

TAMING THE ADMINISTRATIVE STATE

Federal Register Vol. 80, No. 407 Thursday, March 5, 2015 Public and Regulatory Notices

14299



Identifying **REGULATIONS** That Impact Jobs and the Economy

“that resulted in or are likely to result in an annual effect on the economy of \$100 million or more”

Environmental Protection Agency

Department of Labor



U.S. CHAMBER OF COMMERCE

Environment, Technology & Regulatory Affairs Division

REGULATIONS AND
COMPLIANCE STATE

IN 2014 Public Notice and Title
IN 2014-2015

REGULATIONS AND COMPLIANCE
STATE

major rules

Regulatory Accountability Act

economically significant rules

Department of Transportation

ACKNOWLEDGMENTS

AUTHORS

William L. Kovacs, *Senior Vice President, Environment, Technology & Regulatory Affairs, U.S. Chamber of Commerce*

Joseph J. Johnson, *Executive Director, Federal Regulatory Process Review & Analysis, U.S. Chamber of Commerce*

Jordan Crenshaw, *Assistant Policy Counsel, U.S. Chamber of Commerce*

Ronald Bird, *Senior Economist / Regulatory Analyst, U.S. Chamber of Commerce*

The authors work in the U.S. Chamber's Environment, Technology & Regulatory Affairs Division. Released March 2017



U.S. CHAMBER OF COMMERCE

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

Copyright © 2017 by the United States Chamber of Commerce. All rights reserved. No part of this publication may be reproduced or transmitted in any form—print, electronic, or otherwise—without the express written permission of the publisher.

TAMING THE ADMINISTRATIVE STATE: Identifying **REGULATIONS** That Impact Jobs and the Economy

No. 9 in a Series of Regulatory Reports

U.S. Chamber of Commerce
March 2017

CONTENTS

Executive Summary	1
Report: <i>Taming the Administrative State</i>	4
Recommendations	18
Appendix A: Glossary of Terms Used in Report	26
Appendix B: Charts Illustrating Number of \$100 million-plus rules issued by an agency for years 2008 – 2016.....	28
Appendix C: Economically Significant Rules by Year: 2008 – 2016.....	38
Appendix D: Potentially Economically Significant Rules by Independent Agencies by Year 2008 – 2016.....	52
Appendix E: Methodology for Developing a List of Rules with over \$100 million in Annual Costs.....	59



EXECUTIVE SUMMARY



William L. Kovacs

Senior Vice President for
Environment, Technology, & Regulatory Affairs
U.S. Chamber of Commerce

“Cutting red tape,” “regulatory tsunami,” an “out-of-control regulatory process,” “regulatory overreach,” “imposing a regulatory budget,” and estimates of “trillions of dollars of regulatory costs” are terms in the modern lexicon that attempt to capture the frustration over a federal administrative state that is big, complex, and incomprehensible. Those using such terms advance many ideas to rein in the regulatory beast, ranging from “freezing the beast,” to mandating the elimination of regulations as new ones are proposed, to having Congress vote on regulations before they become law.

With over 190,000 regulations put on the books just since 1976, along with hundreds of thousands of guidance documents, opinion letters, rulings, and orders, the frustrations with the administrative state are well justified. But taking on the entire administrative state is a much more difficult matter than ordering it gone; there are simply too many complications and unintended consequences that can arise from an abrupt elimination of a massive part of it.

Many of the regulations were mandated by Congress and if arbitrarily revoked would only trigger lawsuits or citizen petitions to reinstate them. Moreover, many of the regulations set forth the rules of the road for the regulated community or protect the health and safety of citizens. Therefore, before initiating a process to tame the administrative state we must first attempt to understand its composition—it is more than a series of individual regulations that generate conflict between different interest groups and the government. With understanding comes the ability to appreciate that all regulations are not equal. Some regulations keep society functioning. Some regulations protect health and safety. Some produce benefits that far outweigh the costs imposed upon society. Yet some

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

regulations are purely legislative actions that go well beyond any delegated authority given to the agency by Congress. It is these regulations that transform society that must be more critically reviewed before being imposed on the country.

In *Taming the Administrative State: Identifying Regulations That Matter*, the types of rules involved in the regulatory process are dissected in order to understand how all of the parts fit together. The report recognizes that the regulatory terminology used by the federal government is not consistent; the Office of Management and Budget uses one set of terms, and Congress in the Congressional Review Act uses other terms, despite addressing the same regulatory concepts. For clarity, this report uses terms that identify the rules by category, that is, rules, significant rules, rules with an annual cost of \$100 million or more, and high-impact rules (those with an annual cost of \$1 billion or more).

While these categories were selected to closely track federal reporting categories, there are significant analytical differences between this report and federal reporting. First, federal reporting is year by year, whereas *Taming the Administrative State* provides a longer perspective by setting out the several categories of rules over a nine-year time period (2008 to 2016) and identifies the agencies that issue the largest and most costly rules over time.

Second, *Taming the Administrative State* separates the rules into distinct categories so as to analyze the number and costs of the rules in those specific categories. By separating out the rules that impose an annual cost of over \$100 million from the general category of rules and significant rules the perceived impact of the large number of significant rules looks completely different. On average, federal agencies identify over 300 rules each year as significant. Yet only a few of these rules (15 to 25 a year, except for 2016 in which there were 34) have a designated annual cost of \$100 million or more.

The third difference is that *Taming the Administrative State* establishes a new category of rules—"high-impact rules"—which are rules that impose an annual cost of more than \$1 billion. While there are very few of these rules (up to four a year), these rules are legislative actions that are costly, and transform society.



By identifying the rules that are the most costly to the economy, agencies should apply more scrutiny to these rules before they are final, so as to ensure that the benefits outweigh the costs, and the public has the ability to openly test the accuracy of the agency determinations. Moreover, such transparency allows the courts to more easily review these high-impact rules. It should be noted, however, that since independent agencies are not subject to the same reporting requirements as executive agencies, it is more difficult to accurately identify the \$100 million and high-impact rules issued by those agencies.

The administrative state has been growing since the first agency was created in 1887. It took from 1887 until 1946 for Congress to enact the Administrative Procedure Act (APA), which provided a structure around agency rulemaking activities. While the APA works well for the day-to-day rulemaking process, its informal notice and comment rulemaking structure allows agencies to easily propose and finalize the costliest rules without solid support. Moreover, as courts granted more and more deference to final rules, agencies became more willing to expand the powers Congress delegated to them.

With few checks on how agencies exercise their delegated powers from Congress, the agencies began issuing final rules having an annual cost of over \$100 million, and eventually final rules having an annual cost of over \$1 billion. While rules having limited impact on the economy are often ignored, rules having annual impacts of billions of dollars can have transformative effects on the economy; yet, these transformative rules are subject to the same informal process as the least impactful rules.

The goal of the report is to identify the categories of final rules that should have received a more stringent agency review before being finalized. Since these rules being reviewed are final, the report merely flags the types of future rules needing a more stringent review. Therefore, by identifying the types of rules needing a more rigorous review of the facts, economics, and science supporting them, agencies will be better able to implement the intent of Congress, not the intent of the agency.

Finally, the report also sets forth a list of recommendations that could be undertaken by Congress and the executive branch to ensure that, going forward, regulators get regulations right and use available mechanisms to reduce the mass of regulations produced by the administrative state.

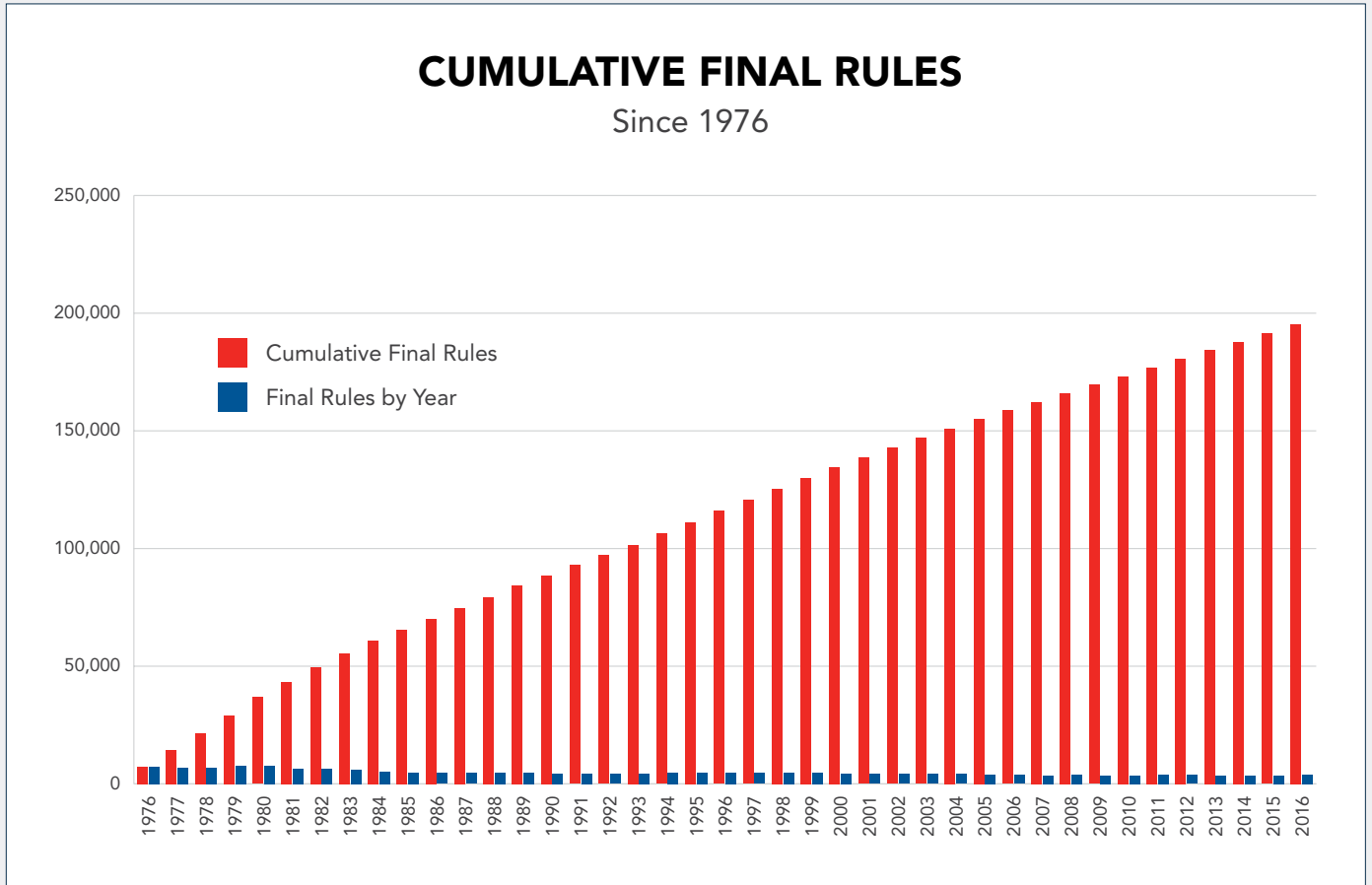
SHOULD WE BE CONCERNED ABOUT THE NUMBER OF REGULATIONS PRODUCED BY THE FEDERAL GOVERNMENT EACH YEAR?

While the administrative state is massive, all regulations are not equal. Some regulations keep society functioning while others fundamentally transform society. Controlling the administrative state first requires a clear understanding of the types of regulations that impose the most cost on society.

The best way to understand our expanding regulatory burden is to identify which regulations cause the most impact and find ways to ensure that federal agencies are more careful when they write the most costly rules.

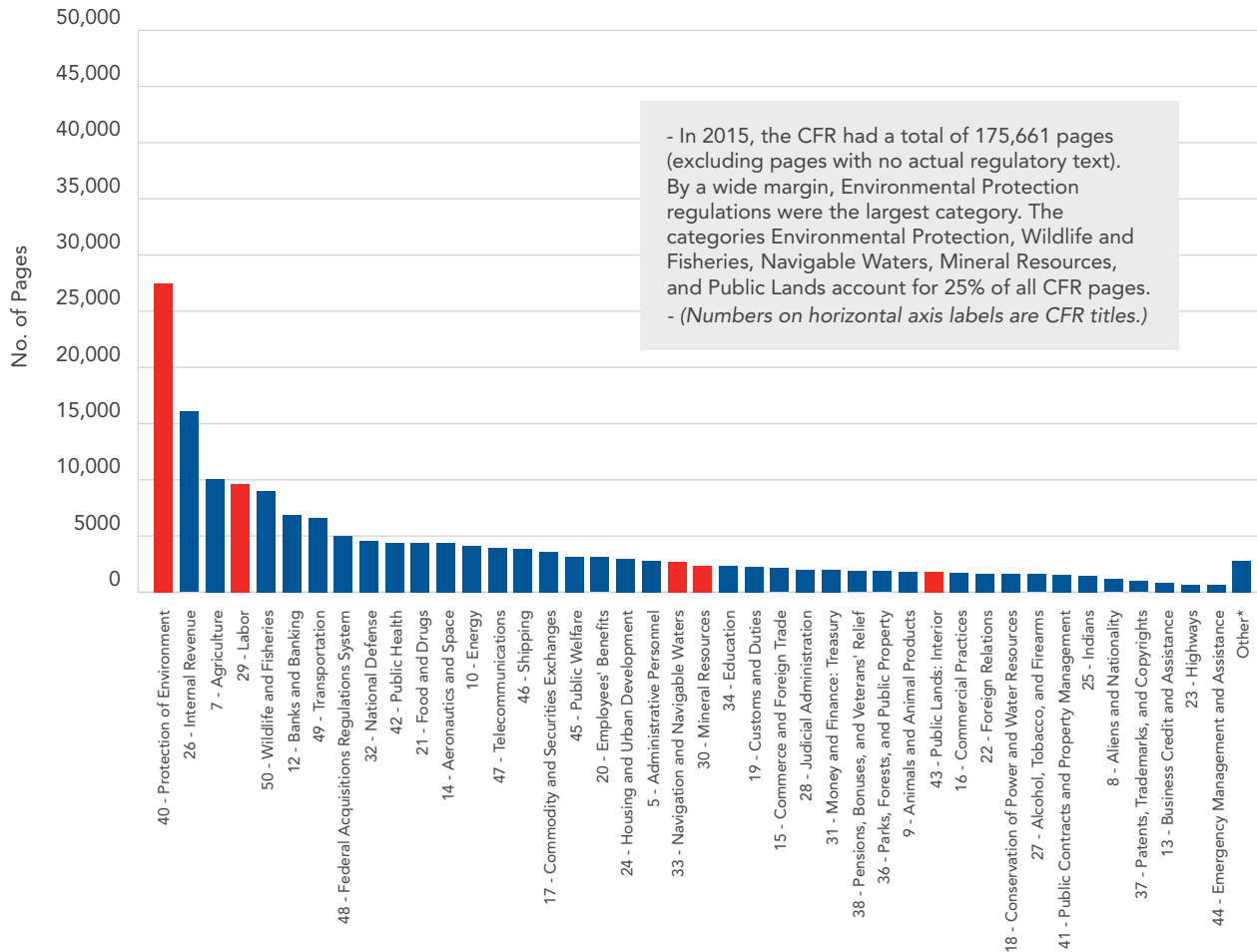
Finally, it must be noted that since all the rules in this report are final, the report merely identifies the most costly rules so that Congress, the administration, and the public can better understand the types of rules that should be subject to greater scrutiny in future agency rulemakings.

