

2010

Ten Thousand

Commandments

An Annual Snapshot of the Federal Regulatory State

by Clyde Wayne Crews Jr.



Competitive Enterprise Institute

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Executive Summary

President Barack Obama's federal budget for fiscal year (FY) 2011 proposes \$3.83 trillion in discretionary, entitlement, and interest spending.¹ In the previous fiscal year, the president had proposed \$3.552 trillion. For reference, George W. Bush had proposed the first-ever \$3 trillion U.S. budget. In fact, President Bush was also the first to propose a \$2 trillion federal budget—in 2002, a scant eight years ago.²

Meanwhile, the Congressional Budget Office (CBO) projects FY 2010 spending will end up at \$3.524 trillion.³ The result: thanks to the bailout and “stimulus” frenzy, a projected FY 2010 deficit of a previously unthinkable \$1.349 trillion, down slightly from 2009.⁴

To be sure, many other countries' governments consume more of their national output than the U.S. government does.⁵ However, in absolute terms, the U.S. government is the largest government on planet Earth, whether one looks at revenues or expenditures.⁶

Regulation: A Hidden Tax

Those costs fully convey the federal government's on-budget scope, and they are sobering enough. Yet the government's reach extends well beyond the taxes that Washington collects and the deficit spending and borrowing now surging. Federal environmental, safety and health, and economic regulations cost hundreds of billions of dollars every year over and above the costs of the official federal outlays that now dominate the policy agenda.

Firms generally pass along to consumers the costs of some taxes. Likewise, some regulatory compliance costs that businesses face will find their way into consumer prices. Precise regulatory costs can never be fully known, because, unlike taxes, they are unbudgeted and often indirect. But scattered government and private data exist on scores of regulations and on the agencies that issue them, as well as on regulatory costs and benefits. Some of that information can be com-

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piled to make the regulatory state somewhat more comprehensible. That is one purpose of the annual *Ten Thousand Commandments* report, highlights of which appear next.

- A very rough extrapolation from an evaluation of the federal regulatory enterprise by economist Mark Crain estimates that annual regulatory compliance costs hit \$1.187 trillion in 2009.
- Given 2009's actual government spending of \$3.518 trillion, the regulatory "hidden tax" stood at 34 percent of the level of federal spending itself. (Because of the recent federal spending surge, this proportion is lower than the near-40 percent level of recent years.)
- The dramatic reality that regulations and deficits now each exceed \$1 trillion a year is an unsettling new development for America. In 2008, regulatory costs were more than double that year's \$459 billion budget deficit. Now, the 2009 deficit spending surge has catapulted the deficit well above the costs of regulation (\$1.414 trillion compared to \$1.187 trillion, respectively).
- The game has changed, with respect to government spending versus government regulation. Although the spending and deficit levels eclipse federal regulatory costs now, unchecked government spending can translate, in later years, into greater regulation as well.
- Regulatory costs are equivalent to 63 percent of all 2007 corporate pretax profits of \$1.89 trillion.
- Regulatory costs dwarf corporate income taxes of \$147 billion.
- Regulatory costs exceed estimated 2009 individual income taxes of \$953 billion by 25 percent.
- Regulatory costs of \$1.187 trillion absorb 8.3 percent of the U.S. gross domestic product (GDP), estimated at \$14.253 trillion in 2009.
- Combining regulatory costs with federal FY 2009 outlays of \$3.518 trillion implies that the federal government's share of the economy now reaches 33 percent.
- The Weidenbaum Center at Washington University in St. Louis and the Mercatus Center at George Mason University in Arlington, Virginia, jointly estimate that agencies spent \$54.3 billion to administer and police the regulatory enterprise. Adding the \$1.187 trillion in off-budget compliance costs brings the total regulatory burden to \$1.24 trillion.
- The 2009 Federal Register dropped significantly from its all-time high of 79,435 pages in 2008. It fell nearly 14 percent to 68,598.
- Federal Register pages devoted specifically to final rules fell by 21 percent, from a record 26,320 in 2008 to 20,782 in 2009.
- In 2009, agencies issued 3,503 final rules, an 8.5-percent drop from 3,830 rules in 2008.
- The annual outflow of roughly 4,000 final rules has meant that nearly 60,000 rules have been issued since 1995.
- Although regulatory agencies issued 3,503 final rules in 2009, Congress passed and the president signed into law a comparatively few 125 bills. Considerable lawmaking power is delegated to unelected bureaucrats at agencies.
- According to the 2009 Unified Agenda, which lists federal regulatory actions at various stages of implementation, 59 federal departments, agencies, and commissions have 4,043 regulations in play at various stages of implementation.
- Of the 4,043 regulations now in the pipeline, 184 are "economically significant" rules wielding at least \$100 million in economic impact. Assuming those rulemakings are primarily regulatory rather than deregulatory, that number implies roughly \$18 billion yearly in future off-budget regulatory effects.
- "Economically significant" rules increased by 2 percent between 2008 and 2009 (following 13- and 14-percent increases in the prior two years). High federal budgetary spending now likely implies higher future regulatory costs as well.
- The five most active rule-producing agencies—the departments of the Treasury, Agriculture, Commerce, and the Interior, along with the Environmental

Protection Agency—account for 1,763 rules, or 44 percent of all rules in the Unified Agenda pipeline.

- Of the 4,043 regulations now in the works, 758 affect small business.

Liberate to Stimulate?

The short-lived string of budgetary surpluses enjoyed from 1998 to 2001 (the first since 1969) seems like ancient history—even inconceivable—in today’s spending culture. Indeed, CBO projects no surpluses whatsoever over the coming decade, merely deficits of hundreds of billions each year (the “lowest,” of \$475 billion, in 2014).⁷ However, if regaining and maintaining an honest surplus ever again become political priorities, policy makers must control regulatory costs as well. The dramatic fact of regulations and deficits now *each* exceeding \$1 trillion a year is an unsettling new development for America. The deficit is already widely—and appropriately—criticized by the media, citizens, and policy makers, but reducing the scope of the regulatory state and fostering a “deregulatory stimulus” should occupy policy makers as well. When it comes to stimulating a limping economy, reducing both deficits and regulations is critical.

Without better regulatory oversight and monitoring—without an effort to “liberate to stimulate”—the urgency of deficit reduction invites lawmakers to opt for off-budget regulations on the private sector rather than adding to already unchecked deficit spending. Taxation and regulation can substitute for each other. A new government program—for example, job training—would require either increasing government spending on the one hand, or imposing new rules and regulations requiring such training on

the other. If regulatory costs remain largely hidden from public view, regulating will become increasingly attractive compared with increasingly unpopular taxing and spending.

Disclosure and Accountability

Like federal spending, each agency’s stream of regulations and their costs should be tracked and monitored each year. Cost-benefit analysis of rules is the usual approach suggested for policing regulation. A problem with cost-benefit analysis, however, is that it largely amounts to agency self-policing. Agencies that perform “audits” of their own rules would rarely admit that a rule’s benefits do not justify the costs involved. At the least, some third-party review is needed, and cost-benefit analysis at the agency level is already controversial.

Another approach is to leapfrog the cost-benefit debate and go back to the source of delegation to the agencies. Congress should answer for the compliance costs (and benefits) of federal regulations. Requiring expedited votes on economically significant or controversial agency rules before they become binding on the population would reestablish congressional accountability and would help fulfill the principle of “no regulation without representation.”

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

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Overview: Toward Ending “Regulation without Representation”

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

The government can also “fund” programs or achieve its objectives by regulating the private sector, thereby advancing federal government initiatives or goals without using tax dollars. Rather than pay directly and book expenses for new initiatives, the federal

government can require the private sector (and state and local governments) to pay for federal initiatives through compliance costs.

Because disclosure of, and accountability for, regulatory costs are both spotty, policy makers can afford to be cavalier about imposing regulatory costs relative to undertaking ordinary but more publicly visible government spending. Where regulatory compliance costs prove burdensome, Congress can escape accountability by blaming the agency that issued the unpopular rule. Because regulatory costs are not budgeted and because they lack the formal public disclosure that accompanies federal spending,

Table I. The Regulatory State: A 2010 Overview

	Year-End 2009	1-Year Change	5-Year Change (2005-2009)	10-Year Change (2000-2009)
Total regulatory costs	\$1.187 trillion	n/a	n/a	n/a
Agency enforcement budgets	\$54.3 billion	13.00%	20.0%	71.0%
<i>Federal Register</i> pages	68,598	-13.64%	-7.1%	-7.6%
<i>Federal Register</i> pages devoted to final rules	20,782	-21.00%	-9.8%	-15.1%
<i>Federal Register</i> final rules	3,503	8.50%	-11.1%	-18.8%
Total rules in Agenda	4,043	1.00%	-0.5%	-14.0%
“Economically significant” rules in the pipeline	184	2.20%	34.3%	16.4%
Rules affecting small business	758	0.70%	-3.8%	-28.0%
Rules affecting state governments	514	0.20%	-1.7%	-24.3%
Rules affecting local governments	328	5.10%	-5.2%	-22.0%
FCC Breakdown				
Total number of FCC rules in Agenda	145	1.4%	1.4%	5.8%
FCC rules affecting small business	10	3.8%	-2.6%	4.8%

Note: n/a = not applicable.

regulatory initiatives can allow federal direction of private-sector resources with comparatively little public fuss—thus rendering regulation a form of off-budget taxation. Table 1 provides some perspective on the regulatory “tax” by presenting summary data for selected topics described in *Ten Thousand Commandments*. Trends over the past few years are provided where information is available.

Ten Thousand Commandments for 2010 contains four basic sections:

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

The Regulatory State and Its Cost

The 2009 *Draft Report to Congress* from the Office of Management and Budget (OMB) on regulatory costs and benefits pegs the cumulative costs of 99 selected major regulations during 1998–2008 at between \$51 billion and \$60 billion. Meanwhile, the estimated range for benefits was between \$126 billion and \$663 billion.⁸

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

Examination of Cost Assessments

For an overall cost assessment of the entire regulatory enterprise, W. Mark Crain of Lafayette College prepared a comprehensive estimate for 2005 for the Small Business Administration.⁹ This report assessed economic regulatory costs (for example, price-and-entry restrictions and “transfer” costs, such as price supports, which shift money from one pocket to another); workplace costs; environmental regulatory costs; and paperwork costs (for example, tax compliance). Crain estimated regulatory costs of \$1.113 trillion for 2004. (His calculations updated an October 2001 report by Crain and Thomas Hopkins that noted regulatory costs of \$843 billion.¹⁰)

Adjusting Crain's 2005 annual regulatory cost estimate by extrapolating the growth

trend in regulatory costs that prevailed between 2000 and 2004 yields a very rough estimate of \$1.187 trillion for 2009.¹¹ Figure 1 breaks down the regulatory cost estimate by categories: economic, environmental, tax compliance, and workplace. Economic costs, the largest category at \$630 billion, include the noted price-and-entry controls on business and losses from economic transfers.¹² But the current tabulation does not include recent regulatory interventions related to the various stimulus and bailout programs and other developments since 2004. And given that indirect costs—such as the effects of lost innovation or productivity—are not included in Crain's analysis, this figure can further understate the total regulatory burden.¹³

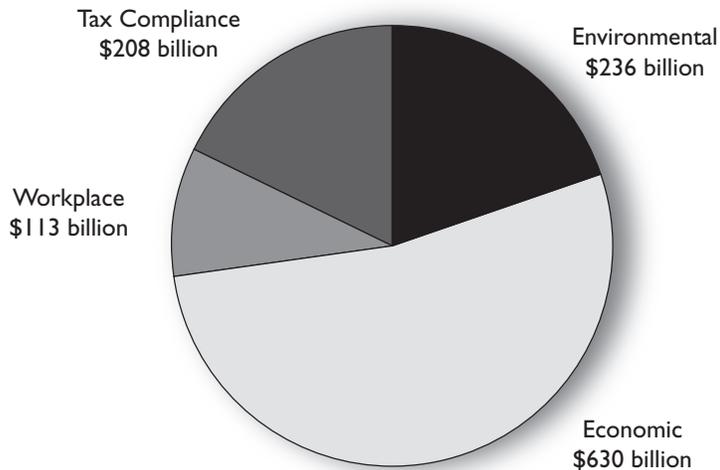
Regulatory benefits are beyond the scope of the Crain analysis, although those benefits would be recognized as offsetting some costs.¹⁴ The Crain report also notes the extent to which regulatory costs impose higher burdens on small firms, for which per-employee regulatory costs are higher. Table 2 shows, for 2004, how per-employee regulatory costs for firms of fewer than 20 workers can be more than 40 percent greater than for larger firms (more than \$7,600 for smaller firms versus \$5,300 for larger ones).¹⁵

Regulation Catching up with Government Spending

After nearly three decades of deficit spending, the federal government temporarily balanced the budget from FY 1998 through FY 2001. (The total surplus was \$128 billion in FY 2001.¹⁶) Those days are history. In FY 2009, a deficit of \$1.414 trillion was posted

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

Figure 1. 2009 Federal Regulatory Costs, \$1.187 Trillion



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

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

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

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

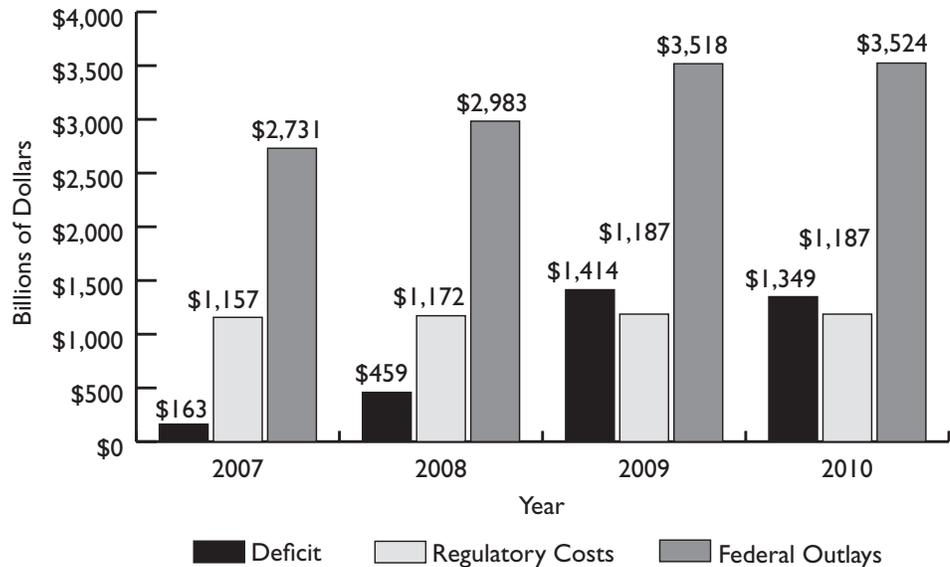
on \$3.518 trillion in outlays with no surplus at all projected over the coming decade.¹⁷ (In FY 2008, the figures were \$459 billion and \$2.98 trillion, respectively.¹⁸)

Figure 2 compares deficits and outlays during 2007–2009 with Crain’s regulatory cost estimates, along with a projection for 2010. Note that the regulatory hidden tax in recent years has approached roughly 40 percent of the size of budgeted government. The approximate \$1.187 trillion in regulatory costs

in 2009 dropped to the equivalent of 33.7 percent of spending of the \$3.518 trillion. The proportion between 2009 and earlier years is lower not because today’s calculated regulatory costs are lower, but because of the jump in federal outlays.

