

Regulatory Accumulation since 1970

By Patrick McLaughlin and Oliver Sherouse

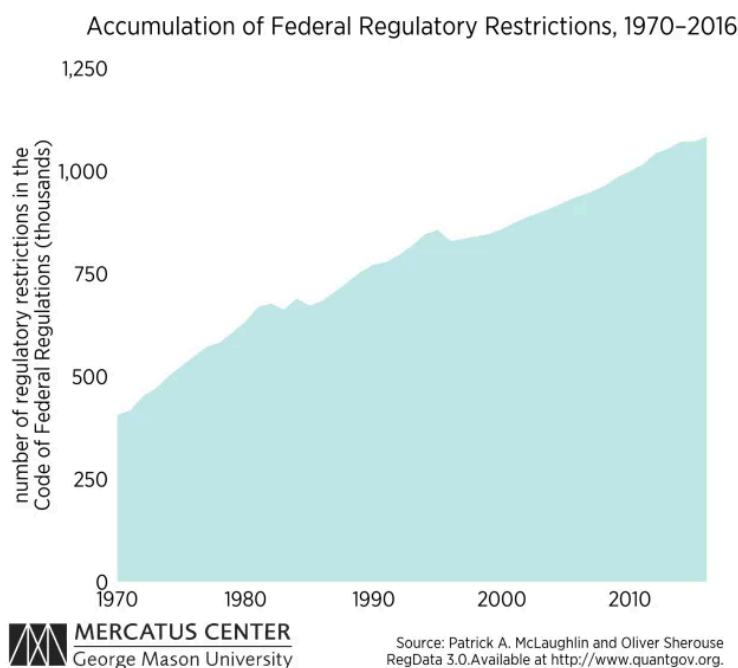
It is difficult to quantify the trends in and effects of federal regulation, and it is all too easy to mistake rhetoric for reality. In debates about regulation and regulatory reform, people often cherry-pick their favorite anecdote as evidence to support their points of view, and disagree over who the biggest regulators or deregulators were. To us, the slippery nature of these debates simply proves that Lord Kelvin (after whom the temperature unit is named) was correct when he wrote, in 1883,

"When you can measure what you are speaking about, and express it in numbers, you know something about it; when you cannot express it in numbers, your knowledge is of a meager and unsatisfactory kind; it may be the beginning of knowledge, but you have scarcely, in your thoughts, advanced to the stage of science."

Similarly, a lack of measurement and data has limited our knowledge about regulation and its effects, at least until

recently.

RegData 3.0 is a revised and updated version of the five-year-old RegData Project hosted by the Mercatus Center at George Mason University. This version of RegData gives us a more precise history of federal regulation spanning nearly five decades. Produced using the QuantGov framework, RegData includes counts of the number of regulatory restrictions—phrases like *shall*, *must*, and others that indicate prohibited or required activity—that are published annually in the *Code of Federal Regulations* (CFR). The chart below shows the total count of regulatory restrictions for each year from 1970 to 2016.



The most striking aspect of the chart is the inexorable accumulation of regulatory restrictions over time. Steady growth occurred over three long periods, with two quick intermissions when the growth rate slowed dramatically and the number of restrictions even declined. From 1970 to 1981, restrictions were added at an average rate of about 24,000 per year. From 1981 to 1985, that pace slowed to an average of 620 restrictions per year, before accelerating back to 18,000 restrictions per year from 1985 to 1995. A decrease of 27,000 restrictions occurred from 1995 to 1996—3.2 percent of the 1995 total—and in the 20 years since then, regulation has grown steadily by about 13,000 restrictions per year. These periods do not match up neatly with any president or party;

rather, regulatory accumulation seems to be a bipartisan trend—or perhaps a bureaucratic trend independent of elected officials’ ideologies.

The magnitude of regulatory accumulation is striking—the CFR contained over 1,080,000 total restrictions as of 2016. Unfortunately, it is doubtful that all these regulations were carefully crafted. The Mercatus Center’s Regulatory Report Card project consistently found that agencies failed either to fully demonstrate the existence of the problem that they could solve with a new regulation or to show that they explored alternative approaches—regulatory or otherwise—for addressing the problem.

With the overall body of regulations having grown for several decades, its cumulative restrictiveness may also have sweeping unintended consequences. Some recent studies show that regulatory accumulation not only slows economic growth, but is also associated with consumer price increases that disproportionately impact lower-income households. These are some of the costs of a regulatory process that results in regulatory accumulation—consequences that should be relevant to any discussion of its reform.

The good news is that there are ways to improve the regulatory process so that it can help us solve real problems at reasonable costs. Proposals like instituting legislative impact accounting, requiring better analysis from agencies, clarifying the role of the courts, and performing retrospective analysis could all improve the system of federal regulation. For a fuller perspective on these and other possible reforms, please see the “Comprehensive Regulatory Reform” Mercatus Policy Primer.

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