

TEN THOUSAND COMMANDMENTS

An Annual Snapshot of the Federal Regulatory State

CLYDE WAYNE CREWS JR.

Ten Thousand Commandments

An Annual Snapshot of the Federal Regulatory State

2015 Edition

by Clyde Wayne Crews Jr.

Executive Summary

In January 2015, the Congressional Budget Office (CBO) reported outlays for fiscal year (FY) 2014 of \$3.5 trillion and projected spending for FY 2015 at \$3.656 trillion.¹ The CBO projected that spending would reach \$4 trillion by 2017, whereas President Barack Obama's federal budget proposal for FY 2016 already seeks \$3.999 trillion in discretionary, entitlement, and interest spending.² High debt and deficits notwithstanding, \$4 trillion in annual spending will soon be the new normal.

Trillion dollar deficits were once unimaginable. Such sums typified the level of budgets themselves, not shortfalls. Spending is not projected to balance revenue at any point in the coming decade. We experienced trillion dollar deficits between 2009 and 2012,³ and the CBO projects that deficits will exceed \$1 trillion again by FY 2025.⁴ In the near term, President Obama's 2016 budget projects smaller deficits than recent highs—with \$485 billion in 2014 expected to jump to an estimated \$583 billion in 2015 before dip-

ping and then heading back to \$600 billion and beyond.⁵

Many other countries' government outlays make up a greater share of their national output, compared with about 20 percent for the U.S. at the federal level. But in absolute terms, the U.S. government is the largest government on the planet.⁶ Only five other nations top \$1 trillion in annual government revenues, and none but the United States and now China—for the first time—collect more than \$2 trillion.⁷

Like federal spending, regulations and their costs should be tracked and disclosed annually. Then, periodic housecleaning should be performed. Cost-benefit analysis at the agency level is already deficient; such analyses accompany only a fraction of rules.⁸

A problem with cost-benefit analysis is that it relies primarily on agency self-reporting. Having agencies audit their own rules is like asking students to grade their own exams. Regulators are disinclined to emphasize

**Federal
environmental,
safety and health,
and economic
regulations affect
the economy
by hundreds of
billions—perhaps
trillions—of
dollars annually,
in addition to
the official dollar
outlays that
dominate the
federal policy
debate.**

when a rule's benefits do not justify its costs. In fact, one could expect agencies to devise new and dubious categories of benefits to justify an agency's rulemaking activity.⁹

A major source of overregulation is the systematic overdelegation of rulemaking power to agencies. Requiring expedited votes on economically significant or controversial agency rules before they become binding would reestablish congressional accountability and help affirm a principle of "no regulation without representation."

Openness about regulatory facts and figures can be bolstered through federal "regulatory transparency report cards," similar to the presentation in the annual *Ten Thousand Commandments* report.¹⁰ These report cards could be officially issued each year to distill information for the public and policy makers about the scope of the regulatory state.

Regulation: The Hidden Tax

The scope of federal government spending and deficits is sobering. The national debt topped \$18 trillion in December 2014,¹¹ the same month the International Monetary Fund calculated China's economy to be worth \$17.6 trillion in terms of purchasing power parity, making it the world's largest economy (albeit still significantly lagging the United States on a per capita basis).¹² Yet the federal government's reach extends well beyond Washington's taxes, deficits, and borrowing. Federal environmental, safety and health, and economic regulations affect the economy by hundreds of billions—perhaps trillions—of dollars annually, in addition to the official dollar outlays that dominate the federal policy debate.

Firms generally pass the costs of some taxes along to consumers.¹³ Likewise, some regulatory compliance costs borne by businesses will find their way into the prices that consumers pay, affect the wages workers earn, and lead to lower levels of growth and prosperity. Precise regulatory costs can never be

fully known because, unlike taxes, they are unbudgeted and often indirect.¹⁴ 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 make the federal regulatory enterprise somewhat more comprehensible. That compilation is one purpose of *Ten Thousand Commandments*, highlights of which follow:

- Based on the best available federal government data, past reports, and contemporary studies, this report highlights estimated regulatory compliance and economic costs of \$1.88 trillion annually.¹⁵
- In 2014, 224 laws were enacted by Congress during the calendar year, whereas 3,554 rules were issued by agencies.¹⁶ Thus, 16 rules were issued for every law enacted last year. The "Unconstitutionality Index," the ratio of regulations issued by agencies to laws passed by Congress and signed by the president, was 16 for 2014 and 51 for 2013. The average for the decade has been 26. This disparity highlights the delegation of lawmaking power to unelected agency officials.
- If one assumed that all costs of federal regulation and intervention flowed all the way down to households, U.S. households would "pay" \$14,976 annually on average in regulatory hidden tax. That payment amounts to 23 percent of the average income of \$63,784 and 29 percent of the expenditure budget of \$51,100. The "tax" exceeds every item in the budget except housing. More is "spent" on embedded regulation than on health care, food, transportation, entertainment, apparel and services, and savings.
- The estimated cost of regulation exceeds half the level of the federal spending itself, which was \$3.5 trillion in 2014.
- Regulatory costs of \$1.88 trillion amount to 11 percent of the U.S. GDP, which was estimated at \$17.4 trillion in 2014 by the Commerce Department's Bureau of Economic Analysis.
- When regulatory costs are combined with federal FY 2014 outlays of \$3.5 trillion, the federal government's

share of the entire economy now reaches 30.6 percent.

- The costs of the regulatory “hidden tax” surpass federal income tax receipts. Regulatory compliance costs exceed 2014 total individual income tax revenues of \$1.386 trillion.
- Regulatory compliance costs vastly exceed the 2014 estimated U.S. corporate income tax revenues of \$333 billion and rival corporate pretax profits of \$2.235 trillion.¹⁷
- If it were a country, U.S. regulation would be the world’s tenth-largest economy, ranking behind Russia and ahead of India.
- U.S. regulatory costs exceed each of the GDPs of Australia and Canada, the highest income nations among the countries ranked most free in the annual *Index of Economic Freedom* and *Economic Freedom of the World* reports.
- The Weidenbaum Center at Washington University in St. Louis and the Regulatory Studies Center at George Washington University in Washington, D.C., jointly estimate that agencies spent \$59.5 billion (on budget) to administer and police the regulatory enterprise. Adding the \$1.88 trillion in off-budget compliance costs brings the total reckoned regulatory enterprise to about \$1.94 trillion.
- Among the six all-time-high *Federal Register* page counts, five have occurred under President Obama.
- The annual outflow of more than 3,500 final rules—sometimes far above that level—means that 90,836 rules have been issued since 1993.
- The *Federal Register* finished 2014 at 77,687 pages, the sixth-highest level in its history.
- *Federal Register* pages devoted specifically to final rules stand at 24,861 in 2014. The record high is 26,417 in 2013.
- The 2014 *Federal Register* contained 3,554 final rules and 2,383 proposed rules.
- Since the nation’s founding, more than 15,209 executive orders have been issued. President Obama issued 215 by the end of 2014.
- President George W. Bush’s administration averaged 62 major rules annually during his eight years in office; Obama’s six years so far have averaged 81.
- Whereas the federal government issues more than 3,500 rules annually, public notices in the *Federal Register* normally exceed 24,000 annually, with uncounted “guidance documents” and other materials among them. There were 23,970 notices in 2014, and there have been 501,899 since 1995.
- Sixty federal departments, agencies, and commissions have 3,415 regulations at various stages of implementation, according to the 2014 “Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions,” which lists federal regulatory actions at various stages of implementation.
- Of the 3,415 regulations in the pipeline, 200 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 implies roughly \$20 billion yearly in future off-budget regulatory costs.
- Of the 3,415 regulations now in the works, 674 affect small businesses. Of those, 374 required a regulatory flexibility analysis; 300 were otherwise noted by agencies to affect small businesses.
- The five most active rule-producing agencies—the departments of the Treasury, Interior, Commerce, Transportation, and Health and Human Services—account for 1,453 rules, or 43 percent of all rules in the Unified Agenda pipeline.
- The Environmental Protection Agency, which was formerly ranked consistently in the top five, is now sixth, but adding its 186 rules brings the total from the top six rulemaking agencies to 1,639 rules, or 48 percent of all federal rules.

The short-lived series of budget surpluses from 1998 to 2001—the first since 1969—is ancient history given today’s debt- and deficit-drenched policy setting. When it comes to stimulating a limping economy, reducing

***If it were a country,
U.S. regulation
would be the
world’s tenth-
largest economy,
ranking behind
Russia and ahead
of India.***

overspending and relieving regulatory burdens are both vital to the nation's economic health. Otherwise, pressures to restrain budgets can incentivize lawmakers to impose off-budget regulations on the private sector, rather than to add to unpopular deficit spending. For example, a new government program

like job training could involve either increasing government spending or imposing new regulations requiring businesses to provide such training. Unlike on-budget spending, the latter regulatory costs remain largely hidden from public view, which can make regulation increasingly attractive to lawmakers.

EMBARGOED

Introduction: Toward a Rational Regulatory Budget

Congress's spending disclosure and accountability, although imperfect, are necessary conditions for a federal government to be accountable to voters. Washington funds its programs either by raising taxes or by borrowing—with a promise to repay with interest—from future tax collections. However controversial government spending programs may be, taxpayers can inspect costs in the federal budget's historical tables¹⁸ and CBO publications.¹⁹ The public can see what is going on.

However, the government can also “fund” objectives and programs through regulatory compliance, without using tax dollars. Rather than pay directly and book expenses for new initiatives, federal regulations can compel the private sector, as well as state and local governments, to bear the costs of federal initiatives.

Regulatory compliance and economic impact costs are not budgeted and lack the formal public disclosure that accompanies federal spending. Therefore, regulatory initiatives can enable federal direction of private-sector resources with comparatively little public fuss, rendering regulation a form of off-budget taxation. Policy makers find it easier to impose regulatory costs than to embark on more government spending because of the former's lack of disclosure and accountability for costs. Furthermore, where regulatory compliance

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

Table 1 provides some perspective on the regulatory “tax” by presenting summary data for selected topics described in *Ten Thousand Commandments*. Trends over recent years are provided where information is available.

The 2015 edition of *Ten Thousand Commandments* contains four main sections:

1. An overview of the costs and scope of the regulatory state, such as its estimated size compared with federal budgetary components and 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. This section offers steps to (a) improve regulatory disclosures through a regulatory transparency report card and (b) increase congressional responsibility to voters for costly and controversial rules.
4. An appendix containing historical tables of regulatory trends over past decades.

Rather than pay directly and book expenses for new initiatives, federal regulations can compel the private sector, as well as state and local governments, to bear the costs of federal initiatives.

Table I. The Regulatory State: A 2014 Overview

	Year-End 2014	1-Year Change	5-Year Change (2010–2014)	10-Year Change (2005–2014)
Total regulatory costs	\$1.88 trillion	1.07%	n/a	n/a
Agency enforcement budgets	\$59.5 billion	1.9%	2.9%	24.5%
<i>Federal Register</i> pages	77,687	-1.9%	-4.5%	5.3%
Devoted to final rules	24,861	-5.9%	-0.2%	7.9%
<i>Federal Register</i> final rules	3,554	-2.9%	-0.5%	-10.6%
Code of Federal Regulations pages	175,268	-0.1%	5.9%	15.3%
Total rules in Agenda pipeline	3,415	3.3%	-19.2%	-15.9%
Completed	629	36.1%	-12.9%	0.6%
Active	2,321	-3.2%	-13.9%	-10.5%
Long term	465	4.3%	-42.4	-45.0%
“Economically significant” rules in the year-end pipeline	200	4.7%	-10.7%	47.1%
Completed	31	10.7%	-39.2%	14.8%
Active	131	0.0%	-6.4%	57.8%
Long term	38	18.8%	15.2%	46.2%
Rules affecting small business	674	0.7%	-20.2%	-14.5%
Regulatory flexibility analysis required	374	-4.3%	-12.6%	-4.1%
Regulatory flexibility analysis not required	300	7.9%	-28.1%	-24.6%
Rules affecting state governments	396	4.5%	-33.2%	-33.2%
Rules affecting local governments	231	7.6%	-27.6%	-24.3%
GAO Congressional Review Act reports on major rules	80	1.3%	-20.0%	42.9%
EPA Breakdown				
Final rules (<i>Federal Register</i>)	539	4.9%	12.5%	-0.4%
EPA rules in Agenda	186	3.9%	-46.1%	-53.5%
EPA rules affecting small business	6	0.0%	-93.7%	-94.5%
FCC Breakdown				
Final rules (<i>Federal Register</i>)	144	6.7%	44.0%	-37.9%
FCC rules in Agenda	132	0.0%	-10.2%	-7.7%
FCC rules affecting small business	98	-1.0%	-12.5%	-13.3%

Note: n/a = not applicable.

The Cost of Regulation and Intervention

Policy makers have a responsibility to disclose regulatory costs, whatever uncertainties exist in measuring them. Indeed, in many respects, costs are unmeasurable to third parties.²⁰ Given the inherent difficulty of accurately measuring costs and the fact that regulators are unelected, all reforms must move toward requiring our elected Congress to vote to approve regulations before they become effective.

The Office of Management and Budget's (OMB) *2014 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates*, which surveys regulatory costs and benefits, pegs the cumulative costs of 116 selected major regulations during the decade from 2003 to 2013 at between \$68.5 billion and \$101.8 billion (in 2010 dollars),²¹ compared with 115 rules at between \$57 billion and \$84 billion in the 2013 report (in 2001 dollars).²² Meanwhile, the estimated range for benefits in the new report spanned \$261.7 billion to \$1,042.1 billion (in 2010 dollars).²³

The OMB's cost-benefit breakdown incorporates only rules for which both benefits and costs have been expressed in quantitative and monetary terms by agencies. It omits numerous categories and cost levels of rules. Rules from independent agencies are entirely absent.

For the fiscal year ending September 2013, the OMB's new publication reports only seven rules that had both benefit and cost analyses. These depict additional costs ranging from \$2.4 billion to \$3 billion (in 2010 dollars).²⁴ In the previous year's report, by contrast, the OMB had presented 14 rules with costs ranging from \$14.8 billion to

\$19.5 billion annually (in 2001 dollars).²⁵ Several billion dollars more in annual rule costs generally appear in these reports for rules with only cost estimates, but these are not tallied and highlighted by the OMB.

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).²⁶ Earlier governmental estimates before and after the turn of the century from the OMB, the Government Accountability Office (GAO), and the Small Business Administration (SBA) have also noted 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 cost impacts into the stratosphere via dozens of trillions of dollars in lost GDP annually, taking into account the long-term growth reduction caused by decades of costly economic regulation.²⁷

Among these reports, the latest comprehensive federal government assessment of the entire federal regulatory enterprise that one might regard as "official" was prepared in September 2010 for the SBA.²⁸ Modeling techniques have changed over time for this now discontinued report, which the SBA had presented in several versions over the past decade and a half. The report estimated regulatory compliance costs of \$1.752 trillion for 2008 and received significant criticism, to which the authors responded directly.²⁹

The SBA report series' primary purpose was to examine the extent to which regulatory

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 Accounting 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/t2pbat1/153774.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. 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/infocreg/cbreport.pdf>. 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>. W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, Contract no. SBHQ-03-M-0522, September 2005 <https://www.sba.gov/sites/default/files/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/A7A8456F-33484E498F40CB46D6167F31.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>.

costs impose higher burdens on small firms, which have higher per employee regulatory costs. The exercise is vitally important, but the federal government now chooses to ignore it. The SBA and earlier OMB surveys traditionally have 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
- Paperwork costs

The NAM model addresses the now-dropped size-of-firms question and finds overall annual per employee regulatory costs to firms to be \$9,991 on average.³⁰ 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 versus \$9,083 for larger ones.³¹ Meanwhile, other developments—including the aftermath of recent major financial, health, and environmental policies—point to substantial regulatory costs not captured by most assessments to date.³²

NAM estimates that regulatory costs now exceed \$2 trillion, whereas other reports

imply far 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 the OMB’s annual *Information Collection Budget*, independent agency costs, and other publicly available material and third-party assessments. The goal is for data to converge over time on some informal baseline encompassing new information about economic and regulatory cost burdens, as compared to more formal top-down modeling such as that used by NAM. Using this approach, we arrive at an across-the-board cost estimate for federal regulation and intervention at \$1.88 trillion annually (see Figure 1).³⁴

Recent regulatory interventions—including the various stimulus and bailout programs and regulatory costs associated with the recent health care and financial reform legislation—have had dramatic economic impacts. Other long-known costs, such as indirect costs and the effects of lost innovation or productivity, are notoriously difficult to assess and can produce underestimates of the total regulatory burden (which works to the regulators’ advantage).³⁵

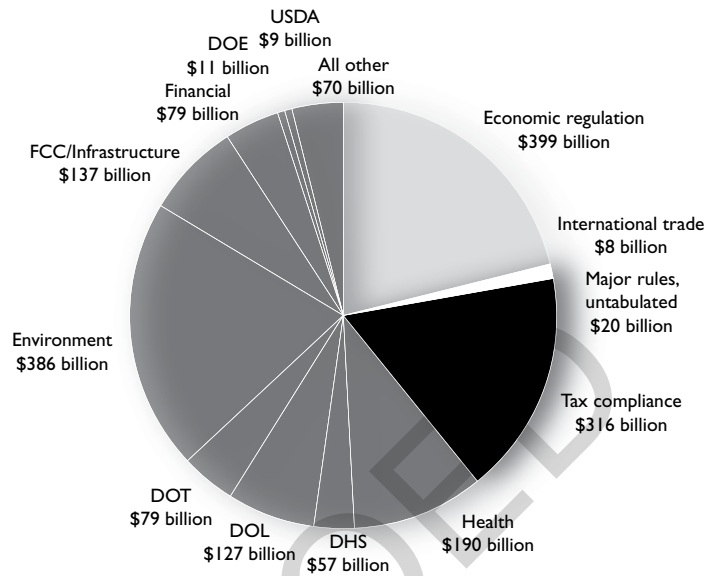
Per employee regulatory costs for firms of fewer than 50 workers can be 29 percent greater than those for larger firms.

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 Regs	\$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.

Figure 1. Annual Cost of Federal Regulation and Intervention, 2015 Estimate, \$1.882 Trillion



Source: Wayne Crews, *Tip of the Costberg: On the Invalidity of All Cost of Regulation Estimates and the Need to Compile Them Anyway*, Working Paper, 2015 ed., available at Social Science (SSRN) at <http://ssrn.com/abstract=2502883> and at www.tenthousandcommandments.com.

Note: 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: Catching Up to Government Spending?

Regulatory compliance costs are equivalent to more than half the 2014 level of fiscal budget outlays.

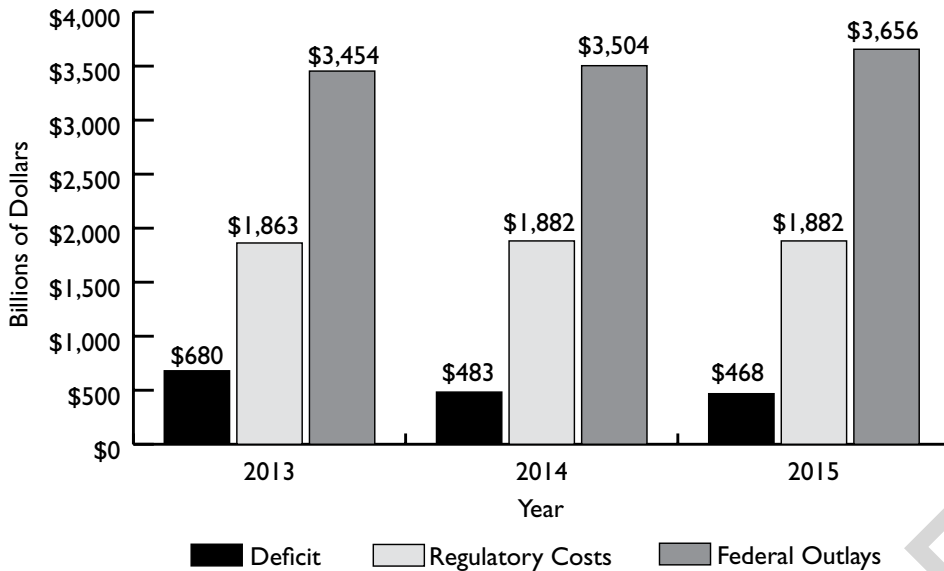
FY 2014 saw a deficit of \$483 billion on \$3.5 trillion in outlays. Figure 2 compares deficits and outlays for 2013–2014 and projected amounts for 2015 with our 2015 regulatory cost estimate of \$1.88 trillion. In the center bar, note that estimated regulatory compliance costs are equivalent to more than half the 2014 level of fiscal budget outlays. Regulatory compliance is nearly four times the 2014 deficit.

As the United States hovers at \$3.5 trillion in annual federal spending today and a projected \$4 trillion by 2017, the days when

a \$2 trillion federal budget was regarded as high seem to have passed in the blink of an eye. Contemplating off-budget regulatory compliance costs that are equivalent to half of all federal outlays is sobering enough, but the situation is more dramatic in Washington’s high-spending culture of perpetual deficits. After nearly three decades of deficit spending, the federal government temporarily balanced the budget between 1998 and 2001.³⁶ But those days are history.

Regulations constitute a type of off-budget spending in the form of federal requirements that the population is compelled to bear. Thus, viewing outlays, regulation, and the deficit at one glance is useful (see Figure 2). FY 2014 saw a deficit of \$483 billion on

Figure 2. Federal Outlays and Deficits Compared with Federal Regulatory Costs (2013, 2014, and projected 2015)



Sources: 2013 deficit and outlays from CBO, *The Budget and Economic Outlook: Fiscal Years 2014 to 2024*, February 2014, Table 1-2, “CBO’s Baseline Budget Projections,” p. 12, http://www.cbo.gov/sites/default/files/cbofiles/attachments/45010-Outlook2014_Feb.pdf. 2013-15 regulatory cost estimate from Crews, *Tip of the Costberg*. 2014 actual and 2015 projected deficit and outlays from CBO, *The Budget and Economic Outlook: Fiscal Years 2015 to 2025*, January 2015, Table 1-2, “CBO’s Baseline Budget Projections,” p. 13. <https://www.cbo.gov/sites/default/files/cbofiles/attachments/49892-Outlook2015.pdf>.

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

\$3.5 trillion in outlays, with no balance—let alone surplus—projected over the coming decade by the CBO. In fact, the smallest deficit projected is \$468 billion in 2016, after which it heads northward again.³⁷

Higher spending can translate into even higher future regulatory costs. Spending related to bailouts, stimulus, infrastructure, and the like will include significant regulatory components as well (for example, net neutrality proposals with respect to telecommunications infrastructure spending).

Interestingly, deficits totaling hundreds of billions of dollars and regulatory costs exceeding \$1.8 trillion dwarf the initial \$150 billion 2008 “stimulus package,” which fizzled out

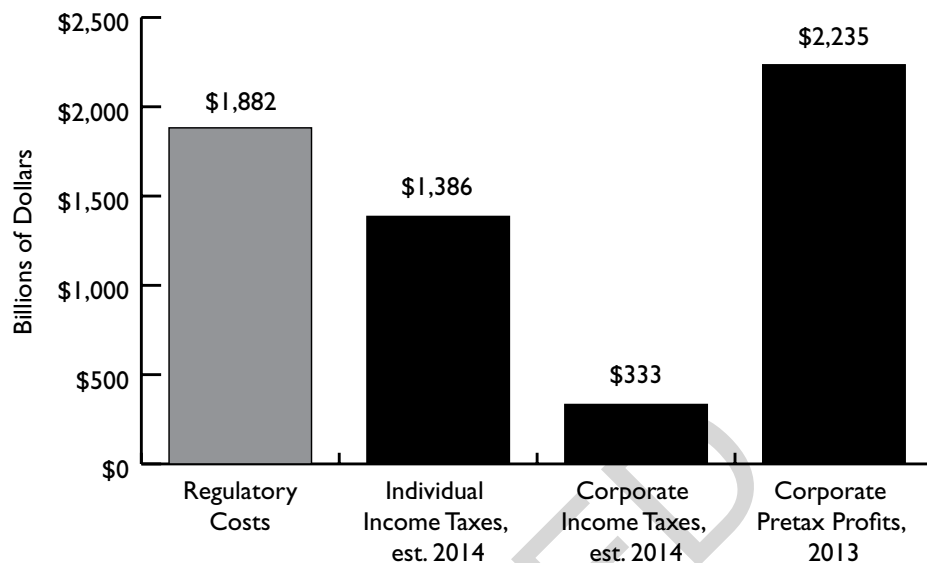
and failed to resurrect the economy.³⁸ Policy makers would do well to consider economic liberalization and a reduced regulatory state as ways to address our spending and deficit culture and off-budget regulation.

Regulatory Costs versus Income Taxes and Corporate Profits

Regulatory costs now easily exceed the cost of individual income taxes and vastly exceed revenue from corporate taxes. As Figure 3 shows, regulatory costs now tower over the estimated 2014 individual income tax revenues of \$1.386 trillion (individual income tax receipts had fallen substantially dur-

Regulatory costs now easily exceed the cost of individual income taxes and vastly exceed revenue from corporate taxes.

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



Sources: Crews, *Tip of the Costberg*. Estimated 2014 tax figures from OMB, *Historical Tables*, Table 2.1, “Receipts by Source: 1934–2019,” <http://www.whitehouse.gov/omb/budget/Historicals>. Corporate 2013 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>.

ing the economic downturn but are rising again).³⁹ Corporate income taxes collected by the U.S. government, estimated at \$333 billion in 2014, are dwarfed by regulatory costs (corporate tax receipts had declined by half during the recent downturn).⁴⁰ As the last bar of Figure 3 shows, regulatory compliance costs are approaching the level of pretax corporate profits, which were \$2.235 trillion in 2013.⁴¹ Incidentally, this is the second time pretax profits have topped \$2 trillion.

estimate of \$1.88 trillion is equivalent to approximately 11 percent of that amount. Combining regulatory costs with federal FY 2014 outlays of \$3.5 trillion (see Figure 2) indicates that the federal government’s \$5.386 trillion share of the economy reaches 30.9 percent. (See Figure 4.)

