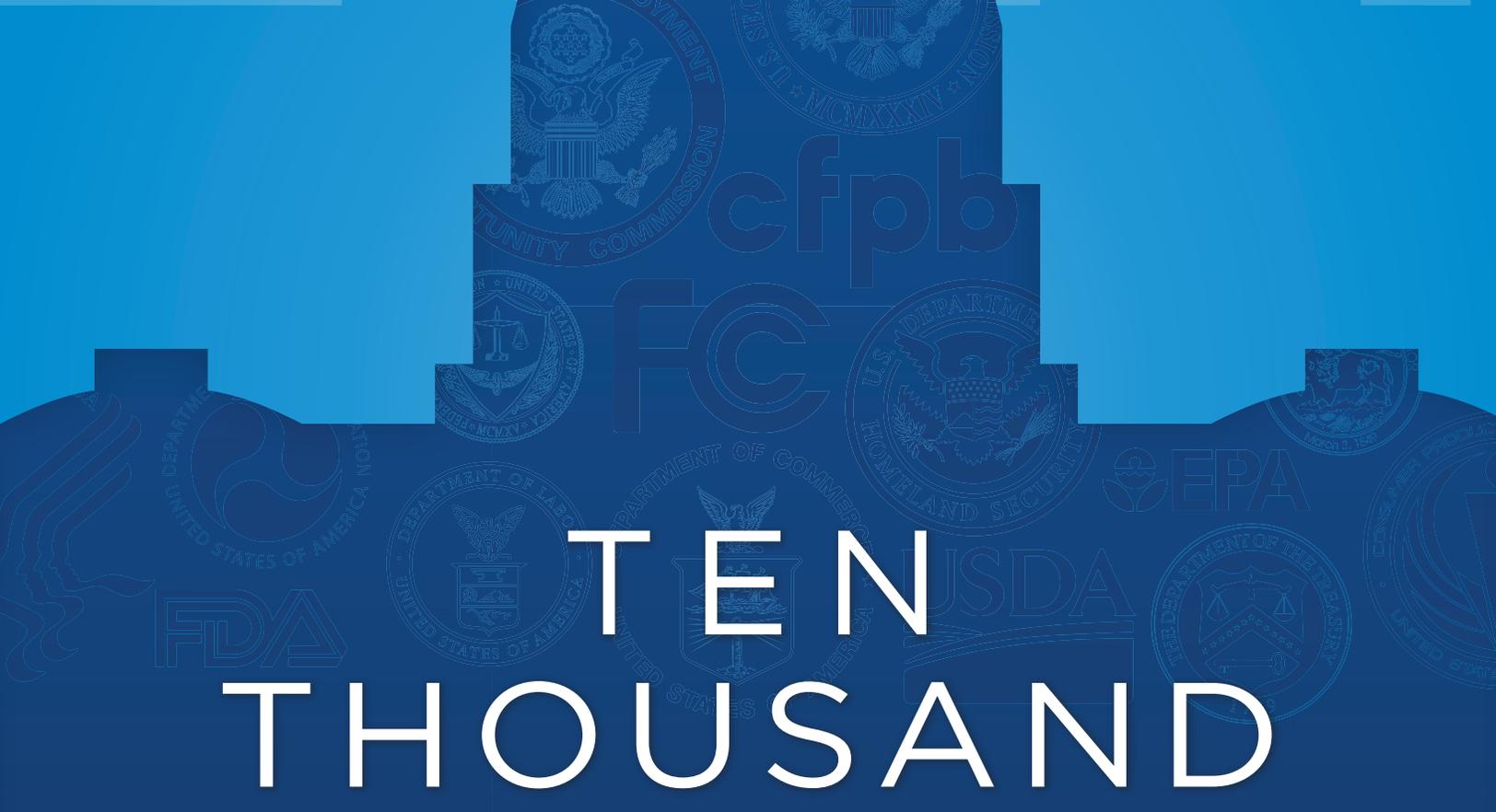


2014



TEN THOUSAND COMMANDMENTS

An Annual Snapshot of the Federal Regulatory State

CLYDE WAYNE CREWS JR.

Ten Thousand Commandments

An Annual Snapshot of the Federal Regulatory State

2014 Edition

by Clyde Wayne Crews Jr.

Executive Summary

In February 2014, the Congressional Budget Office (CBO) reported outlays for fiscal year (FY) 2013 of \$3.454 trillion and projected spending for FY 2014 at \$3.543 trillion.¹ Meanwhile, President Barack Obama's federal budget proposal for FY 2015 seeks \$3.901 trillion in discretionary, entitlement, and interest spending.² In the previous fiscal year, the president had proposed outlays of \$3.778 trillion.³ Despite high debt and deficits, we have been unable to avoid entering the era of \$4 trillion in annual spending.

We experienced trillion dollar deficits between 2009 and 2012,⁴ and CBO projects that deficits will exceed \$1 trillion again by FY 2022.⁵ Trillion dollar deficits were once unimaginable. Such sums signified the level of budgets themselves, not of shortfalls. Yet at no point is spending projected to balance in the coming decade. President Obama's 2015 budget projects deficits that are smaller than recent heights—with 2014's claimed \$649 billion to fall to \$413 billion in 2018⁶—before heading back into the CBO-predicted stratosphere.

Many other countries' government outlays make up a greater share of their national output, compared with 20 percent for the U.S. government,⁷ but in absolute terms, the U.S. government is the largest government on the planet. Only four other nations top \$1 trillion in annual government revenues, and none but the United States collects more than \$2 trillion.⁸

Regulation: The Hidden Tax

The scope of federal government spending and deficits is sobering. Yet the government's reach extends well beyond Washington's taxes, deficits, and borrowing. Federal environmental, safety and health, and economic regulations cost hundreds of billions—perhaps trillions—of dollars annually in addition to the official federal outlays that dominate policy debate.

Firms generally pass the costs of some taxes along to consumers.⁹ Likewise, some regulatory compliance costs that businesses face will find their way into the prices that

Precise regulatory costs can never be fully known because, unlike taxes, they are unbudgeted and often indirect.

consumers pay and out of the wages workers earn. Precise regulatory costs can never be fully known because, unlike taxes, they are unbudgeted and often indirect.¹⁰ But scattered government and private data exist about scores of regulations and about the agencies that issue them, as well as data about estimates of regulatory costs and benefits. Compiling some of that information can make the regulatory state somewhat more comprehensible. That compilation is one purpose of the annual *Ten Thousand Commandments* report, highlights of which follow:

- Among the five all-time-high *Federal Register* page counts, four have occurred under President Obama.
- The annual outflow of more than 3,500 final rules—sometimes far above that level—means that 87,282 rules have been issued since 1993.
- There were 51 rules for every law in 2013. The “Unconstitutionality Index,” the ratio of regulations issued by agencies to laws passed by Congress and signed by the president, stood at 51 for 2013. Specifically, 72 laws were passed in calendar year 2013, whereas 3,659 rules were issued. This disparity highlights the excessive delegation of lawmaking power to unelected agency officials.
- This author’s working paper, “Tip of the Costberg,” which is largely based on federal government data, estimates regulatory compliance and economic impacts at \$1.863 trillion annually.¹¹
- U.S. households “pay” \$14,974 annually in regulatory hidden tax, thereby “absorbing” 23 percent of the average income of \$65,596, and “pay” 29 percent of the expenditure budget of \$51,442. The “tax” exceeds every item in the budget except housing. More is “spent” on embedded regulation than on health care, food, transportation, entertainment, apparel and services, and savings.
- The estimated cost of regulation exceeds half the level of the federal budget itself. Regulatory costs of \$1.863 trillion amount to 11.1 percent of the U.S. gross domestic product (GDP), which was estimated at \$16.797 trillion in 2013 by the Bureau of Economic Analysis.
- When regulatory costs are combined with federal FY 2013 outlays of \$3.454 trillion, the federal government’s share of the entire economy now reaches 31 percent.
- The regulatory “hidden tax” surpasses the income tax. Regulatory compliance costs exceed the 2013 estimated total individual income tax revenues of \$1.234 trillion.
- Regulatory compliance costs vastly exceed the 2013 estimated corporate income tax revenues of \$288 billion and approach corporate pretax profits of \$2.19 trillion.
- If it were a country, U.S. regulation would be the 10th largest economy, ranked between India and Italy.
- U.S. regulatory costs exceed the GDPs of Australia and Canada, the highest-income nations among the countries ranked most free in the annual *Index of Economic Freedom* and *Economic Freedom of the World* reports.
- The Weidenbaum Center at Washington University in St. Louis, Missouri, and the Regulatory Studies Center at George Washington University in Washington, D.C., jointly estimate that agencies spent \$57.3 billion (on budget) to administer and police the federal regulatory enterprise. Adding the \$1.863 trillion in off-budget compliance costs brings the total regulatory enterprise to \$1.92 trillion.
- The *Federal Register* finished 2013 at 79,311 pages, the fourth highest level in history.
- *Federal Register* pages devoted specifically to final rules rose to a record high of 26,417.
- The 2013 *Federal Register* contained 3,659 final rules and 2,594 proposed rules.
- Since the nation’s founding, more than 15,177 executive orders have been issued. President Obama issued 181 as of the end of 2013.
- President George W. Bush averaged 63 major rules annually during his eight years in office; Obama’s five years so far have averaged 81.

- Although there are over 3,500 rules annually, public notices in the *Federal Register* exceed 24,000 annually, with uncounted “guidance documents” among them. There were 24,261 notices in 2013 and 477,929 since 1995.
- According to the fall 2013 “Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions” (which lists federal regulatory actions at various stages of implementation), 63 federal departments, agencies, and commissions have 3,305 regulations at various stages of implementation.
- Of the 3,305 regulations in the pipeline, 191 are “economically significant” rules, which the federal government defines as imposing at least \$100 million in annual costs. Assuming that those rulemakings are primarily regulatory implies roughly \$19 billion yearly in future off-budget regulatory effects.
- Of the 3,305 regulations now in the works, 669 affect small businesses. Of those, 391 required a regulatory flexibility analysis; 278 were otherwise noted by agencies to affect small businesses.
- The five most active rule-producing agencies—the Departments of the Treasury, Interior, Commerce, Transportation, and Health and Human Services—account for 1,451 rules, or 44 percent of all rules in the Unified Agenda pipeline.
- The Environmental Protection Agency (EPA), which was formerly consistently in the top five, is now sixth, but adding its 179 rules brings the total from the top six rulemaking agencies to 1,630 rules, or 49.3 percent of all federal rules.
- The most recent Small Business Administration (SBA) evaluation of the overall U.S. federal regulatory enterprise estimated annual regulatory compliance costs of \$1.752 trillion in 2008. Earlier SBA reports pegged costs at \$1.1 trillion in 2005 and at \$843 billion in 2001. The Office of Management and Budget (OMB) agreed with those figures at the time. Meanwhile, a subset of 115 selected major rules reviewed during 2002–2012 by the OMB notes cumula-

tive annual costs of between \$57 billion and \$84 billion.

The short-lived series of budget surpluses from 1998 to 2001—the first since 1969—seems like ancient history in today’s debt- and deficit-drenched policy setting, as the CBO projects annual deficits of hundreds of billions of dollars over the coming decade. When it comes to stimulating a limping economy, reducing deficits and relieving regulatory burdens are key to the nation’s economic health. Otherwise, budgetary pressures can incentivize lawmakers to impose off-budget regulations on the private sector, rather than add to unpopular deficit spending. A new government program—for example, job training—would require either increasing government spending or imposing new regulations requiring such training. Unlike on-budget spending, the latter regulatory costs remain largely hidden from public view, which makes regulation increasingly attractive to lawmakers.

The Disclosure and Accountability Imperatives

Cost-benefit analysis at the agency level is already neglected; thus, at minimum, some third-party review is needed.¹² Like federal spending, regulations and their costs should be tracked and disclosed annually. Then, periodic housecleaning should be performed.

A problem with cost-benefit analysis is that it largely relies on agency self-policing. Having agencies audit their own rules is like asking students to grade their own exams. Regulators are disinclined to emphasize when a rule’s benefits do not justify the costs involved. In fact, one could expect new and dubious categories of benefits to emerge to justify an agency’s rulemaking activity.¹³

A major source of overregulation is the systematic overdelegation of rulemaking power to agencies. Requiring expedited votes on economically significant or controversial agency rules before they become binding would reestablish congressional accountabil-

Having agencies audit their own rules is like asking students to grade their own exams.

ity and would help affirm a principle of “no regulation without representation.”

Openness about regulatory facts and figures can be bolstered through federal “regula-

tory report cards,” similar to the presentation in *Ten Thousand Commandments*.¹⁴ These could be officially issued each year to distill information for the public and policy makers about the scope of the regulatory state.

Introduction: Toward a Rational “Regulatory Budget”

Congress’s spending accountability, although highly imperfect, is a necessary condition for government’s accountability to voters. The federal government 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 to some, taxpayers can inspect costs in the federal budget’s historical tables¹⁵ and CBO publications.¹⁶ The public can see what is going on.

However, the government can also “fund” objectives and programs through regulatory compliance, without using tax dollars. Rather than pay directly and book expenses for new initiatives, federal regulations can force 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 direction of private-sector resources with comparatively little public fuss—thus rendering regulation a form of off-budget taxation. Policy makers find it easier to impose regulatory costs relative to undertaking more government spending, because of the lack of disclosure and accountability for regulatory costs. Where regulatory compliance costs prove burden-

some, 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 2014 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 the gross national product (GNP).
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 the past decades.

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Table I. The Regulatory State: A 2013 Overview

	Year-End 2013	1-Year Change	5-Year Change (2009–2013)	10-Year Change (2004–2013)
Total regulatory costs	\$1.863 trillion	\$1.806 trillion	n/a	n/a
Agency enforcement budgets	\$57.3 billion	0.86%	2.7%	22.6%
<i>Federal Register</i> pages	79,311	0.40%	15.6%	4.8%
Devoted to final rules	26,417	7.00%	27.1%	17.2%
<i>Federal Register</i> final rules	3,659	–1.30%	4.5%	–10.8%
Code of Federal Regulations pages	175,496	0.50%	7.4%	18.9%
Total rules in <i>Agenda</i> pipeline	3,305	–18.60%	–18.2%	–19.0%
Completed	462	–60.60%	–30.9%	–28.0%
Active	2,397	0.40%	–8.9%	–9.0%
Long term	446	–11.30%	–40.1%	–44.8%
“Economically significant” rules in the year-end pipeline	191	–14.70%	3.8%	40.4%
Completed	28	–50.90%	–15.2%	16.7%
Active	131	–3.70%	6.5%	56.0%
Long term	32	3.20%	14.3%	14.3%
Rules affecting small business	669	–21.70%	–11.7%	–15.2%
Regulatory flexibility analysis required	391	–16.80%	5.1%	8.9%
Regulatory flexibility analysis not required	278	–27.60%	–28.0%	–35.3%
Rules affecting state governments	368	–17.10%	–28.4%	–27.4%
Rules affecting local governments	221	–17.50%	–32.6%	–34.6%
GAO Congressional Review Act reports on major rules	77	14.90%	–7.2%	18.5%
EPA Breakdown				
Final rules (<i>Federal Register</i>)	514	–19.10%	16.6%	–0.6%
EPA rules in <i>Agenda</i>	179	–19.70%	–45.9%	–57.0%
EPA rules affecting small business	6	–87.80%	–93.3%	–95.1%
FCC Breakdown				
Final rules (<i>Federal Register</i>)	135	23.90%	5.5%	–52.8%
FCC rules in <i>Agenda</i>	132	11.90%	–9.0%	–9.6%
FCC rules affecting small business	99	11.20%	–10.0%	–12.4%

Note: n/a = not applicable.

The Dollar Cost of the Regulatory State

The OMB's 2013 *Draft 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 115 selected major regulations during the decade from 2002 to 2012 at between \$57 billion and \$84 billion (compared with 106 rules at between \$43 billion and \$67 billion in the 2012 report).¹⁷ Meanwhile, the estimated range for benefits spanned \$193 billion to \$800 billion (in 2001 dollars).

The OMB's cost-benefit breakdown incorporates only benefits and costs that the OMB or agencies have expressed in quantitative and monetary terms. It omits numerous categories and cost levels of rules; rules from independent agencies are entirely absent.

OMB shows that 14 rules, which were added during the fiscal year ended September 2012 and which sported both benefit and cost analysis, show costs ranging from \$14.8 billion to \$19.5 billion were added (in 2001 dollars).¹⁸

The latest official comprehensive cost assessment of the entire federal regulatory enterprise was prepared in September 2010 for the SBA.¹⁹ Modeling techniques have changed over time, as the SBA presented several versions of the report over the past decade and a half. The survey traditionally has assessed regulatory costs by the following categories

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

- Workplace regulatory costs
- Environmental regulatory costs
- Paperwork costs

The 2010 edition of the SBA report, which was prepared by economists Nicole V. Crain and W. Mark Crain, estimates regulatory compliance costs at \$1.752 trillion for 2008.²⁰ The Crain and Crain report's primary purpose is to note the extent to which regulatory costs impose higher burdens on *small* firms, for which per employee regulatory costs are higher. In their model, overall regulatory costs amounted to \$8,086 per employee.²¹ The impacts by firm size are disparate. Table 2 shows (for 2008) that per employee regulatory costs for firms with fewer than 20 workers can be more than 36 percent greater than those for larger firms—\$10,585 for smaller firms versus \$7,755 for larger ones.²² Meanwhile, other developments—including the aftermath of recent major financial, health, and environmental policies—point to substantial regulatory costs not captured by any of SBA's reports.²³

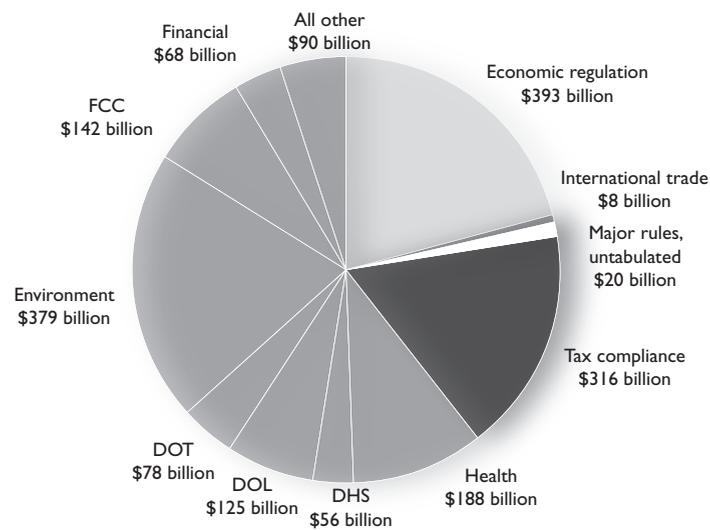
More recently, this author compiled available estimates on the compliance and economic cost burden of the federal regulatory enterprise, using the OMB annual *Report to Congress* on costs and benefits, Government Accountability Office (GAO) and other federal data, and third-party estimates. The result is the working paper, "Tip of the Costberg: On the Invalidity of All Cost of Regulation Estimates and the Need to Compile Them Anyway," which estimates across-the-board costs of federal regulation at \$1.863 trillion annually.²⁴ Figure 1, the Annual Cost of Federal Regulation, breaks down this estimate by categories.

Table 2. Per Employee Regulatory Costs Higher for Small Firms, 2008

Size of Firm	Regulatory Costs per Employee
Large > 500 employees	\$7,755
Medium 20–499 employees	\$7,454
Small < 20 employees	\$10,585

Source: Nicole V. Crain and W. Mark Crain, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBAHQ-08-M-0466, September 2010, <http://www.sba.gov/advo/research/rs371tot.pdf>. Costs presented in 2009 dollars.

Figure 1. Annual Cost of Federal Regulation 2012, \$1.863 Trillion



Source: Wayne Crews, “Tip of the Costberg: On the Invalidity of All Cost of Regulation Estimates and the Need to Compile Them Anyway,” Working Paper, 2014 Edition. www.tenthousandcommandments.com.

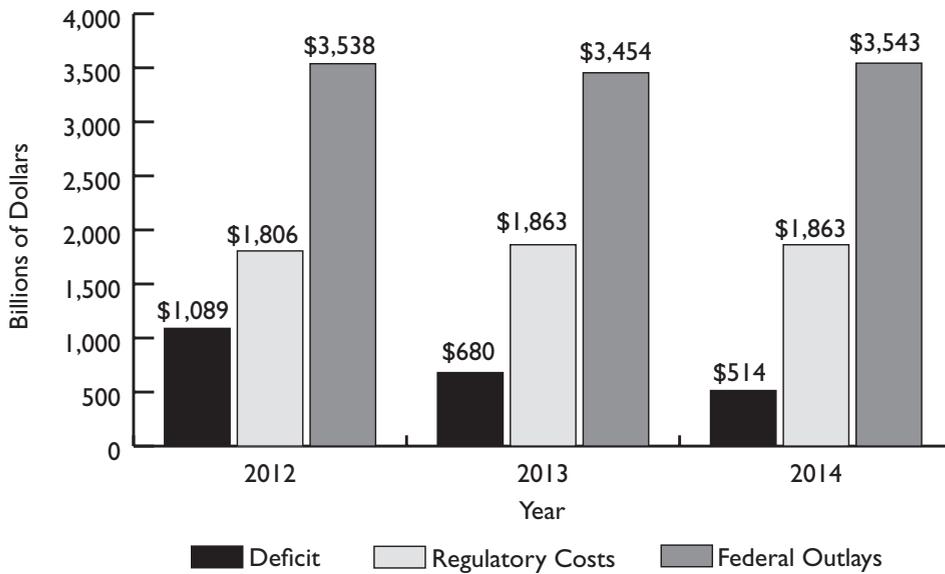
Note: DHS = Department of Homeland Security; DOL = Department of Labor; DOT = Department of Transportation; FCC = Federal Communications Commission.

Recent regulatory interventions—including the various stimulus and bailout programs and regulatory costs associated with the recent health care and financial reform legislation—will have dramatic economic impacts. Other costs, such as the indirect costs and the effects of lost innovation or productivity, are notoriously difficult to assess (which works to the advantage of the regulator) and can produce underestimates of the total regulatory burden.²⁵

Regulatory Compliance Costs: Catching Up to Government Spending?

Figure 2 compares 2012–2014 deficits and outlays with the 2013 “Costberg” regulatory cost estimate of \$1.863 trillion. In the center column, note that estimated regulatory compliance costs exceed half the 2013 level of

Figure 2. Federal Outlays and Deficits Compared with Federal Regulatory Costs (2012, 2013, and projected 2014)



Sources: 2012 deficit and outlays from CBO, *The Budget and Economic Outlook: Fiscal Years 2013 to 2023*, January 2013, Table I-1, “CBO’s Baseline Budget Projections,” p. 9, <http://www.cbo.gov/sites/default/files/cbofiles/attachments/43907-BudgetOutlook.pdf>. Estimated 2012–2014 regulatory cost placeholder from Crews, “Tip of the Costberg,” 2012 and 2014 editions. 2013 actual and 2014 projected deficit and outlays from CBO, *The Budget and Economic Outlook: 2014 to 2024*, February 2014, Table I-2, “CBO’s Baseline Budget Projections,” p. 12, <http://www.cbo.gov/sites/default/files/cbofiles/attachments/45010-Outlook2014.pdf>.

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

fiscal budget outlays. Regulatory compliance is twice the 2013 deficit.

