REGULATORY BACKGROUND REPORT/RECOMMENDATION

Presented
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Background

By definition, the word regulation means, "***a law, rule, or other order prescribed by authority, especially to regulate conduct.***" All regulations have one thing in common; they are affecting the private market place to create a desired effect or outcome.

Common examples of regulations include controls on minimum wages, standards of production of certain products, pollution effects, public and workplace safety and many others. Many regulations touch our lives in very positive ways every single day in ways we seldom see and consider.

However, we live in a large, complex society, laws and regulations are necessary for us to function safely, peacefully and efficiently with one another. We feel the positive effects of regulations every day when the drive to work on roads with traffic controls designed to keep us safe. We enjoy peace of mind when we enter a building constructed to meet safety standards. And we feel confident when we buy food because the manufacturers are required to meet standards to ensure our food is safe to eat.

So, the question is not whether or not we need regulations to help run our society, but rather how much regulation do we need to maintain the health and welfare of our citizens and the environment we all share. When is enough regulation really too much?

Regulatory Accumulation

The real challenge we are facing as a society is the problem of regulatory accumulation. According to the Mercatus Center at George Mason University, "In 1997, there were 834,949 instances of the words 'may not', 'must', 'prohibited', 'required' and 'shall' in the Code of Federal Regulations, which serve as a proxy for the number of regulatory restrictions imposed by the U.S. federal government.

By 2023, that number had grown to approximately 1,090,000 regulatory restrictions, reflecting continued expansion in the size and scope of federal regulation over time. For perspective, for the preceding 208 years, going back to 1789, the average rate of increase of regulations in the U.S. was just 4,013 per year."

As regulatory agencies began adding new regulations to an already gargantuan pile of regulations, a couple things began happening. First, regulations started to conflict with one another and more regulations had to be drafted to deal with those conflicts. Second, the cost to individuals and businesses started to go up as they met their legal obligation to comply with regulations.

In its more recent editions of the "Ten Thousand Commandments Report," the Competitive Enterprise Institute (CEI) estimates the cumulative cost to our nation's citizens to comply with government regulation to be in the range of $2.0 trillion annually. While estimates vary, we can all agree that there is a very significant financial burden imposed on the citizens and businesses of the United States to comply with those regulations.

Overlapping Regulatory Authority

In addition to the sheer volume of regulations, businesses and individuals must also navigate **overlapping regulatory authority**—a situation in which multiple agencies have jurisdiction over the same activity. When coordination between federal and state agencies is limited, this overlap creates uncertainty, delays, and increased compliance costs.

As noted by REGBLOG, the greatest regulatory burden does not come from a single rule, but from the cumulative effect of multiple regulations issued by different agencies over time. Unlike fiscal policy, where impacts can be measured and analyzed, the regulatory landscape remains largely opaque—making it difficult to identify areas of duplication and inefficiency.

The cost of this overlap is significant. A study by the American Action Forum found that regulatory duplication across just 17 areas identified by the Government Accountability Office resulted in **642 million paperwork hours**, **$46 billion in costs**, and **990 separate reporting requirements**.

Pennsylvania's coal industry provides a clear example. Operators are subject to oversight from numerous federal and state entities, including the EPA, OSM, MSHA, U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service, DEP, and multiple state agencies.

While each agency serves a distinct purpose, the lack of coordination often results in conflicting interpretations, duplicative requirements, and regulatory "turf battles." The result is predictable: project delays, higher operating costs, and growing frustration among those required to comply.

Birth of a Regulation

Regulations are something we all live with as a part of our daily lives. They seem to be this mysterious force of Government imposed on a helpless and unwitting population by some nameless, faceless bureaucrat hidden away in some back office sworn to serve and protect the rules they so cleverly devise.

However, the creation of a regulation is far different. Despite public perception, the process of creating a regulation is itself heavily regulated. Regulations don't just happen. In fact, nearly all regulations enacted in the U.S. and Pennsylvania are the result of four different triggering events. Those events are:

- Enactment of state legislation which is signed into law by the Governor
- Enactment of Federal legislation which is signed into law by the President
- Legal challenges to a particular rule that results in establishing new case law

- Federal program changes

State Legislation: In Pennsylvania, some regulations get their start as a part of the legislative process. A state representative or Senator will introduce a bill which gets enough votes in the House and Senate to pass. If the Governor signs the bill, it then becomes law. But it doesn't stop there.

