Backgrounder

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Red Tape Rising: Regulatory Trends in the Bush Years

James L. Gattuso

In this election year, Americans will hear a lot about taxes. Candidates for everything from President to village alderman will present their plans on who should pay and how much. Yet in the political frenzy, one type of tax will almost certainly be overlooked: the hidden tax of regulation. The federal government alone enforces thousands of pages of regulations that impose a burden of some $1.1 trillion—an amount that is comparable to total federal income tax receipts.

And the cost of regulation is getting higher. Despite the claims of critics—and some supporters—of the Bush Administration, net regulatory burdens have increased in the years since George W. Bush assumed the presidency. Since 2001, the federal government has imposed almost $30 billion in new regulatory costs on Americans. About $11 billion was imposed in fiscal year (FY) 2007 alone.

Even more are on the way. Historically, the amount of regulatory activity surges dramatically in the last year of a presidential Administration, whether Republican or Democrat, as regulators, freed from normal political constraints, clean off their desks. A similar surge looks likely for the final year of the Bush Administration unless the President and other policymakers keep a tight hand on the regulatory leash.

Background

Over 50 agencies ranging from the Animal and Plant Health Inspection Service to the Bureau of Customs and Border Protection have a hand in federal regulatory policy. Together, they enforce over 145,000

Talking Points

- The regulatory burden has increased during the Bush Administration.
- Since 2001, the annual regulatory cost of federal regulation has increased by nearly $30 billion. Over $11 billion was added in FY 2007 alone.
- By contrast, actions to lessen regulatory burdens have been rare. In FY 2007, savings from significant actions reducing regulation totaled some $684 million, or about 1/17th of the cost of new burdens imposed that year.
- Regulatory burdens may increase even more in 2008, with a bevy of costly new regulations already in the pipeline. Historically, regulatory activity surges during the final year of a presidential Administration.
- Policymakers should consider a number of reforms, including strengthening the OMB's Office of Information and Regulatory Affairs, establishing a Congressional Regulation Office, establishing a sunset date for all new regulations, and requiring independent agencies to submit benefit-cost analyses for review by the OMB.

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(202) 546-4400 • heritage.org

pages of rules, with purposes and impacts as varied as the agencies themselves. Some rules are meant to protect health and safety, some to protect (or suppress) economic competition, and others to protect the environment.

Certainly, many of these regulations are justified—and even necessary. For instance, most would agree on the need for security rules to protect citizens against terrorism, although the extent and scope of those rules may be subject to debate. Moreover, imposition of a regulation is not *per se* inconsistent with market principles. Some in fact reinforce property rights and market mechanisms.

Nevertheless, all rules come at a cost: a "regulatory tax" imposed on all Americans. Of course, Americans do not file regulatory tax forms on April 15, and there is no bottom line indicating how much they pay for these regulations. Hidden or not, however, the tax is large. According to a 2005 study for the Small Business Administration, the cost of all rules on the books is $1.1 trillion,[1] about the same amount that Americans paid in federal income taxes in 2007.

Even this staggeringly large number may underestimate the cost of regulation, since many costs are by their nature unknowable. For many economic regulations, the primary cost may not be any direct burden placed on consumers or businesses, but constraints on innovation. Assessing such losses is impossible because inventions that never existed cannot be measured.

Moreover, regulations can also reduce Americans' health and safety. Delays in new drug approvals by the Food and Drug Administration have led to thousands of unnecessary deaths.[2] By encouraging the purchase of smaller cars, automobile fuel efficiency standards have contributed to thousands of deaths in car accidents.[3] Rules banning health claims on wine bottles have denied Americans information about the beneficial effects of the moderate consumption of wine on heart health.[4]

