

# Analysis of “The Regulatory Plan and Unified Agenda of Federal Regulations”

One of the goals of regulatory reform should be to improve disclosure and enhance its relevance to rulemaking. “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions” (the Agenda) is the document in which agencies outline their priorities. Like the *Federal Register*, the Agenda is one of the few limited and imperfect tools we have. Yet much could still be done to improve the quality of the information compiled within it and the frequency of its publication.

The Agenda normally appears in the *Federal Register* each fall and, minus the regulatory plan component, in the spring. However, the publication of the Unified Agenda has become erratic in recent years, suffering delays in its traditional April and October schedule, much as the annual report to Congress on regulatory costs and benefits remains even more chronically late.<sup>573</sup> Elections and other considerations by administrations, such as reporting priorities, can prompt agencies to either accelerate or slow down rulemaking or to report fewer rules, thus affecting the Agenda’s content and bulk.<sup>574</sup>

The Trump administration released the fall 2020 edition of the twice-yearly Agenda in November 2020. Usually, the Agenda appears with little fanfare and the 2020 edition was no exception. However, 2017 and 2018 saw the beginning of the one-in, two-out directive for federal agency rulemaking, by way of Trump’s Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.” The normally unremarkable Agenda release was accompanied then by White House statements touting progress on meeting goals for regulatory streamlining and me-

dia events complete with red-tape props<sup>575</sup> and, in 2017, with a *Wall Street Journal* column by Neomi Rao, then the administrator of the Office of Management and Budget’s Office of Information and Regulatory Affairs.<sup>576</sup>

Along with those affecting the private sector, many rules in the Unified Agenda affect operations of state and local governments, either directly or indirectly. It breaks down rules into (a) rules recently completed, (b) rules anticipated or prioritized in the upcoming 12 months, and (c) longer-term rules by over 60 federal departments, agencies, and commissions. As a compilation of agency-reported federal regulatory actions at several stages, one might regard the Agenda as a cross-sectional snapshot of the following actions moving through the regulatory pipeline:

- Active actions: prerule actions, proposed and final rules
- Completed actions: actions completed during the previous six months
- Long-term actions: 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. In the fall 2020 edition, 444 of the active actions appeared for the first time.

Observers have long recognized the inconsistent and subjective nature of the Agenda’s contents. For example, upon release of the fall 2013 Agenda, regulatory expert Leland E. Beck remarked that the Agenda “provides

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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.”<sup>577</sup> Rules and content fluctuate given administration priorities. For example, in 2012, during the Obama administration, spring and fall guidelines from OMB’s then-director of the Office of Information and Regulatory Affairs, Cass Sunstein, altered reporting directives to agencies:

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.<sup>578</sup>

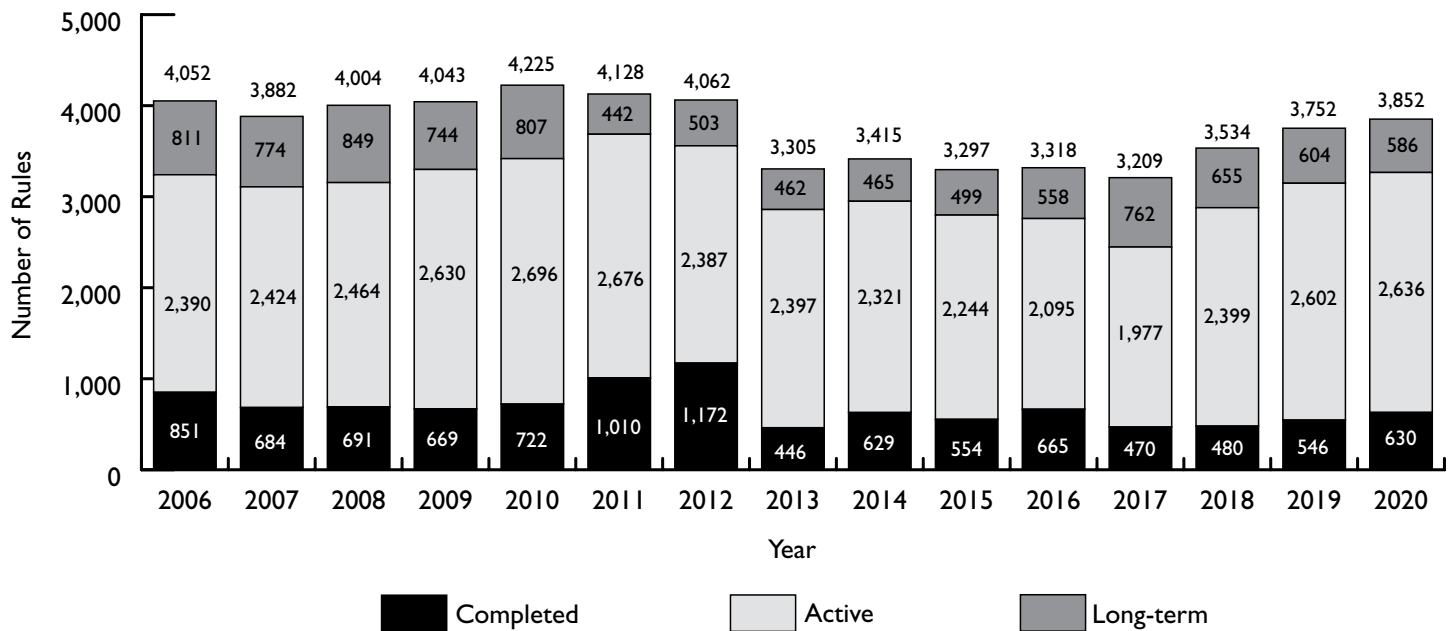
When the subsequent OIRA administrator Howard Shelanski issued a similar memo-

randum on August 7, 2013, “please consider terminating” became the more direct “please remove.”<sup>579</sup> The drop in the number of rules appearing in the Agenda at that time is apparent in Figure 18.

Policy reversed again during the Trump administration. In 2017, both then acting OIRA director Dominic Mancini and then-OIRA Administrator Rao instructed agency heads:

In recent years, a large number of Unified Agenda entries have reflected regulatory actions for which no substantial activity was expected within the coming year. Many of these entries are listed as “Long-Term.” We have retained the ability to list these items in the Agenda, and see merit in their continued inclusion, particularly in some instances of notable rulemakings for which no action is planned in the coming year. Please, however, consider whether the listing of such entries still benefits readers.<sup>580</sup>

Figure 18. Total Agency Rules in the Fall Unified Agenda Pipeline, 2006–2020



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.

In many respects, rule reporting can be short-circuited and costs obscured. The Agenda is no different. Agencies are not required to limit their regulatory activity to what they publish in the Unified Agenda. However, that temporarily changed under the Trump administration. As Rao noted:

Agencies must make every effort to include actions they plan to pursue, because if an item is not on the Agenda, under Executive Order 13771, an agency cannot move forward unless it obtains a waiver or the action is required by law. A clear and accurate Agenda helps avoid unfair surprise and achieves greater predictability of upcoming actions.<sup>581</sup>

Healthy skepticism is justified regarding the counts in the Unified Agenda, given the lack of uniformity with respect to its content and strategic rule timing by administrations. While the political and policy climate can affect what appears in it, the Agenda nonetheless gives regulated entities and researchers a sense of the flow in the regulatory pipeline.

### 3,852 Rules in the Fall 2020 Unified Agenda Pipeline; 653 Deemed Deregulatory, 338 Regulatory

The fall 2020 “Regulatory Plan and Unified Agenda of Regulatory and Deregulatory Actions” found 68 federal agencies, departments, and commissions listing 3,852 regulations (100 more than the fall 2019) in the active (prerule, proposed, and final), just-completed, and long-term stages, many of which had been in the pipeline for some time (see Figure 18).<sup>582</sup> This count is easily Trump’s highest. There had been 3,209 in 2017, when 1,579 Obama-era planned regulatory actions and rules had been withdrawn or delayed early in the Trump administration.

Trump’s overall count of rules in the Unified Agenda pipeline was the highest since 2012,

under Obama. However, 653 rules in the pipeline were deemed “deregulatory” for purposes of Executive Order 13771, for a “net” of 3,199. (There had been 689 such rules in 2019.)

Figure 18 illustrates how, apart from 2007, the overall Unified Agenda pipeline exceeded 4,000 rules (active, completed, and long-term) each fall through 2012. Counts had been even higher in the 1990s, when an all-time-high count of 5,119 rules occurred in the fall 1994 Agenda. The sharp 19 percent drop under Obama from 4,062 rules in 2012 to 3,305 in 2013 seems to reflect, at least in part, the election year and management directive factors noted earlier. (For a history of the numbers of rules in the Unified Agenda since 1983, see Appendix: Historical Tables, Part E.)

Rule counts remain in the thousands, but many of those have come to be regarded as routine measures, such as safety directives from agencies like the Federal Aviation Administration and Coast Guard, rather than new initiatives. Such assumptions deserve rethinking. The total pipeline count of 3,852 rules depicted in Figure 18 is broken out in detail in Table 6 by issuing agency, commission, or department. It shows numbers of rules at the active, completed, and long-term stages.

