

2018

TEN
THOUSAND
COMMANDMENTS

25th Anniversary

*An Annual Snapshot of the
Federal Regulatory State*

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Ten Thousand Commandments

An Annual Snapshot of the Federal Regulatory State

2018 Edition

by Clyde Wayne Crews, Jr.

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 rule-making 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;

Regulators are reluctant to acknowledge when a rule's benefits do not justify its costs.

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.

9,999 Commandments? Six Ways Rule Flows Were Reduced or Streamlined in 2017

Rather than jump directly into the numbers of rules and regulations, this year's *Ten Thousand Commandments* begins with a survey of approaches the Trump administration took in its first year to fulfill promises to reduce red tape. This is appropriate given the administration's vocal emphasis on regulatory reform. Later sections of this report will put Trump's 2017 numbers in context with the historical record, which will allow us to examine Trump's success, or lack thereof, in implementing the requirement in Executive Order 13771 ("Reducing Regulation and Controlling Regulatory Costs") to eliminate two regulations for every one issued and subsequent White House guidance on carrying out the program.²⁸

In the process, we can assess what agencies' priorities and numbers to date indicate about the prospects for continued streamlining of rules and regulations, assuming Congress does not enact a broader legislative package aimed at regulatory reform.

The 2018 edition of *Ten Thousand Commandments* helps illustrate the need for a regulatory budget. It contains four sections:

1. An overview of the costs and scope of the regulatory state, including its appraised size compared with federal budgetary components and gross domestic product;
2. An analysis of trends in the numbers of regulations issued by agencies, based on information provided in the *Federal Register* and in "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions." This discussion also explores the Trump administra-

tion's success in implementing a "one-in, two-out" process for new regulations, as well as barriers that it may face as an executive branch program;

3. Recommendations for reform that emphasize disclosure and improving congressional accountability for rule-making; and
4. An appendix containing historical tables of regulatory trends over past decades.

Presidents come and go, but few really attempt to roll back regulations or statutes, no matter the party. President Barack Obama unapologetically wielded the "pen and phone" to expand federal reach over private affairs.²⁹ President Donald Trump, too, has used the pen and phone, but largely in an attempt to undo Obama programs.³⁰ Some legal challenges to Executive Order 13771 aside, the Trump approach, at least within the framework of regulatory restraint or rollback, seems executed within the rule of law.³¹ Executive order 13771 asserts: "Nothing in this order shall be construed to impair or otherwise affect ... the authority granted by law to an executive department or agency. ... This order shall be implemented consistent with applicable law."³² There were no arbitrary, illegal cuts in regulation. Rather, Executive Order 13771 in a sense implemented a restoration a separation of powers in rulemaking by underscoring what a president and his agencies may *not* do.³³ As such, Executive Order 13771 represents a voluntary *weakening* of executive power (we are not addressing wider policy matters in this context). The underlying message is that if something needs to be done, Congress should pass a law.

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President Trump made much news over slowing down the flow of regulations and promising to reduce even more red tape in 2018, which raises two questions.³⁴ First, which regulations, exactly, did Trump get rid of? Second, were the rules added costly compared to those eliminated?

Some progressive commentators call Trump's boast a "deregulation myth,"³⁵ while others insist his rollbacks are "illegal" and are harming health and safety.³⁶ Obviously, both cannot be true. Yet, wholesale regulatory streamlining requires Congress to roll back regulations, because the president cannot make law unilaterally. The Administrative Procedure Act (APA) requires that rules must be eliminated either by writing a new rule or through legislation.

Some lesser rules were eliminated in the 11 months Trump occupied the White House in 2017. But undoing or reforming major regulations, like the Environmental Protection Agency's (EPA) Waters of the United States or Clean Power Plan rules, takes years. As Heritage Foundation analyst James Gattuso put it: "Given the procedural and institutional obstacles to repealing a rule, it is unlikely that any administration would be able to achieve substantial deregulation in its first year."³⁷

For context on the limits of the possible, a report by the Mercatus Center at George Mason University looked at regulatory restrictions (as opposed to numbers of rules or costs) "produced by counting select words and phrases, such as shall or must, that are typically used in legal language to create binding obligations or prohibitions." This analysis found that "the numbers don't show a massive deregulation—in fact, they show that the quantity of regulatory restrictions actually grew. But it grew by less than we might have expected based on historical patterns."³⁸ The number of restrictions added was well below that of previous administrations, and some may have been inherited and part of longstanding statutory implementation, which are off-limits to most executive orders. Rules not subject

to Executive Order 13771 would proceed, which could also help explain some new restriction terminology.

One helpful change is that, in implementing Executive Order 13771, the Trump administration has begun to explicitly separate deregulatory actions from regulatory ones. This move could have staying power with subsequent administrations regardless of whether Congress implements regulatory reform. Box 1 notes many sector-specific executive actions on financial regulation, antiquities and national monuments, offshore resource access, education, and health care. In addition to these, Trump's regulatory rollbacks—limited given their largely unilateral implementation within a rigid preexisting administrative state—have consisted of six main elements.

First, 14 rules that had been finalized during the closing months of the Obama administration, plus a 2017 Consumer Financial Protection Bureau (CFPB) rule on arbitration agreements, were eliminated using the Congressional Review Act (CRA), via individual resolutions of disapproval passed by Congress and signed by Trump.³⁹ The rules removed were generally not particularly well-known, headline-grabbing reforms, nor all major ones.⁴⁰ However, some repeals generated significant controversy, such as those of the CFPB arbitration rule, a Federal Communications Commission (FCC) privacy rule, and an Interior Department stream protection rule. There were hundreds of rules actually eligible to be turned back, which provides the sometimes-needed reality check that "Many companies like existing rules or want more of them," especially when they provide advantages over rivals.⁴¹

Second, the Trump administration withdrew or delayed 1,579 Obama rules that were in the pipeline but not yet finalized, broken down as follows:

- 635 regulations were withdrawn.
- 244 regulations were made inactive.
- 700 regulations were delayed.

One helpful change is that, in implementing Executive Order 13771, the Trump administration has begun to explicitly separate deregulatory actions from regulatory ones.

In July 2017, White House Office of Management and Budget (OMB) Director Mick Mulvaney acknowledged that of the rules by that time addressed, “None of them are very sexy.” He commented: “None of them are very glamorous. None of them really rise to the level of getting national attention. But think about that—860 of them.”⁴² Small regulations can accumulate and have unintended effects and ought not be ignored.⁴³

Third, streamlining permitting for bridges, pipelines, transportation, telecommunications, and other infrastructure is being interpreted as a more open season for infrastructure planning. This manifested in several ways, such as the permitting-related executive actions noted earlier in Box 1; the Commerce Department’s permit streamlining action plan⁴⁴ and some elements, with caveats, of the 2019 Trump Budget proposal addressing infrastructure reform.⁴⁵

Fourth, agencies have largely abstained from issuing significant new rules, to the extent possible within congressional requirements and an autopilot administrative state. The total 2017 rule count was 3,281, compared to Obama’s 2016 tally of 3,853. Of Obama’s rules, 486 were categorized as “significant”; the significant subset for 2017 was 199. The lower count can overstate Trump’s rulemaking activity, however, since some were delays or rollbacks and many were part of the ever-present Federal Aviation Administration airworthiness directives and Coast Guard rules.

Fifth, President Trump’s Executive Order 13771 required executive—not independent—agencies to eliminate at least two rules for every significant one issued and required the capping of net new regulatory costs at zero. The White House maintains that the goal of one-in, two-out for regulations was exceeded with a 22-to-one out/in ratio, since only three significant new regulatory actions were imposed during 2017⁴⁶ (see the OMB website or the Regulation Identifier Number [RIN] for particulars⁴⁷):

1. **Department of Energy:** Energy Conservation Standards for Walk-in Cooler

and Freezer Refrigeration Systems RIN: 1904-AD59

2. **Food and Drug Administration:** FY 2018 Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities (SNFs), SNF Value-Based Purchasing Program, SNF Quality Reporting Program (CMS-1679-F) RIN: 0938-AS96

3. **Environmental Protection Agency:** Effluent Limitations Guidelines and Standards for the Dental Category RIN: 2040-AF26

The assertions of a 22-to-one success ratio received the expected criticisms, including claims that new rules and offsets are not comparable and that other sub-significant rules did not count in the tally.⁴⁸ But Executive Order 13771 never applied to nonsignificant rules, only to a “significant regulatory action” as defined by Executive Order 12866. It also did not apply to significant rules from independent agencies like the FCC or the CFPB or to rules mandated by Congress as opposed to those driven by agency discretion.

Implementing the streamlining process was not automatic; two OMB guidance documents on the executive order were issued after the order itself,⁴⁹ and a separate executive order established Regulatory Reform Task Forces.⁵⁰ Agencies sought to establish procedures by inviting public input on rule streamlining.⁵¹ Last but not least, agencies may or may not choose to deem an action significant that should be. In any event, the no-net-new costs provisions of Trump’s two-for-one executive order could be seen as something of a mini-regulatory budget.

Box 2 lists Trump’s claimed 67 completed regulatory eliminations or reductions.⁵² The Environmental Protection Agency and the Department of Interior generated the most reductions, at 16 and 12, respectively. Among Trump’s initial 67 rule reductions, nine appear to be revocations or alterations of sub-regulatory guidance, notices, orders, or information collections (these appear in bold type in Box 2).

Agencies may or may not choose to deem an action significant that should be.

Box 2. Regulatory Reform: Completed Executive Order 13771 Deregulatory Actions

Orders, guidance, notices, and information collection changes are presented in **bold** type

Department of Agriculture (5)

1. Importation of Bone-in Ovine Meat from Uruguay RIN: 0579-AE21
2. Importation of Fresh Persimmon with Calyxes from Japan into the U.S. RIN: 0579-AE27
3. Importation of Fresh Pitahaya Fruit from Ecuador into the Continental U.S. RIN: 0579-AE12
4. Importation of Hass Avocados from Colombia RIN: 0579-AE29
5. Republic of Korea Orchids Imported in Growing Media RIN: 0579-AE24

Department of Commerce (7)

6. Capital Construction Fund; Fishing Vessel Capital Construction Fund Procedures RIN: 0648-AW57
7. Framework Action to Modify Commercial Permit Restrictions for King and Spanish Mackerel in the Gulf of Mexico and Atlantic Federal Waters RIN: 0648-BG56
8. Framework Amendment to the Coastal Pelagic Species Fishery Management Plan; Change to Pacific Mackerel Management Cycle From an Annual to Biennial Specification Schedule RIN: 0648-BF96
9. Regulatory Omnibus Framework Adjustment to Modify Reporting Requirements for Electronic Vessel Trip Reports by Federally-Permitted for-Hire Vessels and Operators in the Mid-Atlantic Region RIN: 0648-BG60
10. Repeal of Regulations Governing the Public Telecommunications Facilities Program RIN: 0660-AA34
11. Timing of Accountability Measure-Based Closures Amendment RIN: 0648-BG29
12. Withdrawal of Proposed Rule for Protected Species Hard Caps for the California/Oregon Large-Mesh Drift Gillnet Fishery RIN: 0648-BG23

Department of Health and Human Services (7)

13. Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments; Extension of Compliance Date; Request for Comments RIN: 0910-AG57
- 14. FDA De Novo Classifications**
- 15. Office of the National Coordinator for Health Information Technology (ONC) Certification Program guidance**
16. Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2018 Rates (CMS-1677-F) RIN: 0938-AS98
- 17. FDA Medical Device Notices**
18. FY 2018 Inpatient Rehabilitation Facility (IRF) Prospective

- Payment System (CMS-1671F) RIN: 0938-AS99
19. Changes to the Medicaid Eligibility Quality Control and Payment Error Rate Measurement (PERM) Programs in Response to the Affordable Care Act (CMS-6068-F) RIN: 0938-AS74

Department of Homeland Security (4)

- 20. Equivalency Determination for “Marine Charts,” “Charts,” or “Maps,” “Publications,” and Navigation Functions—Notice of Availability of Navigation and Vessel Inspection Circular 01–16 Change I**
21. Exercise of Time-Limited Authority to Increase the Fiscal Year 2017 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program RIN: 1615-AC12
- 22. Hazard Mitigation Assistance Acquisition Projects: Hydraulic Fracturing and Horizontal Directional Drilling FEMA Policy 302-094-03**
- 23. Jones Act Ruling Rescission**

Department of Interior (12)

24. Effectuating Congressional Nullification of the Stream Protection Rule under the Congressional Review Act RIN: 1029-AC63
25. Endangered and Threatened Wildlife and Plants; Reinstatement of Removal of the Gray Wolf in Wyoming from the Federal List of Endangered and Threatened Wildlife RIN: 1018-BC04
26. Endangered and Threatened Wildlife and Plants; Removal of the Greater Yellowstone Ecosystem Population of Grizzly Bears from the List of Endangered and Threatened Wildlife RIN: 1018-BA41
27. Endangered and Threatened Wildlife and Plants; Removal of the Hualapai Mexican Vole from the List of Endangered and Threatened Wildlife RIN: 1018-AX99
28. Endangered and Threatened Wildlife and Plants; Removal of the Scarlet-Chested Parakeet and Turquoise Parakeet from the List of Endangered and Threatened Wildlife RIN: 1018-BB29
29. Migratory Bird Permits; Control Order for Introduced Migratory Bird Species in Hawaii (Cattle Egrets and Barn Owls) RIN: 1018-AZ69
30. Non-Subsistence Take of Wildlife and Public Participation and Closure Procedures on National Wildlife Refuges in Alaska RIN: 1018-BA31
31. Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Lease Continuation Through Operations RIN: 1014-AA35
- 32. Order No. 3346 “Revocation of the United States Fish and Wildlife Service Director’s Order No. 219 (Use of Nontoxic Ammunition and Fishing Tackle)”**

Box 2. Regulatory Reform: Completed Executive Order 13771 Deregulatory Actions (continued)

33. Repeal of Consolidated Federal Oil and Gas and Federal and Indian Coal Valuation Reform Rule RIN: 1012-AA20
 34. Subsistence Handicrafts RIN: 1018-BB24
 35. **OMB Control No. 1018-0101, Monitoring Recovered Species After Delisting—American Peregrine Falcon**
- Department of Labor (7)**
36. Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness (Volks) RIN: 1218-AC84
 37. Definition of Fiduciary—Delay of Applicability Date RIN: 1210-AB79
 38. Exercise of Time-Limited Authority to Increase the FY 2017 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program RIN: 1205-AB84
 39. Federal-State Middle Class Tax Relief and Job Creation Act of 2012 Provision on Establishing Appropriate Occupations for Drug Testing of Unemployment Compensation Applicants RIN: 1205-AB63
 40. Guidance for Executive Order 13673, "Fair Pay and Safe Workplaces" RIN: 1290-ZA02
 41. Savings Arrangements Established by Qualified State Political Subdivisions for Non-Governmental Employees RIN: 1210-AB76
 42. Savings Arrangements Established by States for Non-Governmental Employees RIN: 1210-AB71
- Department of the Treasury (4)**
43. Dividend Equivalents from Sources within the United States RIN: 1545-BN76
 44. **IRS Notice 2017-36, One Year Delay in Application of IRS' 385 rule (§ 1.385-2)**
 45. Transactions Involving the Transfer of No Net Value. RIN: 1545-BI18
 46. Withholding on Payments of Certain Gambling Winnings. RIN: 1545-BN58
- Department of Transportation (2)**
47. Add New Electrical Safety Requirements during Normal Vehicle Use and Optional Post Crash Requirements to FMVSS No. 305 RIN: 2127-AL68
 48. Metropolitan Planning Organization Coordination and Planning Area Reform RIN: 2125-AF75
- Department of Veterans Affairs (1)**
49. Fisher House and Other Temporary Lodging. RIN: 2900-AP45
- Environmental Protection Agency (16)**
50. Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act; Further Delay of Effective Date RIN: 2050-AG91
- Federal Acquisition Regulation (1)**
66. Federal Acquisition Regulation (FAR); FAR Case 2017-015, Removal of Fair Pay and Safe Workplaces Rule RIN: 9000-AN52
- Small Business Administration (1)**
67. Miscellaneous Amendments to Business Loan Programs and Surety Bond Guarantee Program. RIN: 3245-AF85
51. Amendment to Standards and Practices for All Appropriate Inquiries under CERCLA RIN: 2050-AG94
 52. Certification of Pesticide Applicators; Delay of Effective Date RIN: 2070-AK38
 53. Clean Water Act Methods Update Rule for the Analysis of Effluent RIN: 2040-AF48
 54. Compliance Date Extension; Formaldehyde Emission Standards for Composite Wood Products RIN: 2070-AK35
 55. Chemical Substances When Manufactured or Processed as Nanoscale Materials; TSCA Reporting and Recordkeeping Requirements RIN: 2070-AK39
 56. Labeling Relief; Formaldehyde Emission Standards for Composite Wood Products RIN: 2070-AK30
 57. Mercury and Air Toxics Standards (MATS) Electronic Reporting Requirements RIN: 2060-AS75
 58. Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Grant of Reconsideration and Partial Stay RIN: 2060-AT63
 59. Technical Amendments to Procedure 6 RIN: 2060-AS86
 60. Phosphoric Acid Manufacturing and Phosphate Fertilizer Production Risk and Technology Review Reconsideration RIN: 2060-AT14
 61. Postponement of Certain Compliance Dates for Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category RIN: 2040-AF76
 62. Revisions to Procedure 2—Quality Assurance Requirements for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources RIN: 2060-AT15
 63. Approval of Tennessee's Request To Relax the Federal Reid Vapor Pressure Gasoline Volatility Standard for Davidson, Rutherford, Sumner, Williamson, and Wilson Counties; and Minor Technical Corrections for Federal Reid Vapor Pressure Gasoline Volatility Standards in Other Areas RIN: 2060-AT32
 64. Stay of Standards of Performance for Municipal Solid Waste Landfills and Emission Guidelines and Compliance Times for MSW Landfills. RIN: 2060-AT62
 65. **OMB Control No. 2060-0705, Withdrawal of the 2016 Information Collection Effort for Oil and Gas Facilities**

Six rules included in the roundup of 67 were among the 15 eliminated via the Congressional Review Act. Other independent agency rules were removed by the CRA but were not taken as credit for two-for-one purposes, such as the CFPB's arbitration rule,⁵³ a Securities and Exchange Commission rule on foreign resource extraction payment disclosure,⁵⁴ and an FCC broadband privacy regulation.⁵⁵ Similarly, some controversial Obama-era guidance documents the Trump administration revoked were not claimed in the roundup of 67. These include withdrawn transgender school facilities guidance, issued jointly by the Departments of Education and Justice,⁵⁶ and Labor Department guidance on independent contracting and joint employment.⁵⁷

One could argue that the FCC's elimination of Obama-era net neutrality rules⁵⁸ and modernization of broadcast ownership rules might be more significant than anything else on the list of successes.⁵⁹ But, like all substantial final rules, new rulemaking proceedings will be lengthy. Despite these successes, Trump could derail much of it with his proclivity for trade restrictions and his ad hoc zeal for antitrust and media regulation (such as swipes at Amazon and the AT&T-Time Warner merger).⁶⁰

As for Executive Order 13771's directive that "total incremental cost of all new regulations, including repealed regulations, to be finalized this year shall be no greater than zero," the present value cost savings from these 67 rule rollbacks was claimed in December 2017 to be just under \$8 billion, or around \$600 million annually.⁶¹ In September 2017, Office of Information and Regulatory Affairs (OIRA) Administrator Neomi Rao issued a memorandum to regulatory reform officers at executive departments and agencies, calling on them to "prepare a proposed total incremental cost allowance" for the upcoming 2018 fiscal year and to articulate how it conforms to Trump's deregulatory executive order.⁶² Where Executive Order 13771 had called for zero net new costs and achieved the purported \$8 billion in savings, Rao's memorandum went further, "expect[ing]

that each agency will propose a net reduction in total incremental regulatory costs for FY 2018." In response, agencies have projected forthcoming cost savings of \$10 billion in present value terms, or \$700 million annualized.⁶³

The first-year results roughly correspond to an analysis by the American Action Forum (AAF), which found that of 23 final actions the administration subjected to one-in, two-out that contained cost estimates, realized estimated annualized cost savings totaled \$893 million, "most ... from delays in compliance deadlines and paperwork changes."⁶⁴ AAF anticipates larger second-year savings as rule reductions make their way through the notice-and-comment process. These Trump-era reported savings share some parallels with Obama's savings from retrospective review, yet they are only minor dents in the federal regulatory state.⁶⁵ All such savings can be either augmented or eclipsed by new costs added by independent agencies not subject to Executive Order 13771.

The truly pertinent question regarding the two-for-one campaign is not the extent of its success to date, but whether any executive branch regulatory liberalization can be maintained over time given the administrative state's barriers to any reform at all. Congress has not passed comprehensive regulatory liberalization in nearly a quarter century. Deregulation under Executive Order 13771 will become harder as low-hanging, quick-to-rid regulations are exhausted.⁶⁶

Sixth, the Trump administration has arguably taken more steps than any of its predecessors (apart from President George W. Bush's Executive Order 13422, which subjected significant guidance to OMB review,⁶⁷ and his administration's 2007 OMB Good Guidance Practices memorandum⁶⁸) to address the proliferation of significant guidance documents and other allegedly sub-regulatory decrees that have concrete regulatory effect—a phenomenon I have termed "regulatory dark matter."⁶⁹ Trump's executive orders and directives encompass not just

Trump-era reported savings share some parallels with Obama's savings from retrospective review, yet they are only minor dents in the federal regulatory state.

*Longer-lasting
regulatory reform
will require action
by Congress.*

“significant regulatory actions,” but significant guidance on a case-by-case basis.⁷⁰ The Trump administration not only has declined to issue regulatory guidance to the extent the Obama administration did, but has asked agencies to reduce it and has revoked guidance and directives that were not included among the 67 deregulatory actions claimed.

When agencies are discouraged from issuing rules, they may rely increasingly on sub-regulatory guidance documents, interpretive bulletins, memoranda, and other agency issuances to implement de facto rule changes. To address this, Trump should supplement Executive Order 13771 with a new executive order explicitly addressing regulatory guidance and other “regulatory dark matter.” Even if Congress does not act and pass leg-

islation such as the Guidance Out of Darkness (GOOD) Act (S. 2296, H. R. 4809), sponsored by Sen. Ron Johnson (R-Wis.) and Rep. Mark Walker (R-N.C.)⁷¹ on guidance disclosure, it is within the power of the president to disclose, eliminate, better classify, and streamline guidance and to hold accountable those issuing it to excess.

When all is said and done, the administrative state cannot be said to have fundamentally changed under Trump. While agencies like the FCC, the EPA, and the CFBP are currently led by pro-liberalization appointees, the agency bureaucracies are likely biding time. Without congressional action, much of the Trump streamlining phenomenon will be transitory. Longer-lasting regulatory reform will require action by Congress.

Toward a Federal “Regulatory Budget”

When Congress spends money, a certain degree of disclosure helps voters hold their representatives accountable. Federal programs are funded by either raising taxes or borrowing, against a promise to repay with interest from future tax collections. Taxpayers can observe those decisions to some degree during the authorization and appropriations processes, and they can inspect the costs of programs and agencies in Congressional Budget Office publications⁷² and the federal budget’s historical tables.⁷³

However, Congress often “funds” objectives and programs through regulatory mandates. Rather than taxing and paying directly, federal regulation compels the private sector, as well as state and local governments, to bear the costs of federal initiatives. Regulation in such instances functions

like an off-budget form of taxation and spending.

There is an unappreciated synergy between fiscal budgeting and regulatory “budgeting.” Because the costs and economic effects of regulatory compliance are not budgeted and disclosed the same way as federal spending, regulatory initiatives can commandeer private sector resources with comparatively little public fuss. Policy makers may find it easier to impose regulatory costs than to embark on government spending because of the former’s lack of disclosure and accountability for costs. And when regulatory compliance costs prove burdensome, Congress can escape accountability by blaming an agency for issuing an unpopular rule.

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Table I. The Regulatory State: A 2018 Overview

	Year-End 2017	1-Year Change	5-Year Change (2013–2017)	10-Year Change (2008–2017)
Total regulatory costs	\$1.9 trillion	n/a	n/a	n/a
Agency enforcement budgets	\$66.0 billion	1.7%	7.9%	22.2%
<i>Federal Register</i> pages	61,308	-36.1%	-22.7%	-22.8%
Devoted to final rules	18,727	-51.5%	-29.1%	-28.8%
<i>Federal Register</i> final rules	3,281	-14.8%	-10.3%	-14.3%
Code of Federal Regulations pages	186,374	0.7%	6.2%	18.0%
Total rules in Agenda pipeline	3,209	-3.3%	-2.9%	-19.9%
Completed	470	-29.3%	1.7%	-32.0%
Active	1,977	-5.6%	-17.5%	-19.8%
Long term	762	36.6%	70.9%	-10.2%
“Economically significant” rules in the year-end pipeline	140	-27.5%	-26.7%	-22.2%
Completed	21	-55.3%	-25.0%	-36.4%
Active	71	-37.2%	-45.8%	-35.5%
Long term	48	45.5%	50.0%	29.7%
Rules affecting small business	590	-12.1%	-11.8%	-21.6%
Regulatory flexibility analysis required	337	-18.2%	-13.8%	-15.1%
Regulatory flexibility analysis not required	253	-2.3%	-9.0%	-28.9%
Rules affecting state governments	289	-18.6%	-21.5%	-43.7%
Rules affecting local governments	173	-18.0%	-21.7%	-44.9%
GAO Congressional Review Act reports on major rules	48	-59.7%	-40.7%	-49.5%
FCC Breakdown				
Final rules (<i>Federal Register</i>)	117	30.0%	-13.3%	-27.8%
FCC rules in Agenda	106	-13.1%	-19.7%	-25.9%
FCC rules affecting small business	77	-16.3%	-22.2%	-27.4%

n/a = not applicable.

The Costs of Regulation and Intervention

Regulation and spending are related; both are implements by which governments act or compel individuals. Therefore, policy makers should disclose regulatory costs the same way they disclose spending, to give voters the opportunity to give full consideration as to what to regulate and how. Yet, they fail to do this despite being required by law to present an aggregate estimate for regulatory costs.⁷⁴

Legal scholar Phillip Hamburger has described the rise of a monarchical-style administrative state characterized by over-delegation of lawmaking power by Congress to executive branch agencies, in defiance of the Constitution, which “expressly bars the delegation of legislative power.”⁷⁵ This over-delegation makes the administrative state attractive to progressive advocates of government regulation. Within the administrative state’s framework, regulations cannot be gotten rid of; they can generally, at best, be replaced with other regulations, and the state only grows.⁷⁶

The vastness of the regulatory enterprise remains unknown, as there are numerous categories of untabulated costs. The only official reckoning citizens get today is an OMB annual survey of a subset of regulatory costs and benefits. The OMB’s *2017 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act*, the most recent edition, only covers through FY 2015, despite being required annually by law. The report includes only a 10-year aggregate cost tabulation, when an aggregate one is required.⁷⁷ In any event, this report pegs the annual costs of 137 selected “major” regulations from 2006 to 2016 at between \$78 bil-

lion and \$115 billion (all figures here are in 2015 dollars).⁷⁸ The estimated range for benefits in the report was \$287 billion to \$911 billion.⁷⁹ According to OMB, the 16 rules subjected to both benefit and cost analyses during FY 2016 added annual costs of \$4.3 to \$6.4 billion.⁸⁰

The OMB cost-benefit breakdown omits independent agencies and incorporates only those rules for which agencies have expressed both benefits and costs in quantitative and monetary terms—amounting to a couple dozen at best, when several thousand rules appear each year. Several billion dollars more in annual rule costs generally appear in these reports for rules with cost-only estimates, but they are not tallied and highlighted by OMB.

The Small Business Administration (SBA) in the past published a comprehensive assessment of the federal regulatory apparatus, but that was discontinued in 2010. The final edition of the report estimated regulatory compliance costs of \$1.75 trillion for 2008.⁸¹ The primary purpose of the SBA report series was not an aggregate cost estimate but rather to examine the extent to which regulatory costs impose burdens on small firms, which have higher per-employee regulatory costs than larger ones. Earlier governmental assessments around the turn of the 20th century from the OMB, Government Accountability Office (GAO), and SBA have also found aggregate annual costs in the hundreds of billions of dollars, some in excess of \$1 trillion in today’s dollars (see Table 2).

More recently in a 2014 report, the National Association of Manufacturers (NAM) estimated 2012 total annual regulatory costs

The OMB cost-benefit breakdown omits independent agencies and incorporates only those rules for which agencies have expressed both benefits and costs.

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

	Hopkins 1992 (1991 dollars)	Government Accountability Office 1995 (1995 dollars)	Hopkins 1995 (1995 dollars)	Small Business Admin. 2001 (2001 dollars)	Office of Management & Budget 2002 (2001 dollars)	Small Business Admin. 2005 (2004 dollars)	Small Business Admin. 2010	National Association of Manufacturers 2014 (2012 dollars)
Environmental	115		168	197	203	221	281	330
Other Social	36		55		30			
Transportation					22			
Labor					22			
Economic Regulation								
Efficiency	73		80		150			
Transfers	130		147		337	591	1,236	1,448
Efficiency - Domestic				101				
Transfers - Domestic				202				
Efficiency - Int'l Trade				44				
Transfers - Int'l Trade				88				
Workplace and Homeland Security				82		106	75	92
Paperwork/Process/Info Collection (tax compliance)	189		218	129	190	195	160	159
Totals	543	647	668	843	954	1,113	1,752	2,029
Totals, converted to 2013 dollars		1,019.03	1,052.10	1,142.27	1,292.67			

Sources: Thomas D. Hopkins, "Costs of Regulation: Filling the Gaps. Report prepared for the Regulatory Information Service Center," Washington, D.C., August 1992, <http://www.there.com/pdf/COST%20OF%20REGULATION%20FILLING%20THE%20GAPS.pdf>; General Accountability Office, Briefing Report to the Ranking Minority Member, Committee on Governmental Affairs, U.S. Senate, Regulatory Reform: Information on Costs, Cost Effectiveness, and Mandated Deadlines for Regulations, (GAO/PEMD 95 18BR), March 1995, <http://archive.gao.gov/t2pbat/1/153774.pdf>; Thomas D. Hopkins, "The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress," Office of the Chief Counsel for Advocacy, U.S. Small Business Administration, Washington, D.C., October 1995, http://www.sba.gov/advo/laws/archive/law_brd.html; W. Mark Crain and Thomas D. Hopkins, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, RFP No. SBAHQ-00-R-0027, October 2001, <http://www.sba.gov/advo/research/rs207tot.pdf>; Office of Management and Budget, "Draft Report to Congress on the Costs and Benefits of Federal Regulations," Federal Register, March 28, 2002, pp. 15037-15038, <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/cbreport.pdf>; W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBHQ-03-M-0522, September 2005, <https://www.sba.gov/sites/default/files/files/rs264tot.pdf>; Nicole V. Crain and W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBAHQ-08-M-0466, September 2010, <http://www.sba.gov/advo/research/rs371tot.pdf>; Nicole V. Crain and W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBAHQ-08-M-0466, September 2010, <http://www.sba.gov/advocacy/7540/49291>; National Association of Manufacturers, "The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business," W. Mark Crain and Nicole V. Crain, September 10, 2014, <http://www.nam.org/~media/A7A8456F33484E498F40CB46D6167F31.ashx>. Some figures here are adjusted to 2016 by the change in the consumer price index between 2001 and 2016, derived from "CPI Detailed Report Data for January 2017," Bureau of Labor Statistics, Washington, D.C. (Table 24. Historical Consumer Price Index for All Urban Consumers (CPI-U), U.S. city average, all items), <http://www.bls.gov/cpi/cpid1404.pdf>.

in the economy of \$2.028 trillion (in 2014 dollars).⁸² Still another report, by economists John W. Dawson of Appalachian State University and John J. Seater of North Carolina State University, pushes regulatory costs into the stratosphere by counting the long-term growth reduction caused by decades of increased opportunity costs imposed by economic regulation. Their report counts dozens of trillions of dollars in lost gross domestic product (GDP) annually.⁸³

A 2016 report by the Mercatus Center at George Mason University employs a micro-economic model to attempt to determine “how much regulation distorts the investment decisions of firms and thus hampers long-run economic growth.” According to this analysis, had regulatory burdens remained constant since 1980, the 2012 U.S. economy would have been 25 percent larger. Put another way, during that time, the economy grew by at least \$4 trillion less each year than it could have.⁸⁴

With respect to regulations’ unequal effects on different kinds of firms, the NAM’s model finds overall annual per-employee regulatory costs to firms of \$9,991 on average, but the effects by firm size vary.⁸⁵ Table 3 shows that per-employee regulatory costs for firms of fewer than 50 workers can be 29 percent greater than those for larger

firms—\$11,724 for smaller firms, compared with \$9,083 for larger ones.⁸⁶

To allow for incremental updates to an aggregate baseline, estimates of compliance and economic costs for the federal regulatory apparatus, this report compiles legacy sources such as the annual OMB *Report to Congress* on costs and benefits over the years, data such as paperwork burdens described in OMB’s annual *Information Collection Budget*, the few independent agency cost estimates available, and other publicly available material and third-party assessments. The SBA and earlier OMB surveys had traditionally conveyed regulatory costs in the following categories:

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

Costs of regulation and intervention can never be fully known, but using these sources, this report employs a baseline estimate for across-the-board federal regulatory costs of \$1.9 trillion annually (see Figure 1).⁸⁷

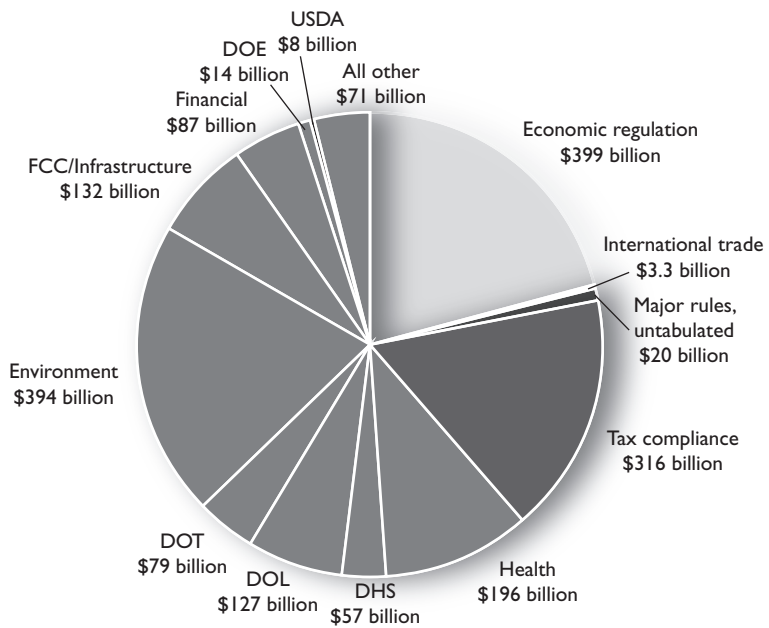
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Table 3. Regulatory Costs in Small, Medium, and Large Firms, 2012

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

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

Figure I. Annual Cost of Federal Regulation and Intervention, 2018 Estimate, \$1.9 Trillion



Source: Wayne Crews, *Tip of the Costberg: On the Invalidity of All Cost of Regulation Estimates and the Need to Compile Them Anyway*, 2017 ed., <http://ssrn.com/abstract=2502883>.

