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# Fact Sheet: The President's Regulatory Strategy

Today, President Obama signed an Executive Order outlining his regulatory strategy to support continued economic growth and job creation, while protecting the safety, health and rights of all Americans. This strategy builds on best practices of the past, while adapting to challenges the country faces today and establishing a smart path for the future. As part of the immediate implementation of this strategy, the President also issued a memorandum to the heads of Executive Agencies and Departments calling for more transparency and accountability in regulatory compliance, as well as a memorandum emphasizing the need to reduce burdens on small businesses whenever possible.

The new Executive Order can be found [HERE](#).

## Executive Order on Improving Regulation and Regulatory Review

In this Executive Order, the President requires Federal agencies to design cost-effective, evidence-based regulations that are compatible with economic growth, job creation, and competitiveness. It outlines following guiding principles:

- **Cost-effective and Cost-Justified:** Consistent with law, Agencies must consider costs and benefits and choose the least burdensome path.
- **Transparent:** The regulatory process must be transparent and include public participation, with an opportunity for the public to comment.
- **Coordinated and Simplified:** Agencies must attempt to coordinate, simplify, and harmonize regulations to reduce costs and promote certainty for businesses and the public.
- **Flexible:** Agencies must consider approaches that maintain freedom of choice and flexibility, including disclosure of relevant information to the public.
- **Science-driven:** Regulations must be guided by objective scientific evidence.
- **Necessary and Up-to-Date:** Existing regulations must be reviewed to determine that they are still necessary and crafted effectively to solve current problems. If they are outdated, they must be changed or repealed.

## Presidential Memorandum on Regulatory Compliance and Enforcement

As part of this Administration's commitment to an open and transparent government, the President issued a memo requiring Federal enforcement agencies to make publicly-available compliance information easily accessible, downloadable, and searchable online. This will provide citizens with information they need to determine when entities fail to comply with the law. From highway safety and clean air to workers' safety and toxic chemicals, smart regulations won't work without effective enforcement.

Such disclosure is a critical step in ensuring that regulations succeed in protecting Americans. It's also critical to supporting the continued growth of American businesses. As the economy recovers and American companies create jobs, consistent regulatory enforcement levels the playing field among regulated entities, ensuring that those that fail to comply with the law do not have an unfair advantage over their law-abiding competitors.

With this change, the Administration is supporting economic growth, providing Americans with information they need to make informed decisions, and holding Government accountable for its obligations to the public.

The new memorandum can be found [HERE](#)

### **Presidential Memorandum on Regulatory Flexibility, Small Business, and Job Creation**

Small businesses are critical to the Nation's continued economic recovery and the creation of jobs. To support small business growth and innovation, the President issued a memo reinforcing the need for Federal Agencies to consider ways to reduce regulatory burdens on small business and requiring that Agencies provide justifications when such flexibilities are not included in proposed regulation. Because there can be significant differences in scale and resources among businesses of ranging size, regulations can impose disproportionately high burdens on small businesses. The Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 601-612 requires that Agencies consider regulatory flexibilities to minimize the economic impact on small entities. Such flexibilities could include:

- extended compliance dates;
- performance standards rather than design standards;
- simplification of reporting and compliance requirements (as, for example, through streamlined forms and electronic filing options);
- different requirements for large and small firms; and
- partial or total exemptions.

With the President's memo, Agencies will not only be required to consider these alternatives for small businesses, but also to provide written justification when such alternatives are not utilized.

The new memorandum can be found [HERE](#)



Together, these initiatives will create a more cost-effective, transparent and smart regulatory system, supporting the long-term economic strength and global competitiveness of our Nation.

# Toward a 21st-Century Regulatory System

If the FDA deems saccharin safe enough for coffee, then the EPA should not treat it as hazardous waste.

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By [BARACK OBAMA](#)

For two centuries, America's free market has not only been the source of dazzling ideas and path-breaking products, it has also been the greatest force for prosperity the world has ever known.



For instance, the FDA has long considered saccharin, the artificial sweetener, safe for people to consume. Yet for years, the EPA made companies treat saccharin like other dangerous chemicals. Well, if it goes in your coffee, it is not hazardous waste. The EPA wisely eliminated this rule last month.

But creating a 21st-century regulatory system is about more than which rules to add and which rules to subtract. As the executive order I am signing makes clear, we are seeking more affordable, less intrusive means to achieve the same ends—giving careful consideration to benefits and costs. This means writing rules with more input from experts, businesses and ordinary citizens. It means using disclosure as a tool to inform consumers of their choices, rather than restricting those choices. And it means making sure the government does more of its work online, just like companies are doing.

