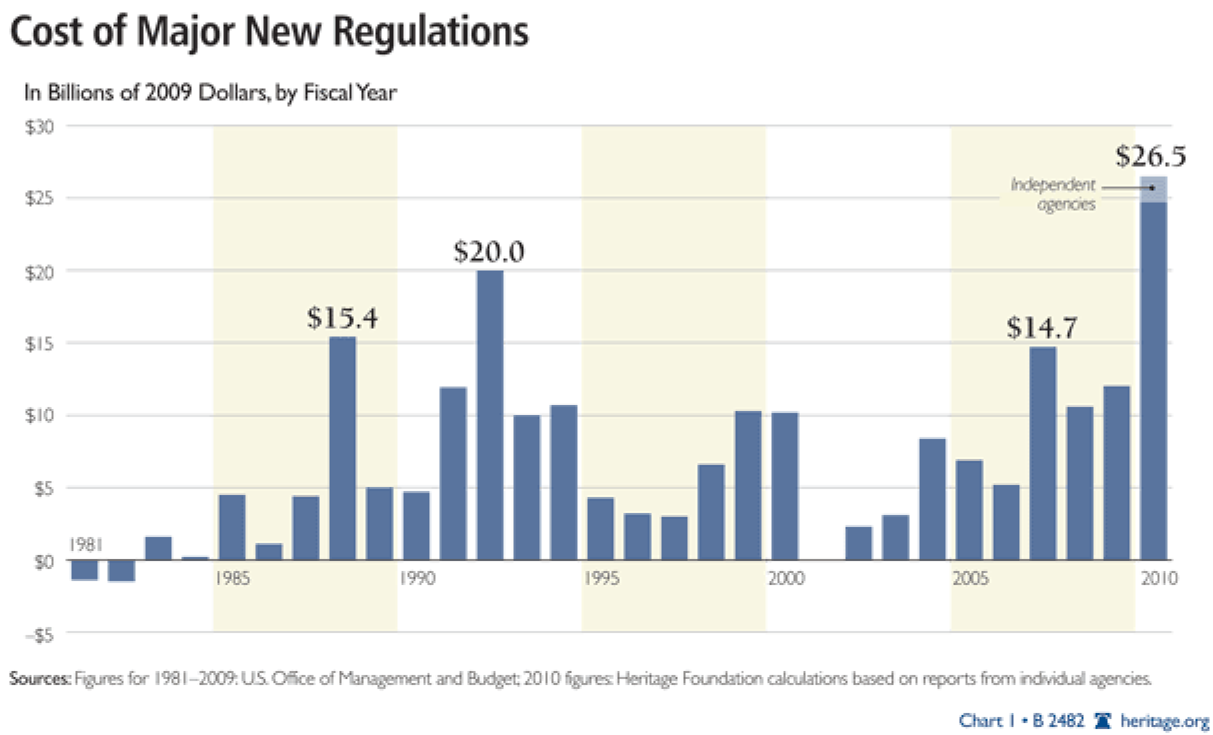
As of Feb 9, 2011   76 Executive Orders



Among the most costly of the FY 2010 crop are:

- Fuel economy and emission standards[6] for passenger cars, light-duty trucks, and medium-duty passenger vehicles imposed jointly by the EPA and NHTSA. Annual cost: $10.8 billion (for model years 2012 to 2016). For automakers to recover these increased outlays, NHTSA estimates the standards will lead to increases in average new vehicle prices ranging from $457 per vehicle in FY 2012 to $985 per vehicle in FY 2016.[7]
- Mandated quotas for renewable fuels. Annual cost: $7.8 billion (for 15 years). Utilizing farmland to grow corn and other crops used in renewable fuels will displace food crops, leading food costs to increase by $10 per person per year—or $40 for a family of four, according to the EPA.[8]
- Efficiency standards for residential water heaters, heating equipment, and pool heaters. Annual cost: $1.3 billion. The appliance upgrades necessary to comply with the new standards will raise the price of a typical gas storage water heater by $120.[9]
- Limits on "effluent" discharges from construction sites imposed by the EPA. Annual cost: $810.8 million. The cost of the requirements will force the closure of 147 construction firms and the loss of 7,257 jobs, according to the EPA. Homebuyers also will bear some of the costs, with an increase in mortgage costs of about $1,953.

Regulatory Reductions Missing in Action

Measures to reduce regulatory burdens, by contrast, were few and far between in FY 2010. Only five significant rulemakings adopted last year reduced burdens. Of these, cost reductions were quantified for only two, for reported savings of $1.5 billion. This leaves a net increase in the regulatory burden of $26.5 billion.