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

Regulatory Costs Compared to Federal Spending and the Deficit

Comparisons of regulation with the costs of federal taxation and spending help place the magnitudes in perspective. The U.S. government reached \$3.982 trillion in federal outlays and a deficit of \$665 billion in FY 2017.⁸⁸ Figure 2 compares deficits and outlays for 2016–2017 and projected amounts for 2018 with our regulatory and intervention burden figure of \$1.9 trillion. For 2018, estimated costs of regulatory compliance and intervention are equivalent to nearly half the projected level of fiscal budget outlays of \$4.1 trillion, and over twice the anticipated deficit, expected to soar to \$804 billion. (Regulation had been almost triple the more

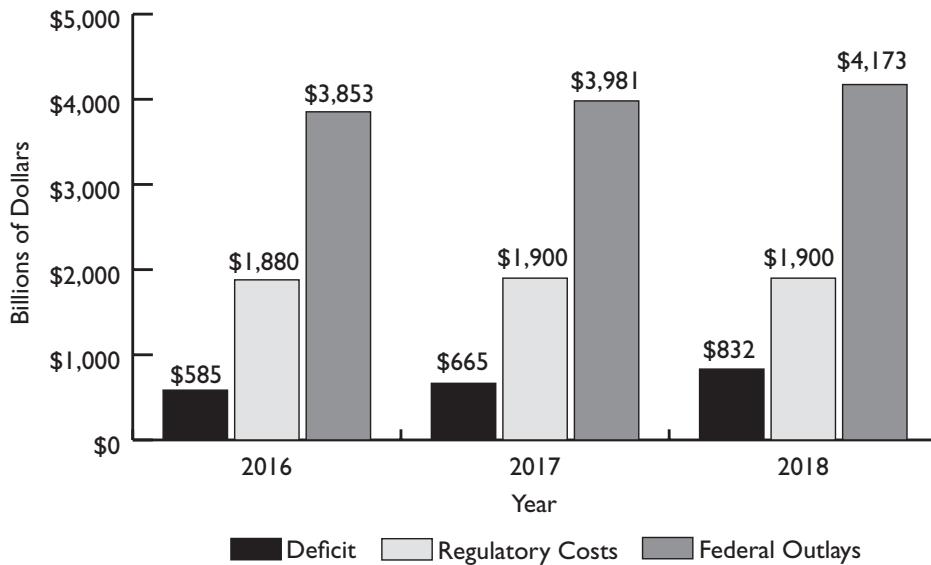
“modest” earlier deficits in the \$600-billion range.)

Regulatory Costs Compared to Income Taxes and Corporate Profits

Regulatory costs easily rival revenues from individual income taxes and corporate taxes *combined*. As Figure 3 shows, regulatory costs stand well above 2017 individual income tax revenues of \$1.587 trillion (individual income tax receipts fell substantially during the 2009 economic downturn but are rising again and have reached record levels).⁸⁹ Corporate income taxes collected by the U.S. government—\$297 billion for 2017—

Regulatory costs easily rival revenues from individual income taxes and corporate taxes combined.

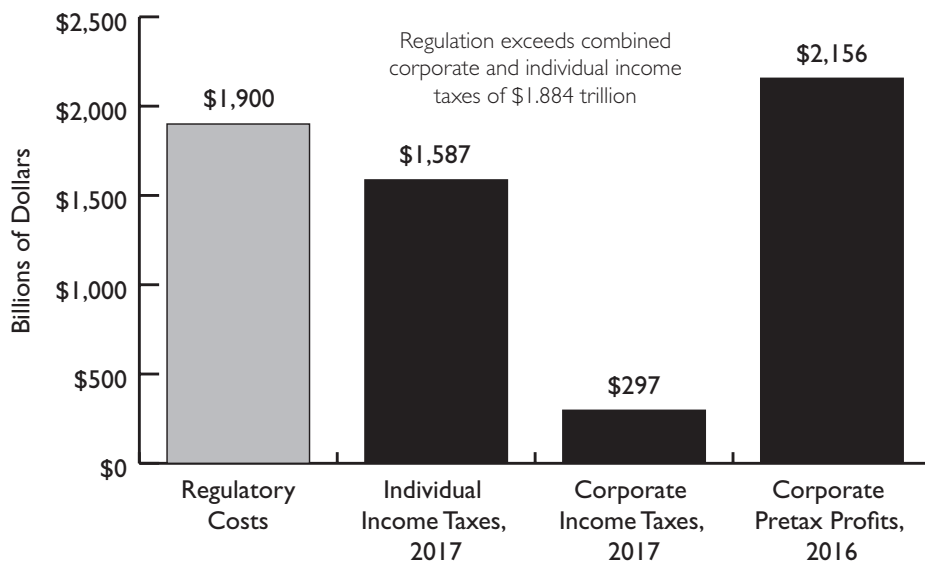
Figure 2. Federal Outlays and Deficits Compared with Federal Regulatory Costs (2016, 2017, and projected 2018)



Sources: Deficit and outlays from White House Office of Management and Budget, Historical Tables, “Table 1.1—Summary of Receipts, Outlays, and Surpluses or Deficits (–): 1789–2023,” <https://www.whitehouse.gov/omb/historical-tables/>. Regulatory Cost estimate from Crews, *Tip of the Costberg*, 2017 ed.

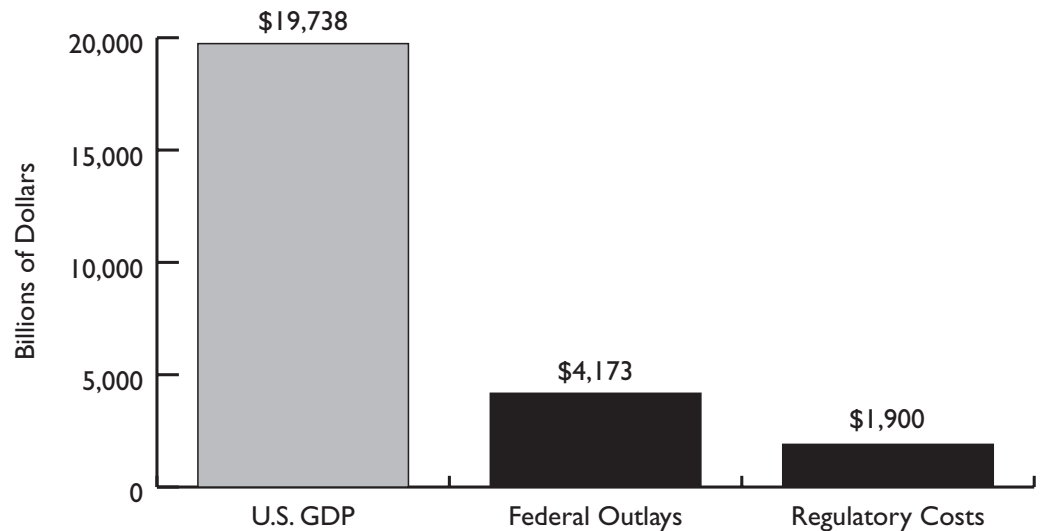
Federal deficit and outlay numbers are by fiscal year; regulatory costs by calendar year.

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



Sources: Regulatory cost estimate from Crews, *Tip of the Costberg*, 2017 ed. 2017 tax figures from OMB, Historical Tables, Table 2.1, “Receipts by Source: 1934–2023,” <http://www.whitehouse.gov/omb/historical-tables>. 2016 corporate pretax profits (domestic and international) from Bureau of Economic Analysis, *National Income and Product Accounts Tables*, Table 6.17D, “Corporate Profits before Tax by Industry,” <http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=3&isuri=1&903=243>.

Figure 4. GDP Compared to Federal Outlays and Regulation



Sources: Crews, *Tip of the Costberg*, 2017 ed. GDP from U.S. Department of Commerce, Bureau of Economic Analysis, *National Income and Product Accounts, Gross Domestic Product: Fourth Quarter and Annual 2017* (Advance Estimate), January 26, 2018, <https://www.bea.gov/newsreleases/national/gdp/gdpnewsrelease.htm>. Outlays from OMB, Historical Tables, "Table 1.1—Summary of Receipts, Outlays, and Surpluses or Deficits (-): 1789–2023," <https://www.whitehouse.gov/omb/historical-tables/>.

If U.S. regulatory costs of \$1.9 trillion were a country, it would be the world's eighth-largest economy.

are dwarfed by regulatory costs (corporate tax receipts had declined more than half in 2009 during the downturn).⁹⁰ The combination of the two, \$1.88 trillion, is roughly equivalent to our regulatory cost estimate of \$1.9 trillion. Regulatory costs even approach the level of pretax corporate profits, which were \$2.156 trillion in 2016.⁹¹

Regulatory Costs Compared to GDP

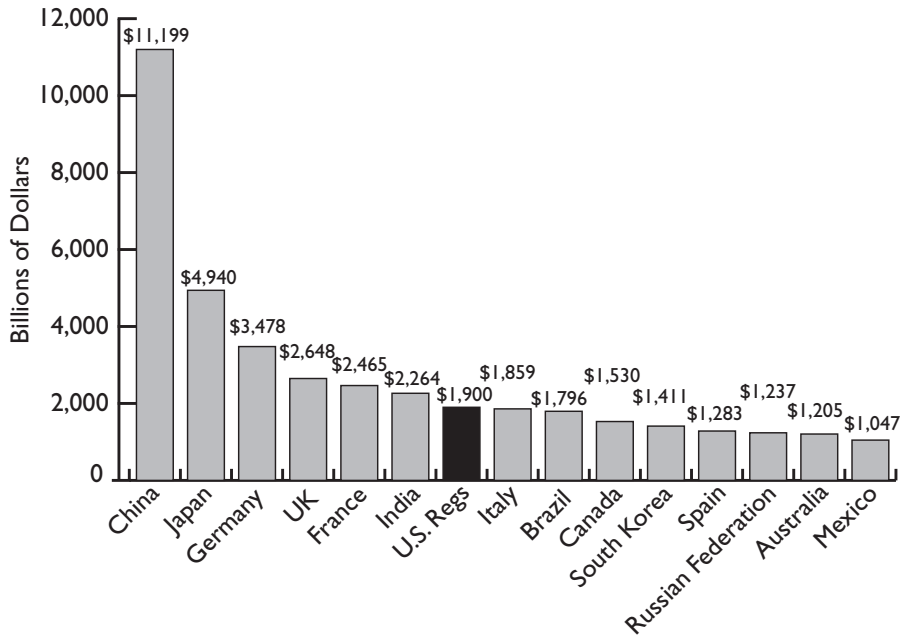
In January 2018, the Commerce Department's Bureau of Economic Analysis estimated U.S. GDP for 2017 at \$19.738 trillion.⁹² The total regulatory cost figure of \$1.9 trillion annually is equivalent to approximately 10 percent of that amount. Combining regulatory costs with federal FY 2018 projected outlays of \$4.1 trillion (see Figure 2), the federal government's share of the economy reaches \$6.07 trillion, or 31 percent of GDP (see Figure 4). That does not include state and local spending and reg-

ulation. The percentage has been 30 percent for some time.

Not counting the United States, only six countries have GDPs that exceed the cost burden of U.S. regulation. U.S. regulatory costs surpass the 2016 GDP of neighbors Canada, at \$1.53 trillion, and Mexico, at \$1.047 trillion. If U.S. regulatory costs of \$1.9 trillion were a country, it would be the world's eighth-largest economy, ranking behind India and ahead of Italy (see Figure 5).⁹³

U.S. regulatory costs of \$1.9 trillion easily exceed the output of many of the world's major economies, including those (with the exception of the United Kingdom) ranked as the freest economically by two prominent annual surveys of global economic freedom. Figure 6 depicts the GDP's of the countries common to the top 10 in both the Heritage Foundation/*Wall Street Journal Index of Economic Freedom*, and the Fraser Institute/Cato Institute *Economic Freedom of the World* report.⁹⁴ The U.S. ranks 18th and 11th on these reports, respectively.

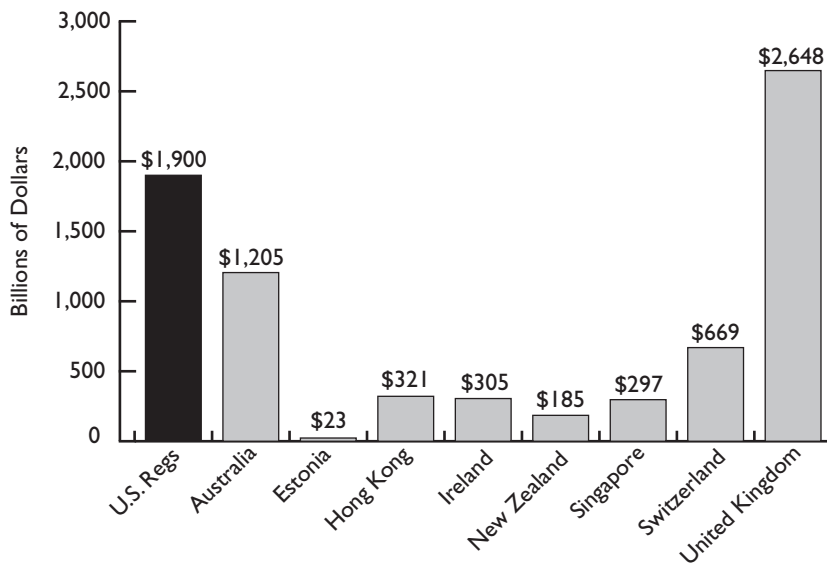
Figure 5. U.S. Regulatory Costs Compared to 2016 Gross Domestic Product of the World's Largest Economies



Source: Crews, *Tip of the Costberg*, 2017 ed. Gross Domestic Product data from World Bank, Washington, D.C., GDP Data, <http://data.worldbank.org/indicator/NY.GDPMKTP.CD/countries>, and <http://databank.worldbank.org/data/download/GDP.pdf>.

If it were an “economy,” U.S. regulations would be the seventh largest. U.S. 2016 GDP of \$18.624 trillion per World Bank is not shown.

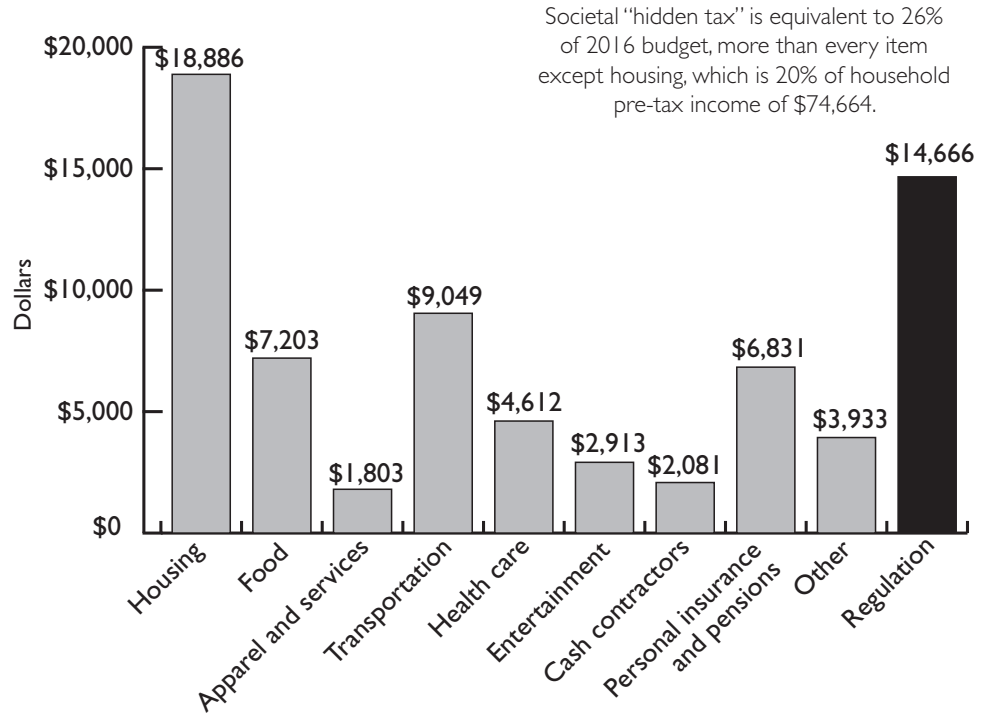
Figure 6. U.S. Regulatory Load Compared to 2016 Gross Domestic Product in World Economies Regarded as Most Free



Sources: Crews, *Tip of the Costberg*, 2017 ed. Gross Domestic Product data from World Bank, Washington, D.C., GDP Data, <http://data.worldbank.org/indicator/NY.GDPMKTP.CD/countries>. New Zealand is from 2011 data.

“Free” economies consist of those in the top 10 of both the Heritage Foundation/*Wall Street Journal Index of Economic Freedom* and the Fraser Institute/*Cato Institute Economic Freedom of the World* reports.

Figure 7. The U.S. Household Expense Budget of \$57,311 Compared to Regulatory Costs



Sources: Bureau of Labor Statistics, author calculations.

Proxy for households here is BLS depiction of 129,549,000 "consumer units," which comprise "families, single persons living alone or sharing a household with others but who are financially independent, or two or more persons living together who share expenses."

Regulation: A Hidden Tax on the Family Budget

The regulatory "hidden tax" is higher than every annual household budgetary expenditure item except housing.

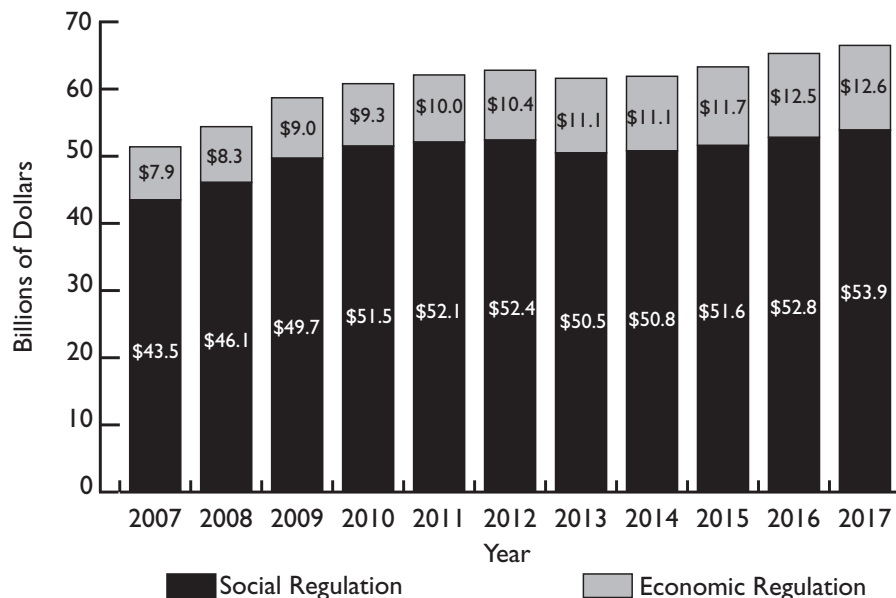
Like the taxes they are required to pay, businesses will pass some regulatory costs on to consumers. Other costs will find their way to workers and investors in regulated companies. By assuming a full pass-through of all such costs to consumers—many consumers are also workers and owners through stock and mutual fund holdings—we can look at the share of each household's regulatory costs and compare it with total annual expenditures as compiled by the Department of Labor's Bureau of Labor Statistics (BLS).⁹⁵

For America's 129.5 million households, or "consumer units" in BLS parlance, the average 2016 pretax income was \$74,664.⁹⁶ If one were to allocate annual regulatory costs, assuming for simplicity's sake a full pass-

through of costs to consumers, U.S. households "pay" \$14,666 annually in embedded regulatory or intervention costs (\$1.9 trillion in regulation divided by 129.5 million "consumer units"), or 20 percent of average income before taxes. The percentage is higher as a share of after-tax income. As Figure 7 shows, the regulatory "hidden tax" is higher than every annual household budgetary expenditure item except housing. Regulatory costs amount to up to 26 percent of the typical household's expenditure budget of \$57,311. More is "spent" on embedded or hidden regulation in society than on items like health care, food, transportation, entertainment, apparel, services, and savings (see Figure 7).

Of course, some costs of regulation are not hidden. Consumers pay for regulatory agencies more directly through taxes.

**Figure 8. Federal Agency Enforcement Budgets,
\$66 Billion Total in FY 2017**



Source: Susan Dudley and Melinda Warren, Annual “Regulators’ Budget” Series, published jointly by the Regulatory Studies Center at the George Washington University and the Weidenbaum Center on the Economy, Government, and Public Policy.

Original 2009 constant dollars are adjusted here by the change in the consumer price index between 2009 and 2017, derived from Consumer Price Index tables, U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. (Table 24. All Urban Consumers (CPI-U), U.S. city average, all items), <http://www.bls.gov/cpi/tables.htm>.

The Administrative and Enforcement Costs of Regulation

Regulatory cost estimates attempt to capture costs experienced by the public, but those estimates do not include administrative costs—the on-budget amounts spent by federal agencies to produce and enforce rules. The Weidenbaum Center at Washington University in St. Louis and the George Washington University Regulatory Studies Center regularly examine the president’s annual budget proposal to compile the administrative costs of developing and enforcing rules. These amounts—as funds that taxpayers contribute to support agencies’ administrative operations—are disclosed in the federal budget.

According to these estimates, FY 2017 enforcement costs incurred by federal depart-

ments and agencies stood at \$66.5 billion (in constant 2017 dollars, adjusted from original 2009 dollars) (Figure 8).⁹⁷ Of that amount, \$12.6 billion was incurred administering economic regulations. The larger amount, spent on writing and enforcing social and environmental regulations, was \$53.9 billion. The \$66 billion in regulatory agency enforcement costs helps complete a picture of the federal regulatory apparatus, as these come on top of other estimates of regulatory compliance and economic burdens. In current dollars, the EPA alone spent an estimated \$5.465 billion in this category in 2017, accounting for 8 percent of the total expected to be spent by all regulatory agencies.⁹⁸ The EPA formerly accounted for the lion’s share of governmental administration and enforcement costs, but the Department of Homeland Security (DHS), at an estimated \$29.6 billion, now makes up 45 percent.

The Weidenbaum Center and the Regulatory Studies Center also estimate the number of full-time-equivalent administrative and enforcement staff at 281,300 in FY 2017, up from 277,099 in 2016. The number of federal employees has increased well over 100,000 since the 2001 staffing level of 173,057.⁹⁹ Much of the post-2001 surge may be attributable to the then newly created Transportation Security Administration's

hiring of thousands of airport screening personnel.

Costs are one way to attempt to capture the size and scope of the federal regulatory enterprise, which is indeed massive. Another is to assess the paper production—the regulatory material that agencies issue each year in publications like the *Federal Register*.

Thousands of Pages and Rules in the *Federal Register*

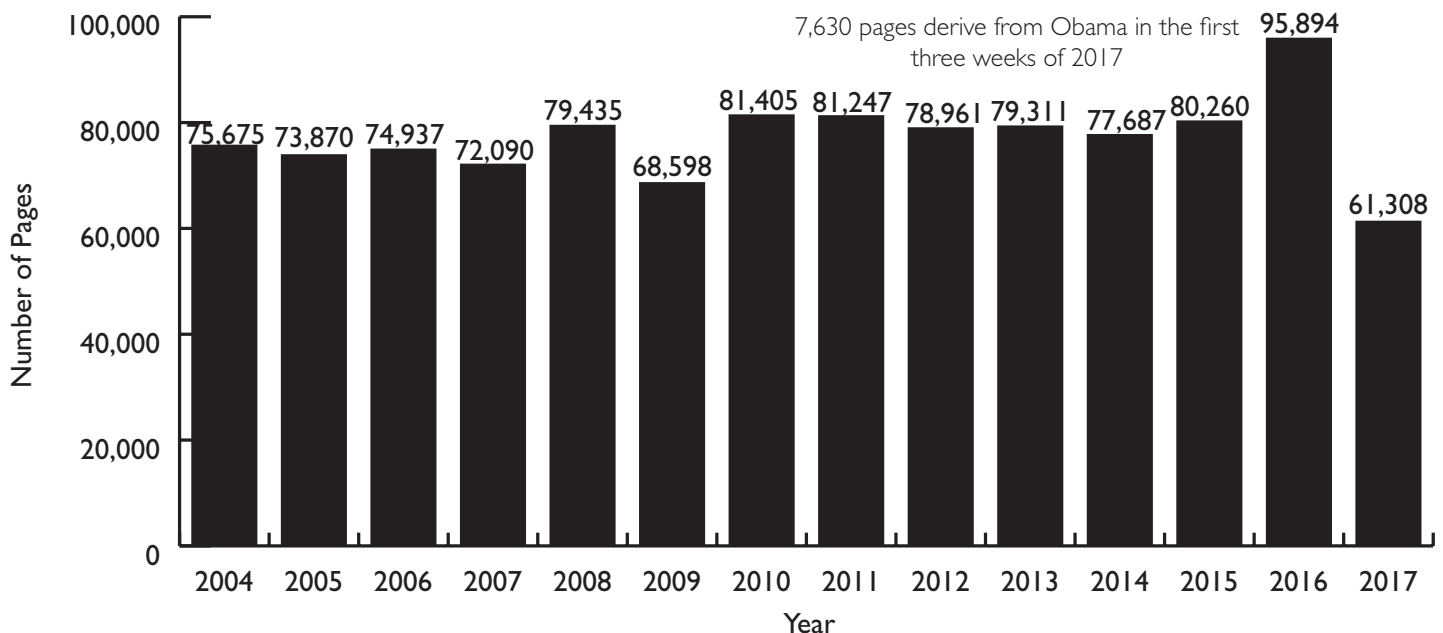
The *Federal Register* is the daily repository of all proposed and final federal rules and regulations. Although its page count is often cited as a measure of regulation's scope, there are problems with relying on number of pages. For example, a short rule may be costly and a lengthy one may be relatively cheap. The *Federal Register* also contains many administrative notices, corrections, rules relating to the governance of federal programs and budgets, presidential statements, and other material. They all add bulk and bear some relation to the flow of regulation, but they are not strictly regulations. Blank pages also appear and affect page counts. In previous decades, blank pages numbered

into the thousands owing to the Government Publishing Office's imperfect prediction of the number of pages that agencies would require for publishing their rules. But it is worthwhile to track the *Federal Register's* page counts and related tallies as a gross measure of regulatory activity.

Federal Register Pages

The Trump administration's first year ended with 61,308 pages in the *Federal Register* (see Figure 9; this figure is net of the blanks

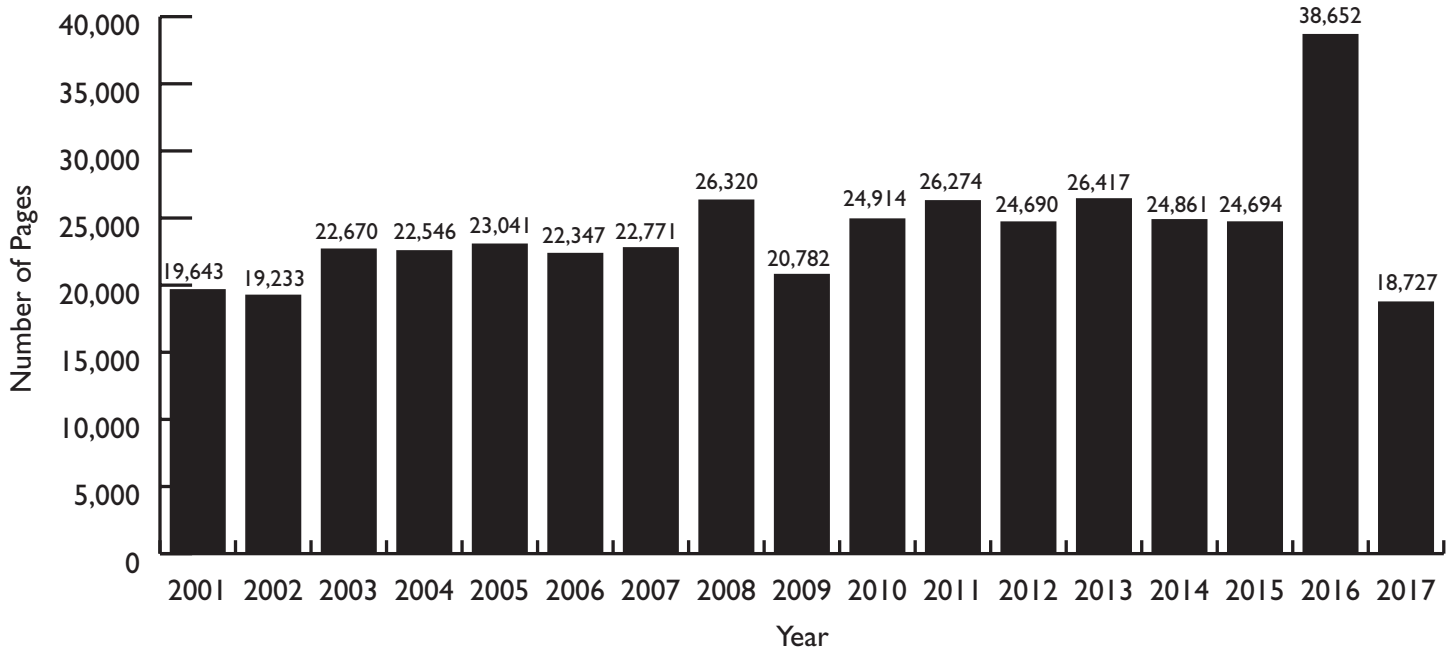
Figure 9. Number of *Federal Register* Pages, 2004–2017



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

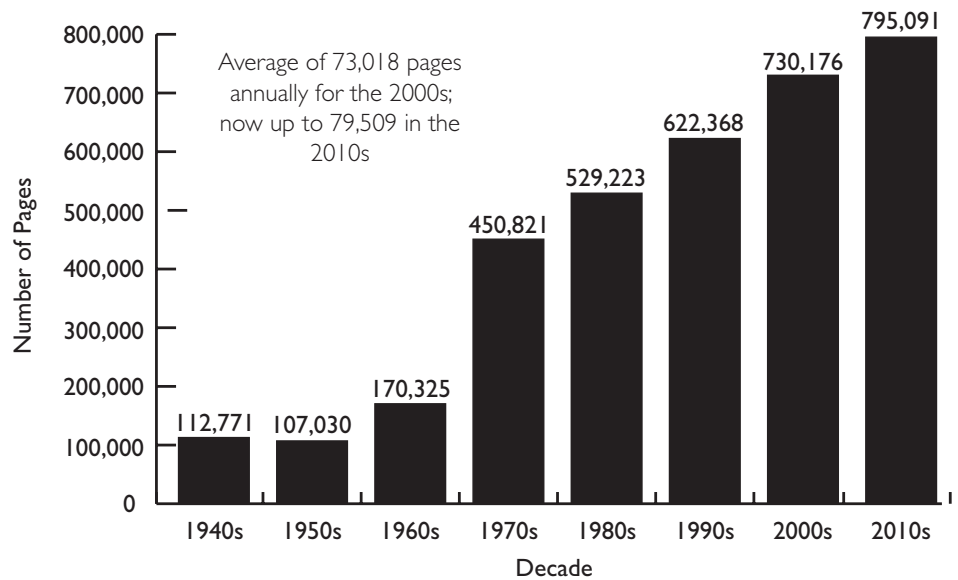
2017 page count is the lowest since 1993. Of the top-ten high *Federal Register* page counts, seven were during the Obama administration.