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

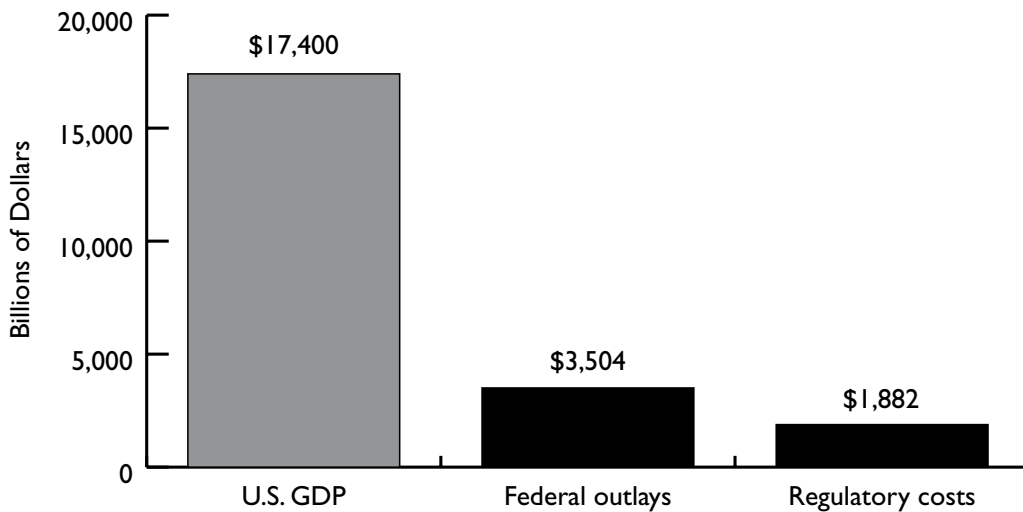
Regulatory Costs versus GDP

Regulation “Eats” 11 Percent of U.S. GDP

For the United States, the Commerce Department’s Bureau of Economic Analysis in March 2015 estimated GDP for 2014 at \$17.4 billion.⁴² The total regulatory cost

U.S. regulatory costs surpass the 2013 GDP of both Canada, at \$1.827 trillion, and Mexico, at \$1.261 trillion.⁴³ Only eight countries have GDPs that exceed the estimated cost of regulation in the United States. If U.S. regulatory costs of \$1.88 trillion were a country, it would be the world’s tenth-largest economy, ranking behind Russia and ahead of India. Figure 5 depicts this number embedded

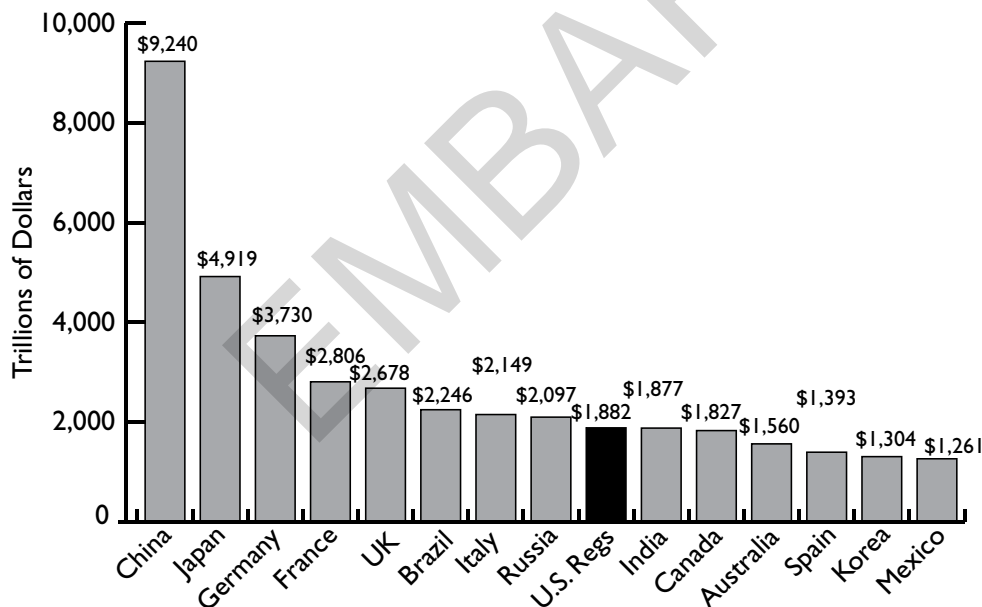
Figure 4. GDP Compared to Federal Outlays and Regulation



Sources: Wayne Crews, *Tip of the Costberg*. GDP from U.S. Department of Commerce, Bureau of Economic Analysis, *National Income and Product Accounts, Gross Domestic Product: Third Quarter 2014* (Third Estimate), February 28, 2014. <https://www.bea.gov/newsreleases/national/gdp/gdpnewsrelease.htm>. Outlays from CBO, *The Budget and Economic Outlook: Fiscal Years 2015 to 2025*, January 2015, Table 1-2, "CBO's Baseline Budget Projections," p. 13, <http://www.cbo.gov/sites/default/files/cbofiles/attachments/45010-Outlook2014.pdf>.

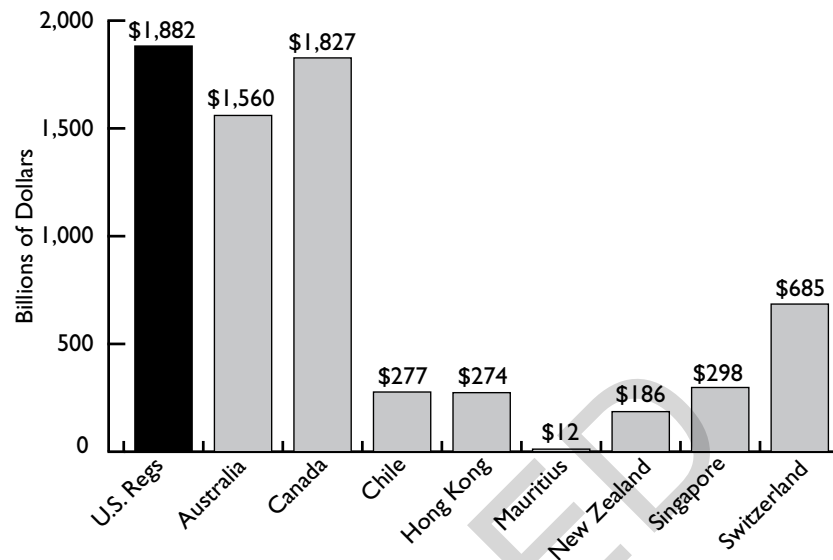
Note: Federal "share" of the economy 31 percent (outlays 20 percent, regulation 11 percent).

Figure 5. U.S. Regulatory Costs Compared to 2013 Gross Domestic Product of the World's Largest Economies after the United States



Source: Gross Domestic Product data from World Bank, Washington, D.C., GDP Data, <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD/countries>.

Figure 6. U.S. Regulatory Load Compared to 2013 Gross Domestic Product in World Economies Regarded as Most Free



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

Note: "Free" economies consist of those in top ten of both the Heritage Foundation/*Wall Street Journal* Index of Economic Freedom and the Fraser Institute/Cato Institute *Economic Freedom of the World* report.

within a ranking of the 14 largest global economies (U.S. GDP is omitted in the chart).

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

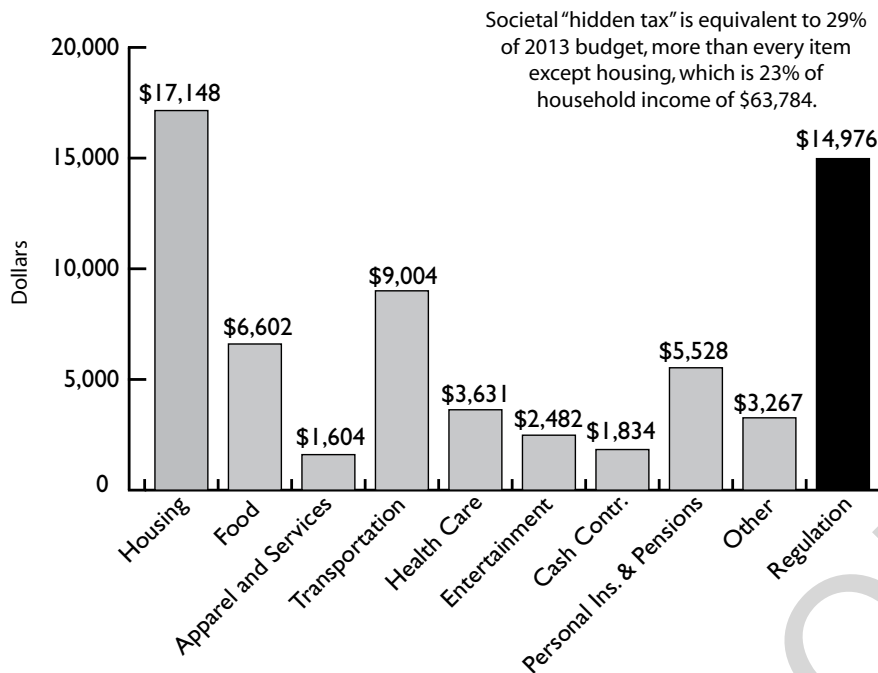
U.S. regulatory costs of \$1.88 trillion exceed the output of many of the world's major economies, including those regarded as the most economically free. Two annual surveys of global economic freedom are widely cited. Each year, the Heritage Foundation and the *Wall Street Journal* jointly publish the *Index of Economic Freedom*.⁴⁴ Meanwhile, Canada's Fraser Institute, in conjunction with the Cato Institute and a large group of international think tanks, publishes the annual *Economic Freedom of the World* report.⁴⁵

Of the top 10 countries in these publications, eight are common to both. Figure 6 lists the eight compared to U.S. regulatory costs. Regulatory costs exceed the GDP of both Australia and Canada, the highest-income nations among the countries ranked most free. Note also that the United States no longer ranks in the top 10 of either report. Regulation is likely a factor affecting such rankings.

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. Costs are borne by businesses, households, and lower-level governments both through direct pass-downs and

Figure 7. The U.S. Household Expense Budget of \$51,100 Compared to Regulatory Costs



Sources: Bureau of Labor Statistics, author arithmetic.

Note: Proxy for households here is BLS depiction of 125,670,000 “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.”

in broader indirect economic effects.⁴⁶ Thus, regulatory costs propagate through an economy, for which the basic unit remains the individual and the household. The implication is that regulation has large effects on societal wealth. For perspective, if we assume the full pass-through of all such costs to consumers, 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). This approach is a useful way of reflecting on the magnitude of regulatory costs.⁴⁷

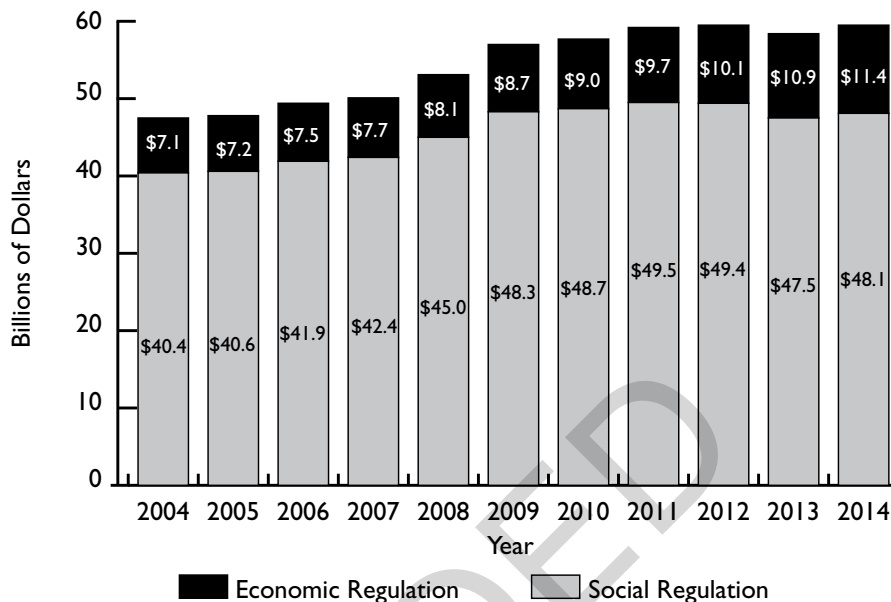
For America’s 125.67 million households, or “consumer units” in BLS parlance, the average 2013 pretax income was \$63,784.⁴⁸ Figure 7 breaks down household expenditures of \$51,100 by category. The highest category

is housing at \$17,148 annually. The second-highest category is transportation at \$9,004.

Regulatory costs obviously are not “paid” out of pocket by households. Nonetheless, if one envisioned these costs being allocated directly to individuals as done in Figure 7, U.S. households “pay” \$14,976 annually in a hidden regulatory tax (\$1.88 trillion in regulation divided by 125.67 million “consumer units”), or 23 percent of average income before taxes. That figure is higher than every annual household budgetary expenditure item except housing costs. More is “spent” on embedded or hidden regulation in society than on health care, food, transportation, entertainment, apparel and services, and savings. Societal regulatory costs amount to up to 29 percent of the typical household’s expenditure budget.⁴⁹

Societal regulatory costs amount to up to 29 percent of the typical household’s expenditure budget.

Figure 8. Federal Agency Enforcement Budgets, \$59.5 Billion Total in FY 2014



Source: Susan Dudley and Melinda Warren, “Economic Forms of Regulation on the Rise: An Analysis of the U.S. Budget for Fiscal Years 2014 and 2015,” *Regulators’ Budget* No. 36, published jointly by the Regulatory Studies Center at the George Washington University and the Weidenbaum Center on the Economy, Government, and Public Policy, July 2014, p. 25.

Note: Original 2009 constant dollars are adjusted here by the change in the consumer price index between 2009 and 2014, 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>.

The Federal Government’s Costs of Policing the Regulatory State

Regulatory cost estimates encompass compliance costs paid by the public, but those estimates do not include administrative costs—the on-budget amounts spent by federal agencies to produce rules and police regulatory compliance. The Weidenbaum Center at Washington University in St. Louis, Missouri, and the Regulatory Studies Center at George Washington University in Washington, D.C., regularly examine the annual presidential federal budget proposal to compile the administrative costs of developing and enforcing rules. Such amounts are disclosed in the federal budget because these are funds that taxpayers contribute

to support agencies’ administrative budgets, not compliance costs paid by regulated parties.

The estimated FY 2014 enforcement costs incurred by federal departments and agencies stood at an estimated \$59.5 billion, a slight 1.9 percent increase over \$58.3 billion the previous year (Figure 8).⁵⁰

Of that amount, \$11.4 billion was spent administering economic regulations. The larger amount spent for writing and enforcing social and environmental regulations was \$48.1 billion. In current dollars, the Environmental Protection Agency (EPA) alone spent an estimated \$4.954 billion in this latter category in 2014, which accounted for 8.6 percent of the total expected to be spent

by all regulatory agencies.⁵¹ The EPA formerly accounted for the lion's share of governmental administration and enforcement costs, but the Department of Homeland Security, at an estimated \$23.6 billion, now accounts for 40.9 percent.⁵²

The \$59.5 billion in regulatory agency enforcement costs (\$11.4 billion plus \$48.1 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 \$1.88 trillion estimate brings the to-

tal 2014 regulatory cost estimate to about \$1.94 trillion.

Estimated full-time-equivalent administrative and enforcement staffing stood at 279,421 in FY 2014, up 2 percent from 273,843 the year before, according to the joint report by the Weidenbaum Center and Regulatory Studies Center. This represents an increase of more than 100,000 since the 2001 staffing of 173,027.⁵³ Much of the post-2001 surge may be attributable to the newly created Transportation Security Administration's hiring of thousands of airport screening personnel.

EMBARGOED

Thousands of Pages and Rules in the *Federal Register*

The *Federal Register* is the daily depository of all proposed and final federal rules and regulations. The number of pages in the *Federal Register* is probably the most frequently cited measure of regulation's scope. There are obvious problems with relying on page counts. The wordiness of rules will vary, thus affecting the number of pages and obscuring the real effects of the underlying rules. A short rule could be costly and a lengthy one relatively cheap. Furthermore, the *Federal Register* contains administrative notices, corrections, rules relating to the governance of federal programs and budgetary operations, presidential statements, and other material. Blank pages sometimes appear—in previous decades, they numbered into the thousands, owing to the Government Publishing Office's imperfect prediction of the number of pages agencies would require.

Federal Register Pages

Despite these limitations, it remains worthwhile to track the *Federal Register's* growth according to its page counts, provided the caveats are kept in mind. Tens of thousands of pages stream from America's departments, agencies, and commissions. As Figure 9 shows, at the end of 2014, the number of pages stood at 77,687. Although this number is President Obama's lowest level since the 68,598 pages of 2009, it is nonetheless the sixth-highest level in the history of the *Federal Register*. Both 2010 and 2011 had been the all-time record years, at 81,405 and 81,247, respectively. The 79,435 count in 2008 under President George W. Bush holds the third-highest title. Of the six all-time high *Federal*

Register page counts, five have 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

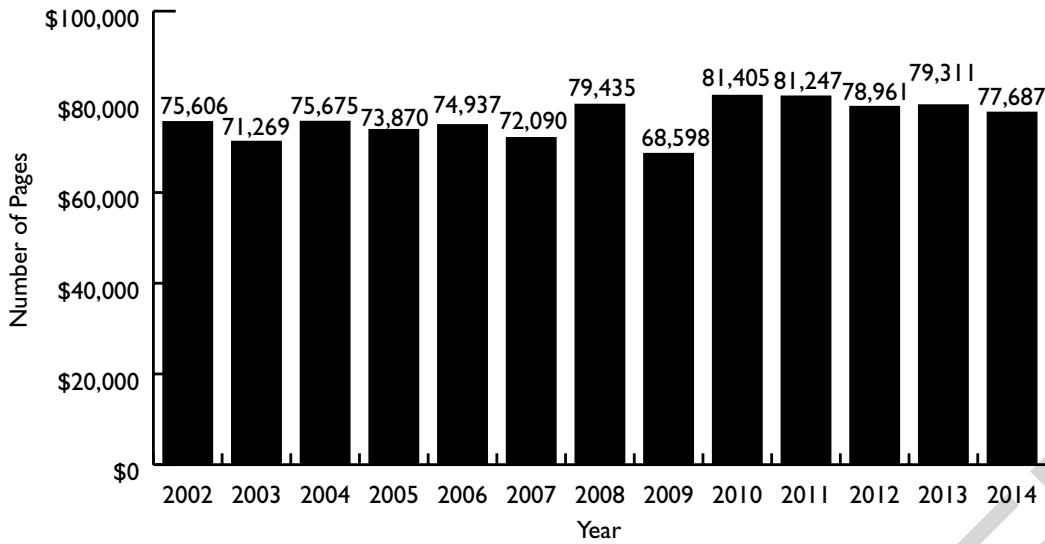
Whereas they may plausibly signify greater governmental activity, gross page counts alone do not satisfactorily reveal whether actual regulatory burdens have increased or decreased, given that a rule of few pages might impose a significant burden. Isolating the pages devoted specifically to *final* rules might be more informative because it could omit pages devoted to proposed rules, agency notices, corrections, and presidential documents (although those categories have regulatory effects too). Between 2013 and 2014, the number of pages devoted to final rules dropped by 5.9 percent from a record high of 26,417 to 24,861 (see Figure 10).

The previous record was 26,320 in 2008, after which the number dropped sharply by 21 percent to 20,782 in 2009. This decrease mirrored the above-noted drop in total pages between those two years. Figure 10 shows that over the decade since 2005, the number of *Federal Register* pages devoted to final rules has increased by 7.9 percent.

Still another way of looking at *Federal Register* trends is by pages per decade (see Figure 11). During the 1990s, the total number of *Federal Register* pages published was 622,368, whereas the total number published during the 1980s was 529,223. (The busiest year in

Despite these limitations, it remains worthwhile to track the Federal Register's growth according to its page counts, provided the caveats are kept in mind.

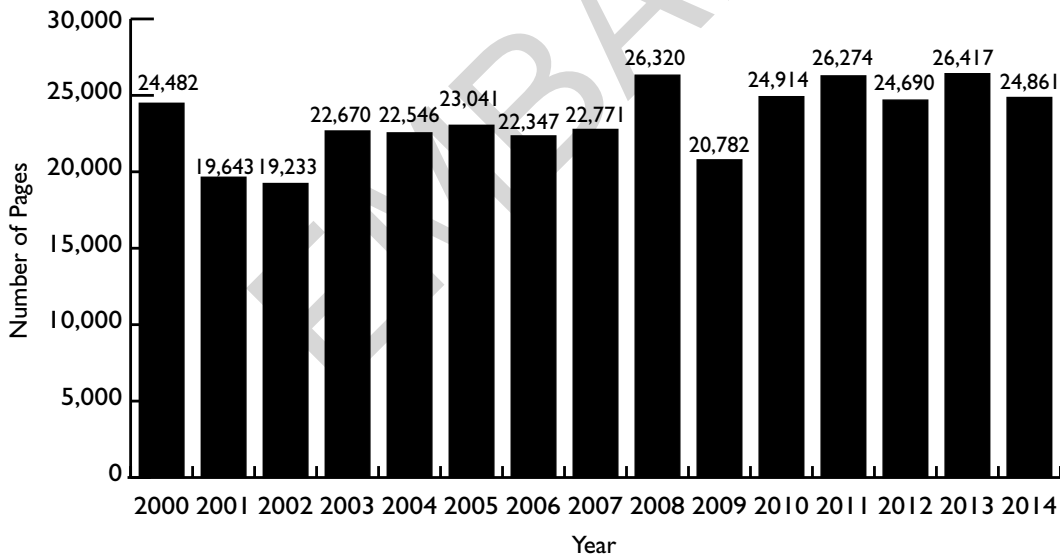
Figure 9. Number of *Federal Register* Pages, 2002–2014



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

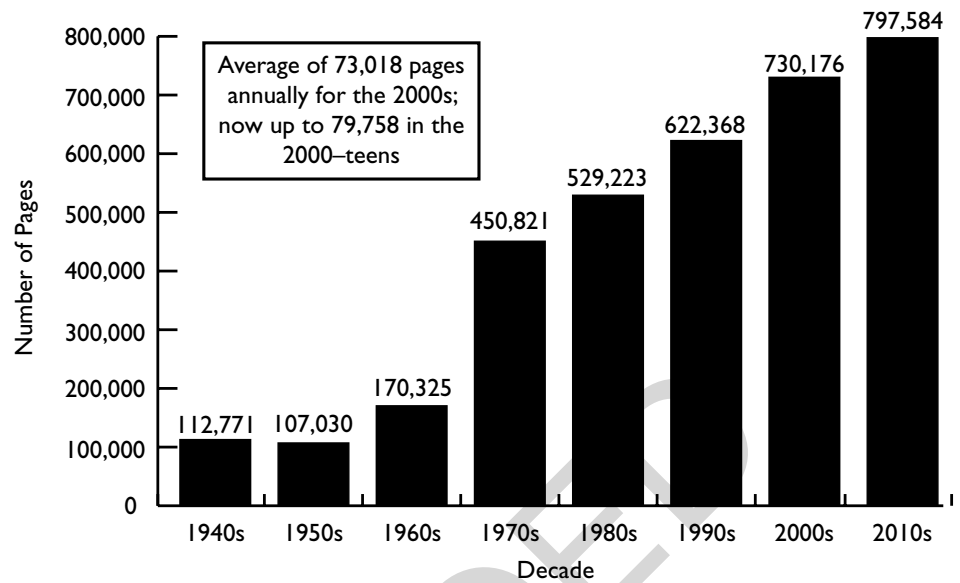
Note: Of six all-time-high *Federal Register* page counts, five belong to the Obama administration.

Figure 10. *Federal Register* Pages Devoted to Final Rules, 2000–2014



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

Figure 11. *Federal Register* Pages per Decade ...
797,584 Pages Projected for the 2000 “Teens”



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

Note: 2010s is a projection based on the last five years' average. Years 2000–2009 average 73,000 annual pages; this decade averages 79,000 pages yearly.

the 1980s was 1980, with a peak of 73,258 pages, as shown in Appendix: Historical Tables, Part A.) At the end of the first decade of the 21st century,⁵⁴ 730,176 pages ultimately appeared—an average of 73,018 pages annually and a 17 percent increase over the 1990s.

If page counts hold around 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 five years at 79,758. If trends continue, we will end up with nearly 800,000 *Federal Register* pages for the decade (the projection at the moment is 797,584). Decade page counts could top 1 million within a few years, as a glance at increases since the 1940s makes clear.

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

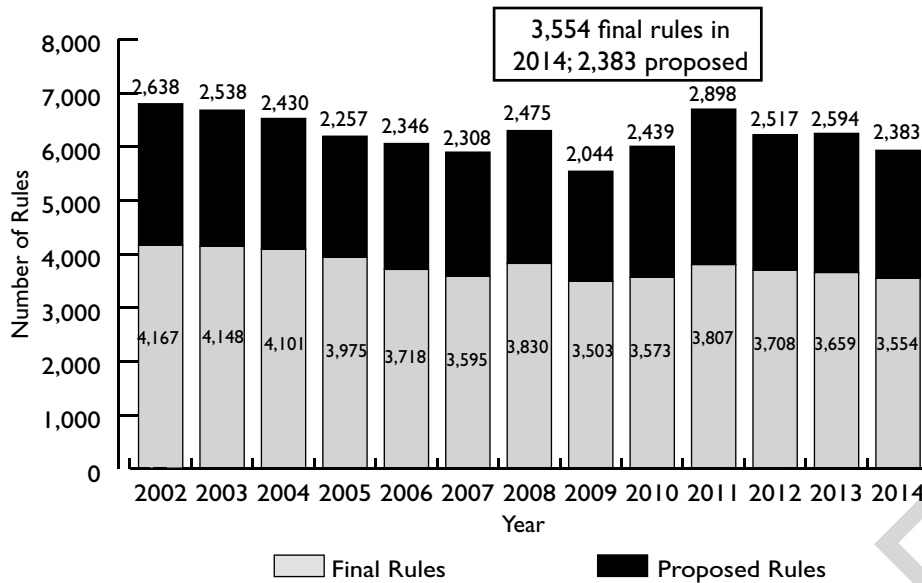
The actual numbers of proposed and final rules—not just the page count—published in

the *Federal Register* merit close attention. As Figure 12 shows, final rules in 2014 dropped by 2.9 percent, from 3,659 to 3,554. The upcoming section describing the Unified Agenda of federal regulations will examine some of the possible reasons for these recent declines.

Rule impacts vary of course, but the number of final rules currently being published is lower than it was throughout the 1990s, when the average number of annual regulations made final was 4,596, and it is lower than during the early years depicted in Figure 12. The average for the decade 2000–2009 was 3,945. So the decline in rule numbers is a positive trend, one that policy makers should seek to extend. Nonetheless, a pace of more than 3,500 completed rules annually is significant and creates a largely ignored cumulative burden.

Also notable is the pace of proposed rules appearing in the *Federal Register*. The 2,383 rules proposed in 2014 are down from the past few years. The 2,517 proposed rules of 2012 and

Figure 12. Number of Proposed and Final Rules in the *Federal Register*, 2002–2014



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

the 2,898 proposed in 2011 were on the high side compared with the decade as a whole. Should the pace resume, high numbers of proposed rules signify likely future increases in final rules. (For the numbers of proposed and final rules and other documents issued in the *Federal Register* since 1976, see Appendix: Historical Tables, Part B.)

