



# Public Safeguards Past Due

Missed Deadlines Leave Public Unprotected

## **Acknowledgments**

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## Introduction

Congress typically delegates to federal agencies the task of creating regulations to implement the laws it passes. In many cases, especially for time-sensitive laws, Congress creates deadlines for agencies to complete the rules.<sup>1</sup> But a Public Citizen analysis of a set of public health and safety rulemakings reveals that most rules are issued after the deadlines pass, often by years.

This report reviews 159 regulations subject to statutory deadlines that were listed in the government's fall 2011 report of pending and recently completed regulations that were due no later than June of this year. Of these, 78 percent missed their congressionally established deadlines and more than half remain incomplete.<sup>2</sup>

Rules may be delayed for many reasons. Several statutes and executive orders were added to the rulemaking process in the 1980s and 1990s that created procedural obstacles for agencies to issue regulations. The changes were intended to make the process more amenable to businesses, and they added significant additional responsibilities that agencies must fulfill before rules can be finalized. Although there are many procedural requirements for agencies implementing new regulations, this report highlights four particular factors that impede agencies' ability to issue the rules that Congress mandates.

**The Regulatory Flexibility Act:** The Regulatory Flexibility Act requires agencies to conduct an intensive analysis of the potential effects of rules that pose a "significant economic impact on a substantial number of small entities." If a rule is subject to a regulatory flexibility analysis, the agency must quantify the number of small businesses that may be affected by the rule, the level of effort and expense required by small businesses to comply with the rule's standards, and possible alternatives to the rule.<sup>3</sup> Such analysis is onerous for agencies.

**Executive Order 12866:** Executive Order 12866, which was signed by President Bill Clinton in 1993, requires non-independent agencies to conduct extensive analyses of the costs and benefits of rules that are expected to have an annual cost of \$100 million or more, and to provide alternatives to the rules. The order requires agencies to issue regulations in the "most cost-effective manner," which impedes the ability of agencies to issue the most effective public health or safety rule. Economically significant rules must then be submitted to the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) for review. The order gives OIRA authority to review the significant rulemakings of

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<sup>1</sup> Jacob E. Gerson and Anne J. O'Connell, *Deadlines in Administrative Law*, 2 (Chicago Law Sch. Public Law and Legal Theory Working Paper, No. 196), <http://bit.ly/MsCDVn>.

<sup>2</sup> The results of Public Citizen's analysis are discussed further in the next section and are included in detail in the Appendix.

<sup>3</sup> 5 U.S.C § 601 & 612, <http://bit.ly/KxvDLK>.

all federal agencies except for independent agencies, such as the Securities and Exchange Commission (SEC), Federal Communications Commission (FCC) and Commodity Futures Trading Commission (CFTC).

**OIRA review:** Under Executive Order 12866, OIRA has 90 days to review submitted drafts of regulations, with one 30-day extension.<sup>4</sup> But the agency often does not abide by the 120-day period.<sup>5</sup> For example, all 14 of the rules included in this study that are at OIRA have been under review for more than 120 days. In total, 51 percent of the rules submitted to OIRA exceeded 120 days of review.

**Politically motivated delays:** In addition to procedural delays, politically motivated interference can hinder agencies' ability to implement laws. When the Securities and Exchange Commission (SEC) began implementing the conflict minerals provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act, industry groups lobbied heavily to water down the proposal. More than 14 months after the statutory deadline for issuing a final rule, the SEC has yet to complete it.

Procedural requirements and political pressures diminish the ability of agencies to issue rules promptly, even in cases in which Congress has set out deadlines. The rulemaking process demands that agencies conduct a seemingly endless stream of analyses, convene multiple panels and provide multiple opportunities for the public, industry, and other government agencies to provide input. It also requires agencies to furnish comprehensive responses and justifications throughout.

But solely blaming requirements for the government's poor record in meeting deadlines would be overly simplistic. The agencies and OIRA also play a determinative role in pushing rules to fruition when they have the will to do so.

Consider the contrast between OIRA's record of reviewing rules in recent years with its current performance. Of the 14 rules included in this report that are under OIRA review, all have been at OIRA for longer than its allotted 120 days. Yet, among rules included in this report that previously went through OIRA, more than two-thirds were processed within 120 days. Common sense suggests that OIRA has slowed its rulemaking efforts because regulations have become such a charged political issue in this presidential election year.

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<sup>4</sup> Exec. Ord. 12866, <http://bit.ly/Lai989>.

<sup>5</sup> OMB's Role in Reviews of Agencies' Draft Rules and the Transparency of Those Reviews, U.S. GENERAL ACCOUNTABILITY OFFICE (Sept. 22, 2003).

## I. Findings

The data set used in this analysis was limited to rules listed in the fall 2011 issue of the Unified Agenda of Federal Regulatory and Deregulatory Actions. Public Citizen assessed whether rules with statutory deadlines assigned to 12 public safety and consumer protection agencies were issued by congressionally mandated due dates.<sup>6</sup> For those rules that underwent review by OIRA, Public Citizen calculated whether OIRA's review exceeded 120 days, the maximum time allowed by Executive Order 12866, which authorizes it to review rules.<sup>7</sup>

The data set used in this study included 159 rules. Public Citizen's analysis found that nearly four-fifths of public safety and health regulations for which Congress imposed a deadline had not been issued by the deadline, and more than half of those rules whose due dates have passed remain incomplete. Specifically:

- **78 percent of the rules included in this study were not issued by the statutory deadline.** Of the 159 public health and safety rules with statutory deadlines, 125 rules missed the deadline.
- **51 percent of the rules included in this study remain incomplete.** Of the 159 rules, 81 have yet to be finalized.
- **51 percent of the rules included in the study that were reviewed by OIRA were delayed at OIRA.** Of the 49 rules that were submitted to OIRA for review, the review of 25 lasted more than 120 days—the maximum length of review time that OIRA is afforded by the executive order.

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<sup>6</sup> The agencies included in this study were the Consumer Financial Protection Bureau (CFPB), Consumer Safety Product Commission (CSPC), Commodity Futures Trading Commission (CFTC), Department of Agriculture (USDA), Department of Energy (DOE), Department of Transportation (DOT), Environmental Protection Agency (EPA), Food and Drug Administration (FDA), Securities and Exchange Commission (SEC), Federal Communications Commissions (FCC), Federal Reserve System (FRS), and Office of the Comptroller of the Currency (OCC). The data set was limited to proposed rules and final rules for which Congress set statutory deadlines of June 1, 2012, or earlier. To account for a lag between the completion of a rule and its publication in the Federal Register, only rules that remained incomplete 30 days past their statutory deadline were counted as late. In some instances, Congress has granted agencies permission to extend deadlines. For the purpose of this analysis, the deadline initially set by Congress was used to determine whether a rule missed its deadline. It has been noted by an outside reader of this analysis that the need for a few rules may be obviated by external circumstances, such as the absence of an international treaty upon which a pending rule relies. Such cases would not significantly change this study's findings.

<sup>7</sup> Executive Order 12866 allots OIRA 90 days to review a rule, with a one-time extension of 30 days. The total review time should not exceed 120 days.

- **Each of the rules included in this study that are currently under review at OIRA has been under review for more than 120 days.** Of the 14 rules currently at OIRA, each has been under review for more than 120 days.

Eight of the 12 agencies included in this study missed at least 70 percent of their statutory deadlines for rules listed in the fall 2011 Unified Agenda of Federal Regulatory and Deregulatory Actions. The Environmental Protection Agency (EPA) missed deadlines for eight of nine rules under its purview. The Commodity Futures Trading Commission (CFTC) and Securities and Exchange Commission (SEC), two agencies tasked with creating rules to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act, were responsible for more than one-third of the rules included in Public Citizen's analysis. Combined, these eight agencies missed 89 percent of their deadlines. [See Figure 1]

**Figure 1: Agencies' Records of Completing Rules with Statutory Deadlines**

Agency	Number of Rules with Statutory Deadlines	Number of Rules that Met Deadline	Number of Rules that Missed Deadline	Percentage of Rules Delayed
Consumer Product Safety Commission	1	0	1	100.0%
Commodity Futures Trading Commission	24	2	22	91.7%
Environmental Protection Agency	9	1	8	88.9%
Securities and Exchange Commission	32	4	28	87.5%
Department of Energy	21	3	18	85.7%
Department of Transportation	37	8	29	78.4%
Food and Drug Administration	8	2	6	75.0%
Department of Agriculture	11	3	8	72.7%
Comptroller of the Currency	3	1	2	66.7%
Federal Communications Commission	4	3	1	25.0%
Federal Reserve System	8	6	2	25.0%
Consumer Financial Protection Bureau	1	1	0	0.0%
<b>Totals</b>	<b>159</b>	<b>34</b>	<b>125</b>	<b>78.6%</b>

Source: Public Citizen analysis of rules with statutory deadlines listed in 2011 issue of the Unified Agenda of Federal Regulatory and Deregulatory Actions.

