

TEN THOUSAND COMMANDMENTS

*An Annual Snapshot of the
Federal Regulatory State*

CLYDE WAYNE CREWS JR.

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2017 Edition

by Clyde Wayne Crews Jr.

Executive Summary

When the era of executive regulation began in the 1920s, few likely imagined the dense tangle of rules that it would produce or how they would envelop the economy and society. But over decades, the federal regulatory state has continued to grow, with rules accumulating year after year. Members of both major political parties have long recognized that federal regulatory burdens can operate as a hidden tax.¹ President Donald Trump has echoed that view.² In response,

his administration issued a memorandum titled “Regulatory Freeze Pending Review” to executive branch agencies.³ (That is a typical step taken by new presidents wishing to review their predecessor’s pending actions and to prioritize their own.⁴) The president has also issued a series of executive actions related to reforming the regulatory process (see Box 1). Such action is needed given the growing costs of federal regulation.

Box 1. Executive Actions on Regulatory Process Reform during Trump’s First 100 Days

- **Presidential Memorandum.** Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing, January 24, 2017.⁵
- **Executive Order 13766.** Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects, January 24, 2017.⁶
- **Presidential Executive Order 13771.** Reducing Regulation and Controlling Regulatory Costs, January 30, 2017.⁷
- **Presidential Executive Order 13772.** Core Principles for Regulating the United States Financial System, February 3, 2017.⁸
- **Presidential Executive Order 13777.** Enforcing the Regulatory Reform Agenda, February 24, 2017.⁹
- **Presidential Executive Order 13789.** Identifying and Reducing Tax Regulatory Burdens, April 21, 2017.¹⁰

*Cost–benefit
analysis relies
primarily on
agency self-
reporting.*

Reducing overspending and relieving regulatory burdens are vital to the nation's economic health. But the cost of government extends beyond what Washington taxes and spends.

Budgetary pressures can incentivize lawmakers to impose off-budget regulations on the private sector rather than add to unpopular deficit spending. Unlike on-budget spending, regulatory costs remain largely hidden from public view, which can make regulation overly attractive to lawmakers. For example, a new government program like job training could involve either increasing government spending or imposing new regulations that require businesses to provide such training. Spread throughout the economy, the costs of such rules and mandates pile up high. This report is the latest in an annual series that attempts to quantify the costs of the federal regulatory state.

For context, consider the level of federal spending. In January 2017, the Congressional Budget Office reported outlays for fiscal year (FY) 2016 of \$3.854 trillion.¹¹ Discretionary, entitlement, and interest spending is projected to surpass \$4 trillion in FY 2018 and to top \$5 trillion by FY 2022.¹² The national debt now stands at \$19.95 trillion.¹³ Yet the federal government's reach extends far beyond its taxes, deficits, and borrowing. Federal environmental, safety and health, and economic regulations affect the economy by hundreds of billions—even trillions—of dollars annually.

Along with spending, government heavily influences society through regulation. Like federal spending, regulatory costs should be closely tracked and disclosed annually, and periodic housecleaning should be performed. The limited cost-benefit analysis currently undertaken at the agency level covers only a fraction of rules.¹⁴ Furthermore, cost-benefit analysis relies primarily on agency self-reporting. Regulators are reluctant to acknowledge when a rule's benefits do not justify its costs. In fact, one could expect agencies to devise new and suspect categories of benefits to jus-

tify agency rulemaking activity and new endeavors.¹⁵

A major driver of overregulation is the entrenched overdelegation of rulemaking power to agencies by Congress. This problem is difficult to address. A good start would be to require expedited congressional votes on economically significant or controversial agency rules before they become binding. Lawmakers having to go on the record as supporting or opposing specific rules would help reestablish congressional accountability and affirm the principle of "no regulation without representation." In addition, federal regulatory transparency report cards, similar to the presentation in this report, could be issued each year to distill information for the public and policy makers about the scope of the regulatory state.¹⁶

Firms generally pass the costs of some taxes along to consumers.¹⁷ Some regulatory compliance costs borne by businesses will find their way into the prices that consumers pay, will affect the wages that workers earn, and will hinder growth and prosperity. Precise regulatory costs are not fully known because, unlike taxes, they are unbudgeted and often indirect.¹⁸ But scattered government and private data exist about the number of regulations issued, their costs and effects, and the agencies that issue them. Compiling some of that information can shed some light on the cost of the federal regulatory state. That goal is central to the annual *Ten Thousand Commandments* report. Highlights of the current edition follow:

- Based on federal government data, past reports, and contemporary studies, this report highlights regulatory compliance and economic impacts of federal intervention of \$1.9 trillion annually.¹⁹
- The Weidenbaum Center at Washington University in St. Louis and the George Washington University Regulatory Studies Center in Washington, D.C., jointly estimate that agencies spent \$63 billion in fiscal year 2016 to administer the federal regulatory state. Adding the \$1.9 trillion in off-budget compliance costs

- brings the total reckoned regulatory enterprise to about \$1.963 trillion.
- If it were a country, U.S. regulation would be the world's seventh-largest economy, ranking behind India and ahead of Italy.
 - The estimated cost of regulation is equivalent to half the level of federal spending, which was \$3.854 trillion in 2016.
 - Regulatory costs of \$1.9 trillion amount to 10 percent of the U.S. gross domestic product, which was estimated at \$18.861 trillion in 2016 by the Commerce Department's Bureau of Economic Analysis.
 - When regulatory costs are combined with federal FY 2016 outlays of \$3.854 trillion, the federal government's share of the entire economy reaches 30 percent (not including state and local spending and regulation).
 - During calendar year 2016, Congress enacted 214 laws, whereas agencies issued 3,853 rules. Thus, 18 rules were issued for every law enacted. This "Unconstitutionality Index"—the ratio of regulations issued by agencies to laws passed by Congress and signed by the president—highlights the delegation of lawmaking power to unelected agency officials. The ratio was 30 in 2015. The average for the past decade has been 27.
 - If one assumed that all costs of federal regulation and intervention flowed all the way down to households, U.S. households would "pay" \$14,809 annually on average in a regulatory hidden tax. That amounts to 21 percent of the average income of \$69,629 and 26.45 percent of the expenditure budget of \$55,978. The "tax" exceeds every item in the budget except housing. More is "spent" on embedded regulation than on health care, food, transportation, entertainment, apparel, services, and savings.
 - Sixty federal departments, agencies, and commissions have 3,318 regulatory actions at various stages of implementation, according to the fall 2016 "Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions."
 - Of the 3,318 regulations in the pipeline, 193 are "economically significant" rules, which the federal government defines as having annual effects on the economy of \$100 million or more. Assuming that those rulemaking effects are primarily regulatory rather than deregulatory implies roughly \$19 billion yearly in future off-budget economic effects in the works.
 - The costs of the regulatory hidden tax surpass federal individual and corporate income tax receipts, which totaled a combined \$1.92 trillion in 2016 (\$1.628 trillion in estimated individual income tax revenues and \$292.6 billion in estimated corporate income tax revenues).
 - Regulatory costs rival corporate pretax profits of \$2.138 trillion.
 - The *Federal Register* finished 2016 at 95,894 pages, the highest level in its history and 19 percent higher than the previous year's 80,260 pages.
 - Of the top 10 all-time-high *Federal Register* page counts, seven occurred under President Barack Obama.
 - *Federal Register* pages devoted specifically to final rules in 2016 stood at 38,652, compared with 24,694 in 2015. This new record shatters 2013's record high of 26,417 by 46 percent.
 - The 2016 *Federal Register* contained 3,853 completed rules, compared with 3,410 final rules the year before. In addition, at year-end, 2,419 proposed rules were in the pipeline (compared with 2,342 the year before).
 - Since 1993, when the first edition of *Ten Thousand Commandments* was published, 98,099 rules have been issued. Since the *Federal Register* first began itemizing them in 1976, there have been 195,189 rules.
 - President George W. Bush's administration averaged 63 "major" rules (a somewhat broader category than "economically significant") annually during his eight years in office. Obama averaged 86, or a 36 percent higher average annual output than that of Bush. Obama issued 685 major rules during his term, compared with Bush's 505.

- For completed economically significant rules (a slightly narrower category than “major”), the average for Barack Obama’s eight years was 69; George W. Bush’s average over his term was 49.
- Of the 3,318 regulations now in the works, 671 affect small businesses. Of those, 412 required a regulatory flexibility analysis, up from 386 in the past year. An additional 259 were otherwise noted by agencies to affect small businesses in some fashion. Although the combined reported number of rules affecting small business is down recently, the average of Obama’s eight years, 406, exceeds Bush’s eight-year average of 377.
- The five most active rule-producing entities—the Departments of the Treasury, the Interior, Transportation, and Commerce and the Environmental Protection Agency—account for 1,428 rules, or 43 percent of all rules in the Unified Agenda pipeline.
- Since the nation’s founding, more than 15,285 executive orders have been issued. President Obama issued a total of 276, below President George W. Bush’s 291.
- President George W. Bush published 131 memoranda in the *Federal Register* over his entire presidency, whereas President Barack Obama published 257.
- Public notices in the *Federal Register* normally exceed 24,000 annually, with uncounted guidance documents and other proclamations with potential regulatory effect among them. There were 24,557 notices in 2016. There have been 550,489 public notices since 1994 and well over a million since the 1970s.

Introduction: Toward a Regulatory Budget

When Congress spends money, a modicum of disclosure helps voters hold their representatives accountable. Washington funds many programs either by raising taxes or by borrowing, promising to repay with interest from future tax collections. Taxpayers can observe those decisions to at least some degree during the authorization and appropriations processes, and they can inspect the costs of programs and agencies in Congressional Budget Office (CBO) publications²⁰ and the federal budget's historical tables.²¹

Congress also “funds” objectives and programs through regulatory mandates. Rather than taxing and paying directly, federal regulation compels the private sector, as well as state and local governments, to bear the costs of federal initiatives. Regulation is essentially an off-budget form of taxation and spending.

Because the costs and economic effects of regulatory compliance are not budgeted and disclosed the way that federal spending is, regulatory initiatives can commandeer private sector resources with comparatively little public fuss. Policy makers find it easier to impose regulatory costs than to embark on government spending because of the former's lack of disclosure and accountability for costs. And when regulatory compliance costs prove burdensome, Congress can escape ac-

countability by blaming an agency for issuing an unpopular rule.

This edition of *Ten Thousand Commandments* helps illustrate the need for a regulatory budget to counter these dynamics. It contains four sections:

1. An overview of the costs and scope of the regulatory state, including its estimated size compared with federal budgetary components and gross domestic product (GDP);
2. An analysis of trends in the numbers of regulations issued by agencies, based on information provided in the *Federal Register* and in “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions”;
3. Recommendations for reform that emphasize improving congressional accountability for rulemaking; and
4. An appendix containing historical tables of regulatory trends over past decades.

Although challenging, it is possible to get a sense of the very substantial costs of the regulatory state. For the good of the nation's economic health and the welfare of people as both citizens and consumers, the regulatory process should be made more transparent, brought under democratic control, and required to provide clear net benefits.

When regulatory compliance costs prove burdensome, Congress can escape accountability by blaming an agency for issuing an unpopular rule.

Table I. The Regulatory State: A 2016 Overview

	Year-End 2016	1-Year Change	5-Year Change (2012–2016)	10-Year Change (2007–2016)
Total regulatory costs	\$1.9 trillion	n/a	n/a	n/a
Agency enforcement budgets	\$63.0 billion	0.7%	2.1%	24.6%
<i>Federal Register</i> pages	95,894	19.5%	21.4%	33.0%
Devoted to final rules	38,652	56.5%	56.5%	69.7%
<i>Federal Register</i> final rules	3,853	13.0%	3.9%	7.2%
Code of Federal Regulations pages	178,277	–0.6%	5.3%	15.7%
Total rules in Agenda pipeline	3,318	0.6%	–18.3%	–14.5%
Completed	665	20.0%	–43.3%	–2.8%
Active	2,095	–6.6%	–12.2%	–13.6%
Long term	558	11.8%	10.9%	–27.9%
“Economically significant” rules in the year-end pipeline	193	–11.5%	–13.8%	20.6%
Completed	47	30.6%	–17.5%	80.8%
Active	113	–24.2%	–16.9%	9.7%
Long term	33	0.0%	6.5%	6.5%
Rules affecting small business	671	–0.4%	–21.4%	–11.4%
Regulatory flexibility analysis required	412	6.7%	–12.3%	9.9%
Regulatory flexibility analysis not required	259	–10.1%	–32.6%	–32.2%
Rules affecting state governments	355	–13.2%	–20.0%	–34.1%
Rules affecting local governments	211	–17.3%	–21.3%	–36.8%
GAO Congressional Review Act reports on major rules	115	51.3%	–69.1%	88.5%
FCC Breakdown				
Final rules (<i>Federal Register</i>)	90	0.0%	–17.4%	–17.4%
FCC rules in Agenda	122	–8.3%	3.4%	–15.9%
FCC rules affecting small business	92	–7.1%	3.4%	–15.6%
EPA Breakdown				
Final rules (<i>Federal Register</i>)	558	–3.6%	–12.1%	18.0%
EPA rules in Agenda	203	8.0%	–9.0%	–39.6%
EPA rules affecting small business	14	16.7%	–71.4%	–83.5%

n/a = not applicable.

The Cost of Regulation and Intervention

Policy makers should disclose regulatory costs so that the choice to regulate can get full consideration. The costs that Congress imposes indirectly through regulation appear substantial, as several studies over the years have shown. The coverage and methodology of such studies vary, but they all suggest that regulation is a substantial government activity that deserves greater consideration.

The Office of Management and Budget (OMB) annually surveys regulatory costs and benefits. Its *2016 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act* pegs the annual costs of 129 selected “major” regulations from 2005 to 2015 at between \$74 billion and \$110 billion (in 2014 dollars).²² The estimated range for benefits in the new report spanned \$269 billion to \$872 billion (in 2014 dollars).²³ According to OMB, 21 rules subjected to both benefit and cost analyses during the fiscal year ending September 2015 show added annual costs of \$5.5 to \$6.9 billion (2014 dollars).²⁴

The OMB cost–benefit breakdown incorporates only those rules for which agencies have expressed both benefits and costs in quantitative and monetary terms. The previous year’s OMB report included only 13 rules that had both benefit and cost analyses. It reported additional costs ranging from \$3 billion to \$4.4 billion (in 2010 dollars).²⁵ Just seven rules were subjected to cost and benefit analyses the year before that.²⁶ Several billion dollars more in annual rule costs generally appear in these reports for rules with only cost estimates, but they are not tallied and highlighted

by OMB. The agency omits many smaller rules from its analysis.

In a 2014 report, the National Association of Manufacturers (NAM) modeled 2012 total annual regulatory costs in the economy of \$2.028 trillion (in 2014 dollars).²⁷ Earlier governmental assessments before and after the turn of the century from OMB, the Government Accountability Office (GAO), and the Small Business Administration (SBA) have also found aggregate annual costs in the hundreds of billions of dollars, some well in excess of \$1 trillion in today’s dollars (see Table 2). Still another report, by economists John W. Dawson of Appalachian State University and John J. Seater of North Carolina State University, pushes regulatory costs into the stratosphere by counting the long-term growth reduction caused by decades of increased opportunity costs imposed by economic regulation. Their report counts tens of trillions of dollars in lost GDP annually.²⁸

The Mercatus Center at George Mason University in Arlington, Virginia, has a report that uses a microeconomic model to try to determine “how much regulation distorts the investment decisions of firms and thus hampers long-run economic growth.” If regulatory burdens had remained constant since 1980, according to the Mercatus report, the 2012 U.S. economy would have been 25 percent larger. Put another way, during that time, the economy grew by at least \$4 trillion less each year than it could have.²⁹

The SBA used to publish a comprehensive assessment of the federal regulatory apparatus that was unfortunately discontinued in

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

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

Sources: Thomas D. Hopkins, "Costs of Regulation: Filling the Gaps. Report prepared for the Regulatory Information Service Center," Washington, D.C., August 1992, <http://www.thecre.com/pdf/COST%20OF%20REGULATION%20FILLING%20THE%20GAPS.pdf>; General Accountability Office, Briefing Report to the Ranking Minority Member, Committee on Governmental Affairs, U.S. Senate, Regulatory Reform: Information on Costs, Cost Effectiveness, and Mandated Deadlines for Regulations, (GAO/PEMD 95 18BR), March 1995, <http://archive.gao.gov/t2pbat/1/153774.pdf>; Thomas D. Hopkins, "The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress," Office of the Chief Counsel for Advocacy, U.S. Small Business Administration, Washington, D.C., October 1995, http://www.sba.gov/advo/laws/archive/law_brd.html; W. Mark Crain and Thomas D. Hopkins, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, RFP No. SBAHQ-00-R-0027, October 2001, <http://www.sba.gov/advo/research/rs207tot.pdf>; Office of Management and Budget, "Draft Report to Congress on the Costs and Benefits of Federal Regulations," Federal Register, March 28, 2002, pp. 15037-15038, <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/cbreport.pdf>; W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, Contract no. SBAHQ-03-M-0522, September 2005, <https://www.sba.gov/sites/default/files/rs264tot.pdf>; National Association of Manufacturers, "The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business," W. Mark Crain and Nicole V. Crain, September 10, 2014, <http://www.nam.org/~media/A7A8456F3484E498F40CB46D6167F31.ashx>. Some figures here are adjusted to 2013 by the change in the consumer price index between 2001 and 2013 (1.316), and between 1995 and 2013, derived from "CPI Detailed Report Data for April 2014," Bureau of Labor Statistics, Washington, D.C. (Table 24. Historical Consumer Price Index for All Urban Consumers (CPI-U), U.S. city average, all items), <http://www.bls.gov/cpi/cpid1404.pdf>.

2010. This report estimated regulatory compliance costs of \$1.75 trillion for 2008.³⁰

The primary purpose of the SBA report series was to examine the extent to which regulatory costs impose burdens on small firms, which have higher per-employee regulatory costs than larger ones. The SBA and earlier OMB surveys have traditionally conveyed regulatory costs using the following categories:

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

The National Association of Manufacturers’ model finds overall annual per-employee regulatory costs to firms of \$9,991 on average.³¹ But the effects by firm size are disparate. Table 3 shows that per-employee regulatory costs for firms of fewer than 50 workers can be 29 percent greater than those for larger firms—\$11,724 for smaller firms, compared with \$9,083 for larger ones.³²

The NAM model estimates that regulatory costs now exceed \$2 trillion annually, whereas other estimates suggest more.³³ To allow for incremental updates to an aggregate baseline, one may compile estimates of compliance

and economic costs for the federal regulatory enterprise mainly by using the OMB annual *Report to Congress* on costs and benefits over the years, data such as paperwork burdens described in OMB’s annual *Information Collection Budget*, the few independent agency cost estimates available, and other publicly available material and third-party assessments. The goal is for data to converge over time on some annual baseline reckoning that encompasses new information about economic and regulatory cost burdens. Using this approach, we estimate across-the-board federal regulatory costs of \$1.902 trillion annually (see Table 1 and Figure 1).

There is much more work to be done. Because of recent developments—including major financial, health, and environmental regulations—some substantial regulatory costs are not captured by most assessments.³⁴ Other long-recognized costs—such as indirect costs and negative effects on innovation or productivity—remain stubbornly difficult to assess. That may produce underestimates of the total regulatory burden.³⁵ Nonetheless, it is clear that regulation imposes costs to rival government taxation and spending. Some comparisons help place the cost of regulation in perspective.

The U.S. government saw \$3.854 trillion in federal outlays in FY 2016 and a deficit of \$587 billion. Figure 2 compares deficits

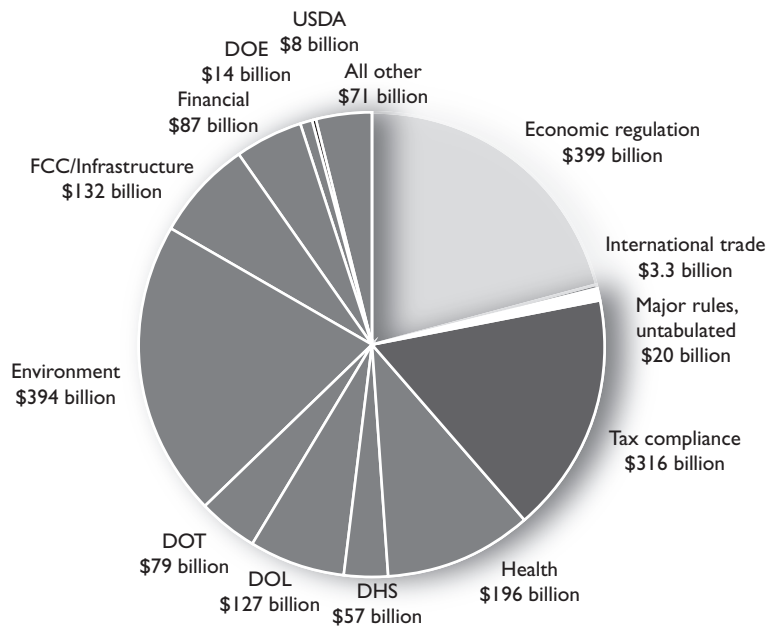
Per-employee regulatory costs for firms of fewer than 50 workers can be 29 percent greater than those for larger firms.

