

# Analysis of the Regulatory Plan and Unified Agenda of Federal Regulations

The “Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions” (Agenda) is where agencies outline their priorities. It normally appears in the *Federal Register* each fall and, minus the regulatory plan component, each spring. However, the publication schedule has become erratic. Election campaign considerations can cause agencies to abstain from rulemaking or to report fewer rules.<sup>243</sup> And reporting priorities by administrations can change the Agenda’s content.

The Trump administration released the fall 2018 edition of the twice-yearly Agenda in December 2018, pairing the occasion with an outline of progress on meeting goals for regulatory streamlining. Usually the Agenda appears with little fanfare, but 2017 and 2018 have been the years of one-in, two-out for federal agency rulemaking, by way of Trump’s Executive Order 13771 on “Reducing Regulation and Controlling Regulatory Costs.” The normal Agenda release was accompanied by White House statements complete with red tape props<sup>244</sup> and a *Wall Street Journal* column by Office of Management and Budget Office of Information and Regulatory Affairs administrator Neomi Rao.<sup>245</sup>

Along with those affecting the private sector, many rules in the Unified Agenda concern the operations of state and local governments and the federal government itself. In normal circumstances, the Agenda gives regulated entities and researchers a sense of the flow in the regulatory pipeline. It details rules recently completed, plus those anticipated or prioritized in the upcoming 12 months by federal departments, agencies, and commis-

sions (67 in the newest edition). As a compilation of agency-reported federal regulatory actions at several stages, one might regard the Agenda as a cross-sectional snapshot of the following actions moving through the regulatory pipeline:

- Prerule actions;
- Proposed and final rules;
- Actions completed during the previous six months; and
- Anticipated longer-term rulemakings beyond 12 months.

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

The appearance of the Unified Agenda had become erratic in recent years, as its publication has suffered delays in its traditional April and October schedule.<sup>246</sup> This has seemingly been corrected under Trump, but the annual report to Congress on regulatory costs and benefits remains chronically late.

Observers have recognized the fluid, inconsistent nature of the Agenda’s contents. For example, upon release of the fall 2013 Agenda, regulatory expert Leland Beck remarked: “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.”<sup>247</sup> Rules and content fluctuate given administration priorities. During the Obama administration, for example, spring

and fall guidelines in 2012 from the OMB's then-director of the Office of Information and Regulatory Affairs, Cass Sunstein, altered reporting directives to agencies:

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.<sup>248</sup>

When subsequent OIRA Administrator Howard Shelanski issued a similar memorandum on August 7, 2013, "please consider terminating" became the more direct "please remove."<sup>249</sup> The drop at that time is apparent in Figure 18. Susan Dudley of the George Washington University Regulatory Studies Center noted that such changes might be beneficial, but advised "to the extent that reclassifying actions reduces the public's ability to understand upcoming regulatory activity, the revisions could reduce transparency and accountability."<sup>250</sup>

Policy reversed again in the Trump administration. In 2017, both then-acting OIRA Director Dominic Mancini and current administrator Rao instructed agency heads:

In recent years, a large number of Unified Agenda entries have reflected regulatory actions for which no substantial activity was expected within the coming year. Many of these entries are listed as "Long-Term." We have retained the ability to list these items in the Agenda, and see merit in their continued inclusion, particularly in some instances of notable rulemakings for which no action is planned in the coming year. Please, however, consider whether the listing of such entries still benefits readers.<sup>251</sup>

There are many respects in which rule reporting can be short-circuited and costs

obscured. The Agenda is no different. Agencies are not required to limit their regulatory activity to what they publish in the Unified Agenda. The *Federal Register* has noted the following:

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.<sup>252</sup>

However, this has changed under the Trump administration. As Rao notes:

Agencies must make every effort to include actions they plan to pursue, because if an item is not on the Agenda, under Executive Order 13771, an agency cannot move forward unless it obtains a waiver or the action is required by law. A clear and accurate Agenda helps avoid unfair surprise and achieves greater predictability of upcoming actions.<sup>253</sup>

Healthy skepticism is justified regarding the counts in the Unified Agenda, given the lack of clarity regarding its content and strategic rule timing by administrations. But like the *Federal Register*, the Agenda is one of the few limited and imperfect tools we have, and so we need to use it; one of the goals of reform should be improving disclosure.

### **3,534 Rules in the Unified Agenda Pipeline; 671 Deemed "Deregulatory"**

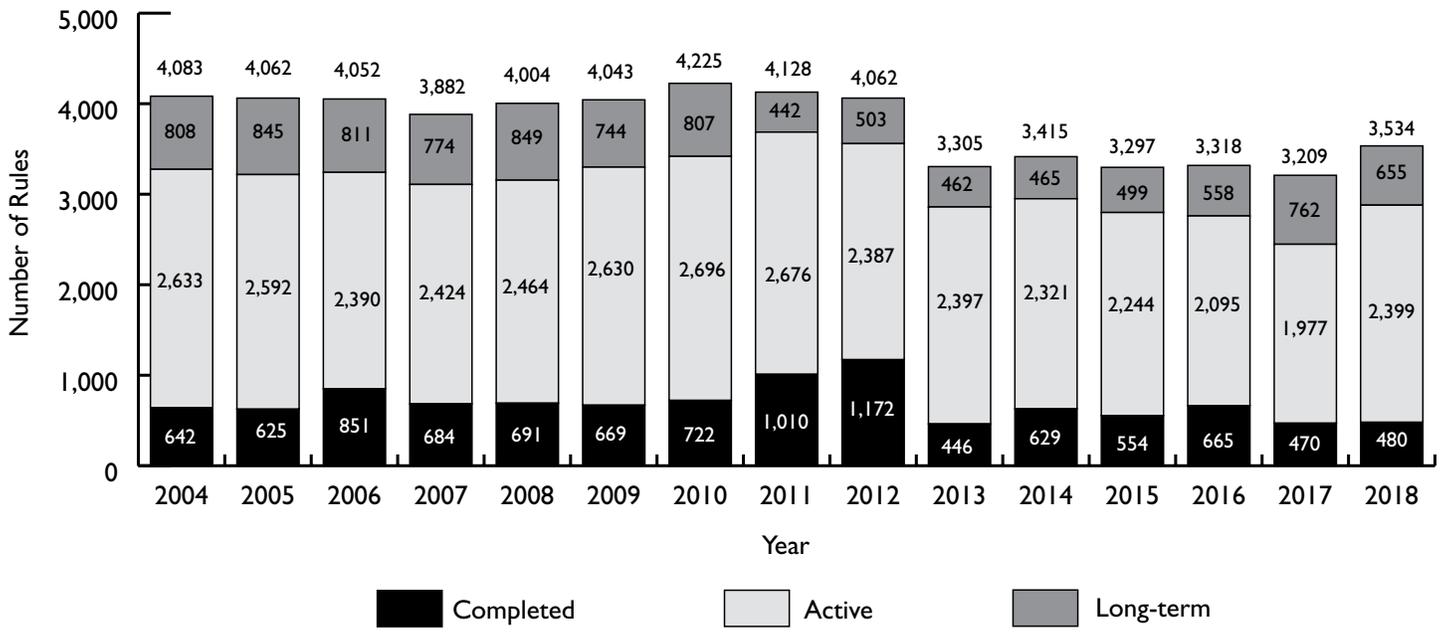
The fall 2018 "Regulatory Plan and the Unified Agenda of Regulatory and Deregulatory Actions" again became the vehicle for Trump's status report on his two-for-one program. The Agenda finds 67 federal agencies, departments, and commissions recognizing 3,534 regulations in the "active" (pre-rule, proposed, and final), "just-completed," and "long-term" stages, many of which have

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Figure 18. Total Agency Rules in the Fall Unified Agenda Pipeline, 2004–2018



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>.

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

been in the pipeline for some time.<sup>254</sup> This is an increase from 3,209 in 2017. By the time of the fall 2017 Agenda, 1,579 Obama-era planned regulatory actions and rules had been withdrawn or delayed during the first year of the Trump administration.

Trump’s overall count of rules in the Unified Agenda pipeline is the highest since 2012 under Obama. However, 671 of 2018’s rules are deemed “Deregulatory” for purposes of Executive Order 13771.

Figure 18 illustrates how, apart from 2007, the overall Unified Agenda pipeline (active, completed, long-term) exceeded 4,000 rules each fall through 2012. Counts had been even higher in the 1990s, when an all-time-high count of 5,119 rules occurred in the fall 1994 Agenda. The 19 percent drop from 4,062 rules in 2012 to 3,305 in 2013 in part reflects election year and management directive factors noted above. (For the history of the numbers of rules in the spring and fall editions of the Unified Agenda since 1983, see Appendix: Historical Tables, Part E.)