A full listing of the rules included in this study is in Appendix 1. Public Citizen asked the Office of Management and Budget if it believes OIRA's track record of reviewing rules within its allotted 120 days is acceptable. OMB's response is published in Appendix 2.

## II. Food Safety Rules

Last year, according to the Centers for Disease Control and Prevention (CDC), 48 million people in United States suffered from foodborne illnesses. Of these, 128,000 were hospitalized and 3,000 died.<sup>8</sup> In response, on Nov. 30, 2011, Congress passed the Food Safety Modernization Act (FSMA), the largest revision to U.S. food safety regulations in 70 years.<sup>9</sup> Although the USDA is responsible for overseeing meat, poultry, and egg products, the Food and Drug Administration (FDA) regulates most of the U.S. food supply.<sup>10</sup> FSMA provides the FDA with tools to better protect the U.S. food supply, more quickly recall tainted foods, and more effectively respond to foodborne illness outbreaks.

But these four important FSMA rules are stuck in the regulatory review process. When eventually issued, these will implement safety measures at food processing facilities and at animal feed processing facilities, create minimum requirements for the safe handling of produce, and require food importers to meet U.S. food safety standards. [See Figure 2]

**Figure 2: Pending Food Safety Rules with Statutory Deadlines Required by FSMA**

Rule	Deadline	Rulemaking Type Required by Deadline	Delay	Rule is Currently at OIRA	Date OIRA Received Rule	Rulemaking Type Submitted to OIRA
Preventive Controls for Food Processing Facilities	7/4/2012	Final rule	Likely*	Yes	11/22/2011	Proposed rule
Preventive Controls for Animal Feed Processing Facilities	9/27/2009**	Final rule	Yes	Yes	12/5/2011	Proposed rule
Foreign Supplier Verification Program	1/4/2012	Final rule	Yes	Yes	11/28/2011	Proposed rule
Produce Safety Regulation	1/4/2012	Proposed rule	Yes	Yes	12/9/2011	Proposed rule

Source: Public Citizen analysis of OIRA Regulatory Dashboard provided by the Office of Management and Budget (<http://www.reginfo.gov>).

\*The FDA is still awaiting for OIRA's approval of the proposed rule and has yet to draft the final rule.

\*\*The Food and Drug Amendments of 2007 set a statutory deadline for animal feed safety that has yet to be fulfilled. FSMA included a substantially similar requirement.

### Regulatory Delays

Because the four new rules are considered to pose significant costs and have a significant economic impact on small entities, the FDA must complete a variety of analyses before finalizing the rules. For example, it must conduct comprehensive cost-benefit and Regulatory Flexibility Act analyses.

<sup>8</sup> *2011 Estimates of Foodborne Illness in the United States*, CENTERS FOR DISEASE CONTROL AND PREVENTION (April 15, 2011), <http://1.usa.gov/LGWNzb>.

<sup>9</sup> *The New FDA Food Safety Modernization Act (FSMA)*, U.S. FOOD AND DRUG ADMINISTRATION (May 31, 2012), <http://1.usa.gov/jXR8YK>.

<sup>10</sup> *About the FDA*, Food and Drug Administration, <http://1.usa.gov/LCFMTH>.



“[There is a] logistical challenge of getting this volume of rulemaking done and out the door at the same time,” Michael Taylor, deputy commissioner for foods at the FDA, told *Food Safety News* in January.<sup>11</sup>

The FDA drafted proposed versions of the four rules within the last year and submitted them to OIRA. These drafts remain at OIRA.

OIRA has had each of the proposals under review for the past six months, which exceeds the maximum number of days (120) allowed by Executive Order 12866 for OIRA review. Three of the four rules have already missed statutory deadlines, and the fourth inevitably will, as well, because it is due in July and the rulemaking is still in the proposed stage.

The delay at the OIRA “baffles consumer advocates and industry groups,” which in rare agreement joined forces to lobby for passage of the legislation and press for its funding,<sup>12</sup> *The Washington Post* reported in May. Both consumer and industry representatives are uncertain about why OIRA is delaying the release of the proposed rules.

Even after OIRA completes its review, critical steps remain before the FDA can issue final regulations: The agency must officially release the proposed versions to the public, conduct public comment periods (typically lasting 60 days or more) and, after having considered all public comments, prepare final rules. The agency must then send the final rules to OIRA for review before they can be issued.

### **Pending Food Safety Regulations Required by the Food Safety Modernization Act**

#### *1. Preventive Controls for Food Processing Facilities*

This pending regulation would improve manufacturing, processing, packing, and distribution of food at processing facilities.<sup>13</sup> FSMA requires companies to develop written food safety plans that identify hazards at food processing facilities and aim to prevent food contamination.<sup>14</sup> Safety plans can address issues surrounding environmental pathogens, food allergens, mandatory employee training, and sanitation of food contact surfaces.<sup>15</sup> Before the passage of FSMA, FDA had not updated standards for good manufacturing

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<sup>11</sup> Helena Bottemiller, *Key FSMA Rules Continue to Languish at OMB, Months After Deadline*, FOOD SAFETY NEWS (April 23, 2012), <http://bit.ly/1l3XF6>.

<sup>12</sup> Dina ElBoghdady, *Food-safety rules in limbo at Office of Management and Budget*, WASHINGTON POST (May 2, 2012), <http://wapo.st/Kvw0By>.

<sup>13</sup> This rule is officially called “Hazard Analysis and Risk-Based Preventive Controls.”

<sup>14</sup> *Hazard Analysis and Risk-Based Preventive Controls*, Office of Management and Budget (2011), <http://bit.ly/KF8HH1>.

<sup>15</sup> *Id.*

practices since 1986.<sup>16</sup> The FDA is to inspect the safety plans, and confirm that they are effective and properly followed by food processors.

FSMA's preventive measures at food processing plants are designed to address common causes of contaminations, like those that led to one of the deadliest listeria outbreaks in 2011. Jensen Farms, a Colorado farm, was responsible for the outbreak that infected 146 people and caused 32 fatalities.<sup>17</sup> Details later revealed that there was bacteria on the equipment that processed cantaloupes. The cantaloupes also were not washed with antimicrobial solutions or cooled before storage, as proper care would require.<sup>18</sup> Shortly after the outbreak, Jensen Farms filed for bankruptcy.<sup>19</sup>

## 2. Preventive Controls for Animal Feed Processing Facilities

Section 103 of FSMA proposes similar regulations to Section 1002(a) of the Food and Drug Administration Amendments of 2007. Both laws direct the FDA to establish processing standards for pet food. The 2007 measure proposed a September 2009 deadline, requiring the FDA to establish ingredient standards, processing standards and labeling standards for pet food.<sup>20</sup> FSMA's provision included a July 2012 deadline and emphasized prevention, inspection, compliance, and response, as well as import safety, for all animal feed.<sup>21</sup>

The rule, "Current Good Manufacturing Practice and Hazard Analysis and Risk-Benefit Preventive Controls for Food for Animals," would require companies to develop written food safety plans that identify and aim to prevent food safety hazards in their animal feed processing facilities, similar to the preventive controls being implemented within processing facilities for food intended for human consumption.<sup>22</sup> These preventive measures would reduce the number of recalls of contaminated animal food products that can harm people who handle the feed, as well as the animals who consume it. From 2006 to 2008, nearly 80 people, including 32 children under the age of two, were infected as a result of coming into contact with contaminated dog or cat food.<sup>23</sup> The rule would prevent pet food contamination similar to several outbreaks that occurred in the past two years

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<sup>16</sup> *Id.*

<sup>17</sup> *Jensen Farms, Cantaloupe Farm Traced to Listeria Outbreak, Files For Bankruptcy*, ASSOCIATED PRESS (May 25, 2012), <http://huff.to/Ksknhd>.

<sup>18</sup> Dan Flynn, *Probe Finds Many to Blame for Listeria Cantaloupe Outbreak*, FOOD SAFETY NEWS (Jan. 11, 2012), <http://bit.ly/xEkdeL>.

<sup>19</sup> *Jensen Farms, Cantaloupe Farm Traced to Listeria Outbreak, Files For Bankruptcy*, ASSOCIATED PRESS (May 25, 2012), <http://huff.to/Ksknhd>.

<sup>20</sup> Food and Drug Administration Amendments Act of 2007, <http://1.usa.gov/Kzr3ws>.

<sup>21</sup> *Animal & Veterinary*, Food and Drug Administration, <http://1.usa.gov/yUMODs>.

