

BACKGROUND

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Red Tape Receding: Trump and the High-Water Mark of Regulation

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Abstract

When President Trump took office, federal regulatory policy dramatically shifted from the unparalleled expansion of the Obama Administration to a reform agenda. During the Obama years, the nation's regulatory burden increased by more than \$122 billion annually as a result of 284 new "major" rules (roughly defined as those costing the private sector at least \$100 million per year). The Trump Administration, in its first six months, launched a multifaceted reform agenda. Whether it ultimately succeeds in reining in decades of regulatory excess remains to be seen. The need for reform has never been greater. Regulation acts as a stealth tax on the American people and the U.S. economy, and exacts an incalculable toll on individual liberty. President Trump and his appointees need all of the means available to them to overcome the powerful forces that favor the status quo.

At 12:01 p.m. on January 20, 2017, federal regulatory policy dramatically shifted from the unparalleled expansion of the Obama Administration to a reform agenda under President Donald Trump. During the Obama years, the nation's regulatory burden increased by more than \$122 billion annually as a result of 284 new "major" rules (roughly defined as those costing the private sector at least \$100 million per year). The Trump Administration, in its first six months, launched a multifaceted reform agenda. Whether it ultimately succeeds in reining in decades of regulatory excess remains to be seen.

From Inauguration Day to June 30, only eight new major regulations were issued—two of which increased private-sector burdens, and two that decreased such burdens. (The other four were administrative in nature.) The Trump Administration has also blocked

KEY POINTS

- The cost of federal regulations has multiplied for decades—with \$122 billion in new annual costs added in the Obama years alone. By the end of its final year, the Obama Administration had issued more than 23,000 rules in total.
- The need for reform has never been greater. Regulation acts as a stealth tax on the American people and the U.S. economy, and exacts an incalculable toll on individual liberty.
- The Trump Administration has launched a multifaceted reform agenda. Whether it ultimately succeeds in reining in decades of regulatory excess remains to be seen, but a number of promising initiatives to reverse the red tide are underway.
- President Trump and his appointees need all of the means available to them to overcome the powerful forces that favor the status quo.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3260>

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some rules and rescinded others, as well as withdrawn hundreds of regulatory actions in the rule-making pipeline. However, six months is too short a time span to judge results in the labyrinthine world of federal rulemaking.

The need for reform has never been greater. Regulation acts as a stealth tax on the American people and the U.S. economy, and exacts an incalculable toll on individual liberty. President Trump and his appointees need all of the means available to them to overcome the powerful forces that favor the status quo.

Measuring Obama's Red Tape

In its final year, the Obama Administration issued nearly 2,800 new rules, including 127 designated as "major." (Not all major rules impose direct costs on the private sector; many govern administrative matters, such as Medicaid rates or catch limits on fisheries.)

Of the 2016 major rules, 54 imposed direct annual costs of \$14.7 billion on the private sector. And during its entire eight years, the Administration imposed more than 23,000 regulations, including 693 major rules, of which 258 imposed a cumulative total of \$122 billion in new annual costs on the private sector.

That was nearly double the \$68 billion in private-sector costs imposed under the Administration of President George W. Bush.¹

As large as that cumulative cost is, it does not account for the total costs of new rules. The \$122 billion figure includes only major regulations, not the thousands of other rules issued every year. It also does not capture significant but intangible costs such as lost innovation or violations of individual liberty. Exacerbating matters, independent agencies are not required to conduct cost-benefit analyses for new major rules although some of these agencies generate a large number of regulations.

In many instances, agencies simply failed to calculate regulatory costs. For example, the Consumer Financial Protection Bureau (CFPB), in its 1,700-

TABLE 1

Obama Administration: Total Regulatory Burden

FIGURES SINCE 2009

Total number of new rules	23,627
Total number of new major rules	693
Increasing burdens	284
Decreasing burdens	32

IN BILLIONS OF 2015 DOLLARS

Cost of major increases in burden	\$122.0
Savings from decreases in burden	\$3.4

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

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page rule regulating pre-paid cards (also known as "reloadable" cards), failed to quantify the costs or benefits of this regulatory crackdown on a payment method used by tens of millions of Americans (and particularly popular with those who cannot afford to maintain bank accounts). Industry estimates peg the cost of compliance at \$1.5 billion.²

Similarly, there was no cost-benefit analysis prepared by the Commodity Futures Trading Commission (CFTC) for its highly complex rule on the cross-border application of margin requirements for swaps. The agency "discussed" the costs and benefits in qualitative terms, but failed to provide adequate information for sound decision making. As the CFTC Inspector General noted in a recent report criticizing the commission's lack of analysis: "A thorough consideration of costs and benefits based on rigorous

1. Cost figures are based on assessments prepared by the rulemaking agency, typically from regulatory impact analyses. In calculating the Bush Administration rules, OMB estimates were used when available. If an agency did not prepare an analysis or did not quantify costs, an amount was not included, although the rule was counted in our tally of major regulations. The agencies' totals were adjusted to constant 2015 dollars using the gross domestic product deflator at Areppim, "Converter of Current to Real US Dollars," http://stats.areppim.com/calc/calc_usdlrdeflator.php (accessed between March and June in 2017). Where applicable, a 7 percent discount rate was used. When a range of values was given by an agency, costs were based on the most likely scenario if so indicated by the agency; otherwise, the mid-point value was used. The date of a rule was based on its date of publication in the *Federal Register*.
2. News release, "Senators Intervene to Protect Prepaid Accounts from Sweeping Government Regulation," Office of Senator David Perdue, February 3, 2017, <https://www.perdue.senate.gov/news/press-releases/senators-intervene-to-protect-prepaid-accounts-from-sweeping-government-regulation-> (accessed September 26, 2017).

economic analysis informs regulators, Congress, and the public of the likely effects of a policy change.”³

As was typically the case during the Obama Administration, the Environmental Protection Agency (EPA) in 2016 issued the rule with the highest quantified cost: a fuel-efficiency mandate for medium-duty and heavy-duty trucks estimated to cost \$2.7 billion per year.

The other four of the five costliest rules in 2016 were:

- **Wage and overtime requirements, estimated to cost of \$1.5 billion annually.** This Department of Labor rule eliminated the “white collar” exemptions from minimum-wage and overtime-pay requirements under the Fair Labor Standards Act.
- **Renewable fuel standards, at an estimated cost of \$1.1 billion annually.** The EPA regulation set the annual percentages of cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuels required to be added to vehicle gasoline and diesel produced or imported in 2017.
- **Energy conservation standards for air conditioners and heat pumps, with a projected cost of \$741 million annually.** The Department of Energy rule prescribed more stringent energy-conservation standards for these various appliances and commercial and industrial equipment.
- **More stringent regulation of oil and gas and sulfur operations in the Outer Continental Shelf, at an estimated cost of \$696 million annually.** From the Department of the Interior, the rule revised and added new requirements for exploratory drilling.