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

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

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

Figure 1. Annual Cost of Federal Regulation and Intervention, 2017 Estimate, \$1.902 Trillion



Source: Wayne Crews, *Tip of the Costberg: On the Invalidity of All Cost of Regulation Estimates and the Need to Compile Them Anyway*, 2017 ed., <http://ssrn.com/abstract=2502883>.

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

Regulatory compliance costs are equivalent to nearly half the projected level of fiscal budget outlays and well over three times the anticipated deficit.

and outlays for 2015–2016 and projected amounts for 2017 with our regulatory cost estimate of \$1.9 trillion. For 2017, estimated regulatory compliance costs are equivalent to nearly half the projected level of fiscal budget outlays of \$3,963 and well over three times the anticipated deficit of \$559 billion.

Regulatory Costs versus Income Taxes and Corporate Profits

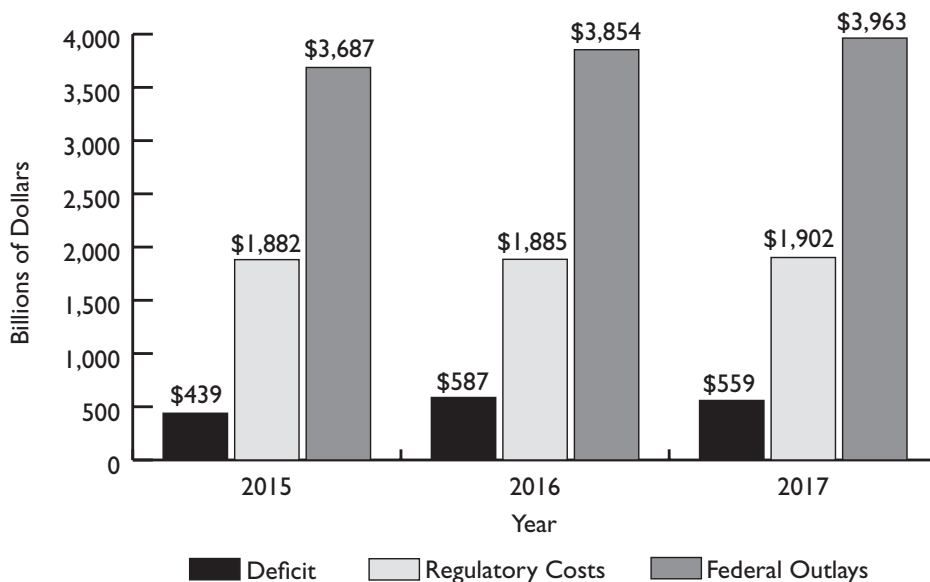
Regulatory costs easily rival revenues from individual income taxes and corporate taxes combined. As Figure 3 shows, regulatory costs stand well above estimated 2016 individual income tax revenues of \$1.628 trillion (individual income tax receipts fell substantially during the economic downturn but are rising again and

have reached record levels).³⁶ Corporate income taxes collected by the U.S. government—estimated at \$292.6 billion for 2016—are dwarfed by regulatory costs (corporate tax receipts declined by half during the recent downturn).³⁷ The combination of the two, \$1.92 trillion, just exceeds our regulatory cost estimate of \$1.9 trillion. Regulatory compliance costs are approaching the level of corporate pretax profits, which were \$2.138 trillion in 2015.³⁸

Regulatory Costs versus GDP

In January 2017, the Commerce Department's Bureau of Economic Analysis estimated U.S. GDP for 2016 at \$18.861 trillion.³⁹ The total regulatory cost figure of \$1.9 trillion annually is equivalent to ap-

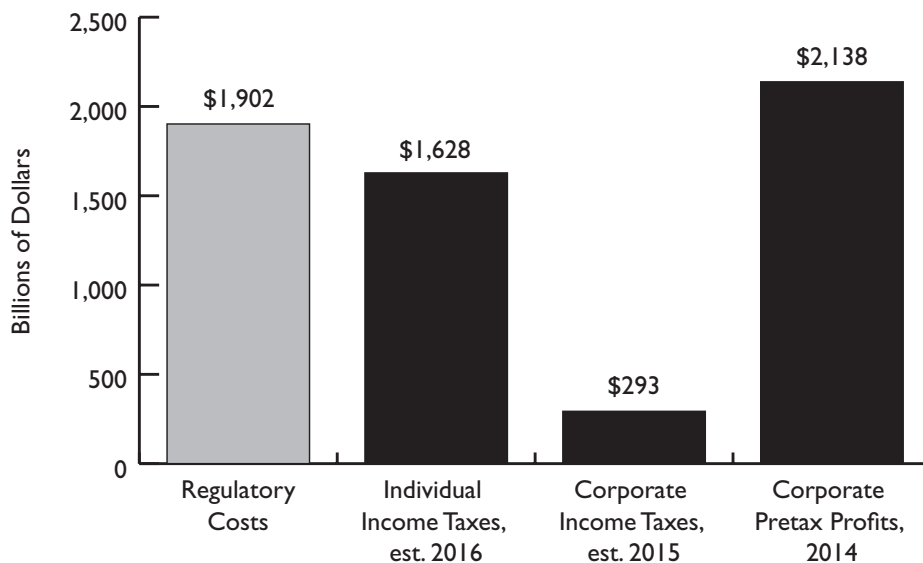
Figure 2. Federal Outlays and Deficits Compared with Federal Regulatory Costs (2015, 2016, and projected 2017)



Sources: 2015 deficit and outlays from Congressional Budget Office (CBO), *The Budget and Economic Outlook: Fiscal Years 2016 to 2026*, January 2016, Table I-2, "CBO's Baseline Budget Projections," p. 15, <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51129-2016outlook.pdf>. 2016 actual and 2017 projected deficit and outlays from CBO, *The Budget and Economic Outlook: Fiscal Years 2017 to 2027*, January 2017, Table I-1, "CBO's Baseline Budget Projections, by Category" p. 10, <https://www.cbo.gov/sites/default/files/115th-congress-2017-2018/reports/52370-outlook.pdf>.

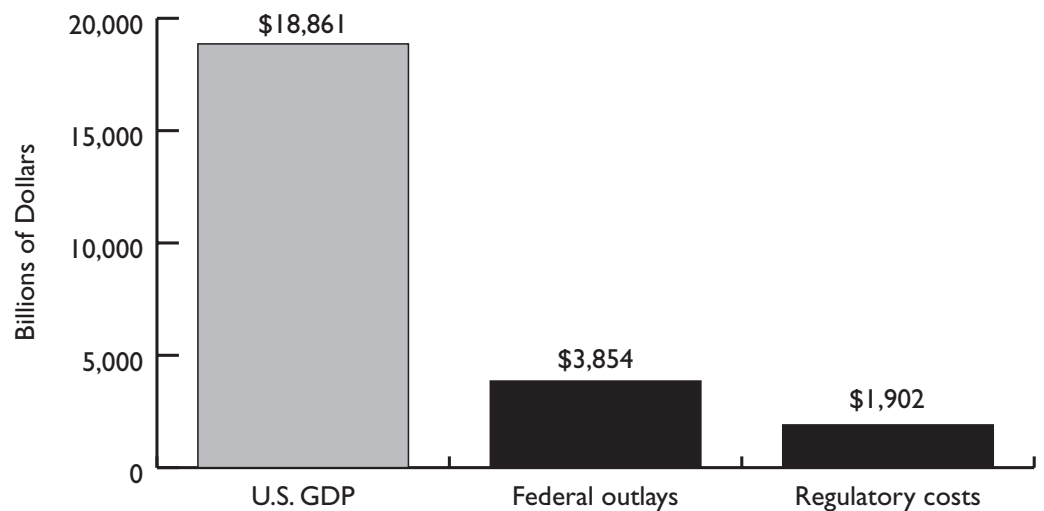
Federal deficit and outlay numbers are by fiscal year; regulatory costs by calendar year.

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



Sources: Crews, *Tip of the Costberg*, 2017 ed. Estimated 2014 tax figures from OMB, Historical Tables, Table 2.1, "Receipts by Source: 1934–2019," <http://www.whitehouse.gov/omb/budget/Historicals>. 2013 corporate pretax profits (domestic and international) from Bureau of Economic Analysis, *National Income and Product Accounts Tables*, Table 6.17D, "Corporate Profits before Tax by Industry," <http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=3&isuri=1&903=243>.

Figure 4. GDP Compared to Federal Outlays and Regulation



Sources: Crews, *Tip of the Costberg*, 2017 ed. GDP from U.S. Department of Commerce, Bureau of Economic Analysis, *National Income and Product Accounts, Gross Domestic Product: Fourth Quarter and Annual 2015 (Advance Estimate)*, January 29, 2016, <https://www.bea.gov/newsreleases/national/gdp/gdpnewsrelease.htm>. Outlays from CBO, *The Budget and Economic Outlook: Fiscal Years 2016 to 2026* January 2016, Summary Table 1, “CBO’s Baseline Budget Projections,” p. 2, <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51129-2016Outlook.pdf>.

proximately 10 percent of that amount. Combining regulatory costs with federal FY 2016 outlays of \$3.854 trillion (see Figure 2), the federal government’s share of the economy reaches \$5.754 trillion, or 30 percent. That does not include state and local spending and regulation (see Figure 4).

est economically by the two annual surveys of global economic freedom (see Figure 6).⁴¹

Regulation: A Hidden Tax on the Family Budget

Like the taxes they are required to pay, businesses will pass some regulatory costs on to consumers.⁴² The rest are passed on to workers and investors in regulated companies. By assuming a full pass-through of all such costs to consumers—most consumers are also workers and owners through stock and mutual fund holdings—we can look at the share of each household’s regulatory costs and compare it with total annual expenditures as compiled by the Labor Department’s Bureau of Labor Statistics (BLS).⁴³

For America’s 128.4 million households, or “consumer units” in BLS parlance, the average 2015 pretax income was \$69,629.⁴⁴ U.S. households “pay” \$14,809 annually in embedded regulatory or intervention costs (\$1.902 trillion in regulation divided by 128.4 million

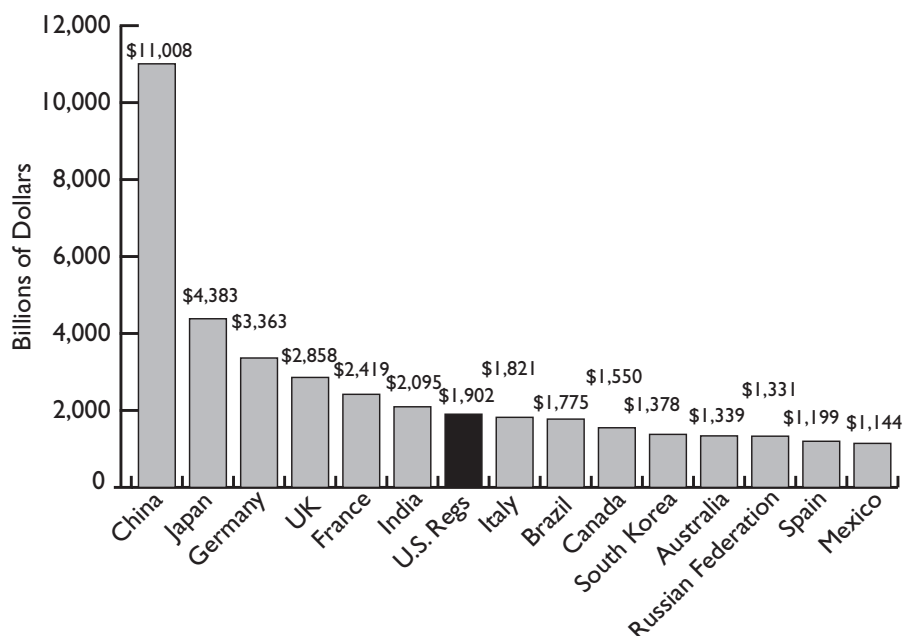
The federal government’s share of the economy reaches \$5.754 trillion, or 30 percent.

U.S. Regulation Compared with Some of the World’s Largest and Freest Economies

Not counting the United States, only six countries have GDPs that exceed the estimated cost of U.S. regulation. U.S. regulatory costs surpass the 2015 GDP of both Canada, at \$1.55 trillion, and Mexico, at \$1.144 trillion. If U.S. regulatory costs of \$1.9 trillion were a country, it would be the world’s seventh-largest economy, ranking behind India and ahead of Italy (see Figure 5).⁴⁰

U.S. regulatory costs of \$1.9 trillion exceed the output of many of the world’s major economies, including those ranked as the fre-

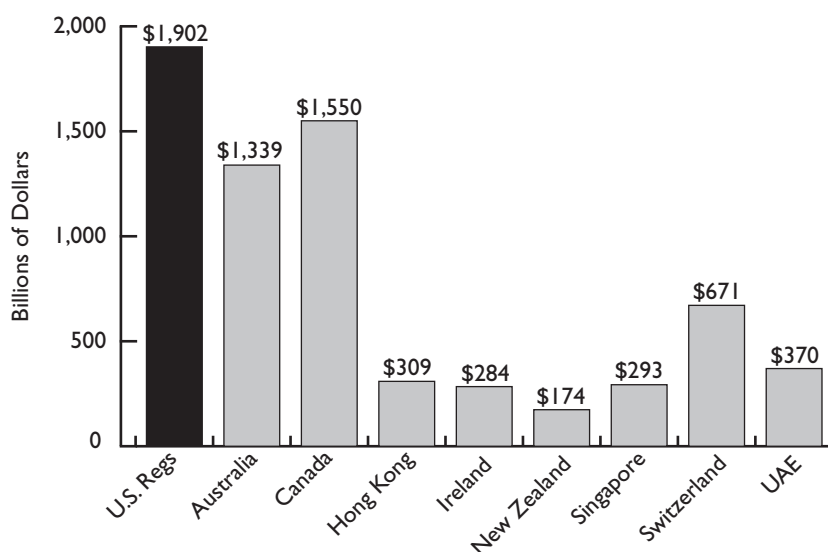
Figure 5. U.S. Regulatory Costs Compared to 2015 Gross Domestic Product of the World's Largest Economies



Source: Crews, *Tip of the Costberg*, 2017 ed. Gross Domestic Product data from World Bank, Washington, D.C., GDP Data, <http://data.worldbank.org/indicator/NY.GDPMKTP.CD/countries>, and <http://databank.worldbank.org/data/download/GDP.pdf>.

If it were an “economy,” U.S. regulations would be the seventh largest.

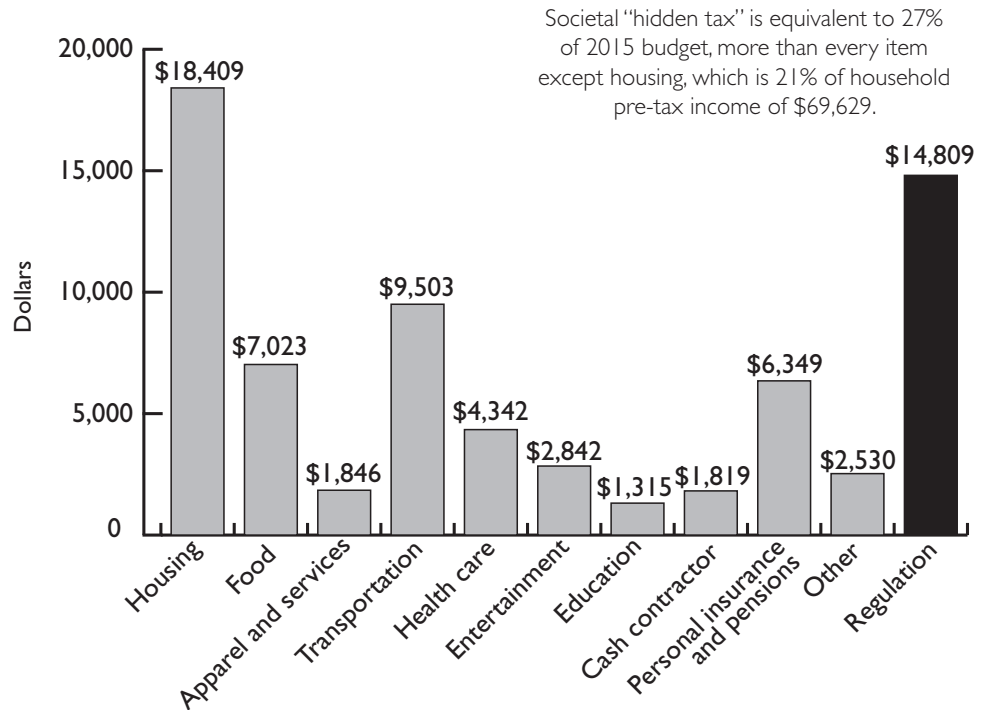
Figure 6. U.S. Regulatory Load Compared to 2015 Gross Domestic Product in World Economies Regarded as Most Free



Sources: Crews, *Tip of the Costberg*, 2017 ed. Gross Domestic Product data from World Bank, Washington, D.C., GDP Data, <http://data.worldbank.org/indicator/NY.GDPMKTP.CD/countries>. New Zealand is from 2011 data.

“Free” economies consist of those in the top 10 of both the Heritage Foundation/*Wall Street Journal* Index of Economic Freedom and the Fraser Institute/Cato Institute *Economic Freedom of the World* report.

Figure 7. The U.S. Household Expense Budget of \$55,978 Compared to Regulatory Costs



Sources: Bureau of Labor Statistics, author arithmetic.

Proxy for households here is BLS depiction of 128,437,000 "consumer units," which comprise "families, single persons living alone or sharing a household with others but who are financially independent, or two or more persons living together who share expenses."

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

"consumer units"), or 21 percent of average income before taxes. (The percentage is higher as a share of after-tax income.) That "hidden tax" figure is higher than every annual household budgetary expenditure item except housing. Regulatory costs amount to up to 27 percent of the typical household's expenditure budget. More is "spent" on embedded or hidden regulation in society than on items like health care, food, transportation, entertainment, apparel, services, and savings (see Figure 7). Of course, some costs of regulation are not hidden. Consumers pay for regulatory agencies directly through taxes.

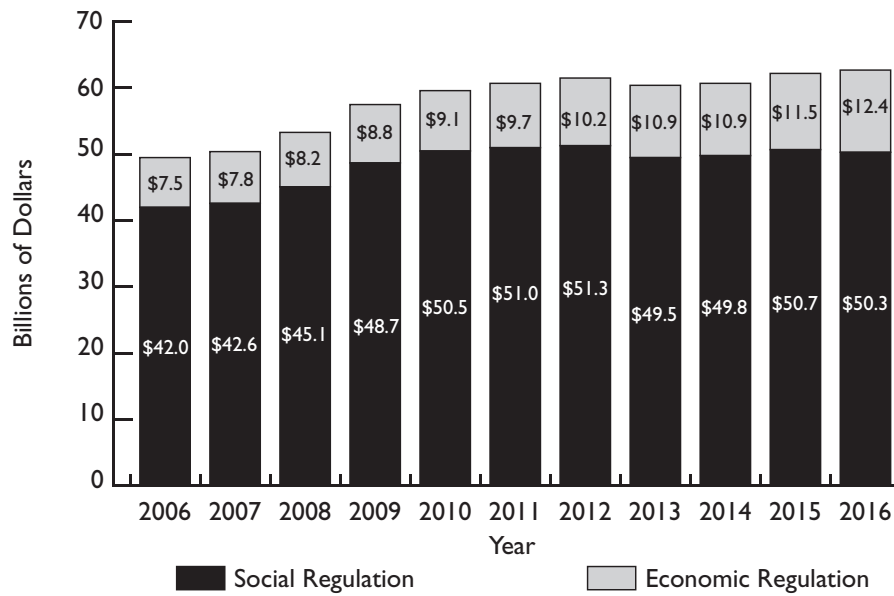
The Direct Costs of Regulatory Policing

Regulatory cost estimates generally capture costs paid by the public, but those estimates

do not include administrative costs—the on-budget amounts spent by federal agencies to produce and enforce rules. The Weidenbaum Center at Washington University in St. Louis and the George Washington University Regulatory Studies Center regularly examine the president's annual budget proposal to compile the administrative costs of developing and enforcing rules. These amounts—as funds that taxpayers contribute to support agencies' administrative operations—are disclosed in the federal budget.