Perhaps most important for assessing Trump’s one-in, two-out regulatory campaign is the question of which agencies are responsible for the 653 of 3,852 rules that are deemed “deregulatory,” which are also depicted in Table 6. For the total numbers of rules by department and agency from previous year-end editions of the Unified Agenda since 2001, see Appendix: Historical Tables, Part F.

**Active rules.** Since 2005, active rule counts in the Agenda consistently remained well above 2,000, until they fell to 1,977 under Trump in 2017, with 448 deemed deregulatory at the time. The number of active rules rose to 2,399 in 2018 (with 514 deemed deregulatory), to 2,602 in 2019 (522 deregulatory), and to 2,636 in 2020 (496

Table 6. Unified Agenda Entries by Department and Agency (Fall 2020)

	Total Rules	Unified Agenda			Deregulatory Actions		
		Active	Completed	Long Term	Active	Completed	Long Term
Dept. of Agriculture	164	114	29	21	22	6	8
Dept. of Commerce	312	196	80	36	48	16	10
Dept. of Defense	234	176	57	1	9	1	
Dept. of Education	23	15	8		5	1	
Dept. of Energy	153	132	9	12	16	4	2
Dept. of Health and Human Services	250	194	39	17	54	7	3
Dept. of Homeland Security	155	88	16	51	17	2	2
Dept. of Housing and Urban Development	52	44	6	2	9	4	
Dept. of the Interior	306	246	44	16	53	9	3
Dept. of Justice	108	78	9	21	13		
Dept. of Labor	92	63	19	10	18	9	1
Dept. of State	71	59	9	3	2		
Dept. of Transportation	301	221	29	51	147	14	12
Dept. of the Treasury	394	267	57	70	38	3	5
Dept. of Veterans Affairs	81	61	11	9	1	1	2
Agency for International Development	17	15	2		2		
Architectural and Transportation Barriers Compliance Board	2		1	1			
CPBSD*	4	4					
Commodity Futures Trading Commission	42	25	14	3			
Consumer Financial Protection Bureau	21	13	1	7			
Consumer Product Safety Commission	21	10	3	8			
Corporation for National and Community Service	9	7	1	1			
Council of Inspector General on Integrity and Efficiency	1			1			
Council on Environmental Quality	3	2	1			1	
Court Services/Offender Supervision, D.C.	7	7					
Environmental Protection Agency	232	132	45	55	24	15	7
Equal Employment Opportunity Commission	15	13	2				
Farm Credit Administration	19	15	2	2			
Federal Acquisition Regulation	61	51	10		5	3	
Federal Communications Commission	79		2	77			
Federal Deposit Insurance Corporation	56	27	20	9			
Federal Energy Regulatory Commission	12	2	1	9			
Federal Housing Finance Agency	14	10	3	1			
Federal Maritime Commission	3		3				
Federal Mediation and Conciliation Service	4		1	3			
Federal Mine Safety and Health Review Commission	2	2					

	Total Rules	Unified Agenda			Deregulatory Actions		
		Active	Completed	Long Term	Active	Completed	Long Term
Federal Permitting Improvement Steering Council	3	3					
Federal Reserve System	46	20	18	8			
Federal Trade Commission	20	18	2				
General Services Administration	32	30	2				
Institute of Museum and Library Services	2	2	0				
National Aeronautics and Space Administration	10	7	3				
National Archives and Records Administration	9	6	2	1			
National Credit Union Administration	32	29	3				
National Endowment for the Arts	6	5		1			
National Endowment for the Humanities	5	4	1				
National Indian Gaming Commission	10	9		1			
National Labor Relations Board	4	4					
National Mediation Board	1			1			
National Science Foundation	1	1					
National Transportation Safety Board	6			6			
Nuclear Regulatory Commission	56	32	7	17			
Office of Government Ethics	13	9	4				
Office of Management and Budget	9	8	1		4		
Office of National Drug Control Policy	2	2					
Office of Personnel Management	51	34	15	2	3	1	
Office of the U.S. Trade Representative	2	1	1				
Peace Corps	6	6					
Pension Benefit Guaranty Corporation	12	9	3				
Postal Regulatory Commission	5			5			
Presidio Trust	3	3					
Railroad Retirement Board	7		1	6			
Securities and Exchange Commission	80	32	15	33			
Small Business Administration	65	51	9	5	6	4	1
Social Security Administration	19	15	4				
Surface Transportation Board	10	4	3	3			
U.S. Agency for Global Media	4	2	2				
U.S. Commission on Civil Rights	1	1					
<b>TOTAL</b>	<b>3,852</b>	<b>2,636</b>	<b>630</b>	<b>586</b>	<b>496</b>	<b>101</b>	<b>56</b>

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>. With Executive Order 13771 Deregulatory Component

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

deregulatory) (see Figure 18). While gross active counts are back to the historical levels seen in Figure 18, they are offset by the several hundred deregulatory rules each year under Trump. However, the proportion of active rulemaking that is explicitly deregulatory appears to be on the decline.

**Completed rules.** Completed rules are “actions or reviews the agency has completed or withdrawn since publishing its last Agenda.” 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 dropped precipitously in 2013 to 462. This category stood at 470 and 480 in Trump’s fall 2017 and 2018 Agendas, respectively, and rose to 546 in 2019 and to 630 in 2020. While the gross count for completed rules has returned to heights normal for the past decade, the net is lower since a significant proportion of Trump’s completed rules have been deregulatory (62 in 2017, 94 in 2018, 106 in 2019, and 101 in 2020).

**Long-term rules.** In the 2017 Agenda, Trump’s first, announced long-term rules in the pipeline stood at 762, a jump from 558 in 2016. That may have reflected in part the directives by Mancini and Rao to consider including these rules again. Thirty of the 762 were deregulatory. In 2018, long-term rules dropped to 655, with 63 of them deemed deregulatory. In 2019, they dropped again, to 604, with 61 deemed deregulatory. Long-term rules included in the fall 2020 Agenda fell to 586, with 56 deemed deregulatory. After covering economically significant rules in the Agenda, we will revisit the important deregulatory component of the fall Agenda, longer-term rules in particular, and the implications for future regulatory reductions.

## Top Rulemaking Departments and Agencies

A relative handful of executive branch agencies account for a large number of the rules

in the pipeline each year. Without distinguishing between regulatory and deregulatory, the top five rulemaking cabinet departments are Commerce, Health and Human Services, the Interior, Transportation, and the Treasury (see Table 7). These top five, with 1,563 rules among them, account for 41 percent of the 3,852 rules in the Unified Agenda pipeline.

The top five independent agencies in the Unified Agenda pipeline by rule count are the Federal Deposit Insurance Corporation, Federal Communications Commission, Securities and Exchange Commission, Small Business Administration, and the multi-agency Federal Acquisition Regulation system (see Table 7).<sup>583</sup> Their total 341 rules account for 9 percent of the 3,852 rules in the Agenda. Combined, the top executive and independent agency components make up 49 percent of the total. However, the difference between this year and prior years is that some entries are now explicitly deemed deregulatory. Therefore, it is worth noting the percentage of actions at these bodies that are deregulatory for Executive Order 13771 purposes. They are listed in Table 6.

## 261 “Economically Significant” Rules in the Unified Agenda—36 Deemed Deregulatory, 76 Regulatory

A subset of the Unified Agenda’s 3,852 rules is classified as economically significant, which means that agencies estimate their yearly economic effects at \$100 million or more. That generally reflects increased costs, although sometimes an economically significant rule is intended to reduce costs, particularly so in the wake of Executive Order 13771. As Table 8 shows, 261 economically significant rules from 21 departments and agencies appear at the active (prerule, proposed rule, and final rule), completed, and long-term stages of the pipeline. This count is up considerably from 192 in 2019 and from Trump’s earlier years (as seen in Figure

**Table 7. Top Rule-Producing Executive and Independent Agencies**  
(From Fall 2020 Unified Agenda, total of active, completed, and long-term rules)

<b>Executive Agency</b>	<b>Number of Rules</b>
1. Department of the Treasury	394
2. Department of Commerce	312
3. Department of the Interior	306
4. Department of Transportation	301
5. Department of Health and Human Services	250
<b>TOTAL</b>	<b>1563</b>
<b>% of Total Agenda Pipeline of 3,852</b>	<b>41</b>

<b>Independent Agency</b>	<b>Number of Rules</b>
1. Securities and Exchange Commission	80
2. Federal Communications Commission	79
3. Small Business Administration	65
4. Federal Acquisition Regulation	61
5. Federal Deposit Insurance Corporation	56
<b>TOTAL</b>	<b>341</b>
<b>% of Total Agenda Pipeline of 3,752</b>	<b>9</b>

<b>Top 7 Executives plus Independents</b>	<b>1,904</b>
<b>% of Total Agenda Pipeline</b>	<b>49</b>

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

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

19).<sup>584</sup> Each of those years contains deregulatory rules.