On-Budget Costs of Regulation

As the number of regulations grew, so did government spending on regulatory enforcement. Accord-

ing to Susan Dudley and Melinda Warren (of George Washington University and Washington University in St. Louis, respectively), regulatory outlays between fiscal year (FY) 2009 and FY 2017, which roughly conforms to President Obama’s two terms in office, increased by 13.3 percent (\$6.8 billion), and staff levels increased by 7.4 percent (19,345 full-time employees).

Outlays for administering red tape in FY 2017 are projected to total \$65.9 billion, an increase of 3.5 percent over FY 2016.⁴

The growth of the regulatory budget is not a new phenomenon, and it has occurred under both Democratic and Republican Administrations. The regulatory budget growth during the eight years of President George W. Bush was actually greater than it was under the Obama Administration.⁵

Midnight Regulations

Some 40 percent of all major rules issued by the Obama Administration in its final year (21 out of 54 rules) were finalized *after* the election on November 8, 2016. These “midnight” regulations included some of the costliest rules of the final year, including the EPA’s renewable fuel standard and the Department of Energy’s energy-conservation standards.

This rush of rulemaking at the end of a term has been common among both Democratic and Republican Administrations, and regardless of the incoming President’s party affiliation. In 2008, for example, George W. Bush imposed 36 new major rules, far above his average of about 20 major rules annually. A large spike was also recorded in the final year of the George H. W. Bush Administration.

The practice is problematic because the Administration officials who issue midnight regulations have virtually no accountability once the President’s term ends; they face no consequences for the regulatory costs imposed on society.

Legislation to counteract such last-minute rulemaking is pending in Congress. H.R. 21, the Midnight Rules Relief Act, sponsored by Representative

3. Office of the Inspector, General Commodity Futures Trading Commission, “A Review of the Cost-Benefit Consideration for the Margin Rule for Uncleared Swaps,” June 5, 2017, http://www.cftc.gov/idc/groups/public/@aboutcftc/documents/file/oig_rcbcmrus060517.pdf (accessed October 16, 2017).

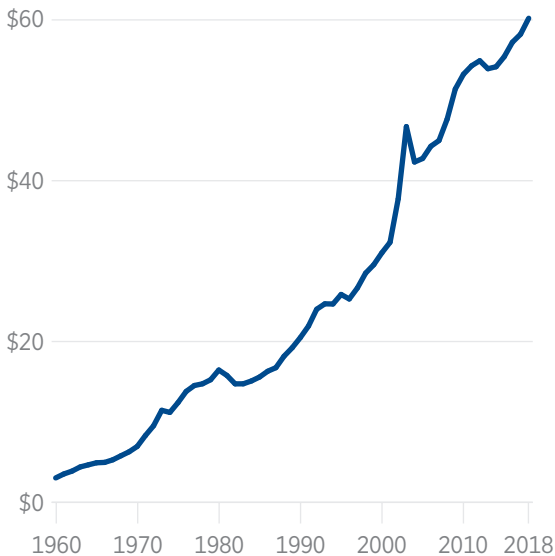
4. Susan Dudley and Melinda Warren, “Regulators’ Budget Reflects President Trump’s Priorities: An Analysis of the U.S. Budget for Fiscal Years 1960 Through 2018,” George Washington University’s Regulatory Studies Center and Washington University in St. Louis’s Weidenbaum Center, *Regulators Budget* No. 39 (July 2017), <https://regulatorystudies.columbian.gwu.edu/sites/regulatorystudies.columbian.gwu.edu/files/downloads/Bulleted%20Highlights%20w%20Figures%20pp-2017-07-18.pdf> (accessed September 2, 2017).

5. Ibid.

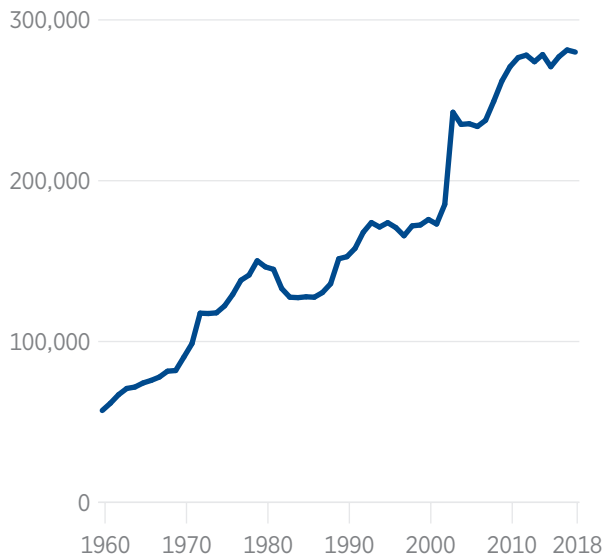
CHART 1

Federal Regulatory Activity: Spending and Staffing

ON-BUDGET SPENDING, IN BILLIONS OF 2009 DOLLARS



TOTAL STAFFING, FULL-TIME EQUIVALENT EMPLOYMENT



NOTES: Some figures have been interpolated. Figures are by fiscal year. Figures for 2017 and 2018 are estimates.

SOURCE: Susan Dudley and Melinda Warren, “Regulators’ Budget Reflects President Trump’s Priorities: An Analysis of the U.S. Budget for Fiscal Years 1960 through 2018,” July 2017, <https://regulatorystudies.columbian.gwu.edu/sites/regulatorystudies.columbian.gwu.edu/files/downloads/Final%20Regulators%27%20Budget.pdf> (accessed August 15, 2017).

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Darrell Issa (R-CA), would enable Congress to disapprove a group of regulations together (“en bloc”) rather than one at a time, as is currently the procedure. An identical measure is pending in the Senate as S. 34, sponsored by Senator Ron Johnson (R-WI).

Trump’s First Six Months

On the day President Trump took office, his Administration inherited 1,985 regulations in the rulemaking pipeline—966 in the proposed stage and 1,019 in the final stage.

Like his predecessors, President Trump moved quickly to direct his chief of staff to issue a memorandum to department heads directing them to freeze rulemaking until a designated senior official reviewed and approved the regulations.

The memorandum also directed agency heads to withdraw regulations that had been sent to the Office of the Federal Register but had not yet been published, and to postpone for 60 days the regulations

that had been published in the *Federal Register* but had not yet taken effect.

The memorandum seems to have had its desired effect—there has been a dramatic decrease in the number of new rules adopted.

