

CRS Report for Congress

Congressional Influence on Rulemaking and Regulation Through Appropriations Restrictions

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Summary

The statutory provision known as the Congressional Review Act (CRA) (5 U.S.C. §§801-808) has not been a frequently used method for Congress to control agency rulemaking, having been used to overturn only one rule in the more than 12 years since it took effect. However, Congress has various other methods to influence agency rulemaking and regulatory activity, including the addition of provisions to agency appropriations bills that restrict federal rulemaking or regulatory activity.

The use of restrictions in appropriations legislation to control rulemaking has received relatively little attention from scholars and analysts, but these restrictions can have substantial effects on public policy. This report examines the Consolidated Appropriations Act for 2008 (P.L. 110-161), and identifies four types of such provisions: (1) restrictions on the finalization of particular proposed rules, (2) restrictions on regulatory activity within certain areas, (3) implementation or enforcement restrictions, and (4) conditional restrictions (e.g., preventing implementation of a rule until certain actions are taken). The report then examines appropriations acts in nine previous fiscal years, noting that some provisions have been included in appropriations bills every year, and others have appeared for several years in a row. Numerous examples of regulatory appropriations restrictions are provided in this report. The reasons behind these restrictions vary, with some appearing to be based on economic considerations, some requiring or preventing the implementation of rules issued at the end of a presidential administration, and some included for various other reasons.

Although none of the appropriations provisions appear designed to *reverse* agency rulemaking actions (as the CRA was intended to permit), the number and variety of the provisions clearly illustrate that Congress's ability to oversee and affect regulatory agencies is not confined to CRA resolutions of disapproval. On the other hand, such provisions are generally applicable only for the period of time and the agencies covered by the relevant appropriations bill. Also, to the extent that agencies have independent sources of funding (e.g., user fees) or implement their regulations through state or local governments, some of the limitations may not be as restrictive as they seem. While appropriations provisions have been advocated by representatives of virtually all political parties and interest groups, some observers have questioned whether they are constitutional or conducive to sound public policy. Nevertheless, their use by Congress is likely to continue as long as appropriations bills are considered "must pass" legislation.

This report will be updated if any changes occur that alter the factual information in the report.

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Congressional Influence on Rulemaking and Regulation Through Appropriations Restrictions

Introduction¹

In March 1996, the statutory provisions commonly known as the “Congressional Review Act” (CRA) (5 U.S.C. §§801-808) were included as part of the Small Business Regulatory Enforcement Fairness Act. Under the CRA, before any final rule can take effect, it must be filed with each house of Congress and the Government Accountability Office (GAO). The act established expedited procedures by which Congress may disapprove agencies’ rules by enacting a joint resolution of disapproval, with subsequent presentation to the President for signature or veto.²

Although initially considered a reassertion of congressional authority over rulemaking agencies, the CRA is now viewed by some observers as a far less effective check on finalizing undesirable rules than originally anticipated. Between April 1996 and April 2008, federal agencies submitted nearly 48,000 final rules to GAO (and, presumably, to Congress), and 47 CRA joint resolutions of disapproval were introduced regarding 35 rules. However, during this 12-year period, only one rule was overturned through the CRA’s procedures — the Occupational Safety and Health Administration’s (OSHA’s) ergonomics standard in March 2001 — and that reversal was the result of a unique set of circumstances.³

Even though the CRA has resulted in the congressional reversal of only one agency rule, Congress influences regulatory activity in a variety of other ways. Those methods include specifically delineating in the underlying statutes how regulations

¹ Morton Rosenberg, Specialist in American National Law in the American Law Division; and Stuart Carmody, reference assistant in the Knowledge Services Group, collaborated in the preparation of this report.

² For a detailed discussion of CRA procedures, see CRS Report RL31160, *Disapproval of Regulations by Congress: Procedure Under the Congressional Review Act*, by Richard S. Beth.

³ In this case, the incoming President (George W. Bush) did not veto the resolution disapproving the outgoing President’s (William J. Clinton’s) rule. See CRS Report RL30116, *Congressional Review of Agency Rulemaking: An Update and Assessment of the Congressional Review Act After a Decade*, by Morton Rosenberg, for a description of several possible factors affecting the law’s use. Although the CRA has been used to disapprove only one rule, it may have other, less discernable effects (e.g., keeping Congress informed and preventing the publication of rules that may be disapproved).

are to be written,⁴ statutory requirements delineating the analytical and procedural steps that must be followed in the development of proposed and final rules,⁵ oversight hearings on particular rules or rulemaking requirements, confirmation hearings for the heads of regulatory agencies, restrictions on rulemaking in authorizing legislation,⁶ and provisions included in the text of agencies' appropriations bills.⁷ Compared to the other congressional methods of influence, appropriations provisions related to agency rulemaking and regulatory activity have received comparatively little attention by scholars and analysts, but those provisions can have substantial effects on public policy.⁸

⁴ All regulations start with an act of Congress, and are the means by which statutes are implemented and specific requirements are established. The specificity of the statutory basis for a regulation can vary significantly, from broad grants of rulemaking authority that state the general intent of the legislation to very specific requirements delineating exactly what regulatory agencies should do and how they should do it. For examples of both general and specific statutory authorities, see U.S. General Accounting Office, *Regulatory Burden: Some Agencies' Claims Regarding Lack of Rulemaking Discretion Have Merit*, GAO/GGD-99-20, January 8, 1999.

⁵ These statutory rulemaking requirements include the Administrative Procedure Act (5 U.S.C. §551 et seq.), the Paperwork Reduction Act (44 U.S.C. §§3501-3520), the Regulatory Flexibility Act (5 U.S.C. §§601-612), Title II of the Unfunded Mandates Reform Act (2 U.S.C. §§1532-1538), and the Information Quality Act (44 U.S.C. §§3504(d)(1) and 3516). For a discussion of these and other requirements, see CRS Report RL32240, *The Federal Rulemaking Process: An Overview*, by Curtis W. Copeland.

⁶ For example, Section 206 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (P.L. 110-173, 121 Stat. 2514) prohibited the Secretary of the Department of Health and Human Services from taking any action (including "through promulgation of regulation") to restrict coverage or payment under Title XIX of the Social Security Act for rehabilitation services or school-based administration and school-based transportation. More recently, H.R. 6660 in the 110th Congress (introduced July 30, 2008) would prohibit the Secretary of Labor from "issuing, administering, or enforcing any rule, regulation, or requirement derived from the proposal submitted to the Office of Management and Budget entitled 'Requirements for DOL Agencies' Assessment of Occupational Health Risks' (RIN:1290-AA23)." This draft proposed rule had not been published in the *Federal Register*, but was characterized in the press as requiring "all recipients of federal aid under federal health programs to certify that they would not refuse to hire nurses and other providers who object to abortion and even certain types of birth control." Robert Pear, "Abortion Proposal Sets Condition on Aid," *nytimes.com*, available at [http://www.nytimes.com/2008/07/15/washington/15rule.html?_r=1&ref=us&].

⁷ Limitations on the expenditure of funds may be in the text of appropriations legislation, or in committee reports, conference reports, or managers' statements. Only provisions in the text of the legislation are legally binding. See CRS Report 98-518 GOV, *Earmarks and Limitations in Appropriations Bills*, by Sandy Streeter. In this report, all of the provisions mentioned were in the text of the appropriations legislation.

⁸ Some authors have discussed congressional mechanisms of executive agency control in general or appropriations provisions specifically, and have mentioned restrictions on regulatory activity as one element of those issues. See, for example, Frederick M. Kaiser, "Congressional Control of Executive Actions in the Aftermath of the *Chadha* Decision," *Administrative Law Review*, vol. 36 (Summer 1984), pp. 258-259.

This report focuses on appropriations provisions that affect rulemaking and regulation, particularly those that prevent or restrict agency actions. After discussing four types of such provisions in the Consolidated Appropriations Act of 2008 (P.L. 110-161), the report examines their prevalence over a longer period of time, discusses why the provisions are used, and concludes with a discussion of their perceived strengths and weaknesses. First, however, the report briefly discusses several other types of regulatory appropriations measures.

Regulatory Appropriations Provisions That Do Not Restrict Rulemaking

Although appropriations provisions that are designed to prevent or restrict the development, implementation, or enforcement of particular rules or types of rules are common, other types of appropriation measures are also prevalent and deserve mention. These measures include those that require agencies to develop rules in particular areas, that change the rulemaking process, that assign regulatory reporting requirements, and that control the funding and operation of a regulatory initiative.

Initiation of Rulemaking

Some appropriations provisions direct federal agencies to develop rules in particular areas, or to take particular enforcement actions. For example, a provision in the Consolidated Appropriations Act for 2008 (121 Stat. 2084) amends the Homeland Security Act of 2002 (6 U.S.C. §361 *et seq.*) and requires the Secretary of the Department of Homeland Security to “regulate the sale and transfer of ammonium nitrate by an ammonium nitrate facility in accordance with the subtitle to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.” The provision delineates what the regulations must contain (e.g., a registration process for owners, records that must be maintained, and an appeals process); and mandates that the Secretary “(1) shall issue a proposed rule implementing this subtitle not later than 6 months after the date of the enactment of this subtitle; and (2) shall issue a final rule implementing this subtitle not later than 1 year after such date of enactment.”

In some cases, the congressional requirement for agency rulemaking is conditional upon other factors. For example, the Consolidated Appropriations Act for 2004 (P.L. 108-199, 118 Stat. 236) requires the Secretary of Labor to “re-propose a rule on respirable coal dust which incorporates the use of Personal Dust Monitors,” but only after “the successful demonstration of Personal Dust Monitor technology, and if the Secretary of Labor makes a determination that Personal Dust Monitors can be effectively applied in a regulatory scheme.”⁹

⁹ In July 2000, the Department of Labor issued a proposed rule on coal dust monitoring. See U.S. Department of Labor, Mine Safety and Health Administration, and U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, “Determination of Respirable Coal Mine Dust,” 65 *Federal Register* 42068, July 7, 2000.

In other cases, particular amounts of funds are set aside for rulemaking. For example, the Consolidated Appropriations Act for 2008 (121 Stat. 2128) states that not less than \$3.5 million of the funds provided in EPA's Environmental Programs and Management account "shall be provided for activities to develop and publish a draft rule not later than 9 months after the date of enactment of this Act, and a final rule not later than 18 months after the date of enactment of this Act, to require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy of the United States."

Rule Development Process

Other appropriations provisions affect the process by which certain types of rules are developed, and therefore the participants in that process. For example, Executive Order 12866 requires the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA) to review most agencies' significant rules before they are published in the *Federal Register*.¹⁰ However, a provision within the Consolidated Appropriations Act for 2008 (121 Stat. 1982) states that "none of the funds appropriated in this Act for the Office of Management and Budget [OMB] may be used for the purpose of reviewing any agricultural marketing orders or any activities or regulations under the provisions of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. §601 *et seq.*)."¹¹ Another provision in the same section of the act states that "none of the funds provided in this or prior Acts shall be used, directly or indirectly, by the Office of Management and Budget, for evaluating or determining if water resource project or study reports submitted by the Chief of Engineers acting through the Secretary of the Army are in compliance with all applicable laws, regulations, and requirements relevant to the Civil Works water resource planning process."¹²

Provisions added to appropriations bills in previous years have also led to the establishment of new procedural requirements on rulemaking agencies. For example, Consolidated Appropriations Act, 2001 (P.L. 106-554, 114 Stat. 2763A-154) established what came to be known as the Information Quality Act (sometimes referred to as the Data Quality Act). The provision required OMB to issue guidance to federal agencies designed to ensure the "quality, objectivity, utility, and integrity"

¹⁰ For more information on OIRA and this review process, see CRS Report RL32397, *Federal Rulemaking: The Role of the Office of Information and Regulatory Affairs*, by Curtis W. Copeland.

¹¹ This restriction on the review of agricultural marketing orders has been attached to OMB's appropriation every year since 1983, and was reportedly enacted "at the insistence of agricultural interests that were angry at OMB's application of [Executive Order 12291's] economic principles to modify or disapprove their marketing orders." Christopher C. DeMuth and Douglas H. Ginsburg, "White House Review of Agency Rulemaking," *Harvard Law Review*, vol. 99 (March 1986), p. 1087. For background on this action, see Jeffrey H. Birnbaum, "Farm, Budget Officials Clash on Supply Curbs by Marketing Boards," *Wall Street Journal*, December 7, 1982, p. 1.

¹² This provision has been attached to OMB's appropriation every year since 2005.

of information disseminated to the public.¹³ It also required agencies to issue their own information quality guidelines, and to establish administrative mechanisms that allow affected persons to seek correction of information maintained and disseminated by the agencies that does not comply with the OMB guidance.¹⁴

Other appropriations provisions have attempted to *prevent* the establishment of certain new rulemaking procedures. For example, as passed by the House, Section 901 of the Financial Services and General Government (FSGG) Appropriations Act, 2008 (H.R. 2829, which funded OMB, among other agencies) stated that “None of the funds made available by this Act may be used to implement Executive Order 13422.” That executive order, which had been issued by President Bush in January 2007, required (among other things) that agencies give OMB advance notification of any significant guidance documents, and that each agency head designate a presidential appointee as a regulatory policy officer.¹⁵ The order also gave these officers enhanced power to control agency rulemaking.¹⁶ Ultimately, though, this provision was not enacted. The FSGG appropriations bill was later folded into the Consolidated Appropriations Act for 2008, and the final version of the legislation did not contain any language regarding the executive order. A similar provision has reportedly been added to the FSGG bill for FY2009.¹⁷

OMB Reporting Requirements

Certain appropriations provisions have imposed regulatory reporting requirements on OMB. Section 645(a) of the Treasury, Postal Service and General Government Appropriations Act, 1997 (P.L. 104-208) required the Director of OMB to submit a report to Congress providing

- (1) estimates of the total annual costs and benefits of Federal regulatory programs, including quantitative and nonquantitative measures of regulatory costs and benefits;
- (2) estimates of the costs and benefits (including quantitative and nonquantitative measures) of each rule that is likely to have a gross annual effect on the economy of \$100,000,000 or more in increased costs;
- (3) an assessment of the direct and indirect impacts of Federal rules on the private sector, State and local government, and the Federal Government; and
- (4) recommendations from the Director and a description of significant public comments to reform or eliminate any Federal regulatory program or program

¹³ OMB published final guidelines (with a request for further comments on certain points) on September 28, 2001 (66 *Federal Register* 49718), and later republished the guidelines (after making changes pursuant to public comments) on February 22, 2002 (67 *Federal Register* 8452).

¹⁴ For more on this issue, see CRS Report RL32532, *The Information Quality Act: OMB's Guidance and Initial Implementation*, by Curtis W. Copeland.

¹⁵ See [<http://www.whitehouse.gov/news/releases/2007/01/20070118.html>] for a copy of this executive order.

¹⁶ For more on this issue, see CRS Report RL33862, *Changes to the OMB Regulatory Review Process by Executive Order 13422*, by Curtis W. Copeland.

¹⁷ Ralph Lindeman, “House Panel Again to Block Spending on Bush-Appointed Regulatory Policy Officers,” *BNA Daily Report for Executives*, July 1, 2008, p. A-17.

element that is inefficient, ineffective, or is not a sound use of the Nation's resources.