Rule counts remain in the thousands, but many of those are routine safety directives from agencies like the Federal Aviation Administration and Coast Guard rather than new initiatives. Such procedures might be suboptimal and deserve a rethinking in their own right, of course, but they are not generally what people most distress over when it comes to the federal bureaucracy. The total pipeline count of 3,534 rules depicted in Figure 18 is broken out in Table 5 by agency, commission, or issuing department. It shows numbers of rules at the active, completed, and long-term stages.<sup>255</sup>

Perhaps most important for assessing Trump’s one-in, two-out regulatory campaign is the question of which agencies are responsible for the 671 of 3,534 rules that are deemed “Deregulatory.” Independent agency deregulatory actions are not a factor in the 671 (see Table 5). For the total numbers of rules by department and agency from previous year-end editions of the Unified Agenda since 2001, see Appendix: Historical Tables, Part F.

Table 5. Unified Agenda Entries by Department and Agency (Fall 2018)

	Total Rules	Unified Agenda			Regulatory Plan Component		
		Active	Completed	Long Term	Active	Completed	Long Term
Dept. of Agriculture	114	72	30	12	32	10	9
Dept. of Commerce	279	162	59	58	43	4	30
Dept. of Defense	246	194	51	1	10	1	
Dept. of Education	49	34	15		11	15	
Dept. of Energy	97	63	8	26	19	5	2
Dept. of Health and Human Services	237	188	22	27	73	13	3
Dept. of Homeland Security	171	89	44	38	19	4	
Dept. of Housing and Urban Development	48	33	4	11	11	1	2
Dept. of the Interior	233	189	35	9	53	7	
Dept. of Justice	70	42	3	25	5	1	1
Dept. of Labor	83	59	10	14	31	8	
Dept. of State	75	60	11	4	5	1	
Dept. of Transportation	298	206	30	62	108	18	10
Dept. of the Treasury	439	332	24	83	35		
Dept. of Veterans Affairs	79	55	19	5	6	2	
Agency for International Development	8	8			2		
American Battle Monuments Commission	1	1					
Architectural and Transportation Barriers Compliance Board	1	1					
Broadcasting Board of Governors	3	3					
Commission on Civil Rights	1	1					
CPBSD*	2	2					
Commodity Futures Trading Commission	36	31	1	4			
Consumer Financial Protection Bureau	22	12	2	8			
Consumer Product Safety Commission	29	18	7	4			
Corporation for National and Community Service	7	3		4			
Council on Environmental Quality	2	2					
Council of Inspector General on Integrity and Efficiency	1	1					
Court Services/Offender Supervision, D.C.	5	5					
Environmental Protection Agency	218	148	22	48	38	1	6
Equal Employment Opportunity Commission	7	7					
Farm Credit Administration	14	13	1				
Federal Acquisition Regulation	53	45	8		6	2	
Federal Communications Commission	83	3		80			
Federal Deposit Insurance Corporation	39	25	4	10			
Federal Energy Regulatory Commission	18		5	13			

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

(continued)

Table 5. Unified Agenda Entries by Department and Agency (Fall 2018) (continued)

	Total Rules	Unified Agenda			Regulatory Plan Component		
		Active	Completed	Long Term	Active	Completed	Long Term
Federal Housing Finance Agency	18	13	2	3			
Federal Maritime Commission	2	1	1				
Federal Mediation and Conciliation Service	1	1					
Federal Reserve System	39	18	11	10			
Federal Trade Commission	18	17		1			
General Services Administration	31	28	3		1		
Institute of Museum and Library Services	1	1					
National Aeronautics and Space Administration	10	6	4		2		
National Archives and Records Administration	7	6	1				
National Commission on Military, National and Public Service	2		2				
National Credit Union Administration	20	10	7	3			
National Endowment for the Arts	6	5		1			
National Endowment for the Humanities	5	5					
National Indian Gaming Commission	7	3	1	3			
National Labor Relations Board	2	1		1			
National Mediation Board	1			1			
National Transportation Safety Board	5	3		2			
Nuclear Regulatory Commission	51	28	6	17			
Office of Government Ethics	7	6	1				
Office of Management and Budget	5	4	1		2		
Office of Personnel Management	26	23	3		1	1	
Peace Corps	4	4					
Pension Benefit Guaranty Corporation	16	13	3				
Postal Regulatory Commission	4		1	3			
Presidio Trust	4	4					
Railroad Retirement Board	6			6			
Securities and Exchange Commission	99	39	8	52			
Small Business Administration	30	26	4		1		
Social Security Administration	31	26	5				
Surface Transportation Board	7		1	6			
Tennessee Valley Authority	1	1					
<b>TOTAL</b>	<b>3,534</b>	<b>2,399</b>	<b>480</b>	<b>655</b>	<b>514</b>	<b>94</b>	<b>63</b>

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>. With Executive Order 13771 Deregulatory Component

**Active rules.** Since 2004, “Active” rule counts in the Agenda consistently remained well above 2,000, until they fell to 1,977 under Trump in 2017, even with 448 at the time deemed “Deregulatory.” Actives rose to 2,399 in 2018, however 514 of them were deemed “Deregulatory” (see Figure 18).

**Completed rules.** Completed rules are “actions or reviews the agency has completed or withdrawn since publishing its last agenda.” Note that although the number of rules in the “Completed” category in fall Agendas (spring Agendas are not shown in Figure 18) rose steadily and rapidly under Obama—from 669 in 2009 to 1,172 in 2012, a 75.2 percent increase—they, like the overall count, dropped precipitously in 2013. This category stood at 470 and 480 in Trump’s fall 2017 and 2018 Agendas, respectively. These completed rules were well below Obama’s past three years’ counts, especially given that of Trump’s completed rules, 62 in 2017 and 94 in 2018 were deregulatory.

**Long-term rules.** Announced long-term rules in the pipeline dropped markedly from 807 to 442 between 2010 and 2011 (see Figure 18). In the 2017 Agenda, these rules stood at 762, a jump from 558 in 2016, which may have reflected in part the decision by Mancini and Rao to include these rules. Thirty of these were deregulatory. In 2018, long-term rules dropped to 655, with 63 of them deemed deregulatory. After covering “economically significant” rules in the Agenda, we will revisit the deregulatory component of the fall Agenda and its implications for future regulatory reductions.

## Top Five Rulemaking Departments and Agencies

A relative handful of executive branch agencies each year account for a large number of the rules in the pipeline. The five departments and agencies listed in Table 6—the Departments of Commerce, Defense, Health and Human Services, Transportation, and the Treasury—were the most active rulemak-

ers. The Department of the Interior came in sixth with 233 rules, and the Environmental Protection Agency seventh with 218. The top five, with 1,499 rules among them, account for 42 percent of the 3,534 rules in the Unified Agenda pipeline. It is worth noting the percentage of actions at these bodies that are “Deregulatory” for Executive Order 13771 purposes, which Table 5 isolates.

Table 6 also depicts the top five independent agencies in the Unified Agenda pipeline by rule count. These are the Securities and Exchange Commission, Federal Communications Commission, the multi-agency Federal Acquisition Regulation system, Nuclear Regulatory Commission, and the Federal Deposit Insurance Corporation.<sup>256</sup> Their total 329 rules account for 9 percent of the 3,534 rules in the Agenda. Combined, the top executive and independent agency components make up 52 percent of the total. However, the difference between this year and prior years is that some entries are now explicitly deemed deregulatory.

## 174 “Economically Significant” Rules in the Unified Agenda; 38 of them Deemed “Deregulatory”; 58 “Regulatory”

A subset of the Unified Agenda’s 3,534 rules is classified as “economically significant,” which broadly means that agencies estimate yearly economic effects of at least \$100 million. Those impacts generally amount to increased costs, although sometimes an economically significant rule is intended to reduce costs, particularly so in the wake of Executive Order 13771. As Table 7 shows, 174 economically significant rules from 20 departments and agencies appear at the active (prerule, proposed rule, and final rule), completed, and long-term stages of the pipeline. This count is up from 140 in 2017, but down from 193 and 218 in the two previous years, respectively)

Figure 19 depicts 2018’s 174 rules alongside those of the previous decade and a half and shows how the of number of economi-

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*A relative handful of executive branch agencies each year account for a large number of the rules in the pipeline.*

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**Table 6. Top Rule-Producing Executive and Independent Agencies**  
(From Fall 2017 Unified Agenda, total of active, completed, and long-term rules)

<b>Executive Agency</b>	<b>Number of Rules</b>
1. Department of the Treasury	439
2. Department of Transportation	298
3. Department of Commerce	279
4. Department of Defense	246
5. Department of Human Services	237
<b>TOTAL</b>	<b>1,499</b>
<b>% of Total Agenda Pipeline of 3,534</b>	<b>42</b>

<b>Independent Agency</b>	<b>Number of Rules</b>
1. Securities and Exchange Commission	99
2. Federal Communications Commission	83
3. Federal Acquisition Regulation	53
4. Nuclear Regulatory Commission	51
5. Federal Deposit Insurance Corporation	39
<b>TOTAL</b>	<b>325</b>
<b>% of Total Agenda Pipeline of 3,534</b>	<b>9</b>

<b>Top 5 Executives plus Independents</b>	<b>1,824</b>
<b>% of Total Agenda Pipeline</b>	<b>52</b>

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>.