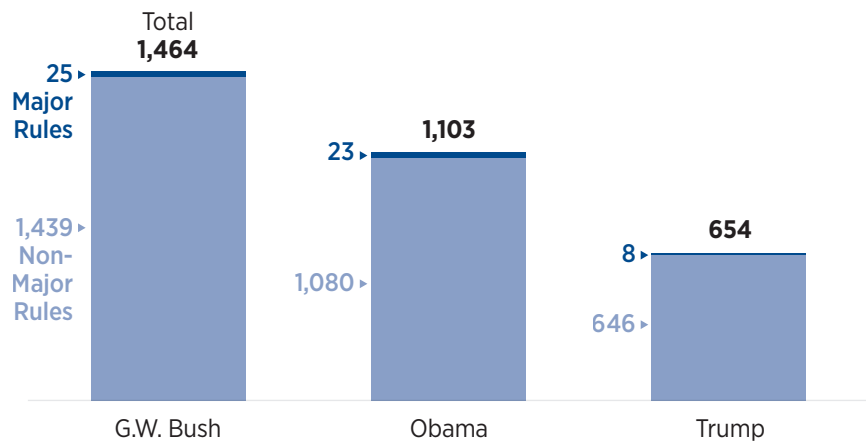
From Inauguration Day through June 30, the Trump Administration finalized 659 new rules, of which eight were classified as major. Two of these increased regulatory burdens on the private sector, and two decreased those burdens. This is a startling change from Obama’s first six months, during which 1,103 rules were finalized, of which 23 imposed major costs on the private sector. The George W. Bush Administration adopted 1,464 rules in its first six months, of which 25 imposed major costs on the private sector.

Both of the Trump rules that increased regulatory burdens were initiated by the Obama Administration and promulgated by agencies independent of direct White House control. The Securities and

CHART 2

Number of Final Rules in First Six Months of Office

SOURCE: General Accounting Office, Reports on Federal Agency Major Rules, <http://www.gao.gov/legal/congressional-review-act/overview> (accessed September 25, 2017).



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Exchange Commission adopted a rule shortening the settlement cycle for broker-dealer transactions (for which costs were not quantified), while the Federal Reserve Board imposed loss-absorption mandates on large banks (with private-sector costs estimated at \$1.3 billion).

Of the two rules implemented by the Trump Administration that reduce regulation, one from the Food and Drug Administration postponed the effective date for new nutrition label requirements, and the second, from the Department of Labor, postponed the effective date of its rule expanding the scope of fiduciary duties for investment advisors. By extending the effective dates of these 2016 rules, the regulatory costs have been reduced. The savings, however, are one-time gains. In neither case have the underlying mandates been eased (although efforts to accomplish this are continuing).

In the same six-month period, the Trump Administration's Office of Information and Regulatory Affairs (OIRA) conducted significantly fewer reviews of new rules—and withdrew a higher proportion of rulemakings—than either the Obama Administration or the Bush Administration—the lowest number, in fact, since recordkeeping began in the 1990s.

Congressional Review Act Resuscitated

A total of 15 rules have been “disapproved” under provisions of the Congressional Review Act (CRA)—a 1996 statute that provides for fast-track review of regulations. If passed by Congress and signed by the President, a resolution of disapproval rescinds a regulation and prohibits a future rule that is “substantially the same.”⁶

Since it was enacted in 1996, the CRA had been successfully used only once, in March 2001. But this year, it became one of the primary tools available to block last-minute Obama rules from taking effect.

Executive Orders on Regulatory Review

The Trump White House also issued 39 executive orders (EOs) in his first six months. Two, in particular, are intended to have a direct and substantial impact on the regulatory process:

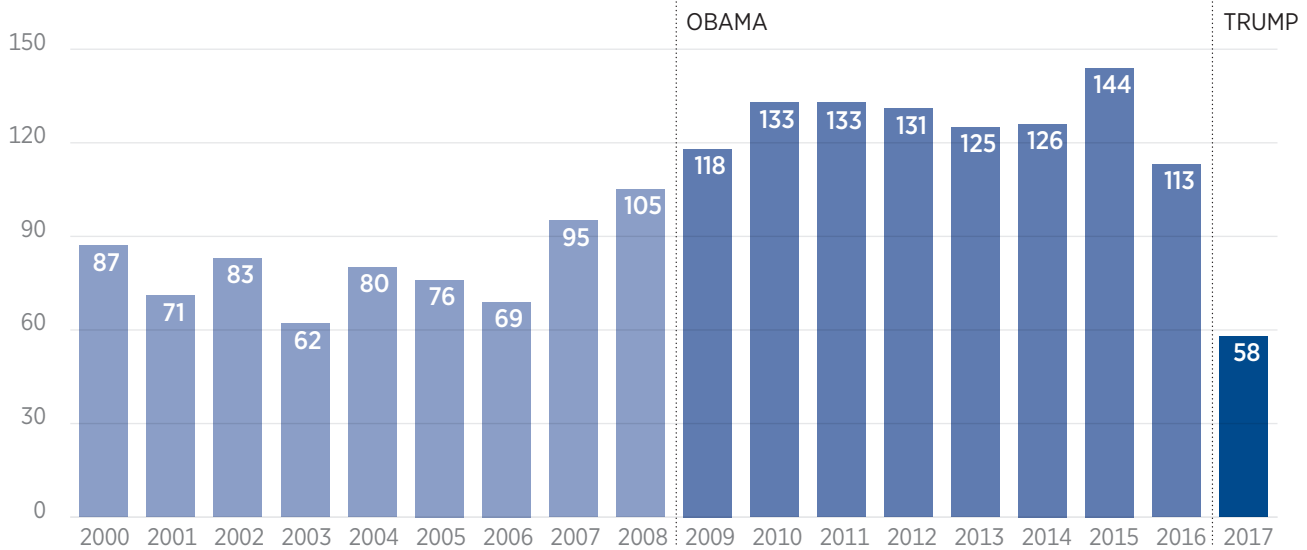
EO 13771 directs executive departments and agencies to identify for repeal at least two existing regulations for every new regulation they promulgate.⁷ The order also calls for a budgeting process to manage regulatory costs, and prohibits any increase in the total incremental cost of all regulations finalized in 2017 (unless required by law or advised by the Director of the Office of Management and Budget (OMB).

6. Daren Bakst and James Gattuso, “Stars Align for the Congressional Review Act,” Heritage Foundation *Issue Brief* No. 4640, December 16, 2016, <http://thf-reports.s3.amazonaws.com/2016/IB4640.pdf>.
7. Executive Office of the President, “Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs,” *Federal Register*, Vol. 82 (January 30, 2017), p. 9339, <https://www.federalregister.gov/documents/2017/02/03/2017-02451/reducing-regulation-and-controlling-regulatory-costs> (accessed September 22, 2017).

CHART 3

Trump Keeps Fewer "Economically Significant" Rulemakings

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



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

SOURCE: Office of Information and Regulatory Affairs, Unified Agenda of Regulatory and Deregulatory Actions, <https://www.reginfo.gov/public/do/eAgendaMain> (accessed July 20, 2017).

