

TEN THOUSAND COMMANDMENTS

*An Annual Snapshot of the
Federal Regulatory State*

CLYDE WAYNE CREWS JR.

Ten Thousand Commandments

An Annual Snapshot of the Federal Regulatory State

2016 Edition

by Clyde Wayne Crews Jr.

Executive Summary

In January 2016, the Congressional Budget Office (CBO) reported outlays for fiscal year (FY) 2015 of \$3.687 trillion and projected spending for FY 2016 at \$3.919 trillion.¹ Discretionary, entitlement, and interest spending is projected to surpass \$4 trillion in 2017 and to top \$5 trillion by FY 2022.² High debt and deficits notwithstanding, \$5 trillion in annual spending will soon be the new normal.

Revenue is not expected to cover spending at any point in the coming decade. Once unthinkable, trillion-dollar deficits became an annual occurrence during the economic downturn between 2009 and 2012,³ and the CBO projects that deficits will exceed \$1 trillion again by FY 2022.⁴ In the near term, President Obama's more optimistic 2017 budget projects smaller deficits than recent highs, yet the \$503 billion deficit projected for 2017 is expected to hit \$660 billion in 2022 with no hint of balance anywhere in sight.⁵

Such sums once typified the level of budgets themselves rather than shortfalls. Granted,

numerous other countries' national government outlays consume a greater share of their national output, compared with about 20 percent for the U.S. federal government, but in absolute terms, the U.S. government is the largest government on the planet.⁶ Only six other nations top \$1 trillion in annual government revenues, and none but the United States and recently China collect more than \$2 trillion.⁷

Alongside spending, regulations are another way the federal government heavily influences society. Like federal spending, regulations and their costs should be closely tracked and disclosed annually. Then, periodic housecleaning should be performed. The limited cost-benefit analysis at the agency level covers only a fraction of rules.⁸

Among the problems with cost-benefit analysis is that it relies primarily on agency self-reporting. Having agencies audit their own rules is like asking students to grade their own exams. Regulators are disinclined to underscore when a rule's benefits do not justify

If it were a country, U.S. regulation would be the ninth-largest economy, ranking behind India and ahead of Russia.

its costs. In fact, one could expect agencies to devise new and suspect categories of benefits to justify agency rulemaking activity and new endeavors.⁹

A major driver of overregulation is the entrenched overdelegation of rulemaking power to agencies. Requiring expedited votes on economically significant or controversial agency rules before they become binding would help reestablish congressional accountability and affirm the principle of “no regulation without representation.”

Openness about regulatory facts and figures can be bolstered through federal regulatory transparency report cards, similar to the presentation in the annual *Ten Thousand Commandments* report.¹⁰ These report cards could be officially issued each year to distill information for the public and policy makers about the scope of the regulatory state.

Regulation: The Hidden Tax

The national debt now stands at \$18.9 trillion.¹¹ That is alarming. Yet the federal government’s reach extends well beyond Washington’s taxes, deficits, and borrowing. Federal environmental, safety and health, and economic regulations affect the economy by hundreds of billions—even trillions—of dollars annually in addition to the official dollar outlays that dominate the federal policy debate.

Firms generally pass the costs of some taxes along to consumers.¹² Likewise, some regulatory compliance costs borne by businesses will find their way into the prices consumers pay, affect the wages workers earn, and lead to lower levels of growth and prosperity. Precise regulatory costs can never be fully known because, unlike taxes, they are unbudgeted and often indirect.¹³ But scattered government and private data exist about the number of regulations issued, their costs and effects, and the agencies that issue them. Compiling some of that information can make the federal regulatory enterprise

somewhat more comprehensible. That compilation is one purpose of *Ten Thousand Commandments*, highlights of which follow:

- Based on federal government data, past reports, and contemporary studies, this report highlights regulatory compliance and economic impacts of federal intervention of \$1.885 trillion annually.¹⁴
- The Weidenbaum Center at Washington University in St. Louis and the Regulatory Studies Center at George Washington University in Washington, D.C., jointly estimate that agencies spent \$63 billion in 2015 to administer and police the regulatory enterprise. Adding the \$1.885 trillion in off-budget compliance costs brings the total reckoned regulatory enterprise to about \$1.948 trillion.
- If it were a country, U.S. regulation would be the ninth-largest economy, ranking behind India and ahead of Russia.
- U.S. regulatory costs fall between the gross domestic products (GDPs) of Canada and the United Kingdom, the highest-income nations among the countries ranked most free in the annual *Index of Economic Freedom* and *Economic Freedom of the World* reports.
- In 2015, 114 laws were enacted by Congress during the calendar year, while 3,410 rules were issued by agencies.¹⁵ Thus, 30 rules were issued for every law enacted last year. This “Unconstitutionality Index,” the ratio of regulations issued by agencies to laws passed by Congress and signed by the president, had been 16 in 2014 and 51 in 2013. The average for the decade has been 26. This disparity highlights the delegation of lawmaking power to unelected agency officials.
- If one assumed that all costs of federal regulation and intervention flowed all the way down to households, U.S. households would “pay” \$14,842 annually on average in a regulatory hidden tax. That payment amounts to 22 percent of the average income of \$66,877 and 28 percent of the expenditure budget of \$53,495. The “tax” exceeds every item in the budget except housing. More is

“spent” on embedded regulation than on health care, food, transportation, entertainment, apparel, services, and savings.

- The estimated cost of regulation is equivalent to half the level of federal spending itself, which was \$3.687 trillion in 2015.
- Regulatory costs of \$1.88 trillion amount to 11 percent of U.S. GDP, which was estimated at \$17.9 trillion in 2015 by the Commerce Department’s Bureau of Economic Analysis.
- When regulatory costs are combined with federal FY 2015 outlays of \$3.687 trillion, the federal government’s share of the entire economy reaches 31.1 percent. This does not include state and local spending and regulation.
- The costs of the regulatory hidden tax surpass federal individual and corporate income tax receipts, which total \$1.82 trillion combined.
 - Regulatory compliance costs exceed 2015 estimated individual income tax revenues of \$1.478 trillion.
 - Regulatory compliance costs vastly exceed the 2015 estimated U.S. corporate income tax revenues of \$341.7 billion.
- Regulatory costs rival corporate pretax profits of \$2.208 trillion.
- The *Federal Register* finished 2015 at 80,260 pages, the third-highest level in its history.
- Of the seven all-time-high *Federal Register* page counts, six have occurred under President Obama.
- *Federal Register* pages devoted specifically to final rules stand at 24,694 in 2015. The record high was 26,417 in 2013.
- The 2015 *Federal Register* contained 3,410 final rules and 2,342 proposed rules.
- The annual outflow of more than 3,400 final rules—sometimes far above that level—means that 94,246 rules have been issued since 1993 when the first edition of *Ten Thousand Commandments* was published.
- President George W. Bush’s administration averaged 63 “major” rules (a broader category than “economically significant”) annually during his eight years in office. President Obama’s seven years so far have averaged 81, or a 29 percent higher average annual output than that of Bush. Obama has already issued 570 major rules during his seven years, compared with Bush’s 505 over eight years.
- Since the nation’s founding, more than 15,236 executive orders have been issued. President Obama had issued 244 as of the end of 2015.
- President Bush published 129 memoranda over his entire presidency, whereas Obama issued 219 that were published in the *Federal Register* during his first seven years.
- Whereas the federal government issues more than 3,400 rules annually, public notices in the *Federal Register* normally exceed 24,000 annually, with uncounted “guidance documents” and other proclamations with potential regulatory effect among them. There were 24,393 notices in 2015, and there have been 526,292 since 1995.
- As for the current regulatory pipeline, 60 federal departments, agencies, and commissions have 3,297 regulatory actions at various stages of implementation, according to the fall 2015 “Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions.”
- Of the 3,297 regulations in the pipeline, 218 are “economically significant” rules, which the federal government defines as having annual effects on the economy of \$100 million or more. Assuming that those rule-making effects are primarily regulatory rather than deregulatory implies roughly \$22 billion yearly in future off-budget regulatory costs in the works.
- For completed economically significant rules (a narrower category than “major”), the average for Obama’s seven years so far is 67; George W. Bush’s average over his eight years was 49.
- Of the 3,297 regulations now in the works, 674 affect small businesses. Of those, 386 required a regulatory flexibility analysis, up from 374 last year. An additional 288 were otherwise noted by agencies to affect small businesses

in some fashion. While the combined reported number of rules affecting small business is down recently, the average of Obama's seven years so far, 406, exceeds Bush's eight-year average of 377.

- The five most active rule-producing entities—the Departments of the Treasury, the Interior, Commerce, Health and Human Services, and Transportation—account for 1,348 rules, or 41 percent of all rules in the Unified Agenda pipeline.
- The Environmental Protection Agency (EPA), which until two years ago ranked consistently in the top five, is now sixth. But adding the EPA's 188 rules brings the total from the top six rulemaking agencies to 1,639 rules, or 46 percent of all federal rules.

Reducing overspending and relieving regulatory burdens are vital to the nation's economic health. The short-lived series of budget surpluses from 1998 to 2001 now seem like ancient history. Mounting pressures to restrain spending budgets can incentivize lawmakers to impose off-budget regulations on the private sector rather than add to unpopular deficit spending. Unlike on-budget spending, the regulatory costs remain largely hidden from public view, a feature that can make regulation overly attractive to lawmakers. For example, a new government program like job training could involve either increasing government spending or imposing new regulations that require businesses to provide such training.

Introduction: Toward a Rational Regulatory Budget

Congress's spending disclosure and accountability, although imperfect, are necessary conditions for holding the federal government accountable to voters. Washington funds its programs either by raising taxes or by borrowing—with a promise to repay with interest—from future tax collections. However controversial government spending programs may be, taxpayers can inspect costs in the federal budget's historical tables¹⁶ and Congressional Budget Office (CBO) publications.¹⁷

However, the government can also “fund” objectives and programs through regulatory compliance. Rather than pay directly and book expenses for new initiatives, federal regulations can compel the private sector, as well as state and local governments, to bear the costs of federal initiatives.

Regulatory compliance and economic impact costs are not budgeted and lack the formal public disclosure that accompanies federal spending. Therefore, regulatory initiatives can enable federal commandeering of private sector resources with comparatively little public fuss, rendering regulation a form of off-budget taxation. Policy makers find it easier to impose regulatory costs than to embark on more government spending because of the former's lack of disclosure and accountability for costs. Furthermore, where regulatory compliance costs prove burdensome, Congress can escape accountability by

blaming an agency for issuing an unpopular rule.

Table 1 provides some perspective on the regulatory “tax” by presenting summary data for selected topics described in *Ten Thousand Commandments*. Trends over recent years are provided where information is available.

The 2016 edition of *Ten Thousand Commandments* contains four main sections:

1. An overview of the costs and scope of the regulatory state, such as its estimated size compared with federal budgetary components and gross domestic product (GDP).
2. An analysis of trends in the numbers of regulations issued by agencies, based on information provided in the *Federal Register* and in the “Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions.”
3. Recommendations for reform that emphasize improving congressional accountability for rulemaking. This section offers steps to (a) improve regulatory disclosures through a regulatory transparency report card and (b) increase congressional responsibility to voters for costly and controversial rules.
4. An appendix containing historical tables of regulatory trends over past decades.

Rather than pay directly and book expenses for new initiatives, federal regulations can compel the private sector, as well as state and local governments, to bear the costs of federal initiatives.

Table I. The Regulatory State: A 2015 Overview

| | Year-End 2015 | 1-Year Change | 5-Year Change (2011–2015) | 10-Year Change (2006–2015) |
|---|------------------|---------------|---------------------------|----------------------------|
| Total regulatory costs | \$1.886 trillion | 1.0% | n/a | n/a |
| Agency enforcement budgets | \$63.0 billion | 4.3% | 4.6% | 28.1% |
| <i>Federal Register</i> pages | 80,260 | 3.3% | –1.2% | 7.1% |
| Devoted to final rules | 24,694 | –0.7% | –6.0% | 10.5% |
| <i>Federal Register</i> final rules | 3,410 | –4.1% | –10.4% | –8.3% |
| Code of Federal Regulations pages | 178,277 | –0.6% | 5.3% | 15.7% |
| Total rules in Agenda pipeline | 3,297 | –3.5% | –20.1% | –18.6% |
| Completed | 554 | –11.9% | –45.1% | –34.9% |
| Active | 2,244 | –3.3% | –16.1% | –6.1% |
| Long term | 499 | 7.3% | 12.9% | –38.5% |
| “Economically significant” rules in the year-end pipeline | 218 | 9.0% | 2.8% | 54.6% |
| Completed | 36 | 16.1% | –20.0% | 12.5% |
| Active | 149 | 13.7% | 8.0% | 98.7% |
| Long term | 33 | –13.2% | 13.8% | –2.9% |
| Rules affecting small business | 674 | 0.0% | –18.0% | –14.4% |
| Regulatory flexibility analysis required | 386 | 3.2% | –7.7% | –2.4% |
| Regulatory flexibility analysis not required | 288 | –4.0% | –28.7% | –29.8% |
| Rules affecting state governments | 409 | 3.3% | –20.0% | –24.7% |
| Rules affecting local governments | 255 | 10.4% | –19.3% | –26.5% |
| GAO Congressional Review Act reports on major rules | 76 | –6.2% | –5.0% | 35.7% |

EPA Breakdown

| | | | | |
|---|-----|--------|--------|--------|
| Final rules (<i>Federal Register</i>) | 579 | 7.4% | 8.6% | 14.4% |
| EPA rules in Agenda | 188 | 1.1% | –40.9% | –49.5% |
| EPA rules affecting small business | 12 | 100.0% | –83.6% | –87.4% |

FCC Breakdown

| | | | | |
|---|-----|--------|--------|--------|
| Final rules (<i>Federal Register</i>) | 90 | –37.5% | –30.8% | –52.1% |
| FCC rules in Agenda | 132 | 0.8% | 29.1% | –4.3% |
| FCC rules affecting small business | 99 | 1.0% | 26.9% | –8.3% |

Note: n/a = not applicable.

The Cost of Regulation and Intervention

Policy makers have a responsibility to disclose regulatory costs, whatever uncertainties exist in measuring them. Indeed, in many respects, costs are unmeasurable to third parties.¹⁸ Given the inherent difficulty of accurately measuring costs and the fact that regulators are unelected, reforms must move toward requiring elected representatives to vote to approve regulations before they become effective, because there is no other way to force authorities to internalize and answer for costs. Alas, Washington has a long way to go in this regard.

The Office of Management and Budget's (OMB) *2015 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates*, which surveys regulatory costs and benefits, pegs the cumulative costs of 120 selected major regulations during the decade from 2004 to 2014 at between \$68.4 billion and \$102.9 billion (in 2010 dollars).¹⁹ The previous year's report estimated the cost of 116 rules at between \$68.5 billion and \$101.8 billion.²⁰ Meanwhile, the estimated range for benefits in the new report spanned \$260.9 billion to \$981 billion (in 2010 dollars).²¹

OMB's cost-benefit breakdown incorporates only rules for which both benefits and costs have been expressed in quantitative and monetary terms by agencies. It omits numerous categories and cost levels of rules. Rules from independent agencies are entirely absent.

For the fiscal year (FY) ending September 2014, OMB's new publication reports only 13 rules that had both benefit and cost analyses. These depict additional costs ranging from \$3.0 billion to \$4.4 billion (in 2010 dollars).²² In the previous year's report, by contrast, OMB had presented seven rules

with costs ranging from \$2.4 billion to \$3 billion annually (in 2010 dollars).²³ Several billion dollars more in annual rule costs generally appear in these reports for rules with only cost estimates, but these are not tallied and highlighted by OMB.

In a 2014 report, the National Association of Manufacturers (NAM) modeled 2012 total annual regulatory costs in the economy of \$2.028 trillion (in 2014 dollars).²⁴ Earlier governmental assessments before and after the turn of the century from OMB, Government Accountability Office (GAO), and Small Business Administration (SBA) have also noted aggregate annual costs in the hundreds of billions of dollars, some well in excess of \$1 trillion in today's dollars (see Table 2). Still another report, by economists John W. Dawson of Appalachian State University and John J. Seater of North Carolina State University, pushes regulatory cost impacts into the stratosphere via dozens of trillions of dollars in lost GDP annually, taking into account the long-term growth reduction caused by decades of costly economic regulation.²⁵ Finally, the Mercatus Center in a "a formal model of economic growth from microeconomic foundations," particularly the influence of regulation on firms' investment choices, presents a counterfactual that if regulatory burdens had remained constant since 1980, the 2012 U.S. economy would have been 25 percent larger; or, put another way, the economy is now at least \$4 trillion smaller annually than it would be otherwise.²⁶

Among governmental reports, the latest comprehensive federal government assessment of the entire federal regulatory enterprise that one might regard as official was

Table 2. Assessments of Federal Regulation: Late 20th Century, Early 21st Century, Billions of Dollars

| | Hopkins 1992 (1991 dollars) | Government Accountability Office 1995 (1995 dollars) | Hopkins 1995 (1995 dollars) | Small Business Admin. 2001 (2001 dollars) | Office of Management & Budget 2002 (2001 dollars) | Small Business Admin. 2005 (2004 dollars) | Small Business Admin. 2010 | National Association of Manufacturers 2014 (2012 dollars) |
|--|-----------------------------|--|-----------------------------|---|---|---|----------------------------|---|
| Environmental | 115 | | 168 | 197 | 203 | 221 | 281 | 330 |
| Other Social | 36 | | 55 | | 30 | | | |
| Transportation | | | | | 22 | | | |
| Labor | | | | | 22 | | | |
| Economic Regulation | | | | | | | | |
| Efficiency | 73 | | 80 | | 150 | | | |
| Transfers | 130 | | 147 | | 337 | 591 | 1,236 | 1,448 |
| Efficiency - Domestic | | | | 101 | | | | |
| Transfers - Domestic | | | | 202 | | | | |
| Efficiency - Int'l Trade | | | | 44 | | | | |
| Transfers - Int'l Trade | | | | 88 | | | | |
| Workplace and Homeland Security | | | | 82 | | 106 | 75 | 92 |
| Paperwork/Process/Info Collection (tax compliance) | 189 | | 218 | 129 | 190 | 195 | 160 | 159 |
| Totals: | 543 | 647 | 668 | 843 | 954 | 1,113 | 1,752 | 2,029 |
| Totals, converted to 2013 \$ | | 992.498 | 1,024.712 | 1,109.39 | 1,255.46 | | | |

Sources: Thomas D. Hopkins, "Costs of Regulation: Filling the Gaps, Report prepared for the Regulatory Information Service Center," Washington, D.C., August 1992, <http://www.thecre.com/pdf/COST%20OF%20REGULATION%20FILLING%20THE%20GAPS.pdf>. General Accounting Office, Briefing Report to the Ranking Minority Member, Committee on Governmental Affairs, U.S. Senate, Regulatory Reform: Information on Costs, Cost Effectiveness, and Mandated Deadlines for Regulations, (GAO/PEMD 95 18BR), March 1995, <http://archive.gao.gov/t2pbat/1153774.pdf>. Thomas D. Hopkins, "The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress," Office of the Chief Counsel for Advocacy, U.S. Small Business Administration, Washington, D.C., October 1995, http://www.sba.gov/advo/laws/archive/law_brd.html. Office of Management and Budget, "Draft Report to Congress on the Costs and Benefits of Federal Regulations," *Federal Register*, March 28, 2002, pp. 15037-15038, <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/cbreport.pdf>. W. Mark Crain and Thomas D. Hopkins, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, RFP No. SBAHQ-00-R-0027, October 2001, <http://www.sba.gov/advo/research/rs207tot.pdf>. W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, Contract no. SBHQ-03-M-0522, September 2005, <https://www.sba.gov/sites/default/files/files/rs264tot.pdf>. National Association of Manufacturers, "The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business," W. Mark Crain and Nicole V. Crain, September 10, 2014, <http://www.nam.org/~media/A7A8456F33484E498F40CB46D6167F31.ashx>. Some figures here are adjusted to 2013 by the change in the consumer price index between 2001 and 2013 (1.316), and between 1995 and 2013, derived from "CPI Detailed Report Data for April 2014," Bureau of Labor Statistics, Washington, D.C. (Table 24. Historical Consumer Price Index for All Urban Consumers (CPI-U), U.S. city average, all items), <http://www.bls.gov/cpi/cpid1404.pdf>.

prepared in September 2010 for the SBA.²⁷ This report, which the SBA presented in several iterations over the previous decade and a half, has been discontinued. The report estimated regulatory compliance costs of \$1.752 trillion for 2008 and received significant criticism, to which the authors responded directly and more than adequately.²⁸

The primary purpose of the SBA report series was to examine the extent to which regulatory costs impose higher burdens on small firms, which have higher per-employee regulatory costs than do larger ones. The exercise is vitally important, but the federal government now chooses to ignore it. The SBA and earlier OMB surveys traditionally have conveyed regulatory costs using the following categories:

- Economic regulatory costs (for example, market entry restrictions and transfer payments such as price supports that shift money from one pocket to another)
- Workplace regulatory costs
- Environmental regulatory costs
- Paperwork costs

The NAM model addresses the now-dropped size-of-firms question and finds overall annual per employee regulatory costs to firms of \$9,991 on average. But the effects by firm size are disparate. Table 3 shows that per employee regulatory costs for firms of fewer than 50 workers can be 29 percent

greater than those for larger firms—\$11,724 for smaller firms versus \$9,083 for larger ones.²⁹ Meanwhile, other developments—including the aftermath of recent major financial, health, and environmental policies—point to substantial regulatory costs not captured by most assessments to date.³⁰

NAM estimates that regulatory costs now exceed \$2 trillion, whereas other reports imply considerably more.³¹ To allow for incremental updates to an aggregate baseline, one may compile estimates of compliance and economic costs for the federal regulatory enterprise mainly by using OMB annual *Report to Congress* on costs and benefits over the years, data such as paperwork burdens described in OMB’s annual *Information Collection Budget*, the few independent agency cost estimates available, and other publicly available material and third-party assessments. The goal is for data to converge over time on some annual estimate encompassing new information about economic and regulatory cost burdens. Using this approach, we employ an across-the-board cost estimate for federal regulation and economic intervention of \$1.886 trillion annually (see Figure 1)³² that integrates material like that seen in Table 2.

There is much work to be done. Recent regulatory interventions—including regulatory costs associated with the recent health care and financial reform legislation—have dramatic

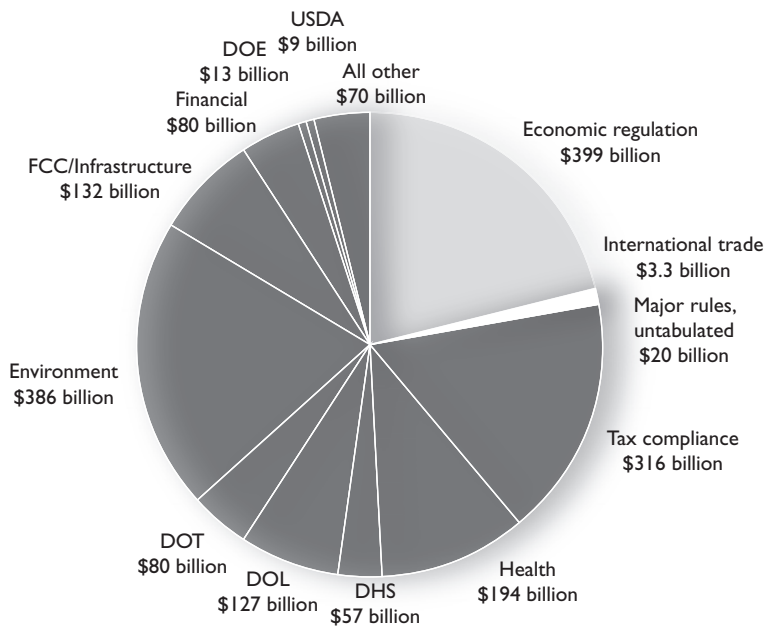
Per employee regulatory costs for firms of fewer than 50 workers can be 29 percent greater than those for larger firms.

Table 3. Regulatory Costs in Small, Medium, and Large Firms, 2012

| | Cost per Employee for All Business Types | | | |
|--------------------------------|---|--------------------------|------------------------|---------------------------|
| | All Firms | < 50 Employees | 50–99 Employees | > 100 Employees |
| All Federal Regulations | \$9,991 | \$11,724 | \$10,664 | \$9,083 |
| Economic | \$6,381 | \$5,662 | \$7,464 | \$6,728 |
| Environmental | \$1,889 | \$3,574 | \$1,338 | \$1,014 |
| Tax Compliance | \$960 | \$1,518 | \$1,053 | \$694 |
| Occupational/Homeland Security | \$761 | \$970 | \$809 | \$647 |

Source: W. Mark Crain and Nicole V. Crain, “The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business,” National Association of Manufacturers, September 10, 2014, <http://www.nam.org/~media/A7A8456F33484E498F40CB46D6167F31.ashx>.

Figure I. Annual Cost of Federal Regulation and Intervention, 2016 Estimate, \$1.885 Trillion



Source: Wayne Crews, *Tip of the Costberg: On the Invalidity of All Cost of Regulation Estimates and the Need to Compile Them Anyway*, 2016 ed., <http://ssrn.com/abstract=2502883>.

Note: DHS = Department of Homeland Security; DOE = Department of Education; DOL = Department of Labor; DOT = Department of Transportation; FCC = Federal Communications Commission; USDA = U.S. Department of Agriculture.

The last time the federal government balanced the budget was between 1998 and 2001.

economic impacts. Other long-recognized costs, such as indirect costs and the effects of lost innovation or productivity, remain stubbornly difficult to assess and can produce underestimates of the total regulatory burden.³³

Regulatory Compliance Costs: Catching Up to Government Spending?

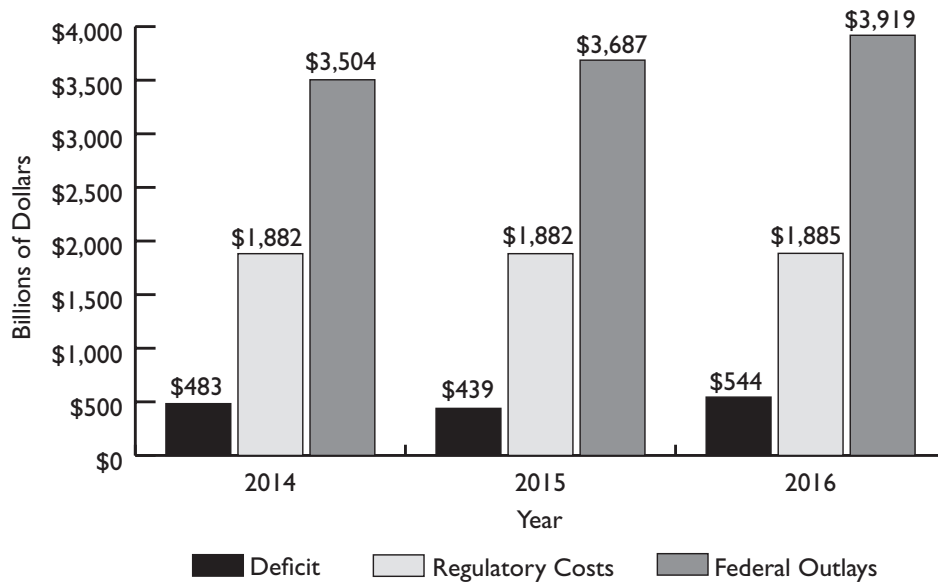
FY 2015 saw a deficit of \$439.0 billion on \$3.687 trillion in outlays. Figure 2 compares deficits and outlays for 2014–2015 and projected amounts for 2016 with our regulatory cost estimate of \$1.88 trillion. In the 2016 bar, note that estimated regulatory compliance costs are equivalent to nearly half the projected

level of fiscal budget outlays and well over three times the anticipated deficit of \$544 billion.

Recognizing that off-budget, largely hidden regulatory compliance costs are equivalent to half of all federal outlays is sobering enough, but the situation is more dramatic in Washington’s high-spending culture of perpetual deficits, because regulations constitute a type of off-budget spending in the form of federal mandates—for which the population is compelled to bear the cost. That is why looking at outlays, regulation, and the deficit at one glance is useful (see Figure 2).

The last time the federal government balanced the budget was between 1998 and 2001.³⁴ But those were days when a \$2 trillion federal budget was regarded as high.

Figure 2. Federal Outlays and Deficits Compared with Federal Regulatory Costs (2014, 2015, and projected 2016)



Sources: 2014 deficit and outlays from CBO, *The Budget and Economic Outlook: Fiscal Years 2015 to 2025*, January 2016, Table 1-2, “CBO’s Baseline Budget Projections,” p. 13, <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/49892-Outlook2015.pdf>. 2014-16 regulatory cost estimate from Crews, *Tip of the Costberg*, Working Paper 2014, 2015 and 2016 eds. 2015 actual and 2016 projected deficit and outlays from CBO, *The Budget and Economic Outlook: Fiscal Years 2016 to 2026*, January 2016, Summary Table 1, “CBO’s Baseline Budget Projections,” p. 2. <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51129-2016Outlook.pdf>.

Note: Federal deficit and outlay numbers are by fiscal year; regulatory costs by calendar year.

Today, regulatory costs approach \$2 trillion, while annual federal spending hovers around \$3.9 trillion and will soon top \$4 trillion. FY 2015 saw a deficit of \$439 billion on \$3.687 trillion in outlays, with no balance—let alone surplus—anywhere in sight over the coming decade, according to the CBO. The deficit is projected to jump by more than \$100 billion during 2016, to reach \$3.919 trillion. And the trend likely will continue northward, as the deficit’s rate of increase is projected to top \$1 trillion by 2022.³⁵

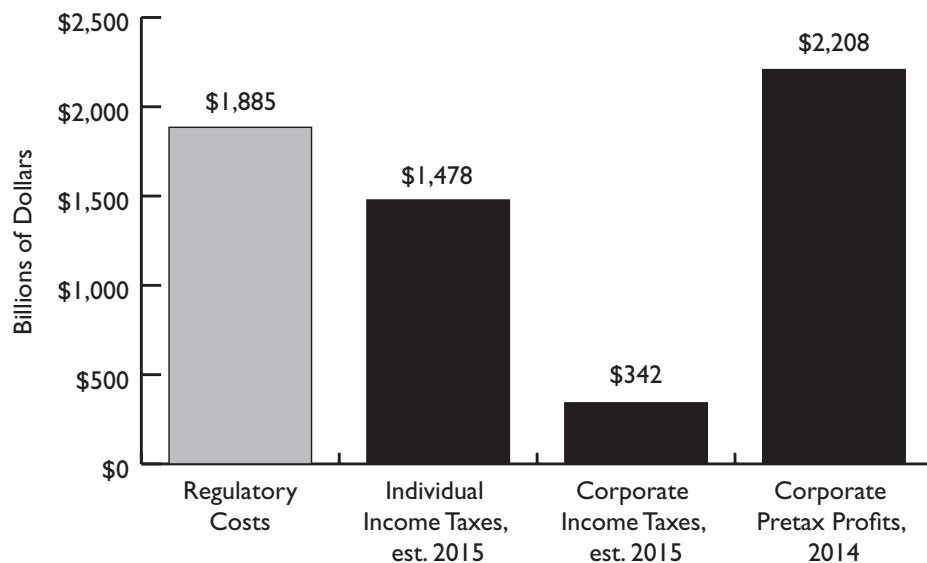
All this spending can translate into even higher future regulatory costs. Spending related to bailouts, stimulus, infrastructure, health care, telecommunications, and more will include significant regulatory components as well. Burdening the American

economy with even more regulatory mandates and restrictions will lead to more years of slow growth and stagnant job creation. To avoid that fate and truly address Washington’s spending and deficit culture and off-budget regulation, policy makers should move toward economic liberalization and a reduced regulatory state.

Regulatory Costs versus Income Taxes and Corporate Profits

Regulatory costs easily exceed the cost of individual income taxes and vastly exceed revenue from corporate taxes *combined*. As Figure 3 shows, regulatory costs now tower over the estimated 2015 individual income tax revenues of \$1.478 trillion (individual

Figure 3. Regulatory Compliance Compared with Individual Income Taxes, Corporate Income Taxes, and Corporate Pretax Profits



Sources: Crews, *Tip of the Costberg*, 2016 ed. Estimated 2014 tax figures from OMB, Historical Tables, Table 2.1, "Receipts by Source: 1934–2019," <http://www.whitehouse.gov/omb/budget/Historicals>. 2014 corporate pretax profits (domestic and international) from Bureau of Economic Analysis, National Income and Product Accounts Tables, Table 6.17D, "Corporate Profits before Tax by Industry," <http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=3&isuri=1&903=243>.

Regulatory compliance costs are approaching the level of pretax corporate profits, which were \$2.208 trillion in 2014.

income tax receipts had fallen substantially during the economic downturn but are rising again).³⁶ Corporate income taxes collected by the U.S. government, estimated at \$341.7 billion in 2015, are dwarfed by regulatory costs (corporate tax receipts had declined by half during the recent downturn).³⁷ The combination of the two, \$1.82 trillion, is just exceeded by our regulatory cost estimate. As the last bar of Figure 3 shows, regulatory compliance costs are approaching the level of pretax corporate profits, which were \$2.208 trillion in 2014.³⁸ This is the third time pretax profits have topped \$2 trillion.