Figure 19 depicts 2020’s 261 economically significant rules alongside those of the previous decade and a half. That number represents a 36 percent increase over 2019’s 192 rules (of which 33 were classified deregulatory and 67 regulatory). The number of economically significant rules in the annual fall pipeline rose under President Obama, topped out twice at 224, and finished out 2016 with 193.<sup>585</sup> Of Trump’s 261 economically significant rules in the 2020 Agenda, 36 are deregulatory, for a “net” count of 225. Back in Trump’s first fall Unified Agenda in 2017, the administration brought the count down by 27 percent, an effect magnified by the fact that 30 of the 140 rules at that time were deemed deregulatory. (The full list of the 261 economi-

cally significant rules in the 2020 Agenda pipeline is available in Appendix: Historical Tables, Part G, which flags the 36 deregulatory and 76 regulatory entries.)

Figure 19 also breaks down economically significant rules into completed, active, and long-term categories. Of the 261 economically significant rules in the fall 2020 edition, 173 stand at the active phase, compared with 119 in 2019 and 71 in the fall 2017 edition. The new level of active rules exceeds anything seen in the Obama Agendas, even taking into account that 20 in the active category were deemed deregulatory in 2020. Barack Obama’s eight-year average of active rules across the fall Agendas was 133; George W. Bush’s eight-year average was 87. Trump’s average across the active category for his four years in office is 120, but that includes deregulatory measures.

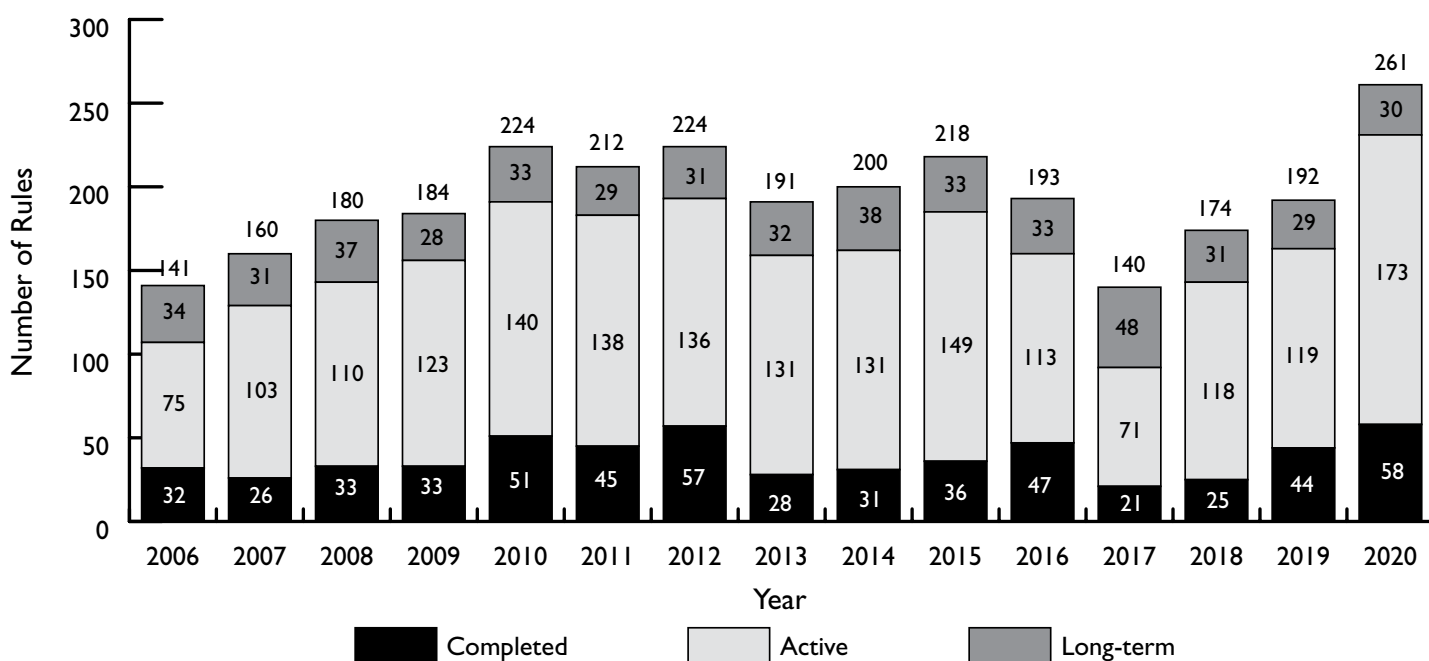
Table 8. 261 Economically Significant Rules in the Fall Unified Agenda Pipeline Expected to Have \$100 Million Annual Economic Impact, 36 Deemed Deregulatory, Fall 2019

	Rules	Unified Agenda			Deregulatory Actions*		
		Active	Completed	Long Term	Active	Completed	Long Term
Dept. of Agriculture	16	13	3		2		
Dept. of Commerce	2	1	1				
Dept. of Defense	2	2					
Dept. of Education	4	3	1		3	1	
Dept. of Energy	6	5		1			
Dept. of Health and Human Services	67	42	20	5	3	2	1
Dept. of Homeland Security	22	13	4	5		1	1
Dept. of Housing and Urban Development	2	2					
Dept. of the Interior	5	3	2		1	1	
Dept. of Justice	3	2	1		2		
Dept. of Labor	14	8	2	4	3	1	
Dept. of State	1	1					
Dept. of Transportation	15	10	2	3	5	1	
Dept. of the Treasury	39	21	15	3	1	2	
Dept. of Veterans Affairs	11	8	1	2			
Consumer Product Safety Commission	1	1					
Council on Environmental Quality	1		1			1	
Environmental Protection Agency	11	7	3	1		3	
Federal Acquisition Regulation	2	1	1			1	
Federal Communications Commission	5			5			
Federal Housing Finance Agency	1	1					
Federal Permitting Improvement Steering Committee	1	1					
Nuclear Regulatory Commission	3	1	1	1			
Office of Personnel Management	1	1					
Small Business Administration	25	25					
Social Security Administration	1	1					
<b>TOTAL</b>	<b>261</b>	<b>173</b>	<b>58</b>	<b>30</b>	<b>20</b>	<b>14</b>	<b>2</b>

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>.



Figure 19. 261 Economically Significant Rules in the Unified Agenda Pipeline, 2006–2020



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

*Rules that have a substantial impact in society are not always deemed economically significant.*

Rules that have a substantial impact in society are not always deemed economically significant. For example, one of the major policy events in 2020 was the creation of the Paycheck Protection Program as part of COVID relief legislation, along with the rules for implementing it. A look at the 261 economically significant rules in the fall Agenda finds 28 Small Business Administration rules at the final (not completed) stage related to the Paycheck Protection Program.

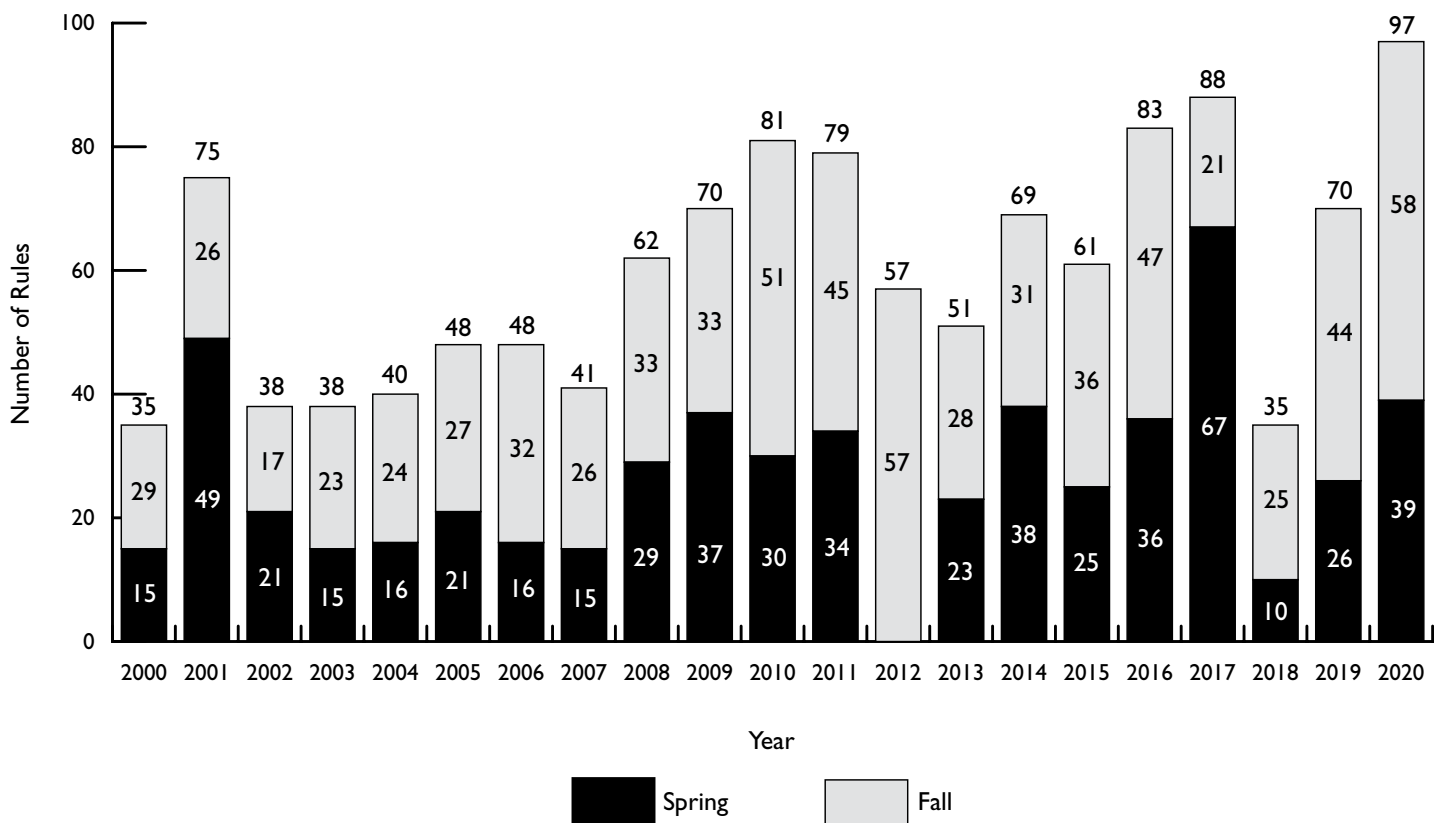
As for economically significant rules at the completed stage in the fall Agendas, President Obama’s count was consistently higher than President George W. Bush’s, even when accounting for an Obama election-year drop between 2011 and 2012. Completed rules in the fall Agenda peaked at 57 in 2012, just below the 58 in Trump’s fall Agenda. Completed economically significant rules attained their lowest point of 21 under Trump in 2017. Of the 58 Trump rules completed in the fall 2020 Agenda, 14 are deemed deregulatory. This leaves a net of 44 that, with a few exceptions, exceeds “historical” levels (see Figure 19).

