Ripe for Review:
An Index of Regulations that Should be Reviewed or Modified

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On January 30, 2017, President Trump signed an executive order to reduce the regulatory burden of the federal government. Under the order, executive departments and agencies that propose a new regulation must identify at least two regulations to be repealed. Moreover, the incremental costs of the new regulation must be fully offset by eliminating costs associated with at least two prior regulations, such that the incremental costs of all new regulations in fiscal year 2017 be equal to zero.

The following is a list of regulations that we recommend the Trump Administration target for elimination or modification. These rules were chosen because they all suffer from a number of shortcomings, such as being ineffective, counterproductive, legally suspect, or failing to provide benefits in excess of costs, despite regulators’ claims to the contrary.

New Source Review (NSR)

What it does:
The Clean Air Act’s New Source Review Program requires that new industrial facilities (manufacturing plants, power plants, refineries, etc.), the expansion of existing facilities, or facilities that undergo major modifications, meet stringent new source requirements. In areas that fail to meet the Environmental Protection Agency’s (EPA) National Ambient Air Quality Standards (known as non-attainment areas), such facilities must install pollution control equipment that meets an emission rate that matches or is lower than the lowest emitting facility of its type in the country. Those companies must also purchase pollution offsets equal to between 110 and 150 percent of the facility’s projected emissions from other facilities in the same area.

Why it should be repealed or modified:
NSR imposes a de facto ban on new and expanded industrial facilities in many parts of the country, due primarily to the lack of available offsets in nonattainment areas. For example, to build even a small plant that emits no more than 100 tons in Houston, a company would need to purchase offsets for nitrogen oxides and volatile organic compounds valued at $32 million and $54 million before even breaking ground.

Moreover, stringent NSR requirements slow down normal cycle of business where older, dirtier industrial facilities are periodically replaced with newer, cleaner facilities, creating a situation in which older facilities are kept in operation well past their normal functioning lifetimes. Hence, NSR may be environmentally counterproductive in many cases.
Sources:


Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Passenger Cars and Light Trucks, and for Medium and Heavy-Duty Trucks

What it does:

In two separate rules, the National Highway Traffic Safety Administration (NHTSA) and the EPA implemented higher greenhouse gas emissions (GHGs) standards and fuel efficiency standards for 1) passenger cars and light trucks, and 2) for medium and heavy-duty trucks. The rules followed the controversial Supreme Court ruling, *Massachusetts vs EPA*, that found that the EPA has the authority to reduce greenhouse gas emissions.

The rule for passenger cars and light trucks requires a fleet-wide average fuel efficiency standard of 40.9 miles per gallon (mpg) by 2021 and 49.6 mpg by 2025. For the medium and heavy-duty truck rule, heavy-duty pickups and vans must increase fuel efficiency by 2.5 percent each year between 2021 and 2027, while vehicles such as tractor-trailers, delivery trucks and school buses must lower fuel efficiency by 25 percent compared to existing standards.

Why it should be repealed or modified:

Even though these fuel efficiency rules are ostensibly about reducing GHG emissions, the vast majority of the total benefits are private net benefits to consumers and firms, largely from fuel savings. Indeed, as much as 85 percent of the benefits in both rules are private benefits to consumers or firms. Moreover, the benefits of GHG emissions reductions are derived from the widely criticized social cost of carbon figure, which purports to calculate the cost of a ton of emitted carbon dioxide (CO2), or its equivalent, over the next 300 years. It also inappropriately includes the benefits of reducing U.S. domestic GHG emissions to foreign countries, which are many multiples of domestic benefits. But, even including foreign benefits, GHG emissions reductions only account for less than 10 percent of the rules’ total benefits.

The inclusion of private net benefits is dubious, as it makes the unwarranted assumption that consumers and firms irrationally place too little value on fuel efficiency. But in fact, there is little evidence to support such an assumption. It is perfectly rational to value certain vehicle attributes over fuel efficiency, such as safety. Heavier, less fuel-efficient vehicles are safer than their more fuel-efficient counterparts. NHTSA and the EPA claim that consumers are made better off by forcing them to choose efficiency over safety.
But by eliminating the choice of what consumers truly and rationally value, these agencies are really imposing costs, not providing benefits.

