

TEN THOUSAND COMMANDMENTS

*An Annual Snapshot of the
Federal Regulatory State*

CLYDE WAYNE CREWS JR.

Ten Thousand Commandments

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2016 Edition

by Clyde Wayne Crews Jr.

Executive Summary

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

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

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

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

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

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

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

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

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

Regulation: The Hidden Tax

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

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

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

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

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

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

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

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

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

Introduction: Toward a Rational Regulatory Budget

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

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

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

blaming an agency for issuing an unpopular rule.

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

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

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

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Table I. The Regulatory State: A 2015 Overview

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

EPA Breakdown

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

FCC Breakdown

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

Note: n/a = not applicable.

The Cost of Regulation and Intervention

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

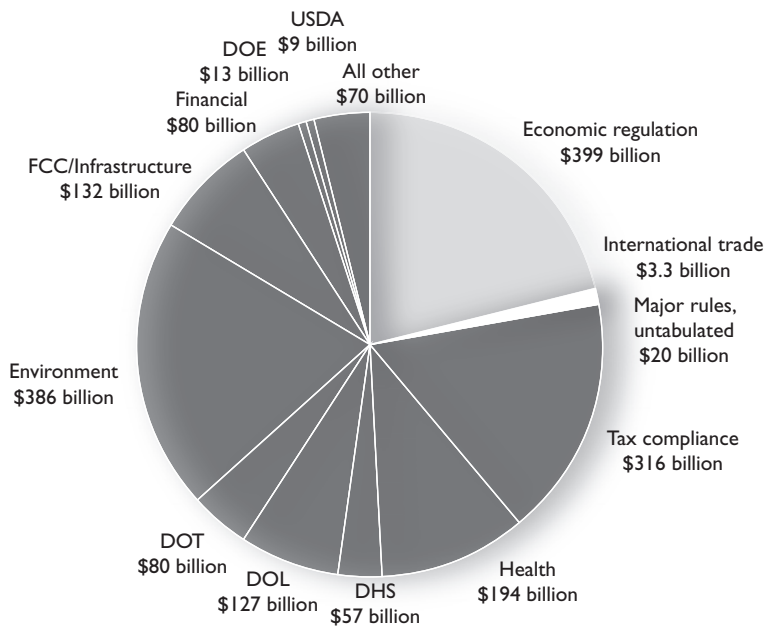
Per employee regulatory costs for firms of fewer than 50 workers can be 29 percent greater than those for larger firms.

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

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

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

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



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

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

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

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

Regulatory Compliance Costs: Catching Up to Government Spending?

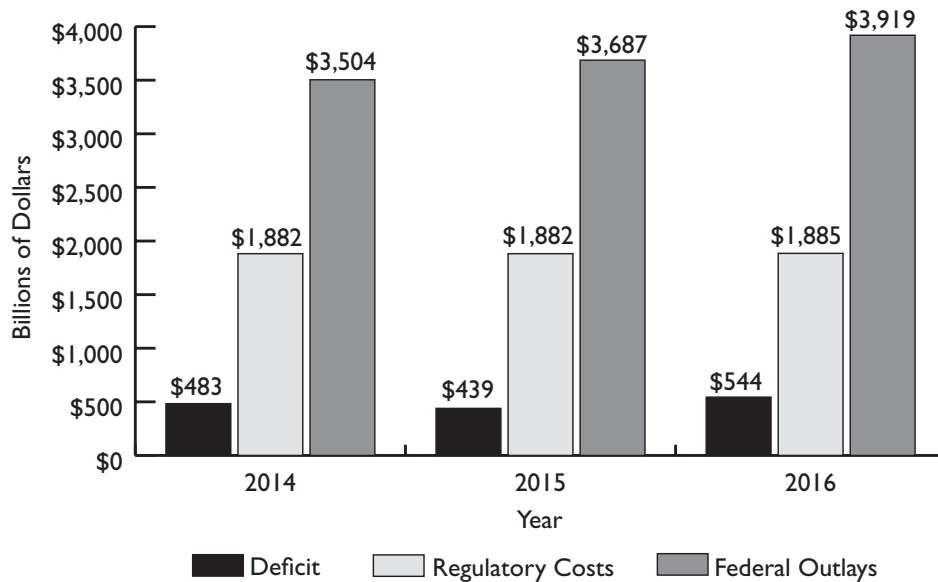
FY 2015 saw a deficit of \$439.0 billion on \$3.687 trillion in outlays. Figure 2 compares deficits and outlays for 2014–2015 and projected amounts for 2016 with our regulatory cost estimate of \$1.88 trillion. In the 2016 bar, note that estimated regulatory compliance costs are equivalent to nearly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

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

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

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

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



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

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

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

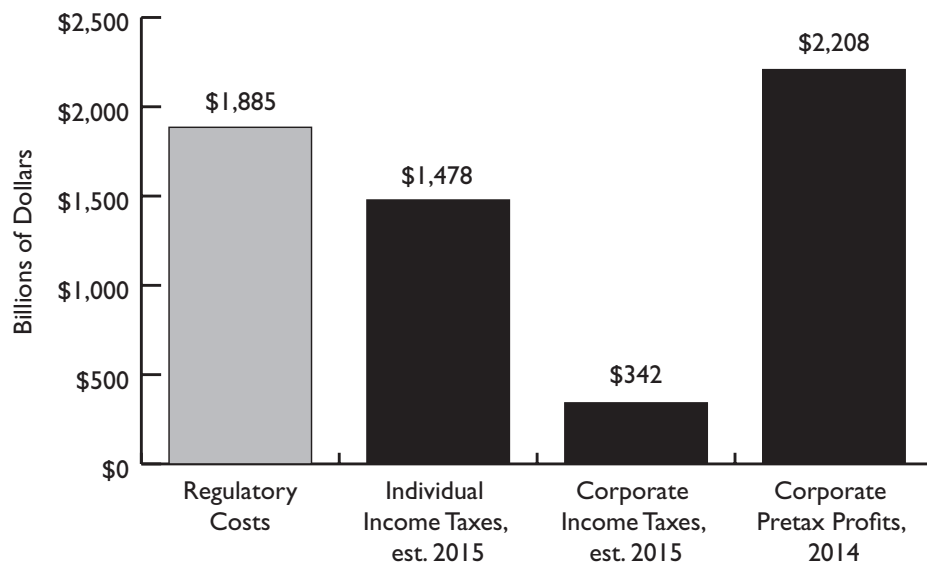
All this spending can translate into even higher future regulatory costs. Spending related to bailouts, stimulus, infrastructure, health care, telecommunications, and more will include significant regulatory components as well. Burdening the American

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

Regulatory Costs versus Income Taxes and Corporate Profits

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

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



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

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

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

Regulatory Costs versus GDP

Regulation "Eats" 11 Percent of U.S. GDP

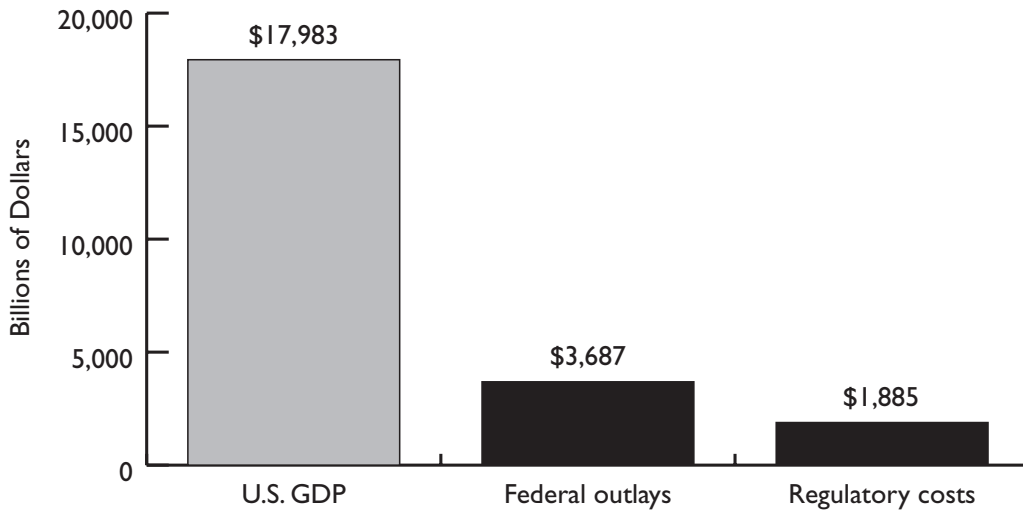
For the United States, the Commerce Department's Bureau of Economic Analysis in January 2016 estimated GDP for 2015 at \$17.938 trillion.³⁹ The total regulatory cost estimate of

