REGULATORY RAMIFICATIONS

PROGRESS QUIETLY ADDING UP IN D.C.

"Some of the most important actions this past year in Washington have occurred outside of Congress – through reversing course on federal rules, regulations and executive orders that were affecting the bottom line for businesses and hampering expansion and job growth," declares Kevin Brinegar, Indiana Chamber President and CEO.

"A majority of these policies originally had circumvented Congress and amounted to attacks on business, industry and, ultimately, the workforce."

At the start of 2017, the Indiana Chamber sought input from its members on what were the most onerous items that fell into this category. The organization subsequently submitted a list to Vice President Mike Pence and the Indiana congressional delegation that included more than 15 policies for repeal consideration.

"We are pleased that most of the areas identified have seen positive steps taken to rectify the harm that was being done or stop a detrimental initiative from going into effect," Brinegar adds. "We will continue to push for more progress throughout 2018."

Below is the full Indiana Chamber list of "repeal" requests and any action taken by the President, a federal agency or the courts as of mid-December:

Environment and Energy

An EPA regulation setting limits on the carbon dioxide emissions from newly built coal- and natural gas-fired power plants, based on the amount of electricity they produce.
Impact: Dramatic increase in energy prices for business and residential consumers with minimal improvement in air quality.
The latest: The EPA is currently in the process of reviewing the New Source Performance Standard for coal- and natural gas-fired electric generating units. EPA Administrator Scott Pruitt signed a measure to repeal this regulation in early October 2017.

Clean Power Plan, which mandates a cut in the entire power sector's emissions.
Impact: Dramatic increase in energy prices for business and residential consumers with minimal improvement in air quality.
The latest: President Trump signed an executive order to repeal the Clean Power Plan; in October 2017, Pruitt formally proposed a new rule to dismantle the program.

EPA ozone regulation issuing new National Ambient Air Quality Standards (NAAQS) for fine particulate matter (PM 2.5) (effective Oct. 24, 2016).
Impact: Under an increasingly tighter and more costly ozone standard, businesses and industries may be forced to relocate out of nonattainment areas or relocate overseas to countries with less strict environmental regulations simply because they cannot afford to operate under such extreme conditions in the U.S.
The latest: The Trump administration sought to delay this regulation from going into effect; however, lawsuits filed by nearly 20 state attorneys general led EPA to withdraw the delay. The rule went into effect October 1, 2017. EPA is currently investigating ways to ease implementation of the standard and provide flexibility for state and local governments that must develop plans to meet the new ozone requirements.

New definition of Waters of the U.S. (WOTUS)/Clean Water Act that gives the EPA greater jurisdiction – aka makes small waterways like wetlands and ponds subject to federal rule.
Impact: Erodes a state's ability to define jurisdiction within its bounds. Also, the case-by-case determination creates significant uncertainty for the regulated community.
The latest: In June 2017, the Trump administration announced the move to rescind WOTUS.

Fracking rule from the Interior Department's Bureau of Land Management designed to make it more difficult to conduct hydraulic fracturing for the extraction of oil or gas (fossil fuel).
Impact: Risks significant increase in natural gas prices and progress with energy independence (fracking led to the major price drops seen in the last decade).
The latest: The fracking rule is slated to take effect pending an appeals court decision (expected by the end of 2017). Meanwhile, the Bureau of Land Management is reportedly working on issuing a rescission plan to formally repeal the rule.

Army Corps of Engineers block of the final portion of the Dakota Access Pipeline (93% already complete), which

threatens energy infrastructure investment if approvals can be so arbitrarily revoked.
Impact: Creates dangerous precedent of a federal entity reversing course near the end of an approved project.
The latest: President Trump approved a final permit for the pipeline. Then, a U.S. district judge ordered federal regulators to conduct a new environmental review (deeming the first one inadequate); the pipeline is still operating while that is taking place.

Finance

Proposed Consumer Financial Protection Bureau rule seeks to remove "mandatory arbitration" for financial company consumers, thereby allowing these customers to seek class-action lawsuits against companies.
Impact: Opens up financial institutions to more consumer litigation.