When a bill becomes law, it will normally be assigned to the appropriate Executive agency where regulations are drafted detailing how the new law will be implemented and enforced. In Pennsylvania those agencies include the Department of Environmental Protection (DEP), Department of Labor & Industry (L&I), the Department of Community & Economic Development (DCED) and others.

This is the beginning of a long and drawn-out process call "Rule Making" which we will detail a little later in this report.

Federal Legislation: Similarly, the U.S. Congress will pass legislation in Washington D.C. and if the President signs the bill, it then becomes law. The new law is then assigned to the appropriate Federal Executive agency where it also begins a long and drawn "Rule Making" process at the Federal level.

Legal Challenges: Sometimes an individual, organization or business will challenge the validity of a Federal or state regulation or rule in the court system. This can result in all or part of a state or Federal rule being upheld, modified or even eliminated entirely. When this occurs, state and Federal agencies are required to amend their rules to comply with the court order.

Federal Program Changes: A fourth way a regulation can be implemented or amended is because of Federal Program Changes. For example, a Federal agency like the EPA or Fish and Wildlife Service may amend a regulation due to new information, technology changes or a result of public or political pressure.

Federal Regulations Supersede State Rules

By Federal statute, all state regulations, including Pennsylvania's, must be at least as stringent as Federal regulations. While they cannot be less stringent, a state can make a rule that is more stringent than Federal requirements. While most rules in Pennsylvania are enacted to comply with Federal rules, there are many rules in place to do exceed Federal rules. In some cases, these stricter rules may be justified. In other cases, they may not be needed.

If the Federal government finds state rules are not in compliance with Federal regulations, then the state could be subject to court action, loss of funding or both.

Regulatory Enabling Legislation

Pennsylvania's regulatory process is governed by four key statutes:

- **Commonwealth Documents Law (CDL)** (45 P.S. §§ 1102–1208), which establishes the procedural requirements for drafting and publishing regulations;
- **Administrative Code** (71 P.S. § 232), which requires preparation of a fiscal note by the Office of the Budget;
- **Commonwealth Attorneys Act** (71 P.S. §§ 732-101–732-506), which mandates legal review by the Office of General Counsel and the Attorney General; and
- **Regulatory Review Act (RRA)** (71 P.S. §§ 745.1–745.15), which provides oversight by the Independent Regulatory Review Commission (IRRC) and the General Assembly.

Within this framework, Commonwealth agencies are granted the authority—and responsibility—to promulgate regulations consistent with their enabling statutes.

Regulatory action is typically triggered when an agency must:

1. Implement new legislation;
2. Align state regulations with federal law and regulations;
3. Comply with a court decision; or
4. Clarify or improve an existing regulation.

These triggers may be external, such as legislative or judicial action, or internal, as agencies seek to improve program effectiveness. In all cases, regulatory changes must remain consistent with the agency's statutory authority.

The Two-Stage Regulatory Process

By its nature, the drafting and enactment of a regulation is a complex, highly structured, and time-consuming process. From initiation to completion, it typically takes 18 to 24 months—or longer. This process is divided into two formal phases: the **Proposed Stage** and the **Final Stage**.

Proposed Stage

Although regulations may undergo months or even years of internal development, the formal process does not begin until a regulatory board—such as the Environmental Quality Board (EQB) or Mine Safety Advisory Board—approves submission of a proposed rule.

Typically, a state agency like the Department of Environmental Protection (DEP) drafts the regulation in response to a statutory or policy trigger and submits it to the appropriate board for approval. Once approved, the proposal enters the formal process.

The proposed regulation is first reviewed by the Attorney General for legal sufficiency. Upon approval, it is simultaneously delivered to the standing legislative oversight committees, the Legislative Reference Bureau (LRB), and the Independent Regulatory Review Commission (IRRC).

The LRB publishes the proposal in the *Pennsylvania Bulletin*, initiating a public comment period—generally 30 days, though this may vary. During this time, the public, legislative committees, and IRRC may all submit comments.

After the comment period closes, the agency must prepare a formal response addressing all comments received. This response document is also published in the *Pennsylvania Bulletin*. The Proposed Stage typically takes 8 to 12 months.

Final Stage

In the Final Stage, the agency revises the regulation as needed and resubmits it to the Attorney General, legislative committees, and IRRC. IRRC conducts public meetings and ultimately votes to approve or disapprove the rule.

If approved, the regulation is published as final and becomes effective. This stage generally requires an additional 8 to 12 months or more.