Cumulative Final Rules in the *Federal Register*

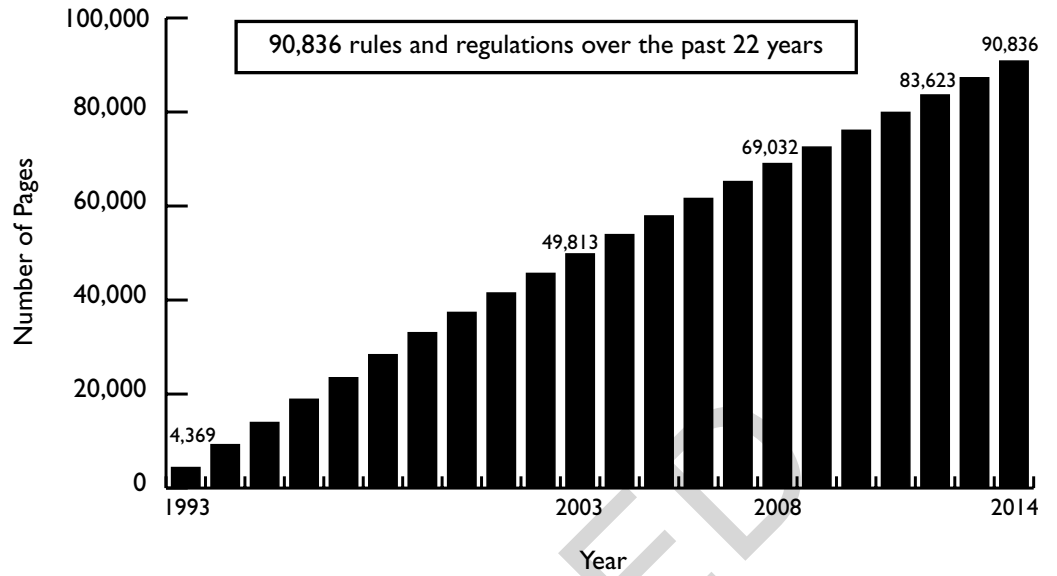
The cumulative effect of regulation can matter a great deal despite yearly fluctuations. The bottom line is that the annual outflow of more than 3,500 final rules—and often far more—has meant that about 90,836 rules have been issued since 1993, when the first edition of *Ten Thousand Commandments* was published (see Figure 13).

The Expanding Code of Federal Regulations

The page count for final general and permanent rules in the *Code of Federal Regulations* (CFR) is more modest than that of the *Federal Register*, but the count is substantial nonetheless. In 1960, the CFR contained 22,877 pages. Since 1975, the total pages in the complete CFR have grown from 71,224 to 175,268 at the end of 2014, including the 1,170-page index. That figure is a 146 percent increase over the period. The number of CFR volumes stands at 236, compared with 133 in 1975. Figure 14 depicts the CFR’s pages for the past decade. (For the detailed breakdown numbers of pages and volumes in the CFR since 1975, see Appendix: Historical Tables, Part C.)

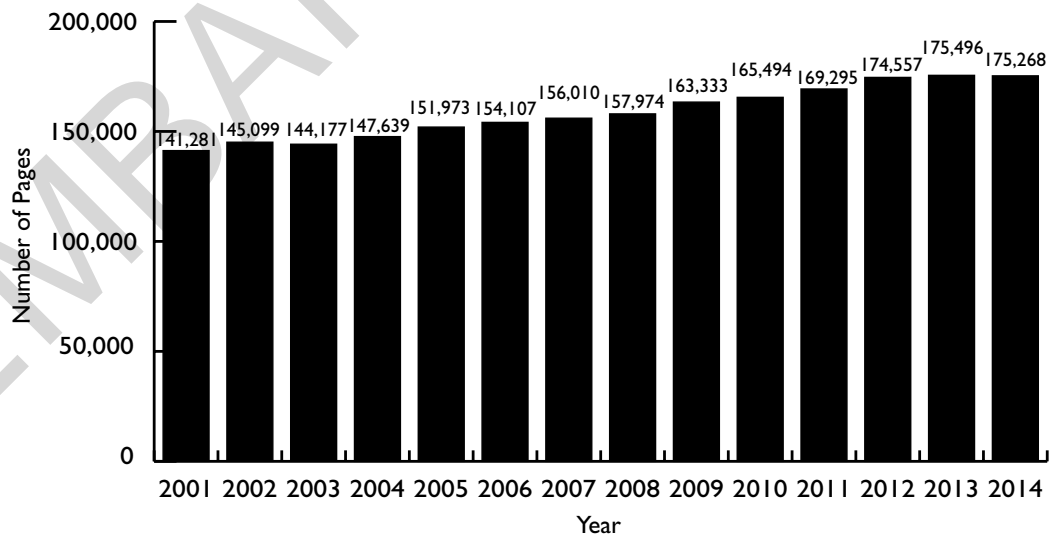
The annual outflow of more than 3,500 final rules—and often far more—has meant that about 90,836 rules have been issued since 1993, when the first edition of Ten Thousand Commandments was published.

Figure 13. Cumulative Final Rules Published in the *Federal Register*, 1993–2014



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

Figure 14. *Code of Federal Regulations*, 175,268 Total Pages in 2014, 2001–2014



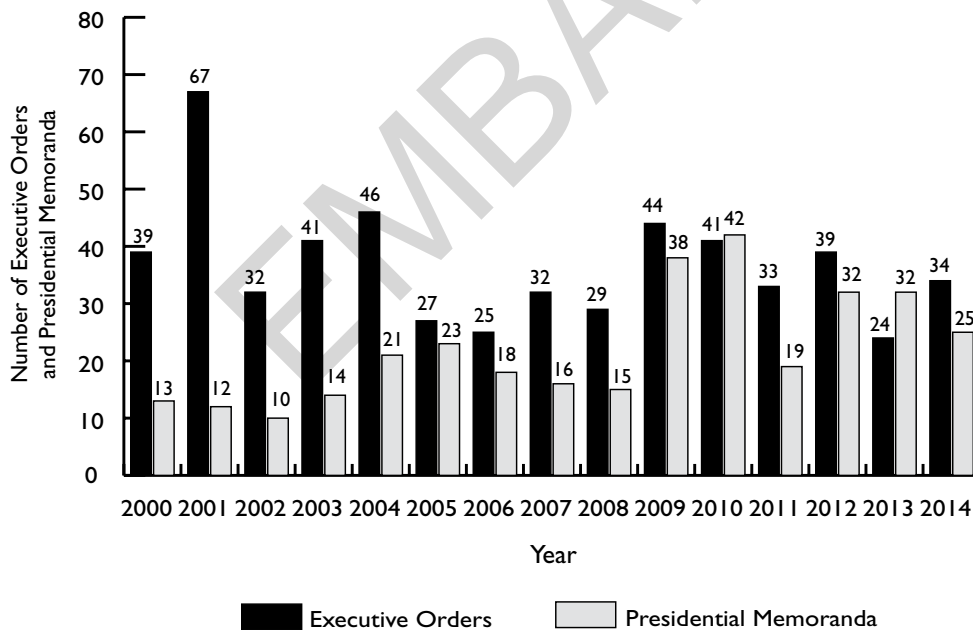
Source: National Archives and Records Administration, Office of the Federal Register.

Presidential Executive Orders and Executive Memoranda

During his 2014 State of the Union Address, President Obama pledged to use his “pen and phone” to implement a “year of action,” with or without Congress.⁵⁵ Executive orders (as well as presidential memoranda⁵⁶ and other actions) make up a large component of that initiative. Here, we look at the numbers, but a considerable amount of executive branch activity is not well measured, and it merits attention, especially when an administration emphasizes unilateral action.

Executive orders’ realm is ostensibly the internal workings and operations of the federal government. Subsequent presidents can overturn them. Their use is nothing new, dating back to George Washington’s administration.⁵⁷ Obama’s totals are not high compared to those of other presidents. At the end of 2014, he had issued 215. Figure 15 lists executive orders issued over the past two decades, from 1995 to the present. Obama clearly issued more in his first term than did President George W. Bush in his second

Figure 15. Number of Executive Orders and Presidential Memoranda, 2000–2014



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

We live in an era in which the government—without actually passing a law—increasingly asserts itself into various economic sectors, including health care, retirement, education, energy production, finance, land and resource management, funding of science and research, and manufacturing.

term, but Bush was clearly in the lead during his first term.

Presidential memoranda since 1999—what *USA Today* has termed “Executive orders by another name”—are also depicted in Figure 15.⁵⁸ Memoranda may or may not be published, depending on the administration’s own determination of “general applicability and legal effect,” making it “difficult to count presidential memoranda.”⁵⁹ Obama’s pace since 2009 tops that of George W. Bush, which is unsurprising given the administration’s openness about prioritizing executive action. Bush published 131 memoranda over his entire presidency, whereas Obama during his first six years issued 188 that were published in the *Federal Register*. (President Bill Clinton published just 14 memoranda.⁶⁰)

The pertinent question as far as regulatory burdens are concerned is what those executive orders and memoranda—and ones to come—are used for and what they do. Executive actions can liberalize and enhance freedom, such as President Abraham Lincoln’s Emancipation Proclamation to free slaves. Or they can expand governmental power, such as President Harry Truman’s failed attempt to seize control of America’s steel mills⁶¹ or President Franklin D. Roosevelt’s confiscation of the nation’s gold.⁶²

Whether lengthy or brief, orders and memoranda can have significant impacts for or against liberty. Therefore, a smaller number of them does not necessarily mean small effects. In 2014 alone, Obama memoranda included creating a new financial investment instrument and implementing new positive rights regarding work hours and employment preferences.⁶³ As with the *Federal Register*, counts are interesting but do not tell the whole story.

Obama’s own Executive Order No. 13563 about review and reform was a pledge to roll back regulation but amounted to only a few billion dollars in cuts that were swamped by other rules issued.⁶⁴ In all, four of Obama’s executive orders directly address overregulation and rollbacks.⁶⁵

Other key executive orders about regulatory restraint were President Bill Clinton’s 1993 Executive Order No. 12866⁶⁶ and President Ronald Reagan’s Executive Order No. 12291, which formalized central regulatory review at the OMB.⁶⁷ Clinton’s was a step back from the heavier oversight of the Reagan order in that it sought “to reaffirm the primacy of Federal agencies in the regulatory decision-making process.”⁶⁸

The United States existed for many decades before a president issued more than two dozen executive orders—that was President Franklin Pierce, who served in 1853–1857.⁶⁹ Orders numbered in the single digits or teens until President Lincoln and the subsequent reconstruction period. The Ulysses S. Grant administration issued 217, then a record.⁷⁰ From the 20th century onward, orders were to top 100 for each president and sometimes numbered in the thousands. President Franklin D. Roosevelt issued 3,467 numbered executive orders. Table 4 provides a look at executive order counts by administration since the nation’s founding and presents a total rough count of 15,209.⁷¹ (In an expansion of Figure 15, executive orders since 1995 by calendar year appear in Appendix: Historical Tables, Part J.)

We live in an era in which the government—without actually passing a law—increasingly asserts itself into various economic sectors, including health care, retirement, education, energy production, finance, land and resource management, funding of science and research, and manufacturing. Decrees issued in a limited government context have different implications than do those issued in an era of activist government, and some of what transpires today is without precedent. For example, the *Washington Post* described President Obama’s unilateral executive action on immigration as “fl[y]ing in the face of congressional intent—no matter how indefensible that intent looks.”⁷² More disquieting is that Obama never signed such an order, and the Department of Homeland Security never published one in the *Federal Register*.⁷³ Meanwhile, the Internal Revenue Service has granted numerous waivers of the Patient Protection and

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	13,688	13,489	200
Total Number of Executive Orders			15,209

Source: W. Crews' 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>.

Note: n/a = not applicable or not available

Affordable Care Act's employer mandate without regard to the statute's language.⁷⁴

Counting rules and regulations, executive orders, memoranda, and other regulatory

guidance gets us only so far, yet these call for more scrutiny because they can be a way of working around the constitutional system of legislation by an elected body.⁷⁵

24,000 Public Notices Annually

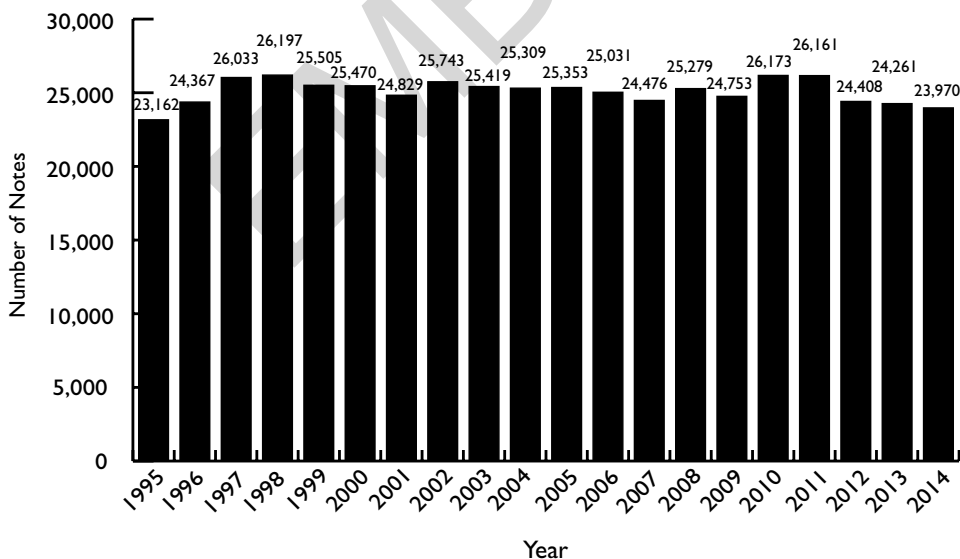
Public notices in the *Federal Register* are non-rulemaking documents such as meeting and hearing notices and agency-related organizational material.⁷⁶ There are tens of thousands of yearly public notices, including memoranda, bulletins, guidance documents, and alerts, many of which could be important to the public. Figure 16 shows the number of notices annually. Whereas notices stood at 23,970 in 2014, the last time they had dipped below 24,000 was in 1995.

There were 46 notices that rose to the level of receiving OMB review during the 2014 calendar year (see Figure 17 in next section). Of

these, five notices are deemed to have an “economically significant” impact. (A history of the number of notices reviewed annually appears in Appendix: Historical Tables, Part D.)

Policy makers should pay more attention to documents such as notices and memoranda because of the modern executive inclination to advance policy by memorandum and bulletin. Most notice-and-comment regulations already lack cost-benefit or other analysis. More unilateral executive action will make the costs of regulation even less clear as government grows and the federal government increasingly interposes itself in commerce and engages in private activity.

Figure 16. Thousands of “Public Notices” in the *Federal Register*, 1995–2014



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

Analysis of the Regulatory Plan and Unified Agenda of Federal Regulations

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

In normal circumstances, the Agenda gives researchers a sense of the flow in the regulatory pipeline. It details rules recently completed, plus those anticipated within the upcoming 12 months by federal departments, agencies, and commissions (60 in the newest edition). As a cross-sectional snapshot of rules moving through the regulatory pipeline, the Agenda compiles agency-reported federal regulatory actions at several stages:

- Prerule actions
- Proposed and final rules
- Actions completed during the previous few months
- Anticipated longer-term rulemakings beyond a 12-month horizon

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

A complication is that agencies are not required to limit their regulatory activity to

what they publish in the Agenda. As the *Federal Register* has noted:

The Regulatory Plan and the Unified Agenda do not create a legal obligation on agencies to adhere to schedules in this publication or to confine their regulatory activities to those regulations that appear within it.⁷⁷

The appearance of the Agenda has become less reliable. The fall 2011 edition did not appear until January 20, 2012.⁷⁸ The spring 2012 edition did not appear at all, and a solitary volume with no seasonal designation finally appeared the Friday before the Christmas 2012 holiday with no clarity on how its methodology might have been affected by the delay.

In spring 2013, a document titled “Spring 2013 Update to the Unified Agenda of Federal Regulatory and Deregulatory Actions” appeared instead of the normal Unified Agenda the day before July 4. Then in late 2013, echoing 2012’s pre-Santa version, the fall edition appeared the day before Thanksgiving (coinciding with a delay of implementation of the Affordable Care Act’s employer mandate, in defiance of the statute’s language). In 2014, the fall edition again appeared late on the Friday before Thanksgiving.

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

In 2012, spring and fall guidelines from the OMB's then-director of the Office of Information and Regulatory Affairs (OIRA), Cass Sunstein, altered directives to agencies regarding their Agenda reporting:⁷⁹

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

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

Newly appointed OIRA Administrator Howard Shelanski issued a similar memorandum on the Unified Agenda on August 7, 2013—"please consider removing" became simply "please remove."⁸⁰ As Susan Dudley of the George Washington University Regulatory Studies Center notes, 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."⁸¹

Upon release of the fall 2013 edition of the Agenda, regulatory expert Leland Beck noted the fluid nature of the Agendas, stating: "The [A]genda provides only a semi-filtered view of each agency's intentions and must be considered within its limitations" and the Agendas "reflect what the agency wants to make public, not necessarily all that they are actually considering, and some highly controversial issues may be withheld."⁸²

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

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

'The number and scope of delays under Obama went well beyond those of his predecessors, who helped shape rules but did not have the same formalized controls,' said current and former officials who spoke on the condition of anonymity because of the sensitivity of the topic.⁸³

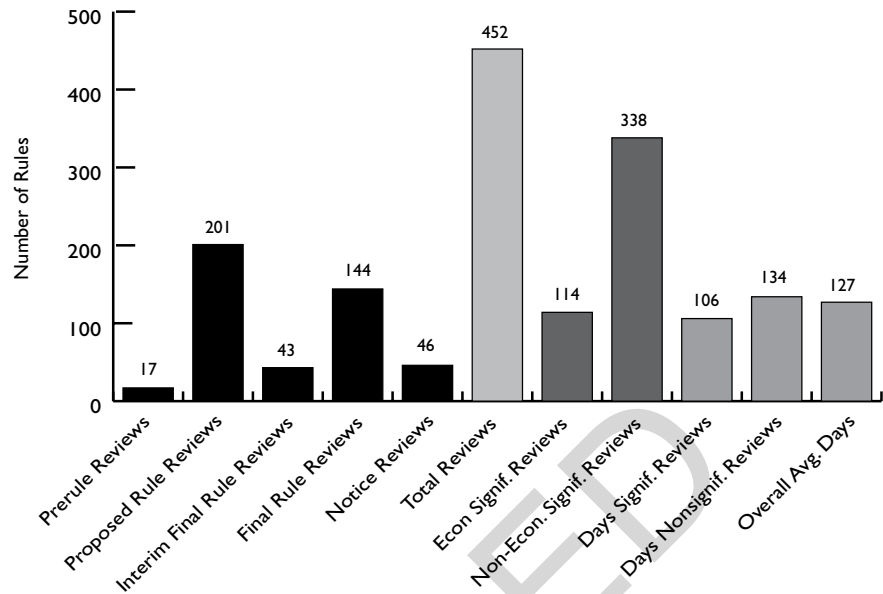
A December 2013 report by the Administrative Conference of the United States about the growing length of rule reviews at the OMB reinforced the *Washington Post* article's conclusion.⁸⁴ Other headlines captured the environment:

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

The 2014 mid-term elections did not appear to have as significant an impact on rule volume as the 2012 presidential cycle. However, completed rules in the Unified Agenda remain lower than during Obama's peak years.

Figure 17 presents the number of Executive Order No. 12866 rule reviews carried out at the OMB, by stage and by economic significance, for calendar year 2014. It also shows the number of days for review at the OMB in 2014, a process which now can take several months rather than two months or less. The Office of Information and Regulatory Affairs, however, does not review independent agen-

Figure 17. Number of OMB Rule Reviews under Executive Order 12866 and Average Days under Review, 2014



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

cies’ 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 2014. Note the pre-Executive Order No. 12866 years depicted there, 1991–1993, when review times were shorter and the numbers of rules were considerably higher.)

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

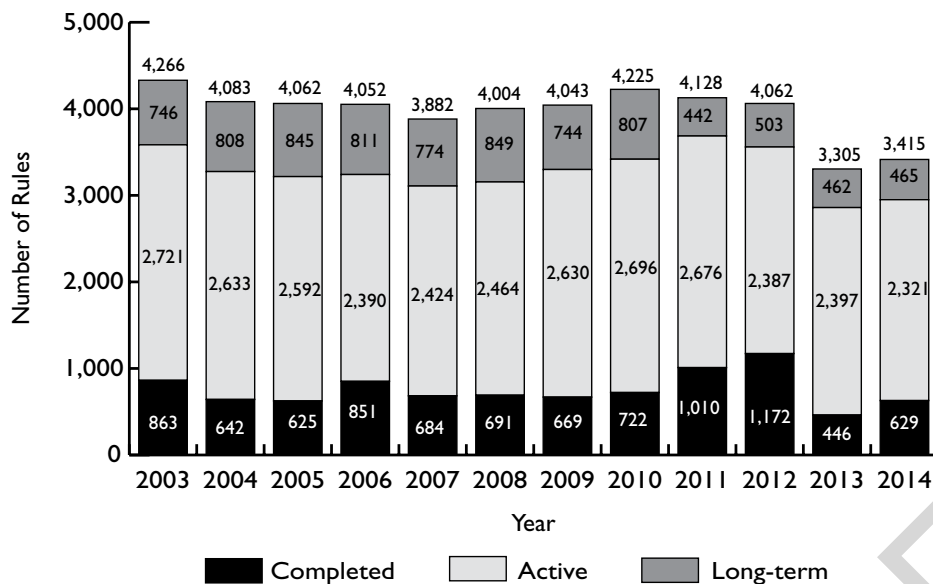
Some healthy skepticism may be justified regarding the numbers in the most recent Agenda, given the lack of both a clarification of the numbers’ legitimacy and a rule delay by the administration. But like the *Federal Register*, they are what we have and can be improved.

3,415 Rules Acknowledged in the Unified Agenda Pipeline

The year-end 2014 Agenda finds federal agencies, departments, and commissions recognizing 3,415 regulations in the active (pre-rule, proposed, and final), just-completed, and long-term stages.⁸⁵ As is true every year, many of the rules are not new to the Agenda and have been in the pipeline for quite some time.

As Figure 18 shows, the overall Agenda pipeline had topped 4,000 rules from 2000 to 2014, except for the years 2007, 2013, and 2014, when the count dipped to 3,882, 3,305, and 3,415, respectively. The 2013 drop of 18.6 percent from 4,062 rules in 2012 may reflect the change in directive noted earlier. The all-time-high count for rules in the year-end Agenda was 5,119 in 1994. (For a history of the numbers of rules in the spring and fall Unified Agenda editions since 1983, see Appendix: Historical Tables, Part E.)⁸⁶

Figure 18. Total Agency Rules in the Fall Unified Agenda Pipeline, 2003–2014



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 reginfo.gov. “Active” rules consist of rules at the pre-rule, proposed and final stages.

Note: pre-2004 online database totals do not match the printed, paper editions of that era, so I have elected to retain the data as compiled in those earlier print editions.

President Obama declared during his 2012 State of the Union address that he had issued fewer rules in his first three years than did his predecessor, George W. Bush.⁸⁷ That statement was technically true with respect to the total number of *final* rules, but Obama’s *proposed* rules have continued to mount (see Figure 12).

Obama’s claim also held together somewhat regarding the overall number of rules in the Unified Agenda pipeline at that time (see Figure 18). But note that Obama referred to *first* terms, and he no longer makes the Bush comparisons. Although Obama did issue fewer rules in his first term than did Bush, Obama’s first term brought more rules than Bush issued in his second term.

The *Federal Register* consistently shows some 3,500 rules made final annually. As Figure 18 shows, since 2003, “Active” rule counts have consistently remained above 2,300. This category stands at 2,321 for 2014. Although

the Unified Agenda pipeline shows very large overall declines for 2013 and 2014, whether that translates into fewer actual regulations remains to be seen.

Note that although rules in the “Completed” category in fall Agendas (spring Agendas are not shown here) had been rising steadily and rapidly under Obama—from 669 in 2009 to 1,172 in 2012, a 75.2 percent increase—they too dropped precipitously to 462 in 2013. (Completed rules are “actions or reviews the agency has completed or withdrawn since publishing its last agenda.”) This decline appears to have reflected the administration’s rule delays featured in the previous section. However, this category is growing again; in 2014, rules rose to 629, a 36 percent increase.

Still, despite the drop in Obama’s “Completed” rules in 2013, the average of his six years of fall Agendas, 777, exceeds the aver-

age of 726 for George W. Bush's final six years (bottom one-third of Figure 18).

With respect to the long-term category (top of Figure 18), in the wake of the Sunstein and Shelanski memoranda, one can see that the Obama administration discloses far fewer regulations compared to the previous administration. Announced long-term rules shown in Figure 18 dropped precipitously from 807 to 442 between 2010 and 2011. In the new 2014 Agenda, these rules stand at 465. De-emphasizing "long-term" reporting is unwise. In the "pen and phone" era, that is where much of the action will be, so having the notice is (or was) worthwhile.

The total pipeline count of 3,415 rules depicted in Figure 18 is broken out in Table

5 by agency, commission, or issuing department to show numbers of rules at the active, completed, and long-term stages by department or agency. Note that there are no completed or long-term rules listed in the Regulatory Plan component of the Unified Agenda. (For the numbers of rules by department and agency from previous year-end editions of the Agenda since 1999, see Appendix: Historical Tables, Part F.)

The overall Unified Agenda gives the impression that regulatory burdens are declining, but that apparent decline may actually reflect a pullback in disclosure and transparency, such as the administration's alleged delay of the pace of rules in 2012. Time will tell, as

Table 5. Unified Agenda Entries by Department and Agency, (Year-End 2014)

	Total Rules	Unified Agenda			Regulatory Plan Component		
		Active	Completed	Long Term	Active	Completed	Long Term
All Agencies	3,415	2,321	629	465	159		
Dept. of Agriculture	160	123	35	2	32		
Dept. of Commerce	270	165	85	20	5		
Dept. of Defense	121	98	23		5		
Dept. of Education	26	21	5		2		
Dept. of Energy	105	91	10	4	3		
Dept. of Health and Human Services	217	150	40	27	20		
Dept. of Homeland Security	141	78	17	46	22		
Dept. of Housing and Urban Development	55	38	15	2	1		
Dept. of the Interior	324	229	80	15			
Dept. of Justice	102	82	5	15	5		
Dept. of Labor	95	75	5	15	8		
Dept. of State	47	25	12	10			
Dept. of Transportation	216	158	33	25	17		
Dept. of Treasury	426	319	79	28			
Dept. of Veterans Affairs	75	56	17	2	1		
Environmental Protection Agency	186	129	31	26	23		

	Total Rules	Unified Agenda			Regulatory Plan Component		
		Active	Completed	Long Term	Active	Completed	Long Term
Advisory Council on Historic Preservation	1	1					
Agency for International Development	7	7					
Architectural and Transportation Barriers Compliance Board	7	5	1	1			
Commission on Civil Rights	1	1					
CPBSD*	2	1		1			
Commodity Futures Trading Commission	26	23	3				
Consumer Financial Protection Bureau	21	13	4	4			
Consumer Product Safety Commission	37	26	1	10			
Corporation for National and Community Service	6	3		3			
Court Services/Offender Supervision, D.C.	3			3			
Federal Acquisition Regulation	36	24	12				
Equal Employment Opportunity Commission	8	8			4		
Farm Credit Administration	26	23	3				
Federal Communications Commission	132	1	3	128			
Federal Deposit Insurance Corporation	25	17	6	2			
Federal Energy Regulatory Commission	24	1	6	17			
Federal Housing Finance Agency	19	16	1	2			
Federal Maritime Commission	7	4	3				
Federal Reserve System	23	16	7				
Federal Trade Commission	23	19	2	2			
General Services Administration	25	17	8				
Gulf Coast Ecosystem Restoration Council	4	3		1			
Institute of Museum and Library Services	1	1					
National Aeronautics and Space Administration	22	13	8	1			
National Archives and Records Administration	10	7	3				
National Credit Union Administration	22	20	2				

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

(continued)

Table 5. Unified Agenda Entries by Department and Agency,
(Year-End 2012) (continued)

	Total Rules	Unified Agenda			Regulatory Plan Component		
		Active	Completed	Long Term	Active	Completed	Long Term
National Endowment for the Arts	8	8					
National Endowment for the Humanities	5	4	1				
National Indian Gaming Commission	5	4		1			
National Labor Relations Board	1			1			
National Science Foundation	3	1	2				
National Transportation Safety Board	14	13		1			
Nuclear Regulatory Commission	60	26	8	26	1		
Office of Government Ethics	6	6					
Office of Management and Budget	2	2					
Office of Personnel Management	67	31	36				
Peace Corps	4	3	1				
Pension Benefit Guaranty Corporation	12	5	3	4			
Postal Regulatory Commission	2		2				
Railroad Retirement Board	1	1					
Recovery Accountability and Transparency Board	3			3			
Securities and Exchange Commission	61	54	2	5			
Small Business Administration	30	26	3	1			
Social Security Administration	39	27	5	7	10		
Surface Transportation Board	8	3	1	4			
TOTAL	3,415	2,321	629	465	159	0	0

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

rules make their way from the Agenda to the *Federal Register*.