Regulatory Costs versus GDP

Regulation “Eats” 11 Percent of U.S. GDP

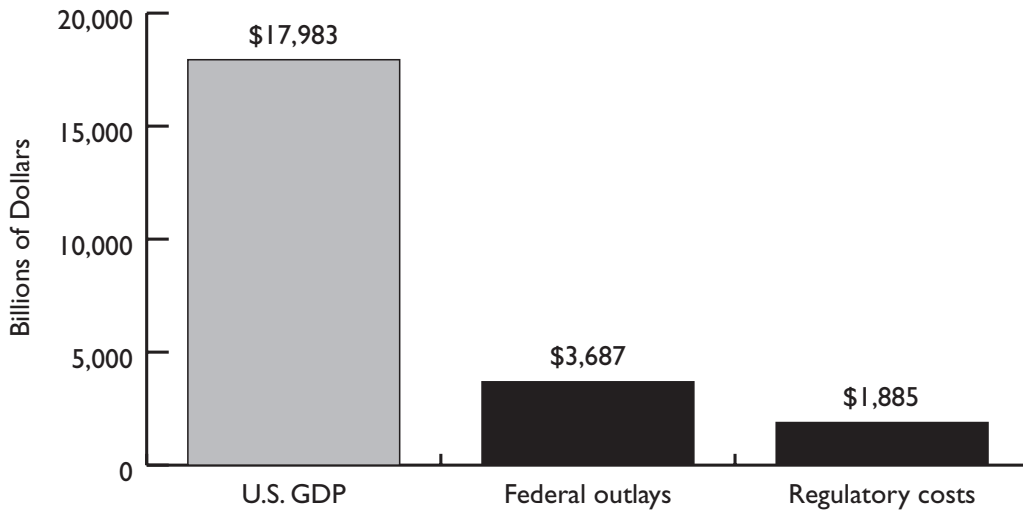
For the United States, the Commerce Department’s Bureau of Economic Analysis in January 2016 estimated GDP for 2015 at \$17.938 trillion.³⁹ The total regulatory cost estimate of

\$1.885 trillion is equivalent to approximately 10.5 percent of that amount. Combining regulatory costs with federal FY 2015 outlays of \$3.687 trillion (see Figure 2) indicates that the federal government’s share of the economy reaches \$5.572 trillion, or 31.1 percent. (See Figure 4.) This does not include state and local spending and regulation.

U.S. Regulation Can Be Compared to Some of the World’s Largest Economies

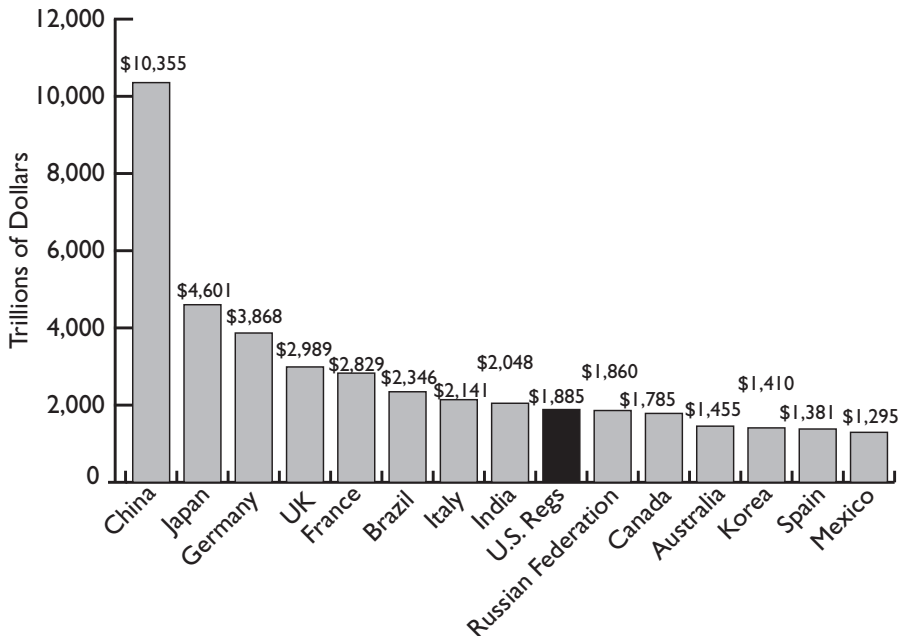
Not counting the United States, only eight countries have GDPs that exceed the estimated cost of regulation in the United States. U.S. regulatory costs surpass the 2014 GDP of both Canada, at \$1.785 trillion, and Mexico, at \$1.295 trillion. If U.S. regulatory costs of \$1.885 trillion were a country, it would be the world’s ninth-largest economy, ranking behind India and ahead of Russia.⁴⁰ Figure 5 depicts this number embedded within a ranking of the 14 largest global

Figure 4. GDP Compared to Federal Outlays and Regulation



Sources: Crews, *Tip of the Costberg*, 2016 ed. GDP from U.S. Department of Commerce, Bureau of Economic Analysis, *National Income and Product Accounts, Gross Domestic Product: Fourth Quarter and Annual 2015* (Advance Estimate), January 29, 2016, <https://www.bea.gov/newsreleases/national/gdp/gdpnewsrelease.htm>. Outlays from CBO, *The Budget and Economic Outlook: Fiscal Years 2016 to 2026* January 2016, Summary Table 1, "CBO's Baseline Budget Projections," p. 2, <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51129-2016Outlook.pdf>.

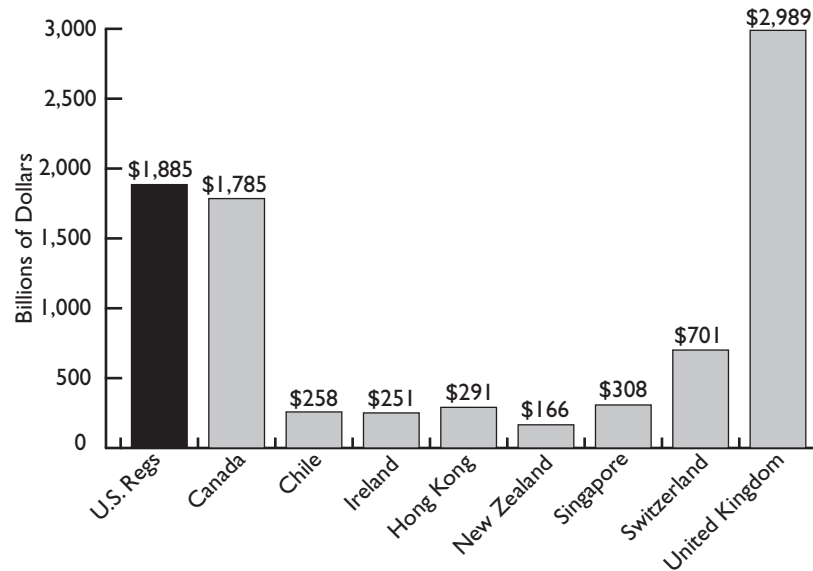
Figure 5. U.S. Regulatory Costs Compared to 2014 Gross Domestic Product of the World's Largest Economies



Source: Crews, *Tip of the Costberg*, 2016 ed. Gross Domestic Product data from World Bank, Washington, D.C., GDP Data, <http://data.worldbank.org/indicator/NY.GDPMKTP.CD/countries>.

Note: U.S. 2014 GDP of \$17.419 trillion is not shown. If it were a country, U.S. regulations would be the ninth largest.

Figure 6. U.S. Regulatory Load Compared to 2014 Gross Domestic Product in World Economies Regarded as Most Free



Sources: Crews, *Tip of the Costberg*. Gross Domestic Product data from World Bank, Washington, D.C., GDP Data, <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD/countries>. New Zealand is from 2011 data.

Note: "Free" economies consist of those in the top ten of both the Heritage Foundation/*Wall Street Journal Index of Economic Freedom* and the Fraser Institute/Cato Institute *Economic Freedom of the World* report.

economies (U.S. GDP is omitted in the chart).

U.S. Regulatory Costs Exceed GDPs of All the World's Most-Free Economies

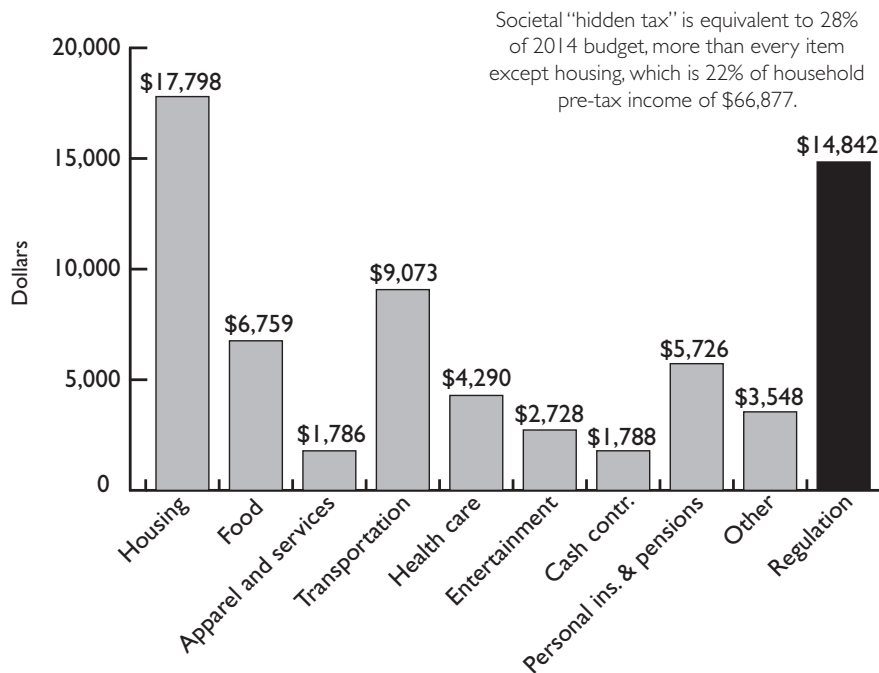
U.S. regulatory costs of \$1.885 trillion exceed the output of many of the world's major economies, including those regarded as the most economically free. Two annual surveys of global economic freedom are widely cited. Each year, the Heritage Foundation and the *Wall Street Journal* jointly publish the *Index of Economic Freedom*.⁴¹ Meanwhile, Canada's Fraser Institute, in conjunction with the Cato Institute and a group of international think tanks, publishes the annual *Economic Freedom of the World* report.⁴² Of the top

10 countries in these publications, eight are common to both. Figure 6 lists the eight compared to U.S. regulatory costs. Note that the United States no longer ranks in the top 10 of either report. Overregulation is likely a factor affecting that ranking.

Regulation: A Hidden Tax on the Family Budget

Like the taxes they are required to pay, businesses will pass some regulatory costs on to consumers. Costs are borne by businesses, households, and lower-level governments both through direct pass downs and in broader indirect economic effects.⁴³ Thus, regulatory costs propagate through an economy, for which the basic unit remains the individual and the household. The implication

Figure 7. The U.S. Household Expense Budget of \$53,495 Compared to Regulatory Costs



Sources: Bureau of Labor Statistics, author arithmetic.

Note: Proxy for households here is BLS depiction of 127,006,000 “Consumer units,” which comprise “families, single persons living alone or sharing a household with others but who are financially independent, or two or more persons living together who share expenses.”

is that regulation has large effects on societal wealth. For perspective, if we assume the full pass-through of all such costs to consumers, we can look at the share of each household’s regulatory costs and compare it with total annual expenditures as compiled by the Labor Department’s Bureau of Labor Statistics (BLS).⁴⁴

For America’s 127 million households, or “consumer units” in BLS parlance, the average 2014 pretax income was \$66,877.⁴⁵ Figure 7 breaks down household expenditures of \$53,495 by category. The highest category is housing at \$17,798 annually. The second-highest category is transportation at \$9,073.

As Figure 7 shows, U.S. households “pay” \$14,842 annually in a hidden regulatory tax (\$1.885 trillion in regulation divided by 127 million “consumer units”), or 22 percent of

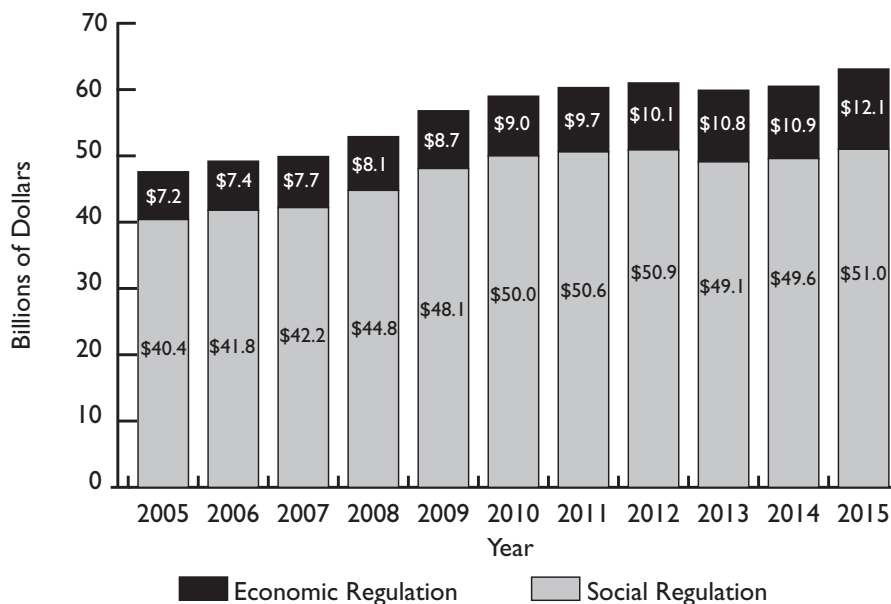
average income before taxes. That figure is higher than every annual household budgetary expenditure item except housing. More is “spent” on embedded or hidden regulation in society than on health care, food, transportation, entertainment, apparel and services, and savings. Societal regulatory costs amount to up to 28 percent of the typical household’s expenditure budget.⁴⁶

The Federal Government’s Costs of Policing the Regulatory State

Regulatory cost estimates encompass compliance costs paid by the public, but those estimates do not include administrative costs—the on-budget amounts spent by federal agencies to produce their rules and to police regulatory compliance. The Weiden-

More is “spent” on embedded or hidden regulation in society than on health care, food, transportation, entertainment, apparel and services, and savings.

Figure 8. Federal Agency Enforcement Budgets, \$63 Billion Total in FY 2015



Source: Susan Dudley and Melinda Warren, “Regulators’ Budget Increases Consistent with Growth in Fiscal Budget: An Analysis of the U.S. Budget for Fiscal Years 2015 and 2016,” *Regulators’ Budget* No. 37, published jointly by the Regulatory Studies Center at the George Washington University and the Weidenbaum Center on the Economy, Government, and Public Policy, May 2015, p. 25.

Note: Original 2009 constant dollars are adjusted here by the change in the consumer price index between 2009 and 2015, derived from Consumer Price Index tables, U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. (Table 24. All Urban Consumers (CPI-U), U.S. city average, all items), <http://www.bls.gov/cpi/tables.htm>

baum Center at Washington University in St. Louis, Missouri, and the Regulatory Studies Center at George Washington University in Washington, D.C., regularly examine the annual presidential federal budget proposal to compile the administrative costs of developing and enforcing rules. Such amounts, as funds that taxpayers contribute to support agencies’ administrative operations, are disclosed in the federal budget.

The estimated FY 2015 enforcement costs incurred by federal departments and agencies stood at \$63 billion (in constant 2014 dollars, adjusted from original 2009 dollars), a 4.3 percent increase over \$60.4 billion the previous year (Figure 8).⁴⁷

Of that amount, \$12.1 billion was spent administering economic regulations. The larger amount spent for writing and enforcing social and environmental regulations was \$51 billion. In current dollars, the Environmental Protection Agency (EPA) alone spent an estimated \$5.211 billion in this latter category in 2015, accounting for 8.3 percent of the total expected to be spent by all regulatory agencies.⁴⁸ The EPA formerly accounted for the lion’s share of governmental administration and enforcement costs, but the Department of Homeland Security, at an estimated \$26.5 billion, now accounts for 42.1 percent.⁴⁹

The \$63 billion in regulatory agency enforcement costs—\$12.1 billion plus \$51 billion—helps complete a picture of the federal

regulatory apparatus. Adding administrative costs tabulated by the Weidenbaum Center and the Regulatory Studies Center to our \$1.885 trillion estimate brings the total 2015 regulatory cost estimate to about \$1.948 trillion.

The number of estimated full-time-equivalent administrative and enforcement staff stood at 277,266 in FY 2015, up from

276,576 in 2014, according to the joint report by the Weidenbaum Center and Regulatory Studies Center. There has been an increase of well over 100,000 federal employees since the 2001 staffing level of 173,027.⁵⁰ Much of the post-2001 surge may be attributable to the creation of the Transportation Security Administration that year, which included the hiring of thousands of airport screening personnel.

Thousands of Pages and Rules in the *Federal Register*

The *Federal Register* is the daily depository of all proposed and final federal rules and regulations. Although its number of pages is an often cited measure of the scope of federal regulations, there are problems with relying on page counts. The wordiness of rules will vary, thus affecting the number of pages and obscuring the real effects of the underlying mandates. A short rule could be costly and a lengthy one relatively cheap. Furthermore, the *Federal Register* contains administrative notices, corrections, rules relating to the governance of federal programs and budgetary operation, presidential statements, and other material. Blank pages sometimes appear—in previous decades, they numbered into the thousands owing to the Government Publishing Office’s imperfect prediction of the number of pages that agencies would require.

A short rule could be costly and a lengthy one relatively cheap.

Federal Register Pages

Despite these limitations, it remains worthwhile to track the *Federal Register*’s growth according to its page counts, provided the caveats are kept in mind. Tens of thousands of pages stream from America’s departments, agencies, and commissions. As Figure 9 shows, at the end of 2015, the number of *Federal Register* pages stood at 80,260. This count is President Obama’s third-highest level, as well as the third-highest level in the entire history of the *Federal Register*. Both 2010 and 2011 had been the all-time record years, at 81,405 and 81,247, respectively. The 79,435 count in 2008 under President George W. Bush holds the title for fourth-highest level. Of the seven all-time high *Federal Register* page counts, six have occurred during the

Obama administration. (For a history of *Federal Register* page totals since 1936, see Appendix: Historical Tables, Part A.)

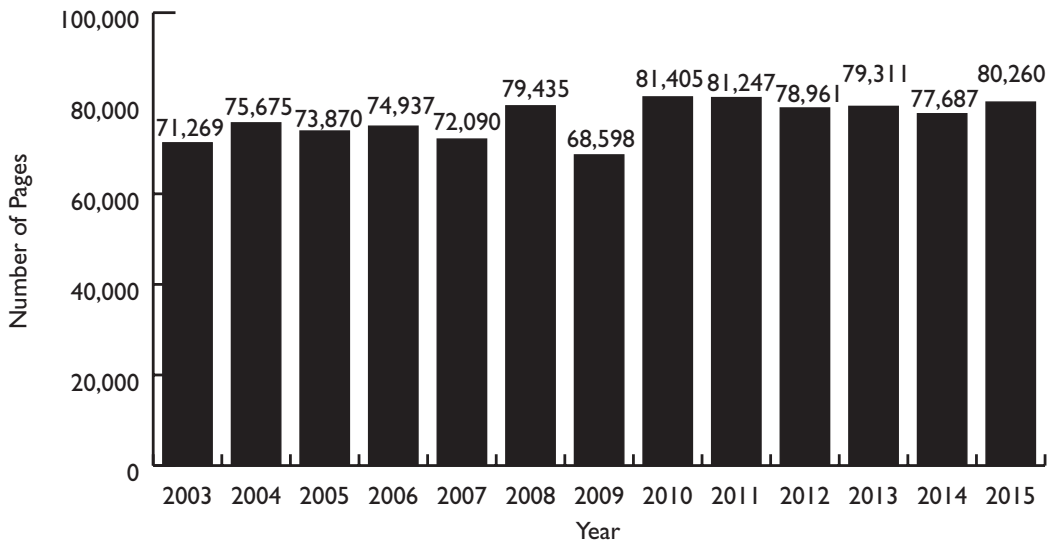
Federal Register Pages Devoted to Final Rules

Whereas they may plausibly signify greater governmental activity, gross page counts alone do not reveal whether actual regulatory burdens have increased or decreased, given that a rule of a few pages might impose a significant burden and vice versa. Isolating the pages devoted to *final* rules might be more informative because doing so omits pages devoted to proposed rules, agency notices, corrections, and presidential documents (although those categories have regulatory effects too). From 2014 to 2015, the number of pages devoted to final rules remained relatively flat, moving from 24,861 to 24,694. Following immediately from 2013’s record high of 26,417, these counts maintain high levels that have been the norm during the Obama administration (see Figure 10).

Figure 10 shows that over the decade since 2006, the number of *Federal Register* pages devoted to final rules has increased by 10.5 percent. Meanwhile, pages of proposed rules reached 22,588 in 2015, the second-highest level, which indicates we may see a surge in final rule pages in the future. Pages of proposed rules peaked at 23,193 in 2011 under Obama.

Another way of looking at *Federal Register* trends is by pages per decade (see Figure 11). If page counts hold around the current

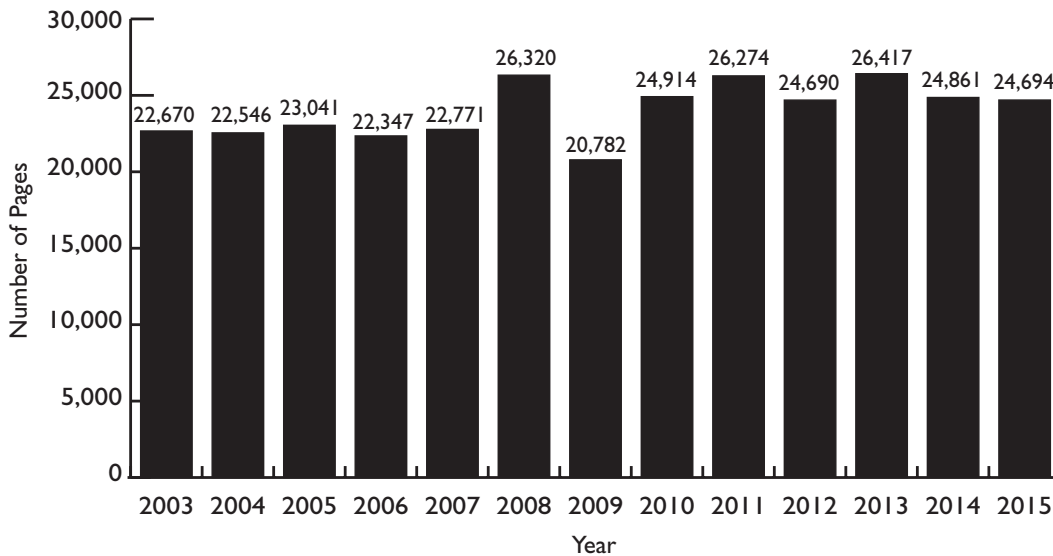
Figure 9. Number of *Federal Register* Pages, 2003–2015



Source: National Archives and Records Administration, Office of the Federal Register.

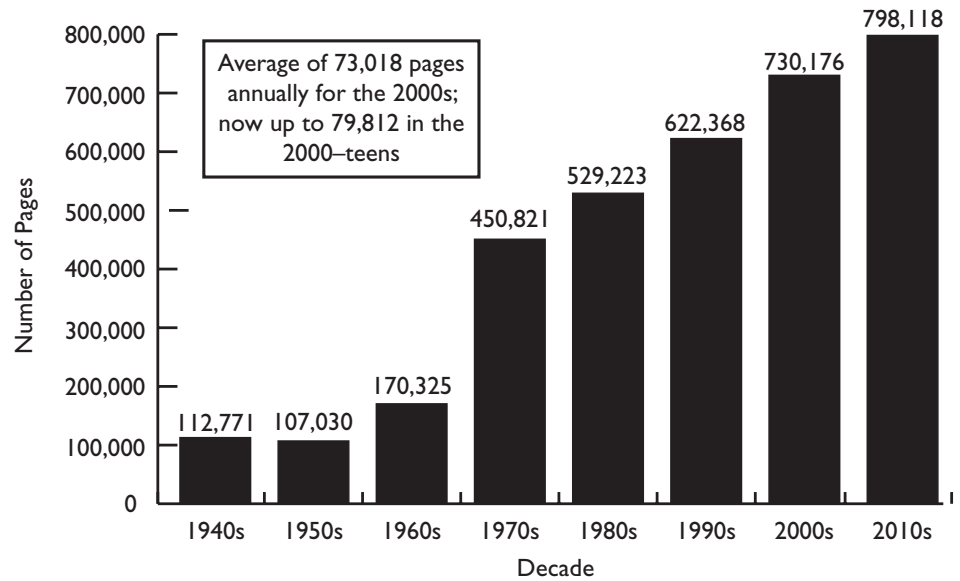
Note: Of seven all-time-high *Federal Register* page counts, six belong to the Obama administration.

Figure 10. *Federal Register* Pages Devoted to Final Rules, 2003–2015



Source: National Archives and Records Administration, Office of the Federal Register.

Figure 11. *Federal Register* Pages per Decade ...
798,118 Pages Projected for the 2000 “Teens”



Source: National Archives and Records Administration, Office of the Federal Register.

Note: 2010s is a projection based on the past three years' average. Years 2000–2009 average 73,000 annual pages; this decade averages 80,000 pages yearly.

ranges, we can expect to see a considerable increase for the current decade. The last bar of Figure 11 projects the average of the past six years of 79,812 pages for the decade as a whole. If trends continue, we will end up with nearly 800,000 *Federal Register* pages for the decade (the projection at the moment is 798,118). Decade page counts could easily top 1 million in the 2020s, as a glance at increases since the 1940s makes clear.

Number of Proposed and Final Rules in the *Federal Register*

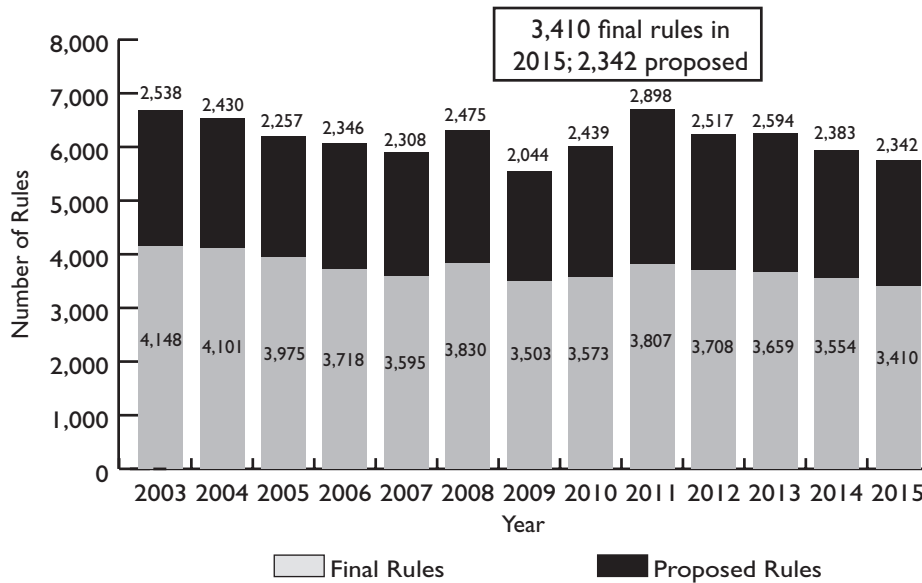
The actual numbers of proposed and final rules—not just the page count—published in the *Federal Register* merit close attention. As Figure 12 shows, final rules in 2015 dipped from 3,554 to 3,410. The following section describes the so-called Unified Agenda of federal regulations and examines some of the possible reasons for such recent declines, such as election year considerations and in-

formal substitutes for formal regulations that may require new forms of monitoring.

Rule impacts vary, but the number of final rules currently being published is lower than it was throughout the 1990s, when the average annual total of final regulations was 4,596, and lower than during the early years depicted in Figure 12. The average for 2000–2009 was 3,948. The decline in rule numbers is a positive trend, one that policy makers should seek to extend. Nonetheless, a pace of more than 3,400 completed rules annually remains significant, compounding the largely ignored cumulative burden.

Also notable is the pace of proposed rules appearing in the *Federal Register*. Proposed rule page counts are relatively high now. Although the 2,342 rules proposed in 2015 are fewer than in recent years, the 2,517 rules proposed in 2012 and the 2,898 proposed in 2011 were on the high side compared with the decade as a whole. Should that pace re-

Figure 12. Number of Proposed and Final Rules in the *Federal Register*, 2003–2015



Source: National Archives and Records Administration, Office of the Federal Register.

sume, high numbers of proposed rules (and page counts) signify likely future increases in final rules. (For the numbers of proposed and final rules and other documents issued in the *Federal Register* since 1976, see Appendix: Historical Tables, Part B.)

Cumulative Final Rules in the *Federal Register*

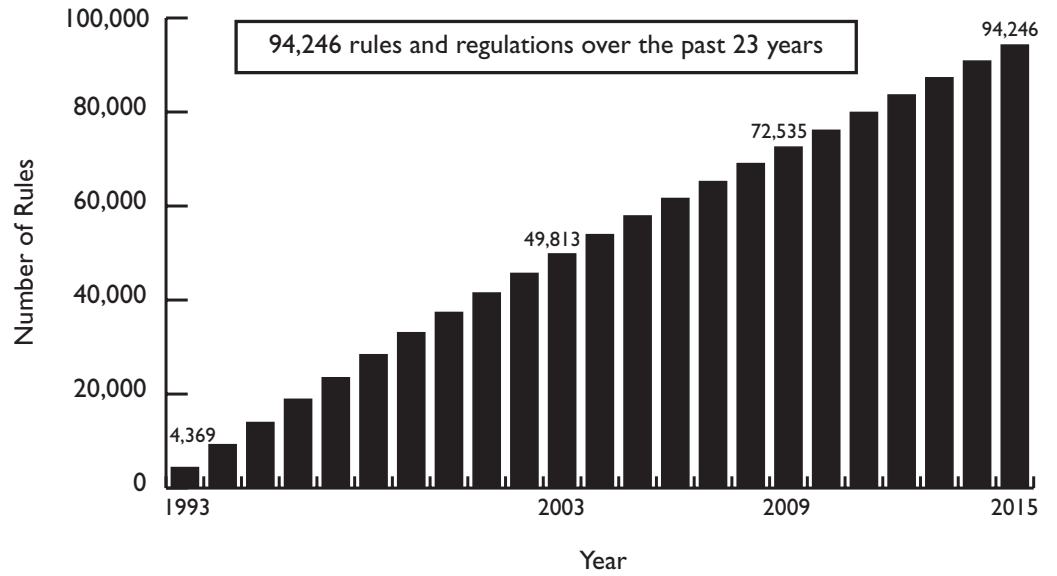
Despite yearly fluctuations, the cumulative effect of regulation can matter a great deal. The bottom line is that the annual outflow of at least 3,400 final rules—and often far more—has meant that 94,246 rules have been issued since 1993, when the first edition of *Ten Thousand Commandments* was published (see Figure 13).

The Expanding Code of Federal Regulations

The page count for final general and permanent rules in the *Code of Federal Regulations* (CFR) is more modest than that of the *Federal Register*, but still considerable. In 1960, the CFR contained 22,877 pages. Since 1975, total pages in the complete CFR have grown from 71,224 to 178,277 at the end of 2015, including the 1,170-page index. That is a 150 percent increase over the period. The number of CFR bound volumes stands at 237, compared with 133 in 1975. Figure 14 depicts the CFR’s pages for the past decade. (For the detailed breakdown numbers of pages and volumes in the CFR since 1975, see Appendix: Historical Tables, Part C.)

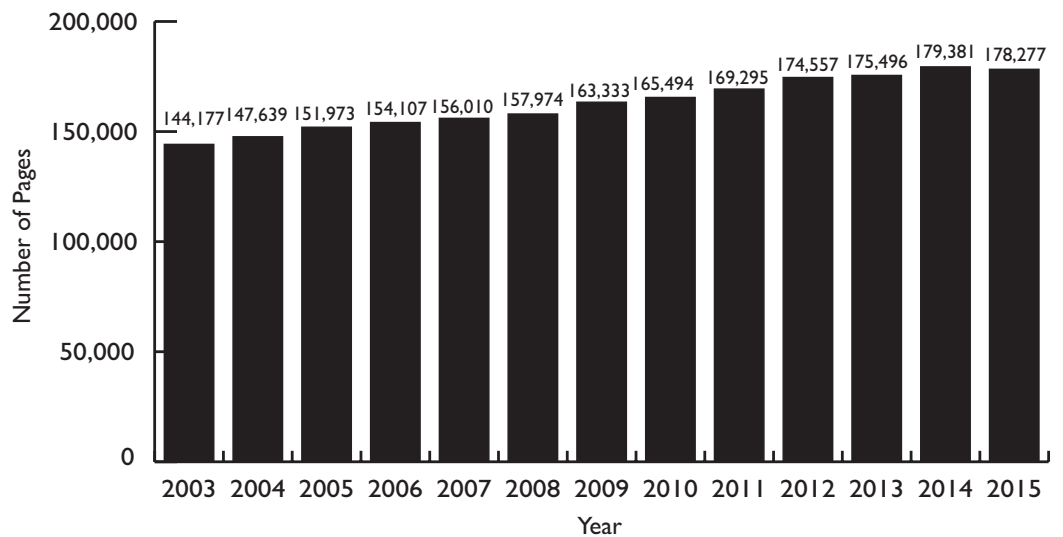
The annual outflow of at least 3,400 final rules—and often far more—has meant that 94,246 rules have been issued since 1993, when the first edition of Ten Thousand Commandments was published.

Figure 13. Cumulative Final Rules Published in the *Federal Register*, 1993–2015



Source: National Archives and Records Administration, Office of the Federal Register.

Figure 14. *Code of Federal Regulations*, 178,277 Total Pages in 2015, 2003–2015



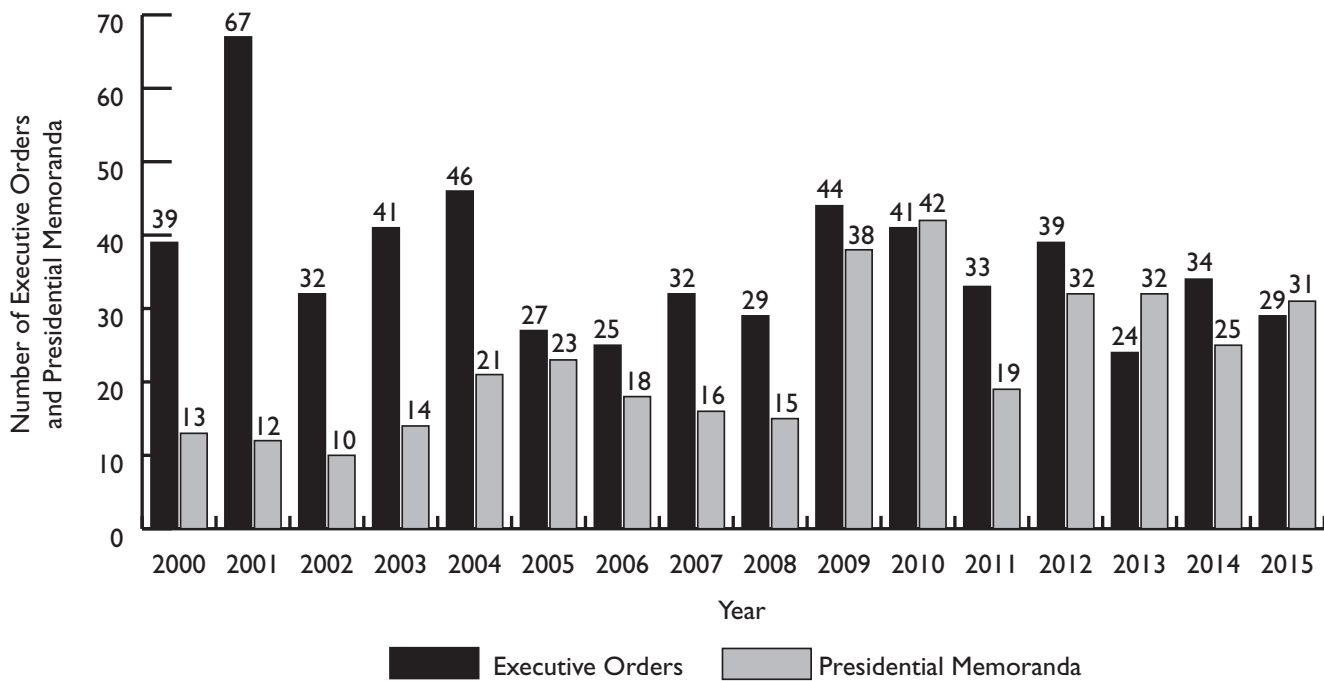
Source: National Archives and Records Administration, Office of the Federal Register.

