

# TEN THOUSAND COMMANDMENTS

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**An Annual Snapshot of the  
Federal Regulatory State**

**Clyde Wayne Crews, Jr.**

**2005 Edition**



Competitive  
Enterprise  
Institute

# Ten Thousand Commandments

## An Annual Snapshot of the Federal Regulatory State

by Clyde Wayne Crews Jr.

### Executive Summary

In the fiscal year 2006 federal budget, President Bush proposed \$2.57 trillion in discretionary, entitlement, and interest spending. Although those costs fully express the on-budget scope of the federal government, there is considerably more to the government's reach than the sum of the taxes sent to Washington. Federal environmental, safety and health, and economic regulations cost hundreds of billions of dollars every year—on top of official federal outlays.

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

- The 2004 *Federal Register* contained 75,676 pages, a 6.2 percent increase from 2003's 71,269 pages. This is an all-time record.
- In 2004, 4,101 final rules were issued by agencies. This is a slight 1 percent decline from 2003.
- Whereas regulatory agencies issued 4,101 final rules, Congress passed and the President signed into law a comparatively low 299 bills in 2004.
- In the 2004 *Unified Agenda*, agencies reported on 4,083 regulations that were at various stages

of implementation throughout the 50-plus federal departments, agencies, and commissions, a 4 percent drop from the previous year's 4,266.

- Of the 4,266 regulations now in the regulatory pipeline, 135 are “economically significant” rules that will have at least \$100 million in economic impact. Those rules will impose at least \$13.5 billion yearly in future off-budget costs.
- Economically significant rules in the works increased 6 percent between 2003 and 2004, from 127 to 135.
- The five most active rule-producing agencies—the departments of Treasury, Homeland Security, Transportation, and Interior and the Environmental Protection Agency—with 1,850 rules among them, account for 45 percent of all rules in the *Agenda* pipeline.
- Of the 4,083 regulations now in the works, 789 affect small business. Rules affecting small business are down 8 percent over the past year and 25 percent over the past five years.
- The Office of Management and Budget's 2005 draft report on the costs and benefits of federal regulations finds cumulative 1994–2004 costs of major regulations to be between \$35 and \$39 billion; meanwhile, the estimated range for benefits was \$68 billion to \$260 billion.
- Based on a more broadly constructed compilation of annual regulatory costs by economists Thomas Hopkins and Mark Crain, regulatory costs hit an estimated \$877 billion in 2004, an amount equivalent to 38 percent of all FY 2004 outlays.



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

- Regulatory costs are more than twice the \$412 billion budget deficit.
- Regulatory costs of \$877 billion are equivalent to 7.6 percent of U.S. gross domestic product, estimated at \$10,980 billion for 2003.
- Federal regulatory costs of \$877 billion combined with outlays of \$2,292 billion bring the federal government's share of the economy to some 27 percent.
- Regulatory costs also exceed all corporate pretax profits, which were \$745 billion in 2002.
- Regulatory costs exceed estimated 2004 individual income taxes of \$765 billion, and are far greater than corporate income taxes of \$169 billion.
- On the basis of estimates from the Weidenbaum Center and the Mercatus Center, agencies spent \$36.3 billion merely to administer and police the regulatory state in 2004. Counting the \$877 billion in off-budget costs, that brings the total regulatory burden to \$913 billion.

The U.S. government has conclusively ended its recent short-lived string of budgetary surpluses—the first since 1969. But if regaining and maintaining a true surplus remains a priority, policy makers must seek to control regulatory costs. Think of it this way: The maximum surplus projected by the Congressional Budget Office over the coming decade is a minimal and highly speculative \$71 billion in 2012. Regulatory costs of more than \$800 billion clearly dwarf that amount. Moreover, regulations and taxes can be substitutes for one another; a new

government program requires increasing spending—or imposing new rules and regulations. Thus, unless regulatory activity is better monitored, deficit control may tend to invite Congress to adopt new off-budget private-sector regulations rather than new spending that would increase the deficit. If regulatory costs remain largely hidden from public view, regulating will continue to look like an attractive alternative to taxing and spending. Regulations should be treated the same way federal spending is treated: Whenever possible, Congress should be held accountable for the compliance costs—as well as the benefits—of federal regulations. Cost/benefit analysis of rules is the typical remedy proposed to police excess regulation. The problem with cost/benefit analysis, however, is that it is largely a form of agency self-policing; agencies would perform “audits” of their own rules, but would rarely admit that the benefits of a rule do not justify the costs involved. At the least, some third-party review would be needed.

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

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

## Introduction: Toward Ending “Regulation without Representation”

The federal government funds programs in three ways. It can raise taxes to pay for new programs, or it can borrow money to pay for them (with a promise to repay, with interest, from future tax collections). No matter how controversial government spending programs can be, taxpayers can assess their cost by looking at the federal budget. Congress is held largely accountable for spending programs, and that accountability, though not perfect, is a necessary condition for controlling government.

A third way the government funds its programs is by regulating. That is, rather than pay directly and book the expense of a new initiative, it can require the private sector and state and local governments to pay. By regulating, the government can carry out desired programs but avoid using tax dollars to fund them. That approach allows Congress to escape accountability and to blame agencies for costs. Since disclosure of and accountability for the costs of regulation are limited, policy makers are often careless of regulatory costs, and how high costs are in relation to ordinary government spending. Since regulatory costs are not budgeted and lack the formal presentation

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

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

	2004 Change	1-Year	5-Year Change (00–04)	10-Year Change (95–04)
Total regulatory costs	\$877 billion			
Agency enforcement budgets (real \$)	\$36.3 billion	6%	41.2%	69.6%
Net <i>Federal Register</i> pages	75,676	6.2%	1.9%	20.8%
<i>Federal Register</i> pages devoted to final rules	22,546	-5%	-7.9%	24.9%
Federal Register final Rules	4,101	-1.1%	-4.9%	-13%
Total rules in Agenda	4,083	-4.3%	-13.1%	-13.8%
“Economically significant” rules in the pipeline	135	6.3%	-14.5%	
Rules impacting small business	789	-8.1%	-25.1%	
Rules impacting state governments	507	-3.8%	-25.3%	-24.4%
Rules impacting local governments	338	-5.8%	-19.5%	-17.6%
Major rules finalized by agencies	61	19.6%	-16.4%	
Total number of EPA rules in Agenda	416	0%	-7.3%	
EPA rules impacting small business	122	-9.6%	-40.5%	

to the public and media that applies to ordinary federal spending, regulatory initiatives allow the government to direct private-sector resources to a significant degree without much public fuss. In that sense regulation can be thought of as off-budget taxation. Table 1 provides perspective on the level of the hidden regulatory “tax” by presenting summary data for selected topics described in this report. Trends over the past few years are provided where information is available.

The 2005 edition of *Ten Thousand Commandments* is divided into four main sections:

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

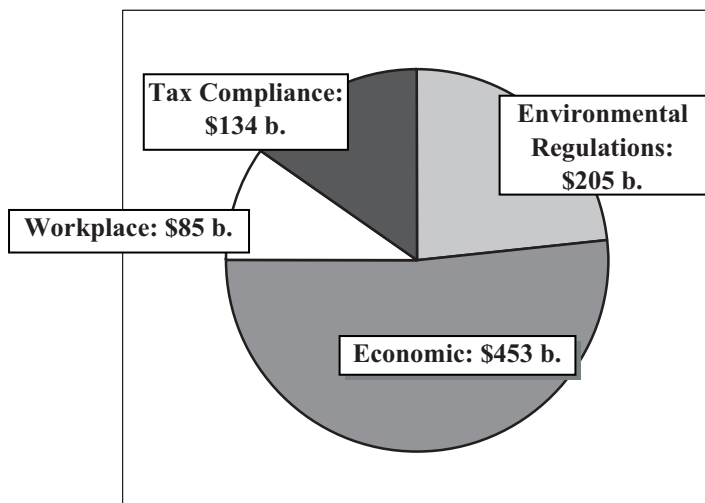
## The Regulatory State and Its Cost to Americans

### The Social and Economic Costs of Regulation

The Office of Management and Budget’s (OMB) 2005 draft report on the costs and benefits of federal regulations finds cumulative 1994–2004 costs of major regulations to be between \$35 and \$39 billion; meanwhile, the estimated range for benefits was \$68 billion to \$260 billion.<sup>1</sup> Note, however, that OMB’s cost/benefit breakdown incorporates only benefits and costs that agencies or OMB were able to put in quantitative and monetary terms. In fact, given ample uncertainties at hand, costs of all rules could be more than 10 times greater than stated.<sup>2</sup> In any event, cost/benefit analyses are highly sensitive to basic assumptions about how regulations translate to benefits. As for an overall cost estimate, W. Mark Crain of George Mason University and Thomas D. Hopkins of the Rochester Institute of Technology prepared an estimate of regulatory costs for 2000 for the Small Business Administration (SBA).<sup>3</sup> Their report assessed social and environmental costs as well as costs of economic regulations (such as price and entry restrictions), “transfer” costs (such as farm price supports, which shift money from one pocket to another), and paperwork costs (such as tax compliance). It found regulatory costs of \$843 billion for 2000. (That estimate is largely in line with the inflation-adjusted \$815 billion predicted for 2000 by Hopkins in an earlier 1995 report for the Small Business Administration.)<sup>4</sup>

Adjusting the Crain and Hopkins 2000 regulatory costs for 2004 by extrapolating the growth in regulatory costs that had occurred between 1995 and 2000 yields a rough estimate of \$877 billion.<sup>5</sup> Figure 1 breaks down their regulatory cost estimate by category: environmental, economic,

**Figure 1**  
**2004 Federal Regulatory Costs: \$877 Billion**



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

**Table 2**  
**Per-Employee Regulatory Higher for Small Firms, 2000**

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

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

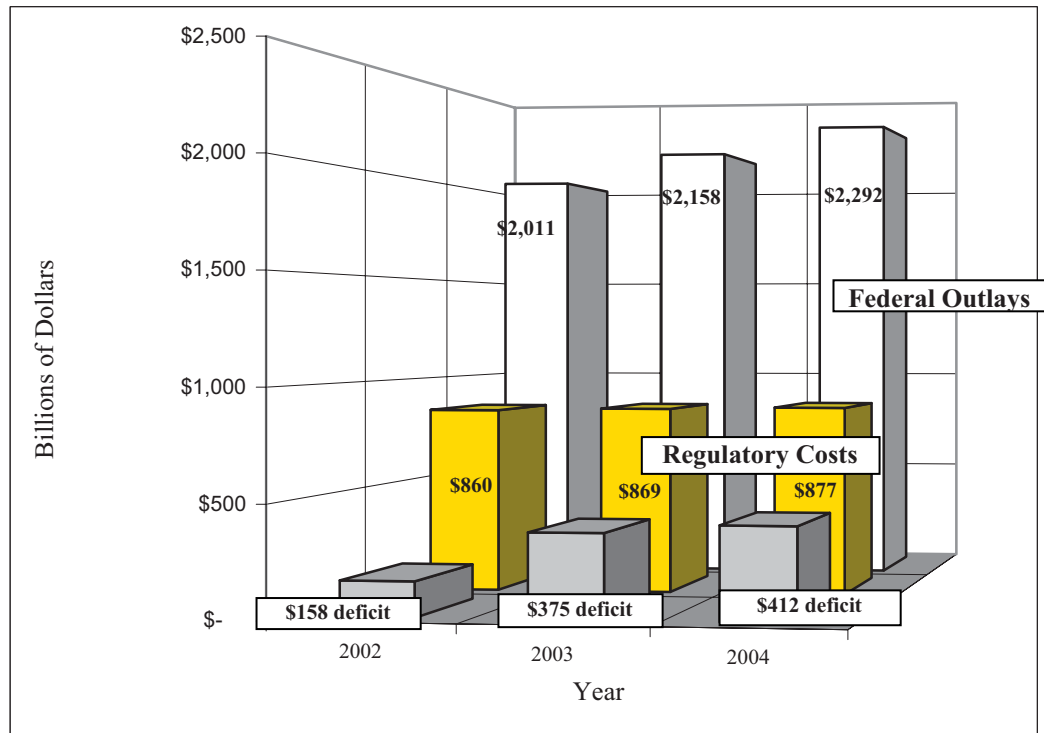
workplace, and tax compliance. Economic costs, the largest category at \$453 billion, include such items as price and entry controls on business and losses from economic transfers.<sup>6</sup> Given that indirect costs—such as the impacts of lost innovation or productivity—are not included in the Crain and Hopkins analysis, these figures could understate the total regulatory burden.<sup>7</sup>

Regulatory benefits are beyond the scope of the Crain and Hopkins analysis,

although those benefits would be recognized as offsetting some costs.<sup>8</sup> Crain and Hopkins also argue that regulatory costs impose a higher burden on small firms, where per-employee costs are higher. Table 2 shows, for 2000, how per employee costs for firms of fewer than 20 workers can be more than 50 percent greater than for larger firms.