A large part of the operating expenditures of U.S. firms are fuel costs. In addition, they operate in highly competitive markets and with narrow profit margins. These factors provide more than sufficient incentive to make rational decisions about fuel efficiency, without the aid of government paternalism.

By putting costs and benefits in their proper context, the costs of these rules dwarf the benefits and therefore should be repealed.

Sources:


Department of Energy’s Energy Efficiency Standards for Appliances

What it does:

The Energy Policy and Conservation Act (EPCA) sets energy efficiency standards for a whole class of consumer products and requires that the Department of Energy (DOE) conduct regular reviews of energy efficiency standards. The new standards must be “technologically feasible,” “economically justified,” and save a significant amount of energy. DOE is not required to raise the standards, but in virtually every instance it has opted to do so, leading to serial tightening of efficiency standards.

Moreover, EPCA contains an “anti-backsliding” provision, which prevents the DOE from lowering existing energy efficiency standards. One must presume that such backsliding is prohibited even if
subsequent analyses were to determine that existing standards were not “technologically feasible,” or “economically justified,” or that it failed to save a significant amount of energy. This may be an issue that Congress must deal with by changing the law.

Why it should be repealed or modified:

Even though these rules are ostensibly about reducing GHG emissions, the vast majority of the total benefits are private net benefits to consumers, largely from reducing operating expenses. Moreover, the benefits of GHG emissions reductions are derived from the widely criticized social cost of carbon figure, which purports to calculate the cost of a ton of emitted carbon dioxide (CO2), or its equivalent, over the next 300 years. It also inappropriately includes the benefits of reducing U.S. domestic GHG emissions to foreign countries, which are many multiples of domestic benefits. If only domestic environmental benefits are considered, energy efficiency standards are not economically justifiable.

As is the case with this entire class of regulations, most of the benefits derive from the dubious assumption that consumers are irrational and fail to sufficiently value energy efficiency over other attributes, requiring the government to step in and save consumers from their own folly.

In the case of appliances, however, the potential savings over the lifetime of the appliance is miniscule by DOE's own calculations. As Mercatus Center scholar, Sherzod Abdukadirov, explained in a commentary in the *U.S. New and World Report*, “Under the latest energy efficiency standards for residential dishwashers, the consumer would pay an additional $44 to save a whopping $3 over the 15 years of the dishwasher's lifetime. It would take consumers almost 12 years before they recouped the higher upfront costs. In the case of clothes dryers, consumers would pay an additional $12 to save just $14 over the 16 years of the dryer's lifetime, whereas for small air conditioners consumers would pay an additional $42 to save just $7 over 10 years.”

It is absurd to label consumers as irrational because they fail to chase a few dollars in savings over the lifetime of an appliance. Add to that the fact that such small savings might be nothing more than an estimation error on the part of DOE and we may have a rule that is “economically justified” by nothing more than a calculation error.

Putting costs and benefits in their proper context, the costs of these rules dwarf the benefits and therefore should be repealed.

Sources:


The Nuclear Regulatory Commission’s Airplane Impact Assessment Rule

What it does:

The rule requires that applicants for new power plant reactors demonstrate that their reactor design will be able to withstand the impact from a large commercial aircraft.

Why it should be repealed or modified:

Prior to 9/11, the Nuclear Regulator Commission had repeatedly withstood political pressure to impose an aircraft impact rule, arguing that such a rule would not enhance safety. It finally succumbed in the face of the infamous terrorist attacks, but still maintained that “…compliance with the rule is not needed for adequate protection to public health and safety or common defense and security.” The fact that the rule was not applied to existing plants or even to plants that had obtained construction permits further emphasized the needlessness of the rule.

The first plants that the rule was applied to experienced such large delays and cost overruns, due in part to the new rule, that it put Westinghouse, the company building the plants, into chapter 11 bankruptcy.

This rule is just the latest chapter in a decades-long narrative of a nuclear industry battered by unnecessarily burdensome regulation.