Appropriations legislation for the next several years essentially repeated these requirements, and a provision added to OMB's appropriation for FY2001 made this type of reporting requirement permanent.¹⁸

Electronic Rulemaking Initiative

Congress has also used appropriations provisions in an attempt to control transfers of funding and reimbursements for the Bush Administration's electronic rulemaking initiative and other e-government projects. From FY2003 through FY2007, Congress appropriated less than \$20 million to the E-Government Fund for all e-government projects — much less than the \$345 million authorized in the E-Government Act for that period.¹⁹ The lack of direct appropriations for e-government has led to controversial funding mechanisms, in which at least 10 e-government projects (including electronic rulemaking) have been funded by required "contributions" from participating agencies. In response, for several years in a row, Congress has required approval by the Appropriations Committees before any transfers or reimbursements of agency appropriations are made. For example, one of the governmentwide provisions in the Consolidated Appropriations Act for 2008 (Section 737) states that "no funds shall be available for transfers or reimbursements to the E-Government initiatives sponsored by the Office of Management and Budget prior to 15 days following submission of a report to the Committees on Appropriations by the Director of the Office of Management and Budget and receipt of approval to transfer funds by the House and Senate Committees on Appropriations." The provision goes on to require justification materials for subsequent funding requests, and says that "no funds shall be available for obligation or expenditure for new E-Government initiatives without the explicit approval of the House and Senate Committees on Appropriations."²⁰

¹⁸ Section 624 of the Consolidated Appropriations Act, 2001 (P.L. 106-554, 114 Stat. 2763A-161, codified at 31 U.S.C. §1105 note), also called the "Regulatory Right-to-Know Act." The provision required OMB to submit an "accounting statement and associated report" for FY2002 "and each year thereafter" that included "(1) an estimate of the total annual costs and benefits (including quantifiable and nonquantifiable effects) of Federal rules and paperwork, to the extent feasible — (A) in the aggregate; (B) by agency and agency program; and (C) by major rule; (2) an analysis of impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth; and (3) recommendations for reform."

¹⁹ Section 101 of the E-Government Act (which added a new Chapter 36 to Title 44 of the United States Code) established an "E-Government Fund" that was to be used to support projects "that enable the Federal Government to expand its ability, through the development and implementation of innovative uses of the Internet or other electronic methods, to conduct activities electronically."

²⁰ For more on e-rulemaking and this funding issue, see CRS Report RL34210, *Electronic Rulemaking in the Federal Government*, by Curtis W. Copeland.

Appropriations Provisions and the Restriction of Rulemaking or Regulatory Action

Many other provisions in appropriations acts are intended to prevent or restrict federal agencies from taking certain rulemaking or regulatory actions. In fact, one author, writing about appropriations provisions in general, said the following:

The classic appropriation rider is negative in its thrust and strictly pertains to the expenditure of funds. It declares that the agency may not spend any of the monies Congress is appropriating to engage in a specific activity described in the legislation. This type of rider is often described as a “limitation rider” because it limits the executive branch from engaging in certain activity by denying the funds necessary for its undertaking. For instance, a rider may provide that an agency cannot spend money to buy equipment or to hire personnel for a particular office. More substantively, a rider may provide that the agency cannot spend money to prepare a study on a specific topic, to propose a rule on a specific topic, to make final a pending proposed rule, to implement a final rule, to make a legal argument in court, or to appeal a pending case.²¹

Some of the more high-profile appropriations restrictions regarding agency rulemaking have received attention by analysts and scholars. For example, GAO and others have written about congressional restrictions on the development of corporate average fuel economy, or “CAFE,” standards.²² For six years (FY1996 through FY2001), the Department of Transportation’s (DOT’s) appropriations acts stated that none of the funds in the acts could be used to prepare, propose, or promulgate regulations prescribing CAFE standards for automobiles that differed from the standards promulgated prior to the enactment of the legislation. Other regulatory-related appropriations restrictions that have garnered some attention include provisions preventing the implementation of the Delaney Clause (a provision of the Federal Food, Drug, and Cosmetic Act that banned any additive in processed food that had been shown to cause cancer in humans or laboratory animals);²³ and

²¹ Richard J. Lazarus, “Congressional Descent: The Demise of Deliberative Democracy in Environmental Law,” *Georgetown Law Journal*, vol. 94 (March 2006), p. 635. Although legislative provisions in annual appropriations acts are often referred to as “riders,” the use of the term “rider” is avoided in this report because it is slang and because there is no common agreement as to whether it should apply to limitation provisions as well as legislative provisions. See CRS Report RL30619, *Examples of Legislative Provisions in Omnibus Appropriations Acts*, by Robert Keith.

²² See, for example, U.S. General Accounting Office, *Department of Transportation, National Highway Traffic Safety Administration: Light Truck Average Fuel Economy Standard, Model Year 2000*, GAO/OGC-98-42, April 17, 1998; and U.S. Government Accountability Office, *Vehicle Fuel Economy: Reforming Fuel Economy Standards Could Help Reduce Oil Consumption by Cars and Light Trucks, and Other Options Could Complement These Standards*, GAO-07-921, August 2, 2007.

²³ The Food Quality Protection Act of 1996 (P.L. 104-170) eliminated the distinction between raw and processed food tolerances so that all pesticide residues will be regulated under an amended Federal Food, Drug, and Cosmetic Act, which requires all tolerances to
(continued...)

prohibitions on OSHA developing or issuing regulations on ergonomics (which were enacted before the adoption of the January 2001 resolution of disapproval under the CRA).²⁴ A “timber salvage rider” that Congress enacted in 1995 reportedly accelerated the use of restrictions in environmental appropriations legislation during the remainder of the 1990s.²⁵ However, many other appropriations restrictions related to rulemaking or regulatory action have not received much attention in the relevant literature.

Regulatory Restrictions in the Consolidated Appropriations Act for 2008

To determine the frequency and nature of regulatory appropriations restrictions, CRS initially searched the Consolidated Appropriations Act for 2008 for provisions that were designed to prohibit or limit the development, implementation, or enforcement of agency regulations.²⁶ The search revealed nearly two dozen such provisions in the act, which generally fell into four categories: (1) prohibitions on the finalization of particular proposed rules, (2) prohibitions on the development of regulations with regard to particular statutes or issues, (3) implementation or enforcement restrictions, and (4) conditional restrictions on the development or implementation of particular rules.

Prohibiting the Finalization of Particular Proposed Rules. Several provisions in the Consolidated Appropriations Act deny the use of agency funds to make particular proposed rules final. For example:

- Section 723 within Division A of the legislation (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008; 121 Stat. 1878) states: “None of the funds made available by this Act may be used to issue a final rule in furtherance of, or otherwise implement, the proposed rule on cost-sharing for animal and plant health emergency programs of the Animal and Plant Health Inspection Service [APHIS] published on

²³ (...continued)

be “safe,” ensuring a “reasonable certainty of no harm” from pesticides. See CRS Report 96-759 ENR, *Pesticide Legislation: Food Quality Protection Act of 1996 (P.L. 104-170)*, by Linda-Jo Schierow.

²⁴ For example, Section 104 of the Department of Labor’s appropriation legislation for FY1998 (P.L. 105-78) stated that “None of the funds made available in this Act may be used by the Occupational Safety and Health Administration to promulgate or issue any proposed or final standard regarding ergonomic protection before September 30, 1998.” However, the legislation expressly did not prohibit OSHA from issuing voluntary guidelines on ergonomic protection or from developing a proposed standard regarding ergonomic protection.

²⁵ Richard J. Lazarus, “Congressional Descent,” pp. 643-644.

²⁶ CRS electronically searched the act using words and phrases such as “regulations,” “final rule,” “proposed rule,” and “none of the funds.” Although this approach revealed the regulatory appropriations restrictions discussed in this report, other restrictions may have been in this and other appropriations bills that did not contain those words or phrases.

July 8, 2003 (Docket No. 02-062-1; 68 Fed. Reg. 40541).” As discussed in detail later in this report, the July 2003 APHIS rule would have required states and certain groups to pay a greater share of the cost of these programs.

- Section 735 within Division D of the legislation (the Financial Services and General Government Appropriations Act, 2008; 121 Stat. 2027) states that “none of the funds appropriated or made available under this Act or any other appropriations Act may be used ... to implement the proposed regulations of the Office of Personnel Management [OPM] to add sections 300.311 through 300.316 to part 300 of Title 5 of the Code of Federal Regulations, published in the Federal Register, volume 68, number 174, on September 9, 2003 (relating to the detail of executive branch employees to the legislative branch).”
- Section 559 within Division E of the legislation (the Department of Homeland Security Appropriations Act, 2008; 121 Stat. 2083) states: “None of the funds made available in this Act may be used by the Secretary of Homeland Security or any delegate of the Secretary to issue any rule or regulation which implements the Notice of Proposed Rulemaking related to Petitions for Aliens To Perform Temporary Nonagricultural Services or Labor (H-2B) set out beginning on 70 Fed. Reg. 3984 (January 27, 2005).” An H-2B alien is someone who comes to the United States to perform temporary nonagricultural labor or services, and the proposed rule would have facilitated the use of the H-2B program by creating a simplified application process.
- Section 432 within Division F of the legislation (the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2008; 121 Stat. 2152) states: “None of the funds made available under this Act may be used to promulgate or implement the Environmental Protection Agency [EPA] proposed regulations published in the Federal Register on January 3, 2007 (72 Fed. Reg. 69).” The proposed rule at issue would have amended the general provisions to the national emission standards for hazardous air pollutants, replacing a policy that had been established in 1995.
- Section 170 within Division K of the legislation (the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2008; 121 Stat. 2401) states: “None of the funds provided or limited under this Act may be used to issue a final regulation under section 5309 of title 49, United States Code, except that the Federal Transit Administration may continue to review comments received on the proposed rule (Docket No. FTA-2006-25737).” The targeted proposed rule would have made

changes in the Federal Transit Administration's "small starts" capital investment grant program.²⁷

Restricting Certain Types of Regulatory Activity. Other provisions in the Consolidated Appropriations Act for 2008 are more general, prohibiting the development, issuance, amendment, implementation, or enforcement of certain types of regulations. For example:

- Section 726 within Division A of the legislation (funding, among others, the Department of Agriculture, 121 Stat. 1878) states: "None of the funds provided in this Act may be used for salaries and expenses to draft or implement any regulation or rule insofar as it would require recertification of rural status for each electric and telecommunications borrower for the Rural Electrification and Telecommunication Loans program."
- Section 511 within Division D of the legislation (121 Stat. 1998) states: "None of the funds appropriated by this Act may be used by the Federal Communications Commission to modify, amend, or change its rules or regulations for universal service support payments to implement the February 27, 2004 recommendations of the Federal-State Joint Board on Universal Service regarding single connection or primary line restrictions on universal service support payments."
- Section 617 within Division D of the legislation (121 Stat. 2015) states that "for fiscal years 2008 and 2009, neither the Board of Governors of the Federal Reserve System nor the Secretary of the Treasury may determine, by rule, regulation, order, or otherwise, for the purposes of section 4(K) of the Bank Holding Company Act of 1956, or section 5136A of the Revised Statutes of the United States, that real estate brokerage activity or real estate management activity (which for purposes of this paragraph shall be defined to mean 'real estate brokerage' and 'property management' respectively, as those terms were understood by the Federal Reserve Board prior to March 11, 2000) is an activity that is financial in nature, is incidental to any financial activity, or is complementary to a financial activity."
- Section 823 within Division D of the legislation (within the general provisions applicable to the District of Columbia, 121 Stat. 2041) states: "None of the funds contained in this Act may be used to enact or carry out any law, rule, or regulation to legalize or otherwise reduce penalties associated with the possession, use, or distribution

²⁷ U.S. Department of Transportation, Federal Transit Administration, "Major Capital Investment Projects," 72 *Federal Register* 43327, August 3, 2007.

of any schedule I substance under the Controlled Substances Act (21 U.S.C. 801 et seq.) or any tetrahydrocannabinols derivative.”²⁸

- Section 433 of Division F of the legislation (121 Stat. 2152) states: “None of the funds made available by this Act shall be used to prepare or publish final regulations regarding a commercial leasing program for oil shale resources on public lands pursuant to section 369(d) of the Energy Policy Act of 2005 (P.L. 109-58) or to conduct an oil shale lease sale pursuant to subsection 369(e) of such Act.”
- A portion of Division G of the legislation (providing funds for salaries and expenses at OSHA as part of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2008; 121 Stat. 2163) contains a provision stating that “none of the funds appropriated under this paragraph shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, or order under the Act which is applicable to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees.”
- A section of the legislation within Division K of the act having to do with Federal Aviation Administration (FAA) operations (121 Stat. 2379) states that “none of the funds in this Act shall be available for the Federal Aviation Administration to finalize or implement any regulation that would promulgate new aviation user fees not specifically authorized by law after the date of the enactment of this Act.”
- Section 111 within Division K (121 Stat. 2381) states: “None of the funds in this Act shall be used to pursue or adopt guidelines or regulations requiring airport sponsors to provide to the Federal Aviation Administration without cost building construction, maintenance, utilities and expenses, or space in airport sponsor-owned buildings for services relating to air traffic control, air navigation, or weather reporting”;²⁹ and
- Another section within Division K having to do with operations and research at the National Highway Traffic Safety Administration (NHTSA, 121 Stat. 2391) states that “none of the funds appropriated by this Act may be obligated or expended to plan, finalize, or implement any rulemaking to add to section 575.104 of title 49 of

²⁸ Tetrahydrocannabinol (also known as THC) is the active chemical in cannabis, or marihuana.

²⁹ The provision goes on to say that “the prohibition of funds in this section does not apply to negotiations between the agency and airport sponsors to achieve agreement on ‘below-market’ rates for these items or to grant assurances that require airport sponsors to provide land without cost to the FAA for air traffic control facilities.”

the Code of Federal Regulations any requirement pertaining to a [tire] grading standard that is different from the three grading standards (treadwear, traction, and temperature resistance) already in effect.”