<sup>22</sup> *Id.*

<sup>23</sup> Tara Parker-Pope, *Salmonella Lurks in Pet Foods Too*, THE NEW YORK TIMES (Aug. 11, 2011), <http://nyti.ms/L84MFx>.

involving salmonella-contaminated pet food. An outbreak this year has sickened at least 14 people in nine states.<sup>24</sup>

### 3. Foreign Supplier Verification Program

The foreign supplier verification program stems from the need to prevent future outbreaks similar to recent outbreaks from Salmonella-contaminated yellowfin tuna from India, which infected more than 160 people, or the outbreak from Salmonella-contaminated pet treats imported from China, which resulted in the FDA receiving 350 reports of pet illnesses.<sup>25</sup>

To address the 15 percent of the U.S. food supply that is imported, FSMA increases FDA's tools and authorities to verify that imported food is produced in compliance with U.S. requirements.<sup>26</sup> The foreign supplier verification program will require foreign food processing facilities to adhere to the same standards as the preventive controls measures to be implemented domestically.<sup>27</sup> In addition to the foreign supplier verification program, FSMA requires the FDA to conduct inspections of 600 facilities worldwide within the first year of the program's enactment and double those inspections every year for the next five years.<sup>28</sup> In fiscal year 2011, the FDA inspected 438 foreign food facilities.<sup>29</sup> FSMA proposes to increase inspections by at least 37 percent during its first year of implementation.

### 4. Produce Safety Rule

According to the Center for Science in the Public Interest (CSPI), produce is one of the 10 riskiest FDA-regulated foods.<sup>30</sup> Leafy greens alone—such as iceberg lettuce, baby leaf lettuce, and spinach—have caused 363 outbreaks that resulted in 13,568 reported cases of illness since 1990.<sup>31</sup> A cause of 64 percent of outbreaks is a pathogen called Norovirus, which spreads from unwashed hands handling produce.<sup>32</sup> In some cases, a more deadly strain of bacteria, such as E. coli can cause an outbreak. Earlier this year, 58 people from

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<sup>24</sup> JoNel Aleccia, *Recalled Dog Food Tied to Salmonella Outbreak*, MSNBC (May 4, 2012), <http://on.msnbc.com/IOY11Z>.

<sup>25</sup> Mary Rothschild, *Sushi Salmonella Outbreak Total Rises to 160 Confirmed Cases*, FOOD SAFETY NEWS (April 21, 2012) <http://bit.ly/JufC3z>, & 158 CONG. REC. S379 (2012).

<sup>26</sup> *Foreign Supplier Verification Program*, Office of Management and Budget (2011), <http://bit.ly/KFeZq5>.

<sup>27</sup> *Id.*

<sup>28</sup> *Inspection & Compliance*, U.S. FOOD AND DRUG ADMINISTRATION, (June 14, 2012), <http://1.usa.gov/t0kp0J>.

<sup>29</sup> *FSMA to Increase the Likelihood of FDA Inspections of Foreign Food Facilities*, U.S. FOOD AND DRUG ADMINISTRATION (June 14, 2012) <http://bit.ly/M8Q3aY>.

<sup>30</sup> Sarah Klein, Jacqlyn Witmer, Amanda Tian, and Caroline DeWaal, *The Ten Riskiest Foods Regulated by the Regulated by the U.S. Food and Drug Administration*, CENTER FOR SCIENCE IN THE PUBLIC INTEREST, <http://bit.ly/tQdzt>.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

nine states were infected with *E. coli* as a result of coming into contact with a brand of romaine lettuce.<sup>33</sup>

The produce safety rule sets much-needed minimum standards for safe growing and harvesting of fresh fruits and vegetables. The rule is currently under review by OIRA, but once released, the FDA has requested a 120-day comment period to allow growers to respond during spring planting season.<sup>34</sup>

### III. Rearview Mirrors Rule

In 2008, President George W. Bush signed the Cameron Gulbransen Kids Transportation Safety Act. The law included several mandates aimed at reducing fatalities and injuries to children in non-traffic auto accidents.<sup>35</sup> Among its requirements, the law called on the National Highway Traffic Safety Administration (NHTSA) to improve its standard on motor vehicles' rearview mirrors to enable drivers to detect the presence of people immediately behind a vehicle.<sup>36</sup> But a year past the deadline Congress set for NHTSA to issue the rule, it remains incomplete.

The act was named after two-year old Cameron Gulbransen, who was killed when his father accidentally backed over him in the family's driveway. The intent of the requirement for a new rearview mirror rule was to avoid such tragedies by expanding the field of view of a motor vehicle driver to minimize blind spots—areas in which drivers cannot see either by turning around or using their vehicles' mirrors—directly behind the vehicle.<sup>37</sup> By implementing the rule, NHTSA concluded that annual fatalities would be reduced by 95 to 112 and that 7,072 to 8,374 injuries would be avoided.<sup>38</sup>

On average, 292 fatalities and 18,000 injuries result from backover crashes every year.<sup>39</sup> Of those, 228 fatalities and 17,000 injuries involve light vehicles, such as passenger cars.<sup>40</sup> These types of crashes most often occur in areas off public roads, such as on driveways or in parking lots, because drivers cannot see a person standing directly behind the vehicle as

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<sup>33</sup> *Investigation Update: Multistate Outbreak of E. coli O157:H7 Infections Linked to Romaine Lettuce*, CENTERS FOR DISEASE CONTROL AND PREVENTION (March 23, 2012), <http://1.usa.gov/GSMtmR>

<sup>34</sup> *FDA to Publish New Produce Rule with 120 Days for Comments*, FOOD SAFETY NEWS (April 27, 2012), <http://bit.ly/lt3P5G>

<sup>35</sup> *See, e.g.*, Press Release, Public Citizen, "VICTORY: Important Child Safety Bill Becomes Law" (Feb. 29, 2008) and Advocates for Highway & Auto Safety, "Cameron Gulbransen Kids Transportation Safety Act of 2008," <http://bit.ly/NrN9B5>.

<sup>36</sup> The official title of this rule is "Federal Motor Vehicle Safety Standard No. 111, Rearview Mirrors."

<sup>37</sup> Federal Motor Vehicle Safety Standard, Rearview Mirrors; Federal Motor Vehicle Safety Standard, Low-Speed Vehicles Phase-In Reporting Requirements, 75 FED. REG. 76186 (proposed Dec. 7, 2010) (to be codified at 49 CFR pt. 571 & 585), <http://1.usa.gov/Le7rgT>.

<sup>38</sup> *Id.* at 76189.

<sup>39</sup> *Id.* at 76187.

<sup>40</sup> *Id.*

they back up.<sup>41</sup> NHTSA, in its proposed rule, elaborated on the disproportionate risk backover crashes pose to children and older individuals. “When restricted to backover fatalities involving passenger vehicles,” the proposed rule states, “children under 5 years old account for 44 percent of the fatalities, and adults 70 years of age and older account for 33 percent.”<sup>42</sup>

The law permitted the improved rearview mirror safety standard to be met with additional mirrors, sensors, cameras or other technology.<sup>43</sup> However, NHTSA concluded that camera-based systems were the only effective type of technology currently available to avoid backover crashes.<sup>44</sup> Adding cameras to new vehicles would cost \$159 to \$203 per vehicle, NHTSA calculated.<sup>45</sup> In anticipation of the rule, some automakers, such as Honda, have been designing some new models with camera-based systems as standard equipment.<sup>46</sup> According to *The New York Times*, 45 percent of all 2012 vehicle models include a rearview camera as a standard feature and 23 percent include it as an option, so only about half of all car buyers would be affected by the rule, and that share is dropping.<sup>47</sup>

The law requires the new safety standard to take effect by September 2014.<sup>48</sup>

### Regulatory Delays

The law set a Feb. 28, 2011, deadline to finalize a new rearview mirror safety rule. But Congress afforded the secretary of the Department of Transportation the authority to extend the deadline. Transportation Secretary Ray LaHood has subsequently extended the deadline twice,<sup>49</sup> most recently to Dec. 31, 2012.<sup>50</sup>

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<sup>41</sup> *Id.* at 76196.

<sup>42</sup> *Id.* at 76193.

<sup>43</sup> Cameron Gulbransen Kids Transportation Safety Act of 2007, Pub. L. No. 110-189, <http://1.usa.gov/Mz5PO7>.

<sup>44</sup> Federal Motor Vehicle Safety Standard, Rearview Mirrors; Federal Motor Vehicle Safety Standard, Low-Speed Vehicles Phase-In Reporting Requirements, 75 FED. REG. 76239 (proposed Dec. 7, 2010) (to be codified at 49 CFR pt. 571 & 585), <http://1.usa.gov/Le7rgT>.

<sup>45</sup> *Id.* at 76189.

<sup>46</sup> Nick Bunkley, *U.S. Rule Set for Cameras at Cars' Rear*, NEW YORK TIMES (Feb. 27, 2012), <http://nyti.ms/L5Q7we>.

<sup>47</sup> *Id.*

<sup>48</sup> Cameron Gulbransen Kids Transportation Safety Act of 2007, Pub. L. No. 110-189, <http://1.usa.gov/Mz5PO7>.

