

2008

Ten Thousand

Commandments



An Annual Snapshot of the Federal Regulatory State

by Clyde Wayne Crews Jr.



Competitive Enterprise Institute

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Executive Summary

President George W. Bush's federal budget for fiscal year (FY) 2009 proposed \$3.107 trillion in discretionary, entitlement, and interest spending.¹ This was the first-ever \$3 trillion budget in the United States. Many other countries' governments consume more of the national output than the U.S. government does,² but in absolute terms, the United States operates the largest government on Earth.³ President Bush was also the first president to deliver a \$2 trillion federal budget, as recently as 2002.⁴

Those costs fully convey the federal government's on-budget scope, and they are striking enough in themselves. But the government's reach extends well beyond the taxes that Washington collects and the deficit spending at which it excels. Federal environmental, safety and health, and economic regulations cost hundreds of billions of dollars every year over and above the costs of official federal outlays.

Firms generally pass the costs of some taxes along to consumers. Similarly, some business

regulatory-compliance costs trickle down to consumers. Exact regulatory costs can never be fully known; unlike taxes, they are unbudgeted and often indirect. But scattered government 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 to make the regulatory state somewhat more comprehensible. That compilation is one purpose of the annual *Ten Thousand Commandments* report, highlights from which follow.

- An extrapolation from an estimate of the federal regulatory enterprise by economist Mark Crain shows that regulatory compliance costs hit an estimated \$1.157 trillion in 2007.
- Given that 2007 government spending stood at \$2.73 trillion, the hidden tax of regulation now approaches half the level of federal spending itself.
- Regulation costs more than seven times the \$163 billion budget deficit.
- Regulatory costs nearly match 2005 corporate pretax profits of \$1.3 trillion.

The government's reach extends well beyond the taxes that Washington collects and the deficit spending at which it excels.

The short-lived string of budgetary surpluses enjoyed from 1998 through 2001 was the first since 1969.

- Regulatory costs also rival estimated 2007 individual income taxes of \$1.17 trillion.
- Regulatory costs dwarf corporate income taxes of \$342 billion.
- Regulatory costs of \$1.16 trillion absorb 8.5 percent of U.S. gross domestic product (GDP), which was \$13.67 trillion in 2006.
- Regulations dwarf the \$150 billion “economic stimulus package” passed in early 2008, and their rollback would constitute the *deregulatory stimulus* that the U.S. economy needs.
- Combining regulatory costs with federal FY 2007 outlays of \$2.73 trillion brings the federal government’s share of the economy to 28 percent.
- The Weidenbaum Center at Washington University in St. Louis and the Mercatus Center at George Mason University in Virginia jointly estimate that agencies spent \$42 billion to administer and police the 2007 regulatory enterprise. Adding the \$1.157 trillion in off-budget compliance costs brings the total regulatory burden to \$1.201 trillion.
- The 2007 *Federal Register* contained 72,090 pages, down 3.8 percent from 2006’s 74,937 pages. The record year 2004 saw 75,676 pages.
- In 2007, agencies issued 3,595 final rules, a 3 percent decline from 2006’s 3,718 rules.
- The annual outflow of nearly 4,000 final rules has meant well over 51,000 final rules since 1995—that is, since the Republican takeover and the recent Democratic recapture of Congress.
- While regulatory agencies issued 3,595 final rules, Congress passed and the president signed into law a comparatively low 188 bills in 2007. Considerable lawmaking power is delegated to unelected agencies.
- In the 2007 Unified Agenda, the 50-plus federal departments, agencies, and commissions detailed 3,882 regulations at various stages of implementation.
- Of the 3,882 regulations now in the pipeline, 159 are “economically significant” rules bearing at least \$100 million in economic impact. That number implies a lower boundary of some \$15.9 billion yearly in future off-budget regulatory effects.
- “Economically significant” rules increased by 14 percent between 2006 and 2007, from 139 to 159.
- The five most active rule-producing agencies—the departments of Treasury, Commerce, Agriculture, and Homeland Security, along with the Environmental Protection Agency (EPA)—account for 1,741 rules, or 45 percent of all rules in the Unified Agenda pipeline.
- Of the 3,882 regulations now in the works, 757 affect small business.

The short-lived string of budgetary surpluses enjoyed from 1998 through 2001 was the first since 1969.⁵ But if regaining and maintaining a genuine surplus remain a priority, policy makers must control regulatory costs. Consider: The Congressional Budget Office projects no surpluses over the coming decade until a speculative \$87 billion in 2012.⁶ Regulatory costs of more than \$1.16 trillion clearly dwarf that amount, as well as dwarfing the \$150 billion “stimulus package” of early 2008. Moreover, regulations and taxes can substitute for one another; a new government program means increasing spending—or imposing new rules and regulations. Thus, without better regulatory monitoring, deficit control may invite lawmaker preference for off-budget, private-sector regulations rather than new deficit spending. If regulatory costs remain largely hidden from public view, regulating remains attractive compared with taxing and spending.

Regulations should be accounted for like federal spending. Thus, whenever possible, Congress should answer 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. A problem with cost-benefit analysis, however, is that it is largely a form of agency self-policing; agencies that perform “audits” of their own rules would rarely admit that a rule’s benefits do not justify the costs involved. At the least, some third-party review is needed.

Congressional accountability can be improved by requiring expedited votes on agency rules before they become binding. This step would fulfill citizens' expectation of "no regulation without representation."

Disclosing rules' costs would remain important, however, even if Congress ap-

proved rules; openness about regulatory facts and figures is critical, just as disclosure of program costs is critical in the federal budget. Rather, simple federal "regulatory report cards," similar to the presentation in *Ten Thousand Commandments*, could be issued officially each year to distill regulatory data.

Introduction: Toward Ending “Regulation without Representation”

If expenditures are unpopular, Congress escapes accountability by blaming agencies.

The federal government funds new programs by either raising taxes or borrowing money—with a promise to repay, with interest, from future tax collections. No matter how controversial government spending programs are, taxpayers can examine their costs in the federal budget. Congress’s spending accountability, though not perfect, is a necessary condition for government oversight.

A third way the government funds programs is by regulating. Rather than pay directly and book expenses for new initiatives, the government can require the private sector (and state and local governments) to pay for federal initiatives through compliance costs.

Government regulation can help advance desired programs without using tax dollars. Because disclosure of, and accountability for, the regulatory costs are so rare, policy makers can afford to be careless about regulatory costs relative to ordinary government spending. If such expenditures are unpopular, Congress escapes accountability by blaming agencies. Because regulatory costs are not budgeted and because they lack the formal presentation to the public and media that accompanies federal spending, regulatory initiatives can allow manipulation of private-sector resources with little public fuss, thus rendering regulation a form of off-budget taxation. Table 1 provides some perspec-

Table 1. The Regulatory State: A 2008 Overview

	Year-End 2007	1-Year Change	5-Year Change	10-Year Change
Total regulatory costs	\$1.157 trillion	n/a	n/a	n/a
Agency enforcement budgets (real \$)	\$44.5 billion	5.2%	0.0%	63.0%
Federal Register pages	72,090	-3.8%	1.1%	5.1%
Federal Register pages devoted to final rules	22,741	1.8%	0.3%	13.5%
Federal Register final rules	3,595	-3.3%	-13.3%	-26.6%
Total rules in Agenda	3,882	-4.2%	-9.0%	-14.9%
“Economically significant” rules in the pipeline	159	14.4%	25.2%	35.9%
Rules affecting small business	757	-3.8%	-11.9%	-19.2%
Rules affecting state governments	539	-7.0%	2.3%	-26.1%
Rules affecting local governments	334	-3.5%	-7.0%	-22.7%
FCC Breakdown				
Total number of FCC rules in Agenda	145	4.3%	8.2%	19.8%
FCC rules affecting small business	109	0.9%	4.8%	32.9%

Note: n/a = not applicable.

tive on the regulatory “tax” by presenting summary data for selected topics described herein. Trends over the past few years are provided where information is available.

Ten Thousand Commandments for 2008 contains four main sections:

1. An overview of the costs and scope of the regulatory state, such as its estimated size compared with the federal budget and the gross national product.
2. An analysis of trends in the numbers of regulations issued by agencies on the basis of information provided in the *Federal Register* and in “The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions.”
3. Recommendations for regulatory reform that emphasize ending “regulation without representation.” This section offers steps to improve regulatory cost disclosure and to increase congressional accountability. It contrasts those steps with the agency-driven, cost-benefit analysis that typical reform proposals emphasize.
4. An appendix containing historical tables of regulatory trends over the past several years.

The Regulatory State and Its Cost

Regulation's Social and Economic Costs

The Office of Management and Budget's (OMB's) 2007 *Draft Report to Congress* on regulatory costs and benefits pegs cumulative 1996–2006 costs of 91 selected major regulations at between \$39 billion and \$46 billion. Meanwhile, the estimated range for benefits was \$98 billion to \$484 billion.⁷

OMB's cost-benefit breakdown incorporates only benefits and costs that agencies or OMB expressed in quantitative and monetary terms. The breakdown omits many categories and cost levels of rules altogether. Cost-benefit analyses are also sensitive to basic assumptions about how regulations translate into benefits.

For an overall cost estimate, W. Mark Crain of Lafayette College prepared a comprehensive regulatory cost estimate for 2004 for the Small Business Administration.⁸ This report assessed economic regulatory costs (such as price-and-entry restrictions and "transfer" costs such as price supports, which shift money from one pocket to another); workplace costs; environmental regulatory costs; and paperwork costs (such as tax compliance). Crain found regulatory costs of \$1.113 trillion for 2004. (His estimate updates an October 2001 report by Crain and Thomas Hopkins that noted regulatory costs of \$843 billion.)⁹

Adjusting the Crain 2004 regulatory costs for 2007 by extrapolating the growth trend in regulatory costs that occurred between 2000 and 2004 yields a rough estimate of \$1.157 trillion.¹⁰ Figure 1 breaks down the regulatory cost estimate by categories:

economic, environmental, tax compliance, and workplace. Economic costs, the largest category at \$614 billion, include the noted price-and-entry controls on business and losses from economic transfers.¹¹ Given that indirect costs—such as the effects of lost innovation or productivity—are not included in Crain's analysis, those figures could understate the total regulatory burden.¹²

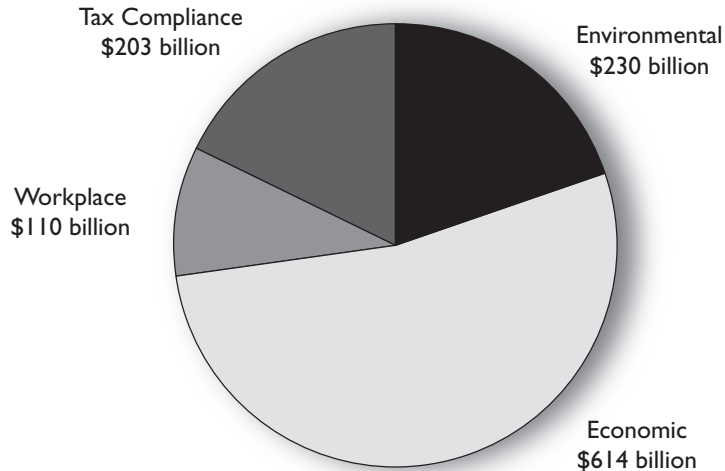
Regulatory benefits are beyond the scope of the Crain analysis, although those benefits would be recognized as offsetting some costs.¹³ The Crain report emphasizes the extent to which regulatory costs impose higher burdens on small firms, where per-employee regulatory costs are higher. Table 2 shows, for the year 2004, how per-employee costs for firms of fewer than 20 workers can be more than 40 percent greater than for larger firms (more than \$7,600 for smaller firms versus \$5,300 for larger ones).¹⁴

Regulation vs. Government Spending

After nearly three decades of deficit spending, the federal government's budget was temporarily balanced from FY 1998 through FY 2001. (The federal government posted a total surplus of \$127 billion in FY 2001.)¹⁵ In FY 2007, a deficit of \$163 billion was posted on \$2.73 trillion in spending, with no surplus projected until 2012.¹⁶ As Figure 2 shows, 2007's approximate \$1.16 trillion in regulatory costs is equivalent to 42 percent of spending of \$2.7 trillion, and it is more than seven times the \$163 billion deficit. Figure 2 also depicts 2005 and 2006 deficits compared with outlays and

Per-employee costs for firms of fewer than 20 workers can be more than 40 percent greater than for larger firms.

Figure 1. 2007 Federal Regulatory Costs, \$1.157 Trillion



Source: Extrapolated from W. Mark Crain, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBHQ-03-M-0522, September 2005, <http://www.sba.gov/advo/research/rs264tot.pdf>.

with Crain’s regulatory cost estimates.¹⁷ Deficit spending, in a manner of speaking, can manifest itself as regulatory compliance costs that go largely unacknowledged by the federal government. That is why it is important to note that those regulatory costs now approach one-half the size of budgeted government.

Regulatory Costs vs. Income Taxes and Corporate Profits

Regulatory costs now exceed or nearly match revenue from major taxes. As Figure 3 shows,

regulatory costs rival estimated 2007 individual income taxes, which were \$1.169 trillion.¹⁸ Corporate income taxes, estimated at \$342 billion, are dwarfed by regulatory costs.¹⁹ Regulatory costs approach even pretax corporate profits—\$1.32 trillion in 2005.²⁰

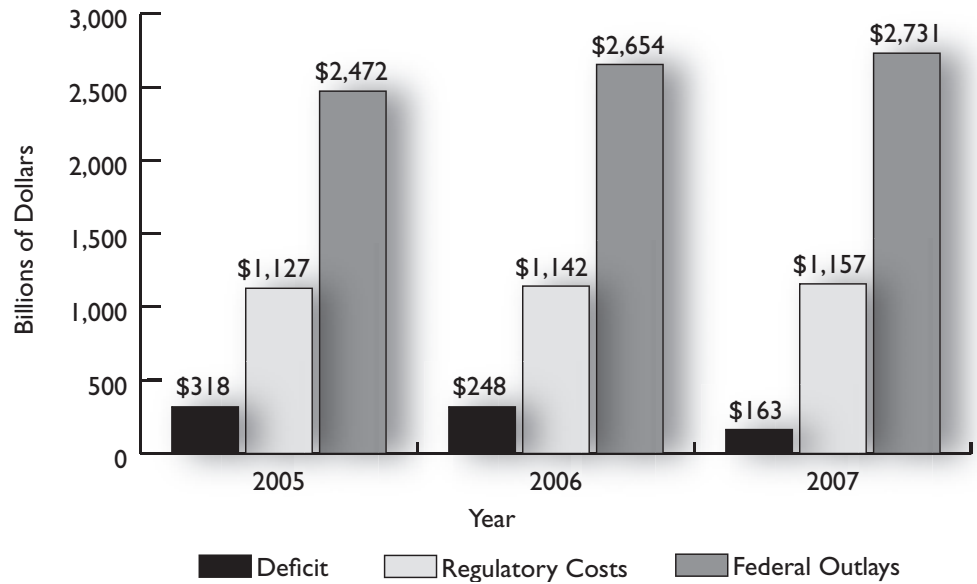
If one is to put regulation into global perspective, U.S. regulatory costs of \$1.157 trillion exceed the output of many major national economies. Figure 4 shows that U.S. regulatory costs exceed the entire 2004 GDP of Canada, which stood at \$1.017 trillion. The regulatory burden also exceeded Mexico’s GDP of \$1.054 trillion.²¹ For the United

Table 2. Per-Employee Regulatory Costs Higher for Small Firms (2004)

Size of Firm	Regulatory Costs per Employee
Large > 500 employees	\$5,282
Medium 20–499 employees	\$5,411
Small < 20 employees	\$7,647

Source: W. Mark Crain, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, Contract no. SBHQ-03-M-0522, September 2005, p. 5, <http://www.sba.gov/advo/research/rs264tot.pdf>.