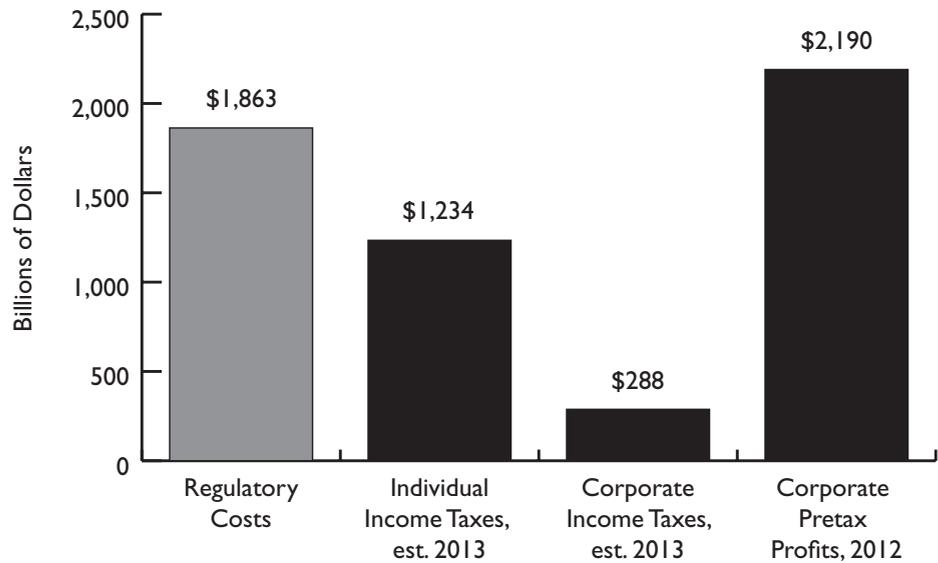
As America hovers at \$3.5 trillion in annual spending today and a projected \$4 trillion by 2016, the days when a \$2 trillion federal budget was regarded as high seem to have passed in the blink of an eye. Contemplating off-budget regulatory compliance costs that are equivalent to half of all federal outlays is sobering enough, but the situation is more dramatic in Washington’s high-spending culture of perpetual deficits.

After nearly three decades of deficit spending, the federal government had temporarily balanced the budget from FY 1998 through FY 2001. (The total surplus was \$128 billion in FY 2001.)²⁶ Those days are history.

Regulations constitute a form of off-budget spending, in the form of the costs of federal requirements that the population is compelled to bear. Thus, viewing outlays, regulation, and the deficit at one glance is useful (see Figure 2). In FY 2013, a deficit of \$680 billion was posted on \$3.454 trillion in outlays, with no balance—let alone surplus—projected over the coming decade. In fact, the smallest deficit projected is an optimistic \$478 billion in 2015, after which it heads northward again.²⁷ Higher spending can translate into even higher future regulatory costs. Spending related to bailouts, stimulus, infrastructure, and the like will include significant regulatory components as well (for example, salary cap proposals with respect to bank bailouts and reconstituted net neutral-

As America hovers at \$3.5 trillion in annual spending today and a projected \$4 trillion by 2016, the days when a \$2 trillion federal budget was regarded as high seem to have passed in the blink of an eye.

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



Sources: Crews, “Tip of the Costberg,” 2014 edition. Estimated 2013 tax figures from OMB, Historical Tables, Table 2.1, “Receipts by Source: 1934–2018,” <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/hist02z1.xls>. Corporate 2012 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>.

Deficits totaling hundreds of billions of dollars and regulatory costs exceeding \$1.8 trillion dwarf the initial \$150 billion 2008 “stimulus package,” which fizzled out and failed to resurrect the economy.

ity proposals with respect to telecommunications infrastructure spending).

Deficits totaling hundreds of billions of dollars and regulatory costs exceeding \$1.8 trillion dwarf the initial \$150 billion 2008 “stimulus package,” which fizzled out and failed to resurrect the economy. Because far larger stimulus packages have not increased employment, economic liberalization and a reduced regulatory state deserve consideration. Policy makers would do well to contemplate how the spending and deficit culture leads to growth in off-budget regulation.

Regulatory Costs versus Income Taxes and Corporate Profits

Regulatory costs now easily exceed the cost of individual income taxes and vastly exceed revenue from corporate taxes. As Figure 3 shows, regulatory costs now tower over the estimated 2013 individual income tax rev-

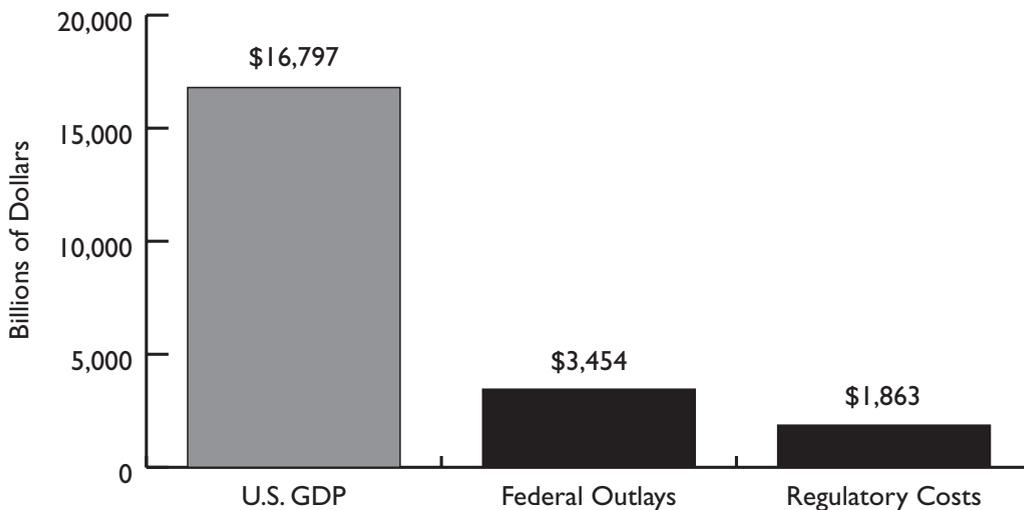
enues of \$1.234 trillion (individual income tax receipts had fallen substantially during the economic downturn and are rising again at the moment).²⁸ Corporate income taxes, estimated at \$288 billion in 2013, are dwarfed by regulatory costs (corporate tax receipts had declined by half during the recent downturn).²⁹ As the last bar of Figure 3 shows, regulatory compliance costs are approaching the level of pretax corporate profits, which were \$2.19 trillion in 2012.³⁰ Incidentally, this is the first time pretax profits have topped \$2 trillion.

Regulatory Costs versus GDP

Regulation “Eats” 11.1 Percent of U.S. GDP

For the United States, the Commerce Department’s Bureau of Economic Analysis estimated 2013’s GDP to be \$16.797 trillion.³¹

Figure 4. GDP Compared to Federal Outlays and Regulation



Sources: Crews, “Tip of the Costberg,” 2014 edition. GDP from U.S. Department of Commerce, Bureau of Economic Analysis, National Income and Product Accounts, Gross Domestic Product, Fourth Quarter and Annual 2013 (second estimate), February 28, 2014, <https://www.bea.gov/newsreleases/national/gdp/gdpnewsrelease.htm>. Outlays from CBO, The Budget and Economic Outlook: 2014 to 2024, February 2014, Table I-2, “CBO’s Baseline Budget Projections,” p. 12, <http://www.cbo.gov/publication/45010>.

The total regulatory cost estimate of \$1.863 trillion is equivalent to 11.1 percent of that amount. Combining regulatory costs with federal FY 2013 outlays of \$3.454 trillion (see Figure 2) indicates that the federal government’s \$5.317 trillion “share” of the economy reaches 31.6 percent. (See Figure 4.)

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

U.S. regulatory costs surpass the 2012 GDPs of both Canada, which stood at \$1.821 trillion, and Mexico, at \$1.178 trillion.³² There are only nine countries whose GDP exceeds the estimated cost of regulation in the United States. If U.S. regulatory costs of \$1.863 trillion were a country, it would be the world’s 10th largest economy, ranked between Italy and India. Figure 5 depicts this number embedded within a ranking of the 15 largest global economies.

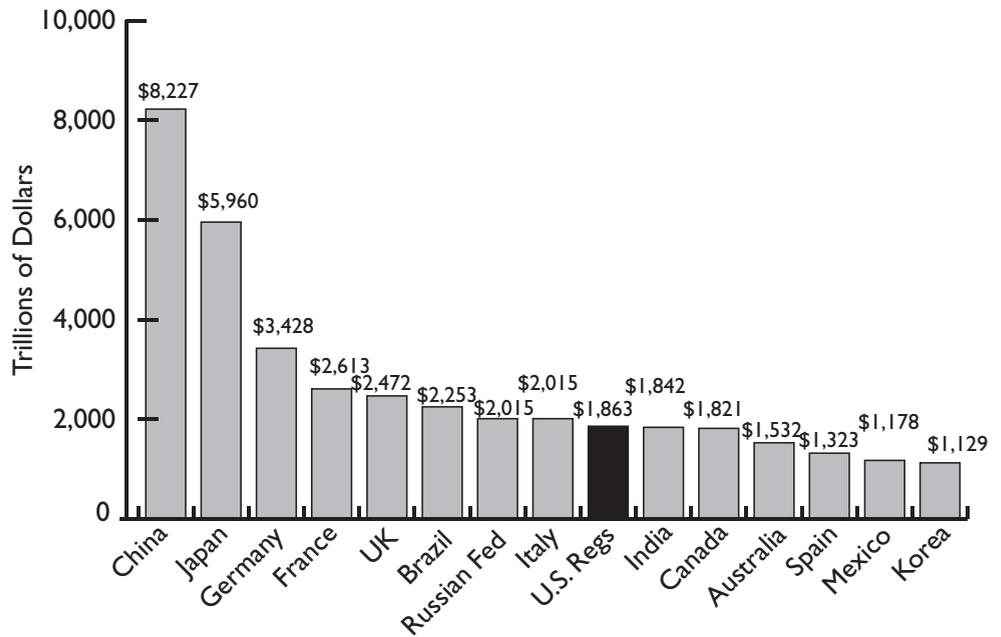
U.S. Regulatory Costs Exceed GDPs of the World’s Most-Free Economies

U.S. regulatory costs of \$1.863 trillion exceed the output of many of the world’s major economies, including all of those regarded as the most economically free.

There are two significant and widely cited annual surveys of global economic freedom. Each year, The Heritage Foundation and *The Wall Street Journal* jointly publish the *Index of Economic Freedom*.³³ Meanwhile, Canada’s Fraser Institute, in conjunction with the Cato Institute and a large group of international think tanks, publishes the annual *Economic Freedom of the World* report.³⁴ Seven countries rank among the top 10 countries in both publications. Figure 6 lists the seven (alphabetically) compared to U.S. regulatory costs, which exceed the GDPs of Austra-

If U.S. regulatory costs of \$1.863 trillion were a country, it would be the world’s 10th largest economy, ranked between Italy and India.

Figure 5. U.S. Regulatory Costs Compared to 2012 Gross Domestic Product of the World's Largest Economies



Sources: Crews, "Tip of the Costberg," 2014 edition. Gross domestic product data from World Bank, Washington, DC, GDP Data, <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD/countries>.

lia and Canada, the highest-income nations among the countries ranked most free.

Regulation: A Hidden Tax on the Family Budget

Like the taxes they are required to pay, businesses often pass many regulatory costs on to consumers. How much of the American family or household budget is absorbed by regulatory costs is hard to say, but we can look at the share of each household's regulatory costs and compare it with total annual expenditures as compiled by the Bureau of Labor Statistics (BLS).³⁵ Although not scientific, the comparison is a useful back-of-the-envelope way of reflecting on the magnitude of regulatory costs.

For America's 124.42 million households, or "consumer units" in BLS parlance, the average 2012 income was \$65,596.³⁶ Figure 7 breaks down those expenditures by category. The highest category is housing at \$16,887

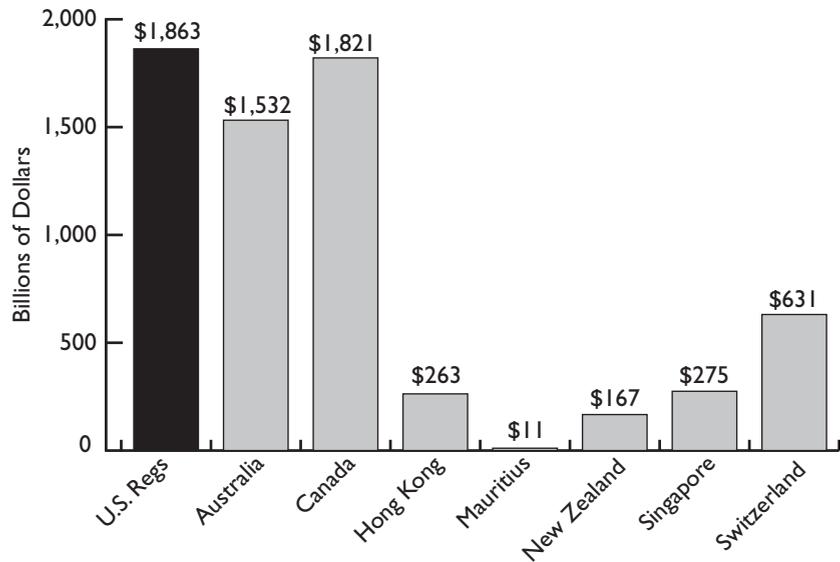
annually; the second-highest category is transportation at \$8,998.

If one were to allocate annual regulatory costs and assume full pass-through of costs to consumers, each U.S. household "pays" \$14,974 annually in a hidden regulatory tax, or 23 percent of average income before taxes. That figure is higher than every annual household budgetary expenditure item except housing. More is "spent" on embedded regulation than on health care, food, transportation, entertainment, apparel and services, and savings. Embedded regulatory costs can be said to absorb up to 29 percent of the typical household's expenditure budget.

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

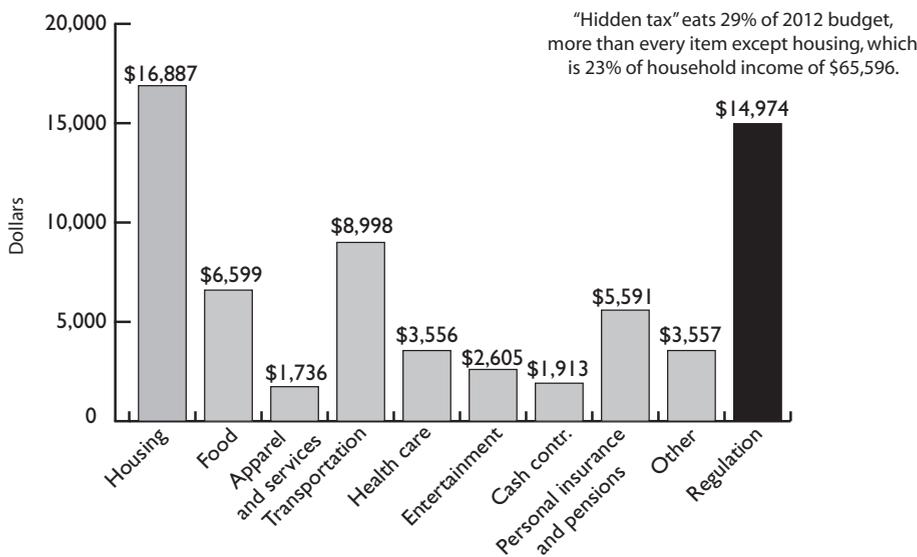
Figure 6. U.S. Regulatory Load Compared to 2012 Gross Domestic Product in World Economies Regarded as Most Free



Sources: Crews, “Tip of the Costberg,” 2014 edition. Gross domestic product data from World Bank, Washington, DC, GDP Data, <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD/countries>.

Note: “Free” economies consist of those held in common in the *Index of Economic Freedom* by the Heritage Foundation and *Wall Street Journal* and in the *Economic Freedom of the World* report by the Cato Institute and Fraser Institute.

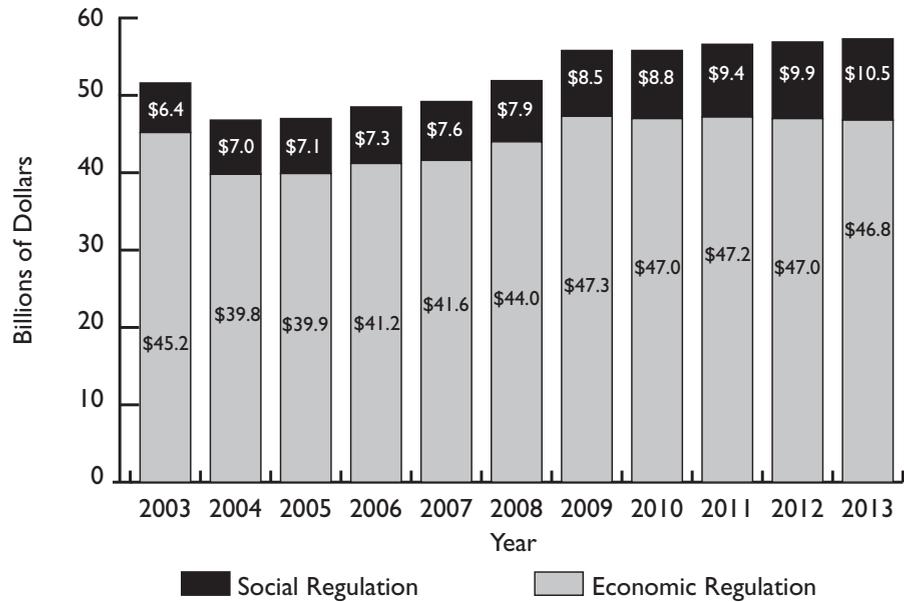
Figure 7. The U.S. Household Expense Budget of \$51,442 Contains \$14,974 in Embedded Regulatory Costs



Sources: Bureau of Labor Statistics, author compilation.

Note: Proxy for “households” here is BLS depiction of 124,416,000 “Consumer units”; that comprises “families, single persons living alone or sharing a household with financially independent, or two or more persons living together who share expenses.”

Figure 8. Federal Agency Enforcement Budgets, \$57.3 Billion Total in FY 2013



Source: Susan Dudley and Melinda Warren, “Sequester’s Impact on Regulatory Agencies Modest: An Analysis of the U.S. Budget for Fiscal Years 2013 and 2014,” *Regulators’ Budget* No. 35, published jointly by the Regulatory Studies Center at George Washington University and the Weidenbaum Center on the Economy, Government, and Public Policy, July 2013, p. 25.

Note: Original 2005 constant dollars are adjusted here by the change in the consumer price index between 2005 and 2013, Labor Statistics, Washington, D.C., 1-16-2014 (All Urban Consumers - (CPI-U), U.S. city average, all items).

costs—the on-budget amounts spent by federal agencies to produce rules and to police compliance. The Weidenbaum 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 federal budget proposal to compile the administrative costs of developing and enforcing regulations. The amounts are disclosed in the federal budget because those are funds that taxpayers pay to support agencies’ administrative budgets rather than compliance costs paid by regulated parties.

The estimated FY 2013 enforcement costs incurred by federal departments and agencies stood at an estimated \$57.3 billion (in constant 2013 dollars, adjusted from original 2005 dollars), a slight 0.86 percent increase over \$56.8 billion the previous year (Figure 8).³⁷

Of that amount, \$10.5 billion was spent administering economic regulations. The larger amount spent for writing and enforcing social and environmental regulations was \$46.8 billion. The EPA alone spent an estimated \$5.5 billion in this latter category in 2013, which accounted for 9.6 percent of the total expected to be spent by all regulatory agencies.³⁸ The EPA used to account for the lion’s share of rules promulgated, but the Department of Homeland Security—at an estimated \$23.7 billion—now accounts for 41 percent, approaching half.³⁹

That \$57.3 billion (\$10.5 billion plus \$46.8 billion) in agency costs helps complete a picture of the federal regulatory apparatus. Adding those administrative costs tabulated by the Weidenbaum Center and the Regulatory Studies Center to the \$1.863 trillion estimate in the “Tip of the Costberg” brings

the total estimated 2013 regulatory burden to about \$1.92 trillion.

Estimated full-time-equivalent employment staffing reached 282,070 in FY 2013, according to the Weidenbaum Center and Regulatory Studies Center report—an in-

crease of nearly 100,000 in just over a decade (185,205 in 2002).⁴⁰ Much of the post-2002 surge may be attributable to the newly created Transportation Security Administration's hiring of thousands of airport screening personnel. Over the past year, overall staffing is up 1.6 percent (from 277,549).

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. The number of pages in the *Federal Register* is probably the most frequently cited measure of regulation's scope. There are obvious 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 rules. 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 Printing Office's imperfect prediction of the number of pages a given agency would require.

Federal Register Pages

Despite these limitations, it remains worthwhile to track the *Federal Register's* growth according to its page counts, provided the 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 2013, the number of pages stood at 79,311, which happens to be the fourth-highest level in the 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 third-highest title. In fact, of five all-time high *Federal Register* page counts, four occurred during the Obama administration.

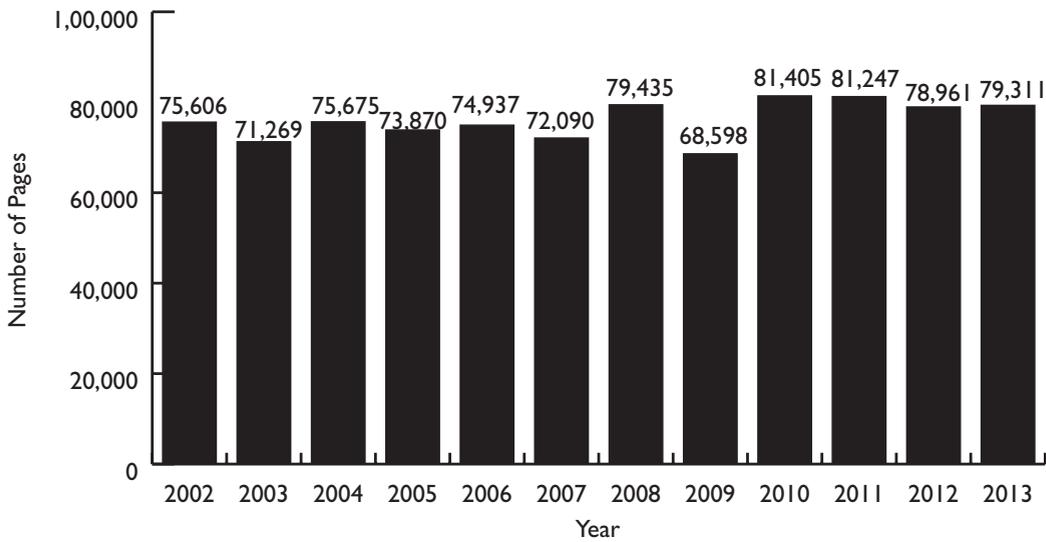
Referring again to Figure 9, the sixth-highest page count had been 75,606 in 2002 (the year the Justice Department's antitrust settlement with Microsoft added significantly to the total). After 2002, annual page counts remained above 70,000 until the 2009 dip. The 2013 total means that, overall, the decade from 2002 to 2013 has seen the annual page count increase by 4.9 percent. (For a history of *Federal Register* page totals since 1936, see Appendix: Historical Tables, Part A.)

The drop in pages in 2009 looks like an anomaly, for which there are at least three potential explanations:

- The 2009 drop is exaggerated relative to the normal page fluctuations because President George W. Bush issued a flurry of “midnight regulations” at the end of his term in 2008,⁴¹ the record year for *Federal Register* pages at the time. Apart from midnight regulations, the 2009 level still marks a decline from the years before 2008.
- President Obama's appointment of Harvard law professor Cass Sunstein, who is relatively favorable toward cost-benefit analysis, as director of the Office of Information and Regulatory Affairs could have affected 2009 rulemaking late in the year, following his Senate confirmation.⁴²
- The regulatory freeze announced by the incoming president's chief of staff in January 2009,⁴³ which applied to President George W. Bush regulations still in the pipeline, may have had some measurable effect by slowing what otherwise might have landed in the books during 2009.⁴⁴ However, this

Of five all-time high Federal Register page counts, four occurred during the Obama administration.

Figure 9. Number of *Federal Register* Pages, 2002–2013



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

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

effect—if it even existed—was transitory. By way of comparison, a freeze on regulations by President George H. W. Bush did slow regulations the year after its implementation, but rules resumed normal trends once the moratorium was lifted.⁴⁵

Federal Register Pages Devoted to Final Rules

Whereas they do signify greater governmental activity, gross page counts alone do not satisfactorily reveal whether actual regulatory burdens have increased or decreased; a rule of few pages might impose a significant burden. Isolating the pages devoted specifically to *final* rules might be more informative because it could omit pages devoted to proposed rules, agency notices, corrections, and presidential documents (although those categories have regulatory impacts too). Between 2012 and 2013, the number of pages devoted to final rules rose by 7 percent from 24,690 to a record high of 26,417 (see Figure 10).

