Backgrounder

Published by The Heritage Foundation

No. 2510
January 27, 2011

Rolling Back Red Tape: 20 Regulations to Eliminate

Diane Katz

Abstract: *As the new Congress assembles, many legislators are considering how to lessen the regulatory burden on Americans. President Obama, too, now says that he wants to root out unnecessary government rules. With regulatory costs at record levels, relief is sorely needed. But it is not enough to talk about fewer regulations. Policymakers must critically review specific rules and identify those that should be abolished. This paper details 20 unnecessary and harmful regulations that should be eliminated now.*

Americans are besieged by regulations. At every level, government intrudes into citizens' lives with a torrent of do's and don'ts that place an unsustainable burden on the economy and erode Americans' most fundamental freedoms. In fiscal year (FY) 2010 alone, the Obama Administration unleashed regulations that will cost more than $26.5 billion annually,[1] and many more are on the way. These rules cover a broad swath of American life: Fifteen of the 43 major rules issued during the fiscal year arose from the regulatory crackdown on the finance sector in the Wall Street Reform and Protection Act (Dodd–Frank) and similar lawmaking. Another five stemmed from the Patient Protection and Affordable Care Act (PPACA) adopted by Congress in early 2010. Ten others came from the Environmental Protection Agency (EPA), including the first mandatory reporting of "greenhouse gas" emissions and $10.8 billion in new automotive fuel economy standards.

Talking Points

- Regulatory burdens are hindering job growth, investment, and innovation, while eroding fundamental freedoms in America.
- Policymakers in Congress and the executive branch must do more than prevent harmful new regulations from taking effect. They must also eliminate unnecessary rules already on the books.
- It is easy to talk about abolishing harmful rules, but success requires identifying specific rules to abolish.
- This paper offers a list of 20 specific rules that Congress should eliminate now.

This paper, in its entirety, can be found at:
http://report.heritage.org/bg2510

Produced by the Thomas A. Roe Institute for Economic Policy Studies

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002–4999
(202) 546-4400 • heritage.org

In total, regulations now extract some $1.75 trillion a year from the economy, according to a recent report from the federal government's own Small Business Administration.[2] Little different from taxes, regulations raise the price of almost every product and service, while also inhibiting the capital investment and job creation needed to keep the nation's economy strong.

This regulatory tide must be reversed. Policymakers should not just prevent harmful new regulations, but must repeal costly and unnecessary rules already on the books. Such action can be undertaken by the new Congress, or by regulators themselves. In fact, President Obama recently pledged a government-wide review of rules to determine which should be "modified, streamlined, expanded, or repealed." Below are 20 such rules that should be eliminated:

1. The Individual Health Insurance Mandate

Discussion. The "individual mandate,"[3] slated to take effect in 2014, is the cornerstone of the Patient Protection and Affordable Care Act. The PPACA requires U.S. citizens to obtain health insurance or face financial penalties imposed by the Internal Revenue Service—a fine that escalates from $95 or 1 percent of taxable income in 2014 to $695 or 2.5 percent of taxable income in 2016. Subsidies to purchase coverage will be provided to those who meet generous income-eligibility requirements.

Experience with similar schemes at the state level indicates that the individual mandate will not solve the dilemmas created by the uninsured. The subsidies required to fulfill the mandate will impose a massive economic burden on taxpayers. But the most pernicious effects extend well beyond the economic. Never before has the federal government attempted to force Americans to purchase a product or service, and a multitude of legal challenges have been filed.[4] To allow this regulatory overreach to stand would undermine fundamental constitutional constraints on government powers, and curtail individual liberties to an unprecedented degree.

Recommended Action. Repeal. Until that occurs, Congress should use its appropriations power to prohibit the expenditure of funds to enforce the mandate.

Relevant Reading.

- Robert E. Moffit, "Obamacare and the Individual Mandate: Violating Personal Liberty and Federalism," Heritage Foundation *WebMemo* No. 3103, January 18, 2011, at *http://www.heritage.org/Research/Reports/2011/01/Obamacare-and-the-Individual-Mandate-Violating-Personal-Liberty-and-Federalism*.
- Randy Barnett, Nathaniel Stewart, and Todd Gaziano, "Why the Personal Mandate to Buy Health Insurance Is Unprecedented and Unconstitutional," Heritage Foundation *Legal Memorandum* No. 49, December 9, 2009, at *http://www.heritage.org/Research/Reports/2009/12/Why-the-Personal-Mandate-to-Buy-Health-Insurance-Is-Unprecedented-and-Unconstitutional*.
- Conn Carroll, "White House Admits Obamacare's Individual Mandate is a Tax," Heritage Foundation *Foundry* blog, July 20, 2010, at *http://blog.heritage.org/?p=39250*.

1. James L. Gattuso, Diane A. Katz, and Stephen Keen, "Red Tape Rising: Obama's Torrent of New Regulation," Heritage Foundation *Backgrounder* No. 2482, October 26, 2010, at *http://www.heritage.org/Research/Reports/2010/10/Red-Tape-Rising-Obamas-Torrent-of-New-Regulation*.
2. Nicole V. Crain and W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," Small Business Administration *Research Summary* No. 371, September 2010, at *http://www.sba.gov/advo/research/rs371.pdf* (January 19, 2011).
3. Patient Protection and Affordable Care Act (Public Law 111–148), March 23, 2010, Chapter 48: "Maintenance of Minimum Essential Coverage," at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ148.111.pdf* (January 19, 2011).
4. Robert Alt and Todd Gaziano, "Judge Rules Obamacare Mandate Goes Beyond Letter and Spirit of the Constitution," Heritage Foundation *Foundry* blog, December 13, 2010, at *http://blog.heritage.org/2010/12/13/judge-rules-obamacare-mandate-goes-beyond-letter-and-spirit-of-the-constitution/*.