Presidential Executive Orders and Executive Memoranda

President Obama famously pledged to use his “pen and phone” to implement parts of his policy agenda without congressional approval.⁵¹ Executive orders, presidential memoranda, and other executive actions make up a large component of that initiative.⁵² This section examines those numbers, but a considerable amount of executive branch activity is not well measured and merits heightened attention, especially when an administration so explicitly emphasizes unilateral action.⁵³

Executive orders ostensibly deal with the internal workings and operations of the federal government. Subsequent presidents can overturn them. Their use is nothing new, dating back to George Washington’s administration.⁵⁴ President Obama’s totals are not high compared with those of other presidents. At the end of 2015, he had issued 244 executive orders. Figure 15 provides a snapshot of executive orders issued over the past two decades, from 2000 to the present. Obama

Figure 15. Number of Executive Orders and Presidential Memoranda, 2000–2015



Source: National Archives and Records Administration, Office of the Federal Register.

We live in an era in which the government—without actually passing a law—increasingly dictates parameters of various economic sectors.

issued more executive orders in his first term than did President George W. Bush in his second term, but Bush was comparatively more active during his first term.

Presidential memoranda since 1999—which presidential scholar Phillip Cooper has termed “executive orders by another name”—are also depicted in Figure 15.⁵⁵ Memoranda may or may not be published, depending on the administration’s own determination of “general applicability and legal effect,” making it “difficult to count presidential memoranda.”⁵⁶ Obama’s pace since 2009 tops that of George W. Bush, which is unsurprising given his administration’s openness about prioritizing executive action. Bush published 129 memoranda over his entire presidency, whereas Obama issued 219 during his first seven years that were published in the *Federal Register*. (President Bill Clinton published just 14 memoranda.⁵⁷)

The pertinent question as far as regulatory burdens are concerned is what these executive orders and memoranda are used for and what they do. Executive actions can liberalize and enhance freedom, such as President Abraham Lincoln’s Emancipation Proclamation. Or they can expand governmental power, such as President Harry Truman’s failed attempt to seize control of America’s steel mills⁵⁸ or President Franklin D. Roosevelt’s confiscation of the nation’s gold.⁵⁹

Whether lengthy or brief, orders and memoranda can have significant impacts for or against liberty. Therefore, a smaller number of them does not necessarily mean small effects. In 2014 alone, Obama memoranda created a new financial investment instrument and implemented new positive rights regarding work hours and employment preferences for federal contractors.⁶⁰ As with the *Federal Register*, counts are interesting but do not tell the whole story.

Obama’s own Executive Order No. 13563 about review and reform was a pledge to roll back regulation, but it amounted to only a few billion dollars in cuts that were

swamped by other rules issued.⁶¹ In all, four of Obama’s executive orders directly address overregulation and rollbacks.⁶²

Other key executive orders directly affecting regulatory restraint were President Bill Clinton’s 1993 Executive Order No. 12866⁶³ and President Ronald Reagan’s Executive Order No. 12291, which formalized central regulatory review at OMB.⁶⁴ Clinton’s was a step back from the heavier oversight of the Reagan order in that it sought “to reaffirm the primacy of Federal agencies in the regulatory decision-making process.”⁶⁵

The United States existed for many decades before a president issued more than two dozen executive orders—that was President Franklin Pierce, who served during 1853–1857.⁶⁶ Orders numbered in the single digits or teens until President Lincoln and the subsequent reconstruction period. The Ulysses S. Grant administration issued 217, then a record.⁶⁷ From the 20th century onward, orders topped 100 for each president and sometimes numbered in the thousands. President Franklin D. Roosevelt issued 3,467 numbered executive orders. Table 4 provides a look at executive order counts by administration since the nation’s founding and presents a total approximate count of 15,236. (In an expansion of Figure 15, executive orders since 1995 by calendar year appear in Appendix: Historical Tables, Part I.)

We live in an era in which the government—without actually passing a law—increasingly dictates parameters of various economic sectors, including health care, retirement, education, energy production, finance, land and resource management, funding of science and research, and manufacturing. Executive actions and decrees issued in a limited government context have different implications than do those issued in an era of activist government, rendering some of what transpires today without precedent. For example, the Internal Revenue Service granted numerous waivers of the Patient Protection and Affordable Care Act’s employer mandate without regard to the statute’s language.⁶⁸

Table 4. Executive Orders by Administration

| | Sequence Number | | Total Number of Executive Orders |
|------------------------|-----------------|-----------|----------------------------------|
| | Ending | Beginning | |
| George Washington | n/a | | 8 |
| John Adams | n/a | | 1 |
| Thomas Jefferson | n/a | | 4 |
| James Madison | n/a | | 1 |
| James Monroe | n/a | | 1 |
| John Quincy Adams | n/a | | 3 |
| Andrew Jackson | n/a | | 12 |
| Martin van Buren | n/a | | 10 |
| William Henry Harrison | n/a | | 0 |
| John Tyler | n/a | | 17 |
| James K. Polk | n/a | | 18 |
| Zachary Taylor | n/a | | 5 |
| Millard Fillmore | n/a | | 12 |
| Franklin Pierce | n/a | | 35 |
| James Buchanan | n/a | | 16 |
| Abraham Lincoln | n/a | | 48 |
| Andrew Johnson | n/a | | 79 |
| Ulysses S. Grant | n/a | | 217 |
| Rutherford B. Hayes | n/a | | 92 |
| James Garfield | n/a | | 6 |
| Chester Arthur | n/a | | 96 |
| Grover Cleveland - I | n/a | | 113 |
| Benjamin Harrison | n/a | | 143 |
| Grover Cleveland - II | n/a | | 140 |
| William McKinley | n/a | | 185 |
| Theodore Roosevelt | | | 1,081 |
| William Howard Taft | | | 724 |
| Woodrow Wilson | | | 1,803 |
| Warren G. Harding | | | 522 |
| Calvin Coolidge | | | 1,203 |
| Herbert Hoover | 6,070 | 5,075 | 996 |
| Franklin D. Roosevelt | 9,537 | 6,071 | 3,467 |
| Harry S. Truman | 10,431 | 9,538 | 894 |
| Dwight D. Eisenhower | 10,913 | 10,432 | 482 |
| John F. Kennedy | 11,127 | 10,914 | 214 |
| Lyndon B. Johnson | 11,451 | 11,128 | 324 |
| Richard Nixon | 11,797 | 11,452 | 346 |

(continued)

Table 4. Executive Orders by Administration (*continued*)

| | Sequence Number | | Total Number of Executive Orders |
|---|-----------------|-----------|----------------------------------|
| | Ending | Beginning | |
| Gerald R. Ford | 11,966 | 11,798 | 169 |
| Jimmy Carter | 12,286 | 11,967 | 320 |
| Ronald Reagan | 12,667 | 12,287 | 381 |
| George H.W. Bush | 12,833 | 12,668 | 166 |
| William J. Clinton | 13,197 | 12,834 | 364 |
| George W. Bush | 13,488 | 13,198 | 291 |
| Barack Obama | 13,715 | 13,489 | 227 |
| Total Number of Executive Orders | | | 15,236 |

Source: W. Crews's tabulations; Executive Orders Disposition Tables Index, Office of the Federal Register, National Archives, <http://www.archives.gov/federal-register/executive-orders/disposition.html>; "Executive Orders," The American Presidency Project, ed. John T. Woolley and Gerhard Peters (Santa Barbara, CA: 1999–2014.), <http://www.presidency.ucsb.edu/data/orders.php>.

Note: n/a = not applicable or not available

Counting rules and regulations, executive orders, memoranda, and other regulatory guidance gets us only so far. These actions need more scrutiny and oversight, because they

have become powerful means of working around the constitutional system of legislation made by an elected body.⁶⁹

24,000 Public Notices Annually

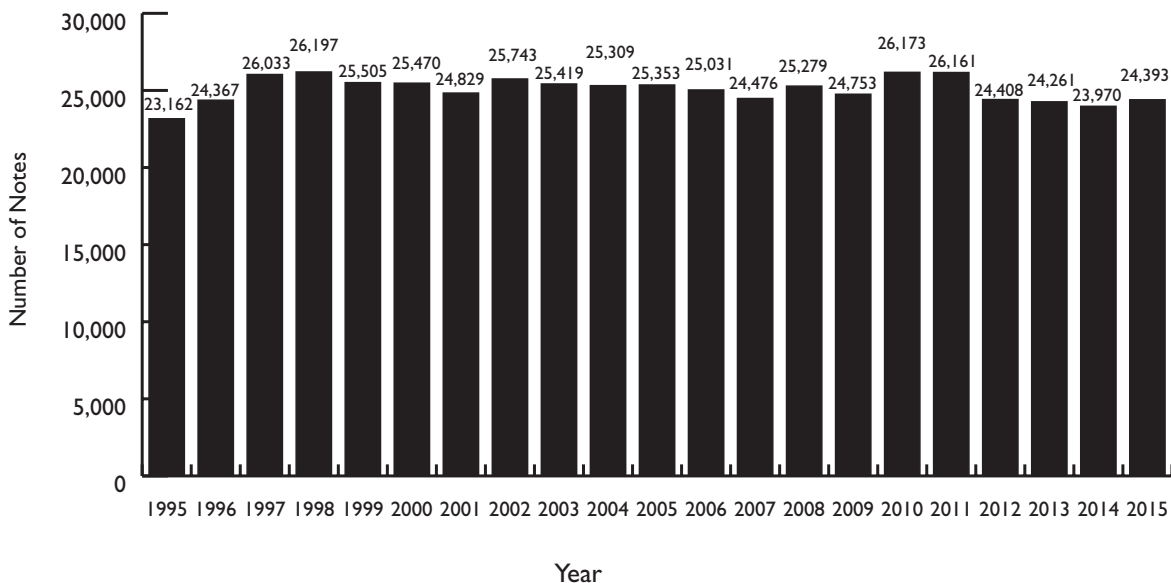
Public notices in the *Federal Register* include non-rulemaking documents such as meeting and hearing notices and agency-related organizational material.⁷⁰ But there are tens of thousands of yearly public notices, including memoranda, bulletins, guidance documents, alerts, and other proclamations, many of which could be important to the public. Figure 16 shows the number of notices annually. Notices stood at 24,393 in 2015, and have dipped below 24,000 only once since 1996 (in 2014). There have been 526,292 public notices since 1995.

During the 2015 calendar year, 35 notices received OMB review (see Figure 17 in the next section), and some of those were

deemed to have an “economically significant” impact. A history of the number of notices reviewed annually appears in Appendix: Historical Tables, Part D.

Policy makers should pay more attention to such documents because of the modern executive inclination to advance policy by memorandum, notice, bulletin, and even blog post. Most notice-and-comment regulations already lack cost-benefit or other analysis. Increased unilateral executive action will render costs of regulation even less transparent as the federal government expands and increasingly interposes itself in commerce and other realms of private activity.

Figure 16. Thousands of “Public Notices” in the *Federal Register*, 1995–2015



Source: National Archives and Records Administration, Office of the Federal Register.

Analysis of the Regulatory Plan and Unified Agenda of Federal Regulations

What little regulatory disclosure does exist has suffered under the Obama administration. “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions” (the Agenda) outlining agency priorities normally appears in the *Federal Register* each fall and, minus the Regulatory Plan component, each spring. However, these days it seems even this limited disclosure has become too much to ask of a government that avoids preparing a comprehensive and balanced fiscal budget for itself, let alone a regulatory one. Election campaign considerations can cause agencies to hold back on rules or report fewer of them. In addition, OMB now routinely reports on fewer “long-term” planned rules—including disclosure of rules affecting small business—an omission that misleadingly pushes the overall Agenda count downward. The overall number of rules appearing in the Agenda has decreased of late, yet that does not mean regulatory burdens have decreased. In any event, counts for the costlier subset of rules are up.

The Agenda’s rules primarily affect the private sector, but many also affect state and local governments and the federal government itself. In normal circumstances, the Agenda gives researchers a sense of the flow of the regulatory pipeline. It details rules recently completed, plus those anticipated or prioritized within the upcoming 12 months by federal departments, agencies, and commissions (59 in the newest edition). As a cross-sectional snapshot of rules moving through the regulatory pipeline, the Agenda compiles agency-reported federal regulatory actions at several stages:

- Prerule actions
- Proposed and final rules

- Actions completed during the previous few months
- Anticipated longer-term rulemaking beyond a 12-month horizon

Therefore, the rules contained in the Agenda often carry over at the same stage from one year to the next, or they may reappear in subsequent editions at different stages.

However, agencies are not required to limit their regulatory activity to what they publish in the Agenda. As the *Federal Register* has noted:

The Regulatory Plan and the Unified Agenda do not create a legal obligation on agencies to adhere to schedules in this publication or to confine their regulatory activities to those regulations that appear within it.⁷¹

The appearance of the Agenda has become less reliable. The fall 2011 edition did not appear until January 20, 2012.⁷² The spring 2012 edition did not appear at all, and a solitary volume with no seasonal designation finally appeared the Friday before the Christmas 2012 holiday with no clarity on how its methodology might have been affected by the delay.

In spring 2013, a document titled “Spring 2013 Update to the Unified Agenda of Federal Regulatory and Deregulatory Actions” appeared instead of the normal Unified Agenda the day before July 4. Then in late 2013, echoing 2012’s pre-Santa version, the fall edition appeared the day before Thanksgiving (coinciding with a delay of regula-

tory implementation of the Affordable Care Act’s employer mandate, in defiance of that statute’s language). In both 2014 and 2015, the fall edition again appeared the weekend before Thanksgiving.

Whereas rules finalized in the *Federal Register* remain above 3,400 annually, the rules now being reported in the Unified Agenda pipeline are fewer, owing perhaps to the administration’s own formal and informal rule-making delays and reporting irregularities and new guidance memoranda affecting the Agenda’s production.

In 2012, spring and fall guidelines from OMB’s then-director of the Office of Information and Regulatory Affairs (OIRA), Cass Sunstein, altered directives to agencies regarding their Agenda reporting:

In recent years, a large number of Unified Agenda entries have been for regulatory actions for which no real activity is expected within the coming year. Many of these entries are listed as “Long-Term.” Please consider terminating the listing of such entries until some action is likely to occur. ...

Many entries are listed with projected dates that have simply been moved back year after year, with no action taken. Unless your agency realistically intends to take action in the next 12 months, you can remove these items from the Agenda.⁷³

Newly appointed OIRA Administrator Howard Shelanski issued a similar memorandum on the Unified Agenda on August 7, 2013—“please consider removing” became the more direct “please remove.”⁷⁴ As Susan Dudley of the George Washington University Regulatory Studies Center noted, the changes introduced in the Sunstein and Shelanski memoranda might be beneficial, but “to the extent that reclassifying actions reduces the public’s ability to understand upcoming regulatory activity, the revisions could reduce transparency and accountability.”⁷⁵

Upon release of the fall 2013 edition, regulatory expert Leland Beck noted the Agenda’s fluid nature, stating: “The [A]genda provides only a semi-filtered view of each agency’s intentions and must be considered within its limitations.” Furthermore, it “reflect[s] what the agency wants to make public, not necessarily all that they are actually considering, and some highly controversial issues may be withheld.”⁷⁶

Politics and elections can play a role in reporting and rule delays, and presidential election year 2012 appeared to be an extreme example. One *Washington Post* headline proclaimed, “White House Delayed Enacting Rules Ahead of 2012 Election to Avoid Controversy.” The *Post* summed up the matter as follows:

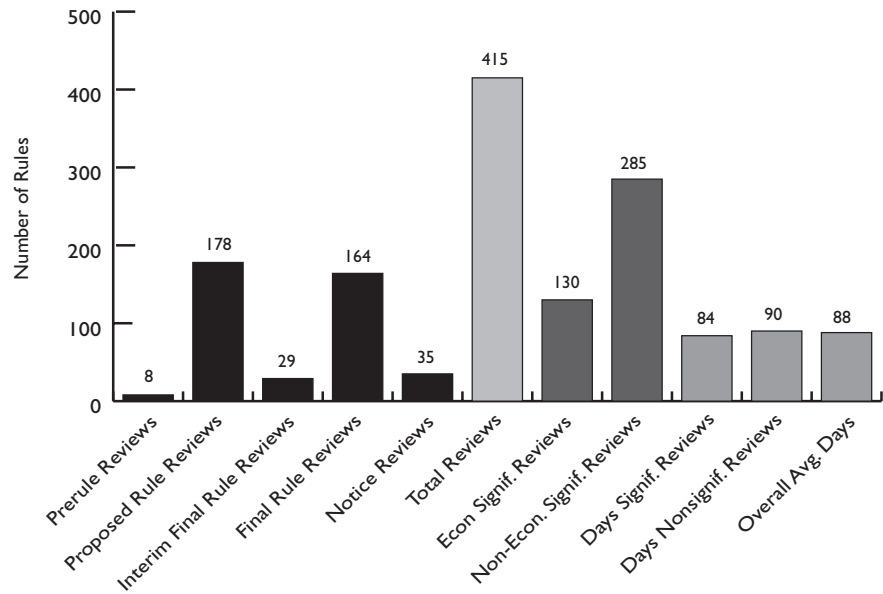
The number and scope of delays under Obama went well beyond those of his predecessors, who helped shape rules but did not have the same formalized controls, said current and former officials who spoke on the condition of anonymity because of the sensitivity of the topic.⁷⁷

A December 2013 report by the Administrative Conference of the United States about the growing length of time it took to complete rule reviews at OMB reinforced *The Washington Post* article’s conclusion.⁷⁸ However, the 2014 midterm elections did not appear to have as significant an impact on rule volume as the 2012 presidential cycle.

Figure 17 presents the number of Executive Order No. 12866 rule reviews carried out at OMB, by stage and by economic significance, for calendar year 2015. It also shows the number of days OMB took to review rules in 2015. The time of review improved over the past year, but a review still can take several months rather than the once-common two months or less. The Office of Information and Regulatory Affairs, however, does not review independent agencies’ rules. Appendix: Historical

It seems even limited disclosure has become too much to ask of a government that avoids preparing a comprehensive and balanced fiscal budget for itself, let alone a regulatory one.

Figure 17. Number of OMB Rule Reviews under Executive Order 12866 and Average Days under Review, 2015



Source: Author search on RegInfo.gov, “Review Counts” database search engine under Regulatory Review heading.

Tables, Part D, presents a detailed breakdown of numbers of rules reviewed by type and by average days for review from 1991 through 2015. During the pre-Executive Order No. 12866 years depicted there, 1991–1993, review times were shorter, although numbers of rules were considerably higher.

Information about numbers of reviews and how long they take is well worth reporting for clarity and perspective. But whether reviewing a rule takes 120 days or 30 days may not make a great deal of difference in a regime where OMB reviews only a few hundred of several thousand annual rules and where cost-benefit analysis rarely occurs in the first place.

Some healthy skepticism may be justified regarding the numbers in the most recent Agenda, given the lack of both a clarification of the numbers’ legitimacy and recent rule delay by the administration. But like the *Federal Register*, they are what we have, and reporting could be improved.

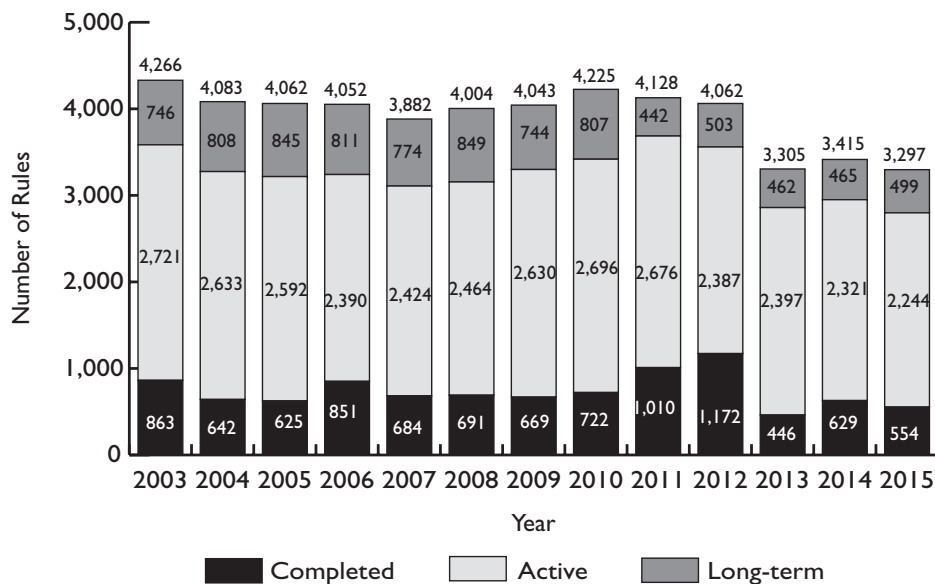
3,297 Rules Acknowledged in the Unified Agenda Pipeline

The fall 2015 Unified Agenda finds 59 federal agencies, departments, and commissions recognizing 3,297 regulations in the active (prerule, proposed, and final), just-completed, and long-term stages.⁷⁹ Many of the rules are not new to the Agenda and have been in the pipeline for quite some time.

As Figure 18 shows, the overall Agenda pipeline had topped 4,000 rules until 2012, except for the year 2007. (The all-time-high count for rules in the year-end Agenda of 5,119 occurred back in 1994.) The 2013 drop of 18.6 percent from 4,062 rules in 2012 in part reflects the change in directive noted earlier. (For a history of the numbers of rules in the spring and fall Unified Agenda editions since 1983, see Appendix: Historical Tables, Part E.)⁸⁰

The *Federal Register* consistently shows more than 3,400 rules finalized annually, but

Figure 18. Total Agency Rules in the Fall Unified Agenda Pipeline, 2003–2015



Source: Compiled by the author from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, Fall edition, consecutive years, and database at <http://reginfo.gov>.

Note: “Active” rules consist of rules at the pre-rule, proposed, and final stages. Pre-2004 online database totals do not match the printed, paper editions of that era, so the author has elected to retain the data as compiled in those earlier print editions.

with dips in the past two years. As Figure 18 shows, since 2003, “Active” rule counts consistently remained above 2,300, until that number dropped this past year. This category stands at 2,244 for 2015. Although the Unified Agenda pipeline shows very large recent declines, whether that will translate into fewer actual regulations finalized in the *Federal Register* remains to be seen.

Note that although rules in the “Completed” category in fall Agendas (spring Agendas are not shown in Figure 18) had been rising steadily and rapidly under Obama—from 669 in 2009 to 1,172 in 2012, a 75.2 percent increase—they too dropped precipitously in 2013. (Completed rules are “actions or reviews the agency has completed or withdrawn since publishing its last agenda.”) This decline appears to reflect the administration’s rule delays noted in the previous section. Although this category rose to 629 in 2014, it dipped to 554 in 2015. Despite the drop in Obama’s “Completed” rules since

2012, the average of his seven years of fall Agendas, 745, exceeds the average of 726 for George W. Bush’s final six years (see bottom one-third of Figure 18).

With respect to the “Long-Term” category (top of Figure 18), the Obama administration discloses considerably fewer planned regulations than did its immediate predecessor. Announced long-term rules in the pipeline shown in Figure 18 dropped precipitously from 807 to 442 between 2010 and 2011. In the new 2015 Agenda, these rules stand at 499. Deemphasizing “long-term” reporting does not aid transparency because that is where much of the executive action will likely occur.

The total pipeline count of 3,297 rules depicted in Figure 18 is broken out in Table 5 by agency, commission, or issuing department. The table shows numbers of rules at the active, completed, and long-term stages by department or agency. For the numbers

The Unified Agenda gives the impression that regulatory burdens are declining, but that may reflect a pullback in disclosure and transparency.

of rules by department and agency from previous year-end editions of the Agenda since 1999, see Appendix: Historical Tables, Part F.

Overall, the Unified Agenda gives the impression that regulatory burdens are declining, but that may reflect a pullback in disclosure and transparency such as the administration’s alleged delay of the pace of rules in 2012. That the Federal Communications Commission, Federal Energy Regulatory Commission, and National Labor Relations Board own up to no “active” actions is questionable, as is the decline in active entries from the EPA. Time will tell as rules make their way from the Agenda to the *Federal Register*. In addition, more rulemaking may be shifting toward the more infor-

mal guidance and memoranda, avoiding the formalities of notice-and-comment required in the Administrative Procedure Act.⁸¹

Top Five Executive Departments and Agencies

Every year, a relative handful of executive agencies accounts for a large number of the rules in the pipeline. The five departments and agencies listed in Table 6—the Departments of Commerce, Health and Human Services, the Interior, Transportation, and the Treasury—were the most active rule makers. These top five, with 1,348 rules among them, account for 41 percent of the 3,297 rules in the Agenda pipeline. For the third time, the

Table 5. Unified Agenda Entries by Department and Agency, (Fall 2015)

| | Total Rules | Unified Agenda | | | Regulatory Plan Component | |
|--|-------------|----------------|------------|------------|---------------------------|-----------|
| | | Active | Completed | Long Term | Active | Long Term |
| All Agencies | 3297 | 2244 | 554 | 499 | 139 | 2 |
| Dept. of Agriculture | 155 | 123 | 25 | 7 | 14 | 1 |
| Dept. of Commerce | 246 | 142 | 92 | 12 | | |
| Dept. of Defense | 117 | 86 | 30 | 1 | 7 | |
| Dept. of Education | 25 | 16 | 6 | 3 | 2 | |
| Dept. of Energy | 107 | 86 | 14 | 7 | 7 | |
| Dept. of Health and Human Services | 213 | 153 | 33 | 27 | 18 | |
| Dept. of Homeland Security | 130 | 75 | 8 | 47 | 19 | 1 |
| Dept. of Housing and Urban Development | 52 | 40 | 9 | 3 | 2 | |
| Dept. of the Interior | 288 | 224 | 44 | 20 | | |
| Dept. of Justice | 100 | 76 | 8 | 16 | 7 | |
| Dept. of Labor | 97 | 71 | 10 | 16 | 9 | |
| Dept. of State | 44 | 26 | 12 | 6 | | |
| Dept. of Transportation | 210 | 152 | 30 | 28 | 18 | |
| Dept. of Treasury | 391 | 331 | 32 | 28 | | |
| Dept. of Veterans Affairs | 80 | 55 | 18 | 7 | | |
| Environmental Protection Agency | 188 | 115 | 40 | 33 | 16 | |
| Agency for International Development | 8 | 4 | 3 | 1 | | |

| | Total Rules | Unified Agenda | | | Regulatory Plan Component | |
|--|-------------|----------------|-----------|-----------|---------------------------|-----------|
| | | Active | Completed | Long Term | Active | Long Term |
| Architectural and Transportation Barriers Compliance Board | 6 | 4 | | 2 | | |
| Commission on Civil Rights | 1 | 1 | | | | |
| CPBSD* | 2 | 2 | | | | |
| Commodity Futures Trading Commission | 34 | 29 | 4 | 1 | | |
| Consumer Financial Protection Bureau | 23 | 13 | 6 | 4 | | |
| Consumer Product Safety Commission | 45 | 32 | 4 | 9 | | |
| Corporation for National and Community Service | 7 | 2 | 1 | 4 | | |
| Court Services/Offender Supervision, D.C. | 4 | 4 | | | | |
| Federal Acquisition Regulation | 42 | 34 | 8 | | | |
| Equal Employment Opportunity Commission | 8 | 8 | | | 4 | |
| Farm Credit Administration | 27 | 23 | 3 | 1 | | |
| Federal Communications Commission | 133 | | 6 | 127 | | |
| Federal Deposit Insurance Corporation | 25 | 18 | 4 | 3 | | |
| Federal Energy Regulatory Commission | 25 | | 9 | 16 | | |
| Federal Housing Finance Agency | 20 | 14 | 4 | 2 | | |
| Federal Maritime Commission | 8 | 6 | 2 | | | |
| Federal Reserve System | 18 | 11 | 7 | | | |
| Federal Trade Commission | 20 | 15 | 3 | 2 | | |
| General Services Administration | 21 | 15 | 6 | | | |
| Gulf Coast Ecosystem Restoration Council | 4 | 2 | 1 | 1 | | |
| Institute of Museum and Library Services | 1 | | 1 | | | |
| National Aeronautics and Space Administration | 14 | 7 | 7 | | | |
| National Archives and Records Administration | 8 | 8 | | | | |
| National Council on Disability | 1 | | 1 | | | |
| National Credit Union Administration | 26 | 14 | 12 | | | |
| National Endowment for the Arts | 7 | 5 | 2 | | | |
| National Endowment for the Humanities | 4 | 3 | 1 | | | |
| National Indian Gaming Commission | 9 | 2 | | 7 | | |
| National Science Foundation | 1 | 1 | | | | |
| National Transportation Safety Board | 15 | 12 | | 3 | | |
| Nuclear Regulatory Commission | 65 | 31 | 11 | 23 | | |
| Office of Government Ethics | 5 | 5 | | | | |
| Office of Management and Budget | 4 | 3 | 1 | | | |
| Office of National Drug Control Policy | 1 | | 1 | | | |

* Committee for Purchase from People Who Are Blind or Severely Disabled.

(continued)

Table 5. Unified Agenda Entries by Department and Agency,
(Fall 2015) (continued)

| | Total Rules | Unified Agenda | | | Regulatory Plan Component | |
|--------------------------------------|--------------|----------------|------------|------------|---------------------------|-----------|
| | | Active | Completed | Long Term | Active | Long Term |
| Office of Personnel Management | 40 | 25 | 15 | | | |
| Peace Corps | 3 | 3 | | | | |
| Pension Benefit Guaranty Corporation | 12 | 7 | 2 | 3 | | |
| Railroad Retirement Board | 1 | | | 1 | | |
| Securities and Exchange Commission | 69 | 62 | 4 | 3 | | |
| Small Business Administration | 33 | 26 | 4 | 3 | 5 | |
| Social Security Administration | 42 | 22 | 9 | 11 | 11 | |
| Surface Transportation Board | 12 | | 1 | 11 | | |
| TOTAL | 3,297 | 2,244 | 554 | 499 | 139 | 2 |

Source: Compiled from "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions," *Federal Register*, and from the online edition at <http://www.reginfo.gov>.

Although many of the things regulations purport to do are worthy and needed pursuits, that does mean that federal bureaucracy is the best means to achieve them.

Environmental Protection Agency does not appear in the top five; it is now sixth. Including the EPA's 188 rules would bring the total to 1,536 rules, or 47 percent.

Table 6 also depicts the top five independent agencies in the Agenda pipeline by rule count. They are the Federal Communications Commission, Securities and Exchange Commission, Nuclear Regulatory Commission, and Consumer Product Safety Commission, with the Social Security Administration and federal acquisition regulations tying at fifth. Their total of 396 rules accounts for 12 percent of the 3,297 rules in the Agenda. Combined, the top executive and independent agency components come to 53 percent of the total.

Notable Regulations by Agency

Among the thousands of rules in the pipeline, notable recent and pending regulations include the Department of Energy's drive to regulate energy-using devices, including dehumidifiers, dishwashers, vending machines, fans, hearth products, battery

backups, ice makers, and more; the Department of Health and Human Services' regulation of labels on pet food, requirements for calorie count postings for vending machines and restaurants, portion size regulations for products such as breath mints, regulation of home health providers, and new rules for e-cigarettes; the Department of Agriculture's rules for school lunch contents; and the EPA's campaign against ordinary wood fires and fossil fuel-based energy.

In recent Agenda editions, federal agencies have noted the initiatives listed below, among others, that are pending or recently completed. The full list of the 218 economically significant rules in the 2015 Agenda pipeline is available in Appendix: Historical Tables, Part G.

Of course, many rules are significant in fact but do not get labeled as such by the federal government, including the Federal Communications Commission's net neutrality rules and proposals to require that quiet electric vehicles make noise. Although many of the things regulations purport to do are wor-

Table 6. Top Rule-Producing Executive and Independent Agencies
(From year-end 2015 Unified Agenda, total of active, completed, and long-term rules)

| Executive Agency | Number of Rules |
|--|------------------------|
| 1. Department of the Treasury | 391 |
| 2. Department of the Interior | 288 |
| 3. Department of Commerce | 246 |
| 4. Department of Health and Human Services | 213 |
| 5. Department of Transportation | 210 |
| TOTAL | 1,348 |
| % of Total Agenda Pipeline of 3,297 | 41 |

Note: The Environmental Protection Agency, formerly always in the top five, is sixth, with 188 rules in the pipeline.

| Independent Agency | Number of Rules |
|--|------------------------|
| 1. Federal Communications Commission | 133 |
| 2. Securities and Exchange Commission | 69 |
| 3. Nuclear Regulatory Commission | 65 |
| 4. Consumer Product Safety Commission | 45 |
| 5. (tie) Social Security Administration | 42 |
| 5. (tie) Federal Acquisition Regulation | 42 |
| TOTAL | 396 |
| % of Total Agenda Pipeline of 3,297 | 12 |

| | |
|---|--------------|
| Top 5 Executives plus Independents | 1,744 |
| % of Total Agenda Pipeline | 53 |

Source: Compiled by the author from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, Fall edition, and database at <http://www.reginfo.gov>.