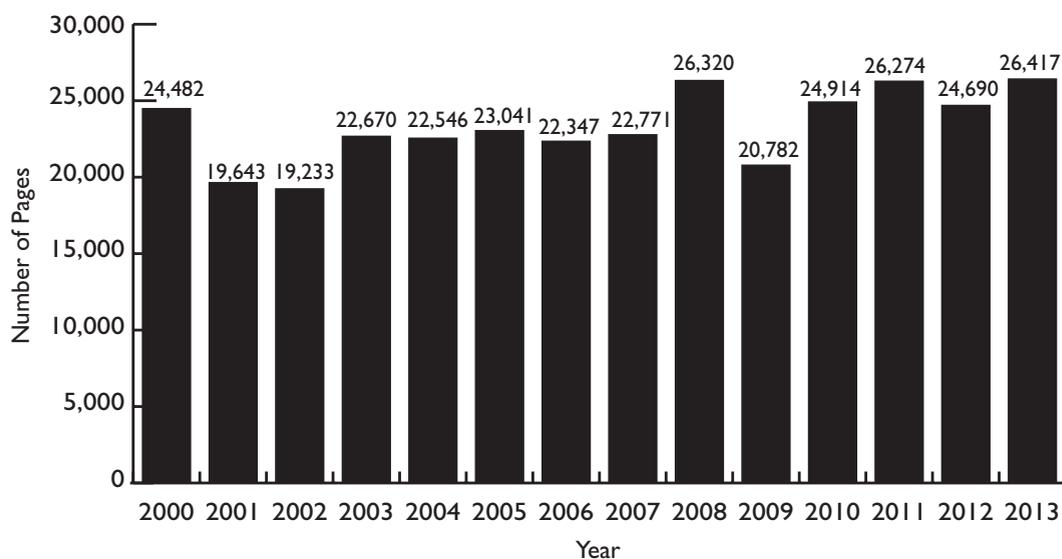
The previous record was 26,320 in 2008, after which the number dropped sharply by 21 percent to 20,782 in 2009. This decrease mirrored the above-noted drop in total pages between those two years. Note that before 2008, the highest page count up to that time was 24,482 pages in 2000, the last full year of the Clinton administration. Indeed, this decade’s levels are the highest since the *Federal Register* page-count breakdown by category was first reported, starting in 1976.

The 2000 count was up by 21 percent over 1999 (possibly partly attributable to an effort by President Bill Clinton to complete a backlog of rules before the arrival of the George W. Bush administration). The drop right after Clinton’s final year in office was noteworthy in that, in pages devoted to final rules, this 2000–2001 Clinton-to-Bush drop is similar to the 2008–2009 drop we saw from President George W. Bush’s final year to President Barack Obama’s first year.

Figure 10 shows that over the decade since 2004, the number of *Federal Register* pages devoted to final rules has increased by

*A rule of few
pages might
impose a
significant burden.*

Figure 10. *Federal Register* Pages Devoted to Final Rules, 2000–2013



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

17.2 percent. Indeed, except for 2001–2002, the number of final-rule pages has remained above 22,000 annually, in most cases far above. Obama’s page counts dominate all the earlier years.

Still another way of looking at *Federal Register* trends is by pages per decade (see Figure 11). During the 1990s, the total number of *Federal Register* pages published was 622,368, whereas the total number published during the 1980s was 529,223. (The busiest year in the 1980s was the 1980 peak of 73,258 pages, as shown in Appendix: Historical Tables, Part A.) At the end of the first decade of the 21st century,⁴⁶ 730,176 pages ultimately appeared—a 17 percent increase over the 1990s and an average of 73,018 pages annually.

If page counts hold around the range of the 2010s, we can expect to see a considerable increase for the current decade. The last bar of Figure 11 projects the average of the past four years at 80,310. If trends continue, we will end up with more than 800,000 pages for the decade. Despite the limitations of

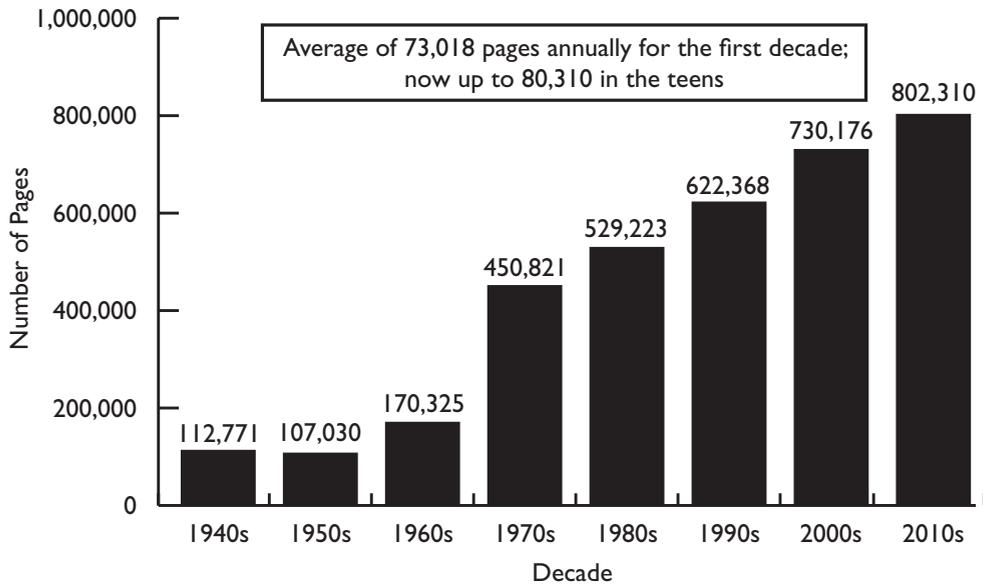
Federal Register page counts, the higher overall number of pages compared with past decades—plus a stream of pages devoted to final rules averaging well over 20,000 annually—quite credibly signifies higher levels of final rule costs and burdens.

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, in 2013, rules made final dropped by 1.3 percent, from 3,708 to 3,659. The upcoming section describing the Unified Agenda of federal regulations will examine some of the possible reasons for this recent decline.

Rule impacts vary of course, but the number of final rules currently being published is lower than it was throughout the 1990s, when the average number of annual regulations made final was 4,596, and it is lower than during the first years depicted in Fig-

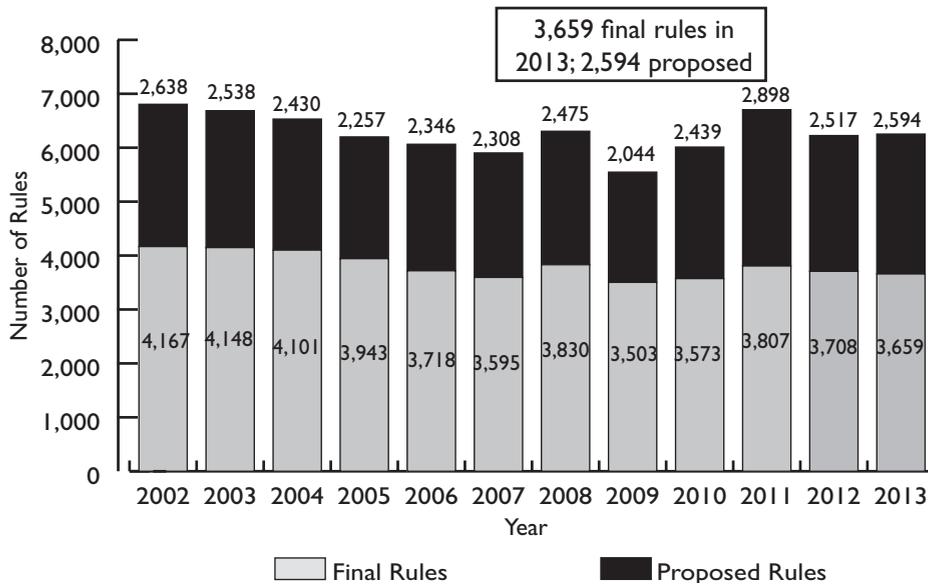
Figure 11. New Federal Register Pages per Decade ...
802,310 Pages Projected for the 2000 “Teens”



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

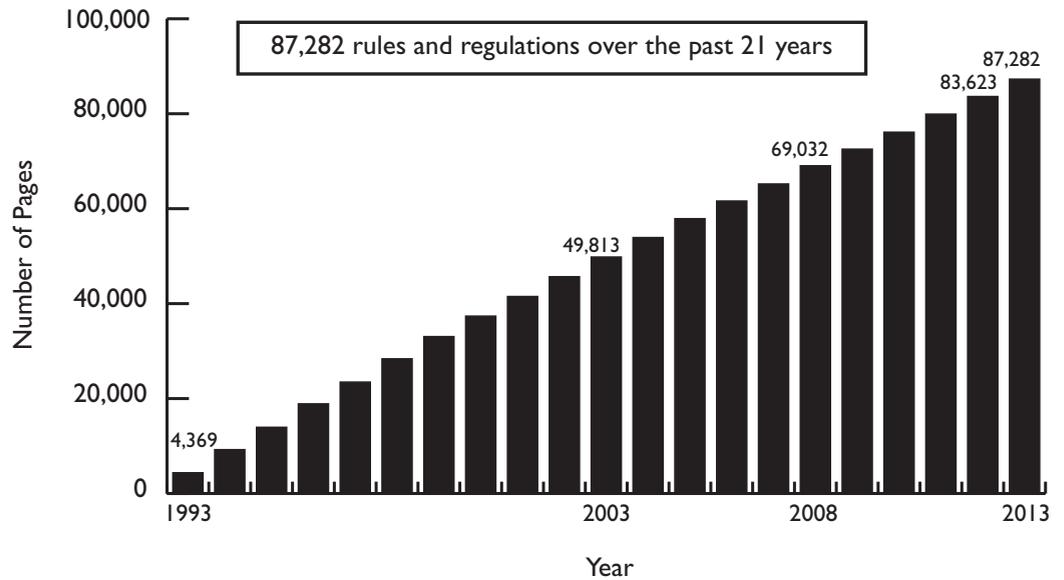
Note: 2010s is a projection based on the last three years' average. Years 2000–2009 average 73,000 annual pages; this decade averages 80,000 pages yearly.

Figure 12. Number of Proposed and Final Rules in the Federal Register, 2002–2013



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

Figure 13. Cumulative Final Rules Published in the *Federal Register*, 1993–2013



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

ure 12. The average for the first decade of the 21st century (2000–2009) was 3,945. So the decline in rule numbers is a positive trend, one that policy makers should seek to extend.

Nonetheless, a pace of more than 3,000 completed rules annually is highly significant and creates a much-ignored cumulative burden. Obama’s first year in office brought 3,503 rules, so the increase since then has been 4 percent.

Also notable is the pace of proposed rules appearing in the *Federal Register*. The 2,594 rules proposed in 2013 are a 3 percent increase over the 2,517 proposed rules of 2012. Those rules and the 2,898 proposed in 2011 are on the high side compared with the decade as a whole. High numbers of proposed rules signify likely future increases in final rules. Figure 12 shows that Obama’s proposed rule load comfortably exceeds earlier years. (For the numbers of proposed and final rules and other documents issued in the

Federal Register since 1976, see Appendix: Historical Tables, Part B.)

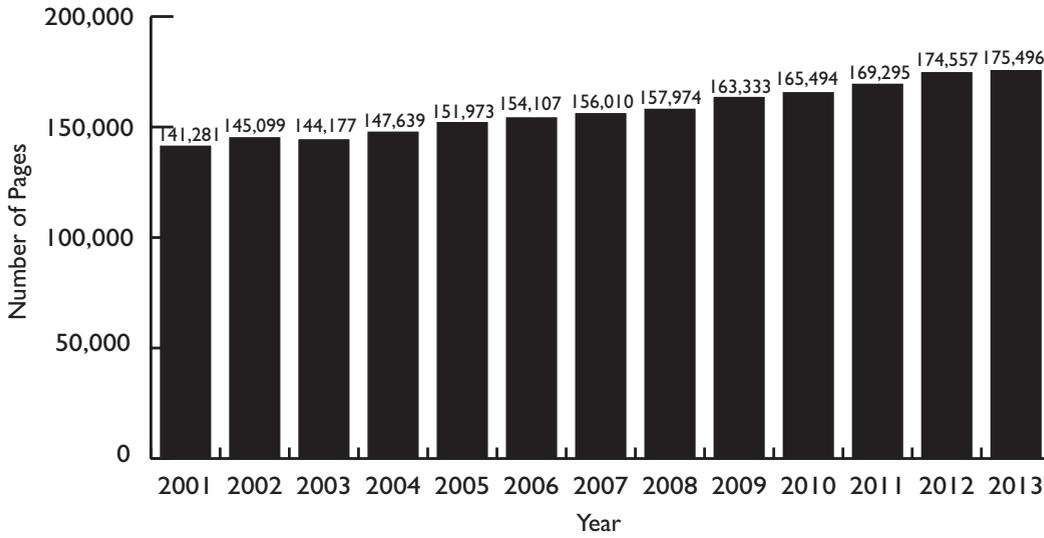
Cumulative Final Rules in the *Federal Register*

The cumulative effect of regulation can matter a great deal despite yearly fluctuations. The bottom line is that the ceaseless annual outflow of more than 3,500 final rules—and often far more—has meant that about 87,282 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 the count is substantial nonetheless. In 1960, the CFR

Figure 14. Code of Federal Regulations, 175,496 Total Pages in 2013, 2001–2013



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

contained 22,877 pages. Since 1975, the total pages in the complete CFR have grown from 71,224 to 175,496 at year-end 2013, including the 1,170-page index. That figure is a 146 percent increase over the period. The number of CFR volumes

stands at 235 (as of 2012), compared with 133 in 1975. Figure 14 depicts the CFR's pages for the past decade. (For the detailed breakdown numbers of pages and volumes in the CFR since 1975, see Appendix: Historical Tables, Part C.)

15,177 U.S. Executive Orders

During his 2014 State of the Union Address, President Obama pledged to use his “pen and phone” to implement a “year of action,” with or without Congress.⁴⁷ Executive orders could make up a large component of that initiative.

Executive orders’ realm is ostensibly the internal workings and operations of the federal government. Their use is nothing new, dating back to George Washington’s administration.⁴⁸ Obama’s totals are not high compared to those of other presidents; as of the end of 2013, he had issued 181. Figure 15 lists executive orders issued over the past two decades, from 1995 to the present. Obama clearly issued more in his first term than did President George W. Bush in his second term, but fewer than did chief executives over the two decades depicted in Figure 15.

The real question as far as regulatory burdens are concerned is what those executive orders—and the ones to come—are used *for* and what they *do*. They can liberalize and enhance freedom—such as Lincoln’s Emancipation Proclamation to free slaves—or can expand governmental power—such as President Harry Truman’s failed attempt to seize control of America’s steel mills⁴⁹ or President Franklin Delano Roosevelt’s confiscation of citizens’ gold.⁵⁰

Like short regulations, orders can have big impacts for or against liberty; a smaller number of them does not necessarily mean small effects. Just like the *Federal Register*, counts are highly interesting but do not tell the whole story.

Obama’s own Executive Order No. 13565 about review and reform was a pledge to roll

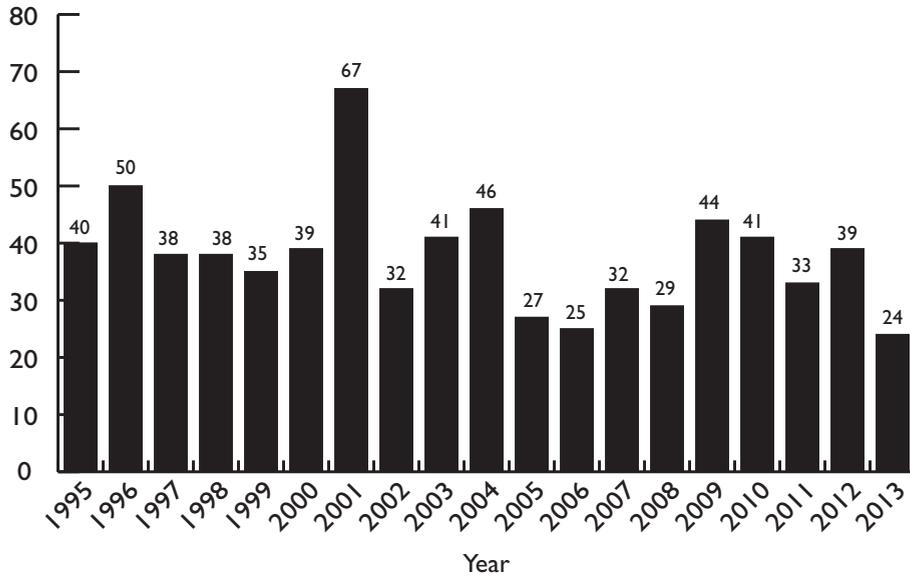
back regulation⁵¹ but amounted to only a few billion dollars in cuts that were swamped by other rules issued. In all, four of Obama’s executive orders directly address overregulation and rollbacks.⁵²

Other key executive orders about regulatory restraint were President Bill Clinton’s 1993 Executive Order No. 12866⁵³ and President Ronald Reagan’s Executive Order No. 12291, which formalized central regulatory review at the Office of Management and Budget.⁵⁴ 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.”⁵⁵

The nation existed for many decades before a president issued more than two dozen executive orders—that was President Franklin Pierce, who served in 1853–1857.⁵⁶ Orders numbered fewer than 10 or in the teens until Lincoln and the subsequent reconstruction period. The Ulysses S. Grant administration issued 217, a record at the time.⁵⁷ From the 20th century onward, orders were to top 100 for each president and sometimes numbered in the thousands. President Franklin D. Roosevelt issued 3,467 numbered executive orders. Table 3 provides a look at executive order counts by administration since the nation’s founding (some inexactness is involved) and presents a total count of 15,177.⁵⁸ (Executive orders since 1995 by calendar year appear in “Historical Tables Part J: The Unconstitutionality Index.”)

Decrees issued in a limited government environment have different implications than do those issued in an era of activist government.

Figure 15. Number of Executive Orders, 1995–2013



Source: Data compiled from “Regulatory Plan and the 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 prerule, proposed, and final stages. Pre-2004 online database totals do not match the printed, paper editions of that era, so this survey retains the data as compiled in those earlier print editions.

We live in an era in which the government increasingly intervenes in all sorts of economic sectors, including health care, retirement, education, energy production, finance, land and resource management, funding of science and research, and manufacturing. Our economy is many things, but “laissez faire” is not among its defining characteristics. Much of what takes place happens with government steering while the market only rows.

In a mixed economy that increasingly flouts the constitutional system of legislation by an elected body, such rules and regulations, executive orders, and “notices” take on greater significance and call for more scrutiny. Increasingly, even rules dealing with internal government operations address activities that were once the purview of the free economy. Therefore, they constitute “regulation” and should not escape increased scrutiny.

Increasingly, even rules dealing with internal government operations address activities that were once the purview of the free economy.

Table 3. 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

(continued)

Table 3. Executive Orders by Administration (*continued*)

	Sequence Number		Total Number of Executive Orders
	Ending	Beginning	
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
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	13,656	13,489	168

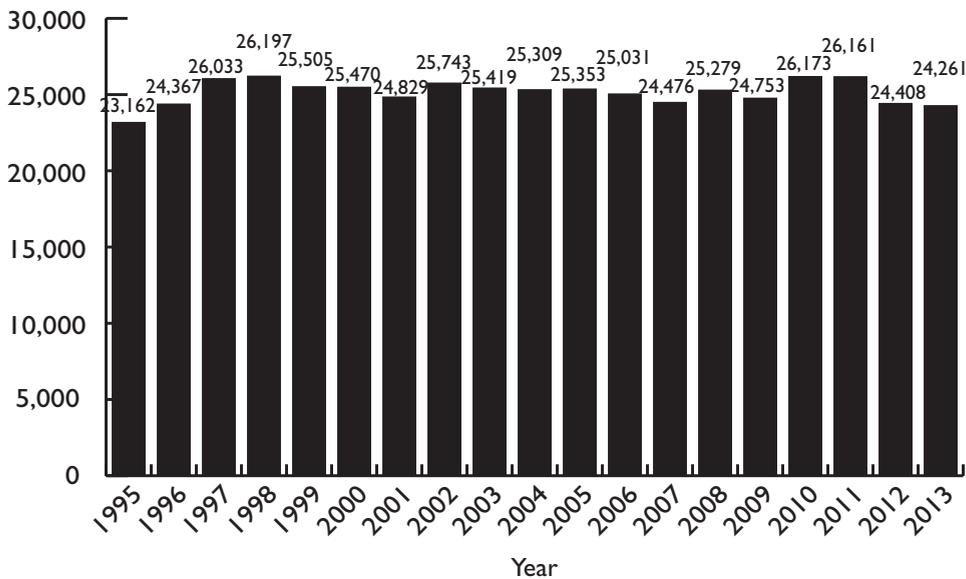
More Than 24,000 “Public Notices” Annually

Executive orders matter increasingly as the domain of private sector authority and control shrinks. So do “Public Notices” in the *Federal Register*. Whereas there are 3,500 rules annually, there are tens of thousands of public notices, with uncounted “guidance documents” among them. Figure 16 shows that the number of notices annually has never dipped be-

low 24,000 since 1996. One wonders how many have pondered the implications of 477,929 notices since 1995.

Most notice-and-comment regulations lack cost-benefit or other analysis. As the federal government conducts so much commerce and takes over private activity, regulation gets even harder to measure.

Figure 16. Thousands of “Public Notices” in the *Federal Register*, 1995–2013



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 became more confused under the Obama administration. “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions” (the Agenda) normally appears in the *Federal Register* each fall and, minus the Regulatory Plan, each spring. However, these days it seems even that has become too much to ask of a government that avoids preparing even a fiscal budget for itself, let alone a regulatory one.

In normal circumstances, the Agenda gives researchers at least a vague sense of the flow in the regulatory pipeline as it details rules recently completed, plus those anticipated within the upcoming 12 months by federal departments, agencies, and commissions (60 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 rulemakings beyond a 12-month horizon

Therefore, the rules contained in the Agenda may often carry over at the same stage from one year to the next, or they may reappear in subsequent editions at different stages. The Agenda’s rules primarily affect the private sector, but many also affect state and local governments and the federal government itself.

A complication is that 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.⁵⁹

The appearance of the Agenda has become more irregular. The fall 2011 edition did not appear until January 20, 2012.⁶⁰ The spring 2012 edition never appeared, and a solitary edition 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, something called the “Spring 2013 Update to the Unified Agenda of Federal Regulatory and Deregulatory Actions” appeared instead of the normal Unified Agenda. Then in late 2013, echoing 2012’s pre-Santa version, the fall edition appeared the day before Thanksgiving (coinciding with an employer mandate delay for Obamacare in defiance of that law’s own strictures).

Whereas rules finalized in the *Federal Register* remain above 3,500 annually, the rules now being reported in the Unified Agenda are declining, owing to the reporting irregularities noted earlier, new guidance memos on the Agenda production, and the administration’s own formal and informal rulemaking delays.

In 2012, spring and fall guidelines from the OMB’s then-director of the Office of Information and Regulatory Affairs, Cass Sun-

Agencies are not required to limit their regulatory activity to what they publish in the Agenda.

stein, altered directives to agencies regarding their Agenda reporting.⁶¹

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.

