

Ten Thousand Commandments

An Annual Snapshot of the Federal Regulatory State

by Clyde Wayne Crews Jr.

Executive Summary

In the fiscal year 2005 federal budget, President Bush proposed \$2.4 trillion in discretionary, entitlement, and interest spending. Although those costs fully express the on-budget scope of the federal government, there is considerably more to the government's reach than the sum of the taxes sent to Washington. Federal environmental, safety and health, and economic regulations cost hundreds of billions of dollars every year—on top of official federal outlays.

The exact cost of federal regulations can never be fully known. Firms generally pass along to consumers some of the costs of the taxes they are required to pay. Similarly, some regulatory costs, although generally imposed on businesses, get passed on to consumers. But governmental and private data exist on scores of regulations and the agencies that issue them, as well as on regulatory costs and benefits, some of which can be compiled in a way that makes the regulatory state more comprehensible to the public. That is the purpose of the annual *Ten Thousand Commandments* report, some highlights of which appear below.

- The 2003 *Federal Register* contained 71,269 pages, a 6 percent decrease from 2002's all-

time record 75,606 pages.

- In 2003, 4,148 final rules were issued by agencies.
- Whereas regulatory agencies issued 4,148 final rules, Congress passed and the president signed into law a comparatively low 198 bills in 2003.
- In the 2003 *Unified Agenda*, agencies reported on 4,266 regulations that were at various stages of implementation throughout the 50-plus federal departments, agencies, and commissions, an increase of 2 percent from the previous year.
- Of the 4,266 regulations now in the regulatory pipeline, 127 are “economically significant” rules that will have at least \$100 million in economic impact. Those rules will impose at least \$12.7 billion yearly in future off-budget costs.
- Economically significant rules in the works decreased 6 percent between 2002 and 2003, from 135 to 127.
- The five most active rule-producing agencies (the Departments of Treasury, Transportation, Homeland Security, and Agriculture, and the Environmental Protection Agency) account for

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If regulatory costs remain largely hidden from public view, regulating will continue to look like an attractive alternative to taxing and spending

46 percent of rules under consideration.

- Of the 4,266 regulations now in the works, 859 affect small business. Rules affecting small business are down 4 percent over the past year and 11 percent over the past five years.
- The Office of Management and Budget's latest report on the costs and benefits of federal regulations finds cumulative 1993–2004 costs of major regulations to be between \$34 and \$39 billion while noting benefits of all rules range from \$62 billion to \$168 billion.
- Based on a more broadly constructed competing compilation of annual regulatory costs by economists Thomas Hopkins and Mark Crain, regulatory costs hit an estimated \$869 billion in 2002, an amount equivalent to 40 percent of all FY 2003 outlays.
- Regulatory costs are more than twice the \$375 billion budget deficit.
- Regulatory costs of \$869 billion are equivalent to 7.9 percent of U.S. gross domestic product, estimated at \$10,980 billion for 2003.
- Federal regulatory costs of \$869 billion combined with outlays of \$2,158 billion bring the federal government's share of the economy to some 27 percent.
- Regulatory costs also exceed all corporate pretax profits, which were \$665 billion in 2002.
- Regulatory costs exceed estimated 2003 individual income taxes of \$849 billion, and are far greater than corporate income taxes of \$143 billion.
- On the basis of estimates from the Weidenbaum and Mercatus Centers, agencies spent \$30.8 billion merely to administer and police the regulatory state in 2003, 12.8 percent more than in the previous year. Counting the \$869 billion in off-budget costs, that brings the total regulatory burden to \$899.8 billion.

The U.S. government has conclusively ended its recent short-lived string of budgetary surpluses—the first since 1969. But if

regaining and maintaining a true surplus remains a priority, policymakers must seek to control regulatory costs. Think of it this way: The maximum surplus projected by the Congressional Budget Office over the coming decade is a minimal and highly speculative \$13 billion in 2014. Regulatory costs of more than \$800 billion clearly dwarf that amount. Moreover, regulations and taxes can be substitutes for one another; a new government program requires increasing spending—or imposing new rules and regulations. Thus, unless regulatory activity is better monitored, deficit control may tend to invite Congress to adopt new off-budget private-sector regulations rather than new spending that would increase the deficit. If regulatory costs remain largely hidden from public view, regulating will continue to look like an attractive alternative to taxing and spending.

Regulations should be treated the same way federal spending is treated: whenever possible, Congress should be held accountable for the compliance costs—as well as the benefits—of federal regulations. Cost/benefit analysis of rules is the typical remedy proposed to police excess regulation. The problem with cost/benefit analysis, however, is that it is largely a form of agency self-policing; agencies would perform “audits” of their own rules, but would rarely admit that the benefits of a rule do not justify the costs involved. At the least, some third-party review would be needed.

A way to maximize congressional accountability is to require Congress to vote on agency rules (in an expedited fashion) before they become binding. Vital for true accountability, this step would fulfill citizens' expectation of “no regulation without representation.” Disclosing costs of rules would remain important, however, even if Congress approved rules; openness about regulatory facts and figures is critical, just as disclosure of program costs is critical in the federal budget. Rather simple “regulatory report cards,” in some respects like the presentation in *Ten Thousand Commandments*, can be issued officially each year by the federal government to distill regulatory data.

Introduction: Toward Ending “Regulation without Representation”

The federal government funds programs in three primary ways. The first is by raising taxes to pay for new programs. The second is by borrowing money to pay for them (with a promise to pay back the borrowed money, with interest, from taxes collected in the future). No matter how controversial government spending programs can be, taxpayers can always see how much they cost by looking at the federal budget. Congress is held largely accountable for spending programs, and that accountability, though not perfect, is a fundamental, necessary condition for controlling government.

The third way the government funds its programs is by regulating. That is, rather than pay directly and book the expense of a

new initiative, it can require that the private sector and lower-level governments pay. By regulating, the government can carry out desired programs but avoid using tax dollars to fund them. That process can allow Congress to escape accountability and to blame agencies for costs. Since disclosure of and accountability for the costs of regulation are limited, there is limited incentive for policymakers to care about the extent of regulatory costs, or where those costs stand in relation to ordinary government spending. Since regulatory costs are unbudgeted and lack the formal presentation to the public and media to which ordinary federal spending is subject, regulatory initiatives allow the government to direct private-sector resources to a significant degree without much public fuss. In that sense regulation can be thought of as off-budget taxation. Table 1 provides perspective on the level of the hidden regulatory

By regulating the government can carry out desired programs but avoid using tax dollars to fund them.

Table 1
The Regulatory State: An Overview

	2003	1-Year Change	5-Year Change (99–03)	10-Year Change (94–03)
Total regulatory costs	\$869 billion	NA	NA	NA
Agency enforcement budgets (real \$)	\$30.8 billion	13%	58%	70%
Net <i>Federal Register</i> pages	71,269	-6%	0%	10%
<i>Federal Register</i> pages devoted to final rules	22,670	18%	12%	11%
<i>Federal Register</i> final rules	4,148	.4%	-11%	-15%
Total rules in <i>Agenda</i>	4,266	2%	-6%	-17%
“Economically significant” rules in the pipeline	127	-6%	-7%	NA
Rules impacting small business	859	-.4%	-11%	NA
Rules impacting state governments	359	-1%	-21%	-33%
Major rules finalized by agencies	51	0%	-11%	NA
Total number of EPA rules in <i>Agenda</i>	417	2%	-10%	NA
EPA rules impacting small business	135	-1.9%	24%	NA

Note: NA = not applicable.

Regulatory costs impose a higher burden on small firms, where per employee costs are higher.

“tax” by presenting summary data for selected topics described in this report. Trends over the past few years are provided where information is available.

The 2003 edition of *Ten Thousand Commandments* is divided into four main sections:

- An overview of the costs and scope of the regulatory state, such as its size in comparison with the federal budget and the gross national product.
- An analysis of trends in the numbers of regulations issued by agencies, based on data and information provided in the *Federal Register* and in *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*
- Recommendations for regulatory reform that emphasize ending “regulation without representation.” Steps to improve disclosure of regulatory costs and increase congressional accountability for regulations are offered, in contrast to the agency-driven cost/benefit analysis that typical reform proposals emphasize.
- An appendix that contains historical tables of data on regulatory trends over the past several years.

The Regulatory State and Its Cost to Americans

The Social and Economic Costs of Regulation

The Office of Management and Budget’s 2004 draft report on the costs and benefits of federal regulations finds cumulative 1993–2003 costs of major regulations to be between \$34 and \$39 billion; meanwhile, the estimated range for benefits was \$62 billion to \$168 billion.¹

Note, however, that OMB’s cost/benefit breakdown incorporates only benefits and costs that agencies or OMB were able to put in quantitative and monetary terms. In fact, given ample uncertainties at hand, costs of all rules could be more than 10 times greater than stated.² In any event, cost/benefit analy-

ses are highly sensitive to basic assumptions about how regulations translate to benefits.

As for an overall cost estimate, W. Mark Crain of George Mason University and Thomas D. Hopkins of the Rochester Institute of Technology prepared an estimate of regulatory costs for 2000 for the Small Business Administration.³ Their report assessed social and environmental costs as well as costs of economic regulations (such as price and entry restrictions), “transfer” costs (such as farm price supports, which shift money from one pocket to another), and paperwork costs (such as tax compliance). It found 2000 regulatory costs of \$843 billion. (That estimate is largely in line with the inflation-adjusted \$815 billion predicted for 2000 by Hopkins in a 1995 report for the Small Business Administration).⁴

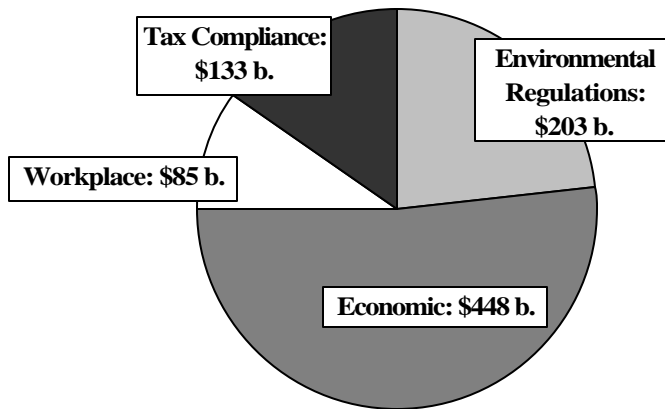
Updating the Crain and Hopkins 2000 regulatory costs for 2003 by extrapolating the growth in regulatory costs that had occurred between 1995 and 2000 yields an estimate of \$869 billion.⁵ Figure 1 breaks down their regulatory cost estimate by category: environmental, economic, workplace, and tax compliance. Economic costs, the largest category at \$448 billion, include such items as price and entry controls on business and losses from economic transfers.⁶ Given that indirect costs—such as the impacts of lost innovation or productivity—are not included in the Crain and Hopkins analysis, these figures could understate the total regulatory burden.⁷ Regulatory benefits are beyond the scope of the Crain and Hopkins analysis, although those benefits would be recognized as offsetting some costs.⁸

Crain and Hopkins also argue that regulatory costs impose a higher burden on small firms, where per employee costs are higher. Table 2 shows, for 2000, how per employee costs for firms of fewer than 20 workers can be more than 50 percent greater than for larger firms.

Regulation vs. Government Spending

After nearly three decades of deficit spending, the federal government’s budget was temporarily balanced from FY 1998 through FY

Figure 1
2003 Federal Regulatory Costs: \$869 Billion



Source: Extrapolated from W. Mark Crain and Thomas D. Hopkins, “The Impact of Regulatory Costs on Small Firms,” Report prepared for Small Business Administration, Office of Advocacy, RFP no. SBAHQ-00-R-0027, October 2001, www.sba.gov/advo/research/rs207tot.pdf.

Table 2
Per Employee Regulatory Costs Higher for Small Firms, 2000

Size of Firm	Regulatory Costs per Employee
Large >500 employees	\$4,463
Medium 20–499 employees	\$4,319
Small <20 employee	\$6,975

Source: Derived from W. Mark Crain and Thomas D. Hopkins, “The Impact of Regulatory Costs on Small Firms,” Report prepared for Small Business Administration, Office of Advocacy, RFP no. SBAHQ-00-R-0027, October 2001, Table 1. www.sba.gov/advo/research/rs207tot.pdf.

2001. Indeed, Washington posted a total surplus of \$127 billion in FY 2001.⁹ In FY 2002 there was a deficit of \$158 billion on just over \$2 trillion in spending;¹⁰ and in 2003, a deficit of \$375 billion on \$2.16 trillion in spending, with no surplus in sight until 2014’s puny \$13 billion.¹¹

As Figure 2 shows, 2003’s approximately \$869 billion in regulatory costs is equivalent to 40 percent of spending of \$2,158 billion, and more than twice the \$375 billion deficit. Figure 2 also depicts the 2002 deficit of \$158 billion and the 2001 surplus of \$127 billion

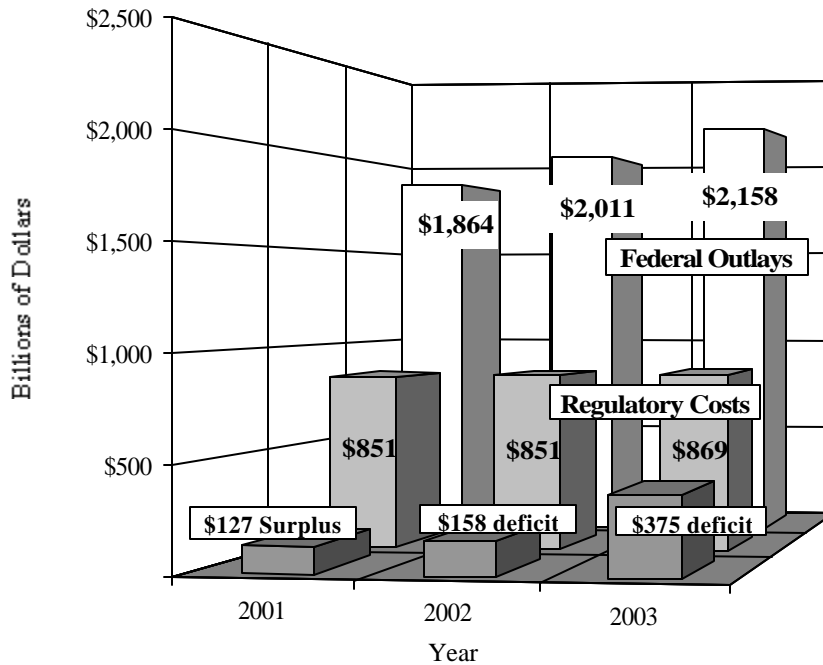
compared with regulatory costs for those years.¹² Deficit spending, in a manner of speaking, can manifest itself as regulatory compliance costs that go largely unacknowledged by the federal government.

