



Written by [William F. Jasper](#) on November 16, 2012

Regulators R Us: Feds Crank Up Regulations – on Everything

Get set for the Obama administration's post-election tsunami of business-killing, job-killing, economy-killing federal regulations. It's already begun. Take a look at www.regulations.gov, the administration's regulatory website. The home page informs us that in the last 90 days, the administration has posted 5,934 new regulations.



Yes, our federal bureaucrats have been very diligent. The above-mentioned website informs us of their daily productivity of regulations over the past 90 days:

- Today (121)
- Last 3 Days (274)
- Last 7 Days (371)
- Last 15 Days (826)
- Last 30 Days (1,915)
- Last 90 Days (5,934)

How will these regulations affect you, your family, your job, business, ranch, or farm? You may not have federal SWAT teams descend upon you, as has happened to dairy farmers and natural food store operators who dared to sell raw milk products not approved by the federal Food & Drug Administration (see [here](#) and [here](#)) or the hundreds of other Americans subjected to [Gestapo-type treatment](#) for running afoul of the volumes of murky and convoluted regulations that fill the [169,301 pages](#) of the Code of Federal Regulations (CFR) published in the *Federal Register*. However, even if your home, farm or business is not personally "visited" by agents of the FDA, EPA, OSHA, SEC, or any of the myriad other federal agencies, you will pay a huge price nonetheless, both in economic costs and in loss of freedoms.

A cost analysis by the Small Business Administration in 2008 found that the cost to our national economy of compliance with federal regulations was an astronomical \$1.75 trillion!

That was in 2008. The cost, of course, has escalated dramatically in the four years since that study was conducted. We should note also that the 169,301 pages of federal regulations referenced above covers only those promulgated through 2011; it does not include thousands of pages added in 2012. Nor does it include the thousands of pages that are expected to soon be dumped into the pipeline by bureaucrats who had been instructed to hold off until after the election.

According to the U.S. Chamber of Commerce, between Jan. 1, 2009 and Dec. 31, 2011 the Code of Federal Regulations increased by 11,327 pages — a 7.4-percent increase. The regulatory burden is now



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a crushing weight on the entire economy, a hidden tax which is equivalent to roughly half the current federal spending and equal to the entire federal budget of the late 1990s.

A study by the U.S. Chamber of Commerce entitled [Project No Project](#) found that a broad range of energy projects “are being stalled, stopped, or outright killed nationwide due to a broken permitting process and a system that allows nearly limitless opportunities for opponents of development to raise challenge after challenge.”

The impact has been truly mind-boggling. The Chamber of Commerce study reported:

In total, the 351 projects identified in the Project No Project inventory could have produced a \$1.1-trillion boost to the economy and created 1.9 million jobs annually during the projected seven years of construction. Moreover, these facilities, once constructed, would have continued to generate jobs, because they would have operated for years or even decades.

That’s nearly two million jobs annually, just in the energy sector, that are being killed by the federal regulatory straitjacket.

In an op-ed in the *Washington Post* on November 13, attorney [Keith A. Ashmus](#) noted that the regulatory cliff rivals the fiscal cliff among small business owners’ biggest concerns. And it is almost certain to get worse, if Team Obama has its way.

“Following President Obama’s reelection and the continuation of the current majorities in the House and Senate, we can expect continued difficulty moving initiatives forward legislatively in Washington,” noted Mr. Ashmus. “That means more regulatory activity, unrestrained by the any concerns about the president’s reelection. The Department of Labor, the Equal Employment Opportunity Commission and the National Labor Relations Board are likely to go after employers, large and small, with regulations that make it more difficult to manage workforces and obtain outside help understanding the legal requirements concerning unions.”

Obama Regulatory Plan: Sly, Not Shy

Not that President Obama has been shy about using executive branch regulations to get the Big Government programs he has been unable to get passed legislatively. In fact, following the 2010 congressional elections, in which the Democrats suffered historic losses in the House of Representatives, the Obama White House indicated it was going to move ahead with its agenda by executive fiat. *The New American* reported on this unconstitutional regulatory usurpation plan at the time. (See [Obama Eyes “Executive Orders” to Circumvent Congress](#).)

However, with the economy imploding, unemployment skyrocketing, and with eyes fixed firmly on the 2012 presidential election, President Obama began a major effort, in 2011, to make it appear he was sensitive to the needs of job producers, especially stressing his administration’s commitment to easing the regulatory red tape that is so fatal to small and medium businesses that create most of our jobs.

Amid great fanfare, on January 18, 2011, President Obama signed [“Executive Order 13563 — Improving Regulation and Regulatory Review.”](#)

If words signified genuine intent, then there would be cause for rejoicing. The executive order stated, *inter alia*:

Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must promote predictability and reduce uncertainty. It must identify and



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use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.