2. The Employer Health Insurance Mandate

Discussion. The "employer mandate,"[5] slated for 2014, is also a key element of the PPACA. It requires companies with 50 or more employees to provide health benefits or face a penalty of $2,000 per employee.

The employer mandate already shows signs of prompting unintended consequences. A number of major corporations are considering dropping health care coverage—the premiums for which are escalating under other provisions of the law—in favor of paying the penalty. Either way, the employer mandate constitutes a major new tax on business, the costs of which will be borne by workers and consumers in the form of lower wages, job losses, and higher prices for goods and services.

Recommended Action. Repeal. Instead of keeping the employer mandate, policymakers should eliminate inequitable treatment of health benefits in the tax system, improve Medicare and Medicaid, and expand customized solutions by states.

Relevant Reading.

- James Sherk and Robert A. Book, "Employer Health Care Mandates: Taxing Low-Income Workers to Pay for Health Care," Heritage Foundation *WebMemo* No. 2552, July 21, 2009, at *http://www.heritage.org/Research/Reports/2009/07/Employer-Health-Care-Mandates-Taxing-Low-Income-Workers-to-Pay-for-Health-Care*.
- Vivek Rajasekhar, "Side Effects: Let the Employer Penalties Begin," Heritage Foundation *Foundry* blog, May 4, 2010, at *http://blog.heritage.org/?p=32714*.

3. Insurer Coverage Mandates

Discussion. The new health care statute imposes a multitude of coverage dictates on private insurers,[6] including coverage for dependent children through the age of 26; no co-pays or deductibles for preventive services; no coverage exclusions for pre-existing conditions; no annual or lifetime limits on coverage; and a prescribed share of premium revenues that must be devoted to patient care expenses. Beginning in 2014, the law also requires that the following services be included in a basic plan: "ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care."[7]

Taken together, these coverage mandates will substantially raise the cost of insurance, and denying consumers and employers opportunities to customize affordable coverage. The insurance mandates also impose a rigid standard of care that will prove less flexible in adapting to advances in medicine and the changing needs of patients.

Recommended Action. Repeal. Until that occurs, Congress should use its appropriations power to prohibit the expenditure of funds to enforce the mandate.

Relevant Reading.

- Kathryn Nix, "Government Intervention in Health Care Increases Costs," Heritage Foundation *Foundry* blog, October 21, 2010, at *http://blog.heritage.org/?p=45329*.

4. Consumer Financial Protection Bureau Regulations

Discussion. The Consumer Financial Protection Bureau, to be established pursuant to the Dodd–Frank financial regulation bill,[8] will wield ill-defined powers to create and enforce regulations on all manner of consumer-oriented financial products, including loans, mortgages, and credit cards. Although ensconced within the Federal Reserve, the bureau will act independently.

5. PPACA (Public Law 111–148), Chapter 48.
6. PPACA (Public Law 111–148), Chapter 48.
7. PL 111-148 § 1302(b)(1).
8. See Title X—Bureau of Consumer Financial Protection, in Dodd–Frank Wall Street Reform and Consumer Protection Act, at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ203.111.pdf* (January 19, 2011).

The bureau is charged with protecting consumers from "unfair, deceptive and abusive" business practices. These terms are vague. While "unfair" and "deceptive" have been defined in other contexts (such as Federal Trade Commission regulation), the word "abusive" is almost completely undefined and would thus grant the bureau an inordinate amount of regulatory discretion.

At the same time, a regulatory crackdown on the terms and conditions of financial products will ultimately reduce the options available to consumers. For many consumers, especially those with lower incomes or impaired credit histories, this will make credit more expensive and harder to obtain.

The bureau's independent status is also problematic. Lacking accountability and seemingly any direct understanding of how its actions could affect the industry's financial viability, the new bureau is far more likely to act in arbitrary fashion, swayed by the whims of the political appointees who will wield the regulatory power. That means a lot less of the regulatory certainty that otherwise engenders private-sector investment and job growth.

Recommended Action. Repeal. If not repealed, this new agency will wield far-reaching and vague regulatory powers, as well as lack accountability.

Relevant Reading.

- James Gattuso, Todd Zywicki, Alex Pollock, and David C. John, "Protecting Consumers in the Financial Marketplace: Thinking Outside the Boxes," Heritage Foundation *Lecture* No. 1151, April 2, 2010, at *http://www.heritage.org/Research/Reports/2010/04/Protecting-Consumers-in-the-Financial-Marketplace-Thinking-Outside-the-Boxes*.
- David C. John, "How to Protect Consumers in the Financial Marketplace: An Alternate Approach," Heritage Foundation *Backgrounder* No. 2314, September 8, 2009, at *http://www.heritage.org/Research/Reports/2009/09/How-to-Protect-Consumers-in-the-Financial-Marketplace-An-Alternate-Approach*.
- Todd J. Zywicki, "Let's Treat Borrowers Like Adults: The Problems with a Financial Products Safety Panel," *The Wall Street Journal*, July 8, 2009, at *http://online.wsj.com/article/SB124701284222009065.html* (January 19, 2011).

5. Debit Card Interchange Fees ("Durbin Amendment")

Discussion. The new financial reform law requires the Federal Reserve to regulate the fees that financial institutions may charge retailers for processing debit card purchases. The statute calls for such "interchange" fees to be "reasonable" and "proportional" to the cost of processing debit card transactions[9]—whatever that is.