Regulatory Costs vs. Income Taxes and Corporate Profits

Regulatory costs exceed revenue from most major taxes. Regulatory costs stand to the shoulder of estimated 2003 individual income taxes, which were \$849 billion, as Figure 3 shows.¹³ Corporate income taxes, estimated at

Regulatory costs exceed revenue from most major taxes.

Figure 2
Off-Budget Regulatory Costs Compared with Projected Federal Spending (2001–2003)



Sources: Congressional Budget Office, *The Budget and Economic Outlook*, various years; and W. Mark Crain and Thomas D. Hopkins, “The Impact of Regulatory Costs on Small Firms,” Report prepared for Small Business Administration, Office of Advocacy, RFP no. SBAHQ-00-R-0027, October 2001, www.sba.gov/advo/research/rs207tot.pdf.

Notes: Regulatory costs are projected on the basis of average annual increases in regulatory costs between 1995 and 2000 from Hopkins, 1995. Federal surplus/deficit and outlay numbers are by fiscal year; regulatory costs are by calendar year.

\$143 billion that year, are greatly outdistanced by regulatory costs.¹⁴ Regulatory costs surpass even pretax corporate profits—\$665 billion in 2002.¹⁵

To put regulation into further perspective, U.S. regulatory costs of \$869 billion exceed the output of many entire national economies. As shown in Figure 4, U.S. regulatory costs exceed the entire 2001 GDP of Canada, which stood at \$695 billion. The regulatory burden also exceeded Mexico’s GDP of \$617 billion.¹⁶

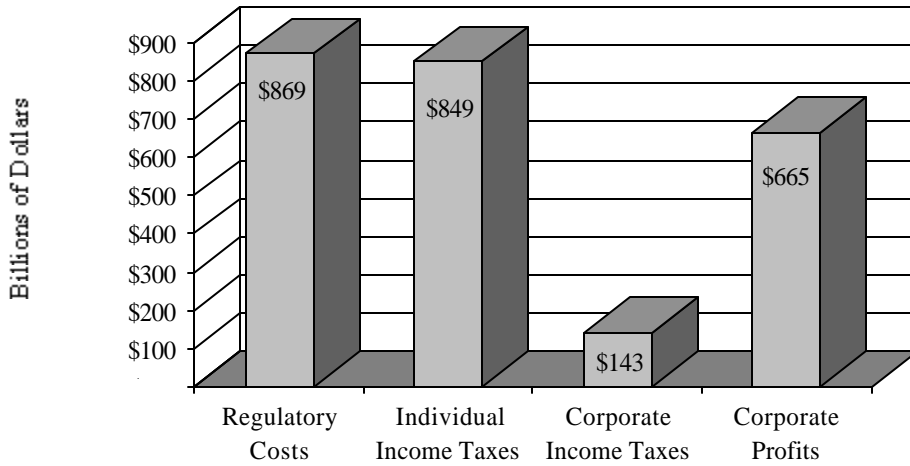
Total regulatory costs of \$869 billion are substantial—7.9 percent of U.S. GDP. (The Congressional Budget Office has estimated GDP to be \$10,980 billion for calendar year 2003.)¹⁷ Combined with direct federal FY 2003 outlays of \$2,158 billion, the federal government’s share of the economy is some 27 percent.

Costs of Administering the Regulatory State

Thomas Hopkins’s regulatory cost estimates include compliance costs paid by the public and lower-level governments. But his estimates do not include the costs of administering the regulatory state—the on-budget amounts spent by federal agencies to produce rules and police regulatory compliance. The Weidenbaum Center at Washington University in St. Louis and the Mercatus Center at George Mason University together examine the federal budget and excerpt and compile the administrative costs of developing and enforcing regulations. Since those funds are amounts that taxpayers pay to support agencies’ administrative budgets, rather than compliance costs paid by the parties that are regulated, they are disclosed in the federal budget.

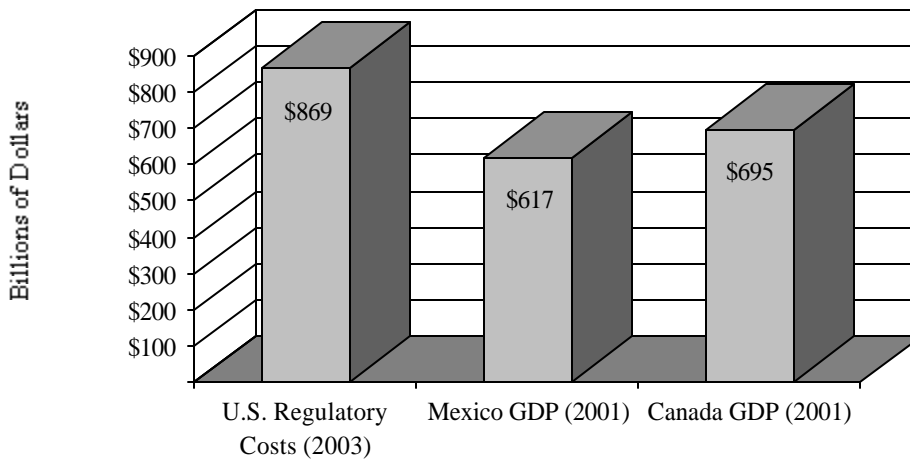
U.S. regulatory costs of \$869 billion exceed the output of many entire national economies.

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



Sources: W. Mark Crain and Thomas D. Hopkins, "The Impact of Regulatory Costs on Small Firms," Report prepared for Small Business Administration, Office of Advocacy, RFP no. SBAHQ-00-R-0027, October 2001, www.sba.gov/advo/research/rs207tot.pdf. Tax figures from U.S. Census Bureau, *Statistical Abstract of the United States: 2003*, Table 481, "Federal Receipts by Source: 1980 to 2003," p. 325, www.census.gov/prod/2004pubs/03statab/fedgov.pdf. Profits from U.S. Census Bureau, *Statistical Abstract of the United States: 2003*, Table 775, "Corporate Profits, Taxes, and Dividends: 1990 to 2002," p. 520, www.census.gov/prod/2004pubs/03statab/business.pdf.

Figure 4
U.S. Regulatory Costs Compared with Mexico's and Canada's GDP



Sources: W. Mark Crain and Thomas D. Hopkins, "The Impact of Regulatory Costs on Small Firms," Report prepared for Small Business Administration, Office of Advocacy, RFP no. SBAHQ-00-R-0027, October 2001, www.sba.gov/advo/research/rs207tot.pdf. GDP figures for Canada and Mexico are from U.S. Census Bureau, *Statistical Abstract of the United States: 2003*, Table 1334, "Gross Domestic Product (GDP) by Country: 1995 to 2001," p. 852, www.census.gov/prod/2004pubs/03statab/intlstat.pdf.

The *Federal Register* is the daily depository of all proposed and final federal rules and regulations.

The estimate of FY 2003 enforcement costs incurred by federal departments and agencies reached a record high of \$30.8 billion (constant 2002 dollars), an increase of 12.8 percent over the previous year (Figure 5).¹⁸ Of that amount, \$5.6 billion was spent administering economic regulation. The larger amount spent for writing and enforcing social and environmental regulations rose from \$22.2 billion to \$25.2 billion.

The enforcement cost numbers help fill in the picture of the regulatory state. Adding the \$30.8 billion in administrative costs tabulated by the Weidenbaum and Mercatus Centers to the Crain and Hopkins \$869 billion estimate for compliance costs brings the total 2003 regulatory burden to \$899.8 billion. (The CSAB expects total regulatory enforcement costs for FY 2004 to decline to \$29.1 billion.)¹⁹

Federal agency staff employed to write and enforce regulations is also on the rise. Estimated full-time-equivalent employment staffing reached 195,284 in FY 2003, according to Weidenbaum and Mercatus, a whopping 47 percent increase over 2002,²⁰ largely owing to the Transportation Security Administration's

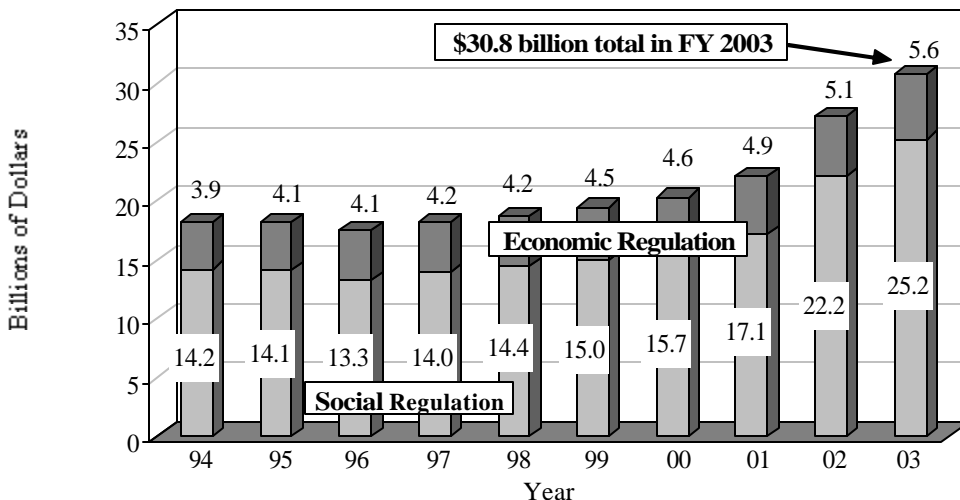
hiring of thousands of airport screening personnel.

***Federal Register* Analysis**

Tens of Thousands of Federal Register Pages

The *Federal Register* is the daily depository of all proposed and final federal rules and regulations. The number of pages in the *Register* is probably the most frequently cited measure of the scope of regulation. There are serious problems with using the number of pages alone as a proxy for the level of regulation, of course; several thousand of 2002's rules for example, related to the Microsoft settlement—not a very good gauge of what was going on government-wide. Many rules now relate to homeland security, a worthy pursuit. And even where OMB issues orders to reduce regulation, and agencies follow procedures to lessen rules, require posting lengthy notices in the *Federal Register*. And of course there are the obvious problems with relying on page counts: The wordiness of rules will vary,

Figure 5
Agency Enforcement Budgets, 1994–2003 (billions of constant 2002 dollars)



Source: Susan Dudley and Melinda Warren, *Regulatory Spending Soars: An Analysis of the U.S. Budget for Fiscal Years 2003 and 2004*, Regulatory Budget Report 25, Published jointly by the Weidenbaum Center and the Mercatus Center, July 2003. Original 1996 constant dollars are adjusted by the change in the consumer price index between 1996 and 2002, derived from U.S. Census Bureau, Statistical Abstract of the United States: 2003, Table 713, p. 475.

affecting the number of pages and obscuring the real impacts of the underlying rules. A short rule could be very costly and a long one relatively cheap. Administrative notices, corrections, presidential statements, and other material are contained in the *Register*. Thousands of blank pages appear as a result of the Government Printing Office's imperfect prediction of the number of pages an agency will require (however those are accounted for here).

Nonetheless, it is surely worthwhile to track the *Register's* growth via pages, provided the appropriate caveats are kept in mind to temper any sweeping or unwarranted conclusions. As Figure 6 shows, in 2003 the number of pages stood at 71,269, a decrease of 5.7 percent from the year before. As noted, that 2002 count of 75,606, while an all-time record for the *Federal Register*, would not have been were it not for pages related to the Microsoft settlement. The previous page-count record had been 74,258 pages in 2000—President Clinton's last year and a year in which he was charged with issuing "midnight regulations" prior to President Bush's arrival.²¹ From 1994 to 2003 the overall page count increased 9.8 percent. (For a history of *Federal Register* page

totals going back to 1936, see Appendix: Historical Tables, Part A.)

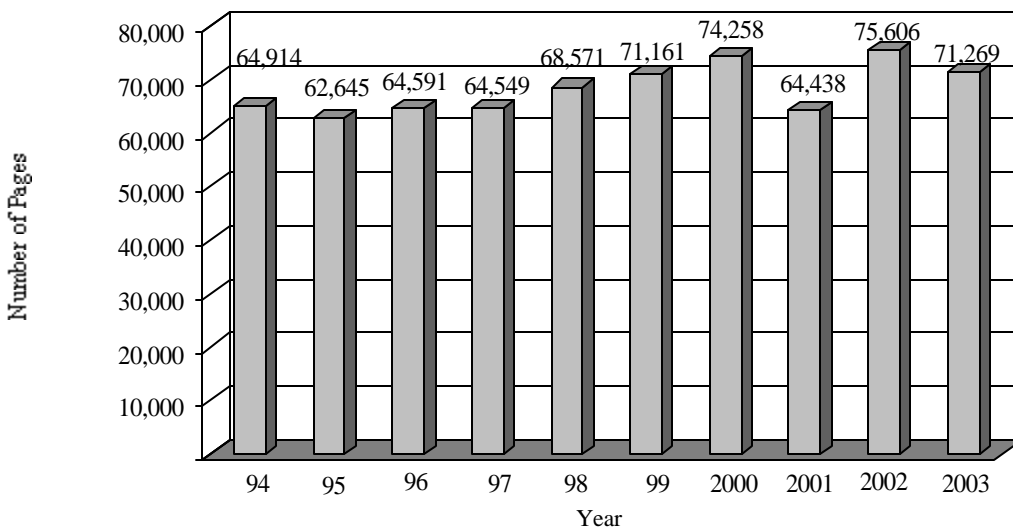
What ultimately happens now as a result of President George W. Bush's tenure remains to be seen. It is reasonable to conclude that regulation and agency activity in terms of page counts are at record levels, in spite of the dominance of Congress by presumably more deregulatory Republicans following the 1994 election year. While a dip occurred last year and during Bush's first year, the last time the number of *Federal Register* pages fell notably was in 1995, when the new influx of Republican congressional reformers kept an eye on and made an issue of the number of *Federal Register* pages and refer to the number frequently as a surrogate for the level of regulation. (A partial federal government shutdown in 1995, which slowed the promulgation of new regulations for a time, also contributed to the drop during that year.)

Federal Register Pages Devoted to Final Rules

Overall page counts alone do not reveal whether actual regulatory burdens have increased or decreased; as noted, a rule of a few

In 2003 the number of pages stood at 71,269, a decrease of 5.7 percent from the year before.

Figure 6
Number of *Federal Register* Pages, 1994–2003



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

The CFR contains 41 percent more pages now than it did in 1980.

short pages might impose a significant burden. Isolating the pages that are devoted specifically to final rules may be a bit more informative, since this approach omits pages devoted to proposed rules, agency notices, corrections, and presidential documents. Over the past year, these pages of final rules increased 17.9 percent (from 19,233 to 22,670) (Figure 7).