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

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

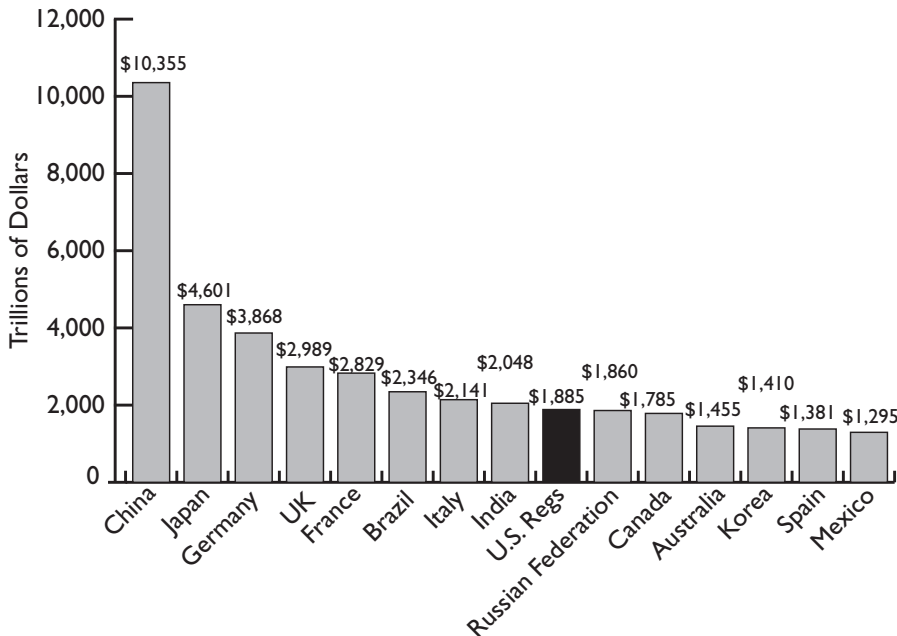
Not counting the United States, only eight countries have GDPs that exceed the estimated cost of regulation in the United States. U.S. regulatory costs surpass the 2014 GDP of both Canada, at \$1.785 trillion, and Mexico, at \$1.295 trillion. If U.S. regulatory costs of \$1.885 trillion were a country,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

Figure 4. GDP Compared to Federal Outlays and Regulation



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

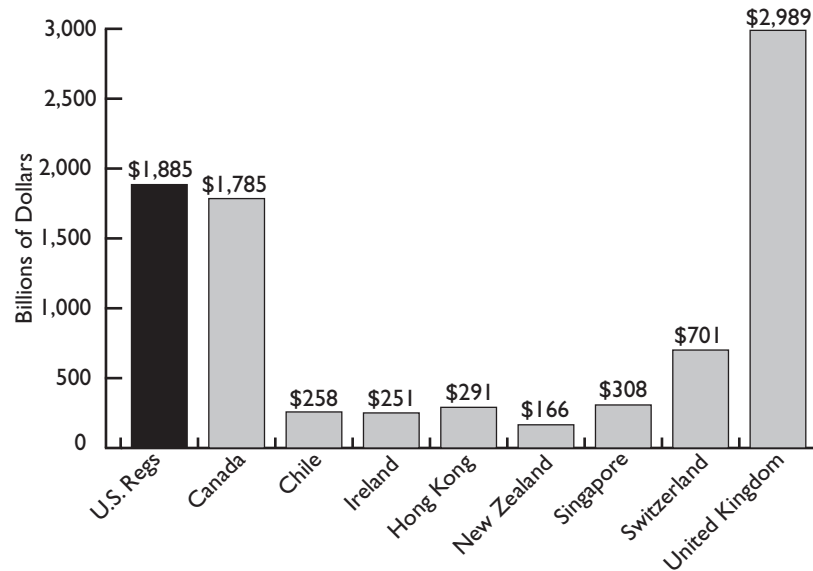
Figure 5. U.S. Regulatory Costs Compared to 2014 Gross Domestic Product of the World's Largest Economies



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

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

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



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

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

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

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

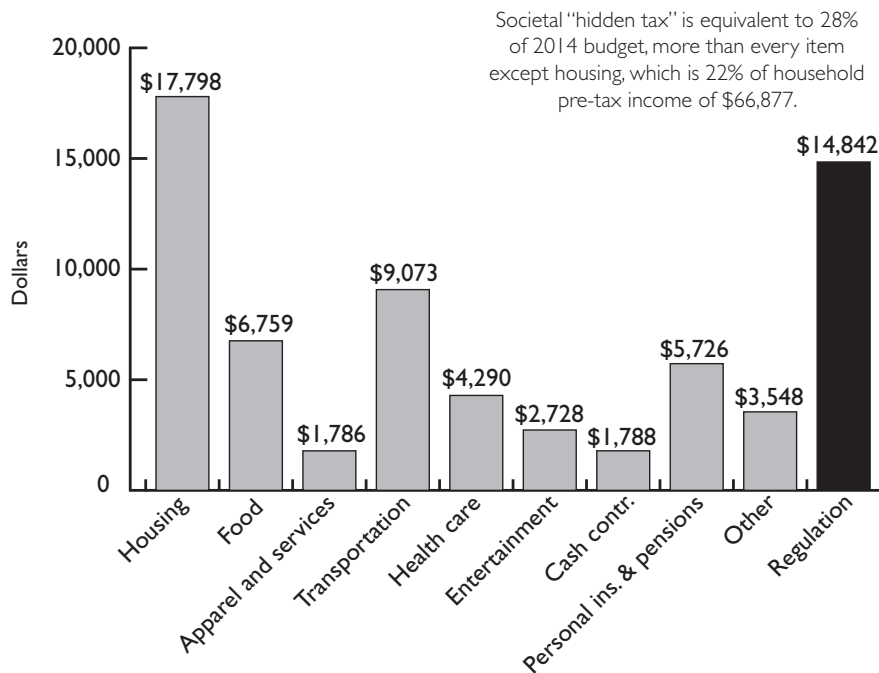
U.S. regulatory costs of \$1.885 trillion exceed the output of many of the world's major economies, including those regarded as the most economically free. Two annual surveys of global economic freedom are widely cited. Each year, the Heritage Foundation and the *Wall Street Journal* jointly publish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

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

Regulation: A Hidden Tax on the Family Budget

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

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



Sources: Bureau of Labor Statistics, author arithmetic.

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

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

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

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

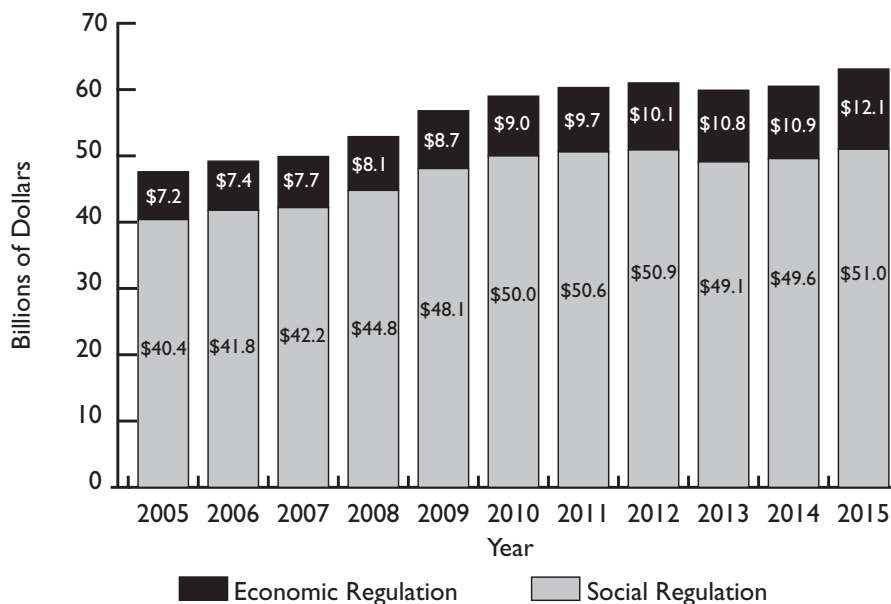
average income before taxes. That figure is higher than every annual household budgetary expenditure item except housing. More is “spent” on embedded or hidden regulation in society than on health care, food, transportation, entertainment, apparel and services, and savings. Societal regulatory costs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

