

Time Line of the Regulatory Process

1789—Several executive departments, such as the Department of War, the State Department, and the Department of the Treasury, are formed.

1849—The Department of the Interior is formed.

1863—The US office of the Comptroller of the Currency is established, the oldest regulatory agency in the country. Now, this agency is housed within the Department of the Treasury.

1868—The Treasury Department begins publishing its customs decisions for the public.

1869—Patent Office begins publishing decisions.

1870—The Department of Justice is formed.

1872—The Post Office is formed.

1887—The Interstate Commerce Commission, the first economic regulatory agency, is formed in response to complaints from farmers and merchants about exorbitant railroad shipping rates.

1906—The Bureau of Chemistry (later renamed the FDA) is established, the oldest regulatory agency with a focus on regulatory science; the Pure Food & Drugs Act is passed with the purpose of protecting the public from “manufacture, sale, [and] transportation of adulterated or misbranded, or poisonous or deleterious foods, drugs, medicines, and liquors” and the Chemistry Bureau is given the power to implement it.¹

1935—The Federal Register Act creates the *Federal Register*, a platform for notifying the public of the actions of the federal government.

1937—President Roosevelt creates the Code of Federal Regulations as an amendment to the Federal Register Act.

¹ The publication of Upton Sinclair’s novel *The Jungle* draws attention to the unsanitary practices of the meat industry in 1906. This and other aspects of popular culture likely encouraged citizens to push for pertinent regulation.

1946—The Administrative Procedure Act establishes standards for formal and informal rulemaking procedures.² For most cases, this act requires an agency to publish a notice of proposed rulemaking in the FR, take comments on the FR, publish final ruling, and provide a 30-day waiting period before the rule is enacted.

1967—The Freedom of Information Act is passed, increasing the number of documents made available in the Federal Register, but reducing the number of pages in publications by allowing for “incorporation by reference” for many documents.³

1970—An executive reorganization plan pulls together 15 components from five departments and agencies to create the Environmental Protection Agency.⁴

1971—(October) Nixon establishes the Quality of Life regulatory review process⁵ (supervised by the Office of Management & Budget) that requires agencies to submit the costs of “significant” rules and their possible alternatives.

The Occupational Safety & Health Administration is formed.

1973—The Consumer Product Safety Commission is formed.

1974—(August) Gerald Ford establishes the Council on Wage & Price Stability (CWPS) to review all government programs with regards to costs.

(November) EO 11821 requires agencies to assess the impact of regulations on inflation and gives the OMB authority to establish the regulatory agency procedures for preparing Inflation Impact Statements. The CWPS would then review these statements.

1975—(July) Ford meets with ten independent regulatory agencies to encourage them to reform their processes to be more compliant with his EO.⁶

² Formal rulemaking involves formal hearings, is rarely used, and is only required per Congress’ request, informal rulemaking (“notice and comment” rulemaking, Section 553 rulemaking) is the most common type, the APA requires an agency to publish a notice of proposed rulemaking in the FR, take comments on the FR, publish final ruling, and provide a 30-day waiting period before the rule is enacted, and it established the “good cause” exceptions

³ LegHistory.Info

⁴ In particular, the EPA incorporated some or all of the functions of the Federal Water Quality Administration (formerly the Department of the Interior), the pesticide studies performed by the DI and the FDA (Department of Health, Education, and Welfare), National Air Pollution Control Administration (DHEW), the Bureau of Solid Waste Management (DHEW), the Bureau of Water Hygiene (DHEW), the Bureau of Radiological Health of the Environmental Control Administration (DHEW), the Council of Environmental Quality, the Atomic Energy Commission, the Federal Radiation Council, and the Agricultural Research Service (the Department of Agriculture).

⁵ Named as such for its initial focus on rules regarding the environment, consumer protection, and occupational and public health and safety.

1976—(December) Ford issues EO 11949, extending the Inflation Impact Program and renaming the document produced the Economic Impact Statement.

1978—(February) President Carter establishes the Regulatory Analysis Review Group (RARG)⁷ to review the “most important” regulations proposed.

(March) EO 12044 replaced Ford’s Economic Impact Statement with a Regulatory Analysis. The OMB oversaw and delegated to the CWPS the review of agency submissions. All rules with annual economic effects of \$100 million or more or that would have a significant impact on industries or regional governments were subject to this process.⁸ This EO also set up the Regulatory Analysis Review Group (RARG) to review significant proposed rules. The RARG established a required Semi-Annual Agenda of Regulations.

1980—(September) The Regulatory Flexibility Act is passed, requiring agencies to conduct regulatory flexibility analyses for rules that have “significant economic impact on a substantial number of small entities” (SEISNE) and to solicit feedback from these entities.⁹

(December) The Paperwork Reduction Act is passed, which establishes the Office of Information & Regulatory Affairs (within the OMB) as the presidential regulatory review entity and establishes a process by which agencies must consider the “paperwork burden” of their proposed regulatory actions.