Note: “Active” rules consist of rules at the prerule, proposed, and final stages.

thy and needed pursuits, that does mean that federal bureaucracy is the best means to achieve them, compared with insurance, liability and other private-sector options, or state and local oversight.

Department of Agriculture

- Mandatory country-of-origin labeling of beef, fish, lamb, peanuts, and pork
- National school lunch and school breakfast programs: nutrition standards for all foods sold in school and certification of

compliance with meal requirements for the National School Lunch Program (as required by the Healthy, Hunger-Free Kids Act of 2010)

- Rural Energy for America Program
- Rural broadband access loans and loan guarantees
- Mandatory inspection of catfish and catfish products
- Multifamily Housing Reinvention
- Inspection regulations for eggs and egg products
- Performance standards for ready-to-eat processed meat and poultry products

- “Modernization” of poultry slaughter inspection
- Regulations concerning importation of unmanufactured wood articles (solid-wood packing material)
- Bovine spongiform encephalopathy: minimal-risk regions and importation of commodities
- Nutrition labeling of single-ingredient and ground or chopped meat and poultry products

Department of Energy

- Energy-efficiency and conservation standards for the following: manufactured housing; automatic commercial ice makers; wine chillers; battery chargers and power supplies; televisions; residential dehumidifiers; computer servers and computers; walk-in coolers and freezers; residential furnace fans, boilers, and mobile home furnaces; electric distribution transformers; commercial refrigeration units and heat pumps; clothes washers and dryers; room air conditioners; portable air conditioners; dishwashers; pool heaters and direct heating equipment; fluorescent and incandescent lamps; metal halide lamp fixtures; small electric motors; refrigerated bottled or canned beverage vending machines; and residential central air conditioners and heat pumps
- Incentive program for manufacturing advanced technology vehicles

Department of Commerce

- Right whale ship strike reduction
- Taking of marine mammals incidental to conducting geological and geophysical exploration of mineral and energy resources on the outer continental shelf

Department of Education

- “Gainful Employment” rule to prepare students for employment in a recognized occupation

- Income-driven “pay as you earn” program
- Race to the Top

Department of Health and Human Services

- Substances prohibited from use in animal food or feed; registration of food and animal feed facilities
- Updated standards for labeling of pet food
- Over-the-counter drug review of topical antimicrobial drug products
- Revision of the Nutrition Facts and Supplement Facts labels: serving sizes of foods that can reasonably be consumed in one eating occasion, dual-column labeling, and modification of the reference amounts customarily consumed
- Produce safety regulation
- Sanitary transportation of human and animal food
- Focused mitigation strategies to protect food against intentional adulteration
- Federal policy for protection of human subjects
- Patient Protection and Affordable Care Act; standards related to essential health benefits, actuarial value, and accreditation; and Medicaid, exchanges, and children’s health insurance programs: eligibility, appeals, and other provisions
- Price regulation: prospective payment system rates for home health, acute, and long-term hospital care; skilled nursing facilities; inpatient rehabilitation facilities; and so on
- Nutrition labeling for food sold in vending machines and for restaurant menu items
- Food labeling: trans fatty acids in nutrition labeling, nutrient content claims, and health claims
- “Tobacco products” subject to the Federal Food, Drug, and Cosmetic Act, as amended by the Family Smoking Prevention and Tobacco Control Act
- Prevention of *Salmonella enteritidis* in shell eggs

- Good manufacturing practice in manufacturing, packing, or holding dietary ingredients and dietary supplements
- Good manufacturing practice regulations for finished pharmaceuticals
- Prior authorization process for certain durable medical equipment, prosthetic, orthotics, and supplies
- Rule on comprehensive care for joint replacement
- Criteria for determining whether a drug is considered usually self-administered
- Requirements for long-term care facilities: hospice services
- Bar-code label requirements for human drug products and blood
- Pediatric dosing for various over-the-counter cough, cold, and allergy products
- Fire safety and sprinkler requirements for long-term care facilities
- Blowout prevention for offshore oil and gas operations

Department of Justice

- Nondiscrimination on the basis of disability: accessibility of Web information and services of state and local governments
- National standards to prevent, detect, and respond to prison rape
- Retail sales of scheduled listed chemical products

Department of Labor

- Conflict of interest rule in investment advice
- Group health plans and health insurance issuers relating to coverage of preventive services under the Patient Protection and Affordable Care Act
- Walking working surfaces and personal fall protection systems (slips, trips, and fall prevention)
- Establishing a minimum wage for contractors (Executive Order No. 13658)
- Establishing paid sick leave for contractors (Executive Order No. 13706)
- Application of the Fair Labor Standards Act to domestic service
- Improved fee disclosure for pension plans
- Occupational exposure to crystalline silica, tuberculosis, and beryllium
- Rules regarding confined spaces in construction: preventing suffocation and explosions
- Implementation of the health care access, portability, and renewability provisions of the Health Insurance Portability and Accountability Act of 1996
- Hearing conservation program for construction workers
- Reinforced concrete in construction
- Preventing backover injuries and fatalities
- Cranes and derricks
- Health care standards for mothers and newborns

Department of Homeland Security

- Computer Assisted Passenger Prescreening System, providing government access to passenger reservation information
- Passenger screening using advanced body imaging technology
- Importer security filing and additional carrier requirements
- Air cargo screening and inspection of towing vessels
- Minimum standards for driver's licenses and ID cards acceptable to federal agencies
- United States Visitor and Immigrant Status Indicator Technology program, which is authorized to collect biometric data from travelers and to expand to the 50 most highly trafficked land border ports

Department of the Interior

- Revised requirements for well plugging and platform decommissioning
- Increased safety measures for oil and gas operations on the Arctic outer continental shelf

- Protective equipment in electric power transmission and distribution
- Refuge alternatives for underground coal mines
- Combustible dust
- Injury and illness prevention program
- Monitoring systems for improved tire safety and tire pressure
- Hazardous materials: transportation of lithium batteries

Environmental Protection Agency

Department of Transportation

- Passenger car and light truck Corporate Average Fuel Economy standards (2017 model years and beyond)
- Fuel-efficiency standards for medium- and heavy-duty vehicles and work trucks
- Sound for hybrid and electric vehicles
- Heavy-vehicle speed limiters and electronic stability control systems for heavy vehicles
- Requirement for installation of seat belts on motor coaches
- Carrier safety fitness determination
- Hours of service, rest, and sleep for truck drivers; electronic logging devices and hours-of-service supporting documents
- Flight crew duty limitations and rest requirements
- Standard for rearview mirrors
- Commercial Driver's License Drug and Alcohol Clearinghouse
- Automotive regulations for car lighting, door retention, brake hoses, daytime running-light glare, and side-impact protection
- Minimum training requirements for entry-level commercial motor vehicle operators and for operators and training instructors of multiple trailer combination trucks
- Rear impact guards and other safety strategies for single-unit trucks
- Amendments for positive train control systems
- Aging aircraft safety
- Upgrade of head restraints in vehicles
- Rear center lap and shoulder belt requirement
- Rear seat belt reminder system
- Establishment of side-impact performance requirements for child restraint systems
- Registration and training for operators of propane tank filling equipment
- Control of air pollution from motor vehicles: Tier 3 motor vehicle emission and fuel standards
- Greenhouse gas emissions and fuel-efficiency standards for medium- and heavy-duty engines and vehicles
- Standards of Performance for New Residential Wood Heaters
- Oil and natural gas sector: emission standards for new and modified sources
- Model trading rules for greenhouse gas emissions from electric utility generating places constructed before January 7, 2014
- Financial responsibility requirements under CERCLA for certain hard-rock mining industry facilities
- Clean air visibility, mercury, and ozone implementation rules
- Effluent limitations guidelines and standards for the steam electric power generating point source category
- Revision of stormwater regulations to address discharges from developed sites
- Formaldehyde emissions standards for composite wood products
- Review of National Ambient Air Quality Standards for lead, ozone, sulfur dioxide, particulate matter, and nitrogen dioxide
- Revision of underground storage tank regulations: revisions to existing requirements and new requirements for secondary containment and operator training
- Petroleum refineries—new source performance standards
- Rulemakings regarding lead-based paint and the Lead, Renovation, Repair, and Painting Program for public and commercial buildings
- National drinking water regulations covering groundwater and surface water

- National emission standards for hazardous air pollutants from plywood and composite wood products, certain reciprocating internal combustion engines, and auto paints
- Renewable fuel standards
- Standards for cooling water intake structures
- Combined rulemaking for industrial, commercial, and institutional boilers and process heaters
- Standards for management of coal combustion wastes (“coal ash”) from electric power producers
- Control of emissions from non-road spark ignition engines, new locomotives, and new marine diesel engines

Architectural and Transportation Barriers Compliance Board

- Americans with Disabilities Act accessibility guidelines for passenger vessels
- Information and communication technology standards and guidelines

Office of Personnel Management

- Multistate exchanges; implementations for Affordable Care Act provisions

Consumer Product Safety Commission

- Flammability standards for upholstered furniture and bedclothes
- Testing, certification, and labeling of certain consumer products
- Banning of certain backyard playsets
- Product registration cards for products intended for children

Federal Communications Commission

- Net neutrality “open Internet” order
- Broadband for passengers aboard aircraft
- Broadband over power line systems

- Mobile personal satellite communications
- Satellite broadcasting signal carriage requirements
- Rules regarding Internet protocol-enabled devices

Department of Housing and Urban Development

- Revision of manufactured home construction and safety standards regarding location of smoke alarms
- Instituting Smoke-Free Public Housing
- Regulation of Fannie Mae and Freddie Mac on housing goals
- Regulations within the Real Estate Settlement Procedures Act pertaining to mortgages and closing costs
- Refinement of income and rent determinations in public and assisted housing

Department of the Treasury

- Prohibition of funding of unlawful Internet gambling
- Risk-based capital guidelines; capital adequacy guidelines
- Assessment of fees for large bank holding companies and other financial entities supervised by the Federal Reserve to fund the Financial Research Fund (which includes the Financial Stability Oversight Council)
- Registration and Regulation of Swap Dealers and Major Swap Participants; Registration and Regulation of Security-Based Swap Dealers and Major Security-Based Swap Participants
- Troubled Asset Relief Program standards for compensation and corporate governance

Federal Deposit Insurance Corporation

- Standardized Approach for Risk-Weighted Assets

**Table 7. Economically Significant Rules in the Unified Agenda Pipeline
Expected to Have \$100 Million Annual Economic Impact, Year-End 2015**

| | Rules | Active | Completed | Long Term |
|--|--------------|---------------|------------------|------------------|
| All Agencies | 218 | 149 | 36 | 33 |
| Dept. of Agriculture | 13 | 10 | 3 | |
| Dept. of Commerce | 2 | 1 | | 1 |
| Dept. of Defense | 4 | 2 | 2 | |
| Dept. of Education | 3 | 2 | 1 | |
| Dept. of Energy | 21 | 19 | 1 | 1 |
| Dept. of Health and Human Services | 70 | 53 | 12 | 5 |
| Dept. of Homeland Security | 14 | 7 | 2 | 5 |
| Dept. of Housing and Urban Development | 3 | 1 | 1 | 1 |
| Dept. of the Interior | 4 | 3 | 1 | |
| Dept. of Justice | 4 | 3 | | 1 |
| Dept. of Labor | 15 | 10 | | 5 |
| Dept. of Transportation | 17 | 15 | 2 | |
| Dept. of Treasury | 6 | 4 | | 2 |
| Dept. of Veterans' Affairs | 5 | 4 | 1 | |
| Environmental Protection Agency | 16 | 7 | 5 | 4 |
| ACBCB | 2 | 1 | | 1 |
| Federal Acquisition Regulation | 1 | 1 | | |
| Consumer Product Safety Commission | 2 | 2 | | |
| Federal Communications Commission | 8 | | 1 | 7 |
| Federal Deposit Insurance Corporation | 1 | 1 | | |
| National Credit Union Administration | 3 | 1 | 2 | |
| Nuclear Regulatory Commission | 3 | 2 | 1 | |
| Office of Personnel Management | 1 | | 1 | |
| TOTAL | 218 | 149 | 36 | 33 |

Source: Compiled from “The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, and from the online edition at <http://www.reginfo.gov>.

- Margin and capital requirements for covered swap entities

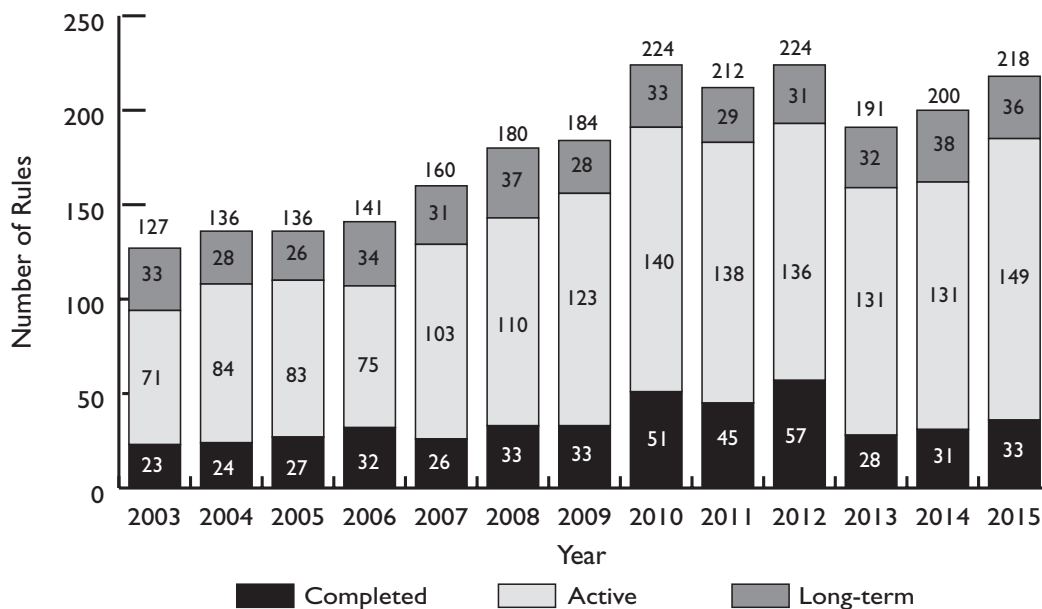
**Federal Energy Regulatory
Commission**

- Critical infrastructure protection reliability standards

**218 “Economically Significant”
Rules in the Agenda**

A subset of the Agenda’s 3,297 rules is classified as “economically significant,” which means that agencies anticipate yearly economic impacts of at least \$100 million. Those impacts generally amount to increased costs, although sometimes an economically significant rule is intended to reduce costs. As Table 7

Figure 19. Economically Significant Rules in the Unified Agenda Pipeline, 2003–2015



Source: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, Fall edition, various years.

shows, 218 economically significant rules (up from 200 last year) from 23 separate departments and agencies appear at the active (pre-rule, proposed rule, and final rule), completed, and long-term stages.

While the overall number of rules in the Agenda has declined, the overall number of “economically significant” rules in the pipeline during the current administration is considerably higher than earlier in the decade. President George W. Bush started an uptick; President Obama continued it, increasing the flow of costly economically significant rules at the completed and active stages. As Figure 19 shows, 2015’s 218 rules are a 9 percent increase over the previous year’s 200, but they are not the highest level of the current administration.

Recent online database editions of the Agenda break economically significant rules into completed, active, and long-term categories. Among the 218 rules, the body of ac-

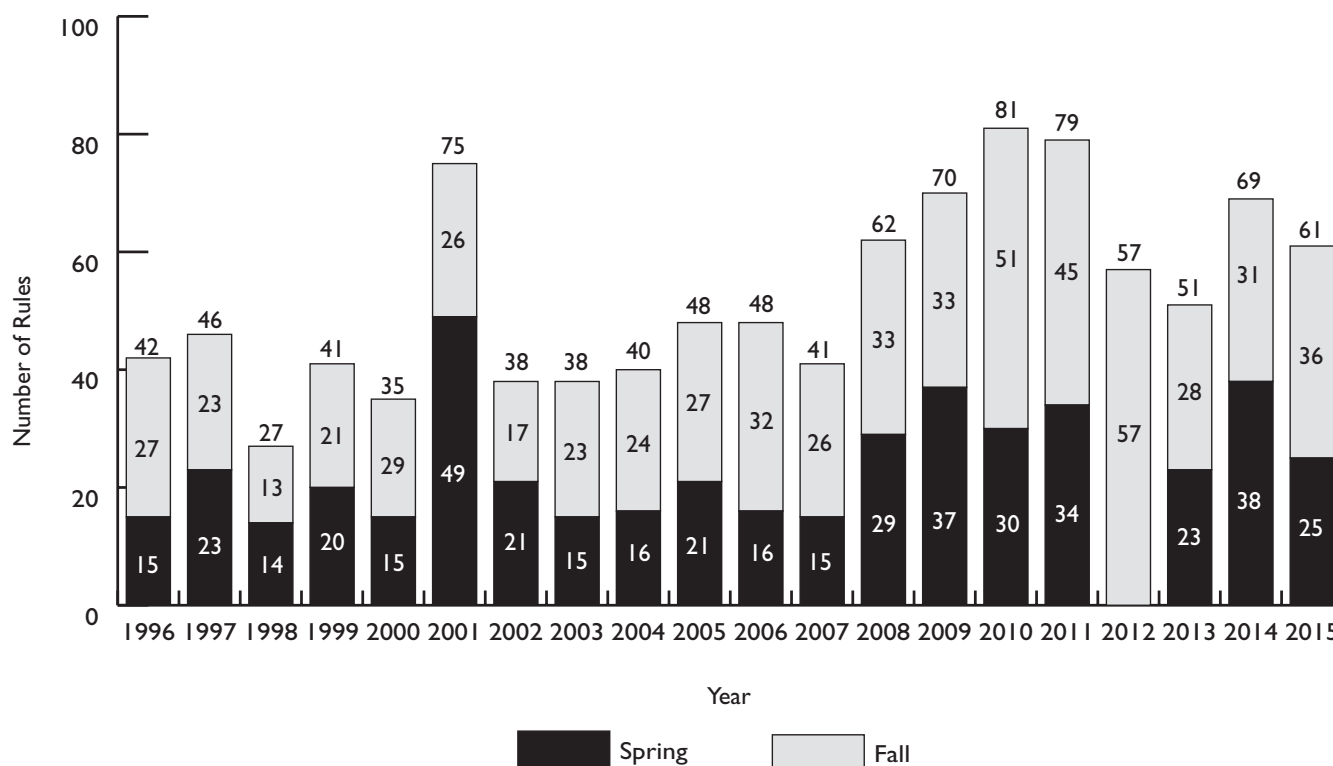
tive economically significant rules in the fall Agenda has topped 130 for all but the first of Obama’s seven years in office. (His seven-year average is 135; the George W. Bush eight-year average was 87).

Obama’s level of completed rules in the fall 2015 Unified Agenda has also been consistently higher than those under Bush, even taking into account the drop since 2012 that appears to conform with the effort to dial back on regulations during that election year. Completed rules in the fall agenda peaked at 57 in 2012 and stand at 36 in 2015. Figure 20 isolates the totals of completed economically significant rules from both the spring and the fall Agendas for closer analysis of yearly trends in this category.

As Figure 20 shows, the annual totals for completed economically significant rules are down substantially from the 2010 peak of 81. They stand at 61 in 2015, which is still higher than in any year of the Bush administration save

The overall number of “economically significant” rules in the pipeline during the current administration is considerably higher than earlier in the decade.

Figure 20. Annual Completed Economically Significant Rules in the Unified Agenda, 1996–2014



Sources: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, Spring and Fall editions, various years.

Paying the most attention to economically significant rules should not tempt policy makers and analysts into ignoring the remaining bulk of rules in the yearly pipeline.

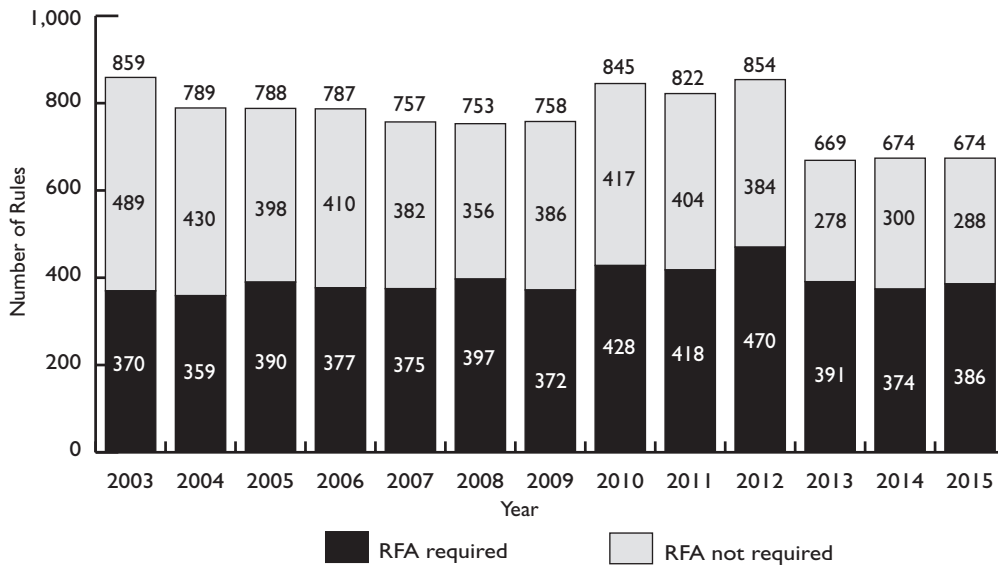
2001 and higher than in the Clinton years shown. In fact, apart from 2001, the level of completed economically significant rules from 2008 forward is notably higher than during the earlier part of the decade and the late 1990s. For completed economically significant rules, the average for Obama’s seven years so far is 67; George W. Bush’s average over his eight years was 49. This takes into account that only one edition of the Unified Agenda appeared in 2012. (Also, some agency “midnight regulations” may have been issued by the Bush administration in 2009 as Obama was taking office, though the Obama administration did issue a freeze to review Bush rules upon assuming office.⁸²)

Each of the 218 economically significant rules scattered among the 3,297 rules in the Agenda is reckoned to have annual impacts of at least \$100 million when implemented. So taken together, those rules might be ex-

pected to impose annual costs of at least \$22 billion (218 rules multiplied by the \$100 million economically significant threshold). Some rules, however, may decrease costs, which would offset this total. Yet, whatever the elusive actual total cost, these costs are cumulative, as they are recurring annual costs to be added to previous years’ costs. And, as noted, agencies are not limited to what they list in the Agenda.

Paying the most attention to economically significant rules should not tempt policy makers and analysts into ignoring the remaining bulk of rules in the yearly pipeline. In 2015, 3,079 federal rules were not designated as officially economically significant by the government (3,297 total rules minus the 218 economically significant ones). But that categorization does not mean that many of those rules are not economically significant in the ordinary sense of such a phrase. A rule may cost up to \$99

Figure 21. Rules Affecting Small Business, 2003–2015



Sources: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, Fall edition, various years.

million and escape the official “economically significant” designation.

Federal Regulations Affecting Small Business

It is often said that there is no such thing as a free lunch, something particularly true for the small businessperson. The “Small Business Anthem,” heard on the *Small Business Advocate* radio program, goes in part:⁸³

Even though you make payroll every Friday,

You don’t have a guaranteed paycheck.

You’re a small business owner, and you eat what you kill.

The Regulatory Flexibility Act (RFA) directs federal agencies to assess their rules’ effects on small businesses.⁸⁴ Figure 21 shows the number of rules requiring annual RFA

analysis, as well as other rules that are anticipated by agencies to affect small business but do not require an annual RFA analysis. The number of rules acknowledged to significantly affect small business has dropped substantially since 2012, probably reflecting reporting changes noted already. At the end of 2015, overall rules affecting small business stood at 674, the same as 2014 but down from 854 in 2012. Before the 2013 drop, the number of rules with small-business impacts during the Obama administration regularly exceeded 800, which had not occurred since 2003.

Of those 674 rules in play with small-business impacts, 386 required an RFA, a drop from the peak of 470 requiring an RFA in 2012 (2012’s 470 rules had been a 12.4 percent increase over 2011 and far above anything seen in the past decade). Another 288 rules were otherwise deemed by agencies to affect small business but not to rise to the level of requiring an RFA. In the past three years, disclosure of this category of rules appears to have diminished.

A rule may cost up to \$99 million and escape the official “economically significant” designation.

Notable here is that, even though the overall reported number of rules affecting small business is down, the average of Obama's seven years so far, 406, exceeds Bush's eight-year average of 377.

Table 8 breaks out the 2015 Agenda's 674 rules affecting small business by depart-

ment, agency, and commission. Five of them—the Federal Communications Commission and the Departments of Agriculture, Commerce, Health and Human Services, and Transportation—account for 402, or 60 percent, of the rules affecting small business.

Table 8. Unified Agenda Entries Affecting Small Business by Department, Agency, and Commission, Year-End 2014

| | Total Rules | Number Affecting Small Business | | | | | | Total | % Affecting Small Business | Top 5 |
|--|-------------|---------------------------------|-----------|-----|------------------|-----------|-----|-------|----------------------------|-------|
| | | RFA Required | | | RFA Not Required | | | | | |
| | | Active | Completed | L-T | Active | Completed | L-T | | | |
| Dept. of Agriculture | 155 | 19 | 5 | | 11 | 3 | 2 | 40 | 25.8 | 40 |
| Dept. of Commerce | 246 | 39 | 29 | 2 | 26 | 11 | 2 | 109 | 44.3 | 109 |
| Dept. of Defense | 117 | 1 | | | 7 | 2 | | 10 | 8.5 | |
| Dept. of Education | 25 | 1 | | | | | | 1 | 4.0 | |
| Dept. of Energy | 107 | 4 | 1 | 1 | 2 | | | 8 | 7.5 | |
| Dept. of Health & Human Services | 213 | 36 | 9 | 2 | 31 | 8 | 7 | 93 | 43.7 | 93 |
| Dept. of Homeland Security | 130 | 9 | | 6 | 3 | | 4 | 22 | 16.9 | |
| Dept. of Housing & Urban Development | 52 | 1 | | | | | | 1 | 1.9 | |
| Dept. of the Interior | 288 | 9 | | | 18 | 5 | 3 | 35 | 12.2 | |
| Dept. of Justice | 100 | 1 | | | 4 | | 4 | 9 | 9.0 | |
| Dept. of Labor | 97 | 9 | 1 | 2 | 8 | 1 | 1 | 22 | 22.7 | |
| Dept. of State | 44 | | | | 8 | 4 | 6 | 18 | 40.9 | |
| Dept. of Transportation | 210 | 20 | 4 | | 19 | 8 | 10 | 61 | 29.0 | 61 |
| Dept. of Treasury | 391 | 1 | | | 22 | | | 23 | 5.9 | |
| Dept. of Veterans' Affairs | 80 | | | | 1 | | | 1 | 1.3 | |
| Environmental Protection Agency | 188 | 5 | 2 | 1 | 3 | 1 | | 12 | 6.4 | |
| Agency for International Development | 8 | | | | | | | 0 | 0.0 | |
| Architectural and Transportation Barriers Compliance Board | 6 | | | 1 | 1 | | | 2 | 33.3 | |
| Commission on Civil Rights | 1 | | | | | | | 0 | 0.0 | |
| CPBSD* | 2 | | | | | | | 0 | 0.0 | |

* Committee for Purchase from People Who Are Blind or Severely Disabled.

| | Total Rules | Number Affecting Small Business | | | | | | | % Affecting Small Business | Top 5 |
|---|-------------|---------------------------------|-----------|-----|------------------|-----------|-----|-------|----------------------------|-------|
| | | RFA Required | | | RFA Not Required | | | Total | | |
| | | Active | Completed | L-T | Active | Completed | L-T | | | |
| Commodity Futures Trading Commission | 34 | | | | | | | 0 | 0.0 | |
| Consumer Financial Protection Bureau | 23 | 3 | 1 | | | | | 4 | 17.4 | |
| Consumer Product Safety Commission | 45 | 2 | | | | | | 2 | 4.4 | |
| Corp. for National and Community Service | 7 | | | | | | | 0 | 0.0 | |
| Court Sevices/Offender Supervision, D.C. | 4 | | | | | | | 0 | 0.0 | |
| Federal Acquisition Regulation | 42 | 16 | 3 | | 1 | 2 | | 22 | 52.4 | |
| Equal Employment Opportunity Comm. | 8 | | | | 2 | | | 2 | 25.0 | |
| Farm Credit Administration | 27 | | | | | | | 0 | 0.0 | |
| Federal Communications Commission | 133 | | 2 | 94 | | | 3 | 99 | 74.4 | 99 |
| Federal Deposit Insurance Corporation | 25 | | | | | | | 0 | 0.0 | |
| Federal Energy Regulatory Commission | 25 | | | | | | | 0 | 0.0 | |
| Federal Housing Finance Agency | 20 | | | | | | | 0 | 0.0 | |
| Federal Maritime Commission | 8 | | | | 1 | | | 1 | 12.5 | |
| Federal Reserve System | 18 | 3 | | | | 1 | | 4 | 22.2 | |
| Federal Trade Commission | 20 | | | | 13 | 3 | 2 | 18 | 90.0 | |
| General Services Administration | 21 | 4 | | | 4 | 2 | | 10 | 47.6 | |
| Gulf Coast Ecosystem Restoration Council | 4 | | | | | | | | 0.0 | |
| Institute of Museum and Library Services | 1 | | | | | | | 0 | 0.0 | |
| National Aeronautics and Space Administration | 14 | | | | | 1 | | 1 | 7.1 | |
| National Archives and Records Administration | 8 | | | | | | | 0 | 0.0 | |
| National Council on Disability | 1 | | | | | | | | 0.0 | |
| National Credit Union Administration | 26 | | | | | | | 0 | 0.0 | |

(continued)

Table 8. Unified Agenda Entries Affecting Small Business by Department, Agency, and Commission, Year-End 2014 (continued)

| | Total Rules | Number Affecting Small Business | | | | | | | % Affecting Small Business | Top 5 |
|--|--------------|---------------------------------|-----------|------------|------------------|-----------|-----------|------------|----------------------------|---------------------|
| | | RFA Required | | | RFA Not Required | | | Total | | |
| | | Active | Completed | L-T | Active | Completed | L-T | | | |
| National Endowment for the Arts | 7 | | | | 2 | | | 2 | 28.6 | |
| National Endowment for the Humanities | 4 | | | | | | | 0 | 0.0 | |
| National Indian Gaming Commission | 9 | | | | | | | 0 | 0.0 | |
| National Science Foundation | 1 | | | | | | | 0 | 0.0 | |
| National Transportation Safety Board | 15 | | | | | | | | 0.0 | |
| Nuclear Regulatory Commission | 65 | 2 | 1 | | | | | 3 | 4.6 | |
| Office of Government Ethics | 5 | | | | | | | 0 | 0.0 | |
| Office of Management and Budget | 4 | | | | | | | 0 | 0.0 | |
| Office of National Drug Control Policy | 1 | | | | | | | | 0.0 | |
| Office of Personnel Management | 40 | | | | | | | 0 | 0.0 | |
| Peace Corps | 3 | | | | | | | 0 | 0.0 | |
| Pension Benefit Guaranty Corporation | 12 | | | | | | | 0 | 0.0 | |
| Railroad Retirement Board | 1 | | | | | | | 0 | 0.0 | |
| Securities and Exchange Commission | 69 | 9 | | 1 | 1 | | | 11 | 15.9 | |
| Small Business Administration | 33 | 19 | 3 | 2 | 2 | 1 | 1 | 28 | 84.8 | |
| Social Security Administration | 42 | | | | | | | 0 | 0.0 | |
| Surface Transportation Board | 12 | | | | | | | 0 | 0.0 | |
| TOTAL | 3,297 | 213 | 61 | 112 | 190 | 53 | 45 | 674 | 20.4 | 402 |
| | | 386 | | | 288 | | | | | 60% of total |

Source: Compiled from "The Regulatory Plan and Unified Agenda of Federal Regulatory and Actions." Note: RFA = regulatory flexibility analysis; L-T = long term.

The overall proportion of total rules affecting small business, as noted in Table 8, stands at 20.4 percent, but the range is quite wide among agencies. (For the numbers of rules affecting small business broken down by department and agency for fall Agendas since 1996, see Appendix: Historical Tables, Part H.)

For further perspective on the small-business regulatory climate, Box 1 depicts a partial list of the basic, non-sector-specific laws and regulations that affect small business.

Federal Regulations Affecting State and Local Governments

Ten Thousand Commandments primarily emphasizes regulations imposed on the private sector. However, state and local officials' realization during the 1990s that their own priorities were being overridden by federal mandates generated demands for reform. As a result, the Unfunded Mandates Act was passed in 1995, requiring lawmakers to pay

Box 1. Federal Workplace Regulation Affecting Growing Businesses

Assumes nonunion, nongovernment contractor, with interstate operations and a basic employee benefits package. Includes general workforce-related regulation only. Omitted are (a) categories such as environmental and consumer product safety regulations and (b) regulations applying to specific types of businesses, such as mining, farming, trucking, or financial firms.

