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New House Rules Will Increase Deficit, Underfund National Priorities

Whenever a party takes control of one or both houses of Congress, it exercises its prerogative to implement a flurry of new rules and practices. This is generally unremarkable, though in 2011, with the House of Representatives returning to Republican control, the changes are stirring up controversy. Despite claiming to fight for fiscal responsibility and transparency, by tweaking a handful of rules, the Republican majority will end up delivering the opposite.

Whether it's warping Pay-As-You-Go into Cut-As-You-Go, giving unprecedented power to the Budget Committee chairman, exempting certain bills from rules for expediency's sake, or making it easier to underfund transportation projects, the new House rules are aimed at cutting federal spending and reducing taxes without consideration of what effects these fiscal policies will have on the federal budget deficit and our national priorities.

Deficit-Limiting PAYGO Turned on Its Head

One important budgetary rule in Congress that has slowed deficit-increasing legislation is the Pay-As-You-Go (PAYGO) rule. PAYGO requires that increases in mandatory spending (spending that does not require annual reauthorization, like Medicare and Social Security) or decreases in

revenue must be "paid for." That is, mandatory spending increases or tax cuts have to be offset with equal mandatory spending cuts or tax increases so that the proposed legislation is deficit neutral. It is important to note that the $1.4 trillion in discretionary spending that funds the functions of the federal government and an assortment of programs is not bound by PAYGO rules.

PAYGO currently exists as both a law and a rule in the House. The House cannot unilaterally abolish PAYGO, but it can change the process by which it enacts spending and tax bills. The now-defunct rule, which the Democratic-led 110th Congress implemented after a Republican-led Congress let the original PAYGO provision expire in 2002, read:

> [I]t shall not be in order to consider any bill ... if the provisions of such measure affecting direct spending and revenues have the net effect of increasing the deficit or reducing the surplus.

Under that PAYGO rule, if a bill widened the deficit either through increases in mandatory spending or decreases in tax revenue and did not pay for this change with either higher taxes or lower spending somewhere else, the bill was considered "out of order." The bill would then be subject to a "point of order," which, if raised, could kill it. While a simple majority could override this point of order, it placed a hurdle in front of Congress and forced it to acknowledge that a bill violating the waived point of order would increase the federal budget deficit.

The new House rule significantly changes PAYGO, placing the emphasis on spending cuts as opposed to reducing the federal budget deficit. Instead of stymieing legislation if it increases the deficit, "Cut-As-You-Go (Cut-Go)" only looks at the level of mandatory spending, saying:

> ...it shall not be in order to consider a bill ... if the provisions of such measure have the net effect of increasing mandatory spending."

Cut-Go uses similar language to PAYGO and has a similar-sounding name, but the differences are crucial. With Cut-Go, tax cuts are exempted from PAYGO rules in the House. Under the new rules, tax cuts do not need to be offset with spending cuts or revenue increases elsewhere in the budget, meaning tax cuts can be "deficit-financed." This exemption guts half of the accountability inherent in PAYGO, as House lawmakers are now free to vote for unpaid-for tax cuts without acknowledging that they add to the deficit.

At the same time, because Cut-Go applies only to spending levels and not the bottom line, spending increases can no longer by paid for by revenue changes; the Cut-Go rule approved by the House has essentially set a new high-water mark for mandatory spending. The House cannot vote for an increase in mandatory spending without specifically voting to set aside the rule.

Additionally, while the House has freed itself from the tax-related strictures of PAYGO, the Senate has retained its PAYGO rules. The potential for legislative gridlock has now been significantly increased, as the House will likely send the Senate deficit-spurring tax cuts that will require the Senate to overcome a 60-vote hurdle triggered by its PAYGO rules.

Adding to the complexity and the problems created by the House Cut-Go rule is the fact that PAYGO also exists as a law. No matter what the new House rule allows, deficits induced by Congress must either be declared as the result of an emergency – a frequent occurrence – or they will result in automatic, across-the-board spending cuts to designated mandatory spending programs, including Medicare. Tax cuts that are not required to be offset by the House are automatically offset by mandatory spending cuts by law, allowing Congress to avoid the politically painful act of voting on fiscally responsible offsets.

