

Analysis of “The Regulatory Plan and Unified Agenda of Federal Regulations”

“The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions” (the Agenda) is the document in which agencies have outlined their priorities since the 1980s. Along with the *Federal Register*, the Agenda is one of the few limited and imperfect tools available for regulatory disclosure. Much could be done to improve the quality of the information compiled within it.

The Agenda normally appears in the *Federal Register* each fall and, minus the regulatory plan component, in the spring, as well as on an online searchable database. However, the publication of the Unified Agenda has become erratic in recent years, suffering delays in its traditional April and October schedule, much as the annual report to Congress on regulatory costs and benefits has been chronically late.⁴⁶¹ The Trump administration released the fall 2020 edition of the twice-yearly Agenda in November; the Biden OMB released the fall 2021 edition on December 10.⁴⁶² While the Agenda appears with little public fanfare, elections and other considerations by administrations, such as reporting priorities, can prompt agencies to either accelerate or slow down rulemaking or to report fewer rules, thereby affecting the Agenda’s content and bulk.

The year 2017 saw the beginning of Trump’s one-in, two-out directive for federal agency rulemaking by way of Trump’s Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.” The normally staid Agenda release was accompanied during the Trump years with White House statements touting progress on meeting goals for regulatory streamlining and media events

complete with red-tape props⁴⁶³ and a *Wall Street Journal* op-ed by then-OIRA Administrator Neomi Rao.⁴⁶⁴ A reversal has occurred under Biden, with both the spring and fall editions accompanied by proclamations of solidarity with the broader progressive agenda and an abandonment of any emphasis on an oversight role questioning regulatory initiatives.

The Agenda breaks down rules along three categories:

- Rules recently completed
- Rules anticipated or prioritized in the upcoming 12 months
- Longer-term rules by over 60 federal departments, agencies, and commissions

As a compilation of agency-reported federal regulatory actions at several stages, one might regard the Agenda as a cross-sectional snapshot of the following actions moving through the regulatory pipeline:

- Active actions: prerule actions, proposed and final rules; rules in the production process
- Completed actions: actions completed during the previous six months
- Long-term actions: anticipated longer-term rulemakings beyond 12 months

Along with those affecting the private sector, many rules in the Unified Agenda affect operations of state and local governments, either directly or indirectly. The rules contained in the Unified Agenda often carry over at the same stage from one year to the next, or they may reappear in subsequent editions at different stages. In the fall 2021 edition, 495 of

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the Active actions appeared for the first time, compared with 444 a year earlier.

Observers, such as regulatory expert Leland Beck, have long recognized the inconsistent and subjective nature of the Agenda's contents, that it "provides only a semi-filtered view of each agency's intentions," and that it "reflect[s] what the agency wants to make public, not necessarily all that they are actually considering, and some highly controversial issues may be withheld."⁴⁶⁵ While agencies are not required to limit their regulatory activity to what they publish in the Unified Agenda, that temporarily changed under the Trump administration, which instructed:

Agencies must make every effort to include actions they plan to pursue, because if an item is not on the Agenda, under Executive Order 13771, an agency cannot move forward unless it obtains a waiver or the action is required by law. A clear and accurate Agenda helps avoid unfair surprise and achieves greater predictability of upcoming actions.⁴⁶⁶

As noted, rules and content fluctuate given administration priorities, and sometimes top-down reversals in reporting emphasis occur. Another example occurred during the Obama administration, when spring and fall 2012 guidelines from then-OIRA Administrator Cass Sunstein called on agencies to "please consider terminating" the listing of stalled long-term entries until action appears more likely.⁴⁶⁷ That became the more direct "please remove" in 2013.⁴⁶⁸ (The drop in the number of rules appearing in the Agenda at that time is apparent in Figure 19 in the next section.) The retention of long-term rules reversed in 2017 during the Trump administration, with OIRA leadership instructing agency heads that the administration sees "merit in their continued inclusion" where "listing of such entries still benefits readers."⁴⁶⁹

Healthy skepticism is justified regarding the counts in the Unified Agenda, given the lack

of uniformity with respect to its content and strategic timing of issuing of rules by different administrations. While the political and policy climate can affect what appears in the Agenda, it nonetheless gives regulated entities and researchers a sense of the flow in the regulatory pipeline.