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

cally significant rules in the annual fall pipeline became considerably higher under President Barack Obama. President George W. Bush started an uptick. Obama continued it, increasing the flow of costly economically significant rules at the completed and active stages and finishing 2016 with 193. Trump brought the count down by 27 percent in his first fall Agenda, particularly given that 30 of his 140 were “Deregulatory.” Among the 174 in the fall 2018 Agenda, 38 were classified deregulatory, and 58 regulatory. How this ratio does or does not square with the two-for-one program is covered in the section “Warning Signs” and is illustrated in Table 8. (The full list of the 174 economically significant rules in the 2018 Agenda pipeline is available in Appendix: Historical Tables, Part G, which flags 38 Regulatory and 58 Deregulatory entries.)

Figure 19 also breaks down economically significant rules into completed, active, and long-term categories. Among the 174 economically significant rules in the fall 2018 edition, 118 of them stand at the “Active” phase, an increase from 71 in the fall 2017 edition and similar to the 113 in the final Obama Agenda. However, 26 of the active category are deemed deregulatory. Barack Obama’s eight-year average of active rules across the fall Agendas was 133; George W. Bush’s eight-year average was 87. As for economically significant rules at the “Completed” stage in the fall Agendas, President Obama’s count was consistently higher than President Bush’s, even taking into account an Obama midterm election drop between 2011 and 2012. Completed rules in the fall Agenda peaked at 57 in 2012, stood at 47 in 2016, and dropped by more than half, to 21, under Trump in 2017. In the fall of 2018,

Table 7. 140 Economically Significant Rules in the Fall Unified Agenda Pipeline Expected to Have \$100 Million Annual Economic Impact, 30 Deemed Deregulatory, Year-End 2016

	Rules	Unified Agenda			Deregulatory Actions*		
		Active	Completed	Long Term	Active	Completed	Long Term
Dept. of Agriculture	8	3	4	1			
Dept. of Commerce	1	1					
Dept. of Defense	1		1				
Dept. of Education	7	7					
Dept. of Energy	9	4	1	4		1	
Dept. of Health and Human Services	60	47	11	2	10	7	
Dept. of Homeland Security	12	8	1	3	1		
Dept. of Housing and Urban Development	2			2			
Dept. of the Interior	5	3	2		2	1	
Dept. of Justice	1	1					
Dept. of Labor	11	4	2	5	3	2	
Dept. of Transportation	12	8		4	4		
Dept. of the Treasury	11	10		1	2		
Dept. of Veterans Affairs	9	7	1	1	1		
Commodity Futures Trading Commission	12	8		4	3		1
Consumer Product Safety Commission	1	1					
Environmental Protection Agency	3	3					
Federal Communications Commission	3			3			
Nuclear Regulatory Commission	5	2	2	1			
Social Security Administration	1	1					
<b>TOTAL</b>	<b>174</b>	<b>118</b>	<b>25</b>	<b>31</b>	<b>26</b>	<b>11</b>	<b>1</b>

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>.

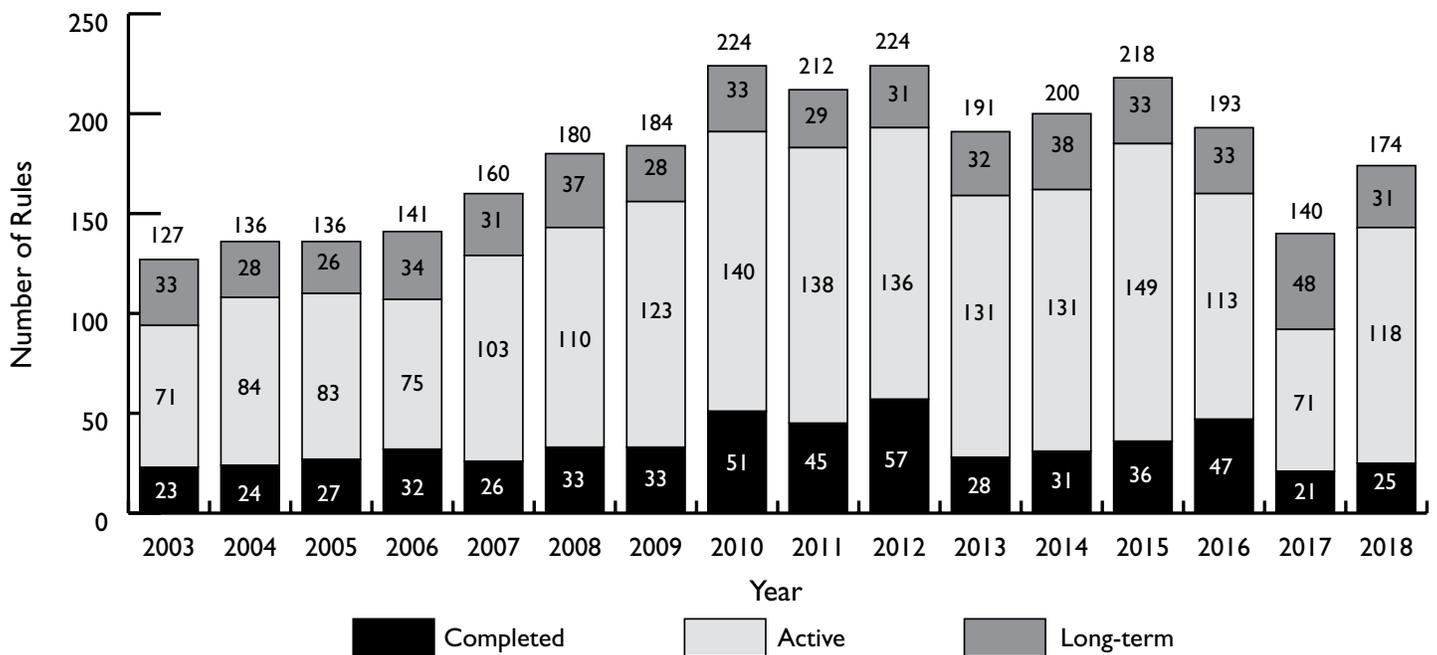
the Trump administration reported 25 completed economically significant rules.

For a fuller picture of completed rules in any given year, one must incorporate the completed rules from the spring Agendas. Figure 20 isolates the totals of completed economically significant rules since 1996 from both the spring and the fall Agendas for closer analysis of yearly trends in this category.<sup>257</sup>

As Figure 20 shows, completed economically significant rules totaled 35 in the combined

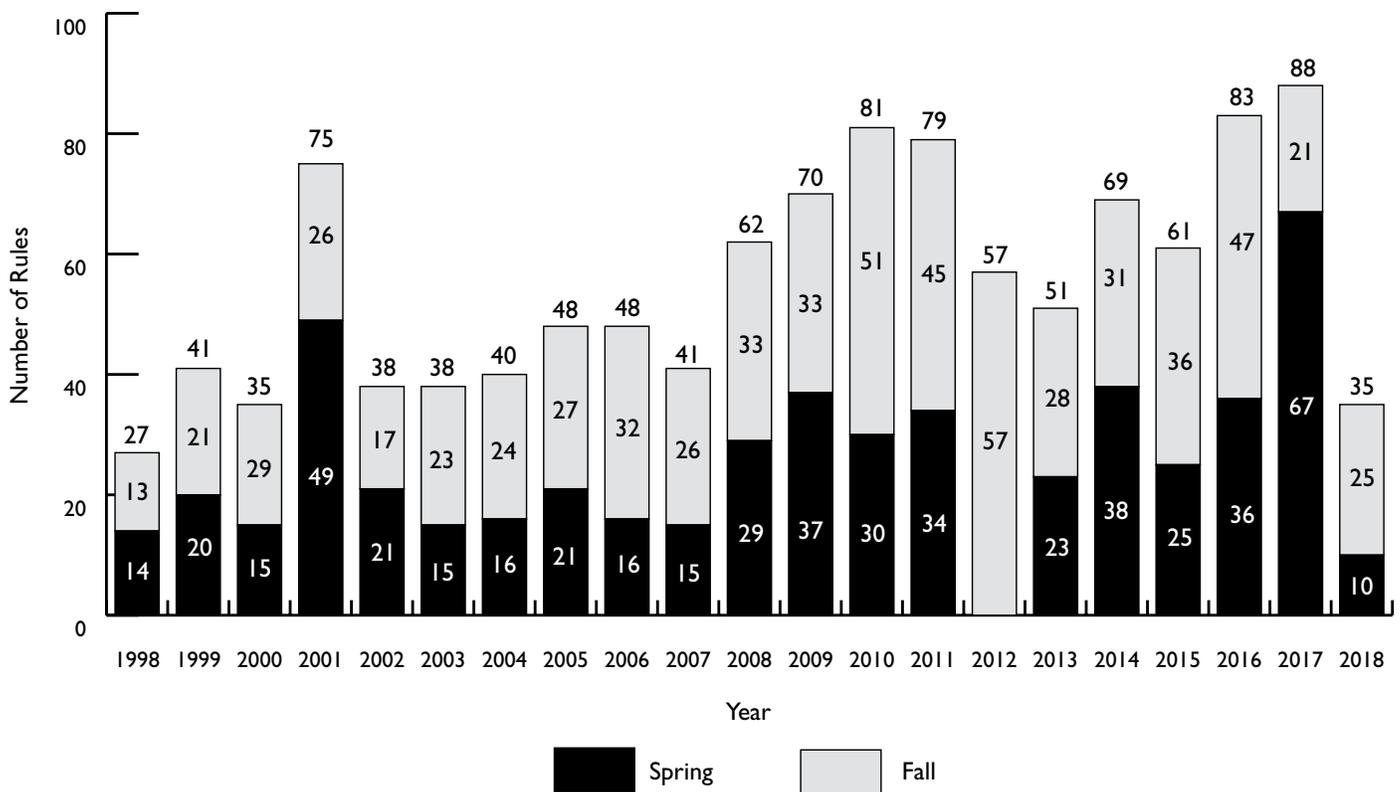
fall and spring 2018 Agendas under Trump. In 2017, Trump had issued more completed economically significant rules than either Bush or Obama in any year. This may have been partly due to the fact that Administrative Procedure Act requires writing a new rule to get rid of an old one. So when agencies are directed to eliminate two for one, that can make it appear as if more “rules” are being issued. In 2018, 16 of the 35 completed rules are explicitly deemed deregulatory for Executive Order 13771 purposes. If one were to remove the 16 deregulatory