Figure 10. *Federal Register* Pages Devoted to Final Rules, 2001–2017



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

Figure 11. *Federal Register* Pages per Decade
795,091 Pages Projected for the 2010s



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

2010s is a projection based on the past seven years' average.

and skips that appear in the daily print *Federal Register*). The last time the annual page count was this low was in 1993. However, the 2017 count contains three weeks of Obama administration output, and by the time Trump was inaugurated on January 20, 2017, the Obama administration had already added 7,630 pages to the *Federal Register*, making Trump's "net" page count 53,678.¹⁰⁰

By contrast, at the end of Obama's final calendar year of 2016, the number of *Federal Register* pages stood at 95,854. Trump's count was 36 percent below Obama's. The last time a drop in *Federal Register* page counts of the Trump magnitude happened was when Ronald Reagan reduced the count from Jimmy Carter's 73,258 in 1980 to 44,812 by 1986, but that 28,446-page drop took five years.¹⁰¹

Obama's 2016 count was the highest level in the history of the *Federal Register* and a 19 percent jump over his second-to-last year's count. As Figure 9 shows, 2010 and 2011 had been the previous all-time record years, at 81,405 and 81,247, respectively. Of the 10 all-time-high *Federal Register* page counts, seven occurred during the Obama administration. (For a history of *Federal Register* page totals since 1936, see Appendix: Historical Tables, Part A.)

Federal Register Pages Devoted to Final Rules

Isolating the pages devoted to *final* rules might be more informative than gross page counts, because doing so omits pages devoted to proposed rules, agency notices, corrections, and presidential documents (although those categories can have regulatory effects too).

Two things stand out in Figure 10: (a) the great jump from 2015 to 2016 under Obama, when the number of pages devoted to final rules jumped by 56 percent,

from 24,694 to 38,652; and (b) the drop of 51 percent from there to 18,727 pages of rules under Trump in 2017. Obama's high was a record that shattered 2013's then-peak of 26,417 by 46.3 percent. Trump's count, by contrast, was the lowest seen since 1995.

While more relevant measures than pages include underlying restrictions and actual burdens, for page counts to drop so steeply is still significant. Relevant to the discussion about controlling future regulatory costs are pages of proposed rules, those under production in the regulatory pipeline. These peaked at 23,193 in 2011, and Obama's final page count of proposed rules was 21,457 in 2016. Under Trump, *Federal Register* pages devoted to proposed rules in 2017 were 10,892, half the level of Obama's concluding years, and the lowest since 1981.

Still another way of looking at *Federal Register* trends is by pages per decade (see Figure 11). Even with Trump's cut late in the 2010s, we still will get a jump over the previous decade. The last bar of Figure 11 projects the average of the past eight years of 79,509 pages for the decade as a whole (the projection at the moment is 795,091). Last year, the projected average was 89,109 pages. Even with the Trump drop, decade page counts could easily top 1 million in the 2020s, as a glance at increases since the 1940s makes clear.

Number of Proposed and Final Rules in the Federal Register

The number of final rules published in the *Federal Register* in 2016 increased from 3,410 to 3,853, the highest total of the Obama administration and the highest since 2005. Under Trump, final rules dipped to 3,281 (see Figure 12).

Even with the Trump drop, decade page counts could easily top 1 million in the 2020s.

The number of final rules currently being published is lower than it was throughout the 1990s, when the average annual total of final regulations was 4,596. It is also lower than during the early years depicted in Figure 12. The average for the period 2000–2009 was 3,948. Additionally, rules issued up to the point of Trump’s inauguration were Obama’s, and there had been 207 issued by January 20, giving Trump a “net” of 3,074.¹⁰²

Rules deemed “significant”—a broader assortment than the “economically significant” rules—are worth focusing on.¹⁰³ Among Obama’s 3,853 final rules in 2016, 486 were deemed “significant” under Executive Order 12966, the highest count over the past two decades. Although several hundred “significant” final rules are the norm, Trump’s first year saw 199 by comparison (deregulatory actions among these would add to the count), compared to a low of 164 in 2006.¹⁰⁴ (Note, however, that figures in the National Archives online database have not remained consistent on these tabulations.)

In 2016, 2,419 proposed rules appeared in the *Federal Register*. In Trump’s first year, these fell to 1,834 (counting the 156 that had been issued by Obama during the first three weeks of 2017). Still, in the 1990s, far more proposed rules in the pipeline were published. (For the numbers of proposed and final rules and other documents issued in the *Federal Register* since 1976, see Appendix: Historical Tables, Part B.)

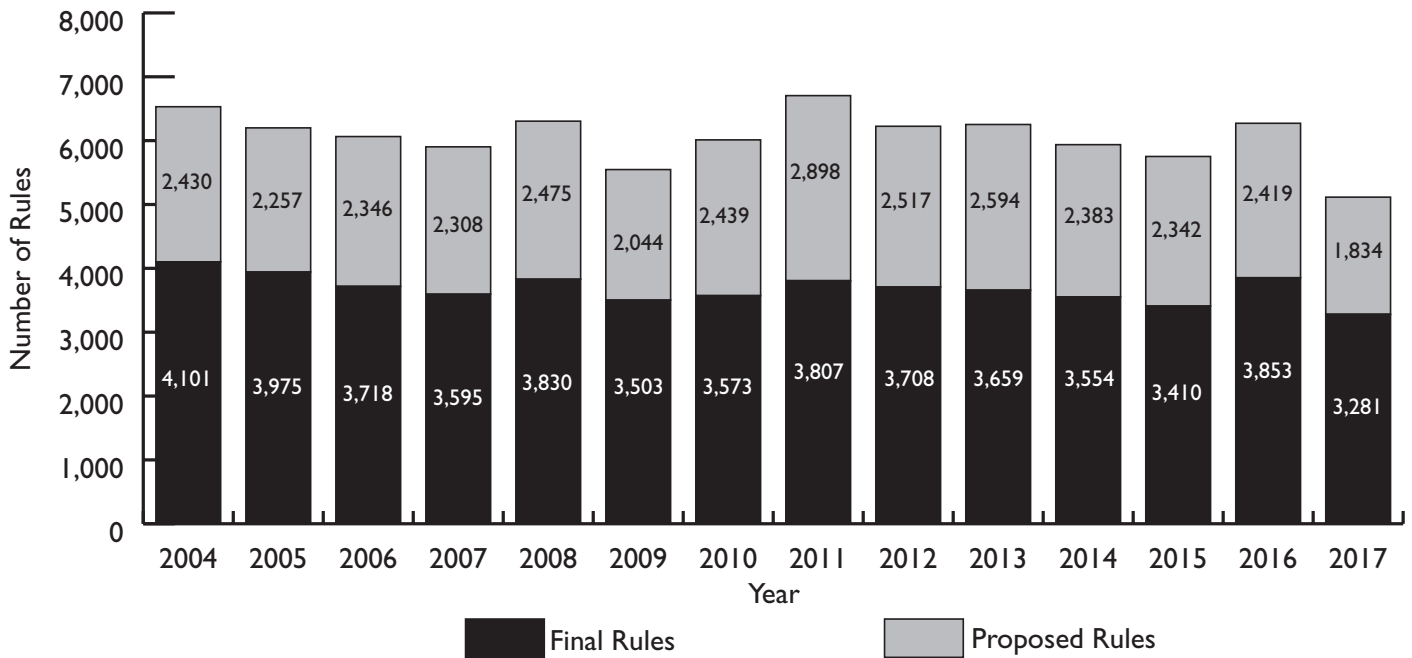
Cumulative Final Rules in the *Federal Register*

The annual outflow of over 3,000 final rules—and often far more—has meant that 101,380 rules have been issued since 1993, when the first edition of *Ten Thousand Commandments* was published (see Figure 13). Going back to 1976, when the *Federal Register* first began itemizing them, 198,470 rules have been issued.

The Expanding Code of Federal Regulations

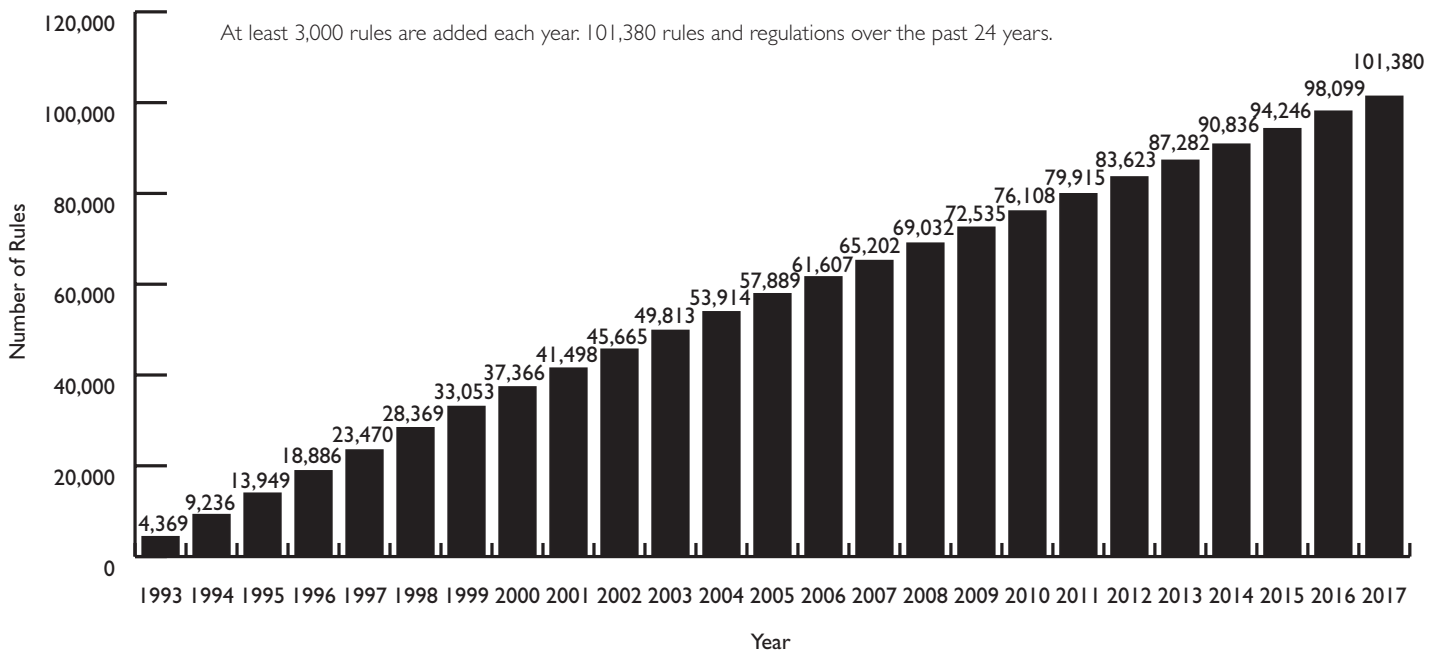
The page count for final general and permanent rules as they come to rest in the *Code of Federal Regulations* (CFR) is more modest than that of the *Federal Register*, but it is still considerable. In 1960, the CFR contained 22,877 pages. Since 1975, its total page count has grown from 71,224 to 186,374 at the end of 2017, including the 1,170-page index—a 162 percent increase. The number of CFR bound volumes stands at 242, compared with 133 in 1975. (See Figure 14; for the detailed breakdown numbers of pages and volumes in the CFR since 1975, see Appendix: Historical Tables, Part C.) In recent years, traditional rules and regulations have been supplemented by various forms of executive actions and regulatory guidance documents, which are important to track as well.

Figure 12. Number of Proposed and Final Rules in the *Federal Register*, 2004–2017



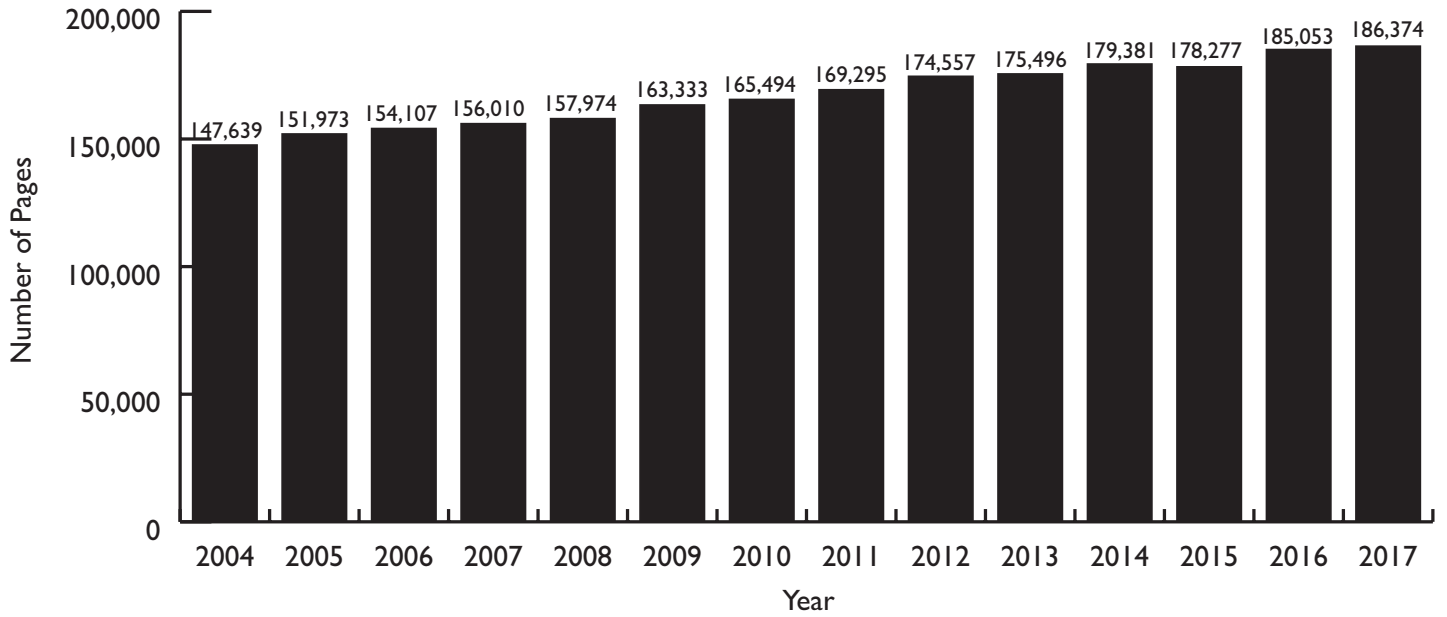
Source: National Archives and Records Administration, Office of the Federal Register.

Figure 13. Cumulative Final Rules Published in the *Federal Register*, 1993–2016



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

Figure 14. *Code of Federal Regulations*, 186,374 Total Pages in 2017, 2004–2017



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

Presidential Executive Orders and Executive Memoranda

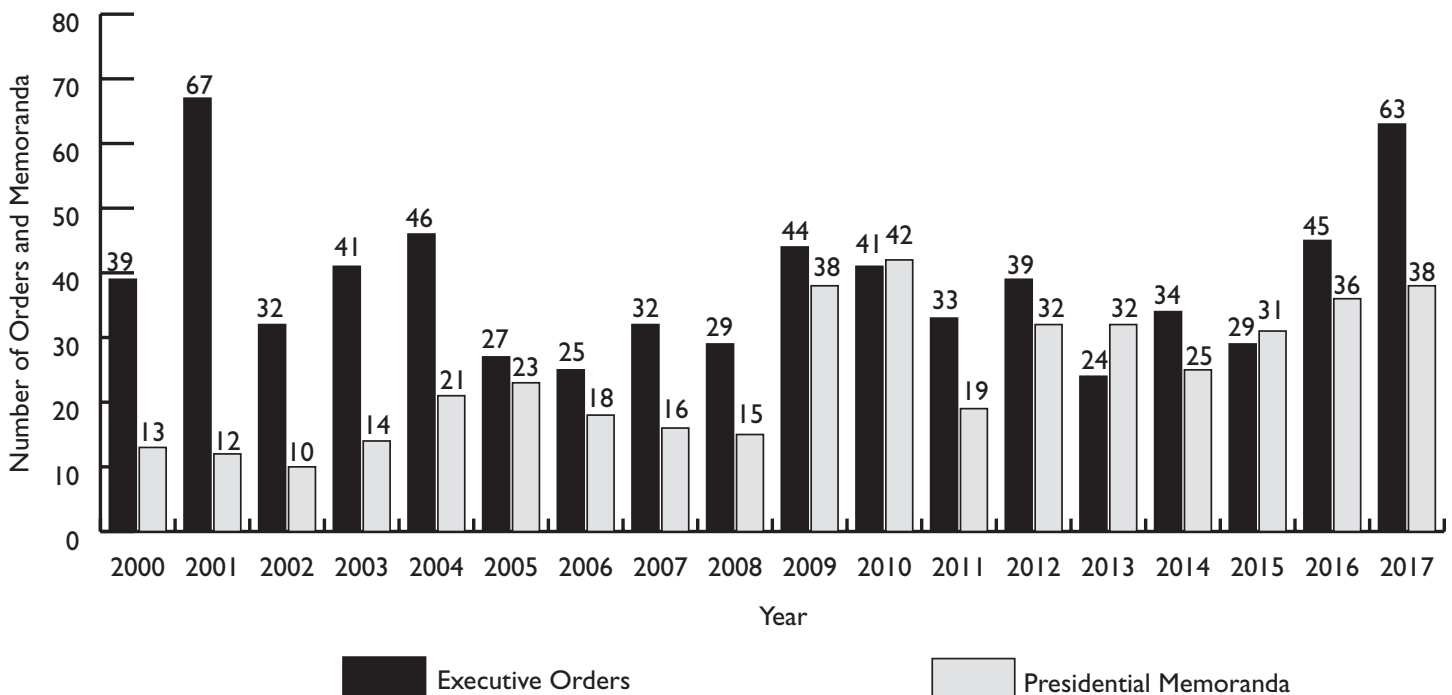
Executive orders, presidential memoranda, and other executive actions make up a large component of executive “lawmaking” but are not well monitored and merit heightened attention from lawmakers.¹⁰⁵

Executive orders ostensibly deal with the internal workings and operations of the federal government. Subsequent presidents can overturn them. Their use is nothing new, and they date back to President George Washington’s administration.¹⁰⁶ Conster-
nation from conservatives aside, President

Barack Obama’s executive order totals were not high compared with those of other presidents. At the end of his term, Obama had issued 276 executive orders, whereas President George W. Bush’s final tally was 291, and that of President Bill Clinton was 364 (see Figure 15). President Donald Trump issued 63 orders in 2017, far outstripping anyone since Bush in 2001, that president’s high-water mark.¹⁰⁷

Memoranda are difficult to tally. They may or may not be published, depending on the

Figure 15. Number of Executive Orders and Presidential Memoranda, 2000–2017



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

Executive orders, memoranda, and other regulatory guidance have become powerful means of working around the constitutional system of government envisioned by the Framers of our Constitution.

administration's own determination of "general applicability and legal effect."¹⁰⁸ George W. Bush published 131 memoranda over his entire presidency, whereas Barack Obama issued 257 that were published in the *Federal Register*. Bill Clinton published just 14 during his presidency.¹⁰⁹ Donald Trump has issued 38 memoranda, the highest level in a single year since 2010.

The pertinent question as far as regulatory burdens are concerned is what these executive orders and memoranda are used for and what they do. Whether lengthy or brief, orders and memoranda can have significant effects, and a smaller number of them does not necessarily mean small effects. In 2014 alone, Obama memoranda created a new financial investment instrument and implemented new positive rights regarding work hours and employment preferences for federal contractors.¹¹⁰ In all, four of Obama's executive orders directly address overregulation and rollbacks.¹¹¹ As with the *Federal Register*, counts are interesting but do not tell the whole story. Obama's Executive Order 13563 concerning regulatory review and reform was a pledge to roll back regulation. It amounted to a few billion dollars in cuts, which were swamped by other, newly issued rules and negated by costly guidance.¹¹²

In President Trump's case, we noted a handful of his executive orders and memoranda at the beginning of this report that encompass perhaps the most aggressive attempt by the executive branch to streamline regulation. Other key executive orders directed at regulatory restraint were President Bill Clinton's 1993 Executive Order 12866¹¹³ and President Ronald Reagan's Executive Order 12291, which formalized central regulatory review at OMB.¹¹⁴ Clinton's was a step back from the heavier oversight of the Reagan order in that it sought "to reaffirm the primacy

of Federal agencies in the regulatory decision-making process."¹¹⁵

The United States existed for many decades before a president issued more than two dozen executive orders—that was President Franklin Pierce, who served from 1853 to 1857. Orders numbered in the single digits or teens until President Abraham Lincoln and the subsequent Reconstruction period. President Ulysses S. Grant issued 217, then a record. From the 20th century onward, executive orders have numbered over 100 during each presidency and sometimes reached into the thousands. President Franklin D. Roosevelt—the longest-serving president in U.S. history, elected to four terms and having served a full three—issued 3,721 executive orders.¹¹⁶ Table 4 provides a look at executive order counts by administration since the nation's founding through Obama.

We live in an era in which the government—without actually passing a law—increasingly specifies parameters for various economic sectors, including health care, retirement, education, energy production, finance, land and resource management, funding of science and research, and manufacturing. A prominent Obama era example is the Internal Revenue Service's granting of waivers of the Patient Protection and Affordable Care Act's employer mandate without regard to the statute's language.¹¹⁷

Counting rules and regulations, executive orders, memoranda, and other regulatory guidance gets us only so far. These alternative regulatory actions should receive more scrutiny and oversight than they do, because they have become powerful means of working around the constitutional system of government envisioned by the Framers of our Constitution: legislation made by elected representatives.¹¹⁸

Table 4. Executive Orders by Administration

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

(continued)

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

	Sequence Number		Total Number of Executive Orders
	Ending	Beginning	
Gerald R. Ford	11,966	11,798	169
Jimmy Carter	12,286	11,967	320
Ronald Reagan	12,667	12,287	381
George H.W. Bush	12,833	12,668	166
William J. Clinton	13,197	12,834	364
George W. Bush	13,488	13,198	291
Barack Obama	13,764	13,489	276
Donald Trump	13,790	13,490	26
Total Number of Executive Orders			15,553

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

Executive orders for President Trump are as of April 28, 2017.

More than 22,000 Public Notices Annually

In addition to the *Federal Register's* tally of some presidential memoranda, public notices in the *Federal Register* typically consist of non-rulemaking documents such as meeting and hearing notices and agency-related organizational material.¹¹⁹ But the tens of thousands of yearly public notices can also include memoranda, bulletins, guidance documents, alerts, and other proclamations, many of which may be consequential to the public, but may or may not be published in the *Federal Register*.¹²⁰

Figure 16 shows the number of notices annually. They peaked at more than 26,000 during 2010–2011. They have dipped below 24,000 only three times since 1996, including the drop to 22,137 in calendar year 2017 (the other years were 2014 and 2015). There have

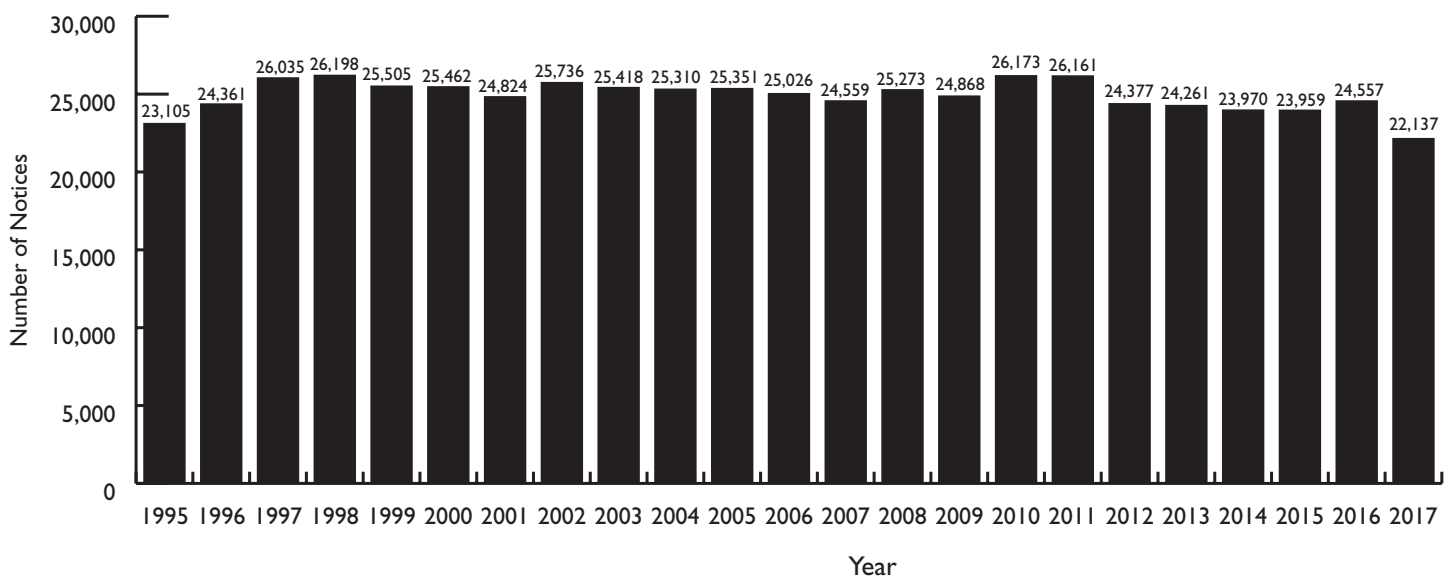
been 572,626 public notices since 1994 and well over 1 million since the 1970s.

Given that many notice-and-comment regulations already lack cost-benefit or other analysis, policy makers should pay greater attention to the “notices” component of the *Federal Register*, given the modern administrative state’s inclination to advance policy by memorandum, notice, letter, and other means. Increased unilateral executive proclamations atop “traditional” rules and regulations render costs and effects of regulation even less transparent than they already are.

While agencies issued thousands of “notices,” only 24 received OMB review during the 2017 calendar year, down from 45 in the previous year. Further, some of the annual

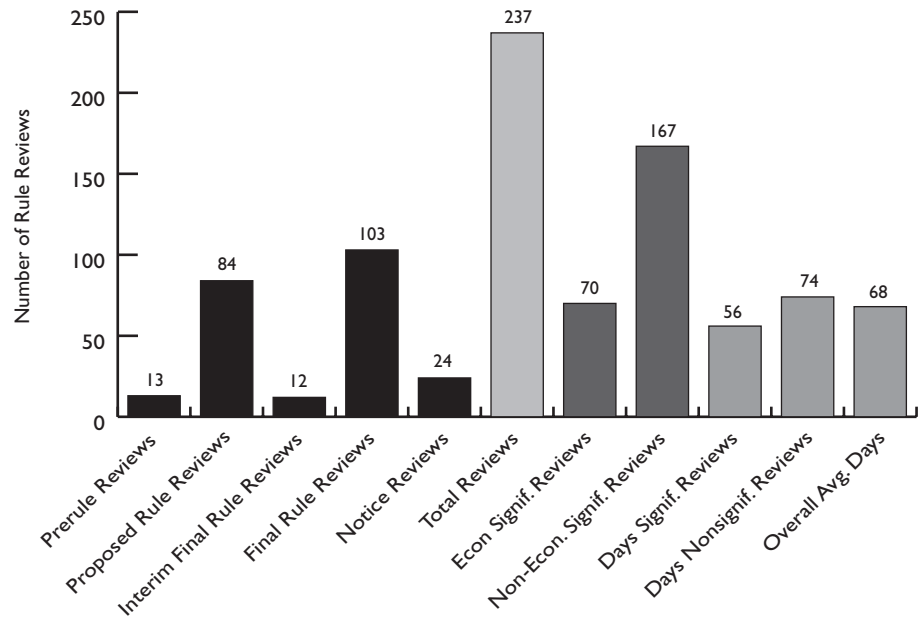
Increased unilateral executive proclamations atop “traditional” rules and regulations render costs and effects of regulation even less transparent than they already are.

Figure 16. Public Notices in the *Federal Register*, 1995–2017



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

Figure 17. Number of OMB Rule Reviews and Average Days under Review, 2017



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

notices reviewed have been deemed “economically significant.” Figure 17 presents the number of rule reviews conducted by OMB, by stage and by economic significance, for calendar year 2017. It also shows the number of days OMB took to review rules in 2017, a process that has improved in recent years but can still take several months.

A history of the number of rules and notices reviewed annually by OIRA appears in Ap-

pendix: Historical Tables, Part D, where a detailed breakdown is presented of numbers of rules reviewed by type and by average days for review from 1991 through 2017. Each category was down significantly between Obama’s last year and Trump’s first. During the pre-Executive Order 12866 years depicted there, 1991–1993, review times were shorter, although numbers of rules were considerably higher then.

Analysis of the Regulatory Plan and Unified Agenda of Federal Regulations

The “Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions” (the 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 (for example, a 2012 *Washington Post* headline proclaimed, “White House Delayed Enacting Rules Ahead of 2012 Election to Avoid Controversy”¹²¹). And reporting priorities by administrations can change the Agenda’s content.