<sup>49</sup> Nick Bunkley, *U.S. Delays Rule on Rearview Car Cameras*, NEW YORK TIMES (Feb. 28, 2012), <http://nyti.ms/AqNNt5>.

<sup>50</sup> *Id.*

NHTSA released an advanced notice of proposed rulemaking in March 2009 and a proposed version of the rule in December 2010.<sup>51</sup> Each draft had to be submitted to OIRA for review.<sup>52</sup>

The agency submitted its draft of the final rulemaking to OIRA on November 16, 2011.<sup>53</sup> This draft—the third version to be sent to OIRA—has been on OIRA’s desk for seven months, three months more than the 120 days OIRA is allotted for review.<sup>54</sup> NHTSA is now waiting for OIRA to release the final version of the rule.

There is little transparency into OIRA’s decision-making process.<sup>55</sup> Observers have put forth various reasons for the delay. Some suggest political concerns are slowing the rule’s finalization because it is one of the five most expensive pending regulations.<sup>56</sup> The delay comes amid the presidential election campaign, in which public health and safety regulations are a major point of debate.<sup>57</sup>

Others have focused on cost-benefit analysis as the reason for delay.<sup>58</sup> If it saved 112 lives a year, the rule would cost \$11.8 million per life saved.<sup>59</sup> NHTSA has generally deemed the \$6.1 million as the value of a “statistical life.”<sup>60</sup>

But such considerations fail to take several factors into account. Among them, 44 percent of victims of backover crashes are “under 5 years of age with nearly their entire lives ahead of them,” NHTSA wrote in the proposed rule, suggesting that the generic “value” of a human life should not apply in this instance even if one accepts the rationale of justifying rules solely on the basis of cost-benefit formulations. Also, NHTSA noted, the horrific pain of a parent causing his or her child’s death belies a cost calculation in dollars and cents. The

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<sup>51</sup> Federal Motor Vehicle Safety Standard; Rearview Mirrors, 74 FED. REG. 9478 (proposed March 4, 2009) (to be codified at 49 CFR Pt. 571), <http://1.usa.gov/NHLuZ0> and Federal Motor Vehicle Safety Standard, Rearview Mirrors; Federal Motor Vehicle Safety Standard, Low-Speed Vehicles Phase-In Reporting Requirements, 75 FED. REG. 76239 (proposed Dec. 7, 2010) (to be codified at 49 CFR pt. 571 & 585), <http://1.usa.gov/Le7rgT>.

<sup>52</sup> *OIRA Conclusion of EO 12866 Regulatory Review*, Office of Management and Budget, (February 19, 2009), <http://bit.ly/MdwlN8>, & *OIRA Conclusion of EO 12866 Regulatory Review*, Office of Management and Budget, (August 17, 2010), <http://bit.ly/Mz8yqZ>.

<sup>53</sup> *Pending EO 12866 Regulatory Review*, Office of Management and Budget (Nov. 16, 2011), <http://bit.ly/LeaWE5>.

<sup>54</sup> Exec. Ord. 12866, <http://bit.ly/Lai989>.

<sup>55</sup> See e.g. OMB’s Role in Reviews of Agencies’ Draft Rules and the Transparency of Those Reviews, U.S. GENERAL ACCOUNTABILITY OFFICE (Sept. 22, 2003).

<sup>56</sup> Andrew Zajac, *Obama Punt on Cameras Robs GOP of Issue*, BLOOMBERG, (March 2, 2012), <http://bloom.bg/xejP6l>.

<sup>57</sup> *Id.*

<sup>58</sup> Arden Rowell, *Valuing the Rear-view Camera Rule*, REG BLOG, (May 30, 2012), <http://bit.ly/KXhjq1>.

<sup>59</sup> *Id.*

<sup>60</sup> Federal Motor Vehicle Safety Standard, Rearview Mirrors; Federal Motor Vehicle Safety Standard, Low-Speed Vehicles Phase-In Reporting Requirements, 75 FED. REG. 76237 (proposed Dec. 7, 2010) (to be codified at 49 CFR pt. 571 & 585), <http://1.usa.gov/Le7rgT>.

cost-benefit calculation on lives saved also fails to place a value on avoiding 7,072 to 8,374 injuries in backover accidents.<sup>61</sup> There are further unquantifiable benefits that would accrue from universal inclusion of cameras in vehicles, NHTSA noted, such as the “increased ease and convenience of driving, and especially parking,” as well as the value that society places on the protection of children.<sup>62</sup>

Finally, the costs are probably greatly overstated. NHTSA forecasts that “the costs are likely to be substantially less when actually installed in future model years” because of technological innovation. But NHTSA was not permitted to factor this judgment into its calculations because the guidelines that govern cost-benefit analyses prohibited the agency from doing so.<sup>63</sup>

But evaluating the rule purely on a cost-benefit basis, even with attempts to account for factors for which dollar values are elusive, misses a more fundamental point: an unobtrusive technological solution exists to save about 112 lives a year. The solution is so reasonably priced that much of the marketplace is already willing to pay for it.

At present, the rule could be implemented for less than the cost of three full tanks of gas for a minivan, hardly a major expenditure in relation to the price of a new car. But about four people a week are dying unnecessarily while OIRA mulls over formulas to determine whether saving those lives is worth the effort. This unnecessary delay illustrates how politically motivated and procedural detours can slow the rulemaking process in ways that belie common sense.

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*, at 76239.

<sup>63</sup> *Id.*, at 76238.

## IV. Conflict Minerals Rule

Many provisions of the Dodd–Frank Wall Street Reform and Consumer Protection Act were enacted to protect U.S. consumers. In contrast, the purpose of Section 1502 is primarily to reduce the purchase of “conflict minerals”—five minerals whose sale by combatants in the Democratic Republic of Congo (DRC) is known to perpetrate human rights abuses on people in the DRC. Section 1502 requires the Securities and Exchange Commission (SEC) to issue a rule directing publicly held companies to disclose whether any of four metals—gold, tantalum, tungsten and tin—that are present in their products came from central Africa, where trade in these commodities has funded years of civil war.<sup>64</sup>

“It is the sense of Congress,” the act states, “that the exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo (DRC) is helping to finance conflict characterized by extreme levels of violence... particularly sexual- and gender-based violence and contributing to an emergency humanitarian situation therein.”<sup>65</sup>

Section 1502 requires public companies to “exercise due diligence” in tracking the supply chain of the minerals to their origin.<sup>66</sup> Companies must contract with independent auditors to assess the composition of their products and to disclose the findings in their annual reports to the SEC. The provision also allows companies to label their products “DRC conflict free” if they qualify.<sup>67</sup>

The statute required the SEC to promulgate the rule by April 15, 2011.<sup>68</sup> The agency issued a proposed rule in December 2010. More than a year later, the agency has yet to issue a final rule.

### Regulatory Delays

After the April 2011 deadline passed, the SEC said that the rule would be out by December. Then it said by June. In March 2012, nearly a full year after a final rule was due, the SEC reported to Congress that the agency will need yet another “couple of months” to complete the rule.<sup>69</sup> Numerous industry groups have likely contributed to the delay by heavily

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<sup>64</sup> Conflict Minerals, 75 FED. REG. 80948 (proposed Dec. 23, 2010) (to be codified at 17 CFR Pt. 229 & 249), <http://1.usa.gov/LnNtS7>.

<sup>65</sup> 156 CONG. REC. H4977 (2010), <http://1.usa.gov/MH9ndY>.

<sup>66</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203 § 1502, <http://1.usa.gov/eEIZxs>.

<sup>67</sup> *Id.* § 1502 (b)(p)(1)(A)(ii)

<sup>68</sup> *Id.*

<sup>69</sup> Jesse Hamilton, *SEC Conflict Mineral Rule May Miss Deadline by More Than a Year*, BLOOMBERG (March 6, 2012), <http://bloom.bg/zDHAyS>.



lobbying the SEC to scale back the proposed rule and to establish a phase-in period to delay its effective date.<sup>70</sup> [Figure 3 lists 15 organizations that have lobbied the SEC on the rule.]

**Figure 3: Selected Organizations That Have Lobbied the SEC on the Conflict Mineral Rule, 2011-2012**

Organization
American Apparel & Footwear Association
AngloGold Ashanti North America Inc.
Best Buy Co.
Eastman Kodak Company
General Motors Company
National Electrical Manufacturers
National Retail Federation
Panasonic Corporation
Retail Industry Leaders Assn
Siemens Corporation
The Procter & Gamble Company
Tyco Electronics Corporation
U.S. Chamber of Commerce
Wal-Mart Stores Inc.
Xerox Corporation

Source: Public Citizen analysis of Senate Disclosure Lobbying Database (<http://www.senate.gov>).