Figure 19. 140 Economically Significant Rules in the Unified Agenda Pipeline, 2003–2018



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

Figure 20. Annual Completed Economically Significant Rules in the Unified Agenda, 1998–2018



Sources: Compiled from "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions," *Federal Register*, spring and fall editions, various years.

rules from Trump's tally, we land at only 19, a major rollback in rulemaking by comparison to predecessor output. Of course, other presidents have issued deregulatory measures; they just did not make the reduction agenda so explicit or ease the tracking of the relevant metrics as the Trump administration did with the OIRA database.

Apart from 2001, the level of completed economically significant rules from 1996 forward was notably lower during the late 1990s and early 2000s. Bush's total number of completed economically significant rules was 390, for an average of 49 per year. Obama's total was 551, an average of 69 per year. Some agency "midnight regulations" from the prior administration may be reflected in the totals for a first-year president, but this report is primarily concerned with calendar year comparisons. Trump's average at the moment is 61, but again, some rules are more explicitly deregulatory.

As noted, each of the 174 economically significant rules scattered among the 3,534 rules in the Agenda is estimated to have annual impacts of at least \$100 million. Had this been any other year, those rules might be expected to impose annual costs of at least \$17 billion (loosely, 174 rules multiplied by the \$100 million economically significant threshold). Some rules may decrease costs, which would offset this total. In Trump's second year, we have explicit declarations of 38 such rules in the pipeline (See Figure 19, Tables 7 and 8, and Part G in the Historical Tables). Yet whatever the elusive actual total cost, these costs are cumulative, recurring annual costs to be added to previous years' costs. And, as noted, agencies are not limited to what they list in the Agenda.

Heightened attention to economically significant rules should not tempt policy makers and analysts to ignore the remaining bulk of rules in the annual pipeline. In the fall 2018 pipeline, 3,360 federal rules were not designated as economically significant (3,534 total rules minus the 174 economically significant ones). However, a rule estimated to cost below the \$100 million economically

significant threshold can still impose substantial costs on the regulated entities. To this we must add the phenomenon of guidance documents with regulatory impact, which avoid congressional oversight and the APA's notice-and-comment requirement.

## Notable Regulations by Agency

Although many of the things that regulations purport to do are worthy and needed pursuits, that does not mean that the federal bureaucracy and administrative state are the best ways to achieve them, compared with insurance, liability, and other private sector options, or state and local oversight. As noted, the full list of the 174 economically significant rules in the fall 2018 Agenda pipeline appears in Appendix: Historical Tables, Part G. In recent Unified Agenda editions and in other venues, federal agencies have noted the regulatory initiatives listed below, among others pending or recently completed.

### Department of Agriculture

- National Bioengineered Food Disclosure Standard
- Revision of nutrition facts panels for meat and poultry products and updating certain reference amounts customarily consumed
- 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 schools and certification of compliance with meal requirements for the national school lunch program (as required by the Healthy, Hunger-Free Kids Act of 2010)<sup>258</sup>
- Standards for grades of canned baked beans<sup>259</sup>
- Rural Energy for America Program
- Rural broadband access loans and loan guarantees
- Mandatory inspection of catfish and catfish products
- Multifamily housing reinvention

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***A rule estimated to cost below the \$100 million economically significant threshold can still impose substantial costs on the regulated entities.***

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- Inspection regulations for eggs and egg products
- Performance standards for ready-to-eat processed meat and poultry products
- Nutrition labeling of single-ingredient and ground or chopped meat and poultry products
- Modernization of poultry slaughter inspection
- Regulations concerning importation of unmanufactured wood articles (solid-wood packing material)

### *Department of Commerce*

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

### *Department of Education*

- Gainful Employment rule to prepare students for employment in a recognized occupation
- Proposed Priorities, Requirements, Definitions, and Selection Criteria: Striving Readers Comprehensive Literacy Program
- Income-driven “pay as you earn” program
- Race to the Top

### *Department of Energy*

- Energy efficiency and conservation standards for the following: ceiling fans; 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, central air conditioners, heat pumps, dishwashers, conventional cooking products, non-weatherized gas furnaces; mobile home furnaces and gas furnaces; electric distribution transformers; commercial refrigeration units, heat

- pumps, and water heating equipment; clothes washers and dryers; room air conditioners; portable air conditioners; pool heaters and direct heating equipment; fluorescent and incandescent lamps; metal halide lamp fixtures; small electric motors; and refrigerated bottled or canned beverage vending machines
- Incentive program for manufacturing advanced technology vehicles

### *Department of Health and Human Services*

- Tobacco product standard for characterizing flavors in cigars
- Sunscreen drug products for over-the-counter human use guidance
- Nutrient content claims, definition of the term “healthy”
- General and plastic surgery devices: sunlamp products
- Rules deeming electronic cigarettes and components subject to the Federal Food, Drug, and Cosmetic Act, as amended by the Family Smoking Prevention and Tobacco Control Act, and being subjected to warning labels and sale restrictions<sup>260</sup>
- Requirements for Tobacco Product Manufacturing Practice
- Food labeling: serving sizes of foods that can reasonably be consumed at one eating occasion; dual-column labeling; modification of certain reference amounts customarily consumed
- 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
- Rule on safety and effectiveness of consumer antibacterial soaps (“Topical Antimicrobial Drug Products for Over-the-Counter Human Use”);<sup>261</sup> consumer antiseptics
- General and plastic surgery devices: sunlamp products
- Federal policy for the protection of human subjects
- Criteria for determining whether a drug is considered usually self-administered

- Substances prohibited from use in animal food or feed; registration of food and animal feed facilities
- Updated standards for labeling of pet food
- Sanitary transportation of human and animal food
- Focused mitigation strategies to protect food against intentional adulteration
- Produce safety regulation
- Centers for Medicare and Medicaid Services standards for long-term nursing care facilities and home health service providers<sup>262</sup>
- Requirements for long-term care facilities: hospice services
- Fire safety and sprinkler requirements for long-term care facilities
- Pediatric dosing for various over-the-counter cough, cold, and allergy products
- Rule on comprehensive care for joint replacement
- Medication Assisted Treatment for Opioid Use Disorders Reporting Requirements
- 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
- 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
- Bar-code label requirements for human drug products and blood

### *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 Housing and Urban Development*

- Revision of manufactured home construction and safety standards regarding location of smoke alarms
- Instituting smoke-free public housing<sup>263</sup>
- Regulation of Fannie Mae and Freddie Mac on housing goals
- Regulations within the Real Estate Settlement Procedures Act pertaining to mortgages and closing costs
- Establishing a more effective Fair Market Rent system; using Small Area Fair Market Rents in Housing Choice Voucher Program (modification of income and rent determinations in public and assisted housing)

