

Ten Thousand Commandments

An Annual Snapshot of the Federal Regulatory State

2017 Edition

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Executive Summary

When the era of executive regulation began in the 1920s, few likely imagined the dense tangle of rules that it would produce or how they would envelop the economy and society. But over decades, the federal regulatory state has continued to grow, with rules accumulating year after year. Members of both major political parties have long recognized that federal regulatory burdens can operate as a hidden tax.¹ President Donald Trump has echoed that view.² In response,

his administration issued a memorandum titled “Regulatory Freeze Pending Review” to executive branch agencies.³ (That is a typical step taken by new presidents wishing to review their predecessor’s pending actions and to prioritize their own.⁴) The president has also issued a series of executive actions related to reforming the regulatory process (see Box 1). Such action is needed given the growing costs of federal regulation.

Box 1. Executive Actions on Regulatory Process Reform during Trump’s First 100 Days

- **Presidential Memorandum.** Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing, January 24, 2017.⁵
- **Executive Order 13766.** Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects, January 24, 2017.⁶
- **Presidential Executive Order 13771.** Reducing Regulation and Controlling Regulatory Costs, January 30, 2017.⁷
- **Presidential Executive Order 13772.** Core Principles for Regulating the United States Financial System, February 3, 2017.⁸
- **Presidential Executive Order 13777.** Enforcing the Regulatory Reform Agenda, February 24, 2017.⁹
- **Presidential Executive Order 13789.** Identifying and Reducing Tax Regulatory Burdens, April 21, 2017.¹⁰

*Cost–benefit
analysis relies
primarily on
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Reducing overspending and relieving regulatory burdens are vital to the nation's economic health. But the cost of government extends beyond what Washington taxes and spends.

Budgetary pressures can incentivize lawmakers to impose off-budget regulations on the private sector rather than add to unpopular deficit spending. Unlike on-budget spending, regulatory costs remain largely hidden from public view, which 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. Spread throughout the economy, the costs of such rules and mandates pile up high. This report is the latest in an annual series that attempts to quantify the costs of the federal regulatory state.

For context, consider the level of federal spending. In January 2017, the Congressional Budget Office reported outlays for fiscal year (FY) 2016 of \$3.854 trillion.¹¹ Discretionary, entitlement, and interest spending is projected to surpass \$4 trillion in FY 2018 and to top \$5 trillion by FY 2022.¹² The national debt now stands at \$19.95 trillion.¹³ Yet the federal government's reach extends far beyond its taxes, deficits, and borrowing. Federal environmental, safety and health, and economic regulations affect the economy by hundreds of billions—even trillions—of dollars annually.

Along with spending, government heavily influences society through regulation. Like federal spending, regulatory costs should be closely tracked and disclosed annually, and periodic housecleaning should be performed. The limited cost-benefit analysis currently undertaken at the agency level covers only a fraction of rules.¹⁴ Furthermore, cost-benefit analysis relies primarily 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 jus-

tify agency rulemaking activity and new endeavors.¹⁵

A major driver of overregulation is the entrenched overdelegation of rulemaking power to agencies by Congress. This problem is difficult to address. A good start would be to require expedited congressional votes on economically significant or controversial agency rules before they become binding. Lawmakers having to go on the record as supporting or opposing specific rules would help reestablish congressional accountability and affirm the principle of "no regulation without representation." In addition, federal regulatory transparency report cards, similar to the presentation in this report, could be issued each year to distill information for the public and policy makers about the scope of the regulatory state.¹⁶

Firms generally pass the costs of some taxes along to consumers.¹⁷ Some regulatory compliance costs borne by businesses will find their way into the prices that consumers pay, will affect the wages that workers earn, and will hinder growth and prosperity. Precise regulatory costs are not fully known because, unlike taxes, they are unbudgeted and often indirect.¹⁸ 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 shed some light on the cost of the federal regulatory state. That goal is central to the annual *Ten Thousand Commandments* report. Highlights of the current edition follow:

- Based on federal government data, past reports, and contemporary studies, this report highlights regulatory compliance and economic impacts of federal intervention of \$1.9 trillion annually.¹⁹
- 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 \$63 billion in fiscal year 2016 to administer the federal regulatory state. Adding the \$1.9 trillion in off-budget compliance costs