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

**Figure 2**  
**Off-Budget Regulatory Costs Compared**  
**With Projected Federal Spending (2002-2004)**



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

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

### Regulation vs. Government Spending

After nearly three decades of deficit spending, the federal government's budget was temporarily balanced from FY 1998 through FY 2001. (Indeed, Washington posted a total surplus of \$127 billion in FY 2001.<sup>9</sup>) In FY 2004, a deficit of \$412 billion was posted on \$2.29 trillion in spending, with no surplus projected until 2012 (at which point the CBO estimates a \$71 billion surplus.<sup>10</sup>)

As Figure 2 shows, 2004's approximate \$877 billion in regulatory costs is equivalent to 38 percent of spending of \$2,292 billion, and more than twice the \$412 billion deficit. Figure 2 also depicts the 2003 and 2002 deficits of \$375 and \$158 billion compared with regulatory

costs for those years.<sup>11</sup> Deficit spending, in a manner of speaking, can manifest itself as regulatory compliance costs that go largely unacknowledged by the federal government.

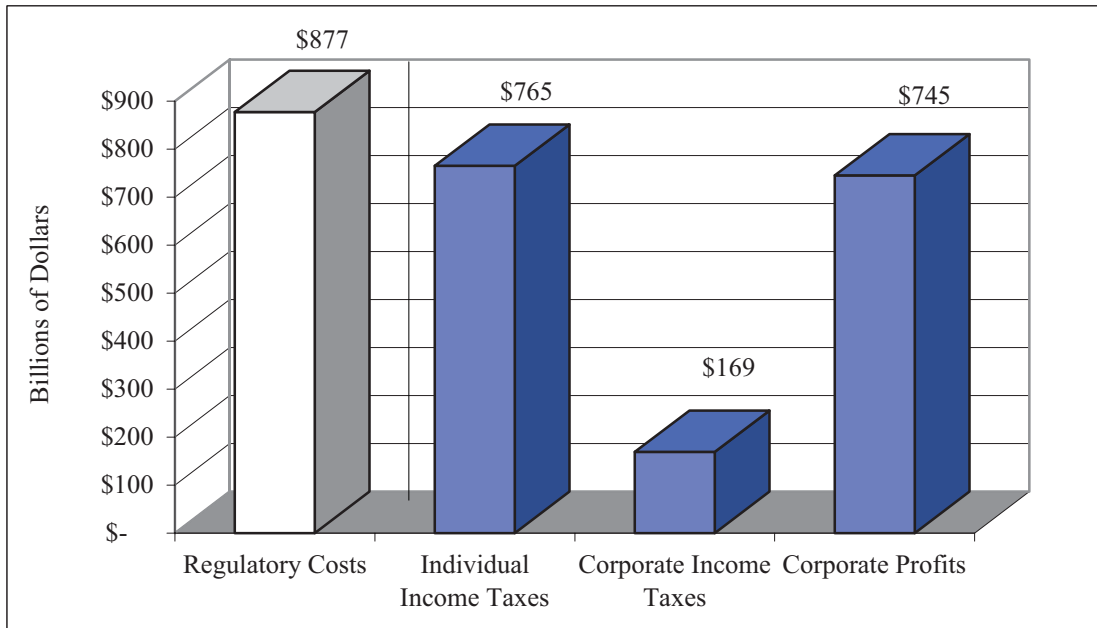
### Regulatory Costs vs. Income Taxes and Corporate Profits

Regulatory costs exceed revenue from major taxes. Regulatory costs exceed estimated 2004 individual income taxes, which were \$765 billion, as Figure 3 shows.<sup>12</sup> Corporate income taxes, estimated at \$169 billion that year, are greatly outdistanced by regulatory costs.<sup>13</sup> Regulatory costs surpass even pretax corporate profits—\$745 billion in 2002.<sup>14</sup>

To put regulation into further perspective, U.S. regulatory costs of \$877 billion exceed the output of many entire national

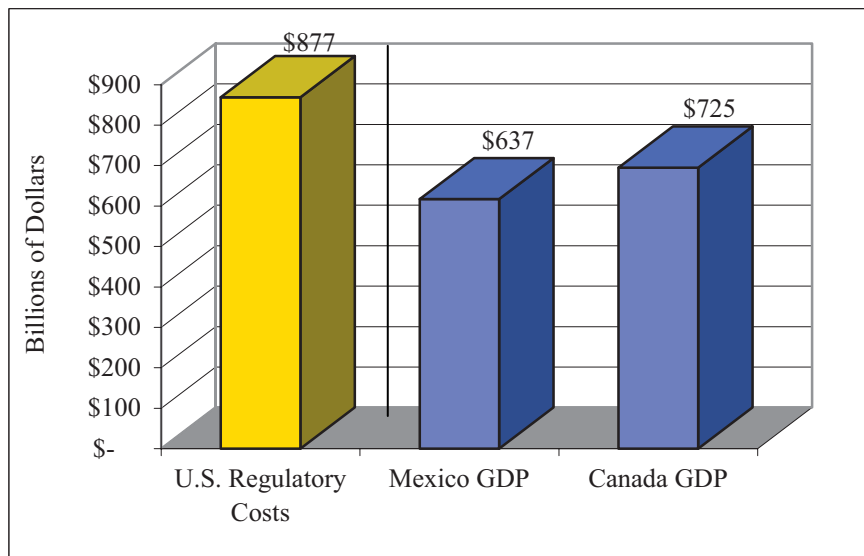
*Regulatory costs exceed revenue from most major taxes.*

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



Sources: W. Mark Crain and Thomas D. Hopkins, "The Impact of Regulatory Costs on Small Firms," Report prepared for Small Business Administration, Office of Advocacy, RFP no. SBAHQ-00-R-0027, October 2001, [www.sba.gov/advo/research/rs207tot.pdf](http://www.sba.gov/advo/research/rs207tot.pdf). Tax figures from U.S. Census Bureau, *Statistical Abstract of the United States: 2004-2005*, Table No. 467, "Federal Receipts by Source: 1990 to 2004," p. 311, <http://www.census.gov/prod/2004pubs/04statab/fedgov.pdf>. Profits from U.S. Census Bureau, *Statistical Abstract of the United States: 2004-2005*, Table 758, "Corporate Profits Before Taxes by Industry: 1998 to 2002," p. 506, <http://www.census.gov/prod/2004pubs/04statab/business.pdf>.

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



Sources: W. Mark Crain and Thomas D. Hopkins, "The Impact of Regulatory Costs on Small Firms," Report prepared for Small Business Administration, Office of Advocacy, RFP no. SBAHQ-00-R-0027, October 2001, [www.sba.gov/advo/research/rs207tot.pdf](http://www.sba.gov/advo/research/rs207tot.pdf). GDP figures for Canada and Mexico are from U.S. Census Bureau, *Statistical Abstract of the United States: 2004-2005*, Table 1337, "Gross Domestic Product (GDP) by Country: 1995 to 2002," p. 853, <http://www.census.gov/prod/2004pubs/04statab/intlstat.pdf>



*U.S. regulatory costs of \$877 billion exceed the output of many entire national economies.*

economies. As shown in Figure 4, U.S. regulatory costs exceed the entire 2002 GDP of Canada, which stood at \$725 billion. The regulatory burden also exceeded Mexico's GDP of \$637 billion.<sup>15</sup> Total regulatory costs of \$877 billion are substantial—7.6 percent of U.S. GDP. (The Congressional Budget Office has estimated GDP to be \$11,553 billion for the year 2004.<sup>16</sup>) Combined with direct federal FY 2003 outlays of \$2,292 billion, the federal government's share of the economy is some 27 percent.

### Costs of Administering the Regulatory State

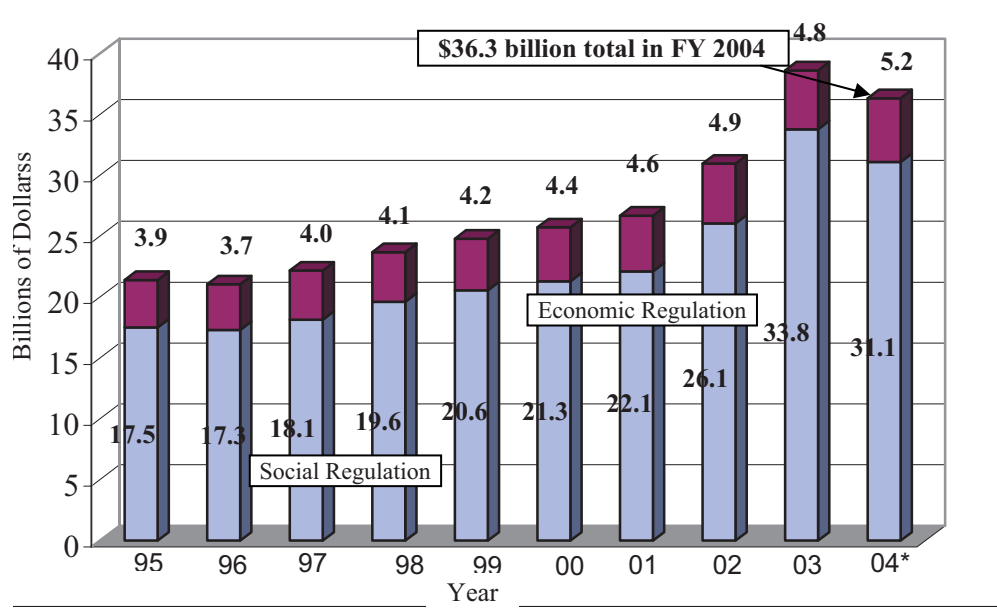
The Crain and Hopkins regulatory cost estimates include compliance costs paid by the public and state and local governments. But those estimates do not include the costs of administering the

regulatory state—the on-budget amounts spent by federal agencies to produce rules and police regulatory compliance.

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

The estimate of FY 2004 enforcement costs incurred by federal departments and agencies stood at \$36.3 billion (constant 2003 dollars), a decrease of 6 percent from the previous year (Figure 5).<sup>17</sup> Of that

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



Source: Susan Dudley and Melinda Warren, "Regulators' Budget Continues to Rise: An Analysis of the U.S. Budget for Fiscal Years 2004 and 2005," Regulatory Budget Report 26, published jointly by the Weidenbaum Center and the Mercatus Center, July 2004, p. 25. <http://www.mercatus.org/pdf/materials/796.pdf>. Original 2000 constant dollars are adjusted by the change in the consumer price index between 2000 and 2003, derived from U.S. Census Bureau, *Statistical Abstract of the United States: 2004-2005*, Table No. 698, "Consumer Price Indexes (CPI-U) by Major Groups: 1980 to 2003," p. 463. <http://www.census.gov/prod/2004pubs/04statab/prices.pdf>.

amount, \$5.6 billion was spent administering economic regulation. The larger amount spent for writing and enforcing social and environmental regulations fell from \$33.8 billion to \$31.1 billion. The enforcement cost numbers help fill in the picture of the regulatory state.

Adding the \$36.3 billion in administrative costs tabulated by the Weidenbaum and Mercatus centers to the Crain and Hopkins \$877 billion estimate for compliance costs brings the total 2004 regulatory burden to \$913 billion. (The CSAB expects total regulatory enforcement costs for FY 2005 to increase to \$36.2 billion.)<sup>18</sup>

Federal agency staff employed to write and enforce regulations remained flat over the past year. Estimated full-time-equivalent employment staffing reached 239,624 in FY 2004, according to Weidenbaum and Mercatus.<sup>19</sup> However this figure is some 42 percent above staffing levels in 2001,

largely owing to the Transportation Security Administration's hiring of thousands of airport screening personnel.<sup>20</sup>

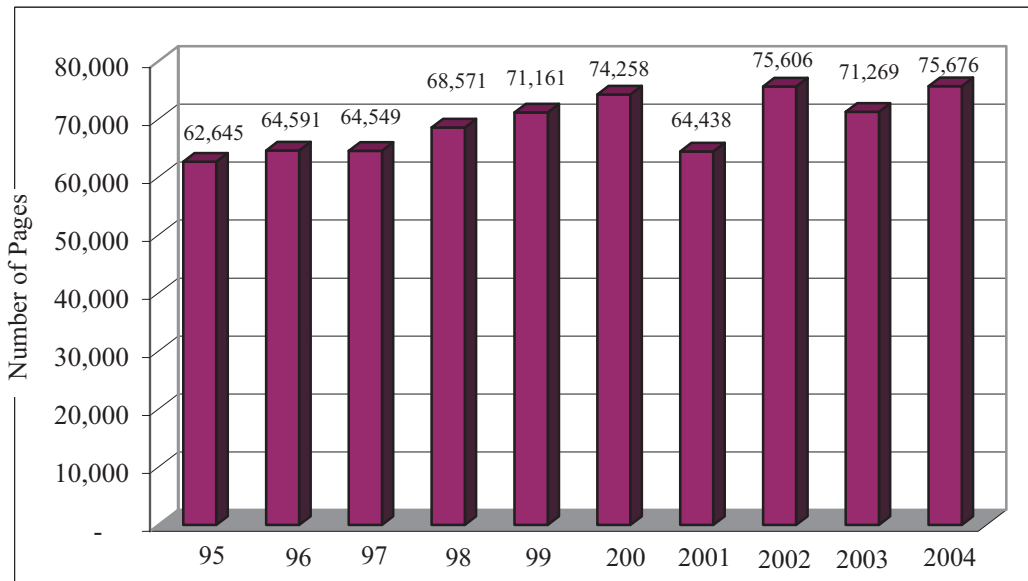
### Federal Register Analysis

#### Tens of Thousands of Federal Register Pages

The *Federal Register* is the daily depository of all proposed and final federal rules and regulations. The number of pages in the *Register* is probably the most frequently cited measure of the scope of regulation. There are serious problems with using the number of pages alone as a proxy for the level of regulation, of course; for example, several thousand of 2002's rules related to the Microsoft settlement—not a very good gauge of what was going on government-wide. Many rules now relate to homeland security, a worthy pursuit in general regardless of fights over the specifics. And even where OMB issues orders to reduce regulation, and agencies

