

TEN THOUSAND COMMANDMENTS

A POLICYMAKER'S SNAPSHOT OF THE FEDERAL REGULATORY STATE (1998 Edition)

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INTRODUCTION: WHY REGULATORY DISCLOSURE IS ESSENTIAL

When the federal government decides to spend money on a program, it has three choices. The two primary choices appear in the *Federal Budget*: Uncle Sam can either raise taxes to pay for programs or borrow money which must be repaid with interest by future taxpayers. However controversial government's programs, Americans know precisely how much is paid in individual and corporate income taxes, and in payroll and excise taxes.

But the third option the government employs to accomplish objectives is one whose costs are not officially documented: Uncle Sam can issue regulations to require the private sector and lower-level governments to carry out costly directives. In fact regulation embodies a significant tool by which government directs private sector resources. Thus, such regulation can be thought of as off-budget taxation. Yet since regulatory costs are unbudgeted, and since detailed, formal accountings of regulatory costs are limited, there is little means for policymakers to grasp where regulatory costs stand in relation to ordinary government spending. Figure 1 presents summary data for some of the topics described in this report, showing trends over the past 10 years.

Americans spend hundreds of billions of dollars every year to comply with federal regulations. Regulated businesses pass much of their compliance costs on in the prices of goods and services, which consumers pay. In that sense, regulations operate as hidden taxes on business and consumers. It is certainly true that some regulations may produce overall benefits that exceed overall costs. On the other hand, requiring one portion of the public to bear the costs of benefits enjoyed by another may be unfair. Even the common claim of overall net benefits from the regulatory state cannot be made with assurance. Since there is no mandatory regulatory accounting, precise costs and benefits are known for relatively few regulations. Thus it is difficult to know whether society wins or loses when Uncle Sam regulates. This is why concise regulatory data should be disclosed and published officially, and why Congress – our elected representatives — should assume responsibility for agency regulatory activity.

*Regulations may
be thought of as
off-budget taxes.*

Regulation Costs Over \$1/2 Tril- lion Per Year.

This report is broken down into four components:

- (1) An overview of existing data on the costs and scope of regulation, and its impact on the family budget.
- (2) Analysis of trends in the numbers of regulations based on the data provided in the *Federal Register* and the *Unified Agenda of Federal Regulations*.
- (3) Proposed short- and long-term approaches to improving disclosure and maximizing congressional accountability for regulations, with an eye toward ending “Regulation Without Representation.”
- (4) An Appendix presenting historical regulatory data and further detail.

THE REGULATORY STATE AND ITS COST TO AMERICANS

The Total Regulatory Cost Burden

The total direct costs of complying with federal regulations reached \$688 billion in 1997, according to professor Thomas D. Hopkins of the Rochester Institute of Technology.¹ As Figure 2 shows, these costs have increased mildly but steadily throughout the 1990s. Hopkins notes that his figures likely somewhat understate the total regulatory burden, since indirect costs such as the costs of lost productivity are not included.² Hopkins cautions that his calculations do not include benefits that might offset costs in some cases, so he reserves judgment about the merits of particular regulations.³

Figure 1
Regulatory Data Overview

	Current Year	1 Year Increase	5 Year Increase	10 Year Increase
Total Regulatory Costs	\$688 billion	1.6%	7.2%	25.3%
Environmental/Social Regulatory Costs	\$240 billion	3.4%	20%	81.8%
Economic Regulatory Costs	\$223 billion	(.4%)	(3.0%)	(8.6%)
Agency Enforcement Budgets	\$14.8 billion*	0%	4.7%	26.1%
Net Federal Register Pages	64,519^	3.1%	13.3%	37.3%
Federal Register Pages Devoted to Final Rules	21,622^	19.8%	35.8%	58.7%
Total Federal Register Rule Documents	8,145^	1.1%	11.2%	1.8%
Federal Register Final Rule Documents	4,937^	4.7%	18.8%	7.8%
Total Number of Rules in Unified Agenda	4,407	(6.83%)	(11%)	9.7%
“Economically Significant” Rules in Agenda	125	(10.1%)	n/a	n/a
Rules Impacting Small Business	733	(2.79%)	10.1%	n/a
Total Rules Reviewed by OMB	498^	(24.9%)	(78.2%)	(78.2%)
EPA Spotlight:				
Total Number of EPA Rules in Unified Agenda	430	(.5%)	19%	
“Economically Significant” EPA Rules in Agenda	38	(17%)	n/a	
EPA Rules Impacting Small Business	163	7.2%	91.8%	

*Fiscal year 1998 data.

^1996 data.

n/a: not available

Figure 2
Regulatory Costs, 1977-2000
(Billions of 1995 \$)

YEAR	SOCIAL		ECONOMIC		PAPERWORK	TOTAL Regulatory Costs
	Environmental	Other Social	Efficiency Loss	Transfer		
1977	47	32	149	288	138	654
1978	52	35	142	273	139	641
1979	56	37	134	256	139	622
1980	60	39	125	239	143	606
1981	63	37	118	225	147	590
1982	65	35	113	213	144	570
1983	71	32	108	204	161	576
1984	76	31	103	194	163	567
1985	81	31	99	186	165	562
1986	87	31	95	177	165	555
1987	93	32	90	168	174	557
1988	98	34	86	158	173	549
1989	105	36	85	156	180	562
1990	112	39	83	153	206	593
1991	129	40	82	151	219	621
1992	137	47	82	150	226	642
1993	149	51	81	149	212	642
1994	152	53	80	148	215	648
1995	168	55	80	147	218	668
1996	174	58	79	145	221	677
1997	180	60	79	144	225	688
1998	188	62	78	143	229	700
1999	193	65	77	142	232	709
2000	199	68	77	141	236	721

Source: U.S. Small Business Administration, Office of the Chief Counsel for Advocacy, The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress, Washington, D.C., October 1995, Table 3, p. 28.

Hopkins breaks regulatory costs down into three components: Social regulations (such as environmental and health and safety rules), Economic regulations (Such as price and entry controls on business), and Paperwork regulations (primarily tax compliance). Each of the three categories comprises roughly one-third of the \$688 billion in regulatory compliance costs. Figure 2 shows Hopkins' breakdown of regulatory costs from 1977 to 2000.⁴ Although total regulatory costs remain at about nine percent of U.S. Gross Domestic Product (GDP), notable in Hopkins' presentation is the dramatic increase in environmental, social and paperwork costs, while the extent of economic regulation has drastically decreased. The economic regulatory cost decline reflects deregulation in various prominent economic sectors including transportation (trucking and airlines), banking, natural gas and telecommunications over the past two decades.

Off-budget regulatory costs now dwarf the deficit.

Figure 2 illustrates how economic deregulation helped overall regulatory costs decline through much of the 1980s, bottoming out at \$549 billion in 1988. Upturns, especially in paperwork costs, and environmental and social regulations such as the Clean Air Act Amendments and the Americans with Disabilities Act, helped reverse the 1980s decline in regulatory costs. For example, over the past ten years, the “Social” regulation costs have increased 82 percent, while the “Economic” regulation costs have decreased nine percent.

The trend has been a long-term one that has changed significantly the very mix of the components of the regulatory state. As can be ascertained from Hopkin’s chart data, between 1977 and 1997, the “environmental and social” component of regulatory costs grew from 12 percent of the total regulatory burden to 35 percent of the total. On the other hand, the economic regulation component shrank from 67 percent to 32 percent over the 20-year time frame.

A recent assessment of overall regulatory costs that Congress required the Office of Management to perform is based largely on Hopkins’ work, but makes a few different assumptions that have the effect of lessening total regulatory costs.⁵ The OMB report concludes that paperwork costs and the economic transfer costs portions of Hopkins’ data ought not to be included in a total assessment of regulatory costs, however such assumptions are directly disputed by Hopkins himself.⁶ In any event, OMB concludes that regulatory costs “are approximately \$200 billion in annual costs and \$300 billion in annual benefits for environmental and social regulation and about \$90 billion in annual costs and nominal benefits for economic regulation.”⁷ That puts the regulatory state at least on roughly a break-even basis, as far as the government is concerned.

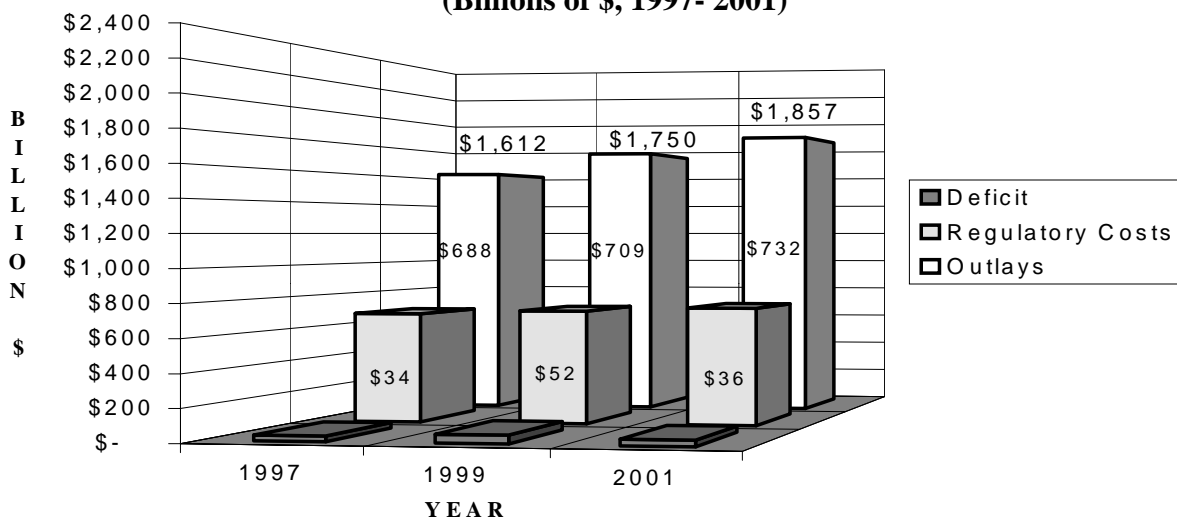
Regulation vs. Government Spending

Since regulation can be a substitute for taxing and spending, the continuing drive to turn the U.S. federal deficit into a surplus could place additional pressure on policymakers to substitute regulatory mandates for government spending. The \$688 billion in regulatory costs in 1997 is 20 times the size of 1997’s projected \$34 billion federal budget deficit.⁸ Yet the regulatory burden is entirely off budget and subject to few significant administrative constraints. Figure 3 projects the deficit compared to the regulatory burden for the years 1997, 1999 and 2001. In 2001, the growing regulatory burden will remain 20 times the size of the projected deficit. (Until 2002, when a surplus of \$32 billion is projected.)

Figure 3 also projects regulatory costs relative to the level of federal spending. In 1997, the \$688 billion regulatory burden was 43 percent the size of the fiscal spending budget itself, which stood at \$1.6 trillion.⁹ Off-budget regulatory costs are projected to remain well over one third the level of total

Regulation is deficit spending by other means.

Figure 3
Off-Budget Regulatory Costs
Compared with the Deficit and Federal Spending
(Billions of \$, 1997- 2001)



Sources: Congressional Budget Office, *The Economic and Budget Outlook: An Update*, September 1997; Office of the Chief Counsel for Advocacy, U.S. Small Business Administration, *The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress*, October 1995. Year 2001 regulatory cost projected based upon 5-year average increase.

government spending through 2001. As yet there is no regulatory budget that must be “balanced” as the fiscal one is tamed, so checks on unaccountable regulatory growth are warranted.

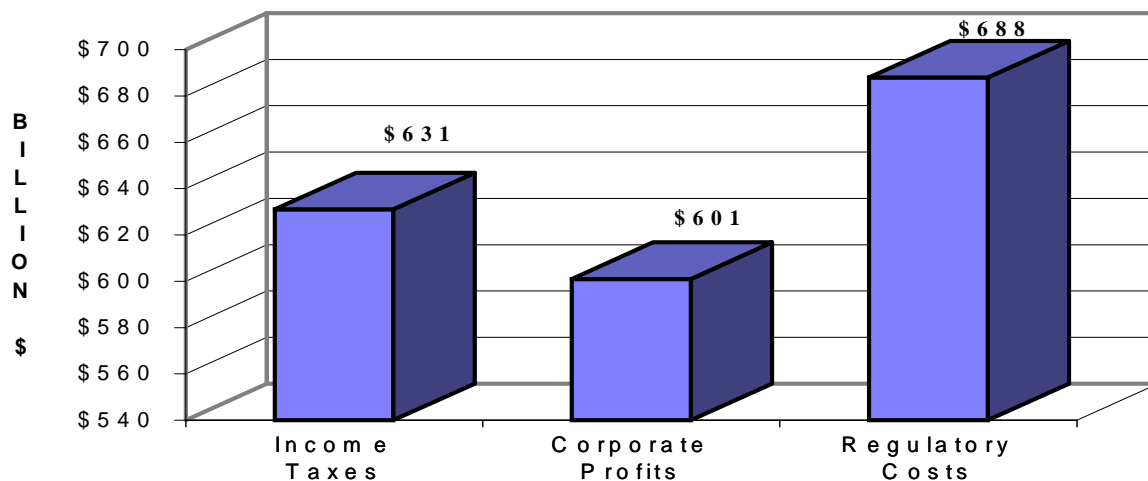
Hidden Regulatory Taxes vs. Income Taxes and Corporate Profits

While one might expect a hidden tax like that of regulation to be a somewhat minor nuisance compared to genuine, explicit taxes, regulation is far bolder than that. As shown in Figure 4, estimated individual income taxes of \$631 billion in 1996 were eclipsed by the regulatory burden.¹⁰ Even *pretax* corporate profits, \$601 billion in 1995, are smaller than the regulatory burden.¹² Adding regulatory costs to federal outlays gives a more accurate picture of the extent of government involvement in the economy. Projected federal outlays of \$1,612 in 1997 are 20 percent of U.S. GDP of \$7,955. But adding government-imposed regulatory costs of \$688 billion to this government spending brings the federal government’s share of the economy to 29 percent.

Off-budget regulatory costs are equivalent to one-third federal outlays.

Indeed, America’s regulatory burden of 9 percent of GDP is so large it exceeds the size of many entire national economies. Glancing at our northern and southern neighbors gives another eye-opening look at the magnitude of the regulatory state. As shown in Figure 5, U.S. regulatory costs of \$688 billion exceed the entire GDP of Canada, which stood at \$597 billion in 1994. The regulatory burden also exceeds the economic output of Mexico, which totalled \$673 billion in 1994.¹³

Figure 4
U.S. Regulatory Costs Exceed
1996 Personal Income Taxes, and 1995 Corporate Profits



Sources: Statistical Abstract of the United States, 1996, Table No. 513, p. 331, and Table No. 868, p. 555; U.S. Small Business Administration, Office of the Chief Counsel for Advocacy, *The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress*, Washington, D.C., October 1995, Table 3, p. 28.