Top Five Executive Rulemaking Agencies

Every year, a relative handful of executive agencies accounts for a large number of the rules produced. The five departments and agencies listed in Table 6—the depart-

ments of the Treasury, Interior, Commerce, Health and Human Services, and Transportation—were the biggest rulemakers. These top five, with 1,453 rules among them, account for 43 percent of the 3,415 rules in the Agenda pipeline. For the second time, the Environmental Protection Agency does not appear in the top five; it is sixth. Including the EPA's 186 rules (there were 179 last year but 223 the year before) would bring the total to 1,639 rules, or 48 percent.

Table 6. Top Rule-Producing Executive and Independent Agencies
(From year-end 2014 Unified Agenda, total of active, completed, and long-term rules)

Executive Agency	Number of Rules
1. Department of the Treasury	426
2. Department of the Interior	324
3. Department of Commerce	270
4. Department of Health and Human Services	217
5. Department of Transportation	216
TOTAL	1,453
% of Total Agenda Pipeline of 3,415	43

Note: The Environmental Protection Agency, formerly always in the top five, is sixth, with 186 rules in the pipeline.

Independent Agency	Number of Rules
1. Federal Communications Commission	132
2. Office of Personnel Management	67
3. Securities and Exchange Commission	61
4. Nuclear Regulatory Commission	60
5. Social Security Administration	39
TOTAL	359
% of Total Agenda Pipeline of 3,415	11

Top 5 Executives plus Independents	1,812
% 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 reginfo.gov.

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

Top Five Independent Rulemaking Agencies

Table 6 also depicts the top five independent agencies in the Agenda pipeline by rule count. They are the Federal Communications Commission, Office of Personnel Management, Securities and Exchange Commission, Nuclear Regulatory Commission, and Social Security Administration. Their total of 359 rules is 11 percent of the 3,415 rules in the Agenda. Combined, the top five executive and independent agency components come to 53 percent of that total.

Notable Regulations by Agency

Notable recent and pending regulations include the Department of Energy’s drive to regulate energy-using devices ranging from dehumidifiers to vending machines to ice makers; the Department of Health and Human Services’ regulation of labels on pet food, requirements for calorie count postings for vending machines and restaurants, and rules for school lunch contents; the Food and Drug Administration’s portion size regulations for products such as breath mints; and the EPA’s campaign against ordinary wood fires and, of course, fossil energy.

In recent Agenda editions, federal agencies have noted the initiatives listed below, among others, that are pending or recently completed. The full list of the 200 economically significant rules in the 2014 Agenda pipeline is available in Appendix: Historical Tables, Part G; economically significant rule tallies will be discussed in the next section. Many other rules are significant in fact, but do not get labeled as such by the government, including the Federal Communications Commission's net neutrality rules and proposals to require that quiet electric vehicles make noise.

Department of Agriculture

- Mandatory country-of-origin labeling of beef, fish, lamb, peanuts, and pork
- National school lunch and school breakfast programs: nutrition standards for all foods sold in school and certification of compliance with meal requirements for the national school lunch program (as required by the Healthy, Hunger-Free Kids Act of 2010)
- Rural Energy for America Program
- Rural broadband access loans and loan guarantees
- Mandatory inspection of catfish and catfish products
- Multifamily Housing Reinvention
- Inspection regulations for eggs and egg products
- Performance standards for ready-to-eat processed meat and poultry products
- "Modernization" of poultry slaughter inspection
- Regulations concerning importation of unmanufactured wood articles (solid-wood packing material)
- Bovine spongiform encephalopathy: minimal-risk regions and importation of commodities
- Nutrition labeling of single-ingredient and ground or chopped meat and poultry products

Department of Energy

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

Department of Commerce

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

Department of Education

- "Gainful Employment" rule to prepare students for employment in a recognized occupation
- Race to the Top

Department of Health and Human Services

- Substances prohibited from use in animal food or feed; registration of food and animal feed facilities

- Updated standards for labeling of pet food
- Revision of the Nutrition Facts and Supplement Facts labels: serving sizes of foods that can reasonably be consumed in one eating occasion, dual-column labeling, and modification of the reference amounts customarily consumed
- Produce safety regulation
- Sanitary transportation of human and animal food
- Patient Protection and Affordable Care Act; standards related to essential health benefits, actuarial value, and accreditation; and Medicaid, exchanges, and children's health insurance programs: eligibility, appeals, and other provisions
- Price regulation: prospective payment system rates for home health, acute, and long-term hospital care; skilled nursing facilities; inpatient rehabilitation facilities; and so on
- Nutrition labeling for food sold in vending machines and for restaurant menu items
- Food labeling: trans fatty acids in nutrition labeling, nutrient content claims, and health claims
- "Tobacco products" subject to the Federal Food, Drug, and Cosmetic Act, as amended by the Family Smoking Prevention and Tobacco Control Act
- Prevention of *Salmonella enteritidis* in shell eggs
- Good manufacturing practice in manufacturing, packing, or holding dietary ingredients and dietary supplements
- Good manufacturing practice regulations for finished pharmaceuticals
- Prior authorization process for certain durable medical equipment, prosthetic, orthotics, and supplies items
- Criteria for determining whether a drug is considered usually self-administered
- Requirements for long-term care facilities: hospice services
- Bar-code label requirements for human drug products and blood
- Pediatric dosing for various over-the-counter cough, cold, and allergy products

- Fire safety and sprinkler requirements for long-term care facilities

Department of Homeland Security

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

Department of the Interior

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

Department of Justice

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

Department of Labor

- Conflict of interest rule in investment advice

- Group health plans and health insurance issuers relating to coverage of preventive services under the Patient Protection and Affordable Care Act
- Walking working surfaces and personal fall protection systems (slips, trips, and fall prevention)
- Establishing a minimum wage for contractors (Executive Order No. 13658)
- Application of the Fair Labor Standards Act to domestic service
- Improved fee disclosure for pension plans
- Occupational exposure to crystalline silica, tuberculosis, and beryllium
- Rules regarding confined spaces in construction: preventing suffocation and explosions
- Implementation of the health care access, portability, and renewability provisions of the Health Insurance Portability and Accountability Act of 1996
- Hearing conservation program for construction workers
- Reinforced concrete in construction
- Preventing backover injuries
- Cranes and derricks
- Health care standards for mothers and newborns
- Protective equipment in electric power transmission and distribution
- Refuge alternatives for underground coal mines
- Combustible dust
- Injury and illness prevention program
- Automotive regulations for car lighting, door retention, brake hoses, daytime running-light glare, and side-impact protection
- Minimum training requirements for entry-level commercial motor vehicle operators and for operators and training instructors of multiple trailer combination trucks
- Hours of service, rest, and sleep for truck drivers; electronic logging devices and hours-of-service supporting documents
- Requirement for installation of seat belts on motor coaches
- Heavy-vehicle speed limiters and electronic stability control systems for heavy vehicles
- Amendments for positive train control systems
- Aging aircraft safety
- Upgrade of head restraints in vehicles
- Rear center lap and shoulder belt requirement
- 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
- Hazardous materials: transportation of lithium batteries

Department of Transportation

- Passenger car and light truck Corporate Average Fuel Economy standards (2017 model years and beyond)
- Fuel efficiency standards for medium- and heavy-duty vehicles and work trucks
- Sound for hybrid and electric vehicles
- Motor coach seat belts
- Standard for rearview mirrors
- Commercial Driver's License Drug and Alcohol Clearinghouse
- Flight crew duty limitations and rest requirements
- Control of air pollution from motor vehicles: Tier 3 motor vehicle emission and fuel standards
- Greenhouse gas emissions and fuel efficiency standards for medium- and heavy-duty engines and vehicles
- Standards of Performance for New Residential Wood Heaters
- Clean air visibility, mercury, and ozone implementation rules
- Effluent limitations guidelines and standards for the steam electric power generating point source category

Environmental Protection Agency

- Revision of stormwater regulations to address discharges from developed sites
- Formaldehyde emissions standards for composite wood products
- Review of National Ambient Air Quality Standards for lead, ozone, sulfur dioxide, particulate matter, and nitrogen dioxide
- Revision of underground storage tank regulations: revisions to existing requirements and new requirements for secondary containment and operator training
- Revision of new source performance standards for new residential wood heaters, new residential hydronic heaters, and forced-air furnaces
- Petroleum refineries—new source performance standards
- Rulemakings regarding lead-based paint and the Lead, Renovation, Repair, and Painting Program for public and commercial buildings
- National drinking water regulations covering groundwater and surface water
- National emission standards for hazardous air pollutants from plywood and composite wood products, certain reciprocating internal combustion engines, and auto paints
- Renewable fuels standards
- Standards for cooling water intake structures
- Combined rulemaking for industrial, commercial, and institutional boilers and process heaters
- Standards for management of coal combustion wastes (“coal ash”) from electric power producers
- Control of emissions from non-road spark ignition engines, new locomotives, and new marine diesel engines

Architectural and Transportation Barriers Compliance Board

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

Office of Personnel Management

- Multistate exchanges; implementations for Affordable Care Act provisions

Consumer Product Safety Commission

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

Federal Communications Commission

- Net neutrality order
- Broadband over power line systems
- Mobile personal satellite communications
- Satellite broadcasting signal carriage requirements
- Rules regarding Internet protocol-enabled devices

Department of Housing and Urban Development

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

Department of the Treasury

- Prohibition of funding of unlawful Internet gambling
- Risk-based capital guidelines; capital adequacy guidelines

- 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

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

Economically Significant Rules in the Agenda

A subset of the Agenda's 3,415 rules is classified as "economically significant," which means that agencies anticipate yearly economic impacts of at least \$100 million. Those impacts generally amount to increased costs, although sometimes an economically significant rule is intended to reduce costs. As Table 7 shows, 200 economically significant rules from 24 separate departments and agencies appear at the active (prerule, proposed rule, and final rule), completed, and long-term stages.

The overall number of "economically significant" rules issued during the current administration is higher than at any time earlier in the decade. President George W. Bush started the uptick trend; President Obama continued it. The current administration is increasing the flow of costly, economically significant rules at the completed and active stages. As Figure 19 shows, 2014's 200 rules

are a 5 percent increase over the past year's 191, but are by no means the highest level of the current administration. Still, the past two years' levels remain well above anything seen before 2010. Obama clearly retains a substantially higher flow of economically significant rules in the pipeline compared with that of the previous administration.

Recent online database editions of the Agenda break economically significant rules into completed, active, and long-term categories. Among the 200 rules, the body of active economically significant rules has not changed substantially under Obama's six years in office (they numbered 131 in both 2013 and 2014; his six-year average is 133), but they are clearly well above previous levels (the George W. Bush eight-year average is 87).

The smaller level of completed rules in the fall Unified Agenda from Obama's past two years might appear to conform with the earlier noted effort to dial back on regulations during 2012, which was reflected in fewer completed rules being issued in the Agenda overall (a peak of 57 in 2012 fell to 28 in 2013 and 31 in 2014).

Recall, however, that the Agenda appears in both the spring and the fall. Figure 20 isolates the totals of completed economically significant rules from both the spring and the fall Agendas for closer analysis of yearly trends in this category.

As Figure 20 shows, the annual totals for completed economically significant rules are down substantially from the 2010 peak of 81, but jumped to 69 from 51 during the past year. Nonetheless, apart from 2001, the level of completed economically significant rules from 2008 forward is notably higher. The average for Obama's six years so far is 68; George W. Bush's average over his eight years was 49. Only one edition of the Agenda appeared in 2012, which may complicate comparisons somewhat. (Also, some agency "midnight regulations" may have been issued by the Bush administration in 2009 as Obama was taking office,

**Table 7. Economically Significant Rules in the Unified Agenda Pipeline
Expected to Have \$100 Million Annual Economic Impact, Year-End 2014**

	Rules	Active	Completed	Long Term
All Agencies	200	131	31	38
Dept. of Agriculture	14	9	4	1
Dept. of Commerce	1			1
Dept. of Defense	2	2		
Dept. of Education	6	4	2	
Dept. of Energy	18	18		
Dept. of Health and Human Services	64	39	17	8
Dept. of Homeland Security	16	9		7
Dept. of Housing and Urban Development	1	1		
Dept. of the Interior	4	3	1	
Dept. of Justice	4	4		
Dept. of Labor	14	8		6
Dept. of Transportation	14	11	1	2
Dept. of Treasury	8	3	2	3
Dept. of Veterans Affairs	4	3	1	
Environmental Protection Agency	12	10		2
Architectural and Transportation Barriers Compliance Board	2	2		
Federal Acquisition Regulation	1	1		
Consumer Product Safety Commission	1			1
Federal Communications Commission	7			7
Federal Deposit Insurance Corporation	1	1		
Federal Energy Regulatory Commission	1		1	
General Services Administration	1	1		
Nuclear Regulatory Commission	3	2	1	
Postal Regulatory Commission	1		1	
TOTAL	200	131	31	38

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

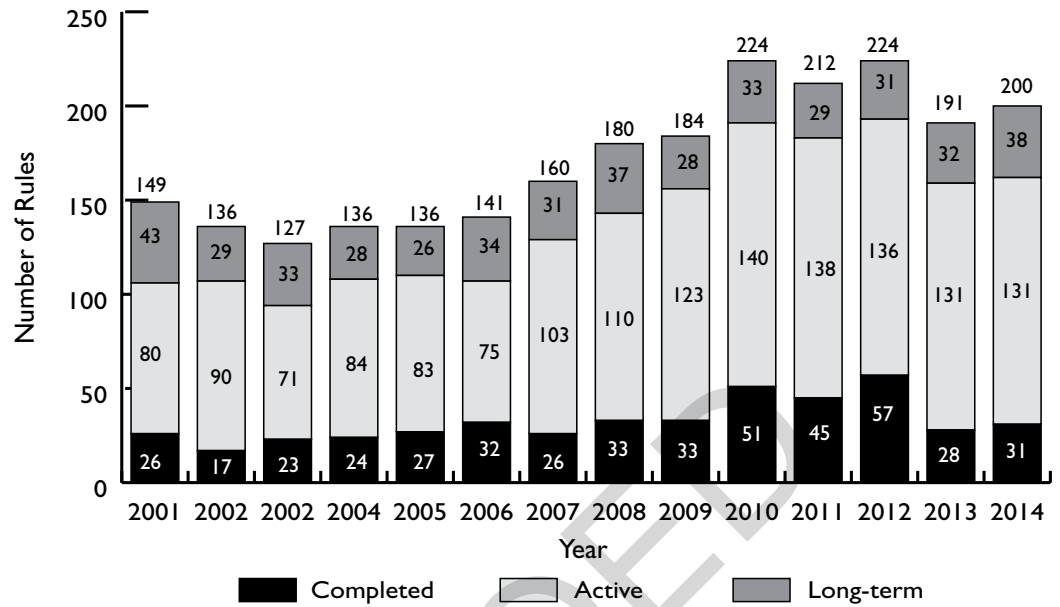
though the Obama administration did issue a freeze to review Bush rules upon assuming office).⁸⁸

Each of the economically significant rules scattered among the 3,415 rules in the Agenda is estimated to have annual impacts of at least \$100 million when implemented. So taken together, those rules might be expected to impose annual costs of at least \$20 billion (200 rules multiplied by

the \$100 million economically significant threshold). Some rules, however, may decrease costs, which would offset this total. In any event, whatever the elusive actual total cost, it is a recurring annual cost to be added to previous years' costs cumulatively. And, as noted, agencies are not limited to what they list in the Agenda.

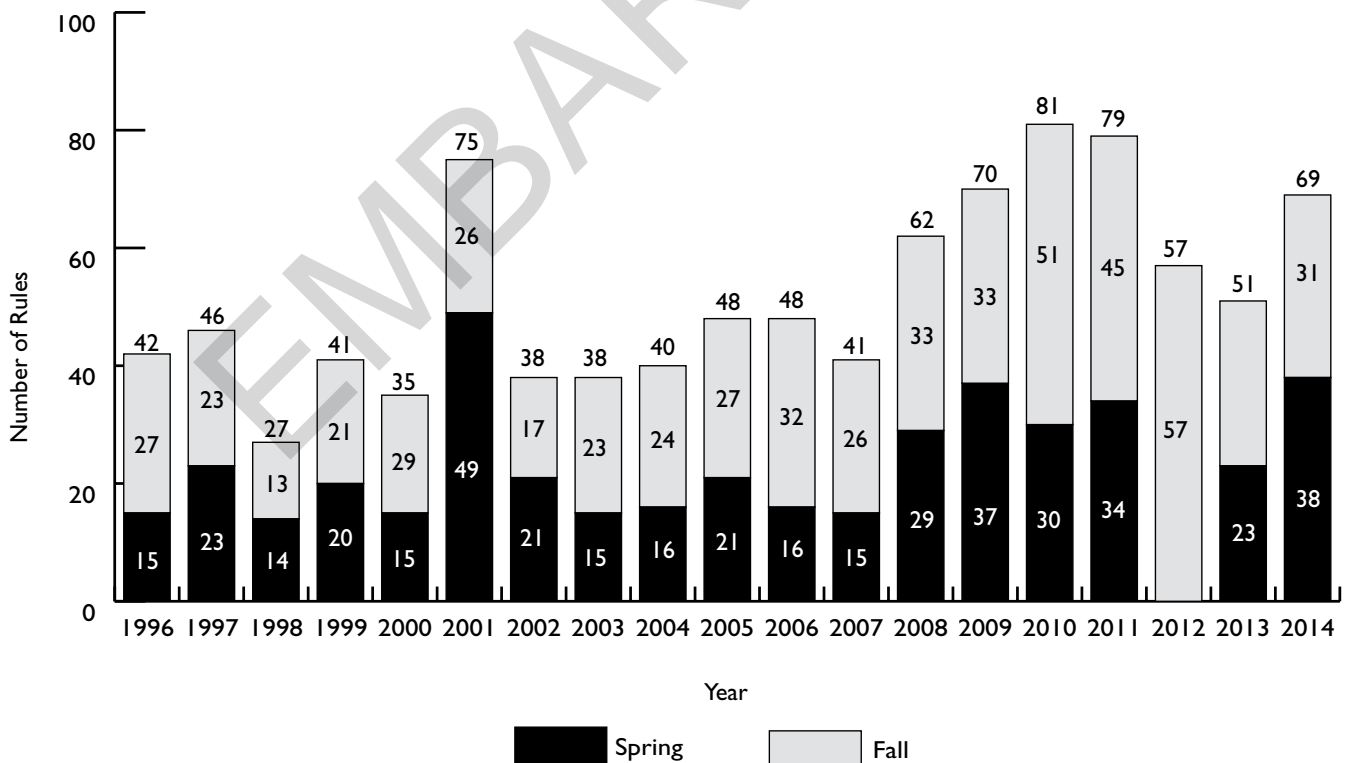
Paying the most attention to economically significant rules should not tempt policy

Figure 19. Economically Significant Rules in the Unified Agenda Pipeline, 2001–2014



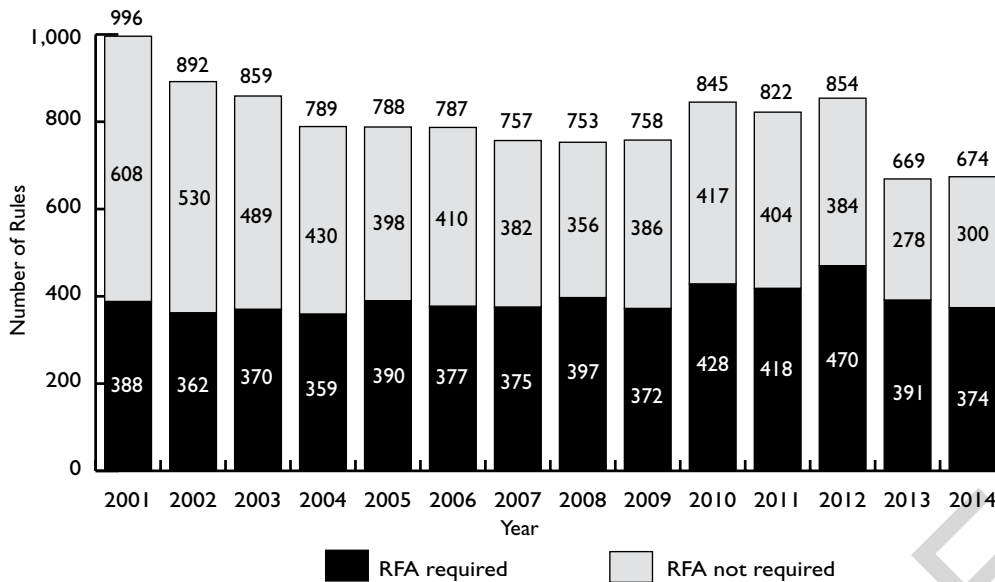
Source: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, Fall edition, various years.

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



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

Figure 21. Rules Affecting Small Business, 2001–2014



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

makers and analysts into ignoring the remaining bulk of rules in the yearly pipeline. In 2014, 3,215 federal rules were not designated as officially economically significant by the government (3,415 total rules minus the 200 economically significant ones). But that categorization does not mean that many of those rules are not economically significant in the ordinary sense of the term. A rule may cost up to \$99 million and escape the official “economically significant” designation.

Federal Regulations Affecting Small Business

It is often said that there is no such thing as a free lunch, and that is especially true for the small businessperson. The “Small Business Anthem,” heard on the *Small Business Advocate* radio program, goes in part:⁸⁹

Even though you make payroll every Friday,
You don’t have a guaranteed paycheck.

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

The Regulatory Flexibility Act (RFA) directs federal agencies to assess their rules’ effects on small businesses.⁹⁰ Figure 21 shows the number of rules requiring annual RFA analysis, as well as other rules that are anticipated by agencies to affect small business but do not require an annual RFA analysis. The number of rules acknowledged to significantly affect small business dropped substantially in 2013 and 2014. At the end of 2014, overall rules affecting small business stood at 674, the second-lowest level of the entire period shown in Figure 21, down from 854 in 2012. Before the 2013 drop—partly attributable to already noted changes in Unified Agenda reporting—the number of rules with small-business impacts during the Obama administration regularly exceeded 800, which had not been the case since 2003.

Of those 674 rules in play with small-business impacts, 374 required an RFA, a 20.4 percent drop from the peak of 470 requiring an RFA

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

in 2012 (2012's 470 rules had been a 12.4 percent increase over 2011 and far above anything seen in the past decade). Another 300 rules were otherwise deemed by agencies to affect small business but not to rise to the level of requiring an RFA. In the past two years, disclosure of this category of rules appears to have diminished.

Table 8 breaks out the 2014 Agenda's 674 rules affecting small business by department, agency, and commission. Six of them—the departments of Agriculture, Commerce, Health and Human Services, Interior, and Transportation and the Federal Communications Commission—account for 443, or 66 percent, of the rules affecting small business.

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

	Total Rules	Number Affecting Small Business							% Affecting Small Business	Top 6
		RFA Required			RFA Not Required			Total		
		Active	Completed	L-T	Active	Completed	L-T			
Dept. of Agriculture	160	17	4		19	6	1	47	29.4	47
Dept. of Commerce	270	49	27	5	20	9	2	112	41.5	112
Dept. of Defense	121	1			6			7	5.8	
Dept. of Education	26		2					2	7.7	
Dept. of Energy	105	2	1		1			4	3.8	
Dept. of Health and Human Services	217	39	8	6	30	14	6	103	47.5	103
Dept. of Homeland Security	141	10		4	5	1	5	25	17.7	
Dept. of Housing and Urban Development	55							0	0.0	
Dept. of the Interior	324	6			18	4	2	30	9.3	30
Dept. of Justice	102		1		7		2	10	9.8	
Dept. of Labor	95	7		3	11	1	2	24	25.3	
Dept. of State	47				13		8	21	44.7	
Dept. of Transportation	216	14	2		26	4	7	53	24.5	53
Dept. of Treasury	426				21	6		27	6.3	
Dept. of Veterans Affairs	75				1			1	1.3	
Environmental Protection Agency	186	5		1				6	3.2	
Advisory Council on Historic Preservation	1									
Agency for International Development	7							0	0.0	
Architectural and Transportation Barriers Compliance Board	7	1						1	14.3	
Commission on Civil Rights	1							0	0.0	
CPBSD*	2							0	0.0	

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

	Total Rules	Number Affecting Small Business						Total	% Affecting Small Business	Top 6
		RFA Required			RFA Not Required					
		Active	Completed	L-T	Active	Completed	L-T			
Commodity Futures Trading Commission	26		1					1	3.8	
Consumer Financial Protection Bureau	21	2		1				3	14.3	
Consumer Product Safety Commission	37							0	0.0	
Corp. for National and Community Service	6							0	0.0	
Court Services/ Offender Supervision, D.C.	3							0	0.0	
Federal Acquisition Regulation	36	15	8				1	24	66.7	
Equal Employment Opportunity Commission	8				2			2	25.0	
Farm Credit Administration	26							0	0.0	
Federal Communications Commission	132	1	3	89				5	98	98
Federal Deposit Insurance Corporation	25							0	0.0	
Federal Energy Regulatory Commission	24							0	0.0	
Federal Housing Finance Agency	19							0	0.0	
Federal Maritime Commission	7				1			1	14.3	
Federal Reserve System	23	3	3		1			7	30.4	
Federal Trade Commission	23				17	2	2	21	91.3	
General Services Administration	25	3			1			4	16.0	
Gulf Coast Ecosystem Restoration Council	4									
Institute of Museum and Library Services	1							0	0.0	
National Aeronautics and Space Administration	22				1			1	4.5	
National Archives and Records Administration	10							0	0.0	
National Credit Union Administration	22							0	0.0	

(continued)

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

	Total Rules	Number Affecting Small Business						Total	% Affecting Small Business	Top 6
		RFA Required			RFA Not Required					
		Active	Completed	L-T	Active	Completed	L-T			
National Endowment for the Arts	8				2			2	25.0	
National Endowment for the Humanities	5							0	0.0	
National Indian Gaming Commission	5							0	0.0	
National Labor Relations Board	1							0	0.0	
National Science Foundation	3							0	0.0	
National Transportation Safety Board	14									
Nuclear Regulatory Commission	60	1	1	1	1			4	6.7	
Office of Government Ethics	6							0	0.0	
Office of Management and Budget	2							0	0.0	
Office of Personnel Management	67							0	0.0	
Peace Corps	4							0	0.0	
Pension Benefit Guaranty Corporation	12							0	0.0	
Postal Regulatory Commission	2							0	0.0	
Privacy and Civil Liberties Oversight Board	0							0	0.0	
Railroad Retirement Board	1							0	0.0	
Recovery Accountability and Transparency Board	3							0	0.0	
Securities and Exchange Commission	61	5	1	1	2			9	14.8	
Small Business Administration	30	16	2	1	3	1		23	76.7	
Social Security Administration	39							0	0.0	
Surface Transportation Board	8		1					1	12.5	
TOTAL	3,415	197	65	112	209	49	42	674	19.7	443
		374			300					66% of total

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

The overall proportion of total rules affecting small business, as noted in Table 8, stands at 19.7 percent, but the range is quite wide among agencies as the table shows. (For the numbers of rules affecting small business broken down by department and agency for fall Agendas since 1996, see Appendix: Historical Tables, Part H.)