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

**Figure 6**  
**Number of Federal Register Pages, 1995-2004**



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

*In 2004 the number of pages stood at 75,676, an increase of six percent from the year before, when the count stood at 71,269.*

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

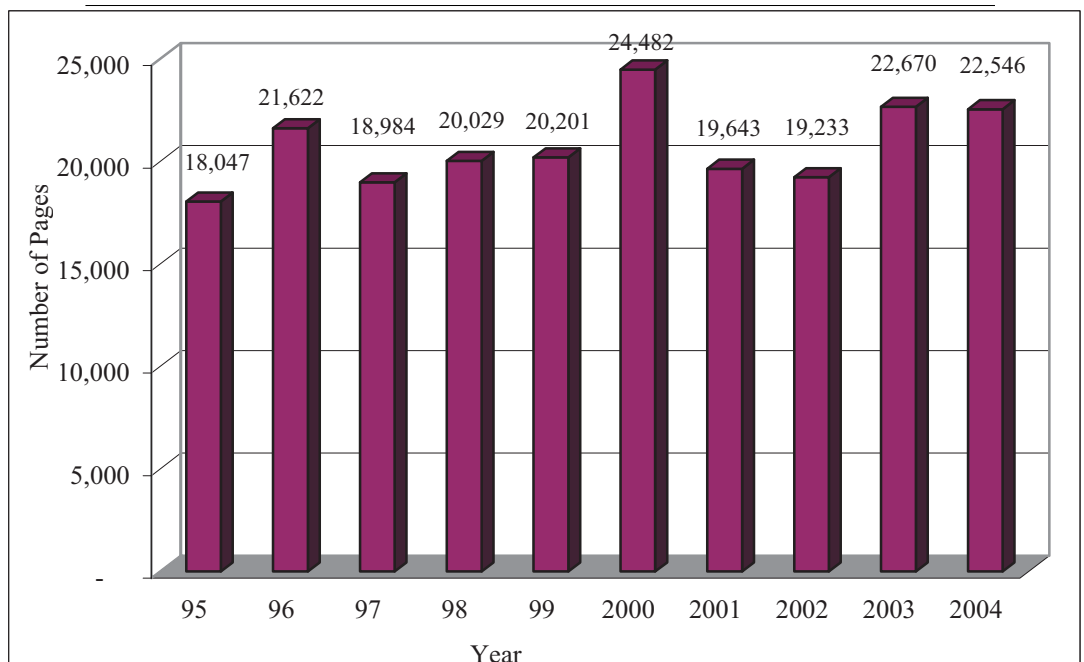
Nonetheless, it is surely worthwhile to track the *Register's* growth via pages, provided the appropriate caveats are kept in mind to temper any sweeping or unwarranted conclusions. As Figure 6 shows, in 2004 the number of pages stood at 75,676, an increase of 6 percent from

the year before, when the count stood at 71,269.

The previous page-count record had been 75,606 pages in 2002, the year the Microsoft settlement inflated pages. Earlier, 2000 was a high-water mark; President Clinton's last year during which charges of issuing "midnight regulations" prior to President Bush's arrival were made.<sup>21</sup> From 1995 to 2004 the overall page count increased 21 percent. (For a history of *Federal Register* page totals going back to 1936, see Appendix: Historical Tables, Part A.)

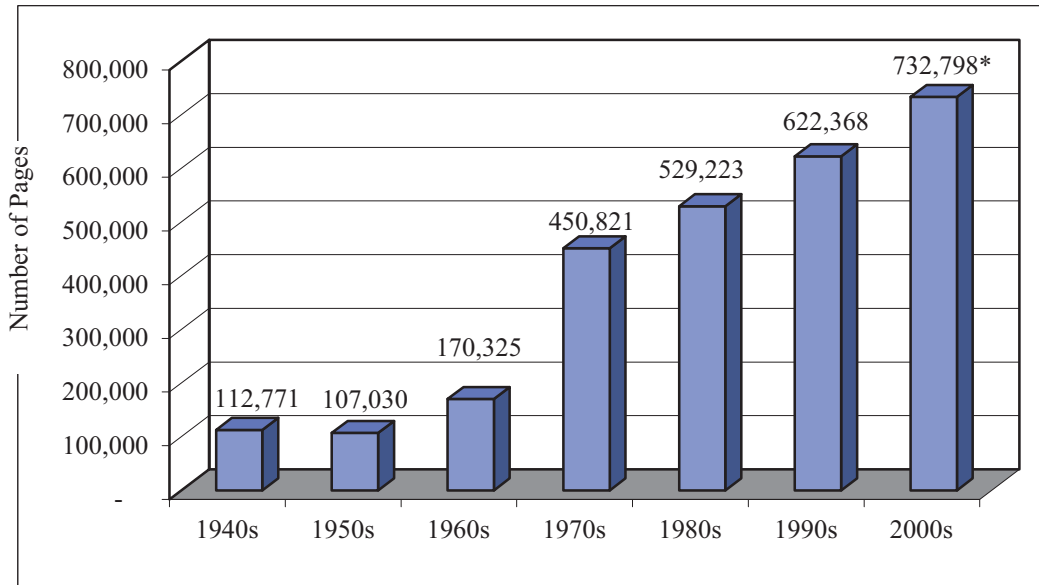
What ultimately happens as a result of President George W. Bush's tenure remains to be seen. It is reasonable to conclude that regulation and agency activity in terms of page counts are at record levels, in spite of the dominance of Congress by presumably more deregulatory Republicans following the 1994 election. While a dip occurred last

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



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

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



\* Projection based on five-year average.

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

year and during Bush's first and third years, the last time the number of *Federal Register* pages fell notably was in 1995, when the new influx of Republican congressional reformers kept an eye on and made an issue of the number of *Federal Register* pages and referred to the number frequently as a surrogate for the level of regulation. (A partial federal government shutdown in 1995, which slowed the promulgation of new regulations for a time, also contributed to the drop during that year.)

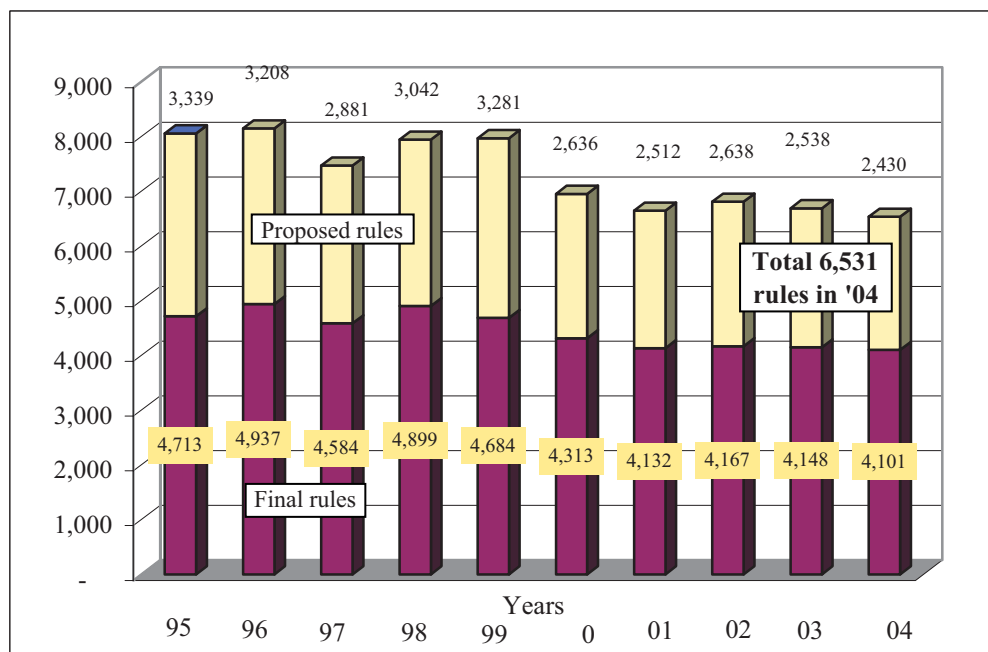
Overall page counts alone do not reveal whether actual regulatory burdens have increased or decreased; as noted, a rule of a few short pages might impose a significant burden. Isolating the pages that are devoted specifically to final rules may be a bit more informative, since this approach omits pages devoted to proposed rules, agency notices, corrections, and presidential documents. Over the past year, these pages of final rules stayed flat, dipping just a half percent (from 22,670 to 22,546) (Figure 7).

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

Another interesting way of looking at *Federal Register* page trends in terms of agency activity is the pages per decade. During all of the 1990s, the total number of *Register* pages published was 622,000 (see Figure 8). The total number of *Federal Register* pages during the 1980s was 529,000. (The busiest year in the 1980s was the 1980 peak of 73,000 pages.) So far, in the first five years of the new century,<sup>22</sup> the average is 73,279, which, extrapolated



**Figure 9**  
**Number of Rules Published in the *Federal Register*, 1995–2004**



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

*The CFR contains 44 percent more pages now than it did in 1980.*

across the remainder of the decade, implies that 733,000 total pages will be published in the *Federal Register* during the decade, an 18 percent increase over the 1990s. Although the final codification of general and permanent rules as ultimately realized in the Code of Federal Regulations is considerably more modest in terms of numbers (if not in costs), the CFR contains 44 percent more pages now than it did in 1980. Since 1980, the CFR has grown from 102,195 pages to 147,639. By contrast, in 1960, there were 22,877 pages.

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

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

The actual numbers of proposed and final rules in the *Federal Register* deserve attention. As can be seen in Figure 9, in 2004 the total number of proposed and final rules published dropped slightly, to 6,531. That represents a slight—2 percent—decline from the previous year’s 6,686 rules published in the *Register*.

The number of rules actually finalized in 2004 dropped as well. As Figure 9 also shows, final regulations issued by agencies stood at 4,101 in 2004, slightly below the 2003 count of 4,148. The number of final rules currently being published is lower than throughout the 1990s. The average number of annual regulations in the 1990s was 4,596. So far, the average for the current decade (2000–04) is 4,172. (For the numbers of proposed and final rules and other documents issued in the

Federal Register since 1976, see Appendix: Historical Tables, Part B.)

The cumulative impact of such regulation can matter a great deal, despite recent declines. The bottom line is that the annual outflow of well above 4,000 final rules has meant more than 40,000 final rules have been issued from 1995 to 2004—that is, since the Republican takeover of Congress. It must be remembered, however, that the costs of those rules can vary tremendously.

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

### **4,083 New Rules in the Pipeline**

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

The *Agenda* lists federal regulatory actions at several stages: prerule, proposed and final rules, actions completed during the past few months, and anticipated longer-term rule makings. The *Agenda* is something of a cross-sectional snapshot of rules moving through the pipeline; therefore the rules it contains may carry over at the same stage from one year to the next, or they may reappear in subsequent *Agendas* at different stages. The *Agenda's* 4,000-plus rules affect the private sector primarily, but many also affect state and local governments and the federal government itself.

The December 2004 *Agenda* finds federal agencies, departments, and commissions at work on 4,083 regulations

from the prerule to the just-completed stages.<sup>23</sup> This is a decrease of 4 percent from 2003's 4,266 (see Figure 10). The number of rules in the *Agenda* was at a peak of 5,119 11 years ago in 1994, but the count remained well above 4,000 ever since. (For a history of numbers of rules in the *Agenda* since 1983, see Appendix: Historical Tables, Part C.)<sup>24</sup>

Table 3 breaks the 4,083 rules down by issuing department, agency, or commission. It is apparent that a handful of agencies account for a large number of the rules produced, and such is the case each year. The five agencies and departments listed in Table 4—the departments of Treasury, Homeland Security, Transportation, Interior and the Environmental Protection Agency—were the biggest rule makers. Those “top five,” with 1,850 rules among them, account for 45 percent of all rules in the *Agenda* pipeline. (For numbers of rules by department and agency from previous editions of the *Unified Agenda*, see Appendix: Historical Tables, Part D.)

