

BACKGROUND

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Red Tape Rising 2016: Obama Regs Top \$100 Billion Annually

James L. Gattuso and Diane Katz

Abstract

The Obama Administration is responsible for an unparalleled expansion of the regulatory state, with the imposition of 229 major regulations since 2009 at a cost of \$108 billion annually (using the regulatory agencies' own numbers). The actual costs are far greater, both because costs have not been fully quantified for a significant number of rules, and because many of the worst effects—the loss of freedom and opportunity, for example—are incalculable. The need for reform is urgent. The White House, Congress, and federal agencies routinely breach legislative and even constitutional boundaries, and increasingly dictate lifestyle choices rather than focusing on public health and safety. Immediate reforms should require legislation to undergo an analysis of regulatory impacts before a floor vote in Congress, and require congressional approval of each major regulation before it can take effect. Sunset deadlines should be set in law for all major rules, and independent agencies should be subject—as are executive branch agencies—to the White House regulatory review process.

The number and cost of federal regulations increased substantially in 2015, as regulators continued to tighten restrictions on American businesses and individuals. The addition of 43 new major rules last year increased annual regulatory costs by more than \$22 billion, bringing the total annual costs of Obama Administration rules to an astonishing \$100 billion-plus in just seven years.

The effects of this rampant rulemaking are widespread. Among them: higher energy rates from the Environmental Protection Agency's "Clean Power Plan"; increased food prices for both people and pets as a result of excessively prescriptive food production stan-

KEY POINTS

- The number and cost of government regulations continued to climb in 2015, intensifying Washington's control over the economy and Americans' lives.
- The addition of 43 new major rules in 2015 increased annual regulatory costs by more than \$22 billion, bringing the total costs of Obama Administration rules to an astonishing \$100 billion-plus in just seven years.
- The tide of regulation is expected to rise even higher in 2016—President Obama's final year in office. With 144 additional rules already in the pipeline, Americans should be prepared for a regulatory surge before year's end.
- The White House, Congress, and federal agencies routinely ignore regulatory costs, exaggerate benefits, breach legislative and constitutional boundaries, and dictate lifestyle choices rather than focusing on public health and safety.
- Absent substantial reform, economic growth and individual freedom in America will continue to suffer.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3127>

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

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TABLE 1

Regulatory Burden at a Glance

Major regulations enacted in 2015 burden businesses and individuals with more than \$22 billion a year in regulatory costs. The total new burden since 2001 is \$176 billion.

	2015	Since 2009	Since 2001
Total number of new rules	2,353	20,642	47,661
Total number of new major rules	81	566	1,062
Increasing burdens	43	229	355
Decreasing burdens	7	26	58
IN BILLIONS OF 2015 DOLLARS			
Cost of major increases in burden	\$22.9	\$112.0	\$182.9
Savings from major decreases in burden	\$0.6	\$3.4	\$5.9
Net increase in burden*	\$22.3	\$107.7	\$176.0

* Excludes identified rules later vacated.

SOURCE: Heritage Foundation research using data from the Government Accountability Office.

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dards; restricted access to credit for consumers and small businesses under Dodd–Frank financial regulations; fewer health care choices and higher medical costs because of the Affordable Care Act; and reduced Internet investment and innovation under the network neutrality rules dictated by the Federal Communications Commission (FCC).

The tide of regulation is expected to rise even higher in 2016—President Barack Obama’s final year in the White House. Historically, rulemaking increases as Presidents scramble to fulfill their regulatory agenda before leaving office. With 144 new rules already in the pipeline, Americans should be prepared for a regulatory surge before year’s end.

In a post-Obama era, the need for reform of the regulatory system will be greater than ever before. Immediate reforms should include the requirement that legislation undergo an impact analysis before a floor vote in Congress, as well as a requirement that every major regulation obtain congressional approval before taking effect. Sunset deadlines should be required for all major rules, and independent agencies should be subject to the same White House regulatory review as executive branch agencies.¹

Measuring 2015’s Red Tape

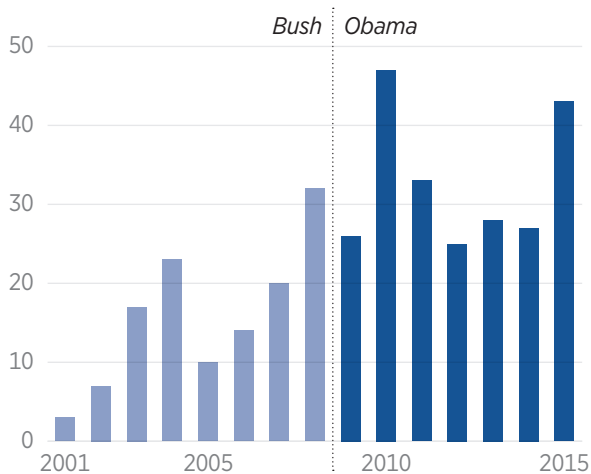
Regulation acts as a stealth tax on the American people and the U.S. economy. The weight of this tax

1. This *Backgrounder* is the 10th in a series of reports measuring trends in regulatory activity. The previous reports are (1) James L. Gattuso, “Reining in the Regulators: How Does President Bush Measure Up?” Heritage Foundation *Backgrounder* No. 1801, September 28, 2004, <http://www.heritage.org/Research/Regulation/bg1801.cfm>; (2) Gattuso, “Red Tape Rising: Regulatory Trends in the Bush Years,” Heritage Foundation *Backgrounder* No. 2116, March 25, 2008, <http://www.heritage.org/research/regulation/bg2116.cfm>; (3) Gattuso and Stephen A. Keen, “Red Tape Rising: Regulation in the Obama Era,” Heritage Foundation *Backgrounder* No. 2394, updated April 8, 2010, <http://www.heritage.org/Research/Reports/2010/03/Red-Tape-Rising-Regulation-in-the-Obama-Era>; (4) Gattuso, Diane Katz, and Keen, “Red Tape Rising: Obama’s Torrent of New Regulation,” Heritage Foundation *Backgrounder* No. 2482, October 26, 2010, <http://www.heritage.org/research/reports/2010/10/red-tape-rising-obamas-torrent-of-new-regulation>; (5) Gattuso and Katz, “Red Tape Rising: A 2011 Mid-Year Report on Regulation,” Heritage Foundation *Backgrounder* No. 2586, July 25, 2011, <http://www.heritage.org/research/reports/2011/07/red-tape-rising-a-2011-mid-year-report>; (6) Gattuso and Katz, “Red Tape Rising: Obama-Era Regulation at the Three-Year Mark,” Heritage Foundation *Backgrounder* No. 2663, March 13, 2012, <http://www.heritage.org/research/reports/2012/03/red-tape-rising-obama-era-regulation-at-the-three-year-mark>; (7) Gattuso and Katz, “Red Tape Rising: Regulation in Obama’s First Term,” Heritage Foundation *Backgrounder* No. 2793, May 2, 2013, <http://www.heritage.org/research/reports/2013/05/red-tape-rising-regulation-in-obamas-first-term>; (8) Gattuso and Katz, “Red Tape Rising: Five Years of Regulatory Expansion,” Heritage Foundation *Backgrounder* No. 2895, March 26, 2014, <http://www.heritage.org/research/reports/2014/03/red-tape-rising-five-years-of-regulatory-expansion>; and (9) Gattuso and Katz, “Red Tape Rising: Six Years of Escalating Regulation Under Obama,” Heritage Foundation *Backgrounder* No. 3015, May 11, 2015, http://thf_media.s3.amazonaws.com/2015/pdf/BG3015.pdf.

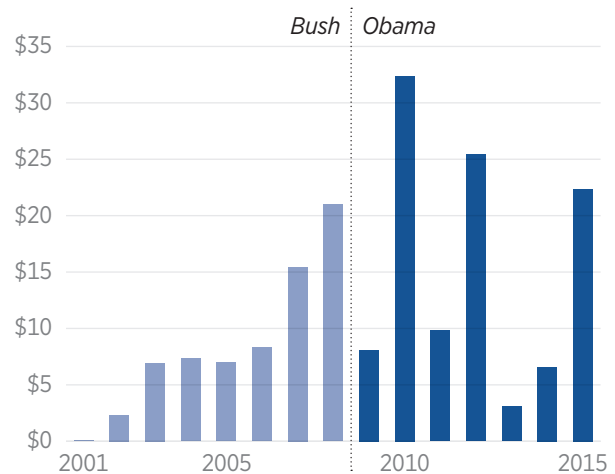
CHART 1

New Regulations for Private Sector and Individuals

NUMBER OF MAJOR REGULATIONS THAT INCREASE BURDENS



COSTS DUE TO MAJOR REGULATIONS, IN BILLIONS



SOURCES: U.S. Government Accountability Office, GAO Federal Rules Database Search, <http://www.gao.gov/fedrules.html> (accessed April 21, 2016), and Heritage Foundation calculations based on data provided by individual agencies. See appendix for methodology.

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is crushing, with independent estimates of total regulatory costs exceeding \$2 trillion annually—more than is collected in income taxes each year.² This estimate, however useful as a general guide, is far from precise and likely modest.³

Much more information is available on the year-to-year changes in the regulatory burden. Since the 1970s, most regulatory agencies have been required to analyze the costs and benefits of new rules.⁴ Using this information, it is possible to identify trends in regulation. The most comprehensive source of data on new regulations is the Federal Rules Data-

base maintained by the Government Accountability Office (GAO).⁵

Number of New Rules. As documented by the GAO, federal regulators issued 2,353 new rules during the 2015 “presidential year.”⁶ Of these, 81 were classified as “major,” meaning that they were expected to impose annual costs of \$100 million or more.

Of these 81 rules, 31 were budgetary or administrative in nature, such as those setting Medicare payment rates or hunting limits on migratory birds. Those actions do not increase or decrease restrictions on private-sector activity. A total of 43 were

2. W. Mark Crain and Nicole V. Crain, “The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business,” a report for the National Association of Manufacturers, September 10, 2014, <http://www.nam.org/Data-and-Reports/Cost-of-Federal-Regulations/Federal-Regulation-Full-Study.pdf> (accessed April 28, 2016).