That was balm to the ears of struggling producers. Six months later, on June 13, President Obama launched follow-up public relations effort, signing [“Executive Order 13576 — Delivering an Efficient, Effective, and Accountable Government.”](#)

President Obama and members of his Cabinet made repeated ovations about the importance of small businesses and reducing the burden of regulation. Even Secretary of State Hillary Clinton got on the bandwagon. In a [speech](#) to Arab leaders in New York on September 28, she sang the praises of deregulation as the solution to economic stagnation in the Middle East:

On the economic front, we are zeroing in on small and medium-sized enterprises because they are the growth engines in any economy. They create the bulk of new jobs and they spread wealth more broadly through more communities....

So the OECD is helping emerging democracies find ways they can loosen regulations and make it easier to start or expand a small business.

Regulation reform figures prominently on the White House’s [21st Century Government: Campaign to Cut Waste](#) website. It is also a major feature of the White House’s [Open Government Initiative](#), which says it’s all about “Transparency, Collaboration, Participation.”

To this end, President Obama issued a [“Memorandum for the Heads of Executive Departments and Agencies.”](#) It is entitled: “Transparency and Open Government.” The opening paragraph reads:

My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.

Where’s the Transparency?

The White House’s Open Government Initiative web page is filled with self-congratulatory entries lauding the administration’s supposed triumphs in bringing transparency and efficiency into all departments, agencies, and programs of the federal government. Sounds great, but what’s the real story?

On November 13, the Competitive Enterprise Institute (CEI) [announced](#) that it had filed suit in federal court to force the Treasury Department to release more than 7,300 emails believed to discuss a massive new “carbon tax” that Obama administration allies in Congress are expected to propose in the upcoming lame-duck session.

“Although President Obama repeatedly promised openness and transparency in government, even liberal watchdogs have despaired that his has become one of the most secretive administrations ever,” said Christopher Horner, an attorney, CEI senior fellow, and author of the recent book *The Liberal War on Transparency*. “This administration has attempted to conceal its involvement in this proposal not just until the elections were over but beyond, to the point where disclosure will come too late to meaningfully inform the public. This shameful lack of transparency must stop, beginning with the administration coming clean about its effort to impose a massive, harmful new energy tax.”



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But it's not just the secret carbon tax that the administration is stonewalling on. Wayne Crews, the Competitive Enterprise Institute's regulatory expert, says its next to impossible to get a glimpse of the tidal wave of federal regulations about to be unleashed. In a November 1 column published in *Forbes*, the [CEI regulation watcher stated](#):

Despite the written commitment to transparency and two executive orders since January 2011 instructing federal agencies to review and roll back rules, it's hard to tell what federal regulatory agencies are doing in the aggregate and relative to one another.

That's because the Spring edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions, published since forever (or at least 1981), never appeared.

"Now it's November and almost time for the Fall Agenda and its supplemental Regulatory Plan," notes Crews. "So the Agenda is two editions behind. Not only that, the Administration's final 2012 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates never appeared."

Members of Congress are not at all happy about that, but the "transparency" president seems determined to keep his regulatory agenda behind opaque barriers. On October 25, four committee chairmen from the House of Representatives sent a stern [letter](#) to Mr. Boris Bershteyn, President Obama's Acting Administrator for the Office of Information and Regulatory Affairs (OIRA) requesting once again information about the long overdue Spring 2012 Unified Agenda of Regulatory and Deregulatory Actions and the 2012 Report to Congress on the Benefits and Costs of Federal Regulation. These documents "that provide basic regulatory transparency, and are required to be published by law, remain outstanding," they note.

The chairmen are: Lamar Smith (R-Texas), chairman of the Committee on the Judiciary; Darrell Issa (R-Calif.), chairman of the Committee on Oversight and Government Reform; Howard Coble (R-N.C.), chairman of the Subcommittee on Courts, Commercial and Administrative Law; and Jim Jordan (R-Ohio), chairman of the Subcommittee on Regulatory Affairs. The chairmen's letter pointed out that a month earlier (September 21) they had sent a letter to OIRA requesting information on the status of the overdue regulatory reports only to be told that agencies were still "compiling the most updated information."

This was puzzling, said the chairmen, since the OIRA had set April 13, 2012 as the "firm deadline" for completion. "Due to the impending election," says the chairmen's letter, "it does raise concerns that the Administration is holding back this information for fear it will be met with dissatisfaction by the public, or even worse, perceived as breaking the Administration's promise of regulatory reform."

The sorry spectacles cited above, of citizens being forced to sue the federal government in court to obtain regulatory records, and committee chairmen of Congress — the elected "people's representatives" — being forced to plead with bureaucrats for a peek at regulations, graphically illustrate the absurdity, the dangerous absurdity of our federal regulatory system.

