

TEN THOUSAND COMMANDMENTS

AN ANNUAL POLICYMAKER'S SNAPSHOT OF THE FEDERAL REGULATORY STATE

2000 EDITION

Clyde Wayne Crews Jr.

EXECUTIVE SUMMARY

The federal government spent \$1.7 trillion in 1999 to carry out discretionary and entitlement spending and pay interest on the debt.¹ In the new fiscal year 2001 federal budget, President Bill Clinton proposed to spend \$1.84 trillion.² While these costs fully encompass the on-budget scope of the federal government, there is considerably more to the reach of the federal government 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. Regulatory costs occur “off-budget” and therefore largely escape the disclosure and scrutiny that the fiscal budget encounters. In large part, what regulatory discipline exists depends upon the good faith of agencies to voluntarily disclose the costs and benefits of their rules, rather than a requirement that they do so. Thus, it is not only unclear what Americans pay in regulatory compliance costs, but the level of benefits received in return for those costs is a subject of great debate. Yet in the face of this uncertainty, the 1999 *Federal Register* contained the highest number of pages since 1980, the last year of the Carter presidency. Between 1998 and 1999, the number of rules in the pipeline costing at least \$100 million jumped 17 percent. At the same time, major rules actually finalized dropped significantly.

The exact cost of federal regulations can never be fully known. But governmental and private data exist on numbers of regulations, the agencies that issue them, and sometimes regulatory costs and benefits—all 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 1999 *Federal Register* contained 71,161 pages, the highest level since Jimmy Carter's presidency and a 4 percent jump over 1998.
- Well over 4,000 rules are issued by agencies every single year.
- Agencies have issued over 23,000 final rules since the Republican takeover of Congress.
- In 1999, 4,538 regulations were at various stages of implementation throughout the 50-plus federal departments, agencies, and commissions.
- Of the 4,538 regulations in the works, 137 are “economically significant” rules that will have at least \$100 million in economic impact. That means new regulations which will impose at least \$13.7 billion yearly in future off-budget costs are in the pipeline.
- \$100-million rules in the works increased 17 percent between 1998 and 1999, from 117 to 137.

- The five most active rule-producing agencies (DOT, EPA, Treasury, DOC, USDA) account for 46 percent of all rules under consideration.
- Rules impacting small businesses are up 35 percent over the past five years.
- The costs of meeting the demands of off-budget social regulations in 1999 were as high as \$234 billion, according to the Office of Management and Budget. A more broadly constructed competing estimate that includes economic regulatory costs and paperwork costs pegs regulatory expenditures at \$758 billion in 1999. This latter amount, if in the ballpark, is equivalent to more than 44 percent of the \$1.703 trillion spent on all federal fiscal-year 1999 outlays. But the costs of regulations, although approaching half the size of government outlays, are unbudgeted.
- Regulatory costs of \$758 billion are equivalent to 8.2 percent of US gross domestic product, which was \$9,235 billion last year.
- The costs of regulation are greater than Canada's entire gross national product, which was \$595 billion in 1997.
- The costs of regulations far exceed the maximum expected federal budgetary surplus of \$489 billion in 2010.
- Regulatory costs of \$758 billion even exceed corporate pretax profits, which were \$718 billion in 1998.
- In 1998, the median two-earner family's after-tax income of \$41,846 contained about \$7,410 in hidden regulatory costs. Thus, regulatory costs eat up about 18 percent of the after-tax family budget.
- Agencies spent \$18.8 billion to administer and police the regulatory state in 1999. Counting the \$758 billion in off-budget costs, that brings the total regulatory burden to \$777 billion.
- The Environmental Protection Agency (EPA) expects to issue 456, or 10 percent, of the 4,538 planned rules.
- EPA rules in the pipeline will add at least \$2.8 billion in regulatory costs each year.
- Fewer than half of the EPA's planned \$100-million rules are accompanied by benefit estimates.

The US is now comfortably enjoying its first string of budgetary surpluses in decades, and the federal government is expected to continue posting surpluses of between \$124 billion and \$489 billion over the next ten years.³ But if maintaining a true surplus remains a priority, then honest policymaking also must seek to control regulatory costs. Think of it this way: The maximum anticipated surplus is \$489 billion in 2010. But the regulatory costs of over \$700 billion already far exceed that level. 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 monitored better, the balanced-budget imperative may tend to invite Congress to adopt new off-budget private-sector regulations rather than new spending that would deplete the surplus. If regulatory costs remain largely hidden from public view, the fallout from regulating instead of taxing and spending will continue to be less.

Regulations should be treated the same way federal spending is treated: To the extent possible, Congress should be held directly accountable for the compliance costs—as well as the benefits—federal regulations deliver to the public. The typical remedy proposed to police excess regulation is cost-benefit analysis of rules. The problem with cost-benefit analysis, however, is that it is largely a form of agency self-policing; agencies in effect would perform “audits” of their own rules. Granted, some propose that agency analyses be subjected to third-party review. But even this is unlikely to be enough, since agencies will rarely admit benefits of a rule do not justify the costs involved.

The way to maximize congressional accountability is to require Congress to vote on agency rules (in an expedited fashion) before they are binding. Vital for true accountability, this step would fulfill citizens' rights to "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. Relatively simple "Regulatory Report Cards," in some respects like the presentation in *Ten Thousand Commandments*, can be performed officially each year by the federal government to distill regulatory data.

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INTRODUCTION: TOWARD ENDING “REGULATION WITHOUT REPRESENTATION”

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

The third way the government can accomplish its goals is to regulate. That is, rather than pay directly and book the expense of a new initiative, it can require that the private sector and lower-level governments pay. By regulating, the government can carry out desired programs but avoid using tax dollars to fund them. This process sometimes allows Congress to escape accountability and blame agencies for costs. Since disclosure and accountability for regulation is limited, there is limited incentive for policymakers to care about the extent of regulatory costs, or where those costs stand in relation to ordinary government spending. Since regulatory costs are unbudgeted and lack the formal presentation to the public and media to which ordinary federal spending is subject, regulatory initiatives allow the government to direct private-sector resources to a significant degree without much public fuss. In that sense regulation can be thought of as off-budget taxation. Figure 1 provides perspective on the level of “hidden regulatory taxation,” by presenting summary data for selected topics described in this report. Trends over the past few years are provided where information is available.

Regulations can be regarded as a form of off-budget taxation.

The 2000 Edition of *Ten Thousand Commandments* is divided into four main sections:

- An overview of the costs and scope of the regulatory state, such as its size in comparison to the federal budget and the gross national product, and its impact on the family budget.
- An analysis of trends in the numbers of regulations issued by agencies, based on data and information provided in the *Federal Register* and the *Unified Agenda of Federal Regulations*.
- Recommendations for regulatory reform that emphasize ending “Regulation without Representation.” Steps to improve disclosure of regulatory costs and increase congressional accountability for regulations are offered, in contrast to the agency-driven cost-benefit analysis that typical reform proposals emphasize.
- An appendix containing Historical Tables providing data on regulatory trends over the past several years.

Figure 1
The Regulatory State: An Overview

	1999	1 Year Change	5 Year Change	10 Year Change
Total Regulatory Costs (Hopkins' Estimates)	\$758 billion	1.2%	6.2%	19.5%
Environmental/Social Regulatory Costs	\$276 billion	3.4%	16.0%	71.4%
Economic Regulatory Costs	\$234 billion	-8%	-3.7%	-7.1%
Agency Enforcement Budgets	\$18.8 billion	10.5%	14.3%	31.1%
Net <i>Federal Register</i> Pages	71,161	3.8%	13.6%	42.9%
<i>Federal Register</i> Pages Devoted to Final Rules	20,201	.8%	11.9%	42.5%
Total <i>Federal Register</i> Rule Documents	7,965	.3%	-1.1%	8.0%
<i>Federal Register</i> Final Rule Documents	4,684	-4.4%	-.6%	8.1%
Total Rules in <i>Unified Agenda</i>	4,538	-.5%	-4.2%	1.5%
“Economically Significant” Rules in the Pipeline	137	17.1%	-1.4%*	n/a
Rules Impacting Small Business	963	2.8%	35.4%	n/a
% of Agency Rules that Impact Small Business	21.2%	3.4%	41.3%	n/a
Rules Impacting State Governments	726	-.4%	8.2%	n/a
Rules Impacting Local Governments	453	4.9%	10.5%	n/a
Major Rules Finalized By Agencies	46	-34.3%	n/a	n/a
<u>EPA Spotlight:</u>				
Total Number of EPA Rules in <i>Unified Agenda</i>	456	-1.3%	4.8%	n/a
“Economically Significant” EPA Rules in <i>Agenda</i>	28	-26.3%	n/a	n/a
Final Rules issued by EPA	5	-44.4%	n/a	n/a
EPA Rules Impacting Small Business	179	0%	27.8%	n/a
n/a: not available				
*represents change over four, not five, years				

THE REGULATORY STATE AND ITS COST TO AMERICANS

THE SOCIAL AND ECONOMIC COSTS OF REGULATION

The Office of Management and Budget (OMB) in January 2000 released its latest draft report on regulatory costs and benefits. OMB determined in the report that costs of social regulations (such as environmental quality, and health and safety rules) range from \$174 billion to \$234 billion.⁴ The OMB further estimated that benefits of those rules range from \$264 billion to \$1.79 trillion. As Figure 2 shows, these findings lead OMB to report “net benefits” of federal regulation in the range of \$30 billion to \$1.6 trillion. In the worst case, then, OMB finds regulations to produce \$30 billion in net benefits. Note however that OMB’s cost-benefit breakdown uses only benefits and costs that were both quantified and monetized. Furthermore, cost-benefit analysis will be highly sensitive to basic assumptions made about how regulations translate into health benefits.⁵

	Benefits	Costs
Environmental Regulations	\$97 to 1,595	\$124 to 175
Transportation Regulations	\$84 to 110	\$15 to 18
Labor	\$28 to 30	\$18 to 19
Other	\$55 to 60	\$17 to 22
Total	\$264 to 1,795	\$174 to 234
Net benefit range	\$30 to \$1,621	

Source: OMB, *Draft Report to Congress on the Costs and Benefits of Federal Regulations*, January 2000.

Another widely cited regulatory survey estimated regulatory costs covering the years 1977 through 2000. Prepared in 1995 for the Small Business Administration by Professor Thomas D. Hopkins of the Rochester Institute of Technology, this report assessed social and environmental costs, just as the OMB report did. But Hopkins also included costs of economic regulations (such as price and entry restrictions), “transfer” costs (such as farm price supports), and paperwork costs (such as tax compliance). Professor Hopkins’ well-known (indeed probably the best-known) estimates have projected the total direct compliance costs for federal regulations at well over \$700 billion for several years.⁷

The OMB has called adding together a diverse set of studies of the many kinds of regulatory costs an “apples and oranges” exercise and an “inherently flawed approach.”⁸ The point is well taken, given that assumptions

Figure 3
Regulatory Compliance Cost Estimates 1977-2000
 (Billions of 1998 \$)

YEAR	SOCIAL			ECONOMIC			PAPER	TOTAL
	Environmental	Other Social	Total Social	Efficiency Loss	Transfer	Total Econ.	WORK	
77	50	34	84	159	308	467	148	699
78	56	37	93	152	292	444	149	686
79	60	40	99	143	274	417	149	665
80	64	42	106	134	256	389	153	648
81	67	40	107	126	241	367	157	631
82	70	37	107	121	228	349	154	610
83	76	34	110	116	218	334	172	616
84	81	33	114	110	207	318	174	606
85	87	33	120	106	199	305	176	601
86	93	33	126	102	189	291	176	594
87	99	34	134	96	180	276	186	596
88	105	36	141	92	169	261	185	587
89	112	39	151	91	167	258	193	601
90	120	42	161	89	164	252	220	634
91	138	43	181	88	161	249	234	664
92	147	50	197	88	160	248	242	687
93	159	55	214	87	159	246	227	687
94	163	57	219	86	158	244	230	693
95	180	59	238	86	157	243	233	714
96	186	62	248	84	155	240	236	724
97	193	64	257	84	154	238	241	736
98	201	66	267	83	153	236	245	749
99	206	70	276	82	152	234	248	758
2000	213	73	286	82	151	233	252	771

Source: Data from US Small Business Administration, Office of the Chief Counsel for Advocacy, *The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress*, Washington, DC, October 1995, Table 3, p. 28. Original 1995 dollars are adjusted by the change in the CPI between 1995 and 1998.

of studies can differ and double-counting can occur. But rather than making the case that studies cannot be done, OMB’s criticism really makes the case that OMB itself should perform its own ground-up study of regulatory costs rather than rely on third-party estimates. Explicitly retaining paperwork and economic transfer costs in an aggregate cost tally (as Hopkins does but the OMB does not) improves disclosure and acknowledges that, like taxes, *someone* pays on the basis of government compulsion.

Hopkins projected total 1999 regulatory costs of \$758 billion.⁹ Given that indirect costs—such as the impacts of lost innovation or productivity—are not included in Hopkins’ analysis, he has noted that likely his figures somewhat understate the total regulatory burden.¹⁰ On the other hand, reg-

ulatory benefits are beyond the scope of Hopkins' analysis, yet those would be recognized to offset some costs, as they certainly are by the OMB.¹¹

Figure 3 shows Hopkins' regulatory cost estimates from 1977 to 2000, adjusted for the change in consumer price index (CPI) since his original calculations.¹² As referred to earlier, Hopkins sorts regulations into three main categories: social (such as environmental rules and health and safety requirements); economic (such as efficiency costs of price and entry controls on business and losses from economic transfers); and paperwork (largely tax compliance costs). Each category accounts for roughly one-third of total compliance costs, but the growing environmental/social category increasingly comprises a larger share (note the rise in environmental and social costs and the slight decrease in economic costs). Overall, total regulatory costs have increased slightly throughout the 1990s. The fall in economic regulation reflects deregulation in business sectors such as trucking, airlines, banking, and natural gas during the 1980s. The next major economic sector likely to face some restructuring is the \$200-billion electricity industry.

Opinions vary among OMB and others over which costs should be included in regulatory analyses. Nonetheless, a loose correspondence between Hopkins' cost figures and those of OMB can probably be drawn between Hopkins' estimate of total "environmental" and "other social" costs of \$276 billion, and OMB's estimate of \$174 billion to \$234 billion for social regulatory costs. Given the uncertainties admitted by both OMB and Hopkins, the parties are likely in the same ballpark on those limited aspects of regulatory costs that both can agree warrant quantitative reporting. Furthermore, the OMB's figures would also be slightly higher if converted to 1998 dollars.

Figure 3's columns show the decline in the level of economic regulation. On the other hand, paperwork costs have increased, and social regulatory costs have increased dramatically. Economic regulatory reforms caused overall regulatory costs to drop during much of the 1980s, to a 1988 low of \$587 billion. But paperwork-filing costs and increasing environmental and social regulations (such rules as the Clean Air Act amendments and the Americans with Disabilities Act) began to overwhelm those declines and add to total costs thereafter.

While total costs are up only one percent over the past year, the net effect of the differing trends is that total estimated costs of regulation have increased 26 percent, from \$634 billion to \$758 billion over the past 10 years (see Figure 3). Although the combined costs of economic "efficiency loss" and "transfer" regulation have decreased 7.1 percent, falling from \$252 billion to \$234 billion since 1990, these decreases are overwhelmed by the 71.4 percent increase in "environmental" and "other social" rules between 1990 and 1999 (from \$161 billion to \$276 billion). Contributing also to the overall rise in regulatory costs has been the 12.7 percent rise in paperwork costs, from \$220 billion to \$248 billion.

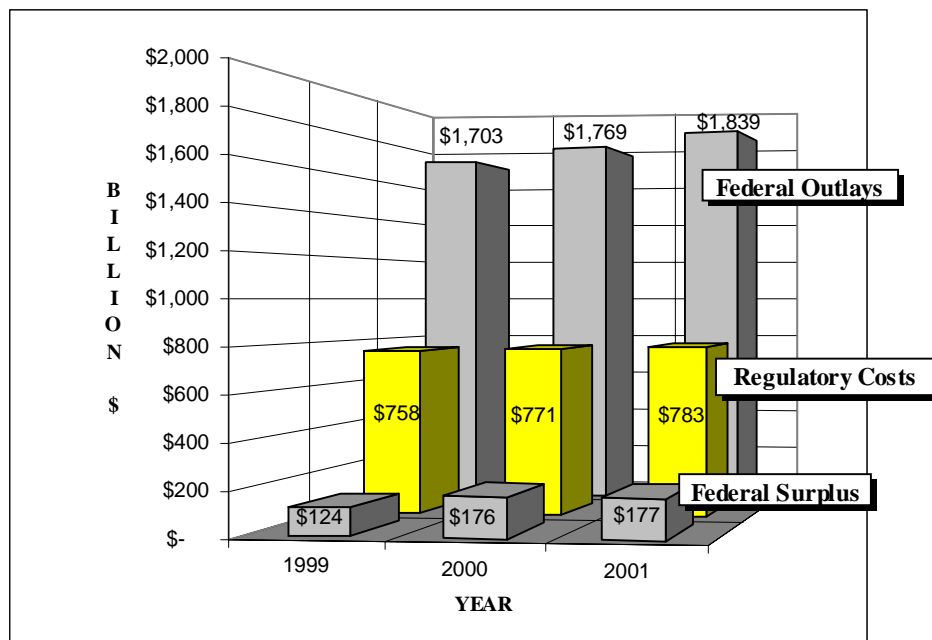
Congress knows with certainty the size of the federal surplus and may grow nervous as it dwindles, but since regulatory costs are hidden, the fallout from regulating instead may be less.

The offsetting movements of economic and social regulatory costs over the past two decades has altered the mix of the regulatory state's main components. The environmental/social component of regulatory costs made up just 12 percent of the total regulatory cost burden in 1977. In 1999, it comprised 36 percent.

*Regulation:
Stealth deficit
spending?*

At one time, economic regulation dominated, standing at 66.8 percent of all regulatory costs in 1977. Economic regulation has now dipped to 30.8 percent, largely a response to the realization by policymakers that economic interference hurts more than it helps. Environmental and social rules can be abused as well, such as when firms seek regulation merely to hobble their competitors. Nonetheless, despite the abuse of economic regulation and the recognition that regulation can be inferior to market-oriented or common law solutions, policymakers continue to have favorable impressions of social and environmental interventions.