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

#### **Department of Agriculture**

- Mandatory country of origin labeling of beef, pork, lamb, fish, and peanuts
- Egg and egg products inspection regulations
- Performance standards for ready-to-eat meat and poultry products
- Regulations concerning importation of unmanufactured wood articles, i.e., solid wood packing material
- Bovine Spongiform Encephalopathy: Minimal risk regions and importation of commodities

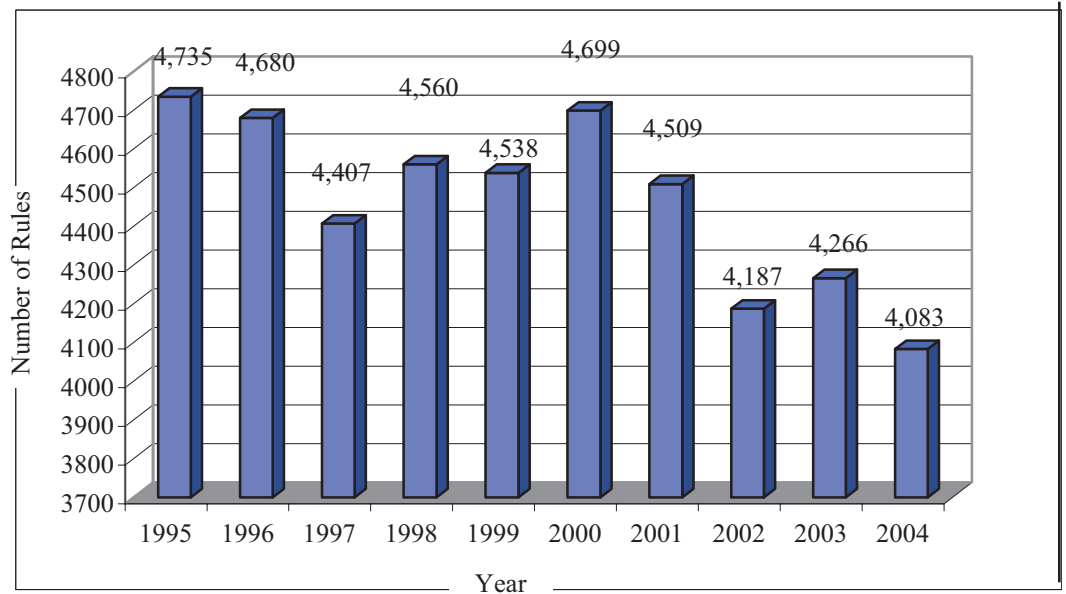
#### **Department of Health and Human Services**

- Substances prohibited from use in animal food or feed
- Prevention of salmonella enteritidis in shell eggs

*The annual outflow of well above 4,000 final rules has meant more than 40,000 final rules have been issued from 1995 to 2004—that is, since the Republican takeover of Congress.*

*Those “top five” agencies, with 1,850 rules among them, account for 45 percent of all rules in the Agenda pipeline.*

**Figure 10 Total Agency Rules in the *Unified Agenda* Pipeline (1995-2004)**



Source: Compiled from National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, December 13, 2004.

***Department of Health and Human Services (cont.)***

- Current good manufacturing practice in manufacturing, packing, or holding dietary ingredients and dietary supplements
- Registration of food and animal feed facilities
- Food labeling: trans fatty acids in nutrition labeling, nutrient content claims, and health claims
- Criterial for determining whether a drug is considered usually self-administered
- Requirements for long-term care facilities: hospice services
- Bar code label requirements for human drug products and blood

***Department of Homeland Security***

- CAPPs II, the Computer Assisted Passenger Prescreening System, providing governmental access to passenger reservation information
- Secure Flight Program

- U.S.-VISIT, the United States Visitor and Immigrant Status Indicator Technology program, authorized to collect biometric data from additional travelers and expansion to 50 most highly trafficked land border ports.

***Department of Justice***

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

***Department of Labor***

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

**Table 3**  
**Unified Agenda Entries by**  
**Department and Agency**  
**(December 2004)**

Compiled from National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, December 13, 2004.  
 \*Committee for Purchase from People Who are Blind or Severely Disabled

	Total Rules
Department of Agriculture	279
Department of Commerce	273
Department of Defense	126
Department of Education	11
Department of Energy	50
Department of Health & Human Services	233
Department of Homeland Security	314
Department of Housing & Urban Development	103
Department of the Interior	287
Department of Justice	125
Department of Labor	88
Department of State	21
Department of Transportation	301
Department of Treasury	532
Department of Veterans' Affairs	79
Advisory Council on Historic Preservation	1
Agency for International Development	8
Architectural and Transportation Barriers Compliance Board	4
Commission on Civil Rights	1
CPBSD*	5
Corporation for National & Community Service	8
Court Services/Offender Supervision, D.C.	1
Environmental Protection Agency	416
Equal Employment Opportunity Commission	3
Federal Mediation and Conciliation Service	2
General Services Administration	27
National Aeronautics & Space Administration	27
National Archives & Records Administration	22
Institute of Museum and Library Services	3
National Endowment for the Arts	2
National Endowment for the Humanities	3
National Science Foundation	3
Office of Federal Housing Enterprise Oversight	4
Office of Government Ethics	7
Office of Management & Budget	3
Office of Personnel Management	103
Peace Corps	4
Pension Benefit Guaranty Corporation	6
Presidio Trust	2
Railroad Retirement Board	6
Selective Service System	1
Small Business Administration	29
Social Security Administration	59
Federal Acquisition Regulation	45
Commodity Futures Trading Commission	15
Consumer Product Safety Commission	18
Farm Credit Administration	20
Farm Credit System Insurance Corporation	1
Federal Communications Commission	146
Federal Deposit Insurance Corporation	20
Federal Energy Regulatory Commission	23
Federal Housing Finance Board	9
Federal Maritime Commission	7
Federal Reserve System	18
Federal Trade Commission	14
National Credit Union Administration	26
National Indian Gaming Commission	14
Nuclear Regulatory Commission	42
Securities and Exchange Commission	79
Surface Transportation Board	4
<b>TOTAL</b>	<b>4,083</b>

**Department of Energy**

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

**Department of Transportation**

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



*One hundred and thirty-five new economically significant rules are under consideration by 17 separate departments and agencies.*

***Environmental Protection Agency***

- Clean air visibility, mercury, and ozone implementation rules
- National drinking water regulations covering groundwater and surface water
- National emission standards for hazardous air pollutants from plywood and composite wood products, certain reciprocating internal combustion engines, and auto paints
- Emissions from non-road spark-ignition

***Consumer Product Safety Commission***

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

***Federal Communications Commission***

- Broadband over power line systems
- Mobile personal communications by satellite
- Satellite broadcasting signal carriage requirements
- Rules regarding Internet Protocol-enabled devices

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

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

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

The *Agenda* classifies a subset of its 4,083 rules as being “economically significant.” That term means that the rules are anticipated by agencies to have yearly economic impacts of at least \$100 million. Those impacts generally mean increased costs, although occasionally an economically significant rule is intended to reduce costs in the economy. As Table 5 shows, 135 new economically significant rules are under consideration by 17 separate departments and agencies at the prerule, proposed rule, final rule, long-term, and recently completed stages. (That number is an increase of 6 percent from the 127 high-cost rules last year).

**Table 4  
The Top Rule-Producing Agencies, 2004**

Agency	Number of Regulations
1. Department of Treasury	532
2. Environmental Protection Agency	416
3. Department of Homeland Security	314
4. Department of Transportation	301
5. Department of Interior	287
<b>Top-Five Total</b>	<b>1,850</b>

Source: Compiled from National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, December 13, 2004.

These high-cost rules are scattered among the 4,083 rules in the *Agenda*. Since each will cost at least \$100 million annually, those rules can be expected to impose, at minimum, total annual costs of \$13.5 billion (135 rules multiplied by \$100 million). (For a full list of the 135 economically significant rules, see Appendix: Historical Tables, Part E.)

A breakdown of the \$13.5 billion in regulatory costs is never presented directly for each rule in the *Agenda*. The costs represent a floor and are found by combing through the document. Rather than accumulate and summarize regulatory costs for readers' benefit, each *Agenda* entry indicates whether or not a rule is "economically significant" and occasionally provides additional cost data from agency regulatory impact analyses. Note also that even though the \$13.5 billion in anticipated costs

represents a lower boundary for regulatory costs, it is not a one-time cost but a recurring annual cost that must be added to prior years' costs and to costs to come in the future. Figure 11 shows economically significant rules from the October *Agendas* for the 2000–2004 period. As noted, the 135 major rules in 2004 represent a six percent increase over 2003.

It should be noted that agencies are not required to limit their activity to what they publish in the *Agenda*. *The Regulatory Plan* and the *Unified Agenda* do not create a legal obligation on agencies to adhere to schedules in this publication or to confine their regulatory activities to those regulations that appear within it.<sup>25</sup> Finally, the fact that policymakers and analysts pay most attention to economically significant rules should not lull them into ignoring the remaining bulk of rules in the yearly pipeline. In 2004,

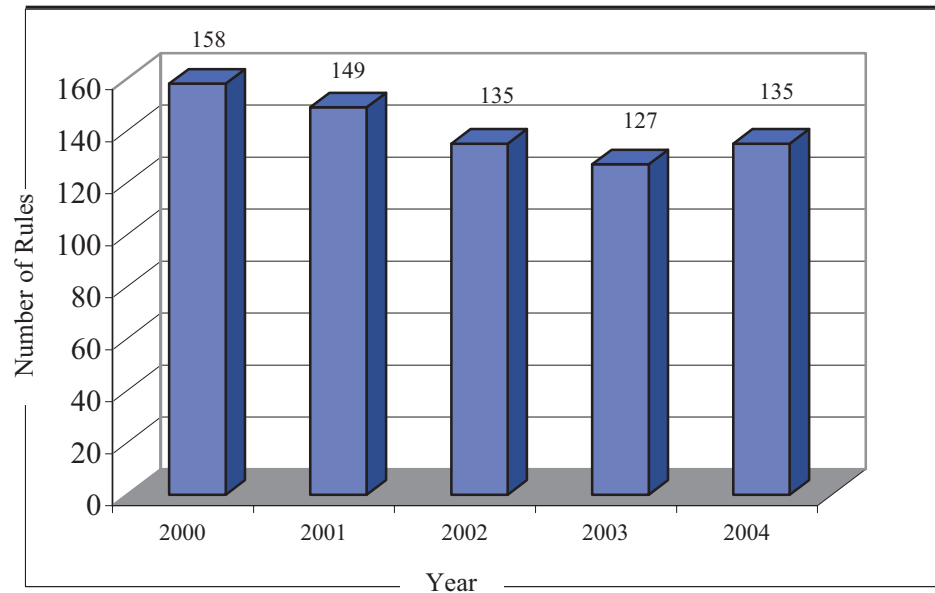
*Seven hundred and eighty-nine rules are anticipated to have significant economic impact on small businesses.*

**Table 5**  
**135 Rules in the Pipeline Expected to Cost Over \$100 Million Annually 2004**

Department of Agriculture	14
Department of Commerce	3
Department of Energy	7
Department of Health & Human Services	40
Department of Housing and Urban Development	5
Department of Justice	2
Department of the Interior	2
Department of Labor	6
Department of Transportation	8
Department of Treasury	1
Department of Veterans' Affairs	1
ATBCB	1
Environmental Protection Agency	22
Department of Homeland Security	9
Consumer Product Safety Commission	2
Federal Communications Commission	10
Social Security Administration	2
<b>TOTAL</b>	<b>135</b>

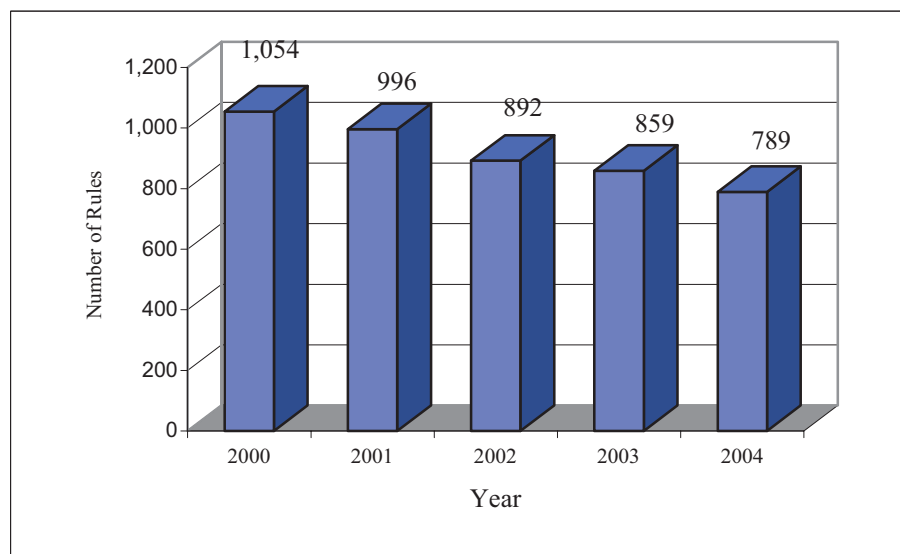
Source: Compiled from National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, December 13, 2004.

**Figure 11**  
**“Economically Significant” Rules in the Agenda Pipeline, 2000-2004**



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

**Figure 12**  
**Rules That Impact Small Business (2000-2004)**



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

3,948 federal rules were not considered “economically significant” by the government (4,083 total rules minus the 135 economically significant ones). But that doesn’t mean many of those rules aren’t economically significant in the ordinary sense of the term. Any of those rules may cost up to \$99 million and still evade the “economically significant” label.