3,777 Rules in the Fall 2021 Unified Agenda Pipeline

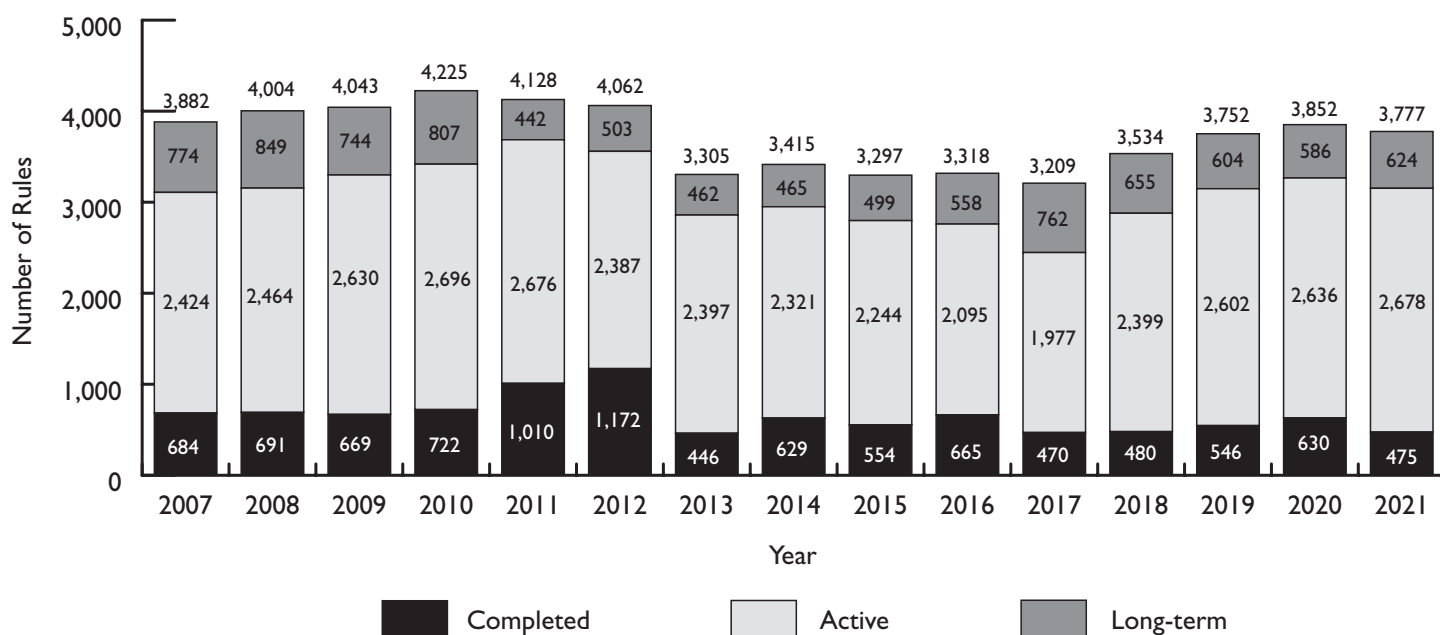
The fall 2021 "Regulatory Plan and Unified Agenda of Regulatory and Deregulatory Actions" found 68 federal agencies, departments, and commissions listing 3,777 regulations in the active (prerule, proposed, and final), just-completed, and long-term stages, many of which had been in the pipeline for some time (see Figure 19).⁴⁷⁰ The gross tally of 3,852 a year ago was easily Trump's highest, and indeed the highest since 2012 under Obama; however 653 rules in the fall 2020 pipeline had been deemed "Deregulatory," for a "net" of 3,199. The fall 2017 Agenda pipeline of 3,209 contained the fewest rules since 1983, even without counting that edition's 540 deregulatory entries. (For a partially complete history of the numbers of rules in the Unified Agenda since 1983, see Appendix: Historical Tables, Part E.)

As Figure 19 illustrates, the overall Unified Agenda pipeline exceeded 4,000 rules (active, completed, and long-term) each fall between 2008 and 2012. Counts were even higher in the 1990s, when an all-time high count of 5,119 rules occurred in the fall 1994 Agenda. The sharp 19 percent drop under Obama from 4,062 rules in 2012 to 3,305 in 2013 seems to reflect, at least in part, election year considerations predominant at the time.⁴⁷¹

The total count of 3,777 rules in the pipeline depicted in Figure 19 is broken out in detail in Table 5 by issuing agency, commission, or department. It shows numbers of rules at the active, completed, and long-term stages. The question of which agencies are responsible for the hundreds of annual rules

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Figure 19. Total Agency Rules in the Fall *Unified Agenda* Pipeline, 2007–2021



Source: Compiled by the author from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, fall edition, consecutive years, and database at <http://reginfo.gov>.

“Active” rules consist of rules at the prerule, proposed, and final stages.

that are deemed “Deregulatory” is significant for assessing Trump’s one-in, two-out regulatory campaign. (These were depicted in separate columns in Table 5 in the prior four editions of *Ten Thousand Commandments*, but that designation is not part of the regulatory picture now. For the total numbers of rules by department and agency from previous year-end editions of the Unified Agenda since 2001, see Appendix: Historical Tables, Part F. For a closer look at rule categories, see Table 5 and Figure 19.)

Active rules. The number of active rules in the Agenda consistently remained well above 2,000, until it fell to 1,977 in 2017 under Trump, with 448 deemed deregulatory at the time for a far lower “net.” The gross number of active rules rose subsequently to 2,636 in 2020 (when 496 were deregulatory) (see Figure 19). While gross active counts returned to the historical levels seen in Figure 18, they were offset by the several hundred deregulatory rules among them each year under Trump, although the proportion of rulemakings across categories that were explicitly de-

regulatory appeared to decline.⁴⁷² In the fall 2021 edition, the active rule count is back up to 2,678, without deregulatory offsets. The year 2010 was the last time the active rule count was that high.

Long-term rules. In Trump’s first fall Agenda at the end of 2017, long-term rules in the pipeline stood at 762, a jump from 558 in 2016. That may have reflected in part the aforementioned OMB directives to consider disclosing those rules. Thirty of the 762 were deregulatory. The count fell each year between 2018, while the fall 2020 Agenda long-term rule count fell to 586, with 56 deemed deregulatory. With Biden, long-term rules are back up to 624.