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

Federal Regulations Affecting State and Local Governments

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

Box 1. Federal Workplace Regulation Affecting Growing Businesses

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

1 EMPLOYEE

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

4 EMPLOYEES: ALL THE ABOVE, PLUS

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

15 EMPLOYEES: ALL THE ABOVE, PLUS

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

20 EMPLOYEES: ALL THE ABOVE, PLUS

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

25 EMPLOYEES: ALL THE ABOVE, PLUS

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

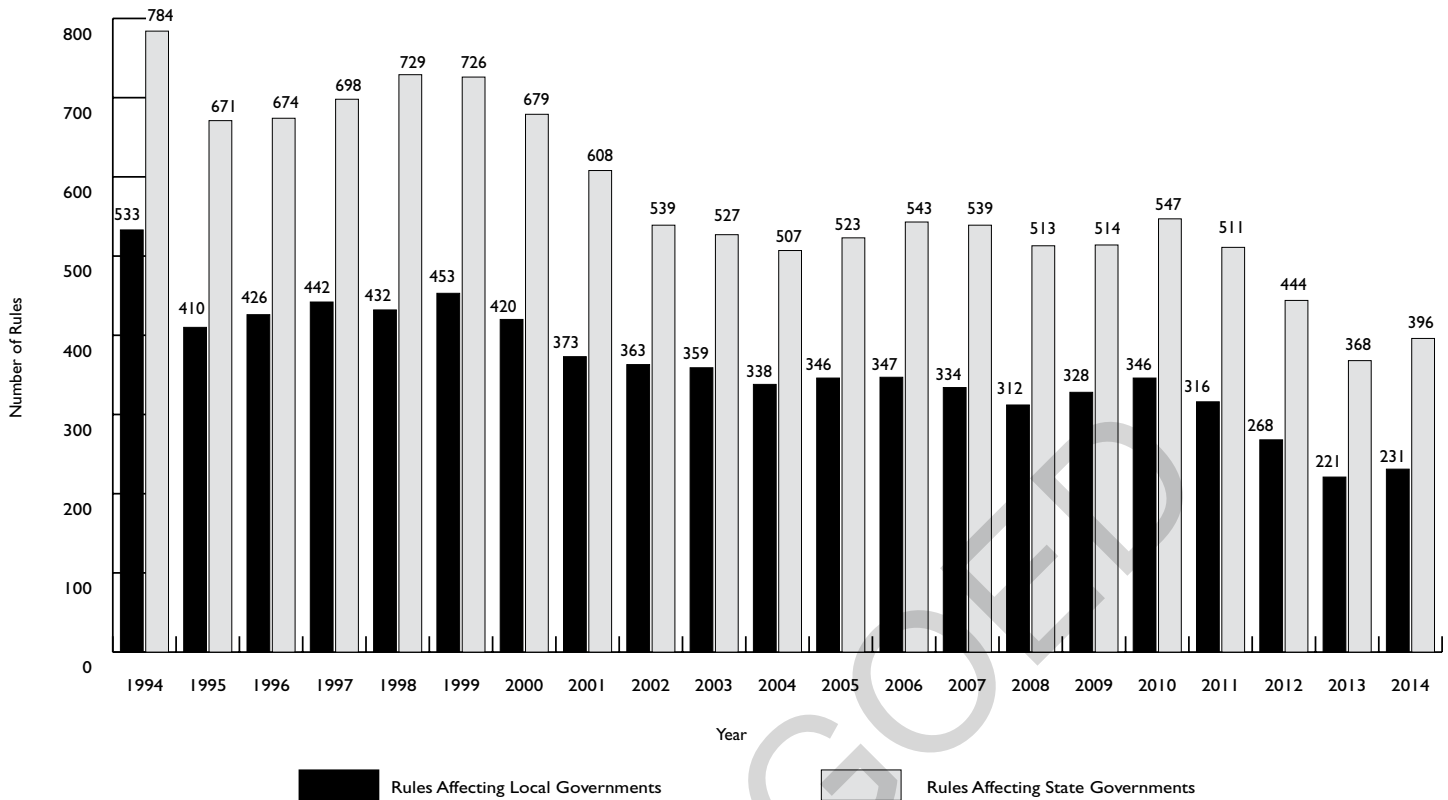
50 EMPLOYEES: ALL THE ABOVE, PLUS

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

100 EMPLOYEES: ALL THE ABOVE, PLUS

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

Figure 22. Rules Affecting State and Local Governments, 1994–2014



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>.

As Figure 22 shows, agencies report that 231 of the 3,415 rules in the 2014 fall Agenda pipeline will affect local governments.⁹¹ Since the passage of the Unfunded Mandates Act in the mid-1990s, the number of overall rules affecting local governments has fallen by 57 percent, from 533 to 231 (2013’s 221 was the lowest level yet seen over this period).

Figure 22 also shows that the total number of regulatory actions affecting state governments stands at 396, an 8 percent increase from 368 in 2013. (For breakdowns of the numbers of rules affecting state and local governments by department and agency since 2006, see Appendix: Historical Tables, Part I. See earlier editions of this report for previous years.)

Government Accountability Office

Database on Regulations

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

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

The 1996 Congressional Review Act (CRA) requires agencies to submit reports to Congress on their major rules—those costing \$100 million or more. Owing to such reports, which are maintained in a database at the Government Accountability Office, 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.⁹²

The CRA gives Congress a window of 60 legislative days in which to review a major rule and, if desired, pass a resolution of disapproval rejecting the rule. Despite the issuance of thousands of rules since the act's passage, including many dozens of major rules, only one has been rejected: the Department of Labor's rule on workplace repetitive-motion injuries in early 2001. According to a recent review, however, final rules are no longer properly submitted to the GAO and to Congress as required under the CRA.⁹³

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 2014. There were 80 rules in 2014, 79 in 2013, and 67 in 2012.⁹⁴ The 100 rules in 2010 is the highest count since this tabulation began following passage of the CRA.

Mirroring what was seen as the most active executive and independent rulemaking agencies in Table 6 (see earlier), the Department of Health and Human Services, Bureau of Consumer Financial Protection, and Commodity Futures Trading Commission may be seen to be increasingly active in terms of major rules in wake of the Affordable Care Act and the Dodd-Frank financial regulation law. The Department of the Interior also maintains a relatively high flow of major rules.

President George W. Bush averaged 62 major rules annually during his eight years in office; President Obama's six years so far have averaged 81. Obama's major rule output level at this point is 31 percent higher than that of Bush. This parallels the depiction of economically significant rules in Figures 19 and 20. Despite declines in overall rule counts in the Unified Agenda, the Obama administration's output level of impact rules during the decade is notably higher.

A March 2014 Heritage Foundation analysis of the current 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. This report found that 157 major rules adopted during the Obama administration have added almost \$73 billion in annual costs.⁹⁵

President George W. Bush averaged 62 major rules annually during his eight years in office; President Obama's six years so far have averaged 81.

Table 9. Government Accountability Office Reports on Major Rules as Required by the Congressional Review Act, 1998–2014

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

Case Studies

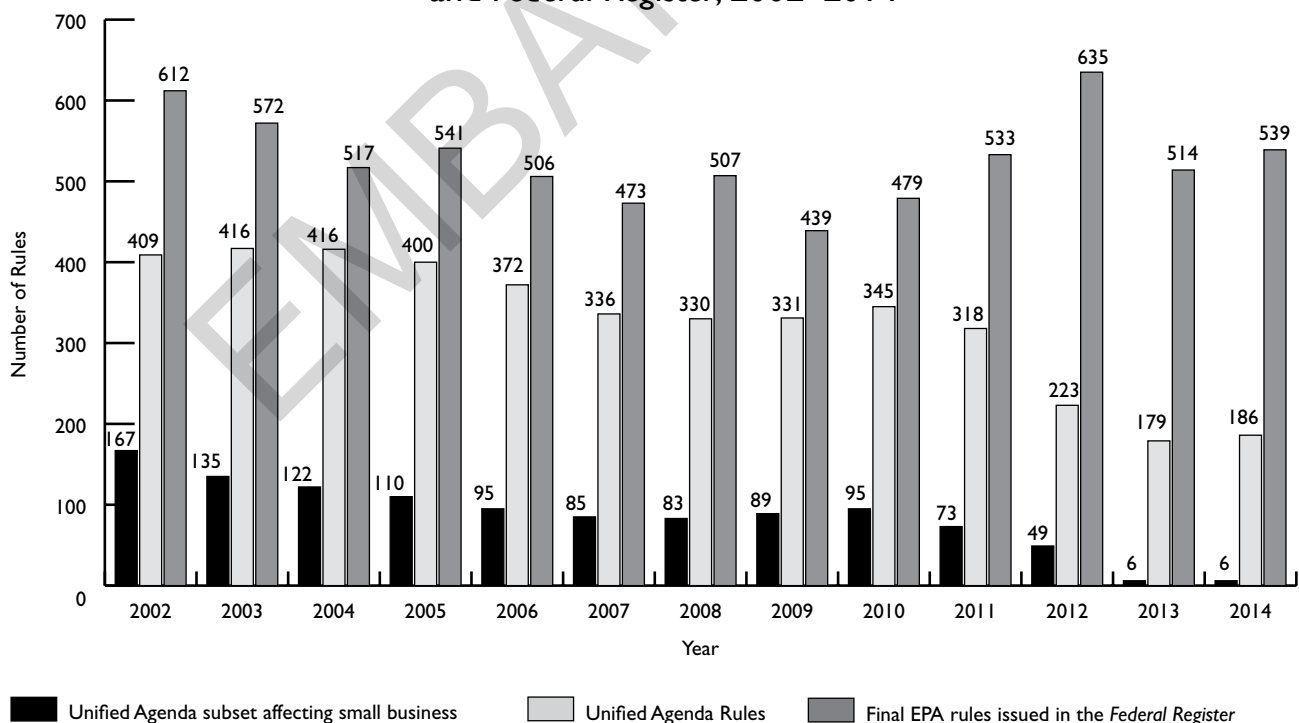
Regulation and the Environmental Protection Agency

It has been nearly five years since Rep. Darrell Issa (R-Calif.) issued a request to businesses, trade associations, and think tanks seeking input on which federal rules they considered to be the most burdensome. He received more than 160 responses filled with recommendations (including from the Competitive Enterprise Institute⁹⁶), and his office issued a summary report.⁹⁷ The EPA, more

than any other agency, accounted for the regulatory burden felt by private enterprise at the time.

The number of EPA rules finalized in the *Federal Register* had been rising during the first term of the Obama administration, toward levels that had been seen before in the George W. Bush administration (see Figure 23). The Bush trend was downward, whereas Obama's counts rose sharply then decreased. Finalized EPA rules rose from 439 to 635 between 2009 and 2012—a 45 percent in-

Figure 23. Number of EPA Rules in the Unified Agenda and *Federal Register*, 2002–2014



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.

Box 2. Dropoff in Active, Completed, and Long-Term EPA Rules in the Unified Agenda

	Total	Active	Completed	Long Term
2011	318	175	82	61
2012	223	117	71	35
2013	179	134	21	24

crease—before dropping 19 percent to 514 in 2013. Between 2013 and 2014, the count rose again by 5 percent.

The past two years' drop is interesting, because for the third time, the EPA does not appear among the top five rulemaking agencies in the Unified Agenda pipeline (it is sixth with 186 rules; see Table 6). The agency also no longer ranks among the agencies with the most rules that are in the Unified Agenda and that affect small business (note, in Figure 23, the implausible 88 percent drop from 49 rules affecting small business in 2012 to only 6 in both 2013 and 2014). There also has been a substantial drop-off in the Agenda-listed EPA-issued rules over the past few years compared with the higher levels of EPA rules finalized in the *Federal Register* in Figure 23. In the past year, EPA rules in the Unified Agenda pipeline did rise a bit, from 179 to 186, but had otherwise been dropping since 2010, to 179 in 2013, which was the lowest level of the decade.

Where did all the EPA's Agenda rules go? Box 2 shows the 2013 breakdown of the agency's 179 Unified Agenda-listed rules by stage of completion. One can see that chunks of the EPA's active, completed, and long-term rules had simply vanished during the 2011–2013 interval. A falloff does not square with the level of regulatory impact driven by the EPA and has been partly addressed in earlier discussion of rule delays, as well as in the Sunstein and Shelanski memoranda and their possible effect on reporting policy for the Unified Agenda. It simply

appears that fewer of the long-term rules are being disclosed. Recall too that only one Agenda, not the required two, appeared in 2012.

The EPA is not likely to roll back regulatory pursuits, as may be inferred from the Obama administration's public statements about acting on energy and environmental policy unilaterally. An October 2012 Senate Minority Report from Sen. James Inhofe (R-Okla.), then-ranking member of the Senate Committee on Environment and Public Works, detailed what it called "Numerous Obama-EPA Rules Placed on Hold until After the Election."⁹⁸ Those rules include the following:

- Greenhouse gas regulations
- Ozone rule
- Hydraulic fracturing rule
- Florida numeric nutrient criteria (water quality rules)
- Guidance documents for waters covered by the Clean Water Act
- Stormwater regulation
- Tier 3 gas regulations
- Maximum achievable control technologies rules for industrial boilers and for cement
- Power plant cooling towers rule
- Coal ash rule
- Farm dust regulations
- Spill prevention control and countermeasure rule

Various years' editions of the OMB's *Report to Congress on the Benefits and Costs of Federal*

Regulations attest to the EPA's status as one of the more costly regulators. For example, the 2013 draft report had presented a range of total costs of \$14.8 billion to \$19.5 billion added during the fiscal year (for the handful of rules for which quantified cost-benefit analysis occurred). Well over half was attributable to the EPA: \$8.3 billion to the EPA exclusively, and another \$5.3 billion to \$8.8

billion ascribed to the EPA and Department of Transportation's fuel economy standards.⁹⁹ This author's calculations yield an estimate of the annual impact of EPA rules at \$386 billion.¹⁰⁰ That amount is less than the 2.4 percent of GDP that the EPA once anticipated its activities would encompass for programs existing in the 1990s and that it regarded as an investment bargain.¹⁰¹

EMBARGOED

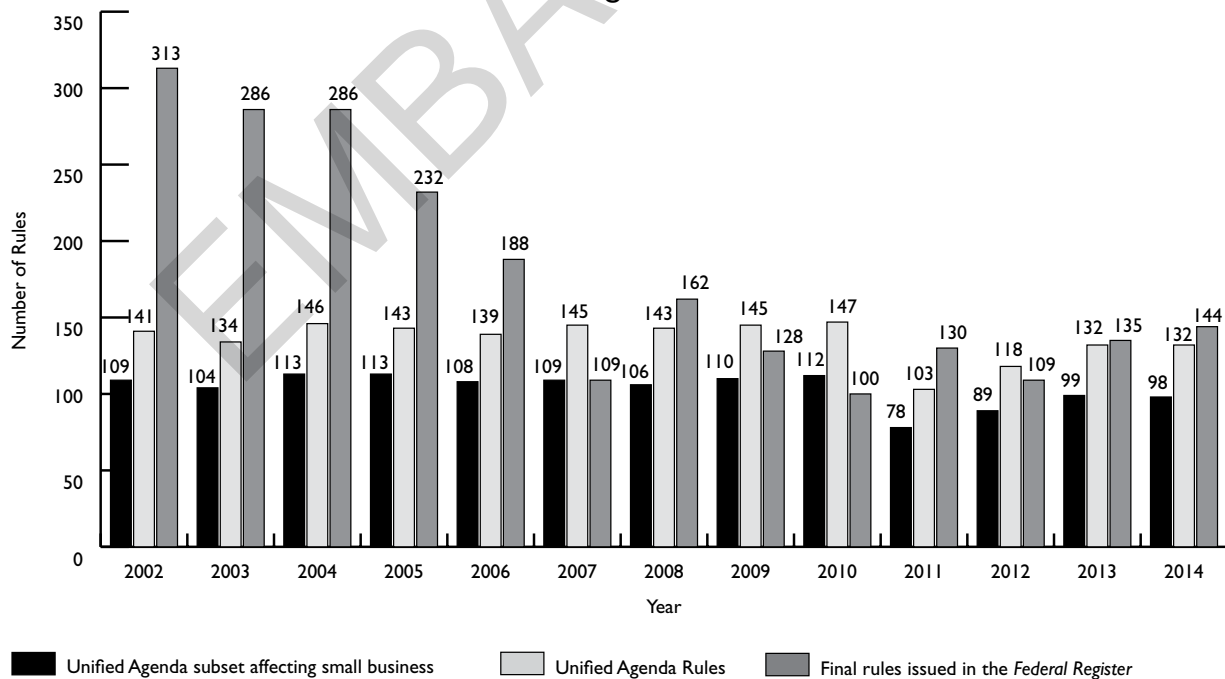
Regulation and the Federal Communications Commission

The Federal Communications Commission (FCC) is by no means the heavyweight among regulators as gauged by the number of rules issued. Its 132 rules in the Unified Agenda pipeline are surpassed by eight other departments or agencies (see Table 5), and its seven economically significant rules are exceeded by those of eight other agencies (see Table 7). Yet, the FCC is worth singling out for review because it wields great influence over a major economic sector regarded as a growth engine in today's information economy: telecommunications and the Internet.

The FCC is an expensive agency. It spent an estimated \$433 million on regulatory development and enforcement during FY 2014¹⁰² and accounts for more than \$100 billion in annual regulatory and economic impact.¹⁰³ Figure 24 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 with small-business impacts.

According to the National Archives' online database, FCC final rules in the *Federal Reg-*

Figure 24. Number of FCC Rules in the Unified Agenda and *Federal Register*, 2002–2014



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.

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

ister numbered as high as 313 in 2002, then declined steadily during the decade to a low of 109 in 2012. For the past two years, its number of final rules in the *Federal Register* bumped upward 32 percent between 2012 and 2014, from 109 to 144.¹⁰⁴ As of March 2, 2015, the FCC had finalized 19 rules in the *Federal Register*.

Of the 3,415 total rules in the 2014 fall Agenda pipeline, 132, or 4 percent, were in the works at the FCC (Figure 24). The commission's Agenda presence remained rather flat during the decade before dropping rapidly to a low of 103 rules in 2011, but it has been rising since. Ninety-eight of the FCC's rules in the fall 2014 pipeline, or 74 percent of its total, affect small business, as Figure 24 and Table 8 show.

Although the FCC has published fewer rules in the Agenda and has finalized fewer than in preceding years, a pro-regulatory mindset still prevails at the commission, most recently seen in the February 2015 push to apply utility regulation to broadband in pursuit of so-called net neutrality.¹⁰⁵ Once again, 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.¹⁰⁶ Communications markets do not exhibit abuses and market failures calling for top-down rulemaking with respect to every new technological advance. Yet the FCC forges ahead to expand its domain, in disregard of the outdated char-

acter of its original mandate to police public airwaves characterized by scarcity. Such conditions no longer apply in today's world, in which everyone is a potential broadcaster.

The FCC has continued the net neutrality push despite being rebuffed in federal court following earlier attempts and despite the concerns of many in Congress, which never delegated such authority to the commission.¹⁰⁷ Although a January 2014 federal court decision¹⁰⁸ struck down part of the FCC's open Internet order,¹⁰⁹ it exposed the Internet to even wider FCC regulation—and the commission has responded accordingly.¹¹⁰ In recent years, the FCC has also inserted itself into journalism with a "Future of Media" proceeding.¹¹¹

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

As noted, of the 200 economically significant rules in the works across the entire federal government, seven belong to the FCC (see Table 7) and are presented in Box 3. Such rulemakings, along with other FCC rules in the Agenda pipeline and the hundreds made final each year, present opportunities for either liberalization of telecommunications or avenues for new central regulatory oversight and protracted legal battles.¹¹² The commission has chosen the latter.

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

- **Broadband over Power Line (BPL) Systems, RIN 3060-AI24:** “To promote the development of BPL systems by removing regulatory uncertainties for BPL operators and equipment manufacturers while ensuring that licensed radio services are protected from harmful interference.”
- **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.**
- **Amendment of the Rules regarding Maritime Automatic Identification Systems (WT Docket No. 04-344), RIN 3060-AJ16.**
- **Service Rules for the 698-746, 747-762, and 777-792 MHz Band Ranges, RIN 3060-AJ35:** “[O]ne of several docketed proceedings involved in the establishment of rules governing wireless licenses in the 698-806 MHz Band (the 700 MHz Band). This spectrum is being vacated by television broadcasters in TV Channels 52-69. It is being made available for wireless services, including public safety and commercial services, as a result of the digital television (DTV) transition. This docket has to do with service rules for the commercial services and is known as the 700 MHz Commercial Services proceeding.”¹¹³
- **Universal Service Reform Mobility Fund (WT Docket No. 10-208), RIN 3060-AJ58.**
- **Internet Protocol-Enabled Services, RIN 3060-AI48:** “The notice seeks comment on ways in which the Commission might categorize IP-enabled services for purposes of evaluating the need for applying any particular regulatory requirements. It poses questions regarding the proper allocation of jurisdiction over each category of IP-enabled service. The notice then requests comment on whether the services composing each category constitute ‘telecommunications services’ or ‘information services’ under the definitions set forth in the Act. Finally, noting the Commission’s statutory forbearance authority and Title I ancillary jurisdiction, the notice describes a number of central regulatory requirements (including, for example, those relating to access charges, universal service, E911, and disability accessibility), and asks which, if any, should apply to each category of IP-enabled services.”
- **Implementation of Section 224 of the Act; A National Broadband Plan for Our Future (WC Docket No. 07-245, GN Docket No. 09-51), RIN 3060-AJ64.**

Liberate to Stimulate

The annual cost of regulation exceeds the ineffective \$787 billion 2009 economic stimulus package. In contrast, a regulatory liberalization agenda would constitute genuine stimulus to the U.S. economy and offer some confidence and certainty for business enterprises that are seeking a greater foothold. 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.¹¹⁴

Pertinent, relevant, and readily available regulatory data should be summarized and publicly reported to help create pressures for better disclosure. An incremental step would be for Congress to require—or for the OMB to initiate—publication of a summary of already available but scattered data. Such a regulatory transparency report card could resemble the presentation in *Ten Thousand Commandments*. That simple step alone would help transform today's regulatory hidden tax culture into one characterized by greater openness.

Congress needs to cease delegating legislative power to unelected agency personnel. Reining in off-budget regulatory costs can occur only when elected representatives assume responsibility and end “regulation without

representation.” Such a goal can be achieved by imposing institutional changes that would force Congress to internalize pressures that, in turn, would push it to make cost-benefit assessments *before* issuing directives to agencies.

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

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 Agenda and OMB reports could be made more user friendly by adopting these reforms.

Regulatory information is available, but it is often difficult or tedious to compile or interpret. To learn about regulatory trends and to accumulate information on rules, interested

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

citizens need either to comb through the Agenda's 1,000-plus pages of small, multi-column print or compile results from online searches and agencies' regulatory plans. Data from the 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*.¹¹⁵

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.

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
- Rules that affect internal agency procedures alone
- Number of rules new to the Unified Agenda; number that are carry-overs from previous years
- Numbers and percentages of rules facing statutory or judicial deadlines that limit executive branch ability to restrain them
- Rules for which weighing costs and benefits is statutorily prohibited
- Percentages of rules reviewed by the OMB and action taken

Ending Regulation without Representation: The Unconstitutionality Index—16 Rules for Every Law

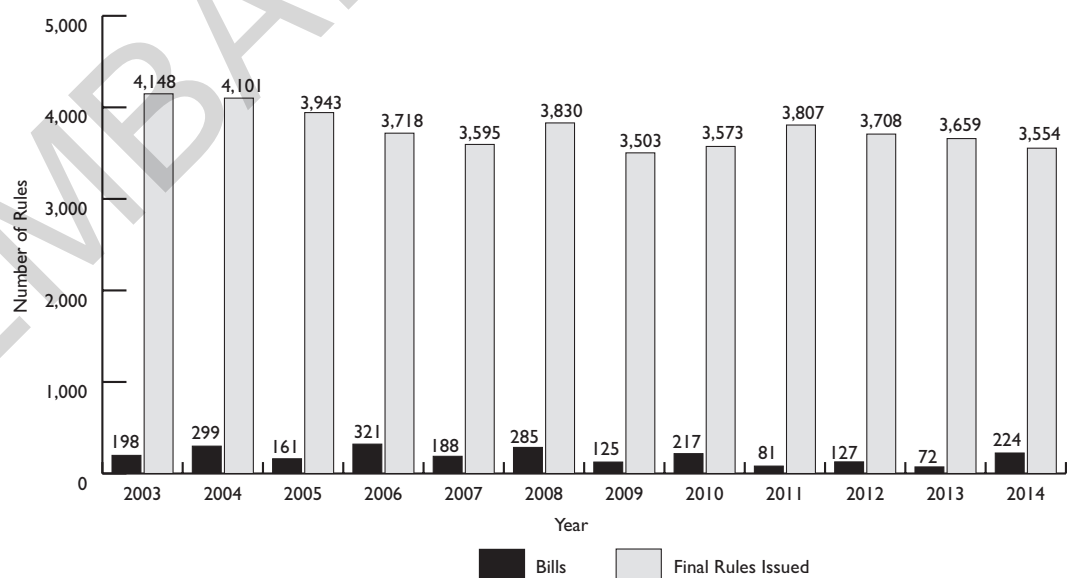
Agencies do not answer to voters. Yet in a sense, regulators and the administration, rather than Congress, do the bulk of U.S. lawmaking. Years of unbudgeted growth of the federal regulatory system are worrisome when no one can claim with assurance that regulatory benefits exceed costs. But agencies are not the only culprits. For too long, Congress has shirked its constitutional duty to make the tough calls. Instead, it delegates substantial lawmaking power to agencies and then fails to ensure that they deliver benefits that exceed costs.¹¹⁶ Thus, agencies can hardly be the only ones faulted for suboptimal or damaging regulation or for not ensuring that only good rules get through.