The Trump administration released the fall 2017 edition of the twice-yearly Agenda in December 2017, emphasizing the occasion to outline progress on meeting goals for regulatory streamlining. Usually, the Agenda appears with little note, but 2017 was the year 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 normally sedate and uncommented-upon Agenda was accompanied by a statement, complete with red tape props,¹²² and a *Wall Street Journal* column by OIRA Administrator Neomi Rao.¹²³

Along with effects on the private sector, the Agenda’s rules 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 of the regulatory pipeline. It details rules recently completed, plus those anticipated or priori-

tized in the upcoming 12 months by federal departments, agencies, and commissions (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 rules moving through the regulatory pipeline:

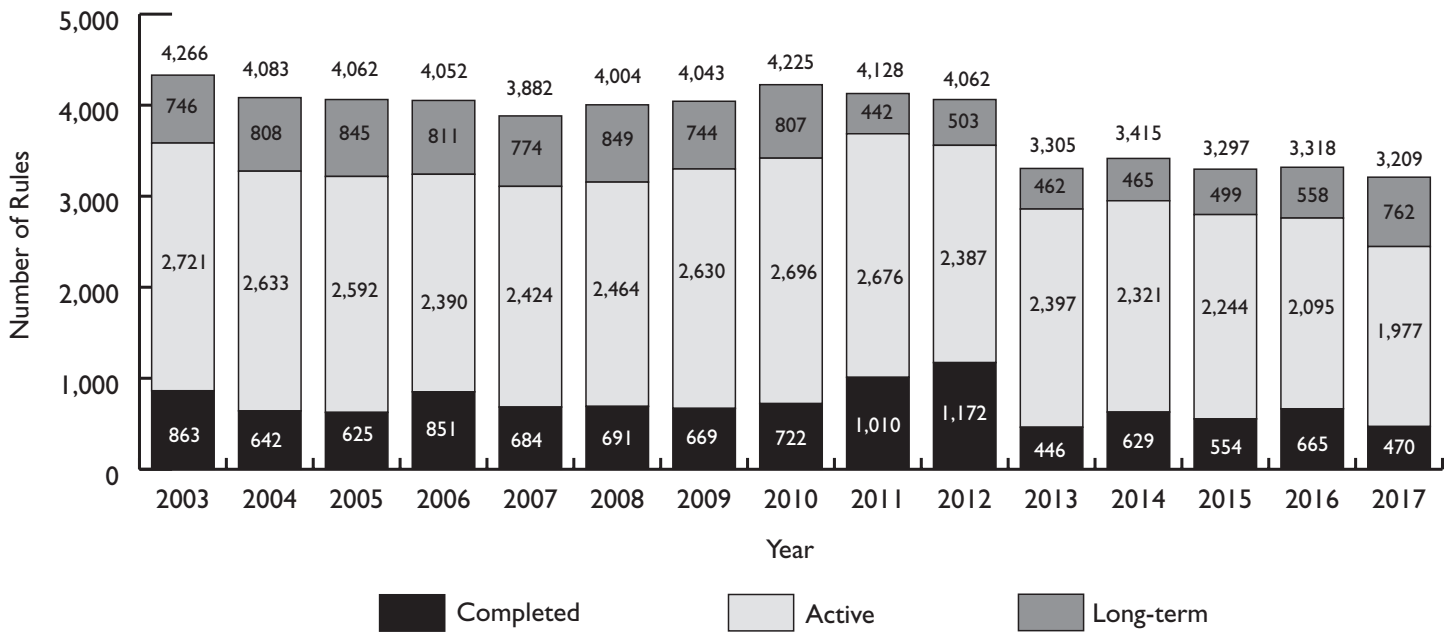
- Prerule actions;
- Proposed and final rules;
- Actions completed during the previous six months; and
- Anticipated longer-term rulemakings beyond 12 months.

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 less reliable in recent years as its delayed publication missed its traditional April and October clockwork-like schedule. The fall 2011 edition did not appear until January 20, 2012.¹²⁴ The spring 2012 edition did not appear at all. Later spring editions (including in 2017) began to appear during the summer. “October” releases became Thanksgiving weekend releases, which became December releases. While Trump’s Regulatory Plan is one of the latest ever, his emphasis on reviewing the inventory for cuts and asking agencies to use the Agenda to plan deregulatory actions is unique.

Observers have noted the fluid nature of the Agenda’s contents. Upon release of the fall 2013 Agenda, for example, regulatory expert Leland Beck remarked: “The [A]genda provides only a semi-filtered view of

Figure 18. Total Agency Rules in the Fall Unified Agenda Pipeline, 2003–2017



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. Pre-2004 online database totals do not match the printed, paper editions of that era, so the author has elected to retain the data as compiled in those earlier print editions.

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.”¹²⁵ Rules fluctuate given administration priorities. In the Obama administration, for example, spring and fall guidelines in 2012 from then-OIRA Administrator 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.¹²⁶

When subsequent OIRA Administrator Howard Shelanski issued a similar memo-

randum on August 7, 2013, “please consider terminating” became the more direct “please remove.”¹²⁷ The drop is apparent in Figure 18. As Susan Dudley of the George Washington University Regulatory Studies Center noted in this regard, such changes might be beneficial, but “to the extent that reclassifying actions reduces the public’s ability to understand upcoming regulatory activity, the revisions could reduce transparency and accountability.”¹²⁸

Policy reversed again in the Trump administration. In 2017, both then-acting OIRA Administrator Dominic Mancini and current Administrator Neomi 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.¹²⁹

Agencies are not required to limit their regulatory activity to what they publish in the Unified Agenda. The *Federal Register* has noted:

The Regulatory Plan and the Unified Agenda do not create a legal obligation on agencies to adhere to schedules in this publication or to confine their regulatory activities to those regulations that appear within it.¹³⁰

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

3,209 Rules in the Unified Agenda Pipeline; 540 of them Deemed “Deregulatory”

The fall 2017 “Regulatory Plan and the Unified Agenda of Regulatory and Deregulatory Actions” became the vehicle for Trump’s status report on his two-for-one rule-pruning program. The Agenda finds 67 federal agencies, departments, and commissions recognizing 3,209 regulations in the active (prerule, proposed, and final), just-completed, and long-term stages (there had been 3,318 overall in 2016). Many rules have been in the pipeline for some time.¹³¹ Not only is there a lower overall count of rules in Trump’s Unified Agenda pipeline, 540 of them 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 up until 2013. Counts had been even higher in the 1990s, when an all-time-high count of 5,119 rules occurred in the fall 1994 Agenda. (For the history of the numbers of rules in the spring and fall editions of the Agenda since 1983, see Appendix: Historical Tables, Part E.)¹³² The 19 percent drop from 2012’s 4,062 rules to 3,305 in 2013 in part reflects election year and management directive factors noted above.

The total pipeline count of 3,209 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.¹³³ Perhaps most important for assessing Trump’s one-in, two-out regulatory campaign is the question of which agencies are responsible for the 540 rules deemed deregulatory, out of a total of 3,209, in Table 5. (For the numbers of rules by department and agency from previous year-end editions of the Agenda since 2000, see Appendix: Historical Tables, Part F.)

Active rules. As Figure 18 shows, since 2003, active rule counts in the Agenda consistently remained well above 2,000, until they fell to 1,977 under Trump, with 448 of them deemed deregulatory. As noted, by the time of the fall 2017 Agenda, 1,579 Obama-era planned regulatory actions and rules were withdrawn or delayed during this first year of the Trump administration, which could partly explain the lower number.

Completed rules. Completed rules are “actions or reviews the agency has completed or withdrawn since publishing its last agenda.”¹³⁴ Note that although the number of rules in the completed category in fall Agendas 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 (spring Agendas are not shown in Figure 18). This category stood at 470 in Trump’s fall 2017 Agenda, well below Obama’s last three

*Healthy skepticism
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Unified Agenda,
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administrations.*

years' snapshots, especially given that 62 of Trump's completed rules are deregulatory.

Long-term rules. Announced long-term rules in the pipeline shown in Figure 18 dropped markedly from 807 to 442 between 2010 and 2011. In the new 2017 Agenda, these rules stand at 762, a jump from 558 in 2016. Thirty of these are deregulatory, but this jump is a development that needs to be monitored closely, even though it may reflect in part the decision of Mancini and Rao to include these rules.

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 the Treasury, Transportation, Commerce, and Defense

and the EPA—were the most active rulemakers. The Department of the Interior came in sixth with 183 rules. These top five, with 1,359 rules among them, account for 42 percent of the 3,209 rules in the Agenda pipeline.

It is worth noting the percentage of actions at these bodies that are deregulatory for Executive Order 13771 purposes, as Table 5 shows. For comparative purposes, these agencies' deregulatory actions could take their burdens below those of other agencies not in the top five.

Table 6 also depicts the top five independent agencies in the Agenda pipeline by rule count. These are the FCC, the Securities and Exchange Commission, the Nuclear Regulatory Commission, the multi-agency Federal Acquisition Regulation system, and the Consumer Product Safety Commission.¹³⁵ Their total 323 rules account for 10 percent of the 3,209 rules in the Agenda. Combined, the

Table 5. Unified Agenda Entries by Department and Agency (Fall 2017)

	Total Rules	Unified Agenda			Regulatory Plan Component		
		Active	Completed	Long Term	Active	Completed	Long Term
Dept. of Agriculture	114	75	35	4	12	43	1
Dept. of Commerce	247	168	55	24	7	28	5
Dept. of Defense	193	184	7	2		23	
Dept. of Education	38	34	4		1	25	
Dept. of Energy	87	30	11	46		14	1
Dept. of Health and Human Services	189	123	25	41	10	54	7
Dept. of Homeland Security	123	59	10	54	1	14	2
Dept. of Housing and Urban Development	42	18	13	11	5	11	
Dept. of the Interior	183	140	40	3	7	43	
Dept. of Justice	68	20	12	36		6	4
Dept. of Labor	64	44	2	18	1	22	
Dept. of State	64	49	4	11		1	
Dept. of Transportation	255	172	16	67	4	83	2
Dept. of Treasury	444	274	42	128	5	20	2
Dept. of Veterans Affairs	79	60	13	6		5	
Agency for International Development	9	8	1			2	
American Battle Monuments Commission	2	1		1			

	Total Rules	Unified Agenda			Regulatory Plan Component		
		Active	Completed	Long Term	Active	Completed	Long Term
Architectural and Transportation Barriers Compliance Board	3	1		2			
Commission on Civil Rights	1	1					
CPBSD*	3	2	1				
Commodity Futures Trading Commission	32	22	6	4			
Consumer Financial Protection Bureau	29	13	7	9			
Consumer Product Safety Commission	29	19	2	8			
Corporation for National and Community Service	6	1		5			
Council of Inspector General on Integrity and Efficiency	2	2					
Court Services/Offender Supervision, D.C.	6	3	3				
Defense Nuclear Facilities Safety Board	1		1				
Environmental Protection Agency	220	101	59	60	7	41	6
Equal Employment Opportunity Commission	8	7	1				
Farm Credit Administration	31	14	17				
Federal Acquisition Regulation	43	41	2		1		
Federal Communications Commission	106	4	3	99			
Federal Deposit Insurance Corporation	29	16	7	6			
Federal Energy Regulatory Commission	17		1	16			
Federal Housing Finance Agency	14	9	2	3			
Federal Maritime Commission	4	2	2				
Federal Reserve System	29	13	8	8			
Federal Trade Commission	20	18	2				
General Services Administration	20	18	2			4	
Institute of Museum and Library Services	1	1					
National Aeronautics and Space Administration	12	8	4				
National Archives and Records Administration	8	4	4				
National Credit Union Administration	23	14	6	3			
National Endowment for the Arts	6	6					
National Endowment for the Humanities	4	4					
National Indian Gaming Commission	8	8				1	
National Labor Relations Board	1	1					
National Mediation Board	1		1				
National Science Foundation	3	2	1				
National Transportation Safety Board	8	5	3				
Nuclear Regulatory Commission	60	30	8	22			
Office of Government Ethics	6	6					
Office of Management and Budget	4	3	1		1	3	

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

(continued)

Table 5. Unified Agenda Entries by Department and Agency (Fall 2017) (continued)

	Total Rules	Unified Agenda			Regulatory Plan Component		
		Active	Completed	Long Term	Active	Completed	Long Term
Office of Personnel Management	22	16	6			2	
Office of the Trade Representative	2		2				
Peace Corps	4	4					
Pension Benefit Guaranty Corporation	17	13	1	3			
Postal Regulatory Commission	3			3			
Presidio Trust	4	4					
Privacy and Civil Liberties Oversight Board	1		1				
Railroad Retirement Board	4	4					
Securities and Exchange Commission	85	26	5	54			
Small Business Administration	29	24	5			3	
Social Security Administration	27	25	2				
Special Inspector General for Afghanistan Reconstruction	1		1				
Surface Transportation Board	10	2	3	5			
Tennessee Valley Authority	1	1					
TOTAL	3,209	1,977	470	762	62	448	30

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

top executive and independent agency components comprise 52 percent of the total. However, the difference between this year and previous year portrayals is that some entries are explicitly deemed deregulatory.

140 “Economically Significant” Rules in the Unified Agenda; 25 of Them Deemed “Deregulatory”

A subset of the Agenda’s 3,209 rules is classified as “economically significant”—rules for which agencies estimate yearly economic impacts of at least \$100 million. Those impacts generally amount to increased costs, although sometimes an economically significant rule is intended to reduce costs, particularly so in the wake of Executive Order 13771. As Table 7 shows, 140 economically significant rules (down from 193 and 218 in the two previous

years, respectively) from 22 departments and agencies appear at the active (prerule, proposed rule, and final rule), completed, and long-term stages of the pipeline.

Figure 19 shows the annual fall pipeline’s increase 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, then President Donald Trump brought the count down substantially in his first year, particularly given that 30 of the 140 are deregulatory. Under Trump, the overall flow of economically significant rules is 27 percent lower fall-to-fall, even though these figures contain numerous “rules” that are deregulatory or withdrawals or holds of preexisting orders.

Figure 19 also breaks down economically significant rules into completed, active, and long-term categories. Among the 140 eco-

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

Executive Agency	Number of Rules
1. Department of the Treasury	444
2. Department of Transportation	255
3. Department of Commerce	247
4. Environmental Protection Agency	220
5. Department of Defense	193
TOTAL	1,359
% of Total Agenda Pipeline of 3,209	42

Independent Agency	Number of Rules
1. Federal Communications Commission	106
2. Securities and Exchange Commission	85
3. Nuclear Regulatory Commission	60
4. Federal Acquisition Regulation	43
5. Consumer Product Safety Commission	29
TOTAL	323
% of Total Agenda Pipeline of 3,209	10

Top 5 Executives plus Independents	1,682
% of Total Agenda Pipeline	52

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.

nominally significant rules in the fall 2017 Agenda, 71 of them stand at the active phase, far below the 113 active in the fall 2016 Obama Agenda. (The full list of the 140 economically significant rules in the 2017 Agenda pipeline is available in Appendix: Historical Tables, Part G.) Until Trump, the annual body of active economically significant rules had remained above 100 since 2007, as may be seen in Figure 19. Obama’s eight-year average of active rules across the fall Agendas was 133; Bush’s eight-year average was 87. Time will tell if Trump’s 71 represents a new trend. As for economically significant rules at the completed stage in the fall Agendas, Obama’s count was consistently higher than 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.

For a fuller picture of completed rules, we need to 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.

As Figure 20 shows, completed economically significant rules totaled 88 in the fall and spring Agendas under Trump. Trump actually issued more completed economically significant rules than either Bush or Obama, but this may be partly because the Administrative Procedure Act requires writing a new rule to get rid of an old one. For example, five of these rules are explicitly deemed deregula-

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
Dept. of Agriculture	5	2	1	2		
Dept. of Commerce	1	1				
Dept. of Defense	1	1				
Dept. of Education	4	3	1			1
Dept. of Energy	10	2	1	7		
Dept. of Health and Human Services	46	30	11	5	13	3
Dept. of Homeland Security	8	5		3	1	
Dept. of Housing and Urban Development	2			2		
Dept. of the Interior	4	4			2	
Dept. of Justice	2		2			
Dept. of Labor	8	3		5	2	
Dept. of State	1	1				
Dept. of Transportation	9	4		5	1	
Dept. of Treasury	8	4	1	3	3	
Dept. of Veterans Affairs	5	4		1		
Architectural Barriers Compliance Board	1			1		
Consumer Product Safety Commission	3			3		
Environmental Protection Agency	12	6	1	5	3	
Federal Acquisition Regulation	1		1			1
Federal Communications Commission	5			5		
Federal Deposit Insurance Corporation	1		1			
Nuclear Regulatory Commission	3	1	1	1		
TOTAL	140	71	21	48	25	5

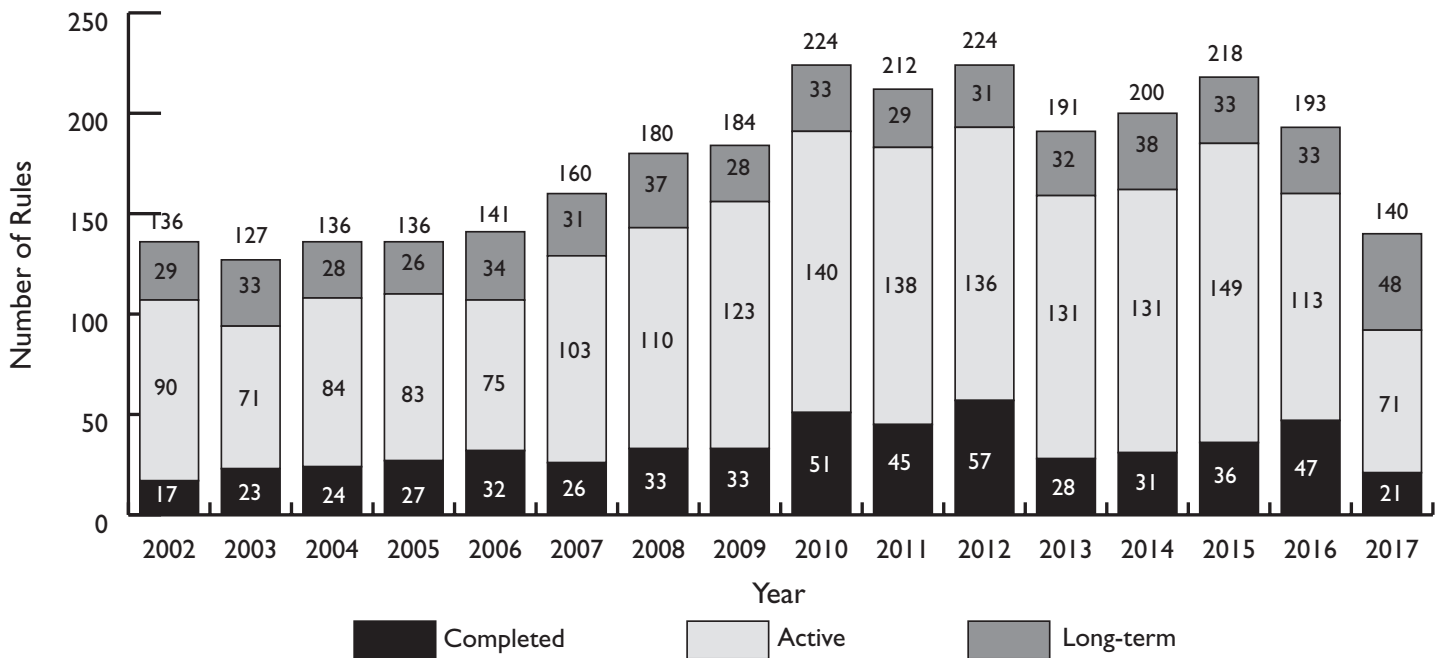
Source: Compiled from “The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, and from the online edition at <http://www.reginfo.gov>.

* No deregulatory actions are listed in the long-term category.

tory for Executive Order 13771 purposes. If the five deregulatory rules were removed from Trump’s tally, the total would be 83 rules, tied with Obama. Still further, the number of deregulatory actions from the spring agenda is not clear, because the Trump-era database search function for “13771 Designation” was not active for that edition. When agencies are directed to eliminate two for one, that can make it appear as if more “rules” are being issued. Of course, other presidents have issued deregulatory rules; they just did not make the reduction agenda so explicit, nor ease the tracking of the relevant metrics.

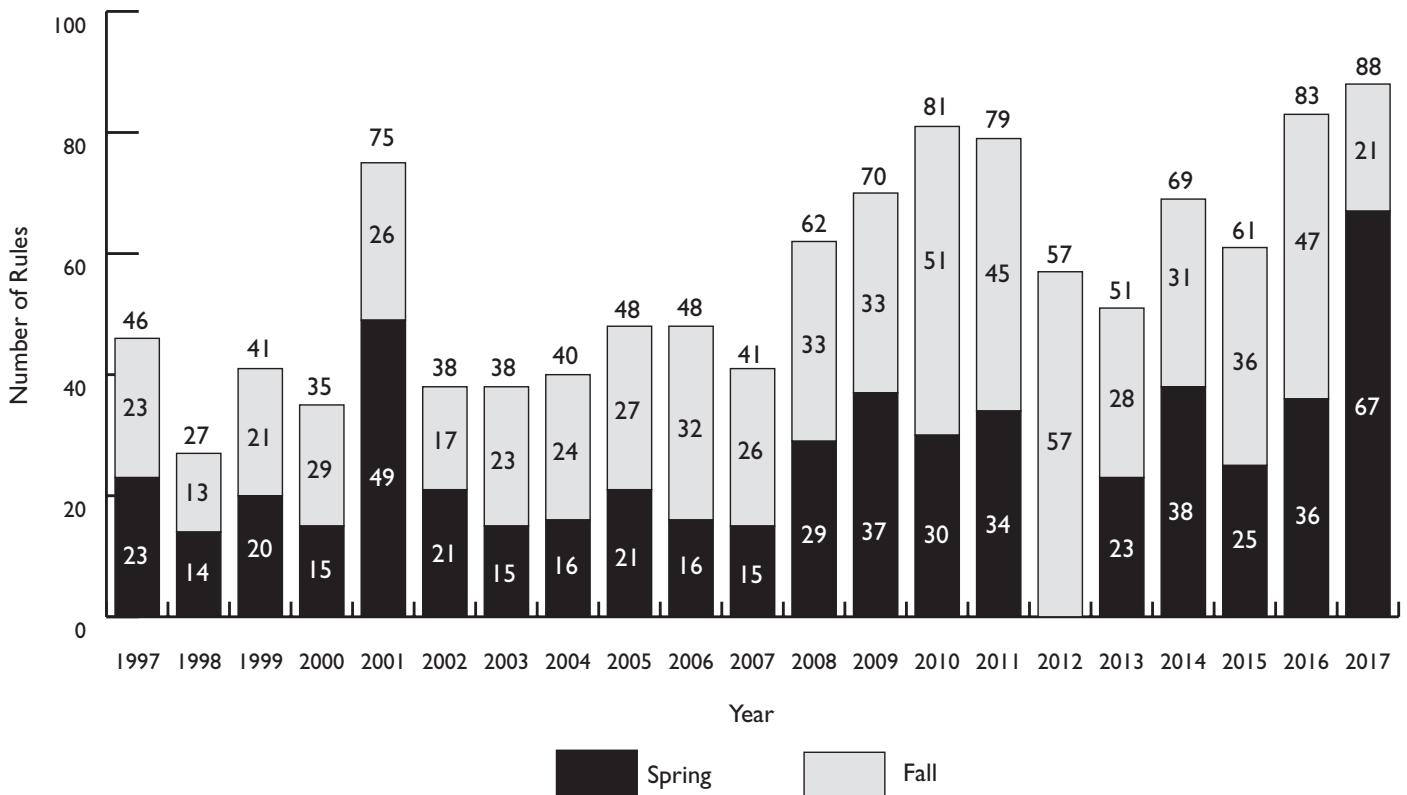
Apart from 2001, the level of completed economically significant rules from 1996 forward was notably lower during the earlier part of the late 1990s and early 2000s. Bush’s total number of completed economically significant rules was 390, for an average of 49 per year. Obama’s total was 551, an average of 69 per year. Some agency “midnight regulations” of previous administrations may be reflected in the totals for a first-year president, but this report is primarily concerned with calendar year comparisons. Trump is above these averages, but again, some rules are deregulatory.

Figure 19. 140 Economically Significant Rules in the Unified Agenda Pipeline, 2002–2017



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, 1997–2017



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

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

As noted, each of the 140 economically significant rules scattered among the 3,209 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 \$14 billion (loosely, 140 rules multiplied by the \$100 million economically significant threshold). Some rules may decrease costs, which would offset this total; in Trump's first year, 30 such rules have explicit declarations (See Figure 19 and Table 7). Yet whatever the elusive actual total cost, these costs are cumulative, as recurring annual costs are 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 2017 pipeline, 3,069 federal rules were not designated economically significant (3,209 total rules minus the 140 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 regulatory dark matter, which avoids congressional oversight and the Administrative Procedure Act's notice-and-comment requirement for rulemaking.

Notable Regulations by Agency

The full list of the 140 economically significant rules in the fall 2017 Agenda pipeline appears in Appendix: Historical Tables, Part G. In recent Agenda editions and in other venues, federal agencies have noted the initiatives listed below, among others pending or recently completed.

Although many of the things that regulations purport to do are worthy and need pursuing, that does not mean that the federal bureaucracy and administrative state are the best ways to achieve them, compared with insurance, liability, other private sector options, and state and local oversight.

Department of Agriculture

- Mandatory country-of-origin labeling of beef, fish, lamb, peanuts, and pork
- National school lunch and school breakfast programs: nutrition standards for all foods sold in school and certification of compliance with meal requirements for the national school lunch program (as required by the Healthy, Hunger-Free Kids Act of 2010)¹³⁶
- Standards for grades of canned baked beans¹³⁷
- Rural Energy for America Program
- Rural broadband access loans and loan guarantees
- Mandatory inspection of catfish and catfish products
- Multifamily housing reinvention
- Inspection regulations for eggs and egg products
- Performance standards for ready-to-eat processed meat and poultry products
- 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, and mobile home furnaces; residential dishwashers; residential conventional cooking products; electric distribution transformers; commercial refrigeration units and heat pumps; 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; refrigerated bottled or canned beverage vending machines; and residential central air conditioners and heat pumps
- Incentive program for manufacturing advanced technology vehicles

Department of Health and Human Services

- 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 restrictions¹³⁸
- 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”);¹³⁹ 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 providers¹⁴⁰
- 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; 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 housing¹⁴¹
- 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 shelf¹⁴²
- 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"¹⁴³
- 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)¹⁴⁴
- Walking-working surfaces and personal fall protection systems (slips, trips, and fall prevention)¹⁴⁵
- 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,¹⁴⁶ 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
- 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
- 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

Department of Transportation

- Quiet car rule; Minimum Sound Requirements for Hybrid and Electric Vehicles¹⁴⁷
- Federal Aviation Administration rule on operation and certification of drones (must stay in line of sight, for example)¹⁴⁸
- National Highway Traffic Safety Administration (NHTSA) proposal on vehicle-to-vehicle communications standardization¹⁴⁹
- Federal Motor Carrier Safety Administration and NHTSA rule on speed limiters and electronic stability control systems for heavy vehicles¹⁵⁰
- Federal Railroad Administration's Train Crew Staffing rule seeking a two-engineers-on-a-train mandate¹⁵¹
- NHTSA rule on lighting and marking on agricultural equipment¹⁵²
- Minimum training requirements for entry-level commercial motor vehicle operators and for operators and training instructors of multiple trailer combination trucks¹⁵³
- Passenger car and light truck Corporate Average Fuel Economy standards (newer model years)
- Rear-impact guards and other safety strategies for single-unit trucks
- Amendments for positive train control systems
- Aging aircraft safety
- Upgrade of head restraints in vehicles
- 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 loans¹⁵⁴

Consumer Product Safety Commission

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

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 (NESHAP) from certain reciprocating 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
- Revisions of national primary drinking water regulations for lead and copper
- 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 services¹⁵⁵
- 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

Longer term, does the administrative state have anything to fear from Trump’s regulatory liberalization agenda?

There is a need for far greater clarity in the Agenda, *Federal Register*, and OMB *Report to Congress* on regulatory benefits and costs as to whether agency actions are regulatory or deregulatory. Pertinent to tracking regulatory ins and outs, one of the most important modifications in the new Regulatory Plan and Agenda is the transformative change in the rule roundup presented in OIRA’s database to capture the specifics of Executive Order 13771-related deregulatory actions and to explicitly identify rules not subject to the order.

On the landing page of OIRA’s advanced search database there now appears a radio-button search option field for “EO 13771 Designation.” This enables researchers and the public to isolate where agencies have classified rules as “Deregulatory” or “Regulatory.” Categories of rules not subject to the executive order are now classified and depicted where possible: “Fully or Partially Exempt;” “Not Subject to, not significant;” “Other;” and “Independent agency.”¹⁵⁶ Table 8 shows the number of these rules at the completed, active, and long-term stages relative to the overall count of 3,209.

If this practice becomes incorporated into the *Federal Register* presentation and in other forms of agency disclosure, it could make a significant difference over time. In fact, the Executive Order 13771 designation may be even more important than the particular cuts completed so far, because the renewed scrutiny may prompt agencies to continue to report such distinctions long after the Trump administration ends. Any failure to implement regulatory relief would become obvious over time. Requiring inde-

The Executive Order 13771 designation may be even more important than the particular cuts completed so far, because the renewed scrutiny may prompt agencies to continue to report such distinctions long after the Trump administration ends.

While agencies can be said to have met the two-for-one goals, a deeper look reveals agencies are planning more rules than rollbacks in future years.

pendent agencies to report as well would be fairly low-hanging fruit for congressional reform.

As noted, instead of two-for-one, the administration reported achieving a one-in, 22-out ratio for managing finalized regulations. Put differently, the administration claims that three rules were added but 67 removed for purposes of Executive Order 13771.

More broadly, as Table 8 shows, a total of 540 rules in the fall Agenda pipeline were classified as deregulatory, while 248 rules are classified as regulatory. Rules can be regulatory but not subject to the order. The order does not apply to nonsignificant rules, yet some of them are tabulated for Executive Order 13771 purposes.

As noted, agencies are not required by law to issue only the rules they describe in the Agenda or Regulatory Plan. The administration notes 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 cost caps] represent a subset of an agency’s total regulatory actions.¹⁵⁷

The fall 2017 Agenda pipeline of 3,209 is the lowest level seen since 1983, and incorporating the 540 deregulatory entries gives a net of 2,669 new rules. However, there is no way to readily compare that deregulatory element with past years’ Agenda rule counts, from which some entries would have been deregulatory in nature.¹⁵⁸ Table 5 breaks down the 540 deregulatory measures by department and agency and stage of completion. The Department of Transportation easily led with 89 rules in the pipeline classified as deregulatory.

There are some warning signs, however. While agencies can be said to have met the two-for-one goals, a deeper look reveals agencies are planning more rules than rollbacks in future years. The Agenda is a planning document, and agencies plan well more regulating than deregulating, which shows 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, which governs OMB review of rules. One option to address that problem could be to expand coverage of rules via executive order. Stopping or slowing rules in the pipeline is easier than getting rid of existing rules; the Trump administration should do the former more thoroughly in the next Agenda.

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. These are also isolated in Table 8. The economically significant category appears to present hurdles to meeting the two-for-one goal.

Completed Deregulatory and Regulatory Actions in Unified Agenda Hit a Four-for-One Target

The Unified Agenda’s completed component most closely corresponds to the highlighted 22-to-one successes claimed by the Trump administration in its “Two-for-One Status Report and Regulatory Cost Caps.”¹⁵⁹ As long as costs are net zero, the primary prescription of the executive order, it is acceptable to credit non-significant rules toward the two-for-one goal.¹⁶⁰ Where the administration indicated 67 deregulatory actions in its Status Report,

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	3,209	470	21	100	1,977	71	535	762	48	204
Deregulatory	540	62	5	17	448	25	126	30	0	16
Regulatory	248	15	6	7	131	15	84	102	25	63
Fully or Partially Exempt	305	64	3	34	206	19	96	35	1	26
Not subject to, not significant	672	186	1	11	404	0	15	82	0	1
Other	938	72	2	17	599	11	182	267	12	62
Independent Agency	497	62	1	10	189	1	32	246	10	36
Totals (may not sum fully)	3,200	461	18	96	1,977	71	535	762	48	204

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

It is worrisome with respect to longer-term prospects that non-economically significant deregulatory rules are carrying the weight of offsetting the economically significant regulatory ones.

the Agenda identifies 62 completed deregulatory actions (see Table 8).

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 do not appear in the Agenda (These nine appear in bold type in Box 2).

Another reason is that some removals were achieved via the Congressional Review Act and therefore do not appear in the Agenda.

Still another difference between the two tabulations is that the administration did not take credit for each of the economically significant rules eliminated. As Table 8 also shows, of the 62 completed deregulatory actions in the Agenda, five are in the economically significant category. However, the administration noted only one of these—repeal of the Fair Pay and Safe Workplaces Rule—in its “Two-for-One Status Report.”¹⁶¹ Seventeen rules in Table 8 are deemed “other significant,” with the remainder being more routine.

In its roundup, the administration pointed to three completed “significant regulatory actions” that had been adequately offset on the claimed 22-to-one basis. Actually, 15 completed regulatory actions appeared in the fall Agenda, with 6 of them deemed economically significant. For purposes of Executive Order 13771, significant regulations are required to be offset, so even with six economically significant actions rather than three completed, the overall two-for-one goal is still met given—at least—62 deregulatory actions. Even taking into account the presence of 15 completed regulatory actions under the database's EO 13771 designation, the two-for-one target is still attained at a four-to-one ratio (The 62 deregulatory actions divided by the 15 regulatory ones in Table 8). Note, however, that, while there were six regulatory rules at the economically significant level, there were only five deregulatory ones of comparable significance. It is worrisome with respect to longer-term prospects that non-economically significant

deregulatory rules are carrying the weight of offsetting the economically significant regulatory ones.