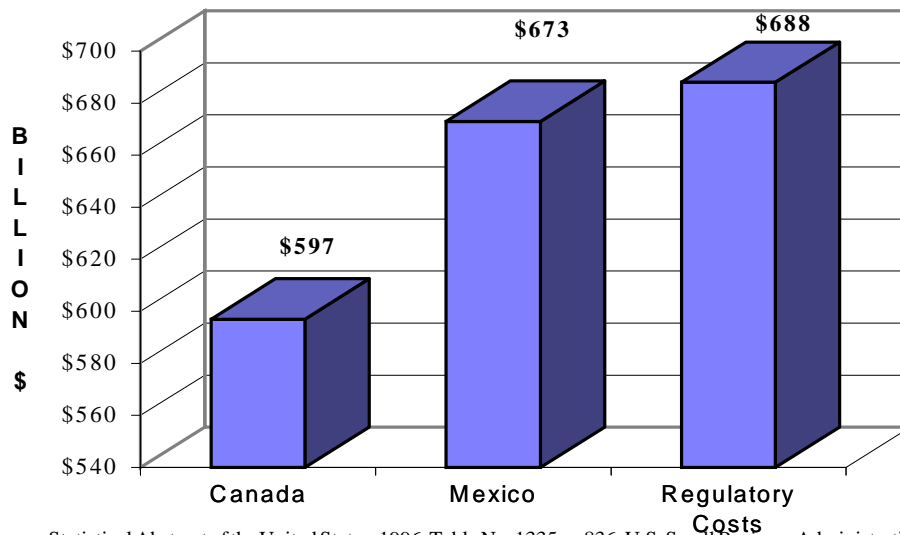
The Regulatory State's Administrative Costs

Managing the costly regulatory state does not come cheaply. The fiscal year 1998 annual survey of regulatory agency enforcement budgets by the Center for the Study of American Business (CSAB) found total agency spending at a record high. Unlike off-budget regulatory costs, this regulatory enforcement spending is allocated during the annual federal appropriations process, and represents costs paid directly by the taxpayers. Thus, unlike Hopkins' cost estimates, these figures do appear in the *Federal Budget* each year. According to CSAB, budgeted enforcement spending for social and economic regulatory programs by 53 departments and agencies is expected to hit \$17.2 billion (current dollars) in fiscal year 1998.¹⁴ In constant 1992 dollars (to control for inflation and allow cross-year comparisons), spending on social and economic programs has risen from \$11.8 billion in 1989 to \$14.8 billion in fiscal year 1998.¹⁵ (See Figure 6.) That amounts to a 26 percent increase in real terms over the past ten years. The CSAB estimates that the Environmental Protection Agency (EPA) alone will spend about one-third of the \$17.2 billion expected to be spent in 1998.¹⁶ CSAB carries its calculations back to 1970, when enforcement spending stood at \$4.6 billion (1992 dollars). Costs have increased 223 percent since then.

Also according to CSAB, federal agency staffing to carry out regulations will reach 126,147 in fiscal year 1998, compared to 103,649 ten years ago – a 22 percent increase. Back in 1970, regulatory personnel stood at 69,753. Mirroring overall regulatory compliance costs, both agency enforcement spending and staffing declined during the early 1980s but began rising late in the decade.

The hidden regulatory tax is larger than either the U.S. individual income tax, or the corporate income tax.

Figure 5
U.S. Regulatory Costs Exceed Entire 1994 GDP
of Canada and Mexico



Sources: Statistical Abstract of the United States, 1996, Table No. 1335, p. 836; U.S. Small Business Administration, Office of the Chief Counsel for Advocacy, *The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress*, Washington, D.C., October 1995, Table 3, p. 28.

U.S. regulatory costs are larger than the entire GDP of either Canada or Mexico.

Regulation's Impact on the Family Budget

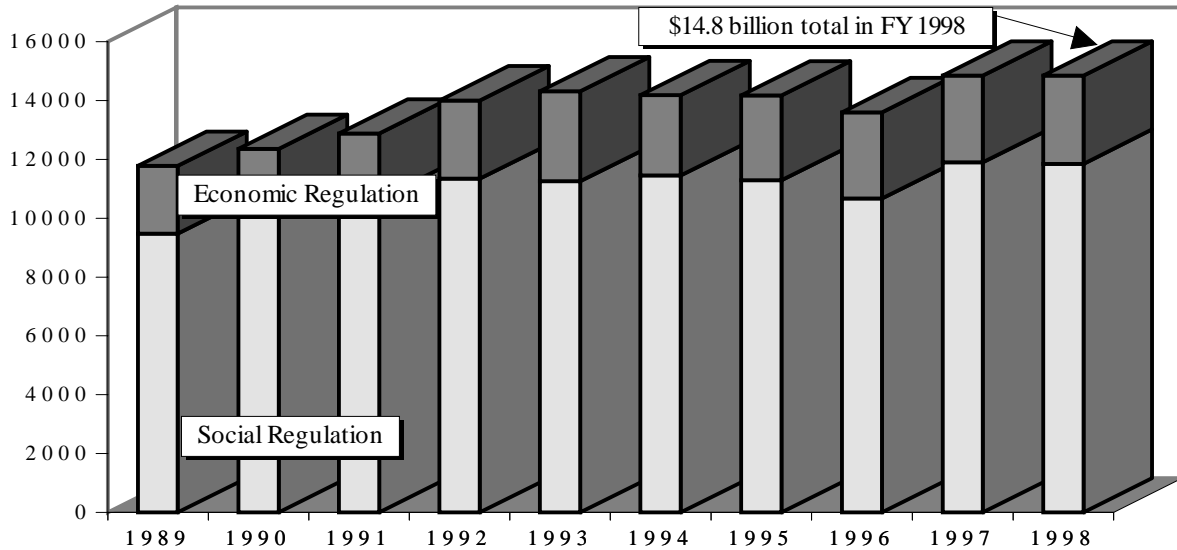
Regulatory costs are typically imposed directly on firms and on lower-level governments, but depending on demand and supply elasticities, firms pass on varying portions of those costs to consumers. Regulatory costs can take various forms, such as higher prices for consumer products, higher grocery and utility bills, higher health and housing costs, and increases in state and local taxes. Ordinary taxes and the off-budget, hidden taxes of regulations can thus affect consumers the same way: in the pocketbook.

As noted, the costs of economic, social and environmental regulation totaled an estimated \$688 billion in 1997. That breaks out to a cost of approximately \$6,875 for the typical family of four.¹⁷ For the average two-earner family, estimated 1997 after-tax income is \$36,423, according to the Tax Foundation.¹⁸ This after-tax income is then allocated across goods and services as shown in Figure 7. Conceptually speaking, applicable regulatory costs of \$6,875 can be thought of as being buried within the costs of these various items in the family's after-tax budget. As Figure 7 shows, embedded regulatory costs thus absorb 18.9 percent of the typical household's after-tax income, thereby making family expenses higher than they would otherwise be.¹⁹ Especially notable is the fact that, except for housing expenses, embedded regulatory costs now exceed spending for every item in the family after-tax budget. More is spent on regulation than on than medical expenses, food, transportation, recreation, clothing, and savings.

Agency enforcement budgets and staffing now at record levels.

Adding the \$6,875 in regulatory costs to the family's tax burden means that households allocate a significant portion of their income to governmental rather than personal ends. In fact, Americans worked 183 days, or until July 3, 1997, to pay for government, according to Americans

Figure 6
Agency Enforcement Budgets Rising
(1989-1998, millions of constant 1992 \$)



Source: Regulatory Changes and Trends: An Analysis of the 1998 Budget of the U.S. Government, by Douglas, Orlando and Warren, Center for the Study of American Business, Policy Brief 182, August 1997.

for Tax Reform (ATR). Calling this symbolic day of independence “Cost of Government Day,” ATR defines it as “the date of the calendar year, counting from January 1, on which the average American has earned enough in Cumulative gross income to pay for his or her share of government spending (total federal, state, and local) plus the cost of regulation.”²⁰

FEDERAL REGISTER ANALYSIS

Federal Register Pages Counts Are On The Rise

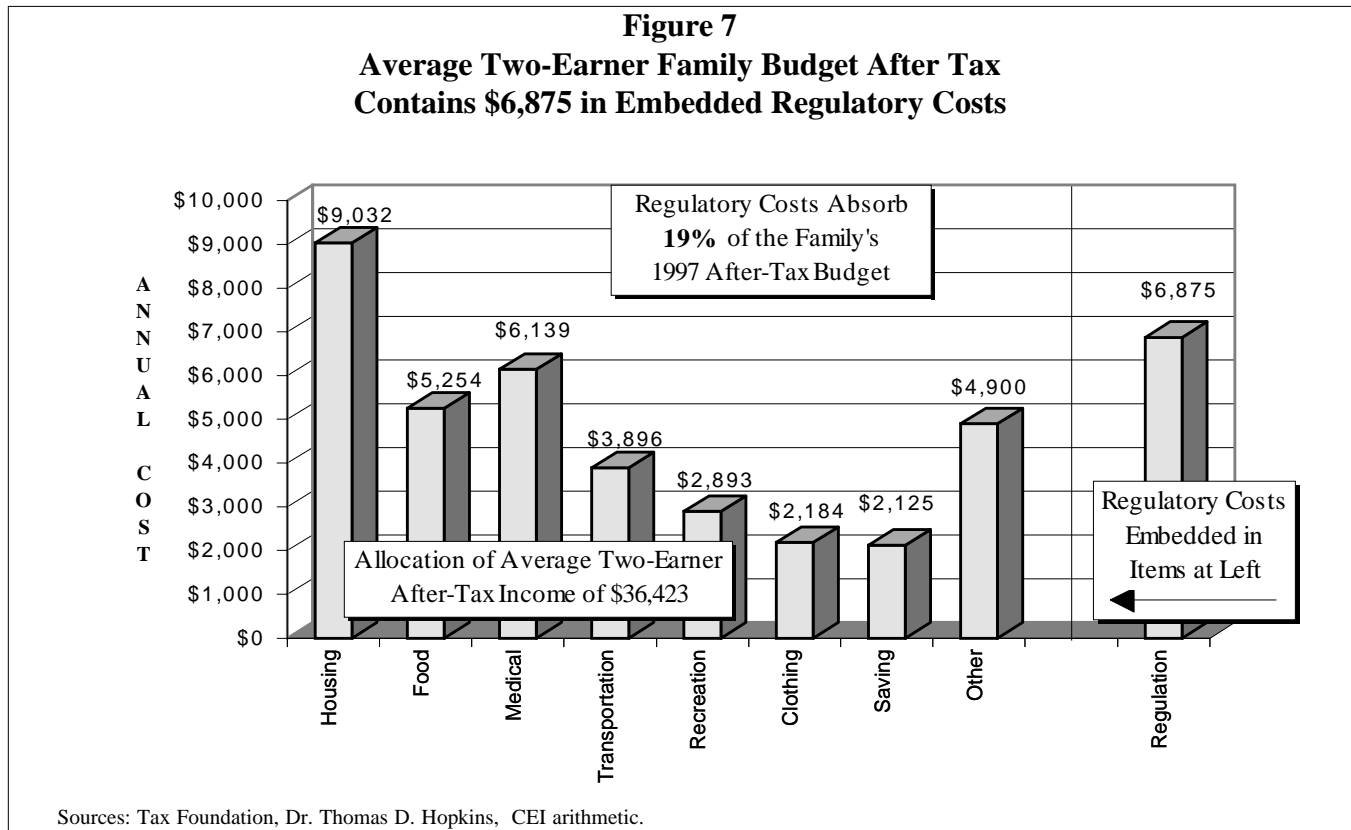
The *Federal Register*, the daily depository of all proposed and final federal rules and regulations, is probably the most often-cited gauge of the growth of regulation. The problem with the Register is that it is a weak proxy for the level of regulation: lengths of rules can vary, and the Register includes administrative notices, corrections, presidential statements and other material as well. With those caveats in mind, it remains worthwhile to examine Register growth.

Taking into account the blank pages that occasionally occur during the printing of the *Register* (a result of the Government Printing Office's imperfect prediction of the agencies' pages required), the *Register* reached its all-time high of 73,258 pages in 1980 under President Carter. The

Regulatory costs devour 19 percent of the family's after-tax budget.

Register then declined to its recent low of 44,812 pages in 1986, partly as a result of the series of the economic deregulatory efforts already mentioned, and because of expanded central review of regulations at the Office Management and Budget. (For a history of *Federal Register* page totals, see Historical Tables Part A: *Federal Register* Page History.)

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



During the past decade, the number of *Register* pages has climbed erratically, as shown in Figure 8. At the end of 1996, the total number of *Federal Register* pages (eliminating blank pages and skips) stood at 64,591, the second-highest level since 1980 under President Carter (the post - Carter peak occurred in 1994). The 1996 count represents an increase of 37 percent over the past 10-year period.

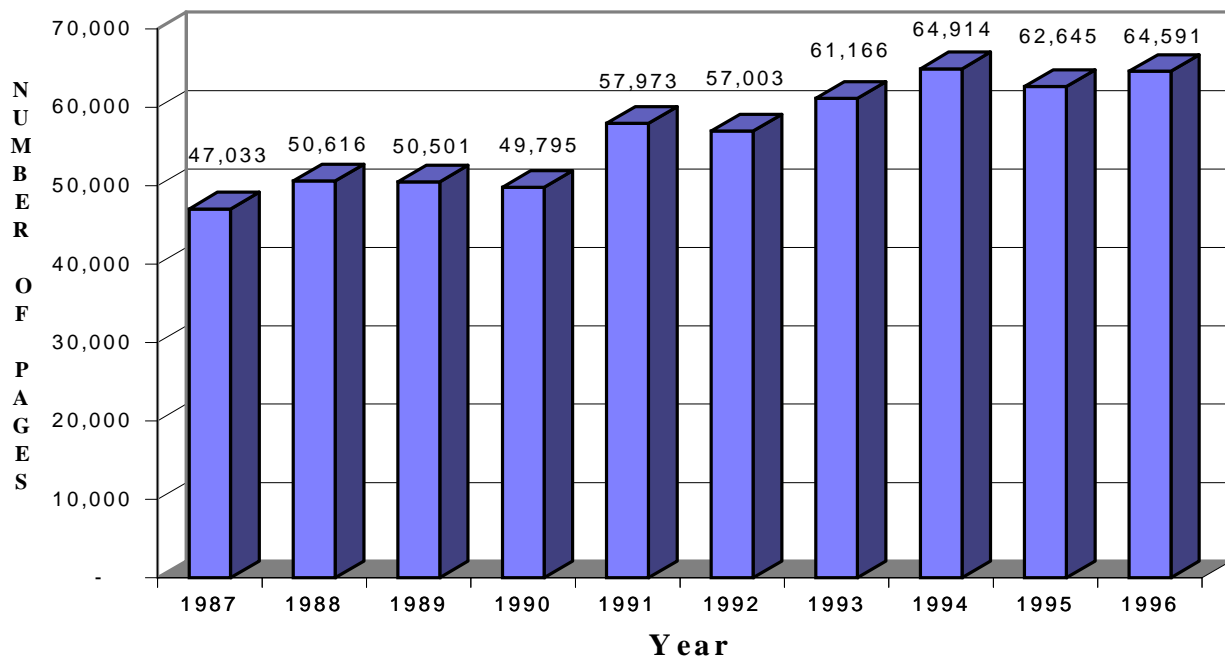
President Bill Clinton's first year in office, 1993, produced a notable 7 percent jump in *Federal Register* pages, from 57,003 to 61,166. Clinton's second year found the *Register* at its highest level since the Carter peak. Nonetheless, as Figure 8 makes clear, the growth of regulation over Clinton's entire first term was less than the growth of regulation during President George Bush's second term. Under Clinton (1993-96), *Federal Register* pages increased 6 percent overall. Under Bush (1989-92), pages jumped 13 percent.

