

Department of Agriculture  
1-2. MANDATORY COUNTRY OF ORIGIN LABELING OF BEEF, PORK, LAMB, FISH, PERISHABLE AGRICULTURAL COMMODITIES, AND PEANUTS (LS-03-04)  
2-13. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC): REVISIONS IN THE WIC FOOD PACKAGES

3-14. FSP: EMPLOYMENT AND TRAINING PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002  
4-16. FSP: EMPLOYMENT AND TRAINING PROGRAM PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002  
5-20. EGG PRODUCTS INSPECTION REGULATIONS  
6-23. PERFORMANCE STANDARDS FOR THE PRODUCTION OF PROCESSED MEAT AND POULTRY PRODUCTS  
7-24. NUTRITION LABELING OF SINGLE-INGREDIENT PRODUCTS AND GROUND OR CHOPPED MEAT AND POULTRY PRODUCTS  
8-26. PROHIBITION OF THE USE OF SPECIFIED RISK MATERIALS FOR HUMAN FOOD AND REQUIREMENTS FOR THE DISPOSITION OF NON-AMBULATORY DISABLED CATTLE

Department of Energy  
9-31. RULEMAKING TO DETERMINE WHETHER THE ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CENTRAL AIR CONDITIONERS AND AIR CONDITIONING HEAT PUMPS SHOULD BE AMENDED  
10-32. RULEMAKING TO DETERMINE WHETHER THE ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL WATER HEATERS SHOULD BE AMENDED  
11-33. RULEMAKING TO DETERMINE WHETHER THE ENERGY CONSERVATION STANDARDS FOR ELECTRIC AND GAS RANGES AND OVENS, AND FOR MICROWAVE OVENS SHOULD BE AMENDED  
12-34. RULEMAKING TO DETERMINE WHETHER THE ENERGY CONSERVATION STANDARDS FOR FLUORESCENT LAMP BALLASTS SHOULD BE AMENDED  
13-35. RULEMAKING TO DETERMINE WHETHER THE ENERGY CONSERVATION STANDARDS FOR ROOM AIR CONDITIONERS

# 2006

## Ten Thousand

# Commandments



*An Annual Snapshot of the Federal Regulatory State*

by Clyde Wayne Crews, Jr.



Competitive Enterprise Institute

# Ten Thousand Commandments

## An Annual Snapshot of the Federal Regulatory State

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### Executive Summary

In the Fiscal Year 2006 federal budget, President Bush proposed \$2.77 trillion in discretionary, entitlement, and interest spending.<sup>1</sup> Although those costs fully express the on-budget scope of the federal government, there is considerably more to the government's reach than the sum of the taxes sent to Washington. Federal environmental, safety and health, and economic regulations cost hundreds of billions of dollars every year—on top of official federal outlays.

The exact cost of federal regulations can never be fully known. Firms generally pass along to consumers some of the costs of the taxes they are required to pay. Similarly, some regulatory costs, although generally imposed on businesses, get passed on to consumers.

Governmental and private data exist on scores of regulations and the agencies that issue them, as well as on regulatory costs and benefits. Some of this data can be compiled in a way that makes the regulatory state more comprehensible to the public. That is the purpose of the annual *Ten Thousand Commandments* report, some highlights from which appear below.

- Extrapolating from an assessment of the federal regulatory enterprise by economist Mark Crain, regulatory costs hit an estimated \$1.127 *trillion* in 2005.
- Given that 2005 government spending was \$2.47 trillion, the hidden tax of regulation now approaches half the size on federal spending itself.
- Regulatory costs are more than triple the \$318 billion budget deficit.
- Regulatory costs also exceed all corporate pre-tax profits, which were \$874 billion in 2003.
- Regulatory costs exceed estimated 2005 individual income taxes of \$894 billion, and are far greater than corporate income taxes of \$226 billion.
- Regulatory costs of \$1.127 trillion are equivalent to 9 percent of U.S. gross domestic product, which was \$12.293 trillion for 2005.
- Federal regulatory costs of \$1.127 trillion combined with outlays of \$2.472 trillion bring the federal government's share of the economy to 29 percent, compared to 27 percent a year ago.
- On the basis of estimates from the Weidenbaum Center and the Mercatus Center, agencies spent \$38.3 billion merely to administer and police the regulatory state in 2005. Counting the \$1.127 trillion in off-budget costs, that brings the total regulatory burden to \$1.165 trillion.
- The 2005 *Federal Register*, the daily depository of all proposed and final federal rules and regulations, contained 73,870 pages. This is a 2.4 percent decrease from 2004's 75,675 pages, which had been an all-time record.
- In 2005, 3,943 final rules were issued by agencies. This is a 3.8 percent decline from 2004's 4,101 rules.
- Whereas regulatory agencies issued 3,943 final rules, Congress passed and the President signed into law a comparatively low 161 bills in 2005.
- In the 2005 *Unified Agenda of Federal Regulatory and Deregulatory Actions*, which details rules recently completed as well as those anticipated within the upcoming 12 months, agencies reported on 4,062 regulations

that were at various stages of implementation throughout the 50-plus federal departments, agencies, and commissions.

- Of the 4,062 regulations now in the regulatory pipeline, 137 are “economically significant” rules that will have at least \$100 million in economic impact. Those rules will impose at least \$13.7 billion yearly in future off-budget costs.
- Economically significant rules in the works increased slightly between 2004 and 2005, from 135 to 137.
- The five most active rule-producing agencies—the departments of Treasury, Interior, Commerce, and Homeland Security and the Environmental Protection Agency—with 1,808 rules among them, account for 44 percent of all rules in the *Agenda* pipeline.
- Of the 4,062 regulations now in the works, 788 affect small business.

The U.S. government has conclusively ended its recent short-lived string of budgetary surpluses—the first since 1969. But if regaining and maintaining a true surplus remains a priority, policy makers must control regulatory costs. Think of it this way: The maximum surplus projected by the Congressional Budget Office (CBO) over the coming decade is a minimal and highly speculative \$38 billion in 2012. Regulatory costs of more than \$1.127 trillion clearly dwarf that amount. Moreover, regulations and taxes can substitute for one another; a new government program requires increasing spending—or imposing new rules and regulations, thus passing the costs on to businesses and individuals. Thus, without better regulatory monitoring, deficit control may invite congressional adoption of new off-budget private-sector regulations rather than new spending that would increase the deficit. If regulatory costs remain largely hidden from public view, regulating will remain an attractive alternative to taxing and spending.

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

A way to maximize congressional accountability is to require Congress to vote on agency rules—in an expedited fashion—before they become binding. Vital for true accountability, this step would fulfill citizens’ expectation of “no regulation without representation.”

Disclosing costs of rules would remain important, however, even if Congress approved rules. Openness about regulatory facts and figures is critical, just as disclosure of program costs is critical in the federal budget. Simple “regulatory report cards,” similar to the presentation in *Ten Thousand Commandments*, can be issued officially each year by the federal government to distill regulatory data.

## Introduction: Toward Ending “Regulation without Representation”

The federal government funds new programs by 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 assess their cost in the federal budget. Congress’s spending accountability, though not perfect, is a necessary condition for governmental oversight.

A third way the government funds programs is by regulating. Rather than pay directly and book the expense of a new initiative, it can require the private sector and state and local governments to pay.

Government regulation can advance desired programs without using tax dollars.

Since disclosure of and accountability for the regulatory costs are rare, policy makers are often careless of regulatory costs relative to ordinary government spending. If unpopular, Congress escapes accountability and blames agencies for costs. Moreover, since regulatory costs are not budgeted and lack the formal presentation to the public and media that accompanies federal spending, regulatory initiatives can allow manipulation of private-sector resources without much public fuss, rendering regulation a form of off-budget taxation. Table 1 provides perspective on the regulatory “tax” by presenting summary data for selected topics described in this report. Trends over the past few years are provided where information is available.

The 2006 *Ten Thousand Commandments* contains four main sections:

- 1) An overview of the costs and scope of the

***Rather than pay directly and book the expense of a new initiative, it can require the private sector and state and local governments to pay.***

**Table 1:  
The Regulatory State: An Overview**

2005	1-Year	5-Year	10-Year	Change	Change
			Change	(01–05)	(96–05)
Total regulatory costs		\$1.127 trillion	NA	NA	NA
Agency enforcement budgets (real \$)		\$38.3 billion	1%	34.4%	69.5%
Federal Register pages		73,870	-2.4%	14.6%	14.4%
Federal Register pages devoted to final rules		23,041	2.2%	17.3%	6.6%
Federal Register final Rules		3,943	-3.8%	-4.6%	-20.1%
Total rules in Agenda		4,062	-5%	-9.9%	-13.2%
“Economically significant” rules in the pipeline		137	1.5%	-8.0%	-1.4%
Rules impacting small business		788	-.1%	-20.9%	4.5%
Rules impacting state governments		523	3.1%	-14%	-22.4%
Rules impacting local governments		346	2.4%	-7.2%	-18.8%
Total number of EPA rules in Agenda		400	-3.8%	-3.8%	-7.4%
EPA rules impacting small business		110	-9.8%	-40.5%	-27.6%

regulatory state, such as its size compared to the federal budget and the gross national product.

2) An analysis of trends in the numbers of regulations issued by agencies, based on information provided in the *Federal Register* and *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 sections offers steps to improve disclosure of regulatory costs and to increase congressional accountability. It contrasts these 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 to Americans

### The Social and Economic Costs of Regulation

The Office of Management and Budget’s (OMB) 2005 report to Congress on the costs and benefits of federal regulations finds cumulative 1994–2004 costs of 88 major regulations between \$35 and \$39 billion; meanwhile, the estimated range for benefits was \$70 billion to \$277 billion.<sup>2</sup>

Note, however, that OMB’s cost/benefit breakdown incorporates only benefits and costs that agencies or OMB expressed in quantitative and monetary terms, and omits many categories and cost-levels of rules altogether. In any event, cost/benefit analyses are highly sensitive to basic assumptions about how regulations translate to benefits. As for an overall cost estimate, W. Mark Crain of Lafayette College prepared an estimate of regulatory costs for 2004 for the Small Business Administration (SBA).<sup>3</sup> This report

assessed economic regulatory costs (such as price and entry restrictions and “transfer” costs like price supports, which shift money from one pocket to another) workplace, environmental regulatory, and paperwork costs (such as tax compliance). Crain found regulatory costs of \$1.113 trillion for 2004. (This estimate updates an October 2001 report by Crain and Hopkins noting regulatory costs of \$843 billion.<sup>4</sup>)

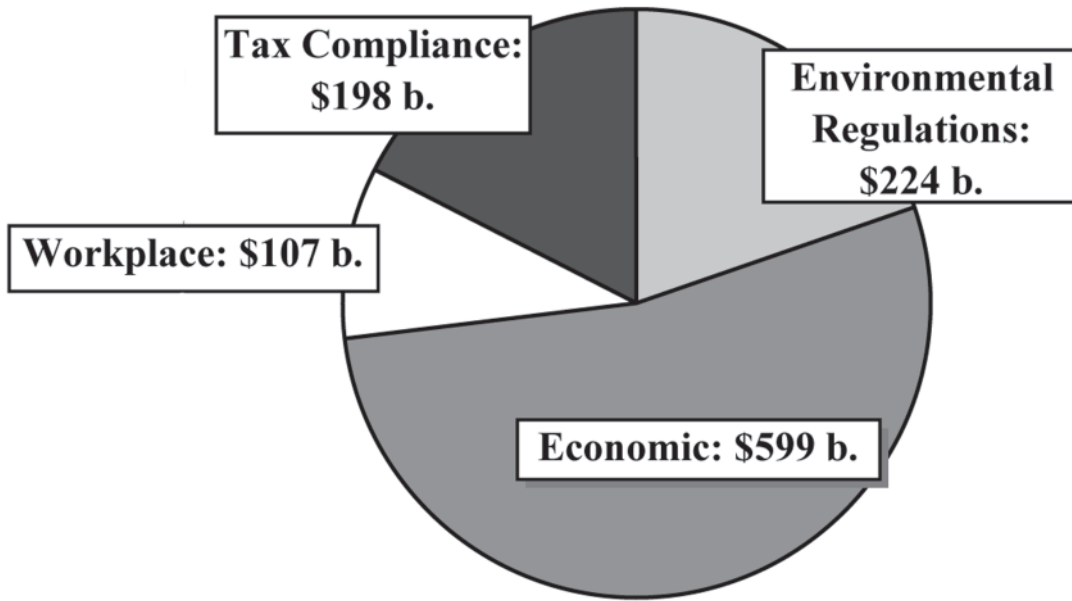
Adjusting the Crain 2004 regulatory costs for 2005 by extrapolating a portion of the growth in regulatory costs that occurred between 2000 and 2004 yields a rough estimate of \$1.127 trillion.<sup>5</sup> Figure 1 breaks down the regulatory cost estimate by category: environmental, economic, workplace, and tax compliance. Economic costs, the largest category at \$599 billion, include such items as price and entry controls on business and losses from economic transfers.<sup>6</sup> Given that indirect costs—such as the impacts of lost innovation or productivity—are not included in the Crain analysis, these figures could understate the total regulatory burden.<sup>7</sup>

Regulatory benefits are beyond the scope of the Crain analysis, although those benefits would be recognized as offsetting some costs.<sup>8</sup> The Crain report emphasizes the extent to which regulatory costs impose higher burdens on small firms, where per-employee costs are higher. Table 2 shows, for 2004, how per-employee costs for firms of fewer than 20 workers can be more than 40 percent greater than for larger firms (Over \$7,600 versus \$5,300).<sup>9</sup>

### 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. (Washington posted a total surplus of \$127 billion in FY 2001.<sup>10</sup>) In FY 2005, a deficit of \$318 billion was posted on \$2.472 trillion in spending, with no surplus projected until

**Figure 1**  
**2005 Federal Regulatory Costs: \$1.127 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>.

**Table 2**  
**Per-Employee Regulatory Higher for Small Firms, 2004**  
**Size of Firm Regulatory Costs Per Employee**

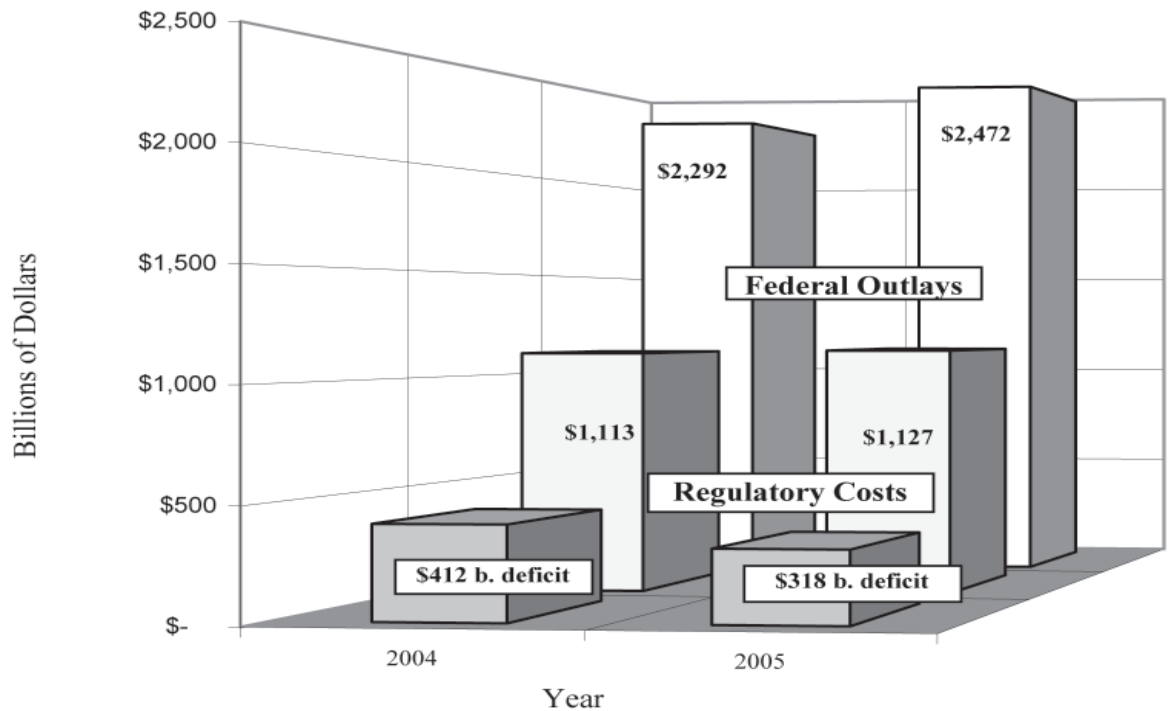
Size of Firm	Regulatory Costs Per Employee
<b>Large</b> >500 employees	\$5,282
<b>Medium</b> 20-499 employees	\$5,411
<b>Small</b> <20 employees	\$7,647

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>.

