

## ABSTRACT

William F. Pedersen  
*Contracting With the Regulated for Better Regulations*

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This piece focuses on the defects and inefficiencies in the federal environmental health and safety regulatory systems. Pedersen asserts that ineffective management in those systems results from a failure to prioritize and to distinguish between the ends sought by regulators and the means used to achieve those ends. Without these distinctions, agencies are merely “passive brokers” between competing interest group pressures. The ossification of rulemaking reinforces the agencies’ passive role.

Pedersen suggests that “regulatory reform contracts” are the solution that will infuse the regulatory process with incentives both to improve efficiency of means and to adjust ends and means through a competitive market structure. Under this approach, Congress authorizes agencies to accept offers from regulated entities to “trade” current regulatory obligations for different obligations that are proposed by the regulated, as long as the trade results in “equal social benefits.” The resulting “contract” would be subject to public comment and limited judicial review, and would be valid if it met the requisite conditions. The agencies are thrust into a more active role because they must select which offers to accept and must defend their reasoning to the public. The necessary debate over which offers to accept will clarify and help agencies prioritize the regulatory ends and means. This clarification and prioritizing, in turn, results in more efficient and effective regulation.

The piece discusses the concerns that such contracts grant too much discretion to agencies and the entities they regulate. Pedersen asserts that using an experimental approach, with the existing regulatory structure as a baseline, will provide safeguards against this danger. For example, the notice and comment process already restricts agencies somewhat, and that process will continue to work under regulatory reform contracts. Additional safeguards, however, are too costly and would reduce the benefits of the contracts. Pedersen concludes that contracts will encourage further changes to the regulatory system, such as market-based approaches, devolution of regulatory decisions to the state and industry level, and the eventual permanent use of contracts as regulatory tools.