Figure 4
Off-Budget Regulatory Costs
Compared with Projected Federal Spending
and Expected Surplus
(Billions of \$, 1999-2001)



The federal surplus is swamped by the costs of regulations.

Sources: *The Budget and Economic Outlook: Fiscal Years 2001-2010*, January 2000, Congressional Budget Office, p. xvi.; Office of the Chief Counsel for Advocacy, US Small Business Administration, *The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress*, October 1995. Year 2001 regulatory costs are projected based upon the average of the annual increases in regulatory costs between 1995 and 2000 in Hopkins' calculations. Federal surplus and outlay numbers are by fiscal year; regulatory costs are shown by calendar year.

REGULATION VS. GOVERNMENT SPENDING

The federal government's budget is finally in balance, indeed, is expected to post a surplus of \$176 billion in 2000, putting an end to nearly three decades of deficit spending.¹³ "Deficit spending," however, lives on in the form of regulatory compliance costs that go largely unacknowledged by the federal government. Carrying out governmental initiatives requires spending and borrowing, and the details of both appear in the fiscal budget each year. But the federal government can impose regulations as an alternative to on-budget spending. Put simply, it can require that others do the spending, and avoid posting the costs on the official books. The drive to maintain the federal surplus, particularly in the face of baby-boomer retirements after 2010 that seriously threaten it, could induce the newfound "surplus culture" to substitute regulations for new spending in many areas, since regulation faces far fewer significant administrative constraints.

As Figure 4 shows, 1999's \$758 billion in regulatory costs is equivalent to 44.5 percent of on-budget spending of \$1.7 trillion. If total regulatory costs continue growing at roughly today's level, they will remain well over 40 percent of the level of total government spending through 2001.¹⁴ Figure 4 also projects the surplus compared to the regulatory burden for 1999-2001.¹⁵ Note that while there indeed exists a fiscal surplus, it is swamped by the costs of regulations. There remains, in a sense, a "regulatory deficit." A limited regulatory-cost budget would give citizens a more complete picture of the reach of government in the economy.

Off-budget regulatory costs are equivalent to 44 percent of federal spending.

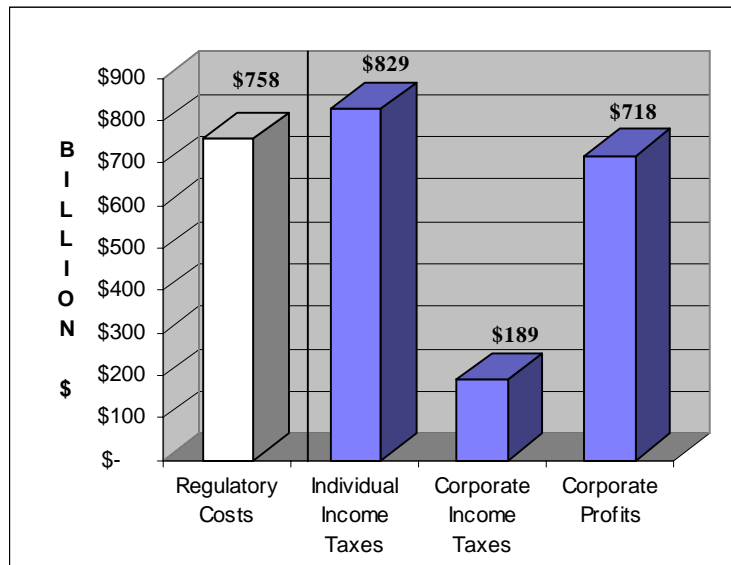
REGULATORY COSTS VS. INCOME TAXES AND CORPORATE PROFITS

The costs of regulations arise from government edicts, but since they are generally untabulated they might be thought of as hidden, off-budget taxes. Given that regulatory costs occur off-budget, one might reasonably assume regulations to be a secondary nuisance compared to on-budget spending. But in fact, regulatory costs rival the level of 1998 individual income taxes, which was \$829 billion, as Figure 5 shows.¹⁶ Corporate taxes, at \$189 billion that year, are greatly outdistanced by regulatory costs.¹⁷ Even *pretax* corporate profits, \$718 billion in 1998, are outstripped by regulatory costs, also shown in Figure 5.¹⁸

To put regulation into further perspective, costs of \$758 billion even exceeded the output of many national economies. As shown in Figure 6, US regulatory costs exceed the entire 1997 GNP of Canada (the latest figure available), which stood at \$595 billion. The regulatory burden was also more than double the 1997 GNP of Mexico, which totaled \$349 billion.¹⁹

As noted in Figure 4, federal outlays in 1999 were \$1,703 billion. That level is 18.4 percent of the 1999 US gross domestic product (GDP) of

Figure 5
Regulatory Costs Exceed 1998 Corporate Profits & Taxes; Rival Individual Income Taxes Paid



Sources (profits and taxes): *Statistical Abstract of the United States 1999*, Table No. 544, p. 349, and Table No. 908, p. 572.

Regulatory costs rival the total amount of individual income taxes collected.

\$9,235 billion.²⁰ Total regulatory costs of \$758 billion themselves stand at 8.2 percent of US GDP. Combining the “hidden tax” of regulation with federal outlays better captures the reach of government in the economy. Adding regulatory costs of \$758 billion to outlays brings the federal government’s share of the economy to 26.6 percent. This is a slight decrease from last year, when the combined regulatory and outlay share of GDP was 28.1 percent.

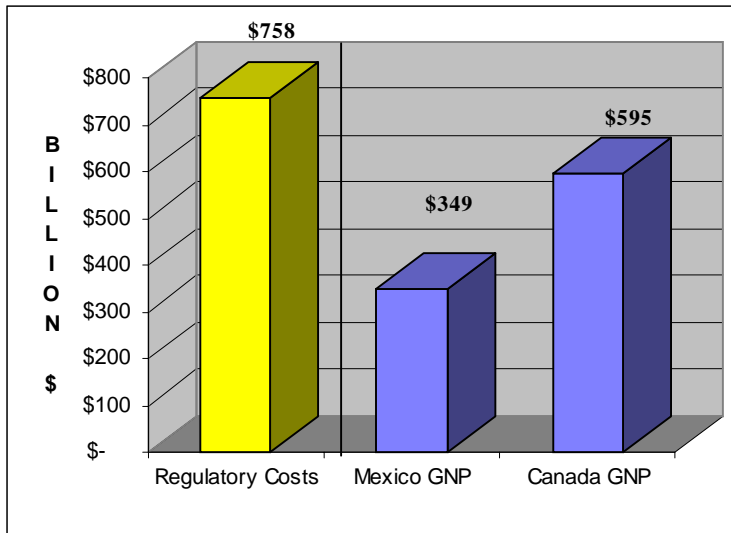
REGULATORY COSTS EAT INTO THE FAMILY BUDGET

Firms generally pass along to consumers some of the costs of the taxes they are required to pay. Likewise the costs of regulations, although generally imposed on businesses, are passed on to consumers. These regulatory costs are generally hidden, but they can manifest themselves as higher prices for consumer products as reflected in grocery bills, utility bills, health and housing costs, and even higher state and local taxes. Like ordinary taxes, the hidden tax of regulation can clearly impact the consumer pocketbook.

So how much of the family budget is absorbed by regulatory costs? For the median two-earner family, 1998 after-tax income (the latest year available) was \$41,846, according to the Tax Foundation.²¹ Economic, social, and environmental regulatory costs totaled an estimated \$749 billion for that year, which broke out to an estimated \$7,410 for the typical family

Corporate taxes, at \$189 billion, are far out-distanced by regulatory compliance costs.

Figure 6
Regulatory Costs Exceed 1997 GNPs
of Canada and Mexico



Sources: *Statistical Abstract of the United States 1999*, Table No. 1362. Gross National Product, by Country: 1997, p. 841; US Small Business Administration, Office of the Chief Counsel for Advocacy, *The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress*, Washington, DC, October 1995, Table 3, p. 28.

US regulatory costs exceed the GNPs of Canada and Mexico.

of four.²² Notably, embedded regulatory costs absorb 17.7 percent of the typical two-earner household's after-tax income.

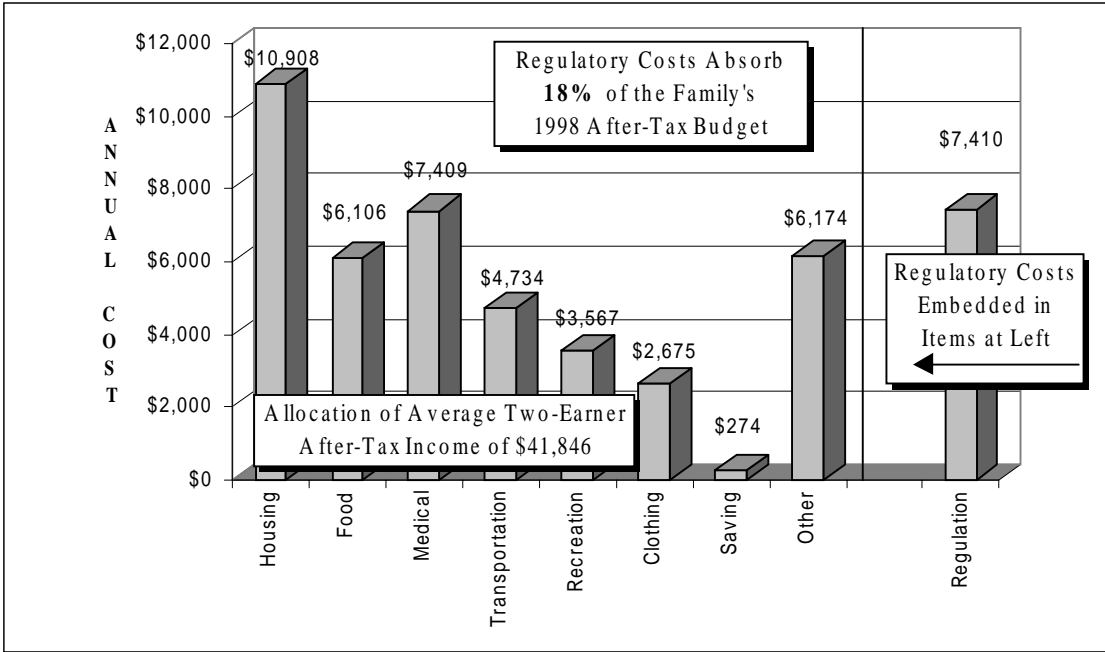
The Tax Foundation allocated 1998 family after-tax income across household goods and services purchases, shown in Figure 7. Conceptually speaking, 1998's regulatory costs of \$7,410, since they are hidden, might be thought of as being embedded in the costs of items in the family's after-tax budget. Figure 7 compares the hidden costs of regulation to the costs of the items in the family budget. Except for housing costs, embedded regulatory costs now exceed spending for every item in the family after-tax budget. More is spent on regulation than on medical expenses, food, transportation, recreation, clothing, and savings.

THE COSTS OF ADMINISTERING THE REGULATORY STATE

Thomas Hopkins' regulatory cost estimates include compliance costs paid by the public and lower-level governments. But his estimates do not include the costs of administering the regulatory state; these are the on-budget amounts spent by federal agencies to produce rules and police regulatory compliance. Each year the Center for the Study of American Business (CSAB) studies the federal budget to excerpt and compile the governmental costs of developing and enforcing regulations, and publishes a study surveying

Even corporate pretax profits—\$718 billion in 1998—are outstripped by regulatory costs.

Figure 7
After-Tax Budget for the Two-Earner Family
Contains \$7,410 in Embedded Regulatory Costs



Sources: Tax Foundation, Dr. Thomas D. Hopkins; CEI arithmetic.

the regulatory state's administrative costs. Since these funds represent amounts that taxpayers pay to support agencies' administrative budgets rather than compliance costs, they therefore are disclosed in the federal budget.

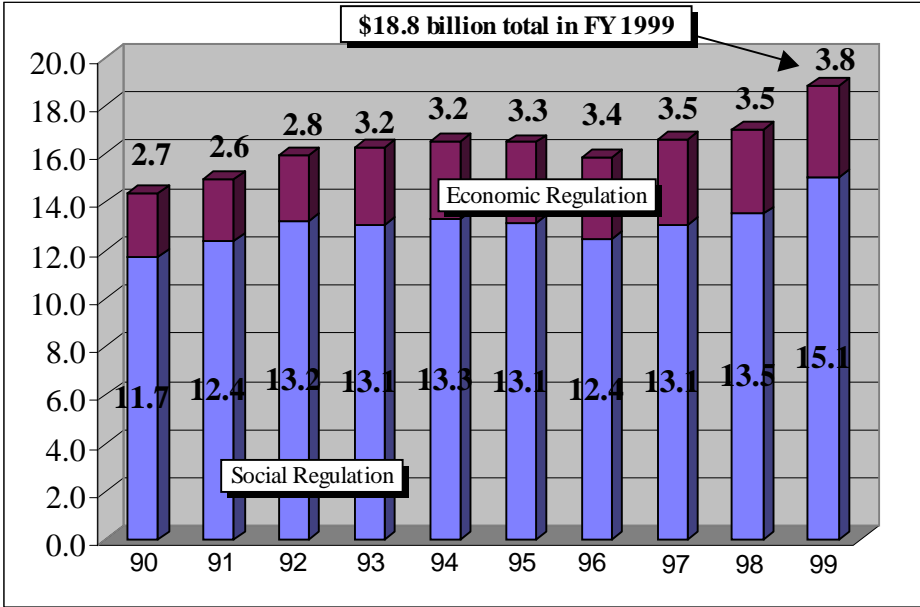
Estimates of fiscal year 1999 enforcement costs to be incurred by 54 departments and agencies reached a record high of \$18.8 billion (in constant 1998 dollars).²³ (See Figure 8.) Of those costs, \$3.8 billion is spent administering economic regulation, but the bulk, \$15.1 billion, goes toward writing and enforcing social and environmental regulations. This parallels the developments seen in Figure 3 by which social regulations have come to represent the bulk of rules in terms of cost. Taken together, total spending on social and economic enforcement in 1999 is 10.5 percent higher than in 1998, and 31 percent higher than the \$14.4 billion spent in 1990.²⁴

The CSAB numbers help fill in the picture of the regulatory state. Adding \$18.8 billion in administrative costs tabulated by CSAB to Hopkins' \$758-billion estimate for compliance costs brings the total 1999 regulatory burden to \$777 billion. As for the 2000 fiscal year, CSAB expects total regulatory enforcement costs to be slightly lower at \$18.6 billion.²⁵

Federal agency staffing employed to write and enforce regulations is also on the rise. Full-time equivalent employment staffing attained 129,189

Agency enforcement budgets and staffing are at record levels.

Figure 8
Agency Enforcement Budgets Rising
 (1990-99, billions of constant 1998 \$)



Source: *The Rise of Regulation Continues: An Analysis of the Budget for the Year 2000*, by Melinda Warren and Murray Weidenbaum, Center for the Study of American Business, Regulatory Budget Report 22, August 1999. 1992 constant dollars in original are adjusted by the change in the CPI between 1992 and 1998, from the *Statistical Abstract of the United States 1999*, US Department of Commerce, Economics and Statistics Administration, Bureau of the Census, Table No. 776, p. 495.

Regulatory costs exceed all expenses in the family budget, save housing.

in fiscal year 1999, according to CSAB. Since staffing stood at 114,679 in 1990, the decade has seen a 12.6 percent increase.²⁶ Like the overall regulatory compliance costs detailed by Hopkins, agency enforcement spending and staffing declined during the early 1980s but rose thereafter.

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 problems with using page numbers alone as a proxy for the level of regulation, of course. The wordiness of rules will vary, affecting page numbers and obscuring the real impacts of the underlying rules. A short rule could be very costly, and vice-versa. Administrative notices, corrections, presidential statements, and other material are contained in the *Register* as well. Blank pages also appear as a result of the Government Printing Office's imperfect

20 percent of the family's after-tax budget is consumed by regulatory costs.

prediction of agency pages required. Nonetheless, it is surely worthwhile to track the *Register's* growth via pages, provided the appropriate caveats are kept in mind.

Costs to police the regulatory state bring the total burden to \$777 billion.

The *Register* reached an all-time high of 73,258 pages in 1980 under President Jimmy Carter.²⁷ The *Register* then dipped to a low of 44,812 pages in 1986, partly as a result economic deregulation, as described earlier. But as shown in Figure 9, during the past decade, the number of *Federal Register* pages (exclusive of blanks and skips) has bounced up and down while nonetheless progressing upward. As may be seen, during 1999 the number of pages rose to 71,161, a 3.8 percent increase over the previous year. This new level is the highest page-count since the Carter record. Over the past 10 years, from 1990 to 1999, the page count has increased 42.9 percent. Over the past five years, pages are up 13.6 percent. (For a history of *Federal Register* page totals going all the way back to 1936, see Historical Tables, Part A: *Federal Register* Page History [1936-99].)

There is another interesting way of looking at the new record in page numbers. The *Federal Register* averaged 52,922 pages throughout the 1980s, including the record year of 1980. But during the 1990s (the period covered in Figure 9) pages averaged 62,237 per year.

Regarding the *Register's* bumpy rise over the past decade, note that President Bill Clinton's first year in office, 1993, brought forth a seven percent jump in *Federal Register* pages: to 61,166 from the 57,003 pages in President Bush's final year. Notably, however, *Federal Register* page growth during Clinton's first term was less than the growth of regulation during the four years under President George Bush. Under Clinton (1993-96), *Federal Register* pages increased 6 percent overall. Under Bush (1989-92) pages jumped 13 percent.