1 EMPLOYEE

- Fair Labor Standards Act (overtime and minimum wage [27 percent minimum wage increase since 1990])
- Social Security matching and deposits
- Medicare, Federal Insurance Contributions Act (FICA)
- Military Selective Service Act (allowing 90 days leave for reservists; rehiring of discharged veterans)
- Equal Pay Act (no sex discrimination in wages)
- Immigration Reform Act (eligibility must be documented)
- Federal Unemployment Tax Act (unemployment compensation)
- Employee Retirement Income Security Act (standards for pension and benefit plans)
- Occupational Safety and Health Act
- Polygraph Protection Act

4 EMPLOYEES: ALL THE ABOVE, PLUS

- Immigration Reform Act (no discrimination with regard to national origin, citizenship, or intention to obtain citizenship)

15 EMPLOYEES: ALL THE ABOVE, PLUS

- Civil Rights Act Title VII (no discrimination with regard to race, color, national origin, religion, or sex; pregnancy-related protections; record keeping)
- Americans with Disabilities Act (no discrimination, reasonable accommodations)

20 EMPLOYEES: ALL THE ABOVE, PLUS

- Age Discrimination Act (no discrimination on the basis of age against those 40 and older)
- Older Worker Benefit Protection Act (benefits for older workers must be commensurate with younger workers)
- Consolidation Omnibus Budget Reconciliation Act (COBRA) (continuation of medical benefits for up to 18 months upon termination)

25 EMPLOYEES: ALL THE ABOVE, PLUS

- Health Maintenance Organization Act (HMO Option required)
- Veterans' Reemployment Act (reemployment for persons returning from active, reserve, or National Guard duty)

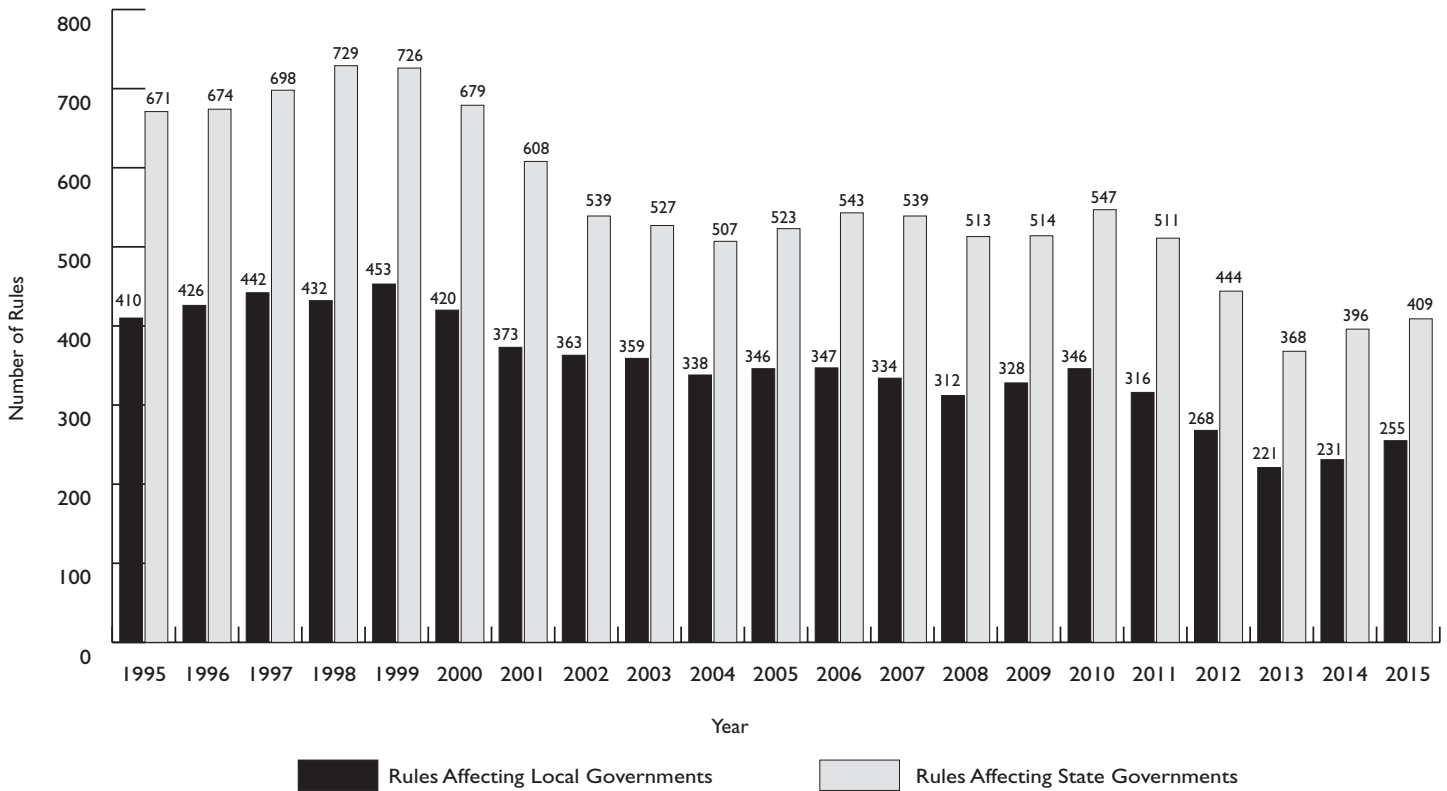
50 EMPLOYEES: ALL THE ABOVE, PLUS

- Family and Medical Leave Act (12 weeks unpaid leave or care for newborn or ill family member)

100 EMPLOYEES: ALL THE ABOVE, PLUS

- Worker Adjusted and Retraining Notification Act (60-days written plant closing notice)
- Civil Rights Act (annual EEO-1 form)

Figure 22. Rules Affecting State and Local Governments, 1995–2015



Sources: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, various years’ editions; and from online edition at <http://www.reginfo.gov>.

closer attention to legislation’s effect on states and localities.

As Figure 22 shows, agencies report that 255 of the 3,297 rules in the 2015 fall Agenda pipeline will affect local governments (this includes all stages—active, completed, and long-term).⁸⁵ Since the passage of the Unfunded Mandates Act in the mid-1990s, the number of overall rules affecting local governments has

fallen by 52 percent, from 533 to 255 (2013’s 221 was the lowest level yet seen over this period). Figure 22 also shows that the total number of regulatory actions affecting state governments stands at 409. Both these categories appear to be trending upward now. (For breakdowns of the numbers of rules affecting state and local governments by department and agency for earlier years, see historical tables in earlier editions of this report.)

Government Accountability Office

Database on Regulations

The various federal reports and databases on regulations serve different purposes:

- The *Federal Register* shows the aggregate number of proposed and final rules (both those that affect the private sector and those that deal with internal government machinery or programs).
- The Unified Agenda shows agency regulatory priorities and provides details about the overall number of rules at various stages in the regulatory pipeline, as well as those with economically significant effects and those affecting small business and state and local governments.

The 1996 Congressional Review Act (CRA) requires agencies to submit reports to Congress on their major rules—those with annual estimated costs of \$100 million or more. Owing to such reports, which are maintained in a database at the Government Accountability Office (GAO), one can more readily observe (a) which of the thousands of final rules that agencies issue each year are major and (b) which agencies are producing the rules.⁸⁶

The CRA gives Congress a window of 60 legislative days in which to review a major rule and, if desired, pass a resolution of disapproval rejecting the rule. Despite the issuance of thousands of rules since the Act's passage, including many dozens of major rules, only one has been rejected: the Department of Labor's rule on workplace repetitive-motion injuries in early 2001. According to a recent review, however, final rules are no longer properly submitted to the GAO and to Congress as required under the CRA.⁸⁷

Table 9, derived from the GAO database of major rules, depicts the number of final major rule reports issued by the GAO regarding agency rules through 2015. There were 76 rules in 2015, according to the GAO's database, and 81 in 2014.⁸⁸ The 100 rules in 2010 was the highest count since this tabulation began following passage of the CRA; 50 rules in 2003 was the lowest.

Mirroring what was seen as the most active executive and independent rule-making agencies in Table 6, the Departments of Health and Human Services, the Interior, and the Treasury, along with the Environmental Protection Agency and the Securities and Exchange Commission, have been particularly active.

President George W. Bush averaged 63 major rules annually during his eight years in office; President Obama's seven years so far have averaged 81, or a 29 percent higher average annual output than that of Bush. Obama has already issued 570 major rules over seven years, compared with Bush's 505 over eight years. This parallels the depiction of economically significant rules in Figures 19 and 20. Despite declines in overall rule counts in the Unified Agenda, the Obama administration's output level of higher-impact rules during the decade is notably higher.

A May 2015 Heritage Foundation analysis of the current administration's regulatory record isolated the major rules listed in the GAO database affecting only the private sector and distinguished between those that are deregulatory and those that are regulatory. This report found that 184 major rules adopted during the Obama administration have added almost \$80 billion in annual costs.⁸⁹

***Obama has
already issued
570 major rules
over seven years,
compared with
Bush's 505 over
eight years.***

Table 9. Government Accountability Office Reports on Major Rules as Required by the Congressional Review Act, 1999–2015

| | 2015 | 2014 | 2013 | 2012 | 2011 | 2010 | 2009 | 2008 | 2007 | 2006 | 2005 | 2004 | 2003 | 2002 | 2001 | 2000 | 1999 |
|---|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Architectural Barriers Compliance Board | | | | | | | | | | | | 1 | | | | 1 | |
| Bureau of Consumer Financial Protection | 2 | | 4 | 1 | 1 | | | | | | | | | | | | |
| Commodity Futures Trading Commission | | 1 | 4 | 9 | 6 | | | | | | | | | | | | |
| Consumer Product Safety Commission | | | | | 1 | | | | | 1 | | | | | | | |
| Department of Agriculture | 7 | 8 | 4 | 2 | 4 | 6 | 12 | 3 | 7 | 8 | 6 | 7 | 4 | 7 | 9 | | 6 |
| Department of Commerce | | | 2 | | | | 2 | 1 | 2 | | | 1 | | | 2 | | 5 |
| Department of Defense | 2 | 1 | | | | 4 | 4 | 6 | | | 1 | | | 2 | 3 | | 1 |
| Department of Education | 1 | 2 | 5 | 4 | 2 | 5 | 6 | 2 | 1 | 2 | | | | | | | 1 |
| Department of Energy | 2 | 6 | 3 | 1 | 5 | 4 | 7 | 3 | 3 | | | | 1 | 1 | 3 | 3 | |
| Department of Health and Human Services | 18 | 27 | 24 | 23 | 24 | 24 | 17 | 24 | 19 | 16 | 22 | 22 | 17 | 13 | 15 | 17 | 7 |
| Department of Homeland Security | 3 | 2 | 2 | 1 | 1 | 3 | 1 | 5 | 4 | 2 | 3 | 2 | 2 | | | | |
| Department of Housing and Urban Development | 1 | | | | 2 | 1 | 1 | 2 | | | 1 | 1 | | | 1 | 2 | 1 |
| Department of Justice | | | | 1 | 1 | 3 | | | | 1 | 1 | 1 | | 3 | 4 | | |
| Department of Labor | 1 | 3 | 3 | 3 | 2 | 6 | 1 | 2 | 3 | 3 | 1 | 1 | | 2 | 3 | 5 | |
| Department of the Interior | 6 | 6 | 6 | 7 | 6 | 7 | 7 | 10 | 5 | 6 | 6 | 8 | 7 | 7 | 8 | 9 | 6 |
| Department of State | | | | 1 | | 1 | | 1 | | | | | | | | | |
| Department of Transportation | 3 | 3 | 3 | 2 | 2 | 5 | 6 | 8 | 3 | 1 | 3 | 5 | 4 | 6 | 3 | | 4 |
| Department of Treasury | 7 | 6 | 3 | 2 | 1 | 4 | | 1 | 1 | 1 | | 1 | 1 | | 1 | | |
| Department of Veterans Affairs | 4 | 3 | 1 | 1 | 2 | 2 | 2 | | 1 | | 1 | | 2 | 1 | 3 | | |
| Emergency Oil and Gas Loan Board | | | | | | | | | | | | | | | | | 1 |
| Emergency Steel Guarantee Loan Board | | | | | | | | | | | | | | | | | 1 |
| Environmental Protection Agency | 8 | 2 | 3 | 5 | 6 | 8 | 3 | 9 | 2 | 8 | 3 | 7 | 3 | 1 | 4 | 20 | 5 |
| Equal Employment Opportunity Commission | | | | | 1 | | | | | | | | | | | | |
| Federal Communications Commission | 1 | 1 | 1 | | | | | 6 | 2 | 1 | 1 | 4 | 2 | 3 | 3 | 6 | 6 |
| Federal Deposit Insurance Corporation | | 1 | 1 | | | | | | | | | | | | | | |

Case Studies

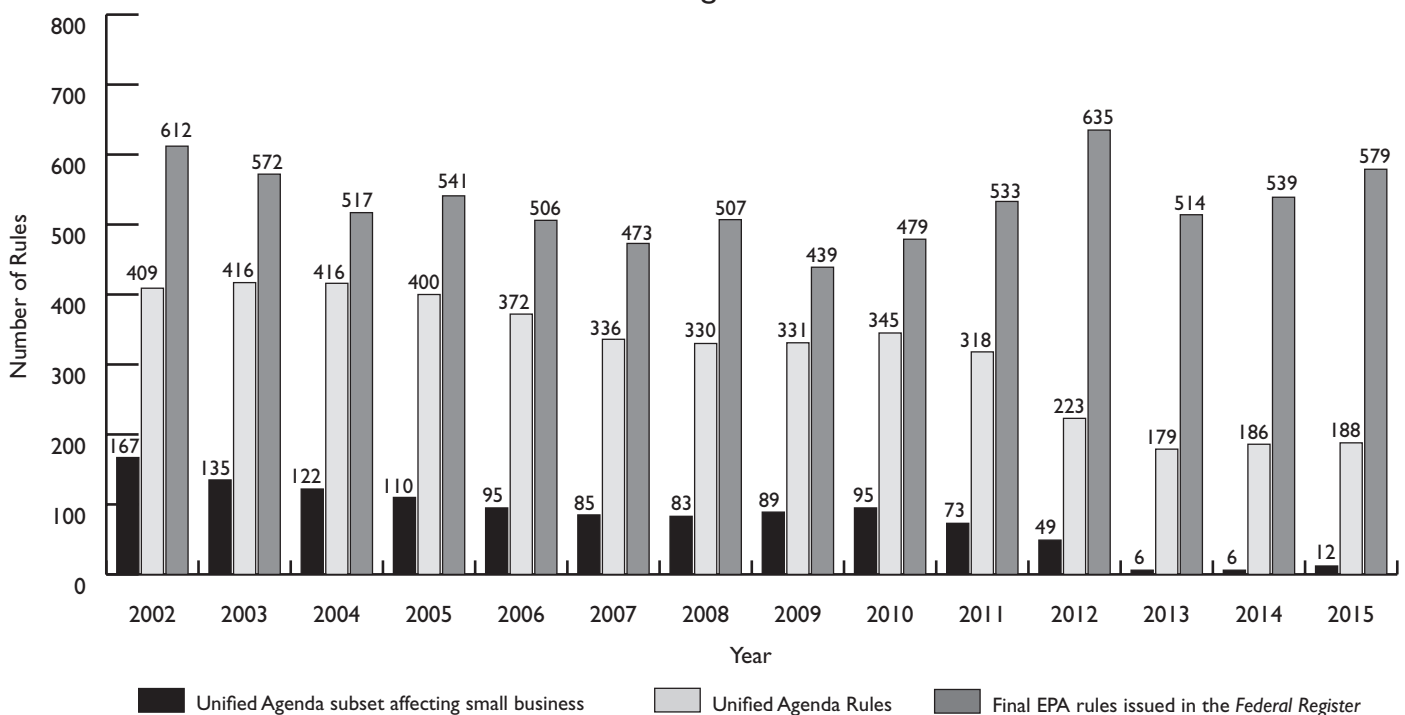
Regulation and the Environmental Protection Agency

It has been nearly six years since Rep. Darrell Issa (R-Calif.), as then-chairman of the House Oversight and Government Reform Committee, issued a request to businesses, trade associations, and think tanks seeking input on which federal rules they regarded most burdensome. He received more than 160 responses brimming with recommendations (including from the Competitive

Enterprise Institute⁹⁰), and his office issued a summary report.⁹¹ The Environmental Protection Agency accounted for the lion's share of the regulatory burden felt by private enterprise.

EPA rules finalized in the *Federal Register* had been rising during the first term of the Obama administration, eventually topping levels last seen in 2002 (see third bars in Figure 23). The Bush trend had been downward, whereas Obama's counts rose sharply, decreased, and have since headed back up-

Figure 23. Number of EPA Rules in the Unified Agenda and *Federal Register*, 2002–2015



Source: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, various years’ editions; from online edition at <http://www.reginfo.gov>; and from FederalRegister.gov.

Box 2. Dropoff in Active, Completed, and Long-Term EPA Rules in the Unified Agenda

| | Total | Active | Completed | Long Term |
|------|--------------|---------------|------------------|------------------|
| 2011 | 318 | 175 | 82 | 61 |
| 2012 | 223 | 117 | 71 | 35 |
| 2013 | 179 | 134 | 21 | 24 |

ward. Under Obama, finalized EPA rules rose from 439 to 635 between 2009 and 2012—a 45 percent increase—before dropping 19 percent to 514 in 2013. Between 2013 and 2015, the count rose 12.6 percent to 579.

Note the Unified Agenda count and the just-noted actual rule count suspiciously diverging. There has been a substantial drop-off in the Agenda-listed rules issued by EPA over the past few years compared with the higher levels of EPA rules finalized in the *Federal Register*, as seen in Figure 23. The past three years' Agenda counts have been interesting, because the EPA did not appear among the top five rule-making agencies in the Unified Agenda pipeline (it is again sixth with 188 rules; see Table 6). In the past two years, the EPA rules in the Unified Agenda pipeline did rise slightly, from 179 to 188, but they had otherwise been dropping since 2010, to 179 in 2013, which was the lowest level of the decade. As of April 26, 2016, the EPA had finalized 139 rules in the *Federal Register*.

The agency also no longer ranks among the agencies with the most rules in the Unified Agenda that affect small business. Note, also in Figure 23, the implausible 88 percent drop from 49 rules affecting small business in 2012 to only six in both 2013 and 2014, and then 12 in 2015.

Where did all the EPA's Agenda rules go? Box 2 shows a breakdown of the agency's 2011-2013 Unified Agenda-listed rules by stage of completion. One can see that chunks of the

EPA's active, completed, and long-term rules simply vanished during that interval. Such a drop-off does not square with the level of regulatory impact driven by the EPA, but can be partly explained by the earlier discussion of rule delays and the Sunstein and Shelanski memoranda and their possible effect on reporting policy in the Unified Agenda. Recall too that only one Agenda, not the required two, appeared in 2012.

The EPA is not likely to roll back regulatory pursuits, as may be inferred from the Obama administration's public statements about acting on energy and environmental policy unilaterally. Many noteworthy rules were listed earlier in this report in "Notable Regulations by Agency." An October 2012 Senate Minority Report from Sen. James Inhofe (R-Okla.), then-ranking member of the Senate Committee on Environment and Public Works, detailed what it called "Numerous Obama-EPA Rules Placed on Hold until after the Election."⁹² Those rules include the following:

- Greenhouse gas regulations
- Ozone rule
- Hydraulic fracturing rule
- Florida numeric nutrient criteria (water quality rules)
- Guidance documents for waters covered by the Clean Water Act
- Stormwater regulation
- Tier 3 gas regulations
- Maximum achievable control technologies rules for industrial boilers and for cement

- Power plant cooling towers rule
- Coal ash rule
- Farm dust regulations
- Spill prevention control and counter-measure rule

Various years' editions of the Office of Management and Budget's *Report to Congress on the Benefits and Costs of Federal Regulations* attest to the EPA's status as one of the more costly regulators. For example, the 2013 draft report had presented a range of total costs of \$14.8 billion to \$19.5 billion added during the fiscal year for the four rules for

which quantified cost-benefit analysis occurred. Well over half was attributable to the EPA: \$8.3 billion to the agency exclusively and another \$5.3 billion to \$8.8 billion to the EPA and Department of Transportation's fuel economy standards.⁹³ In the 2015 report, 13 rules were claimed to cost only \$3.0 to \$4.4 billion, but EPA rules accounted for \$1.6 billion, likely at least half. Overall, this author's survey of available information yields an estimate of the annual impact of EPA rules at \$386 billion, or 2.1 percent of GDP.⁹⁴ That amount is still less than the 2.4 percent of GDP the EPA once anticipated.⁹⁵

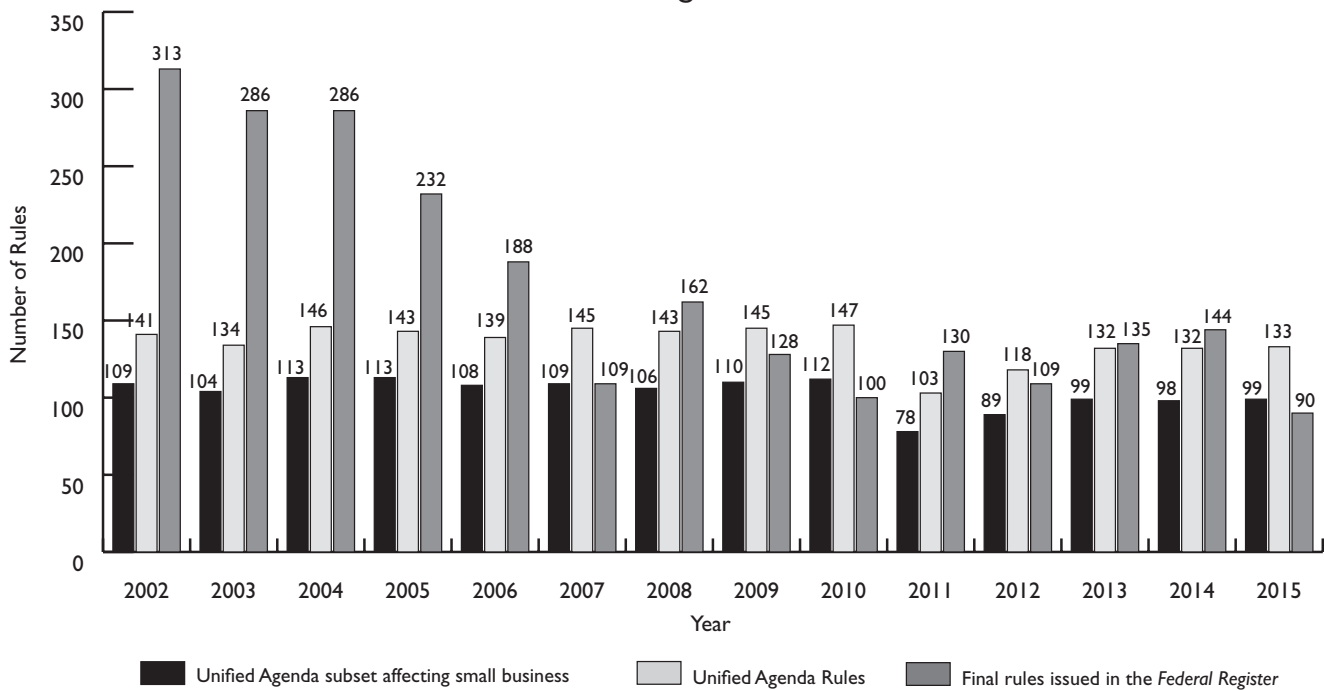
Regulation and the Federal Communications Commission

The Federal Communications Commission (FCC) is by no means the heavyweight among regulators as gauged by the number of rules issued. Its tally of 133 rules in the Unified Agenda pipeline is surpassed by seven other departments or agencies (see Table 5), and its count of eight economically significant rules is exceeded by those of seven other agencies (see Table 7). Yet the FCC merits singling out for review because it wields great influence over a major economic sector regarded as a growth engine in today's economy: telecommunications,

the Internet, and the information economy generally.

The FCC is an expensive agency. It spent an estimated \$464 million on regulatory development and enforcement during FY 2015⁹⁶ and likely accounts for more than \$100 billion in annual regulatory and economic impact.⁹⁷ Figure 24 shows the numbers of FCC's final rules in the *Federal Register* during the past decade, its overall rules in the fall Unified Agenda, and its Agenda rules with small-business impacts.

Figure 24. Number of FCC Rules in the Unified Agenda and *Federal Register*, 2002–2015



Source: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, various years’ editions; from online edition at www.reginfo.gov; and from FederalRegister.gov.

**Today's vibrant
and robust
communications
markets are
not fragile
contrivances
requiring fine-
tuning by
government
bodies.**

According to the National Archives' online database, FCC final rules in the *Federal Register* numbered as high as 313 back in 2002 and then declined steadily during the decade to lows of 109 in 2012 and 90 in 2015 (see third bars in Figure 24). There had been a bump upward of 32 percent between 2012 and 2014 (from 109 to 144).⁹⁸ As of April 26, 2016, the FCC had finalized 32 rules in the *Federal Register*.

Of the 3,297 total rules in the 2015 fall Agenda pipeline, 133, or 4 percent, were in the works at the FCC (Figure 24). The commission's Agenda presence remained rather flat during the decade before dropping rapidly to a low of 103 rules in 2011, but it has been rising since. Ninety-nine of the FCC's rules in the fall 2015 pipeline, or 74 percent of its total, affect small business, as Figure 24 and Table 8 show.

Although the FCC has published fewer rules in the Agenda and has finalized fewer than in preceding years, a pro-regulatory mindset prevails at the commission, most recently seen in the February 2015 push to apply utility regulation to broadband in alleged pursuit of so-called net neutrality, now being litigated.⁹⁹ Once again, an agency's rule count is not all that matters, because a handful of rules can have an outsized impact. Today's vibrant and robust communications markets are not fragile contrivances requiring fine-tuning by government bodies.¹⁰⁰ Communications markets do not exhibit abuses and market failures calling for top-down

rulemaking with respect to each and every new technological advance. Yet the FCC forges ahead to expand its domain in disregard of the outdated character of its original mandate to police public airwaves characterized by scarcity. Such conditions no longer apply today, when everyone is a potential broadcaster.

The FCC has continued the net neutrality push despite having already been rebuffed in federal court following earlier attempts and despite the concerns of many in Congress, which never delegated authority to the commission.¹⁰¹ Although a January 2014 federal court decision¹⁰² struck down part of the FCC's open Internet order,¹⁰³ it exposed the Internet to even wider FCC regulation—and the commission has responded accordingly.¹⁰⁴ In recent years, the FCC has also inserted itself into other matters, including multicast must-carry regulation, media ownership restrictions, video game violence portrayal, and wireless net neutrality.¹⁰⁵

As noted, of the 218 economically significant rules in the works across the entire federal government, eight belong to the FCC (see Table 7) and are presented in Box 3. Such rulemakings, along with other FCC rules in the Agenda pipeline and the hundreds made final each year, present opportunities for either liberalization of telecommunications or avenues for new central regulatory oversight and protracted legal battles.¹⁰⁶ The commission has chosen the latter.

Box 3. Seven Economically Significant Rules in the Pipeline at the FCC

- **Broadband over Power Line (BPL) Systems; ET Docket No. 04-37, RIN 3060-AI24:** “To promote the development of BPL systems by removing regulatory uncertainties for BPL operators and equipment manufacturers while ensuring that licensed radio services are protected from harmful interference.”
- **Expanding Broadband and Innovation through Air-Ground Mobile Broadband Secondary Service for Passengers Aboard Aircraft in the 14.0–14.5 GHz Band; GN Docket No. 13-114, RIN 3060-AK02.**
- **Service Rules for the 698-746, 747-762, and 777-792 MHz Band Ranges; RIN 3060-AJ35:** “[O]ne of several docketed proceedings involved in the establishment of rules governing wireless licenses in the 698-806 MHz Band (the 700 MHz Band). This spectrum is being vacated by television broadcasters in TV Channels 52-69. It is being made available for wireless services, including public safety and commercial services, as a result of the digital television (DTV) transition. This docket has to do with service rules for the commercial services and is known as the 700 MHz Commercial Services proceeding.”¹⁰⁷
- **Universal Service Reform Mobility Fund; WT Docket No. 10-208, RIN 3060-AJ58.**
- **Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions; Docket No. 12-268, 3060-AJ82.**
- **Internet Protocol-Enabled Services; RIN 3060-AI48:** “The notice seeks comment on ways in which the Commission might categorize IP-enabled services for purposes of evaluating the need for applying any particular regulatory requirements. It poses questions regarding the proper allocation of jurisdiction over each category of IP-enabled service. The notice then requests comment on whether the services composing each category constitute ‘telecommunications services’ or ‘information services’ under the definitions set forth in the Act. Finally, noting the Commission’s statutory forbearance authority and title I ancillary jurisdiction, the notice describes a number of central regulatory requirements (including, for example, those relating to access charges, universal service, E911, and disability accessibility), and asks which, if any, should apply to each category of IP-enabled services.”
- **Implementation of Section 224 of the Act: A National Broadband Plan for Our Future; WC Docket No. 07-245, GN Docket No. 09-51, RIN 3060-AJ64.**
- **Protecting and Promoting the Open Internet; WC Docket No. 14-28, 3060-AK21.**

Liberate to Stimulate

In contrast to stimulus spending of dubious merit in an already debt-soaked U.S. economy, a regulatory liberalization agenda would constitute genuine stimulus and offer some confidence and certainty for business enterprises and entrepreneurs. Proposals like those described next can help achieve that goal.

Steps to Improve Regulatory Disclosure

Certainly some regulations' benefits exceed costs, but net benefits or even actual costs are known for very few. Without more complete regulatory accounting, it is difficult to know whether society wins or loses as a result of rules.¹⁰⁸ Pertinent, relevant, and readily available regulatory data should be summarized and reported publicly to help create pressures for even better disclosure and reform. An incremental step would be for Congress to require—or for the Office of Management and Budget to initiate—publication of a summary of already available but scattered data. Such a regulatory transparency report card could resemble the presentation in *Ten Thousand Commandments*. That alone would help transform today's regulatory hidden tax culture into one characterized by greater openness.

Accountability matters along with disclosure. Congress must cease delegating legislative power to unelected agency personnel. We need institutional changes that force Congress to internalize pressures that would push it to make cost-benefit assessments *before* issuing open-ended directives to agencies to

write rules. Reining in off-budget regulatory costs can occur only when elected representatives assume responsibility and end “regulation without representation.”

Regulations fall into two broad classes: (a) those that are economically significant (costing more than \$100 million annually) and (b) those that are not. Agencies typically emphasize reporting of economically significant or major rules, which OMB also tends to emphasize in its annual assessments of the regulatory state. A problem with this approach is that many rules that technically come in below that threshold can still be very significant in the real-world sense of the term.

Moreover, agencies need not specify whether any or all of their economically significant or major rules cost only \$100 million or far more than that. Instead, Congress could require agencies to break up their cost categories into tiers. Table 10 presents one alternative for assigning economically significant rules to one of five categories. Agencies could classify their rules on the basis of either (a) cost information that has been provided in the regulatory impact analyses that accompany many economically significant rules or (b) separate internal or external estimates. The Unified Agenda and annual OMB reports to Congress could be made more user friendly by adopting these reforms.

Regulatory information that is available is often tedious to compile or interpret. To learn about regulatory trends and to accumulate information on rules, interested citizens need either to comb through the Agenda's 1,000-plus pages of small, multicolumn

Congress must cease delegating legislative power to unelected agency personnel.

Table 10. A Possible Breakdown of Economically Significant Rules

| Category | Breakdown |
|----------|----------------------------------|
| 1 | > \$100 million, < \$500 million |
| 2 | > \$500 million, < \$1 billion |
| 3 | > \$1 billion, < \$5 billion |
| 4 | > \$5 billion, < \$10 billion |
| 5 | > \$10 billion |

print or compile results from online searches and agencies' regulatory plans. Data from the Agenda could be made more accessible and user friendly if officially summarized in charts each year and presented as a section in the federal budget, in the Agenda itself, or in the *Economic Report of the President*.¹⁰⁹

A regulatory transparency report card would reveal more clearly what we do not know about the regulatory state. Information could be added to the report as warranted—for

instance, success or failure of special initiatives, such as “reinventing government” or regulatory reform efforts. Providing five-year historical data would prove useful to scholars, third-party researchers, and members of Congress. By making agency activity more explicit, a regulatory transparency report card would help ensure that policy makers take the growth of the regulatory state seriously. Recommended components for a regulatory transparency report card appear in Box 4.

Box 4. Regulatory Transparency Report Card, Recommended Official Summary Data by Program, Agency, and Grand Total, with Five-Year Historical Tables

- Tallies of economically significant rules and minor rules by department, agency, and commission
- Numbers and percentages required/not required by statute or court order
- Numbers and percentages of rules affecting small business
- Depictions of how regulations accumulate as a small business grows
- Numbers and percentages of regulations that contain numerical cost estimates
- Tallies of existing cost estimates, including subtotals by agency and grand total
- Numbers and percentages lacking cost estimates, with a short explanation for the lack of cost estimates
- Analysis of the *Federal Register*, including number of pages and proposed and final rule breakdowns by agency
- Number of major rules reported on by the Government Accountability Office in its database of reports on regulations
- Ranking of most active rulemaking agencies
- Identification of rules that are deregulatory rather than regulatory
- Identification of rules that affect internal agency procedures alone
- Number of rules new to the Unified Agenda; number that are carryovers from previous years
- Numbers and percentages of rules facing statutory or judicial deadlines that limit executive branch ability to restrain them
- Rules for which weighing costs and benefits is statutorily prohibited
- Percentages of rules reviewed by the OMB and action taken

Ending Regulation without Representation: The Unconstitutionality Index—30 Rules for Every Law

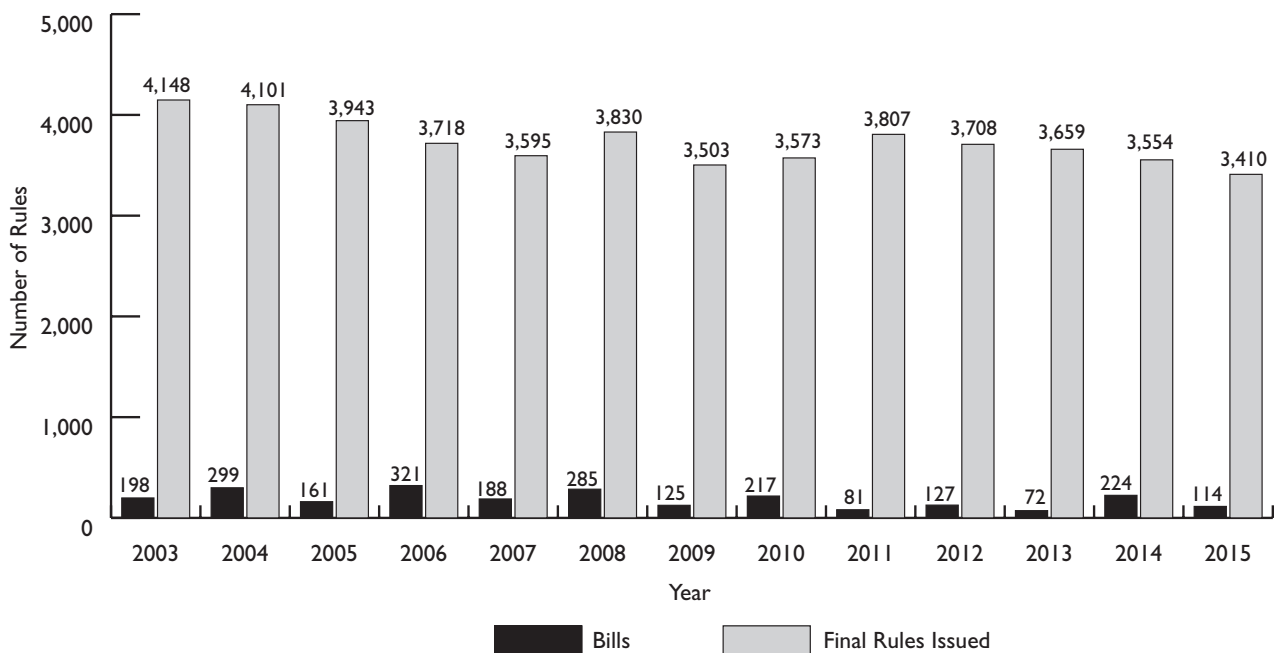
Regulators and the administration, rather than Congress, do the bulk of U.S. lawmaking.

