

2012

Ten Thousand Commandments

An Annual Snapshot of the Federal Regulatory State

By Clyde Wayne Crews Jr.



Competitive Enterprise Institute

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Executive Summary

President Barack Obama's federal budget proposal for fiscal year (FY) 2013 sought a record \$3.803 trillion in discretionary, entitlement, and interest spending.¹ In the previous fiscal year, the president had proposed outlays of \$3.78 trillion. As of January 2012, the Congressional Budget Office (CBO) projects FY 2012 spending will end up at \$3.601 trillion.²

For reference, President George W. Bush proposed not only the first-ever \$3 trillion U.S. budget, but also the first \$2 trillion federal budget—in 2002, just 10 years ago.³ We are now approaching the era of the \$4 trillion budget.

The result: With spending escalation comes deficit escalation. FY 2011 concluded with a \$1.296 trillion deficit, matching FY 2010's \$1.294 trillion.⁴ CBO's deficit projection for FY 2012 (which will conclude September 30) stands at \$1.079 trillion as of January 2012.⁵

Trillion-dollar deficits were once unimaginable; such sums once signified only the level

of budgets themselves, not of shortfalls. At least with the unveiling of the 2013 budget, President Obama projected smaller deficits, with 2013's claimed \$901 billion to fall to \$575 billion in 2018, but rising thereafter.⁶ At no point is spending projected to balance in the coming decade.

To be sure, many other countries' governments consume a greater share of their national output than the U.S. government does.⁷ However, in absolute terms, the U.S. government is the largest government on the planet—whether one's metric is revenues, expenditures, deficits, or accumulated debt. Only seven other nations top \$1 trillion in annual government revenues, and none but the United States collects over \$2 trillion.⁸

Regulation: A Hidden Tax

The scope of federal government spending and deficits is sobering. Yet the government's reach extends well beyond the taxes Washington collects and its deficit spending and borrowing. Federal environmental, safety

Precise regulatory costs can never be fully known because, unlike taxes, they are unbudgeted and often indirect—even unmeasurable as such.

and health, and economic regulations cost hundreds of billions—perhaps trillions—of dollars every year over and above the costs of the official federal outlays that dominate the policy debate.

Economics 101 on tax incidence explains how and why firms generally pass along to consumers the costs of some taxes.⁹ Likewise, some regulatory compliance costs that businesses face will find their way into the prices consumers pay and into wages earned. Precise regulatory costs can never be fully known because, unlike taxes, they are unbudgeted and often indirect—even unmeasurable as such.¹⁰ But scattered government and private data exist on scores of regulations and on the agencies that issue them, as well as estimates of regulatory costs and benefits. Compiling some of that information can make the regulatory state somewhat more comprehensible. That is one purpose of the annual *Ten Thousand Commandments* report, highlights of which appear next.

- The most recent Small Business Administration (SBA) evaluation of the overall U.S. federal regulatory enterprise, prepared by economists Nicole V. Crain and W. Mark Crain, estimated annual regulatory compliance costs of \$1.752 trillion in 2008.
- Earlier SBA reports pegged costs at \$1.1 trillion in 2005 and at \$843 billion in 2001. Meanwhile, a subset of 105 rules reviewed during 2000-2012 by the Office of Management and Budget (OMB) notes annual costs of between \$44 billion and \$62 billion.
- Given 2011's actual government spending or outlays of \$3.598 trillion, SBA's estimated regulatory "hidden tax" stands at 48.7 percent of the level of federal spending itself.
- The dramatic reality that regulations and recent deficits now each exceed \$1 trillion a year is an unsettling development for the United States. Back in 2008, estimated regulatory costs were more than double that year's \$459 billion budget deficit. But the deficit spending surge to more than \$1 trillion annually

since 2009 has institutionalized a deficit nearly equivalent to estimated annual regulatory compliance costs.

- Government spending's relationship to government regulation bears scrutiny by policy makers. Unchecked outlays and deficit spending that enlarge the scope of government can translate, in later years, into greater regulatory compliance costs as well.
- SBA-estimated regulatory costs exceed all 2009 corporate pretax profits of \$1.317 trillion.
- Regulatory compliance costs dwarf corporate income taxes of \$198 billion.
- Regulatory costs tower over the estimated 2011 individual income taxes of \$956 billion by 83 percent.
- Regulatory costs of \$1.752 trillion amount to 11.7 percent of the U.S. gross domestic product (GDP), estimated at \$14.954 trillion in 2011.
- Combining regulatory costs with federal FY 2011 outlays of \$3.598 trillion reveals a federal government whose share of the entire economy now reaches 36 percent.
- The Weidenbaum Center at Washington University in St. Louis and the Mercatus Center at George Mason University in Arlington, Virginia, jointly estimate that agencies spent \$55 billion (on budget) to administer and police the regulatory enterprise. Adding the \$1.752 trillion in off-budget compliance costs brings the total regulatory enterprise to around \$1.8 trillion.
- The 2011 *Federal Register* stands at 81,247 pages. That number is just shy of 2010's all-time record-high 81,405 pages. These years are the only two in which the number of *Federal Register* pages topped 81,000.
- *Federal Register* pages devoted specifically to final rules rose by 5.4 percent—from 24,914 to a near-record-high 26,274 in 2011.
- In 2011, agencies issued 3,807 final rules, compared with 3,573 in 2010, a 6.5-percent increase.
- Proposed rules appearing in the *Federal Register* increased even more than the number of final rules, from 2,439 to

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2,898, an 18.8-percent increase that signals a likely future rise in final rules.

- The annual outflow of over 3,500 final rules has meant that nearly 66,840 rules have been issued since 1995.
- Although regulatory agencies issued 3,807 final rules in 2011, Congress passed and the president signed into law a comparatively few 81 bills. Substantial lawmaking power is delegated to unelected bureaucrats at agencies.
- According to the fall 2011 “Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions” in the *Federal Register*, which lists federal regulatory actions at various stages of implementation, 60 federal departments, agencies, and commissions have 4,128 regulations at various stages of implementation.
 - The “Completed” component of these 4,128 rules rose by 39.9 percent, from 722 to 1,010.
 - The “Active” component—prerule and proposed and final rules—has stood well above 2,600 annually for the current administration.
- Of the 4,128 regulations now in the pipeline, 212 are “economically significant” rules wielding at least \$100 million in economic impact. That number represents a 32.5-percent jump over the 160 rules five years ago, in 2006, and a higher level than any year of the past decade except for the 224 rules in 2010.
- Total economically significant rules finalized annually are down slightly from 2010 (81 to 79), but are up by 92.7 percent over five years, and 108 percent over 10 years.
- If one assumes that those rulemakings are primarily regulatory (even if some are deregulatory) and cost only \$100 million rather than multiples of that figure, that number implies roughly \$21 billion yearly in future off-budget regulatory effects.
- Of the 4,128 regulations now in the works, 822 affect small businesses. Of those, 418 required a regulatory flexibility analysis and 404 were otherwise noted by agencies to affect small business.

- The number of final “major rule” reports issued by agencies and reviewed by the Government Accountability Office (GAO) has grown. The 99 rules of 2010 represented the highest number since this tabulation began. Five years ago, there were 56 such reports.
- The five most active rule-producing agencies—the departments of the Treasury, Commerce, the Interior, and Agriculture, along with the Environmental Protection Agency (EPA)—account for 1,733 rules, or 42 percent of all rules in the Unified Agenda pipeline.

Liberate to Stimulate?

The short-lived string of budgetary surpluses enjoyed from 1998 to 2001 (the first since 1969) seems like ancient history—even inconceivable—in today’s debt- and deficit-drenched culture. Indeed, CBO projects no surpluses whatsoever over the coming decade, merely deficits of hundreds of billions each year. However, if regaining and maintaining a surplus ever again becomes a political priority, policy makers must control regulatory costs as well. The dramatic fact of regulations and deficits—now each exceeding \$1 trillion a year—is an unsettling new development for America. The deficit is already widely—and appropriately—targeted by the media, citizens, and policy makers, but reducing the scope of the regulatory state and fostering a “deregulatory stimulus” can help alleviate it as well. When it comes to stimulating a limping economy, both reducing deficits and ensuring that regulations are bearable are critical for economic health. Better regulatory oversight and monitoring can help “liberate to stimulate.”

Taxation and regulation can substitute for each other, and the pressure for deficit reduction can invite lawmakers to opt for off-budget regulations on the private sector rather than adding to already-unchecked deficit spending. A new government program—for example, job training—would require either increasing government spending on the one hand or imposing new rules and regula-

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tions requiring such training on the other. If regulatory costs remain largely hidden from public view, regulating will become increasingly attractive to lawmakers, compared with increasingly unpopular taxing and spending. That should be avoided.

Disclosure and Accountability

Like federal spending, each agency's stream of regulations and their costs should be disclosed, tracked, and monitored annually. Occasionally, housecleaning should be performed. Cost-benefit analysis of rules is the usual approach suggested for policing regulation. A problem with cost-benefit analysis, however, apart from it not being done and enforced, is that it largely amounts to agency self-policing. Agencies that perform audits of their own rules rarely admit that a rule's benefits do not justify the costs involved, and one could expect new, perhaps dubious, categories of benefits to emerge.¹¹ Cost-benefit analysis at the agency level is already controversial and sometimes ne-

glected, so at minimum, some third-party review is needed.

Another reform alternative is to sidestep the cost-benefit debate and go to the source of the matter—the extent of delegation of rule-making power to agencies. Congress should answer for the compliance costs—as well as benefits—of federal regulations. Therefore, requiring expedited votes on economically significant or controversial agency rules before they become binding on the population would reestablish congressional accountability, helping affirm a principle of “no regulation without representation.”

Disclosing regulatory costs remains important even if Congress were to approve rules. Openness about regulatory facts and figures is critical, just as disclosure of program costs is critical in the federal budget. Simple federal “regulatory report cards,” similar to the presentation in *Ten Thousand Commandments*, could be officially issued each year to distill information to the public and policy makers about the scope of the regulatory state.

Overview: Toward Ending “Regulation without Representation”

The federal government funds programs either by raising taxes or by borrowing funds—with a promise to repay, with interest, from future tax collections. However controversial government spending programs may be to some, taxpayers can examine costs in the federal budget. Congress’s spending accountability, though imperfect, is a necessary condition for government’s accountability to voters.

The government can also “fund” programs or pursue objectives by regulating the private sector, thereby advancing federal government initiatives or goals without using tax dollars. Rather than pay directly and book expenses for new initiatives, the federal government can require the private sector, as well as state and local governments, to pay for federal initiatives through compliance costs.

Table I. The Regulatory State: A 2012 Overview

	Year-End 2011	1-Year Change	5-Year Change (2007-2011)	10-Year Change (2002-2011)
Total regulatory costs	\$1.752 trillion	n/a	n/a	n/a
Agency enforcement budgets	\$54.6 billion	4.3%	18.8%	40.3%
<i>Federal Register</i> pages	81,247	-0.2%	12.7%	7.0%
Devoted to final rules	26,274	5.45%	15.4%	36.6%
<i>Federal Register</i> final rules	3,807	6.5%	5.9%	-8.6%
Total rules in Agenda	4,128	-2.3%	6.3%	-1.4%
Completed	1,010	39.9%	47.7%	n/a
Active	2,676	-0.7%	10.4%	n/a
Long-term	442	-45.2%	42.9%	n/a
Code of Federal Regulations pages	169,301	2.3%	8.5%	16.7%
“Economically significant” rules in the pipeline	212	-5.3%	32.5%	55.9%
Completed	45	-11.8%	73.1%	164.7%
Active	138	-1.4%	34.0%	53.3%
Long-term	29	-12.1%	-6.5%	0.0%
Total “economically significant” rules completed annually	79	-2.5%	92.7%	108.0%
Rules affecting small business	822	-2.7%	8.6%	-7.8%
Regulatory flexibility analysis required	418	-2.3%	11.5%	15.5%
Regulatory flexibility analysis not required	404	-3.1%	5.7%	-23.8%
Rules affecting state governments	511	-6.6%	-5.2%	-5.2%
Rules affecting local governments	316	-8.7%	-5.4%	-12.9%
GAO reports on major rules (year-end 2010)	99	17.9%	76.8%	41.4%

Note: n/a = not applicable.

Disclosure of and accountability for regulatory costs are spotty. This allows policy makers to be reckless about imposing regulatory costs relative to undertaking ordinary—but more publicly visible—government spending. Where regulatory compliance costs prove burdensome, Congress can escape accountability by blaming an agency that issued an unpopular rule. Because regulatory costs are not budgeted and because they lack the formal public disclosure that accompanies federal spending, regulatory initiatives can enable federal direction of private-sector resources with comparatively little public fuss—thus rendering regulation a form of off-budget taxation. Table 1 provides some perspective on the regulatory “tax” by presenting summary data for selected topics described within *Ten Thousand Commandments*. Trends over the past few years are provided where information is available.

Ten Thousand Commandments for 2012 features four sections:

1. An overview of the costs and scope of the regulatory state, such as its esti-

mated size compared with 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 in “The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions.”
3. Recommendations for reform that emphasize improving congressional accountability for rulemaking. This section offers steps to improve regulatory transparency via a “regulatory report card” and to increase congressional responsibility to voters for costly or controversial rules. It then contrasts those steps with the agency-driven cost-benefit analysis commonly emphasized in reform proposals.
4. An appendix containing historical tables of regulatory trends over the past decades.

The Regulatory State and Its Cost

The 2011 *Report to Congress* from the Office of Management and Budget surveying regulatory costs and benefits pegs the cumulative costs of 105 selected major regulations during 2000-2010 at between \$44 billion and \$62 billion (up from 95 rules at between \$43 billion and \$55 billion in the 2010 report). Meanwhile, the estimated range for benefits spanned \$132 billion to \$655 billion.¹²

OMB's cost-benefit breakdown incorporates only benefits and costs that agencies or OMB have expressed in quantitative and monetary terms, omitting numerous categories and cost levels of rules altogether; rules from independent agencies are entirely absent. Cost-benefit analyses are also sensitive to basic assumptions about how regulations translate into benefits.

For an overall cost assessment of the entire regulatory enterprise, economists Nicole V. Crain and W. Mark Crain prepared a comprehensive estimate in September 2010 for the Small Business Administration.¹³ This occasional SBA report has traditionally assessed economic regulatory costs (for example, price-and-entry restrictions and "transfer" costs, such as price supports, which shift money from one pocket to another); workplace costs; environmental regulatory costs; and paperwork costs (for example, tax compliance). Crain and Crain used different modeling techniques this time around and pegged estimated regulatory compliance costs at \$1.752 trillion for 2008.¹⁴ Meanwhile, other developments—including the aftermath of recent major financial and other interventions—point to substantial prevailing regulatory costs.¹⁵ It is unfortunate that the SBA study is the federal

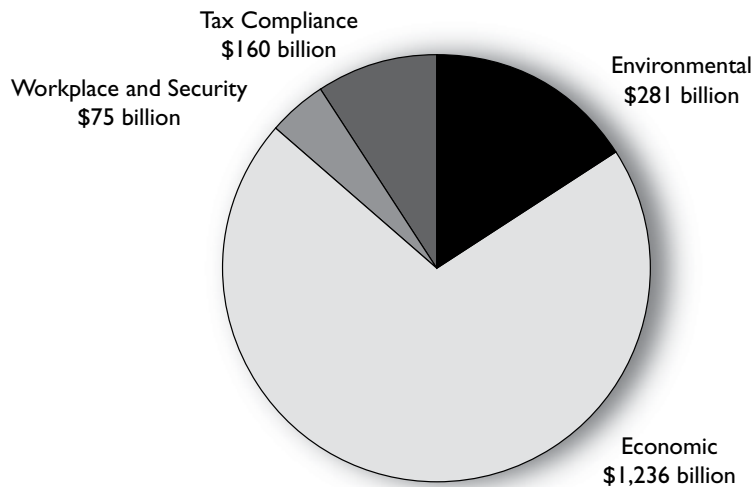
government's sole assessment of itself on the regulatory front—particularly since establishing the overall cost of regulation is not even the SBA study's mission. Rather, the report's essential task is an assessment of small-firm impacts of regulation.

In any event, Figure 1 breaks down the SBA regulatory cost estimate by categories: economic, environmental, tax compliance, and workplace. Economic costs, the largest category at \$1.236 trillion, indirectly capture such elements as price-and-entry controls on business and losses from economic transfers (see note 14 for links to Crain and Crain's responses to criticisms of this component of their study). Recent regulatory interventions related to the various stimulus and bailout programs and regulatory costs associated with the recent health care and financial reform legislation can be assumed to have future impacts. Indirect costs—such as the effects of lost innovation or productivity—are notoriously difficult to determine and can lead to underestimates of the total regulatory burden.¹⁶ Regulatory benefits are beyond the scope of the Crain and Crain cost analysis, although those benefits would be recognized as offsetting some costs.¹⁷

The Crain and Crain report also notes the extent to which regulatory costs impose higher burdens on small firms, for which per-employee regulatory costs are higher. Overall, regulatory costs amount to \$8,086 per employee. But Table 2 shows, for 2008, per-employee regulatory costs for firms of fewer than 20 workers can be more than 36 percent greater than for larger firms—\$10,585 for smaller firms versus \$7,755 for larger ones.¹⁸

After nearly three decades of deficit spending, the federal government temporarily balanced the budget from FY 1998 through FY 2001. Those days are history.

Figure 1. 2008 Federal Regulatory Costs, \$1.752 Trillion



Source: Nicole V. Crain and W. Mark Crain, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBAHQ-08-M-0466, September 2010, <http://www.sba.gov/advo/research/rs371tot.pdf>.

Note: The “Workplace” category has been updated to include Homeland Security and Occupational Safety and Health. Costs presented in 2009 dollars.

Table 2. Per-Employee Regulatory Costs Higher for Small Firms, 2008

Size of Firm	Regulatory Costs per Employee
Large > 500 employees	\$7,755
Medium 20-499 employees	\$7,454
Small < 20 employees	\$10,585

Source: Nicole V. Crain and W. Mark Crain, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBAHQ-08-M-0466, September 2010, <http://archive.sba.gov/advo/research/rs371tot.pdf>.

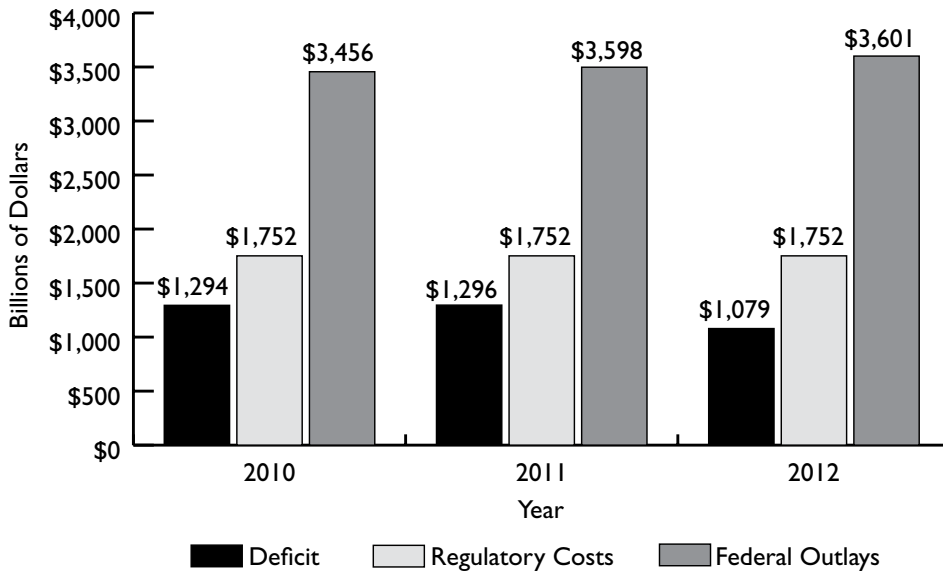
Note: Costs presented in 2009 dollars.

Regulatory Compliance Costs—Catching Up to Government Spending?

After nearly three decades of deficit spending, the federal government temporarily balanced the budget from FY 1998 through FY 2001. (The total surplus was \$128 billion

in FY 2001.)¹⁹ Those days are history. In FY 2011, a deficit of \$1.296 trillion was posted on \$3.598 trillion in outlays, with no balance—let alone surplus—projected over the coming decade. In fact, the smallest deficit projected is an optimistic \$196 billion in 2018.²⁰ (In FY 2010, a deficit of \$1.294 trillion was posted on \$3.456 trillion in outlays. In FY 2009, the figures were \$1.414

Figure 2. Off-Budget Estimated Regulatory Compliance Costs Compared with Federal Spending, 2010–2011 and Projected 2012



Sources: The 2010 deficit and outlays are from CBO, *The Budget and Economic Outlook: Fiscal Years 2011 to 2021*, January 2011, Table 1-4, p. 15, http://www.cbo.gov/ftpdocs/120xx/doc12039/01-26_FY2011_Outlook.pdf. The 2011 actual and 2012 projected deficit and outlays are from CBO, *The Budget and Economic Outlook: Fiscal Years 2012 to 2022*, January 2012, Table 1-1, “Deficits or Surpluses Projected in CBO’s Baseline,” p. 2, http://www.cbo.gov/ftpdocs/126xx/doc12699/01-31-2012_Outlook.pdf.

Estimated regulatory costs are from Nicole V. Crain and W. Mark Crain, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBAHQ-08-M-0466, September 2010, <http://www.sba.gov/advo/research/rs371tot.pdf>.

Note: Federal deficit and outlay numbers are by fiscal year; regulatory costs represent calendar year 2008, presented in 2009 dollars, and carried through 2012 on a static basis.

trillion and \$3.518 trillion, respectively, and in FY 2008, \$459 billion and \$2.98 trillion, respectively.)²¹

Figure 2 compares deficits and outlays during 2010–2011 with the Crain and Crain regulatory cost estimate, along with 2012 projections. Note that the regulatory compliance estimate is equivalent to nearly half the level of fiscal budget outlays. In recent years, the costs of regulation had been more than double the federal deficit. Now, in the wake of the economic downturn and escalated federal spending, the deficit has expanded to rival the costs of regulation. In a sense, regulations themselves constitute off-budget deficit spending—the costs of federal re-

quirements that the population is compelled to bear—so to pair the two is useful.