3. As discussed elsewhere in this *Backgrounder*, the complex and dynamic nature of the economy makes a precise calculation of the total regulatory “tax” extremely difficult, if not impossible.

4. For background on the development of regulatory review, see Murray Weidenbaum, “Regulatory Process Reform from Ford to Clinton,” *Regulation* (Winter 1977), https://www.heartland.org/sites/all/modules/custom/heartland_migration/files/pdfs/5376.pdf (accessed April 28, 2016).

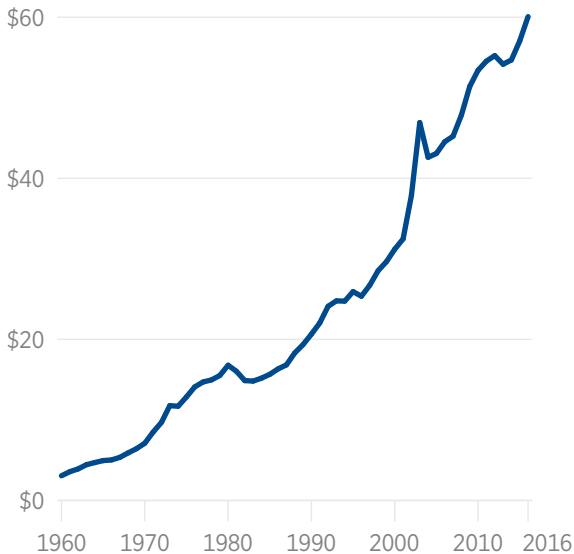
5. The Office of Information and Regulatory Affairs (OIRA), a unit of the White House Office of Management and Budget, maintains a similar database of regulations. This database only includes rules from executive branch agencies, such as Department of Energy appliance efficiency standards. It does not include rules by the many independent agencies that are outside executive branch oversight, such as the Securities and Exchange Commission, the Consumer Financial Protection Bureau, the FCC, and others.

6. The “presidential year” runs from January 21 to January 20, tracking presidential terms.

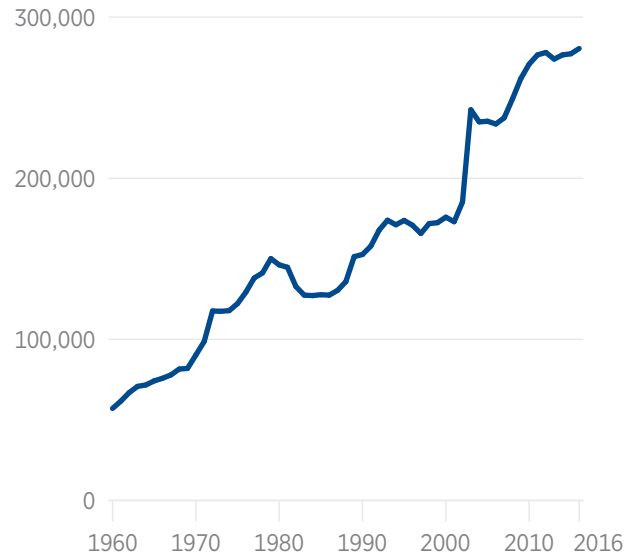
CHART 2

Federal Regulatory Activity: Spending and Staffing

TOTAL SPENDING, IN BILLIONS OF 2009 DOLLARS



TOTAL STAFFING, FULL-TIME EQUIVALENT EMPLOYMENT



NOTES: Figures are by fiscal year. Figures for 2015 and 2016 are estimates.

SOURCE: Susan Dudley and Melinda Warren, "Regulators' Budget Increases Consistent with Growth in Fiscal Budget," The George Washington University and Washington University in St. Louis, May 2015, Tables A-5 and A-6, https://regulatorystudies.columbian.gwu.edu/sites/regulatorystudies.columbian.gwu.edu/files/downloads/2016_Regulators_Budget.pdf (accessed April 21, 2016).

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rules that increased regulatory burdens on individuals or businesses—a near-record high, exceeded only once since 1996.⁷ Seven others decreased restrictions on private activity.

Altogether, during the seven years of the Obama Administration, 229 such major rules have been imposed. Since 2001, a total of 355 such major rules have been imposed.

Cost of New Rules. The new regulations are costly as well as numerous, with agencies reporting new annual costs of almost \$23 billion in 2015.⁸ Very little of this cost was offset by decreases in regulations. In 2015, only seven major rules decreased

regulatory burdens, bringing the Administration's seven-year total to 26, with a claimed savings of \$3.4 billion. That compares to 32 such actions, with claimed savings of \$2.5 billion, during President George W. Bush's Administration.

Overall, the cost of major rules issued in 2015 by the Obama Administration—net of regulatory decreases—totaled more than \$22 billion, bringing the seven-year cumulative increase in regulatory costs to almost \$108 billion annually.⁹ Combined with the regulatory burdens imposed during the George W. Bush Administration, the cost of red tape has increased by \$176 billion since 2001. Even that

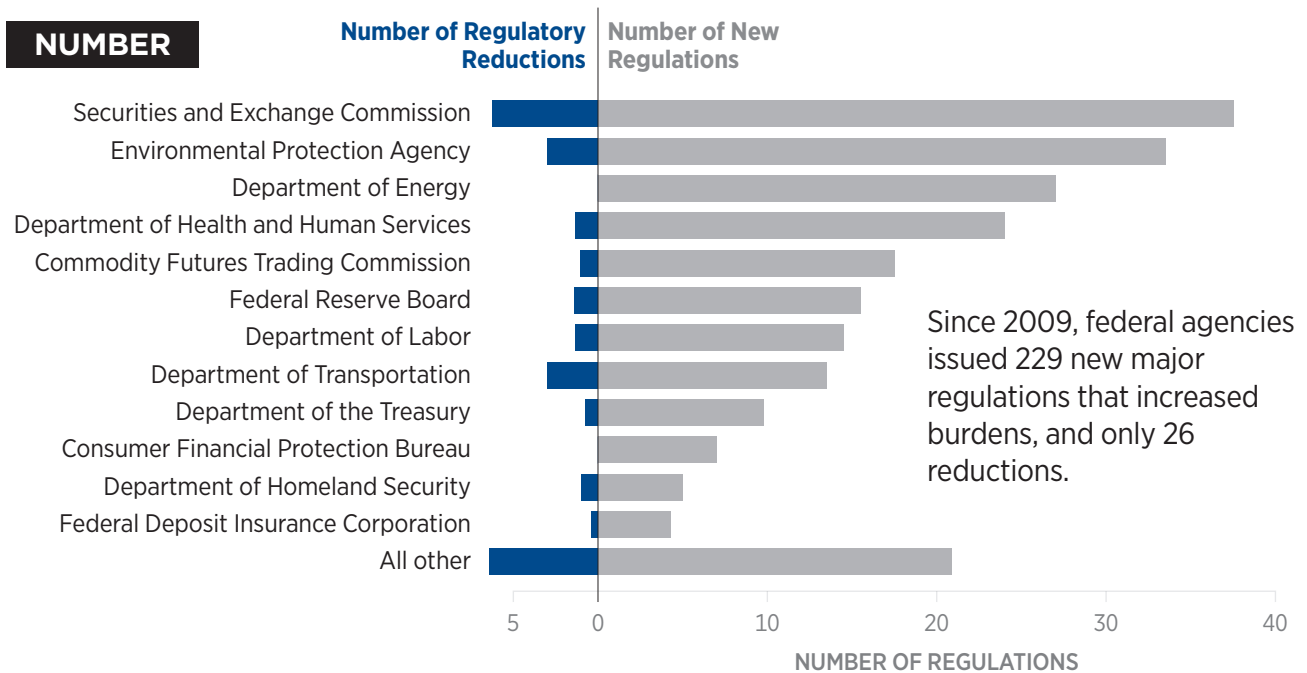
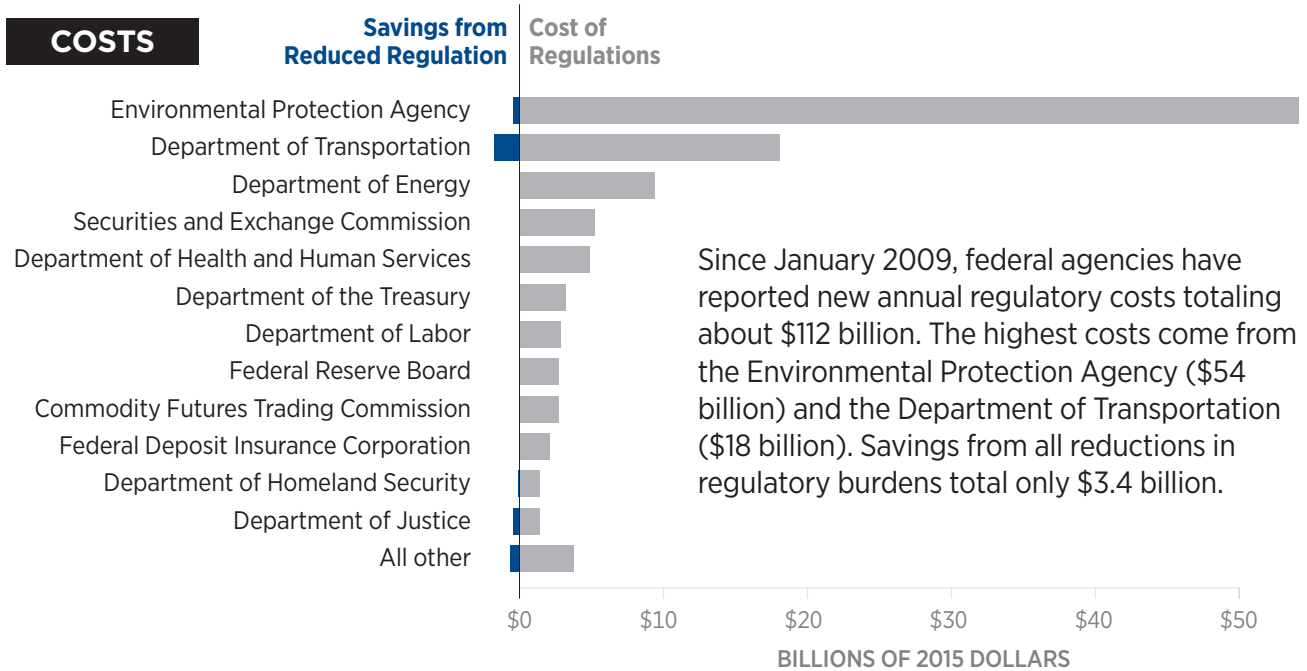
7. Pre-2001 figures, on a fiscal year basis, were prepared by the Office of Management and Budget. James L. Gattuso and Stephen A. Keen, "Red Tape Rising: Regulation in the Obama Era," Heritage Foundation *Backgrounder* No. 2394, March 31, 2010, Chart 1, <http://www.heritage.org/Research/Reports/2010/03/Red-Tape-Rising-Regulation-in-the-Obama-Era>.