In recent years, the costs of regulation had been more than double the federal deficit. Now, in the wake of the economic downturn and escalated federal spending, the deficit has ballooned to eclipse the costs of regula-

Figure 2. Off-Budget Regulatory Costs Compared with Federal Spending (2007–2009 and projected 2010)



Sources: The 2007–2008 deficit and outlays are from Congressional Budget Office, *The Budget and Economic Outlook, 2008–2009* editions; 2009–2010 deficit and outlays are from the 2010 edition; Table 1-3, January 2010, <http://www.cbo.gov/ftpdocs/108xx/doc10871/01-26-Outlook.pdf>.

Regulatory costs 2007–2010 are based on W. Mark Crain, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBHQ-03-M-0522, September 2005, <http://www.sba.gov/advo/research/rs264tot.pdf>.

Note: Regulatory costs are a rough projection based on average annual increases in regulatory costs between 2000 and 2004 from Crain, 2005. Federal deficit and outlay numbers are by fiscal year; regulatory costs are by calendar year. Deficit now eclipses regulatory costs.

tion. In a sense, regulations themselves constitute off-budget deficit spending—the costs of federal requirements that the population is compelled to bear, so to pair the two is appropriate.

The federal spending surge heralds new regulation.

Contemplating off-budget regulatory compliance costs that approach half the official federal budget was disconcerting enough, but the situation is more precarious now given Washington’s new high-spending culture. Note again in Figure 2 the sea change that occurred between 2008 and 2009 in the deficit compared with regulation. Now, CBO projects actual FY 2010 spending to

again exceed \$3.5 trillion thanks to the late-2008 bailout and subsequent “stimulus” frenzy.

Given the months-old spending surge, regulatory costs, although at record highs, are lower as a proportion of surging federal spending, but there is no silver lining here—higher spending will eventually translate into higher future regulatory costs. Any spending related to such bailout and “stimulus” as infrastructure, banking restructuring, energy efficiency mandates, and the like will include significant regulatory components as well (for example, salary cap proposals with respect to bank bailouts, as well as “open access” proposals with respect to telecommunications infrastructure spending). That analysis bears repeating: New spending related to

New spending related to bailouts and stimulus will have regulatory cost implications too.

bailouts and stimulus will have future regulatory cost implications too.

Deficit spending that eclipses regulation has ominous implications.

The \$1.414 deficit of 2009 and the CBO-projected deficit for FY 2010 of \$1.349 trillion both eclipse the cost of regulation and are larger than all federal budget outlays as recently as 2000.¹⁹ Indeed, the days of a \$2-trillion federal budget are long past. President George W. Bush—only two years ago—presented the first \$3 trillion budget. CBO now projects FY 2010 outlays of a staggering \$3.524 trillion.

Trillion-dollar deficits and regulatory costs in the trillions are both unsettling new developments for America. It is sobering to note how both dwarf the initial \$150-billion “stimulus package” of early 2008, which comprised the tax rebates that were to resurrect the economy at that time. Where we go from here is a tough call. In March 2009, House Budget Committee Chair John Spratt (D-S.C.) indicated how quickly circumstances can change:

Economic forecasting is a risky business. A year ago, economists projected a deficit of about \$200 billion for 2009. Economists now project a deficit about nine times that large, due mainly to extraordinary events that no one foresaw a year ago.²⁰

A retreat from deficit spending could mean more regulation.

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

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

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

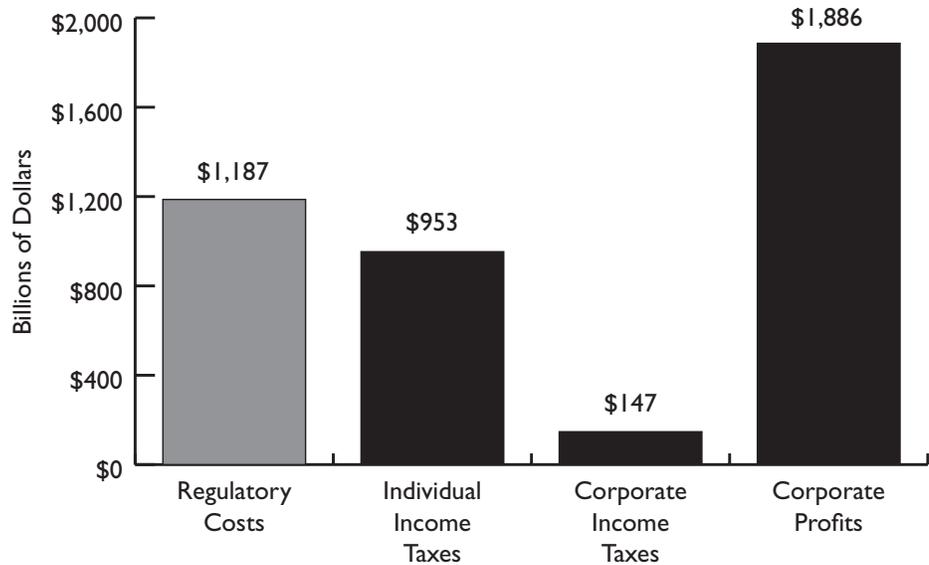
Regulatory Costs versus Income Taxes and Corporate Profits

Regulatory costs now comfortably exceed the cost of individual income taxes, and those costs vastly exceed revenue from corporate taxes. As Figure 3 shows, regulatory costs now tower over the estimated 2009 individual income taxes of \$953 billion (individual income tax receipts have fallen substantially in the economic downturn).²¹ Corporate income taxes, estimated at \$147 billion, are dwarfed by regulatory costs (and themselves have declined by half in the downturn).²² As the last bar of Figure 3 shows, regulatory cost levels rise to well over half the level of pretax corporate profits, which were \$1.886 trillion in 2007.²³ (Note that corporate profits will be far lower in upcoming editions of *Ten Thousand Commandments*.)

For a global perspective, U.S. regulatory costs of \$1.187 trillion exceed the output of many major national economies. Figure 4 shows that U.S. regulatory costs nearly equaled the entire 2007 gross national income (GNI) of Canada, which stood at \$1.307 trillion. The regulatory burden also exceeded Mexico’s GNI of \$989 billion.²⁴ For the United States, the CBO estimated 2009 GDP at \$14.253 trillion.²⁵ Total regulatory costs of \$1.187 trillion are equivalent to 8 percent of that amount. Combining reg-

Trillion-dollar deficits and regulatory costs in the trillions are both unsettling new developments for America.

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

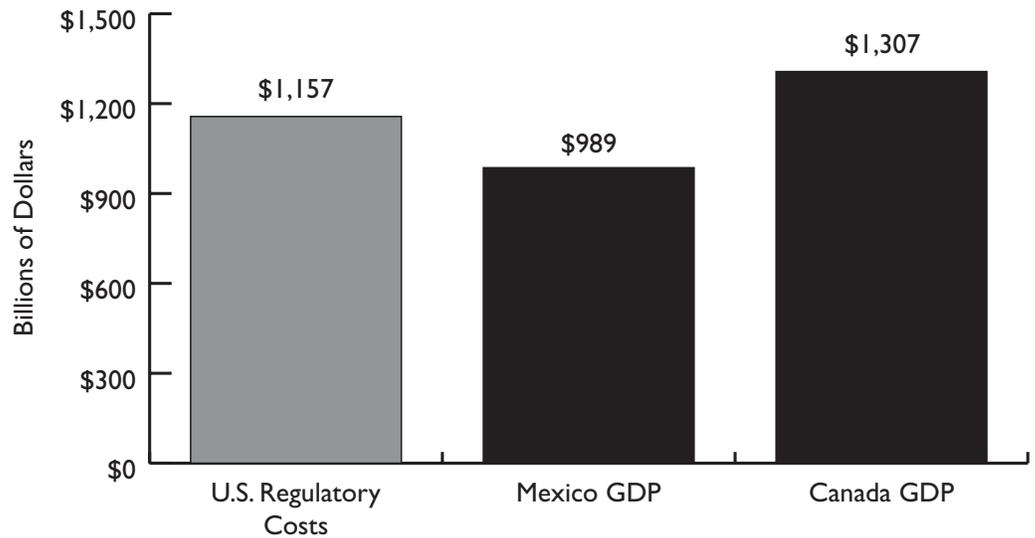


Sources: W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBHQ-03-M-0522, September 2005, <http://www.sba.gov/advo/research/rs264tot.pdf>.

Tax figures from U.S. Census Bureau, Statistical Abstract of the United States: 2010, Table 463, "Federal Budget Receipts by Source: 1990 to 2009," <http://www.census.gov/compendia/statab/2010/tables/10s0463.pdf>.

Profits from U.S. Census Bureau, Statistical Abstract of the United States: 2010, Table 76, "Corporate Profits before Taxes by Industry: 2000 to 2007," <http://www.census.gov/compendia/statab/2010/tables/10s0769.pdf>. Profits do not reflect inventory valuation and capital consumption adjustments.

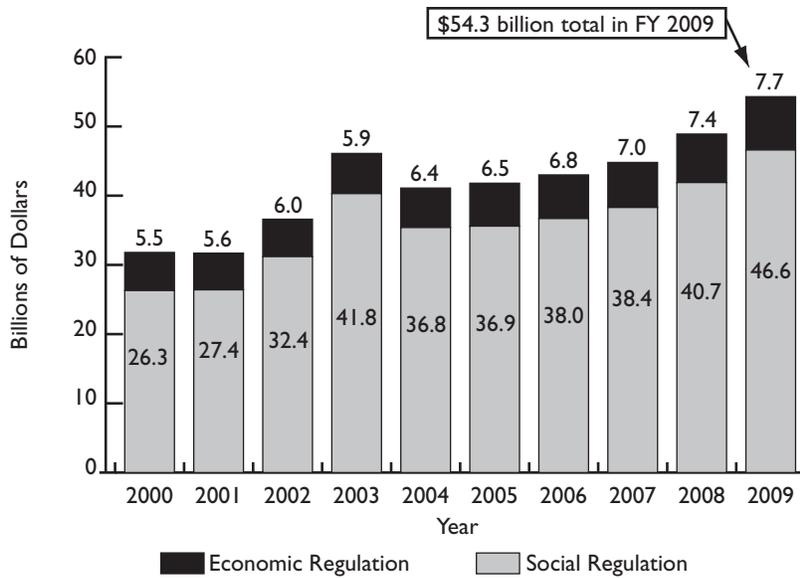
Figure 4. U.S. Regulatory Costs Compared with Mexico's and Canada's Gross National Income



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

GNI figures for Canada and Mexico are from U.S. Census Bureau, Statistical Abstract of the United States: 2010, Table 1312, "Gross National Income (GNI) by Country: 2000 and 2007," <http://www.census.gov/compendia/statab/2010/tables/10s1312.pdf>.

Figure 5. Agency Enforcement Budgets, 2000–2009
(billions of constant 2008 dollars)



Sources: Veronique de Rugy and Melinda Warren, “Expansion of Regulatory Budgets and Staffing Continues in the New Administration: An Analysis of the U.S. Budget for Fiscal Years 2009 and 2010,” *Regulators’ Budget Report 31*, published jointly by the Weidenbaum Center and the Mercatus Center, October 2009, p. 28, <http://mercatus.org/sites/default/files/publication/Regulators-Budget-Report-Final-Version-October-29.pdf>.

Original 2000 constant dollars are adjusted by the change in the consumer price index between 2000 and 2008, derived from U.S. Census Bureau, *Statistical Abstract of the United States: 2010*, Table 709, “Consumer Price Indexes (CPI-U) by Major Groups: 1990 to 2008,” <http://www.census.gov/compendia/statab/2010/tables/10s0709.pdf>.

ulatory costs with federal FY 2009 outlays of \$3.518 trillion indicates that the federal government’s share of the economy (of GDP) now reaches 33 percent.

The Federal Government’s Costs of Policing the Regulatory State

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

administrative costs of developing and enforcing regulations. Because those funds are amounts that taxpayers pay to support agencies’ administrative budgets, rather than compliance costs paid by the regulated parties, the amounts are disclosed in the federal budget.

FY 2009 enforcement costs incurred by federal departments and agencies stood at \$54.3 billion (constant 2008 dollars), a 13-percent increase over the previous year (Figure 5).²⁶ Of that amount, \$7.7 billion was spent administering economic regulation. The larger amount spent for writing and enforcing social and environmental regulations was \$46.6 billion. Those enforcement costs help complete the picture of the federal regulatory apparatus. Adding the \$54.3 billion in administrative costs tabulated by the Weidenbaum Center and Mercatus Center to the \$1.187

trillion in the Crain estimate for compliance costs brings the total estimated 2009 regulatory burden to roughly \$1.24 trillion.

Estimated full-time-equivalent employment staffing reached 266,300 in FY 2009, according to the Weidenbaum and Mercatus report. That figure is 54 percent above staffing levels in 2000. The surges after

2001 were largely attributable to the newly created Transportation Security Administration's (TSA) hiring of thousands of airport personnel. Over the past year alone, staffing is up by 7 percent. (According to a 2008 analysis, even excluding the new TSA personnel, government staffing rose at that time by nearly 11 percent, and costs increased by 30 percent.²⁷)

Federal Register

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

And, of course, there are the more obvious problems with relying on page counts: The wordiness of rules will vary, thus affecting the number of pages and obscuring the real effects of the underlying rules. A short rule could be costly and a lengthy one relatively cheap. Furthermore, the *Federal Register* contains administrative notices, corrections, presidential statements, and other material. And hundreds, even thousands, of blank pages sometimes appear owing to the Government Printing Office's imperfect prediction of the number of pages a given agency will require.

Despite limitations, it remains worthwhile to track the *Federal Register's* growth through page counts, provided the caveats listed above are kept in mind. As Figure 6 shows, at the end of 2008, the number of pages stood at 79,435, an all-time record high and an increase of 10 percent from 72,090 pages the year before. (The previous record high

was 75,676 pages in 2004.) Note that the new count for 2009 is 68,598, a very substantial drop of nearly 14 percent.