Sources:

• Nuclear Regulatory Commission; Consideration of Aircraft Impacts for New Nuclear Power Reactors. 74 Fed. Reg. 28,112 (June 12, 2009).

2015 National Ambient Air Quality Standards (NAAQS) for Ozone

What it does:

In 2015, the Obama administration finalized a rule to lower the limit on ground-level ozone from 75 parts per million (ppm) to 70 ppm.

Why it should be repealed or modified:

The EPA estimated that compliance with the new ozone standard would cost Americans $2 billion, making it one of the costliest air regulations ever imposed by the agency. Other estimates have put the costs much higher. It also claimed that benefits of the rule would be between $3.1 and $8 billion. However, most of the benefits are derived from lowering fine particulate matter (PM). By counting the benefits of PM emissions reductions, which benefits are counted in other EPA rules restricting PM emissions, the EPA is double counting benefits. The EPA also admitted that 23 percent of the reductions necessary to meet the standard must come from unknown technologies.

In 2008, the Bush administration lowered the limit from 84 ppm to 75 ppm, a level deemed very difficult to meet at the time. And indeed, after years of effort and considerable expense, many areas are still in nonattainment. Others became compliant under the Bush standard only to be put in nonattainment again with the Obama standard.

The economic impact of being in nonattainment can be devastating. Nonattainment areas must meet more stringent New Source Review requirements that can make it nearly impossible to build new industrial facilities or expand or substantially modify existing ones (see above).

According to the EPA’s own numbers, ground-level ozone levels have steadily fallen even without additional regulation. And the presumed health benefits from lowering ozone emissions may be exaggerated. A study published in the Annals of Epidemiology found no correlation between all-cause and cardiovascular disease mortality rates and ozone between 2000 and 2010, a period in which ozone levels had fluctuated substantially year-to-year. The same result was found for particulate matter, which had fallen by 30 percent during the same period.

Sources:

- Environmental Protection Agency; National Ambient Air Quality Standards for Ozone. 80 Fed. Reg. 65,292 (October 26, 2015).

EPA’s Mandatory Greenhouse Gas Reporting Rule

What it does:

The EPA’s mandatory greenhouse gas reporting rule would require all facilities that emit more than 25,000 tons of GHGs per year to report their emissions yearly. This would include approximately 10,000 facilities that account for roughly 85 percent of total U.S. GHG emissions. The rule would cover carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and other fluorinated gases including nitrogen trifluoride and hydrofluorinated ethers.

Why it should be repealed or modified:

Compliance costs for the rule will run to $132 million in the first year and then $89 million per year in subsequent years, with 87 percent of the cost falling on the private sector.

The primary benefits of the rule, according to the EPA, include transparency and as an aid the government in the design of future GHG policies. Transparency primarily aids ideological special interest groups to harass and shame emitters even if their operations pose no danger to the public. The EPA declined monetizing the benefits.

In sum, the rule exists to further a political agenda and provides no environmental benefits in and of itself.

Sources:

• Environmental Protection Agency; Mandatory Reporting of Greenhouse Gases, 74 Fed. Reg. 56,260 (October 30, 2009).
Standards of Performance for Municipal Solid Waste Landfills

What it does:
The EPA updated new source performance (NSPS) standards for municipal solid waste (MSW) landfills, which requires that landfills constructed, modified or reconstructed after July 17, 2014 and that have a design capacity of 2.5 million metric tons and 2.5 million cubic meters of waste or more to install controls to reduce methane emissions. The rule also establishes new emissions guidelines for existing MSW landfills.

Why it should be repealed or modified:
The EPA claims the rule reduces GHG emissions (96 percent of the total being methane emissions) by 8.5 million metric tons CO2 equivalent and would lead to benefits equal to $512 million in 2025 at a cost of $60 million. The benefits of GHG emissions reductions are derived from the widely criticized social cost of carbon figure, which purports to calculate the cost of a ton of emitted CO2, or its equivalent, over the next 300 years. It also inappropriately includes the benefits of reducing U.S. domestic GHG emissions to foreign countries which are many multiples of domestic benefits.