For a fuller picture of completed rules in any given year, one must 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 fall Agendas for a closer analysis of yearly trends in this category.<sup>586</sup>

As Figure 20 shows, completed economically significant rules totaled 35 in the combined fall and spring 2018 Agendas under Trump, rose to 70 in 2019, then peaked at 97 in 2020. In both 2017 and 2020, Trump issued more completed economically significant rules than either Bush or Obama in any given year. That may be partly due to the Administrative Procedure Act’s requirement for the issuing of a new rule to get rid of an old one. That means that when agencies eliminate two for one, it may appear as if more “rules” are being issued.

In 2018, 16 of the 35 completed rules were deemed deregulatory for Executive Order 13771 purposes. In 2019, 18 of 70 are designated deregulatory; and in 2020, 21 of 97 are. If one were to remove the deregulatory

Figure 20. Annual Completed Economically Significant Rules in the Unified Agenda, 2000–2020



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

rules from Trump’s tallies, a substantial numerical rollback in economically significant rulemaking is evident compared with his predecessors’ output.

Of course, other presidents have issued deregulatory measures, but they did not make the reduction agenda so explicit or ease the tracking of the relevant metrics as the Trump administration did with the Executive Order 13771 “deregulatory” designations in the OIRA database. The reaction to the COVID-19 crisis is another variable affecting rule flow. Agencies were instructed to use emergency powers, some of which affected federal programs, though not always with deregulatory effect.

Apart from 2001, the level of completed economically significant rules from 1996 forward was notably lower during the late 1990s and early 2000s. Bush’s total num-

ber of completed economically significant rules was 390, for an average of 49 per year. Obama’s total for his eight years was 551, an average of 69 per year. Some agency “midnight regulations” from the prior administration may be reflected in the totals for a first-year president, but this report is primarily concerned with calendar-year comparisons. Trump’s average is 72 (from a total of 289), but again, some of these rules are deregulatory.

As noted, of the 3,852 rules in the Agenda, each of the 261 deemed economically significant is estimated to have annual impacts of at least \$100 million. In any other year, those rules might be expected to eventually impose annual costs of at least \$26.1 billion (loosely, 261 rules multiplied by the \$100 million economically significant threshold). However, some rules under Trump decrease costs, which offset that total, and for which

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the administration reported separately.<sup>587</sup> Whatever the actual total cost, regulatory costs are cumulative and recurring costs need to be added to the previous years' costs. And, as noted, agencies are not limited in their activities to what they list in the Agenda.

Attention to economically significant rules should not distract policy makers and analysts from the remaining bulk of rules in the annual pipeline, which can have significant costs of their own. In the fall 2020 pipeline, 3,591 federal rules were not designated as economically significant (3,852 total rules minus the 261 economically significant ones). However, a rule estimated to cost below the \$100 million economically significant threshold can still impose substantial costs on the regulated entities. To this we must add the regulatory effects of budget rules and guidance documents with regulatory impact.

### **Notable Regulations by Agency**

Many of the things that regulations purport to do are worthy and needed pursuits. However, that does not mean the federal administrative bureaucracy offers the best means of achieving them, compared with state and local oversight, along with insurance, liability, and other voluntary-sector options. In recent Unified Agenda editions and in other venues, federal agencies have noted the regulatory initiatives listed below, among others pending or recently completed. As noted, the full list of the 261 economically significant rules in the fall 2020 Agenda pipeline appears in Appendix: Historical Tables, Part G.

#### ***Department of Agriculture***

- Rural Broadband Grant, Loan, and Loan Guarantee Program; and Rural e-Connectivity Program (ReConnect Program)
- Establishment of a domestic hemp production program

- Revision of the nutrition facts panels for meat and poultry products and updating certain reference amounts customarily consumed
- Supplemental Nutrition Assistance Program: procedural requirements for households that have zero gross countable income and include a work registrant
- Coronavirus Food Assistance Program
- Conservation Stewardship Program
- National Bioengineered Food Disclosure Standard
- 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 schools and certification of compliance with meal requirements for the national school lunch program (as required by the Healthy, Hunger-Free Kids Act of 2010)<sup>588</sup>
- Standards for grades of canned baked beans<sup>589</sup>
- Rural Energy for America Program
- Mandatory inspection of catfish and catfish products
- Multifamily housing reinvention
- Inspection regulations for eggs and egg products
- Performance standards for ready-to-eat processed meat and poultry products
- Modernization of poultry slaughter inspection

#### ***Department of Commerce***

- Taking and importing marine mammals: taking marine mammals incidental to geophysical surveys related to oil and gas activities in the Gulf of Mexico
- Setting and adjusting patent fees during FY 2020
- Right-whale ship strike reduction

#### ***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, central air conditioners, heat pumps, dishwashers, conventional cooking products, and non-weatherized gas furnaces; mobile home furnaces and gas furnaces; electric distribution transformers; commercial refrigeration units, heat pumps, and water-heating equipment; 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; and refrigerated bottled or canned beverage vending machines
- Proposed rule on Executive Order 13920, “Securing the United States Bulk-Power System”
- Fossil fuel-generated energy consumption reduction for new federal buildings and major renovations of federal buildings
- Incentive program for manufacturing advanced technology vehicles

## *Department of Health and Human Services*

- Direct Regulatory Cleanup Initiative
- Department of Health and Human Services Promotion of the rule of law through transparency and fairness in civil administrative enforcement and adjudication

- Policy and regulatory revisions in response to the COVID-19 public health emergency
- Clinical Laboratory Improvement Amendments and Patient Protection and Affordable Care Act; additional policy and regulatory revisions in response to the COVID-19 public health emergency
- COVID-19 hoarding prevention under the Defense Production Act
- Nutrient content claims, definition of the term “healthy”
- Frozen cherry pie: proposed revocation of a standard of identity and a standard of quality<sup>590</sup>
- Tobacco product standard for characterizing flavors in cigars
- Requirements for additional traceability records for certain foods
- General and plastic surgery devices: restricted sale, distribution, and use of sunlamp products
- Prohibition of sale of tobacco products to persons younger than 21 years of age
- Medicaid programs reducing provider and patient burden, and promoting patients’ electronic access to health information
- Hospice wage index, payment rate update, and quality reporting requirements
- Revisions to payment policies under the Physician Fee Schedule and other revisions to Medicare Part B
- Modernizing and clarifying the physician self-referral regulations
- Hospital inpatient prospective payment systems for acute care hospitals, the Long-Term Care Hospital Prospective Payment System, and FY 2021 rates
- Sunscreen drug products for over-the-counter human use guidance
- 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 restrictions<sup>591</sup>
- Required warnings for cigarette packages and advertisements
- Food labeling: serving sizes of foods that can reasonably be consumed at one eating occasion; dual-column label-

- ing; 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”);<sup>592</sup> consumer antiseptics
- 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
- Mammography quality standards
- 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; Medicaid, exchanges, and children’s health insurance programs: eligibility, appeals, and other provisions
- Revisions to promote patients’ electronic access to health care information and improve interoperability for Medicare- and Medicaid-participating providers and suppliers
- 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
- Removing H-4 dependent spouses from the classes of aliens eligible for employment authorization
- Affidavit of support on behalf of immigrants
- Collection and use of biometrics by U.S. Citizenship and Immigration Services; and collection of biometric data from aliens upon entry to and exit from the United States
- Western Hemisphere Travel Initiative: noncompliant traveler fee
- Air cargo advance screening
- Visa Security Program fee
- Establishing a fixed time period of admission and an extension of stay procedure for nonimmigrant academic students, exchange visitors, and representatives of foreign information media
- Cost of assistance estimates in the disaster declaration process for the Public Assistance Program
- Emergency Management Priorities and Allocations System
- COVID-19 hoarding prevention under the Defense Production Act
- 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