Agencies do not answer to voters. Yet in a sense, regulators and the administration, rather than Congress, do the bulk of U.S. lawmaking. Years of unbudgeted growth of the federal regulatory enterprise are worrisome when no one can claim with certainty that regulatory benefits exceed costs. But agencies are not the only culprits. For too long, Congress has shirked its constitutional duty to make the tough calls. Instead, it delegates substantial lawmaking power to agencies and then fails to ensure that the regulations deliver benefits that exceed costs.¹¹⁰ Thus, agencies can hardly be the only ones faulted for suboptimal or damaging regulation or for not ensuring that only good rules get through.

Agencies face significant incentives to expand their turf by regulating even without demonstrated need. The primary measure of an agency's productivity—other than growth in its budget and number of employees—is the body of regulation it produces.¹¹¹ One need not deplete too much time and energy blaming agencies for carrying out the very regulating they were set up to do in the first place. Better to point a finger at Congress.

For perspective, consider that regulatory agencies issued 3,410 final rules, whereas the 114th Congress passed and President Obama signed into law a comparatively few 114 bills in calendar year 2015.¹¹² Figure 25 presents the “Unconstitutionality Index,” the multiple of rules issued over the number of public laws by calendar year passed since 2003. There were 30 rules for every law in 2015. The ratio can vary widely, but the average over the decade has been 26 rules

Figure 25. The 2014 Unconstitutionality Index, 2003–2015



Source: Federal Register data from National Archives and Records Administration and from Crews tabulation at <http://www.tenthousandcommandments.com>. Public Laws data compiled from Government Printing Office, Public and Private Laws at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=PLAW>; and from National Archives, Previous Sessions: Public Law Numbers at <http://www.archives.gov/federal-register/laws/past/index.html>.

for every law. Rules issued by agencies are not usually substantively related to the current year's laws; typically, agencies administer earlier legislation. Still, this perspective is a useful way of depicting flows and relative workloads.

If the thousands of agency public notices and dozens—sometimes hundreds—of executive orders issued annually are considered, policy making without representation assumes even greater importance as an issue of concern. Historical Tables Part I depicts the Unconstitutionality Index dating back to 1993 and shows just by way of comparison the numbers of executive orders and the numbers of agency notices.

An annual regulatory transparency report card is worthwhile and needed but not the complete answer. Regulatory reforms that rely on agencies policing themselves will not rein in the regulatory state or fully address regulation without representation. Rather, making Congress directly answerable to voters for the costs that agencies impose on the public would best promote accountable regulation. Congress should vote on agencies' final rules before they become binding on the public.

Increasing congressional accountability for regulatory costs should be a priority in today's era of debt and deficits. Concern about mounting national debt invites Congress to regulate rather than to increase government spending to accomplish policy ends. Suppose Congress wanted to create a job-training program. Funding the program would require approval of a new appropriation for the Department of Labor, which would appear in the federal budget and would increase the deficit. Instead, Congress could pass a law requiring Fortune 500 companies to fund job training,

a mandate that would be carried out through new regulations issued by the Department of Labor. The latter option would add little to federal spending but would still let Congress take credit for the program. By regulating instead of spending, government can expand almost indefinitely without explicitly taxing anybody one extra penny.

Affirmation of new major regulations would ensure that Congress bears direct responsibility for every dollar of new regulatory costs and is essential for controlling the off-budget regulatory state. The Regulations from the Executive in Need of Scrutiny Act (REINS) Act (H.R. 427, S. 226), sponsored by Rep. Todd Young (R-Ind.) and Sen. Rand Paul (R-Ky.), offers one such approach.¹¹³ It would require Congress to vote on all economically significant agency regulations—those with estimated annual costs of \$100 million or more. It has passed the House in the current and two previous congressional sessions but has not moved forward in the Senate.

To avoid getting bogged down in approving myriad agency rules, Congress could vote on agency regulations in bundles. Another way to expedite the process is by allowing congressional approval or disapproval of new regulations to be given by voice vote, rather than by tabulated roll-call vote. What matters is that Congress would go on record for what laws the public must heed.

Congressional rather than agency approval of regulations and regulatory costs should be the goal of reform. When Congress ensures transparency and disclosure and finally assumes responsibility for the growth of the regulatory state, the resulting system will be one that is fairer and more accountable to voters.

*Congress should
vote on agencies'
final rules before
they become
binding on the
public.*

Appendix: Historical Tables

Part A. *Federal Register* Page History, 1936–2015

| Year | Unadjusted Page Count | Jumps/Blanks | Adjusted Page Count |
|-------------|------------------------------|---------------------|----------------------------|
| 1936 | 2,620 | n/a | 2,620 |
| 1937 | 3,450 | n/a | 3,450 |
| 1938 | 3,194 | n/a | 3,194 |
| 1939 | 5,007 | n/a | 5,007 |
| 1940 | 5,307 | n/a | 5,307 |
| 1941 | 6,877 | n/a | 6,877 |
| 1942 | 11,134 | n/a | 11,134 |
| 1943 | 17,553 | n/a | 17,553 |
| 1944 | 15,194 | n/a | 15,194 |
| 1945 | 15,508 | n/a | 15,508 |
| 1946 | 14,736 | n/a | 14,736 |
| 1947 | 8,902 | n/a | 8,902 |
| 1948 | 9,608 | n/a | 9,608 |
| 1949 | 7,952 | n/a | 7,952 |
| 1950 | 9,562 | n/a | 9,562 |
| 1951 | 13,175 | n/a | 13,175 |
| 1952 | 11,896 | n/a | 11,896 |
| 1953 | 8,912 | n/a | 8,912 |
| 1954 | 9,910 | n/a | 9,910 |
| 1955 | 10,196 | n/a | 10,196 |
| 1956 | 10,528 | n/a | 10,528 |
| 1957 | 11,156 | n/a | 11,156 |
| 1958 | 10,579 | n/a | 10,579 |
| 1959 | 11,116 | n/a | 11,116 |
| 1960 | 14,479 | n/a | 14,479 |
| 1961 | 12,792 | n/a | 12,792 |
| 1962 | 13,226 | n/a | 13,226 |
| 1963 | 14,842 | n/a | 14,842 |
| 1964 | 19,304 | n/a | 19,304 |
| 1965 | 17,206 | n/a | 17,206 |
| 1966 | 16,850 | n/a | 16,850 |
| 1967 | 21,088 | n/a | 21,088 |
| 1968 | 20,072 | n/a | 20,072 |

| Year | Unadjusted Page Count | Jumps/Blanks | Adjusted Page Count |
|-------------|-----------------------|--------------|---------------------|
| 1969 | 20,466 | n/a | 20,466 |
| 1970 | 20,036 | n/a | 20,036 |
| 1971 | 25,447 | n/a | 25,447 |
| 1972 | 28,924 | n/a | 28,924 |
| 1973 | 35,592 | n/a | 35,592 |
| 1974 | 45,422 | n/a | 45,422 |
| 1975 | 60,221 | n/a | 60,221 |
| 1976 | 57,072 | 6,567 | 50,505 |
| 1977 | 65,603 | 7,816 | 57,787 |
| 1978 | 61,261 | 5,565 | 55,696 |
| 1979 | 77,498 | 6,307 | 71,191 |
| 1980 | 87,012 | 13,754 | 73,258 |
| 1981 | 63,554 | 5,818 | 57,736 |
| 1982 | 58,494 | 5,390 | 53,104 |
| 1983 | 57,704 | 4,686 | 53,018 |
| 1984 | 50,998 | 2,355 | 48,643 |
| 1985 | 53,480 | 2,978 | 50,502 |
| 1986 | 47,418 | 2,606 | 44,812 |
| 1987 | 49,654 | 2,621 | 47,033 |
| 1988 | 53,376 | 2,760 | 50,616 |
| 1989 | 53,842 | 3,341 | 50,501 |
| 1990 | 53,620 | 3,825 | 49,795 |
| 1991 | 67,716 | 9,743 | 57,973 |
| 1992 | 62,928 | 5,925 | 57,003 |
| 1993 | 69,688 | 8,522 | 61,166 |
| 1994 | 68,108 | 3,194 | 64,914 |
| 1995 | 67,518 | 4,873 | 62,645 |
| 1996 | 69,368 | 4,777 | 64,591 |
| 1997 | 68,530 | 3,981 | 64,549 |
| 1998 | 72,356 | 3,785 | 68,571 |
| 1999 | 73,880 | 2,719 | 71,161 |
| 2000 | 83,294 | 9,036 | 74,258 |
| 2001 | 67,702 | 3,264 | 64,438 |
| 2002 | 80,332 | 4,726 | 75,606 |
| 2003 | 75,798 | 4,529 | 71,269 |
| 2004 | 78,852 | 3,177 | 75,675 |
| 2005 | 77,777 | 3,907 | 73,870 |
| 2006 | 78,724 | 3,787 | 74,937 |
| 2007 | 74,408 | 2,318 | 72,090 |
| 2008 | 80,700 | 1,265 | 79,435 |
| 2009 | 69,644 | 1,046 | 68,598 |
| 2010 | 82,480 | 1,075 | 81,405 |
| 2011 | 82,415 | 1,168 | 81,247 |
| 2012 | 80,050 | 1,089 | 78,961 |
| 2013 | 80,462 | 1,151 | 79,311 |
| 2014 | 78,796 | 1,109 | 77,687 |
| 2015 | 81,402 | 1,142 | 80,260 |

Source: National Archives and Records Administration, Office of the Federal Register.

Note: Publication of proposed rules was not required before the Administrative Procedures Act of 1946. Preambles to rules were published only to a limited extent before the 1970s.
n/a = not available.

Part B. Number of Documents in the *Federal Register*, 1976–2015

| Year | Final Rules | Proposed Rules | Other* | Total |
|-------------|--------------|----------------|---------------|---------------|
| 1976 | 7,401 | 3,875 | 27,223 | 38,499 |
| 1977 | 7,031 | 4,188 | 28,381 | 39,600 |
| 1978 | 7,001 | 4,550 | 28,705 | 40,256 |
| 1979 | 7,611 | 5,824 | 29,211 | 42,646 |
| 1980 | 7,745 | 5,347 | 33,670 | 46,762 |
| 1981 | 6,481 | 3,862 | 30,090 | 40,433 |
| 1982 | 6,288 | 3,729 | 28,621 | 38,638 |
| 1983 | 6,049 | 3,907 | 27,580 | 37,536 |
| 1984 | 5,154 | 3,350 | 26,047 | 34,551 |
| 1985 | 4,843 | 3,381 | 22,833 | 31,057 |
| 1986 | 4,589 | 3,185 | 21,546 | 29,320 |
| 1987 | 4,581 | 3,423 | 22,052 | 30,056 |
| 1988 | 4,697 | 3,240 | 22,047 | 29,984 |
| 1989 | 4,714 | 3,194 | 22,218 | 30,126 |
| 1990 | 4,334 | 3,041 | 22,999 | 30,374 |
| 1991 | 4,416 | 3,099 | 23,427 | 30,942 |
| 1992 | 4,155 | 3,170 | 24,063 | 31,388 |
| 1993 | 4,369 | 3,207 | 24,017 | 31,593 |
| 1994 | 4,867 | 3,372 | 23,669 | 31,908 |
| 1995 | 4,713 | 3,339 | 23,133 | 31,185 |
| 1996 | 4,937 | 3,208 | 24,485 | 32,630 |
| 1997 | 4,584 | 2,881 | 26,260 | 33,725 |
| 1998 | 4,899 | 3,042 | 26,313 | 34,254 |
| 1999 | 4,684 | 3,281 | 26,074 | 34,039 |
| 2000 | 4,313 | 2,636 | 24,976 | 31,925 |
| 2001 | 4,132 | 2,512 | 25,392 | 32,036 |
| 2002 | 4,167 | 2,635 | 26,250 | 33,052 |
| 2003 | 4,148 | 2,538 | 25,168 | 31,854 |
| 2004 | 4,101 | 2,430 | 25,846 | 32,377 |
| 2005 | 3,943 | 2,257 | 26,020 | 32,220 |
| 2006 | 3,718 | 2,346 | 25,429 | 31,493 |
| 2007 | 3,595 | 2,308 | 24,784 | 30,687 |
| 2008 | 3,830 | 2,475 | 25,574 | 31,879 |
| 2009 | 3,503 | 2,044 | 25,218 | 30,765 |
| 2010 | 3,573 | 2,439 | 26,543 | 32,555 |
| 2011 | 3,807 | 2,898 | 26,296 | 33,001 |
| 2012 | 3,708 | 2,517 | 24,755 | 30,980 |
| 2013 | 3,659 | 2,594 | 24,517 | 30,770 |
| 2014 | 3,554 | 2,383 | 24,257 | 30,194 |
| 2015 | 3,410 | 2,342 | 24,294 | 30,046 |

Source: National Archives and Records Administration, Office of the Federal Register.

* “Other” documents are presidential documents, agency notices, and corrections.

Part C. Code of Federal Regulations Page Counts and Number of Volumes, 1975–2015

| Year | Actual Pages Published (includes text, preliminary pages, and tables) | | | | Unrevised CFR Vol- umes** | Total Pages Complete CFR | Total CFR Volumes (excluding Index) |
|-------------|--|-------------------------|--------------|--------------------------|---------------------------------|--------------------------------|--|
| | Titles 1–50 (minus Title 3) | Title 3 (POTUS Docs) | Index* | Total Pages Published | | | |
| 1975 | 69,704 | 296 | 792 | 70,792 | 432 | 71,224 | 133 |
| 1976 | 71,289 | 326 | 693 | 72,308 | 432 | 72,740 | 139 |
| 1977 | 83,425 | 288 | 584 | 84,297 | 432 | 84,729 | 141 |
| 1978 | 88,562 | 301 | 660 | 89,523 | 4,628 | 94,151 | 142 |
| 1979 | 93,144 | 438 | 990 | 94,572 | 3,460 | 98,032 | 148 |
| 1980 | 95,043 | 640 | 1,972 | 97,655 | 4,640 | 102,295 | 164 |
| 1981 | 103,699 | 442 | 1,808 | 105,949 | 1,160 | 107,109 | 180 |
| 1982 | 102,708 | 328 | 920 | 103,956 | 982 | 104,938 | 177 |
| 1983 | 102,892 | 354 | 960 | 104,206 | 1,448 | 105,654 | 178 |
| 1984 | 110,039 | 324 | 998 | 111,361 | 469 | 111,830 | 186 |
| 1985 | 102,815 | 336 | 1,054 | 104,205 | 1,730 | 105,935 | 175 |
| 1986 | 105,973 | 512 | 1,002 | 107,487 | 1,922 | 109,409 | 175 |
| 1987 | 112,007 | 374 | 1,034 | 113,415 | 922 | 114,337 | 185 |
| 1988 | 114,634 | 408 | 1,060 | 116,102 | 1,378 | 117,480 | 193 |
| 1989 | 118,586 | 752 | 1,058 | 120,396 | 1,694 | 122,090 | 196 |
| 1990 | 121,837 | 376 | 1,098 | 123,311 | 3,582 | 126,893 | 199 |
| 1991 | 119,969 | 478 | 1,106 | 121,553 | 3,778 | 125,331 | 199 |
| 1992 | 124,026 | 559 | 1,122 | 125,707 | 2,637 | 128,344 | 199 |
| 1993 | 129,162 | 498 | 1,141 | 130,801 | 1,427 | 132,228 | 202 |
| 1994 | 129,987 | 936 | 1,094 | 132,017 | 2,179 | 134,196 | 202 |
| 1995 | 134,471 | 1,170 | 1,068 | 136,709 | 1,477 | 138,186 | 205 |
| 1996 | 129,386 | 622 | 1,033 | 131,041 | 1,071 | 132,112 | 204 |
| 1997 | 128,672 | 429 | 1,011 | 130,112 | 948 | 131,060 | 200 |
| 1998 | 132,884 | 417 | 1,015 | 134,316 | 811 | 135,127 | 201 |
| 1999 | 130,457 | 401 | 1,022 | 131,880 | 3,052 | 134,932 | 202 |
| 2000 | 133,208 | 407 | 1,019 | 134,634 | 3,415 | 138,049 | 202 |
| 2001 | 134,582 | 483 | 1,041 | 136,106 | 5,175 | 141,281 | 206 |
| 2002 | 137,373 | 1,114 | 1,039 | 139,526 | 5,573 | 145,099 | 207 |
| 2003 | 139,550 | 421 | 1,053 | 141,024 | 3,153 | 144,177 | 214 |
| 2004 | 143,750 | 447 | 1,073 | 145,270 | 2,369 | 147,639 | 217 |
| 2005 | 146,422 | 103 | 1,083 | 147,608 | 4,365 | 151,973 | 221 |
| 2006 | 149,594 | 376 | 1,077 | 151,047 | 3,060 | 154,107 | 222 |
| 2007 | 149,236 | 428 | 1,088 | 150,752 | 5,258 | 156,010 | 222 |
| 2008 | 151,547 | 453 | 1,101 | 153,101 | 4,873 | 157,974 | 222 |
| 2009 | 158,369 | 412 | 1,112 | 159,893 | 3,440 | 163,333 | 225 |
| 2010 | 152,455 | 512 | 1,122 | 154,089 | 11,405 | 165,494 | 226 |
| 2011 | 159,129 | 486 | 1,136 | 160,751 | 8,544 | 169,295 | 230 |
| 2012 | 164,884 | 472 | 1,154 | 166,510 | 8,047 | 174,557 | 235 |
| 2013 | 166,352 | 520 | 1,170 | 168,042 | 7,454 | 175,496 | 235 |
| 2014 | 165,016 | 538 | 1,170 | 166,724 | 12,657 | 179,381 | 236 |
| 2015 | 170,278 | 495 | 1,170 | 171,943 | 6,334 | 178,277 | 237 |

Source: Chart from National Archives and Records Administration, Office of the Federal Register.

Notes: *General Index and Finding Aids volume for 1975 and 1976. ** Unrevised CFR volumes page totals include those previous editions for which a cover only was issued during the year or any previous editions for which a supplement was issued.

Part D. Number of Regulatory Reviews at the Office of Information and Regulatory Affairs, 1993–2015

| Year | Average Days Review Time | | | | | | | | | | |
|-------------|--------------------------|------------------------|----------------------------|--------------------|----------------|---------------|-------------|----------------|-----------------|---------------------|----------------------|
| | Prerule reviews | Proposed rule re-views | Interim final rule reviews | Final rule reviews | Notice reviews | Total reviews | ES re-views | Non-ES reviews | Days ES reviews | Days non-ES reviews | Overall average days |
| 1993 | 2 | 976 | 6 | 1,155 | 28 | 2,167 | 106 | 2,061 | 53 | 42 | 43 |
| 1994 | 16 | 317 | 68 | 302 | 128 | 831 | 134 | 697 | 33 | 30 | 31 |
| 1995 | 8 | 225 | 64 | 270 | 53 | 620 | 74 | 546 | 41 | 35 | 35 |
| 1996 | 28 | 160 | 56 | 232 | 31 | 507 | 74 | 433 | 39 | 42 | 42 |
| 1997 | 20 | 196 | 64 | 174 | 51 | 505 | 81 | 424 | 47 | 54 | 53 |
| 1998 | 15 | 192 | 58 | 182 | 40 | 487 | 73 | 414 | 33 | 50 | 48 |
| 1999 | 19 | 247 | 71 | 214 | 36 | 587 | 86 | 501 | 51 | 53 | 53 |
| 2000 | 13 | 210 | 66 | 253 | 40 | 582 | 92 | 490 | 60 | 62 | 62 |
| 2001 | 9 | 274 | 95 | 285 | 37 | 700 | 111 | 589 | 46 | 60 | 58 |
| 2002 | 23 | 261 | 81 | 249 | 55 | 669 | 100 | 569 | 44 | 46 | 46 |
| 2003 | 23 | 232 | 92 | 309 | 59 | 715 | 101 | 614 | 42 | 50 | 49 |
| 2004 | 26 | 237 | 64 | 241 | 58 | 626 | 85 | 541 | 35 | 55 | 53 |
| 2005 | 18 | 221 | 66 | 247 | 59 | 611 | 82 | 529 | 39 | 59 | 57 |
| 2006 | 12 | 229 | 43 | 270 | 46 | 600 | 71 | 529 | 34 | 59 | 56 |
| 2007 | 22 | 248 | 44 | 250 | 25 | 589 | 85 | 504 | 49 | 64 | 61 |
| 2008 | 17 | 276 | 39 | 313 | 28 | 673 | 135 | 538 | 53 | 63 | 61 |
| 2009 | 28 | 214 | 67 | 237 | 49 | 595 | 125 | 470 | 33 | 40 | 39 |
| 2010 | 36 | 261 | 84 | 232 | 77 | 690 | 138 | 552 | 48 | 51 | 51 |
| 2011 | 24 | 317 | 76 | 262 | 61 | 740 | 117 | 623 | 51 | 60 | 58 |
| 2012 | 12 | 144 | 33 | 195 | 40 | 424 | 83 | 341 | 69 | 81 | 79 |
| 2013 | 11 | 177 | 33 | 160 | 37 | 418 | 104 | 314 | 121 | 143 | 137 |
| 2014 | 17 | 201 | 43 | 144 | 46 | 452 | 114 | 338 | 106 | 134 | 127 |
| 2015 | 8 | 178 | 29 | 164 | 35 | 415 | 130 | 285 | 84 | 90 | 88 |

Source: Author search on RegInfo.gov, "Review Counts" database search engine under Regulatory Review heading.

Note: ES = economically significant.

Part E. Unified Agenda Rules History, 1983–2014

Total Number of Rules Under Consideration or Enacted

| 1980s | | | 1990s | | | 2000s | | |
|-------|---------|-------|-------|---------|-------|-------|-----------|-------|
| 1983 | April | 2,863 | 1990 | April | 4,332 | 2000 | October | 4,699 |
| | October | 4,032 | | October | 4,470 | 2001 | October | 4,509 |
| 1984 | April | 4,114 | 1991 | April | 4,675 | 2002 | October | 4,187 |
| | October | 4,016 | | October | 4,863 | 2003 | December | 4,266 |
| 1985 | April | 4,265 | 1992 | April | 4,186 | 2004 | December | 4,083 |
| | October | 4,131 | | October | 4,909 | 2005 | October | 4,062 |
| 1986 | April | 3,961 | 1993 | April | 4,933 | 2006 | December | 4,052 |
| | October | 3,983 | | October | 4,950 | 2007 | December | 3,882 |
| 1987 | April | 4,038 | 1994 | April | 5,105 | 2008 | December | 4,004 |
| | October | 4,005 | | October | 5,119 | 2009 | December | 4,043 |
| 1988 | April | 3,941 | 1995 | April | 5,133 | 2010 | December | 4,225 |
| | October | 4,017 | | October | 4,735 | 2011 | December | 4,128 |
| 1989 | April | 4,003 | 1996 | April | 4,570 | 2012 | Year-End* | 4,062 |
| | October | 4,187 | | October | 4,680 | 2013 | November | 3,305 |
| | | | 1997 | April | 4,417 | 2014 | November | 3,415 |
| | | | | October | 4,407 | 2015 | November | 3,297 |
| | | | 1998 | April | 4,504 | | | |
| | | | | October | 4,560 | | | |
| | | | 1999 | April | 4,524 | | | |
| | | | | October | 4,568 | | | |

Sources: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, various years’ editions; also from online edition at <http://www.reginfo.gov>.

*Spring edition skipped in 2012.

Part F. Agenda Rules History by Department and Agency, 2000–2014

| | 2014 | 2013 | 2012 | 2011 | 2010 | 2009 | 2008 | 2007 | 2006 | 2005 | 2004 | 2003 | 2002 | 2001 | 2000 |
|--|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Advisory Council on Historic Preservation | 1 | | | | | | 0 | 0 | 0 | | 1 | 1 | 1 | 0 | 1 |
| Agency for International Development | 7 | 5 | 10 | 14 | 14 | 12 | 7 | 10 | 8 | 10 | 8 | 8 | 7 | 6 | 6 |
| Architectural and Transportation Barriers Compliance Board | 7 | 8 | | 8 | 7 | 6 | 5 | 5 | 4 | 3 | 4 | 4 | 5 | 5 | 7 |
| Commission on Civil Rights | 1 | 1 | | 1 | 1 | 1 | 2 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Commodity Futures Trading Commission | 26 | 33 | 83 | 68 | 56 | 32 | 25 | 19 | 14 | 11 | 15 | 15 | 19 | 30 | 21 |
| Consumer Financial Protection Bureau | 21 | 26 | 34 | | | | | | | | | | | | |
| Consumer Product Safety Commission | 37 | 33 | 48 | 38 | 51 | 39 | 31 | 19 | 24 | 18 | 18 | 20 | 20 | 21 | 20 |
| Corporation for National and Community Service | 6 | 4 | 5 | 13 | 10 | 7 | 7 | 9 | 11 | 11 | 8 | 9 | 16 | 9 | 6 |
| Court Services/Offender Supervision, D.C. | 3 | 3 | 3 | 3 | 2 | 2 | 2 | 2 | 1 | 1 | 1 | 3 | 7 | 5 | 0 |
| CPBSD* | 2 | 2 | 2 | 3 | 3 | 3 | 3 | 5 | 6 | 6 | 5 | 0 | 0 | 0 | 0 |
| Department of Agriculture | 160 | 159 | 276 | 265 | 287 | 327 | 374 | 290 | 311 | 292 | 279 | 323 | 314 | 312 | 327 |
| Department of Commerce | 270 | 250 | 415 | 328 | 296 | 300 | 325 | 303 | 302 | 296 | 273 | 300 | 270 | 342 | 390 |
| Department of Defense | 121 | 104 | 146 | 140 | 150 | 133 | 109 | 131 | 143 | 163 | 126 | 108 | 87 | 93 | 117 |
| Department of Education | 26 | 20 | 24 | 18 | 23 | 22 | 17 | 13 | 16 | 9 | 11 | 13 | 14 | 8 | 21 |
| Department of Energy | 105 | 92 | 108 | 96 | 96 | 85 | 54 | 47 | 63 | 61 | 50 | 66 | 53 | 61 | 67 |
| Department of Health and Human Services | 217 | 200 | 204 | 251 | 312 | 231 | 236 | 259 | 257 | 249 | 233 | 219 | 219 | 277 | 308 |
| Department of Homeland Security | 141 | 139 | 160 | 232 | 230 | 237 | 252 | 267 | 280 | 295 | 314 | 338 | | | |
| Department of Housing and Urban Development | 55 | 52 | 58 | 65 | 65 | 60 | 73 | 86 | 92 | 90 | 103 | 109 | 100 | 89 | 113 |
| Department of Justice | 102 | 95 | 112 | 120 | 137 | 121 | 138 | 140 | 139 | 124 | 125 | 122 | 249 | 229 | 202 |
| Department of Labor | 95 | 84 | 98 | 90 | 99 | 104 | 96 | 94 | 93 | 93 | 88 | 89 | 102 | 141 | 156 |
| Department of State | 47 | 41 | 63 | 35 | 30 | 18 | 27 | 28 | 28 | 24 | 21 | 15 | 41 | 32 | 21 |
| Department of the Interior | 324 | 353 | 320 | 325 | 259 | 277 | 287 | 264 | 305 | 303 | 287 | 295 | 298 | 423 | 418 |
| Department of Transportation | 216 | 220 | 232 | 224 | 223 | 230 | 200 | 199 | 215 | 227 | 301 | 365 | 543 | 511 | 536 |
| Department of Treasury | 426 | 428 | 487 | 497 | 580 | 528 | 521 | 545 | 501 | 514 | 532 | 530 | 513 | 458 | 450 |
| Department of Veterans Affairs | 75 | 66 | 85 | 82 | 81 | 78 | 80 | 65 | 77 | 76 | 79 | 87 | 104 | 164 | 141 |
| Environmental Protection Agency | 186 | 179 | 223 | 318 | 345 | 331 | 330 | 336 | 372 | 400 | 416 | 417 | 409 | 416 | 449 |
| Equal Employment Opportunity Commission | 8 | 9 | 9 | 7 | 7 | 7 | 5 | 7 | 8 | 6 | 3 | 4 | 4 | 3 | 6 |
| Export-Import Bank of the United States | | | 1 | | | | | | | | | | | | |
| Farm Credit Administration | 26 | 30 | 30 | 25 | 23 | 25 | 19 | 12 | 19 | 20 | 20 | 21 | 14 | 17 | 17 |
| Farm Credit System Insurance Corporation | | | | 25 | | 1 | 1 | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 3 |
| Federal Acquisition Regulation | 36 | 40 | 50 | 51 | 85 | 55 | 44 | 36 | 42 | 44 | 45 | 49 | 43 | 48 | 56 |
| Federal Communications Commission | 132 | 132 | 118 | 103 | 147 | 145 | 143 | 145 | 139 | 143 | 146 | 134 | 141 | 145 | 137 |
| Federal Council on the Arts and Humanities | | | | | | | 1 | | | | | | | | |
| Federal Deposit Insurance Corporation | 25 | 17 | 22 | 21 | 21 | 21 | 19 | 18 | 24 | 16 | 20 | 17 | 17 | 22 | 26 |
| Federal Emergency Management Agency | | | | | | | 0 | 0 | 0 | 0 | 0 | 0 | 24 | 30 | 26 |
| Federal Energy Regulatory Commission | 24 | 29 | 40 | 41 | 36 | 37 | 39 | 41 | 47 | 35 | 23 | 21 | 19 | 8 | 18 |
| Federal Housing Finance Agency | 19 | 20 | 32 | 25 | 27 | 30 | 10 | 3 | 8 | 8 | 9 | 11 | 9 | 12 | 12 |
| Federal Housing Finance Board | | | | | | | 3 | | | | | | | | |
| Federal Maritime Commission | 7 | 6 | 4 | 8 | 4 | 6 | 3 | 4 | 3 | 5 | 7 | 11 | 8 | 7 | 9 |

Part G. List of 218 Economically Significant Rules, Year-End 2015

ACTIVE RULEMAKING (149)

DEPARTMENT OF AGRICULTURE

1. USDA/FCIC, Final Rule Stage, General Administrative Regulations; Catastrophic Risk Protection Endorsement; Area Risk Protection Insurance Regulations; and the Common Crop Insurance Regulations, Basic Provisions, 0563-AC43
2. USDA/RHS, Final Rule Stage, Multi-Family Housing (MFH) Reinvention, 0575-AC13
3. USDA/NRCS, Final Rule Stage, Environmental Quality Incentives Program (EQIP), 0578-AA62
4. USDA/FSIS, Final Rule Stage, Mandatory Inspection of Fish of the Order Siluriformes and Products Derived from Such Fish, 0583-AD36
5. USDA/FNS, Proposed Rule Stage, Modernizing Supplemental Nutrition Assistance Program (SNAP) Benefit Redemption Systems, 0584-AE37
6. USDA/FNS, Proposed Rule Stage, Supplemental Nutrition Assistance Program (SNAP): Electronic Benefits Transfer Requirements for Scanning and Product-Lookup Technology, 0584-AE39
7. USDA/FNS, Proposed Rule Stage, Supplemental Nutrition Assistance Program: Standard Utility Allowances Based on the Receipt of Energy Assistance Payments, 0584-AE43
8. USDA/FNS, Final Rule Stage, Eligibility, Certification, and Employment and Training Provisions, 0584-AD87
9. USDA/FNS, Final Rule Stage, Supplemental Nutrition Assistance Program: Farm Bill of 2008 Retailer Sanctions, 0584-AD88
10. USDA/FNS, Final Rule Stage, National School Lunch and School Breakfast Programs: Nutrition Standards for All Foods Sold in School, as Required by the Healthy, Hunger-Free Kids Act of 2010, 0584-AE09

DEPARTMENT OF COMMERCE

11. DOC/PTO, Proposed Rule Stage, Setting and Adjusting Patent Fees, 0651-AD02

DEPARTMENT OF DEFENSE

12. DOD/DODOASHA, Final Rule Stage, TRICARE; Reimbursement of Long-Term Care Hospitals, 0720-AB47
13. DOD/OS, Final Rule Stage, Transition Assistance Program (TAP) for Military Personnel, 0790-AJ17

DEPARTMENT OF EDUCATION

14. ED/OCTAE, Final Rule Stage, Workforce Innovation and Opportunity Act, 1830-AA21
15. ED/OPE, Final Rule Stage, REPAYE, 1840-AD18

DEPARTMENT OF ENERGY

16. DOE/ENDEP, Final Rule Stage, Advanced Technology Vehicles Manufacturing Incentive Program, 1901-AB25
17. DOE/EE, Proposed Rule Stage, Energy Efficiency Standards for Manufactured Housing, 1904-AC11
18. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Miscellaneous Refrigeration Products, 1904-AC51
19. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Commercial Packaged Boilers, 1904-AD01
20. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Portable Air Conditioners, 1904-AD02
21. DOE/EE, Proposed Rule Stage, Coverage Determination for Computers and Battery Backup Systems, 1904-AD04
22. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces, 1904-AD20
23. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Residential Dishwashers, 1904-AD24
24. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Commercial Water Heating Equipment, 1904-AD34
25. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Central Air Conditioners and Heat Pumps, 1904-AD37
26. DOE/EE, Final Rule Stage, Fossil Fuel-Generated Energy Consumption Reduction for New Federal Buildings and Major Renovations of Federal Buildings, 1904-AB96
27. DOE/EE, Final Rule Stage, Energy Conservation Standards for Commercial and Industrial Pumps, 1904-AC54
28. DOE/EE, Final Rule Stage, Energy Conservation Standards for Fans and Blowers, 1904-AC55
29. DOE/EE, Final Rule Stage, Energy Efficiency Standards for Residential Dehumidifiers, 1904-AC81
30. DOE/EE, Final Rule Stage, Energy Conservation Standards for Residential Boilers, 1904-AC88