Agencies face significant incentives to expand their turf by regulating even without demonstrated need. The primary measure of agency productivity—other than growth in their budgets and number of employees—is the body of regulation they produce.¹¹⁷ 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 regulatory agencies issued 3,554 final rules, whereas the 113th Congress passed and President Obama signed into law a comparatively few 224 bills in calendar year 2014 (up from 72 in 2013).¹¹⁸

Figure 25 presents the “Unconstitutionality Index,” the multiple of rules issued over the number of public laws by calendar year passed since 2003. There were 16 rules for

Figure 25. The 2014 Unconstitutionality Index, 2003–2014



Source: Federal Register data from National Archives and Records Administration and from Crews tabulation at 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>.

every law in 2014. In 2013, there were 51 times as many rules as laws. The ratio can vary widely, but the average over the decade has been 26 rules for every law. Rules issued by agencies are not usually substantively related to the current year's laws; typically, agencies administer earlier legislation. Still, this perspective is a useful way of depicting flows and relative workloads.

If the thousands of notices and dozens—sometimes hundreds—of executive orders issued annually are considered, policy making without representation assumes greater importance as an issue of concern. Historical Tables Part J depicts the Unconstitutionality Index dating back to 1995 and shows just by way of comparison the numbers of executive orders and the numbers of notices (within which executive orders are embedded).

An annual regulatory transparency report card is worthwhile and needed but not the complete answer. Regulatory reforms that rely on agencies policing themselves will not rein in the regulatory state or address regulation without representation. Rather, making Congress directly answerable to voters for the costs that agencies impose on the public would best promote accountable regulation. Congress should vote on agencies' final rules before such rules become binding on the public.

Increasing congressional accountability for regulatory costs should be a priority in today's era of debt and deficits. Concern about mounting national debt invites Congress to regulate rather than to increase government spending to accomplish policy ends. Suppose Congress wanted to create a job-training program. Funding the program would require approval of a new appropriation for the Department of Labor, which would appear in the federal budget and would increase the deficit. Instead, Congress could pass a law requiring Fortune

500 companies to fund job training, which would be carried out through new regulations issued by the Department of Labor. The latter option would add little to federal spending but would still let Congress take credit for the program. By regulating instead of spending, government can expand almost indefinitely without explicitly taxing anybody one extra penny.

Affirmation of new major regulations would ensure that Congress bore direct responsibility for every dollar of new regulatory costs; it is a prerequisite for controlling the off-budget regulatory state. The Regulations from the Executive In Need of Scrutiny Act (REINS) Act (H.R. 427, S. 226), sponsored by Rep. Todd Young (R-Ind.) and Sen. Rand Paul (R-Ky.), offers one such approach.¹¹⁹ The REINS Act 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 two previous congressional sessions but has not moved forward in the Senate. The current REINS legislation was marked up in the House Judiciary Committee, fittingly, on April 15, 2015.¹²⁰

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 that Congress go on record for what laws the public must heed.

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, 1936–2014

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

Year	Unadjusted Page Count	Jumps/Blanks	Adjusted Page Count
1968	20,072	n/a	20,072
1969	20,466	n/a	20,466
1970	20,036	n/a	20,036
1971	25,447	n/a	25,447
1972	28,924	n/a	28,924
1973	35,592	n/a	35,592
1974	45,422	n/a	45,422
1975	60,221	n/a	60,221
1976	57,072	6,567	50,505
1977	65,603	7,816	57,787
1978	61,261	5,565	55,696
1979	77,498	6,307	71,191
1980	87,012	13,754	73,258
1981	63,554	5,818	57,736
1982	58,494	5,390	53,104
1983	57,704	4,686	53,018
1984	50,998	2,355	48,643
1985	53,480	2,978	50,502
1986	47,418	2,606	44,812
1987	49,654	2,621	47,033
1988	53,376	2,760	50,616
1989	53,842	3,341	50,501
1990	53,620	3,825	49,795
1991	67,716	9,743	57,973
1992	62,928	5,925	57,003
1993	69,688	8,522	61,166
1994	68,108	3,194	64,914
1995	67,518	4,873	62,645
1996	69,368	4,777	64,591
1997	68,530	3,981	64,549
1998	72,356	3,785	68,571
1999	73,880	2,719	71,161
2000	83,294	9,036	74,258
2001	67,702	3,264	64,438
2002	80,332	4,726	75,606
2003	75,798	4,529	71,269
2004	78,852	3,177	75,675
2005	77,777	3,907	73,870
2006	78,724	3,787	74,937
2007	74,408	2,318	72,090
2008	80,700	1,265	79,435
2009	69,644	1,046	68,598
2010	82,480	1,075	81,405
2011	82,415	1,168	81,247
2012	80,050	1,089	78,961
2013	80,462	1,151	79,311
2014	78,796	1,109	77,687

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

Note: Publication of proposed rules was not required before the Administrative Procedures Act of 1946. Preambles to rules were published only to a limited extent before the 1970s.
n/a = not available.

Part B. Number of Documents in the *Federal Register*, 1976–2014

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

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, 1975–2014

Year	Actual Pages Published (includes text, preliminary pages, and tables)				Unrevised CFR Vol- umes**	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	8,544	175,268	236

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

Notes: *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, 1993–2014

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

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

Note: ES = economically significant.

Part E. Unified Agenda Rules History, 1983–2014

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			
			1998	April	4,504			
				October	4,560			
			1999	April	4,524			
				October	4,568			

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

*Spring edition skipped in 2012.

Federal Maritime Commission	6	4	4	8	4	6	3	4	3	5	7	11	8	7	9	9
Federal Mediation and Conciliation Service		1	2	1	2	2	2	1	1	2	2	3	4	3	2	1
Federal Reserve System	16	25	22	29	22	26	18	20	13	17	18	18	24	32	33	22
Financial Stability Oversight Council		2														
Federal Trade Commission	20	23	24	19	19	20	17	14	16	15	14	12	10	13	14	16
General Services Administration	18	21	29	34	34	49	54	26	34	33	27	37	40	35	40	51
Institute of Museum and Library Services	3	3	1	2	2	1	2	1	1	4	3	6	5	5	4	1
National Aeronautics and Space Administration	23	37	46	26	26	32	19	11	15	20	27	34	13	17	11	7
National Archives and Records Administration	6	6	4	9	7	7	10	15	21	17	22	19	20	19	21	21
National Credit Union Administration	24	31	28	24	24	24	22	24	29	27	26	27	20	22	16	26
National Endowment for the Arts	7	8				2	3	2	2	2	2	6	5	5	5	5
National Endowment for the Humanities	4	3	5	4	3	3	3	3	3	3	3	8	9	8	7	6
National Indian Gaming Commission	5	15	15	9	17	17	18	19	16	15	14	14	16	15	14	14
National Labor Relations Board	1	1														
National Science Foundation	2	3	3	2	3	3	3	0	2	3	3	2	2	3	5	4
Nuclear Regulatory Commission	53	73	64	63	61	61	54	53	45	49	42	45	39	42	55	57
Office of Federal Housing Enterprise Oversight							10	9	8	6	4	4	7	9	5	5
Office of Government Ethics	4	4	5	7	7	7	6	9	8	7	7	9	10	11	11	12
Office of Management and Budget	2	5	8	7	7	7	2	1	2	2	3	4	4	5	5	9
Office of Personnel Management	54	73	87	77	77	80	80	75	93	94	103	90	72	91	110	112
Office of Special Counsel						0	0	0	0	0	0	0	0	0	3	2
Panama Canal Commission								0	0	0	0	0	0	0	0	4
Peace Corps	4	5	5	1	1	1	7	6	6	5	4	9	9	9	8	5
Pension Benefit Guaranty Corporation	13	13	12	10	10	10	12	12	13	9	6	4	6	11	10	12
Postal Regulatory Commission	2	2	1	3	2	2	2	3	0	0	0	0	0	0	0	0
Presidio Trust							0	0	0	2	2	1	2	2	3	3
Privacy and Civil Liberties Oversight Board	1						0	1	0	0	0	0	0	0	0	0
Railroad Retirement Board	1	1	1	1	1	1	3	2	6	5	6	11	13	13	19	16
Recovery Accountability and Transparency Board	3	2				3										
Securities and Exchange Commission	76	89	107	75	74	74	72	76	71	64	79	71	73	80	77	80
Selective Service System																
Small Business Administration	30	43	48	51	39	39	26	28	32	34	29	33	40	37	41	35
Social Security Administration	44	49	53	63	58	58	64	63	53	68	59	64	63	85	82	67
Special Insp. Gen. for Afghanistan Reconstr.		4														
Surface Transportation Board	9	10	11	5	5	5	6	4	7	3	4	5	5	4	3	3
Tennessee Valley Authority							0	0	0	0	0	2	2	3	3	1
Udall Institute for Environmental Conflict Res.							0	0	0	0	0	1	1	3	3	3
TOTAL	3,305	4,062	4,128	4,225	4,043	4,004	3,882	4,052	4,062	4,083	4,266	4,187	4,509	4,699	4,538	4,538

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>.

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

Part G. Listing of 200 Economically Significant Rules, Year-End 2014

Active Rulemakings (131)

DEPARTMENT OF AGRICULTURE

1. USDA/RBS, Final Rule Stage, Rural Energy for America Program, 0570-AA76
2. USDA/RBS, Final Rule Stage, Strategic Economic and Community Development, 0570-AA94
3. USDA/RHS, Proposed Rule Stage, Citizenship Implementation, 0575-AC86
4. USDA/RHS, Final Rule Stage, Multifamily Housing (MFH) Reinvention, 0575-AC13
5. USDA/APHIS, Final Rule Stage, User Fees for Agricultural Quarantine and Inspection Services, 0579-AD77
6. USDA/AMS, Proposed Rule Stage, National Organic Program—Organic Aquaculture Standards, 0581-AD34
7. USDA/FSIS, Final Rule Stage, Mandatory Inspection of Fish of the order Siluriformes and Products Derived From Such Fish, 0583-AD36
8. USDA/FNS, Final Rule Stage, Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation, and Energy Act of 2008, 0584-AD87
9. USDA/FNS, Final Rule Stage, Supplemental Nutrition Assistance Program: Farm Bill of 2008 Retailer Sanctions, 0584-AD88

DEPARTMENT OF DEFENSE

10. DOD/DODOASHA, Final Rule Stage, CHAMPUS/TRICARE: Pilot Program for Refills of Maintenance Medications for TRICARE for Life Beneficiaries Through the TRICARE Mail Order Program, 0720-AB60
11. DOD/OS, Proposed Rule Stage, Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 0790-AJ10

DEPARTMENT OF EDUCATION

12. ED/OESE, Final Rule Stage, School Improvement Grants (SIG) Program, 1810-AB22
13. ED/OSERS, Proposed Rule Stage, Workforce Innovation and Opportunity Act, 1820-AB69
14. ED/OCTAE, Proposed Rule Stage, Workforce Innovation and Opportunity Act, 1830-AA21
15. ED/OPE, Proposed Rule Stage, Title IV of the HEA—Program Integrity and Improvement, 1840-AD14

DEPARTMENT OF ENERGY

16. DOE/ENDEP, Final Rule Stage, Advanced Technology Vehicles Manufacturing Incentive Program, 1901-AB25
17. DOE/EE, Prerule Stage, Energy Conservation Standards for Wine Chillers and Miscellaneous Refrigeration Products, 1904-AC51
18. DOE/EE, Prerule Stage, Energy Conservation Standards for Portable Air Conditioners, 1904-AD02
19. DOE/EE, Prerule Stage, Energy Conservation Standards for Central Air Conditioners and Heat Pumps, 1904-AD37
20. DOE/EE, Proposed Rule Stage, Fossil Fuel-Generated Energy Consumption Reduction for New Federal Buildings and Major Renovations of Federal Buildings, 1904-AB96
21. DOE/EE, Proposed Rule Stage, Energy Efficiency Standards for Manufactured Housing, 1904-AC11
22. DOE/EE, Proposed Rule Stage, Energy Efficiency Standards for Residential Dehumidifiers, 1904-AC81
23. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps, 1904-AC85
24. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Small, Large, and Very Large Commercial Package A/C and Heating Equipment, 1904-AC95
25. DOE/EE, Proposed Rule Stage, Standards for Refrigerated Bottled or Canned Beverage Vending Machines, 1904-AD00
26. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Commercial Warm Air Furnaces, 1904-AD11
27. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Residential Non-weatherized Gas Furnaces, 1904-AD20
28. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Hearth Products, 1904-AD35
29. DOE/EE, Final Rule Stage, Energy Efficiency Standards for Automatic Commercial Ice Makers, 1904-AC39
30. DOE/EE, Final Rule Stage, Energy Conservation Standards for General Service Fluorescent Lamps and Incandescent Reflector Lamps, 1904-AC43
31. DOE/EE, Final Rule Stage, Coverage Determination for Computers and Battery Backup Systems, 1904-AD04
32. DOE/OGC, Proposed Rule Stage, Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation, 1990-AA39
33. DOE/NNSA, Final Rule Stage, Assistance to Foreign Atomic Energy Activities, 1994-AA02

DEPARTMENT OF HEALTH AND HUMAN SERVICES

34. HHS/FDA, Proposed Rule Stage, Over-the-Counter Drug Review—Internal Analgesic Products, 0910-AF36
35. HHS/FDA, Proposed Rule Stage, Over-the-Counter Drug Review—Topical Antimicrobial Drug Products, 0910-AF69
36. HHS/FDA, Proposed Rule Stage, Updated Standards for Labeling of Pet Food, 0910-AG09
37. HHS/FDA, Proposed Rule Stage, Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Food for Animals, 0910-AG10
38. HHS/FDA, Proposed Rule Stage, Over-the-Counter Drug Review—Pediatric Dosing for Cough/Cold Products, 0910-AG12
39. HHS/FDA, Proposed Rule Stage, Electronic Distribution of Prescribing Information for Human Prescription Drugs Including Biological Products, 0910-AG18
40. HHS/FDA, Proposed Rule Stage, Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption, 0910-AG35
41. HHS/FDA, Proposed Rule Stage, Current Good Manufacturing and Hazard Analysis, and Risk-Based Preventive Controls for Human Food, 0910-AG36
42. HHS/FDA, Proposed Rule Stage, Requirements for the Testing and Reporting of Tobacco Product Constituents, Ingredients, and Additives, 0910-AG59
43. HHS/FDA, Proposed Rule Stage, Foreign Supplier Verification Program, 0910-AG64
44. HHS/FDA, Proposed Rule Stage, Radiology Devices; Designation of Special Controls for the Computed Tomography X-Ray System, 0910-AH03
45. HHS/FDA, Proposed Rule Stage, Regulations on Human Drug Compounding Under Sections 503A and 503B of the Federal Food, Drug, and Cosmetic Act, 0910-AH10
46. HHS/FDA, Final Rule Stage, “Tobacco Products” Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act, 0910-AG38
47. HHS/FDA, Final Rule Stage, Food Labeling: Calorie Labeling of Articles of Food Sold in Vending Machines, 0910-AG56
48. HHS/FDA, Final Rule Stage, Food Labeling: Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishment, 0910-AG57
49. HHS/FDA, Final Rule Stage, Revision of Postmarketing Reporting Requirements Discontinuance or Interruption in Supply of Certain Products (Drug Shortages), 0910-AG88
50. HHS/FDA, Final Rule Stage, Combinations of Bronchodilators With Expectorants; Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use, 0910-AH16
51. HHS/CDC, Final Rule Stage, World Trade Center Health Program Requirements for Enrollment, Appeals, Certification of Health Conditions Reimbursement, 0920-AA44
52. HHS/CMS, Proposed Rule Stage, Home Health Agency Conditions of Participation (CMS-3819-F), 0938-AG81
53. HHS/CMS, Proposed Rule Stage, Reform of Requirements for Long-Term Care Facilities (CMS-3260-P), 0938-AR61
54. HHS/CMS, Proposed Rule Stage, Medicare Shared Savings Program; Accountable Care Organizations (CMS-1461-P), 0938-AS06
55. HHS/CMS, Proposed Rule Stage, CY 2016 Notice of Benefit and Payment Parameters (CMS-9944-P), 0938-AS19
56. HHS/CMS, Proposed Rule Stage, Hospital and Critical Access Hospital (CAH) Changes to Promote Innovation, Flexibility, and Improvement in Patient Care (CMS-3295-P), 0938-AS21
57. HHS/CMS, Proposed Rule Stage, Mental Health Parity and Addiction Equity Act of 2008; the Application to Medicaid Managed Care, CHIP, and Alternative Benefit Plans (CMS-2333-P), 0938-AS24
58. HHS/CMS, Proposed Rule Stage, Medicaid Managed Care (CMS-2390-P), 0938-AS25
59. HHS/CMS, Proposed Rule Stage, Electronic Health Record (EHR) Incentive Programs—Stage 3 (CMS-3310-P), 0938-AS26
60. HHS/CMS, Proposed Rule Stage, Medicare Clinical Diagnostic Laboratory Test Payment System (CMS-1621-P), 0938-AS33
61. HHS/CMS, Proposed Rule Stage, CY 2016 Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1631-P), 0938-AS40
62. 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 2016 Rates (CMS-1632-P), 0938-AS41
63. HHS/CMS, Proposed Rule Stage, CY 2016 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1633-P), 0938-AS42
64. HHS/CMS, Proposed Rule Stage, FY 2016 Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities (CMS-1622-P), 0938-AS44

65. HHS/CMS, Proposed Rule Stage, FY 2016 Inpatient Rehabilitation Facility Prospective Payment System (CMS-1624-P), 0938-AS45
66. HHS/CMS, Proposed Rule Stage, CY 2016 Home Health Prospective Payment System Refinements and Rate Update (CMS-1625-P), 0938-AS46
67. HHS/CMS, Proposed Rule Stage, FY 2016 Inpatient Psychiatric Facilities Prospective Payment System—Rate Update (CMS-1627-P), 0938-AS47
68. HHS/CMS, Proposed Rule Stage, CY 2016 Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System and Quality Incentive Program (CMS-1628-P), 0938-AS48
69. HHS/CMS, Final Rule Stage, Face-to-Face Requirements for Home Health Services; Policy Changes and Clarifications Related to Home Health (CMS-2348-F), 0938-AQ36
70. HHS/CMS, Final Rule Stage, Covered Outpatient Drugs (CMS-2345-F), 0938-AQ41
71. HHS/CMS, Final Rule Stage, Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Exchange Eligibility Appeals, and Other Eligibility and Enrollment Provisions (CMS-2334-F2), 0938-AS27
72. HHS/CMS, Final Rule Stage, CY 2016 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts (CMS-8059-N), 0938-AS36

DEPARTMENT OF HOMELAND SECURITY

73. DHS/OS, Final Rule Stage, Ammonium Nitrate Security Program, 1601-AA52
74. DHS/USCG, Prerule Stage, Commercial Fishing Industry Vessels, 1625-AA77
75. DHS/USCG, Proposed Rule Stage, Updates to Maritime Security, 1625-AB38
76. DHS/USCG, Final Rule Stage, Commercial Fishing Vessels—Implementation of 2010 and 2012 Legislation, 1625-AB85
77. DHS/USCBP, Final Rule Stage, Changes to the Visa Waiver Program to Implement the Electronic System for Travel Authorization Program, 1651-AA72
78. DHS/USCBP, Final Rule Stage, Electronic System for Travel Authorization: Fee for Use of the System, 1651-AA83
79. DHS/TSA, Proposed Rule Stage, Security Training for Surface Mode Employees, 1652-AA55
80. DHS/TSA, Proposed Rule Stage, Standardized Vetting, Adjudication, and Redress Services, 1652-AA61
81. DHS/TSA, Final Rule Stage, Passenger Screening Using Advanced Imaging Technology, 1652-AA67

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

82. HUD/CPD, Final Rule Stage, Housing Trust Fund, 2506-AC30

DEPARTMENT OF THE INTERIOR

83. DOI/BOEM, Proposed Rule Stage, Arctic Regulations, 1010-AD85
84. DOI/BSEE, Proposed Rule Stage, Blowout Prevention Systems and Well Control, 1014-AA11
85. DOI/BSEE, Proposed Rule Stage, Arctic Regulations, 1014-AA21

DEPARTMENT OF JUSTICE

86. DOJ/DEA, Final Rule Stage, Electronic Prescriptions for Controlled Substances, 1117-AA61
87. DOJ/DEA, Final Rule Stage, Retail Sales of Scheduled Listed Chemical Products; Chemical; Self-Certification of Regulated Sellers of Scheduled Listed Chemical Products, 1117-AB05
88. DOJ/CRT, Proposed Rule Stage, Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of Public Accommodations, 1190-AA61
89. 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

90. DOL/ETA, Proposed Rule Stage, Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program, 1205-AB72
91. DOL/EBSA, Proposed Rule Stage, Conflict of Interest Rule-Investment Advice, 1210-AB32
92. DOL/OSHA, Prerule Stage, Infectious Diseases, 1218-AC46
93. DOL/OSHA, Proposed Rule Stage, Occupational Exposure to Crystalline Silica, 1218-AB70
94. DOL/OSHA, Proposed Rule Stage, Occupational Exposure to Beryllium, 1218-AB76
95. DOL/OSHA, Final Rule Stage, Walking Working Surfaces and Personal Fall Protection Systems (Slips, Trips, and Fall Prevention), 1218-AB80
96. DOL/WHD, Proposed Rule Stage, Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees, 1235-AA11

97. DOL/WHD, Final Rule Stage, Establishing a Minimum Wage for Contractors, Executive Order 13658, 1235-AA10

DEPARTMENT OF TRANSPORTATION

98. DOT/FAA, Final Rule Stage, Flight and Duty Time Limitations and Rest Requirements; Supplemental Regulatory Impact Analysis, 2120-AJ58
99. DOT/FMCSA, Proposed Rule Stage, Carrier Safety Fitness Determination, 2126-AB11
100. DOT/FMCSA, Proposed Rule Stage, Electronic Logging Devices and Hours of Service Supporting Documents (MAP-21), 2126-AB20
101. DOT/FMCSA, Proposed Rule Stage, Heavy Vehicle Speed Limiters, 2126-AB63
102. DOT/FMCSA, Final Rule Stage, Commercial Driver's License Drug and Alcohol Clearinghouse (MAP-21), 2126-AB18
103. DOT/FMCSA, Final Rule Stage, Inspection, Repair, and Maintenance; Driver-Vehicle Inspection Report (RRR), 2126-AB46
104. DOT/NHTSA, Proposed Rule Stage, Fuel Efficiency Standards for Medium- and Heavy-Duty Vehicles and Work Trucks: Phase 2, 2127-AL52
105. DOT/NHTSA, Final Rule Stage, Electronic Stability Control Systems for Heavy Vehicles (MAP-21), 2127-AK97
106. DOT/FRA, Proposed Rule Stage, Passenger Equipment Safety Standards; Standards for Alternative Compliance and High-Speed Trainsets, 2130-AC46
107. DOT/PHMSA, Proposed Rule Stage, Pipeline Safety: Amendments to Parts 192 and 195 to Require Valve Installation and Minimum Rupture Detection Standards, 2137-AF06
108. DOT/PHMSA, Final Rule Stage, Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains, 2137-AE91

DEPARTMENT OF THE TREASURY

109. TREAS/DO, Final Rule Stage, Small Business Lending Fund Refinance, 1505-AC34
110. 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
111. TREAS/DO, Final Rule Stage, Restore Act Program, 1505-AC44

DEPARTMENT OF VETERANS AFFAIRS

112. VA, Final Rule Stage, Caregivers Program, 2900-AN94
113. VA, Final Rule Stage, Medications Copayment Freeze for 2015, 2900-AP15
114. VA, Final Rule Stage, Expanded Access to Non-VA Care through the Veterans Choice Program, 2900-AP24

ENVIRONMENTAL PROTECTION AGENCY

115. EPA/WATER, Proposed Rule Stage, National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions, 2040-AF15
116. EPA/WATER, Final Rule Stage, Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, 2040-AF14
117. EPA/SWER, Final Rule Stage, Standards for the Management of Coal Combustion Residuals Generated by Commercial Electric Power Producers, 2050-AE81
118. EPA/SWER, Final Rule Stage, Revising Underground Storage Tank Regulations—Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training, 2050-AG46
119. EPA/AR, Proposed Rule Stage, Review of the National Ambient Air Quality Standards for Ozone, 2060-AP38
120. EPA/AR, Proposed Rule Stage, Carbon Pollution Emission Guidelines for Existing Stationary Sources: EGUs in Indian Country and U.S. Territories, 2060-AR33
121. EPA/AR, Proposed Rule Stage, Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, 2060-AS16
122. EPA/AR, Final Rule Stage, Standards of Performance for New Residential Wood Heaters and New Residential Hydronic Heaters and Forced-Air Furnaces, 2060-AP93
123. EPA/AR, Final Rule Stage, Renewable Fuel 2014 Volume Standards, 2060-AR76
124. EPA/OCSP, Proposed Rule Stage, Lead; Renovation, Repair, and Painting Program for Public and Commercial Buildings, 2070-AJ56

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

125. ATBCB, Proposed Rule Stage, Information and Communication Technology Standards and Guidelines, 3014-AA37
126. ATBCB, Final Rule Stage, Americans with Disabilities Act Accessibility Guidelines for Passenger Vessels, 3014-AA11

FEDERAL ACQUISITION REGULATION

127. FAR, Final Rule Stage, Federal Acquisition Regulation (FAR); FAR Case 2015-003; Establishing a Minimum Wage for Contractors, 9000-AM82

FEDERAL DEPOSIT INSURANCE CORPORATION

128. FDIC, Proposed Rule Stage, Margin and Capital Requirements for Covered Swap Entities, 3064-AE21

GENERAL SERVICES ADMINISTRATION

129. GSA, Proposed Rule Stage, General Services Administration Acquisition Regulation (GSAR); GSAR Case 2013-G504, Transactional Data Reporting, 3090-AJ51

NUCLEAR REGULATORY COMMISSION

130. NRC, Proposed Rule Stage, Revision of Fee Schedules: Fee Recovery for FY 2015 [NRC-2014-0200], 3150-AJ44
131. NRC, Final Rule Stage, Domestic Licensing of Source Material—Amendments/Integrated Safety Analysis [NRC-2009-0079], 3150-AI50

Completed Actions (31)

DEPARTMENT OF AGRICULTURE

132. USDA/FSA, Disaster Assistance Programs, Payment Limitations, and Payment Eligibility, 0560-AI21
133. USDA/FSA, Cotton Transition Assistance Program, 0560-AI22
134. USDA/FSA, Margin Protection Program for Dairy and Dairy Product Donation Program, 0560-AI23
135. USDA/FSA, Agriculture Risk Coverage and Price Loss Coverage Program, 0560-AI24