Moreover, one of the five measures—though technically deregulatory in nature—relates to an unparalleled *expansion* of EPA powers. Due to its determination last year that greenhouse gases are pollutants, the agency is moving to set emissions limits for such gases. To follow the standards in the Clean Air Act would corral millions of currently unregulated "facilities," including offices and apartment buildings, shopping malls, restaurants, hotels, hospitals, schools, houses of worship, theaters, and sports arenas into the EPA regulatory regime. In hopes of quieting political outrage over so sweeping a dictate, the EPA's "Tailoring Rule"[10] set a minimum threshold level for regulation. Therefore, fewer facilities would be subject to permit requirements, making imposition of the emissions limits more feasible. Rather than reduce overall burdens, this action actually facilitated increased burdens.[11]

Actual Costs Likely Higher

The actual cost of regulations adopted in FY 2010 is almost certainly much higher than $26.5 billion. As a first matter, the cost of non-economically significant rules—rules deemed not likely to have an annual impact of $100 million or more—is not calculated (although such rules are believed to constitute only a small portion of total regulatory costs). Moreover, costs were not quantified for 12 of the economically significant rules adopted in FY 2010.

Many of the rules lacking quantified costs involve financial regulation. The Federal Reserve Board, for instance, did not quantify any costs for its new "Truth in Lending"[12] regulations—which impose fee and disclosure requirements for credit card accounts—although the new rules are generally expected to be costly. Similarly, costs were not calculated for new Federal Reserve Board regulations on prepaid electronic gift cards.[13]

It should also be noted that reported costs are likely minimized by allowing agencies to make the initial calculations, thereby casting their proposals in the best light. This could have a substantial impact: Overall, there is evidence that agencies systematically understate regulatory costs. In its 2005 report to Congress, the OMB's Office of Information and Regulatory Affairs conducted *ex ante* analyses of regulations to test the accuracy of cost-benefit estimates. The study determined that regulators overestimated benefits 40 percent of the time and underestimated costs 34 percent of the time.[14]

Even a finding that costs exceed benefits does not necessarily stop a new rule from going into effect. For instance, in evaluating new regulations for train-control systems, the Department of Transportation identified costs of $477.4 million, and benefits of a mere $22 million. Nevertheless, due to a statutory mandate, the regulations were adopted.

The EPA is prohibited by law from considering costs in devising regulations under the Clean Air Act and other major environmental statutes. Thus, the agency recently set new, more stringent standards on emissions of nitrogen dioxide without formally considering the economic or technical feasibility of compliance.[15] While the EPA did prepare a cost-benefit analysis—concluding that the costs exceed the benefits—agency officials conceded they had no way of determining the number of localities that would be out of compliance under the new rule.

Lastly, it should be noted that annual compliance costs constitute only part of the economic burden of regulation. New rules also entail start-up costs for new equipment, conversions of industrial processes, and devising data collection and reporting procedures. These "first-year" costs exceed $3.1 billion for the 43 new FY 2010 regulations. For example, new restrictions on "short sales"[16] imposed by the Securities and Exchange Commission will require initial costs of more than $1 billion[17] for modifications to computer systems and surveillance mechanisms, and for information-gathering, management, and recordkeeping systems. Likewise, the EPA estimates one-time implementation costs of nearly $745 million for new limits on emissions from diesel engines used in energy production.[18]

More Rules on the Way

Many, many more regulations are in the pipeline. According to one estimate, financial regulation legislation recently adopted by Congress, known as the Dodd–Frank bill, will require 243 new formal rule-makings by 11 different federal agencies.[19] So wide-ranging are regulators' new powers, in fact, that the Department of Health and Human Services has failed to meet one-third of the deadlines mandated by the new federal health care law, according to a report by the Congressional Research Service.[20]

Meanwhile, the new Consumer Financial Protection Bureau created under the Dodd–Frank measure will wield vaguely defined powers to regulate financial products and services, including mortgages, credit cards, even student loans. And, the Federal Communications Commission is mulling new regulations to limit how Internet service providers manage their networks. Such "net neutrality" rules, if enacted, would undermine investment incentives, thereby robbing the nation of much-needed broadband upgrades.[21]

Taken together, these initiatives embody a stunningly full regulatory agenda—indicating that this year's record for regulatory increases will not stand for long.

Conclusion

The regulatory burden increased at an unprecedented rate during FY 2010, as measured by both the number of new major rules as well as their reported costs. Even more are on the way in 2011.

A number of steps have been proposed to stem this growth, ranging from automatic sunsetting of rules[22] to requiring congressional approval of all new major rules.[23]

Mere procedural reforms will not be enough to stem this regulatory tide. Regulatory costs will rise until policymakers appreciate the burdens that regulations are imposing on Americans and the economy, and exercise the political will necessary to limit—and reduce—those burdens.

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Appendix