Despite some substantial ups and downs during the decade, *Federal Register* pages devoted to final rules have increased 11.2 percent since 1994. The drop right after Clinton's final year in office was noteworthy: The 2000 count of 24,482 pages under Clinton was the highest since 1976, when the *Federal Register* page count breakdown by category was first reported. The 2000 count of 24,482 was up 21 percent over 1999 (possibly due to an effort by President Clinton to push a backlog of rules through before the arrival of the Bush administration). Pages dropped considerably the next year before rebounding in 2003.

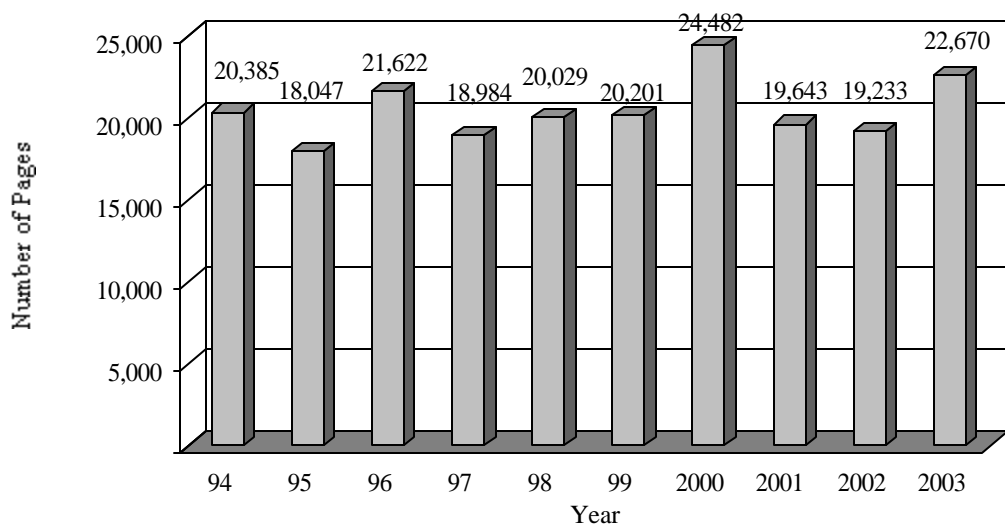
Another interesting way of looking at *Federal Register* page trends in terms of agency activity is the pages per decade. During all of

the 1990s, the total number of *Register* pages published was 622,000 (see Figure 8). The total number of *Federal Register* pages during the 1980s was 529,000. (The busiest year in the 1980s was the 1980 peak of 73,000 pages.) So far, in the first four years of the new century,²² the average is 71,392, which, extrapolated across the remainder of the decade, implies that 714,000 total pages will be published in the *Federal Register* during the decade, a 15 percent increase over the 1990s.

Although the final codification of general and permanent rules as ultimately realized in the *Code of Federal Regulations* is considerably more modest in terms of numbers (if not in costs), the CFR contains 41 percent more pages now than it did in 1980. Since 1980, the CFR has grown from 102,195 pages to 144,177. By contrast, in 1960, there were 22,877 pages.

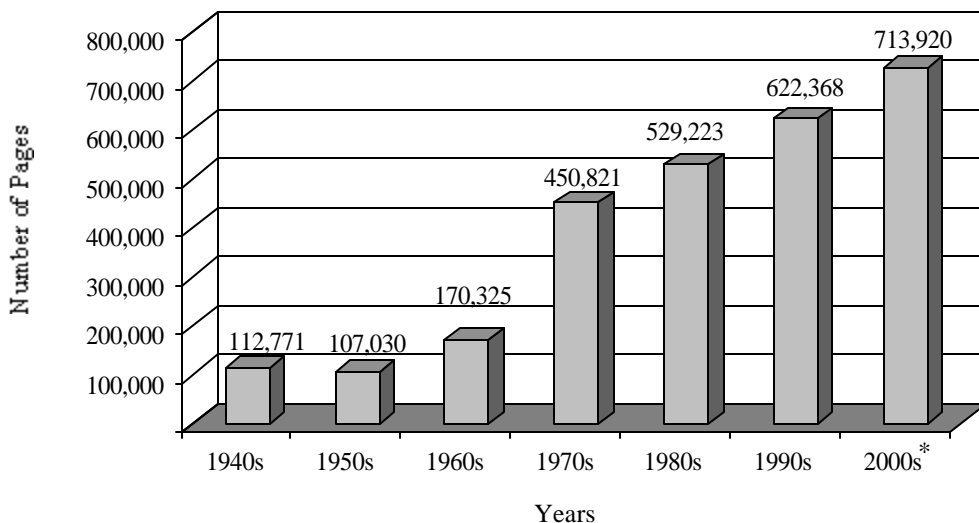
Keeping in mind the caveats discussed above, it is reasonable to suppose that the higher overall number of pages compared with past decades, and an output of pages devoted to final rules that has averaged well over 20,000 annually, genuinely signify higher levels of final rule costs.

Figure 7
Federal Register Pages Devoted to Final Rules



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

Figure 8
New Federal Register Pages per Decade



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

* Projection based on four-year average.

Number of Proposed and Final Rule Documents in the Federal Register

The actual numbers of proposed and final rules in the *Federal Register* deserve attention. As can be seen in Figure 9, in 2003 the total number of proposed and final rules published rose slightly, to 6,686. That represents a slight (2 percent) decline from the previous year’s 6,805 rules published in the *Register*.

The number of rules actually finalized in 2003 dropped as well. As Figure 9 also shows, final regulations issued by agencies stood at 4,148 in 2003, which was just slightly below the 2002 count of 4,167. The number of final rules currently being published is slightly lower than throughout the 1990s. The average number of annual regulations in the 1990s was 4,596. So far, the average for the current decade (2000–04) is 4,190. (For the numbers of proposed and final rules and other documents issued in the *Federal Register* since 1976, see Appendix: Historical Tables, Part B.)

The cumulative impact of such regulation can matter a great deal, despite recent declines. The bottom line is that the annual outflow of well above 4,000 final rules has

meant more than 40,000 final rules have been issued from 1995 to 2003—that is, since the Republican takeover of Congress. It must be remembered, however, that the costs of those rules can vary tremendously.

Analysis of the Regulatory Plan and Unified Agenda

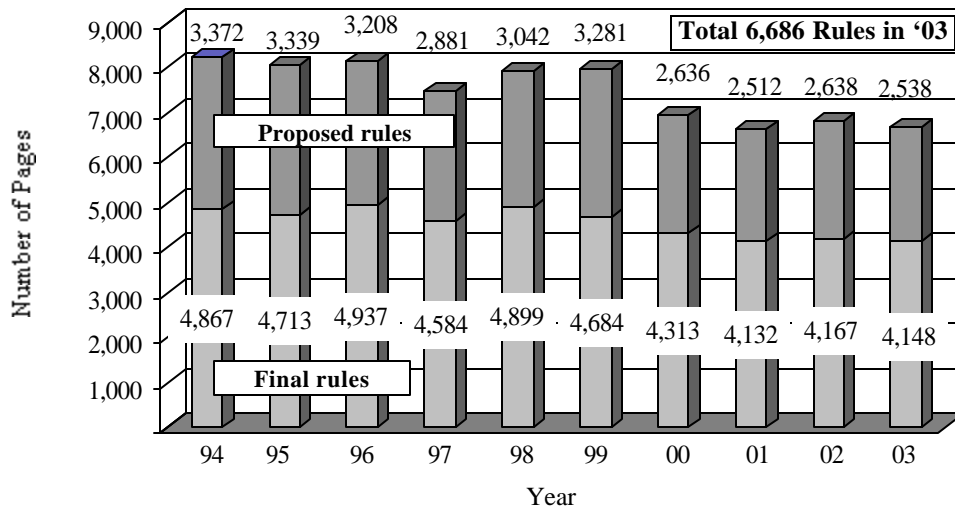
4,266 New Rules in the Pipeline

The Regulatory Plan and the Unified Agenda of Federal Regulations appears in the *Federal Register* each April and October. The *Agenda* details rules recently completed as well as those anticipated within the upcoming 12 months by the roughly 60 federal departments, agencies, and commissions. In that way, the *Agenda* serves as a gauge of what’s in the regulatory pipeline.

The *Agenda* lists federal regulatory actions at several stages: prerules, proposed and final rules, actions completed during the past few months, and anticipated longer-term rule-makings. The *Agenda* is something of a cross-sectional snapshot of rules moving through the pipeline; therefore the rules it contains

The annual outflow of well above 4,000 final rules has meant more than 40,000 final rules have been issued from 1995 to 2003—that is, since the Republican takeover of Congress.

Figure 9
Number of Rules Published in the *Federal Register*, 1994–2003



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

may carry over at the same stage from one year to the next, or they may reappear in subsequent *Agendas* at different stages. The *Agenda's* 4,000-plus rules affect the private sector primarily, but many also affect lower-level governments and the federal government itself.

The December 2003 *Agenda* finds federal agencies, departments, and commissions at work on 4,266 regulations from the prerule to the just-completed stages.²³ This is an increase of 1.9 percent over 2002's 4,187 (see Figure 10). The number of rules in the *Agenda* was at a peak of 5,119 ten years ago in 1994, and generally has declined since. Until 2002, however, the count remained well above 4,400. (For a history of numbers of rules in the *Agenda* since 1983, see Appendix: Historical Tables, Part C.)²⁴

Table 3 breaks the 4,266 rules down by issuing department, agency, or commission. It is apparent that a handful of agencies account for a large number of the rules produced, and such is the case each year. The five agencies and departments listed in Table 4 (the Departments of Treasury, Transportation, Homeland Security, Agriculture and the Environmental Protection Agency) were the biggest rulemakers. Those "top five," with

1,973 rules among them, account for 46 percent of all rules in the *Agenda* pipeline. (For numbers of rules by department and agency from previous editions of the *Unified Agenda*, see Appendix: Historical Tables, Part D.)

As examples of recent initiatives, agencies noted the following rules (among many others) as priorities in recent *Unified Agendas*.

Department of Agriculture

- Mandatory country of origin labeling of beef, pork, lamb, fish, and peanuts
- Egg And Egg Products Inspection Regulations
- Performance standards for ready-to-eat meat and poultry products
- Regulations concerning importation of unmanufactured wood articles, i.e., solid wood packing material
- Environmental quality incentives program

Department of Health and Human Services

- Prevention of salmonella enteritidis in shell eggs
- Current good manufacturing practice in manufacturing, packing, or holding dietary ingredients and dietary supplements

Those "top five," with 1,973 rules among them, account for 46 percent of all rules in the *Agenda* pipeline.

Table 3
Unified Agenda Entries by Department and Agency, December 2003

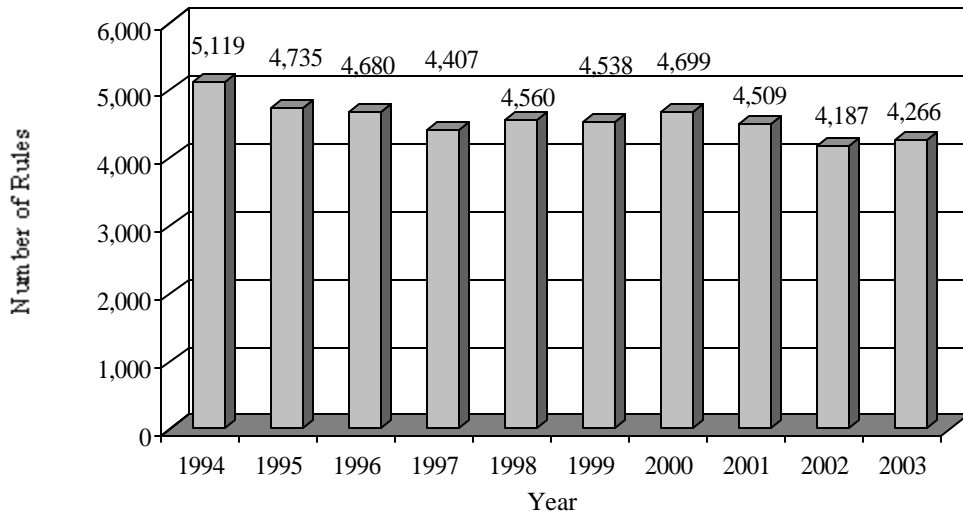
Agency	Total Rules	Agency	Total Rules
Dept. of Agriculture	323	National Science Foundation	2
Dept. of Commerce	300	Office of Federal Housing Enterprise Oversight	4
Dept. of Defense	108	Office of Government Ethics	9
Dept. of Education	13	Office of Management & Budget	4
Dept. of Energy	66	Office of Personnel Management	90
Dept. of Health & Human Services	219	Peace Corps	9
Department of Homeland Security	338	Pension Benefit Guaranty Corporation	4
Dept. of Housing & Urban Development	109	Presidio Trust	1
Dept. of the Interior	295	Railroad Retirement Board	11
Dept. of Justice	122	Selective Service System	1
Dept. of Labor	89	Small Business Administration	33
Dept. of State	15	Social Security Administration	64
Dept. of Transportation	365	Tennessee Valley Authority	2
Dept. of Treasury	530	Federal Acquisition Regulation	49
Dept. of Veterans' Affairs	87	Commodity Futures Trading Commission	15
Advisory Council on Historic Preservation	1	Consumer Product Safety Commission	20
Agency for International Development	8	Farm Credit Administration	21
Architectural and Transportation Barriers Compliance Board	4	Farm Credit System Insurance Corporation	1
Commission on Civil Rights	1	Federal Communications Commission	134
Corporation for National & Community Service	9	Federal Deposit Insurance Corporation	17
Court Services/Offender Supervision, D.C.	3	Federal Energy Regulatory Commission	21
Environmental Protection Agency	417	Federal Housing Finance Board	11
Equal Employment Opportunity Commission	4	Federal Maritime Commission	11
Federal Mediation and Conciliation Service	3	Federal Reserve System	18
General Services Administration	37	Federal Trade Commission	12
Udall Inst. For Environmental Conflict Res.	1	National Credit Union Administration	27
National Aeronautics & Space Administration	34	National Indian Gaming Commission	14
National Archives & Records Administration	19	Nuclear Regulatory Commission	45
Institute of Museum and Library Services	6	Securities and Exchange Commission	71
National Endowment for the Arts	6	Surface Transportation Board	5
National Endowment for the Humanities	8	Total	4,266

Source: Compiled from National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, December 22, 2003.

- Registration of food and animal feed facilities
- Food labeling: trans fatty acids in nutrition labeling, nutrient content claims, and health claims
- Criteria for determining whether a drug is considered usually self-administered
- Requirements for long-term care facilities: hospice services
- Bar code label requirements for human

- drug products and blood
 - Development of hazard analysis critical control points and label warning statements for fruit and vegetable juices
- Department of Homeland Security*
- CAPPS II, the Computer Assisted Passenger Prescreening System, providing governmental access to passenger reservation information

Figure 10
Total Agency Rules in the *Unified Agenda* Pipeline, 1994–2003



Source: Compiled from National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, December 22, 2003.