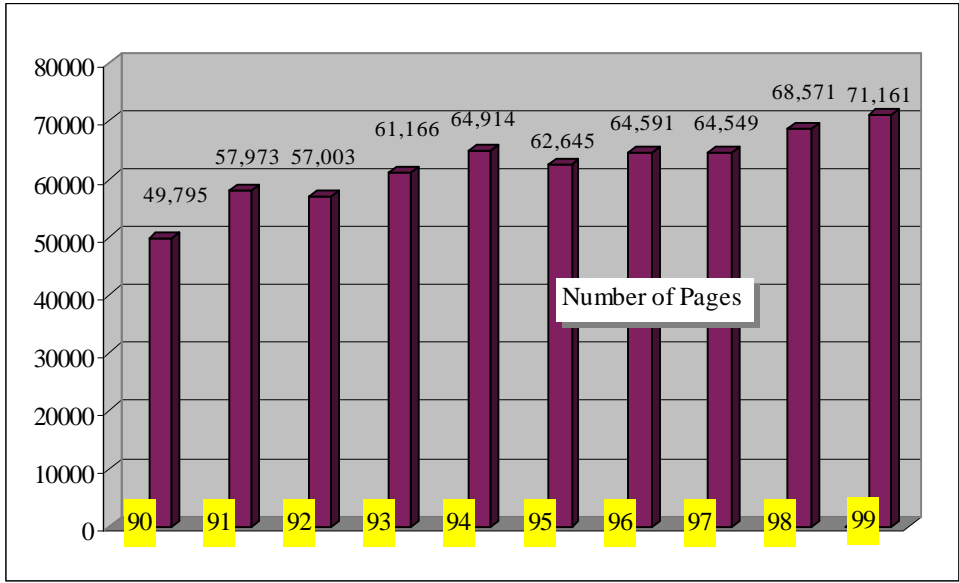
Americans work more than half the year for the government to fund taxes and regulation.

It is clear that in terms of page counts, rules are on the rise now despite the Republican Party's assumption of the majority in Congress in 1995. Back in 1995, the number of *Federal Register* pages did fall, probably partly due to the fact that Republican reformers then kept a watchful eye on *Federal Register* pages and cited them frequently as a gauge of regulation. Also accounting for the drop that year is the partial federal government shut-down which slowed the promulgation of new regulations for a time. But rules have since resumed their upward march.

FEDERAL REGISTER PAGES DEVOTED TO FINAL RULES

Although growth in total *Federal Register* pages has ticked upward to a record-high level, overall page counts alone do not allow one to conclude whether actual regulatory burdens imposed have increased or relaxed. While the total number of *Federal Register* pages is the most popular regulatory

Figure 9
Federal Register Pages Up 43% Over 10 Years
 (1990-99)



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

Federal Register pages are at levels not seen since the Carter Administration.

gauge, isolating those pages that are devoted specifically to *final* rules may be a bit more informative. This approach omits pages devoted to proposed rules, agency notices, corrections, and presidential documents.

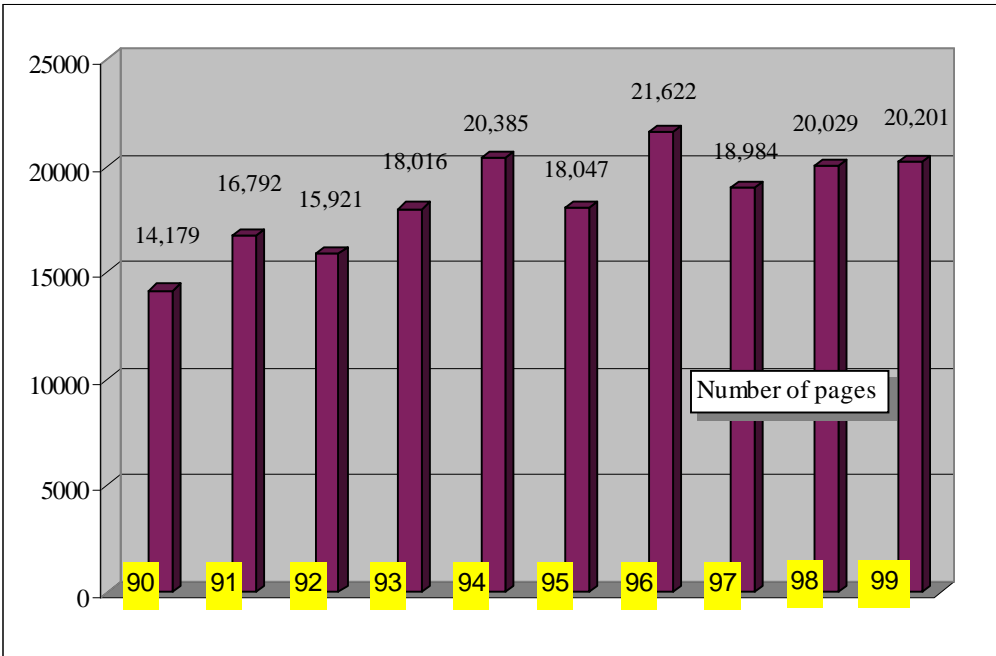
Pages in the *Federal Register* devoted to final rules, rising less than one percent over the past year, experienced a bumpy ride over the decade. Pages increased 42.5 percent since 1990, from 14,179 to 20,201 (See Figure 10). In the interim, the number of pages devoted to final rules peaked in 1996 at 21,622. The 1999 count of 20,201 is up less than one percent over 1998, and up 11.9 percent from five years ago, when pages stood at 18,047 at the end of the year. The significant drop between 1994 and 1995 is, again, probably attributable to the then-new Republican congressional majority and the federal government shutdown. But this slowdown didn't last, given the jump to over 21,600 the very next year, and the overall increase between 1995 and 1999.

Thus, the aggregate *Federal Register* is bigger in terms of number of pages than it has been in two decades, and the pages devoted to final rules is on the rise, although not at a peak. While overall page counts are up, and many would use this fact to say that regulations have grown, it must be remembered that the overall number of total or final-rule pages can mask true levels of costs. Page reduction, even if it were achieved, is not the same as actually reducing the regulatory burden. It is nonetheless reasonable to suppose that the far higher number of pages devoted to final rules that pre-

The 1999 Federal Register contained 71,161 pages, the highest level since 1980 and a 4 percent jump over 1998.

Federal Register pages devoted to final rules are up 42 percent over 10 years.

Figure 10
Federal Register Pages Devoted to Final Rules
 (1990-99)



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

vails today genuinely signifies higher levels of final-rule costs. To determine whether that is actually the case requires further analysis.

**NUMBER OF PROPOSED AND FINAL RULE DOCUMENTS IN THE
 FEDERAL REGISTER**

Perhaps more than focusing on the number of pages in the *Federal Register*, the numbers of proposed and final rules deserve attention. As can be seen in Figure 11, the total number of rules issued at both the proposed and final levels has stood well above 7,000 throughout the 1990s. In 1999, the total number of proposed and final rules published was 7,965, little changed from the year before.

Isolating final rules gives some concrete idea of how active agencies have been in terms of regulatory output. The number of final rules issued was 4,684 in 1999. This new level represents an 8.1 percent increase over 10 years ago, but a 4.4 percent decrease from 1998. Nonetheless, the number of final rules has easily exceeded 4,500 for the past six years, as can be seen in Figure 11.

Over 23,000 final rules have been issued since the 1994 Republican takeover of Congress.

While the level of these rules has remained relatively flat over the decade, the cumulative impact of such regulation matters as much as growth in any particular year. The bottom line is the annual outflow of well over 4,000 final rules has led to over 45,000 new rules since 1990. Indeed, *over 23,000 final rules have been issued since 1995*—since the Republican take-over of Congress. It must be remembered that the costs of those rules can vary tremendously. (For the numbers of proposed and final rules and other documents issued in the *Federal Register* since 1976, see Historical Tables, Part B: Number of *Federal Register* Documents Published [1976-99].)

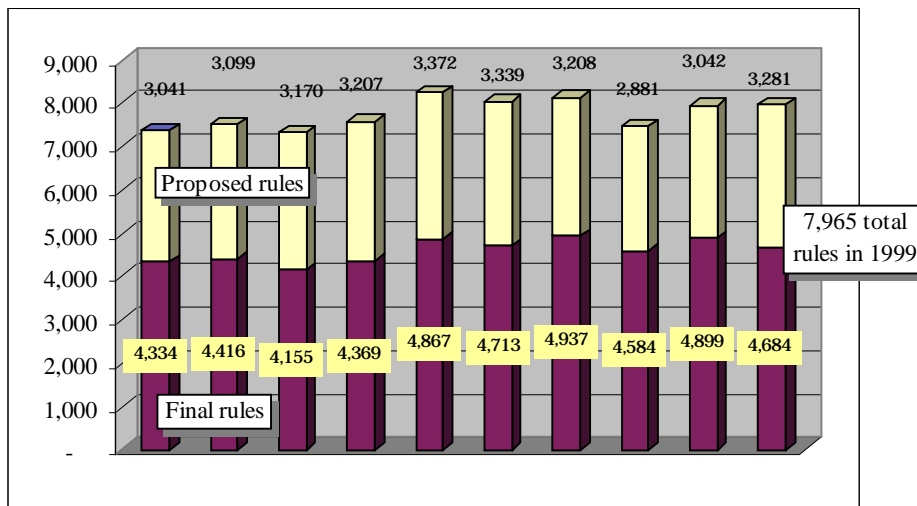
4,684 final rules were issued in 1999.

UNIFIED AGENDA OF FEDERAL REGULATIONS ANALYSIS

4,538 NEW RULES IN THE PIPELINE

The federal Regulatory Information Service Center (an arm of the General Accounting Office) releases the *Unified Agenda of Federal Regulatory and Deregulatory Actions* each April and October. The *Agenda* outlines recently completed rules, as well as rules anticipated in the upcoming 12 months, by the roughly 60 federal departments, agencies, and commissions. In this sense the *Agenda* serves as a rough gauge of what's in the regulatory pipeline at a given time. The *Agenda* depicts federal regulatory actions at several stages: pre-rule; upcoming proposed and final rules; actions recently completed; and anticipated longer-term rulemakings. 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 phase from

Figure 11
Number of Rules Published in the *Federal Register*
 (1990-99)



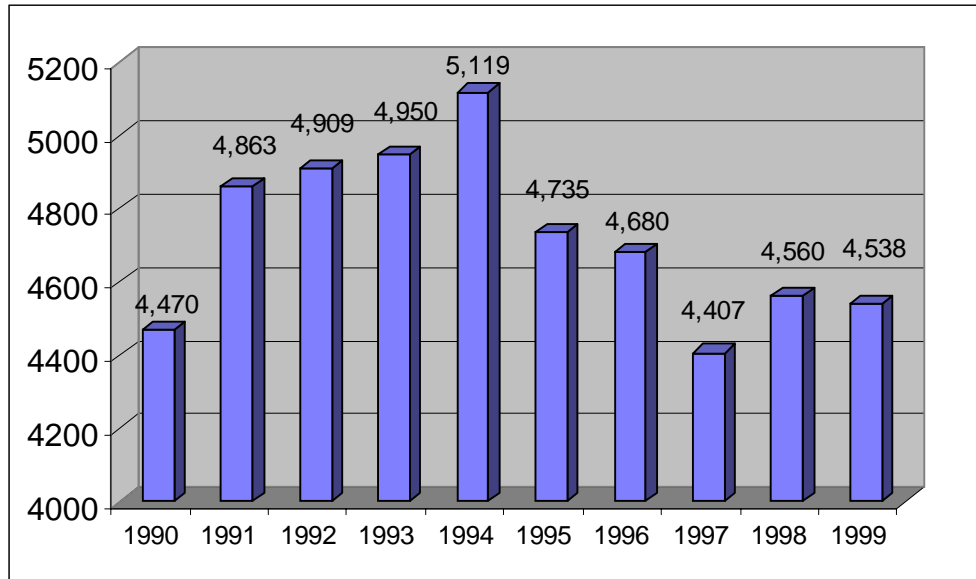
Source: Office of the Federal Register, National Archives and Records Administration.

one year to another, or they may reappear in subsequent *Agendas* at a different stage. The *Agenda's* 4,500-plus rules primarily impact the private sector but many also impact lower-level governments and the federal government.

Five agencies accounted for 46 percent of all rules in the Unified Agenda.

The October 1999 *Unified Agenda* finds federal agencies, departments, and commissions at work on 4,538 regulations from the pre-rule to the just-completed stages.²⁸ As Figure 12 shows, rules in the *Unified Agenda* peaked at 5,119 in October 1994, and then declined, although topping 4,500 for the past two years. The particularly abrupt fall-off between 1994 and 1995, as apparently was the case with *Federal Register* pages, may have partly resulted from agency reluctance to issue as many rules given the aggressive regulatory reform agenda of Republicans who won a majority in both Houses in 1994. Between 1998 and 1999, the number of rules in the *Agenda* remained steady, dropping just one-half percent, from 4,560 to 4,538. (For a history of numbers of rules in the *Unified Agenda* since 1983, see Historical Tables, Part C: *Unified Agenda* Rules History [1983-99].²⁹)

Figure 12
Total Agency Rules in the *Unified Agenda* Pipeline
(1990-99)



Source: Compiled by CEI from *Unified Agenda of Federal Regulations*, various years, October editions; Regulatory Information Service Center.

Departments and agencies are at work on 4,538 rules.

Figure 13 breaks down October 1999's 4,538 rules by issuing department, agency, or commission. As is apparent, a relative handful of agencies account for a huge chunk of rules produced, and such is the case each year. The agencies and departments excerpted in Figure 14 were the biggest rulemakers. These "Top Five," with 2,106 rules among them,

Figure 13
***Unified Agenda* Entries by Department and Agency**
(October 1999)

	Total Rules		Total Rules
Dept. of Agriculture	345	Office of Management & Budget	9
Dept. of Commerce	366	Office of Personnel Management	112
Dept. of Defense	121	Panama Canal Commission	4
Dept. of Education	32	Peace Corps	5
Dept. of Energy	64	Pension Benefit Guaranty Corporation	12
Dept. of Health & Human Services	300	Railroad Retirement Board	16
Dept. of Housing & Urban Development	128	Selective Service System	1
Dept. of the Interior	309	Small Business Administration	35
Dept. of Justice	201	Social Security Administration	67
Dept. of Labor	151	Tennessee Valley Authority	1
Dept. of State	27	Federal Acquisition Regulation	49
Dept. of Transportation	539	Commodity Futures Trading Commission	19
Dept. of Treasury	400	Consumer Product Safety Commission	17
Dept. of Veterans' Affairs	130	Farm Credit Administration	19
Advisory Council on Historic Preservation	1	Farm Credit System Insurance Corporation	3
Agency for International Development	5	Federal Communications Commission	128
Architectural and Transportation Barriers Compliance Board	8	Federal Energy Regulatory Commission	20
Commission on Civil Rights	1	Federal Housing Finance Board	18
Corporation for National & Community Service	4	Federal Maritime Commission	9
Environmental Protection Agency	456	Federal Reserve System	22
Federal Emergency Management Agency	33	National Credit Union Administration	26
General Services Administration	51	Nuclear Regulatory Commission	57
National Aeronautics & Space Administration	7	Office of Special Counsel	2
National Archives & Records Administration	21	Securities and Exchange Commission	80
Institute of Museum Services	1	Federal Trade Commission	16
National Endowment for the Arts	5	Federal Deposit Insurance Corporation	25
Equal Employment Opportunity Commission	9	National Indian Gaming Commission	14
National Endowment for the Humanities	6	Surface Transportation Board	3
National Science Foundation	4	Federal Mediation and Conciliation Service	1
Office of Federal Housing Enterprise Oversight	5	Udall Inst. For Environmental Conflict Res.	3
Office of Government Ethics	12	Presidio Trust	3
		TOTAL	4,538

Source: Compiled by CEI from the *Unified Agenda of Federal Regulations*, Regulatory Information Service Center, October 1999.

account for 46 percent of all rules in the *Agenda* pipeline. (For numbers of rules by department and agency from previous editions of the *Unified Agenda*, see Historical Tables, Part D: *Unified Agenda* Rules History by Department, Agency, and Commission [1996-99 and 1993].)

As examples of forthcoming initiatives, agencies noted the following rules (among many others) as priorities in the October 1999 *Agenda*:

Department of Health and Human Services:

- Shell Eggs: Warning, Notice and Safe Handling Labeling Statements and Refrigeration Requirements

Department of Labor:

- Hearing Loss Prevention in Construction Workers

Department of the Interior:

- Humane and Healthful Transport of Wild Mammals, Birds, Reptiles, and Amphibians to the United States

Department of Transportation:

- Hours of Service of Truck Drivers
- Advanced Air Bags
- Propeller Injury Prevention Aboard Rental Boats

Environmental Protection Agency:

- Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards and Regional Haze Regulations
- Control of Emissions From Nonroad Engines (assorted engines, several rules)

Consumer Product Safety Commission:

- Requesting Development of a Safety Standard for Escalators
- Baby Walkers

Figure 14	
The Top Five Rule-Producing Agencies	
(1) Department of Transportation	539
(2) Environmental Protection Agency	456
(3) Department of the Treasury	400
(4) Department of Commerce	366
(5) Department of Agriculture	<u>345</u>
Top-Five Total	2,106

Source: Compiled by CEI from the *Unified Agenda*, October 1999.

**HIGH-COST, OFF-BUDGET RULES IN THE AGENDA WILL COST
BILLIONS OF DOLLARS**

A subset of the *Agenda's* 4,538 rules are considered "economically significant." This term means that the rules are anticipated to have yearly economic impacts of *at least* \$100 million. These impacts generally mean regulatory compliance costs, although occasionally an economically significant rule is intended to reduce costs in the economy. As Figure 15 shows, 137 new economically significant rules are under consideration by 18 departments and agencies at the pre-rule, proposed, final, long-term, and recently-completed stages. These high-cost rules are scattered among the 4,538 rules in the *Agenda*. Since each will cost at least \$100 million annually,

Figure 15
137 Rules in the Pipeline Expected to Cost Over \$100 Million Annually
 (October 1999)

	Prerule	Proposed	Final	Long-term	Completed	TOTAL
Dept. of Agriculture	0	6	6	5	1	18
Dept. of Commerce	0	1	0	1	0	2
Dept. of Defense	0	0	0	0	1	1
Dept. of Energy	1	3	0	5	0	9
Dept. of Health & Human Services	0	8	6	3	4	21
Dept. of Housing & Urban Development	0	1	1	0	1	3
Dept. of the Interior	0	0	0	1	1	2
Dept. of Labor	2	5	3	8	0	18
Dept. of Transportation	0	3	2	1	4	10
ATBCB	0	3	1	0	0	4
Environmental Protection Agency	0	11	9	6	2	28
Small Business Administration	0	1	0	0	1	2
Social Security Administration	0	1	0	0	2	3
Federal Acquisition Regulation	0	0	0	0	2	2
Consumer Product Safety Commission	0	1	0	0	0	1
Federal Communications Commission	0	0	0	9	1	10
Office of Federal Housing Enterprise Oversight	0	1	0	0	0	1
Nuclear Regulatory Commission	0	1	0	0	1	2
TOTAL	3	46	28	39	21	137

Source: Compiled by CEI from the *Unified Agenda of Federal Regulations*, Regulatory Information Service Center, October 1999.

