



# Regulatory Report Card



COMPETITIVE ENTERPRISE INSTITUTE  
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## Environmental Protection Agency

\$353 billion Annually to Comply with Regulations; Most of Any Agency

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The quality of regulation depends heavily on its transparency. Taking to heart Justice Louis Brandeis' stated belief that sunshine is the best disinfectant, the purpose of this report card is to put important information from scattered sources into one easily accessible place. This report card focuses on the U.S. Environmental Protection Agency (EPA).

President Richard Nixon founded the EPA in July 9, 1970 via executive order, and its doors officially opened on December 2, 1970. The EPA's outlays for 1971, its first full year of operation, were \$701 million.<sup>1</sup> The EPA's 2011 outlays were \$10.722 billion,<sup>2</sup> and in 2011 it employed 20,610 full-time equivalent workers.<sup>3</sup>

### Size and Scope of EPA Regulations

A 2012 Competitive Enterprise working paper estimates that EPA regulations cost a total of \$353 billion per year, making it the single most expensive rulemaking agency.<sup>4</sup> This places the EPA firmly at the top of the five-tier scale we have devised for comparing agencies' regulatory costs (see figure below). The cost of EPA regulations is on par with the entire 2011 GDPs of Denmark (\$332 billion), Thailand (\$345

#### Estimated Cost Rankings by Agency

##### F5: >\$100 billion

**EPA: \$353 billion**

Health and Human Services: \$184.8 billion  
Federal Communications Commission and Telecom Regulation: \$142 billion  
Department of Labor: \$116.3 billion  
Financial Regulation (several agencies): \$102.5 billion

##### F4: \$10 billion - \$100 billion

Department of Transportation: \$61.8 billion  
Dept. of Homeland Security: \$55.32 billion

##### F3: \$5 billion - \$10 billion

Energy Department: \$9.809 billion  
Department of Agriculture: \$9.05 billion  
Department of the Interior: \$5.2 billion

##### F2: \$1 billion - \$5 billion

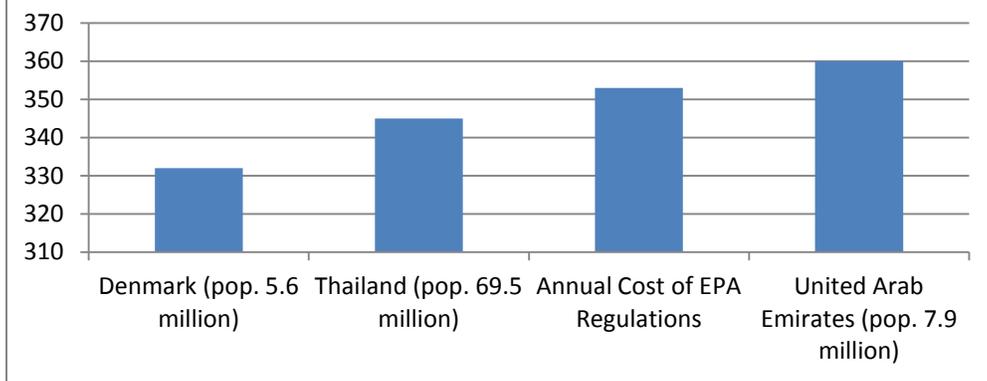
Department of Education: \$3.302 billion  
Housing and Urban Development: \$1.827 billion  
Department of Commerce: \$1.801 billion  
Department of the Treasury: \$1.32 billion  
Department of Justice: \$1.25 billion

##### F1: <\$1 billion

U.S. Access Board (ATBCB): \$851 million  
Nuclear Regulatory Commission: \$414 million  
Federal Energy Regulatory Comm.: \$336 million  
Consumer Product Safety Comm.: \$193 million  
Equal Employment Opportunity Comm.: \$121 million

Source: Wayne Crews, "Tip of the Costberg" working paper.