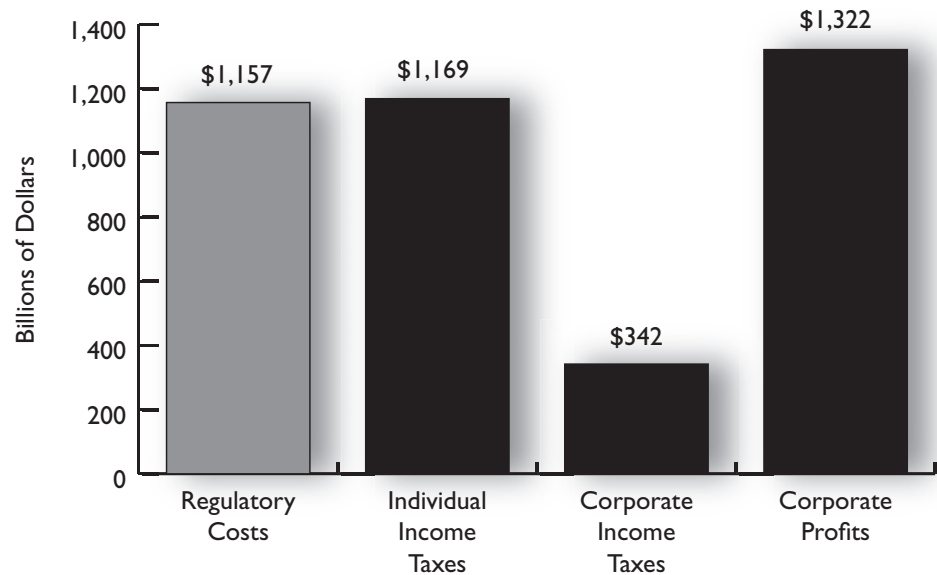
Figure 2. Off-Budget Regulatory Costs Compared with Federal Spending (2005–2007)



Sources: Congressional Budget Office, *The Budget and Economic Outlook*, various years; and W. Mark Crain, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBHQ-03-M-0522, September 2005, <http://www.sba.gov/advo/research/rs264tot.pdf>.

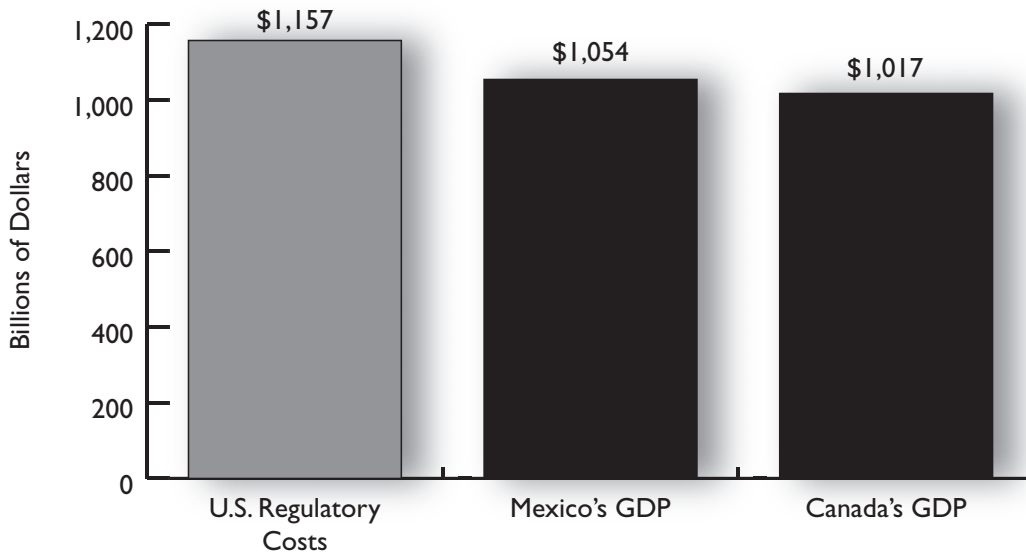
Note: Regulatory costs are projected on the basis of average annual increases in regulatory costs between 2000 and 2004 from Crain, 2005. Federal deficit and outlay numbers are by fiscal year; regulatory costs are by calendar year.

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



Sources: W. Mark Crain, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBHQ-03-M-0522, September 2005, <http://www.sba.gov/advo/research/rs264tot.pdf>. Tax figures from U.S. Census Bureau, *Statistical Abstract of the United States: 2008*, Table No. 461, “Federal Receipts by Source: 1990 to 2007,” <http://www.census.gov/compendia/statab/tables/08s0461.pdf>. Profits from U.S. Census Bureau, *Statistical Abstract of the United States: 2008*, Table 769, “Corporate Profits before Taxes by Industry: 2000 to 2005,” <http://www.census.gov/compendia/statab/tables/08s0769.pdf>. Profits do not reflect inventory valuation and capital consumption adjustments.

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



Sources: W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBHQ-03-M-0522, September 2005, <http://www.sba.gov/advo/research/rs264tot.pdf>. GDP figures for Canada and Mexico are from U.S. Census Bureau, *Statistical Abstract of the United States: 2008*, Table 1316, "Gross Domestic Product (GDP) by Country: 1995 to 2004," <http://www.census.gov/compendia/statab/tables/08s1316.pdf>.

States, the Congressional Budget Office reported a GDP of \$13.67 trillion for 2007.²² Total regulatory costs of \$1.157 trillion are equivalent to 8.5 percent of that amount. Combining regulatory costs with federal FY 2007 outlays of \$2.731 trillion shows that the federal government's share of the economy now reaches 28 percent.

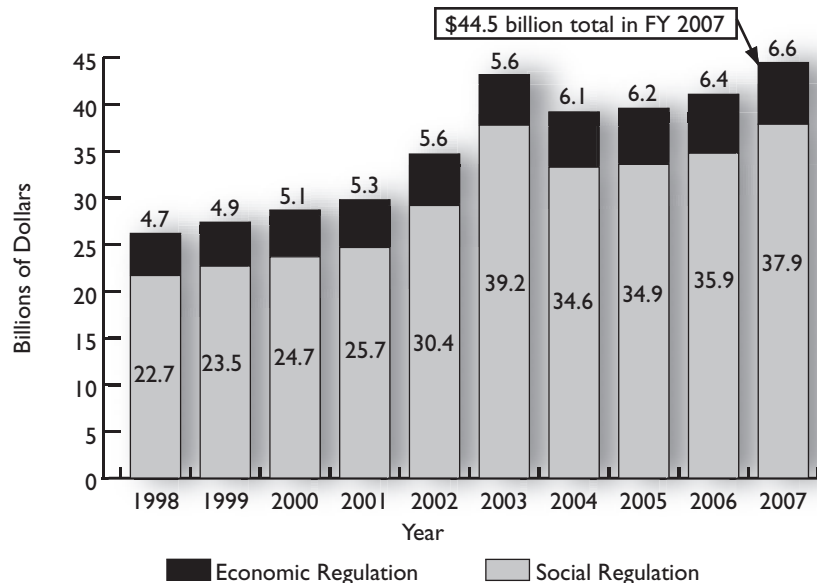
Costs of Running the Regulatory State

The Crain regulatory cost estimates include compliance costs paid by the public and by state and local governments. But those estimates do not include the costs of administering the regulatory state—the on-budget amounts spent by federal agencies to produce rules and to police regulatory compliance. The Weidenbaum Center at Washington University in St. Louis and the Mercatus Center at George Mason University together examined the federal budget to excerpt and

compile the administrative costs of developing and enforcing regulations. Because those funds are amounts that taxpayers pay to support agencies' administrative budgets, rather than compliance costs paid by the parties they regulate, the funds are disclosed in the federal budget. FY 2007 enforcement costs incurred by federal departments and agencies stood at \$44.5 billion (in constant 2006 dollars), a 5.2 percent increase over the previous year (Figure 5).²³ Of that amount, \$6.6 billion was spent administering economic regulation. The larger amount spent for writing and enforcing social and environmental regulations was \$37.9 billion. Those enforcement costs help complete the picture of the regulatory state. Adding the \$44.5 billion in administrative costs tabulated by the Weidenbaum Center and Mercatus Center to the Crain \$1.157 trillion estimate for compliance costs brings the total 2007 regulatory burden to \$1.201 trillion.

Estimated full-time-equivalent employment staffing reached 244,210 workers in FY

Figure 5. Agency Enforcement Budgets, 1998–2007
(billions of constant 2006 dollars)



Sources: Jerry Brito and Melinda Warren, “Growth In Regulation Slows: An Analysis of the U.S. Budget for Fiscal Years 2007 and 2008,” Regulator’s Budget Report 29, published jointly by the Weidenbaum Center and the Mercatus Center, June 2007, p. 25, http://www.mercatus.org/repository/docLib/20070619_2008_Regulators_Budget.pdf.

Original 2000 constant dollars are adjusted by the change in the consumer price index between 2000 and 2006, derived from U.S. Census Bureau, *Statistical Abstract of the United States: 2008*, Table 703, “Consumer Price Indexes (CPI-U) by Major Groups: 1990 to 2006,” <http://www.census.gov/compendia/statab/tables/08s0703.pdf>.

2007, according to Weidenbaum and Mercatus.²⁴ That figure is 41 percent above staffing levels in 2001, largely owing to the newly created Transportation Security Administration’s one-time hiring of thousands of airport

screening personnel after 2001. Even excluding the new Transport Security Administration personnel, government staffing rose by nearly 11 percent, and costs increased by 30 percent.²⁵

Federal Register Analysis

Tens of Thousands of Federal Register Pages

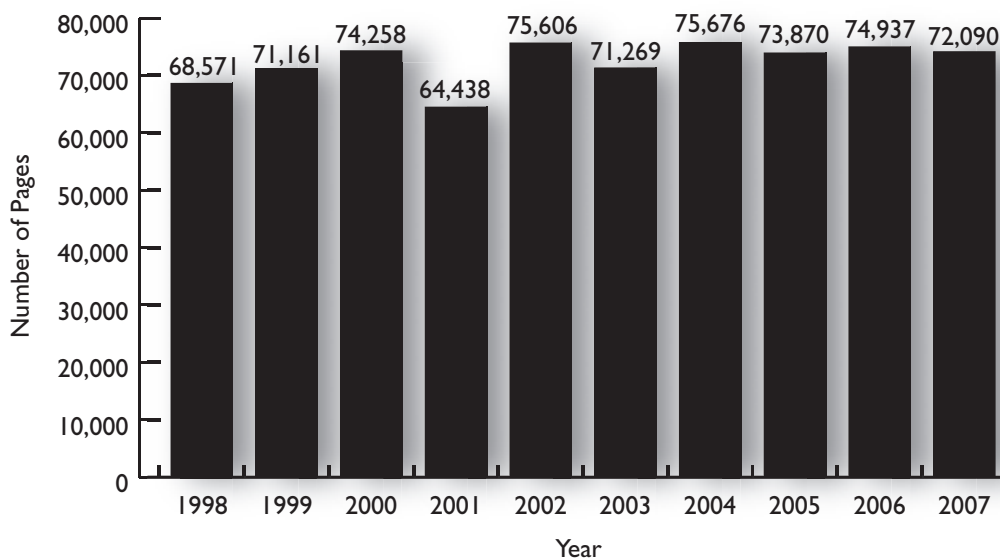
The *Federal Register* is the daily depository of all proposed and final federal rules and regulations. The number of pages in the *Register* is probably the most frequently cited measure of the scope of regulation. Yet serious problems exist with using the number of pages alone as a proxy for regulation. For example, several thousand rules from 2002 pertain to the Microsoft settlement—not a very good gauge of what was going on government-wide. Many rules now pertain to homeland security, an important pursuit in general regardless of fights over specifics. And even in cases in which OMB issues orders to reduce regulation and in which agencies follow procedures

to lessen rules' effects or burdens, the posting of lengthy notices in the *Federal Register* is required. And, of course, there are the obvious problems with relying on page counts: The wordiness of rules will vary, affecting the number of pages and obscuring the real effects of the underlying rules. A short rule could be costly and a long one relatively cheap. Furthermore, the *Register* contains administrative notices, corrections, presidential statements, and other material. And thousands of blank pages sometimes appear as a result of the Government Printing Office's imperfect prediction of the number of pages an agency will require.

Nonetheless, it is surely worthwhile to track the *Register's* growth through page counts, provided the above caveats are kept in mind. As Figure 6 shows, at year-end 2007, the

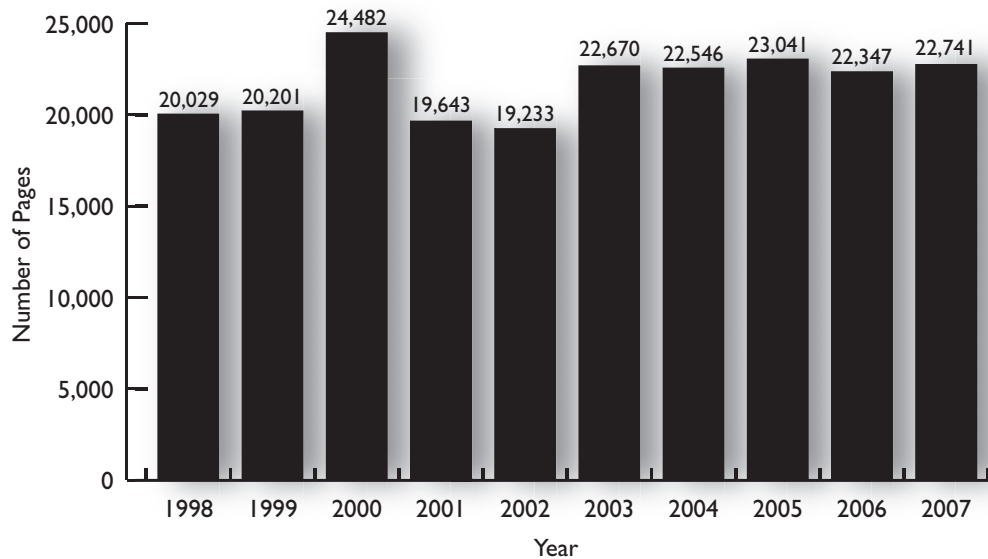
The wordiness of rules will vary, affecting the number of pages and obscuring the real effects of the underlying rules.