DEPARTMENT OF EDUCATION

136. ED/OPE, Gainful Employment, 1840-AD15
137. DOE/EE, Energy Conservation Standards for Residential Furnace Fans, 1904-AC22

DEPARTMENT OF HEALTH AND HUMAN SERVICES

138. HHS/HRSA, 340B Drug Pricing Program Regulations, 0906-AB04

139. HHS/CMS, Pre-Existing Condition Insurance Plan; High Risk Pool (CMS-9995-F), 0938-AQ70
140. HHS/CMS, Early Retiree Reinsurance Program (CMS-9996-F), 0938-AQ78
141. HHS/CMS, Prospective Payment System for Federally Qualified Health Centers; Changes to Contracting Policies for Rural Health Clinics and CLIA Enforcement Actions, for Proficiency Testing Referral (CMS-1443-FC), 0938-AR62
142. HHS/CMS, CY 2015 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts (CMS-8056-N), 0938-AR94
143. HHS/CMS, CY 2015 Part A Premiums for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement (CMS-8057-N), 0938-AR96
144. HHS/CMS, FY 2015 Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities (SNF) (CMS-1605-F), 0938-AS07
145. HHS/CMS, FY 2015 Inpatient Psychiatric Facilities Prospective Payment System—Rate Update (CMS-1606-F), 0938-AS08
146. HHS/CMSFY 2015 Inpatient Rehabilitation Facility Prospective Payment System (CMS-1608-F), 0938-AS09
147. HHS/CMS, FY 2015 Hospice Payment Rate Update (CMS-1609-F), 0938-AS10
148. HHS/CMS, Hospital Inpatient Prospective Payment System for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2015 Rates (CMS-1607-F), 0938-AS11
149. HHS/CMS, CY 2015 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1612-FC), 0938-AS12
150. HHS/CMS, CY 2015 End-Stage Renal Disease Prospective Payment System, Quality Incentive Program, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (CMS-1614-F), 0938-AS13
151. HHS/CMS, CY 2015 Home Health Prospective Payment System Refinements and Rate Update (CMS-1611-F), 0938-AS14
152. HHS/CMS, CY 2015 Hospital Outpatient Prospective Payment System (PPS) Policy Changes and Payment Rates, and CY 2015 Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1613-FC), 0938-AS15
153. HHS/CMS, Extension of Payment Adjustment for Low-Volume Hospitals and the Medicare-Dependent Hospital Program Under the FY 2014 Hospital Inpatient Prospective Payment System (CMS-1599-IFC2), 0938-AS18

154. HHS/CMS, Administrative Simplification: Change to the Compliance Date for the International Classification of Diseases, 10th Revision Medical Data Code Sets (CMS-0043-F), 0938-AS31

DEPARTMENT OF THE INTERIOR

155. DOI/FWS, Migratory Bird Hunting; 2014–2015 Migratory Game Bird Hunting Regulations, 1018-AZ80

DEPARTMENT OF TRANSPORTATION

156. DOT/MARAD, National Shipping Authority, Ship Manager Citizenship, 2133-AB87

DEPARTMENT OF THE TREASURY

157. TREAS/OCC, Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for Certain Bank Holding Companies and their Subsidiary Insured Depository Institutions, 1557-AD69
158. TREAS/OCC, Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring, 1557-AD74

DEPARTMENT OF VETERANS AFFAIRS

159. VA, Copayments for Medications in 2014, 2900-AO91

FEDERAL ENERGY REGULATORY COMMISSION

160. FERC, Version 5 Critical Infrastructure Protection Reliability Standards, 1902-AE66

NUCLEAR REGULATORY COMMISSION

161. NRC, Revision of Fee Schedules: Fee Recovery for FY 2014 [NRC-2013-0276], 3150-AJ32

POSTAL REGULATORY COMMISSION

162. PRC, Treatment of Rate Reductions, Rate Incentives, and De Minimis Rate Increases for Price Cap Purposes, 3211-AA09

Long-Term Actions (38)

DEPARTMENT OF AGRICULTURE

163. USDA/FCIC, General Administrative Regulations; Catastrophic Risk Protection Endorsement; Area Risk Pro-

tection Insurance Regulations; and the Common Crop Insurance Regulations, Basic Provisions, 0563-AC43

DEPARTMENT OF COMMERCE

164. DOC/NOAA, Taking Marine Mammals Incidental to Conducting Geological and Geophysical Exploration of Mineral and Energy Resources on the Outer Continental Shelf in the Gulf of Mexico, 0648-BB38

DEPARTMENT OF HEALTH AND HUMAN SERVICES

165. HHS/FDA, Food Labeling; Revision of the Nutrition and Supplement Facts Labels, 0910-AF22
166. 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
167. HHS/FDA, Focused Mitigation Strategies to Protect Food against Intentional Adulteration, 0910-AG63
168. HHS/FDA, Sanitary Transportation of Human and Animal Food, 0910-AG98
169. HHS/CMS, Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers (CMS-3178-F), 0938-AO91
170. HHS/CMS, Requirements for the Medicare Incentive Reward Program and Provider Enrollment (CMS-6045-F), 0938-AP01
171. HHS/CMS, Prior Authorization Process for Certain Durable Medical Equipment, Prosthetic, Orthotics, and Supplies (DMEPOS) Items (CMS-6050-F), 0938-AR85
172. HHS/CMS, Adoption of Operating Rules for HIPAA Transactions, (CMS-0036-IFC), 0938-AS01

DEPARTMENT OF HOMELAND SECURITY

173. DHS/OS, Collection of Alien Biometric Data Upon Exit From the United States at Air and Sea Ports of Departure, 1601-AA34
174. DHS/USCIS, Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program, 1615-AC02
175. DHS/USCG, Survival Craft 2010 Authorization Act Requirements USCG-2014-0221, 1625-AC19
176. DHS/USCBP, Importer Security Filing and Additional Carrier Requirements, 1651-AA70
177. DHS/TSA, Cessation of the Aviation Security Infrastructure Fees (ASIF), 1652-AA01
178. DHS/TSA, General Aviation Security and Other Aircraft Operator Security, 1652-AA53
179. DHS/TSA, Adjustment of Passenger Civil Aviation Security Service Fee, 1652-AA68

DEPARTMENT OF LABOR

- 180. DOL/ETA, Wage Methodology for the Temporary Nonagricultural Employment H-2B Program, Part 2, 1205-AB69
- 181. DOL/EBSA, Improved Fee Disclosure for Welfare Plans, 1210-AB37
- 182. DOL/OSHA, Combustible Dust, 1218-AC41
- 183. DOL/OSHA, Injury and Illness Prevention Program, 1218-AC48
- 184. DOL/OSHA, Preventing Backover Injuries and Fatalities, 1218-AC51
- 185. DOL/OSHA, Update to the Hazard Communication Standard, 1218-AC93

DEPARTMENT OF TRANSPORTATION

- 186. DOT/NHTSA, Establish Side Impact Performance Requirements for Child Restraint Systems (MAP-21), 2127-AK95
- 187. DOT/NHTSA, Federal Motor Vehicle Safety Standard (FMVSS) 150—Vehicle to Vehicle (V2V) Communication, 2127-AL55

DEPARTMENT OF THE TREASURY

- 188. TREAS/DO, TARP Standards for Compensation and Corporate Governance, 1505-AC09
- 189. TREAS/OCC, Treatment of Certain Collateralized Debt Obligations Backed by Trust Preferred Securities, 1557-AD79
- 190. TREAS/CDFIF, Interim Rule for the CDFI Bond Guarantee Program, 1559-AA01

ENVIRONMENTAL PROTECTION AGENCY

- 191. EPA/WATER, Stormwater Regulations Revision to Address Discharges From Developed Sites, 2040-AF13
- 192. EPA/SWER, Financial Responsibility Requirements Under CERCLA Section 108(b) for Classes of Facilities in the Hard Rock Mining Industry, 2050-AG61

CONSUMER PRODUCT SAFETY COMMISSION

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

FEDERAL COMMUNICATIONS COMMISSION

- 194. 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
- 195. FCC, Broadband Over Power Line Systems; ET Docket No. 04-37, 3060-AI24
- 196. FCC, Amendment of the Rules Regarding Maritime Automatic Identification Systems (WT Docket No. 04-344), 3060-AJ16
- 197. FCC, In the Matter of Service Rules for the 698 to 746, 747 to 762, and 777 to 792 MHz Bands, 3060-AJ35
- 198. FCC, Universal Service Reform Mobility Fund (WT Docket No. 10-208), 3060-AJ58
- 199. FCC, IP-Enabled Services; WC Docket No. 04-36, 3060-AI48
- 200. 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

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>.

Note: The “Regulation Identifier Number” appears at the end of each entry. Sequential numbers in print editions of the “Regulatory Plan and Unified Agenda” no longer apply. For additional information, see “How to Use the Unified Agenda,” http://www.reginfo.gov/public/jsp/eAgenda/StaticContent/UA_HowTo.jsp.

Part H. Rules Affecting Small Business, 1996–2013

	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996
Department of Agriculture	45	80	65	84	87	93	73	67	54	52	64	39	56	47	49	63	58	56
Department of Commerce	103	158	115	98	90	107	112	111	108	79	74	77	89	98	88	52	29	46
Department of Defense	12	25	26	16	12	7	13	14	13	12	13	6	8	7	15	21	15	22
Department of Education	3		1	1	0	0	0	1	0	0	0	1	0	0	0	0	1	1
Department of Energy	5	8	6	3	2	1	1	0	0	0	1	0	1	1	0	0	2	2
Department of Health and Human Services	91	85	100	112	94	93	96	109	112	106	96	92	108	107	75	88	100	89
Department of Homeland Security	28	27	34	37	35	42	44	43	43	38	33	0	0	0	0	0	0	0
Department of Housing and Urban Development			0	1	0	1	5	4	4	6	11	6	3	0	1	1	7	9
Department of the Interior	23	24	23	18	17	18	19	29	21	20	26	17	20	18	33	29	28	17
Department of Justice	10	9	9	5	3	2	5	7	8	8	8	13	15	14	14	10	26	27
Department of Labor	22	24	23	26	29	29	26	26	19	19	23	22	26	40	38	41	39	51
Department of State	20	31	21	20	4	3	1	0	1	1	2	6	3	2	0	0	1	2
Department of Transportation	68	65	56	49	45	41	43	60	63	103	151	216	244	266	246	208	44	31
Department of the Treasury	29	39	47	56	48	47	45	37	41	38	27	26	27	31	15	60	50	52
Department of Veterans Affairs	2	1	2	3	2	2	0	0	0	0	0	1	1	3	6	6	7	3
Agency for International Development			1	1	0	0	1	1	0	0	1	2	1	0	0	0	0	0
Architectural and Transportation Barriers Compliance Board	1	1	1	0	0	0	0	0	0	0	0	1	1	2	2	3	0	0
Commodity Futures Trading Commission			0	1	1	1	1	0	1	1	2	0	0	0	0	1	0	0
Consumer Financial Protection Bureau	4	8	5															
Consumer Product Safety Commission		2	0			0	0	1	0	0	0	0	0	0	0	0	0	1
Corporation for National and Community Service			0		0	0	0	1	1	0	0	0	0	0	0	0	0	0
Environmental Protection Agency	6	49	73	95	89	83	85	95	110	122	135	167	185	205	179	178	163	152
Equal Employment Opportunity Commission	2	3	5	5	4	2	3	3	3	0	0	0	2	0	0	2	1	0
Federal Acquisition Regulation			10	5	4	6	5	5	7	5	5	6	9	13	16	11	15	20
Federal Communications Commission	17	15	78	112	110	110	109	108	113	113	104	109	117	105	91	82	70	75
Federal Deposit Insurance Corporation	99	89	2	1														
Federal Emergency Management Agency	4	5					0	0	0	0	0	1	1	1	0	0	0	1

(continued)

Part H. Rules Affecting Small Business, 1996–2013 (continued)

	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996
Federal Energy Regulatory Commission			0			0	1	0	0	0	0	0	0	0	1	0	0	0
Federal Housing Finance Board			0			0	0	0	0	0	0	0	0	0	0	1	0	0
Federal Maritime Commission	1	1	3	3	3	3	2	3	5	7	10	7	6	7	4	5	0	0
Federal Mediation and Conciliation Service	5	12	0			0	0	0	0	0	0	0	1	1	0	0	0	0
Federal Reserve System	18	21	17	8	6	5	5	3	6	5	3	7	10	8	2	5	2	4
Federal Trade Commission			22	16	16	13	11	13	12	11	9	9	9	9	10	10	11	7
General Services Administration	2	3	4	5	6	7	3	3	3	1	5	4	1	1	2	2	3	6
National Aeronautics and Space Administration	2	2	3			0	0	0	0	0	0	0	0	0	0	1	0	1
National Archives and Records Administration			0			0	0	0	1	1	1	0	0	0	0	1	1	1
National Credit Union Administration		2	4	4	7	3	1	4	1	2	0	0	0	0	0	0	1	1
National Endowment for the Arts	2	2				0	0	0	0	0	2	2	0	0	0	0	0	0
National Endowment for the Humanities			0			0	0	0	0	0	0	0	0	0	0	0	1	0
Nuclear Regulatory Commission	3	6	3	1	2	1	2	1	1	0	3	5	5	3	5	8	9	8
Office of Management and Budget			0			0	0	0	0	0	0	0	0	1	2	1	1	2
Railroad Retirement Board			0			0	0	0	0	0	0	0	0	0	0	0	1	1
Resolution Trust Corporation								0	17	0	0	0	0	0	0	0	0	0
Securities and Exchange Commission	27	38	27	21	21	19	29	16	0	20	25	28	26	40	39	27	34	48
Small Business Administration			35	39	20	13	15	21	19	18	24	21	21	24	28	20	13	17
Social Security Administration	15	19	1		1	1	1	1	1	1	1	1	0	0	2	0	0	1
TOTAL	669	854	822	845	758	753	757	787	788	789	859	892	996	1,054	963	937	733	754

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

Part I. Federal Rules Affecting State and Local Governments, 2006–2014

	2014 Active, Completed, Long Term						2013 Active, Completed, Long Term					
	State			Local			State			Local		
	A	C	LT	A	C	LT	A	C	LT	A	C	LT
Department of Agriculture	26	6		22	4		37	5	1	27	4	1
Department of Commerce	12	5	3	5	3	1	12		1	8		1
Department of Defense							1			1		
Department of Education	4			1			4	2		2	1	
Department of Energy	9		1	8		1	9			8		
Department of Health and Human Services	46	9	8	19	2	3	35	14	5	14	3	1
Department of Homeland Security	8	4	5	4	2	7	11	2	5	8	1	4
Department of Housing and Urban Development	6	1	1	7		1	6	1	1	6	1	1
Department of Interior	46	4	1	21	1		35	1	1	14	1	1
Department of Justice	8		3	6		2	8	1	3	5		3
Department of Labor	17	2	4	9	2	2	13	4	3	6	3	2
Department of State	1						1	1				
Department of Transportation	12	1	1	4	1		11	1	2	3		
Department of Treasury	9	3		6	2		16		1	15		
Department of Veterans Affairs	2			1			2					
Environmental Protection Agency	54	5	9	36	4	3	39	4	12	25	3	7
Architectural and Transportation Barriers Compliance Board	3	1	1	3		1	3		2	2		2
CPBSD*												
Advisory Council on Historic Preservation												
Consumer Financial Protection Bureau	1		1				1		1			
Court Services/Offender Supervision, D.C.												
Corp. for National and Community Service	1		1	1		1			2			2
Federal Emergency Management Agency												
Equal Employment Opportunity Commission	5			5			4	1		4	1	
General Services Administration	4			3			3			3		
Gulf Coast Ecosystem Restoration Council	1		1									
National Aeronautics and Space Administration												
National Archives and Records Administration	1			1				1			1	
Institute of Museum and Library Services												
National Endowment for the Arts	1			1			1			1		
National Endowment for the Humanities												
Office of Management and Budget												
Small Business Administration	1											
Social Security Administration			1						1			
Federal Communications Commission		1	28		1	20			29			21
Federal Energy Regulatory Commission												
Federal Reserve System		1			1				1			1
Federal Trade Commission												
National Credit Union Administration												
National Indian Gaming Commission												
Nuclear Regulatory Commission	2	1	2	1	1	1	1	2	1		1	
Securities and Exchange Commission	1						1	2			2	
State and Local Totals	281	44	71	164	24	43	254	42	72	152	22	47
Total State	396			Total Local	231		Total State	368		Total Local	221	

(continued)

Part I. Federal Rules Affecting State and Local Governments, 2006–2014 (continued)

	2012 Active, Completed, Long Term						2011 Active, Completed, Long Term					
	State			Local			State			Local		
	A	C	LT	A	C	LT	A	C	LT	A	C	LT
Department of Agriculture	39	9	0	27	6	0	44	9	2	29	8	1
Department of Commerce	16	11	2	6	2	2	19	6	2	7	3	2
Department of Defense	1	0	0	1	0	0	1	0	0	1	0	0
Department of Education	0	1	0	0	0	0	0	0	0	0	0	0
Department of Energy	6	6	0	5	5	0	13	9	0	11	5	0
Department of Health and Human Services	42	20	3	17	3	1	39	21	9	14	7	2
Department of Homeland Security	9	2	5	10	1	1	11	8	13	11	6	7
Department of Housing and Urban Development	8	3	0	9	3	0	10	0	0	10	0	0
Department of Interior	26	9	0	14	4	0	29	9	0	16	2	0
Department of Justice	9	3	3	5	3	3	11	2	2	7	2	2
Department of Labor	14	6	3	6	2	2	12	0	3	7	0	2
Department of State	2	0	0	0	0	0	2	0	0	0	0	0
Department of Transportation	8	3	3	4	2	2	9	1	3	7	0	0
Department of Treasury	18	4	3	15	2	3	22	4	0	16	4	0
Department of Veterans Affairs	2	1	0	1	0	0	3	1	0	1	0	0
Environmental Protection Agency	37	26	20	24	18	15	67	22	26	47	17	15
Architectural and Transportation Barriers Compliance Board	4	1	0	3	1	0	4	0	1	3	0	1
CPBSD*	0	0	0	0	0	0	0	1	0	0	1	0
Advisory Council on Historic Preservation	NA	NA	NA	NA	NA	NA						
Consumer Financial Protection Bureau	1	1	1	0	0	0	3					
Court Services/Offender Supervision, D.C.				1								
Corp. for National and Community Service	0	1	2	0	1	2	3	3	0	3	3	0
Federal Emergency Management Agency	NA	NA	NA	NA	NA	NA						
Equal Employment Opportunity Commission	3	2	0	3	2	0	3	2	0	3	2	0
General Services Administration	3	0	0	3	0	0	1	6	0	1	5	0
Gulf Coast Ecosystem Restoration Council												
National Aeronautics and Space Administration	0	0	0	0	0	0	0	0	0	0	0	0
National Archives and Records Administration	0	0	0	0	0	0	0	0	0	0	0	0
Institute of Museum and Library Services	0	1	0	0	1	0	0	0	1	0	0	1
National Endowment for the Arts	1	0	0	1	0	0						
National Endowment for the Humanities	0	0	0	0	0	0	0	0	0	0	0	0
Office of Management and Budget	0	0	0	0	0	0	0	0	0	0	0	0
Small Business Administration												
Social Security Administration	0	0	1	0	0	0	2	0	0	0	0	0
Federal Communications Commission	0	0	25	0	0	18	0	0	24	0	0	17
Federal Energy Regulatory Commission	0	0	0	0	0	0	0	0	0	0	0	0
Federal Reserve System	0	1	1	0	1	1	1	1	1	1	0	1
Federal Trade Commission	1	1	0	1	0	0	2	0	0	1	0	0
National Credit Union Administration	0	0	0	0	0	0	1	0	0	0	0	0
National Indian Gaming Commission	0	0	0	0	0	0	0	0	0	0	0	0
Nuclear Regulatory Commission	4	2	1	2	2	0	3	1	1	2	1	0
Securities and Exchange Commission	2	1	0	1	0	0	2	0	0	1	0	0
State and Local Totals	256	115	73	159	59	50	317	106	88	199	66	51
	Total State 444			Total Local 268			Total State 511			Total Local 316		

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

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

2010		2009		2008		2007		2006	
State	Local	State	Local	State	Local	State	Local	State	Local
53	36	75	49	72	41	63	43	74	58
27	11	20	11	22	11	22	9	28	9
1		1	0	1	0	0	0		
		0	0	0	0	0	0	1	
26	22	23	20	27	25	19	18	12	9
86	42	71	38	69	41	83	45	70	47
35	26	39	30	33	25	37	28	39	28
8	9	2	3	2	4	1	4	3	7
28	9	30	7	41	11	37	9	37	11
21	15	16	11	15	10	17	11	14	8
20	10	27	15	17	9	20	7	13	8
1		1	0	2	0	3	0	3	
13	5	16	6	18	6	19	7	27	12
29	24	29	24	24	20	28	25	16	15
5	1	0	0	1	0	1	0	1	
125	85	101	70	104	65	119	80	132	86
3	2	3	2	2	2	2	2	1	1
1	1	1	1	1	1	2	2	2	2
4	4	5	5	5	5	6	6	7	7
6	6	5	5	2	3	3	4	3	4
9	7	9	7	10	7	8	5	8	5
		0	0			0	0		
		0	0	1	1	3	3	4	4
2	2	0	0	1	1	1	1	1	1
		0	0	1	1	1	1	1	1
		0	0			0	0		
		0	0			0	0	1	1
2		2	0	3		4	0	2	
32	23	30	20	32	20	31	20	32	19
		0	0			0	0		
1	1	0	0			0	0	1	1
2	1	3	1	1	0	1	0	2	
1		0	0	1	0	0	0	3	
		0	0			0	0		
3	1	4	2	3	1	4	1	3	1
3	3	1	1	2	2	4	3	2	1
547	346	514	328	513	312	539	334	543	346

Part J. The Unconstitutionality Index, 1993–2014

Year	Final Rules	Public Laws	The Index	Notices	Executive Orders	Executive Memos
1993	4,369	210	21			
1994	4,867	255	19			
1995	4,713	88	54	23,162	40	
1996	4,937	246	20	24,367	50	
1997	4,584	153	30	26,033	38	
1998	4,899	241	20	26,197	38	
1999	4,684	170	28	25,505	35	
2000	4,313	410	11	25,470	39	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

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

Notes

1 Congressional Budget Office (CBO), *The Budget and Economic Outlook: 2015 to 2025*, January 2015, Table 1-2, “CBO’s Baseline Budget Projections,” p. 13, <https://www.cbo.gov/sites/default/files/cbofiles/attachments/49892-Outlook2015.pdf>.

2 Office of Management and Budget (OMB), *Budget of the United States Government*, Fiscal Year (FY) 2016, Summary Tables, Table S-1, “Budget Totals,” p. 91, <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/tables.pdf>.

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

4 CBO, January 2015, Table 1-2, p. 13.

5 OMB, FY 2016, Table S-1.

6 International percentages are available from Organisation for Economic Co-operation and Development (OECD), *Economic Outlook Annex Tables*, <http://www.oecd.org/eo/economicoutlookanalysisandforecasts/economicoutlookannextables.htm>; Annex Table 25, “General Government Total Outlays.” According to OECD, the U.S. figure for 2014 is 38.4 percent, but that figure includes state and local spending outlays. For federal outlays alone as a percentage of gross domestic product (GDP), the figure is 20.1 percent (\$3.5 trillion/\$17.4 trillion), using GDP data from U.S. Department of Commerce, Bureau of Economic Analysis, “National Income and Product Accounts, Gross Domestic Product: Fourth Quarter and Annual 2014 (Third Estimate),” news release, March 27, 2015, http://www.bea.gov/newsreleases/national/gdp/2015/gdp4q14_3rd.htm.

7 Central Intelligence Agency, *The World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook/fields/2056.html>. Nations with at least \$1 trillion in revenues are China, France, Germany, Japan, the United Kingdom, and the United States.

8 Regulations with cost estimates presented by OMB have made up only 0.5 percent of the annual rule flow of around 3,500 over the past decade, based on data compiled from Office of Information and Regulatory Affairs’s (OIRA) annual Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities, available at https://www.whitehouse.gov/omb/inforg_regpol_reports_congress. See also Clyde Wayne Crews Jr., “Boosting Regulatory Transparency: Comments of the Competitive Enterprise Institute on the Office of Management and Budget’s 2013 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act,” Competitive Enterprise Institute, Washington, D.C., July 31, 2013, p. 9, <http://bit.ly/1dqsTbY>. See also Clyde Wayne Crews Jr., “Federal Regulation: The Costs of Benefits,” *Forbes*, January 7,

2013, <http://www.forbes.com/sites/waynecrews/2013/01/07/federal-regulation-the-costs-of-benefits/>.

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

10 The regulatory report card has long been proposed in *Ten Thousand Commandments*; it was also featured in Clyde Wayne Crews Jr., “The Other National Debt Crisis: How and Why Congress Must Quantify Federal Regulation,” *Issue Analysis* 2011 No. 4, Competitive Enterprise Institute, Washington, D.C., October 2011, <http://cei.org/issue-analysis/other-national-debt-crisis>. Those reporting proposals appeared in the Achieving Less Excess in Regulation and Requiring Transparency (ALERRT) Act during the 113th Congress (2013–2014), <https://beta.congress.gov/bill/113th-congress/house-bill/2804>. They had first appeared in Sen. Olympia Snowe’s (R-Me.) 112th Congress legislation, Restoring Tax and Regulatory Certainty to Small Businesses (RESTART) Act (S. 3572). Section 213 detailed this proposed “regulatory transparency reporting,” which includes reporting on major rule costs in tiers. The full text of S. 3572 is available at <https://www.govtrack.us/congress/bills/112/s3572/text>.

11 “The Debt to the Penny and Who Holds It,” U.S. Department of the Treasury, Bureau of the Fiscal Service, <http://www.treasurydirect.gov/NP/debt/current>.

12 Ben Carter, “Is China’s Economy Really the Largest in the World?,” BBC News, December 16, 2014, <http://www.bbc.com/news/magazine-30483762>.

13 For a survey of corporate tax incidence estimates, see Jennifer C. Gravelle, “Corporate Tax Incidence: A Review of Empirical Estimates and Analysis,” Congressional Budget Office Working Paper Series: Working Paper 2011-01, June 2011, <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/122xx/doc12239/06-14-2011-corporatetaxincidence.pdf>.

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

15 Clyde Wayne Crews Jr., “Tip of the Costberg: On the Invalidity of All Cost of Regulation Estimates and the Need to Compile Them Anyway,” working paper, Competitive Enterprise Institute, available on Social Science Research Network (SSRN), 2015 Edition, <http://ssrn.com/abstract=2502883>. Also available on scribd: <http://www.scribd.com/doc/103172296/Tip-of-the-Costberg-On-the-Invalidity-of-All-Cost-of-Regulation-Estimates-and-the-Need-to-Compile-Them-Anyway>.

16 CBO, *A Review of CBO’s Activities in 2014 Under the Unfunded Mandates Reform Act*, March 2015, p. 2, <http://www.cbo.gov/sites/default/files/cbofiles/attachments/50051-UMRA.pdf>.