Newly appointed Administrator Howard Shelanski issued a similar memo on the Unified Agenda on August 7, 2013—“please consider removing” became “please remove.”⁶² As Susan Dudley of the George Washington University Regulatory Studies Center notes, the changes introduced in the Shelanski and Sunstein memos 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.”⁶³

Upon release of the fall 2013 edition of the Agenda, one commenter, regulatory expert Leland Beck, noted the fluid nature of the Agendas, stating: “The agenda provides only a semi-filtered view of each agency’s intentions and must be considered within its limitations” and that they “reflect what the agency wants to make public, not necessarily all that they are actually considering, and some highly controversial issues may be withheld.”⁶⁴

Politics play a role in reporting and rule delays, and 2012 appeared to be an extreme case of delays ahead of an election. For example, a *Washington Post* headline proclaimed, “White House Delayed Enacting

Rules Ahead of 2012 Election to Avoid Controversy.”⁶⁵ A former White House official told the *Post*, “As we entered the run-up to the election, the word went out the White House was not eager to review new rules.” The *Post* summed up the matter as follows:

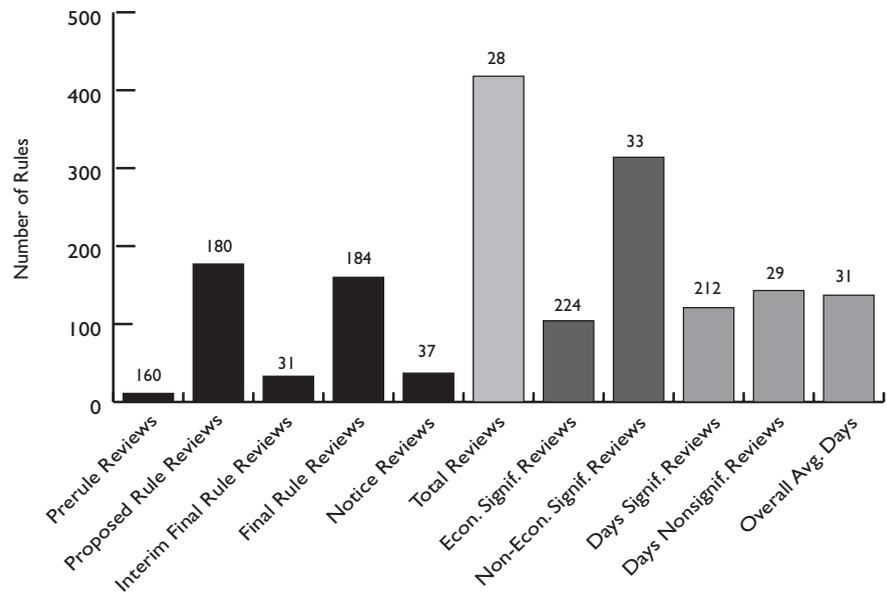
The number and scope of delays under Obama went well beyond those of his predecessors, who helped shape rules but did not have the same formalized controls, said current and former officials who spoke on the condition of anonymity because of the sensitivity of the topic.

A December 2013 report by the Administrative Conference of the United States about the growing length of rule reviews at OMB reinforced the *Washington Post* article’s conclusion.⁶⁶ Other headlines captured the environment:

- “Politics Cited in Regulatory Delays,” *The Hill*, December 15, 2013
- “Environmental Rules Delayed as White House Slows Rules,” *New York Times*, June 12, 2013
- “White House Slowed Rules in Election Year, Study Says,” Bloomberg News, December 15, 2013
- “[White House Press Secretary Jay] Carney Sidesteps on Whether Regs Were Delayed Before Election,” *The Hill*, December 16, 2013

Figure 17 presents the number of Executive Order No. 12866 rule reviews by stage and by economic significance for calendar year 2013. It also shows the number of days for review at OMB in 2013, which now take several months rather than two months or less. The Office of Information and Regulatory Affairs, however, does not review independent agencies’ rules. Appendix: Historical Tables, Part D, presents a detailed breakdown of numbers of rules reviewed by type and by average days for review from 1991 through 2013. Note the pre-Executive Order No. 12866 years depicted there, 1991–1993, when review times were shorter and the number of rules were far higher.

Figure 17. Number of OMB Rule Reviews under Executive Order 12866 and Average Days under Review, 2013



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

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 in which the OMB reviews a few hundred out of several thousand annual rules and cost-benefit analysis often does not occur to provide something concrete and reviewable in the first instance.

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

3,305 Rules Acknowledged in the Unified Agenda Pipeline

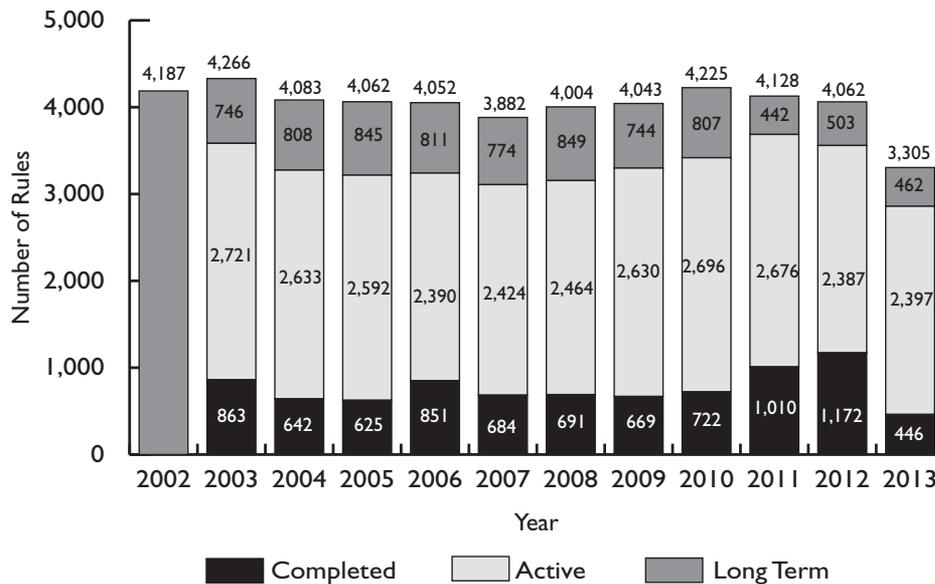
The year-end 2013 Agenda finds federal agencies, departments, and commissions recognizing 3,305 regulations in the active (prerule, proposed, and final), just-completed, and

long-term stages.⁶⁷ As is true every year, many of the rules are not new to the Agenda but have been in the pipeline for quite some time.

As Figure 18 shows, the overall Agenda pipeline had hovered above and below 4,000 rules over the decade before 2013. In 2013, the Agenda pipeline count dropped significantly, by 18.6 percent from 4,062 rules in 2012 (and by 19.9 percent from the 4,128 rules in 2011). The all-time high count for rules in the Agenda was 5,119, in 1994. While the flow has since obviously declined, it has remained above 4,000 over the past decade except for the years 2007 and 2013, when the count dipped to 3,882 and 3,305, respectively. (For a history of the numbers of rules in the spring and fall Unified Agenda editions since 1983, see Appendix: Historical Tables, Part E.)⁶⁸

President Obama declared during his 2012 State of the Union address that he had issued fewer rules in his first three years than his predecessor.⁶⁹ That statement was technically true with respect to the total number of

Figure 18. Total Agency Rules in the Fall Unified Agenda Pipeline, 2002–2013



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

final rules, but Obama’s *proposed* rules have continued to mount (see Figure 12). The president’s claim also held together somewhat regarding the overall number of rules in the Unified Agenda pipeline at that time (see Figure 18). But note that Obama referred to *first* terms: whereas Obama issued fewer rules than Bush did in his first term, Obama’s first term brought more rules than Bush issued in his second term.

The large overall 2013 decline does not necessarily translate into fewer actual regulations. Figure 18 shows that the “Active” rules subcategory stands at 2,397 in 2013, slightly above 2012’s 2,387. Where the *Federal Register* consistently shows at least 3,500 final rules, Figure 18 demonstrates that since 2003, “Active” rule counts have had no trouble staying above 2,300.

In the wake of the Sunstein and Shelanski memos, one can see that the Obama administration discloses far fewer regulations in the long-term category compared to the previous administration. Announced long-term rules

shown in Figure 18 declined from 807 to 442 between 2010 and 2011, then rose again to 503 in 2012, before dropping to 462 in 2013.

Also, note that although rules in the completed category had been rising steadily and rapidly under Obama—from 669 in 2009 to 1,172 in 2012, a 75.2 percent increase—they dropped precipitously to 462 in 2013. This finding appears to reflect the administration’s rule delays featured in the above section. (Completed rules are “actions or reviews the agency has completed or withdrawn since publishing its last agenda.”)

Still, despite the drop in Obama’s completed rules in 2013, the average of his past four years, 841, exceeds any other grouping during the time period depicted in Figure 18. For example, George W. Bush’s last four years yielded 713 rules in the Agenda’s completed category, compared to Obama’s 841. The 60.6 percent drop in completed rules between 2012 and 2013 does not entirely square with the consistently above 3,500 rules in the *Federal Register*. Nor does a re-

duction in completed rules align with the higher level of costs presented by the administration in the *Report to Congress on the Costs and Benefits of Federal Regulation*. The range of OMB-reported costs of between \$14.8 billion and \$19.5 billion is higher than any reported costs since 2003.⁷⁰ Finally, the idea that regulatory burdens are declining does not conform to the administration’s now years-old, oft-repeated proclamation that it is not going to “sit around and wait for congressional action.”⁷¹ Rather, circumstances appear to show a decline conforming only with pullback in disclosure and transparency and with charges that the administration delayed the pace of rules in 2012. Delays in

anticipation of the 2014 midterms may play a role too.

The total pipeline count of 3,305 rules depicted in Figure 18 is broken out in Table 4 by agency, commission, or issuing department to show numbers of rules at the completed, active, and long-term stages by department or agency. Note that there are no long-term rules whatsoever listed in the Regulatory Plan component of the Unified Agenda.

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

Table 4. Unified Agenda Entries by Department and Agency, (Year-End 2012)

	Total Rules	Unified Agenda			Regulatory Plan Component		
		Active	Completed	Long Term	Active	Completed	Long Term
All Agencies	3,305	2,397	462	446	151	4	1
Dept. of Agriculture	159	131	25	3	25		
Dept. of Commerce	250	176	59	15			
Dept. of Defense	104	98	6		14		
Dept. of Education	20	15	5		1		
Dept. of Energy	92	82	6	4	7		
Dept. of Health and Human Services	200	137	39	24	20	2	
Dept. of Homeland Security	139	101	10	28	25		
Dept. of Housing and Urban Development	52	38	12	2	3		
Dept. of the Interior	353	277	63	13			
Dept. of Justice	95	76	3	16	6		1
Dept. of Labor	84	66	12	6			
Dept. of State	41	29	12				
Dept. of Transportation	220	157	28	35	18	1	
Dept. of Treasury	428	346	36	46			
Dept. of Veterans Affairs	66	57	9				
Environmental Protection Agency	179	134	21	24	14		

	Total Rules	Unified Agenda			Regulatory Plan Component		
		Active	Completed	Long Term	Active	Completed	Long Term
Agency for International Development	5	5					
Architectural and Transportation Barriers Compliance Board	8	5	1	2	3		
Commission on Civil Rights	1	1					
CPBSD*	2	2					
Commodity Futures Trading Commission	33	25	8				
Consumer Financial Protection Bureau	26	18	3	5			
Consumer Product Safety Commission	33	22	1	10			
Corporation for National & Community Service	4			4			
Court Services/Offender Supervision, D.C.	3	3					
Federal Acquisition Regulation	40	27	13				
Equal Employment Opportunity Commission	9	7	2		4		
Farm Credit Administration	30	26	4				
Federal Communications Commission	132	1		131			
Federal Deposit Insurance Corporation	17	11	5	1			
Federal Energy Regulatory Commission	29	1	7	21			
Federal Housing Finance Agency	20	12	5	3			
Federal Maritime Commission	6	4	2				
Federal Reserve System	16	13	2	1			
Federal Trade Commission	20	20					
General Services Administration	18	18					
Institute of Museum and Library Services	3	2	1				
National Aeronautics and Space Administration	23	22	1				
National Archives and Records Administration	6	5	1				
National Credit Union Administration	24	20	4				
National Endowment for the Arts	7	7					
National Endowment for the Humanities	4	4					

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

(continued)

Table 4. Unified Agenda Entries by Department and Agency,
(Year-End 2012) (continued)

	Total Rules	Unified Agenda			Regulatory Plan Component		
		Active	Completed	Long Term	Active	Completed	Long Term
National Indian Gaming Commission	5	3	1	1			
National Labor Relations Board	1			1			
National Science Foundation	2	2					
Nuclear Regulatory Commission	53	24	7	22			
Office of Government Ethics	4	4					
Office of Management & Budget	2	2					
Office of Personnel Management	54	52	2				
Peace Corps	4	4					
Pension Benefit Guaranty Corporation	13	9		4			
Postal Regulatory Commission	2	1	1				
Privacy and Civil Liberties Oversight Board	1	1					
Railroad Retirement Board	1	1					
Recovery Accountability and Transparency Board	3			3			
Securities and Exchange Commission	76	38	33	5			
Small Business Administration	30	27	3		4		
Social Security Administration	44	24	6	14	7	1	
Surface Transportation Board	9	4	3	2			
TOTAL	3,305	2,397	462	446	151	4	1

Source: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, Vol. 75, No. 243, December 20, 2010; and from online edition at www.reginfo.gov.

Top Five Executive Rulemaking Agencies

Every year, a relative handful of executive agencies accounts for a large number of the rules produced. The five departments and agencies listed in Table 5—the Departments of the Treasury, Interior, Commerce, Transportation, and Health and Human Services—were the biggest rulemakers. These top five, with 1,451 rules among them, account for 44 percent of the 3,305 rules in the Agenda pipeline. For the second time,

the Environmental Protection Agency does not appear in the top five (it is sixth). Including the EPA’s 179 rules (there were 223 last year, showing that a large portion of the post-Sunstein memo drop is due to EPA) brings the total to 1,953 rules, or 48 percent.

Top Five Independent Rulemaking Agencies

Table 5 also depicts the top five independent agencies in the Agenda pipeline that make rules. They are the Federal Communications

Table 5. Top Rule-Producing Executive and Independent Agencies
(From year-end 2013 Unified Agenda, total of active, completed, and long-term rules)

Executive Agency	Number of Rules
1. Department of the Treasury	428
2. Department of the Interior	353
3. Department of Commerce	250
4. Department of Transportation	220
5. Department of Health and Human Services	200
TOTAL	1,451
% of Total Agenda Pipeline of 3,305	44

Note: The Environmental Protection Agency, formerly always in the top five, is sixth, with 179 rules in the pipeline.

Independent Agency	Number of Rules
1. Federal Communications Commission	132
2. Securities and Exchange Commission	76
3. Office of Personnel Management	54
4. Nuclear Regulatory Commission	53
5. Social Security Administration	44
TOTAL	359
% of Total Agenda Pipeline of 3,305	11

Top 5 Executives plus Independents	1,810
% of Total Agenda Pipeline	55

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

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

Commission, Securities and Exchange Commission, Office of Personnel Management, Nuclear Regulatory Commission, and Social Security Administration. Their total of 359 rules is 11 percent of the 3,305 rules in the Agenda. Combined, the top five executive and independent agency components come to 55 percent of that total.

Notable Regulations by Agency

Federal agencies have noted the following initiatives, among others, in recent Agenda

editions. (An even more extensive list consisting of the 191 economically significant rules in 2012 is available in Appendix: Historical Tables, Part G; economically significant rules will be discussed in the next section.)

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 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
- 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

- 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
- 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: home health prospective payment system rate for calendar year (CY) 2014, changes to the end-stage renal disease prospective payment system for CY 2014, prospective payment system and consolidated billing for skilled nursing facilities, and prospective payment system for inpatient rehabilitation facilities
- 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
- 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

Department of Homeland Security

- Computer Assisted Passenger Prescreening System, providing government access to passenger reservation information
- Passenger screening using advanced imaging technology
- Importer security filing
- 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 outer continental shelf
- 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

- 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)
- Application of the Fair Labor Standards Act to domestic service

- Improved fee disclosure for pension plans
- Occupational exposure to crystalline silica
- 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 and preventing backover injuries
- Cranes and derricks
- Health care standards for mothers and newborns
- Protective equipment in electric power transmission and distribution
- Refuge alternatives for underground coal mines
- Occupational exposure to tuberculosis

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, and 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 Transportation

- Passenger car and light truck Corporate Average Fuel Economy standards (2017 model years and beyond)

- Sound for hybrid and electric vehicles
- Motor coach seat belts
- 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
- Hours of service, rest, and sleep for truck drivers; electronic logging devices and hours-of-service supporting documents
- Requirement for installation of seat belts on motor coaches
- Heavy vehicle speed limiters and electronic stability control systems for heavy vehicles
- Amendments for positive train control systems
- Aging aircraft safety
- Flight crew duty limitations and rest requirements
- Upgrade of head restraints in vehicles
- Rear center lap and shoulder belt requirement
- Registration and training for operators of propane tank filling equipment
- Monitoring systems for improved tire safety and tire pressure
- Hazardous materials: transportation of lithium batteries
- 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 Fuels Standard Program
- Standards for cooling water intake structures
- Combined rulemaking for industrial, commercial, and institutional boilers and process heaters
- Standards for management of coal combustion wastes from a electric power producer
- Control of emissions from non-road spark ignition engines, new locomotives, and new marine diesel engines

Environmental Protection Agency

- Control of air pollution from motor vehicles: Tier 3 motor vehicle emission and fuel standards
- Standards of Performance for New Residential Wood Heaters
- 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

Architectural and Transportation Barriers Compliance Board

- Americans with Disabilities Act accessibility guidelines for passenger vessels

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 order
- 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
- 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

Federal Deposit Insurance Corporation

- Standardized Approach for Risk-Weighted Assets

“Economically Significant” Rules in the Agenda

A subset of the Agenda’s 3,305 rules is classified as “economically significant,” meaning that agencies anticipate yearly economic impacts of at least \$100 million. Those impacts generally amount to increased costs, although occasionally an economically significant rule is intended to reduce costs. As Table 6 shows, 191 economically signifi-

Table 6. Economically Significant Rules in the Unified Agenda Pipeline Expected to Have \$100 Million Annual Economic Impact, Year-End 2013

	Rules	Active	Completed	Long Term
All Agencies	191	131	28	32
Dept. of Agriculture	9	7		2
Dept. of Commerce	2	2		
Dept. of Defense	4	3	1	
Dept. of Education	6	3	3	
Dept. of Energy	21	20		1
Dept. of Health and Human Services	59	42	13	4
Dept. of Homeland Security	13	11		2
Dept. of Housing and Urban Development	3	1	2	
Dept. of the Interior	3	2	1	

(continued)

**Table 6. Economically Significant Rules in the Unified Agenda Pipeline
Expected to Have \$100 Million Annual Economic Impact, Year-End 2013 (continued)**

Dept. of Justice	4	3		1
Dept. of Labor	15	12	2	1
Dept. of State	0			
Dept. of Transportation	14	11		3
Dept. of Treasury	6	3	1	2
Dept. of Veterans Affairs	4	4		
Environmental Protection Agency	11	5		6
Architectural and Transportation Barriers Compliance Board	1			1
Equal Employment Opportunity Commission	0			
Consumer Product Safety Commission	1			1
Federal Communications Commission	7			7
Federal Deposit Insurance Corporation	3	1	2	
National Labor Relations Board	0			
Nuclear Regulatory Commission	3		2	1
Office of Personnel Management	0			
Pension Benefit Guaranty Corporation	1	1		
Postal Regulatory Commission	1		1	
TOTAL	191	131	28	32

Source: Compiled from "The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions," *Federal Register*, www.reginfo.gov.

When it comes to the costly, economically significant rules, the current administration is in a class by itself.

cant rules from 26 separate departments and agencies appear at the active (prerule, proposed rule, and final rule), completed, and long-term stages.

When it comes to the costly, economically significant rules at the completed and active stages, Figure 19 shows that the current administration is in a class by itself. The overall number of "economically significant" rules issued during the current administration is higher than at any time earlier in the decade. President George W. Bush started the upward trend; President Obama continued it.

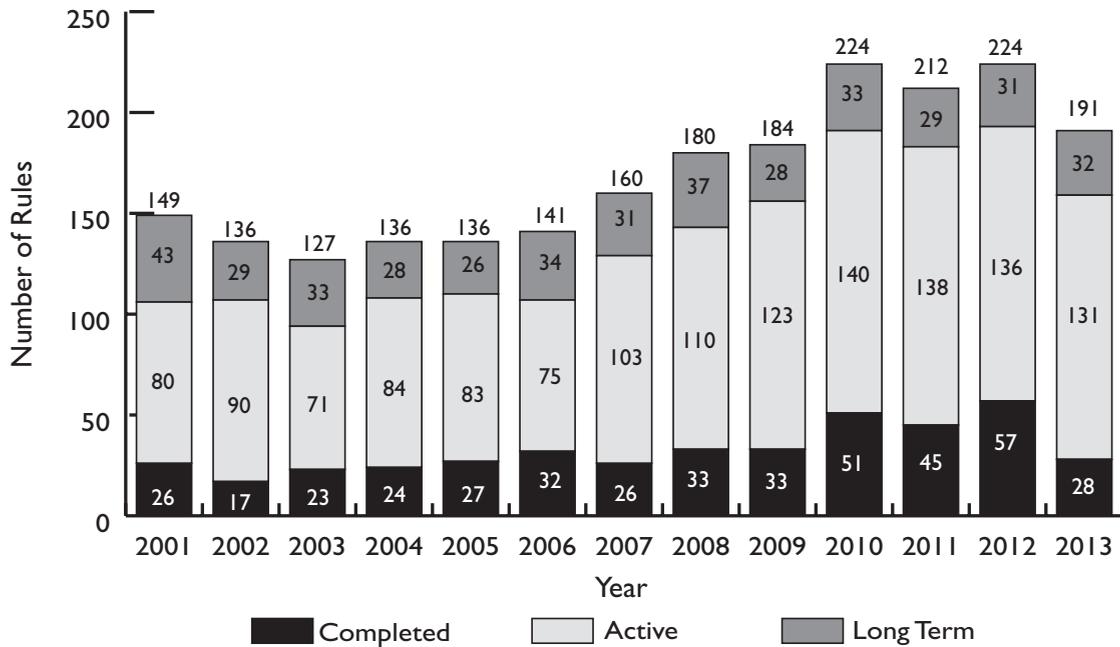
As Figure 19 shows, 2013's 191 rules represent a substantial drop from the previous three years but nonetheless remain well above anything seen before 2010. Obama clearly retains a substantially higher flow of those economically significant rules in the

pipeline compared with the early part of the decade.

Because the recent online database editions of the Agenda break economically significant rules into completed, active, and long term, it is now easier to compile a more useful tally of economically significant rules that were completed annually. Among the 191 rules, the body of active economically significant rules has not changed substantially during Obama's five years (they numbered 131 in 2013), but they are clearly well above levels earlier in the decade.

The smaller level of completed rules over the past year (from 57 in 2012 to 28 in 2013, a 51 percent drop) conforms with the now-apparent effort to dial back on regulations during 2012, which was reflected in fewer completed rules being issued in the Agenda

Figure 19. Economically Significant Rules in the Agenda Pipeline, 2001–2013



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

overall. Yet the lower number of completed rules does not necessarily mean lower costs, as noted earlier with respect to costs presented in the 2013 *Draft Report to Congress on the Benefits and Costs of Federal Regulatory and Deregulatory Actions*. Costs have risen nonetheless.

Figure 20 isolates the totals of completed economically significant rules from the spring and fall Agendas for closer analysis.