The reductions achieved in this rule are a tiny fraction of one percent of total worldwide manmade GHG emissions. The impact on the climate would be so miniscule as to render it entirely undetectable. Finally, the EPA may not have the authority to change the emissions guidelines for existing MSW landfills, a point of contention that is being litigated.

Sources:

Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources

What it does:

The rule establishes performance standards for emissions of GHGs, namely methane, from new, reconstructed, and modified sources in the oil and gas industry, including hydraulically fractured wells. The final rule applies to equipment, processes, and activities in the production, processing, transmission, and storage phases of oil and natural gas systems constructed or modified after July 17, 2014. According to the EPA, the rule will reduce methane emissions by 510,000 short tons by 2025, which is equivalent to 11 million metric tons of CO2. The EPA also claims the rule will yield climate benefits of $690 billion at a cost of $530 million.

Why it should be repealed or modified:

The reductions achieved in this rule are a tiny fraction of one percent of total worldwide manmade GHG emissions. The impact on the climate would be so miniscule as to render it entirely undetectable. Moreover, the oil and gas industry has a stellar record in reducing methane emissions. Since 2005, hydraulically fractured wells have reduced methane emissions by 79 percent. Between 2005 and 2013, the whole industry reduced methane emissions by 38 percent. All this, while expanding production by 50 percent. Why? Because methane that escapes is methane that can’t be sold. The incentives to reduce methane emissions is more than sufficient without the aid of government paternalism.

Moreover, the benefits of GHG emissions reductions are derived from the widely criticized social cost of carbon figure, which purports to calculate the cost of a ton of emitted carbon dioxide (CO2), or its equivalent, over the next 300 years. It also inappropriately includes the benefits of reducing U.S. domestic GHG emissions to foreign countries, which are many multiples of domestic benefits.

Sources:

- Environmental Protection Agency; Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources. 81 Fed. Reg. 35,824 (June 3, 2016).
Phaseout of HFCs due to global warming potential

What it does:
The rule bans a class of refrigerant chemicals, known as HFCs, and approves certain substitutes for HFCs.

Why it should be repealed or modified:
HFCs were developed as a substitute to replace another class of chemical refrigerants known as CFCs, which were banned because of the potential danger they posed to the ozone layer. In addition to being safe for the ozone layer, HFCs are also nontoxic and nonflammable, making them ideal substitutes. Unfortunately, they are potent GHGs.

As a result of the global warming potential of HFCs, the Obama administration began seeking ways to phase out the substance. First, it proposed multiple amendments to the Montreal Protocol, an international treaty that controls ozone depleting substances. When the amendments were not adopted, the administration ordered the EPA to use the Significant New Alternatives Policy (SNAP) program, the U.S. regulatory regime created to implement the Montreal Protocol, to phase them out.

However, the SNAP program only empowers the EPA to phase out ozone depleting substances, and then only when there is a suitable alternative available. HFCs are not ozone depleting substances and therefore banning them through the SNAP program is outside the scope of the EPA’s legal authority.

In a letter to EPA Administrator Gina McCarthy, Pete Olson, Chairman of the House Energy and Commerce Committee and Steve Chabot, Chairman of the House Small Business Committee, noted that the compliance deadlines within the final rule present challenges to the users and manufacturers of HFCs, “especially given that many of the EPA-approved alternatives to HFCs have shortcomings – availability, cost, performance, safety, and/or efficiency – that have yet to be overcome.” The burden would fall most heavily on small manufacturers that “lack the resources to redesign their product lines in a relatively short timeframe.”

The letter also questions the EPA’s assertion that the rule “reduces the overall risk to human health and the environment,” given that the EPA did not quantify the climate impacts of the final rule and that the EPA-approved substitutes contain risks of their own.

The rule is also at cross purposes with federal efficiency standards, which assume the continued use of highly efficient HFCs. Their elimination may cause complications for those that must meet efficiency standards with less efficient EPA-approved substances.
Sources:

- Environmental Protection Agency; Protection of Stratospheric Ozone: Update to the Refrigerant Management Requirements Under the Clean Air Act. 81 Fed. Reg. 82,272 (November 18, 2016).