“Active” Deregulatory and Regulatory Actions Hit a Three-for-One Target

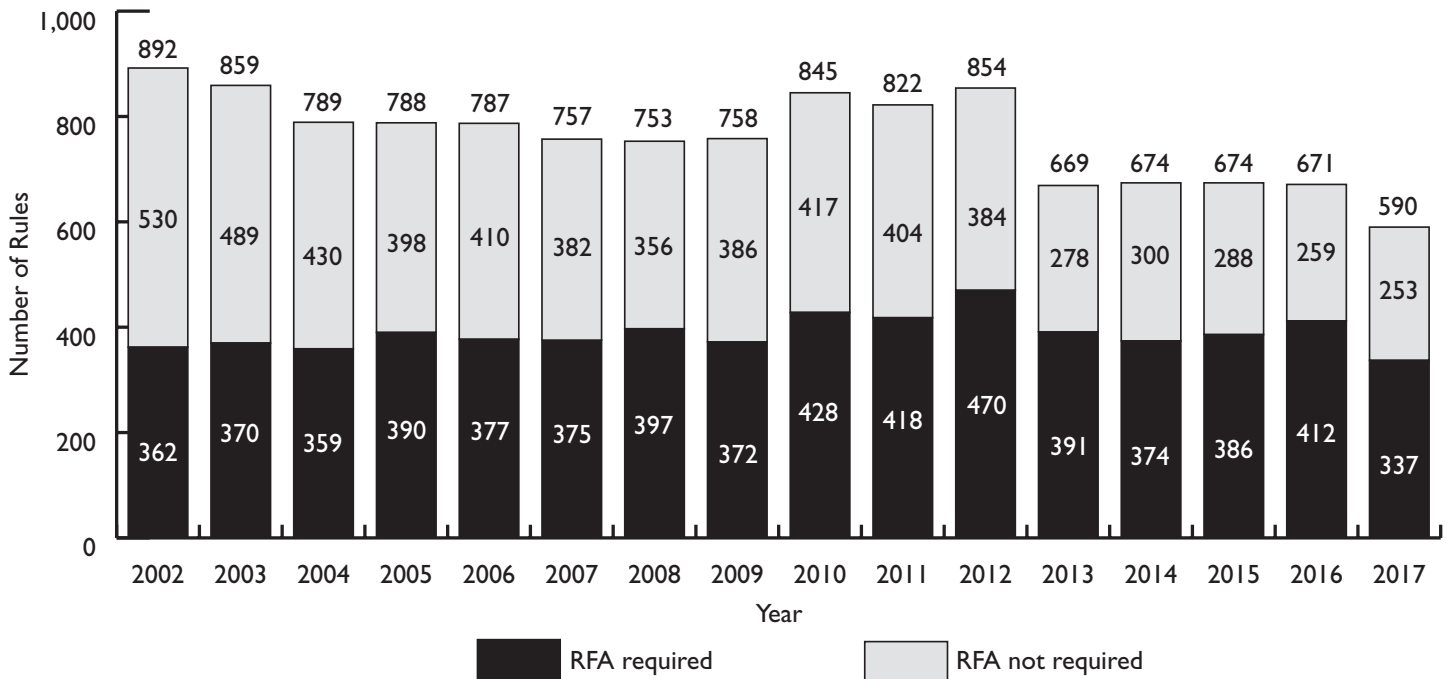
Active actions—those in the pipeline at the prerule, proposed, and final rule stages—are the ones in play. Table 8 shows a total of 448 deregulatory actions in play, in excess of the 131 regulatory ones by more than a three-to-one margin. As noncompleted actions, at this point these rules do not need to be counted to meet the two-for-one goals, but they are still a leading indicator.

Of more concern is the costlier subsets of active rules. There are 15 economically significant regulatory actions in Table 8. While the 25 active economically significant deregulatory actions outweigh the regulatory actions, they do so only by a meager factor of 1.6. Similarly, 84 other significant regulatory actions are outweighed by 126 deregulatory ones, but only by a factor of 1.5. There is time to correct course as rules move closer toward finalization, but this ratio highlights the limits of unilateral executive regulatory liberalization.

“Long-Term” Planned Regulatory Actions Outstrip Deregulatory Ones

Longer-term rules inspire even less confidence. As Table 8 shows, 102 long term actions are deemed regulatory, but only 30 are deemed deregulatory. The two-for-one ratio is inverted with respect to long-term planned rules, with a three-for-one ratio in favor of regulation. Even more worrisome is that, of the anticipated economically significant long-term rules, 25 are deemed regulatory, while none in this costliest category are deregulatory. Even in the other significant category, 63 are regulatory, but only 16 de-

Figure 21. Rules Affecting Small Business, 2002–2017



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

regulatory. These are warning signs because these more costly rule subsets are presumably where tomorrow’s cost savings need to come from.

A charitable interpretation is that agencies are focused on meeting the administration’s goals for two-for-one streamlining and will eventually get around to these longer-term rule reductions. Others might be inclined to ascribe these numbers to the “#resistance” to the Trump administration by some career agency personnel.¹⁶²

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 newer Agendas appear in 2018 and 2019, the situation may be rectified. In addition, agencies may substitute guidance documents for formal regulations. Therefore, 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 directs federal agencies to assess their rules’ effects on small businesses.¹⁶³ Figure 21 shows both the number of rules requiring annual regulatory flexibility analysis per the Regulatory Flexibility Act and other rules anticipated by agencies to affect small business, but which do not require a regulatory flexibility analysis (RFA). In recent years, disclosure of this category of rules appears to have diminished. 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 has dropped even more substantially during the Trump administration, even with some rules being rollbacks.

The administrative state works to the advantage of agencies that want to maintain vast regulatory edifices.

At the end of 2017, overall rules affecting small business stood at 590, a 12 percent drop from 671 the year before. 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 590 rules with small-business impacts, 337 required an RFA, down from the previous year's 412. Another 253 rules were otherwise deemed by agencies to affect small business but not require an RFA, comparable to Obama's last year.

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 Barack Obama's eight years, 406, exceeded George W. Bush's eight-year average of 377. Donald Trump's count is well below Bush's average.

Table 9 breaks out the 2017 fall Unified Agenda's 590 rules affecting small business by department, agency, and commission. The Departments of Commerce, Health and Human Services, and Transportation, along with the FCC and the cross-agency Federal Acquisition Regulations, accounted for 324, or 55 percent, of the 590 rules affecting small business.

Table 9. Unified Agenda Entries Affecting Small Business by Department, Agency, and Commission, Year-End 2017

	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	12	7		5	6	1	31	27.2	
Dept. of Commerce	247	40	14	4	27	4	1	90	36.4	90
Dept. of Defense	193	1						1	0.5	
Dept. of Education	38				2			2	5.3	
Dept. of Energy	87	3	3	3	1		5	15	17.2	
Dept. of Health and Human Services	189	17	7	10	22	4	7	67	35.4	67
Dept. of Homeland Security	123	9	1	9	2	1	5	27	22.0	
Dept. of Housing and Urban Development	42			1	1			2	4.8	
Dept. of the Interior	183	3	1		3	1	1	9	4.9	
Dept. of Justice	68					2	3	5	7.4	
Dept. of Labor	64	1		1	5	1	4	12	18.8	
Dept. of State	64				17		8	25	39.1	
Dept. of Transportation	255	13		3	17	2	12	47	18.4	47
Dept. of Treasury	444	1			21	2	12	36	8.1	
Dept. of Veterans Affairs	79					1		1	1.3	
Agency for International Development	9							0	0.0	
American Battle Monuments Commission	2							0	0.0	
Architectural and Transportation Barriers Compliance Board	3			1				1	33.3	

	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			
Commission on Civil Rights	1							0	0.0	
CPBSD*	3							0	0.0	
Commodity Futures Trading Commission	32	1		1				2	6.3	
Consumer Financial Protection Bureau	29	1	2		3		2	8	27.6	
Consumer Product Safety Commission	29		1	4				5	17.2	
Corp. for National and Community Service	6							0	0.0	
Council of Inspector General on Integrity and Efficiency	2							0	0.0	
Court Sevices/Offender Supervision, D.C.	6							0	0.0	
Defense Nuclear Facilities Safety Board	1							0	0.0	
Environmental Protection Agency	220		2	2				4	1.8	
Equal Employment Opportunity Commission	8				3			3	37.5	
Farm Credit Administration	31							0	0.0	
Federal Acquisition Regulation	43	39	2		2			43	100.0	43
Federal Communications Commission	106	3	3	68			3	77	72.6	77
Federal Deposit Insurance Corporation	29							0	0.0	
Federal Energy Regulatory Commission	17							0	0.0	
Federal Housing Finance Agency	14							0	0.0	
Federal Maritime Commission	4							0	0.0	
Federal Reserve System	29	2						2	6.9	
Federal Trade Commission	20				16	2		18	90.0	
General Services Administration	20	7			7	1		15	75.0	
Institute of Museum and Library Services	1							0	0.0	
National Aeronautics and Space Administration	12							0	0.0	
National Archives and Records Administration	8							0	0.0	
National Credit Union Administration	23							0	0.0	
National Endowment for the Arts	6				2			2	33.3	
National Endowment for the Humanities	4							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 2017 (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 Indian Gaming Commission	8							0	0.0	
National Labor Relations Board	1							0	0.0	
National Mediation Board	1							0	0.0	
National Science Foundation	3							0	0.0	
National Transportation Safety Board	8							0	0.0	
Nuclear Regulatory Commission	60	1	1	1				3	5.0	
Office of Government Ethics	6							0	0.0	
Office of Management and Budget	4							0	0.0	
Office of Personnel Management	22							0	0.0	
Office of the Trade Representative	2							0	0.0	
Peace Corps	4							0	0.0	
Pension Benefit Guaranty Corporation	17							0	0.0	
Postal Regulatory Commission	3							0	0.0	
Presidio Trust	4							0	0.0	
Privacy and Civil Liberties Oversight Board	1							0	0.0	
Railroad Retirement Board	4							0	0.0	
Securities and Exchange Commission	85	5	2	8		1	3	19	22.4	
Small Business Administration	29	13	2		2			17	58.6	
Social Security Administration	27							0	0.0	
Special Inspector General for Afghanistan Reconstruction	1							0	0.0	
Surface Transportation Board	10			1				1	10.0	
Tennessee Valley Authority	1							0	0.0	
TOTAL	3,209	172	48	117	158	28	67	590	18.4	324
		337			253					55% of total
Deregulatory	540	28	8	2	37	7	1	83		

Source: Compiled from "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions," and from online edition at www.reginfo.gov.

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

Recall that 540 rules among the Agenda's flow of 3,209 are flagged as deregulatory. Of the 590 rules with small business effects, 83 are deregulatory, distributed as seen in Table 9. The overall proportion of total rules affecting small business stands at 18 percent, but the range varies widely among agencies. (For the numbers of rules affecting small business broken down by department and agency for fall Agendas since 1996, see Appendix: Historical Tables, Part H.)

For additional perspective on the small-business regulatory climate, Box 3 depicts a partial list of the basic, non-sector-specific laws and regulations that affect small business.

Federal Regulations Affecting State and Local Governments

Ten Thousand Commandments primarily emphasizes regulations imposed on the private sector. However, state and local officials' realization during the 1990s that their own priorities were being overridden by federal mandates generated demands for reform. As a result, the Unfunded Mandates Act was enacted in 1995. It required the Congressional Budget Office (CBO) to produce cost estimates of mandates affecting state, local, and tribal governments above the then-\$50 million threshold.

Box 3. 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)

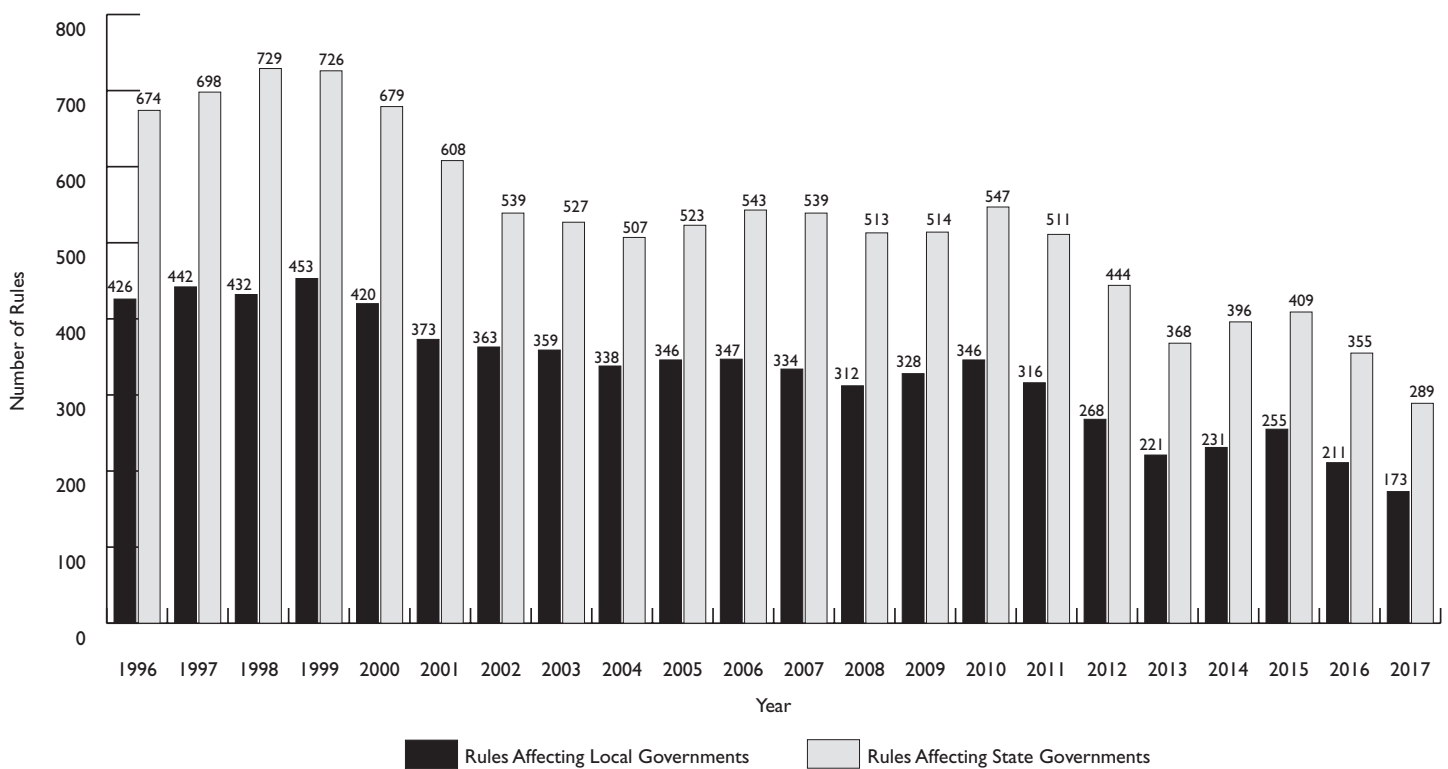
50 EMPLOYEES: ALL THE ABOVE, PLUS

- 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, 1996–2017



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>.

State and local officials’ realization during the 1990s that their own priorities were being overridden by federal mandates generated demands for reform.

As Figure 22 shows, agencies report that 173 of the 3,209 rules in the fall 2017 Agenda pipeline will affect local governments, compared with 211 last year and 255 the year before (this includes all stages, active, completed, and long-term).¹⁶⁴ Since the passage of the Unfunded Mandates Act in the mid-1990s, the number of overall rules affecting local governments has fallen by 67 percent, from 533 to 173, the lowest level over the period.

The total number of regulatory actions affecting state governments stands at 289 (compared with a recent peak of 409 in 2015). Again, the overall pipeline count of active, completed, and long-term rules has been trending downward. The change is even more dramatic for 2017, since about a quarter of rules across the active, completed, and

long-term categories (45 local and 69 state) are deregulatory.

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.”¹⁶⁵ 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.¹⁶⁶

In May 2016, the CBO reported that since 2006, 167 laws have imposed mandates on states and localities, with a notable trailing off since 2012.¹⁶⁷ Regulatory mandates can derive from such laws, as well as from agencies acting unilaterally. According to the official data, since 2010, none 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 that very few of the rules in Figure 22 impose unfunded mandates on states and localities.¹⁶⁸ Nonetheless, below is a compilation of some notable or substantial completed or pending regulations since 2009 that federal agencies have acknowledged in the Agenda as unfunded mandates, with their RINs.¹⁶⁹

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

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

Department of Justice

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

Department of Labor

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

Department of Transportation

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

Architectural and Transportation Barriers Compliance Board

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

Environmental Protection Agency

- 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: 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 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: NESHAP: Portland Cement Notice of Reconsideration and NSPS for Portland Cement (2060-A015)
- EPA/OCSPP: Polychlorinated Biphenyls; Reassessment of Use Authorizations for PCBs in Small Capacitors in Fluorescent Light Ballasts in Schools and Daycares (2070-AK12)
- EPA/OW: National Primary Drinking Water Regulations (2040-AA94)
- EPA/SWER: Standards for the Management of Coal Combustion Residuals Generated by Commercial Electric Power Producers (Coal Ash) (2050-AE81)
- EPA/SWER: Revising Underground Storage Tank Regulations—Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training (2050-AG46)
- EPA/WATER: Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category (2040-AF14)

Nuclear Regulatory Commission

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

Government Accountability Office

Database on Regulations

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

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

The 1996 Congressional Review Act requires agencies to submit reports to Congress on their economically significant rules—those with annual estimated costs of \$100 million or more. Owing to such reports, which are maintained in a database at the GAO, one can more readily observe (a) which of the thousands of final rules that agencies issue each year are major and (b) which departments and agencies are producing the rules.¹⁷⁰

The CRA gives Congress a window of 60 legislative days in which to review a major rule and pass a resolution of disapproval rejecting the rule. Despite the issuance of thousands of rules since the CRA's passage, including dozens of major rules, before 2017 only one had been rejected: the Department of Labor's rule on workplace repetitive-motion injuries in early 2001. Since the start of the 115th Congress in January 2017, the

CRA has been used 15 times to overturn regulations.¹⁷¹ According to recent reports, however, some final rules are not being properly submitted to the GAO and to Congress as required under the CRA.¹⁷²

Table 10, derived from the GAO database of major rules, depicts the number of final major rule reports issued by the GAO regarding agency rules through 2016. Rules can add burdens, reduce them, implement delays, or set rates and rules for major governmental programs like Medicaid. There were 48 major rules in 2017, according to the GAO's database (counting the pre-inauguration weeks), compared with 119 in 2016.¹⁷³ The direction of movement conforms to other 2016 measures of rules and *Federal Register* page trends. The 119 rules in 2016 under Barack Obama were the highest count since this tabulation began following passage of the CRA, the 100 rules in 2010 had been the second-highest. The 48 under Donald Trump in 2017 was the lowest, followed by 50 in 2003 under George W. Bush.

President George W. Bush averaged 63 major rules annually during his eight years in office. President Barack Obama averaged 86, a 36 percent higher average annual output than that of Bush. Obama issued 685 major rules over seven years, compared with Bush's 505 over eight years. (The presentation in this report uses calendar years, so Bush's eight years contain a couple of Bill Clinton's presidential transition weeks before his inauguration, whereas Obama's first year would include the Bush administration's final weeks.) Trump's 48 in year one may be compared with these two presidents.

Table 10. Government Accountability Office Reports on Major Rules as Required by the Congressional Review Act, 1998–2017

	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998
Department of Agriculture	2	5	7	8	4	2	4	6	12	3	7	8	6	7	4	7	9		6	5
Department of Commerce	1				2			4	2	1	2			1			2		5	1
Department of Defense	1	2	2	1				4	4	6			1			2	3		1	2
Department of Education	3	2	1	2	5	4	2	5	6	2	1	2							1	
Department of Energy	4	8	2	6	3	1	5	4	7	3	3				1	1	3	3		
Department of Health and Human Services	16	38	18	27	24	23	24	24	17	24	19	16	22	22	17	13	15	17	7	18
Department of Homeland Security		5	3	2	2	1	1	3	1	5	4	2	3	2	2					
Department of Housing and Urban Development	1	2	1				2	1	1	2			1	1			1	2	1	
Department of Justice		1				1	1	3				1	1	1		3	4			1
Department of Labor	2	8	1	3	3	3	2	6	1	2	3	3	1	1		2	3	5		2
Department of the Interior	3	6	6	6	6	7	6	7	7	10	5	6	6	8	7	7	8	9	6	7
Department of State						1		1		1										
Department of Transportation		4	3	3	3	2	2	5	6	8	3	1	3	5	4	6	3		4	1
Department of Treasury	2	5	7	6	3	2	1	4		1	1	1		1	1		1			1
Department of Veterans Affairs	1	1	4	3	1	1	2	2	2		1		1		2	1	3			
Architectural Barriers Compliance Board	1													1				1		
Commodity Futures Trading Commission		4		1	4	9	6													
Consumer Financial Protection Bureau	3	2	2		4	1	1													
Consumer Product Safety Commission							1					1								
Emergency Oil and Gas Loan Board																			1	
Emergency Steel Guarantee Loan Board																			1	
Environmental Protection Agency	2	7	8	2	3	5	6	8	3	9	2	8	3	7	3	1	4	20	5	9
Equal Employment Opportunity Commission							1													

A November 2017 Heritage Foundation analysis of available information on the Obama administration's regulatory record isolated the major rules listed in the GAO database affecting only the private sector and distinguished between those that are de-

regulatory and those that are regulatory. It concluded: "During the Obama years, the nation's regulatory burden increased by more than \$122 billion annually as a result of 284 new 'major' rules."¹⁷⁴

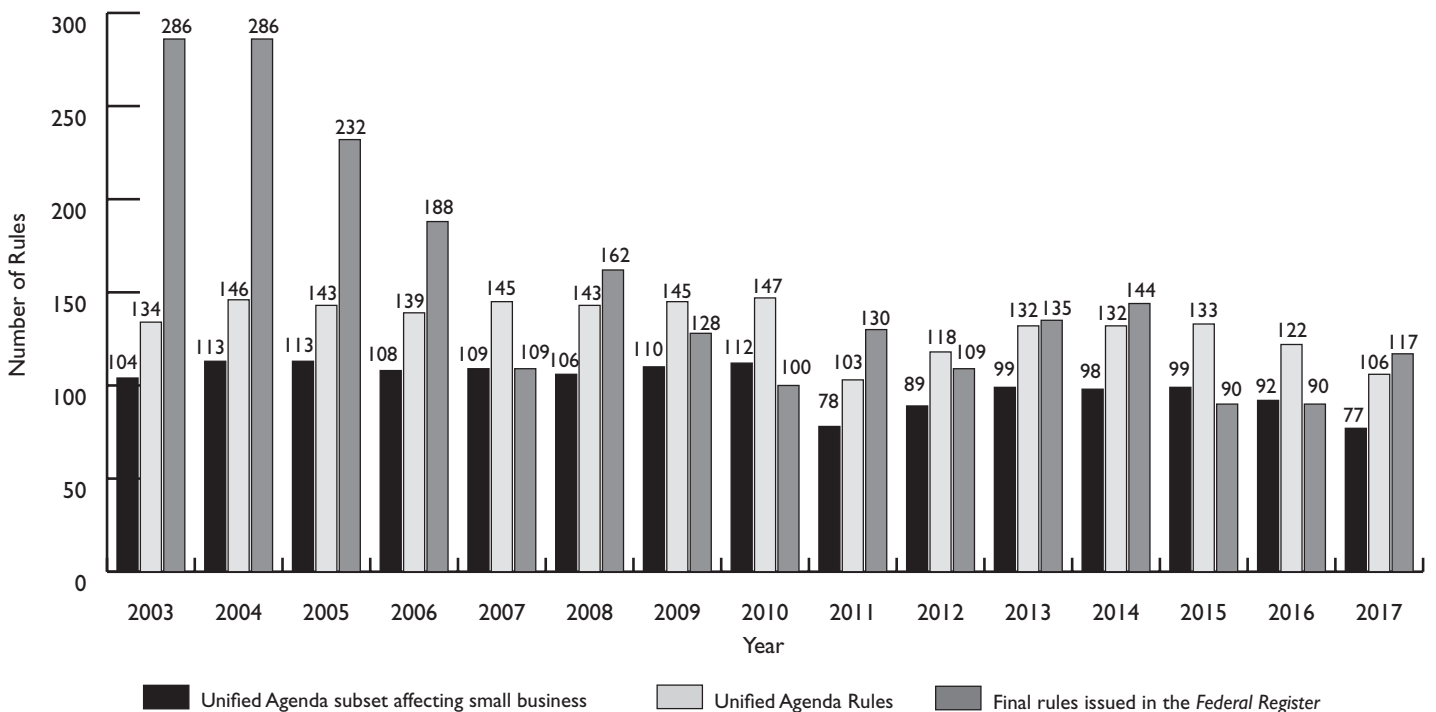
Regulation and the Federal Communications Commission

The Federal Communications Commission is by no means the heavyweight among regulators as gauged by the number of rules issued. Yet the FCC merits highlighting given its great influence over a major economic sector regarded as a growth engine in today's economy: telecommunications, the Internet, and the information economy generally. An agency's rule count is not all that matters because a handful of rules can have an outsized impact.

The FCC is an expensive agency. It spent \$459 million on regulatory development and

enforcement during FY 2016¹⁷⁵ and likely accounts for more than \$100 billion in annual regulatory and economic impact.¹⁷⁶ Figure 23 shows the FCC's final rules in the *Federal Register* during the past decade, its overall number of rules in the fall Agenda, and its Agenda rules affecting small business. Its 106 rules in 2017 in the Agenda pipeline are surpassed by nine other departments or agencies (see Table 5) and its count of five economically significant rules is also exceeded or equaled by that of nine other agencies (see Table 7). Of the 3,208 total rules in the fall 2017 Agenda pipeline, 106, or 3 percent, were in the works

Figure 23. Number of FCC Rules in the Unified Agenda and *Federal Register*, 2003–2017



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

Box 4. Seven Economically Significant Rules in the Pipeline at the FCC

- Expanding Broadband and Innovation through Air-Ground Mobile Broadband Secondary Service for Passengers Aboard Aircraft in the 14.0–14.5 GHz Band; GN Docket No. 13–114, RIN 3060-AK02
- Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions; GN Docket No. 12–268, RIN 3060-AJ82
- Internet Protocol-Enabled Services; WC Docket No. 04–36, RIN 3060-AI48: “The notice seeks comment on ways in which the Commission might categorize IP-enabled services for purposes of evaluating the need for applying any particular regulatory requirements. It poses questions regarding the proper allocation of jurisdiction over each category of IP-enabled service. The notice then requests comment on whether the services composing each category constitute ‘telecommunications services’ or ‘information services’ under the definitions set forth in the Act. Finally, noting the Commission’s statutory forbearance authority and title I ancillary jurisdiction, the notice describes a number of central regulatory requirements (including, for example, those relating to access charges, universal service, E911, and disability accessibility), and asks which, if any, should apply to each category of IP-enabled services.”
- Implementation of Section 224 of the Act; A National Broadband Plan for Our Future (WC Docket No. 07–245, GN Docket No. 09–51), RIN 3060-AJ64
- Restoring Internet Freedom; WC Docket No. 17–108; Protecting and Promoting the Open Internet; GN Docket No. 14–28, RIN 3060-AK21

at the FCC (Figure 23). Seventy-seven of the FCC’s rules in the fall 2017 pipeline, or 73 percent of its total, affect small business, as Figure 23 and Table 8 show.

The FCC finalized 117 rules in the *Federal Register* in 2017, up from 90 in 2016. FCC final rules in the *Federal Register* numbered as high as 313 back in 2002, then declined steadily during the decade to lows of 109 in 2012, and then to 90 in both 2015 and 2016 (see far-right bars in Figure 23). As of February 21, 2018, the FCC had finalized 19 rules in the *Federal Register*.

A pro-regulatory mindset dominated the commission during the Obama administration, most notably in the push to apply utility regulation to broadband in pursuit of

so-called net neutrality rules. Those rules are now subject to a new rulemaking to overturn spearheaded by new FCC Chairman Ajit Pai.¹⁷⁷ This again illustrates the importance of distinguishing regulatory rules from de-regulatory ones.

Of the 140 economically significant rules in the works across the entire federal government, five belong to the FCC (see Table 7 and Box 4). Such rulemakings—along with other FCC rules in the Agenda pipeline and the dozens made final each year—present opportunities for either liberalization of telecommunications or avenues for new central regulatory oversight and protracted legal battles.¹⁷⁸ The commission had chosen the latter in recent years, but has changed under Chairman Pai.

Liberate to Stimulate

Policy makers frequently propose spending stimulus as a way to grow economies. It rarely goes well. A regulatory liberalization stimulus, however, can offer confidence and certainty for businesses and entrepreneurs. Proposals like those described in this section can help Congress achieve that goal. Meanwhile, the executive branch can take immediate steps to stress regulatory streamlining and actions such as requiring rules and guidance to be submitted to Congress and the GAO as intended by the Congressional Review Act. In addition, President Trump should issue a new executive order outlining principles for guidance preparation and disclosure.

Steps to Improve Regulatory Disclosure

Certainly, some regulations' benefits exceed costs, but net benefits and actual costs are difficult to quantify. Without more complete regulatory accounting than we get today, it is difficult to know whether society wins or loses as a result of rules.¹⁷⁹ Pertinent, relevant, and readily available regulatory data should be summarized and reported publicly to help create political pressure for better disclosure and reform. One incremental but important step toward greater openness would be for Congress to require—or for the administration or OMB to initiate—publication of a summary of available but scattered data. Such a regulatory transparency report card could resemble the presentation in *Ten Thousand Commandments*.

Accountability and disclosure are crucial. Congress routinely overdelegates legislative power to unelected agency personnel. Reining in off-budget regulatory costs can occur only when elected representatives assume responsibility and end “regulation without representation.” Changes made by comprehensive regulatory reform, such as the Regulatory Accountability Act, could help induce Congress to internalize pressures that would inspire cost-benefit appraisals before issuing open-ended directives to agencies to write rules.¹⁸⁰ More stringent limitations on delegation, such as requiring congressional approval of rules, are essential.

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

Moreover, agencies need not specify whether any or all of their economically significant or major rules cost only \$100 million or far more than that. One helpful reform would be for Congress to require agencies to break up their cost categories into tiers, as depicted in Table 11. Agencies could classify their rules on the basis of either (a) cost information that has been provided in the regulatory impact analyses that accompany some economically significant rules or (b) separate internal or external estimates.

Without more complete regulatory accounting than we get today, it is difficult to know whether society wins or loses as a result of rules.

Table 11. A Possible Breakdown of Economically Significant Rules

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

Further, much of the available regulatory information is difficult to compile or interpret. To learn about regulatory trends and acquire information on rules, interested citizens once needed to comb through the Agenda's 1,000-plus pages of small, multicolumn print. Today they can compile results from online searches and agencies' regulatory plans and sites like regulations.gov. That is all well and good, but data from the Agenda could be made more accessible and user-friendly if elements of it were officially summarized in charts and presented as a section in the federal budget, in the Agenda itself, or in the *Economic Report of the President*. Suggested components of this regulatory transparency report card appear in Box

5.¹⁸¹ In addition to revealing burdens, impacts, and trends, this user-friendly material would reveal more clearly what we do *not* know about the regulatory state. We need to better quantify the qualitative, so to speak; to know, for example, the percentage of rules that failed to quantify costs, and the percentage of rules that failed to quantify benefits.

Furthermore, the growing use of regulatory guidance documents, memoranda, and other "regulatory dark matter" to implement policy calls for far greater disclosure on these kinds of agency issuances than exists now, since these can be regulatory in effect but are nowhere to be found in the Agenda. Inven-

Box 5. Regulatory Transparency Report Card, Recommended Official Summary Data by Program, Agency, and Grand Total, with Five-Year Historical Tables

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

torying such “dark matter” is difficult to do, but not impossible. Legislation such as the Guidance Out of Darkness (GOOD) Act (H. R. 4809) would help remedy the disclosure problem.¹⁸²

In addition, we have little ability to distinguish between additive and subtractive rules and guidance in terms of burdens imposed. Congress should require agencies to classify their regulatory and deregulatory actions separately and to harmonize rule classifications across agencies.¹⁸³ Current reporting also distinguishes poorly between rules and guidance affecting the private sector and that affecting internal governmental operations.

Given such a basic framework, additional information could be incorporated into the report as warranted—for instance, success or failure of special initiatives such as executive branch restructuring or specific regulatory reform efforts. Providing historical tables would prove useful to scholars, third-party researchers, members of Congress, and the public. By making agency activity more explicit, a regulatory transparency report card would help ensure that policy makers take the growth of the regulatory state seriously.