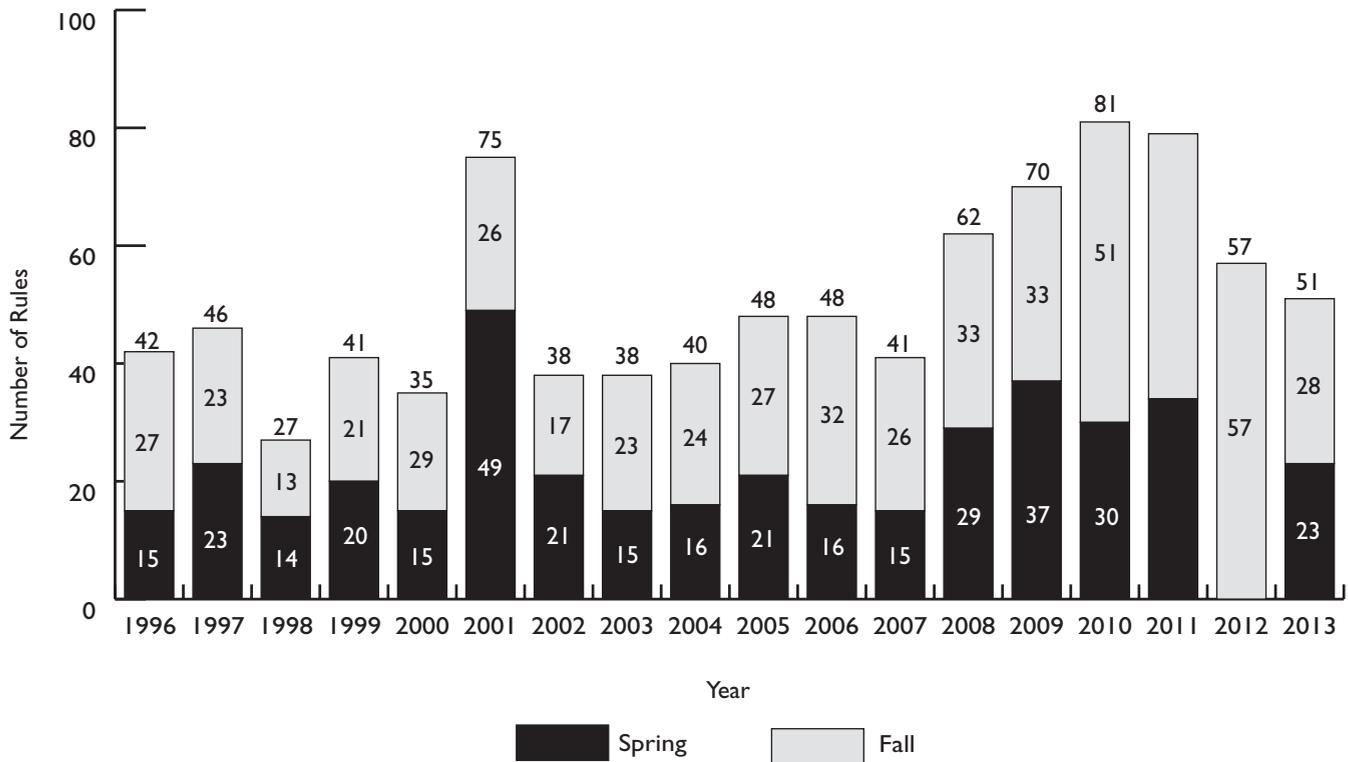
As Figure 20 shows, the annual totals for completed economically significant rules are down substantially in 2013 from the 2010 and 2012 peaks—from 81 to 51. The level from 2007 forward is considerably above the earlier part of the decade, except for the year 2001. Figure 20 also shows that only one edition of the Agenda appeared in 2012, thus making comparisons less clear.

The economically significant rules scattered among the 3,305 rules in the Agenda are es-

timated to each have annual costs of at least \$100 million, so those rules might be expected to impose annual costs of at least \$19 billion (191 rules multiplied by the \$100 million economically significant threshold). Moreover, \$19 billion in regulatory costs is not presented directly for each rule in the Unified Agenda. One must dig deeper for that. Nonetheless, \$19 billion likely represents a floor for regulatory costs. This is not a one-time cost, but a recurring annual cost to be added to previous years’ costs cumulatively. And, as noted, agencies are not limited to what they list in the Agenda.

The fact that policy makers and analysts pay the most attention to economically significant rules should not lull them into ignoring the remaining bulk of rules in the yearly pipeline. In 2013, 3,114 federal rules were not designated as officially economically significant by the government (3,305 total rules minus the 191 economically significant ones). But that categorization does not mean

Figure 20. Annual Completed Economically Significant Rules in the Unified Agenda, 1996–2013



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

There is no such thing as a free lunch, and that is especially true for the small businessperson.

that many of those rules are not economically significant in the ordinary sense of the term. A rule may cost up to \$99 million and may 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, and that is especially true for the small businessperson. The “Small Business Anthem,” heard on the *Small Business Advocate* radio program, goes in part:⁷²

Even though you make payroll every Friday,

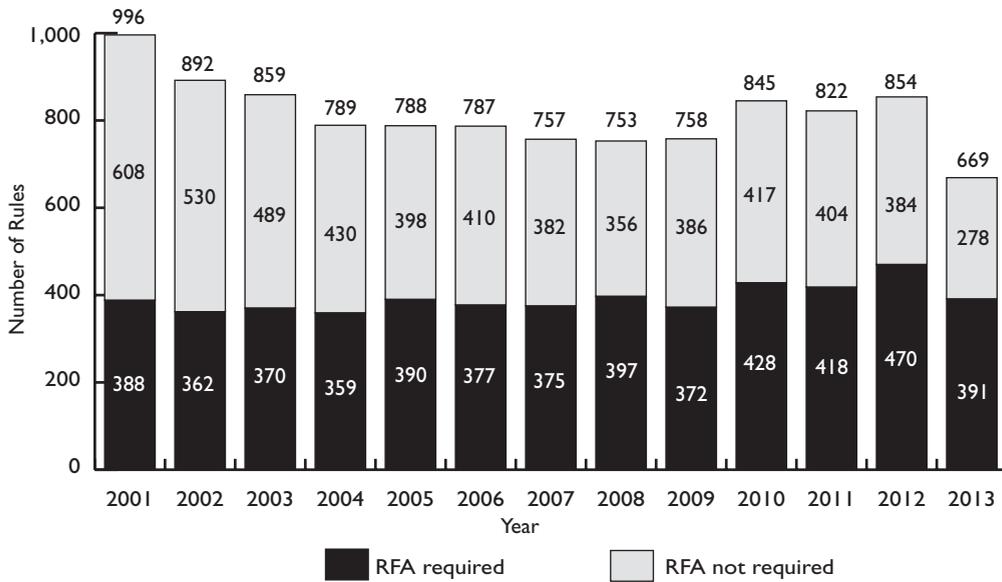
You don’t have a guaranteed paycheck.

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

The Regulatory Flexibility Act directs federal agencies to assess their rules’ effects on small businesses. As the *Federal Register* notes, “The Regulatory Flexibility Act requires that agencies publish semiannual regulatory agendas in the *Federal Register* describing regulatory actions they are developing that may have a significant economic impact on a substantial number of small entities.”⁷³

Figure 21 shows the number of rules requiring an annual regulatory flexibility analysis (RFA), as well as other rules that are anticipated by agencies to affect small business but do not require an annual RFA. The number of rules acknowledged to significantly affect small business dropped substantially in 2013. Before that year—the

Figure 21. Rules Affecting Small Business, 2001–2013



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

administration’s claims to have issued fewer rules notwithstanding—small business rules had trended upward since 2009. At year-end 2013, overall rules affecting small business stood at 669, the lowest of the entire period shown in Figure 21, down from 854 in 2012. Before that drop—partly attributable to already noted changes in Unified Agenda reporting—the number of rules with small-business impacts under Obama regularly exceeded 800, which had not been the case since 2003.

Of those 669 rules in play with small business impacts, 391 required an RFA, a 16.8 percent drop from 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). Note that despite the drop to 391 rules requiring an RFA, the number is still higher than any other non-Obama year shown except for 2008. Another 278 rules were otherwise deemed by agencies to affect small business but not to rise to the level of requiring an

RFA; those rules had dropped from 384 in 2012.

Table 7 breaks out the 2013 Agenda’s 669 rules affecting small business by department, agency, and commission. Six of them—the departments of Agriculture, Commerce, Health and Human Services, Transportation, and Treasury and the Federal Communications Commission—account for 435, or 65 percent, of the rules affecting small business.

The overall proportion of total rules affecting small business, as noted in Table 7, stands at 20.2 percent, but the range is quite wide among agencies, as the table shows. (For the numbers of rules affecting small business broken down by department and agency for 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 as they grow.

**Table 7. Unified Agenda Entries Affecting Small Business by
Department, Agency, and Commission, Year-End 2013**

	Total Rules	Number Affecting Small Business							% Affecting Small Business	Top 6
		RFA Required			RFA Not Required			Total		
		Active	Completed	L-T	Active	Completed	L-T			
Dept. of Agriculture	159	20	2	2	15	6		45	28.3	45
Dept. of Commerce	250	60	16	7	14	4	2	103	41.2	103
Dept. of Defense	104	2	2		7	1		12	11.5	
Dept. of Education	20	2	1					3	15.0	
Dept. of Energy	92	5						5	5.4	
Dept. of Health and Human Services	200	36	5	4	33	9	4	91	45.5	91
Dept. of Homeland Security	139	15	2		8		3	28	20.1	
Dept. of Housing and Urban Development	52							0	0.0	
Dept. of the Interior	353	6			12	2	3	23	6.5	
Dept. of Justice	95	1			5		4	10	10.5	
Dept. of Labor	84	8	2		10	1	1	22	26.2	
Dept. of State	41				18	2		20	48.8	
Dept. of Transportation	220	16	3	2	31	6	10	68	30.9	68
Dept. of Treasury	428	1	1		22		5	29	6.8	29
Dept. of Veterans Affairs	66				2			2	3.0	
Environmental Protection Agency	179	5		1				6	3.4	
Agency for International Development	5							0	0.0	
Architectural and Transportation Barriers Compliance Board	8			1				1	12.5	
Commission on Civil Rights	1							0	0.0	
CPBSD*	2							0	0.0	
Commodity Futures Trading Commission	33							0	0.0	
Consumer Financial Protection Bureau	26	3		1				4	15.4	
Consumer Product Safety Commission	33							0	0.0	
Corp. for National and Community Service	4							0	0.0	
Court Services/ Offender Supervision, D.C.	3							0	0.0	
Federal Acquisition Regulation	40	14	2		1			17	42.5	

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

	Total Rules	Number Affecting Small Business							% Affecting Small Business	Top 6
		RFA Required			RFA Not Required			Total		
		Active	Completed	L-T	Active	Completed	L-T			
Equal Employment Opportunity Commission	9				1	1		2	22.2	
Farm Credit Administration	30							0	0.0	
Federal Communications Commission	132	1		94			4	99	75.0	99
Federal Deposit Insurance Corporation	17	1	3					4	23.5	
Federal Energy Regulatory Commission	29							0	0.0	
Federal Housing Finance Agency	20							0	0.0	
Federal Maritime Commission	6				1			1	16.7	
Federal Reserve System	16	2	1	1	1			5	31.3	
Federal Trade Commission	20				18			18	90.0	
General Services Administration	18	1			1			2	11.1	
Institute of Museum and Library Services	3							0	0.0	
National Aeronautics and Space Administration	23				2			2	8.7	
National Archives and Records Administration	6							0	0.0	
National Credit Union Administration	24							0	0.0	
National Endowment for the Arts	7				2			2	28.6	
National Endowment for the Humanities	4							0	0.0	
National Indian Gaming Commission	5							0	0.0	
National Labor Relations Board	1							0	0.0	
National Science Foundation	2							0	0.0	
Nuclear Regulatory Commission	53		2		1			3	5.7	
Office of Government Ethics	4							0	0.0	

(continued)

Table 7. Unified Agenda Entries Affecting Small Business by Department, Agency, and Commission, Year-End 2013 (continued)

	Total Rules	Number Affecting Small Business						Total	% Affecting Small Business	Top 6
		RFA Required			RFA Not Required					
		Active	Completed	L-T	Active	Completed	L-T			
Office of Management and Budget	2							0	0.0	
Office of Personnel Management	54							0	0.0	
Peace Corps	4							0	0.0	
Pension Benefit Guaranty Corporation	13							0	0.0	
Postal Regulatory Commission	2							0	0.0	
Privacy and Civil Liberties Oversight Board	1							0	0.0	
Railroad Retirement Board	1							0	0.0	
Recovery Accountability and Transparency Board	3							0	0.0	
Securities and Exchange Commission	76	7	6		2			15	19.7	
Small Business Administration	30	21	3		3			27	90.0	
Social Security Administration	44							0	0.0	
Surface Transportation Board	9							0	0.0	
TOTAL	3,305	227	51	113	210	32	36	669	20.2	435
		391			278					65% 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.

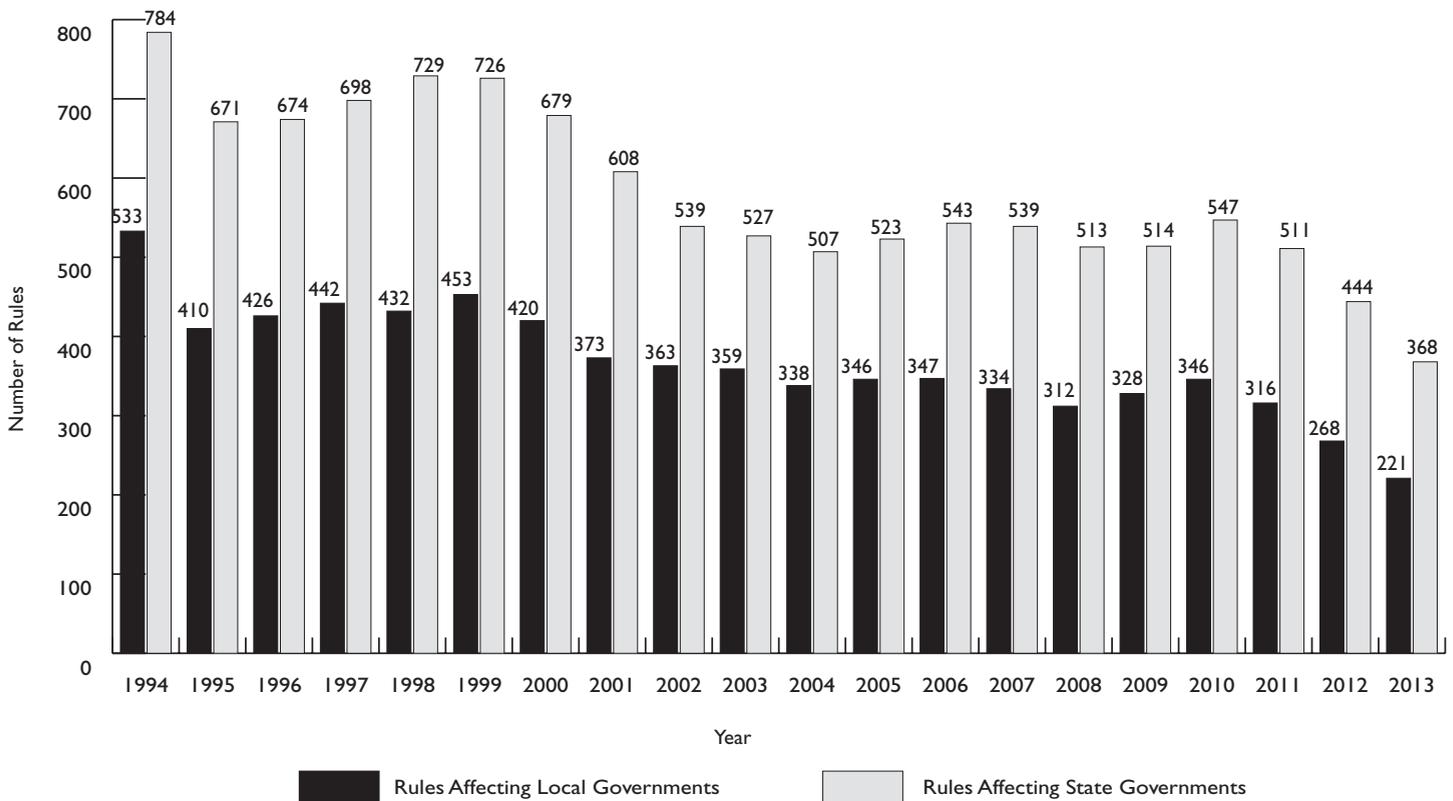
Federal Regulations Affecting State and Local Governments

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, Congress passed the Unfunded Mandates Act in 1995 as a means of getting lawmakers to pay closer attention to legislation's effect on states and localities.

As Figure 22 shows, agencies report that 221 of the 3,305 rules in the 2013 Agenda pipeline will affect local governments.⁷⁴ Since the passage of the Unfunded Man-

Figure 22. Rules Affecting State and Local Governments, 1994–2013



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>.

dates Act in the mid-1990s, the number of overall rules affecting local governments has fallen by 58 percent, from 533 to 221, the lowest level yet seen over this period. Figure 22 also shows that the total number of regulatory actions affecting state governments

stands at 368, down from 444 in 2012. (For breakdowns of the numbers of rules affecting state and local governments by department and agency over the past several years’ Agendas, see Appendix: Historical Tables, Part I.)

Box I. 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 (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

- WARN Act (60-days written plant closing notice)—Civil Rights Act (annual EEO-1 form)

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 costing \$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.⁷⁵

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.

Table 8, derived from the GAO database of major rules, depicts the number of final

major rule reports issued by the GAO about agency rules through 2013. There were 77 rules in 2013, 67 in 2012, and 80 in 2011.⁷⁶ The 99 rules in 2010 had been the highest number since this tabulation began following passage of the CRA.

Mirroring what was seen as the most active executive and independent rulemaking agencies in Table 5 (see earlier), the Department of Health and Human Services, Securities and Exchange Commission, and Commodity Futures Trading Commission may be seen to be increasingly active in terms of major rules in wake of the Affordable Care Act and the Dodd-Frank financial regulation law. President George W. Bush averaged 63 major rules annually during his eight years in office; Obama's five years so far have averaged 81. Obama's output level in his first term is 29 percent higher than that of Bush's last term. This finding parallels the depiction of economically significant rules in Figure 19; the Obama administration's output level during the decade is notably higher despite talk about regulatory lookbacks and reducing regulation.

A May 2013 Heritage Foundation analysis of the current administration's regulatory record, which 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, found that 131 major rules were adopted during the Obama administration's first term, for an increase of almost \$70 billion in annual costs.⁷⁷

Table 8. Government Accountability Office Reports on Major Rules as Required by the Congressional Review Act, 1998–2013

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

Case Studies

Regulation and the Environmental Protection Agency

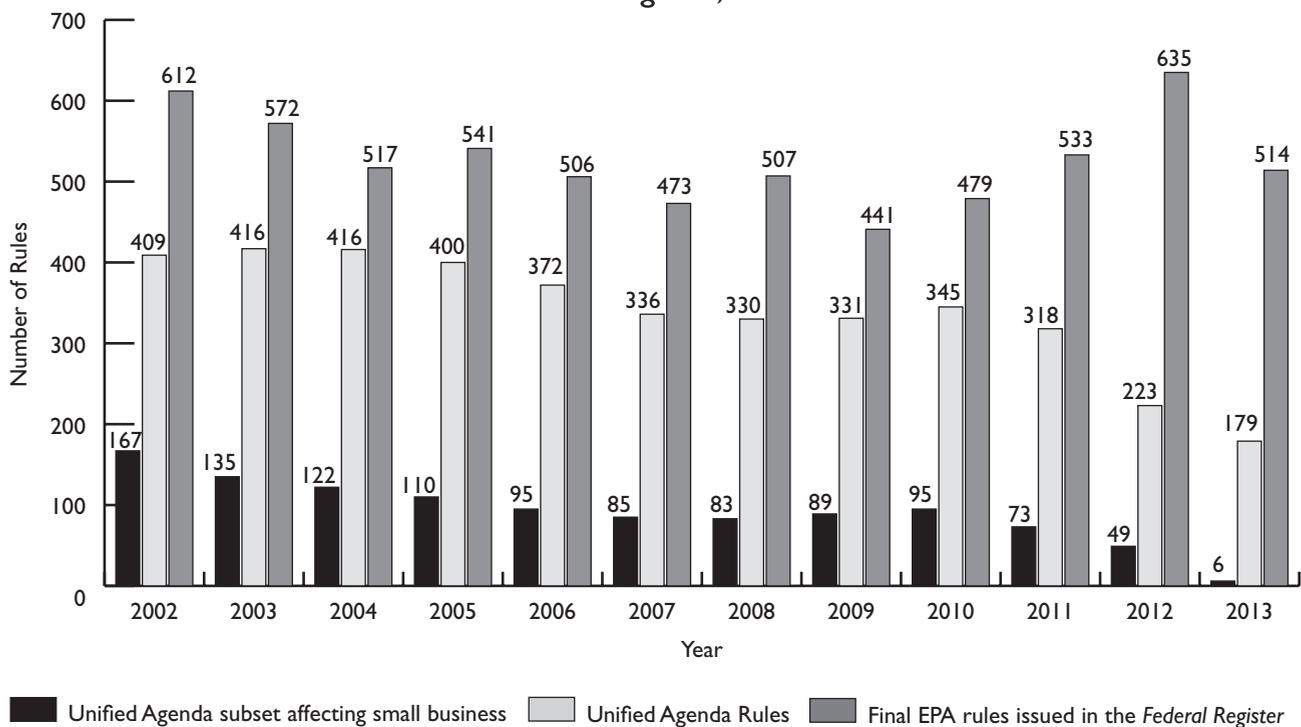
In late 2010, Rep. Darrell Issa (R-Calif.) issued a request to businesses, trade groups, and think tanks, asking which rules they considered to be the most burdensome. He received more than 160 responses filled with recommendations,⁷⁸ including from the Competitive Enterprise Institute, and his office issued a summary report.⁷⁹ The Issa document noted that the Environmen-

tal Protection Agency (EPA), more than any other agency, accounted for the regulatory burden felt by private enterprise.

In Figure 23, one can see that EPA rules finalized in the *Federal Register* during the first term of the Obama administration rose from 441 to 635 between 2009 and 2012 (a 44 percent increase) before dropping 19 percent to 514 in 2013.

The drop is interesting, because for the second time, the EPA does not appear among

Figure 23. Number of EPA Rules in the Unified Agenda and *Federal Register*, 2002–2013



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

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

the top five rulemaking agencies (it is sixth with 179 rules; refer to Table 5). It also ostensibly no longer ranks among the agencies with the most rules that are in the Unified Agenda and that affect small business. (Note, in Figure 23, the implausible 88 percent drop from 49 rules affecting small business to only 6 in 2013.)

There also has been a substantial dropoff in the overall Agenda-listed EPA portion of rules over the past few years compared with the reality of higher levels of EPA rules finalized in the *Federal Register* in Figure 23. In the past year, EPA rules in the Unified Agenda pipeline dropped by 20 percent, from 223 to 179 in 2013, the lowest level of the decade; those rules had been dropping since 2010.

Where did all the EPA's Agenda rules go? Box 2 shows the 2013 breakdown of EPA's 179 Unified Agenda rules by stage of completion. One can see that active rules are actually higher than in 2012, while chunks of the EPA's active and long-term rules had simply vanished between 2011 and 2012. The falloff in completed rules in 2013 reflects the discussion earlier about the administration holding rules back and delaying rule review. Finally, it simply appears that fewer of the long-term rules are being talked about or disclosed.

A falloff does not square with the level of regulatory impact driven by the EPA and has been partly addressed in earlier discussion of rule delays, as well as in the Sunstein and

Shelanski memos and their possible effect on reporting policy for the Unified Agenda. Recall too that only one Agenda, not the required two, appeared in 2012.