2012—at which time the CBO estimates a \$38 billion surplus.<sup>11</sup> As Figure 2 shows, 2005's approximate \$1.13 trillion in regulatory costs is equivalent to 45 percent of spending of \$2.472 trillion, and more than three times the \$318 billion deficit. Figure 2 also depicts 2004's \$412 billion deficit compared with outlays and

with Crain's \$1.1 trillion regulatory cost estimate for that year.<sup>12</sup> Deficit spending, in a manner of speaking, can manifest itself as regulatory compliance costs that go largely unacknowledged by the federal government. Those regulatory costs are now approaching *one-half* the size of budgeted government.

**Figure 2**  
**Off-Budget Regulatory Costs Compared With Federal Spending (2004-2005)**



Sources: Congressional Budget Office, *The Budget and Economic Outlook*, 2005 and 2006; 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>.

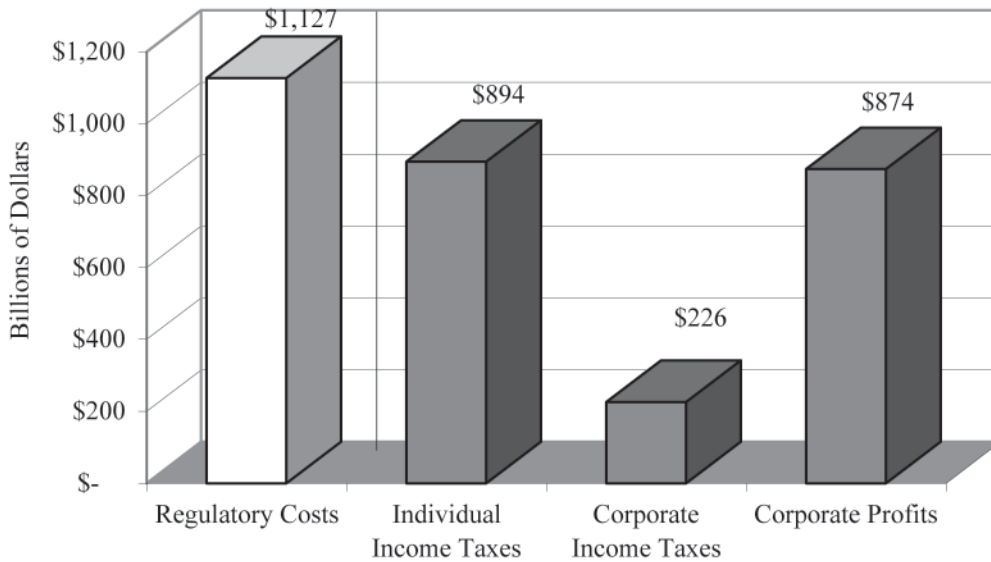
Notes: Regulatory costs for 2005 are projected on the basis of average annual increases in regulatory costs between 2000 and 2004 from Crain, 2005. Federal surplus/deficit and outlay numbers are by fiscal year; regulatory costs are by calendar year.

### **Regulatory Costs vs. Income Taxes and Corporate Profits**

Regulatory costs exceed revenue from major taxes. Regulatory costs exceed estimated 2005 individual income taxes, which were \$894 billion, as Figure 3 shows.<sup>13</sup> Corporate income taxes, estimated at \$226 billion that year, are dwarfed by regulatory costs.<sup>14</sup> Regulatory costs surpass even pre-tax corporate profits—\$874 billion in 2003.<sup>15</sup> To put regulation into further perspective, U.S. regulatory costs of \$1.13 trillion exceed the output of many major national economies. As shown in Figure 4, U.S.

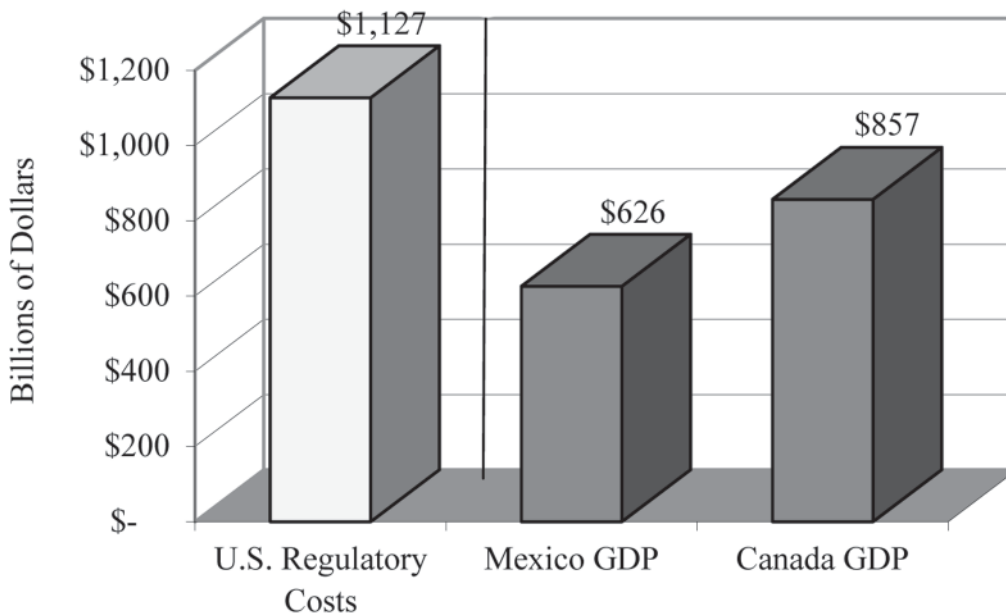
regulatory costs exceed the entire 2003 GDP of Canada, which stood at \$857 billion. The regulatory burden also exceeded Mexico's GDP of \$626 billion.<sup>16</sup> Total regulatory costs of \$1.127 billion amount to 9 percent of U.S. GDP. The Congressional Budget Office reported GDP of \$12.293 trillion for 2005.<sup>17</sup> Combining regulatory costs with federal FY 2005 outlays of \$2.472 billion, the federal government's share of the economy is now 29 percent, compared to 27 percent last year.

**Figure 3**  
**Regulatory Costs Compared with Individual Income Taxes, Corporate**



Sources: Congressional Budget Office, *The Budget and Economic Outlook*, 2005 and 2006; 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>. Tax figures from U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Table No. 464, "Federal Receipts by Source: 1990 to 2005," p. 320. <http://www.census.gov/prod/2005pubs/06statab/fedgov.pdf>. Profits from U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Table 767, "Corporate Profits Before Taxes by Industry: 1999 to 2003," p. 527. <http://www.census.gov/prod/2005pubs/06statab/business.pdf>. Profits do not reflect inventory valuation and capital consumption adjustments.

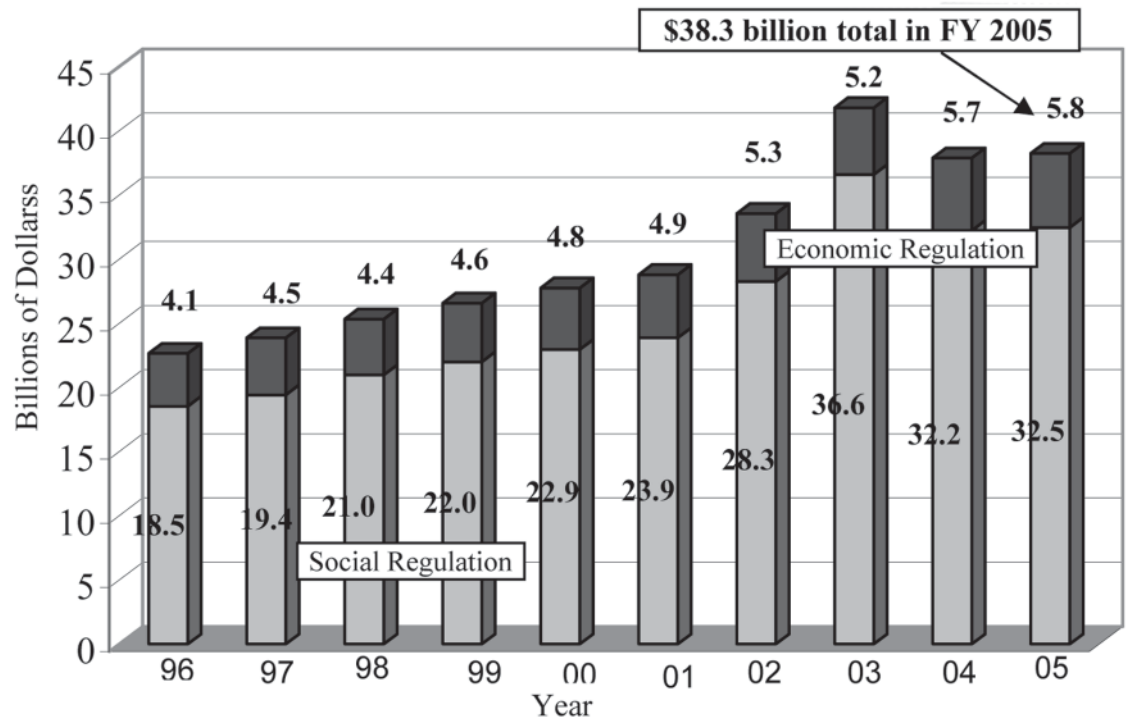
**Figure 4**  
**U.S. Regulatory Costs Compared with Mexico's and Canada's GDP**



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: 2006*, Table 1328, "Gross Domestic Product (GDP) by Country: 1995 to 2003," p. 874. <http://www.census.gov/prod/2005pubs/06statab/intlstat.pdf>.



**Figure 5**  
**Agency Enforcement Budgets, 1996–2005 (billions of constant 2004 dollars)**



Source: Susan Dudley and Melinda Warren, “Moderating Regulatory Growth: An Analysis of the U.S. Budget for Fiscal Years 2006 and 2007,” *Regulators’ Budget Report 28*, published jointly by the Weidenbaum Center and the Mercatus Center, May 2006, p. 25, <http://www.mercatus.org/pdf/materials/1683.pdf>. Original 2000 constant dollars are adjusted by the change in the consumer price index between 2000 and 2004, derived from U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Table No. 706, “Consumer Price Indexes (CPI-U) by Major Groups: 1980 to 2004,” p. 482. <http://www.census.gov/prod/2005pubs/06statab/prices.pdf>.

**Income Taxes, and Corporate Pre-Tax Profits**

**Costs of Administering the Regulatory State**

The Crain regulatory cost estimates include compliance costs paid by the public and 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 police regulatory compliance. The Weidenbaum Center at Washington University in St. Louis and the Mercatus Center at George Mason University together examine the federal budget and excerpt and compile the administrative costs of developing and enforcing regulations. Since those funds are amounts that taxpayers pay to support agencies’ administrative budgets, rather than compliance costs paid by the parties that are regulated, they are disclosed in the federal budget. FY 2005 enforcement

costs incurred by federal departments and agencies stood at \$38.3 billion (constant 2004 dollars), a slight increase over the previous year (Figure 5).<sup>18</sup> Of that amount, \$5.8 billion was spent administering economic regulation. The larger amount spent for writing and enforcing social and environmental regulations was \$32.5 billion. These enforcement costs help complete the picture of the regulatory state. Adding the \$38.3 billion in administrative costs tabulated by the Weidenbaum Center and Mercatus Center to the Crain \$1.127 billion estimate for compliance costs brings the total 2005 regulatory burden to \$1.165 trillion. (The study anticipates total regulatory enforcement costs for FY 2006 to increase to \$39.8 billion.)<sup>19</sup>

Estimated full-time-equivalent employment staffing reached 235,316 in FY 2005, according to Weidenbaum and Mercatus.<sup>20</sup> However this figure is some 37 percent

above staffing levels in 2001, largely owing to the then-newly created Transportation Security Administration's one-time hiring of thousands of airport screening personnel.

### **Federal Register Analysis Tens of Thousands of Federal Register Pages**

The *Federal Register* is the daily depository of all proposed and final federal rules and regulations. The number of pages in the *Register* is probably the most frequently cited measure of the scope of regulation. Yet there are serious problems with using the number of pages alone as a proxy for the level of 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, a worthy pursuit in general regardless of fights over the specifics. And even in cases in which OMB issues orders to reduce regulation, and agencies follow procedures to lessen rules, the posting of lengthy notices in

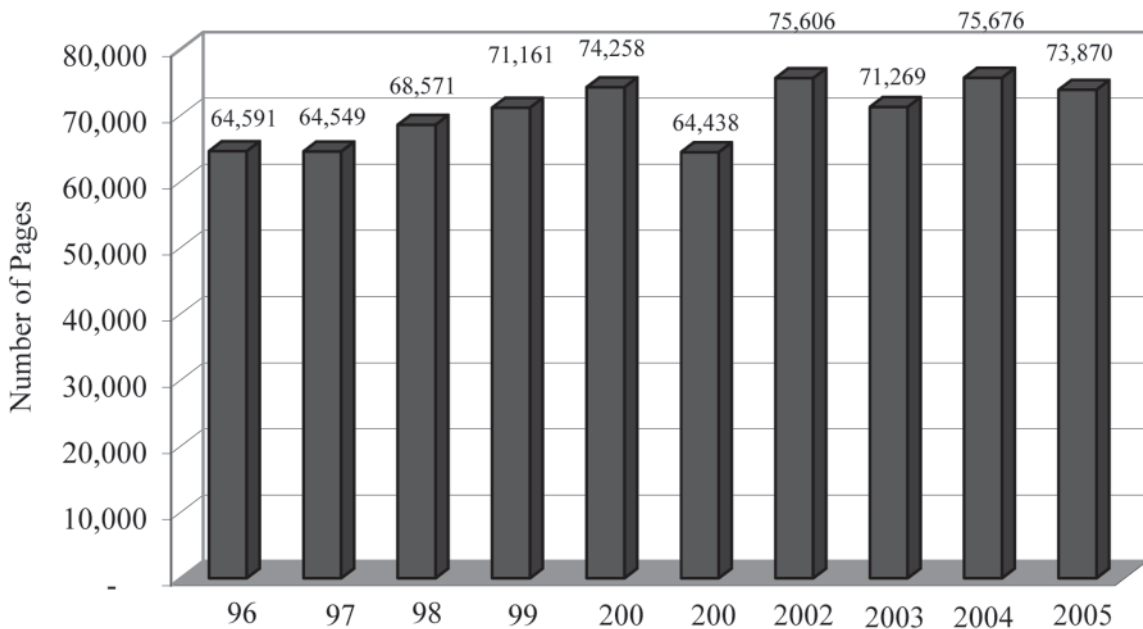
the *Federal Register* is required. And of course there are the obvious problems with relying on page counts: The wordiness of rules will vary, affecting the number of pages and obscuring the real impacts of the underlying rules. A short rule could be very costly and a long one relatively cheap. Administrative notices, corrections, presidential statements, and other material are contained in the *Register*. Thousands of blank pages appear as a result of the Government Printing Office's imperfect prediction of the number of pages an agency will require.

Nonetheless, it is surely worthwhile to track the *Register's* growth via pages, provided the appropriate caveats are kept in mind to temper any sweeping or unwarranted conclusions. As Figure 6 shows, in 2005 the number of pages stood at 73,870, a decrease of 2.4 percent from the year before, when the count stood at a record-high 75,676.