The federal spending surge heralds new regulation

Contemplating off-budget regulatory compliance costs equivalent to nearly half the federal outlays is sobering enough, but the situation is more precarious now given that Washington’s high-spending culture has led to a deficit that also occupies great heights.

Higher spending can translate into even higher future regulatory costs. Spending

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If regulatory compliance costs prove burdensome, Congress can escape accountability by blaming the agencies that issue the unpopular rules.

related to bailouts and such stimulus as infrastructure, banking restructuring, energy-efficiency mandates, and the like will include significant regulatory components as well (for example, salary cap proposals for bailed-out banks, as well as “net neutrality” proposals with respect to telecommunications infrastructure spending). That bears repeating: New spending related to bailouts, stimulus, and calls for investment in recent State of the Union addresses will have future regulatory cost implications.

Deficit spending that eclipses regulation has ominous implications

The noted \$1.296 trillion deficit for FY 2011 is larger than all federal budget outlays as recently as 1990.²² Indeed, as we approach the \$4 trillion mark in outlays (again, CBO projects FY 2012 outlays of \$3.601 trillion), the days of a \$2 trillion federal budget that used to be regarded as high seem to have passed in the blink of an eye. President George W. Bush—only four years ago—presented the first \$3 trillion budget, and the first \$2 trillion budget in 2002.²³

Trillion-dollar-plus deficits and regulatory costs exceeding a trillion dollars are both unsettling new developments for America. Both dwarf the initial \$150 billion “stimulus package” of early 2008, which comprised the tax rebates that were to resurrect the economy at that time. Where we go from here is a tough call, after far larger stimulus packages have not increased employment. Back in March 2009, then–House Budget Committee Chairman John Spratt (D-S.C.) reflected on how quickly circumstances change:

Economic forecasting is a risky business. A year ago, economists projected a deficit of about \$200 billion for 2009. Economists now project a deficit about nine times that large, due mainly to extraordinary events that no one foresaw a year ago.²⁴

Policy makers would do well to contemplate how the spending and deficit culture leads

to growth in off-budget regulation. Projecting the impact of regulation is also risky business.

A retreat from deficit spending could mean more regulation

As noted in the introductory summary, taxation and regulation can substitute for each other because regulation can advance government initiatives without using tax dollars. Rather than pay directly and book expenses for new programs, the government can require the private sector—as well as state and local governments—to pay for federal initiatives through compliance costs.

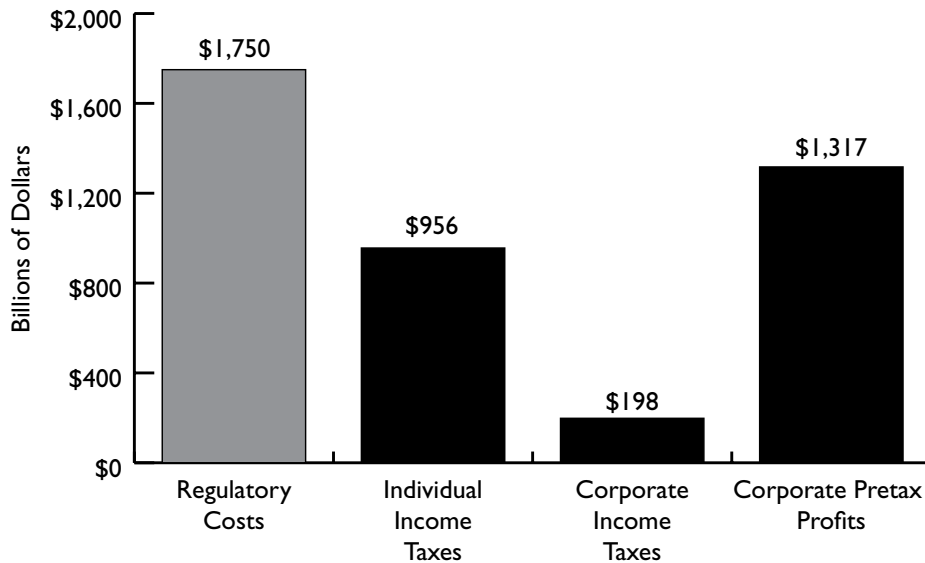
Because such regulatory costs are not budgeted and lack the formal public disclosure of federal spending, they may generate comparatively little public outcry. Regulation thus becomes a form of off-budget or hidden taxation.

As the mounting federal debt causes concern, the impulse to regulate instead can also mount. Deficit spending, in a manner of speaking, can manifest itself as regulatory compliance costs that go largely unacknowledged by the federal government. Worse, if regulatory compliance costs prove burdensome, Congress can escape accountability by blaming the agencies that issue the unpopular rules.

Regulatory Costs versus Income Taxes and Corporate Profits

Regulatory costs now easily exceed the cost of individual income taxes and vastly exceed revenue from corporate taxes. As Figure 3 shows, regulatory costs now tower over the estimated 2011 individual income taxes of \$956 billion (individual income tax receipts have fallen substantially in the economic downturn).²⁵ Corporate income taxes, estimated at \$198 billion, are dwarfed by regulatory costs (and have declined by half in the downturn).²⁶ As the last bar of Figure 3 shows, regulatory compliance costs exceed the level of pretax corporate profits, which

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



Sources: Nicole V. Crain and W. Mark Crain, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBAHQ-08-M-0466, September 2010, <http://www.sba.gov/advo/research/rs371tot.pdf>. Estimated 2011 tax figures from U.S. Census Bureau, *Statistical Abstract of the United States: 2012*, Table 475 titled “Federal Budget Receipts by Source: 1990 to 2011,” <http://www.census.gov/compendia/statab/2012/tables/12s0475.pdf>. The 2009 profits from U.S. Census Bureau, *Statistical Abstract of the United States: 2012*, Table 793, “Corporate Profits before Taxes by Industry: 2000 to 2009,” <http://www.census.gov/compendia/statab/2012/tables/12s0793.pdf>.

Note: Profits do not reflect inventory valuation and capital consumption adjustments.

were \$1.317 trillion in 2009.²⁷ (Corporate profits have dropped over the past few years.) For a global perspective, U.S. regulatory costs of \$1.752 trillion exceed the output of many major national economies. Figure 4 shows that U.S. regulatory costs surpassed the entire 2009 gross national incomes of Mexico and Canada, which stood at \$962 trillion and \$1.416 trillion, respectively.²⁸ For the United States, CBO noted 2011 GDP of \$14.954 trillion.²⁹ Total regulatory costs of \$1.752 trillion are equivalent to 11.7 percent of that amount. Combining regulatory costs with federal FY 2011 outlays of \$3.598 trillion indicates that the federal government’s share of the economy (of GDP) now reaches 35.8 percent.

The Federal Government’s Costs of Policing the Regulatory State

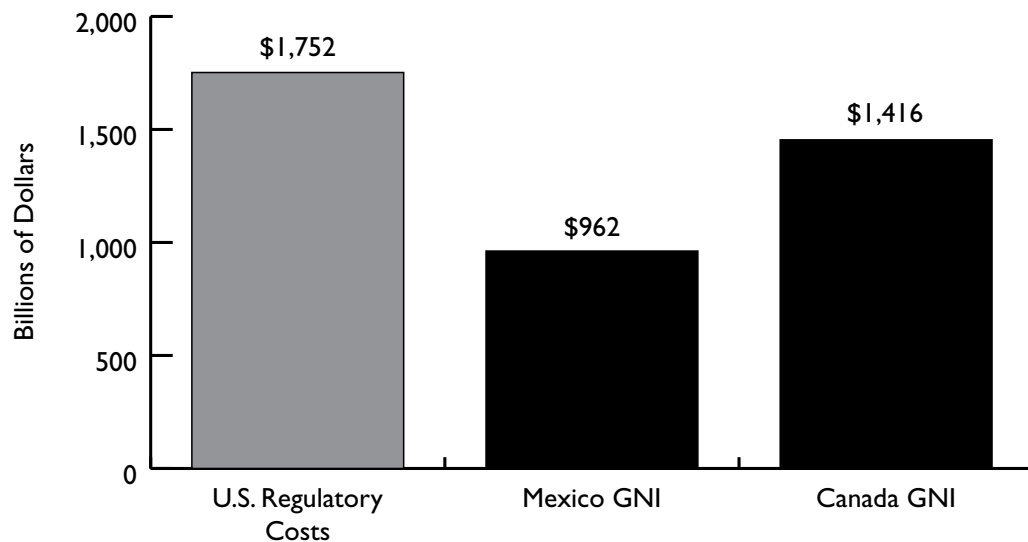
The Crain and Crain regulatory cost estimates encompass compliance costs paid by

the public. But those estimates do not include the costs of *administering* the regulatory state—the on-budget amounts spent by federal agencies to produce rules and to police regulatory compliance. The Weidenbaum Center at Washington University in St. Louis and the Regulatory Studies Center at George Washington University in Washington, D.C., examined the federal budget to excerpt and compile the administrative costs of developing and enforcing regulations. The amounts are disclosed in the federal budget because those funds are amounts that taxpayers pay to support agencies’ administrative budgets, rather than compliance costs paid by the regulated parties.

The FY 2011 enforcement costs incurred by federal departments and agencies stood at an estimated \$55 billion (in constant 2010 dollars), a slight increase over the previous year (Figure 5).³⁰ The Environmental Protection Agency alone spent \$5.48 billion, accounting for 10 percent of the total expected to

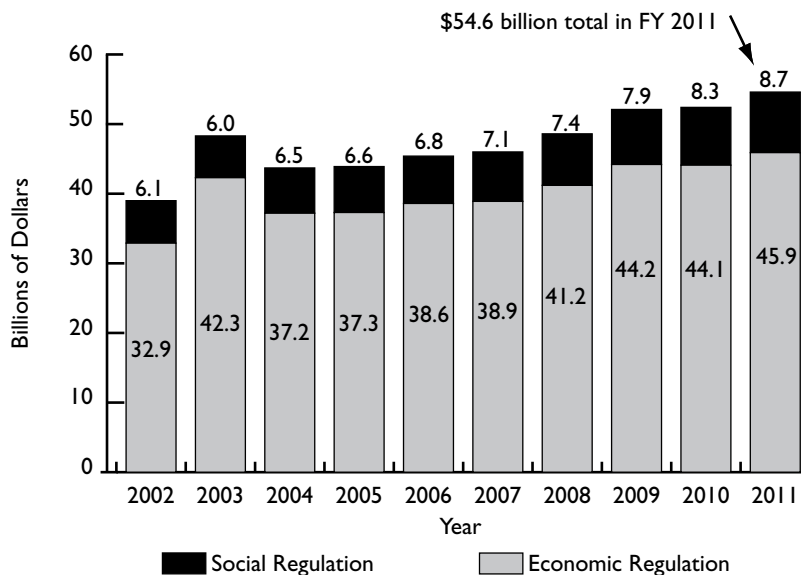
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Figure 4. U.S. Regulatory Costs Compared with Mexico's and Canada's Gross National Income



Sources: Nicole V. Crain and W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBAHQ-08-M-0466, September 2010, <http://www.sba.gov/advo/research/rs371tot.pdf>. GNI figures for Canada and Mexico are from U.S. Census Bureau, *Statistical Abstract of the United States: 2012*, Table 1348, "Gross National Income (GNI) by Country: 2000 and 2009," <http://www.census.gov/compendia/statab/2012/tables/12s1348.pdf>.

Figure 5. Agency Enforcement Budgets, 2002–2011



Source: Susan Dudley and Melinda Warren, "Fiscal Stalemate Reflected in Regulators' Budget: An Analysis of the U.S. Budget for Fiscal Years 2011 and 2012," *Regulators' Budget* 33, published jointly by the Regulatory Studies Center at George Washington University and the Weidenbaum Center on the Economy, Government, and Public Policy, May 2011, p. 25, http://wc.wustl.edu/files/wc/2012_Regulators_Budget_2_1.pdf.

Note: Original 2005 constant dollars are adjusted here by the change in the consumer price index between 2005 and 2010, derived from U.S. Census Bureau, *Statistical Abstract of the United States: 2012*, Table 725, "Consumer Price Indexes (CPI-U) by Major Groups: 1990 to 2010," <http://www.census.gov/compendia/statab/2012/tables/12s0725.pdf>.

be spent by all regulatory agencies. Of that amount, \$8.7 billion was spent administering economic regulations. The larger amount spent for writing and enforcing social and environmental regulations was \$45.9 billion. Those enforcement costs help complete the picture of the federal regulatory apparatus. Adding the \$55 billion in administrative costs tabulated by the Weidenbaum Center and Mercatus Center to the \$1.752 trillion in the Crains' estimate for compliance costs brings the total estimated 2010 regulatory burden to around \$1.8 trillion.

Estimated full-time-equivalent employment staffing reached 271,235 in FY 2010, according to the Weidenbaum and George Washington University report—46.6 percent above staffing levels in 2002 (that is, a decade ago). The post-2002 surges apparent in their data appear largely attributable to the newly created Transportation Security Administration's hiring of thousands of airport personnel. Over the past year, overall staffing is up by 3 percent.

Thousands of Pages in the *Federal Register*

*Despite limitations,
it remains
worthwhile to
track the Federal
Register's growth
according to its
page counts,
provided the
caveats listed are
kept in mind.*

The *Federal Register* is the daily depository of all proposed and final federal rules and regulations. The number of pages in the *Federal Register* is probably the most frequently cited measure of regulation's scope. Yet serious problems exist with using the number of pages alone as a proxy for regulation. For example, in 2002, several thousand pages pertained to the Justice Department's Microsoft settlement—important, but not useful as a component of a precise gauge of government-wide goings-on. Many newer rules address homeland security, an important general pursuit regardless of specific policy battles. Even efforts to reduce regulation and lessen burdens would involve agencies' posting of lengthy notices in the *Federal Register*, but those are not factors now bulking up the *Register*.

There are obvious problems with relying on page counts. The wordiness of rules will vary, thus affecting the number of pages and obscuring the real effects of the underlying rules. A short rule could be costly and a lengthy one relatively cheap. Furthermore, the *Federal Register* contains administrative notices, rules relating to the governance of federal programs and budgetary operation, corrections, presidential statements, and other material. Blank pages sometimes appear—in the old days, they numbered into the thousands owing to the Government Printing Office's imperfect prediction of the number of pages a given agency would require. (Here, we net out those blanks and skips.)

Despite limitations, it remains worthwhile to track the *Federal Register's* growth according to its page counts, provided the caveats listed above are kept in mind. Tens of thou-

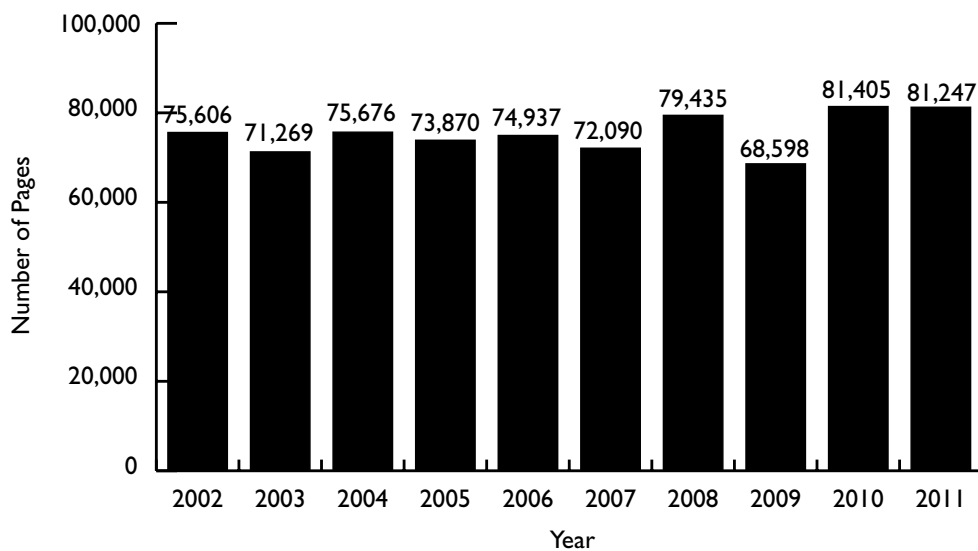
sands of pages stream from America's departments, agencies, and commissions. As Figure 6 shows, at the end of 2011, the number of pages stood at 81,247, just shy of 2010's all-time record of 81,405. Both are an increase of over 18 percent from 68,598 pages in 2009. (The previous record high was 79,435 pages in 2008.)

Referring again to Figure 6, the fourth-highest page count had been 75,606 in 2002 (the year the Microsoft settlement contributed to the total). After 2002, annual page counts remained above 70,000 until the 2009 dip. The 2011 total means that, overall, the decade from 2002 to 2011 saw the annual page count increase by 7.5 percent. (For a history of *Federal Register* page totals since 1936, see Appendix: Historical Tables, Part A.)

The drop in pages in 2009 looks like an anomaly. Future analysis will have to tell the tale more completely, but there are at least three potential explanations for the notable drop in *Federal Register* pages (and the actual number of rules finalized) in 2009, which occurred between the Bush and Obama administrations:

- The 2009 drop is exaggerated relative to the normal page fluctuations since President Bush issued a flurry of “midnight regulations” at the end of his term in 2008,³¹ the then-record year for *Federal Register* pages. Apart from midnight regulations, the 2009 level still marks a decline from the years before 2008.
- President Obama's appointment of Harvard law professor Cass Sunstein, who is favorable toward cost-benefit analysis, as director of the Office of Informa-

Figure 6. Number of *Federal Register* Pages, 2002–2011



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

tion and Regulatory Affairs could have slowed 2009 rulemaking, had he been promptly confirmed. Cost-benefit analysis is controversial among groups that favor activist agency regulation rather than congressional accountability for legislation.³² However, Sunstein’s Senate approval actually came late in calendar year 2009, so 2010 may be more indicative of his effect, which now appears to have had no braking effect on outflow.

- Finally, the regulatory freeze announced by the president’s chief of staff in January 2009,³³ which applied to Bush regulations still in the pipeline, may have had some measurable effect by slowing what otherwise might have landed in the books during 2009.³⁴ However, this effect, if it even existed, was transitory. A freeze on regulations by the first President Bush did slow regulations the year after its implementation, but rulemaking resumed normal trends once the moratorium was lifted.³⁵ In any event, the longer-term result of any “dampening” effect of this temporary moratorium relative to the expansion of other rules under President George W. Bush remains to be sorted out, but the two

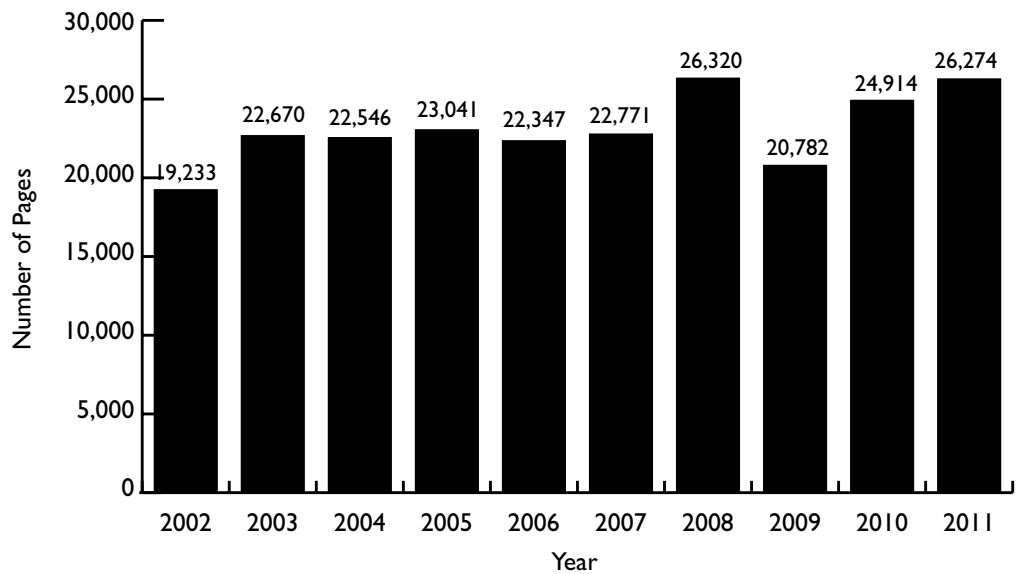
effects are consistent with the surge and the retreat seen in *Federal Register* pages in 2008 and 2009, respectively.

Federal Register Pages Devoted to Final Rules

Gross page counts alone do not reveal whether actual regulatory burdens have increased or decreased; a rule of few pages might impose a significant burden. Isolating the pages devoted specifically to *final* rules might be more informative, because that approach omits pages devoted to proposed rules, agency notices, corrections, and presidential documents. Between 2010 and 2011, the number of pages devoted to final rules rose by 5.5 percent—from 24,914 to a near-record-high 26,274. The all-time record was 26,320 in 2008 (Figure 7); the number had dropped sharply by 21 percent to 20,782 in 2009.

Before the 2008 record and the 2011 height, a count of 24,482 pages back in 2000, during the Clinton administration, had been the highest since the *Federal Register* page-count breakdown by category was first reported

Figure 7. *Federal Register* Pages Devoted to Final Rules, 2002–2011



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

starting in 1976. That count in 2000 was up by 21 percent over 1999 (possibly partly attributable to a midnight regulation effort by President Clinton to complete the backlog of rules before the arrival of the Bush administration). The drop right after Clinton's final year in office was noteworthy in that this Clinton-to-Bush drop mirrors the one seen here from Bush to Obama's first year in terms of pages devoted to final rules.

Figure 7 shows that over the past decade, the number of *Federal Register* pages devoted to final rules has increased by 36.6 percent. The number of final-rule pages has remained above 22,000 since 2003 except for the 2009 dip.