According to these estimates, FY 2016 enforcement costs incurred by federal departments and agencies stood at \$63 billion (in constant 2016 dollars, adjusted from original 2009 dollars) (Figure 8).⁴⁵ Of that amount, \$12.4 billion was spent on administering economic regulations. The larger amount, spent on writing and enforcing social and environmental regulations, was \$50.3 billion.

Figure 8. Federal Agency Enforcement Budgets,
\$63 Billion Total in FY 2016



Source: Susan Dudley and Melinda Warren, Annual “Regulators’ Budget” Series, published jointly by the Regulatory Studies Center at the George Washington University and the Weidenbaum Center on the Economy, Government, and Public Policy.

Original 2009 constant dollars are adjusted here by the change in the consumer price index between 2009 and 2016, derived from Consumer Price Index tables, U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. (Table 24. All Urban Consumers (CPI-U), U.S. city average, all items), <http://www.bls.gov/cpi/tables.htm>.

In current dollars, the Environmental Protection Agency (EPA) alone spent an estimated \$5.335 billion in this latter category in 2016, accounting for 8.4 percent of the total expected to be spent by all regulatory agencies.⁴⁶ The EPA formerly accounted for the lion’s share of governmental administration and enforcement costs, but the Department of Homeland Security (DHS), at an estimated \$26.9 billion, now comprises 42.6 percent.⁴⁷

The Weidenbaum Center and the Regulatory Studies Center estimate the number of full-time-equivalent administrative and enforcement staff at 278,799 in FY 2016, up from 270,910 in 2015. The number of federal employees has increased well over 100,000 since the 2001 staffing level of 173,057.⁴⁸ Much of the post-2001 surge may be attributable to the then newly created Transportation Secu-

rity Administration’s hiring of thousands of airport screening personnel.

The \$63 billion in regulatory agency enforcement costs—\$12.4 billion plus \$50.3 billion—helps complete a picture of the federal regulatory apparatus. Adding administrative costs tabulated by the Weidenbaum Center and the Regulatory Studies Center to our \$1.9 trillion estimate brings the total 2016 regulatory cost estimate to about \$1.963 trillion.

Estimating dollar costs is one way to capture the size and scope of the federal regulatory enterprise, which is indeed massive. Another is to assess the paperwork—the dauntingly huge amount of regulatory material that agencies publish each year in the *Federal Register*.

Thousands of Pages and Rules in the *Federal Register*

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

The *Federal Register* is the daily repository of all proposed and final federal rules and regulations. Although its number of pages is often cited as a measure of regulation's scope, there are problems with relying on page counts.⁴⁹ The wordiness of rules will vary. A short rule may be costly and a lengthy one may be relatively cheap. The *Federal Register* also contains many administrative notices, corrections, rules relating to the governance of federal programs and budgets, presidential statements, and other material. They all contribute bulk and bear some relation to the flow of regulation, but they are not strictly regulations. Blank pages also sometimes appear and inflate page counts. In previous decades, blank pages numbered into the thousands owing to the Government Publishing Office's imperfect prediction of the number of pages that agencies would require.

But it is worthwhile to track the *Federal Register's* page counts and related tallies as a gross measure of regulatory activity. If the *Federal Register's* page counts were to increase at the relatively modest rate of 71 pages that occurred on January 26, and the relatively low numbers since, low page counts may signal reduced regulatory activity.⁵⁰

Federal Register Pages

At the end of 2016, the number of *Federal Register* pages stood at 95,894, 19.4 percent higher than the previous year's 80,260 pages (see Figure 9). This count was President Obama's highest level, as well as the highest level in the history of the *Federal Register*. Both 2010 and 2011 had

been the all-time record years, at 81,405 and 81,247, respectively. The 79,435 count in 2008 under President George W. Bush holds the fifth-highest title. Of the 10 all-time high *Federal Register* page counts, seven occurred during the Obama administration. (For a history of *Federal Register* page totals since 1936, see Appendix: Historical Tables, Part A.)

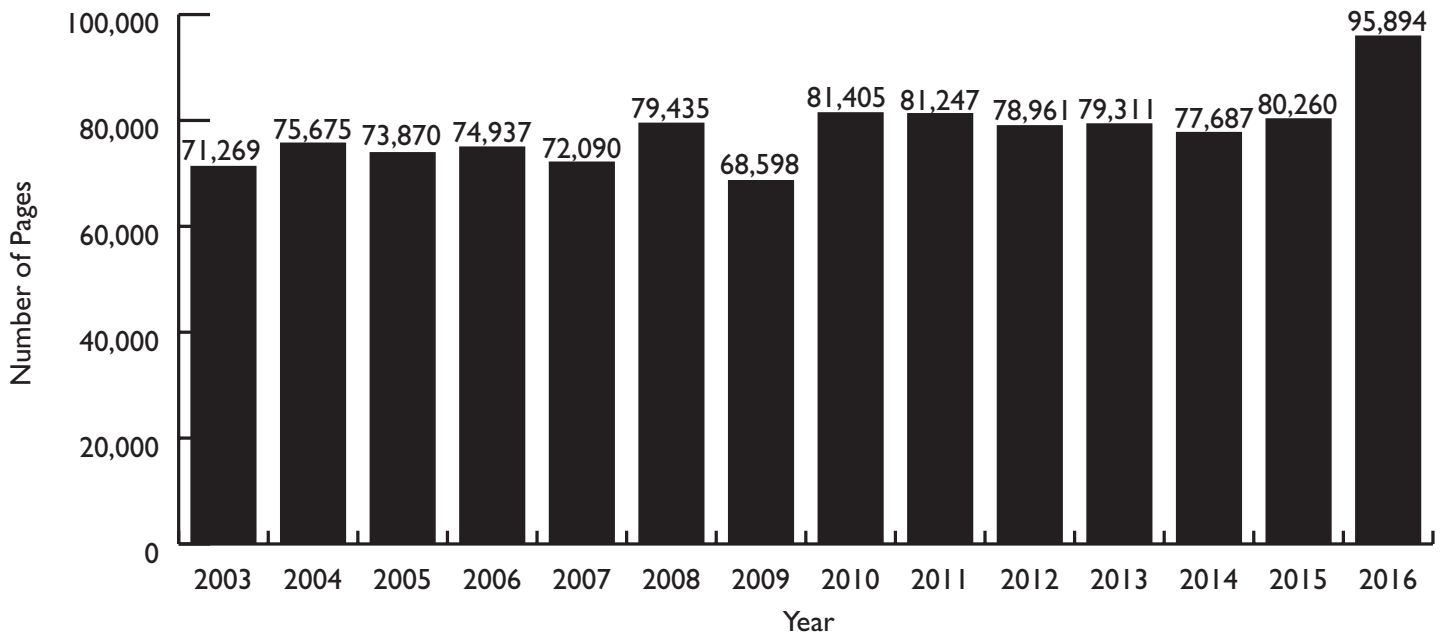
Federal Register Pages Devoted to Final Rules

Isolating the pages devoted to *final* rules might be more informative than gross page counts, because it omits pages devoted to proposed rules, agency notices, corrections, and presidential documents (although those categories can have regulatory effects too). From 2015 to 2016, the number of pages devoted to final rules jumped 56.5 percent, from 24,694 to 38,652. This new record shatters 2013's record high of 26,417 by 46.3 percent, capping the already comparatively high levels characterizing the Obama administration (see Figure 10).

Over the decade since 2007, the number of *Federal Register* pages devoted to final rules has increased by 10.5 percent. Meanwhile, the page count of proposed rules was 21,457 in 2016 compared with 2015's 22,588. Pages of proposed rules peaked at 23,193 in 2011, and they stand at a relatively high level now compared with the early 2000s and especially the 1990s.

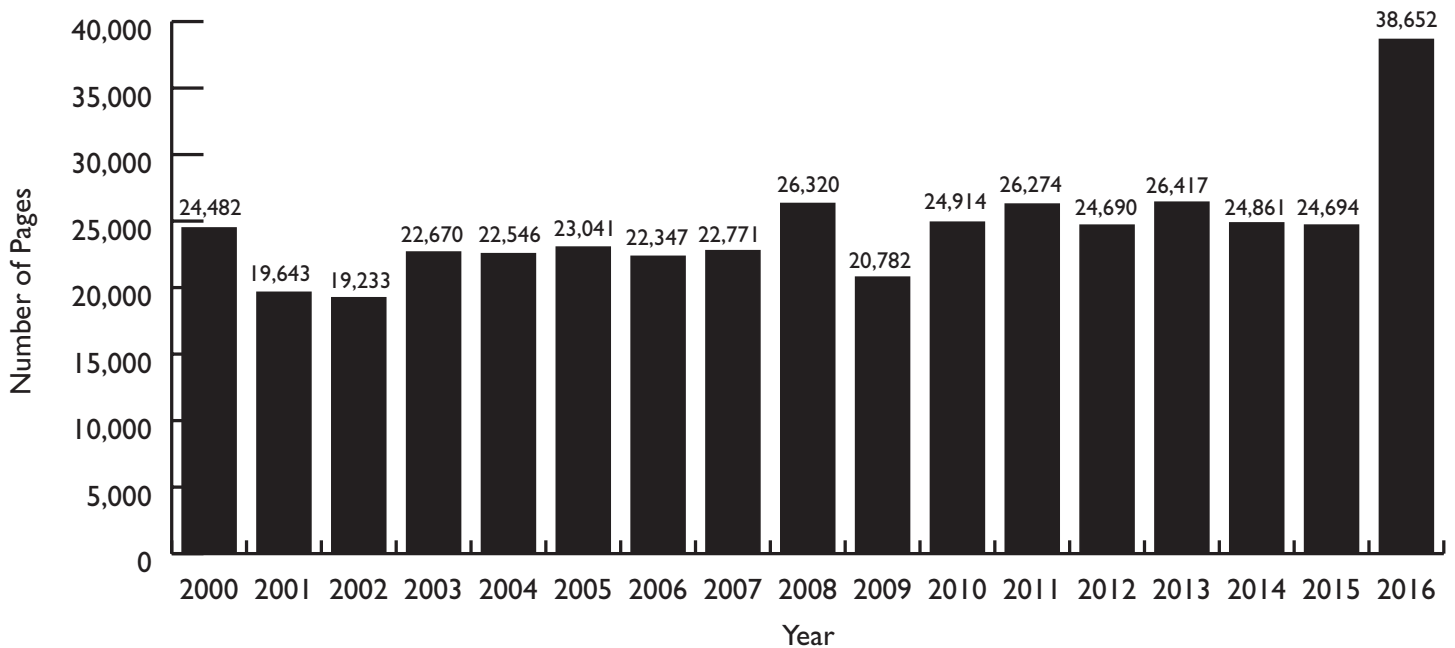
Another way of looking at *Federal Register* trends is by pages per decade (see Figure 11).

Figure 9. Number of *Federal Register* Pages, 2003–2016



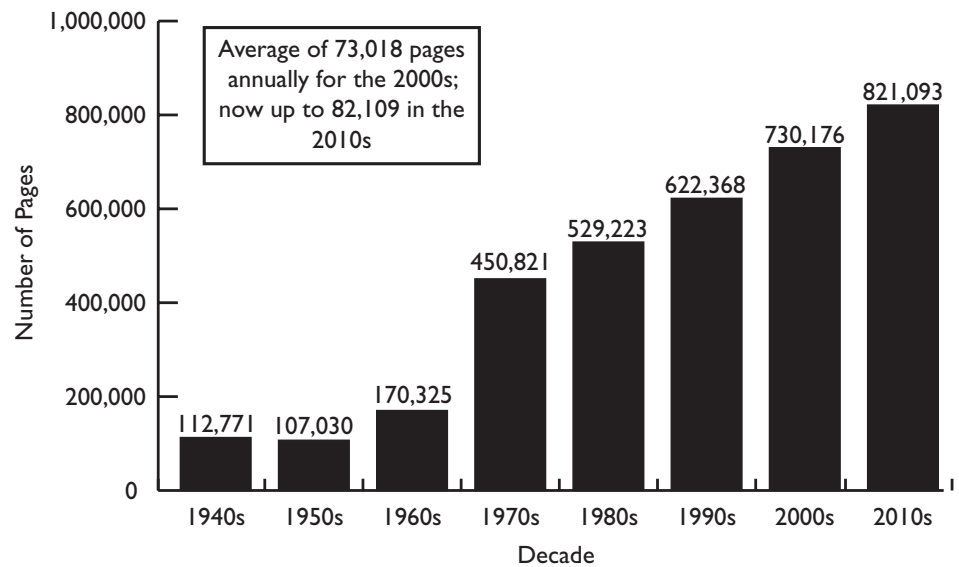
Source: National Archives and Records Administration, Office of the Federal Register.

Figure 10. *Federal Register* Pages Devoted to Final Rules, 2000–2016



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

Figure 11. *Federal Register* Pages per Decade ...
821,093 Pages Projected for the 2010s



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

2010s is a projection based on the past seven years' average. Years 2000–2009 average 73,000 annual pages; this decade averages more than 82,000 pages yearly.

If page counts hold in the current ranges, we can expect to see a considerable increase for the current decade. The last bar of Figure 11 projects the average of the past seven years of 82,109 pages for the decade as a whole (the projection at the moment is 821,093). Decade page counts could easily top 1 million in the 2020s.

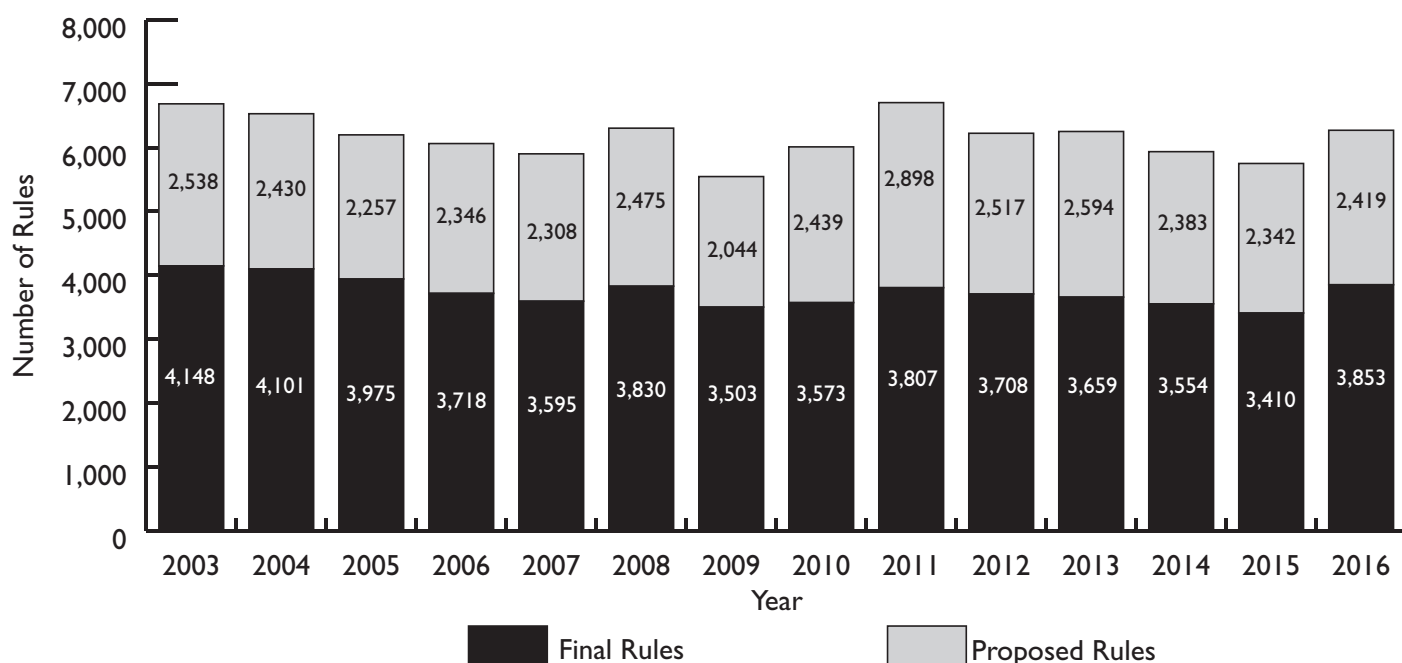
Number of Proposed and Final Rules in the *Federal Register*

Putting aside page counts, final rules in 2016 increased from 3,410 to 3,853, the highest total during the Obama administration, and the highest since 2005. The following section describes the Unified Agenda of federal regulations and examines some of the possible reasons for recent declines, such as election year considerations and informal substitutes for formal regulations that may require new forms of monitoring.

The number of final rules currently being published is lower than it was throughout the 1990s, when the average annual total of final regulations was 4,596. It is also lower than during the early years depicted in Figure 12. The average for the first decade of the 21st century, 2000–2009, was 3,948. Among those final rules in 2016, 315 were deemed “significant” under Executive Order 12966, a broader collection than the “economically significant” rules we will explore later. Several hundred “significant” final rules are now the norm. The past couple of decades saw a low of 163 in 2006 and a high of 444 in 2011.

In 2016, 2,419 proposed rules appeared in the *Federal Register*. Interestingly, even though there were 1,131 fewer pages of proposed rules during 2015–2016, the number of proposed rules in the pipeline in 2016 was greater by 77. The 2,517 proposed rules of 2012 and the 2,898 proposed in 2011 were on the high side compared with the recent

Figure 12. Number of Proposed and Final Rules in the *Federal Register*, 2003–2016



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

decade as a whole. Should that pace resume, high numbers of proposed rules (and page counts) signify likely future increases in final rules. Still, in the 1990s, far more proposed rules in the pipeline were published in fewer pages. (For the numbers of proposed and final rules and other documents issued in the *Federal Register* since 1976, see Appendix: Historical Tables, Part B.)

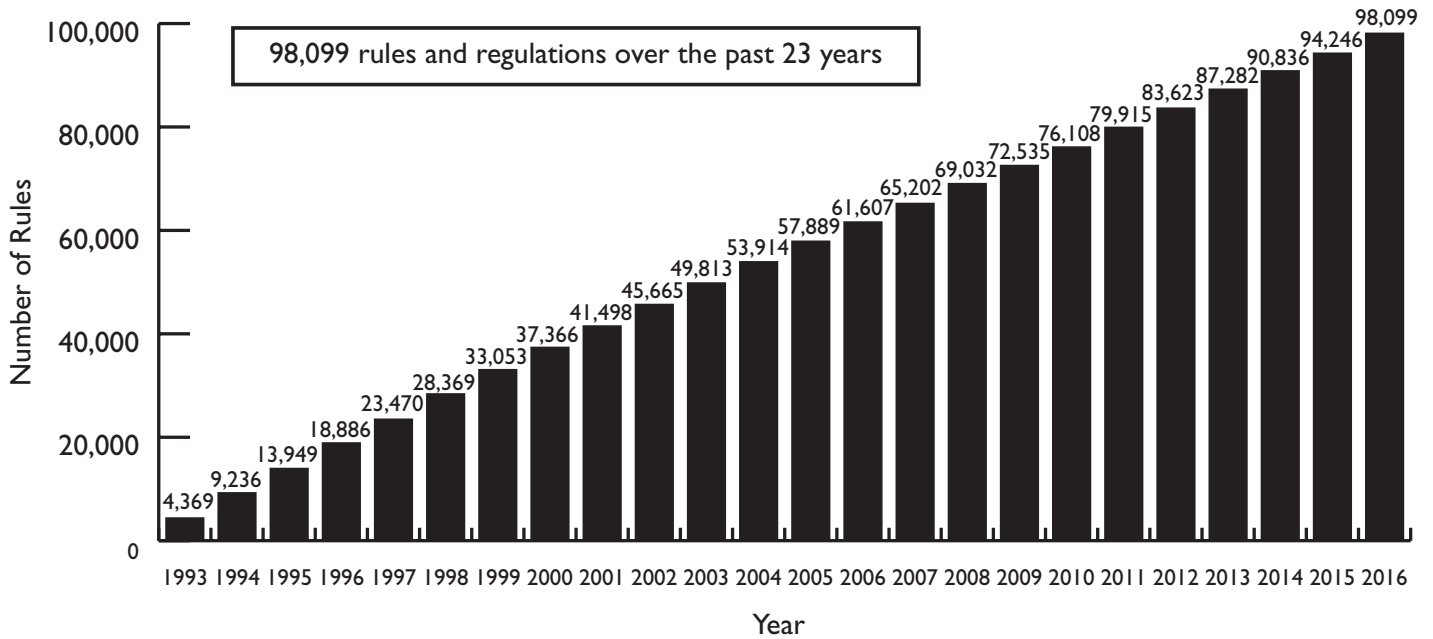
Cumulative Final Rules in the *Federal Register*

The annual outflow of at least 3,400 final rules—and often far more—has meant that 98,099 rules have been issued since 1993, when the first edition of *Ten Thousand Commandments* was published (see Figure 13). Going back to 1976, when the *Federal Register* first began itemizing them, 195,189 rules have been issued.

The Expanding Code of Federal Regulations

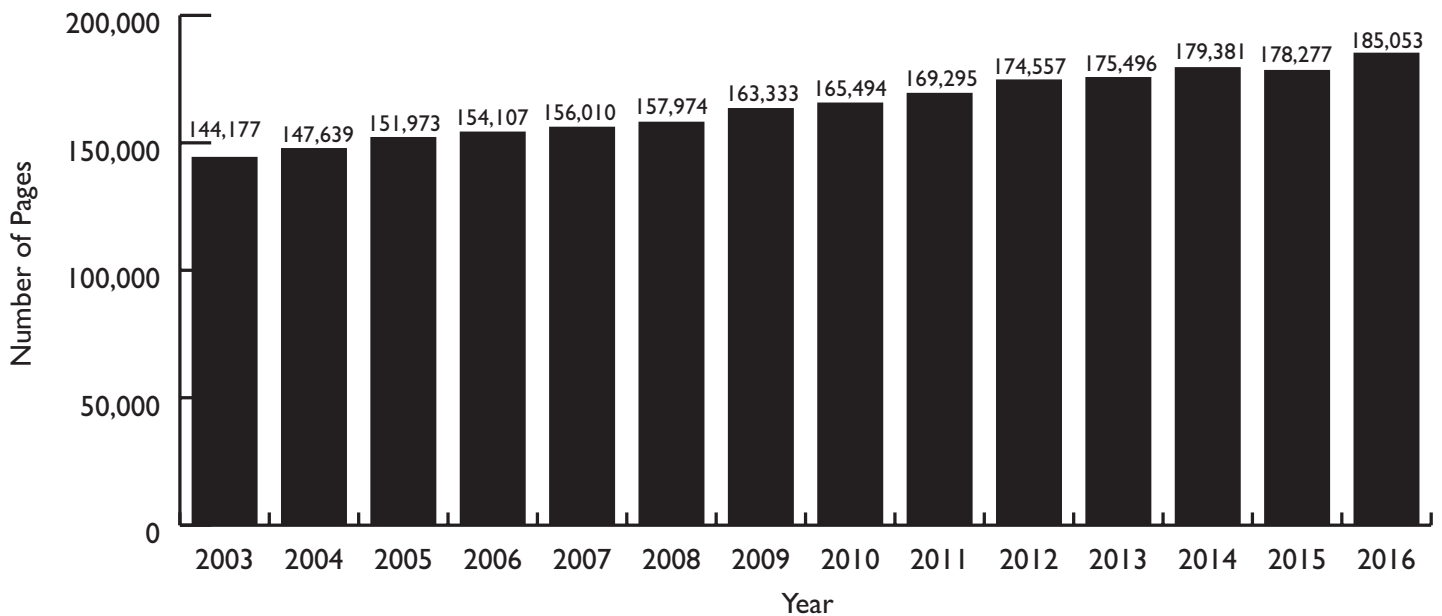
The page count for final general and permanent rules in the *Code of Federal Regulations* (CFR) is more modest than that of the *Federal Register*, but it is still considerable. In 1960, the CFR contained 22,877 pages. Since 1975, its total page count has grown from 71,224 to 185,053 at the end of 2016, including the 1,170-page index—a 160 percent increase. The number of CFR bound volumes stands at 242, compared with 133 in 1975. (See Figure 14. For the detailed breakdown numbers of pages and volumes in the CFR since 1975, see Appendix: Historical Tables, Part C.) In recent years, traditional rules and regulations have given way to new forms of mandates, which are important to track.

Figure 13. Cumulative Final Rules Published in the *Federal Register*, 1993–2016



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

Figure 14. *Code of Federal Regulations*, 185,053 Total Pages in 2016, 2003–2016



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

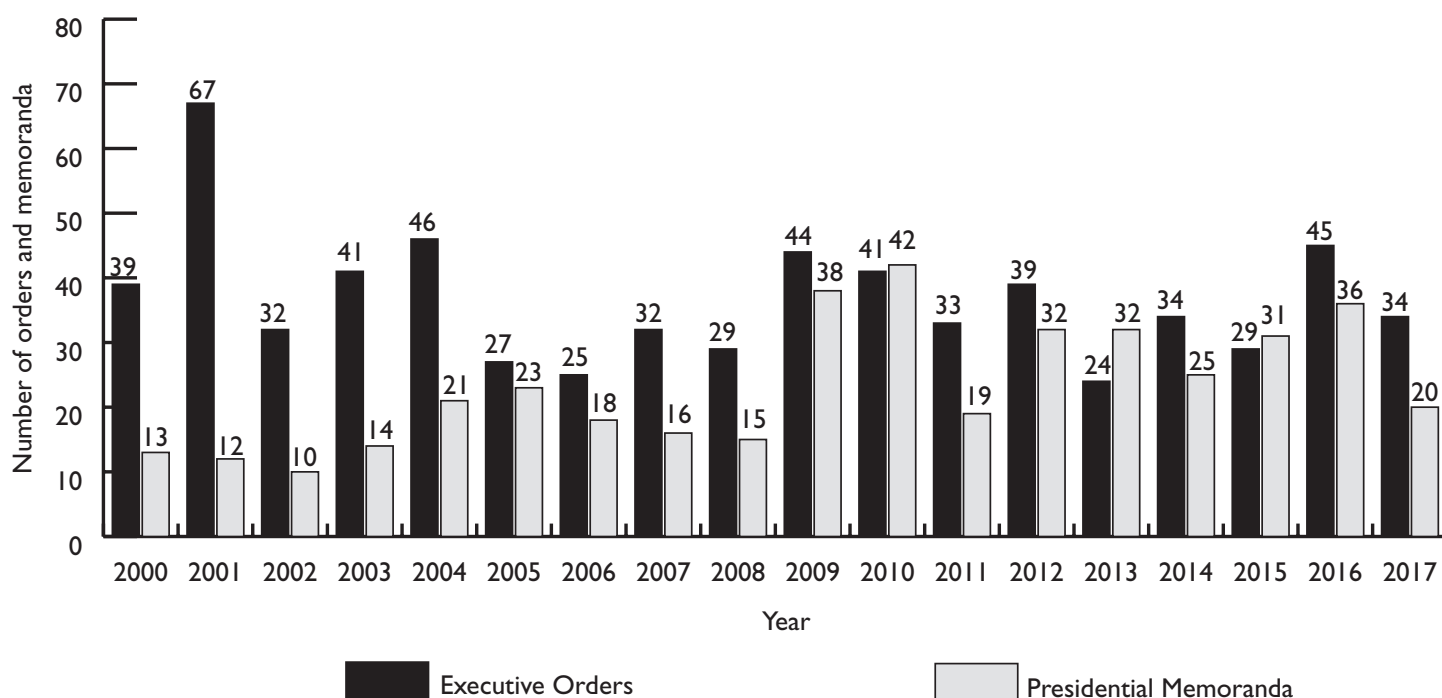
Presidential Executive Orders and Executive Memoranda

In 2014, President Obama famously pledged to use his “pen and phone” to implement parts of his policy agenda without congressional approval.⁵¹

Now, President Trump likewise stands accused by some of exceeding legitimate executive authority. Executive orders, presidential memoranda, and other executive actions make up a large component of “pen and phone” lawmaking, which is not well measured and merits heightened attention from lawmakers.⁵²

Executive orders ostensibly deal with the internal workings and operations of the federal government. Subsequent presidents can overturn them. Their use is nothing new, and they date back to President George Washington’s administration.⁵³ Consternation aside, President Obama’s executive order totals were not high compared with those of other presidents. At the end of his term, Obama had issued 276 executive orders, whereas President George W. Bush’s final tally was 291, and that of President Bill Clinton was 364, according to the National Archives’ tally (see Figure 15).⁵⁴

Figure 15. Number of Executive Orders and Presidential Memoranda, 2000–2017



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

Numbers for 2017 are as of April 28, 2017.

*The United States
existed for many
decades before a
president issued
more than two
dozen executive
orders.*

Memoranda may or may not be published, depending on the administration's own determination of "general applicability and legal effect," which make presidential memoranda difficult to count.⁵⁵ George W. Bush published 131 memoranda over his entire presidency, whereas Barack Obama issued 257 that were published in the *Federal Register*. Bill Clinton published just 14 during his presidency.⁵⁶

The pertinent question as far as regulatory burdens are concerned is what these executive orders and memoranda are used for and what they do. Executive actions can liberalize and enhance freedom, such as President Abraham Lincoln's Emancipation Proclamation. Or they can expand government power, such as President Harry Truman's failed attempt to seize control of America's steel mills⁵⁷ or President Franklin D. Roosevelt's confiscation of the nation's gold.⁵⁸

Whether lengthy or brief, orders and memoranda can have significant effects. A smaller number of them does not necessarily mean small effects. In 2014 alone, Obama memoranda created a new financial investment instrument and implemented new positive rights regarding work hours and employment preferences for federal contractors.⁵⁹ Yet Obama's Executive Order 13563 concerning regulatory review and reform was a pledge to roll back regulation. (It amounted to only a few billion dollars in cuts, which were swamped by other, newly issued rules.⁶⁰) In all, four of Obama's executive orders directly address overregulation and rollbacks.⁶¹ As with the *Federal Register*, counts are interesting but do not tell the whole story.

Other key executive orders directly intending regulatory restraint were President Clinton's 1993 Executive Order 12866⁶² and President Ronald Reagan's Executive Order 12291,

which formalized central regulatory review at OMB.⁶³ Clinton's was a step back from the stronger oversight of the Reagan order in that it sought "to reaffirm the primacy of Federal agencies in the regulatory decision-making process."⁶⁴

The United States existed for many decades before a president issued more than two dozen executive orders—that was President Franklin Pierce, who served from 1853 to 1857. Orders numbered in the single digits or teens until President Lincoln and the subsequent Reconstruction period. President Ulysses S. Grant's administration issued 217, then a record. From the 20th century onward, executive orders numbered over 100 during each presidency and sometimes reached into the thousands. President Franklin D. Roosevelt issued 3,721 executive orders.⁶⁵ Table 4 provides a look at executive order counts by administration since the nation's founding.

We live in an era in which the government—without actually passing a law—increasingly dictates parameters for various economic sectors, including health care, retirement, education, energy production, finance, land and resource management, funding of science and research, and manufacturing. One prominent recent example is the Internal Revenue Service's granting of waivers of the Patient Protection and Affordable Care Act's employer mandate without regard to the statute's language.⁶⁶

Counting rules and regulations, executive orders, memoranda, and other regulatory guidance gets us only so far. These alternative regulatory actions should receive more scrutiny and oversight, because they have become powerful means of working around the constitutional system of government envisioned by the Framers of the Constitution: legislation made by elected representatives.⁶⁷

Table 4. Executive Orders by Administration

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

(continued)

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

	Sequence Number		Total Number of Executive Orders
	Ending	Beginning	
Gerald R. Ford	11,966	11,798	169
Jimmy Carter	12,286	11,967	320
Ronald Reagan	12,667	12,287	381
George H.W. Bush	12,833	12,668	166
William J. Clinton	13,197	12,834	364
George W. Bush	13,488	13,198	291
Barack Obama	13,764	13,489	276
Donald Trump	13,790	13,490	26
Total Number of Executive Orders			15,553

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

Executive orders for President Trump are as of April 28, 2017.

More than 24,000 Public Notices Annually

Public notices in the *Federal Register* include non-rulemaking documents, such as meeting and hearing notices and agency-related organizational material.⁶⁸ But there are tens of thousands of yearly public notices, including memoranda, bulletins, guidance documents, alerts, and other proclamations, many of which may be important to the public. Figure 16 shows the number of notices annually. Notices stood at 24,557 in 2016 and have dipped below 24,000 only twice since 1996 (in 2014 and 2015). There have been 550,489 public notices since 1994 and well over a million since the 1970s.

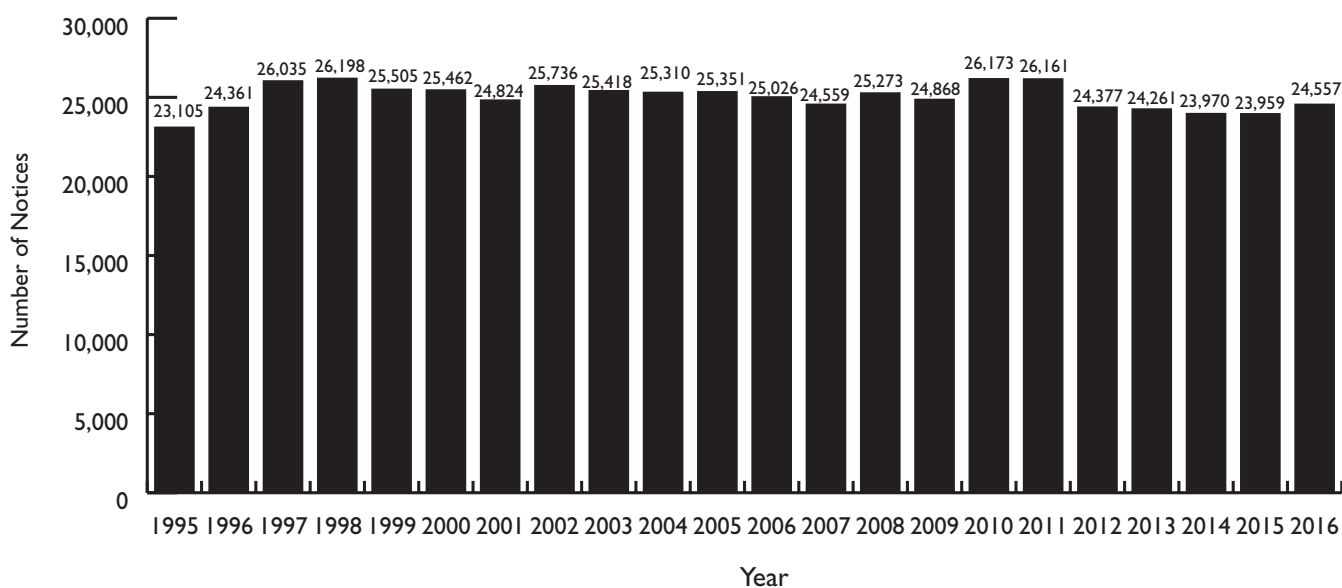
Forty-five notices received OMB review during the 2016 calendar year, and some of those were deemed to have an “economically significant” impact. A history of the number

of rules and notices reviewed annually appears in Appendix: Historical Tables, Part D.

Policy makers should pay more attention to such documents because of the modern executive branch inclination to advance policy by memorandum, notice, bulletin, and even blog post. Most notice-and-comment regulations already lack cost-benefit or other analysis. Increased unilateral executive action will render costs of regulation even less transparent as the federal government expands and increasingly interposes itself in commerce and other realms of private activity. The Unified Agenda, a compilation of information about pending regulations established during the Clinton administration, seems unlikely to help.

*There have been
550,489 public
notices since
1994 and well
over a million
since the 1970s.*

Figure 16. Thousands of “Public Notices” in the *Federal Register*, 1995–2016



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

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.

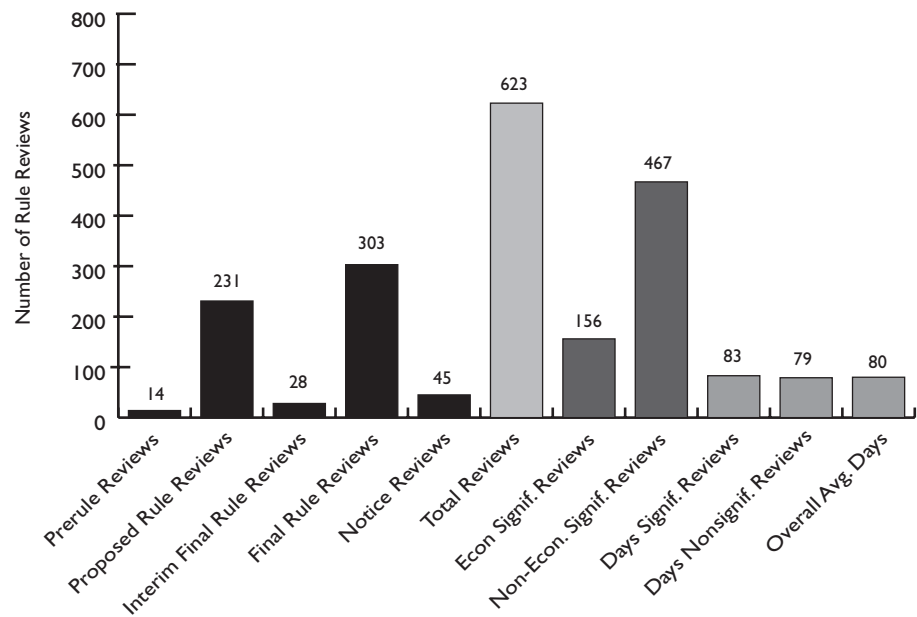
Some healthy skepticism may be justified regarding the numbers in the Unified Agenda, given the lack of both a clarification of the document's comprehensiveness and strategic rule delays by administrations (a bipartisan phenomenon). But like the *Federal Register*, the Agenda is what we have, and part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

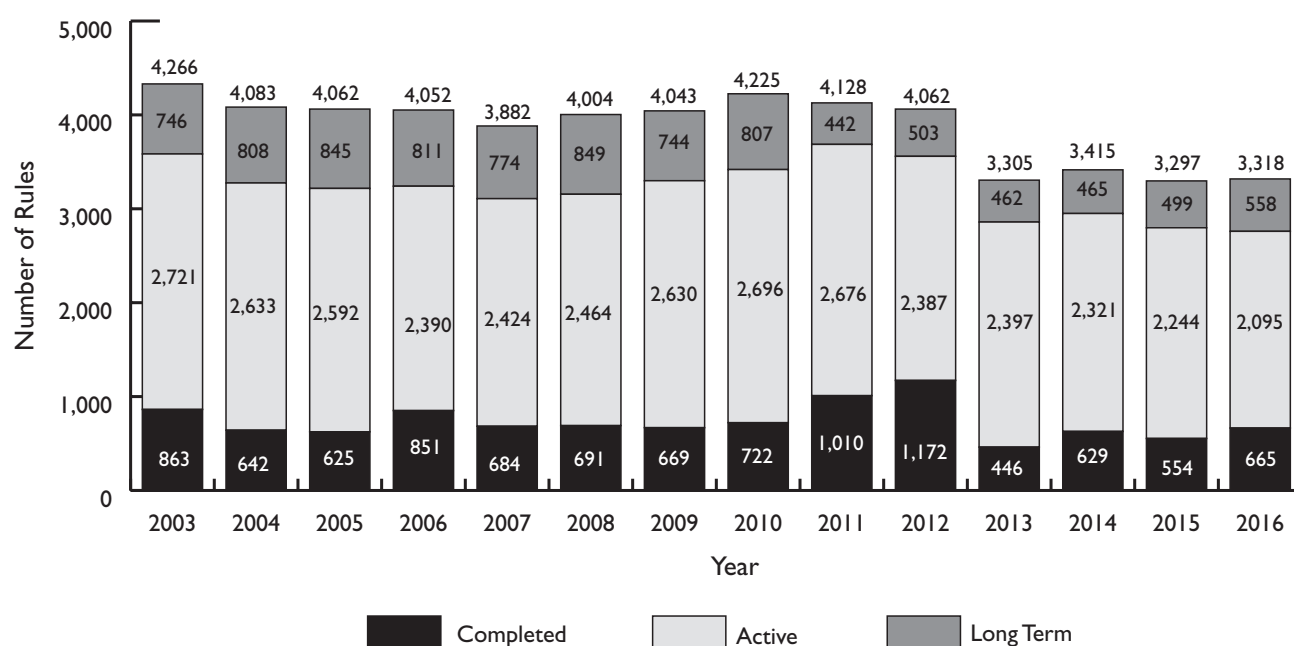
The *Federal Register* consistently shows that more than 3,400 rules are finalized annually. As Figure 18 shows, since 2003, “Active” rule counts consistently remained above 2,300, until that number dropped in 2015. This category stands at 2,095 in the fall 2016 Agenda. Although the Unified Agenda pipeline 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>.

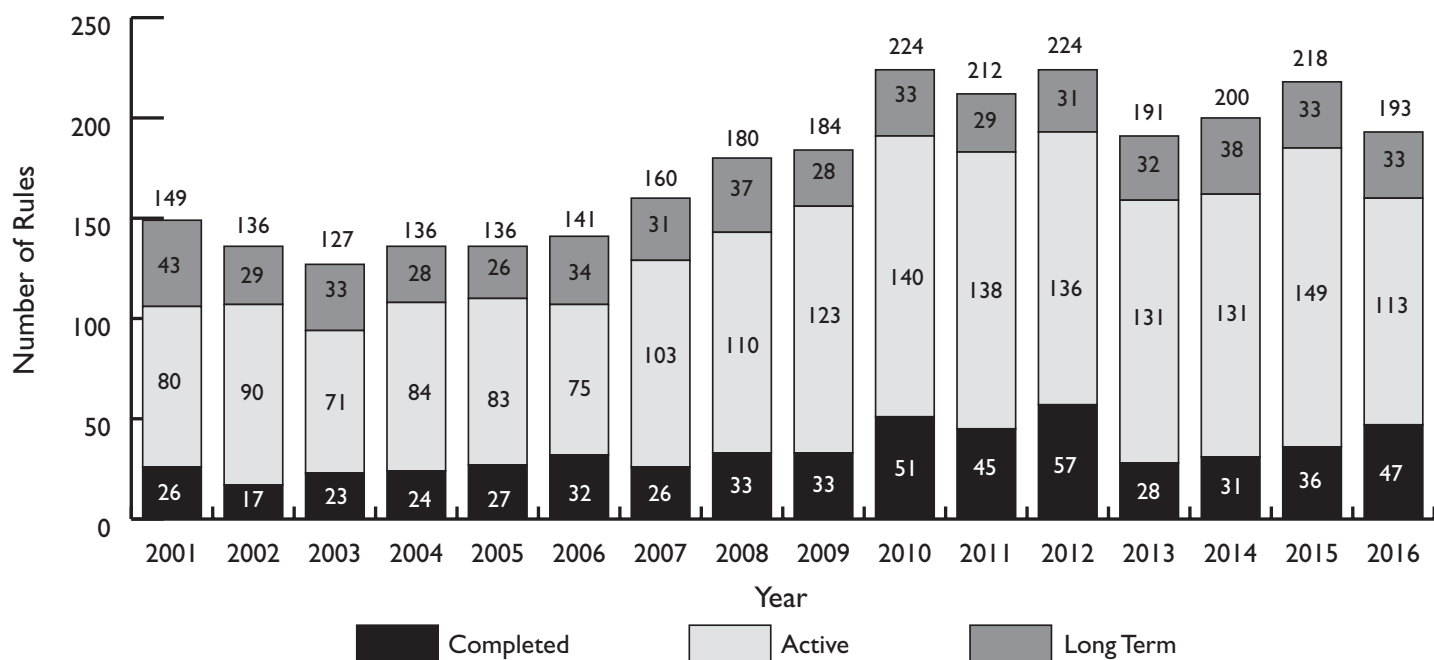
was 133; George W. Bush’s eight-year average was 87.)

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.

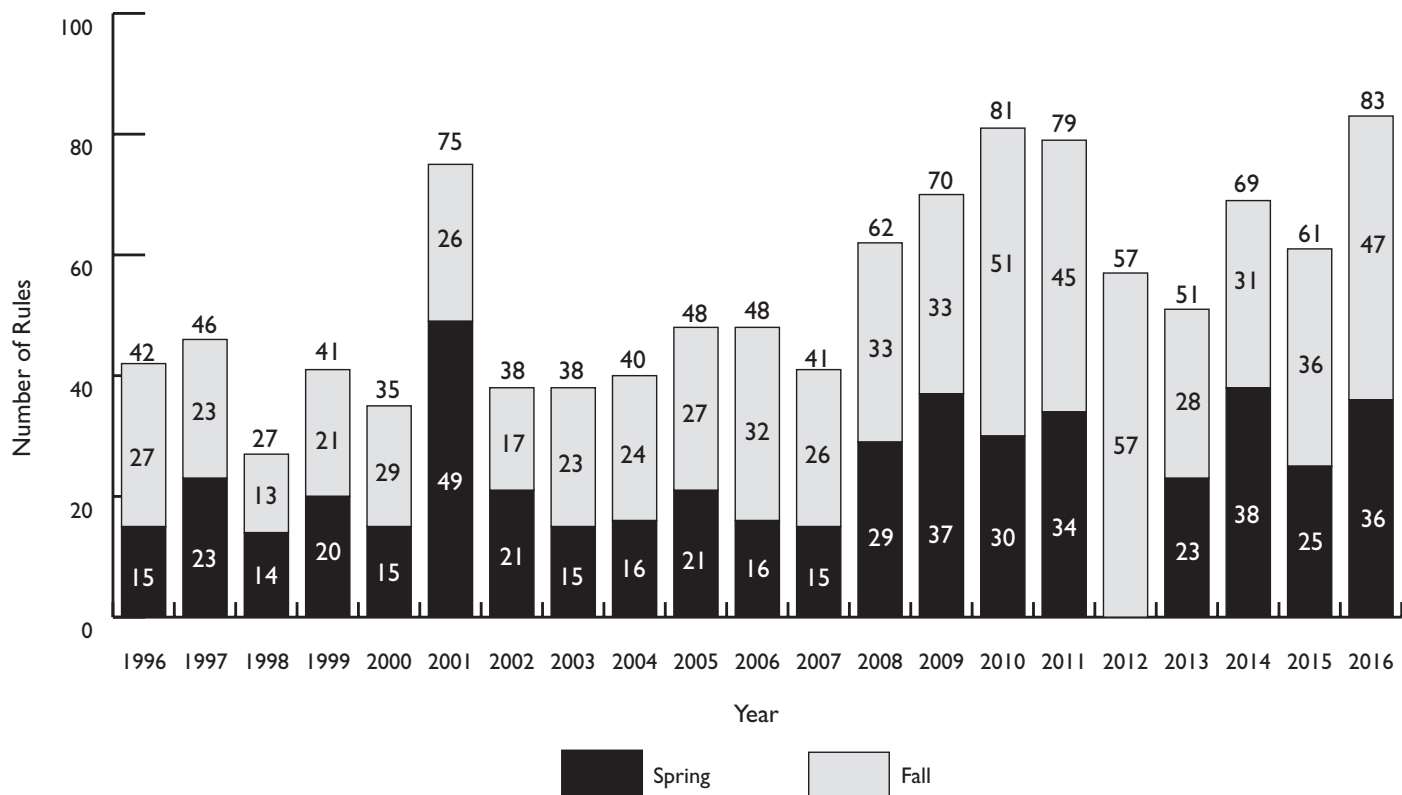
As Figure 20 shows, completed economically significant rules stand at 83 for 2016, the highest count over the entire Obama, Bush, and Clinton intervals shown. Apart from 2001, the level of completed economically significant rules from 2008 forward is notably higher than during the earlier part of the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

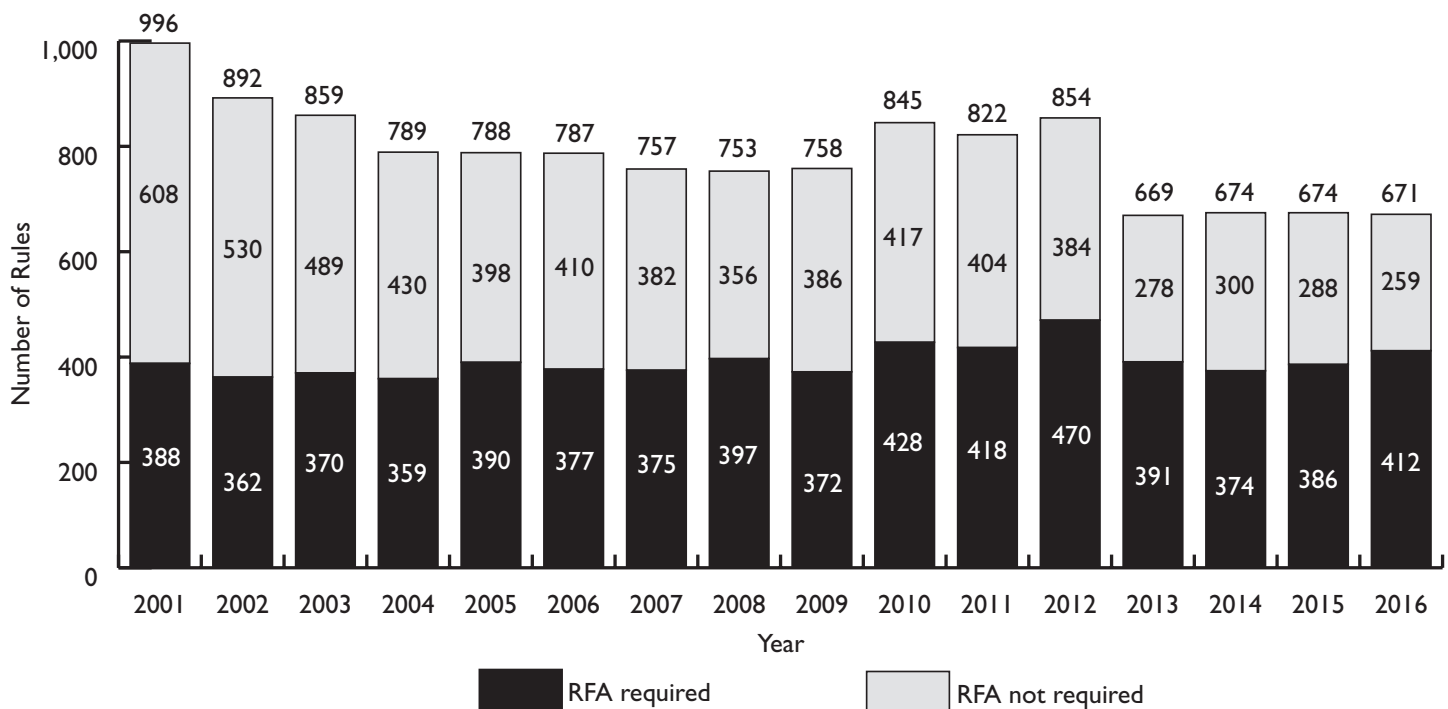
You don’t have a guaranteed paycheck.

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 Sevices/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							% Affecting Small Business	Top 5
		RFA Required			RFA Not Required			Total		
		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)

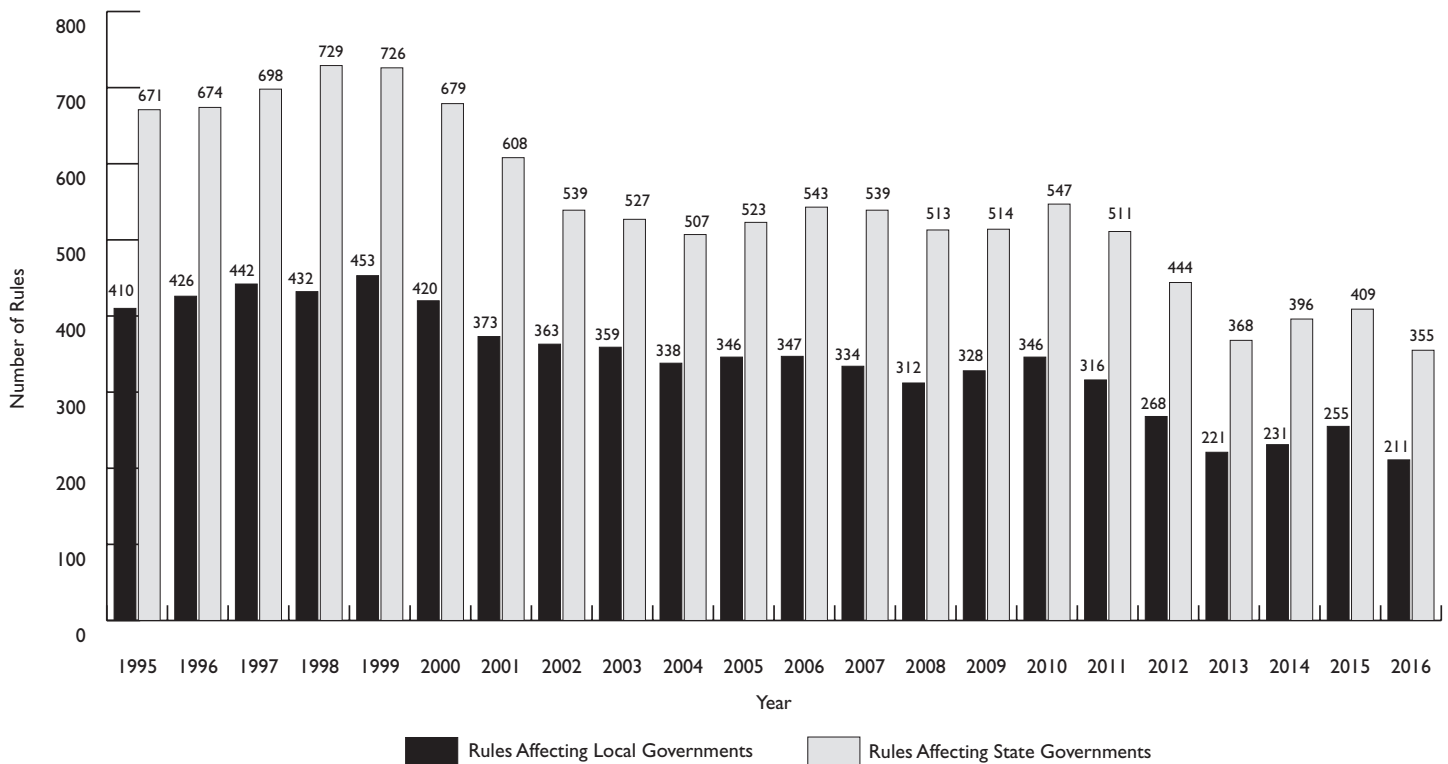
50 EMPLOYEES: ALL THE ABOVE, PLUS

- 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/OCSP: 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)

Government Accountability Office

Database on Regulations

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

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

The 1996 Congressional Review Act (CRA) requires agencies to submit reports to Congress on their major rules—those with annual estimated costs of \$100 million or more. Owing to such reports, which are maintained in a database at the Government Accountability Office, one can more readily observe (a) which of the thousands of final rules that agencies issue each year are major and (b) which agencies are producing the rules.¹⁰⁹

The CRA gives Congress a window of 60 legislative days in which to review a major rule and, if desired, to pass a resolution of disapproval rejecting the rule. Despite the issuance of thousands of rules since the CRA's passage, including many dozens of major rules, before 2017 only one had been rejected: the Department of Labor's rule on workplace repetitive-motion injuries in early 2001. Since the start of the 115th Congress in January 2017, the CRA has been used

13 times to overturn regulations.¹¹⁰ According to a recent review, however, some final rules are not being properly submitted to the GAO and to Congress as required under the CRA.¹¹¹

Table 9, derived from the GAO database of major rules, depicts the number of final major rule reports issued by the GAO regarding agency rules through 2016. There were 115 rules in 2016 based on the GAO's database, compared with 76 and 81 in 2015 and 2014, respectively.¹¹² That conforms with other 2016 measures of rules and *Federal Register* pages. At the time, the 100 rules in 2010 were the highest count since this tabulation began following passage of the CRA; the 50 rules in 2003 were the lowest.

Particularly active cabinet and independent agencies include the Departments of Health and Human Services, Labor, Energy, the Interior, and Homeland Security, along with the Environmental Protection Agency and the Securities and Exchange Commission.

President George W. Bush averaged 63 major rules annually during his eight years in office. President Barack Obama averaged 86, a 36 percent higher average annual output than that of Bush. Obama issued 685 major rules over seven years, compared with Bush's 505 over eight years. (The presentation in this report uses calendar years, so Bush's eight years contain a couple of Bill Clinton's presidential transition weeks at the top before his inauguration, whereas Obama's first year would include Bush's final January weeks.)

A May 2016 Heritage Foundation analysis of the Obama administration's regulatory

record isolated the major rules listed in the GAO database affecting only the private sector and distinguished between those that are deregulatory and those that are regulatory. It concluded: “The addition of 43 new major

rules in 2015 increased annual regulatory costs by more than \$22 billion, bringing the total costs of Obama administration rules to an astonishing \$100 billion-plus in just seven years.”¹¹³

Table 9. Government Accountability Office Reports on Major Rules as Required by the Congressional Review Act, 1998–2016

	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998
Department of Agriculture	5	7	8	4	2	4	6	12	3	7	8	6	7	4	7	9		6	5
Department of Commerce				2				2	1	2			1			2		5	1
Department of Defense	2	2	1				4	4	6			1			2	3		1	2
Department of Education	2	1	2	5	4	2	5	6	2	1	2							1	
Department of Energy	8	2	6	3	1	5	4	7	3	3				1	1	3	3		
Department of Health and Human Services	38	18	27	24	23	24	24	17	24	19	16	22	22	17	13	15	17	7	18
Department of Homeland Security	5	3	2	2	1	1	3	1	5	4	2	3	2	2					
Department of Housing and Urban Development	2	1				2	1	1	2			1	1			1	2	1	
Department of Justice	1				1	1	3				1	1	1		3	4			1
Department of Labor	8	1	3	3	3	2	6	1	2	3	3	1	1		2	3	5		2
Department of the Interior	6	6	6	6	7	6	7	7	10	5	6	6	8	7	7	8	9	6	7
Department of State					1		1		1										
Department of Transportation	4	3	3	3	2	2	5	6	8	3	1	3	5	4	6	3		4	1
Department of Treasury	5	7	6	3	2	1	4		1	1	1		1	1		1			1
Department of Veterans Affairs	1	4	3	1	1	2	2	2		1		1		2	1	3			
Architectural Barriers Compliance Board													1				1		
Commodity Futures Trading Commission	4		1	4	9	6													
Consumer Financial Protection Bureau	2	2		4	1	1													
Consumer Product Safety Commission						1					1								
Emergency Oil and Gas Loan Board																		1	
Emergency Steel Guarantee Loan Board																		1	
Environmental Protection Agency	7	8	2	3	5	6	8	3	9	2	8	3	7	3	1	4	20	5	9
Equal Employment Opportunity Commission						1													
Federal Communications Commission		1	1	1					6	2	1	1	4	2	3	3	6	6	16

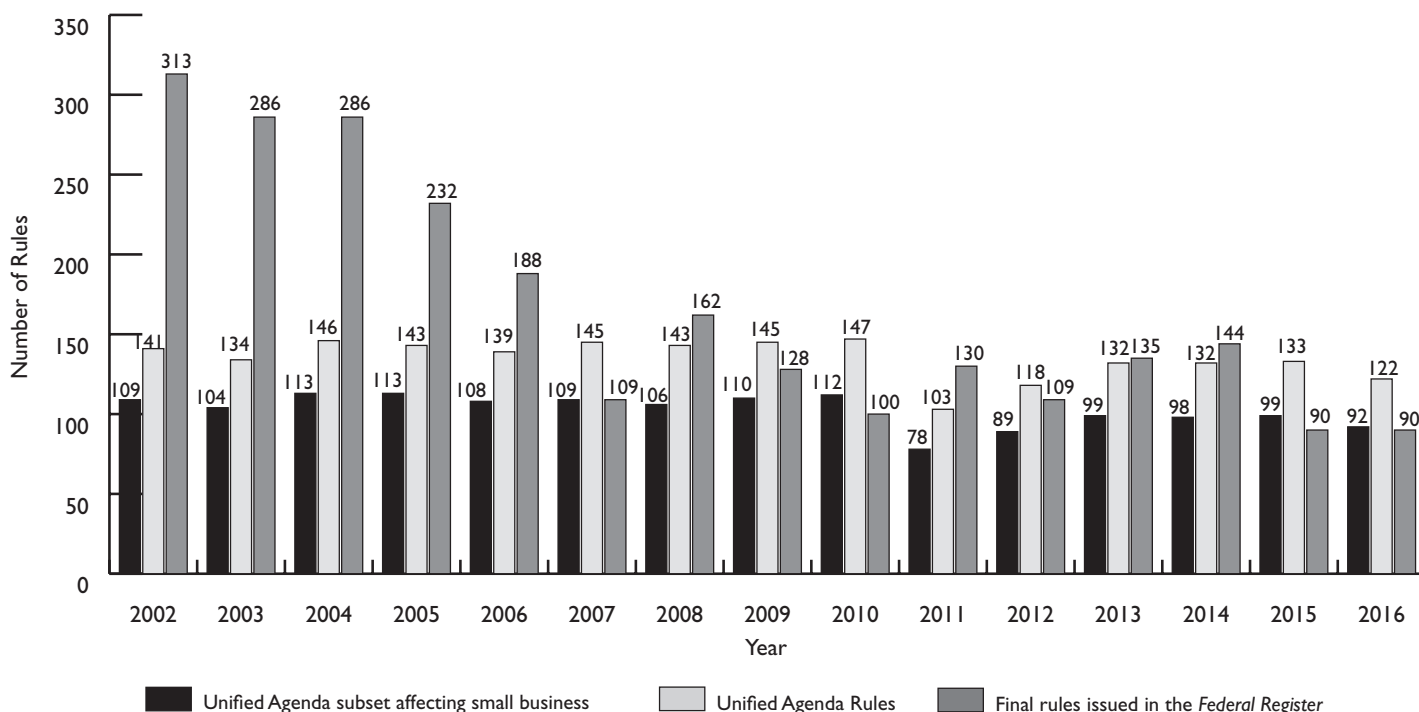
Regulation and the Federal Communications Commission

The Federal Communications Commission (FCC) is by no means the heavyweight among regulators as gauged by the number of rules issued. Its 122 rules in 2016, down from 133 in 2015, in the Unified Agenda pipeline are surpassed by eight other departments or agencies (see Table 5), and its count of six economically significant rules is also exceeded by those of eight other agencies (see Table 7). Yet the FCC merits highlighting given its great influence over a major economic sector regarded as a growth engine in today's economy: telecommunications, the Internet, and the information economy generally.

The FCC is an expensive agency. It will spend an estimated \$498 million on regulatory development and enforcement during FY 2017¹¹⁴ and likely accounts for more than \$100 billion in annual regulatory and economic impact.¹¹⁵ Figure 23 shows the FCC's final rules in the *Federal Register* during the past decade, its overall number of rules in the fall Unified Agenda, and its Agenda rules affecting small business.

FCC final rules in the *Federal Register* numbered as high as 313 back in 2002, then declined steadily during the decade to lows of

Figure 23. Number of FCC Rules in the Unified Agenda and *Federal Register*, 2002–2016



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

100 in 2010, 109 in 2012, and 90 in both 2015 and 2016 (see far-right bars in Figure 23). A bump upward of 32 percent occurred between 2012 and 2014 (from 109 to 144).¹¹⁶ As of January 24, 2017, the FCC had finalized just three rules in the *Federal Register*.

Of the 3,318 total rules in the fall 2016 Agenda pipeline, 122, or 4 percent, were in the works at the FCC (Figure 23). The commission's Agenda presence remained rather flat during the decade before dropping rapidly to a low of 103 rules in 2011. Ninety-two of the FCC's rules in the fall 2016 pipeline, or 75 percent of its total, affect small business, as Figure 23 and Table 8 show.

Although the FCC has published fewer rules in the Unified Agenda and has finalized fewer than in preceding years, a pro-regulatory mindset dominated the commission during the Obama administration, most notably in the push to apply utility regulation to broadband in a pursuit of so-called net neutrality, now being litigated (and likely subject to a new rulemaking proceeding to overturn by new FCC Chairman Ajit Pai).¹¹⁷

An agency's rule count is not all that matters, because a handful of rules can have an outsized

impact. Today's vibrant and robust communications markets are not fragile contrivances requiring fine-tuning by government bodies.¹¹⁸ Communications markets do not exhibit abuses and market failures calling for top-down rulemaking with respect to each and every new technological advance. Furthermore, unlike the past, today's media landscape is not characterized by scarcity. In today's world, everyone is a potential broadcaster.

In recent years, the FCC has also inserted itself into matters that include multicast must-carry regulation, cable à la carte requirements, media ownership restrictions, indecency, video game violence portrayal, and wireless net neutrality.¹¹⁹

As noted, of the 193 economically significant rules in the works across the entire federal government, six belong to the FCC (see Table 7 and Box 3). Such rulemakings—along with other FCC rules in the Agenda pipeline and the dozens made final each year—present opportunities for either liberalization of telecommunications or avenues for new central regulatory oversight and protracted legal battles.¹²⁰ The commission has chosen the latter in recent years, but may be poised for a change.

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

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

- **Expanding Broadband and Innovation through Air-Ground Mobile Broadband Secondary Service for Passengers Aboard Aircraft in the 14.0–14.5 GHz Band; GN Docket No. 13-114, RIN 3060-AK02.**
- **Universal Service Reform Mobility Fund; WT Docket No. 10-208, RIN 3060-AJ58.**
- **Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions; Docket No. 12-268, 3060-AJ82.**
- **Internet Protocol-Enabled Services; RIN 3060-AI48:** “The notice seeks comment on ways in which the Commission might categorize IP-enabled services for purposes of evaluating the need for applying any particular regulatory requirements. It poses questions regarding the proper allocation of jurisdiction over each category of IP-enabled service. The notice

then requests comment on whether the services composing each category constitute ‘telecommunications services’ or ‘information services’ under the definitions set forth in the Act. Finally, noting the Commission’s statutory forbearance authority and Title I ancillary jurisdiction, the notice describes a number of central regulatory requirements (including, for example, those relating to access charges, universal service, E911, and disability accessibility), and asks which, if any, should apply to each category of IP-enabled services.”

- **Implementation of Section 224 of the Act: A National Broadband Plan for Our Future; WC Docket No. 07-245, GN Docket No. 09-51, RIN 3060-AJ64.**
- **Protecting and Promoting the Open Internet; WC Docket No. 14-28, 3060-AK21.**

Liberate to Stimulate

A regulatory liberalization agenda would provide genuine economic stimulus and offer some confidence and certainty for businesses and entrepreneurs. Proposals like those described next can help achieve that goal.

Steps to Improve Regulatory Disclosure

Certainly, some regulations' benefits exceed costs, but net benefits or even actual costs are known for very few. Without more complete regulatory accounting, it is difficult to know whether society wins or loses as a result of rules.¹²¹ Pertinent, relevant, and readily available regulatory data should be summarized and reported publicly to help create pressures for even better disclosure and reform. An incremental but important step toward greater openness would be for Congress to require—or for the Office of Management and Budget to initiate—publication of a summary of available but scattered data. Such a regulatory transparency report card could resemble the presentation in *Ten Thousand Commandments*.

Accountability and disclosure matter. Congress must cease delegating legislative power to unelected agency personnel. We need institutional changes that force Congress to internalize pressures that would push it to make cost-benefit assessments *before* issuing open-ended directives to agencies to write rules. Reining in off-budget regulatory costs can occur only when elected representatives assume responsibility and end “regulation without representation.”

Regulations fall into two broad classes: (a) those that are economically significant (cost-

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

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

Much of the regulatory information that is available is difficult to compile or interpret. To learn about regulatory trends and acquire information on rules, interested citizens need to either comb through the Agenda's 1,000-plus pages of small, multicolumn print or compile results from online searches and agencies' regulatory plans. Data from the Unified Agenda could be made more accessible and user-friendly if officially summarized in charts each year and presented as a section in the federal budget, in the Agenda itself, or in the *Economic Report of the President*.¹²²

Without more complete regulatory accounting, it is difficult to know whether society wins or loses as a result of rules.

Table 10. A Possible Breakdown of Economically Significant Rules

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

A regulatory transparency report card would reveal more clearly what we do not know about the regulatory state. Information could be added to the report as warranted—for instance, success or failure of special initiatives, such as “reinventing government” or regulatory reform efforts. Providing five-year historical data would prove useful to scholars, third-party researchers, and members of Congress. By making agency activity more explicit, a regulatory transparency report card would help ensure that policy makers take the growth of the regulatory state seriously. Recommended components for a regulatory transparency report card appear in Box 4.

Ending Regulation without Representation: The Unconstitutionality Index—27 Rules for Every Law

Agencies do not answer to voters. Yet in a sense, regulators and the administration, rather than Congress, do the bulk of U.S. lawmaking. But agencies are not the only culprits. For too long, Congress has shirked its constitutional duty to make the tough calls. Instead, it delegates substantial law-making power to agencies and then fails to ensure that they deliver benefits that exceed costs.¹²³

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

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

***There were 18
rules for every law
in 2016.***

Agencies face significant incentives to expand their turf by regulating even without demonstrated need. The primary measure of an agency's productivity—other than growth in its budget and number of employees—is the body of regulation it produces.¹²⁴ One need not deplete too much time and energy blaming agencies for carrying out the very regulating they were set up to do in the first place. Better to point a finger at Congress.

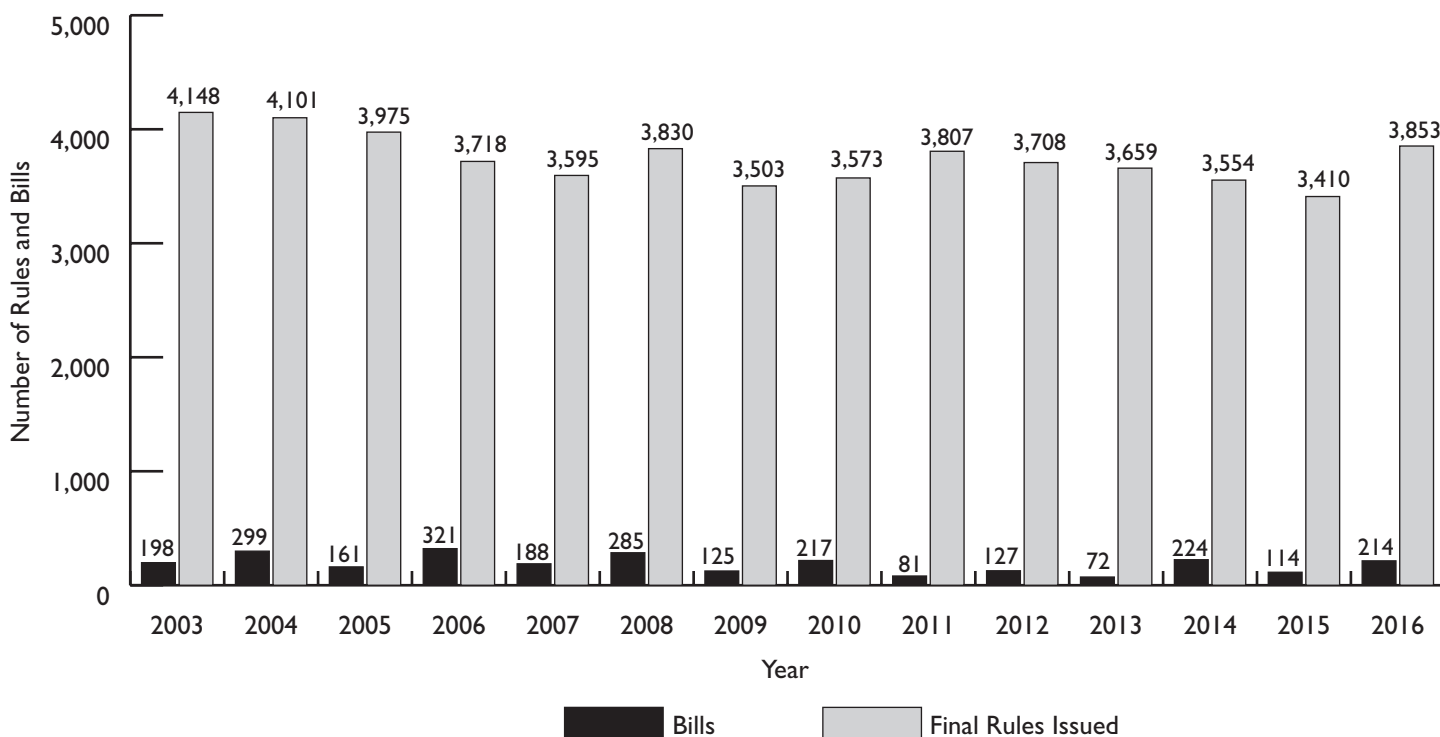
For perspective, consider that in calendar year 2016 regulatory agencies issued 3,853 final rules, whereas the 114th Congress passed and President Obama signed into law a comparatively few 214 bills.¹²⁵ Thus, there were 18 rules for every law in 2016 (see Figure 24). The ratio can vary widely, but the average over the decade has been 27 rules for every law. Rules issued by agencies are not usually substantively related to the current year's laws; typically, agencies adminis-

ter earlier legislation. Still, this perspective is a useful way of depicting flows and relative workloads.

If agency public notices and executive orders are considered, non-legislative policy making assumes even greater importance. (Appendix: Historical Tables, Part I, depicts the Unconstitutionality Index dating back to 2000 and shows just by way of comparison the numbers of executive orders and the numbers of agency notices.)

An annual regulatory transparency report card is worthwhile and needed, but it is not the complete answer. Regulatory reforms that rely on agencies policing themselves will not rein in the regulatory state or fully address regulation without representation. Rather, making Congress directly answerable to voters for the costs that agencies impose on the public would best promote account-

Figure 24. The Unconstitutionality Index, 2003–2016



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

able regulation. Congress should vote on agencies' final rules before such rules become binding on the public.

Increasing congressional accountability for regulatory costs should be a priority in today's era of debt and deficits. Concern about mounting national debt incentivizes Congress to regulate rather than to increase government spending to accomplish policy ends. Suppose Congress wanted to create a job training program. Funding the program would require approval of a new appropriation for the Department of Labor, which would appear in the federal budget and increase the deficit. Instead, Congress could pass a law requiring Fortune 500 companies to fund job training, to be carried out according to new regulations issued by the Department of Labor. The latter option would add little to federal spending but would still let Congress take credit for the program. By regulating instead of spending, government can expand almost indefinitely without explicitly taxing anybody one extra penny.

Affirmation of new major regulations would ensure that Congress bears direct responsibility for every dollar of new regulatory costs. The Regulations from the Executive in Need of Scrutiny Act (REINS) Act (H.R. 26, S. 21), sponsored by Rep. Doug Collins (R-Ga.) and Sen. Rand Paul (R-Ky.), offers one such approach.¹²⁶ It would require Congress to vote on all economically significant

agency regulations—those with estimated annual costs of \$100 million or more. It has passed the House in the current and three previous congressional sessions but has not moved forward in the Senate.

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

States could take the ball from Congress. Many state legislators have indicated support for the Regulation Freedom Amendment, which reads, in its entirety:¹²⁷ “Whenever one quarter of the members of the U.S. House or the U.S. Senate transmit to the president their written declaration of opposition to a proposed federal regulation, it shall require a majority vote of the House and Senate to adopt that regulation.”

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

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

Appendix: Historical Tables

Part A. *Federal Register* Page History, 1936–2016

Year	Unadjusted Page Count	Jumps/Blanks	Adjusted Page Count
1936	2,620	n/a	2,620
1937	3,450	n/a	3,450
1938	3,194	n/a	3,194
1939	5,007	n/a	5,007
1940	5,307	n/a	5,307
1941	6,877	n/a	6,877
1942	11,134	n/a	11,134
1943	17,553	n/a	17,553
1944	15,194	n/a	15,194
1945	15,508	n/a	15,508
1946	14,736	n/a	14,736
1947	8,902	n/a	8,902
1948	9,608	n/a	9,608
1949	7,952	n/a	7,952
1950	9,562	n/a	9,562
1951	13,175	n/a	13,175
1952	11,896	n/a	11,896
1953	8,912	n/a	8,912
1954	9,910	n/a	9,910
1955	10,196	n/a	10,196
1956	10,528	n/a	10,528
1957	11,156	n/a	11,156
1958	10,579	n/a	10,579
1959	11,116	n/a	11,116
1960	14,479	n/a	14,479
1961	12,792	n/a	12,792
1962	13,226	n/a	13,226
1963	14,842	n/a	14,842
1964	19,304	n/a	19,304
1965	17,206	n/a	17,206
1966	16,850	n/a	16,850
1967	21,088	n/a	21,088
1968	20,072	n/a	20,072
1969	20,466	n/a	20,466
1970	20,036	n/a	20,036

Year	Unadjusted Page Count	Jumps/Blanks	Adjusted Page Count
1971	25,447	n/a	25,447
1972	28,924	n/a	28,924
1973	35,592	n/a	35,592
1974	45,422	n/a	45,422
1975	60,221	n/a	60,221
1976	57,072	6,567	50,505
1977	65,603	7,816	57,787
1978	61,261	5,565	55,696
1979	77,498	6,307	71,191
1980	87,012	13,754	73,258
1981	63,554	5,818	57,736
1982	58,494	5,390	53,104
1983	57,704	4,686	53,018
1984	50,998	2,355	48,643
1985	53,480	2,978	50,502
1986	47,418	2,606	44,812
1987	49,654	2,621	47,033
1988	53,376	2,760	50,616
1989	53,842	3,341	50,501
1990	53,620	3,825	49,795
1991	67,716	9,743	57,973
1992	62,928	5,925	57,003
1993	69,688	8,522	61,166
1994	68,108	3,194	64,914
1995	67,518	4,873	62,645
1996	69,368	4,777	64,591
1997	68,530	3,981	64,549
1998	72,356	3,785	68,571
1999	73,880	2,719	71,161
2000	83,294	9,036	74,258
2001	67,702	3,264	64,438
2002	80,332	4,726	75,606
2003	75,798	4,529	71,269
2004	78,852	3,177	75,675
2005	77,777	3,907	73,870
2006	78,724	3,787	74,937
2007	74,408	2,318	72,090
2008	80,700	1,265	79,435
2009	69,644	1,046	68,598
2010	82,480	1,075	81,405
2011	82,415	1,168	81,247
2012	80,050	1,089	78,961
2013	80,462	1,151	79,311
2014	78,796	1,109	77,687
2015	81,402	1,142	80,260
2016	97,069	1,175	95,894

Source: National Archives and Records Administration, Office of the Federal Register.
Publication of proposed rules was not required before the Administrative Procedures Act of 1946. Preambles to rules were published only to a limited extent before the 1970s. n/a = not available.

Part B. Number of Documents in the *Federal Register*, 1976–2016

Year	Final Rules	Proposed Rules	Other*	Total
1976	7,401	3,875	27,223	38,499
1977	7,031	4,188	28,381	39,600
1978	7,001	4,550	28,705	40,256
1979	7,611	5,824	29,211	42,646
1980	7,745	5,347	33,670	46,762
1981	6,481	3,862	30,090	40,433
1982	6,288	3,729	28,621	38,638
1983	6,049	3,907	27,580	37,536
1984	5,154	3,350	26,047	34,551
1985	4,843	3,381	22,833	31,057
1986	4,589	3,185	21,546	29,320
1987	4,581	3,423	22,052	30,056
1988	4,697	3,240	22,047	29,984
1989	4,714	3,194	22,218	30,126
1990	4,334	3,041	22,999	30,374
1991	4,416	3,099	23,427	30,942
1992	4,155	3,170	24,063	31,388
1993	4,369	3,207	24,017	31,593
1994	4,867	3,372	23,669	31,908
1995	4,713	3,339	23,133	31,185
1996	4,937	3,208	24,485	32,630
1997	4,584	2,881	26,260	33,725
1998	4,899	3,042	26,313	34,254
1999	4,684	3,281	26,074	34,039
2000	4,313	2,636	24,976	31,925
2001	4,132	2,512	25,392	32,036
2002	4,167	2,635	26,250	33,052
2003	4,148	2,538	25,168	31,854
2004	4,101	2,430	25,846	32,377
2005	3,943	2,257	26,020	32,220
2006	3,718	2,346	25,429	31,493
2007	3,595	2,308	24,784	30,687
2008	3,830	2,475	25,574	31,879
2009	3,503	2,044	25,218	30,765
2010	3,573	2,439	26,543	32,555
2011	3,807	2,898	26,296	33,001
2012	3,708	2,517	24,755	30,980
2013	3,659	2,594	24,517	30,770
2014	3,554	2,383	24,257	30,194
2015	3,410	2,342	24,294	30,046
2016	3,853	2,419		6,272

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

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

Part C. Code of Federal Regulations Page Counts and Number of Volumes, 1975–2016

Year	Actual Pages Published (includes text, preliminary pages, and tables)				Unrevised CFR Volumes**	Total Pages Complete CFR	Total CFR Volumes (excluding Index)
	Titles 1–50 (minus Title 3)	Title 3 (POTUS Docs)	Index*	Total Pages Published			
1975	69,704	296	792	70,792	432	71,224	133
1976	71,289	326	693	72,308	432	72,740	139
1977	83,425	288	584	84,297	432	84,729	141
1978	88,562	301	660	89,523	4,628	94,151	142
1979	93,144	438	990	94,572	3,460	98,032	148
1980	95,043	640	1,972	97,655	4,640	102,295	164
1981	103,699	442	1,808	105,949	1,160	107,109	180
1982	102,708	328	920	103,956	982	104,938	177
1983	102,892	354	960	104,206	1,448	105,654	178
1984	110,039	324	998	111,361	469	111,830	186
1985	102,815	336	1,054	104,205	1,730	105,935	175
1986	105,973	512	1,002	107,487	1,922	109,409	175
1987	112,007	374	1,034	113,415	922	114,337	185
1988	114,634	408	1,060	116,102	1,378	117,480	193
1989	118,586	752	1,058	120,396	1,694	122,090	196
1990	121,837	376	1,098	123,311	3,582	126,893	199
1991	119,969	478	1,106	121,553	3,778	125,331	199
1992	124,026	559	1,122	125,707	2,637	128,344	199
1993	129,162	498	1,141	130,801	1,427	132,228	202
1994	129,987	936	1,094	132,017	2,179	134,196	202
1995	134,471	1,170	1,068	136,709	1,477	138,186	205
1996	129,386	622	1,033	131,041	1,071	132,112	204
1997	128,672	429	1,011	130,112	948	131,060	200
1998	132,884	417	1,015	134,316	811	135,127	201
1999	130,457	401	1,022	131,880	3,052	134,932	202
2000	133,208	407	1,019	134,634	3,415	138,049	202
2001	134,582	483	1,041	136,106	5,175	141,281	206
2002	137,373	1,114	1,039	139,526	5,573	145,099	207
2003	139,550	421	1,053	141,024	3,153	144,177	214
2004	143,750	447	1,073	145,270	2,369	147,639	217
2005	146,422	103	1,083	147,608	4,365	151,973	221
2006	149,594	376	1,077	151,047	3,060	154,107	222
2007	149,236	428	1,088	150,752	5,258	156,010	222
2008	151,547	453	1,101	153,101	4,873	157,974	222
2009	158,369	412	1,112	159,893	3,440	163,333	225
2010	152,455	512	1,122	154,089	11,405	165,494	226
2011	159,129	486	1,136	160,751	8,544	169,295	230
2012	164,884	472	1,154	166,510	8,047	174,557	235
2013	166,352	520	1,170	168,042	7,454	175,496	235
2014	165,016	538	1,170	166,724	12,657	179,381	236
2015	170,278	495	1,170	171,943	6,334	178,277	237
2016	174,769	570	1,170	176,509	8,544	185,053	242

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

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

Part D. Number of Regulatory Reviews at the Office of Information and Regulatory Affairs, 1991–2016

Year	Prerule reviews	Proposed rule re-views	Interim final rule reviews	Final rule reviews	Notice reviews	Total reviews	ES re-views	Non-ES reviews	Average Days Review Time		
									Days ES reviews	Days non-ES reviews	Overall average days
1991		1,201		1,322		2,523	142	2,381	39	29	29
1992		970		1,315		2,285	121	2,164	44	39	39
1993	2	976	6	1,155	28	2,167	106	2,061	53	42	43
1994	16	317	68	302	128	831	134	697	33	30	31
1995	8	225	64	270	53	620	74	546	41	35	35
1996	28	160	56	232	31	507	74	433	39	42	42
1997	20	196	64	174	51	505	81	424	47	54	53
1998	15	192	58	182	40	487	73	414	33	50	48
1999	19	247	71	214	36	587	86	501	51	53	53
2000	13	210	66	253	40	582	92	490	60	62	62
2001	9	274	95	285	37	700	111	589	46	60	58
2002	23	261	81	249	55	669	100	569	44	46	46
2003	23	232	92	309	59	715	101	614	42	50	49
2004	26	237	64	241	58	626	85	541	35	55	53
2005	18	221	66	247	59	611	82	529	39	59	57
2006	12	229	43	270	46	600	71	529	34	59	56
2007	22	248	44	250	25	589	85	504	49	64	61
2008	17	276	39	313	28	673	135	538	53	63	61
2009	28	214	67	237	49	595	125	470	33	40	39
2010	36	261	84	232	77	690	138	552	48	51	51
2011	24	317	76	262	61	740	117	623	51	60	58
2012	12	144	33	195	40	424	83	341	69	81	79
2013	11	177	33	160	37	418	104	314	121	143	137
2014	17	201	43	144	46	452	114	338	106	134	127
2015	8	178	29	164	35	415	130	285	84	90	88
2016	14	231	28	303	45	623	156	467	83	79	80

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

ES = economically significant.

Part E. Unified Agenda Rules History, 1983–2016

Total Number of Rules Under Consideration or Enacted

1980s			1990s			2000s		
1983	April	2,863	1990	April	4,332	2000	October	4,699
	October	4,032		October	4,470	2001	October	4,509
1984	April	4,114	1991	April	4,675	2002	October	4,187
	October	4,016		October	4,863	2003	December	4,266
1985	April	4,265	1992	April	4,186	2004	December	4,083
	October	4,131		October	4,909	2005	October	4,062
1986	April	3,961	1993	April	4,933	2006	December	4,052
	October	3,983		October	4,950	2007	December	3,882
1987	April	4,038	1994	April	5,105	2008	December	4,004
	October	4,005		October	5,119	2009	December	4,043
1988	April	3,941	1995	April	5,133	2010	December	4,225
	October	4,017		October	4,735	2011	December	4,128
1989	April	4,003	1996	April	4,570	2012	Year-End*	4,062
	October	4,187		October	4,680	2013	November	3,305
			1997	April	4,417	2014	November	3,415
				October	4,407	2015	November	3,297
			1998	April	4,504	2016	November	3,318
				October	4,560			
			1999	April	4,524			
				October	4,568			

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

*Spring edition skipped in 2012.

Part F. Agenda Rules History by Department and Agency, 2000–2015

	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000
Department of Agriculture	155	160	159	276	265	287	327	374	290	311	292	279	323	314	312	327
Department of Commerce	246	270	250	415	328	296	300	325	303	302	296	273	300	270	342	390
Department of Defense	117	121	104	146	140	150	133	109	131	143	163	126	108	87	93	117
Department of Education	25	26	20	24	18	23	22	17	13	16	9	11	13	14	8	21
Department of Energy	107	105	92	108	96	96	85	54	47	63	61	50	66	53	61	67
Department of Health and Human Services	213	217	200	204	251	312	231	236	259	257	249	233	219	219	277	308
Department of Homeland Security	130	141	139	160	232	230	237	252	267	280	295	314	338			
Department of Housing and Urban Development	52	55	52	58	65	65	60	73	86	92	90	103	109	100	89	113
Department of Justice	100	102	95	112	120	137	121	138	140	139	124	125	122	249	229	202
Department of Labor	97	95	84	98	90	99	104	96	94	93	93	88	89	102	141	156
Department of State	44	47	41	63	35	30	18	27	28	28	24	21	15	41	32	21
Department of the Interior	288	324	353	320	325	259	277	287	264	305	303	287	295	298	423	418
Department of Transportation	210	216	220	232	224	223	230	200	199	215	227	301	365	543	511	536
Department of Treasury	391	426	428	487	497	580	528	521	545	501	514	532	530	513	458	450
Department of Veterans Affairs	80	75	66	85	82	81	78	80	65	77	76	79	87	104	164	141
Advisory Council on Historic Preservation		1						0	0	0		1	1	1	0	1
Agency for International Development	8	7	5	10	14	14	12	7	10	8	10	8	8	7	6	6
Architectural and Transportation Barriers Compliance Board	6	7	8		8	7	6	5	5	4	3	4	4	5	5	7
Commission on Civil Rights	1	1	1		1	1	1	2	1	1	1	1	1	1	1	1
Commodity Futures Trading Commission	34	26	33	83	68	56	32	25	19	14	11	15	15	19	30	21
Consumer Financial Protection Bureau	23	21	26	34												
Consumer Product Safety Commission	45	37	33	48	38	51	39	31	19	24	18	18	20	20	21	20
Corporation for National and Community Service	7	6	4	5	13	10	7	7	9	11	11	8	9	16	9	6
Court Services/Offender Supervision, D.C.	4	3	3	3	3	2	2	2	2	1	1	1	3	7	5	0
CPBSD*	2	2	2	2	3	3	3	3	5	6	6	5	0	0	0	0
Environmental Protection Agency	188	186	179	223	318	345	331	330	336	372	400	416	417	409	416	449
Equal Employment Opportunity Commission	8	8	9	9	7	7	7	5	7	8	6	3	4	4	3	6
Export-Import Bank of the United States				1												
Farm Credit Administration	27	26	30	30	25	23	25	19	12	19	20	20	21	14	17	17
Farm Credit System Insurance Corporation					25		1	1	0	1	1	1	1	1	1	3
Federal Acquisition Regulation	42	36	40	50	51	85	55	44	36	42	44	45	49	43	48	56
Federal Communications Commission	133	132	132	118	103	147	145	143	145	139	143	146	134	141	145	137
Federal Council on the Arts and Humanities								1								
Federal Deposit Insurance Corporation	25	25	17	22	21	21	21	19	18	24	16	20	17	17	22	26
Federal Emergency Management Agency								0	0	0	0	0	0	24	30	26
Federal Energy Regulatory Commission	25	24	29	40	41	36	37	39	41	47	35	23	21	19	8	18
Federal Housing Finance Agency	20	19	20	32	25	27	30	10	3	8	8	9	11	9	12	12
Federal Housing Finance Board								3								
Federal Maritime Commission	8	7	6	4	8	4	6	3	4	3	5	7	11	8	7	9
Federal Mediation and Conciliation Service				1	1	2	2	2	1	1	2	2	3	4	3	2
Federal Reserve System	18	23	16	25	29	22	26	18	20	13	17	18	18	24	32	33

Part G. List of 193 Economically Significant Rules, Year-End 2016

ACTIVE RULEMAKINGS (113)

DEPARTMENT OF AGRICULTURE

1. USDA/GIPSA, Final Rule Stage, Clarification of Scope 0580-AB25
2. USDA/FNS, Proposed Rule Stage, Modernizing Supplemental Nutrition Assistance Program (SNAP) Benefit Redemption Systems, 0584-AE37
3. USDA/FNS, Final Rule Stage, Eligibility, Certification, and Employment and Training Provisions, 0584-AD87
4. USDA/FNS, Final Rule Stage, Supplemental Nutrition Assistance Program: Farm Bill of 2008 Retailer Sanctions, 0584-AD88
5. USDA/FNS, Final Rule Stage, National School Lunch and School Breakfast Programs: Nutrition Standards for All Foods Sold in School, as Required by the Healthy, Hunger-Free Kids Act of 2010, 0584-AE09
6. USDA/FNS, Final Rule Stage, Supplemental Nutrition Assistance Program: Standard Utility Allowances Based on the Receipt of Energy Assistance Payments, 0584-AE43

DEPARTMENT OF COMMERCE

7. DOC/PTO, Proposed Rule Stage, Setting and Adjusting Patent Fees During Fiscal Year 2017, 0651-AD02

DEPARTMENT OF DEFENSE

8. DOD/DODOASHA, Final Rule Stage, TRICARE; Reimbursement of Long Term Care Hospitals and Inpatient Rehabilitation Facilities, 0720-AB47

DEPARTMENT OF EDUCATION

9. ED/OESE, Final Rule Stage, Proposed Priorities, Requirements, Definitions, and Selection Criteria—Striving Readers Comprehensive Literacy Program, 1810-AB25
10. ED/OESE, Final Rule Stage, Title I of the Elementary and Secondary Education Act of 1965—Accountability and State Plans, 1810-AB27
11. ED/OESE, Final Rule Stage, Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act—Supplement Not Supplant under Title I, Part A, 1810-AB33

DEPARTMENT OF ENERGY

12. DOE/EE, Prerule Stage, Energy Conservation Standards for Fans and Blowers, 1904-AC55

13. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Miscellaneous Refrigeration Products, 1904-AC51
14. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Computers, 1904-AD04
15. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for General Service Lamps, 1904-AD09
16. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces, 1904-AD20
17. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Residential Dishwashers, 1904-AD24
18. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Walk-In Coolers and Walk-In Freezers, 1904-AD59
19. DOE/EE, Final Rule Stage, Fossil Fuel-Generated Energy Consumption Reduction for New Federal Buildings and Major Renovations of Federal Buildings, 1904-AB96
20. DOE/EE, Final Rule Stage, Energy Conservation Standards for Commercial Packaged Boilers, 1904-AD01
21. DOE/EE, Final Rule Stage, Energy Conservation Standards for Portable Air Conditioners, 1904-AD02
22. DOE/EE, Final Rule Stage, Energy Conservation Standards for Residential Conventional Cooking Products, 1904-AD15
23. DOE/EE, Final Rule Stage, Energy Conservation Standards for Ceiling Fans, 1904-AD28
24. DOE/EE, Final Rule Stage, Energy Conservation Standards for Commercial Water Heating Equipment, 1904-AD34
25. DOE/EE, Final Rule Stage, Energy Conservation Standards for Central Air Conditioners and Heat Pumps, 1904-AD37
26. DOE/EE, Final Rule Stage, Energy Conservation Standards for Dedicated-Purpose Pool Pumps, 1904-AD52
27. DOE/EE, Final Rule Stage, Energy Conservation Standards for Uninterruptible Power Supplies, 1904-AD69
28. DOE/OGC, Final Rule Stage, Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation, 1990-AA39

DEPARTMENT OF HEALTH AND HUMAN SERVICES

29. HHS/FDA, Proposed Rule Stage, Updated Standards for Labeling of Pet Food, 0910-AG09

30. HHS/FDA, Proposed Rule Stage, Radiology Devices; Designation of Special Controls for the Computed Tomography X-Ray System, 0910-AH03
31. HHS/FDA, Proposed Rule Stage, Requirements for Tobacco Product Manufacturing Practice, 0910-AH22
32. HHS/FDA, Proposed Rule Stage, Patient Medication Information, 0910-AH33
33. HHS/FDA, Final Rule Stage, General and Plastic Surgery Devices: Sunlamp Products, 0910-AH14
34. HHS/FDA, Final Rule Stage, Submission of Food and Drug Administration Import Data in the Automated Commercial Environment, 0910-AH41
35. HHS/CDC, Final Rule Stage, World Trade Center Health Program Requirements for Enrollment, Appeals, Certification of Health Conditions and Reimbursement, 0920-AA44
36. HHS/SAMHSA, Final Rule Stage, Medication Assisted Treatment for Opioid Use Disorders Reporting Requirements, 0930-AA22
37. HHS/OASH, Final Rule Stage, Federal Policy for the Protection of Human Subjects; Final Rules, 0937-AA02
38. HHS/CMS, Proposed Rule Stage, Adoption of Operating Rules for HIPAA Transactions (CMS-0036-P), 0938-AS01
39. HHS/CMS, Proposed Rule Stage, Medicaid Disproportionate Share Hospital (DSH) Allotment Reductions (CMS-2394-P), 0938-AS63
40. HHS/CMS, Proposed Rule Stage, FY 2018 Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities (SNFs) (CMS-1679-P), 0938-AS96
41. HHS/CMS, Proposed Rule Stage, FY 2018 Inpatient Psychiatric Facilities Prospective Payment System—Rate Update (CMS-1673-P), 0938-AS97
42. HHS/CMS, Proposed Rule Stage, Hospital Inpatient Prospective Payment System for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and FY 2018 Rates (CMS-1677-P), 0938-AS98
43. HHS/CMS, Proposed Rule Stage, FY 2018 Inpatient Rehabilitation Facility (IRF) Prospective Payment System (CMS-1671-P), 0938-AS99
44. HHS/CMS, Proposed Rule Stage, FY 2018 Hospice Rate Update (CMS-1675-P), 0938-AT00
45. HHS/CMS, Proposed Rule Stage, CY 2018 Home Health Prospective Payment System Rate Update (CMS-1672-P), 0938-AT01
46. HHS/CMS, Proposed Rule Stage, CY 2018 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1676-P), 0938-AT02
47. HHS/CMS, Proposed Rule Stage, CY 2018 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1678-P), 0938-AT03
48. HHS/CMS, Proposed Rule Stage, CY 2018 Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System, Quality Incentive Program, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) (CMS-1674-P), 0938-AT04
49. HHS/CMS, Proposed Rule Stage, Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2019 (CMS-4182-P), 0938-AT08
50. HHS/CMS, Proposed Rule Stage, The Use of New or Increased Pass-Through Payments in Medicaid Managed Care Delivery Systems (CMS-2402-P), 0938-AT10
51. HHS/CMS, Final Rule Stage, Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid, and Other Provisions Related to Eligibility and Enrollment for Medicaid and CHIP (CMS-2334-F2), 0938-AS27
52. HHS/CMS, Final Rule Stage, Merit-Based Incentive Payment System (MIPS) and Alternative Payment Models (APMs) in Medicare Fee-for-Service (CMS-5517-FC), 0938-AS69
53. HHS/CMS, Final Rule Stage, CY 2017 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts (CMS-8062-N), 0938-AS70
54. HHS/CMS, Final Rule Stage, CY 2017 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model; and Home Health Quality Reporting Requirements (CMS-1648-F), 0938-AS80
55. HHS/CMS, Final Rule Stage, CY 2017 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1654-F), 0938-AS81
56. HHS/CMS, Final Rule Stage, CY 2017 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1656-FC), 0938-AS82
57. HHS/CMS, Final Rule Stage, CY 2018 Notice of Benefit and Payment Parameters (CMS-9934-P), 0938-AS95
58. HHS/CMS, Final Rule Stage, CY 2018 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts (CMS-8065-N), 0938-AT05

DEPARTMENT OF HOMELAND SECURITY

59. DHS/USCIS, Final Rule Stage, Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improve-

ments Affecting Highly-Skilled H-1B Nonimmigrant Workers, 1615-AC05

60. DHS/USCBP, Final Rule Stage, Electronic Visa Update System, 1651-AB08

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

61. HUD/HUDSEC, Final Rule Stage, Establishing a More Effective Fair Market Rent (FMR) System; Using Small Area Fair Market Rents (SAFMRs) in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs (FR-5855), 2501-AD74
62. HUD/OH, Final Rule Stage, Federal Housing Administration (FHA): Strengthening the Home Equity Conversion Mortgages (HECM) Program to Promote Sustained Homeownership (FR-5353), 2502-AI79
63. HUD/CPD, Final Rule Stage, Housing Trust Fund, 2506-AC30
64. HUD/PIH, Final Rule Stage, Housing Choice Voucher Program—New Administrative Fee Formula (FR-5874), 2577-AC99
65. HUD/PIH, Final Rule Stage, Instituting Smoke-Free Public Housing (FR-5597), 2577-AC97

DEPARTMENT OF THE INTERIOR

66. DOI/BLM, Final Rule Stage, Waste Prevention, Production Subject to Royalties, and Resource Conservation, 1004-AE14
67. DOI/FWS, Proposed Rule Stage, Migratory Bird Hunting; 2017-2018 Migratory Game Bird Hunting Regulations, 1018-BB40
68. DOI/FWS, Proposed Rule Stage, Migratory Bird Hunting; 2018-2019 Migratory Game Bird Hunting Regulations, 1018-BB73

DEPARTMENT OF JUSTICE

69. DOJ/DEA, Final Rule Stage, Electronic Prescriptions for Controlled Substances, 1117-AA61
70. DOJ/CRT, Proposed Rule Stage, Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Governments, 1190-AA65

DEPARTMENT OF LABOR

71. DOL/EBSA, Proposed Rule Stage, Revision of the Form 5500 Series and Implementing Related Regulations Under the Employee Retirement Income Security Act of 1974 (ERISA), 1210-AB63

72. DOL/OSHA, Prerule Stage, Combustible Dust, 1218-AC41
73. DOL/OSHA, Prerule Stage, Preventing Backover Injuries and Fatalities, 1218-AC51
74. DOL/OSHA, Prerule Stage, Occupational Exposure to Styrene, 1218-AD09
75. DOL/OSHA, Proposed Rule Stage, Infectious Diseases, 1218-AC46
76. DOL/OSHA, Proposed Rule Stage, Update to the Hazard Communication Standard, 1218-AC93
77. DOL/OSHA, Final Rule Stage, Occupational Exposure to Beryllium, 1218-AB76
78. DOL/OSHA, Final Rule Stage, Walking Working Surfaces and Personal Fall Protection Systems (Slips, Trips, and Fall Prevention), 1218-AB80
79. DOL/OS, Final Rule Stage, Department of Labor Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments, 1290-AA31

DEPARTMENT OF STATE

80. STATE, Proposed Rule Stage, Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates—Passport and Documentary Services Fee Changes, 1400-AD81

DEPARTMENT OF TRANSPORTATION

81. DOT/FMCSA, Proposed Rule Stage, Heavy Vehicle Speed Limiters, 2126-AB63
82. DOT/FMCSA, Final Rule Stage, Commercial Driver's License Drug and Alcohol Clearinghouse (MAP-21), 2126-AB18
83. DOT/FMCSA, Final Rule Stage, Entry-Level Driver Training, 2126-AB66
84. DOT/NHTSA, Prerule Stage, Passenger Car and Light Truck Corporate Average Fuel Economy Standards MYs 2022-2025, 2127-AL76
85. DOT/NHTSA, Proposed Rule Stage, Heavy Vehicle Speed Limiters, 2127-AK92
86. DOT/NHTSA, Proposed Rule Stage, Rear Seat Belt Reminder System, 2127-AL37
87. DOT/NHTSA, Proposed Rule Stage, Federal Motor Vehicle Safety Standard (FMVSS) 150—Vehicle to Vehicle (V2V) Communication, 2127-AL55
88. DOT/NHTSA, Final Rule Stage, Sound for Hybrid and Electric Vehicles, 2127-AK93
89. DOT/NHTSA, Final Rule Stage, Fuel Efficiency Standards for Medium- and Heavy-Duty Vehicles and Work Trucks: Phase 2, 2127-AL52
90. DOT/FRA, Proposed Rule Stage, Passenger Equipment Safety Standards Amendments (RRR), 2130-AC46