Ryan's Rule

Another potentially harmful rule allows the chair of the House Budget Committee, Rep. Paul Ryan (R-WI), to single-handedly set spending levels for fiscal year (FY) 2011. Usually, spending limits and revenue targets, including allocations of spending to committees, are set in the congressional budget resolution, which the Budget Committee and the full House consider and vote on. However, under the new House rules, Ryan can set these levels by simply submitting them for publication in the *Congressional Record*. Indeed, Congress will consider this "the completion of congressional action on [an FY 2011] concurrent resolution."

While there is nothing preventing the new Republican House from working with the Democratic Senate to write and adopt an FY 2011 budget resolution, the rule more easily allows the GOP to fulfill its midterm campaign promise to reduce federal spending to "pre-bailout, pre-recovery" FY 2008 levels. It is important to note, though, that these cuts will only come from domestic non-security discretionary spending – representing less than a quarter of total federal spending – and leaves all mandatory (i.e., entitlement programs), defense, and Homeland Security spending untouched.

The larger implication of this rule is that if the House successfully implements these spending cuts over likely Senate opposition, all future budgets will begin from this new, much lower floor. These lower spending levels could seriously hinder implementation of improved food safety and financial reforms, not to mention existing programs that provide a safety net to low- and middle-income families – all the more critical in this high-unemployment economy.

Exempting Legislation from Budget Estimates

A separate House rule provides the chair of the Budget Committee with new powers to adjust estimates of the budgetary impacts of certain legislation. This allows Ryan to simply ignore the budgetary effects of specific, inconvenient deficit-increasing legislation. For instance, the new rules specifically empower Ryan to exempt from budget enforcement rules the fiscal effects of repealing the Affordable Care Act (ACA), the recently enacted health care reform law.

According to the nonpartisan Congressional Budget Office (CBO), repealing ACA will cost nearly $230 billion over the next ten years. That estimate does not include the loss of savings in the out years, which CBO estimated to be nearly a trillion dollars when the president signed ACA into law last March. Additionally, CBO found that some 32 million Americans would forgo health insurance coverage if Congress repeals ACA. Ironically, repealing health care insurance reform

will actually lead to increased spending, something congressional Republicans have been hammering the last two years.

The new rules also provide Ryan with the power to ignore budgetary impacts for further extending or making permanent the Bush tax cuts, including further weakening of the estate tax and implementation of potential legislation to provide "small businesses" with a deduction equal to 20 percent of gross income.

The Center on Budget and Policy Priorities (CBPP) points out that this new legislation is likely to define "small businesses" "very expansively," to the point even of covering "a vast swath of firms and wealthy individuals" who are not part of most Americans' definition of a "small business."

Building Few Bridges to Anywhere

One of the provisions of the new House rules could significantly reduce infrastructure spending during the 112th Congress. The rule eliminates the requirement that appropriators fund highway and transit projects at the levels set by the authorization for surface transportation.

Under the old rule, instituted by former Transportation and Infrastructure Chair Bud Shuster (R-PA), House members could bring a point of order against any appropriations bill that spent less than the totals authorized in the surface transportation authorization bill, a reversal of how spending power is usually allocated between authorizers and appropriators on Capitol Hill.

The idea was to "decouple" surface transportation spending from the annual appropriations process. Before institution of the infrastructure point of order, legislators sometimes allowed surpluses to build in the Highway Trust Fund – financed largely by the gas tax – so they could count them against the overall federal deficit.

In recent years, though, lawmakers have authorized more funds than the trust fund had left in it, requiring large infusions of money from the general fund, usually to the tune of billions of dollars. Hence, there was a call for the new rule that allows appropriators to set spending below authorization levels. The problem is that the rule does not create a floor for transportation spending; it does not state that appropriators *have* to spend all the money in the Highway Trust Fund.