Restricting Implementation or Enforcement. In still other cases, language in the Consolidated Appropriations Act of 2008 prohibits the use of funds to implement or enforce a rule or set of rules, but does not appear to prohibit the development of the rules. In some cases a particular rule or set of rules is specified, but in other cases it is not clear whether any particular rules on the issues are already in place. For example:

- Section 741 within Division A of the legislation (funding the Department of Agriculture and other agencies, 121 Stat. 1881) states: “None of the funds made available in this Act may be used to pay the salaries or expenses of personnel to — (1) inspect horses under section 3 of the Federal Meat Inspection Act (21 U.S.C. 603); (2) inspect horses under section 903 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 1901 note; P.L. 104-127); or (3) implement or enforce section 352.19 of title 9, Code of Federal Regulations.”³⁰
- A condition in Division D of the legislation that is associated with a nearly \$118 million payment to the Postal Service Fund for revenue forgone on free and reduced-rate mail (121 Stat. 2013) states that “none of the funds made available to the Postal Service by this Act shall be used to implement any rule, regulation, or policy of charging any officer or employee of any State or local child support enforcement agency, or any individual participating in a State or local program of child support enforcement, a fee for information requested or provided concerning an address of a postal customer.”
- Section 621 within Division D of the legislation (funding the Department of the Treasury and other agencies, 121 Stat. 2016) states: “None of the funds made available by this Act may be used by the Federal Communications Commission to implement the Fairness Doctrine, as repealed in General Fairness Doctrine Obligations of Broadcast Licensees (50 Fed. Reg. 35418 (1985)), or any other regulations having the same substance.”
- Title I of Division G of the legislation (funding salaries and expenses at OSHA, 121 Stat. 2163) states that “no funds appropriated under this paragraph shall be obligated or expended to administer or enforce any standard, rule, regulation, or order under

³⁰ Section 3 of the Meat Inspection Act covers the inspection of meat and meat food products. Section 903 of the Federal Agriculture Improvement and Reform Act of 1996 involves the regulation of commercial transportation of equine for slaughter. 9 C.F.R. 352.19 concerns ante-mortem inspections at establishments that slaughter horses.

the Act with respect to any employer of 10 or fewer employees who is included within a category having a Days Away, Restricted, or Transferred (DART) occupational injury and illness rate, at the most precise industrial classification code for which such data are published, less than the national average rate as such rates are most recently published by the Secretary, acting through the Bureau of Labor Statistics, in accordance with section 24 of the Act.”³¹

Some provisions in the Consolidated Appropriations Act for 2008 appeared intended to have the opposite effect — i.e., *forbidding the prohibition* of regulatory enforcement. For example, Section 606 within Division D of the legislation (funding the Department of the Treasury and other agencies, 121 Stat. 2013) states: “None of the funds made available by this Act shall be available for any activity or for paying the salary of any Government employee where funding an activity or paying a salary to a Government employee would result in a decision, determination, rule, regulation, or policy that would prohibit the enforcement of section 307 of the Tariff Act of 1930 (19 U.S.C. 1307).”³²

Conditional Restrictions. Another set of provisions in the Consolidated Appropriations Act of 2008 makes the implementation of a particular rule or set of rules conditional upon certain other actions by the agencies or Congress. For example:

- A provision within Division F of the legislation (121 Stat. 2137) states: “None of the funds made available to the Indian Health Service in this Act shall be used to implement the final rule published in the Federal Register on September 16, 1987, by the Department of Health and Human Services, relating to the eligibility for the health care services of the Indian Health Service until the Indian Health Service has submitted a budget request reflecting the increased costs associated with the proposed final rule, and such request has been included in an appropriations Act and enacted into law.”
- Section 110 within Division G of the legislation (funding the Departments of Labor, Health and Human Services, and Education, and related agencies, 121 Stat. 2168) states: “None of the funds made available in this or any other Act shall be available to finalize or implement any proposed regulation under the Workforce Investment Act of 1998, Wagner-Peyser Act of 1933, or the Trade Adjustment Assistance Reform Act of 2002 until such time as

³¹ The provision went on to provide certain exceptions (e.g., “to provide, as authorized by the Act, consultation, technical assistance, educational and training services, and to conduct surveys and studies”).

³² That section of the Tariff Act prohibits the importation of products produced in foreign countries by convict or forced labor, including indentured child labor.

legislation reauthorizing the Workforce Investment Act of 1998 and the Trade Adjustment Assistance Reform Act of 2002 is enacted.”³³

- Section 305 within Division G of the legislation (121 Stat. 2198) states: “None of the funds made available in this Act may be used to promulgate, implement, or enforce any revision to the regulations in effect under section 496 of the Higher Education Act of 1965 on June 1, 2007, until legislation specifically requiring such revision is enacted.”

Regulatory Restrictions in Previous Appropriations Bills

A review of appropriations legislation that was enacted from FY1999 through FY2007 indicated that many of the regulatory restrictions in the Consolidated Appropriations Act for 2008 had appeared in one or more appropriations statutes in previous years. Some were in relevant appropriations bills in all 10 years, some had been in multiple years (but not all 10), and some were present in only one year. **Table 1**, at the end of this report, shows which of the appropriations provisions appeared in which fiscal years.

Provisions Repeated Every Year. Some of the provisions limiting agency rulemaking or regulatory actions have appeared in one or more appropriations bills in every year during this 10-year period.³⁴ Those provisions included the following:

- the provision in the District of Columbia appropriation prohibiting the enactment or implementation of regulations that would legalize or reduce penalties associated with certain substances under the Controlled Substances or any tetrahydrocannabinols derivative;³⁵

³³ This provision also appeared in the Revised Continuing Appropriations Resolution, 2007 (P.L. 110-5, 121 Stat. 29).

³⁴ The final continuing resolution for FY2007 (P.L. 110-5) did not include provisions restricting regulatory actions, but Section 104 of the legislation (121 Stat. 9) stated that, “Except as otherwise expressly provided in this division, the requirements, authorities, conditions, limitations, and other provisions of the appropriations Acts referred to in section 101(a) shall continue in effect through the date specified in section 106.” Section 101(a) lists nine FY2006 appropriations acts, and Section 106 states that the funds made available were for the period ending September 30, 2007. All of the provisions in effect for FY2006 were in one of those nine appropriations acts. Therefore, unless otherwise indicated, this report considers the requirements in those nine appropriations bills that were in effect in FY2006 to also have been in effect for FY2007.

³⁵ For more on this issue, see CRS Report RL33563, *District of Columbia: Appropriations for 2007*, by Eugene Boyd and David P. Smole, pp. 14-15. This provision was originally designed to counteract a District of Columbia initiative on medical marijuana, and has been challenged in court several times. In 2007, the District of Columbia city council adopted a resolution prohibiting the use of federal, but not District, funds from implementing the initiative.

- the prohibition on the issuance or enforcement of any OSHA rules applicable to farming operations that do not maintain a temporary labor camp and employ 10 or fewer employees;³⁶
- the provision prohibiting the promulgation of new aviation user fees that are not specifically authorized by law;
- the provision prohibiting the use of DOT funds to plan, finalize, or implement rules that would change existing tire grading standards; and
- the prohibition on the use of funds appropriated to the Postal Service to implement any rule that would charge State or local officers or employees, or anyone in a child support enforcement program, a fee for information concerning an address of a postal customer.

Multi-year Provisions. Other regulatory appropriations restrictions have appeared in relevant appropriations bills for several years in a row, although not in every year, during the 10-year period. For example:

- the provision in the 2008 legislation prohibiting the finalization of a July 2003 APHIS rule that proposed cost sharing for animal and plant health emergency programs has been in all relevant appropriations bills since FY2004;
- the 2008 provision prohibiting the finalization of a September 2003 OPM proposed rule restricting the detail of executive branch personnel to the legislative branch has been in all relevant appropriations bills since FY2004;
- the provision prohibiting the Federal Communications Commission from changing its rules regarding universal service support payments has been in all relevant appropriations bills since FY2005;
- the prohibition on the development or finalization of a rule determining that real estate brokerage activity is “financial in nature or incidental to a financial activity” has been in all relevant appropriations bills since FY2003;
- the prohibition on the use of funds to issue regulations requiring airport sponsors to provide free building construction, maintenance, or space to the FAA for air traffic control, air navigation, or weather reporting has been in all DOT-related appropriations bills since FY2002;

³⁶ This “farming rider” has been in appropriations legislation as far back as 1991. See, for example, Title I of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1992 (P.L. 102-170).

- a provision was in EPA appropriations bills from FY2000 through FY2003 stating that “none of the funds appropriated or otherwise made available by this Act shall be used to promulgate a final regulation to implement changes in the payment of pesticide tolerance processing fees as proposed at 64 Fed. Reg. 31040, or any similar proposals”;³⁷
- provisions were in relevant appropriations bills from at least FY1999 through FY2003 stating that “none of the funds in this Act shall be available to plan, finalize, or implement regulations that would establish a vessel traffic safety fairway less than five miles wide between the Santa Barbara Traffic Separation Scheme and the San Francisco Traffic Separation Scheme”;³⁸
- provisions were in multiple appropriations bills each year from at least FY1999 through FY2001 prohibiting the use of funds to implement the Kyoto Protocol (which is a protocol to the international Framework Convention on Climate Change with the objective of reducing greenhouse gases);³⁹
- provisions were added to appropriations bills relevant to DOT from at least FY1999 through FY2001 preventing the Coast Guard from planning, finalizing, or implementing any regulation that would promulgate new maritime user fees that were not specifically and subsequently authorized by law;⁴⁰
- as noted earlier in this report, for six years (FY1996 through FY2001), DOT’s appropriations acts stated that none of the funds in the act could be used to prepare, propose, or promulgate regulations prescribing corporate average fuel economy, or “CAFÉ,” standards for automobiles that differed from the standards promulgated prior to the enactment of the legislation;⁴¹ and

³⁷ In FY2003, the provision was in the Consolidated Appropriations Resolution, 2003 (P.L. 108-7, 117 Stat. 513).

³⁸ In FY2003, the provision was in the Consolidated Appropriations Resolution, 2003 (P.L. 108-7, 117 Stat. 409).

³⁹ For example, this provision was in several appropriations bills for FY2001, including P.L. 106-291 (related to the Department of the Interior, 114 Stat. 996); P.L. 106-346 (related to the Department of Transportation, 114 Stat. 1356A-33); Appendixes A and B of P.L. 106-377 (related to the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies, 114 Stat. 1441A-41 and 114 Stat. 1441A-85); P.L. 106-387 (related to the Department of Agriculture, 114 Stat. 1549A-33); and Appendix A of P.L. 106-429 (related to foreign operations, 114 Stat. 1900A-54).

⁴⁰ In FY2001, this provision was in the Appendix of the Department of Transportation and Related Agencies Appropriations Act, 2001 (P.L. 106-346, 114 Stat. 1356A-2).

⁴¹ In FY2001, this provision was in the Appendix of the Department of Transportation and
(continued...)

- the appropriations bills relevant to the Department of Labor from FY2005 through FY2008 prevented the Secretary of Labor from taking any action to amend the current definition in 20 C.F.R. 667.220 for “functions and activities” under Title I of the Workforce Investment Act of 1998.⁴²

Single-Year Provisions. Several other provisions appeared only in the Consolidated Appropriations Act for 2008, or in only one appropriation bill in the previous nine years examined. In some cases, it is clear why the provisions have appeared only once. For example, a provision prohibiting the use of funds to implement a January 2007 proposed rule related to the national emission standards for hazardous pollutants was only in the Consolidated Appropriations Act for 2008 (121 Stat. 2152) — the only appropriations legislation that has been enacted since the rule was proposed.⁴³

In other cases, some investigation reveals why the provisions have not been repeated. For example, one provision appeared only in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (P.L. 105-277, 112 Stat. 2681-266), and said that “None of the funds made available in this or any other Act may be expended before March 31, 1999 to publish final regulations based on the regulations proposed at 63 Fed. Reg. 3289 on January 22, 1998.”⁴⁴ Because the final rule at issue was eventually published on April 12, 1999,⁴⁵ and took effect on May 12, 1999, no additional appropriations restriction of this type was required.

Reasons for Regulatory Appropriations Restrictions

In some cases, the substantive reasons that prompted the inclusion of certain appropriations restrictions seem apparent. For example, the Kyoto Protocol was

⁴¹ (...continued)

Related Agencies Appropriations Act, 2001 (P.L. 106-346, 114 Stat. 1356A-28).

⁴² In 2008, this provision was in the Consolidated Appropriations Act, 2008 (P.L. 110-161, 121 Stat. 2167). 20 C.F.R. 667.220 describes the permissible costs of administration under Workforce Investment Act grants under Title I of the statute that are subject to administrative cost limits.

⁴³ The January 3, 2007, proposed rule at issue (published at 72 *Federal Register* 69) would have amended the general provisions to the national emission standards for hazardous air pollutants, replacing a policy that had been established in 1995.

⁴⁴ U.S. Department of the Interior, Bureau of Indian Affairs, “Class III Gaming Procedures,” 63 *Federal Register* 3289, January 22, 1998. Class III gaming primarily includes slot machines, casino games, banking card games, dog racing, horse racing, and lotteries. In the proposed rule, the bureau said that the department had determined that “the Secretary may promulgate Class III gaming procedures under certain specified circumstances,” and that the rule “sets forth the process and standards pursuant to which any procedures would be adopted.”

⁴⁵ U.S. Department of the Interior, Bureau of Indian Affairs, “Class III Gaming Procedures,” 64 *Federal Register* 17535, April 12, 1999.

(and, to some extent, remains) highly controversial, with some in the business community and elsewhere questioning its effectiveness in addressing climate change and concluding that its adoption and implementation by the United States could impose substantial cost and other burdens on regulated parties.⁴⁶ Therefore, provisions that were added to appropriations bills preventing the implementation of the Kyoto Protocol appear to have been designed to address and respond to those concerns. (Others, however, contend that the Kyoto Protocol would help address climate change and would not be extremely costly to implement.)⁴⁷ Likewise, provisions that would prevent the adoption or implementation of airport user fees, or prevent requirements that airport sponsors contribute buildings or other items to the FAA free of charge, seem designed to prevent certain costs from being imposed on certain groups.

The issues underlying other appropriations restrictions are less immediately apparent, as many of the provisions have little or no legislative history. Where such information is available, though, the reasons behind some of the provisions seem to fall into several categories or types: economic concerns, end-of-administration rules, and other reasons.

Economic Concerns

Several other appropriations restrictions appear to have been prompted by concerns about the economic ramifications of regulations on affected parties.

Animal and Plant Health. For example, as noted previously, provisions in appropriations bills from FY2004 through FY2008 prohibited the implementation of a July 2003 proposed rule on cost sharing for animal and plant health emergency programs. In that proposed rule, the Animal and Plant Health Inspection Service (APHIS) noted that the cost to the federal government of detecting and eradicating animal or plant pests or diseases had increased sharply, and the proposed regulation would provide “a better defined, more consistent approach to cost sharing and the allocation of financial responsibility among the Federal Government, State(s), and other cooperators.”⁴⁸ The regulation was opposed by certain interest groups (e.g., the American Sheep Industry Association and the National Cattlemen’s Beef Association), which sent letters to APHIS recommending that the rule not be made

⁴⁶ See, for example, U.S. Chamber of Commerce, “Reality Check: Straight Talk About the Kyoto Protocol,” available at [http://www.uschamber.com/publications/reports/reality_check_kyoto.htm].

⁴⁷ See, for example, Natural Resources Defense Council, “Bush Administration Errs on Kyoto Global Warming Agreement,” at [<http://www.nrdc.org/globalwarming/kyotoqa.asp>].

⁴⁸ U.S. Department of Agriculture, Animal and Plant Health Inspection Service, “Cost-Sharing for Animal and Plant Health Emergency Programs,” 68 *Federal Register* 40541, July 8, 2003. In this rule, APHIS said that the total amount of emergency funding provided by the federal government had increased from \$136 million in the FY1993 - FY1998 period to \$1,234 million in the FY1999 - FY2003 period.

final.⁴⁹ On November 5, 2003, an amendment was added to the Department of Agriculture's appropriations bill prohibiting the use of funds to make the proposed rule final. The rationale offered for the prohibition by the amendment's sponsor was that the rule would require state governments to provide matching funds for the program, and that doing so could impose a hardship on states without sufficient funds to provide the match.⁵⁰ The language was subsequently included in the Consolidated Appropriations Act, 2004 (P.L. 108-199, 118 Stat. 39, Sec. 761). On October 31, 2005, APHIS announced that it had withdrawn the proposed rule in August 2005.⁵¹ Nevertheless, Congress has continued to include language prohibiting the finalization of the rule in each subsequent appropriations bill funding APHIS.