Completed rules. Completed rules are “actions or reviews the agency has completed or withdrawn since publishing its last Agenda.” Although the number of rules in the completed category in fall Agendas (spring editions are not shown in Figure 18) rose steadily and rapidly under Obama—from 669 in 2009 to 1,172 in 2012, a 75.2 percent in-

Table 5. Agenda Detail

Agency, Commission, or Department	Number of rules
Department of the Interior	363
Department of the Treasury	360
Department of Transportation	301
Department of Commerce	269
Department of Health and Human Services	235
Environmental Protection Agency	226
Department of Defense	219
Department of Agriculture	175
Department of Homeland Security	160
Department of Energy	138
Department of Justice	118
Department of Labor	98
Federal Communications Commission	87
Department of Veterans' Affairs	85
Small Business Administration	76
Securities and Exchange Commission	74
Department of State	70
Nuclear Regulatory Commission	61
Federal Acquisition Regulation	58
Department of Housing and Urban Development	51
Office of Personnel Management	48
General Services Administration	43
Department of Education	42
Federal Reserve System	31
National Credit Union Administration	30
Federal Deposit Insurance Corporation	29
Consumer Product Safety Commission	22
Federal Energy Regulatory Commission	22
Social Security Administration	22
Federal Trade Commission	19
Commodity Futures Trading Commission	18
Agency for International Development	16
National Indian Gaming Commission	16
Farm Credit Administration	14
Federal Housing Finance Agency	14
Office of Government Ethics	13
Corporation for National and Community Service	11
Pension Benefit Guaranty Corporation	10
CPBSD*	9
Consumer Financial Protection Bureau	9
National Archives and Records Administration	8
Office of Management and Budget	8
Surface Transportation Board	8

Court Sevcies/Offender Supervision, D.C.	7
National Endowment for the Humanities	7
National Transportation Safety Board	7
Railroad Retirement Board	7
National Endowment for the Arts	6
Compliance Board	5
Council on Environmental Quality	5
Federal Maritime Commission	5
Federal Mediation and Conciliation Service	5
National Aeronautics and Space Administration	5
Peace Corps	5
Postal Regulatory Commission	5
National Labor Relations Board	4
National Science Foundation	3
U.S Agency for Global Media	3
Federal Mine Safety and Health Review Commission	2
Federal Permitting Imprmt Steering Council	2
Inter-American Foundation	2
Council of Insp General on Integrity and Eff.	1
Institute of Museum and Library Services	1
National Mediation Board	1
Office of National Drug Control Policy	1
Tennessee Valley Authority	1
U.S. Commission on Civil Rights	1

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

crease—they dropped precipitously in 2013 to 462. This category stood at 470 in 2017 and 480 in 2018 in Trump’s fall Agendas for those years, and rose to 546 in 2019 and to 630 in 2020. A significant proportion of Trump’s completed rules were deregulatory (62 in 2017, 94 in 2018, 106 in 2019, and 101 in 2020), for considerably lower nets. These compare to 475 competed rules in the fall 2021 Biden Agenda. The next section looks at completed economically significant rules, taking into account both the spring and fall Agendas to get a full-year picture.

Top Rulemaking Departments and Agencies

A relative handful of executive branch agencies each year account for the greatest num-

ber of the rules in the Agenda pipeline. In the Biden 2021 fall Agenda, the Departments of the Interior, Treasury, Transportation, Commerce, and Health and Human Services are the most active (see Table 6). These top five, with 1,528 rules among them, account for 40 percent of the 3,777 rules in the Unified Agenda pipeline at the moment. The Environmental Protection Agency, with 226 rules, comes in sixth.

The top five independent agencies in the Unified Agenda pipeline by rule count are the Federal Communications Commission, Small Business Administration, Securities and Exchange Commission, Nuclear Regulatory Commission, and the multiagency Federal Acquisition Regulation system (see Table 6).⁴⁷³ Their combined total of 356 rules accounts for 9 percent of the 3,777 rules in the fall Agenda. Combined, the top

A relative handful of executive branch agencies each year account for the greatest number of rules.

Table 6. Top Rule-Producing Executive and Independent Agencies
(From Fall 2021 Unified Agenda, total of active, completed, and long-term rules)

Executive Agency	Number of Rules
1. Department of the Interior	363
2. Department of the Treasury	360
3. Department of Transportation	301
4. Department of Commerce	269
5. Department of Health and Human Services	235
TOTAL	1,528
% of Total Agenda Pipeline of 3,777	40

Independent Agency	Number of Rules
1. Federal Communications Commission	87
2. Small Business Administration	76
3. Securities and Exchange Commission	74
4. Nuclear Regulatory Commission	61
5. Federal Acquisition Regulation	58
TOTAL	356
% of Total Agenda Pipeline of 3,777	9

Top 5 Executives plus Top 5 Independents	1,884
% of Total Agenda Pipeline	50

Source: Compiled by the author from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, Fall edition, and database, <http://www.reginfo.gov>.

“Active” rules consist of rules at the prerule, proposed, and final stages.

executive and independent agency components, numbering 1,884, make up 50 percent of the total. The percentage was similar during the Trump years, with the difference that some entries then were explicitly deemed deregulatory.⁴⁷⁴

295 “Economically Significant” Rules in the Unified Agenda

A subset of the Unified Agenda’s 3,777 rules is classified as economically significant, which means that agencies estimate their yearly economic effects at \$100 million or more. That generally reflects increased costs, although sometimes an economically significant rule can be intended to reduce costs, which had been the case in Trump’s Execu-

tive Order 13771. As Table 7 shows, 295 economically significant rules from 24 departments and agencies appear at the active (prerule, proposed rule, and final rule), completed, and long-term stages of the pipeline.