Figure 6. Number of Federal Register Pages, 1998–2007



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

Figure 7. *Federal Register* Pages Devoted to Final Rules, 1998–2007



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

number of pages stood at 72,090, a decrease of 3.8 percent from the year before when the count stood at 74,937. Page counts are down since 2004, when the *Register* attained a record-high 75,676.

The runner-up page-count record had been 75,606 in 2002 (the year the Microsoft settlement contributed to the total). During 2000, President Bill Clinton's last year in office (when charges were made of issuing "midnight regulations" in advance of President George W. Bush's arrival), pages topped 74,000.²⁶ But page counts have remained high; over the decade from 1998 to 2007, the overall page count increased by 5.1 percent. (For a history of Federal Register page totals since 1936, see Appendix: Historical Tables, Part A.)

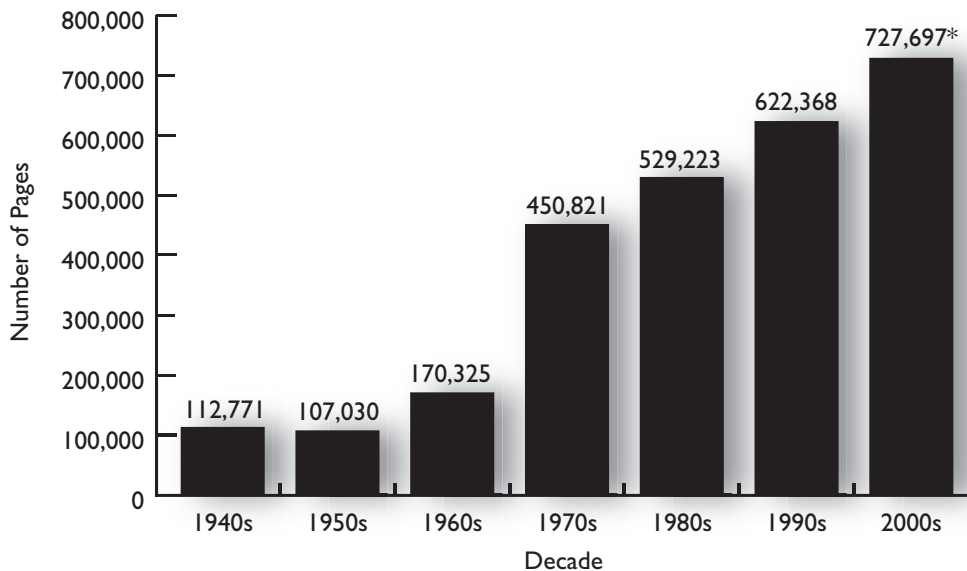
Regulation and agency activity, as gauged by page counts, are at record levels despite the period having been dominated by presumably more deregulatory congressional Republicans following the 1994 elections. The year 2006 marks the return to Democratic control in Congress. Yet apart from 2001, the last time the number of *Federal Register* pages fell notably was in 1995, when the brand-new Republican congressional reformers

specifically made the *Federal Register's* bulk a political issue. (A partial federal government shutdown in 1995, which slowed the promulgation of new regulations for a time, also contributed to the drop that year.)

Gross page counts alone do not reveal whether actual regulatory burdens have increased or decreased; a rule of few pages might impose a significant burden. Isolating the pages devoted specifically to final rules may be a bit more informative, because that approach omits pages devoted to proposed rules, agency notices, corrections, and presidential documents. Over the past year, the pages of final rules rose a slight 1.8 percent—from 22,347 to 22,741 (Figure 7). Despite some substantial ups and downs during the decade, the *Federal Register* pages devoted to final rules overall have increased by 13.5 percent since 1998. 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 was up by 21 percent over 1999 (possibly resulting from the aforementioned effort by President Clinton to complete the backlog of rules before the arrival of the Bush

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Figure 8. New *Federal Register* Pages per Decade



* Projection based on eight-year average.

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

Administration). Pages rebounded in 2003 and have remained above 22,000 since.

Another way of looking at *Federal Register* trends is pages per decade (see Figure 8). During the 1990s, the total number of *Register* pages published was 622,368, whereas the total number published during the 1980s was 529,223. (The busiest year in the 1980s was the 1980 peak of 73,000 pages.) So far, in the first eight years of the 21st century,²⁷ the average is 72,768, which, extrapolated across the remainder of the decade, implies that 727,697 total pages will ultimately appear—a 16.9 percent increase over the 1990s. Although the final codification of general and permanent rules as ultimately realized in the Code of Federal Regulations (CFR) is considerably more modest in terms of numbers—if not in costs—today’s CFR contains 43 percent more pages than 1980’s CFR. Since 1980, the CFR has grown from 102,195 pages to 145,816. By contrast, in 1960, there were only 22,877 pages.

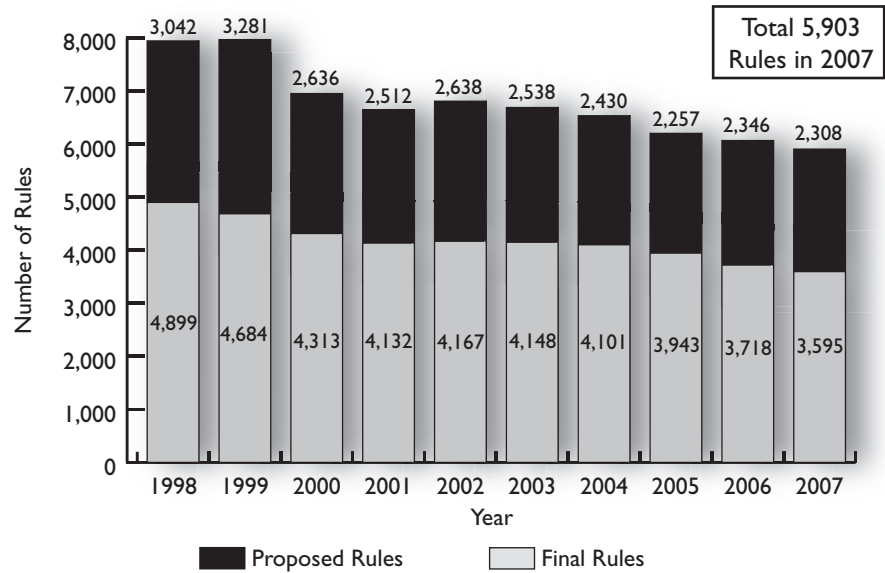
While one should keep in mind the limitations of *Federal Register* page counts, the

higher overall number of pages compared with past decades, plus a stream of pages devoted to final rules averaging well over 22,000 annually, credibly signify higher levels of final rule costs and burdens.

Number of Proposed and Final Rule Documents in the *Federal Register*

The actual numbers of proposed and final rules published in the *Federal Register* merit attention. As Figure 9 shows, in 2007 the total number of proposed and final rules published fell to 5,903 from 6,064 in 2006, a 2.6 percent decline. The number of rules actually finalized by federal agencies in 2007 dropped also—from 3,718 to 3,595, a 3.3 percent decline. The number of final rules currently being published is 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 (2000–07) is 4,014. (For the numbers of proposed and final rules and

Figure 9. Number of Rules Published in the *Federal Register*, 1998–2007



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

other documents issued in the *Federal Register* since 1976, see Appendix: Historical Tables, Part B.)

The cumulative effect of regulation can matter a great deal despite recent declines. The bottom line is that the annual outflow of

some 4,000 final rules has meant that well over 51,000 final rules were issued from 1995 to 2007—that is, during a period dominated by a Republican takeover of Congress. Although the costs of those rules can vary tremendously, that number represents a substantial output of rules and regulations.

Analysis of the Regulatory Plan and Unified Agenda

3,882 New Rules in the Pipeline

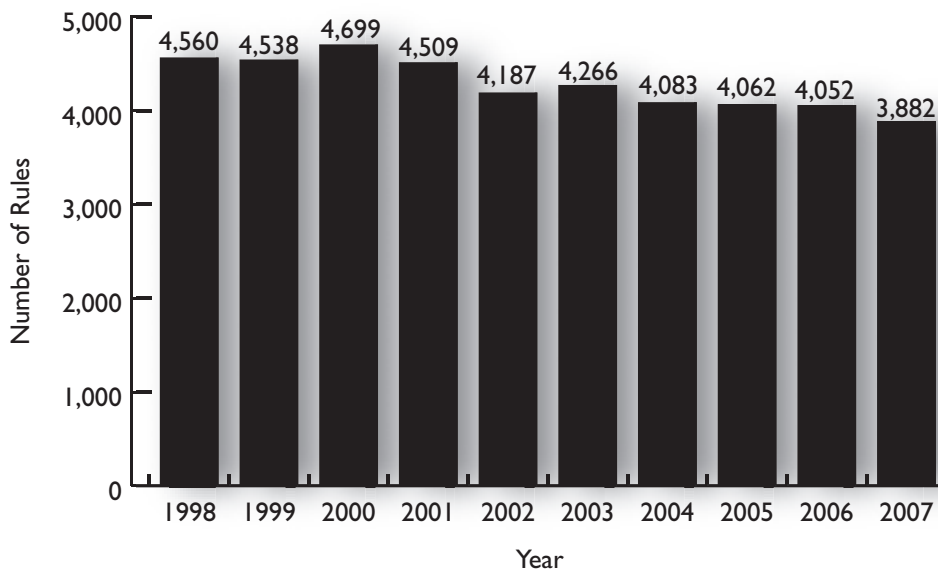
“The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions” appears in the *Federal Register* each December. Detailing rules recently completed, plus those anticipated within the upcoming 12 months by the roughly 60 federal departments, agencies, and commissions, the Agenda helps gauge the regulatory pipeline.

The Agenda lists federal regulatory actions at several stages: prerule, proposed and final rules, actions completed during the past few months, and anticipated longer-term rule-makings. The Agenda functions as a cross-sectional snapshot of rules moving through

the pipeline. Therefore, the rules it contains 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 rules primarily affect the private sector, but many also affect state and local governments and the federal government itself.

The 2007 Agenda finds federal agencies, departments, and commissions at work on 3,882 regulations from the prerule to the just-completed stages.²⁸ This level is down 4.2 percent from 2006’s 4,052 (see Figure 10). The number of rules in the Agenda peaked at 5,119—14 years ago in 1994—and the count remained well above

Figure 10. Total Agency Rules in the Unified Agenda Pipeline, 1998–2007



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

**Table 3. Unified Agenda Entries by Department and Agency,
December 2007**

	Total Rules	Reg. Plan	Agenda
Dept. of Agriculture	290	28	262
Dept. of Commerce	303	4	299
Dept. of Defense	131		131
Dept. of Education	13	1	12
Dept. of Energy	47	3	44
Dept. of Health & Human Services	259	18	241
Dept. of Homeland Security	267	28	239
Dept. of Housing & Urban Development	86	3	83
Dept. of the Interior	264	2	262
Dept. of Justice	140	2	138
Dept. of Labor	94	20	74
Dept. of State	28		28
Dept. of Transportation	199	18	181
Dept. of the Treasury	545	2	543
Dept. of Veterans Affairs	65		65
Agency for International Development	10		10
Architectural & Transportation Barriers Compliance Board	5		5
Commission on Civil Rights	1		1
CPBSD*	5		5
Corporation for National & Community Service	9		9
Court Services/Offender Supervision, D.C.	2		2
Environmental Protection Agency	336	30	306
Equal Employment Opportunity Commission	7	1	6
Federal Mediation & Conciliation Service	1		1
General Services Administration	26		26
National Aeronautics & Space Administration	11		11
National Archives & Records Administration	15	1	14
Institute of Museum & Library Services	1		1
National Endowment for the Arts	2		2
National Endowment for the Humanities	3		3
Office of Federal Housing Enterprise Oversight	9		9
Office of Government Ethics	9		9
Office of Management & Budget	1		1
Office of Personnel Management	75		75
Peace Corps	6		6
Pension Benefit Guaranty Corporation	12		12
Railroad Retirement Board	2		2
Selective Service System	1		1
Small Business Administration	28	1	27
Social Security Administration	63	19	44

4,000 until this past year. (For a history of numbers of rules in the Agenda since 1983, see Appendix: Historical Tables, Part C.)²⁹

Table 3 breaks down the 3,882 rules according to issuing department, agency, or commission. Each year, a relative handful of agencies account for a large number of the rules produced. The five departments and agencies listed in Table 4—the departments of the Treasury, Commerce, Agriculture, and Homeland Security, along with the EPA—were the biggest rule makers. Those “top five,” with 1,741 rules between them, account for 45 percent of all rules in the Agenda pipeline. (For the numbers of rules by department and agency from previous editions of the Unified Agenda, see Appendix: Historical Tables, Part D.)

The agencies noted the following initiatives (among many others) as priorities in recent Unified Agenda editions:

Department of Agriculture

- Mandatory country-of-origin labeling of beef, pork, lamb, fish, and peanuts.
- Inspection regulations for eggs and egg products.
- Performance standards for ready-to-eat meat and poultry products.
- Regulations concerning importation of unmanufactured wood articles (solid-wood packing material).
- Bovine spongiform encephalopathy: minimal risk regions and importation of commodities.

Department of Health and Human Services

- Substances prohibited from use in animal food or feed.
- Prevention of *Salmonella enteritidis* in shell eggs.
- Current good manufacturing practice in manufacturing, packing, or holding dietary ingredients and dietary supplements.

- 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.

Department of Homeland Security

- CAPPS II (Computer Assisted Passenger Prescreening System), providing government access to passenger reservation information.
- Minimum standards for driver's licenses and ID cards acceptable to federal agencies.
- Secure Flight Program.
- U.S.-VISIT (United States Visitor and Immigrant Status Indicator Technology program), which is authorized to collect biometric data from travelers and to expand to the 50 most highly trafficked land border ports.

Department of Labor

- Occupational exposure to crystalline silica.
- Rules regarding confined spaces in construction: preventing suffocation and explosions in confined spaces.
- Implementation of the health care access, portability, and renewability provisions of the Health Insurance Portability and Accountability Act of 1996.
- Hearing conservation program for construction workers.
- Occupational exposure to tuberculosis.