Regulation in the Bush Years: Still Going Up

To its credit, the Bush Administration during its seven years in office has made significant efforts to rein in regulation, mostly through enhanced review of regulatory proposals to ensure that any new restrictions are necessary and impose as little burden as possible. The White House agency responsible for reviewing proposed new rules—the Office of Information and Regulatory Affairs (OIRA), part of the Office of Management and Budget (OMB)—has taken an active role as a gatekeeper.[5] It has established strict criteria for agencies' "regulatory impact analyses" of their rules and for peer review of those analyses. In early 2007, President Bush further strengthened the system by, among other things, increasing the role of designated "regulatory policy officers" within agencies.[6]

Some have argued that regulatory reforms have gone too far and that regulations have been dangerously weakened. Such criticism has been especially

1. W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," Small Business Administration, Office of Advocacy, September 2005, at *www.sba.gov/ADVO/research/rs264tot.pdf* (March 10, 2008).
2. See David R. Henderson, "End the FDA's Monopoly," Hoover Institution *Weekly Essay*, February 23, 2004, at *www-hoover.stanford.edu/pubaffairs/we/2004/henderson02.html* (September 13, 2004).
3. See National Research Council, Transportation Research Board, *Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards* (Washington, D.C.: National Academy Press, 2002), at *http://books.nap.edu/openbook.php?record_id=10172&page=R1* (March 10, 2008).
4. See Ben Lieberman, "The Power of Positive Drinking: Are Alcoholic Beverage Health Claims Constitutionally Protected?" *Food and Drug Law Journal*, Vol. 58, Issue 3 (2003).
5. See James L. Gattuso, "Regulating the Regulators: OIRA's Comeback," Heritage Foundation *Executive Memorandum* No. 813, May 9, 2002, at *www.heritage.org/Research/Regulation/EM813.cfm*, and "Who Will Regulate the Regulators? The Battle over Susan Dudley and OIRA," November 9, 2006, Heritage Foundation *WebMemo* No. 1250, at *www.heritage.org/Research/Regulation/wm1250.cfm*.
6. See Curtis W. Copeland, "Changes to the OMB Regulatory Review Process by Executive Order 13422," Congressional Research Service *Report for Congress*, February 5, 2007, at *www.fas.org/sgp/crs/misc/RL33862.pdf* (March 10, 2008).

frequent over the past year in the wake of fatal mine accidents in West Virginia and Utah and widespread recalls of toys made in China. For instance, these incidents led *USA Today* to charge that Bush has let "[r]egulators slumber."[7]

Others go even farther. OMB Watch, a pro-regulation advocacy group, charged that Bush has "left the public uncertain about whether we can count on our government to provide adequate safeguards."[8] The Center for American Progress charged that "[i]nstead of protecting the public, the administration has weakened or thrown out a host of protective standards."[9]

Regulation by the Numbers

The rhetoric is alarming, but it does not fit the facts. Far from shrinking to dangerously low levels, regulation has actually grown substantially during the Bush years. By almost every measure, regulatory burdens are up.[10]

Tracking year-to-year changes in regulatory burdens is no easy task. Unlike on-budget expenditures, there is no single bottom line figure to report. Yet a number of measures together can provide a fair picture of what is happening in the regulatory world.[11]

Regulatory Budget and Staffing Levels. Critics of Bush Administration regulatory policy have argued that budget cuts are evidence that restrictions are being loosened. Yet according to an analysis by George Mason University's Mercatus Center and Washington University's Weidenbaum Center, appropriations for federal regulatory agencies have increased during the Bush years from $27 billion in FY 2001 to $44.9 billion in FY 2007—a 44 percent increase in inflation-adjusted dollars.[12] The total staffing of regulatory agencies went up nearly as much, from 172,000 employees to over 244,000—a 41 percent increase.

To a significant degree, these increases are due to the federal takeover of airport screening operations by the Transportation Security Administration (TSA). But even with the TSA excluded, the increases were still sizeable, with regulatory budgets still increasing by 30 percent and non-TSA staff levels rising almost 11 percent.