Real Estate Brokerage Activity. Provisions in appropriations bills since FY2003 have prohibited the development or finalization of rules concluding that real estate brokerage activity is "financial in nature or incidental to financial activity." The provision in the Consolidated Appropriations Act for 2008 specifically referenced a January 2001 proposed rule that was jointly published by the Board of Governors of the Federal Reserve System and the Department of the Treasury.⁵² That proposed rule sought comment on whether to issue a final rule declaring that real estate brokerage activity was, in fact, financial in nature, thereby allowing financial holding companies and financial subsidiaries of national banks to engage in such activity pursuant to the Gramm-Leach-Bliley Act (P.L. 106-102).⁵³ According to press accounts, realtors favored these appropriations restrictions and opposed the expansion of real estate activities to banks.⁵⁴ Non-appropriations legislation has been

⁴⁹ To view a copy of the American Sheep Industry Association's comments, see [http://www.sheepusa.org/index.phtml?page=site/text&nav_id=ce39162b34e4b689b4075adf5b559d08&ps_session=f652586ec6000ff9459bf3c04def5290]. To view a copy of comments from the National Cattlemen's Beef Association on this proposed rule, see [<http://www.beefusa.org/NEWSCattlemensCapitolConcernsNovember6200310921.aspx>]. For example, the American Sheep Industry Association characterized the cost-sharing proposal as "arbitrary" and "prescriptive," and not "in the best interests of the agricultural or public sector." It also said "we believe that the federal cost associated with executing this mission has been an excellent investment."

⁵⁰ Sen. Robert F. Bennett, et al., remarks in the Senate proposing Amendment No. 2096, *Congressional Record*, vol. 149 (November 5, 2003), p. S14007.

⁵¹ See 70 *Federal Register* 64336, October 31, 2005.

⁵² U.S. Department of the Treasury and the Board of Governors of the Federal Reserve System, "Bank Holding Companies and Change in Bank Control," 66 *Federal Register* 307, January 3, 2001.

⁵³ The Gramm-Leach-Bliley Act amended the Bank Holding Company Act (12 U.S.C. §1841 et seq.) to allow a bank holding company or qualifying foreign bank to engage in a broad range of activities that are financial in nature. The act also permitted financial holding companies to engage in other activities that the board determines (in consultation with the Secretary of the Treasury) to be financial in nature or incidental to a financial activity.

⁵⁴ Todd Davenport, "OCC Caught in the Middle of Bank-Realtor Fight," *American Banker*, June 2, 2004.

introduced in each recent Congress related to this issue, but the only legislation to be enacted has been the appropriations acts.⁵⁵

Pesticide Tolerance Processing Fees. Appropriations provisions from FY2000 through FY2003 prohibited EPA from finalizing a June 1999 proposed rule that would have changed the fees charged for pesticide tolerance processing.⁵⁶ In that proposed rule, EPA said that a variety of factors had increased the costs associated with tolerance processing well beyond the fees that were being charged, and that the proposed fee increases would “make the tolerance processing system self-supporting” and the financial burden “borne primarily by those constituencies who directly benefit, rather than the taxpayer.”⁵⁷ Although other, non-appropriations-related legislation was introduced in the 107th Congress to prohibit EPA from issuing regulations on this issue,⁵⁸ the only such legislation that was enacted between FY1999 and FY2004 were the restrictions in the various appropriations bills. In January 2004, the Consolidated Appropriations Act of 2004 (P.L. 108-199, Title V of Division G) amended the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and created a new registration service fee system for applications of specified registration and tolerance actions. As required by FIFRA as amended, EPA subsequently published regulations replicating a fee schedule that had been published in the *Congressional Record* on September 17, 2003.⁵⁹ The appropriations restrictions have not appeared since the FIFRA amendments were enacted.

⁵⁵ For example, in the 110th Congress, the “Community Choice in Real Estate Act” (H.R. 111 and S. 413) would have amended the Bank Holding Company Act to prohibit financial holding companies and national banks from engaging in real estate brokerage or real estate management activities. The legislation has not moved since being assigned to congressional committees.

⁵⁶ U.S. Environmental Protection Agency, “Pesticides: Tolerance Processing Fees,” 64 *Federal Register* 31040, June 8, 1999.

⁵⁷ *Ibid.*

⁵⁸ For example, in the 107th Congress, S. 1474 would have prohibited the issuance of regulations making substantive changes to pesticide tolerance processing fees until the end of FY2006. The proposed legislation was not enacted.

⁵⁹ U.S. Environmental Protection Agency, “Pesticides: Fees and Decision Times for Registration Applications,” 69 *Federal Register* 12771, March 17, 2004. See also U.S. Environmental Protection Agency, “Pesticides; Revised Fee Schedule for Registration Applications,” 70 *Federal Register* 32327, June 2, 2005. For more on this issue, see CRS Report RL32218, *Pesticide Registration and Tolerance Fees: An Overview*, by Robert Esworthy. The Pesticide Registration Improvement Renewal Act (P.L. 110-94), enacted October 9, 2007, reauthorized and revised these fee provisions, which would have expired at the end of FY2008. The act also prohibits EPA from collecting any tolerance fees under the authority of Section 408(m) of the Federal Food, Drug, and Cosmetics Act (21 U.S.C. 346a(m)). In each fiscal year budget request since 2004, EPA has included proposals to further increase pesticide fees beyond those authorized. These proposals were not adopted by Congress in each year through FY2008. The FY2009 request included similar proposals.

End-of-Administration Rules

Several other provisions in appropriations acts during the past 10 years appear to have been designed to slow down or prevent the issuance of certain rules issued near the end of a presidential administration (sometimes referred to as “midnight” rules), or to ensure the implementation of rules issued during that period.

Hardrock Mining. One such set of restrictions involved delays and restrictions on the issuance of rules changing 43 C.F.R. 3809, which the Bureau of Land Management (BLM) within the Department of the Interior said were designed to “protect public lands from unnecessary or undue degradation and to ensure that areas disturbed during the search for and extraction of mineral resources are reclaimed.”⁶⁰ In 1997, BLM amended these “3809” or “surface management” regulations, but those rules were overturned by a federal court after being challenged by an industry association.⁶¹ The 1998 Omnibus Consolidated and Emergency Supplemental Appropriations Act (P.L. 105-277) required that BLM pay for a study by the National Research Council (NRC) of the National Academies of Science on the adequacy of requirements to prevent unnecessary or undue degradation of federal lands in each state in which mining of locatable minerals occurs. That study (entitled “Hardrock Mining on Federal Lands”) was to have been completed by July 31, 1999, but was not published until late September 1999. Meanwhile, BLM published a proposed rule in February 1999 to amend the 3809 regulations,⁶² but in the Omnibus Consolidated Emergency Supplemental Appropriations Act, 1999 (P.L. 106-31, 112 Stat. 2681-258), Congress prohibited the Secretary of the Interior from issuing any final rules on this issue until at least September 30, 1999. BLM reopened the comment period on the proposed rule for 120 days in October 1999. Then, in the FY2000 Omnibus Appropriations Act (P.L. 106-113, 113 Stat. 1501A-210), Congress prohibited the Secretary from using appropriated funds to issue final rules revising 43 C.F.R. 3809, but said such rules could be issued if they were “not inconsistent” with the recommendations contained in the NRC report or with existing statutory authorities. The same requirement was included in the Department of the Interior and Related Agencies Appropriations Act, 2001 (P.L. 106-291, 114 Stat. 962), which was enacted in October 2000. Shortly thereafter, in November 2000, BLM published a final rule on this issue, stating that the requirements in the rule were, in fact, “not inconsistent” with the NRC report, and making the rule effective on January 20, 2001 — the last full day of the Clinton Administration.⁶³ In December 2000 and January 2001, four lawsuits were filed by industry groups and others

⁶⁰ U.S. Department of the Interior, Bureau of Land Management, “Mining Claims Under the General Mining Laws; Surface Management; Final Rule,” 65 *Federal Register* 69998, November 21, 2000.

⁶¹ See *Northwest Mining Association v. Babbitt*, No. 97-1013 (D.D.C. May 13, 1998).

⁶² U.S. Department of the Interior, Bureau of Land Management, “Mining Claims Under the General Mining Laws; Surface Management; Proposed Rule,” 64 *Federal Register* 6422, February 9, 1999.

⁶³ U.S. Department of the Interior, Bureau of Land Management, “Mining Claims Under the General Mining Laws; Surface Management; Final Rule,” 65 *Federal Register* 69998, November 21, 2000.

asserting that BLM had improperly issued the rule. In February 2001, the governor of Nevada requested that the Secretary of the Interior postpone the effective date and implementation of the rule. In March 2001, BLM proposed suspending the regulations, citing the need to review issues raised in the lawsuits and the governor's request.⁶⁴ In May 2001, several Democratic Members of Congress reportedly said that if the Bush Administration suspended the regulations they would stop the suspension by adding a provision to the FY2002 DOI appropriation.⁶⁵

Arsenic. Another Clinton Administration “midnight” rule that was addressed by an appropriations restriction was an EPA rule regulating arsenic in drinking water. A provision added to the FY2002 appropriations bill covering EPA stated that “none of the funds appropriated by this Act may be used to delay the national primary drinking water regulation for Arsenic published on January 22, 2001, in the Federal Register (66 Fed. Reg. pages 6976 through 7066, amending parts 141 through 142 of title 40 of the Code of Federal Regulations).”⁶⁶ In that rule, EPA set a new enforceable “Maximum Contaminant Level” for arsenic of 0.01 milligrams per liter (or 10 parts per billion, down from 50 parts per billion in the previous standard), and the rule was scheduled to take effect on March 23, 2001.⁶⁷ However, on January 20, 2001 — two days before the rule was published, and on the first day of the Bush Administration — Assistant to the President and Chief of Staff Andrew H. Card Jr. sent a memorandum to the heads of all executive departments and agencies directing them to (among other things) postpone for 60 days the effective date of all regulations that had not yet taken effect.⁶⁸ EPA initially delayed the effective date of the rule until May 22, 2001, and later extended the effective date until February 2002 “to reassess the scientific and cost issues associated with this rule and to seek further public input on each of these issues.”⁶⁹ Also, in May 2001, OMB's OIRA asked for suggestions from the public on specific regulations that could be rescinded

⁶⁴ U.S. Department of the Interior, Bureau of Land Management, “Mining Claims Under the General Mining Laws; Surface Management,” 66 *Federal Register* 16162, March 23, 2001.

⁶⁵ Pamela Najor, “Democrats Support Mining Regulations as Bush Considers Suspending Clinton Rule,” *BNA Daily Report for Executives*, May 10, 2001, p. A-34. Ultimately, in October 2001, the Bush Administration issued a final hardrock mining rule that retained certain requirements in the 2000 rule, but dropped certain other requirements. Also in October 2001, the Administration issued a proposed rule containing additional changes to the hardrock mining regulations.

⁶⁶ Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (P.L. 107-73, 115 Stat. 697).

⁶⁷ The Safe Drinking Water Act Amendments of 1996 set a January 1, 2000, deadline for EPA to publish a final rule, but Congress extended that deadline until June 22, 2001, in language contained in the final conference report of the EPA spending bill for FY2001.

⁶⁸ For more on this memorandum, see U.S. General Accounting Office, *Regulatory Review: Delay of Effective Dates of Final Rules Subject to the Administration's January 20, 2001, Memorandum* (GAO-02-370R, February 15, 2002).

⁶⁹ U.S. Environmental Protection Agency, “National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring,” 66 *Federal Register* 20579, April 23, 2001.

or changed. One of the suggestions that OIRA received focused on the January 22, 2001, arsenic rule.

In September 2001, the National Academy of Sciences issued a report concluding that even very low concentrations of arsenic were associated with a higher incidence of cancer.⁷⁰ At the end of October 2001, the EPA Administrator announced that the 10-parts-per-billion standard for arsenic would remain.⁷¹ However, in a December 2001 report to Congress, OIRA characterized the suggested elimination or revision of the arsenic rule as a “high priority” for future action, indicating that it was “inclined to agree and look into the suggestion.” By that point, though, Congress had added the provision to the EPA appropriations bill for FY2002 prohibiting the use of associated funds to delay the January 2001 rule any further.⁷²

Snowmobiles. On December 18, 2000, the National Park Service within the Department of the Interior published a proposed rule to phase out the use of snowmobiles in Yellowstone National Park and other areas, with comments requested by January 17, 2001.⁷³ Three days later, on December 21, 2000, the Consolidated Appropriations Act, 2001, was enacted, which said (Section 128 of Appendix D) that “None of the funds provided in this or any other Act may be used prior to July 31, 2001, to promulgate or enforce a final rule to reduce during the 2000-2001 or 2001-2002 winter seasons the use of snowmobiles below current use patterns at a unit in the National Park System.” On January 22, 2001, the National Park Service published a final rule that deleted certain provisions that had been in the proposed rule “to avoid any questions about consistency with the recent statute.”⁷⁴ Less than two weeks later, pursuant to the January 20, 2001, Card memorandum, the National Park Service delayed the effective date of the rule from February 21, 2001, until April 22, 2001. A series of court rulings and agency actions delayed many other actions until December 2007, when NPS issued a final rule governing the use of snowmobiles in the Yellowstone area parks.⁷⁵

Hours of Service. A DOT rule that was published in the last year of the Clinton Administration also became the subject of an appropriations limitation. In May 2000, the Federal Motor Carrier Safety Administration (FMCSA) published a proposed rule that would have changed its “hours of service” regulations to require

⁷⁰ To view a copy of this report, see [http://books.nap.edu/catalog.php?record_id=10194].

⁷¹ “EPA Sets 10 PPB Arsenic Standard, Based on Best Science, Says Whitman,” *BNA Daily Report for Executives*, November 1, 2001, p. A-46.

⁷² The legislation funding EPA (P.L. 107-73) was enacted on November 26, 2001.

⁷³ U.S. Department of the Interior, National Park Service, “Special Regulations, Areas of the National Park System,” 65 *Federal Register* 79024, December 18, 2000.

⁷⁴ U.S. Department of the Interior, National Park Service, “Special Regulations, Areas of the National Park System,” 66 *Federal Register* 7260, January 22, 2001.

⁷⁵ U.S. Department of the Interior, National Park Service, “Special Regulations; Areas of the National Park System,” 72 *Federal Register* 70781, December 13, 2007. The preamble to this rule contains a history of actions relative to this issue during the previous seven years.

certain motor carriers to provide drivers with better opportunities to obtain sleep.⁷⁶ Comments were initially due by July 31, 2000, but FMSCA later extended the comment period to October 31, 2000, and later to December 15, 2000. Meanwhile, on October 23, 2000, Congress enacted the Department of Transportation and Related Agencies Appropriations, 2001 (P.L. 106-346), one provision of which prohibited FMSCA from making the proposed rule final.⁷⁷ In March 2001, separate legislation was introduced to prohibit the rule from becoming final (H.R. 1008, 107th Congress), but that legislation was not enacted. However, later that year, a provision was added to the Department of Transportation and Related Agencies Appropriations Act, 2002 (P.L. 107-87, 115 Stat. 870) stating the “sense of Congress” that DOT should not change current requirements until certain conditions were met.⁷⁸ FMSCA ultimately published a final rule on this issue on April 28, 2003, reflecting “careful consideration of the concerns expressed by Members of Congress as well as the more than 53,000 comments to the docket.”⁷⁹

Other Reasons for Regulatory Appropriations Restrictions

Other provisions prohibiting certain rulemaking or regulatory actions appear to have been added to appropriations bills for other reasons.