Table 4
The Top Rule-Producing Agencies

Agency	Number of Regulations
1. Department of Treasury	530
2. Environmental Protection Agency	417
3. Department of Transportation	365
4. Department of Homeland Security	338
5. Department of Agriculture	323
Top-Five Total	1,973

Source: Compiled from National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, December 22, 2003.

Department of Justice

- Nondiscrimination on the basis of disability in public accommodations and commercial facilities

Department of Labor

- Occupational exposure to crystalline silica
- Rules regarding confined spaces in construction: preventing suffocation/explosions in confined spaces
- Hearing conservation program for construction workers

- Occupational exposure to tuberculosis

Department of Energy

- Energy efficiency standards for: residential furnaces, boilers, and mobile home furnaces; electric distribution transformers; certain commercial central air conditioning units and heat pumps; clothes dryers and dishwashers; pool heaters and direct heating equipment; fluorescent and incandescent lamps; central air conditioners and heat pumps

Department of Transportation

- Reforming the automobile fuel economy standards program
- FAA rules concerning domestic passenger manifest information
- Upgrade of head restraints in vehicles
- Rear center lap/shoulder belt requirement
- Registration and training for operators of propane-tank-filling equipment
- Improved tire safety and tire pressure monitoring systems
- Automotive regulations for car lighting, door retention, brake hoses, daytime running-light glare, side impact protection
- Minimum training requirements for operators and training instructors of multiple trailer combination trucks
- Hours of service, rest and sleep for truck drivers

Environmental Protection Agency

- National emission standards for hazardous air pollutants from plywood and composite wood products, certain reciprocating internal combustion engines, and auto paints
- Emissions from non-road spark-ignition engines and standards for recreational spark-ignition engines
- Review of the national ambient air quality standards for particulate matter
- Control of emissions from spark ignition marine vessels and highway motorcycles, and non-road diesel engines
- Effluent guidelines and standards for the construction and development industry
- Groundwater and pesticide management
- Regulation of acrylamide in grout

Consumer Product Safety Commission

- Flammability standard for upholstered furniture
- Banning certain backyard play sets
- Product registration cards for products intended for children

Federal Communications Commission

- Signal carriage requirements for satellite broadcasters

Department of Housing and Urban Development

- Revision of manufactured home construction and safety standards to revise location of smoke alarms

“Economically Significant” Off-Budget Rules in the Agenda Will Cost Billions of Dollars

The *Agenda* classifies a subset of its 4,266 rules as being “economically significant.” That term means that the rules are anticipated by agencies to have yearly economic impacts of at least \$100 million. Those impacts generally mean increased costs, although occasionally an economically significant rule is intended to reduce costs in the economy. As Table 5 shows, 127 new economically significant rules are under consideration by 20 separate departments and agencies at the pre-rule, proposed rule, final rule, long-term, and recently completed stages. (That number is a decrease of 6 percent from the 135 high-cost rules last year). These high-cost rules are scattered among the 4,266 rules in the *Agenda*. Since each will cost at least \$100 million annually, those rules can be expected to impose, at minimum, total annual costs of \$12.7 billion (127 rules multiplied by \$100 million). (For a full list of the 127 economically significant rules, see Appendix: Historical Tables, Part E.)

A breakdown of the \$12.7 billion in regulatory costs is never presented directly for each rule in the *Agenda*. The costs represent a floor and are found by combing through the document. Rather than accumulate and summarize regulatory costs for readers’ benefit, each *Agenda* entry indicates whether or not a rule is “economically significant” and only occasionally provides additional cost data from agency regulatory impact analyses. Note also that even though the \$12.7 billion in anticipated costs represents a lower boundary for regulatory costs, it is not a one-time cost but a recurring annual cost that must be added to prior years’ costs and to costs to come in the future.

Figure 11 shows economically significant rules from the October *Agendas* for the 1999–2003 period. The 127 major rules in 2003 represent a 6 percent decrease from 2002.

One hundred and twenty-seven new economically significant rules are under consideration by twenty separate departments and agencies.

Table 5
127 Rules in the Pipeline Expected to Cost More Than \$100 Million Annually, 2003

	Prerule	Proposed	Final	Long-term	Completed	Total
Department of Agriculture		9	3	2	4	18
Department of Commerce		1	1			2
Department of Defense					1	1
Department of Energy	3			4		7
Department of Health & Human Services		7	8	1	6	22
Department of Housing and Urban Development		1	1	1		3
Department of Justice		3				3
Department of the Interior			1		1	2
Department of Labor	4	1	2			7
Department of Transportation	1		3	2	2	8
Department of Veterans' Affairs			1			1
ATBCB			1			1
Environmental Protection Agency		3	11	6	2	22
Department of Homeland Security		1	2	2	3	8
Office of Personnel Management					1	1
Consumer Product Safety Commission	1					1
Federal Communications Commission				15		15
Social Security Administration			1	1		2
Federal Acquisition Regulation				1	1	2
Nuclear Regulatory Commission					1	1
Total	9	26	35	35	22	127

Source: Compiled from National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, December 22, 2003.

Eight hundred and fifty-nine rules are anticipated to have significant economic impact on small businesses.

It should be noted that agencies are not required to limit their activity to what they publish in the *Agenda*: “The Regulatory Plan and the Unified Agenda do not create a legal obligation on agencies to adhere to schedules within them or to confine their regulatory activities to those regulations that appear in this publication.”²⁵

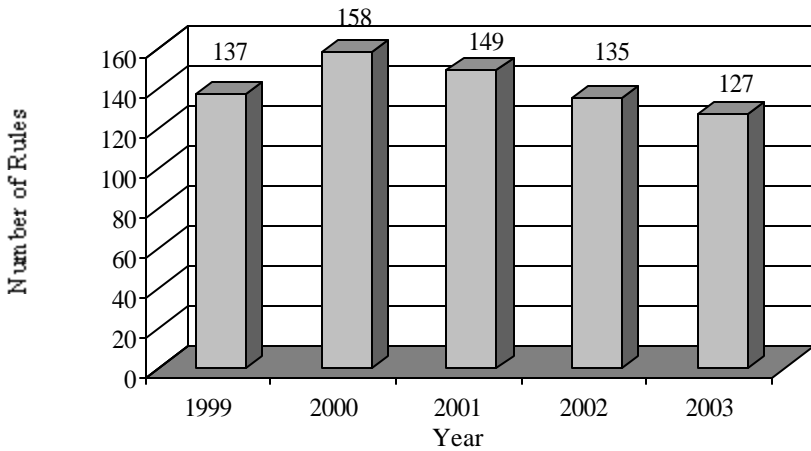
Finally, the fact that policymakers and analysts pay most attention to economically significant rules should not lull them into ignoring the remaining bulk of rules in the yearly pipeline. In 2003, 4,139 federal rules were *not* considered “economically significant” by the government (4,266 total rules minus the 127 economically significant ones). But that doesn’t mean many of those rules aren’t economically significant in the ordinary sense of the term. Any of those rules may cost up to \$99 million and still evade the “economically significant” label.

Planned Federal Regulations Expected to Impact Small Business

The Regulatory Flexibility Act requires that federal agencies assess the impacts of their rules on small businesses. The *Agenda* notes that “the Regulatory Flexibility Act . . . requires that agencies publish regulatory agendas identifying those rules that may have a significant economic impact on a substantial number of small entities.”²⁶

As Figure 12 shows, 859 rules are anticipated to have significant economic impact on small businesses, according to the 2003 *Unified Agenda*. That is down 4 percent from 892 such rules in 2002. From 1999 to 2003, the number of rules affecting small businesses dipped 11 percent, from 963 to 859. Table 6 breaks out the 2003 *Agenda*’s 859 rules affecting small business by department, agency, and commission.

Figure 11
“Economically Significant” Rules in the Agenda Pipeline, 1999–2003



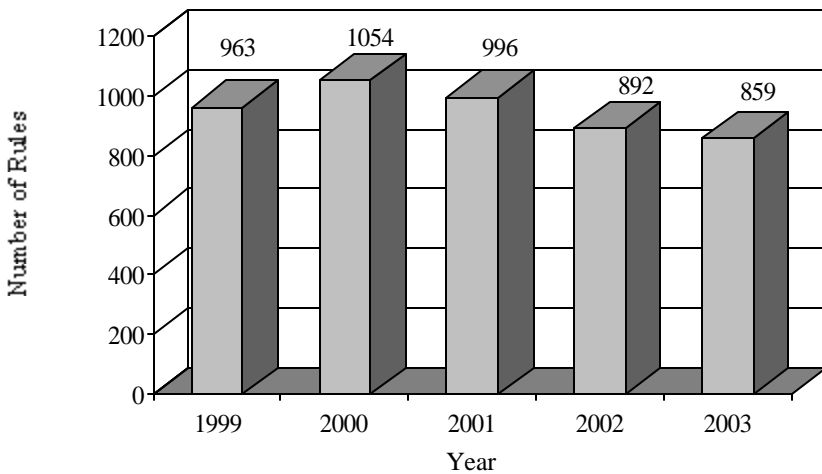
Source: Compiled from National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, December 22, 2003.

The Department of Transportation and the Environmental Protection Agency account for, respectively, 151 and 135 of the 859 rules that affect small business—outstripping other agencies’ rules with small business impacts. The runners up are the Federal Communications Commission with 104 rules affecting small business, the Department of Health and Human Services with 96, and the Department of Commerce with 74. Those five agencies

together account for 560, or 65 percent, of the total number of rules that will affect small businesses. (For the numbers of rules affecting small business broken down by department and agency for *Agendas* since 1995, see Appendix: Historical Tables, Part F.)

The proportion of total rules affecting small business has increased somewhat over the past few years, despite the passage of amendments to the Regulatory Flexibility

Figure 12
Rules That Impact Small Business, 1999–2003



Source: Compiled from National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, December 22, 2003.

Table 6
Unified Agenda Entries Impacting Small Business by Department, Agency, and Commission, December 2003

	Total Rules	Number Impacting Small Business			Total	% Impacting Small Business
		RFA Required	RFA Not Required			
Department of Agriculture	323	43	21	64	19.8%	
Department of Commerce	300	55	19	74	24.7%	
Department of Defense	108		13	13	12.0%	
Department of Education	13			0	0.0%	
Department of Energy	66	1		1	1.5%	
Department of Health & Human Services	219	48	48	96	43.8%	
Department of Homeland Security	338	8	25	33	9.8%	
Department of Housing & Urban Development	109	1	10	11	10.1%	
Department of the Interior	295	12	14	26	8.8%	
Department of Justice	122	5	3	8	6.6%	
Department of Labor	89	13	10	23	25.8%	
Department of State	15		2	2	13.3%	
Department of Transportation	365	16	135	151	41.4%	
Department of Treasury	530		27	27	5.1%	
Department of Veterans Affairs	87			0		
Advisory Council on Historic Preservation	1			0	0.0%	
Agency for International Development	8		1	1		
Architectural and Transportation Barriers Compliance Board	4			0		
Commission on Civil Rights	1			0	0.0%	
Corporation for National & Community Service	9			0	0.0%	
Court Services/Offender Supervision, D.C.	3			0	0.0%	
Environmental Protection Agency	417	9	126	135	32.4%	
Equal Employment Opportunity Commission	4			0	0.0%	
Federal Mediation and Conciliation Service	3			0	0.0%	
General Services Administration	37	2	3	5	13.5%	
Udall Inst. For Environmental Conflict Res.	1			0	0.0%	
National Aeronautics & Space Administration	34			0	0.0%	
National Archives & Records Administration	19		1	1	5.3%	
Institute of Museum and Library Services	6			0	0.0%	
National Endowment for the Arts	6		2	2	33.3%	
National Endowment for the Humanities	8			0	0.0%	
National Science Foundation	2			0	0.0%	
Office of Federal Housing Enterprise Oversight	4			0	0.0%	
Office of Government Ethics	9			0	0.0%	
Office of Management & Budget	4			0	0.0%	
Office of Personnel Management	90			0	0.0%	
Peace Corps	9			0	0.0%	
Pension Benefit Guaranty Corporation	4			0	0.0%	
Postal Trust	1			0	0.0%	
Railroad Retirement Board	11			0	0.0%	

Continued

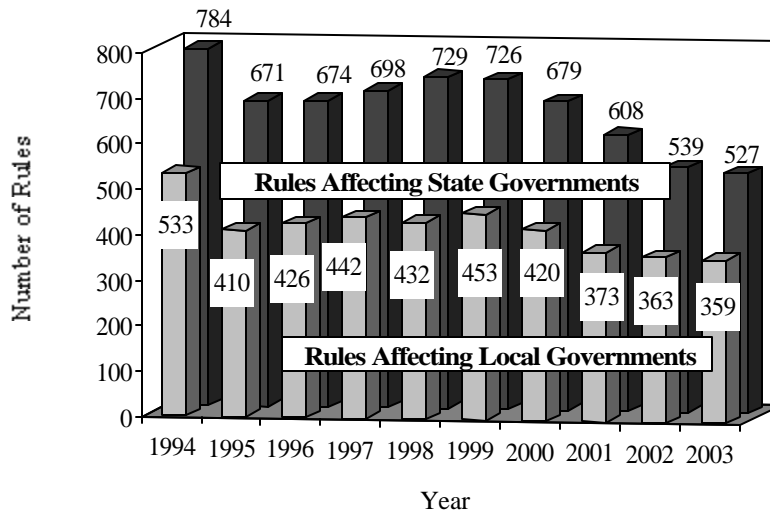
Table 6 continued

	Total Rules	Number Impacting Small Business			% Impacting Small Business
		RFA Required	RFA Not Required	Total	
Selective Service System	1			0	0.0%
Small Business Administration	33	17	7	24	72.7%
Social Security Administration	64		1	1	1.6%
Tennessee Valley Authority	2			0	0.0%
Federal Acquisition Regulation	49	5		5	10.2%
Commodity Futures Trading Commission	15	1	1	2	13.3%
Consumer Product Safety Commission	20			0	0.0%
Farm Credit Administration	21			0	0.0%
Farm Credit System Insurance Corporation	1			0	0.0%
Federal Communications Commission	134	99	5	104	77.6%
Federal Deposit Insurance Corporation	17			0	0.0%
Federal Energy Regulatory Commission	21			0	0.0%
Federal Housing Finance Board	11			0	0.0%
Federal Maritime Commission	11	4	6	10	90.9%
Federal Reserve System	18	3		3	16.7%
Federal Trade Commission	12		9	9	75.0%
National Credit Union Administration	27			0	0.0%
National Indian Gaming Commission	14			0	0.0%
Nuclear Regulatory Commission	45	3		3	6.7%
Securities and Exchange Commission	71	25		25	35.2%
Surface Transportation Board	5			0	0.0%
Total	4,266	370	489	859	20.1%

Note: RFA = Regulatory Flexibility Analysis.