### *Department of the Interior*

- Revised requirements for well plugging and platform decommissioning
- Increased safety measures for oil and gas operations and exploratory drilling on the Arctic outer continental shelf<sup>264</sup>
- 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 financial investment advice
- Overtime rule: “Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees”<sup>265</sup>
- Establishing a minimum wage for contractors (Executive Order 13658)
- Establishing paid sick leave for businesses that contract with the federal government (in response to Executive Order 13706)<sup>266</sup>
- Walking working surfaces and personal fall protection systems (slips, trips, and fall prevention)<sup>267</sup>
- Hearing conservation program for construction workers
- Rules regarding confined spaces in construction: preventing suffocation and explosions
- Reinforced concrete in construction
- Preventing back-over injuries and fatalities
- Cranes and derricks
- Protective equipment in electric power transmission and distribution
- Refuge alternatives for underground coal mines
- Combustible dust
- Injury and illness prevention program
- Application of the Fair Labor Standards Act to domestic service
- Improved fee disclosure for pension plans
- Occupational exposure to styrene crystalline silica,<sup>268</sup> tuberculosis, and beryllium
- Implementation of the health care access, portability, and renewability provisions of the Health Insurance Portability and Accountability Act of 1996
- Group health plans and health insurance issuers relating to coverage of preventive services under the Patient Protection and Affordable Care Act

- Health care standards for mothers and newborns

### *Department of Transportation*

- Quiet car rule; Minimum Sound Requirements for Hybrid and Electric Vehicles<sup>269</sup>
- Federal Aviation Administration rule on operation and certification of drones (must stay in line of sight, for example)<sup>270</sup> and near critical infrastructure facilities
- National Highway Traffic Safety Administration (NHTSA) proposal on vehicle-to-vehicle communications standardization<sup>271</sup>
- Federal Motor Carrier Safety Administration and NHTSA rule on speed limiters and electronic stability control systems for heavy vehicles<sup>272</sup>
- Federal Railroad Administration’s Train Crew Staffing rule seeking a two-engineers-on-a-train mandate<sup>273</sup>
- NHTSA rule on lighting and marking on agricultural equipment<sup>274</sup>
- Minimum training requirements for entry-level commercial motor vehicle operators and for operators and training instructors of multiple trailer combination trucks<sup>275</sup>
- Passenger car and light truck Corporate Average Fuel Economy standards (newer model years)
- Fuel efficiency standards for medium- and heavy-duty vehicles and work trucks
- Requirement for installation of seat belts on motor coaches; rear center lap and shoulder belt requirement; seat belt reminder system
- Carrier safety fitness determination
- Retroreflective tape for single-unit trucks
- 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
- Federal Railroad Administration passenger equipment safety standards amendments
- Rear-impact guards and others safety strategies for single-unit trucks
- Amendments for positive train control systems
- Aging aircraft safety
- Upgrade of head restraints in vehicles
- Establishment of side-impact performance requirements for child restraint systems
- Registration and training for operators of propane tank-filling equipment
- Monitoring systems for improved tire safety and tire pressure
- Pipeline Safety: amendments to parts 192 and 195 to require valve installation and minimum rupture detection standards
- Hazardous materials: transportation of lithium batteries

### *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 security-based swap dealers and major security-based swap participants
- Troubled Asset Relief Program standards for compensation and corporate governance

### *Architectural and Transportation Barriers Compliance Board*

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

### *Consumer Financial Protection Bureau*

- Proposed rule regulating business practices on payday and vehicle title loans<sup>276</sup>

### *Consumer Product Safety Commission*

- Regulatory options for table saws
- 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

### *Environmental Protection Agency*

- 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
- Performance standards for new residential wood heaters
- Oil and natural gas: emission standards for new and modified sources
- Model trading rules for greenhouse gas emissions from electric utility generating plants constructed before January 7, 2014
- Financial Responsibility Requirements under Comprehensive Environmental Response, Compensation, and Liability Act Section 108(b) for classes of facilities in the hard-rock mining industry
- 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
- National emission standards for hazardous air pollutants from certain reciprocating engines

- cating internal combustion engines and auto paints
- 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
- National primary drinking water regulations for lead, copper, and radon
- Modernization of the accidental release prevention regulations under the Clean Air Act
- Trichloroethylene; rulemaking under Toxic Substances Control Act Section 6(a); vapor degreasing
- Reassessment of use authorizations for polychlorinated biphenyls (PCBs) in small capacitors in fluorescent light ballasts in schools and day care centers
- 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
- Renewable fuel standards
- Standards for cooling water intake structures
- Standards of performance for municipal solid waste landfills
- 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

### ***Federal Communications Commission***

- Protecting the privacy of customers of broadband and other telecommunications services<sup>277</sup>

- 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

### ***Federal Deposit Insurance Corporation***

- Standardized approach for risk-weighted assets
- Margin and capital requirements for covered swap entities

### ***Federal Energy Regulatory Commission***

- Critical infrastructure protection reliability standards

### ***Office of Personnel Management***

- Multistate exchanges: implementations for Affordable Care Act provisions

## **Warning Signs? What the Unified Agenda Reveals about the Limits of Trump’s One-In, Two-Out Campaign**

Does the administrative state have anything to fear over the longer term from Trump’s deregulatory agenda? Task forces have faded out of sight, while many businesses do not want cuts and lobby against them.<sup>278</sup> Note that while significant regulations completed met the two-for-one goals, that is not the case for active and long-term rules being contemplated in the pipeline as a whole

There has long been a need for far greater clarity as to whether agency actions listed in the Unified Agenda, *Federal Register*, and

OMB's annual *Report to Congress* on benefits and costs are regulatory or deregulatory. Pertinent to tracking regulatory ins and outs, one of the most important yet simple modifications has been the noted presentation in Trump's Regulatory Plan and Unified Agenda. The OIRA database better captures specifics of Executive Order 13771-related "Deregulatory" actions, and more explicitly identifies rules not subject to the order.

Rules and regulations can now be more methodically identified in the Unified Agenda as net regulatory or deregulatory.<sup>279</sup> On the landing page of OIRA's advanced search database of regulations, there now appears a search option for "Executive Order 13771 Designation." The Agenda's specific inclusion of deregulatory actions enables researchers and the public to more readily isolate where agencies have classified rules as "Deregulatory" or "Regulatory."<sup>280</sup> Categories of rules not subject to the executive order are now classified and depicted where possible in other categories: "Fully or Partially Exempt"; "Not Subject to, Not Significant"; "Other"; and "Independent Agency." To get a better look at the two-for-one, it is helpful to look separately at a grid of completed, active, and long-term rule categories in the aggregate as well as split up into "economically significant" and "other significant" components. Table 8 shows the number of these rules at the completed, active, and long-term stages relative to the overall count of 3,534.

If similar practices were incorporated into the *Federal Register* and in other publicly released outlets of agency disclosure, it could make a significant difference over time. In fact, the Executive Order designation may be even more important than the particular cuts completed so far in the Trump administration, because the renewed scrutiny may prompt agencies to continue to report such distinctions long after the current administration leaves office. Failure to implement regulatory relief would become obvious over time.

As noted, instead of two-for-one, the administration reported achieving a one-in, 22-out

ratio for managing significant regulations in 2017. That is, the administration claimed that three rules were added but 67 removed for purposes of Executive Order 13771. In 2018, the ratio for significant regulations for FY 2018 was four-to-one (and 12-to-one when nonsignificant rollbacks are counted).

However, rules can be regulatory but not subject to Executive Order 13771. The order does not apply to nonsignificant rules, yet some nonsignificant rules get labeled deregulatory or regulatory. More broadly, as Table 8 shows, a total of 671 rules in the fall 2018 Unified Agenda pipeline were classified as deregulatory (compared to 540 in 2017). Meanwhile, 257 rules are classified as explicitly regulatory, for an overall ratio of 2.6-to-one in the pipeline as a whole (as opposed to completed).

As noted, agencies are not required by law to issue only the rules they describe in the Agenda or Plan and the administration issued an important qualifier when defining Executive Order 13771 regulatory actions:

EO 13771 regulatory actions are defined as those final actions that both impose costs greater than zero and qualify as "significant" under Section 3(f) of EO 12866 (see M-17-21, Q2). Accordingly, the regulatory actions listed in this table [of regulatory actions cost caps] represent a subset of an agency's total regulatory actions.<sup>281</sup>

The fall 2017 Agenda pipeline of 3,209 had been the lowest level seen since 1983, even without counting that edition's 540 deregulatory entries. The new fall Agenda count of 3,534 and its 671 deregulatory give a "net" of 2,863. Of course, there is no way to readily tell for comparison what deregulatory elements may have been embedded within prior years' Agenda counts.<sup>282</sup> The detail shown earlier in Table 5 breaks down 2018's 671 deregulatory measures by department and agency, and stage of completion. The Department of Transportation easily led deregulation in both the active and completed

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*There has long been a need for far greater clarity as to whether agency actions are regulatory or deregulatory.*

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Table 8. Unified Agenda Entries by Executive Order 13771 Designation (Deregulatory and Regulatory) and by Rule Stage and Significance

	Total # Rules	Completed			Active			Long-Term		
		Total	Economically Significant	Other Significant	Total	Economically Significant	Other Significant	Total	Economically Significant	Other Significant
All Agencies	3,534	480	25	101	2,399	118	745	655	31	176
Deregulatory	671	94	11	24	514	26	156	63	1	12
Regulatory	257	12	4	5	163	41	102	82	13	58
Fully or Partially Exempt	333	47	5	17	251	11	117	35	3	11
Not subject to, not significant	797	177	0	4	542	1	11	78	0	0
Other	913	63	2	22	683	32	310	167	10	56
Independent Agency	534	59	2	6	245	7	48	230	4	39
<b>Totals (may not sum fully)</b>	<b>3,505</b>	<b>452</b>	<b>24</b>	<b>78</b>	<b>2,398</b>	<b>118</b>	<b>744</b>	<b>655</b>	<b>31</b>	<b>176</b>

Source: Compiled from fall 2017 "Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions."

categories, with 108 and 18 classified as de-regulatory, respectively.

