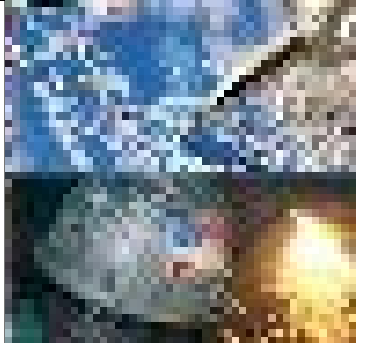


U.S. Manufacturing and Public Policy Conference:
**“What the Next President Should
Do About U.S. Manufacturing:
An Agenda for the First 100
Days”**
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Smarter Regulation for the American Manufacturing Economy

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Introduction

The American version of democratic capitalism has been one of the greatest engines for prosperity and liberty in history, and has the potential to deliver a promising future for the USA and the world. The U.S. manufacturing sector has been a fundamental driver of this success, with the highest economic multiplier of any economic sector, and contributing to the U.S. economy 12 percent of GDP, or \$2.17 trillion. Manufacturing also supports about one in six private sector jobs (18.5 million), and the average compensation per full-time equivalent worker is \$79,553 annually—24 percent more than the average American worker.

But the United States also faces growing challenges in an increasingly competitive global economy. Large swaths of the American economy are distorted by mandates and incentives, and the vast majority of “laws” governing the U.S. are not enacted by elected representatives in Congress, but are promulgated by agencies as regulations. Moreover, as a result of our cumbersome permitting process, America’s infrastructure is crumbling; half of accidents are due to road conditions, the antiquated power grid wastes the equivalent of 200 coal-fired power plants, gridlock on roads and railroads wastes \$300 billion annually, and ancient water pipes leak 2 trillion gallons. And manufacturers that want to expand are stymied.

The cost, complexity and volume of regulations is greater than ever -- with about 3,500 new rules annually imposing an invisible tax of about half of the \$3.8 trillion spent visibly through the budget --

¹ The author would like to thank many thoughtful reviewers for their comments and suggestions, including Donald Elliott, Susan Dudley, Karen Kerrigan, and Thomas Duesterberg.

and this regulatory burden disproportionately affects manufacturers. Manufacturers spent on average \$19,564 per employee to comply with regulations in 2012 -- nearly double the amount for all U.S. businesses -- and small manufacturers spent about \$34,671 per employee annually -- about triple that of the average U.S. business. The vast majority of U.S. manufacturing firms are small businesses; 75 percent have less than 20 employees.

Regrettably, well-intended government regulation often distorts the marketplace or picks winners and losers among companies or technologies. When regulators behave this way, they invariably cause unintended harms. Poorly designed regulations may cause more harm than good; stifle innovation, growth, and job creation; waste limited resources; undermine sustainable development; and erode the public's confidence in our government. On the other hand, when sensible, evidence-based regulations respond to compelling public need, such as material failures of private markets, they can provide vital benefits, such as the protection of the environment, public health and safety, civil rights, consumers and investors.

Leaders in Washington must embrace regulatory reform not simply on a rule-by-rule basis, but as systemic change. Regulations must be carefully designed to provide net benefits to the public based on the best available scientific and technical information through a transparent and accountable rulemaking process, with due consideration of the cumulative regulatory burden.

Policy Proposals

The next president and Congress have an historic opportunity to dramatically improve the regulatory process to serve the public interest and increase the competitiveness of the American manufacturing economy. Though by no means exhaustive, the following policy proposals are intended to directly help reach that goal:

Do More Good than Harm

Regulatory agencies, including independent regulatory commissions, should objectively ensure that the benefits of their regulations justify the costs and that statutory objectives are achieved in the most cost-effective manner, such as through market-based mechanisms, performance standards, and information tools. The president should direct this effort through an Executive order overseen by the Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget (OMB). The president also should direct the agencies to revise their statutory interpretations to fully promote benefit-cost balancing, unless prohibited by law. Regulatory priorities and budgets should be planned across the agencies based on the seriousness of the problems to be addressed and the ability to solve them in a cost-effective manner. Finally, since its

creation 35 years ago, OIRA has lost over half its staff (from 97 to about 47), while the staff of regulatory agencies has about doubled (146,000 to over 278,000); OIRA's resources should be commensurately increased.

Sound Science

Regulators should base their regulatory decisions, priorities, and influential information disseminations on the best available scientific and technical information, including an objective and unbiased evaluation of costs, benefits, and risks including a careful and thorough analysis of the weight of the evidence. Influential scientific information and assessments should be peer-reviewed by independent experts before being disseminated.

Transparency

Agencies should disclose early to the public the data, models and other key information used in high-impact rulemakings and provide an adequate opportunity for meaningful public input. Moreover, court settlements between regulators and interest groups to require rulemakings should be published and disclosed to the public, and reviewed by OIRA, before they are final.

Streamline the Permitting Process

The cumbersome federal permitting process for building infrastructure and siting or operating facilities or projects must be modernized to be timely, certain, and efficient so that our nation's crumbling infrastructure can be rebuilt, beneficial projects can proceed, and millions of jobs can be created. This requires clear lines of authority to make decisions and enforce deadlines, efficient environmental review, a one-stop-shop for permits, removing incentives to use litigation to delay projects, such as through bonding requirements, and streamlining and expediting litigation. This also requires the reform of policies and rules under general statutes such as the National Environmental Policy Act, as well as specific statutes such as the Clean Air Act.