THE CUMULATIVE NUMBER OF FEDERAL REGULATIONS INCREASES EVERY YEAR.



WHICH AGENCIES PUT OUT THE MOST REGULATIONS?

WHY ENVIRONMENTAL REGULATIONS ARE THE FOCUS OF WRATH



- In 2015, the CFR had a total of 175,661 pages (excluding pages with no actual regulatory text). By a wide margin, Environmental Protection regulations were the largest category. The categories Environmental Protection, Wildlife and Fisheries, Navigable Waters, Mineral Resources, and Public Lands account for 25% of all CFR pages.
 - (Numbers on horizontal axis labels are CFR titles.)

* "Other" includes Federal Elections, Postal Service, The President, Grants and Agreements, Domestic Security, Accounts, and General Provisions.

WHAT ARE THE CATEGORIES OF REGULATIONS?

On average, since 1976, roughly 4,760 new regulations are issued each year. The vast majority are relatively simple rules that keep our legal system operating.¹

Some regulations, however, are controversial, carry sizable costs, or have disruptive impacts on our economy. Generally, these regulations are referred to as “significant regulations” and they receive somewhat more scrutiny under the current system of regulatory review. About 10% of all regulations fall into this category. Between 2008 and 2016, federal agencies issued 3,261 significant rules.

In addition there is a small group of regulations that impose an annual cost of \$100 million-plus. These are often called “economically significant rules”; however, for purposes of simplicity this report calls these regulations “\$100 million-plus rules.” From 2008 through 2016, the number of regulations identified in this category is about 140. This is an approximate number since agencies analyze the regulatory cost to the economy for only a small number of regulations.²

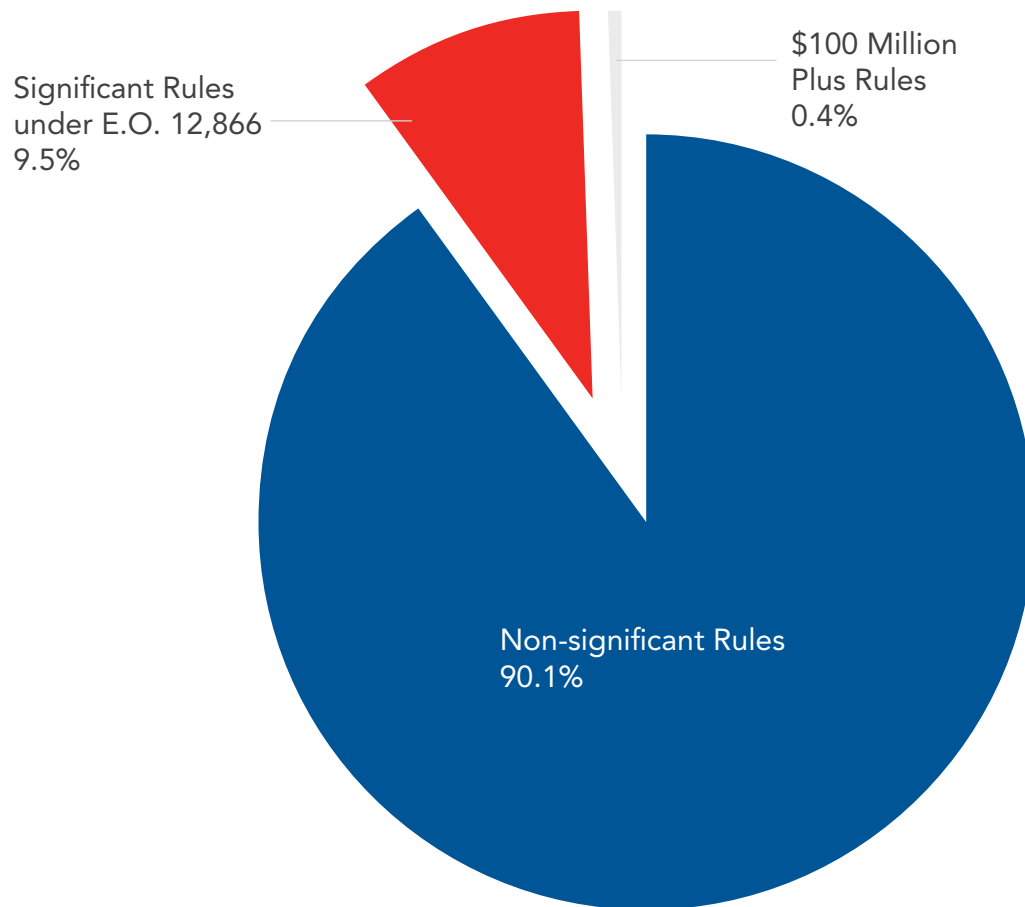
Finally there are the high-impact regulations that have an annual cost of over \$1 billion. There are only a few of these high-impact regulations finalized each year.

¹ For the period of this report, 2008–2016, the average number of regulations issued annually is 3,654.

² There is no federal database of analyses required by Executive Order (E.O.) 12,866 for estimating the costs and benefits of the most impactful regulations, often called Regulatory Impact Analyses (RIAs). However, the database of “major regulations” submitted to the Government Accountability Office (GAO) as required by the CRA captures virtually all of the most impactful regulations produced by both executive branch and independent regulatory agencies. Among those rules, the average number of RIAs completed each year covered by this report is 60, which includes nearly all of the rules that cost \$100 million or more annually, as well as many rules with lesser annual costs.

THE PERCENTAGE OF REGULATIONS BY CATEGORY

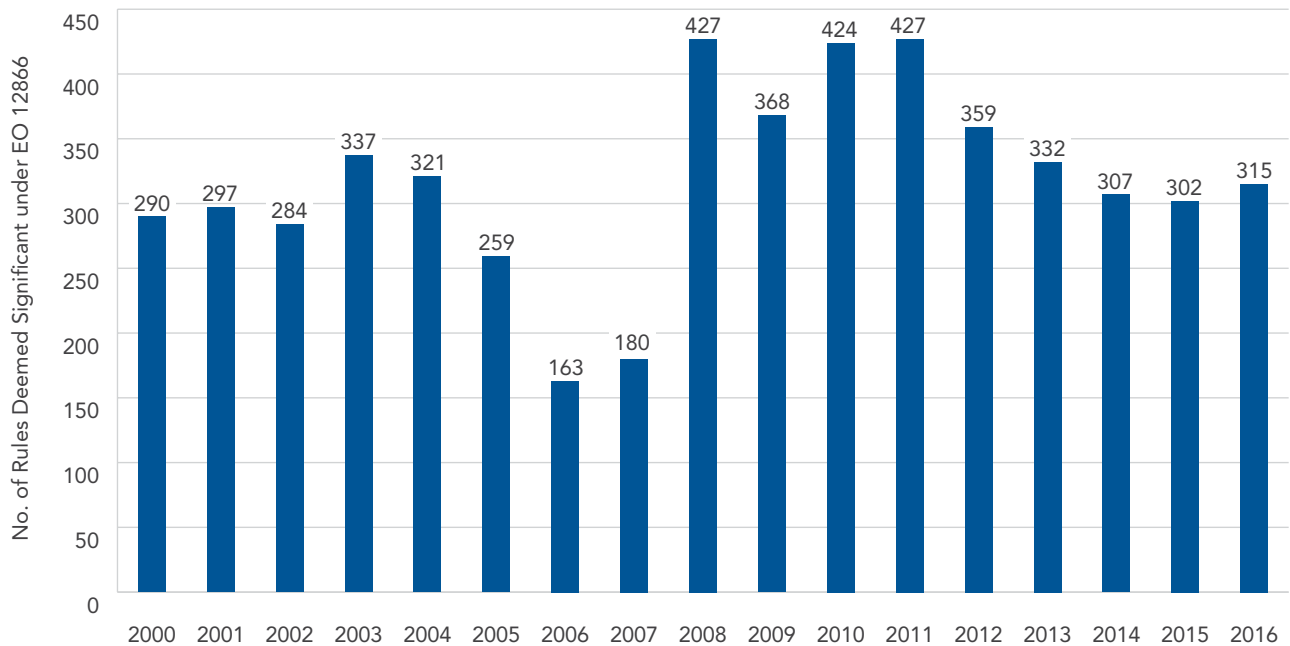
2008–2016



HOW MANY REGULATIONS DO AGENCIES BELIEVE ARE SIGNIFICANT?

Narrowing the focus from all regulations issued in a given year to only significant rules quickly reduces the number of regulations of concern each year from thousands to hundreds. The chart shows the number of rules that agencies identify each year as significant rules, as required by Executive Order (E.O.) 12,866. Not all of these rules have a truly significant impact, but these are the rules that the agencies identify as those that *might* have such an impact. On average, the number of significant rules is less than 10% of the total number of rules each year.³

NUMBER OF SIGNIFICANT RULES UNDER E.O. 12,866

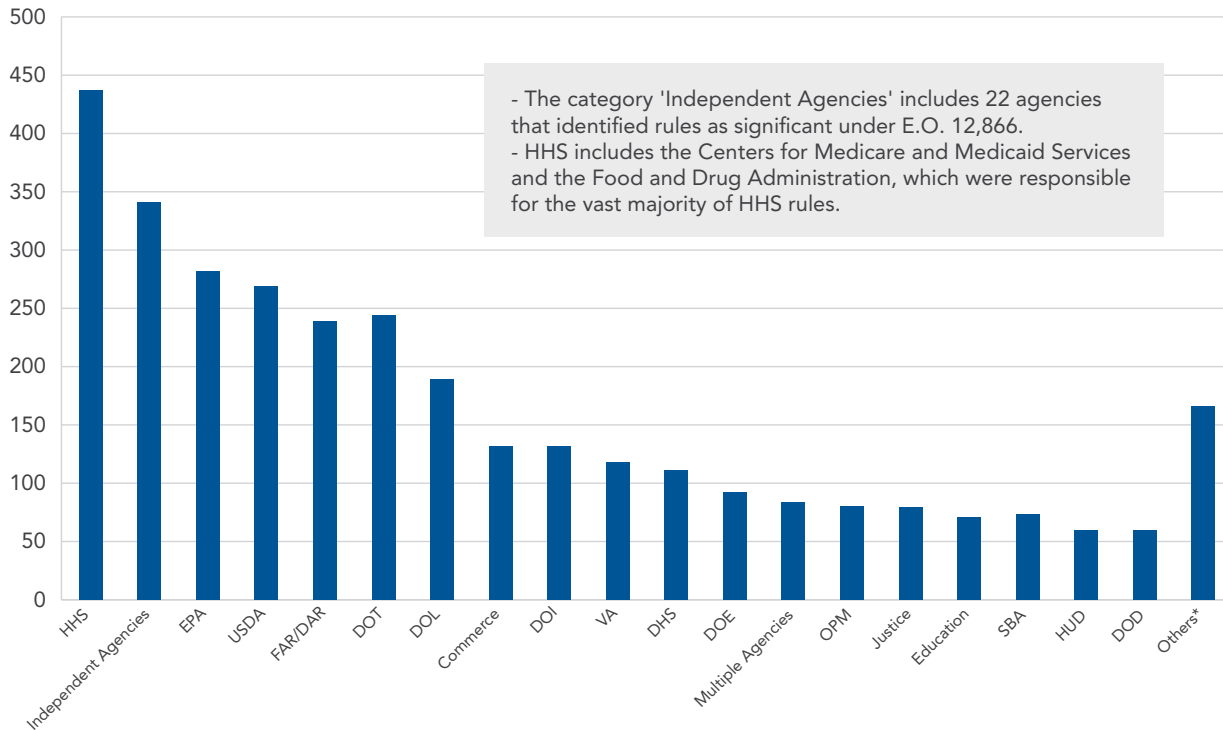


³ An exception to this characterization is rules promulgated by independent agencies. Independent agencies are not covered by E.O. 12,866, and in general, unless required by statute, independent agencies do not do impact analyses for their regulations. Thus, the potential exists for there to be a greater number of high-impact rules when one includes independent agency rules.

AGENCIES DO NOT ALL ISSUE THE SAME NUMBER OF "SIGNIFICANT RULES"; SOME AGENCIES PRODUCE MANY MORE THAN OTHER AGENCIES.

TOTAL SIGNIFICANT RULES BY AGENCY: 2008 THROUGH 2016

FEDERAL AGENCIES IDENTIFIED 3,261 RULES AS SIGNIFICANT UNDER E.O. 12,866



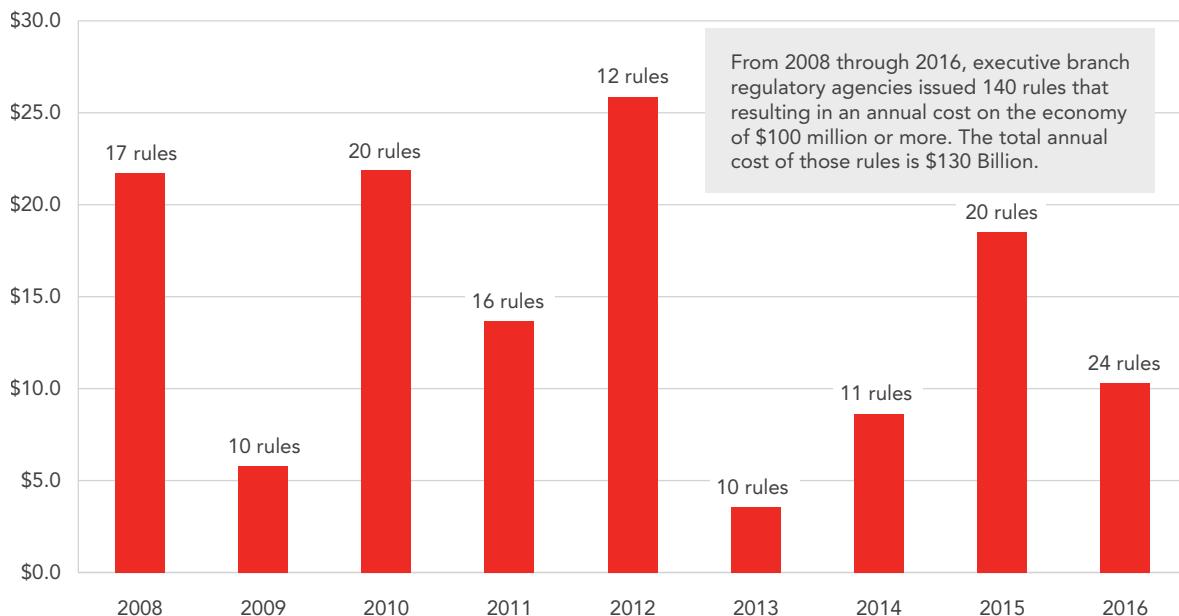
* 'Others' includes the State Department, NASA, GSA, IRS, Treasury Department, and Government Ethics Office.