There are some warning signs, however. While agencies can be said to have met Trump's two-for-one goals, a deeper look reveals agencies are planning more rules than rollbacks in future years. The Unified Agenda is a planning document, and agencies plan well more regulating than de-regulating, which further illustrates the limitations of executive action alone.

Recall that Executive Order 13771, "Reducing Regulations and Controlling Regulatory Costs," only applies to "significant regulatory actions" of executive, but not independent, agencies. Agencies can employ sub-significant rules, as well as issue guidance documents, to fly below the radar of two-for-one constraints, just as they could under the longstanding Executive Order 12866 that governs OMB review of rules. One solution in that regard is expanding coverage of rules via executive order.<sup>283</sup> Table 8's grid of "Completed," "Active," and "Long-term" rule categories depicts "economically significant" and "significant" sub-components. There is time to course correct, but these categories appear to present looming hurdles to meeting future two-for-one strictures.

### ***"Completed" Deregulatory and Regulatory Actions in Unified Agenda Achieve a Four-for-One***

The Unified Agenda's "completed" component most closely corresponds to the highlighted "22-to-one" successes claimed by the Trump administration in its 2017 "Two-for-One Status Report and Regulatory Cost Caps"<sup>284</sup> and in its 12-to-one (four-to-one for significant actions) "Regulatory Reform Results for Fiscal Year 2018." As long as costs are net zero—the primary prescription of the executive order toward which two-for-one is the means—it is adequate for agencies to apply nonsignificant rules for "credit" toward the two-for-one goal.<sup>285</sup> The administration's "update" reporting largely corresponds

to what appears in the Agenda. In 2017, for example, where the administration indicated 67 deregulatory actions in its Status Report, the 2017 Unified Agenda identified a similar 62 completed "Deregulatory" actions. Part of the discrepancy is likely due to the fact that nine of Trump's rule cuts involved agency sub-regulatory guidance documents or notices, some of which did not appear in the Agenda (These nine appear in bold-type in Box 2 of the 2018 edition of *Ten Thousand Commandments*, pp. 9–10). Another reason is that some removals were achieved via the Congressional Review Act and therefore do not appear in the Agenda.

By 2018, the Congressional Review Act and rollback of Obama midnight rules were no longer factors available to boost results. Early in 2018, the spring 2018 edition of the Unified Agenda indicated 80 completed deregulatory actions,<sup>286</sup> while the fall 2018 edition identifies 94 completed deregulatory actions (see Table 8), for a total of 174. The economically significant and "other significant" deregulatory subset of these totals 63.

As Table 8 details, of the 94 Completed "Deregulatory" actions in the 2018 Agenda, 11 are in the "economically significant" category. Twenty-four completed deregulatory rules in Table 8 are deemed "other significant." As for "Regulatory" actions, 12 completed ones appeared in the fall Agenda, with four of them deemed "economically significant" and five "other significant." Taking into account the presence of 12 completed regulatory actions under the database's Executive Order 13771 designation, a nearly eight-to-one ratio prevails well within the requirements of the executive order (The 94 "Deregulatory" actions divided by the 12 "Regulatory" ones in Table 8).

As for "Economically Significant" and "Other Significant" completed actions, Table 8 shows a four-for-one achievement (a total of 35 deregulatory, compared to nine regulatory). This matches the administration's claims. However, there were four regulatory rules at the more weighty economically significant level, and 11 deregulatory ones of

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***Agencies can employ sub-significant rules, as well as issue guidance documents, to fly below the radar of two-for-one constraints.***

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**Box 4. Completed Deregulatory vs Regulatory Rules, and “D-to-R” Ratios:  
(Combined “economically significant” + “other significant” categories)**

<b>Unified Agenda Edition</b>	<b>Deregulatory Entries</b>	<b>Regulatory Entries</b>	<b>Ratio (In/Out)</b>
Fall 2017	22	13	1.7 to 1
Spring 2018	28	9	3.1 to 1
Fall 2018	35	9	3.9 to 1
<b>Grand Total</b>	<b>85</b>	<b>31</b>	<b>2.7 to 1 to date</b>

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*It is best with respect to longer-term prospects of streamlining that economically significant deregulatory rules carry the weight of offsetting the economically significant Regulatory ones.*

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comparable significance, for a lesser but still goal-attaining rate of almost three to one. Box 4 summarizes these Unified Agenda results since fall 2017 to date with respect to rules at the “significant” and above levels. As noted, it is adequate under Executive Order 13771 for nonsignificant rules to offset significant ones to meet the two-for-one goal; the governing criterion is the net-zero cost stricture. However, it is best with respect to longer-term prospects of streamlining that economically significant deregulatory rules carry the weight of offsetting the economically significant Regulatory ones.

***Significant “Active” Deregulatory and Regulatory Actions Need Attention***

Active actions—those in the pipeline at the “pre-rule,” “proposed,” and “final” rule stages—are in the production process. Table 8 shows that a total of 514 deregulatory actions in play well exceed 163 regulatory ones, for a more than three-to-one margin overall when nonsignificant rules are included. As non-completed actions, these rules are not obligated at this point to meet the two-for-one goals, but they might be regarded a leading indicator.

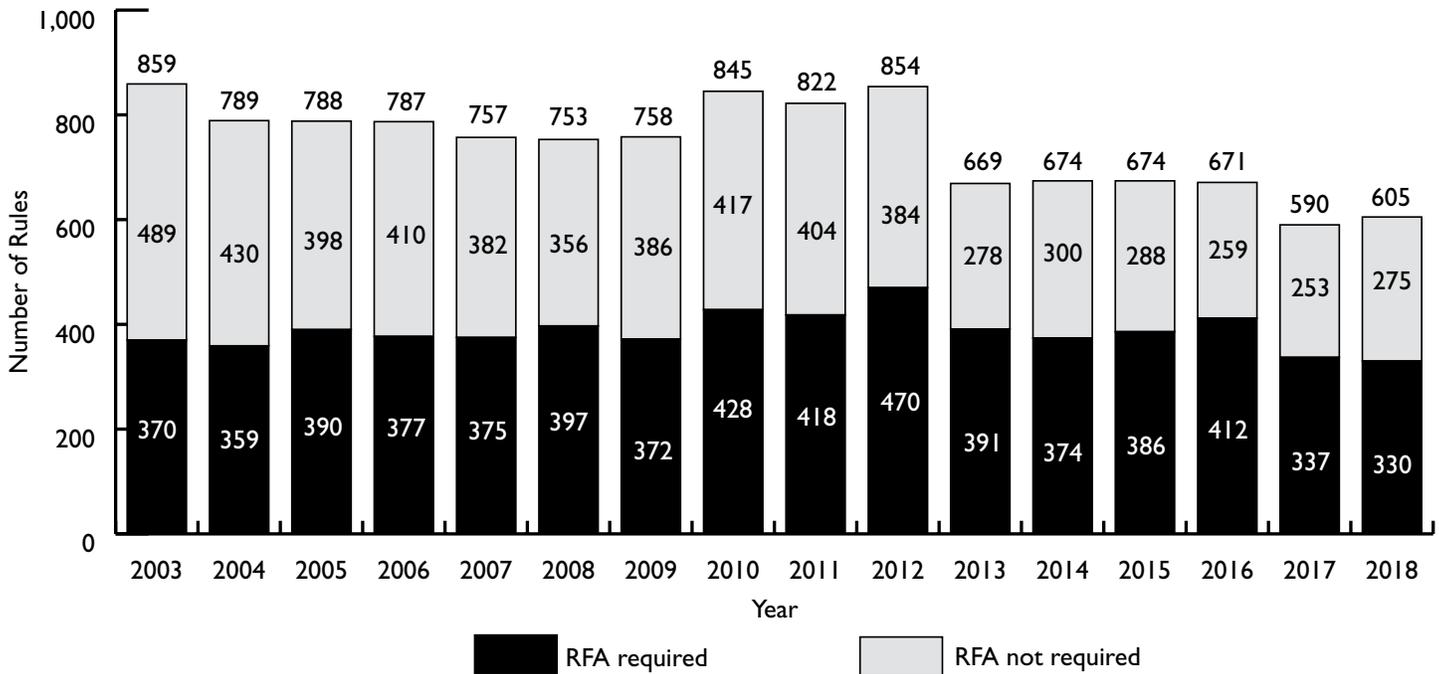
Of more concern are the costlier subsets of active rules. There are 41 economically significant regulatory actions in Table 8 (up from 15 in 2017), but just 26 economically significant deregulatory actions in play, potentially putting two for one on a path to being inverted. In the “other significant” category, 102 regula-

tory actions are outweighed by 156 deregulatory ones, but only by a factor of 1.5. Active rules encompass both proposed and final, and there is time to course-correct as rules in the pipeline move closer to finalization. However, the unfavorable ratios of significant active regulatory to deregulatory rules highlight the limits of unilateral executive regulatory liberalization.