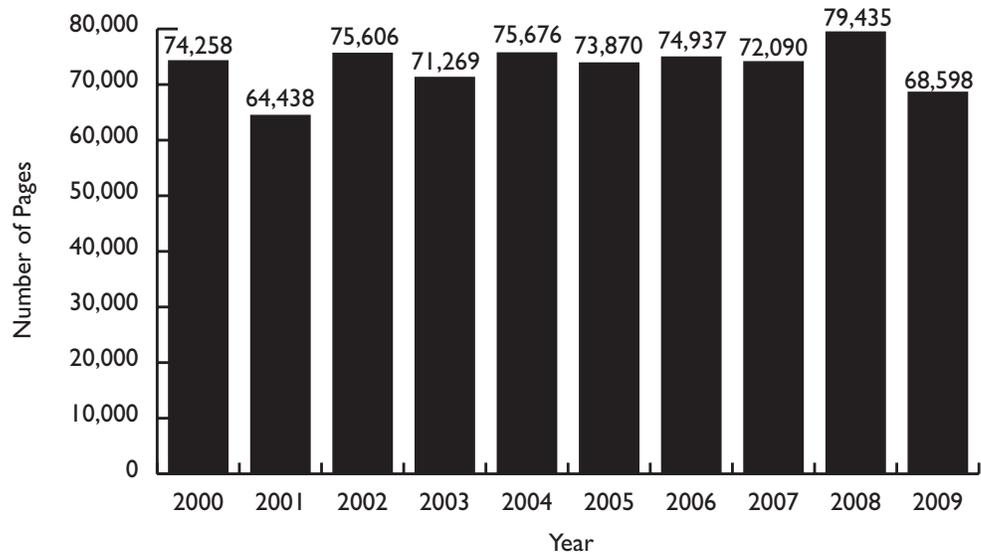
Analysis of Pages in the *Federal Register*

Future analysis may tell the tale more completely, but there are at least three potential explanations for the drop in *Federal Register* pages (and, as will be seen, actual number of rules finalized) in 2009:

- The 2009 drop is exaggerated relative to the normal page fluctuations since President Bush issued a flurry of “midnight regulations” at the end of his term in 2008,²⁸ the record year for *Federal Register* pages. Whether any particular president's homestretch regulations (the phenomenon has a long history) are designed to mitigate and ease earlier rules (which also requires *Federal Register* notice and comment) or to add actual new rules requires analysis separate from this report. In any event, apart from midnight regulations, the current 2009 level still marks a decline from the years before 2008.
- President Obama's appointment of a director of the Office of Information and Regulatory Affairs (OIRA) who is favorable toward cost-benefit analysis could have slowed 2009 rulemaking. Cost-benefit analysis is controversial to groups that favor activist agency regulation rather than congressional accountability for legislation.²⁹ However, the OIRA director's Senate approval actually came late in calendar year 2009, so 2010 may be more indicative of his effect.

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Figure 6. Number of *Federal Register* Pages, 2000–2009



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

- Finally, the regulatory freeze announced by the president’s chief of staff in January 2009³⁰ that applied to Bush regulations still in the pipeline may have had some measurable effect by slowing what otherwise may have landed in the books during 2009.³¹ However, this effect may not be permanent. A freeze on regulations by the first President Bush did slow regulations the year after its implementation, but rules resumed normal trends once the moratorium was lifted.³² In any event, the longer-term result of any “dampening” effect of this temporary moratorium relative to the expansion of other rules under President George W. Bush remains to be sorted out, but the two effects are consistent with the surge and the retreat seen in *Federal Register* pages in 2008 and 2009, respectively.

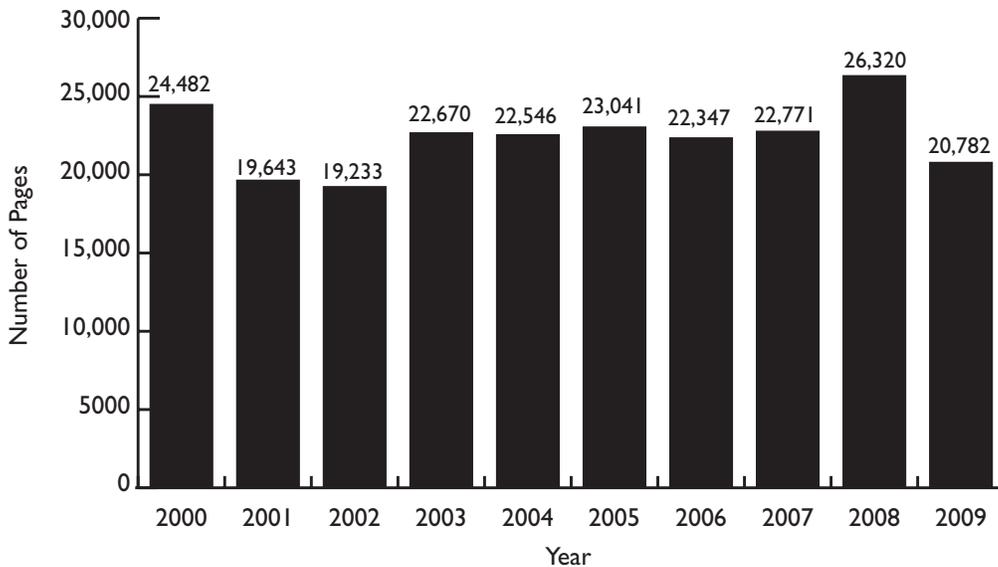
The bottom line, though, is that tens of thousands of pages still stream from 59 departments, agencies, and commissions. If one refers again to Figure 6, the third-highest page count had been 75,606 in 2002 (the year the Microsoft settlement contributed to the total). During 2000, President Bill Clinton’s last year in office (when similar charges of

issuing “midnight regulations,” ahead of President George W. Bush’s arrival, were prevalent), pages topped 74,000.³³ Since 2002, annual page counts remained above 70,000 until the 2009 dip. The 2009 drop means that, overall, the decade from 2000 to 2009 saw the annual page count fall by 7.6 percent. (For a history of *Federal Register* page totals since 1936, see Appendix: Historical Tables, Part A.)

Gross page counts alone do not reveal whether actual regulatory burdens have increased or decreased—a rule of few pages might impose a significant burden. Isolating the pages devoted specifically to *final* rules might be more informative, because that approach omits pages devoted to proposed rules, agency notices, corrections, and presidential documents. Between 2007 and 2008, the number of pages devoted to final rules rose by 16 percent—from 22,771 to a record-high 26,320 (Figure 7), but the number dropped sharply by 21 percent to 20,782 in 2009.

Until the 2008 record, the count of 24,482 pages in 2000 under President Clinton was the highest since 1976, when the *Federal Register* page-count breakdown by category was first reported. The count in 2000 was up by

Figure 7. *Federal Register* Pages Devoted to Final Rules, 2000–2009



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

21 percent over 1999 (possibly partly attributable to the aforementioned effort by Clinton to complete the backlog of rules before the arrival of the Bush administration). The drop right after Clinton's final year in office was noteworthy in that this Clinton-to-Bush drop mirrors the one we see today from Bush to Obama.

Over the decade, the number of *Federal Register* pages devoted to final rules has decreased by 15 percent. The number of final-rule pages has remained above 22,000 since 2003; it bounced to more than 26,000 in 2008 (those midnight regulations again); and then it fell to the current 20,782, which is the lowest level since 2002.

Yet another way of looking at *Federal Register* trends is pages per decade (see Figure 8). During the 1990s, the total number of *Federal Register* pages published was 622,368, whereas the total number published during the 1980s was 529,223. (The busiest year in the 1980s was the 1980 peak of 73,000 pages.) Here at the end of the first decade of the 21st century,³⁴ 730,176 pages ultimately appeared—a 17 percent increase

over the 1990s and an average of 73,018 pages annually.

Although the final codification of general and permanent rules as ultimately realized in the Code of Federal Regulations (CFR) is considerably more modest in terms of numbers—if not in costs—today's CFR contains 55 percent more pages than that for 1980. Since 1980, the CFR has grown from 102,195 pages to 157,974. By contrast, in 1960, it had only 22,877 pages.

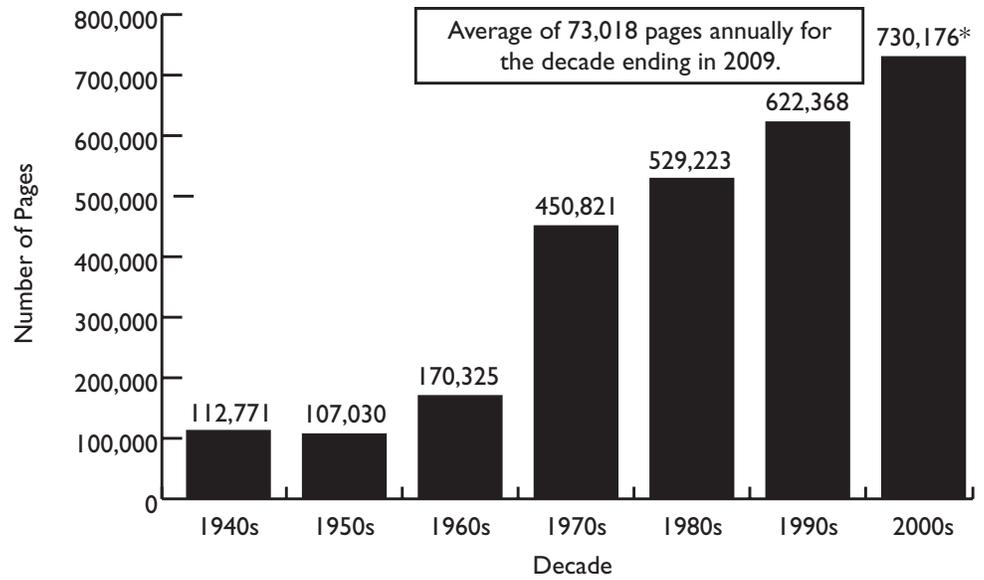
Although one must recognize the limitations of *Federal Register* page counts, the higher overall number of pages compared with past decades, plus a stream of pages devoted to final rules averaging well over 20,000 annually, credibly signify higher levels of final rule costs and burdens.

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

The actual numbers of proposed and final rules published in the *Federal Register* merit

Gross page counts alone do not reveal whether actual regulatory burdens have increased or decreased—a rule of few pages might impose a significant burden.

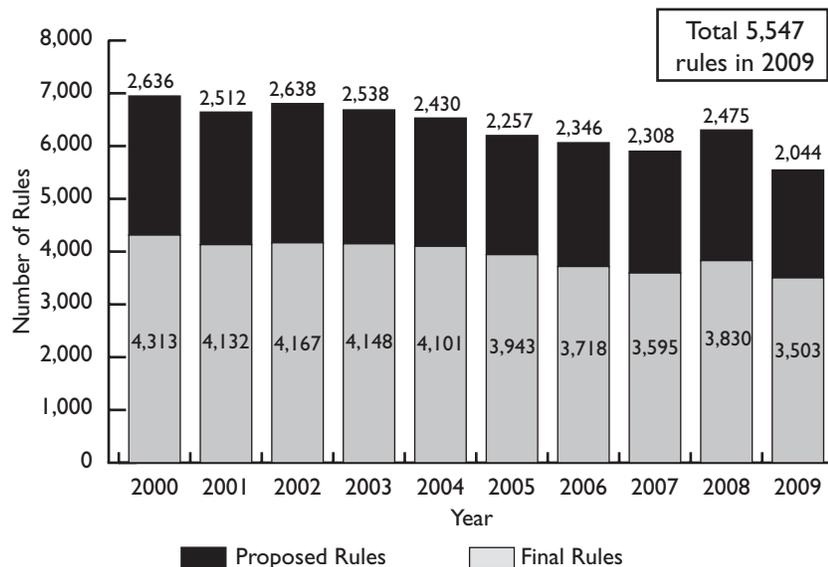
Figure 8. New *Federal Register* Pages per Decade



* Projection based on nine-year average.

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

Figure 9. Number of Rules Published in the *Federal Register*, 1999–2008



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

attention. As Figure 9 shows, in 2009 the total number of proposed and final rules published fell to 5,547, a 12-percent drop from 6,305 in 2008. The number of rules actually finalized by federal agencies in 2009 also fell—from 3,830 to 3,503, an 8.5-percent drop. Despite the prior year's surge, the number of final rules currently being published is lower than it was throughout the 1990s. The average number of annual regulations finalized during the 1990s was 4,596. The average for the first decade of the 21st century (2000–2009) is 3,945. That is a positive trend. However, as noted before, recent budgetary spending surges point to-

ward likely higher levels of future regulation. (For the numbers of proposed and final rules and other documents issued in the *Federal Register* since 1976, see Appendix: Historical Tables, Part B.)

The cumulative effect of regulation can matter a great deal despite yearly fluctuations. The bottom line is that the annual outflow of some 4,000 final rules has meant that nearly 60,000 rules have been issued since 1995. Although the costs of those rules can vary tremendously, that number represents a substantial yield of rules and regulations.

Analysis of the Regulatory Plan and Unified Agenda

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

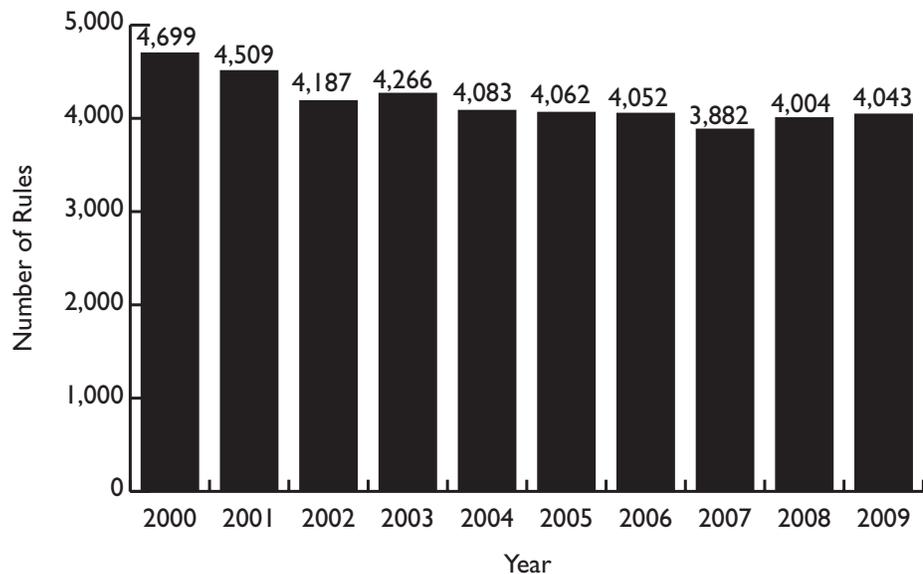
The Agenda lists federal regulatory actions at several stages: “prerules,” proposed and final rules, actions completed during the past few months, and anticipated longer-term rule-makings. The Agenda functions as a cross-sectional snapshot of rules moving through the pipeline. Therefore, the rules it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

may often carry over at the same stage from one year to the next, or they may reappear in subsequent Agendas at different stages. The Agenda’s rules primarily affect the private sector, but many also affect state and local governments and the federal government itself.