The previous page-count record had been 75,606 pages in 2002, the year the Microsoft settlement inflated pages. During

***The wordiness of rules will vary, affecting the number of pages and obscuring the real impacts of the underlying rules. A short rule could be very costly and a long one relatively cheap.***

**Figure 6  
Number of Federal Register Pages, 1996-2005**



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

***The impact of President George W. Bush's tenure remains to be seen.***

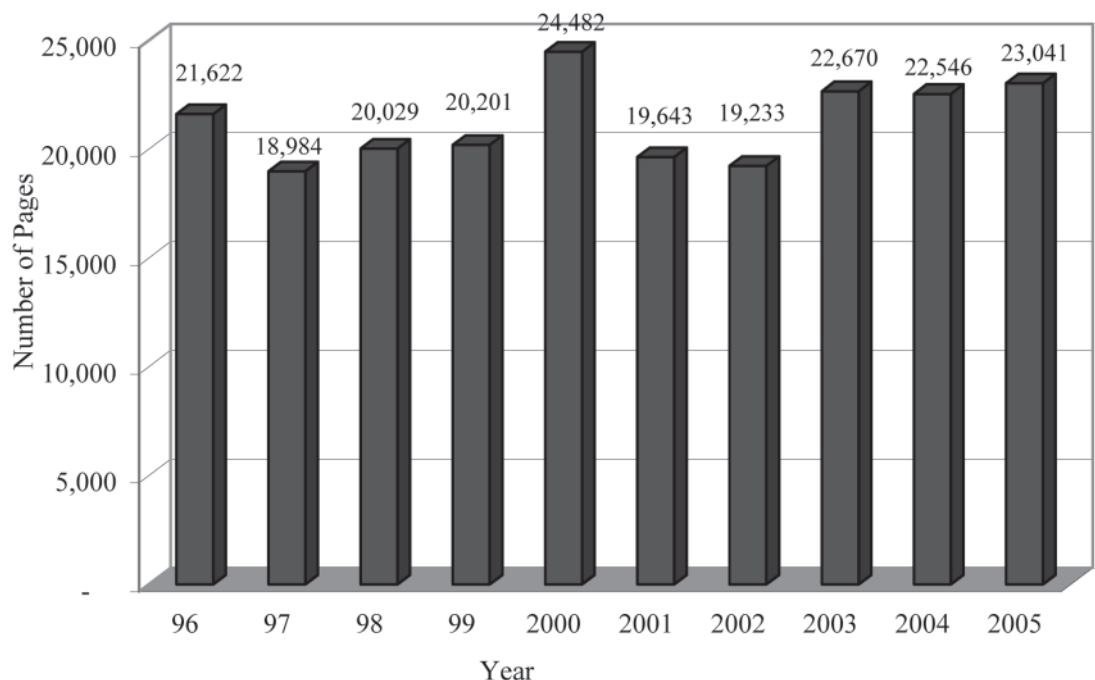
President Clinton's last year (2000), when charges of issuing "midnight regulations" prior to President Bush's arrival were made, pages topped 74,000.<sup>21</sup> From 1996 to 2005 the overall page count increased 14 percent. (For a history of *Federal Register* page totals since 1936, see Appendix: Historical Tables, Part A.)

The impact of President George W. Bush's tenure remains to be seen. Regulation and agency activity in terms of page counts are at record levels, despite dominance of Congress by presumably more deregulatory Republicans following the 1994 election. The 2 percent dip over the past year is noteworthy, as is the drop in 2001. But the last time the number of *Federal Register* pages fell notably was in 1995, when the new influx of Republican congressional reformers made an issue of the number of the *Federal Register's* bulk as a surrogate for the regulatory burden. (A partial federal government shutdown in 1995, which slowed the promulgation of new regulations for a time, also contributed to

the drop that year.)

Overall page counts alone do not reveal whether actual regulatory burdens have increased or decreased; a rule of a few short pages might impose a significant burden. Isolating the pages that are devoted specifically to final rules may be a bit more informative, since this approach omits pages devoted to proposed rules, agency notices, corrections, and presidential documents. Over the past year, these pages of final rules rose slightly, 2.2 percent (from 22,546 to 23,041) (Figure 7). Despite some substantial ups and downs during the decade, *Federal Register* pages devoted to final rules overall have increased by 6.6 percent since 1995. The drop right after Clinton's final year in office was noteworthy: The 2000 count of 24,482 pages under Clinton was the highest since 1976, when the *Federal Register* page count breakdown by category was first reported. The 2000 count of 24,482 was up 21 percent over 1999 (possibly due to an effort by President Clinton to

**Figure 7**  
***Federal Register* Pages Devoted to Final Rules**

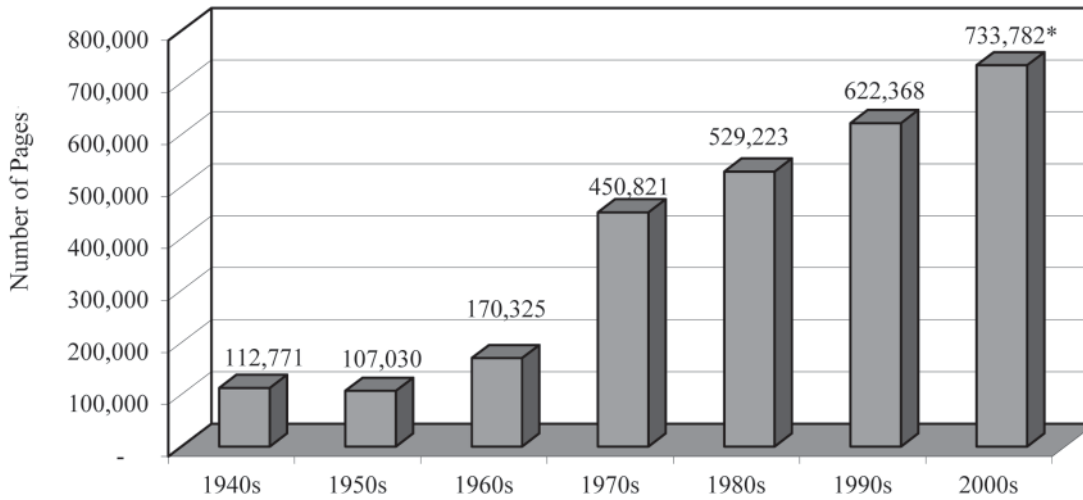


Source: National Archives and Records Administration, Office of the Federal Register

push a backlog of rules through before the arrival of the Bush Administration). Pages rebounded in 2003.

Another interesting way of looking at *Federal Register* trends is pages per decade. During all of the 1990s, the total number of *Register* pages published was

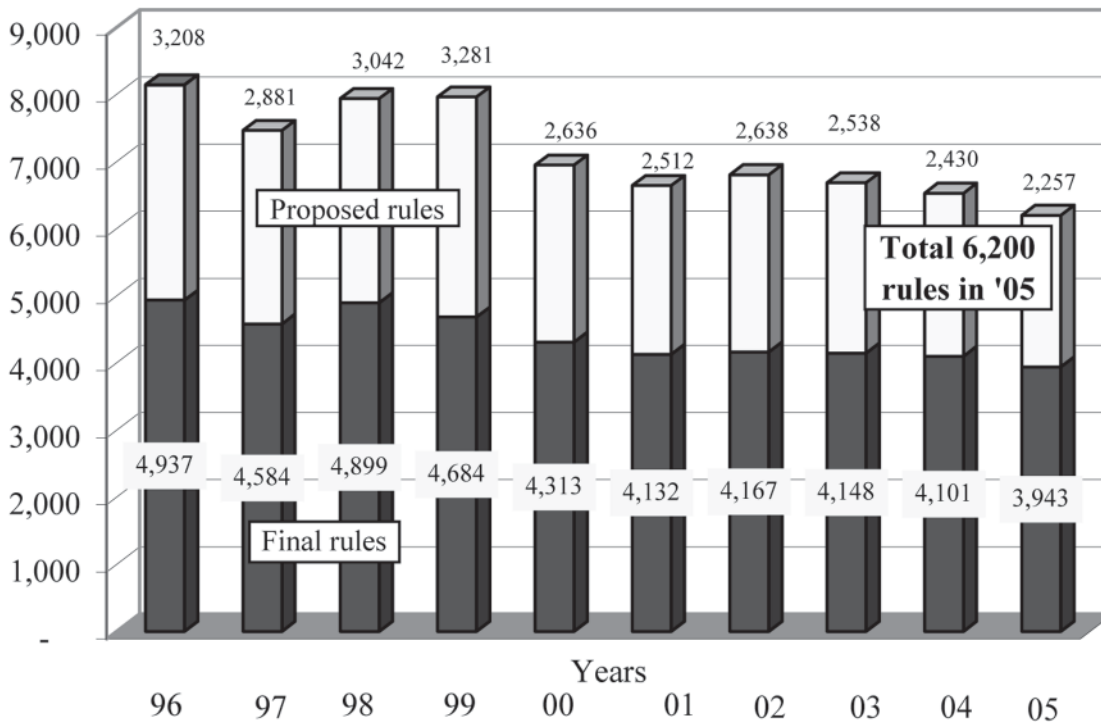
**Figure 8**  
**New Federal Register Pages per Decade**



\* Projection based on five-year average.

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

**Figure 9**  
**Number of Rules Published in the *Federal Register*, 1996–2005**



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

622,000 (see Figure 8). The total number of *Federal Register* pages published during the 1980s was 529,000. (The busiest year in the 1980s was the 1980 peak of 73,000 pages.) So far, in the first five years of the 21st century<sup>22</sup> the average is 73,378, which, extrapolated across the remainder of the decade, implies that 734,000 total pages will be published in the *Federal Register* during the decade—an 18 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—the CFR contains 49 percent more pages now than in 1980. Since 1980, the CFR has grown from 102,195 pages to 152,273. By contrast, in 1960, there were 22,877 pages. The increase over 2004’s 147,639 pages is 3 percent.

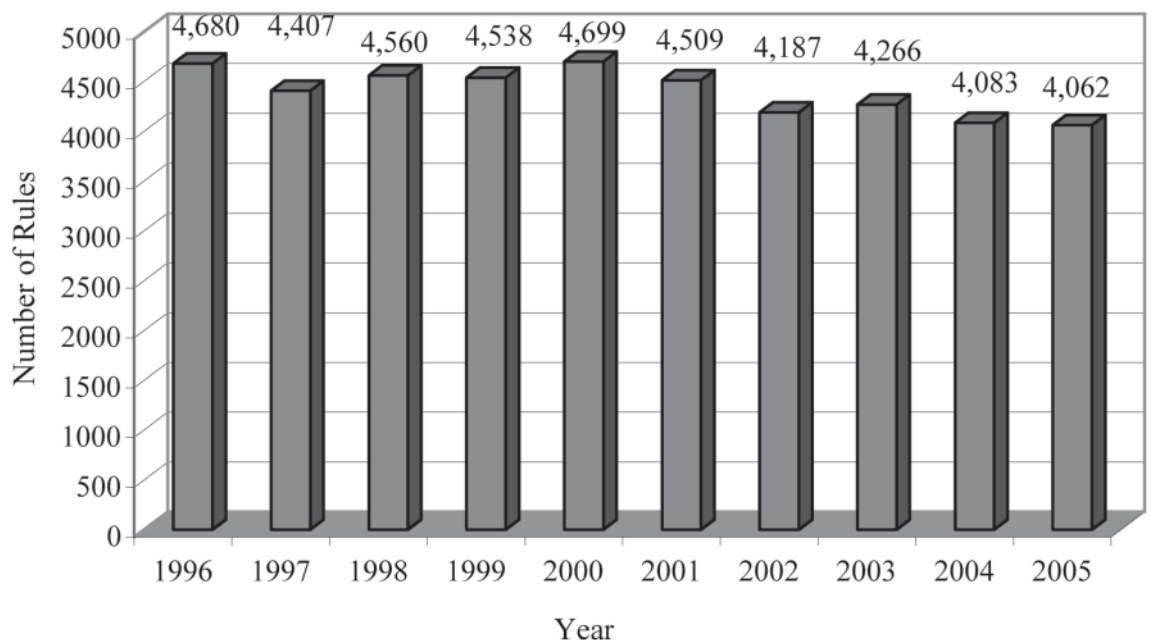
Keeping in mind the above caveats, the higher overall number of pages compared with past decades, and a stream of pages devoted to final rules averaging well over 20,000 annually, signify higher levels of final rule costs and burdens.

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

The actual numbers of proposed and final rules published in the *Federal Register* deserve attention. As can be seen in Figure 9, in 2004 the total number of proposed and final rules published fell to 6,200, a 5.1 percent decline from the previous year’s 6,531 rules. The number of rules finalized in 2004 dropped as well. As Figure 9 also shows, final regulations issued by agencies stood at 4,101 in 2004, and fell to 3,943 in 2005, a 3.8 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 (2000–05) is 4,134. (For the numbers of proposed and final rules and other documents issued in the *Federal Register* since 1976, see Appendix: Historical Tables, Part B.)

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

**Figure 10 Total Agency Rules in the *Unified Agenda Pipeline* (1996-2005)**



Source: Compiled from National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, October 31, 2005.

final rules has meant that well over 44,000 final rules have been issued from 1995 to 2005—that is, since the Republican takeover of Congress. While the costs of those rules can vary tremendously, that is a substantial torrent of rules and regulation.

## Analysis of the *Regulatory Plan and Unified Agenda*

### 4,062 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.

The *Agenda* details rules recently completed as well as those anticipated within the upcoming 12 months by the roughly 60 federal departments, agencies, and commissions. In that way, the *Agenda* serves as a gauge of what is in the regulatory pipeline.

The *Agenda* lists federal regulatory actions at several stages: pre-rules, proposed and final rules, actions completed during the past few months, and anticipated longer-term rulemakings. 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 4,000-plus rules affect the private sector primarily, but many also affect state and local governments and the federal government itself.

The 2005 *Agenda* finds federal agencies, departments, and commissions at work on 4,062 regulations from the pre-rule to the just-completed stages.<sup>23</sup> This is a very slight half-percent decrease from 2004's 4,083 (see Figure 10). The number of rules in the *Agenda* peaked at 5,119—12 years ago in 1994—but the count has remained at well

**Table 3**  
***Unified Agenda Entries by Department and Agency (October 2005)***

	Total Rules
Department of Agriculture	292
Department of Commerce	296
Department of Defense	163
Department of Education	9
Department of Energy	61
Department of Health & Human Services	249
Department of Homeland Security	295
Department of Housing & Urban Development	90
Department of the Interior	303
Department of Justice	124
Department of Labor	93
Department of State	24
Department of Transportation	227
Department of Treasury	514
Department of Veterans' Affairs	76
Agency for International Development	10
Architectural and Transportation Barriers Compliance Board	3
Commission on Civil Rights	1
CPBSD*	6
Corporation for National & Community Service	11
Court Services/Offender Supervision, D.C.	1
Environmental Protection Agency	400
Equal Employment Opportunity Commission	6
Federal Mediation and Conciliation Service	2
General Services Administration	33
NASA	20
National Archives & Records Administration	17
Institute of Museum and Library Services	4
National Endowment for the Arts	2
National Endowment for the Humanities	3
National Science Foundation	3
Office of Federal Housing Enterprise Oversight	6
Office of Government Ethics	7
Office of Management & Budget	2
Office of Personnel Management	94
Peace Corps	5
Pension Benefit Guaranty Corporation	9
Presidio Trust	2
Railroad Retirement Board	5
Selective Service System	1
Small Business Administration	34
Social Security Administration	68
Federal Acquisition Regulation	44
Commodity Futures Trading Commission	11
Consumer Product Safety Commission	18
Farm Credit Administration	20
Farm Credit System Insurance Corporation	1
Federal Communications Commission	143
Federal Deposit Insurance Corporation	16
Federal Energy Regulatory Commission	35
Federal Housing Finance Board	8
Federal Maritime Commission	5
Federal Reserve System	17
Federal Trade Commission	15
National Credit Union Administration	27
National Indian Gaming Commission	15
Nuclear Regulatory Commission	49
Securities and Exchange Commission	64
Surface Transportation Board	3
<b>TOTAL</b>	<b>4,062</b>

Compiled from National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, October 31, 2005.