1981—(February) President Reagan’s EO 12291 requires that regulatory action not be taken unless the potential societal benefits outweigh the costs. It also requires agencies to prepare regulatory impact analyses for any proposed “major rules”. These

⁶ Independent regulatory agencies are not subject to the jurisdiction of EOs. Ford’s four focuses were: “(1) measuring and considering the costs and benefits of proposed regulations; (2) reducing the backlog and delays in regulatory proceedings; (3) suggesting changes in the legislation under which each regulatory commission operates, including deregulation where appropriate; and (4) assuring that the consumers’ interests prevail in regulatory proceedings” (CATO.org). As a result, the FTC and the NRC were the only agencies that took significant steps to follow Ford’s directive, the NRC setting up the Office of Policy & Evaluation.

⁷ Officials from OMB, the Council of Economic Advisors, and the White House formed the group, with the CWPS performing most of the review work.

⁸ The Regulatory Analysis, which agencies were required to make public at the time of the proposed rulemaking, included “a description of the problem, an identification of alternative ways of achieving the policy goal...an analysis of the potential economic impact of the regulation [and] a rudimentary cost-effectiveness test” (CATO.org). However, it should be noted that, while agencies were required to create these reports, they were not prohibited from taking a regulatory action if its costs were shown to outweigh its benefits.

⁹ The law saw little compliance, since many agencies simply added cursory statements to new rules in order to fulfill this requirement. Effects on small businesses was still often significant.

analyses needed to be reviewed and approved by OIRA before agencies could publish notices of proposed rulemaking.¹⁰

Reagan abolishes the CWPS and transfers its regulatory review authority to OIRA.

Reagan creates the Task Force on Regulatory Relief (chaired by VP George Bush) as a court of appeals for cases in which OIRA and federal agencies could not come to agreement.

1985—Reagan’s EO 12498 required agencies to develop a yearly Regulatory Program to detail significant regulations scheduled for publications.

1986—(October) The Paperwork Reduction Reauthorization Act amends the Paperwork Reduction Act of 1980 and aims to extend public participation in rulemaking.¹¹

1989—(March) President Bush replaces the Task Force on Regulatory Relief with the Council on Competitiveness (headed by VP), which aims to review all federal regulations in order to eliminate those that inhibit U.S. competitiveness.

1992—(January) Bush places a ninety-day moratorium on issuing new regulations so that agencies can evaluate their existing regulations and eliminate those that are unnecessary. The moratorium is then extended another 120 days.¹²

1993—Clinton rescinds existing EOs on regulatory review (12291 and 12498) and abolishes the Council on Competitiveness.

(September) Clinton’s Executive Order 12866 establishes the parameters and additional requirements of “Significant” Rules and “Economically Significant” Rules, replacing the Reagan-Bush directives.

1995—(March) The Unfunded Mandates Reform Act is enacted, requiring federal agencies to prepare statements that analyze the costs of a proposed regulation action

¹⁰ OIRA could identify any rule as a “major rule”.

¹¹ Federal agencies are required to include in the FR notice of information collection package submission to OMB, estimated average burden hours per response, etc.

¹² Exceptions to this moratorium included regulations that “(1) faced statutory or judicial deadlines; (2) responded to situations that posed “an imminent danger” to human health or safety; (3) fostered economic growth; (4) were essential to criminal law enforcement; and (5) concerned military or foreign functions” (CATO.org).

with likely annual government or private sector expenditure of \$100 million or more (adjusted for inflation).¹³

(May) The Paperwork Reduction Act of 1995 amends the 1980 act and requires federal agencies to publish a notice with a 30-day comment period in the FR before submitting a proposed rule to OMB.

1996—(February) EO 12988 aims to improve regulation drafting by further including the Office of General Counsel to reduce unnecessary litigation.

(March) The Small Business Regulatory Enforcement & Fairness Act (SBREFA) requires agencies to complete a regulatory flexibility analysis on regulations.¹⁴ Section 251, referred to as the Congressional Review Act (CRA), allows Congress the ability to overturn regulations and establishes the parameters and additional requirements of “Major” Rules.

1999—(August) EO 13132 requires regulatory agencies to consider implications of proposed rules which would impose significant costs on state and local governments, interfere with state law, or have other implications pertaining to Federalism.

2007—(January) President Bush’s EO 13422 amends EO 12866 by requiring OIRA to review guidance documents (memos, guidelines, policy, etc.) distributed to regulation agencies that are “economically significant” or have adverse effects on the economy, industry, or the environment. This EO also installs presidentially-appointed regulatory policy officers in the agencies.

2011--Obama’s EO 13563 requires agencies (excluding independent regulatory agencies) to conduct retrospective analyses of regulations; EO 13579 requires independent regulatory agencies to conduct retrospective analyses as well

Sources:

¹³ This act excludes independent regulatory agencies as well as some more sensitive programs, such as civil rights initiatives.

¹⁴ The regulatory flexibility analysis includes discussion of the need for the rule, changes made based on comments received, actions taken to reduce significant impact, etc.

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