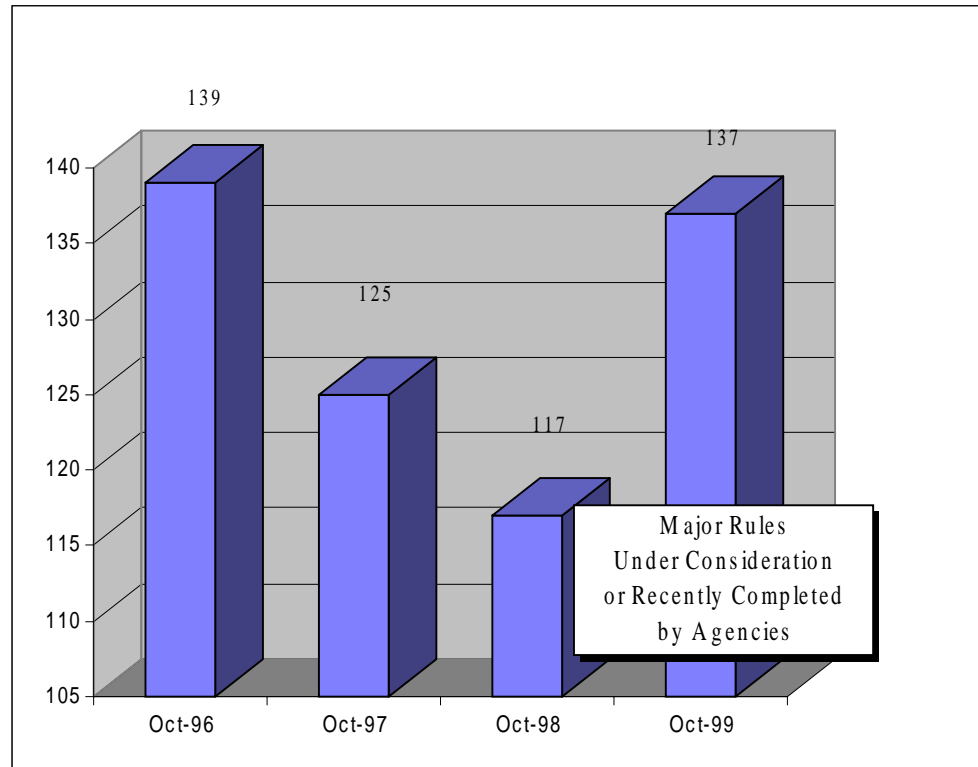
these regulations can be expected to impose, at minimum, total annual costs of \$13.7 billion (137 rules multiplied by \$100 million). (The Appendix presents these 137 economically significant rules and their issuing agencies compiled from the October 1999 edition of *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*.)

Figure 16 shows economically significant rules from 1996 to 1999. The 137 major rules in 1999 represent a 17.1 percent increase from 1998's 117, and a 9.6 percent increase over 1997. The 1999 count is about the same as it had been in 1996. (For breakdowns of economically significant rules by agency and category for recent years, see Historical Tables, Part E: Agency Major Rules by Category [1996-98].)

A breakdown of the \$13.7 billion in regulatory costs is never directly presented for each rule in the *Agenda*. The costs represent a floor and are arrived at by combing through the document. Rather than accumulate and summarize regulatory costs for readers' benefit, each entry indicates whether or not a rule is "economically significant" and occasionally provides additional cost data from agency Regulatory Impact Analyses. Note that even as the \$13.7 billion in anticipated costs represents a lower boundary, it is not simply 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.

Some costly federal rules are far more than merely, in the government's words, "economically significant."

Figure 16
"Economically Significant" Rules in the
Unified Agenda Pipeline
 (1996-99)



Source: Compiled by CEI from *Unified Agenda of Federal Regulations*, 1997-99 Editions; Regulatory Information Service Center.

New rules will cost at least \$13.7 billion annually.

The increase in the number of economically significant rules last year is noteworthy, paralleling increasing total regulatory costs, enforcement costs, and pages in the *Federal Register*. (And as will be seen later, the number of rulings affecting small business and state and local governments are moving up, too.) An economically significant rule can cost \$100 million, or many times that amount: no upper bounds on costs are enforced upon agencies or Congress, and no special reporting requirements are necessary for rules whose compliance may greatly exceed \$100 million. The number of rules alone cannot reveal the relative cost levels, since the bulk of costs can be created by a handful of rules. Likewise, regulatory benefits may be concentrated in a relatively small number of rules while the bulk may offer minuscule net benefits. For example, some studies of the EPA's ozone/particulate-matter rule suggest that by the year 2010, the annual cost of the ozone-abatement requirements will exceed \$1.1 billion, while particulate matter-abatement costs will exceed \$8.6 billion annually.³⁰ Such immensely costly rules clearly are more than merely "economically significant."

The number of costly rules in the *Agenda* declined from 1996 to 1998, a trend that may in part have resulted from the additional attention high-cost regulations received upon the Republican assumption of the majority in Congress. Their kickoff “Contract With America” reform agenda began what has remained a long-term effort to complete some form of comprehensive regulatory reform, an effort embraced by some Democrats as well. Among these efforts have been more targeted proposals, such as bipartisan bills to enhance regulatory accounting requirements. Ongoing pressures for regulatory changes like these might explain agency reluctance to broadcast as many upcoming rules as in prior years, resulting in the decline in anticipated “economically significant” rules as well as overall rules. But the 1999 increase suggests that reluctance may have abated somewhat.

Moreover, despite declines in major rules until last year, agencies may still have been heavily active off the record, so to speak. Agencies are not required to limit their activity to what they publish in the *Unified Agenda*: “The *Regulatory Plan* and the *Unified Agenda* do not create a legal obligation on agencies to adhere to schedules within them or to confine their regulatory activities to those regulations that appear in these publications.”³¹ The jump last year in economically significant rules signifies that the decline between 1996 and 1998 may have been a temporary artifact of personality and politics, not an indication of a genuine shift in public policy toward less off-budget regulation.

Finally, the fact that economically significant rules receive the bulk of attention by policymakers and analysts should not lull them into ignoring the remaining bulk of rules in the yearly pipeline. Consider: In 1999, 4,401 federal rules are *not* considered economically significant by the government (4,538 total rules minus the 137 economically significant ones). But that doesn’t mean many of these rules aren’t “economically significant” in the ordinary sense of the term. Any of these rules may cost up to \$99 million and still evade the “economically significant” label. One example is new workplace rules being considered by the Occupational Safety and Health Administration that would address slip, trip, and fall hazards.³²

Thus, waiting until a regulation costs \$100 million before it is considered significant means that the great majority of rules escape altogether the extra scrutiny directed at economically significant rules. If policymakers turn the other cheek enough, this can create incentive for agencies to break rules into pieces small enough to sail in below the \$100 million threshold. The public can end up facing many small rules instead of one large one, but paying the same costs. And of course, costs will add up quickly even for sub-\$100 million rules, given the thousands issued each year. In the final analysis, since most rules receive no cost analysis at all, the claim that regulation on the whole produces net benefits is not verifiable.

*Any of over
4,000 rules
could cost up to
\$100 million
but escape cost
disclosure alto-
gether.*

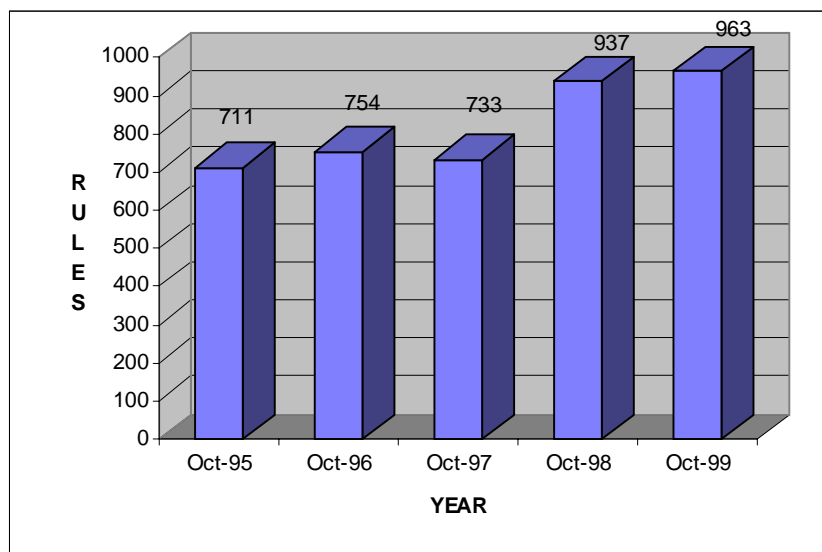
PLANNED FEDERAL REGULATIONS EXPECTED TO IMPACT SMALL BUSINESS

The total costs of regulation are up 26 percent since 1989.

The Regulatory Flexibility Act (RFA) requires that federal agencies assess the impacts of their rules on small businesses. The *Unified 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.”³³ Each year’s *Unified Agenda* contains an index that lists rules anticipated to affect small entities (those that impact lower-level governments are also presented in the indices). The total number of rules from each agency expected to impact small business is not directly given in the *Agenda*, but can be tabulated by counting the individual entries.

As Figure 17 shows, 963 rules are anticipated to have significant economic impact on a number of small businesses, according to the 1999 *Unified Agenda*. This is up 2.8 percent from 937 such rules in 1998. Over the past five years, from 1995 to 1999, rules impacting small businesses have risen 35.4 percent, from 711 to 963.

Figure 17
Over 960 Rules Impact Small Business
(1995-99)



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

The proportion of total agency rules impacting small business is increasing.

Figure 18 breaks down the October 1999 *Agenda*’s 963 rules impacting small business by department, agency, and commission. As the breakdowns show, 433 of the rules impacting small business by law required a Regulatory Flexibility Analysis to assess small business impacts. Another

530 were deemed by agencies not to require an analysis, but nonetheless likely to have some notable effect on small business.

As Figure 18 makes clear, of the total 4,538 rules, 21.2 percent of them impact small business. The chart also shows small-business rules as a percentage of the total number of rules issued by each agency. Some agencies have greater impacts on small businesses. The Department of Transportation and the Environmental Protection Agency account for 246 and 179 of the 963 small business rules, respectively. In number they far outstrip other agencies in small business impacts. The runners-up are the Federal Communications Commission with 91 rules affecting small business, the Department of Commerce with 88, and the Department of Health and Human Services with 75. These five agencies together account for 679, or 70.5 percent, of the total number of rules that will affect small business. (For the numbers of rules impacting small business broken down by department and agency for October *Agendas* since 1993, see Historical Tables, Part F: Rules Impacting Small Business [1993-99].)

963 regulations are expected to have significant economic impacts on small businesses.

The Regulatory Flexibility Act amendments were passed in 1996 to further ensure the right of small firms to sue agencies that failed to perform a Regulatory Flexibility Analysis to assess the impacts that new regulations would have on small firms.³⁴ But, as Figure 17 showed, the overall trend has remained an increase in the number of rules affecting small business, even while the total number of rules in the pipeline is now lower than it was in 1996. And, as noted, until 1999 the number of economically significant rules had also fallen over this period.

The upshot has been that, overall, the proportion of total rules affecting small business has increased, not decreased, since the passage of the RFA amendments. As noted in Figure 18, the 963 small-business rules in 1999 comprise 21.2 percent of the total of 4,538. This level is 3.4 percent higher than the 20.5 percent of rules impacting small business in 1998. The increase in the proportion of rules impacting small business is especially pronounced if one considers the past five years. The October 1995 *Agenda* contained 4,735 rules.³⁵ (Refer back to Figure 12.) Of them, as Figure 17 shows, 711, or 15 percent, were reported by agencies to affect small business. So while the total number of rules in the pipeline has declined, the increase in the overall number of small-business rules has led to the percentage of agency rules impacting small business rising from 15 percent to 21.2 percent. That is a 41.3 percent increase over the past five years.

Figure 18
Unified Agenda Entries Impacting Small Business
by Department, Agency, and Commission
(October 1999)

	Total Rules	Number Impacting Small Business			% Impacting Small Business
		RFA* Required	RFA* Not Required	Total	
Dept. of Agriculture	345	27	22	49	14.2%
Dept. of Commerce	366	65	23	88	24.0%
Dept. of Defense	121	2	13	15	12.4%
Dept. of Education	32			0	0.0%
Dept. of Energy	64			0	0.0%
Dept. of Health & Human Services	300	45	30	75	25.0%
Dept. of Housing & Urban Development	128		1	1	0.8%
Dept. of the Interior	309	28	5	33	10.7%
Dept. of Justice	201	8	6	14	7.0%
Dept. of Labor	151	37	1	38	25.2%
Dept. of State	27			0	0.0%
Dept. of Transportation	539	33	213	246	45.6%
Dept. of Treasury	400	3	12	15	3.8%
Dept. of Veterans' Affairs	130	5	1	6	4.6%
Advisory Council on Historic Preservation	1			0	0.0%
Agency for International Development	5			0	0.0%
Architectural and Transportation Barriers Compliance Board	8	2		2	25.0%
Commission on Civil Rights	1			0	0.0%
Corporation for National & Community Service	4			0	0.0%
Environmental Protection Agency	456	17	162	179	39.3%
Federal Emergency Management Agency	33			0	0.0%
General Services Administration	51	2		2	3.9%
National Aeronautics & Space Administration	7			0	0.0%
National Archives & Records Administration	21			0	0.0%
Institute of Museum Services	1			0	0.0%
National Endowment for the Arts	5			0	0.0%
Equal Employment Opportunity Commission	9			0	0.0%
National Endowment for the Humanities	6			0	0.0%
National Science Foundation	4			0	0.0%
Office of Federal Housing Enterprise Oversight	5			0	0.0%
Office of Government Ethics	12			0	0.0%
Office of Management & Budget	9	2		2	22.2%
Office of Personnel Management	112			0	0.0%
Panama Canal Commission	4			0	0.0%
Peace Corps	5			0	0.0%
Pension Benefit Guaranty Corporation	12			0	0.0%
Railroad Retirement Board	16			0	0.0%
Selective Service System	1			0	0.0%
Small Business Administration	35	12	16	28	80.0%
Social Security Administration	67		2	2	3.0%
Tennessee Valley Authority	1			0	0.0%
Federal Acquisition Regulation	49	12	4	16	32.7%
Commodity Futures Trading Commission	19			0	0.0%
Consumer Product Safety Commission	17			0	0.0%

	Total Rules	Number Impacting Small Business RFA*			% Impacting Small Business
		Required	Not Required	Total	
Farm Credit Administration	19			0	0.0%
Farm Credit System Insurance Corporation	3			0	0.0%
Federal Communications Commission	128	91		91	71.1%
Federal Energy Regulatory Commission	20		1	1	5.0%
Federal Housing Finance Board	18			0	0.0%
Federal Maritime Commission	9	1	3	4	44.4%
Federal Reserve System	22	1	1	2	9.1%
National Credit Union Administration	26			0	0.0%
Nuclear Regulatory Commission	57	5		5	8.8%
Office of Special Counsel	2			0	0.0%
Securities and Exchange Commission	80	35	4	39	48.8%
Federal Trade Commission	16		10	10	62.5%
Federal Deposit Insurance Corporation	25			0	0.0%
National Indian Gaming Commission	14			0	0.0%
Surface Transportation Board	3			0	0.0%
Federal Mediation and Conciliation Service	1			0	0.0%
Udall Inst. For Environmental Conflict Res.	3			0	0.0%
Presidio Trust	3			0	0.0%
TOTAL	4,538	433	530	963	21.2%

FEDERAL REGULATIONS IMPACTING STATE AND LOCAL GOVERNMENTS

Ten Thousand Commandments primarily tracks regulations imposed on the private sector. However, a key development that generated interest in regulatory reform during the 1990s was the realization by state and local officials that their own priorities were being overridden by federal mandates. High on the list of those costly mandates were landfill standards, wastewater treatment standards, drinking water requirements, stormwater regulations, and the Americans with Disabilities Act. The Unfunded Mandates Reform Act was passed in 1995 in response. That law provided for a point-of-order to lie against any bill that would impose \$50 million in mandates on lower-level governments without authorizing funding to cover the costs. The Act also requires that the Congressional Budget Office conduct cost estimates for mandates.

New EPA rules will cost at least \$2.7 billion.

Have state and local jurisdictions enjoyed significant relief since the Unfunded Mandates Act passed? The answer may forecast what might be expected of “Unfunded Mandates”-style legislation intended to provide relief from private-sector mandates. One such bill was the Mandates Information Act of 1999 (HR 350), which passed in the House of Representatives.

Five departments and agencies alone account for two-thirds of the rules that impact small business.

In addition to the Unfunded Mandates Act, two executive orders require assessments of rulemaking activity which affects lower-level governments, and that agencies make efforts to alleviate these impacts.³⁶

Rules flagged by the two executive orders will likely have an effect on lower levels of government and are listed in the *Unified Agenda* each year. Totaling the rules impacting lower-level governments in the 1999 *Unified Agenda*, and comparing that with the rules issued in 1995—the year the Unfunded Mandates Act was passed—gives some indication of the Act’s impact over time.

As Figure 19 shows, of the 4,538 rules in the October 1999 *Unified Agenda*, 453 have reportable impacts on local governments. Note that these represent the *total* number of rules having notable impacts on lower-level governments. A smaller portion of them will exceed the \$50 million threshold that triggers a point-of-order under the unfunded mandates law. Over the past five years rules impacting local governments have increased 10.5 percent, from 410 to 453. Figure 19 also shows the number of regulatory actions impacting state-level governments increased 8.2 percent between 1995 and 1999, from 671 to 726. Over the past year alone, local-government rules increased 4.9 percent, from 432 to 453, while rules impacting state governments stayed essentially level, dropping from 729 to 726.