Figure 20 depicts 2021’s 295 economically significant rules alongside those of the previous decade and a half. The number of economically significant rules in the annual fall pipeline rose under President Obama, topped out twice at 224, and finished out 2016 with 193.⁴⁷⁵ In Trump’s first fall Unified Agenda in 2017, the administration brought the count down by 27 percent, an effect magnified by the fact that 30 of the 140 rules at that time were deemed deregulatory.

For comparison, Biden’s overall tally here exceeds Trump’s final gross count of 261

Table 7. 295 Economically Significant Rules in the Fall Unified Agenda Pipeline Expected to Have \$100 Million or More in Annual Economic Impact, Fall 2021

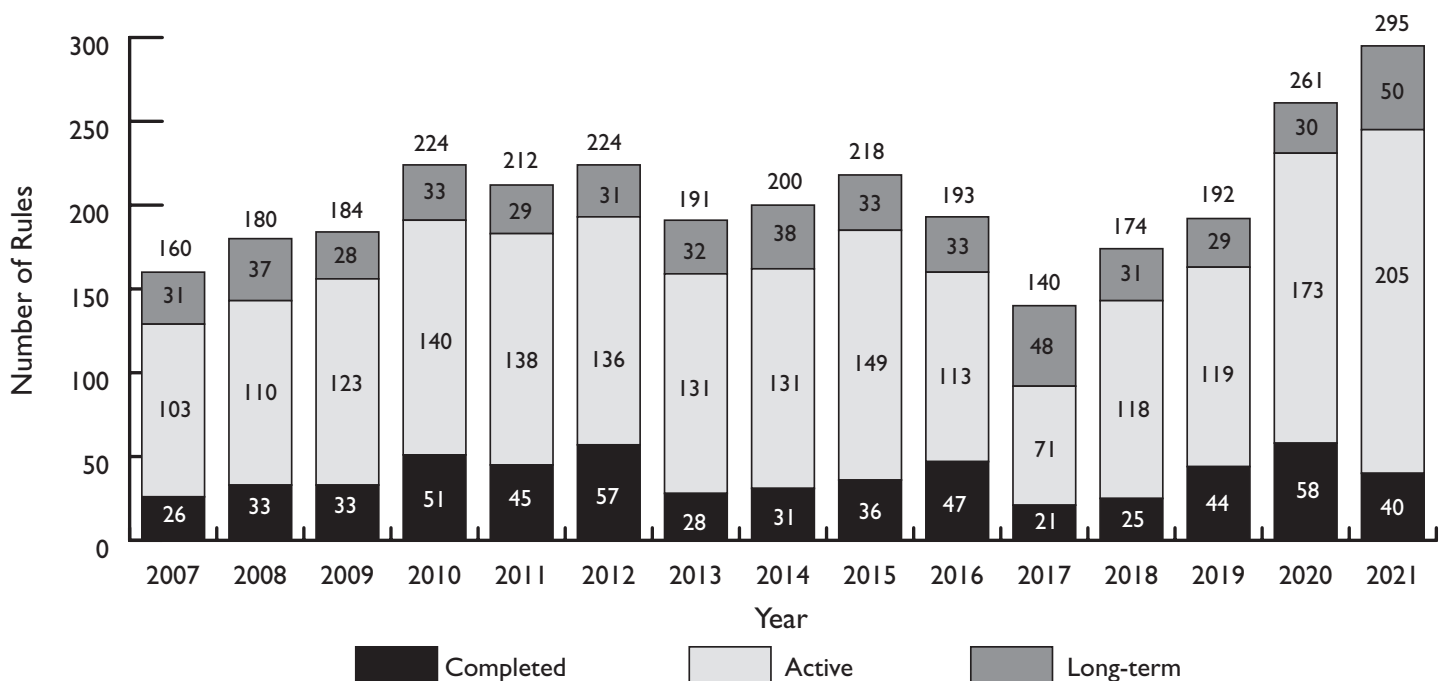
	Rules	Unified Agenda		
		Active	Completed	Long Term
Dept. of Agriculture	17	8	2	7
Dept. of Commerce	2	1	1	
Dept. of Defense	6	4		2
Dept. of Education	16	10	5	1
Dept. of Energy	11	9	2	
Dept. of Health and Human Services	68	44	16	8
Dept. of Homeland Security	18	9	4	5
Dept. of Housing and Urban Development	1	1		
Dept. of the Interior	7	4	2	1
Dept. of Justice	3	3		
Dept. of Labor	22	20		2
Dept. of State	3	2	1	
Dept. of Transportation	16	10		6
Dept. of the Treasury	27	20	2	5
Dept. of Veterans Affairs	11	7	1	3
Consumer Product Safety Commission	2	1	1	
Environmental Protection Agency	16	12	1	3
Federal Acquisition Regulation	1	1		
Federal Communications Commission	6			6
Federal Housing Finance Agency	2	2		
Nuclear Regulatory Commission	3	1	1	1
Office of Personnel Management	4	4		
Pension Benefit Guaranty Corporation	1	1		
Small Business Administration	32	31	1	
TOTAL	295	205	40	50

Source: Compiled from “The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, and from the online edition at <http://www.reginfo.gov>.

economically significant rules by 13 percent. Trump’s count also rose, as shown in Figure 20, albeit with a subset of rules that were deregulatory. Thirty-six of the Trump economically significant rules in 2020 were deemed “Deregulatory” for a “net” of 225, and Biden tops that by 31 percent. (The full list of the 295 economically significant rules in the 2021 Agenda pipeline is available in Appendix: Historical Tables, Part G, which flags the 36 deregulatory and 76 regulatory entries.)