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For future years, the EO directs the OMB director to set the amount of incremental costs an agency will be allowed to impose, if any.

Regulatory budgeting has long been discussed, and poses challenges in obtaining accurate costs from regulators, who exercise broad discretion in their calculations.⁸

EO 13777 directs the head of each regulatory agency to designate a Regulatory Reform Officer to oversee the implementation of regulatory reform initiatives and policies within the agency.⁹ Under the order, each agency is also instructed to establish a Regulatory Reform Task Force to evaluate regulations and recommend those appropriate for repeal, replacement, or modification.

By ensuring that agency staff are focused on controlling regulatory costs, sound regulatory practices can be built into each agency rather than just imposed from outside. That should improve the likelihood of lasting reforms.

Other significant EOs and memoranda include:

Presidential Memorandum on Fiduciary Duty Rule. This directs the Secretary of Labor to examine the Fiduciary Duty Rule¹⁰ to determine, through legal and economic analysis, whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice. If an affirmative determination is made, the EO directs the Secretary of Labor to publish for notice and comment a proposed rule rescinding or revising the Fiduciary Duty Rule.

8. James L. Gattuso, "Regulatory Budgeting: Not Ready for Prime Time," Heritage Foundation *Backgrounder* No. 3173, December 14, 2016, <http://thf-reports.s3.amazonaws.com/2016/BG3173.pdf>.

9. Executive Office of the President, "Executive Order 13777: Enforcing the Regulatory Reform Agenda," *Federal Register*, Vol. 82 (February 24, 2017), p. 12285, <https://www.federalregister.gov/documents/2017/03/01/2017-04107/enforcing-the-regulatory-reform-agenda> (accessed September 22, 2017).

10. Norbert Michel, "Feds Just Can't Allow People to Save and Invest," Heritage Foundation *Commentary*, November 4, 2015, <http://www.heritage.org/government-regulation/commentary/feds-just-cant-allow-people-save-and-invest>.

Presidential Executive Order on Promoting Energy Independence and Economic Growth.

The order directs agencies responsible for regulating domestic energy production to propose revisions or rescissions of regulatory barriers that impede U.S. energy independence. It also rescinds several Obama EOs and policies related to climate change, and directs reconsideration of the \$7.2 billion Clean Power Plan. And, it directs the Administrator of the EPA and the Secretary of the Interior to review, and, if necessary, revise or rescind several regulations that place unnecessary, costly burdens on coal-fired electric utilities, coal miners, and oil and gas producers.

Presidential Memorandum Regarding Construction of the Dakota Access Pipeline. This directs relevant officials to expedite requests for approvals to construct and operate the Dakota Access Pipeline.

Presidential Memorandum Regarding Construction of the Keystone XL Pipeline. This invites TransCanada to re-submit its application to the Department of State for a presidential permit for the construction and operation of the Keystone XL Pipeline, and directs the Secretary of State to expedite review.

Executive Order Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal. This directs the Secretary of Health and Human Services and the heads of all other relevant departments and agencies to “waive, defer, grant exemptions from, or delay” Obamacare rules “that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, health-care providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications.”

Presidential Executive Order on Core Principles for Regulating the United States Financial System. This directs the Secretary of the Treasury to identify all Treasury regulations that are an undue financial burden on taxpayers, add undue complexity, or exceed statutory authority. It also establishes Core Principles of financial regulation, including (1) empowering Americans to make independent financial decisions and informed choices in the marketplace, save for retirement, and build individual wealth; (2) preventing taxpayer-funded

TABLE 2

Rulemakings Withdrawn in First Sixth Months

Administration	RULES WITHDRAWN	
	Total	Major
Trump	469	19
Obama	156	4
Bush	181	5

SOURCE: Office of Information and Regulatory Affairs, Unified Agenda of Regulatory and Deregulatory Actions, <https://www.reginfo.gov/public/do/eAgendaMain> (accessed July 20, 2017).

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bailouts; (3) fostering economic growth and vibrant financial markets through more rigorous regulatory impact analysis that addresses systemic risk and market failures, such as moral hazard and information asymmetry; (4) enabling American companies to be competitive with foreign firms in domestic and foreign markets; (5) advancing American interests in international financial regulatory negotiations and meetings; (6) making regulation efficient, effective, and appropriately tailored; and (7) restoring public accountability within federal financial regulatory agencies and rationalizing the federal financial regulatory framework.

Presidential Executive Order on a Comprehensive Plan for Reorganizing the Executive Branch. This order is intended to improve the efficiency, effectiveness, and accountability of the executive branch by directing the OMB Director to propose a plan to reorganize governmental functions and eliminate unnecessary agencies.

Presidential Executive Order on Identifying and Reducing Tax Regulatory Burdens. This directs the Secretary of the Treasury to review all “significant” tax regulations issued by the department on or after January 1, 2016, and, in consultation with the Administrator of OIRA within the OMB, identify regulations that impose an undue financial burden on taxpayers; add undue complexity to the tax laws; or exceed the statutory authority of the Internal Revenue Service. The Secretary is also directed to delay the effective date

of such regulations, if possible, and to modify or rescind such regulations through notice and comment rulemaking.

Unified Agenda

The new Administration in July released its first Unified Agenda of Regulatory and Deregulatory Actions.¹¹ This document—typically published twice a year—outlines the rulemaking plans for each agency. Under President Obama, the Unified Agenda consistently included between 120 and 130 major rules,¹² reaching a high of 144 pending rules in the spring of 2016. In President Trump’s agenda, the number was cut by about two-thirds, to 49, with agencies having withdrawn 469 rulemakings. The Administration also reconsidered 391 active rulemakings by reclassifying them as long-term (282) or inactive (109).

For regulations that conflict with Administration policies, agencies may propose either to delay the effective date of a rule, or to rewrite or repeal a rule. This requires following the rulemaking procedures under the Administrative Procedures Act, including providing justification for the action and subjecting it to public notice and comment. For example, on March 22, 2017, the EPA announced that it would reconsider whether stricter standards on automotive emissions for greenhouse gases are necessary.

The Obama Administration on January 12 had announced its determination that the standards were appropriate.¹³ However, the EPA failed to consider whether the standards were technically feasible. Given that carbon-dioxide (CO₂) emissions are regulated through adjustments in fuel efficiency—standards set by the National Highway Traffic Safety Administration (NHTSA)—a sound determination by the EPA requires consideration of the standards that the NHTSA considers feasible. As the *Federal Register* notice states: “EPA has concluded that it is

appropriate to reconsider its Final Determination in order to allow additional consultation and coordination with NHTSA in support of a national harmonized program.”¹⁴

As part of a broader effort to scale back the Obama Administration’s vast web of global warming programs, President Trump on June 1 announced the U.S. withdrawal from the Paris climate agreement, which President Obama had signed as an executive agreement on April 22, 2016. The United States, under its Intended Nationally Determined Contributions, was committed to reduce greenhouse gas emissions in 2025 by 26 percent to 28 percent compared to 2005 levels.