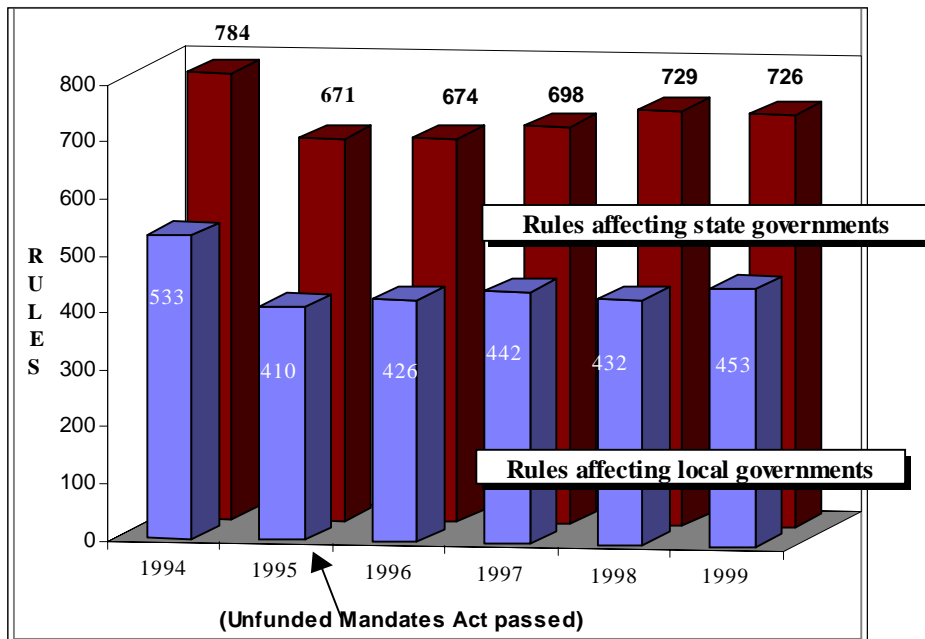
(Note that overlap exists between the state and local rules in Figure 19; many rules impact governments at both the local and state levels, so simply adding together state and local rules would lead to double-counting. Most of these rules affect the private sector as well.)

To gauge the impact of the Unfunded Mandates Act, it is worth noting that, despite the upward trend over the past five years, the number of rules in 1999 remains well below the level that existed in 1994—prior to the unfunded mandates law. While it is beyond the scope of this paper to determine whether today’s lower level of rules is partly caused by the mandates law, surely that is a welcome development for state and local officials. (For breakdowns of the numbers of rules impacting state and local governments by department, agency, and commission over the past several years’ October *Agendas*, see Historical Tables, Part G: Federal Rules Impacting Lower-Level Governments [1993-99].)

GAO DATABASE ON REGULATIONS

The various existing regulatory measures serve different purposes. The *Federal Register* shows the aggregate number of proposed and final rules. The *Unified Agenda* reveals the number of rules at various stages in the regulatory pipeline, such as those for which agencies intend to publish a Notice of Proposed Rulemaking, or those for which agencies intend to publish

Figure 19
Rules Impacting
State and Local Governments
 (1994-99)



Source: Compiled by CEI from the *Unified Agenda of Federal Regulations*, Regulatory Information Service Center, 1994-99.

a final rule as their next action. Under the 1996 Congressional Review Act (CRA), agencies are required to submit reports to Congress on their “major” rules (those costing \$100 million or more). Thanks to these reports, of the thousands of final rules agencies issue each year, one can rather easily see which among them are major (without combing the *Agenda*), and, perhaps most importantly, which agencies are producing these rules.

The agency reports, which are compiled by the Government Accounting Office (GAO), are intended to offer Congress a chance to review a rule for 60 legislative days, and, if desired, to pass a resolution of disapproval to reject the rule. But despite the issuance of thousands of rules since the CRA’s passage—among them many dozens of major ones—none has been rejected. (This may be attributed partly to the fact that Congress benefits from the delegation of rulemaking authority.) In any case, the GAO compiles reports on final major rules in a database which also includes limited information on the thousands of non-major rules, agency policy statements, guidelines, manuals, and other material. GAO’s reporting and database now provide an additional way to keep track of regulations.

Three full years of reports have been issued since the passage of the CRA, and, as can be seen in Figure 20, the number of major rules finalized

The number of mandates on state and local governments remains high, but has stabilized.

Unfunded mandates-style legislation may provide limited relief to the private sector.

by agencies has fallen over the past year, from 70 rules to 46. This is a 34.3 percent decrease, a huge drop largely attributable to far fewer rules from the Federal Communications Commission and the Department of Health and Human Services. Figure 20 shows the Department of Health and Human Services issued the most major rules in 1999. (Note that final rules issued by agencies do not match rules at the final stage in the *Unified Agenda*, as seen in Figure 15; those are actions for which an agency *plans* to issue a final rule.)

Note however that just because a rule is major doesn't mean it is costly. If deregulatory, it could lower costs. For example, the Federal Communications Commission has been particularly active over the past three years. Many rules involve actions such as allocation of radio spectrum, which can reduce government restrictions.

Figure 20
GAO Reports on Major Rules
1997-99

	1999	1998	1997
Environmental Protection Agency	5	9	6
Department of the Interior	4	5	4
Federal Communications Commission	5	17	13
Health and Human Services	7	18	6
Department of Energy	0	0	2
Securities and Exchange Commission	5	5	8
Department of Agriculture	5	4	7
Nuclear Regulatory Commission	1	2	1
Department of Transportation	4	1	2
Department of Justice	0	1	2
Federal Reserve	0	0	1
Social Security Administration	3	0	2
Department of Housing and Urban Develop.	1	0	2
Department of Labor	0	2	2
Department of Commerce	2	1	1
Pension Benefit Guaranty Corp.	0	1	0
Department of Treasury	0	2	1
Department of Defense	1	1	0
Department of Education	1	0	0
National Credit Union Administration	1	0	0
Emergency Steel Guarantee Loan Board	1	0	0
Small Business Administration	0	1	0
TOTALS:	46	70	60

Source: Compiled by CEI from GAO data.

REGULATION AND THE EPA

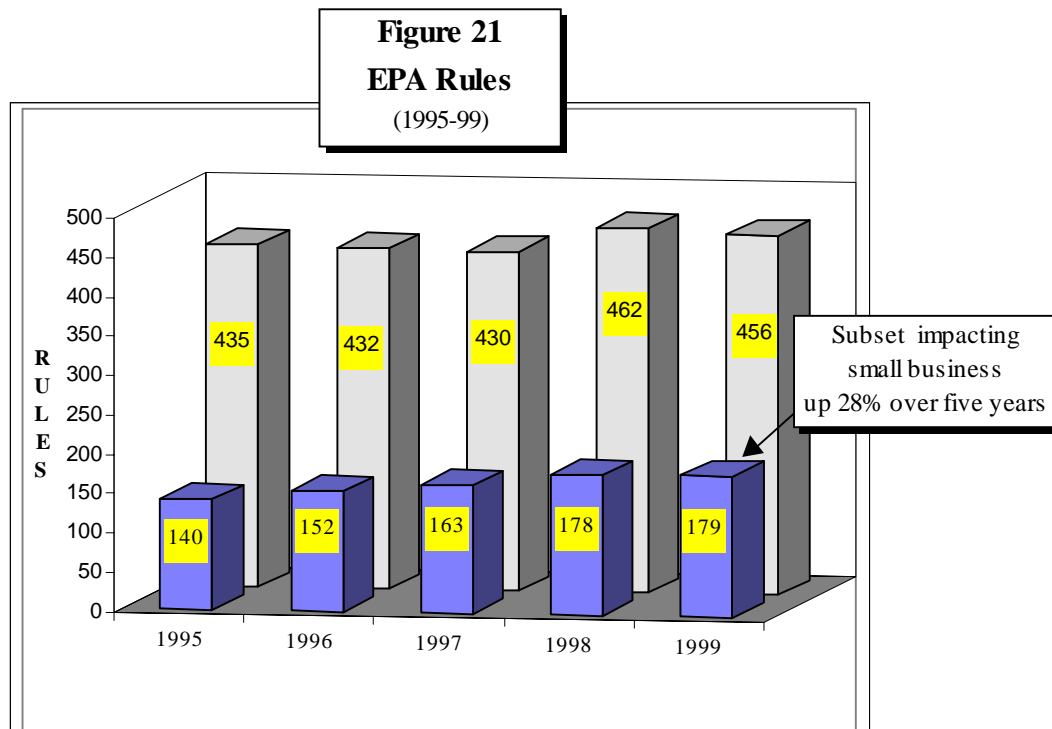
This report has taken a broad look at the extent of government regulation. Also useful is a look at a single agency in isolation to get a feel for regulatory trends. As tales of regulatory excess and abuse go, the Environmental Protection Agency (EPA) always gets its share of the spotlight.

By several measures, the EPA is a prominent regulator. For example, the EPA spends more than any other agency to enforce regulations. The Center for the Study of American Business reports that the EPA, with \$5.2 billion expected to be spent to enforce regulation during fiscal year 2000, accounts for 25.3 percent of the \$18.7 billion (in current dollars) expected to be spent by all the regulatory agencies.³⁹

46 major rules were enacted in 1999, a huge 34 percent decrease from the year before.

TOTAL RULE GROWTH AND SMALL BUSINESS IMPACTS AT THE EPA

Of the 4,538 rules in the pipeline in 1999, 456, or 10 percent, are in the works at the EPA. The number has dropped slightly over the past year: between 1998 and 1999, the number of EPA rules fell 1.3 percent—from 462 to 456. (See Figure 21.) Between 1995 and 1999, the EPA's total number of entries in the *Unified Agenda* pipeline remained rather stable,



Source: Compiled by CEI from the *Unified Agenda of Federal Regulations*, Regulatory Information Service Center, 1995-99.

such that the increase between those years is just 4.8 percent.⁴⁰ The EPA's total number of economically significant rules in the *Agenda*, as shown back in Figure 15, fell dramatically to 28, a 26.3 percent drop from the 38 that had held over the previous two years. Similarly, the portion of EPA rules at the proposed and final stages fell to 20 from 27 in 1999.⁴¹ These declines parallel the decrease from nine to five in the EPA's finalized major rules, as compiled from the GAO data and shown above in Figure 20.

But while EPA rule growth has fallen over the past years, there have been certain highly costly rules. EPA rules on air quality and lead abatement, for example, are among the costliest ever proposed. The lesson, as noted, is that while fewer rules are a welcome development, fewer rules do not necessarily mean lower costs.

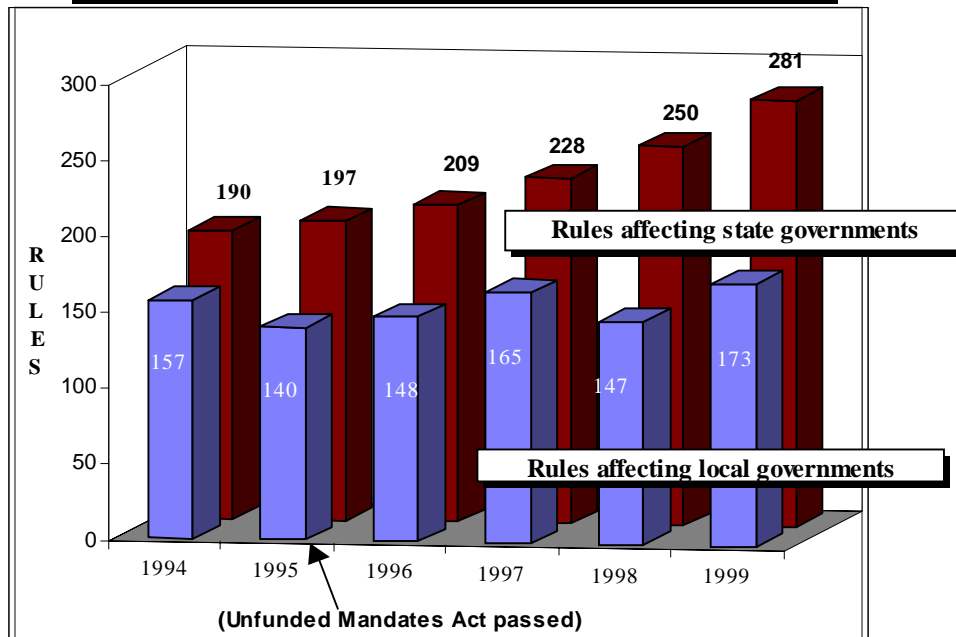
In contrast to the flatness of the level of EPA rules and the fall in the number of major rules, noteworthy is the punch the EPA delivers to small businesses. Also shown in Figure 21 is the subset of the EPA's rules that have some impact on small business. Since 1995, this category of rules has risen from 140 to 179, an increase of 27.8 percent. In addition, the proportion of all EPA rules that affect small business has increased. As Figure 21 shows, of EPA's 456 rules, 179, or 39.2 percent, affect small business. In 1995, 32.2 percent of the EPA's rules had such impacts.

EPA RULES' IMPACT ON STATE AND LOCAL GOVERNMENTS

Figure 19 earlier showed that, overall, federal agency rules impacting state and local governments have edged upward over the past five years but stand at a lower level than they did in 1994 (prior to the Unfunded Mandates Act). But in contrast, Figure 22 shows that EPA rules impacting state governments have rocketed 42.6 percent—from 197 to 281—and stand well above the level that prevailed before the 1995 Unfunded Mandates Act. In 1994, there were just 190 rules impacting state governments.

EPA rules impacting local governments have also risen significantly since 1995. Between 1995 and 1999, EPA rules impacting lower-level governments rose from 140 to 173, an increase of 23.6 percent.⁴² Interestingly, the EPA's rules were heavily implicated in the complaints that led to passage of the Unfunded Mandates Act in the first place. That fact should give pause to government officials concerned about EPA overreach, especially since the EPA consistently issues far more rules that impact both the state and local levels than any other agency.

Figure 22
EPA Rules Impacting
State and Local Governments
 (1994-99)



Source: Compiled by CEI from the *Unified Agenda of Federal Regulations*, Regulatory Information Service Center, 1994-99.

“REINVENTING” \$100 MILLION RULES AT THE EPA

Of the 456 rules anticipated by the EPA in the October 1999 *Unified Agenda*, 28 are classified as economically significant, \$100 million-per-year rules. That is a huge drop from the 38 rules of the year before, but still the greatest number of any agency. (Refer back to Figure 5.)

Of the EPA’s 28 economically significant rules in the pipeline, only one falls into the “reinventing government” category.⁴³ “Reinventing government” refers to the initiative by President Bill Clinton and managed by Vice President Al Gore to reduce unnecessary government burdens. The cost savings of this rule is not given in the *Unified Agenda* write-up. Granting the EPA the benefit of the doubt and assuming the reinvented rule will actually *reduce* yearly regulatory costs by \$100 million would mean that the EPA expects to impose new regulations costing at least \$2.7 billion annually. (This back-of-the-envelope calculation simply multiplies the EPA’s 28 economically significant rules by their lower-bound costs of \$100 million apiece, and subtracts the assumed \$100 million savings from the reinvented rule.) These new annual regulatory costs from the EPA represent amounts the public must pay in addition to the budgeted amounts the EPA spends to write and enforce regulations.

THE EPA REGULATORY PLAN'S OMISSIONS RENDER IT NEARLY USELESS

The October 1994 *Unified Agenda* introduced an annual supplement called the *Regulatory Plan*. The *Regulatory Plan* calls for all agencies to specify “the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form during the upcoming fiscal year.”⁴⁴ In other words, the *Regulatory Plan* is the venue in which federal departments and agencies are expected to present their priorities for significant regulatory actions they plan to issue in proposed or final form during the coming year.⁴⁵ (Rules at the pre-rule, long-term, and completed stages need not be disclosed in the *Regulatory Plan*.)

The EPA accounts for 10 percent of all rules under consideration by more than 50 departments and agencies.

Despite their being highlighted in an annual planning document, the precise compliance costs to the public of these “priorities” is difficult to establish, because, rather than being required by law, costs are “optional information” that agencies provide “at their discretion.”⁴⁶ Moreover, agencies fail to list all of their economically significant rules in the *Plan*, making comparisons of high-level regulatory activity and impacts either across years or across agencies impossible. This renders the *Plan* relatively useless for watchdog purposes, or for any meaningful way to gauge the overall regulatory impact of an agency. At the very least, one would expect all economically significant proposed and final rules to be included in any agency’s regulatory plan. There is seemingly no appreciation of a need to emphasize economically significant rules for the benefit of those who will shoulder the costs. While bold in proposing new regulatory initiatives, information that would assure that burdens are minimized or at least revealed is scant in *Regulatory Plans*.

The EPA’s presentation illustrates the *Regulatory Plan*’s weaknesses. As noted earlier in Figure 13’s breakdown of rules by agency, the EPA accounted for 456 rules in the 1999 *Agenda*. The agency specifically excerpted 36 of these as priority proposed and final rules in its *Regulatory Plan*. Of that 36, 16 are classified as economically significant, \$100 million-plus rules.⁴⁷ The remaining rules in the EPA’s *Plan* are rated priorities for other assorted purposes.

But as Figure 15 shows, in fact 20 of the EPA’s rules at the proposed and final stage are rated economically significant, which qualifies them for inclusion in the *Regulatory Plan*. The *Plan*, after all, calls for agencies to list the “most important significant actions.” But, as noted, only 16 of the EPA’s 20 economically significant proposed and final rules appear in its *Regulatory Plan*. (See Figure 23). The four neglected rules represent at least \$400 million in new costs (four rules multiplied by \$100 million) that a casual observer of the EPA’s *Regulatory Plan* would never see. Granted, what gets regarded as a priority will clearly vary among different observers; but at the very least, most would likely agree that economically significant rules deserve priority listing in all circumstances and for all agencies. *Regu-*

latory Plans, by emphasizing only selected regulatory initiatives without owning up to their costs, give an incomplete representation of the real impacts of regulations to come.

Figure 23	
The EPA Fails to Disclose All High-Cost Rules In Its <i>Regulatory Plan</i>	
• Number of Economically Significant Rules in the EPA’s Full <i>Agenda</i> :	28
• Subset of Economically Significant Rules in the EPA’s Full <i>Agenda</i> at Proposed or Final Stage:	20
• Number of These Economically Significant Proposed and Final Rules that the EPA Lists in its <i>Regulatory Plan</i> :	16
• EPA Regulatory Plan Reporting Shortfall:	4

Source: Compiled by CEI from the *Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, October 1998.