Figure 20 also breaks down economically significant rules into completed, active, and long-term categories. Among the 295 economically significant rules in the fall 2021 edition, 205 stand at the active phase, compared with 173 in 2020, and only 71 in the fall 2017 edition. The new level of active rules exceeds anything seen in the Obama-era Agendas, even taking into account that 20 in the active category were deemed deregulatory in 2020. Barack Obama’s eight-year

Figure 20. 295 Economically Significant Rules in the Unified Agenda Pipeline, 2007–2021



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

average of active rules across the fall Agendas was 133; George W. Bush’s eight-year average was 87. Trump’s average across the active category for his four years in office was 120, but that includes deregulatory measures.

It is important to note that even rules that have a substantial impact in society were not always deemed regulatory by Trump. For example, one of the major policy events in 2020 was the creation of the Paycheck Protection Program (PPP) as part of COVID relief legislation, along with rules for implementing it. Among the 261 economically significant rules in Trump’s fall Agenda, there were 28 Small Business Administration rules at the finalization (not completed) stage related to PPP, but were not designated as either regulatory nor deregulatory.⁴⁷⁶ This has continued under Biden, with 31 SBA rules remaining at that stage. The federal reaction to the COVID-19 crisis is a major variable affecting the flow of rules. Agencies were instructed to use emergency powers, some of which affected federal programs, and not always with deregulatory effect.

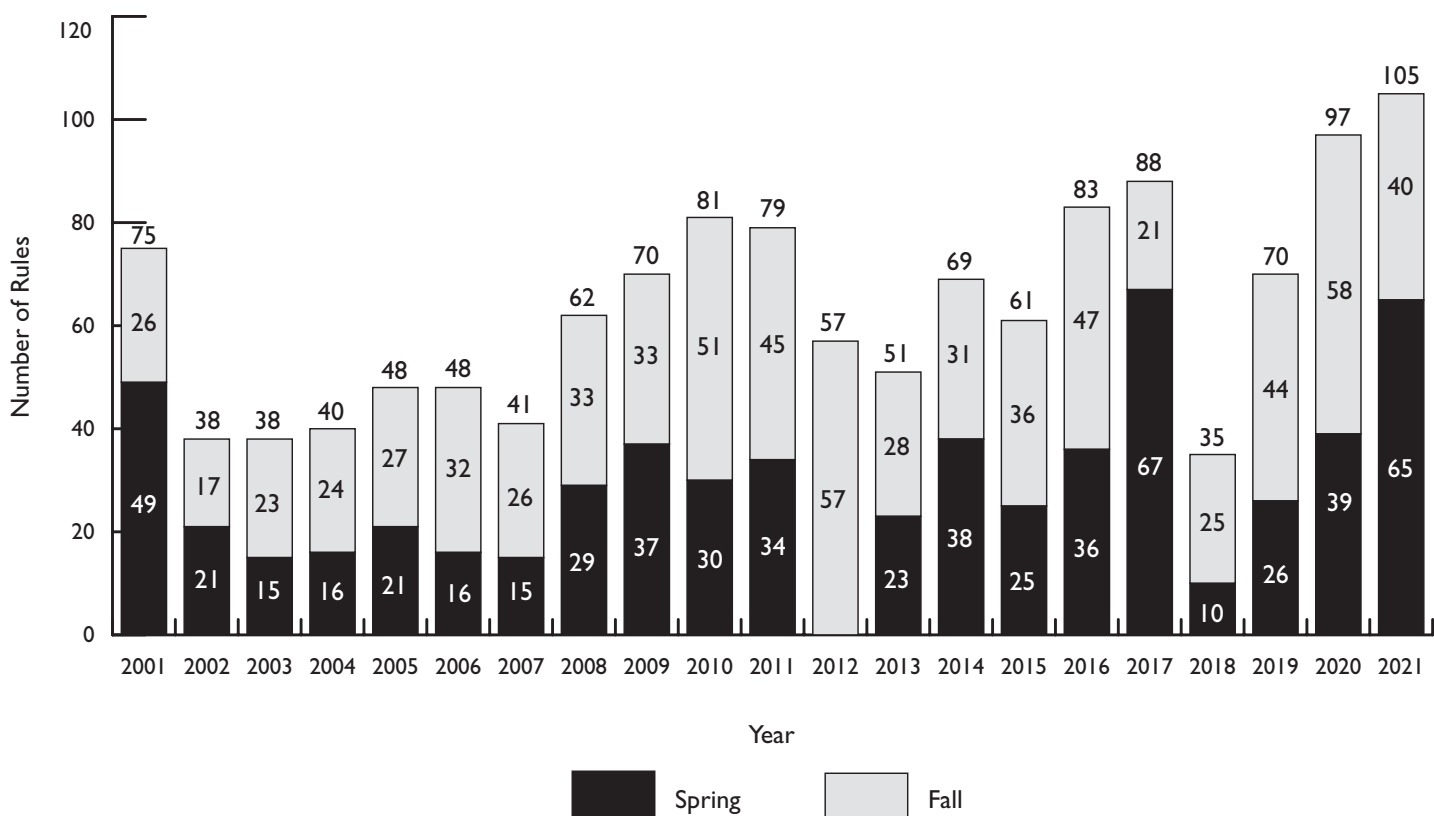
As for economically significant rules at the completed stage in the fall Agendas, President Obama’s count was consistently higher than President George W. Bush’s, even when accounting for an Obama election-year drop between 2011 and 2012. Completed rules in the fall Agenda peaked at 57 in 2012, just below the 58 in Trump’s fall Agenda. Completed economically significant rules reached a low of 21 under Trump in 2017. Of the 58 Trump rules completed in the fall 2020 Agenda, 14 are deemed deregulatory. This leaves a net of 44 that, with a few exceptions, still exceeded “historical” levels. Biden’s year one count is 40 (see Figure 19).