Rulemaking from federal bodies that oversee banking and other financial institutions that have great bearing on how those entities conduct their businesses. (Authority directed by the Dodd-Frank Act; however, rulemaking changes can occur at the agency level.)
Impact: Vast overreach that is costly for these businesses (to comply with) and, ultimately, their customers.
The latest: In summer 2017, the U.S. Treasury released a report essentially calling for the rollback of Dodd-Frank. Separately, the House voted along party lines to repeal many of the stricter Dodd-Frank financial reforms, but there has not been similar progress in the Senate.

Recently-finalized Department of Treasury rules (under IRC section 385) re-characterize certain transactions between related companies, treating the resulting debt as equity instead. (Intended to address corporate inversions; effective on debt issued after January 1, 2017.)
Impact: Will unfairly reflect the internal operations of businesses, resulting in unjustified taxation.
The latest: In summer 2017, the Treasury Department and IRS issued a 12-month delay of the documentation requirements, which were set to take effect January 2018. (Other aspects of 385 are still effective in 2018.)

Health and Workplace Safety

Orders that support Obamacare.
Impact: Perpetuates the higher cost of health care premiums for employers and their workers.

FDA menu labeling rules requiring restaurants and grocery stores to list calories for the food they sell. (Provision of Obamacare that has previously been delayed; was slated to go into effect May 2017.)
Impact: Puts restaurants, particularly, in an impossible position to fulfill the rule due to menu special orders.
The latest: The FDA delayed the implementation until May 2018, but the rule is expected to go into effect then. Rule guidance was released in November 2017.

OSHA rule to limit workers' exposure to respirable crystalline silica to 50 micrograms per cubic meter of air, averaged over an eight-hour shift. (Effective June 23, 2016; companies have one year from that date to comply.)
Impact: Viewed as unachievable; could drive many foundries and construction companies out of business.
The latest: OSHA delayed implementation until late September 2017 for companies involved in the construction industry, in order to allow the agency to conduct additional outreach and provide educational materials and guidance for affected employers. Enforcement of this standard began on October 23, 2017. Requirements for other industries, including manufacturing, must be met starting June 23, 2018.

OSHA recordkeeping and reporting rule requiring certain companies with 250 or more employees to make all injury and illness data public via electronic forms. (Lawsuit filed January 2017 with the U.S. Court of Appeals.)
Impact: This system doesn't capture close to all of the pertinent information, yet allows OSHA to now cite employers even without an employee complaint.
The latest: OSHA extended the deadline for submitting forms to December 1, 2017. This provided the affected companies with more time to familiarize themselves with the electronic reporting system, as well as gave the Trump administration an opportunity to review the new electronic reporting requirements before they were implemented.

Labor Relations

Overtime rule would double the salary threshold – from $23,660 to $47,476 per year – under which most salaried workers are guaranteed overtime.
Impact: Immediate payroll hikes for many employers, which could jeopardize jobs and business growth.
The latest: In September 2017, the Trump administration announced it would not appeal a district court's ruling that said the government overreached when it expanded the number of people covered. This formally puts an end to the far-reaching overtime rule.

Paid sick leave for federal contractors, which requires companies that do business with the federal government to provide their employees with at least seven days of paid sick leave each year, including paid leave to allow for family care (effective January 1, 2017).
Impact: Will put another unnecessary and costly burden on smaller employers in particular.

Federal Acquisition Regulatory Council's final rule and the Department of Labor's guidance implementing the "Fair Pay and Safe Workplaces" executive order, which subjects existing and prospective government contractors and subcontractors to a broad new set of record-keeping, reporting and compliance requirements or risk blacklisting.
Impact: Would result in fewer qualified bids for federal contracts – as well as needless delays and litigation – thereby crippling the contract award process.
The latest: President Trump issued an executive order in the spring revoking the "Fair Pay and Safe Workplaces" executive order.

Technology

FCC net neutrality rule to regulate broadband; 2015 rules require service providers to treat all web traffic equally and designates broadband like a public utility.
Impact: Essentially gives regulatory control of the internet to the federal government. One potential unintended consequence is slowing down innovation.
The latest: In May 2017, FCC Chairman Ajit Pai initiated a rulemaking to eliminate the Title II public-utility style designation of broadband and examine whether to keep net neutrality rules. In late November, the FCC formally announced its decision to repeal net neutrality and voted 3-2 to do so on December 14.