Tire Grading Standards. As noted earlier in this report, in each of the last 10 appropriations bills covering DOT, a provision has been included prohibiting the use of appropriated funds to “plan, finalize, or implement any rulemaking to add to section 575.104 of title 49 of the Code of Federal Regulations any requirement pertaining to a grading standard that is different from the three grading standards (treadwear, traction, and temperature resistance) already in effect.” The House Appropriations Committee Print for the Consolidated Appropriations Act, 2008 states that this provision has been included in all relevant appropriations bills since 1996, but does not indicate why the provision was included.⁸⁰ The Senate Committee on Appropriations report for the Department of Transportation and Related Agencies Appropriations Bill, 1999, stated that the prohibition would “prohibit any rulemaking that would require that passenger car tires be labeled to indicate their low rolling

⁷⁶ U.S. Department of Transportation, Federal Motor Carrier Safety Administration, “Hour of Service of Drivers; Driver Rest and Sleep for Safe Operations; Proposed Rule,” 65 *Federal Register* 25539, May 2, 2000.

⁷⁷ 114 Stat. 1356A-30.

⁷⁸ One of the conditions was that the Secretary of Transportation determine by rulemaking proceedings that the exemptions granted previously in statute “are not in the public interest and adversely affect the safety of commercial motor vehicles.” The Secretary was also required to monitor the safety performance of drivers of commercial motor vehicles who are subject to the exemption and report to Congress prior to the rulemaking proceedings.

⁷⁹ U.S. Department of Transportation, Federal Motor Carrier Safety Administration, “Hour of Service of Drivers; Driver Rest and Sleep for Safe Operations; Final Rule,” 68 *Federal Register* 22455, April 28, 2003.

⁸⁰ House Appropriations Committee Print, Consolidated Appropriations Act, 2008 (H.R. 2764; P.L. 110-161), Division K — Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2008, pp. 2363-2364.

resistance, or fuel economy characteristics,” and that the committee included the provision “because the need for such labels has not been adequately justified and the additional costs associated with this proposal would likely be prohibitive.”⁸¹

Legislative Branch Details. Provisions have been added to relevant appropriations bills each year since FY2004 to prevent the finalization of an OPM proposed rule that was published in September 2003. Among other things, the proposed regulation would have prohibited any executive agency from detailing or otherwise assigning an employee to the legislative branch without the approval of the OPM Director. The proposed rule stated that the OPM Director was allowed approve such details only if doing so would not disclose “information within the constitutional authority of the Executive to withhold” because disclosure would impair (among other things) “the performance of the Executive’s constitutional duties.”⁸² The appropriation provision prohibiting the finalization of the rule first appeared in the Consolidated Appropriations Act, 2004 (P.L. 108-199, 118 Stat. 360, Sec. 646). In a January 23, 2004, signing statement on this legislation, the President said that he would interpret that section “in a manner consistent with the President’s constitutional authority to supervise the unitary executive branch.” To date, however, OPM has not published a final rule on this issue. This conflict appears to be an example of a long-standing point of contention between the President and Congress regarding Congress’ authority to obtain information from the executive branch.⁸³

⁸¹ U.S. Congress, Senate Committee on Appropriations, Department of Transportation and Related Agencies Appropriations Bill, committee print, 105th Cong., 2nd sess., June 15, 1998, S.Rept. 105-249 (Washington: GPO, 1998), p. 104. However, in 2006, the National Research Council of the National Academies of Science reported that information on rolling resistance should be made available to the public, and that Congress should provide NHTSA with resources to allow it to gather and report information on the influence of passenger tires on vehicle fuel consumption. The report also stated (on pp. 3-4) that “consumers now have little, if any, practical way of assessing how tire choices can affect vehicle economy”; a 10% reduction in rolling resistance is “technically and economically feasible”; and that such a reduction could “save about 1 billion to 2 billion gallons of fuel per year”. See National Research Council, *Tires and Passenger Vehicle Fuel Economy: Informing Consumers, Improving Performance*, Transportation Research Board Special Report 286, 2006, available at [<http://onlinepubs.trb.org/Onlinepubs/sr/sr286.pdf>]. Nevertheless, since 2006, Congress has continued to prohibit regulatory changes to the tire grading standards. Section 111 of the Energy Independence and Security Act of 2007 (P.L. 110-140, 121 Stat. 1506) requires the Secretary of Transportation to issue rules establishing a “national tire fuel efficiency consumer information program,” but specifically prohibits the Secretary from requiring “permanent labeling of any kind on a tire for the purpose of tire fuel efficiency information.” Legislation has been introduced in the Senate during the 110th Congress (S. 298) that would, among other things, require that all passenger automobile tires sold in the United States meet low rolling resistance standards prescribed by the administrator of NHTSA. The legislation has not moved since being referred to the Senate Committee on Finance in January 2007.

⁸² U.S. Office of Personnel Management, “Employment (General),” 68 *Federal Register* 53054, September 9, 2003.

⁸³ See, for example, Jack L. Goldsmith, III, “Authority of Agency officials to Prohibit Employees from Providing Information to Congress,” Letter Opinion for the General Counsel, Department of Health and Human Services, available at [<http://www.usdoj.gov/olc/crsmemoresponse.htm>].

Vessel Traffic. The FY1999 through FY2003 prohibition on the development or implementation of rules changing the size of the vessel traffic safety fairway between Santa Barbara and San Francisco appears to have been put in place because of safety and environmental concerns. According to the House Appropriations Committee report on DOT's appropriation for FY2003 (H.Rept. 107-772), the provision was added in response to an April 27, 1989, proposed rule that "would narrow the originally proposed five-mile-wide fairway to two one-mile-wide fairways separated by a two-mile-wide area where offshore oil rigs could be built if Lease Sale 119 goes forward. Under this revised proposal, vessels would be routed in close proximity to oil rigs because the two-mile-wide non-fairway corridor could contain drilling rigs at the edge of the fairways. The Committee is concerned that this rule, if implemented, could increase the threat of offshore oil accidents off the California coast. Accordingly, the bill continues the language prohibiting the implementation of this regulation."

Fairness Doctrine. The FY2008 prohibition on the FCC's use of funds to implement the agency's "Fairness Doctrine" (which had required broadcasters to air both sides of controversial issues, and was repealed by the FCC in 1985) was reportedly based on concerns that the doctrine could be revived, and that doing so would inhibit current political expression over commercial airways. Others, however, said there was no indication that the FCC or Congress intended to revive the doctrine, and that the appropriations provision was unnecessary.⁸⁴

Ending Regulatory Appropriation Restrictions

In some cases, the regulatory limitations that have been added to appropriations bills during the past 10 years appear to have ended because the underlying concern was temporal in nature. For example, one provision that was in appropriations bills for FY2001 and FY2002 prohibited the use of funds to issue a certain type of proposed rule "for which the comment period would close prior to September 30, 2002." Therefore, after FY2002, the provision was no longer needed. Another provision that appeared only in an FY1999 appropriations bill prohibited the use of funds to implement amendments to federal milk marketing orders unless the implementation took place before October 1, 1999 — the end of FY1999.

In other cases, appropriations restrictions appear to have ended because of changes in the political environment. Citing a Defenders of Wildlife report that there was a significant decrease in the number of "anti-environmental riders" between the 1998 to 2000 period and 2001, one observer said that this development was not surprising given that "so many of the riders in the late 1990s resulted from policy conflicts between the Republican leadership in Congress and the Clinton Administration."⁸⁵ As noted previously, several of the regulatory restrictions were

⁸⁴ Alexander Bolton, "Fairness Doctrine Hammered 309-115," *The Hill*, June 28, 2007. Cheryl Bolen, "FCC Spending Bill Would Prohibit Revival of Defunct Fairness Doctrine," *BNA Daily Report for Executives*, June 29, 2007, p. A-24.

⁸⁵ Richard J. Lazarus, "Congressional Descent," pp. 646-647. According to the Defenders of Wildlife study, the number of such provisions fell an average of nearly 50 per year (continued...)

added to multiple appropriations measures for several years at the end of the Clinton Administration preventing the development or issuance of regulations implementing the Kyoto Protocols on global warming. Beginning in FY2002, however, those restrictions no longer appeared in any of the appropriations bills, perhaps because the new Bush Administration had publicly announced its opposition to the Kyoto Protocols, thereby making the development of regulations implementing its requirements unlikely.⁸⁶

Other regulatory appropriations restrictions have continued even though the original reasons for their enactments appear to have disappeared. As noted previously, even though APHIS announced that it had withdrawn a proposed rule on cost sharing for animal and plant health emergency programs in August 2005, Congress has continued to prohibit finalizing the proposed rule.

The Scope and Effect of Regulatory Appropriations Restrictions

The regulatory restrictions in appropriations bills that have been enacted during the last 10 years illustrate that Congress can have a substantial effect on agency rulemaking and regulatory activity beyond the introduction of joint resolutions of disapproval pursuant to the Congressional Review Act. These appropriations provisions can prevent an agency from developing a proposed rule, from making a proposed rule final, or from implementing or enforcing a final rule. However, unlike joint resolutions of disapproval under the Congressional Review Act, these appropriations provisions cannot nullify an existing regulation (i.e., remove it from the *Code of Federal Regulations*) or permanently prevent the agency from issuing the same or similar regulations. Therefore, any final rule that has taken effect and been codified in the *Code of Federal Regulations* will continue to be binding law — even if language in the relevant regulatory agency’s appropriations act prohibits the use of funds to enforce the rule. Regulated entities are still required to adhere to applicable requirements (e.g., installation of pollution control devices, submission of relevant paperwork), even if violations are unlikely to be detected and enforcement actions cannot be taken by federal agencies.

Also, unless otherwise indicated, regulatory restrictions in appropriations acts are binding only for the period of time covered by the legislation (i.e., a fiscal year

⁸⁵ (...continued)
between 1998 and 2000 to 23 in 2001.

⁸⁶ For example, at a March 21, 2001, press conference, the White House press secretary said “The President has been unequivocal. He does not support the Kyoto treaty. It exempts the developing nations around the world, and it is not in the United States’ economic best interest.” [<http://www.whitehouse.gov/news/briefings/20010328.html#KyotoTreaty>] See also William H. Glaze, “Kyoto is dead,” *Environmental Science & Technology*, vol. 35 (May 1, 2001), p. A177, in which EPA Administrator Christine Whitman was quoted as saying that the “Kyoto Protocol was dead as far as the administration was concerned.”

or a portion of a fiscal year).⁸⁷ Therefore, any restriction that is not repeated in the next relevant appropriations act or enacted in other legislation is no longer binding on the relevant agency or agencies. This may explain why some of the provisions in the Consolidated Appropriations Act for 2008 had been in all previous appropriations measures since FY1999. On the other hand, some appropriations provisions are worded in such a way that they have essentially become permanent or multi-year requirements. For example, the provision in the Consolidated Appropriations Act, 2001 requiring OMB to publish a report on the costs and benefits of regulations stated that the report was to be produced that year “and each year thereafter.”⁸⁸ Also, the Consolidated Appropriations Act, 2008 (121 Stat. 2015) prohibits the issuance of any rule indicating that real estate brokerage activity is financial in nature “for fiscal years 2008 and 2009.”

Most of the regulatory restrictions are in appropriations bills providing funds for particular agencies or groups of agencies. Therefore, the prohibitions are generally applicable only to the agencies funded by that appropriations measure. However, some of the regulatory prohibitions are in the “General Provisions — Government-wide” section of one of the appropriations measures (for FY2008, Title VII of the Financial Services and General Government Appropriations Act), and are therefore applicable to virtually all federal agencies. For example, the provision in Section 735 of the Consolidated Appropriations Act of 2008 that prohibited the use of funds to implement a proposed rule on temporary details of staff to the legislative branch was in the “General Provisions — Government-wide” section of the act.⁸⁹ Other provisions are worded in such a way that their effects are broader than the agencies funded by those particular appropriations bills (e.g., those that prohibit the use of funds in “this or any other Act” to publish or implement regulations.)⁹⁰

⁸⁷ See U.S. General Accounting Office, *Principles of Appropriations Law, Third Edition, Volume I*, GAO-04-261SP, (January 2004), p. 2-34, which states that “Since an appropriation act is made for a particular fiscal year, the starting presumption is that everything contained in the act is effective only for the fiscal year covered. Thus, the rule is: A provision contained in an annual appropriation act is not to be construed to be permanent legislation unless the language used therein or the nature of the provision makes it clear that Congress intended it to be permanent.”

⁸⁸ Section 624 of the Treasury and General Government Appropriations Act of 2001 (P.L. 106-554, 31 U.S.C. §1105 note). GAO and the courts have concluded that these types of construction make appropriations provisions permanent law. See, for example, U.S. Government Accountability Office, *Bureau of Alcohol, Tobacco, Firearms, and Explosives — Prohibition in the 2008 Consolidated Appropriations Act*, B-316510 (July 15, 2008). There, GAO said (on page 3), that “the clearest indication that Congress intended a provision to be permanent is the presence in the provision of ‘words of futurity’ clearly indicating such intent.” GAO noted that the U.S. Court of Appeals for the Second Circuit concluded that the phrase “and each fiscal year thereafter” represented “unambiguous language of permanence.” *Auburn Housing Authority v. Martinez*, 277 F.3d 138, 146 (2nd Cir. 2002).

⁸⁹ Although these general provisions are applicable government-wide, they are often written in such a way that, in practice, only certain agencies are actually affected (in this case, OPM).

⁹⁰ See U.S. General Accounting Office, *Principles of Appropriations Law*, p. 2-33, which (continued...)

On the other hand, some of the appropriations provisions restricting regulatory actions may not be as restrictive as they initially appear. Some federal regulatory agencies derive a substantial amount of their operating funds from sources other than congressional appropriations (e.g., user fees), and the use of those funds to develop, implement, or enforce rules may not be legally constrained by language preventing the use of appropriated funds.⁹¹ Also, some federal regulations (e.g., many of those issued by EPA and OSHA) are primarily implemented or enforced by state or local governments, and those governments may have sources of funding that are independent of the federal funds that are restricted by the appropriations provisions. Some state or local governments may also have their own statutory and regulatory requirements that are the same as or similar to the federal rules at issue, or may even go beyond federal standards.⁹² If state or local funds or legal authorities are used to develop, implement, or enforce regulations, those actions would not appear to be constrained by statutory provisions limiting the use of *federal* funds to restrict action on particular *federal* laws and regulations.⁹³

Agencies may also find ways around provisions prohibiting the use of appropriated funds for rulemaking or other regulatory actions. For example, if an agency is not permitted to use its appropriation to issue a formal rule on a particular issue, it might attempt to achieve the end result through other means (e.g., a guidance document that, while technically not having a binding effect, may be granted great deference by affected parties).⁹⁴ More generally, if Congress restricts one agency or group of agencies from issuing a rule on a particular topic, another agency with similar or overlapping statutory authority may be assigned that responsibility. For

⁹⁰ (...continued)

says that a general provision “may apply solely to the act in which it is contained (‘No part of any appropriation contained in this Act shall be used ...’), or it may have general applicability (‘No part of any appropriation contained in this or any other Act shall be used ...’).”

⁹¹ Others, however, take the view that even these non-appropriated funds must be at least figuratively deposited into the Treasury, and that “all spending in the name of the United States must be pursuant to legislative appropriation.” Kate Stith, “Congress’ Power of the Purse,” *The Yale Law Journal*, vol. 97 (1988), p. 1345.

⁹² For example, under the Occupational Safety and Health Act, states may set standards for hazards such as ergonomic injury for which no federal standard has been established. See U.S. General Accounting Office, *Regulatory Programs: Balancing Federal and State Responsibilities for Standard Setting and Implementation*, GAO-02-495, March 2002.

⁹³ See U.S. Government Accountability Office, *Principles of Federal Appropriations Law, Third Edition, Volume II*, GAO-06-382, February 2006, which says that, unless stated otherwise, expenditures by recipients of federal grants “are not subject to all the same restrictions and limitations imposed on direct expenditures by the federal government. For this reason, grant funds in the hands of a grantee have been said to largely lose their character and identity as federal funds.”