Yet another way of looking at *Federal Register* trends is pages per decade (see Figure 8). During the 1990s, the total number of *Federal Register* pages published was 622,368, whereas the total number published during the 1980s was 529,223. (The busiest year in the 1980s was the 1980 peak of 73,258 pages, as shown in Appendix: Historical Tables, Part A.) Here at the end of the first decade of the 21st century,³⁶ 730,176 pages ultimately appeared—a 17-percent increase

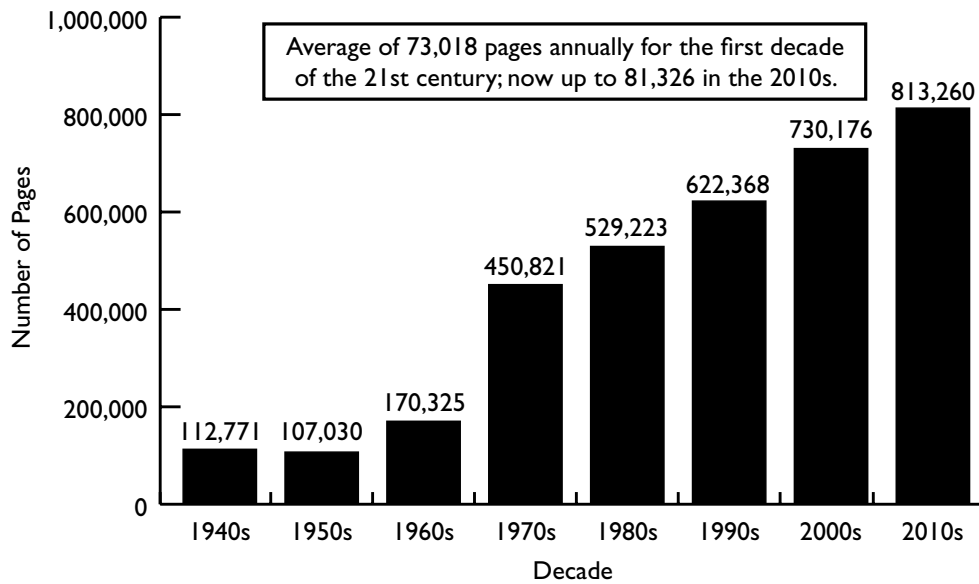
over the 1990s and an average of 73,018 pages annually. If pages hold in the 81,000 range in the 2010s, which is a new phenomenon, there will be a considerable increase for the decade. The last bar of Figure 8 projects the average of the past two years of 81,326, either a taste of what's to come or something to strive to avoid during the second decade of the 21st century.

Although one must recognize the limitations of *Federal Register* page counts, the higher overall number of pages compared with past decades—plus a stream of pages devoted to final rules averaging well over 20,000 annually—credibly signifies 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—not just the page count—published in the *Federal Register* merit attention. As Figure 9 shows, in 2011 the total number of proposed and final rules published rose to

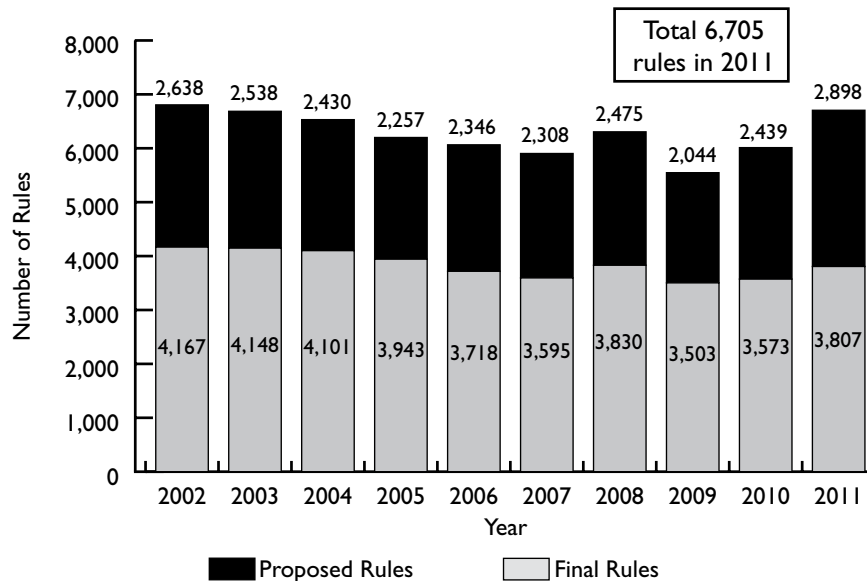
Figure 8. New *Federal Register* Pages per Decade



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

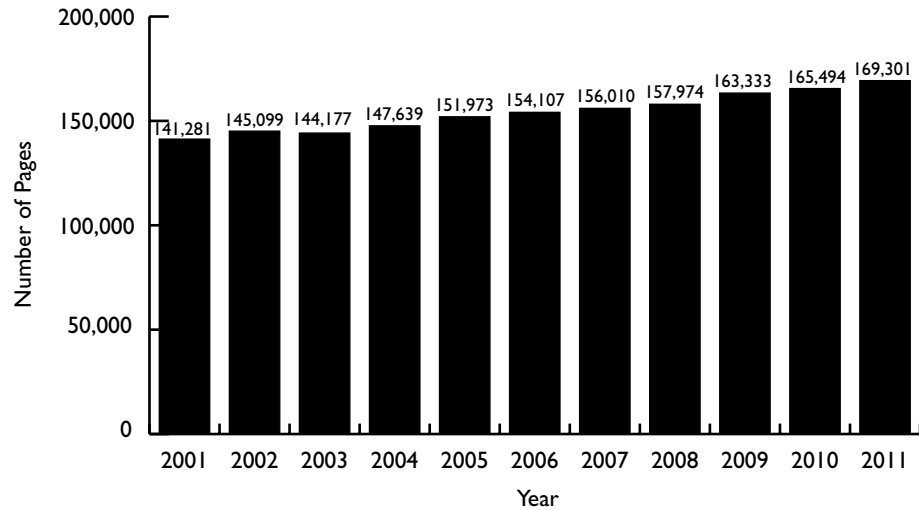
Note: 2010s a projection based on last two years' average.

Figure 9. Number of Rules Published in the *Federal Register*, 2002–2011



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

Figure 10. Code of Federal Regulations, Total Pages, 2001–2011



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

The ceaseless annual outflow of over 3,500 final rules, and often far more, has meant that about 66,840 rules have been issued since 1995.

6,705, an 11.5-percent increase over 6,012 rules in 2010. The number of rules actually finalized by federal agencies in 2010 also rose—from 3,573 to 3,807, a 6.5-percent increase. Perhaps even more significant is the increase in proposed rules appearing in the *Federal Register*. There were 2,439 in 2010, and that number rose by 18.8 percent to 2,898 in 2011, signaling a likely future rise in final rules.

Despite the current surge, the number of final rules currently being published is lower than it was throughout the 1990s, when the average number of annual regulations finalized was 4,596. The average for the first decade of the 21st century (2000–2009) was 3,945. That is a positive trend, one that policy makers should seek to revive by arresting the recent upward growth spurt. As noted before, recent budgetary spending surges point toward likely higher levels of future regulation, as the increase in proposed rules demonstrates. (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 effect of regulation can matter a great deal despite yearly fluctuations. The bottom line is that the ceaseless annual outflow of over 3,500 final rules, and often far more, has meant that about 66,840 rules have been issued since 1995. Although the costs of those rules can vary tremendously, that figure represents a substantial yield of rules and regulations.

The final codification of general and permanent rules as ultimately realized in the Code of Federal Regulations (CFR) is more modest in terms of page counts, if not in costs. But the count is substantial. Back in 1960, the CFR contained 22,877 pages. Since 1975, the total pages in the complete CFR have grown from 71,224 to 169,301 at year-end 2011, including the 1,142-page index. That is a 138 percent increase over the period. The number of CFR volumes stands at 230, compared with 1975's 133. Figure 10 depicts the CFR's page counts over the past decade. (For the detailed breakdown numbers of pages and volumes in the CFR since 1975, see Appendix: Historical Tables, Part C.)

Analysis of the Regulatory Plan and Unified Agenda

The “Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions” (Agenda) usually appears in the *Federal Register* each December (the Fall 2011 edition did not appear until January 20, 2012).³⁷ By detailing rules recently completed, plus those anticipated within the upcoming 12 months by federal departments, agencies, and commissions (60 in this new edition), the Agenda helps gauge the flow in the regulatory pipeline.

The Agenda compiles agency-reported federal regulatory actions at several stages: “prerule,” proposed and final rules, actions completed during the previous few months, and anticipated longer-term rulemakings beyond a 12-month horizon. The Agenda functions like a cross-sectional snapshot of rules moving through the pipeline. Therefore, the rules it contains may often carry over at the same stage from one year to the next, or they may reappear in subsequent Agendas at different stages. The Agenda’s rules primarily affect the private sector, but many also affect state and local governments and the federal government itself.

Agencies, it must be stressed, are not required to limit their regulatory activity to what they publish in the Agenda. As the *Federal Register* has noted:

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.³⁸

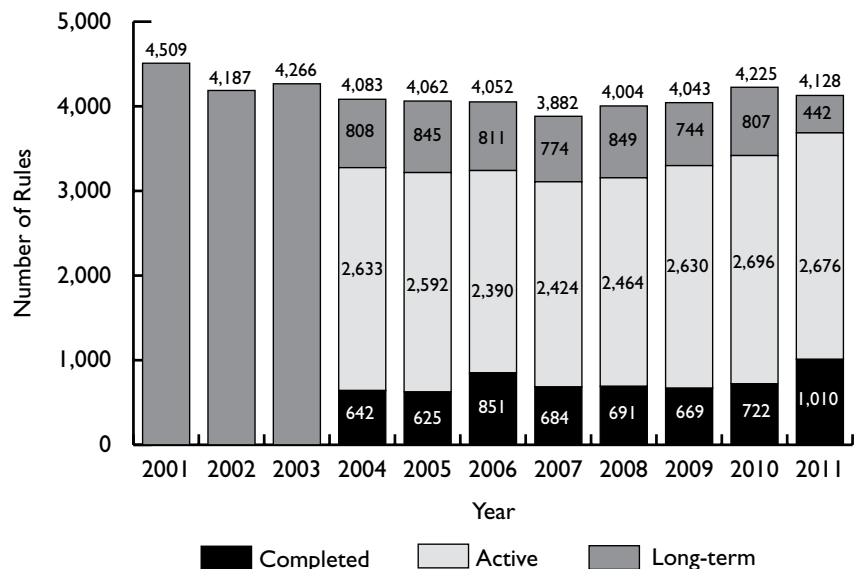
4,128 New Rules in the Pipeline

The year-end 2011 Agenda finds federal agencies, departments, and commissions at work on 4,128 regulations from the active (prerule, proposed, and final) to the just-completed to the long-term stages.³⁹ This level is down by 2.29 percent from 4,225 in 2010, but it represents an increase of 3.1 percent from the 4,004 of President George W. Bush’s final year (see Figure 11). The number of rules in the Agenda peaked at 5,119—18 years ago in 1994. Although the count has since declined, it has remained above 4,000 each year except 2007, when the count dipped to 3,882. (For a history of numbers of rules in the Unified Agenda since 1983, see Appendix: Historical Tables, Part D.)⁴⁰

Table 3 breaks down the 4,128 rules according to issuing department, agency, or commission. Each year, a relative handful of agencies accounts for a large number of the rules produced. The five departments and agencies listed in Table 4—the departments of Agriculture, Commerce, the Interior, and the Treasury, along with the Environmental Protection Agency—were the biggest rulemakers. These top five, with 1,733 rules among them, account for 42 percent of all rules in the Agenda pipeline. (For the numbers of rules by department and agency from previous year-end editions of the Agenda, see Appendix: Historical Tables, Part E.)

Amid the total pipeline counts depicted in both Table 3 and Figure 11 are the numbers of rules at the completed, active, and long-term stages. As seen in Figure 11, the num-

Figure 11. Total Agency Rules in the Unified Agenda Pipeline, 2001–2011



Source: Compiled by the author from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” Federal Register, Fall edition, various years.

Note: Pre-2004 online database totals do not match the printed, paper editions of that time, so I have elected to retain the data as compiled in those earlier print editions.

Table 3. Unified Agenda Entries by Department and Agency, December 2011

	Total Rules	Unified Agenda			Regulatory Plan Component		
		Active	Completed	Long-term	Active	Completed	Long-term
All Agencies	4128	2676	1010	442	169	3	1
Dept. of Agriculture	265	197	53	15	20		
Dept. of Commerce	328	230	94	4	5		
Dept. of Defense	140	87	53				
Dept. of Education	18	14	4		1		
Dept. of Energy	96	73	13	10	5		
Dept. of Health & Human Services	251	140	83	28	21		
Dept. of Homeland Security	232	104	40	88	29		
Dept. of Housing & Urban Development	65	54	11		3		
Dept. of the Interior	325	234	84	7			
Dept. of Justice	120	101	13	6	1		
Dept. of Labor	90	61	14	15	17	3	
Dept. of State	35	23	12				
Dept. of Transportation	224	138	66	20	16		1

	Total Rules	Unifed Agenda			Regulatory Plan Component		
		Active	Completed	Long-term	Active	Completed	Long-term
Dept. of Treasury	497	385	110	2			
Dept. of Veterans' Affairs	82	48	34		2		
Environmental Protection Agency	318	175	82	61	24		
Agency for International Development	14	5	5	4			
Architectural and Transportation Barriers Compliance Board	8	7		1	1		
Commission on Civil Rights	1		1				
CPBSD*	3	2	1				
Commodity Futures Trading Commission	68	54	14				
Consumer Financial Protection Bureau	20	19		1			
Consumer Product Safety Commission	38	21	4	13			
Corporation for National & Community Service	13	5	8				
Court Sevices/Offender Supervision, D.C.	3	2	1				
Federal Acquisition Regulation	51	23	28				
Equal Employment Opportunity Commission	7	5	2		1		
Farm Credit Administration	25	19	4	2			
Federal Communications Commission	103			103			
Federal Deposit Insurance Corporation	21	12	9				
Federal Energy Regulatory Commission	41	7	17	17			
Federal Housing Finance Agency	25	20	4	1			
Federal Maritime Commission	8	4	4				
Federal Mediation and Conciliation Service	1	1					
Federal Reserve System	29	15	13	1			
Federal Trade Commission	24	21	2	1			
Financial Stability Oversight Council	3	2	1				
General Services Administration	29	10	18	1			
Institute of Museum and Library Services	1			1			
National Aeronautics & Space Administration	46	41	4	1			
National Archives & Records Administration	4	4			1		

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

Table 3. Unified Agenda Entries by Department and Agency,
December 2011 (continued)

	Total Rules	Unified Agenda			Regulatory Plan Component		
		Active	Completed	Long-term	Active	Completed	Long-term
National Credit Union Administration	28	18	9	1			
National Endowment for the Humanities	5	3	2				
National Indian Gaming Commission	15	10	2	3			
National Labor Relations Board	2	1	1				
National Science Foundation	3	3					
Nuclear Regulatory Commission	64	36	7	21	12		
Office of Government Ethics	5	5					
Office of Management & Budget	8	5	3				
Office of Personnel Management	87	65	22				
Peace Corps	5	4	1				
Pension Benefit Guaranty Corporation	12	9	1	2			
Postal Regulatory Commission	1	1					
Railroad Retirement Board	1		1				
Securities and Exchange Commission	107	77	26	4			
Selective Service System	1		1				
Small Business Administration	48	32	16		4		
Social Security Administration	53	43	10		6		
Surface Transportation Board	11	1	2	8			
TOTAL	4,128	2,676	1,010	442	169	3	1

Sources: Compiled from "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions," Federal Register, vol. 75, no. 243, December 20, 2010; and from online edition at <http://www.reginfo.gov>.

Table 4. Top Rule-Producing Departments or Agencies, 2011

Department or Agency	Number of Regulations
1. Department of the Treasury	497
2. Department of Commerce	328
3. Department of the Interior	325
4. Environmental Protection Agency	318
5. Department of Agriculture	265
TOTAL	1,733

ber of rules at the fall 2011 completed stage rose by 39.89 percent, from 722 to 1,010, whereas that of announced long-term rules declined from 807 to 442 (it will be interesting to see if future *Federal Register* counts of final rules promulgated reflect this fact). The body of active rules stood at 2,676.

Policy makers do hear from affected parties about regulatory compliance concerns. For example, in late 2010, Rep. Darrell Issa (R-Calif.) issued a request to businesses, trade groups, and think tanks, asking which rules were most burdensome, and he received more than 160 responses filled with recommendations,⁴¹ including from the Competitive Enterprise Institute.⁴²

Federal agencies have noted the following initiatives (among others) in recent Agenda editions:

Department of Agriculture

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

Department of Commerce

- Right whale ship strike reduction
- Taking of marine mammals incidental to conducting of geological and geophysical exploration of mineral and energy resources on the outer continental shelf

Department of Health and Human Services

- Good manufacturing practice and hazard analysis and risk-benefit preventive controls for food for animals
- Nutrition labeling for food sold in vending machines and for restaurant menu items
- Substances prohibited from use in animal food or feed
- Prevention of *Salmonella enteritidis* in shell eggs
- 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
- Pediatric dosing for various over-the-counter cough, cold, and allergy products
- Fire-safety and sprinkler requirements for long-term care facilities

Department of Homeland Security

- Computer Assisted Passenger Prescreening System, providing government access to passenger reservation information
- Importer security filing
- Air cargo screening and inspection of towing vessels
- Minimum standards for driver's licenses and ID cards acceptable to federal agencies
- Secure Flight Program
- United States Visitor and Immigrant Status Indicator Technology program, which is authorized to collect biometric data from travelers and to expand to the 50 most highly trafficked land border ports

Department of Labor

- Occupational exposure to crystalline silica
 - Rules regarding confined spaces in construction: preventing suffocation and explosions
 - 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
 - Cranes and derricks
 - Health care standards for mothers and newborns
 - Protective equipment in electric power transmission and distribution
 - Refuge alternatives for underground coal mines
 - Occupational exposure to tuberculosis
- Flight crew duty limitations and rest requirements
 - Upgrade of head restraints in vehicles
 - Rear center lap and shoulder belt requirement
 - Registration and training for operators of propane tank-filling equipment
 - Monitoring systems for improved tire safety and tire pressure
 - Automotive regulations for car lighting, door retention, brake hoses, daytime running-light glare, and side-impact protection
 - Minimum training requirements for operators and training instructors of multiple trailer combination trucks
 - Hours of service, rest, and sleep for truck drivers

Department of Energy

- Energy-efficiency and conservation standards: wine chillers; battery chargers and power supplies; televisions; walk-in coolers and freezers; manufactured housing, residential furnaces, boilers, and mobile home furnaces; electric distribution transformers; commercial refrigeration units and heat pumps; clothes dryers, room air conditioners, and dishwashers; pool heaters and direct heating equipment; fluorescent and incandescent lamps; small electric motors; and residential central air conditioners and heat pumps
- Advanced technology vehicles manufacturing incentive program

Department of Transportation

- Reform of the automobile fuel economy standards program
- Light-truck Corporate Average Fuel Economy standards (2012 model years and beyond)
- Heavy-vehicle speed limiters
- Train control systems amendments
- Aging aircraft safety

Environmental Protection Agency

- Rulemaking to address greenhouse gas emissions from motor vehicles
- Clean air visibility, mercury, and ozone implementation rules
- Review of National Ambient Air Quality Standards for lead, ozone, sulfur dioxide, particulate matter, and nitrogen dioxide
- Rulemakings regarding lead-based paint
- National drinking water regulations covering groundwater and surface water
- National emission standards for hazardous air pollutants from plywood and composite wood products, certain reciprocating internal combustion engines, and auto paints
- Renewable fuels standard program
- Standards for cooling water intake structures
- Combined rulemaking for industrial, commercial, and institutional boilers and process heaters
- Standards for management of electric power producer coal-combustion wastes
- Control of emissions from nonroad spark ignition engines, new locomotives, and new marine diesel engines

Consumer Product Safety Commission

- Flammability standards for upholstered furniture and bedclothes
- Banning of certain backyard play sets
- Product registration cards for products intended for children

Federal Communications Commission

- Broadband over power line systems
- Mobile personal satellite communications
- 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 regarding location of smoke alarms
- Regulation of Fannie Mae and Freddie Mac on “housing goals”
- Regulations within the Real Estate Settlement Procedures Act pertaining to mortgages and closing costs
- Refinement of income and rent determinations in public and assisted housing

Department of the Treasury

- Prohibition of funding of unlawful Internet gambling
- Risk-based capital guidelines, capital adequacy guidelines

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

A subset of the Agenda’s 4,128 rules is classified as “economically significant,” mean-

ing that agencies anticipate yearly economic impacts of at least \$100 million apiece. Those impacts generally lead to increased costs, although occasionally an economically significant rule is intended to reduce costs. As Table 5 shows, 212 economically significant rules from 23 separate departments and agencies appear at the prerule, proposed rule, final rule, long-term, and recently completed stages.

As Figure 12 shows, these 212 rules represent a 5.36-percent decrease from the 224 high-cost rules in 2010, but a 32.5-percent jump over the 160 rules six years ago, in 2007.

Thus, the overall number of “economically significant” rules in play during the current administration is higher than that seen at any time earlier in the decade. The president stated during his 2012 State of the Union address that he had issued fewer rules in his first three years than his predecessor had.⁴³ That is technically true with respect to total rules finalized per the *Federal Register* (refer to Figure 9) and to rules in the pipeline per the Agenda (see Figure 11), but that may be due to inertia owing to the level of rulemaking inherited by each.⁴⁴ However, when it comes to economically significant rules at the completed and active stage, Figure 12 shows that the current administration is in a class by itself when looking at the year-end flow.

High-cost “economically significant” rules are scattered among the 4,128 rules in the Agenda. Each will have an annual impact of at least \$100 million, so those rules might be expected to impose annual costs on the order of \$21 billion (212 rules multiplied by \$100 million). Some rules may reduce costs, but not generally. (For a full list detailing the 212 economically significant rules, see Appendix: Historical Tables, Part F.)

A breakdown of the \$21 billion in regulatory costs (and sometimes benefits) is rarely presented directly for each rule in the Agenda. Actual costs can sometimes best be found by combing through the docu-

Even though the \$21 billion in anticipated economic impacts represents a floor (of a sort) for regulatory costs, it is not a one-time cost but a recurring annual cost that must be added to prior years’ costs, as well as to future costs.