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

As Figure 12 shows, rules impacting small business have been steadily declining over the past five years. From 2000 to 2004, the number of rules affecting small businesses dipped 25 percent, from 1,054 to 789. According to the 2004 *Unified Agenda*, 789 rules are anticipated to have significant economic impact on small businesses that year. That is down 8 percent from 859 such rules in 2003. Table 6 breaks out the 2004 *Agenda*’s 789 rules affecting small business by department, agency, and commission.

The Environmental Protection Agency and the Federal Communications Commission account for, respectively, 122 and 113 of the 789 rules that affect small business—outstripping other agencies’ rules with small business impacts. The runners up are the Department of Health & Human Services with 106 rules affecting small business, the Department of Transportation with 103, and the Department of Commerce with 79. Those five agencies together account for 523, or 66 percent, of the total number of rules that will affect small businesses. (For the numbers of rules affecting small business broken down by department and agency for Agendas since 1996, see Appendix: Historical Tables, Part F.) The proportion of total rules affecting small business,

as noted in Table 6, stands at 19 percent. (By contrast, in 1996, 16.1 percent of rules affected small businesses.)

## Federal Regulations Impacting State and Local Governments

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

As Figure 13 shows, agencies report that 338 of the 4,083 rules in the 2004 *Agenda* will have effects on local governments, about 6 percent fewer than 2003’s 359.<sup>27</sup> Over the years since the passage of the Unfunded Mandates Act, overall change in rules affecting local governments has fallen from 533 to 338, a level 38 percent lower. Figure 13 also shows that the total number of regulatory actions affecting state-level governments fell slightly, from 527 to 507 over the past year. Since passage of the unfunded mandates legislation, the count has dropped from 784 to 507, a decline of 35 percent. (For breakdowns of the numbers of rules affecting state and local governments by department and agency over the past several years’ Agendas, see Appendix: Historical Tables, Part G.)

## General Accounting Office Database on Regulations

The various reports on regulatory measures serve different purposes. The *Federal Register* shows the aggregate number of proposed and final rules. The *Agenda* reveals the number of rules at various stages

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



**Table 6 Unified Agenda Entries Impacting Small Business by Department, Agency, and Commission (December 2004)**

	Total Rules	RFA Required	RFA Not Required	Total	% Impacting Small Business
Department of Agriculture	279	35	17	52	18.6%
Department of Commerce	273	61	18	79	28.9%
Department of Defense	126		12	12	9.5%
Department of Education	11				0.0%
Department of Energy	50				0.0%
Department of Health & Human Services	233	67	39	106	45.5%
Department of Homeland Security	314	7	31	38	12.1%
Department of Housing & Urban Development	103	1	5	6	5.8%
Department of the Interior	287	2	18	20	7.0%
Department of Justice	125	5	3	8	6.4%
Department of Labor	88	8	11	19	21.6%
Department of State	21		1	1	4.8%
Department of Transportation	301	16	87	103	34.2%
Department of Treasury	532	4	34	38	7.1%
Department of Veterans' Affairs	79				
Advisory Council on Historic Preservation	1				
Agency for International Development	8				
Architectural and Transportation Barriers Compliance Board	4				
Commission on Civil Rights	1				
CPBSD*	5				
Corporation for National & Community Service	8				
Court Services/Offender Supervision, D.C.	1				
Environmental Protection Agency	416	8	114	122	29.3%
Equal Employment Opportunity Commission	3				
Federal Mediation and Conciliation Service	2				
General Services Administration	27	1		1	3.7%
National Aeronautics & Space Administration	27				
National Archives & Records Administration	22		1	1	4.5%
Institute of Museum and Library Services	3				
National Endowment for the Arts	2				
National Endowment for the Humanities	3				
National Science Foundation	3				
Office of Federal Housing Enterprise Oversight	4				
Office of Government Ethics	7				
Office of Management & Budget	3				

**Table 6 Unified Agenda Entries Impacting Small Business by Department, Agency, and Commission (December 2004, cont.)**

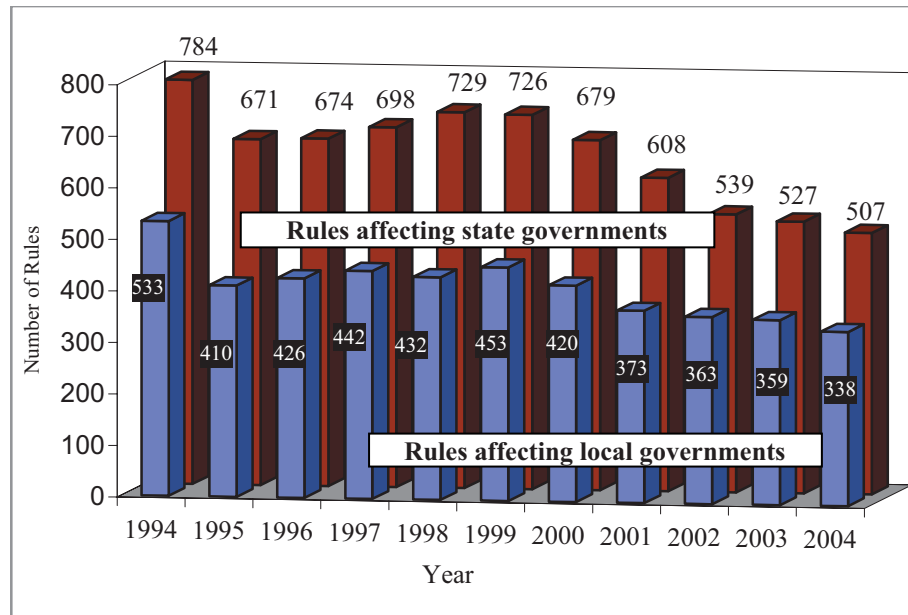
Office of Personnel Management	103						
Peace Corps	4						
Pension Benefit Guaranty Corporation	6						
Presidio Trust	2						
Railroad Retirement Board	6						
Selective Service System	1						
Small Business Administration	29	10	8	18			62.1%
Social Security Administration	59		1	1			1.7%
Federal Acquisition Regulation	45	4	1	5			11.1%
Commodity Futures Trading Commission	15		1	1			6.7%
Consumer Product Safety Commission	18						
Farm Credit Administration	20						
Farm Credit System Insurance Corporation	1						
Federal Communications Commission	146	108	5	113			77.4%
Federal Deposit Insurance Corporation	20						
Federal Energy Regulatory Commission	23						
Federal Housing Finance Board	9						
Federal Maritime Commission	7	1	6	7			100%
Federal Reserve System	18	2	3	5			27.8%
Federal Trade Commission	14		11	11			78.6%
National Credit Union Administration	26	1	1	2			7.7%
National Indian Gaming Commission	14						
Nuclear Regulatory Commission	42						
Securities and Exchange Commission	79	18	2	20			25.3%
Surface Transportation Board	4						
<b>TOTAL</b>	<b>4,083</b>	<b>359</b>	<b>430</b>	<b>789</b>			<b>19.3%</b>

Note: RFA = regulatory flexibility analysis.

Source: Compiled from National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, December 13, 2004.

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

**Figure 13**  
**Rules Impacting State and Local Governments, 1994-2004**



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

in the regulatory pipeline. Under the 1996 Congressional Review Act (CRA), agencies are required to submit reports to Congress on their “major” rules (typically those costing \$100 million or more). Owing to such reporting, one can now more easily see which of the thousands of final rules that agencies issue each year are major and which agencies are producing the rules.

The General Accounting Office reports that the CRA gives Congress a chance to review a rule for 60 legislative days, and, if desired, to pass a resolution of disapproval rejecting the rule. But despite the issuance of thousands of rules since the CRA’s passage—among them many dozens of major ones—only one has been rejected: the Labor Department’s rule on workplace repetitive-motion injuries in early 2001. As can be seen in Table 7, which is based on the GAO data-

base, the number of final major rules issued by agencies increased 20 percent over the past year, from 51 to 61 in 2004. The Department of Health and Human Services issued the greatest number of major rules in 2004—22—followed by the Interior Department’s eight.

## Regulation and the EPA

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

By several measures, the EPA is a prominent regulator. For example, it spends more than any other agency to enforce regulations. The EPA alone, which is expected to spend \$4.4 billion to enforce regulation during FY 2004, accounts for 12 percent of the \$28.8 billion (in current dollars) expected to be spent by all the regulatory agencies.<sup>29</sup> But total numbers of regulations from the EPA have fallen lately.

## Total EPA Rules and Their Impact on Small Business

Of the 4,083 rules in the *Unified Agenda* pipeline in 2004, 416, or 10 percent, were in the works at the EPA. Nonetheless, the total number of rules from EPA is lower than it was in 1999, when the count was 456 (Figure 14). Rules have been level over the past year, moving from 417 to 416. The agency's total number of economically significant rules in the *Agenda* remained steady at 22 (Table 5). The number of EPA major rules finalized, as compiled from GAO data and shown in Table 7, rose from three to seven. The number of EPA rules has fallen, but that should be weighed against high enforcement costs and the thrust of certain highly costly rules. EPA rules on air quality and lead abatement, for example, are notably costly. Fewer rule in the works, or at least better-scrutinized rules, are a welcome development but do not necessarily mean lower costs. Also shown in Figure 14 is the subset of the EPA's rules that have some impact

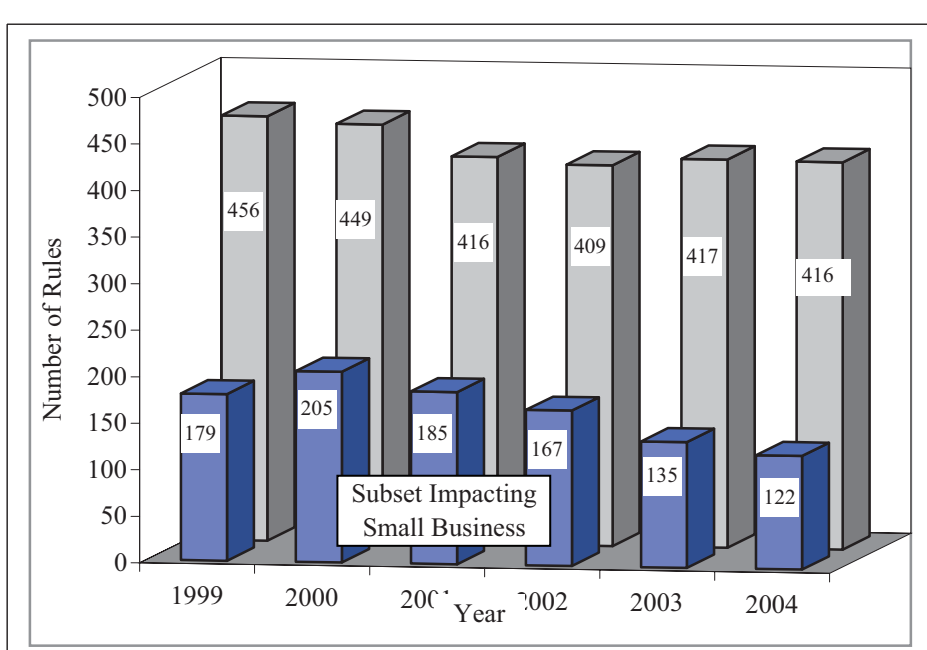
on small business. Since 1999 that category of rules has fallen 32 percent, from 179 to 122. During the interim, the number of EPA rules impacting small business had hit 205 in President Clinton's final year.

## Impacts of EPA Rules on State and Local Governments

Earlier, Figure 13 showed that, overall, there are fewer federal agency rules affecting state and local governments than there were in 1994 (before the Unfunded Mandates Act). Figure 15 shows that the number of EPA rules affecting state and local governments, in contrast with overall trends, did rise steadily after 1995. But after 1999 that number began dropping markedly. For example, under President Bush, annual EPA rules affecting state governments have fallen 31 percent so far, from 228 to 140. Interestingly, the EPA's rules led to many of the complaints that resulted in passage of the Unfunded Mandates Act in the first place.

*Of the 4,083 rules in the Unified Agenda pipeline in 2004, 416, or 10 percent, were in the works at the EPA.*

**Figure 14**  
**Number of EPA Rules, 1999-2004**



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



**Table 7**  
**GAO Reports on Major Rules**  
**1998-2004**

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

Source: Compiled from GAO data.