⁹⁴ See Office of Management and Budget, “Final Bulletin for Agency Good Guidance Practices,” *72 Federal Register* 3432, January 25, 2007. OMB issued bulletin, in part, because of concerns that agencies were treating guidance documents as binding rules. Nevertheless, as OMB points out, guidance documents can have significant effects on regulated entities.

example, in 1986, the House Appropriations Committee voted to cut off funding for OMB's OIRA on grounds that the office's review amounted to "second-guessing" congressional delegations of rulemaking authority to federal agencies.⁹⁵ In response, then-OMB Director James C. Miller III said that, if funds were cut off for OIRA, "we will do it in the White House. If [you take] the office out of the White House, we will do it in the Justice Department. If you take the office out of the Justice Department, we will do it in Commerce. This is a matter of the president's constitutional power and authority."⁹⁶

Also, as this example suggests, it is unclear how these kinds of congressional appropriations restrictions on regulatory agencies will be viewed and implemented by the President. For example, in 2006, President Bush said the provision prohibiting OMB from reviewing agricultural marketing orders "should be deleted as inconsistent with the President's constitutional authority to supervise the unitary executive branch."⁹⁷ More recently, in his December 26, 2007, signing statement on the Consolidated Appropriations Act for 2008, President Bush said the act "contains certain provisions similar to those found in prior appropriations bills passed by the Congress that might be construed to be inconsistent with my Constitutional responsibilities. To avoid such potential infirmities, the executive branch will interpret and construe such provisions in the same manner as I have previously stated in regard to similar provisions."⁹⁸ The Bush Administration has also objected to these kinds of provisions in proposed appropriations legislation.⁹⁹ If the President

⁹⁵ Judith Havemann, "'Defunding' OMB's Rule Reviewers," *Washington Post*, July 18, 1986, p. A17. See also, Judith Havemann, "Lawmakers Want to Dethrone OMB Rule Reviewers," *Washington Post*, May 22, 1986, p. A17; Judith Havemann, "No 'Shade-Drawn' Dealings for OMB," *Washington Post*, June 17, 1986, p. A21; and Judith Havemann, "House Moves to Wipe Out OMB Unit," *Washington Post*, July 31, 1986, p. A23.

⁹⁶ *Ibid.* Ultimately, an agreement was reached to fund OIRA, but only after OMB agreed to institute new procedures to make OIRA's review process more transparent.

⁹⁷ "Statement of Administration Policy, H.R. 5576 — Transportation, Treasury, Housing, the Judiciary, and the District of Columbia Appropriations Bill, FY2007," June 14, 2006, available at [<http://www.whitehouse.gov/omb/legislative/sap/109-2/hr5576sap-h.pdf>].

⁹⁸ To view a copy of this signing statement, see [<http://www.whitehouse.gov/news/releases/2007/12/20071226-1.html>]. For more information on signing statements, see CRS Report RL33667, *Presidential Signing Statements: Constitutional and Institutional Implications*, by T.J. Halstead. For information on how signing statements have been implemented, see U.S. Government Accountability Office, *Presidential Signing Statements Accompanying the Fiscal Year 2006 Appropriations Acts*, B-308603, June 18, 2007; and U.S. Government Accountability Office, *Presidential Signing Statements — Agency Implementation of Ten Provisions of Law*, B-309928, December 20, 2007.

⁹⁹ See, for example, U.S. Office of Management and Budget, Executive Office of the President, "Statement of Administration Policy: H.R. 3043 — Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, 2008," July 17, 2008, in which the Administration said it "opposes the prevention of regulations to improve the Workforce Investment Act and Trade Adjustment Assistance (TAA) programs." The provision at issue was ultimately enacted as part of the Consolidated Appropriations (continued...)

views restrictions on agencies' rulemaking and regulatory authorities as unconstitutional infringements on his ability to manage the executive branch, the agencies might be directed to ignore the restrictions in the appropriations act. (To date, however, CRS is not aware of any such instructions.) On the other hand, because all agency regulations are based on some type of statutory rulemaking authority, Congress may view any failure to adhere to the appropriations restrictions as equally unconstitutional.¹⁰⁰ In this situation, federal courts may have to decide whether the appropriations provisions are binding on the agencies.

Support for and Concerns Regarding Appropriations Restrictions

Article I, Section 9 of the Constitution states that “no money shall be drawn from the Treasury but in consequence of appropriations made by law.” Kate Stith, writing in the *Yale Law Journal*, said that the “appropriations” required by the Constitution “are not only legislative specifications of money *amounts*, but also legislative specifications of the *powers, activities, and purposes* — what we may call, simply, ‘objects’ — for which appropriated funds may be used.”¹⁰¹ She takes the view that Congress has not only the right, but “a constitutional duty to limit the amount and durations of each grant of spending authority,” and that the historical concept of appropriations as adopted by the colonies “encompassed dual limitations on both amount and object.”¹⁰² Stith also said that when Congress denies appropriations for a particular activity,

the denial is not merely a determination that the public fisc cannot afford spending any money on that activity. By such appropriations legislation, Congress decides that, under our constitutional scheme, for the duration of the appropriations denial, the specific activity is no longer within the realm of authorized government actions.¹⁰³

Other authors have also asserted that, since Article I, Section 9 of the Constitution specifically mentions appropriations as a congressional responsibility, appropriations

⁹⁹ (...continued)

Act of 2008 (P.L. 110-161, 121 Stat. 2168).

¹⁰⁰ For more on the perspective of federal rulemaking agencies as extensions of Congress, and regulations as extensions of legislative activity, see David H. Rosenbloom, *Building a Legislative-Centered Public Administration: Congress and the Administrative State, 1946-1999* (Tuscaloosa, AL: The University of Alabama Press, 2000).

¹⁰¹ Kate Stith, “Congress’ Power of the Purse,” *The Yale Law Journal*, vol. 97 (1988), p. 1352.

¹⁰² *Ibid.*, p. 1343, 1353.

¹⁰³ *Ibid.*, p. 1361.

provisions that change or repeal statutory provisions “ought to be looked at especially charitably.”¹⁰⁴

Other observers, however, have expressed concerns about Congress’ use of certain restrictions in appropriations bills. For example, Jacques B. LeBoeuf concluded that Congress “may not interfere with the Executive’s ability to execute the law. Appropriations riders that attempt to influence executive discretion in the area of law enforcement prevent the executive branch from carrying out its constitutionally mandated activities.”¹⁰⁵ LeBoeuf also said that the “President should refuse to abide by funding limitations he or she considers to be unconstitutional,”¹⁰⁶ and some Presidents have lodged these kinds of objections. For example, President Reagan, in a signing statement on a limitation provision in the Supplemental Appropriations Act of 1987, said the following:

Article II of the Constitution assigns responsibility for executing the law to the President. While Congress is empowered to enact new or different laws, it may not indirectly interpret and implement existing laws, which is an essential function allocated by the Constitution to the executive branch. If the Congress disagrees with a statutory interpretation advanced by the executive branch ... the Congress may, of course, amend the underlying statute. The use of an appropriations bill for this purpose, however, is inconsistent with the constitutional scheme of separation of powers.¹⁰⁷

As noted previously, President Bush has similarly objected to appropriations provisions as inappropriately limiting his authority.¹⁰⁸ Others have also raised questions about the constitutionality of certain types of appropriations provisions.¹⁰⁹

¹⁰⁴ Matthew D. McCubbins and Daniel B. Rodriguez, “Canonical Construction and Statutory Revisionism: The Strange Case of the Appropriations Canon,” *Journal of Contemporary Legal Issues*, vol. 14 (2005), pp. 669-715.

¹⁰⁵ Jacques B. LeBoeuf, “Limitations on the Use of Appropriations Riders by Congress to Effectuate Substantive Policy Changes,” *Hastings Constitutional Law Quarterly*, vol. 19 (Winter 1992), p. 493.

¹⁰⁶ *Ibid.*

¹⁰⁷ Statement on signing H.R. 1827 into law, *23 Weekly Comp. Pres. Doc.* 800 (July 11, 1987).

¹⁰⁸ For example, in his signing statement regarding the Consolidated Appropriations Act of 2008, available at [<http://www.whitehouse.gov/news/releases/2007/12/20071226-1.html>]. See also, [<http://www.whitehouse.gov/omb/legislative/sap/109-2/hr5576sap-h.pdf>] for “Statement of Administration Policy, H.R. 5576 — Transportation, Treasury, Housing, the Judiciary, and the District of Columbia Appropriations Bill, FY2007,” June 14, 2006.

¹⁰⁹ See, for example, J. Gregory Sidak, “How Congress Erodes the Power of the Presidency — Appropriations Muzzle,” *Wall Street Journal*, Feb. 6, 1989, p. 1, who asserts that provisions like the prohibition on OMB review of agricultural marketing orders unconstitutionally inhibits the President’s responsibility in Article II, Section 3, to “recommend” to Congress “such Measures as he shall judge necessary and expedient.” By prohibiting the OMB to review marketing orders, Sidak argues, Congress is inhibiting the President’s ability to carry out this recommendation function.

Neal Devins characterized appropriations restrictions as “the constitutional equivalent of authorizations,” but he also said that the addition of such provisions while on the House or Senate floor was “troublesome” and that “the appropriations process may not be conducive to sound substantive policymaking for a variety of institutional reasons,” including the prevention of authorizing committees from applying their expertise.¹¹⁰ Devins said that such provisions “may strain the effectiveness of other branches of government” and “are symptomatic of Congress’s inability to enact authorizing legislation.”¹¹¹ He also said that appropriations provisions prohibiting agencies from launching regulatory initiatives without changing the underlying authorizations “unduly limit the Executive’s policymaking responsibilities,” may result in a “confusing patchwork” of enforcement schemes, and are viewed by some as an unconstitutional violation of separation of powers.¹¹² He concluded that, “while Congress’s use of limitation riders is sometimes necessary, Congress should be aware of the significant risks associated with policymaking through the appropriations process.”

A somewhat different perspective on the constitutionality of appropriations restrictions on executive action was offered by Peter Raven-Hansen and William C. Banks in the context of the President’s authority regarding national security.¹¹³ The authors took a position between the advocates of unlimited congressional and presidential power, but ultimately asserting that narrowly constructed appropriations restrictions are appropriate.

Contrary to ritualistic incantations by proponents of congressional power, the power of the purse is not plenary in national security law. It is always qualified by the commands of the Constitution and cannot be used to achieve ends that Congress could not constitutionally achieve by other means. But it is also not a “merely procedural” power that makes an appropriation restriction somehow less than “substantive” law. A properly enacted national security appropriation has the same force and effect as any other statute. Nor is its effect diluted by the truncated legislative process by which it is sometimes enacted [T]he restrictive appropriation will rarely trespass on national security functions assigned to the President by explicit constitutional text because so few functions are. Most national security functions are shared. It is therefore as inaccurate to invoke the “plenary” war and foreign affairs powers of the President to challenge restrictive appropriations as it is to invoke the “plenary” power of the purse to defend them. Instead, to determine the constitutionality of a restrictive national security appropriation, we must weigh the extent to which the restriction prevents the President from accomplishing his constitutionally assigned functions against

¹¹⁰ Neal E. Devins, “Regulation of Government Agencies Through Limitation Riders,” *Duke Law Journal*, vol. 1987 (June 1987), pp. 456-500.

¹¹¹ *Ibid.*, pp. 458-459.

¹¹² *Ibid.*, p. 472. See also Archie Parnell, *The Yale Law Journal*, vol. 89 (June 1980), pp. 1360-1394, where the author says (p. 1379) that “If the power to execute the laws means anything, it is that neither Congress nor individual congressmen may interfere with the executive decisions of administrative agencies as to how they interpret laws already in force.”

¹¹³ Peter Raven-Hansen and William C. Banks, “Pulling the Purse Strings of the Commander in Chief,” *Virginia Law Review*, vol. 80 (May 1994), pp. 833-944.

the need for the restriction to promote objectives within the authority of Congress. In this weighing, the special history of the power of the purse in national security often tips the scales in favor of its expertise.

The Supreme Court has not ruled on the specific issue of whether appropriations provisions limiting executive agencies' regulatory discretion represent an unconstitutional intrusion into the President's authority. However, the Court has said that, while *implicit* appropriations limitations on authorizing legislation are questionable,¹¹⁴ "Congress ... may amend substantive law in an appropriations statute, as long as it does so clearly."¹¹⁵

Appropriations Restrictions and Rulemaking

Some observers and interest groups have specifically advocated the use of appropriations provisions to stop rulemaking activity. For example, John Shanahan and Mark Wilson of the Heritage Foundation described several spending restrictions in 1995 appropriations legislation for EPA and the Department of Labor (e.g., restricting implementation of the Delaney Clause, wetlands permitting requirements, and an ergonomics standard), and said the following:

While permanent labor and environmental policy reform should be pursued, many of the problems addressed by the House appropriations riders are so egregious that immediate relief should be granted. While these riders are an imperfect solution, Americans should view them as necessary to encourage recalcitrant federal agencies to work with Congress to reform some of the nation's most burdensome regulatory statutes.¹¹⁶

Others, however, have expressed concerns about these kinds of provisions from both a procedural and a public policy standpoint. For example, in a 2005 article entitled "Regulatory Underkill," William W. Buzbee of the Center for Progressive Reform said the following:

During the past decade, use of legislative riders has become another particularly popular and low-visibility means of derailing programs. Such riders are typically not freestanding bills that are subject to the congressional committee process, openly debated, and visible for all to see. Instead, they commonly appear without

¹¹⁴ *Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1978). In this case, the Tennessee Valley Authority asserted that Congress implicitly exempted actions related to the construction of the Tellico Dam project from the scope of the Endangered Species Act because it continued to appropriate funds for the construction of the dam.

¹¹⁵ *Robertson v. Seattle Audubon Society*, 503 U.S. 429 (1992). See also U.S. General Accounting Office, *Principles of Federal Appropriations Law*, p. 2-32.

¹¹⁶ John Shanahan and Mark Wilson, "Using Appropriations Riders to Curb Regulatory Excess," Heritage Issue Bulletin No. 218, October 16, 1995, available at [<http://author.heritage.org/Research/Regulation/IB218.cfm>]. According to its website, the Heritage Foundation's mission is "to formulate and promote conservative public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense."

announcement or even an open legislative sponsor. Riders are appended to other bills, often large spending appropriations bills that have broad support and reflect hundreds of fiercely negotiated bargains. Some riders enact provisions that could not pass as free-standing legislation.... Other riders bar the use of appropriations to implement controversial policies. These “carve-outs” effectively render such policies a nullity for certain periods or in certain areas. Because these riders do not involve a frontal attack on a popular law, and their advocates may remain unknown, the public seldom knows of these proposals in time to mount an effective opposition.¹¹⁷

The Future

Congress’ use of regulatory appropriations restrictions has fluctuated somewhat over time, and previous experience suggests that they may be somewhat less frequent when Congress and the President are of the same party. However, the use of such provisions has not been confined to one political party or one set of interest groups. As Richard Lazarus pointed out in 2006:

No one political party and no particular ideology have been more likely to promote or to reject the use of appropriations riders. All appear to have willingly embraced the strategy when it has served their purposes, whether Republicans or Democrats, liberals or conservatives. Each has condemned the other for doing the same. The precise identity of the condemnor or the condemnee has turned on whose political ox is being gored at the moment rather than on the willingness of anyone to adhere to a principled approach to lawmaking over the longer haul.¹¹⁸

Although the substantive reasons leading to the adoption of these regulatory restrictions are numerous (e.g., economic interests, or to support or oppose end-of-administration rules), their inclusion in appropriations legislation as a matter of legislative strategy appears to be prompted by two factors: (1) Congress’ ability via its “power of the purse” to control agency action, and (2) the fact that appropriations bills are considered “must pass” legislation. As one observer put it, “Because everyone knows that Congress must pass such legislation, it is tempting to try and attach incidental provisions that otherwise might lack the political momentum (or even majority support) necessary for passage.”¹¹⁹ In that regard, several of the regulatory restrictions discussed in this report were also in separate legislation that had not moved since they were introduced. The use of regulatory restrictions in appropriations bills is also likely to continue for the foreseeable future. The examples provided in this report indicate that they are a formidable “tool” in the “toolbox” of congressional oversight and control of executive agencies.