The new rule is reviving fears among infrastructure proponents that lawmakers, at the very least, will again allow money to accumulate in the fund to count against future deficits, or, at the worst, cut transportation funding to decrease deficits. This could have significant ramifications for the nation's infrastructure, which the American Society of Civil Engineers has graded as a "D."

Locking In Spending Cuts

A new spending cut “lockbox” rule that applies to floor amendments makes cuts to appropriations bills easier and provides for a special account in which to collect those cuts. The idea is to make it easier to reduce the overall size of spending bills, but the rule also limits the ability of the House to shift spending from one program to another.

When the House Budget Committee sets overall spending levels, spending bills that exceed those limits are subject to a point of order intended to hinder their passage. However, under previous House rules, appropriators could chose to cut spending in one area and move it to another, which would keep the overall spending level below the Budget Committee cap. Under the new rules, this maneuver would be prevented and it would be harder for House appropriators to cut where they see fit in order to boost funding for another program they deem more effective.

In the end, these rules only apply to how the House conducts its business. While they may make it easier for the new Republican majority in the House to cut spending in their own bills, they will still have to negotiate with the Democratically controlled Senate. It will be up to the two houses to come to an agreement on final spending levels, regardless of the rules each used to arrive at their starting positions, and send bills to the president that he deems acceptable. Nevertheless, the changes to the House rules do show how the new majority sees them: instead of bringing to the House a system that forces its members to make politically difficult choices for the sake of fiscal discipline, the new rules are designed to improve the chances that their ideological agenda – reducing federal revenue and slashing spending – gets written into law.

In WikiLeaks' Wake, Administration Tightens Information Security

A new memo from the White House Office of Management and Budget (OMB) details a new requirement for all federal agencies to assess aspects of their information security in the wake of a series of embarrassing disclosures by WikiLeaks. The memo directs agencies to consider 11 pages of questions relating to information security procedures, including whether employees are required to report contacts with journalists. Transparency advocates have criticized some aspects of OMB's strategy as potentially damaging to open government.

The memo comes in the context of other government actions to investigate and prosecute those involved with the WikiLeaks disclosures. Bradley Manning, an Army intelligence analyst suspected of leaking documents to the site, was arrested in June 2010 and has yet to stand trial. In December 2010, the Justice Department subpoenaed information from several Twitter accounts associated with WikiLeaks. In addition, in December 2010, OMB directed federal employees not to view the leaked classified documents, and the Air Force blocked access to sites that published the documents, including *The New York Times*.

The memo, issued Jan. 3, contains more than 100 questions developed by the National Archives and Records Administration's Information Security Oversight Office (ISOO) and the Director of National Intelligence (DNI). The memo builds upon a Nov. 28, 2010, OMB memo asking

agencies to begin evaluating their procedures for safeguarding classified information. Agencies are directed to complete their initial assessments by Jan. 28. The memo indicates that ISOO and DNI may also conduct on-site inspections of agency compliance.

The questions ask agencies that handle classified information to describe their information security practices, including oversight, counterintelligence, training, personnel security, and technical measures. For instance, many of the questions relate to the use of removable media with classified systems; Manning is reported to have copied classified documents onto a rewritable CD.

Other questions, however, are more controversial. Agencies are asked to describe their efforts to detect "insider threats," including using psychiatrists to measure employees' happiness and grumpiness as a means to gauge their "trustworthiness." The Federation of American Scientists' Steven Aftergood called the memo "paranoia, not security." Aftergood also criticized the question relating to contact with journalists:

> This question seems out of place since there is no existing government-wide security requirement to report "contacts with the media." Rather, this is a security policy that is unique to some intelligence agencies, and is not to be found in any other military or civilian agencies. Its presence here seems to reflect the new "evolutionary pressure" on the government to adopt the stricter security policies of intelligence.

Such a requirement could be viewed as at odds with the administration's December 2010 scientific integrity memo, which called for freer communication between government scientists and the media, as well as the Open Government Directive that calls for more transparency throughout the executive branch.

Missing the Point?