\*Committee for Purchase from People Who are Blind or Severely Disabled

***A handful of agencies account for a large number of the rules produced, and such is the case each year.***

above 4,000 ever since. (For a history of numbers of rules in the *Agenda* since 1983, see Appendix: Historical Tables, Part C.)<sup>24</sup>

Table 3 breaks the 4,062 rules down by issuing department, agency, or commission. It is apparent that a handful of agencies account for a large number of the rules produced, and such is the case each year. The five departments and agencies listed in Table 4—the departments of Treasury, Interior, Commerce, and Homeland Security, along with the Environmental Protection Agency—were the biggest rule makers. Those “top five,” with 1,808 rules among them, account for 44 percent of all rules in the *Agenda* pipeline. (For numbers of rules by department and agency from previous editions of the *Unified Agenda*, see Appendix: Historical Tables, Part D.)

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
- Egg and egg products inspection regulations
- Performance standards for ready-to-eat meat and poultry products
- Regulations concerning importation of unmanufactured wood articles, i.e., solid wood packing material
- 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, the Computer Assisted Passenger Prescreening System, providing governmental access to passenger reservation information
- Secure Flight Program
- U.S.-VISIT, the United States Visitor and Immigrant Status Indicator Technology program, authorized to collect biometric data from additional travelers and expansion to 50 most highly trafficked land border ports.

### **Department of Justice**

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

### **Department of Labor**

- Occupational exposure to crystalline silica
- Rules regarding confined spaces in construction: preventing suffocation/explosions in confined spaces
- 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 air conditioning units and heat pumps;

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

**Department of Transportation**

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

**Environmental Protection Agency**

- Clean air visibility, mercury, and ozone

implementation rules

- National drinking water regulations covering ground 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 non-road spark-ignition

**Consumer Product Safety Commission**

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

**Federal Communications Commission**

- Broadband over power line systems
- Mobile personal communications by satellite

**Table 4  
The Top Rule-Producing Agencies, 2005  
Number of Agency Regulations**

Agency	Number of Regulations
<b>1. Department of Treasury</b>	<b>514</b>
<b>2. Environmental Protection Agency</b>	<b>400</b>
<b>3. Department of the Interior</b>	<b>303</b>
<b>4. Department of Commerce</b>	<b>296</b>
<b>5. Department of Homeland Security</b>	<b>295</b>
<b>Top-Five Total</b>	<b>1,808</b>

Source: Compiled from National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, October 31, 2005.



- Satellite broadcasting signal carriage requirements
- Rules regarding Internet Protocol-enabled devices

**Department of Housing and Urban Development**

- Revision of manufactured home construction and safety standards to revise location of smoke alarms
- Real Estate Settlement Procedures Act regulations pertaining to mortgages and closing costs
- Increased fair market rents for certain areas

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

The *Agenda* classifies a subset of its 4,062 rules as “economically significant.” That term means that agencies anticipate the rules to have yearly economic impacts of at least \$100 million. Those impacts generally mean increased costs, although occasionally an economically significant rule is intended to reduce costs. As Table 5 shows, 137 new economically significant rules are under consideration by 21 separate departments and agencies at the pre-rule, proposed rule, final rule, long-term, and recently completed stages. (That number is a slight increase over the 135 high-cost rules last year).

These high-cost rules are scattered among the 4,062 rules in the *Agenda*. Since each will cost at least \$100 million annually, those rules can be expected to impose, at minimum, total annual costs of \$13.7 billion (137 rules multiplied by

**Table 5  
137 Rules in the Pipeline Expected to Cost Over \$100 Million Annually 2005**

Department of Agriculture	12
Department of Commerce	2
Department of Defense	1
Department of Energy	12
Department of Health & Human Services	36
Department of Housing and Urban Development	2
Department of Justice	2
Department of the Interior	2
Department of Labor	7
Department of State	1
Department of Transportation	11
Department of Treasury	2
Department of Veterans' Affairs	1
Environmental Protection Agency	18
Department of Homeland Security	12
Consumer Product Safety Commission	3
Federal Communications Commission	9
Federal Deposit Insurance Corporation	1
Nuclear Regulatory Commission	1
Social Security Administration	2
<b>TOTAL</b>	<b>137</b>

Source: Compiled from National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, October 31, 2005.

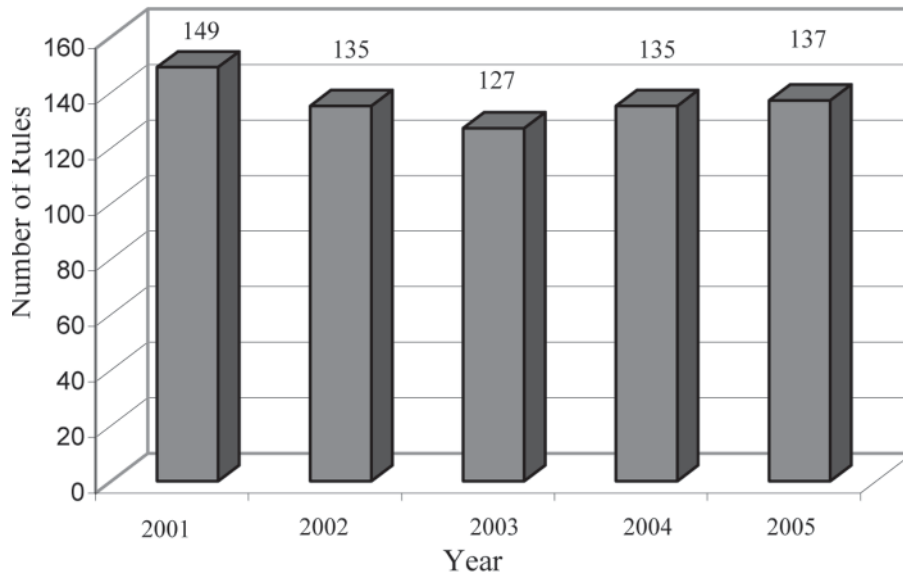
\$100 million). (For a full list of the 137 economically significant rules, see Appendix: Historical Tables, Part E.)

A breakdown of the \$13.7 billion in regulatory costs is never presented directly for each rule in the *Agenda*. The costs represent a floor and are found by combing through the document. Rather than accumulate and summarize regulatory costs for readers’ benefit, each *Agenda* entry indicates whether or not a rule is “economically significant” and occasionally provides additional cost data from agency regulatory impact analyses. Note also that even though the \$13.7 billion in anticipated costs represents a lower boundary for regulatory costs, it is not a one-time cost but a recurring annual cost that must be added to prior years’

costs and to costs to come in the future. Figure 11 shows economically significant rules from the October *Agendas* for the 2001–2005 period. As noted, the 137 major rules in 2005 represent a slight increase over 2004.

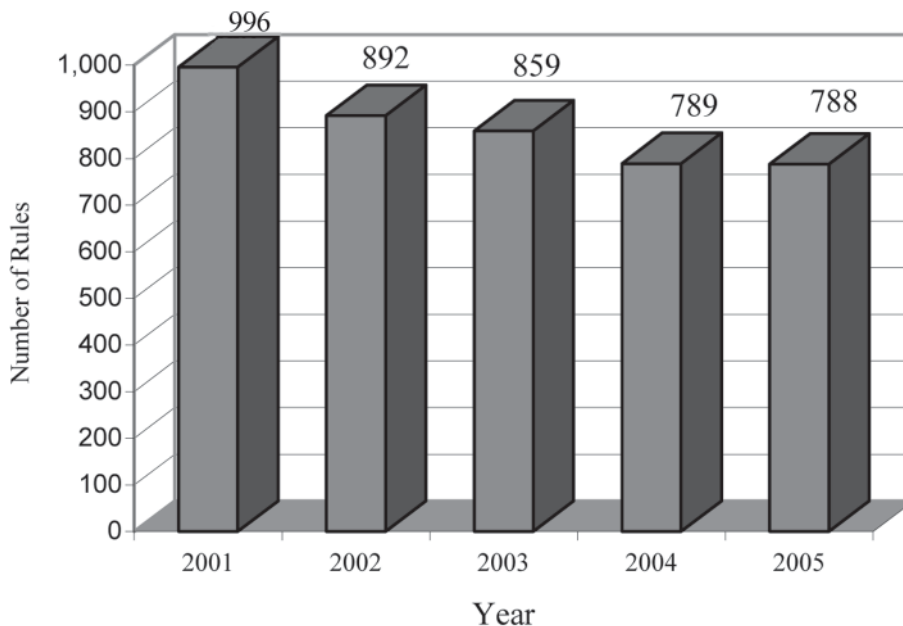
It should be noted that agencies are not required to limit their activity to what they publish in the *Agenda*. *The Regulatory Plan* and the *Unified Agenda* do not create a legal obligation on agencies to adhere to schedules in this publication or to confine their regulatory activities to those regulations that appear within it.”<sup>25</sup> Finally, the fact that policy makers and analysts pay most attention to economically significant rules should not lull them into ignoring the remaining bulk of rules in the yearly pipeline. In 2005, 3,925 federal rules were not considered “economically significant” by the government (4,062 total rules minus the 137 economically significant ones). But that doesn’t mean many of those rules aren’t economically significant in the ordinary sense of the term. Any of those rules may cost up to \$99 million and still evade the “economically significant” label.

**Figure 11**  
**“Economically Significant” Rules in the Agenda Pipeline, 2001-2005**



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

**Figure 12**  
**Rules That Impact Small Business (2001-2005)**



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

**Table 6 Unified Agenda Entries Impacting Small Business by Department, Agency, and Commission (October 2005)**

	Total Rules	Number Impacting Small Business			% Impacting Small Business
		RFA Required	RFA Not Required	Total	
Department of Agriculture	292	30	24	54	18.5%
Department of Commerce	296	93	15	108	36.5%
Department of Defense	163	1	12	13	8.0%
Department of Education	9				0.0%
Department of Energy	61				0.0%
Department of Health & Human Services	249	59	53	112	45.0%
Department of Homeland Security	295	12	31	43	14.6%
Department of Housing & Urban Development	90	1	3	4	4.4%
Department of the Interior	303	4	17	21	6.9%
Department of Justice	124	7	1	8	6.5%
Department of Labor	93	7	12	19	20.4%
Department of State	24		1	1	4.2%
Department of Transportation	227	14	49	63	27.8%
Department of Treasury	514	6	35	41	8.0%
Department of Veterans' Affairs	76				0.0%
Agency for International Development	10				0.0%
Architectural and Transportation Barriers Compliance Board	3				0.0%
Commission on Civil Rights	1				0.0%
CPBSD*	6				0.0%
Corporation for National & Community Service	11		1	1	9.1%
Court Services/Offender Supervision, D.C.	1				0.0%
Environmental Protection Agency	400	9	101	110	27.5%
Equal Employment Opportunity Commission	6		3	3	50.0%
Federal Mediation and Conciliation Service	2				0.0%
General Services Administration	33	1	2	3	9.1%
National Aeronautics & Space Administration	20				0.0%
National Archives & Records Administration	17	1		1	5.9%
Institute of Museum and Library Services	4				0.0%
National Endowment for the Arts	2				0.0%
National Endowment for the Humanities	3				0.0%
National Science Foundation	3				0.0%
Office of Federal Housing Enterprise Oversight	6				0.0%
Office of Government Ethics	7				0.0%
Office of Management & Budget	2				0.0%
Office of Personnel Management	94				0.0%
Peace Corps	5				0.0%
Pension Benefit Guaranty Corporation	9				0.0%
Presidio Trust	2				0.0%
Railroad Retirement Board	5				0.0%
Selective Service System	1				0.0%
Small Business Administration	34	12	7	19	55.9%
Social Security Administration	68		1	1	1.5%
Federal Acquisition Regulation	44	5	2	7	15.9%
Commodity Futures Trading Commission	11		1	1	9.1%
Consumer Product Safety Commission	18				0.0%
Farm Credit Administration	20				0.0%
Farm Credit System Insurance Corporation	1				0.0%
Federal Communications Commission	143	109	4	113	79.0%
Federal Deposit Insurance Corporation	16				0.0%
Federal Energy Regulatory Commission	35				0.0%
Federal Housing Finance Board	8				0.0%
Federal Maritime Commission	5		5	5	100.0%
Federal Reserve System	17	1	5	6	35.3%
Federal Trade Commission	15		12	12	80.0%
National Credit Union Administration	27	1		1	3.7%
National Indian Gaming Commission	15				0.0%
Nuclear Regulatory Commission	49	1		1	2.0%
Securities and Exchange Commission	64	16	1	17	26.6%
Surface Transportation Board	3				0.0%
<b>TOTAL</b>	<b>4,062</b>	<b>390</b>	<b>398</b>	<b>788</b>	<b>19.4%</b>

Note: RFA = regulatory flexibility analysis.  
 Source: Compiled from National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, October 31, 2005.  
 \*Committee for Purchase from People Who are Blind or Severely Disabled.

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

As Figure 12 shows, rules significantly impacting small business have been steadily declining over the past five years. From 2001 to 2005, the number of rules affecting small businesses dipped 21 percent, from 996 to 788, according to the 2005 *Unified Agenda*, an amount even with 2004.

Table 6 breaks out the 2005 *Agenda*’s 788 rules affecting small business by department, agency, and commission. The Federal Communications Commission and the Department of Health and Human Services account for, respectively, 113 and 112 of the 788 rules affecting small business. The runners up are the Environmental Protection Agency with 110, the Department of Commerce with 108 and the Department of Transportation with 63. Those five agencies together account for 506, or 64 percent, of the total number of rules that will affect small businesses. (For the numbers of rules affecting small business broken down by department and agency for *Agendas* since 1996, see Appendix: Historical Tables, Part F.) The proportion of total rules affecting small business, as noted in Table 6, stands at 19 percent. (By contrast, back in 1996, 16.1 percent of rules affected small businesses.)

### **Federal Regulations Impacting State and Local Governments**

*Ten Thousand Commandments* primarily tracks regulations imposed on the private sector. However, state and local officials’ realization during the 1990s that their own priorities were being overridden by federal mandates generated additional

interest from them in regulatory reform. As a result, Congress passed the Unfunded Mandates Act in 1995 to provide a point of order against such mandates as a means of getting lawmakers to pay closer attention to the impacts of legislative activity on the states.

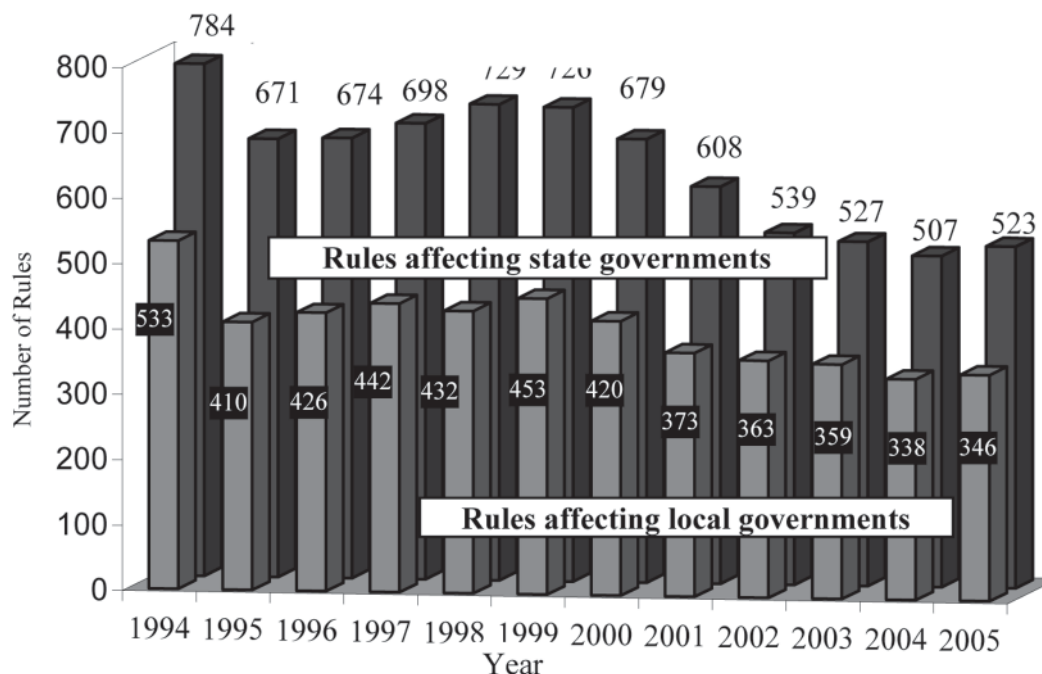
As Figure 13 shows, agencies report that 346 of the 4,062 rules in the 2005 *Agenda* will have effects on local governments, about 2 percent more than 2004’s 338.<sup>27</sup> Over the years since the passage of the Unfunded Mandates Act, overall change in rules affecting local governments has fallen from 533 to 346, a level 35 percent lower. Figure 13 also shows that the total number of regulatory actions affecting state governments rose by 3 percent, from 507 to 523 over the past year. Despite these recent upticks, since passage of the unfunded mandates legislation, the count has dropped from 784 to 523, a decline of 33 percent. (For breakdowns of the numbers of rules affecting state and local governments by department and agency over the past several years’ *Agendas*, see Appendix: Historical Tables, Part G.)