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

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

Part of the Clinton growth slowdown might be attributed to the deregulatory mood in Congress. After the 1994 election, many regulatory agencies slowed down the issuance of new rules lest they attract the attention of the 104th Congress. The fact that regulatory reformers in the newly Republican Congress kept a watchful eye on *Federal Register* pages may have contributed to recent slower growth. Also, the partial federal government shutdown during 1995 slowed the promulgation of new regulations during that year. But no comprehensive regulatory overhaul bill has passed, and nothing prevents page counts from creeping upward again. As of

**Figure 8
Federal Register Pages
(1987-96)**



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

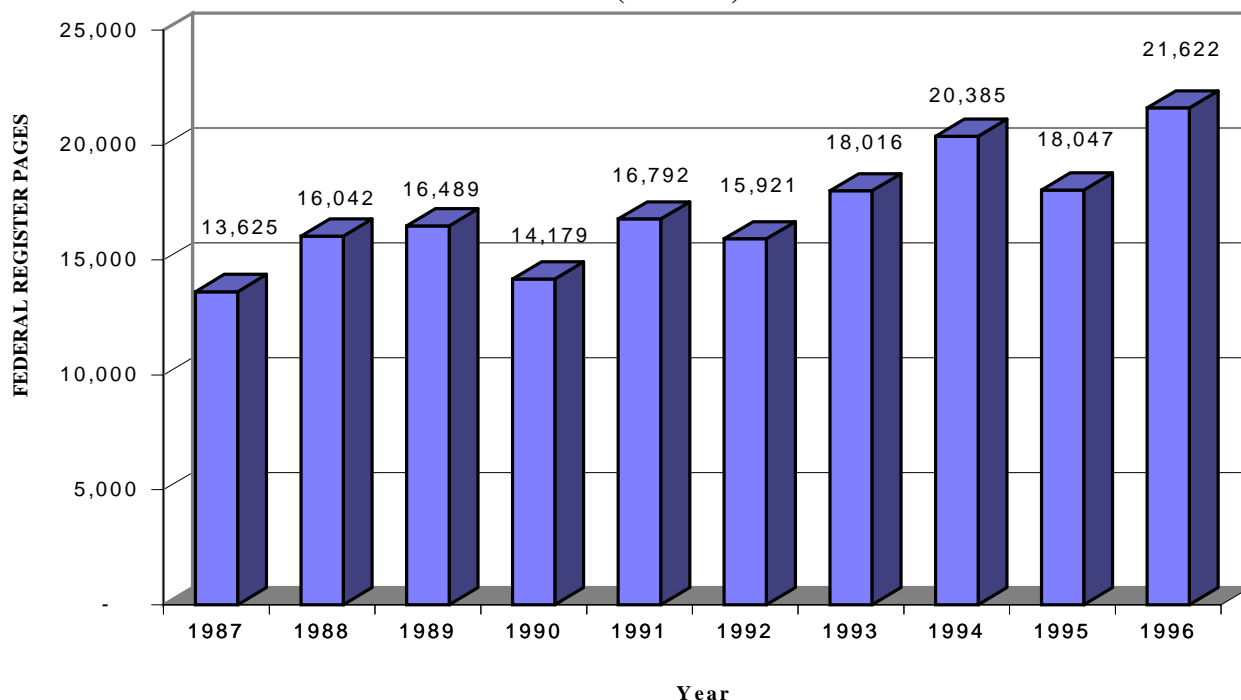
September 29, 1997, the *Register* contained 50,992 pages. That rate of page creation implies by linear extension that the *Register* will hit about 68,400 pages in 1997, which would be a post-Carter record. Of course, any blank pages ultimately tabulated can reduce that total.

Number of Federal Register Pages Devoted to Final Rules

Although growth in total *Federal Register* pages has slowed somewhat, pages remain at record-high levels. Moreover, one cannot conclude from overall *Federal Register* page growth alone that regulatory growth has slowed in terms of final rules actually issued. Instead, the number of pages devoted specifically to final rules is a more telling measure of the amount of yearly regulation, since it omits the pages devoted to proposed rules, agency notices, corrections, and Presidential documents.

The 1996 Federal Register contained 64,591 pages.

Figure 9
Federal Register Pages Devoted to Final Rules
(1987-96)



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

Indeed, final rule pages have risen significantly. The number of pages devoted to final rules in 1996 was 21,622, a 59 percent increase over the past ten years (See Figure 9). As noted, during Clinton’s first term total pages increased merely six percent. But on the other hand, pages actually devoted to final rules increased fully 20 percent over the same 1993-96 period, a very substantial increase in regulatory activity. Clearly, the overall number of pages can mask even higher levels of final rules.

Federal Register pages devoted to final rules are up 59 percent over ten years.

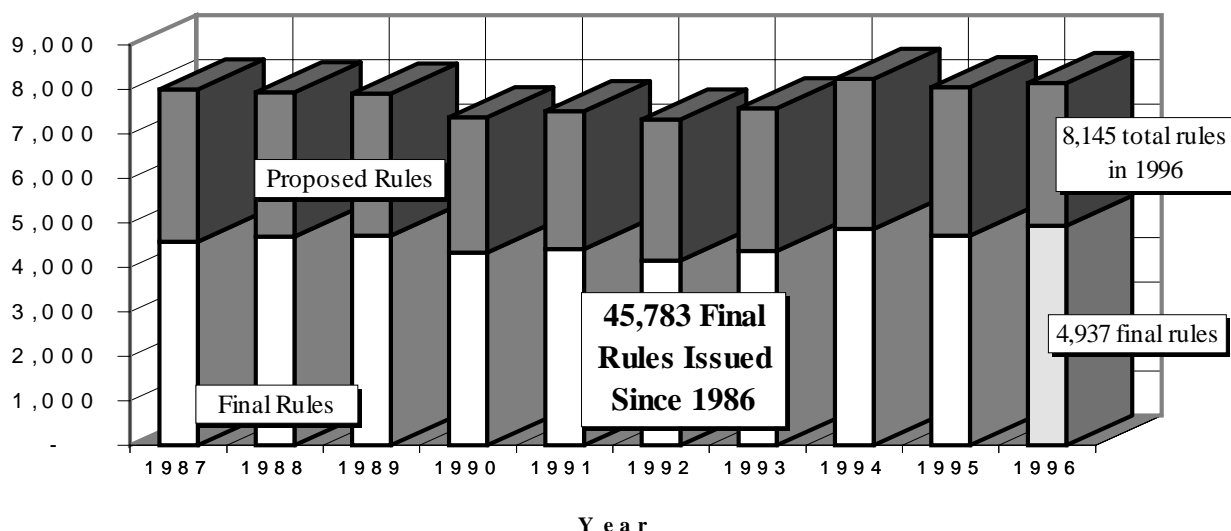
Number of Proposed and Final Rule Documents
in the *Federal Register*

Along with the number of *Federal Register* pages, the numbers of proposed and final rules deserve consideration by policymakers as well. As depicted in Figure 10, the total number of rules issued – both proposed and final – has averaged 7,800 per year, with each of the past three years topping 8,000. Most recently in 1996, the total number of proposed and final rules published was 8,145, a bit lower than 1994’s peak of 8,239.

While total rules per year aren’t growing notably, isolating growth in final rules over the past five years is cause for some concern. The 4,937 final rules issued in 1996—depicted in the lower portion of Figure 10—represent a 19 percent increase over the 4,155 issued in 1992. So while the growth in *Federal Register* pages declined under President Clinton compared to

The 4,937 final rules issued in 1996 are the highest number since 1984.

Figure 10
Number of Rules Published in the Federal Register



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

George Bush’s second term, both the number of pages devoted to final rules, and the actual number of annual rules finalized have markedly increased. The final rule count for 1996 is the highest level since 1984. Indeed, policymakers might be alarmed at the fact that an annual outpouring of over 4,000 final rules since 1986 has led to over 45,000 new rules in only a decade, as Figure 10 also makes clear. That level of unbudgeted regulatory activity should motivate policymakers – liberal and conservative alike — to take another look at whether more harm than good is being done by haphazard, unregulated regulation. (For the numbers of proposed, final and other documents issued since 1976, see Historical Tables Part B: Number of *Federal Register* Documents Published.)

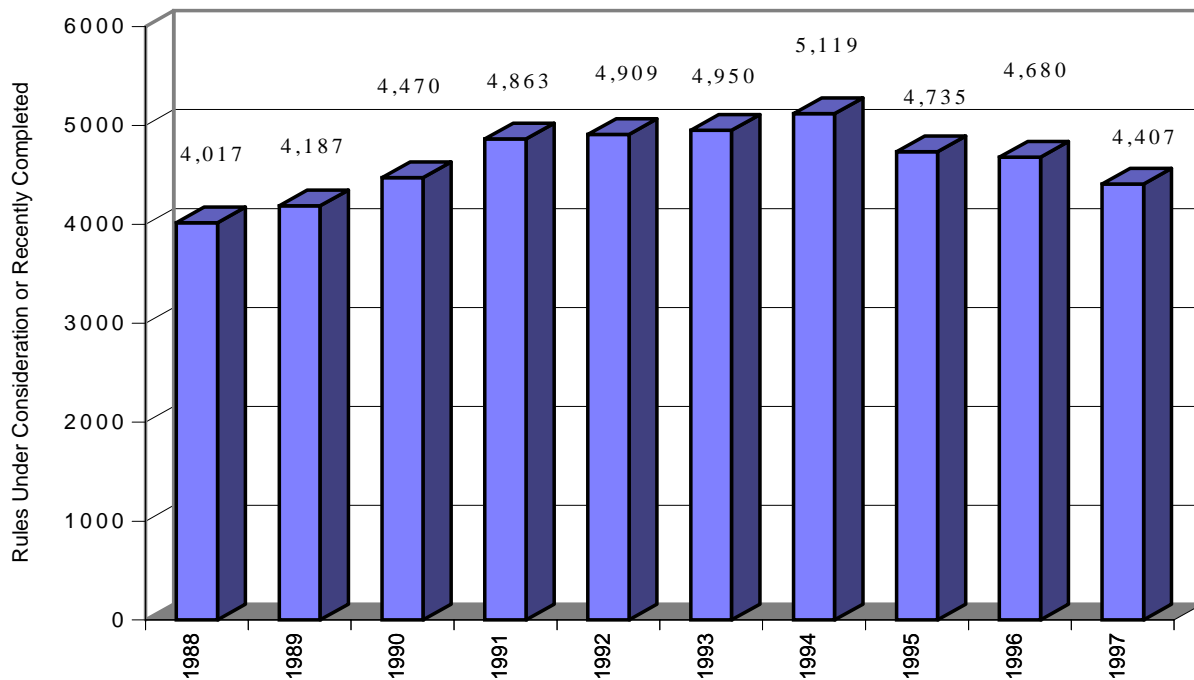
An annual outpouring of over 4,000 final rules since 1986 has meant over 45,000 new rules in only a decade.

UNIFIED AGENDA OF FEDERAL REGULATIONS ANALYSIS

Over 4,000 New Rules in the Pipeline According to the *Unified Agenda*

The federal Regulatory Information Service Center’s twice-yearly (April and October) *Unified Agenda of Federal Regulations* is a planning document. It details new regulations anticipated within the upcoming 12 months by roughly 60 federal departments, agencies and commissions. The *Agenda* might reasonably be thought of as a rough gauge of what’s in the regulatory pipeline at a given time, and rules often carry over from one year to another. Broad in scope, the *Agenda* depicts proposed and final federal regulations and deregulatory actions, as well as entries at the pre-rule stage, actions recently completed, and some regulations planned for the long term. The rules in the *Agenda* affect the private sector and lower level governments, as well as the federal government.

Figure 11
Total Agency Rules in the Unified Agenda Pipeline
(1988-97)



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

Total numbers of regulations in the *Agenda* pipeline have exceeded 4,000 since April 1988. After a peak of 5,119 in October 1994, the total number of rules declined (See Figure 11). The October 1997 *Unified Agenda of Federal Regulation's* 4,407 rules represent a significant decrease from recent years.²¹ However, this general decline masks the noted increase in regulatory costs, agency enforcement budgets, the increase in *Register* pages (especially those devoted to final rules) and a record-high level of final rule documents. (For a history of numbers of rules in the *Unified Agenda* since 1983, see Historical Tables Part C: *Unified Agenda Rules History*.)

Furthermore, as will be seen, those broad trends mask increasing activity in terms of the number of rulings affecting small business and increased levels of overall environmental regulation. Whatever its growth rate, the mounting roster of costly off-budget regulations clearly deserves the attention of policymakers since disclosure is essential to assure over time that rules are doing good rather than harm.

The recent decline in the total number of rules in Figure 11 may be a temporary artifact of personality and politics, rather than a genuine shift in public policy regarding off-budget regulation. Congressional Republicans as well as many Democrats have since 1994 kept a spotlight on regulations by seeking a comprehensive regulatory reform bill. That pressure could create some agency reluctance to broadcast as many upcoming rules as in prior years.²² After all, agencies are not required to limit their activity to what

The recent decline in the total number of rules may be a temporary artifact of personality and politics.

Agencies and departments work on more than 4,000 regulations every year.

they publish in the *Unified Agenda*: “The *Regulatory Plan* and the *Unified Agenda* do not create a legal obligation on agencies to adhere to schedules within them or to confine their regulatory activities to those regulations that appear in these publications.”²³

As depicted in the final column of Figure 11, according to the October 1997 *Unified Agenda*, federal agencies and departments have 4,407 regulations under consideration at various stages in the pipeline, from the pre-rule to the just-completed stage. Figure 12 breaks down those 4,407 rules by department, agency and commission. The greatest number of rules come, respectively, from the Transportation Department (510), the Treasury Department (458), the Environmental Protection Agency (430), the Agriculture Department (398), the Interior Department (321) and the Department of Health and Human Services (299). (For comparison of numbers of rules by department and agency in earlier *Unified Agendas*, see Historical Tables Part D: *Unified Agenda* Rules History by Department and Agency.

Here are a few examples of rules in the works in the October 1997 *Agenda* that agencies regard as priorities.