The Federal Government’s Costs of Policing the Regulatory State

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

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

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



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

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

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

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

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

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

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

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

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

Thousands of Pages and Rules in the *Federal Register*

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

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

Federal Register Pages

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

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

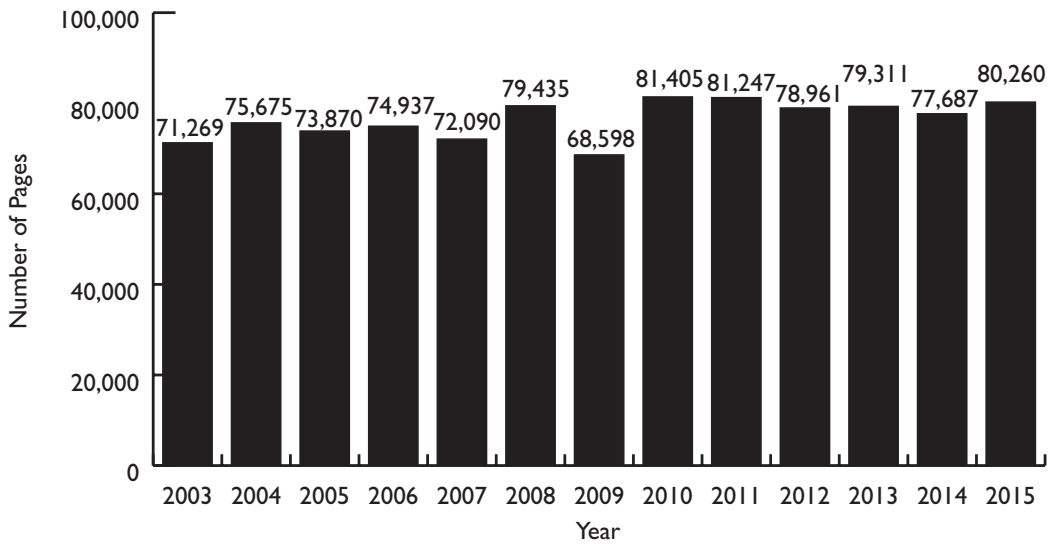
Federal Register Pages Devoted to Final Rules

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

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

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

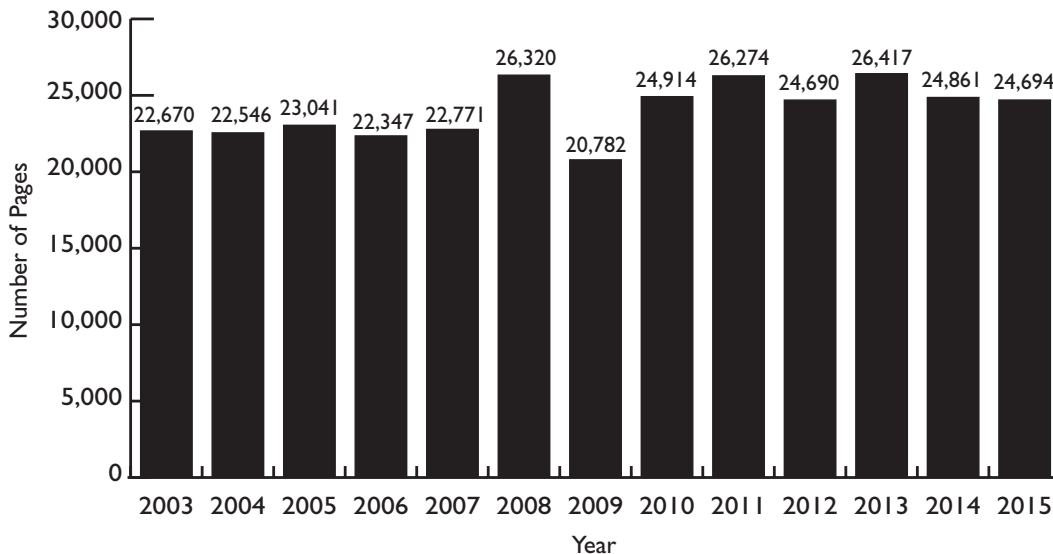
Figure 9. Number of *Federal Register* Pages, 2003–2015



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

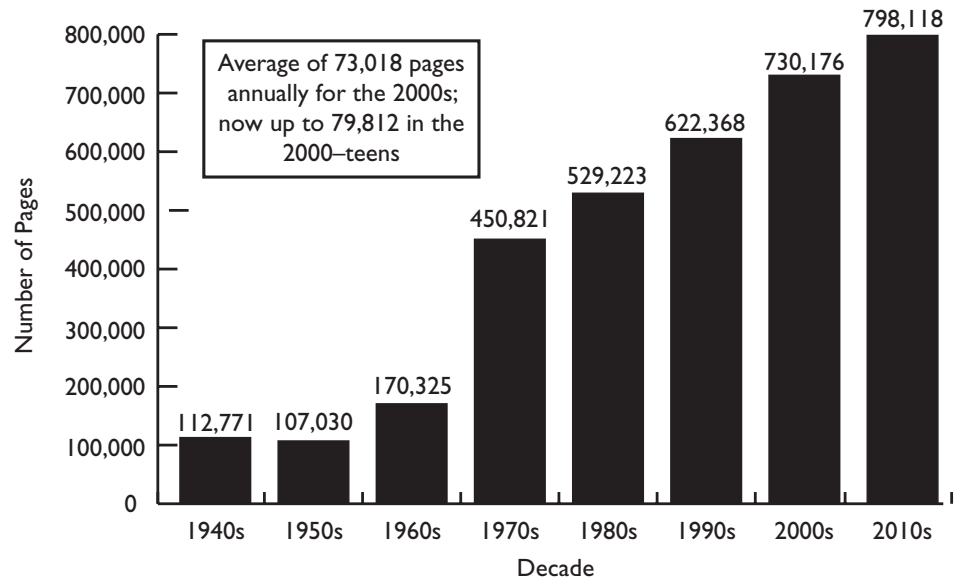
Note: Of seven all-time-high *Federal Register* page counts, six belong to the Obama administration.

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



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

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



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

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

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

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

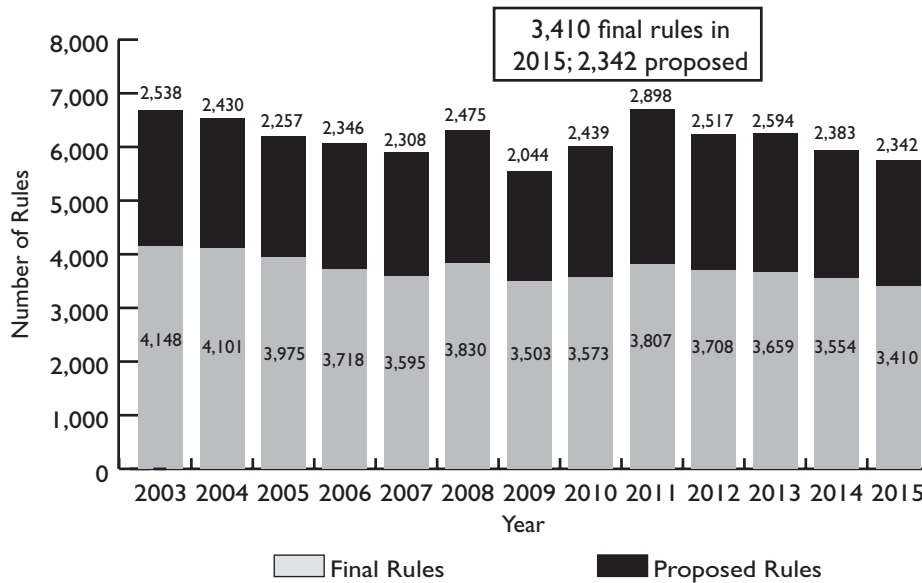
The actual numbers of proposed and final rules—not just the page count—published in the *Federal Register* merit close attention. As Figure 12 shows, final rules in 2015 dipped from 3,554 to 3,410. The following section describes the so-called Unified Agenda of federal regulations and examines some of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