Human rights groups and faith-based groups have countered by urging the SEC to issue a strong rule.<sup>71</sup>

## V. Federal Building Energy Efficiency Performance Standards Rule

In December 2007, President George W. Bush signed the Energy Independence and Security Act. Section 433 of the act requires the Department of Energy (DOE) to gradually achieve carbon-neutrality in new and renovated federal buildings' energy consumption by 2030.<sup>72</sup> The act directed the DOE to revise building energy efficiency performance standards by December 2008.<sup>73</sup> Three-and-a-half years later, the rule has yet to be completed.

The rule, designed to be a national model for carbon-neutral construction, will phase out the use of energy generated from fossil fuels—coal, oil, natural gas, kerosene, and liquefied

<sup>70</sup> Sarah N. Lynch, *SEC to Have Phase-in on Conflict Minerals Rule*, REUTERS (March 6, 2012), <http://reut.rs/AzN9gR>.

<sup>71</sup> Tim Mak, *Clash on Dodd-Frank 'Conflict Minerals'*, POLITICO (Jan. 26, 2012), <http://politi.co/MiiLq0>.

<sup>72</sup> Fossil Fuel-Generated Energy Consumption Reduction for New Federal Buildings and Major Renovations of Federal Buildings, 75 FED. REG. 63404 (proposed Oct. 15, 2010) (to be codified at 10 C.F.R. pt. 433 & 435).

<sup>73</sup> Energy Independence and Security Act of 2007, Pub. L. No. 110-140, <http://1.usa.gov/erxMKj>.

petroleum—in new federal buildings by 2030. The gradual elimination of fossil fuels was set to begin with a 55 percent reduction in 2010, a 65 percent reduction in 2015, an 80 percent reduction in 2020, a 90 percent reduction in 2025, and a complete reduction in fossil fuel use by 2030.<sup>74</sup> The rule also would apply to any building set to undergo renovation with construction costs of more than \$2.5 million.<sup>75</sup>

The federal government spends more than \$7 billion annually to operate 502,000 buildings.<sup>76</sup> In fiscal year 2007, the latest year for which data is available, federal buildings accounted for 2.2 percent of all U.S. building energy consumption.<sup>77</sup>

### Regulatory Delays

For the past 10 months, the rule has been under review by OIRA, which signed off on a proposed draft in 2010.<sup>78</sup>

On April 12, 2012, eight months into OIRA's second review of the rule, representatives of OIRA, the DOE and the White House Council on Environmental Quality met with representatives from the American Gas Association (AGA) and the Federal Performance Contracting Coalition in a closed-door meeting.<sup>79</sup> During the meeting, the AGA shared that it would be calling on Congress to eliminate or substantially change the rule.<sup>80</sup> Since 2010, the AGA has spent \$1.9 million on lobbying and has given about \$700,000 to congressional members and candidates.<sup>81</sup>

An amendment was inserted in the fiscal year 2013 Energy and Water Appropriations Bill to prohibit funding of the rule, which the House Appropriations Committee approved in April.<sup>82</sup> The author of the amendment, Rep. Rodney Alexander (R-La.), member of the

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<sup>74</sup> Fossil Fuel-Generated Energy Consumption Reduction for New Federal Buildings and Major Renovations of Federal Buildings, 75 FED. REG. 63406 (proposed October 15, 2010) (to be codified at 10 C.F.R. pt. 433 & pt. 435).

<sup>75</sup> *Id.* at 63405

<sup>76</sup> Maria Gallucci, *Gas Industry Aims to Block 2030 Zero-Carbon Building Goal*, INSIDE CLIMATE NEWS (May 21, 2012), <http://bit.ly/JZtaVm>.

<sup>77</sup> Buildings Energy Data Book: Chapter 4, U.S. DEPARTMENT OF ENERGY, <http://bit.ly/Osffen>.

<sup>78</sup> *OIRA Conclusion of EO 12866 Regulatory Review*, Office of Management and Budget, <http://bit.ly/KqtpPp> and *Pending EO 12866 Regulatory Review*, Office of Management and Budget, <http://bit.ly/KqtPWe>.

<sup>79</sup> *Meeting Record Regarding: Fossil Fuel Energy Consumption Reduction for New Construction and Major Renovations of Federal Buildings*, Office of Management and Budget (April 12, 2012), <http://1.usa.gov/MjH1G9>.

<sup>80</sup> Fossil Fuel Elimination Rule Issue Brief, <http://1.usa.gov/LesHTI>.

<sup>81</sup> Maria Gallucci, *Gas Industry Aims to Block 2030 Zero-Carbon Building Goal*, INSIDE CLIMATE NEWS (May 21, 2012), <http://bit.ly/JZtaVm>.

<sup>82</sup> Press Release, *Fiscal Year 2013 Energy and Water Appropriations Bill Approved by Appropriations Committee*, THE U.S. HOUSE OF REPRESENTATIVES (April 25, 2012), <http://1.usa.gov/NI4k2m>.

House Appropriations Committee, said that implementing the rule would be harmful to the gas industry.<sup>83</sup> The rule now languishes at OIRA and faces an uncertain funding future.

## Conclusion

As this report outlines, agencies often miss statutory deadlines for issuance of rules needed to implement new laws.

Currently, Congress is proposing several measures that would reduce agencies' ability to meet these deadlines. Members of both houses of Congress have proposed bills that threaten to further hamper the already cumbersome and lengthy rulemaking process. These bills, such as the Regulatory Accountability Act (H.R. 3010, S. 1606) and the Regulatory Freeze for Jobs Act (H.R. 4078), would further politicize rulemakings and exacerbate the delay of critical rules.

The rulemaking process is already bottled up due to requirements that agencies conduct dense analyses and reviews. Even when Congress sets a deadline to prioritize a rulemaking, agencies are missing nearly four-fifths of those deadlines. Congress should be looking for ways to make the rulemaking process more efficient, not proposing hurdles to slow it down.

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<sup>83</sup> Maria Gallucci, *Gas Industry Aims to Block 2030 Zero-Carbon Building Goal*, INSIDE CLIMATE NEWS (May 21, 2012), <http://bit.ly/JZtaVm>.

### Appendix 1: Status of Regulations Listed in Fall 2011 Issue of the Unified Agenda of Federal Regulatory and Deregulatory Actions with Statutory Deadlines of June 1, 2012 or Before

	Agency	Rule	Was Deadline Missed*	Is Rule Complete	Date Rule Was Submitted to OIRA**	Date OIRA Completed Review?	OIRA Review Exceeded 120 Days	Is Rule Currently at OIRA
1	Commodity Futures Trading Commission	Governance and Possible Limits on Ownership and Control (DCOs, SEFs, and DCMs): Requirements for DCOs, DCMs, & SEFs Regarding the Mitigation of Conflicts of Interest	y	n	n/a	n/a	n/a	n/a
2	Commodity Futures Trading Commission	Part 40, Rule Certification and Approval Procedures	n	y	n/a	n/a	n/a	n/a
3	Commodity Futures Trading Commission	Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants	y	n	n/a	n/a	n/a	n/a
4	Commodity Futures Trading Commission	Segregation & Bankruptcy: Protection of Cleared Swaps Customer Contracts and Collateral Conforming Amendments to the Commodity Broker Bankruptcy Provisions	y	y	n/a	n/a	n/a	n/a
5	Commodity Futures Trading Commission	Further Definitions of Swap Dealer, Major Swap Participant, and Eligible Contract Participant	y	y	n/a	n/a	n/a	n/a
6	Commodity Futures Trading Commission	Real Time Public Reporting of Swaps Transactions	y	y	n/a	n/a	n/a	n/a
7	Commodity Futures Trading Commission	Core Principles and Other Requirements for Designated Contract Markets	y	n	n/a	n/a	n/a	n/a
8	Commodity Futures Trading Commission	Swap Data Recordkeeping and Reporting Requirements	y	y	n/a	n/a	n/a	n/a
9	Commodity Futures Trading Commission	To Establish Timeframe for Reporting Pre-Enactment Unexpired Swaps to a Swap Data Repository	n	y	n/a	n/a	n/a	n/a
10	Commodity Futures Trading Commission	Business Conduct Standards-Internal: Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants	y	y	n/a	n/a	n/a	n/a
11	Commodity Futures Trading Commission	Governance Requirements for DCOs, DCMs, & SEFs; Additional Requirements Regarding the Mitigation of Conflicts of Interest	y	n	n/a	n/a	n/a	n/a