The Trump Administration also revoked an Obama directive allowing transgender students in public schools and other government facilities to use the bathrooms and locker rooms as befit their gender identity. A two-page “Dear Colleague” letter announcing the revocation on February 22, 2017, stated that the Obama directive lacked legal justification.

The Trump Administration has also initiated a variety of other rule delays and reconsiderations, including:

- **EPA “waters of the United States” rule.** Also facing repeal is the EPA’s 2015 rule on the “waters of the United States” (issued jointly with the U.S. Army Corps of Engineers). The rule created a new definition for the waters that the federal government can regulate under the Clean Water Act.

The 2015 definition tramples property rights and overrides the important role that states play in water stewardship. Property owners are losing their ability to derive value from their land, restricting investment and diminishing property values, and curtailing property tax revenues. Farmers, too, are deeply concerned that their

11. Reginfo.gov, “Unified Agenda of Regulatory and Deregulatory Actions,” <https://www.reginfo.gov/public/do/eAgendaMain> (accessed September 22, 2017).

12. Including only major rules at the proposed, or final, stages.

13. Environmental Protection Agency, “Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards Under the Midterm Evaluation,” January 12, 2017, <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockkey=P100QQ91.pdf> (accessed September 25, 2017).

14. Environmental Protection Agency and National Highway Traffic Safety Administration, “Notice of Intention to Reconsider the Final Determination of the Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light Duty Vehicles,” *Federal Register*, Vol. 82, No. 54 (March 22, 2017), <https://www.gpo.gov/fdsys/pkg/FR-2017-03-22/pdf/2017-05316.pdf> (accessed September 25, 2017).

land-use practices will be restricted, thereby reducing their productivity—and income.¹⁵

In late July, the EPA issued a proposal to repeal the rule, replacing it with more limited regulation.¹⁶

- **EPA climate-change regulations.** The Trump Administration has targeted the EPA’s Clean Power Plan, for which costs are estimated at \$7.2 billion annually. The centerpiece of the Obama Administration’s global warming crusade, the rule was the first direct regulation of greenhouse gas (GHG) emissions from power plants. It dictates state-specific restrictions on GHG emissions, with a target reduction of 30 percent below 2005 levels by 2030. According to the EPA, the Clean Power Plan will reduce carbon emissions by 870 million tons by 2030. But overall, the rule will cut the annual increase of CO₂ emissions by *one one-hundredth of a percent*.

For this meager result, the Clean Power Plan will more than double the number of coal-fired power-plant closures than would otherwise occur absent the regulation. Not only will electricity rates increase, but so will the prices of virtually all U.S. products.

Under a March 28 Executive Order from President Trump, the EPA was directed to consider rescinding the rule. The complication, however, is that it also is under court order to regulate GHG. To resolve this dilemma, EPA Administrator Scott Pruitt is reportedly considering a “repeal and replace” approach, under which the

current rules are replaced immediately with less costly mandates.

- **Network neutrality.** The 2015 net-neutrality rule, formally titled the Open Internet Order, reclassified “Internet access” as a common carrier service under the Communications Act of 1934. This seemingly technical change subjects Internet service providers to comprehensive regulation by the Federal Communications Commission (FCC). Second, the FCC requires service providers to treat all bits of content travelling over their networks in equal fashion. FCC Chairman Ajit Pai is moving to revoke the order.
- **Nutrition labeling.** On May 4, 2017, the Food and Drug Administration (FDA) announced that it is pushing back the compliance deadline for its rule on Nutrition Labeling of Standard Menu Items¹⁷ from May 5, 2017, to May 7, 2018 (following two previous delays). Similarly, on June 13, 2017, the FDA announced its intention to extend the compliance date for the Nutrition Facts Label rule.¹⁸ According to the FDA, “The framework for the extension will be guided by the desire to give industry more time and decrease costs, balanced with the importance of minimizing the transition period during which consumers will see both the old and the new versions of the label in the marketplace.”¹⁹
- **Beryllium standards.** On June 27, 2017, the Occupational Safety and Health Administration (OSHA) announced a new proposed rule²⁰ to modify the agency’s recent beryllium stan-

15. Daren Bakst, “What You Need to Know About the EPA/Corps Water Rule: It’s a Power Grab and an Attack on Property Rights,” Heritage Foundation *Background* No. 3012, April 29, 2015, <http://thf-reports.s3.amazonaws.com/2016/BG3127.pdf>.

16. Environmental Protection Agency and the Department of the Army, “Definition of ‘Waters of the United States’—Recodification of Pre-Existing Rules,” *Federal Register*, Vol. 82, No. 143 (July 27, 2017), <https://www.gpo.gov/fdsys/pkg/FR-2017-07-27/pdf/2017-13997.pdf> (accessed September 26, 2017).

17. Food and Drug Administration, “Food Labeling: Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments; Extension of Compliance Date; Request for Comments,” *Federal Register* Vol. 82, No. 85 (May 4, 2017), p. 20825, <https://www.gpo.gov/fdsys/pkg/FR-2017-05-04/pdf/2017-09029.pdf> (accessed September 25, 2017).

18. Food and Drug Administration, “Changes to the Nutrition Facts Label,” <https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm385663.htm#dates> (accessed September 22, 2017).

19. Food and Drug Administration, “Changes to the Nutrition Facts Label: Compliance Date,” <https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm385663.htm#dates> (accessed September 22, 2017).

20. Occupational Safety and Health Administration, “Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors,” *Federal Register*, Vol. 82, No. 122 (June 27, 2017), <https://www.gpo.gov/fdsys/pkg/FR-2017-06-27/pdf/2017-12871.pdf> (accessed September 22, 2017).

dards for the construction and shipyard sectors. (On January 9, OSHA issued a final rule²¹ that established new protections for workers who are exposed to beryllium. On February 1, 2017, OSHA temporarily delayed,²² until March 21, 2017, the effective date of the rule.) Beryllium is a light-weight metal used primarily in specialty alloys and beryllium-oxide ceramics. It is also present as a trace material in metal slags.²³

- **Ozone standards.** The EPA is extending the deadline²⁴ for promulgating initial area designations by one year for the 2015 ozone standards.²⁵ The EPA is giving states more time to develop air-quality plans and considering greater flexibility for states—some of which have yet to meet the 1997 and 2008 standards.
- **Truck driver training.** Prompted by a January 20, 2017, memorandum from President Trump, the Federal Motor Carrier Safety Administration has delayed the effective date of stricter truck driver training standards. The rule was slated to take effect on February 6, 2017.
- **Overtime Rule.** On June 30, 2017, the U.S. Department of Labor told the U.S. Court of Appeals for the Fifth Circuit that it intends to abandon the Obama overtime rule, but pursue new rule-making to set a more reasonable salary level. As issued, the rule eliminates the “white collar” exemptions from minimum-wage and overtime-pay requirements under the Fair Labor Standards Act.

