

Texas Public Policy Foundation

# Regulatory Impact Analysis

Legislator's Guide to the Issues 2015-16

## Regulatory Impact Analysis



### The Issue

The basic purpose of regulation in our state and federal constitutional scheme is to implement the laws enacted by popularly elected representatives—no more and no less. The Legislature creates and delegates to agencies the authority to promulgate and enforce regulation. These are very broad powers which can—but should not—authorize regulation not clearly authorized by specific law. As an example of a sweeping grant of authority to a regulatory agency, the Texas Commission on Environmental Quality (TCEQ)'s general powers provide authority “necessary and convenient” to carry out the agency’s statutory mission to protect health, safety, and the environment.

If limited government is the guiding principle, state regulation must come under specific and limited—not general—authority. Regulation issued solely by the general powers of an agency should be the exception and only exercised under heightened justification. Although agencies often prefer more general statutes granting broad discretionary authority, clear statutory language stipulating regulatory goals and mechanisms reduces regulatory “creep,” i.e., regulations exceeding authorizing statutes.

The number, scope, and cost of environmental regulations have dramatically increased in the last 20 years. TCEQ now implements and enforces roughly 6,000 rules, the majority of which are dictated by federal law. Although multiple benefits to health, safety, and the environment may flow from these rules, there is no accessible mechanism for tracking their cost and effectiveness.

The federal government has long required cost-benefit analysis of proposed rules. Texas, by contrast, has no similar requirement. The Texas Administrative Procedures Act (TAPA), governing all state rulemaking, requires an assessment of fiscal implications of new regulations on state and local government but not of impacts on the private sector. The General Government Code “Regulatory Analysis of Major Environmental Rules” (Section 2001.0225) does require this analysis of cost to the private sector for a limited number of “major” rules. However, a “major” environmental rule includes only rules: 1) exceeding an express requirement of federal or state law; 2) adopted solely under the agency’s general powers; or 3) exceeding a requirement of a delegation agreement. The formal Regulatory Impact Analysis (RIA) required in these provisions has only been included in one rulemaking over the 14 years since enactment. The current statutory definition of “major rule” has been effectively interpreted to exclude all rules promulgated.

Court decisions seem to validate this interpretation of current law. In *Brazoria County v. Texas Com’n on Environmental Quality* (App. 3 Dist. 2004)128 S.W.3d728, the court held that TCEQ’s rules implementing requirements for vehicle inspection and lawn-maintenance did not trigger the statutory requirement for a Regulatory Analysis for a Major Environmental Rule since the TCEQ was attempting to meet, not exceed, a relevant standard set by federal law.

Texas environmental agencies generally avoid most of the excesses and inefficiencies typical of the federal agencies. The state’s far more hands-on knowledge and practical understanding of real-world effects tend to accelerate, rather than delay, meaningful environmental protections. And TCEQ has wisely striven to resist unwarranted, counter-productive, unlawful dictates of federal agencies. Yet, the state of Texas, whose population is larger than many countries and whose economy is larger than most countries, has a regulatory purview that is, indeed, vast. However well-honed now, efforts to streamline regulatory design and to measure effectiveness should remain a constant focus of Texas state agencies.

Straightforward RIA should help regulators design the most efficient regulation: targeted and effective at the least cost to the state, regulated entities, and Texans. Proposed rules with extremely high cost and minimal or immeasurable environmental effect should send the rule maker back to the drawing board to design a more efficient rule. Alternative definitions of standards,

continued on back

requirements, and methods of compliance can yield greater environmental outcomes or effect at lower cost. With over 80 steps in TCEQ’s internal rulemaking process, this straight-forward cost-effectiveness analysis of a select few “major” rules need not add time or expense to the agency’s work.

### The Facts

- Over the last 150 years, the amount of CO<sub>2</sub> in the atmosphere has roughly doubled, to 390 parts per million, and, at current rates, is projected to more than double again over the next century.
- Average global temperatures have risen about 0.8 degree Celsius over the same period, much less than the change that models would predict.
- Global average temperatures have not risen over the last 17 years.
- The last several years have seen growing discrepancies between observations and climate model projections, evidence of lower climate sensitivity to increases in CO<sub>2</sub>, increasing Antarctic sea ice extent, and evidence that recent sea level rises are no more than in some previous periods.
- For the U.S. to achieve an 85% reduction in GHG emissions—the global reduction promoted by the IPCC to avert dangerous interference with the climate—emissions would have to be reduced to a level not seen since the 19th century.
- EPA’s proposed restrictions on GHGs are expected to increase the cost of a vehicle \$3,100 by 2025, and, if successful, would prevent only 0.01 degree Celsius of the expected warming, according to EPA’s own estimates.

### Recommendations

- Urge federal policymakers to establish an independent, rigorous review of IPCC science.
- Suspend state programs that require or incentivize GHG reduction.
- Eliminate EPA regulation of CO<sub>2</sub> emissions.

### Resources

Statement to the Committee on Environment and Public Works of the U.S. Senate by Judith A. Curry (16 Jan. 2014).

*Global Warming: How to Approach the Science* by Richard S. Lindzen (22 Feb. 2012).

*Coalition for Responsible Regulation, et al, v. Environmental Protection Agency*, No. 09-1322 (D.C. Cir. Filed 16 Feb. 2010).

*Global Warming: What Should Texas Do?* by Ian Murray, Texas Public Policy Foundation (Apr. 2007).