The EPA is not rolling back regulatory pursuits; they are just not being reported adequately. An October 2012 Minority Report from Sen. James Inhofe (R-Okla.), who is ranking member of the Senate Committee on Environment and Public Works, details what it calls "Numerous Obama-EPA Rules Placed on Hold until After the Election."⁸⁰ 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 countermeasure rule

Regulatory liberalization has not been an Obama administration priority, a fact reflected in public statements about acting unilaterally on energy and environmental policy. And costs are up, despite the lower

Regulatory liberalization has not been an Obama administration priority, a fact reflected in public statements about acting unilaterally on energy and environmental policy.

reported number of rules. Earlier, it was noted that the OMB's 2013 *Draft Report to Congress on the Benefits and Costs of Federal Regulations* presented a range of costs of \$14.8 billion to \$19.5 billion. Well over half of that is attributed to the EPA: \$8.3 billion

is EPA exclusively, and another \$5.3 billion to \$8.8 billion is ascribed to the EPA and Department of Transportation's fuel economy standards.⁸¹ Overall, this author ascribes \$379 billion in annual costs as an estimate for the EPA's impact.⁸²

Regulation and the Federal Communications Commission

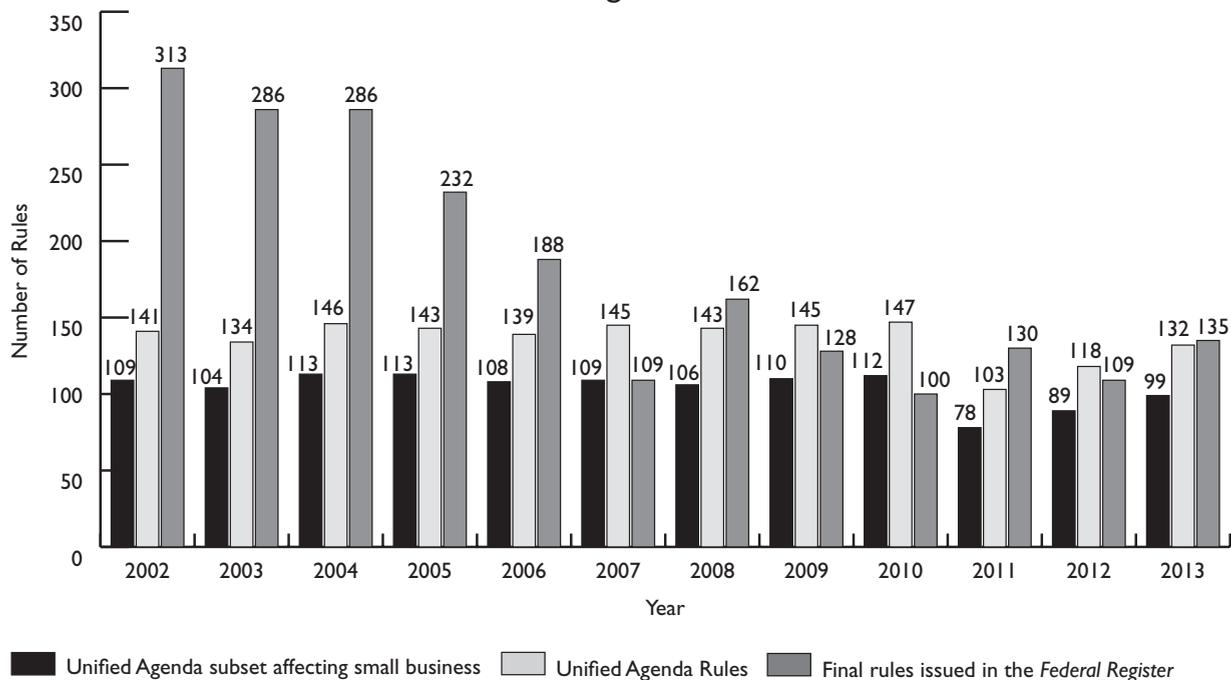
The Federal Communications Commission (FCC) is by no means the heaviest regulator as gauged by the number of rules issued, but it is worth singling out for review because the FCC—and its enabling statute, the Communications Act—wield great influence over a major economic sector regarded as a growth engine in today’s information economy: telecommunications and the Internet.

The FCC is an expensive agency, imposing an estimated \$141 billion in annual regulatory costs.⁸³ It spent an estimated \$388 mil-

lion on regulatory enforcement during FY 2013.⁸⁴ However, its 132 rules in the Unified Agenda pipeline are surpassed by eight other departments or agencies (see Table 4), and its seven economically significant rules are exceeded by those of seven other agencies (see Table 6). The FCC’s seven rules have been in its pipeline for several years.

Figure 24 shows the FCC’s final rules in the *Federal Register* during the past decade, its overall number of rules in the Unified Agenda, and its Agenda rules with small business impacts.

Figure 24. Number of FCC Rules in the Unified Agenda and *Federal Register*, 2002–2013



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

Whereas the FCC has published fewer rules in the Agenda and has finalized fewer of them than in preceding years, a pro-regulatory sentiment remains at the commission.

According to the National Archives' online database, FCC rules made final in the *Federal Register* numbered as high as 313 in 2002, then declined drastically during the next decade. The FCC issued 100 in 2010, 130 in 2011, and 109 in 2012. Then, its number of final rules in the *Federal Register* bumped upward 24 percent between 2012 and 2013, from 109 to 135.⁸⁵ As of February 19, 2014, the FCC had made 50 rules final for the year in the *Federal Register*.⁸⁶

Of the 3,305 total rules in the 2013 Agenda pipeline, 132, 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 in 2011, but they have been rising since. The FCC promulgated 99 rules affecting small business in 2013, as Table 7 shows. Among its rules, 75 percent affect small business.

Whereas the FCC has published fewer rules in the Agenda and has finalized fewer of them than in preceding years, a pro-regulatory sentiment remains at the commission. Again, an agency's rule count is not all that matters, because a mere handful of rules can make an outsized impact. Despite the increasing obsolescence of the FCC's original mandate to police allegedly public airwaves characterized by scarcity—and despite massive innovations in telecommunications and in customized, consumer-oriented, user-driven media—the commission forges ahead. Yet, today's vibrant, robust, and duplicative communications markets are not fragile mechanisms requiring fine-tuning by government bodies.⁸⁷ Nor do communications markets abuse and harass consumers in a manner requiring top-down rulemaking with respect to every new technological advance.

Nonetheless, the FCC recently has done the following:

- It considered a sweeping notice of inquiry to examine the broadband industry practices of the communications sector.⁸⁸
- It inserted itself into journalism with a "Future of Media" proceeding.⁸⁹
- After being rebuffed in federal court once, it issued an order in December 2010 mandating "net neutrality." This action was done to the consternation of many in Congress, which has not delegated such authority to the commission.⁹⁰ Another January 2014 federal court decision struck down part of the rule but opened up the Internet to even wider FCC regulation.⁹¹ Accordingly, in February 2014 the FCC announced its intent to issue another repackaged proposed rule on net neutrality.⁹²

The FCC has held numerous hearings and workshops on those and other matters, including multicast must-carry regulation, cable à la carte, media ownership restrictions, indecency, video game violence portrayal, and wireless net neutrality.

As noted, of the 191 economically significant rules in the works across the entire federal government, seven have long been in the works at the FCC (see Table 6) and are presented in Box 3. Such rulemakings—along with other FCC rules in the Agenda pipeline and the hundreds finalized each year—present opportunities for either liberalization of telecommunications or avenues for new centralized regulatory oversight and protracted legal battles. Liberalizing communications markets requires a deliberate effort to shift regulation from the FCC to the discipline of competitive markets. Today's debates fail to reflect that approach.

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

- **Broadband over power line (BPL) systems**, 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.”
- **Amendment of the rules regarding Maritime Automatic Identification Systems** (WT Docket No. 04-344), RIN 3060-AJ16
- **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.”⁹³
- **Universal Service Reform Mobility Fund** (WT Docket No. 10-208), RIN 3060-AJ58
- **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.”
- **Form 477; Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans**, RIN 3060-AJ15
- **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

Liberate to Stimulate

The annual cost of regulation dwarfs the \$787 billion economic stimulus package passed in early 2009. In contrast to the never-ending spending stimulus of dubious merit, regulatory liberalization would constitute genuine stimulus to the U.S. economy. A *liberate-to-stimulate* agenda would offer some confidence and certainty for business enterprises that are seeking a greater foothold in the economy. Proposals like those described next can help achieve that goal.

Steps to Improve Regulatory Disclosure

Regulatory compliance costs estimated at \$1.8 trillion annually receive too little official attention, so it is not surprising when costs exceed benefits. Although some regulations' benefits exceed costs, "net" benefits—or even actual costs—are known for very few. Without any thorough regulatory accounting, estimates of overall agency net benefits are questionable, which makes it difficult to know whether society wins or loses as a result of rules (as well as whether such social metrics have inherent problems relative to property rights and contract-based alternatives).⁹⁴

Pertinent, relevant, and available regulatory data should be summarized and publicly reported to help create pressures for even better data disclosure. An incremental step would be for Congress to require—or for the OMB to initiate—publication of a summary of already available but scattered data. Such a summary would perhaps resemble that in *Ten Thousand Commandments* and other compilations, or it could be a simple regulatory report card. That simple step alone

would help transform today's regulatory hidden tax culture into one characterized by greater openness.

Although regulatory cost disclosure should be a priority, a protracted legislative fight over comprehensive cost-benefit analysis should be avoided. Real progress will require Congress to cease delegating legislative power to unelected agency personnel. Such progress could be achieved by imposing institutional changes that would force Congress to make cost-benefit assessments before issuing directives to agencies. Reining in off-budget regulatory costs can occur only when elected representatives are forced to assume responsibility and to 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 the 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.

Congress could require agencies to break up their cost categories into tiers. Table 9 presents one alternative for assigning economically significant rules to one of five categories. Agencies could classify their rules either (a) on the basis of cost information that has been provided in the regulatory impact analyses that accompany many economically significant rules or (b) on the basis of separate internal or external estimates.

Reining in off-budget regulatory costs can occur only when elected representatives are forced to assume responsibility and to end "regulation without representation."

Table 9.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

By such means, the Agenda and OMB reports could be made more user-friendly. Going further, one can find that useful regulatory information is available, but it is often difficult to compile or interpret. Today, to learn about regulatory trends and accumulate information on rules, interested citizens must comb through the Agenda’s 1,000-plus pages of small, multicolumn print or compile results from online searches and agencies’ vague Regulatory Plans. As part of this process, data from the Agenda could be

officially summarized in charts each year, perhaps presented as a chapter in the federal budget, in the Agenda itself, or in the *Economic Report of the President*.⁹⁵

Recommended components for a regulatory transparency report card appear in Box 4. Information could be added to the report as warranted—for instance, success or failure of any special initiative, such as any “reinventing government” or regulatory reform effort. Providing five-year historical data would also

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 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 GAO in its database of reports on regulations
- Ranking of most active rulemaking agencies
- Identification of rules that are deregulatory rather than regulatory
- Rules that affect internal agency procedures alone
- Number of rules that are new to the Unified Agenda; number that are carry-overs 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

enhance the process. A regulatory report card would reveal more clearly what we *do not* know about the regulatory state.

Detailed cost-benefit data are not necessary to begin producing a regulatory transparency report card. A clear presentation of trends in those data would prove useful to scholars, third-party researchers, and Congress. By making agency activity more explicit, a regulatory report card would help ensure that policy makers take the growth of the regulatory state seriously.

Ending Regulation without Representation: The “Unconstitutionality Index”—51 Rules for Every Law

Regulators and the administration, not Congress, do the bulk of U.S. lawmaking. Years of unbudgeted growth of the federal regulatory environment are worrisome when no one can claim with assurance that regulatory benefits exceed costs. But agencies are not the only culprits. Congress shirks its constitutional duty to make the tough calls. It delegates substantial lawmaking power to agencies and then fails to ensure that they deliver benefits that exceed costs.⁹⁶ Thus, agencies can hardly be faulted for not guaranteeing optimal 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 agency productivity—other than growth in their budgets and number of employees⁹⁷—is the body of regulations they produce. One need not exhaust 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 3,659 final rules, whereas the 113th Congress passed and President Obama signed into law a comparatively few 72 bills in calendar year 2013.⁹⁸

Figure 25 presents the multiple of rules issued over the number of public laws by calendar year passed since 2003—the “Unconstitutionality Index.” There were 51 rules for every law in 2013. In 2012, there were 29 times as many rules as laws. Obviously the ratio can vary widely, but 2013 is the highest over the period shown. In 2011, the multiple was 47, the second highest.

If the thousands of notices and dozens—sometimes hundreds—of executive orders issued annually are considered, the phenomenon of policy making without representation assumes greater importance as an issue of concern.

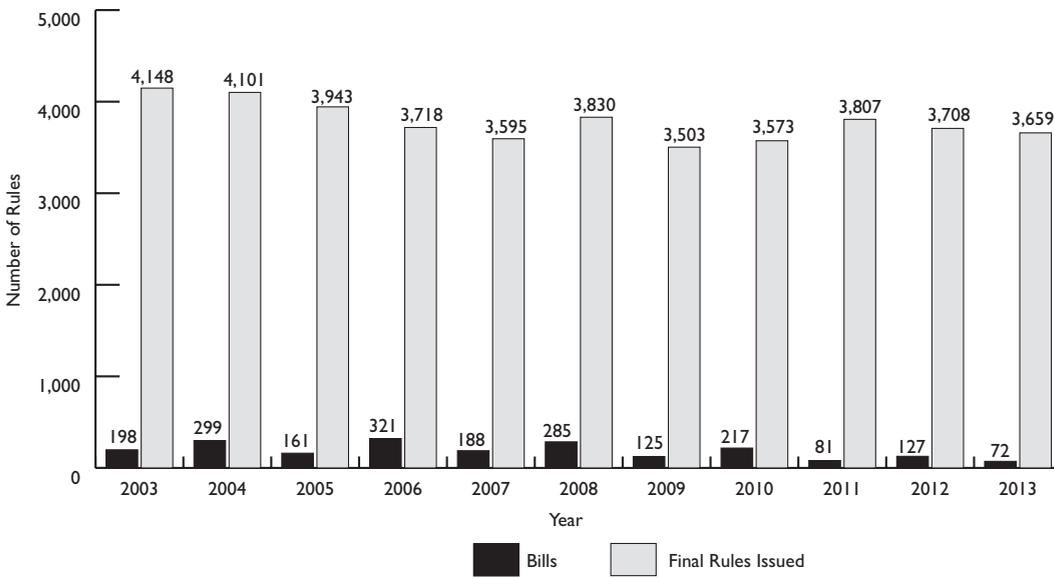
Historical Tables Part J: The Unconstitutionality Index depicts the index back to 1995 and shows just by way of comparison the numbers of executive orders and the numbers of notices (within which executive orders are embedded).

As noted, regulatory agencies are now at work on 3,305 rules according to the fall 2013 Agenda. Agencies do not answer to voters. This fact is why an annual regulatory transparency report card is worthwhile but not a complete answer. Regulatory reforms that rely on agencies’ policing themselves will not rein in the regulatory state or 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 such rules 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 simply pass a

Making Congress directly answerable to voters for the costs that agencies impose on the public would best promote accountable regulation.

Figure 25. The 2013 Unconstitutionality Index, 51 Rules for Every Law, 2003–2013



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

law requiring Fortune 500 companies to fund job training, which 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 bore direct responsibility for every dollar of new regulatory costs; it is a prerequisite for controlling the off-budget regulatory state. The Regulations from the Executive In Need of Scrutiny (REINS) Act (H.R. 367, S. 15), sponsored by Rep. Todd Young (R-Ind.) and Sen. Rand Paul (R-Ky.), offers one such approach.⁹⁹ The REINS Act would require Congress to vote on all economically significant bills—those with estimated annual costs of \$100

million or more. It has passed the House and awaits action in the Senate.

To avoid getting bogged down in approving agency rules, Congress could vote on agency regulations in bundles. In addition, congressional approval of new regulation could be given by voice vote, signifying unanimity, rather than by tabulated roll call vote. Any shortcut is acceptable; what matters is for Congress to go on record for what laws the public must heed.

Whatever improvements in disclosure might be made, congressional rather than agency approval of regulations and regulatory costs should be the goal of regulatory 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.

**By regulating
instead of
spending,
government can
expand almost
indefinitely without
explicitly taxing
anybody one extra
penny.**

Appendix: Historical Tables

Part A. *Federal Register* Page History, 1936–2013

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

Year	Unadjusted Page Count	Jumps/Blanks	Adjusted Page Count
1968	20,072	n/a	20,072
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

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*, 1976–2013

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

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, 1975–2013

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

Source: Chart from National Archives and Records Administration, Office of the Federal Register. *General Index and Finding Aids volume for 1975 and 1976. ** Unrevised CFR volumes page totals include those previous editions for which a cover only was issued during the year or any previous editions for which a supplement was issued. n/a = not available.

Part D. Number of Regulatory Reviews at the Office of Information and Regulatory Affairs,
1993–2013

Year	Prerule reviews	Proposed rule reviews	Interim final rule reviews	Final rule reviews	Notice reviews	Total reviews	ES reviews	Non-ES reviews	Days ES reviews	Days non-ES reviews	Average Days Review Time	
											Overall average days	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	

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, 1983–2013

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	Spring	
			1997	April	4,417	2013	November	3,305
				October	4,407			
			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, 1999–2012

	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999
Advisory Council on Historic Preservation					0	0	0		1	1	1	0	1	1
Agency for International Development	10	14	14	12	7	10	8	10	8	8	7	6	6	5
Architectural and Transportation Barriers Compliance Board		8	7	6	5	5	4	3	4	4	5	5	7	8
Commission on Civil Rights		1	1	1	2	1	1	1	1	1	1	1	1	1
Commodity Futures Trading Commission	83	68	56	32	25	19	14	11	15	15	19	30	21	19
Consumer Financial Protection Bureau	34													
Consumer Product Safety Commission	48	38	51	39	31	19	24	18	18	20	20	21	20	17
Corporation for National and Community Service	5	13	10	7	7	9	11	11	8	9	16	9	6	4
Court Services/Offender Supervision, D.C.	3	3	2	2	2	2	1	1	1	3	7	5	0	0
CPB/SD*	2	3	3	3	3	5	6	6	5	0	0	0	0	0
Department of Agriculture	276	265	287	327	374	290	311	292	279	323	314	312	327	345
Department of Commerce	415	328	296	300	325	303	302	296	273	300	270	342	390	366
Department of Defense	146	140	150	133	109	131	143	163	126	108	87	93	117	121
Department of Education	24	18	23	22	17	13	16	9	11	13	14	8	21	32
Department of Energy	108	96	96	85	54	47	63	61	50	66	53	61	67	64
Department of Health and Human Services	204	251	312	231	236	259	257	249	233	219	219	277	308	300
Department of Homeland Security	160	232	230	237	252	267	280	295	314	338				
Department of Housing and Urban Development	58	65	65	60	73	86	92	90	103	109	100	89	113	128
Department of Justice	112	120	137	121	138	140	139	124	125	122	249	229	202	201
Department of Labor	98	90	99	104	96	94	93	93	88	89	102	141	156	151
Department of State	63	35	30	18	27	28	28	24	21	15	41	32	21	27
Department of the Interior	320	325	259	277	287	264	305	303	287	295	298	423	418	309
Department of Transportation	232	224	223	230	200	199	215	227	301	365	543	511	536	539
Department of Treasury	487	497	580	528	521	545	501	514	532	530	513	458	450	400
Department of Veterans Affairs	85	82	81	78	80	65	77	76	79	87	104	164	141	130
Environmental Protection Agency	223	318	345	331	330	336	372	400	416	417	409	416	449	456
Equal Employment Opportunity Commission	9	7	7	7	5	7	8	6	3	4	4	3	6	9
Export-Import Bank of the United States	1													
Farm Credit Administration	30	25	23	25	19	12	19	20	20	21	14	17	17	19
Farm Credit System Insurance Corporation		25		1	1	0	1	1	1	1	1	1	3	3
Federal Acquisition Regulation	50	51	85	55	44	36	42	44	45	49	43	48	56	49
Federal Communications Commission	118	103	147	145	143	145	139	143	146	134	141	145	137	128
Federal Council on the Arts and Humanities					1									
Federal Deposit Insurance Corporation	22	21	21	21	19	18	24	16	20	17	17	22	26	25
Federal Emergency Management Agency					0	0	0	0	0	0	24	30	26	33
Federal Energy Regulatory Commission	40	41	36	37	39	41	47	35	23	21	19	8	18	20
Federal Housing Finance Agency	32	25	27	30	10	3	8	8	9	11	9	12	12	18
Federal Housing Finance Board					3									
Federal Maritime Commission	4	8	4	6	3	4	3	5	7	11	8	7	9	9

Federal Mediation and Conciliation Service	1	1	2	2	2	2	1	1	2	2	2	3	4	3	2	1
Federal Reserve System	25	29	22	26	18	18	20	13	17	18	18	18	24	32	33	22
Financial Stability Oversight Council	2															
Federal Trade Commission	23	24	19	20	17	17	14	16	15	14	12	10	13	14	16	
General Services Administration	21	29	34	49	54	54	26	34	33	27	37	40	35	40	51	
Institute of Museum and Library Services	3	1	2	1	2	2	1	1	4	3	6	5	5	4	1	
National Aeronautics and Space Administration	37	46	26	32	19	11	15	15	20	27	34	13	17	11	7	
National Archives and Records Administration	6	4	9	7	10	15	21	17	22	19	19	20	19	21	21	
National Credit Union Administration	31	28	24	24	22	24	24	29	27	26	27	20	22	16	26	
National Endowment for the Arts	8			2	3	2	2	2	2	2	6	5	5	5	5	
National Endowment for the Humanities	3	5	4	3	3	3	3	3	3	3	8	9	8	7	6	
National Indian Gaming Commission	15	15	9	17	18	19	19	16	15	14	14	16	15	14	14	
National Labor Relations Board	1															
National Science Foundation	3	3	2	3	3	3	0	2	3	3	2	2	3	5	4	
Nuclear Regulatory Commission	73	64	63	61	54	53	45	45	49	42	45	39	42	55	57	
Office of Federal Housing Enterprise Oversight					10	9	8	8	6	4	4	7	9	9	5	5
Office of Government Ethics	4	5	7	7	6	9	9	8	7	7	9	10	11	11	12	
Office of Management and Budget	5	8	7	7	2	1	2	2	2	3	4	4	5	5	9	
Office of Personnel Management	73	87	77	77	80	75	93	94	103	90	90	72	91	110	112	
Office of Special Counsel					0	0	0	0	0	0	0	0	0	0	2	
Panama Canal Commission						0	0	0	0	0	0	0	0	0	4	
Peace Corps	5	5	1	1	7	6	6	6	5	4	9	9	9	8	5	
Pension Benefit Guaranty Corporation	13	12	10	10	12	12	13	13	9	6	4	6	11	10	12	
Postal Regulatory Commission	2	1	3	2	2	3	0	0	0	0	0	0	0	0	0	
Presidio Trust					0	0	0	0	2	2	1	2	2	3	3	
Privacy and Civil Liberties Oversight Board					0	1	0	0	0	0	0	0	0	0	0	
Railroad Retirement Board	1	1	1	1	3	2	6	6	5	6	11	13	13	19	16	
Recovery Accountability and Transparency Board	2		1	3												
Securities and Exchange Commission	89	107	75	74	72	76	71	71	64	79	71	73	80	77	80	
Selective Service System		1	1	1	1	1	1	1	1	1	1	1	1	1	1	
Small Business Administration	43	48	51	39	26	28	32	34	29	33	33	40	37	41	35	
Social Security Administration	49	53	63	58	64	63	53	53	68	59	64	63	85	82	67	
Special Insp. Gen. for Afghanistan Reconstr.	4															
Surface Transportation Board	10	11	5	5	6	4	7	3	4	5	5	5	4	3	3	
Tennessee Valley Authority					0	0	0	0	0	0	2	2	3	3	1	
Udall Institute for Environmental Conflict Res.					0	0	0	0	0	0	1	1	3	3	3	
TOTAL	4,062	4,128	4,225	4,043	4,004	3,882	4,052	4,062	4,083	4,266	4,187	4,509	4,699	4,538	4,538	

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

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>.