**Figure 1. Annual Cost of EPA Regulations Compared to National 2011 GDPs (\$ Billions)**



Sources: Wayne Crews, “Tip of the Costberg” working paper; World Bank National GDP rankings, <http://data.worldbank.org/data-catalog/GDP-ranking-table>.

billion), and the United Arab Emirates (\$360 billion).<sup>5</sup>

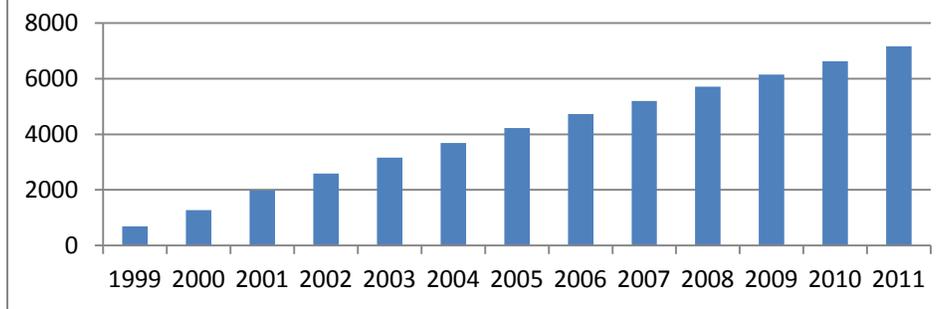
The EPA is historically one of the most active rulemaking agencies. From 1999 to 2011, the agency published a total of 4,995 rules in the “Unified Agenda of Federal Regulatory and Deregulatory Actions,” which lists federal regulatory actions at various stages of implementation.<sup>6</sup> It published even more final rules in the *Federal Register* over the same period, 7,161 in all. This may indicate a transparency problem, as more than 2,000 rules were finalized without first appearing in the Unified Agenda.

The Fall 2011 Unified Agenda, the most recent edition as of this writing, contains 4,128 total rules from 60 agencies. 318 rules—nearly 8 percent—come from the

EPA, making it the fourth most active rulemaking agency. Of those 318 rules, 21 are “economically significant,” meaning they each have \$100 million or more in estimated economic impact in any given year.

As new regulations pass, old ones are rarely deleted. The result is that the EPA’s total burden increases from year to year. According to a Mercatus Center working paper by Omar Al-Ubaydli and Patrick A. McLaughlin, Title 40 of the *Code of Federal Regulations*, which covers environmental protection, has at least 88,852 specific regulatory restrictions. The number could be as high as 154,350.<sup>7</sup> They arrived at these numbers through text analysis, searching the Code of Federal Regulations for terms such as “shall,” “must,” “may not,” “prohibited,” and “required.”<sup>8</sup>

**Figure 2. Cumulative EPA Final Rules Published 1999-2011**



Source: Advanced article searches for final EPA rules by year at <http://www.federalregister.gov>.

The EPA is a federal agency, but many of its regulations affect state and local governments. Of the 318 EPA rules currently in the pipeline, 67 of them affect state governments, and 47 of them affect local governments.

In December of 2010, Rep. Darrell Issa (R-Calif.), Chairman of the House Oversight and Government Reform Committee, asked businesses, trade associations, and think tanks which regulations they considered to be the most burdensome.<sup>9</sup> Some of the most commonly cited EPA rules include power plant emission standards, the prospect of greenhouse gas regulations, stricter gas mileage standards, increasing the amount of ethanol in gasoline from 10 percent to 15 percent, and ambient air standards under the Clean Air Act.<sup>10</sup>

### Recent and Upcoming Rules

There are currently 21 economically significant EPA regulations in various stages of the pipeline. Of these 21 economically significant rules, cost estimates are available

for 11 of them. The total estimated annual cost of these 11 economically significant rules ranges from \$19.848 billion to \$24.238 billion.<sup>11</sup> The average cost per rule ranges from \$1.98 billion to \$2.42 billion. It will be some time before the remaining rules progress far enough through the pipeline to release their estimated costs.