## *Department of Housing and Urban Development*

- Revision of manufactured home construction and safety standards regarding location of smoke alarms
- Instituting smoke-free public housing<sup>593</sup>

- 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)
- Overtime rule: “Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees”<sup>595</sup>
- 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)<sup>596</sup>

### *Department of the Interior*

- Revised requirements for well plugging and platform decommissioning
- Revisions to the requirements for exploratory drilling on the Arctic Outer Continental Shelf
- Endangered and threatened wildlife and plants: removal of the gray wolf from the List of Endangered and Threatened Wildlife
- Increased safety measures for oil and gas operations and exploratory drilling on the Arctic Outer Continental Shelf<sup>594</sup>
- Blowout prevention for offshore oil and gas operations
- Walking working surfaces and personal fall protection systems (slips, trips, and fall prevention)<sup>597</sup>
- 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
- Occupational exposure to styrene crystalline silica, tuberculosis, and beryllium<sup>598</sup>
- 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
- Process safety management and prevention of major chemical accidents

### *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
- Financial factors in selecting plan investments
- Tip regulations under the Fair Labor Standards Act
- Independent contractor status under the Fair Labor Standards Act

### *Department of Transportation*

- Quiet car rule; minimum sound requirements for hybrid and electric vehicles<sup>599</sup>
- Federal Aviation Administration rule on operation and certification of

- drones and near critical infrastructure facilities<sup>600</sup> (waivers on discretionary basis<sup>601</sup>)
- National Highway Traffic Safety Administration, Federal Motor Vehicle Safety Standard 150: vehicle-to-vehicle communication
- Flight attendant duty period limitations and rest requirements
- Rear seat belt reminder system
- Retroreflective tape and underride guards for single-unit trucks
- Medium and heavy-duty fuel efficiency standards
- Establish side-impact performance requirements for child restraint systems
- Corporate Average Fuel Economy civil penalties
- Safer Affordable Fuel-Efficient Vehicles Rule for model years 2021–2026 passenger cars and light trucks
- High-Speed Intercity Passenger Rail Program; Buy America program requirements
- Federal Motor Carrier Safety Administration and National Highway Safety Administration (NHTSA) rule on speed limiters and electronic stability control systems for heavy vehicles<sup>602</sup>
- Federal Railroad Administration’s Train Crew Staffing Rule seeking a two-engineers-on-a-train mandate<sup>603</sup>
- NHTSA rule on lighting and marking on agricultural equipment<sup>604</sup>
- Minimum training requirements for entry-level commercial motor vehicle operators and for operators and training instructors of multiple-trailer combination trucks<sup>605</sup>
- Passenger car and light truck CAFE standards (newer model years)
- Requirement for installation of seat belts on motor coaches; rear center lap and shoulder belt requirement; seat belt reminder system
- Carrier safety fitness determination
- Hours of service, rest, and sleep for truck drivers; electronic logging devices and hours-of-service supporting documents
- 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 others safety strategies for single-unit trucks
- Amendments for positive train control systems
- Aging aircraft safety
- Upgrade of head restraints in vehicles
- Registration and training for operators of propane tank-filling equipment
- Monitoring systems for improved tire safety and tire pressure
- Hazardous materials: transportation of lithium batteries

## *Department of the Treasury*

- Prohibition of funding of unlawful Internet gambling
- Small Business Administration Business Loan Program temporary changes; Paycheck Protection Program—additional criteria for seasonal employers
- Business Loan Program temporary changes; Paycheck Protection Program Requirements—loan forgiveness
- Provisions pertaining to certain transactions by foreign persons involving real estate in the United States
- Provisions pertaining to certain investments in the United States by foreign persons
- Anti-money laundering program and suspicious activity report filing requirements for investment advisers
- Prohibitions and restrictions on proprietary trading and certain interests in, and relationships with, hedge funds and private equity funds
- Margin and capital requirements for covered swap entities
- Regulatory capital rule: temporary exclusion of U.S. Treasury securities and deposits at Federal Reserve Banks from the supplementary leverage ratio
- Regulatory capital rule: Payment Protection Program lending facility and Payment Protection Program loans

- Financial Crimes Enforcement Network: cross-border electronic transmittals of funds
- 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)
- Troubled Asset Relief Program standards for compensation and corporate governance
- Control of air pollution from new motor vehicles: heavy-duty engine standards: Cleaner Trucks Initiative
- National emission standards for hazardous air pollutants for major sources: industrial, commercial, and institutional boilers and process heaters: amendments
- Review of dust-lead post-abatement clearance levels
- Reclassification of major sources as area sources under Section 112 of the Clean Air Act
- Oil and natural gas sector: emission standards for new, reconstructed, and modified sources reconsideration
- Greenhouse gas emissions and fuel efficiency standards for medium- and heavy-duty engines and vehicles
- Performance standards for new residential wood heaters
- 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
- Trichloroethylene; rulemaking under Toxic Substances Control Act Section 6(a); vapor degreasing

### ***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 loans<sup>606</sup>

### ***Consumer Product Safety Commission***

- Regulatory options for table saws
- 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

### ***Council on Environmental Quality***

- Update to the regulations for implementing the procedural provisions of the National Environmental Policy Act

### ***Environmental Protection Agency***

- National primary drinking water regulations for lead and copper: regulatory revisions



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*The administrative state retreated little in the face Trump's stand-alone deregulatory agenda.*

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- 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
- Standards for cooling water intake structures
- Standards of performance for municipal solid waste landfills
- 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 services<sup>607</sup>
- Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions
- Processing applications in the direct broadcast satellite (DBS) service; feasibility of reduced orbital spacing for provision of DBS service in the United States
- Restoring Internet freedom; protecting and promoting the open Internet
- Broadband for passengers aboard aircraft
- Broadband over power line systems
- Satellite broadcasting signal carriage requirements

### *Federal Acquisition Regulation*

- Prohibition on contracting with entities using certain telecommunications and video surveillance services or equipment

### *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

### *Federal Permit Improvement Steering Council*

- Adding land revitalization as a sector of projects eligible for coverage under Title 41 of the Fixing America's Surface Transportation Act

### *Office of Personnel Management*

- Multistate exchanges: implementations for Affordable Care Act provisions
- Paid parental leave and miscellaneous provisions of the Family and Medical Leave Act

### **Limitations of Trump's One-In, Two-Out Campaign**

The administrative state retreated little in the face Trump's stand-alone deregulatory agenda. The regulatory reform task forces, which started with enthusiasm, faded slowly, although a flurry of deregulatory energy remained at some agencies during 2020. Moreover, regulatory reform is made more difficult by the fact that many businesses lobby against substantial regulatory changes to maintain an edge over upstart competitors.<sup>608</sup> In the fall 2020 Agenda, completed significant deregulatory actions exceeded regulatory ones, but the active and long-term rules in the pipeline are a reason for concern.

There has long been a need for greater clarity on whether agency actions listed in the Unified Agenda, *Federal Register*, and OMB's annual *Report to Congress* on benefits and costs are regulatory or deregulatory. Pertinent to that, perhaps the most important modification was the presentation in Trump's Regulatory Plan and Unified Agenda of matters

pertaining to Executive Order 13771. Rules and regulations can now be more methodically identified by readers of the Unified Agenda as regulatory or deregulatory.<sup>609</sup> Because of the change, the OIRA database now can better capture those and other specifics, such as regulatory measures and identification of rules not subject to the order.

In particular, on the landing page of OIRA's database for each edition of the Agenda, a search option appears for "Executive Order 13771 Designation." The Agenda's inclusion of deregulatory actions enables researchers and the public to identify which regulations agencies have classified as either deregulatory or regulatory. Over time, that should enable researchers to determine whether regulation is increasing or decreasing.<sup>610</sup> Categories of rules not subject to the executive order are now classified under other categories: "fully or partially exempt," "not subject to," "not significant," "other," and "independent agency." Table 9 shows the number of such rules at the completed, active, and long-term stages relative to the overall count of 3,752, broken down into economically significant, major, and other significant categories.

Incorporating similar disclosures into the *Federal Register* and other publicly released reports could give a significant boost to regulatory accountability thanks to increased scrutiny of rules.

The fall 2017 Agenda pipeline of 3,209 contained the fewest rules since 1983, even without counting that edition's 540 deregulatory entries (see Figure 18). As noted, the Trump administration that year boasted of achieving a 1-in, 22-out ratio. That is, the administration claimed that three rules were added and 67 removed for purposes of Executive Order 13771. In 2018, the ratio for significant regulations for FY 2018 fell but remained at four to one, and 12 to one when rollbacks of rules not deemed "significant" are counted. In 2019, the directive was met with a 4.3-to-1 ratio of rules removed to significant rules added. Comparing significant deregulatory with significant regulatory actions yielded a 1.7-out-to-1-in ratio reported

in OIRA's "Regulatory Reform Results for Fiscal Year 2019."<sup>611</sup>

As Table 9 shows, a total of 653 rules in the fall 2020 Unified Agenda pipeline were classified as deregulatory (compared with 689 in 2019, 671 in 2018, and 540 in 2017). The fall 2020 Agenda count of 3,852 rules, with 653 being deregulatory, yields a "net" amount of 3,199 new rules. However, there is no way to readily compare what deregulatory elements may have been embedded within prior years' Agenda counts.<sup>612</sup>

Table 9 depicts a breakdown of 2020's 653 deregulatory measures by issuing department or agency, as well as stage of completion. The Department of Commerce, the EPA, and the Department of Transportation led in completed deregulatory actions, with 16, 15, and 14, respectively. The Department of Transportation was far ahead in the "active" component with 147. Meanwhile, 338 rules are classified as explicitly regulatory—compared with 324 in 2019 and 257 in 2018—for an overall gross ratio of 1.93 to 1 in the fall 2020 pipeline as a whole (as opposed to the completed component that is the subject of Executive Order 13771).