The prospect of more costly debit card transactions is already prompting financial institutions to hike fees on a variety of credit instruments.[10] Consumers also are likely to face higher interest rates and reduced credit options.

Recommended Action. Repeal. The Durbin Amendment unnecessarily interferes with free enterprise and reduces consumer protections and choices.

Relevant Reading.

- "The Reduced Credit Act," *The Wall Street Journal*, May 20, 2010, at *http://online.wsj.com/article/SB10001424052748703315404575250563499231670.html* (January 21, 2011).
- Todd Zywicki, "Durbin Regulations Are Aimed at Your Wallet," *The Washington Times*, June 2, 2010, at *http://mercatus.org/media_clipping/zywicki-durbin-regulations-are-aimed-your-wallet* (January 19, 2011).

6. Proxy Access Rules

Discussion. Proxy access regulations,[11] also from the Dodd–Frank law, require firms to include

9. Sec. 920. Reasonable Fees and Rules for Payment Card Transactions, in Dodd–Frank Wall Street Reform and Consumer Protection Act, at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ203.111.pdf* (January 19, 2011).
10. Jessica Silver-Greenberg, "Don't Look Now, But Here Come the New, New Bank Fees," *The Wall Street Journal*, November 6, 2010, at *http://online.wsj.com/article/SB10001424052748703778304575590823786685984.html* (January 19, 2011).

board nominations (and proposed ousters) submitted by either an individual shareholder or shareholder group in the proxy materials they assemble and distribute.

At its most fundamental, this regulation presumes that government regulators know better than corporate officers and shareholders how to establish governance procedures. Rather than allow corporate officers and shareholders to customize procedures to their unique circumstances, the proxy access dictate ignores the vast differences among firms.

Proponents claim the new rules will enhance shareholders' rights. But there is no constitutional right to proxy access. Instead, the rule undermines the state law rights of shareholders to establish corporate governance procedures. The real beneficiaries of the regulation are activists and special interest groups who will be able to manipulate proxy access to focus attention on social and political causes at the expense of the legitimate business concerns of the stockholders. It will also make it easier for predator takeover groups to demand that the company purchase their stock holdings at a high premium or the company will face a hostile takeover attempt.

The rules already have prompted litigation, and they also invite habitual meddling by regulators in the access disputes that inevitably will arise.

Recommended Action. Repeal. Proxy access rules benefit special interest groups at the expense of stockholders, and unnecessarily obstruct corporate governance.

Relevant Reading.

- J. W. Verret and Stefanie Haeffele-Balch, "Corporate Voting: A Pandora's Ballot Box or a Proxy with Moxie?" Mercatus Center *Mercatus on Policy* No. 63, November 2009, at *http://mercatus.org/publication/corporate-voting* (January 19, 2011).
- Commissioner Kathleen L. Casey, U.S. Securities and Exchange Commission, "Statement at Open Meeting to Adopt Amendments Regarding Facilitating Shareholder Director Nominations," August 25, 2010, Washington, D.C., at *http://www.sec.gov/news/speech/2010/spch082510klc.htm* (January 19, 2011).

7. Credit Card Regulation

Discussion. The Credit Card Accountability, Responsibility and Disclosure Act of 2009 (CARD Act)[12] imposes federal restrictions on the terms and conditions of credit card services by (a) limiting when interest rates may be increased on existing balances; (b) requiring financial institutions to lower the interest rates of consumers whose rates had been increased when they pay their bills on time for six months; (c) requiring a 45-day notice period for significant changes in credit card terms; (d) mandating a 21-day pay period for credit card bills; (e) prohibiting assessment of over-limit fees unless the cardholder allows the transactions; and (f) requiring gift cards and gift certificates to remain valid for no fewer than five years.

By restricting the ability of financial firms to cover credit risks, the regulations have already caused higher interest rates and annual fees and lower credit limits, especially for moderate income borrowers. These actions further diminish the access to credit that is necessary for small business investment and job growth. As noted by bank analyst Meredith Whitney,[13] "Small businesses primarily fund themselves through credit cards and loans from local lenders… Those same consumers that regulators are trying to help are actually being hurt by a vast reduction in available credit."

Recommended Action. Repeal. The CARD Act harms consumers more than it protects them.

Relevant Reading.

- James Gattuso, "Credit Card Regs No Credit to Congress," Heritage Foundation *Foundry* blog, February 22, 2010, at *http://blog.heritage.org/*

11. Sec. 971. Proxy Access, in Dodd–Frank Wall Street Reform and Consumer Protection Act, at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ203.111.pdf* (January 19, 2011).
12. Credit Card Accountability, Responsibility, and Disclosure Act of 2009, at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ024.111.pdf* (January 19, 2011).
13. Meredith Whitney, "The Credit Crunch Continues," *The Wall Street Journal*, October 1, 2009, at *http://online.wsj.com/article/SB10001424052748704471504574445470989162030.html* (January 19, 2011).

?p=26994?query=Credit+Card+Regs+No+Credit+to+Congress (January 19, 2011).

- John Berlau, "Credit CARD Act Penalizes Thrift and Entrepreneurship," Competitive Enterprise Institute, February 22, 2010, at *http://cei.org/news-releases/credit-card-act-penalizes-thrift-and-entrepreneurship* (January 19, 2011).