### **Government Accountability Office Database on Regulations**

The various reports on regulatory measures serve different purposes. The *Federal Register* shows the aggregate number of proposed and final rules. The *Agenda* reveals the number of rules at various stages in the regulatory pipeline. Under the 1996 Congressional Review Act (CRA), agencies are required to submit reports to Congress on their “major” rules (typically those costing \$100 million or more). Owing to such reporting, one can now more easily observe which of the thousands of final rules that agencies issue each year are major and which agencies are producing the rules.<sup>28</sup>

***State and local officials’ realization during the 1990s that their own priorities were being overridden by federal mandates generated additional interest from them in regulatory reform.***

**Figure 13**  
**Rules Impacting State and Local Governments, 1994-2005**



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

The Government Accountability Office (GAO) reports that the CRA gives Congress a chance to review a rule for 60 legislative days, and, if desired, to pass a resolution of disapproval rejecting the rule. But despite the issuance of thousands of rules since the CRA’s passage—among them many dozens of major ones—only one has been rejected: the Labor Department’s rule on workplace repetitive-motion injuries in early 2001. As can be seen in Table 7, which is based on the GAO database, the number of final major rules issued by agencies stood at 40 as of September 23, 2005, a level comparable to recent years. The Department of Health and Human Services, Interior and the EPA continue to be among the most active.

**Regulation and the EPA**

This report has taken a broad look at the extent of government regulation. It is also useful to look at a single agency in isolation to get a feel for regulatory

trends. By several measures, the EPA is a prominent regulator. The EPA alone spent \$4.8 billion to enforce regulation during FY 2005, accounting for 12 percent of the \$39 billion (in current dollars) expected to be spent by all the regulatory agencies.<sup>29</sup>

**Total EPA Rules and Their Impact on Small Business**

Of the 4,062 rules in the *Unified Agenda* pipeline in 2004, 400, or about 10 percent, were in the works at the EPA. Nonetheless, the total number of rules from EPA is lower than it was in 1999, when the count was 456 (Figure 14). Rules dropped by 4 percent over the past year, moving from 416 to 400. The agency’s total number of economically significant rules in the *Agenda* dropped from 22 to 18 (Table 5).

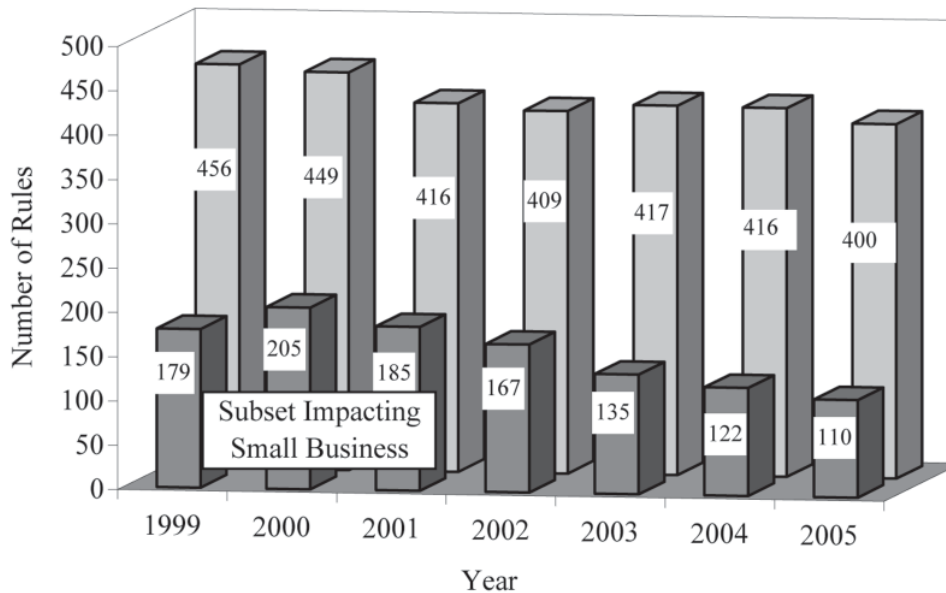
Fewer rules in the works, or at least better scrutinized rules, are a welcome development but do not necessarily mean

**Table 7**  
**GAO Reports on Major Rules, 1998-2005**

	1998	1999	2000	2001	2002	2003	2004	2005
Environmental Protection Agency	9	5	5	4	1	3	7	3
Department of the Interior	5	4	10	8	7	7	8	3
Federal Communications Commission	17	5	7	2	4	1	4	1
Health and Human Services	18	7	13	19	12	18	22	11
Department of Energy	0	0	3	3	1	0	0	0
Securities and Exchange Commission	5	5	6	2	2	5	2	4
Department of Agriculture	4	5	12	9	7	5	7	6
Nuclear Regulatory Commission	2	1	2	1	1	1	1	1
Department of Transportation	1	4	3	3	6	4	3	3
Department of Homeland Security	n/a	n/a	n/a	n/a	n/a	2	1	2
Department of Justice	1	0	0	2	5	0	1	1
Federal Reserve System	0	0	1	0	0	1	1	0
Social Security Administration	0	3	1	1	0	0	0	0
Department of Housing and Urban Dev.	0	1	2	1	0	0	1	0
Department of Labor	2	0	5	3	1	1	1	1
Department of Commerce	1	2	0	1	0	0	1	0
Pension Benefit Guaranty Corp.	1	0	0	0	0	0	0	0
Department of Treasury	2	0	0	0	0	0	0	1
Department of Defense	1	1	0	2	2	0	0	1
Department of Education	0	1	0	0	0	0	0	0
National Credit Union Administration	0	1	0	0	0	0	0	0
Emergency Steel Guarantee Loan Board	0	1	0	0	0	0	0	0
Small Business Administration	1	0	1	1	0	0	0	1
Federal Trade Commission	0	0	1	0	0	0	0	1
Achitectural Barriers Compliance Board	0	0	0	1	0	0	1	0
Federal Emergency Management Agency	0	0	0	3	1	0	0	0
Federal Acquisition Regulation	0	0	0	1	0	0	0	0
Department of Veterans Affairs	0	0	0	3	1	2	0	0
Office of Management and Budget	0	0	0	1	0	0	0	0
Office of Personnel Management	0	0	1	0	0	1	0	0
Various agencies; HIPAA* Implementation	0	0	0	1	0	0	0	0
<b>TOTALS:</b>	<b>70</b>	<b>46</b>	<b>73</b>	<b>72</b>	<b>51</b>	<b>51</b>	<b>61</b>	<b>40</b>

Source: Compiled from GAO data. \*2005 only through September 23.  
 Note: HIPAA = Health Insurance Portability and Accountability Act

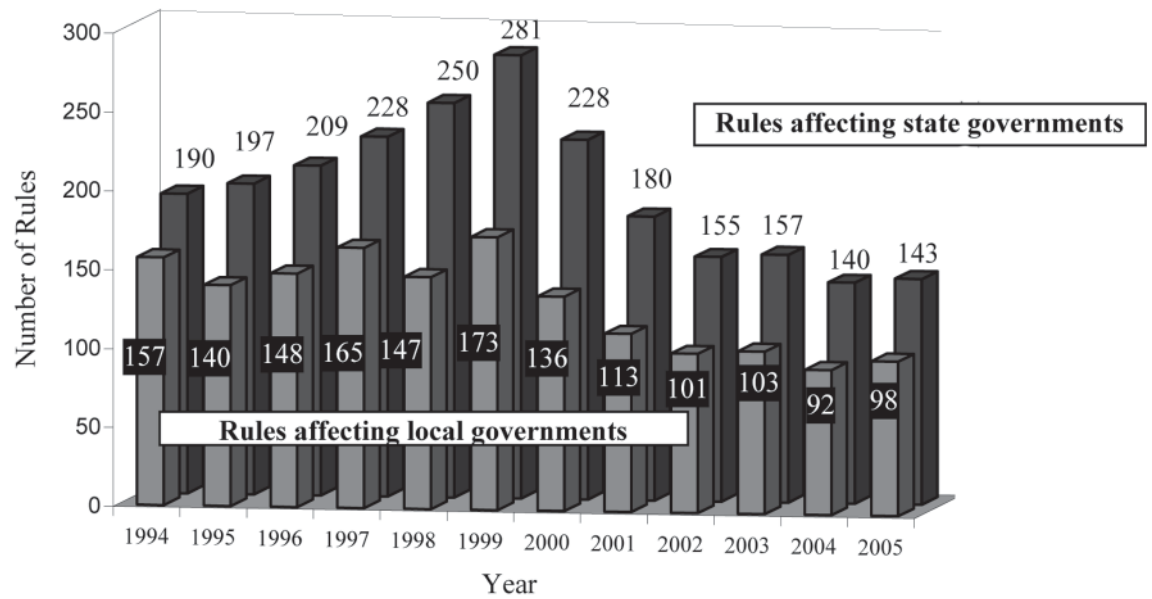
**Figure 14**  
**Number of EPA Rules, 1999-2005**



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

*Although some regulations' benefits exceed their costs, costs and benefits are known for relatively few regulations.*

**Figure 15**  
**EPA Rules Impacting State and Local Governments, 1994-2005**



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

lower costs. The *number* of EPA rules has fallen, but that should be weighed against high enforcement costs and the thrust of certain highly costly rules. EPA rules on air quality and lead abatement, for example, are notably costly.<sup>30</sup>

Also shown in Figure 14 is the subset of EPA rules that have some impact on small business. Since 1999 that category of rules has fallen by 38 percent, from 179 to 110. Meanwhile, the number of EPA rules impacting small business had hit 205 in President Clinton's final year.

### Impacts of EPA Rules on State and Local Governments

Earlier, Figure 13 showed that, overall, there are fewer federal agency rules affecting state and local governments than there were in 1994—before the Unfunded Mandates Act. Figure 15 shows that the number of EPA rules affecting state and local governments, in contrast with overall

trends, did rise steadily after 1995. But after 1999 that number began dropping markedly. For example, under President Bush, annual EPA rules affecting state governments have fallen by 37 percent so far, from 228 to 143. Interestingly, it was EPA rules that led to many of the complaints that resulted in passage of the Unfunded Mandates Act in the first place.

## Ending Regulation without Representation

### Steps Toward Improving Regulatory Disclosure

Federal regulatory compliance costs now total more than \$1 trillion annually, as the earlier cited Crain study indicated. Although some regulations' benefits exceed their costs, costs and benefits are known for relatively few regulations. Without any official regulatory accounting mandate for agencies, OMB's estimates of overall net

**Table 8**  
**A Possible Breakdown of “Economically Significant” Rules**

<b>Category 1</b>	<b>&gt; \$100 million, &lt;\$500 million</b>
<b>Category 2</b>	<b>&gt; \$500 million, &lt; \$1 billion</b>
<b>Category 3</b>	<b>&gt; \$1 billion</b>
<b>Category 4</b>	<b>&gt; \$5 billion</b>
<b>Category 5</b>	<b>&gt;\$10 billion</b>

benefits are questionable, which makes it difficult to know whether society wins or loses due to these rules. The regulatory data that is available should be officially summarized and publicly disclosed, to help create pressures for more useful future disclosure. A helpful incremental step would be for Congress to require, or for the Office of Management and Budget to initiate, publication of a summary of already available, but scattered, data—perhaps resembling that in *Ten Thousand Commandments*. That simple step alone would help to transform today’s regulatory “hidden tax” culture to one of more openness.

While reformers should make regulatory cost disclosure a priority, engaging in a protracted legislative fight over comprehensive reform should be avoided. Better would be halting Congress’s excessive delegation of legislative power to unelected agency personnel in the first place, so Congress itself internalizes pressures to make risk and cost/benefit assessments in its future directives to agencies. Elected representatives must assume responsibility and end “regulation without representation” to rein in off-budget regulatory costs.

Broadly, today’s regulations fall into two classes—those that are “economically

significant”—they cost more than \$100 million annually—and those that are not. Agencies typically report only on 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 on the basis of cost information provided in the regulatory impact analyses that accompany many economically significant rules, or on the basis of separate internal or external estimates.

Although modest, this step toward greater disclosure could be highly important. Today, to learn about regulatory trends and 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



***Congress regularly shirks its duty to make the tough calls, delegating too much lawmaking power to agencies, and then fails to require that they deliver greater benefits than costs.***

the *Agenda's* 1,000-plus pages of small, multi-column print or search online. Useful regulatory information is available but often 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 the accompanying text box. Information could be added to the report as deemed necessary—for instance, success or failure of any special initiative, such as any “reinventing government,” or regulatory reform effort. Providing five-year historical data would tremendously enhance the *Agenda's* usefulness. Paradoxically, one of the virtues of a regulatory report card is that it would reveal more clearly what we *don't* know about the regulatory state—something 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 is seriously.

**“No Regulation without Representation”**

Years of unbudgeted regulatory growth merit concern. We simply don't know whether regulatory benefits exceed costs. Agencies are not the real culprits: Congress regularly shirks its duty to make the tough calls, delegating too much lawmaking power to agencies, and then fails to require that they deliver greater benefits than costs.<sup>31</sup> Thus, agencies can hardly be faulted for not guaranteeing optimal regulation or for not ensuring that only “good” rules get through.

Agencies face overwhelming incentives to expand their turf by regulating even in the absence of demonstrated need, since the only measure of agency productivity—other than growth in their budgets and

<b>Regulatory Report Card: Recommended Official Summary Data by Program, Agency, and Grand Total, with Five-Year Historical Tables</b>
• “Economically significant” rules by category (see Table 8) and minor rules by department, agency, and commission
• Numbers/percentages of rules impacting small business and lower-level governments
• Numbers/percentages of rules featuring numerical cost estimates
• Tallies of existing cost estimates, with subtotals by agencies, and grand total
• Numbers/percentages of rules lacking cost estimates
• Short explanation of lack of cost estimates, where applicable
• Percentage of rules reviewed by the OMB and action taken
• Analysis of the <i>Federal Register</i> : number of pages, proposed and final rule breakdowns by agency
• Numbers of major rules reported on by the GAO in its database of reports on regulations
• Most active rule-making agencies
• Rules that are deregulatory rather than regulatory
• Rules that affect internal agency procedures alone
• Rollover: number of rules new to the <i>Unified Agenda</i> ; number carried over from previous years

number of employees—is the number of regulations that they produce. One need not waste time blaming agencies for emphasizing the very regulating they were set up to do in the first place. Better to point the finger at Congress. To put matters in perspective, Congress passed and the President signed 161 bills into law in calendar year 2005.<sup>32</sup>

But, as noted, regulatory agencies issued 4,062 rules. The unelected are doing the bulk of the lawmaking. Since agencies are unaccountable to voters, an annual regulatory report card is a start but not a complete answer. Nor are regulatory reforms that rely on agencies policing themselves capable of harnessing the regulatory state. Rather, making Congress directly answerable to the voters for the costs agencies impose on the public would best promote accountable regulation. The way to control regulation is not to merely require agencies to perform cost/benefit analyses but to require Congress to vote on agencies' final rules before they 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, 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 not add significantly to federal spending but would nonetheless let

Congress take credit. By regulating instead of spending, government can expand almost indefinitely without explicitly taxing anybody a single extra penny.