While agencies met Trump's two-for-one goals as far as the fall Agenda is concerned—with a ratio of 3.74 to 1, or 101 deregulatory measures divided by 27 significant regulatory ones—if we compare significant to significant, the ratio is 1.8 to 1, still meeting the two-for-one goal with a bit of rounding up.

Yet a deeper look suggests that agencies appear to be planning more regulatory activity than rollbacks in future years, as a glance at Table 9's active and long-term "economically significant" and "other significant" components show. Furthermore, Executive Order 13771 applied to "significant regulatory actions" of executive, but not independent, agencies.

Also, as noted, agencies are not required to issue only the rules they describe in the Agenda or Regulatory Plan. The administration issued an important qualifier when

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*Agencies appear to be planning more regulatory activity than rollbacks in future years.*

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Table 9. Unified Agenda Entries by Executive Order 13771 Designation (Deregulatory and Regulatory) and by Rule Stage and Significance, Fall 2020

	Total # Rules	Completed			Active			Long-Term					
		Total	Economically Significant	Major	Other Significant	Total	Economically Significant	Major	Other Significant	Total	Economically Significant	Major	Other Significant
All Agencies	3,852	630	58	80	150	2,636	173	182	816	586	30	30	177
Deregulatory	653	101	14	15	35	496	20	21	159	56	2	2	16
Regulatory	338	31	12	12	15	238	51	54	141	69	13	13	49
Fully or Partially Exempt	315	66	7	8	35	218	22	25	111	31	1	2	7
Not subject to, not significant	1,044	233	2	2	4	717	5	3	46	94		0	3
Other	917	83	15	16	37	699	70	71	298	135	7	6	64
Independent Agency	585	116	8	27	24	268	5	8	61	201	7	7	38
<b>Totals (may not sum fully)</b>	<b>3,852</b>	<b>630</b>	<b>58</b>	<b>80</b>	<b>150</b>	<b>2,636</b>	<b>173</b>	<b>182</b>	<b>816</b>	<b>586</b>	<b>30</b>	<b>30</b>	<b>177</b>
Ratios—Dereg/Reg:	1.93	3.26	1.17	1.25	2.33	2.08	0.39	0.39	1.13	0.81	0.15	0.15	0.33

EO13771 ratio on completed “significant regulatory actions” - All Dereg/Significant Reg:	3.74
EO13771 applies-to-applies (not mandated) - Significant Dereg/Significant Reg:	1.81
Economically Significant Deregulatory, Overall:	36
Economically Significant Regulatory, Overall:	76
Major Deregulatory, Overall:	38
Major Regulatory, Overall:	79

Source: Compiled from fall 2017 “Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions.”

defining Executive Order 13771 regulatory actions:

EO 13771 regulatory actions are defined as those final actions that both impose costs greater than zero and qualify as “significant” under Section 3(f) of EO 12866 (see M-17-21, Q2). Accordingly, the regulatory actions listed in this table [of regulatory cost caps] represent a subset of an agency’s total regulatory actions.<sup>613</sup>

The order did not require offsetting rules not deemed significant, which can be a subjective determination by agencies. Moreover, agencies can employ subsignificant rules, as well as issue guidance documents, to fly below the radar. (However, some nonsignificant rules did get labeled as either deregulatory or regulatory as the subsets that do not tally up to 653 make plain.)

### ***Completed Deregulatory and Regulatory Actions in the Unified Agenda***

The former administration’s fiscal year updates since 2017 largely corresponded to what appears in the Agenda. The Unified Agenda’s completed components from the combined spring and fall editions closely correspond to the highlighted “22-to-1” successes claimed by the Trump administration in its 2017 “Two-for-One Status Report and Regulatory Cost Caps,”<sup>614</sup> its 12-to-1 (4 to 1 for significant actions) “Regulatory Reform Results for Fiscal Year 2018,” and the 1.7 to 1 in the corresponding 2019 report.<sup>615</sup>

It is acceptable for agencies to apply nonsignificant rules for “credit” toward the two-for-one goal.<sup>616</sup> The primary goal of the two-for-one campaign was for net regulatory costs to add to less than zero. In 2017, when the administration indicated 67 deregulatory actions in its Status Report, the 2017 Unified Agenda identified a similar 62

completed deregulatory actions. Part of the discrepancy is likely due to the fact that nine of Trump’s rule cuts involved agency sub-regulatory guidance documents or notices, some of which did not appear in the Agenda.<sup>617</sup> Another reason is that some removals were then achieved via the Congressional Review Act and therefore did not appear in the Agenda. By 2018, the Congressional Review Act and rollback of Obama midnight rules were no longer factors available to boost one-in, two-out results.

As Table 9 shows, of the 101 completed deregulatory actions in the 2020 Agenda, 14 fall under the economically significant category, while 35 are deemed other significant (for a total of 49 significant deregulatory rules). As for regulatory actions, 31 completed ones appeared in the fall Agenda, with 12 deemed economically significant and 15 other significant. Therefore, in the final months covered by the fall Agenda, a still-healthy 3.74-to-1 ratio prevails overall (the 101 deregulatory actions divided by the 27 significant regulatory ones in Table 9). Even looking at significant deregulatory items alone, a 1.8-to-1 ratio prevails. That said, allegedly nonsignificant regulatory actions can be added without offset. Furthermore, without a deep dive, we may not know what the “other,” “not subject to,” and “partially exempt” categories contain—and there are thousands of such rules. This is a red flag, since most rules fall into these categories. These classifications, along with agency guidance documents, need greater scrutiny.

Table 10 summarizes Unified Agenda deregulatory-to-regulatory results since the fall of 2017 for rules at the significant and economically significant levels. As noted, it is adequate under Executive Order 13771 for nonsignificant rules to offset significant ones to meet the two-for-one goal; the governing criterion is achieving the goal of net-zero costs. Still, a two-to-one ratio was achieved. Regarding the prospects of longer-term streamlining, it is worrying that economically significant deregulatory

Table 10. Trump Administration Unified Agenda Lookback: Completed Significant Deregulatory and Significant Regulatory Rules and “Significant Deregulatory-to-Significant Regulatory” Ratios

Unified Agenda Edition	Deregulatory Entries	Regulatory Entries	Ratio (In/Out)
Fall 2017	22	13	1.7 to 1
Spring 2018	28	9	3.1 to 1
Fall 2018	35	9	3.9 to 1
Spring 2019	33	15	2.2 to 1
Fall 2019	37	28	1.3 to 1
Spring 2020	38	31	1.2 to 1
Fall 2020	49	27	1.8 to 1
<b>Grand Total</b>	<b>242</b>	<b>132</b>	<b>2.2 to 1 to date</b>

Combined “economically significant” plus “other significant” categories

rules did not offset economically significant regulatory ones.

### *Significant Active Deregulatory and Regulatory Actions*

Active actions—those in the pipeline at the prerule, proposed, and final rule stages—can be thought of as the rules in the production process. Table 9 shows that a total of the 496 deregulatory actions in play well exceeds the 238 regulatory ones. That represents a 2.1-to-1 margin overall with rules not deemed significant (which are not required to be offset) included. As noncompleted actions, these rules were not obligated to meet the two-for-one goals, but they might be regarded as a leading indicator of future rulemaking activity.

Of more concern are the costlier subsets of these active rules. There are 51 economically significant regulatory actions in the works in Table 9 (compared with 39, 41, and 15 in the prior three years), but just 20 economically significant deregulatory actions in play to offset them. Were Trump to have remained in office, this factor put two-for-one on a path to being not just unmet, but inverted, which is now a distinct likelihood under the new administration. In the “other significant” category, 141 regulatory actions are “offset” by 159 deregulatory ones, but not by a factor of two to one. These increas-

ingly unfavorable ratios of significant active regulatory to deregulatory rules highlight the limits of unilateral executive regulatory liberalization apart from freezes or slowdowns.

### *Long-Term Planned Regulatory Actions Greatly Outstrip Deregulatory Ones*

The costlier longer-term significant rules inspire even less confidence in the prospects for executive branch streamlining. Here, agencies clearly show they plan more regulating than deregulating. As Table 8 exhibits, 69 long-term actions are deemed regulatory and 56 are deemed deregulatory. More noteworthy is that, after four years of Trump, only two economically significant long-term deregulatory actions were listed as planned by agencies. By contrast, 13 were deemed regulatory. Likewise, the “other significant” category contains 49 planned regulatory actions and only 16 deregulatory ones, a ratio of three to one.