8. There were also \$4.9 billion in reported one-time implementation costs for the 2015 rules, bringing the Administration's seven-year total for such costs to nearly \$22 billion.

9. See Appendix A for an explanation of the methodology used in calculating these figures. This figure is not net of benefit calculations. The cost of regulation, like the cost of government spending, is the proper measure of the burden of red tape, independent of benefits.

CHART 3

New Major Regulations Under Obama, 2009–2015



SOURCE: Heritage Foundation calculations based on data provided by individual agencies.

figure understates the actual costs, for reasons discussed below.¹⁰

On-Budget Costs of Regulation. As the number of regulations grows, so does government spending on regulatory enforcement. According to the latest budget figures compiled by Susan Dudley and Melinda Warren (of George Washington University and Washington University in St. Louis, respectively), administering red tape in fiscal year 2015 was forecast to cost taxpayers more than \$57 billion, an increase of 4.3 percent over 2014, and 83 percent more than in 2001.¹¹ Part of the cost is the increasing number of regulators who write and enforce ever more rules. Dudley and Warren report that there were 277,000 employees at regulatory agencies in 2015, an all-time high.

Regulations of 2015

The Environmental Protection Agency (EPA) dominated rulemaking in 2015, accounting for nine of the 43 new major rules, and increasing annual regulatory costs by \$11.1 billion. The Department of Health and Human Services (including the Food and Drug Administration), ranked second, with nine major rules totaling more than \$2.4 billion, and the Department of Energy (DOE) was third, with six new

energy conservation standards for appliances that increased annual regulatory costs by \$1.6 billion.

Costly Power Plan. The EPA's Clean Power Plan,¹² the centerpiece of the Obama Administration's global warming crusade, was the single most costly regulation imposed in 2015—with \$7.2 billion in annual costs, according to the agency (and far more according to critics).¹³

The rule represents the first direct regulation of so-called greenhouse gas (GHG) emissions from power plants.¹⁴ It dictates state-specific restrictions on GHG emissions, with a target reduction of 30 percent below 2005 levels by 2030. Regardless of whether GHG emissions actually increase global temperatures, the volume of reductions under the Clean Power Plan are effectively meaningless as a proportion of total emissions. According to the EPA, the Clean Power plan will reduce carbon emissions by 870 million tons by 2030.¹⁵ But the amount of “extra” carbon dioxide (CO₂) in the atmosphere increases by 50 billion tons annually.¹⁶ Therefore, the Clean Power Plan, at a cost of \$7.2 billion each year, will cut the annual increase of CO₂ emissions by a mere 0.01 percent—that is one one hundredth of a percent.

The real effects are hardly beneficial.¹⁷ Eliminating coal and restricting other carbon-based fuels for

10. Other sources have reported far higher total costs for regulation. The American Action Forum's (AAF's) “Regulation Roundup,” for instance, reports \$710.1 billion in “total final costs” for the period 2009 to 2015. Regulation Rodeo, “Explore the Data,” <http://regrodeo.com> (accessed April 28, 2016). Similarly, AAF's Sam Batkins reported \$99 billion in “final rule burdens” for 2015. Sam Batkins, “The Year in Regulation: EPA, Health Care Rules Drive Burdens,” American Action Forum, January 11, 2016, <http://www.americanactionforum.org/research/the-year-in-regulation-epa-health-care-rules-drive-burdens-2/> (accessed April 28, 2016). These figures are eye-popping, but misleading. Rather than annual costs, these totals represent the net present value of future regulatory costs. This distinction is crucial, although not clearly stated in the AAF report. When the AAF figure of \$99 billion in total final regulatory costs for 2015 is annualized, the cost of regulation is actually \$19.4 billion, slightly lower than our figure of \$22 billion. Because of the uncertainties of regulatory costs over the long term, we report our costs in annual terms rather than net present value terms.
11. In constant 2009 dollars. Susan Dudley and Melinda Warren, “Regulators' Budget Increases Consistent with Growth in Fiscal Budget: An Analysis of the U.S. Budget for Fiscal Years 2015 and 2016,” Regulators' Budget Report No. 37, Weidenbaum Center, Washington University and Regulatory Studies Center, and George Washington University, May 19, 2015, https://regulatorystudies.columbian.gwu.edu/sites/regulatorystudies.columbian.gwu.edu/files/downloads/2016_Regulators_Budget.pdf (accessed April 28, 2016).
12. Formally titled the Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units.
13. NERA Economic Consulting, “Energy and Consumer Impacts of EPA's Clean Power Plan,” November 7, 2015, <http://www.americaspower.org/wp-content/uploads/2015/11/NERA-CPP-Final-Nov-7.pdf> (accessed April 28, 2016).
14. Executive Office of the President, “The President's Climate Action Plan,” June 2013, <https://www.whitehouse.gov/sites/default/files/image/president27climateactionplan.pdf> (accessed April 28, 2016).
15. Environmental Protection Agency, “Fact Sheet: Clean Power Plan by the Numbers,” <https://www.epa.gov/cleanpowerplan/fact-sheet-clean-power-plan-numbers> (accessed April 28, 2016).
16. David Biello, “How Far Does Obama's Clean Power Plan Go in Slowing Climate Change?” *Scientific American*, August 6, 2015, <http://www.scientificamerican.com/article/how-far-does-obama-s-clean-power-plan-go-in-slowing-climate-change/> (accessed April 28, 2016).
17. Nicolas D. Loris, “The Many Problems of the EPA's Clean Power Plan and Climate Regulations: A Primer,” Heritage Foundation *Background* No. 3025, July 7, 2015, http://thf_media.s3.amazonaws.com/2015/pdf/BG3025.pdf.

electricity production will jeopardize the reliability of the power grid and raise energy prices across the economy. Indeed, the U.S. Energy Information Administration projects that the Clean Power Plan will more than double the number of coal-fired power-plant closures than would otherwise occur absent the regulation.¹⁸ Not only will electricity rates increase, but so will the prices of virtually all U.S. products, because energy is a primary component of all manufacturing. Low-income families and fixed-income seniors will be hardest hit, of course; higher prices consume a larger proportion of their assets. Higher prices also dampen consumer demand, which imperils jobs.

More than 150 stakeholders, including 27 states, have filed suit challenging the Clean Power Plan as a violation of the EPA's regulatory authority. On February 22, the Supreme Court issued a stay to halt implementation of the regulation until the lower court determines its validity.

Ozone Standard. The EPA's second-most costly regulation of 2015 imposed a stricter standard for ground-level ozone,¹⁹ which added \$1.4 billion to annual compliance costs (excluding \$800 million for California²⁰). The agency has set the new primary standard at 70 parts per billion (ppb), down from the previous standard of 75 ppb.²¹

Ozone is one of the six "criteria pollutants" that the Clean Air Act requires the EPA to review every

five years. The agency originally planned to set a standard of 65 ppb in August 2011, which some analysts projected would cost \$1.1 trillion over two decades, making it one of the most costly regulations ever devised.²² However, the 65 ppb standard was rejected by President Obama, who reportedly was concerned that his 2012 reelection campaign could be hurt by such a burdensome regulation.²³

The new ozone standard of 70 ppb will push hundreds of communities out of compliance, and force states to devise plans to limit industrial activity and transportation projects, as well as replace existing emissions control equipment with more advanced (and costly) systems.²⁴

The EPA and environmental lobbyists dismiss concerns about regulatory costs by touting the (supposed) public health benefits to come. In reality, as much as 75 percent of the benefits of the ozone rule cited by the agency are credited to a reduction in particulate matter, not ozone, which is already controlled by other regulations.²⁵

Unnavigable Water Rules. Also of particular consequence in 2015 was the EPA's rule on the "waters of the United States" (issued jointly with the U.S. Army Corps of Engineers). The rule constitutes a new definition for the waters that the federal government can regulate under the Clean Water Act—a response to two rulings by the Supreme Court holding that the EPA and Army Corps overstepped their authority.

18. Projected coal plant retirements over the 2014–2040 period, which are 40 GW (gigawatts) in the reference case, increase to 90 GW under the Clean Power Plan. Retirements of inefficient units fueled by natural gas or oil are also projected to rise. See U.S. Energy Information Administration, "Analysis of the Impacts of the Clean Power Plan," May 22, 2015, <http://www.eia.gov/analysis/requests/powerplants/cleanplan/> (accessed April 28, 2016).

19. Ozone is a gas that occurs both naturally and as a product of chemical reactions between nitrogen oxides and volatile organic compounds emitted from factories, power plants, and vehicle exhaust.

20. The EPA calculated California's costs separately because the state faces a heavier compliance burden over a longer period of time.

21. "Environmental Protection Agency, National Ambient Air Quality Standards for Ozone," *Federal Register*, Vol. 80, No. 206, October 26, 2015, p. 65292, <https://www.gpo.gov/fdsys/pkg/FR-2015-10-26/pdf/2015-26594.pdf> (accessed April 28, 2016).