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

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

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

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



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

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

Cumulative Final Rules in the *Federal Register*

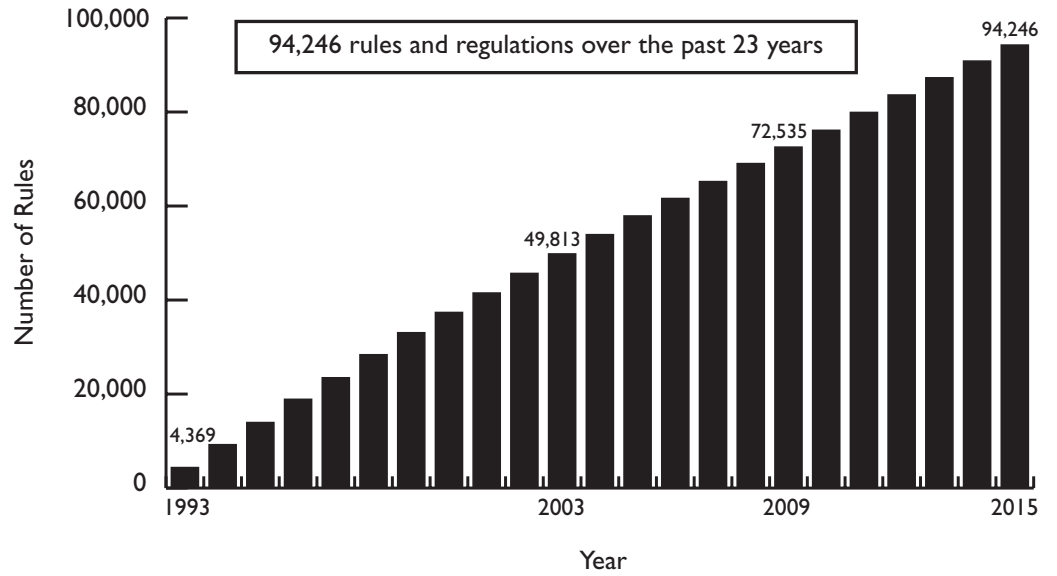
Despite yearly fluctuations, the cumulative effect of regulation can matter a great deal. The bottom line is that the annual outflow of at least 3,400 final rules—and often far more—has meant that 94,246 rules have been issued since 1993, when the first edition of *Ten Thousand Commandments* was published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

The Expanding Code of Federal Regulations

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

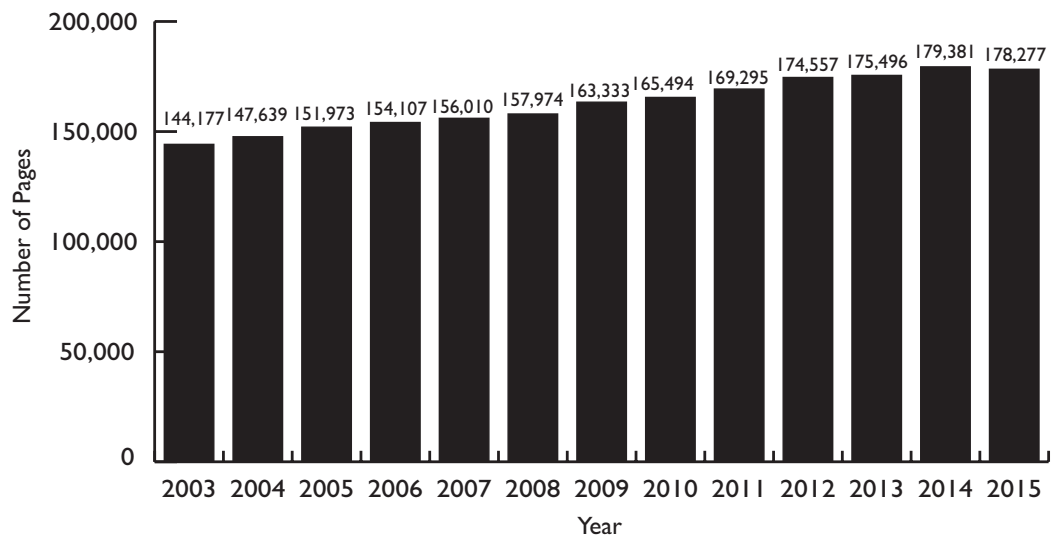
The annual outflow of at least 3,400 final rules—and often far more—has meant that 94,246 rules have been issued since 1993, when the first edition of Ten Thousand Commandments was published.

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



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

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



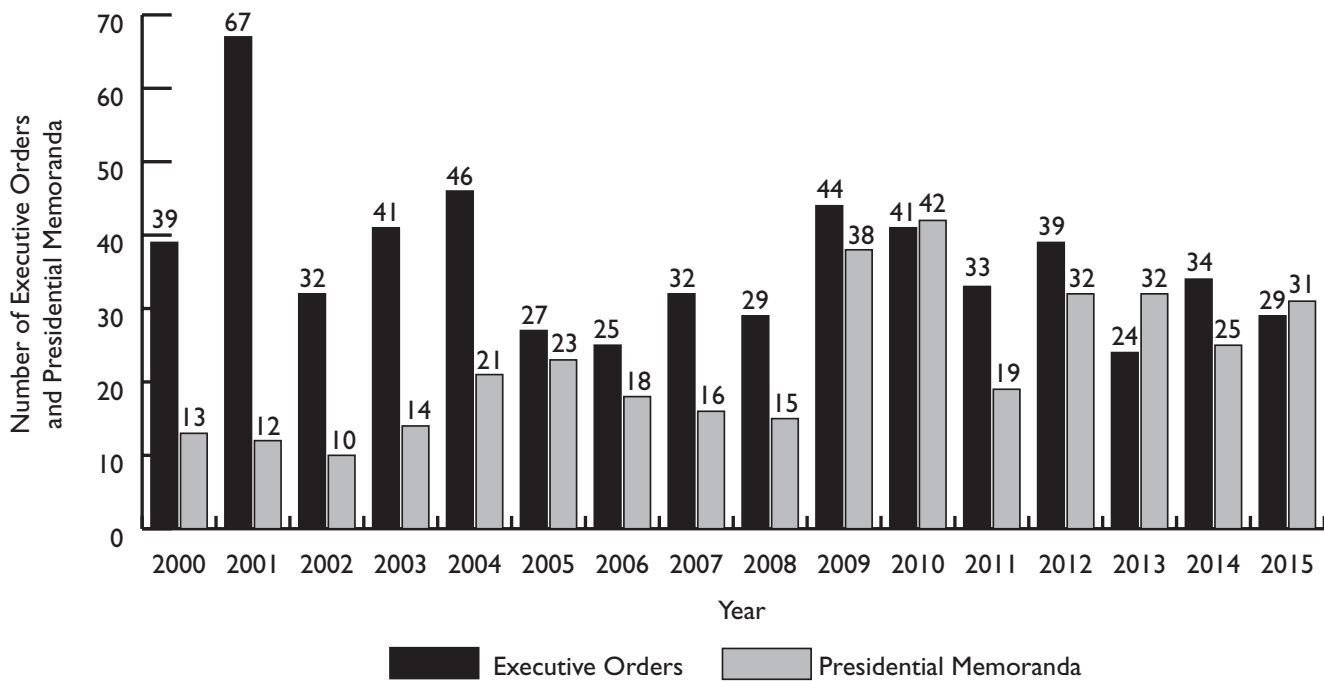
Source: National Archives and Records Administration, Office of the Federal Register.