¹¹⁷ William W. Buzbee, “Regulatory Underkill,” available at [<http://www.progressiveregulation.org/perspectives/underkill.cfm>]. According to its website, the Center for Progressive Reform is “a 501(c)(3) nonprofit research and educational organization with a network of Member Scholars working to protect health, safety, and the environment through analysis and commentary.”

¹¹⁸ Richard J. Lazarus, “Congressional Descent,” p. 637.

¹¹⁹ Richard J. Lazarus, “Congressional Descent,” p. 635.

Table 1. Appropriations Provisions Affecting Rulemaking and Regulation, Fiscal Years 1999 Through 2008

	Fiscal Year(s) in Which the Provision Appeared ^a
A. Provisions Related to the Finalization of Particular Proposed Rules	
1. None of the funds made available by this Act may be used to issue a final rule in furtherance of, or otherwise implement, the proposed rule on cost-sharing for animal and plant health emergency programs of the Animal and Plant Health Inspection Service published on July 8, 2003 (Docket No. 02-062-1; 68 Fed. Reg. 40541).	2004, 2005, 2006, 2007, 2008
2. None of the funds appropriated or made available under this Act or any other appropriations Act may be used to implement or enforce restrictions or limitations on the Coast Guard Congressional Fellowship Program, or to implement the proposed regulations of the Office of Personnel Management to add sections 300.311 through 300.316 to part 300 of title 5 of the Code of Federal Regulations, published in the Federal Register, volume 68, number 174, on September 9, 2003 (relating to the detail of executive branch employees to the legislative branch).	2004, 2005, 2006, 2007, 2008
3. None of the funds made available in this Act may be used by the Secretary of Homeland Security or any delegate of the Secretary to issue any rule or regulation which implements the Notice of Proposed Rulemaking related to Petitions for Aliens To Perform Temporary Nonagricultural Services or Labor (H-2B) set out beginning on 70 Fed. Reg. 3984 (January 27, 2005).	2008
4. None of the funds made available under this Act may be used to promulgate or implement the Environmental Protection Agency [EPA] proposed regulations published in the Federal Register on January 3, 2007 (72 Fed. Reg. 69). ^b	2008
5. None of the funds provided or limited under this Act may be used to issue a final regulation under section 5309 of title 49, United States Code, except that the Federal Transit Administration may continue to review comments received on the proposed rule (Docket No. FTA-2006-25737). ^c	2008
6. None of the funds made available in the Act may be used to finalize, implement, administer, or enforce — (1) the proposed rule relating to the determination that real estate brokerage is an activity that is financial in nature or incidental to a financial activity published in the Federal Register on January 3, 2001 (66 Fed. Reg. 307 et seq.); or (2) the revision proposed in such rule to section 1501.2 of title 12 of the Code of Federal Regulations.	2003, 2004, 2005, 2006, 2007 ^d

7. None of the funds made available under this Act may be used to issue or implement the Department of Transportation's proposed regulation entitled Parts and Accessories Necessary for Safe Operation; Certification of Compliance With Federal Motor Vehicle Safety Standards (FMVSSs), published in the Federal Register, volume 67, number 53, on March 19, 2002, relating to a phase-in period to bring vehicles into compliance with the requirements of the regulation.	2005
8. None of the funds appropriated or otherwise made available by this Act shall be used to promulgate a final regulation to implement changes in the payment of pesticide tolerance processing fees as proposed at 64 Fed. Reg. 31040, or any similar proposals. The Environmental Protection Agency may proceed with the development of such a rule.	2000, 2001, 2002, 2003
9. None of the funds made available in this or any other Act may be expended before March 31, 1999 to publish final regulations based on the regulations proposed at 63 Fed. Reg. 3289 on January 22, 1998. ^e	1999
10. None of the funds made available in this Act may be used by the Secretary of the Interior or the Secretary of Agriculture to implement a final rule for estimating fair market value land use rental fees for fiberoptic communications rights-of-way on Federal lands that amends or replaces the linear right-of-way rental fee schedule published on July 8, 1987 (43 CFR 2803.1-2(c)(1)(I)). In determining rental fees for fiberoptic rights-of-way, the Secretaries shall use the rates contained in the linear right-of-way rental fee schedules in place on May 1, 2000.	2001
11. None of the funds appropriated or made available by this Act or any other Act shall be used: (1) to adopt any proposed rule or proposed amendment to a rule contained in the Notice of Proposed Rulemaking issued on April 24, 2000 (Docket No. FMCSA-97- 2350-953); (2) to adopt any rule or amendment to a rule similar in substance to a proposed rule or proposed amendment to a rule contained in such Notice; or (3) if any such proposed rule or proposed amendment to a rule has been adopted prior to enactment of this section, to enforce such rule or amendment to a rule. ^f	2001, 2002 ^g
12. None of the funds made available in this Act may be used by the Secretary of the Treasury, or his designee, to issue any rule or regulation which implements the proposed amendments to Internal Revenue Service regulations set forth in REG-209500-86 and REG-164464-02, or any amendments reaching results similar to such proposed amendments. ^h	2004
B. Provisions Related to Regulatory Activity Within Certain Areas	
1. None of the funds provided in this Act may be used for salaries and expenses to draft or implement any regulation or rule insofar as it would require recertification of rural status for each electric and telecommunications borrower for the Rural Electrification and Telecommunication Loans program.	2006, 2007, 2008

<p>2. None of the funds appropriated by this Act may be used by the Federal Communications Commission to modify, amend, or change its rules or regulations for universal service support payments to implement the February 27, 2004 recommendations of the Federal-State Joint Board on Universal Service regarding single connection or primary line restrictions on universal service support payments.</p>	<p>2005, 2006, 2007, 2008</p>
<p>3. For fiscal years 2008 and 2009, neither the Board of Governors of the Federal Reserve System nor the Secretary of the Treasury may determine, by rule, regulation, order, or otherwise, for the purposes of section 4(K) of the Bank Holding Company Act of 1956, or section 5136A of the Revised Statutes of the United States, that real estate brokerage activity or real estate management activity (which for purposes of this paragraph shall be defined to mean ‘real estate brokerage’ and ‘property management’ respectively, as those terms were understood by the Federal Reserve Board prior to March 11, 2000) is an activity that is financial in nature, is incidental to any financial activity, or is complementary to a financial activity.</p>	<p>2008ⁱ</p>
<p>4. None of the funds contained in this Act may be used to enact or carry out any law, rule, or regulation to legalize or otherwise reduce penalties associated with the possession, use, or distribution of any schedule I substance under the Controlled Substances Act (21 U.S.C. 801 et seq.) or any tetrahydrocannabinols derivative.</p>	<p>All years (1999 through 2008)^j</p>
<p>5. None of the funds made available by this Act shall be used to prepare or publish final regulations regarding a commercial leasing program for oil shale resources on public lands pursuant to section 369(d) of the Energy Policy Act of 2005 (P.L. 109-58) or to conduct an oil shale lease sale pursuant to subsection 369(e) of such Act.</p>	<p>2008</p>
<p>6. None of the funds appropriated under this paragraph shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, or order under the Act which is applicable to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees.</p>	<p>All years (1999 through 2008)^k</p>
<p>7. None of the funds in this Act shall be available for the Federal Aviation Administration to finalize or implement any regulation that would promulgate new aviation user fees not specifically authorized by law after the date of the enactment of this Act.</p>	<p>All years (1999 through 2008)</p>
<p>8. None of the funds in this Act shall be used to pursue or adopt guidelines or regulations requiring airport sponsors to provide to the Federal Aviation Administration without cost building construction, maintenance, utilities and expenses, or space in airport sponsor-owned buildings for services relating to air traffic control, air navigation, or weather reporting.¹</p>	<p>2002, 2003, 2004, 2005, 2006, 2007, 2008</p>
<p>9. None of the funds appropriated by this Act may be obligated or expended to plan, finalize, or implement any rulemaking to add to section 575.104 of title 49 of the Code of Federal Regulations any requirement pertaining to a grading standard that is different from the three grading standards (treadwear, traction, and temperature resistance) already in effect.</p>	<p>All years (1999 through 2008)</p>

10. None of the funds in this Act shall be available to plan, finalize, or implement regulations that would establish a vessel traffic safety fairway less than five miles wide between the Santa Barbara Traffic Separation Scheme and the San Francisco Traffic Separation Scheme.	1999, 2000, 2001, 2002, 2003
11. None of the funds appropriated or made available by this Act shall be used to issue a proposed rule for which the comment period would close prior to September 30, 2002, final, or interim final rule pursuant to notice and comment rulemaking in relation to any change or modification of the definition of “animal” in existing regulations pursuant to the Animal Welfare Act.	2001, 2002
12. None of the funds appropriated or otherwise made available for the United Nations may be used by the United Nations for the promulgation or enforcement of any treaty, resolution, or regulation authorizing the United Nations, or any of its specialized agencies or affiliated organizations, to tax any aspect of the Internet or international currency transactions.	2002
13. None of the funds appropriated by this Act shall be used to propose or issue rules, regulations, decrees, or orders for the purpose of implementation, or in preparation for implementation, of the Kyoto Protocol which was adopted on December 11, 1997, in Kyoto, Japan at the Third Conference of the Parties to the United Nations Framework Convention on Climate Change.	1999, 2000, 2001 ^m
14. None of the funds in this Act shall be available for the Coast Guard to plan, finalize, or implement any regulation that would promulgate new maritime user fees not specifically authorized by law after the date of the enactment of this Act:	1999, 2000, 2001
15. None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations pursuant to title V of the Motor Vehicle Information and Cost Savings Act (49 U.S.C. 32901 et seq.) prescribing corporate average fuel economy standards for automobiles, as defined in such title, in any model year that differs from standards promulgated for such automobiles prior to the enactment of this section.	1999, 2000, 2001
16. None of the funds in this Act shall be available to implement or enforce regulations that would result in the withdrawal of a slot from an air carrier at O’Hare International Airport under section 93.223 of title 14 of the Code of Federal Regulations in excess of the total slots withdrawn from that air carrier as of October 31, 1993 if such additional slot is to be allocated to an air carrier or foreign air carrier under section 93.217 of title 14 of the Code of Federal Regulations.	1999, 2000
17. None of the funds made available under this title may be used to . . . promulgate any regulation or other transmittal or policy directive that has the effect of imposing (or clarifying the imposition of) a restriction on the coverage of injectable drugs under section 1861(s)(2) of the Social Security Act beyond the restrictions applied before the date of such transmittal.	2000

18. None of the funds made available by this Act or in subsequent Acts may be used by the Environmental Protection Agency to issue or to establish an interpretation or guidance relating to fats, oils, and greases (as described in P.L. 104-55) that does not comply with the requirements of the Edible Oil Regulatory Reform Act.	1999
19. None of the funds appropriated or otherwise made available to the Secretary by this Act, any other Act, or any other source may be used to issue the final rule to implement the amendments to Federal milk marketing orders required by subsection (a)(1) of section 143 of the Agricultural Market Transition Act (7 U.S.C. 7253), other than during the period of February 1, 1999, through April 4, 1999, and only if the actual implementation of the amendments as part of Federal milk marketing orders takes effect on October 1, 1999, notwithstanding the penalties that would otherwise be imposed under subsection (c) of such section.	1999
20. None of such funds may be used to designate the State of California as a separate Federal milk marketing order under subsection (a)(2) of such section, other than during the period beginning on the date of the issuance of the final rule referred to in subsection (a) through September 30, 1999.	1999
21. None of the funds made available by this Act shall be used in any way to promulgate a final rule (altering 29 CFR part 103) regarding single location bargaining units in representation cases.	1999
22. None of the funds provided in this or any other Act may be used prior to July 31, 2001, to promulgate or enforce a final rule to reduce during the 2000-2001 or 2001-2002 winter seasons the use of snowmobiles below current use patterns at a unit in the National Park System. ⁿ	2001
C. Implementation or Enforcement Restrictions	
1. None of the funds made available in this Act may be used to pay the salaries or expenses of personnel to — (1) inspect horses under section 3 of the Federal Meat Inspection Act (21 U.S.C. 603); (2) inspect horses under section 903 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 1901 note; P.L. 104-127); or (3) implement or enforce section 352.19 of title 9, Code of Federal Regulations.	2008
2. None of the funds made available to the Postal Service by this Act shall be used to implement any rule, regulation, or policy of charging any officer or employee of any State or local enforcement agency, or any individual participating in a State or local program of child support enforcement, a fee for information requested or provided concerning an address of a postal customer.	All years (1999 through 2008)
3. None of the funds made available by this Act may be used by the Federal Communications Commission to implement the Fairness Doctrine, as repealed in General Fairness Doctrine Obligations of Broadcast Licensees (50 Fed. Reg. 35418 (1985)), or any other regulations having the same substance.	2008

<p>4. None of the funds made available by this Act shall be available for any activity or for paying the salary of any Government employee where funding an activity or paying a salary to a Government employee would result in a decision, determination, rule, regulation, or policy that would prohibit the enforcement of section 307 of the Tariff Act of 1930 (19 U.S.C. 1307).</p>	<p>All years (1999 through 2008) °</p>
<p>5. No funds appropriated under this paragraph shall be obligated or expended to administer or enforce any standard, rule, regulation, or order under the Act with respect to any employer of 10 or fewer employees who is included within a category having a Days Away, Restricted, or Transferred (DART) occupational injury and illness rate, at the most precise industrial classification code for which such data are published, less than the national average rate as such rates are most recently published by the Secretary, acting through the Bureau of Labor Statistics, in accordance with section 24 of the Act.^p</p>	<p>All years (1999 through 2008)</p>
<p>6. None of the funds provided in this Act may be used for salaries and expenses to carry out any regulation or rule insofar as it would make ineligible for enrollment in the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) land that is planted to hardwood trees as of the date of enactment of this Act and was enrolled in the conservation reserve program under a contract that expired prior to calendar year 2002.</p>	<p>2004, 2005, 2006, 2007</p>
<p>7. None of the funds appropriated or otherwise made available by this Act shall be used to pay salaries and expenses of personnel who implement or administer section 508(e)(3) of the Federal Crop Insurance Act (7 U.S.C. 1508(e)(3)) or any regulation, bulletin, policy or agency guidance issued pursuant to section 508(e)(3) of such Act for the 2007 reinsurance year.</p>	<p>2006, 2007</p>
<p>8. None of the funds appropriated or made available by this or any other Act may be used to pay the salaries and expenses of personnel to carry out section 6029 of P.L. 107-171, the Farm Security and Rural Investment Act of 2002.</p>	<p>2004, 2006, 2007^q</p>
<p>9. No funds appropriated or otherwise made available by this Act may be used to implement or enforce any provisions of the Final Rule, issued on April 16, 2003 (Docket No. FMCSA-97- 2350), with respect to either of the following: (1) The operators of utility service vehicles, as that term is defined in section 395.2 of title 49, Code of Federal Regulations. (2) Maximum daily hours of service for drivers engaged in the transportation of property or passengers to or from a motion picture or television production site located within a 100-air mile radius of the work reporting location of such drivers.</p>	<p>2004</p>
<p>10. None of the funds provided in this Act shall be used to implement or enforce regulations for locality pay areas in fiscal year 2004 that are inconsistent with the recommendations of the Federal Salary Council adopted on October 7, 2003.</p>	<p>2004</p>

