A Regulation on Regulations
AN OBSCURE LAW IS EVOLVING INTO A BLUDGEON AGAINST GOVERNMENT REGULATION BY PAUL RAEBURN

In January 2001, the New England Journal of Medicine published a study showing that reducing salt in the diet could lower blood pressure, even in people without hypertension. The National Heart, Lung and Blood Institute, which funded the study, quickly posted a press release on its Web site announcing the findings.

The Salt Institute, an industry group, was stung by the study’s results. Unable to challenge the data on scientific grounds, the institute found another way to attack them. It filed a petition under the Data Quality Act—a law ironically intended to ensure that regulations are based on solid science—arguing that the findings did not meet the act’s standards and that the heart institute had therefore broken the law by posting them.

The dispute eventually moved to the courts, where a district judge dismissed the industry’s challenge. The institute appealed, and in March a federal appeals court again dismissed the petition. The Salt Institute, which was joined in the suit by the U.S. Chamber of Commerce, has yet to decide whether to take the case to the Supreme Court.

It was the first time the right to petition in court under the Data Quality Act was challenged, but it will most likely not be the last. Nobody keeps an exact tally, but something like 100 Data Quality Act petitions have been filed with dozens of different government agencies. Most have been initiated by industry groups, disputing scientific reports that could lead to tougher regulations. If subsequent petitions are accepted by the courts, the litigation could tie up government reports indefinitely, long before their data could lead to any government action.

The law, also known as the Information Quality Act, was enacted in 2000 without public debate. “It was passed in the middle of the night as an appropriations rider,” says Rena Steinzor, a University of Maryland law professor. The act consists of a mere
two paragraphs in a longer appropriations bill. It says that the White House Office of Management and Budget (OMB) should ensure “the quality, objectivity, utility, and integrity of information ... disseminated by Federal agencies.” That seems reasonable, Steinzor admits: “Who can argue with the idea that data should be correct?”

In practice, however, the act could turn into an “über-statute that can challenge all rule making” by the federal government, she says. “Somebody could challenge the rule making and lose, lose, lose—and then file an appeal under the Data Quality Act.”

The federal government’s regulatory actions are already subject to opposition in court. What the Data Quality Act does is attempt to extend those challenges to reports that are strictly informational, such as the heart institute’s press release. In the absence of the Data Quality Act, its research could not be taken to court.

The Data Quality Act was written not by a member of Congress but rather by James J. Tozzi, a lobbyist and the founder of the Center for Regulatory Effectiveness. Tozzi acknowledges that although the act could shut down government regulations, its effect would mainly be on inefficient regulations. The reason, he says, is that filing a Data Quality Act petition is difficult, and it can be turned down by the agency it is aimed at, the OMB or ultimately by the courts.

Thomas O. McGarity, a professor at the University of Texas School of Law and president of the Center for Progressive Reform, disagrees. “It costs nothing to file a Data Quality Act request, and if you get judicial review, you can shut down the government.”

Given the Salt Institute’s setback, its case is dead unless one of two things happens: it appeals to the Supreme Court, hoping for a decision saying that courts can accept Data Quality Act petitions. Or the act’s defenders go to Congress to ask it to amend the law to allow judicial review. In the meantime, petitioners can continue to take their cases to court in other appellate jurisdictions.

Tozzi, a one-time New Orleans jazz musician, has a more improvisational approach to going back to court. Because courts may not be sympathetic to industry, he is using the act to argue that the government has ignored data showing marijuana is helpful to cancer patients and others. “The FDA issued a statement saying that medical marijuana has no medical uses,” Tozzi says. That is at variance with a National Academy of Sciences report that found it did have benefits. He reasons that the courts might take a more sympathetic view of suffering cancer patients than they did of the Salt Institute. “It’s a case where you have industry trying to establish a precedent for itself by hiding behind sick people,” says Sean Moulton of OMB Watch, a Washington, D.C., nonprofit.

Industry’s success with the Data Quality Act is now being imitated by a few public-interest groups, including some confronting the Fish and Wildlife Service’s failure to list species as endangered when the data argue otherwise. But most are waiting to see whether Congress amends the act. “If they do,” McGarity says, “they’re going to wish they hadn’t.”

Paul Raeburn writes about science, policy and the environment from New York City.

An Immune Portal

PROTEIN MAY BE A KEY TO AUTOIMMUNE DISORDERS

BY JENEEN INTERLANDI

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s a medical student in Germany, Stefan Feske studied two Turkish brothers born with severe combined immunodeficiency syndrome, or SCID, a rare, life-threatening genetic disease characterized by a seriously debilitated immune system. Because the boys’ T cells could not take up calcium, their immune systems would not work. These siblings provided Feske and his collaborators with a unique opportunity to track down a key protein involved in this process by studying human cells in