Source: Compiled from National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, December 22, 2003.

Figure 13
Rules That Impact State and Local Governments, 1994–2003



Compiled from the National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions*, December 22, 2003.

Note: Many of these rules affect both local and state governments, and most of these rules affect the private sector as well.

Act in 1996. As noted in Table 6, the 859 rules impacting small business in 2003 make up 20 percent of the total 4,266 rules. By contrast, in 1996, 16.1 percent of rules affected small businesses.

Federal Regulations Impacting State and Local Governments

Ten Thousand Commandments primarily tracks regulations imposed on the private sector. However, state and local officials' realization during the 1990s that their own priorities were being overridden by federal mandates generated additional interest from them in regulatory reform. As a result, Congress passed the Unfunded Mandates Act in 1995 to provide a point of order against such mandates as a means of getting lawmakers to pay closer attention to the impacts of legislative activity on the states.

As Figure 13 shows, agencies report that 359 of the 4,266 rules in the 2003 *Agenda* will have effects on local governments, about 1 percent fewer than 2002's 363.²⁷ Over the

eight years since the passage of the Unfunded Mandates Act, the number of rules affecting local governments has fallen from 533 to 353, a drop of 34 percent.

Figure 13 also shows that the total number of regulatory actions affecting state-level governments was somewhat level, falling from 539 to 527 over the past year. Since passage of the unfunded mandates legislation, the count has dropped from 784 to 527, a decline of 33 percent. (For breakdowns of the numbers of rules affecting state and local governments by department and agency over the past several years' *Agendas*, see Appendix: Historical Tables, Part G.)

General Accounting Office Database on Regulations

The various reports on regulatory measures serve different purposes. The *Federal Register* shows the aggregate number of proposed and final rules. The *Agenda* reveals the number of rules at various stages in the regulatory pipeline. Under the 1996 Congressional Review Act, agencies are required to submit

State and local officials realized during the 1990s that their own priorities were being overridden by federal mandates.

Table 7
GAO Reports on Major Rules, 1998–2003

	1998	1999	2000	2001	2002	2003
Environmental Protection Agency	9	5	5	4	1	3
Department of the Interior	5	4	10	8	7	7
Federal Communications Commission	17	5	7	2	4	1
Health and Human Services	18	7	13	19	12	18
Department of Energy	0	0	3	3	1	
Securities and Exchange Commission	5	5	6	2	2	5
Department of Agriculture	4	5	12	9	7	5
Nuclear Regulatory Commission	2	1	2	1	1	1
Department of Transportation	1	4	3	3	6	4
Department of Homeland Security	n/a	n/a	n/a	n/a	n/a	2
Department of Justice	1	0	0	2	5	
Federal Reserve System	0	0	1	0	0	1
Social Security Administration	0	3	1	1	0	
Department of Housing and Urban Dev.	0	1	2	1	0	
Department of Labor	2	0	5	3	1	1
Department of Commerce	1	2	0	1	0	
Pension Benefit Guaranty Corp.	1	0	0	0	0	
Department of Treasury	2	0	0	0	0	
Department of Defense	1	1	0	2	2	
Department of Education	0	1	0	0	0	
National Credit Union Administration	0	1	0	0	0	
Emergency Steel Guarantee Loan Board	0	1	0	0	0	
Small Business Administration	1	0	1	1	0	
Federal Trade Commission	0	0	1	0	0	
Achitectural Barriers Compliance Board	0	0	0	1	0	
Federal Emergency Management Agency	0	0	0	3	1	
Federal Acquisition Regulation	0	0	0	1	0	
Department of Veterans Affairs	0	0	0	3	1	2
Office of Management and Budget	0	0	0	1	0	
Office of Personnel Management	0	0	1	0	0	1
Various agencies; HIPAA* Implementation	0	0	0	1	0	
Total	70	46	73	72	51	51

Source: Compiled from GAO data.

Note: HIPAA = Health Insurance Portability and Accountability Act.

reports to Congress on their “major” rules (typically those costing \$100 million or more). Thanks to those reports, one can now rather easily see which of the thousands of final rules that agencies issue each year are major and which agencies are producing the rules.

The General Accounting Office reports that the CRA gives Congress a chance to review a rule for 60 legislative days, and, if desired, to pass a resolution of disapproval rejecting the rule. But despite the issuance of thousands of rules since the CRA’s passage—among them many dozens of major ones—only one has been rejected, the Labor Department’s rule on work-

place repetitive-motion injuries in early 2001.

As can be seen in Table 7, which is based on the GAO database, the number of final major rules issued by agencies stayed the same over the past year; 51 final rules were issued in 2003. The Department of Health and Human Services issued the greatest number of major rules in 2003—18—followed by the Interior Department’s 7.

Regulation and the EPA

This report has taken a broad look at the

Despite the issuance of thousands of rules since the CRA’s passage, only one has been rejected.

Of the 4,266 rules in the *Unified Agenda* pipeline in 2003, 417, or 10 percent, were in the works at the EPA.

extent of government regulation. It is also useful to look at a single agency in isolation to get a feel for regulatory trends. By several measures, the EPA is a prominent regulator. For example, it spends more than any other agency to enforce regulations. The EPA alone, which is expected to spend \$4.8 billion to enforce regulation during FY 2004, accounts for 17 percent of the \$28.8 billion (in current dollars) expected to be spent by all the regulatory agencies.²⁸ But total numbers of regulations from the EPA have fallen lately.

Total EPA Rules and Their Impact on Small Business

Of the 4,266 rules in the *Unified Agenda* pipeline in 2003, 417, or 10 percent, were in the works at the EPA (Table 7). Nonetheless, the total number of rules from EPA is lower than it was five years ago in 1998, when the count was 462 (Figure 14). Rules have been about level over the past year, moving from 409 to 417. The agency's total number of economically significant rules in the *Agenda* dropped to 22 from 25 in 2002 (Table 5). The number of EPA major rules finalized, as compiled from GAO data and shown in Table 7, rose from one to three.

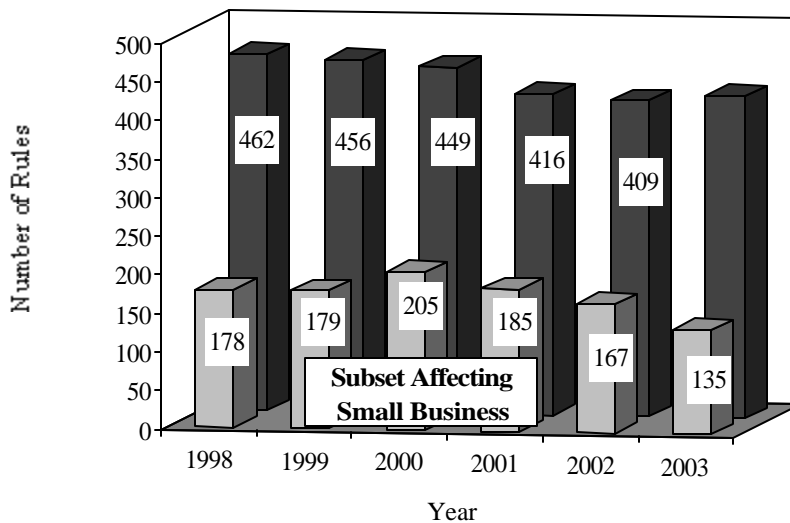
The number of EPA rules has fallen, but that should be weighed against high enforcement costs and the thrust of certain highly costly rules. EPA rules on air quality and lead abatement, for example, are extremely costly.²⁹ Fewer rules, or at least better-scrutinized rules, are a welcome development but do not necessarily mean lower costs.

Also shown in Figure 14 is the subset of the EPA's rules that have some impact on small business. Since 1998 that category of rules has fallen 24 percent, from 178 to 135. The number of EPA rules impacting small business had hit 205 in President Clinton's final year.

Impacts of EPA Rules on State and Local Governments

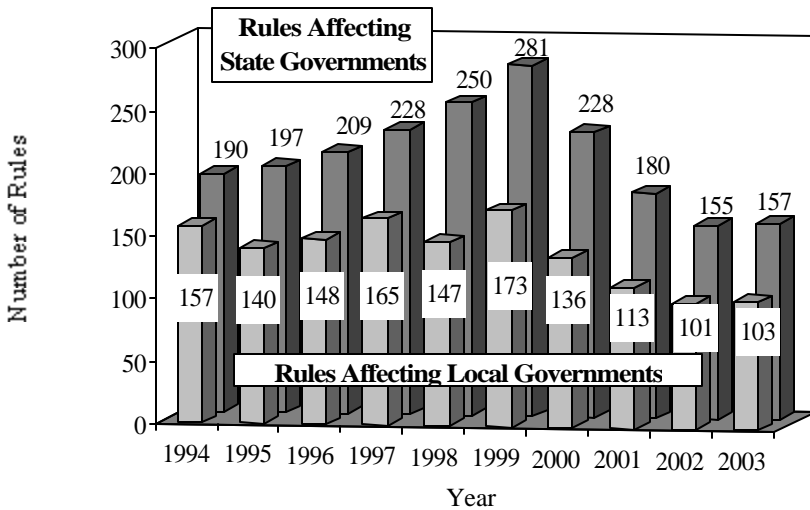
Earlier, Figure 13 showed that, overall, there are fewer federal agency rules affecting state and local governments than there were in 1994 (before the Unfunded Mandates Act). Figure 15 shows that the number of EPA rules affecting state and local governments, in contrast with overall trends, did rise steadily after 1995. But after 1999 that number began dropping markedly. For example, under President Bush, EPA rules

Figure 14
Number of EPA Rules, 1998–2003



Source: Compiled from the National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions*, December 22, 2003.

Figure 15
EPA Rules Affecting State and Local Governments, 1994–2003



Source: Compiled from the National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions*, December 22, 2003.

affecting state governments have fallen 31 percent so far, from 228 to 157.

Interestingly, the EPA’s rules led to many of the complaints that resulted in passage of the Unfunded Mandates Act in the first place.

Ending Regulation without Representation

Steps toward Improving Regulatory Disclosure

Federal regulatory compliance costs total hundreds of billions of dollars every year, as the earlier descriptions of the OMB and Hopkins studies indicated. Although it is true

that some regulations may produce benefits that exceed their costs, costs and benefits are known for relatively few regulations. Without any official regulatory accounting, it is difficult to know whether society wins or loses, which renders OMB’s estimates of overall net benefits from the regulatory state questionable. That is why, to the extent possible, regulatory data should be officially summarized and publicly disclosed. Simultaneously, elected representatives should assume responsibility and end “regulation without representation.” Halting excessive delegation is the best way to rein in off-budget regulatory costs.

Although disclosure of regulatory costs should be a priority of regulatory reformers, engaging in a protracted legislative fight over

Halting excessive delegation is the best way to rein in off-budget regulatory costs.

Table 8
A Possible Breakdown of “Economically Significant” Rules

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

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

- “Economically significant” rules by category (see Table 8) and minor rules by department, agency, and commission
- Numbers/percentages of rules impacting small business and lower-level governments
- Numbers/percentages of rules featuring numerical cost estimates
- Tallies of existing cost estimates, with subtotals by agencies, and grand total
- Numbers/percentages of rules lacking cost estimates
- Short explanation of lack of cost estimates, where applicable
- Percentage of rules reviewed by the OMB and action taken
- Analysis of the *Federal Register*: number of pages, proposed and final rule breakdowns by agency
- Numbers of major rules reported on by the GAO in its database of reports on regulations
- Most active rule-making agencies
- Rules that are deregulatory rather than regulatory
- Rules that affect internal agency procedures alone
- Rollover: number of rules new to the *Unified Agenda*; number carried over from previous years
- Numbers/percentages of rules required by statute vs. discretionary rules
- Numbers/percentages of rules facing statutory or judicial deadlines
- Rules for which weighing costs and benefits is statutorily prohibited

By making agency activity more explicit, a regulatory report card would help ensure that the growth of the regulatory state is taken seriously.

comprehensive reform, such as requiring more net benefit and risk assessment analysis, should be avoided. A useful incremental step would be to require the publication of a summary of already available, but scattered, data (resembling that in *Ten Thousand Commandments*). That simple step alone would help to transform today’s regulatory culture from one of nondisclosure and bureaucratic brushoff to one of maximum regulatory disclosure.

Broadly, today’s regulations fall into two classes—those that are “economically significant” (cost more than \$100 million annually) and those that are not. An obvious problem with this threshold is that reformers can point, not to what the regulatory state actually costs, but only to a minimum level of such costs. Today, agencies need not specify whether any or all of their economically signif-

icant rules cost only \$100 million, or something far beyond.

To improve disclosure, a simple intermediate step would be to redefine the notion of economically significant rules to reflect increasing levels of costs. Agencies could be required to break up their economically significant rules into categories that represent increasing costs. Table 8 presents one alternative that assigns economically significant rules to one of five categories.

Agencies could classify their rules on the basis of cost information provided in the regulatory impact analyses that accompany many economically significant rules, or on the basis of separate internal or external estimates. Although modest, this step toward greater disclosure could be highly important. Other steps can be taken easily. Today, to learn about regulatory trends and accumu-

late information on rules—such as numbers produced by each agency, their costs and benefits (if available), and so on—interested citizens must comb through the *Agenda's* 1,000-plus pages of small, multicolumn print. Useful regulatory information is available but often tedious to accumulate.

The *Agenda* could be made more user-friendly. One modest change might require that data from the *Agenda* be officially summarized in charts each year. The information could be presented as a chapter in the federal budget, the *Agenda* itself, or the *Economic Report of the President*.

One way to set up a regulatory report card is shown in the box above. Information could be added to the report as deemed necessary—for instance, success or failure of any special initiative, such as any reinventing government, or regulatory reform effort. Providing five-year historical data would tremendously enhance the usefulness of the *Agenda*. Paradoxically, one of the virtues of a regulatory report card is that it would reveal more clearly what we don't know about the regulatory state.

Detailed cost/benefit data are not necessary to begin producing a regulatory report card. A clear presentation of trends in those data would prove useful to scholars, third-party researchers, and Congress. By making agency activity more explicit, a regulatory report card would help ensure that the growth of the regulatory state is taken seriously by policymakers.

