

Analysis of the Regulatory Plan and Unified Agenda of Federal Regulations

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

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

- Prerule actions
- Proposed and final rules

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

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

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

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

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

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

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

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

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

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

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

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

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

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

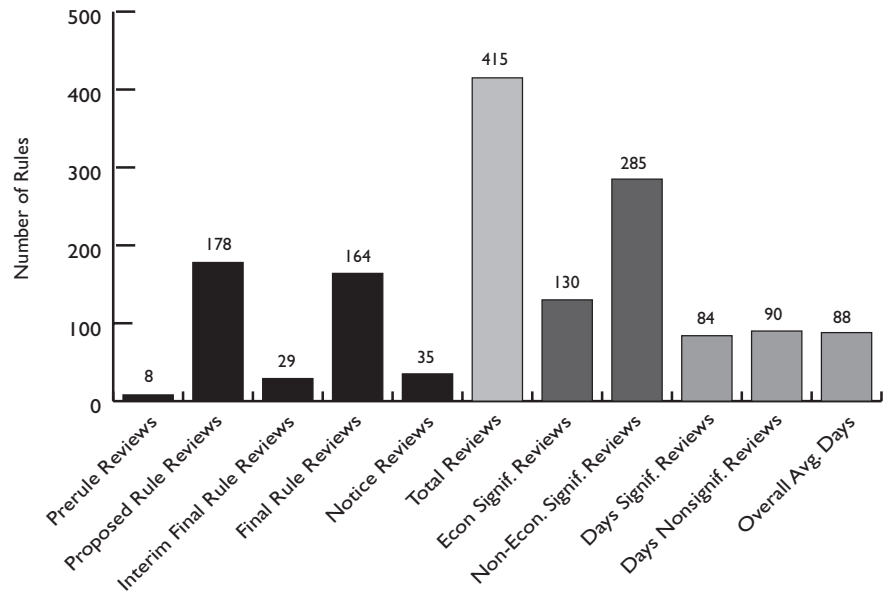
The number and scope of delays under Obama went well beyond those of his predecessors, who helped shape rules but did not have the same formalized controls, said current and former officials who spoke on the condition of anonymity because of the sensitivity of the topic.⁷⁷

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

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

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

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



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

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

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

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

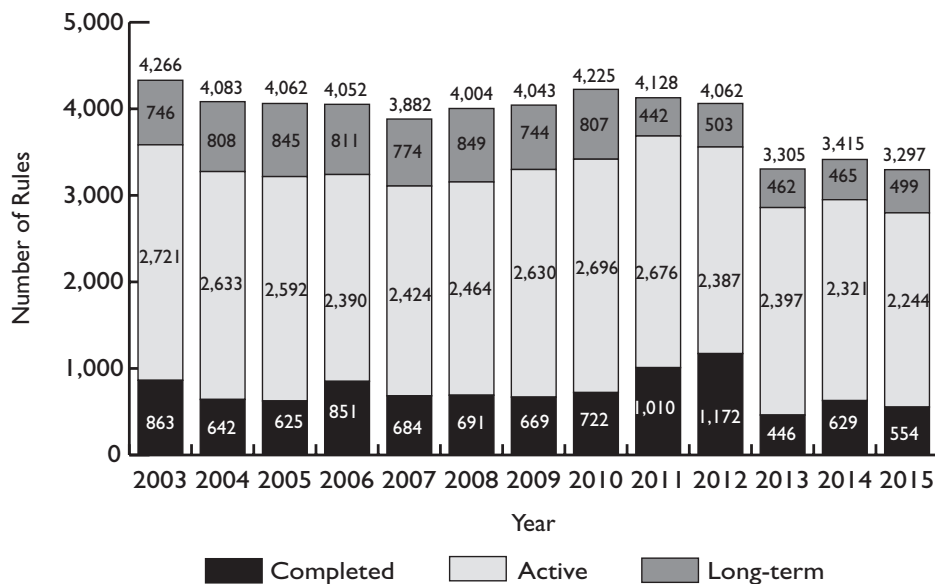
3,297 Rules Acknowledged in the Unified Agenda Pipeline

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

Top Five Executive Departments and Agencies

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

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

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

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

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

(continued)

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

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

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

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

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

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

Notable Regulations by Agency

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

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

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

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

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

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

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

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

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

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

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

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

Department of Agriculture

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

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

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

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

Department of Energy

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

Department of Commerce

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

Department of Education

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

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

Department of Health and Human Services

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

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

Department of Justice

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

Department of Labor

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

Department of Homeland Security

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

Department of the Interior

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

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

Environmental Protection Agency

Department of Transportation

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

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

Architectural and Transportation Barriers Compliance Board

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

Office of Personnel Management

- Multistate exchanges; implementations for Affordable Care Act provisions

Consumer Product Safety Commission

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

Federal Communications Commission

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

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

Department of Housing and Urban Development

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

Department of the Treasury

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

Federal Deposit Insurance Corporation

- Standardized Approach for Risk-Weighted Assets

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

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

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

- Margin and capital requirements for covered swap entities

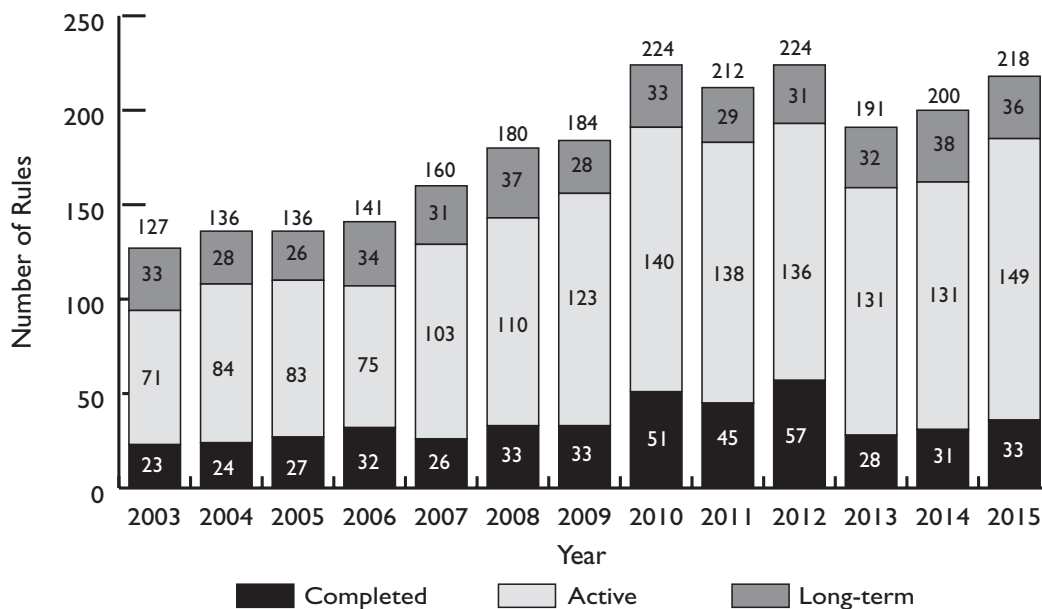
**Federal Energy Regulatory
Commission**

- Critical infrastructure protection reliability standards

**218 “Economically Significant”
Rules in the Agenda**

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

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



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

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

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

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

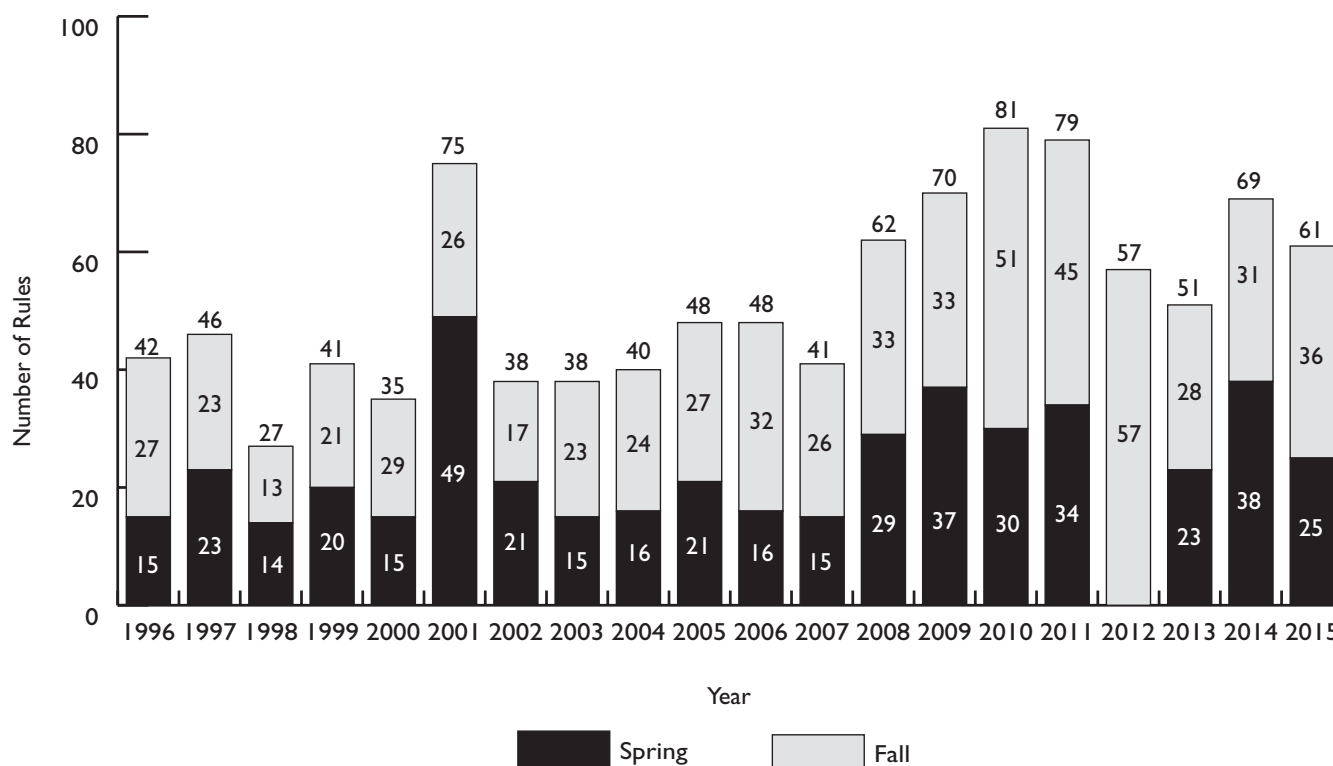
tive economically significant rules in the fall Agenda has topped 130 for all but the first of Obama’s seven years in office. (His seven-year average is 135; the George W. Bush eight-year average was 87).

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

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

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

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



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

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

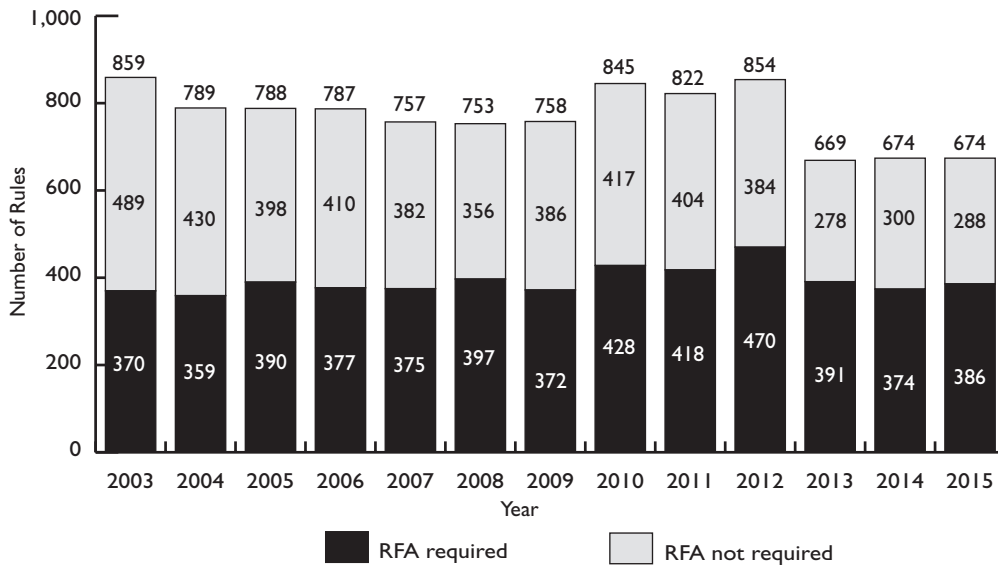
2001 and higher than in the Clinton years shown. In fact, apart from 2001, the level of completed economically significant rules from 2008 forward is notably higher than during the earlier part of the decade and the late 1990s. For completed economically significant rules, the average for Obama’s seven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

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

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

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

Figure 21. Rules Affecting Small Business, 2003–2015



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

million and escape the official “economically significant” designation.

Federal Regulations Affecting Small Business

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

Even though you make payroll every Friday,

You don’t have a guaranteed paycheck.