Note: HIPAA = Health Insurance Portability and Accountability Act

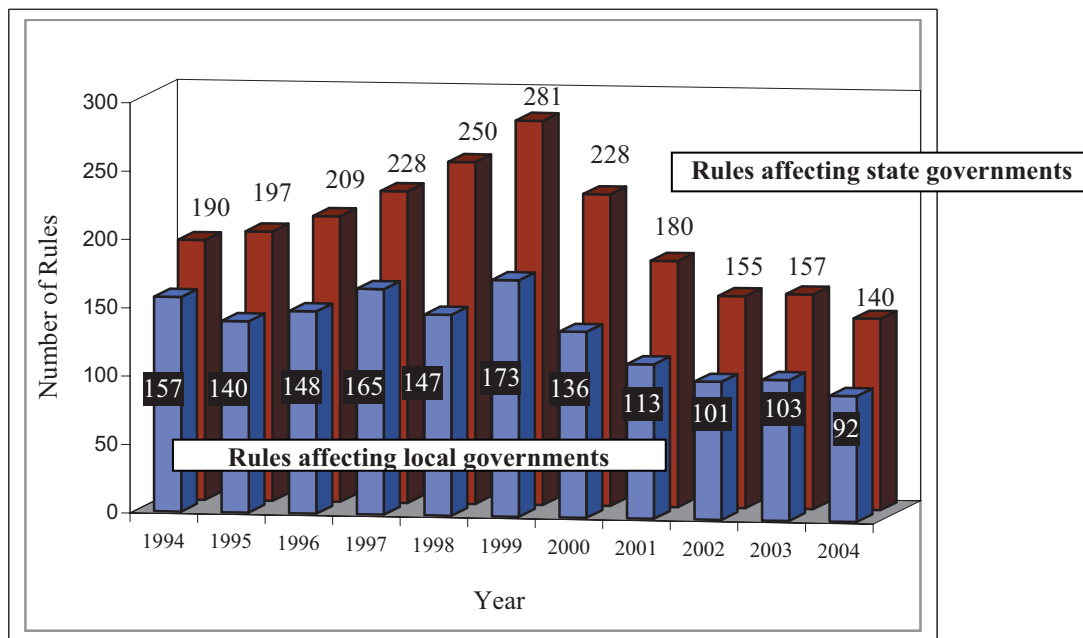
## Ending Regulation without Representation

### Steps toward Improving Regulatory Disclosure

Federal regulatory compliance costs total hundreds of billions of dollars every year, as the earlier descriptions of

the OMB and Hopkins studies indicated. Although it is true that some regulations produce benefits that exceed their costs, costs and benefits are known for relatively few regulations. Without any official regulatory accounting, it is difficult to know whether society wins or loses, which renders OMB's estimates of overall net benefits from the regulatory state questionable.

**Figure 15**  
**EPA Rules Impacting State and Local Governments, 1994-2004**



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

That is why, to the extent possible, regulatory data should be officially summarized and publicly disclosed. Simultaneously, elected representatives should assume responsibility and end “regulation without representation.” Halting excessive delegation is the best way to rein in off-budget regulatory costs. Although disclosure of regulatory costs should be a priority of regulatory reformers, engaging in a protracted legislative fight over comprehensive reform, such as requiring more net benefit and risk assessment analysis, should be avoided. A useful incremental step would be to require the publication of a summary of already available, but scattered, data (resembling that in *Ten Thousand Commandments*). That simple step alone would help to transform today’s regulatory culture from one of nondisclosure and bureaucratic brushoff to one of maximum regulatory disclosure.

Broadly, today’s regulations fall into two classes—those that are “economically significant” (cost more than \$100 million annually) and those that are not. An obvious problem with this threshold is that reform-

ers can point, not to what the regulatory state actually costs, but only to a minimum level of such costs. Today, agencies need not specify whether any or all of their economically significant rules cost only \$100 million, or something far beyond.

To improve disclosure, a simple intermediate step would be to redefine the notion of economically significant rules to reflect increasing levels of costs. Agencies could be required to break up their economically significant rules into categories that represent increasing costs. Table 8 presents one alternative that assigns economically significant rules to one of five categories. Agencies could classify their rules on the basis of cost information provided in the regulatory impact analyses that accompany many economically significant rules, or on the basis of separate internal or external estimates. Although modest, this step toward greater disclosure could be highly important. Other steps can be taken easily. Today, to learn about regulatory trends and accumulate information on rules—such as numbers produced by each agency, their costs and benefits (if available),

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

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

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

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

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

and so on—interested citizens must comb through the Agenda’s 1,000-plus pages of small, multicolumn print.

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

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

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

### **“No Regulation without Representation”**

Years of unbudgeted regulatory growth merits concern. Most of the time we simply don’t know whether regulatory benefits exceed costs. The real culprits are not the agencies: Congress shirks the duty to make the tough calls, delegating too much law-making power to agencies, and then fails to require that they deliver greater benefits than costs. Thus, agencies can hardly be

faulted for not guaranteeing optimal regulation or for not ensuring that only “good” rules get through.

Agencies face overwhelming incentives to expand their turf by regulating even in the absence of demonstrated need, since the only measure of agency productivity—other than growth in its budget and number of employees—is the number of regulations. One needn’t waste time blaming agencies for emphasizing the very regulating they were set up to do in the first place. Better to point the finger at Congress. To put matters in perspective, Congress passed and the president signed 299 bills into law in 2004. But, as noted, regulatory agencies issued 4,101 rules. The unelected are doing the bulk of the lawmaking. Since agencies are unaccountable to voters, an annual regulatory report card is a start but not a complete answer. Nor are regulatory reforms that rely on agencies’ policing themselves capable of harnessing the regulatory state. Instead, making Congress directly answerable to the voters for the costs agencies impose on the public would best promote accountable regulation. The way to control regulation is not to merely require agencies to perform cost/benefit analyses but to require Congress to vote on agencies’ final rules before they are binding on the public.

Congressional accountability for regulatory costs assumes new importance in this era of vanished budget surpluses. If Congress’s alternatives are to spend or to issue new regulations, concern about deficits invites Congress to regulate instead of increase government spending to accomplish its ends. For example, suppose Congress wanted to create a job-training program or otherwise fulfill some promise to voters. Funding a job-training program would require approval of a new appropriation for the Department of Labor, and that appropriation would appear in the federal budget (and reduce the

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

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

government surplus). Or, Congress could simply pass a law requiring Fortune 500 companies to fund job training. That law, of course, would be carried out through new regulations issued by the Labor Department. The latter option would not add significantly to federal spending but would nonetheless let Congress take credit. By regulating instead of spending, government can expand almost indefinitely without explicitly taxing anyone a single penny. Making Congress accountable for regulation in the same manner it is accountable for ordinary government spending is a way to head off excess. Requiring explicit approval of all proposed regulations would ensure that Congress bore direct responsibility for every dollar of new regulatory costs. To allay the concern that Congress would become bogged down approving agency rules, agency regulations could be voted on in bundles. In addition, congressional approval of new regulation could also be given by voice vote, signifying unanimity, rather than by tabulated roll call vote. The important thing is that Congress be held accountable.

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



## Appendix: Historical Tables

### Part A: Federal Register Page History, 1936-04

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

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**Part A: Federal Register Page History, 1936-04 (cont.)**

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Year	Unadjusted Page Count	Jumps/Blanks	Adjusted Page Count
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

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

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

n/a = not available.

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## Part B: Number of Documents Published in Federal Register (1976-2004)

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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

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

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

**Historical Tables, Part C:  
Unified Agenda Rules History (1983-2004)**

**Total Number of Rules Under Consideration**

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

**Part D:**  
**Agenda Rules History By Department and Agency 1997-2003**

	2003	2002	2001	2000	1999	1998	1997
Department of Agriculture	323	314	312	327	345	384	398
Department of Commerce	300	270	342	390	366	344	283
Department of Defense	108	87	93	117	121	142	142
Department of Education	13	14	8	21	32	20	29
Department of Energy	66	53	61	67	64	63	75
Department of Health & Human Services	219	219	277	308	300	351	299
Department of Homeland Security	338						
Department of Housing & Urban Development	109	100	89	113	128	102	98
Department of the Interior	295	298	423	418	309	337	321
Department of Justice	122	249	229	202	201	186	185
Department of Labor	89	102	141	156	151	149	132
Department of State	15	41	32	21	27	22	24
Department of Transportation	365	543	511	536	539	518	510
Department of Treasury	530	513	458	450	400	438	458
Department of Veterans' Affairs	87	104	164	141	130	118	108
Advisory Council on Historic Preservation	1	1	0	1	1	1	1
Agency for International Development	8	7	6	6	5	7	8
Architectural and Transportation Barriers Compliance Board	4	5	5	7	8	9	9
Commission on Civil Rights	1	1	1	1	1	1	1
Corporation for National & Community Service	9	16	9	6	4	6	2
Court Services/Offender Supervision, D.C.	3	0	0	0	0	0	0
Environmental Protection Agency	417	409	416	449	456	462	430
Federal Emergency Management Agency		24	30	26	33	25	22
General Services Administration	37	40	35	40	51	49	52
National Aeronautics & Space Administration	34	13	17	11	7	11	17
National Archives & Records Administration	19	20	19	21	21	19	17
Institute of Museum and Library Services	6	5	5	4	1	1	2
National Endowment for the Arts	6	5	5	5	5	5	7
Equal Employment Opportunity Commission	4	4	3	6	9	10	10
National Endowment for the Humanities	8	9	8	7	6	6	7
National Science Foundation	2	2	3	5	4	5	7
Office of Federal Housing Enterprise Oversight	4	7	9	5	5	4	4
Office of Government Ethics	9	10	11	11	12	12	13
Office of Management & Budget	4	4	5	5	9	11	16
Office of Personnel Management	90	72	91	110	112	101	92
Panama Canal Commission	0	0	0	0	4	5	6
Peace Corps	9	9	9	8	5	5	5
Pension Benefit Guaranty Corporation	4	6	11	10	12	12	10
Railroad Retirement Board	11	13	13	19	16	17	20
Selective Service System	1	1	1	1	1	1	1
Small Business Administration	33	40	37	41	35	25	15
Social Security Administration	64	63	85	82	67	70	72
Tennessee Valley Authority	2	2	3	3	1	1	0
U.S. Information Agency	0	0	0	0	0	1	4
Federal Acquisition Regulation	49	43	48	56	49	42	49
Commodity Futures Trading Commission	15	19	30	21	19	12	9
Consumer Product Safety Commission	20	20	21	20	17	15	14
Farm Credit Administration	21	14	17	17	19	15	17
Farm Credit System Insurance Corporation	1	1	1	3	3	3	4
Federal Communications Commission	134	141	145	137	128	121	98
Federal Energy Regulatory Commission	21	19	8	18	20	12	10
Federal Housing Finance Board	11	9	12	12	18	17	17
Federal Maritime Commission	11	8	7	9	9	6	3
Federal Reserve System	18	24	32	33	22	30	36
Federal Trade Commission	12	10	13	14	16	16	19
National Credit Union Administration	27	20	22	16	26	14	14
Federal Deposit Insurance Corporation	17	17	22	26	25	26	31
National Indian Gaming Commission	14	16	15	14	14	17	16
National Labor Relations Board	0	0	0	0	0	0	3
Nuclear Regulatory Commission	45	39	42	55	57	63	62
Office of Special Counsel	0	0	0	3	2	1	0
Overseas Private Investment Corporation	0	0	0	0	0	2	0



**Part D: Agenda Rules History By Department and Agency 1997-2003 (cont.)**

	2003	2002	2001	2000	1999	1998	1997
Securities and Exchange Commission	71	73	80	77	80	83	79
Surface Transportation Board	5	5	4	3	3	8	13
Federal Mediation and Conciliation Service	3	4	3	2	1	1	1
Court Services/Offender Supervision, D.C.	0	7	5	0	0	0	0
Presidio Trust	1	2	2	3	3	0	0
Udall Institute for Environmental Conflict Res.	1	1	3	3	3	0	0
TOTAL	4,266	4,187	4,509	4,699	4,538	4,560	4,407

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

## **Part E: Listing of 135 “Economically Significant” Rules, 2004\***

### **From the Regulatory Plan (44 rules)**

#### **Department of Agriculture**

1. (2) MANDATORY COUNTRY OF ORIGIN LABELING OF BEEF, PORK, LAMB, FISH, PERISHABLE AGRICULTURAL COMMODITIES, AND PEANUTS (LS-03-04)
2. (12) FSP: ELIGIBILITY AND CERTIFICATION PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002
3. (14) FSP: EMPLOYMENT AND TRAINING PROGRAM PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002
4. (17) EGG PRODUCTS INSPECTION REGULATIONS
5. (20) PERFORMANCE STANDARDS FOR THE PRODUCTION OF PROCESSED MEAT AND POULTRY PRODUCTS
6. (22) PROHIBITION OF THE USE OF SPECIFIED RISK MATERIALS FOR HUMAN FOOD AND REQUIREMENTS FOR THE DISPOSITION OF NON-AMBULATORY DISABLED CATTLE
7. (25) EMERGENCY WATERSHED PROTECTION PROGRAM
8. (27) CONSERVATION SECURITY PROGRAM

#### **Department of Commerce**

9. (31) DESIGNATE CRITICAL HABITAT FOR 13 EVOLUTIONARILY SIGNIFICANT UNITS (ESUS) OF PACIFIC SALMON AND STEELHEAD IN WASHINGTON, OREGON AND IDAHO
10. (32) AMENDMENTS 18 AND 19 TO THE FISHERY MANAGEMENT PLAN FOR BERING SEA/ALEUTIAN ISLANDS KING AND TANNER CRABS: CRAB RATIONALIZATION PROGRAM

#### **Department of Energy**

11. (36) ENERGY EFFICIENCY STANDARDS FOR RESIDENTIAL FURNACES AND BOILERS
12. (37) ENERGY EFFICIENCY STANDARDS FOR ELECTRIC DISTRIBUTION TRANSFORMERS
13. (38) ENERGY EFFICIENCY STANDARDS FOR COMMERCIAL UNITARY AIR CONDITIONERS AND HEAT PUMPS