Controlling Air Pollution from Residential Wood Heaters

What it does:

The rule established new source performance standards for residential wood heaters. The rule also establishes first-ever federal standards for hydronic heaters, wood-fired forced air furnaces, pellet stoves and a previously unregulated type of wood stove called a single burn-rate stove. The EPA estimates that the rule will provide benefits of between $3.4 billion to $7.6 billion with costs of $46 million.

Why it should be repealed or modified:

The 2010 U.S. Census shows that wood is the fastest growing heating fuel in the U.S. Between 2000 and 2010, the number of households that heated their home with wood grew by 34 percent. Some states have seen much larger increases: Michigan (135%), Connecticut (122%), New Hampshire (99%), Massachusetts (99%), Maine (96%), Rhode Island (96%), Ohio (95%), and Nevada (91%).

The Census also shows that low and middle-income households are far more likely to use wood as their primary heating fuel. That means the costs of the rule will fall most heavily on those least able to afford it.

The estimated benefits of reducing particulate matter (PM) are plagued by a high degree of uncertainty. The EPA acknowledges that its estimates go beyond those confirmed in its foundational epidemiological study, which means that the benefits are not based on empirical data. It also assumes that all PM,
regardless of composition, is equally harmful and it assumes a linear dose response, meaning that even miniscule concentrations are harmful. All of these assumptions are scientifically dubious and lead to significant overestimation of the benefits.

Finally, the rule is unnecessary. Those who burn wood in their homes are likely to bear most or all of the emissions costs and therefore already have strong incentives to reduce those emissions. Indeed, these incentives have already led to the development of less polluting stoves, as 85 percent of all wood burning stoves in the U.S. meet a standard lower than the one set in the EPA’s rule. Moreover, since wood burning stoves tend to be highly concentrated within small geographic areas, local regulation is likely to be preferable and more cost-effective.

Sources:


Federal Motor Vehicle Safety Standards; Minimum Sound Requirements for Hybrid and Electric Vehicles (NHTSA)

What it does:

The National Highway Traffic Safety Administration (NHTSA) established a standard requiring that hybrid and electric vehicles produce a certain level of sound to help ensure that blind, visually impaired, and other pedestrians are able to detect hybrid and electric vehicles.
Why it should be repealed or modified:

NHTSA calculated benefits of $246 million and costs of $43 million from the rule. It also claims that the rule will result in 2,400 fewer injuries to pedestrians and pedalcyclists. There are numerous reasons to believe that these are substantial overestimates.

First, the primary purpose of the rule is to protect blind and visually impaired pedestrians. In calculating benefits, NHTSA used crash estimates for all pedestrians and pedalcyclists, not just those involving blind and vision-impaired persons. Second, more than half of the benefits from the rule come from avoided crashes with pedalcyclists, even though it is very unlikely that blind and vision-impaired persons are riding bikes. Thus, the rule substantially overestimates the number of persons benefitting from this rule.

Even if the intended beneficiaries of the rule were all pedalcyclists, NHTSA acknowledges that there is no statistical difference in crash rates between hybrid and conventional vehicles at speeds lower than 35 miles per hour. Since the sound requirements are for speeds of 18 mph or less, the rule will likely result in zero benefits for pedalcyclists.

Finally, NHTSA does not present any research on the causes of hybrid vehicle crashes with non-impaired pedestrians and pedalcyclists without impaired vision, nor that explains the differences in crash rates between hybrid and conventional vehicles with non-impaired pedestrian and pedalcyclists. For example, residents of cities that share a strong environmental ethic, might see a large increase in the number of hybrid or electric vehicles as well as a large increase in the number of people choose cycling or walking as a preferred mode of transportation.

For example, many cities have seen bicycle ridership increase by more than 100 percent since 2007. If there are more hybrid drivers in areas where there are also more pedestrians and cyclists, then this might explain why hybrids have a higher crash rate with pedestrians and pedalcyclists than conventional vehicles.

Sources: