

Analysis of the Regulatory Plan and Unified Agenda of Federal Regulations

The “Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions” (the Unified Agenda), outlines agency priorities and normally appears in the *Federal Register* each fall and, minus the regulatory plan component, each spring. However, even the publication schedule of this document has become erratic. Election campaign considerations can cause agencies to abstain from rulemaking or to report fewer of them. In addition, OMB reports on fewer “long-term” planned rules than it once did, which can inaccurately push the count downward. The overall number of rules appearing in the Unified Agenda has decreased of late, but that does not mean regulatory burdens have decreased. Counts for costlier “significant” rules are up.

The Unified 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 regulated entities and researchers a sense of the flow in the regulatory pipeline. It details rules recently completed, plus those anticipated or prioritized in the upcoming 12 months by federal departments, agencies, and commissions (61 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:

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

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

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

The Regulatory Plan and the Unified Agenda do not create a legal obligation on agencies to adhere to schedules in this publication or to confine their regulatory activities to those regulations that appear within it.⁶⁹

The appearance of the Unified Agenda has become less reliable. At one time published like clockwork in April and October, the fall 2011 edition did not appear until January 20, 2012.⁷⁰ The spring 2012 edition did not appear at all, and in 2012, a solitary volume with no seasonal designation finally appeared the Friday before Christmas, with no explanation of how its methodology might have been affected by the delay.

In 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 regulatory implementation of the Affordable Care Act’s employer mandate, in defiance of that statute’s language). In 2014–2016,

the fall edition appeared the weekend before Thanksgiving.

Whereas rules finalized in the *Federal Register* now exceed 3,800 annually, the rules reported in the Unified Agenda pipeline are fewer, since the emphasis is on agency priorities. But recent lower counts may have been due in part to the Obama administration's reporting irregularities, as well as formal and informal rulemaking delays, and recent official memoranda affecting the Agenda's production.

In 2012, spring and fall guidelines from the 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.⁷¹

The subsequent 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."⁷² 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."⁷³

Upon release of the fall 2013 Unified Agenda, 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."⁷⁴

Figure 17 presents the number of Executive Order 12866 rule reviews conducted by OMB, by stage and by economic significance, for calendar year 2016. It also shows the number of days OMB took to review rules in 2016, a process that improved during recent years but that can take several months rather than two months or less, as was once common. However, OIRA 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 2016. During the pre-Executive Order 12866 years depicted there, 1991-1993, review times were shorter, although numbers of rules were considerably higher.

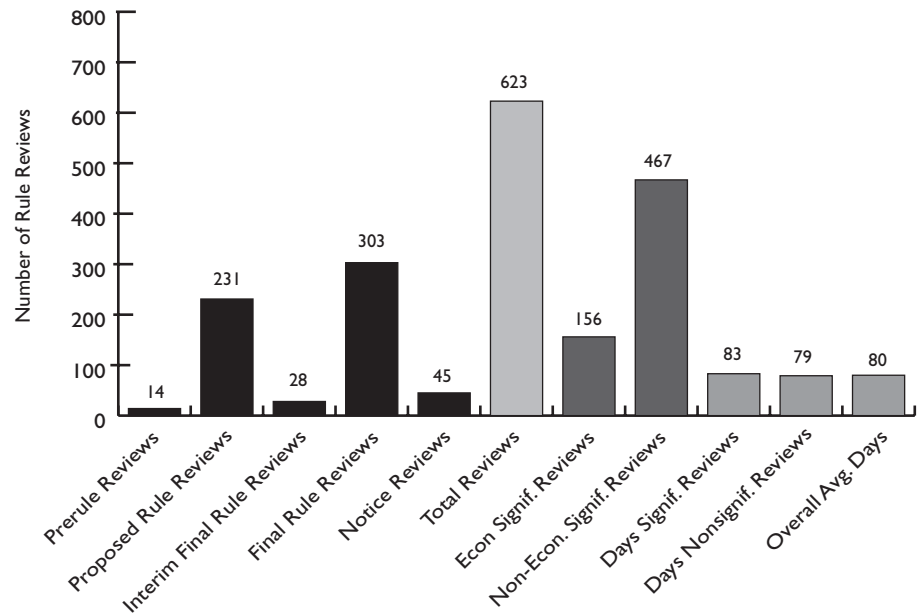
Some healthy skepticism may be justified regarding the numbers in the Unified Agenda, given the lack of both a clarification of the document's comprehensiveness and strategic rule delays by administrations (a bipartisan phenomenon). But like the *Federal Register*, the Agenda is what we have, and part of reform efforts should be directed at improving disclosures.

3,318 Rules Acknowledged in the Unified Agenda Pipeline

The fall 2016 Unified Agenda finds 60 federal agencies, departments, and commissions recognizing 3,318 regulations in the active (prerule, proposed, and final), just-completed, and long-term stages⁷⁵ (3,297 in 2015, 3,415 the year before). Many rules are not new to the Agenda and have been in the pipeline for quite some time.

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, 2016



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

As Figure 18 shows, the overall Unified Agenda pipeline exceeded 4,000 rules until 2013, except for the year 2007. Figures disclosed had been even higher in the 1990s; the all-time-high count for rules in the fall Agenda of 5,119 occurred in 1994. The 2013 drop of 18.6 percent from 4,062 rules in 2012 in part reflects the change in that year’s OIRA directive noted earlier. (For a history of the numbers of rules in the spring and fall editions of the Unified Agenda since 1983, see Appendix: Historical Tables, Part E.)⁷⁶

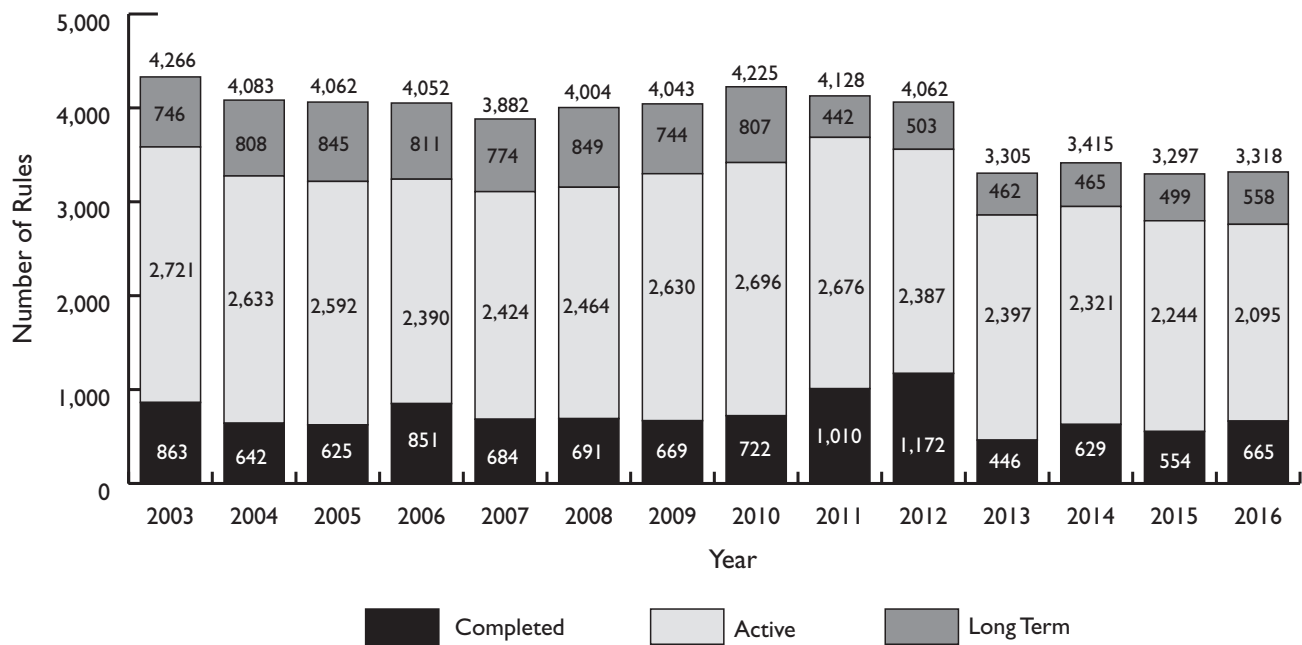
The *Federal Register* consistently shows that more than 3,400 rules are finalized annually. As Figure 18 shows, since 2003, “Active” rule counts consistently remained above 2,300, until that number dropped in 2015. This category stands at 2,095 in the fall 2016 Agenda. Although the Unified Agenda pipeline shows very large recent declines in active rules, whether that will ultimately translate into fewer actual regulations finalized in the *Federal Register* remains to be seen.

Note that although the number of rules in the “Completed” category in fall Agendas (spring Agendas are not shown in Figure 18) rose 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. This category then rose to 629 in 2014 and now stands at 665 in the fall 2016 Agenda.

Announced long-term rules in the pipeline shown in Figure 18 dropped markedly from 807 to 442 between 2010 and 2011. In the new 2016 Unified Agenda, these rules stand at 558, a jump from 499 in 2015.

The total pipeline count of 3,318 rules depicted in Figure 18 is broken out in Table 5 by agency, commission, or issuing department. It shows numbers of rules at the active, completed, and long-term stages.

Figure 18. Total Agency Rules in the Fall Unified Agenda Pipeline, 2003–2016



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

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

Table 5. Unified Agenda Entries by Department and Agency (Fall 2016)

	Total Rules	Unified Agenda			Regulatory Plan Component		
		Active	Completed	Long Term	Active	Completed	Long Term
Dept. of Agriculture	140	88	37	15	13	1	
Dept. of Commerce	231	136	79	16	5		
Dept. of Defense	115	86	28	1	5		
Dept. of Education	27	14	13		2		
Dept. of Energy	97	65	25	7	7		
Dept. of Health and Human Services	197	127	38	32	20	1	
Dept. of Homeland Security	123	60	12	51	17		
Dept. of Housing and Urban Development	47	42	5		2		
Dept. of the Interior	285	202	64	19			
Dept. of Justice	94	58	10	26	6		
Dept. of Labor	94	56	14	24	10		
Dept. of State	38	24	10	4			
Dept. of Transportation	240	132	51	57	13		2
Dept. of Treasury	469	335	60	74			
Dept. of Veterans Affairs	76	58	17	1	19	1	
Agency for International Development	14	8	4	2			
Architectural and Transportation Barriers Compliance Board	6	5		1			

(continued)

Table 5. Unified Agenda Entries by Department and Agency (Fall 2016) (continued)

	Total Rules	Unified Agenda			Regulatory Plan Component		
		Active	Completed	Long Term	Active	Completed	Long Term
Commission on Civil Rights	1	1					
CPBSD*	4	4					
Commodity Futures Trading Commission	35	23	12				
Consumer Financial Protection Bureau	26	19	3	4			
Consumer Product Safety Commission	43	31	6	6	1		
Corporation for National and Community Service	6	2	1	3			
Council of Inspector General on Integrity and Efficiency	1	1					
Court Services/Offender Supervision, D.C.	4	4					
Environmental Protection Agency	203	130	33	40	20		2
Equal Employment Opportunity Commission	10	3	3	4	1		
Farm Credit Administration	27	22	5				
Farm Credit System Insurance Corporation	2		2				
Federal Acquisition Regulation	40	22	18				
Federal Communications Commission	122	11		111			
Federal Deposit Insurance Corporation	19	9	8	2			
Federal Energy Regulatory Commission	21		7	14			
Federal Housing Finance Agency	20	14	4	2			
Federal Maritime Commission	6	4	2				
Federal Reserve System	22	20	2				
Federal Trade Commission	18	14	4				
General Services Administration	23	16	7				
Gulf Coast Ecosystem Restoration Council	2		2				
National Aeronautics and Space Administration	12	7	5				
National Archives and Records Administration	10	7	2	1			
National Credit Union Administration	15	14	1				
National Endowment for the Arts	5	5					
National Endowment for the Humanities	4	4					
National Indian Gaming Commission	9	2	2	5	2		
National Science Foundation	2	2					
National Transportation Safety Board	17	6	11				
Nuclear Regulatory Commission	62	26	13	23	1		
Office of Government Ethics	8	8					
Office of Management and Budget	4	2	1	1			
Office of Personnel Management	38	31	7				
Office of the Trade Representative	3	3					

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

	Total Rules	Unified Agenda			Regulatory Plan Component		
		Active	Completed	Long Term	Active	Completed	Long Term
Peace Corps	4	4					
Pension Benefit Guaranty Corporation	13	7	2	4			
Railroad Retirement Board	2	1		1			
Securities and Exchange Commission	75	62	9	4			
Small Business Administration	30	19	9	2	2		
Social Security Administration	36	25	11		16	3	
Special Inspector General for Afghanistan Reconstruction	1			1			
Surface Transportation Board	20	14	6				
TOTAL	3,318	2,095	665	558	162	6	4

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>.

For the numbers of rules by department and agency from previous year-end editions of the Unified Agenda since 2000, see Appendix: Historical Tables, Part F; for numbers going back further, refer to earlier editions of *Ten Thousand Commandments*.

Overall, the Unified Agenda gives the impression that regulatory burdens are declining, but that may reflect recent pullbacks in disclosure and transparency such as the Obama administration’s delay of the pace of rules in 2012 or agencies’ predisposition toward disclosure. Time will tell, as rules make their way from the Agenda to final publication in the *Federal Register*.

In addition, more rulemaking may be shifting from rulemaking toward the more informal guidance and memoranda, avoiding the formalities of notice-and-comment required in the Administrative Procedure Act and any need for disclosure in the Unified Agenda.⁷⁷

Top Five Rulemaking Departments and Agencies

Every year, a relative handful of executive branch agencies account for a large number of the rules in the pipeline. The five departments

and agencies listed in Table 6—the Departments of the Treasury, the Interior, Transportation, and Commerce, plus the Environmental Protection Agency—were the most active rule-making agencies. These top five, with 1,428 rules among them, account for 43 percent of the 3,318 rules in the Unified Agenda pipeline.

Table 6 also depicts the top four independent agencies in the Unified Agenda pipeline by rule count. They are the Federal Communications Commission (FCC), Securities and Exchange Commission, Nuclear Regulatory Commission, and Consumer Product Safety Commission, with the Federal Acquisition Regulation System in fifth place.⁷⁸ Their total 342 rules account for 10 percent of the 3,318 rules in the Agenda. Combined, the top executive and independent agency components come to 53 percent of the total.

193 “Economically Significant” Rules in the Unified Agenda

A subset of the Unified Agenda’s 3,318 rules is classified as “economically significant,” which means that agencies estimate yearly economic impacts of at least \$100 million. Those impacts generally amount to increased costs, although sometimes an economically

Table 6. Top Rule-Producing Executive and Independent Agencies
(From year-end 2016 Unified Agenda, total of active, completed, and long-term rules)

Executive Agency	Number of Rules
1. Department of the Treasury	469
2. Department of the Interior	285
3. Department of Transportation	240
4. Department of Commerce	231
5. Environmental Protection Agency	203
TOTAL	1,428
% of Total Agenda Pipeline of 3,318	43

Independent Agency	Number of Rules
1. Federal Communications Commission	122
2. Securities and Exchange Commission	75
3. Nuclear Regulatory Commission	62
4. Consumer Product Safety Commission	43
5. Federal Acquisition Regulation	40
TOTAL	342
% of Total Agenda Pipeline of 3,318	10

Top 5 Executives plus Independents	1,770
% 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>.

“Active” rules consist of rules at the prerule, proposed, and final stages.

significant rule is intended to reduce costs. As Table 7 shows, 193 economically significant rules (down from 218 and 200 in the two previous years, respectively) from 23 separate departments and agencies appear at the active (prerule, proposed rule, and final rule), completed, and long-term stages of the pipeline.

Although the overall number of rules in the Agenda pipeline has declined along with 2016’s count of economically significant ones, the overall number of “economically significant” rules currently in the pipeline 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. Figure 19 shows 2016’s 193 rules along with those of the previous 15 years.

Recent online database editions of the Agenda break economically significant rules into completed, active, and long-term categories. Among the 193 economically significant rules in the fall 2016 edition, 113 of them stand at the “active” phase. (The full list of the 193 economically significant rules in the 2016 Agenda pipeline is available in Appendix: Historical Tables, Part G.) In fact, the body of active rules has remained above 100 annually. (Barack Obama’s eight-year average of “actives” across the fall Agendas

**Table 7. Economically Significant Rules in the Unified Agenda Pipeline
Expected to Have \$100 Million Annual Economic Impact, Year-End 2016**

	Rules	Active	Completed	Long Term
Dept. of Agriculture	8	6	2	
Dept. of Commerce	1	1		
Dept. of Defense	2	1	1	
Dept. of Education	5	3	2	
Dept. of Energy	22	17	4	1
Dept. of Health and Human Services	57	30	18	9
Dept. of Homeland Security	10	2	3	5
Dept. of Housing and Urban Development	5	5		
Dept. of the Interior	5	3	2	
Dept. of Justice	4	2		2
Dept. of Labor	16	9	4	3
Dept. of State	1	1		
Dept. of Transportation	14	11		3
Dept. of Treasury	7	3	2	2
Dept. of Veterans Affairs	5	5		
Architectural Barriers Compliance Board	2	2		
Consumer Product Safety Commission	2	2		
Environmental Protection Agency	15	8	5	2
Federal Acquisition Regulation	1		1	
Federal Communications Commission	6			6
Federal Deposit Insurance Corporation	1		1	
Nuclear Regulatory Commission	3	1	2	
Office of Personnel Management	1	1		
TOTAL	193	113	47	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>.

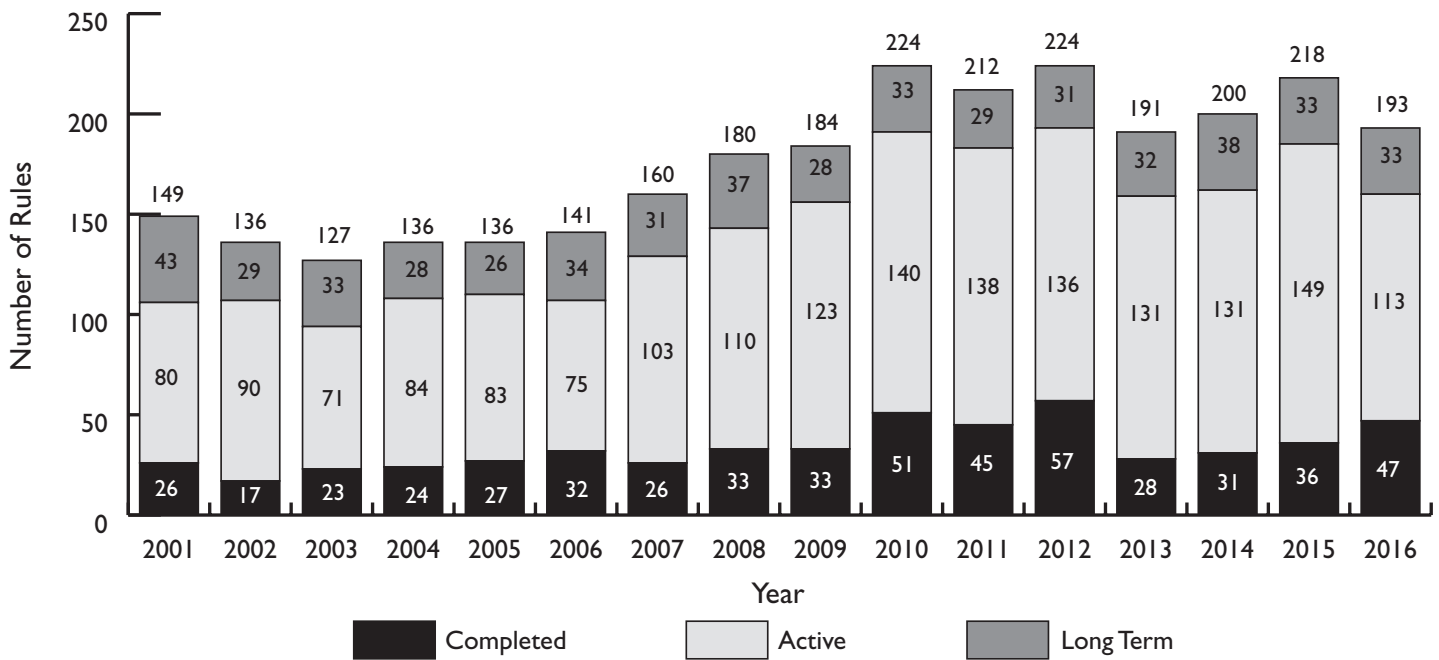
was 133; George W. Bush’s eight-year average was 87.)

President Obama’s level of completed rules in the Unified Agenda was consistently higher than President Bush’s, even taking into account the Obama election-year drop between 2011 and 2012. Completed rules in the fall Agenda peaked at 57 in 2012 (the year no spring Agenda was issued) and stand at 47 in 2016. But for a fuller picture, we need to incorporate the completed rules from the spring Agendas. Figure 20 isolates the totals

of completed economically significant rules since 1996 from both the spring and the fall Agendas for closer analysis of yearly trends in this category.

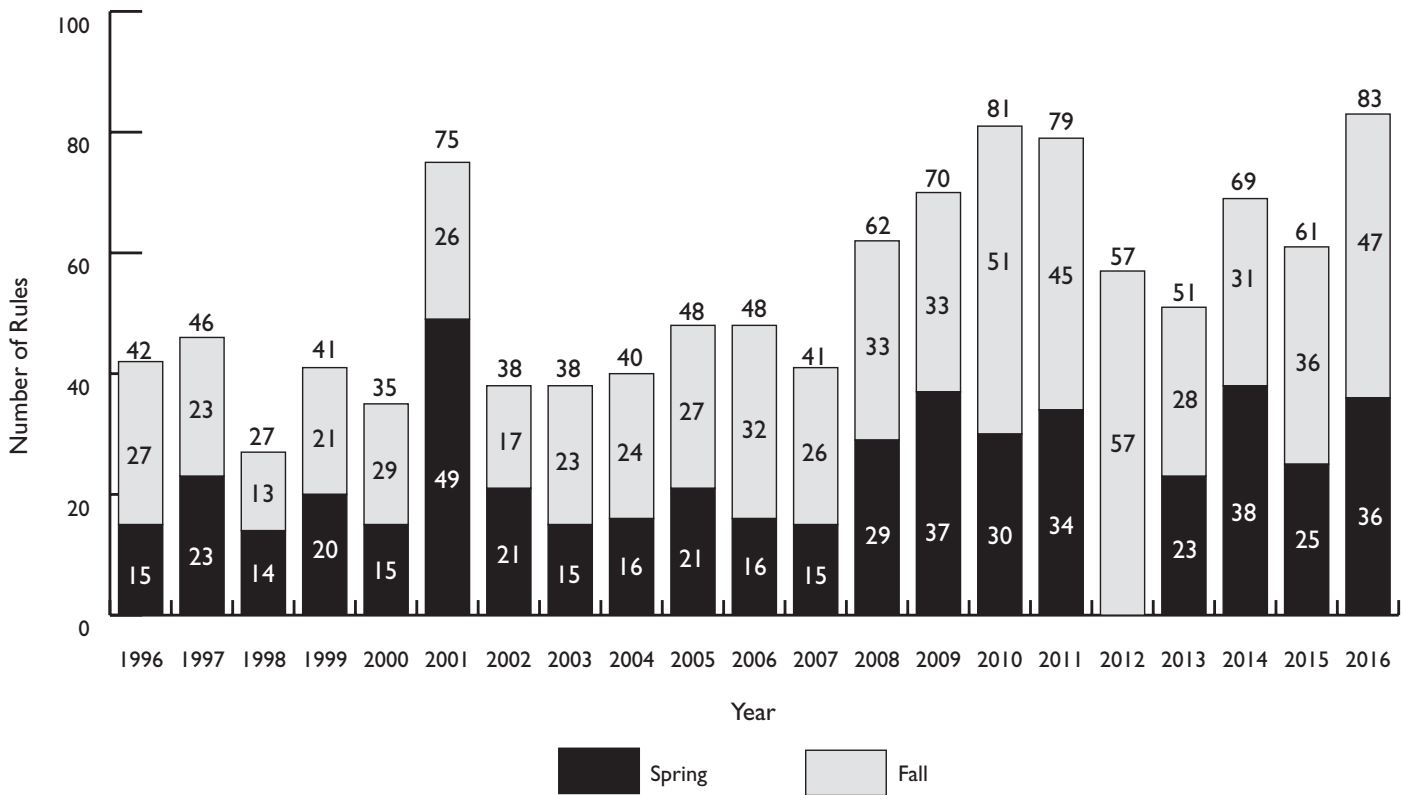
As Figure 20 shows, completed economically significant rules stand at 83 for 2016, the highest count over the entire Obama, Bush, and Clinton intervals shown. Apart from 2001, the level of completed economically significant rules from 2008 forward is notably higher than during the earlier part of the decade and the late 1990s. Bush’s total

Figure 19. Economically Significant Rules in the Unified Agenda Pipeline, 2001–2016



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

Figure 20. Annual Completed Economically Significant Rules in the Unified Agenda, 1996–2016



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

number of completed economically significant rules was 390, for an average of 49 per year. Obama's total was 551, an average of 69 per year. That takes into account that only one edition of the Unified Agenda appeared in 2012. (Some agency "midnight regulations" of the Bush administration in 2009 as Obama was taking office may be reflected in the 2009 total, although the Obama administration did issue a freeze to review Bush rules upon assuming office.⁷⁹)

As noted, each of the 193 economically significant rules scattered among the 3,318 rules in the Agenda is estimated to have annual impacts of at least \$100 million. So taken together, those rules might be expected to impose annual costs of at least \$19 billion (193 rules multiplied by the \$100 million economically significant threshold). Some rules 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 attention to economically significant rules should not tempt policy makers and analysts into ignoring the remaining bulk of rules in the annual pipeline. In the fall 2016 pipeline, 3,125 federal rules were not designated as officially economically significant by the government (3,318 total rules minus the 193 economically significant ones). However, a rule estimated to cost below the \$99 million "economically significant" threshold can still impose substantial costs on the regulated entities.

Notable Regulations by Agency

In recent Unified Agenda editions and in other venues, federal agencies have noted the initiatives listed, among others pending or recently completed. As noted, the full list of the 193 economically significant rules in the 2016 Agenda pipeline appears in Appendix: Historical Tables, Part G.

Although many of the things that regulations purport to do are worthy and needed pursuits, that does not mean that the federal bureaucracy and administrative state are the best ways 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)⁸⁰
- Standards for grades of canned baked beans⁸¹
- Rural Energy for America Program
- Rural broadband access loans and loan guarantees
- Mandatory inspection of catfish and catfish products
- Multifamily housing reinvention
- Inspection regulations for eggs and egg products
- Performance standards for ready-to-eat processed meat and poultry products
- Nutrition labeling of single-ingredient and ground or chopped meat and poultry products
- "Modernization" of poultry slaughter inspection
- Regulations concerning importation of unmanufactured wood articles (solid-wood packing material)

Department of Commerce

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

Although many of the things that regulations purport to do are worthy and needed pursuits, that does not mean that the federal bureaucracy and administrative state are the best ways to achieve them.

Department of Education

- “Gainful Employment” rule to prepare students for employment in a recognized occupation
- Proposed priorities, requirements, definitions, and selection criteria: Striving Readers Comprehensive Literacy Program
- Income-driven “pay as you earn” program
- Race to the Top

Department of Energy

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

Department of Health and Human Services

- Rules deeming electronic cigarettes and components subject to the Federal Food, Drug, and Cosmetic Act, as amended by the Family Smoking Prevention and Tobacco Control Act, and being subjected to warning labels and sale restrictions⁸²
- Requirements for Tobacco Product Manufacturing Practice

- Food labeling: serving sizes of foods that can reasonably be consumed at one eating occasion; dual-column labeling; modification of certain reference amounts customarily consumed
- Nutrition labeling for food sold in vending machines and for restaurant menu items
- Food labeling: trans fatty acids in nutrition labeling, nutrient content claims, and health claims
- Rule on safety and effectiveness of consumer antibacterial soaps (“Topical Antimicrobial Drug Products for Over-the-Counter Human Use”);⁸³ consumer antiseptics
- General and plastic surgery devices: sunlamp products
- Federal policy for the protection of human subjects
- Criteria for determining whether a drug is considered usually self-administered
- Substances prohibited from use in animal food or feed; registration of food and animal feed facilities
- Updated standards for labeling of pet food
- Sanitary transportation of human and animal food
- Focused mitigation strategies to protect food against intentional adulteration
- Produce safety regulation
- Centers for Medicare and Medicaid Services standards for long-term nursing care facilities and home health service providers⁸⁴
- Requirements for long-term care facilities: hospice services
- Fire safety and sprinkler requirements for long-term care facilities
- Pediatric dosing for various over-the-counter cough, cold, and allergy products
- Rule on comprehensive care for joint replacement
- Medication-assisted treatment for opioid use disorders reporting requirements
- Patient Protection and Affordable Care Act; standards related to essential health benefits, actuarial value, and accreditation; 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
- Good manufacturing practice in manufacturing, packing, or holding dietary ingredients and dietary supplements
- Good manufacturing practice regulations for finished pharmaceuticals
- Prior authorization process for certain durable medical equipment, prosthetic, orthotics, and supplies
- Bar-code label requirements for human drug products and blood

Department of Homeland Security

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

Department of Housing and Urban Development

- Revision of manufactured home construction and safety standards regarding location of smoke alarms
- Instituting smoke-free public housing⁸⁵
- Regulation of Fannie Mae and Freddie Mac on housing goals

- Regulations within the Real Estate Settlement Procedures Act pertaining to mortgages and closing costs
- Establishing a more effective Fair Market Rent system; using Small Area Fair Market Rents in Housing Choice Voucher Program (modification of income and rent determinations in public and assisted housing)

Department of the Interior

- Revised requirements for well plugging and platform decommissioning
- Increased safety measures for oil and gas operations and exploratory drilling on the Arctic outer continental shelf⁸⁶
- Blowout prevention for offshore oil and gas operations

Department of Justice

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

Department of Labor

- Conflict of interest rule in financial investment advice
- Overtime rule: "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees"⁸⁷
- Establishing a minimum wage for contractors (Executive Order 13658)
- Establishing paid sick leave for businesses that contract with the federal government (in response to Executive Order 13706)⁸⁸
- Walking working surfaces and personal fall protection systems (slips, trips, and fall prevention)⁸⁹
- Hearing conservation program for construction workers

- Rules regarding confined spaces in construction: preventing suffocation and explosions
- Reinforced concrete in construction
- Preventing back-over injuries and fatalities
- Cranes and derricks
- Protective equipment in electric power transmission and distribution
- Refuge alternatives for underground coal mines
- Combustible dust
- Injury and illness prevention program
- Application of the Fair Labor Standards Act to domestic service
- Improved fee disclosure for pension plans
- Occupational exposure to styrene, crystalline silica,⁹⁰ tuberculosis, and beryllium
- Implementation of the health care access, portability, and renewability provisions of the Health Insurance Portability and Accountability Act of 1996
- Group health plans and health insurance issuers relating to coverage of preventive services under the Patient Protection and Affordable Care Act
- Health care standards for mothers and newborns
- NHTSA rule on lighting and marking on agricultural equipment⁹⁶
- Minimum training requirements for entry-level commercial motor vehicle operators and for operators and training instructors of multiple trailer combination trucks⁹⁷
- Passenger car and light truck Corporate Average Fuel Economy standards (newer model years)
- Fuel efficiency standards for medium- and heavy-duty vehicles and work trucks⁹⁸
- Requirement for installation of seat belts on motor coaches
- Rear center lap and shoulder belt requirement
- Carrier safety fitness determination
- Retroreflective tape for single-unit trucks
- Hours of service, rest, and sleep for truck drivers; electronic logging devices and hours-of-service supporting documents
- Flight crew duty limitations and rest requirements
- Standard for rearview mirrors
- Commercial driver's license drug and alcohol clearinghouse
- Automotive regulations for car lighting, door retention, brake hoses, daytime running-light glare, and side-impact protection
- Federal Railroad Administration passenger equipment safety standards amendments
- Rear-impact guards and other safety strategies for single-unit trucks
- Amendments for positive train control systems
- Aging aircraft safety
- Upgrade of head restraints in vehicles
- Establishment of side-impact performance requirements for child restraint systems
- Registration and training for operators of propane tank filling equipment
- Monitoring systems for improved tire safety and tire pressure
- Pipeline Safety: Amendments to Parts 192 and 195 to require valve installation and minimum rupture detection standards
- Hazardous materials: transportation of lithium batteries

Department of Transportation

- Quiet car rule; “Minimum Sound Requirements for Hybrid and Electric Vehicles”⁹¹
- Federal Aviation Administration rule on operation and certification of drones (must stay in line of sight, for example)⁹²
- National Highway Traffic Safety Administration (NHTSA) proposal on vehicle-to-vehicle communications standardization⁹³
- Federal Motor Carrier Safety Administration and NHTSA rule on speed limiters and electronic stability control systems for heavy vehicles⁹⁴
- Federal Railroad Administration’s “Train Crew Staffing” rule seeking a two-engineers-on-a-train mandate⁹⁵

Department of the Treasury

- Prohibition of funding of unlawful Internet gambling
- Risk-based capital guidelines; capital adequacy guidelines
- Assessment of fees for large bank holding companies and other financial entities supervised by the Federal Reserve to fund the Financial Research Fund (which includes the Financial Stability Oversight Council)
- Registration and regulation of security-based swap dealers and major security-based swap participants
- Troubled Asset Relief Program standards for compensation and corporate governance

Architectural and Transportation Barriers Compliance Board

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

Consumer Financial Protection Bureau

- Proposed rule regulating business practices on payday and vehicle title loans⁹⁹

Consumer Product Safety Commission

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

Environmental Protection Agency

- Control of air pollution from motor vehicles: Tier 3 motor vehicle emission and fuel standards

- Greenhouse gas emissions and fuel efficiency standards for medium- and heavy-duty engines and vehicles
- Performance standards for new residential wood heaters
- Oil and natural gas: emission standards for new and modified sources
- Model trading rules for greenhouse gas emissions from electric utility generating plants constructed before January 7, 2014
- Financial Responsibility Requirements under Comprehensive Environmental Response, Compensation, and Liability Act Section 108(b) for classes of facilities in the hard-rock mining industry
- Clean air visibility, mercury, and ozone implementation rules
- Effluent limitations guidelines and standards for the steam electric power generating point source category
- Revision of stormwater regulations to address discharges from developed sites
- Formaldehyde emissions standards for composite wood products
- National emission standards for hazardous air pollutants from certain reciprocating internal combustion engines and auto paints
- Review of National Ambient Air Quality Standards for lead, ozone, sulfur dioxide, particulate matter, and nitrogen dioxide
- Revision of underground storage tank regulations: revisions to existing requirements and new requirements for secondary containment and operator training
- Petroleum refineries—new source performance standards
- Revisions of national primary drinking water regulations for lead and copper
- Modernization of the accidental release prevention regulations under the Clean Air Act
- Trichloroethylene; rulemaking under Toxic Substances Control Act Section 6(a); vapor degreasing
- Reassessment of use authorizations for polychlorinated biphenyls (PCBs) in small capacitors in fluorescent light ballasts in schools and day care centers
- Rulemakings regarding lead-based paint and the Lead, Renovation, Repair, and

- Painting Program for public and commercial buildings
- National drinking water regulations covering groundwater and surface water
- Renewable fuel standards
- Standards for cooling water intake structures
- Standards of performance for municipal solid waste landfills
- Combined rulemaking for industrial, commercial, and institutional boilers and process heaters
- Standards for management of coal combustion wastes (“coal ash”) from electric power producers
- Control of emissions from non-road spark-ignition engines, new locomotives, and new marine diesel engines

Federal Communications Commission

- Protecting the privacy of customers of broadband and other telecommunications services¹⁰⁰
- Net neutrality “open Internet” order
- Broadband for passengers aboard aircraft
- Broadband over power line systems
- Mobile personal satellite communications
- Satellite broadcasting signal carriage requirements
- Rules regarding Internet protocol-enabled devices

Federal Deposit Insurance Corporation

- Standardized approach for risk-weighted assets
- Margin and capital requirements for covered swap entities

Federal Energy Regulatory Commission

- Critical infrastructure protection reliability standards

Office of Personnel Management

- Multistate exchanges: implementations for Affordable Care Act provisions

Federal Regulations Affecting Small Business

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

Even though you make payroll every Friday,

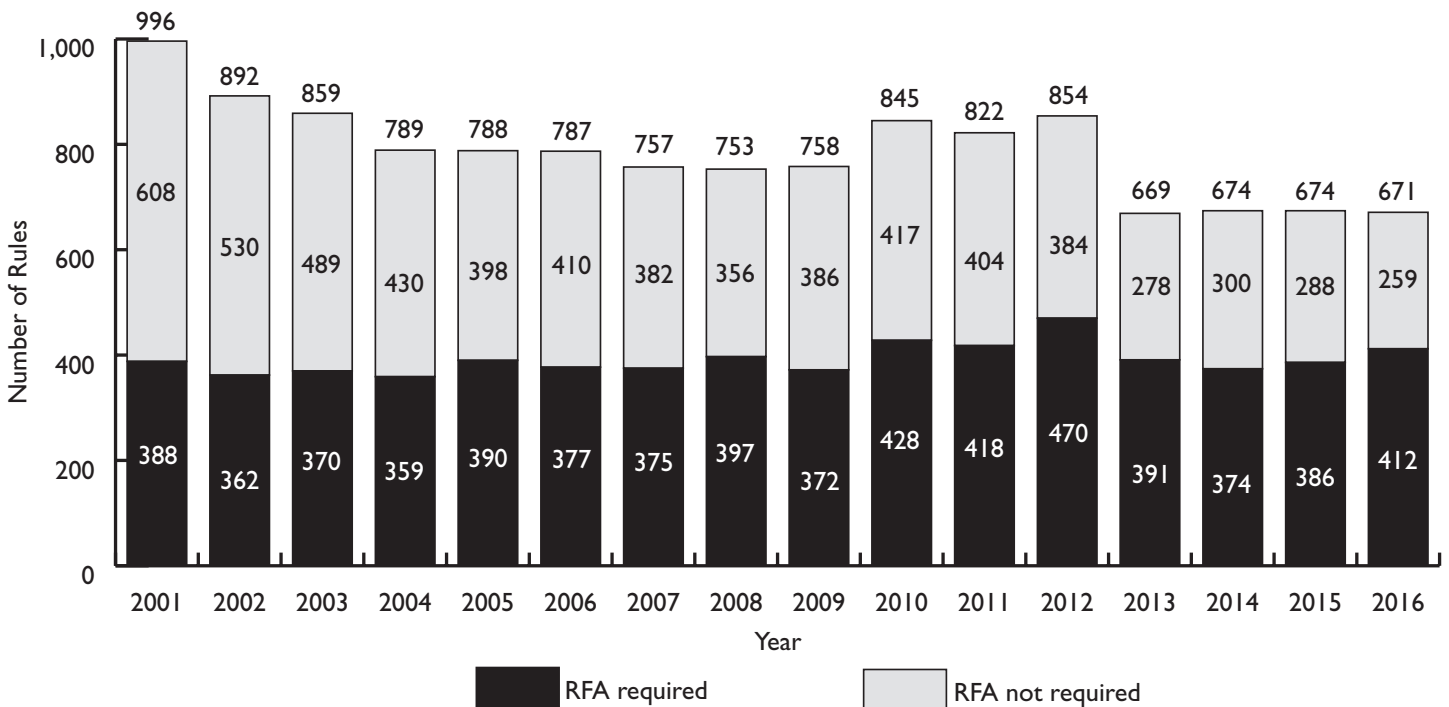
You don’t have a guaranteed paycheck.

You’re a small business owner, and you eat what you kill.¹⁰¹

The Regulatory Flexibility Act (RFA) directs federal agencies to assess their rules’ effects on small businesses.¹⁰² Figure 21 shows the number of rules requiring annual regulatory flexibility analysis for RFA and 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, reflecting reporting changes noted already. At the end of 2016, overall rules affecting small business stood at 671, roughly even since 2013. 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 671 rules with small-business impacts, 412 required an RFA analysis, up from the previous year’s 386. Another 259 rules were otherwise deemed by agencies to affect small business but not to rise to the level of requiring an RFA analysis.

In the past four years, disclosure of this category of rules appears to have diminished. Even though the overall reported number

Figure 21. Rules Affecting Small Business, 2001–2016



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

of rules affecting small business is down, when it comes to the more hefty ones, those requiring an RFA analysis, the average of Obama’s eight years, 406, exceeds Bush’s eight-year average of 377.

Table 8 breaks out the 2016 Unified Agenda’s 671 rules affecting small business by department, agency, and commission. Five of them—the Federal Communications Commission and the Departments of Agriculture, Commerce, Health and Human Services, and Transportation—account for 361, or 54 percent, of the rules affecting small business. Overall, 144 of these rules were at the “completed” stage.

The overall proportion of total rules affecting small business, as noted in Table 8, stands at 20.2 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 1997, see Appendix: Historical Tables, Part H.)

For further perspective on the small-business regulatory climate, Box 2 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, which required the Congressional Budget Office to produce cost estimates of mandates affecting state, local, and tribal governments above the then-\$50 million threshold.

As Figure 22 shows, agencies report that 211 of the 3,318 rules in the fall 2016 Agenda

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

Table 8. Unified Agenda Entries Affecting Small Business by Department, Agency, and Commission, Year-End 2016

	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			
Dept. of Agriculture	140	21	4	1	13	4	3	46	32.9	46
Dept. of Commerce	231	44	26	6	9	8	1	94	40.7	94
Dept. of Defense	115	1						1	0.9	
Dept. of Education	27							0	0.0	
Dept. of Energy	97	8	5	1				14	14.4	
Dept. of Health and Human Services	197	20	13	6	19	8	7	73	37.1	73
Dept. of Homeland Security	123	9	3	7	3		3	25	20.3	
Dept. of Housing and Urban Development	47	2						2	4.3	
Dept. of the Interior	285	8	2		12	6	2	30	10.5	
Dept. of Justice	94	1			3	2	6	12	12.8	
Dept. of Labor	94	5	5	1	6		3	20	21.3	
Dept. of State	38				8	3	3	14	36.8	
Dept. of Transportation	240	17	3	2	15	5	14	56	23.3	56
Dept. of Treasury	469	2			32	4	3	41	8.7	
Dept. of Veterans Affairs	76				1			1	1.3	
Agency for International Development	14							0	0.0	
Architectural and Transportation Barriers Compliance Board	6	1			1			2	33.3	
Commission on Civil Rights	1							0	0.0	
CPBSD*	4							0	0.0	
Commodity Futures Trading Commission	35	2						2	5.7	
Consumer Financial Protection Bureau	26	3						3	11.5	
Consumer Product Safety Commission	43	3	1					4	9.3	
Corp. for National and Community Service	6							0	0.0	
Council of Inspector General on Integrity and Efficiency	1							0	0.0	
Court Services/Offender Supervision, D.C.	4							0	0.0	
Environmental Protection Agency	203	6	2		5	1		14	6.9	

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

	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			
Equal Employment Opportunity Commission	10					2	2	20.0		
Farm Credit Administration	27						0	0.0		
Farm Credit System Insurance Corporation	2						0	0.0		
Federal Acquisition Regulation	40	22	15			1	38	95.0		
Federal Communications Commission	122	10		78			4	92	75.4	92
Federal Deposit Insurance Corporation	19						0	0.0		
Federal Energy Regulatory Commission	21						0	0.0		
Federal Housing Finance Agency	20						0	0.0		
Federal Maritime Commission	6				2	1	3	50.0		
Federal Reserve System	22	2					2	9.1		
Federal Trade Commission	18				13	3	16	88.9		
General Services Administration	23	2	2		6	3	13	56.5		
Gulf Coast Ecosystem Restoration Council	2						0			
National Aeronautics and Space Administration	12						0	0.0		
National Archives and Records Administration	10						0	0.0		
National Credit Union Administration	15						0	0.0		
National Endowment for the Arts	5				2		2	40.0		
National Endowment for the Humanities	4						0	0.0		
National Indian Gaming Commission	9						0	0.0		
National Science Foundation	2						0	0.0		
National Transportation Safety Board	17						0	0.0		
Nuclear Regulatory Commission	62	1	2				3	4.8		
Office of Government Ethics	8						0	0.0		

(continued)

Table 8. Unified Agenda Entries Affecting Small Business by Department, Agency, and Commission, Year-End 2016 (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			
Office of Management and Budget	4							0	0.0	
Office of Personnel Management	38							0	0.0	
Office of the Trade Representative	3							0	0.0	
Peace Corps	4							0	0.0	
Pension Benefit Guaranty Corporation	13					1		1	7.7	
Railroad Retirement Board	2							0	0.0	
Securities and Exchange Commission	75	15	3	1	5			24	32.0	
Small Business Administration	30	11	3	2	1	2		19	63.3	
Social Security Administration	36							0	0.0	
Special Inspector General for Afghanistan Reconstruction	1							0	0.0	
Surface Transportation Board	20	1	1					2	10.0	
TOTAL	3,318	217	90	105	156	54	49	671	20.2	361
		412			259					54% of total

Source: Compiled from "The Regulatory Plan and Unified Agenda of Federal Regulatory and Actions."

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

pipeline will affect local governments compared with 255 the previous year (this includes all stages, active, completed, and long term).¹⁰³ Since the passage of the Unfunded Mandates Act in the mid-1990s, the number of overall rules affecting local governments has fallen by 60 percent, from 533 in 1994 to 211, the lowest level over the period.

The total number of regulatory actions affecting state governments stands at 355 (compared with 409 in 2015). There was a sizable uptick in the "completed" rules

in each of these categories, but the overall pipeline count of active, completed, and long-term has been trending downward. (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.)

However, the states insist that mandates are still rising. At the 2016 Legislative Summit of the National Conference of State Legislatures (NCSL) in Chicago, the NCSL Stand-

ing Committee on Budgets and Revenue issued a resolution on unfunded mandates that asserts: “The growth of federal mandates and other costs that the federal government imposes on states and localities is one of the most serious fiscal issues confronting state and local government officials.”¹⁰⁴ The NCSL calls for “reassessing” and “broadening” the 1995 Unfunded Mandates Reform Act. Likewise, state attorneys general in 2016 wrote to House and Senate leadership regarding federal agencies’ “failing to fully consider the effect of their regulations on States and state law,” and called for strengthening the Administrative Procedure Act.¹⁰⁵

The CBO says that since 2006, 167 laws have imposed mandates on states and localities, with a notable tailing off since 2012.¹⁰⁶ Regulatory mandates can derive from such laws, as well as from agencies acting unilaterally. According to the official data, since 2010, none have imposed costs on states and localities exceeding the noted statutory threshold (aggregate direct costs during any of the mandate’s first five years of \$50 million in 1996, \$77 million now), but this should be examined further. Agencies acknowledge that very few of the rules in Figure 22 impose unfunded mandates on states and localities (just two at the active stage in fall 2016, for

Box 2. 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)

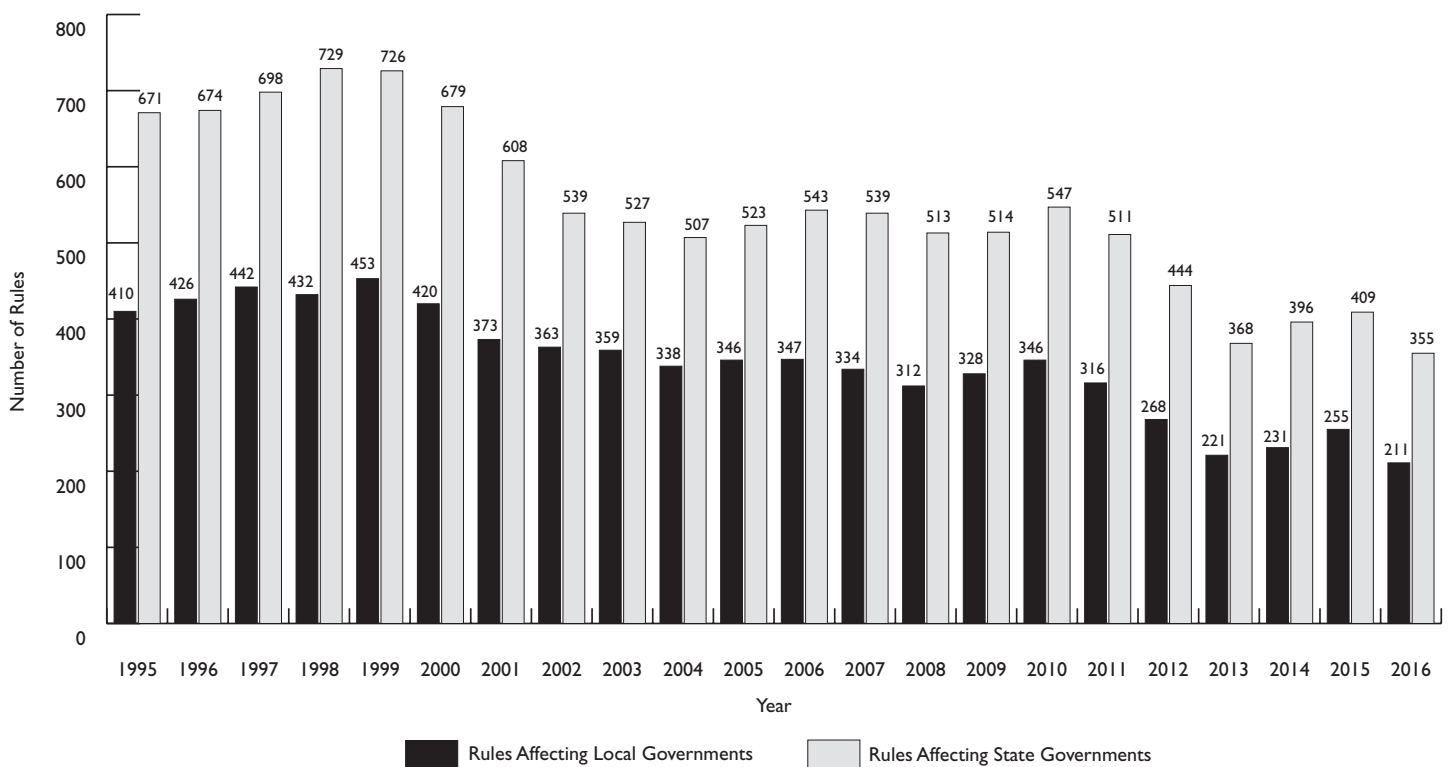
50 EMPLOYEES: ALL THE ABOVE, PLUS

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

100 EMPLOYEES: ALL THE ABOVE, PLUS

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

Figure 22. Rules Affecting State and Local Governments, 1995–2016



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>.

example).¹⁰⁷ Nonetheless, below is a compilation of some notable or substantial completed or pending regulations since 2009 that federal agencies have acknowledged in the Unified Agenda as *unfunded* mandates (not just mandates). (The last number in each is the so-called Regulation Identifier Number.¹⁰⁸)

Department of Agriculture

- USDA/FNS: National School Lunch and School Breakfast Programs: Nutrition Standards for All Foods Sold in School, as Required by the Healthy, Hunger-Free Kids Act of 2010 (0584-AE09)
- USDA/RBS: Debt Settlement—Community and Business Programs (0570-AA88)

Department of Health and Human Services

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

Smokeless Tobacco to Protect Children and Adolescents (0910-AG33)

Department of Justice

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

Department of Labor

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

Department of Transportation

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

Architectural and Transportation Barriers Compliance Board

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

Environmental Protection Agency

- EPA/OCSPP: Polychlorinated Biphenyls; Reassessment of Use Authorizations for PCBs in Small Capacitors in Fluorescent Light Ballasts in Schools and Daycares (2070-AK12)
- EPA/WATER: Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category (2040-AF14)
- EPA/SWER: Revising Underground Storage Tank Regulations—Revisions to Existing Requirements and New Re-

quirements for Secondary Containment and Operator Training (2050-AG46)

- EPA/SWER: Standards for the Management of Coal Combustion Residuals Generated by Commercial Electric Power Producers (Coal Ash) (2050-AE81)
- EPA/AR: Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards (2060-AQ86)
- EPA/AR: National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; Reconsideration (2060-AR13)
- EPA/AR: National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Electric Utility Steam Generating Units (2060-AP52)
- EPA/AR: NESHAP from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Electric Utility Steam Generating Units—Appropriate and Necessary Finding (2060-AR31)
- EPA/AR: National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers (2060-AM44)
- EPA/AR: National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (2060-AQ25)
- EPA/AR: NESHAP: Portland Cement Notice of Reconsideration and NSPS for Portland Cement (2060-AO15)

Nuclear Regulatory Commission

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