22. The estimate represents the total cost of compliance in terms of present value for 2014. See NERA Economic Consulting, "Economic Impacts of a 65 ppb National Ambient Air Quality Standard for Ozone," prepared for National Association of Manufacturers, February 2015, [http://www.nam.org/Issues/Energy-and-Environment/Ozone/Economic-Impacts-of-a-65-ppb-NAAQS-for-Ozone-\(NERA\).pdf](http://www.nam.org/Issues/Energy-and-Environment/Ozone/Economic-Impacts-of-a-65-ppb-NAAQS-for-Ozone-(NERA).pdf) (accessed April 28, 2016).

23. John M. Broder, "Re-election Strategy Is Tied to a Shift on Smog," *The New York Times*, November 16, 2011, http://www.nytimes.com/2011/11/17/science/earth/policy-and-politics-collide-as-obama-enters-campaign-mode.html?_r=0 (accessed April 28, 2016).

24. State Implementation Plans require the approval of the EPA. Absent approval, the agency is authorized to impose a plan of its own design on the state.

25. Daren Bakst, "Alleged Benefits from Proposed Ozone Standard Have Little to Do with Ozone: Statement to the EPA," *The Daily Signal*, February 13, 2015, <http://dailysignal.com/2015/02/13/alleged-benefits-proposed-ozone-standard-little-ozone-statement-epa/>.

The Clean Water Act applies to “navigable waters,” which are defined as “the waters of the United States, including the territorial seas.” This notoriously vague definition has for decades invited the Corps and the EPA to stretch their authority. No surprise, then, that the agencies’ 2015 definition of authority covers virtually all waters in the nation and, by extension, much of the land use, from farming to home building.²⁶

At the behest of more than two dozen states, the Sixth Circuit Court of Appeals has blocked implementation of the rule while litigation proceeds. If it somehow survives legal scrutiny, the new definition would trample property rights and override the important role that states play in water stewardship. Property owners will lose their ability to derive value from their land. Beyond being an affront to individual liberty, this will restrict investment, hurt property values, and curtail property tax revenues. Farmers, too, are deeply concerned that their land-use practices will be restricted, thereby reducing their productivity—and income.

Unaffordable Care Rules. Six years after passage of the Affordable Care Act, the government’s increased involvement in the nation’s health care system still figures prominently in the regulatory landscape. A search of the *Federal Register* turns up a total of 34 regulations in 2015 related to the Patient Protection and Affordable Care Act—including three from the Department of Health and Human Services that qualify as “major.” Among these is a rule dictating which preventive health care services must be covered under employer-provided health insurance policies. The list includes hormonal birth control and sterilization, as well as “emergency contraceptives that prevent implantation of an embryo”—effectively abortion—regardless an employer’s religious objections. The rule sets up a process for obtaining an employer exemption, if they are deemed “eligible” by the government.

The FDA Food Police. Congress dramatically expanded government control over the nation’s food supply in 2011 with passage of the Food Safety Modernization Act, and it has taken some five years to develop the regulations that dictate how the federal

government expects farmers to produce fruits and vegetables (and dog food), including rules governing soil, water, hygiene, packing, temperatures, and even what animals may roam which fields and when. It also increased inspections of food “facilities” and taxes them to do so.

Foodborne illness is indeed a public health concern. However, America’s food supply is remarkably safe, and yet the Food and Drug Administration (FDA) has cast an exceedingly broad regulatory net rather than focusing on the biggest risks. That means higher food costs across the board without regard to consumer benefit. In addition to consumers, the biggest burden will fall on small farms and “local” food producers who are forced to implement controls, training, and record-keeping systems fashioned for much larger operations. And because the rules are rigid, producers of specialty crops are particularly concerned that advances in food science and technology will become more difficult to adopt.

Proponents claim that the rules will reduce incidents of foodborne illness and death. But as noted by Richard Williams of the Mercatus Center at George Mason University, “For some of the rules, there is very little evidence that they actually address a significant food safety problem. For others, the FDA has been unable to provide evidence that the rules will be effective at reducing foodborne risk.”²⁷

Ever More Rules from Dodd–Frank. Five years in and the hundreds of regulations mandated by the Dodd–Frank financial regulation act continue to arrive: six in 2015, with billions of dollars in new annual costs. Indeed, virtually no aspect of the securities and banking systems remains unaffected by the act, which encompassed 850 pages of legislative text.

As of the end of 2015, 271 rulemaking deadlines had passed, and rules were finalized for 75 percent of them. Proposed rules are pending for another 34 (12.5 percent), while there remain 33 rulemakings still outstanding.²⁸

New margin and capital requirements for some swap dealers, a joint rulemaking among five agencies, were the second costliest regulation of 2015, at \$4.7 billion annually.

26. More than 900,000 public comments were submitted in response to the proposed rule.

27. Richard A. Williams, “Regulations Implementing the Food Safety Modernization Act,” *Mercatus Center Working Paper*, August 2015, p. 23, <http://mercatus.org/sites/default/files/Williams-FSMA-Regulations.pdf> (accessed May 9, 2016).

28. Davis Polk, “Dodd–Frank Progress Report, Fourth Quarter 2015,” http://prod.davispolk.com/sites/default/files/Q4_2015_Dodd-Frank_Progress_Report.pdf (accessed April 29, 2016).

Dodd–Frank also mandated new data collection requirements for mortgage lenders, which were implemented—and then some—in 2015 by the Consumer Financial Protection Bureau (CFPB). The 797-page rule produced by the bureau vastly exceeds the authority provided under Dodd–Frank. Instead of just nine data fields, lenders will have to report 45 separate data points about mortgage applicants, borrowers, and the underwriting process; the property securing the loan; features of the loan; and other unique identifiers.

Among the most politicized regulations of 2015 was the Pay Ratio Disclosure rule issued by the Securities and Exchange Commission (SEC). The rule requires a public company to disclose the total pay of its CEO and its median-paid employee, and the ratio between the two. The “disclosure” is not material to assessing the expected return from investing in a company, which historically has been the purpose of disclosure rules.²⁹ Instead, the Pay Ratio Disclosure is intended to highlight “income inequality” as a political device. But such requirements impose unwarranted costs that reduce the return on shareholder investments. And, by adding to already voluminous disclosure requirements, they make it more difficult for investors to find more important material.

DOE Power Politics. In 2015, the DOE added to its profusion of rules restricting the energy used by appliances and other electrical gadgets (at the expense of consumer choice). Targets last year included fluorescent lamps, commercial icemakers, ceiling fans, vending machines, industrial equipment, and boilers. These new standards increase annual regulatory costs by a reported \$1.6 billion.³⁰

The DOE has imposed dozens of such mandates based on the very broad authority granted to it by Congress under the Energy Policy and Conservation Act of 1975. The law requires any new energy standards to be “technologically feasible” and “economically justified”—standards that the DOE has often ignored.

For each of these rules, the DOE counted as a benefit the energy savings to owners from more efficient equipment and appliances. But such “private benefits” constitute a substitution of the regulator’s

preference for that of consumers and entrepreneurs. Whether energy savings are worth the higher cost of a more efficient item is a decision that consumers and business owners can and should make for themselves. Taking away their ability to make that choice is not a benefit; it is, in fact, a steep cost.

FCC Neutralizing the Internet. One of the most significant regulations adopted in 2015 after contentious debate is the Federal Communication Commission’s misnamed “Open Internet Order.” The order did two things. First, it reclassified “Internet access” as a common carrier service under the Communications Act of 1934. This seemingly technical change subjects Internet service providers, such as Verizon and T-Mobile, to comprehensive FCC regulation of their businesses, under a framework devised for 19th-century railroads.

Second, using this new-found power, the FCC imposed “network neutrality” requirements for treating all bits of content travelling over transmission networks in exactly the same way. Never mind that cat videos and digital 911 calls *ought* to be treated differently; forced neutrality has been pushed relentlessly by Internet firms that see benefits in constraining their rivals, and well as activists with a fundamental distrust of markets. As a result of these new rules, not only will investment and growth in the Internet be chilled, but innovation itself will be hindered, as firms find themselves compelled to ask permission from the FCC prior to making service changes.³¹

Neither the effects of this rule, nor possible alternatives to this regulatory approach, were analyzed in any formal way. As an independent agency, the FCC is not required to prepare a regulatory impact analysis, not even an assessment of costs and benefits, before imposing new regulations. In fact, far from relying on a reasoned analysis, the FCC’s decision reportedly was driven by the last-minute intervention of President Obama, who publicly called for the FCC to expand the more limited regulatory approach the agency had been planning. As a result, the net neutrality rules suffered from political interference in their formulation, without the benefit of scrutiny under the White House’s own regulatory review process.

29. David R. Burton, “How Dodd–Frank Mandated Disclosures Harm, Rather than Protect, Investors,” Heritage Foundation *Issue Brief* No. 4526, March 10, 2016, <http://thf-reports.s3.amazonaws.com/2016/IB4526.pdf>.

30. Heritage Foundation calculations based on DOE-reported costs.

31. For an example of the pro-consumer, innovative services that could be affected by this rule, see James L. Gattuso, “Binge of Regulation: Wireless Pricing and the FCC,” Heritage Foundation *Issue Brief* No. 4512, January 27, 2016, <http://thf-reports.s3.amazonaws.com/2015/IB4512.pdf>.

The new rules have been challenged in federal appeals court, which heard the case in December 2015.

Quantifying Costs and Benefits

Executive Order 1353, issued in 2011 by President Obama, directs agencies to adopt a regulation only if the benefits justify the costs, and to “use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” Analyzing costs is necessary to identify the trade-offs inherent in rulemaking, and to determine the most efficient and effective course of action among various alternatives. It is also crucial information that allows the public to hold regulators accountable. Without such information, regulators are free to act on a whim.