Recommendations for Reform

The burden of federal regulation has grown without constraint for decades—with \$122 billion in new annual costs added in the Obama years alone. Presi-

dent Trump has pledged to “massively” reduce regulation, and he has so far succeeded in slowing regulatory output. But the necessary systemic reforms require action by Congress—in particular, to increase scrutiny of existing and new regulations to ensure that each is constitutional and necessary, and that costs are minimized. The Heritage Foundation proposes the following reforms to accomplish this:

1. **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 unless and 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, 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.
2. **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 OIRA, 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 Office or the Government Accountability Office, or through a new unit established by Congress. This new capability need not require a net increase in

21. Occupational Safety and Health Administration, “Occupational Exposure to Beryllium,” *Federal Register*, Vol. 82, No. 5 (January 9, 2017), <https://www.gpo.gov/fdsys/pkg/FR-2017-01-09/pdf/2016-30409.pdf> (accessed September 22, 2017).

22. Occupational Safety and Health Administration, “Occupational Exposure to Beryllium: Delay of Effective Date,” *Federal Register*, Vol. 82, No. 20 (February 1, 2017), <https://www.gpo.gov/fdsys/pkg/FR-2017-02-01/pdf/2017-02149.pdf> (accessed September 22, 2017).

23. Occupational Safety and Health Administration, “Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors.”

24. News release, “EPA to Extend Deadline for 2015 Ozone NAAQS Area Designations,” Environmental Protection Agency, June 6, 2017, <https://www.epa.gov/newsreleases/epa-extend-deadline-2015-ozone-naaqs-area-designations> (accessed September 22, 2017).

25. Environmental Protection Agency, “National Ambient Air Quality Standards for Ozone,” *Federal Register*, Vol. 80, No. 206 (October 26, 2015), <https://www.gpo.gov/fdsys/pkg/FR-2015-10-26/pdf/2015-26594.pdf> (accessed September 22, 2017).

staff or budget, but could easily be paid for through reductions in existing regulatory agency expenses.

- 3. Automatically sunset regulations.** While the REINS Act would strengthen review of new regulations, measures for reviewing existing red tape are also necessary. Congress should set sunset dates for all major regulations. Rules should expire automatically if not explicitly reaffirmed by the relevant agency through the formal rule-making 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.
- 4. Codify regulatory impact analysis requirements.** All executive branch agencies are currently required to conduct regulatory impact analyses (including cost-benefit calculations) when proposing any new major rules. Codifying these requirements would ensure that they cannot be rolled back without congressional action and provide the basis for judicial review of agency compliance.
- 5. 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.

- 6. 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.

- 7. 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 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 unparalleled expansion of the regulatory state is crushing America's entrepreneurial spirit, productivity, and economic growth. The new Administration of Donald Trump has promised reform, and it has succeeded in slowing regulatory output. But six months is too short a time to judge results in the world of regulation, where actions take years, not days. It remains to be seen whether President Trump will succeed in reversing decades of regulatory overreach.

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Appendix: New Major Rules in 2016

January 26, 2016: Department of Energy, “Revised Critical Infrastructure Protection Reliability Standards.”

This rule announces the Federal Energy Regulatory Commission’s approval of seven standards to mitigate the cybersecurity risks to bulk electric system facilities, systems, and equipment.

Annual Cost: \$62.1 million

One-time Cost: \$17.9 million

January 26, 2016: Department of Energy, “Energy Conservation Standards for Pumps.”

This rule adopts new energy conservation standards for clean water pumps used in a variety of commercial, industrial, agricultural, and municipal applications.

Annual Cost: \$17.2 million

February 19, 2016: Securities and Exchange Commission, “Security-Based Swap Transactions Connected with a Non-U.S. Person’s Dealing Activity that Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer De Minimis Exception.”

This rule governs the *de minimis* exception to security-based swap transactions involving “non-U.S. persons” that are executed in a U.S. branch or office.

Annual Cost: \$9.6 million

One-time Cost: \$10.7 million

March 8, 2016: Department of Health and Human Services: Patient Protection and Affordable Care Act, “HHS Notice of Benefit and Payment Parameters for 2017.”

This rule sets payments and provisions related to the risk adjustment, reinsurance, and risk corridors programs; cost-sharing parameters; and cost-sharing reductions. It also amends essential health benefits, the definitions of large employer and small employer, the medical loss ratio program, exemptions and appeals, and other related topics.

Annual Cost: Not quantified

March 25, 2016: Department of Labor, “Occupational Exposure to Respirable Crystalline in Silica.”

This rule establishes a permissible occupational exposure limit for respirable crystalline silica, which is used in a variety of ways. Among other applications, sand and gravel are used in road building and concrete construction; the manufacture of glass and ceramics; to form molds for metal castings in foundries; and in abrasive blasting operations. Silica is also used as a filler in plastics, rubber, and paint, and as an abrasive in soaps and scouring cleansers.

Annual Cost: \$1.1 billion

April 6, 2016: Department of Health and Human Services (HHS), “Sanitary Transportation of Human and Animal Food.”

This final rule establishes sanitary practices used by shippers, loaders, motor and rail carriers, and receivers to ensure that food is not transported under conditions that may render it adulterated.

Annual Cost: \$115.5 million

One-time Cost: \$160.6 million

April 8, 2016: Department of Labor, Employee Benefits Security Administration, “Definition of the Term ‘Fiduciary’; Conflict of Interest Rule—Retirement Investment Advice; Best Interest Contract Exemption; Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs.”

This rule imposes standards of client care on investment advisers and their firms in accordance with fiduciary norms and delineates prohibited transactions.

Annual Cost: \$1.9 billion

April 29, 2016: Department of the Interior, “Oil and Gas and Sulfur Operations in the Outer Continental Shelf—Blowout Preventer Systems and Well Control.”

This rule consolidates a number of equipment and operational requirements, and reforms rules related to well design, well control, casing, cementing, well monitoring, and subsea containment. It also implements multiple recommendations resulting from investigations of the Deepwater Horizon incident.

Annual Cost: \$696 million

May 10, 2016: Department of Health and Human Services, “Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products.”

This rule expands the Food and Drug Administration’s regulatory authority over tobacco products and related components, including waterpipe tobacco, e-cigarettes, vape pens, electronic pipes, cigars, and pipe tobacco.