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

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

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

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

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

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

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

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

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

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

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

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

(continued)

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

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

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

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

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

Federal Regulations Affecting State and Local Governments

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

Box 1. Federal Workplace Regulation Affecting Growing Businesses

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

1 EMPLOYEE

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

4 EMPLOYEES: ALL THE ABOVE, PLUS

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

15 EMPLOYEES: ALL THE ABOVE, PLUS

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

20 EMPLOYEES: ALL THE ABOVE, PLUS

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

25 EMPLOYEES: ALL THE ABOVE, PLUS

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

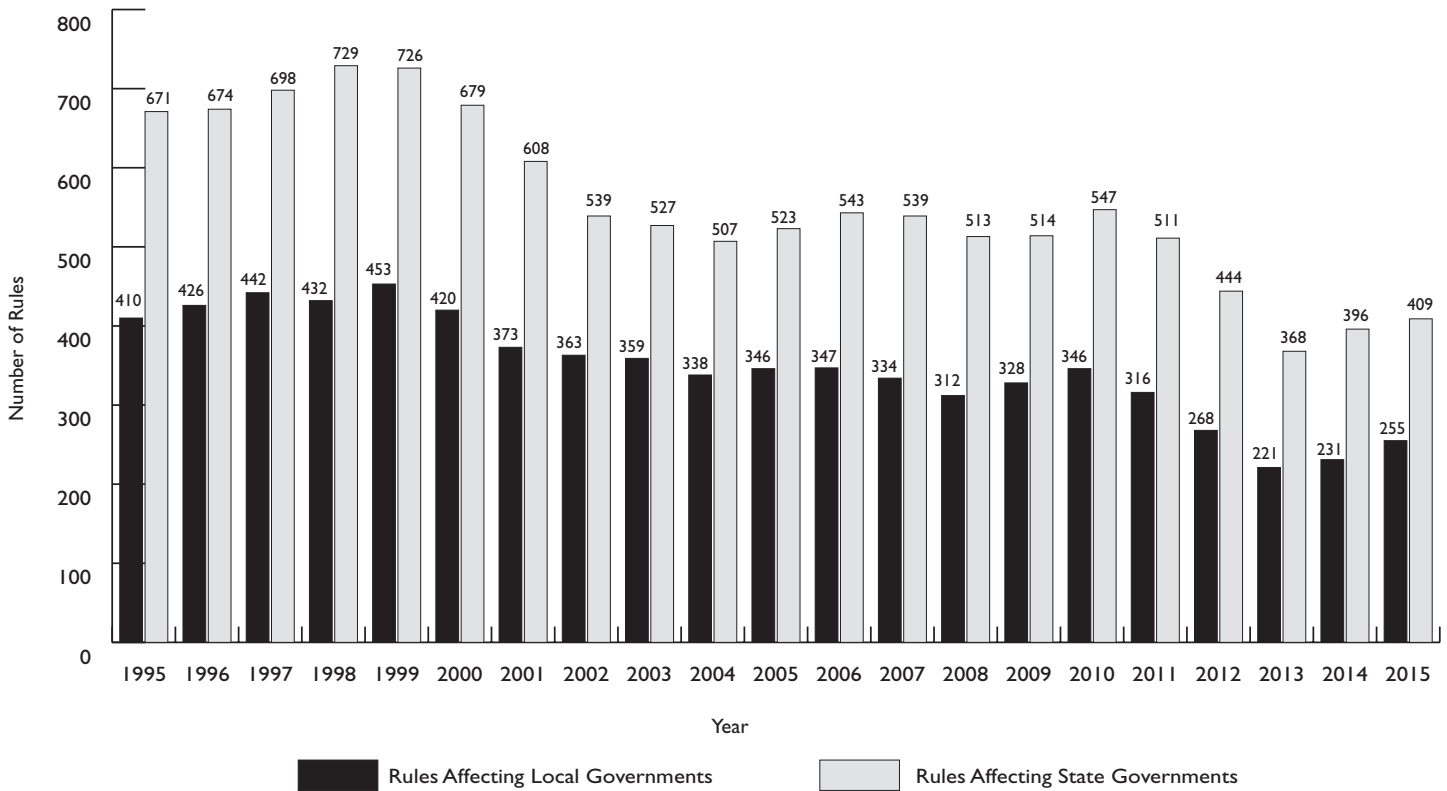
50 EMPLOYEES: ALL THE ABOVE, PLUS

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

100 EMPLOYEES: ALL THE ABOVE, PLUS

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

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



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

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

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

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