Sensitivity to Small Business

Regulators should be more sensitive to the impacts of regulations on small business. For many years, agencies have exploited loopholes to avoid the requirements of the Regulatory Flexibility Act, such as excluding the "indirect effects" of regulations, and those loopholes should be closed.

Retrospective Review of Rules

There should be a retrospective review to streamline and simplify existing rules and to remove outdated and duplicative rules. The retrospective review process should be the beginning of a bottom-up analysis of how agencies can best accomplish their statutory goals. This should include a careful analysis of regulatory requirements and their necessity, as well as an estimation of their value to achieve needed outcomes.

During the first six months of the new administration, priority should be given to reconsidering regulations that have a significant impact on the U.S. manufacturing sector, starting with those listed in the attachment to this paper. Moreover, no new significant rule should be issued without a plan for review. In some cases, small scale pilot projects should be considered so more can be learned before a nationwide regulation is issued.

Finally, to institutionalize retrospective review for the long term, a Congressional-presidential commission should be established to recommend the elimination or modernization of packages of outmoded rules or programs through fast-track procedures, similar to the military base-closing commission, or sunset reviews could be instituted to eliminate or reform rules that no longer can be justified.

Accountability

The president should direct all regulatory agencies, including the independent agencies, to promptly implement the preceding policy proposals. As all regulation starts with the delegation of lawmaking authority from Congress, Congress should elevate these proposals into binding law. Because there is no independent regulatory evaluator in the federal government, regulatory reviews too often conclude with self-praise. Therefore, Congress also should establish an independent congressional agency modeled on MedPAC, the independent medicare advisory commission, or build new capacity in an existing body, such as the Congressional Budget Office, that could assess the costs and benefits of proposed or final regulations—as well as legislative proposals—to better inform Congressional oversight and legislative activity.

Appendix

Priority Manufacturing Regulations for Early Review

- **EPA Clean Power Plan:** By increasing the costs of electricity and natural gas and creating reliability challenges, this rule could put American manufacturers at risk in a globally competitive economy. The rule would vastly expand the Environmental Protection Agency's traditional authority far beyond specific source categories by reaching into the entire electricity supply and demand chain. It also could serve as a model for future direct regulation of manufacturing industries – and thus manufacturers could be impacted twice by greenhouse gas regulations.
- **DOL Overtime Rule:** Announced on May 18, 2016, the Department of Labor rule raises the exemption from overtime pay from an annual salary of \$23,660 to \$47,476, and it requires employers to reclassify certain salaried employees as hourly to make them eligible for overtime pay.
- **EPA Waiver for California's Zero Emission Vehicle Regulation:** Under the Clean Air Act, all states are prohibited from enacting emission standards except for California, which may—if provided a waiver by EPA -- adopt stricter emissions standards than the federal government. In 2012 EPA granted a waiver for California to adopt a ZEV (Zero Emission Vehicle) requirement, which amounts to a requirement that about 15 percent of all new vehicles sold in 2025 be powered by electricity or hydrogen fuel cells. Neither EPA nor California subjected the ZEV requirement to a national benefit-cost analysis.
- **NLRB Joint-Employer Standard:** In 2015, the National Labor Relations Board issued a decision in the Browning-Ferris Industries case, which redefines the 30-year-old joint-employer standard, calling into question what type of relationship one employer has with another. Now, manufacturers who contract out for any product or service with another company could find themselves in a joint-employer relationship, triggering responsibility for collective bargaining agreements and other parts of the National Labor Relations Act.
- **EPA New Source Review Program:** The NSR program should be modified to allow manufacturers to make routine investments in maintenance and repairs, without triggering complex, time-consuming and costly permitting changes.
- **National Highway Traffic Safety Administration (NHTSA)/EPA Fuel Economy Rule:** The scheduled midterm review of federal fuel economy standards for vehicles should be adjusted to reflect lower gasoline prices and higher compliance costs, including coordination of federal

regulations with California's greenhouse gas and zero-emission vehicle regulations.

- **Occupational Safety and Health Administration (OSHA), Crystalline Silica Standard:** The rule lowered the permissible exposure level for respirable crystalline silica by half to 50 micrograms per cubic meter of air, and mandates costly methods for controlling exposure, such as new engineering controls, respiratory protection, medical surveillance, hazard communication, and record keeping. The rule has been estimated to affect 534,000 businesses and cost \$5.5 billion annually.
- **EPA, Ozone National Ambient Air Quality Standards (NAAQS) Rule:** In 2015, EPA lowered its ozone standard from 75 to 70 parts per billion, despite a weak health science case. Because more than 60 percent of the controls and technologies are not known, the rule could result in plant closures and premature retirement of manufacturing equipment. By some estimates, the rule could reduce GDP by \$140 billion, eliminate 1.4 million jobs and cost over \$1 trillion, making it the most costly U.S. regulation in history.
- **EPA Boiler MACT Rules:** After about 20 years of work by EPA on certain Clean Air Act regulations setting limits for the emission of hazardous air pollutants from industrial and institutional boilers, parts of the rules were struck down in court for the second time in July 2016. Among other things, the court's actions could affect over 1,000 boilers at facilities that have just come into compliance under the January 2016 deadline. Three attempts at rulemaking have been unsuccessful in developing achievable and sustainable rules under the rigid technology-based standards in the Act.

This event is intended to serve as a voter education event. All candidates received invitations to participate in this event. The opinions expressed by any speaker, including candidates or their representatives, do not represent the views of Indiana University. Indiana University does not endorse or provide resources to support or oppose particular candidates for political office or political parties.