Presidential Executive Orders and Executive Memoranda

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

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

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



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

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

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

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

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

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

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

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

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

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

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

Table 4. Executive Orders by Administration

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

(continued)

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

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

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

Note: n/a = not applicable or not available

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

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

24,000 Public Notices Annually

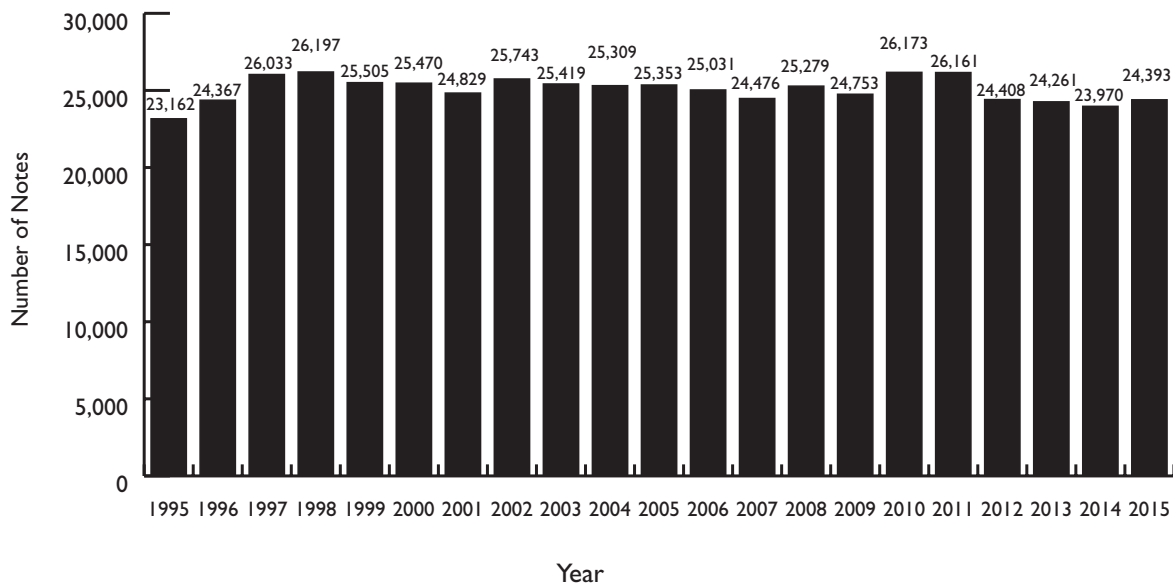
Public notices in the *Federal Register* include non-rulemaking documents such as meeting and hearing notices and agency-related organizational material.⁷⁰ But there are tens of thousands of yearly public notices, including memoranda, bulletins, guidance documents, alerts, and other proclamations, many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

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

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

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

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



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

Analysis of the Regulatory Plan and Unified Agenda of Federal Regulations

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

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

- Prerule actions
- Proposed and final rules

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

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

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

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

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

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

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

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

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

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

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

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

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

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

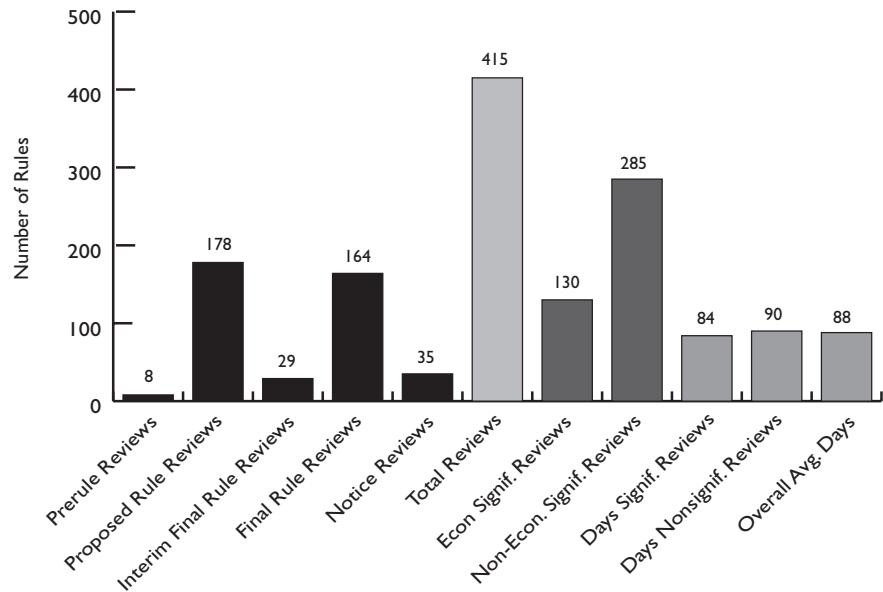
The number and scope of delays under Obama went well beyond those of his predecessors, who helped shape rules but did not have the same formalized controls, said current and former officials who spoke on the condition of anonymity because of the sensitivity of the topic.⁷⁷

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

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

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

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



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

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

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

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

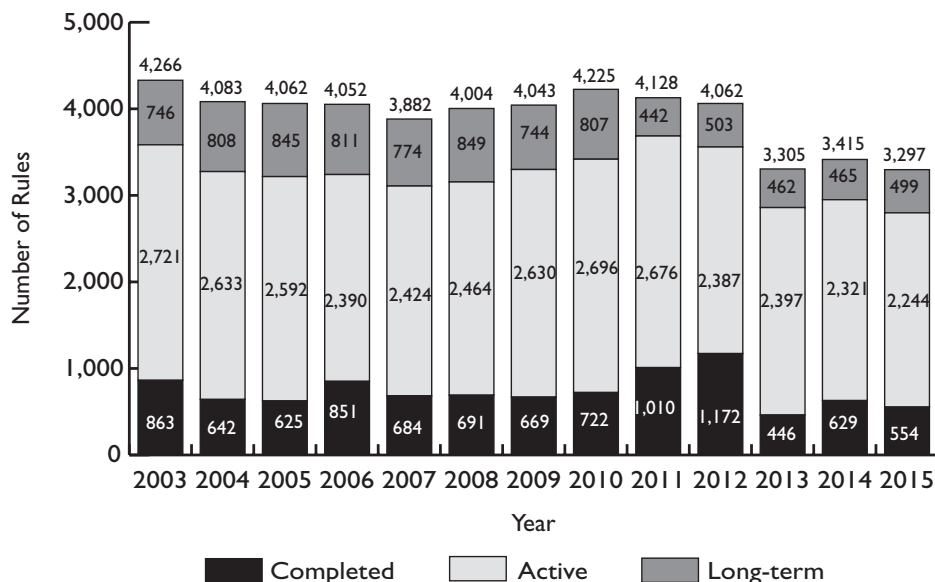
3,297 Rules Acknowledged in the Unified Agenda Pipeline

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

Top Five Executive Departments and Agencies

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

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

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

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

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

(continued)