While homeland security functions garnered the largest increases, expansion has not been limited to that area. Agencies responsible for consumer safety and health have received budget increases of 33 percent in real terms since 2000[13] and staff increases of over 9 percent. Other areas with increases include transportation, energy, and general business regulation. Environmental regulation declined in real (although not nominal) terms, from about $6 billion to $5.6 billion. However, because environmental spending increased during the 1990s by about one-third, today's funding is still well above its 1990 level.

7. Editorial, "Our View on Protecting the Public: Regulators Slumber, Letting Health and Safety Suffer," *USA Today*, November 1, 2007, at *http://blogs.usatoday.com/oped/2007/11/our-view-on-pro.html* (March 10, 2008).
8. OMB Watch, "A Year for Failure: Regulatory Policy News in 2007," December 18, 2007, at *www.ombwatch.org/article/blogs/entry/4416/18* (March 10, 2008).
9. Reece Rushing, "Safeguarding the American People: The Progressive Vision vs. the Bush Record," Center for American Progress, August 23, 2007, at *www.americanprogress.org/issues/2007/08/safeguarding_report.html* (March 13, 2008).
10. For an earlier assessment of regulatory trends in the Bush years, see James L. Gattuso, "Reining in the Regulators: How Does President Bush Measure Up?" Heritage Foundation *Backgrounder* No. 1801, September 28, 2004, at *www.heritage.org/Research/Regulation/bg1801.cfm*.
11. The discussion and analysis in this paper focus primarily on regulation as imposed by rules promulgated by agencies, as opposed to regulation imposed by Congress through legislation. Regulation by legislation, while certainly important, is largely outside the scope of this paper.
12. Jerry Brito and Melinda Warren, "Growth in Regulation Slows: An Analysis of the U.S. Budget for Fiscal Years 2007 and 2008," George Mason University, Mercatus Center, and Washington University at St. Louis, Weidenbaum Center on the Economy, Government, and Public Policy, *Regulator's Budget Report* No. 39, June 2007, at *www.mercatus.org/repository/docLib/20070619_2008_Regulators_Budget.pdf* (March 10, 2008).
13. The Mercatus–Weidenbaum report does not provide agency-specific details for 2001.

Regulatory Page Counts. What are regulators actually doing with their resources? Perhaps the most commonly cited yardstick of regulatory activity is the size of the *Federal Register*. Before any new federal rule can be proposed or finalized, the agency involved must publish it in this daily publication. In 2007, the *Federal Register* declined slightly in size, weighing in at 72,090 pages. That figure is less than its all-time record of over 75,000 pages but still higher than any year before 2000.[14]

Unlike the *Federal Register*, which is in effect a posting board for all sorts of agency actions, the Code of Federal Regulations (CFR) is the regulatory equivalent of a statute book that includes only the text of existing regulations. In number of pages, the CFR makes the *Federal Register* look Lilliputian, with the 2007 edition totaling 145,816 pages, more than 4,500 pages longer than in 2001, when Bush took office,[15] and almost 8,000 pages longer than in 2000.

However, the *Federal Register* and CFR page counts have significant drawbacks as measures of regulation. The *Federal Register* contains more than regulations, including discussions of rules, determinations under rules, requests for public comment, and more. In addition, agencies must publish all rule changes in the *Federal Register*, both actions to eliminate or reduce regulatory burdens and actions to increase them.

CFR page counts have similar limitations. Most notably, the number of pages in a regulation does not necessarily indicate a heavier burden. A 500-page regulation could impose a lesser burden than a simple one-line prohibition of an activity.

The Number and Cost of Major Rules. More important than the mere number of pages in the *Federal Register* or the CFR is the content of those pages: How many rules are being adopted, and what do they cost Americans?