“No Regulation without Representation”

Years of unbudgeted regulatory growth merits concern. Most of the time we simply don't know whether regulatory benefits exceed costs. The real culprits are not the agencies: Congress shirks the duty to make the tough calls, delegating too much lawmaking power to agencies,³⁰ and then fails to require that they deliver greater benefits than costs. Thus, agencies can hardly be faulted for not guaranteeing optimal regulation or for not ensuring that only “good” rules get through. Agencies face overwhelming incentives to

expand their turf by regulating even in the absence of demonstrated need, since the only measure of agency productivity—other than growth in its budget and number of employees—is the number of regulations. One needn't waste time blaming agencies for emphasizing the very regulating they were set up to do in the first place. Better to point the finger at Congress. To put things in perspective, Congress passed and the president signed 198 bills into law in 2003.³¹ But, as noted, regulatory agencies issued 4,148 rules. The unelected are doing the bulk of the lawmaking.

Since agencies are unaccountable to voters, an annual regulatory report card is a start but not a complete answer. Nor are regulatory reforms that rely on agencies' policing themselves capable of harnessing the regulatory state. Instead, making Congress directly answerable to the voters for the costs agencies impose on the public would best promote accountable regulation. The way to control regulation is not to merely require agencies to perform cost/benefit analyses but to require Congress to vote on agencies' final rules before they are binding on the public.

Congressional accountability for regulatory costs assumes new importance in this era of vanished budget surpluses. If Congress's alternatives are to spend or to issue new regulations, concern about deficits invites Congress to regulate instead of increase government spending to accomplish its ends. For example, suppose Congress wanted to create a job-training program or otherwise fulfill some promise to voters. Funding a job-training program would require approval of a new appropriation for the Department of Labor, and that appropriation would appear in the federal budget (and reduce the government surplus). Or, Congress could simply pass a law requiring Fortune 500 companies to fund job training. That law, of course, would be carried out through new regulations issued by the Labor Department. The latter option would not add significantly to federal spending but would nonetheless let Congress take credit.

By regulating instead of spending, govern-

Congressional accountability for regulatory costs assumes new importance in this era of vanished budget surpluses.

Making Congress accountable for regulation in the same manner it is accountable for ordinary government spending is a way to head off excess.

ment can expand almost indefinitely without explicitly taxing anyone a single penny. Making Congress accountable for regulation in the same manner it is accountable for ordinary government spending is a way to head off excess. Requiring explicit approval of all proposed regulations would ensure that Congress bore direct responsibility for every dollar of new regulatory costs. To allay the concern that Congress would become bogged down approving agency rules, agency regulations could be voted on in bundles. In addition, congressional approval of new regulation could

also be given by voice vote, signifying unanimity, rather than by tabulated roll call vote. The important thing is that Congress be held accountable.

Whatever improvements in disclosure are made, however, congressional approval—rather than agency approval—of both regulations and regulatory costs should be the goal of regulatory reform. When Congress ensures transparency and disclosure and finally assumes responsibility for the growth of the regulatory state, it will have put in place a system more accountable to voters.

Appendix: Historical Tables

Part A: *Federal Register* Page History, 1936–2003

Year	Unadjusted Page Count	Jumps/Blanks	Adjusted Page Count
1936	2,620	not available (n/a)	2,620
1937	3,450	n/a	3,450
1938	3,194	n/a	3,194
1939	5,007	n/a	5,007
1940	5,307	n/a	5,307
1941	6,877	n/a	6,877
1942	11,134	n/a	11,134
1943	17,553	n/a	17,553
1944	15,194	n/a	15,194
1945	15,508	n/a	15,508
1946	14,736	n/a	14,736
1947	8,902	n/a	8,902
1948	9,608	n/a	9,608
1949	7,952	n/a	7,952
1950	9,562	n/a	9,562
1951	13,175	n/a	13,175
1952	11,896	n/a	11,896
1953	8,912	n/a	8,912
1954	9,910	n/a	9,910
1955	10,196	n/a	10,196
1956	10,528	n/a	10,528
1957	11,156	n/a	11,156
1958	10,579	n/a	10,579
1959	11,116	n/a	11,116
1960	14,479	n/a	14,479
1961	12,792	n/a	12,792
1962	13,226	n/a	13,226
1963	14,842	n/a	14,842
1964	19,304	n/a	19,304
1965	17,206	n/a	17,206
1966	16,850	n/a	16,850
1967	21,088	n/a	21,088
1968	20,072	n/a	20,072
1969	20,466	n/a	20,466
1970	20,036	n/a	20,036
1971	25,447	n/a	25,447
1972	28,924	n/a	28,924
1973	35,592	n/a	35,592
1974	45,422	n/a	45,422
1975	60,221	n/a	60,221
1976	57,072	6,567	50,505
1977	65,603	7,816	57,787
1978	61,261	5,565	55,696
1979	77,498	6,307	71,191
1980	87,012	13,754	73,258
1981	63,554	5,818	57,736
1982	58,494	5,390	53,104
1983	57,704	4,686	53,018
1984	50,998	2,355	48,643
1985	53,480	2,978	50,502
1986	47,418	2,606	44,812

Part A: Federal Register Page History, 1936–2003 *continued*

Year	Unadjusted Page Count	Jumps/Blanks	Adjusted Page Count
1987	49,654	2,621	47,033
1988	53,376	2,760	50,616
1989	53,842	3,341	50,501
1990	53,620	3,825	49,795
1991	67,716	9,743	57,973
1992	62,928	5,925	57,003
1993	69,688	8,522	61,166
1994	68,108	3,194	64,914
1995	67,518	4,873	62,645
1996	69,368	4,777	64,591
1997	68,530	3,981	64,549
1998	72,356	3,785	68,571
1999	73,880	2,719	71,161
2000	83,294	9,036	74,258
2001	67,702	3,264	64,438
2002	80,332	4,726	75,606
2003	75,798	4,529	71,269

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

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

Part B: Number of Documents Published in *Federal Register*, 1976–2003

Year	Final Rules	Proposed Rules	Other	Total
1976	7,401	3,875	27,223	38,499
1977	7,031	4,188	28,381	39,600
1978	7,001	4,550	28,705	40,256
1979	7,611	5,824	29,211	42,646
1980	7,745	5,347	33,670	46,762
1981	6,481	3,862	30,090	40,433
1982	6,288	3,729	28,621	38,638
1983	6,049	3,907	27,580	37,536
1984	5,154	3,350	26,047	34,551
1985	4,843	3,381	22,833	31,057
1986	4,589	3,185	21,546	29,320
1987	4,581	3,423	22,052	30,056
1988	4,697	3,240	22,047	29,984
1989	4,714	3,194	22,218	30,126
1990	4,334	3,041	22,999	30,374
1991	4,416	3,099	23,427	30,942
1992	4,155	3,170	24,063	31,388
1993	4,369	3,207	24,017	31,593
1994	4,867	3,372	23,669	31,908
1995	4,713	3,339	23,133	31,185
1996	4,937	3,208	24,485	32,630
1997	4,584	2,881	26,260	33,725
1998	4,899	3,042	26,313	34,254
1999	4,684	3,281	26,074	34,039
2000	4,313	2,636	24,976	31,925
2001	4,132	2,512	25,392	32,036
2002	4,167	2,635	26,250	33,052
2003	4,148	2,538	25,168	31,854

Source: National Archives and Records Administration, Office of the Federal Register.
Note: “Other” documents are presidential documents, agency notices, and corrections.

Part C: Unified Agenda Rules History, 1983–2003

		<u>Total Number of Rules under Consideration</u>						
1980s		1990s			2000s			
1983	April	2,863	1990	April	4,332	2000	October	4,699
	October	4,032		October	4,470	2001	October	4,509
1984	April	4,114	1991	April	4,675	2002	October	4,187
	October	4,016		October	4,863	2003	October	4,266
1985	April	4,265	1992	April	4,186			
	October	4,131		October	4,909			
1986	April	3,961	1993	April	4,933			
	October	3,983		October	4,950			
1987	April	4,038	1994	April	5,105			
	October	4,005		October	5,119			
1988	April	3,941	1995	April	5,133			
	October	4,017		October	4,735			
1989	April	4,003	1996	April	4,570			
	October	4,187		October	4,680			
			1997	April	4,417			
				October	4,407			
			1998	April	4,504			
				October	4,560			
			1999	April	4,524			
				October	4,568			

Source: Regulatory Information Service Center, *The Regulatory Plan and the Unified Agenda of Federal Regulations*, various years.

Part D: Agenda Rules History by Department and Agency, 1997–2002

	2002	2001	2000	1999	1998	1997
Department of Agriculture	314	312	327	345	384	398
Department of Commerce	270	342	390	366	344	283
Department of Defense	87	93	117	121	142	142
Department of Education	14	8	21	32	20	29
Department of Energy	53	61	67	64	63	75
Department of Health & Human Services	219	277	308	300	351	299
Department of Housing & Urban Development	100	89	113	128	102	98
Department of the Interior	298	423	418	309	337	321
Department of Justice	249	229	202	201	186	185
Department of Labor	102	141	156	151	149	132
Department of State	41	32	21	27	22	24
Department of Transportation	543	511	536	539	518	510
Department of the Treasury	513	458	450	400	438	458
Department of Veterans Affairs	104	164	141	130	118	108
Advisory Council on Historic Preservation	1	0	1	1	1	1
Agency for International Development	7	6	6	5	7	8
Architectural and Transportation Barriers Compliance Board	5	5	7	8	9	9
Commission on Civil Rights	1	1	1	1	1	1
Corporation for National & Community Service	16	9	6	4	6	2
Environmental Protection Agency	409	416	449	456	462	430
Federal Emergency Management Agency	24	30	26	33	25	22
General Services Administration	40	35	40	51	49	52
National Aeronautics & Space Administration	13	17	11	7	11	17
National Archives & Records Administration	20	19	21	21	19	17
Institute of Museum and Library Services	5	5	4	1	1	2
National Endowment for the Arts	5	5	5	5	5	7
Equal Employment Opportunity Commission	4	3	6	9	10	10
National Endowment for the Humanities	9	8	7	6	6	7
National Science Foundation	2	3	5	4	5	7
Office of Federal Housing Enterprise Oversight	7	9	5	5	4	4
Office of Government Ethics	10	11	11	12	12	13
Office of Management & Budget	4	5	5	9	11	16
Office of Personnel Management	72	91	110	112	101	92
Panama Canal Commission	0	0	0	4	5	6
Peace Corps	9	9	8	5	5	5
Pension Benefit Guaranty Corporation	6	11	10	12	12	10
Railroad Retirement Board	13	13	19	16	17	20
Selective Service System	1	1	1	1	1	1
Small Business Administration	40	37	41	35	25	15
Social Security Administration	63	85	82	67	70	72
Tennessee Valley Authority	2	3	3	1	1	0
U.S. Information Agency	0	0	0	0	1	4
Federal Acquisition Regulation	43	48	56	49	42	49
Commodity Futures Trading Commission	19	30	21	19	12	9
Consumer Product Safety Commission	20	21	20	17	15	14
Farm Credit Administration	14	17	17	19	15	17
Farm Credit System Insurance Corporation	1	1	3	3	3	4
Federal Communications Commission	141	145	137	128	121	98
Federal Energy Regulatory Commission	19	8	18	20	12	10
Federal Housing Finance Board	9	12	12	18	17	17
Federal Maritime Commission	8	7	9	9	6	3
Federal Reserve System	24	32	33	22	30	36
Federal Trade Commission	10	13	14	16	16	19
National Credit Union Administration	20	22	16	26	14	14
Federal Deposit Insurance Corporation	17	22	26	25	26	31
National Indian Gaming Commission	16	15	14	14	17	16
National Labor Relations Board		0	0	0	0	3
Nuclear Regulatory Commission	39	42	55	57	63	62
Office of Special Counsel		0	3	2	1	
Overseas Private Investment Corporation		0	0	0	2	0
Securities and Exchange Commission	73	80	77	80	83	79
Surface Transportation Board	5	4	3	3	8	13
Federal Mediation and Conciliation Service	4	3	2	1	1	1
Court Services/Offender Supervision, D.C.	7	5	0	0	0	0
Presidio Trust	2	2	3	3	0	0
Udall Institute for Environmental Conflict Res.	1	3	3	3	0	0
Total	4,187	4,509	4,699	4,538	4,560	4,407

Source: Compiled from Regulatory Information Service Center, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, various years.

Part E: Listing of 127 “Economically Significant” Rules, 2003*

From the Regulatory Plan (43 Rules)

Department of Agriculture

- (1) 4. MANDATORY COUNTRY OF ORIGIN LABELING OF BEEF, PORK, LAMB, FISH, PERISHABLE AGRICULTURAL COMMODITIES, AND PEANUTS (LS-03-04)
- (2) 12. FOOD STAMP PROGRAM: SIMPLIFICATION AND STATE FLEXIBILITY
- (3) 14. FSP: ELIGIBILITY AND CERTIFICATION PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002
- (4) 15. FSP: EMPLOYMENT AND TRAINING PROGRAM PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002
- (5) 19. FOOD STAMP PROGRAM: VEHICLE AND MAXIMUM EXCESS SHELTER EXPENSE DEDUCTION PROVISIONS OF PUBLIC LAW 106-387
- (6) 22. EGG AND EGG PRODUCTS INSPECTION REGULATIONS
- (7) 24. EMERGENCY REGULATIONS TO PREVENT MEAT FOOD AND MEAT PRODUCTS THAT MAY CONTAIN THE BSE AGENT FROM ENTERING COMMERCE
- (8) 26. PERFORMANCE STANDARDS FOR READY-TO-EAT MEAT AND POULTRY PRODUCTS
- (9) 31. CONSERVATION SECURITY PROGRAM

Department of Commerce

- (10) 32. AMENDMENT 13 TO THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN (FMP)

Department of Energy

- (11) 35. ENERGY EFFICIENCY STANDARDS FOR RESIDENTIAL FURNACES, BOILERS, AND MOBILE HOME FURNACES
- (12) 36. ENERGY EFFICIENCY STANDARDS FOR ELECTRIC DISTRIBUTION TRANSFORMERS
- (13) 37. ENERGY EFFICIENCY STANDARDS FOR COMMERCIAL CENTRAL AIR CONDITIONING UNITS AND HEAT PUMPS RATED 65-240 KBTUS/HR