However, agencies very often fail to quantify the costs—and overstate the benefits—of their rules. In some cases, this is unavoidable because costs cannot always be quantified (for instance, for technologies not invented or the loss of religious freedom). But in many instances in 2015, as in years past, agencies simply failed to conduct a cost analysis. Exacerbating matters, independent agencies are exempt from the Executive Order.

For example, there was no analysis prepared by the Federal Reserve System for its regulatory capital rules although it requires the largest bank holding companies to retain an additional \$200 billion as a buffer against losses.

Likewise, as discussed above, the FCC did not analyze the cost of its Internet regulation despite the potential for massive effects on network investment.

The absence of cost analyses represents a major dysfunction in the rulemaking process. How is the public to judge the efficiency of a regulation or hold agencies accountable for effectively managing a problem if the costs of a rule are estimated to range, say, from \$290 million to \$2.05 billion—as was the case with a rule setting margin requirements for uncleared swaps promulgated by the Commodity Futures Trading Commission?

Other agencies have gone to great lengths to negate regulatory costs altogether. The Environ-

mental Protection Agency,³² for instance, actually claimed there would not be any direct costs from its “waters of the United States” rule, which vastly expands the agency’s powers over virtually every body of water—as well as vast tracts of land. According to the EPA, the rule simply redefined its regulatory powers, and a definitional change does not produce costs; it is the application of the new definition that produces costs.

The results of some cost-benefit analyses are so skewed that it is nearly impossible to imagine that the agency fully considered the necessity of the rule. The regulatory impact analysis for the EPA’s 2015 coal ash regulation, for example, reported annual costs (\$509 million) that were twice as high as the benefits (\$236 million). The agency cited 11 other benefits, but claimed that those benefits could not be monetized “(d)ue to uncertainties and weaknesses in supporting documentation.”³³

Then there are the DOE’s conservation standards for commercial air conditioners and furnaces. The annual cost is estimated to be \$708 million a year, but the agency touts as a benefit the electricity cost savings that supposedly will accrue to appliance owners (for instance, \$104 in energy savings over 13.4 years of ownership). But, as stated above, such “private benefits” constitute a substitution of the regulator’s preference for that of consumers and entrepreneurs.

Federal agencies also often mask politically driven regulations as scientifically based imperatives. In such cases, agencies fail to properly perform scientific and economic analyses, or selectively pick findings from the academic literature to justify their actions and ignore evidence that contradicts their agenda.

The Administration’s new Clean Power Plan rule exemplifies some of the most problematic elements of improper rulemaking. The regulation is the first direct regulation of CO₂ emissions from power plants, and it effectively bans construction of coal-fired electricity-generating units. The agency estimates that compliance costs will be \$6.6 billion annually—a figure widely contested as low by industry. But the benefits calculation used to justify the rule is even more dubious than the cost calculation.

Simply put, the only way the EPA could show that

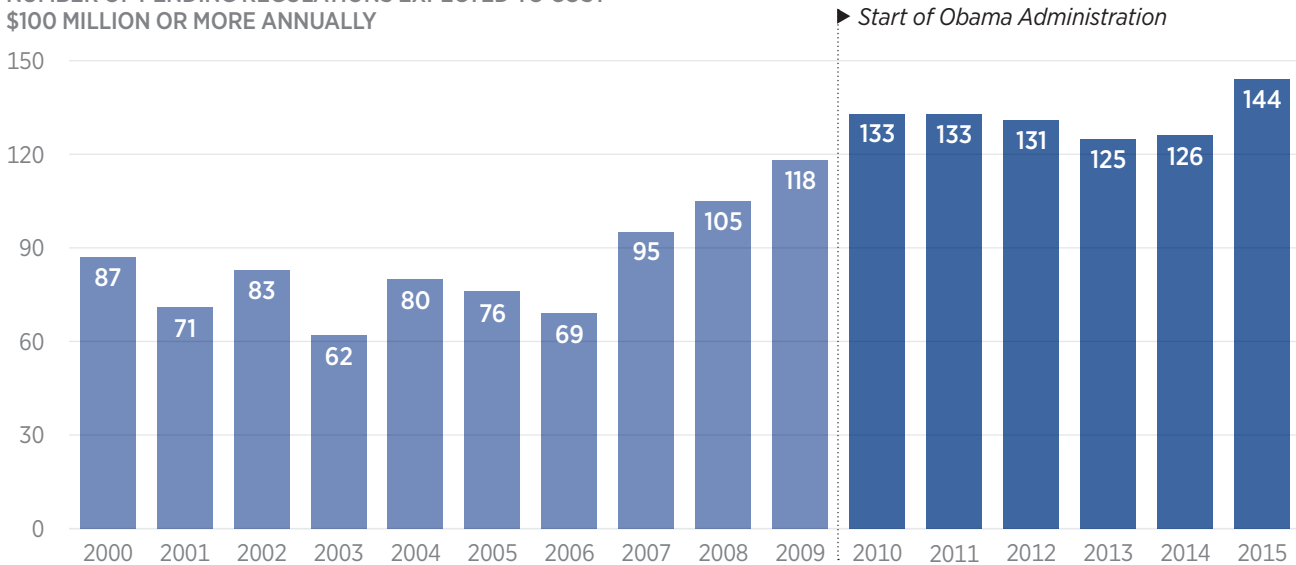
32. In concert with the U.S. Army Corps of Engineers.

33. “The Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities,” *Federal Register*, Vol. 80 No. 75, p. 21460, <https://www.gpo.gov/fdsys/pkg/FR-2015-04-17/pdf/2015-00257.pdf> (accessed April 29, 2016).

CHART 4

More “Economically Significant” Rules on the Way

NUMBER OF PENDING REGULATIONS EXPECTED TO COST \$100 MILLION OR MORE ANNUALLY



NOTE: Years reflect Fall Agendas, except for 2012, when only a single agenda was issued.

SOURCE: Office of Management and Budget, “Unified Agenda and Regulatory Plan Search Criteria,” <http://www.reginfo.gov/public/do/eAgendaAdvancedSearch> (accessed April 21, 2016).

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the benefits of the power plan rule exceed the costs was to count presumed benefits *worldwide* rather than just in the United States—an invalid approach. Ascribing benefits to the entire globe shrinks the relative costs to a more acceptable figure. But Americans are paying the costs, and they should know what they are getting in return. Second, the agency ascribes the majority of benefits to health impacts associated with the reduction of ancillary air pollutants that are already controlled under other regulations. This regulatory sleight of hand is all too common for regulations that otherwise would cost far more than they return in benefits.

For executive branch agencies, the integrity of cost analyses is the responsibility of the Office of Management and Budget’s Office of Information and Regulatory Affairs (OIRA). There is currently a large backlog of regulations awaiting review at this office. According to OIRA data, 21 of the 133 regulations (21 percent) awaiting review in May had been pending for more than 90 days, exceeding the maximum

time allotted under Executive Order 12866, which governs the review process. Another 22 regulations (16.5 percent) were pending for more than 60 days (though fewer than 90 days).

If the delays in OIRA’s review were the result of more thorough analyses, or consideration of regulatory alternatives, that would be good news for the economy and consumers. But it is far from clear that this is the case. OIRA’s meager staff of approximately 45 is outnumbered *6,000 to one* by the regulators whose work they are charged with reviewing.³⁴ This would be a difficult job even with the support of the President. It is all the more difficult under the present Administration, which has hardly made controlling regulatory costs a priority.

Given these and other problems, it is no surprise that the overall quality of agency cost-benefit analyses is low. In a Mercatus Center scorecard of the quality of agency regulatory impact analyses, none of the 130 analyses examined received more than a 2.8 score of a possible 5.0—meaning each was incom-

34. Based on regulatory agency full-time equivalent staff total of 277,266, reported in Dudley and Warren, “Regulators’ Budget Increases Consistent with Growth in Fiscal Budget.”

plete in some material way.³⁵

Countdown to Midnight Regulations

The 2015 regulatory surge could be exceeded in 2016 if the Administration fulfills its regulatory agenda—in which more than 2,000 rules are either in the proposal stage or in the process of being finalized. Of these, 144 are expected to have an impact on the private sector of \$100 million or more annually, including yet more energy-efficiency mandates for home and commercial appliances, additional food-labeling requirements, Obamacare requirements, greenhouse gas limits for trucks, and more Dodd-Frank financial regulations.

Not all of the items in the regulatory agenda are typically completed in a given year. But a much higher portion will likely be pushed through in 2016, the last year for the Obama Administration. This pattern holds for both Democratic and Republican Administrations, and regardless of the incoming President's party affiliation. In 2008, for instance, George W. Bush imposed 36 new major rules, far above his average in other years of about 20 annually. Large spikes were also recorded in the last year of the George H. W. Bush Administration, and even when Ronald Reagan's presidency was ending, even though he was replaced by another Republican.

A disproportionate amount of this regulatory activity takes place after the general election and before inauguration of the new chief executive. Such "midnight" regulations are particularly problematic because the lame duck regulators issuing the rules have little or no accountability. In an institutional sense, they face no tomorrow, and no responsibility for their actions.³⁶

To his credit, Howard Schelanski, President Obama's OIRA chief, has urged regulators to complete high-priority rulemakings by the summer to avoid an "end of year scramble" and provide enough time for OIRA review.³⁷ It is unclear, however, how

successful his plea will be. Similar efforts to forestall last-minute rulemaking were made by OIRA at the end of the Bush Administration without notable success, and that was under an Administration less friendly to new regulation.

Legislation to limit such last-minute rulemaking is pending. H.R. 4612, the Midnight Rule Relief Act, sponsored by Representative Tim Walberg (R-MI), would bar promulgation of major rules between Election Day and the inauguration of the new President. Even without new legislation, Congress could control midnight rules through the Congressional Review Act (CRA), which allows lawmakers to reject major regulations within 60 legislative days of a submission to Congress.³⁸ The CRA is usually of only limited value, because—in order to reject a rule—the President must sign the resolution of disapproval of his own Administration's policy decision. In the case of an end-of-term regulation, however, the incoming President reviews his predecessor's work. This provides an opportunity for Congress and the new President to veto midnight rules, and he or she should use it.