Department of Energy

- Energy-efficiency standards for residential furnaces, boilers, and mobile home furnaces; electric distribution transformers; certain commercial central

Table 3. Unified Agenda Entries by Department and Agency, December 2007 (continued)

	Total Rules	Reg. Plan	Agenda
Federal Acquisition Regulation	36		36
Commodity Futures Trading Commission	19		19
Consumer Product Safety Commission	19	1	18
Farm Credit Administration	12		12
Federal Communications Commission	145		145
Federal Deposit Insurance Corporation	18		18
Federal Energy Regulatory Commission	41		41
Federal Housing Finance Board	3		3
Federal Maritime Commission	4		4
Federal Reserve System	20		20
Federal Trade Commission	14	1	13
National Credit Union Administration	24		24
National Indian Gaming Commission	19	2	17
Nuclear Regulatory Commission	53		53
Securities & Exchange Commission	76		76
Postal Regulatory Commission	3	2	1
Privacy & Civil Liberties Oversight Board	3		1
Surface Transportation Board	4		4
TOTAL	3,882	87	3,695

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

Source: Compiled from the "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions," *Federal Register*, Vol. 72, No. 236, December 10, 2007.

Table 4. Top Rule-Producing Departments and Agencies, 2007

Department or Agency	Number of Regulations
1. Department of the Treasury	545
2. Environmental Protection Agency	336
3. Department of Commerce	303
4. Department of Homeland Security	297
5. Department of Agriculture	290
Total	1,741

air-conditioning units and heat pumps; clothes dryers and dishwashers; pool heaters and direct heating equipment; fluorescent and incandescent lamps; and central air conditioners and heat pumps.

Department of Transportation

- Reform of the automobile fuel economy standards program.
- Light-truck Corporate Average Fuel Economy standards (2012 model years and beyond).
- Aging aircraft safety.
- Flight-crew member duty limitations and rest requirements.
- Upgrade of head restraints in vehicles.
- Rear center lap and shoulder belt requirement.
- Registration and training for operators of propane tank filling equipment.
- Monitoring systems for improved tire safety and tire pressure.
- Automotive regulations for car lighting, door retention, brake hoses, daytime running-light glare, and 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

- Rulemaking to address greenhouse gas emissions from motor vehicles.

- Clean air visibility, mercury, and ozone implementation rules.
- Review of National Ambient Air Quality Standards for lead, ozone, sulfur dioxide, particulate matter, and nitrogen dioxide.
- Rulemakings regarding lead-based paint.
- National drinking water regulations covering groundwater and surface water.
- National emission standards for hazardous air pollutants from plywood and composite wood products, certain reciprocating internal combustion engines, and auto paints.
- Emissions from nonroad spark ignition.

Consumer Product Safety Commission

- Flammability standard for upholstered furniture.
- Banning of certain backyard play sets.
- Product registration cards for products intended for children.
- Proposed standard to address open-flame ignition of mattresses and bedding.

Federal Communications Commission

- Broadband over power line systems.
- Mobile personal communications by satellite.
- Satellite broadcasting signal carriage requirements.

Table 5. 159 Rules in the Pipeline Expected to Cost More than \$100 Million Annually, 2007

	Rules
Department of Agriculture	12
Department of Commerce	3
Department of Education	1
Department of Energy	12
Department of Health & Human Services	42
Department of Housing & Urban Development	4
Department of Homeland Security	20
Department of Justice	3
Department of the Interior	3
Department of Labor	10
Department of Transportation	13
Department of the Treasury	3
Department of Veterans Affairs	1
Environmental Protection Agency	15
Consumer Product Safety Commission	2
Federal Trade Commission	1
Federal Communications Commission	8
Postal Regulatory Commission	2
Federal Deposit Insurance Corporation	1
Nuclear Regulatory Commission	1
Social Security Administration	2
TOTAL	159

Source: Compiled from the "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions," *Federal Register*, Vol. 72, No. 236, December 10, 2007; and from the online edition at <http://www.reginfo.gov>.

- Rules regarding Internet protocol-enabled devices.
- Increased fair-market rents for certain areas.

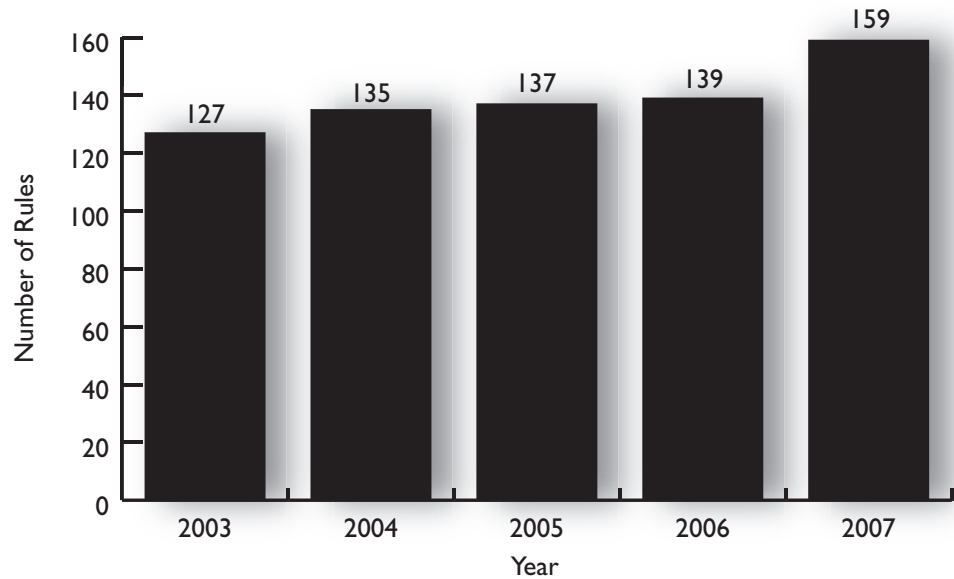
Department of Housing and Urban Development

- Revision of manufactured home construction and safety standards to revise location of smoke alarms.
- Regulation of Fannie Mae and Freddie Mac on "housing goals."
- Regulations within the Real Estate Settlement Procedures Act pertaining to mortgages and closing costs.

"Economically Significant" Off-Budget Rules in the Agenda Cost Billions of Dollars

A subset of the Agenda's 3,882 rules is classified as "economically significant," meaning that agencies anticipate yearly economic impacts of at least \$100 million apiece. Those impacts generally mean increased costs, although occasionally an economically significant rule is intended to reduce costs. As Table 5 shows, 159 new economically

Figure 11. Economically Significant Rules in the Agenda Pipeline, 2003–2007



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

The fact that policy makers and analysts pay the most attention to economically significant rules should not lull them into ignoring the remaining bulk of rules in the yearly pipeline.

significant rules are under consideration by 21 separate departments and agencies at the prerule, proposed rule, final rule, long-term, and recently completed stages. This number is a 14.4 percent increase over the 139 high-cost rules in 2006 (see Figure 11, which also depicts the number of economically significant rules from the year-end Agendas for the 2003–07 period).

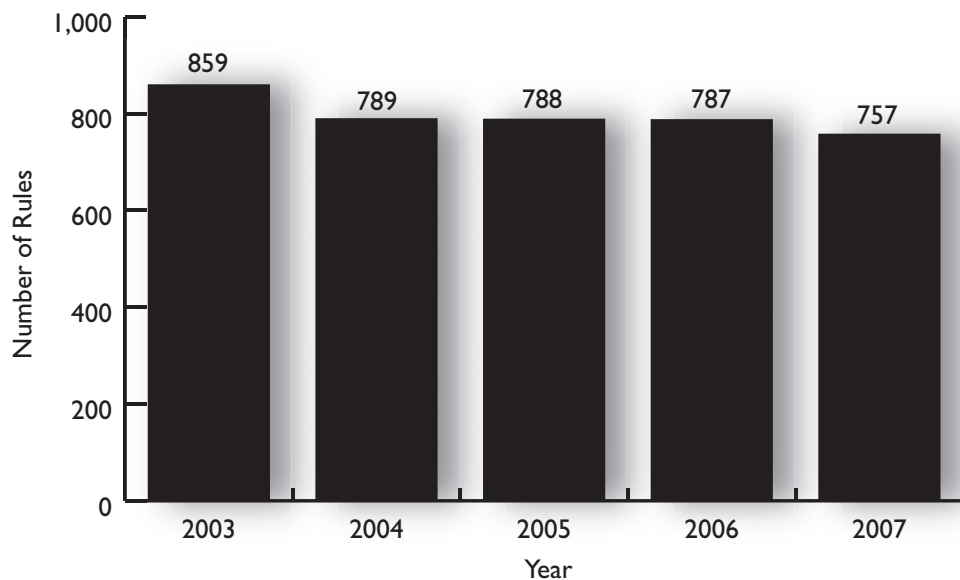
The high-cost rules are scattered among the 3,882 rules in the Agenda. Because each will have an annual impact of at least \$100 million, those rules can be expected annually to carry costs of at least \$15.9 billion (159 rules multiplied by \$100 million). (For a full list of the 159 economically significant rules, see Appendix: Historical Tables, Part E.)

A breakdown of the \$16 billion in regulatory costs (and sometimes benefits) is rarely presented directly for each rule in the Agenda. Actual costs can best be found by combing through the document or searching online. Rather than accumulate and summarize regulatory costs for the readers’ benefit, each Agenda entry indicates whether a rule

is economically significant and occasionally provides additional cost data from agency regulatory impact analyses. Note also that even though the \$16 billion in anticipated economic impacts represents a floor (of a sort) for regulatory costs, it is not a one-time cost but is a recurring annual impact that must be added to prior years’ costs, as well as to costs to come in the future.

Nor are agencies required to limit their activity to what they publish in the Agenda. The *Federal Register* notes, “The Regulatory Plan and the Unified Agenda do not create a legal obligation on agencies to adhere to schedules in this publication or to confine their regulatory activities to those regulations that appear within it.”³⁰ Finally, the fact that policy makers and analysts pay the most attention to economically significant rules should not lull them into ignoring the remaining bulk of rules in the yearly pipeline. In 2007, 3,723 federal rules were not considered economically significant by the government (3,882 total rules minus the 159 economically significant ones). But that categorization does not mean that many of those rules are not economically sig-

Figure 12. Rules Affecting Small Business,
2003–2007



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

nificant in the ordinary sense of the term. Any of the rules may cost up to \$99 million and still evade the “economically significant” label.

Federal Regulations Affecting Small Business

The Regulatory Flexibility Act requires that federal agencies assess the effects of their rules on small businesses. As the *Federal Register* puts it, “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.”³¹ In that light, as Figure 12 shows, rules significantly affecting small business have dipped in recent years. Since 2003, the number of rules affecting small businesses dropped by 12 percent, from 859 to 757.

Table 6 breaks out the 2007 Agenda’s 757 rules affecting small business by department, agency, and commission. Four of them—the departments of Commerce and of Health

and Human Services, the Federal Communications Commission (FCC), and the EPA—account for 402, or 53 percent, of the rules affecting small business. (For the numbers of rules affecting small business broken down by department and agency for Agendas since 1996, see Appendix: Historical Tables, Part F.) The proportion of total rules affecting small business, as noted in Table 6, stands at 19.5 percent.

Federal Regulations Affecting 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 impulses for regulatory reform. As a result, Congress passed the Unfunded Mandates Act in 1995 to establish a point of order against such mandates as a means of getting lawmakers to pay closer at-

**Table 6. Unified Agenda Entries Affecting Small Business by
Department, Agency, and Commission, December 2007**

	Total Rules	Number Affecting Small Business			% Affecting Small Business
		RFA Required	RFA Not Required	Total	
Dept. of Agriculture	290	29	44	73	25.2
Dept. of Commerce	303	82	30	112	37.0
Dept. of Defense	131	2	11	13	9.9
Dept. of Education	13				
Dept. of Energy	47	1		1	2.1
Dept. of Health & Human Services	259	58	38	96	37.1
Dept. of Homeland Security	267	10	34	44	16.5
Dept. of Housing & Urban Development	86	3	2	5	5.8
Dept. of the Interior	264	1	18	19	7.2
Dept. of Justice	140	4	1	5	3.6
Dept. of Labor	94	7	19	26	27.7
Dept. of State	28		1	1	3.6
Dept. of Transportation	199	18	25	43	21.6
Dept. of the Treasury	545		45	45	8.3
Dept. of Veterans Affairs	65				
Agency for International Development	10		1	1	10.0
Architectural & Transportation Barriers Compliance Board	5				
Commission on Civil Rights	1				
CPBSD*	5				
Corporation for National & Community Service	9				
Court Services/Offender Supervision, D.C.	2				
Environmental Protection Agency	336	4	81	85	25.3
Equal Employment Opportunity Commission	7		3	3	42.9
Federal Mediation & Conciliation Service	1				
General Services Administration	26	2	1	3	11.5
National Aeronautics & Space Administration	11				
National Archives & Records Administration	15				
Institute of Museum & Library Services	1				
National Endowment for the Arts	2				
National Endowment for the Humanities	3				
Office of Federal Housing Enterprise Oversight	9				
Office of Government Ethics	9				
Office of Management & Budget	1				
Office of Personnel Management	75				
Peace Corps	6				
Pension Benefit Guaranty Corporation	12				
Railroad Retirement Board	2				
Selective Service System	1				
Small Business Administration	28	14	1	15	53.6
Social Security Administration	63	1		1	1.6

Table 6. Unified Agenda Entries Affecting Small Business by Department, Agency, and Commission, December 2007 (continued)

	Total Rules	Number Affecting Small Business			% Affecting Small Business
		RFA Required	RFA Not Required	Total	
Federal Acquisition Regulation	36	4	1	5	13.9
Commodity Futures Trading Commission	19		1	1	5.3
Consumer Product Safety Commission	19				
Farm Credit Administration	12				
Federal Communications Commission	145	105	4	109	75.2
Federal Deposit Insurance Corporation	18				
Federal Energy Regulatory Commission	41	1		1	2.4
Federal Housing Finance Board	3				
Federal Maritime Commission	4		2	2	50.0
Federal Reserve System	20	2	3	5	25.0
Federal Trade Commission	14	1	10	11	78.6
National Credit Union Administration	24		1	1	4.2
National Indian Gaming Commission	19				
Nuclear Regulatory Commission	53	1	1	2	3.8
Securities & Exchange Commission	76	25	4	29	38.2
Postal Regulatory Commission	3				
Privacy & Civil Liberties Oversight Board	1				
Surface Transportation Board	4				
TOTAL	3,882	375	382	757	19.5

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

Compiled from "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions," *Federal Register*, Vol. 72, No. 236, December 10, 2007; and from online edition at <http://www.reginfo.gov>.

Note: RFA = regulatory flexibility analysis.

tention to legislative activity's effect on the states.