Department of Health and Human Services

- (14) 42. PREVENTION OF SALMONELLA ENTERITIDIS IN SHELL EGGS
- (15) 46. USE OF OZONE-DEPLETING SUBSTANCES: REMOVAL OF ESSENTIAL USE DESIGNATION; ALBUTEROL
- (16) 49. CGMP FOR BLOOD AND BLOOD COMPONENTS: NOTIFICATION OF CONSIGNEES AND TRANSFUSION RECIPIENTS RECEIVING BLOOD AND BLOOD COMPONENTS AT INCREASED RISK OF TRANSMITTING HCV INFECTION (LOOKBACK)
- (17) 50. CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, OR HOLDING DIETARY INGREDIENTS AND DIETARY SUPPLEMENTS
- (18) 51. BAR CODE LABEL REQUIREMENTS FOR HUMAN DRUG PRODUCTS AND BLOOD
- (19) 53. ESTABLISHMENT AND MAINTENANCE OF RECORDS PURSUANT TO THE PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002
- (20) 60. HOSPITAL PATIENTS’ RIGHTS COP-STANDARD SAFETY COMPLIANCE COMMITTEES (CMS-3120-P)
- (21) 63. REVISIONS TO THE APPEALS PROCESS FOR INITIAL CLAIM DETERMINATIONS (CMS-4064-F)

Department of the Interior

- (22) 74. RELIEF OR REDUCTION IN ROYALTY RATES—DEEP GAS PROVISIONS

Department of Justice

- (23) 75. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES (Section 610 Review)

Continued

Part E: Listing of 127 “Economically Significant” Rules, 2003* *continued*

(24) 76. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES

Department of Labor

(25) 79. DEFINING AND DELIMITING THE TERM “ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY” (ESA/W-H)

(26) 89. OCCUPATIONAL EXPOSURE TO HEXAVALENT CHROMIUM (PREVENTING OCCUPATIONAL ILLNESS: CHROMIUM)

(27) 90. OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA

Department of Transportation

(28) 97. REFORMING THE AUTOMOBILE FUEL ECONOMY STANDARDS PROGRAM

Department of Veterans Affairs

(29) 100. ENROLLMENT—PROVISION OF HOSPITAL AND OUTPATIENT CARE TO VETERANS--SUB-PRIORITIES OF PRIORITY CATEGORIES 7 AND 8 AND ENROLLMENT LEVEL DECISION

Environmental Protection Agency

(30) 102. ELECTRIC UTILITY STEAM GENERATING UNIT MACT REGULATION

(31) 110. STANDARDS FOR THE MANAGEMENT OF COAL COMBUSTION WASTES GENERATED BY COMMERCIAL ELECTRIC POWER PRODUCERS

(32) 115. NESHAP: PLYWOOD AND COMPOSITE WOOD PRODUCTS

(33) 116. NESHAP: RECIPROCATING INTERNAL COMBUSTION ENGINE

(34) 117. NESHAP: INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL BOILERS AND PROCESS HEATERS

(35) 118. NESHAP: SURFACE COATING OF AUTOMOBILES AND LIGHT-DUTY TRUCKS

(36) 119. IMPLEMENTATION RULE FOR 8-HOUR OZONE NAAQS

(37) 120. CONTROL OF EMISSIONS OF AIR POLLUTION FROM NONROAD DIESEL ENGINES AND FUEL

(38) 126. NATIONAL PRIMARY DRINKING WATER REGULATIONS: GROUNDWATER RULE

(39) 127. NATIONAL PRIMARY DRINKING WATER REGULATIONS: LONG TERM 2 ENHANCED SURFACE WATER TREATMENT RULE

(40) 128. NATIONAL PRIMARY DRINKING WATER REGULATIONS: STAGE 2 DISINFECTION BYPRODUCTS RULE

(41) 129. EFFLUENT GUIDELINES AND STANDARDS FOR THE CONSTRUCTION AND DEVELOPMENT INDUSTRY

(42) 130. MINIMIZING ADVERSE ENVIRONMENTAL IMPACT FROM COOLING WATER INTAKE STRUCTURES AT EXISTING FACILITIES UNDER SECTION 316(B) OF THE CLEAN WATER ACT, PHASE 2

Social Security Administration

(43) 147. REVISED MEDICAL CRITERIA FOR EVALUATING IMPAIRMENTS OF THE DIGESTIVE SYSTEM (800F)

From the *Unified Agenda* (84 additional rules)

Department of Agriculture

(44) 186. 2002 FARM BILL REGULATIONS—CONSERVATION RESERVE PROGRAM

Continued

Part E: Listing of 127 “Economically Significant” Rules, 2003* *continued*

- (45) 207. 2003 AGRICULTURAL ASSISTANCE ACT—CROP DISASTER PROGRAM, LIVESTOCK ASSISTANCE PROGRAM, AND WEATHER-RELATED LOSSES FOR SUGAR BEETS
- (46) 246. IMPORTATION OF UNMANUFACTURED WOOD ARTICLES; SOLID WOOD PACKING MATERIAL
- (47) 303. FOOD STAMP PROGRAM: ADMINISTRATIVE COST REIMBURSEMENT
- (48) 331. WIC: REQUIREMENTS FOR AND EVALUATION OF WIC PROGRAM REQUESTS FOR BIDS FOR INFANT FORMULA REBATE CONTRACTS
- (49) 374. CCC SUPPLIER CREDIT GUARANTEE PROGRAM
- (50) 463. EMERGENCY WATERSHED PROTECTION PROGRAM
- (51) 470. ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

Department of Commerce

- (52) 630. PACIFIC COAST GROUND FISH FISHERY; ANNOUNCEMENT OF THE 2004 GROUND FISH FISHERY SPECIFICATIONS AND MANAGEMENT MEASURES
- (53) 661. FISHING CAPACITY REDUCTION PROGRAM FOR THE CRAB SPECIES COVERED BY THE FISHERY MANAGEMENT PLAN FOR THE BERING SEA/ALEUTIAN ISLANDS KING AND TANNER CRABS

Department of Defense

- (54) 880. TRICARE; CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); ELIGIBILITY AND PAYMENT PROCEDURES FOR CHAMPUS BENEFICIARIES AGE 65 AND OVER

Department of Energy

- (55) 918. ENERGY EFFICIENCY STANDARDS FOR CLOTHES DRYERS AND DISHWASHERS
- (56) 919. ENERGY EFFICIENCY STANDARDS FOR POOL HEATERS AND DIRECT HEATING EQUIPMENT
- (57) 920. ENERGY EFFICIENCY STANDARDS FOR 1-200 HP ELECTRIC MOTORS
- (58) 921. ENERGY EFFICIENCY STANDARDS FOR FLUORESCENT AND INCANDESCENT LAMPS

Department of Health and Human Services

- (59) 1024. REGISTRATION OF FOOD AND ANIMAL FEED FACILITIES
- (60) 1025. PRIOR NOTICE OF IMPORTED FOOD UNDER THE PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002
- (61) 1035. FOOD LABELING: TRANS FATTY ACIDS IN NUTRITION LABELING, NUTRIENT CONTENT CLAIMS, AND HEALTH CLAIMS
- (62) 1038. APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG: PATENT LISTING REQUIREMENTS AND APPLICATION OF 30-MONTH STAYS ON APPROVAL OF ABBREVIATED NEW DRUG APPLICATIONS
- (63) 1074. CRITERIA FOR DETERMINING WHETHER A DRUG IS CONSIDERED USUALLY SELF-ADMINISTERED (CMS-1228-P)
- (64) 1082. CHANGES TO THE HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEM AND FY 2005 RATES (CMS-1428-P)
- (65) 1087. REQUIREMENTS FOR LONG-TERM CARE FACILITIES: HOSPICE SERVICES (CMS-3140-P)
- (66) 1089. HOME HEALTH PROSPECTIVE PAYMENT SYSTEM RATE UPDATE FY 2005 (CMS-1265-P)
- (67) 1123. HOSPITAL CONDITIONS OF PARTICIPATION: REQUIREMENTS FOR HISTORY AND PHYSICAL EXAMINATIONS; AUTHENTICATION OF VERBAL ORDERS, SECURING MEDICATIONS AND POST-ANESTHESIA EVALUATIONS (CMS-3122-F)
- (68) 1127. CHANGES TO THE CRITERIA FOR BEING CLASSIFIED AS AN INPATIENT REHABILITATION FACILITY (CMS-1262-F)
- (69) 1145. CHANGES TO THE HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEM AND FY 2004 RATES (CMS-1470-F)
- (70) 1154. PAYMENT REFORM FOR PART B DRUGS (CMS-1229-F)

Continued

Part E: Listing of 127 “Economically Significant” Rules, 2003* *continued*

- (71) 1157. TIME LIMITATION ON RECALCULATIONS AND DISPUTES UNDER THE DRUG REBATE PROGRAM (CMS-2175-FC)
(72) 1162. HOSPITAL COST-TO-CHARGE RATIOS USED TO CALCULATE COST OUTLIER PAYMENTS UNDER THE MEDICARE SHORT-TERM INPATIENT PROSPECTIVE PAYMENT SYSTEM (CMS-1243-F)

Department of Homeland Security

- (73) 1356. SALVAGE AND MARINE FIREFIGHTING REQUIREMENTS; VESSEL RESPONSE PLANS FOR OIL (USCG-1998-3417)
(74) 1373. FACILITY SECURITY (USCG-2003-14732)
(75) 1374. VESSEL SECURITY (USCG-2003-14749)
(76) 1410. PASSENGER AND CREW MANIFESTS FOR ARRIVING AND DEPARTING VESSELS AND AIRCRAFT
(77) 1416. REQUIRED ADVANCE ELECTRONIC PRESENTATION OF CARGO INFORMATION
(78) 1428. CARRIER ARRIVAL AND DEPARTURE ELECTRONIC MANIFEST REQUIREMENTS
(79) 1443. CAPPS II-ACCESS TO PASSENGER RESERVATION INFORMATION
(80) 1508. DISASTER ASSISTANCE; FEDERAL ASSISTANCE TO INDIVIDUALS AND HOUSEHOLDS

Department of Housing and Urban Development

- (81) 1526. FAIR MARKET RENTS PROGRAMS: INCREASED FAIR MARKET RENTS FOR CERTAIN AREAS AND HIGHER PAYMENT STANDARDS (FR-4606)
(82) 1556. UP-FRONT MORTGAGE INSURANCE PREMIUMS FOR LOANS INSURED UNDER 24 CFR 203(K) AND 234(C) OF THE NATIONAL HOUSING ACT (FR-4749)
(83) 1578. RESPA—IMPROVING THE PROCESS FOR OBTAINING MORTGAGES (FR-4727)

Department of the Interior

- (84) 1797. MIGRATORY BIRD HUNTING; PROPOSED 2003–2004 MIGRATORY GAME BIRD HUNTING REGULATIONS (PRELIMINARY) WITH REQUESTS FOR INDIAN TRIBAL PROPOSALS

Department of Justice

- (85) 2036. PUBLIC SAFETY OFFICERS’ BENEFITS PROGRAM

Department of Labor

- (86) 2101. CONFINED SPACES IN CONSTRUCTION (PART 1926): PREVENTING SUFFOCATION/EXPLOSIONS IN CONFINED SPACES
(87) 2104. OCCUPATIONAL EXPOSURE TO BERYLLIUM
(88) 2112. HEARING CONSERVATION PROGRAM FOR CONSTRUCTION WORKERS
(89) 2118. OCCUPATIONAL EXPOSURE TO TUBERCULOSIS

Department of Transportation

- (90) 2171. DOMESTIC PASSENGER MANIFEST INFORMATION
(91) 2378. UPGRADE OF HEAD RESTRAINTS
(92) 2387. AUTOMOTIVE FUEL ECONOMY MANUFACTURING INCENTIVE FOR ALTERNATIVE FUEL VEHICLES
(93) 2397. REAR CENTER LAP/SHOULDER BELT REQUIREMENT—STANDARD 208
(94) 2415. TIRE PRESSURE MONITORING SYSTEM
(95) 2426. OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS
(96) 2428. IMPROVED TIRE SAFETY

Continued

Part E: Listing of 127 “Economically Significant” Rules, 2003* *continued*

Architectural and Transportation Barriers Compliance Board

(97) 3139. AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

Environmental Protection Agency

- (98) 3224. RULE TO REDUCE INTERSTATE TRANSPORT OF FINE PARTICULATE MATTER AND OTHER POLLUTANTS (INTERSTATE TRANSPORT RULE)
(99) 3319. REVIEW OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR PARTICULATE MATTER
(100) 3325. PHASE I (FIP) TO REDUCE THE REGIONAL TRANSPORT OF OZONE IN THE EASTERN UNITED STATES
(101) 3362. OVERVIEW OF RULEMAKINGS FOR THE PURPOSE OF REDUCING INTERSTATE OZONE TRANSPORT
(102) 3387. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) AND NONATTAINMENT NEW SOURCE REVIEW (NSR): ROUTINE MAINTENANCE, REPAIR, AND REPLACEMENT
(103) 3425. GROUNDWATER AND PESTICIDE MANAGEMENT PLAN RULE
(104) 3494. STANDARDS FOR THE MANAGEMENT OF COAL COMBUSTION WASTES—NONPOWER PRODUCERS AND MINEFILLING
(105) 3541. MINIMIZING ADVERSE ENVIRONMENTAL IMPACT FROM COOLING WATER INTAKE STRUCTURES AT EXISTING FACILITIES UNDER SECTION 316(B) OF THE CLEAN WATER ACT, PHASE 3
(106) 3564. NATIONAL PRIMARY DRINKING WATER REGULATIONS: RADON

Office of Personnel Management

(107) 3797. IMPLEMENTATION OF PREMIUM CONVERSION FOR EXECUTIVE BRANCH FEDERAL EMPLOYEES PARTICIPATING IN THE FEDERAL EMPLOYEES’ HEALTH BENEFITS (FEHB) PROGRAM

Social Security Administration

(108) 3904. NEW DISABILITY CLAIMS PROCESS—ROLES OF STATE AGENCY (816F)

Federal Acquisition Regulation

- (109) 3940. FAR CASE 2002—011, PROCUREMENT OF PRINTING AND DUPLICATING THROUGH THE GOVERNMENT PRINTING OFFICE
(110) 3971. FAR CASE 2002—029, CONTRACT BUNDLING

Consumer Product Safety Commission

(111) 3989. FLAMMABILITY STANDARD FOR UPHOLSTERED FURNITURE

Federal Communications Commission

- (112) 4041. UNLICENSED NATIONAL INFORMATION INFRASTRUCTURE AT 5 GHZ
(113) 4049. REVISION OF THE RULES REGARDING ULTRA—WIDEBAND TRANSMISSION
(114) 4067. ALLOCATE & DESIGNATE: SPEC FOR FIXED—SAT SRV (37.5—38.5, 40.5—41.5 & 48.2—50.2 GHZ BANDS). ALLOCATE: FIXED & MOBILE 40.5—42.5 GHZ; WIRELESS 46.9—47 GHZ; GOV OPER 37—38 & 40—40.5 GHZ; IB DOC NO. 97—95
(115) 4070. GLOBAL MOBILE PERSONAL COMMUNICATIONS BY SATELLITE; IB DOCKET NO. 99-67
(116) 4076. FLEXIBILITY FOR DELIVERY OF COMMUNICATIONS BY MOBILE SATELLITE SERVICE PROVIDERS IN THE 2 GHZ BAND, THE L—BAND, AND THE 1.6/2.4 GHZ BAND
(117) 4098. SATELLITE BROADCASTING SIGNAL CARRIAGE REQUIREMENTS

Continued

Part E: Listing of 127 “Economically Significant” Rules, 2003* *continued*

- (118) 4111. ASSESSMENT AND COLLECTION OF REGULATORY FEES FOR FY 2002
- (119) 4112. ASSESSMENT AND COLLECTION OF REGULATORY FEES FOR FY 2003
- (120) 4124. SERVICE RULES FOR THE 746—764 AND 776—794 MHZ BANDS, AND REVISIONS TO PART 27 OF THE COMMISSION’S RULES
- (121) 4130. TRANSFER OF THE 3650 THROUGH 3700 MHZ BAND FROM FEDERAL GOVERNMENT USE
- (122) 4131. 2000 BIENNIAL REGULATORY REVIEW SPECTRUM AGGREGATION LIMITS FOR COMMERCIAL MOBILE RADIO SERVICES
- (123) 4138. IMPLEMENTATION OF 911 ACT
- (124) 4148. ACCESS CHARGE REFORM
- (125) 4158. ACCESS CHARGE REFORM AND UNIVERSAL SERVICE REFORM

Federal Deposit Insurance Corporation

- (126) 4175. ACCESS OF PERSONS WITH DISABILITIES TO FDIC PROGRAMS, ACTIVITIES, FACILITIES, AND ELECTRONIC AND INFORMATION TECHNOLOGY

Nuclear Regulatory Commission

- (127) 4334. REVISION OF FEE SCHEDULES; FEE RECOVERY, FY 2003

Source: Compiled from National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, December 22, 2003.