Listed below are brief descriptions of particularly onerous rules from the EPA that deserve greater public scrutiny.

1) The Utility MACT rule is, by the EPA's cost estimate, one of the most expensive regulations of all time. Its estimated annual cost is \$9.6 billion. By reducing methylmercury emissions from coal-fired power plants, the regulation will improve the health of a truly niche population: the unborn children of pregnant, subsistence fisherwomen who consume more than 225 pounds of self-caught fish exclusively from 90<sup>th</sup> percentile most-polluted bodies of inland freshwater. It will not have perceptible health impacts on other population groups.<sup>12</sup>

2) Stricter Corporate Average Fuel Economy (CAFE) Standards will begin to take effect in 2017. By 2025, car manufacturers' fleets will be required to have average fuel economy of at least 54.5 miles per gallon, which the agency itself estimates will add \$1,800 to the average sales price of each new car. This rule will also negatively impact passenger safety, as a common way to improve fuel economy is to make cars smaller. Since smaller cars don't fare as well in crashes as larger cars, road fatalities will be higher than they would be with less stringent CAFE standards.<sup>13</sup>

3) In 2012, the EPA enacted Regional Haze federal implementation plans on Arizona, Montana, Nebraska, New Mexico, Oklahoma, and Wyoming at a cost \$450 million per year. The resulting visibility improvements are not perceptible to the human eye.<sup>14</sup> The EPA plans to issue similar rules for 27 more states in 2013.

4) In 2013, the EPA is expected to pass new coal combustion residual standards, colloquially known as coal ash. The standards would designate coal ash as a hazardous substance. After being burned in power plants, much coal ash is currently recycled into concrete.

5) In March 2013, the EPA is expected to release new carbon pollution standards that would essentially ban new coal-fired power plants.

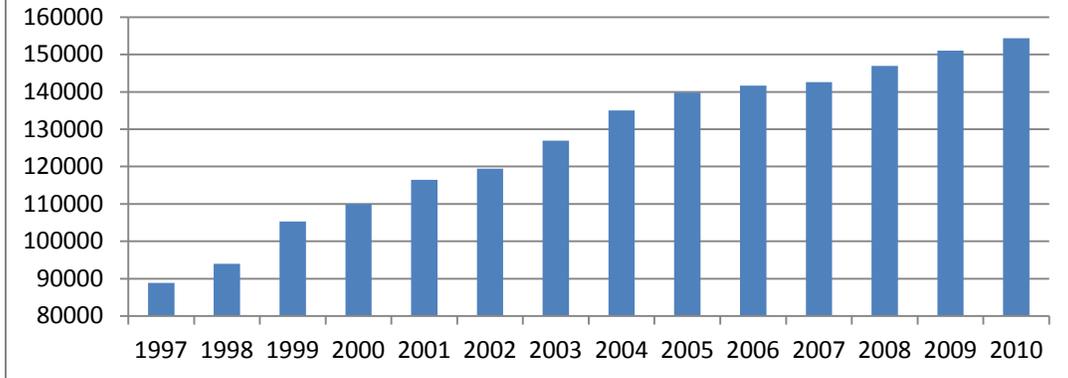
## Suggested Reforms

There is much the Environmental Protection Agency can do to improve its transparency and the quality of its rulemaking. The agency should put out annual report cards similar to this one, aggregating data from diverse sources into a single publicly accessible document. The public, policy makers, journalists, and the agency itself would better understand how effectively the EPA is pursuing its mission.

Every year, the EPA should evaluate its older rules and repeal the ones that no longer apply; have been rendered obsolete by new technologies, regulations, or private action; or have been demonstrated to do more harm than good. An independent annual commission is better suited to this task because agencies have little incentive to recommend reducing their own size and scope. But in the absence of third-party review, the agency should at least exercise this basic regulatory hygiene. The EPA should also lighten its regulatory touch in areas where environmental quality is high or has significantly improved.