Making Congress accountable for regulation in the same manner that it is accountable for legislation is a prerequisite for control. Requiring explicit approval of all proposed regulations would ensure that Congress bore direct responsibility for every dollar of new regulatory costs. To allay the concern that Congress would become bogged down approving agency rules, agency regulations could be voted on in bundles. In addition, congressional approval of new regulation could also be given by voice vote, signifying unanimity, rather than by tabulated roll call vote. The important thing is that Congress be held accountable.

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

## **Acknowledgement**

Thanks to Metin Hassu for helpful research assistance for this edition of *Ten Thousand Commandments*.

***By regulating instead of spending, government can expand almost indefinitely without explicitly taxing anybody a single extra penny.***

**Part A: Federal Register Page History, 1936-05**

<b>Year</b>	<b>Unadjusted Page Count</b>	<b>Jumps/Blanks</b>	<b>Adjusted Page Count</b>
<b>1936</b>	2,620	not available (n/a)	<b>2,620</b>
<b>1937</b>	3,450	n/a	<b>3,450</b>
<b>1938</b>	3,194	n/a	<b>3,194</b>
<b>1939</b>	5,007	n/a	<b>5,007</b>
<b>1940</b>	5,307	n/a	<b>5,307</b>
<b>1941</b>	6,877	n/a	<b>6,877</b>
<b>1942</b>	11,134	n/a	<b>11,134</b>
<b>1943</b>	17,553	n/a	<b>17,553</b>
<b>1944</b>	15,194	n/a	<b>15,194</b>
<b>1945</b>	15,508	n/a	<b>15,508</b>
<b>1946</b>	14,736	n/a	<b>14,736</b>
<b>1947</b>	8,902	n/a	<b>8,902</b>
<b>1948</b>	9,608	n/a	<b>9,608</b>
<b>1949</b>	7,952	n/a	<b>7,952</b>
<b>1950</b>	9,562	n/a	<b>9,562</b>
<b>1951</b>	13,175	n/a	<b>13,175</b>
<b>1952</b>	11,896	n/a	<b>11,896</b>
<b>1953</b>	8,912	n/a	<b>8,912</b>
<b>1954</b>	9,910	n/a	<b>9,910</b>
<b>1955</b>	10,196	n/a	<b>10,196</b>
<b>1956</b>	10,528	n/a	<b>10,528</b>
<b>1957</b>	11,156	n/a	<b>11,156</b>
<b>1958</b>	10,579	n/a	<b>10,579</b>
<b>1959</b>	11,116	n/a	<b>11,116</b>
<b>1960</b>	14,479	n/a	<b>14,479</b>
<b>1961</b>	12,792	n/a	<b>12,792</b>
<b>1962</b>	13,226	n/a	<b>13,226</b>
<b>1963</b>	14,842	n/a	<b>14,842</b>
<b>1964</b>	19,304	n/a	<b>19,304</b>
<b>1965</b>	17,206	n/a	<b>17,206</b>
<b>1966</b>	16,850	n/a	<b>16,850</b>
<b>1967</b>	21,088	n/a	<b>21,088</b>
<b>1968</b>	20,072	n/a	<b>20,072</b>
<b>1969</b>	20,466	n/a	<b>20,466</b>
<b>1970</b>	20,036	n/a	<b>20,036</b>
<b>1971</b>	25,447	n/a	<b>25,447</b>
<b>1972</b>	28,924	n/a	<b>28,924</b>
<b>1973</b>	35,592	n/a	<b>35,592</b>

<b>Year</b>	<b>Unadjusted Page Count</b>	<b>Jumps/Blanks</b>	<b>Adjusted Page Count</b>
<b>1974</b>	45,422	n/a	<b>45,422</b>
<b>1975</b>	60,221	n/a	<b>60,221</b>
<b>1976</b>	57,072	6,567	<b>50,505</b>
<b>1977</b>	65,603	7,816	<b>57,787</b>
<b>1978</b>	61,261	5,565	<b>55,696</b>
<b>1979</b>	77,498	6,307	<b>71,191</b>
<b>1980</b>	87,012	13,754	<b>73,258</b>
<b>1981</b>	63,554	5,818	<b>57,736</b>
<b>1982</b>	58,494	5,390	<b>53,104</b>
<b>1983</b>	57,704	4,686	<b>53,018</b>
<b>1984</b>	50,998	2,355	<b>48,643</b>
<b>1985</b>	53,480	2,978	<b>50,502</b>
<b>1986</b>	47,418	2,606	<b>44,812</b>
<b>1987</b>	49,654	2,621	<b>47,033</b>
<b>1988</b>	53,376	2,760	<b>50,616</b>
<b>1989</b>	53,842	3,341	<b>50,501</b>
<b>1990</b>	53,620	3,825	<b>49,795</b>
<b>1991</b>	67,716	9,743	<b>57,973</b>
<b>1992</b>	62,928	5,925	<b>57,003</b>
<b>1993</b>	69,688	8,522	<b>61,166</b>
<b>1994</b>	68,108	3,194	<b>64,914</b>
<b>1995</b>	67,518	4,873	<b>62,645</b>
<b>1996</b>	69,368	4,777	<b>64,591</b>
<b>1997</b>	68,530	3,981	<b>64,549</b>
<b>1998</b>	72,356	3,785	<b>68,571</b>
<b>1999</b>	73,880	2,719	<b>71,161</b>
<b>2000</b>	83,294	9,036	<b>74,258</b>
<b>2001</b>	67,702	3,264	<b>64,438</b>
<b>2002</b>	80,332	4,726	<b>75,606</b>
<b>2003</b>	75,798	4,529	<b>71,269</b>
<b>2004</b>	78,852	3,177	<b>75,675</b>
<b>2005</b>	77,777	3,907	<b>73,870</b>

Source: National Archives and Records Administration, Office of the Federal Register. Procedures Act of 1946. Preambles to rules were published only to a limited extent before

Notes: Publication of proposed rules was not required before the Administrative

n/a = not available.

**Part B:****Number of Documents Published in the *Federal Register* (1976-2005)**

<b>Year</b>	<b>Final Rules</b>	<b>Proposed Rules</b>	<b>Other*</b>	<b>Total</b>
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

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

Note: "Other" documents are presidential documents, agency notices, and corrections.

**Part C:**  
**Unified Agenda Rules History (1983-2005)**

**Total Number of Rules Under Consideration**

<b>1980s</b>			<b>1990s</b>			<b>2000s</b>		
<b>1983</b>	April	<b>2,863</b>	<b>1990</b>	April	<b>4,332</b>	<b>2000</b>	October	<b>4,699</b>
	October	<b>4,032</b>		October	<b>4,470</b>	<b>2001</b>	October	<b>4,509</b>
<b>1984</b>	April	<b>4,114</b>	<b>1991</b>	April	<b>4,675</b>	<b>2002</b>	October	<b>4,187</b>
	October	<b>4,016</b>		October	<b>4,863</b>	<b>2003</b>	December	<b>4,266</b>
<b>1985</b>	April	<b>4,265</b>	<b>1992</b>	April	<b>4,186</b>	<b>2004</b>	December	<b>4,083</b>
	October	<b>4,131</b>		October	<b>4,909</b>	<b>2005</b>	October	<b>4,062</b>
<b>1986</b>	April	<b>3,961</b>	<b>1993</b>	April	<b>4,933</b>			
	October	<b>3,983</b>		October	<b>4,950</b>			
<b>1987</b>	April	<b>4,038</b>	<b>1994</b>	April	<b>5,105</b>			
	October	<b>4,005</b>		October	<b>5,119</b>			
<b>1988</b>	April	<b>3,941</b>	<b>1995</b>	April	<b>5,133</b>			
	October	<b>4,017</b>		October	<b>4,735</b>			
<b>1989</b>	April	<b>4,003</b>	<b>1996</b>	April	<b>4,570</b>			
	October	<b>4,187</b>		October	<b>4,680</b>			
			<b>1997</b>	April	<b>4,417</b>			
				October	<b>4,407</b>			
			<b>1998</b>	April	<b>4,504</b>			
				October	<b>4,560</b>			
			<b>1999</b>	April	<b>4,524</b>			
				October	<b>4,568</b>			

## Part D: Agenda Rules by Department and Agency, 1998-2004

		2003	2002	2001	2000	1999	1998
Department of Agriculture	279	323	314	312	327	345	384
Department of Commerce	273	300	270	342	390	366	344
Department of Defense	126	108	87	93	117	121	142
Department of Education	11	13	14	8	21	32	20
Department of Energy	50	66	53	61	67	64	63
Department of Health & Human Services	233	219	219	277	308	300	351
Department of Homeland Security	314	338					
Department of Housing & Urban Development	103	109	100	89	113	128	102
Department of the Interior	287	295	298	423	418	309	337
Department of Justice	125	122	249	229	202	201	186
Department of Labor	88	89	102	141	156	151	149
Department of State	21	15	41	32	21	27	22
Department of Transportation	301	365	543	511	536	539	518
Department of Treasury	532	530	513	458	450	400	438
Department of Veterans' Affairs	79	87	104	164	141	130	118
Advisory Council on Historic Preservation	1	1	1	0	1	1	1
Agency for International Development	8	8	7	6	6	5	7
Architectural and Transportation Barriers Compliance Board	4	4	5	5	7	8	9
Commission on Civil Rights	1	1	1	1	1	1	1
CPBSD*	5						
Corporation for National & Community Service	8	9	16	9	6	4	6
Court Services/Offender Supervision, D.C.	1	3	0	0	0	0	0
Environmental Protection Agency	416	417	409	416	449	456	462
Federal Emergency Management Agency	0	0	24	30	26	33	25
General Services Administration	27	37	40	35	40	51	49
National Aeronautics & Space Administration	27	34	13	17	11	7	11
National Archives & Records Administration	22	19	20	19	21	21	19
Institute of Museum and Library Services	3	6	5	5	4	1	1
National Endowment for the Arts	2	6	5	5	5	5	5
Equal Employment Opportunity Commission	3	4	4	3	6	9	10
National Endowment for the Humanities	3	8	9	8	7	6	6
National Science Foundation	3	2	2	3	5	4	5
Office of Federal Housing Enterprise Oversight	4	4	7	9	5	5	4
Office of Government Ethics	7	9	10	11	11	12	12
Office of Management & Budget	3	4	4	5	5	9	11
Office of Personnel Management	103	90	72	91	110	112	101
Panama Canal Commission	0	0	0	0	0	4	5
Peace Corps	4	9	9	9	8	5	5
Pension Benefit Guaranty Corporation	6	4	6	11	10	12	12
Railroad Retirement Board	6	11	13	13	19	16	17
Selective Service System	1	1	1	1	1	1	1
Small Business Administration	29	33	40	37	41	35	25
Social Security Administration	59	64	63	85	82	67	70
Tennessee Valley Authority	0	2	2	3	3	1	1
U.S. Information Agency	0	0	0	0	0	0	1
Federal Acquisition Regulation	45	49	43	48	56	49	42
Commodity Futures Trading Commission	15	15	19	30	21	19	12
Consumer Product Safety Commission	18	20	20	21	20	17	15
Farm Credit Administration	20	21	14	17	17	19	15
Farm Credit System Insurance Corporation	1	1	1	1	3	3	3
Federal Communications Commission	146	134	141	145	137	128	121
Federal Energy Regulatory Commission	23	21	19	8	18	20	12
Federal Housing Finance Board	9	11	9	12	12	18	17
Federal Maritime Commission	7	11	8	7	9	9	6
Federal Reserve System	18	18	24	32	33	22	30
Federal Trade Commission	14	12	10	13	14	16	16
National Credit Union Administration	26	27	20	22	16	26	14
Federal Deposit Insurance Corporation	20	17	17	22	26	25	26
National Indian Gaming Commission	14	14	16	15	14	14	17
National Labor Relations Board	0	0	0	0	0	0	0
Nuclear Regulatory Commission	42	45	39	42	55	57	63
Office of Special Counsel	0	0	0	0	3	2	1
Overseas Private Investment Corporation	0	0	0	0	0	0	2
Securities and Exchange Commission	79	71	73	80	77	80	83
Surface Transportation Board	4	5	5	4	3	3	8
Federal Mediation and Conciliation Service	2	3	4	3	2	1	1
Court Services/Offender Supervision, D.C.	0	0	7	5	0	0	0
Presidio Trust	2	1	2	2	3	3	0
Udall Institute for Environmental Conflict Resolution	0	1	1	3	3	3	0
<b>TOTAL</b>	<b>4,083</b>	<b>4,266</b>	<b>4,187</b>	<b>4,509</b>	<b>4,699</b>	<b>4,538</b>	<b>4,560</b>

Source: Compiled from Regulatory Information Service Center, The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions, various years.  
\*Committee for Purchase from People Who are Blind or Severely Disabled.

## **Part E: Listing of 138 “Economically Significant” Rules, 2005\***

### **From the *Regulatory Plan* (48 rules)**

#### **Department of Agriculture**

- 1 2. MANDATORY COUNTRY OF ORIGIN LABELING OF BEEF, PORK, LAMB, FISH, PERISHABLE AGRICULTURAL COMMODITIES, AND PEANUTS (LS-03-04)
- 2 13. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC): REVISIONS IN THE WIC FOOD PACKAGES
- 3 14. FSP: ELIGIBILITY AND CERTIFICATION PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002
- 4 16. FSP: EMPLOYMENT AND TRAINING PROGRAM PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002
- 5 20. EGG PRODUCTS INSPECTION REGULATIONS
- 6 23. PERFORMANCE STANDARDS FOR THE PRODUCTION OF PROCESSED MEAT AND POULTRY PRODUCTS
- 7 24. NUTRITION LABELING OF SINGLE-INGREDIENT PRODUCTS AND GROUND OR CHOPPED MEAT AND POULTRY PRODUCTS
- 8 26. PROHIBITION OF THE USE OF SPECIFIED RISK MATERIALS FOR HUMAN FOOD AND REQUIREMENTS FOR THE DISPOSITION OF NON-AMBULATORY DISABLED CATTLE

#### **Department of Energy**

- 9 31. RULEMAKING TO DETERMINE WHETHER THE ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CENTRAL AIR CONDITIONERS AND AIR CONDITIONING HEAT PUMPS SHOULD BE AMENDED
- 10 32. RULEMAKING TO DETERMINE WHETHER THE ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL WATER HEATERS SHOULD BE AMENDED
- 11 33. RULEMAKING TO DETERMINE WHETHER THE ENERGY CONSERVATION STANDARDS FOR ELECTRIC AND GAS RANGES AND OVENS, AND FOR MICROWAVE OVENS SHOULD BE AMENDED
- 12 34. RULEMAKING TO DETERMINE WHETHER THE ENERGY CONSERVATION STANDARDS FOR FLUORESCENT LAMP BALLASTS SHOULD BE AMENDED
- 13 35. RULEMAKING TO DETERMINE WHETHER THE ENERGY CONSERVATION STANDARDS FOR ROOM AIR CONDITIONERS SHOULD BE AMENDED
- 14 36. ENERGY EFFICIENCY STANDARDS FOR RESIDENTIAL FURNACES AND BOILERS
- 15 37. ENERGY EFFICIENCY STANDARDS FOR ELECTRIC DISTRIBUTION TRANSFORMERS