WHAT IS THE ANNUAL COST OF THE COSTLIEST RULES?

Out of the 3,261 significant rules issued between 2008 and 2016 there is a small group (140 rules) that have an annual cost of \$100 million or more. Only about 4.3% of the significant rules are \$100 million-plus rules. Most of the significant rules do not impose costs over \$100 million on the economy since they are lower-cost rules, transfer rules, technical corrections, or paperwork. These \$100 million-plus rules represent most of the known cost of the regulatory process. However, it should be noted that agencies only prepare a cost analysis for a small number of rules.

ANNUAL COST OF \$100 MILLION PLUS RULES ISSUED BY ALL EXECUTIVE BRANCH AGENCIES

2008–2016

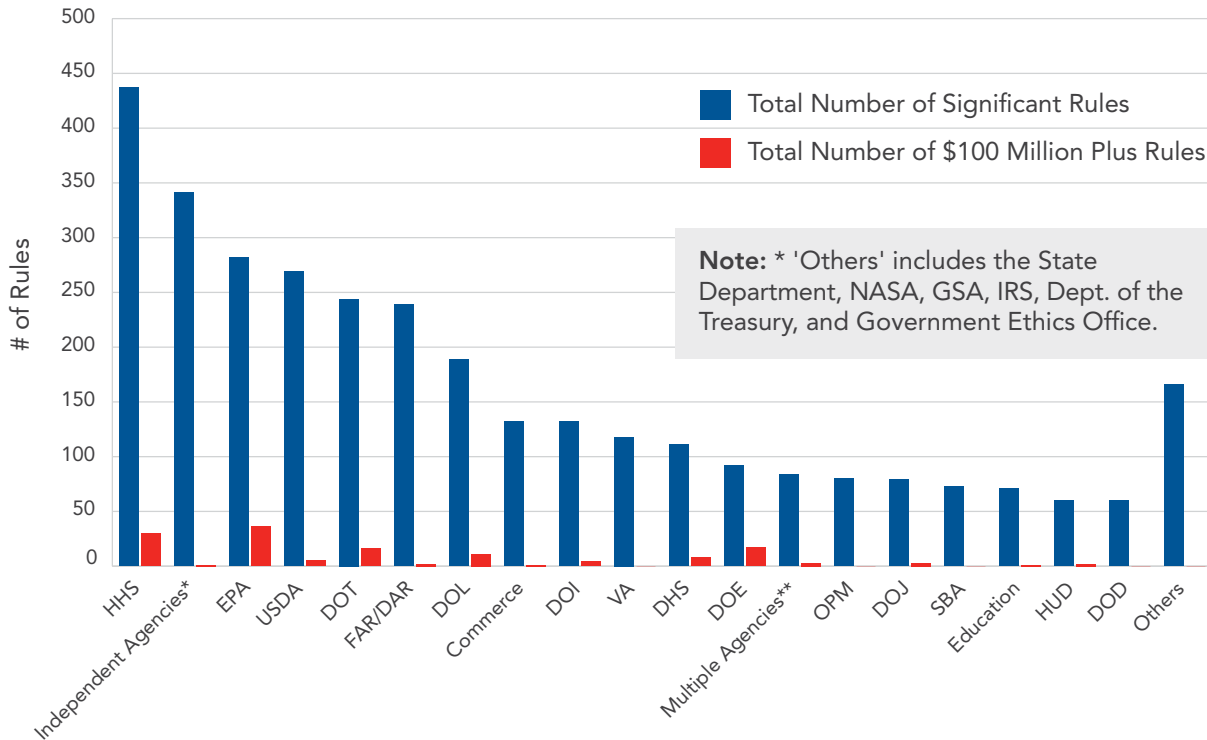


Note: The chart contains only rules by executive branch agencies.

COMPARISON BY AGENCY OF THE NUMBER OF SIGNIFICANT RULES VS. \$100 MILLION-PLUS RULES, 2008–2016

COMPARISON OF NUMBER OF SIGNIFICANT VS. \$100 MILLION PLUS RULES BY AGENCY

Rules from 2008 through 2016



* The 1 \$100 Million Plus was from EEOC, most other independent agencies do not submit rules to OIRA under EO 12,866.

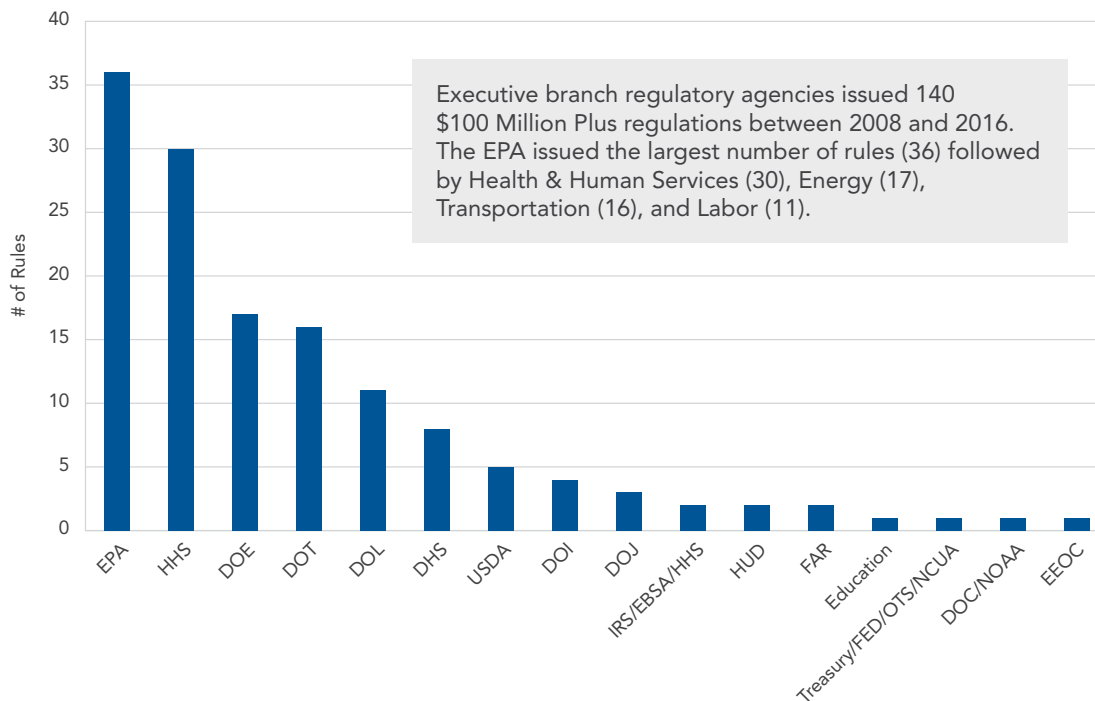
** All 3 \$100 Million Plus were jointly produced by financial regulatory agencies.

WHICH AGENCY ISSUES THE MOST \$100 MILLION-PLUS RULES?

The number of \$100 million-plus rules shown in the chart is highly concentrated in just a few agencies. The chart shows the distribution by agency of the \$130 billion in annual regulatory costs imposed by annual \$100 million-plus rules issued between 2008 and 2016.

NUMBER OF \$100 MILLION PLUS RULES ISSUED BY AGENCY

2008–2016



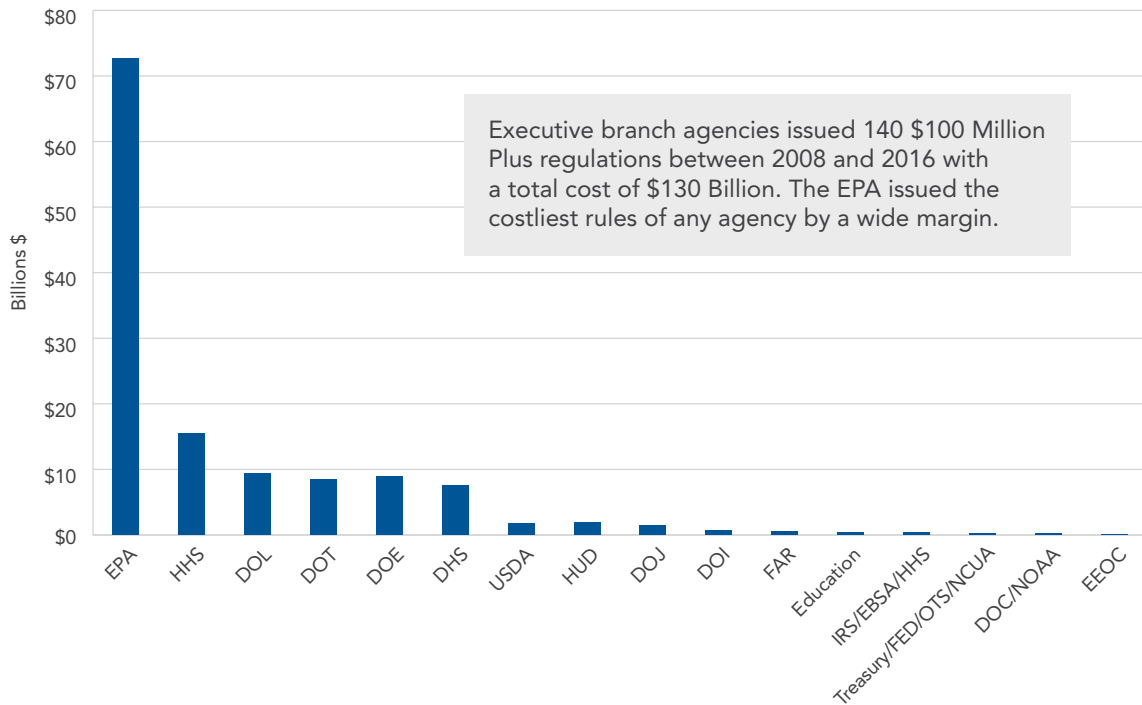
Note: The chart contains primarily rules by executive branch agencies.

WHICH AGENCY IMPOSES THE GREATEST REGULATORY BURDEN?

EPA imposes the greatest amount of regulatory burden as measured by the number of \$100 million-plus rules issued as well as by annual cost of the rules. EPA issued 36 of the 140 \$100 million-plus rules from 2008 to 2016 and these rules accounted for \$72.7 billion of the \$130 billion cost for all such rules; that is, 56% of the total cost of all \$100 million-plus rules. The following chart compares the cost of EPA's rules against the cost of the \$100 million-plus rules issued by all other federal executive branch agencies.

\$100 MILLION PLUS RULE ANNUAL COSTS BY AGENCY

2008–2016

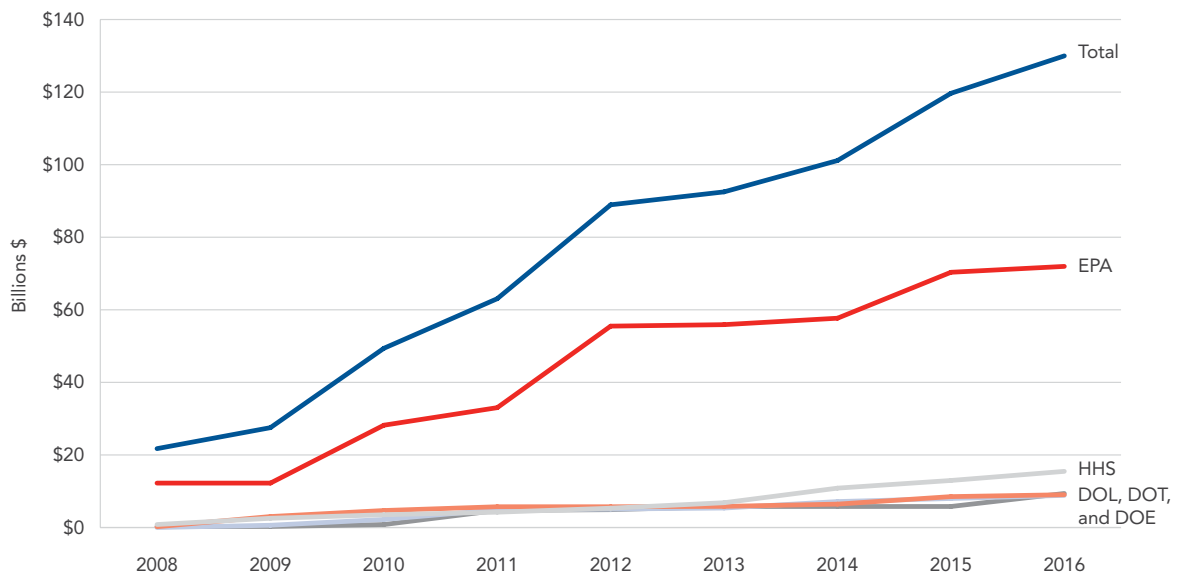


Note: The chart contains primarily rules by executive branch agencies.

WHAT ARE THE CUMULATIVE COSTS BY AGENCY FOR RULES WITH AN ANNUAL COST OF \$100 MILLION-PLUS OR MORE PER YEAR FROM 2008 TO 2016?