Ending Regulation without Representation: The “Unconstitutionality Index”—34 Rules for Every Law

Regulatory agencies do not answer to voters. Yet in a sense, regulators rather than Congress do the bulk of U.S. lawmaking. But agencies are not the sole offenders. For too long, Congress has shirked its constitutional duty to make the tough calls. Instead, it delegates substantial lawmaking power to agencies and then fails to ensure that they deliver benefits that exceed costs.

The primary measure of an agency’s productivity—other than growth in its budget and number of employees—is the body of regulation it produces.¹⁸⁴ Agencies face significant incentives to expand their turf by regulating even

without established need. It is hard to blame agencies for carrying out the very regulating they were set up to do in the first place. Better to point a finger at Congress.

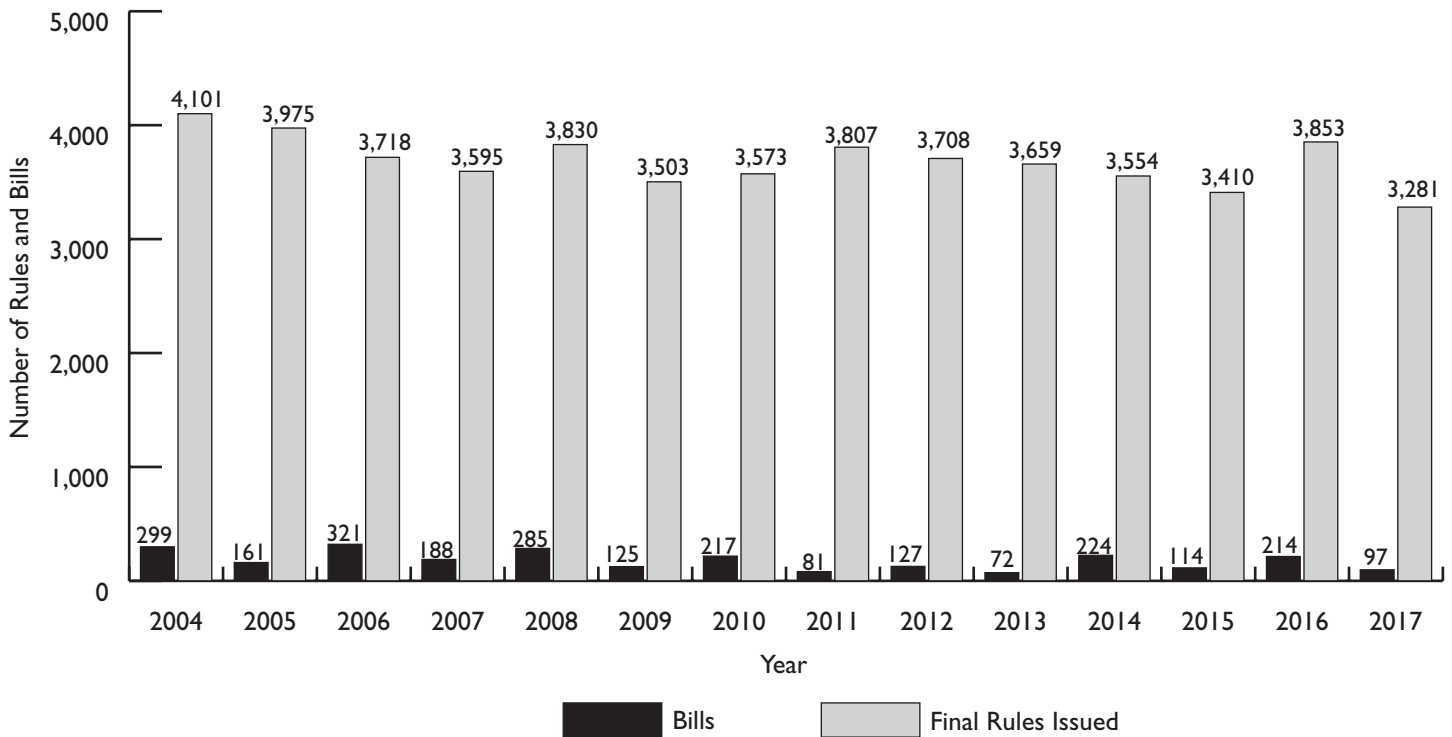
For perspective, consider that in calendar year 2017 regulatory agencies issued 3,281 final rules, whereas the 115th Congress passed and President Trump signed into law a comparatively few 97 bills.¹⁸⁵ Thus, there were 34 rules for every law in 2017 (see Figure 24). The Unconstitutionality Index ratio can vary widely, of course; while Trump’s rule count was lower, the number of laws enacted was down even more. The average over the past decade has been 28 rules for every law. Rules issued by agencies are not usually substantively related to the current year’s laws; typically, agencies administer earlier legislation. (Appendix: Historical Tables, Part I, depicts the Unconstitutionality Index dating back to 1993 and shows by way of comparison the numbers of executive orders and the numbers of agency notices.) If agency public notices and executive orders are considered, non-legislative policy making assumes even greater importance as an issue of concern.

Growing debt and deficits incentivize Congress to regulate rather than to increase government spending to accomplish policy ends. Suppose Congress wanted to boost job training. Funding a job training program would require approval of a new appropriation for the Department of Labor, which would appear in the federal budget and increase the deficit. Instead, Washington could mandate for Fortune 500 companies to implement job training programs, to be carried out according to new regulations issued by the Department of Labor. The latter option would add little to federal spending but would still let Congress take credit for the program. By regulating instead of spending, government can expand almost indefinitely without explicitly taxing anybody one extra penny.

An annual regulatory transparency report card is worthwhile and needed, but it is not the complete response. Regulatory reforms that rely on agencies policing themselves will not

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

Figure 24. The Unconstitutionality Index, 2004–2017



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

rein in the regulatory state or fully address regulation without representation. Rather, making Congress directly answerable to voters for the costs that agencies impose on the public would best promote accountable regulation. To that end, Congress should vote on agencies' final rules before such rules become binding on the public.

Affirmation of new major regulations would ensure that Congress bears direct responsibility for every dollar of new regulatory costs. The Regulations from the Executive in Need of Scrutiny (REINS) Act (H. R. 26, S. 21), sponsored by Rep. Doug Collins (R-Ga.) and Sen. Rand Paul (R-Ky.), offers one such approach.¹⁸⁶ The REINS Act would require Congress to vote on all economically significant agency regulations—those with estimated annual costs of \$100 million or more. It has passed the House in the current and

three previous congressional sessions but has not moved forward in the Senate.

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

If Congress does not act, states could take the ball from Congress. Many state legislators have indicated support for the Regulation Freedom Amendment, which reads, in its entirety:

Whenever one quarter of the members of the U.S. House or the U.S. Senate transmit to the president

their written declaration of opposition to a proposed federal regulation, it shall require a majority vote of the House and Senate to adopt that regulation.¹⁸⁷

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

These changes are necessary but not sufficient. Legislative regulatory reform and executive branch streamlining are pieces of more fundamental debates. Congress is responsible for the fiscal budget, yet deficits are the norm. The bigger questions are over the role and legitimacy of the administrative state and the proper size and scope of government in a constitutional republic.

Appendix: Historical Tables

Part A. Federal Register Page History, 1936–2017

Year	Unadjusted Page Count	Jumps/Blanks	Adjusted Page Count
1936	2,620	n/a	2,620
1937	3,450	n/a	3,450
1938	3,194	n/a	3,194
1939	5,007	n/a	5,007
1940	5,307	n/a	5,307
1941	6,877	n/a	6,877
1942	11,134	n/a	11,134
1943	17,553	n/a	17,553
1944	15,194	n/a	15,194
1945	15,508	n/a	15,508
1946	14,736	n/a	14,736
1947	8,902	n/a	8,902
1948	9,608	n/a	9,608
1949	7,952	n/a	7,952
1950	9,562	n/a	9,562
1951	13,175	n/a	13,175
1952	11,896	n/a	11,896
1953	8,912	n/a	8,912
1954	9,910	n/a	9,910
1955	10,196	n/a	10,196
1956	10,528	n/a	10,528
1957	11,156	n/a	11,156
1958	10,579	n/a	10,579
1959	11,116	n/a	11,116
1960	14,479	n/a	14,479
1961	12,792	n/a	12,792
1962	13,226	n/a	13,226
1963	14,842	n/a	14,842
1964	19,304	n/a	19,304
1965	17,206	n/a	17,206
1966	16,850	n/a	16,850
1967	21,088	n/a	21,088
1968	20,072	n/a	20,072
1969	20,466	n/a	20,466
1970	20,036	n/a	20,036

Year	Unadjusted Page Count	Jumps/Blanks	Adjusted Page Count
1971	25,447	n/a	25,447
1972	28,924	n/a	28,924
1973	35,592	n/a	35,592
1974	45,422	n/a	45,422
1975	60,221	n/a	60,221
1976	57,072	6,567	50,505
1977	65,603	7,816	57,787
1978	61,261	5,565	55,696
1979	77,498	6,307	71,191
1980	87,012	13,754	73,258
1981	63,554	5,818	57,736
1982	58,494	5,390	53,104
1983	57,704	4,686	53,018
1984	50,998	2,355	48,643
1985	53,480	2,978	50,502
1986	47,418	2,606	44,812
1987	49,654	2,621	47,033
1988	53,376	2,760	50,616
1989	53,842	3,341	50,501
1990	53,620	3,825	49,795
1991	67,716	9,743	57,973
1992	62,928	5,925	57,003
1993	69,688	8,522	61,166
1994	68,108	3,194	64,914
1995	67,518	4,873	62,645
1996	69,368	4,777	64,591
1997	68,530	3,981	64,549
1998	72,356	3,785	68,571
1999	73,880	2,719	71,161
2000	83,294	9,036	74,258
2001	67,702	3,264	64,438
2002	80,332	4,726	75,606
2003	75,798	4,529	71,269
2004	78,852	3,177	75,675
2005	77,777	3,907	73,870
2006	78,724	3,787	74,937
2007	74,408	2,318	72,090
2008	80,700	1,265	79,435
2009	69,644	1,046	68,598
2010	82,480	1,075	81,405
2011	82,415	1,168	81,247
2012	80,050	1,089	78,961
2013	80,462	1,151	79,311
2014	78,796	1,109	77,687
2015	81,402	1,142	80,260
2016	97,069	1,175	95,894
2017	61,950	642	61,308

Source: National Archives and Records Administration, Office of the Federal Register.
Publication of proposed rules was not required before the Administrative Procedure Act of 1946. Preambles to rules were published only to a limited extent before the 1970s. n/a = not available.

Part B. Number of Documents in the *Federal Register*, 1976–2017

Year	Final Rules	Proposed Rules	Other*	Total
1976	7,401	3,875	27,223	38,499
1977	7,031	4,188	28,381	39,600
1978	7,001	4,550	28,705	40,256
1979	7,611	5,824	29,211	42,646
1980	7,745	5,347	33,670	46,762
1981	6,481	3,862	30,090	40,433
1982	6,288	3,729	28,621	38,638
1983	6,049	3,907	27,580	37,536
1984	5,154	3,350	26,047	34,551
1985	4,843	3,381	22,833	31,057
1986	4,589	3,185	21,546	29,320
1987	4,581	3,423	22,052	30,056
1988	4,697	3,240	22,047	29,984
1989	4,714	3,194	22,218	30,126
1990	4,334	3,041	22,999	30,374
1991	4,416	3,099	23,427	30,942
1992	4,155	3,170	24,063	31,388
1993	4,369	3,207	24,017	31,593
1994	4,867	3,372	23,669	31,908
1995	4,713	3,339	23,133	31,185
1996	4,937	3,208	24,485	32,630
1997	4,584	2,881	26,260	33,725
1998	4,899	3,042	26,313	34,254
1999	4,684	3,281	26,074	34,039
2000	4,313	2,636	24,976	31,925
2001	4,132	2,512	25,392	32,036
2002	4,167	2,635	26,250	33,052
2003	4,148	2,538	25,168	31,854
2004	4,101	2,430	25,846	32,377
2005	3,943	2,257	26,020	32,220
2006	3,718	2,346	25,429	31,493
2007	3,595	2,308	24,784	30,687
2008	3,830	2,475	25,574	31,879
2009	3,503	2,044	25,218	30,765
2010	3,573	2,439	26,543	32,555
2011	3,807	2,898	26,296	33,001
2012	3,708	2,517	24,755	30,980
2013	3,659	2,594	24,517	30,770
2014	3,554	2,383	24,257	30,194
2015	3,410	2,342	24,294	30,046
2016	3,853	2,419	24,912	31,184
2017	3,281	1,834	22,132	27,247

Source: National Archives and Records Administration, Office of the Federal Register.
* "Other" documents are presidential documents, agency notices, and corrections.

Rules since 1993: 101,380; rules since 1975: 198,470; other since 1975: 1,066,129.

Part C. Code of Federal Regulations Page Counts and Number of Volumes, 1975–2017

Year	Actual Pages Published (includes text, preliminary pages, and tables)				Unrevised CFR Volumes**	Total Pages Complete CFR	Total CFR Volumes (excluding Index)
	Titles 1–50 (minus Title 3)	Title 3 (POTUS Docs)	Index*	Total Pages Published			
1975	69,704	296	792	70,792	432	71,224	133
1976	71,289	326	693	72,308	432	72,740	139
1977	83,425	288	584	84,297	432	84,729	141
1978	88,562	301	660	89,523	4,628	94,151	142
1979	93,144	438	990	94,572	3,460	98,032	148
1980	95,043	640	1,972	97,655	4,640	102,295	164
1981	103,699	442	1,808	105,949	1,160	107,109	180
1982	102,708	328	920	103,956	982	104,938	177
1983	102,892	354	960	104,206	1,448	105,654	178
1984	110,039	324	998	111,361	469	111,830	186
1985	102,815	336	1,054	104,205	1,730	105,935	175
1986	105,973	512	1,002	107,487	1,922	109,409	175
1987	112,007	374	1,034	113,415	922	114,337	185
1988	114,634	408	1,060	116,102	1,378	117,480	193
1989	118,586	752	1,058	120,396	1,694	122,090	196
1990	121,837	376	1,098	123,311	3,582	126,893	199
1991	119,969	478	1,106	121,553	3,778	125,331	199
1992	124,026	559	1,122	125,707	2,637	128,344	199
1993	129,162	498	1,141	130,801	1,427	132,228	202
1994	129,987	936	1,094	132,017	2,179	134,196	202
1995	134,471	1,170	1,068	136,709	1,477	138,186	205
1996	129,386	622	1,033	131,041	1,071	132,112	204
1997	128,672	429	1,011	130,112	948	131,060	200
1998	132,884	417	1,015	134,316	811	135,127	201
1999	130,457	401	1,022	131,880	3,052	134,932	202
2000	133,208	407	1,019	134,634	3,415	138,049	202
2001	134,582	483	1,041	136,106	5,175	141,281	206
2002	137,373	1,114	1,039	139,526	5,573	145,099	207
2003	139,550	421	1,053	141,024	3,153	144,177	214
2004	143,750	447	1,073	145,270	2,369	147,639	217
2005	146,422	103	1,083	147,608	4,365	151,973	221
2006	149,594	376	1,077	151,047	3,060	154,107	222
2007	149,236	428	1,088	150,752	5,258	156,010	222
2008	151,547	453	1,101	153,101	4,873	157,974	222
2009	158,369	412	1,112	159,893	3,440	163,333	225
2010	152,455	512	1,122	154,089	11,405	165,494	226
2011	159,129	486	1,136	160,751	8,544	169,295	230
2012	164,884	472	1,154	166,510	8,047	174,557	235
2013	166,352	520	1,170	168,042	7,454	175,496	235
2014	165,016	538	1,170	166,724	12,657	179,381	236
2015	170,278	495	1,170	171,943	6,334	178,277	237
2016	174,769	570	1,170	176,509	8,544	185,053	242
2017	178,628	846	1,170	180,644	5,730	186,374	242

Source: Chart from National Archives and Records Administration, Office of the Federal Register.
 *General Index and Finding Aids volume for 1975 and 1976. **Unrevised CFR volumes page totals include those previous editions for which a cover only was issued during the year or any previous editions for which a supplement was issued.

Part D. Number of Regulatory Reviews at the Office of Information and Regulatory Affairs, 1991–2017

Year	Prerule reviews	Proposed rule re-views	Interim final rule reviews	Final rule reviews	Notice reviews	Total reviews	ES re-views	Non-ES reviews	Days ES reviews	Days non-ES reviews	Average Days Review Time	
											Overall average days	Overall average days
1991		1,201		1,322		2,523	142	2,381	39	29	39	29
1992		970		1,315		2,285	121	2,164	44	39	44	39
1993	2	976	6	1,155	28	2,167	106	2,061	53	42	53	43
1994	16	317	68	302	128	831	134	697	33	30	33	31
1995	8	225	64	270	53	620	74	546	41	35	41	35
1996	28	160	56	232	31	507	74	433	39	42	39	42
1997	20	196	64	174	51	505	81	424	47	54	47	53
1998	15	192	58	182	40	487	73	414	33	50	33	48
1999	19	247	71	214	36	587	86	501	51	53	51	53
2000	13	210	66	253	40	582	92	490	60	62	60	62
2001	9	274	95	285	37	700	111	589	46	60	46	58
2002	23	261	81	249	55	669	100	569	44	46	44	46
2003	23	232	92	309	59	715	101	614	42	50	42	49
2004	26	237	64	241	58	626	85	541	35	55	35	53
2005	18	221	66	247	59	611	82	529	39	59	39	57
2006	12	229	43	270	46	600	71	529	34	59	34	56
2007	22	248	44	250	25	589	85	504	49	64	49	61
2008	17	276	39	313	28	673	135	538	53	63	53	61
2009	28	214	67	237	49	595	125	470	33	40	33	39
2010	36	261	84	232	77	690	138	552	48	51	48	51
2011	24	317	76	262	61	740	117	623	51	60	51	58
2012	12	144	33	195	40	424	83	341	69	81	69	79
2013	11	177	33	160	37	418	104	314	121	143	121	137
2014	17	201	43	144	46	452	114	338	106	134	106	127
2015	8	178	29	164	35	415	130	285	84	90	84	88
2016	14	231	28	303	45	623	156	467	83	79	83	80
2017	13	84	12	103	24	237	70	167	56	74	56	68

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

ES = economically significant.

Part E. Unified Agenda Rules History, 1983–2017

Total Number of Rules under Consideration or Enacted

1980s			1990s			2000s		
1983	April	2,863	1990	April	4,332	2000	October	4,699
	October	4,032		October	4,470	2001	October	4,509
1984	April	4,114	1991	April	4,675	2002	October	4,187
	October	4,016		October	4,863	2003	December	4,266
1985	April	4,265	1992	April	4,186	2004	December	4,083
	October	4,131		October	4,909	2005	October	4,062
1986	April	3,961	1993	April	4,933	2006	December	4,052
	October	3,983		October	4,950	2007	December	3,882
1987	April	4,038	1994	April	5,105	2008	December	4,004
	October	4,005		October	5,119	2009	December	4,043
1988	April	3,941	1995	April	5,133	2010	December	4,225
	October	4,017		October	4,735	2011	December	4,128
1989	April	4,003	1996	April	4,570	2012	Year-End*	4,062
	October	4,187		October	4,680	2013	November	3,305
			1997	April	4,417	2014	November	3,415
				October	4,407	2015	November	3,297
			1998	April	4,504	2016	November	3,318
				October	4,560	2017	December	3,209
			1999	April	4,524			
				October	4,568			

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

*Spring edition skipped in 2012.

Federal Trade Commission	18	20	23	20	23	24	19	20	17	14	16	15	14	12	10	13	14
General Services Administration	23	21	25	18	21	29	34	49	54	26	34	33	27	37	40	35	40
Gulf Coast Ecosystem Restoration Council	2	4	4														
Institute of Museum and Library Services		1	1	3	3	1	2	1	2	1	1	4	3	6	5	5	4
National Aeronautics and Space Administration	12	14	22	23	37	46	26	32	19	11	15	20	27	34	13	17	11
National Archives and Records Administration	10	8	10	6	6	4	9	7	10	15	21	17	22	19	20	19	21
National Credit Union Administration		1	22	24	31	28	24	24	22	24	29	27	26	27	20	22	16
National Council on Disability	15	26															
National Endowment for the Arts	5	7	8	7	8			2	3	2	2	2	2	6	5	5	5
National Endowment for the Humanities	4	4	5	4	3	5	4	3	3	3	3	3	3	8	9	8	7
National Indian Gaming Commission	9	9	5	5	15	15	9	17	18	19	16	15	14	14	16	15	14
National Labor Relations Board			1	1	1												
National Science Foundation	2	1	3	2	3	3	2	3	3	0	2	3	3	2	2	3	5
National Transportation Safety Board	17	15	14														
Nuclear Regulatory Commission	62	65	60	53	73	64	63	61	54	53	45	49	42	45	39	42	55
Office of Federal Housing Enterprise Oversight									10	9	8	6	4	4	7	9	5
Office of Government Ethics	8	5	6	4	4	5	7	7	6	9	8	7	7	9	10	11	11
Office of Management and Budget	4	4	2	2	5	8	7	7	2	1	2	2	3	4	4	5	5
Office of National Drug Control Policy		1															
Office of Personnel Management	38	40	67	54	73	87	77	77	80	75	93	94	103	90	72	91	110
Office of Special Counsel									0	0	0	0	0	0	0	0	3
Office of the Trade Representative	3									0	0	0	0	0	0	0	0
Peace Corps	4	3	4	4	5	5	1	1	7	6	6	5	4	9	9	9	8
Pension Benefit Guaranty Corporation	13	12	12	13	13	12	10	10	12	12	13	9	6	4	6	11	10
Postal Regulatory Commission			2	2	2	1	3	2	2	3	0	0	0	0	0	0	0
Presidio Trust									0	0	0	2	2	1	2	2	3
Privacy and Civil Liberties Oversight Board				1					0	1	0	0	0	0	0	0	0
Railroad Retirement Board	2	1	1	1	1	1	1	1	3	2	6	5	6	11	13	13	19
Recovery Accountability and Transparency Board			3	3	2		1	3									
Securities and Exchange Commission	75	69	61	76	89	107	75	74	72	76	71	64	79	71	73	80	77
Selective Service System						1	1	1	1	1	1	1	1	1	1	1	1
Small Business Administration	30	33	30	30	43	48	51	39	26	28	32	34	29	33	40	37	41
Social Security Administration	36	42	39	44	49	53	63	58	64	63	53	68	59	64	63	85	82
Special Insp. Gen. for Afghanistan Reconstr.	1				4												
Surface Transportation Board	20	12	8	9	10	11	5	5	6	4	7	3	4	5	5	4	3
Tennessee Valley Authority									0	0	0	0	0	2	2	3	3
Udall Institute for Environmental Conflict Res.									0	0	0	0	0	1	1	3	3
TOTAL	3,318	3,297	3,415	3,305	4,062	4,128	4,225	4,043	4,004	3,882	4,052	4,062	4,083	4,266	4,187	4,509	4,699

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>.

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

Part G. List of 140 Economically Significant Rules, Year-End 2017

ACTIVE RULEMAKINGS (71)

DEPARTMENT OF AGRICULTURE

1. USDA/AMS, Proposed Rule Stage, NOP: Organic Livestock and Poultry Practices, 0581-AD75
2. USDA/AMS, Final Rule Stage, NOP; Organic Livestock and Poultry Practices, 0581-AD44

DEPARTMENT OF DEFENSE

3. DOC/PTO, Final Rule Stage, Setting and Adjusting Patent Fees During Fiscal Year 2017, 0651-AD02
4. DOD/DODOASHA, Final Rule Stage, TRICARE; Reimbursement of Long-Term Care Hospitals and Inpatient Rehabilitation Facilities, 0720-AB47

DEPARTMENT OF EDUCATION

5. ED/OPE, Proposed Rule Stage, Borrower Defense and Related Issues, 1840-AD26
6. ED/OPE, Proposed Rule Stage, Program Integrity; Gainful Employment, 1840-AD31
7. ED/OII, Proposed Rule Stage, Proposed Priorities, Requirements, and Selection Criteria—Charter Schools Program Grants to Charter Management Organizations, 1855-AA14

DEPARTMENT OF ENERGY

8. DOE/EE, Proposed Rule Stage, Energy Conservation Standards and Definition for General Service Lamps, 1904-AD09
9. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Residential Conventional Cooking Products, 1904-AD15

DEPARTMENT OF HEALTH AND HUMAN SERVICES

10. HHS/FDA, Proposed Rule Stage, Sunscreen Drug Products for over-the-Counter Human Use; Tentative Final Monograph, 0910-AF43
11. HHS/FDA, Proposed Rule Stage, Mammography Quality Standards Act; Regulatory Amendments, 0910-AH04
12. HHS/FDA, Proposed Rule Stage, Current Good Manufacturing Practice for Outsourcing Facilities, 0910-AH61

13. HHS/FDA, Proposed Rule Stage, Requirement for Access or Safe Use of Certain Nonprescription Drug Products, 0910-AH62
14. HHS/FDA, Proposed Rule Stage, Medication Guides; Patient Medication Information, 0910-AH68
15. HHS/FDA, Proposed Rule Stage, Testing Standards for Batteries and Battery Management Systems in Electronic Nicotine Delivery Systems, 0910-AH90
16. HHS/FDA, Proposed Rule Stage, Food Labeling: Revision of the Nutrition and Supplement Facts Labels and Serving Sizes of Foods that Can Reasonably Be Consumed At One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and E, 0910-AH92
17. HHS/FDA, Proposed Rule Stage, Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption, Extension of Compliance Dates for Subpart E, 0910-AH93
18. HHS/OASH, Proposed Rule Stage, Proposed One-Year Delay of the General Implementation Date While Allowing the Use of Three Burden-Reducing Provisions During the Delay Year, 0937-AA05
19. HHS/CMS, Proposed Rule Stage, Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2019 (CMS-4182-P), 0938-AT08
20. HHS/CMS, Proposed Rule Stage, CY 2019 Notice of Benefit and Payment Parameters (CMS-9930-P), 0938-AT12
21. HHS/CMS, Proposed Rule Stage, Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction (CMS-3346-P), 0938-AT23
22. HHS/CMS, Proposed Rule Stage, FY 2019 Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities (SNFs) (CMS-1696-P), 0938-AT24
23. HHS/CMS, Proposed Rule Stage, Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2019 (CMS-1688-P), 0938-AT25
24. HHS/CMS, Proposed Rule Stage, FY 2019 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements (CMS-1692-P), 0938-AT26
25. HHS/CMS, Proposed Rule Stage, Hospital Inpatient Prospective Payment System for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and FY 2019 Rates (CMS-1694-P), 0938-AT27
26. HHS/CMS, Proposed Rule Stage, CY 2019 Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System, (CMS-1691-P), 0938-AT28

27. HHS/CMS, Proposed Rule Stage, CY 2019 Home Health Prospective Payment System Rate Update (CMS-1689-P), 0938-AT29
28. HHS/CMS, Proposed Rule Stage, CY 2019 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1695-P), 0938-AT30
29. HHS/CMS, Proposed Rule Stage, CY 2019 Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1693-P), 0938-AT31
30. HHS/CMS, Proposed Rule Stage, FY 2019 Inpatient Psychiatric Facilities Prospective Payment System—Rate Update (CMS-1690-P), 0938-AT32
31. HHS/CMS, Proposed Rule Stage, CY 2020 Notice of Benefit and Payment Parameters (CMS-9926-P), 0938-AT37
32. HHS/CMS, Proposed Rule Stage, Administrative Simplification; Health Care Claims Attachments (CMS-0053-P), 0938-AT38
33. HHS/CMS, Proposed Rule Stage, Medicaid and CHIP Managed Care (CMS-2408-P), 0938-AT40
34. HHS/CMS, Final Rule Stage, Medicaid Disproportionate Share Hospital (DSH) Allotment Reductions (CMS-2394-F), 0938-AS63
35. HHS/CMS, Final Rule Stage, Durable Medical Equipment Fee Schedule, Adjustments to Resume the Transitional 50/50 Blended Rates to Provide Relief in Non-Competitive Bidding Areas (CMS-1687-IFC), 0938-AT21
36. HHS/CMS, Final Rule Stage, Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for CY 2019 (CMS-8068-N), 0938-AT33
37. HHS/OCR, Proposed Rule Stage, HIPAA Privacy Rule: Changing Requirement to Obtain Acknowledgment of Receipt of the Notice of Privacy Practices, 0945-AA08
38. HHS/ONC, Proposed Rule Stage, Health Information Technology: Interoperability and Certification Enhancements, 0955-AA01
39. HHS/ACF, Proposed Rule Stage, Head Start Service Duration Requirements, 0970-AC73
40. DHS/OS, Proposed Rule Stage, Collection of Alien Biometric Data Upon Exit from the United States at Air and Sea Ports of Departure, 1601-AA34
41. DHS/USCIS, Proposed Rule Stage, Removing H-4 Dependent Spouses from the Class of Aliens Eligible for Employment Authorization, 1615-AC15
42. DHS/USCIBP, Proposed Rule Stage, Western Hemisphere Travel Initiative (WHTI)-Noncompliant Traveler Fee, 1651-AB06
43. DHS/USCIBP, Final Rule Stage, Air Cargo Advance Screening (ACAS), 1651-AB04
44. DHS/FEMA, Prerule Stage, National Flood Insurance Program (NFIP); Revisions to Methodology for Payments to Write Your Own Companies (WYO), 1660-AA90

DEPARTMENT OF THE INTERIOR

45. DOI/BSEE, Proposed Rule Stage, Revisions to the Blowout Preventer Systems and Well Control Rule, 1014-AA39
46. DOI/BSEE, Proposed Rule Stage, Revisions to the Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf, 1014-AA40
47. DOI/FWS, Proposed Rule Stage, Migratory Bird Hunting; 2018-2019 Migratory Game Bird Hunting Regulations, 1018-BB73
48. DOI/FWS, Final Rule Stage, Migratory Bird Hunting; 2017-2018 Migratory Game Bird Hunting Regulations, 1018-BB40

DEPARTMENT OF LABOR

49. DOL/EBSA, Proposed Rule Stage, Revision of the Form 5500 Series and Implementing Related Regulations under the Employee Retirement Income Security Act of 1974 (ERISA), 1210-AB63
50. DOL/EBSA, Proposed Rule Stage, Definition of an ‘Employer’ under Section 3(5) of ERISA—Association Health Plans, 1210-AB85
51. DOL/WHI, Proposed Rule Stage, Tip Regulations under the Fair Labor Standards Act (FLSA), 1235-AA21

DEPARTMENT OF STATE

52. STATE, Final Rule Stage, Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates—Passport and Documentary Services Fee Changes, 1400-AD81

DEPARTMENT OF TRANSPORTATION

53. DOT/NHTSA, Proposed Rule Stage, Rear Seat Belt Reminder System, 2127-AL37

DEPARTMENT OF HOMELAND SECURITY

40. DHS/OS, Proposed Rule Stage, Collection of Alien Biometric Data Upon Exit from the United States at Air and Sea Ports of Departure, 1601-AA34

- 54. DOT/NHTSA, Proposed Rule Stage, Passenger Car and Light Truck Corporate Average Fuel Economy Standards MYs 2022-2025, 2127-AL76
- 55. DOT/NHTSA, Final Rule Stage, Establish Side Impact Performance Requirements for Child Restraint Systems (MAP-21), 2127-AK95
- 56. DOT/FRA, Final Rule Stage, Passenger Equipment Safety Standards Amendments, 2130-AC46
- 68. EPA/OAR, Final Rule Stage, Renewable Fuel Volume Standards for 2018 and Biomass Based Diesel Volume (BBD) for 2019, 2060-AT04
- 69. EPA/OAR, Final Rule Stage, Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 2060-AT55
- 70. EPA/OAR, Final Rule Stage, Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements, 2060-AT59

DEPARTMENT OF THE TREASURY

- 57. TREAS/FINCEN, Proposed Rule Stage, Financial Crimes Enforcement Network: Cross-Border Electronic Transmittals of Funds, 1506-AB01
- 58. TREAS/CUSTOMS, Final Rule Stage, Automated Commercial Environment (ACE) Required for Electronic Entry/Entry Summary (Cargo Release and Related Entry) Filings, 1515-AE03
- 59. TREAS/IRS, Proposed Rule Stage, Treatment of Certain Interests Between Members of an Expanded Group, 1545-BO02
- 60. TREAS/IRS, Proposed Rule Stage, Treatment of Certain Interests in Corporations as Stock or Indebtedness, 1545-BO18