The Unconstitutional Fourth Branch of Government

In 2011, Congress passed 81 bills into law. During the same period, federal agencies promulgated 3,807 regulations — rules that are treated as if they are binding law. These agencies are under the executive branch, which means they are under the president. However, under the U.S. Constitution, the president has no authority whatsoever to make laws. Neither do any of his subordinates. The president's role is to faithfully execute (i.e., administer) the laws passed by Congress, provided of course, that said laws comport with the Constitution.



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The very first sentence of Article I, Section 1 of the U.S. Constitution states: “All legislative powers herein granted shall be vested in a Congress of the United States.” It is difficult to get plainer and more definitive than that: “All legislative powers.” Congress is the legislative branch, and it possesses “all legislative powers.” The executive and judicial branches have their own peculiar jurisdictions and purviews, but their powers do not include lawmaking. Nor does the Constitution allow the Congress to sublet or delegate its lawmaking authority to the president, bureaucrats, or judges.

Nevertheless, Congress (and the American people, whose duty it is to vigilantly monitor Congress) have allowed the executive branch to stealthily, steadily build an enormous fourth branch of government — the federal regulatory agencies — that have usurped legislative, executive, and judicial powers. According to our Founders, this is “the very definition of tyranny.” James Madison, frequently referred to as the “father of the Constitution,” addressed this issue in essay No. 47 of *The Federalist*, noting:

The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.

So, it should not be surprising to find federal bureaucrats acting, well, tyrannically, since they have been allowed to accumulate “all powers, legislative, executive, and judiciary, in the same hands.” Consider. An agency (FDA, EPA, OSHA, etc.) issues regulations (legislative), then sends out agents to monitor and enforce the regulations, demand compliance, levy fines, make arrests (executive), and if a citizen wishes to contest the regulatory action, he must appeal to an agency tribunal (judiciary).

That was the plight faced by Mike and Chantelle Sackett of Priest Lake, Idaho, who were stopped from building their dream home because the EPA had arbitrarily declared their property in a residential area to be a “wetland.” Moreover, the EPA threatened the Sacketts with fines of \$75,000 per day, if they didn’t restore the property to the natural condition dictated by the agency. Thankfully, after a nearly five-year battle, the Sacketts received relief through a [U.S. Supreme Court decision](#), in March of this year.

Congress has completely abdicated its responsibility. It has allowed executive branch agencies to get away with usurping powers for so long that it has become an accepted practice. Now the chairmen of committees of Congress are reduced to the pathetic practice of beseeching third-level bureaucrats of myriad agencies simply to be allowed to examine the mushrooming multitude of regulations that are being fastened upon the citizens of this land.

The regulations are as unconstitutional as the agencies that issue them. Not only should virtually the entire Code of Federal Regulations be abolished, but all of the unconstitutional regulatory agencies as well.

As James Madison famously explained in *The Federalist*, No. 45, “The powers delegated by the proposed Constitution to the federal government are few and defined” and “will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce.”

“The powers reserved to the several States,” Madison continued, “will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.” Which is to say, that if the people decide some sort of government regulation is necessary to deal with a particular concern, then, under our constitutional system, it is to the state or local governments they should look for solutions.

The federal government’s powers, besides being delegated to it by the states, are also enumerated.



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Hence, the federal government's jurisdiction, Madison explained in *The Federalist*, No. 14, "is limited to certain enumerated objects, which concern all the members of the republic, but which are not to be attained by the separate provisions of any." All other powers are retained by the states or the people.

This is a principle that was well understood in the Founders' time and was later reaffirmed in the Tenth Amendment, which states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Since federal powers are limited to those "few and defined" found in the Constitution, Congress may not pass laws that trespass on the innumerable powers reserved to the states and the people. "No legislative act ... contrary to the Constitution can be valid," Alexander Hamilton noted in *The Federalist*, No. 78. "To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid."

If this constitutional principle applies to legislative acts of Congress, it most certainly applies to the massive regulatory maze erected by unelected, unaccountable, and unconstitutional agencies of the executive branch.

Related articles:

[Obama Administration Gets Sued Over Carbon Tax E-mails](#)

["Ten Thousand Commandments" of Federal Regulation](#)

[10,000 Commandments — The Hidden Tax](#)

[The FDA: Neither Safe nor Effective](#)

[Federal Court Strikes Down EPA Regulation on Coal](#)

[EPA Declares Human Breath \(CO₂\) a Pollutant](#)

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[EPA Rule Proposes First-Ever Carbon Limits on Power Plants](#)

[Hillary Clinton Advocates Less Govt. Regulation in Libya, Egypt](#)

[DOI Tightens Rules on Oil and Gas Drilling \(May 2012\)](#)

[From the Good News Dept.: North Dakota's Economy Is Doing Just Fine, Thank You](#)

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[Obama Eyes "Executive Orders" to Circumvent Congress](#)

[Raw Milk Mandates](#)

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