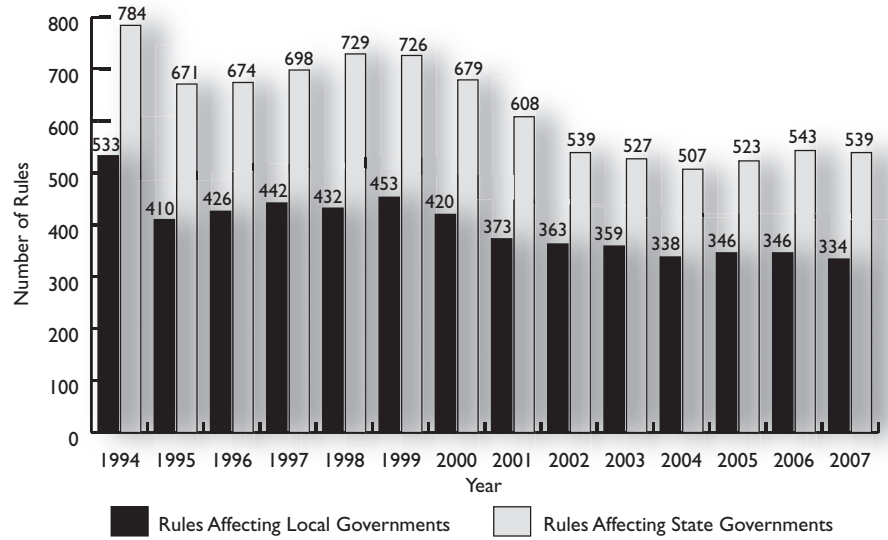
As Figure 13 shows, agencies report that 334 of the 3,882 rules in the 2007 Agenda will affect local governments.³² Over the years since the passage of the Unfunded Mandates Act, overall rules affecting local governments have fallen by 37 percent, from 533 to 334. Figure 13 also shows that the total number of regulatory actions affecting state governments remained about the same over the past year (from 543 to 539). Over the period since passage of the unfunded mandates legislation, the count has dropped from 784 to

539, a 31 percent decline. (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.)

Government Accountability Office Database on Regulations

The various federal reports and databases on regulation serve different purposes. The *Federal Register* shows the aggregate number of proposed and final rules (both those

Figure 13. Rules Affecting State and Local Governments, 1994–2007



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

that affect the private sector and those that deal with internal government machinery or programs). The Unified Agenda reveals the overall number of rules at various stages in the regulatory pipeline, as well as those with economically significant effects, and those affecting small business and lower-level governments.

Under the 1996 Congressional Review Act (CRA), agencies are required to submit reports to Congress on their “major” rules—typically those costing \$100 million or more. Owing to such reports, which are maintained in a database at the Government Accountability Office (GAO), one can more readily observe which of the thousands of final rules that agencies issue each year are major and which agencies are producing the rules.³³

The CRA gives Congress a window of 60 legislative days to review a major rule, 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 workplace repetitive-motion injuries in early 2001. As Table 7, derived from the GAO database, shows, the number of final major rule reports issued by agencies stood at 60, a level comparable to recent years. The departments of Health and Human Services and of Agriculture continue to be among the most active.

A Heritage Foundation analysis of the George W. Bush administration’s tenure isolates the database’s major rules affecting only the private sector, and it further distinguishes between those that are *deregulatory* and those that are regulatory. That useful compilation finds that 74 major rules increased burdens, whereas 23 reduced them.³⁴ The net result is that new regulatory costs of \$28 billion have been imposed since the start of the Bush Administration.³⁵

Table 7. GAO Reports on Major Rules, 1998–2007

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Achitectural Barriers Compliance Board			1				1			
Dept. of Agriculture	5	6		9	7	4	7	6	8	7
Dept. of Commerce	1	5		2			1			2
Dept. of Defense	2	1		3	2			1		
Dept. of Education		1							2	1
Dept. of Energy			3	3	1	1				3
Dept. of Health & Human Services	18	7	17	15	13	17	22	22	16	19
Dept. of Homeland Security						2	2	3	2	4
Dept. of Housing & Urban Development		1	2	1			1	1		
Dept. of the Interior	7	6	9	8	7	7	8	6	6	5
Dept. of Justice	1			4	3		1	1	1	
Dept. of Labor	2		5	3	2		1	1	3	3
Dept. of Transportation	1	4		3	6	4	5	3	1	3
Dept. of the Treasury	1			1		1	1		1	1
Dept. of Veterans Affairs				3	1	2		1		1
Emergency Oil & Gas Loan Board		1								
Emergency Steel Guarantee Loan Board		1								
Environmental Protection Agency	9	5	20	4	1	3	7	3	8	2
Federal Acquisition Regulation										
Federal Communications Commission	16	6	6	3	3	2	4	1	1	2
Federal Emergency Management Agency			2	3	1					
Federal Reserve System			1		1		1			
Federal Trade Commission			1					1		
National Credit Union Administration	1									
Nuclear Regulatory Commission	2	1	2	1	1	1	1	1	1	2
Office of Management & Budget				1						
Office of Personnel Management			1			1				
Pension Benefit Guaranty Corporation	1									
Securities & Exchange Commission	8	3	5	2	2	5	2	4	3	5
Small Business Administration	1		1	1			1			
Social Security Administration		3	1					1	2	
Federal Election Commission						1				
Consumer Product Safety Commission										
Various agencies: HIPAA Implementation										
TOTAL				76	51	77	70	51	51	66

Source: Compiled from GAO data.

Note: HIPAA = Health Insurance Portability and Accountability Act.

Regulation and the Federal Communications Commission

Today's vibrant, robust, and duplicative communications markets are not fragile instruments that require fine-tuning from government bodies.

Although it is by no means the heaviest regulator, the Federal Communications Commission (FCC) is worth singling out for review in today's information economy. (Indeed, the FCC is surpassed in the overall number of rules by eight other agencies, and in the number of economically significant rules by seven others—see Tables 3 and 5, respectively.)

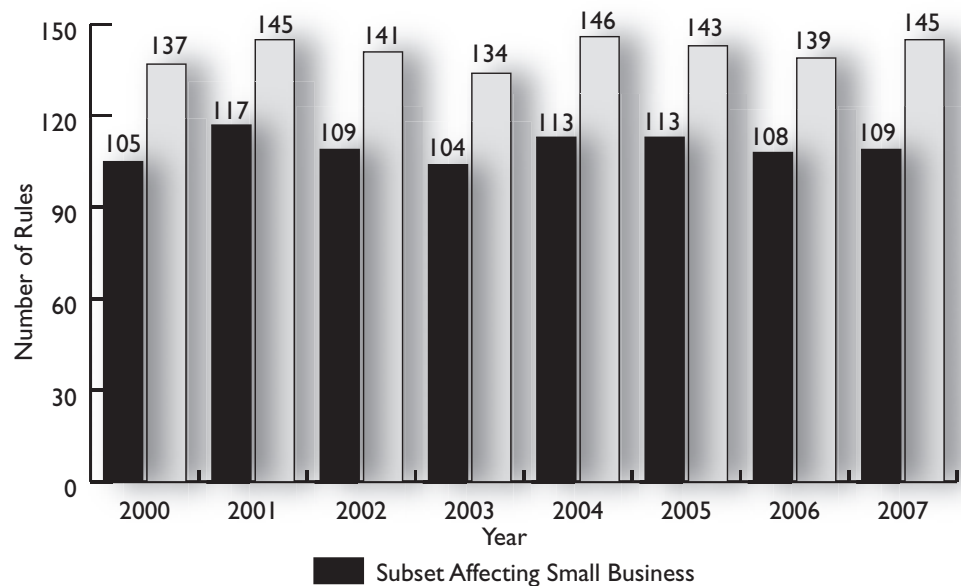
The FCC spent an estimated \$327 million to enforce regulation during FY 2007; The Environmental Protection Agency, for example, spent vastly more at \$4.8 billion, accounting for some 10 percent of the total expected to be spent by all the regulatory agencies.³⁶

Of the 3,882 rules in the 2007 Unified Agenda pipeline, 145, or about 4 percent, were in the works at the FCC. The level of rules from

the FCC has been rather flat since 2000 (Figure 14, and many of these rules are holdovers from previous years). Rules rose by 4 percent over the past year, from 139 to 145. Also shown in Figure 14 is the subset of FCC rules that register some effect on small business. Since 2000, that category of rules has also remained flat, moving from 105 to 109.

Despite massive innovations in telecommunications and in customized, consumer-oriented, and user-driven multimedia, and despite the obsolete nature of the FCC's original mandate to police allegedly public airwaves, an air of paternalism still reigns at the FCC. Today's vibrant, robust, and duplicative communications markets are not fragile instruments that require fine-tuning

Figure 14. Number of FCC Rules, 2000–2007



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

from government bodies. Communications markets do not confound consumers in a manner that requires endless rulemaking.

Nonetheless, now under consideration at the FCC is a notice of inquiry to examine both the broadband industry practices and the applicability of “Net neutrality” to the communications sector. The FCC has held a number of hearings and workshops on the matter. Far from a deregulatory outlook, FCC commissioners are seeking new rules for multicast must-carry regulation, cable à la carte, media ownership restrictions, and indecency regulation. Violence in video games and proposals for wireless Net neutrality also occupy the agency.

Of the 159 economically significant rules in the works across the entire federal government, eight rules are from the FCC, the same as the previous year (refer to Table 5).

Except for a rule dealing with reduced orbital spacing for direct broadcast satellites, those rules are the same batch in play both years. Those eight economically significant FCC rules appear in Box 1. Such sweeping rule-makings (and the 137 other FCC rules in the Agenda pipeline) present opportunities for either liberalization of telecommunications—or avenues for new centralized regulatory oversight and protracted legal battles. Liberalizing communications markets requires a conscious effort to shift “regulation” or competitive discipline from the FCC to competitive markets. Today’s debates inadequately reflect that mindset. The overall level of rules at the FCC and the number of that agency’s rules affecting small business are considerably larger today than they were 10 years ago, as can be gleaned from the historical tables in the appendix.

Liberalizing communications markets requires a conscious effort to shift “regulation” or competitive discipline from the FCC to competitive markets.

Box 1. The Eight Economically Significant Rules in the Pipeline at the FCC

- Broadband over power lines (BPL): “To promote the development of BPL systems by removing regulatory uncertainties for BPL operators and equipment manufacturers while ensuring that licensed radio services are protected from harmful interference.”
- Digital television (DTV): “To apply the DTV tuner requirement to all TV receivers on an advanced schedule that will allow a more rapid completion of the DTV transition while providing manufacturers with adequate time to include DTV tuners in all their TV products.”
- Processing Applications in the Direct Broadcast Satellite Service; Feasibility of Reduced Orbital Spacing for Provision of Direct Broadcast Satellite Service in the United States.
- Service rules for the 746–764 and 776–794 megahertz bands, and revisions to Part 27 of the commission’s rules: “Adopts service rules for licensing and auction of commercial services in spectrum in the 700 MHz band to be vacated by UHF television licensees.”
- Transfer of the 3,650- through 3,700-MHz band from federal government use: “Proposes to allow unlicensed devices to operate in all, or part, of the 3,650-MHz band at higher power levels than usually permitted for unlicensed services. These devices would be subject to smart (or cognitive) requirements and other safeguards designed to prevent interference to the licensed Frequency Selective Surface earth stations now resident in the band.”
- The 2000 biennial regulatory review spectrum aggregation limits for Commercial Mobile Radio Services: “The Commission has adopted a final rule in a proceeding reexamining the need for Commercial Mobile Radio Services spectrum aggregation limits.”
- Hearing aid-compatible telephones: “Modifies exemptions for wireless phones under the Hearing Aid Compatibility Act of 1988 to require that digital wireless phones be capable of being effectively used with hearing aids. It finds that modifying the exemption will extend the benefits of wireless telecommunications to individuals with hearing disabilities—including emergency, business, and social communications—thereby increasing the value of the wireless network for all Americans.”
- Internet protocol (IP)-enabled services: “The notice seeks comment on ways in which the Commission might categorize IP-enabled services for purposes of evaluating the need for applying any particular regulatory requirements. It poses questions regarding the proper allocation of jurisdiction over each category of IP-enabled service. The notice then requests comment on whether the services composing each category constitute ‘telecommunications services’ or ‘information services’ under the definitions set forth in the Act. Finally, noting the Commission’s statutory forbearance authority and title I ancillary jurisdiction, the notice describes a number of central regulatory requirements (including, for example, those relating to access charges, universal service, E911, and disability accessibility), and asks which, if any, should apply to each category of IP-enabled services.”

Ending Regulation without Representation

Steps toward Improving Regulatory Disclosure

Regulatory compliance costs now total more than \$1 trillion annually and receive little official scrutiny. Therefore, it is not surprising that costs often exceed benefits. Although some regulations' benefits exceed costs, net benefits or costs are known for relatively few. Without any authoritative regulatory accounting, OMB's estimates of overall agency net benefits are questionable, which makes it difficult to know whether society wins or loses as a result of those rules. The regulatory data that are available should be officially summarized and publicly disclosed to help create pressures for better data. An incremental step would be for Congress to require—or for the OMB to initiate—publication of a summary of already available, but scattered, data. Such a summary would perhaps resemble that in *Ten Thousand Commandments* and many other compilations. That simple step alone would help transform today's regulatory “hidden tax” culture to one of more openness.

Indeed, regulations dwarf the \$150 billion “economic stimulus package” passed in early 2008 and their rollback would constitute the *deregulatory stimulus* that the U.S. economy needs, and it would offer some certainty or confidence to small businesses seeking a foothold in a shaky or weak economy.

Although regulatory cost disclosure should be a priority, a protracted legislative fight over comprehensive “cost-benefit” should be avoided. Better would be halting Congress's excessive delegation of legislative power to unelected agency personnel in the first place.

Such an institutional change would force Congress to internalize pressures to make cost-benefit assessments before issuing directives to agencies. Elected representatives must assume responsibility and must end “regulation without representation” to rein in the off-budget regulatory costs.

Regulations fall into two broad classes: those that are economically significant (costing more than \$100 million annually) and those that are not. Agencies typically emphasize the reporting of economically significant rules, which OMB also tends to emphasize in its assessments of the regulatory state. An obvious problem with this approach is that many rules can slide unobserved below the threshold. Moreover, agencies need not specify whether any or all of their economically significant rules cost only \$100 million—or something far beyond. Redefining economically significant rules to reflect increasing cost tiers would improve disclosure. 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 either on the basis of cost information that has been provided in the regulatory impact analyses that accompany many economically significant rules or on the basis of separate internal or external estimates.

Although modest, such steps toward greater disclosure could be important. Today, to learn about regulatory trends and to accumulate 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

The regulatory data that are available should be officially summarized and publicly disclosed to help create pressures for better data.

Table 8. Possible Breakdown of “Economically Significant” Rules

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

1,000-plus pages of small, multicolumn print, or they must compile results from on-line searches. Useful regulatory information is available but is often difficult and tedious to accumulate. The Agenda could be made more user-friendly.

As part of this process, data from the Agenda could be officially summarized in charts each year, perhaps 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 Box 2. Information could be added to the report as deemed necessary—for instance, success or failure of any special initia-

tive, such as any “reinventing government,” or regulatory reform effort. Providing five-year historical data would tremendously enhance the Agenda’s usefulness. Paradoxically, one of the virtues of a regulatory report card is that it would reveal more clearly what we *do not* comprehend about the regulatory state—something that would be quite useful to know.