#### **Department of Health and Human Services**

- 16 42. CONTROL OF COMMUNICABLE DISEASES, INTERSTATE AND FOREIGN QUARANTINE
- 17 48. CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, OR HOLDING DIETARY INGREDIENTS AND DIETARY SUPPLEMENTS
- 18 51. COMPETITIVE ACQUISITION FOR CERTAIN DURABLE MEDICAL EQUIPMENT (DME), PROSTHETICS, ORTHOTICS, AND SUPPLIES AND RESIDUAL ISSUES (CMS-1270-P)
- 19 52. CHANGES TO THE HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEMS AND FY 2007 RATES (CMS-1488-P)
- 20 53. ORGAN PROCUREMENT ORGANIZATION CONDITIONS FOR COVERAGE (CMS-3064-IFR) (SECTION 610 REVIEW)
- 21 54. CHANGES TO THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM AND CALENDAR YEAR 2006 PAYMENT RATES (CMS-1501-FC)
- 22 55. REVISIONS TO PAYMENT POLICIES UNDER THE PHYSICIAN FEE SCHEDULE FOR CALENDAR YEAR 2006 (CMS-1502-FC)

#### **Department of Justice**

- 23 72. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES (SECTION 610 REVIEW)
- 24 73. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES (SECTION 610 REVIEW)

#### **Department of Labor**

- 25 79. REGULATIONS IMPLEMENTING THE HEALTH CARE ACCESS, PORTABILITY, AND RENEWABILITY PROVISIONS OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996
- 26 84. OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA



27 86. OCCUPATIONAL EXPOSURE TO HEXAVALENT CHROMIUM (PREVENTING OCCUPATIONAL ILLNESS: CHROMIUM)

### **Department of Transportation**

28 89. TRANSPORT AIRPLANE FUEL TANK FLAMMABILITY REDUCTION  
29 91. AGING AIRCRAFT SAFETY—DEVELOPMENT OF TC AND STC HOLDER DATA  
30 95. LIGHT TRUCK AVERAGE FUEL ECONOMY STANDARDS, MODEL YEAR 2008 AND POSSIBLY BEYOND  
31 97. SIDE IMPACT PROTECTION UPGRADE - FMVSS NO. 214

### **Department of Treasury**

32 98. IMPLEMENTATION OF A REVISED BASEL CAPITAL ACCORD (BASEL II)

### **Department of Veterans Affairs**

33 99. ENROLLMENT—PROVISION OF HOSPITAL AND OUTPATIENT CARE TO VETERANS—SUBPRIORITIES OF PRIORITY CATEGORIES 7 AND 8 AND ENROLLMENT LEVEL DECISION

### **Environmental Protection Agency**

34 100. REVIEW OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR PARTICULATE MATTER  
35 104. CONTROL OF EMISSIONS FROM NEW LOCOMOTIVES AND NEW MARINE DIESEL ENGINES LESS THAN 30 LITERS PER CYLINDER  
36 105. CONTROL OF EMISSIONS FROM SPARK-IGNITION ENGINES AND FUEL SYSTEMS FROM MARINE VESSELS AND SMALL EQUIPMENT  
37 109. REVIEW OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE  
38 112. LEAD-BASED PAINT ACTIVITIES; AMENDMENTS FOR RENOVATION, REPAIR AND PAINTING  
39 119. INCLUSION OF DELAWARE AND NEW JERSEY IN THE CLEAN AIR INTERSTATE RULE  
40 120. RULE ON SECTION 126 PETITION FROM NC TO REDUCE INTERSTATE TRANSPORT OF FINE PM AND O<sub>3</sub>; FIPS TO REDUCE INTERSTATE TRANSPORT OF FINE PM & O<sub>3</sub>; REVISIONS TO CAIR RULE; REVISIONS TO ACID RAIN PROGRAM  
41 128. REVISIONS TO THE DEFINITION OF SOLID WASTE  
42 129. NATIONAL PRIMARY DRINKING WATER REGULATIONS: GROUND WATER RULE  
43 130. NATIONAL PRIMARY DRINKING WATER REGULATIONS: LONG TERM 2 ENHANCED SURFACE WATER TREATMENT RULE  
44 131. NATIONAL PRIMARY DRINKING WATER REGULATIONS: STAGE 2 DISINFECTION BYPRODUCTS RULE

### **Social Security Administration**

45 152. ADMINISTRATIVE REVIEW PROCESS FOR ADJUDICATING INITIAL DISABILITY CLAIMS (3203F)  
46 154. REVISED MEDICAL CRITERIA FOR EVALUATING IMPAIRMENTS OF THE DIGESTIVE SYSTEM (800F)

### **Consumer Product Safety Commission**

47 159. FLAMMABILITY STANDARD FOR UPHOLSTERED FURNITURE  
48 160. PROPOSED STANDARD TO ADDRESS OPEN-FLAME IGNITION OF MATTRESSES/FOUNDATION SETS

### **From the *Unified Agenda* (90 additional rules)**

#### **Department of Agriculture**

49 233. USER FEES FOR AGRICULTURAL QUARANTINE AND INSPECTION SERVICES  
50 244. BOVINE SPONGIFORM ENCEPHALOPATHY; MINIMAL RISK REGIONS AND IMPORTATION OF COMMODITIES  
51 351. ELECTRONIC SIGNATURES  
52 451. CONSERVATION SECURITY PROGRAM

#### **Department of Commerce**

53 653. AMENDMENTS 18 AND 19 TO THE FISHERY MANAGEMENT PLAN FOR BERING SEA/ALEUTIAN ISLANDS KING AND TANNER CRABS—CRAB RATIONALIZATION PROGRAM  
54 726. DESIGNATE CRITICAL HABITAT FOR 12 EVOLUTIONARILY SIGNIFICANT UNITS (ESUS) OF PACIFIC SALMON AND STEELHEAD IN WASHINGTON, OREGON AND IDAHO

## Department of Defense

55 866. RADIO FREQUENCY IDENTIFICATION (DFARS CASE 2004-D011)

## Department of Energy

56 942. ENERGY EFFICIENCY STANDARDS FOR CLOTHES DRYERS AND DISHWASHERS

57 943. ENERGY EFFICIENCY STANDARDS FOR POOL HEATERS AND DIRECT HEATING EQUIPMENT

58 944. ENERGY EFFICIENCY STANDARDS FOR 1-200 HP ELECTRIC MOTORS

59 945. ENERGY EFFICIENCY STANDARDS FOR FLUORESCENT AND INCANDESCENT LAMPS

60 950. ENERGY EFFICIENCY STANDARDS FOR COMMERCIAL UNITARY AIR CONDITIONERS AND HEAT PUMPS

## Department of Health and Human Services

61 1039. PREVENTION OF SALMONELLA ENTERITIDIS IN SHELL EGGS

62 1077. AMENDMENTS TO THE PERFORMANCE STANDARD FOR DIAGNOSTIC X-RAY SYSTEMS AND THEIR MAJOR COMPONENTS

63 1121. REQUIREMENTS FOR LONG-TERM CARE FACILITIES: HOSPICE SERVICES (CMS-3140-P)

64 1123. REVISIONS TO HIPAA CODE SETS (CMS-0013-P)

65 1131. HOME HEALTH PAYMENT SYSTEM RATE UPDATE FOR CALENDAR YEAR 2007 (CMS-1304-P)

66 1134. PROSPECTIVE PAYMENT SYSTEM FOR LONG-TERM CARE HOSPITALS FY 2007: ANNUAL PAYMENT RATE UPDATES (CMS-1485-P)

67 1138. REVISED PAYMENT SYSTEM FOR SERVICES FURNISHED IN AMBULATORY SURGICAL CENTERS (ASCS) EFFECTIVE JANUARY 1, 2008 (CMS-1517-P)

68 1140. PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT REHABILITATION FACILITIES FOR FY 2007 (CMS-1540-P)

69 1141. OUTPATIENT HOSPITAL SERVICES AND RURAL HEALTH CLINIC SERVICES AMENDMENT (CMS-2213-P)

70 1142. FIVE YEAR REVIEW OF WORK RELATIVE VALUE UNITS UNDER THE PHYSICIAN FEE SCHEDULE (CMS-1512-PN)

71 1143. REVISIONS TO PAYMENT POLICIES UNDER THE PHYSICIAN FEE SCHEDULE FOR CALENDAR YEAR 2007 (CMS-1321-P)

72 1154. HOME HEALTH PROSPECTIVE PAYMENT SYSTEM RATE UPDATE FOR CALENDAR YEAR 2006 (CMS-1301-F)

73 1159. FEE SCHEDULE FOR PAYMENT OF AMBULANCE SERVICES — UPDATE FOR CY 2006 (CMS-1294-N)

74 1167. PROSPECTIVE PAYMENT SYSTEM AND CONSOLIDATED BILLING FOR SKILLED NURSING FACILITIES— UPDATE FOR FY 2007 (CMS-1530-N)

75 1173. STANDARDS FOR ELECTRONIC HEALTH CARE CLAIM ATTACHMENTS (CMS-0050-P)

76 1179. REVISIONS TO THE APPEALS PROCESS FOR INITIAL CLAIM DETERMINATIONS (CMS-4064-F)

77 1180. CONDITIONS FOR COVERAGE OF POWER MOBILITY DEVICES, INCLUDING POWERED WHEELCHAIRS AND POWER-OPERATED VEHICLES SCOOTER (CMS-3017-F)

78 1189. ELECTRONIC PRESCRIBING STANDARDS (CMS-0011-F)

79 1190. MEDICARE PART B COMPETITIVE ACQUISITION OF OUTPATIENT DRUGS AND BIOLOGICALS (CMS-1325-F)

80 1198. HEALTH CARE INFRASTRUCTURE IMPROVEMENT PROGRAM; SELECTION CRITERIA OF LOAN PROGRAM FOR QUALIFYING HOSPITALS ENGAGED IN CANCER-RELATED HEALTH CARE (CMS-1287-F)

81 1204. PROSPECTIVE PAYMENT SYSTEM FOR LONG TERM CARE HOSPITALS: ANNUAL PAYMENT RATE UPDATES AND POLICY CHANGES FOR 2006 (CMS-1483-F)

82 1205. PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT REHABILITATION FACILITIES FOR FY 2006 (CMS-1290-F)

83 1208. CHANGES TO THE HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEM AND FY 2006 RATES (CMS-1500-F)

84 1209. SPECIAL PAYMENT PROVISIONS AND STANDARDS FOR SUPPLIERS OF CUSTOM FABRICATED ORTHOTICS AND PROSTHETICS (CMS-6012-P)

85 1210. PROSPECTIVE PAYMENT SYSTEM AND CONSOLIDATED BILLING FOR SKILLED NURSING FACILITIES— UPDATE FOR FY 2006 (CMS-1282-F)

86 1217. IMMUNIZATION STANDARD FOR LONG TERM CARE FACILITIES (CMS-3198-F)

87 1220. INPATIENT HOSPITAL DEDUCTIBLE AND HOSPITAL AND EXTENDED CARE SERVICES COINSURANCE AMOUNTS FOR CALENDAR YEAR 2006 (CMS-8026-N)

88 1221. PART A PREMIUMS FOR CALENDAR YEAR 2006 FOR THE UNINSURED AGED AND FOR CERTAIN DISABLED INDIVIDUALS WHO HAVE EXHAUSTED OTHER ENTITLEMENT (CMS-8025-N)

89 1222. MEDICARE PART B MONTHLY ACTUARIAL RATES AND PREMIUM RATE BEGINNING JANUARY 1, 2006 (CMS-8027-N)

## Department of Homeland Security

90 1238. ASSISTANCE TO FIREFIGHTERS GRANT PROGRAM

91 1329. ALLOCATION OF H-1B VISAS CREATED BY THE H-1B VISA REFORM ACT OF 2004

- 92 1389. SALVAGE AND MARINE FIREFIGHTING REQUIREMENTS; VESSEL RESPONSE PLANS FOR OIL (USCG-1998-3417)  
93 1417. AIR TRANSIT PROGRAM  
94 1419. CONTAINER SEALS  
95 1420. 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  
96 1428. LETTERS AND DOCUMENTS; ADVANCE ELECTRONIC PRESENTATION OF CARGO DATA  
97 1452. SECURE FLIGHT PROGRAM  
98 1491. ESTABLISH COMPLIANCE CRITERIA AND COMPREHENSIVE FEE FOR RECERTIFICATION OF SCHOOLS APPROVED BY THE STUDENT AND EXCHANGE VISITOR PROGRAM (SEVP) TO ENROLL F OR M NONIMMIGRANT STUDENTS  
99 1504. SPECIAL COMMUNITY DISASTER LOANS PROGRAM  
100 1512. DISASTER ASSISTANCE; FEDERAL ASSISTANCE TO INDIVIDUALS AND HOUSEHOLDS  
101 1524. GRANTS FOR REPETITIVE INSURANCE CLAIM PROPERTIES

### **Department of Housing and Urban Development**

- 102 1581. RESPA—IMPROVING THE PROCESS FOR OBTAINING MORTGAGES (FR-4727)  
103 1617. OPERATING FUND ALLOCATION FORMULA (FR-4874)

### **Department of the Interior**

- 104 1697. MIGRATORY BIRD HUNTING; 2006-2007 MIGRATORY GAME BIRD HUNTING REGULATIONS  
105 1777. MIGRATORY BIRD HUNTING; 2005-2006 MIGRATORY GAME BIRD HUNTING REGULATIONS

### **Department of Labor**

- 106 2057. CLAIMS FOR COMPENSATION UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000, AS AMENDED  
107 2110. OCCUPATIONAL EXPOSURE TO BERYLLIUM  
108 2121. ELECTRIC POWER TRANSMISSION AND DISTRIBUTION; ELECTRICAL PROTECTIVE EQUIPMENT  
109 2133. HEARING CONSERVATION PROGRAM FOR CONSTRUCTION WORKERS

### **Department of State**

- 110 2143. DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED—AIR TRANSIT PROGRAM

### **Department of Transportation**

- 111 2220. CONGESTION AND DELAY REDUCTION AT CHICAGO O'HARE INTERNATIONAL AIRPORT  
112 2231. FLIGHT CREWMEMBER DUTY LIMITATIONS AND REST REQUIREMENTS  
113 2260. ELECTRONIC ON-BOARD RECORDERS FOR HOURS-OF-SERVICE COMPLIANCE  
114 2284. HOURS OF SERVICE OF DRIVERS  
115 2305. TIRE SAFETY  
116 2325. REFORMING THE AUTOMOBILE FUEL ECONOMY STANDARDS PROGRAM  
117 2388. MARITIME SECURITY PROGRAM

### **Department of Treasury**

- 118 2895. RISK-BASED CAPITAL GUIDELINES; IMPLEMENTATION OF NEW BASEL CAPITAL ACCORD

### **Environmental Protection Agency**

- 119 3230. CLEAN AIR MERCURY RULE—ELECTRIC UTILITY STEAM GENERATING UNIT MACT  
120 3233. CLEAN AIR VISIBILITY RULE  
121 3235. CLEAN AIR INTERSTATE RULE (FORMERLY TITLED: INTERSTATE AIR QUALITY RULE)  
122 3246. FEDERAL IMPLEMENTATION PLANS TO REDUCE INTERSTATE TRANSPORT OF FINE PARTICULATE MATTER AND OZONE  
123 3331. STANDARDS FOR THE MANAGEMENT OF COAL COMBUSTION WASTES GENERATED BY COMMERCIAL ELECTRIC POWER PRODUCERS  
124 3347. STANDARDS FOR THE MANAGEMENT OF COAL COMBUSTION WASTES—NON-POWER PRODUCERS AND MINEFILLING  
125 3404. NATIONAL PRIMARY DRINKING WATER REGULATIONS: RADON

### **Consumer Product Safety Commission**

126 3804. PROPOSED STANDARD TO ADDRESS OPEN-FLAME IGNITION OF BEDCLOTHES

### **Federal Communications Commission**

127 3851. BROADBAND OVER POWER LINE SYSTEMS

128 3858. DTV TUNER REQUIREMENTS

129 3877. REDESIGNATION OF THE 17.7-19.7 GHZ BAND, BLANKET LICENSING OF SATELLITE EARTH STATIONS, & ALLOCATION OF SPECTRUM IN THE 17.3-17.8 AND 24.75-25.25 GHZ BANDS FOR BROADCAST SATELLITE SERVICE USE; IB DOCK

130 3883. REDESIGNATION OF THE 17.7-19.7 GHZ BAND, BLANKET LICENSING OF SATELLITE EARTH STATIONS, AND ALLOCATION OF SPECTRUM FOR BROADCAST SATELLITE SERVICE

131 3926. SERVICE RULES FOR THE 746-764 AND 776-794 MHZ BANDS, AND REVISIONS TO PART 27 OF THE COMMISSION'S RULES

132 3932. TRANSFER OF THE 3650 THROUGH 3700 MHZ BAND FROM FEDERAL GOVERNMENT USE

133 3933. 2000 BIENNIAL REGULATORY REVIEW SPECTRUM AGGREGATION LIMITS FOR COMMERCIAL MOBILE RADIO SERVICES

134 3949. IN THE MATTER OF SECTION 68.4(A) OF THE COMMISSION'S RULES GOVERNING HEARING AID-COMPATIBLE TELEPHONES

135 3969. IP-ENABLED SERVICES

### **Federal Deposit Insurance Corporation**

136 3987. COMMUNITY REINVESTMENT ACT REGULATIONS

### **Nuclear Regulatory Commission**

137 4148. REVISION OF FEE SCHEDULES; FEE RECOVERY, FY 2005

Source: Compiled by author from the National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions*, October 31, 2005.