	Agency	Rule	Was Deadline Missed*	Is Rule Complete	Date Rule Was Submitted to OIRA**	Date OIRA Completed Review?	OIRA Review Exceeded 120 Days	Is Rule Currently at OIRA
12	Commodity Futures Trading Commission	Swap Data Repositories	y	y	n/a	n/a	n/a	n/a
13	Commodity Futures Trading Commission	Business Conduct Standards-Internal: Designation of a Chief Compliance Officer; Required Compliance Policies; and Annual Report of a FCM, SD or MSP	y	y	n/a	n/a	n/a	n/a
14	Commodity Futures Trading Commission	Business Conduct Standards-Internal: Implementation of Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers	y	y	n/a	n/a	n/a	n/a
15	Commodity Futures Trading Commission	Business Conduct Standards-Internal: Implementation of Conflicts of Interest Policies and Procedures by Swap Dealers and Major Swap Participants	y	y	n/a	n/a	n/a	n/a
16	Commodity Futures Trading Commission	Business Conduct Standards-Internal: Orderly Liquidation Termination Provision in Swap Trading Relationship Documentation for Swap Dealers and Major Swap Participants	y	n	n/a	n/a	n/a	n/a
17	Commodity Futures Trading Commission	Business Conduct Standards-Internal: Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants	y	y	n/a	n/a	n/a	n/a
18	Commodity Futures Trading Commission	Business Conduct Standards-Internal: Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants	y	y	n/a	n/a	n/a	n/a
19	Commodity Futures Trading Commission	Business Conduct Standards-Internal: Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants	y	y	n/a	n/a	n/a	n/a
20	Commodity Futures Trading Commission	Product Definitions Relating to Swaps and Security Based Swaps	y	n	n/a	n/a	n/a	n/a

	Agency	Rule	Was Deadline Missed*	Is Rule Complete	Date Rule Was Submitted to OIRA**	Date OIRA Completed Review?	OIRA Review Exceeded 120 Days	Is Rule Currently at OIRA
21	Commodity Futures Trading Commission	Segregation & Bankruptcy: Protection of Collateral for Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy	y	n	n/a	n/a	n/a	n/a
22	Commodity Futures Trading Commission	End-User Clearing Exception	y	n	n/a	n/a	n/a	n/a
23	Commodity Futures Trading Commission	Position Limits for Derivatives;	y	n	n/a	n/a	n/a	n/a
24	Commodity Futures Trading Commission	Core Principles and Other Requirements for Swap Execution Facilities	y	n	n/a	n/a	n/a	n/a
25	Comptroller of the Currency	Off-Exchange Retail Foreign Exchange Transactions	n	y	n/a	n/a	n/a	n/a
26	Comptroller of the Currency	Alternatives to the Use of External Credit Ratings in the Regulatory Capital Guidelines of the Federal Banking Agencies	y	n	n/a	n/a	n/a	n/a
27	Comptroller of the Currency	Alternatives to the Use of External Credit Ratings in the Regulations of the OTS	y	n	n/a	n/a	n/a	n/a
28	Consumer Financial Protection Bureau	Disclosure Rules for Remittance Transactions (Regulation E)	n	y	n/a	n/a	n/a	n/a
29	Consumer Product Safety Commission	Testing, Certification, and Labeling of Certain Consumer Products	y	y	n/a	n/a	n/a	n/a
30	Department of Agriculture	Implementation of Regs. Required by the 2008 Farm Bill; Swine and Poultry Sample Contracts, Suspension of Delivery of Birds, Add'l Capital Investment Criteria, Breach of Contract, and Arbitration	y	y	03-Nov-11	05-Dec-11	n	n
31	Department of Agriculture	Wholesale Pork Reporting Program	y	n	19-Dec-11	06-Mar-12	n	n
32	Department of Agriculture	Supplemental Nutrition Assistance Program: Nutrition Education and Obesity Prevention Grant	y	n	16-Feb-12	n/a	y	y
33	Department of Agriculture	Commodity Incentive Payments; Wheat and Oilseed Programs	y	y	n/a	n/a	n/a	n/a

	Agency	Rule	Was Deadline Missed*	Is Rule Complete	Date Rule Was Submitted to OIRA**	Date OIRA Completed Review?	OIRA Review Exceeded 120 Days	Is Rule Currently at OIRA
34	Department of Agriculture	Resource Agency Procedures for Conditions and Prescriptions in Hydropower Licenses	n	y	04-Nov-05	08-Nov-05	n	n
35	Department of Agriculture	Wetlands Reserve Program	y	y	n/a	n/a	n/a	n/a
36	Department of Agriculture	Cotton Crop Classification Services to Growers, 2011 Crop, CN-10-0111	n	y	n/a	n/a	n/a	n/a
37	Department of Agriculture	Federal-State Interstate Shipment Cooperative Inspection Program	y	y	07-Jan-11 Final 04-Jun-09 Proposed	30-Mar-11 Final 31-Aug-09 Proposed	n	n
38	Department of Agriculture	Implementation of the Nondiscretionary General WIC Provisions in the Healthy, Hunger-Free Kids Act of 2010	n	y	n/a	n/a	n/a	n/a
39	Department of Agriculture	Mandatory Inspection of Catfish and Catfish Products	y	n	13-Nov-09	03-Feb-11	y	n/a
40	Department of Agriculture	Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation	y	n	18-Oct-11	n/a	y	y
41	Department of Energy	Inclusion of Electric Drive Vehicles in the Alternative Fuel Transportation Program	y	n	n/a	n/a	n/a	n/a
42	Department of Energy	Energy Efficiency Standards for Metal Halide Lamp Fixtures	y	n	17-Feb-12	n/a	y	y
43	Department of Energy	Test Procedures for High-Intensity Discharge Lamps	y	n	n/a	n/a	n/a	n/a
44	Department of Energy	Energy Conservation Standards for Residential Clothes Washers	y	n	23-Sep-11	26-Apr-12	y	n
45	Department of Energy	Determination Regarding Energy Efficiency Improvements in ANSI/ASHRAE/IESNA Standard 90.1-2010	n	y	22-Feb-11	23-Jun-11	y	n
46	Department of Energy	Fleet Petroleum and Alternative Fuel Consumption Reduction Requirements for Federal Agencies	y	n	10-Mar-11	20-Oct-11	y	n
47	Department of Energy	Federal Building Standards Update Rulemaking	y	y	13-Apr-11	01-Jul-11	n	n

	Agency	Rule	Was Deadline Missed*	Is Rule Complete	Date Rule Was Submitted to OIRA**	Date OIRA Completed Review?	OIRA Review Exceeded 120 Days	Is Rule Currently at OIRA
48	Department of Energy	Test Procedures for Microwave Ovens (Standby and Off Mode)	n	y	n/a	n/a	n/a	n/a
49	Department of Energy	Test Procedures for Residential Dishwashers, Dehumidifiers, and Conventional Cooking Products--Standby and Off Mode	y	n	n/a	n/a	n/a	n/a
50	Department of Energy	Energy Efficiency Standards for Battery Chargers and External Power Supplies	y	y	19-Jul-11	05-Mar-12	y	n
51	Department of Energy	Energy Conservation Standards for Walk-In Coolers and Walk-In Freezers	y	n	23-Sep-11	n/a	y	y
52	Department of Energy	Energy Efficiency Standards for Manufactured Housing	y	n	21-Dec-11	n/a	y	y
53	Department of Energy	Energy Priorities and Allocation System	y	y	14-Jan-11 Final 22-Apr-10 Proposed	04-Apr-11 Final 25-May-10 Proposed	n	n
54	Department of Energy	Federal Building Standards Rule--Update--90.1-2010	y	n	19-Dec-11	n/a	y	y
55	Department of Energy	Test Procedures for Residential Clothes Washers, Active, Standby, and Off Mode	y	y	n/a	n/a	n/a	n/a
56	Department of Energy	Fossil Fuel Energy Consumption Reduction for New Construction and Major Renovations of Federal Buildings	y	n	31-Aug-11	n/a	y	y
57	Department of Energy	Test Procedures for General Service Incandescent Lamps, General Service Fluorescent Lamps and Incandescent Reflector Lamps	y	y	n/a	n/a	n/a	n/a
58	Department of Energy	Test Procedures for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters	y	n	n/a	n/a	n/a	n/a
59	Department of Energy	Energy Efficiency and Sustainable Design Standards for New Federal Buildings	y	n	18-Aug-11	n/a	y	Y
60	Department of Energy	Advanced Technology Vehicles Manufacturing Incentive Program	n	y	05-Nov-08	05-Nov-08	n	