CUMULATIVE ANNUAL COST OF \$100 MILLION PLUS RULES

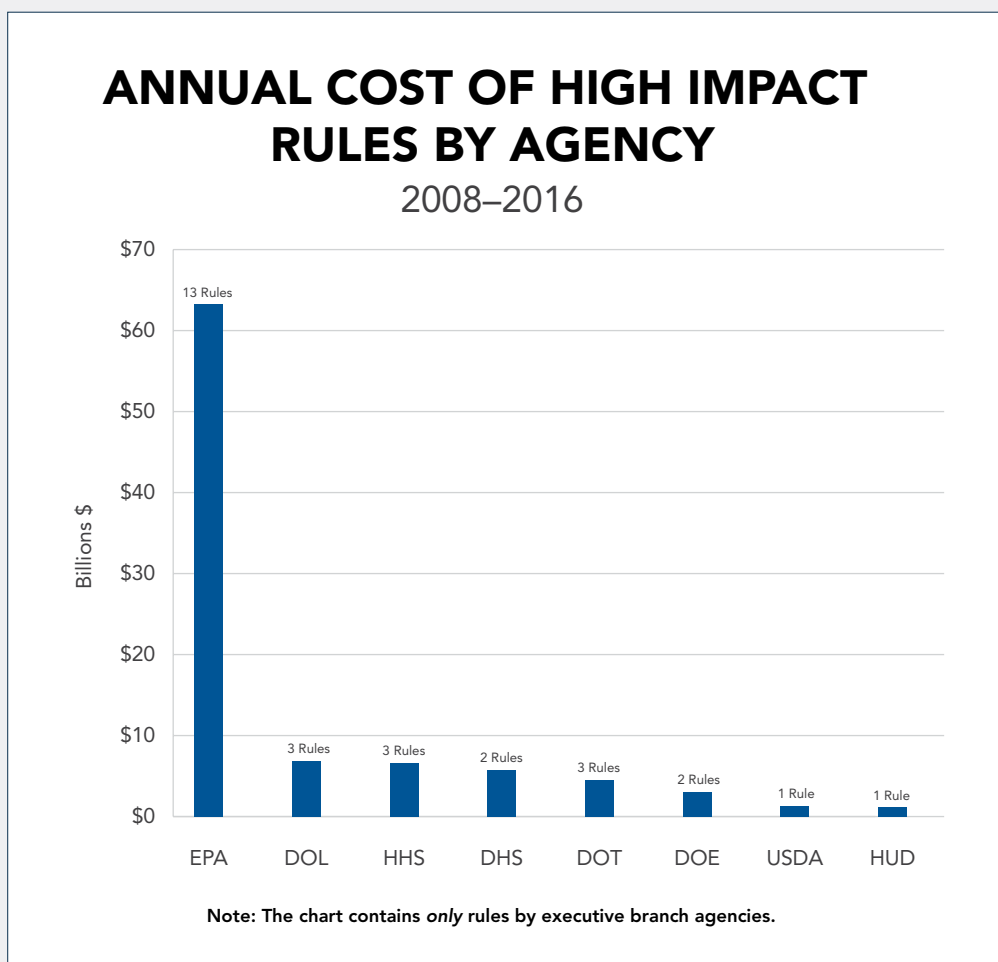
Cumulative Costs by Agency for Top Five Executive Branch Agencies



WHO PRODUCES THE LARGEST NUMBER OF REGULATIONS HAVING AN ANNUAL COST OF \$1 BILLION OR MORE?

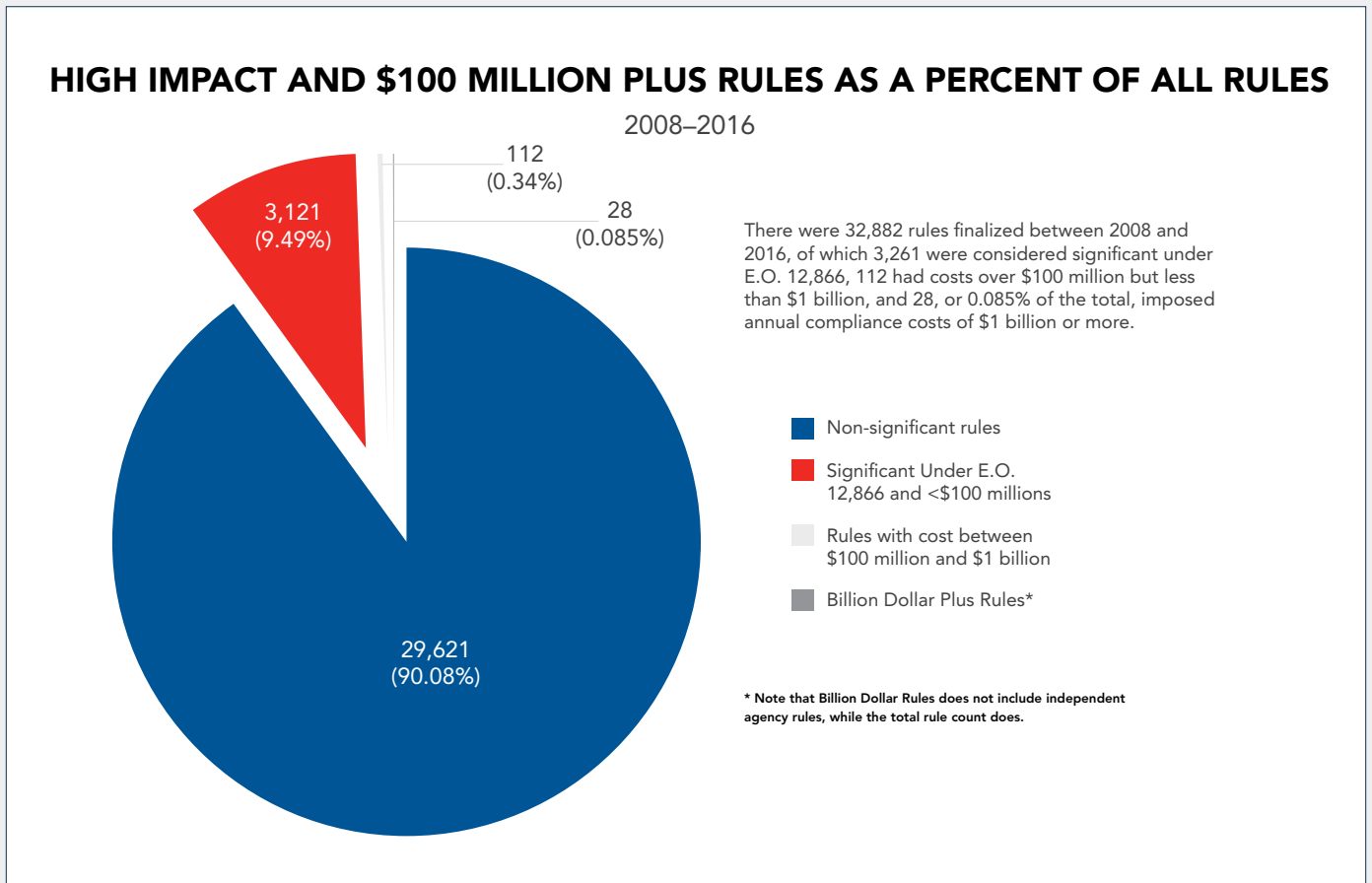
EPA leads all agencies when it comes to issuing high-impact rules having an annual cost of \$1 billion or more. Among executive branch regulatory agencies, EPA issued 13 of the 28 rules that had an annual cost of \$1 billion or more between 2008 and 2016. The next closest agencies were the Department of Labor, Department of Health and Human Services, and Department of Transportation at three rules each.

Between 2008 and 2016, these rules accounted for only 28 of the 32,882 rules federal agencies issued.



WILL AGENCIES BE SIGNIFICANTLY BURDENED IF REQUIRED TO UNDERTAKE MORE SCRUTINY OF HIGH-IMPACT RULES AND RULES HAVING AN ANNUAL COST OF \$100 MILLION?

Since there are only a few high-impact rules or \$100 million-plus rules a year there should be little impact on agency resources. As the following chart shows, that burden would be very small since out of the 32,882 final rules between 2008 and 2016, only 140 rules at most would be subject to a more rigorous rulemaking process. High-impact rules were only 0.085% of all rules finalized between 2008 and 2016. The \$100 million-plus rules were only 0.34% of all rules finalized between 2008 and 2016.



TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

RECOMMENDATIONS

The most essential principle in *Taming the Administrative State* is to identify how to get the regulatory process structured so that agencies implement the intent of Congress, not the intent of the agency. After determining how to get the regulatory process right going forward, the next goal should be to clear out the regulatory underbrush of overreaching rules and out-of-date, duplicative rules that clutter the *Code of Federal Regulations*.

A. Getting Regulations Right Going Forward

Congress Should Pass the Regulatory Accountability Act

A modernized APA is needed to restore the kinds of checks and balances on federal agency action that the 1946 APA—the “bill of rights” for the regulatory state—intended to provide the American people. Congress has a huge stake in getting the rulemaking process right since it must reclaim its Article I Constitutional legislative authority. Over the decades Congress delegated law-making authority, in the form of rulemaking, to federal agencies. As the agencies received more delegated authority their rules became more aggressive and overreaching. As agencies received more delegated authority, the federal courts viewed the agencies as the experts and deferred to agency decisions. Eventually, in a divided government Congress was unable to reclaim its Article I authority since it could not override a presidential veto.

The Regulatory Accountability Act will help Congress reclaim its authority to ensure agencies implement its laws, by requiring agencies to be transparent when a rulemaking involves the most costly of regulations. By being transparent, the agency must provide the public with all of the data on which it relies, comply with Information Quality Act (IQA) requirements for scientific and economic data, and for factual disputes to allow for the public to question the agency. This process would put balance and accountability back into the federal rulemaking process, without undermining needed public safety and health protections. Moreover, by requiring agencies to undertake a serious review of the information forming the basis of the rule being proposed and by granting the public open access to



information and the right to question the agency, it is more likely that the agency will do a better job of implementing congressional intent for the most costly rules.

The President Should Mandate All Agencies Follow the Information Quality Act

Congress passed the IQA in 2000, requiring the Office of Management and Budget (OMB) to issue guidance to federal agencies to ensure “the quality, objectivity, utility, and integrity of information disseminated by Federal agencies.”⁴ IQA also requires individual federal agencies to issue their own guidelines.⁵ For example, OMB has issued requirements under IQA that agencies obtain peer review by qualified specialists before disseminating important scientific data.⁶ OMB guidance also requires agencies to implement mechanisms allowing affected persons to correct information used and released by agencies.⁷ Unfortunately, many agencies do not comply with their statutory duty of using the best quality data in rulemakings. Compounding the problem is the fact that some courts do not view the IQA as granting a private right of action to require the agency to fulfill its data quality obligations.⁸ In order to ensure that agencies are doing their job by using and disseminating the best quality data, the president should mandate that federal agencies follow the IQA as a condition of issuing a final rule.

The President Should Mandate That All Agencies Comply with the Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (UMRA)⁹ requires federal agencies to assess the effects of a rule on state and local governments and the private sector before imposing mandates on them of \$100 million or more per year without providing federal funding for state and local governments to

⁴ Pub. L. 106-554 sec. 515.

⁵ *Id.*

⁶ 70 Fed. Reg. 2664 (Jan. 14, 2005).

⁷ 67 Fed. Reg. 8452, 8459 (Feb. 22, 2002).

⁸ See e.g., *Salt Institute v. Leavitt*, 440 F.3d 156 (2006).

⁹ Pub. L. 104-4.

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

implement the mandate. UMRA requires agencies to determine if a less-costly alternative to a proposal exists. In essence, UMRA is intended to prevent federal agencies from shifting the costs of federal programs to the states. Since the purpose of UMRA is to provide regulatory relief to states and local governments that bear the burden of many regulations, particularly environmental mandates, the president should require compliance with UMRA as a condition to issuing a final rule.

The President Should Mandate All Agencies Comply with the Regulatory Flexibility Act

Congress passed the Regulatory Flexibility Act (RFA) in 1980 to give small entities a voice in the federal rulemaking process.¹⁰ Put simply, the RFA requires federal agencies to assess the economic impact of their planned regulations on small entities and to consider alternatives that would lessen those impacts. RFA requires each federal agency to review its proposed and final rules to determine if the rule in question will have a “significant economic impact on a substantial number of small entities.”¹¹ If the rule is expected to have such an impact, the agency must assess the anticipated economic impacts of the rule and evaluate whether alternative actions that would minimize the rule’s impact would still achieve the rule’s purpose.

In 1996, Congress passed the Small Business Regulatory Enforcement Fairness Act, which established small business advocacy review panels that take into account recommendations from small entities on proposed rules in order to minimize regulatory effects on small business.¹² The president should mandate that all agencies establish review panels to minimize the regulatory burden on small business as a condition of issuing a final rule.

¹⁰ 5 U.S.C. §§ 601-612.

¹¹ 5 U.S.C. §605(b).

¹² Pub. L. 104-121.



The President Should Mandate Agencies Conduct Employment Impact Analysis

Congress passed legislative provisions requiring the Environmental Protection Agency to conduct analyses of the impacts that particular regulations have on employment. Congress passed these provisions in order to determine if it should recalibrate environmental statutes to address employment effects.¹³ Congress enacted these provisions in the Clean Water Act,¹⁴ the Clean Air Act (CAA),¹⁵ the Solid Waste Disposal Act,¹⁶ the Toxic Substances Control Act,¹⁷ and the Comprehensive Environmental Response, Compensation and Liability Act.¹⁸

Unfortunately, EPA never conducted any of the evaluations of employment impacts required by the five environmental statutes. For instance, Section 321(a) of CAA requires the EPA to “conduct continuing evaluations of potential loss or shifts of employment.”¹⁹ In response to a Freedom of Information Act request from the U.S. Chamber, EPA stated that it could not find any records that indicated it prepared a continuing evaluation of the potential loss or shifts of employment resulting from its regulations. Specifically, EPA stated: “after conducting searches, neither the Office of Air and Radiation nor the Office of Policy were able to find any documents pertaining to your request.”²⁰

¹³ See 95 Cong. House Report 294 (Stating that “Section 304 of the committee bill [the Clean Air Act] is based on a nearly identical provision in the Federal Water Pollution Control Act.”).

¹⁴ 33 U.S.C. § 1367(e) (1972)(e).

¹⁵ 42 U.S.C. § 7621(a) (1977); § 321(a).

¹⁶ 42 U.S.C. § 6971 (1976); § 7001(e).

¹⁷ 15 U.S.C. § 2623 (1976); § 24(a).

¹⁸ 42 U.S.C. § 9610 (1980); § 110(e).

¹⁹ 42 U.S.C. § 7621(a).

²⁰ Letter from Jim DeMocker, Acting Director, EPA Office of Policy Analysis and Review to William L. Kovacs, U.S. Chamber of Commerce, Freedom of Information Request No. EPA-HQ-2012-001352 (June 14, 2013).

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

In 2016, a federal district court determined that Section 321(a) of CAA is a nondiscretionary duty of EPA.²¹ The court held that “Congress unmistakably intended to track and monitor the effects of the Clean Air Act and its implementing regulations on employment in order to improve the legislative and regulatory processes.”²² Although EPA claimed that it had complied with Section 321(a) by its use of Regulatory Impact Analyses (RIAs) in rulemaking proceedings, the court held that EPA failed to be in compliance with CAA’s job study analysis requirements.²³ The court ordered EPA to submit a plan to study job impacts.²⁴ EPA should drop any appeal of the court’s ruling and comply with the ruling.

B. Systematically Removing Overreaching and Out-of-Date, Duplicative Regulations

Congress Should Aggressively Utilize the Congressional Review Act

The Congressional Review Act (CRA) enables Congress to quickly undue overly burdensome regulations. Congress can utilize CRA within 60 legislative days of the adoption of a regulation and pass resolutions disapproving of the rule. What makes CRA such a valuable tool to combat harmful regulations is that it provides for a modified voting process in the Senate in which only a majority of members are needed to pass a resolution of disapproval. Once both houses of Congress pass a resolution of disapproval, the president can sign the resolution, effectively terminating a regulation. After a resolution of disapproval is signed by the president, an agency cannot adopt a substantially similar rule.²⁵ CRA is particularly useful for rolling back midnight regulations that are put forward by an outgoing administration. Congress and the president should use this mechanism to roll back overly burdensome last-minute rules.