4,043 New Rules in the Pipeline

The 2009 Agenda finds federal agencies, departments, and commissions at work on 4,043 regulations from the prerule to the just-completed stages.³⁵ This level is up 1 percent from 4,004 in 2008 (see Figure 10), and up 4 percent from 2007. The number

Figure 10. Total Agency Rules in the Unified Agenda Pipeline, 2000–2009



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

of rules in the Agenda peaked at 5,119, in 1994, and the count has remained above 4,000 except in 2007. (For a history of numbers of rules in the Unified Agenda since 1983, see Appendix: Historical Tables, Part C.³⁶)

Table 3 breaks down the 4,043 rules according to issuing department, agency, or commission. Each year, a relative handful of agencies account for a large number of the rules produced. The five departments and agencies listed in Table 4—the departments of the Treasury, Agriculture, Commerce, and Interior, along with the Environmental Protection Agency—were the biggest rulemakers. These top five, with 1,763 rules among them, account for 44 percent of all rules in the Agenda pipeline. (For the numbers of rules by department and agency from previous editions of the Unified Agenda, see Appendix: Historical Tables, Part D.)

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

Department of Agriculture

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

Department of Commerce

- Right whale ship strike reduction

Table 3. Unified Agenda Entries by Department and Agency, December 2009 (continued on next page)

	Total Rules	Reg. Plan	Agenda
Department of Agriculture	327	31	296
Department of Commerce	300	4	296
Department of Defense	133	1	132
Department of Education	22	3	19
Department of Energy	85	2	83
Department of Health and Human Services	231	14	217
Department of Homeland Security	237	30	207
Department of Housing and Urban Development	60	3	57
Department of the Interior	277	0	277
Department of Justice	121	3	118
Department of Labor	104	19	85
Department of State	18	0	18
Department of Transportation	230	19	211
Department of the Treasury	528	3	525
Department of Veterans Affairs	78	0	78
Environmental Protection Agency	331	22	309
Agency for International Development	12	0	12
Architectural and Transportation Barriers Compliance Board	6	0	6
Commission on Civil Rights	1	0	1
CPBSD*	3	0	3
Commodity Futures Trading Commission	32	0	32
Consumer Product Safety Commission	39	0	39
Corporation for National and Community Service	7	0	7
Court Services/Offender Supervision, D.C.	2	0	2
Federal Acquisition Regulation	55	0	55
Equal Employment Opportunity Commission	7	2	5
Farm Credit Administration	25	0	25
Farm Credit System Insurance Corporation	1	0	1
Federal Communications Commission	145	0	145
Federal Deposit Insurance Corporation	21	0	21
Federal Energy Regulatory Commission	37	0	37
Federal Housing Finance Agency	30	0	30
Federal Maritime Commission	6	0	6
Federal Mediation and Conciliation Service	2	0	2
Federal Reserve System	26	0	26
Federal Trade Commission	20	0	20
General Services Administration	49	0	49
Institute of Museum and Library Services	1	0	1

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

Table 3. Unified Agenda Entries by Department and Agency, December 2009 (continued)

	Total Rules	Reg. Plan	Agenda
National Aeronautics and Space Administration	32	0	32
National Archives and Records Administration	7	1	6
National Credit Union Administration	24	0	24
National Endowment for the Arts	2	0	2
National Endowment for the Humanities	3	0	3
National Indian Gaming Commission	17	2	15
National Science Foundation	3	0	3
Nuclear Regulatory Commission	61	0	61
Office of Government Ethics	7	0	7
Office of Management and Budget	7	0	7
Office of Personnel Management	77	0	77
Peace Corps	1	0	1
Pension Benefit Guaranty Corporation	10	0	10
Postal Regulatory Commission	2	1	1
Railroad Retirement Board	1	0	1
Recovery Accountability and Transparency Board	3	0	3
Securities and Exchange Commission	74	0	74
Selective Service System	1	0	1
Small Business Administration	39	5	34
Social Security Administration	58	13	45
Surface Transportation Board	5	0	5
TOTAL	4,043	178	3,865

Source: Compiled from "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions," *Federal Register*, Vol. 74, No. 233, December 7, 2009; and from online edition at <http://www.reginfo.gov>.

- *Department of Health and Human Services*
- Substances prohibited from use in animal food or feed
- Prevention of *Salmonella enteritidis* in shell eggs
- Good manufacturing practice in manufacturing, packing, or holding dietary ingredients and dietary supplements
- Registration of food and animal feed facilities
- Food labeling: transfatty acids in nutrition labeling, nutrient content claims, and health claims
- Criteria for determining whether a drug is considered usually self-administered
- Requirements for long-term care facilities: hospice services
- Bar-code label requirements for human drug products and blood
- Pediatric dosing for various over-the-counter cough, cold, and allergy products
- Fire-safety and sprinkler requirements for long-term care facilities

Department of Homeland Security

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

Department of Labor

- Occupational exposure to crystalline silica

Table 4. Top Rule-Producing Departments or Agencies, 2009

Department or Agency	Number of Regulations
1. Department of the Treasury	528
2. Environmental Protection Agency	331
3. Department of Agriculture	327
4. Department of Commerce	300
5. Department of the Interior	277
TOTAL	1,763

- Rules regarding confined spaces in construction: preventing suffocation and explosions
- Implementation of the health care access, portability, and renewability provisions of the Health Insurance Portability and Accountability Act of 1996
- Hearing conservation program for construction workers
- Cranes and derricks
- Health care standards for mothers and newborns
- Protective equipment in electric power transmission and distribution
- Refuge alternatives for underground coal mines
- Occupational exposure to tuberculosis

Department of Energy

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

Department of Transportation

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

Environmental Protection Agency

- Rulemaking to address greenhouse gas emissions from motor vehicles
- Clean air visibility, mercury, and ozone implementation rules

A subset of the Agenda's 4,043 rules is classified as "economically significant," meaning that agencies anticipate yearly economic impacts of at least \$100 million apiece.

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

Consumer Product Safety Commission

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

Federal Communications Commission

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

Department of Housing and Urban Development

- Revision of manufactured home construction and safety standards regarding location of smoke alarms

- Regulation of Fannie Mae and Freddie Mac on "housing goals"
- Regulations within the Real Estate Settlement Procedures Act pertaining to mortgages and closing costs
- Refinement of income and rent determinations in public and assisted housing

Department of the Treasury

- Prohibition of funding of unlawful Internet gambling
- Capital adequacy guidelines

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

A subset of the Agenda's 4,043 rules is classified as "economically significant," meaning that agencies anticipate yearly economic impacts of at least \$100 million apiece. Those impacts generally lead to increased costs, although occasionally an economically significant rule is intended to reduce costs. As Table 5 shows, 184 new economically significant rules are under consideration by 23 separate departments and agencies at the prerule, proposed rule, final rule, long-term, and recently completed stages. As Figure 11 shows, this is a 2-percent increase over the 180 high-cost rules in 2008 (the prior year saw a 13.2-percent increase), and a 34.3-percent jump over the past five years.

High-cost "economically significant" rules are scattered among the 4,043 rules in the Agenda. Because each will have an annual impact of at least \$100 million, those rules can be expected to impose annual costs on the order of \$18 billion (184 rules multiplied by \$100 million). Some rules may reduce costs, but not typically. (For a full list of the 184 economically significant rules, see Appendix: Historical Tables, Part E.)

A breakdown of the \$18 billion in regulatory costs (and sometimes benefits) is rarely presented directly for each rule in the Agenda. Actual costs can sometimes best be found by

Table 5. 184 Rules in the Pipeline Expected to Cost More than \$100 Million Annually, 2009

	Rules
Department of Agriculture	18
Department of Commerce	2
Department of Defense	3
Department of Education	8
Department of Energy	8
Department of Health and Human Services	44
Department of Homeland Security	13
Department of Housing and Urban Development	2
Department of Justice	4
Department of the Interior	2
Department of Labor	13
Department of State	1
Department of Transportation	15
Department of the Treasury	5
Department of Veterans Affairs	3
Environmental Protection Agency	27
Consumer Product Safety Commission	2
Federal Communications Commission	7
Federal Deposit Insurance Corporation	1
National Credit Union Administration	1
Nuclear Regulatory Commission	2
Small Business Administration	1
Social Security Administration	2
TOTAL	184

Source: Compiled from "The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions," *Federal Register*, Vol. 74, No. 233, December 7, 2009; and from online edition at <http://www.reginfo.gov>.

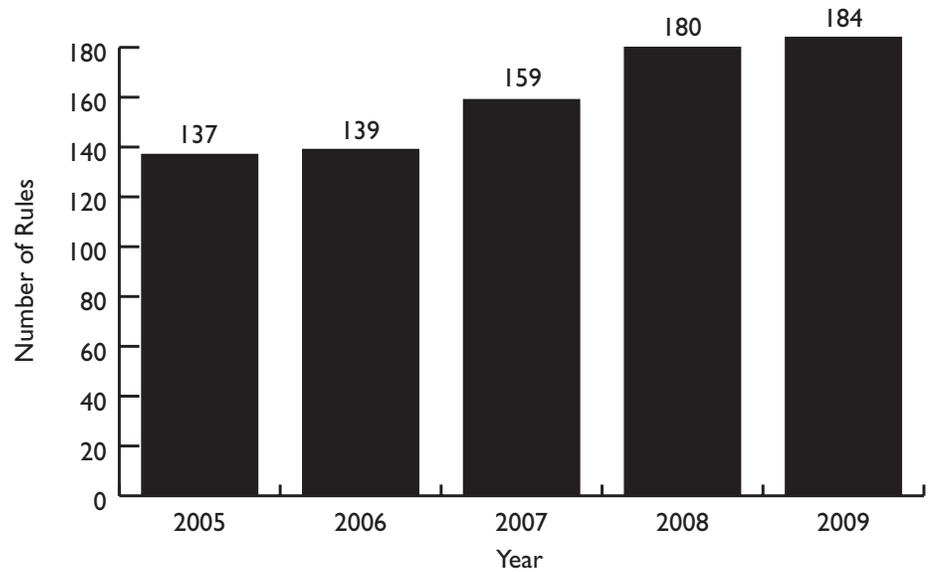
combing through the document or searching online. Rather than accumulate and summarize regulatory costs for the readers' benefit, each Agenda entry indicates whether a rule is economically significant and occasionally provides additional cost data from agency regulatory impact analyses. Note also that even though the \$18 billion in anticipated economic impacts represents a floor (of a sort) for regulatory costs, it is not a one-time cost but a recurring annual cost that must be added to prior years' costs, as well as to costs that come in the future.

Nor are agencies required to limit their regulatory activity to what they publish in the Agenda:

The Regulatory Plan and the Unified Agenda do not create a legal obligation on agencies to adhere to schedules in this publication or to confine their regulatory activities to those regulations that appear within it.³⁷

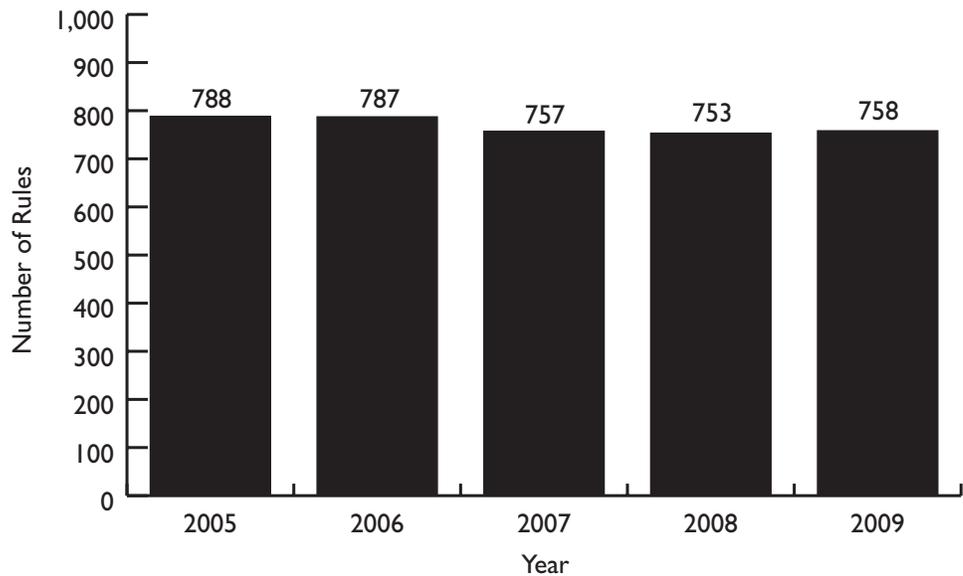
Finally, the fact that policy makers and analysts pay the most attention to economically significant rules should not lull them into ignoring the remaining bulk of rules in the yearly pipeline. In 2009, 3,859 federal rules were not considered officially economically significant by the government (4,043 total rules minus the 184 economically significant

Figure 11. “Economically Significant” Rules in the Agenda Pipeline, 2005–2009



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

Figure 12. Rules Affecting Small Business, 2005–2009



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

ones). But that categorization does not mean that many of those rules are not economically significant in the ordinary sense of the term to those affected by them. Any of the rules may cost up to \$99 million and still evade the “economically significant” category.

Federal Regulations Affecting Small Business

The Regulatory Flexibility Act requires federal agencies to assess the effects of their rules on small businesses. As the *Federal Register*

puts it, “The Regulatory Flexibility Act requires that agencies publish semiannual regulatory agendas in the *Federal Register* describing regulatory actions they are developing that may have a significant economic impact on a substantial number of small entities.”³⁸ Figure 12 shows that annual rules significantly affecting small business have remained rather flat in recent years; they are up by five from the previous year, but dropped from 788 to 758 since 2005.