The EPA should also be more forthcoming with its cost analyses. Currently, the agency is only required to disclose estimated costs for rules that are classified as "significant" under Executive Order 12866, or "major" under the Congressional Review Act. Such rules are reviewed by the Office of Management and Budget, though the EPA sometimes includes its own cost estimates, even when not required to.

**Figure 3. Total Regulatory Constraints in Title 40 of the Code of Federal Regulations, "Protection of Environment"**



Source: [regdata.mercatus.org](http://regdata.mercatus.org), Mercatus Center at George Mason University.

Every rule should include its estimated cost, even if it is not classified as significant or major. A rule can cost as much as \$99 million per year and be exempt from cost reporting requirements. These estimates are best done by an independent third party, since the EPA has an incentive to understate

costs and overstate benefits. But the EPA's own estimates would still be better than no estimates at all.

The federal government should also annually publish the total estimated cost of all EPA rules currently in effect. The EPA's budget is far from the only cost it imposes on taxpayers.

## Notes

<sup>1</sup> Office of Management and Budget historical budget table 4.1, "Outlays by Agency: 1962-2017," <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2013/assets/hist04z1.xls>.

<sup>2</sup> Ibid.

<sup>3</sup> Environmental Protection Agency, FY 2012 Annual Performance Plan, p. 13, <http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=P100AMEQ.txt>. The report provides the raw numbers, but not the totals. The total figure is from the author's calculations.

<sup>4</sup> Wayne Crews, "Tip of the Costberg: On the Invalidity of All Cost of Regulation Estimates and the Need to Compile Them Anyway," CEI working paper, pp. 46-54, <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-August-17-2012-Uncopyedited-Draft>.

<sup>5</sup> World Bank GDP ranking, <http://data.worldbank.org/data-catalog/GDP-ranking-table>.

<sup>6</sup> "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions," *Federal Register*, various years' editions; and from online edition, <http://www.reginfo.gov>.

<sup>7</sup> Omar Al-Ubaydli and Patrick A. McLaughlin, "The Industry-Specific Regulatory Constraint Database (IRCD): A Numerical Database on Industry-Specific Regulations for All U.S. Industries and Federal Regulations, 1997-2010," Mercatus Center working paper No. 12-20, October 2012, p.7

<sup>8</sup> Ibid, p. 6.

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<sup>9</sup> The Competitive Enterprise Institute's response to Rep. Issa's request is online at <http://www.scribd.com/doc/47563145/Competitive-Enterprise-Institute-Letter-to-Chairman-Issa-January-3-2011>.

<sup>10</sup> U.S. House of Representative Committee on Oversight and Government Reform, "Assessing Regulatory Impediments to Job Creation," pp. 13-26.

<sup>11</sup> Author's calculations from the final rules published in the *Federal Register*.

<sup>12</sup> Since the EPA has not identified any people who fit those criteria, the agency's reason for promulgating the rule may have more to do with the fact it disadvantages coal compared to other, more politically popular energy sources. See Marlo Lewis, Jr., William Yeatman, and David Bier, "All Pain and No Gain: The Illusory Benefits of the Utility MACT," Competitive Enterprise Institute, *Issue Analysis* 2012 No. 5, June 2012, <http://cei.org/issue-analysis/all-pain-and-no-gain>.

<sup>13</sup> Sam Kazman, "First, Do No Harm to Motorists: Six Reasons Not to Raise CAFE Standards," Competitive Enterprise Institute *On Point* No. 114, June 12, 2007, <http://cei.org/pdf/5967.pdf>.

<sup>14</sup> William Yeatman, "The Regional Haze Agreement Is a Terrible Deal for New Mexico: State Should Continue to Fight EPA in Court," Competitive Enterprise Institute/Rio Grande Foundation Working Paper, November 14, 2012, <http://cei.org/studies/regional-haze-settlement-agreement-terrible-deal-new-mexico><http://cei.org/studies/regional-haze-settlement-agreement-terrible-deal-new-mexico>.