²¹ Memorandum Opinion and Order, *Murray Energy Corp. v. McCarthy*, No 14-cv-39, at *21 (N.D. W. Va. Oct. 17, 2016).

²² *Id.* at 39.

²³ *Id.* at 57.

²⁴ *Id.* at 64.

²⁵ See 5 U.S.C. § 801 *et seq.*



The President Should Aggressively Mandate Periodic Reviews of Rules

The president has several options for reviewing, amending, or repealing regulations so as to clear out the regulatory underbrush of overreaching rules and out-of-date, duplicative rules that clutter the *Code of Federal Regulations*. Section 610 of the Regulatory Flexibility Act requires agencies to conduct a review of rules that have or will have a significant economic impact on a substantial number of small entities within 10 years of a regulation's promulgation. In doing so, agencies must publish in the *Federal Register* a list of such rules that are to be reviewed within the following 12 months. The purpose of the review is to determine whether these types of regulations should either continue to operate as written, be amended, or be removed consistent with statutory objectives with the aim of minimizing impacts on small entities. Agencies conducting Section 610 evaluations must take into consideration the following about a rule: (1) its continued need, (2) the nature of complaints or comments about it, (3) its complexity, (4) whether it is duplicative or overlaps with another rule, and (5) the length of time since its last evaluation and whether other factors affect the rule, like technology and economic change.²⁶

For example since 2000, the Environmental Protection Agency has completed nearly 30 retrospective reviews under Section 610 of the RFA, including the Ground Water Rule and clean water discharge rules related to confined animal feeding operations.²⁷ Other agencies, including the Department of Transportation,²⁸ Securities and Exchange Commission,²⁹ Department of Agriculture,³⁰ Consumer

²⁶ See 5 U.S.C. § 610.

²⁷ See Environmental Protection Agency "Regulatory Flexibility for Small Entities, Section 610 Reviews" (last visited Feb. 13, 2017 1:12 P.M.) available at <https://www.epa.gov/reg-flex/section-610-reviews>.

²⁸ 78 Fed. Reg. 27169 (May 9, 2013) (Pipeline and Hazardous Materials Safety Administration review).

²⁹ 81 Fed. Reg. 64362 (Sept. 20, 2016) (Publication of SEC list of rules scheduled for 2016 review).

³⁰ 76 Fed. Reg. 37617 (June 28, 2011) (Confirmation of regulations regarding handling of grapes grown in designated area of southeastern California); 75 Fed. Reg. 22213 (Apr. 28, 2010) (Review of Minimum Quality and Handling Standards for Peanuts Marketed in the U.S.); 74 Fed. Reg. 11835 (Mar. 30, 2009) (Confirmation of regulations under Perishable Agricultural Commodities Act).

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

Product and Safety Commission,³¹ and the Occupational Safety and Health Administration,³² have also completed Section 610 retrospective reviews.

Unfortunately, Section 610 of RFA does not apply to all rules and applies specifically only to those that impact small entities. Both Democratic and Republican administrations have taken steps to retroactively review already existing regulations. In 1993, President Clinton issued Executive Order 12,866, which required agencies to establish programs to conduct a retrospective review of significant regulations in order to “make the agency’s regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President’s priorities....”³³ The George W. Bush administration asked for public nominations in 2001 of existing rules and deemed 23 of them as high-priority for review, with the majority them being Department of Labor and EPA rules.³⁴ In 2004, OMB specifically targeted regulations impacting manufacturing and chose to prioritize 76 regulations impacting that sector of those nominated by the public.³⁵ In 2011, the Obama administration issued Executive Order 13,563, requiring agencies to submit plans for retroactive review of rules that “may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.”³⁶

The current administration has ordered that agencies must identify two regulations to be repealed for each one proposed and that the total incremental costs of a new proposed regulation in 2017—including the two to be repealed—are not to be greater than zero.³⁷ Although this approach is the most

³¹ 81 Fed. Reg. 91923 (Sept. 19, 2016) (Section 610 review of Standard for the Flammability of Mattress Sets).

³² 75 Fed. Reg. 24509 (May 5, 2010) (Section 610 review of Methylene Chloride Standard).

³³ Executive Order 12,866 “Regulatory Planning and Review” sec. 5 (Sept. 30, 1993).

³⁴ John D. Graham, Paul R. Noe & Elizabeth L. Branch, *Managing the Regulatory State: The Experience of the Bush Administration*, 33 *Fordham Urb. L.J.* 102, 146 (2005).

³⁵ *Id.*

³⁶ 76 Fed. Reg. 3821, 3822 (Jan. 21, 2011).

³⁷ See Executive Order, “Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs,” (Jan. 30, 2017) available at <https://www.whitehouse.gov/the-press-office/2017/01/30/presidential-executive-order-reducing-regulation-and-controlling>.



aggressive at rolling back existing regulations, statutory constraints on agencies many times require final rules to be subjected to the full rulemaking process, which can be costly and time-consuming.³⁸

Drawing on Section 610 of RFA and the executive actions of several administrations, including the current administration, these continuous reviews of existing regulations attempt to hold the agencies accountable for eliminating out-of-date and duplicative regulations, what is needed by the current administration to make the effort a success is perseverance; a trait abandoned by previous administrations as the process is extremely tedious.

Petitions for Amendment or Repeal of Regulations

Although presidential administrations and Congress have attempted to alleviate regulatory burdens through retrospective review processes, relatively few rules overall have been amended or repealed. Congress has also provided a mechanism in the Administrative Procedure Act for citizens and regulated entities, those who have the most knowledge of the effects of overly burdensome rules, to petition agencies to issue, amend, or repeal existing rules.³⁹ Agencies have established procedures for how interested parties can petition for new rulemakings.⁴⁰ To prevent agency inaction in response to rulemaking petitions, it has been suggested “if necessary, the President by executive order should mandate that petitions be acted upon within a specified time.”⁴¹ The regulated community should use its statutory right to petition agencies for the amendment and repeal of overly burdensome regulations. Congress and the president should also exercise oversight of agencies that refuse to respond to these petitions.

³⁸ See, e.g., 42 U.S.C. § 7409(d). The Clean Air Act requires agencies to review and suggest revisions to National Ambient Air Quality Standards every five years.

³⁹ See 5 U.S.C. § 553(e).

⁴⁰ See, e.g., 47 C.F.R. § 1.401 (Federal Communications Commission petitions for rulemaking).

⁴¹ 60 Fed. Reg. 43108, 43109 (Aug. 18, 1995).

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

APPENDIX A

Definitions of Terms Used by the Federal Government and in This Report

GLOSSARY OF TERMS INTRODUCED IN THIS REPORT:

\$100 million-plus Rule: These are rules that have an annual cost of \$100 million or greater, as calculated by the agency issuing the regulation. (See the methodology discussion in Appendix E for additional information.)

High-Impact Rule: These are rules that have an annual cost of \$1 billion or greater, as calculated by the agency issuing the regulation.

OMB DEFINITIONS:

“Significant rules,” “economically significant rules,” and “major rules” are defined as follows by the relevant executive order, guidance document, and the Congressional Review Act:

1) Definition of “Significant under Executive Order 12866”

“Regulatory Planning and Review,” 58 Fed. Reg. 51,735 (October 4, 1993), Section 3(f):

“Significant Regulatory Action” means any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or



- Raise novel legal or policy issues arising out of legal mandates, the president’s priorities, or the principles set forth in this Executive Order.

2) Definition of “Economically Significant Rule” in OIRA Circular A-4

In 2003, OIRA issued a guidance document (Circular A-4) that laid out special analytical requirements for regulations that have an annual cost effect on the economy of \$100 million or more. The Circular A-4 guidance document adopted the term that was informally adopted by practitioners of regulatory analysis for this specific subset of significant rules: economically significant rules.

STATUTORY DEFINITION:

3) Definition of “Major Rule” in 5 U.S. Code Section 804—Definitions

The term “major rule” means any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—

- an annual effect on the economy of \$100,000,000 or more;
- a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or
- significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States–based enterprises to compete with foreign-based enterprises in domestic and export markets.

The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that act.

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

APPENDIX B

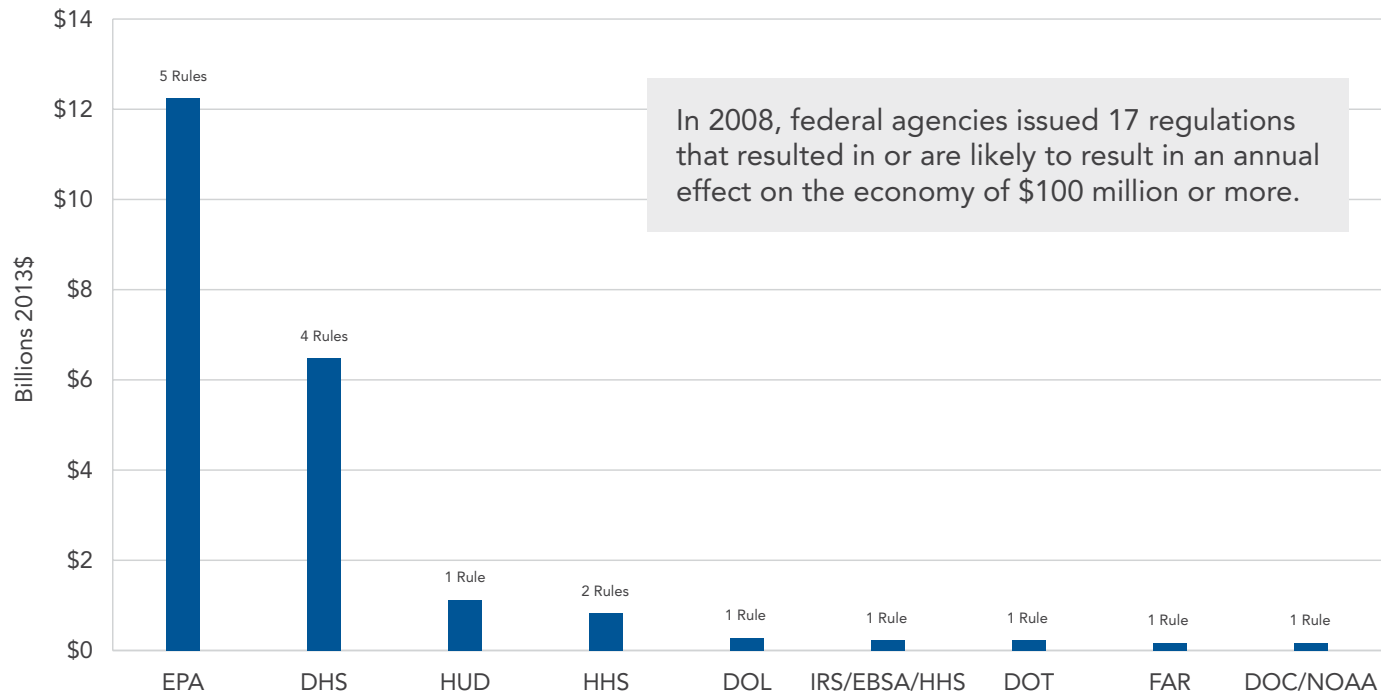
The next nine charts illustrate the number of \$100 million-plus rules issued by an agency for a specific year and the government's estimated cost of the rule.

As the series of charts illustrates, between 2008 and 2016 only a handful of agencies produced regulations that resulted in or are likely to result in an annual effect on the economy of \$100 million or more, and the same agencies keep producing these costly regulations year after year.



ANNUAL COST BY AGENCY OF 2008 \$100 MILLION PLUS RULES

Total Annual Cost of 2008 \$100 Million Plus Rules: \$21.7 Billion



In 2008, federal agencies issued 17 regulations that resulted in or are likely to result in an annual effect on the economy of \$100 million or more.

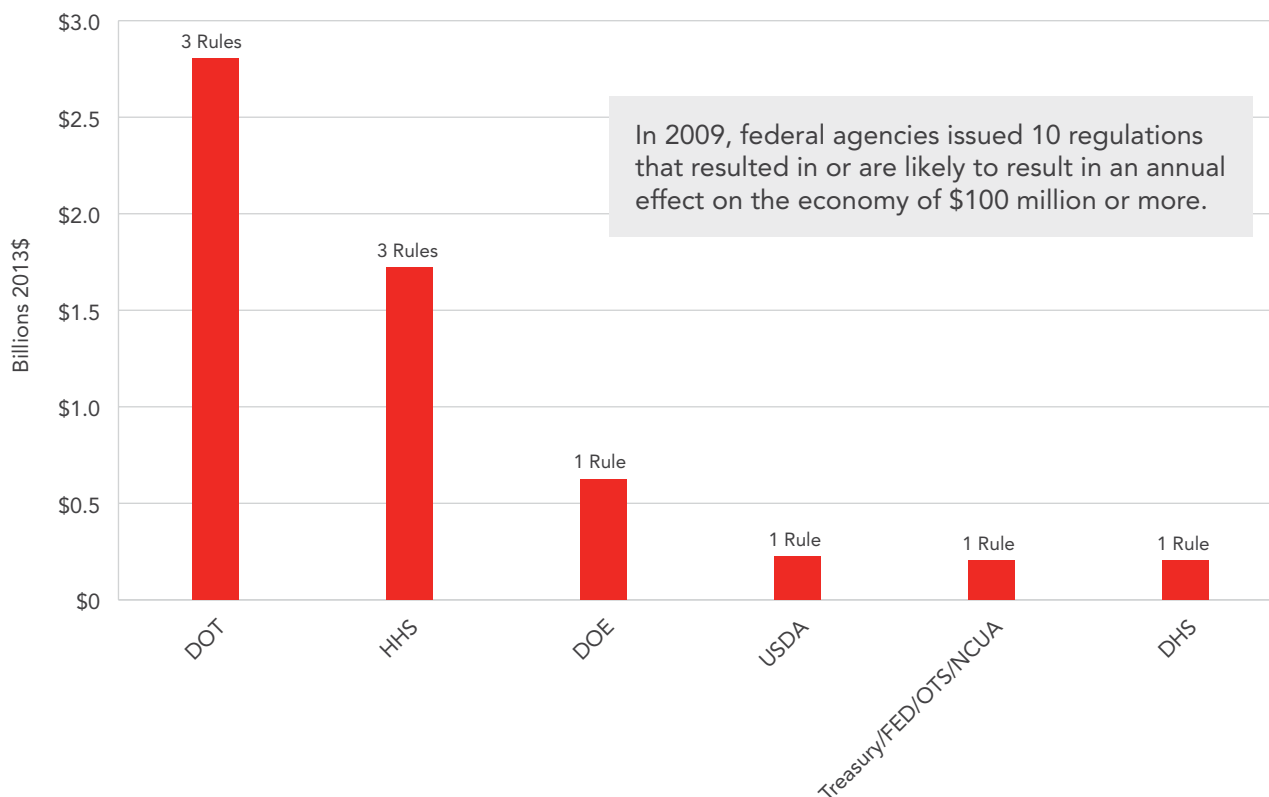
Note: The chart contains *only* rules by executive branch agencies.