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

14. (44) SUBSTANCES PROHIBITED FROM USE IN ANIMAL FOOD OR FEED
15. (51) CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, OR HOLDING DIETARY INGREDIENTS AND DIETARY SUPPLEMENTS
16. (52) PREVENTION OF SALMONELLA ENTERITIDIS IN SHELL EGGS
17. (54) ESTABLISHMENT AND MAINTENANCE OF RECORDS PURSUANT TO THE PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002
18. (55) REGISTRATION OF FOOD AND ANIMAL FEED FACILITIES
19. (56) PRIOR NOTICE OF IMPORTED FOOD UNDER THE PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002
20. (57) USE OF OZONE-DEPLETING SUBSTANCES: REMOVAL OF ESSENTIAL USE DESIGNATION; ALBUTEROL
21. (63) ORGAN PROCUREMENT ORGANIZATION CONDITIONS FOR COVERAGE (CMS-3064-P)
22. (66) MEDICARE ADVANTAGE PROGRAM: TITLE II (CMS-4069-F)
23. (67) MEDICARE DRUG BENEFIT EFFECTIVE CALENDAR YEAR 2006: TITLE I (CMS-4068-F)

**Part E: Listing of 135 “Economically Significant” Rules, 2004\* (cont.)**

**Department of Homeland Security**

24. (74) UNITED STATES VISITOR AND IMMIGRANT STATUS INDICATOR TECHNOLOGY PROGRAM (US-VISIT); AUTH. TO COLLECT BIOMETRIC DATA FROM ADDITIONAL TRAVELERS AND EXPANSION TO 50 MOST HIGHLY TRAFFICKED LAND BORDER PORTS

**Department of Housing and Urban Development**

25. (81) OPERATING FUND ALLOCATION FORMULA (FR-4874)

**Department of Justice**

26. (86) NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES (SECTION 610 REVIEW)  
27. (87) NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES (SECTION 610 REVIEW)

**Department of Labor**

28. (95) REGULATIONS IMPLEMENTING THE HEALTH CARE ACCESS, PORTABILITY, AND RENEWABILITY PROVISIONS OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996  
29. (99) OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA  
30. (100) OCCUPATIONAL EXPOSURE TO HEXAVALENT CHROMIUM (PREVENTING OCCUPATIONAL ILLNESS: CHROMIUM)

**Department of Transportation**

31. (106) AGING AIRCRAFT SAFETY: DEVELOPMENT OF TC AND STC HOLDER DATA  
32. (108) TRANSPORT AIRPLANE FUEL TANK FLAMMABILITY REDUCTION  
33. (111) TIRE PRESSURE MONITORING SYSTEMS

**Department of Treasury**

34. (113) IMPLEMENTATION OF A REVISED BASEL CAPITAL ACCORD (BASEL II)

**Department of Veterans Affairs**

35. (114) ENROLLMENT—PROVISION OF HOSPITAL AND OUTPATIENT CARE TO VETERANS—SUBPRIORITIES OF PRIORITY CATEGORIES 7 AND 8 AND ENROLLMENT LEVEL DECISION

**Environmental Protection Agency**

36. (126) CLEAN AIR VISIBILITY RULE  
37. (127) CLEAN AIR MERCURY RULE: ELECTRIC UTILITY STEAM GENERATING UNITS  
38. (128) CLEAN AIR OZONE IMPLEMENTATION RULE (PART 1 AND PART 2)  
39. (137) NATIONAL PRIMARY DRINKING WATER REGULATIONS: GROUNDWATER RULE  
40. (138) NATIONAL PRIMARY DRINKING WATER REGULATIONS: LONG TERM 2 ENHANCED SURFACE WATER TREATMENT RULE

**Part E: Listing of 135 “Economically Significant” Rules, 2004\* (cont.)**

41. (139) NATIONAL PRIMARY DRINKING WATER REGULATIONS: STAGE 2 DISINFECTION BYPRODUCTS RULE

**Social Security Administration**

42. (154) AMENDMENTS TO THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM (967P)

**Consumer Product Safety Commission**

43. (169) FLAMMABILITY STANDARD FOR UPHOLSTERED FURNITURE

44. (170) PROPOSED STANDARD TO ADDRESS OPEN-FLAME IGNITION OF MATTRESSES/BEDDING

**From the *Unified Agenda* (91 additional rules)**

**Department of Agriculture**

45. (224) BOVINE SPONGIFORM ENCEPHALOPATHY: MINIMAL RISK REGIONS AND IMPORTATION OF COMMODITIES

46. (229) MEXICAN HASS AVOCADO IMPORT PROGRAM

47. (231) USER FEES FOR AGRICULTURAL QUARANTINE AND INSPECTION SERVICES

48. (333) FOOD STAMP PROGRAM: ADMINISTRATIVE COST REIMBURSEMENT

49. (335) FOOD STAMP PROGRAM: VEHICLE AND MAXIMUM EXCESS SHELTER EXPENSE DEDUCTION PROVISIONS OF PUBLIC LAW 106-387

50. (366) CCC SUPPLIER CREDIT GUARANTEE PROGRAM

**Department of Commerce**

51. (666) AMENDMENT 13 TO THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN (FMP)

**Department of Energy**

52. (873) ENERGY EFFICIENCY STANDARDS FOR CLOTHES DRYERS AND DISHWASHERS

53. (874) ENERGY EFFICIENCY STANDARDS FOR POOL HEATERS AND DIRECT HEATING EQUIPMENT

54. (875) ENERGY EFFICIENCY STANDARDS FOR 1-200 HP ELECTRIC MOTORS

55. (876) ENERGY EFFICIENCY STANDARDS FOR FLUORESCENT AND INCANDESCENT LAMPS

**Department of Health and Human Services**

56. (969) AMENDMENTS TO THE PERFORMANCE STANDARD FOR DIAGNOSTIC X-RAY SYSTEMS AND THEIR MAJOR COMPONENTS

57. (1038) STANDARDS FOR ELECTRONIC HEALTH CARE CLAIM ATTACHMENTS(CMS-0050-P)

58. (1044) REQUIREMENTS FOR LONG-TERM CARE FACILITIES: HOSPICE SERVICES (CMS-3140-P)

59. (1045) HOSPITAL CONDITIONS OF PARTICIPATION: REQUIREMENTS FOR HISTORY AND PHYSICAL EXAMINATIONS; AUTHENTICATION OF VERBAL ORDERS; SECURING MEDICATIONS; AND POST-ANESTHESIA EVALUATIONS (CMS-3122-P)

60. (1049) COMPETITIVE ACQUISITION FOR CERTAIN DURABLE MEDICAL EQUIPMENT (DME), PROSTHETICS, ORTHOTICS, AND SUPPLIES (CMS-1270-P)

61. (1051) REVISIONS TO HIPAA CODE SETS (CMS-0013-P)

62. (1053) PROSPECTIVE PAYMENT SYSTEM FOR LONG TERM CARE HOSPITALS: ANNUAL PAYMENT RATE UPDATES AND POLICY CHANGES FOR 2006 (CMS-1483-P)

**Part E: Listing of 135 “Economically Significant” Rules, 2004\* (cont.)**

63. (1060) MEDICARE MODERNIZATION ACT; ELECTRONIC PRESCRIBING (CMS-0011-P)
64. (1061) FURNISHING HOSPITALS WITH INFORMATION TO COMPUTE THE DISPROPORTIONATE SHARE HOSPITAL FORMULA (CMS-1283-P)
65. (1063) CHANGES TO THE HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEM AND FY 2006 RATES (CMS-1500-P)
66. (1064) MEDICARE PART B COMPETITIVE ACQUISITION OF OUTPATIENT DRUGS AND BIOLOGICALS (CMS-1325-P)
67. (1066) SPECIAL PAYMENT PROVISIONS AND STANDARDS FOR SUPPLIERS OF CUSTOM FABRICATED ORTHOTICS AND PROSTHETICS (CMS-6012-P)
68. (1069) HEALTH COVERAGE PORTABILITY FOR GROUP HEALTH PLANS AND GROUP HEALTH INSURANCE ISSUERS (CMS-2151-F)
69. (1070) PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT PSYCHIATRIC FACILITIES FOR FY 2004 (CMS-1213-F)
70. (1073) REVISIONS TO THE APPEALS PROCESS FOR INITIAL CLAIM DETERMINATIONS (CMS-4064-IFC)
71. (1075) CHANGES TO THE HOSPITAL OUTPATIENT PROSPECTIVE SYSTEM AND CALENDAR YEAR 2005 PAYMENT RATES (CMS-1427-FC)
72. (1076) REVISIONS TO PAYMENT POLICIES UNDER THE PHYSICIAN FEE SCHEDULE FOR CALENDAR YEAR 2005 (CMS-1429-FC)
73. (1086) FISCAL YEAR 2006 SCHIP ALLOTMENTS (CMS-2219-N)
74. (1100) MEDICARE AMBULANCE FEE SCHEDULE UPDATE (CMS-1492-F)
75. (1106) CONTINUATION OF MEDICARE ENTITLEMENT WHEN DISABILITY BENEFIT ENDS BECAUSE OF SUBSTANTIAL GAINFUL ACTIVITY (CMS-4018-F)
76. (1108) HOSPITAL PATIENTS’ RIGHTS COP—STANDARD SAFETY COMPLIANCE COMMITTEES (CMS-3120-P)
77. (1113) CHANGES TO THE HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEM AND FY 2005 RATES (CMS-1428-F)
78. (1117) HOME HEALTH PROSPECTIVE PAYMENT SYSTEM RATE UPDATE FY 2005 (CMS-1265-F)
79. (1120) CHANGES TO MEDICARE PAYMENT FOR DRUGS AND PHYSICIAN FEE SCHEDULE PAYMENTS FOR CALENDAR YEAR 2004: CORRECTION NOTICE CMS-1372-F)
80. (1125) SPECIAL RULES FOR EMPLOYER-SPONSORED DRUG PROGRAMS: SUBSIDIES TO ENCOURAGE RETENTION (TITLE I) (CMS-2199-P)
81. (1126) FY 2005 SCHIP ALLOTMENTS (CMS-2201-N)
82. (1127) PART A PREMIUMS FOR CALENDAR YEAR 2005 FOR THE UNINSURED AGED AND FOR CERTAIN DISABLED INDIVIDUALS WHO HAVE EXHAUSTED OTHER ENTITLEMENT (CMS-8022-N)
83. (1128) INPATIENT HOSPITAL DEDUCTIBLE AND HOSPITAL AND EXTENDED CARE SERVICES COINSURANCE AMOUNTS FOR CALENDAR YEAR 2005 (CMS-8021-N)
84. (1129) MEDICARE PART B MONTHLY ACTUARIAL RATES AND PREMIUM RATE BEGINNING JANUARY 1, 2005 (CMS-8020-N)
85. (1130) FEE SCHEDULE FOR PAYMENT OF AMBULANCE SERVICES-UPDATE FOR CALENDAR YEAR 2005 (CMS-1267-N)

**Department of Homeland Security**

86. (1288) SALVAGE AND MARINE FIREFIGHTING REQUIREMENTS; VESSEL RESPONSE PLANS FOR OIL (USCG-1998-3417)
87. (1324) ELECTRONIC TRANSMISSION OF PASSENGER AND CREW MANIFESTS FOR VESSELS AND AIRCRAFT
88. (1330) LETTERS AND DOCUMENTS; ADVANCE ELECTRONIC PRESENTATION OF CARGO DATA
89. (1375) SECURE FLIGHT PROGRAM



## **Part E: Listing of 135 “Economically Significant” Rules, 2004\* (cont.)**

- 90. (1392) CAPPS II: ACCESS TO PASSENGER RESERVATION INFORMATION
- 91. (1428) ESTABLISH COMPLIANCE CRITERIA AND COMPREHENSIVE FEE FOR RECERTIFICATION OF SCHOOLS APPROVED BY THE STUDENT AND EXCHANGE VISITOR PROGRAM (SEVP) TO ENROLL FOREIGN NONIMMIGRANT STUDENTS
- 92. (1438) DISASTER ASSISTANCE; FEDERAL ASSISTANCE TO INDIVIDUALS AND HOUSEHOLDS
- 93. (1451) GRANTS FOR REPETITIVE INSURANCE CLAIM PROPERTIES

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

- 94. (1469) FAIR MARKET RENTS PROGRAMS: INCREASED FAIR MARKET RENTS FOR CERTAIN AREAS AND HIGHER PAYMENT STANDARDS (FR-4606)
- 95. (1475) THE SECRETARY OF HUD’S REGULATION OF FANNIE MAE AND FREDDIE MAC (FR-4790)
- 96. (1510) UP-FRONT MORTGAGE INSURANCE PREMIUMS FOR LOANS INSURED UNDER 24 CFR 203(K) AND 234(C) OF THE NATIONAL HOUSING ACT (FR-4749)
- 97. (1520) RESPA: IMPROVING THE PROCESS FOR OBTAINING MORTGAGES (FR-4727)