Part G. Listing of 191 Economically Significant Rules, Year-End 2013

From the Regulatory Plan (40 Active Actions)

DEPARTMENT OF AGRICULTURE

1. USDA/APHIS, Proposed Rule Stage, User Fees for Agricultural Quarantine and Inspection Services, 0579-AD77
2. USDA/FSIS, Final Rule Stage, Modernization of Poultry Slaughter Inspection, 0583-AD32
3. USDA/FNS, Final Rule Stage, Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation, and Energy Act of 2008, 0584-AD87

DEPARTMENT OF DEFENSE

4. DOD/DODOASHA, Proposed Rule Stage, TRICARE; Reimbursement of Long-Term Care Hospitals, 0720-AB47
5. DOD/DODOASHA, Final Rule Stage, CHAMPUS/TRICARE: Pilot Program for Refills of Maintenance Medications for TRICARE for Life Beneficiaries Through the TRICARE Mail Order Program, 0720-AB60
6. DOD/OS, Final Rule Stage, Voluntary Education Programs, 0790-AJ06

DEPARTMENT OF EDUCATION

7. ED/OPE, Proposed Rule Stage Gainful Employment, 1840-AD15

DEPARTMENT OF ENERGY

8. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Walk-In Coolers and Walk-In Freezers, 1904-AB86
9. DOE/EE, Proposed Rule Stage, Energy Efficiency Standards for Metal Halide Lamp Fixtures, 1904-AC00
10. DOE/EE, Proposed Rule Stage, Energy Efficiency Standards for Manufactured Housing, 1904-AC11
11. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Commercial Refrigeration Equipment, 1904-AC19
12. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Residential Furnace Fans, 1904-AC22
13. DOE/EE, Proposed Rule Stage, Energy Efficiency Standards for Certain Commercial and Industrial Electric Motors, 1904-AC28

14. DOE/EE, Final Rule Stage, Energy Efficiency Standards for Battery Chargers and External Power Supplies, 1904-AB57

DEPARTMENT OF HEALTH AND HUMAN SERVICES

15. HHS/FDA, Proposed Rule Stage, Food Labeling; Revision of the Nutrition and Supplement Facts Labels, 0910-AF22
16. HHS/FDA, Proposed Rule Stage, Food Labeling: Serving Sizes of Foods that Can Reasonably Be Consumed at One-Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain RACCs, 0910-AF23
17. HHS/FDA, Proposed Rule Stage, Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals, 0910-AG10
18. HHS/FDA, Proposed Rule Stage, "Tobacco Products" Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act, 0910-AG38
19. HHS/FDA, Proposed Rule Stage, Revision of Post-marketing Reporting Requirements Discontinuance or Interruption in Supply of Certain Products (Drug Shortages), 0910-AG88
20. HHS/FDA, Final Rule Stage, Food Labeling: Calorie Labeling of Articles of Food Sold in Vending Machines, 0910-AG56
21. HHS/FDA, Final Rule Stage, Food Labeling: Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments, 0910-AG57
22. HHS/CMS, Proposed Rule Stage, Hospital Inpatient Prospective Payment System for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2015 Rates (CMS-1607-P), 0938-AS11
23. HHS/CMS, Proposed Rule Stage, CY 2015 Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1612-P), 0938-AS12
24. HHS/CMS, Proposed Rule Stage, CY 2015 Hospital Outpatient Prospective Payment System (PPS) Policy Changes and Payment Rates, and CY 2015 Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1613-P), 0938-AS15

DEPARTMENT OF HOMELAND SECURITY

25. DHS/OS, Final Rule Stage, Ammonium Nitrate Security Program, 1601-AA52

26. DHS/USCBP, Final Rule Stage, Importer Security Filing and Additional Carrier Requirements, 1651-AA70
27. DHS/USCBP, Final Rule Stage, Changes to the Visa Waiver Program to Implement the Electronic System for Travel Authorization (ESTA) Program, 1651-AA72
28. DHS/TSA, Proposed Rule Stage, Security Training for Surface Mode Employees, 1652-AA55
29. DHS/TSA, Proposed Rule Stage, Standardized Vetting, Adjudication, and Redress Services, 1652-AA61
30. DHS/TSA, Final Rule Stage, Passenger Screening Using Advanced Imaging Technology, 1652-AA67

DEPARTMENT OF JUSTICE

31. DOJ/CRT, Proposed Rule Stage, Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of Public Accommodations, 1190-AA61
32. DOJ/CRT, Proposed Rule Stage, Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Governments, 1190-AA65

DEPARTMENT OF TRANSPORTATION

33. DOT/FMCSA, Proposed Rule Stage, Carrier Safety Fitness Determination, 2126-AB11
34. DOT/FMCSA, Proposed Rule Stage, Commercial Driver's License Drug and Alcohol Clearinghouse (MAP-21), 2126-AB18
35. DOT/FMCSA, Proposed Rule Stage, Electronic Logging Devices and Hours of Service Supporting Documents (MAP-21), 2126-AB20
36. DOT/NHTSA, Final Rule Stage, Require Installation of Seat Belts on Motorcoaches, FMVSS No. 208 (MAP-21), 2127-AK56
37. DOT/NHTSA, Final Rule Stage, Electronic Stability Control Systems for Heavy Vehicles (MAP-21), 2127-AK97

ENVIRONMENTAL PROTECTION AGENCY

38. EPA/WATER, Final Rule Stage, Criteria and Standards for Cooling Water Intake Structures, 2040-AE95
39. EPA/WATER, Final Rule Stage, Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, 2040-AF14
40. EPA/AR, Final Rule Stage, Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards, 2060-AQ86

From the Regulatory Plan (2 Completed Actions)

DEPARTMENT OF HEALTH AND HUMAN SERVICES

41. HHS/FDA, Completed Actions, Unique Device Identification, 0910-AG31
42. HHS/CMS, Completed Actions, HIPAA Mental Health Parity and Addiction Equity Act of 2008 Amendments (CMS-4140-F), 0938-AR81

From the Unified Agenda (91 Active Actions)

DEPARTMENT OF AGRICULTURE

43. USDA/RUS, Final Rule Stage. Energy Efficiency Program Loans, 0572-AC19
44. USDA/RHS, Proposed Rule Stage, Citizenship Implementation, 0575-AC86
45. USDA/FNS, Final Rule Stage, Supplemental Nutrition Assistance Program: Farm Bill of 2008 Retailer Sanctions, 0584-AD88
46. USDA/FNS, Final Rule Stage, Certification of Compliance with Meal Requirements for the National School Lunch Program under the Healthy, Hunger-Free Kids Act of 2010, 0584-AE15

DEPARTMENT OF COMMERCE

47. DOC/NOAA, Proposed Rule Stage, Taking Marine Mammals Incidental to Conducting Geological and Geophysical Exploration of Mineral and Energy Resources on the Outer Continental Shelf in the Gulf of Mexico, 0648-BB38
48. DOC/NOAA, Final Rule Stage, Removal of the Sunset Provision of the Final Rule Implementing Vessel Speed Restrictions to Reduce the Threat of Ship Collisions with North Atlantic Right Whales, 0648-BB20

DEPARTMENT OF EDUCATION

49. ED/OPE, Proposed Rule Stage, Negotiated Rulemaking under Title IV of HEA, 1840-AD14
50. ED/OPE, Final Rule Stage, 150% Regulations, 1840-AD13

DEPARTMENT OF ENERGY

51. DOE/ENDEP, Final Rule Stage, Advanced Technology Vehicles Manufacturing Incentive Program, 1901-AB25

52. DOE/EE, Prerule Stage, Energy Conservation Standards for Wine Chillers and Miscellaneous Refrigeration Products, 1904-AC51
53. DOE/EE, Prerule Stage, Energy Efficiency Standards for Residential Dehumidifiers, 1904-AC81
54. DOE/EE, Prerule Stage, Standards for Refrigerated Bottled or Canned Beverage Vending Machines, 1904-AD00
55. DOE/EE, Proposed Rule Stage, Energy Efficiency Standards for Automatic Commercial Ice Makers, 1904-AC39
56. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for General Service Fluorescent Lamps and Incandescent Reflector Lamps, 1904-AC43
57. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Commercial Clothes Washers, 1904-AC77
58. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps, 1904-AC85
59. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Small, Large, and Very Large Commercial Package A/C and Heating Equipment, 1904-AC95
60. DOE/EE, Final Rule Stage, Energy Conservation Standards for Portable Air Conditioners, 1904-AD02
61. DOE/EE, Final Rule Stage, Coverage Determination for Computer Servers, 1904-AD03
62. DOE/EE, Final Rule Stage, Coverage Determination for Computers, 1904-AD04
63. DOE/NNSA, Proposed Rule Stage, Assistance to Foreign Atomic Energy Activities, 1994-AA02
71. HHS/FDA, Proposed Rule Stage, Focused Mitigation Strategies To Protect Food Against Intentional Adulteration, 0910-AG63
72. HHS/FDA, Proposed Rule Stage, Foreign Supplier Verification Program, 0910-AG64
73. HHS/FDA, Proposed Rule Stage, Sanitary Transportation of Human and Animal Food, 0910-AG98
74. HHS/FDA, Proposed Rule Stage, Radiology Devices; Designation of Special Controls for the Computed Tomography X-Ray System, 0910-AH03
75. HHS/CDC, Final Rule Stage, World Trade Center Health Program Requirements for Enrollment, Appeals, Certification of Health Conditions Reimbursement, 0920-AA44
76. HHS/CMS, Proposed Rule Stage, Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers (CMS-3178-P), 0938-AO91
77. HHS/CMS, Proposed Rule Stage, Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2015 (CMS-4159-P), 0938-AR37
78. HHS/CMS, Proposed Rule Stage, Prospective Payment System for Federally Qualified Health Centers; Changes to Contracting Policies for Rural Health Clinics and CLIA Enforcement Actions for Proficiency Testing Referral (CMS-1443-F), 0938-AR62
79. HHS/CMS, Proposed Rule Stage, CY 2015 Notice of Benefit and Payment Parameters (CMS-9954-P), 0938-AR89

DEPARTMENT OF HEALTH AND HUMAN SERVICES

64. HHS/FDA, Proposed Rule Stage, Over-the-Counter (OTC) Drug Review—Internal Analgesic Products, 0910-AF36
65. HHS/FDA, Proposed Rule Stage, Updated Standards for Labeling of Pet Food, 0910-AG09
66. HHS/FDA, Proposed Rule Stage, Over-the-Counter (OTC) Drug Review—Pediatric Dosing for Cough/Cold Products, 0910-AG12
67. HHS/FDA, Proposed Rule Stage, Electronic Distribution of Prescribing Information for Human Prescription Drugs Including Biological Products, 0910-AG18
68. HHS/FDA, Proposed Rule Stage, Produce Safety Regulation, 0910-AG35
69. HHS/FDA, Proposed Rule Stage, Hazard Analysis and Risk-Based Preventive Controls, 0910-AG36
70. HHS/FDA, Proposed Rule Stage, Requirements for the Testing and Reporting of Tobacco Product Constituents, Ingredients, and Additives, 0910-AG59
80. HHS/CMS, Proposed Rule Stage, Establishment of the Basic Health Program (CMS-2380-F), 0938-AR93
81. HHS/CMS, Proposed Rule Stage, FY 2015 Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities (SNF) (CMS-1605-P), 0938-AS07
82. HHS/CMS, Proposed Rule Stage, FY 2015 Inpatient Psychiatric Facilities Prospective Payment System—Rate Update (CMS-1606-P), 0938-AS08
83. HHS/CMS, Proposed Rule Stage, FY 2015 Inpatient Rehabilitation Facility Prospective Payment System (CMS-1608-P), 0938-AS09
84. HHS/CMS, Proposed Rule Stage, CY 2015 Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System and Quality Incentive Program (CMS-1614-P), 0938-AS13
85. HHS/CMS, Proposed Rule Stage, CY 2015 Home Health Prospective Payment System Refinements and Rate Update (CMS-1611-P), 0938-AS14
86. HHS/CMS, Final Rule Stage, Home and Community-Based State Plan Services Program, Waivers, and Provider Payment Reassignments (CMS-2249-F), 0938-AO53

87. HHS/CMS, Final Rule Stage, Face-to-Face Requirements for Home Health Services; Policy Changes and Clarifications Related to Home Health (CMS-2348-F), 0938-AQ36
88. HHS/CMS, Final Rule Stage, Covered Outpatient Drugs (CMS-2345-F), 0938-AQ41
89. HHS/CMS, Final Rule Stage, Home Health Prospective Payment System Rate for CY 2014 (CMS-1450-F), 0938-AR52
90. HHS/CMS, Final Rule Stage, CY 2014 Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System, ESRD Quality Incentive Program, and Durable Medical Equipment (CMS-1526-F), 0938-AR55
91. HHS/CMS, Final Rule Stage, Revisions to Payment Policies under the Physician Fee Schedule and Medicare Part B for CY 2014 (CMS-1600-F), 0938-AR56
92. HHS/CMS, Final Rule Stage, Influenza Vaccination Standard for Certain Participating Providers and Suppliers (CMS-3213-F), 0938-AR80
93. HHS/CMS, Final Rule Stage, CY 2015 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts (CMS-8056-N), 0938-AR94
94. HHS/CMS, Final Rule Stage, CY 2015 Part B Monthly Actuarial Rates, Monthly Premium Rates, and Annual Deductible (CMS-8058-N), 0938-AR95
95. HHS/CMS, Final Rule Stage, Adoption of Operating Rules for HIPAA Transactions (CMS-0036-IFC), 0938-AS01

DEPARTMENT OF HOMELAND SECURITY

96. DHS/USCG, Proposed Rule Stage, Updates to Maritime Security, 1625-AB38
97. DHS/USCG, Final Rule Stage, Commercial Fishing Industry Vessels, 1625-AA77
98. DHS/USCG, Final Rule Stage, Commercial Fishing Vessels—Implementation of 2010 and 2012 Legislation, 1625-AB85
99. DHS/USCBP, Final Rule Stage, Electronic System for Travel Authorization (ESTA): Fee for Use of the System, 1651-AA83
100. DHS/TSA, Proposed Rule Stage, General Aviation Security and Other Aircraft Operator Security, 1652-AA53

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

101. HUD/CPD, Final Rule Stage, Housing Trust Fund (FR-5405), 2506-AC30

DEPARTMENT OF THE INTERIOR

102. DOI/BSEE, Proposed Rule Stage, Blowout Prevention Systems, 1014-AA11

103. DOI/FWS, Proposed Rule Stage, Migratory Bird Hunting; 2014–2015 Migratory Game Bird Hunting Regulations, 1018-AZ80

DEPARTMENT OF JUSTICE

104. DOJ/DEA, Final Rule Stage, Retail Sales of Scheduled Listed Chemical Products; Chemical; Self-Certification of Regulated Sellers of Scheduled Listed Chemical Products, 1117-AB05

DEPARTMENT OF LABOR

105. DOL/ETA, Final Rule Stage, Wage Methodology for the Temporary Nonagricultural Employment H-2B Program, Part 2, 1205-AB69
106. DOL/EBSA, Proposed Rule Stage, Conflict of Interest Rule-Investment Advice, 1210-AB32
107. DOL/EBSA, Final Rule Stage, Mental Health Parity and Addiction Equity Act, 1210-AB30
108. DOL/OSHA, Prerule Stage, Infectious Diseases, 1218-AC46
109. DOL/OSHA, Prerule Stage, Reinforced Concrete in Construction and Preventing Backover Injuries and Fatalities, 1218-AC51
110. DOL/OSHA, Proposed Rule Stage, Occupational Exposure to Crystalline Silica, 1218-AB70
111. DOL/OSHA, Proposed Rule Stage, Occupational Exposure to Beryllium, 1218-AB76
112. DOL/OSHA, Proposed Rule Stage, Combustible Dust, 1218-AC41
113. DOL/OSHA, Proposed Rule Stage, Injury and Illness Prevention Program, 1218-AC48
114. DOL/OSHA, Final Rule Stage, Electric Power Transmission and Distribution; Electrical Protective Equipment, 1218-AB67
115. DOL/OSHA, Final Rule Stage, Walking Working Surfaces and Personal Fall Protection Systems (Slips, Trips, and Fall Prevention), 1218-AB80
116. DOL/OFCCP, Final Rule Stage, Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities, 1250-AA02

DEPARTMENT OF TRANSPORTATION

117. DOT/FAA, Final Rule Stage, Flight and Duty Time Limitations and Rest Requirements, 2120-AJ58
118. DOT/FMCSA, Proposed Rule Stage Inspection, Repair, and Maintenance; Driver-Vehicle Inspection Report (RRR), 2126-AB46

- 119. DOT/FMCSA, Proposed Rule Stage, Heavy Vehicle Speed Limiters, 2126-AB63
- 120. DOT/NHTSA, Proposed Rule Stage, Heavy Vehicle Speed Limiters, 2127-AK92
- 121. DOT/FRA, Proposed Rule Stage, Passenger Equipment Safety Standards; Standards for Alternative Compliance and High-Speed Trainsets, 2130-AC46
- 122. DOT/MARAD, Prerule Stage, National Shipping Authority, Ship Manager Citizenship, 2133-AB87

DEPARTMENT OF THE TREASURY

- 123. TREAS/DO, Proposed Rule Stage, Restore Act Program, 1505-AC44
- 124. TREAS/DO, Final Rule Stage, Assessment of Fees for Large Bank Holding Companies and Nonbank Financial Companies Supervised by the Federal Reserve To Cover the Expenses of the Financial Research Fund, 1505-AC42
- 125. TREAS/CDFIE, Final Rule Stage, Interim Rule for the CDFI Bond Guarantee Program, 1559-AA01

DEPARTMENT OF VETERANS AFFAIRS

- 126. VA, Proposed Rule Stage, Post-9/11 Improvements, Fry Scholarship, and Work-Study, 2900-AO07
- 127. VA, Proposed Rule Stage, Disabled Veterans Experiencing Difficulties Using Prosthetic Devices, Veterans Needing a Higher Level of Aid and Attendance for Traumatic Brain Injury, and Definition of Catastrophic Disability, 2900-AO16
- 128. VA, Final Rule Stage, Veterans Retraining Assistance Program (VRAP), 2900-AO40
- 129. VA, Final Rule Stage, Caregivers Program, 2900-AN94

ENVIRONMENTAL PROTECTION AGENCY

- 130. EPA/SWER, Final Rule Stage, Revising Underground Storage Tank Regulations—Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training, 2050-AG46
- 131. EPA/AR, Proposed Rule Stage, Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces, and New Residential Masonry Heaters, 2060-AP93

FEDERAL DEPOSIT INSURANCE CORPORATION

- 132. FDIC, Final Rule Stage, Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III Capital Adequacy, Transition Provisions, Prompt Corrective

Action, Standardize Approach for Risk-Weighted Assets, 3064-AD95

PENSION BENEFIT GUARANTY CORPORATION

- 133. PBGC, Final Rule Stage, Payment of Premiums; Large-Plan Flat-Rate Premium, 1212-AB26

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DEPARTMENT OF DEFENSE

- 134. DOD/DODOASHA, TRICARE; Reimbursement of Sole Community Hospitals, 0720-AB41

DEPARTMENT OF EDUCATION

- 135. ED/OESE, Race to the Top—District, 1810-AB17
- 136. ED/OESE, Race to the Top—Early Learning Challenge, 1810-AB18
- 137. ED/OPE, Transitioning from the FFEL Program to the Direct Loan Program and Loan Rehabilitation under the FFEL, Direct Loan, and Perkins Loan Programs, 1840-AD12

DEPARTMENT OF HEALTH AND HUMAN SERVICES

- 138. HHS/CMS, Medicaid, Exchanges, and Children’s Health Insurance Programs: Eligibility, Appeals, and Other Provisions under the Affordable Care Act (CMS-2334-F), 0938-AR04
- 139. HHS/CMS, Disproportionate Share Hospital Payment Reduction (CMS-2367-F), 0938-AR31
- 140. HHS/CMS, Changes to the Hospital Inpatient and Long-Term Care Prospective Payment System for FY 2014 (CMS-1599-F), 0938-AR53
- 141. HHS/CMS, Changes to the Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System for CY 2014 (CMS-1601-F), 0938-AR54
- 142. HHS/CMS, CY 2014 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts (CMS-8053-N), 0938-AR59
- 143. HHS/CMS, Inpatient Psychiatric Facility Prospective Payment System—Update for Fiscal Year 2014 (CMS-1447-N), 0938-AR63

- 144. HHS/CMS, FY 2014 Hospice Rate Update (CMS-1449-F), 0938-AR64
- 145. HHS/CMS, Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update for FY 2014 (CMS-1446-F), 0938-AR65
- 146. HHS/CMS, Prospective Payment System for Inpatient Rehabilitation Facilities for FY 2014 (CMS-1448-F), 0938-AR66
- 147. HHS/CMS, Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions (CMS-9958-F), 0938-AR68
- 148. HHS/CMS, Program Integrity: Exchange, Premium Stabilization Programs, Market Standards, and Cost-Sharing Reduction Reconciliation; Amendments to Benefit and Payment Parameters for 2014 (CMS-9957-F2), 0938-AR82

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

- 149. HUD/OH, HOPE for Homeowners Program; Statutory Transfer of Program Authority to HUD and Conforming Amendments To Adopt Recently Enacted Statutory Changes (FR-5340), 2502-AI76
- 150. HUD/OH, Emergency Homeowners' Loan Program (FR-5470), 2502-AI97

DEPARTMENT OF INTERIOR

- 151. DOI/FWS, Migratory Bird Hunting; 2013–2014 Migratory Game Bird Hunting Regulations, 1018-AY87

DEPARTMENT OF LABOR

- 152. DOL/EBSA, Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services under the Patient Protection and Affordable Care Act, 1210-AB44
- 153. DOL/WHD, Application of the Fair Labor Standards Act to Domestic Service, 1235-AA05

DEPARTMENT OF THE TREASURY

- 154. TREAS/OCC, Strengthening Tier 1 Capital Other Capital Enhancements, Standardized Approach (Basel III), 1557-AD46

FEDERAL DEPOSIT INSURANCE CORPORATION

- 155. FDIC, Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements, 3064-AD96

- 156. FDIC, Regulatory Capital Rules: Advanced Approaches Risk-Based Capital Rules; Market Risk Capital Rule, 3064-AD97

NUCLEAR REGULATORY COMMISSION

- 157. NRC, Revision of Fee Schedules: Fee Recovery for FY 2013 (NRC-2012-0211), 3150-AJ19
- 158. NRC, Inflation Adjustment to the Price-Anderson Act Financial Protection Regulations (NRC-2013-0072), 3150-AJ25

POSTAL REGULATORY COMMISSION

- 159. PRC, Review of Price Cap Rules for Market Dominant Products, 3211-AA08

From the Unified Agenda
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DEPARTMENT OF AGRICULTURE

- 160. USDA/RHS, Multifamily Housing (MFH) Reinvention, 0575-AC13
- 161. USDA/FSIS, Mandatory Inspection of Catfish and Catfish Products, 0583-AD36

DEPARTMENT OF ENERGY

- 162. DOE/EE, Energy Conservation Standards for ER, BR, and Small Diameter Incandescent Reflector Lamps, 1904-AC15

DEPARTMENT OF HEALTH AND HUMAN SERVICES

- 163. HHS/FDA, Over-the-Counter (OTC) Drug Review—Topical Antimicrobial Drug Products, 0910-AF69
- 164. HHS/FDA, Amendments to the Current Good Manufacturing Practice Regulations for Finished Pharmaceuticals—Components, 0910-AG70
- 165. HHS/CMS, Requirements for the Medicare Incentive Reward Program and Provider Enrollment (CMS-6045-F), 0938-AP01
- 166. HHS/CMS, Part II—Regulatory Provisions To Promote Program Efficiency, Transparency, and Burden Reduction (CMS-3267-F), 0938-AR49

DEPARTMENT OF HOMELAND SECURITY

- 167. DHS/OS, Collection of Alien Biometric Data upon Exit from the United States at Air and Sea Ports of Departure

- ture; United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT), 1601-AA34
168. DHS/USCIS, Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program, 1615-AC02

DEPARTMENT OF JUSTICE

169. DOJ/DEA, Electronic Prescriptions for Controlled Substances, 1117-AA61

DEPARTMENT OF LABOR

170. DOL/EBSA, Improved Fee Disclosure for Welfare Plans, 1210-AB37

DEPARTMENT OF TRANSPORTATION

171. DOT/FMCSA, Minimum Training Requirements for Entry Level Commercial Motor Vehicle Operations (MAP-21), 2126-AB06
172. DOT/NHTSA, Federal Motor Vehicle Safety Standard No. 111, Rearview Mirrors, 2127-AK43
173. DOT/NHTSA, Sound for Hybrid and Electric Vehicles, 2127-AK93

DEPARTMENT OF THE TREASURY

174. TREAS/DO, TARP Standards for Compensation and Corporate Governance, 1505-AC09
175. TREAS/DO, Small Business Lending Fund Refinance, 1505-AC34

ENVIRONMENTAL PROTECTION AGENCY

176. EPA/WATER, Stormwater Regulations Revision to Address Discharges from Developed Sites, 2040-AF13
177. EPA/WATER, National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions, 2040-AF15
178. EPA/SWER, Standards for the Management of Coal Combustion Residuals Generated by Commercial Electric Power Producers, 2050-AE81
179. EPA/SWER, Financial Responsibility Requirements under CERCLA Section 108(b) for Classes of Facilities in the Hard Rock Mining Industry, 2050-AG61

180. EPA/AR, Review of the National Ambient Air Quality Standards for Ozone, 2060-AP38
181. EPA/OCSP, Lead; Renovation, Repair, and Painting Program for Public and Commercial Buildings, 2070-AJ56