Table 6 breaks out the 2009 Agenda’s 758 rules affecting small business by department,

Table 6. Unified Agenda Entries Affecting Small Business by Department, Agency, and Commission, December 2009 (continued on next page)

	Number Affecting Small Business				% Affecting Small Business
	Total Rules	RFA Required	RFA Not Required	Total	
Department of Agriculture	327	37	50	87	26.6
Department of Commerce	300	23	67	90	30.0
Department of Defense	133	12	0	12	9.0
Department of Education	22	0	0	0	0.0
Department of Energy	85	1	1	2	2.4
Department of Health and Human Services	231	34	60	94	40.7
Department of Homeland Security	237	23	12	35	14.8
Department of Housing and Urban Development	60	0	0	0	0.0
Department of the Interior	277	16	1	17	6.1
Department of Justice	121	2	1	3	2.5
Department of Labor	104	20	9	29	27.9
Department of State	18	4	0	4	22.2
Department of Transportation	230	26	19	45	19.6
Department of the Treasury	528	47	1	48	9.1
Department of Veterans Affairs	78	2	0	2	2.6
Environmental Protection Agency	331	83	6	89	26.9
Agency for International Development	12	0	0	0	0.0
Architectural and Transportation Barriers Compliance Board	6	0	0	0	0.0
Commission on Civil Rights	1	0	0	0	0.0
CPBSD*	3	0	0	0	0.0
Commodity Futures Trading Commission	32	1	0	1	3.1
Consumer Product Safety Commission	39	0	0	0	0.0
Corporation for National and Community Service	7	0	0	0	0.0

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

Table 6. Unified Agenda Entries Affecting Small Business by Department, Agency, and Commission, December 2009 (continued)

	Total Rules	Number Affecting Small Business			% Affecting Small Business
		RFA Required	RFA Not Required	Total	
Court Services/Offender Supervision, D.C.	2	0	0	0	0.0
Federal Acquisition Regulation	55	1	3	4	7.3
Equal Employment Opportunity Commission	7	4	0	4	57.1
Farm Credit Administration	25	0	0	0	0.0
Farm Credit System Insurance Corporation	1	0	0	0	0.0
Federal Communications Commission	145	5	105	110	75.9
Federal Deposit Insurance Corporation	21	0	0	0	0.0
Federal Energy Regulatory Commission	37	0	0	0	0.0
Federal Housing Finance Agency	30	0	0	0	0.0
Federal Maritime Commission	6	3	0	3	50.0
Federal Mediation and Conciliation Service	2	0	0	0	0.0
Federal Reserve System	26	5	1	6	23.1
Federal Trade Commission	20	16	0	16	80.0
General Services Administration	49	1	5	6	12.2
Institute of Museum and Library Services	1	0	0	0	0.0
National Aeronautics and Space Administration	32	0	0	0	0.0
National Archives and Records Administration	7	0	0	0	0.0
National Credit Union Administration	24	4	3	7	29.2
National Endowment for the Arts	2	0	0	0	0.0
National Endowment for the Humanities	3	0	0	0	0.0
National Indian Gaming Commission	17	0	0	0	0.0
National Science Foundation	3	0	0	0	0.0
Nuclear Regulatory Commission	61	0	2	2	3.3
Office of Government Ethics	7	0	0	0	0.0
Office of Management and Budget	7	0	0	0	0.0
Office of Personnel Management	77	0	0	0	0.0
Peace Corps	1	0	0	0	0.0
Pension Benefit Guaranty Corporation	10	0	0	0	0.0
Postal Regulatory Commission	2	0	0	0	0.0
Railroad Retirement Board	1	0	0	0	0.0
Recovery Accountability and Transparency Board	3	0	0	0	0.0
Securities and Exchange Commission	74	1	20	21	28.4
Selective Service System	1	0	0	0	0.0
Small Business Administration	39	0	20	20	51.3
Social Security Administration	58	1	0	1	1.7
Surface Transportation Board	5	0	0	0	0.0
TOTAL	4,043	372	386	758	18.7

Source: Compiled from "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions," *Federal Register*, Vol. 74, No. 233, December 7, 2009; and from online edition at <http://www.reginfo.gov>.

Note: RFA = regulatory flexibility analysis.

agency, and commission. Five of them—the departments of Agriculture, Commerce, and Health and Human Services; the Environmental Protection Agency; and the Federal Communications Commission—account for 470, or 62 percent, of the rules affecting small business. (For the numbers of rules affecting small business broken down by department and agency for Agendas since 1996, see Appendix: Historical Tables, Part F.) The proportion of total rules affecting small business, as noted in Table 6, stands at 18.7 percent.

Federal Regulations Affecting State and Local Governments

Ten Thousand Commandments primarily tracks regulations imposed on the private sector. However, state and local officials' realization during the 1990s that their own priorities were being overridden by federal mandates generated impulses for regulatory reform. As a result, Congress passed the Unfunded Mandates Act in 1995 to establish a point of order against such mandates as a

means of getting lawmakers to pay closer attention to legislation's effect on states and localities.

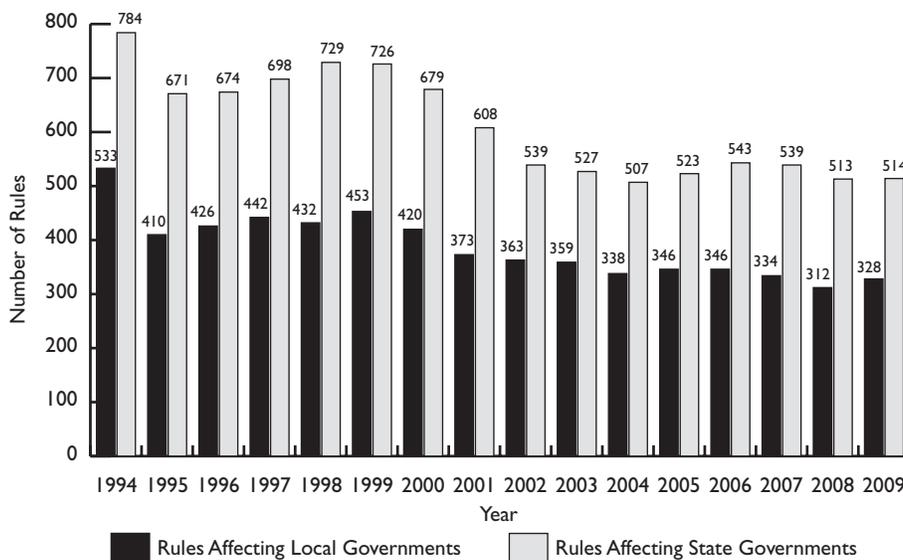
As Figure 13 shows, agencies report that 328 of the 4,043 rules in the 2009 Agenda will affect local governments.³⁹ Over the years since the passage of the Unfunded Mandates Act, overall rules affecting local governments have fallen by 38 percent, from 533 to 328. Figure 13 also shows that the total number of regulatory actions affecting state governments stands at 514. During the period since passage of the unfunded mandates legislation, the count has dropped to that level from 784, a 34-percent decline. (For breakdowns of the numbers of rules affecting state and local governments by department and agency over the past several years' Agendas, see Appendix: Historical Tables, Part G.)

Government Accountability Office Database on Regulations

The various federal reports and databases on regulation serve different purposes. The

State and local officials' realization during the 1990s that their own priorities were being overridden by federal mandates generated impulses for regulatory reform.

Figure 13. Rules Affecting State and Local Governments, 1994–2009



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

Table 7. Government Accountability Office Reports on Major Rules, 1998–2007

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

Source: Compiled from Government Accountability Office data.
 Note: HIPAA = Health Insurance Portability and Accountability Act.

Federal Register shows the aggregate number of proposed and final rules (both those that affect the private sector and those that deal with internal government machinery or programs). The Unified Agenda provides detail of the overall number of rules at various stages in the regulatory pipeline, as well as those with economically significant effects, and those affecting small business and state and local governments.

Under the 1996 Congressional Review Act, agencies were subsequently required to submit reports to Congress on their “major” rules—typically those costing \$100 million or more. Owing to such reports, which are maintained in a database at the Government Accountability Office (GAO), one can more readily observe which of the thousands of final rules agencies issue each year are major and which agencies are producing the rules.⁴⁰

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

rule. But despite the issuance of thousands of rules since the act’s passage—among them many dozens of major ones—only one has been rejected: the Labor Department’s rule on workplace repetitive-motion injuries in early 2001. Table 7, derived from the GAO database, depicts the number of final major rule reports issued by agencies through 2007 (the last year of readily available online compilation). The Department of Health and Human Services and the Department of Agriculture are among the most active. The coming years will be instructive on how increased federal spending may affect the generation of major rules.

A 2008 Heritage Foundation analysis of the George W. Bush administration’s tenure isolates the database’s major rules affecting only the private sector, and it further distinguishes between those that are deregulatory and those that are regulatory. That compilation found that 74 major rules increased burdens, whereas 23 reduced them.⁴¹ The net result at that time was that new regulatory costs of \$28 billion had been imposed since the onset of the Bush administration.⁴²

Regulation and the Federal Communications Commission

Although by no means the heaviest regulator, the FCC is worth singling out for review in today's information economy.

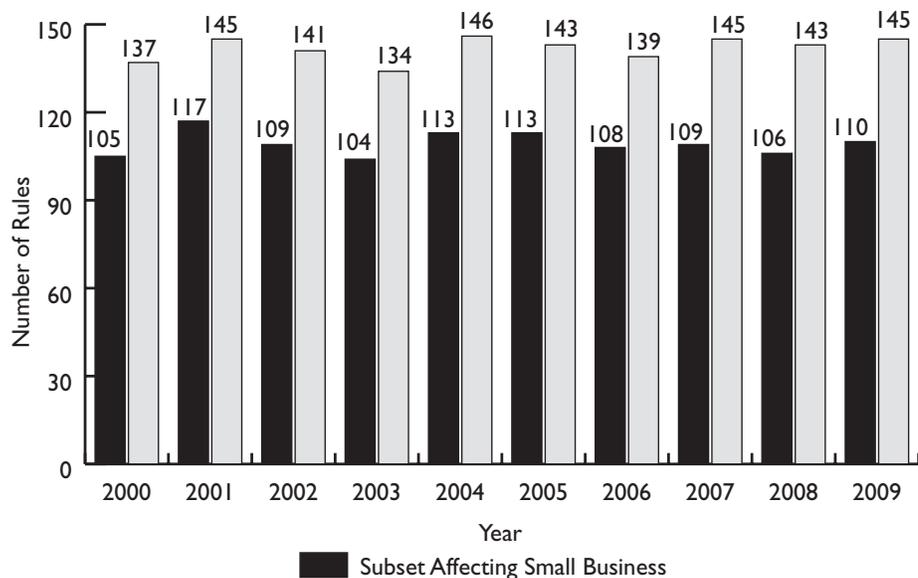
Although by no means the heaviest regulator, the Federal Communications Commission (FCC) is worth singling out for review in today's information economy. (Indeed, the FCC is surpassed in both the overall number of rules and in the number of "economically significant" (\$100 million plus) rules by eight other agencies—refer to Tables 3 and 5, respectively.)

In terms of enforcement, the FCC spent an estimated \$438 million to enforce regulation during FY 2009. (Meanwhile the Environmental Protection Agency spent vastly more at \$45.09 billion, alone accounting for nearly 10 percent of the total expected to be spent by all the regulatory agencies.⁴³)

Of the 4,043 rules in the 2009 Unified Agenda pipeline, 145, or 3.6 percent, were in the works at the FCC. The level of rules from the FCC is up 5.8 percent since 2000 (Figure 14). Rules rose slightly over the past year, from 143 to 145. Also shown in Figure 14 is the subset of FCC rules that register some effect on small business. Since 2000, that category of rules has risen 4.8 percent, moving from 105 to 110.

A regulatory stance remains in fashion at the FCC despite massive innovations in telecommunications and in customized, consumer-oriented, and user-driven media, as well as despite the increasingly obsolete nature of the FCC's original mandate to police both allegedly public airwaves and scarcity of the

Figure 14. Number of FCC Rules, 2000–2009



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

radio spectrum. Today's vibrant, robust, and duplicative communications markets are not fragile mechanisms requiring fine-tuning by (allegedly impartial) governmental bodies.⁴⁴ Communications markets do not abuse and harass consumers in a manner requiring endless rulemaking with respect to every new technological advance.

Nonetheless, now under consideration at the FCC is a notice of inquiry to examine both the broadband industry practices and the applicability of "net neutrality" to the communications sector.⁴⁵ The FCC has held numerous hearings and workshops on those matters. Indeed, far from embracing any deregulatory outlook or hands-off stance, FCC commissioners have occupied themselves with contemplating new rules for multicast must-carry regulation, cable à la carte, media

ownership restrictions, "indecentcy," video games, violence portrayal, and wireless net neutrality.

Of the 184 economically significant rules in the works across the entire federal government, seven are from the FCC (refer to Table 5). Those seven economically significant FCC rules, all but one of which are holdovers from earlier years, appear in Box 1. Such sweeping rulemakings (and the 138 other FCC rules in the Agenda pipeline) present opportunities for either liberalization of telecommunications or avenues for new centralized regulatory oversight and protracted legal battles. Liberalizing communications markets requires a deliberate effort to shift "regulation" from the FCC to the discipline of competitive markets. Today's debates seem to inadequately reflect that approach.

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

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

- Broadband over power line systems (BPL): "To promote the development of BPL systems by removing regulatory uncertainties for BPL operators and equipment manufacturers while ensuring that licensed radio services are protected from harmful interference."
- Processing applications in the Direct Broadcast Satellite (DBS) service; feasibility of reduced orbital spacing for provision of DBS service in the United States.
- Transfer of the 3,650- through 3,700-megahertz (MHz) band from federal government use: "Proposes to allow unlicensed devices to operate in all, or part, of the 3,650-MHz band at higher power levels than usually permitted for unlicensed services. These devices would be subject to smart (or cognitive) requirements and other safeguards designed to prevent interference to the licensed FSS [Frequency Selective Surface] earth stations now resident in the band."
- Service rules for the 746–764 and 776–794 MHz bands, and revisions to Part 27 of the commission's rules: "Adopts service rules for licensing and auction of commercial services in spectrum in the 700-MHz band to be vacated by UHF television licensees."
- The 2000 biennial regulatory review spectrum aggregation limits for Commercial Mobile Radio Services: "The Commission has adopted a final rule in a proceeding reexamining the need for Commercial Mobile Radio Services spectrum aggregation limits."
- Internet Protocol-enabled services: "The notice seeks comment on ways in which the Commission might categorize IP-enabled services for purposes of evaluating the need for applying any particular regulatory requirements. It poses questions regarding the proper allocation of jurisdiction over each category of IP-enabled service. The notice then requests comment on whether the services composing each category constitute 'telecommunications services' or 'information services' under the definitions set forth in the Act. Finally, noting the Commission's statutory forbearance authority and title I ancillary jurisdiction, the notice describes a number of central regulatory requirements (including, for example, those relating to access charges, universal service, E911, and disability accessibility), and asks which, if any, should apply to each category of IP-enabled services."
- FCC Long-Term Actions Amendment of the rules regarding Maritime Automatic Identification Systems.

Ending Regulation without Representation

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

Regulations dwarf the first \$150 billion “economic stimulus package” passed in early 2008, and their rollback would constitute the *deregulatory stimulus* that the U.S. economy requires. A rollback would offer some certainty or confidence to small businesses seeking a foothold in a shaky or weak economy. The following proposals can help steer us toward that goal.