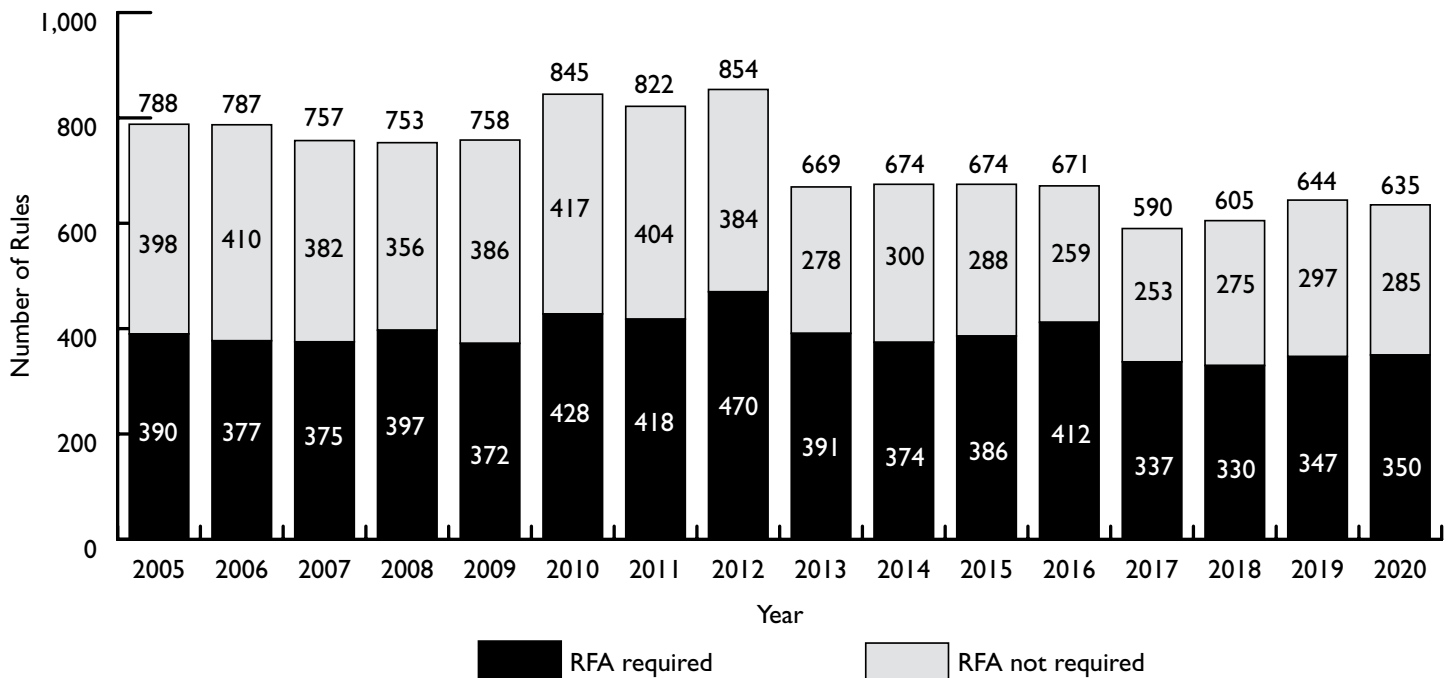
Such trends are warning signs because these more costly rule subsets are presumably where tomorrow’s cost savings need to come from. The “long-term” category in particular illustrates how regulatory liberalization will require congressional action. But like the debt and deficit, no bipartisan wherewithal exists to address it.

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*More costly rule subsets are presumably where tomorrow’s cost savings need to come from.*

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Figure 21. Rules in the Pipeline Affecting Small Business, 2005–2020



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

Rolling back longstanding regulations requires going through the public notice-and-comment process. It takes time, which works to the advantage of agencies that are seeking to expand and maintain their authority.

## Federal Regulations Affecting Small Business

The Regulatory Flexibility Act (RFA) directs federal agencies to assess their rules’ effects on small businesses.<sup>618</sup> Figure 21 depicts the number of rules requiring such annual regulatory flexibility analysis. It also portrays other rules anticipated by agencies to affect small business, but that purportedly do not rise to the level of requiring a regulatory flexibility analysis. The number of rules acknowledged to significantly affect small business dropped substantially after 2012 during the Obama administration, in part reflecting reporting changes noted, but they dropped even more substantially under Trump, amplified by some rules comprising rollbacks.

At the end of 2020, the total number of rules affecting small business stood at 635 (compared with 644, 605, and 590 in the prior three years). Of those, 350 required RFA analysis and another 285 were otherwise deemed by agencies to affect small business but not require RFA analysis.<sup>619</sup> There had been 671 small-business rules in Obama’s final year. Before the 2013 drop and flat trajectory since then, the number of rules with small-business impacts during the Obama administration regularly exceeded 800, a level not seen since 2003.

Table 11 breaks out the 2019 fall Unified Agenda’s 635 rules affecting small business by department, agency, and commission. The top five—the Departments of Commerce, Health and Human Services, and the Treasury, along with the Federal Communications Commission and the multiagency Federal Acquisition Regulations—accounted for 310, or 49 percent, of the 635 rules affecting small business. The average of those during Obama’s eight years, 406, exceeded George W. Bush’s eight-year average of 377.

Trump's average annual number of rules affecting small business was lower than either Bush's or Obama's, at 341, and a number of those were deregulatory.

Recall that 653 rules among the Unified Agenda's flow of 3,852 are flagged as deregulatory. Of the 635 rules with small-business effects, 83 are deregulatory, compared with 102 in both 2019 and 2018, and 83 in 2017. The overall proportion of total rules affecting small business stands at 16.5 percent, but varies widely among agencies (see Table 9). (For the numbers of rules affecting small business broken down by department and agency for fall Agenda editions since 1996, see Appendix: Historical Tables, Part H.)

Box 4 depicts a partial list of the basic, non-sector-specific laws and regulations that affect small business, stacking as they grow.

## 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 enacted in 1995 and required the Congress-

**Table 11. Unified Agenda Entries Affecting Small Business by Department, Agency, and Commission, Fall 2019**

	Total Rules	Number Affecting Small Business						Total	Affecting Small Business	Top 5
		RFA Required			RFA Not Required					
		Active	Completed	L-T	Active	Completed	L-T			
Dept. of Agriculture	164	9	2	3	2	3	1	20	12.2%	
Dept. of Commerce	312	33	12	3	16	14	3	81	26.0%	81
Dept. of Defense	234	6	1		1			8	3.4%	
Dept. of Education	23		1					1	4.3%	
Dept. of Energy	153	4			3			7	4.6%	
Dept. of Health and Human Services	250	21	13	2	21	4	1	62	24.8%	62
Dept. of Homeland Security	155	9	3	11	1	2	5	31	20.0%	
Dept. of Housing and Urban Development	52							0	0.0%	
Dept. of the Interior	306	6	1		8	1	2	18	5.9%	
Dept. of Justice	108				5	2		7	6.5%	
Dept. of Labor	92	6	1	2	11	3	1	24	26.1%	
Dept. of State	71				28	3		31	43.7%	
Dept. of Transportation	301	10		4	13	1	9	37	12.3%	
Dept. of the Treasury	394	5	1		36	3	5	50	12.7%	50
Dept. of Veterans Affairs	81							0	0.0%	
Agency for International Development	17							0	0.0%	
Architectural and Transportation Barriers Compliance Board	2							0	0.0%	
CPBSD*	4							0	0.0%	

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

	Total Rules	Number Affecting Small Business						Total	Affecting Small Business	Top 5
		RFA Required			RFA Not Required					
		Active	Completed	L-T	Active	Completed	L-T			
Commodity Futures Trading Commission	42		1					1	2.4%	
Consumer Financial Protection Bureau	21	2			7		6	15	71.4%	
Consumer Product Safety Commission	21	2	1	1				4	19.0%	
Corp. for National and Community Service	9							0	0.0%	
Council of Inspector General on Integrity and Efficiency	1									
Council on Environmental Quality	3							0	0.0%	
Court Sevices/Offender Supervision, D.C.	7							0	0.0%	
Environmental Protection Agency	232	3		3			1	7	3.0%	
Equal Employment Opportunity Commission	15				5	1		6	40.0%	
Farm Credit Administration	19							0	0.0%	
Federal Acquisition Regulation	61	41	8		8	2		59	96.7%	59
Federal Communications Commission	79		2	53			3	58	73.4%	58
Federal Deposit Insurance Corporation	56				2	1	1	4	7.1%	
Federal Energy Regulatory Commission	12							0	0.0%	
Federal Housing Finance Agency	14							0	0.0%	
Federal Maritime Commission	3							0	0.0%	
Federal Mediation and Conciliation Service	4						1	1	25.0%	
Federal Mine Safety and Health Review Commission	2							0	0.0%	
Federal Permitting Improvement Steering Committee	3	3								
Federal Reserve System	46		1	1				2	4.3%	
Federal Trade Commission	20				16	2		18	90.0%	
General Services Administration	32	13			15	2		30	93.8%	
Institute of Museum and Library Services	2							0	0.0%	
National Aeronautics and Space Administration	10							0	0.0%	
National Archives and Records Administration	9							0	0.0%	
National Credit Union Administration	32							0	0.0%	



