

ISSUE BRIEF

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Obama's Regulatory Agenda: Calm Before the Superstorm

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After three years of unprecedented regulatory activity, the Obama Administration has noticeably slowed its rulemaking in recent months. A number of major rules remain under prolonged “review” by the White House, while publication of the regulatory agenda required by statute has not occurred.

This flouting of the law is disturbing enough, but it is made worse by the mounting regulatory uncertainty it has caused. The Administration should come clean about its regulatory intentions by releasing its agenda as required.

Lack of Transparency.

Congress mandated a regulatory agenda from each agency in 1980 under the Regulatory Flexibility Act. The statute calls for release every April and October of a description of all rules likely to have a “significant economic impact” on a substantial

number of small entities. A series of subsequent executive orders extended agenda requirements to all regulations under development or review by some 60 departments, agencies, and commissions.

President Obama has ignored both the April 2012 and October 2012 agenda deadlines. The last agenda released by the Administration, in fall 2011, included a total of 2,676 regulations.

Notice of upcoming regulatory actions is an essential tool of government transparency and accountability. The agenda enables citizens to participate in the rulemaking process, businesses to plan, and Congress to engage in oversight.

The President's neglect of the law contrasts sharply with his promise of an “unprecedented level of openness in government transparency.”¹ The stakes are especially high now because of the hundreds of rules related to Obamacare and the Dodd-Frank financial regulation statute that are yet to be finalized.

A Regulatory Tsunami

Coming? Action on some of the Administration's most ambitious regulations has been postponed, including more restrictive requirements for controlling ozone emissions. As proposed by the Environmental

Protection Agency (EPA), the rule would cost \$90 billion or more annually and, potentially, millions of jobs. However, the President instructed EPA Administrator Lisa Jackson to hold off on the new standards until 2013.

Also on hold are various regulations to control power plant emissions of so-called greenhouse gases that would dramatically increase energy costs, as well as the designation of coal ash as a “hazardous substance”—estimated to cost \$79 billion to \$110 billion and thousands of jobs in Pennsylvania, West Virginia, Missouri, and Ohio.

There is ample reason to believe that this recent “drawback”² of rulemaking portends a regulatory tsunami in the coming year. Of particular note is the large number of proposed regulations that are piling up at the Office of Information and Regulatory Affairs (OIRA), the department within the Office of Management and Budget that reviews proposed and final rules before they are published in the *Federal Register*.

Costly and Overzealous.

According to OIRA data, a whopping 78 percent of the 151 regulations awaiting review have been pending at the office for more than 90 days, thus exceeding the maximum

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time allotted under Executive Order 12866. Another 11 percent have been pending for more than 60 days (but fewer than 90 days).

The EPA is the single largest source of the regulations currently pending at OIRA, with a total of 29. Of those, 27 are designated as “economically significant,” meaning that costs will exceed \$100 million or more annually. Runner-up is Health and Human Services (16), followed by the Department of Labor (11) and the Departments of Energy and Transportation (10).

Among the most costly:

- A Department of Transportation (DOT) rule to require a rear-view camera and video display for all new cars and trucks at an estimated cost of up to \$2.7 billion. The regulation was submitted to OIRA on November 16, 2011.
- A DOT proposal to require “a means of alerting” blind and other pedestrians of approaching hybrid and electric vehicles. The agency has not developed a cost estimate but has concluded that “only beneficial outcomes will occur.” The proposal was submitted to OIRA on May 10, 2012.
- Final revisions to the so-called Boiler MACT rules that impose stricter limits on industrial and commercial boilers and incinerators. The cost of the original rules was pegged at \$9.5 billion by the EPA and \$20 billion by the economic forecasting firm IHS Global Insight (for the Council of Industrial Boiler Owners). The

stringency and cost of the original rules provoked an outpouring of protest and some 5,800 comments citing technical and statutory errors. Ultimately, EPA officials were forced to undertake revisions, which were submitted to OIRA on May 17.

- Proposed limits from the EPA on formaldehyde emissions from hardwood plywood, particleboard, and medium-density fiberboard (replicating standards established by California in 2007). The regulation would also set standards for testing and certification of compliance. Estimates of the regulatory cost exceed \$100 million. The proposal was submitted to OIRA on May 5.
- Proposed energy conservation standards for walk-in coolers and freezers (pending since October 2011) and commercial refrigeration equipment (February 2012), which apply to virtually all refrigerated equipment used in retail food stores—and estimated by the Department of Energy to increase manufacturing costs by \$500 million over four years. Likewise, stricter energy standards for manufactured housing (December 2011) would add \$1,269 to the cost of a multi-section unit and \$889 for a single-section home—increases that would reduce sales of manufactured homes by an estimated 4.8 percent.
- Proposed regulations from the Food and Drug Administration on

the production, harvesting, and packaging of fruits and vegetables, pending since December 9, 2011. The rules would affect more than 300,000 domestic and foreign farmers and packers of fresh produce.

- Department of Labor restrictions on worker exposure to crystalline silica (fine particles of sand common to mining, manufacturing, and construction). The stricter rules, pending since February 14, 2011, cover methods of compliance, exposure monitoring, training, and medical surveillance. One analysis submitted to OIRA by engineering and economic consultants estimated \$5.5 billion in annual compliance costs and the loss of 17,000 “person-years” of employment and \$3.1 billion of economic output each year.

The Damage of Uncertainty. If the delays in rulemaking were the result of more thorough cost analysis or consideration of regulatory alternatives, that would be good news for the economy and consumers. But there is no indication that the Administration has embraced a newfound skepticism toward red tape. The evidence instead suggests that a multitude of major rules are simply awaiting release next year.

No one knows for certain, of course. But that very uncertainty is itself damaging to the economy. That is one important reason why Congress requires the Administration to disclose its regulatory intentions in semi-annual

1. The White House, “Transparency and Open Government: Memorandum for the Heads of Executive Departments and Agencies,” http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment (accessed October 31, 2012).

2. See Susan E. Dudley, “Are We Witnessing a Regulatory Drawback?,” George Washington University Regulatory Studies Center, October 9, 2012, http://regulatorystudies.gwu.edu/images/commentary/regulatory_drawback.pdf (accessed October 31, 2012).

agendas. President Obama should follow that law.

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