Steps toward Improving Regulatory Disclosure

Regulatory compliance costs exceed \$1 trillion annually and receive little official scrutiny, so it is not surprising that costs often exceed benefits. Although some regulations’ benefits exceed costs, “net” benefits (or costs) are known for relatively few. Without any definitive regulatory accounting, estimates of overall agency net benefits are questionable, which makes it difficult to know whether society wins or loses as a result of those rules (as well as whether there are problems with such social metrics).⁴⁶

All relevant and available regulatory data should be summarized and publicly disclosed to help create pressures for even better data disclosure. An incremental step would be for Congress to require—or for OMB to initiate—publication of a summary of already-available, but scattered, data. Such a summary would perhaps resemble that in *Ten Thousand Commandments* and other compilations. That simple step alone would help transform today’s regulatory hidden tax culture to one of more openness.

Although regulatory cost disclosure should be a priority, a protracted legislative fight

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

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

Moreover, agencies need not specify whether any or all of their economically significant rules cost only \$100 million—or something far beyond. Redefining economically significant rules to reflect increasing cost tiers would improve disclosure. Agencies could be required to break up their economically significant rules into categories that represent increasing costs. Table 8 presents one alternative that assigns economically significant rules to one of five categories. Agencies could classify their rules either on the basis of cost information that has been provided in the regulatory impact analyses that accompany many economically significant rules or on

Table 8. Possible Breakdown of “Economically Significant” Rules

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

the basis of separate internal or external estimates.

While modest, any such steps toward greater disclosure could be important. Today, to learn about regulatory trends and to accumulate information on rules—such as numbers produced by each agency, their costs and benefits (if available), and so on—interested citizens must comb through the Agenda’s 1,000-plus pages of small, multicolumn print, or they must compile results from online searches. Useful regulatory informa-

tion is available, but it is often difficult to compile; the Agenda could be made more user-friendly.

As part of this process, data from the Agenda could be officially summarized in charts each year, perhaps presented as a chapter in the federal budget, the Agenda itself, or the *Economic Report of the President*.

One way to set up a regulatory report card is shown in Box 2. Information could be added to the report as deemed necessary—

Box 2. Regulatory Report Card: Recommended Official Summary Data by Program, Agency, and Grand Total, with Five-Year Historical Tables

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

One need not waste time blaming agencies for carrying out the very regulating they were set up to do in the first place.

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

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

“No Regulation without Representation”

Years of unbudgeted regulatory growth merit concern when we simply do not know whether regulatory benefits exceed costs. But agencies are not the only culprits. Congress regularly shirks its constitutional duty to make the tough calls. It delegates considerable lawmaking power to agencies, and then it fails to ensure that they deliver benefits that exceed costs.⁴⁷ Thus, agencies can hardly be faulted for not guaranteeing optimal regulation or for not ensuring that only “good” rules get through.

Agencies face overwhelming incentives to expand their turf by regulating even in the absence of demonstrated need, because the only measure of agency productivity—other than growth in their budgets and number of employees⁴⁸—is the number of regulations they produce. One need not waste time blaming agencies for carrying out the very regulating they were set up to do in the first place. It would be better to point a finger at Congress. For perspective, consider that regulatory agencies issued 3,503 final rules, whereas the 111th Congress passed and President Obama signed into law a comparatively low 125 bills in calendar year 2009.⁴⁹

Meanwhile, as noted, regulatory agencies are at work on 4,043 rules. The unelected are doing a sizable bulk of U.S. lawmaking. Because agencies never answer to voters, an annual regulatory report card is a start but not a complete answer. And the regulatory reforms that rely on agencies’ policing themselves are not capable of harnessing the regulatory state. Rather, making Congress directly answerable to voters for the costs that agencies impose on the public would best promote accountable regulation. The way to control regulation is not to merely require agencies to perform cost-benefit analyses, but to require Congress to vote on agencies’ final rules before such rules become binding on the public.

Congressional accountability for regulatory costs assumes new importance in today’s era of yawning deficits. If Congress’s alternatives are to spend or to issue new regulations, then concern about mounting national debt invites Congress to regulate rather than increase government spending to accomplish its ends. For example, suppose Congress wanted to create a job-training program or otherwise to fulfill some promise to voters. Funding a job-training program would require approval of a new appropriation for the Department of Labor, which would appear in the federal budget—and increase the deficit—or Congress could simply pass a law requiring Fortune 500 companies to fund job training. That law, of course, would be carried out through new regulations issued by the Labor Department. The latter option would add little to federal spending but would, nonetheless, let Congress take credit. By regulating instead of spending, government can expand almost indefinitely without explicitly taxing anybody one extra penny.

Making Congress as accountable for regulation as well as legislation is a prerequisite for control of the off-budget regulatory state. Explicit approval of all proposed regulations would ensure that Congress bore direct responsibility for every dollar of new regulatory costs. To allay the concern that it would become bogged down in approving agency rules, Congress could vote on agency regula-

tions in bundles. In addition, congressional approval of new regulation could be given by voice vote, signifying unanimity, rather than by tabulated roll call vote.

Whatever improvements in disclosure might be made, congressional approval—rather

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

Appendix of Historical Tables

Part A. *Federal Register* Page History, 1936–2009

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

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

n/a = not available.

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

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

Part B. Number of Documents in *Federal Register*, 1976–2009

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

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

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

Part C. Unified Agenda Rules History, 1983–2009

Total Number of Rules Under Construction

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

Part D. Agenda Rules History by Department and Agency, 1999–2008 *(continued on next page)*

	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999
Department of Agriculture	374	290	311	292	279	323	314	312	327	345
Department of Commerce	325	303	302	296	273	300	270	342	390	366
Department of Defense	109	131	143	163	126	108	87	93	117	121
Department of Education	17	13	16	9	11	13	14	8	21	32
Department of Energy	54	47	63	61	50	66	53	61	67	64
Department of Health and Human Services	236	259	257	249	233	219	219	277	308	300
Department of Homeland Security	252	267	280	295	314	338				
Department of Housing and Urban Development	73	86	92	90	103	109	100	89	113	128
Department of the Interior	287	264	305	303	287	295	298	423	418	309
Department of Justice	138	140	139	124	125	122	249	229	202	201
Department of Labor	96	94	93	93	88	89	102	141	156	151
Department of State	27	28	28	24	21	15	41	32	21	27
Department of Transportation	200	199	215	227	301	365	543	511	536	539
Department of the Treasury	521	545	501	514	532	530	513	458	450	400
Department of Veterans Affairs	80	65	77	76	79	87	104	164	141	130
Advisory Council on Historic Preservation	0	0	0		1	1	1	0	1	1
Agency for International Development	7	10	8	10	8	8	7	6	6	5
Architectural and Transportation Barriers Compliance Board	5	5	4	3	4	4	5	5	7	8
Commission on Civil Rights	2	1	1	1	1	1	1	1	1	1
CPBSD*	3	5	6	6	5	0	0	0	0	0
Corporation for National and Community Service	7	9	11	11	8	9	16	9	6	4

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

Part D. Agenda Rules History by Department and Agency, 1998–2008 (continued)

	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999
Court Services/Offender Supervision, D.C.	2	2	1	1	1	3	7	5	0	0
Environmental Protection Agency	330	336	372	400	416	417	409	416	449	456
Equal Employment Opportunity Commission	5	7	8	6	3	4	4	3	6	9
Federal Mediation and Conciliation Service	1	1	1	2	2	3	4	3	2	1
Federal Emergency Management Agency	2	0	0	0	0	0	24	30	26	33
General Services Administration	0	26	34	33	27	37	40	35	40	51
National Aeronautics and Space Administration	54	11	15	20	27	34	13	17	11	7
National Archives and Records Administration	19	15	21	17	22	19	20	19	21	21
Institute of Museum and Library Services	10	1	1	4	3	6	5	5	4	1
National Endowment for the Arts	2	2	2	2	2	6	5	5	5	5
National Endowment for the Humanities	3	3	3	3	3	8	9	8	7	6
National Science Foundation	3	0	2	3	3	2	2	3	5	4
Office of Federal Housing Enterprise Oversight	3	9	8	6	4	4	7	9	5	5
Office of Government Ethics	10	9	8	7	7	9	10	11	11	12
Office of Management and Budget	6	1	2	2	3	4	4	5	5	9
Office of Personnel Management	2	75	93	94	103	90	72	91	110	112
Panama Canal Commission	80	0	0	0	0	0	0	0	0	4
Peace Corps	0	6	6	5	4	9	9	9	8	5
Pension Benefit Guaranty Corporation	7	12	13	9	6	4	6	11	10	12
Railroad Retirement Board	12	2	6	5	6	11	13	13	19	16
Selective Service System	3	1	1	1	1	1	1	1	1	1
Small Business Administration	1	28	32	34	29	33	40	37	41	35
Social Security Administration	26	63	53	68	59	64	63	85	82	67
Tennessee Valley Authority	64	0	0	0	0	2	2	3	3	1
U.S. Information Agency	0	0	0	0	0	0	0	0	0	0
Federal Acquisition Regulation	44	36	42	44	45	49	43	48	56	49
Commodity Futures Trading Commission	25	19	14	11	15	15	19	30	21	19
Consumer Product Safety Commission	31	19	24	18	18	20	20	21	20	17
Farm Credit Administration	19	12	19	20	20	21	14	17	17	19
Farm Credit System Insurance Corporation	1	0	1	1	1	1	1	1	3	3
Federal Communications Commission	143	145	139	143	146	134	141	145	137	128
Federal Energy Regulatory Commission	39	41	47	35	23	21	19	8	18	20
Federal Housing Finance Board	10	3	8	8	9	11	9	12	12	18
Federal Maritime Commission	3	4	3	5	7	11	8	7	9	9
Federal Reserve System	3	20	13	17	18	18	24	32	33	22
Federal Trade Commission	18	14	16	15	14	12	10	13	14	16
National Credit Union Administration	17	24	29	27	26	27	20	22	16	26
Federal Deposit Insurance Corporation	22	18	24	16	20	17	17	22	26	25
National Indian Gaming Commission	19	19	16	15	14	14	16	15	14	14
National Labor Relations Board	18	0	0	0	0	0	0	0	0	0
Nuclear Regulatory Commission	0	53	45	49	42	45	39	42	55	57
Office of Special Counsel	54	0	0	0	0	0	0	0	3	2
Overseas Private Investment Corporation	0	0	0	0	0	0	0	0	0	0
Presidio Trust	0	0	0	2	2	1	2	2	3	3
Securities and Exchange Commission	72	76	71	64	79	71	73	80	77	80
Surface Transportation Board	6	4	7	3	4	5	5	4	3	3
Udall Institute for Environmental Conflict Resolution	0	0	0	0	0	1	1	3	3	3
Postal Regulatory Commission	2	3	0	0	0	0	0	0	0	0
Privacy and Civil Liberties Oversight Board	0	1	0	0	0	0	0	0	0	0
TOTAL	4,004	3,882	4,052	4,062	4,083	4,266	4,187	4,509	4,699	4,538

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

Part E. Listing of 184 “Economically Significant” Rules, 2009

From the Regulatory Plan (62 Rules)

Department of Agriculture

1. USDA/FSIS, Proposed Rule Stage, Egg Products Inspection Regulations, 0583-AC58
2. USDA/FSIS, Proposed Rule Stage, New Poultry Slaughter Inspection, 0583-AD32
3. USDA/FSIS, Final Rule Stage, Performance Standards for the Production of Processed Meat and Poultry Products; Control of *Listeria Monocytogenes* in Ready-to-Eat Meat and Poultry Products, 0583-AC46
4. USDA/FNS, Proposed Rule Stage, Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation, and Energy Act of 2008, 0584-AD87
5. USDA/FNS, Proposed Rule Stage, Supplemental Nutrition Assistance Program: Farm Bill of 2008 Retailer Sanctions, 0584-AD88
6. USDA/FNS, Final Rule Stage, SNAP: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002, 0584-AD30

Department of Defense

7. DOD/OS, Final Rule Stage, Homeowners Assistance Program (HAP), 0790-AI58

Department of Education

8. ED/OESE, Proposed Rule Stage, Teacher Incentive Fund—Priorities, Requirements, Definitions, and Selection Criteria, 1810-AB08
9. ED/OESE, Final Rule Stage School Improvement Grants—Requirements under the American Recovery and Reinvestment Act of 2009; Title I of the Elementary and Secondary Education Act of 1965, 1810-AB06
10. ED/OII, Proposed Rule Stage, Investing in Innovation—Priorities, Requirements, Definitions, and Selection Criteria, 1855-AA06

Department of Energy

11. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Small Electric Motors, 1904-AB70
12. DOE/EE, Final Rule Stage, Energy Efficiency Standards for Commercial Clothes Washers, 1904-AB93

Department of Health and Human Services

13. HHS/FDA, Proposed Rule Stage, Electronic Submission of Data from Studies Evaluating Human Drugs and Biologics, 0910-AC52
14. HHS/FDA, Proposed Rule Stage, Produce Safety Regulation, 0910-AG35
15. HHS/FDA, Proposed Rule Stage, Modernization of the Current Food Good Manufacturing Practices Regulation, 0910-AG36
16. HHS/FDA, Final Rule Stage, Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents, 0910-AG33
17. HHS/CMS, Proposed Rule Stage, Electronic Health Record (EHR) Incentive Program (CMS-0033-P), 0938-AP78
18. HHS/CMS, Proposed Rule Stage, Revisions to Payment Policies under the Physician Fee Schedule and Part B for CY 2011 (CMS-1503-P), 0938-AP79
19. HHS/CMS, Proposed Rule Stage, Proposed Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and FY 2011 Rates and to the Long-Term Care Hospital PPS and RY 2011 Rates (CMS-1498-P), 0938-AP80
20. HHS/CMS, Proposed Rule Stage, Changes to the Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System for CY 2011 (CMS-1504-P), 0938-AP82

Department of Homeland Security

21. DHS/OS, Final Rule Stage, Collection of Alien Biometric Data upon Exit from the United States at Air and Sea Ports of Departure; United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT), 1601-AA34
22. DHS/USCG, Proposed Rule Stage, Standards for Living Organisms in Ships’ Ballast Water Discharged in U.S. Waters (USCG-2001-10486), 1625-AA32
23. DHS/USCBP, Final Rule Stage, Importer Security Filing and Additional Carrier Requirements, 1651-AA70
24. DHS/USCBP, Final Rule Stage, Changes to the Visa Waiver Program to Implement the Electronic System for Travel Authorization (ESTA) Program, 1651-AA72
25. DHS/TSA, Proposed Rule Stage, Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Security Program, 1652-AA53

26. DHS/TSA, Final Rule Stage, Air Cargo Screening, 1652-AA64
27. DHS/FEMA, Final Rule Stage, Special Community Disaster Loans Program, 1660-AA44

Department of Housing and Urban Development

28. HUD/CPD, Proposed Rule Stage, Housing Trust Fund Program—Allocation Formula and Program Requirements (FR-5246), 2506-AC23