DEPARTMENT OF VETERANS AFFAIRS

- 61. VA, Proposed Rule Stage, Civilian Health and Medical Program of the Department of Veterans Affairs, 2900-AP02
- 62. VA, Final Rule Stage, Loan Guaranty: Ability-to-Repay Standards and Qualified Mortgage Definition under the Truth in Lending Act, 2900-AO65
- 63. VA, Final Rule Stage, Expanded Access to Non-VA Care Through the Veterans Choice Program, 2900-AP60
- 64. VA, Final Rule Stage, Reimbursement for Emergency Treatment, 2900-AQ08

ENVIRONMENTAL PROTECTION AGENCY

- 65. EPA/OW, Proposed Rule Stage, Federal Numeric Nutrient Criteria Applicable to Missouri Lakes, 2040-AF69
- 66. EPA/OW, Proposed Rule Stage, National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions, 2040-AF15
- 67. EPA/OAR, Proposed Rule Stage, Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration, 2060-AT54

NUCLEAR REGULATORY COMMISSION

- 71. NRC, Proposed Rule Stage, Revision of Fee Schedules: Fee Recovery for FY 2018 [NRC-2017-0026], 3150-AJ95

COMPLETED ACTIONS (21)

DEPARTMENT OF AGRICULTURE

- 72. USDA/GIPSA, Clarification of Scope, 0580-AB25

DEPARTMENT OF EDUCATION

- 73. ED/OESE, Title I of the Elementary and Secondary Education Act of 1965—Accountability and State Plans, 1810-AB27

DEPARTMENT OF ENERGY

- 74. DOE/EE, Energy Conservation Standards for Walk-In Coolers and Walk-In Freezers, 1904-AD59

DEPARTMENT OF HEALTH AND HUMAN SERVICES

- 75. HHS/FDA, Current Good Manufacturing Practice in Manufacturing, Packing, Labeling, or Holding Operations for Dietary Supplements, 0910-AB88
- 76. HHS/FDA, Updated Standards for Labeling of Pet Food, 0910-AG09
- 77. HHS/FDA, Radiology Devices; Designation of Special Controls for the Computed Tomography X-Ray System, 0910-AH03
- 78. HHS/CMS, FY 2018 Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities (SNFs), SNF Value-Based Purchasing Program, SNF Quality Reporting Program (CMS-1679-F), 0938-AS96

79. HHS/CMS, Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2018 Rates (CMS-1677-F), 0938-AS98
80. HHS/CMS, FY 2018 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements (CMS-1675-F), 0938-AT00
81. HHS/CMS, CY 2018 Home Health Prospective Payment System Rate Update; CY 2019 Case-Mix Adjustment Methodology Refinements; Value-Based Purchasing Model; and Quality Reporting Requirements (CMS-1672-F), 0938-AT01
82. HHS/CMS, CY 2018 Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Part B; Medicare Shared Savings Program Requirements; Medicare Diabetes Prevention Program (CMS-1676-F), 0938-AT02
83. HHS/CMS, CY 2018 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1678-FC), 0938-AT03
84. HHS/CMS, CY 2018 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts (CMS-8065-N), 0938-AT05
85. HHS/CMS, CY 2018 Updates to the Quality Payment Program (CMS-5522-FC), 0938-AT13

DEPARTMENT OF JUSTICE

86. DOJ/CRT, Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of Public Accommodations, 1190-AA61
87. DOJ/CRT, Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Governments, 1190-AA65

DEPARTMENT OF TREASURY

88. TREAS/IRS, Updated Mortality Tables for Determining Present Value, 1545-BM71

ENVIRONMENTAL PROTECTION AGENCY

89. EPA/OLEM, Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act, 2050-AG82

FEDERAL ACQUISITION REGULATION

90. FAR, Federal Acquisition Regulation (FAR); FAR Case 2017-015, Removal of Fair Pay and Safe Workplaces Rule, 9000-AN52

FEDERAL DEPOSIT INSURANCE CORPORATION

91. FDIC, Restrictions on Qualified Financial Contracts of Certain FDIC-Supervised Institutions; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions, 3064-AE46

NUCLEAR REGULATORY COMMISSION

92. NRC, Revision of Fee Schedules; Fee Recovery for FY 2017 [NRC-2016-0081], 3150-AJ73

LONG-TERM ACTIONS (48)

DEPARTMENT OF AGRICULTURE

93. USDA/RHS, Implementation of the Multi-Family Housing U.S. Citizenship Requirements, 0575-AC86
94. USDA/FSIS, Revision of the Nutrition Facts Panels for Meat and Poultry Products and Updating Certain Reference Amounts Customarily Consumed, 0583-AD56

DEPARTMENT OF ENERGY

95. DOE/EE, Energy Conservation Standards for Commercial Packaged Boilers, 1904-AD01
96. DOE/EE, Energy Conservation Standards for Portable Air Conditioners, 1904-AD02
97. DOE/EE, Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces, 1904-AD20
98. DOE/EE, Energy Conservation Standards for Commercial Water Heating Equipment, 1904-AD34
99. DOE/EE, Energy Conservation Standards for Uninterruptible Power Supplies, 1904-AD69
100. DOE/EE, Energy Conservation Standards for External Power Supplies, 1904-AD87
101. DOE/OGC, Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation, 1990-AA39

DEPARTMENT OF HEALTH AND HUMAN SERVICES

102. HHS/FDA, General and Plastic Surgery Devices: Sunlamp Products, 0910-AH14
103. HHS/FDA, Combinations of Bronchodilators With Expectorants; Cold, Cough, Allergy, Bronchodilator,

- and Antiasthmatic Drug Products for over-the-Counter Human Use, 0910-AH16
104. HHS/CMS, Hospital and Critical Access Hospital (CAH) Changes to Promote Innovation, Flexibility, and Improvement in Patient Care (CMS-3295-F), 0938-AS21
 105. HHS/CMS, Revisions to Requirements for Discharge Planning for Hospitals, Critical Access Hospitals, and Home Health Agencies (CMS-3317-F), 0938-AS59
 106. HHS/CMS, Program Integrity Enhancements to the Provider Enrollment Process (CMS-6058-F), 0938-AS84

DEPARTMENT OF HOMELAND SECURITY

107. DHS/OS, Ammonium Nitrate Security Program, 1601-AA52
108. DHS/USCIS, Temporary Non-Agricultural Employment of H-2B Aliens in the United States, 1615-AC06
109. DHS/USCBP, Importer Security Filing and Additional Carrier Requirements, 1651-AA70

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

110. HUD/CPD, Housing Trust Fund (FR-5246), 2506-AC30
111. HUD/PIH, Housing Choice Voucher Program—New Administrative Fee Formula (FR-5874), 2577-AC99

DEPARTMENT OF LABOR

112. DOL/ETA, Temporary Non-Agricultural Employment of H-2B Aliens in the United States, 1205-AB76
113. DOL/EBSA, Improved Fee Disclosure for Welfare Plans, 1210-AB37
114. DOL/OSHA, Infectious Diseases, 1218-AC46
115. DOL/OSHA, Process Safety Management and Prevention of Major Chemical Accidents, 1218-AC82
116. DOL/OSHA, Emergency Response and Preparedness, 1218-AC91

DEPARTMENT OF TRANSPORTATION

117. DOT/FMCSA, Heavy Vehicle Speed Limiters, 2126-AB63
118. DOT/NHTSA, Heavy Vehicle Speed Limiters, 2127-AK92
119. DOT/NHTSA, Federal Motor Vehicle Safety Standard (FMVSS) 150—Vehicle to Vehicle (V2V) Communication, 2127-AL55

120. DOT/NHTSA, Retroreflective Tape for Single Unit Trucks, 2127-AL57
121. DOT/FRA, High-Speed Intercity Passenger Rail (HSIPR) Program; Buy America Program Requirements, 2130-AC23

DEPARTMENT OF THE TREASURY

122. TREAS/DO, Assessment of Fees for Large Bank Holding Companies and Nonbank Financial Companies Supervised by the Federal Reserve to Cover the Expenses of the Financial Research Fund, 1505-AC42
123. TREAS/OCC, Net Stable Funding Ratio, 1557-AD97
124. TREAS/CDFIE, Interim Rule for the CDFI Bond Guarantee Program, 1559-AA01

DEPARTMENT OF VETERANS AFFAIRS

125. VA, Net Worth, Asset Transfers, and Income Exclusions for Needs-Based Benefits, 2900-AO73

ENVIRONMENTAL PROTECTION AGENCY

126. EPA/OW, National Primary Drinking Water Regulations: Radon, 2040-AA94
127. EPA/OLEM, Water Resources Reform Development Act Farm Amendments to the Spill Prevention Control and Countermeasures Rule, 2050-AG84
128. EPA/OCSP, Lead; Renovation, Repair, and Painting Program for Public and Commercial Buildings, 2070-AJ56
129. EPA/OCSP, N-Methylpyrrolidone (NMP) and Methylene Chloride; Rulemaking under TSCA Section 6(a), 2070-AK07
130. EPA/OCSP, Trichloroethylene (TCE); Rulemaking under TSCA Section 6(a); Vapor Degreasing, 2070-AK11

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

131. ATBCB, Americans With Disabilities Act Accessibility Guidelines for Passenger Vessels, 3014-AA11

CONSUMER PRODUCT SAFETY COMMISSION

132. CPSC, Flammability Standard for Upholstered Furniture, 3041-AB35
133. CPSC, Regulatory Options for Table Saws, 3041-AC31
134. CPSC, Portable Generators, 3041-AC36

FEDERAL COMMUNICATIONS COMMISSION

- 135. FCC, Expanding Broadband and Innovation Through Air-Ground Mobile Broadband Secondary Service for Passengers Aboard Aircraft in the 14. 0-14. 5 GHz Band; GN Docket No. 13-114, 3060-AK02
- 136. FCC, Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions; (GN Docket No. 12-268), 3060-AJ82
- 137. FCC, IP-Enabled Services; WC Docket No. 04-36, 3060-AI48

- 138. FCC, Implementation of Section 224 of the Act; A National Broadband Plan for Our Future (WC Docket No. 07-245, GN Docket No. 09-51), 3060-AJ64
- 139. FCC, Restoring Internet Freedom (WC Docket No. 17-108); Protecting and Promoting the Open Internet; (GN Docket No. 14-28), 3060-AK21

NUCLEAR REGULATORY COMMISSION

- 140. NRC, Revision of Fee Schedules: Fee Recovery for FY 2019 [NRC-2017-0032], 3150-AJ99

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

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Part H. Rules Affecting Small Business, 1997–2016

	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997
Dept. of Agriculture	46	40	47	45	80	65	84	87	93	73	67	54	52	64	39	56	47	49	63	58
Dept. of Commerce	94	109	112	103	158	115	98	90	107	112	111	108	79	74	77	89	98	88	52	29
Dept. of Defense	1	10	7	12	25	26	16	12	7	13	14	13	12	13	6	8	7	15	21	15
Dept. of Education		1	2	3		1	1	0	0	0	1	0	0	0	1	0	0	0	0	1
Dept. of Energy	14	8	4	5	8	6	3	2	1	1	0	0	0	1	0	1	1	0	0	2
Dept. of Health and Human Services	73	93	103	91	85	100	112	94	93	96	109	112	106	96	92	108	107	75	88	100
Dept. of Homeland Security	25	22	25	28	27	34	37	35	42	44	43	43	38	33	0	0	0	0	0	0
Dept. of Housing and Urban Development	2	1				0	1	0	1	5	4	4	6	11	6	3	0	1	1	7
Dept. of the Interior	30	35	30	23	24	23	18	17	18	19	29	21	20	26	17	20	18	33	29	28
Dept. of Justice	12	9	10	10	9	9	5	3	2	5	7	8	8	8	13	15	14	14	10	26
Dept. of Labor	20	22	24	22	24	23	26	29	29	26	26	19	19	23	22	26	40	38	41	39
Dept. of State	14	18	21	20	31	21	20	4	3	1	0	1	1	2	6	3	2	0	0	1
Dept. of Transportation	56	61	53	68	65	56	49	45	41	43	60	63	103	151	216	244	266	246	208	44
Dept. of Treasury	41	23	27	29	39	47	56	48	47	45	37	41	38	27	26	27	31	15	60	50
Dept. of Veterans Affairs	1	1	1	2	1	2	3	2	2	0	0	0	0	0	1	1	3	6	6	7
Agency for International Development						1	1	0	0	1	1	0	0	1	2	1	0	0	0	0
Arch. and Trans. Barriers Compliance Board	2	2	1	1	1	1		0	0	0	0	0	0	0	1	1	2	2	3	0
Commodity Futures Trading Commission	2		1			0		1	1	1	0	1	1	2	0	0	0	0	1	0
Consumer Financial Protection Bureau	3	4	3	4	8	5														
Consumer Product Safety Commission	4	2			2	0			0	0	1	0	0	0	0	0	0	0	0	0
Corporation for National and Community Service						0		0	0	0	1	1	0	0	0	0	0	0	0	0
Environmental Protection Agency	14	12	6	6	49	73	95	89	83	85	95	110	122	135	167	185	205	179	178	163
Equal Employment Opportunity Commission	2	2	2	2	3	5	5	4	2	3	3	3	0	0	0	2	0	0	2	1
Federal Emergency Management Agency										0	0	0	0	0	1	1	1	0	0	0
Federal Acquisition Regulation	38	22	24	17	15	10	5	4	6	5	5	7	5	5	6	9	13	16	11	15
Federal Communications Commission	92	99	98	99	89	78	112	110	110	109	108	113	113	104	109	117	105	91	82	70
Federal Deposit Insurance Corporation				4	5	2	1													

Part I. The Unconstitutionality Index, 1993–2017

Year	Final Rules	Public Laws	The Index	Notices	Executive Orders	Executive Memos
1993	4,369	210	21			
1994	4,867	255	19			
1995	4,713	88	54	23,105	40	
1996	4,937	246	20	24,361	50	
1997	4,584	153	30	26,035	38	
1998	4,899	241	20	26,198	38	
1999	4,684	170	28	25,505	35	
2000	4,313	410	11	25,470	39	13
2001	4,132	108	38	24,829	67	12
2002	4,167	269	15	25,743	32	10
2003	4,148	198	21	25,419	41	14
2004	4,101	299	14	25,309	46	21
2005	3,975	161	25	25,353	27	23
2006	3,718	321	12	25,031	25	18
2007	3,595	188	19	24,476	32	16
2008	3,830	285	13	25,279	29	15
2009	3,503	125	28	24,753	44	38
2010	3,573	217	16	26,173	41	42
2011	3,807	81	47	26,161	33	19
2012	3,708	127	29	24,408	39	32
2013	3,659	72	51	24,261	24	32
2014	3,554	224	16	23,970	34	25
2015	3,410	114	30	24,393	29	31
2016	3,853	214	18	24,557	45	36
2017	3,281	97	34	22,137	63	38

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

Notes

1 Consider President Jimmy Carter's Economic Report of the President in 1980: "[A]s more goals are pursued through rules and regulations mandating private outlays rather than through direct government expenditures, the Federal budget is an increasingly inadequate measure of the resources directed by government toward social ends." Council of Economic Advisers, Economic Report of the President, Executive Office of the President, January 1980, p. 125, http://www.presidency.ucsb.edu/economic_reports/1980.pdf.

2 For a survey of corporate tax incidence estimates, see Jennifer C. Gravelle, "Corporate Tax Incidence: A Review of Empirical Estimates and Analysis," Congressional Budget Office, Working Paper Series: Working Paper 2011-01, June 2011, <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/122xx/doc12239/06-14-2011-corporatetaxincidence.pdf>.

3 Jacob Pramuk, "Trump Tells Business Leaders He Wants to Cut Regulations by 75% or 'Maybe More,'" CNBC.com, January 23, 2017, <http://www.cnbc.com/2017/01/23/trump-tells-business-leaders-he-wants-to-cut-regulations-by-75-percent-or-maybe-more.html>. This memorandum took the additional step of incorporating agency guidance documents. White House, Office of the Press Secretary, "Memorandum for the Heads of Executive Departments and Agencies from Reince Priebus, Assistant to the President and Chief of Staff, Regulatory Freeze Pending Review," January 20, 2017, <https://www.whitehouse.gov/the-press-office/2017/01/20/memorandum-heads-executive-departments-and-agencies>.

4 For example, the first action of the incoming Obama administration in 2009 was likewise a Memorandum for the Heads of Executive Departments and Agencies, from then-Chief of Staff Rahm Emanuel, on "Memorandum for the Heads of Executive Departments and Agencies," The White House, January 20, 2009, https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/information_and_regulatory_affairs/regulatory_review_012009.pdf.

5 Bryan Riley, "The Right Import Tax Is Zero: President Trump Should Reject New Rules on Steel and Aluminum Imports," *U.S. News and World Report*, March 1, 2018, <https://www.usnews.com/opinion/economic-intelligence/articles/2018-03-01/donald-trump-should-reject-import-taxes-on-steel-and-aluminum>.

6 White House Office of Management and Budget, Historical Tables, Table 1.1—Summary of Receipts, Outlays, and Surpluses or Deficits (-): 1789–2023, accessed March 28, 2018, <https://www.whitehouse.gov/omb/historical-tables/>.

7 Keith Hall, "CBO's Release of Annual Budget and Economic Outlook to Be Delayed," Congressional Budget Office, January 24, 2018, <https://www.cbo.gov/publication/53503>.

8 Congressional Budget Office, *The Budget and Economic Outlook: 2018 to 2028*, April 2018, Table 2-1, "Outlays Projected in CBO's Baseline," p. 44, <https://www.cbo.gov/publication/53651>.

9 U.S. Department of the Treasury, Bureau of the Fiscal Service, "The Debt to the Penny and Who Holds It," <http://www.treasurydirect.gov/NP/debt/current>.

10 Regulations with cost estimates presented by OMB have made up only 0.5 percent of the annual rule flow of about 3,500 over the past decade, based on data compiled in the White House Office of Information and Regulatory Affairs' annual *Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, https://obamawhitehouse.archives.gov/omb/inforeg_regpol_reports_congress/; Clyde Wayne Crews, Jr., "Boosting Regulatory Transparency: Comments of the Competitive Enterprise Institute on the Office of Management and Budget's 2013 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act," Competitive Enterprise Institute, July 31, 2013, p. 9, https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/2013_cb/comments/comments_of_wayne_crews_competitive_enterprise_institute_on_2013_draft_report_to_congress_on_the_benefits_and_costs_of_federal_regulation.pdf; Crews, "Federal Regulation: The Costs of Benefits," *Forbes.com*, January 7, 2013, <http://www.forbes.com/sites/waynecrews/2013/01/07/federal-regulation-the-costs-of-benefits/>.

11 "Measuring the Impact of Regulation: The Rule of More," *The Economist*, February 18, 2012, <http://www.economist.com/node/21547772>.

12 White House, Office of the Press Secretary, "Presidential Memorandum Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing," news release, January 24, 2017, <https://www.whitehouse.gov/the-press-office/2017/01/24/presidential-memorandum-streamlining-permitting-and-reducing-regulatory>.

13 White House, Office of the Press Secretary, "Executive Order Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects," news release, January 24, 2017, <https://www.whitehouse.gov/the-press-office/2017/01/24/executive-order-expediting-environmental-reviews-and-approvals-high>; Executive Order 13766, "Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects," *Federal Register*, Vol. 82, No. 18, <https://www.gpo.gov/fdsys/pkg/FR-2017-01-30/pdf/2017-02029.pdf>.

14 White House, Office of the Press Secretary, "Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs," news release, January 30, 2017, <https://www.whitehouse.gov/the-press-office/2017/01/30/presidential>

executive-order-reducing-regulation-and-controlling; Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” *Federal Register*, Vol. 82, No. 22, February 3, 2017, <https://www.gpo.gov/fdsys/pkg/FR-2017-02-03/pdf/2017-02451.pdf>.

15 White House, Office of the Press Secretary, “Presidential Executive Order on Core Principles for Regulating the United States Financial System,” news release, February 3, 2017, <https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-executive-order-core-principles-regulating-united-states>; Executive Order 13772, “Core Principles for Regulating the United States Financial System,” *Federal Register*, Vol. 82, No. 25, February 8, 2017, <https://www.gpo.gov/fdsys/pkg/FR-2017-02-08/pdf/2017-02762.pdf>.

16 White House, Office of the Press Secretary, “Presidential Executive Order on Enforcing the Regulatory Reform Agenda,” news release, February 24, 2017, <https://www.whitehouse.gov/the-press-office/2017/02/24/presidential-executive-order-enforcing-regulatory-reform-agenda>; Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” *Federal Register*, Vol. 82, No. 39, March 1, 2017, <https://www.gpo.gov/fdsys/pkg/FR-2017-03-01/pdf/2017-04107.pdf>.

17 Executive Order 13781 of March 13, 2017, “Comprehensive Plan for Reorganizing the Executive Branch,” *Federal Register*, Vol. 82, No. 50, March 16, 2017, <https://www.gpo.gov/fdsys/pkg/FR-2017-03-16/pdf/2017-05399.pdf>.

18 The White House, Office of the Press Secretary, “Presidential Executive Order on Identifying and Reducing Tax Regulatory Burdens,” news release, April 21, 2017, <https://www.whitehouse.gov/the-press-office/2017/04/21/presidential-executive-order-identifying-and-reducing-tax-regulatory>; Executive Order 13789, “Identifying and Reducing Tax Regulatory Burdens,” *Federal Register*, Vol. 82, No. 79, April 26, 2017, <https://www.gpo.gov/fdsys/pkg/FR-2017-04-26/pdf/2017-08586.pdf>.

19 Executive Order 13790 of April 25, 2017, “Promoting Agriculture and Rural Prosperity in America,” *Federal Register*, Vol. 82, No. 81, April 28, 2017, <https://www.gpo.gov/fdsys/pkg/FR-2017-04-28/pdf/2017-08818.pdf>.

20 Executive Order 13791 of April 26, 2017, “Enforcing Statutory Prohibitions on Federal Control of Education,” *Federal Register*, May 1, 2017, Vol. 82, No. 82, <https://www.gpo.gov/fdsys/pkg/FR-2017-05-01/pdf/2017-08905.pdf>.

21 Executive Order 13792 of April 26, 2017, “Review of Designations under the Antiquities Act,” *Federal Register*, Vol. 82, No. 82, May 1, 2017, <https://www.gpo.gov/fdsys/pkg/FR-2017-05-01/pdf/2017-08908.pdf>.

22 Executive Order 13795, “Implementing an America-First offshore Energy Strategy,” *Federal Register*, Vol. 82, No. 84, April 28, 2017, <https://www.gpo.gov/fdsys/pkg/FR-2017-05-03/pdf/2017-09087.pdf>.

23 Executive Order 13807, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects,” *Federal Register*, Vol. 82, No. 163, August 15, 2017, <https://www.gpo.gov/fdsys/pkg/FR-2017-08-24/pdf/2017-18134.pdf>.

24 Executive Order 13813, “Promoting Healthcare Choice and Competition Across the United States,” *Federal Register*, Vol. 82, No. 199, October 12, 2017, <https://www.gpo.gov/fdsys/pkg/FR-2017-10-17/pdf/2017-22677.pdf>.

25 Executive Order 13821 of January 8, 2018, “Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America,” *Federal Register*, Vol. 83, No. 8, <https://www.gpo.gov/fdsys/pkg/FR-2018-01-11/pdf/2018-00553.pdf>.

26 Memorandum of January 8, 2018, “Memorandum for the Secretary of the Interior: Supporting Broadband Tower Facilities in Rural America on Federal Properties Managed by the Department of the Interior,” *Federal Register*, Vol. 83, No. 9, January 12, 2018, <https://www.gpo.gov/fdsys/pkg/FR-2018-01-12/pdf/2018-00628.pdf>.

27 The regulatory report card has long been proposed in *Ten Thousand Commandments*. It was also featured in Clyde Wayne Crews, Jr., “The Other National Debt Crisis: How and Why Congress Must Quantify Federal Regulation,” *Issue Analysis* 2011 No. 4, October 2011, Competitive Enterprise Institute, <http://cei.org/issue-analysis/other-national-debt-crisis>. Those reporting proposals appeared in the Achieving Less Excess in Regulation and Requiring Transparency (ALERRT) Act (H.R. 2804), introduced in the 113th Congress (2013–2014), <https://beta.congress.gov/bill/113th-congress/house-bill/2804>. They had first appeared in Sen. Olympia Snowe’s (R-Maine) 112th Congress legislation, Restoring Tax and Regulatory Certainty to Small Businesses Act (S. 3572). Section 213 detailed this proposed “regulatory transparency reporting,” which includes reporting on major rule costs in tiers. The full text of S. 3572 is available at <https://www.govtrack.us/congress/bills/112/s3572/text>.

28 White House, Memorandum, “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled ‘Reducing Regulation and Controlling Regulatory Costs,’” February 2, 2017, https://www.whitehouse.gov/sites/whitehouse.gov/files/briefing-room/presidential-actions/related-omb-material/eo_interim_guidance_reducing_regulations_controlling_regulatory_costs.pdf; Dominic J. Mancini, “Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions,” Executive Office of the President, April 5, 2017, <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21-OMB.pdf>.

29 “Obama on Executive Actions: ‘I’ve Got a Pen and I’ve Got a Phone,’” CBS DC, January 14, 2014, <http://washington.cbslocal.com/2014/01/14/obama-on-executive-actions-ive-got-a-pen-and-ive-got-a-phone/>.

30 Victor Davis Hanson, "President Nobama," *National Review*, January 16, 2018, <http://www.nationalreview.com/article/455453/president-trump-undoes-obama-legacy-commonsense-nobama>.

31 For example, see *Public Citizen v. Trump*, No. 1:17-cv-00253 (D. D. C. filed April 21, 2017), https://www.citizen.org/system/files/case_documents/first_amended_complaint.pdf. This particular challenge was rejected on the grounds of the plaintiffs' lack of standing. Alex Guillén, "Judge Tosses Challenge to Trump '2-for-1' Regulatory Order," *Politico*, February 26, 2018, <https://www.politicopro.com/education/article/2018/02/judge-tosses-challenge-to-trump-2-for-1-regulatory-order-36630>. "Breaking the Law: Many Trump Regulatory Rollbacks and Delays Are Unlawful," Center for Progressive Reform, January 30, 2018, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=A7CF1677-A352-5BB7-E0B44D50EF790B2B>; "Sacrificing Public Protections on the Altar of Deregulation: A Close Look at the Rulemakings Halted by the Administration on the Spring 2017 Unified Agenda of Regulatory and Deregulatory Actions," Public Citizen, November 28, 2017, <https://www.citizen.org/sites/default/files/trump-withdrawn-regs-report.pdf>.

32 Executive Order 13771 of January 30, 2017, "Reducing Regulation and Controlling Regulatory Costs," *Federal Register*, Vol. 82, No. 22, February 3, 2017, <https://www.gpo.gov/fdsys/pkg/FR-2017-02-03/pdf/2017-02451.pdf>.

33 Josh Blackman, "Is Trump Restoring Separation of Powers?" *National Review*, November 20, 2017, <http://www.nationalreview.com/article/453896/trump-separation-powers-his-administration-reining-its-own-powers>.

34 Tim Hains, "President Trump Cuts Red Tape: On Deregulation, Winning 22–1," *RealClearPolitics*, December 14, 2017, <https://www.realclearpolitics.com/video/2017/12/14/president-trump-cuts-red-tape-on-deregulation-winning-22-1.html>.

35 Jennifer Rubin, "The President and the Deregulation Myth," *Washington Post*, January 31, 2018, https://www.washingtonpost.com/blogs/right-turn/wp/2018/01/31/the-president-and-the-deregulation-myth/?utm_term=.fd70efeb2c09.

36 Public Citizen.

37 James L. Gattuso, "Trump's Red Tape Rollback," Heritage Foundation, December 12, 2017, <https://www.heritage.org/government-regulation/commentary/trumps-red-tape-rollback>.

38 Patrick McLaughlin, "Regulatory Data on Trump's First Year," Mercatus Center at George Mason University, January 30, 2018, <https://www.mercatus.org/publications/regulatory-data-trump-first-year>.

39 For an updated tally, see U.S. Government Accountability Office, Congressional Review Act FAQs, <https://www.gao.gov/legal/congressional-review-act/faq>.

40 Gattuso.

41 Spencer Jakab, "Trump Gets a Reality Check on Deregulation," *Wall Street Journal*, January 9, 2018, <https://www.wsj.com/articles/trump-gets-a-reality-check-on-deregulation-1515525695?mg=prod/accounts-wsj>.

42 White House, News Briefing by Principal Deputy Press Secretary Sarah Sanders and OMB Director Mick Mulvaney, July 20, 2017, <https://www.whitehouse.gov/briefings-statements/press-gaggle-principal-deputy-press-secretary-sarah-sanders-omb-director-mick-mulvaney-072017/>.

43 John Dearie and Courtney Geduldig, "Regulations Are Killing Us," in *Where the Jobs Are: Entrepreneurship and the Soul of the American Economy* (Hoboken, NJ: John Wiley & Sons, 2013), pp. 107–118.

44 U.S. Department of Commerce, "Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing," October 6, 2017, https://www.commerce.gov/sites/commerce.gov/files/streamlining_permitting_and_reducing_regulatory_burdens_for_domestic_manufacturing.pdf.

45 Marc Scribner, "Trump's Infrastructure Plan: The Good, the Bad, and the Ugly," Competitive Enterprise Institute Blog, February 12, 2018, <https://cei.org/blog/trumps-infrastructure-plan-good-bad-and-ugly>.

46 White House Office of Management and Budget, Office of Information and Regulatory Affairs, "Regulatory Reform: Two-for-One Status Report and Regulatory Cost Caps," https://www.reginfo.gov/public/pdf/e013771/FINAL_TOPLINE_All_20171207.pdf.

47 Office of Information and Regulatory Affairs (OIRA), "Regulatory Reform: Completed Actions Fiscal Year 2017," https://www.reginfo.gov/public/pdf/e013771/FINAL_BU_20171207.pdf.

48 Krissy Clark and Amy Scott, "At the State of the Union, Trump Said He's Killed More Regulations than Any Other White House. Not Exactly," *Marketplace*, National Public Radio, January 31, 2018, <https://www.marketplace.org/2018/01/31/economy/state-union-trump-said-hes-killed-more-regulations-any-other-white-house-not>; <http://www.politifact.com/truth-o-meter/statements/2018/feb/02/donald-trump/trump-hasnt-cut-22-regulations-every-new-one/>; Alan Levin and Ari Natter, "Trump Stretches Meaning of Deregulation in Touting Achievements," *Bloomberg*, December 29, 2017, <https://www.bloomberg.com/news/articles/2017-12-29/trump-stretches-meaning-of-deregulation-in-touting-achievements>; Zack Colman, "Has Trump Killed More Regulations than Any Other President?" *Scientific American*, February 1, 2018, <https://www.scientificamerican.com/article/has-trump-killed-more-regulations-than-any-other-president/>.

49 The White House, Memorandum, "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled 'Reducing Regulation and Controlling Regulatory Costs,'" February 2, 2017, <https://www.whitehouse.gov/sites/>

whitehouse.gov/files/briefing-room/presidential-actions/related-omb-material/eo_iterim_guidance_reducing_regulations_controlling_regulatory_costs.pdf; White House, Office of the Press Secretary, “Guidance for Implementing Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.”

50 White House, Office of the Press Secretary, “Presidential Executive Order on Enforcing the Regulatory Reform Agenda,” news release, February 24, 2017, <https://www.whitehouse.gov/the-press-office/2017/02/24/presidential-executive-order-enforcing-regulatory-reform-agenda>; Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” *Federal Register*, Vol. 82, No. 39, March 1, 2017, <https://www.gpo.gov/fdsys/pkg/FR-2017-03-01/pdf/2017-04107.pdf>.

51 Roncevert Ganan Almond, “Measuring President Trump’s Regulatory Reform Agenda: The 2-for-1 Rule,” Notice and Comment (Blog of the *Yale Journal on Regulation* and the American Bar Association Section of Administrative Law and Regulatory Practice), November 22, 2017, <http://yalejreg.com/nc/measuring-president-trumps-regulatory-reform-agenda-the-2-for-1-rule-by-roncevert-ganan-almond/>.

52 “Regulatory Reform: Completed Actions Fiscal Year 2017,” RegInfo.gov, https://www.reginfo.gov/public/pdf/e013771/FINAL_BU_20171207.pdf.

53 Bureau of Consumer Financial Protection, “Arbitration Agreements,” *Federal Register*, Vol. 82, No. 137, p. 33210, July 19, 2017, <https://www.gpo.gov/fdsys/pkg/FR-2017-07-19/pdf/2017-14225.pdf>.