Agency self-reporting poses an inherent problem of objectivity in the first place, but compounding that problem with such omissions as hundreds of millions of dollars in costly regulations irreparably compromises the *Regulatory Plan* concept in terms of its usefulness for understanding the overall merits of what agencies are doing. At minimum, *all* economically significant proposed and final rules should be listed in each agency’s *Regulatory Plan*. While the rules do appear spread out in the *Agenda*, the *Regulatory Plan* offers an opportunity to highlight important rules that should not be dismissed.

THE EPA’S *REGULATORY PLAN* DOES NOT JUSTIFY COSTLY RULES WITH DOCUMENTED BENEFITS

It is certainly the case that, even if costs are high and benefits are non-existent, an agency must issue a rule if required to by legislation. So, while one may fault agencies for failing to list all their anticipated costly rules in the annual *Regulatory Plan*, agencies are not necessarily to be faulted for not emphasizing cost-benefit assessments for all their rules—even those that are priorities. As a recent GAO study makes clear, agencies often do lack discretion in issuing rules.⁴⁸

Even the determination that a rule is economically significant is no guarantee that cost-benefit analysis will get done. For example, looking at the 16 economically significant rules contained within the EPA’s *Regulatory Plan*, one can see that the agency falls short in providing cost estimates even

The cost of social regulation has risen 71 percent over the past decade.

for those rules that it does manage to designate as priorities. Only 10 are accompanied by cost estimates. The costs of the remaining six rules are undetermined. Furthermore, of the 16 economically significant rules in the EPA's *Plan*, only eight feature benefit estimates, and three of these are merely qualitative estimates. In the final analysis, of the EPA's costliest, highest-priority rules, benefits are known and expressed for fewer than half.

If costs are not calculated and presented openly to the public, it is even less likely benefits will be. Indeed, there is such mismatch between the existence of cost and benefit estimates at the EPA that neither the agency, nor the OMB in its recent annual regulatory cost surveys, may be justified in regarding the EPA as producing net benefits. What in fact are the benefits of the remaining eight economically significant rules in the EPA's *Regulatory Plan*? What are the benefits of the four economically significant rules that the EPA did not even bother to list in its *Regulatory Plan*? What are the benefits of the EPA's entire 456-rule enterprise in the *Unified Agenda*?

In sum, the EPA is contemplating the greatest number of \$100 million-plus rules (28), the second highest number of rules impacting small business (179), the most rules impacting state governments (250), and the greatest number impacting local governments (173). Yet the agency cannot claim with any certainty that it does more good than harm overall. If the EPA cannot demonstrate that overall benefits outweigh costs—and indeed this goes for any agency—then Congress should directly vote to approve such rules. At the very least, greater disclosure of what agencies really know about the costs and benefits of their actions can be increased. The next section discusses these reforms.

ENDING REGULATION WITHOUT REPRESENTATION: IMPROVING DISCLOSURE AND ENSURING CONGRESSIONAL ACCOUNTABILITY FOR ALL REGULATIONS

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 showed. Regulated businesses, as they often do with taxes, will pass along much of their compliance costs to consumers in the prices of goods and services. Regulations thereby have the effect of hidden taxes on business and consumers. While it is certainly true that some regulations may produce overall benefits that exceed overall costs, costs and benefits are known for relatively few regulations (not to mention that requiring one portion of the public to bear the costs of supplying benefits enjoyed by another may be unfair). Without any official regulatory accounting it is difficult to know whether society wins or loses from regulations, rendering OMB's estimates of overall net benefits from the regulatory state highly unwieldy. This is

*Only one of the
EPA's 28
economically
significant
rulemakings
purports to
reduce regula-
tory burdens.*

why, to the extent possible and on an official basis, regulatory data should be better summarized and publicly disclosed. Simultaneously, elected representatives should assume responsibility and put an end to off-budget “regulation without representation” altogether.

Another risk of applying net-benefit numbers to the entire regulatory enterprise—rather than requiring each component to stand or fall on its own merits—is that, of the tens of thousands of regulations, a relative handful may be responsible for the vast amount of regulatory benefits. If just a few rules are providing the bulk of benefits, the rest are getting a free ride, meaning the merits of the vast regulatory state are questionable at best. As one example, the OMB notes that \$1.51 trillion of its overall benefit estimate is from the EPA’s assessment of the benefits of the Clean Air Act. If this rule indeed accounts for the bulk of regulatory benefits that agencies are able to specify, it raises serious questions about the regulatory state as a whole.

While 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 better incremental step would be to require the publication of a summary of *already available*, but scattered, data. This simple step alone would help transform today’s regulatory culture from one of secrecy and bureaucratic brush-off to one of maximum regulatory disclosure. While agencies and opponents of regulatory overhauls often demonize attempts to institute comprehensive regulatory reform, simple steps that merely enhance disclosure—but remove the ability to hide—would be far more difficult to credibly oppose.

As noted, today’s regulations fall into two classes: those that are “economically significant” (cost over \$100 million annually) and those that are not. An obvious problem with this threshold is that reformers can point, not to what the regulatory state actually costs, but only to a *minimum* level of such costs.

For example, given that the October 1999 *Unified Agenda* identifies 137 rules that will cost at least \$100 million, it is apparent that the total annual costs for these rules will be at least \$13.7 billion (\$100 million per rule multiplied by 137 rules). But, unless one combs through the *Unified Agenda* or digs up agency Regulatory Impact Analyses, that minimum level of costs is all that can easily be determined (and even such research does not guarantee that credible numbers will be found). 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 such that they reflect increasing levels of costs. Agencies should be required to break up their

39 percent of the EPA’s rules place burdens on small businesses.

Agencies fail to list all of their high-cost rules in the annual Regulatory Plans, limiting the Plans' value to outsiders.

economically significant rules into categories that represent increasing costs. Figure 24 presents one alternative that assigns economically significant rules to one of five categories:

Figure 24 Proposed 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

The “economically significant” designation would have considerably more meaning if it were modified in this manner. Agencies can categorize their rules based on cost information provided in the Regulatory Impact Analyses accompanying many economically significant rules, or separate internal or external estimates. While modest, this step toward greater disclosure could be highly important. Recall the EPA’s ozone/particulate-matter rule of 1997 discussed earlier. Currently, we know that both rule components are “economically significant,” distinguishing them little from a hundred others. Knowing instead that the EPA is imposing “Category 3” and “Category 4” rules would be far more informative.

Other steps, beyond expanding the definition of an economically significant rule, can be easily taken. Today, to learn about regulatory trends and accumulate information on rules—such as numbers produced by each agency, their costs and benefits (if available) and so on—interested citizens must typically comb through the *Unified Agenda*’s 1,000-plus pages of small, multi-column print. Useful regulatory information is often available, but too tedious to accumulate. There is no reason for the *Unified Agenda* to be such an unfriendly document. Presenting official, concise regulatory cost and trend data—a “Regulatory Report Card”—is a straightforward, achievable step toward better regulatory disclosure. One modest reform would require data from the *Agenda* to be officially summarized in charts each year. The information could be presented as a chapter in the federal budget, the *Unified Agenda* itself, or in the *Economic Report of the President*. That step would elevate the entire notion of regulatory disclosure, making reporting far more useful for policymakers and analysts.

One way to set up the report would be in the form of a “Regulatory Report Card” like that shown in Figure 25. Information could be added to the report as deemed necessary, such as successes or failures of any special

initiative, like the Clinton administration’s Reinventing Government effort. Providing five-year historical data would tremendously enhance the usefulness of the report. 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.

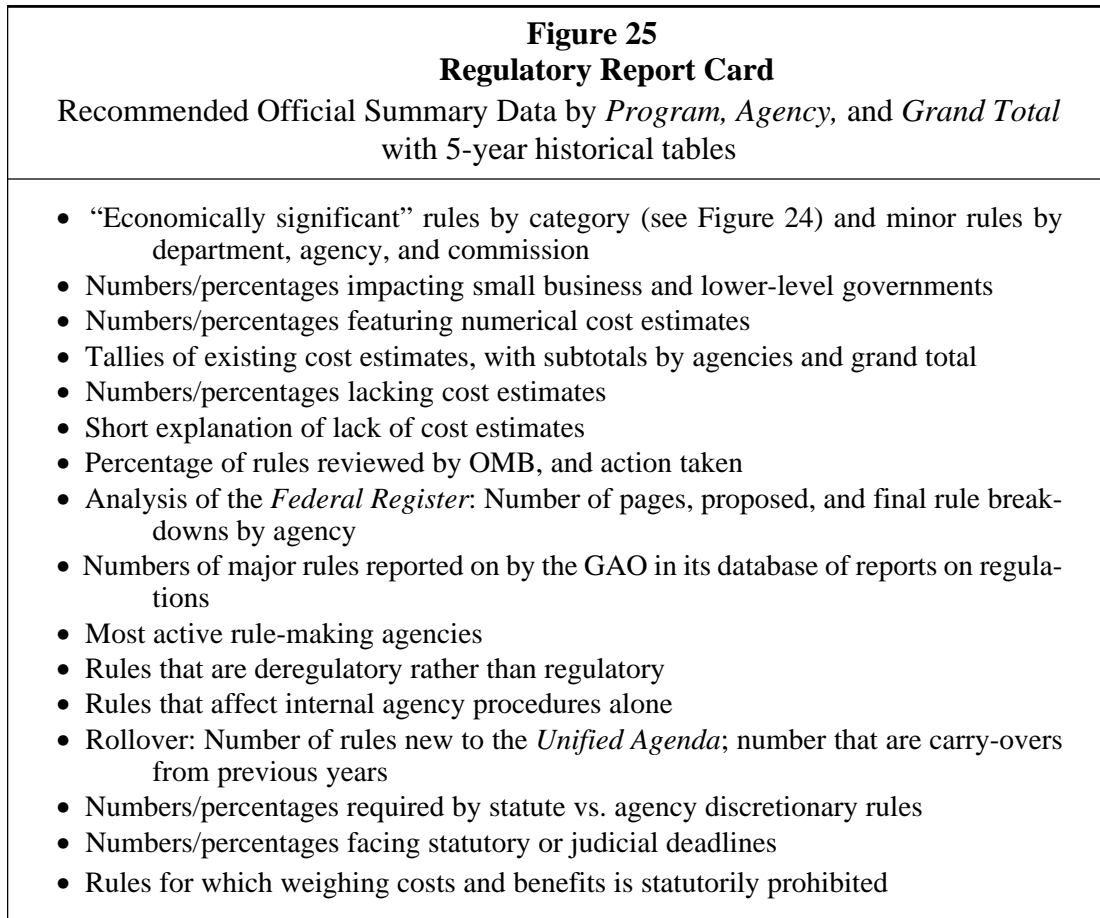


Figure 25 shows that detailed cost-benefit data are not necessary to begin producing a Regulatory Report Card. Its ease of implementation—the very fact that it only requires cataloging of the already known and not-known—gives Report Card-style disclosure a distinct advantage over contentious comprehensive reform. Its simplicity should make it a difficult reform to oppose, compared with comprehensive reform. While relatively easy to compile, trends in this data could prove vital to scholars, third-party researchers, and Congress. Over time, improvements in disclosure would make cross-agency comparisons simpler and more informative, leading toward a more rational, above-board, and accountable regulatory state. By making agency activity more explicit, a Regulatory Report Card can help assure that the growth of the regulatory state is taken seriously on an official level.

Agencies often lack discretion when issuing costly rules, and are merely following the dictates of Congress.

“NO REGULATION WITHOUT REPRESENTATION!”

Fewer than half of the EPA’s \$100 million rules are accompanied by quantitative benefit estimates.

Better disclosure through a Regulatory Report Card will show that the prime mover behind the regulatory state’s growth is Congress itself rather than agencies. As the earlier-mentioned GAO report found, a Regulatory Report Card would reveal that Congress applied many of the statutory deadlines to rules, which has the effect of limiting agency ability to reduce regulatory burdens. Also, a Report Card would help subject OMB’s claim that regulation on the whole produces net benefits to the scrutiny it deserves. As shown above in Figure 25, presenting the percentages of rules *with* and *without* benefit calculations would reveal whether or not the regulatory state’s defenders can credibly claim that regulation is doing more good than harm.

Years of unbudgeted regulatory growth should be of concern: rules can do more harm than good, but most often we simply don’t know whether regulatory benefits exceed costs. But the real culprits are not the agencies: Congress, our body of elected representatives, shirks its duty to make the tough calls and delegates too much of its lawmaking power to non-elected agencies, and then fails to require that they guarantee net benefits. 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.

Since agencies are inherently unaccountable to voters, an annual Regulatory Report Card is a start, but it is not enough. Any regulatory reforms—including the comprehensive reforms proposed by some Republicans—that rely on agencies policing themselves will not harness the regulatory state. Instead, making Congress directly answerable to the voters for the costs agencies impose on the public is necessary for fully accountable regulation. The way to control regulation is not to merely require agencies to perform cost-benefit analysis, 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 today’s era of budget surpluses. If Congress’s alternatives are to spend or to issue new regulations, a balanced-budget constraint invites Congress to regulate rather than to increase government spending on a program to accomplish its ends. For example, suppose Congress wants to create a job training program to appease constituents or otherwise fulfill some promise to the voters. Funding such a program would require approval of a new appropriation through the Department of Labor, and would appear in the federal budget and reduce the government surplus. On the

other hand, Congress can 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. Except for the costs of hiring new Labor Department employees to manage the program, the latter option would not add to federal spending and would let Congress take credit for good deeds.

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 the only way to head off this sort of manipulation. Today, Congress often lays blame for excessive regulation at the regulators' feet. But of course, Americans cannot vote out regulators who overstep their bounds. The solution is to end delegation and to make Congress directly accountable for agency regulations

Disclosure, through tools like the Report Card, will make regulatory costs (like taxes) as transparent as possible, and accountability will ensure that Congress bears direct responsibility to the voters for every dollar of new regulatory costs. As to the concern that Congress will become bogged down approving agency rules, there is no reason why agency regulations cannot be voted on in bundles. Additionally, congressional approval of new regulation can also be given by voice vote, rather than by tabulated roll call votes. Those who make this complaint don't seem to mind bogging down private citizens with rules pouring out of agencies.

Congress could start small by simply requiring that widely dispersed, publicly available summary data be compiled and presented in a form such as a Regulatory Report Card. Publishing such information as a chapter in the annual *Federal Budget* would make it far more meaningful. Congress might also implement a limited regulatory cost (not benefit) budget, modeled on, but far less sweeping than, the federal budget itself.⁴⁹ Whatever improvements in disclosure are made, however, congressional approval—rather than agency approval—of both regulations and regulatory costs should be the ultimate 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 into place a fairer and more rational regulatory system.

Useful regulatory information is often readily available but simply not reported.

Appendix

Part 1: Summary of economically significant rules in the October 1999 Regulatory Plan
(numbers refer to the sequence in the *Regulatory Plan*)

Department of Agriculture

1. Agricultural Marketing Service; National Organic Program
2. Animal and Plant Health Inspection Service; Importation of Solid Wood Packing Material
4. FNS; FSP-Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996
5. FNS; FSP-State flexibility and Certification Provisions of Public Law 104-193
6. FNS; FSP-Work Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996
8. FNS; FSP-Food Stamp Recipient Claim Establishment and Collection Standards
10. FNS; FSP-Nondiscretionary Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996
12. Egg Products Inspection Regulations

Department of Energy

22. Energy efficiency standards rulemakings and determinations for high priority consumer products and commercial equipment

Department of Health and Human Services

27. OS; Standards for Privacy of Individually Identifiable Health Information
31. FDC; CGMPS for Blood and Blood Components: Notification of consignees and transfusion recipients receiving blood and blood components at increased risk of transmitting HCV Infection
33. FDA; Fruit and vegetable juices: Development of HACCP and label warning statements for juices
35. Medicare Program; Qualifications for establishing and maintaining medicare billing privileges
37. Medicare Program; Prospective payment system for inpatient rehabilitation hospital services
38. DME Surety Bonds (HCFA-6006-P)
39. HHA Surety Bonds (HCFA-6001-P)
42. Medicare program; Prospective payment system for Hospital outpatient services (HCFA-1005-F)
43. Security and electronic signature standards (HCFA-0049-F)
45. National standard employer identifier (HCFA-0047-F)
48. The Children's Health Insurance program: Implementing the Balanced Budget Act of 1997

Department of Housing and Urban Development

49. Secretary of HUD's regulation of Fannie Mae and Freddie Mac: Purchase goals
65. Defining and Delimiting the term "Any employee employed in a bona fide executive, administrative, or professional capacity"

Department of Labor

71. Revision of the Form 5500 series and implementing and related regulations under the Employee Retirement Income Security Act of 1974 (ERISA)
81. Ergonomics programs: Preventing musculoskeletal disorders
82. Safety and Health programs (for the General Industry and the Maritime Industries)
83. Permissible exposure limits (Pels) for air contaminants
84. Steel erection (Part 1926) (Safety protection for Ironworkers)
86. Occupational Exposure to Tuberculosis

Department of Transportation

93. Hours of Service of Drivers (Section 610 Review)
95. Advanced air bags

Environmental Protection Agency

- 103. NAAQS: Sulfur Dioxide (Response to Remand)
- 106. NESHAP: Industrial, Commercial and Institutional Boilers
- 107. Review of the National Ambient Air Quality Standards for Particulate Matter
- 109. Heavy-Duty Engine Emission Standards and Diesel Fuel Sulfur Control Requirements
- 111. Lead; Overview of Rulemaking under TSCA Section 402, Lead-Based paint activities for the Regulatory Plan
- 117. National Primary Drinking Water Regulations: Radon
- 118. National Primary Drinking Water Regulations: Ground Water Rule
- 119. National Primary Drinking Water Regulations: Arsenic
- 120. Long Term 1 enhanced surface water treatment/filter backwash rule
- 126. Nonroad spark-ignition engines at or below 19 kilowatts (25 Horsepower) (Phase 2)
- 129. Tier II Light-Duty vehicle and Light-Duty truck emission standards and gasoline sulfur standards
- 130. Ground Water and Pesticide Management Plan
- 131. Lead; TSCA Section 403; Identification of Dangerous levels of lead
- 132. TRI; Reporting threshold amendment for certain persistent and bioaccumulative toxic chemicals
- 133. TRI; Lowering of EPCRA section 313 reporting thresholds for lead and lead compounds
- 134. NPDES Comprehensive storm water Phase II regulations