***“Long-term” Planned Regulatory Actions Outstrip Deregulatory Ones***

The costlier longer-term significant rules inspire even less confidence for the ultimate success of one-in, two-out given their high ratios in favor of regulation. As Table 8 shows, 82 long-term actions are deemed regulatory and 63 are deemed deregulatory, up from 30 deemed deregulatory in 2017. Whereas the deregulatory long-term rule count is up, regulatory rules outweigh them. More worrisome is that, of the anticipated “economically significant” long-term rules, 13 are deemed regulatory, while only one in this costliest category is deregulatory. Even in the “other significant” category, 58 are regulatory, but only 12 are deregulatory. These are warning signs because these more costly rule subsets are where tomorrow’s cost savings need to come from. In 2017, there were no long-term economically significant actions that were deemed deregulatory. However, the number of these deemed regulatory declined from 25 to 13 between 2017 and 2018.

Figure 21. Rules Affecting Small Business, 2003–2018



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

A generous interpretation of the inversions of two-for-one at the long-term stage is that agencies focused in 2017 and 2018 on meeting the administration’s immediate short-term goals for two-for-one streamlining, and they will eventually get around to these longer-term significant rule reductions. Others might be inclined to ascribe what we observe to the “resistance” to the Trump administration by some career agency personnel.<sup>287</sup> Rolling back regulations requires going through the public notice-and-comment process. It takes time, and the administrative state works to the advantage of agencies that want to maintain vast regulatory edifices. As new editions of the Agenda appear in 2019 and 2020, the situation may be rectified. Another reason for monitoring these situations is that agencies may substitute guidance documents for formal regulations. Again, a more aggressive executive order specifically on the use of guidance to make policy is warranted, especially in the absence of congressional action on regulatory reform.

## Federal Regulations Affecting Small Business

The Regulatory Flexibility Act (RFA) directs federal agencies to assess their rules’ effects on small businesses.<sup>288</sup> Figure 21 shows both the number of rules requiring annual regulatory flexibility analysis per the RFA and other rules anticipated by agencies to affect small business, but which do not require a regulatory flexibility analysis. The number of rules acknowledged to significantly affect small business dropped substantially after 2012 during the Obama administration, in part reflecting reporting changes noted already, but dropped even more substantially under Trump, even with some rules presumably comprising rollbacks.

At the end of 2018, overall rules affecting small business stood at 605 compared to 590 the year before and 671 in Obama’s final year. Before the 2013 drop and flat trajectory since then, the number of rules with small

business impacts during the Obama administration regularly exceeded 800, which had not occurred since 2003. Of those 605 rules with small-business impacts, 330 required an RFA, and another 275 rules were otherwise deemed by agencies to affect small business but not require an RFA.<sup>289</sup>

Table 9 breaks out the 2018 fall Unified Agenda's 605 rules affecting small business by department, agency, and commission. The Departments of Commerce, Health and Human Services, and Transportation, along with the Federal Communications Commission and the cross-agency Federal Acquisition Regulations, accounted for 314, or

52 percent, of the 605 rules affecting small business.

Even though the overall reported number of rules affecting small business is down, when it comes to the more hefty ones, those requiring an RFA, the average of Obama's eight years, 406, exceeded Bush's eight-year average of 377. Trump's average annual number of rules affecting small business is far lower than either Bush or Obama, at 333, and nearly a third of these are deregulatory.

Recall that 671 rules among the Unified Agenda's flow of 3,534 are flagged as deregulatory. Of the 605 rules with small business

**Table 9. Unified Agenda Entries Affecting Small Business by Department, Agency, and Commission, Year-End 2018**

	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	114	7	7	1	7	1	1	24	21.1	
Dept. of Commerce	279	35	15	6	22	9	3	90	32.3	90
Dept. of Defense	246							0	0.0	
Dept. of Education	49				2			2	4.1	
Dept. of Energy	97	4		2	4		2	12	12.4	
Dept. of Health and Human Services	237	20	3	12	23	5	1	64	27.0	64
Dept. of Homeland Security	171	16		4	3	1	4	28	16.4	
Dept. of Housing and Urban Development	48				1			1	2.1	
Dept. of the Interior	233	4	2		5		2	13	5.6	
Dept. of Justice	70	1			2		2	5	7.1	
Dept. of Labor	83	4	1	2	13	3	3	26	31.3	
Dept. of State	75				25	2	4	31	41.3	
Dept. of Transportation	298	13		4	15	2	12	46	15.4	46
Dept. of the Treasury	439	1		1	25	2	5	34	7.7	
Dept. of Veterans Affairs	79							0	0.0	
Agency for International Development	8							0	0.0	
American Battle Monuments Commission	1							0	0.0	
Architectural and Transportation Barriers Compliance Board	1							0	0.0	

	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			
Broadcasting Board of Governors	3							0	0.0	
Commission on Civil Rights	1							0	0.0	
CPBSD*	2							0	0.0	
Commodity Futures Trading Commission	36	1	1					2	5.6	
Consumer Financial Protection Bureau	22			1	6		3	10	45.5	
Consumer Product Safety Commission	29	3	4	1				8	27.6	
Corp. for National and Community Service	7							0	0.0	
Council on Environmental Quality	2							0	0.0	
Council of Inspector General on Integrity and Efficiency	1							0	0.0	
Court Services/Offender Supervision, D.C.	5							0	0.0	
Environmental Protection Agency	218	1		2				3	1.4	
Equal Employment Opportunity Commission	7				3			3	42.9	
Farm Credit Administration	14							0	0.0	
Federal Acquisition Regulation	53	42	7		3	1		53	100.0	53
Federal Communications Commission	83	2		55			4	61	73.5	61
Federal Deposit Insurance Corporation	39							0	0.0	
Federal Energy Regulatory Commission	18							0	0.0	
Federal Housing Finance Agency	18							0	0.0	
Federal Maritime Commission	2							0	0.0	
Federal Mediation and Conciliation Service	1							0	0.0	
Federal Reserve System	39	3		1				4	10.3	
Federal Trade Commission	18				14			14	77.8	
General Services Administration	31	9			17	2		28	90.3	
Institute of Museum and Library Services	1							0	0.0	
National Aeronautics and Space Administration	10							0	0.0	
National Archives and Records Administration	7							0	0.0	
National Comm. on Military, National and Public Service	2							0	0.0	

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

(continued)

Table 9. Unified Agenda Entries Affecting Small Business by Department, Agency, and Commission, Year-End 2018 (continued)

	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			
National Credit Union Administration	20							0	0.0	
National Endowment for the Arts	6				1		1	2	33.3	
National Endowment for the Humanities	5							0	0.0	
National Indian Gaming Commission	7							0	0.0	
National Labor Relations Board	2	1						1	50.0	
National Mediation Board	1							0	0.0	
National Transportation Safety Board	5							0	0.0	
Nuclear Regulatory Commission	51	1	1	1				3	5.9	
Office of Government Ethics	7							0	0.0	
Office of Management and Budget	5				1			1	20.0	
Office of Personnel Management	26							0	0.0	
Peace Corps	4							0	0.0	
Pension Benefit Guaranty Corporation	16							0	0.0	
Postal Regulatory Commission	4							0	0.0	
Presidio Trust	4							0	0.0	
Railroad Retirement Board	6							0	0.0	
Securities and Exchange Commission	99	4	4	6	1	1	4	20	20.2	
Small Business Administration	30	12	1		2			15	50.0	
Social Security Administration	31							0	0.0	
Surface Transportation Board	7			1				1	14.3	
Tennessee Valley Authority	1							0	0.0	
<b>TOTAL</b>	<b>3,534</b>	<b>184</b>	<b>46</b>	<b>100</b>	<b>195</b>	<b>29</b>	<b>51</b>	<b>605</b>	<b>17.1</b>	<b>314</b>
		<b>330</b>			<b>275</b>					<b>52% of total</b>
<b>Deregulatory</b>		<b>30</b>	<b>11</b>	<b>2</b>	<b>50</b>	<b>9</b>	<b>9</b>	<b>102</b>		

Source: Compiled from "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions," and from online edition at [www.reginfo.gov](http://www.reginfo.gov).

RFA = regulatory flexibility analysis; L-T = long term.

effects, 102 are deregulatory, up from 83 in 2017 (see bottom row of Table 9). The overall proportion of total rules affecting small business, as noted in Table 9, stands at 17 percent, but the range is wide among agencies. (For the numbers of rules affecting small business broken down by department and agency for fall Agenda editions since 1996, see Appendix: Historical Tables, Part H.)

