Written by **Bob Adelmann** on April 16, 2010

10,000 Commandments — The Hidden Tax

When the Competitive Enterprise Institute (CEI) announced the conclusions of its annual "Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State" earlier this week, it came as no surprise to learn that the rules and regulations placed on the economy by illicit agencies of the "fourth branch of government" constitute an enormous burden that is largely uncounted.

What was surprising was the horrendous cost of that burden which constitutes an additional tax on the economy.

Clyde Wayne Crews, vice president of CEI and author of the annual study, said that federal regulations cost the economy more than $1 trillion last year and included more than 3,500 new regulations issued by the fourth branch agencies. In addition, the cost of running those agencies was not included in the study, but was estimated by the author to be another $54 billion. The federal government spends about $3.5 trillion a year according to the current budget. Adding in the additional costs of those "Ten Thousand Commandments" brings the price tag to nearly $5 trillion, or one-third of the country's GDP.

Furthermore, most of those costs are borne by the industries being regulated, as well as state and local governments forced into compliance with the regulations. As Crews puts it: "Rather than pay directly and book the expense of a new initiative, [the federal government] can require that the private sector and lower-level governments pay. By regulating, the government can carry out desired programs but avoid using tax dollars to fund them."

And there is little incentive to keep those costs under control by the agencies. Crews points out that "policymakers … care [little] about the extent of regulatory costs or where those costs stand in relation to ordinary government spending. Regulatory costs are unbudgeted and … thus allow the government to direct private-sector resources … without much public fuss. In that sense, regulation can be thought of as off-budget taxation."

The report estimates that nearly 60,000 rules have been issued by these agencies since 1995. And, in addition to the 3,500 rules promulgated this past year, another 4,000 rules are pending. Given the enormous growth of government under the Obama administration so far, it seems reasonable to assume that more (and more onerous) rules can be expected in the years to come. In 1996, Congress passed the Congressional Review Act under which regulatory agencies were required to submit reports to Congress on their "major" (costing $100 million or more) rules. The Act gives Congress a 60-day window to review such rules before they become "law' and, if desired, pass a resolution of disapproval rejecting the rule. Crews notes: "But despite the issuance of thousands of rules since the Act's passage — among them many dozens of major ones — *only one has been rejected*." (Emphasis added.)

And even when the courts step in to limit an agency's authority (as just happened to the Federal Communications Commission), the agency is often able to override or ignore such limits internally by

merely changing its policy. The FCC's original mandate was to police the public airwaves and the scarcity of the radio spectrum, but is now considering many new rules for "multicast must-carry regulation, cable a la carte, media ownership restrictions, 'indecency,' video games, violence portrayal, and wireless net neutrality."

It's the area of "net neutrality" that recently got the FCC into hot water. As covered here the U.S. Court of Appeals struck down an attempt by the FCC to enforce its definition of net neutrality against Comcast. The court said that the FCC "lacked the authority to require Comcast … to treat all [of its] internet traffic equally."

Ryan Radia, CEI's associate director, said, "Hopefully the court's ruling will spell an end to the FCC's push to dictate the outcomes of market disputes over network access and pricing." But already some liberal Democrat Senators and other advocacy groups are calling for the FCC merely to change its definition of the Internet so that it may be covered under its authority to impose such rules. By classifying the Internet as a "common carrier," this would allow the FCC to impose its will on the Internet and "would create significant regulatory uncertainty, endangering the dynamic Internet marketplace. Worse, [such reclassification] would impede the FCC's own goal of ensuring that consumers enjoy 'competition among network providers,'" Radia added.

According to TopNews, the chairman of the FCC told a congressional panel that "it will continue with its plans despite a court ruling that the agency does not have any power to regulate the internet." Julius Genachowski, the FCC chairman, told the Senate Commerce Committee, "I have instructed our lawyers to take the recent decision seriously and evaluate what our options are." Some Senators warned the chairman against changing its classification of the Internet. Senator Mike Johanns (R-Neb.) said the court's ruling was "very specific in saying you don't have the authority" to proceed. But Genachowski responded, "I don't agree with that." Senator Kay Bailey Hutchinson (R-Texas) warned the chairman that if the FCC did change its rules without congressional authorization, "the legitimacy of the [FCC] would be seriously compromised."

The FCC has moved a long way away from the position taken by a former FCC chairman, Michael Powell. In 1998, addressing the Freedom Forum, Powell said, "It is time to re-examine the proper role of government in shaping the content of the messages our citizens see and hear…. While some who have sat in my seat at the Commission have welcomed … wide discretion [in its rulings], I dare say, [such discretion] invites mischief by regulators and special interests to advance parochial interests under the guise of public interest…. There are only three branches of government set out in the Constitution and we are not one of them."

In another address, Powell reiterated his position. Speaking before the Media Institute in April, 1998, he said that "one is left with the undeniable conclusion that the government has been engaged for too long in willful denial in order to subvert the Constitution so that it can impose its speech preferences on the public — exactly the sort of infringement of individual freedom the Constitution was masterfully designed to prevent."

Powell is precisely correct. The last thing that is needed is more rules. All that needs to be done is to follow the rules already in place, carefully crafted and "masterfully designed" in the Constitution itself.