Many thousands of regulatory actions are taken each year: 3,595 rules were printed in the *Federal Register* in 2007 alone.[16] However, a large number of these are not "regulatory" in the commonly understood sense of the word because they do not limit or impose mandates on private activities. Many rules each year are fiscal in nature, such as those that establish rules and conditions for federal spending programs.[17] Others are annual determinations, such as the number of birds that can be hunted in certain areas, based on preexisting regulatory schemes.

Excluding these "non-regulatory" rules still leaves many thousand agency actions each year that increase or decrease regulatory burdens. Each has a real cost, but the size of their impact varies widely. Perhaps as much as 90 percent of regulatory costs comes from "major" or "economically significant" regulations—regulations that have economic impacts of more than $100 million.[18] While costly, relatively few regulations reach this threshold, making it feasible to examine them individually.

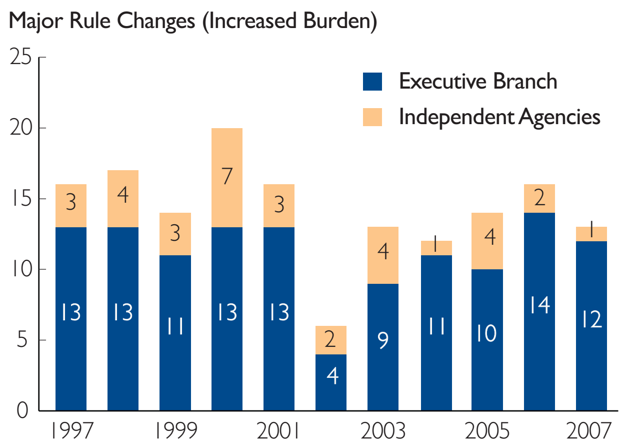
During the first seven years of the Bush presidency, 98 such major rules were promulgated by federal agencies. Of those, 75 (more than 10 per year) increased regulatory burdens on Americans. This is significantly less than the rate during the Clinton Administration, which adopted major increases in regulation at a rate of some 19 times per year from 1997 to early 2001.[19]

Although the Bush Administration imposed fewer new burdens on Americans, the total regulatory bur-

14. U.S. National Archives and Records Administration, Office of the Federal Register, "Chart 7: Federal Register Pages Published, 1936–2008." This total excludes blank pages.
15. U.S. National Archives and Records Administration, Office of the Federal Register, "Chart 12: Code of Federal Regulations—Total Pages 1938 Through 1949, and Total Volumes and Pages 1950 through 2006."
16. .US. National Archives and Records Administration, Office of the Federal Register, "Chart 10: Federal Register Documents, 1976–2008."
17. Such rules can burden the private sector. For instance, Medicare rules are a major burden on doctors and hospitals. While these rules pose substantial problems, they are outside the scope of this paper.
18. Office of Management and Budget, Office of Information and Regulatory Affairs, *Progress in Regulatory Reform: 2004 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, pp. 26–27, at *www.whitehouse.gov/omb/inforeg/2004_cb_final.pdf* (March 10, 2008).

Chart 1 B 2116

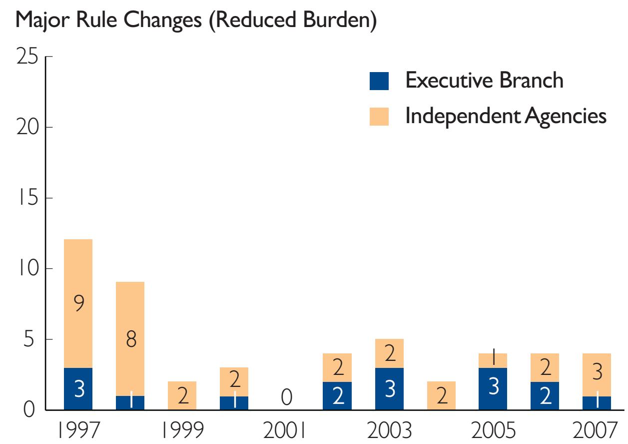
Major Increases in Regulatory Burdens, 1997–2007



Source: U.S. Government Accountability Office, Federal Rules Database, at *www.gao.gov/fedrules.html* (March 10, 2008).