Table 5. 212 Rules in the Pipeline Expected to have \$100 Million Annual Economic Impact, (Year-End 2011 Unified Agenda)

	Rules	Active	Completed	Long-term
All Agencies	212	138	45	29
Dept. of Agriculture	14	13		1
Dept. of Commerce	2	1	1	
Dept. of Defense	2	2		
Dept. of Education	5	3	2	
Dept. of Energy	18	14	3	1
Dept. of Health & Human Services	65	39	23	3
Dept. of Homeland Security	11	8		3
Dept. of Housing and Urban Development	4	3	1	
Dept. of Justice	4	3	1	
Dept. of the Interior	4	3	1	
Dept. of Labor	19	12	1	6
Dept. of State	1	1		
Dept. of Transportation	15	10	2	3
Dept. of Treasury	7	4	3	
Dept. of Veterans' Affairs	4	4		
Environmental Protection Agency	21	12	4	5
Equal Employment Opportunity Commission	1		1	
Consumer Product Safety Commission	2	2		
Federal Communications Commission	7			7
Federal Deposit Insurance Corporation	2	2		
National Labor Relations Board	1		1	
Nuclear Regulatory Commission	3	2	1	
Social Security Administration	0			
TOTAL	212	138	45	29

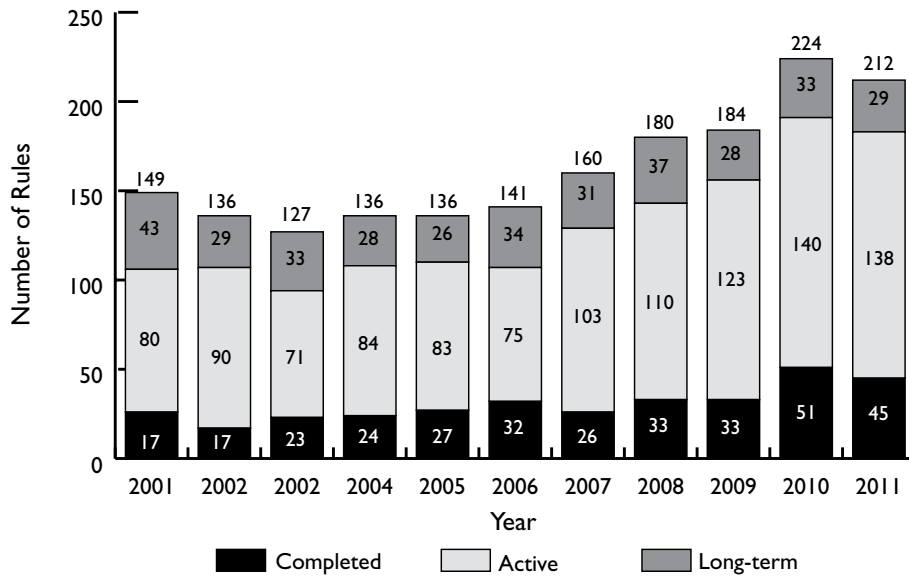
Sources: Compiled from "The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions," *Federal Register*, vol. 75, no. 243, December 20, 2010; and from online edition at <http://www.reginfo.gov>.

ment, by searching online, or by gathering agency regulatory impact analyses. Rather than accumulate and summarize regulatory costs for the readers' benefit, each Agenda entry indicates whether a rule is economically significant and occasionally provides additional cost data from agency analysis. Note also that even though the \$21 billion in anticipated economic impacts represents a floor (of a sort) for regulatory costs, it is not a one-time cost but a recurring annual cost that must be added to prior years' costs, as well as to future costs. And, as noted, agencies are not limited to what they anticipate in the Agenda.

Since the recent online database editions of the Agenda break economically significant rules into completed, active, and long-term, it is easier to compile a tally of economically significant rules completed annually over the years. Figure 13 presents the totals of "completed" rules from the Spring and Fall Agendas. (Completed rules are "actions or reviews the agency has completed or withdrawn since publishing its last agenda.")

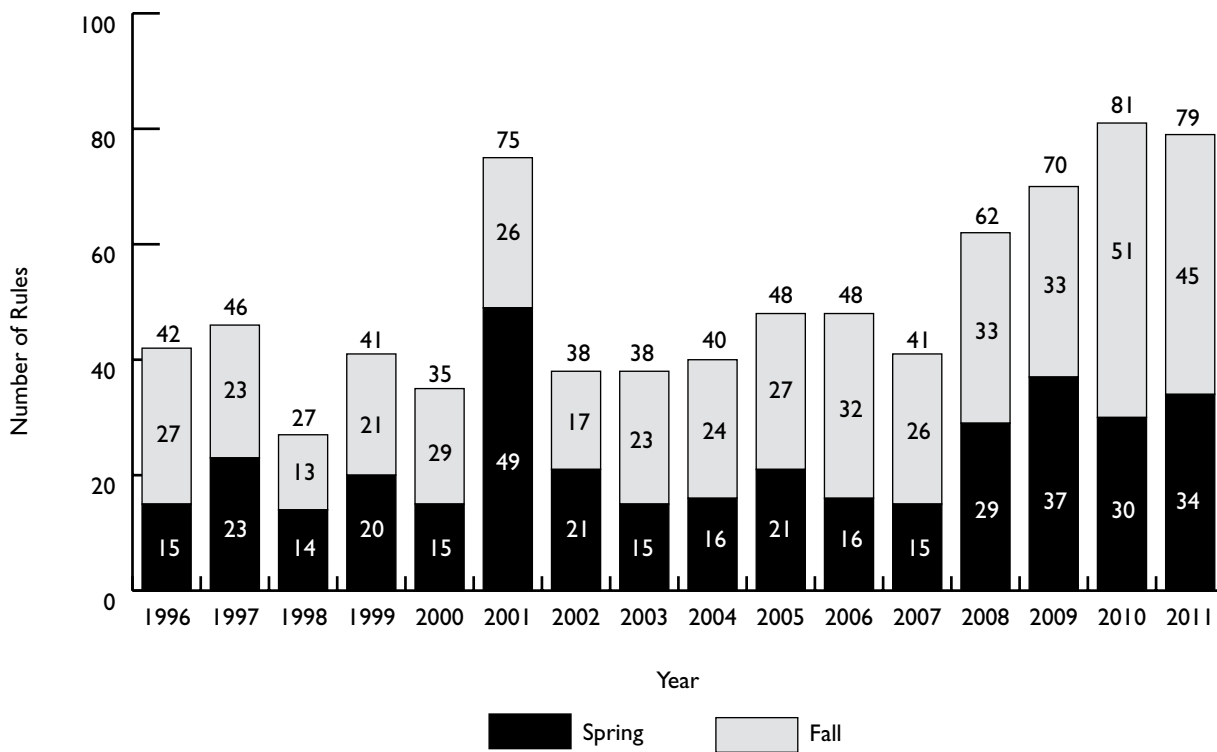
Total economically significant rules finalized annually are down slightly from 2010—from 81 to 79—but are up by 92.7 percent over five years and 108 percent over 10 years.

Figure 12. “Economically Significant” Rules in the Agenda Pipeline, 2001–2011



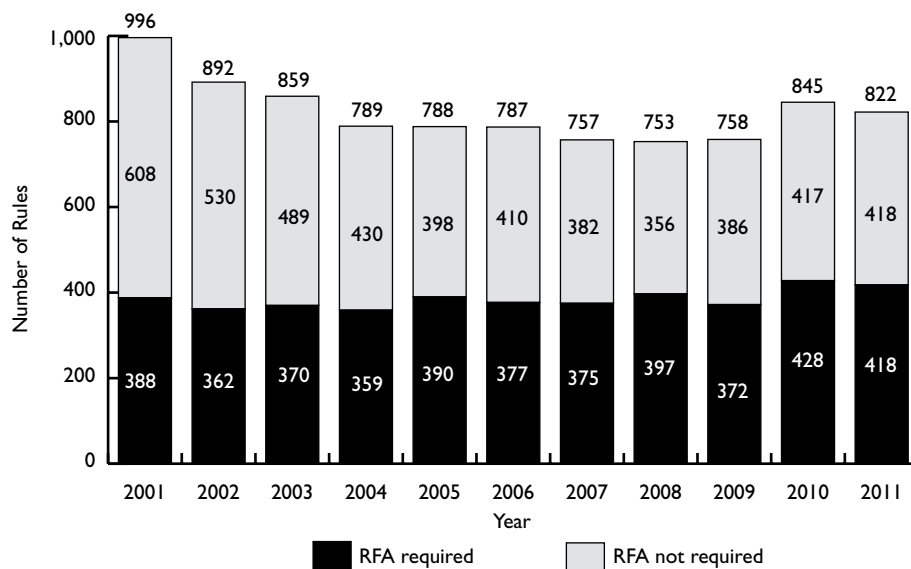
Source: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, Fall edition, various years.

Figure 13. Number of Completed “Economically Significant” Rules Annually in the Unified Agenda (Spring plus Fall Edition)



Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, Spring and Fall editions, various years.

Figure 14. Rules Affecting Small Business, 2001–2011



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

A rule may cost up to \$99 million and escape the official “economically significant” designation.

Finally, the fact that policy makers and analysts pay the most attention to economically significant rules should not lull them into ignoring the remaining bulk of rules in the yearly pipeline. In fall 2011, 3,916 federal rules were not considered officially economically significant by the government (4,128 total rules minus the 212 economically significant ones), but that categorization does not mean that many of those rules are not economically significant in the ordinary sense of the term to those affected by them. A rule may cost up to \$99 million and escape the official “economically significant” designation.

Federal Regulations Affecting Small Business

The Regulatory Flexibility Act is a law directing federal agencies to assess the effects of their rules on small businesses. As the *Federal Register* notes, “The Regulatory Flexibility Act requires that agencies publish semiannual regulatory agendas in the *Federal Register* describing regulatory actions they are developing that may have a significant

economic impact on a substantial number of small entities.”⁴⁵ Figure 14 shows that annual rules significantly affecting small business bumped upward in the past couple years. At year-end 2011, they stood at 822. Although down from the 845 in 2010, the number of rules with small-business impacts is exceeding 800 for the first time since 2003. Policy makers at least should be aware of this and examine the rules in question in more detail.

Of these 822 rules, 418 required regulatory flexibility analyses, and 404 were otherwise noted by agencies to affect small business.

Table 6 breaks out the 2011 Agenda’s 822 rules affecting small business by department, agency, and commission. Five of them—the departments of Agriculture, Commerce, and Health and Human Services; the Environmental Protection Agency; and the Federal Communications Commission (FCC)—account for 431, or 52 percent, of the rules affecting small business. The proportion of total rules affecting small business, as noted in Table 6, stands at 20 percent. (For the numbers of rules affecting small business

**Table 6. Unified Agenda Entries Affecting Small Business by
Department, Agency, and Commission, Fall 2011** *(continued on next page)*

	Total Rules	Number Affecting Small Business						Total	% Affecting Small Business
		RFA Required			RFA Not Required				
		Active	Completed	L-T	Active	Completed	L-T		
Dept. of Agriculture	265	22	5	3	26	7	2	65	24.5
Dept. of Commerce	328	65	18	1	24	6	1	115	35.1
Dept. of Defense	140	13	8		3	2		26	18.6
Dept. of Education	18		1					1	5.6
Dept. of Energy	96	5	1					6	6.3
Dept. of Health & Human Services	251	31	9	8	25	20	7	100	39.8
Dept. of Homeland Security	232	15	1	1	9	2	6	34	14.7
Dept. of Housing & Urban Development	65							0	0.0
Dept. of the Interior	325	6			13	4		23	7.1
Dept. of Justice	120				7		2	9	7.5
Dept. of Labor	90	4	1	2	14	1	1	23	25.6
Dept. of State	35				14	7		21	60.0
Dept. of Transportation	224	10	4	3	28	6	5	56	25.0
Dept. of Treasury	497	3	2		30	12		47	9.5
Dept. of Veterans' Affairs	82				1	1		2	2.4
Environmental Protection Agency	318	7	1	3	36	16	10	73	23.0
Agency for International Development	14					1		1	7.1
Architectural and Transportation Barriers Compliance Board	8	1						1	12.5
Commission on Civil Rights	1							0	0.0
CPBSD*	3							0	0.0
Commodity Futures Trading Commission	68							0	0.0
Consumer Financial Protection Bureau	20	5						5	0.0
Consumer Product Safety Commission	38							0	0.0
Corp. for National & Community Service	13							0	0.0
Court Sevices/Offender Supervision, D.C.	3							0	0.0
Federal Acquisition Regulation	51	10						10	19.6
Equal Employment Opportunity Commission	7				3	2		5	71.4
Farm Credit Administration	25							0	0.0
Federal Communications Commission	103			74			4	78	75.7
Federal Deposit Insurance Corporation	21	2						2	9.5

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

Table 6. Unified Agenda Entries Affecting Small Business by Department, Agency, and Commission, Fall 2011 (continued)

	Total Rules	Number Affecting Small Business						Total	% Affecting Small Business
		RFA Required			RFA Not Required				
		Active	Completed	L-T	Active	Completed	L-T		
Federal Energy Regulatory Commission	41							0	0.0
Federal Housing Finance Agency	25							0	0.0
Federal Maritime Commission	8				1	2		3	37.5
Federal Mediation and Conciliation Service	1							0	0.0
Federal Reserve System	29	5	6	1	1	4		17	58.6
Federal Trade Commission	24				20	1	1	22	91.7
Financial Stability Oversight Council	3							0	0.0
General Services Administration	29	2		1	1			4	13.8
Institute of Museum and Library Services	1							0	0.0
National Aeronautics & Space Administration	46				2	1		3	6.5
National Archives & Records Administration	4							0	0.0
National Credit Union Administration	28				3	1		4	14.3
National Endowment for the Humanities	5							0	0.0
National Indian Gaming Commission	15							0	0.0
National Labor Relations Board	2							0	0.0
National Science Foundation	3							0	0.0
Nuclear Regulatory Commission	64	2	1					3	4.7
Office of Government Ethics	5							0	0.0
Office of Management & Budget	8							0	0.0
Office of Personnel Management	87							0	0.0
Peace Corps	5							0	0.0
Pension Benefit Guaranty Corporation	12							0	0.0
Postal Regulatory Commission	1							0	0.0
Railroad Retirement Board	1							0	0.0
Securities and Exchange Commission	107	15	10		2			27	25.2
Selective Service System	1							0	0.0
Small Business Administration	48	24	6		1	4		35	72.9
Social Security Administration	53					1		1	1.9
Surface Transportation Board	11							0	0.0
TOTAL	4,128	247	74	97	264	101	39	822	19.9

Sources: Compiled from "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions"; and from online edition at <http://www.reginfo.gov>. Note: RFA = regulatory flexibility analysis, L-T = long-term.

broken down by department and agency for Agendas since 1996, see Appendix: Historical Tables, Part G.)

For a bit of extra perspective on the small business regulatory climate, Box 1 depicts a partial list of the basic, non-sector-specific laws and regulations that affect small business.

Federal Regulations Affecting State and Local Governments

Ten Thousand Commandments primarily tracks regulations imposed on the private

sector. However, state and local officials' realization during the 1990s that their own priorities were being overridden by federal mandates generated demands for reform. As a result, Congress passed the Unfunded Mandates Act in 1995 to establish a point of order against such mandates as a means of getting lawmakers to pay closer attention to legislation's effect on states and localities. As Figure 15 shows, agencies report that 316 of the 4,128 rules in the 2011 Agenda pipeline will affect local governments.⁴⁶ Since the passage of the Unfunded Mandates Act in the mid-1990s, overall rules affecting local governments have fallen by 40.7 percent,

Box 1. Federal Workplace Regulation Affecting Growing Businesses

Assumes nonunion, nongovernment contractor, with interstate operations and a basic employee benefits package. Includes general workforce-related regulation only. Omitted are (a) categories such as environmental and consumer product safety regulations and (b) regulations applying to specific types of businesses, such as mining, farming, trucking or financial firms.

1 EMPLOYEE

- Fair Labor Standards Act (overtime and minimum wage [27 percent minimum wage increase since 1990])
- Social Security matching and deposits
- Medicare, Federal Insurance Contributions Act (FICA)
- Military Selective Service Act (90 days leave for reservists; rehiring of discharged veterans)
- Equal Pay Act (no sex discrimination in wages)
- Immigration Reform Act (eligibility must be documented)
- Federal Unemployment Tax Act (unemployment compensation)
- Employee Retirement Income Security Act (standards for pension and benefit plans)
- Occupational Safety and Health Act
- Polygraph Protection Act

4 EMPLOYEES: ALL THE ABOVE, PLUS

- Immigration Reform Act (no discrimination with regard to national origin, citizenship, or intention to obtain citizenship)

15 EMPLOYEES: ALL THE ABOVE, PLUS

- Civil Rights Act Title VII (no discrimination with regard to race, color, national origin, religion, or sex; pregnancy-related protections; record keeping)
- Americans with Disabilities Act (no discrimination, reasonable accommodations)

20 EMPLOYEES: ALL THE ABOVE, PLUS

- Age Discrimination Act (no discrimination on the basis of age against those 40 and older)
- Older Worker Benefit Protection Act (benefits for older workers must be commensurate with younger workers)
- Consolidation Omnibus Budget Reconciliation Act (COBRA) (continuation of medical benefits for up to 18 months upon termination)

25 EMPLOYEES: ALL THE ABOVE, PLUS

- Health Maintenance Organization Act (HMO Option required)
- Veterans' Reemployment Act (reemployment for persons returning from active, reserve, or National Guard duty)

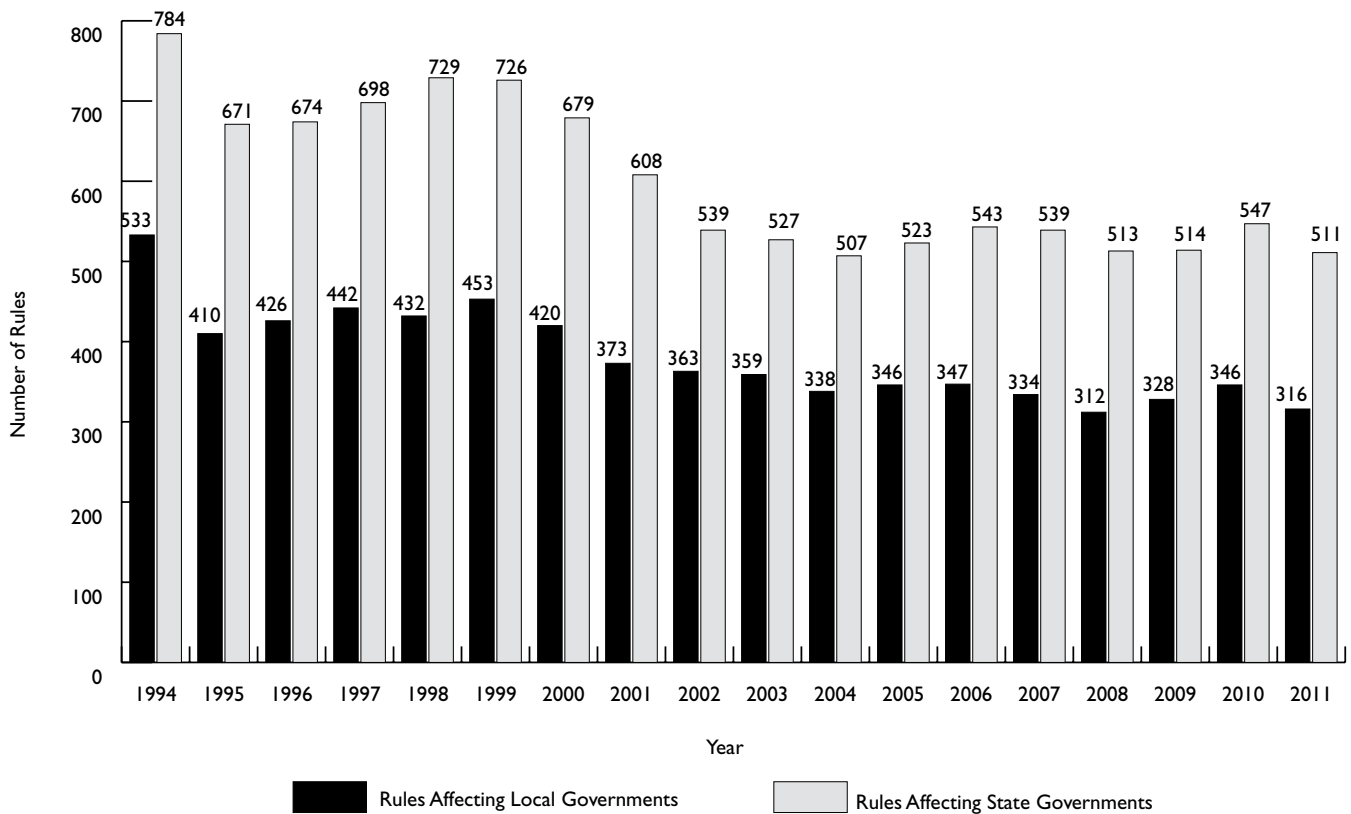
50 EMPLOYEES: ALL THE ABOVE, PLUS

- Family and Medical Leave Act (12 weeks unpaid leave or care for newborn or ill family member)

100 EMPLOYEES: ALL THE ABOVE, PLUS

- WARN Act (60-days written plant closing notice)—Civil Rights Act (annual EEO-1 form)

Figure 15. Rules Affecting State and Local Governments, 1994–2011



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

from 533 to 316. Figure 15 also shows that the total number of regulatory actions affecting state governments stands at 511, down from 547 in 2010 but roughly equivalent to 514 in 2009. During the period since passage of the unfunded mandates legislation, the count has dropped (from 784) by 34.8 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 H.)

Government Accountability Office Database on Regulations

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

deal with internal government machinery or programs). The Agenda provides detail of the overall number of rules at various stages in the regulatory pipeline, as well as those with economically significant effects and those affecting small business and state and local governments.