Department of Energy

- Energy Efficiency Standards Rulemakings and Determinations for High-Priority Consumer Products and Commercial Equipment

Department of Labor

- Safety and Health Programs (For General Industry)
- Permissible Exposure Limits for Air Contaminants

Department of Transportation

- Federal Motor Vehicle Safety Standards: Head Impact Protection
- Advanced Air Bags

Environmental Protection Agency

- Data Expansion Amendments; Toxic Chemicals Release Reporting; Community Right-to-Know
- Stormwater Phase II Regulations
- Integrated NESHAP and Effluent Guidelines: Pulp and Paper
- Pesticides and Ground Water State Management Plan Regulation
- National Primary Drinking Water Regulations

Consumer Product Safety Commission

- Flammability Standard for Upholstered Furniture
- Safety Standard for Bicycle Helmets
- Requirements for Child Resistance of Multi-Purpose Lighters

Figure 12
Unified Agenda Entries by Department and Agency
(October 1997)

	Total Rules
Dept. of Agriculture	398
Dept. of Commerce	283
Dept. of Defense	142
Dept. of Education	29
Dept. of Energy	75
Dept. of Health & Human Services	299
Dept. of Housing & Urban Development	98
Dept. of Interior	321
Dept. of Justice	185
Dept. of Labor	132
Dept. of State	24
Dept. of Transportation	510
Dept. of Treasury	458
Dept. of Veterans's Affairs	108
Advisory Council on Historic Preservation	1
Agency for International Development	8
Architectural and Transportation Barriers Compliance Board	9
Commission on Civil Rights	1
Corporation for National & Community Service	2
Environmental Protection Agency	430
Federal Emergency Management Agency	22
General Services Administration	52
National Aeronautics & Space Agency	17
National Archives & Records Administration	17
Institute of Museum Services	2
National Endowment for the Arts	7
Equal Employment Opportunity Commission	10
Natioanl Endowment for the Humanities	7
National Science Foundation	7
Office of Federal Housing Enterprise Oversight	4
Office of Government Ethics	13
Office of Management & Budget	16
Office of Personnel Management	92
Panama Canal Commssion	6
Peace Corps	5
Pension Benefit Guaranty Corporation	10
Railroad Retirement Board	20
Selective Service System	1
Small Business Administration	15
Social Security Administration	72
U.S. Information Agency	4
Federal Acquisition Regulation	49
Commodity Futures Trading Commission	9
Consumer Product Safety Commission	14
Farm Credit Administration	17
Farm Credit System Insurance Corporation	4
Federal Communications Commission	98
Federal Energy Regulatory Commission	10
Federal Housing Finance Board	17
Federal Maritime Commission	3
Federal Reserve System	36
Federal Trade Commission	19
National Credit Union Administration	14
Federal Deposit Insurance Corporation	31
National Indian Gaming Commission	16
National Labor Relations Board	3
Nuclear Regulatory Commission	62
Securities and Exchange Commission	79
Surface Transportation Board	13
Federal Mediation and Conciliation Service	1
TOTAL	4,407

Source: Compiled by CEI from the Unified Agenda of Federal Regulations, Regulatory Information Service Center, April 1997.

Health and Human Services

- Infant Formula: Good Manufacturing Practice, Quality Control Procedures, Quality Factors, Notification Requirements, and Records and Reports

Billions of Dollars of Off-Budget High-Cost Rules in the Agenda

The decline in total rules in the *Unified Agenda* may nonetheless obscure increased cost in terms of the subset of *Agenda* rules that impose particularly heavy burdens on the public. In fact, during the current year, the rules that federal departments and agencies will be at work on or will have just completed will cost, at a *minimum*, \$12.5 billion annually. This \$12.5 billion in new off-budget regulatory costs is not presented directly to the

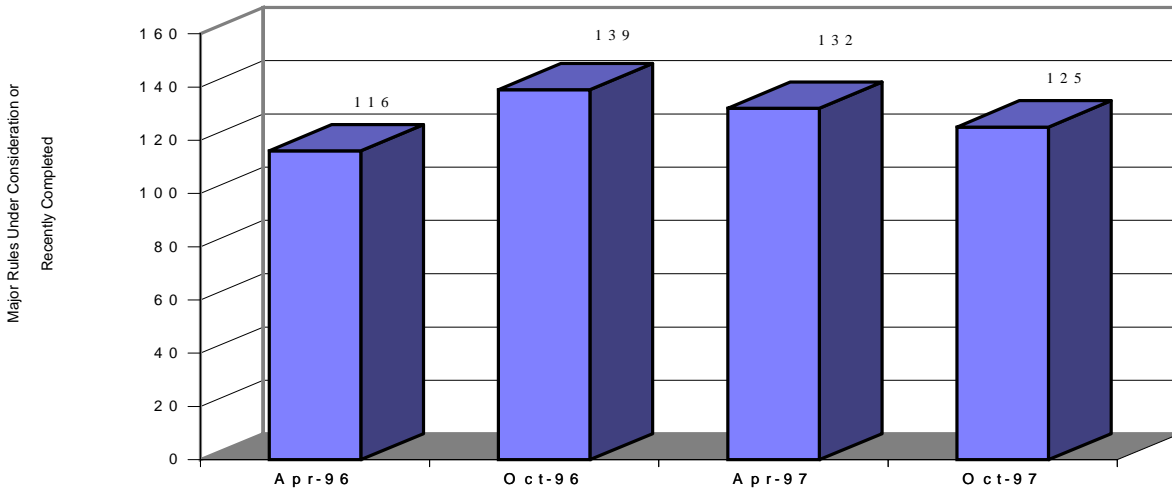
Figure 13
125 New Rules are Expected to Cost Over \$100 Million Annually
(October 1997)

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

Source: Compiled by CEI from the *Unified Agenda of Federal Regulations*, Regulatory Information Service Center, October 1997

public in the 4,407-rule *Agenda*, but must be tallied by combing through the document. Rather than accumulate and summarize dollar costs of regulations for the benefit of the reader, each *Agenda* entry separately indicates whether or not a rule is “economically significant” and provides additional cost data from Regulatory Impact Analyses if it is available.

Figure 14
“Economically Significant” Rules
in the *Unified Agenda* Pipeline
(1996-97)



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

“Economically significant” means that a rule is projected by the issuing agency to have economic impacts of *at least* \$100 million annually. These impacts typically are costs compliance of regulations, although occasionally a major rule is part of President Clinton’s “Reinventing Government” effort and thus intended to reduce costs. As Figure 13 shows, a total of 125 new rules at the pre-rule, proposed, final, long-term and recently completed stages are being issued by 18 departments and agencies. These high-cost rules are scattered among the 4,407 rules. Since each will cost *at least* \$100 million apiece annually, the \$12.5 billion cost minimum is arrived at simply by multiplying the 125 rules times \$100 million.

Unfortunately, the sky is the limit as far as any upper bound on costs is concerned. The open-ended character of costs severely limits the information content of the term “economically significant.” For example, an economically significant rule could cost precisely \$100 million, or it could cost over 100 times that amount. Furthermore, even though the \$12.5 billion in anticipated costs represents a lower bound for 1997’s rules, policymakers must appreciate that it is not a one-time cost, but a recurring annual cost.

The 125 major rules in October 1997 represent a 10.1 percent decrease from 1996. Figure 14 shows the total number of economically significant rules from the April and October *Unified Agendas* for the past two years. Though the costs of major rules can vary widely, one would hope that this decline in number represents a substantial decrease in new regulatory costs. (For charts breaking down economically significant rules by type and by agency for the past 2 years, see Historical Tables Part E: Agency Major Rules by Category, 1996-1997.)

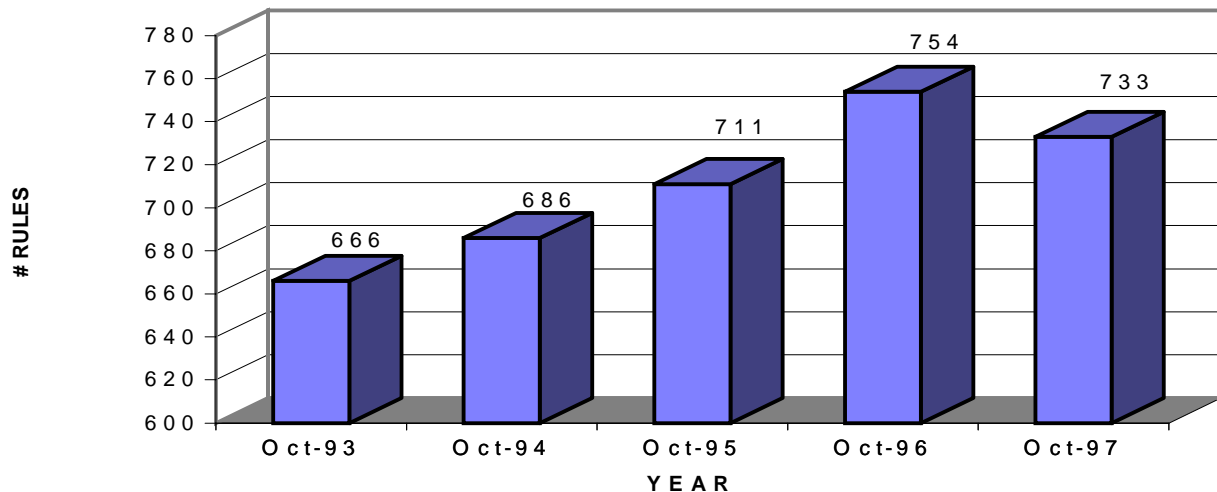
Regulators anticipate new rules costing at least \$12.5 billion annually.

Significant risks inhere in using a \$100 million threshold to designate a regulation as significant. The bulk of regulations simply escape the cost scrutiny that applies to economically significant rules. Although 4,282 federal rules don't qualify as economically significant (4,407 total rules minus the 125 economically significant ones), any of those rules may cost up to \$99 million and escape the "economically significant" label. That gap in the application of cost-benefit analysis renders any claim that regulation on the whole produces net benefits arbitrary at best, incoherent at worst. Furthermore, for exceedingly costly rules, the \$100 million cutoff threshold gives agencies an incentive to deliberately divide rules into smaller components that need not be considered significant.

PLANNED FEDERAL REGULATIONS EXPECTED TO IMPACT SMALL BUSINESS

According to the *Unified Agenda*, "The Regulatory Flexibility Act . . . requires that agencies publish regulatory agendas identifying those rules that may have significant economic impact on a substantial number of small entities."²⁴ This disclosure appears in an index to the *Agenda* that lists rules expected to have such impacts. The primary small entity of concern is small business, although small governments are listed as well. While the total numbers of rules impacting small business per agency are not directly given in the *Agenda*, they can be tabulated by counting the individual entries. As shown in Figure 15, annual regulations impacting small business totaled 733 in October 1997, up from 666 agency rules impacted small business in October 1993. Even taking into account the obvious decline between the 1996 and 1997 *Agendas*, the number of rules impacting small concerns has increased 10 percent since 1993.

Figure 15
Rules Affecting Small Business
(1993-97)



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

Figure 16 breaks down by agency the 733 rules impacting small business in the October 1997 *Agenda* impacting small business. It further presents them as a proportion of the total number of rules issued by those agencies. As the totals show, 17 percent of the total October 1997 count of 4,407 rules contain provisions impacting small business. The Environmental Protection Agency, accounting for 163 of the 733 small business rules, is by far the leader in small business impacts. The runners up are the Department of Health and Human Services, with 100 rules impacting small business, and the Federal Communications Commission, with 70. (For the numbers of rules impacting small business broken down by department and agency for April and October *Agenda*'s since 1993, See Historical Tables Part F: Rules Impacting Small Business.)

One reasonable explanation for part of the 1997 decline in rules impacting small business is the strengthening of the Regulatory Flexibility Act that occurred in 1996. This act ensured small firms' right to sue agencies that failed to perform a Regulatory Flexibility Analysis assessing the impacts of new rules on small firms.²⁵ Nonetheless, as Figure 15 showed, the overall trend appears to be an increase in the number of rules affecting small businesses, even as the total number of rules in the pipeline has declined since 1994. Thus the proportion of rules affecting small business, rather than remaining constant or declining over the past five years, has increased. The 733 small-business rules in 1997 comprise 17 percent of the 4,407 total. However, the October 1993 *Agenda* contained a total of 4,950 rules: only 13.4 percent, 666 of them, were reported by agencies to affect small business.

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

In addition to the rules known to impact small entities, the *Unified Agenda* includes a category of small entity impacts called "undetermined." In the April 1997 *Unified Agenda*, a hand-count found 661 rules to fit into this "undetermined" category, in addition to the 748 classified by agencies at that time as likely to have significant impact on small entities. The implication is that, potentially, the number of rules impacting small business is almost double the number openly admitted to by agencies.

FEDERAL REGULATIONS IMPACTING STATE AND LOCAL GOVERNMENTS

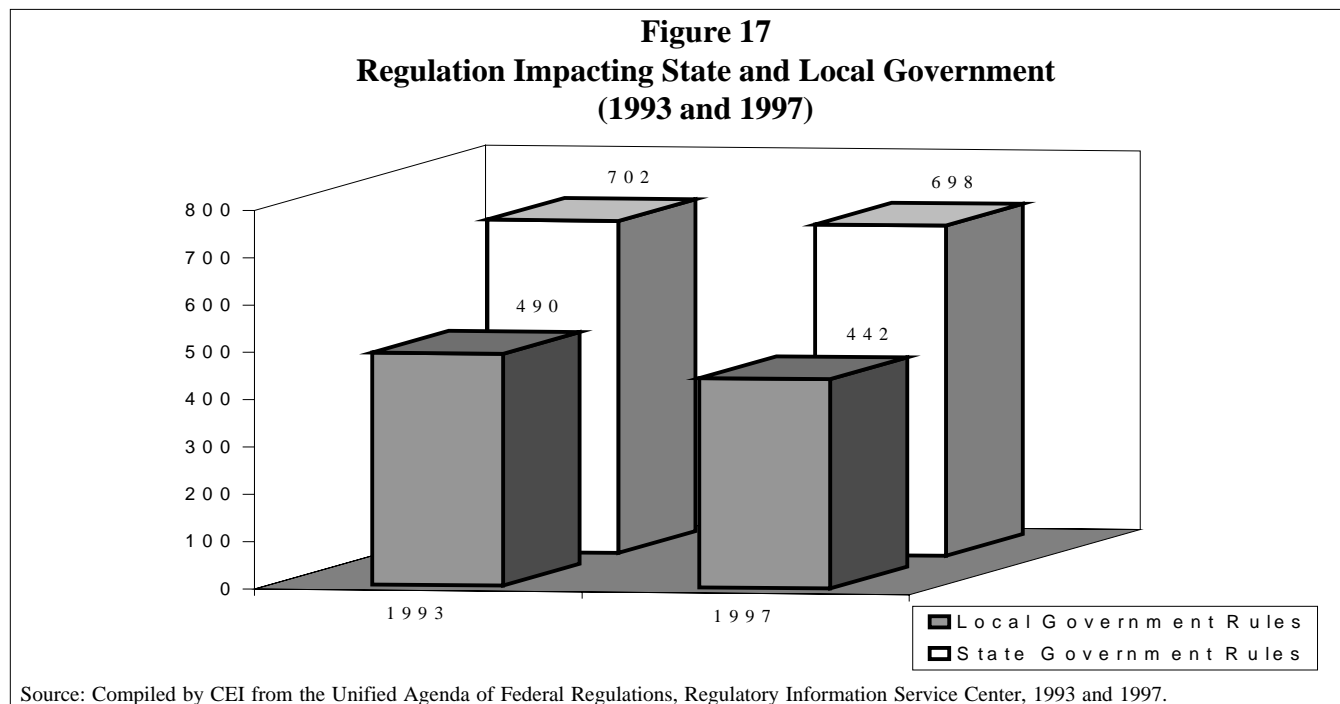
This report is primarily concerned with regulatory impacts on private sector businesses and the family. However, one significant driver of the limited deregulatory action that has occurred in the 1990s was the burden on state and local governments imposed by federal mandates. State and local officials complained that their own priorities were being superseded by those of the federal government. Among the most burdensome mandates, officials included landfill standards, wastewater treatment standards, drinking water requirements, stormwater regulations and the Americans with Disabilities Act. Their protests over the excesses of these rules led to passage of the Unfunded Mandates Reform Act of 1995. That bill provided for a point order

Figure 16
Unified Agenda Entries Impacting Small Business by Department and Agency
(October 1997)