Chart 2 B 2116

Major Decreases in Regulatory Burdens, 1997–2007



Source: U.S. Government Accountability Office, Federal Rules Database, at *www.gao.gov/fedrules.html* (March 10, 2008).

den continued to increase in absolute terms. Compared to the 74 rule changes that increased regulatory costs, only 23 rule changes reduced burdens. In other words, for every case in which regulators reduced a burden, they increased burdens over three times.

Interestingly, independent agencies such as the Federal Communications Commission (FCC) and Securities and Exchange Commission (SEC), which are not under the President's direct control and are not subject to White House regulatory review procedures, have accounted for more than half of all deregulatory actions.

The reason for the higher percentage of deregulatory actions at these independent agencies is unclear. One factor may be that both the FCC and the SEC administer 1930s-era economic regulations that have been undergoing significant change. The FCC's deregulatory record was due largely to proceedings liberalizing radio spectrum rules. However, regardless of the deregulatory actions of the independent agencies, they are still a major source of new regulation, accounting for about a quarter of all rules that increased burdens.[20]

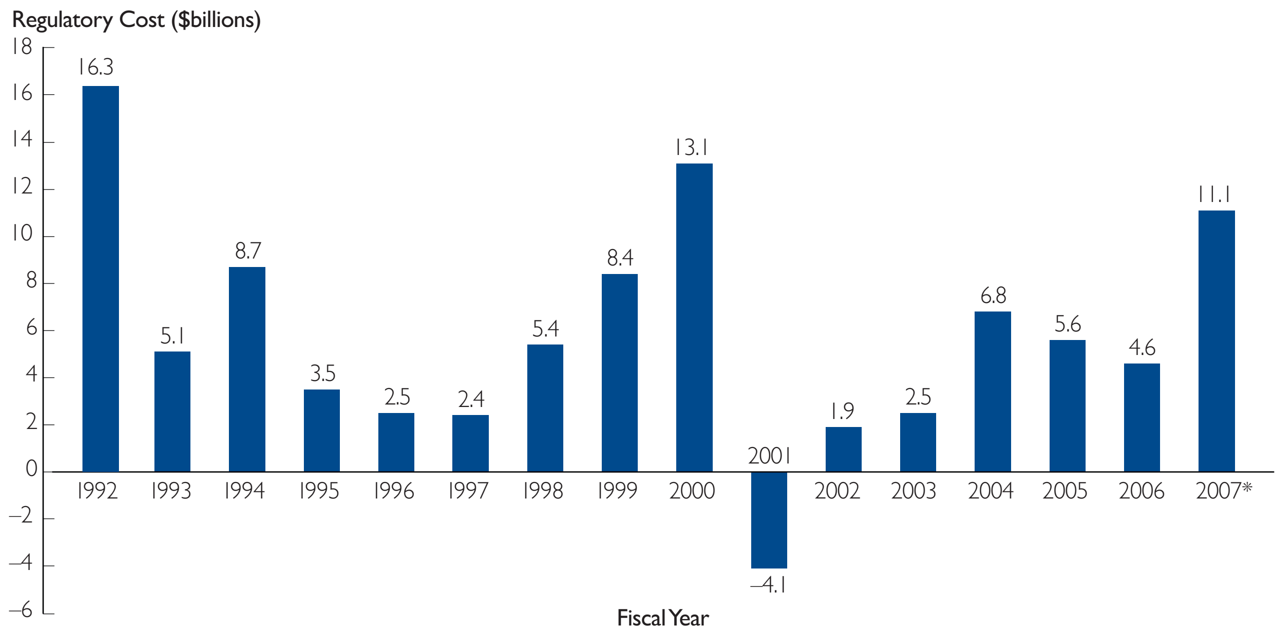
Cost Estimates. The costs and number of regulations are increasing substantially. Based on regulatory impact analyses prepared by agencies, over $28 billion in new regulatory costs has been imposed on Americans since the beginning of the Bush Administration.[21]

Regulatory costs went down only in one year (2001) due to the repeal of an ergonomics rule promulgated by the Department of Labor under the Clinton Administration. After remaining relatively low for the next couple of years, average new costs for 2004 through 2006 ranged between $4 billion and $6 billion.

