

Ten Thousand Commandments

An Annual Snapshot of the Federal Regulatory State

2018 Edition

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Executive Summary

Spending and deficit restraint are vital to the nation's economic health. But the cost of government extends beyond what Washington collects in taxes and what it spends. Federal environmental, safety and health, and economic regulations affect the economy by hundreds of billions—even trillions—of dollars annually. Budgetary pressures can incentivize lawmakers to impose off-budget regulations on the private sector rather than add to unpopular deficit spending.

Federal regulatory burdens can operate as a hidden tax.¹ Unlike on-budget spending, regulatory costs are largely hidden from public view. This can make regulation overly attractive to lawmakers. For example, a new government job-training initiative could involve either increased government spending or new regulations that require businesses to provide such training. Just as firms generally pass the costs of some taxes along to consumers, some regulatory compliance costs borne by businesses will find their way into the prices that consumers pay, affecting the wages that workers earn and hinder-

ing growth and prosperity. The costs of such rules and mandates accumulate throughout the economy. This report is the latest in an annual series that examines the scope of the federal regulatory state.²

When the U.S. federal administrative state began its growth a century ago, few likely imagined the tangle of rules it would yield and how they would envelop the economy and society. Over several decades, the federal regulatory state has continued to grow, as rules accumulate year after year with little retrenchment. Over the past year, there were some hopeful signs in this regard, but there are still reasons for concern.

One of the first acts of President Donald Trump's administration was to issue a memorandum to executive branch agencies titled "Regulatory Freeze Pending Review."³ This is a routine move taken by new presidents wishing to review their predecessor's pending actions and to prioritize their own, but it was exceeded by Trump's broader streamlining actions.⁴ While some of Trump's executive ac-

Box I. Trump Executive Actions on Regulatory Process Reform

- **Presidential Memorandum.** Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing, January 24, 2017.¹²
- **Executive Order 13766.** Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects, January 24, 2017.¹³
- **Executive Order 13771.** Reducing Regulation and Controlling Regulatory Costs, January 30, 2017.¹⁴
- **Executive Order 13772.** Core Principles for Regulating the United States Financial System, February 3, 2017.¹⁵
- **Executive Order 13777.** Enforcing the Regulatory Reform Agenda, February 24, 2017.¹⁶
- **Executive Order 13781.** Comprehensive Plan for Reorganizing the Executive Branch, March 13, 2017.¹⁷
- **Executive Order 13789.** Identifying and Reducing Tax Regulatory Burdens, April 21, 2017.¹⁸
- **Executive Order 13790.** Promoting Agriculture and Rural Prosperity in America, April 25, 2017.¹⁹
- **Executive Order 13791.** Enforcing Statutory Prohibitions on Federal Control of Education, April 26, 2017.²⁰
- **Executive Order 13792.** Review of Designations under the Antiquities Act, April 26, 2017.²¹
- **Executive Order 13795.** Implementing an America-First Offshore Energy Strategy, April 28, 2017.²²
- **Executive Order 13807.** Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, August 15, 2017.²³
- **Executive Order 13813.** Promoting Healthcare Choice and Competition across the United States, October 12, 2017.²⁴
- **Executive Order 13821.** Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America, January 8, 2018.²⁵
- **Presidential Memorandum.** Memorandum for the Secretary of the Interior: Supporting Broadband Tower Facilities in Rural America on Federal Properties Managed by the Department of the Interior, January 8, 2018.²⁶

tions worryingly seem overly concerned with trade restrictions, anti-dumping and “buying American,” the president also issued a series of actions related to reforming the regulatory process in general, liberalizing specific sectors, and even reforming the executive branch itself (see Box 1).⁵

For context, consider the level of federal spending. In February 2018, the White House budget proposal reported that outlays for fiscal year (FY) 2017 stood at \$3.981 trillion and are estimated to reach \$4.173 trillion in FY 2018.⁶ The president’s new budget projects annual spending to top \$5 trillion in 2023. Similarly, the Congressional Budget Office’s 2018 Budget and Economic Outlook report—which was delayed owing to the tax reform legislation of late 2017⁷—projects discretionary, entitlement, and interest spending to surpass \$4.1 trillion in FY 2018 and to top \$7 trillion by FY 2028.⁸ Meanwhile, the national debt now stands at \$20.8 trillion.⁹

