or Detering Rules: 19 states
Principle #4	Review is Exercised Consistently, Not Ad Hoc: 30 states
Principle #5	Review Is Guided by Substantive Standards: 18 states
Principle #6	Review Promotes Inter-Agency Coordination: 5 states
Principle #7	Review Combats Agency Inaction: 13 states
Principle #8	Review Promotes Transparency and Participation: 20 states
Principle #9	Periodic Review is Guided by Substantive Standards: 18 states
Principle #10	Periodic Review is Balanced and Consistent: 4 states
Principle #11	Analysis Treats Costs and Benefits Equally: 11 states
Principle #12	Analysis Is Integrated into Decisionmaking: 14 states
Principle #13	Analysis Focuses on Maximizing Net Benefits: 7 states
Principle #14	Analysis Considers a Range of Alternatives: 14 states
Principle #15	Analysis Includes a Balanced Distributional Assessment: 7 states



Guiding Principle Grades

Table 3	Guiding Principles Grade
A	0 states
B+	1 state
B	2 states
B-	4 states
C+	6 states
C	10 states
C-	2 states
D+	5 states
D	15 states
D-	7 states



Recommendations

Step-by-Step Recommendations

- #1: Low-Hanging Fruit
 - Transparency: post more impact statements and agendas online
 - Training: host seminars for rule writers, rule reviewers, and the public
 - National Professional Association: create a body to facilitate interstate communication
 - Inter-State and Intra-State Sharing: share resources and best practices
- #2: Research and Resource Prioritization
 - Conduct deeper survey of individual state practices
 - Prioritize agencies or reviewers that would benefit most from additional resources
- #3: Stroke of the Pen Changes
 - Adopt off-the-shelf recommendations, like the Draft Order featured in the Appendix
 - Or design original guidance documents, promoting balance in analysis and reviews
- #4: Process-Intensive Changes
 - Update the state's Administrative Procedure Act
 - Reform the state's Regulatory Flexibility Act to promote balanced analysis
- #5: Continual Reevaluation
 - Monitor individual state practices
 - Support academic, empirical research into what works



Problems in Transparency

- Public does not know/understand regulatory review structure
 - Agencies/rule writers/rule reviewers do not know/understand
- Public does not have access to key regulatory review documents and to most regulatory impact analyses
 - Agencies/rule writers/rule reviewers do not have access
- Public has access only to perfunctory/meaningless analyses
 - E.g., one Maryland small business statement read: "The proposed action has a meaningful economic impact on small business."





Final Thoughts

- Constantly Changing Landscape
 - Florida, Maine, New Mexico; also, Federal
 - **Poll:** Is your state now (or in last 3 months) looking at revisions?
- Inter-State Collaboration and Association
 - **Poll:** Would rule writers and reviewers benefit from more avenues to learn/share/collaborate with other states?
 - **Poll:** Could the ACR expand more into regulatory review and reach out to rule reviewers (enter a "check"), or should a new professional association be dedicated to this topic (enter an "x")?
 - **Poll:** What should such an expanded or new association prioritize: training and education (enter a "check"), research into best practices (enter an "x"), or some other goal, like professional networking (leave blank)?



Final Thoughts

- Questions?
- Please feel free to contact me with specific questions about reforming the regulatory review structure of your state: jason.schwartz@nyu.edu