54 Securities and Exchange Commission, “Disclosure of Payments by Resource Extraction Issuers,” *Federal Register*, Vol. 81, No. 144, p. 49359, March 27, 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-07-27/pdf/2016-15676.pdf>.

55 Federal Communications Commission, “Protecting the Privacy of Customers of Broadband and other Telecommunications Services,” *Federal Register*, Vol. 81, p. 87274, December 2, 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-12-02/pdf/2016-28006.pdf>.

56 U.S. Department of Justice and U.S. Department of Education, Dear Colleague Letter on withdrawal of Dear Colleague Letter on Transgender Students jointly issued by the Civil Rights Division of the Department of Justice and the Department of Education, February 22, 2017, <https://www.justice.gov/opa/press-release/file/941551/download>.

57 United States Department of Labor, “U.S. Secretary of Labor Withdraws Joint Employment, Independent Contractor Informal Guidance,” news release, June 7, 2017, <https://www.dol.gov/newsroom/releases/opa/opa20170607>.

58 Federal Communications Commission, Declaratory Ruling, Report and Order, and Order, in the Matter of Restoring Internet Freedom, WC Docket No. 17-108, Adopted December 14, 2017, Released January 4, 2018, https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-166A1.pdf.

59 Federal Communications Commission, “FCC Modernizes Broadcast Ownership Rules and Decides to Establish a New Incubator Program to Promote Broadcast Ownership Diversity,” news release, November 16, 2017, https://apps.fcc.gov/edocs_public/attachmatch/DOC-347796A1.pdf.

60 Adonis Hoffman, “The Emerging Trump Doctrine on Mergers and Antitrust,” *The Hill*, January 15, 2018, <http://thehill.com/opinion/white-house/368970-the-emerging-trump-doctrine-on-mergers-and-antitrust>.

61 Regulatory Reform: Two-for-One Status Report and Regulatory Cost Caps (Executive Order 13771: Final Accounting for Fiscal Year 2017 and Cost Caps for Fiscal Year 2018), RegInfo.gov, https://www.reginfo.gov/public/pdf/e013771/FINAL_TOPLINE_All_20171207.pdf.

62 Neomi Rao, Office of Information and Regulatory Affairs, “FY 2018 Regulatory Cost Allowances,” Memorandum for Regulatory Reform Officers at Executive Departments and Agencies, September 7, 2017, <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/FY%202018%20Regulatory%20Cost%20Allowances.pdf>.

63 Regulatory Reform: Cost Caps Fiscal Year 2018, RegInfo.gov, https://www.reginfo.gov/public/pdf/e013771/FINAL_TOPLINE_ALLOWANCES_20171207.pdf.

64 Dan Bosch and Dan Goldbeck, “Update: Deregulation under Trump,” American Action Forum, January 23, 2018, <https://www.americanactionforum.org/insight/update-deregulation-trump/>.

65 White House, “Retrospective Review of Regulations,” accessed March 13, 2018, <https://obamawhitehouse.archives.gov/omb/oira/regulation-reform>.

66 Described in OIRA, “Current Regulatory Plan and the Unified Agenda of Regulatory and Deregulatory Actions,” RegInfo.gov, <https://www.reginfo.gov/public/do/eAgendaMain>.

67 Executive Order 13422, “Further Amendment to Executive Order 12866 on Regulatory Planning and Review,” January 18, 2007, <http://www.gpo.gov/fdsys/pkg/FR-2007-01-23/pdf/07-293.pdf>. Executive Order 12866 was the Clinton executive order that replaced Reagan’s Executive Order 12291. While Executive Order 12866 preserved OMB review of regulations, it shifted primacy back to agencies.

68 Office of Management and Budget, “Final Bulletin for Agency Good Guidance Practices,” Memorandum for the Heads of Executive Departments and Agencies, January 18, 2007, *Federal Register*, Vol. 72, No. 16, January 25, 2007, pp. 3432–3440, http://www.justice.gov/sites/default/files/ust/legacy/2011/07/13/OMB_Bulletin.pdf.

69 Clyde Wayne Crews Jr., “Mapping Washington’s Lawlessness: An Inventory of ‘Regulatory Dark Matter’ 2017 Edition,” *Issue Analysis* 2017 No. 4, March 2017, <https://cei.org/content/mapping-washington%E2%80%99s-lawlessness-2017>.

70 Noted in OMB, “Implementing Executive Order 13771,” April 5, 2017.

71 Guidance out of Darkness Act (H. R. 4809, S. 2296), 115th Congress, (2017–2018), <https://www.congress.gov/bill/115th-congress/house-bill/4809?q=%7B%22search%22%3A%5B%22Guidance+Out+of+Darkness+Act%22%5D%7D&r=1>,

72 CBO website, <http://www.cbo.gov/>.

73 OMB, *Historical Tables*, <http://www.whitehouse.gov/omb/budget/Historicals>.

74 Regulatory Right-to-Know Act (H.R. 1074), 106th Congress (1999–2000), <https://www.congress.gov/bill/106th-congress/house-bill/1074/text>.

75 Philip Hamburger, “The History and Danger of Administrative Law,” *Imprimis*, Vol. 43, No. 9, September 2014, http://imprimis.hillsdale.edu/file/archives/pdf/2014_09_Imprimis.pdf; Philip Hamburger, *Is Administrative Law Unlawful?* (Chicago: University of Chicago Press, 2014).

76 Early into her appointment as administrator of the Office of Information and Regulatory Affairs, Neomi Rao remarked: “For agencies, deregulation is hard—something I’ve learned in the past three months.” Cheryl Bolen, “New Regulatory Task Forces Meet Same Old Obstacles,” Bloomberg BNA, October 13, 2017, <https://www.bna.com/new-regulatory-task-n73014470829/?amp=true>.

77 Regulatory Right-to-Know Act.

78 OIRA, *2017 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act*, February 23, 2018, p. 2, https://www.whitehouse.gov/wp-content/uploads/2017/12/draft_2017_cost_benefit_report.pdf.

79 Ibid.

80 Ibid., p. 3.

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

82 W. Mark Crain and Nicole V. Crain, “The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business,” National Association of Manufacturers, September 10, 2014, <http://www.nam.org/-/media/A7A8456F-33484E498F40CB46D6167F31.ashx>.

83 John W. Dawson and John J. Seater, “Federal Regulation and Aggregate Economic Growth,” *Journal of Economic Growth*, Vol. 18, No. 2 (June 2013), pp. 137–177, http://papers.ssrn.com/s013/papers.cfm?abstract_id=2223315##

84 Bentley Coffey, Patrick A. McLaughlin, and Pietro Peretto, “The Cumulative Cost of Regulations,” Mercatus working paper, Mercatus Center of George Mason University, April 2016, <http://mercatus.org/sites/default/files/Coffey-Cumulative-Cost-Regs-v3.pdf>.

85 Crain and Crain, “The Cost of Federal Regulation.”

86 Ibid.

87 Clyde Wayne Crews, Jr., “Tip of the Costberg: On the Invalidity of All Cost of Regulation Estimates and the Need to Compile Them Anyway,” Social Science Research Network (SSRN), 2017 edition, <https://ssrn.com/abstract=2502883>.

88 White House Office of Management and Budget, *Historical Tables*, Table 1.1—Summary of Receipts, Outlays, and Surpluses or Deficits (-): 1789–2023, <https://www.whitehouse.gov/omb/historical-tables/>.

89 Estimated 2017 tax figures from OMB, *Historical Tables*, Table 2.1, “Receipts by Source: 1934–2023,” <https://www.whitehouse.gov/wp-content/uploads/2018/02/hist02z1-fy2019.xlsx>. This spreadsheet is linked at <https://www.whitehouse.gov/omb/historical-tables/>.

90 Ibid.

91 Corporate pretax profits from U.S. Department of Commerce, Bureau of Economic Analysis, National Income and Product Accounts Tables, National Data, Section 6—Income and Employment by Industry, Table 6.17D, “Corporate Profits before Tax by Industry,” <http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=3&isuri=1&903=243>.

92 U.S. Department of Commerce, Bureau of Economic Analysis, “National Income and Product Accounts, Gross Domestic Product: Fourth Quarter and Annual 2017 (Advance Estimate),” news release, January 26, 2018, <http://www.bea.gov/newsreleases/national/gdp/gdpnewsrelease.htm>. Similar data are also available from the World Bank, Data: GDP (Current US\$), <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD>.

93 World Bank, “Gross Domestic Product 2016,” <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD/countries> and <http://databank.worldbank.org/data/download/GDP.pdf>.

94 Terry Miller, Anthony B. Kim and James M. Roberts, *2018 Index of Economic Freedom*, Heritage Foundation, <http://www.heritage.org/index/>; James Gwartney, Robert Lawson, and Joshua Hall, eds., *Economic Freedom of the World: 2017 Annual Report* (Washington, DC: Cato Institute, 2017), <http://www.cato.org/economic-freedom-world>.

95 U.S. Department of Labor, Bureau of Labor Statistics, “Consumer Expenditures—2016,” economic news release, August 29, 2017, <http://www.bls.gov/news.release/cesan.nr0.htm>.

96 Ibid. For the BLS, “Consumer units include families, single persons living alone or sharing a household with others but who are financially independent, or two or more persons living together who share expenses.” For each “unit,” average annual expenditures were \$57,311 according to the BLS. And

129,549 consumer units figure from “Number of consumer units (in thousands), from Table 1502. Composition of consumer unit: Annual expenditure means, shares, standard errors, and coefficients of variation, Consumer Expenditure Survey, 2016, Bureau of Labor Statistics, <https://www.bls.gov/cex/2016/combined/cucomp.pdf>. The Consumer Expenditure Survey and CE Tables containing this material are available at <https://www.bls.gov/cex/tables.htm>. The BLS also provided additional information on these figures by email and the following document: “Average Annual Expenditures and Characteristics of All Consumer Units, Consumer Expenditure Survey, 2006-2011,” <http://www.bls.gov/cex/2011/standard/multiyr.pdf>. The 2015 edition is available at <http://www.bls.gov/cex/2015/standard/multiyr.pdf>.

97 Susan Dudley and Melinda Warren, “Regulators’ Budget Reflects President Trump’s Priorities: An Analysis of the U.S. Budget for Fiscal Years 1960 through 2018,” Regulators Budget No. 39, published jointly by the Regulatory Studies Center, George Washington University, and the Weidenbaum Center at Washington University in St. Louis, July 2017, Table A-5, “Total Spending on Federal Regulatory Activity: Constant Dollars,” (1960–2017), p. 22, https://wc.wustl.edu/files/wc/imce/2018_regulatorsbudgetreport_rev11-2017.pdf. Instead of employing Dudley and Warren’s nominal dollar estimates, their 2009 constant dollars are adjusted here by the change in the consumer price index between 2009 and 2017, derived from Consumer Price Index tables, U.S. Department of Labor, Bureau of Labor Statistics, (Table 24, Historical Consumer Price Index for All Urban Consumers [CPI-U], U.S. city average, all items), “Annual avg.” column, <https://www.bls.gov/cpi/tables/supplemental-files/home.htm#>.

98 Dudley and Warren, Table A-1, “Agency Detail of Spending on Federal Regulatory Activity: Current Dollars, Selected Fiscal Years,” p. 12.

99 Ibid., Table A-6, “Total Staffing of Federal Regulatory Activity,” p. 23. For an overview of shrinkage in federal employment staffing overall during the first year of the Trump administration, see Lisa Rein and Andrew Ba Tran “How the Trump Era Is Changing the Federal Bureaucracy,” *Washington Post*, December 30, 2017, https://www.washingtonpost.com/politics/how-the-trump-era-is-changing-the-federal-bureaucracy/2017/12/30/8d5149c6-daa7-11e7-b859-fb0995360725_story.html?utm_term=.b445363155c4.

100 *Federal Register*, January 18, 2017, Vol. 82, No. 12, <https://www.gpo.gov/fdsys/pkg/FR-2017-01-19/pdf/FR-2017-01-19.pdf>.

101 Clyde Wayne Crews, Jr., “Channeling Reagan by Executive Order: How the Next President Can Begin Rolling Back the Obama Regulation Rampage,” *OnPoint* No. 218, Competitive Enterprise Institute, July 14, 2016, <https://cei.org/content/channeling-reagan-executive-order>.

102 Employing National Archives Document Search at <https://www.federalregister.gov/documents/search#advanced>.

103 Crews, “What’s the Difference between ‘Major,’ ‘Significant,’ and All Those Other Federal Rule Categories?” Issue Analysis 2017 No. 8, Competitive Enterprise Institute, September 2017, <https://cei.org/content/whats-difference-between-major-significant-and-all-those-other-federal-rule-categories>.

104 Federal Regulation—The Updates, [tenthousandcommandments.com](http://www.tenthousandcommandments.com), <http://www.tenthousandcommandments.com/p/federal-regulation-updates.html>.

105 Crews, “Mapping Washington’s Lawlessness 2017”; Crews, “Despotism-Lite? The Obama Administration’s Rule by Memo,” *Forbes.com*, July 1, 2014, <https://cei.org/content/despotism-lite-obama-administrations-rule-memo>.

106 Kenneth Mayer, *With the Stroke of a Pen: Executive Orders and Presidential Power* (Princeton, N.J.: Princeton University Press, 2001), p. 67.

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

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

109 President Bill Clinton’s memoranda are not shown in Figure 15, but are derived from the “Advanced Document Search” feature on <https://www.FederalRegister.gov>.

110 Crews, “Despotism-Lite?”

111 These are Executive Orders 13563 (“Improving Regulation and Regulatory Review,” January 18, 2011), 13579 (“Regulation and Independent Regulatory Agencies,” July 11, 2011), 13609 (“Promoting International Regulatory Cooperation,” May 1, 2012), and 13610 (“Identifying and Reducing Regulatory Burdens,” May 10, 2012). All are available at http://www.whitehouse.gov/omb/inforeg_regmatters#e013610.

112 Executive Order 13563, “Improving Regulation and Regulatory Review,” January 18, 2011, <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>.

113 Executive Order 12866, “Regulatory Planning and Review,” September 30, 1993, <http://www.archives.gov/federal-register/executive-orders/pdf/12866.pdf>.

114 Executive Order 12291, “Federal Regulation,” February 17, 1981, <http://www.archives.gov/federal-register/codification/executive-order/12291.html>.

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

116 Executive Orders Disposition Tables Index, Office of the Federal Register, National Archives, <http://www.archives.gov/federal-register/executive-orders/disposition.html>; Executive

Orders, The American Presidency Project, <http://www.presidency.ucsb.edu/data/orders.php>.

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

118 Ibid.

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

120 Office of Management and Budget 2007 Bulletin on Good Guidance Principles suggested that agency directors announce economically significant guidance in the *Federal Register*:

IV. Notice and Public Comment for Economically Significant Guidance Documents:

1. In General: Except as provided in Section IV(2), when an agency prepares a draft of an economically significant guidance document, the agency shall:

a. Publish a notice in the *Federal Register* announcing that the draft document is available;

Rob Portman, administrator, Office of Management and Budget, “Issuance of OMB’s “Final Bulletin for Agency Good Guidance Practices,” Memorandum for the Heads of Executive Departments and Agencies, January 18, 2007, <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-07.pdf>; “Final Bulletin for Agency Good Guidance Practices,” *Federal Register*, Vol. 72, No. 16 (January 25, 2007), pp. 3432–3440, http://www.justice.gov/sites/default/files/ust/legacy/2011/07/13/OMB_Bulletin.pdf.

121 Juliet Eilperin, “White House Delayed Enacting Rules Ahead of 2012 Election to Avoid Controversy,” *Washington Post*, December 14, 2013, http://www.washingtonpost.com/politics/white-house-delayed-enacting-rules-ahead-of-2012-election-to-avoid-controversy/2013/12/14/7885a494-561a-11e3-ba82-16ed03681809_story.html?hpid=z1.

122 White House, Office of the Press Secretary, “Remarks by President Trump on Deregulation,” December 14, 2017, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-deregulation/>.

123 Neomi Rao, “The Trump Regulatory Game Plan,” *Wall Street Journal*, December 13, 2017, <https://www.wsj.com/articles/the-trump-regulatory-game-plan-1513210177>.

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

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

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

127 Howard Shelanski, administrator, Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions, “Fall 2013 Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” Office of Information and Regulatory Affairs, Executive Office of the President, August 7, 2013, <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/inforeg/inforeg/for-agencies/fall-2013-regulatory-plan-and-unified-agenda-of-federal-regulatory-and-deregulatory-actions.pdf>.

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

129 Dominic J. Mancini, “Spring 2017 Data Call for the *Unified Agenda of Federal Regulatory and Deregulatory Actions*,” Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions,” March 2, 2017, https://www.whitehouse.gov/sites/whitehouse.gov/files/briefing-room/presidential-actions/related-omb-material/spring_2017_unified_agenda_data_call.pdf; Neomi Rao, Data Call for the Fall 2017 *Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions*, August 18, 2017, https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/2017_fall_agenda_data_call_08242017.pdf.

130 *Federal Register*, Vol. 74, No. 233, December 7, 2009, p. 64133.

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

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

133 Among these 3,209 is a component of 139 actives in the Regulatory Plan, but no completed or long-term rules are so designated, which is a change from previous Agenda editions Regulatory Information Service Center search function, <https://www.reginfo.gov/public/do/eAgendaSearchResult?viewall=y>.

134 Rao, “FY 2018 Regulatory Cost Allowances,” p. 13.

135 For more on the Federal Acquisition Regulation System, see “Federal Acquisition Regulation System,” Office of the Federal Register, accessed April 28, 2017, <https://www.federalregister.gov/agencies/federal-acquisition-regulation-system>.

136 U.S. Department of Agriculture, Food and Nutrition Service, “National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010,” Final Rule, 7 CFR Parts 210, 215, 220, et al., *Federal Register*, Vol. 81, No. 146, July 29, 2016, <https://www.federalregister.gov/documents/2016/07/29/2016-17227/national-school-lunch-program-and-school-breakfast-program-nutrition-standards-for-all-foods-sold-in>.

137 U.S. Department of Agriculture, Agricultural Marketing Service, “United States Standards for Grades of Canned Baked Beans,” *Federal Register*, Vol. 81, No. 89, May 9, 2016, <https://www.federalregister.gov/documents/2016/05/09/2016-10743/united-states-standards-for-grades-of-canned-baked-beans>.

138 Food and Drug Administration, “Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products,” *Federal Register*, Vol. 81, No. 90, May 10, 2016, <https://www.federalregister.gov/documents/2016/05/10/2016-10685/deeming-tobacco-products-to-be-subject-to-the-federal-food-drug-and-cosmetic-act-as-amended-by-the>. Questions and answers and guidance may be found at <http://www.fda.gov/TobaccoProducts/Labeling/Rules-RegulationsGuidance/ucm394909.htm>.

139 Food and Drug Administration, “Safety and Effectiveness of Consumer Antiseptics; Topical Antimicrobial Drug Products for Over-the-Counter Human Use,” *Federal Register*, Vol. 81, No. 172, September 6, 2016, <https://www.federalregister.gov/documents/2016/09/06/2016-21337/safety-and-effectiveness-of-consumer-antiseptics-topical-antimicrobial-drug-products-for>. FDA, “FDA Issues Final Rule on Safety and Effectiveness of Antibacterial Soaps,” news release, September 2, 2016, <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm517478.htm>.

140 Centers for Medicaid and Medicare Services, “Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities,” *Federal Register*, Vol. 81, No. 192, October 4, 2016, <https://www.federalregister.gov/docu->

[ments/2016/10/04/2016-23503/medicare-and-medicaid-programs-reform-of-requirements-for-long-term-care-facilities](https://www.federalregister.gov/docu-ments/2016/10/04/2016-23503/medicare-and-medicaid-programs-reform-of-requirements-for-long-term-care-facilities).

141 Department of Housing and Urban Development, “Instituting Smoke-Free Public Housing,” *Federal Register*, Vol. 81, No. 233, December 5, 2016, <https://www.federalregister.gov/documents/2016/12/05/2016-28986/instituting-smoke-free-public-housing>.

142 Bureau of Safety and Environmental Enforcement and Bureau of Ocean Energy Management, “Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf,” *Federal Register*, Vol. 81, No. 136, July 15, 2016, <https://www.federalregister.gov/documents/2016/07/15/2016-15699/oil-and-gas-and-sulfur-operations-on-the-outer-continental-shelf-requirements-for-exploratory>.

143 Department of Labor, Wage and Hour Division, “Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees,” *Federal Register*, Vol. 81, No. 99, May 23, 2016, <https://www.federalregister.gov/documents/2016/05/23/2016-11754/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and>.

144 Department of Labor, Wage and Hour Division, “Establishing Paid Sick Leave for Federal Contractors,” *Federal Register*, Vol. 81, No. 190, September 30, 2016, <https://www.federalregister.gov/documents/2016/09/30/2016-22964/establishing-paid-sick-leave-for-federal-contractors>.

145 Occupation Safety and Health Administration, “Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems),” *Federal Register*, Vol. 81, No. 223, November 18, 2016, <https://www.federalregister.gov/documents/2016/11/18/2016-24557/walking-working-surfaces-and-personal-protective-equipment-fall-protection-systems>.

146 OSHA’s crystalline silica rule of March 25, 2016 took up 606 pages in the *Federal Register*. Occupation Safety and Health Administration, “Occupational Exposure to Respirable Crystalline Silica,” *Federal Register*, Vol. 81, No. 58, March 25, 2016, pp. 16285–16890, <https://www.gpo.gov/fdsys/pkg/FR-2016-03-25/pdf/2016-04800.pdf>.

147 National Highway Traffic Safety Administration (NHTSA), “Federal Motor Vehicle Safety Standards; Minimum Sound Requirements for Hybrid and Electric Vehicles,” *Federal Register*, Vol. 81, No. 240, December 14, 2016, <https://www.federalregister.gov/documents/2016/12/14/2016-28804/federal-motor-vehicle-safety-standards-minimum-sound-requirements-for-hybrid-and-electric-vehicles>; NHTSA, “NHTSA Sets ‘Quiet Car’ Safety Standard to Protect Pedestrians,” news release, November 14, 2016, <https://www.nhtsa.gov/press-releases/nhtsa-sets-quiet-car-safety-standard-protect-pedestrians>.

148 Federal Aviation Administration, “Operation and Certification of Small Unmanned Aircraft Systems,” *Federal Register*, Vol. 81, No. 124, June 28, 2016, <https://www>.

federalregister.gov/documents/2016/06/28/2016-15079/operation-and-certification-of-small-unmanned-aircraft-systems.

149 NHTSA, “Federal Motor Vehicle Safety Standards; V2V Communications,” *Federal Register*, Vol. 82, No. 8, January 12, 2017, <https://www.federalregister.gov/documents/2017/01/12/2016-31059/federal-motor-vehicle-safety-standards-v2v-communications>.

150 NHTSA, “Federal Motor Vehicle Safety Standards; Federal Motor Carrier Safety Regulations; Parts and Accessories Necessary for Safe Operation; Speed Limiting Devices,” *Federal Register*, Vol. 81, No. 173, September 7, 2016, <https://www.federalregister.gov/documents/2016/09/07/2016-20934/federal-motor-vehicle-safety-standards-federal-motor-carrier-safety-regulations-parts-and>.

151 Federal Railroad Administration, “Train Crew Staffing,” *Federal Register*, Vol. 81, No. 50, March 15, 2016, <https://www.federalregister.gov/documents/2016/03/15/2016-05553/train-crew-staffing>.

152 NHTSA, “Lighting and Marking on Agricultural Equipment,” *Federal Register*, Vol. 81, No. 120, June 22, 2016, <https://www.federalregister.gov/documents/2016/06/22/2016-14571/lighting-and-marking-on-agricultural-equipment>.

153 Federal Motor Carrier Safety Administration, “Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators,” *Federal Register*, Vol. 81, No. 44, March 7, 2016, <https://www.federalregister.gov/documents/2016/03/07/2016-03869/minimum-training-requirements-for-entry-level-commercial-motor-vehicle-operators>.

154 Bureau of Consumer Financial Protection, “Payday, Vehicle Title, and Certain High-Cost Installment Loans,” *Federal Register*, Vol. 81, No. 141, July 22, 2016, <https://www.federalregister.gov/documents/2016/07/22/2016-13490/payday-vehicle-title-and-certain-high-cost-installment-loans>.

155 FCC, “Protecting the Privacy of Customers of Broadband and Other Telecommunications Services,” *Federal Register*, Vol. 81, No. 232, December 2, 2016, <https://www.federalregister.gov/documents/2016/12/02/2016-28006/protecting-the-privacy-of-customers-of-broadband-and-other-telecommunications-services>.

156 Available under Advanced Search-Select Publication(s) at RegInfo.gov, Office of Information and Regulatory Affairs, Office of Management and Budget, <https://www.reginfo.gov/public/do/eAgendaAdvancedSearch>.

157 Regulatory Reform: Cost Caps Fiscal Year 2018, OIRA, December 2017, https://www.reginfo.gov/public/pdf/e013771/FINAL_TOPLINE_ALLOWANCES_20171207.pdf.

158 The Heritage Foundation’s “Red Tape” series is helpful for isolating independent agency rules with cost-saving effect from those imposing costs. Diane Katz, “Red Tape Receding: Trump and the High-Water Mark of Regulation,” *Background*

No. 3260, Heritage Foundation, November 8, 2017, <https://www.heritage.org/sites/default/files/2017-11/BG3260.pdf>.

159 OIRA, “Regulatory Reform: Two-for-One and Regulatory Cost Caps,” accessed March 13, 2018, <https://www.reginfo.gov/public/do/eAgendaEO13771>.

160 “Any existing regulatory action that imposes costs and the repeal or revision of which will produce verifiable savings may qualify. Meaningful burden reduction through the repeal or streamlining of mandatory reporting, recordkeeping or disclosure requirements may also qualify.” The White House, Memorandum, “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled ‘Reducing Regulation and Controlling Regulatory Costs,’” February 2, 2017, https://www.whitehouse.gov/sites/whitehouse.gov/files/briefing-room/presidential-actions/related-omb-material/eo_interim_guidance_reducing_regulations_controlling_regulatory_costs.pdf.

161 OIRA, “Regulatory Reform: Two-for-One and Regulatory Cost Caps,” accessed March 13, 2018, <https://www.reginfo.gov/public/do/eAgendaEO13771>.

162 Juliet Eilperin, Lisa Rein, and Marc Fisher, “Resistance from Within: Federal Workers Push Back against Trump,” *Washington Post*, January 31, 2017, https://www.washingtonpost.com/politics/resistance-from-within-federal-workers-push-back-against-trump/2017/01/31/c65b110e-e7cb-11e6-b82f-687d6e-6a3e7c_story.html?utm_term=.335e18bd5d2f.

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

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

165 National Conference of State Legislatures, Standing Committee on Budgets and Revenue, Policy Directives and Resolutions, 2016 NCSL Legislative Summit, Chicago, August 8–11, https://comm.ncsl.org/productfiles/83453460/2016_BR_Policies.pdf.

166 Letter to House and Senate Leadership on eliminating burdensome and illegal regulations by strengthening the Administrative Procedure Act, from several Republican state attorneys general, July 11, 2016, <http://www.ago.wv.gov/Documents/Regulatory%20reform%20letter.pdf>.

167 Derived from “CBO’s Activities under the Unfunded Mandates Reform Act,” May 10, 2016, <https://www.cbo.gov/publication/51335>.

168 That may be because the Unfunded Mandates Reform Act is not applicable to many rules and programs. Maev P. Carey, “Cost Benefit and Other Analysis Requirements in the

Rulemaking Process,” Congressional Research Service, Report 7–5700, pp. 11–12, <https://fas.org/sgp/crs/misc/R41974.pdf>.

169 “Regulation Identifier Numbers,” *Federal Register* blog, <https://www.federalregister.gov/reader-aids/office-of-the-federal-register-blog/2011/04/regulation-identifier-numbers>.

170 Government Accountability Office, “Congressional Review Act FAQ,” accessed March 28, 2018, <https://www.gao.gov/legal/congressional-review-act/faq>.

171 Ibid.

172 Curtis W. Copeland, “Congressional Review Act: Many Recent Final Rules Were Not Submitted to GAO and Congress,” white paper, July 15, 2014, https://www.eenews.net/assets/2017/02/22/document_pm_01.pdf; Todd Gaziano, “The Time to Review and Kill Hundreds of Rules under the CRA Has Not Yet Begun,” Liberty Blog, Pacific Legal Foundation, April 24, 2017, <http://blog.pacificlegal.org/time-review-kill-hundreds-rules-cra-not-yet-begun/>.

173 In addition to the database search at <http://www.gao.gov/legal/congressional-review-act/overview>, the GAO presents rules in a scroll window in reverse chronological order, which was used here for the hand tally rows that sum up the individual agency entries. Some slight differences exist between some hand tallies and the database search engine results (earlier years’ discrepancies are visible in earlier editions of *Ten Thousand Commandments*). Also, sometimes slight changes exist in the results the search engine provides from year to year.

174 Katz, p. 1.

175 Dudley and Warren, “Regulators’ Budget,” Table A-1, p. 14.

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

177 Federal Communications Commission, Declaratory Ruling, Report and Order, and Order, In the Matter of Restoring Internet Freedom, WC Docket No. 17–108, Adopted December 14, 2017, Released January 4, 2018, https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-166A1.pdf.

178 Braden Cox and Clyde Wayne Crews Jr., “Communications without Commissions: A National Plan for Reforming Telecom Regulation,” *Issue Analysis* 2005 No. 9 (October 18, 2005), Competitive Enterprise Institute, <https://cei.org/studies-issue-analysis/communications-without-commissions>.

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

180 Regulatory Accountability Act of 2017, as introduced by Sens. Rob Portman (R-Ohio), Heidi Heitkamp (D-N.D.), Orrin Hatch (R-Utah), and Joe Manchin (D-W. Va.), https://www.portman.senate.gov/public/index.cfm/files/serve?File_id=55976E26-D5DB-4B44-838B-8598272B92A6.

181 A version of the Competitive Enterprise Institute’s major rule categorization and disclosure recommendations noted in Table 10 and Box 5 is also explored in Crews, “The Other National Debt Crisis.” Those reporting proposals later appeared in the Achieving Less Excess in Regulation and Requiring Transparency (ALERRT) Act, introduced by Rep. George Holding in the 113th Congress, and in the Restoring Tax and Regulatory Certainty to Small Businesses Act of 2012, introduced by Sen. Olympia Snowe (R-Maine) in the 112th Congress. Section 213 pertained to “[r]egulatory transparency reporting.” ALERRT Act (H.R. 2804), 113th Congress (2013–2014), <https://www.congress.gov/bill/113th-congress/house-bill/2804/related-bills?q=%7B%22search%22%3A%5B%22Achieving+Less+Excess+in+Regulation+and+Requiring+Transparency+Act%22%5D%7D&r=1>. Restoring Tax and Regulatory Certainty to Small Businesses Act of 2012 (S. 3572), 112th Congress (2011–2012), <https://www.govtrack.us/congress/bills/112/s3572/text>.

182 Guidance out of Darkness Act (H.R. 4809, S. 2296), 115th Congress (2017–2018), <https://www.congress.gov/bill/115th-congress/house-bill/4809?q=%7B%22search%22%3A%5B%22Guidance+Out+of+Darkness+Act%22%5D%7D&r=1>, <https://www.congress.gov/bill/115th-congress/senate-bill/2296>.

183 Crews, “What’s the Difference between ‘Major,’ ‘Significant,’ and All Those Other Federal Rule Categories?”

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

185 Derived from Library of Congress, Public Laws website, <https://www.congress.gov/public-laws/114th-congress>; U.S. Government Publishing Office, Public and Private Laws website, <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=PLAW>; and GovTrack website, [https://www.govtrack.us/congress/bills/browse?status=28,29,32,33&sort=-current_status_date%20-%20current_status%5b%5d=9#sort=-current_status_date¤t_status\[\]=28](https://www.govtrack.us/congress/bills/browse?status=28,29,32,33&sort=-current_status_date%20-%20current_status%5b%5d=9#sort=-current_status_date¤t_status[]=28).

186 Regulations from the Executive in Need of Scrutiny Act of 2017 (H.R. 26), 115th Congress (2017–2018), <https://www.congress.gov/bill/115th-congress/house-bill/26?q=%7B%22search%22%3A%5B%22reins+act%22%5D%7D&r=2>.

187 American Opportunity Project, Regulation Freedom Amendment, January 2017, <http://www.americanopportunity-project.org/regulation-freedom-amendment/>.

About the Author

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

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

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



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