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 policy makers take the growth of the regulatory state seriously.

Regulations dwarf the \$150 billion “economic stimulus package” passed in early 2008.

Box 2. 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 or percentages of rules affecting small business and state and local governments.
- Numbers or percentages of rules featuring numerical cost estimates.
- Tallies of existing cost estimates, with subtotals by agencies, and grand total.
- Numbers or percentages of rules lacking cost estimates.
- Short explanation of lack of cost estimates, where applicable.
- Percentage of rules reviewed by the Office of Management and Budget 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 Government Accountability Office in its database of reports on regulations.
- Rules up for 10-year review (under Section 610 of the Regulatory Flexibility Act).
- Most active rulemaking 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 or percentages of rules required by statute vs. discretionary rules.
- Numbers or percentages of rules facing statutory or judicial deadlines.
- Rules for which weighing costs and benefits is statutorily prohibited.

“No Regulation without Representation”

Congress regularly shirks its constitutional duty to make the tough calls. It delegates considerable lawmaking power to agencies, and then it fails to ensure that they deliver benefits that are greater than costs.

Years of unbudgeted regulatory growth merit concern. We simply do not know whether regulatory benefits exceed costs. But agencies are not the real culprits. Congress regularly shirks its constitutional duty to make the tough calls. It delegates considerable lawmaking power to agencies, and then it fails to ensure that they deliver benefits that are greater than costs.³⁷ 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, because the only measure of agency productivity—other than growth in their budgets and number of employees—is the number of regulations they produce. One need not waste time blaming agencies for emphasizing the very regulating they were set up to do in the first place. It would be better to point a finger at Congress. For perspective, consider that regulatory agencies issued 3,595 final rules, whereas Congress passed and the President signed into law a comparatively low 188 bills in 2007.³⁸

But, as noted, regulatory agencies are at work on 3,882 rules. The unelected are doing the bulk of the lawmaking. Because agencies never answer to voters, an annual regulatory report card is a start but not a complete answer. And the regulatory reforms that rely on agencies’ policing themselves are not capable of harnessing the regulatory state. Rather, making Congress directly answerable to the voters for the costs that 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 such rules become binding on the public.

Congressional accountability for regulatory costs assumes new importance in today’s era of vanished budget surpluses. If Congress’s alternatives are to spend or to issue new regulations, then concern about deficits invites Congress to regulate rather than 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, which would appear in the federal budget—and increase the deficit—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 add little to federal spending but would, nonetheless, let Congress take credit. By regulating instead of spending, government can expand almost indefinitely without explicitly taxing anybody—or spending—one extra penny.

Making Congress as accountable for regulation as for legislation is a prerequisite for control of the off-budget regulatory state. 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 in 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 might be 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 when it finally assumes responsibility for the growth of the regulatory state, it will have put in place a system that is more accountable to voters.

Appendix of Historical Tables

Part A. *Federal Register* Page History, 1936–2007

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

Year	Unadjusted Page Count	Jumps/Blanks	Adjusted Page Count
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
1987	49,654	2,621	47,033
1988	53,376	2,760	50,616
1989	53,842	3,341	50,501
1990	53,620	3,825	49,795
1991	67,716	9,743	57,973
1992	62,928	5,925	57,003
1993	69,688	8,522	61,166
1994	68,108	3,194	64,914
1995	67,518	4,873	62,645
1996	69,368	4,777	64,591
1997	68,530	3,981	64,549
1998	72,356	3,785	68,571
1999	73,880	2,719	71,161
2000	83,294	9,036	74,258
2001	67,702	3,264	64,438
2002	80,332	4,726	75,606
2003	75,798	4,529	71,269
2004	78,852	3,177	75,675
2005	77,777	3,907	73,870
2006	78,724	3,787	74,937
2007	74,408	2,318	72,090

n/a = not available.

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 in *Federal Register*, 1976–2007

Year	Final Rules	Proposed Rules	Other*	Total
1976	7,401	3,875	27,223	38,499
1977	7,031	4,188	28,381	39,600
1978	7,001	4,550	28,705	40,256
1979	7,611	5,824	29,211	42,646
1980	7,745	5,347	33,670	46,762
1981	6,481	3,862	30,090	40,433
1982	6,288	3,729	28,621	38,638
1983	6,049	3,907	27,580	37,536
1984	5,154	3,350	26,047	34,551
1985	4,843	3,381	22,833	31,057
1986	4,589	3,185	21,546	29,320
1987	4,581	3,423	22,052	30,056
1988	4,697	3,240	22,047	29,984
1989	4,714	3,194	22,218	30,126
1990	4,334	3,041	22,999	30,374
1991	4,416	3,099	23,427	30,942
1992	4,155	3,170	24,063	31,388
1993	4,369	3,207	24,017	31,593
1994	4,867	3,372	23,669	31,908
1995	4,713	3,339	23,133	31,185
1996	4,937	3,208	24,485	32,630
1997	4,584	2,881	26,260	33,725
1998	4,899	3,042	26,313	34,254
1999	4,684	3,281	26,074	34,039
2000	4,313	2,636	24,976	31,925
2001	4,132	2,512	25,392	32,036
2002	4,167	2,635	26,250	33,052
2003	4,148	2,538	25,168	31,854
2004	4,101	2,430	25,846	32,377
2005	3,943	2,257	26,020	32,220
2006	3,718	2,346	25,429	31,493
2007	3,595	2,308	24,784	30,687

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

*“Other” documents are presidential documents, agency notices, and corrections.

Part C. Unified Agenda Rules History, 1983–2007

Total Number of Rules Under Construction

1980s			1990s			2000s		
1983	April	2,863	1990	April	4,332	2000	October	4,699
	October	4,032		October	4,470	2001	October	4,509
1984	April	4,114	1991	April	4,675	2002	October	4,187
	October	4,016		October	4,863	2003	December	4,266
1985	April	4,265	1992	April	4,186	2004	December	4,083
	October	4,131		October	4,909	2005	October	4,062
1986	April	3,961	1993	April	4,933	2006	December	4,052
	October	3,983		October	4,950	2007	December	3,882
1987	April	4,038	1994	April	5,105			
	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			

Part D. Agenda Rules History by Department and Agency, 1998–2005

	2005	2004	2003	2002	2001	2000	1999	1998
Dept. of Agriculture	292	279	323	314	312	327	345	384
Dept. of Commerce	296	273	300	270	342	390	366	344
Dept. of Defense	163	126	108	87	93	117	121	142
Dept. of Education	9	11	13	14	8	21	32	20
Dept. of Energy	61	50	66	53	61	67	64	63
Dept. of Health & Human Services	249	233	219	219	277	308	300	351
Dept. of Homeland Security	295	314	338					
Dept. of Housing & Urban Development	90	103	109	100	89	113	128	102
Dept. of the Interior	303	287	295	298	423	418	309	337
Dept. of Justice	124	125	122	249	229	202	201	186
Dept. of Labor	93	88	89	102	141	156	151	149
Dept. of State	24	21	15	41	32	21	27	22
Dept. of Transportation	227	301	365	543	511	536	539	518
Dept. of the Treasury	514	532	530	513	458	450	400	438
Dept. of Veterans Affairs	76	79	87	104	164	141	130	118
Advisory Council on Historic Preservation		1	1	1	0	1	1	1
Agency for International Development	10	8	8	7	6	6	5	7
Architectural & Transportation Barriers Compliance Board	3	4	4	5	5	7	8	9
Commission on Civil Rights	1	1	1	1	1	1	1	1
CPBSD*	6	5	0	0	0	0	0	0

(continued on next page)

Part D. Agenda Rules History by Department and Agency, 1998–2005 (continued)

	2005	2004	2003	2002	2001	2000	1999	1998
Corporation for National & Community Service	11	8	9	16	9	6	4	6
Environmental Protection Agency	400	416	417	409	416	449	456	462
Federal Emergency Management Agency	0	0	0	24	30	26	33	25
General Services Administration	33	27	37	40	35	40	51	49
National Aeronautics & Space Administration	20	27	34	13	17	11	7	11
National Archives & Records Administration	17	22	19	20	19	21	21	19
Institute of Museum & Library Services	4	3	6	5	5	4	1	1
National Endowment for the Arts	2	2	6	5	5	5	5	5
Equal Employment Opportunity Commission	6	3	4	4	3	6	9	10
National Endowment for the Humanities	3	3	8	9	8	7	6	6
National Science Foundation	3	3	2	2	3	5	4	5
Office of Federal Housing Enterprise Oversight	6	4	4	7	9	5	5	4
Office of Government Ethics	7	7	9	10	11	11	12	12
Office of Management & Budget	2	3	4	4	5	5	9	11
Office of Personnel Management	94	103	90	72	91	110	112	101
Panama Canal Commission	0	0	0	0	0	0	4	5
Peace Corps	5	4	9	9	9	8	5	5
Pension Benefit Guaranty Corporation	9	6	4	6	11	10	12	12
Railroad Retirement Board	5	6	11	13	13	19	16	17
Selective Service System	1	1	1	1	1	1	1	1
Small Business Administration	34	29	33	40	37	41	35	25
Social Security Administration	68	59	64	63	85	82	67	70
Tennessee Valley Authority	0	0	2	2	3	3	1	1
U.S. Information Agency	0	0	0	0	0	0	0	1
Federal Acquisition Regulation	44	45	49	43	48	56	49	42
Commodity Futures Trading Commission	11	15	15	19	30	21	19	12
Consumer Product Safety Commission	18	18	20	20	21	20	17	15
Farm Credit Administration	20	20	21	14	17	17	19	15
Farm Credit System Insurance Corporation	1	1	1	1	1	3	3	3
Federal Communications Commission	143	146	134	141	145	137	128	121
Federal Energy Regulatory Commission	35	23	21	19	8	18	20	12
Federal Housing Finance Board	8	9	11	9	12	12	18	17
Federal Maritime Commission	5	7	11	8	7	9	9	6
Federal Reserve System	17	18	18	24	32	33	22	30
Federal Trade Commission	15	14	12	10	13	14	16	16
National Credit Union Administration	27	26	27	20	22	16	26	14
Federal Deposit Insurance Corporation	16	20	17	17	22	26	25	26
National Indian Gaming Commission	15	14	14	16	15	14	14	17
National Labor Relations Board	0	0	0	0	0	0	0	0
Nuclear Regulatory Commission	49	42	45	39	42	55	57	63
Office of Special Counsel	0	0	0	0	0	3	2	1
Overseas Private Investment Corporation	0	0	0	0	0	0	0	2
Securities & Exchange Commission	64	79	71	73	80	77	80	83
Surface Transportation Board	3	4	5	5	4	3	3	8
Federal Mediation & Conciliation Service	2	2	3	4	3	2	1	1
Court Services/Offender Supervision, D.C.	1	1	3	7	5	0	0	0
Presidio Trust	2	2	1	2	2	3	3	0
Udall Institute for Environmental Conflict Res.	0	0	1	1	3	3	3	0
TOTAL	4,062	4,083	4,266	4,187	4,509	4,699	4,538	4,560

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

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

Part E. Listing of 159 “Economically Significant” Rules, 2007

From the Regulatory Plan (54 Rules)

Department of Agriculture

1. Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Fish, Perishable Agricultural Commodities, and Peanuts (LS-03-04) 0581-AC26.
2. Egg Products Inspection Regulations 0583-AC58.
3. Public Health-Based Poultry Slaughter Inspection 0583-AD32.
4. Performance Standards for the Production of Processed Meat and Poultry Products; Control of Listeria Monocytogenes in Ready-to-Eat Meat and Poultry Products 0583-AC46.
5. Nutrition Labeling of Single-Ingredient Products and Ground or Chopped Meat and Poultry Products 0583-AC60.
6. Food Stamp Program: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002 0584-AD30.
7. Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages 0584-AD77.

Department of Commerce

8. Right Whale Ship Strike Reduction 0648-AS36.

Department of Energy

9. Energy Efficiency Standards for Commercial Refrigeration Equipment 1904-AB59.

Department of Health and Human Services

10. Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Ingredients and Dietary Supplements 0910-AB88.
11. Prevention of Salmonella Enteritidis in Shell Eggs 0910-AC14.
12. Control of Communicable Diseases, Interstate and Foreign Quarantine 0920-AA12.
13. Medicare Supplemental Policies (CMS-4084-P) 0938-AP10.
14. Changes to the Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System for CY 2009 (CMS-1404-P) 0938-AP17.

15. Revisions to Payment Policies under the Physician Fee Schedule and Ambulance Fee Schedule for CY 2009 (CMS-1403-P) 0938-AP18.

Department of Homeland Security

16. Minimum Standards for Driver’s Licenses and Identification Cards Acceptable to Federal Agencies for Official Purposes 1601-AA37.
17. Commercial Fishing Industry Vessels (USCG-2003-16158) 1625-AA77.
18. Importer Security Filing and Additional Carrier Requirements 1651-AA70.
19. Documents Required for Travelers Entering the United States at Sea and Land Ports-of-Entry from within the Western Hemisphere 1651-AA69.
20. Secure Flight Program 1652-AA45.
21. Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Security Program 1652-AA53.
22. Special Community Disaster Loans Program 1660-AA44.

Department of Housing and Urban Development

23. HUD’s Regulation of Fannie Mae and Freddie Mac: Housing Goals (FR-4960) 2501-AD12.
24. Real Estate Settlement Procedures Act (RESPA); to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Costs (FR-5180) 2502-AI61.

Department of Justice

25. Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities 1190-AA44.
26. Nondiscrimination on the Basis of Disability in State and Local Government Services 1190-AA46.

Department of Labor

27. Amendment of Standards Applicable to General Statutory Exemption for Services 1210-AB08.
28. Regulations Implementing the Health Care Access, Portability, and Renewability Provisions of the Health Insurance Portability and Accountability Act of 1996 1210-AA54.

29. Section 404 Regulation—Default Investment Alternatives under Participant Directed Individual Account Plans 1210-AB10.
30. Occupational Exposure to Crystalline Silica 1218-AB70.

Department of Transportation

31. Automatic Dependent Surveillance—Broadcast (ADS-B) Equipage Mandate to Support Air Traffic Control Service 2120-AI92.
32. Transport Airplane Fuel Tank Flammability Reduction 2120-AI23.
33. National Registry of Certified Medical Examiners 2126-AA97.
34. Light Truck Corporate Average Fuel Economy Standards, Model Years 2012 and Beyond 2127-AK08.
35. Regulatory Relief for Electronically Controlled Pneumatic Brake System Implementation 2130-AB84.
36. Major Capital Investment Projects—New/Small Starts 2132-AA81.
37. Pipeline Safety: Distribution Integrity Management 2137-AE15.