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

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

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

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

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

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

Notable Regulations by Agency

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

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

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

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

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

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

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

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

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

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

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

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

Department of Agriculture

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

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

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

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

Department of Energy

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

Department of Commerce

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

Department of Education

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

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

Department of Health and Human Services

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

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

Department of Justice

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

Department of Labor

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

Department of Homeland Security

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

Department of the Interior

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

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

Environmental Protection Agency

Department of Transportation

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

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

Architectural and Transportation Barriers Compliance Board

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

Office of Personnel Management

- Multistate exchanges; implementations for Affordable Care Act provisions

Consumer Product Safety Commission

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

Federal Communications Commission

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

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

Department of Housing and Urban Development

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

Department of the Treasury

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

Federal Deposit Insurance Corporation

- Standardized Approach for Risk-Weighted Assets

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

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

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

- Margin and capital requirements for covered swap entities

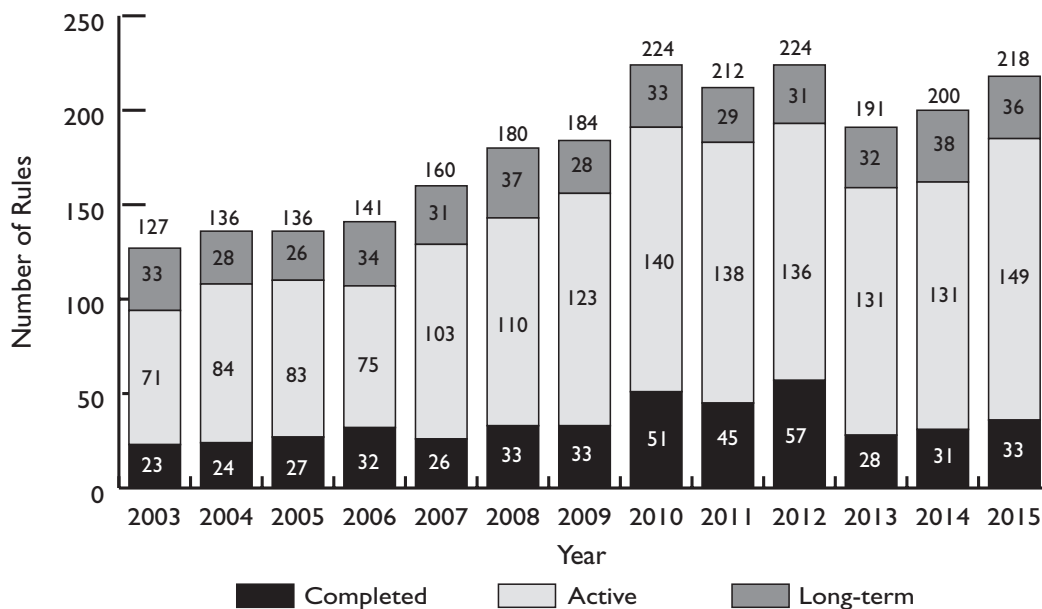
Federal Energy Regulatory Commission

- Critical infrastructure protection reliability standards

218 “Economically Significant” Rules in the Agenda

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

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



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

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

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

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

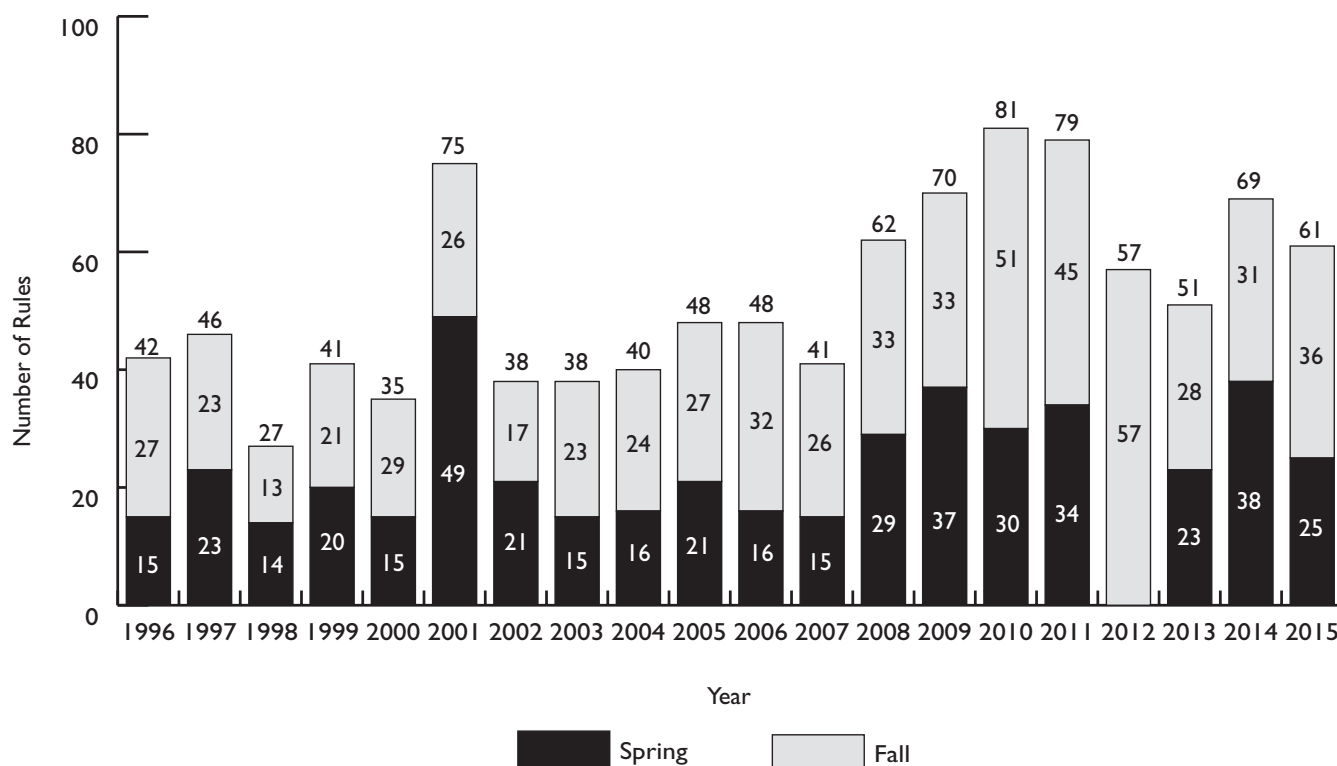
tive economically significant rules in the fall Agenda has topped 130 for all but the first of Obama’s seven years in office. (His seven-year average is 135; the George W. Bush eight-year average was 87.)

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

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

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

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



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

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

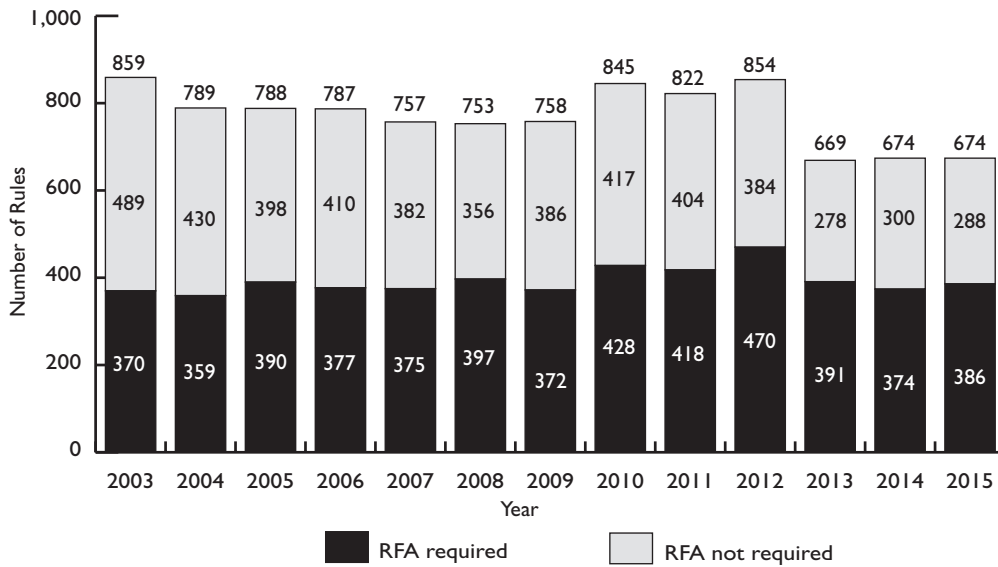
2001 and higher than in the Clinton years shown. In fact, apart from 2001, the level of completed economically significant rules from 2008 forward is notably higher than during the earlier part of the decade and the late 1990s. For completed economically significant rules, the average for Obama’s seven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

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

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

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

Figure 21. Rules Affecting Small Business, 2003–2015



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

million and escape the official “economically significant” designation.

Federal Regulations Affecting Small Business

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

Even though you make payroll every Friday,

You don’t have a guaranteed paycheck.