19. Based on major rules reported to Congress by the Government Accountability Office (GAO) pursuant to the Congressional Review Act of 1996. U.S. Government Accountability Office, Federal Rules Database, at *www.gao.gov/legal/congress.html* (March 10, 2008). For the purposes of this analysis, only rules reported by the GAO after March 2001 are attributed to the Bush Administration. Rules before 1997, the first full year of GAO reports, are not included. Fifteen of the rules attributed to the Clinton Administration were "midnight regulations," finalized in early 2001.
20. Because of a quirk in the law, the GAO data do not include FCC decisions implementing the Telecommunications Act of 1996.

Chart 3 B 2116

Cost of Major New Regulations, FY 1992–2007



* Estimate based on reports from individual agencies.
Sources: Office of Management and Budget and Heritage Foundation calculations based on reports from individual agencies.

In 2007, costs shot up to their highest level yet in the Bush Administration. OIRA has not yet released figures for FY 2007, but some $11.8 billion in new costs was imposed, based on estimates from individual agencies. Most of this cost ($6.7 billion) comes from a single regulation: the fine particle implementation rule from the Environmental Protection Agency (EPA). Almost $1.4 billion comes from the Department of Homeland Security's anti-terrorism standards for chemical facilities. The Department of Transportation's rules on electronic stability control systems for automobiles cost $985 million per year, and new side-impact collision rules cost about $764 million per year.[22]

While substantial, these numbers likely underestimate the total cost of the new regulations. Costs for many rules, including those by most independent agencies, are not quantified. Moreover, the estimates are drawn from analyses produced by the regulators themselves, who have an incentive to minimize the reported costs.[23]

Whatever the exact number, the cost of new restrictions dwarfs the savings to Americans from actions reducing regulatory burdens. In FY 2007, federal regulators completed eight major proceedings that reduced burdens: five from the SEC, two from the Department of Agriculture, and one from the EPA.[24] Of these, cost savings were quantified for

21. Totals are net of savings from deregulation but not of claimed benefits from regulatory actions. Calculations are by OIRA through FY 2006. FY 2007 totals are based on regulatory impact analyses by individual agencies for rules finalized in FY 2007. In its estimate, OIRA adjusted the numbers to a standard inflation-adjusted level and made other changes for consistency. For FY 2007, such modifications were not made. Where agencies provided a range of numbers, the midpoint was used unless another figure was indicated. For 2007, the cost of the EPA's particulate matter rule adopted in October 2006 was not included because this was redundant with the EPA's implementation rule for particulate matter adopted in April 2007.

three, totaling just under $684 million, or about 1/17th of the new costs imposed.[25]

In both number and cost, the trend is clear: Rather than shrinking, the burden of regulation expanded during the Bush years. That growth was relatively slow during the first several years but has accelerated during the President's second term. Contrary to much popular rhetoric, significant deregulation has been virtually nonexistent.

The Expected Regulatory Surge

Looking ahead, the growth of regulatory burdens is likely to accelerate further. Historically, regulatory activity surges at the end of a presidential Administration. In the months before (and for several months after) President Bill Clinton left office, a rush of "midnight regulations" were adopted, pushing the total for 2000 to $13.1 billion—over one-third higher than for any other year of his Administration.

Yet the pattern is not limited to Democrats. In 1992, the last year of President George H. W. Bush's Administration, regulatory costs hit $12.5 billion. Regulatory costs even surged in 1988, at the end of the Reagan Administration.