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

ANNUAL COST BY AGENCY OF 2009 \$100 MILLION PLUS RULES

Total Annual Cost of 2009 \$100 Million Plus Rules: \$5.8 Billion

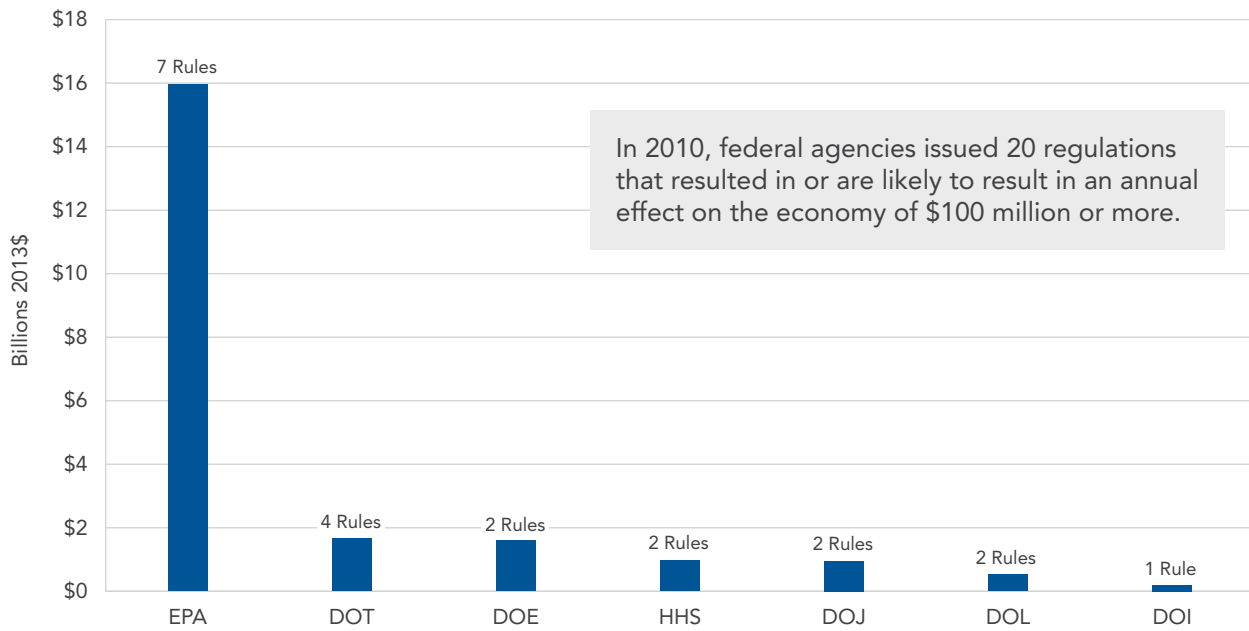


Note: The chart contains *only* rules by executive branch agencies.



ANNUAL COST BY AGENCY OF 2010 \$100 MILLION PLUS RULES

Total Annual Cost of 2010 \$100 Million Plus Rules: \$21.9 Billion



In 2010, federal agencies issued 20 regulations that resulted in or are likely to result in an annual effect on the economy of \$100 million or more.

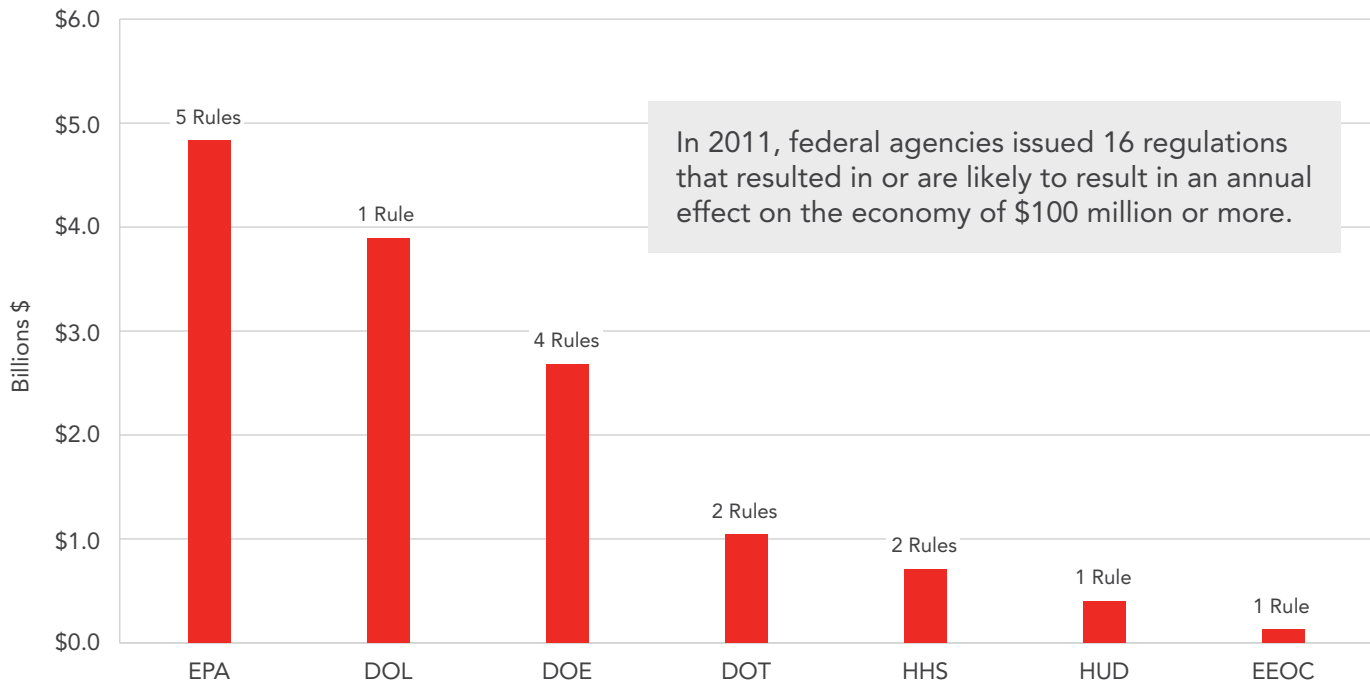
Note: The chart contains only rules by executive branch agencies.

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

ANNUAL COST BY AGENCY OF 2011 \$100 MILLION PLUS RULES

Total Annual Cost of 2011 \$100 Million Plus Rules: \$13.7 Billion

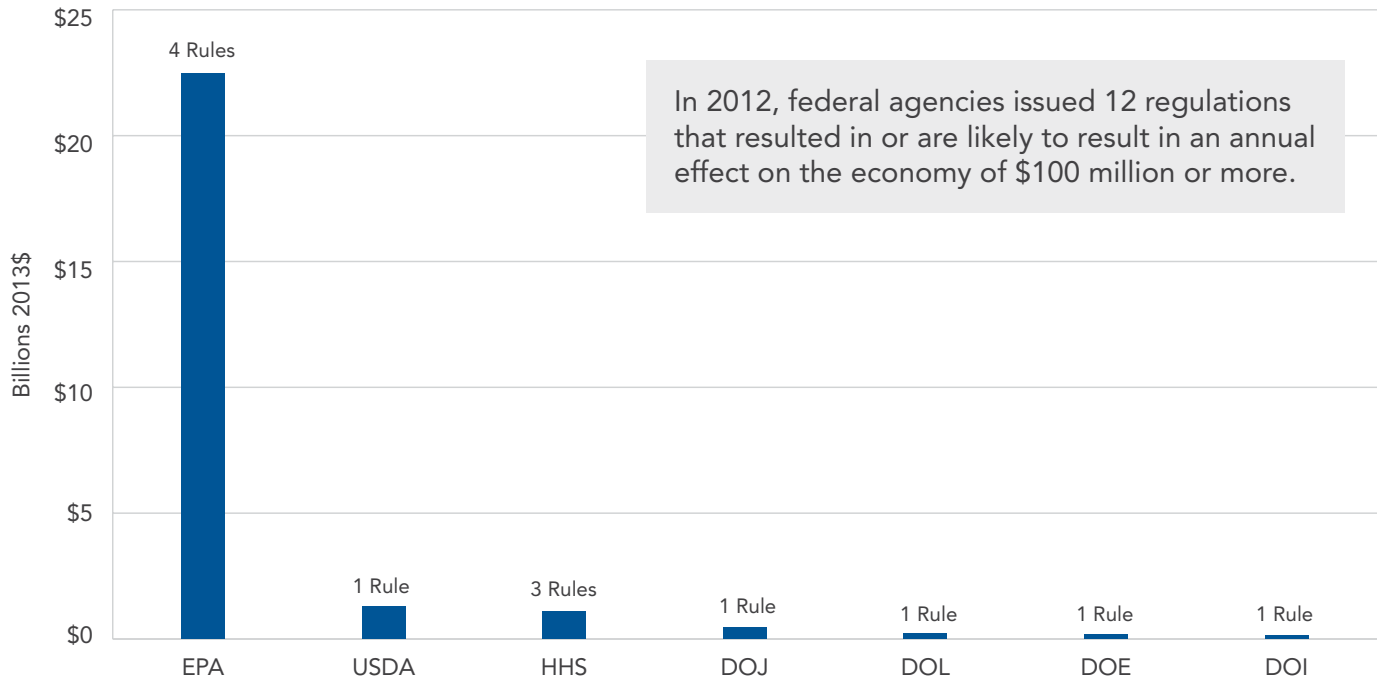


Note: The chart contains *only* rules by executive branch agencies.



ANNUAL COST BY AGENCY OF 2012 \$100 MILLION PLUS RULES

Total Annual Cost of 2012 \$100 Million Plus Rules: \$25.9 Billion



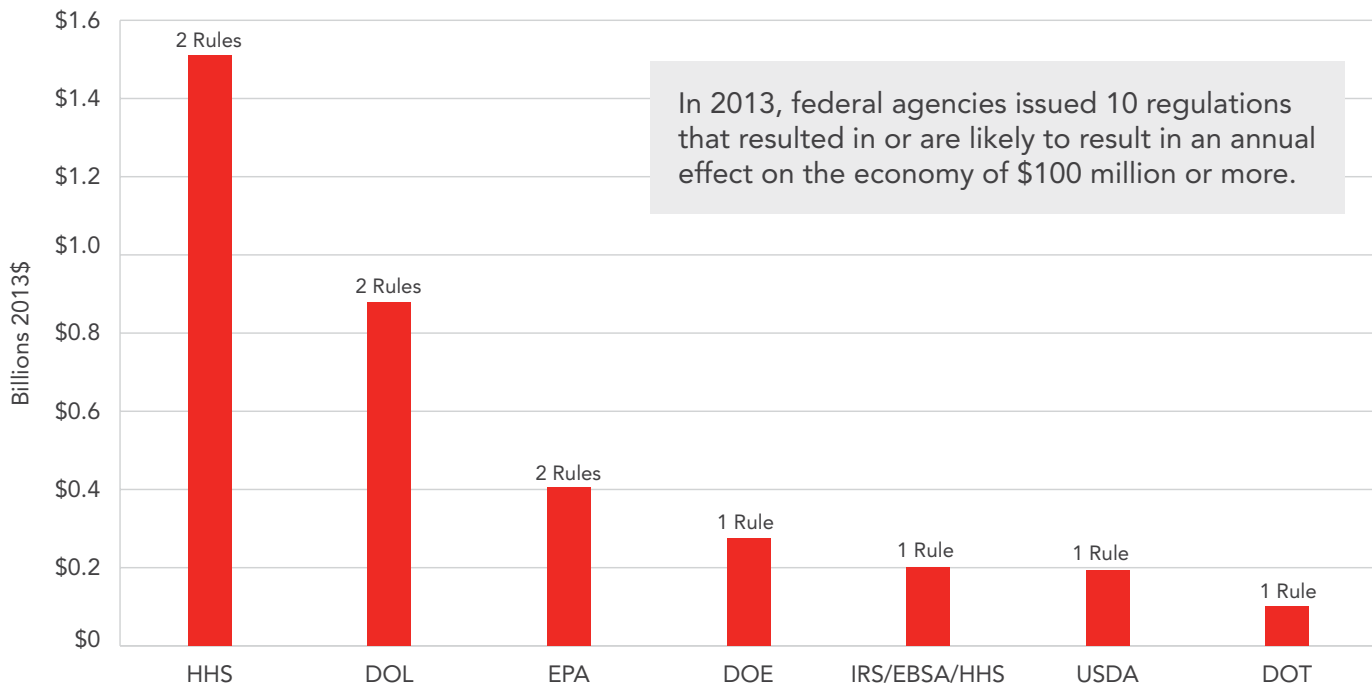
Note: The chart contains only rules by executive branch agencies.