17 CBO, January 2015, Table 1-2, p. 13.

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

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

20 Buchanan, pp. 42–43.

21 OMB, *2014 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, Table 1-1, “Estimates of the Total Annual Benefits and Costs of Major Federal Rules by Agency, October 1, 2003–September 30, 2013 (billions of 2001 or 2010 dollars),” May 2014, pp. 9–11, http://www.whitehouse.gov/sites/default/files/omb/inforeg/2014_cb/draft_2014_cost_benefit_report-updated.pdf.

22 OMB, *2013 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, Table 1-1, “Estimates of the Total Annual Benefits and Costs of Major Federal Rules by Agency, October 1, 2002–September 30, 2012 (billions of 2001 dollars),” March 2013, pp. 11–12, http://www.whitehouse.gov/sites/default/files/omb/inforeg/2013_cb/draft_2013_cost_benefit_report.pdf.

23 OMB, *2014 Draft Report to Congress*, Table 1-1, pp. 9–11.

24 OMB, *2014 Draft Report to Congress*, Table 1-5, “Estimates, by Agency, of the Total Annual Benefits and Costs of Major Rules: October 1, 2012–September 30, 2013 (billions of 2001 or 2010 dollars),” pp. 22.

25 OMB, *2013 Draft Report to Congress*, Table 1-3, “Total Annual Benefits and Costs of Major Rules by Fiscal Year (billions of 2001 dollars),” pp. 18–19.

26 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/Data-and-Reports/Cost-of-Federal-Regulations/>.

27 John W. Dawson and John J. Seater, “Federal Regulation and Aggregate Economic Growth,” *Journal of Economic Growth*, Vol. 18, No. 2, pp. 137–77, June 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2223315##.

28 Nicole V. Crain and W. Mark Crain, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBAHQ-08-M-0466, September 2010, <http://www.sba.gov/advocacy/7540/49291>.

29 The 2010 Crain and Crain calculations updated a 2005 report by Mark Crain that found 2004 regulatory costs of \$1.1 trillion (W. Mark Crain, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBHQ-03-M-0522, September 2005, <https://www.sba.gov/sites/default/files/files/rs264tot.pdf>). In a still earlier October 2001 report by

Crain and Thomas Hopkins, the authors noted regulatory costs of \$843 billion (W. Mark Crain and Thomas D. Hopkins, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, RFP No. SBAHQ-00-R-0027, October 2001, <https://www.sba.gov/sites/default/files/files/rs207tot.pdf>). That report, in turn, updated still earlier SBA analyses.

Recent criticisms of the current Crain and Crain report (“The Impact of Regulatory Costs on Small Firms,” see note 27) would also apply to some OMB calculations and have in the past—although, alas, critics do not present alternative and defensible total cost estimates. In particular, the Crain and Crain model for calculating costs of economic regulations using the World Bank Regulatory Quality Index has fallen under criticism by OMB and others. Earlier estimates by Crain and Hopkins would be in the same ballpark, in current dollars, even without including costs of interim regulations. Moreover, current estimates do not capture the costs of such major initiatives as health care legislation, Dodd-Frank financial regulation, or even the earlier Sarbanes-Oxley financial rules. This author addressed some of those concerns about the SBA study in a *Forbes* column (Clyde Wayne Crews Jr., “The Cost of Government Regulation,” *Forbes*, July 6, 2011, <http://www.forbes.com/sites/waynecrews/2011/07/06/the-cost-of-government-regulation-the-barack-obama-cass-sunstein-urban-legend/>).

Following are the primary criticisms and links to Crain and Crain’s responses to them:

Curtis W. Copeland, “Analysis of an Estimate of the Total Costs of Federal Regulations,” Congressional Research Service, April 6, 2011, http://www.progressivereform.org/articles/CRS_Crain_and_Crain.pdf. Crain and Crain response: <http://policystudies.lafayette.edu/files/2011/03/Response-to-CRS-April-28-2011-inc2.pdf>.

John Irons and Andrew Green, “Flaws Call for Rejecting Crain and Crain Model,” Economic Policy Institute Issue Brief No. 308, July 19, 2011, http://www.epi.org/publication/flaws_call_for_rejecting_crain_and_crain_model/. Crain and Crain response: <http://policystudies.lafayette.edu/files/2011/03/EPI-response.pdf>.

Sidney A. Shapiro, Ruth Ruttenberg, and James Goodwin, “Setting the Record Straight: The Crain and Crain Report on Regulatory Costs,” Center for Progressive Reform White Paper No. 1103, February 2011, http://www.progressivereform.org/articles/SBA_Regulatory_Costs_Analysis_1103.pdf. Crain and Crain response: http://policystudies.lafayette.edu/files/2011/03/Analysis-of-CPR_4_27_last.pdf.

30 Crain and Crain, “The Cost of Federal Regulation,” 2014.

31 Ibid.

32 For example, the February 18, 2012, issue of *The Economist* features a special section, “Over-Regulated America,”

which notes, “[R]ed tape in America is no laughing matter. The problem is not the rules that are self-evidently absurd. It is the ones that sound reasonable on their own but impose a huge burden collectively. America is meant to be the home of laissez-faire.... Yet for some time America has been straying from this ideal.” With respect to the regulations emerging from the Dodd-Frank law, the story notes that “financial firms in America must prepare to comply with a law that is partly unintelligible and partly unknowable” (<http://www.economist.com/node/21547789>). This special section includes the following articles: “Measuring the Impact of Regulation: The Rule of More,” <http://www.economist.com/node/21547772>; “Deleting Regulations: Of Sunstein and Sunsets,” <http://www.economist.com/node/21547799>; and “Excessive Regulation: Tangled Up in Green Tape,” <http://www.economist.com/node/21547804>.

33 Dawson and Seater, 2013.

34 Crews, “Tip of the Costberg,” 2015.

35 Thomas D. Hopkins, “Statement Prepared for the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs of the House Committee on Government Reform and Oversight,” May 16, 1996. See also Hopkins, “Regulatory Costs in Profile,” Policy Study No. 231, Center for the Study of American Business, August 1996, p. 4.

36 The total surplus was \$128 billion in FY 2001. White House, OMB, Table 1.1, “Summary of Receipts, Outlays, and Surpluses or Deficits (-): 1789–2020,” <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/hist01z1.xls>.

37 CBO, *The Budget and Economic Outlook*, January 2015, Table 1-2.

38 John B. Taylor, “The Lack of an Empirical Rationale for a Revival of Discretionary Fiscal Policy,” *American Economic Review: Papers and Proceedings*, Vol 99, No. 2, May 2009, pp. 550-555. http://web.stanford.edu/~johntayl/Onlinepaperscombinedbyyear/2009/The_Lack_of_an_Empirical_Rationale_for_a_Revival_of_Discretionary_Fiscal_Policy.pdf. See also Clyde Wayne Crews Jr., “Still Stimulating Like It’s 1999: Time to Rethink Bipartisan Collusion on Economic Stimulus Packages,” *Issue Analysis* 2008 No. 1, Competitive Enterprise Institute, February 2008, <http://cei.org/pdf/6425.pdf>.

39 Estimated 2014 tax figures from OMB, *Historical Tables*, Table 2.1, “Receipts by Source: 1934–2018,” <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/hist02z1.xls>. This spreadsheet is regularly found at <http://www.whitehouse.gov/omb/budget/Historicals>.

40 Ibid.

41 Corporate 2013 pretax profits (domestic and international) from U.S. Department of Commerce, Bureau of Economic Analysis, *National Income and Product Accounts Tables*, Table 6.17D, “Corporate Profits before Tax by Industry,” <http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=3&isuri=1&903=243>. This spreadsheet is found at <http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=3&isuri=1>.

42 U.S. Department of Commerce, Bureau of Economic Analysis, “National Income and Product Accounts, Gross Domestic Product: Fourth Quarter and Annual 2014 (Third Estimate),” news release, December 23, 2014. Similar data are also available at the World Bank, Washington, D.C., “Data: GDP (Current US \$),” <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD>.

43 The World Bank, “Gross Domestic Product 2013,” <http://databank.worldbank.org/data/download/GDP.pdf>.

44 Terry Miller and Anthony B. Kim, *2015 Index of Economic Freedom*, Heritage Foundation/*Wall Street Journal*, January 2015, <http://www.heritage.org/index/>.

45 James Gwartney, Robert Lawson, and Joshua Hall, et al., *Economic Freedom of the World: 2014 Annual Report* (Washington, DC: Cato Institute, 2014), <http://www.cato.org/economic-freedom-world>.

46 As the previously cited National Association of Manufacturers study on regulatory costs observes: “It is worth emphasizing that all regulatory costs are—and can only be—borne by individuals, as consumers, as workers, as stockholders, as owners or as taxpayers. In other words, the distinction between ‘business’ and ‘individuals’ focuses on the compliance responsibility, fully recognizing that ultimately all costs must fall on individuals.” Crain and Crain, “The Cost of Federal Regulation,” 2014, p. 46.

47 U.S. Department of Labor, Bureau of Labor Statistics, “Consumer Expenditures—2013,” economic news release, September 9, 2014, <http://www.bls.gov/news.release/cesan.nr0.htm>.

48 Ibid. For the Bureau of Labor Statistics (BLS), “Consumer units include families, single persons living alone or sharing a household with others but who are financially independent, or two or more persons living together who share expenses.” For each “unit,” average annual expenditures were \$51,442 according to the BLS. The BLS also provided additional information on these figures by email and the following document: “Average Annual Expenditures and Characteristics of All Consumer Units, Consumer Expenditure Survey, 2006–2011,” <http://www.bls.gov/cex/2011/standard/multiyr.pdf>. Find the 2012 version at <http://www.bls.gov/cex/2012/standard/multiyr.pdf>.

49 That is still a light load compared to the federal debt per household, which Ohio Senator and former Director of the OMB Rob Portman has said reaches \$140,000 per household. As *PolitiFact* noted, “Portman was using an average to illustrate a point, not to say that each of us needs to take out a second mortgage.” The same perspective holds when we try to contextualize regulation. Stephen Koff, “Sen. Rob Portman Says the National Debt Breaks Down to \$140,000

Per Household,” *PolitiFact*, March 27, 2013, <http://www.politifact.com/ohio/statements/2013/mar/27/rob-portman/sen-rob-portman-says-national-debt-breaks-down-140/>.

50 Susan Dudley and Melinda Warren, “Economic Forms of Regulation on the Rise: An Analysis of the U.S. Budget for Fiscal Years 2014 and 2015,” *Regulators’ Budget* No. 36, published jointly by the Regulatory Studies Center, George Washington University, Washington, D.C., and the Weidenbaum Center on the Economy, Government, and Public Policy, Washington University, St. Louis, Missouri, July 2014, p. 5. http://regulatorystudies.columbian.gwu.edu/sites/regulatorystudies.columbian.gwu.edu/files/downloads/2015_Regulators_Budget.pdf. Instead of using the Dudley and Warren nominal dollar estimates, their 2009 constant dollars are adjusted here by the change in the consumer price index between 2009 and 2014, 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>.

51 Dudley and Warren, Table A-1, 2014, p. 16. (current dollars).

52 *Ibid.*, Table A-1, 2014, p. 15. (current dollars).

53 Dudley and Warren, Table A-6, “Total Staffing of Federal Regulatory Activity,” 2014, p. 26.

54 The year 2000 is included as part of the new millennium, which is technically incorrect.

55 See “President Barack Obama’s State of the Union Address,” The White House, Office of the Press Secretary, January 28, 2014, <https://www.whitehouse.gov/the-press-office/2014/01/28/president-barack-obamas-state-union-address>.

56 Clyde Wayne Crews Jr. “Despotism-Lite? The Obama Administration’s Rule By Memo,” *Forbes*, July 1, 2014, <https://cei.org/content/despotism-lite-obama-administrations-rule-memo>.

57 Kenneth Mayer, *With the Stroke of a Pen: Executive Orders and Presidential Power* (Princeton: Princeton University Press, 2001), p. 67, <http://bit.ly/M9aGcn>.

58 Gregory Korte, “Obama Issues ‘Executive Orders By Another Name,’” *USA Today*, December 17, 2014, <http://www.usatoday.com/story/news/politics/2014/12/16/obama-presidential-memoranda-executive-orders/20191805/>.

59 For example, see Glenn Kessler, “Claims Regarding Obama’s Use of Executive Orders and Presidential Memoranda,” *Washington Post*, December 31, 2014, <http://www.washingtonpost.com/blogs/fact-checker/wp/2014/12/31/claims-regarding-obamas-use-of-executive-orders-and-presidential-memoranda/>.

60 Clinton’s memoranda are not shown in Figure 15. However, they are likewise derived from the “Advanced Document Search” feature on <https://www.FederalRegister.gov>.

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

62 Ben Traynor, “Roosevelt’s Gold Confiscation: Could It Happen Again?” *The Telegraph*, April 3, 2013, <http://www.telegraph.co.uk/finance/personalfinance/investing/gold/9968494/Roosevelts-gold-confiscation-could-it-happen-again.html>.

63 Crews, “Despotism-Lite?,” 2014.

64 Executive Order No. 13563, Improving Regulation and Regulatory Review, January 18, 2011, <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>.

65 These are Executive Orders No. 13563 (Improving Regulation and Regulatory Review; January 18, 2011), 13579 (Regulation and Independent Regulatory Agencies; July 11, 2011), 13609 (Promoting International Regulatory Cooperation; May 1, 2012), and 13610 (Identifying and Reducing Regulatory Burdens; May 10, 2012). All are available at http://www.whitehouse.gov/omb/inforeg_regmatters#eo13610.

66 Executive Order No. 12866, “Regulatory Planning and Review,” September 30, 1993, <http://www.archives.gov/federal-register/executive-orders/pdf/12866.pdf>.

67 Executive Order No. 12291, “Federal Regulation,” February 17, 1981, <http://www.archives.gov/federal-register/codification/executive-order/12291.html>.

68 Executive Order 12866 “Regulatory Planning and Review,” *Federal Register*, Vol. 58, No. 190, October 4, 1993.

69 Executive Orders Disposition Tables Index, Office of the Federal Register, National Archives, <http://www.archives.gov/federal-register/executive-orders/disposition.html>; and Executive Orders, The American Presidency Project, <http://www.presidency.ucsb.edu/data/orders.php>.

70 *Ibid.*

71 *Ibid.*

72 Editorial Board, “President Obama’s Unilateral Action on Immigration Has No Precedent,” *Washington Post*, December 3, 2014, http://www.washingtonpost.com/opinions/president-obamas-unilateral-action-on-immigration-has-no-precedent/2014/12/03/3fd78650-79a3-11e4-9a27-6fdb612bfff8_story.html.

73 David Ingram and Mica Rosenberg, “Texas Judge’s Immigration Rebuke May Be Hard to Challenge,” Reuters, February 18, 2015, <http://news.yahoo.com/texas-judges-immigration-rebuke-may-hard-challenge-021016060.html>.

74 John D. Graham and James W. Broughel, “Stealth Regulation: Addressing Agency Evasion of OIRA and the

Administrative Procedure Act,” *Harvard Journal of Law and Public Policy*, Federalist Edition, Vol. 1, No. 1, pp. 40–41, 2014, http://www.harvard-jlpp.com/wp-content/uploads/2010/01/Graham_Broughel_final.pdf.

75 See, for example, Graham and Broughel, 2014.

76 “Notices” are defined at <http://www.federalregister.gov>: “This category contains non-rulemaking documents that are applicable to the general public and named parties. These documents include notices of public meetings, hearings, investigations, grants and funding, environmental impact statements, information collections, statements of organization and functions, delegations, and other announcements of public interest.”

77 Noted, for example, in *Federal Register*, Vol. 74, No. 233, December 7, 2009, p. 64133.

78 It did not appear in the *Federal Register*, but in the online database at <http://www.reginfo.gov>.

79 Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions, “Spring 2012 *Unified Agenda of Federal Regulatory and Deregulatory Actions*” (plus attachment), Cass Sunstein, administrator, Office of Information and Regulatory Affairs, Executive Office of the President, March 12, 2012, <http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/agenda-data-call-and-guidelines-spring-2012.pdf>.

80 Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions, “Fall 2013 *Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions*,” Howard Shelanski, administrator, Office of Information and Regulatory Affairs, Executive Office of the President, August 7, 2013, <http://www.whitehouse.gov/sites/default/files/omb/inforeg/memos/fall-2013-regulatory-plan-and-agenda.pdf>.

81 Susan E. Dudley, “2012 Unified Agenda Less Informative,” Regulatory Studies Center, George Washington University, Washington, D.C., February 6, 2013, http://research.columbian.gwu.edu/regulatorystudies/sites/default/files/u41/20130206_unified_agenda_dudley.pdf.

82 Leland E. Beck, “Fall 2013 Unified Agenda Published: Something New, Something Old,” *Federal Regulations Advisor*, November 27, 2013, <http://www.fedregsadvisor.com/2013/11/27/fall-2013-unified-agenda-published-something-new-something-old/>.

83 Juliet Eilperin, “White House Delayed Enacting Rules Ahead of 2012 Election to Avoid Controversy,” *Washington Post*, December 14, 2013, http://www.washingtonpost.com/politics/white-house-delayed-enacting-rules-ahead-of-2012-election-to-avoid-controversy/2013/12/14/7885a494-561a-11e3-ba82-16ed03681809_story.html?hpid=z1.

84 Curtis W. Copeland, “Length of Rule Reviews by the Office of Information and Regulatory Affairs,” Administrative Conference of the United States, December 2, 2013, <http://www.acus.gov/sites/default/files/documents/OIRA%20Review%20Final%20Report%20with%20Cover%20Page.pdf>.

85 This count has been compiled in *Ten Thousand Commandments* over the years from printed editions of National Archives and Records Administration, Office of the Federal Register, “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” printed separately as well as in the *Federal Register*, and from <http://www.reginfo.gov>.

86 Although the Unified Agenda is published twice a year, this document tracks each year’s October or December year-end compilation.

87 Remarks by the President in State of the Union Address, United States Capitol, Washington, D.C., January 25, 2012, <http://www.whitehouse.gov/photos-and-video/video/2012/01/25/2012-state-union-address-enhanced-version#transcript>.

88 “Obama Orders Halt to Pending Regulations for Review,” Fox News, January 20, 2009, <http://www.foxnews.com/politics/2009/01/20/obama-orders-halt-pending-regulations-review/>.

89 See <http://www.smallbusinessadvocate.com/>.

90 The *Federal Register* notes: “The Regulatory Flexibility Act requires that agencies publish semiannual regulatory agendas in the *Federal Register* describing regulatory actions they are developing that may have a significant economic impact on a substantial number of small entities.” Cited, for example, in *Federal Register*, Vol. 74, No. 233, December 7, 2009, pp. 64131–32.

91 The legislation and executive orders by which agencies are directed to assess effects on state and local governments are described in the Agenda’s appendixes.

92 Government Accountability Office (GAO) website, “Congressional Review Act Resources,” <http://www.gao.gov/legal/congress.html>.

93 Curtis W. Copeland, “Congressional Review Act: Many Recent Final Rules Were Not Submitted to GAO and Congress,” White Paper, July 15, 2014, <http://www.washingtonpost.com/r/2010-2019/WashingtonPost/2014/07/25/National-Politics/Advance/Graphics/CRA%20Report%200725.pdf>.

94 The Government Accountability Office now explicitly presents its major rule reports for only the most recent three months, <http://www.gao.gov/legal/congressact/majrule.html>. To get a count going further back in time, a researcher must use the GAO’s database of rules submitted to it by agencies, on the presumption that the major ones are those requiring and receiving a GAO report as required by the CRA, <http://www.gao.gov/legal/congress.html>. There are slight differences between earlier hand tallies and the GAO search engine, and sometimes slight changes

exist in the results that the search engine itself provides from year to year.

95 James L. Gattuso and Diane Katz, “Red Tape Rising: Five Years of Regulatory Expansion,” Background No. 2895, Heritage Foundation, March 26, 2014, http://thf_media.s3.amazonaws.com/2014/pdf/BG2895.pdf.

96 Fred Smith, Letter to Rep. Darrell Issa (R-Calif.), January 3, 2011, <http://www.scribd.com/doc/47563145/Competitive-Enterprise-Institute-Letter-to-Chairman-Issa-January-3-2011>.

97 Darren Goode, “Gripes over EPA in Responses to Darrell Issa,” *Politico*, February 7, 2011, <http://www.politico.com/news/stories/0211/48995.html>.

98 Senator James Inhofe, “A Look Ahead to EPA Regulations for 2013: Numerous Obama-EPA Rules Placed on Hold until After the Election Spell Doom for Jobs and Economic Growth,” Minority Report, Senate Committee on Environment and Public Works, October 18, 2012, <http://www.inhofe.senate.gov/download/?id=28b57b78-30ba-4d78-bf32-2259797e513f&download=1>.

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

100 Crews, “Tip of the Costberg,” 2015, pp. 83–93.

101 U.S. Environmental Protection Agency, *Environmental Investments: The Cost of a Clean Environment*, EPA-230-11-90-083, November 1990, [http://yosemite.epa.gov/eel/epa/erm.nsf/vwAN/EE-0294B-2.pdf/\\$file/EE-0294B-2.pdf](http://yosemite.epa.gov/eel/epa/erm.nsf/vwAN/EE-0294B-2.pdf/$file/EE-0294B-2.pdf).

102 Susan Dudley and Melinda Warren, “Economic Forms of Regulation on the Rise: An Analysis of the U.S. Budget for Fiscal Years 2014 and 2015,” *Regulators’ Budget*, No. 36, July 2014, Table A-1, p. 17.

103 Jerry Ellig, “Costs and Consequences of Federal Telecommunications Regulations,” *Federal Communications Law Journal*, Vol. 58, No.1, p. 95, January 2006, <http://ssrn.com/abstract=982574>.

104 *Federal Register*, <http://www.federalregister.gov>. For another roundup of FCC regulations, see Ryan Young, “Federal Communications Commission: Regulations Impose \$142 Billion in Compliance Costs; More on the Way,” *Regulatory Report Card* No. 2, Competitive Enterprise Institute, February 21, 2013, <http://cei.org/sites/default/files/Ryan%20Young%20-%20FCC%20Regulatory%20Report%20Card.pdf>.

105 Tom Wheeler, “FCC Chairman Tom Wheeler: This Is How We Will Ensure Net Neutrality,” *Wired*, February 4, 2015, <http://www.wired.com/2015/02/fcc-chairman-wheeler-net-neutrality/>.

106 See Crews, “Splinternets and Cyberspaces vs. Net Neutrality,” *Daily Caller*, February 3, 2010, <http://dailycaller.com/2010/02/03/splinternets-and-cyberspaces-vs-net-neutrality/>.

107 Gautham Nagesh, “FCC Plans to Issue New ‘Net Neutrality’ Rules,” *Wall Street Journal*, February 19, 2014, <http://>

online.wsj.com/news/articles/SB10001424052702303636404579392960485193226.

108 *Verizon v. FCC* (D.C. Cir. Jan. 14, 2014), [http://www.cadc.uscourts.gov/internet/opinions.nsf/3AF8B4D938CDEEA685257C6000532062/\\$file/11-1355-1474943.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/3AF8B4D938CDEEA685257C6000532062/$file/11-1355-1474943.pdf).

109 FCC, Report and Order on “Preserving the Open Internet Broadband Industry Practices,” adopted December 21, 2010, https://apps.fcc.gov/edocs_public/attachmatch/FCC-10-201A1_Rcd.pdf. See also Brief for Competitive Enterprise Institute et al. as Amici Curiae Supporting Appellant, *Verizon v. FCC*, No. 11-1355 (D.C. Cir. Jul. 23, 2012), <http://object.cato.org/sites/cato.org/files/pubs/pdf/VerizonvFCC.pdf>.

110 Wheeler, 2015.

111 See Clyde Wayne Crews Jr., “Comments of Competitive Enterprise Institute in FCC Future of Media Proceeding, GN Docket No. 10-25,” May 7, 2010, <http://www.scribd.com/doc/135189382/Wayne-Crews-Comments-of-Competitive-Enterprise-Institute-in-FCC-Future-of-Media-Proceeding-GN-Docket-No-10-25>.

112 See, for example, Braden Cox and Clyde Wayne Crews Jr., “Communications without Commissions: A National Plan for Reforming Telecom Regulation,” *Issue Analysis* 2005, No. 9, Competitive Enterprise Institute, October 18, 2005, <http://cei.org/pdf/4911.pdf>.

113 FCC, “In the Matter of Service Rules for the 698 to 746, 747 to 762 and 777 to 792 MHz Bands,” RIN 3060-AJ35, Fall 2010, <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201010&RIN=3060-AJ35>.

114 Clyde Wayne Crews Jr., “Promise and Peril: Implementing a Regulatory Budget,” *Policy Sciences*, Vol. 31, No. 4, December 1998, pp. 343–369, <http://cei.org/PDFs/promise.pdf>.

115 A version of CEI’s major-rule categorization and disclosure recommendations noted in Table 10 is also explored in Crews, “The Other National Debt Crisis” (see note 10). Those reporting proposals appeared in the ALERRT Act proposal and in Sen. Olympia Snowe’s (R-Me.) 112th Congress legislation (see note 10). Section 213 of the latter detailed this proposed “regulatory transparency reporting,” <https://www.govtrack.us/congress/bills/112/s3572/text>.

116 For a complete analysis, see David Schoenbrod and Jerry Taylor, “The Delegation of Legislative Powers,” in *Cato Handbook for Congress: Policy Recommendations for the 108th Congress*, ed. Edward H. Crane and David Boaz (Washington, D.C.: Cato Institute, 2003), pp. 77–85, <http://object.cato.org/pubs/handbook/hb108/hb108-8.pdf>.

117 See William A. Niskanen Jr., *Bureaucracy and Representative Government* (Chicago: Aldine, Atherton, 1971).

118 Derived from Library of Congress, Thomas website, Public Laws, 113th Congress (2013–2014), <http://thomas>.

loc.gov/home/LegislativeData.php?&n=PublicLaws&c=113.
See also U.S. Government Publishing Office, Public and
Private Laws, <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=PLAW>.

119 Office of Sen. Rand Paul, “Sen. Paul and Rep.
Young Introduce REINS Act,” press release, January
22, 2015, <http://www.paul.senate.gov/news/press/sen-paul-and-rep-young-introduce-reins-act>.

120 “House Judiciary Committee Approves REINS Act
to Control Regulatory Costs and Restore Accountability,”
press release, United States House of Representatives Judiciary
Committee, April 15, 2015, <http://judiciary.house.gov/index.cfm/2015/4/house-judiciary-committee-approves-reins-act-to-control-regulatory-costs-and-restore-accountability>.

EMBARGOED

About the Author

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

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

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

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



COMPETITIVE ENTERPRISE INSTITUTE

The Competitive Enterprise Institute promotes the institutions of liberty and works to remove government-created barriers to economic freedom, innovation, and prosperity through timely analysis, effective advocacy, inclusive coalition-building, and strategic litigation.

COMPETITIVE ENTERPRISE INSTITUTE

1899 L Street NW, 12th Floor

Washington, DC 20036

202-331-1010

cei.org