These surges are not random. The most likely explanation is that regulators have an institutional incentive to clear their desks before turning over the office keys to new occupants. In the process, the normal review procedure may be overwhelmed, with more costly rules slipping through the screens.

There are already signs that such a regulatory surge is on the way for 2008. Reams of new rules are in the pipeline for 2008, ranging from Department of Agriculture rules on genetically modified food to Food and Drug Administration rules on dietary supplements to Americans with Disabilities Act rules for airlines.

The EPA looks to be particularly busy, with rules being adopted or nearing completion on everything from ozone to electric generator emissions. However, the most costly EPA agenda item could be regulation of carbon dioxide and other greenhouse gases from motor vehicles. In April 2007, the U.S. Supreme Court ordered the EPA to determine whether or not such gases endanger the public health and must be regulated under the Clean Air Act.[26] The EPA had argued (unsuccessfully) that ubiquitous substances such as carbon dioxide should not be considered "pollutants" and that the agency was therefore not directly required to regulate. If it does regulate greenhouse gas emissions, the costs could be immense.[27]

22. Other rules finalized during FY 2007 and their estimated annual costs include Food and Drug Administration rules on blood transfusions ($10.3 million) and dietary supplements ($153 million); Department of Homeland Security rules on electronic transmission of manifests ($123 million), hazardous materials transport ($247.5 million), and documents for Western Hemisphere travelers ($649 million); SEC rules on proxy materials ($24.8 million); Department of Agriculture rules on the use of stunning devices ($171.2 million); Department of Energy rules on reliability of bulk-power systems ($131.76 million); EPA rules on air pollution from mobile sources ($359.4 million) and drinking water ($62.05 million); Treasury and Health and Human Services rules on the "wellness market" ($11.5 million); and Department of Labor rules on mine evacuations ($42.6 million).

23. Independent agencies are not required to prepare regulatory impact analyses. For instance, the FCC almost never calculates the costs of its rules, but the SEC routinely does so, although it is not required.

24. The cost savings from the rule changes were as follows: SEC rules on termination of a foreign private issuer's registration ($200 million), management reports on internal controls (no estimate), Internet availability of proxy materials ($144.85 million), periodic reports (no estimate), and mutual fund redemption fees ($175.4 million); Department of Agriculture rules on bovine importation ($37.1 million) and milk marketing orders (no clear estimate); and EPA rules on oil spill prevention ($126.5 million).

25. The totals in Chart 3 are costs of new regulations minus cost savings from reductions of regulation. They are not net of quantified benefits of regulations. While estimates of benefits are critical to the consideration of a particular regulation, the purpose of this paper is to examine the total burden of regulations imposed. Just as the federal budget includes the full cost of each spending program, not just the net cost of presumed benefits, these figures are meant to reflect the full costs of regulation.

26. *Massachusetts et al. v. Environmental Protection Agency et al.*, No. 05–1120 (U.S. April 2, 2007).

The Federal Communications Commission is also considering new regulation. Most notably, FCC Chairman Kevin Martin has proposed a variety of new restrictions and mandates on the cable television industry and rules on how network managers manage traffic on their networks. The cost of such regulation is unknown—the FCC does not produce cost-benefit analyses—but it would likely be significant.

What Is to Be Done?