8. Phase-Out of Incandescent Light Bulbs

Discussion. The Energy Independence and Security Act of 2007 imposed stringent efficiency requirements that effectively phase out the incandescent bulbs[14] on which the world has relied for more than a century.

Proponents of the phase-out tout the supposed energy-saving attributes of costly compact fluorescent bulbs. LED lighting is also gaining favor. But rather than eliminate incandescent bulbs, consumers ought to have a choice among all types of lighting the market has to offer. Consumer choice and competition will ultimately determine the type of bulbs best suited for various applications and family budgets.

The light bulb regulation is also a job-killer, leading to the closure of the last American light bulb factory.[15] (The vast majority of fluorescent bulbs are manufactured in China.)

Recommended Action. Repeal. Light bulb regulation is an unnecessary dictate that raises lighting costs and limits consumer choice.

Relevant Reading.

- Nicolas D. Loris, "Government's Light Bulb Ban Is Just Plain Destructive," Heritage Foundation *WebMemo* No. 3024, September 23, 2010, at *http://www.heritage.org/Research/Reports/2010/09/Governments-Light-Bulb-Ban-Is-Just-Plain-Destructive*.
- Deroy Murdock, "The All-American Light Bulb Dims as Freedom Flickers," National Review Online, July 2, 2010, at *http://www.nationalreview.com/articles/243383/all-american-light-bulb-dims-freedom-flickers-deroy-murdock* (January 19, 2011).

9. Appliance Energy Standards

Discussion. During the past three decades, Congress has imposed a multitude of energy efficiency standards[16] for a host of appliances, including:

- Battery chargers and external power supplies
- Ceiling fans and ceiling-fan light kits
- Central air conditioners and heat pumps
- Clothes washers and dryers
- Cooking products
- Dehumidifiers
- Direct heating equipment
- Dishwashers
- Furnace fans
- Furnaces and boilers
- Fluorescent and incandescent lamps
- Fluorescent lamp ballasts
- Plumbing products
- Pool heaters
- Refrigerators and freezers
- Air conditioners
- Torchieres
- Water heaters

In effect, efficiency standards allow the government to control how Americans clean their clothes, cook their food, wash their dishes, and light, heat, and cool their homes. No longer do consumers exercise the freedom to balance appliance performance against cost. In many cases, the efficiency standards increase the price of appliances by more than consumers will recoup from energy savings.[17]

14. Section 322. Incandescent Reflector Lamp Efficiency Standards, in Energy Independence and Security Act of 2007, at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h6enr.txt.pdf* (January 19, 2011).
15. David Kreutzer, "The Clean Energy Future Looks Dim for Light Bulb Workers," Heritage Foundation *Foundry* blog, September 9, 2010, at *http://blog.heritage.org/?p=42597*.
16. For example, the Energy Policy and Conservation Act of 1975; the National Energy Conservation Policy Act of 1978; the National Energy Conservation Act of 1978; and the Energy Policy Act of 1992.

Taxpayers also pay heavily through tax credits provided to manufacturers for producing energy-efficient appliances. Depending on the efficiency of the model and the date of manufacture, dishwasher manufacturers can claim a tax credit of $45 to $75 for every new unit.[18] The credit for residential or commercial clothes washers ranges from $75 to $250 per unit, and for refrigerators from $50 to $200 per unit.

It is also worth noting that consumers actually increase energy consumption when the cost of using electricity declines (i.e., greater efficiency). And, by forcing R&D to focus on energy efficiency, investment in other product innovations suffers.

Recommended Action. Repeal. Energy efficiency standards increase appliance costs and reduce consumer choice.

Relevant Reading.

- Nicolas Loris, "Today's Calamity: Energy Efficiency is Good—Except When It's Not," Heritage Foundation *Foundry* blog, September 3, 2009, at *http://blog.heritage.org/?p=14085*.
- Ben Lieberman, "An Annoying Regulation for Every Room in the House," OpenMarket.org, September 24, 2010, at *http://www.openmarket.org/2010/09/24/an-annoying-regulation-for-every-room-in-the-house* (January 19, 2011).

10. Corporate Average Fuel Economy (CAFE) Standards

Discussion. New fuel efficiency standards[19] set by the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency require automakers to attain a fleet-wide average fuel economy level of 34.1 mpg by model year 2016[20] for passenger cars, light-duty trucks, and medium-duty passenger vehicles. The new regulation—running some 300 pages—will dictate specific fuel efficiency standards by model type, weighted by sales volume. This will require significantly greater investment in re-engineering.

Justification for CAFE has evolved over time, from ending "dependence on foreign oil" to reducing air pollution to mitigating global warming. No matter the intent, problems with the regulation abound. To the extent that the standards increase sticker prices,[21] consumers are more likely to continue using older, less fuel efficient vehicles. A host of research also documents that increased fuel efficiency, by lowering the cost of driving, actually increases travel—thereby negating at least some of the supposed environmental effects.[22] CAFE standards also have undercut the domestic auto industry by forcing production of unprofitable (and less popular) small cars in order to offset the fuel efficiency ratings of larger, more profitable models. But most troublesome of all is the fact that CAFE stan-