Since government heavily influences society through regulation as well as spending,

regulatory costs should be closely tracked and disclosed annually, and periodic housecleaning should be performed. The limited cost-benefit analysis currently undertaken by agencies covers only a fraction of rules.¹⁰ Furthermore, cost-benefit analysis relies largely on agency self-reporting. Regulators are reluctant to acknowledge when a rule’s benefits do not justify its costs. In fact, one could expect agencies to devise new and suspect categories of benefits to justify agency rulemaking activity and new endeavors.¹¹

The problem of overregulation is largely driven by entrenched delegation of rulemaking power to agencies by Congress. Addressing overregulation effectively and over the long term will require expedited congressional votes on significant or controversial agency rules before they become binding. Getting lawmakers to go on the record as supporting or opposing specific rules would reestablish congressional accountability and affirm the sound principle of “no regulation without representation.”

Federal regulatory transparency report cards, similar to the presentation in *Ten Thousand Commandments*, could be issued each year to distill information for the public and policy makers about the scope of the regulatory state.²⁷ Scattered government and private data exist about the number of regulations issued by agencies and their costs and effects. Compiling some of that information can shed light on the scope of the federal regulatory enterprise. That goal is central to the annual *Ten Thousand Commandments* report.

Although challenging, it is worthwhile to try to get some sense of the substantial costs of the regulatory state. For the good of the nation's economic health and the welfare of people as both citizens and consumers, Congress should strive to make the regulatory process more transparent and to bring it under democratic and constitutional control.

Highlights of the current edition include the following:

- The estimate for regulatory compliance and economic effects of federal intervention is \$1.9 trillion annually for purposes of comparison with federal spending and other economic metrics. This estimate was compiled using available federal government data and reports, in context with contemporary studies.
- The estimated burden of regulation is equivalent to nearly half the level of federal spending, expected to be \$4.1 trillion in 2018.
- Regulatory costs of \$1.9 trillion amount to 10 percent of the U.S. gross domestic product, which was estimated at \$19.738 trillion in 2017 by the Commerce Department's Bureau of Economic Analysis.
- When regulatory costs are combined with estimated federal FY 2018 outlays of \$4.173 trillion, the federal government's share of the entire economy reaches 30 percent (not including state and local spending and regulation).

- If it were a country, U.S. regulation would be the world's eighth-largest economy, ranking behind India and ahead of Italy.
- The regulatory hidden tax is equivalent to federal individual and corporate income tax receipts combined, which total an estimated \$1.884 trillion in 2017 (\$1.587 trillion in individual income tax revenues; and \$297 billion in corporate income tax revenues).
- Regulatory costs rival 2016 corporate pretax profits of \$2.156 trillion.
- If all costs of federal regulation and intervention flowed down to U.S. households, each would "pay" \$14,666 annually on average in a regulatory hidden tax. That amounts to 20 percent of the average household pretax income of \$74,664 and 26 percent of the average household expenditure budget of \$57,311. The regulatory "tax" exceeds every item in the household budget except housing. More is "spent" on embedded regulation than on health care, food, transportation, entertainment, apparel, services, and savings.
- The Weidenbaum Center at Washington University in St. Louis and the George Washington University Regulatory Studies Center in Washington, D.C., jointly estimate that agencies spent \$66 billion in fiscal year 2017 to administer and police the federal regulatory state. This on-budget amount is in addition to compliance and economic burdens.
- Apart from sector-specific executive orders and memoranda, there are six ways the Trump administration has so far addressed regulatory streamlining:
 - Elimination of 15 existing rules via the Congressional Review Act;
 - Delay or withdrawal of 1,579 of Obama administration rules in the pipeline;
 - Multipronged streamlining for pipelines, bridges, 5G broadband, rural broadband, and other infrastructure;
 - Imposition of restraint on agencies regarding initiating large, significant rulemakings;

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While the Trump administration has technically met Executive Order 13771's goal of implementing a "one-in, two-out" process for federal regulations, agencies are already on track to reverse this.