Department of Justice

29. DOJ/DEA, Final Rule Stage, Electronic Prescriptions for Controlled Substances, 1117-AA61
30. DOJ/CRT, Final Rule Stage, Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities, 1190-AA44
31. DOJ/CRT, Final Rule Stage, Nondiscrimination on the Basis of Disability in State and Local Government Services, 1190-AA46

Department of Labor

32. DOL/EBSA, Proposed Rule Stage, Definition of “Fiduciary”—Investment Advice, 1210-AB32
33. DOL/ESA, Proposed Rule Stage, The Family and Medical Leave Act of 1993, as Amended, 1215-AB76
34. DOL/OSHA, Prerule Stage, Occupational Exposure to Crystalline Silica, 1218-AB70
35. DOL/OSHA, Proposed Rule Stage, Hazard Communication, 1218-AC20
36. DOL/OSHA, Final Rule Stage, Cranes and Derricks in Construction, 1218-AC01

Department of Transportation

37. DOT/FAA, Proposed Rule Stage, Flight and Duty Time Limitations and Rest Requirements, 2120-AJ58
38. DOT/FAA, Final Rule Stage, Automatic Dependent Surveillance—Broadcast (ADS-B) Equipage Mandate to Support Air Traffic Control Service, 2120-AI92
39. DOT/NHTSA, Proposed Rule Stage, Ejection Mitigation, 2127-AK23
40. DOT/NHTSA, Final Rule Stage, Passenger Car and Light Truck Corporate Average Fuel Economy Standards MYs 2012–2016, 2127-AK50
41. DOT/FRA, Final Rule Stage, Positive Train Control, 2130-AC03
42. DOT/PHMSA, Final Rule Stage, Pipeline Safety: Distribution Integrity Management, 2137-AE15

Department of the Treasury

43. TREAS/DO, Final Rule Stage, TARP Standards for Compensation and Corporate Governance, 1505-AC09
44. TREAS/OCC, Final Rule Stage, SAFE Mortgage Licensing Act, 1557-AD23

Environmental Protection Agency

45. EPA/WATER, Proposed Rule Stage, Criteria and Standards for Cooling Water Intake Structures, 2040-AE95
46. EPA/WATER, Final Rule Stage, Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category, 2040-AE91
47. EPA/SWER, Proposed Rule Stage, Standards for the Management of Coal Combustion Residuals Generated by Commercial Electric Power Producers, 2050-AE81
48. EPA/SWER, Final Rule Stage, Revisions to the Spill Prevention, Control, and Countermeasure (SPCC) Rule, 2050-AG16
49. EPA/AR, Proposed Rule Stage, Review of the National Ambient Air Quality Standards for Particulate Matter, 2060-AO47
50. EPA/AR, Proposed Rule Stage, Review of the Primary National Ambient Air Quality Standard for Sulfur Dioxide, 2060-AO48
51. EPA/AR, Proposed Rule Stage, Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur, 2060-AO72
52. EPA/AR, Proposed Rule Stage, Combined Rulemaking for Industrial, Commercial, and Institutional Boilers and Process Heaters at Major Sources of HAP and Industrial, Commercial, and Institutional Boilers at Area Sources, 2060-AM44
53. EPA/AR, Proposed Rule Stage, Clean Air Transport Rule, 2060-AP50
54. EPA/AR, Proposed Rule Stage, Prevention of Significant Deterioration/Title V Greenhouse Gas Tailoring Rule, 2060-AP86
55. EPA/AR, Proposed Rule Stage, Reconsideration of the 2008 Ozone National Ambient Air Quality Standards, 2060-AP98
56. EPA/AR, Final Rule Stage, Review of the Primary National Ambient Air Quality Standard for Nitrogen Dioxide, 2060-AO19
57. EPA/AR, Final Rule Stage, Renewable Fuels Standard Program, 2060-AO81
58. EPA/AR, Final Rule Stage, EPA/NHTSA Joint Rulemaking to Establish Light-Duty Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, 2060-AP58

59. EPA/OPPTS, Prerule Stage, Lead; Renovation, Repair, and Painting Program for Public and Commercial Buildings, 2070-AJ56
60. EPA/OPPTS, Proposed Rule Stage, Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program, 2070-AJ57
61. EPA/OPPTS, Final Rule Stage, Lead; Amendment to the Opt-Out and Record-Keeping Provisions in the Renovation, Repair, and Painting Program, 2070-AJ55

Social Security Administration

62. SSA, Final Rule Stage, Setting the Time and Place for a Hearing before an Administrative Law Judge (3481F), 0960-AG61 From the Unified Agenda (138 Additional Rules)

From the Unified Agenda (122 Additional Rules)

Department of Agriculture

63. USDA/FSA, Proposed Rule Stage, Sugar Program, 0560-AH86
64. USDA/FSA, Final Rule Stage, Emergency Conservation Program, 0560-AH43
65. USDA/FSA, Final Rule Stage, Conservation Reserve Program, 0560-AH80
66. USDA/FSA, Final Rule Stage, Supplemental Revenue Assistance Payments Program (SURE), 0560-AH90
67. USDA/FSA, Final Rule Stage, Noninsured Disaster Assistance Program (NAP), 0560-AI06
68. USDA/FSA, Completed Actions, Emergency Loss Assistance Program (ELAP) and Livestock Forage Disaster Program (LFP), 0560-AH93
69. USDA/FSA, Completed Actions, Livestock Forage Disaster Program (LFP), 0560-AH94
70. USDA/NRCS, Final Rule Stage, Conservation Stewardship Program, 0578-AA43
71. USDA/NRCS, Final Rule Stage, Environmental Quality Incentives Program, 0578-AA45
72. USDA/FSIS, Final Rule Stage, Nutrition Labeling of Single-Ingredient Products and Ground or Chopped Meat and Poultry Products, 0583-AC60
73. USDA/FNS, Final Rule Stage, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages, 0584-AD77

74. USDA/FS, Final Rule Stage, Special Areas; State-Specific Inventoried Roadless Area Management: Colorado, 0596-AC74

Department of Commerce

75. DOC/PTO, Long-Term Actions, Fiscal Year 2009 Revision of Request for Continued Examination, 18-Month Publication, and Other Miscellaneous Cost-Recovery Patent Fees, 0651-AC29
76. DOC/BIS, Long-Term Actions, Imposition of License Requirement for Exports and Reexports of Missile Technology (MT)—Controlled Items to Canada, 0694-AC48

Department of Defense

77. DOD/DODOASHA, Final Rule Stage, TRICARE; Relationship between the TRICARE Program and Employer-Sponsored Group Health Coverage, 0720-AB17
78. DOD/DODOASHA, Completed Actions, TRICARE; Outpatient Hospital Prospective Payment System (OPPS), 0720-AB19

Department of Education

79. ED/OESE, Completed Actions, State Fiscal Stabilization Fund Program—Requirements, Definitions, and Approval Criteria, 1810-AB04
80. ED/OESE, Completed Actions, Race to the Top Fund—Priorities, Requirements, Definitions, and Selection Criteria, 1810-AB07
81. ED/OPE, Proposed Rule Stage, Federal TRIO Programs, Gaining Early Awareness and Readiness for Undergraduate Program, and High School Equivalency and College Assistance Migrant Programs, 1840-AD01
82. ED/OPE, Final Rule Stage, Student Assistance General Provisions, TEACH Grant, Federal Pell Grant, and Academic Competitiveness Grant, and National Science and Mathematics Access to Retain Talent Grant Programs, 1840-AC96
83. ED/OPE, Completed Actions, General and Non-Loan Programmatic Issues, 1840-AC99

Department of Energy

84. DOE/ENDEP, Final Rule Stage, Advanced Technology Vehicles Manufacturing Incentive Program, 1901-AB25
85. DOE/ENDEP, Final Rule Stage, Loan Guarantees for Projects That Employ Innovative Technologies, 1901-AB27

86. DOE/EE, Proposed Rule Stage, Energy Efficiency Standards for Pool Heaters and Direct Heating Equipment and Water Heaters, 1904-AA90
87. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Residential Central Air Conditioners and Heat Pumps, 1904-AB47
88. DOE/EE, Completed Actions, Energy Efficiency Standards for General Service Fluorescent Lamps and Incandescent Lamps, 1904-AA92
89. DOE/EE, Completed Actions, Production Incentives for Cellulosic Biofuels, 1904-AB73
102. HHS/CDC, Completed Actions, Medical Examination of Aliens: Removal of HIV Infection as a Communicable Disease of Public Health Significance, 0920-AA26
103. HHS/CMS, Proposed Rule Stage, Revisions to the Medicare Advantage and Medicare Prescription Drug Benefit Programs for Contract Year 2011 (CMS-4085-F), 0938-AP77
104. HHS/CMS, Proposed Rule Stage, Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update for FY 2011 (CMS-1338-P), 0938-AP87

Department of Health and Human Services

90. HHS/FDA, Proposed Rule Stage, Pediatric Dosing for Cough, Cold, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph, 0910-AG12
91. HHS/FDA, Final Rule Stage, Use of Ozone-Depleting Substances; Removal of Essential Use Designations [Flunisolide, Triamcinolone, Metaproterenol, Pirbuterol, Albuterol, and Ipratropium in Combination, Cromolyn, and Nedocromil], 0910-AF93
92. HHS/FDA, Long-Term Actions, Current Good Manufacturing Practice in Manufacturing, Packing, Labeling, or Holding Operations for Dietary Supplements, 0910-AB88
93. HHS/FDA, Long-Term Actions, Unique Device Identification, 0910-AG31
94. HHS/FDA, Completed Actions, Substances Prohibited from Use in Animal Food or Feed to Prevent the Transmission of Bovine Spongiform Encephalopathy, 0910-AF46
95. HHS/CDC, Proposed Rule Stage, Possession, Use, and Transfer of Select Agents and Toxins—Pandemic Influenza, 0920-AA30
96. HHS/CDC, Final Rule Stage, Control of Communicable Diseases Foreign Quarantine, 0920-AA12
97. HHS/CDC, Final Rule Stage, Possession, Use, and Transfer of Select Agents and Toxins—Biennial Review, 0920-AA25
98. HHS/CDC, Final Rule Stage, Control of Communicable Diseases: Interstate Quarantine, Passenger Information, 0920-AA27
99. HHS/CDC, Long-Term Actions, Possession, Use, and Transfer of Select Agents and Toxins (Sars-CoV), 0920-AA31
100. HHS/CDC, Long-Term Actions, Possession, Use, and Transfer of Select Agents and Toxins, 0920-AA32
101. HHS/CDC, Completed Actions, Possession, Use, and Transfer of Select Agents and Toxins, 0920-AA24
105. HHS/CMS, Proposed Rule Stage, Home Health Prospective Payment System Refinements and Rate Update for CY 2011 (CMS-1510-P), 0938-AP88
106. HHS/CMS, Proposed Rule Stage, Prospective Payment System for Inpatient Rehabilitation Facilities for FY 2011 (CMS-1344-P), 0938-AP89
107. HHS/CMS, Final Rule Stage, Revisions to Payment Policies under the Physician Fee Schedule for CY 2010 (CMS-1413-FC), 0938-AP40
108. HHS/CMS, Final Rule Stage, Changes to the Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System for CY 2010 (CMS-1414-FC), 0938-AP41
109. HHS/CMS, Final Rule Stage, Children's Health Insurance Program (CHIP); Allotment Methodology and States' Fiscal Year 2009 CHIP Allotments (CMS-2291-F), 0938-AP53
110. HHS/CMS, Long-Term Actions, Electronic Claims Attachments Standards (CMS-0050-IFC), 0938-AK62
111. HHS/CMS, Long-Term Actions, Targeted Case Management (CMS-2237-F), 0938-AO50
112. HHS/CMS, Long-Term Actions, Home and Community-Based Services (HCBS) State Plan Option (CMS-2249-F), 0938-AO53
113. HHS/CMS, Long-Term Actions, ESRD Bundled Payment System (CMS-1418-F), 0938-AP57
114. HHS/CMS, Long-Term Actions, State Flexibility for Medicaid Benefit Packages (CMS-2232-F4), 0938-AP72
115. HHS/CMS, Completed Actions, Rehabilitation Services: State Plan Option (CMS-2261-P), 0938-AO81
116. HHS/CMS, Completed Actions, Medicaid Graduate Medical Education (CMS-2279-F), 0938-AO95
117. HHS/CMS, Completed Actions, Medicare Supplemental Policies (CMS-4084-P), 0938-AP10
118. HHS/CMS, Completed Actions, Changes to the Hospital Inpatient and Long-Term Care Prospective Payment System for FY 2010 (CMS-1406-F), 0938-AP39
119. HHS/CMS, Completed Actions, Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for CY 2010 (CMS-8037-N), 0938-AP42

120. HHS/CMS, Completed Actions, Part A Premiums for CY 2010 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement (CMS-8038-N), 0938-AP43
121. HHS/CMS, Completed Actions, Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update for FY 2010 (CMS-1410-F), 0938-AP46
122. HHS/CMS, Completed Actions, Part B Monthly Actuarial Rates, Monthly Premium Rates, and Annual Deductible Beginning January 1, 2010 (CMS-8039-N), 0938-AP48
123. HHS/CMS, Completed Actions, Inpatient Psychiatric Facility Prospective Payment System—Update for Rate Year Beginning July 1, 2009 (RY 2010) (CMS-1495-NC), 0938-AP50
124. HHS/CMS, Completed Actions, Home Health Prospective Payment System and Rate Update for CY 2010 (CMS-1560-F), 0938-AP55
125. HHS/CMS, Completed Actions, Prospective Payment System for Inpatient Rehabilitation Facilities for FY 2010 (CMS-1538-F), 0938-AP56

Department of Homeland Security

126. DHS/USCIS, Proposed Rule Stage, Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule, 1615-AB80
127. DHS/USCG, Proposed Rule Stage, Maritime Security (MTSA II), 1625-AB38
128. DHS/USCBP, Long-Term Actions, Air Transit Program, 1651-AA50
129. DHS/USCBP, Long-Term Actions, Coastwise Transportation of Passengers, 1651-AA76
130. DHS/TSA, Completed Actions, Secure Flight Program, 1652-AA45
131. DHS/TSA, Completed Actions, Airport Access Controls, 1652-AA63

Department of Housing and Urban Development

132. HUD/OH, Proposed Rule Stage, HOPE for Homeowners Program; Statutory Transfer of Program Authority to HUD and Conforming Amendments to Adopt Recently Enacted Statutory Changes (FR-5340), 2502-AI76