Small Business Administration

- 151. Local Economic Development and For-Profit CDCS

Social Security Administration

- 155. Work Incentives Improvement Act (767P)

Consumer Product Safety Commission

- 158. Flammability standards for Upholstered Furniture

Nuclear Regulatory Commission

- 164. ECCS Evaluations Models

Part 2: Summary of economically significant rules in the October 1999 *Unified Agenda* (numbers refer to the sequence in the *Unified Agenda*)

Department of Agriculture

- 172. Livestock Mandatory Reporting Act of 1999
- 198. Amendments to the Farmers Account Servicing Policies
- 231. Disaster Set-Aside Program Second Installment
- 240. Marketing Assistance Loan Provisions for the 1998 and subsequent crop years
- 250. Dairy Market Loss Assistance Program
- 274. Requiring treatment of solid wood packing material from China
- 352. Food Stamp Program: Payment adjustments
- 356. WIC: Requirements for and evaluation of WIC program requests for bids for infant formula rebate contracts
- 383. Food Stamp Provisions of the Balanced Budget Act of 1997
- 408. Retained Water in Raw Meat and Poultry Products; Poultry-Chilling Performance Standards
- 411. Irradiation of Meat and Meat Products
- 432. CCC Supplier Credit Guarantee Program

Department of Commerce

- 702. Rule governing the take of seven threatened evolutionarily significant units (ESUS) of west coast salmonids
- 795. Implementation of 1997 MMPA Amendments affecting Yellowfin Tuna purse seine fishing in the Eastern Tropical Pacific

Department of Defence

- 936. Distribution of Contract Financing Payment (DFARS Case 97-D011)

Department of Energy

- 1029. Energy Efficiency standards for Central Air Conditioners and Heat Pumps
- 1034. Energy Efficiency standards for Lamp Ballasts
- 1035. Energy Efficiency standards for Water Heaters
- 1049. Energy Efficiency standards for Residential Furnaces, Boilers and Mobile Home Furnaces
- 1052. Energy Efficiency standards for Clothes Dryers and Dishwashers
- 1053. Energy Efficiency standards for Pool Heaters and Direct Heating Equipment
- 1054. Energy Efficiency standards for 1-200 HP Electric Motors
- 1055. Energy Efficiency standards for Fluorescent and Incandescent lamps

Department of Health and Human Services

- 1140. Food Labeling: Trans Fatty acids in Nutrition labeling and Nutrient Content claims
- 1237. State Child Health; Implementing regulations for the State Children's Health Insurance Program
- 1338. Medicare Program; Medicare coverage of and Payment for Bone Mass Measurements
- 1352. Changes to the Hospital Inpatient Prospective Payment system and Fiscal Year 2000 rates
- 1354. Adjustment in Payment amounts for new technology intraocular lenses
- 1357. Medicare Program; Prospective payment system and consolidated billings for skilled nursing facilities
- 1359. Medicare Program state allotments for payment of Medicare Part B premium for qualifying individuals: Federal Fiscal Year for 1999
- 1365. Medicare and Medicaid programs: Hospital conditions of participation; Patients' rights
- 1369. Bonus to reward high performance states under the temporary assistance for needy families block grant

Department of Housing and Urban Development

- 1416. Lead-Based Paint poisoning prevention in certain residential structures
- 1450. RESPA: Disclosure of fees paid to retail lenders (brokers)

Department of the Interior

- 1597. Proposed approval of selected state programs allowing the export of Ginseng harvested in 1997-99
- 1681. Migratory bird hunting; Proposed 1999-2000 migratory game bird hunting regulations (preliminary) with requests for Indian proposals

Department of Labor

- 2139. Occupational Exposure to Perchloroethylene
- 2140. Hearing loss prevention in construction workers
- 2147. Occupational exposure to Crystalline silica
- 2156. Respiratory protection (Proper use of Modern respirators)
- 2162. Indoor air quality in the workplace
- 2163. Occupational exposure to Hexavalent chromium (preventing occupational illness: chromium)
- 2164. Confined spaces in Construction (Part 1926): Preventing suffocation/explosions in confined spaces
- 2170. Safety and Health Programs for Construction

- 2171. Control of Hazardous Energy (Lockout) in Construction (Part 1926) (Preventing construction injuries/fatalities: Lockout)
- 2176. Oil and gas well drilling and servicing
- 2177. Prevention of Needlestick and other sharps injuries

Department of Transportation

- 2242. Domestic Passenger manifest information
- 2368. Screening of checked baggage on flights within the United States
- 2425. Minimum training requirements for operators and training instructions of multiple trailer combination vehicles
- 2443. Federal motor carrier safety regulations; zero-base revision
- 2505. Parts and accessories necessary for safe operation; lighting devices, reflectors, and electrical equipment
- 2511. Credit assistance for surface transportation projects
- 2626. Light truck fuel economy standards for model year 2001
- 2687. Credit assistance for surface transportation projects

Architectural and Transportation Barriers and Compliance Board

- 3284. Americans with disabilities act (ADA) accessibility guidelines for buildings and facilities: recreation facilities
- 3285. Americans with disabilities act (ADA) accessibility guidelines for buildings and facilities
- 3287. Standards for accessible electronic and information technology
- 3288. Americans with disabilities act (ADA) accessibility guidelines for buildings and facilities: play areas

Environmental Protection Agency

- 3378. Control of emissions from nonroad spark-ignition engines rated over 19 KW and new Land-based recreational spark-ignition engines
- 3442. Findings of significant contribution and rulemaking on Section 126 petitions for purposes of reducing interstate ozone transport
- 3481. NESHAP: Automobile and Light-duty truck manufacturing (surface coating)
- 3499. Federal Implementation plans (FIPS) to reduce the regional transport of ozone in the eastern United States
- 3501. NESHAP: Chemical recovery combustion sources at Kraft, Soda, Sulfite and stand alone semichemical pulp mills
- 3511. Integrated NESHAP and effluent guidelines: Pulp and Paper
- 3638. Corrective action for solid waste management units (SWMUS) at hazardous waste management facilities
- 3670. Minimizing adverse environmental impact from cooling water intake structures under section 316(B) of the Clean Water Act
- 3704. Effluent guidelines and standards for the metal products and machinery category, phases 1 and 2
- 3745. Long term 2 enhanced surface water treatment rule
- 3746. Stage 2 Disinfectant/Disinfection byproducts rule
- 3748. Filtering Backwash recycling regulation

Office of Federal Housing Enterprise Oversight

- 3894. Risk-Based Capital
- 4103. Small business size standards; Engineering services, architectural services, and surveying and mapping services
- 4170. Effective date of application for supplemental security income (SSI) benefits (642F)
- 4174. Increase in substantial gainful activity (738F)

Federal Acquisitions Regulation

4203. FAR case 97-603, empowerment contracting

4204. FAR case 97-004A and 97-004B, Reform of affirmative action in federal procurement

Federal Communications Commission

4310. Access charge reform

4342. Millimeter wave spectrum allocation

4343. Digital equipment deregulation

4346. Unlicensed NII at 5 GHZ

4368. Redesignation of the 17.7-19.7 GHZ band, blanket licensing of SAT Earth stations (17.7-20.2 GHZ) & allocation in the 17.3-17.8 & 24.75-25.25 GHZ bands for broadcast satellite-service use

4369. Allocation and designation of spec for fixed-SAT SRV (37.5-38.5, 40.5-41.5 & 48.2-50.2 GHZ bands). Allocations: fixed & mobile 40.5-42.5 GHZ; Wireless SRV 46.9-47 GHZ; GOV operations 37-38 & 40-40.5 GHZ

4388. Advanced television service (MM Docket 87-268)

4390. Assessment and collection of regulatory fees for FY 1999

4410. Service rules for the 746-764 and 776-794 MHZ bands, and revisions to part 27 of the Commission's rules

Nuclear Regulatory Commission

4616. Revision of fee schedules; 100 percent fee recovery, FY 1999

Historical Tables

Historical Tables, Part A:

Federal Register Page History (1936-99)*

Year	Unadjusted Page Count	Jumps/Blanks	Adjusted Page Count	Year	Unadjusted Page Count	Jumps/Blanks	Adjusted Page Count
1936	2,620	not available (n/a)	2,620	1972	28,924	n/a	28,924
1937	3,450	n/a	3,450	1973	35,592	n/a	35,592
1938	3,194	n/a	3,194	1974	45,422	n/a	45,422
1939	5,007	n/a	5,007	1975	60,221	n/a	60,221
1940	5,307	n/a	5,307	1976	57,072	6,567	50,505
1941	6,877	n/a	6,877	1977	65,603	7,816	57,787
1942	11,134	n/a	11,134	1978	61,261	5,565	55,696
1943	17,553	n/a	17,553	1979	77,498	6,307	71,191
1944	15,194	n/a	15,194	1980	87,012	13,754	73,258
1945	15,508	n/a	15,508	1981	63,554	5,818	57,736
1946	14,736	n/a	14,736	1982	58,494	5,390	53,104
1947	8,902	n/a	8,902	1983	57,704	4,686	53,018
1948	9,608	n/a	9,608	1984	50,998	2,355	48,643
1949	7,952	n/a	7,952	1985	53,480	2,978	50,502
1950	9,562	n/a	9,562	1986	47,418	2,606	44,812
1951	13,175	n/a	13,175	1987	49,654	2,621	47,033
1952	11,896	n/a	11,896	1988	53,376	2,760	50,616
1953	8,912	n/a	8,912	1989	53,842	3,341	50,501
1954	9,910	n/a	9,910	1990	53,620	3,825	49,795
1955	10,196	n/a	10,196	1991	67,716	9,743	57,973
1956	10,528	n/a	10,528	1992	62,928	5,925	57,003
1957	11,156	n/a	11,156	1993	69,688	8,522	61,166
1958	10,579	n/a	10,579	1994	68,108	3,194	64,914
1959	11,116	n/a	11,116	1995	67,518	4,873	62,645
1960	14,479	n/a	14,479	1996	69,368	4,777	64,591
1961	12,792	n/a	12,792	1997	68,530	3,981	64,549
1962	13,226	n/a	13,226	1998	72,356	3,785	68,571
1963	14,842	n/a	14,842	1999	73,880	2,719	71,161
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				

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

*Proposed rules were not required to be published prior to the Administrative Procedure Act of 1946.

Rule preambles published only to a limited extent prior to the 1970s.

Historical Tables, Part B:

Number of *Federal Register* Documents Published (1976-99)

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

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

* "Other" documents consist of presidential documents, agency notices, and corrections.

Historical Tables, Part C:

Unified Agenda Rules History (1983-99)

Total Number of Rules Under Consideration					
1980s			1990s		
1983	April	2,863	1990	April	4,332
	October	4,032		October	4,470
1984	April	4,114	1991	April	4,675
	October	4,016		October	4,863
1985	April	4,265	1992	April	4,186
	October	4,131		October	4,909
1986	April	3,961	1993	April	4,933
	October	3,983		October	4,950
1987	April	4,038	1994	April	5,105
	October	4,005		October	5,119
1988	April	3,941	1995	April	5,133
	October	4,017		October	4,735
1989	April	4,003	1996	April	4,570
	October	4,187		October	4,680
			1997	April	4,417
				October	4,407
			1998	April	4,504
				October	4,560
			1999	April	4,524
				October	4,538

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

Historical Tables, Part D:

Unified Agenda Rules History By Department, Agency, and Commission (1996-99 and 1993)

	Oct-99	Oct-98	Oct-97	Oct-96	Oct-93
Dept. of Agriculture	345	384	398	450	460
Dept. of Commerce	366	344	283	289	283
Dept. of Defense	121	142	142	136	135
Dept. of Education	32	20	29	49	94
Dept. of Energy	64	63	75	81	85
Dept. of Health & Human Services	300	351	299	283	384
Dept. of Housing & Urban Development	128	102	98	98	221
Dept. of the Interior	309	337	321	386	307
Dept. of Justice	201	186	185	203	136
Dept. of Labor	151	149	132	119	129
Dept. of State	27	22	24	18	16
Dept. of Transportation	539	518	510	551	541
Dept. of Treasury	400	438	458	444	637
Dept. of Veterans' Affairs	130	118	108	145	152
Advisory Council on Historic Preservation	1	1	1	1	2
Agency for International Development	5	7	8	4	3
Architectural and Transportation Barriers Compliance Board	8	9	9	7	7
Commission on Civil Rights	1	1	1	1	1
Corporation for National & Community Service	4	6	2	1	0
Environmental Protection Agency	456	462	430	432	362
Federal Emergency Management Agency	33	25	22	23	36
General Services Administration	51	49	52	42	44
National Aeronautics & Space Administration	7	11	17	34	26
National Archives & Records Administration	21	19	17	17	16
Institute of Museum Services	1	1	2	0	0
National Endowment for the Arts	5	5	7	4	6
Equal Employment Opportunity Commission	9	10	10	9	7
National Endowment for the Humanities	6	6	7	5	6
National Science Foundation	4	5	7	3	6
Office of Federal Housing Enterprise Oversight	5	4	4	4	0
Office of Government Ethics	12	12	13	13	11
Office of Management & Budget	9	11	16	15	29
Office of Personnel Management	112	101	92	91	89
Panama Canal Commission	4	5	6	5	5
Peace Corps	5	5	5	6	4
Pension Benefit Guaranty Corporation	12	12	10	11	20
Railroad Retirement Board	16	17	20	21	18
Selective Service System	1	1	1	1	1
Small Business Administration	35	25	15	18	77
Social Security Administration	67	70	72	73	0
Tennessee Valley Authority	1	1	0	1	6
U.S. Information Agency	0	1	4	3	4
Federal Acquisition Regulation	49	42	49	102	65
Commodity Futures Trading Commission	19	12	9	13	21
Consumer Product Safety Commission	17	15	14	15	19
Farm Credit Administration	19	15	17	21	28
Farm Credit System Insurance Corporation	3	3	4	4	0
Federal Communications Commission	128	121	98	104	57
Federal Energy Regulatory Commission	20	12	10	14	29

	Oct-99	Oct-98	Oct-97	Oct-96	Oct-93
Federal Housing Finance Board	18	17	17	18	22
Federal Maritime Commission	9	6	3	7	11
Federal Reserve System	22	30	36	40	38
Federal Trade Commission	16	16	19	17	12
National Credit Union Administration	26	14	14	12	21
Federal Deposit Insurance Corporation	25	26	31	34	35
National Indian Gaming Commission	14	17	16	6	3
National Labor Relations Board	0	0	3	5	0
Nuclear Regulatory Commission	57	63	62	55	93
OSC	2	1	0	0	0
Overseas Private Investment Corporation	0	2	0	0	0
Securities and Exchange Commission	80	83	79	102	86
Surface Transportation Board	3	8	13	13	0
Federal Mediation and Conciliation Service	1	1	1	0	0
Thrift Depositor Protection Board	0	0	0	0	4
Resolution Trust Corporation	0	0	0	0	8
Interstate Commerce Commission	0	0	0	0	20
ACTION	0	0	0	0	8
Merit Systems Protection Board	0	0	0	0	2
Presidio Trust	3	0	0	0	0
Udall Institute for Environmental Conflict Res.	3	0	0	0	0
Pennsylvania Ave. Development Corp.	0	0	0	0	2
TOTAL	4,538	4,560	4,407	4,679	4,950

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

Historical Tables, Part E:

Agency Major Rules by Category (1996-98)

October 1998	Prerule	Proposed	Final	Long-term	Completed	TOTAL
Dept. of Agriculture	0	7	7	1	2	17
Dept. of Energy	2	2	0	5	0	9
Dept. of Health & Human Services	0	2	1	6	0	9
Dept. of Housing & Urban Development	0	0	2	0	0	2
Dept. of the Interior	0	0	0	1	1	2
Dept. of Labor	1	8	3	3	0	15
Dept. of Transportation	0	4	1	0	1	6
ATBCB	0	0	1	0	0	1
Environmental Protection Agency	0	14	13	9	2	38
Small Business Administration	0	5	1	0	1	7
Social Security Administration	0	0	0	0	1	1
Federal Acquisition Regulation	0	0	0	1	0	1
Consumer Product Safety Commission	0	1	0	0	0	1
Federal Communications Commission	0	0	0	7	0	7
Nuclear Regulatory Commission	0	0	0	0	1	1
TOTAL	3	43	29	33	9	117

October 1997	Prerule	Proposed	Final	Long-term	Completed	TOTAL
Dept. of Agriculture	0	5	4	3	3	15
Dept. of Commerce	0	0	1	0	0	1
Dept. of Energy	1	2	2	5	3	13
Dept. of Health & Human Services	0	1	1	0	3	5
Dept. of Housing & Urban Development	0	0	3	0	0	3
Dept. of the Interior	0	0	0	1	0	1
Dept. of Justice	0	1	0	0	0	1
Dept. of Labor	2	10	1	3	0	16
Dept. of Transportation	0	5	3	0	0	8
Environmental Protection Agency	1	9	11	12	5	38
Small Business Administration	0	2	1	0	2	5
Social Security Administration	0	0	1	0	0	1
Federal Acquisition Regulation	0	0	0	2	0	2
Consumer Product Safety Commission	0	1	0	0	0	1
Federal Communications Commission	0	0	0	7	2	9
Federal Housing Finance Board	0	0	0	0	3	3
Federal Reserve System	0	0	1	0	0	1
Nuclear Regulatory Commission	0	1	0	0	1	2
TOTAL	4	37	29	33	22	125