Recommendations for Reform

Congress should increase scrutiny of existing and new regulations to ensure that each is constitutional and necessary, and that costs are minimized. A broad set of reforms have been put forward to accomplish this.

Regulatory Budgeting: An Imperfect Solution. One frequently proposed approach is to establish a "budget" for regulations, similar to the fiscal budget for direct expenditures.³⁹ Agencies would be prohibited from imposing new regulatory costs above the amount provided for in that budget.

This approach has a certain appeal to it. Government rules, some argue, are like taxation and spending, so why not place them under a budget like other taxes and expenditures? Making those costs explicit and limiting how many rules could be imposed would

35. Jerry Ellig, James Broughel, and Spencer Bell, "Regulating Real Problems: The First Principle of Regulatory Impact Analysis," Mercatus on Policy, March 9, 2016, <http://mercatus.org/sites/default/files/Ellig-Regulating-Real-Problems-MOP-v1.pdf> (accessed April 29, 2016).

36. For more background information, see Sherzod Abdulkadirov, "The Phenomenon of Midnight Regulations," Mercatus Center, August 28, 2012, <http://mercatus.org/publication/phenomenon-midnight-regulations> (accessed April 29, 2016).

37. Lydia Wheeler and Tim Devaney, "Overnight Regulation: White House Warns Against 'Midnight Regs,'" *The Hill*, January 26, 2016, <http://thehill.com/regulation/overnights/267080-overnight-regulation-wh-to-agencies-no-midnight-regulations> (accessed April 29, 2016).

38. In fact, the CRA has only been used successfully once, in 2001, when Congress voted shortly after President George W. Bush's inauguration to overturn a rule issued by the Occupational Safety and Health Administration requiring employers to curb the risks of ergonomic injuries.

39. See the National Regulatory Budget Act of 2014 (S. 2153), sponsored by Senator Marco Rubio (R-FL).

supposedly force policymakers to scrutinize regulations, and to make trade-offs between competing regulatory priorities.⁴⁰

However, unresolved issues surround this concept. For instance, would agencies be able to shift priorities internally, or would those priorities be set in the budget, as are line-items in fiscal budgets? If they are not able to shift priorities, their incentives to avoid non-cost-effective rules would be negated. If they are able to do so, the accountability of Congress and the White House would be blunted.

But there is a more fundamental issue concerning regulatory budgeting. Regulatory cost estimates are notoriously inaccurate and imprecise at present and subject to political manipulation. This is a particular concern with proposals that require baseline estimates of the cost of the existing stock of regulation on the books. Moreover, cost is only one element of regulatory impact—and not always the most important. But regulatory budgeting would treat every regulation as equal, dollar-for-dollar, when they most definitely are not. There is also the dilemma of how to deal with non-quantifiable costs. How is lost innovation from Internet regulation to be scored, or the loss of religious freedom in mandating contraception coverage? Would these very real costs simply be ignored in a regulatory budget?

Proponents acknowledge that regulatory budgeting does have limitations, but argue that any curb on regulation is worth a try. But a flawed budgeting system could be worse than the status quo, especially given regulators' ability to game the system. And, just as Congress virtually ignores the fiscal budget, there is no reason to think that lawmakers would hold the executive branch accountable for regulatory budgeting. If anything, they are more likely to

leverage such a budget for political purposes. Perhaps these and other limitations will be overcome in the future, or a work-around can be found.⁴¹ But the problems cannot be ignored.

A Red Tape Reform Agenda. Beyond regulatory budgeting, there are many other reforms which policymakers should pursue. Policymakers should:

- **Require congressional approval of new major regulations issued by agencies.** Congress, not regulators, should make the laws and be accountable to the American people for the results. No major regulation should be allowed to take effect until Congress explicitly approves it. Legislation to require such congressional approval for all major rules, known as the REINS Act (Regulations from the Executive in Need of Scrutiny) passed the House in July 2015,⁴² but is still awaiting action in the Senate. In addition, legislators should include requirements for congressional approval of rules in every bill that expands or re-authorizes regulation. Such an approach would demonstrate how REINS Act requirements work in practice, paving the way for their broader application.
- **Create a congressional regulatory analysis capability.** In order to exercise regulatory oversight, especially if the REINS Act is adopted, Congress needs to be able to analyze various regulatory policies objectively. Congress currently depends on the White House's Office of Information and Regulatory Affairs, or the regulatory agencies themselves, for analyses, and needs an independent source of expertise. This could be accomplished through an existing congressional institution, such as the Congressional Budget

40. For a discussion of the potential benefits of a regulatory budget and the various proposals that have been offered, see Jeffrey A. Rosen and Brian Callanan, "The Regulatory Budget Revisited," *Administrative Law Review*, Vol. 66, No. 4 (September 2014), p. 835, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2603760 (accessed May 2, 2016).

41. As an alternative to a regulatory budget, some have proposed a simple requirement that for every new regulation adopted an existing regulation of similar cost be repealed. Known as "one in, one out," or "pay as you go" (PAYGO), the system avoids some of the problems of a regulatory budget, since it does not require a precise calculation of the costs of all existing regulations, although the problem of establishing the actual cost of each rule remains. Such PAYGO systems are already in effect in Britain and in Canada, and have been widely touted as models for the U.S. But these programs have so far led to only the smallest of regulatory reforms. In both countries, the rules eliminated have been miniscule. In Canada, the regulations eliminated over the first three years of the program totaled CDN\$24 million, of which only CDN\$2.7 million was saved during the most recent fiscal year. Treasury Board of Canada, "The 2014-15 Scorecard Report on Reducing Regulatory Red Tape," February 5, 2016, <https://www.tbs-sct.gc.ca/hgw-cgf/priorities-priorites/rtrap-parfa/report-rapport/2014-15/asr-featb-eng.asp> (accessed May 2, 2016). This is in a parliamentary system, where the executive and parliament work together. In the U.S. system, where the Administration and Congress do not share a common agenda, there is even more reason for skepticism.

42. H.R. 427, sponsored by Representative Todd Young (R-IN).

Office or the GAO, or through a new unit established by Congress. This new capability need not require a net increase in staff or budget, but could easily be paid for through reductions in existing regulatory agency expenses.

- **Automatically sunset obsolete regulations.** While the REINS Act would strengthen review of new regulations, measures for reviewing existing red tape are also necessary. In 2011, President Obama, with great fanfare, launched a retrospective review, or “lookback” initiative, instructing regulatory agencies to root out obsolete regulations. The White House cites 179 rules that have been eliminated with billions of dollars in savings.⁴³ Notwithstanding such claims, the initiative has barely made a dent in regulatory burdens. Since 2011, in fact, less than \$2.4 billion in savings have been reported from deregulatory actions.

To make retrospective review more effective, Congress should set sunset dates for all major regulations. Rules should expire automatically if not explicitly reaffirmed by the relevant agency through the formal rulemaking process. As with any such regulatory decision, this reaffirmation would be subject to review by the courts. Such sunset clauses already exist for some regulations. Congress should make them the rule, not the exception.

- **Codify regulatory impact analysis requirements.** All executive branch agencies are currently required to conduct regulatory impact analysis (including cost-benefit calculations) when imposing any major regulation. Codifying these requirements would ensure that they cannot be rolled back without congressional action, and provides the basis for judicial review of agency compliance.
- **Subject “independent” agencies to executive branch regulatory review.** Rulemaking is increasingly being conducted by independent agencies outside the direct control of the White

House. Regulations issued by agencies, such as the FCC, the SEC, and the CFPB are not subject to review by OIRA or even required to undergo a cost-benefit analysis. This is a gaping loophole in the rulemaking process. These agencies should be fully subject to the same regulatory review requirements as executive branch agencies. Such a requirement has broad support, even from President Obama’s former OIRA chief, Cass Sunstein.⁴⁴

- **Codify stricter information-quality standards for rulemaking.** Federal agencies too often mask politically driven regulations as scientifically based imperatives. In such cases, agencies fail to properly perform scientific and economic analyses or selectively pick findings from the academic literature to justify their actions and ignore evidence that contradicts their agenda. Congress should impose specific strict information-quality standards for rulemaking, and conduct oversight to ensure that the standards are met. Congress should also make compliance with such standards subject to judicial review, and explicitly state that noncompliance will cause regulation to be deemed “arbitrary and capricious.”
- **Reform “sue and settle” practices.** Regulators often work in concert with advocacy groups to produce settlements to lawsuits that result in greater regulation. Such collaboration has become a common way for agencies to impose rules that otherwise would not have made it through the regulatory review process. To prevent such “faux” settlements, agencies should be required to subject proposed settlements to public notice and comment. The Sunshine for Regulatory Decrees and Settlements Act (H.R. 712) would do just that.
- **Increase professional staff levels within OIRA.** OIRA is one of the only government entities in Washington that is charged with limiting, rather than producing, red tape. More resources

43. Howard Shelanski, “Retrospective Review: July 2015 Lookback Reports,” Department of Homeland Security, August 14, 2015, <https://www.dhs.gov/blog/2015/08/14/retrospective-review-july-2015-lookback-reports> (accessed May 2, 2016).

44. Cass R. Sunstein, “5 Smart Ways to Cut Red Tape,” Bloomberg View, January 20, 2016, <http://www.bloombergvew.com/articles/2016-01-20/5-smart-ways-to-cut-red-tape> (accessed May 2, 2016).

should be focused on OIRA's regulatory review function. This should be done at no additional cost to taxpayers: The necessary funding should come from cuts in the budgets of regulatory agencies.

Conclusion

The addition in 2015 of 43 new major regulations with \$22 billion in annual costs brings the Obama Administration's seven-year regulatory total to 229 rules and \$108 billion in annual costs. This unparalleled burden spells a decline in economic freedom, replaced by political influence and gamesmanship—all of which inhibits innovation and investment, increases prices, and limits consumer choice.

Much more regulation is in the pipeline, with another 144 major rules on the Administration's agenda. Congress must take immediate steps to control this excessive regulation and to prevent further harm to the economy and to the personal liberties of Americans.