### **Department of the Interior**

- 98. (1622) MIGRATORY BIRD HUNTING; 2005-2006 MIGRATORY GAME BIRD HUNTING REGULATIONS
- 99. (1725) MIGRATORY BIRD HUNTING; PROPOSED 2004-05 MIGRATORY GAME BIRD HUNTING REGULATIONS (PRELIMINARY) WITH REQUESTS FOR INDIAN TRIBAL PROPOSALS

### **Department of Labor**

- 100. (2030) OCCUPATIONAL EXPOSURE TO BERYLLIUM
- 101. (2036) CONFINED SPACES IN CONSTRUCTION (PART 1926): PREVENTING SUFFOCATION/ EXPLOSIONS IN CONFINED SPACES
- 102. (2053) HEARING CONSERVATION PROGRAM FOR CONSTRUCTION WORKERS

### **Department of Transportation**

- 103. (2100) DOMESTIC PASSENGER MANIFEST INFORMATION
- 104. (2161) FLIGHT CREWMEMBER DUTY LIMITATIONS AND REST REQUIREMENTS
- 105. (2374) MARITIME SECURITY PROGRAM
- 106. (2275) SIDE IMPACT PROTECTION UPGRADE: FMVSS NO. 214
- 107. (2277) REFORMING THE AUTOMOBILE FUEL ECONOMY STANDARDS PROGRAM

### **Architectural and Transportation Barriers Compliance Board**

- 108. (3005) AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

### **Environmental Protection Agency**

- 109. (3113) PREVENTION OF SIGNIFICANT DETERIORATION (PSD) AND NONATTAINMENT NEW SOURCE REVIEW (NSR): ROUTINE MAINTENANCE, REPAIR AND REPLACEMENT (RMRR); MAINTENANCE AND REPAIR AMENDMENTS
- 110. (3114) PROTECTION OF STRATOSPHERIC OZONE: LISTING OF SUBSTITUTES FOR OZONE-DEPLETING SUBSTANCES: N-PROPYL BROMIDE (COATINGS)
- 111. (3127) FEDERAL IMPLEMENTATION PLANS TO REDUCE INTERSTATE TRANSPORT OF FINE PARTICULATE MATTER AND OZONE
- 112. (3165) CLEAN AIR INTERSTATE RULE FORMERLY TITLED: INTERSTATE AIR QUALITY RULE

## **Part E: Listing of 135 “Economically Significant” Rules, 2004\* (cont.)**

- 113. (3179) PREVENTION OF SIGNIFICANT DETERIORATION (PSD) AND NONATTAINMENT NEW SOURCE REVIEW (NSR): ROUTINE MAINTENANCE, REPAIR AND REPLACEMENT (RMRR) EQUIPMENT REPLACEMENT PROVISION (ERP); RECONSIDERATION
- 114. (3190) REVIEW OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR PARTICULATE MATTER
- 115. (3195) PHASE I (FIP) TO REDUCE THE REGIONAL TRANSPORT OF OZONE IN THE EASTERN UNITED STATES
- 116. (3242) NESHAP: RECIPROCATING INTERNAL COMBUSTION ENGINE
- 117. (3243) NESHAP: INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL BOILERS AND PROCESS HEATERS
- 118. (3246) NESHAP: PLYWOOD AND COMPOSITE WOOD PRODUCTS
- 119. (3253) CONTROL OF EMISSIONS OF AIR POLLUTION FROM NONROAD DIESEL ENGINES AND FUEL
- 120. (3291) GROUNDWATER AND PESTICIDE MANAGEMENT PLAN RULE
- 121. (3370) STANDARDS FOR THE MANAGEMENT OF COAL COMBUSTION WASTES GENERATED BY COMMERCIAL ELECTRIC POWER PRODUCERS
- 122. (3371) STANDARDS FOR THE MANAGEMENT OF COAL COMBUSTION WASTES: NON-POWER PRODUCERS AND MINEFILLING
- 123. (3417) MINIMIZING ADVERSE ENVIRONMENTAL IMPACT FROM COOLING WATER INTAKE STRUCTURES AT EXISTING FACILITIES UNDER SECTION 316(B) OF THE CLEAN WATER ACT, PHASE 2
- 124. (3428) NATIONAL PRIMARY DRINKING WATER REGULATIONS: RADON

### **Social Security Administration**

- 125. (3725) REVISED MEDICAL CRITERIA FOR EVALUATING IMPAIRMENTS OF THE DIGESTIVE SYSTEM (800F)

### **Federal Communications Commission**

- 126. (3877) BROADBAND OVER POWER LINE SYSTEMS
- 127. (3884) UNLICENSED NATIONAL INFORMATION INFRASTRUCTURE AT 5 GHZ
- 128. (3897) GLOBAL MOBILE PERSONAL COMMUNICATIONS BY SATELLITE; IB DOCKET NO. 99-67
- 129. (3907) REDESIGNATION OF THE 17.7-19.7 GHZ BAND, BLANKET LICENSING OF SATELLITE EARTH STATIONS, AND ALLOCATION OF SPECTRUM FOR BROADCAST SATELLITE SERVICE
- 130. (3909) REDESIGNATION OF THE 17.7-19.7 GHZ BAND, BLANKET LICENSING OF SATELLITE EARTH STATIONS, & ALLOCATION OF SPECTRUM IN THE 17.3-17.8 AND 24.75-25.25 GHZ BANDS FOR BROADCAST SATELLITE SERVICE
- 131. (3926) SATELLITE BROADCASTING SIGNAL CARRIAGE REQUIREMENTS
- 132. (3953) SERVICE RULES FOR THE 746-764 AND 776-794 MHZ BANDS, AND REVISIONS TO PART 27 OF THE COMMISSION’S RULES
- 133. (3959) TRANSFER OF THE 3650 THROUGH 3700 MHZ BAND FROM FEDERAL GOVERNMENT USE
- 134. (3960) 2000 BIENNIAL REGULATORY REVIEW SPECTRUM AGGREGATION LIMITS FOR COMMERCIAL MOBILE RADIO SERVICES
- 135. (3996) IP-ENABLED SERVICES

Source: Compiled from the National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions*, December 13, 2004.

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

## Part F: Rules Impacting Small Business (1996-2003)

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

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

## Part G: Federal Rules Impacting Lower Level Governments (2000-2004)

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

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

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

## NOTES

<sup>1</sup> Office of Management and Budget, “2005 Draft Report to Congress on the Costs and Benefits of Federal Regulations,” 2005, Table 1-2, p. 8. [http://www.whitehouse.gov/omb/inforeg/2005\\_cb/draft\\_2005\\_cb\\_report.pdf](http://www.whitehouse.gov/omb/inforeg/2005_cb/draft_2005_cb_report.pdf).

<sup>2</sup> *Ibid.*, p. 9.

<sup>3</sup> W. Mark Crain and Thomas D. Hopkins, “The Impact of Regulatory Costs on Small Firms,” Report prepared for Small Business Administration, Office of Advocacy, RFP no. SBAHQ-00-R-0027, October 2001, [www.sba.gov/advo/research/rs207tot.pdf](http://www.sba.gov/advo/research/rs207tot.pdf).

<sup>4</sup> *Ibid.*, p. 26, n. 26. Crain and Hopkins in their report update Thomas D. Hopkins, “Profiles of Regulatory Costs: Report to the U.S. Small Business Administration, U.S. Department of Commerce,” NTIS PB96128038, November 1995, [www.sba.gov/ADVO/research/rs1995hoptot.pdf](http://www.sba.gov/ADVO/research/rs1995hoptot.pdf).

<sup>5</sup> In 1995, Hopkins had projected that regulatory costs would grow from \$668 billion to \$721 billion, an annual growth rate of 1.3 percent. (Hopkins, “Profiles of Regulatory Costs,” Table A-1.) Relatedly, Crain and Hopkins (2001) tabulated a 1.2 percent annualized compound growth rate between those same years in “total regulatory costs per household” for major categories of regulation. For present purposes, a lower growth trend of one percent is applied to the newer Crain and Hopkins 2000 figure of \$843 billion to arrive at a more conservative 2004 estimate. (If the 1.3 percent growth rate had been used instead, the estimate for total 2004 regulatory costs would have been \$888 billion.)

<sup>6</sup> A breakdown in the original dollars for 2000 appears in Table 8, “Total Cost of Federal Regulations: By Type and Allocation between Businesses and Others,” Crain and Hopkins, p. 25.

<sup>7</sup> See Thomas D. Hopkins, “Prepared Statement for the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs of the House Committee on Government Reform and Oversight,” May 16, 1996. See also Thomas D. Hopkins, “Regulatory Costs in Profile,” Center for the Study of American Business Policy Study no. 231, August 1996, p. 4.

<sup>8</sup> Crain and Hopkins, p. 5.

<sup>9</sup> Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2003–2012*, January 2002, [www.cbo.gov/showdoc.cfm?index=3277&sequence=2](http://www.cbo.gov/showdoc.cfm?index=3277&sequence=2).

<sup>10</sup> Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2006–2015*, January 2005, Chapter 1, p. 3. <http://mirror2.cbo.gov/ftpdocs/60xx/doc6060/Chapter1.pdf>.

<sup>11</sup> Figures for 2002 and 2003 outlays and deficit are contained in Congressional Budget Office, *The Budget and Economic Outlook* editions of January 2003 and 2004 respectively. <http://www.cbo.gov>.

<sup>12</sup> Tax figures from U.S. Census Bureau, *Statistical Abstract of the United States: 2004–2005*, Table. No. 467, “Federal Receipts by Source: 1990 to 2004,” p. 311,

<http://www.census.gov/prod/2004pubs/04statab/fedgov.pdf>.

<sup>13</sup> *Ibid.*

<sup>14</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2004–2005*, Table 758, “Corporate Profits Before Taxes by Industry: 1998 to 2002,” p. 506, <http://www.census.gov/prod/2004pubs/04statab/business.pdf>. Profits do not reflect from inventory valuation and capital consumption adjustments.

<sup>15</sup> GDP figures for Canada and Mexico are from U.S. Census Bureau, *Statistical Abstract of the United States: 2004–2005*, Table 1337, “Gross Domestic Product (GDP) by Country: 1995 to 2002,” p. 853, <http://www.census.gov/prod/2004pubs/04statab/intlstat.pdf>.

<sup>16</sup> Congressional Budget Office, 2005. p. 3.

<sup>17</sup> Susan Dudley and Melinda Warren, *Regulators’ Budget Continues to Rise: An Analysis of the U.S. Budget for Fiscal Years 2004 and 2005*, Regulatory Budget Report 26, published jointly by the Weidenbaum Center and the Mercatus Center, July 2004, p. 25. <http://www.mercatus.org/pdf/materials/796.pdf>. Original 2000 constant dollars are adjusted by the change in the consumer price index between 2000 and 2003, derived from U.S. Census Bureau, *Statistical Abstract of the United States: 2004–2005*, Table No. 698,

“Consumer Price Indexes (CPI-U) by Major Groups: 1980 to 2003,” p. 463. <http://www.census.gov/prod/2004pubs/04statab/prices.pdf>.

<sup>18</sup> *Ibid.* This figure is also adjusted by the change in CPI.

<sup>19</sup> *Ibid.*, p. 26.

<sup>20</sup> *Ibid.*, p. 1.

<sup>21</sup> See, for example, Cindy Skrzycki, “Midnight Regulations’ Swell Register,” *Washington Post*, January 23, 2001, p. E1.

<sup>22</sup> Counting 2000 as part of the new millennium, which is technically incorrect.

<sup>23</sup> National Archives and Records Administration, Office of the Federal Register, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, printed in *Federal Register* 69, No. 238, December 13, 2004. Cited hereinafter as *Agenda*.

<sup>24</sup> Though the *Agenda* is published twice a year, this document tracks each year’s December publication.

<sup>25</sup> *Agenda*, p. 72,646.

<sup>26</sup> *Ibid.*, p. 74,293.

<sup>27</sup> The legislation and executive orders by which agencies are directed to assess impacts on state and local governments are described in *ibid.*, p. 74,315.

<sup>28</sup> General Accounting Office website “Reports on Federal Agency Major Rules,” <http://www.gao.gov/decisions/majrule/majrule.htm>.

<sup>29</sup> Dudley and Warren, from pp. 16 and 17.

<sup>30</sup> Noted in letter to the Hon. Jacob J. Lew, director, Office of Management and Budget, from Sen.

Fred Thompson (R-TN), chairman, Senate Committee on Governmental Affairs, and Sen.

Ted Stevens (R-AK), chairman, Senate Committee on Appropriations, October 10, 1998, p. 2.

<sup>31</sup> For a complete analysis see David Schoenbrod and Jerry Taylor, “The Delegation of Legislative Powers,” *Cato Handbook for Congress: Policy Recommendations for the 108th Congress*, pp. 77–85, [www.cato.org/pubs/handbook/hb108/hb108-8.pdf](http://www.cato.org/pubs/handbook/hb108/hb108-8.pdf).

<sup>32</sup> Derived from “Catalog of Public and Private Laws—108th Congress,” National Archives and Records Administration, <http://www.access.gpo.gov/nara/publaw/108publ.html>.



## About the Author

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

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

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

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