Annual Cost: \$76.1 million

May 11, 2016: Department of the Treasury, “Customer Due Diligence Requirements for Financial Institutions.”

This rule tightens due-diligence requirements for banks, brokers, and dealers in securities, mutual funds, and futures to thwart the ability of criminals to hide ill-gotten proceeds in the financial system.

Annual Cost: \$217.1 million

May 13, 2016: Security and Exchange Commission, “Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants.”

This rule implements provisions of title VII of the Dodd–Frank Wall Street Reform and Consumer Protection Act relating to business conduct standards and the designation of a chief compliance officer for security-based swap dealers and swap participants.

Annual Cost: \$187.8 million

May 18, 2016: Department of Health and Human Services, “Nondiscrimination in Health Programs and Activities.”

This rule prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in health programs and activities.

Annual Cost: \$291.5 million

May 23, 2016: Department of Labor, “Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees.”

This rule largely eliminates the “white collar” exemptions from minimum-wage and overtime-pay requirements under the Fair Labor Standards Act.

Annual Cost: \$1.5 billion

May 27, 2016: Department of Health and Human Services, “Food Labeling: Serving Sizes of Foods that Can Reasonably Be Consumed at One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments.”

This rule defines a single-serving container; requires dual-column labeling for certain containers; updates, modifies, and establishes “customarily consumed” amounts; amends the label serving size for breath mints; and amends various aspects of serving-size regulations.

Annual Cost: HHS calculated the costs of this rule in a joint economic impact analysis with a related rule issued the same day (listed below).

May 27, 2016: Department of Health and Human Services, “Food Labeling: Revision of the Nutrition and Supplement Facts Labels.”

This rule updates the list of nutrients that are required to be declared; updates daily reference and daily intake values; amends requirements for foods represented for children under the age of four, and pregnant and lactating women; and revises the format and appearance of the nutrition facts label.

Annual Cost: \$505.4 million

May 27, 2016: Department of Health and Human Services, “Mitigation Strategies to Protect Food Against Intentional Adulteration.”

This rule imposes requirements to prevent food hazards, including assessments to identify vulnerabilities and mitigation strategies to minimize vulnerabilities in the food supply.

Annual Cost: \$389.1 million

May 31, 2016: Commodity Futures Trading Commission (CFTC), “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements.”

This rule addresses the cross-border application of the CFTC’s margin requirements for uncleared swaps of swap dealers and major swap participants that do not have a Prudential Regulator (covered swap entities (CSEs)).

Annual Cost: Not quantified

June 3, 2016: Environmental Protection Agency, “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources.”

This action establishes the “best system of reduction” for emissions of methane and volatile organic compounds in the production, processing, transmission, and storage of oil and natural gas.

Annual Cost: \$511.3 million

One-time Cost: \$602 million

June 13, 2016: Department of Energy, “Energy Conservation Standards for Dehumidifiers.” This rule limits the amount of energy that may be consumed in operating various types of dehumidifiers.

Annual Cost: \$11.3 million

June 13, 2016: Department of Energy, “Energy Conservation Standards for Battery Chargers.” This rule adopts further limits on the energy consumption of battery chargers.

Annual Cost: \$9.3 million

June 28, 2016: Department of Transportation, Federal Aviation Administration, “Operation and Certification of Small Unmanned Aircraft Systems.”

This rule establishes certification and operating requirements to allow small unmanned aircraft systems to fly in the National Airspace System for non-hobby and non-recreational purposes.

Annual Cost: Not quantified

July 15, 2016: Department of the Interior, “Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf.”

Annual Cost: \$230.7 million

One-time Cost: \$5.2 million

July 27, 2016: Securities and Exchange Commission, “Disclosure of Payments by Resource Extraction Issuers.”

This rule requires developers of oil, natural gas, or minerals to report annually on payments made to a foreign government or the federal government for the purpose of commercially developing natural resources.

Annual Cost: \$263.5 million

One-time Cost: \$310.9 million

August 2, 2016: Department of the Treasury, “Margin and Capital Requirements for Covered Swap Entities.”

This rule creates exemptions from the initial and variation margin requirements of the Dodd–Frank Act, and also exempts certain non-cleared swaps and security-based swaps from clearing pursuant to Title III of the Terrorism Risk Insurance Program Reauthorization Act.

Annual Cost: Not quantified

September 6, 2016: Department of Health and Human Services, “Safety and Effectiveness of Consumer Antiseptics; Topical Antimicrobial Drug Products for Over-the-Counter Human Use.” This action constitutes a determination that 19 active ingredients intended for use in consumer antiseptic washes are not generally recognized as safe and effective, and thus are misbranded.

Annual Cost: \$27.2 million

One-time Cost: \$251.2 million

September 29, 2016: Department of Treasury, “OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Technical Amendments.”

This rule establishes standards for recovery planning by insured national banks, insured federal savings associations, and insured federal branches of foreign banks with average total consolidated assets of \$50 billion or more.

Annual Cost: Not quantified

October 13, 2016: Securities and Exchange Commission (SEC), “Standards for Covered Clearing Agencies.”

This rule establishes enhanced standards for the operation and governance of clearing agencies designated as systemically important (and for which the SEC is the supervisory agency), or agencies that provide central counterparty services for security-based swaps or have a complex risk profile.

Annual Cost: \$165.8 million

One-time Cost: \$14.8 million

October 14, 2016: Commodity Future Trading Commission, “Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps.” This rule requires that

interest-rate swaps denominated in certain currencies and termination dates be submitted for clearing to a derivatives clearing organization that is registered under the Commodity Exchange Act.

One-time Cost: \$165.8 million

October 20, 2016: Department of Homeland Security, “Establishment of the Electronic Visa Update System.”

This rule establishes the Electronic Visa Update System, which will collect biographic and other information from nonimmigrant aliens in designated categories.

Annual Cost: \$165 million

One-time Cost: \$1.3 million

October 21, 2016: Department of the Treasury, Internal Revenue Service, “Treatment of Certain Interests in Corporations as Stock or Indebtedness.”

This rule establishes documentation requirements that must be satisfied for related-party interests in a corporation to be treated as indebtedness for federal tax purposes. It also establishes the documentation requirements that must be satisfied to treat as stock certain related-party interests that otherwise would be treated as indebtedness for federal tax purposes.

Annual Cost: \$55.3 million

One-time Cost: \$221.1 million

October 25, 2016: Environmental Protection Agency and National Highway Traffic Safety Administration, Department of Transportation, “Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2.”

This rule establishes fuel consumption standards and carbon-dioxide emission standards for on-road medium- and heavy-duty vehicles and engines.

Annual Cost: \$2 billion

October 26, 2016: Environmental Protection Agency, “Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS.”