Department of the Treasury

38. Implementation of a Revised Basel Capital Accord (Basel II) 1550-AB56.
39. Implementation of a Revised Basel Capital Accord (Basel II) 1557-AC91.

Environmental Protection Agency

40. Revisions to the Spill Prevention, Control, and Countermeasure (SPCC) Rule 2050-AG16.
41. Definition of Solid Wastes Revisions 2050-AG31
42. Review of the National Ambient Air Quality Standards for Lead 2060-AN83.
43. Implementing Periodic Monitoring in Federal and State Operating Permit Programs 2060-AN00.
44. Rulemaking to Address Greenhouse Gas Emissions from Motor Vehicles 2060-AO56.
45. Control of Emissions from New Locomotives and New Marine Diesel Engines Less than 30 Liters per Cylinder 2060-AM06.
46. Control of Emissions from Nonroad Spark-Ignition Engines and Equipment 2060-AM34.
47. Review of the National Ambient Air Quality Standards for Ozone 2060-AN24.
48. Lead-Based Paint; Amendments for Renovation, Repair and Painting 2070-AC83.

Consumer Product Safety Commission

49. Flammability Standard for Upholstered Furniture 3041-AB35.

Federal Trade Commission

50. Fair and Accurate Credit Transactions Act of 2003 3084-AA94.

Postal Regulatory Commission

51. System of Rate Regulation for Market Dominant Products 3211-AA02.
52. Competitive Products 3211-AA03.

Social Security Administration

53. Amendments to the Administrative Law Judge, Appeals Council, and Decision Review Board Appeals Levels (3401P) 0960-AG52.
54. Suspension of New Claims to the Federal Reviewing Official Review Level (3394F) 0960-AG53.

From the Unified Agenda (105 Additional Rules)

Department of Agriculture

55. Emergency Conservation Program 0560-AH43.
56. Conservation Security Program 0578-AA36.
57. Bovine Spongiform Encephalopathy; Minimal-Risk Regions and Importation of Commodities 0579-AC01.
58. Electronic Signatures 0583-AD14.
59. Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle 0583-AC88.

Department of Commerce

60. Amendment 15 to the Pacific Coast Salmon Fishery Management Plan De Minimis Fishing Opportunity for Klamath River Fall Run Chinook Salmon 0648-AV07.
61. Imposition of License Requirement for Exports and Re-exports of Missile Technology (MT)—Controlled Items to Canada 0694-AC48.

Department of Education

62. Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program 1840-AC89.

Department of Energy

63. Energy Efficiency Standards for Pool Heaters and Direct Heating Equipment and Water Heaters 1904-AA90.
64. Energy Efficiency Standards for Fluorescent and Incandescent Reflector and General Service Lamps 1904-AA92.
65. Determination and Energy Efficiency Standards for Battery Chargers and External Power Supplies 1904-AB57.
66. Energy Efficiency Standards for Refrigerated Bottled or Canned Beverage Vending Machines 1904-AB58.
67. Energy Efficiency Standards for Residential Furnaces and Boilers 1904-AA78.
68. Energy Efficiency Standards for Clothes Dryers and Room Air Conditioners 1904-AA89.
69. Energy Efficiency Standards for 1-200 HP Electric Motors 1904-AA91.
70. Energy Conservation Standards for Residential Central Air Conditioners and Air Conditioning Heat Pumps 1904-AB47.
71. Energy Conservation Standards for Fluorescent Lamp Ballasts 1904-AB50.
72. Energy Conservation Standards for Small Electric Motors 1904-AB70.
73. Energy Efficiency Standards for Electric Distribution Transformers 1904-AB08.

Department of Health and Human Services

74. Substances Prohibited from Use in Animal Food or Feed to Prevent the Transmission of Bovine Spongiform Encephalopathy 0910-AF46.
75. Use of Ozone-Depleting Substances; Removal of Essential Use Designations [Epinephrine] 0910-AF92.
76. CGMPs for Blood and Blood Components: Notification of Consignees and Transfusion Recipients Receiving Blood and Blood Components at Increased Risk of Transmitting HCV Infection (Lookback) 0910-AB76.
77. Patient Safety and Quality Improvement Act of 2005 Rules 0919-AA01.
78. Revisions to HIPAA Code Sets (CMS-0013-P) 0938-AN25.
79. State Flexibility for Medicaid Benefit Packages (CMS-2232-P) 0938-AO48.

80. Prospective Payment System for Long-Term Care Hospitals RY 2009: Annual Payment Rate Updates (CMS-1393-P) 0938-AO94.
81. Establishing Additional Medicare Provider and Supplier Enrollment Safeguards (CMS-6045-P) 0938-AP01.
82. Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update for FY 2009 (CMS-1534-P) 0938-AP11.
83. Changes to the Hospital Inpatient Prospective Payment Systems and FY 2009 Rates (CMS-1390-P) 0938-AP15.
84. Prospective Payment System for Inpatient Rehabilitation Facilities for FY 2009 (CMS-1554-P) 0938-AP19.
85. Home Health Prospective Payment System Refinements and Rate Update for CY 2009 (CMS-1555-P) 0938-AP20.
86. Electronic Claims Attachments Standards (CMS-0050-F) 0938-AK62.
87. Revisions to the Appeals Process for Initial Claim Determinations (CMS-4064-F) 0938-AM73.
88. Group Health Plans and Health Insurance Issues under the Newborns and Mothers Health Protection Act (CMS-4116-F) 0938-AO43.
89. Targeted Case Management (CMS-2237-IFC) 0938-AO50.
90. Revisions to Payment Policies under the Physician Fee Schedule, and Other Part B Payment Policies CY 2008; Revisions to the Payment Policies of Ambulance Fee Schedule CY 2008 0938-AO65.
91. Changes to the Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System Calendar Year 2008 Payment Rates (CMS-1392-C) 0938-AO71.
92. Health Care-Related Tax Revisions (CMS-2275-F) 0938-AO80.
93. Rehabilitation Services: State Plan Option (CMS-2261-F) 0938-AO81.
94. Inpatient Psychiatric Facility Prospective Payment System—Update for Rate Year Beginning July 1, 2008 (RY 2009) (CMS-1401-N) 0938-AO92.
95. Elimination of Reimbursement under Medicaid for School-Based Administration Expenditures and Certain Transportation Costs (CMS-2287-F) 0938-AP13.
96. Policy and Technical Changes to the Medicare Prescription Drug Benefit (CMS-4130-F) 0938-AO74.
97. Medicaid Graduate Medical Education (CMS-2279-F) 0938-AO95.
98. Competitive Acquisition for Certain Durable Medical Equipment (DME), Prosthetics, Orthotics, and Supplies (CMS-1270-F) 0938-AN14.
99. Medicaid Prescription Drugs—Average Manufacturer Price (CMS-2238-FC) 0938-AO20.

100. Prospective Payment System for Long-Term Care Hospitals RY 2008: Annual Payment Rate Updates and Policy Changes (CMS-1529-F) 0938-AO30.
101. Home Health Prospective Payment System Refinements and Rate Update for Calendar Year 2008 (CMS-1541-F) 0938-AO32.
102. Inpatient Psychiatric Facility Prospective Payment System—Update for Rate Year 2008 (CMS-1479-N) 0938-AO40.
103. Cost Limits for Governmentally Operated Providers (CMS-2258-FC) 0938-AO57.
104. Prospective Payment System for Inpatient Rehabilitation Facilities for FY 2008 (CMS-1551-F) 0938-AO63.
105. Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update for FY 2008 (CMS-1545-F) 0938-AO64.
106. Changes to the Hospital Inpatient Prospective Payment Systems and FY 2008 Rates (CMS-1533-FC) 0938-AO70.
107. Revised Payment System for Services Furnished in Ambulatory Surgical Centers (ASCs) Effective January 1, 2008 (CMS-1517-F) 0938-AO73.
108. Fee Schedule for Payment of Ambulance Services—Update for CY 2008 (CMS-1552-N) 0938-AO85.
109. Child Support Provisions of the Deficit Reduction Act 0970-AC24.

Department of Homeland Security

110. Public Transportation Security Grants 1601-AA31.
111. Chemical Facility Anti-Terrorism Standards 1601-AA41.
112. Allocation of H-1B Visas Created by the H-1B Visa Reform Act of 2004 1615-AB32.
113. Adjustment of the Immigration Benefit Application/Petition and Biometric Fee Schedule 1615-AB53.
114. Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil (USCG-1998-3417) 1625-AA19.
115. Letters and Documents; Advanced Electronic Presentation of Cargo Data 1651-AA55.
116. Air Transit Program 1651-AA50.
117. Passenger Manifest for Commercial Aircraft Arriving in and Departing from the United States; Passengers and Crew Manifests for Commercial Vessels Departing from the United States 1651-AA62.
118. Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License 1652-AA41.
119. Collection of Fees Levied on F, M, and J Nonimmigrants and Schools Approved by DHS to Enroll F and

- M Nonimmigrants to Defray the Costs of the Student and Exchange Visitor Program 1653-AA54.
120. Disaster Assistance; Federal Assistance to Individuals and Households 1660-AA18.
121. Estimating Eligible Cost 1660-AA33.
122. Assistance to Firefighters Grant Program 1660-AA50.

Department of Housing and Urban Development

123. Refinement of Income and Rent Determinations in Public and Assisted Housing Programs (FR-4998) 2501-AD16.
124. Real Estate Settlement Procedures Act (RESPA); to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Costs (FR-4727) 2502-AH85.

Department of the Interior

125. Reduction in Oil and Gas Royalty Rates in the Outer Continental Shelf under the Deep Water Royalty Relief Act 1010-AD29.
126. Migratory Bird Hunting; 2008 to 2009 Migratory Game Bird Hunting Regulations 1018-AV62.
127. Migratory Bird Hunting; 2007 to 2008 Migratory Game Bird Hunting Regulations 1018-AV12.

Department of Justice

128. Retail Sales of Scheduled Listed Products; Self-Certification of Regulated Sellers of Scheduled Listed Chemical Products 1117-AB05.

Department of Labor

129. Revision of the Form 5500 Series and Implementing Regulations 1210-AB06.
130. Proposed Revision of Annual Information Return/Reports 1210-AB14.
131. Occupational Exposure to Beryllium 1218-AB76
132. Electric Power Transmission and Distribution; Electrical Protective Equipment 1218-AB67.
133. Employer Payment for Personal Protective Equipment 1218-AB77.
134. Hearing Conservation Program for Construction Workers 1218-AB89.

Department of Transportation

135. Congestion Management Rule for LaGuardia Airport 2120-AI70.

- 136. Flight Crewmember Duty Limitations and Rest Requirements 2120-AI93.
- 137. Minimum Training Requirements for Entry Level Commercial Motor Vehicle Operations 2126-AB06.
- 138. Side Impact Protection Upgrade—FMVSS No. 214 2127-AJ10.
- 139. Amendments to Design Standards for Pressurized Railroad Tank Cars 2130-AB69.
- 140. Grant Program for Local Rail Line Relocation and Improvement Projects 2130-AB74.

Department of the Treasury

- 141. Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Maintenance: Domestic Capital Modifications 1550-AB98.

Department of Veterans Affairs

- 142. Enrollment—Provision of Hospital and Outpatient Care to Veterans—Subpriorities of Priority Categories 7 and 8 and Enrollment Level Decision 2900-AL51.

Environmental Protection Agency

- 143. National Primary Drinking Water Regulations: Radon 2040-AA94.
- 144. Standards for the Management of Coal Combustion Wastes Generated by Commercial Electric Power Producers 2050-AE81.
- 145. Review of the Primary National Ambient Air Quality Standard for Nitrogen Dioxide 2060-AO19.
- 146. Review of the National Ambient Air Quality Standards for Particulate Matter 2060-AO47.
- 147. Review of the Primary National Ambient Air Quality Standard for Sulfur Dioxide 2060-AO48.
- 148. Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur 2060-AO72.

Consumer Product Safety Commission

- 149. Proposed Standard to Address Open-Flame Ignition of Bedclothes 3041-AC26.

Federal Communications Commission

- 150. Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules 3060-AH32.
- 151. Transfer of the 3650 through 3700 MHz Band from Federal Government Use 3060-AH75.
- 152. 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services 3060-AH81.
- 153. Broadband Over Power Line Systems 3060-AI24.
- 154. IP-Enabled Services 3060-AI48.
- 155. Hearing Aid-Compatible Telephones (WT Docket Nos. 01-309 and 06-150) 3060-AI57.
- 156. Processing Applications in the Direct Broadcast Satellite Service; Feasibility of Reduced Orbital Spacing for Provision of Direct Broadcast Satellite Service in the United States; IB Docket No. 06-160 3060-AI86.
- 157. DTV Tuner Requirements 3060-AI60.

Federal Deposit Insurance Corporation

- 158. Assessment Dividends 3064-AD19.

Nuclear Regulatory Commission

- 159. Revision of Fee Schedules; Fee Recovery for FY 2007 3150-AI00.

Sources: Compiled from "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions," *Federal Register*, Vol. 72, No. 236, December 10, 2007; and from online edition at <http://www.reginfo.gov>.