*Note: Second number of each entry denotes the sequential location in the *Regulatory Plan and Unified Agenda*. See the entry for more detail.

Part F: Rules Affecting Small Business, 1995–2002

	1995	1996	1997	1998	1999	2000	2001	2002
Department of Agriculture	54	56	58	63	49	47	56	39
Department of Commerce	43	46	29	52	88	98	89	77
Department of Defense	27	22	15	21	15	7	8	6
Department of Education	0	1	1	0	0	0	0	1
Department of Energy	2	2	2	0	0	1	1	0
Department of Health & Human Services	59	89	100	88	75	107	108	92
Department of Housing & Urban Development	17	9	7	1	1	0	3	6
Department of the Interior	21	17	28	29	33	18	20	17
Department of Justice	23	27	26	10	14	14	15	13
Department of Labor	33	51	39	41	38	40	26	22
Department of State	0	2	1	0	0	2	3	6
Department of Transportation	24	31	44	208	246	266	244	216
Department of the Treasury	59	52	50	60	15	31	27	26
Department of Veterans Affairs	3	3	7	6	6	3	1	1
Advisory Council on Historic Preservation						0	0	0
Agency for International Development	1	0	0	0	0	0	1	2
Architectural and Transportation Barriers Compliance Board	0	0	0	3	2	2	1	1
Corporation for National & Community Service	0	0	0	0	0	0	0	0
Environmental Protection Agency	140	152	163	178	179	205	185	167
Federal Emergency Management Agency	3	1	0	0	0	1	1	1
General Services Administration	5	6	3	2	2	1	1	4
National Aeronautics & Space Administration	1	1	0	1	0	0	0	0
National Archives & Records Administration	1	1	1	1	0	0	0	0
Equal Employment Opportunity Commission	0	0	1	2	0	0	2	0
National Endowment for the Humanities	0	0	1	0	0	0	0	2
National Science Foundation	0	0	0	0	0	0	0	0
Office of Management & Budget	4	2	1	1	2	1	0	0
Railroad Retirement Board	2	1	1	0	0	0	0	0
Small Business Administration	62	17	13	20	28	24	21	21
Social Security Administration	4	1	0	0	2	0	0	1
U.S. Information Agency	0	0	0	0	0	0	0	0
Federal Acquisition Regulation	16	20	15	11	16	13	9	6
Commodity Futures Trading Commission	0	0	0	1	0	0	0	0
Consumer Product Safety Commission	1	1	0	0	0	0	0	0
Federal Communications Commission	52	75	70	82	91	105	117	109
Federal Energy Regulatory Commission	1	0	0	0	1	0	0	0
Federal Housing Finance Board	1	0	0	1	0	0	0	0
Federal Maritime Commission	0	0	0	5	4	7	6	7
Federal Reserve System	6	4	2	5	2	8	10	7
Federal Trade Commission	5	7	11	10	10	9	9	9
Federal Mediation and Conciliation Service						1	1	0
Interstate Commerce Commission	0	0	0	0	0	0	0	0
National Credit Union Administration	2	1	1	0	0	0	0	0
Nuclear Regulatory Commission	5	8	9	8	5	3	5	5
Resolution Trust Corporation	0	0	0	0	0	0	0	0
Securities and Exchange Commission	34	48	34	27	39	40	26	28
Total	711	754	733	937	963	1054	996	892

Source: Compiled from Regulatory Information Service Center, *The Regulatory Plan and the Unified Agenda of Federal Regulations*, various years.

Part G: Federal Rules Impacting Lower Level Governments (1999–2003)

	2003		2002		2001		2000		1999	
	State	Local	State	Local	State	Local	State	Local	State	Local
Department of Agriculture	53	42	60	49	51	43	51	43	67	58
Department of Commerce	18	9	15	8	30	11	36	13	21	10
Department of Defense	2	2	2	2	3	3	2	2	2	1
Department of Education	0	0	1	1	0	0	0	0	0	0
Department of Energy	9	9	8	9	10	10	15	15	13	12
Department of Health & Human Services	40	20	46	21	59	21	76	26	71	23
Department of Homeland Security	34	28	0	0	0	0	0	0	0	0
Department of Housing & Urban Development	14	23	13	17	10	14	9	19	8	13
Department of Interior	42	20	47	22	66	29	54	21	55	21
Department of Justice	15	11	28	21	28	20	25	20	31	24
Department of Labor	23	14	25	16	33	23	31	24	34	25
Department of State	2	1	2	1	2	2	2	1	1	1
Department of Transportation	26	16	42	23	41	23	49	31	50	33
Department of Treasury	22	15	17	12	16	8	16	8	11	7
Department of Veterans's Affairs	5	2	4	1	6	1	6	1	9	3
Advisory Council on Historic Preservation	1	0	1	0	0	0	1	0	1	0
Agency for International Development	0	0	0	0	0	0	1	1	0	0
Architectural and Transportation Barriers Compliance Board	2	2	3	3	3	3	4	4	4	4
Corp. for National and Community Service	4	4	8	8	6	6	4	4	1	1
Environmental Protection Agency	157	103	155	101	180	113	228	136	281	173
Federal Emergency Management Agency	0	0	8	8	7	8	5	6	5	4
Equal Employment Opportunity Commission	2	2	2	2	1	1	3	3	3	3
General Services Administration	11	7	10	6	6	1	4	1	2	1
National Aeronautics & Space Agency	0	0	0	0	0	0	1	1	0	0
National Archives & Records Administration	4	4	4	4	5	5	5	5	4	4
Institute of Museum and Library Services	2	2	2	2	2	2	2	2	0	0
National Endowment for the Arts	1	1	1	1	1	1	1	1	1	1
National Endowment for the Humanities	1	1	1	1	1	1	1	1	0	0
National Science Foundation	0	0	0	0	1	0	1	1	0	0
Office of Management & Budget	0	0	0	0	0	0	0	0	0	1
Railroad Retirement Board	0	0	0	0	0	0	1	0	1	0
Small Business Administration	0	0	0	0	0	0	1	1	0	0
Social Security Administration	8	3	5	3	6	3	7	3	11	3
Tennessee Valley Authority	0	0	0	0	0	0	1	1	0	0
U.S. Information Agency	0	0	0	0	0	0	0	0	0	0
Federal Communications Commission	21	16	23	18	25	18	27	20	30	22
Federal Energy Regulatory Commission	2	1	2	2	2	2	2	2	2	2
Federal Reserve System	0	0	0	0	0	0	1	0	1	0
Federal Trade Commission	1	0	1	0	2	0	2	0	2	0
National Credit Union Administration	1	0	1	0	0	0	0	0	0	0
National Indian Gaming Commission	0	0	1	0	1	0	1	0	1	0
Nuclear Regulatory Commission	4	1	1	1	1	1	2	2	1	1
Securities and Exchange Commission	0	0	0	0	3	0	1	1	2	2
State and Local Totals	527	359	539	363	608	373	679	420	726	453

Source: Compiled from the National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions*, December 22, 2003.

Notes

1. Office of Management and Budget, *2004 Draft Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, 2004, Table 2, p. 5, http://www.whitehouse.gov/omb/inforeg/draft_2004_cbreport.pdf.
2. *Ibid.*, p. 6.
3. W. Mark Crain and Thomas D. Hopkins, "The Impact of Regulatory Costs on Small Firms," Report prepared for Small Business Administration, Office of Advocacy, RFP no. SBAHQ-00-R-0027, October 2001, www.sba.gov/advo/research/rs207tot.pdf.
4. *Ibid.*, p. 26, n. 26. Crain and Hopkins in their report update Thomas D. Hopkins, "Profiles of Regulatory Costs: Report to the U.S. Small Business Administration, U.S. Department of Commerce," NTIS PB96128038, November 1995, www.sba.gov/ADVO/research/rs1995hoptot.pdf.
5. In 1995, Hopkins had projected that regulatory costs would grow from \$668 billion to \$721 billion, an annual growth rate of 1.3 percent. (Hopkins, "Profiles of Regulatory Costs," Table A-1.) Relatedly, Crain and Hopkins (2001) tabulated a 1.2 percent annualized compound growth rate between those same years in "total regulatory costs per household" for major categories of regulation. For present purposes, a growth trend of just 1 percent is applied to the newer Crain and Hopkins 2000 figure of \$843 billion to arrive at a more conservative 2003 estimate. (If the 1.3 percent growth rate had been used instead, the estimate for total 2003 regulatory costs would have been \$876 billion.)
6. A breakdown in the original dollars for 2000 appears in Table 8, "Total Cost of Federal Regulations: By Type and Allocation between Businesses and Others," Crain and Hopkins, p. 25.
7. See Thomas D. Hopkins, "Prepared Statement for the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs of the House Committee on Government Reform and Oversight," May 16, 1996. See also Thomas D. Hopkins, "Regulatory Costs in Profile," Center for the Study of American Business Policy Study no. 231, August 1996, p. 4.
8. Crain and Hopkins, p. 5.
9. Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2003–2012*, January 2002, www.cbo.gov/showdoc.cfm?index=3277&sequence=2.
10. Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2004–2013*, Chapter 1, p. 4, [ftp://ftp.cbo.gov/40xx/doc4032/Chapter1.pdf](http://ftp.cbo.gov/40xx/doc4032/Chapter1.pdf).
11. Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2005–2014*, Chapter 1, p. 3, [ftp://ftp.cbo.gov/49xx/doc4985/Chapter1.pdf](http://ftp.cbo.gov/49xx/doc4985/Chapter1.pdf).
12. Figures for 2001 outlays and deficit are contained in Congressional Budget Office, January 2002. Outlays and surplus for 2000 are contained in Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2002–2011*, January 2001, www.cbo.gov/showdoc.cfm?index=2727&sequence=2.
13. Tax figures from U.S. Census Bureau, *Statistical Abstract of the United States: 2003*, Table. 481, "Federal Receipts by Source: 1980 to 2003," p. 325, www.census.gov/prod/2004pubs/03statab/fedgov.pdf.
14. *Ibid.*
15. U.S. Census Bureau, *Statistical Abstract of the United States: 2003*, Table 775, "Corporate Profits, Taxes, and Dividends: 1990 to 2002," p. 520, www.census.gov/prod/2004pubs/03statab/business.pdf.
16. GDP figures for Canada and Mexico are from U.S. Census Bureau, *Statistical Abstract of the United States: 2003*, Table 1334, "Gross Domestic Product (GDP) by Country: 1995 to 2001," p. 852, <http://www.census.gov/prod/2004pubs/03statab/intlstat.pdf>.
17. *The Budget and Economic Outlook*, January 2004, Table E-1, "CBO's Year-by-Year Forecast and Projections for Calendar Years 2004 through 2014," [ftp://ftp.cbo.gov/49xx/doc4985/AppendixE.pdf](http://ftp.cbo.gov/49xx/doc4985/AppendixE.pdf).
18. Susan Dudley and Melinda Warren, *Regulatory Spending Soars: An Analysis of the U.S. Budget for Fiscal Years 2003 and 2004*, Regulatory Budget Report 25, published jointly by the Weidenbaum Center and the Mercatus Center, July 2003, p. 24. www.mercatus.org/pdf/materials/359.pdf. Original 1996 constant dollars are adjusted by the change in the consumer price index between 1996 and 2002, derived from U.S. Census Bureau, *Statistical Abstract of the United States: 2003*, Table 713, "Consumer Price Indexes (CPI-U), by Major Groups: 1980 to 2002," p. 475.
19. *Ibid.* This figure is also adjusted by the change in CPI.
20. *Ibid.*, p. 25.

21. See, for example, Cindy Skrzycki, "Midnight Regulations' Swell Register," *Washington Post*, January 23, 2001, p. E1.
22. Counting 2000 as part of the new millennium, which is technically incorrect.
23. National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, printed in *Federal Register* 67, no. 236, December 9, 2002. Cited hereinafter as *Agenda*.
24. Though the *Agenda* is published twice a year, this document tracks each year's December publication.
25. *Agenda*, p. 74,052.
26. *Ibid.*, p. 75,675.
27. The legislation and executive orders by which agencies are directed to assess impacts on state and local governments are described in *ibid.*, p. 75,699.
28. Dudley and Warren, from pp. 15 and 16.
29. Noted in letter to the Hon. Jacob J. Lew, director, Office of Management and Budget, from Sen. Fred Thompson (R-TN), chairman, Senate Committee on Governmental Affairs, and Sen. Ted Stevens (R-AK), chairman, Senate Committee on Appropriations, October 10, 1998, p. 2.
30. For a complete analysis see David Schoenbrod and Jerry Taylor, "The Delegation of Legislative Powers," *Cato Handbook for Congress: Policy Recommendations for the 108th Congress*, pp. 77-85, www.cato.org/pubs/handbook/hb108/hb108-8.pdf.
31. Derived from "Catalog of Public and Private Laws—108th Congress," National Archives and Records Administration, www.access.gpo.gov/nara/publaw/108publ.html.

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