This action imposes federal plans in eastern states for the reduction of ground-level ozone emissions from electric generating units. It also modifies the ozone-allowance trading program established under the Cross-State Air Pollution Rule.

Annual Cost: \$67 million

October 28, 2016: Department of Energy, “Energy Conservation Standards for Miscellaneous Refrigeration Products.”

This rule tightens energy conservation standards for wine chillers, non-compressor refrigeration products, hybrid refrigerators, and ice makers.

Annual Cost: \$153 million

November 18, 2016: Securities and Exchange Commission, “Investment Company Liquidity Management Programs.”

This rule requires investment companies to establish a liquidity-risk-management program; requires underwriters and investment trusts to engage in a limited liquidity review; amends disclosure forms; and requires reporting of a fund’s holdings and liquidity risk-management practices.

Annual Cost: Not quantified

One-time Cost: \$855 million

November 18, 2016: Security and Exchange Commission, “Investment Company Reporting Modernization.”

This rule requires investment companies to report monthly portfolio holdings in a structured data format; requires enhanced disclosure about derivatives in investment company financial statements; requires investment companies to report certain census-type information to the SEC; and requires disclosures regarding securities lending activities.

Annual Cost: Not quantified

One-time Cost: \$3.9 million

November 18, 2016: Department of the Interior, “Waste Prevention, Production Subject to Royalties, and Resource Conservation.”

This rule requires operators to reduce waste of gas, establishes criteria for qualifying flared gas as waste and subject to royalties, and clarifies which on-site uses of gas are exempt from royalties.

Annual Cost: \$194 million

November 18, 2016: Department of Labor, “Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems).”

This rule revises and updates standards for walking-working surfaces to reduce injuries and fatalities.

Annual Cost: \$345 million

November 22, 2016: Bureau of Consumer Financial Protection, “Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z).”

This action regulates prepaid cards, including requirements for disclosures, liability and error resolution, and statements, and adds new requirements regarding the posting of account agreements. The rule also dictates overdraft credit features that may be offered in conjunction with prepaid accounts.

Annual Cost: Not quantified

December 5, 2016: Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA), “Commercial Driver’s License Drug and Alcohol Clearinghouse.”

This rule establishes a database of drug and alcohol violations of commercial drivers.

One-time cost: \$152 million

December 5, 2016: Federal Deposit Insurance Corporation, “Recordkeeping for Timely Deposit Insurance Determination.”

This rule requires large depository institutions to (1) configure its information technology system to be capable of calculating the insured and uninsured amount in each deposit account by ownership right and capacity, and (2) maintain information to determine deposit insurance coverage with respect to each deposit account.

Annual Cost: \$79.6 million

One-time Cost: \$362 million

December 8, 2016: Department of Transportation, “Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators.”

This rule sets new training standards for first-time applicants for a commercial driver’s license (CDL), for upgrading a CDL, and for obtaining endorsement for transporting hazardous materials or passengers.

Annual Cost: \$389 million

December 12, 2016: Environmental Protection Agency, “Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018.”

This rule sets the annual percentages of cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuels required to be added to vehicle gasoline and diesel produced or imported in 2017.

Annual Cost: \$1.1 billion

December 12, 2016: Environmental Protection Agency, “Formaldehyde Emission Standards for Composite Wood Products.”

This rule sets emission standards for formaldehyde in hardwood plywood, medium-density fiberboard, and particleboard, and finished goods containing these products. The rule also includes testing requirements, product labeling, chain of custody documentation and other recordkeeping requirements; establishes a third-party certification program for hardwood plywood, medium-density fiberboard, and particleboard; and includes procedures for the accreditation of third-party certifiers and general requirements for accreditation bodies and third-party certifiers.

Annual Cost: \$59.7 million

December 16, 2016: Commodity Futures Trading Commission (CFTC), “Aggregation of Positions.”

This action amends the CFTC’s policies on aggregation for futures and option contracts on nine agricultural commodities.

Annual Cost: \$1.1 million

December 20, 2016: Department of Agriculture, “Scope of Sections 202(a) and (b) of the Packers and Stockyards Act.”

This action clarifies that not all violations of the Packers and Stockyards Act require a showing of harm or likely harm to competition. Specifically, the scope of sections 202(a) and (b) of the act encompasses prohibited conduct or actions without a finding of harm or likely harm to competition.

Annual Cost: \$52.9 million

December 22, 2016: Department of Health and Human Services: Patient Protection and Affordable Care Act, “HHS Notice of Benefit and Payment Parameters for 2018; Amendments to Special Enrollment Periods and the Consumer Operated and Oriented Plan Program.”

This rule sets payment parameters and provisions related to the risk-adjustment program and cost-sharing parameters. It also provides guidance relating to standardized options, qualified health plans, the Small Business Health Options Programs, and the medical loss ratio program.

Annual Cost: Not quantified

December 30, 2016: Department of the Treasury, “Industrial and Commercial Metals.”

This rule prohibits national banks and federal savings associations from dealing or investing in industrial or commercial metals.

Annual Cost: Not quantified

January 6, 2017: Department of Energy, “Energy Conservation Standards for Residential Central Air Conditioners and Heat Pumps.”

This rule tightens the energy conservation standards for residential central air conditioners and heat pumps.

Annual Cost: \$741 million

One-time Cost: \$342.6 million

January 9, 2017: Department of Labor, “Occupational Exposure to Beryllium.”

This rule establishes exposure limits of beryllium. It also sets requirements for exposure assessment, methods for controlling exposure, respiratory protection, personal protective clothing and equipment, housekeeping, medical surveillance, hazard communication, and recordkeeping.

Annual Cost: \$76.6 million

January 13, 2017: Environmental Protection Agency, “Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act.”

This action amends requirements for the accident prevention program, including additional analysis of safer technology and alternatives as part of the process hazard assessment; third-party audits and incident investigations; enhancements to the emergency-preparedness requirements; and increased public availability of chemical-hazard information.

Annual Cost: \$131.8 million

January 18, 2017: Department of Energy, “Energy Conservation Standards for Dedicated-Purpose Pool Pumps.”

This rule tightens energy conservation standards for dedicated-purpose pool pumps.

Annual Cost: \$138 million

January 19, 2017: Department of Energy, “Energy Conservation Standards for Ceiling Fans.” This rule tightens the energy-conservation standards for ceiling fans.

Annual Cost: \$245 million

January 19, 2017: Department of Health and Human Services, “Federal Policy for the Protection of Human Subjects.”

This rule strengthens protections of human research subjects.

Annual Cost: \$67 million

January 19, 2017: Department of Agriculture: “National Organic Program (NOP); Organic Livestock and Poultry Practices.”

This rule sets new requirements under the National Organic Program for livestock handling and transport, as well as avian living conditions. It also expands requirements for livestock care and production practices.

Annual Cost: \$29.2 million