Other transparency advocates criticized the administration's effort for focusing on the wrong issues. The National Security Archive's Tom Blanton said the review should address overclassification, noting, "I really don't see the kind of systemic reform that would protect the real secrets and push everything out into the public domain."

None of the questions attached to the memo explore the issue of overclassification or the possibility of improving information security by reducing the amount of information requiring stronger protections. Overclassification has long been an acknowledged problem for government, and even during the George W. Bush administration, which utilized government secrecy more than most administrations, officials estimated that as much as half the information being classified did not justify the marking.

Congress has also started to respond to the WikiLeaks issue. House Oversight and Government Reform Committee Chairman Darrell Issa (R-CA) is expected to investigate the administration's response to WikiLeaks. During the lame-duck session of the previous Congress, Sen. Joe

Lieberman (I-CT) introduced the Securing Human Intelligence and Enforcing Lawful Dissemination Act (SHIELD Act) that would make it a federal crime for anyone to publish the name of a U.S. intelligence source. The bill was introduced so late in the session (Dec. 2, 2010) that no action beyond referring it to the Judiciary Committee occurred. The bill has not yet been reintroduced in the 112th Congress.

It is unclear whether the internal agency assessments will be combined and used to craft a unified, government-wide policy response to the WikiLeaks issue or if agencies will be given responsibility to improve those areas deemed to need attention.

Protecting the Public or Big Business? Battle Lines are Drawn

As the 112th Congress convenes, a renewed battle over the role of government in protecting the public is being waged. The battle reflects the decades-old myth that regulations are "job-killers" and that government must either sacrifice jobs to provide public safety or sacrifice lives, health, and environmental quality to protect jobs.

Attacks on Public Protections

Before and since the 2010 midterm elections, opponents of government action have proposed rollbacks of public protections or obstacles to additional protections. For example:

- In July 2010, the Business Roundtable, a coalition of top corporate executives, submitted to the White House a list of laws and regulations that it believes are hurting businesses and that it wants rolled back. The U.S. Chamber of Commerce penned at the same time an open letter to President Obama proposing similar rollbacks. The groups' targets included financial reform, health care laws, greenhouse gas emissions rules, worker health and safety policy, food and auto safety legislation, government contractor responsibility measures, and oil spill prevention rules.
- In July 2010, then-House Minority Leader John Boehner (R-OH) endorsed a one-year moratorium on most new regulations. A moratorium "sends a wonderful signal to the private sector that they'll have some breathing room," he said.
- Boehner was one of 69 co-sponsors of H.R. 3765, the Regulations From the Executive in Need of Scrutiny Act of 2009 (REINS Act), a bill that would require Congress to vote on and approve every new agency rule estimated to have an economic impact (either costs or benefits) of $100 million or more. The act would prohibit agencies from enforcing rules that do not garner congressional approval. This bill is likely to be reintroduced in the new session.
- In September 2010, House Republicans issued "A Pledge to America," which, among other things: 1) proposed to halt new regulations unless Congress approves each one; 2) pledged to impose a prescribed end date for all federal programs (known as "sunsets"); and 3) called for cutting federal spending back to Fiscal Year 2008 levels, which would cut the budgets of federal agencies. (Read OMB Watch's analysis of the Pledge.)

- In December 2010, the soon-to-be-chair of the House Oversight and Government Reform Committee, Rep. Darrell Issa (R-CA), sent letters to more than 150 businesses, business groups, and think tanks requesting that these groups identify existing regulations and regulations under development that they believe hinder job growth.
- In a Jan. 6 *Greenwire* article (subscription required), Sen. Rand Paul (R-KY) said that he would introduce legislation requiring all federal regulations to expire in six months unless Congress votes to approve the rules. "If the EPA writes a regulation, it expires in six months, unless Congress votes on it and approves it," Paul said in the article.
- On Jan. 7, Rep. Don Young (R-AK) introduced a bill (H.R. 213) that would impose a moratorium of up to two years on all new regulations, making only limited exceptions for emergencies and other issues.