	Total Rules	Number Impacting Small Business	% Impacting Small Business
Dept. of Agriculture	398	58	15%
Dept. of Commerce	283	29	10%
Dept. of Defense	142	15	11%
Dept. of Education	29	1	3%
Dept. of Energy	75	2	3%
Dept. of Health & Human Services	299	100	33%
Dept. of Housing & Urban Development	98	7	7%
Dept. of Interior	321	28	9%
Dept. of Justice	185	26	14%
Dept. of Labor	132	39	30%
Dept. of State	24	1	4%
Dept. of Transportation	510	44	9%
Dept. of Treasury	458	50	11%
Dept. of Veterans's Affairs	108	7	6%
Advisory Council on Historic Preservation	1	0	0%
Agency for International Development	8	0	0%
Architectural and Transportation Barriers Compliance Board	9	0	0%
Commission on Civil Rights	1	0	0%
Corporation for National & Community Service	2	0	0%
Environmental Protection Agency	430	163	38%
Federal Emergency Management Agency	22	0	0%
General Services Administration	52	3	6%
National Aeronautics & Space Agency	17	0	0%
National Archives & Records Administration	17	1	6%
Institute of Museum Services	2	0	0%
National Endowment for the Arts	7	0	0%
Equal Employment Opportunity Commission	10	1	10%
Natioanl Endowment for the Humanities	7	1	14%
National Science Foundation	7	0	0%
Office of Federal Housing Enterprise Oversight	4	0	0%
Office of Government Ethics	13	0	0%
Office of Management & Budget	16	1	6%
Office of Personnel Management	92	0	0%
Panama Canal Commssion	6	0	0%
Peace Corps	5	0	0%
Pension Benefit Guaranty Corporation	10	0	0%
Railroad Retirement Board	20	1	5%
Selective Service System	1	0	0%
Small Business Administration	15	13	87%
Social Security Administration	72	0	0%
U.S. Information Agency	4	0	0%
Federal Acquisition Regulation	49	15	31%
Commodity Futures Trading Commission	9	0	0%
Consumer Product Safety Commission	14	0	0%
Farm Credit Administration	17	0	0%
Farm Credit System Insurance Corporation	4	0	0%
Federal Communications Commission	98	70	71%
Federal Energy Regulatory Commission	10	0	0%
Federal Housing Finance Board	17	0	0%
Federal Maritime Commission	3	0	0%
Federal Reserve System	36	2	6%
Federal Trade Commission	19	11	58%
National Credit Union Administration	14	1	7%
Federal Deposit Insurance Corporation	31	0	0%
National Indian Gaming Commission	16	0	0%
National Labor Relations Board	3	0	0%
Nuclear Regulatory Commission	62	9	15%
Securities and Exchange Commission	79	34	43%
Surface Transportation Board	13	0	0%
Federal Mediation and Conciliation Service	1	0	0%
TOTAL	4,407	733	17%

to lie against any bill that imposes mandates without authorizing (not necessarily appropriating) funding for lower level governments, and also required that the Congressional Budget Office provide cost estimates.

It is worthwhile to look at the relief that has occurred for state and local jurisdictions since the Mandates act was passed, which may give an indication of what one might expect if a similar bill is enacted to provide private sector relief. Two executive orders require assessments of the rulemaking activity affecting lower level governments, and the rules they flag are listed in the *Unified Agenda*. In 1993, Executive Order 12866, “Regulatory Planning and Review” directed agencies to “assess the effects



of Federal regulations on State, local, and tribal governments.”²⁶ Similarly, 1993’s Executive Order 12875, “Enhancing the Intergovernmental Partnership,” required that agencies “reduce the imposition of unfunded mandates” on those same lower level jurisdictions.²⁷

As shown in Figure 17, a bit of a decline in rules has occurred for local governments. Between 1993 (prior to the Unfunded Mandates Act) and 1997 the number of rules dropped 10% percent, from 490 to 442. However rules that impact state governments still hover around 700. These trends make it unclear whether a Mandates-style bill alone would be enough to provide substantial relief for the private sector. (For a comparison of numbers of rules impacting state and local governments by department and agency in the October 1993 and 1997 *Agendas*, see Historical Tables, Part G: Federal Rules Impacting Lower Level Governments (1993 and 1997).)

The number of mandates on state and local governments is still a problem.

OMB REVIEW OF AGENCY RULES: STIFF AUDIT OR RUBBER STAMP?

Unfunded mandates-style legislation may provide only minimal relief to the private sector if experience in the public sector is an indicator.

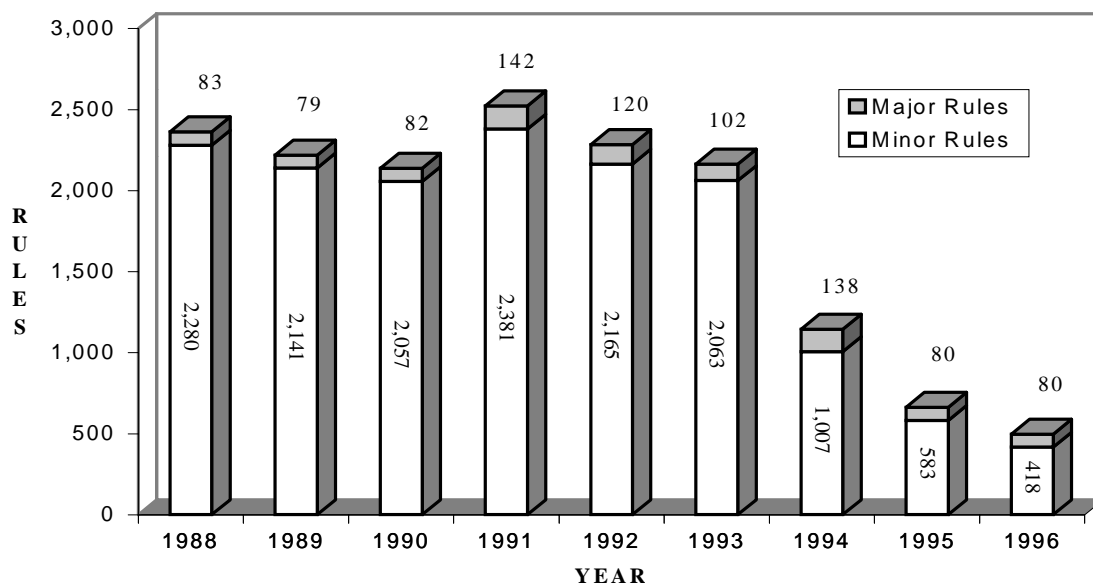
Total Rules Reviewed

The Office of Management and Budget's (OMB) responsibilities for reviewing regulations were formalized by President Ronald Reagan's Executive Order 12291 in 1981. From that time until 1994, federal departments and agencies submitted well over 2,000 proposed and final rules each fiscal year to OMB for review.²⁸ Except for rules specifically exempted, Reagan's Executive Order required all proposed and final rules to be submitted for OMB review.²⁹

The deregulatory 1980s produced a low in 1986, when 2,007 rules were submitted by agencies for review at OMB. Figure 18 depicts total reviews from 1988 through 1996. Annual reviews peaked in 1991, with a total of 2,523 proposed and final rules submitted to OMB for review.³⁰ Of that total, 2,381 were considered "minor" rules, and 142 were considered "major," meaning they imposed annual costs of at least \$100 million. Figure 18 shows also that in 1996, the latest year for which data is available, a total of 498 major and minor rules were reviewed.

Note the dramatic dropoff in total reviews between 1993 and 1994. This reflects Clinton's replacement in October 1993 of Reagan's E.O. 12291

Figure 18
Total Rules Reviewed By OMB
Have Declined Since 1991
(1988-1996)

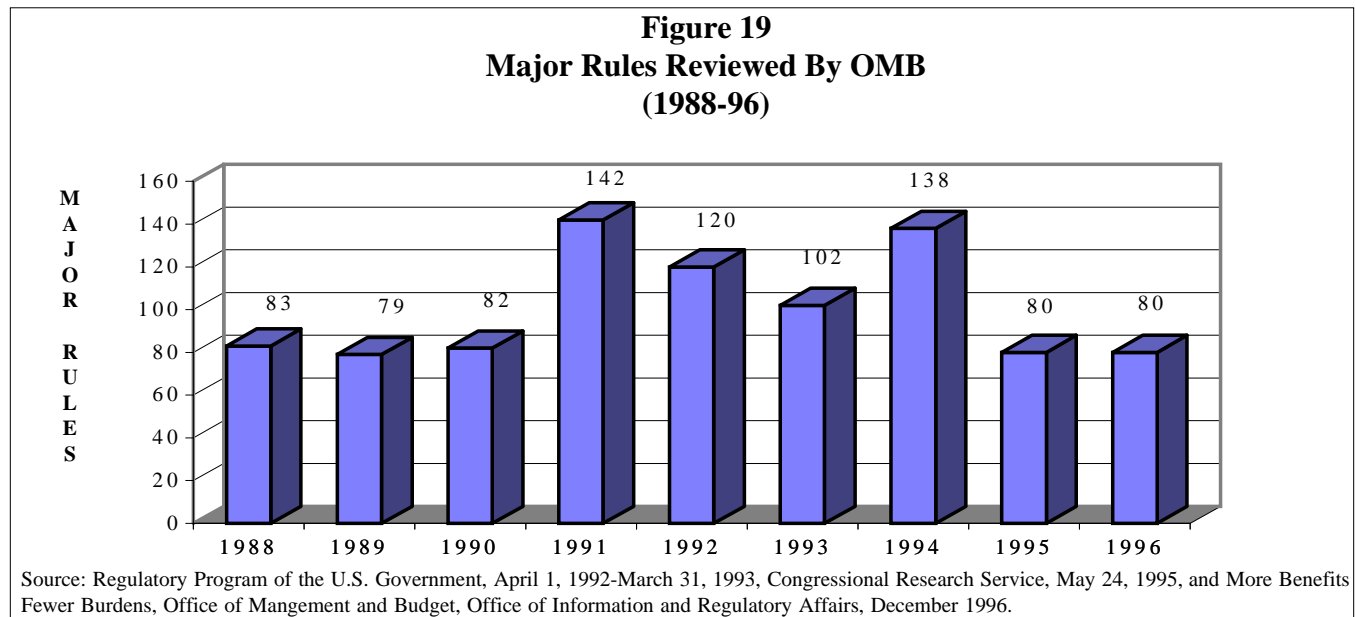


Source: Regulatory Program of the U.S. Government, April 1, 1992-March 31, 1993, Congressional Research Service, May 24, 1995, and More Benefits Fewer Burdens, Office of Management and Budget, Office of Information and Regulatory Affairs, December 1996.

with E.O. 12866. Where Reagan’s order required that all rules be reviewed, the new order stipulates only that “significant” rules be submitted for review. Of these, “economically significant” rules (similar to “major” rules as defined by E.O. 12291 in that they impose costs of \$100 million or more annually) must be accompanied by a cost-benefit analysis.

High-Cost Rules Reviewed

As noted, Figure 18 also breaks down rules into the categories “major” and “minor.” For purposes of comparison over time, major rules up until October 1993 are largely comparable with those considered “economically significant” by Clinton’s E.O. 12866 since that time. Under both the



Reagan and Clinton Executive Orders, written cost-benefit evaluations were required for “major” and “economically significant” rules, respectively. Though their definitions are not precisely the same, each cost at least \$100 million, and each require review at OMB.

Since official regulatory cost estimates are not legally mandated by Congress, it is worth tracing the growth of rules reviewed known to cost \$100 million annually since OMB's review is the only significant external brake on agency rulemaking. Again, although the “significant” label doesn’t reveal the total costs of regulations to be imposed, it does provide a floor, or a minimum amount that reviewed proposed and final rules are guaranteed to impose on the public. Figure 19 separates out the major and economically significant rules embedded in Figure 18 for the years 1988 through 1996. Paralleling total rules, major rules peaked in 1991 at 142, as noted. More recently, for both 1995 and 1996, the total number of proposed and final major rules reviewed from all departments and agencies stood at a low of 80. This is down from 1994’s 138, which had been the second highest level over the period under review.

New economically significant rules reviewed by OMB in 1996 will cost over \$8 billion annually.

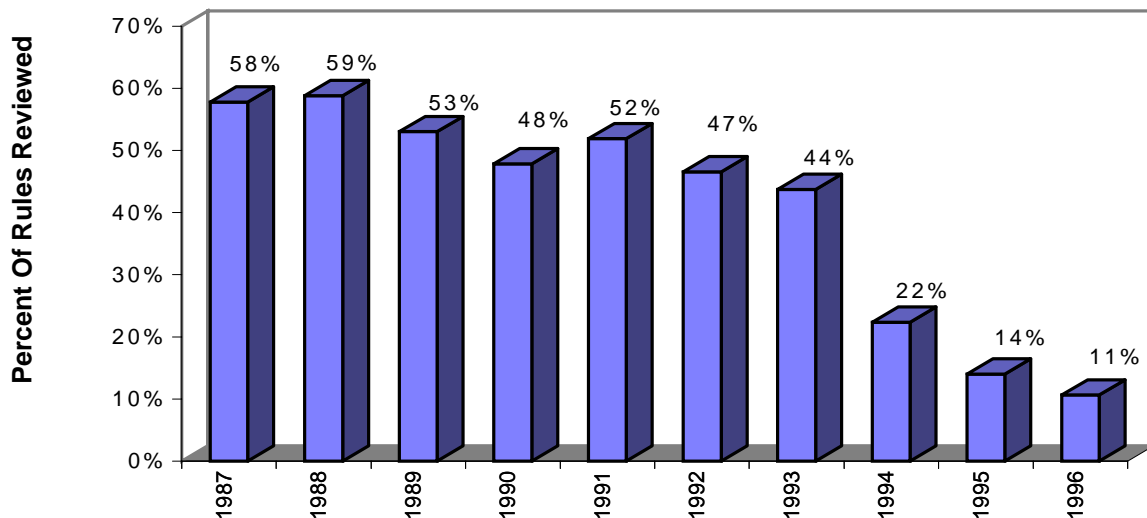
The major rules reviewed decrease is clearly good news, especially if the trend continues. But that may be precluded if the more recent uptick in final rule documents continues. Given that \$100 million in costs is a floor, we cannot ascertain the total costs of these newly reviewed regulations. We can however say that since these 80 economically significant rules cost a minimum of \$100 million apiece, they will cost the public *at least* \$8 billion per year.

Oversight Index

Written cost-benefit evaluations of major and economically significant rules are the best windows we have on the magnitude of the regulatory state. OMB's reviews of the reasonableness of these analyses is one of the only institutional checks on excessive regulation. As is clear from a glance at Figure 18, major or economically significant rules that undergo agency cost-benefit have made up at most only 16 percent of the total raw number of rules reviewed since 1993. Prior to that time, all the way back to the beginnings of E.O. 12291, major rules averaged less than 4 percent of the total number of rules. Surely, the fewer, costly major rules, the better. However, absolute uncertainty is the name of the game regarding the impacts of the remaining majority of rules, which face no cost-benefit test. If scrutinized, perhaps many of these "minor" rules would qualify as "major." But they simply are not reviewed closely, leading to the potential for a great many \$99 million rules to simply fall through the cracks. The plain truth is that most rules take effect without *any* public accounting for their economic consequences whatsoever.

Roughly 89 percent of rules in 1996 escaped OMB review.

Figure 20
Oversight Index For OMB Reviews
(1987-96)



Data Sources: Regulatory Program of the U.S. Government, Office of Management and Budget, April 1, 1992-March 31, 1993; Congressional Research Service, May 24, 1995; More Benefits Fewer Burdens, Office of Management and Budget, December 1996.