	Agency	Rule	Was Deadline Missed*	Is Rule Complete	Date Rule Was Submitted to OIRA**	Date OIRA Completed Review?	OIRA Review Exceeded 120 Days	Is Rule Currently at OIRA
61	Department of Energy	Energy Efficiency Standards for Residential Refrigerators, Refrigerator-Freezers, and Freezers	y	y	22-Apr-11	25-Aug-11	y	n
62	Department of Transportation	Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structures	n	y	n/a	n/a	n/a	n/a
63	Department of Transportation	National Registry of Certified Medical Examiners	y	y	28-Sep-11 Final 21-Aug-08 PR	04-Apr-12 Final 19-Nov-08 PR	y	n
64	Department of Transportation	Pilot Certification and Qualification Requirements (Formerly First Officer Qualification Requirements) (HR 5900)	y	y	27-Jun-11 Proposed 01-Feb-10 Final	22-Feb-12 Proposed 03-Feb-10 Final	y	n
65	Department of Transportation	Flight Crewmember Mentoring, Leadership and Professional Development (HR 5900)	y	n	19-May-11	n/a	y	Y
66	Department of Transportation	Landing Gear Mechanism and Pilot Compartment View	n	y				
67	Department of Transportation	Certification of Safety Auditors, Safety Investigators, and Safety Inspectors	y	y	15-Jan-02	01-Mar-02	n	n
68	Department of Transportation	Function and Reliability Testing for Turbine-powered Airplanes Less than 6,000 Pounds	n	y	n/a	n/a	n/a	n/a
69	Department of Transportation	Major Capital Investment Projects (RRR)	y	n	03-Oct-11 Proposed 29-Apr-10 Pre Rule	27-Dec-11 Proposed 28-May-10 Pre Rule	n	n
70	Department of Transportation	Flight and Duty Time Limitations and Rest Requirements	y	y	17-Aug-11 Final 31-Aug-10 Proposed	20-Dec-11 Final 03-Sep-10 Proposed	y	n
71	Department of Transportation	Rotor Overspeed Requirements	n	y	n/a	n/a	n/a	n/a
72	Department of Transportation	Vehicle Labeling--Fuel Economy, Greenhouse Gas and Other Emissions	n	y	19-May-11 Final 29-Jul-10 Proposed	24-May-11 Final 27-Aug-10 Proposed	n	n

	Agency	Rule	Was Deadline Missed*	Is Rule Complete	Date Rule Was Submitted to OIRA**	Date OIRA Completed Review?	OIRA Review Exceeded 120 Days	Is Rule Currently at OIRA
73	Department of Transportation	Commercial Medium- and Heavy-Duty On-Highway Vehicles and Work Truck Fuel Efficiency Standards	y	y	04-Jul-11 Final 13-Aug-10 Proposed	08-Aug-11 Final 22-Oct-11 Proposed	n	n
74	Department of Transportation	Damage Tolerance and Fatigue Evaluation for Metallic Structures	n	y	30-Nov-09	25-Feb-10	n	n
75	Department of Transportation	Activation of Ice Protection	y	y	21-Apr-11 Final 17-Sep-09 Proposed	20-Jul-11 Final 10-Nov-09 Proposed	n	n
76	Department of Transportation	Alternative Fuel Vehicle Badging and Fuel Compartment Labels on Alternative Fuel Usage	y	n	n/a	n/a	n/a	n/a
77	Department of Transportation	Track Safety Standards: Defective Rails, Inspection of Rail, Inspection Records, Qualified Operator, Joint Bar Fracture Report	y	n	n/a	n/a	n/a	n/a
78	Department of Transportation	Unified Registration System	y	n	08-Jul-11 PR 04-Feb-05 PR	06-Oct-11 PR 05-May-05 PR	n	n
79	Department of Transportation	Hours of Service: Passenger Train Employees	n	y	29-Jun-11 Final 14-Jan-11 Proposed	02-Aug-11 Final 14-Mar-11 Proposed	n	n
80	Department of Transportation	Camp Car Sleeping Quarters	y	y	n/a	n/a	n/a	n/a
81	Department of Transportation	Conductor Certification	y	y	n/a	n/a	n/a	n/a
82	Department of Transportation	Alternate Passenger Rail Service Pilot Program	y	y	n/a	n/a	n/a	n/a
83	Department of Transportation	Qualifications of Drivers; Diabetes Standard	y	n	16-Feb-06	28-Feb-06	n	n
84	Department of Transportation	Grade Crossing--Telephone Services	y	n	n/a	n/a	n/a	n/a
85	Department of Transportation	Electrical and Electronic System Lightning Protection	n	y	n/a	n/a	n/a	n/a
86	Department of Transportation	High-Speed Rail Corridor Development and Capital Investment Grants to Support Intercity Passenger Rail Service	y	n	n/a	n/a	n/a	n/a

	Agency	Rule	Was Deadline Missed*	Is Rule Complete	Date Rule Was Submitted to OIRA**	Date OIRA Completed Review?	OIRA Review Exceeded 120 Days	Is Rule Currently at OIRA
87	Department of Transportation	Alcohol and Controlled Substance Testing for Maintenance-of-Way Employees	y	n	n/a	n/a	n/a	n/a
88	Department of Transportation	Development and Use of Rail Safety Technology: Dark Territory	y	n	n/a	n/a	n/a	n/a
89	Department of Transportation	Federal Motor Vehicle Safety Standard No. 111, Rearview Mirrors	y	n	16-Nov-11 Final 17-Aug-10 Proposed	n/a 30-Nov-10 Proposed	y	y
90	Department of Transportation	Training Standards for Railroad Employees	y	n	11-Oct-11	10-Jan-12	n	
91	Department of Transportation	Prioritization and Allocation Authority Exercised By the Secretary of Transportation Under the Defense Production Act	y	n	18-Nov-11 Final 06-Oct-10 Proposed	n/a 04-Jan-11 Proposed	y	y
92	Department of Transportation	Emergency Escape Breathing Apparatus	y	n	n/a	n/a	n/a	n
93	Department of Transportation	Hours of Service	y	y	01-Nov-11 Final 26-Jul-10 Proposed	20-Dec-11 Final 17-Dec-10 Proposed	y	n
94	Department of Transportation	Certification of Turbofan Powered Airplanes and Miscellaneous Amendments	y	y	12-Jul-11 Final 05-May-09 Proposed	13-Oct-11 Final 31-Jul-09 Proposed	n	n
95	Department of Transportation	Restrictions on Operators Employing Former Flight Standards Service Aviation Safety Inspectors	y	y	21-Apr-11 Final 31-Jul-09 Proposed	20-Jul-11 Final 28-Oct-09 Proposed	n	n
96	Department of Transportation	Highway-Rail Grade Crossing Safety	y	n	n/a	n/a	n/a	n/a
97	Department of Transportation	FMVSS No. 124, Accelerator Control Systems Upgrade	y	y	n/a	n/a	n/a	n/a
98	Department of Transportation	Pilot-in-Command Proficiency Check and Other Changes to the Pilot and Pilot School Certification Rules	y	y	21-Apr-11 Final 05-May-09 Proposed	20-Jul-11 Final 20-Jul-09 Proposed	n	n

	Agency	Rule	Was Deadline Missed*	Is Rule Complete	Date Rule Was Submitted to OIRA**	Date OIRA Completed Review?	OIRA Review Exceeded 120 Days	Is Rule Currently at OIRA
99	Environmental Protection Agency	Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed On or Before December 1, 2008	y	n	n/a	n/a	n/a	n/a
100	Environmental Protection Agency	Air Quality Designations for the 2008 Lead National Ambient Air Quality Standards: Second Round	y	y	n/a	n/a	n/a	n/a
101	Environmental Protection Agency	Development of Best Management Practices for Recreational Boats Under Section 312(o) of the Clean Water Act	y	n	n/a	n/a	n/a	n/a
102	Environmental Protection Agency	2010 Effluent Guidelines Program Plan	y	n	30-Nov-09 Notice 24-Jan-11 Notice	15-Dec-09 Notice 23-Sep-11 Notice	y	n
103	Environmental Protection Agency	Revision of New Source Performance Standards for New Residential Wood Heaters	y	n	n/a	n/a	n/a	n/a
104	Environmental Protection Agency	Air Quality Designations for the 2010 Nitrogen Dioxide National Ambient Air Quality Standards	y	y	n/a	n/a	n/a	n/a
105	Environmental Protection Agency	Uniform National Discharge Standards for Vessels of the Armed Forces--Phase II	y	n	n/a	n/a	n/a	n/a
106	Environmental Protection Agency	Reasonable Further Progress Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard	n	y	n/a	n/a	n/a	n/a
107	Environmental Protection Agency	Revisions to the Unregulated Contaminant Monitoring Regulation (UCMR 3) for Public Water Systems	y	y	08-Dec-11 Final 30-Sep-10 Proposed	27-Mar-12 Final 28-Dec-10 Proposed	n	n
108	Federal Communications Commission	Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals; CG Docket No. 10-210	n	y	n/a	n/a	n/a	n/a
109	Federal Communications Commission	Rules and Regulations Implementing the Truth in Caller ID Act of 2009	n	y	n/a	n/a	n/a	n/a