The 1996 Congressional Review Act requires agencies to submit reports to Congress on their “major” rules—typically those costing \$100 million or more. Owing to such reports, which are maintained in a database at the Government Accountability Office (GAO), one can more readily observe which of the thousands of final rules agencies issue each year are major and which agencies are producing the rules.⁴⁷

The Congressional Review Act gives Congress a window of 60 legislative days in which to review a major rule and, if desired,

Table 7. Government Accountability Office Reports on Major Rules, 1998–2010

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Architectural Barriers Compliance Board			1				1						
Department of Agriculture	5	6		9	7	4	7	6	8	7	3	12	6
Department of Commerce	1	5		2			1			2	1	2	
Department of Defense	2	1		3	2			1			6	4	4
Department of Education		1							2	1	2	6	5
Department of Energy			3	3	1	1				3	3	7	4
Department of Homeland Security						2	2	3	2	4	5	1	3
Department of Housing and Urban Development		1	2	1			1	1			2	1	1
Department of Justice	1			4	3		1	1	1				3
Department of Labor	2		5	3	2		1	1	3	3	2	1	6
Department of the Interior	7	6	9	8	7	7	8	6	6	5	10	7	7
Department of State											1		1
Department of Transportation	1	4		3	6	4	5	3	1	3	8	6	5
Department of the Treasury	1			1		1	1		1	1	1		4
Department of Veterans Affairs				3	1	2		1		1		2	2
Emergency Oil and Gas Loan Board		1											
Emergency Steel Guarantee Loan Board		1											
Environmental Protection Agency	9	5	20	4	1	3	7	3	8	2	9	3	8
Federal Acquisition Regulation													
Federal Communications Commission	16	6	6	3	3	2	4	1	1	2	6		
Federal Emergency Management Agency			2	3	1								
Federal Reserve System			1	1	1		1				2	6	6
Federal Trade Commission			1					1					
Health and Human Services	18	7	17	15	13	17	22	22	16	19	24	17	24
National Credit Union Administration	1												
Nuclear Regulatory Commission	2	1	2	1	1	1	1	1	1	2	1	2	1
Office of Management and Budget				1									
Office of Personnel Management			1			1							
Pension Benefit Guaranty Corporation	1												
Securities and Exchange Commission	8	3	5	2	2	5	2	4	3	5	7	7	9
Small Business Administration	1		1	1			1						
Social Security Administration		3	1					1	2		2		
Federal Election Commission						1							
Consumer Product Safety Commission									1				
Various agencies; HIPAA* implementation													
TOTAL	76	51	77	70	51	51	66	56	56	60	95	84	99

Source: Compiled from Government Accountability Office data.

Note: HIPAA = Health Insurance Portability and Accountability Act.

pass a resolution of disapproval rejecting the rule. But despite the issuance of thousands of rules since the Act'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.

Table 7, derived from Government Accountability Office's database of major rules, depicts the presumed number of final major rule reports issued by GAO on agency rules through 2010. The 79 rules of 2011⁴⁸ are a 20 percent drop from the 99 of the year before, which had been the highest number since this tabulation began following passage of the Congressional Review Act. The Securities and Exchange Commission is increasingly active, in the wake of the Dodd-Frank financial regulation law. The Department of Health and Human Services and Environ-

mental Protection Agency are among the most active regulatory agencies. The coming years will be instructive on how increased federal spending may continue to affect the generation of major rules.

A July 2011 Heritage Foundation analysis of the current administration's regulatory record (part of a series of such reports) isolated the GAO database's major rules affecting only the private sector, and it further distinguishes between those that are deregulatory and those that are regulatory. That compilation found that 75 major rules were adopted from the beginning of the Obama administration to the middle of FY 2011, for an increase in annual costs of \$38 billion.⁴⁹ Some of these costs will overlap with those presented in OMB's *Costs and Benefits* report described on page 7 (see endnote 12).

Regulation and the Federal Communications Commission

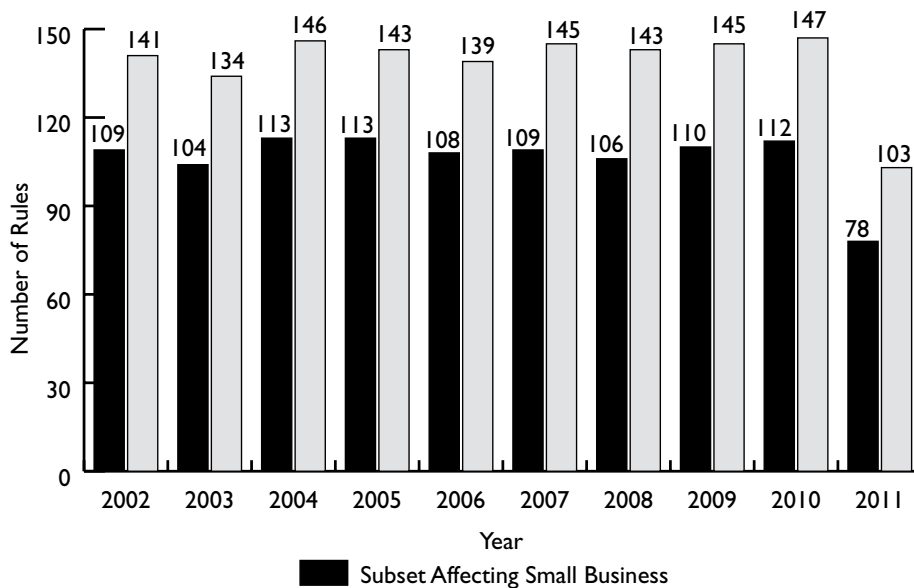
The Federal Communications Commission is surpassed in overall number of rules by 11 other departments or agencies, and it is exceeded or matched in the number of “economically significant” (\$100 million plus) rules by 8 other agencies. (See Tables 3 and 5.) Although by no means the heaviest regulator as judged by such counts, the FCC is worth singling out for review in today’s information economy because it wields great influence over a major economic sector, telecommunications and the Internet.

In terms of enforcement, the FCC spent an estimated \$445 million to enforce regula-

tions during FY 2010.⁵⁰ Of the 4,128 rules in the 2011 Agenda pipeline, 103, or 2.49 percent, were in the works at the FCC, a significant drop from what the Commission has reported in the Agenda during prior years (Figure 16). Also shown in Figure 16 is the subset of FCC rules that register some effect on small business.

The count remained level during the decade before the decline reported here—which itself may be an artifact of what the FCC elected to include in the Agenda. That is a major reason the opaqueness of agency Agendas need improvement and standard-

Figure 16. Number of FCC Rules, 2002–2011



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

Today's vibrant, robust, and duplicative communications markets are not fragile mechanisms requiring fine-tuning by government bodies.

ization. In reality, regarding finalized rules in the *Federal Register*, the FCC issued 491 in 2010 and 566 in 2011, a net increase, according to the National Archives online database.⁵¹ (As of March 6, 2012, the FCC had already finalized 80 rules.)

The Agenda decline notwithstanding, a regulatory sentiment remains at the FCC despite the increasingly obsolete nature of the FCC's original mandate to police allegedly public airwaves on a radio spectrum characterized by scarcity—and despite massive innovations in telecommunications and in customized, consumer-oriented, user-driven multimedia that have made that mandate largely obsolete. Today's vibrant, robust, and duplicative communications markets are not fragile mechanisms requiring fine-tuning by government bodies.⁵² Nor do communications mar-

kets abuse and harass consumers in a manner requiring top-down rulemaking with respect to every new technological advance; the opposite appears more plausible.

Nonetheless, the FCC recently has:

- Considered a sweeping notice of inquiry to examine the broadband industry practices of the communications sector;⁵³
- Inserted itself into journalism with a “Future of Media” proceeding;⁵⁴ and most recently,
- Issued a final ruling, in December 2010, mandating “net neutrality” requirements, to the consternation of many in Congress who had not delegated such authority to the agency⁵⁵ (the rule is being challenged in court).

Box 2. Seven Economically Significant Rules in the Pipeline at the FCC

- **Broadband over power line (BPL) systems**, RIN 3060-AI24: “To promote the development of BPL systems by removing regulatory uncertainties for BPL operators and equipment manufacturers while ensuring that licensed radio services are protected from harmful interference.”
- **Amendment of the rules regarding Maritime Automatic Identification Systems** (WT Docket No. 04-344), RIN 3060-AJ16
- **Service Rules for the 698-746, 747-762, and 777-792 MHz Band Ranges**, RIN 3060-AJ35: “[O]ne of several docketed proceedings involved in the establishment of rules governing wireless licenses in the 698-806 MHz Band (the 700 MHz Band). This spectrum is being vacated by television broadcasters in TV Channels 52-69. It is being made available for wireless services, including public safety and commercial services, as a result of the digital television (DTV) transition. This docket has to do with service rules for the commercial services, and is known as the 700 MHz Commercial Services proceeding.”⁵⁶
- **Universal Service Reform Mobility Fund** (WT Docket No. 10-208), RIN 3060-AJ58
- **Internet Protocol-enabled services**, RIN 3060-AI48: “The notice seeks comment on ways in which the Commission might categorize IP-enabled services for purposes of evaluating the need for applying any particular regulatory requirements. It poses questions regarding the proper allocation of jurisdiction over each category of IP-enabled service. The notice then requests comment on whether the services composing each category constitute ‘telecommunications services’ or ‘information services’ under the definitions set forth in the Act. Finally, noting the Commission’s statutory forbearance authority and title I ancillary jurisdiction, the notice describes a number of central regulatory requirements (including, for example, those relating to access charges, universal service, E911, and disability accessibility), and asks which, if any, should apply to each category of IP-enabled services.”
- **Form 477; Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans**, RIN 3060-AJ15
- **Implementation of Section 224 of the Act; A National Broadband Plan for Our Future** (WC Docket No. 07-245, GN Docket No. 09-51), RIN 3060-AJ64

The FCC has held numerous hearings and workshops on these and other matters. Far from embracing any hands-off stance—let alone an active liberalization agenda—FCC commissioners have occupied themselves in recent years with contemplating rules for multicast must-carry regulation, cable à la carte, media ownership restrictions, “indecent,” video games violence portrayal, and wireless net neutrality (which may be the real aim beyond the recent neutrality ruling).

Of the 212 economically significant rules in the works across the entire federal govern-

ment, seven are from the FCC (see Table 5) and are presented in Box 2. Such rulemakings—along with other FCC rules in the Agenda pipeline and the hundreds finalized each year—present opportunities for either liberalization of telecommunications or avenues for new centralized regulatory oversight and protracted legal battles. Liberalizing communications markets requires a deliberate effort to shift “regulation” from the FCC to the discipline of competitive markets. Today’s debates seem to reflect that approach inadequately.

Liberate to Stimulate and Measure Regulation

Without any definitive regulatory accounting, estimates of overall agency net benefits are questionable, which makes it difficult to know whether society wins or loses as a result of those rules.

The cost of regulation dwarfs the first \$787 billion economic stimulus package passed in early 2009 under President Obama, which accomplished little. A rollback of regulation would constitute a helpful deregulatory stimulus to the U.S. economy, in contrast to the spending stimulus. A “liberate to stimulate” agenda would offer some certainty and confidence to business enterprises seeking a greater foothold in this economy. Proposals like those described next can help achieve that goal.

Steps to Improve Regulatory Disclosure

Regulatory compliance costs estimated at \$1.752 trillion annually receive too little official scrutiny, so it is not surprising when costs exceed benefits. Although some regulations’ benefits exceed costs, “net” benefits—or costs—are known for relatively few. Without any definitive regulatory accounting, estimates of overall agency net benefits are questionable, which makes it difficult to know whether society wins or loses as a result of those rules (as well as whether such social metrics have problems).⁵⁷

Relevant and available regulatory data should be summarized and publicly disclosed to help create pressures for even better data disclosure. An incremental step would be for Congress to require—or for OMB to initiate—publication of a summary of already available, but scattered, data. Such a summary would perhaps resemble that in *Ten Thousand Commandments* and other compilations, or a simple regulatory transparency report card. That simple step alone would

help transform today’s regulatory hidden tax culture into one characterized by greater openness.

Although regulatory cost disclosure should be a priority, a protracted legislative fight over comprehensive cost-benefit analysis should be avoided. Better would be restricting Congress’s delegation of legislative power to unelected agency personnel in the first place. That institutional change would force Congress to internalize pressures to make cost-benefit assessments before issuing directives to agencies. Elected representatives will have to assume responsibility and end “regulation without representation” to rein in off-budget regulatory costs, no matter what else gets done.

Regulations today fall into two broad cost classes: (a) those that are economically significant (costing more than \$100 million annually) and (b) those that are not. Agencies typically emphasize reporting of economically significant rules, which OMB also tends to emphasize in its assessments of the regulatory state. A problem with this approach is that many rules that technically come in below that threshold can still be very significant in the real-world sense of the term.

Moreover, agencies need not specify whether any or all of their economically significant rules cost only \$100 million—or far more than that. 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 for assigning economically significant rules to one of five categories. Agencies

Table 8. Possible Breakdown of “Economically Significant” Rules

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

could classify their rules either on the basis of cost information that has been provided in the regulatory impact analyses that accompany many economically significant rules or on the basis of separate internal or external estimates.

Although modest, any such steps toward greater transparency could be important. Useful regulatory information is available, but it is often difficult to compile. The Agenda could be made more user friendly. Today, to learn about regulatory trends and to accumulate information on rules—such

as numbers produced by each agency, their costs and benefits (if available), and so on—interested citizens must comb through the Agenda’s 1,000-plus pages of small, multi-column print or compile results from online searches. 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*.

Recommended components for a regulatory transparency report card appear in Box 3. Information could be added to the report

Box 3. Regulatory Transparency Report Card: Recommended Official Summary Data by Program, Agency, and Grand Total, with Five-Year Historical Tables

- “Economically significant” rules by category (see Table 8) and minor rules by department, agency, and commission
- Number or percentage of rules affecting small business and state and local governments
- Number or percentage of rules featuring numerical cost estimates
- Tallies of existing cost estimates, with subtotals by agencies and with grand total
- Number or percentage of rules lacking cost estimates
- Short explanation of lack of cost estimates, where applicable
- Percentage of rules reviewed by the Office of Management and Budget and action taken
- Analysis of the *Federal Register*: number of pages, plus proposed and final rule breakdowns by agency
- Number of major rules reported on by the Government Accountability Office in its database of reports on regulations
- Rules up for 10-year review (under Section 610 of the Regulatory Flexibility Act)
- Most active rulemaking agencies
- Rules that are deregulatory rather than regulatory
- Rules that affect internal agency procedures alone
- Rollover: number of rules new to the Unified Agenda, plus number carried over from previous years
- Number or percentage of rules required by statute versus discretionary rules
- Number or percentage of rules facing statutory or judicial deadlines
- Rules for which the weighing of costs and benefits is statutorily prohibited

Agencies face overwhelming incentives to expand their turf by regulating even in the absence of demonstrated need, because the primary measure of agency productivity is the number of regulations they produce.

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 also enhance the Agenda’s usefulness. One of the virtues of a regulatory report card is that it would reveal more clearly what we *do not* comprehend about the regulatory state—something useful to know.

Detailed cost-benefit data are not necessary to begin improving a regulatory transparency. 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 transparency report card would help ensure that policy makers take the growth of the regulatory state seriously.

End Regulation without Representation

Years of unbudgeted growth of the federal regulatory state merit concern when no one can claim with assurance that regulatory benefits exceed costs. But agencies are not the only culprits. Congress shirks its constitutional duty to make the tough calls. It delegates considerable lawmaking power to agencies and then fails to ensure that they deliver benefits that exceed costs.⁵⁸ Thus, agencies can hardly be faulted for not guaranteeing optimal regulation or for not ensuring that only good rules get through.

Agencies face overwhelming incentives to expand their turf by regulating even in the absence of demonstrated need, because the primary measure of agency productivity—other than growth in their budgets and number of employees⁵⁹—is the number of regulations they produce. One need not waste time blaming agencies for carrying out the very regulating they were set up to do in the first place. It would be better to point a finger at Congress. For perspective, consider that regulatory agencies issued 3,807 final rules, whereas the 112th Congress passed and President Obama signed into law a comparatively few 81 bills in calendar year

2011.⁶⁰ (The counts of 217 in 2010 and 125 in 2009 are more typical.)⁶¹

As noted, regulatory agencies are at work on 4,128 rules. Agencies do not answer to voters, so the unelected are doing a sizable bulk of U.S. lawmaking. An annual regulatory transparency report is a start but not a complete answer. Regulatory reforms that rely on agencies’ policing themselves will not rein in the regulatory state. Rather, making Congress directly answerable to voters for the costs that agencies impose on the public would best promote accountable regulation. Congress should vote on agencies’ costly or controversial final rules before such rules become binding on the public. The 112th Congress’ Regulations from the Executive in Need of Scrutiny (REINS) act is one such proposal.

Congressional accountability for regulatory costs assumes new importance in today’s era of deficits. If Congress’s alternatives are to spend or to issue new regulations, then concern about mounting national debt 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 to 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. Instead, Congress could simply pass a law requiring Fortune 500 companies to fund job training, to be carried out through new regulations issued by the Labor Department. The latter option would add little to federal spending but would still let Congress take credit for the program. By regulating instead of spending, government can expand almost indefinitely without explicitly taxing anybody one extra penny.

Explicit approval of proposed regulations would ensure that Congress bore direct responsibility for every dollar of new regulatory costs and is a prerequisite for control of the off-budget regulatory state. To allay the concern that it would become bogged down in

approving agency rules, Congress could vote on agency regulations in bundles. In addition, congressional approval of new regulation could be given by voice vote, signifying unanimity, rather than by tabulated roll call vote.

Whatever improvements in disclosure might be made, congressional—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 far more accountable to voters.

Appendix of Historical Tables

Part A. *Federal Register* Page History, 1936–2011

Year	Unadjusted Page Count	Jumps/Blanks	Adjusted Page Count
1936	2,620	n/a	2,620
1937	3,450	n/a	3,450
1938	3,194	n/a	3,194
1939	5,007	n/a	5,007
1940	5,307	n/a	5,307
1941	6,877	n/a	6,877
1942	11,134	n/a	11,134
1943	17,553	n/a	17,553
1944	15,194	n/a	15,194
1945	15,508	n/a	15,508
1946	14,736	n/a	14,736
1947	8,902	n/a	8,902
1948	9,608	n/a	9,608
1949	7,952	n/a	7,952
1950	9,562	n/a	9,562
1951	13,175	n/a	13,175
1952	11,896	n/a	11,896
1953	8,912	n/a	8,912
1954	9,910	n/a	9,910
1955	10,196	n/a	10,196
1956	10,528	n/a	10,528
1957	11,156	n/a	11,156
1958	10,579	n/a	10,579
1959	11,116	n/a	11,116
1960	14,479	n/a	14,479
1961	12,792	n/a	12,792
1962	13,226	n/a	13,226
1963	14,842	n/a	14,842
1964	19,304	n/a	19,304
1965	17,206	n/a	17,206
1966	16,850	n/a	16,850
1967	21,088	n/a	21,088

Year	Unadjusted Page Count	Jumps/Blanks	Adjusted Page Count
1968	20,072	n/a	20,072
1969	20,466	n/a	20,466
1970	20,036	n/a	20,036
1971	25,447	n/a	25,447
1972	28,924	n/a	28,924
1973	35,592	n/a	35,592
1974	45,422	n/a	45,422
1975	60,221	n/a	60,221
1976	57,072	6,567	50,505
1977	65,603	7,816	57,787
1978	61,261	5,565	55,696
1979	77,498	6,307	71,191
1980	87,012	13,754	73,258
1981	63,554	5,818	57,736
1982	58,494	5,390	53,104
1983	57,704	4,686	53,018
1984	50,998	2,355	48,643
1985	53,480	2,978	50,502
1986	47,418	2,606	44,812
1987	49,654	2,621	47,033
1988	53,376	2,760	50,616
1989	53,842	3,341	50,501
1990	53,620	3,825	49,795
1991	67,716	9,743	57,973
1992	62,928	5,925	57,003
1993	69,688	8,522	61,166
1994	68,108	3,194	64,914
1995	67,518	4,873	62,645
1996	69,368	4,777	64,591
1997	68,530	3,981	64,549
1998	72,356	3,785	68,571
1999	73,880	2,719	71,161
2000	83,294	9,036	74,258
2001	67,702	3,264	64,438
2002	80,332	4,726	75,606
2003	75,798	4,529	71,269
2004	78,852	3,177	75,675
2005	77,777	3,907	73,870
2006	78,724	3,787	74,937
2007	74,408	2,318	72,090
2008	80,700	1,265	79,435
2009	69,644	1,046	68,598
2010	82,480	1,075	81,405
2011	82,415	1,168	81,247

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

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

Part B. Number of Documents in the *Federal Register*, 1976–2011

Year	Final Rules	Proposed Rules	Other*	Total
1976	7,401	3,875	27,223	38,499
1977	7,031	4,188	28,381	39,600
1978	7,001	4,550	28,705	40,256
1979	7,611	5,824	29,211	42,646
1980	7,745	5,347	33,670	46,762
1981	6,481	3,862	30,090	40,433
1982	6,288	3,729	28,621	38,638
1983	6,049	3,907	27,580	37,536
1984	5,154	3,350	26,047	34,551
1985	4,843	3,381	22,833	31,057
1986	4,589	3,185	21,546	29,320
1987	4,581	3,423	22,052	30,056
1988	4,697	3,240	22,047	29,984
1989	4,714	3,194	22,218	30,126
1990	4,334	3,041	22,999	30,374
1991	4,416	3,099	23,427	30,942
1992	4,155	3,170	24,063	31,388
1993	4,369	3,207	24,017	31,593
1994	4,867	3,372	23,669	31,908
1995	4,713	3,339	23,133	31,185
1996	4,937	3,208	24,485	32,630
1997	4,584	2,881	26,260	33,725
1998	4,899	3,042	26,313	34,254
1999	4,684	3,281	26,074	34,039
2000	4,313	2,636	24,976	31,925
2001	4,132	2,512	25,392	32,036
2002	4,167	2,635	26,250	33,052
2003	4,148	2,538	25,168	31,854
2004	4,101	2,430	25,846	32,377
2005	3,943	2,257	26,020	32,220
2006	3,718	2,346	25,429	31,493
2007	3,595	2,308	24,784	30,687
2008	3,830	2,475	25,574	31,879
2009	3,503	2,044	25,218	30,765
2010	3,573	2,439	26,543	32,555
2011	3,807	2,898	26,296	33,001

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

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

Part C. Code of Federal Regulations Page Counts and Number of Volumes, 1975–2011

Year	Actual Pages Published (includes text, preliminary pages, and tables)				Unrevised CFR Volumes**	Total Pages Complete CFR	Total CFR Volumes (excluding Index)
	Titles 1–50 (minus Title 3)	Title 3 (POTUS Docs)	Index*	Total Pages Published			
1975	69,704	296	792	70,792	432	71,224	133
1976	71,289	326	693	72,308	432	72,740	139
1977	83,425	288	584	84,297	432	84,729	141
1978	88,562	301	660	89,523	4,628	94,151	142
1979	93,144	438	990	94,572	3,460	98,032	148
1980	95,043	640	1,972	97,655	4,640	102,295	164
1981	103,699	442	1,808	105,949	1,160	107,109	180
1982	102,708	328	920	103,956	982	104,938	177
1983	102,892	354	960	104,206	1,448	105,654	178
1984	110,039	324	998	111,361	469	111,830	186
1985	102,815	336	1,054	104,205	1,730	105,935	175
1986	105,973	512	1,002	107,487	1,922	109,409	175
1987	112,007	374	1,034	113,415	922	114,337	185
1988	114,634	408	1,060	116,102	1,378	117,480	193
1989	118,586	752	1,058	120,396	1,694	122,090	196
1990	121,837	376	1,098	123,311	3,582	126,893	199
1991	119,969	478	1,106	121,553	3,778	125,331	199
1992	124,026	559	1,122	125,707	2,637	128,344	199
1993	129,162	498	1,141	130,801	1,427	132,228	202
1994	129,987	936	1,094	132,017	2,179	134,196	202
1995	134,471	1170	1,068	136,709	1,477	138,186	205
1996	129,386	622	1,033	131,041	1,071	132,112	204
1997	128,672	429	1,011	130,112	948	131,060	200
1998	132,884	417	1,015	134,316	811	135,127	201
1999	130,457	401	1,022	131,880	3,052	134,932	202
2000	133,208	407	1,019	134,634	3,415	138,049	202
2001	134,582	483	1,041	136,106	5,175	141,281	206
2002	137,373	1114	1,039	139,526	5,573	145,099	207
2003	139,550	421	1,053	141,024	3,153	144,177	214
2004	143,750	447	1,073	145,270	2,369	147,639	217
2005	146,422	103	1,083	147,608	4,365	151,973	221
2006	149,594	376	1,077	151,047	3,060	154,107	222
2007	149,236	428	1,088	150,752	5,258	156,010	222
2008	151,547	453	1,101	153,101	4,873	157,974	222
2009	158,369	412	1,112	159,893	3,440	163,333	225
2010	152,455	512	1,122	154,089	11,405	165,494	226
2011	159,129	486	1,142	160,757	8,544	169,301	230

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

*General Index and Finding Aids volume for 1975 and 1976.

