

FEATURE

IN THE FISCAL YEAR 2003 FEDERAL BUDGET, PRESIDENT BUSH PROPOSED \$2.01 TRILLION IN DISCRETIONARY, ENTITLEMENT, AND INTEREST SPENDING. ALTHOUGH THOSE COSTS FULLY ENCOMPASS THE ON-BUDGET SCOPE OF THE FEDERAL GOVERNMENT, THERE IS CONSIDERABLY MORE TO THE REACH OF THE FEDERAL GOVERNMENT THAN THE SUM OF THE TAXES SENT TO WASHINGTON. FEDERAL ENVIRONMENTAL, SAFETY AND HEALTH, AND ECONOMIC REGULATIONS COST HUNDREDS OF BILLIONS OF DOLLARS EVERY YEAR—ON TOP OF OFFICIAL FEDERAL OUTLAYS.

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The exact cost of federal regulations can never be fully known. But governmental and private data exist on scores of regulations and the agencies that issue them, as well as on regulatory costs and benefits—all of which can be compiled in a way that makes the regulatory state more comprehensible to the public. That is the purpose of the annual Ten Thousand Commandments report, some highlights of which appear below.

- The 2001 Federal Register contained 64,431 pages, a 13.2 percent decline from 2000.
- In 2001, 4,132 final rules were issued by agencies.
- Whereas regulatory agencies that are unaccountable to the public issued 4,132 rules, Congress passed and the president signed into law just 108 bills in 2001.
- In 2001, 4,509 regulations were at various

small business are down 5.5 percent over the past year and up 36 percent over the past five years.

- The costs of meeting the demands of off-budget social regulations were as high as \$229 billion according to the Office of Management and Budget. A more broadly constructed competing estimate that includes economic regulatory costs and paperwork costs pegs regulatory expenditures at \$854 billion in 2001, or 46 percent of all FY01 outlays.
- Regulatory costs of \$854 billion are equivalent to 8.4 percent of U.S. gross domestic product, estimated at \$10,193 billion for 2001.
- Regulatory costs rival the amount estimated to be paid in 2001 individual income taxes, which was \$1,073 billion. They also rival all

THE TEN THOUSAND COMMANDMENTS

by Clyde Wayne Crews, Jr.

stages of implementation throughout the 50-plus federal departments, agencies, and commissions, a decrease of 4 percent from the previous year.

- Of the 4,509 regulations now in the works, 149 are “economically significant” rules that will have at least \$100 million in economic impact. Those rules will impose at least \$14.9 billion yearly in future off-budget costs.
- Economically significant rules in the works decreased 5.7 percent between 2000 and 2001, from 158 to 149.
- The five most active rule-producing agencies (the Departments of Transportation, Treasury, Interior, and Commerce and the Environmental Protection Agency) account for 48 percent of all rules under consideration.
- Of the 4,509 regulations now in the works, 996 impact small business. Rules affecting

corporate pretax profits, which were \$946 billion in 2000.

- In 1998 the median two-earner family’s after-tax income of \$41,846 contained \$7,410 in hidden regulatory costs. Thus, regulatory costs eat up about 18 percent of the after-tax family budget.
- Agencies spent \$21 billion to administer and police the regulatory state in 2001, 9.4 percent more than the previous year. Counting the \$854 billion in off-budget costs, that brings the total regulatory burden to \$875 billion.

With the FY02 and FY03 budgets, the U.S. government has conclusively ended its first string of budgetary surpluses in decades, but they are projected to return by 2005. But, if regaining and maintaining a true surplus remains a priority, sincere policymaking must seek to control regulatory costs. Think of it this

Ten Thousand Commandments: A Policymaker's Annual Snapshot of the Federal Regulatory State, from which this article is adapted.

way: The maximum surplus projected by the Congressional Budget Office over the coming decade is \$641 billion in 2012. But regulatory costs of more than \$800 billion already exceed that amount. Moreover, regulations and taxes can be substitutes for one another; a new government program requires increasing spending—or imposing new rules and regulations. Thus, unless regulatory activity is better monitored, the balanced-budget imperative may tend to invite Congress to adopt new off-budget private sector regulations rather than new spending that would deplete the surplus. If regulatory costs remain largely hidden from public view, regulating will continue to look like an attractive alternative to taxing and spending.

“IT WILL BE OF LITTLE AVAIL TO THE PEOPLE THAT THE LAWS ARE MADE BY MEN OF THEIR OWN CHOICE, IF THE LAWS BE SO VOLUMINOUS THAT THEY CANNOT BE READ, OR SO INCOHERENT THAT THEY CANNOT BE UNDERSTOOD; IF THEY BE REPEALED OR REVISED BEFORE THEY ARE PROMULGATED, OR UNDERGO SUCH INCESSANT CHANGES THAT NO MAN WHO KNOWS WHAT THE LAW IS TODAY CAN GUESS WHAT IT WILL BE TOMORROW.”

—JAMES MADISON,
FEDERALIST NO. 62

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

The way to maximize congressional accountability is to require Congress to vote on agency rules (in an expedited fashion) before they become binding. Vital for true accountability, this step would uphold citizens’ rights to “no regulation without representation.” Disclosing costs of rules would remain important, however, even if Congress approved rules; openness about regulatory facts and figures is critical, just as disclosure of program costs is critical in the federal budget. Rather than simple “regulatory report cards,” in some respects like the presentation in *Ten Thousand Commandments*, can be issued officially each year by the federal government to distill regulatory data.

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