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

ANNUAL COST BY AGENCY OF 2013 \$100 MILLION PLUS RULES

Total Annual Cost of 2013 \$100 Million Plus Rules: \$3.6 Billion

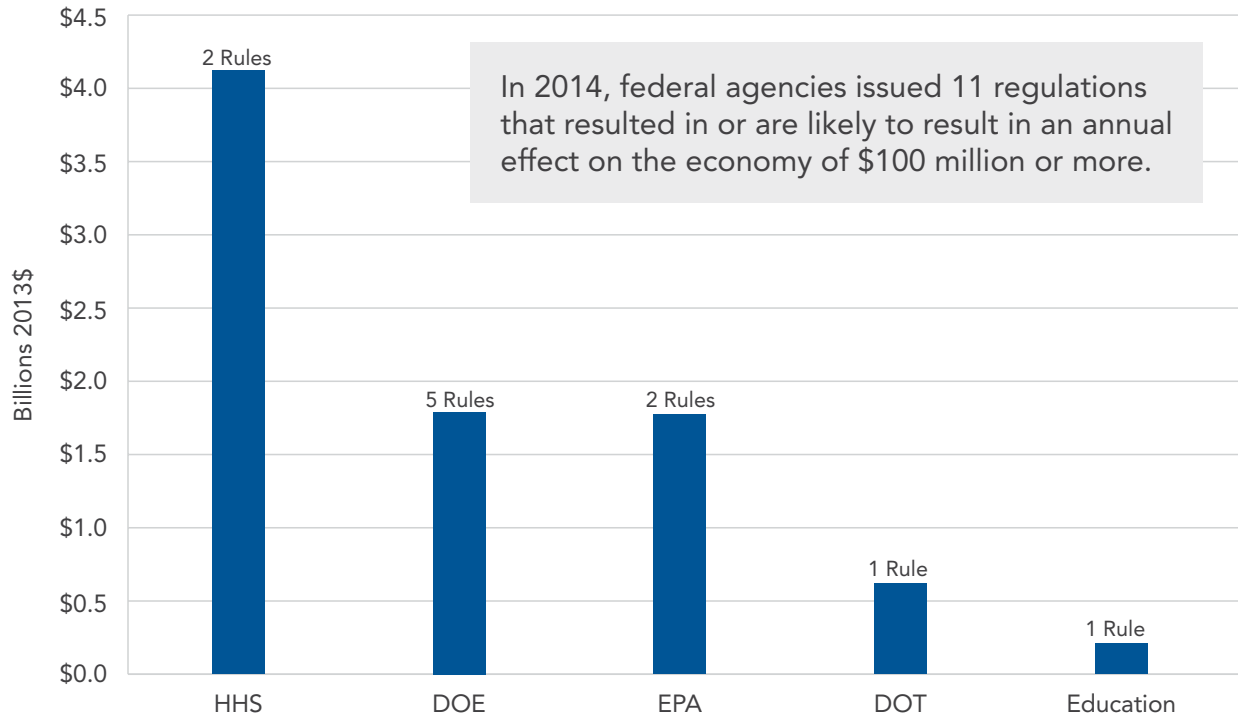


Note: The chart contains only rules by executive branch agencies.



ANNUAL COST BY AGENCY OF 2014 \$100 MILLION PLUS RULES

Total Annual Cost of 2014 \$100 Million Plus Rules: \$8.6 Billion



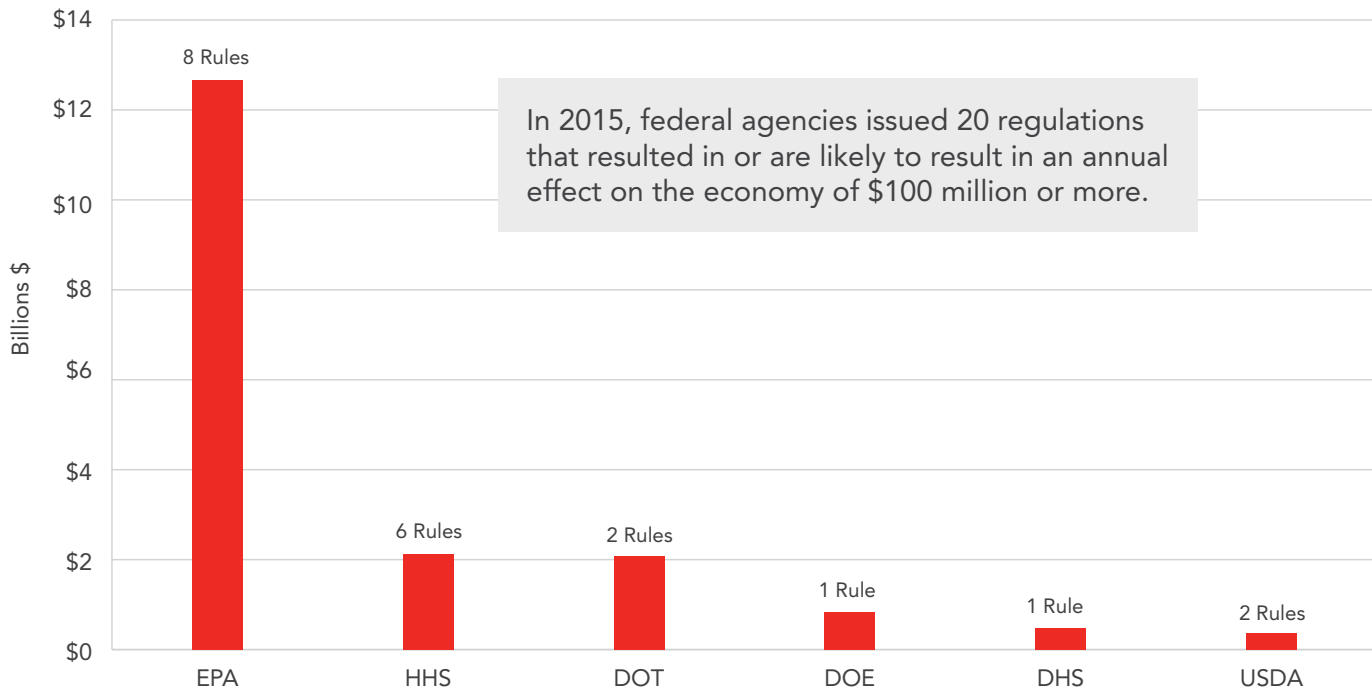
Note: The chart contains *only* rules by executive branch agencies.

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

ANNUAL COST BY AGENCY OF 2015 \$100 MILLION PLUS RULES

Total Annual Cost of 2015 \$100 Million Plus Rules: \$18.5 Billion

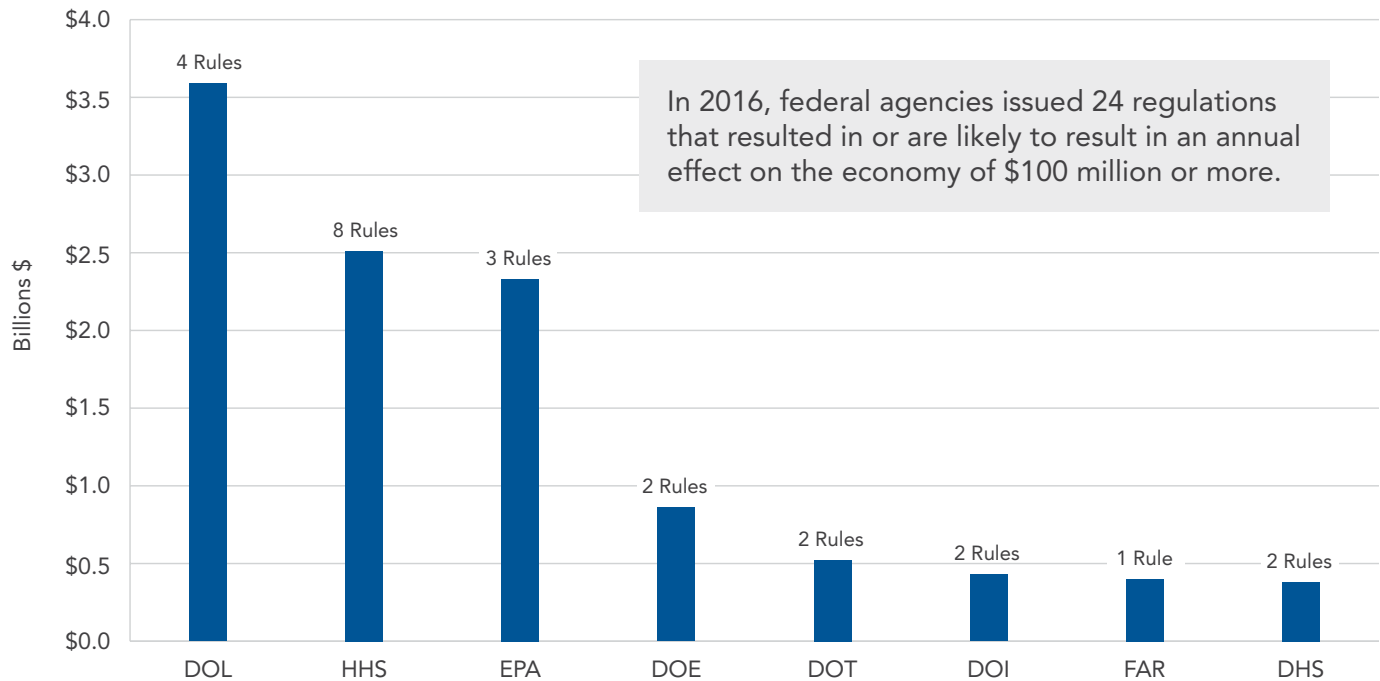


Note: The chart contains *only* rules by executive branch agencies.



ANNUAL COST BY AGENCY OF 2016 \$100 MILLION PLUS RULES

Total Annual Cost of 2016 \$100 Million Plus Rules: \$11 Billion



Note: The chart contains *only* rules by executive branch agencies.

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

APPENDIX C

Economically Significant Rules by Year: 2008-2016

2008		
Rule	Agency	Annual Cost (millions of 2013 dollars)
Secure Flight Program	DHS	\$361.8
Importer Security Filing and Additional Carrier Requirements	DHS	\$4,289.9
Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes	DHS	\$1,463.0
Documents Required for Travelers Departing from or Arriving in the United States at Sea and Land Ports-of-Entry from Within the Western Hemisphere	DHS	\$363.8
The Family and Medical Leave Act of 1993	DOL	\$284.2
National Ambient Air Quality Standards for Ozone	EPA	\$9,216.2
Lead; Renovation, Repair, and Painting Program	EPA	\$429.5
Control of Emissions of Air Pollution from Locomotive Engines and Marine Compression-Ignition Engines Less Than 30 Liters per Cylinder	EPA	\$463.4
National Ambient Air Quality Standards for Lead	EPA	\$1,893.8
Control of Emissions from Nonroad Spark-Ignition Engines and Equipment	EPA	\$239.1
Federal Acquisition Regulation; FAR Case 2007-013, Employment Eligibility Verification	FAR Council	\$170.5



Patient Safety and Quality Improvement	HHS	\$124.0
Use of Ozone-Depleting Substances; Removal of Essential-Use Designation (Epinephrine)	HHS/FDA	\$700.7
Real Estate Settlement Procedures Act (RESPA): Rule to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs	HUD	\$1,124.6
Right Whale Ship Strike Reduction	DOC-NOAA	\$169.2
Final Rules for Group Health Plans and Health Insurance Issuers under the Newborns' and Mothers' Health Protection Act	IRS/EBSA/HHS	\$224.3
Electronically Controlled Pneumatic Brake Systems	DOT	\$222.6

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

2009		
Rule	Agency	Annual Cost (millions of 2013 dollars)
Energy Conservation Program: Energy Conservation Standards and Test Procedures for General Service Fluorescent Lamps and Incandescent Reflector Lamps	DOE	\$625.0
Medicare Program; Surety Bond Requirement for Suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)	HHS	\$109.0
Health Insurance Reform; Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Electronic Transaction Standards	HHS	\$1,342.2
HIPAA Administrative Simplification: Modifications to Medical Data Code Set Standards to Adopt ICD-10-CM and ICD-10-PCS	HHS	\$270.0
Air Cargo Screening	DHS	\$202.3
Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Wild and Farm-Raised Fish and Shellfish, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts	USDA	\$225.8
Pipeline Safety: Integrity Management Program for Gas Distribution Pipelines	DOT-PHMSA	\$107.6
Federal Motor Vehicle Safety Standards; Roof Crush Resistance; Phase-In Reporting Requirements	DOT	\$1,139.9
Average Fuel Economy Standards Passenger Cars and Light Trucks Model Year 2011	DOT-NHTSA	\$1,555.9
Unfair or Deceptive Acts or Practices	Treasury/ FED/OTS/ NCUA	\$203.3



2010		
Rule	Agency	Annual Cost (millions of 2013 dollars)
Energy Conservation Program: Energy Conservation Standards for Small Electric Motors	DOE	\$288.9
Energy Conservation Program: Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters	DOE	\$1,306.0
National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines	EPA	\$252.3
Control of Emissions from New Marine Compression-Ignition Engines at or above 30 Liters per Cylinder	EPA	\$2,079.3
Lead; Amendment to the Opt-Out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program	EPA	\$347.6
Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule	EPA	\$11,277.2
Primary National Ambient Air Quality Standard for Sulfur Dioxide	EPA	\$1,079.0
National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines	EPA	\$408.1
National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants	EPA	\$509.7
Medicare Program; Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs	HHS	\$302.5
Medicare and Medicaid Programs; Electronic Health Record Incentive Program	HHS	\$673.4
Oil and Gas and Sulfur Operations in the Outer Continental Shelf—Increased Safety Measures for Energy Development on the Outer Continental Shelf	DOI	\$192.7

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

Nondiscrimination on the Basis of Disability in State and Local Government Services	DOJ	\$190.8
Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities	DOJ	\$763.3
Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans	DOL	\$372.5
Cranes and Derricks in Construction	DOL	\$162.3
Real-Time System Management Information Program	DOT	\$153.6
Electronic On-Board Recorders for Hours-of-Service Compliance	DOT	\$146.4
Automatic Dependent Surveillance-Broadcast (ADS-B) Out Performance Requirements to Support Air Traffic Control (ATC) Service	DOT	\$254.4
Positive Train Control	DOT	\$1,106.8



2011		
Rule	Agency	Annual Cost (millions of 2013 dollars)
Energy Conservation Program: Energy Conservation Standards for Residential Refrigerators, Refrigerator-Freezers, and Freezers	DOE	\$1,457.8
Energy Conservation Program: Energy Conservation Standards for Fluorescent Lamp Ballasts	DOE	\$382.2
Energy Conservation Program: Energy Conservation Standards for Residential Furnaces and Residential Central Air Conditioners and Heat Pumps	DOE	\$666.0
Energy Conservation: Standards, Clothes Dryers, Air Conditioners	DOE	\$170.5
Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals (CSAPR)	EPA	\$886.8
NESHAP for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters	EPA	\$1,503.3
NESHAP for Area Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters	EPA	\$526.2
Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units	EPA	\$249.1
Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles	EPA/DOT	\$1,672.0
Administrative Simplification: Adoption of Operating Rules for Eligibility for a Health Plan and Health Care Claim Status Transactions	HHS	\$508.9
Medicare Program; Medicare Shared Savings Program: Accountable Care Organizations	HHS	\$195.2
SAFE Mortgage Licensing Act: Minimum Licensing Standards and Oversight Responsibilities	HUD	\$397.2

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, as Amended	EEOC	\$125.5
Federal Motor Vehicle Safety Standards, Ejection Mitigation; Phase-In Reporting Requirements; Incorporation by Reference	DOT	\$540.3
Hours of Service of Drivers	DOT	\$500.9
Investment Advice-Participants and Beneficiaries	DOL	\$3,892.9



2012		
Rule	Agency	Annual Cost (millions of 2013 dollars)
Energy Conservation Program: Energy Conservation Standards for Residential Clothes Washers	DOE	\$194.8
National Emission Standards and Standards of Performance: Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units	EPA	\$10,510.8
Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews	EPA	\$186.3
Regulation of Fuels and Fuel Additives: 2013 Biomass-Based Diesel Renewable Fuel Volume	EPA	\$401.2
2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards (joint rule with NHTSA)	EPA	\$11,372.0
Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers	HHS	\$713.2
Administrative Simplification: Adoption of a Standard for a Unique Health Plan Identifier; Addition to the National Provider Identifier Requirements; and a Change to the Compliance Date for the International Classification of Diseases, 10th Edition (ICD-10-CM and ICD-10-PCS) Medical Data Code Sets	HHS	\$232.7
Administrative Simplification: Adoption of Operating Rules for Health Care Electronic Funds Transfers (EFT) and Remittance Advice Transactions	HHS	\$152.2
Nutrition Standards in the National School Lunch and School Breakfast Programs	USDA	\$1,298.8
National Standards to Prevent, Detect, and Respond to Prison Rape	DOJ	\$475.5
Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Increased Safety Measures for Energy Development on the Outer Continental Shelf	DOI	\$132.6
Hazard Communication	DOL-OSHA	\$204.0

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

2013		
Rule	Agency	Annual Cost (millions of 2013 dollars)
Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken	USDA	\$192.1
Energy Conservation Program: Energy Conservation Standards for Transformers	DOE	\$274.7
National Ambient Air Quality Standards for Particulate Matter	EPA	\$213.0
NESHAP: Major Sources: Industrial and Commercial Boilers and Process Heaters	EPA	\$193.0*
Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans, Veterans of the Vietnam Era, Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans	DOL	\$483.6
Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities	DOL	\$395.3
Final Rules under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008; Technical Amendment to External Review for Multi-State Plan Program	IRS, EBSA, HHS	\$201.9
Pilot Certification and Qualification Requirements (Formerly First Officer Qualification Requirements) (HR5900)	DOT/FAA	\$100.0
Medicaid and Children's Health Insurance Programs: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes, and Premiums and Cost Sharing; Exchanges: Eligibility and Enrollment	HHS	\$1,330.8
Medicare, Medicaid, Children's Health Insurance Programs; Transparency Reports and Reporting of Physician Ownership or Investment Interests	HHS	\$180.0

* This is the marginal additional cost from the 2013 modification of the original 2011 rule.