Anti-Regulatory Forces Target EPA's Climate Change Rules

Those acting at the behest of corporate special interests are going after a variety of America's public protections, and environmental regulations are drawing some of the most blatant attacks. For example, the U.S. Environmental Protection Agency's (EPA) greenhouse gas (GHG) emissions rules are a favorite target of anti-regulatory forces on K Street and in Congress. The agency is legally required to promulgate rules as a result of the U. S. Supreme Court's 2007 decision in *Massachusetts v. EPA*, which held that greenhouse gases should be regulated under the Clean Air Act if EPA found them to be a danger to public health or welfare. EPA made the endangerment finding in December 2009.

EPA has crafted rules to control emissions from mobile sources (vehicles) and is in the process of setting standards for large stationary sources (power plants, oil refineries, and factories, for example), according to an agency press release. Congress has failed to enact climate change legislation, leaving the Obama administration no choice but to seek controls of emissions through regulations.

Congressional proposals to limit EPA's ability to act are being introduced and use a variety of strategies to handcuff the agency. For example, Sen. Jay Rockefeller (D-WV) proposed last session a bill, S. 3072, to suspend for two years EPA's ability to promulgate greenhouse gas emissions rules on stationary sources. In a Jan. 6 press release, Rockefeller promised to reintroduce his bill in the 112th Congress. Rep. Shelley Moore Capito (R-WV) introduced a similar measure on Jan. 6, H.R. 199 (text not yet available online).

On Jan. 5, Rep. Ted Poe (R-TX) introduced a bill, H.R. 153 (text not yet available online), that would prohibit EPA from spending money on regulations that limit greenhouse gases. House members are expected to use the appropriations process to defund specific agency actions, as Poe's bill proposes, and to cut budgets for federal agencies (not just EPA) as proposed in the Pledge. Budget cuts place agencies in the difficult position of having to choose among regulatory options mandated by Congress and enforcement programs, leaving some problems unaddressed and major violators held unaccountable.

Also on Jan. 5, Rep. Marsha Blackburn (R-TN), introduced H.R. 97 (text not yet available online), which would amend the Clean Air Act so that it could not be used as the legal authority under which EPA regulates greenhouse gases.

Jackson, Boxer Defend EPA's Actions; General Public, Small Business Owners Support Climate Change Policies

Defenders of the administration's efforts to regulate greenhouse gas emissions have promised to fight for the EPA's authority. For example, EPA Administrator Lisa Jackson said in the press release, "We are following through on our commitment to proceed in a measured and careful way to reduce GHG pollution that threatens the health and welfare of Americans, and contributes to climate change ... These standards will help American companies attract private investment to the clean energy upgrades that make our companies more competitive and create good jobs here at home."

On Jan. 6, Sen. Barbara Boxer (D-CA), chair of the Senate Committee on Environment and Public Works, gave a press conference in which she strongly supported environmental laws and promised to vigorously defend the EPA against attacks. According to Boxer's prepared remarks, she said, "Let me send a clear message to Chairman Upton [Rep. Fred Upton (R-MI)], the new Chairman of the Energy and Commerce Committee. I congratulate him on his new position. And I want to tell him that I will use every tool available to me as Chairman of this Committee and as Senator from California to oppose any legislative effort that threatens the health, or safety, or well-being of the people of America. That includes his desire to stop the Environmental Protection Agency from carrying out its responsibilities under the Clean Air Act."

Several 2010 polls show that the American public supports environmental policies including GHG emissions limits. Even polls of small business owners indicate support for climate and energy legislation.

Rules to Watch for in 2011

Federal agencies have released their rulemaking agendas for 2011, providing the public with a roadmap of the health, safety, and environmental safeguards it can anticipate in the new year.

Each spring and fall, the executive branch publishes the *Unified Agenda of Regulatory and Deregulatory Actions*, commonly called the *Unified Agenda*. The agenda includes the individual rulemaking agendas for all executive branch agencies, including independent commissions. Agencies post online brief descriptions of their rules and projected timetables for milestones and completion.