For additional perspective on the small-business regulatory climate, Box 5 depicts a partial list of the basic, non-sector-specific laws and regulations that affect small business, stacking as they grow.

## 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, which required the Congressional Budget Office to produce cost estimates of mandates affecting state, local, and tribal governments above the then-\$50 million threshold.

### Box 5. Federal Workplace Regulations 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)

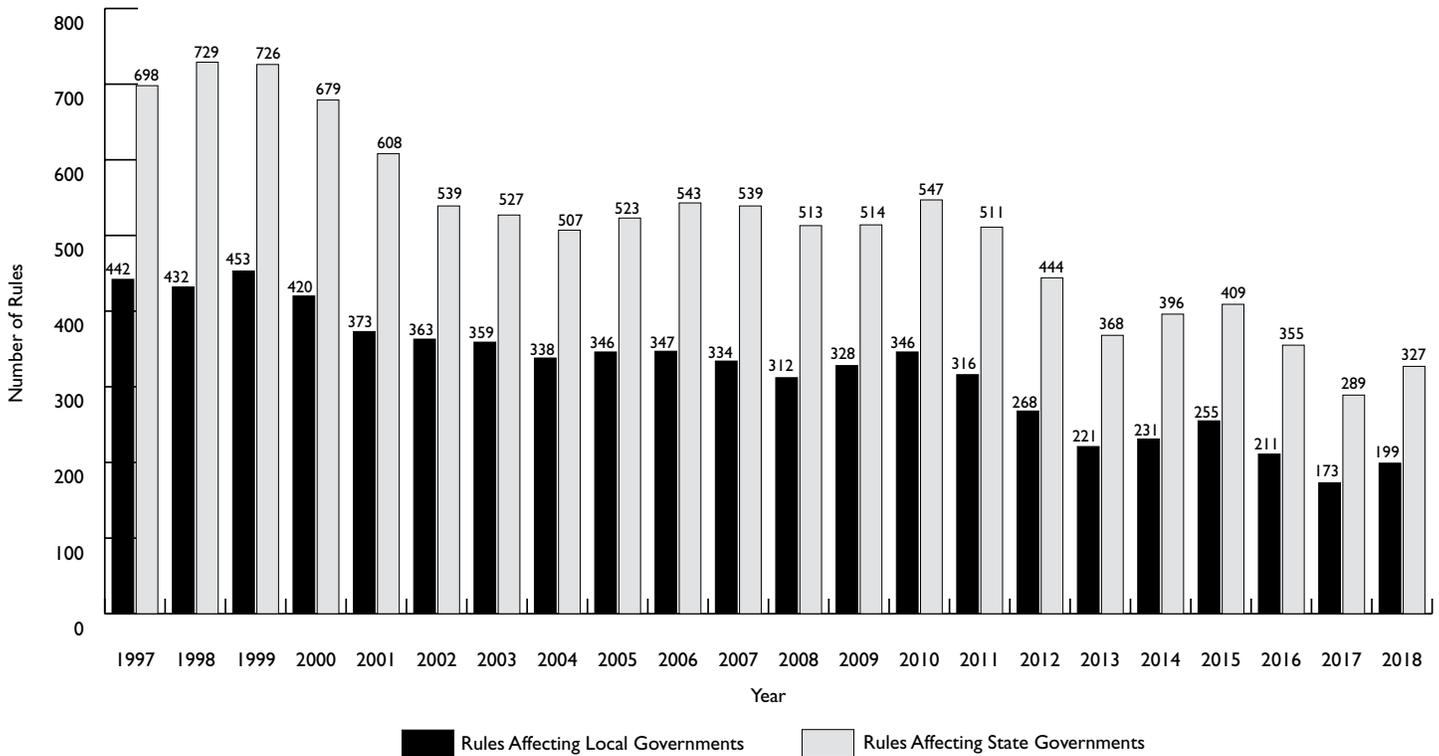
#### **50 EMPLOYEES: ALL THE ABOVE, PLUS**

- Family and Medical Leave Act (12 weeks unpaid leave to 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, 1997–2018



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>.

As Figure 22 shows, agencies report that 199 of the 3,534 rules in the fall 2018 Agenda pipeline will affect local governments (this includes all stages—active, completed, and long-term).<sup>290</sup> Since the passage of the Unfunded Mandates Act in the mid-1990s, the number of overall rules affecting local governments has fallen by 62 percent, from 533 to 199. The total number of regulatory actions affecting state governments stands at 327. The overall pipeline count of active, completed, and long-term rules has been trending downward. The change is even more dramatic in the past two years owing to explicit deregulatory actions—47 local actions and 76 state actions deemed “Deregulatory” for Executive Order 13771 purposes, across the active, completed and long-term categories.

Unfunded federal mandates on state and local governments remain an issue that could influ-

ence overall regulatory reform measures. At the 2016 Legislative Summit of the National Conference of State Legislatures (NCSL) in Chicago, the NCSL Standing Committee on Budgets and Revenue issued a resolution on unfunded mandates that asserts, “The growth of federal mandates and other costs that the federal government imposes on states and localities is one of the most serious fiscal issues confronting state and local government officials.”<sup>291</sup> The NCSL calls for “reassessing” and “broadening” the 1995 Unfunded Mandates Reform Act. Likewise, state attorneys general in 2016 wrote to House and Senate leadership over federal agencies’ “failing to fully consider the effect of their regulations on States and state law,” and called for strengthening the Administrative Procedure Act.<sup>292</sup>

In May 2016, the Congressional Budget Office (CBO) reported that since 2006, 160

laws have imposed mandates on states and localities, with 342 mandates within these laws.<sup>293</sup> Regulatory mandates can derive from such laws, as well as from agencies acting unilaterally. According to official data, few have imposed costs on states and localities exceeding the noted statutory threshold (aggregate direct costs during any of the mandate's first five years of \$50 million in 1996; \$77 million now), but this should be examined further.

Agencies claim very few of the rules in Figure 22 impose unfunded mandates on states and localities.<sup>294</sup> Nonetheless, below appear some notable completed or pending regulations since 2009 that federal agencies have acknowledged in the Unified Agenda as unfunded mandates, (with their Regulation Identifier Number<sup>295</sup> provided).

### ***Department of Agriculture***

- USDA/FNS: 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)
- USDA/RBS: Debt Settlement—Community and Business Programs (0570-AA88)

### ***Department of Health and Human Services***

- HHS/FDA: Combinations of Bronchodilators with Expectorants; Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use (0910-AH16)
- HHS/CMS: CY 2016 Notice of Benefit and Payment Parameters (CMS-9944-P) (0938-AS19)
- HHS/FDA: Over-the-Counter Drug Review—Internal Analgesic Products (0910-AF36)
- HHS/CDC: Establishment of Minimum Standards for Birth Certificates (0920-AA46)

- HHS/FDA: Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents (0910-AG33)

### ***Department of Justice***

- DOJ/LA: Supplemental Guidelines for Sex Offender Registration and Notification (1105-AB36)
- DOJ/CRT: Nondiscrimination on the Basis of Disability in State and Local Government Services (1190-AA46)

### ***Department of Labor***

- DOL/OSHA: Occupational Exposure to Crystalline Silica (1218-AB70)

### ***Department of Transportation***

- DOT/PHMSA: Hazardous Materials: Real-Time Emergency Response Information by Rail (2137-AF21)
- DOT/FHWA: Real-Time System Management Information Program (2125-AF19)

### ***Architectural and Transportation Barriers Compliance Board***

- ATBCB: Americans with Disabilities Act Accessibility Guidelines for Transportation Vehicles (3014-AA38)

### ***Environmental Protection Agency***

- EPA/OW: National Primary Drinking Water Regulations (2040-AA94)
- EPA/OCSPP: Polychlorinated Biphenyls; Reassessment of Use Authorizations for PCBs in Small Capacitors in Fluorescent Light Ballasts in Schools and Daycares (2070-AK12)
- EPA/WATER: Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category (2040-AF14)

- EPA/SWER: Revising Underground Storage Tank Regulations—Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training (2050-AG46)
- EPA/SWER: Standards for the Management of Coal Combustion Residuals Generated by Commercial Electric Power Producers (Coal Ash) (2050-AE81)
- EPA/AR: Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards (2060-AQ86)
- EPA/AR: National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; Reconsideration (2060-AR13)
- EPA/AR: National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Electric Utility Steam Generating Units (2060-AP52)
- EPA/AR: NESHAP from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Electric Utility Steam Generating Units—Appropriate and Necessary Finding (2060-AR31)
- EPA/AR: National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers (2060-AM44)
- EPA/AR: National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (2060-AQ25)
- EPA/AR: NESHAP: Portland Cement Notice of Reconsideration and NSPS for Portland Cement (2060-AO15)

### ***Nuclear Regulatory Commission***

- NRC: Revision of Fee Schedules (3150-AI93)