91. DOT/PHMSA, Proposed Rule Stage, Pipeline Safety: Amendments to Parts 192 and 195 to Require Valve Installation and Minimum Rupture Detection Standards, 2137-AF06

DEPARTMENT OF THE TREASURY

92. TREAS/DO, Final Rule Stage, Assessment of Fees for Large Bank Holding Companies and Nonbank Financial Companies Supervised by the Federal Reserve to Cover the Expenses of the Financial Research Fund, 1505-AC42
93. TREAS/FINCEN, Final Rule Stage, Imposition of Special Measure Against North Korea as a Jurisdiction of Primary Money Laundering Concern, 1506-AB35
94. TREAS/CUSTOMS, Final Rule Stage, Automated Commercial Environment (ACE) Required for Electronic Entry/Entry Summary (Cargo Release and Related Entry) Filings, 1515-AE03

DEPARTMENT OF VETERANS AFFAIRS

95. VA, Proposed Rule Stage, Diseases Associated With Exposure to Contaminants in the Water Supply at Camp Lejeune, 2900-AP66
96. VA, Final Rule Stage, Loan Guaranty: Ability-to-Repay Standards and Qualified Mortgage Definition Under the Truth in Lending Act, 2900-AO65
97. VA, Final Rule Stage, Net Worth, Asset Transfers, and Income Exclusions for Needs-Based Benefits, 2900-AO73
98. VA, Final Rule Stage, Tiered Pharmacy Copayments for Medications, 2900-AP35
99. VA, Final Rule Stage, Expanded Access to Non-VA Care Through the Veterans Choice Program, 2900-AP60

ENVIRONMENTAL PROTECTION AGENCY

100. EPA/RODENVER, Proposed Rule Stage, Federal Implementation Plan for Existing Oil and Natural Gas Sources; Uintah and Ouray Indian Reservation in Utah, 2008-AA02
101. EPA/OW, Proposed Rule Stage, National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions, 2040-AF15
102. EPA/OLEM, Proposed Rule Stage, Water Resources Reform Development Act Farm Amendments to the Spill Prevention Control and Countermeasures Rule, 2050-AG84

103. EPA/OLEM, Proposed Rule Stage, Financial Responsibility Requirements under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 108(b) for Classes of Facilities in the Hard Rock Mining Industry, 2050-AG61
104. EPA/OLEM, Final Rule Stage, Modernization of the Accidental Release Prevention Regulations Under Clean Air Act, 2050-AG82
105. EPA/OCSP, Proposed Rule Stage, Lead; Renovation, Repair, and Painting Program for Public and Commercial Buildings, 2070-AJ56
106. EPA/OCSP, Proposed Rule Stage, Trichloroethylene (TCE); Rulemaking under the Toxic Substances Control Act (TSCA) Section 6(a); Vapor Degreasing, 2070-AK11
107. EPA/OCSP, Proposed Rule Stage, Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations for PCBs in Small Capacitors in Fluorescent Light Ballasts in Schools and Daycares, 2070-AK12

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

108. ATBCB, Final Rule Stage, Americans With Disabilities Act (ADA) Accessibility Guidelines for Passenger Vessels, 3014-AA11
109. ATBCB, Final Rule Stage, Information and Communication Technology Standards and Guidelines, 3014-AA37

CONSUMER PRODUCT SAFETY COMMISSION

110. CPSC, Prerule Stage, Rule Review of: Standard for the Flammability (Open Flame) of Mattress Sets, 3041-AD47
111. CPSC, Proposed Rule Stage, Flammability Standard for Upholstered Furniture, 3041-AB35

NUCLEAR REGULATORY COMMISSION

112. NRC, Proposed Rule Stage, Revision of Fee Schedules; Fee Recovery for FY 2017 [NRC-2016-0081], 3150-AJ73

OFFICE OF PERSONNEL MANAGEMENT

113. OPM, Final Rule Stage, Federal Employees Health Benefits Program; Tribes and Tribal Organizations, 3206-AM40

COMPLETED ACTIONS (47)

DEPARTMENT OF AGRICULTURE

- 114. USDA/FCIC, General Administrative Regulations; Catastrophic Risk Protection Endorsement; Area Risk Protection Insurance Regulations; and the Common Crop Insurance Regulations, Basic Provisions, 0563-AC43
- 115. USDA/RBS, Business and Industry (B&I) Guaranteed Loan Program, 0570-AA85

DEPARTMENT OF DEFENSE

- 116. DOD/OS, Transition Assistance Program (TAP) for Military Personnel, 0790-AJ17

DEPARTMENT OF EDUCATION

- 117. ED/OCTAE, Workforce Innovation and Opportunity Act, 1830-AA21
- 118. ED/OPE, Borrower Defense, 1840-AD19

DEPARTMENT OF ENERGY

- 119. DOE/ENDER, Advanced Technology Vehicles Manufacturing Incentive Program, 1901-AB25
- 120. DOE/EE, Energy Efficiency Standards for Residential Dehumidifiers, 1904-AC81
- 121. DOE/EE, Energy Conservation Standards for Small, Large, and Very Large Commercial Package Air Conditioning and Heating Equipment, 1904-AC95
- 122. DOE/EE, Energy Conservation Standards for Commercial Warm Air Furnaces, 1904-AD11

DEPARTMENT OF HEALTH AND HUMAN SERVICES

- 123. HHS/FDA, Food Labeling: Revision of the Nutrition and Supplement Facts Labels, 0910-AF22
- 124. HHS/FDA, Food Labeling: Serving Sizes of Foods that Can Reasonably Be Consumed at One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain RACCs, 0910-AF23
- 125. HHS/FDA, Safety and Effectiveness of Consumer Antiseptics; Topical Antimicrobial Drug Products for Over-the-Counter Human Use, 0910-AF69
- 126. HHS/FDA, “Tobacco Products” Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act, 0910-AG38
- 127. HHS/FDA, Focused Mitigation Strategies to Protect Food Against Intentional Adulteration, 0910-AG63

- 128. HHS/CMS, Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers (CMS-3178-F), 0938-AO91
- 129. HHS/CMS, Reform of Requirements for Long-Term Care Facilities (CMS-3260-F), 0938-AR61
- 130. HHS/CMS, Medicare Clinical Diagnostic Laboratory Test Payment System (CMS-1621-F), 0938-AS33
- 131. HHS/CMS, Medicare Shared Savings Program; Accountable Care Organizations (ACOs)—Revised Benchmark Rebasing Methodology (CMS-1644-F), 0938-AS67
- 132. HHS/CMS, FY 2017 Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities (CMS-1645-F), 0938-AS75
- 133. HHS/CMS, FY 2017 Inpatient Psychiatric Facilities Prospective Payment System—Rate Update (CMS-1650-N), 0938-AS76
- 134. HHS/CMS, Hospital Inpatient Prospective Payment System for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and FY 2017 Rates (CMS-1655-F), 0938-AS77
- 135. HHS/CMS, FY 2017 Inpatient Rehabilitation Facility Prospective Payment System (CMS-1647-F), 0938-AS78
- 136. HHS/CMS, FY 2017 Hospice Rate Update (CMS-1652-F), 0938-AS79
- 137. HHS/OCR, Nondiscrimination Under the Patient Protection and Affordable Care Act, 0945-AA02
- 138. HHS/ONC, ONC Health IT Certification Program: Enhanced Oversight and Accountability, 0955-AA00
- 139. HHS/ACF, Head Start Performance Standards, 0970-AC63
- 140. HHS/ACF, Child Care and Development Block Grant Act Reauthorization Implementation, 0970-AC67

DEPARTMENT OF HOMELAND SECURITY

- 141. DHS/USCIS, U.S. Citizenship and Immigration Services Fee Schedule, 1615-AC09
- 142. DHS/USCG, Commercial Fishing Industry Vessels, 1625-AA77
- 143. DHS/TSA, Standardized Vetting, Adjudication, and Redress Services, 1652-AA61

DEPARTMENT OF THE INTERIOR

- 144. DOI/FWS, Migratory Bird Hunting; 2016-2017 Migratory Game Bird Hunting Regulations, 1018-BA70
- 145. DOI/ASLM, Arctic Regulations, 1082-AA00

DEPARTMENT OF LABOR

- 146. DOL/ETA, Workforce Innovation and Opportunity Act, 1205-AB73

- 147. DOL/ETA, Workforce Innovation and Opportunity Act; Joint Rule With U.S. Department of Education for Combined and Unified State Plans, Performance Accountability, and the One-Stop System Joint Provisions, 1205-AB74
- 148. DOL/WHd, Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees, 1235-AA11
- 149. DOL/WHd, Establishing Paid Sick Leave for Contractors, Executive Order 13706, 1235-AA13

DEPARTMENT OF TREASURY

- 150. TREAS/IRS, Treatment of Certain Interests in Corporations, 1545-BN40
- 151. TREAS/OCC, Treatment of Certain Collateralized Debt Obligations Backed by Trust Preferred Securities, 1557-AD79

ENVIRONMENTAL PROTECTION AGENCY

- 152. EPA/OAR, Standards of Performance for Municipal Solid Waste Landfills, 2060-AM08
- 153. EPA/OAR, Cross-State Air Pollution Rule Update for the 2008 Ozone National Ambient Air Quality Standards (NAAQS), 2060-AS05
- 154. EPA/OAR, Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, 2060-AS16
- 155. EPA/OAR, Emissions Guidelines and Compliance Times for Municipal Solid Waste Landfills, 2060-AS23
- 156. EPA/OAR, Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources, 2060-AS30

FEDERAL ACQUISITION REGULATION

- 157. FAR, Federal Acquisition Regulation (FAR); FAR Case 2014-025; Fair Pay and Safe Workplaces, 9000-AM81

FEDERAL DEPOSIT INSURANCE CORPORATION

- 158. FDIC, Assessments, 3064-AE40

NUCLEAR REGULATORY COMMISSION

- 159. NRC, Domestic Licensing of Source Material—Amendments/Integrated Safety Analysis [NRC-2009-0079], 3150-AI50
- 160. NRC, Revision of Fee Schedules: Fee Recovery for FY 2016 [NRC-2015-0223], 3150-AJ66

LONG-TERM ACTIONS (33)

DEPARTMENT OF ENERGY

- 161. DOE/EE, Energy Conservation Standards for Hearth Products, 1904-AD35

DEPARTMENT OF HEALTH AND HUMAN SERVICES

- 162. HHS/FDA, Requirements for the Testing and Reporting of Tobacco Product Constituents, Ingredients, and Additives, 0910-AG59
- 163. HHS/FDA, Regulations on Human Drug Compound-ing Under Sections 503A and 503B of the Federal Food, Drug, and Cosmetic Act, 0910-AH10
- 164. HHS/CMS, Conditions of Participation for Home Health Agencies (CMS-3819-F), 0938-AG81
- 165. HHS/CMS, Hospital and Critical Access Hospital (CAH) Changes to Promote Innovation, Flexibility, and Improvement in Patient Care (CMS-3295-F), 0938-AS21
- 166. HHS/CMS, Revisions to Requirements for Discharge Planning for Hospitals, Critical Access Hospitals, and Home Health Agencies (CMS-3317-F), 0938-AS59
- 167. HHS/CMS, Imaging Accreditation (CMS-3309-P), 0938-AS62
- 168. HHS/CMS, Requirements for Surety Bonds for Certain Medicare Providers and Suppliers (CMS-6067-P), 0938-AS65
- 169. HHS/CMS, Program Integrity Enhancements to the Provider Enrollment Process (CMS-6058-F), 0938-AS84
- 170. HHS/CMS, Part B Drug Payment Model (CMS-1670-F), 0938-AS85

DEPARTMENT OF HOMELAND SECURITY

- 171. DHS/OS, Collection of Alien Biometric Data Upon Exit from the United States at Air and Sea Ports of Departure, 1601-AA34
- 172. DHS/OS, Ammonium Nitrate Security Program, 1601-AA52
- 173. DHS/USCIS, Temporary Non-Agricultural Employment of H-2B Aliens in the United States, 1615-AC06
- 174. DHS/USCG, Updates to Maritime Security, 1625-AB38
- 175. DHS/USCBP, Importer Security Filing and Additional Carrier Requirements, 1651-AA70

DEPARTMENT OF JUSTICE

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

177. DOJ/CRT, Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of Public Accommodations, 1190-AA61

DEPARTMENT OF LABOR

178. DOL/ETA, Temporary Non-Agricultural Employment of H-2B Aliens in the United States, 1205-AB76
179. DOL/EBSA, Improved Fee Disclosure for Welfare Plans, 1210-AB37
180. DOL/OSHA, Injury and Illness Prevention Program, 1218-AC48

DEPARTMENT OF TRANSPORTATION

181. DOT/FMCSA, Carrier Safety Fitness Determination, 2126-AB11
182. DOT/NHTSA, Retroreflective Tape for Single Unit Trucks, 2127-AL57
183. DOT/PHMSA, Pipeline Safety: Gas Transmission (RRR), 2137-AE72

DEPARTMENT OF THE TREASURY

184. TREAS/OCC, Net Stable Funding Ratio, 1557-AD97
185. TREAS/CDFIF, Interim Rule for the CDFI Bond Guarantee Program, 1559-AA01

ENVIRONMENTAL PROTECTION AGENCY

186. EPA/OW, Stormwater Regulations Revision to Address Discharges From Developed Sites, 2040-AF13
187. EPA/OAR, Emission Guidelines for the Existing Oil and Natural Gas Sector, 2060-AT29

FEDERAL COMMUNICATIONS COMMISSION

188. FCC, Expanding Broadband and Innovation Through Air-Ground Mobile Broadband Secondary Service for Passengers Aboard Aircraft in the 14.0-14.5 GHz Band; GN Docket No. 13-114, 3060-AK02
189. FCC, Universal Service Reform Mobility Fund (WT Docket No. 10-208), 3060-AJ58
190. FCC, Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions; (GN Docket No. 12-268), 3060-AJ82
191. FCC, IP-Enabled Services; WC Docket No. 04-36, 3060-AI48
192. FCC, Implementation of Section 224 of the Act; A National Broadband Plan for Our Future (WC Docket No. 07-245, GN Docket No. 09-51), 3060-AJ64
193. FCC, Protecting and Promoting the Open Internet; (WC Docket No. 14-28), 3060-AK21

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

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Part H. Rules Affecting Small Business, 1997–2015

	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997
Dept. of Agriculture	40	47	45	80	65	84	87	93	73	67	54	52	64	39	56	47	49	63	58
Dept. of Commerce	109	112	103	158	115	98	90	107	112	111	108	79	74	77	89	98	88	52	29
Dept. of Defense	10	7	12	25	26	16	12	7	13	14	13	12	13	6	8	7	15	21	15
Dept. of Education	1	2	3		1	1	0	0	0	1	0	0	0	1	0	0	0	0	1
Dept. of Energy	8	4	5	8	6	3	2	1	1	0	0	0	1	0	1	1	0	0	2
Dept. of Health and Human Services	93	103	91	85	100	112	94	93	96	109	112	106	96	92	108	107	75	88	100
Dept. of Homeland Security	22	25	28	27	34	37	35	42	44	43	43	38	33	0	0	0	0	0	0
Dept. of Housing and Urban Development	1				0	1	0	1	5	4	4	6	11	6	3	0	1	1	7
Dept. of the Interior	35	30	23	24	23	18	17	18	19	29	21	20	26	17	20	18	33	29	28
Dept. of Justice	9	10	10	9	9	5	3	2	5	7	8	8	8	13	15	14	14	10	26
Dept. of Labor	22	24	22	24	23	26	29	29	26	26	19	19	23	22	26	40	38	41	39
Dept. of State	18	21	20	31	21	20	4	3	1	0	1	1	2	6	3	2	0	0	1
Dept. of Transportation	61	53	68	65	56	49	45	41	43	60	63	103	151	216	244	266	246	208	44
Dept. of Treasury	23	27	29	39	47	56	48	47	45	37	41	38	27	26	27	31	15	60	50
Dept. of Veterans Affairs	1	1	2	1	2	3	2	2	0	0	0	0	0	1	1	3	6	6	7
Agency for International Development					1	1	0	0	1	1	0	0	1	2	1	0	0	0	0
Arch. and Trans Barriers Compliance Board	2	1	1	1	1		0	0	0	0	0	0	0	1	1	2	2	3	0
Commodity Futures Trading Commission		1			0		1	1	1	0	1	1	2	0	0	0	0	1	0
Consumer Financial Protection Bureau	4	3	4	8	5														
Consumer Product Safety Commission	2			2	0			0	0	1	0	0	0	0	0	0	0	0	0
Corporation for National and Community Service					0		0	0	0	1	1	0	0	0	0	0	0	0	0
Environmental Protection Agency	12	6	6	49	73	95	89	83	85	95	110	122	135	167	185	205	179	178	163
Equal Employment Opportunity Commission	2	2	2	3	5	5	4	2	3	3	3	0	0	0	2	0	0	2	1
Federal Emergency Management Agency									0	0	0	0	0	1	1	1	0	0	0
Federal Acquisition Regulation	22	24	17	15	10	5	4	6	5	5	7	5	5	6	9	13	16	11	15
Federal Communications Commission	99	98	99	89	78	112	110	110	109	108	113	113	104	109	117	105	91	82	70
Federal Deposit Insurance Corporation			4	5	2	1													
Federal Energy Regulatory Commission					0			0	1	0	0	0	0	0	0	0	1	0	0

(continued)

Part H. Rules Affecting Small Business, 1997–2015 (continued)

	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997
Federal Housing Finance Board					0			0	0	0	0	0	0	0	0	0	0	1	0
Federal Maritime Commission	1	1	1	1	3	3	3	3	2	3	5	7	10	7	6	7	4	5	0
Federal Reserve System	4	7	5	12	17	8	6	5	5	3	6	5	3	7	10	8	2	5	2
Federal Trade Commission	18	21	18	21	22	16	16	13	11	13	12	11	9	9	9	9	10	10	11
Federal Mediation and Conciliation Service					0			0	0	0	0	0	0	0	1	1	0	0	0
General Services Administration	10	4	2	3	4	5	6	7	3	3	3	1	5	4	1	1	2	2	3
National Aeronautics and Space Administration	1	1	2	2	3			0	0	0	0	0	0	0	0	0	0	1	0
National Archives and Records Administration					0			0	0	0	1	1	1	0	0	0	0	1	1
National Credit Union Administration				2	4	4	7	3	1	4	1	2	0	0	0	0	0	0	1
National Endowment for the Arts	2	2	2	2				0	0	0	0	0	2	2	0	0	0	0	0
National Endowment for the Humanities					0			0	0	0	0	0	0	0	0	0	0	0	1
Nuclear Regulatory Commission	3	4	3	6	3	1	2	1	2	1	1	0	3	5	5	3	5	8	9
Office of Management and Budget					0			0	0	0	0	0	0	0	0	1	2	1	1
Railroad Retirement Board					0			0	0	0	0	0	0	0	0	0	0	0	1
Resolution Trust Corporation										0	17	0	0	0	0	0	0	0	0
Small Business Administration	28	23	27	38	35	39	20	13	15	21	19	18	24	21	21	24	28	20	13
Social Security Administration					1		1	1	1	1	1	1	1	1	0	0	2	0	0
Surface Transportation Board		1																	
Securities and Exchange Commission	11	9	15	19	27	21	21	19	29	16	0	20	25	28	26	40	39	27	34
TOTAL	674	674	669	854	822	845	758	753	757	787	788	789	859	892	996	1054	963	937	733

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

Part I. The Unconstitutionality Index, 2000–2016

Year	Final Rules	Public Laws	The Index	Notices	Executive Orders	Executive Memos
2000	4,313	410	11	25,470	39	13
2001	4,132	108	38	24,829	67	12
2002	4,167	269	15	25,743	32	10
2003	4,148	198	21	25,419	41	14
2004	4,101	299	14	25,309	46	21
2005	3,975	161	25	25,353	27	23
2006	3,718	321	12	25,031	25	18
2007	3,595	188	19	24,476	32	16
2008	3,830	285	13	25,279	29	15
2009	3,503	125	28	24,753	44	38
2010	3,573	217	16	26,173	41	42
2011	3,807	81	47	26,161	33	19
2012	3,708	127	29	24,408	39	32
2013	3,659	72	51	24,261	24	32
2014	3,554	224	16	23,970	34	25
2015	3,410	114	30	24,393	29	31
2016	3,853	214	18	24,557	45	36

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

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