- Early progress on the presidential requirement that agencies eliminate at least two rules for every one issued;
- Steps toward addressing regulating through agency guidance documents and other sub-regulatory decrees.
- While the Trump administration has technically met Executive Order 13771's ("Reducing Regulation and Controlling Regulatory Costs") goal of implementing a "one-in, two-out" process for federal regulations, agencies are already on track to reverse this, poised to issue over three times more regulatory than deregulatory actions.
- The *Federal Register* finished 2017 at 61,308 pages, the lowest count since 1993. This represents a 36 percent drop from President Barack Obama's 95,894 pages in 2016, the highest level ever recorded.
- *Federal Register* pages devoted specifically to final rules in 2017 stood at 18,727, the lowest since 1995.
- The 2017 *Federal Register* contained 3,281 completed or final rules, compared with 3,853 final rules the year before under Obama, a 15 percent reduction. In the 1990s and early 2000s, rule counts regularly exceeded 4,000 annually.
- At the end of calendar year, 1,834 proposed rules were in the *Federal Register* pipeline. This was a 24 percent reduction from 2,419 in 2016.
- During calendar-year 2017, while agencies issued those 3,281 rules, Congress enacted "only" 97 laws. Thus, agencies issued 34 rules for every law enacted by Congress. This "Unconstitutionality Index"—the ratio of regulations issued by agencies to laws passed by Congress and signed by the president—highlights the entrenched delegation of lawmaking power to unelected agency officials. The ratio was 18 in 2016; the average for the past decade has been 28.
- In the pipeline now, 67 federal departments, agencies, and commissions have 3,209 regulatory actions at various stages of implementation ("Completed," "Active," and "Long-term" stages), according to the fall 2017 "Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions." Of the 3,209 rules in the Agenda, 540 are "Deregulatory" for Executive Order 13771 purposes, broken down as follows:
 - 1,977 rules in active phase, 448 deemed deregulatory.
 - 470 completed rules, 62 deemed deregulatory.
 - 762 long-term rules, 30 deemed deregulatory.
- Of the 3,209 regulations in the pipeline (completed, active, and long-term stages), 140 are "economically significant" rules, which the federal government describes as having annual economic effects of \$100 million or more. Of those 140, 30 are deemed deregulatory for purposes of Executive Order 13771 (five at the completed stage, 25 at the active stage.) However, none of the planned long-term rules are deregulatory.
- Since 1993, when the first edition of *Ten Thousand Commandments* was published, agencies have issued 101,380 rules. Since the *Federal Register* first began itemizing them in 1976, there have been 198,470 rules.
- The Trump administration's spring and fall Unified Agenda of Federal Regulatory and Deregulatory Actions contained a combined 68 completed economically significant rules. The annual average for Barack Obama's eight years was 69; George W. Bush's average over his term was 49. Trump's Agendas are the first to contain expressly deregulatory rules for purposes of Executive Order 13771.
- In the first year of the Trump administration, the Government Accountability Office issued 48 reports on "major" rules (a category similar to economically significant) as required by the Congressional Review Act. President George W. Bush's administration averaged 63 major rules annually during his eight years in office. President Barack Obama averaged 86, or a 36 percent higher average annual output than Bush. Obama issued

685 major rules during his term compared with Bush's 505.

- Of the 3,209 regulations now in the works, 590 affect small businesses, down from 671 in fall 2016. Of those, 337 required a Regulatory Flexibility Analysis (assessing small-business impacts), down from 412 in 2016. An additional 253 were otherwise noted by agencies to affect small businesses in some fashion. Overall, 83 were deregulatory.
- The five most active rule-producing entities—the Departments of Commerce, Defense, Transportation, and the Treasury and the Environmental Protection Agency—account for 1,359 rules, or 43 percent of all rules in the Unified Agenda pipeline.
- Trump issued 63 executive orders in 2017. From the nation's founding

through President Barack Obama, more than 15,285 executive orders have been issued. Obama issued a total of 276, similar to President George W. Bush's 291.

- Trump issued 38 presidential memoranda in 2017. President George W. Bush published 131 memoranda in the *Federal Register* over his entire presidency, whereas Obama published 257.
- Public notices in the *Federal Register* normally exceed 24,000 annually, including uncounted guidance documents and other proclamations with potential regulatory effect. A total of 22,137 notices were issued in 2017, 572,626 have been issued since 1994, and well over a million since the 1970s.