** Unrevised CFR volumes page totals include those previous editions for which a cover only was issued during the year or any previous editions for which a supplement was issued.

Part D. Unified Agenda Rules History, 1983–2011

Total Number of Rules Under Consideration or Enacted

1980s			1990s			2000s		
1983	April	2,863	1990	April	4,332	2000	October	4,699
	October	4,032		October	4,470	2001	October	4,509
1984	April	4,114	1991	April	4,675	2002	October	4,187
	October	4,016		October	4,863	2003	December	4,266
1985	April	4,265	1992	April	4,186	2004	December	4,083
	October	4,131		October	4,909	2005	October	4,062
1986	April	3,961	1993	April	4,933	2006	December	4,052
	October	3,983		October	4,950	2007	December	3,882
1987	April	4,038	1994	April	5,105	2008	December	4,004
	October	4,005		October	5,119	2009	December	4,043
1988	April	3,941	1995	April	5,133	2010	December	4,225
	October	4,017		October	4,735	2011	December	4,128
1989	April	4,003	1996	April	4,570	Sources: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” <i>Federal Register</i> , various years’ editions; and from online edition at http://www.reginfo.gov .		
	October	4,187		October	4,680			
1997	April	4,417	1997	April	4,417			
	October	4,407		October	4,407			
1998	April	4,504	1998	April	4,504			
	October	4,560		October	4,560			
1999	April	4,524	1999	April	4,524			
	October	4,568		October	4,568			

Part E. Agenda Rules History by Department and Agency, 1999–2010

	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999
Advisory Council on Historic Preservation			0	0	0		1	1	1	0	1	1
Agency for International Development	14	12	7	10	8	10	8	8	7	6	6	5
Architectural and Transportation Barriers Compliance Board	7	6	5	5	4	3	4	4	5	5	7	8
Commission on Civil Rights	1	1	2	1	1	1	1	1	1	1	1	1
Commodity Futures Trading Commission	56	32	25	19	14	11	15	15	19	30	21	19
Consumer Product Safety Commission	51	39	31	19	24	18	18	20	20	21	20	17
Corporation for National and Community Service	10	7	7	9	11	11	8	9	16	9	6	4
Court Services/Offender Supervision, D.C.	2	2	2	2	1	1	1	3	7	5	0	0
CPBSD*	3	3	3	5	6	6	5	0	0	0	0	0
Department of Agriculture	287	327	374	290	311	292	279	323	314	312	327	345
Department of Commerce	296	300	325	303	302	296	273	300	270	342	390	366
Department of Defense	150	133	109	131	143	163	126	108	87	93	117	121
Department of Education	23	22	17	13	16	9	11	13	14	8	21	32
Department of Energy	96	85	54	47	63	61	50	66	53	61	67	64
Department of Health and Human Services	312	231	236	259	257	249	233	219	219	277	308	300
Department of Homeland Security	230	237	252	267	280	295	314	338				
Department of Housing and Urban Development	65	60	73	86	92	90	103	109	100	89	113	128
Department of the Interior	259	277	287	264	305	303	287	295	298	423	418	309
Department of Justice	137	121	138	140	139	124	125	122	249	229	202	201
Department of Labor	99	104	96	94	93	93	88	89	102	141	156	151
Department of State	30	18	27	28	28	24	21	15	41	32	21	27
Department of Transportation	223	230	200	199	215	227	301	365	543	511	536	539
Department of the Treasury	580	528	521	545	501	514	532	530	513	458	450	400
Department of Veterans Affairs	81	78	80	65	77	76	79	87	104	164	141	130
Environmental Protection Agency	345	331	330	336	372	400	416	417	409	416	449	456
Equal Employment Opportunity Commission	7	7	5	7	8	6	3	4	4	3	6	9
Farm Credit Administration	23	25	19	12	19	20	20	21	14	17	17	19
Farm Credit System Insurance Corporation		1	1	0	1	1	1	1	1	1	3	3
Federal Acquisition Regulation	85	55	44	36	42	44	45	49	43	48	56	49
Federal Communications Commission	147	145	143	145	139	143	146	134	141	145	137	128
Federal Council on the Arts and Humanities			1									
Federal Deposit Insurance Corporation	21	21	19	18	24	16	20	17	17	22	26	25
Federal Emergency Management Agency			0	0	0	0	0	0	24	30	26	33
Federal Energy Regulatory Commission	36	37	39	41	47	35	23	21	19	8	18	20
Federal Housing Finance Agency	27	30	10	3	8	8	9	11	9	12	12	18
Federal Housing Finance Board			3									
Federal Maritime Commission	4	6	3	4	3	5	7	11	8	7	9	9
Federal Mediation and Conciliation Service	2	2	2	1	1	2	2	3	4	3	2	1
Federal Reserve System	22	26	18	20	13	17	18	18	24	32	33	22
Federal Trade Commission	19	20	17	14	16	15	14	12	10	13	14	16
General Services Administration	34	49	54	26	34	33	27	37	40	35	40	51
Institute of Museum and Library Services	2	1	2	1	1	4	3	6	5	5	4	1
National Aeronautics and Space Administration	26	32	19	11	15	20	27	34	13	17	11	7
National Archives and Records Administration	9	7	10	15	21	17	22	19	20	19	21	21
National Credit Union Administration	24	24	22	24	29	27	26	27	20	22	16	26
National Endowment for the Arts		2	3	2	2	2	2	6	5	5	5	5
National Endowment for the Humanities	4	3	3	3	3	3	3	8	9	8	7	6
National Indian Gaming Commission	9	17	18	19	16	15	14	14	16	15	14	14
National Science Foundation	2	3	3	0	2	3	3	2	2	3	5	4

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

	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999
Nuclear Regulatory Commission	63	61	54	53	45	49	42	45	39	42	55	57
Office of Federal Housing Enterprise Oversight			10	9	8	6	4	4	7	9	5	5
Office of Government Ethics	7	7	6	9	8	7	7	9	10	11	11	12
Office of Management and Budget	7	7	2	1	2	2	3	4	4	5	5	9
Office of Personnel Management	77	77	80	75	93	94	103	90	72	91	110	112
Office of Special Counsel			0	0	0	0	0	0	0	0	3	2
Panama Canal Commission				0	0	0	0	0	0	0	0	4
Peace Corps	1	1	7	6	6	5	4	9	9	9	8	5
Pension Benefit Guaranty Corporation	10	10	12	12	13	9	6	4	6	11	10	12
Postal Regulatory Commission	3	2	2	3	0	0	0	0	0	0	0	0
Presidio Trust			0	0	0	2	2	1	2	2	3	3
Privacy and Civil Liberties Oversight Board			0	1	0	0	0	0	0	0	0	0
Railroad Retirement Board	1	1	3	2	6	5	6	11	13	13	19	16
Recovery Accountability and Transparency Board	1	3										
Securities and Exchange Commission	75	74	72	76	71	64	79	71	73	80	77	80
Selective Service System	1	1	1	1	1	1	1	1	1	1	1	1
Small Business Administration	51	39	26	28	32	34	29	33	40	37	41	35
Social Security Administration	63	58	64	63	53	68	59	64	63	85	82	67
Surface Transportation Board	5	5	6	4	7	3	4	5	5	4	3	3
Tennessee Valley Authority			0	0	0	0	0	2	2	3	3	1
Udall Institute for Environmental Conflict Resolution			0	0	0	0	0	1	1	3	3	3
TOTAL	4,225	4,043	4,004	3,882	4,052	4,062	4,083	4,266	4,187	4,509	4,699	4,538

Sources: Compiled from "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions," *Federal Register*, various years' editions; and from online edition at <http://www.reginfo.gov>. For years before 1999, see past editions of *Ten Thousand Commandments*, available at <http://www.tenthousandcommandments.com>.

Part F. Listing of 212 "Economically Significant" Rules, 2011

From the Regulatory Plan (55 Active Actions)

Department of Agriculture

1. USDA/AMS, Proposed Rule Stage, National Organic Program: Sunset Review for Nutrient Vitamins and Minerals, 0581-AD17
2. USDA/FSIS, Proposed Rule Stage, New Poultry Slaughter Inspection, 0583-AD32
3. USDA/FSIS, Final Rule Stage, Performance Standards for the Production of Processed Meat and Poultry Products; Control of *Listeria Monocytogenes* in Ready-to-Eat Meat and Poultry Products, 0583-AC46

4. USDA/FNS, Proposed Rule Stage, Supplemental Nutrition Assistance Program: Farm Bill of 2008 Retailer Sanctions, 0584-AD88
5. USDA/FNS, Final Rule Stage, Nutrition Standards in the National School Lunch and School Breakfast Programs, 0584-AD59
6. USDA/FNS, Final Rule Stage, Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation, and Energy Act of 2008, 0584-AD87

Department of Education

7. ED/OPE, Proposed Rule Stage, Title IV of the Higher Education Act of 1965, as Amended, 1840-AD05

Department of Energy

8. DOE/EE, Proposed Rule Stage, Energy Efficiency Standards for Battery Chargers and External Power Supplies, 1904-AB57
9. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Walk-In Coolers and Walk-In Freezers, 1904-AB86
10. DOE/EE, Proposed Rule Stage, Energy Efficiency Standards for Manufactured Housing, 1904-AC11
11. DOE/EE, Final Rule Stage, Energy Efficiency Standards for Fluorescent Lamp Ballasts, 1904-AB50

Department of Health and Human Services

12. HHS/FDA, Proposed Rule Stage, Electronic Submission of Data from Studies Evaluating Human Drugs and Biologics, 0910-AC52
13. HHS/FDA, Proposed Rule Stage, Current Good Manufacturing Practice and Hazard Analysis and Risk-Benefit Preventive Controls for Food for Animals, 0910-AG10
14. HHS/FDA, Proposed Rule Stage, Unique Device Identification, 0910-AG31
15. HHS/FDA, Proposed Rule Stage, Produce Safety Regulation, 0910-AG35
16. HHS/FDA, Proposed Rule Stage, Hazard Analysis and Risk-Based Preventive Controls, 0910-AG36
17. HHS/FDA, Final Rule Stage, Medical Device Reporting; Electronic Submission Requirements, 0910-AF86
18. HHS/FDA, Final Rule Stage, Food Labeling: Nutrition Labeling for Food Sold in Vending Machines, 0910-AG56
19. HHS/FDA, Final Rule Stage, Food Labeling: Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments, 0910-AG57
20. HHS/CMS, Proposed Rule Stage, Medicare and Medicaid Programs: Reform of Hospital and Critical Access Hospital Conditions of Participation (CMS-3244-P), 0938-AQ89
21. HHS/CMS, Proposed Rule Stage, Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction (CMS-9070-P), 0938-AQ96
22. HHS/CMS, Proposed Rule Stage, Proposed Changes to Hospital OPPS and CY 2013 Payment Rates; ASC Payment System and CY 2013 Payment Rates (CMS-1589-P), 0938-AR10
23. HHS/CMS, Proposed Rule Stage, Revisions to Payment Policies under the Physician Fee Schedule and Part B for CY 2013 (CMS-1590-P), 0938-AR11
24. HHS/CMS, Proposed Rule Stage, Changes to the Hospital Inpatient and Long-Term Care Prospec-

tive Payment System for FY 2013 (CMS-1588-P), 0938-AR12

25. HHS/CMS, Final Rule Stage, Medicaid Eligibility Expansion under the Affordable Care Act of 2010 (CMS-2349-F), 0938-AQ62
26. HHS/CMS, Final Rule Stage, Establishment of Exchanges and Qualified Health Plans Part I (CMS-9989-F), 0938-AQ67
27. HHS/CMS, Final Rule Stage, State Requirements for Exchange—Reinsurance and Risk Adjustments (CMS-9975-F), 0938-AR07

Department of Homeland Security

28. DHS/OS, Proposed Rule Stage, Secure Handling of Ammonium Nitrate Program, 1601-AA52
29. DHS/USCBP, Final Rule Stage, Importer Security Filing and Additional Carrier Requirements, 1651-AA70
30. DHS/USCBP, Final Rule Stage, Changes to the Visa Waiver Program to Implement the Electronic System for Travel Authorization (ESTA) Program, 1651-AA72
31. DHS/TSA, Proposed Rule Stage, General Aviation Security and Other Aircraft Operator Security, 1652-AA53
32. DHS/TSA, Proposed Rule Stage, Standardized Vetting, Adjudication, and Redress Services, 1652-AA61

Department of Justice

33. DOJ/LA, Final Rule Stage, National Standards to Prevent, Detect, and Respond to Prison Rape, 1105-AB34

Department of Labor

34. DOL/EBSA, Proposed Rule Stage, Definition of “Fiduciary,” 1210-AB32
35. DOL/OSHA, Prerule Stage, Infectious Diseases, 1218-AC46
36. DOL/OSHA, Prerule Stage, Injury and Illness Prevention Program, 1218-AC48
37. DOL/OSHA, Proposed Rule Stage, Occupational Exposure to Crystalline Silica, 1218-AB70
38. DOL/OSHA, Final Rule Stage, Hazard Communication, 1218-AC20

Department of Transportation

39. DOT/FMCSA, Proposed Rule Stage, Carrier Safety Fitness Determination, 2126-AB11

40. DOT/FMCSA, Final Rule Stage, National Registry of Certified Medical Examiners, 2126-AA97
41. DOT/NHTSA, Proposed Rule Stage, Passenger Car and Light Truck Corporate Average Fuel Economy Standards MYs 2017 and Beyond, 2127-AK79
42. DOT/NHTSA, Proposed Rule Stage, Electronic Stability Control Systems for Heavy Vehicles, 2127-AK97
43. DOT/FTA, Proposed Rule Stage, Major Capital Investment Projects (RRR), 2132-AB02

Department of Veterans Affairs

44. VA, Final Rule Stage, Caregivers Program, 2900-AN94

Environmental Protection Agency

45. EPA/WATER, Proposed Rule Stage, Stormwater Regulations Revision to Address Discharges from Developed Sites, 2040-AF13
46. EPA/WATER, Final Rule Stage, Criteria and Standards for Cooling Water Intake Structures, 2040-AE95
47. EPA/AR, Proposed Rule Stage, Petroleum Refinery Sector Risk and Technology Review and NSPS, 2060-AQ75
48. EPA/AR, Proposed Rule Stage, Joint Rulemaking to Establish 2017 and Later Model Year Light Duty Vehicle GHG Emissions and CAFE Standards, 2060-AQ54
49. EPA/AR, Proposed Rule Stage, Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards, 2060-AQ86
50. EPA/AR, Proposed Rule Stage, Greenhouse Gas New Source Performance Standard for Electric Generating Units for New Sources, 2060-AQ91
51. EPA/AR, Final Rule Stage, National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Electric Utility Steam Generating Units, 2060-AP52
52. EPA/AR, Final Rule Stage, Oil and Natural Gas Sector—New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants, 2060-AP76
53. EPA/OCSP, Proposed Rule Stage, Lead; Renovation, Repair, and Painting Program for Public and Commercial Buildings, 2070-AJ56

Nuclear Regulatory Commission

54. NRC, Proposed Rule Stage, Revision of Fee Schedules: Fee Recovery for FY 2012, 3150-AJ03
55. NRC, Final Rule Stage, Physical Protection of Byproduct Material (NRC-2008-0120), 3150-AI12

From the Regulatory Plan (1 Long-Term Action)

Department of Transportation

56. DOT/FMCSA, Electronic On-Board Recorders and Hours of Service Supporting Documents, 2126-AB20

From the Unified Agenda (83 Active Actions)

Consumer Product Safety Commission

57. CPSC, Proposed Rule Stage, Flammability Standard for Upholstered Furniture, 3041-AB35
58. CPSC, Final Rule Stage, Testing, Certification, and Labeling of Certain Consumer Products, 3041-AC71

Department of Agriculture

59. USDA/RUS, Final Rule Stage, Rural Broadband Access Loans and Loan Guarantees, 0572-AC06
60. USDA/RHS, Proposed Rule Stage, Citizenship Implementation, 0575-AC86
61. USDA/RHS, Final Rule Stage, Multi-Family Housing (MFH) Reinvention, 0575-AC13
62. USDA/FNS, Proposed Rule Stage, Certification of Compliance with Meal Requirements for the National School Lunch Program under the Healthy, Hunger-Free Kids Act of 2010, 0584-AE15
63. USDA/FNS, Proposed Rule Stage, Child and Adult Care Food Program: Meal Pattern Revisions Related to the Healthy, Hunger-Free Kids Act of 2010, 0584-AE18
64. USDA/FNS, Final Rule Stage, National School Lunch and School Breakfast Programs: School Food Service Account Revenue Amendments Related to the Healthy, Hunger-Free Kids Act of 2010, 0584-AE11
65. USDA/FS, Final Rule Stage, Special Areas; State-Specific Inventoried Roadless Area Management: Colorado, 0596-AC74

Department of Commerce

66. DOC/NOAA, Proposed Rule Stage, Taking Marine Mammals Incidental to Conducting Geological and Geophysical Exploration of Mineral and Energy Resources on the Outer Continental Shelf in the Gulf of Mexico, 0648-BB38

Department of Defense

67. DOD/DODOASHA, Final Rule Stage, TRICARE; Reimbursement of Sole Community Hospitals, 0720-AB41
68. DOD/OS, Final Rule Stage, Voluntary Education Programs, 0790-AI50

Department of Education

69. ED/OESE, Proposed Rule Stage, Teacher Incentive Fund, 1810-AB12
70. ED/OPE, Final Rule Stage, Federal Pell Grant Program, 1840-AD11

Department of Energy

71. DOE/ENDEP, Final Rule Stage, Advanced Technology Vehicles Manufacturing Incentive Program, 1901-AB25
72. DOE/EE, Prerule Stage, Energy Efficiency Standards for Certain Commercial and Industrial Electric Motors, 1904-AC28
73. DOE/EE, Prerule Stage, Energy Conservation Standards for High-Intensity Discharge Lamps, 1904-AC36
74. DOE/EE, Prerule Stage, Energy Conservation Standards for Wine Chillers and Miscellaneous Refrigeration Products, 1904-AC51
75. DOE/EE, Proposed Rule Stage, Energy Efficiency Standards for Metal Halide Lamp Fixtures, 1904-AC00
76. DOE/EE, Proposed Rule Stage, Energy Efficiency Standards for Microwave Ovens (Standby and Off Mode), 1904-AC07
77. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Commercial Refrigeration Equipment, 1904-AC19
78. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Televisions, 1904-AC20
79. DOE/EE, Final Rule Stage, Energy Conservation Standards for Residential Clothes Washers, 1904-AB90
80. DOE/EE, Final Rule Stage, Energy Efficiency Standards for Dishwashers, 1904-AC64

Department of Health and Human Services

81. HHS/FDA, Proposed Rule Stage, Over-the-Counter (OTC) Drug Review—Topical Antimicrobial Drug Products, 0910-AF69
82. HHS/FDA, Proposed Rule Stage, Over-the-Counter (OTC) Drug Review—Pediatric Dosing for Cough/Cold Products, 0910-AG12