No single magic bullet will stop the growth of regulation, but policymakers can take steps to increase scrutiny of new and existing rules, both to ensure that each is necessary and to minimize costs. Specifically, they should:

- **Continue to strengthen the Office of Information and Regulatory Affairs.** OIRA has long played a key role in ensuring that proposed new rules are well scrutinized before adoption. During the Bush Administration, it has played a particularly significant role, strengthening and systematizing regulatory review procedures so that they are more consistent, transparent, and effective. However, OIRA is still badly outgunned in regulatory battles, with almost 5,000 regulatory agency staffers per OIRA staffer. OIRA should be provided with additional resources to regulate the regulators.[28]
- **Establish a Congressional Regulation Office.** While Congress receives detailed information from the Congressional Budget Office on the state of the budget and on proposals that would affect the budget, it has no similar source of information on regulatory programs. A Congressional Regulation Office would help to fill this gap. Such an office could review the regulatory impact of legislative proposals and report on the cost and effectiveness of rules adopted by agencies. In this way, it would act as both a complement to and a check on OIRA.
- **Establish a sunset date for all new federal regulations.** While every new regulation promulgated by executive branch agencies undergoes a detailed review, no similar process is in place for reviewing regulations that are already on the books.[29] Old rules tend to be left in place even though they may no longer be necessary.[30] Policymakers should create a process under which the regulatory closet is regularly cleaned by establishing a sunset date on all new regulations, after which they would expire unless they are explicitly renewed by regulators. Ideally, such a sunset date should apply to all regulations, but given the vast number of regulations in place, such a requirement would not be feasible. By limiting review to new regulations—perhaps on the 10th anniversary of a rule—agencies could adequately review the merits of and need for each regulation.
- **Require independent agencies to submit cost-benefit analyses to OIRA.** Independent agencies (e.g., the FCC and SEC) produce a substantial share of the major new rules that are finalized

27. See Ben Lieberman, "EPA Should Avoid Regulating Carbon Dioxide Emissions," Heritage Foundation *WebMemo* No. 1822, February 21, 2008, at *www.heritage.org/Research/EnergyandEnvironment/wm1822.cfm*.
28. This can be done without additional budget expenditures by shifting a small portion of the approximately $45 billion that is spent on regulatory agencies to OIRA.
29. Under Section 610 of the Regulatory Flexibility Act, agencies are now required to review rules that have a "significant economic effect on a substantial number of small entities" 10 years after adoption to determine whether the rules should be changed. However, this does not require agencies to make an affirmative determination that the rule is necessary. See Small Business Administration, Office of Advocacy, "Section 610 of the Regulatory Flexibility Act: Best Practices for Federal Agencies," October 2007, at *www.sba.gov/advo/r3/r3_section610.pdf* (March 10, 2008). If an agency does nothing, the rule continues. The proposal above would reverse that presumption.
30. On several occasions, OIRA has solicited comment from the public on rules that should be reformed. However, the recommendations received are only suggestive. Although OIRA encouraged agencies to consider the changes, it has little or no ability to initiate action on any such reforms. In 2007, the Small Business Administration launched a similar effort called the Small Business Regulatory Review and Reform Initiative. This initiative solicited ideas from small businesses regarding regulations that should be modified and has garnered a substantial number of recommendations. However, like OIRA, the Small Business Administration has no power to force agency action.

each year. The overall impact of these agencies is even greater because they cover some of the economy's most dynamic and vital sectors. Yet their rules are not reviewed by OIRA before they are promulgated, and often their costs and benefits are never formally analyzed. This problem could be resolved by subjecting independent agency rules to the OIRA review process. If that cannot be done, agencies should at least be required to prepare cost-benefit analyses of all planned significant rules and forward these analyses to OIRA for non-binding review.

Conclusion

Contrary to much popular rhetoric about massive regulatory rollbacks, the regulatory burden on Americans has grown, not shrunk, during President George W. Bush's tenure. This growth was relatively slow during the first few years of the Administration, but it has been accelerating. Consistent with past trends, a surge in regulation may be in the cards for the President's final year.

Policymakers should be on guard to prevent this surge in the short run. In the longer run, they should adopt sensible reforms to ensure that both new and old rules are thoroughly vetted to ease the burden of this regulatory tax on Americans.

—James L. Gattuso is Senior Research Fellow in Regulatory Policy in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation. Jack Khayoyan, an intern at The Heritage Foundation, assisted in the research for this study.