- brings the total reckoned regulatory enterprise to about \$1.963 trillion.
- If it were a country, U.S. regulation would be the world's seventh-largest economy, ranking behind India and ahead of Italy.
 - The estimated cost of regulation is equivalent to half the level of federal spending, which was \$3.854 trillion in 2016.
 - Regulatory costs of \$1.9 trillion amount to 10 percent of the U.S. gross domestic product, which was estimated at \$18.861 trillion in 2016 by the Commerce Department's Bureau of Economic Analysis.
 - When regulatory costs are combined with federal FY 2016 outlays of \$3.854 trillion, the federal government's share of the entire economy reaches 30 percent (not including state and local spending and regulation).
 - During calendar year 2016, Congress enacted 214 laws, whereas agencies issued 3,853 rules. Thus, 18 rules were issued for every law enacted. This "Unconstitutionality Index"—the ratio of regulations issued by agencies to laws passed by Congress and signed by the president—highlights the delegation of lawmaking power to unelected agency officials. The ratio was 30 in 2015. The average for the past decade has been 27.
 - If one assumed that all costs of federal regulation and intervention flowed all the way down to households, U.S. households would "pay" \$14,809 annually on average in a regulatory hidden tax. That amounts to 21 percent of the average income of \$69,629 and 26.45 percent of the expenditure budget of \$55,978. 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.
 - Sixty federal departments, agencies, and commissions have 3,318 regulatory actions at various stages of implementation, according to the fall 2016 "Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions."
 - Of the 3,318 regulations in the pipeline, 193 are "economically significant" rules, which the federal government defines as having annual effects on the economy of \$100 million or more. Assuming that those rulemaking effects are primarily regulatory rather than deregulatory implies roughly \$19 billion yearly in future off-budget economic effects in the works.
 - The costs of the regulatory hidden tax surpass federal individual and corporate income tax receipts, which totaled a combined \$1.92 trillion in 2016 (\$1.628 trillion in estimated individual income tax revenues and \$292.6 billion in estimated corporate income tax revenues).
 - Regulatory costs rival corporate pretax profits of \$2.138 trillion.
 - The *Federal Register* finished 2016 at 95,894 pages, the highest level in its history and 19 percent higher than the previous year's 80,260 pages.
 - Of the top 10 all-time-high *Federal Register* page counts, seven occurred under President Barack Obama.
 - *Federal Register* pages devoted specifically to final rules in 2016 stood at 38,652, compared with 24,694 in 2015. This new record shatters 2013's record high of 26,417 by 46 percent.
 - The 2016 *Federal Register* contained 3,853 completed rules, compared with 3,410 final rules the year before. In addition, at year-end, 2,419 proposed rules were in the pipeline (compared with 2,342 the year before).
 - Since 1993, when the first edition of *Ten Thousand Commandments* was published, 98,099 rules have been issued. Since the *Federal Register* first began itemizing them in 1976, there have been 195,189 rules.
 - President George W. Bush's administration averaged 63 "major" rules (a somewhat broader category than "economically significant") annually during his eight years in office. Obama averaged 86, or a 36 percent higher average annual output than that of Bush. Obama issued 685 major rules during his term, compared with Bush's 505.

- For completed economically significant rules (a slightly narrower category than “major”), the average for Barack Obama’s eight years was 69; George W. Bush’s average over his term was 49.
- Of the 3,318 regulations now in the works, 671 affect small businesses. Of those, 412 required a regulatory flexibility analysis, up from 386 in the past year. An additional 259 were otherwise noted by agencies to affect small businesses in some fashion. Although the combined reported number of rules affecting small business is down recently, the average of Obama’s eight years, 406, exceeds Bush’s eight-year average of 377.
- The five most active rule-producing entities—the Departments of the Treasury, the Interior, Transportation, and Commerce and the Environmental Protection Agency—account for 1,428 rules, or 43 percent of all rules in the Unified Agenda pipeline.
- Since the nation’s founding, more than 15,285 executive orders have been issued. President Obama issued a total of 276, below President George W. Bush’s 291.
- President George W. Bush published 131 memoranda in the *Federal Register* over his entire presidency, whereas President Barack Obama published 257.
- 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 24,557 notices in 2016. There have been 550,489 public notices since 1994 and well over a million since the 1970s.