17. Ronald J. Sutherland, "The High Costs of Federal Energy Efficiency: Standards for Residential Appliances," Cato Institute *Policy Analysis* No. 504, December 23, 2003, at *http://www.cato.org/pub_display.php?pub_id=1362* (January 19, 2011).
18. Internal Revenue Service, "Manufacturers' Energy Efficient Appliance Credit," March 31, 2010, at *http://www.irs.gov/businesses/corporations/article/0,,id=208024,00.html* (January 19, 2011).
19. "Environmental Protection Agency and Department of Transportation, National Highway Traffic Safety Administration: Light-Duty Vehicle Greenhouse Gas Emissions Standards and Corporate Average Fuel Economy Standards, Final Rule," *Federal Register*, Vol. 75, No. 88 (May 7, 2010), p. 25,324.
20. At the same time, the EPA has established a slightly more stringent fuel efficiency standard (35.5 mpg) to limit emissions of carbon dioxide, which are directly related to the amount of fuel burned. However, because the EPA will award emissions reduction credits for improvements to air conditioning systems—credits that NHTSA is barred from awarding—the two standards are equivalent.
21. The NHTSA estimates the fuel efficiency standards will increase vehicle cost by $434 in model year 2012 and up to $926 per vehicle in model year 2016. See NHTSA, "NHTSA and EPA Establish New National Program to Improve Fuel Economy and Reduce Greenhouse Gas Emissions for Passenger Cars and Light Trucks," April 1, 2010, at *http://www.nhtsa.gov/staticfiles/rulemaking/pdf/cafe/CAFE-GHG_Fact_Sheet.pdf* (January 19, 2011).
22. "2012–2016 Corporate Average Fuel Economy Compliance and Effects Modeling System Documentation," U.S. Department of Transportation National Highway Traffic Safety Administration, March 2010, at *http://www.nhtsa.gov/staticfiles/rulemaking/misc/volpe/CAFE_Model_Documentation_March_2010.pdf* (January 19, 2011).

dards have resulted in tens of thousands of deaths by constraining production of larger, more protective vehicles.[23]

Recommended Action. Repeal. The fuel economy standards set by the NHTSA and the EPA should be repealed, along with the agency's authority to set standards in the future.

Relevant Reading.

- Nicolas Loris, "EPA's Fuel Efficiency Standards: Bad News for the Consumer," Heritage Foundation *Foundry* blog, April 2, 2010, at *http://blog.heritage.org/2010/04/02/epa%e2%80%99s-fuel-efficiency-standards-bad-news-for-the-consumer/*.
- Sam Kazman, "Automobile Fuel Economy Standards," Competitive Enterprise Institute, July 17, 2008, at *http://cei.org/studies-other-studies/automobile-fuel-economy-standards* (January 19, 2011).

11. The EPA Endangerment Finding

Discussion. The basis for the EPA's regulation of carbon dioxide is the agency's "finding"[24] that so-called greenhouse gases are "air pollutants" actionable under the Clean Air Act. In the 2007 case *Massachusetts v. EPA*, the U.S. Supreme Court ruled that such gases do fall under agency purview and within the scope of the act—legislative history to the contrary.

The EPA has acknowledged[25] that the endangerment finding and concomitant regulations will, for the first time, impose costly requirements on millions of businesses and other "facilities," including apartment buildings, office buildings, even churches. Farmers also will be entangled in the costly regulations. Overall, cumulative gross domestic product losses could reach nearly $7 trillion by 2029, and annual job losses could exceed 800,000 in several years.[26]

Aside from being costly, the "finding" is factually wrong. There is no scientific consensus on the theory of anthropogenic climate change, and significant evidence to the contrary exists. The agency's endangerment "finding" is all the more suspect given evidence of alleged fraud and deception in the very source documents the agency relied upon to reach its conclusions.[27]

Recommended Action. Rescind. Congress should prohibit the EPA (or any other agency) from regulating carbon dioxide (or other so-called greenhouse gases). Pending that step, lawmakers should withhold any and all funding related to such regulations, and prohibit expenditures on the same.

Relevant Reading.

- Nicolas D. Loris, "How the 'Scientific Consensus' on Global Warming Affects American Business—and Consumers," Heritage Foundation *Backgrounder* No. 2479, October 26, 2010, at *http://www.heritage.org/research/reports/2010/10/how-the-scientific-consensus-on-global-warming-affects-american-business-and-consumers.*
- David W. Kreutzer and Karen A. Campbell, "CO_2-Emission Cuts: The Economic Costs of the EPA's ANPR Regulations." Heritage Foundation Center for Data Analysis Report No. CDA08-10, October 29, 2008, at *http://www.heritage.org/Research/Reports/2008/10/CO2-Emission-Cuts-The-Economic-Costs-of-the-EPAs-ANPR-Regulations.*

23. National Academy of Sciences, "Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards," 2002, at *http://www.nhtsa.gov/cars/rules/cafe/docs/162944_web.pdf* (January 19, 2011).
24. "Environmental Protection Agency: Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, Final Rule," *Federal Register*, Vol. 74, No. 239 (December 15, 2009), p. 66,496.
25. Ben Lieberman, "Small Business Impact of the EPA Endangerment Finding," Heritage Foundation *WebMemo* No. 2766, January 20, 2010, at *http://www.heritage.org/Research/Reports/2010/01/Small-Business-Impact-of-the-EPA-Endangerment-Finding*.
26. David W. Kreutzer and Karen A. Campbell, "C0$_2$-Emissions Cuts: The Economic Costs of the EPA's ANPR Regulations," Heritage Foundation *Center for Data Analysis Report* No. CDA08-10, October 29, 2008, at *http://www.heritage.org/Research/Reports/2008/10/CO2-Emission-Cuts-The-Economic-Costs-of-the-EPAs-ANPR-Regulations*.
27. Ben Lieberman, "'Climategate' Should Derail Copenhagen Climate Conference," Heritage Foundation *Commentary*, January 7, 2010, at *http://www.heritage.org/Research/Commentary/2010/01/Climategate-Should-Derail-Copenhagen-Climate-Conference*.