We're also getting rid of absurd and unnecessary paperwork requirements that waste time and money. We're looking at the system as a whole to make sure we avoid excessive, inconsistent and redundant regulation. And finally, today I am directing federal agencies to do more to account for—and reduce—the burdens regulations may place on small businesses. Small firms drive growth and create most new jobs in this country. We need to make sure nothing stands in their way.

One important example of this overall approach is the fuel-economy standards for cars and trucks. When I took office, the country faced years of litigation and confusion because of conflicting rules set by Congress, federal regulators and states.

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The EPA and the Department of Transportation worked with auto makers, labor unions, states like California, and environmental advocates this past spring to turn a tangle of rules into one aggressive new standard. It was a victory for car companies that wanted regulatory certainty; for consumers who will pay less at the pump; for our security, as we save 1.8 billion barrels of oil; and for the environment as we reduce pollution. Another example: Tomorrow the FDA will lay out a new effort to improve the process for approving medical devices, to keep patients safer while getting innovative and life-saving products to market faster.

Despite a lot of heated rhetoric, our efforts over the past two years to modernize our regulations have led to smarter—and in some cases tougher—rules to protect our health, safety and environment. Yet according to current estimates of their economic impact, the benefits of these regulations exceed their costs by billions of dollars.

This is the lesson of our history: Our economy is not a zero-sum game. Regulations do have costs; often, as a country, we have to make tough decisions about whether those costs are necessary. But what is clear is that we can strike the right balance. We can make our economy stronger and more competitive, while meeting our fundamental responsibilities to one another.

*Mr. Obama is president of the United States.*

The White House

Office of the Press Secretary

For Immediate Release

January 18, 2011

# Improving Regulation and Regulatory Review - Executive Order

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve regulation and regulatory review, it is hereby ordered as follows:

Section 1. General Principles of Regulation. (a) Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.

(b) This order is supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866 of September 30, 1993. As stated in that Executive Order and to the extent permitted by law, each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(c) In applying these principles, each agency is directed to use the best available techniques to quantify anticipated

present and future benefits and costs as accurately as possible. Where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Sec. 2. Public Participation. (a) Regulations shall be adopted through a process that involves public participation. To that end, regulations shall be based, to the extent feasible and consistent

with law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole.

(b) To promote that open exchange, each agency, consistent with Executive Order 12866 and other applicable legal requirements, shall endeavor to provide the public with an opportunity to participate in the regulatory process. To the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days. To the extent feasible and permitted by law, each agency shall also provide, for both proposed and final rules, timely online access to the rulemaking docket on regulations.gov, including relevant scientific and technical findings, in an open format that can be easily searched and downloaded. For proposed rules, such access shall include, to the extent feasible and permitted by law, an opportunity for public comment on all pertinent parts of the rulemaking docket, including relevant scientific and technical findings.

(c) Before issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those who are likely to benefit from and those who are potentially subject to such rulemaking.

Sec. 3. Integration and Innovation. Some sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping. Greater coordination across agencies could reduce these requirements, thus reducing costs and simplifying and harmonizing rules. In developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote such coordination, simplification, and harmonization. Each agency shall also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.

Sec. 4. Flexible Approaches. Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible.

Sec. 5. Science. Consistent with the President's Memorandum for the Heads of Executive Departments and Agencies,

"Scientific Integrity" (March 9, 2009), and its implementing guidance, each agency shall ensure the objectivity of any scientific and technological information and processes used to support the agency's regulatory actions.

Sec. 6. Retrospective Analyses of Existing Rules. (a) To facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and



to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data, should be released online whenever possible.

(b) Within 120 days of the date of this order, each agency shall develop and submit to the Office of Information and Regulatory Affairs a preliminary plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

Sec. 7. General Provisions. (a) For purposes of this order, "agency" shall have the meaning set forth in section 3(b) of Executive Order 12866.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

THE WHITE HOUSE,  
January 18, 2011.

## Obama's Regulatory Reform Test

by Richard W. Rahn

Richard W. Rahn is a senior fellow at the Cato Institute and chairman of the Institute for Global Economic Growth.

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Assume your government job is to write regulations to require bicycle manufacturers to make safer bicycles. You know two things. The first is that if you say bicycles are being made about as safely as they can be, then you will no longer be needed; hence, no job. Second, you know there were no U.S. commercial airline fatalities in the U.S. in 2010 (an amazing and true fact) while about 1,000 people died in bicycle accidents in 2010. Thus, as long as you argue that riding a bicycle should be made as safe as flying in an airplane and that tougher regulations on bicycle manufacturers could make bike-riding safer, you can keep your job.

President Obama jumped on the regulatory-reform bandwagon last week after two years of greatly expanding costly regulations and reducing personal liberty, particularly on health care and financial services. I confidently predict his new initiative will be a failure. History has shown that the vested interest of the regulators in job preservation and expansion almost always swamps efforts at regulatory reform.