31. DOE/EE, Final Rule Stage, Energy Conservation Standards for Small, Large, and Very Large Commercial Package A/C and Heating Equipment, 1904-AC95
32. DOE/EE, Final Rule Stage, Energy Conservation Standards for Commercial Warm Air Furnaces, 1904-AD11
33. DOE/EE, Final Rule Stage, Energy Conservation Standards for Residential Conventional Cooking Products, 1904-AD15
34. DOE/EE, Final Rule Stage, Energy Conservation Standards for Hearth Products, 1904-AD35
48. HHS/IHS, Proposed Rule Stage, Catastrophic Health Emergency Fund (CHEF), 0917-AA10
49. HHS/CDC, Final Rule Stage, World Trade Center Health Program Requirements for Enrollment, Appeals, Certification of Health Conditions Reimbursement, 0920-AA44
50. HHS/SAMHSA, Proposed Rule Stage, Increase Number of Patients to Which Drug Addiction Treatment Act (DATA)–Waived Physicians Can Prescribe Buprenorphine, 0930-AA22

DEPARTMENT OF HEALTH AND HUMAN SERVICES

35. HHS/FDA, Proposed Rule Stage, Over-the-Counter (OTC) Drug Review Topical Antimicrobial Drug Products, 0910-AF69
36. HHS/FDA, Proposed Rule Stage, Updated Standards for Labeling of Pet Food, 0910-AG09
37. HHS/FDA, Proposed Rule Stage, Requirements for the Testing and Reporting of Tobacco Product Constituents, Ingredients, and Additives, 0910-AG59
38. HHS/FDA, Proposed Rule Stage, Radiology Devices; Designation of Special Controls for the Computed Tomography X-ray System, 0910-AH03
39. HHS/FDA, Proposed Rule Stage, Requirements for Tobacco Product Manufacturing Practice, 0910-AH22
40. HHS/FDA, Final Rule Stage, Food Labeling: Revision of the Nutrition and Supplement Facts Labels, 0910-AF22
41. HHS/FDA, Final Rule Stage, Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed at One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain RACCs, 0910-AF23
42. HHS/FDA, Final Rule Stage, Electronic Distribution of Prescribing Information for Human Prescription Drugs Including Biological Products, 0910-AG18
43. HHS/FDA, Final Rule Stage, Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption, 0910-AG35
44. HHS/FDA, Final Rule Stage, Tobacco Products Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act, 0910-AG38
45. HHS/FDA, Final Rule Stage, Focused Mitigation Strategies to Protect Food against Intentional Adulteration, 0910-AG63
46. HHS/FDA, Final Rule Stage, Foreign Supplier Verification Program, 0910-AG64
47. HHS/FDA, Final Rule Stage, Sanitary Transportation of Human and Animal Food, 0910-AG98
51. HHS/OIG, Final Rule Stage, Medicare and State Health Care Programs: Fraud and Abuse; Revisions to the Office of the Inspector General’s Civil Monetary Penalty Rules, 0936-AA04
52. HHS/OASH, Proposed Rule Stage, Federal Policy for the Protection of Human Subjects, 0937-AA02
53. HHS/CMS, Proposed Rule Stage, Hospital and Critical Access Hospital (CAH) Changes to Promote Innovation, Flexibility, and Improvement in Patient Care (CMS-3295-P), 0938-AS21
54. HHS/CMS, Proposed Rule Stage, Medicare Clinical Diagnostic Laboratory Test Payment System (CMS-1621-F), 0938-AS33
55. HHS/CMS, Proposed Rule Stage, CY 2017 Notice of Benefit and Payment Parameters (CMS-9937-P), 0938-AS57
56. HHS/CMS, Proposed Rule Stage, Revisions to Requirements for Discharge Planning for Hospitals, Home Health Agencies, and Critical Access Hospitals (CMS-3317-F), 0938-AS59
57. HHS/CMS, Proposed Rule Stage, Imaging Accreditation (CMS-3309-P), 0938-AS62
58. HHS/CMS, Proposed Rule Stage, Medicaid Disproportionate Share Hospital (DSH) Allotment Reductions (CMS-2394-P), 0938-AS63
59. HHS/CMS, Proposed Rule Stage, Requirements for Surety Bonds for Certain Medicare Providers and Suppliers (CMS-6067-P), 0938-AS65
60. HHS/CMS, Proposed Rule Stage, Merit-Based Incentive Payment System (MIPS) and Alternative Payment Models (APMs) in Medicare Fee-for-Service (CMS-5517-P), 0938-AS69
61. HHS/CMS, Proposed Rule Stage, FY 2017 Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities (CMS-1645-P), 0938-AS75
62. HHS/CMS, Proposed Rule Stage, Hospital Inpatient Prospective Payment System for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and FY 2017 Rates (CMS-1655-P), 0938-AS77
63. HHS/CMS, Proposed Rule Stage, FY 2017 Inpatient Rehabilitation Facility Prospective Payment System (CMS-1647-P), 0938-AS78

64. HHS/CMS, Proposed Rule Stage, FY 2017 Hospice Rate Update (CMS-1652-P), 0938-AS79
65. HHS/CMS, Proposed Rule Stage, CY 2017 Home Health Prospective Payment System Refinements and Rate Update (CMS-1648-P), 0938-AS80
66. HHS/CMS, Proposed Rule Stage, CY 2017 Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1654-P), 0938-AS81
67. HHS/CMS, Proposed Rule Stage, CY 2017 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1656-P), 0938-AS82
68. HHS/CMS, Proposed Rule Stage, CY 2017 Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System and Quality Incentive Program (CMS-1651-P), 0938-AS83
69. HHS/CMS, Proposed Rule Stage, Program Integrity Enhancements to the Provider Enrollment Process (CMS-6058-P), 0938-AS84
70. HHS/CMS, Final Rule Stage, Face-to-Face Requirements for Home Health Services; Policy Changes and Clarifications Related to Home Health (CMS-2348-F), 0938-AQ36
71. HHS/CMS, Final Rule Stage, Covered Outpatient Drugs (CMS-2345-F), 0938-AQ41
72. HHS/CMS, Final Rule Stage, Reform of Requirements for Long-Term Care Facilities (CMS-3260-F), 0938-AR61
73. HHS/CMS, Final Rule Stage, Prior Authorization Process for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Items (CMS-6050-F), 0938-AR85
74. HHS/CMS, Final Rule Stage, Mental Health Parity and Addiction Equity Act of 2008; Application of Mental Health Parity Requirements to Medicaid Managed Care Organizations, CHIP, and Alternative Benefit Plans (CMS-2333-F), 0938-AS24
75. HHS/CMS, Final Rule Stage, Medicaid Managed Care, CHIP Delivered in Managed Care, Medicaid and CHIP Comprehensive Quality Strategies, and Revisions Related to Third-Party Liability (CMS-2390-F), 0938-AS25
76. HHS/CMS, Final Rule Stage, Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid, and other Provisions Related to Eligibility and Enrollment for Medicaid and CHIP (CMS-2334-F2), 0938-AS27
77. HHS/CMS, Final Rule Stage, CY 2016 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts (CMS-8059-N), 0938-AS36
78. HHS/CMS, Final Rule Stage, CY 2016 Part B Monthly Actuarial Rates, Monthly Premium Rates, and Annual Deductible (CMS-8061-N), 0938-AS38
79. HHS/CMS, Final Rule Stage, CY 2016 Revisions to Payment Policies under the Physician Fee Schedule and other Revisions to Medicare Part B (CMS-1631-FC) , 0938-AS40
80. HHS/CMS, Final Rule Stage, CY 2016 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1633-FC), 0938-AS42
81. HHS/CMS, Final Rule Stage, Medicaid Mechanized Claims Processing and Information Retrieval Systems (CMS-2392-F), 0938-AS53
82. HHS/CMS, Final Rule Stage, Omnibus Group and Individual Insurance Market Reforms (CMS-9993-F), 0938-AS56
83. HHS/CMS, Final Rule Stage, Comprehensive Care for Joint Replacement (CMS-5516-F), 0938-AS64
84. HHS/CMS, Final Rule Stage, CY 2017 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts (CMS-8062-N), 0938-AS70
85. HHS/OCR, Proposed Rule Stage, Nondiscrimination under the Patient Protection and Affordable Care Act, 0945-AA02
86. HHS/ACF, Final Rule Stage, Head Start Performance Standards, 0970-AC63
87. HHS/OS, Final Rule Stage, 2015 Edition Health Information Technology (Health IT) Certification Criteria, Base Electronic Health Record (EHR) Definition, and ONC Health IT Certification Program Modifications, 0991-AB93

DEPARTMENT OF HOMELAND SECURITY

88. DHS/USCIS, Proposed Rule Stage, U.S. Citizenship and Immigration Services Fee Schedule, 1615-AC09
89. DHS/USCG, Prerule Stage, Commercial Fishing Industry Vessels, 1625-AA77
90. DHS/USCG, Proposed Rule Stage, Updates to Maritime Security, 1625-AB38
91. DHS/USCG, Final Rule Stage, Commercial Fishing Vessels Implementation of 2010 and 2012 Legislation, 1625-AB85
92. DHS/USCBP, Final Rule Stage, Importer Security Filing and Additional Carrier Requirements, 1651-AA70
93. DHS/TSA, Final Rule Stage, Passenger Screening Using Advanced Imaging Technology, 1652-AA67
94. DHS/USICE, Proposed Rule Stage, Improving and Expanding Training Opportunities for F-1 Nonimmigrant

Students with STEM Degrees and Expanding Cap-Gap Relief for All F-1 Students with Pending H-1B Petitions, 1653-AA72

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

95. HUD/PIH, Proposed Rule Stage, Instituting Smoke-Free Public Housing (FR-5597), 2577-AC97

DEPARTMENT OF THE INTERIOR

96. DOI/BSEE, Final Rule Stage, Blowout Prevention Systems and Well Control, 1014-AA11
97. DOI/FWS, Proposed Rule Stage, Migratory Bird Hunting; 2016–2017 Migratory Game Bird Hunting Regulations, 1018-BA70
98. DOI/ASLM, Final Rule Stage, Arctic Regulations, 1082-AA00

DEPARTMENT OF JUSTICE

99. DOJ/DEA, Final Rule Stage, Electronic Prescriptions for Controlled Substances, 1117-AA61
100. DOJ/DEA, Final Rule Stage, Retail Sales of Scheduled Listed Chemical Products; Chemical; Self-Certification of Regulated Sellers of Scheduled Listed Chemical Products, 1117-AB05
101. DOJ/CRT, Proposed Rule Stage, Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Governments, 1190-AA65

DEPARTMENT OF LABOR

102. DOL/ETA, Proposed Rule Stage, Workforce Innovation and Opportunity Act; Joint Rule with U.S. Department of Education for Combined and Unified State Plans, Performance Accountability, and the One-Stop System Joint Provisions, 1205-AB74
103. DOL/EBSA, Proposed Rule Stage, Conflict-of-Interest Rule Investment Advice, 1210-AB32
104. DOL/EBSA, Final Rule Stage, Final Rules under the Affordable Care Act for Grandfathered Plans, Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, Dependent Coverage, Appeals, and Patient Protections, 1210-AB72
105. DOL/OSHA, Prerule Stage, Combustible Dust, 1218-AC41
106. DOL/OSHA, Prerule Stage, Preventing Backover Injuries and Fatalities, 1218-AC51

107. DOL/OSHA, Proposed Rule Stage, Occupational Exposure to Beryllium, 1218-AB76
108. DOL/OSHA, Final Rule Stage, Occupational Exposure to Crystalline Silica, 1218-AB70
109. DOL/OSHA, Final Rule Stage, Walking Working Surfaces and Personal Fall Protection Systems (Slips, Trips, and Fall Prevention), 1218-AB80
110. DOL/WHDD, Proposed Rule Stage, Establishing Paid Sick Leave for Contractors, Executive Order No. 13706, 1235-AA13
111. DOL/WHDD, Final Rule Stage, Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees, 1235-AA11

DEPARTMENT OF TRANSPORTATION

112. DOT/FMCSA, Proposed Rule Stage, Carrier Safety Fitness Determination, 2126-AB11
113. DOT/FMCSA, Proposed Rule Stage, Heavy Vehicle Speed Limiters, 2126-AB63
114. DOT/FMCSA, Proposed Rule Stage, Entry-Level Driver Training, 2126-AB66
115. DOT/FMCSA, Final Rule Stage, Commercial Driver's License Drug and Alcohol Clearinghouse (MAP-21), 2126-AB18
116. DOT/FMCSA, Final Rule Stage, Electronic Logging Devices and Hours of Service Supporting Documents (MAP-21) (RRR), 2126-AB20
117. DOT/NHTSA, Prerule Stage, Rear Impact Guards and Other Safety Strategies for Single-Unit Trucks, 2127-AL57
118. DOT/NHTSA, Proposed Rule Stage, Heavy Vehicle Speed Limiters, 2127-AK92
119. DOT/NHTSA, Proposed Rule Stage, Rear Seat Belt Reminder System, 2127-AL37
120. DOT/NHTSA, Proposed Rule Stage, Fuel-Efficiency Standards for Medium- and Heavy-Duty Vehicles and Work Trucks: Phase 2, 2127-AL52
121. DOT/NHTSA, Proposed Rule Stage, Federal Motor Vehicle Safety Standard (FMVSS) 150 Vehicle-to-Vehicle (V2V) Communication, 2127-AL55
122. DOT/NHTSA, Final Rule Stage, Establish Side Impact Performance Requirements for Child Restraint Systems (MAP-21), 2127-AK95
123. DOT/FRA, Proposed Rule Stage, Passenger Equipment Safety Standards Amendments, 2130-AC46
124. DOT/FTA, Proposed Rule Stage, Transit Asset Management, 2132-AB07
125. DOT/PHMSA, Proposed Rule Stage, Pipeline Safety: Gas Transmission, 2137-AE72

126. DOT/PHMSA, Proposed Rule Stage, Pipeline Safety: Amendments to Parts 192 and 195 to Require Valve Installation and Minimum Rupture Detection Standards, 2137-AF06

DEPARTMENT OF THE TREASURY

127. TREAS/DO, Final Rule Stage, Assessment of Fees for Large Bank-Holding Companies and Nonbank Financial Companies Supervised by the Federal Reserve to Cover the Expenses of the Financial Research Fund, 1505-AC42
128. TREAS/DO, Final Rule Stage, Restore Act Program, 1505-AC44
129. TREAS/CUSTOMS, Final Rule Stage, Automated Commercial Environment (ACE) Required for Electronic Entry/Entry Summary (Cargo Release and Related Entry) Filings, 1515-AE03
130. TREAS/OCC, Final Rule Stage, Registration and Regulation of Swap Dealers and Major Swap Participants; Registration and Regulation of Security-Based Swap Dealers and Major Security-Based Swap Participants, 1557-AD43

DEPARTMENT OF VETERANS AFFAIRS

131. VA, Proposed Rule Stage, Tiered Pharmacy Copayments, 2900-AP35
132. VA, Final Rule Stage, Net Worth, Asset Transfers, and Income Exclusions for Needs-Based Benefits, 2900-AO73
133. VA, Final Rule Stage, Copayments for Medications in 2015, 2900-AP15
134. VA, Final Rule Stage, Expanded Access to Non-VA Care through the Veterans Choice Program, 2900-AP60

ENVIRONMENTAL PROTECTION AGENCY

135. EPA/SWER, Proposed Rule Stage, Modernization of the Accidental Release Prevention Regulations under the Clean Air Act, 2050-AG82
136. EPA/SWER, Proposed Rule Stage, Financial Responsibility Requirements under CERCLA Section 108(b) for Classes of Facilities in the Hard Rock Mining Industry, 2050-AG61
137. EPA/AR, Proposed Rule Stage, Interstate Transport Rule for the 2008 Ozone NAAQS, 2060-AS05
138. EPA/AR, Proposed Rule Stage, Oil and Natural Gas Sector: Emission Standards for New and Modified Sources, 2060-AS30
139. EPA/AR, Proposed Rule Stage, Model Trading Rules for Greenhouse Gas Emissions from Electric Utility Gener-

ating Units Constructed on or Before January 8, 2014, 2060-AS47

140. EPA/AR, Final Rule Stage, Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards, 2060-AQ75
141. EPA/AR, Final Rule Stage, Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles Phase 2, 2060-AS16

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

142. ATBCB, Final Rule Stage, Information and Communication Technology Standards and Guidelines, 3014-AA37

CONSUMER PRODUCT SAFETY COMMISSION

143. CPSC, Prerule Stage, Rule Review of: Standard for the Flammability (Open Flame) of Mattress Sets, 3041-AD47
144. CPSC, Proposed Rule Stage, Flammability Standard for Upholstered Furniture, 3041-AB35

FEDERAL ACQUISITION REGULATION

145. FAR, Final Rule Stage, Federal Acquisition Regulation (FAR); FAR Case 2014-025; Fair Pay and Safe Workplaces, 9000-AM81

FEDERAL DEPOSIT INSURANCE CORPORATION

146. FDIC, Final Rule Stage, Margin and Capital Requirements for Covered Swap Entities, 3064-AE21

NATIONAL CREDIT UNION ADMINISTRATION

147. NCUA, Final Rule Stage, Risk-Based Capital, 3133-AD77

NUCLEAR REGULATORY COMMISSION

148. NRC, Proposed Rule Stage, Revision of Fee Schedules: Fee Recovery for FY 2016 (NRC-2015-0223), 3150-AJ66
149. NRC, Final Rule Stage, Domestic Licensing of Source Material Amendments/Integrated Safety Analysis (NRC-2009-0079), 3150-AI50

COMPLETED ACTIONS (36)

DEPARTMENT OF AGRICULTURE

- 150. USDA/APHIS, Completed Actions, Importation of Beef from a Region in Brazil, 0579-AD41
- 151. USDA/APHIS, Completed Actions, User Fees for Agricultural Quarantine and Inspection Services, 0579-AD77
- 152. USDA/APHIS, Completed Actions, Importation of Beef from a Region in Argentina, 0579-AD92

DEPARTMENT OF DEFENSE

- 153. DOD/DODOASHA, Completed Actions, CHAMPUS/TRICARE: Pilot Program for Refills of Maintenance Medications for TRICARE for Life Beneficiaries through the TRICARE Mail Order Program, 0720-AB60
- 154. DOD/OS, Completed Actions, Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 0790-AJ10

DEPARTMENT OF EDUCATION

- 155. ED/OII, Completed Actions, Charter Schools Grants to SEAs, 1855-AA12

DEPARTMENT OF ENERGY

- 156. DOE/EE, Completed Actions, Energy Conservation Standards for Single-Package Vertical Air Conditioners and Single-Package Vertical Heat Pumps, 1904-AC85

DEPARTMENT OF HEALTH AND HUMAN SERVICES

- 157. HHS/FDA, Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Food for Animals, 0910-AG10
- 158. HHS/FDA, Current Good Manufacturing and Hazard Analysis and Risk-Based Preventive Controls for Human Food, 0910-AG36
- 159. HHS/FDA, Revision of Postmarketing Reporting Requirements Discontinuance or Interruption in Supply of Certain Products (Drug Shortages), 0910-AG88
- 160. HHS/CMS, Medicare Shared Savings Program; Accountable Care Organizations (CMS-1461-F), 0938-AS06
- 161. HHS/CMS, Electronic Health Record Incentive Program Stage 3 and Modifications to Meaningful Use in 2015 through 2017 (CMS-3310-F), 0938-AS26

- 162. HHS/CMS, FY 2016 Hospice Rate Update (CMS-1629-F), 0938-AS39
- 163. HHS/CMS, Hospital Inpatient Prospective Payment System for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and FY 2016 Rates (CMS-1632-FC), 0938-AS41
- 164. HHS/CMS, FY 2016 Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities (CMS-1622-F), 0938-AS44
- 165. HHS/CMS, FY 2016 Inpatient Rehabilitation Facility Prospective Payment System (CMS-1624-F), 0938-AS45
- 166. HHS/CMS, CY 2016 Home Health Prospective Payment System Refinements and Rate Update (CMS-1625-F), 0938-AS46
- 167. HHS/CMS, Coverage of Certain Preventive Services; Eligible Organizations (CMS-9940-F), 0938-AS50
- 168. HHS/CMS, Electronic Health Record Incentive Program Modifications to Meaningful Use in 2015 through 2017 (CMS-3311-F), 0938-AS58

DEPARTMENT OF HOMELAND SECURITY

- 169. DHS/USCBP, Changes to the Visa Waiver Program to Implement the Electronic System for Travel Authorization (ESTA) Program, 1651-AA72
- 170. DHS/USCBP, Electronic System for Travel Authorization (ESTA): Fee for Use of the System, 651-AA83

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

- 171. HUD/HUDSEC, Credit Risk Retention (FR-5504), 2501-AD53

DEPARTMENT OF THE INTERIOR

- 172. DOI/FWS, Migratory Bird Hunting; 2015–2016 Migratory Game Bird Hunting Regulations, 1018-BA67

DEPARTMENT OF TRANSPORTATION

- 173. DOT/NHTSA, Electronic Stability Control Systems for Heavy Vehicles (MAP-21), 2127-AK97
- 174. DOT/PHMSA, Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains, 2137-AE91

DEPARTMENT OF VETERANS AFFAIRS

- 175. VA, Expanded Access to Non-VA Care through the Veterans Choice Program, 2900-AP24

ENVIRONMENTAL PROTECTION AGENCY

- 176. EPA/WATER, Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, 2040-AF14
- 177. EPA/SWER, Revising Underground Storage Tank Regulations Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training, 2050-AG46
- 178. EPA/AR, Review of the National Ambient Air Quality Standards for Ozone, 2060-AP38
- 179. EPA/AR, NESHAP for Brick and Structural Clay Products Manufacturing and NESHAP for Clay Ceramics Manufacturing, 2060-AP69
- 180. EPA/AR, Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 2060-AR33

FEDERAL COMMUNICATIONS COMMISSION

- 181. FCC, Broadband over Power Line Systems; ET Docket No. 04-37, 3060-AI24

NATIONAL CREDIT UNION ADMINISTRATION

- 182. NCUA, Loans in Areas Having Special Flood Hazards, 3133-AE18
- 183. NCUA, Loans in Areas Having Special Flood Hazards (Escrow and Mandatory Purchase), 3133-AE40

NUCLEAR REGULATORY COMMISSION

- 184. NRC, Revision of Fee Schedules: Fee Recovery for FY 2015 (NRC-2014-0200), 3150-AJ44

OFFICE OF PERSONNEL MANAGEMENT

- 185. OPM, Federal Employees Health Benefits Program Self Plus One Enrollment Type, 3206-AN08

LONG-TERM ACTIONS (33)

DEPARTMENT OF COMMERCE

- 186. DOC/NOAA, Taking Marine Mammals Incidental to Conducting Geological and Geophysical Exploration of Mineral and Energy Resources on the Outer Continental Shelf in the Gulf of Mexico, 0648-BB38

DEPARTMENT OF ENERGY

- 187. DOE/OGC, Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation, 1990-AA39

DEPARTMENT OF HEALTH AND HUMAN SERVICES

- 188. HHS/FDA, Regulations on Human Drug Compound- ing under Sections 503A and 503B of the Federal Food, Drug, and Cosmetic Act, 0910-AH10
- 189. HHS/CMS, Home Health Agency Conditions of Participation (CMS-3819-F), 0938-AG81
- 190. HHS/CMS, Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers (CMS-3178-F), 0938-AO91
- 191. HHS/CMS, Fire Safety Requirements for Certain Health Care Facilities (CMS-3277-F), 0938-AR72
- 192. HHS/CMS, Adoption of Operating Rules for HIPAA Transactions (CMS-0036-IFC), 0938-AS01

DEPARTMENT OF HOMELAND SECURITY

- 193. DHS/OS, Collection of Alien Biometric Data upon Exit from the United States at Air and Sea Ports of Departure, 1601-AA34
- 194. DHS/OS, Ammonium Nitrate Security Program, 1601-AA52
- 195. DHS/USCIS, Temporary Non-Agricultural Employment of H-2B Aliens in the United States, 1615-AC06
- 196. DHS/TSA, General Aviation Security and Other Aircraft Operator Security, 1652-AA53
- 197. DHS/TSA, Standardized Vetting, Adjudication, and Redress Services, 1652-AA61

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

- 198. HUD/CPD, Housing Trust Fund, 2506-AC30

DEPARTMENT OF JUSTICE

- 199. DOJ/CRT, Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of Public Accommodations, 1190-AA61

DEPARTMENT OF LABOR

- 200. DOL/ETA, Temporary Non-Agricultural Employment of H-2B Aliens in the United States, 1205-AB76

- 201. DOL/EBSA, Improved Fee Disclosure for Welfare Plans, 1210-AB37
- 202. DOL/OSHA, Infectious Diseases, 1218-AC46
- 203. DOL/OSHA, Injury and Illness Prevention Program, 1218-AC48
- 204. DOL/OSHA, Update to the Hazard Communication Standard, 1218-AC93

DEPARTMENT OF THE TREASURY

- 205. TREAS/OCC, Treatment of Certain Collateralized Debt Obligations Backed by Trust Preferred Securities, 1557-AD79
- 206. TREAS/CDFI, Interim Rule for the CDFI Bond Guarantee Program, 1559-AA01

ENVIRONMENTAL PROTECTION AGENCY

- 207. EPA/WATER, Stormwater Regulations Revision to Address Discharges from Developed Sites, 2040-AF13
- 208. EPA/WATER, National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions, 2040-AF15
- 209. EPA/AR, Review of the National Ambient Air Quality Standards for Particulate Matter, 2060-AS50
- 210. EPA/OCSP, Lead; Renovation, Repair, and Painting Program for Public and Commercial Buildings, 2070-AJ56

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

- 211. ATBCB, Americans with Disabilities Act (ADA) Accessibility Guidelines for Passenger Vessels, 3014-AA11

FEDERAL COMMUNICATIONS COMMISSION

- 212. FCC, Expanding Broadband and Innovation through Air-Ground Mobile Broadband Secondary Service for Passengers Aboard Aircraft in the 14.0–14.5 GHz Band; GN Docket No. 13-114, 3060-AK02
- 213. FCC, In the Matter of Service Rules for the 698 to 746, 747 to 762, and 777 to 792 MHz Bands, 3060-AJ35
- 214. FCC, Universal Service Reform Mobility Fund (WT Docket No. 10-208), 3060-AJ58
- 215. FCC, Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions; Docket No. 12-268, 3060-AJ82
- 216. FCC, IP-Enabled Services; WC Docket No. 04-36, 3060-AI48
- 217. FCC, Implementation of Section 224 of the Act; A National Broadband Plan for Our Future (WC Docket No. 07-245, GN Docket No. 09-51), 3060-AJ64
- 218. FCC, Protecting and Promoting the Open Internet (GN Docket No. 14-28 OK?), 3060-AK21

Source: Data compiled by Clyde Wayne Crews Jr. from “The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, and from online edition at <http://www.reginfo.gov>.

Note: The “Regulation Identifier Number” appears at the end of each entry. Sequential numbers in print editions of the “Regulatory Plan and Unified Agenda” no longer apply. For additional information, see “How to Use the Unified Agenda,” http://www.reginfo.gov/public/jsp/eAgenda/StaticContent/UA_HowTo.jsp.

Part H. Rules Affecting Small Business, 1997–2014

| | 2014 | 2013 | 2012 | 2011 | 2010 | 2009 | 2008 | 2007 | 2006 | 2005 | 2004 | 2003 | 2002 | 2001 | 2000 | 1999 | 1998 | 1997 |
|--|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Dept. of Agriculture | 47 | 45 | 80 | 65 | 84 | 87 | 93 | 73 | 67 | 54 | 52 | 64 | 39 | 56 | 47 | 49 | 63 | 58 |
| Dept. of Commerce | 112 | 103 | 158 | 115 | 98 | 90 | 107 | 112 | 111 | 108 | 79 | 74 | 77 | 89 | 98 | 88 | 52 | 29 |
| Dept. of Defense | 7 | 12 | 25 | 26 | 16 | 12 | 7 | 13 | 14 | 13 | 12 | 13 | 6 | 8 | 7 | 15 | 21 | 15 |
| Dept. of Education | 2 | 3 | | 1 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| Dept. of Energy | 4 | 5 | 8 | 6 | 3 | 2 | 1 | 1 | 0 | 0 | 0 | 1 | 0 | 1 | 1 | 0 | 0 | 2 |
| Dept. of Health and Human Services | 103 | 91 | 85 | 100 | 112 | 94 | 93 | 96 | 109 | 112 | 106 | 96 | 92 | 108 | 107 | 75 | 88 | 100 |
| Dept. of Homeland Security | 25 | 28 | 27 | 34 | 37 | 35 | 42 | 44 | 43 | 43 | 38 | 33 | 0 | 0 | 0 | 0 | 0 | 0 |
| Dept. of Housing and Urban Development | | | | 0 | 1 | 0 | 1 | 5 | 4 | 4 | 6 | 11 | 6 | 3 | 0 | 1 | 1 | 7 |
| Dept. of the Interior | 30 | 23 | 24 | 23 | 18 | 17 | 18 | 19 | 29 | 21 | 20 | 26 | 17 | 20 | 18 | 33 | 29 | 28 |
| Dept. of Justice | 10 | 10 | 9 | 9 | 5 | 3 | 2 | 5 | 7 | 8 | 8 | 8 | 13 | 15 | 14 | 14 | 10 | 26 |
| Dept. of Labor | 24 | 22 | 24 | 23 | 26 | 29 | 29 | 26 | 26 | 19 | 19 | 23 | 22 | 26 | 40 | 38 | 41 | 39 |
| Dept. of State | 21 | 20 | 31 | 21 | 20 | 4 | 3 | 1 | 0 | 1 | 1 | 2 | 6 | 3 | 2 | 0 | 0 | 1 |
| Dept. of Transportation | 53 | 68 | 65 | 56 | 49 | 45 | 41 | 43 | 60 | 63 | 103 | 151 | 216 | 244 | 266 | 246 | 208 | 44 |
| Dept. of Treasury | 27 | 29 | 39 | 47 | 56 | 48 | 47 | 45 | 37 | 41 | 38 | 27 | 26 | 27 | 31 | 15 | 60 | 50 |
| Dept. of Veterans' Affairs | 1 | 2 | 1 | 2 | 3 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 3 | 6 | 6 | 7 |
| Agency for International Development | | | | 1 | 1 | 0 | 0 | 1 | 1 | 0 | 0 | 1 | 2 | 1 | 0 | 0 | 0 | 0 |
| Arch. and Trans Barriers Compliance Board | 1 | 1 | 1 | 1 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 2 | 2 | 3 | 0 |
| Commodity Futures Trading Commission | 1 | | | 0 | | 1 | 1 | 1 | 0 | 1 | 1 | 2 | 0 | 0 | 0 | 0 | 1 | 0 |
| Consumer Financial Protection Bureau | 3 | 4 | 8 | 5 | | | | | | | | | | | | | | |
| Consumer Product Safety Commission | | | 2 | 0 | | | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Corporation for National and Community Service | | | | 0 | | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Environmental Protection Agency | 6 | 6 | 49 | 73 | 95 | 89 | 83 | 85 | 95 | 110 | 122 | 135 | 167 | 185 | 205 | 179 | 178 | 163 |
| Equal Employment Opportunity Commission | 2 | 2 | 3 | 5 | 5 | 4 | 2 | 3 | 3 | 3 | 0 | 0 | 0 | 2 | 0 | 0 | 2 | 1 |
| Federal Emergency Management Agency | | | | | | | | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 0 | 0 | 0 |
| Federal Acquisition Regulation | 24 | 17 | 15 | 10 | 5 | 4 | 6 | 5 | 5 | 7 | 5 | 5 | 6 | 9 | 13 | 16 | 11 | 15 |
| Federal Communications Commission | 98 | 99 | 89 | 78 | 112 | 110 | 110 | 109 | 108 | 113 | 113 | 104 | 109 | 117 | 105 | 91 | 82 | 70 |
| Federal Deposit Insurance Corporation | | 4 | 5 | 2 | 1 | | | | | | | | | | | | | |
| Federal Energy Regulatory Commission | | | | 0 | | | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 |

Part I. The Unconstitutionality Index, 1993–2015

| Year | Final Rules | Public Laws | The Index | Notices | Executive Orders | Executive Memos |
|-------------|--------------|-------------|-----------|---------------|------------------|-----------------|
| 1993 | 4,369 | 210 | 21 | | | |
| 1994 | 4,867 | 255 | 19 | | | |
| 1995 | 4,713 | 88 | 54 | 23,162 | 40 | |
| 1996 | 4,937 | 246 | 20 | 24,367 | 50 | |
| 1997 | 4,584 | 153 | 30 | 26,033 | 38 | |
| 1998 | 4,899 | 241 | 20 | 26,197 | 38 | |
| 1999 | 4,684 | 170 | 28 | 25,505 | 35 | |
| 2000 | 4,313 | 410 | 11 | 25,470 | 39 | 13 |
| 2001 | 4,132 | 108 | 38 | 24,829 | 67 | 12 |
| 2002 | 4,167 | 269 | 15 | 25,743 | 32 | 10 |
| 2003 | 4,148 | 198 | 21 | 25,419 | 41 | 14 |
| 2004 | 4,101 | 299 | 14 | 25,309 | 46 | 21 |
| 2005 | 3,975 | 161 | 25 | 25,353 | 27 | 23 |
| 2006 | 3,718 | 321 | 12 | 25,031 | 25 | 18 |
| 2007 | 3,595 | 188 | 19 | 24,476 | 32 | 16 |
| 2008 | 3,830 | 285 | 13 | 25,279 | 29 | 15 |
| 2009 | 3,503 | 125 | 28 | 24,753 | 44 | 38 |
| 2010 | 3,573 | 217 | 16 | 26,173 | 41 | 42 |
| 2011 | 3,807 | 81 | 47 | 26,161 | 33 | 19 |
| 2012 | 3,708 | 127 | 29 | 24,408 | 39 | 32 |
| 2013 | 3,659 | 72 | 51 | 24,261 | 24 | 32 |
| 2014 | 3,554 | 224 | 16 | 23,970 | 34 | 25 |
| 2015 | 3,410 | 114 | 30 | 24,393 | 29 | 31 |

Sources: Final rules, notices, and executive orders compiled from database at National Archives and Records Administration, Office of the Federal Register, <https://www.federalregister.gov/articles/search#advanced>; Public laws from Government Printing Office, Public and Private Laws, <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=PLAW>.