In addition, the obvious decline in the absolute number of OMB reviews indicates that even Executive Branch oversight is deteriorating in terms of comprehensiveness. Clinton's executive order reduced the number of rules required to be reviewed. OMB, for its part, believes that "By focusing on the most important rules, OMB can become involved earlier and more deeply in agency policies of greatest impact."³¹ On the other hand, given that agencies are not constrained by voters or by statutory requirements for rigorous cost-benefit analysis, relaxing central review raises the distinct possibility that agencies will find loopholes and that too many onerous or absurd regulations will escape unchallenged by the threat of even rudimentary review.

Figure 20 presents an "Oversight Index," an inexact but useful way of gauging the comprehensiveness of OMB's audit of unelected agency regulators. Though there is no one-to-one correspondence between the two, the index looks at the absolute number of absolute OMB reviews (from Figure 18) as a proportion of total regulatory activity, as loosely proxied by the total number of rules flowing through the regulatory pipeline. (This rules flow is presented earlier in Figure 11.) Figure 20 shows that the completeness of regulatory oversight has declined markedly over the past few years. In 1996, the 498 rules reviewed represented just 11 percent of the 4,680-rule flow emanating from the regulatory agencies that year. By contrast, in the late 1980s and early 1990s, the index stood above 50 percent, indicating that far fewer rules escaped some measure of scrutiny.

IS REGULATION BEING "REINVENTED"? A LOOK AT EPA

Regulatory Plan Omissions Limit Usefulness

The EPA is arguably in the spotlight more than any other agency as far as accusations of regulatory excess are concerned. That means when ascertaining whether or not government is being downsized or "reinvented," the EPA is one of the best places to make that judgment.

The October 1994 *Unified Agenda* introduced an annual supplement called the *Regulatory Plan*, a subset of the *Unified Agenda* meant to highlight agency priorities. Agencies and departments in the *Regulatory Plan* present their most important significant regulatory actions to be issued in proposed or final form for the coming year.³² (Rules at the pre-rule, long-term and completed stages are not required to be disclosed in the *Regulatory Plan*.) Unfortunately, compliance costs to the public for these important rules, rather than being required by law, are "optional information" that agencies provide "at their discretion."³³ Figure 21 shows the number of rules considered priorities in the various agencies' *Regulatory Plans* from 1994 through 1997. Unfortunately, agencies fail to list all of their significant

When ascertaining whether or not government is being downsized or "reinvented," the EPA is one of the best places to make that judgement.

regulatory actions in the *Plan*, making comparisons of high-level regulatory activity and impacts both across years and across agencies impossible.

In April 1996, the *Unified Agenda of Federal Regulations* was renamed the *Unified Agenda of Federal Regulatory and Deregulatory Actions*. Despite the new emphasis on deregulation and the decline in the total number of *Agenda* rules over the past few years, deregulation is not yet carrying the day, at least as far as that superstar regulator, the Environmental Protection Agency (EPA), is concerned.

The *Regulatory Plan* calls for all agencies to identify “the most important significant regulatory actions that the agency reasonably expects

Figure 21
Regulatory Plans:
Agency Proposed and Final Rule Priorities
(1994-1997)

	97 Plan	96 Plan	95 Plan	94 Plan
Department of Agriculture	13	12	11	18
Department of Commerce	1	2	5	4
Department of Defense	1	1		1
Department of Education	3	5	5	5
Department of Energy	5	5	4	4
Health and Human Services	21	15	22	31
Housing and Urban Development	13	7	10	19
Department of Interior	5	2	4	4
Department of Justice	4	5	3	8
Department of Labor	22	22	20	21
Department of Transportation	14	13	11	19
Department of the Treasury	3	3	2	5
Veterans' Affairs	1	1	2	
Environmental Protection Agency	39	41	33	27
General Services Administration	1	2	5	7
National Aeronautics and Space Admin.	1			
National Archives and Records Admin.	1		1	2
Equal Employment Opportunity Comm.	1	2	3	
Office of Personnel Management	1	2	1	11
Pension Benefit Guaranty Corporation	1	2	1	1
Railroad Retirement Board	2	2	2	6
Small Business Administration	3	2	2	
Social Security Administration	9	8	5	
Commodity Futures Trading Commission	2	4	2	3
Consumer Product Safety Commission	3	2	2	3
Federal Communications Commission			2	
Federal Housing Finance Board	2	3	3	2
Federal Maritime Commission	1	1	1	
Federal Trade Commission			3	
National Indian Gaming Commission	3			
Nuclear Regulatory Commission	1	4	6	5
Surface Transportation Board		2		
TOTAL	172	172	166	214

Source: Compiled by CEI from the *Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, Regulatory Information Service Center, 1994-1997.

to issue in proposed or final form during the upcoming fiscal year,”³⁴ So far, however, the report is barely useful for determining the overall regulatory impact of an agency. The EPA provides the perfect illustration of failure to adhere the *Regulatory Plan* spirit, because it simply does not report all its most onerous new rules in the *Plan*.

As noted earlier in Figure 12, the EPA has 430 rules in the 1997 *Agenda*. (This is a slight drop from the count of 432 in 1996.) Thirty-nine of the 430 are specifically excerpted as “priority” proposed and final rules in the EPA’s *Regulatory Plan*. Of these 39 in the EPA’s *Regulatory Plan*, 14 are economically significant (cost more than \$100 million annually). The rest are priorities for other reasons. (EPA included an additional rule in its *Plan* that was at the pre-rule stage, but that is omitted here since only proposed and final rules are required to be included.)

Recall from Figure 13 that fully 38 EPA rules in the October 1997 *Agenda* are economically significant. As Figure 13 further shows, 20 of these costly rules are at the proposed and final stage, which qualifies them for inclusion in the *Regulatory Plan*. But despite the requirement that agencies list the “most important significant actions” at the proposed and final stages in their *Regulatory Plan*, the EPA, as noted, lists only 14 of its 20 proposed and final economically significant rules in its *Plan*. Thus an additional six EPA rules are economically significant yet *are not listed* by the EPA in its *Plan* (See Figure 22). These represent at least \$600 million in new costs. Granted, the bureauspeak phrase “most important significant” can mean different things to different people; but at the very least, it can be agreed among reasonable individuals that economically significant rules fit this category and should be disclosed in every *Regulatory Plan*. Otherwise the plan gives an incomplete and misleading picture of the financial burdens of regulations to come.

The annual Regulatory Plans are marred because agencies fail to list all of their high-cost rules in them.

Figure 22
EPA Fails to Disclose All High-Cost Rules in *Regulatory Plan*

Total Number of Economically Significant	
Proposed and Final Rules in EPA’s <i>Agenda</i> :	20
Number that EPA Lists in <i>Regulatory Plan</i> :	14
EPA <i>Regulatory Plan</i> Reporting Shortfall:	6

Beyond the inherent problems in relying on agency self-reporting in the first place, such gross omissions irreparably compromise the usefulness of the *Regulatory Plan*. At the very least, *all* economically significant proposed and final rules should be listed in every agency’s *Regulatory Plan* (not just the EPA’s). These omissions must be remedied in future editions of the *Regulatory Plan* for it to be coherent.

Rule Growth and Small Business Impacts at EPA

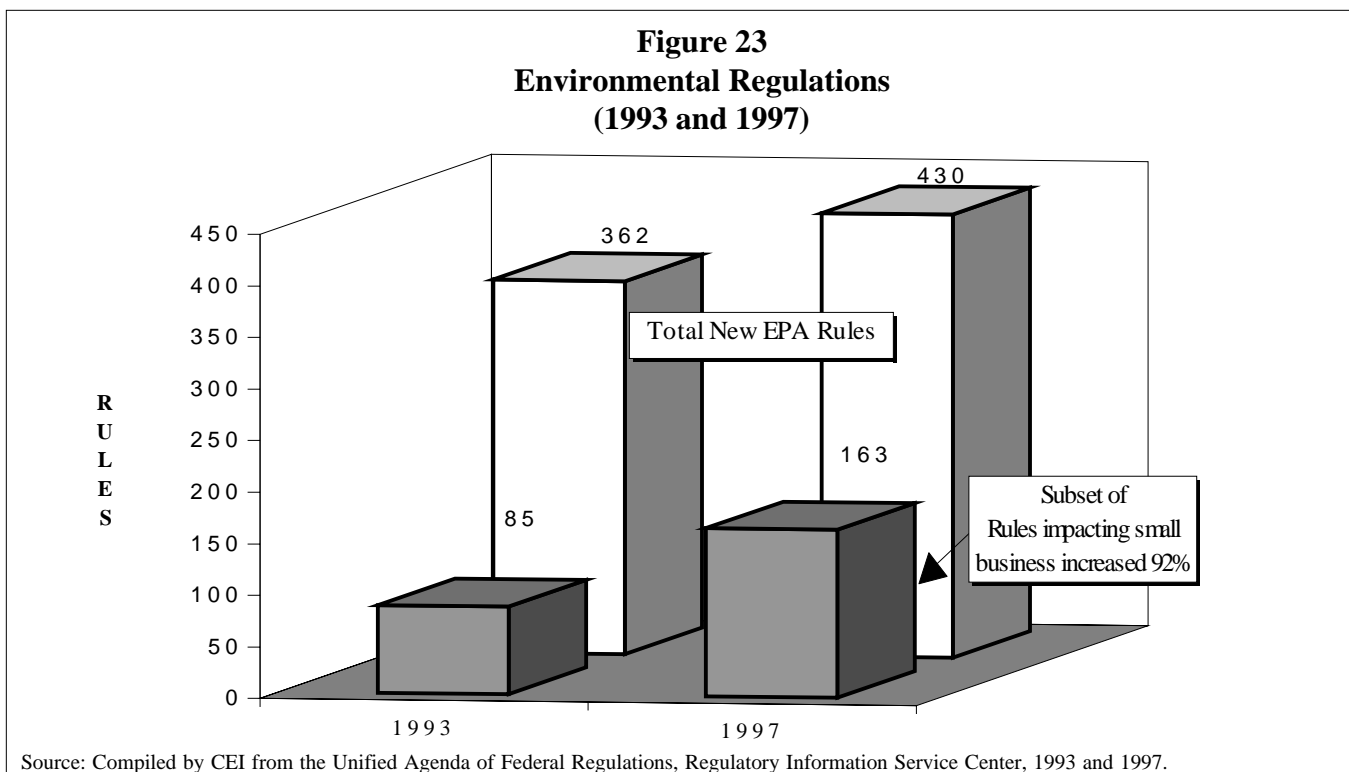
Since 1993, the EPA's total number of "pipeline" entries in the *Unified Agenda* increased from 362 to 430—a 19 percent increase (See Figure 23). Though the EPA's rule growth has been rather flat over the past two years, a 19 percent increase over five years at perhaps the most fearsome regulatory agency is inconsistent with today's ethic of "downsizing government." Furthermore, the EPA delivers a particularly serious blow to small business. Also shown in Figure 23 is the subset of EPA's rules that impact small business. Since 1993, the number of EPA's rules that impact small business has risen from 85 to 163, a 92 percent jump. Rules affecting small business now account for fully 38 percent of EPA's *Agenda* entries. (This was also shown back in Figure 16.)

New EPA rules will cost at least \$3.6 billion.

"Reinventing" \$100 Million Rules at EPA

As noted, of the 430 rules anticipated by the EPA in the October 1997 *Agenda*, 38 are considered "economically significant," \$100 million-per-year rules.

To what extent are such big-ticket regulations being cut back by reinvention? Of the EPA's 38 economically significant rules, just two are part of President Clinton's Reinventing Government effort to reduce government burdens. Since we don't know precise costs, one can give the benefit of the doubt and assume that the EPA's two "reinvented" rules are guaranteed to *reduce* regulatory costs by \$100 million apiece. In other words, the EPA *alone* expects to impose — at a minimum — new regulations



costing \$3.6 billion annually (38 economically significant rules times \$100 million apiece, minus the assumed \$100 million savings apiece from the two reinvented rules). These new off-budget, yearly regulatory costs of \$3.6 billion will come on top of the EPA's annual appropriation from taxpayers, which will be approximately \$ 6.7 billion for fiscal year 1998.

The EPA Cannot Justify Costly Rules With Documented Benefits

Agencies not only fail to list all their anticipated costly rules in the annual *Regulatory Plan*: they also sometimes fall short in providing cost estimates for the economically significant rules that they do manage to include in their *Regulatory Plans*. Even the existence of the \$100 million threshold and its consequent designation that a rule is economically significant is no guarantee that cost-benefit analysis will get done. The EPA serves as the example again. As noted, 15 rules in the EPA's 1997 *Regulatory Plan* are economically significant. Of those, only eight are accompanied by cost estimates. The costs of the remaining rules are a mystery. And as noted, several of the EPA's costliest proposed and final rules don't appear in its 1997 *Regulatory Plan* at all.

If costs are not calculated and presented openly to the public even when required by Executive Order, it is a virtual certainty that benefits are not. Indeed, there is a mismatch between the existence of cost and benefit estimates at EPA, such that the agency may not be justified in claiming that its activities produce net benefits. Of the 15 economically significant rules in EPA's plan, only seven feature benefit estimates. What are the benefits of the other eight significant rules in the *Regulatory Plan*? What are the benefits of the other 23 economically significant rules in the pipeline that EPA did not need to list in its *Regulatory Plan*? What are the benefits of the remaining 392 EPA rules in the *Unified Agenda*?

Since the EPA issued the greatest number of \$100 million-plus rules (38), the greatest number of rules affecting small business (163) and has increased rulemaking 19 percent since 1993, it is difficult to argue that a pullback is underway.

ENDING REGULATION WITHOUT REPRESENTATION

Easy Steps Improve Regulatory Disclosure

Enhancing disclosure for regulations, in contrast to a regulatory overhaul mandating quantitative cost-benefit analysis, need not entail a protracted legislative fight. Incremental steps that summarize *already available* but scattered data can go a long way toward transforming today's regulatory culture toward one of maximum disclosure. Such steps would be far more difficult to credibly oppose in the public arena.

Benefit estimates were provided for fewer than half of EPA's costly rules.

Instead of rigorous cost-benefit analysis, regulations today are broken into those that are “economically significant” (over \$100 million in annual costs), and those that are not. The problem is that this threshold allows reformers are able to discern only a *minimum* level of costs. For example, of the 125 major rules in the October 1997 *Unified Agenda*, we may easily ascertain only that the total annual costs for these rules will be *at least* \$12.5 billion (\$100 million per rule times 125 rules). But we can’t determine any more than that without combing through the *Unified Agenda* or Regulatory Impact Analyses on file at the agencies, and even these steps are no guarantee that good numbers will be forthcoming. Today, agencies need not specify whether an economically significant rule costs only \$100 million, or one hundred times that amount.

The definition of “economically significant” rules should be expanded.

To remedy this information gap, the definition of “significant rule” should be slightly modified. OMB should recommend that agencies break their economically significant rules up into separate categories that represent increasing costs. Figure 24 presents one workable breakdown:

Figure 24
Proposed Breakdown of “Economically Significant” Rules

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

Agencies can categorize rules on the basis of the Regulatory Impact Analyses that accompany many economically significant rules. The administration acting alone could require agencies to categorize their significant rules, beginning immediately. Otherwise Congress should require it as one modest step toward regulatory accountability. Clearly, even such a simple step could render the “economically significant” designation substantially more informative than it is now. For example, some analyses of the EPA ozone-particulate matter rule suggest that by the year 2010, the annual cost of the ozone portion will exceed \$1.1 billion, while the particulate matter portion will exceed \$8.6 billion annually.³⁵ Currently, we merely know that both rules are “economically significant.” Knowing instead that EPA is imposing “Category 3” and “Category 4” rules would be far more informative shorthand.