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110	Federal Communications Commission	Contributions to the Telecommunications Relay Services Fund; CG Docket No. 11-47	n	y	n/a	n/a	n/a	n/a
111	Federal Communications Commission	Implementation of the Universal Service Portions of the 1996 Telecommunications Act	y	n	n/a	n/a	n/a	n/a
112	Federal Reserve System	Regulation D, Q, and DD-- Prohibition Against Payment of Interest on Demand Deposits (Docket No. R-1413)	n	y	n/a	n/a	n/a	n/a
113	Federal Reserve System	Regulations H and Y--Risk-Based Capital Standards: Advanced Capital Adequacy Framework--Basel II; Establishment of a Risk-Based Capital Floor (Docket No. R-1402)	n	y	n/a	n/a	n/a	n/a
114	Federal Reserve System	Regulation Y--Capital Plans (Docket No. R-1425)	n	y	n/a	n/a	n/a	n/a
115	Federal Reserve System	Regulation Z--Truth in Lending (Docket No. R-1399)	n	y	n/a	n/a	n/a	n/a
116	Federal Reserve System	Regulation JJ--Incentive-based Compensation Arrangements (Docket No. R-1410)	y	n	n/a	n/a	n/a	n/a
117	Federal Reserve System	Regulation E--Electronic Fund Transfers (Docket No: R-1419)	y	n	n/a	n/a	n/a	n/a
118	Federal Reserve System	Regulation Y--Resolution Plans and Credit Exposure Reports Require (Docket No. R-1414)	n	y	n/a	n/a	n/a	n/a
119	Federal Reserve System	Regulation II--Debit Card Interchange Fees and Routing (Docket No. R-1404)	n	y	n/a	n/a	n/a	n/a
120	Food and Drug Administration	Pet Food Labeling Requirements	y	n	n/a	n/a	n/a	n/a
121	Food and Drug Administration	Foreign Supplier Verification Program	y	n	28-Nov-11	n/a	y	y
122	Food and Drug Administration	Food Labeling; Gluten-Free Labeling of Foods	y	y				
123	Food and Drug Administration	Tobacco Product Substantial Equivalence Exemptions	n	y	20-Jun-11 Final 19-Nov-10 Proposed	29-Jun-11 Final 23-Dec-10 Proposed	n	n

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124	Food and Drug Administration	Cigarette Warning Label Statements	n	y	09-May-11 Final  22-Sep-10 Proposed	09-Jun-11 Final  02-Nov-10 Proposed	n	n
125	Food and Drug Administration	Non-Face-to-Face Sale and Distribution of Tobacco Products and Advertising, Promotion, and Marketing of Tobacco Products	y	n	04-Aug-11	31-Aug-11	n	n
126	Food and Drug Administration	Current Good Manufacturing Practice and Hazard Analysis and Risk-Benefit Preventive Controls for Food for Animals	y	n	05-Dec-11	n/a	y	y
127	Food and Drug Administration	Produce Safety Regulation	y	n	09-Dec-11	n/a	y	y
128	Securities and Exchange Commission	Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds	y	n	n/a	n/a	n/a	n/a
129	Securities and Exchange Commission	Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants	y	n	n/a	n/a	n/a	n/a
130	Securities and Exchange Commission	Prohibition Against Conflicts of Interest Relating to Certain Securitizations	y	n	n/a	n/a	n/a	n/a
131	Securities and Exchange Commission	Treatment of Asset-Backed Issuers Under the Investment Company Act	y	n	n/a	n/a	n/a	n/a
132	Securities and Exchange Commission	Interim Rule for Reporting Pre-Enactment Security-Based Swap Transactions	n	y	n/a	n/a	n/a	n/a
133	Securities and Exchange Commission	Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF	y	y	n/a	n/a	n/a	n/a
134	Securities and Exchange Commission	Definitions Contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act	y	n	n/a	n/a	n/a	n/a
135	Securities and Exchange Commission	References to Credit Ratings in Certain Investment Company Act Rules and Forms	y	n	n/a	n/a	n/a	n/a

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136	Securities and Exchange Commission	Family Offices	n	y	n/a	n/a	n/a	n/a
137	Securities and Exchange Commission	Investment Adviser Performance or Incentive Fees	y	y	n/a	n/a	n/a	n/a
138	Securities and Exchange Commission	Credit Risk Retention	y	n	n/a	n/a	n/a	n/a
139	Securities and Exchange Commission	Clearing Agency Standards for Operation and Governance	y	n	n/a	n/a	n/a	n/a
140	Securities and Exchange Commission	Proposed Amendment to Rule 17Ad-17; Transfer Agents', Brokers', and Dealers' Obligation To Search for Lost Security holders	y	n	n/a	n/a	n/a	n/a
141	Securities and Exchange Commission	Trade Acknowledgement and Verification of Security-Based Swap Transactions	y	n	n/a	n/a	n/a	n/a
142	Securities and Exchange Commission	End-User Exception to Mandatory Clearing of Security-Based Swaps	y	n	n/a	n/a	n/a	n/a
143	Securities and Exchange Commission	Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies	y	n	n/a	n/a	n/a	n/a
144	Securities and Exchange Commission	Registration of Municipal Advisers	y	n	n/a	n/a	n/a	n/a
145	Securities and Exchange Commission	Regulation SBSR--Reporting and Dissemination of Security-Based Swap Information	y	n	n/a	n/a	n/a	n/a
146	Securities and Exchange Commission	Disclosure of Payments By Resource Extraction Issuers	y	n	n/a	n/a	n/a	n/a
147	Securities and Exchange Commission	Rules Implementing Amendments to the Investment Advisers Act	n	y	n/a	n/a	n/a	n/a
148	Securities and Exchange Commission	Conflict Minerals	y	n	n/a	n/a	n/a	n/a

	Agency	Rule	Was Deadline Missed*	Is Rule Complete	Date Rule Was Submitted to OIRA**	Date OIRA Completed Review?	OIRA Review Exceeded 120 Days	Is Rule Currently at OIRA
149	Securities and Exchange Commission	Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies; Security-Based Swap Execution Facilities, and National Exchanges	y	n	n/a	n/a	n/a	n/a
150	Securities and Exchange Commission	Disqualification of Felons and Other "Bad Actors" From Rule 506 Offerings	y	n	n/a	n/a	n/a	n/a
151	Securities and Exchange Commission	Security-Based Swap Data Repository Registration, Duties, and Core Principles	y	n	n/a	n/a	n/a	n/a
152	Securities and Exchange Commission	Prohibition Against Fraud, Manipulation, and Deception in Connection With Security-Based Swaps	y	n	n/a	n/a	n/a	n/a
153	Securities and Exchange Commission	Rules for Nationally Recognized Statistical Rating Organizations	y	n	n/a	n/a	n/a	n/a
154	Securities and Exchange Commission	Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less than \$150 Million in Assets Under Management and Foreign Private Advisers	n	y	n/a	n/a	n/a	n/a
155	Securities and Exchange Commission	Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act	y	y	n/a	n/a	n/a	n/a
156	Securities and Exchange Commission	Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants	y	n	n/a	n/a	n/a	n/a
157	Securities and Exchange Commission	Rules Regarding Incentive Compensation	y	n	n/a	n/a	n/a	n/a
158	Securities and Exchange Commission	Registration and Regulation of Securities-Based Swap Execution Facilities	y	n	n/a	n/a	n/a	n/a
159	Securities and Exchange Commission	Listing Standards for Compensation Committees	y	n	n/a	n/a	n/a	n/a

\* This analysis used the date of publication of a rule in the Federal Register as its completion date. To account for the delay between an agency's finalization of a rule and its publication date, only rules that exceeded statutory due dates by 31 days were deemed late.

\*\* Rules promulgated by independent agencies are not subject to OIRA review.



**Appendix 2: Office of Management and Budget’s Response to Public Citizen’s Query on Whether the Agency Deems OIRA’s Track Record on Meeting Its 120-Day Deadline to Review Rules Acceptable**

The mission of the White House Office of Information and Regulatory Affairs includes managing the important process of interagency review of regulatory action—drawing on expertise across the administration to help ensure that rules comply with the law and, to the extent permitted by law, maximize benefits while minimizing costs. As part of this process, OIRA maintains an open door policy for receiving public input while rules are under review. There is also an extensive public comment period that accompanies proposed regulations, which provides an extensive opportunity for participation from all members of the public. The Administration works as expeditiously as possible on draft rules. At the same time, it is critical that we take the time to get it right—particularly for complex rules that are important to public safety. When a review is extended, it is because we are committed to getting it right.

On [pending] food safety [rules]: The Administration is working as expeditiously as possible to implement legislation we fought so hard for. When it comes to rules with this degree of importance and complexity, it is critical that we get it right.

Our regulatory record reflects the Administration’s commitment to protecting the health, welfare, and safety of the American people at the same time that we promote economic growth, job creation, competitiveness, and innovation. That record includes billions of dollars in regulatory benefits, including not only extraordinary economic savings for businesses and consumers, but also deaths prevented and illnesses and accidents avoided.

The net benefits of regulations issued through the third fiscal year of the Obama Administration have exceeded \$91 billion. This amount, including not only monetary savings but also lives saved and injuries prevented, is over 25 times the net benefits through the third fiscal year of the Bush Administration.

–Moira Mack, spokeswoman, Office of Management and Budget