Department of the Interior

133. DOI/MMS, Completed Actions, Renewable Energy and Alternate Use, 1010-AD30

134. DOI/FWS, Completed Actions, Migratory Bird Hunting; 2009 to 2010 Migratory Game Bird Hunting Regulations, 1018-AW31

Department of Justice

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

Department of Labor

136. DOL/EBSA, Final Rule Stage, Regulations Implementing the Health Care Access, Portability, and Renewability Provisions of the Health Insurance Portability and Accountability Act of 1996, 1210-AA54
137. DOL/EBSA, Final Rule Stage, Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans, 1210-AB07
138. DOL/EBSA, Final Rule Stage, Amendment of Standards Applicable to General Statutory Exemption for Services, 1210-AB08
139. DOL/EBSA, Final Rule Stage, Prohibited Transaction Exemption for Provision of Investment Advice to Participants in Individual Account Plans, 1210-AB13
140. DOL/OSHA, Prerule Stage, Occupational Exposure to Beryllium, 1218-AB76
141. DOL/OSHA, Prerule Stage, Airborne Infectious Diseases, 1218-AC46
142. DOL/OSHA, Final Rule Stage, Electric Power Transmission and Distribution; Electrical Protective Equipment, 1218-AB67
143. DOL/OSHA, Long-Term Actions, Hearing Conservation Program for Construction Workers, 1218-AB89

Department of State

144. STATE, Final Rule Stage, Schedule of Fees for Consular Services, Department of State, and Overseas Embassies and Consulates, 1400-AC41

Department of Transportation

145. DOT/FAA, Proposed Rule Stage, Flight Crewmember Duty Limitations and Rest Requirements, 2120-AI93
146. DOT/FAA, Completed Actions, Pilot Age Limit, 2120-AJ01
147. DOT/FHWA, Final Rule Stage, Real-Time System Management Information Program, 2125-AF19

- 148. DOT/FMCSA, Final Rule Stage, Electronic On-Board Recorders for Hours-of-Service Compliance, 2126-AA89
- 149. DOT/FMCSA, Final Rule Stage, Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operations, 2126-AB06
- 150. DOT/NHTSA, Completed Actions, Roof Crush Resistance, 2127-AG51
- 151. DOT/NHTSA, Completed Actions, Requirements for Temporary Vehicle Trade-In Program, 2127-AK53
- 152. DOT/FRA, Prerule Stage, Risk Reduction Program, 2130-AC11
- 153. DOT/FRA, Proposed Rule Stage, Hours of Service—Passenger Train Employees, 2130-AC15

Department of the Treasury

- 154. TREAS/OTS, Final Rule Stage, Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Standardized Risk-Based Capital Rules, 1550-AC19
- 155. TREAS/OTS, Final Rule Stage, SAFE Mortgage Licens- ing Act of 2008 Regulations, 1550-AC33
- 156. TREAS/OCC, Final Rule Stage, Basel II Standardized Approach, 1557-AD07

Department of Veterans Affairs

- 157. VA, Proposed Rule Stage, Payments for Outpatient Care and Health Care Professional Services at Non-Depart- mental Facilities, 2900-AN37
- 158. VA, Completed Actions, Enrollment—Provision of Hos- pital and Outpatient Care to Veterans—Subpriorities of Priority Categories 7 and 8 and Enrollment Level Deci- sion, 2900-AL51
- 159. VA, Completed Actions, Expansion of Enrollment in the VA Health Care System, 2900-AN23

Environmental Protection Agency

- 160. EPA/WATER, Long-Term Actions, National Primary Drinking Water Regulations: Radon, 2040-AA94
- 161. EPA/AR, Proposed Rule Stage, Review of the National Ambient Air Quality Standards for Carbon Monoxide, 2060-AI43
- 162. EPA/AR, Proposed Rule Stage, Implementing Periodic Monitoring in Federal and State Operating Permit Pro- grams, 2060-AN00
- 163. EPA/AR, Final Rule Stage, NESHAP: Portland Cement Notice of Reconsideration, 2060-AO15
- 164. EPA/AR, Final Rule Stage, Review of New Source Per- formance Standards—Portland Cement, 2060-AO42

- 165. EPA/AR, Final Rule Stage, National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines, 2060-AP36
- 166. EPA/AR, Final Rule Stage, Regulation to Establish Man- datory Reporting of GHGs from Industrial Landfills, Wastewater, Underground Coal Mines, and Magnesium Production, 2060-AQ03
- 167. EPA/AR, Long-Term Actions, Review of the National Ambient Air Quality Standards for Ozone, 2060-AP38
- 168. EPA/AR, Long-Term Actions, National Emission Stan- dards for Hazardous Air Pollutants for Coal- and Oil- Fired Electric Utility Steam Generating Units, 2060-AP52
- 169. EPA/AR, Completed Actions, Greenhouse Gas Mandat- ory Reporting Rule, 2060-AO79

Consumer Product Safety Commission

- 170. CPSC, Long-Term Actions, Flammability Standard for Upholstered Furniture, 3041-AB35
- 171. CPSC, Long-Term Actions, Proposed Standard to Ad- dress Open-Flame Ignition of Bedclothes, 3041-AC26

Federal Communications Commission

- 172. FCC, Long-Term Actions, Processing Applications in the Direct Broadcast Satellite Service; Feasibility of Reduced Orbital Spacing for Provision of Direct Broad- cast Satellite Service in the United States (IB Docket No. 06-160), 3060-AI86
- 173. FCC, Long-Term Actions, Transfer of the 3650- through 3700-MHz Band from Federal Government Use (WT Docket No. 05-96; ET Docket No. 02-380), 3060-AH75
- 174. FCC, Long-Term Actions, Broadband over Power Line Systems, 3060-AI24
- 175. FCC, Long-Term Actions, Service Rules for the 746– 764 and 776–794 MHz Bands, and Revisions to the Commission’s Rules, 3060-AH32
- 176. FCC, Long-Term Actions, 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, 3060-AH81
- 177. FCC, Long-Term Actions, Amendment of the Rules Regarding Maritime Automatic Identification Systems (WT Docket No. 04-344), 3060-AJ16
- 178. FCC, Long-Term Actions, IP-Enabled Services, 3060-AI48

Federal Deposit Insurance Corporation

- 179. FDIC, Long-Term Actions, Risk-Based Capital Guide- lines; Capital Adequacy Guidelines: Standardized Frame- work, 3064-AD29

National Credit Union Administration

180. NCUA, Final Rule Stage, Unfair or Deceptive Acts or Practices; Clarifications, 3133-AD62

Nuclear Regulatory Commission

181. NRC, Proposed Rule Stage, Revision of Fee Schedules; Fee Recovery for FY 2010 [NRC-2009-0333], 3150-AI70

182. NRC, Completed Actions, Revision of Fee Schedules; Fee Recovery for FY 2009 [NRC-2008-0620], 3150-AI52

Small Business Administration

183. SBA, Proposed Rule Stage, Small Business Size Standards for Loan, Investment, and Surety Programs, 3245-AG05

Social Security Administration

184. SSA, Long-Term Actions, Amendments to the Administrative Law Judge, Appeals Council, and Decision Review Board Appeals Levels (3401F), 0960-AG52

Source: Compiled from "The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions," *Federal Register*, Vol. 74, No. 233, December 7, 2009; and from online edition at <http://www.gpoaccess.gov>.

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

Part F: Rules Affecting Small Business, 1996–2008

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Department of Agriculture	56	58	63	49	47	56	39	64	52	54	67	73	93
Department of Commerce	46	29	52	88	98	89	77	74	79	108	111	112	107
Department of Defense	22	15	21	15	7	8	6	13	12	13	14	13	7
Department of Education	1	1	0	0	0	0	1	0	0	0	1	0	0
Department of Energy	2	2	0	0	1	1	0	1	0	0	0	1	1
Department of Health and Human Services	89	100	88	75	107	108	92	96	106	112	109	96	93
Department of Homeland Security	0	0	0	0	0	0	0	33	38	43	43	44	42
Department of Housing and Urban Development	9	7	1	1	0	3	6	11	6	4	4	5	1
Department of the Interior	17	28	29	33	18	20	17	26	20	21	29	19	18
Department of Justice	27	26	10	14	14	15	13	8	8	8	7	5	2
Department of Labor	51	39	41	38	40	26	22	23	19	19	26	26	29
Department of State	2	1	0	0	2	3	6	2	1	1	0	1	3
Department of Transportation	31	44	208	246	266	244	216	151	103	63	60	43	41
Department of the Treasury	52	50	60	15	31	27	26	27	38	41	37	45	47
Department of Veterans Affairs	3	7	6	6	3	1	1	0	0	0	0	0	2
Agency for International Development	0	0	0	0	0	1	2	1	0	0	1	1	0
Architectural and Transportation Barriers Compliance Board	0	0	3	2	2	1	1	0	0	0	0	0	0
Corporation for National and Community Service	0	0	0	0	0	0	0	0	0	1	1	0	0
Environmental Protection Agency	152	163	178	179	205	185	167	135	122	110	95	85	83
Federal Emergency Management Agency	1	0	0	0	1	1	1	0	0	0	0	0	0
General Services Administration	6	3	2	2	1	1	4	5	1	3	3	3	7
National Aeronautics and Space Administration	1	0	1	0	0	0	0	0	0	0	0	0	0
National Archives and Records Administration	1	1	1	0	0	0	0	1	1	1	0	0	0
Equal Employment Opportunity Commission	0	1	2	0	0	2	0	0	0	3	3	3	2
National Endowment for the Arts	0	0	0	0	0	0	2	2	0	0	0	0	0
National Endowment for the Humanities	0	1	0	0	0	0	0	0	0	0	0	0	0
National Science Foundation	0	0	0	0	0	0	0	0	0	0	0	0	0
Office of Management & Budget	2	1	1	2	1	0	0	0	0	0	0	0	0
Railroad Retirement Board	1	1	0	0	0	0	0	0	0	0	0	0	0
Small Business Administration	17	13	20	28	24	21	21	24	18	19	21	15	13
Social Security Administration	1	0	0	2	0	0	1	1	1	1	1	1	1
U.S. Information Agency	0	0	0	0	0	0	0	0	0	0	0	0	0
Federal Acquisition Regulation	20	15	11	16	13	9	6	5	5	7	5	5	6
Commodity Futures Trading Commission	0	0	1	0	0	0	0	2	1	1	0	1	1
Consumer Product Safety Commission	1	0	0	0	0	0	0	0	0	0	1	0	0
Federal Communications Commission	75	70	82	91	105	117	109	104	113	113	108	109	110
Federal Energy Regulatory Commission	0	0	0	1	0	0	0	0	0	0	0	1	0

Part G. Federal Rules Affecting State and Local Governments, 2003–2009

	2009			2008			2007			2006			2005			2004			2003		
	State	Local	Total	State	Local	Total	State	Local	Total	State	Local	Total									
Department of Agriculture	75	49	72	41	63	43	58	69	59	71	59	53	42								
Department of Commerce	20	11	22	11	22	9	28	34	8	23	9	18	9								
Department of Defense	1	0	1	0	0	0	1			1	1	2	2								
Department of Education	0	0	0	0	0	0	1			0	0	0	0								
Department of Energy	23	20	27	25	19	18	9	16	15	9	8	9	9								
Department of Health and Human Services	71	38	69	41	83	45	70	34	19	35	18	40	20								
Department of Homeland Security	39	30	33	25	37	28	39	29	29	37	27	34	28								
Department of Housing and Urban Development	2	3	2	4	1	4	3	6	10	9	13	14	23								
Department of the Interior	30	7	41	11	37	9	37	11	44	37	16	42	20								
Department of Justice	16	11	15	10	17	11	14	15	9	16	10	15	11								
Department of Labor	27	15	17	9	20	7	13	16	10	18	12	23	14								
Department of State	1	0	2	0	3	0	3	4	1	1	1	2	1								
Department of Transportation	16	6	18	6	19	7	27	11	4	21	13	26	16								
Department of the Treasury	29	24	24	20	28	25	16	13	12	17	13	22	15								
Department of Veterans Affairs	0	0	1	0	1	0	1	2	1	3	2	5	2								
Environmental Protection Agency	101	70	104	65	119	80	132	143	98	140	92	157	103								
Architectural and Transportation Barriers Compliance Board	3	2	2	2	2	2	1	1	1	2	2	2	2								
CPBSD*	1	1	1	1	2	2	2	2	2	2	2										
Advisory Council on Historic Preservation										1	0	1	0								
Corporation for National and Community Service	5	5	5	5	6	6	7	9	9	5	5	4	4								
Federal Emergency Management Agency										0	0	0	0								
Equal Employment Opportunity Commission	5	5	2	3	3	4	3	3	4	1	1	2	2								
General Services Administration	9	7	10	7	8	5	8	8	5	8	6	11	7								
National Aeronautics and Space Agency	0	0			0	0				0	0	0	0								
National Archives and Records Administration	0	0	1	1	3	3	4	4	4	4	4	4	4								
Institute of Museum and Library Services	0	0	1	1	1	1	1	1	1	1	1	2	2								
National Endowment for the Arts	0	0	1	1	1	1	1	1	1	1	1	1	1								
National Endowment for the Humanities	0	0			0	0				0	0	1	1								
Office of Management and Budget	0	0			0	0	1	1	1	1	1	0	0								
Social Security Administration	2	0	3		4	0	2	3	24	5	1	8	3								
Federal Communications Commission	30	20	32	20	31	20	32	37	24	33	20	21	16								
Federal Energy Regulatory Commission	0	0			0	0				1	0	2	1								
Federal Reserve System	0	0			0	0	1	1		0	0	0	0								
Federal Trade Commission	3	1	1	0	1	0	2	1	1	1	0	1	0								
National Credit Union Administration	0	0	1	0	0	0	3	2		0	0	1	0								
National Indian Gaming Commission	0	0			0	0				0	0	0	0								
Nuclear Regulatory Commission	4	2	3	1	4	1	3	3	1	3	0	4	1								
Securities and Exchange Commission	1	1	2	2	4	3	2	1	1	0	0	0	0								
TOTALS	514	328	513	312	539	334	543	523	346	507	338	527	359								

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

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

Notes

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In “The Impact of Regulatory Costs” (see note 10), Crain and Hopkins tabulated a 1.2-percent annualized compound growth rate during those same years in “total regulatory costs per household” for major categories of regulation. In the 2005 Crain study (see note 10), regulatory costs per household (\$10,172 in 2004) had grown faster, at an annualized rate of 2.7 percent between 2000 and 2004. For present purposes, a lower growth trend of half that amount, 1.3 percent, is applied to the newer Crain figure of \$1.113 trillion to arrive at a more conservative 2009 estimate of \$1.157 trillion, an estimate that also conforms to the earlier studies’ lesser growth rates. (If the 2.7-percent growth rate had been used instead, the estimate for total 2009 regulatory costs would have been \$1.201 trillion.) The SBA study will likely be updated in the near future. Meanwhile, anecdotal evidence—not including the aftermath of recent major financial and other interventions—suggests higher prevailing regulatory costs (see James Pethokoukis, “The Return of Big Government,” *U.S. News & World Report*, April 11, 2008, <http://www.usnews.com/money/business-economy/articles/2008/04/11/the-return-of-big-government.html>).

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

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