The fall version of the *Unified Agenda* is supposed to be released in October. However, the 2010 version was not released until Dec. 20. No explanation was given for the delay. Below are descriptions of select rulemakings covered in the agendas of major health, safety, and environmental agencies.

EPA

The rulemaking agenda of the U.S. Environmental Protection Agency (EPA) continues to emphasize the fight against climate change. The agency will continue to write rules to limit greenhouse gas emissions from stationary sources like coal-fired power plants and oil refineries. Under a 2010 greenhouse gas rule, certain sources began requesting permits at the beginning of 2011.

EPA is also in the midst of two joint rulemakings with the National Highway Traffic Safety Administration (NHTSA) to cut greenhouse gas emissions from vehicles. The agencies expect to finalize in August a rule cutting emissions from heavy-duty vehicles and are in the early stages of developing fuel efficiency standards for passenger vehicles manufactured for model years 2017 and beyond. In 2010, the agencies finalized standards for model years beginning in 2012 that set miles per gallon requirements of up to 34.1 mpg by 2016.

EPA projects it will finalize in July the Clean Air Transport Rule, a regulation aimed at emissions that cross state lines and impact downwind states. EPA estimates the rule could prevent as many as 36,000 premature deaths every year.

EPA also expects that it will propose adding to its chemicals of concern list certain phthalates, compounds often found in soft plastics, as well as bisphenol-A, found in hard plastics and the lining of food containers. The agency had hoped to propose adding the chemicals to the list by September 2010, according to the last *Unified Agenda* (April 2010), but the notice has been held up at the White House Office of Information and Regulatory Affairs (OIRA) since May 2010. OIRA, the clearinghouse for all significant rules and notices, is supposed to spend no more than 120 days reviewing agency drafts.

EPA now lists its pending regulation of coal ash as a "long-term action." EPA decided to regulate coal ash, a byproduct of coal combustion that can contain arsenic, lead, chromium, and other heavy metals, after an impoundment in Tennessee failed in December 2008, releasing 5.4 million cubic yards of coal ash. Reports have linked exposure to the toxic components in coal ash to cancer and other health problems.

After a lengthy and tumultuous interagency review, EPA proposed coal ash rules in May 2010. The rulemaking has been the subject of intense debate. Environmentalists want the agency to regulate coal ash as a hazardous waste, while industry groups want coal ash to be treated like common waste, which would lead to fewer restrictions. EPA now lists the date of final action as "to be determined," suggesting the agency may be uncertain as to its course of action in the face of political and industry pressure.

OSHA and MSHA

The Occupational Safety and Health Administration (OSHA) will continue to emphasize the Department of Labor's "Plan/Prevent/Protect" initiative, first announced when the last *Unified Agenda* was released in April 2010. OSHA is developing two rules implementing

Plan/Prevent/Protect. The first would require employers to plan, implement, and maintain injury and illness prevention programs to reduce occupational risks. The other would create an infection control program to protect workers from infectious diseases. During a Jan. 5 web event marking the release of the current agenda, OSHA called the injury and illness prevention rule its "highest regulatory priority." Both rules are in the earliest stages of development.

OSHA expects to make progress in 2011 on two long-delayed rulemakings. OSHA says it will publish in April a proposed rule to address the risks of crystalline silica. The substance is a known carcinogen, and workers exposed to it can develop sometimes fatal illnesses. OSHA's crystalline silica rulemaking first appeared in the *Unified Agenda* in 1997. OSHA also plans to publish in November a final rule protecting workers operating in confined spaces. It has appeared on the *Unified Agenda* since the 1990s.

OSHA still expects to finalize a rule restoring the musculoskeletal disorder reporting column to the form employers fill out when a worker is injured. OSHA hopes the form change will provide the agency with more reliable information on musculoskeletal injuries. OSHA had expected to finalize a rule in July 2010. The agency submitted the rule to OIRA on July 14, 2010, but the White House has yet to approve it. The *Unified Agenda* projects final publication in February.