11. None of the funds made available by this or any other Act shall be used to implement Notice CRP-338, issued by the Farm Service Agency on March 10, 1999, nor shall funds be used to implement any related administrative action including implementation of such procedures published in Farm Service Agency program manuals. ^f	2000
12. None of the funds made available by this or any other Act shall be used to implement Notice CRP-327, issued by the Farm Service Agency on October 26, 1998, nor shall funds be used to implement any related administrative action including implementation of such procedures published in Farm Service Agency program manuals. ^g	2000
13. None of the funds made available in this Act may be used to implement, administer, or enforce any guidelines of the Equal Employment Opportunity Commission covering harassment based on religion, when it is made known to the Federal entity or official to which such funds are made available that such guidelines do not differ in any respect from the proposed guidelines published by the Commission on October 1, 1993 (58 Fed. Reg. 51266).	2000, 2001
14. None of the funds made available in this Act may be used to implement or administer the interim guidance issued on February 5, 1998 by the Environmental Protection Agency relating to title VI of the Civil Rights Act of 1964 and designated as the ``Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits'' with respect to complaints filed under such title after the date of the enactment of this Act and until guidance is finalized.	1999, 2001
15. None of the funds appropriated by this Act may be used to delay the national primary drinking water regulation for Arsenic published on January 22, 2001, in the Federal Register (66 Fed. Reg. pages 6976 through 7066, amending parts 141 through 142 of title 40 of the Code of Federal Regulations).	2002
D. Conditional Restrictions	
1. None of the funds made available to the Indian Health Service in this Act shall be used to implement the final rule published in the Federal Register on September 16, 1987, by the Department of Health and Human Services, relating to the eligibility for the health care services of the Indian Health Service until the Indian Health Service has submitted a budget request reflecting the increased costs associated with the proposed final rule, and such request has been included in an appropriations Act and enacted into law.	2000, 2001, 2002, 2003, 2005, 2008
2. None of the funds made available in this or any other Act shall be available to finalize or implement any proposed regulation under the Workforce Investment Act of 1998, Wagner-Peyser Act of 1933, or the Trade Adjustment Assistance Reform Act of 2002 until such time as legislation reauthorizing the Workforce Investment Act of 1998 and the Trade Adjustment Assistance Reform Act of 2002 is enacted.	2008
3. None of the funds made available in this Act may be used to promulgate, implement, or enforce any revision to the regulations in effect under section 496 of the Higher Education Act of 1965 on June 1, 2007, until legislation specifically requiring such revision is enacted.	2008

<p>4. None of the funds made available by this Act may be used by the Administrator of the Environmental Protection Agency to accept, consider or rely on third-party intentional dosing human toxicity studies for pesticides, or to conduct intentional dosing human toxicity studies for pesticides until the Administrator issues a final rulemaking on this subject.¹</p>	2006, 2007
<p>5. None of the funds provided in this Act or any other Act may be used by the Environmental Protection Agency (EPA) to publish proposed or final regulations pursuant to the requirements of section 428(b) of division G of P.L. 108-199 until the Administrator of the Environmental Protection Agency, in coordination with other appropriate Federal agencies, has completed and published a technical study to look at safety issues, including the risk of fire and burn to consumers in use, associated with compliance with the regulations.²</p>	2006, 2007
<p>6. The Secretary of Labor shall take no action to amend, through regulatory or administration action, the definition established in 20 CFR 667.220 for functions and activities under title I of the Workforce Investment Act of 1998, or to modify, through regulatory or administrative action, the procedure for redesignation of local areas as specified in subtitle B of title I of that Act (including applying the standards specified in section 116(a)(3)(B) of that Act, but notwithstanding the time limits specified in section 116(a)(3)(B) of that Act), until such time as legislation reauthorizing the Act is enacted.</p>	2005, 2006, 2007, 2008 ^v
<p>7. Section 1310.12(a) of title 45 of the Code of Federal Regulations (October 1, 2004) shall not be effective until June 30, 2006, or 60 days after the date of the enactment of a statute that authorizes appropriations for fiscal year 2006 to carry out the Head Start Act, whichever date is earlier.</p>	2006, 2007
<p>8. None of the funds in title I of this Act may be used to adopt rules or regulations concerning travel agent service fees unless the Department of Transportation publishes in the Federal Register revisions to the proposed rule and provides a period for additional public comment on such proposed rule for a period not less than 60 days.</p>	2004
<p>9. The Secretary of Commerce “shall not prepare or publish proposed or final regulations for the implementation of” a fishing capacity reduction program for the West Coast groundfish fishery until a referendum is conducted on the industry fee system.</p>	2003
<p>10. None of the funds in this Act may be expended to issue, implement, or enforce a regulation that diminishes or revokes an exemption authorized under section 345 of the National Highway System Designation Act of 1995 (P.L. 104-59; 109 Stat. 613; 49 U.S.C. 31136 note) before the Secretary of Transportation determines by a rulemaking proceeding that the exemptions granted are not in the public interest and adversely affects the safety of commercial motor vehicles with respect to such exemption that is required under subsection (c) of such section and, as under subsection (d), if a result of monitoring the safety performance of drivers of commercial vehicles that are subject to an exemption under section 345, the Secretary determines that public safety has been severely affected by an exemption granted under this section, the Secretary shall report to Congress that determination.</p>	2003

11. No funds appropriated in this Act may be used to apply or enforce a regulatory requirement for strengthening of flight deck doors on classes of aircraft not specifically required to take such action under P.L. 107-71, section 104(a)(1), unless and until the Under Secretary of Transportation for Security, after opportunity for notice and comment, determines that such strengthening is necessary for aviation security purposes.	2003
12. The Environmental Protection Agency may not use any of the funds appropriated or otherwise made available by this Act to implement the Registration Fee system codified at 40 Code of Federal Regulations Subpart U (sections 152.400 et seq.) if its authority to collect maintenance fees pursuant to FIFRA section 4(i)(5) is extended for at least 1 year beyond September 30, 2002.	2002, 2003
13. None of the funds made available under this Act or any other Act, may be used to implement, carry out, or enforce any regulation issued under section 41705 of title 49, United States Code, including any regulation contained in part 382 of title 14, Code of Federal Regulations, or any other provision of law (including any Act of Congress, regulation, or Executive order or any official guidance or correspondence thereto), that requires or encourages an air carrier (as that term is defined in section 40102 of title 49, United States Code) to, on intrastate or interstate air transportation (as those terms are defined in section 40102 of title 49, United States Code) — (1) provide a peanut-free buffer zone or any other related peanut- restricted area; or (2) restrict the distribution of peanuts, until 90 days after submission to the Congress and the Secretary of a peer-reviewed scientific study that determines that there are severe reactions by passengers to peanuts as a result of contact with very small airborne peanut particles of the kind that passengers might encounter in an aircraft.	1999, 2000
14. None of the funds made available by this Act shall be used to issue a notice of final rulemaking with respect to the valuation of crude oil for royalty purposes until March 15, 2000. The rulemaking must be consistent with existing statutory requirements.	1999, 2000
15. None of the funds in this Act or any other Act shall be used by the Secretary of the Interior to promulgate final rules to revise 43 CFR subpart 3809, except that the Secretary, following the public comment period required by section 3002 of P.L. 106-31, may issue final rules to amend 43 CFR Subpart 3809 which are not inconsistent with the recommendations contained in the National Research Council report entitled ``Hardrock Mining on Federal Lands`` so long as these regulations are also not inconsistent with existing statutory authorities.	2000, 2001

Notes: The provisions that are listed in this table may not include all provisions limiting rulemaking or regulatory activity during this period. They were drawn from the appropriations legislation that was enacted from FY1999 through FY2008, which may be found on the CRS website at [<http://www.crs.gov/products/appropriations/WA00001.shtml>].

- a. The final continuing resolution for FY2007 (the Revised Continuing Appropriations Resolution, 2007, P.L. 110-5) did not include many of the provisions restricting regulatory actions, but Section 104 of the legislation stated that, "Except as otherwise expressly provided in this division, the requirements, authorities, conditions, limitations, and other provisions of the appropriations Acts referred to in section 101(a) shall continue in effect through the date

specified in section 106.” Section 101(a) lists nine FY2006 appropriations acts, and Section 106 states that the funds made available were for the period ending September 30, 2007. All of the provisions in effect for FY2006 were in one of those nine appropriations acts. Therefore, this report considers the requirements that were in effect in FY2006 to also have been in effect for FY2007.

- b. The proposed rule at issue would have amended the general provisions to the national emission standards for hazardous air pollutants, replacing a policy that had been established in 1995.
- c. Section 5309 of Title 49 involves “capital investment grants.” The proposed rule was issued on August 3, 2007, and proposed changes in the Federal Transit Administration’s “small starts” capital investment grant program.
- d. A similar provision appeared in the Consolidated Appropriations Act for 2008 prohibiting regulatory activity in this area by the Board of Governors of the Federal Reserve System or the Secretary of the Treasury, but not referencing this particular rule. (See item B.3. in this table.)
- e. U.S. Department of the Interior, Bureau of Indian Affairs, “Class III Gaming Procedures,” 63 *Federal Register* 3289, January 22, 1998. Class III gaming primarily includes slot machines, casino games, banking card games, dog racing, horse racing, and lotteries. In the proposed rule, the bureau said that the Department had determined that “the Secretary may promulgate Class III gaming procedures under certain specified circumstances,” and that the rule “sets forth the process and standards pursuant to which any procedures would be adopted.”
- f. The provision went on to say the following: “Provided, That nothing in this section shall apply to issuing and proceeding, through all stages of rulemaking other than adoption of a final rule, under subchapter II of chapter 5 of title 5, United States Code on a supplemental notice of proposed rulemaking to be issued in Docket No. FMCSA-97-2350-953 that contains proposed rules and proposed amendments to rules that take appropriate account of the information received for filing in the docket on the Notice of Proposed Rulemaking (Docket No. FMCSA-97-2350-953).” The proposed rule was actually published in the *Federal Register* on May 2, 2000. U.S. Department of Transportation, Federal Motor Carrier Safety Administration, “Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations; Proposed Rule,” 65 *Federal Register* 25539, May 2, 2000.
- g. The language for FY2002 was different than that used for FY2001, but had the same effect.
- h. U.S. Department of the Treasury, Internal Revenue Service, “Reductions of Accruals and Allocations Because of the Attainment of Any Age; Application of Nondiscrimination Cross-Testing Rules to Cash Balance Plans,” 67 *Federal Register* 76123, December 11, 2002. The rule would affect retirement plan sponsors and administrators, and participants in and beneficiaries of retirement plans.
- i. Similar provisions appeared in previous years, but did not focus on the Board of Governors of the Federal Reserve or the Secretary of the Treasury. (See item A.6 in this table.)
- j. In FY2001, this provision was in P.L. 106-522 and P.L. 106-553 (both related to the District of Columbia). In FY1999, P.L. 105-277 stated that “None of the funds contained in this Act may be used to conduct any ballot initiative which seeks to legalize or otherwise reduce penalties associated with the possession, use, or distribution of any schedule I substance under the Controlled Substances Act (21 U.S.C. 802) or any tetrahydrocannabinols derivative.”
- k. This “farming rider” has been in appropriations legislation as far back as 1991. See, for example, title I of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1992 (P.L. 102-170).
- l. This provision went on to say that “the prohibition of funds in this section does not apply to negotiations between the agency and airport sponsors to achieve agreement on ‘below-market’ rates for these items or to grant assurances that require airport sponsors to provide land without cost to the FAA for air traffic control facilities.” In FY2005, the provision appeared in both the Consolidated Appropriations Act, 2005 (P.L. 108-447, Division D — the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005); and the Department of Homeland Security Appropriations Act, 2005 (P.L. 108-334).
- m. In FY2000, this provision was in P.L. 106-69 (related to the Department of Transportation), P.L. 106-74 (related to the Environmental Protection Agency), P.L. 106-78 (related to the Department of Agriculture), and P.L. 106-113 (the Consolidated Appropriations Act, 2000). In FY2001, this provision was in numerous appropriations bills, including P.L. 106-291 (related to the Department of the Interior), P.L. 106-346 (related to the Department of Transportation), Appendixes A and B of P.L. 106-377 (related to the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies), P.L. 106-387 (related to the Department of Agriculture), and P.L. 106-429 (related to foreign operations).

- n. The provision went on to say the following: “Provided, That nothing in this section shall be interpreted as amending any requirement of the Clean Air Act: Provided further, That nothing in this section shall preclude the Secretary from taking emergency actions related to snowmobile use in any National Park based on authorities which existed to permit such emergency actions as of the date of enactment of this Act.”
- o. This provision was in both the Consolidated Appropriations Act, 2004 (P.L. 108-189 — Division F, the Department of Transportation and Treasury, and Independent Agencies Appropriations Act, 2004); and in the Department of Homeland Security Appropriations Act, 2004 (P.L. 108-90).
- p. The provision went on to provide certain exceptions (e.g., “to provide, as authorized by the Act, consultation, technical assistance, educational and training services, and to conduct surveys and studies”). In FY2004 and earlier years, the reference to DART was replaced with “an occupational injury lost workday case rate”.
- q. In FY2004, this provision (section 759 of P.L. 108-199) went on to say that “this section shall not apply to activities related to the promulgation of regulations or the receipt and review of applications for the Rural Business Investment Program.” Therefore, it prohibited the enforcement, but not the promulgation, of regulations. In FY2005, the appropriation bill did not prohibit enforcement, but a provision (section 753 of P.L. 108-447) said that no more than \$10 million could be used to carry out section 6029.
- r. This provision also provided that “rental payments for any lands enrolled in the Conservation Reserve Program under this section shall be reduced by an amount equal to the Federal cost of any remaining value of a federally cost-shared conservation practice as determined by the Secretary.”
- s. This provision also provided that “this section shall not apply to any lands for which there is not full compliance with the conservation practices required under terms of the CRP contract.”
- t. The provision went on to say that “The Administrator shall allow for a period of not less than 90 days for public comment on the Agency’s proposed rule before issuing a final rule. Such rule shall not permit the use of pregnant women, infants or children as subjects; shall be consistent with the principles proposed in the 2004 report of the National Academy of Sciences on intentional human dosing and the principles of the Nuremberg Code with respect to human experimentation; and shall establish an independent Human Subjects Review Board. The final rule shall be issued no later than 180-days after enactment of this Act.”
- u. The provision went on to say that “Not later than 6 months after the date of enactment of this Act, the Administrator shall complete and publish the technical study.”
- v. The provision in the Consolidated Appropriations Act, 2005 (P.L. 108-447) did not contain the language “or to modify, through regulatory or administrative action, the procedure for redesignation of local areas as specified in subtitle B of title I of that Act (including applying the standards specified in section 116(a)(3)(B) of that Act, but notwithstanding the time limits specified in section 116(a)(3)(B) of that Act”.