—*James L. Gattuso is Senior Research Fellow for Regulatory Policy, and Diane Katz is a Senior Research Fellow for Regulatory Policy, in the Thomas A. Roe Institute for Economic Policy Studies, of the Institute for Economic Freedom and Opportunity, at The Heritage Foundation. Heritage Foundation Research Assistant Mollie McNeill provided valuable assistance for this Backgrounder.*

Appendix A: Methodology

In calculating the number and cost of regulations, we only included rules designated as “major” in the Government Accountability Office’s Federal Rules Database. Unlike the database maintained by the Office of Management and Budget (OMB), the GAO’s database includes independent agencies that are not required to submit major rules for executive branch review.

We included only “prescriptive” rules in the analyses. We excluded rules that do not restrict or mandate private-sector activity from the calculations. Thus, we excluded budgetary rules that set reimbursement rates for Medicaid or conditions for receipt of agricultural subsidies.

Cost figures are based on assessments prepared by the rulemaking agency, typically from regulatory impact analyses. In calculating the Bush Administration rules, we used the OMB estimates when available. If an agency did not prepare an analysis or did not quantify costs, no amount was included, although the rule was included in the count of major regulations.

The agencies’ totals were adjusted to constant 2015 dollars using the gross domestic product deflator at Areppim’s current-dollars converter (http://stats.areppim.com/calc/calc_usdlrxdeflator.php). Where applicable, we used a 7 percent discount rate. Where a range of values was given by an agency, we based costs on the most likely scenario if so indicated by the agency; otherwise, we used the mid-point value. The date of a rule was based on its date of publication in the *Federal Register*.

Unless otherwise noted, years refer to “presidential years,” beginning on January 21 and ending on January 20.

Appendix B:

Major Rules that Increase Regulatory Burdens

January 26, 2015: *Department of Energy, “Energy Conservation Program: Energy Conservation Standards for General Service Fluorescent Lamps and Incandescent Reflector Lamps.”* This rule mandates stricter energy standards for fluorescent lights, adding hundreds of millions of dollars each year to the cost of lighting equipment.

Annual Cost: \$863.3 million

January 28, 2015: *Department of Energy, “Energy Conservation Program: Energy Conservation Standards for Automatic Commercial Ice Makers.”* The rule restricts the amount of energy used by commercial ice makers. Regulators estimate that manufacturers may lose up to one-eighth of the value of their businesses, with more regulatory costs passed on to consumers in the form of higher prices.

Annual Cost: \$23 million

February 27, 2015: *Department of Health and Human Services, “Notice of Benefit and Payment Parameters for 2016.”* This rule imposes cost-sharing requirements and other obligations on health insurers to offset the concentration of risks. It also sets user fees for federal health insurance exchanges, and dictates coverage mandates for the 2016 benefits year. The costs will be borne by employers who purchase coverage for their workers, as well as individual policyholders who underwrite the Obamacare subsidies.

Annual Cost: \$7.5 million

March 16, 2015: *Environmental Protection Agency, “Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces.”* This rule imposes efficiency standards for a variety of furnaces and heaters used to warm American homes. The rules are currently being challenged in court.

Annual Cost: \$46.9 million

March 19, 2015: *Securities and Exchange Commission, “Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information.”* This

rule requires security-based swap dealers to report information on their swaps to registered swap-data repositories, and requires those dealers to follow data collection and record-keeping procedures for that information.

Annual Cost: \$374.3 million

Implementation Cost: \$258.2 million

April 13, 2015: *Federal Communications Commission, “Protecting and Promoting the Open Internet.”* This rule re-classifies Internet service as a telecommunications service under the Communications Act, making Internet service providers “common carriers” subject to FCC regulation. Using this newly declared authority, the FCC imposed broad “net neutrality” restrictions on Internet service firms. A lawsuit is pending.

Annual Cost: No cost-benefit analysis conducted

April 17, 2015: *Environmental Protection Agency, “Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities.”* This rule regulates the disposal of coal ash, the residue from burning coal. The EPA had considered designating coal ash as a “hazardous waste,” but settled on the less onerous category of “solid waste.” However, the cost of the regulation is still expected to exceed half a billion dollars. The rule is currently being challenged in court.

Annual Cost: \$509 million

April 29, 2015: *Department of Homeland Security, “Department of Labor Temporary Non-Agricultural Employment of H-2B Aliens in the United States.”* This interim final rule adds new requirements to the process of hiring foreign employees under the H-2B visa program. The changes include a longer period for recruiting and hiring U.S. workers, and new rehiring requirements for recent former employees.

Annual Cost: \$1 million

Implementation Cost: \$2.3 million

May 4, 2015: *Department of Labor, Occupational Safety and Health Administration, “Confined Spaces in Construction.”* This rule imposes stricter safety requirements for construction workers in confined spaces, such as manholes, crawl spaces, and attics.

The National Association of Home Builders has filed a lawsuit seeking to overturn the rules, arguing that they place an unnecessary burden on homebuilding.

Annual Cost: \$60.3 million

May 8, 2015: *Department of Transportation, “Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains.”* This rule, adopted in the wake of several high-profile train accidents, imposes strict new safety standards for trains carrying high volumes of flammable liquids. The American Petroleum Institute has sued to stop the rules, arguing that the Department of Transportation has not shown that the rules will actually reduce risk.

Annual Cost: \$124 million

June 8, 2015: *Department of Homeland Security, “Changes to the Visa Waiver Program to Implement the Electronic System for Travel Authorization (ESTA) Program and the Fee for Use of the System.”* This rule finalized requirements for implementing an electronic authorization system for visa waivers. The system will process travel authorizations for nonimmigrant aliens seeking to enter the United States under a visa waiver.

Annual Cost: \$376 million

June 23, 2015: *Department of Transportation, “Electronic Stability Control Systems for Heavy Vehicles.”* This rule requires heavy trucks and buses to have computer-controlled braking and other automatic safety systems. The rule will add about \$600 to the price of a new truck.

Annual Cost: \$46.8 million

June 29, 2015: *Army Corps of Engineers and Environmental Protection Agency, “Clean Water Rule: Definition of ‘Waters of the United States.’”* This rule expands the definition of the term “waters of the United States” in relation to the Clean Water Act. The redefinition significantly expands the types of water and land areas that are subject to federal wetlands and other regulation. The rule is under challenge in nine separate lawsuits before seven appeals courts. Efforts are also underway in Congress to overturn the rulemaking.

Annual Cost: \$232.5 million

July 8, 2015: *Department of Health and Human Services, Food and Drug Administration, “Permanent Discontinuance or Interruption in Manufacturing of Certain Drug or Biological Products.”* This rule implements provisions of the 2012 FDA Safety and Improvement Act requiring manufacturers of certain approved drugs to notify the agency of interruptions in production that will disrupt supply.

Annual Cost: \$26.5 million

July 14, 2015: *Department of the Treasury, Department of Labor, Department of Health and Human Services, “Coverage of Certain Preventive Services Under the Affordable Care Act.”* This rule imposes requirements on insurers to cover specific preventative services, including contraceptive services, without cost-sharing payments by the patient. The cost is spread among all policyholders.

Annual Cost: Costs already accounted for under interim rules.

July 15, 2015: *Environmental Protection Agency, “Revising Underground Storage Tank Regulations—Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training.”* This rule expands EPA requirements for the maintenance, operation, and containment of underground storage tanks.

Annual Cost: \$160 million

July 21, 2015: *Department of the Treasury, Federal Reserve System, Federal Deposit Insurance Corporation, Farm Credit Administration, National Credit Union Administration, “Loans in Areas Having Special Flood Hazards.”* This rule requires flood insurance payments to be put in escrow when government-backed loans are made.

Annual Cost: \$21.2 million

July 22, 2015: *Department of Defense, “Limitations on Terms of Consumer Credit Extended to Service Members and Dependents.”* This rule limits the amount of interest a lender can charge a member of the military, in addition to other constraints on military lending. This will reduce access to credit for military families.

Annual Cost: \$30 million

Implementation Cost: \$106 million

August 14, 2015: *Federal Reserve System, “Implementation of Risk-Based Capital Surcharges for Globally Systemically Important Bank Holding Companies.”* This rule, adopted under the Dodd–Frank Act, subjects banks designated as “systemically important” to capital surcharges. The Fed did not quantify either costs or benefits, although it did forecast a temporary reduction in available credit as a likely cost, thus impeding the ability of businesses to obtain loans.

Annual Cost: No cost-benefit analysis conducted.

August 14, 2015: *Securities and Exchange Commission, “Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants.”* This rule, mandated by Dodd–Frank, requires all security-based swap dealers to register with the SEC and to provide information about business, management, and ownership. Although the quantified costs reported by the SEC are small, the commission acknowledged that non-quantified costs were likely much larger. These other costs include a potential reduction in competition due to the regulatory burden on smaller dealers.

Annual Cost: \$100,000

Implementation Cost: \$14.2 million

August 18, 2015: *Securities and Exchange Commission, “Pay Ratio Disclosure.”* This SEC rule, mandated by Dodd–Frank, requires companies to report the ratio between the pay of chief executive officers and the median pay of employees. The agency did not quantify any benefits associated with the rule.

Annual Cost: \$536 million

Implementation Cost: \$1.3 billion

September 17, 2015: *Department of Health and Human Services, Food and Drug Administration, “Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals.”* This rule imposes new, stricter safety standards for the production of pet food. Authorized in 2011 by the Food Safety Modernization Act, the new standards are expected to significantly increase the cost of pet food.

Annual Cost: \$1.1 billion

Implementation Cost: \$1.7 billion

September 17, 2015: *Department of Health and Human Services, Food and Drug Administration, “Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food.”* This rule imposes new, stricter, safety standards for the production of food as authorized in 2011 by the Food Safety Modernization Act.