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

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

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

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

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

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

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

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

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

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

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

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

(continued)

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

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

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

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

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

Federal Regulations Affecting State and Local Governments

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

Box 1. Federal Workplace Regulation Affecting Growing Businesses

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

1 EMPLOYEE

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

4 EMPLOYEES: ALL THE ABOVE, PLUS

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

15 EMPLOYEES: ALL THE ABOVE, PLUS

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

20 EMPLOYEES: ALL THE ABOVE, PLUS

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

25 EMPLOYEES: ALL THE ABOVE, PLUS

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

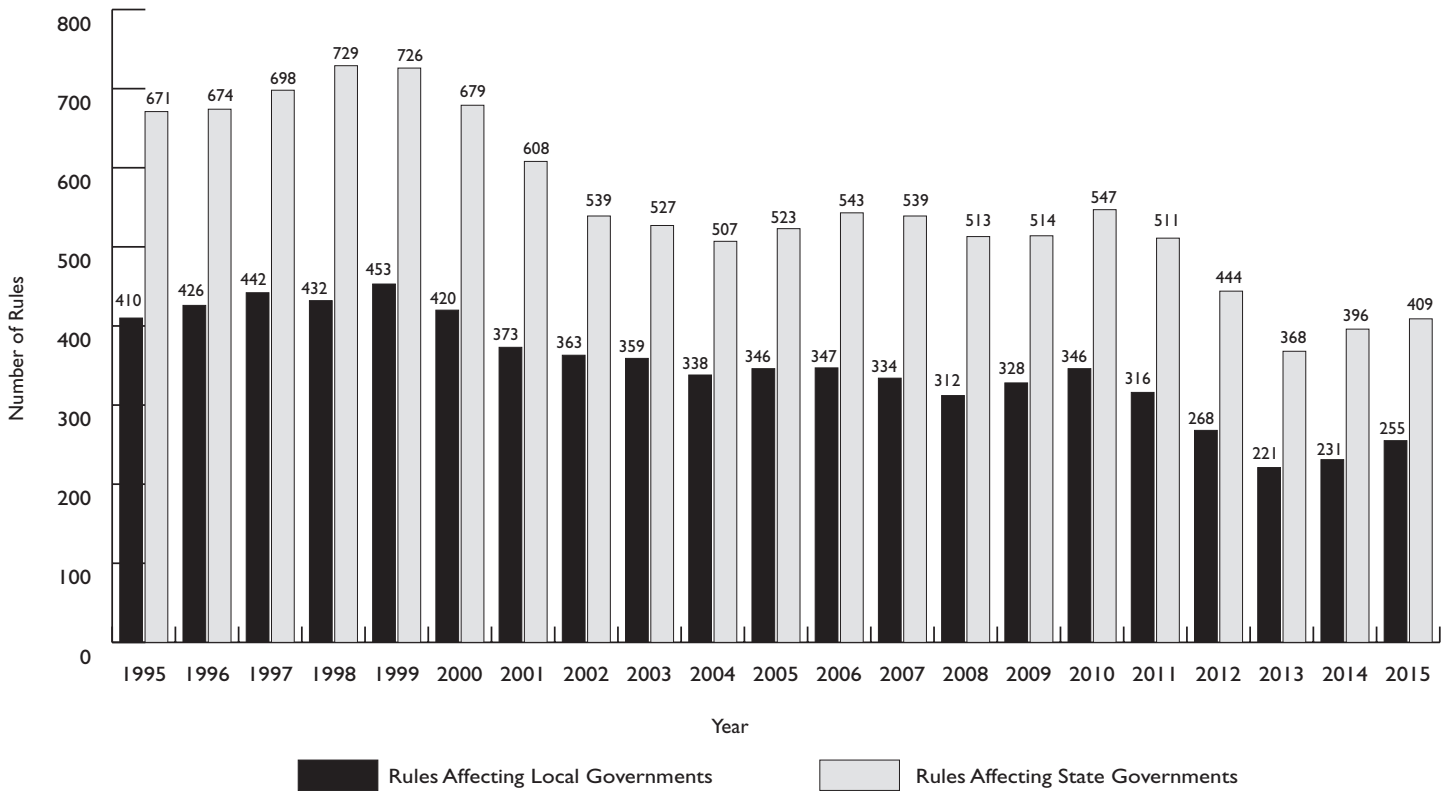
50 EMPLOYEES: ALL THE ABOVE, PLUS

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

100 EMPLOYEES: ALL THE ABOVE, PLUS

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

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



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

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

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

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

Government Accountability Office

Database on Regulations

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

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

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

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

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

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

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

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

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

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

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

Case Studies

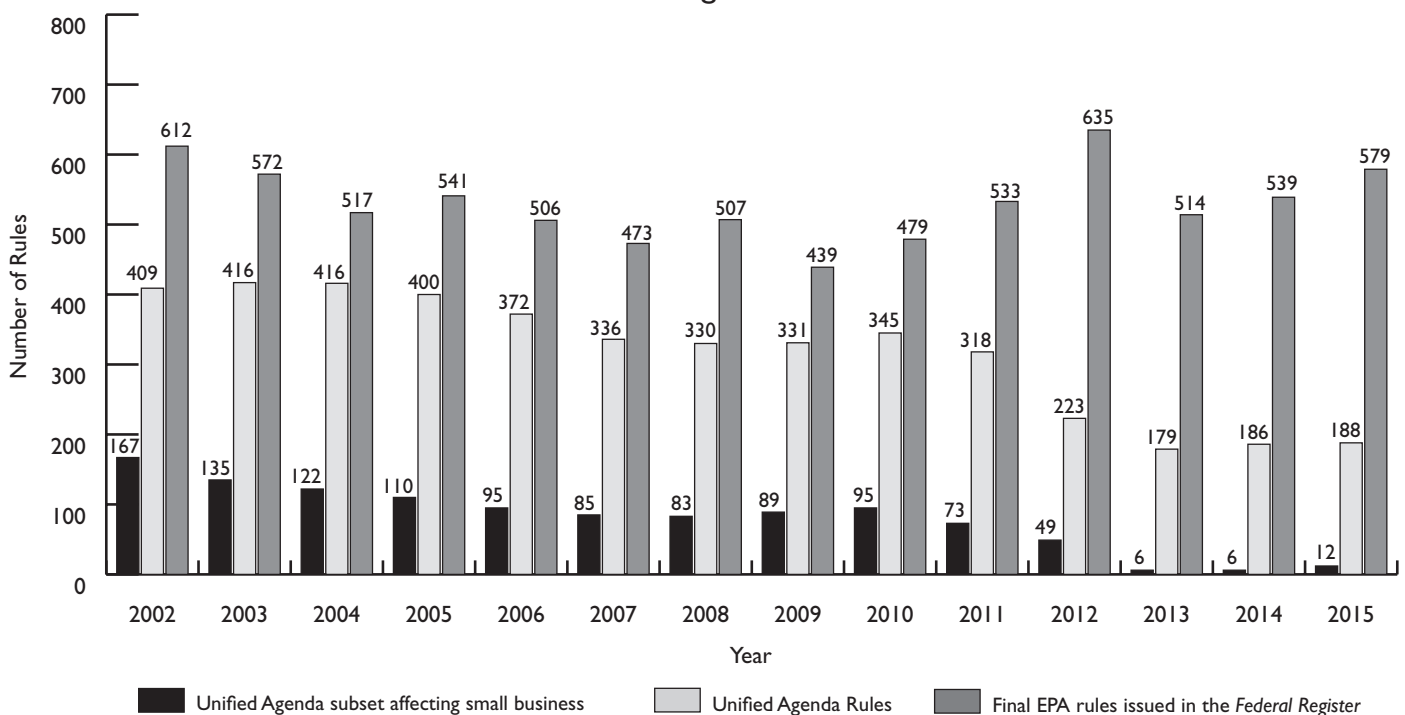
Regulation and the Environmental Protection Agency