Notes

- 1 Congressional Budget Office (CBO), *The Budget and Economic Outlook: 2016 to 2026*, January 2016, Table 1, “CBO’s Baseline Budget Projections,” p. 2, <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51129-2016Outlook.pdf>.
- 2 Office of Management and Budget (OMB), *Budget of the United States Government*, Fiscal Year (FY) 2017, Summary Tables, Table S-1, “Budget Totals,” p. 115, <https://www.whitehouse.gov/sites/default/files/omb/budget/fy2017/assets/tables.pdf>.
- 3 OMB, *Historical Tables*, Table 1.1, “Summary of Receipts, Outlays, and Surpluses or Deficits (-): 1789–2021,” <http://www.whitehouse.gov/omb/budget/historicals>.
- 4 CBO, 2016.
- 5 OMB, FY 2017, Table S-1.
- 6 International percentages are available from the Organisation for Economic Co-operation and Development (OECD), *Economic Outlook Annex Tables*, <http://www.oecd.org/eco/economicoutlookanalysisandforecasts/economicoutlookannextables.htm>; Annex Table 25, “General Government Total Outlays.” According to the OECD, the U.S. figure for 2015 is 37.9 percent, but that figure includes state and local spending outlays. For federal outlays alone as a percentage of gross domestic product (GDP), the figure is 20.5 percent (\$3.687 trillion/\$17.938 trillion), using GDP data from the U.S. Department of Commerce, Bureau of Economic Analysis, “National Income and Product Accounts, Gross Domestic Product: Fourth Quarter and Annual 2015 (Advance Estimate),” news release, January 29, 2016, <http://www.bea.gov/newsreleases/national/gdp/gdpnewsrelease.htm>.
- 7 Central Intelligence Agency, *The World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook/fields/2056.html>. Nations with at least \$1 trillion in revenues are China, France, Germany, Italy, Japan, the United Kingdom, and the United States.
- 8 Regulations with cost estimates presented by OMB have made up only 0.5 percent of the annual rule flow of around 3,500 over the past decade, based on data compiled from the Office of Information and Regulatory Affairs’ annual Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities, https://www.whitehouse.gov/omb/inforeg_regpol_reports_congress. See also Clyde Wayne Crews Jr., “Boosting Regulatory Transparency: Comments of the Competitive Enterprise Institute on the Office of Management and Budget’s 2013 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act,” Competitive Enterprise Institute, Washington, D.C., July 31, 2013, p. 9, <http://bit.ly/1dq5TbY>. See also Crews, “Federal Regulation: The Costs of Benefits,” *Forbes*, January 7, 2013, <http://www.forbes.com/sites/waynecrews/2013/01/07/federal-regulation-the-costs-of-benefits/>.
- 9 “Measuring the Impact of Regulation: The Rule of More,” *The Economist*, February 18, 2012, <http://www.economist.com/node/21547772>.
- 10 The regulatory report card has long been proposed in *Ten Thousand Commandments*; it was also featured in Clyde Wayne Crews Jr., “The Other National Debt Crisis: How and Why Congress Must Quantify Federal Regulation,” *Issue Analysis* 2011 No. 4, Competitive Enterprise Institute, Washington, D.C., October 2011, <http://cei.org/issue-analysis/other-national-debt-crisis>. Those reporting proposals appeared in the Achieving Less Excess in Regulation and Requiring Transparency (ALERRT) Act during the 113th Congress (2013–2014), <https://beta.congress.gov/bill/113th-congress/house-bill/2804>. They had first appeared in Sen. Olympia Snowe’s (R-Maine) 112th Congress legislation, Restoring Tax and Regulatory Certainty to Small Businesses (RESTART) Act (S. 3572). Section 213 detailed this proposed “regulatory transparency reporting,” which includes reporting on major-rule costs in tiers. The full text of S. 3572 is available at <https://www.govtrack.us/congress/bills/112/s3572/text>.
- 11 “The Debt to the Penny and Who Holds It,” U.S. Department of the Treasury, Bureau of the Fiscal Service, <http://www.treasurydirect.gov/NP/debt/current>.
- 12 For a survey of corporate tax incidence estimates, see Jennifer C. Gravelle, “Corporate Tax Incidence: A Review of Empirical Estimates and Analysis,” Congressional Budget Office Working Paper Series: Working Paper 2011-01, June 2011, <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/122xx/doc12239/06-14-2011-corporatetaxincidence.pdf>.
- 13 See James M. Buchanan, *Cost and Choice: An Inquiry in Economic Theory* (Chicago and London: University of Chicago Press, 1969).
- 14 Clyde Wayne Crews Jr., “Tip of the Costberg: On the Invalidity of All Cost of Regulation Estimates and the Need to Compile Them Anyway,” working paper, Competitive Enterprise Institute, available on Social Science Research Network (SSRN), 2016 Edition, <http://ssrn.com/abstract=2502883>. Editions also available on scribd: <http://www.scribd.com/doc/103172296/Tip-of-the-Costberg-On-the-Invalidity-of-All-Cost-of-Regulation-Estimates-and-the-Need-to-Compile-Them-Anyway>.
- 15 CBO, *A Review of CBO’s Activities in 2014 under the Unfunded Mandates Reform Act*, March 2015, p. 2, <http://www.cbo.gov/sites/default/files/cbofiles/attachments/50051-UMRA.pdf>.
- 16 OMB, *Historical Tables*, <http://www.whitehouse.gov/omb/budget/Historicals>.
- 17 CBO website, <http://www.cbo.gov>.
- 18 Buchanan, *Cost and Choice*, 1969, pp. 42–43.

19 OMB, *2015 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, Table 1-1, “Estimates of the Total Annual Benefits and Costs of Major Federal Rules by Agency, October 1, 2004–September 30, 2014 (billions of 2001 or 2010 dollars),” March 10, 2016, pp. 9-10, https://www.whitehouse.gov/sites/default/files/omb/inforeg/2015_cb/2015-cost-benefit-report.pdf.

20 OMB, *2014 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, Table 1-1, “Estimates of the Total Annual Benefits and Costs of Major Federal Rules by Agency, October 1, 2003–September 30, 2013 (billions of 2010 dollars),” May 2014, pp. 9–11, http://www.whitehouse.gov/sites/default/files/omb/inforeg/2014_cb/draft_2014_cost_benefit_report-updated.pdf.

21 OMB, *2015 Report to Congress*, Table 1-1, pp. 9-10.

22 OMB, *2015 Report to Congress*, Table 1-5, “Estimates, by Agency, of the Total Annual Benefits and Costs of Major Rules: October 1, 2013–September 30, 2014 (billions of 2001 or 2010 dollars),” p. 23.

23 OMB, *2014 Draft Report to Congress*, Table 1-5, “Total Annual Benefits and Costs of Major Rules by Fiscal Year (billions of 2001 or 2010 dollars),” p. 22.

24 W. Mark Crain and Nicole V. Crain, “The Cost of Federal Regulation to the U.S. Economy, Manufacturing, and Small Business,” National Association of Manufacturers, September 10, 2014, <http://www.nam.org/-/media/A7A8456F33484E498F40CB46D6167F31.ashx>.

25 John W. Dawson and John J. Seater, “Federal Regulation and Aggregate Economic Growth,” *Journal of Economic Growth*, Vol. 18, No. 2, pp. 137–177, June 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2223315##.

26 Bentley Coffey, Patrick A. McLaughlin, and Pietro Peretto, “The Cumulative Cost of Regulations,” Mercatus Working Paper, Mercatus Center, April 2016, <http://mercatus.org/sites/default/files/Coffey-Cumulative-Cost-Regs-v3.pdf>.

27 Nicole V. Crain and W. Mark Crain, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBAHQ-08-M-0466, September 2010, <http://www.sba.gov/advocacy/7540/49291>.

28 The 2010 Crain and Crain calculations updated a 2005 report by Mark Crain that found 2004 regulatory costs of \$1.1 trillion (W. Mark Crain, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBHQ-03-M-0522, September 2005, <https://www.sba.gov/sites/default/files/files/rs264tot.pdf>). In a still earlier October 2001 report by Crain and Thomas Hopkins, the authors noted regulatory costs of \$843 billion (W. Mark Crain and Thomas D. Hopkins, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, RFP No. SBAHQ-00-R-0027, Octo-

ber 2001, <http://www.sba.gov/sites/default/files/files/rs207tot.pdf>). That report, in turn, updated still earlier SBA analyses.

Recent criticisms of the more recent Crain and Crain SBA report (“The Impact of Regulatory Costs”; see note 26) would also apply to some OMB calculations and have in the past—though critics do not present alternative and defensible total cost estimates. In particular, the Crain and Crain model for calculating costs of economic regulations using the World Bank Regulatory Quality Index has fallen under criticism by OMB and others. Earlier estimates by Crain and Hopkins would be in the same ballpark, in current dollars, even without including the costs of interim regulations. Moreover, current estimates do not capture the costs of such major initiatives as health care legislation, Dodd-Frank financial regulation, or even the earlier Sarbanes-Oxley financial rules. This author addressed some of those concerns about the SBA study in a *Forbes* column (Crews, “The Cost of Government Regulation,” *Forbes*, July 6, 2011, <http://www.forbes.com/sites/waynecrews/2011/07/06/the-cost-of-government-regulation-the-barack-obama-cass-sunstein-urban-legend/>).

Following are the primary criticisms and links to Crain and Crain’s responses to them:

Curtis W. Copeland, “Analysis of an Estimate of the Total Costs of Federal Regulations,” Congressional Research Service, April 6, 2011, http://www.progressivereform.org/articles/CRS_Crain_and_Crain.pdf. Crain and Crain response: <http://policystudies.lafayette.edu/files/2011/03/Response-to-CRS-April-28-2011-inc2.pdf>.

John Irons and Andrew Green, “Flaws Call for Rejecting Crain and Crain Model,” Economic Policy Institute Issue Brief No. 308, July 19, 2011, http://www.epi.org/publication/flaws_call_for_rejecting_crain_and_crain_model/. Crain and Crain response: <http://policystudies.lafayette.edu/files/2011/03/EPI-response.pdf>.

Sidney A. Shapiro, Ruth Ruttenberg, and James Goodwin, “Setting the Record Straight: The Crain and Crain Report on Regulatory Costs,” Center for Progressive Reform White Paper No. 1103, February 2011, http://www.progressivereform.org/articles/SBA_Regulatory_Costs_Analysis_1103.pdf. Crain and Crain response: http://policystudies.lafayette.edu/files/2011/03/Analysis-of-CPR_4_27_last.pdf.

29 Crain and Crain, “The Cost of Federal Regulation,” 2014.

30 For example, the February 18, 2012, issue of *The Economist* features a special section, “Over-Regulated America,” which notes, “[R]ed tape in America is no laughing matter. The problem is not the rules that are self-evidently absurd. It is the ones that sound reasonable on their own but impose a huge burden collectively. America is meant to be the home of laissez-faire. ... Yet for some time America has been straying from this ideal.”

With respect to the regulations emerging from the Dodd-Frank law, the story notes that “financial firms in America must prepare to comply with a law that is partly unintelligible and partly unknowable.” (<http://www.economist.com/node/21547789>). This special section includes the following articles: “Measuring the Impact of Regulation: The Rule of More,” <http://www.economist.com/node/21547772>; “Deleting Regulations: Of Sunstein and Sunsets,” <http://www.economist.com/node/21547799>; and “Excessive Regulation: Tangled Up in Green Tape,” <http://www.economist.com/node/21547804>.

31 Dawson and Seater, “Federal Regulation and Aggregate Economic Growth,” 2013.

32 Crews, “Tip of the Costberg,” 2016.

33 Thomas D. Hopkins, economist and former deputy administrator of OIRA, “Statement Prepared for the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs of the House Committee on Government Reform and Oversight,” May 16, 1996. See also Hopkins, “Regulatory Costs in Profile,” Policy Study No. 231, Center for the Study of American Business, August 1996, p. 4.

34 The total surplus was \$128 billion in FY 2001. White House, OMB, Table 1.1, “Summary of Receipts, Outlays, and Surpluses or Deficits (-): 1789–2020,” <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/hist01z1.xls>.

35 CBO, *The Budget and Economic Outlook*, January 2016, Summary Table 1.

36 Estimated 2015 tax figures from OMB, *Historical Tables*, Table 2.1, “Receipts by Source: 1934–2020,” <https://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/hist02z1.xls>. This spreadsheet is regularly found at <http://www.whitehouse.gov/omb/budget/Historicals>.

37 Ibid.

38 Corporate 2014 pretax profits (domestic and international) from U.S. Department of Commerce, Bureau of Economic Analysis, *National Income and Product Accounts Tables*, Table 6.17D, “Corporate Profits before Tax by Industry,” <http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=3&isuri=1&903=243>. This spreadsheet is found at <http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=1&isuri=1>.

39 U.S. Department of Commerce, Bureau of Economic Analysis, “National Income and Product Accounts, Gross Domestic Product: Fourth Quarter and Annual 2015 (Advance Estimate),” news release, January 29, 2016, <http://www.bea.gov/newsreleases/national/gdp/gdpnewsrelease.htm>. Similar data are also available at the World Bank, Washington, D.C., Data: GDP (Current U.S. \$), <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD>.

40 The World Bank, “Gross Domestic Product 2014,” <http://databank.worldbank.org/data/download/GDP.pdf>.

41 Terry Miller and Anthony B. Kim, *2016 Index of Economic Freedom*, Heritage Foundation/*Wall Street Journal*, February 2016, <http://www.heritage.org/index/>.

42 James Gwartney, Robert Lawson, and Joshua Hall, et al., *Economic Freedom of the World: 2015 Annual Report* (Washington, D.C.: Cato Institute, 2015), <http://www.cato.org/economic-freedom-world>.

43 As the previously cited National Association of Manufacturers study on regulatory costs observes: “It is worth emphasizing that all regulatory costs are—and can only be—borne by individuals, as consumers, as workers, as stockholders, as owners or as taxpayers. In other words, the distinction between ‘business’ and ‘individuals’ focuses on the compliance responsibility, fully recognizing that ultimately all costs must fall on individuals.” Crain and Crain, “The Cost of Federal Regulation,” 2014, p. 46.

44 U.S. Department of Labor, Bureau of Labor Statistics, “Consumer Expenditures—2014,” economic news release, September 3, 2015, <http://www.bls.gov/news.release/cesan.nr0.htm>.

45 Ibid. For the BLS, “Consumer units include families, single persons living alone or sharing a household with others but who are financially independent, or two or more persons living together who share expenses.” For each “unit,” average annual expenditures were \$53,495, according to the BLS. The BLS also provided additional information on these figures by email and in the following document: “Average Annual Expenditures and Characteristics of All Consumer Units, Consumer Expenditure Survey, 2006–2011,” <http://www.bls.gov/cex/2011/standard/multiyr.pdf>. Find the 2014 version at <http://www.bls.gov/cex/2014/standard/multiyr.pdf>.

46 That is still a relatively light load compared with the federal debt per household, which Ohio Senator and former OMB Director Rob Portman has said reaches \$140,000 per household. As *PolitiFact* noted, “Portman was using an average to illustrate a point, not to say that each of us needs to take out a second mortgage.” The same perspective holds when we try to contextualize regulation. Stephen Koff, “Sen. Rob Portman Says the National Debt Breaks Down to \$140,000 per Household,” *PolitiFact*, March 27, 2013, <http://www.politifact.com/ohio/statements/2013/mar/27/rob-portman/sen-rob-portman-says-national-debt-breaks-down-140/>.

47 Susan Dudley and Melinda Warren, “Regulators’ Budget Increases Consistent with Growth in Fiscal Budget: An Analysis of the U.S. Budget for Fiscal Years 2015 and 2016,” *Regulators’ Budget* No. 37, published jointly by the Regulatory Studies Center, George Washington University, Washington, D.C., and the Weidenbaum Center on the Economy, Government, and Public Policy, Washington University, St. Louis, Missouri, May 2015, http://regulatorystudies.columbian.gwu.edu/sites/regulatorystudies.columbian.gwu.edu/files/downloads/2016_Regulators_Budget.pdf. Instead of using the Dudley and Warren nominal dollar estimates, their 2009 constant dollars are adjusted here by the change in the consumer price index between 2009 and 2014, derived from Consumer Price Index

tables, U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. (Table 24. Historical Consumer Price Index for All Urban Consumers [CPI-U], U.S. city average, all items), “Annual avg.” column, <http://www.bls.gov/cpi/tables.htm>.

48 Ibid., Table A-1, 2015, p. 16 (current dollars).

49 Ibid., Table A-1, 2015, p. 15 (current dollars).

50 Ibid., Table A-6, “Total Staffing of Federal Regulatory Activity,” 2015, p. 26.

51 See “President Barack Obama’s State of the Union Address,” The White House, Office of the Press Secretary, January 28, 2014, <http://www.whitehouse.gov/the-press-office/2014/01/28/president-barack-obamas-state-union-address>.

52 Clyde Wayne Crews Jr., “Despotism-Lite? The Obama Administration’s Rule by Memo,” *Forbes*, July 1, 2014, <https://cei.org/content/despotism-lite-obama-administrations-rule-memo>.

53 Clyde Wayne Crews Jr., “Mapping Washington’s Lawlessness: A Preliminary Inventory of ‘Regulatory Dark Matter,’” *Issue Analysis* 2015 No. 6, Competitive Enterprise Institute, December 2015. <https://cei.org/sites/default/files/Wayne%20Crews%20-%20Mapping%20Washington%27s%20Lawlessness.pdf>.

54 Kenneth Mayer, *With the Stroke of a Pen: Executive Orders and Presidential Power* (Princeton, NJ: Princeton University Press, 2001), p. 67, <http://bit.ly/M9aGcn>.

55 Gregory Korte, “Obama Issues ‘Executive Orders by Another Name,’” *USA Today*, December 17, 2014, <http://www.usatoday.com/story/news/politics/2014/12/16/obama-presidential-memoranda-executive-orders/20191805/>.

56 Glenn Kessler, “Claims Regarding Obama’s Use of Executive Orders and Presidential Memoranda,” *Washington Post*, December 31, 2014, <http://www.washingtonpost.com/blogs/fact-checker/wp/2014/12/31/claims-regarding-obamas-use-of-executive-orders-and-presidential-memoranda/>.

57 Most of Clinton’s memoranda are not shown in Figure 15. However, they are likewise derived from the “Advanced Document Search” feature on <https://www.FederalRegister.gov>.

58 *Youngstown Sheet & Tube Co. v. Sawyer* 343 U.S. 579, 1952, <http://supreme.justia.com/cases/federal/us/343/579/case.html>.

59 Ben Traynor, “Roosevelt’s Gold Confiscation: Could It Happen Again?” *The Telegraph*, April 3, 2013, <http://www.telegraph.co.uk/finance/personalfinance/investing/gold/9968494/Roosevelts-gold-confiscation-could-it-happen-again.html>.

60 Crews, “Despotism-Lite;” 2014.

61 Executive Order No. 13563, Improving Regulation and Regulatory Review, January 18, 2011, <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>.

62 These are Executive Orders No. 13563 (Improving Regulation and Regulatory Review, January 18, 2011); 13579 (Regulation and Independent Regulatory Agencies, July 11,

2011); 13609 (Promoting International Regulatory Cooperation, May 1, 2012); and 13610 (Identifying and Reducing Regulatory Burdens, May 10, 2012). All are available at http://www.whitehouse.gov/omb/inforeg_regmatters#eo13610.

63 Executive Order No. 12866, “Regulatory Planning and Review,” September 30, 1993, <http://www.archives.gov/federal-register/executive-orders/pdf/12866.pdf>.

64 Executive Order No. 12291, “Federal Regulation,” February 17, 1981, <http://www.archives.gov/federal-register/codification/executive-order/12291.html>.

65 Executive Order No. 12866, “Regulatory Planning and Review,” *Federal Register*, Vol. 58, No. 190, October 4, 1993.

66 Executive Orders Disposition Tables Index, Office of the Federal Register, National Archives, <http://www.archives.gov/federal-register/executive-orders/disposition.html>; and Executive Orders, The American Presidency Project, <http://www.presidency.ucsb.edu/data/orders.php>.

67 Ibid.

68 John D. Graham and James W. Broughel, “Stealth Regulation: Addressing Agency Evasion of OIRA and the Administrative Procedure Act,” *Harvard Journal of Law and Public Policy*, Federalist Edition, Vol. 1, No. 1, pp. 40–41, 2014, http://www.harvard-jlpp.com/wp-content/uploads/2010/01/Graham_Broughel_final.pdf.

69 See, for example, Graham and Broughel, 2014.

70 “Notices” are defined at <http://www.federalregister.gov>: “This category contains non-rulemaking documents that are applicable to the general public and named parties. These documents include notices of public meetings, hearings, investigations, grants and funding, environmental impact statements, information collections, statements of organization and functions, delegations, and other announcements of public interest.”

71 Noted, for example, in *Federal Register*, Vol. 74, No. 233, December 7, 2009, p. 64133.

72 It did not appear in the *Federal Register*, but in the online database at <http://www.reginfo.gov>.

73 Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions, “Spring 2012 *Unified Agenda of Federal Regulatory and Deregulatory Actions*” (plus attachment), Cass Sunstein, administrator, Office of Information and Regulatory Affairs, Executive Office of the President, March 12, 2012, <http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/agenda-data-call-and-guidelines-spring-2012.pdf>.

74 Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions, “Fall 2013 *Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions*,” Howard Shelanski, administrator, Office of Information and Regulatory Affairs, Executive Office of the Presi-

dent, August 7, 2013, <http://www.whitehouse.gov/sites/default/files/omb/inforeg/memos/fall-2013-regulatory-plan-and-agenda.pdf>.

75 Susan E. Dudley, “2012 Unified Agenda Less Informative,” Regulatory Studies Center, George Washington University, Washington, D.C., February 6, 2013, http://research.columbian.gwu.edu/regulatorystudies/sites/default/files/u41/20130206_unified_agenda_dudley.pdf.

76 Leland E. Beck, “Fall 2013 Unified Agenda Published: Something New, Something Old,” *Federal Regulations Advisor*, November 27, 2013, <http://www.fedregsadvisor.com/2013/11/27/fall-2013-unified-agenda-published-something-new-something-old>.

77 A former White House official told the *Post*: “As we entered the run-up to the election, the word went out the White House was not eager to review new rules.” Juliet Eilperin, “White House Delayed Enacting Rules Ahead of 2012 Election to Avoid Controversy,” *Washington Post*, December 14, 2013, http://www.washingtonpost.com/politics/white-house-delayed-enacting-rules-ahead-of-2012-election-to-avoid-controversy/2013/12/14/7885a494-561a-11e3-ba82-16ed03681809_story.html?hpid=z1.

78 Curtis W. Copeland, “Length of Rule Reviews by the Office of Information and Regulatory Affairs,” Administrative Conference of the United States, December 2, 2013, <http://www.acus.gov/sites/default/files/documents/OIRA%20Review%20Final%20Report%20with%20Cover%20Page.pdf>.

79 This count has been compiled in *Ten Thousand Commandments* over the years from printed editions of the National Archives and Records Administration, Office of the Federal Register’s “Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” printed separately as well as in the *Federal Register*, and from <http://www.reginfo.gov>.

80 Although the Unified Agenda is published twice a year, this document primarily tracks each year’s fall or year-end compilation.

81 Crews, “Mapping Washington’s Lawlessness.”

82 “Obama Orders Halt to Pending Regulations for Review,” Fox News, January 20, 2009, <http://www.foxnews.com/politics/2009/01/20/obama-orders-halt-pending-regulations-review>.

83 Jim Blasingame, “Small Business Advocate” website, <http://www.smallbusinessadvocate.com>.

84 The *Federal Register* notes: “The Regulatory Flexibility Act requires that agencies publish semiannual regulatory agendas in the *Federal Register* describing regulatory actions they are developing that may have a significant economic impact on a substantial number of small entities.” Cited, for example, in *Federal Register*, Vol. 74, No. 233, December 7, 2009, pp. 64131–64132.

85 The legislation and executive orders by which agencies are directed to assess effects on state and local governments are described in the Agenda’s appendixes.

86 Government Accountability Office website, “Congressional Review Act Resources,” <http://www.gao.gov/legal/congressional-review-act/overview>.

87 Curtis W. Copeland, “Congressional Review Act: Many Recent Final Rules Were Not Submitted to GAO and Congress,” White Paper, July 15, 2014, <http://www.washingtonpost.com/r/2010-2019/WashingtonPost/2014/07/25/National-Politics/Advance/Graphics/CRA%20Report%200725.pdf>.

88 The GAO through 2014 presented its major-rule reports only for the most recent three months. It now presents them in a scroll window in reverse chronological order going further back, which was used here for 2015’s hand tally. Alongside, the GAO provides a searchable database of rules submitted to it by agencies, operating on the presumption that the major ones are those requiring and receiving a GAO report as required by the CRA, <http://www.gao.gov/legal/congressional-review-act/overview>. There are sometimes slight differences between some hand tallies and the database search engine results (earlier years’ discrepancies visible in earlier editions of *Ten Thousand Commandments* have now vanished from the database). Also, sometimes slight changes exist in the results the search engine provides from year to year, as well as its URL. For 2015, the hand tally yielded 75 rules; the database, 76.

89 James L. Gattuso and Diane Katz, “Red Tape Rising: Six Years of Escalating Regulation under Obama,” *Backgrounder* No. 3015, Heritage Foundation, May 11, 2015, <http://www.heritage.org/research/reports/2015/05/red-tape-rising-six-years-of-escalating-regulation-under-obama>.

90 Fred Smith, founder and then-president, CEI, Letter to Rep. Darrell Issa (R-Calif.), January 3, 2011, <http://www.scribd.com/doc/47563145/Competitive-Enterprise-Institute-Letter-to-Chairman-Issa-January-3-2011>.

91 Darren Goode, “Gripes over EPA in Responses to Darrell Issa,” *Politico*, February 7, 2011, <http://www.politico.com/news/stories/0211/48995.html>.

92 Senator James Inhofe, “A Look Ahead to EPA Regulations for 2013: Numerous Obama-EPA Rules Placed on Hold until after the Election Spell Doom for Jobs and Economic Growth,” Minority Report, Senate Committee on Environment and Public Works, October 18, 2012, http://www.epw.senate.gov/public/_cache/files/fda3fe87-14d2-4252-827f-d553249bf4cd/a-look-ahead-to-epa-regulations-for-20131.pdf.

93 OMB, *2013 Draft Report to Congress*, Table 1-3, pp. 18–19.

94 Crews, “Tip of the Costberg,” 2016.

95 U.S. Environmental Protection Agency, *Environmental Investments: The Cost of a Clean Environment*, EPA-230-11-90-083, November 1990, [http://yosemite.epa.gov/ee/epa/erm.nsf/vwAN/EE-0294B-2.pdf/\\$file/EE-0294B-2.pdf](http://yosemite.epa.gov/ee/epa/erm.nsf/vwAN/EE-0294B-2.pdf/$file/EE-0294B-2.pdf).

96 Susan Dudley and Melinda Warren, “Regulators’ Budget Increases Consistent with Growth in Fiscal Budget: An Analysis of the U.S. Budget for Fiscal Years 2015 and 2016,” *Regulators’ Budget*, No. 37, May 2015, Table A-1, p. 17.

97 Jerry Ellig, “Costs and Consequences of Federal Telecommunications Regulations,” *Federal Communications Law Journal*, Vol. 58, No.1, p. 95, January 2006, <http://ssrn.com/abstract=982574>.

98 *Federal Register*, <http://www.federalregister.gov>. For another roundup of FCC regulations, see Ryan Young, “Federal Communications Commission: Regulations Impose \$142 Billion in Compliance Costs; More on the Way,” *Regulatory Report Card* No. 2, Competitive Enterprise Institute, February 21, 2013, <http://cei.org/sites/default/files/Ryan%20Young%20-%20FCC%20Regulatory%20Report%20Card.pdf>.

99 Tom Wheeler, “FCC Chairman Tom Wheeler: This Is How We Will Ensure Net Neutrality,” *Wired*, February 4, 2015, <http://www.wired.com/2015/02/fcc-chairman-wheeler-net-neutrality>.

100 See Clyde Wayne Crews Jr., “Splinternets and Cyberspaces vs. Net Neutrality,” *Daily Caller*, February 3, 2010, <http://dailycaller.com/2010/02/03/splinternets-and-cyberspaces-vs-net-neutrality/>.

101 Gautham Nagesh, “FCC Plans to Issue New ‘Net Neutrality’ Rules,” *Wall Street Journal*, February 19, 2014, <http://online.wsj.com/news/articles/SB10001424052702303636404579392960485193226>.

102 *Verizon v. FCC* (D.C. Cir. January 14, 2014), [http://www.cadc.uscourts.gov/internet/opinions.nsf/3AF8B4D938CDEEA685257C6000532062/\\$file/11-1355-1474943.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/3AF8B4D938CDEEA685257C6000532062/$file/11-1355-1474943.pdf).

103 Federal Communications Commission, Report and Order on “Preserving the Open Internet Broadband Industry Practices,” adopted December 21, 2010, <http://www.fcc.gov/document/preserving-open-internet-broadband-industry-practices-1>. See also Brief for Competitive Enterprise Institute et al. as Amici Curiae Supporting Appellant, *Verizon v. FCC*, No. 11-1355 (D.C. Cir. July 23, 2012), http://techfreedom.org/sites/default/files/Verizon_v_FCC_Amicus_Brief.pdf.

104 Wheeler.

105 See Crews, “Comments of Competitive Enterprise Institute in FCC Future of Media Proceeding, GN Docket No. 10-25,” May 7, 2010, <http://www.scribd.com/doc/135189382>

[/Wayne-Crews-Comments-of-Competitive-Enterprise-Institute-in-FCC-Future-of-Media-Proceeding-GN-Docket-No-10-25](http://Wayne-Crews-Comments-of-Competitive-Enterprise-Institute-in-FCC-Future-of-Media-Proceeding-GN-Docket-No-10-25).

106 See, for example, Braden Cox and Clyde Wayne Crews Jr., “Communications without Commissions: A National Plan for Reforming Telecom Regulation,” *Issue Analysis* 2005 No. 9, Competitive Enterprise Institute, October 18, 2005, <http://cei.org/pdf/4911.pdf>.

107 FCC, “In the Matter of Service Rules for the 698 to 746, 747 to 762, and 777 to 792 MHz Bands,” RIN 3060-AJ35, Fall 2010, <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201010&RIN=3060-AJ35>.

108 Crews, “Promise and Peril: Implementing a Regulatory Budget,” *Policy Sciences*, Vol. 31, No. 4, December 1998, pp. 343–369, <http://cei.org/PDFs/promise.pdf>.

109 A version of CEI’s major-rule categorization and disclosure recommendations noted in Table 10 and Box 4 is also explored in Crews, “The Other National Debt Crisis.” Those reporting proposals later appeared in the ALERRT Act proposal and in Sen. Olympia Snowe’s 112th Congress legislation (see note 10). Section 213 of Snowe’s bill detailed this proposed “regulatory transparency reporting,” <https://www.govtrack.us/congress/bills/112/s3572/text>.

110 For a complete analysis, see David Schoenbrod and Jerry Taylor, “The Delegation of Legislative Powers,” in *Cato Handbook for Congress: Policy Recommendations for the 108th Congress*, ed. Edward H. Crane and David Boaz (Washington, D.C.: Cato Institute, 2003), pp. 77–85, <http://object.cato.org/sites/cato.org/files/serials/files/cato-handbook-policymakers/2003/9/hb108-8.pdf>.

111 See William A. Niskanen Jr., *Bureaucracy and Representative Government* (Chicago: Aldine, Atherton, 1971).

112 Derived from Library of Congress, Thomas website, Public Laws, <http://thomas.loc.gov/home/LegislativeData.php?&n=PublicLaws&c=114>; and from the U.S. Government Publishing Office, Public and Private Laws, <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=PLAW>.

113 Office of Sen. Rand Paul (R-Ky.), “Sen. Paul and Rep. Young Introduce REINS Act,” news release, January 22, 2015, <http://www.paul.senate.gov/news/press/sen-paul-and-rep-young-introduce-reins-act>.

About the Author

Wayne Crews is Vice President for Policy at the Competitive Enterprise Institute (CEI). He is widely published and a contributor at Forbes.com. A frequent speaker, he has appeared at venues including the DVD Awards Showcase in Hollywood, European Commission–sponsored conferences, the National Academies, the Spanish Ministry of Justice, and the Future of Music Policy Summit. He has testified before Congress on various policy issues. Crews has been cited in dozens of law reviews and journals. His work spans regulatory reform, antitrust and competition policy, safety and environmental issues, and various information-age policy concerns.

Alongside numerous studies and articles (including the recent *The Other National Debt Crisis: How and Why Congress Must Quantify Federal Regulation*), Crews is co-editor of the books *Who Rules the Net?: Internet Governance and Jurisdiction*, and *Copy Fights: The Future of Intellectual Property in the Information Age*. He is co-author of *What's Yours Is Mine: Open Access and the Rise of Infrastructure Socialism*, and a contributing author to other books. He has written in the *Wall Street Journal*, *Chicago Tribune*, *Communications Lawyer*, *International Herald Tribune*, and other publications. He has appeared on Fox News, CNN, ABC, CNBC, and the PBS News Hour. His policy proposals have been featured prominently in the *Washington Post*, *Forbes*, and *Investor's Business Daily*.

Before coming to CEI, Crews was a scholar at the Cato Institute. Earlier, Crews was a legislative aide in the U.S. Senate, an economist at Citizens for a Sound Economy and the Food and Drug Administration, and a fellow at the Center for the Study of Public Choice at George Mason University. He holds a Master's of Business Administration from the College of William and Mary and a Bachelor's of Science from Lander College in Greenwood, South Carolina. While at Lander, he was a candidate for the South Carolina state senate.

A dad of five, he can still do a handstand on a skateboard and enjoys custom motorcycles.



The Competitive Enterprise Institute promotes the institutions of liberty and works to remove government-created barriers to economic freedom, innovation, and prosperity through timely analysis, effective advocacy, inclusive coalition-building, and strategic litigation.

COMPETITIVE ENTERPRISE INSTITUTE

1899 L Street NW, 12th Floor

Washington, DC 20036

202-331-1010

cei.org