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

## Part F: Rules Impacting Small Business (1996-2004)

	1996	1997	1998	1999	2000	2001	2002	2003	2004
Department of Agriculture	56	58	63	49	47	56	39	64	54
Department of Commerce	46	29	52	88	98	89	77	74	108
Department of Defense	22	15	21	15	7	8	6	13	13
Department of Education	1	1	0	0	0	0	1	0	0
Department of Energy	2	2	0	0	1	1	0	1	0
Department of Health & Human Services	89	100	88	75	107	108	92	96	112
Department of Homeland Security	0	0	0	0	0	0	0	33	43
Department of Housing & Urban Development	9	7	1	1	0	3	6	11	4
Department of the Interior	17	28	29	33	18	20	17	26	21
Department of Justice	27	26	10	14	14	15	13	8	8
Department of Labor	51	39	41	38	40	26	22	23	19
Department of State	2	1	0	0	2	3	6	2	1
Department of Transportation	31	44	208	246	266	244	216	151	63
Department of Treasury	52	50	60	15	31	27	26	27	41
Department of Veterans' Affairs	3	7	6	6	3	1	1	0	0
Agency for International Development	0	0	0	0	0	1	2	1	0
Architectural and Transportation Barriers Compliance Board	0	0	3	2	2	1	1	0	0
Corporation for National & Community Service	0	0	0	0	0	0	0	0	1
Environmental Protection Agency	152	163	178	179	205	185	167	135	110
Federal Emergency Management Agency	1	0	0	0	1	1	1	0	0
General Services Administration	6	3	2	2	1	1	4	5	3
NASA	1	0	1	0	0	0	0	0	0
National Archives & Records Administration	1	1	1	0	0	0	0	1	1
Equal Employment Opportunity Commission	0	1	2	0	0	2	0	0	3
National Endowment for the Arts	0	0	0	0	0	0	2	2	0
National Endowment for the Humanities	0	1	0	0	0	0	0	0	0
National Science Foundation	0	0	0	0	0	0	0	0	0
Office of Management & Budget	2	1	1	2	1	0	0	0	0
Railroad Retirement Board	1	1	0	0	0	0	0	0	0
Small Business Administration	17	13	20	28	24	21	21	24	19
Social Security Administration	1	0	0	2	0	0	1	1	1
U.S. Information Agency	0	0	0	0	0	0	0	0	0
Federal Acquisition Regulation	20	15	11	16	13	9	6	5	7
Commodity Futures Trading Commission	0	0	1	0	0	0	0	2	1
Consumer Product Safety Commission	1	0	0	0	0	0	0	0	0
Federal Communications Commission	75	70	82	91	105	117	109	104	113
Federal Energy Regulatory Commission	0	0	0	1	0	0	0	0	0
Federal Housing Finance Board	0	0	1	0	0	0	0	0	0
Federal Maritime Commission	0	0	5	4	7	6	7	10	5
Federal Reserve System	4	2	5	2	8	10	7	3	6
Federal Trade Commission	7	11	10	10	9	9	9	9	12
Federal Mediation and Conciliation Service	0	0	0	0	1	1	0	0	0
Interstate Commerce Commission	0	0	0	0	0	0	0	0	0
National Credit Union Administration	1	1	0	0	0	0	0	0	1
Nuclear Regulatory Commission	8	9	8	5	3	5	5	3	1
Resolution Trust Corporation	0	0	0	0	0	0	0	0	17
Securities and Exchange Commission	48	34	27	39	40	26	28	25	0
<b>TOTAL</b>	<b>754</b>	<b>733</b>	<b>937</b>	<b>963</b>	<b>1054</b>	<b>996</b>	<b>892</b>	<b>859</b>	<b>788</b>

Source: Compiled from Regulatory Information Service Center, Unified Agenda of Federal Regulations, various years.

## Part G: Federal Rules Impacting Lower Level Governments (2000-2005)

	2005		2004		2003		2002		2001		2000	
	State	Local	State	Local	State	Local	State	Local	State	Local	State	Local
Department of Agriculture	69	59	71	59	53	42	60	49	51	43	51	43
Department of Commerce	34	8	23	9	18	9	15	8	30	11	36	13
Department of Defense			1	1	2	2	2	2	3	3	2	2
Department of Education			0	0	0	0	1	1	0	0	0	0
Department of Energy	16	15	9	8	9	9	8	9	10	10	15	15
Department of Health & Human Services	34	19	35	18	40	20	46	21	59	21	76	26
Department of Homeland Security	39	29	37	27	34	28	0	0	0	0	0	0
Department of Housing & Urban Development	6	10	9	13	14	23	13	17	10	14	9	19
Department of Interior	44	17	37	16	42	20	47	22	66	29	54	21
Department of Justice	15	9	16	10	15	11	28	21	28	20	25	20
Department of Labor	16	10	18	12	23	14	25	16	33	23	31	24
Department of State	4	1	1	1	2	1	2	1	2	2	2	1
Department of Transportation	11	4	21	13	26	16	42	23	41	23	49	31
Department of Treasury	13	12	17	13	22	15	17	12	16	8	16	8
Department of Veterans's Affairs	2	1	3	2	5	2	4	1	6	1	6	1
Advisory Council on Historic Preservation			1	0	1	0	1	0	0	0	1	0
Agency for International Development			0	0	0	0	0	0	0	0	1	1
Architectural and Transportation Barriers Compliance Board	1	1	2	2	2	2	3	3	3	3	4	4
CPBSD*	2	2	2	2								
Corp. for National and Community Service	9	9	5	5	4	4	8	8	6	6	4	4
Environmental Protection Agency	143	98	140	92	157	103	155	101	180	113	228	136
Federal Emergency Management Agency			0	0	0	0	8	8	7	8	5	6
Equal Employment Opportunity Commission	3	4	1	1	2	2	2	2	1	1	3	3
General Services Administration	8	5	8	6	11	7	10	6	6	1	4	1
National Aeronautics & Space Agency			0	0	0	0	0	0	0	0	1	1
National Archives & Records Administration	4	4	4	4	4	4	4	4	5	5	5	5
Institute of Museum and Library Services	1	1	1	1	2	2	2	2	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	1	1	1	1	1	1	1	1
National Science Foundation			0	0	0	0	0	0	1	0	1	1
Office of Management & Budget	1	1	1	1	0	0	0	0	0	0	0	0
Railroad Retirement Board			0	0	0	0	0	0	0	0	1	0
Small Business Administration			0	0	0	0	0	0	0	0	1	1
Social Security Administration	3		5	1	8	3	5	3	6	3	7	3
Tennessee Valley Authority			0	0	0	0	0	0	0	0	1	1
U.S. Information Agency			0	0	0	0	0	0	0	0	0	0
Federal Communications Commission	37	24	33	20	21	16	23	18	25	18	27	20
Federal Energy Regulatory Commission			1	0	2	1	2	2	2	2	2	2
Federal Reserve System			0	0	0	0	0	0	0	0	1	0
Federal Trade Commission	1		1	0	1	0	1	0	2	0	2	0
National Credit Union Administration	2		0	0	1	0	1	0	0	0	0	0
National Indian Gaming Commission			0	0	0	0	1	0	1	0	1	0
Nuclear Regulatory Commission	3	1	3	0	4	1	1	1	1	1	2	2
Securities and Exchange Commission	1	1	0	0	0	0	0	0	3	0	1	1
<b>State and Local Totals</b>	<b>523</b>	<b>346</b>	<b>507</b>	<b>338</b>	<b>527</b>	<b>359</b>	<b>539</b>	<b>363</b>	<b>608</b>	<b>373</b>	<b>679</b>	<b>420</b>

Compiled from the National Archives and Records Administration, Office of the Federal Register, The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions, various years.

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

## Notes

- <sup>1</sup> Office of Management and Budget, *Budget of the United States Government*, Fiscal Year 2007, <http://www.whitehouse.gov/omb/budget/fy2007/>.
- <sup>2</sup> Office of Management and Budget, *Validating Regulatory Analysis: 2005 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, December 2005, Table 1-1, p. 8, [http://www.whitehouse.gov/omb/inforeg/2005\\_cb/final\\_2005\\_cb\\_report.pdf](http://www.whitehouse.gov/omb/inforeg/2005_cb/final_2005_cb_report.pdf). Benefits claimed by OMB from non-road diesel engine and industrial boiler rules led to a significantly higher benefit range for this year compared to the 2004 analysis.
- <sup>3</sup> 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>.
- <sup>4</sup> Crain and Thomas D. Hopkins, *The Impact of Regulatory Costs on Small Firms*, Report prepared for SBA, Office of Advocacy, RFP no. SBAHQ-00-R-0027, October 2001, [www.sba.gov/advo/research/rs207tot.pdf](http://www.sba.gov/advo/research/rs207tot.pdf). The October 2001 report is in turn an update of Thomas D. Hopkins, *Profiles of Regulatory Costs: Report to the U.S. Small Business Administration*, U.S. Department of Commerce, NTIS PB96128038, November 1995, [www.sba.gov/ADVO/research/rs1995hoptot.pdf](http://www.sba.gov/ADVO/research/rs1995hoptot.pdf).
- <sup>5</sup> In 1995, Hopkins projected that regulatory costs would grow from \$668 billion to \$721 billion, an annual growth rate of 1.3 percent. (Hopkins, “Profiles of Regulatory Costs,” Table A-1.) Relatedly, Crain and Hopkins (2001) tabulated a 1.2 percent annualized compound growth rate between those same years in “total regulatory costs per household” for major categories of regulation. In the present Crain study, regulatory costs per household (\$10,172 in 2004) had grown faster, at an annualized rate of 2.7 percent between 2000-2004. 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 2005 estimate of \$1.127 trillion. (If the 2.7 percent growth rate had been used instead, the estimate for total 2005 regulatory costs would have been \$1.143 trillion.)
- <sup>6</sup> 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*, Crain, p. 49.
- <sup>7</sup> See Thomas D. Hopkins, *Prepared Statement for the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs of the House Committee on Government Reform and Oversight*, May 16, 1996. See also Thomas D. Hopkins, *Regulatory Costs in Profile*, Center for the Study of American Business Policy Study no. 231, August 1996, p. 4.
- <sup>8</sup> Crain, p. 7.
- <sup>9</sup> Crain, p. 5.
- <sup>10</sup> Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2003–2012*, January 2002, <http://www.cbo.gov/showdoc.cfm?index=3277&sequence=2>.
- <sup>11</sup> CBO, *The Budget and Economic Outlook: Fiscal Years 2007–2016*, January 2006, Chapter 1, p. 9. <http://www.cbo.gov/ftpdocs/70xx/doc7027/01-26-BudgetOutlook.pdf>.
- <sup>12</sup> Figures for 2004 outlays and deficit are contained in Congressional Budget Office, *The Budget and Economic Outlook* edition of January 2005, <http://www.cbo.gov/ftpdocs/60xx/doc6060/01-25-BudgetOutlook.pdf>.
- <sup>13</sup> Tax figures from U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Table No. 464, “Federal Receipts by Source: 1990 to 2005,” p. 320, <http://www.census.gov/prod/2005pubs/06statab/fedgov.pdf>.
- <sup>14</sup> Ibid.
- <sup>15</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Table 767, “Corporate Profits Before Taxes by Industry: 1999 to 2003,” p. 527, <http://www.census.gov/prod/2005pubs/06statab/business.pdf>. Profits do not reflect inventory valuation and capital consumption adjustments.
- <sup>16</sup> GDP figures for Canada and Mexico are from U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Table 1328, “Gross Domestic Product (GDP) by Country: 1995 to 2003,” p. 874, <http://www.census.gov/prod/2005pubs/06statab/intlstat.pdf>.
- <sup>17</sup> Congressional Budget Office, 2006, p. 9.
- <sup>18</sup> Susan Dudley and Melinda Warren, “Moderating Regulatory Growth: An Analysis of the U.S. Budget for Fiscal Years 2006 and 2007,” *Regulator’s Budget Report 28*, published jointly by the Weidenbaum Center and the Mercatus Center, May 2006, p. 25, <http://www.mercatus.org/pdf/materials/1683.pdf>. Original 2000 constant dollars are adjusted by the change in the consumer price index between 2000 and 2004, derived from U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Table No. 706, “Consumer Price Indexes (CPI-U) by Major Groups: 1980 to 2004,” p. 482, <http://www.census.gov/prod/2005pubs/06statab/prices.pdf>.
- <sup>19</sup> Ibid. This figure is also adjusted by the change in CPI.
- <sup>20</sup> Ibid., p. 26.
- <sup>21</sup> See, for example, Cindy Skrzycki, “‘Midnight Regulations’ Swell Register,” *The Washington Post*, January 23, 2001, p. E1.
- <sup>22</sup> Counting 2000 as part of the new millennium, which is technically incorrect.
- <sup>23</sup> National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, printed in *Federal Register* 70, No. 209, October 31, 2005. Cited hereinafter as *Agenda*.
- <sup>24</sup> Though the *Agenda* is published twice a year, this document tracks each year’s October or December year-end compilation.
- <sup>25</sup> *Agenda*, p. 64,080.
- <sup>26</sup> Ibid., p. 65,709.
- <sup>27</sup> The legislation and executive orders by which agencies are directed to assess impacts on state and local governments are described in *ibid.*, pp. 74, 315.

- <sup>28</sup> General Accounting Office website, “Reports on Federal Agency Major Rules,” <http://www.gao.gov/decisions/majrule/majrule.htm>.
- <sup>29</sup> Dudley and Warren, from pp. 16 and 17.
- <sup>30</sup> Noted in letter to the Hon. Jacob J. Lew, director, Office of Management and Budget, from Sen. Fred Thompson (R-Tenn.), chairman, Senate Committee on Governmental Affairs, and Sen. Ted Stevens (R-AK), chairman, Senate Committee on Appropriations, October 10, 1998, p. 2.
- <sup>31</sup> For a complete analysis see David Schoenbrod and Jerry Taylor, “The Delegation of Legislative Powers,” *Cato Handbook for Congress: Policy Recommendations for the 108th Congress*, pp. 77–85, <http://www.cato.org/pubs/handbook/hb108/hb108-8.pdf>.
- <sup>32</sup> Derived from “Catalog of Public and Private Laws—109th Congress,” National Archives and Records Administration, <http://www.access.gpo.gov/nara/publaw/109publ.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.

Crews has published in outlets such as the *Wall Street Journal*, *Chicago Tribune*, *Forbes*, *Atlanta Journal-Constitution*, *Communications Lawyer*, and *Electricity Journal*. He has made various TV appearances on Fox, CNN, ABC, and other media outlets, and his regulatory reform ideas have been featured prominently in such publications as the *Washington Post*, *Forbes*, and *Investor’s Business Daily*. He is frequently invited to speak, and has testified before several congressional committees.

Crews is co-editor of the books *Who Rules the Net: Internet Governance and Jurisdiction* (2003) and *Copy Fights: The Future of Intellectual Property in the Information Age* (2002). He is co-author of *What’s Yours Is Mine: Open Access and the Rise of Infrastructure Socialism* (2003), and a contributing author to others.

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