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Solving the Puzzle of an Enfeebled Regulatory System

Citing ‘Regulatory System in Severe Disrepair,’ CPR Releases Three White Papers Addressing Distinct Aspects of Problem:

CPR Member Scholars Address Dysfunctional Regulatory Agencies, Costs of Delayed Regulations, Moving Beyond Cost-Benefit Analysis

Washington, DC – Federal regulations intended to protect the health, safety and the environment have long been the subject of intense political fights, battles stretching back to the creation of the agencies charged with enforcing the federal government’s various “protective statutes.” The result, according to three new white papers from the Center for Progressive Reform, is a regulatory system beset by dysfunction, inadequate resources, outdated authorizing statutes, and political interference – often resulting in weak regulations and sporadic enforcement, failings that impose substantial costs on Americans’ health and pocketbooks.

“Overall, the federal regulatory system is slow, feeble, and in severe disrepair,” said CPR President Rena Steinzor, a co-author of each of the three white papers. “We tolerate unnecessary hazards in the food we eat, air we breathe, water we drink, drugs we take, workplaces we populate, and environment we live in. It’s not that regulation doesn’t work; it can and often does. The problem is that the agencies that do the regulating have been beaten back or cowed by pressure from industry and its allies, and their resources have been so restricted that they’re unable to do their jobs effectively in too many cases. It’s time to reinvigorate regulation to protect health, safety and the environment.”

The three white papers each examine a different aspect of the problem. In [*Regulatory Dysfunction: How Insufficient Resources, Outdated Law, and Political Interference Cripple the ‘Protector Agencies,’*](#) CPR Member Scholars Sidney Shapiro and Rena Steinzor, and CPR Policy

Analyst Matthew Shudtz examine the big-picture question of whether regulatory agencies are actually protecting Americans from health, safety, and environmental threats. Their conclusion: Despite important work done by regulatory agencies over their institutional lifetimes, critical failures in providing safeguards have emerged. Among the culprits identified in the white paper are woefully inadequate budgets, outdated authorizing legislation, and political interference with the work of agency experts. Proposed solutions include providing adequate resources – a process that begins not by adding incrementally to existing budgets but by asking what agencies need to accomplish their statutory missions; developing new accountability mechanisms at the agencies to gauge how well they are actually protecting Americans and the environment; and decentralizing regulatory decisionmaking.

In [*The Hidden Human and Environmental Costs of Regulatory Delay*](#), CPR Member Scholars Catherine O'Neill, Amy Sinden, and Steinzor, together with Policy Analysts James Goodwin and Ling-Yee Huang, explore a long-overlooked issue: the profound human and economic costs of regulations that take years, sometimes decades to produce because of a variety of delays – often because of political interference. Regulatory agencies are in the habit of taking years, to study an issue and promulgate regulations, and when they do, legal challenges often delay things further. The white paper cites the example of mercury regulation. Because of challenges from industry, delay by the Bush Administration, and adoption of a regulatory approach that did not comply with the law, nearly two decades have passed since Congress ordered EPA to regulate mercury emissions in the Clean Air Act Amendments of 1990, and no standard is expected until 2011. During this period, as many as 637,000 U.S. babies have been born each year with elevated blood mercury levels – levels high enough to leave them with irreversible brain damage. An estimated 231 children develop mental retardation each year as a direct result of exposure to mercury emissions from U.S. power plants – a fate they could be spared, if regulations had been imposed and enforced.

The third white paper offers a workable alternative to cost-benefit analysis, a method of regulatory impact analysis imposed by the Office of Management and Budget on regulatory agencies. Past CPR scholarship has criticized cost-benefit analysis as a failed approach that has persisted because it serves the interests of regulatory opponents, producing watered down regulations built on analyses that consistently overstate costs and understate benefits. Moreover, the imposition of cost-benefit analysis comes at the expense of methods of regulatory impact analysis that are commanded by statute. CPR's white paper, [*A Return to Common Sense: Protecting Health, Safety, and the Environment Through "Pragmatic Regulatory Impact Analysis"*](#), by CPR Member Scholars Sidney Shapiro, Sinden, and Steinzor, with Policy Analyst Goodwin, proposes a different method: Pragmatic Regulatory Impact Analysis (PRIA). The approach would call on agencies to follow the standards for analysis specified in their

authorizing statutes, rather than relying almost solely on cost-benefit analysis. Agencies would gather and rely on the best available science to make evaluations based on the weight of the evidence, and solicit public comment from experts representing a broad range of disciplines, in a way that enhanced transparency.

In a letter transmitting the white papers to Cass Sunstein, the Obama Administration's newly confirmed administrator of the OMB Office of Information and Regulatory Affairs, Steinzor described the papers as each addressing "a distinct piece of a larger puzzle: how to reinvigorate federal agencies so that they effectively protect health, safety, and the environment." She said that CPR looks forward to having an "opportunity to work with [Sunstein] to explore these and other issues related to the regulatory process, and to facilitate conversations with our Member Scholars and others toward that end."

The publications are available at www.progressivereform.org.

The Center for Progressive Reform (www.progressivereform.org) is a nonprofit research and educational organization dedicated to protecting health, safety, and the environment through analysis and commentary. Visit CPR on the web at www.progressivereform.org and read CPRBlog at www.progressivereform.org/cprblog.cfm.