Annual Cost: \$133.8 million

Implementation Cost: \$147.9 million

October 13, 2015: *Department of Homeland Security, U.S. Customs and Border Protection; Department of the Treasury, “Automated Commercial Environment Filings for Electronic Entry/Entry Summary (Cargo Release and Related Entry).”* This rule requires importers to switch to a new software system for tracking cargo shipments.

Annual Cost: \$8.6 million

October 16, 2015: *Department of Health and Human Services, Office of the Secretary, “2015 Edition Health Information Technology (Health IT) Certification Criteria, 2015 Edition Base Electronic Health Record (EHR) Definition, and ONC Health IT Certification Program Modifications.”* This rule imposes new standards for electronic health records. The new standards will raise the overall cost of health care.

Implementation Cost: \$331.8 million

October 23, 2015: *Environmental Protection Agency, “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units.”* Known as the Clean Power Plan, this mammoth regulation imposes new limits on so-called greenhouse gas emissions from power plants. Intended to forestall global warming, the rule is expected to effectively ban coal-fired plants. According to calculations by Heritage analysts,⁴⁵ the regulation could increase electricity rates by as much as 17 percent, and destroy some 300,000 jobs. Despite the huge costs, the plan would do little to address global warming. The rule is now being challenged in the courts by 24 states.

Annual Cost: \$7.2 billion

45. Nicolas D. Loris, “The Many Problems of the EPA’s Clean Power Plan and Climate Regulations: A Primer,” Heritage Foundation *Background* No. 3025, July 7, 2015, <http://www.heritage.org/research/reports/2015/07/the-many-problems-of-the-epas-clean-power-plan-and-climate-regulations-a-primer>.

October 26, 2015: *Environmental Protection Agency, “National Ambient Air Quality Standards for Ozone.”* This regulation imposes strict new limits on ozone emissions. The rule will push hundreds of communities out of compliance, and thus bar new manufacturing facilities, and require substantial investments in emissions controls in existing plants.

Annual Cost: \$1.4 billion

October 26, 2015: *Environmental Protection Agency, “NESHP for Brick and Structural Clay Products.”* This rule imposes more stringent emission standards on brick makers. Efforts are underway in Congress to reverse this rule.

Annual Cost: \$26.5 million

Implementation Cost: \$69 million

October 28, 2015: *Consumer Financial Protection Bureau, “Home Mortgage Disclosure (Regulation C).”* This 797-page rule expands reporting requirements under Regulation C and the Home Mortgage Disclosure Act, adding about 25 new data fields and modifying 12 others. The data collection will allow federal officials to pursue claims of disparate impact against mortgage lenders.

Annual Cost: \$34.1 million

November 3, 2015: *Environmental Protection Agency, “Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category.”* This rule imposes the first federal limits on pollutants that can be discharged as wastewater from steam power generating plants. The rule was finalized pursuant to a court-ordered deadline obtained by the Sierra Club. More legal challenges are expected.⁴⁶

Annual Cost: \$483.7 million

November 18, 2015: *Department of the Treasury, Internal Revenue Service; Department of Labor, Employee Benefits Security Administration; Department of Health and Human Services: “Final Rules for Grandfathered Plans, Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, Dependent Coverage, Appeals, and Patient Protections Under the Affordable Care Act.”* This rule clarifies

earlier interim rules regarding the changes in coverage that a health insurer may make without losing its “grandfathered” status under Obamacare.

Annual Cost: \$223.4 million

November 27, 2015: *Department of Health and Human Services, “Foreign Supplier Verification Program.”* This rule requires food importers to verify that their product was produced in compliance with U.S. standards. The verification costs will increase food prices for U.S. consumers.

Annual Cost: \$435 million

November 27, 2015: *Department of Health and Human Services, Food and Drug Administration, “Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption.”* This rule prescribes the procedures and practices to reduce the risk of foodborne illness from produce, including biological hazards. With this rule, the FDA has cast an exceedingly broad regulatory net, rather than focusing on the biggest risks. That means higher food costs across the board without regard to consumer benefit.

Annual Cost: \$504 million

November 30, 2015: *Department of the Treasury, Office of the Comptroller of the Currency; Federal Reserve System; Federal Deposit Insurance Corporation; Farm Credit Administration; Federal Housing Finance Agency, “Margin and Capital Requirements for Covered Swap Entities.”* This regulation, adopted under Dodd–Frank, imposes new margin and capital requirements on swap dealers regulated by banking agencies. The estimated cost of the capital required to be retained ranges from \$2.9 billion to \$6.4 billion.

Annual Cost: \$4.7 billion

Implementation Cost: \$659 million

December 1, 2015: *Environmental Protection Agency, “Petroleum Refinery Sector Risk and Technology Review.”* This rule imposes new limits on emissions from smoking flares at refineries.

Annual Cost: \$63.2 million

Implementation Cost: \$283 million

46. Sonal Patel, “EPA Finalizes Steam Electric Power Plant Effluent Guidelines,” *Power*, September 30, 2015, <http://www.powermag.com/epa-finalizes-steam-electric-power-plant-effluent-guidelines/> (accessed May 2, 2016).

December 2, 2016: *Department of Agriculture, “Mandatory Inspection of Fish the Order Siluriformes and Products Derived from Such Fish.”* The rule establishes a mandatory inspection program for catfish that duplicates existing inspection requirements. This will cost taxpayers millions of dollars annually without enhancing the safety of catfish. The program will also limit import competition and increase the likelihood of retaliatory trade measures by foreign countries.

Annual Cost: \$33,000

December 14, 2016: *Environmental Protection Agency, “Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017.”* The rule establishes the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that apply to all motor vehicle gasoline and diesel produced or imported in the years 2014, 2015, and 2016. The renewable fuel standard distorts commodity production and prices, artificially raises the price of fuel and food, and has adverse environmental effects. The alleged climate benefit increasing biofuel use is dubious at best.

Annual Cost: \$1.2 billion

January 6, 2016: *Commodity Futures Trading Commission, “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants.”* This rule implements a Dodd–Frank requirement that the Commodity Futures Trading Commission adopt initial and variation margin requirements for certain swap dealers and major swap participants.

Annual Cost: \$1.1 billion

January 6, 2016: *Department of Energy, “Energy Conservation Standards for Ceiling Fan Light Kits.”* The rule imposes more stringent energy conservation standards for ceiling light fan kits. Whether energy savings are worth the higher cost of a more

efficient item is a decision that consumers and business owners can and should make for themselves. Taking away their ability to make that choice is not a benefit; it is a steep cost.

Annual Cost: \$6 million

January 8, 2016: *Department of Energy, “Energy Conservation Program: Energy Conservation Standards for Refrigerated Bottled or Canned Beverage Vending Machines.”* The rule amends the energy conservation standards for Class A and Class B beverage vending machines.

Annual Cost: \$1.8 million

January 15, 2016: *Department of Energy, “Energy Conservation Standards for Residential Boilers.”* The rule adopts more stringent energy conservation standards for residential boilers, which will increase the costs of new appliances.

Annual Cost: \$17.5 million

January 15, 2016: *Department of Energy, “Energy Conservation Standards for Small, Large, and Very Large Air-Cooled Commercial Package Air Conditioning and Heating Equipment and Commercial Warm Air Furnaces.”* The rule amends the energy conservation standards for small, large, and very large air-cooled commercial package air conditioning and heating equipment and commercial warm air furnaces.

Annual Cost: \$708 million

Appendix C: Major Rules that Decrease Regulatory Burdens

April 20, 2015: *Securities and Exchange Commission, “Amendments for Small and Additional Issues Exemptions under the Securities Act (Regulation A).”* This rule implements provisions of the Jumpstart Our Business Startups (JOBS) Act to exempt offerings of up to \$50 million annually from registration requirements. While the new rule is less restrictive than the status quo, the SEC did adopt significant additional restrictions on small offerings which reduce the net gains.

Annual Savings: No cost-benefit analysis conducted.

June 16, 2015: *Department of the Treasury, Department of Labor, Department of Health and Human Services, “Summary of Benefits and Coverage and Uniform Glossary.”* This rule clarifies disclosure requirements for benefits and coverage for health plans. The rule increases some burdens, but also decreases regulatory duplication and increases flexibility.

Annual Savings: No cost-benefit analysis conducted.

July 2, 2015: *Department of Agriculture, Animal and Plant Health Inspection Service, “Importation of Beef from a Region in Brazil.”* This rulemaking lifted a ban on beef imports from Brazil. The action is expected to lower prices for beef, as well as increase consumption of beef overall.

Annual Savings: \$387.5 million

July 7, 2015: *Department of Agriculture, Animal and Plant Inspection Service, “Importation of Beef from a Region in Argentina.”* This rulemaking lifted a ban on imported beef from certain areas of Argentina, which had been put in place to avoid the spread of foot-and-mouth disease. The U.S. Department of Agriculture found that fresh beef can now be safely imported. The winners are U.S. consumers, who are expected to gain \$388 million through lower prices for, and greater availability of, beef.

Annual Savings: \$191 million

November 16, 2015: *Securities and Exchange Commission, “Crowdfunding.”* This rulemaking implements provisions of the JOBS Act to reduce barriers to crowdfunding—raising large amounts of capital through small investments from large numbers of people, usually via the Internet. While the SEC rule is a step toward reducing impediments to this promising new source of funding for new businesses, the SEC did not open up the marketplace as significantly as many had hoped, limiting its impact.

Annual Savings: No cost-benefit analysis conducted.

November 30, 2015: *Department of the Treasury et al., “Margin and Capital Requirements for Covered Swap Entities.”* This rulemaking establishes three exemptions to the swap rules established the same day in a separate proceeding.

Annual Savings: No cost-benefit analysis conducted.

January 19, 2016: *Securities and Exchange Commission, “Simplification of Disclosure Requirements for Emerging Growth Companies and Forward Incorporation by Reference on Form S-1 for Smaller Reporting Companies.”* The rule revises Forms S-1 and F-1 to permit emerging growth companies to omit financial information for certain historical periods and revises Form S-1 to permit forward incorporation by reference for smaller reporting companies.

Annual Savings: No cost-benefit analysis conducted.