Manganese Rulemaking – A Case Study in Regulatory Overreach

In 2017, the Pennsylvania General Assembly Enacted Act 40, directing the Environmental Quality Board (EQB) to revise the Commonwealth's manganese standard and—critically—to move the point of compliance to the point of potable water withdrawal.

The intent was clear: regulate manganese where it impacts drinking water—not at the point of discharge.

The subsequent rulemaking initiated by the Department of Environmental Protection (DEP), through its **Bureau of Clean Water**, went well beyond that directive.

Importantly, this action was not driven by the mining regulatory program, but by a separate program within DEP with primary jurisdiction over water quality standards.

However, the subsequent rulemaking initiated by the Department of Environmental Protection (DEP) Bureau of Clean Water went well beyond that directive.

Instead of limiting the change to point of compliance, DEP proposed to:

- Reclassify manganese as a toxic substance;
- Lower the standard from 1.0 mg/L to 0.3 mg/L; and
- Apply that standard broadly at or near the point of discharge.

This represented a significant expansion of regulatory scope that was neither required by federal law nor authorized by the General Assembly.

The Independent Regulatory Review Commission (IRRC) ultimately disapproved the rule.

However, despite that disapproval, the issue did not end.

Under Pennsylvania's administrative code, the applicable manganese standard for mine drainage remains 2.0 mg/L. Yet in practice, DEP continues to enforce a 1.0 mg/L treatment standard in discharge permits.

This creates a fundamental disconnect:

- The law says one thing;
- The regulation reflects another;
- And enforcement applies something else entirely.

The result is a system where regulated entities are held to standards that exceed both the administrative code and federal benchmarks—without clear statutory authority or consistent public justification.

This is not simply a policy disagreement. It is a breakdown in the regulatory process itself.

Conclusion

In a complex society, laws and regulations are necessary to govern our economy, property, and daily lives. They define what we "can, shall, must, and may" do, and when applied fairly, they protect citizens and enable society to function effectively.

However, excessive regulation carries real consequences. Overlapping rules can create confusion, delay critical projects, and impose significant costs. Over time, the cumulative burden of regulation has grown substantially, costing citizens and businesses trillions in inefficiencies and lost opportunity.

Equally important, regulations can be shaped or applied in ways that advance specific political or social agendas. For this reason, both lawmakers and citizens must remain vigilant to ensure that regulations serve the public—not the other way around.

The two steps outlined below are intended to introduce greater transparency and public accountability into an already complex and time-consuming process. By shining a light on overly burdensome regulations at both the state and federal levels, these reforms will help restore confidence that the regulatory system exists to serve the people.

Accordingly, we offer the following recommendations:

Recommendations

1. Regulatory Audit (Executive Action)
The Governor of Pennsylvania should direct **all state agencies** to conduct a comprehensive review of existing regulations to identify those that are more stringent than corresponding federal requirements.

Each agency should report its findings to the Governor and the appropriate House and Senate oversight committees. These reports should clearly justify any instances where state standards exceed federal requirements. A similar statewide review was last undertaken during the administration of Governor Tom Ridge.

2. Legislative Action (Ongoing Oversight)
In the absence of—or in conjunction with—executive action, the General Assembly should enact legislation requiring all regulatory agencies to perform a regulatory audit at least once every four (4) years.

The results of these audits should be submitted to the appropriate legislative oversight committees and made publicly available. Committees should then hold hearings to receive testimony from both regulatory agencies and stakeholders in the regulated community.

Following this review process, the Governor and/or the General Assembly should direct agencies to align state regulations with federal standards where appropriate, unless a clear and compelling justification exists for maintaining a more stringent requirement.

Closing Statement

In closing, this is not about whether we need regulation—we do.

The issue is how much, how clearly, and how consistently those regulations are applied.

As outlined in this testimony, Pennsylvania's current system has become increasingly complex, with overlapping requirements, inconsistent enforcement, and, in some cases, standards that exceed federal law without clear justification.

The recommendations we've offered are straightforward and practical. They are designed to increase transparency, improve consistency, and ensure that our regulatory system serves the public without placing unnecessary burdens on businesses and job creators.

When the law says one thing, the regulation reflects another, and enforcement applies something else—that's not regulation, that's confusion.

And if Pennsylvania is going to compete for jobs and investment, our system must be just as strong in clarity and consistency as it is in intent.

Thank you.