



## Analysis of the Regulatory Improvement Act (S. 1390)

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- Overview:
  - o Bill is one-sided:
    - Focuses on weakening or eliminating rules
    - Equates “regulatory improvement” with weaker or fewer rules
  - o Procedures for developing commission reports and “recommended legislative language” favor industry, which already dominates the regulatory process
  - o No clear mechanisms for holding the commission accountable for properly implementing the statute
  - o Bad optics:
    - The problem this bill seeks to address is “too much bureaucracy”:
      - It’s solution is “more bureaucracy”:
        - o A whole new commission with:
          - Reimbursed commissioners;
          - GSA-provided facilities, executive director and other personnel, administrative support staff, and other resources;
          - Authority to procure services; and
          - Authority to contract for supplies and equipment.
    - According to the bill’s sponsors, the cause of the problem of excessive regulations is “unaccountable bureaucrats”:
      - Yet, the fundamental design of the bill is to entrust even less accountable bureaucrats with extraordinary authority over the safeguards on which Americans depend to protect their health, safety, and the environment
- Specific criticisms:
  - o Biased “purpose”:
    - The bill directs the commission to make “recommendations for modification, consolidation, or repeal of” regulations:
      - The commission is prohibited from considering or identifying areas where existing regulations should be expanded or new regulations should be implemented
    - The “aim” of the commission’s recommendations must be to “reduc[e] compliance costs, encourag[e] growth and innovation, and improv[e] competitiveness”:
      - This approach explicitly ignores regulatory benefits, which can leave society worse off on balance:

- For example, there are many instances where increasing compliance costs can lead to disproportionately greater benefits, which would leave society better off on balance
  - Based on the false premise that regulations are antithetical to growth, innovation, and competitiveness:
    - There are plenty of examples where strong regulations have spurred growth, innovation, and competitiveness
  - The one limitation that is placed on this purpose—that recommendations still allow for “protecting public health and safety”—is weak:
    - The bill does not define what “protecting public health and safety” entails
    - The bill provides no means for blocking recommendations that would plainly undermine public health and safety.
      - In other words, there are no means for enforcing this limitation
    - This limitation is also too limited in scope:
      - It does protect against commission recommendations that might impair other goals that regulations would seek to advance, such as environmental protection or financial security
- Biased reports:
  - The interim and final reports that the commission is supposed to produce can only contain recommendations “to modify, consolidate, or repeal” regulations.
  - These reports may not include recommendations for expanding existing regulations or to implement new ones, regardless of how beneficial these recommendations might be for achieving several of the bill’s “aims,” including spurred growth, innovation, and competitiveness
- Nonapplicability of FACA:
  - This raises concerns because FACA ensures that “advisory committees”—which the commission created by this bill surely is—abide by minimal transparency requirements. As discussed below, this bill does not subject the commissions’ activities to any meaningful transparency and accountability requirements
- Inadequate transparency requirements:
  - No meeting of the commission would ever be open to the public, so long as only one of the nine members of the commission objects to the meeting being open
    - The commission would be free to meet behind closed doors with politically well-connected industries seeking regulatory relief
- Inadequate accountability requirements:
  - There is no requirement that the commission support “the findings and conclusions” in the interim and final reports with a reasonable policy basis. In other words, the commission is free to issue findings and conclusions that would be deemed “arbitrary and capricious” under the Administrative Procedure Act.

- In contrast, agencies are subject to this requirement when issuing a rule.
  - Even if there was a requirement to support findings and conclusions with a reasonable policy basis, there would be no method for enforcing it. The commission’s final report is not judicially reviewable, unlike an agency’s final rule.
- The bill directs the commission to “incorporate any relevant [public] comments” it receives on the interim report when preparing the final report, but there is no means for enforcing this provision:
  - The commission could blatantly ignore comments it receives, but there would no means for the public to hold the commission accountable for violating the law.
    - For example, the commission would be free ignore public comments that a recommendation to repeal rule would harm public health.
- Public participation procedures are biased in favor of corporate interests:
  - The commission process establishes two periods of public comment, but numerous studies have found that corporate interests dominate the public comment process in Administrative Procedure Act rulemaking proceedings
  - There is no alternative mechanisms for ensuring that the commission accounts for public interest concerns in its reports or recommendations:
    - As noted above, the minimal public health and safety standard is not enforceable, nor is the requirement that the commission incorporate all public comments into the final report and recommendations
  - As such, this commission runs the risk of turning into a one-stop shop for corporate interests seeking regulatory relief
- The process for commission “examination of regulations” is designed to produce a distorted picture of regulations that overemphasizes regulatory costs and underemphasizes regulatory benefits:
  - The bill requires the commission to employ “quantitative metrics” and “testimony from industry” when “determin[ing] the effectiveness” of regulations. These resources tend to overemphasize regulatory costs and underemphasize regulatory benefits.
  - The bill makes no effort to ensure that the commission properly accounts for regulatory benefits, especially those benefits that defy quantitative assessment.
- The bill appears to focus on “cumulative burdens” of regulations by directing the commission to develop “a sector or area-specific body of” regulations “to research and review”:
  - The bill takes no parallel requirement to account for the “cumulative burdens” imposed on disadvantage populations that suffer from multiple environmental, public health, financial, etc. stressors, and which have less adaptive capacity

- As such, the commission is not required to consider for whether and what kind of incremental impacts that its recommendations to repeal regulations will have on populations that are already disproportionately burdened