2014		
Rule	Agency	Annual Cost (millions of 2013 dollars)
Program Integrity: Gainful Employment	Education	\$209.2
Energy Conservation Standards for Commercial Refrigeration Equipment	DOE	\$256.0
Energy Conservation Standards for Commercial and Industrial Electric Motors	DOE	\$517.0
Energy Conservation Standards for External Power Supplies	DOE	\$147.0
Energy Conservation Standards for Residential Furnace Fans	DOE	\$358.0
Energy Conservation Standards for Walk-In Coolers and Freezers	DOE	\$511.0
Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards	EPA	\$1,500.0
National Pollutant Discharge Elimination System-Final Regulations to Establish Requirements for Cooling Water Intake Structures at Existing Facilities and Amend Requirements at Phase I Facilities	EPA	\$274.9
Medicare Program; Revisions to Payment Policies	HHS	\$121.6
Change to the Compliance Date: International Classification of Diseases	HHS	\$3,896.0
Federal Motor Vehicle Safety Standards; Rear Visibility	DOT - NHTSA	\$620.0

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

2015		
Rule	Agency	Annual Cost (millions of 2013 dollars)
Energy Conservation Standards for General Service Fluorescent Lamps	DOE	\$841.0
Waters of the U.S. (WOTUS)	EPA	\$462.9
Revising Underground Storage Tank Regulations—Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training	EPA	\$160.0
Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016	EPA	\$831.0
Carbon Pollution-Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units	EPA	\$8,400.0
National Ambient Air Quality Standards for Ozone	EPA	\$1,400.0
Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category	EPA	\$471.0
Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities	EPA	\$509.0
Pesticides; Agricultural Worker Protection Standard Revisions	EPA	\$424.2
Medicare Shared Savings Program: Accountable Care Organizations	HHS	\$191.0
Importation of Beef from Regions in Brazil	USDA	\$245.0
Importation of Beef from Regions in Argentina	USDA	\$120.0
Final Determination Regarding Partially Hydrogenated Oils	HHS/FDA	\$585.2
Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food	HHS/FDA	\$382.0



U.S. CHAMBER OF COMMERCE

Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals	HHS/FDA	\$155.0
Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption	HHS/FDA	\$366.0
Foreign Supplier Verification Programs for Importers of Food for Humans and Animals	HHS/FDA	\$435.0
Electronic System for Travel Authorization	DHS	\$476.0
Electronic Logging Devices and Hours of Service Supporting Documents	DOT	\$1,836.0
Hazardous Materials: Enhanced Tank Car Standards	DOT	\$234.3

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

2016		
Rule	Agency	Annual Cost (millions of 2013 dollars)
Federal Acquisition Regulation; Fair Pay and Safe Workplaces	FAR Council	\$400.9
Cargo Securing Manuals	DHS/Coast Guard	\$212.8
Energy Conservation Program: Energy Conservation Standards for Miscellaneous Refrigeration Products	DOE	\$153.0
Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards for Small, Large, and Very Large Air-Cooled Commercial Package Air Conditioning and Heating Equipment and Commercial Warm Air Furnaces	DOE	\$708.0
Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles-Phase 2	EPA	\$179.0
Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources	EPA	\$324.8
Standards for 2017 and Biomass-Based Diesel Volume for 2018	EPA	\$1,118.0
Food Labeling: Revision of the Nutrition and Supplement Facts Labels and Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed	HHS/FDA	\$400.0
Mitigation Strategies to Protect Food Against Intentional Adulteration	HHS/FDA	\$375.0
Sanitary Transportation of Human and Animal Food	HHS/FDA	\$117.0
Child Care and Development Fund (CCDF) Program	HHS	\$291.4
Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities	HHS	\$735.9



Nondiscrimination in Health Programs and Activities	HHS	\$197.8
Medicare Program; Reporting and Returning of Overpayments	HHS	\$161.0
Medication Assisted Treatment for Opioid Use Disorders	HHS	\$233.0
Establishment of the Electronic Visa Update System (EVUS)	DHS	\$168.9
Waste Prevention, Production Subject to Royalties, and Resource Conservation	DOI	\$196.5
Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf	DOI	\$234.0
Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees (Overtime Rule)	DOL	\$295.1
Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)	DOL/OSHA	\$305.0
Occupational Exposure to Respirable Crystalline Silica	DOL/OSHA	\$1,029.8
Definition of the Term “Fiduciary”; Conflict of Interest Rule-Retirement Investment Advice	DOL	\$1,960.0
Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators	DOT	\$368.0
Commercial Driver’s License Drug and Alcohol Clearinghouse	DOT	\$154.0

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

APPENDIX D

Potential Economically Significant Rules by Independent Agencies by Year: 2008-2016

2008	
Rule	Agency
Disclosure of Short Sales and Short Positions by Institutional Investment Managers	Securities and Exchange Commission
Mandatory Reliability Standards for Critical Infrastructure Protection	Federal Energy Regulatory Commission

2009	
Rule	Agency
Indexed Annuities and Certain Other Insurance Contracts	Securities and Exchange Commission
Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies	Securities and Exchange Commission
Amendments to Rules for Nationally Recognized Statistical Rating Organizations—Amendments to Form NSRO	Securities and Exchange Commission
Amendments to Rules for Nationally Recognized Statistical Rating Organizations—Amendment to Rule 17-G2	Securities and Exchange Commission
Proxy Disclosure Enhancements	Securities and Exchange Commission



2010	
Rule	Agency
Amendments to Form ADV	Securities and Exchange Commission
Reporting of Security-Based Swap Transaction Data	Securities and Exchange Commission
Political Contributions by Certain Investment Advisers	Securities and Exchange Commission
Amendments to Regulation SHO	Securities and Exchange Commission
Custody of Funds or Securities of Clients by Investment Advisers	Securities and Exchange Commission

2011	
Rule	Agency
Family Offices	Securities and Exchange Commission
Fair Credit Reporting Risk-Based Pricing Regulations	Federal Reserve System, Federal Trade Commission
Large Trader Reporting	Securities and Exchange Commission
Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF	Commodity Futures Trading Commission, Securities and Exchange Commission
Position Limits for Futures and Swaps	Commodity Futures Trading Commission
Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934	Securities and Exchange Commission

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

2012	
Rule	Agency
Core Principles and Other Requirements for Designated Contract Markets	Commodity Futures Trading Commission
Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping	Commodity Futures Trading Commission, Securities and Exchange Commission
Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions	Commodity Futures Trading Commission
Risk-Based Capital Guidelines: Market Risk	Treasury/Office of the Comptroller of the Currency, Federal Reserve, Federal Deposit Insurance Corporation
Conflict Minerals	Securities and Exchange Commission



2013	
Rule	Agency
Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z)	Consumer Financial Protection Bureau
Physical Protection of Byproduct Material	Nuclear Regulatory Commission
Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations	Commodity Futures Trading Commission
Integrated Mortgage Disclosure under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)	Consumer Financial Protection Bureau
Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds	Federal Reserve, Federal Deposit Insurance Corporation, Treasury/Office of the Comptroller of the Currency, Securities and Exchange Commission, Federal Reserve
Identify Theft Red Flag Rules	Securities and Exchange Commission, Commodity Futures Trading Commission
Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Riskweighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule	Department of the Treasury, Office of the Comptroller of Currency, Federal Reserve System

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

2014	
Rule	Agency
Money Market Fund Reform; Amendments to Form PF	Securities and Exchange Commission
Asset-Backed Securities Disclosure and Registration	Securities and Exchange Commission
Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for Certain Bank Holding Companies and Their Subsidiary Insured Depository Institutions	Department of the Treasury, Office of the Comptroller of Currency, Federal Deposit Insurance Corporation, Federal Reserve System
Credit Risk Retention	Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, U.S. Securities and Exchange Commission, Federal Housing Finance Agency, Department of Housing and Urban Development
Liquidity Coverage Ratio; Liquidity Risk Management Standards	Department of the Treasury, Office of the Comptroller of Currency, Federal Deposit Insurance Corporation, Federal Reserve System
Ability-to-Repay and Qualified Mortgage Standards under the Truth in Lending Act (Regulation Z)	Consumer Financial Protection Bureau
Regulation Systems Compliance and Integrity	Securities and Exchange Commission



2015	
Rule	Agency
Home Mortgage Disclosure (Regulation C)	Consumer Financial Protection Bureau
Pay Ratio Disclosure	Securities and Exchange Commission
Security-Based Swap Data Repository Registration, Duties, and Core Principles	Securities and Exchange Commission
Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information	Securities and Exchange Commission
Margin and Capital Requirements for Covered Swap Entities	Department of the Treasury, Office of the Comptroller of the Currency; Federal Reserve System; Federal Deposit Insurance Corporation; Farm Credit Administration; Federal Housing Finance Agency
Protecting and Promoting the Open Internet	Federal Communications Commission
Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies	Federal Reserve System

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

2016	
Rule	Agency
Clearing Requirement Determination under Section 2(h)	Commodity Futures Trading Commission
Margin Requirements for Uncleared Swaps for Swap Dealers	Commodity Futures Trading Commission
Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants	Securities and Exchange Commission
Joint Industry Plan; Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail	Securities and Exchange Commission
Standards for Covered Clearing Agencies	Securities and Exchange Commission
Investment Company Liquidity Risk Management Programs	Securities and Exchange Commission
Investment Company Reporting Modernization	Securities and Exchange Commission
Investment Company Swing Pricing	Securities and Exchange Commission
Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations	Federal Reserve System
Protecting the Privacy of Customers of Broadband and Other Telecommunications Services	Federal Communications Commission



APPENDIX E

Methodology for Developing a List of Rules with over \$100 Million in Annual Costs

- 1) The Government Accountability Office (GAO) maintains a list of final rules submitted as “major rules” under the definition of the Congressional Review Act (CRA). CRA covers all final rules produced by executive branch and independent regulatory agencies. Under the CRA definition of a “major rule,” the first qualifying criteria is any rule that has “an annual effect on the economy of \$100 million or more.”⁴² Thus all rules with annual costs of \$100 million or greater should, in theory, be included in GAO’s listing of “major rules” under CRA. The identification of all \$100 million-plus rules therefore begins with the GAO major rule listing for any given year.
- 2) From the GAO major rule listing, the next step is accessing the appropriate information on each rule (including, but not necessarily limited to, GAO reports, Federal Register rule preambles, and Regulatory Impact Analyses as necessary) and first removing all rules involving transfers or on-budget expenditures unless such rules also have estimated costs beyond the transfers themselves and incurred to implement the transfer(s) in excess of \$100 million (annual cost).
- 3) Next, the remainder of the rules are reviewed to determine which rules have costs in excess of \$100 million annually according to the following:
 - a.) Cost estimates prepared by the promulgating agency are the only input used to determine whether a rule meets the standard of producing a cost of \$100 million annually as defined by CRA.
 - b.) To estimate how many rules have annual costs over \$100 million, follow the generally accepted methodology used by the Office of Information and Regulatory Affairs (OIRA) and federal executive branch agencies and use the annual cost estimate expressed by distributing total

⁴² 5 U.S. Code §804(2)(A).

TAMING THE ADMINISTRATIVE STATE

Identifying **REGULATIONS** That Impact Jobs and the Economy

costs across a relevant number of years and discounting future costs at a 7% rate.⁴³

- c.) If an agency fails to produce an annualized cost estimate appropriately discounted for a given rule, use a different estimate of yearly costs produced by the agency, such as costs from an implementation schedule.
 - d.) Check to make sure that all cost estimates are expressed in nominal dollars that match the year of the rulemaking, and adjust if necessary.
- 4) Rules by independent agencies are not currently covered by the regulatory analysis guidance in Executive Order 12,866 and Circular A-4. Because the Regulatory Accountability Act will extend analytical requirements to independent agencies and these agencies will have the same additional requirements for \$1-billion-plus and \$100 million-plus rules, we attempt to include independent agency rules with annual costs of \$100 million or greater. If an independent agency produces an impact analysis, it is considered on a case-by-case basis in determining whether a rule exceeds the \$100 million threshold. This analysis uses whatever cost estimate(s) the agency performed, to make that determination.
- 5) After checking each rule on the GAO major rule list and determining which should be included on our list of \$100 million-plus regulations, cross check the final results with OIRA's list of major regulations in its annual report to Congress on rule costs and benefits. If any discrepancies arise, determine why and decide whether the rule has annual costs of \$100 million or greater.

⁴³ In Circular A-4, OIRA directed agencies to discount costs to produce annualized cost estimates and net present value costs using two discount rates, 7% and 3%. The 7% was specified as the preferred rate and the 3% rate as the alternate rate (at p. 33). Note that at time of writing, the OIRA website is offline and therefore Circular A-4 and other guidance documents are unavailable. Further, these documents may be revised going forward.



U.S. CHAMBER OF COMMERCE

1615 H Street, NW, Washington, DC 20062-2000

www.uschamber.com