These completed rules in Figure 19 represent only those of the fall Agendas. A fuller picture of completed rules in any given year requires incorporating completed rules from the spring Agendas as well. Figure 21 isolates the totals of completed economically significant rules since 1996 from both the spring and fall Agendas.

As Figure 21 shows, completed economically significant rules that had cratered to only

Rules that have a substantial impact in society were not always deemed regulatory by Trump.

Figure 21. Annual Completed Economically Significant Rules in the Unified Agenda, 2001–2021



Sources: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, spring and fall editions, various years.

35 in the combined fall and spring 2018 Agendas under Trump rose subsequently and peaked at 97 in 2020. Completed rules, however, are where the deregulatory counts really mattered for the one-in, two-out directive. In both 2017 and 2020, Trump issued more completed economically significant rules than either Bush or Obama, but that may be partly due to the Administrative Procedure Act’s requirement for the issuing of a new rule to get rid of an old one. When agencies eliminated two for one, it could appear as if more “rules” are being issued. The deregulatory counts for Executive Order 13771 purposes were 16 in 2018, 18 in 2019, and 21 in 2020, which were large proportions of Trump’s totals. If one were to subtract the deregulatory rules from Trump’s tallies, a substantial numerical rollback in economically significant rulemaking was evident compared with his predecessors’ output.

Under the Biden administration, there were a combined 105 completed economically significant rules reported in the spring and fall Unified Agendas, as Figure 21 shows. Biden’s total number of completed economically significant rules exceeds all other years depicted, going back to President Clinton in 1999. Biden’s tally is 8 percent higher than Trump’s last-year gross count of 97. If the 21 deregulatory rules Trump issued are netted out, Biden’s count is 38 percent above Trump’s final-year count. Interestingly Biden’s tally is 84 percent higher than Obama’s tally of 57 completed economically significant rules 10 years ago.

Of course, Trump is not the only president to have issued deregulatory measures in the Unified Agenda, but predecessors never made the reduction agenda so explicit, nor did they ease the tracking of the relevant

Regulatory effects are cumulative and need to be added to previous years' costs.

metrics as the Trump administration did with the Executive Order 13771 “Deregulatory” designations in the OIRA database. The Biden OMB eliminated that designation, so the compilations of deregulatory rules referenced here are no longer possible.

The year 2001 is an exception visible in Figure 21, but the level of completed economically significant rules was notably lower during the late 1990s and early 2000s than today. George W. Bush’s total number of completed economically significant rules during his two terms was 390, for an average of 49 per year. Obama’s total for his eight years was 551, an average of 69 per year. Some agency “midnight regulations” from the prior administration may be reflected in the totals for any first-year president, but this report primarily focuses on calendar-year comparisons. Trump’s four-year average was 72 (given his total of 289), but again, OMB deemed over 50 of these rules as deregulatory.

As noted, of the 3,777 rules in the Agenda, each of the 295 deemed economically significant is estimated to have annual impacts of at least \$100 million. Those rules might be expected to eventually have annual effects of at least \$29 billion (loosely, 295 rules multiplied by the \$100 million economically significant threshold), particularly with the Trump offsets now out of the picture. Whatever the actual and largely indeterminate costs, regulatory effects are cumulative and need to be added to previous years’ costs.

Attention to economically significant rules should not distract policy makers and analysts from the remaining bulk of rules in the annual pipeline, which can have significant costs of their own. In the fall 2021 pipeline, 3,482 federal rules were not designated as economically significant (3,777 total rules minus the 295 economically significant ones). However, a rule estimated to cost below the \$100 million economically significant threshold can still impose substantial costs on the regulated entities. Agencies do not limit their regulatory actions to what

they list in the Agenda. To this we must add the regulatory effects of budget and transfer rules, especially since the pandemic, and guidance documents with regulatory impact.

Notable Regulations by Agency

Many regulatory goals are worthy and needed, but that does not mean the federal administrative bureaucracy offers the best means of achieving them, compared with state and local oversight, along with insurance, liability, and other private sector options. With that caveat in mind, let us look at a section of agency pursuits. In recent Unified Agenda editions and in other venues, federal agencies have noted the regulatory initiatives listed below, among others pending or recently completed. As noted, the full list of the 295 economically significant rules in the fall 2021 Agenda pipeline appears in Appendix: Historical Tables, Part G.