12. The "Tailpipe Rule"

Discussion. The EPA's new limits[28] on carbon dioxide emissions require automakers to achieve a fleet-wide average of 50 grams of CO_2 per mile by 2016 for passenger cars, light-duty trucks, and medium-duty passenger vehicles. Emissions of carbon dioxide are directly related to the volume of fuel burned. Consequently, the emissions standard equates to a fuel efficiency standard of 35.5 mpg.[29]

The EPA estimates that the crackdown on tailpipe emissions will add about $1,000 to sticker prices by 2016. Consumers are thus more likely to hold on to older, more polluting cars. Whether consumers will realize cost savings from greater fuel efficiency is questionable, depending on a host of variables, including vehicle type, local temperatures, and driving habits. Having established the emissions restrictions on mobile sources, the agency is now authorized to impose CO_2 controls on all manner of "stationary" sources, ranging from the corner bakery to office buildings.

Recommended Action. Repeal. The mandates imposed by the EPA should be repealed, along with the agency's authority to set standards in the future.

Relevant Reading.

- Nicolas D. Loris, "The EPA's Global Warming Regulation Plans," Heritage Foundation *WebMemo* No. 2768, January 20, 2010, at *http://www.heritage.org/Research/Reports/2010/01/The-EPAs-Global-Warming-Regulation-Plans*.

13. The Renewable Fuel Standard

Discussion. The Renewable Fuel Standard (RFS) constitutes national quotas[30] on the volume of "renewable fuels," including corn, sugarcane and cellulosic ethanol, bio-diesel, and biomass that must be blended into transportation fuel. The 2010 RFS has been set at 12.95 billion gallons, and is slated to increase to 36 billion gallons by 2022. For the first time, quotas have been established for specific categories of renewable fuels based on projected reductions of greenhouse gas emissions. Of particular note, the EPA raised the cap on ethanol, a fuel that is more costly, less efficient, and more polluting than gasoline.

The RFS represents a massive subsidy by consumers for the "renewables" industry—in the absence of which there is little demand for more costly fuel blends. Moreover, government dictates on the nation's fuel mix are driven by political considerations more than environmental or economic outcomes. For example, the artificial demand created by the quotas, in conjunction with subsidies, creates powerful incentives to convert sensitive forest land into agriculture; less productive farmland is also being cultivated with increased use of agricultural chemicals. Shifting farmland from food crops to corn for renewables is projected to increase food costs by $10 per person per year—or $40 for a family of four, according to the EPA.

Recommended Action. Rescind. Congress should also revoke the EPA's authority to set such renewable fuel standards in the future.

Relevant Reading.

- Ben Lieberman, "The Ethanol Mandate—EPA Moves Ahead with Higher Energy and Food Prices and a Worse Environment," Heritage Foundation *Foundry* blog, May 6, 2009, at *http://blog.heritage.org/?p=6300*.
- Ben Lieberman and Nicolas Loris, "Time to Repeal the Ethanol Mandate," Heritage Foundation *WebMemo* No. 1925, May 15, 2008, at *http://www.heritage.org/Research/Reports/2008/05/Time-to-Repeal-the-Ethanol-Mandate*.

28. "Environmental Protection Agency and Department of Transportation, National Highway Traffic Safety Administration: Light-Duty Vehicle Greenhouse Gas Emissions Standards and Corporate Average Fuel Economy Standards, Final Rule," *Federal Register*, Vol. 75, No. 88 (May 7, 2010), p. 25,324.
29. At the same time, the National Highway Traffic Safety Administration has established a slightly less stringent fuel efficiency standard (34.1 mpg). Because the EPA will award emissions reduction credits for improvements to air conditioning systems—credits that NHTSA is barred from awarding—the two standards are equivalent.
30. "Environmental Protection Agency: Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program," *Federal Register*, Vol. 75, No. 58 (March 26, 2010), p. 14,670.

14. The Community Reinvestment Mandates

Discussion. In response to claims of widespread discrimination in lending ("red-lining"), Congress enacted the Community Reinvestment Act (CRA) of 1977, requiring regulated depository institutions to demonstrate that they serve the "convenience and needs" of the communities in which they do business.[31] Under the act, all banking institutions insured by the Federal Deposit Insurance Corporation must undergo an evaluation to determine compliance based on 12 assessment factors.

The CRA is based on the obsolete concept of banks serving only a specific geographic area from brick-and-mortar branches as the only providers of deposit and loan services. For instance, regulators count all online deposits when calculating a bank's lending obligations—even when the online customer lives outside the bank's service area.

The CRA also discourages banks from locating branches in or near lower-income neighborhoods since that will automatically bring that area into the bank's assessment area. As a result, low-income and moderate-income workers may have even less access to needed financial services.

Recommended Action. Repeal. The Community Reinvestment Act unnecessarily interferes in free enterprise and obstructs access to credit.

Relevant Reading.

- Lawrence J. White, "A Flawed Regulatory Concept: The Community Reinvestment Act," Mercatus Center *Mercatus on Policy* No. 54, July 2009, at *http://mercatus.org/publication/flawed-regulatory-concept-community-reinvestment-act* (January 19, 2011).
- Michelle Minton, "The Community Reinvestment Act's Harmful Legacy: How It Hampers Access to Credit," Competitive Enterprise *On Point* No. 132, March 20, 2008, at *http://cei.org/sites/default/files/Michelle%20Minton%20-%20CRA%20-%20FINAL_WEB.pdf* (January 19, 2011).