Other steps beyond improving our current definition of an economically significant rule are attainable as well. Under the existing reporting format, interested citizens must comb through the *Unified Agenda*’s 1,000-plus pages of small, multi-column print to accumulate regulatory information on numbers of major rules, benefit estimates and so forth. Regulatory reformers are stymied by the relative absence of any official *concise* presentation of known information about regulatory costs and trends. Thus

a logical incremental step toward regulatory disclosure would require that *Agenda*'s data be officially summarized in chart form each year — perhaps as a chapter in the *Fiscal Budget* or the *Economic Report of the President*. That alone would make the *Agenda* a far more useful document for policy-makers and outside analysts of the regulatory state.

An appropriate summary presentation would be a “Regulatory Report Card” like that depicted in Figure 25. Such a summary disclosure could distinguish between: the numbers of rules that are major and minor; the numbers of rules that regulatory and *deregulatory*; which entries are regulations impacting the private sector and which mere administrative rulings that affect only agency procedure; which are recurring rules and which are appearing in the *Agenda* for the first time (In other words, how much “rollover” is there?); and so on. The successes or failures of any special initiative, such as the current administration’s Reinventing Government effort, could be presented separately in a Report Card as well. Finally, topping off the Report Card with five-year historical data would tremendously enhance the usefulness of the *Unified Agenda*.

A simple Regulatory Report Card would enhance disclosure.

Figure 25

REGULATORY REPORT CARD

Recommended Official Summary Data by *Program, Agency, and Grand Total*

Numbers of economically significant (\$100 million +) rules by category (See Figure 24)

Numbers of minor rules

Numbers of major and minor rules that contain numerical cost estimates

Tallies of cost estimates that exist, with subtotals by agencies and grand total

Numbers/Percentages of major and minor rules without cost estimates

Short explanation of ratio and primary reason for lack of cost estimates

Numbers of major and minor rules required by statute

Numbers of major and minor rules that are discretionary

Numbers of final rule documents published

Numbers of *Federal Register* pages devoted to final and to proposed rules

Number economically significant final rule documents

Number of GAO reports on major rules

Number of rules facing statutory or judicial deadlines

Numbers of rules for which cost calculations are statutorily prohibited

Percentages of rules reviewed at OMB or “Oversight Index”

Numbers of rules that are deregulatory, or part of “Reinventing Government”

Five-year historical tables for all the above

Precision cost-benefit data would not be necessary to begin producing a Regulatory Report Card. That very fact gives Report Card disclosure a short-term advantage over comprehensive reform in that it would merely require cataloguing what is already known. Simple disclosure of what exists would

Reforms such as a Report Card set the stage for making explicit to the public, the extent of the regulatory burden.

Congressional accountability for regulatory costs is paramount.

be a difficult reform to oppose. Trends in this data would prove vital to scholars, third party researchers and to Congress as the months go by, facilitating rudimentary cross-agency comparisons of regulatory rationality over time. We owe thanks for most of what we know about regulatory costs not to governmental disclosure but to work such as that by Thomas Hopkins. Reforms such as a Report Card set the stage for making explicit to the public, on an *official* basis, the extent of the regulatory burden.

“No Regulation Without Representation”

An important side effect of disclosure is that it will quickly expose the extent to which Congress itself, rather than agencies, bears responsibility for the regulatory burden. For example, a Regulatory Report Card would quickly show that Congress put in place many of the major rule statutory deadlines that make aggressive streamlining at the agency level impossible. Also, so long as agencies continue to calculate benefits, presenting the percentages of rules with and without benefit calculations would reveal whether or not the regulatory state’s defenders can legitimately argue that unaccountable regulation is doing more good than harm.

The lesson to be learned from years of unbudgeted regulatory growth is that one cannot assume that merely because agencies engage in something called “regulating” and impose things called “regulations,” that they necessarily do good. Yet agencies can hardly be faulted for not guaranteeing net benefits: Congress deliberately delegates lawmaking power to unelected agencies, and then fails to require that they make any guarantee of net benefits. Since there are few measures of agency “productivity” other than budget size and numbers of regulations, agencies thus face overwhelming incentives to expand their turf by regulating even in the absence of demonstrated need. Thanks to our elected representatives shirking their duty to make the tough calls themselves, it is hard to blame agencies for emphasizing the very regulating they were set up to do and downplaying the rigorous cost-benefit analyses that work against their own self interest.

Since agencies are inherently unaccountable to voters, an annual Regulatory Report Card is a start but it is not enough. Any reform that relies on agencies policing themselves must ultimately fall short. Instead, making Congress directly accountable for every dollar of costs agencies impose on the public by requiring it to vote its approval of agencies’ final rules would mark the ultimate achievement in ensuring accountable regulation.

Congressional accountability for regulatory costs assumes added importance in an environment in which deficit cutting and budget balancing dominate. If Congress’s alternatives are to spend (thus increasing the deficit) or to issue new regulations, a balanced budget constraint invites Congress to expand off-budget regulatory burdens rather than spending money it lacks. For example, if Congress desires a job training program of some sort it can

fund it through a Labor Department appropriation, which appears in the *Federal Budget*. Alternatively, the Labor Department it can simply impose a regulation requiring Fortune 500 companies to fund such a program. Forcing others to pay with their own money for government preferences does not increase the deficit, yet it lets Congress take credit for “good deeds.” In this manner, government can expand almost indefinitely without explicitly taxing anyone a single penny. We at least know the size of the deficit with precision. But the true scope of the regulatory burden will remain a mystery unless excessive delegation is prohibited.

Unfortunately, Americans cannot can’t vote out offending regulators, even as Congress lays blame for excessive regulation at the regulators’ feet. That is a dangerous state of affairs, and the best solution is to make Congress directly accountable. Thus important reforms to control the unaccountable regulatory enterprise are (1) Disclosure: to make regulatory costs (like taxes) as transparent as possible, and (2) Accountability: to ensure that Congress bears direct responsibility to voters for every dollar of new regulatory costs. To ensure accountability, today’s rampant delegation of legislative power to unelected agencies must end. Congress, our elected representatives, should explicitly approve every significant regulation that agencies impose on the private sector and lower level governments.

As already noted, to ensure transparency Congress could start small by simply requiring that widely dispersed publicly-available data be consolidated and presented in summary form in the aforementioned Regulatory Report Card, to be published as a chapter in the annual *Federal Budget*. Congress might also implement a limited regulatory budget, modeled on but far less sweeping than the fiscal budget.³⁶ But congressional approval -- rather than agency approval -- of both regulations and regulatory costs should be the ultimate goal of regulatory reform. Such votes need not bog Congress down: there is no reason why agency regulations cannot be voted on *en bloc*, for example. Congressional approval of new regulation can also be given by voice vote, rather than by tabulated roll call.

If today’s Congress can begin ensuring transparency and disclosure and taking responsibility for the growth of the regulatory state, that will set the stage for a fairer and more rational regulatory system. If the government at last is above-board about the regulatory costs it imposes, that will eliminate the need for reports such as *Ten Thousand Commandments*.

Rampant delegation of legislative power to agencies must end.

ABOUT THE AUTHOR

Clyde Wayne Crews Jr. is the Fellow in Regulatory Studies at the Competitive Enterprise Institute, where he studies general regulatory and antitrust reform, risk and environmental issues, electricity deregulation, and other budget issues. Wayne has published in outlets such as the *Wall Street Journal*, the *Journal of Commerce*, *American Enterprise*, the *Washington Times*, the *Electricity Journal*, *Public Utilities Fortnightly* and the *Journal of Regulation and Social Costs*, and others, and has appeared on various television and radio programs. Before joining CEI in 1995 Wayne was a legislative aide in the United States Senate, responsible for regulatory and welfare reform issues. Earlier, he was an economist and policy analyst at Citizens for a Sound Economy Foundation, and before that an economist at the Food and Drug Administration and a research assistant at the Center for the Study of Public Choice at George Mason University. He holds an M.B.A. from William and Mary and a B.S. from Lander College in Greenwood, South Carolina.

Special thanks to William J. Michael, CEI Research Assistant, for his valuable research assistance on this monograph.

ENDNOTES

¹ Thomas D. Hopkins, *Regulatory Costs In Profile*, Center for the Study of American Business, Policy Study Number 132, August 1996, p. 10. Also see U.S. Small Business Administration, Office of Advocacy, *The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress*, October 1995, p. 28.

² Prepared Statement of Thomas D. Hopkins, Rochester Institute of Technology, Rochester, New York, Before The House Government Reform and Oversight Committee, National Economic Growth, Natural Resources and Regulatory Affairs Subcommittee, May 16, 1996.

³ Hopkins, August 1996, p. 5.

⁴ These breakdowns are available in Hopkins, August 1996, p. 10; U.S. Small Business Administration, October 1995, Table 3, p. 28; and also Thomas D. Hopkins, *Profiles of Regulatory Costs: Report to the Small Business Administration*, November 1995, Appendix A, Table A-1.

⁵ *Draft Report to Congress on the Costs and Benefits of Federal Regulations*, Office of Management and Budget, Executive Office of the President, July 18, 1997.

⁶ See Thomas D. Hopkins, *OMB's Regulatory Accounting Report Falls Short of the Mark*, Center for the Study of American Business, Policy Study Number 142, November 1997.

⁷ *Draft Report*, p. 5.

⁸ The deficit figure is from Congressional Budget Office, *The Economic and Budget Outlook: An Update*, September 1997, p. xii.

⁹ Federal spending figure is from Congressional Budget Office, 1997, p. xii.

¹⁰ Individual income tax figures from "Federal Receipts, by Source: 1980 to 1996," *Statistical Abstract of the United States 1996*, U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, p. 331.

¹¹ From "Corporate Profits, Taxes, and Dividends: 1980 to 1995," *Statistical Abstract of the United States 1996*, U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, p. 555.

¹² Government outlays and GDP are from Congressional Budget Office, *The Economic and Budget Outlook: An Update*, September 1997, p. xxi.

¹³ GDP figures for Canada and Mexico are from "Gross Domestic Product, by Country: 1980 to 1994," *Statistical Abstract of the United States 1996*, U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, p. 836.

¹⁴ See Christopher Douglass, Michael Orlando and Melinda Warren, *Regulatory Changes and Trends: An Analysis of the 1998 Budget of the U.S. Government*, Center for the Study of American Business, Policy Brief 182, August 1997, Table A-4, p. 31.

¹⁵ *Ibid*, Table A-5, p. 32.

¹⁶ *Ibid*, p. 1.

¹⁷ Hopkins, 1995, Appendix A, Table A-2.

¹⁸ Claire M. Hintz, *Tax Burden on American Families Rises Again*, Tax Foundation Special Report, November 1997, No. 74.

¹⁹ The actual burden is slightly higher since the family regulatory cost figure is expressed in 1995 dollars rather than current dollars.

²⁰ *Cost of Government Day: July 3, 1997*, Americans for Tax Reform Foundation, Washington, D.C.

²¹ Regulatory Information Service Center, *The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions*, Reprinted from *Federal Register* of Wednesday, October 29, 1997, Volume 62, No. 209, October 1997.

²² See, for example, Cindy Skrzycki, "Slowing the Flow of Federal Rules: New Conservative Climate Chills

Agencies' Activism," Washington Post, February 18, 1996, p. A1 (First in a four-article series entitled "De-Facto Deregulation: Changing the Rules of the Game.)

²³ Regulatory Information Service Center, October 1997, p. 57006.

²⁴ Regulatory Information Service Center, October 1997, p. 58517.

²⁵ The bill also contained provisions allowing Congress an opportunity to review agency rules before they become effective, potentially raising congressional accountability to new heights. These provisions were signed into law as a part of H.R. 3136 on March 29, 1996, the Contract with America Advancement Act, which also included an increase in the debt ceiling and a Social Security earnings limitation increase.

²⁶ Regulatory Information Service Center, October 1997, p. 58531.

²⁷ Ibid.

²⁸ Part of the reason this figure is smaller than the 4,000-plus rules that appear in the *Agenda* is that the *Agenda* includes rules in the pre-rule, long-term, and completed categories.

²⁹ Specifically exempted from review were certain independent regulatory agencies and commissions, such as the Nuclear Regulatory Commission, the Consumer Product Safety Commission, the Federal Reserve, rules dealing with emergencies, and rules with statutory deadlines.

³⁰ Rules reviewed at the 20 most active agencies in 1991 – the last year for which comprehensive data was published – were as follows, in descending order: Agriculture (418), Health and Human Services (402), Transportation (257), Commerce (208), Environmental Protection Agency (185), Justice (133), Housing and Urban Development (125), Education (124), Interior (115), Office of Personnel Management (87), Veterans Affairs (71), Treasury (52), Labor (47), State (46), General Services Administration (37), Small Business Administration (34), Energy (33), Defense (25), Railroad Retirement Board (21), Federal Emergency Management Agency (19). From the *Regulatory Program of the United States Government*, April 1, 1992-March 31, 1993, p. 606.

³¹ Office of Management and Budget, Office of Information and Regulatory Affairs, *More Benefits, Fewer Burdens: Creating a Regulatory System that Works for the American People*, A Report to the President on the Third Anniversary of Executive Order 12866, December 1996, Appendix A, p. 36.

³² Executive Order 12866 requires that agencies include in their Regulatory Plan "(1) a narrative statement of its regulatory priorities; and (2) a description of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form during the upcoming fiscal year." See Regulatory Information Service Center, *The Regulatory Plan and the Unified Agenda of Federal Regulations*, Vol. 1, Reprinted from the *Federal Register* of Monday, November 14, 1994, volume 59, No. 218, p. 50006.

³³ Regulatory Information Service Center, October 1994, p. 57008.

³⁴ Regulatory Information Service Center, October 1997, p. 57005.

³⁵ "Costs of Ozone Standard Outweigh Benefits, Final Impact Analysis Shows," *BNA Daily Environment Report*, No. 142, 7-24-97

³⁶ For further detail, see Clyde Wayne Crews Jr., *Promise and Peril: Implementing a Regulatory Budget*, Competitive Enterprise Institute: Washington, D.C. (CEI Regulatory Reform Project), April 1996. See also Christopher C. DeMuth, "The Regulatory Budget," *Regulation: The American Enterprise Institute Journal on Government and Society*, March/April 1980, pp. 29-44.