Mr. Obama said, in essence, that the benefits of regulations should exceed the costs — which every president, at least going back to Jimmy Carter, also has said. President Reagan made the most serious attempt to rein in the regulatory monster by staffing his administration with many talented and committed deregulators, but even they were often frustrated by the regulatory bureaucrats and Congress. We will now have a test of whether Mr. Obama is serious and will seek to carry out his own words.

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[More by Richard W. Rahn](#)

The Obama Environmental Protection Agency (EPA) has ruled that carbon dioxide is a pollutant and, as a result, has been holding up the permitting of new power and manufacturing plants. If this continues, it will cause a significant drop in U.S. economic growth and job creation, yet it will have no measurable benefit. China, India and many other countries are rapidly increasing CO2 emissions, overwhelming whatever actions the United States may take. Even if all new CO2 emissions were stopped globally, it would be decades before there would be even a minor effect on global temperatures. Now, new research is indicating that sunspot activity is much more important than CO2 when it comes to influencing the earth's temperature. The EPA ban is nothing more than national economic suicide. Let us see if Mr. Obama has the courage to tell the EPA to stop.

The Internal Revenue Service (IRS) has just issued a proposed regulation that would have an enormous cost on the U.S. economy with no benefit. Specifically, it is demanding that U.S.

banks report the amount of interest they pay foreign nationals to their governments. The U.S. long ago decided not to tax interest earned by foreign investors in order to attract their money. Well-qualified, independent economists have estimated this will cost the United States in lost foreign investment roughly \$100 billion a year and many thousands of jobs. This will make foreign tax collectors happy, even in corrupt countries, at the expense of U.S. jobs. If the IRS does not immediately withdraw this proposed regulation, it will show it pays no attention to Mr. Obama's words or does not care what he says.

If Mr. Obama is serious about regulatory reform, he will immediately instruct the EPA and the IRS to drop their no-benefit, job-killing proposals. If these proposals are still hanging out there a month from now, that will reveal that he is all talk and no action.

The Securities and Exchange Commission (SEC), an agency with a long record of destructive incompetence (remember the many warnings about Bernie Madoff?), was too busy creating such burdensome regulations on new public stock offerings that now few companies can afford the cost of going public. The SEC is off on a tangent of creating wild new theories of insider trading. This nonsense is making it difficult for officers and directors of companies to do their basic jobs of business development and corporate governance. Serious scholars of insider trading, notably Henry G. Manne, dean emeritus of the George Mason University Law School, have rightly concluded that the insider-trading regulations result in a denial of timely and important information to market participants, thus causing more harm than benefit. Unlike the SEC bureaucrats, Mr. Manne and other serious critics of the SEC have no vested interest in more, nonproductive regulation.

New regulation is often proposed under the guise of consumer protection. However, consumers are well-protected under our tort system, which makes it costly for firms to cheat or injure their customers. Both airplane and bicycle manufacturers understand better than any government bureaucrat that if their products end up killing the people who use them, it is not good for business or their pocketbooks. Yet the bureaucrats at the SEC and the IRS are engaged in the ultimate conflict of interest because it is much easier to be promoted and retain their jobs if their agencies are growing. Hence, the production of more regulations becomes an end in itself. And to the extent that the regulations are vague and incomprehensible, it only means more work for the regulators.

To reduce this inherent conflict of interest, those who are asked to write new regulations should be independent contractors or temporary employees. And every proposed regulation, no matter how small, should be accompanied by an independent cost-benefit analysis that is open to challenge by any interested party.

## **Obama's regulatory reform will focus on fairness**



by [Michael A. Livermore](#)

25 Jan 2011 10:12 AM

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Obama's executive order adds "human dignity" and "fairness" to the list of considerations. Photo: The White House The recent Obama [executive order](#) on regulation encourages agencies to examine "values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts."

This is a significantly positive element in a move that has been [derided](#) as an "[unforced fumble](#)" for its concession of rhetorical ground to industry.

The Obama order, as has been [noted](#), is one in a long line of executive orders requiring review of agency action using cost-benefit analysis. Initiated under Reagan, the process initially looked only at economic efficiency, remaining insensitive to how benefits and burdens were distributed.

So if a regulation generated a large economic benefit for very wealthy people, but caused lower income earners to suffer disproportionately, it could be approved. At the same time, a rule that would help lift people out of poverty, but placed a larger burden on corporate profits, could be turned down.

This insensitivity to distribution was one of the main reasons that progressives fought against the use of cost-benefit analysis under Reagan. When Bill Clinton took office, he kept the same basic

structure in place, but added distribution and equity to the list of net benefits that agencies were to maximize.

Unfortunately, as a practical matter, under Clinton and continuing under George W. Bush, distributional impacts have continued to take a back seat to purely economic considerations.