15. Section 404 Financial Reporting Requirements (Sarbanes–Oxley)

Discussion. The Public Company Accounting Reform and Investor Protection Act of 2002, popularly known as the Sarbanes–Oxley Act, requires publicly traded companies to undertake both internal and external audits of financial reporting systems and submit reports describing the scope and adequacy of its procedures to the Securities and Exchange Commission (and distribute the findings to investors and include it in the firm's annual report).

The regulation was shaped by the accounting failures of Enron and WorldCom, as well as the prosecution and subsequent dissolution of accounting giant Arthur Andersen. According to the Institute of Internal Auditors,[32] Section 404 is intended to provide "a level of comfort with respect to the reliability of future financial statements assuming there is no significant change in the quality of the system of internal control."

However, compliance with Section 404 has imposed significant costs on firms that likely outweigh the benefits of the additional reporting—particularly for smaller companies, and companies of any size that are considering going public. To some extent, this reflects the shift of responsibility for internal financial controls from the chief financial officer to the chief executive officer and the heightened caution in financial oversight. External auditors likewise are questioning every detail of financial accounting, performing far more extensive and complex audits than ever before.

Recommended Action. Repeal. Section 404 of the Sarbanes–Oxley Act greatly increases business costs.

Relevant Reading.

- David C. John and Nancy Marano, "The Sarbanes–Oxley Act: Do We Need a Regulatory or Legislative Fix?" Heritage Foundation *Backgrounder* No. 2035, May 16, 2007, at *http://www.heritage.org/*

31. 12 USC Chapter 30—Community Reinvestment, February 1, 2010, at *http://uscode.house.gov/download/pls/12C30.txt* (January 19, 2011).
32. Institute of Internal Auditors, "Sarbanes–Oxley Section 404: A Guide for Management by Internal Controls Practitioners," January 2008, at *http://www.theiia.org/download.cfm?file=31866* (January 19, 2011).

Research/Reports/2007/05/The-Sarbanes-Oxley-Act-Do-We-Need-a-Regulatory-or-Legislative-Fix.

- Tom Feeney, David C. John, and Alex Pollock, "Reforming Sarbanes–Oxley: How to Restore American Leadership in World Capital Markets," Heritage Foundation *Lecture* No. 995, Feb. 20, 2007, at *http://www.heritage.org/research/lecture/reforming-sarbanes-oxley-how-to-restore-american-leadership-in-world-capital-markets?query=Reforming+Sarbanes-Oxley:+How+to+Restore+American+Leadership+in+World+Capital+Markets*.

16. Network Neutrality

Discussion. On December 21, 2010, the Federal Communications Commission (FCC) adopted network neutrality regulations in defiance of both Congress and a federal appeals court. The new rules restrict how Internet service providers such as Comcast or Verizon manage the digital transmissions flowing through their networks. The new rules would hobble the ability of network owners to efficiently manage traffic flows, as well as chill the investment needed to keep the Internet growing. The end result: a slower and less dynamic Web. In addition, the rules give the government a role in deciding how content is treated on the Web, potentially threatening the free flow of information.

Recommended Action. Rescind. Until the new rules are rescinded, the FCC should be prohibited from spending any appropriated money to enforce the rules. Congress should make clear that the FCC has no authority to impose regulations on the Internet.

Relevant Reading.

- James L. Gattuso, "Red Tape Under the Tree: FCC Plans Internet Regulation for Christmas," Heritage Foundation *WebMemo* No. 3086, December 17, 2010, at *http://www.heritage.org/Research/Reports/2010/12/Red-Tape-Under-the-Tree-FCC-Plans-Internet-Regulation-for-Christmas*.
- James L. Gattuso, "The FCC and Broadband Regulation: What Part of 'No' Did You Not Understand?" Heritage Foundation *WebMemo* No. 2864, April 15, 2010, at *http://www.heritage.org/Research/Reports/2010/04/The-FCC-and-Broadband-Regulation-What-Part-of-No-Did-You-Not-Understand*.

17. FCC Media Ownership Rules

Discussion. The Federal Communications Commission enforces a variety of limits on ownership of media outlets. Among these are a ban on joint ownership of a newspaper and broadcast station in the same market, limits on the number of local stations owned by a network, and limits on the number of stations in a market that can be owned by the same firm. The FCC is required by law to review these rules every four years, and recently started its latest quadrennial review.

Most of these rules are decades old, dating back as far as 1941. The media world, however, has changed dramatically since that time. Rather than rely on a limited number of broadcast stations and newspapers, consumers today enjoy hundreds of channels offered by a multitude of service providers, and—increasingly—virtually unlimited information sources on the Internet. At the same time, many traditional sources of information—newspapers in particular—have lost their dominance, with many facing bankruptcy.

In such a world, ownership restrictions on media outlets make little sense. Any competitive problems that may arise can be addressed under existing antitrust law, enforced by the Department of Justice and the Federal Trade Commission.

Recommended Action. Repeal. Congress should eliminate the cross-ownership rule. Media choice and competition can be protected through antitrust laws.

Relevant Reading.

- James L. Gattuso, "The FCC's Cross-Ownership Rule: Turning the Page on Media," Heritage Foundation *Backgrounder* No. 2133, May 6, 2008, at *http://www.heritage.org/Research/Reports/2008/05/The-FCCs-CrossOwnership-Rule-Turning-the-Page-on-Media*.
- Adam D. Thierer, "The Media Cornucopia," *City Journal*, Spring 2007, at *http://www.city-journal.org/html/17_2_media.html* (January 21, 2011).