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

Part F: Rules Affecting Small Business, 1996–2006

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Dept. of Agriculture	56	58	63	49	47	56	39	64	52	54	67
Dept. of Commerce	46	29	52	88	98	89	77	74	79	108	111
Dept. of Defense	22	15	21	15	7	8	6	13	12	13	14
Dept. of Education	1	1	0	0	0	0	1	0	0	0	1
Dept. of Energy	2	2	0	0	1	1	0	1	0	0	0
Dept. of Health & Human Services	89	100	88	75	107	108	92	96	106	112	109
Dept. of Homeland Security	0	0	0	0	0	0	0	33	38	43	43
Dept. of Housing & Urban Development	9	7	1	1	0	3	6	11	6	4	4
Dept. of the Interior	17	28	29	33	18	20	17	26	20	21	29
Dept. of Justice	27	26	10	14	14	15	13	8	8	8	7
Dept. of Labor	51	39	41	38	40	26	22	23	19	19	26
Dept. of State	2	1	0	0	2	3	6	2	1	1	0
Dept. of Transportation	31	44	208	246	266	244	216	151	103	63	60
Dept. of the Treasury	52	50	60	15	31	27	26	27	38	41	37
Dept. of Veterans Affairs	3	7	6	6	3	1	1	0	0	0	0
Agency for International Development	0	0	0	0	0	1	2	1	0	0	1
Architectural & Transportation Barriers Compliance Board	0	0	3	2	2	1	1	0	0	0	0
Corporation for National & Community Service	0	0	0	0	0	0	0	0	0	1	1
Environmental Protection Agency	152	163	178	179	205	185	167	135	122	110	95
Federal Emergency Management Agency	1	0	0	0	1	1	1	0	0	0	0
General Services Administration	6	3	2	2	1	1	4	5	1	3	3
National Aeronautics & Space Administration	1	0	1	0	0	0	0	0	0	0	0
National Archives & Records Administration	1	1	1	0	0	0	0	1	1	1	0
Equal Employment Opportunity Commission	0	1	2	0	0	2	0	0	0	3	3
National Endowment for the Arts	0	0	0	0	0	0	2	2	0	0	0
National Endowment for the Humanities	0	1	0	0	0	0	0	0	0	0	0
National Science Foundation	0	0	0	0	0	0	0	0	0	0	0
Office of Management & Budget	2	1	1	2	1	0	0	0	0	0	0
Railroad Retirement Board	1	1	0	0	0	0	0	0	0	0	0
Small Business Administration	17	13	20	28	24	21	21	24	18	19	21
Social Security Administration	1	0	0	2	0	0	1	1	1	1	1
U.S. Information Agency	0	0	0	0	0	0	0	0	0	0	0
Federal Acquisition Regulation	20	15	11	16	13	9	6	5	5	7	5
Commodity Futures Trading Commission	0	0	1	0	0	0	0	2	1	1	0
Consumer Product Safety Commission	1	0	0	0	0	0	0	0	0	0	1
Federal Communications Commission	75	70	82	91	105	117	109	104	113	113	108
Federal Energy Regulatory Commission	0	0	0	1	0	0	0	0	0	0	0
Federal Housing Finance Board	0	0	1	0	0	0	0	0	0	0	0

Federal Maritime Commission	0	0	0	5	4	7	6	7	10	7	5	3
Federal Reserve System	4	2	5	5	2	8	10	7	3	5	6	3
Federal Trade Commission	7	11	10	10	10	9	9	9	9	11	12	13
Federal Mediation & Conciliation Service	0	0	0	0	0	1	1	0	0	0	0	0
Interstate Commerce Commission	0	0	0	0	0	0	0	0	0	0	0	0
National Credit Union Administration	1	1	0	0	0	0	0	0	0	2	1	4
Nuclear Regulatory Commission	8	9	8	5	5	3	5	5	3	0	1	1
Resolution Trust Corporation	0	0	0	0	0	0	0	0	0	0	17	0
Securities & Exchange Commission	48	34	27	39	39	40	26	28	25	20	0	16
Commission on Civil Rights	0	0	0	0	0	0	0	0	0	0	0	0
Court Services/Offender Supervision, D.C.	0	0	0	0	0	0	0	0	0	0	0	0
CPBSD*	0	0	0	0	0	0	0	0	0	0	0	0
Institute of Museum & Library Services	0	0	0	0	0	0	0	0	0	0	0	0
Office of Federal Housing Enterprise Oversight	0	0	0	0	0	0	0	0	0	0	0	0
Office of Government Ethics	0	0	0	0	0	0	0	0	0	0	0	0
Office of Personnel Management	0	0	0	0	0	0	0	0	0	0	0	0
Peace Corps	0	0	0	0	0	0	0	0	0	0	0	0
Pension Benefit Guaranty Corporation	0	0	0	0	0	0	0	0	0	0	0	0
Selective Service Administration	0	0	0	0	0	0	0	0	0	0	0	0
Farm Credit Administration	0	0	0	0	0	0	0	0	0	0	0	0
Farm Credit Insurance Corporation	0	0	0	0	0	0	0	0	0	0	0	0
Federal Deposit Insurance Corporation	0	0	0	0	0	0	0	0	0	0	0	0
National Indian Gaming Commission	0	0	0	0	0	0	0	0	0	0	0	0
Surface Transportation Board	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	754	733	937	963	1,054	892	996	859	789	788	787	

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

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

Part G. Federal Rules Affecting State and Local Governments, 2002–2007

	2007		2006		2005		2004		2003		2002	
	State	Local	State	Local	State	Local	State	Local	State	Local	State	Local
Dept. of Agriculture	63	43	74	58	69	59	71	59	53	42	60	49
Dept. of Commerce	22	9	28	9	34	8	23	9	18	9	15	8
Dept. of Defense	0	0					1	1	2	2	2	2
Dept. of Education	0	0	1				0	0	0	0	1	1
Dept. of Energy	19	18	12	9	16	15	9	8	9	9	8	9
Dept. of Health & Human Services	83	45	70	47	34	19	35	18	40	20	46	21
Dept. of Homeland Security	37	28	39	28	39	29	37	27	34	28	0	0
Dept. of Housing & Urban Development	1	4	3	7	6	10	9	13	14	23	13	17
Dept. of the Interior	37	9	37	11	44	17	37	16	42	20	47	22
Dept. of Justice	17	11	14	8	15	9	16	10	15	11	28	21
Dept. of Labor	20	7	13	8	16	10	18	12	23	14	25	16
Dept. of State	3	0	3		4	1	1	1	2	1	2	1
Dept. of Transportation	19	7	27	12	11	4	21	13	26	16	42	23
Dept. of the Treasury	28	25	16	15	13	12	17	13	22	15	17	12
Dept. of Veterans Affairs	1	0	1		2	1	3	2	5	2	4	1
Advisory Council on Historic Preservation							1	0	1	0	1	0
Agency for International Development	0	0					0	0	0	0	0	0
Architectural & Transportation Barriers Compliance Board	2	2	1	1	1	1	2	2	2	2	3	3
CPBSD*	2	2	2	2	2	2	2	2				
Corp. for National & Community Service	6	6	7	7	9	9	5	5	4	4	8	8
Environmental Protection Agency	119	80	132	86	143	98	140	92	157	103	155	101
Federal Emergency Management Agency							0	0	0	0	8	8
Equal Employment Opportunity Commission	3	4	3	4	3	4	1	1	2	2	2	2
General Services Administration	8	5	8	5	8	5	8	6	11	7	10	6
National Aeronautics & Space Agency	0	0					0	0	0	0	0	0
National Archives & Records Administration	3	3	4	4	4	4	4	4	4	4	4	4
Institute of Museum & Library Services	1	1	1	1	1	1	1	1	2	2	2	2
National Endowment for the Arts	1	1	1	1	1	1	1	1	1	1	1	1
National Endowment for the Humanities	0	0					0	0	1	1	1	1
National Science Foundation	0	0					0	0	0	0	0	0
Office of Management & Budget	0	0	1	1	1	1	1	1	0	0	0	0
Railroad Retirement Board	0	0					0	0	0	0	0	0
Small Business Administration	0	0					0	0	0	0	0	0
Social Security Administration	4	0	2		3		5	1	8	3	5	3
Tennessee Valley Authority	0	0					0	0	0	0	0	0
U.S. Information Agency	0	0					0	0	0	0	0	0
Federal Communications Commission	31	20	32	19	37	24	33	20	21	16	23	18
Federal Energy Regulatory Commission	0	0					1	0	2	1	2	2
Federal Reserve System	0	0	1	1			0	0	0	0	0	0
Federal Trade Commission	1	0	2		1		1	0	1	0	1	0
National Credit Union Administration	0	0	3		2		0	0	1	0	1	0
National Indian Gaming Commission	0	0					0	0	0	0	1	0
Nuclear Regulatory Commission	4	1	3	1	3	1	3	0	4	1	1	1
Securities & Exchange Commission	4	3	2	1	1	1	0	0	0	0	0	0
State and Local Totals	539	334	543	346	523	346	507	338	527	359	539	363

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

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

Notes

1. Office of Management and Budget, *Budget of the United States Government*, Fiscal Year 2009, Table S-1, Budget Totals, <http://www.whitehouse.gov/omb/budget/fy2009/summarytables.html>.
2. Percentages available at U.S. Census Bureau, *Statistical Abstract of the United States: 2008*, Table 1324, "Gross Public Debt, Expenditures, and Receipts by Country: 1990 to 2006," <http://www.census.gov/compendia/statab/tables/08s1324.pdf>.
3. Central Intelligence Agency, *The World Factbook*, <http://www.cia.gov/library/publications/the-world-factbook/fields/2056.html>.
4. Outlays in 2002 were \$2,011.2 billion. Congressional Budget Office, "Revenues, Outlays, Deficits, Surpluses, and Debt Held by the Public, 1968 to 2007, in Billions of Dollars," <http://www.cbo.gov/budget/data/historical.shtml>.
5. Ibid.
6. Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2008–2018*, January 2008, Chapter 1, p. 8, http://www.cbo.gov/ftpdocs/89xx/doc8917/01-23-2008_BudgetOutlook.pdf.
7. Office of Management and Budget, *Draft 2007 Report to Congress on the Costs and Benefits of Federal Regulations*, March 9, 2007, Table 1-1, p. 7, http://www.whitehouse.gov/omb/inforeg/2007_cb/2007_draft_cb_report.pdf.
8. W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBHQ-03-M-0522, September 2005, <http://www.sba.gov/advo/research/rs264tot.pdf>.
9. 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, <http://www.sba.gov/advo/research/rs207tot.pdf>. This report, in turn, updates still earlier analyses, such as Thomas D. Hopkins, "The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress," Office of the Chief Counsel for Advocacy, U.S. Small Business Administration, Washington, DC, October 1995, http://www.sba.gov/advo/laws/archive/law_brd.html.
10. In 1995, Thomas D. Hopkins had projected that regulatory costs would grow from \$668 billion to \$721 billion between 1995 and 2000, an annual growth rate of 1.3 percent (see Table 3 in "The Changing Burden of Regulation" [see note 9]). Relatedly, in "The Impact of Regulatory Costs" (see note 9), Crain and Hopkins tabulated a 1.2 percent annualized compound growth rate between those same years in "total regulatory costs per household" for major categories of regulation. In the 2005 Crain study, regulatory costs per household (\$10,172 in 2004) had grown faster, at an annualized rate of 2.7 percent between 2000 and 2004. For present purposes, a lower growth trend of half that amount, 1.3 percent, is applied to the newer Crain figure of \$1.113 trillion to arrive at a more conservative 2007 estimate of \$1.157 trillion, an estimate that also conforms to the earlier lesser growth rates. (If the 2.7 percent growth rate had been used instead, the estimate for total 2007 regulatory costs would have been \$1.201 trillion.) Some anecdotal evidence suggests that regulatory costs are actually higher now (see James Pethokoukis, "The Return of Big Government," *U.S. News & World Report*, April 11, 2008, <http://www.usnews.com/articles/business/economy/2008/04/11/the-return-of-big-government.html?PageNr=4>).
11. A breakdown by category for the original 2004 dollars appears in Table 15, "Total Cost of Federal Regulations in 2004 by Type and Business Portion," in "The Impact of Regulatory Costs," p. 49 (see note 8).
12. See Thomas D. Hopkins, Statement prepared for the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs of the House Committee on Government Reform and Oversight, May 16, 1996. See also Thomas D. Hopkins, "Regulatory Costs in Profile," Policy Study No. 231, Center for the Study of American Business, August 1996, p. 4.
13. "The Impact of Regulatory Costs," p. 7 (see note 8).
14. Ibid., p. 5.
15. Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2003–2012*, January 2002, <http://www.cbo.gov/showdoc.cfm?index=3277&sequence=2>.
16. Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2008–2018*, January 2008, Chapter 1, p. 8, http://www.cbo.gov/ftpdocs/89xx/doc8917/01-23-2008_BudgetOutlook.pdf.
17. Figures for 2004 and 2005 outlays and deficit are contained in Congressional Budget Office, *The Budget and Economic Outlook*, January 2005 and 2006 editions, <http://www.cbo.gov/showdoc.cfm?index=6060&sequence=0> and <http://www.cbo.gov/showdoc.cfm?index=7027&sequence=0>.
18. Tax figures from U.S. Census Bureau, *Statistical Abstract of the United States: 2008*, Table 461, "Federal Receipts by Source: 1990 to 2007," <http://www.census.gov/compendia/statab/tables/08s0461.pdf>.
19. Ibid.

20. Ibid., Table 769, “Corporate Profits before Taxes by Industry: 2000 to 2005,” <http://www.census.gov/compendia/statab/tables/08s0769.pdf>. Profits do not reflect inventory valuation and capital consumption adjustments.
21. GDP figures for Canada and Mexico are from U.S. Census Bureau, *Statistical Abstract of the United States: 2008*, Table 1316, “Gross Domestic Product (GDP) by Country: 1995 to 2004,” <http://www.census.gov/compendia/statab/tables/08s1316.pdf>.
22. *The Budget and Economic Outlook*, 2008, p. 8 (see note 16).
23. Jerry Brito and Melinda Warren, “Growth in Regulation Slows: An Analysis of the U.S. Budget for Fiscal Years 2007 and 2008,” *Regulator’s Budget Report 29*, published jointly by the Weidenbaum Center and the Mercatus Center, June 2007, p. 25, http://www.mercatus.org/repository/docLib/20070619_2008_Regulators_Budget.pdf. Original 2000 constant dollars are adjusted by the change in the consumer price index between 2000 and 2006, derived from U.S. Census Bureau, *Statistical Abstract of the United States: 2008*, Table 703, “Consumer Price Indexes (CPI-U) by Major Groups: 1990 to 2006,” <http://www.census.gov/compendia/statab/tables/08s0703.pdf>.
24. Ibid., p. 26.
25. James L. Gattuso, “The Red Tape Rising: Regulatory Trends in the Bush Years,” Heritage Foundation *Backgrounders*, No. 2116, March 25, 2008. p. 3, http://www.heritage.org/research/regulation/upload/bg_2116.pdf.
26. Ibid., p. 7. See also Cindy Skrzycki, “Midnight Regulations’ Swell Register,” *Washington Post*, January 23, 2001, p. E1.
27. Counting 2000 as part of the new millennium, which is technically incorrect.
28. National Archives and Records Administration, Office of the Federal Register, “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” printed in *Federal Register*, Vol. 72, No. 236, December 10, 2007; and in online edition at <http://www.reginfo.gov>.
29. Though the Agenda is published twice a year, this document tracks each year’s October or December year-end compilation.
30. *Federal Register*, Vol. 72, No. 236, December 10, 2007, p. 69,739.
31. Ibid.
32. The legislation and executive orders by which agencies are directed to assess effects on state and local governments are described in *ibid.*, p. 74,355.
33. Government Accountability Office Web site, “Reports on Federal Agency Major Rules,” <http://www.gao.gov/legal/congress.html>.
34. “Red Tape Rising” (see note 25).
35. Ibid.
36. “Growth in Regulation Slows” (see note 23), from Table A-1, “Agency Detail of Spending on Federal Regulatory Activity: Current Dollars,” pp. 15–17.
37. 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*, Cato Institute, pp. 77–85, <http://www.cato.org/pubs/handbook/hb108/hb108-8.pdf>.
38. Derived from Public and Private Laws—109th and 110th Congresses, National Archives and Records Administration, <http://www.gpoaccess.gov/plaws/110publ.html>.

About the Author

Clyde Wayne Crews Jr. is Vice President for Policy and Director of Technology Studies at the Competitive Enterprise Institute. His work includes regulatory reform, antitrust and competition policy, safety and environmental issues, and various information-age concerns such as e-commerce, privacy, “spam,” broadband, and intellectual property.

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