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

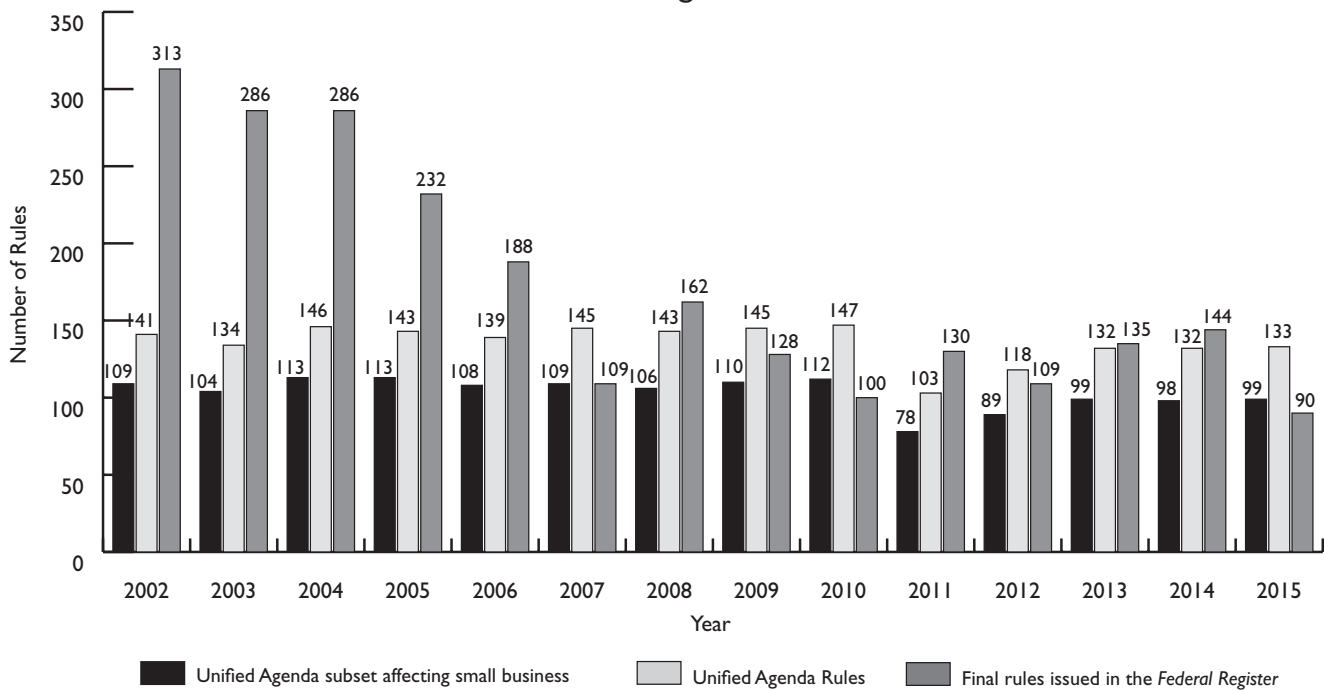
Regulation and the Federal Communications Commission

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

the Internet, and the information economy generally.

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

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



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

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

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

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

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

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

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

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

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

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

Liberate to Stimulate

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

Steps to Improve Regulatory Disclosure

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

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

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

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

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

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

Congress must cease delegating legislative power to unelected agency personnel.

Table 10. A Possible Breakdown of Economically Significant Rules

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

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

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

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

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

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

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

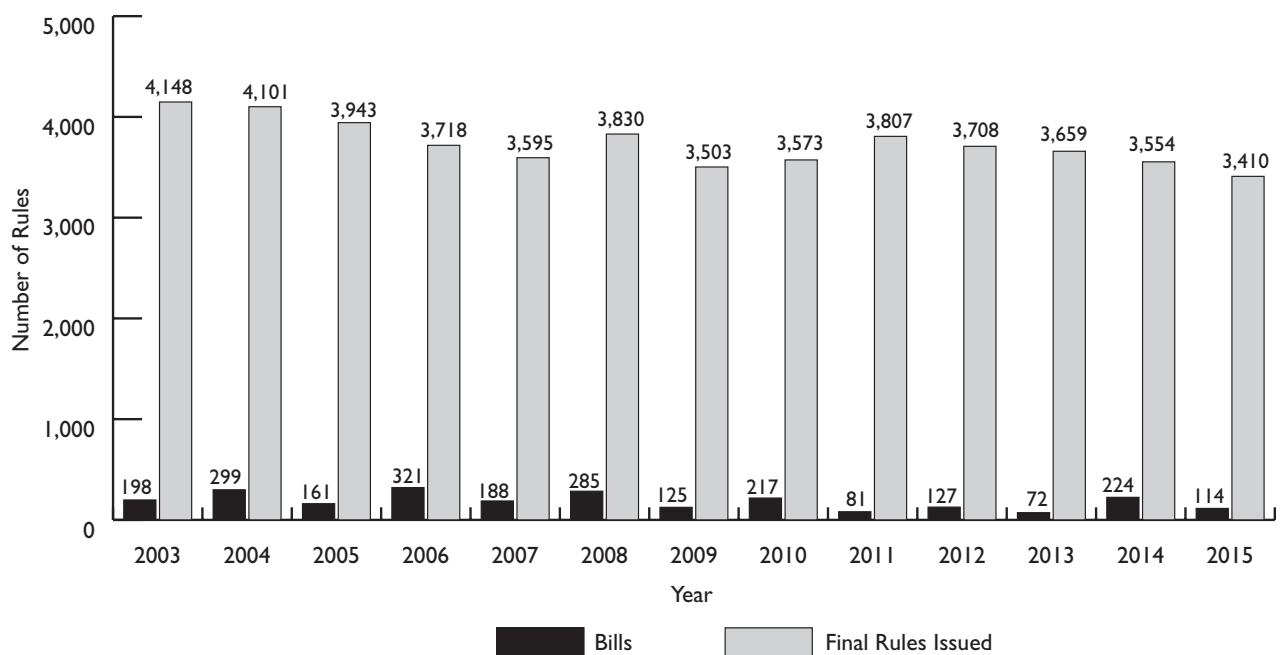
Regulators and the administration, rather than Congress, do the bulk of U.S. lawmaking.

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

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

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

Figure 25. The 2014 Unconstitutionality Index, 2003–2015



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

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

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

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

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

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

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

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

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

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

Appendix: Historical Tables

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Note: ES = economically significant.

Part E. Unified Agenda Rules History, 1983–2014

Total Number of Rules Under Consideration or Enacted

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

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

*Spring edition skipped in 2012.

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

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

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

ACTIVE RULEMAKING (149)

DEPARTMENT OF AGRICULTURE

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

DEPARTMENT OF COMMERCE

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31. DOE/EE, Final Rule Stage, Energy Conservation Standards for Small, Large, and Very Large Commercial Package A/C and Heating Equipment, 1904-AC95
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- 157. HHS/FDA, Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Food for Animals, 0910-AG10
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- 159. HHS/FDA, Revision of Postmarketing Reporting Requirements Discontinuance or Interruption in Supply of Certain Products (Drug Shortages), 0910-AG88
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- 162. HHS/CMS, FY 2016 Hospice Rate Update (CMS-1629-F), 0938-AS39
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- 167. HHS/CMS, Coverage of Certain Preventive Services; Eligible Organizations (CMS-9940-F), 0938-AS50
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- 171. HUD/HUDSEC, Credit Risk Retention (FR-5504), 2501-AD53

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- 173. DOT/NHTSA, Electronic Stability Control Systems for Heavy Vehicles (MAP-21), 2127-AK97
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- 178. EPA/AR, Review of the National Ambient Air Quality Standards for Ozone, 2060-AP38
- 179. EPA/AR, NESHAP for Brick and Structural Clay Products Manufacturing and NESHAP for Clay Ceramics Manufacturing, 2060-AP69
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- 187. DOE/OGC, Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation, 1990-AA39

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- 188. HHS/FDA, Regulations on Human Drug Compound- ing under Sections 503A and 503B of the Federal Food, Drug, and Cosmetic Act, 0910-AH10
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- 190. HHS/CMS, Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers (CMS-3178-F), 0938-AO91
- 191. HHS/CMS, Fire Safety Requirements for Certain Health Care Facilities (CMS-3277-F), 0938-AR72
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- 195. DHS/USCIS, Temporary Non-Agricultural Employment of H-2B Aliens in the United States, 1615-AC06
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- 208. EPA/WATER, National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions, 2040-AF15
- 209. EPA/AR, Review of the National Ambient Air Quality Standards for Particulate Matter, 2060-AS50
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- 212. FCC, Expanding Broadband and Innovation through Air-Ground Mobile Broadband Secondary Service for Passengers Aboard Aircraft in the 14.0–14.5 GHz Band; GN Docket No. 13-114, 3060-AK02
- 213. FCC, In the Matter of Service Rules for the 698 to 746, 747 to 762, and 777 to 792 MHz Bands, 3060-AJ35
- 214. FCC, Universal Service Reform Mobility Fund (WT Docket No. 10-208), 3060-AJ58
- 215. FCC, Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions; Docket No. 12-268, 3060-AJ82
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- 218. FCC, Protecting and Promoting the Open Internet (GN Docket No. 14-28 OK?), 3060-AK21

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

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

Part H. Rules Affecting Small Business, 1997–2014

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

Part I. The Unconstitutionality Index, 1993–2015

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

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

Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 Ibid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

60 Crews, “Despotism-Lite;” 2014.

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

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

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

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

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

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

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

67 Ibid.

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

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

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

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

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

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