TEN THOUSAND COMMANDMENTS

HISTORICAL TABLES

**Historical Tables Part A:
Federal Register Page History (1936-1997)***

Year	Unadjusted Page Count	Jumps/Blanks	Adjusted Page Count
1936	2,620	not available (n/a)	2,620
1937	3,450	n/a	3,450
1938	3,194	n/a	3,194
1939	5,007	n/a	5,007
1940	5,307	n/a	5,307
1941	6,877	n/a	6,877
1942	11,134	n/a	11,134
1943	17,553	n/a	17,553
1944	15,194	n/a	15,194
1945	15,508	n/a	15,508
1946	14,736	n/a	14,736
1947	8,902	n/a	8,902
1948	9,608	n/a	9,608
1949	7,952	n/a	7,952
1950	9,562	n/a	9,562
1951	13,175	n/a	13,175
1952	11,896	n/a	11,896
1953	8,912	n/a	8,912
1954	9,910	n/a	9,910
1955	10,196	n/a	10,196
1956	10,528	n/a	10,528
1957	11,156	n/a	11,156
1958	10,579	n/a	10,579
1959	11,116	n/a	11,116
1960	14,479	n/a	14,479
1961	12,792	n/a	12,792
1962	13,226	n/a	13,226
1963	14,842	n/a	14,842
1964	19,304	n/a	19,304
1965	17,206	n/a	17,206
1966	16,850	n/a	16,850
1967	21,088	n/a	21,088
1968	20,072	n/a	20,072
1969	20,466	n/a	20,466
1970	20,036	n/a	20,036
1971	25,447	n/a	25,447
1972	28,924	n/a	28,924
1973	35,592	n/a	35,592
1974	45,422	n/a	45,422
1975	60,221	n/a	60,221
1976	57,072	6,567	50,505
1977	65,603	7,816	57,787
1978	61,261	5,565	55,696
1979	77,498	6,307	71,191
1980	87,012	13,754	73,258
1981	63,554	5,818	57,736
1982	58,494	5,390	53,104
1983	57,704	4,686	53,018
1984	50,998	2,355	48,643
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 est.	68,400	unknown	unknown

**Historical Tables Part B:
Number of Federal Register
Documents Published (1976-1996)**

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

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

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

Historical Tables Part C:
Unified Agenda Rules History (1983-1997)*

Total Number of Rules Under Consideration

1980s

1983	April	2,863
	October	4,032
1984	April	4,114
	October	4,016
1985	April	4,265
	October	4,131
1986	April	3,961
	October	3,983
1987	April	4,038
	October	4,005
1988	April	3,941
	October	4,017
1989	April	4,003
	October	4,187

1990s

1990	April	4,332
	October	4,470
1991	April	4,675
	October	4,863
1992	April	4,186
	October	4,909
1993	April	4,933
	October	4,950
1994	April	5,105
	October	5,119
1995	April	5,133
	October	4,735
1996	April	4,570
	October	4,680
1997	April	4,417
	October	4,407

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

**Historical Tables Part D:
Unified Agenda History By Department and Agency
(1997, 1996 and Oct 1993)**

	Oct-97	Apr-97	Oct-96	Apr-96	Oct-93
Dept. of Agriculture	398	399	450	376	460
Dept. of Commerce	283	274	289	290	283
Dept. of Defense	142	141	136	142	135
Dept. of Education	29	36	49	55	94
Dept. of Energy	75	74	81	72	85
Dept. of Health & Human Services	299	284	283	272	384
Dept. of Housing & Urban Development	98	80	98	110	221
Dept. of Interior	321	327	386	356	307
Dept. of Justice	185	198	203	203	136
Dept. of Labor	132	113	119	107	129
Dept. of State	24	26	18	19	16
Dept. of Transportation	510	517	551	566	541
Dept. of Treasury	458	435	444	443	637
Dept. of Veterans's Affairs	108	103	145	101	152
Advisory Council on Historic Preservation	1	1	1	1	2
Agency for International Development	8	5	4	2	3
Architectural and Transportation Barriers					
Compliance Board	9	6	7	7	7
Commission on Civil Rights	1	1	1	2	1
Corporation for National & Community Service	2	1	1	1	0
Environmental Protection Agency	430	446	432	430	362
Federal Emergency Management Agency	22	22	23	18	36
General Services Administration	52	62	42	40	44
National Aeronautics & Space Agency	17	26	34	43	26
National Archives & Records Administration	17	14	17	18	16
Federal Council on the Arts and Humanities	0	0	0	1	0
Institute of Museum Services	2	1	0	1	0
National Endowment for the Arts	7	5	4	4	6
Equal Employment Opportunity Commission	10	7	9	9	7
Natioanl Endowment for the Humanities	7	6	5	5	6
National Science Foundation	7	7	3	3	6
Office of Federal Housing Enterprise Oversight	4	4	4	4	0
Office of Government Ethics	13	11	13	11	11
Office of Management & Budget	16	12	15	18	29
Office of Personnel Management	92	92	91	107	89
Panama Canal Commssion	6	4	5	5	5
Peace Corps	5	6	6	6	4
Pension Benefit Guaranty Corporation	10	10	11	17	20
Railroad Retirement Board	20	20	21	18	18
Selective Service System	1	1	1	1	1
Small Business Administration	15	16	18	53	77
Social Security Administration	72	71	73	67	0
Tennessee Valley Authority	0	0	1	1	6
U.S. Information Agency	4	4	3	2	4
Federal Acquisition Regulation	49	73	102	94	65
Commodity Futures Trading Commission	9	11	13	10	21
Consumer Product Safety Commission	14	14	15	17	19
Farm Credit Administration	17	18	21	22	28
Farm Credit System Insurance Corporation	4	4	4	4	0

Federal Communications Commission	98	96	104	90	57
Federal Energy Regulatory Commission	10	10	14	15	29
Federal Housing Finance Board	17	20	18	20	22
Federal Maritime Commission	3	8	7	7	11
Federal Reserve System	36	37	40	34	38
Federal Trade Commission	19	21	17	26	12
National Credit Union Administration	14	14	12	19	21
Federal Deposit Insurance Corporation	31	30	34	22	35
National Indian Gaming Commission	16	13	6	6	3
National Labor Relations Board	3	5	5	7	0
Nuclear Regulatory Commission	62	59	55	57	93
Securities and Exchange Commission	79	92	102	89	86
Surface Transportation Board	13	23	13	21	0
Federal Mediation and Conciliation Service	1	1	0	0	0
Thrift Depositor Protection Board	0	0	0	3	4
Resolution Trust Corporation	0	0	0	0	8
Interstate Commerce Commission	0	0	0	0	20
ACTION	0	0	0	0	8
Merit Systems Protection Board	0	0	0	0	2
Pennsylvania Ave. Development Corp.	0	0	0	0	2
TOTAL	4,407	4,417	4,679	4,570	4,950

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

**Historical Tables Part E:
Agency Major Rules by Category (1996-1997)**

Apr-97	Prerule	Proposed	Final	Long-term	Completed	TOTAL
Dept. of Agriculture	0	5	8	1	3	17
Dept. of Energy	1	2	3	7	0	13
Dept. of Health & Human Services	0	0	2	1	1	4
Dept. of Housing & Urban Development	0	1	2	0	1	4
Dept. of Interior	0	1	0	0	0	1
Dept. of Justice	0	1	0	0	1	2
Dept. of Labor	1	7	1	2	2	13
Dept. of Transportation	1	4	1	1	0	7
Dept. of Veterans's Affairs	0	0	0	0	1	1
Environmental Protection Agency	1	11	13	12	6	43
Federal Emergency Management Agency	0	0	0	0	1	1
Small Business Administration	0	3	2	0	0	5
Social Security Administration	0	0	1	0	1	2
Consumer Product Safety Commission	0	1	0	0	0	1
Federal Communications Commission	0	1	0	7	3	11
Federal Housing Finance Board	0	1	2	0	0	3
Federal Reserve System	0	0	1	0	2	3
Nuclear Regulatory Commission	0	0	1	0	0	1
TOTAL	4	38	37	31	22	132

Oct-96	Prerule	Proposed	Final	Long-term	Completed	TOTAL
Dept. of Agriculture	0	5	7	3	10	25
Dept. of Commerce	0	0	0	0	1	1
Dept. of Energy	1	2	3	7	0	13
Dept. of Health & Human Services	0	2	2	0	2	6
Dept. of Housing & Urban Development	0	0	3	0	0	3
Dept. of Interior	0	1	0	0	1	2
Dept. of Labor	1	8	1	1	0	11
Dept. of Transportation	2	2	1	0	1	6
Dept. of Veterans' Affairs	0	1	0	0	0	1
Environmental Protection Agency	3	13	14	10	6	46
Federal Emergency Management Agency	0	0	0	1	0	1
Small Business Administration	0	4	0	0	0	4
Social Security Administration	0	0	2	0	0	2
Consumer Product Safety Commission	0	1	0	0	0	1
Federal Acquisition Regulation	0	0	0	0	1	1
Federal Communications Commission	0	0	0	8	2	10
Federal Energy Regulatory Commission	0	0	0	0	1	1
Federal Housing Finance Board	0	2	0	0	0	2
Federal Reserve System	0	0	1	0	1	2
Nuclear Regulatory Commission	0	1	0	0	0	1
TOTAL	7	42	34	30	26	139

Apr-96	Prerule	Proposed	Final	Long-term	Completed	Total
Department of Agriculture	0	1	7	8	4	20
Department of Commerce	0	0	0	0	1	1
Department of Energy	1	0	0	7	0	8
Health and Human Services	0	2	1	0	1	4
Housing and Urban Development	0	0	2	0	0	2
Department of Interior	0	1	0	0	0	1
Department of Labor	0	7	0	3	0	10
Department of Transportation	1	0	5	0	0	6
Veterans' Affairs	0	1	0	0	0	1
Environmental Protection Agency	1	14	19	9	3	46
Small Business Administration	0	0	0	0	5	5
Social Security Administration	0	0	1	0	0	1
Federal Acquisition Regulation	0	0	1	0	0	1
Consumer Product Safety Commission	0	1	0	0	0	1
Federal Communications Commission	0	1	0	4	0	5
Federal Energy Regulatory Commission	0	0	0	1	0	1
Federal Housing Finance Board	0	1	0	1	0	2
Nuclear Regulatory Commission	0	0	0	0	1	1
TOTAL	3	29	36	33	15	116

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

**Historical Tables Part F:
Rules Impacting Small Business, 1993-1997**

	1993		1994		1995		1996		1997	
	April	October	April	October	April	October	April	October	April	October
Dept. of Agriculture	33	62	62	54	49	54	53	56	59	58
Dept. of Commerce	38	33	39	46	38	43	37	46	37	29
Dept. of Defense	24	20	15	22	21	27	25	22	19	15
Dept. of Education	3	3	3	0	0	0	1	1	1	1
Dept. of Energy	2	9	4	4	1	2	2	2	2	2
Dept. of Health & Human Services	75	73	64	63	37	59	76	89	99	100
Dept. of Housing & Urban Development	43	34	36	33	19	17	12	9	6	7
Dept. of Interior	6	9	23	26	17	21	20	17	15	28
Dept. of Justice	15	16	17	17	21	23	26	27	25	26
Dept. of Labor	32	30	36	40	32	33	34	51	45	39
Dept. of State	1	1	1	1	0	0	0	2	2	1
Dept. of Transportation	30	30	25	14	16	24	37	31	36	44
Dept. of Treasury	78	70	74	69	49	59	57	52	57	50
Dept. of Veterans' Affairs	3	3	3	3	3	3	3	3	7	7
Agency for International Development	0	0	0	0	1	1	0	0	0	0
Corp. for Natl. & Community Service	0	0	0	1	0	0	0	0	0	0
Environmental Protection Agency	85	85	111	123	117	140	137	152	158	163
Federal Emergency Management Agency	2	1	1	1	1	3	3	1	0	0
General Services Administration	7	6	8	7	5	5	4	6	5	3
National Aeronautics & Space Agency	1	1	1	1	1	1	1	1	0	0
National Archives & Records Admin.	1	1	1	1	1	1	1	1	1	1
Equal Employment Opportunity Cmsn.	0	0	0	0	0	0	0	0	0	1
Natioanl Endowment for the Humanities	0	0	0	0	0	0	0	0	0	1
National Science Foundation	0	0	0	0	1	0	0	0	0	0
Office of Management & Budget	7	5	4	3	2	4	3	2	1	1
Railroad Retirement Board	1	1	2	1	1	2	2	1	1	1
Small Business Administration	54	60	47	44	47	62	49	17	15	13
Social Security Administration	0	0	0	0	2	4	2	1	1	0
U.S. Information Agency	1	1	0	0	0	0	0	0	0	0
Federal Acquisition Regulation	7	7	9	9	17	16	15	20	21	15
Commodity Futures Trading Commission	1	1	0	0	0	0	0	0	0	0
Consumer Product Safety Commission	3	3	2	2	2	1	1	1	1	0
Federal Communications Commission	54	47	45	47	48	52	65	75	68	70
Federal Energy Regulatory Commission	0	0	0	0	0	1	0	0	0	0
Federal Housing Finance Board	1	1	1	1	1	1	1	0	0	0
Federal Reserve System	14	10	12	9	8	6	4	4	3	2
Federal Trade Commission	2	2	3	2	5	5	9	7	12	11
Interstate Commerce Commission	0	1	1	0	1	0	0	0	0	0
National Credit Union Administration	2	2	1	1	0	2	2	1	1	1
Nuclear Regulatory Commission	11	9	7	8	8	5	5	8	9	9
Resolution Trust Corporation	1	0	1	1	1	0	0	0	0	0
Securities and Exchange Commission	34	29	35	32	35	34	34	48	41	34
TOTAL	672	666	694	686	608	711	721	754	748	733

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

Historical Tables Part G: Federal Rules Impacting Lower Level Government (1993-1997)

	Oct-97		Oct-93	
	State Governments	Local Governments	State Governments	Local Governments
Dept. of Agriculture	70	58	85	68
Dept. of Commerce	16	9	18	14
Dept. of Defense	4	3	2	2
Dept. of Education	3	3	26	13
Dept. of Energy	18	18	14	6
Dept. of Health & Human Ser.	82	30	107	36
Dept. of Housing & Urban Dev. ²⁴	29	68	86	
Dept. of Interior	78	11	46	8
Dept. of Justice	26	20	16	14
Dept. of Labor	29	15	29	14
Dept. of State	1	1	3	3
Dept. of Transportation	34	22	40	28
Dept. of Treasury	22	16	29	27
Dept. of Veterans's Affairs	5	0	2	1
Advis. Council on Historic Pre.	1	0	0	0
Agency for Internatl Dev.	0	0	1	1
Architectural & Tran. Barriers				
Compliance Board	1	1	1	1
Environ. Protection Agency	228	165	145	110
Federal Emer. Mgmt. Agency	1	3	16	15
General Services Admn.	5	4	4	2
Natl Aeronatics & Space Agency ¹	2	3	1	
Natl Archives & Records Admn. ²	2	3	3	
Natl Endowment for the Arts	2	2	2	2
Equal Employment Oppr. Cms.	2	2	1	1
Natl Endw. for the Humanities	1		2	2
National Science Foundation	1	1	1	1
Office of Mgmt. & Budget	4	4	7	6
Peace Corps	0	0	2	1
Railroad Retirement Board	1	0	2	0
Small Business Administration	1	0	4	4
Social Security Administration	3	0	0	0
Tennessee Valley Authority	0	0	1	1
U.S. Information Agency	2	2	1	1
Federal Comm. Commission	21	17	6	7
Federal Energy Regulty. Cms.	0	0	2	2
Federal Reserve System	3	1	1	1
Federal Trade Commission	2	0	1	0
National Credit Union Admn.	0	0	3	0
Natl Indian Gaming Cms.	2	0	0	0
Nuclear Regulatory Cms.	1	1	1	1
Securities and Exchnge Cms	1	0	1	1
Resolution Trust Corp.	0	0	1	1
ACTION	0	0	5	5
TOTAL	698	442	702	490

Source: Compiled by CEI from the Unified Agenda of Federal Regulations, Regulatory Information Service Center, 1993 and 1997.