	Total Rules	Number Affecting Small Business							Affecting Small Business	Top 5
		RFA Required			RFA Not Required			Total		
		Active	Completed	L-T	Active	Completed	L-T			
National Endowment for the Arts	6				1		1	2	33.3%	
National Endowment for the Humanities	5							0	0.0%	
National Indian Gaming Commission	10							0	0.0%	
National Labor Relations Board	4							0	0.0%	
National Mediation Board	1							0	0.0%	
National Science Foundation	1									
National Transportation Safety Board	6							0	0.0%	
Nuclear Regulatory Commission	56	1	1	1				3	50.0%	
Office of Government Ethics	13							0	0.0%	
Office of Management and Budget	9	1	1					2	15.4%	
Office of Personnel Management	51							0	0.0%	
Office of National Drug Control Policy	2									
Office of the U.S. Trade Representative	2									
Peace Corps	6							0	0.0%	
Pension Benefit Guaranty Corporation	12							0	0.0%	
Presidio Trust	3							0	0.0%	
Postal Regulatory Commission	5							0	0.0%	
Railroad Retirement Board	7							0	0.0%	
Securities and Exchange Commission	80	13	6	9	1		1	30	37.5%	
Small Business Administration	65	10		2				12	18.5%	
Social Security Administration	19							0	0.0%	
Surface Transportation Board	10	1						1	10.0%	
U.S. Agency for Global Media	4							0	0.0%	
U.S. Commission on Civil Rights	1							0	0.0%	
<b>TOTAL</b>	<b>3,852</b>	<b>199</b>	<b>56</b>	<b>95</b>	<b>200</b>	<b>44</b>	<b>41</b>	<b>635</b>	<b>16.5%</b>	<b>310</b>
		<b>350</b>			<b>285</b>					<b>49% of total</b>
<b>Deregulatory</b>		<b>22</b>	<b>11</b>	<b>5</b>	<b>28</b>	<b>15</b>	<b>2</b>	<b>83</b>		

Source: Compiled from "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions," and from online edition at [www.reginfo.gov](http://www.reginfo.gov). RFA = regulatory flexibility analysis; L-T = long term.

sional Budget Office to produce cost estimates of mandates affecting state, local, and tribal governments above the then-threshold of \$50 million.

As Figure 22 shows, agencies report that 258 of the 3,852 rules in the fall 2020 Agenda pipeline will affect local governments, an increase of 11 percent over the past year after a larger rise the year prior. That includes all stages—active, completed, and long-term.<sup>620</sup> Since the passage of the Unfunded Mandates Act in the mid-1990s, the number of overall rules affecting local governments has fallen by 51 percent, from 533. Meanwhile, the total number of regulatory actions affecting

state governments stands at 409, a 6 percent rise over 2019 after an 18 percent jump the year before. The pipeline count of active, completed, and long-term rules had been trending downward in years prior to those jumps, but the tallies now include deregulatory actions. In the 2020 Agenda, 46 local and 72 state actions are deemed deregulatory for Executive Order 13771 purposes, across the active, completed, and long-term categories. (The deregulatory counts in 2019 were 45 local actions and 69 state ones.)

Unfunded federal mandates on state and local governments remain an issue that could influence overall regulatory reform mea-

## Box 4. Federal Workplace Regulations 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)

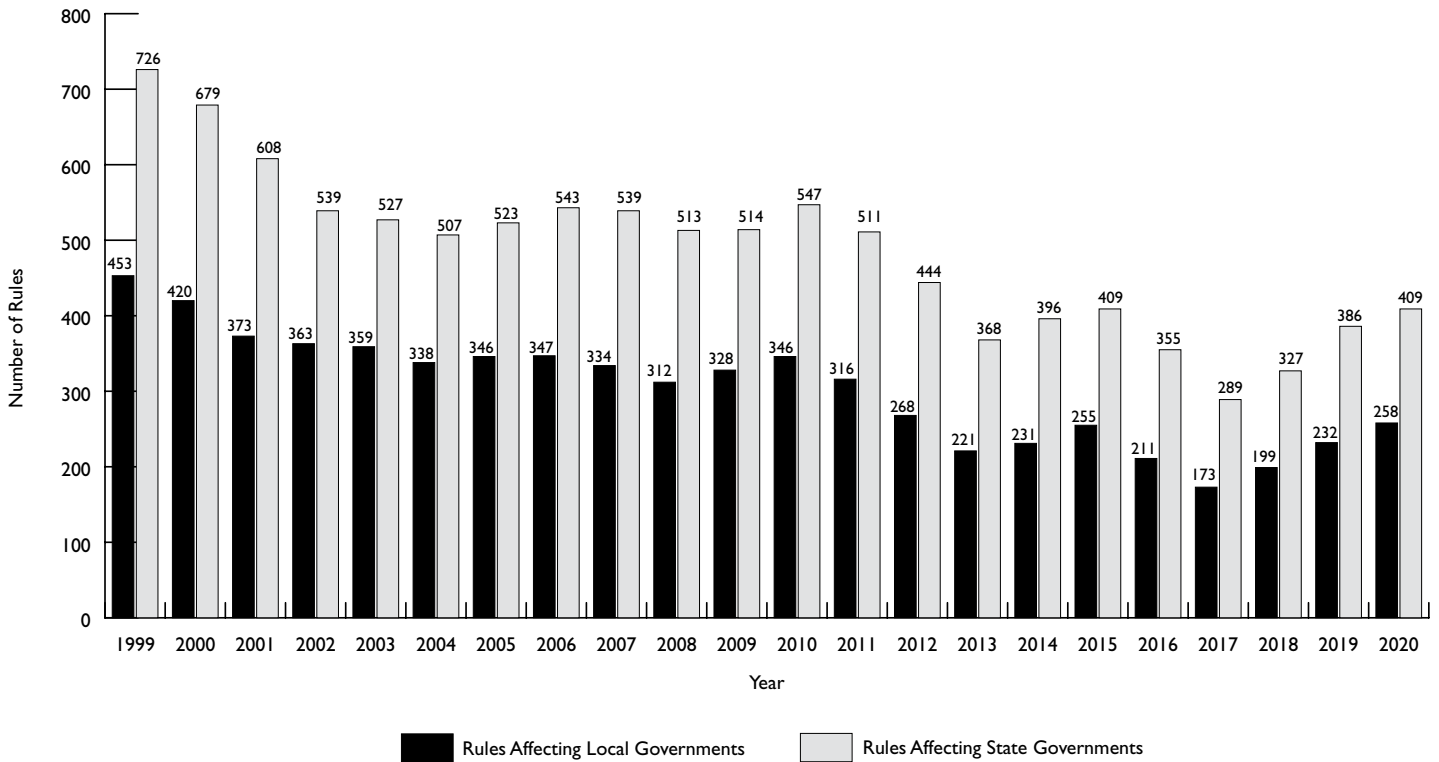
### **50 EMPLOYEES: ALL THE ABOVE, PLUS**

- 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, 1999–2020



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>.

asures. At the 2016 Legislative Summit of the National Conference of State Legislatures (NCSL) in Chicago, the NCSL Standing Committee on Budgets and Revenue issued a resolution on unfunded mandates asserting, “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.”<sup>621</sup> The NCSL called for “reassessing” and “broadening” the 1995 Unfunded Mandates Reform Act. Likewise, state attorneys general in 2016 wrote to House and Senate leadership over federal agencies’ “failing to fully consider the effect of their regulations on States and state law,” and called for strengthening the Administrative Procedure Act.<sup>622</sup>

The Congressional Budget Office reports that since 2006, 190 laws have imposed intergovernmental mandates on states and

localities, with 420 mandates within these laws.<sup>623</sup> Regulatory mandates can derive from such laws, as well as from agencies acting unilaterally. According to official data, few 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 claim very few of the rules affecting states and localities impose unfunded mandates on them, but that may be because the Unfunded Mandates Reform Act is not applicable to many rules and programs (see Figure 22).<sup>624</sup> Nonetheless, following are some notable completed or pending regulations over the past decade that federal agencies have acknowledged in the Unified Agenda as unfunded mandates (with their Regulation Identifier Number provided<sup>625</sup>).

## *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 Anti-Asthmatic 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 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 Accessibility Guidelines for Transportation Vehicles (3014-AA38)

## *Environmental Protection Agency*

- EPA/OW: National Primary Drinking Water Regulations (2040-AA94, 2040-AF15)
- EPA/OCSP: Polychlorinated Biphenyls; Reassessment of Use Authorizations for PCBs in Small Capacitors in Fluorescent Light Ballasts in Schools and Day Cares (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 Requirements 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: National Emission Standards for Hazardous Air Pollutants (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: NESHAP for Area Sources: Industrial, Commercial, and Institutional Boilers (2060-AM44)
- EPA/AR: NESHAP for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (2060-AQ25)
- EPA/AR: NESHAP: Portland Cement Notice of Reconsideration and New Source Performance Standards for Portland Cement (2060-AO15)

### ***Nuclear Regulatory Commission***

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