October 1996	Prerule	Proposed	Final	Long-term	Completed	TOTAL
Dept. of Agriculture	0	5	7	3	10	25
Dept. of Commerce	0	0	0	0	1	1
Dept. of Energy	1	2	3	7	0	13
Dept. of Health & Human Services	0	2	2	0	2	6
Dept. of Housing & Urban Development	0	0	3	0	0	3
Dept. of the Interior	0	1	0	0	1	2
Dept. of Labor	1	8	1	1	0	11
Dept. of Transportation	2	2	1	0	1	6
Dept. of Veterans' Affairs	0	1	0	0	0	1
Environmental Protection Agency	3	13	14	10	6	46
Federal Emergency Management Agency	0	0	0	1	0	1
Small Business Administration	0	4	0	0	0	4
Social Security Administration	0	0	2	0	0	2
Consumer Product Safety Commission	0	1	0	0	0	1
Federal Acquisition Regulation	0	0	0	0	1	1
Federal Communications Commission	0	0	0	8	2	10
Federal Energy Regulatory Commission	0	0	0	0	1	1
Federal Housing Finance Board	0	2	0	0	0	2
Federal Reserve System	0	0	1	0	1	2
Nuclear Regulatory Commission	0	1	0	0	0	1
TOTAL	7	42	34	30	26	139

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

Historical Tables, Part F:

Federal Rules Impacting Small Business (1993-99)

	1993	1994	1995	1996	1997	October 1998			October 1999		
						RFA* Required	RFA* Not Required	1998 Total	RFA* Required	RFA* Not Required	1999 Total
Dept. of Agriculture	62	54	54	56	58	46	17	63	27	22	49
Dept. of Commerce	33	46	43	46	29	47	5	52	65	23	88
Dept. of Defense	20	22	27	22	15	2	19	21	2	13	15
Dept. of Education	3	0	0	1	1	0	0	0	0	0	0
Dept. of Energy	9	4	2	2	2	0	0	0	0	0	0
Dept. of Health & Human Services	73	63	59	89	100	52	36	88	45	30	75
Dept. of Housing & Urban Development	34	33	17	9	7	1	0	1	0	1	1
Dept. of the Interior	9	26	21	17	28	28	1	29	28	5	33
Dept. of Justice	16	17	23	27	26	9	1	10	8	6	14
Dept. of Labor	30	40	33	51	39	41	0	41	37	1	38
Dept. of State	1	1	0	2	1	0	0	0	0	0	0
Dept. of Transportation	30	14	24	31	44	30	178	208	33	213	246
Dept. of Treasury	70	69	59	52	50	59	1	60	3	12	15
Dept. of Veterans' Affairs	3	3	3	3	7	6	0	6	5	1	6
Agency for International Development	0	0	1	0	0	0	0	0	0	0	0
Architectural and Transportation Barriers Compliance Board	0	0	0	0	0	3	0	3	2	0	2
Corporation for National & Community Service	0	1	0	0	0	0	0	0	0	0	0
Environmental Protection Agency	85	123	140	152	163	23	155	178	17	162	179
Federal Emergency Management Agency	1	1	3	1	0	0	0	0	0	0	0
General Services Administration	6	7	5	6	3	2	0	2	2	0	2
National Aeronautics & Space Agency	1	1	1	1	0	1	0	1	0	0	0
National Archives & Records Administration	1	1	1	1	1	1	0	1	0	0	0
Equal Employment Opportunity Commission	0	0	0	0	1	2	0	2	0	0	0
National Endowment for the Humanities	0	0	0	0	1	0	0	0	0	0	0
National Science Foundation	0	0	0	0	0	0	0	0	0	0	0
Office of Management & Budget	5	3	4	2	1	1	0	1	2	0	2
Railroad Retirement Board	1	1	2	1	1	0	0	0	0	0	0
Small Business Administration	60	44	62	17	13	20	0	20	12	16	28

	1993	1994	1995	1996	1997	October 1998			October 1999		
						RFA* Required	RFA* Not Required	1998 Total	RFA* Required	RFA* Not Required	1999 Total
Social Security Administration	0	0	4	1	0	0	0	0	0	2	2
US Information Agency	1	0	0	0	0	0	0	0	0	0	0
Federal Acquisition Regulation	7	9	16	20	15	9	2	11	12	4	16
Commodity Futures Trading Commission	1	0	0	0	0	1	0	1	0	0	0
Consumer Product Safety Commission	3	2	1	1	0	0	0	0	0	0	0
Federal Communications Commission	47	47	52	75	70	80	2	82	91	0	91
Federal Energy Regulatory Commission	0	0	1	0	0	0	0	0	0	1	1
Federal Housing Finance Board	1	1	1	0	0	0	1	1	0	0	0
Federal Maritime Commission	0	0	0	0	0	0	5	5	1	3	4
Federal Reserve System	10	9	6	4	2	2	3	5	1	1	2
Federal Trade Commission	2	2	5	7	11	1	9	10	0	10	10
Interstate Commerce Commission	1	0	0	0	0	0	0	0	0	0	0
National Credit Union Administration	2	1	2	1	1	0	0	0	0	0	0
Nuclear Regulatory Commission	9	8	5	8	9	8	0	8	5	0	5
Resolution Trust Corporation	0	1	0	0	0	0	0	0	0	0	0
Securities and Exchange Commission	29	32	34	48	34	22	5	27	35	4	39
TOTAL	666	686	711	754	733	497	440	937	433	530	963

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

*Regulatory Flexibility Analysis

Historical Tables, Part G:

Federal Rules Impacting Lower-Level Governments (1994-1999)

	October 1999		October 1998		October 1997		October 1996		October 1995		October 1994	
	State	Local	State	Local	State	Local	State	Local	State	Local	State	Local
Dept. of Agriculture	67	58	65	54	70	58	84	72	74	61	83	64
Dept. of Commerce	21	10	18	9	16	9	15	8	12	6	24	17
Dept. of Defense	2	1	4	3	4	3	4	2	8	6	6	6
Dept. of Education	0	0	0	0	3	3	3	3	8	5	19	9
Dept. of Energy	13	12	15	14	18	18	18	16	19	16	18	12
Dept. of Health & Human Services	71	23	88	23	82	30	47	24	62	20	93	34
Dept. of Housing & Urban Development	8	13	25	28	24	29	25	29	26	33	66	83
Dept. of Interior	55	21	61	20	78	11	98	9	108	8	112	15
Dept. of Justice	31	24	28	22	26	20	32	26	26	22	22	18
Dept. of Labor	34	25	32	24	29	15	33	17	22	11	28	14
Dept. of State	1	1	1	1	1	1	0	0	2	2	2	2
Dept. of Transportation	50	33	47	29	34	22	42	25	38	26	24	17
Dept. of Treasury	11	7	16	12	22	16	12	9	13	11	28	23
Dept. of Veterans's Affairs	9	3	7	2	5	0	2	0	2	0	2	1
Advisory Council on Historic Preservation	1	0	1	0	1	0	0	0	0	0	0	0
Agency for International Development	0	0	0	0	0	0	0	0	0	0	1	1
Architectural and Transportation Barriers Compliance Board	4	4	2	2	1	1	1	1	1	1	1	1
Environmental Protection Agency	281	173	250	147	228	165	209	148	197	140	190	157
Federal Emergency Management Agency	5	4	5	3	1	3	3	4	3	4	6	7
General Services Administration	2	1	5	2	5	4	3	2	5	4	1	4
National Aeronautics & Space Agency	0	0	2	2	1	2	5	3	5	3	5	2
National Archives & Records Administration	4	4	2	2	2	2	0	0	1	1	4	2
National Endowment for the Arts	1	1	1	1	2	2	0	0	0	0	2	2
Equal Employment Opportunity Commission	3	3	4	4	2	2	1	2	0	2	0	0
Natioanl Endowment for the Humanities	0	0	0	0	1	0	0	0	0	0	2	2
National Science Foundation	0	0	0	0	1	1	0	0	0	0	1	1

	October 1999		October 1998		October 1997		October 1996		October 1995		October 1994	
	State	Local	State	Local	State	Local	State	Local	State	Local	State	Local
Office of Management & Budget	0	1	1	2	4	4	2	2	2	2	5	4
Peace Corps	0	0	0	0	0	0	1	0	1	0	2	1
Railroad Retirement Board	1	0	1	0	1	0	1	0	1	0	2	1
Small Business Administration	0	0	2	0	1	0	1	0	1	1	4	4
Social Security Administration	11	3	9	3	3	0	2	0	3	1	0	0
Tennessee Valley Authority	0	0	0	0	0	0	0	0	0	0	1	1
US Information Agency	0	0	0	0	2	2	2	2	2	1	2	2
Federal Communications Commission	30	22	30	21	21	17	25	21	16	14	10	10
Federal Energy Regulatory Commission	2	2	0	0	0	0	0	0	4	4	3	3
Federal Reserve System	1	0	1	0	3	1	0	0	0	0	0	3
Federal Trade Commission	2	0	2	0	2	0	2	0	3	1	2	1
National Credit Union Administration	0	0	0	0	0	0	0	0	2	0	4	0
National Indian Gaming Commission	1	0	1	0	2	0	0	0	0	0	0	0
Nuclear Regulatory Commission	1	1	1	1	1	1	1	1	1	1	2	2
Securities and Exchange Commission	2	2	1	0	1	0	0	0	1	1	3	2
Resolution Trust Corporation	0	0	0	0	0	0	0	0	0	0	0	1
FMCS	0	0	0	0	0	0	0	0	1	1	1	1
Consumer Product Safety Commission	0	0	0	0	0	0	0	0	0	0	1	1
CNCS	1	1	1	1	0	0	0	0	1	1	2	2
ACTION	0	0	0	0	0	0	0	0	0	0	0	0
State and Local Subtotals	726	453	729	432	698	442	674	426	671	410	784	533

Source: Compiled by CEI from the Unified Agenda of Federal Regulations, Regulatory Information Service Center, 1994-99.

NOTES

- ¹ *The Budget and Economic Outlook: Fiscal Years 2001-2010*, January 2000, Congressional Budget Office, p. xvi.
- ² “Clinton to Send Congress the Final Budget of His Presidency,” CNN AllPolitics, February 7, 2000, www.cnn.com/2000/ALLPOLITICS/stories/02/07/clinton.budget/index.html.
- ³ *The Budget and Economic Outlook*, p. xvi.
- ⁴ *Draft Report to Congress On the Costs and Benefits of Federal Regulations*, US Office of Management and Budget, Office of Information and Regulatory Affairs, 2000, Table 3, attachment, www.whitehouse.gov/omb/inforeg/index.html.
- ⁵ “Regulation: Costs and Benefits,” *The Budget of the United States Government for Fiscal Year 2000*, Office of Management and Budget, February 1, p. 280.
- ⁶ *Draft Report to Congress*, p. 11.
- ⁷ Thomas D. Hopkins, *Regulatory Costs In Profile*, Center for the Study of American Business, Policy Study Number 132 (August 1996), p. 10. Also see US Small Business Administration, Office of Advocacy, *The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress* (October 1995), p. 28.
- ⁸ *Draft Report to Congress*, p. 6.
- ⁹ Original 1995 dollars are adjusted by the change in CPI between 1995 and 1998, computed from Table No. 776, “Consumer Price Indexes (CPI-U), by Major Groups: 1980 to 1998,” *Statistical Abstract of the United States 1999*, US Department of Commerce, Economics and Statistics Administration, Bureau of the Census, p. 495.
- ¹⁰ Prepared Statement of Thomas D. Hopkins, Rochester Institute of Technology, Rochester, New York, before the House Government Reform and Oversight Committee, National Economic Growth, Natural Resources and Regulatory Affairs Subcommittee, May 16, 1996. See also Hopkins, *Regulatory Costs in Profile*, p. 4.
- ¹¹ See Hopkins, *Regulatory Costs in Profile*, p. 5.
- ¹² These breakdowns are available in Hopkins, *Regulatory Costs in Profile*, p. 10; US Small Business Administration (October 1995), Table 3, p. 28; and also Thomas D. Hopkins, *Profiles of Regulatory Costs: Report to the Small Business Administration*, November 1995, Appendix A, Table A-1. Hopkins’s original data appear in 1995 dollars; Figure 3 in this paper adjusts them by the change in the CPI between 1995 and 1998 as described above in footnote 9.
- ¹³ *The Budget and Economic Outlook*, p. xvi.
- ¹⁴ Year 2001 regulatory costs are projected based upon the average of the annual increases in total regulatory costs between 1995 and 2000 in Hopkins’s calculations (from Figure 3).
- ¹⁵ *The Budget and Economic Outlook*, p. xvi.
- ¹⁶ Individual income tax figures from Table No. 544, “Federal Receipts, by Source: 1980 to 1999,” *Statistical Abstract of the United States 1999*, US Department of Commerce, Economics and Statistics Administration, Bureau of the Census, p. 349.
- ¹⁷ *Ibid.*
- ¹⁸ Corporate profits from Table No. 908, “Corporate Profits, Taxes, and Dividends: 1990 to 1998,” *Statistical Abstract of the United States 1999*, US Department of Commerce, Economics and Statistics Administration, Bureau of the Census, p. 572.
- ¹⁹ GNP figures for Canada and Mexico are from Table No. 1362, “Gross National Product, by Country: 1997,” *Statistical Abstract of the United States 1999*, US Department of Commerce, Economics and Statistics Administration, Bureau of the Census, p. 841.
- ²⁰ Outlays from *The Budget and Economic Outlook*, p. xvi; GDP from p. xxii.
- ²¹ “New Study Profiles Total Tax Burden of Median American Family,” Tax Foundation press release, March 9, 2000, www.taxfoundation.org/prmedianfamily.html.
- ²² Hopkins, *Profiles of Regulatory Costs*, Appendix A, Table A-2, “Federal Receipts and Regulatory Costs Per Household in 1995 Dollars, Case A.” 1995 dollars are adjusted by the change in the CPI, as explained in footnote 9.
- ²³ Melinda Warren and Murray Weidenbaum, *The Rise of Regulation Continues: An Analysis of the Budget for the Year 2000*, Center for the Study of American Business, Regulatory Budget Report 22 (August 1999), Table A-5, p. 17. Original 1992 constant dollars used by CSAB are in this report adjusted by the change in the CPI between 1992 and 1998, from Table No. 776, “Consumer Price Indexes (CPI-U), by Major Groups: 1980 to 1998,” *Statistical Abstract of the United States 1999*, US Department of Commerce, Economics and Statistics Administration, Bureau of the Census, p. 495.
- ²⁴ *Ibid.*
- ²⁵ *Ibid.* This figure is also inflated by the change in CPI; refer to footnote 9.
- ²⁶ *Ibid.*, p. 18.
- ²⁷ The often-cited number of 87,012 pages includes blank pages, which are subtracted here. Historical Tables, Part A, contains the breakdown.

- ²⁸ *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, Regulatory Information Service Center, reprinted from *Federal Register* of Monday, November 22, 1999, vol. 64, no. 224 (October 1999).
- ²⁹ Though the *Agenda* is published twice a year, this document tracks each year's October edition. The Historical Tables found in the appendices contain data for April of certain years.
- ³⁰ "Costs of Ozone Standard Outweigh Benefits, Final Impact Analysis Shows," *BNA Daily Environment Report*, no. 142, July 24, 1997.
- ³¹ *The Regulatory Plan and the Unified Agenda* (October 1997), p. 57006.
- ³² *The Regulatory Plan and the Unified Agenda* (October 1999), p. 64668.
- ³³ *The Regulatory Plan and the Unified Agenda* (October 1998), p. 62813.
- ³⁴ The bill also contained provisions allowing Congress an opportunity to review agency rules before they become effective, potentially raising congressional accountability to new heights. These provisions were signed into law as a part of the Contract with America Advancement Act, H.R. 3136, on March 29, 1996, which also included an increase in the debt ceiling and a Social Security earnings limitation increase.
- ³⁵ Data by agency can be seen in Historical Tables, Part F.
- ³⁶ In 1993, Executive Order 12866, "Regulatory Planning and Review," directed agencies to "assess the effects of Federal regulations on State, local, and tribal governments." Similarly, 1993's Executive Order 12875, "Enhancing the Intergovernmental Partnership," required that agencies "reduce the imposition of unfunded mandates" on those same lower-level jurisdictions. Cited in *The Regulatory Plan and the Unified Agenda* (October 1998), p. 62831.
- ³⁷ *An Assessment of the Unfunded Mandates Reform Act in 1998*, Congressional Budget Office (February 1999), p. vi.
- ³⁸ *Ibid.*, p. 2.
- ³⁹ Calculated from Melinda Warren and Murray Weidenbaum, *The Rise of Regulation Continues*, Table A-1, pp. 7-9.
- ⁴⁰ Figures from 1995 are from a CEI tally of the EPA entries in *The Regulatory Plan and the Unified Agenda*, reprinted from *Federal Register* of Tuesday, November 28, 1995, vol. 60, no. 228 (October 1995). EPA counts for intervening years may be found in Historical Tables, Part D.
- ⁴¹ See Historical Tables, Part E, for 1998 major rule data on EPA and other agencies.
- ⁴² Refer to Historical Tables, Part G: Federal Rules Impacting Lower-Level Governments (1993-98).
- ⁴³ This rule is #3638, Corrective Action for Solid Waste Management Units at Hazardous Waste Management Facilities, *The Regulatory Plan and the Unified Agenda* (October 1999), p. 65,129.
- ⁴⁴ *The Regulatory Plan and the Unified Agenda* (October 1997), p. 57005.
- ⁴⁵ Executive Order 12866 requires that agencies include in their Regulatory Plan "(1) a narrative statement of its regulatory priorities; and (2) a description of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form during the upcoming fiscal year." See Regulatory Information Service Center, *The Regulatory Plan and the Unified Agenda of Federal Regulations*, vol. 1, reprinted from the *Federal Register* of Monday, Nov. 14, 1994, Vol. 59, No. 218, p. 50006.
- ⁴⁶ *The Regulatory Plan and the Unified Agenda* (October 1994), p. 57008.
- ⁴⁷ Refer to the Appendix for a list of EPA's rules featured in its *Regulatory Plan*.
- ⁴⁸ See *Some Agencies' Claims Regarding Lack of Rulemaking Discretion Have Merit*, US States General Accounting Office, GAO/GGD-99-20 (January 1999).
- ⁴⁹ For further detail, see Clyde Wayne Crews Jr., *Promise and Peril: Implementing a Regulatory Budget*, CEI Regulatory Reform Project (Washington, DC: Competitive Enterprise Institute, April 1996). See also Christopher C. DeMuth, "The Regulatory Budget," *Regulation: The American Enterprise Institute Journal on Government and Society* (March/April 1980), pp. 29-44.

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