Other OSHA standards continue to develop slowly. The agency does not expect to propose in the near future standards for beryllium or diacetyl, two dangerous chemicals, despite the fact that the rulemakings have appeared in versions of the *Unified Agenda* for years. The current agenda also lacks a proposed rule for combustible dust, a hazard that led to 119 deaths and 718 injuries between 1980 and 2005, according to the U.S. Chemical Safety Board.

The Mine Safety and Health Administration (MSHA) says that it will publish in January new rules for its Pattern of Violations (POV) program. The program came under scrutiny in the wake of the April 2010 explosion at the Upper Big Branch mine in West Virginia that killed 29 miners. Although the Upper Big Branch mine operators and its owner, Massey Energy, had a clear history of safety and health violations, MSHA had been unable to place the mine on its POV list, a move that triggers increased oversight of a mine. Companies can avoid being listed in the program by appealing violations. MSHA has never placed a mine on the POV list in the program's 32-year history.

The *Unified Agenda* does not project a date for the completion of an MSHA rule to reduce the risk of black lung disease. In October 2010, MSHA proposed cutting in half the exposure standard for coal dust, the cause of black lung. MSHA estimates the new standard would prevent thousands of illnesses and hundreds of deaths over the lifetimes of miners.

FDA and FSIS

Food safety efforts at the Food and Drug Administration (FDA) are centered on the labeling of food products. Among other items, the agency expects to propose two rules in March: one setting nutrition labeling requirements for food sold in vending machines and another for standard menu items at chain restaurants.

The U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS), the regulator of meat and poultry products, continues to struggle to set up a safety inspection program for catfish. The *Unified Agenda* projects a proposed rule creating the program in December 2010 – a date the agency has obviously missed. The agency was under a statutory deadline to create the program by December 2009, but the implementing rule has been held by OIRA since November 2009.

On the medical product front, FDA expects to finalize in October tighter standards for direct-to-consumer advertising of drug products on TV and radio. FDA is also planning an August final rule changing the way pharmaceutical companies report potential safety problems after a drug is on the market. The postmarketing rulemaking comes on the heels of a similar rule, finalized in 2010, that changed premarketing reporting requirements.

FDA will also continue to implement the Family Smoking Prevention and Tobacco Control Act, signed into law in 2009. The law granted the FDA regulatory authority over cigarettes and other tobacco products. In 2011, FDA will develop standards for cigars and finalize new, graphic warning labels "depicting the negative health consequences of smoking" cigarettes.

CPSC and NHTSA

The Consumer Product Safety Commission (CPSC) continues to write rules implementing the Consumer Product Safety Improvement Act, the landmark 2008 law that overhauled product safety and placed a renewed emphasis on children's product safety. Among other items, CPSC expects to make progress in 2011 on the law's requirements that certain products pass third-party safety tests. CPSC is currently developing rules for third-party testing of toys and of children's products containing phthalates, exposure to which has been linked to reproductive and developmental abnormalities.

NHTSA will soon propose revisions to its standards for acceleration control systems in passenger vehicles, according to the *Unified Agenda*. NHTSA says the revision is necessary because most carmakers have shifted from mechanical throttle controls to electronic or computerized controls. It is unclear whether the rule will address the problems highlighted in the recall of millions of Toyota vehicles in 2009 and 2010. Many of those vehicles were recalled after reported incidents of sudden, uncontrolled acceleration. NHTSA is still investigating the defect.

NHTSA is also mulling a proposed rule that would require new cars to be equipped with rear cameras that allow drivers to maintain a more complete view of the space behind them. The standard would help reduce the number of accidents in which drivers inadvertently back into people, other vehicles, or other objects, according to NHTSA.

Other NHTSA rules include a standard for new vehicles intended to reduce the risk of occupants being ejected during a crash and a requirement that commercial motorcoaches, such as tour buses, be equipped with seatbelts. A final ejection mitigation rule is expected in January 2011, and a final seatbelt rule is expected in January 2012.

The entire Fall 2010 *Unified Agenda* is available at www.reginfo.gov/public/do/eAgendaMain. The next *Unified Agenda* is due to be published in April.

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