83. HHS/FDA, Proposed Rule Stage, Electronic Distribution of Content of Labeling for Human Prescription Drug and Biological Products, 0910-AG18
84. HHS/FDA, Proposed Rule Stage, “Tobacco Products” Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act, 0910-AG38
85. HHS/FDA, Proposed Rule Stage, Amendments to the Current Good Manufacturing Practice Regulations for Finished Pharmaceuticals—Components, 0910-AG70
86. HHS/FDA, Proposed Rule Stage, Effective Date of Requirement for Premarket Approval for Two Class III Preamendments Devices, 0910-AG78
87. HHS/CDC, Final Rule Stage, World Trade Center Health Program Requirements for Enrollment, Appeals, Certification of Health Conditions, and Reimbursement, 0920-AA44
88. HHS/CMS, Proposed Rule Stage, Home and Community-Based State Plan Services Program and Provider Payment Reassignments (CMS-2249-P2), 0938-AO53
89. HHS/CMS, Proposed Rule Stage, Covered Outpatient Drugs (CMS-2345-P), 0938-AQ41
90. HHS/CMS, Proposed Rule Stage, Payments for Primary Care Services under the Medicaid Program (CMS-2370-P), 0938-AQ63
91. HHS/CMS, Proposed Rule Stage, Medicare and Medicaid Electronic Health Record Incentive Program—Stage 2 (CMS-0044-P), 0938-AQ84
92. HHS/CMS, Proposed Rule Stage, Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2013 (CMS-4157-F), 0938-AQ86
93. HHS/CMS, Proposed Rule Stage, Medicaid Eligibility Changes under the Affordable Care Act—Part II (CMS-2334-P), 0938-AR04
94. HHS/CMS, Proposed Rule Stage, Changes to the End-Stage Renal Disease Prospective Payment System for CY 2013 (CMS-1352-P), 0938-AR13
95. HHS/CMS, Proposed Rule Stage, Home Health Prospective Payment System Rate for CY 2013 (CMS-1358-P), 0938-AR18
96. HHS/CMS, Proposed Rule Stage, Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update for FY 2013 (CMS-1432-P), 0938-AR20
97. HHS/CMS, Proposed Rule Stage, Prospective Payment System for Inpatient Rehabilitation Facilities for FY 2013 (CMS-1433-P), 0938-AR21
98. HHS/CMS, Proposed Rule Stage, Disproportionate Share Hospital Payment Reduction (CMS-2367-P), 0938-AR31

- 99. HHS/CMS, Proposed Rule Stage, Transparency Reports and Reporting of Physician Ownership of Investment Interests (CMS-5060-F), 0938-AR33
- 100. HHS/CMS, Final Rule Stage, Administrative Simplification: Adoption of Standards for Electronic Funds Transfer (EFT) (CMS-0024-IFC), 0938-AQ11
- 101. HHS/CMS, Final Rule Stage, Community First Choice Option (CMS-2337-F), 0938-AQ35
- 102. HHS/CMS, Final Rule Stage, Face-to-Face Requirements for Home Health Services; Policy Changes and Clarifications Related to Home Health (CMS-2348-F), 0938-AQ36
- 103. HHS/OCR, Final Rule Stage, Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules, 0945-AA03

Department of Homeland Security

- 104. DHS/USCG, Proposed Rule Stage, Updates to Maritime Security, 1625-AB38
- 105. DHS/USCG, Final Rule Stage, Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters, 1625-AA32
- 106. DHS/USCBP, Final Rule Stage, Electronic System for Travel Authorization (ESTA): Fee for Use of the System, 1651-AA83

Department of Housing and Urban Development

- 107. HUD/HUDSEC, Final Rule Stage, Credit Risk Retention (FR-5504), 2501-AD53
- 108. HUD/OH, Final Rule Stage, Emergency Homeowners' Loan Program (FR-5470), 2502-AI97
- 109. HUD/CPD, Final Rule Stage, Housing Trust Fund Program (FR-5246), 2506-AC23

Department of the Interior

- 110. DOI/BOEM, Proposed Rule Stage, Revised Requirements for Well Plugging and Platform Decommissioning, 1010-AD61
- 111. DOI/FWS, Proposed Rule Stage, Migratory Bird Hunting; 2012–13 Migratory Game Bird Hunting Regulations, 1018-AX97
- 112. DOI/OSMRE, Proposed Rule Stage, Stream Protection Rule, 1029-AC63

Department of Justice

- 113. DOJ/DEA, Final Rule Stage, Electronic Prescriptions for Controlled Substances, 1117-AA61

- 114. DOJ/DEA, Final Rule Stage, Retail Sales of Scheduled Listed Products; Chemical; Self-Certification of Regulated Sellers of Scheduled Listed Chemical Products, 1117-AB05

Department of Labor

- 115. DOL/ETA, Final Rule Stage, Wage Methodology for the Temporary Nonagricultural Employment H-2B Program, 1205-AB61
- 116. DOL/EBSA, Proposed Rule Stage, Guide or Similar Requirement for Section 408(b)(2) Disclosures, 1210-AB53
- 117. DOL/EBSA, Final Rule Stage, Improved Fee Disclosure for Pension Plans, 1210-AB08
- 118. DOL/OSHA, Final Rule Stage, Electric Power Transmission and Distribution; Electrical Protective Equipment, 1218-AB67
- 119. DOL/OSHA, Final Rule Stage, Walking Working Surfaces and Personal Fall Protection Systems (Slips, Trips, and Fall Prevention), 1218-AB80
- 120. DOL/WHI, Proposed Rule Stage, Amendments to the Family and Medical Leave Act of 1993, 1235-AA03
- 121. DOL/WHI, Proposed Rule Stage, Application of the Fair Labor Standards Act to Domestic Service, 1235-AA05

Department of State

- 122. STATE, Final Rule Stage, Schedule of Fees for Consular Services, Department of State, and Overseas Embassies and Consulates, 1400-AC58

Department of Transportation

- 123. DOT/FMCSA, Proposed Rule Stage, Medical Examiner's Certification Integration, 2126-AB40
- 124. DOT/NHTSA, Proposed Rule Stage, Heavy Vehicle Speed Limiters, 2127-AK92
- 125. DOT/NHTSA, Final Rule Stage, Federal Motor Vehicle Safety Standard No. 111, Rearview Mirrors, 2127-AK43
- 126. DOT/FRA, Proposed Rule Stage, High-Speed Rail Corridor Development and Capital Investment Grants to Support Intercity Passenger Rail Service, 2130-AC17
- 127. DOT/FRA, Final Rule Stage, Positive Train Control Systems Amendments (RRR), 2130-AC27

Department of the Treasury

- 128. TREAS/DO, Final Rule Stage, TARP Standards for Compensation and Corporate Governance, 1505-AC09
- 129. TREAS/DO, Final Rule Stage Small Business Lending Fund Refinance, 1505-AC34

- 130. TREAS/OCC, Proposed Rule Stage, Risk-Based Capital Standards: Market Risk, 1557-AC99
- 131. TREAS/OCC, Proposed Rule Stage, Strengthening Tier 1 Capital Other Capital Enhancements, Standardized Approach (Basel III), 1557-AD46

Department of Veterans Affairs

- 132. VA, Proposed Rule Stage, Post-9/11 Improvement and Fry Scholarship, 2900-AO07
- 133. VA, Proposed Rule Stage, Disabled Veterans Experiencing Difficulties Using Prosthetic Devices, Veterans Needing a Higher Level of Aid and Attendance for Traumatic Brain Injury, and Definition of Catastrophic Disability, 2900-AO16
- 134. VA, Final Rule Stage, Vocational Rehabilitation and Employment Program—Changes to Subsistence Allowance, 2900-AO10

Environmental Protection Agency

- 135. EPA/SWER, Proposed Rule Stage, Revising Underground Storage Tank Regulations—Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training, 2050-AG46
- 136. EPA/AR, Proposed Rule Stage, Revision of New Source Performance Standards for New Residential Wood Heaters, 2060-AP93
- 137. EPA/AR, Proposed Rule Stage, Risk and Technology Review for Ferroalloys Production, 2060-AQ11

Federal Deposit Insurance Corporation

- 138. FDIC, Final Rule Stage, Alternatives to the Use of Credit Ratings in the Risk-Based Capital Guidelines of the Federal Banking Agencies, 3064-AD62
- 139. FDIC, Final Rule Stage, Risk-Based Capital Guidelines: Market Risk, 3064-AD70

**From the Unified Agenda
(45 Completed Actions)**

Department of Commerce

- 140. DOC/BIS, Imposition of License Requirement for Exports and Reexports of Missile Technology (MT)—Controlled Items to Canada, 0694-AC48

Department of Education

- 141. ED/OPE, Program Integrity: Gainful Employment—Measures, 1840-AD06

- 142. ED/OS, Race to the Top Fund Phase 3, 1894-AA01

Department of Energy

- 143. DOE/EE, Energy Efficiency Standards for Clothes Dryers and Room Air Conditioners, 1904-AA89
- 144. DOE/EE, Energy Efficiency Standards for Residential Refrigerators, Refrigerator-Freezers, and Freezers, 1904-AB79
- 145. DOE/EE, Energy Efficiency Standards for Residential Furnace, Central Air Conditioners, and Heat Pumps, 1904-AC06

Department of Health and Human Services

- 146. HHS/FDA, Cigarette Warning Label Statements, 0910-AG41
- 147. HHS/CMS, Optional State Plan Case Management Services (CMS-2237-F), 0938-AO50
- 148. HHS/CMS, Implementing Regulations for Reauthorization of the Children’s Health Insurance Program (CHIP) (CMS-2301-P), 0938-AP68
- 149. HHS/CMS, Administrative Simplification: Adoption of Authoring Organizations for Operating Rules and Adoption of Operating Rules for Eligibility and Claims Status (CMS-0032-F), 0938-AQ12
- 150. HHS/CMS, Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for CY 2012 (CMS-8043-N), 0938-AQ14
- 151. HHS/CMS, Part B Monthly Actuarial Rates, Monthly Premium Rates, and Annual Deductible Beginning January 1, 2012 (CMS-8045-N), 0938-AQ16
- 152. HHS/CMS, Medicaid Recovery Audit Contractors (CMS-6034-F), 0938-AQ19
- 153. HHS/CMS, Durable Medical Equipment (DME) Face to Face Encounters and Written Orders Prior to Delivery (CMS-6033-P), 0938-AQ21
- 154. HHS/CMS, Medicare Shared Savings Program: Accountable Care Organizations (CMS-1345-F), 0938-AQ22
- 155. HHS/CMS, Inpatient Psychiatric Facilities Prospective Payment System—Update for Rate Year and Fiscal Year Beginning July 1, 2011 (CMS-1346-F), 0938-AQ23
- 156. HHS/CMS, Proposed Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and FY 2012 Rates and to the Long-Term Care Hospital PPS and FY 2012 Rates (CMS-1518-F), 0938-AQ24
- 157. HHS/CMS, Revisions to Payment Policies under the Physician Fee Schedule and Part B for CY 2012 (CMS-1524-FC), 0938-AQ25
- 158. HHS/CMS, Changes to the Hospital Outpatient Prospective Payment System and Ambulatory Surgical

Center Payment System for CY 2012 (CMS-1525-F), 0938-AQ26

159. HHS/CMS, End-Stage Renal Disease Prospective Payment System for CY 2012, Quality Incentive Program for PY 2013 and PY 2014; Ambulance Fee Schedule; and Durable Medical Equipment (CMS-1577-F), 0938-AQ27
160. HHS/CMS, Prospective Payment System for Inpatient Rehabilitation Facilities for FY 2012; Changes in Size of Inpatient Rehabilitation Units and Inpatient Psychiatric Units (CMS-1349-F), 0938-AQ28
161. HHS/CMS, Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2012; Required Disclosures of Ownership (CMS-1351-F), 0938-AQ29
162. HHS/CMS, Home Health Prospective Payment System Refinements and Rate Update for CY 2012 (CMS-1353-F), 0938-AQ30
163. HHS/CMS, HIPAA Mental Health Parity and Addiction Equity Act of 2008 Amendments (CMS-4140-F), 0938-AQ52
164. HHS/CMS, Enhanced Federal Funding for Medicaid Eligibility Determination and Enrollment Activities (CMS-2346-F), 0938-AQ53
165. HHS/CMS, Revisions to Medicare Advantage and Part D Prescription Drug Programs; MIPPA-Related Marketing Revisions and Agent/Broker Compensation Plan (CMS-4138-F), 0938-AQ60
166. HHS/CMS, Establishment of the Consumer Operated and Oriented Plan Program (CMS-9983-F), 0938-AQ98
167. HHS/CMS, Exchange Functions in the Individual Market: Eligibility Determinations; Standards for Verification of Employer-Sponsored Health Coverage, Employer Appeals, and Employer SHOP Participation (CMS-9974-F), 0938-AR25
168. HHS/OS, Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules, 0991-AB80

Department of Housing and Urban Development

169. HUD/OH, SAFE Mortgage Licensing Act: Minimum Licensing Standards and Oversight Responsibilities (FR-5271-F-03), 2502-AI70

Department of the Interior

170. DOI/FWS, Migratory Bird Hunting; 2011–2012 Migratory Game Bird Hunting Regulations, 1018-AX34

Department of Justice

171. DOJ/LA, James Zadroga 9/11 Health and Compensation Act of 2010, 1105-AB39

Department of Labor

172. DOL/EBSA, Statutory Exemption for Provision of Investment Advice, 1210-AB35

Department of Transportation

173. DOT/FMCSA, Hours of Service, 2126-AB26
174. DOT/NHTSA, Commercial Medium- and Heavy-Duty On-Highway Vehicles and Work Truck Fuel Efficiency Standards, 2127-AK74

Department of the Treasury

175. TREAS/IRS, Regulations Governing Practice before the Internal Revenue Service, 1545-BH01
176. TREAS/OTS, Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Standardized Risk-Based Capital Rules, 1550-AC19
177. TREAS/OCC, Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Standardized Risk-Based Capital Rules, 1557-AD51

Environmental Protection Agency

178. EPA/AR, Commercial and Industrial Solid Waste Incineration Units; Response to Remand of New Source Performance Standards and Emission Guidelines, 2060-AO12
179. EPA/AR, Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 2060-AP50
180. EPA/AR, Control of Greenhouse Gas Emissions from Medium and Heavy-Duty Vehicles, 2060-AP61
181. EPA/AR, Federal Implementation Plans for IA, KS, MI, MO, OK, and WI to Reduce Interstate Transport of Ozone, 2060-AR01

Equal Employment Opportunity Commission

182. EEOC, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act Amendments Act, 3046-AA85

National Labor Relations Board

183. NLRB, Notification of Employee Rights under the National Labor Relations Act, 3142-AA07

Nuclear Regulatory Commission

184. NRC, Revision of Fee Schedules: Fee Recovery for FY 2011 (NRC-2011-0016), 3150-AI93

From the Unified Agenda (28 Long-Term Actions)

Department of Agriculture

185. USDA/FSIS, Mandatory Inspection of Catfish and Catfish Products, 0583-AD36

Department of Energy

186. DOE/EE, Energy Conservation Standards for General Service Fluorescent Lamps and Incandescent Reflector Lamps, 1904-AC43

Department of Health and Human Services

187. HHS/FDA, Food Labeling; Revision of the Nutrition and Supplement Facts Labels, 0910-AF22
188. HHS/CDC, Control of Communicable Diseases: Foreign, 0920-AA12
189. HHS/CDC, Control of Communicable Diseases: Interstate, 0920-AA22

Department of Homeland Security

190. DHS/OS, Collection of Alien Biometric Data upon Exit from the United States at Air and Sea Ports of Departure; United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT), 1601-AA34
191. DHS/USCG, Commercial Fishing Industry Vessels, 1625-AA77
192. DHS/FEMA, Disaster Assistance; Federal Assistance to Individuals and Households, 1660-AA18

Department of Labor

193. DOL/EBSA, Mental Health Parity and Addiction Equity Act, 1210-AB30
194. DOL/EBSA, Improved Fee Disclosure for Welfare Plans, 1210-AB37
195. DOL/EBSA, Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act, 1210-AB42
196. DOL/EBSA, Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services

- under the Patient Protection and Affordable Care Act, 1210-AB44
197. DOL/OSHA, Occupational Exposure to Beryllium, 1218-AB76
198. DOL/OSHA, Combustible Dust, 1218-AC41

Department of Transportation

199. DOT/FMCSA, Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operations, 2126-AB06
200. DOT/FRA, Risk Reduction Program, 2130-AC11

Environmental Protection Agency

201. EPA/SWER, Financial Responsibility Requirements under CERCLA Section 108(b) for Classes of Facilities in the Hard Rock Mining Industry, 2050-AG61
202. EPA/AR, Review of the National Ambient Air Quality Standards for Particulate Matter, 2060-AO47
203. EPA/AR, Review of the National Ambient Air Quality Standards for Ozone, 2060-AP38
204. EPA/AR, Reconsideration of the 2008 Ozone Primary and Secondary National Ambient Air Quality Standards, 2060-AP98
205. EPA/AR, Review of the National Ambient Air Quality Standards for Lead, 2060-AQ44

Federal Communications Commission

206. FCC, Broadband over Power Line Systems, 3060-AI24
207. FCC, Amendment of the Rules Regarding Maritime Automatic Identification Systems (WT Docket No. 04-344), 3060-AJ16
208. FCC, In the Matter of Service Rules for the 698 to 746, 747 to 762, and 777 to 792 MHz Bands, 3060-AJ35
209. FCC, Universal Service Reform Mobility Fund (WT Docket No. 10-208), 3060-AJ58
210. FCC, IP-Enabled Services, 3060-AI48
211. FCC, Form 477; Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, 3060-AJ15
212. FCC, Implementation of Section 224 of the Act; A National Broadband Plan for Our Future (WC Docket No. 07-245, GN Docket No. 09-51), 3060-AJ64

Source: Compiled from "The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions," *Federal Register*, and from online edition at <http://www.gpoaccess.gov>.

Note: The "Regulation Identifier Number" appears at the end of each entry. Sequential numbers in print editions of the Regulatory Plan and Unified Agenda no longer apply.

Part G. Rules Affecting Small Business, 1996–2010

	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996
Dept. of Agriculture	84	87	93	73	67	54	52	64	39	56	47	49	63	58	56
Dept. of Commerce	98	90	107	112	111	108	79	74	77	89	98	88	52	29	46
Dept. of Defense	16	12	7	13	14	13	12	13	6	8	7	15	21	15	22
Dept. of Education	1	0	0	0	1	0	0	0	1	0	0	0	0	1	1
Dept. of Energy	3	2	1	1	0	0	0	1	0	1	1	0	0	2	2
Dept. of Health & Human Services	112	94	93	96	109	112	106	96	92	108	107	75	88	100	89
Dept. of Homeland Security	37	35	42	44	43	43	38	33	0	0	0	0	0	0	0
Dept. of Housing & Urban Development	1	0	1	5	4	4	6	11	6	3	0	1	1	7	9
Dept. of the Interior	18	17	18	19	29	21	20	26	17	20	18	33	29	28	17
Dept. of Justice	5	3	2	5	7	8	8	8	13	15	14	14	10	26	27
Dept. of Labor	26	29	29	26	26	19	19	23	22	26	40	38	41	39	51
Dept. of State	20	4	3	1	0	1	1	2	6	3	2	0	0	1	2
Dept. of Transportation	49	45	41	43	60	63	103	151	216	244	266	246	208	44	31
Dept. of Treasury	56	48	47	45	37	41	38	27	26	27	31	15	60	50	52
Dept. of Veterans' Affairs	3	2	2	0	0	0	0	0	1	1	3	6	6	7	3
Agency for International Development	1	0	0	1	1	0	0	1	2	1	0	0	0	0	0
Arch. & Trans Barriers Compliance Board		0	0	0	0	0	0	0	1	1	2	2	3	0	0
Corporation for National & Community Service		0	0	0	1	1	0	0	0	0	0	0	0	0	0
Environmental Protection Agency	95	89	83	85	95	110	122	135	167	185	205	179	178	163	152
Federal Emergency Management Agency				0	0	0	0	0	1	1	1	0	0	0	1
General Services Administration	5	6	7	3	3	3	1	5	4	1	1	2	2	3	6
National Aeronautics & Space Administration			0	0	0	0	0	0	0	0	0	0	1	0	1
National Archives & Records Administration			0	0	0	1	1	1	0	0	0	0	1	1	1
Equal Employment Opportunity Commission	5	4	2	3	3	3	0	0	0	2	0	0	2	1	0
National Endowment for the Arts			0	0	0	0	0	2	2	0	0	0	0	0	0
National Endowment for the Humanities			0	0	0	0	0	0	0	0	0	0	0	1	0
Office of Management & Budget			0	0	0	0	0	0	0	0	1	2	1	1	2
Railroad Retirement Board			0	0	0	0	0	0	0	0	0	0	0	1	1
Small Business Administration	39	20	13	15	21	19	18	24	21	21	24	28	20	13	17
Social Security Administration		1	1	1	1	1	1	1	1	0	0	2	0	0	1
Federal Acquisition Regulation	5	4	6	5	5	7	5	5	6	9	13	16	11	15	20
Commodity Futures Trading Commission		1	1	1	0	1	1	2	0	0	0	0	1	0	0
Consumer Product Safety Commission			0	0	1	0	0	0	0	0	0	0	0	0	1
Federal Communications Commission	112	110	110	109	108	113	113	104	109	117	105	91	82	70	75
Federal Deposit Insurance Corporation	1														
Federal Energy Regulatory Commission			0	1	0	0	0	0	0	0	0	1	0	0	0
Federal Housing Finance Board			0	0	0	0	0	0	0	0	0	0	1	0	0
Federal Maritime Commission	3	3	3	2	3	5	7	10	7	6	7	4	5	0	0
Federal Reserve System	8	6	5	5	3	6	5	3	7	10	8	2	5	2	4
Federal Trade Commission	16	16	13	11	13	12	11	9	9	9	9	10	10	11	7
Federal Mediation and Conciliation Service			0	0	0	0	0	0	0	1	1	0	0	0	0
National Credit Union Administration	4	7	3	1	4	1	2	0	0	0	0	0	0	1	1
Nuclear Regulatory Commission	1	2	1	2	1	1	0	3	5	5	3	5	8	9	8
Resolution Trust Corporation					0	17	0	0	0	0	0	0	0	0	0
Securities and Exchange Commission	21	21	19	29	16	0	20	25	28	26	40	39	27	34	48
TOTAL	845	758	753	757	787	788	789	859	892	996	1054	963	937	733	754