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

182. ATBCB, Americans with Disabilities Act Accessibility Guidelines for Passenger Vessels, 3014-AA11

CONSUMER PRODUCT SAFETY COMMISSION

183. CPSC, Flammability Standard for Upholstered Furniture, 3041-AB35

FEDERAL COMMUNICATIONS COMMISSION

184. FCC, Broadband over Power Line Systems; ET Docket No. 04-37, 3060-AI24
185. FCC, Amendment of the Rules Regarding Maritime Automatic Identification Systems (WT Docket No. 04-344), 3060-AJ16
186. FCC, In the Matter of Service Rules for the 698 to 746, 747 to 762, and 777 to 792 MHz Bands, 3060-AJ35
187. FCC, Universal Service Reform Mobility Fund (WT Docket No. 10-208), 3060-AJ58
188. FCC, IP-Enabled Services, 3060-AI48
189. FCC, Form 477; Development of Nationwide Broadband Data To Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, 3060-AJ15
190. FCC, Implementation of Section 224 of the Act; A National Broadband Plan for Our Future (WC Docket No. 07-245, GN Docket No. 09-51), 3060-AJ64

NUCLEAR REGULATORY COMMISSION

191. NRC, Domestic Licensing of Source Material—Amendments/Integrated Safety Analysis (NRC-2009-0079), 3150-AI50

Sources: Data compiled by Wayne Crews 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, 1996–2012

	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996
Department of Agriculture	80	65	84	87	93	73	67	54	52	64	39	56	47	49	63	58	56
Department of Commerce	158	115	98	90	107	112	111	108	79	74	77	89	98	88	52	29	46
Department of Defense	25	26	16	12	7	13	14	13	12	13	6	8	7	15	21	15	22
Department of Education		1	1	0	0	0	1	0	0	0	1	0	0	0	0	1	1
Department of Energy	8	6	3	2	1	1	0	0	0	1	0	1	1	0	0	2	2
Department of Health and Human Services	85	100	112	94	93	96	109	112	106	96	92	108	107	75	88	100	89
Department of Homeland Security	27	34	37	35	42	44	43	43	38	33	0	0	0	0	0	0	0
Department of Housing and Urban Development		0	1	0	1	5	4	4	6	11	6	3	0	1	1	7	9
Department of the Interior	24	23	18	17	18	19	29	21	20	26	17	20	18	33	29	28	17
Department of Justice	9	9	5	3	2	5	7	8	8	8	13	15	14	14	10	26	27
Department of Labor	24	23	26	29	29	26	26	19	19	23	22	26	40	38	41	39	51
Department of State	31	21	20	4	3	1	0	1	1	2	6	3	2	0	0	1	2
Department of Transportation	65	56	49	45	41	43	60	63	103	151	216	244	266	246	208	44	31
Department of the Treasury	39	47	56	48	47	45	37	41	38	27	26	27	31	15	60	50	52
Department of Veterans Affairs	1	2	3	2	2	0	0	0	0	0	1	1	3	6	6	7	3
Agency for International Development		1	1	0	0	1	1	0	0	1	2	1	0	0	0	0	0
Architectural and Transportation Barriers Compliance Board	1	1		0	0	0	0	0	0	0	1	1	2	2	3	0	0
Commodity Futures Trading Commission		0		1	1	1	0	1	1	2	0	0	0	0	1	0	0
Consumer Financial Protection Bureau	8	5															
Consumer Product Safety Commission	2	0			0	0	1	0	0	0	0	0	0	0	0	0	1
Corporation for National and Community Service		0		0	0	0	1	1	0	0	0	0	0	0	0	0	0
Environmental Protection Agency	49	73	95	89	83	85	95	110	122	135	167	185	205	179	178	163	152
Equal Employment Opportunity Commission	3	5	5	4	2	3	3	3	0	0	0	2	0	0	2	1	0
Federal Acquisition Regulation		10	5	4	6	5	5	7	5	5	6	9	13	16	11	15	20
Federal Communications Commission	15	78	112	110	110	109	108	113	113	104	109	117	105	91	82	70	75
Federal Deposit Insurance Corporation	89	2	1														
Federal Emergency Management Agency	5					0	0	0	0	0	1	1	1	0	0	0	1

(continued)

Part H. Rules Affecting Small Business, 1996–2012 (continued)

	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996
Federal Energy Regulatory Commission		0			0	1	0	0	0	0	0	0	0	1	0	0	0
Federal Housing Finance Board		0			0	0	0	0	0	0	0	0	0	0	1	0	0
Federal Maritime Commission	1	3	3	3	3	2	3	5	7	10	7	6	7	4	5	0	0
Federal Mediation and Conciliation Service	12	0			0	0	0	0	0	0	0	1	1	0	0	0	0
Federal Reserve System	21	17	8	6	5	5	3	6	5	3	7	10	8	2	5	2	4
Federal Trade Commission		22	16	16	13	11	13	12	11	9	9	9	9	10	10	11	7
General Services Administration	3	4	5	6	7	3	3	3	1	5	4	1	1	2	2	3	6
National Aeronautics and Space Administration	2	3			0	0	0	0	0	0	0	0	0	0	1	0	1
National Archives and Records Administration		0			0	0	0	1	1	1	0	0	0	0	1	1	1
National Credit Union Administration	2	4	4	7	3	1	4	1	2	0	0	0	0	0	0	1	1
National Endowment for the Arts	2				0	0	0	0	0	2	2	0	0	0	0	0	0
National Endowment for the Humanities		0			0	0	0	0	0	0	0	0	0	0	0	1	0
Nuclear Regulatory Commission	6	3	1	2	1	2	1	1	0	3	5	5	3	5	8	9	8
Office of Management and Budget		0			0	0	0	0	0	0	0	0	1	2	1	1	2
Railroad Retirement Board		0			0	0	0	0	0	0	0	0	0	0	0	1	1
Resolution Trust Corporation							0	17	0	0	0	0	0	0	0	0	0
Securities and Exchange Commission	38	27	21	21	19	29	16	0	20	25	28	26	40	39	27	34	48
Small Business Administration		35	39	20	13	15	21	19	18	24	21	21	24	28	20	13	17
Social Security Administration	19	1		1	1	1	1	1	1	1	1	0	0	2	0	0	1
TOTAL	854	822	845	758	753	757	787	788	789	859	892	996	1,054	963	937	733	754

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

Part I. Federal Rules Affecting State and Local Governments, 2002–2013

	2013 Active, Completed, Long Term						2012, Active, Completed, Long Term					
	State			Local			State			Local		
	A	C	LT	A	C	LT	A	C	LT	A	C	LT
Department of Agriculture	37	5	1	27	4	1	39	9	0	27	6	0
Department of Commerce	12		1	8		1	16	11	2	6	2	2
Department of Defense	1			1			1	0	0	1	0	0
Department of Education	4	2		2	1		0	1	0	0	0	0
Department of Energy	9			8			6	6	0	5	5	0
Department of Health and Human Services	35	14	5	14	3	1	42	20	3	17	3	1
Department of Homeland Security	11	2	5	8	1	4	9	2	5	10	1	1
Department of Housing and Urban Development	6	1	1	6	1	1	8	3	0	9	3	0
Department of the Interior	35	1	1	14	1	1	26	9	0	14	4	0
Department of Justice	8	1	3	5		3	9	3	3	5	3	3
Department of Labor	13	4	3	6	3	2	14	6	3	6	2	2
Department of State	1	1					2	0	0	0	0	0
Department of Transportation	11	1	2	3			8	3	3	4	2	2
Department of the Treasury	16		1	15			18	4	3	15	2	3
Department of Veterans Affairs	2						2	1	0	1	0	0
Advisory Council on Historic Preservation	39	4	12	25	3	7	n/a	n/a	n/a	n/a	n/a	n/a
Architectural and Transportation Barriers Compliance Board	3		2	2		2	4	1	0	3	1	0
Consumer Financial Protection Bureau							1	1	1	0	0	0
Corporation for National and Community Service							0	1	2	0	1	2
Court Services/Offender Supervision, D.C.	1		1							1		
CPBSD*							0	0	0	0	0	0
Environmental Protection Agency			2			2	37	26	20	24	18	15
Equal Employment Opportunity Commission							3	2	0	3	2	0
Federal Communications Commission	4	1		4	1		0	0	25	0	0	18
Federal Emergency Management Agency	3			3			n/a	n/a	n/a	n/a	n/a	n/a
Federal Energy Regulatory Commission							0	0	0	0	0	0
Federal Reserve System		1			1		0	1	1	0	1	1
Federal Trade Commission							1	1	0	1	0	0
General Services Administration	1			1			3	0	0	3	0	0
Institute of Museum and Library Services							0	1	0	0	1	0
National Aeronautics and Space Administration							0	0	0	0	0	0
National Archives and Records Administration			1				0	0	0	0	0	0
National Credit Union Administration			29			21	0	0	0	0	0	0
National Endowment for the Arts							1	0	0	1	0	0
National Endowment for the Humanities			1			1	0	0	0	0	0	0
National Indian Gaming Commission							0	0	0	0	0	0
Nuclear Regulatory Commission							4	2	1	2	2	0
Office of Management and Budget							0	0	0	0	0	0
Securities and Exchange Commission	1	2	1		1		2	1	0	1	0	0
Social Security Administration	1	2			2		0	0	1	0	0	0
STATE AND LOCAL TOTALS	254	42	72	152	22	47	256	115	73	159	59	50

(continued)

Part I. Federal Rules Affecting State and Local Governments, 2002–2013 (continued)

	2011, Active, Completed Long Term						2010		2009	
	State			Local			State	Local	State	Local
	A	C	LT	A	C	LT				
Department of Agriculture	44	9	2	29	8	1	53	36	75	49
Department of Commerce	19	6	2	7	3	2	27	11	20	11
Department of Defense	1	0	0	1	0	0	1		1	0
Department of Education	0	0	0	0	0	0			0	0
Department of Energy	13	9	0	11	5	0	26	22	23	20
Department of Health and Human Services	39	21	9	14	7	2	86	42	71	38
Department of Homeland Security	11	8	13	11	6	7	35	26	39	30
Department of Housing and Urban Development	10	0	0	10	0	0	8	9	2	3
Department of the Interior	29	9	0	16	2	0	28	9	30	7
Department of Justice	11	2	2	7	2	2	21	15	16	11
Department of Labor	12	0	3	7	0	2	20	10	27	15
Department of State	2	0	0	0	0	0	1		1	0
Department of Transportation	9	1	3	7	0	0	13	5	16	6
Department of the Treasury	22	4	0	16	4	0	29	24	29	24
Department of Veterans Affairs	3	1	0	1	0	0	5	1	0	0
Advisory Council on Historic Preservation										
Architectural and Transportation Barriers Compliance Board	4	0	1	3	0	1	3	2	3	2
Consumer Financial Protection Bureau	3									
Corporation for National and Community Service	3	3	0	3	3	0	4	4	5	5
Court Services/Offender Supervision, D.C.										
CPBSD*	0	1	0	0	1	0	1	1	1	1
Environmental Protection Agency	67	22	26	47	17	15	125	85	101	70
Equal Employment Opportunity Commission	3	2	0	3	2	0	6	6	5	5
Federal Communications Commission	0	0	24	0	0	17	32	23	30	20
Federal Emergency Management Agency										
Federal Energy Regulatory Commission	0	0	0	0	0	0			0	0
Federal Reserve System	1	1	1	1	0	1	1	1	0	0
Federal Trade Commission	2	0	0	1	0	0	2	1	3	1
General Services Administration	1	6	0	1	5	0	9	7	9	7
Institute of Museum and Library Services	0	0	1	0	0	1	2	2	0	0
National Aeronautics and Space Administration	0	0	0	0	0	0			0	0
National Archives and Records Administration	0	0	0	0	0	0			0	0
National Credit Union Administration	1	0	0	0	0	0	1		0	0
National Endowment for the Arts									0	0
National Endowment for the Humanities	0	0	0	0	0	0			0	0
National Indian Gaming Commission	0	0	0	0	0	0			0	0
Nuclear Regulatory Commission	3	1	1	2	1	0	3	1	4	2
Office of Management and Budget	0	0	0	0	0	0			0	0
Securities and Exchange Commission	2	0	0	1	0	0	3	3	1	1
Social Security Administration	2	0	0	0	0	0	2		2	0
STATE AND LOCAL TOTALS	317	106	88	199	66	51	547	346	514	328

Source: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” Federal Register, various years’ editions, www.reginfo.gov.

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

Note: n/a = not available.

2008		2007		2006		2005		2004		2003		2002	
State	Local												
72	41	63	43	74	58	69	59	71	59	53	42	60	49
22	11	22	9	28	9	34	8	23	9	18	9	15	8
1	0	0	0					1	1	2	2	2	2
0	0	0	0	1				0	0	0	0	1	1
27	25	19	18	12	9	16	15	9	8	9	9	8	9
69	41	83	45	70	47	34	19	35	18	40	20	46	21
33	25	37	28	39	28	39	29	37	27	34	28	0	0
2	4	1	4	3	7	6	10	9	13	14	23	13	17
41	11	37	9	37	11	44	17	37	16	42	20	47	22
15	10	17	11	14	8	15	9	16	10	15	11	28	21
17	9	20	7	13	8	16	10	18	12	23	14	25	16
2	0	3	0	3		4	1	1	1	2	1	2	1
18	6	19	7	27	12	11	4	21	13	26	16	42	23
24	20	28	25	16	15	13	12	17	13	22	15	17	12
1	0	1	0	1		2	1	3	2	5	2	4	1
								1	0	1	0	1	0
2	2	2	2	1	1	1	1	2	2	2	2	3	3
5	5	6	6	7	7	9	9	5	5	4	4	8	8
1	1	2	2	2	2	2	2	2	2				
104	65	119	80	132	86	143	98	140	92	157	103	155	101
2	3	3	4	3	4	3	4	1	1	2	2	2	2
32	20	31	20	32	19	37	24	33	20	21	16	23	18
								0	0	0	0	8	8
		0	0					1	0	2	1	2	2
		0	0	1	1			0	0	0	0	0	0
1	0	1	0	2		1		1	0	1	0	1	0
10	7	8	5	8	5	8	5	8	6	11	7	10	6
1	1	1	1	1	1	1	1	1	1	2	2	2	2
		0	0					0	0	0	0	0	0
1	1	3	3	4	4	4	4	4	4	4	4	4	4
1	0	0	0	3		2		0	0	1	0	1	0
1	1	1	1	1	1	1	1	1	1	1	1	1	1
		0	0					0	0	1	1	1	1
		0	0					0	0	0	0	1	0
3	1	4	1	3	1	3	1	3	0	4	1	1	1
		0	0	1	1	1	1	1	1	0	0	0	0
2	2	4	3	2	1	1	1	0	0	0	0	0	0
3		4	0	2		3		5	1	8	3	5	3
513	312	539	334	543	346	523	346	507	338	527	359	539	363

Part J. The Unconstitutionality Index, 1993–2013

Year	Final Rules	Public Laws	The Index	Notices	Executive Orders
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
2001	4,132	108	38	24,829	67
2002	4,167	269	15	25,743	32
2003	4,148	198	21	25,419	41
2004	4,101	299	14	25,309	46
2005	3,975	161	25	25,353	27
2006	3,718	321	12	25,031	25
2007	3,595	188	19	24,476	32
2008	3,830	285	13	25,279	29
2009	3,503	125	28	24,753	44
2010	3,573	217	16	26,173	41
2011	3,807	81	47	26,161	33
2012	3,708	127	29	24,408	39
2013	3,659	72	51	24,261	24

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: 2014 to 2024*, February 2014, Table 1-2, “CBO’s Baseline “Budget Projections,” p. 12, http://www.cbo.gov/sites/default/files/cbofiles/attachments/45010-Outlook2014_Feb.pdf.

2 Office of Management and Budget (OMB), *Budget of the United States Government*, Fiscal Year (FY) 2015, Summary Tables, Table S-1, “Budget Totals,” p. 163, <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/tables.pdf>.

3 OMB, *Budget of the United States Government*, FY 2014, Summary Tables, Table S-1, “Budget Totals,” p. 183, <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/tables.pdf>.

4 OMB, *Historical Tables*, Table 1.1, “Summary of Receipts, Outlays, and Surpluses or Deficits (-): 1789–2018,” <http://www.whitehouse.gov/omb/budget/historicals>.

5 CBO, February 2014, Table 1-2, p. 12 (see note 1).

6 OMB, FY 2015, Table S-1 (see note 2).

7 International percentages are available from Organisation for Economic Co-operation and Development (OECD), *Economic Outlook Annex Tables*, <http://www.oecd.org/eco/economicoutlookanalysisandforecasts/economicoutlookannextables.htm>; Annex Table 25, “General Government Total Outlays.” According to OECD, the U.S. figure for 2013 is 38.7 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 percent, using GDP data from U.S. Department of Commerce, Bureau of Economic Analysis, “National Income and Product Accounts, Gross Domestic Product, Fourth Quarter and Annual 2013 (second estimate),” February 28, 2014, <https://www.bea.gov/newsreleases/national/gdp/gdpnewsrelease.htm>.

8 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, Japan, and the United States.

9 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>.

10 See James M. Buchanan, *Cost and Choice: An Inquiry in Economic Theory* (Chicago and London: University of Chicago Press, 1969).

11 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, 2014, <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>.

12 Regulations with cost estimates have made up less than 0.5 percent of the annual rule flow of more than 3,500 over the past decade. 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/>.

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

14 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 4, 2011, <http://cei.org/issue-analysis/other-national-debt-crisis>. Those reporting proposals appeared in Sen. Olympia Snowe’s (R-Maine) 112th Congress legislation, Restoring Tax and Regulatory Certainty to Small Businesses (RESTART) Act of 2012 (S. 3572), introduced on September 12, 2012. Section 213 detailed this proposed “regulatory transparency reporting.” The full text of S. 3572 is available at <https://www.govtrack.us/congress/bills/112/s3572/text>.

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

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

17 OMB, *2013 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, 2002–September 30, 2012 (billions of 2001 dollars),” March 2013, pp. 11–12, http://www.whitehouse.gov/sites/default/files/omb/inforeg/2013_cb/draft_2013_cost_benefit_report.pdf.

18 OMB, *2013 Draft Report to Congress*, Table 1-3, pp. 18–19.

19 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>.

20 Their 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, <http://archive.sba.gov/advo/research/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, October 2001, <http://www.sba.gov/advo/research/rs207tot.pdf>). That report, in turn, updated still earlier analyses, such as Thomas D. Hopkins, “The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress,” Small Business Administration, Office of the Chief Counsel for Advocacy, Washington, D.C., October 1995, http://www.sba.gov/advo/laws/archive/law_brd.html.

Recent criticisms of the current Crain and Crain report (“The Impact of Regulatory Costs,” see note 20) would also apply to some OMB calculations and have in the past—although, alas, 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 Crain and Hopkins estimates, in current dollars, would be in the same ballpark even without including 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 Rutenberg, 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.

21 Crain and Crain, “The Impact of Regulatory Costs,” pp. 7–8.

22 Ibid.

23 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>. See also James Pethokoukis, “The Return of Big Government,” *U.S. News & World Report*, April 11, 2008, <http://www.usnews.com/money/business-economy/articles/2008/04/11/the-return-of-big-government.html>.

24 Crews, “Tip of the Costberg,” 2014 (see note 14).

25 See, for example, Thomas D. Hopkins, “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.

26 White House, OMB, Table 1.1—Summary of Receipts, Outlays, and Surpluses or Deficits (-): 1789–2018, <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/hist01z1.xls>.

27 CBO, *The Budget and Economic Outlook*, February 2014, Table 1-2.

28 Estimated 2013 tax figures from OMB, *Historical Tables*, Table 2.1, “Receipts by Source: 1934–2018,” <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/hist02z1.xls>. This spreadsheet is regularly found at <http://www.whitehouse.gov/omb/budget/historicals>.

29 Ibid.

30 Corporate 2012 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>. This spreadsheet is housed at <http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=1&isuri=1>.

31 U.S. Department of Commerce, Bureau of Economic Analysis, “National Income and Product Accounts, Gross Domestic Product, Fourth Quarter and Annual 2013 (second estimate),” news release, February 28, 2014, <https://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. \$); Data: Chart at <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD>. The data are further ranked highest to lowest at <http://databank.worldbank.org/data/download/GDP.pdf>, housed at <http://data.worldbank.org/data-catalog/GDP-ranking-table>.

32 The World Bank, <http://databank.worldbank.org/data/download/GDP.pdf>.

33 Terry Miller, Anthony B. Kim, and Kim R. Holmes, *2014 Index of Economic Freedom*, Heritage Foundation/*Wall Street Journal*, January 2014, <http://www.heritage.org/index/>.

34 James Gwartney, Robert Lawson, and Joshua Hall et al., *Economic Freedom of the World: 2013 Annual Report* (Washington, DC: Cato Institute, 2013), <http://www.cato.org/economic-freedom-world>.

35 Bureau of Labor Statistics, “Consumer Expenditures—2012,” economic news release, September 10, 2013, <http://www.bls.gov/news.release/cesan.nr0.htm>.

36 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 \$51,442 according to the BLS. The BLS also provided additional information on these figures by e-mail and the following document: “Average Annual Expenditures and Characteristics of All Consumer Units, Consumer Expenditure Survey, 2006–2011,” <http://www.bls.gov/cex/2011/standard/multiyr.pdf>. Find the 2012 version at <http://www.bls.gov/cex/2012/standard/multiyr.pdf>.

37 Susan Dudley and Melinda Warren, “Sequester’s Impact on Regulatory Agencies Modest: An Analysis of the U.S. Budget for Fiscal Years 2013 and 2014,” *Regulators’ Budget No. 35*, published jointly by the Regulatory Studies Center at George Washington University and the Weidenbaum Center on the Economy, Government, and Public Policy, July 2013, p. 25, http://research.columbian.gwu.edu/regulatorystudies/sites/default/files/u41/2014_Regulators_Budget.pdf. Original 2005 constant dollars are adjusted here by the change in the consumer price index between 2005 and 2013, derived from Consumer Price Index, U.S. Department of Labor, Bureau of Labor Statistics, Washington, DC, January 16, 2014 (all urban consumers [CPI-U], U.S. city average, all items).

38 Dudley and Warren, Table A-1, 2013, p. 16.

39 Dudley and Warren, Table A-1, 2013, p. 15.

40 Original 2005 constant dollars are adjusted here by the change in the consumer price index between 2005 and 2013, derived from Table 24. Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C., January 2014, <http://www.bls.gov/cpi/cpid1401.pdf>.

41 Emma Schwartz, “The Bush Administration’s Midnight Regulations,” ABC News, October 30, 2008, <http://abcnews.go.com/Blotter/Story?id=6146929&page=1>; and Stephen Power, Elizabeth Williamson, and Christopher Conkey, “White House Pushes through a Flurry of Rule Changes Sought by Business,” *Wall Street Journal*, November 20, 2008, <http://online.wsj.com/article/SB122714583954143319.html>.

42 OMB Watch, “OMB Watch Statement on Cass Sunstein’s Senate Confirmation,” news release, September 10, 2009, <http://www.ombwatch.org/node/10371>.

43 The memo specified that “no proposed or final regulation should be [published] unless and until it has been reviewed and approved by a department or agency head appointed or designated by the President after noon on January 20, 2009.” The memo, like moratoriums issued by previous administrations, exempts regulations that address “urgent circumstances relating to health, safety, environmental, financial, or national security matters,” as well as regulations subject to statutory or judicial deadlines.

44 A freeze was advocated by the Competitive Enterprise Institute in the months before Obama’s inauguration: Clyde Wayne Crews Jr., “To President-Elect Obama—Freeze Gov’t. Regulations This Winter,” *OpenMarket* (blog), November 12, 2008, <http://www.openmarket.org/2008/11/12/to-president-elect-obama%E2%80%94freeze-govt-regulations-this-winter>.

45 See, for example, *Ten Thousand Commandments: A Policymaker’s Snapshot of the Federal Regulatory State*, Competitive Enterprise Institute, September 1996, <http://cei.org/gencon/025,01430.cfm>.

46 Counting year 2000 as part of the new millennium, which is technically incorrect.

47 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>.

48 Kenneth Mayer, *With the Stroke of a Pen: Executive Orders and Presidential Power* (Princeton University Press: Princeton, 2002), 67, <http://bit.ly/M9aGcn>.

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

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About the Author

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

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

Before coming to CEI, Crews was a scholar at the Cato Institute. Earlier, Crews was a legislative aide in the U.S. Senate, an economist at Citizens for a Sound Economy and the Food and Drug Administration, and a fellow at the Center for the Study of Public Choice at George Mason University. He holds a Master's of Business Administration from the College of William and Mary and a Bachelor's of Science from Lander College in Greenwood, South Carolina. While at Lander, he was a candidate for the South Carolina state senate.

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



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