18. FCC Merger Review Authority

Discussion. Under current law, the Federal Communications Commission must approve all transfers of radio spectrum licenses and telecommunications operating certificates. For practical purposes, this means that mergers and acquisitions involving broadcasters and telecommunications firms must be approved by the FCC. Such transactions, however, are also thoroughly reviewed by antitrust authorities at either the Federal Trade Commission or the Department of Justice. This redundant review has been defended on the grounds that the standard used by the FCC—whether the merger serves the "public interest, convenience, and necessity"—is different than that applied by antitrust authorities, which is focused on market competition.

In most cases, however, the primary issue in the FCC review, despite the different standard, is consumer choice and competition. This makes the FCC's review redundant; it does not add anything to the analysis of antitrust authorities. It does impose delays on time-sensitive business transactions.

While the "public interest" standard does allow the FCC to consider broader issues than competition, what exactly those issues are is ambiguous. While concepts such as "diversity" and "universal service" have been cited, the "public interest" standard itself is notoriously vague and arbitrary. As a result, the FCC wields almost unlimited discretion in reviewing mergers, which allows the agency to use merger review to promote its own pet causes. Although mergers are rarely rejected outright, the FCC frequently imposes extensive conditions on a merger, routinely including service restrictions or mandates only tangentially related to the merger.

Most recently, for example, the FCC considered the proposed merger of Comcast and NBC. Even though the two firms largely do not compete against each other, the commission only approved the merger with an extensive list of conditions regulating Comcast operations

Recommended Action. Rescind. Congress should restrict the FCC's authority to review license transfers to a simple confirmation that the new licensee is eligible to hold the license.

Relevant Reading.

- James Gattuso, "Comcast–NBC: Why is the FCC Involved?" Heritage Foundation *Foundry* blog, December 4, 2009, at *http://blog.heritage.org/?p=21199*.
- Jim Harper, "The Lesson of the XM/Sirius Merger," Cato Institute *TechKnowledge* No. 119, August 15, 2008, at *http://www.cato.org/pub_display.php?pub_id=11454* (January 19, 2011).
- Randy May, "The FCC Risks Over-Conditioning the Comcast–NBCU Merger," *The Daily Caller*, January 3, 2011, at *http://dailycaller.com/2011/01/03/the-fcc-risks-over-conditioning-the-comcast-nbcu-merger/* (January 19, 2011).

19. Dairy Price Controls

Discussion. U.S. consumers pay inflated prices for dairy products due to a variety of federal programs that manipulate the supply and demand of dairy products. The Department of Agriculture, for example, issues "Milk Marketing Orders" that set the milk prices processors must pay based on the products they make. Dairy farmers in each of the 10 government-drawn regions then split the proceeds—effectively constituting a cartel.

To maintain demand for dairy products—and thus higher prices—the government also purchases cheese, butter, and nonfat dry milk through its Price Support Program. The program adds up to a huge wealth redistribution from consumers and taxpayers to dairy farmers. Not only are the costs of dairy products higher, but so, too, are the prices for every product made with dairy ingredients.

Recommended Action. Rescind. Eliminate dairy price controls, as well as related subsidies that artificially inflate prices for dairy products and increase the federal budget.

Relevant Reading.

- Sallie James, "Milking the Customers: The High Cost of U.S. Dairy Policies," Cato Institute *Trade Briefing Paper* No. 24, November 9, 2006, at *http://www.freetrade.org/pubs/briefs/tbp-024.pdf* (January 19, 2011).

20. Sugar Protectionism

Discussion. The Byzantine system of price supports and subsidies for domestic sugar production dates to 1789, when the U.S. first imposed tariffs on sugar imports. Tariffs remain in place, along with government-backed loans to sugar processors that require repayment only if the price of sugar exceeds a floor price set by the U.S. Department of Agriculture. Inflated sugar prices are also maintained by production quotas ("marketing allotments"), while in some instances, the government pays processors to dump inventory to reduce supply, thereby maintaining higher prices. Most recently, the 2008 farm bill authorized the government to purchase "excess" sugar imports that otherwise would dilute the market share of domestic suppliers. The "excess" imports are sold—at a loss—to ethanol producers.

These various schemes are responsible for steep declines in U.S. industries that use sugar in their products. They are drawn instead to Canada, where sugar prices are less than half those in the U.S., while they are a third cheaper in Mexico. Consequently, for each job in sugar production "saved" through subsidies and price supports, nearly three confectionary manufacturing jobs are lost as American companies relocate abroad, according to the Department of Commerce.[33]

Recommended Action. Rescind. Eliminate sugar quotas, price controls, subsidies, and tariffs.

Relevant Reading.

- Andre Rougeot, "The Cost of Sugar Subsidies," Heritage Foundation *Foundry* blog, December 6, 2010, at *http://blog.heritage.org/?p=47757*.
- Norbert Michel, "Nothing Sweet About Sugar Subsidies," Heritage Foundation *Commentary*, March 7, 2004, at *http://www.heritage.org/Research/Commentary/2004/03/Nothing-Sweet-About-Sugar-Subsidies*.

*—**Diane Katz** is Research Fellow in Regulatory Policy in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation.*

33. "Employment Changes in U.S. Food Manufacturing: The Impact of Sugar Prices," U.S. Department of Commerce, International Trade Administration, February 2006, at *http://www.trade.gov/mas/ian/build/groups/public/@tg_ian/documents/webcontent/tg_ian_002705.pdf* (January 20, 2011).