Department of Agriculture

- Rural Broadband Grant, Loan, and Loan Guarantee Program; Rural e-Connectivity Program (ReConnect Program)
- Establishment of a domestic hemp production program
- Revision of the nutrition facts panels for meat and poultry products and updating certain reference amounts customarily consumed
- Supplemental Nutrition Assistance Program: procedural requirements for households that have zero gross countable income and include a work registrant
- Coronavirus Food Assistance Program
- Conservation Stewardship Program
- National Bioengineered Food Disclosure Standard
- Mandatory country-of-origin labeling of beef, fish, lamb, peanuts, and pork
- National school lunch and school breakfast programs: nutrition standards for all foods sold in schools and certification of compliance with meal requirements for

the national school lunch program (as required by the Healthy, Hunger-Free Kids Act of 2010)⁴⁷⁷

- Standards for grades of canned baked beans⁴⁷⁸
- Rural Energy for America Program
- Mandatory inspection of catfish and catfish products
- Multifamily housing reinvention
- Inspection regulations for eggs and egg products
- Performance standards for ready-to-eat processed meat and poultry products
- Modernization of poultry slaughter inspection

Department of Commerce

- Taking and importing marine mammals: taking marine mammals incidental to geophysical surveys related to oil and gas activities in the Gulf of Mexico
- Setting and adjusting patent fees during FY 2020
- Right-whale ship strike reduction

Department of Education

- Gainful employment rule to prepare students for employment in a recognized occupation
- Proposed priorities, requirements, definitions, and selection criteria: Striving Readers Comprehensive Literacy Program
- Income-driven “pay as you earn” program
- Race to the Top

Department of Energy

- Energy efficiency and conservation standards for the following: ceiling fans; manufactured housing; automatic commercial ice makers; wine chillers; battery chargers and power supplies; televisions; residential dehumidifiers; computer servers and computers; walk-in coolers and freezers; residential furnace fans, boilers, central air conditioners, heat pumps, dishwashers, conventional cook-

ing products, and non-weatherized gas furnaces; mobile home furnaces and gas furnaces; electric distribution transformers; commercial refrigeration units, heat pumps, and water-heating equipment; clothes washers and dryers; room air conditioners; portable air conditioners; pool heaters and direct heating equipment; fluorescent and incandescent lamps; metal halide lamp fixtures; small electric motors; and refrigerated bottled or canned beverage vending machines

- Proposed rule on Executive Order 13920, “Securing the United States Bulk-Power System”
- Fossil fuel-generated energy consumption reduction for new federal buildings and major renovations of federal buildings
- Incentive program for manufacturing advanced technology vehicles

Department of Health and Human Services

- Salt: Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods; Guidance for Industry
- Criteria for an expedited coverage pathway to provide Medicare beneficiaries with faster access to innovative and beneficial technologies⁴⁷⁹
- Medical product “intended use” regulations describing the types of evidence relevant to determining whether a product is intended for use as a drug or device⁴⁸⁰
- Clinical Laboratory Improvement Amendments and Patient Protection and Affordable Care Act; additional policy and regulatory revisions in response to the COVID-19 public health emergency
- COVID-19 hoarding prevention under the Defense Production Act
- Nutrient content claims, definition of the term “healthy”
- Frozen cherry pie: proposed revocation of a standard of identity and a standard of quality⁴⁸¹

- Tobacco product standard for characterizing flavors in cigars
- Requirements for additional traceability records for certain foods
- General and plastic surgery devices: restricted sale, distribution, and use of sunlamp products
- Prohibition of sale of tobacco products to persons younger than 21 years of age
- Medicaid programs reducing provider and patient burden, and promoting patients' electronic access to health information
- Hospice wage index, payment rate update, and quality reporting requirements
- Revisions to payment policies under the Physician Fee Schedule and other revisions to Medicare Part B
- Modernizing and clarifying physician self-referral regulations
- Hospital inpatient prospective payment systems for acute care hospitals, the Long-Term Care Hospital Prospective Payment System, and FY 2021 rates
- Sunscreen drug products for over-the-counter human use guidance
- Rules deeming electronic cigarettes and components subject to the Federal Food, Drug, and Cosmetic Act, as amended by the Family Smoking Prevention and Tobacco Control Act, and being subjected to warning labels and sale restrictions⁴⁸²
- Required warnings for cigarette packages and advertisements
- Food labeling: serving sizes of foods that can reasonably be consumed at one eating occasion; dual-column labeling; modification of certain reference amounts customarily consumed
- Nutrition labeling for food sold in vending machines and for restaurant menu items
- Food labeling: trans fatty acids in nutrition labeling, nutrient content claims, and health claims
- Rule on safety and effectiveness of consumer antibacterial soaps ("Topical Antimicrobial Drug Products for Over-the-Counter Human Use"),⁴⁸³ consumer antiseptics
- Federal policy for the protection of human subjects
- Criteria for determining whether a drug is considered usually self-administered
- Substances prohibited from use in animal food or feed; registration of food and animal feed facilities
- Updated standards for labeling of pet food
- Sanitary transportation of human and animal food
- Focused mitigation strategies to protect food against intentional adulteration
- Produce safety regulation
- Mammography quality standards
- Fire safety and sprinkler requirements for long-term care facilities
- Pediatric dosing for various over-the-counter cough, cold, and allergy products
- Rule on comprehensive care for joint replacement
- Medication-assisted treatment for opioid use disorders reporting requirements
- Patient Protection and Affordable Care Act; standards related to essential health benefits, actuarial value, and accreditation; Medicaid, exchanges, and children's health insurance programs: eligibility, appeals, and other provisions
- Revisions to promote patients' electronic access to health care information and improve interoperability for Medicare- and Medicaid-participating providers and suppliers
- Good manufacturing practice in manufacturing, packing, or holding dietary ingredients and dietary supplements
- Good manufacturing practice regulations for finished pharmaceuticals
- Prior authorization process for certain durable medical equipment, prosthetic, orthotics, and supplies
- Bar code label requirements for human drug products and blood