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

Part H. Federal Rules Affecting State and Local Governments, 2002–2011

	2011					
	State			Local		
	Active	Completed	Long-term	Active	Completed	Long-term
Dept. of Agriculture	44	9	2	29	8	1
Dept. of Commerce	19	6	2	7	3	2
Dept. of Defense	1	0	0	1	0	0
Dept. of Education	0	0	0	0	0	0
Dept. of Energy	13	9	0	11	5	0
Dept. of Health & Human Services	39	21	9	14	7	2
Dept. of Homeland Security	11	8	13	11	6	7
Dept. of Housing & Urban Development	10	0	0	10	0	0
Dept. of Interior	29	9	0	16	2	0
Dept. of Justice	11	2	2	7	2	2
Dept. of Labor	12	0	3	7	0	2
Dept. of State	2	0	0	0	0	0
Dept. of Transportation	9	1	3	7	0	0
Dept. of Treasury	22	4	0	16	4	0
Dept. of Veterans's Affairs	3	1	0	1	0	0
Environmental Protection Agency	67	22	26	47	17	15
Architectural and Transportation Barriers Compliance Board	4	0	1	3	0	1
CPBSD*	0	1	0	0	1	0
Advisory Council on Historic Preservation						
Consumer Financial Protection Bureau	3					
Corp. for National and Community Service	3	3	0	3	3	0
Federal Emergency Management Agency						
Equal Employment Opportunity Commission	3	2	0	3	2	0
General Services Administration	1	6	0	1	5	0
National Aeronautics & Space Administration	0	0	0	0	0	0
National Archives & Records Administration	0	0	0	0	0	0
Institute of Museum and Library Services	0	0	1	0	0	1
National Endowment for the Arts						
Natioanl Endowment for the Humanities	0	0	0	0	0	0
Office of Management & Budget	0	0	0	0	0	0
Social Security Administration	2	0	0	0	0	0
Federal Communications Commission	0	0	24	0	0	17
Federal Energy Regulatory Commission	0	0	0	0	0	0
Federal Reserve System	1	1	1	1	0	1
Federal Trade Commission	2	0	0	1	0	0
National Credit Union Administration	1	0	0	0	0	0
National Indian Gaming Commission	0	0	0	0	0	0
Nuclear Regulatory Commission	3	1	1	2	1	0
Securities and Exchange Commission	2	0	0	1	0	0
STATE AND LOCAL TOTALS	317	106	88	199	66	51

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

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2010		2009		2008		2007		2006		2005		2004		2003		2002	
State	Local	State	Local	State	Local	State	Local	State	Local	State	Local	State	Local	State	Local	State	Local
53	36	75	49	72	41	63	43	74	58	69	59	71	59	53	42	60	49
27	11	20	11	22	11	22	9	28	9	34	8	23	9	18	9	15	8
1		1	0	1	0	0	0					1	1	2	2	2	2
		0	0	0	0	0	0	1				0	0	0	0	1	1
26	22	23	20	27	25	19	18	12	9	16	15	9	8	9	9	8	9
86	42	71	38	69	41	83	45	70	47	34	19	35	18	40	20	46	21
35	26	39	30	33	25	37	28	39	28	39	29	37	27	34	28	0	0
8	9	2	3	2	4	1	4	3	7	6	10	9	13	14	23	13	17
28	9	30	7	41	11	37	9	37	11	44	17	37	16	42	20	47	22
21	15	16	11	15	10	17	11	14	8	15	9	16	10	15	11	28	21
20	10	27	15	17	9	20	7	13	8	16	10	18	12	23	14	25	16
1		1	0	2	0	3	0	3		4	1	1	1	2	1	2	1
13	5	16	6	18	6	19	7	27	12	11	4	21	13	26	16	42	23
29	24	29	24	24	20	28	25	16	15	13	12	17	13	22	15	17	12
5	1	0	0	1	0	1	0	1		2	1	3	2	5	2	4	1
125	85	101	70	104	65	119	80	132	86	143	98	140	92	157	103	155	101
3	2	3	2	2	2	2	2	1	1	1	1	2	2	2	2	3	3
1	1	1	1	1	1	2	2	2	2	2	2	2	2				
												1	0	1	0	1	0
4	4	5	5	5	5	6	6	7	7	9	9	5	5	4	4	8	8
												0	0	0	0	8	8
6	6	5	5	2	3	3	4	3	4	3	4	1	1	2	2	2	2
9	7	9	7	10	7	8	5	8	5	8	5	8	6	11	7	10	6
		0	0			0	0					0	0	0	0	0	0
		0	0	1	1	3	3	4	4	4	4	4	4	4	4	4	4
2	2	0	0	1	1	1	1	1	1	1	1	1	1	2	2	2	2
		0	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1
		0	0			0	0					0	0	1	1	1	1
		0	0			0	0	1	1	1	1	1	1	0	0	0	0
2		2	0	3		4	0	2		3		5	1	8	3	5	3
32	23	30	20	32	20	31	20	32	19	37	24	33	20	21	16	23	18
		0	0			0	0					1	0	2	1	2	2
1	1	0	0			0	0	1	1			0	0	0	0	0	0
2	1	3	1	1	0	1	0	2		1		1	0	1	0	1	0
1		0	0	1	0	0	0	3		2		0	0	1	0	1	0
		0	0			0	0					0	0	0	0	1	0
3	1	4	2	3	1	4	1	3	1	3	1	3	0	4	1	1	1
3	3	1	1	2	2	4	3	2	1	1	1	0	0	0	0	0	0
547	346	514	328	513	312	539	334	543	346	523	346	507	338	527	359	539	363

Notes

1 Office of Management and Budget (OMB), *Budget of the United States Government, Fiscal Year (FY) 2013*, Summary Tables, Table S-1, “Budget Totals,” p. 205, <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2013/assets/tables.pdf>.

2 Congressional Budget Office (CBO), *The Budget and Economic Outlook: Fiscal Years 2012 to 2022*, January 2012, Table 1-1, “Deficits or Surpluses Projected in CBO’s Baseline,” p. 2, http://www.cbo.gov/sites/default/files/cbofiles/attachments/01-31-2012_Outlook.pdf.

3 Outlays in 2002 were \$2.0112 trillion. CBO, “Revenues, Outlays, Surpluses, Deficits, and Debt Held by the Public, 1969 to 2008,” January 13, 2009, Supplement to the 2009 *Budget and Economic Outlook*, <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/99xx/doc9957/historicaltables09-web.xls>.

4 Figures from, respectively, CBO, January 2012, Table 1-1 (see note 1); and CBO, *The Budget and Economic Outlook: Fiscal Years 2011 to 2021*, January 2011, Summary Table 1, “CBO’s Baseline Budget Outlook,” p. xii, http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/120xx/doc12039/01-26_fy2011outlook.pdf.

5 CBO, January 2012, p. 2 (see note 2).

6 OMB, FY 2013, Table S-1 (see note 1).

7 Percentages are available at U.S. Census Bureau, *Statistical Abstract of the United States: 2012*, Table 1360, “Gross Public Debt, Expenditures, and Receipts by Country: 1990 to 2011,” <http://www.census.gov/compendia/statab/2012/tables/12s1360.pdf>.

8 Central Intelligence Agency, *The World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook/fields/2056.html>. Nations with at least \$1 trillion in revenues are Brazil, China, France, Germany, Italy, Japan and the United Kingdom.

9 For a recent survey of corporate tax incidence estimates, see Jennifer C. Gravelle, “Corporate Tax Incidence: A Review of Empirical Estimates and Analysis,” Congressional Budget Office Working Paper Series: Working Paper 2011-01, June 2011, <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/122xx/doc12239/06-14-2011-corporatetaxincidence.pdf>.

10 See James M. Buchanan, *Cost and Choice: An Inquiry in Economic Theory* (Chicago and London: University of Chicago Press, 1969).

11 “Measuring the Impact of Regulation: The Rule of More,” *The Economist*, February 18, 2012, <http://www.economist.com/node/21547772>.

12 OMB, *2011 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, June 2011, Table 1-1, “Estimates of the Total Annual Benefits and Costs of Major Federal Rules by Agency,

October 1, 2000–September 30, 2010 (billions of 2001 dollars),” pp. 13–14, http://www.whitehouse.gov/sites/default/files/omb/inforeg/2011_cb/2011_cba_report.pdf.

13 Nicole V. Crain and W. Mark Crain, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBAHQ-08-M-0466, September 2010, <http://www.sba.gov/advo/research/rs371tot.pdf>.

14 Their calculations updated a 2005 report by Mark Crain that found 2004 regulatory costs of \$1.1 trillion (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://archive.sba.gov/advo/research/rs264tot.pdf>). In a still earlier October 2001 report by Crain and Thomas Hopkins, the authors noted regulatory costs of \$843 billion (W. Mark Crain and Thomas D. Hopkins, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, RFP No. SBAHQ-00-R-0027, October 2001, <http://www.sba.gov/advo/research/rs207tot.pdf>). That report, in turn, updated still earlier analyses, such as Thomas D. Hopkins, “The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress,” Small Business Administration, Office of the Chief Counsel for Advocacy, Washington, DC, October 1995, http://www.sba.gov/advo/laws/archive/law_brd.html.

Recent criticisms of the current Crain and Crain report (“The Impact of Regulatory Costs,” see note 13) would also apply to some OMB calculations and have in the past, although, alas, critics do not present alternative defensible total cost estimates. In particular, the Crain and Crain model for calculating costs of economic regulations using the World Bank Regulatory Quality Index has fallen under criticism by OMB and others. It happens to be the case that earlier Crain/Hopkins iterations, in current dollars, would be in the same ballpark even without including costs of interim regulations and that current estimates do not capture the costs of such major initiatives as health care legislation, Dodd-Frank financial regulation, or even the earlier Sarbanes-Oxley financial rules. This author addressed some of those concerns about the SBA study in a *Forbes* column (Wayne Crews, “The Cost of Government Regulation,” *Forbes*, July 6, 2011, <http://www.forbes.com/sites/waynecrews/2011/07/06/the-cost-of-government-regulation-the-barack-obama-cass-sunstein-urban-legend/>).

Here, however, I list the primary criticisms and link to the Crain and Crain responses to them:

Curtis W. Copeland, “Analysis of an Estimate of the Total Costs of Federal Regulations,” Congressional Research Service, April 6, 2011, http://www.progressivereform.org/articles/CRS_Crain_and_Crain.pdf (Crain and Crain response: <http://>

policystudies.lafayette.edu/files/2011/03/Response-to-CRS-April-28-2011-inc2.pdf).

Sidney A. Shapiro, Ruth Ruttenberg, and James Goodwin, “Setting the Record Straight: The Crain and Crain Report on Regulatory Costs,” Center for Progressive Reform White Paper No. 1103, February 2011, http://www.progressivereform.org/articles/SBA_Regulatory_Costs_Analysis_1103.pdf (Crain and Crain response: http://policystudies.lafayette.edu/files/2011/03/Analysis-of-CPR_4_27_last.pdf).

John Irons and Andrew Green, “Flaws Call for Rejecting Crain and Crain Model,” Issue Brief No. 308, July 19, 2011, http://www.epi.org/publication/flaws_call_for_rejecting_crain_and_crain_model/ (Crain and Crain response: <http://policystudies.lafayette.edu/files/2011/03/EPI-response.pdf>).

15 For example, the February 18, 2012, issue of *The Economist* features a cover story on “Over-Regulated America” and noted that, “[R]ed tape in America is no laughing matter. The problem is not the rules that are self-evidently absurd. It is the ones that sound reasonable on their own but impose a huge burden collectively. America is meant to be the home of laissez-faire. . . . Yet for some time America has been straying from this ideal.” With respect to the regulations emerging from the Dodd-Frank law, the story notes that, “[F]inancial firms in America must prepare to comply with a law that is partly unintelligible and partly unknowable” (<http://www.economist.com/node/21547789>). Elements of the cover story series include “Measuring the Impact of Regulation: The Rule of More” (<http://www.economist.com/node/21547772>); “Deleting Regulations: Of Sunstein and Sunsets” (<http://www.economist.com/node/21547799>); and “Excessive Regulation: Tangled Up in Green Tape” (<http://www.economist.com/node/21547804>). See also James Pethokoukis, “The Return of Big Government,” *U.S. News & World Report*, April 11, 2008, <http://www.usnews.com/money/business-economy/articles/2008/04/11/the-return-of-big-government.html>.

16 See Thomas D. Hopkins, “Statement Prepared for the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs of the House Committee on Government Reform and Oversight,” May 16, 1996. See also Thomas D. Hopkins, “Regulatory Costs in Profile,” Policy Study No. 231, Center for the Study of American Business, August 1996, p. 4.

17 Crain and Crain, “The Impact of Regulatory Costs,” p. 7 (see note 13).

18 Ibid., pp. 7–8.

19 CBO, Supplement to 2009 *Budget and Economic Outlook* (see note 3).

20 CBO, *The Budget and Economic Outlook: Fiscal Years 2012 to 2022*, Table 1-1, “Deficits or Surpluses Projected in CBO’s Baseline,” p. 2 (see note 2).

21 These figures for the 2008, 2009, and 2010 deficit and outlays may be found in CBO, *The Budget and Economic*

Outlook, January 2009, 2010, and 2011 editions, all available at <http://www.cbo.gov>.

22 See OMB, *Historical Tables*, Table 1.3, “Summary of Receipts, Outlays, and Surpluses or Deficits (–) in Current Dollars, Constant (FY 2005) Dollars, and as Percentages of GDP: 1940–2017,” <http://www.whitehouse.gov/omb/budget/Historicals>.

23 CBO, Supplement to 2009 *Budget and Economic Outlook* (see note 3).

24 Committee on the Budget, “Chairman Spratt’s Statement on CBO Deficit Projection,” news release, March 20, 2009.

25 Estimated 2011 tax figures from U.S. Census Bureau, *Statistical Abstract of the United States: 2012*, Table 475, “Federal Budget Receipts by Source: 1990 to 2011,” <http://www.census.gov/compendia/statab/2012/tables/12s0475.pdf>.

26 Ibid.

27 Profits from U.S. Census Bureau, *Statistical Abstract of the United States: 2012*, Table 793, “Corporate Profits before Taxes by Industry: 2000 to 2009,” <http://www.census.gov/compendia/statab/2012/tables/12s0793.pdf>. Profits do not reflect inventory valuation and capital consumption adjustments.

28 Gross national income (GNI) figures for Canada and Mexico are from U.S. Census Bureau, *Statistical Abstract of the United States: 2012*, Table 1348, “Gross National Income (GNI) by Country: 2000 and 2009,” <http://www.census.gov/compendia/statab/2012/tables/12s1348.pdf>. As the chart detail notes, “GNI measures the total domestic and foreign value added claimed by residents. GNI comprises GDP plus net receipts of primary income (compensation of employees and property income) from nonresident sources.”

29 CBO, *The Budget and Economic Outlook: Fiscal Years 2012 to 2022*, Table 1-3, “CBO’s Baseline Budget Projections,” p. 10, http://www.cbo.gov/sites/default/files/cbofiles/attachments/01-31-2012_Outlook.pdf (see note 2).

30 Susan Dudley and Melinda Warren, “Fiscal Stalemate Reflected in Regulators’ Budget: An Analysis of the U.S. Budget for Fiscal Years 2011 and 2012,” Regulators’ Budget 33, published jointly by the Regulatory Studies Center at George Washington University and the Weidenbaum Center on the Economy, Government, and Public Policy, May 2011, http://wc.wustl.edu/files/wc/2012_Regulators_Budget_2_1.pdf. Original 2000 constant dollars are adjusted by the change in the consumer price index between 2000 and 2010, derived from U.S. Census Bureau, *Statistical Abstract of the United States: 2012*, Table 725, “Consumer Price Indexes (CPI-U) by Major Groups: 1990 to 2010,” <http://www.census.gov/compendia/statab/2012/tables/12s0725.pdf>.

31 Whether any particular president’s home stretch regulations (the phenomenon has a long history) are designed to mitigate and ease earlier rules (which also requires *Federal Register* notice and comment) or to add actual new rules re-

quires analysis separate from this report. See Emma Schwartz, “The Bush Administration’s Midnight Regulations,” *ABC News*, October 30, 2008, <http://abcnews.go.com/Blotter/Story?id=6146929&page=1>; and Stephen Power, Elizabeth Williamson, and Christopher Conkey, “White House Pushes through a Flurry of Rule Changes Sought by Business,” *Wall Street Journal*, November 20, 2008, <http://online.wsj.com/article/SB122714583954143319.html>.

32 OMB Watch, “OMB Watch Statement on Cass Sunstein’s Senate Confirmation,” news release, September 10, 2009, <http://www.ombwatch.org/node/10371>.

33 The memo specified that, “[N]o proposed or final regulation should be [published] unless and until it has been reviewed and approved by a department or agency head appointed or designated by the President after noon on January 20, 2009.” The memo, like moratoriums issued by prior administrations, exempts regulations that address “urgent circumstances relating to health, safety, environmental, financial, or national security matters,” as well as regulations subject to statutory or judicial deadlines.

34 A freeze was advocated by the Competitive Enterprise Institute in the months before Obama’s inauguration: Clyde Wayne Crews Jr., “To President-Elect Obama—Freeze Gov’t Regulations This Winter,” *OpenMarket* (blog), November 12, 2008, <http://www.openmarket.org/2008/11/12/to-president-elect-obama%E2%80%94freeze-govt-regulations-this-winter>.

35 See, for example, *Ten Thousand Commandments: A Policymaker’s Snapshot of the Federal Regulatory State*, Competitive Enterprise Institute, September 1996, <http://cei.org/gencon/025,01430.cfm>.

36 Counting year 2000 as part of the new millennium, which is technically incorrect.

37 It did not appear in the *Federal Register*, but in the online database at <http://www.reginfo.gov>.

38 *Federal Register*, vol. 74, No. 233, December 7, 2009, p. 64133.

39 This count is compiled over the years from printed editions of National Archives and Records Administration, Office of the Federal Register, “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, various years; and from <http://www.reginfo.gov>.

40 Although the Agenda is published twice a year, this document tracks each year’s October or December year-end compilation, except where indicated.

41 Darren Goode, “Gripes over EPA in Responses to Darrell Issa,” *Politico*, February 7, 2011, <http://www.politico.com/news/stories/0211/48995.html>.

42 Fred Smith, Letter to Rep. Darrell Issa, January 3, 2011, <http://www.scribd.com/doc/47563145/Competitive-Enterprise-Institute-Letter-to-Chairman-Issa-January-3-2011>.

43 Remarks by the President in State of the Union Address, United States Capitol, Washington, DC, January 25, 2012, <http://www.whitehouse.gov/photos-and-video/video/2012/01/25/2012-state-union-address-enhanced-version#transcript>.

44 Examined in Wayne Crews, “The Burden of Federal Rules: Our Other Trillion-Dollar Debt,” *Investor’s Business Daily*, February 7, 2012, <http://news.investors.com/article/600378/201202071819/government-regulations-are-a-trillion-dollar-burden-on-the-economy.htm>.

45 *Federal Register*, vol. 74, No. 233, December 7, 2009, pp. 64131–32.

46 The legislation and executive orders by which agencies are directed to assess effects on state and local governments are described in the Agenda’s appendixes.

47 Government Accountability Office (GAO) website, “Congressional Review Act Reports,” <http://www.gao.gov/legal/congress.html>.

48 GAO now only explicitly presents its major rule reports for the most recent three months, at <http://www.gao.gov/legal/congressact/majrule.html>, which used to not be the case. Now to get a count going further back in time, a researcher must use GAO’s seemingly separate database of rules submitted to it by agencies, on the presumption that the major ones are those requiring and getting a GAO report as required by the Congressional Review Act. So, for the current year, using that database (<http://www.gao.gov/legal/congressact/fedrule.html>), I here select “major” under rule type, and the time period January through December 2011 in the “published” category. I tabulated 79 but have not here broken them down by agency in Table 7.

49 James Gattuso and Diane Katz, “Red Tape Rising: A 2011 Mid-Year Report on Regulation,” Heritage Foundation *Background*, No. 2586, July 25, 2011, <http://www.heritage.org/research/reports/2011/07/red-tape-rising-a-2011-mid-year-report>.

50 As seen in Dudley and Warren, “Fiscal Stalemate Reflected in Regulators’ Budget,” May 2011, from Table A-1, “Agency Detail of Spending on Federal Regulatory Activity: Current Dollars,” pp. 15–17 (see note 30).

51 *Federal Register* available at <http://www.federalregister.gov>.

52 See Clyde Wayne Crews Jr., “Splinternets and Cyberspaces vs. Net Neutrality,” *Daily Caller*, February 3, 2010, <http://dailycaller.com/2010/02/03/splinternets-and-cyberspaces-vs-net-neutrality/>.

53 See Clyde Wayne Crews Jr., Comments of the Competitive Enterprise Institute to the Federal Communications Commission in the matter of “Preserving the Open Internet Broadband Industry Practices,” GN Docket No. 09-191, WC Docket No. 07-52, January 14, 2010, http://cei.org/cei_files/fm/active/0/Neutrality%20comment%20to%20FCC%20Jan%202010.pdf.

54 See Clyde Wayne Crews Jr., Comments of the Competitive Enterprise Institute to the Federal Communications Commission in the matter of “The Future of Media and Information Needs of Communities in a Digital Age,” GN Docket No. 10-25, May 7, 2010, http://cei.org/cei_files/fm/active/0/31076904-Comments-of-Competitive-Enterprise-Institute-in-FCC-Future-of-Media-Proceeding-GN-Docket-No-10-25.pdf.

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57 Clyde Wayne Crews Jr., “Promise and Peril: Implementing a Regulatory Budget,” *Policy Sciences*, vol. 31, no. 4, December 1998, <http://cei.org/PDFs/promise.pdf>.

58 For a complete analysis, see David Schoenbrod and Jerry Taylor, “The Delegation of Legislative Powers,” in *Cato Handbook for Congress: Policy Recommendations for the 108th Congress*, ed. Edward H. Crane and David Boaz (Washington, DC: Cato Institute, 2003), pp. 77–85, <http://www.cato.org/pubs/handbook/hb108/hb108-8.pdf>.

59 See William A. Niskanen Jr., *Bureaucracy and Representative Government* (Chicago: Aldine, Atherton, 1971).

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61 Derived from “Public and Private Laws: Browse 112th Congress (2011–2012),” http://frwebgate.access.gpo.gov/cgi-bin/browse?DB=112_cong_public_laws&template=plaws.tpl&sortoption=alphabetical.

About the Author

Wayne Crews is Vice President for Policy and Director of Technology Studies at the Competitive Enterprise Institute, and a former Cato Institute scholar. He is widely published and a contributor at Forbes.com. A frequent speaker, he has appeared at venues including the DVD Awards Showcase in Hollywood, European Commission sponsored conferences, the National Academies, the Spanish Ministry of Justice and the Future of Music Policy Summit. He has testified before Congress on various policy issues.

Crews has been cited in dozens of law reviews and journals. His work spans regulatory reform, antitrust and competition policy, safety and environmental issues, and various information-age policy concerns. A dad of four, he can still do a handstand on a skateboard and enjoys custom motorcycles.

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Thanks to Laura DeMaria for research assistance on this year's edition and to Ivan Osorio for editing.

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