Department of Homeland Security

- Computer Assisted Passenger Prescreening System, providing government access to passenger reservation information
- "REAL ID": Minimum Standards for Driver's Licenses and Identification Cards

Acceptable by Federal Agencies for Official Purposes; Mobile Driver's Licenses⁴⁸⁴

- Removing H-4 dependent spouses from the classes of aliens eligible for employment authorization
- Affidavit of support on behalf of immigrants
- Collection and use of biometrics by U.S. Citizenship and Immigration Services; and collection of biometric data from aliens upon entry to and exit from the United States
- Western Hemisphere Travel Initiative: noncompliant traveler fee
- Air cargo advance screening
- Visa Security Program fee
- Establishing a fixed time period of admission and an extension of stay procedure for nonimmigrant academic students, exchange visitors, and representatives of foreign information media
- Cost of assistance estimates in the disaster declaration process for the Public Assistance Program
- Emergency Management Priorities and Allocations System
- COVID-19 hoarding prevention under the Defense Production Act
- Passenger screening using advanced body imaging technology
- Importer security filing and additional carrier requirements
- Air cargo screening and inspection of towing vessels

Department of Housing and Urban Development

- Revision of manufactured home construction and safety standards regarding location of smoke alarms
- Instituting smoke-free public housing⁴⁸⁵
- Regulation of Fannie Mae and Freddie Mac on housing goals
- Regulations within the Real Estate Settlement Procedures Act pertaining to mortgages and closing costs
- Establishing a more effective fair-market rent system; using small-area fair-market rents in Housing Choice Voucher Program (modification of income and rent

determinations in public and assisted housing)

Department of the Interior

- Revised requirements for well plugging and platform decommissioning
- Revisions to the requirements for exploratory drilling on the Arctic Outer Continental Shelf
- Endangered and threatened wildlife and plants: removal of the gray wolf from the List of Endangered and Threatened Wildlife
- Increased safety measures for oil and gas operations and exploratory drilling on the Arctic Outer Continental Shelf⁴⁸⁶
- Blowout prevention for offshore oil and gas operations

Department of Justice

- Nondiscrimination on the basis of disability: accessibility of Web information and services of state and local governments
- Regulation of telepharmacy practice⁴⁸⁷
- National standards to prevent, detect, and respond to prison rape
- Retail sales of scheduled listed chemical products

Department of Labor

- Conflict-of-interest rule in financial investment advice
- Financial factors in selecting plan investments
- Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings⁴⁸⁸
- Tip regulations under the Fair Labor Standards Act
- Independent contractor status under the Fair Labor Standards Act
- Overtime rule: "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees"⁴⁸⁹
- Establishing a minimum wage for contractors (Executive Order 13658)

- Establishing paid sick leave for businesses that contract with the federal government (in response to Executive Order 13706)⁴⁹⁰
- Walking working surfaces and personal fall protection systems (slips, trips, and fall prevention)⁴⁹¹
- Hearing conservation program for construction workers
- Rules regarding confined spaces in construction: preventing suffocation and explosions
- Reinforced concrete in construction
- Preventing back-over injuries and fatalities
- Cranes and derricks
- Protective equipment in electric power transmission and distribution
- Refuge alternatives for underground coal mines
- Combustible dust
- Injury and illness prevention program
- Application of the Fair Labor Standards Act to domestic service
- Occupational exposure to styrene crystalline silica, tuberculosis, and beryllium⁴⁹²
- Implementation of the health care access, portability, and renewability provisions of the Health Insurance Portability and Accountability Act of 1996
- Group health plans and health insurance issuers relating to coverage of preventive services under the Patient Protection and Affordable Care Act
- Health care standards for mothers and newborns
- Process safety management and prevention of major chemical accidents
- Federal Aviation Administration rule on operation and certification of drones and near critical infrastructure facilities⁴⁹⁵ (discretionary waivers⁴⁹⁶)
- Flight attendant work hour limitations and rest period requirements⁴⁹⁷
- National Highway Traffic Safety Administration, Federal Motor Vehicle Safety Standard 150: vehicle-to-vehicle communication
- Rear seat belt reminder system
- Retroreflective tape and underride guards for single-unit trucks
- Medium and heavy-duty fuel efficiency standards
- Establish side-impact performance requirements for child restraint systems
- Corporate Average Fuel Economy standard civil penalties
- Safer Affordable Fuel-Efficient Vehicles Rules for passenger cars and light trucks
- High-Speed Intercity Passenger Rail Program; Buy America program requirements
- Federal Motor Carrier Safety Administration and National Highway Traffic Safety Administration rule on speed limiters and electronic stability control systems for heavy vehicles⁴⁹⁸
- Federal Railroad Administration's Train crew staffing rule seeking a two-engineers-on-a-train mandate⁴⁹⁹
- NHTSA rule on lighting and marking on agricultural equipment⁵⁰⁰
- Minimum training requirements for entry-level commercial motor vehicle operators and for operators and training instructors of multiple-trailer combination trucks⁵⁰¹
- Requirement for installation of seat belts on motor coaches; rear center lap and shoulder belt requirement; seat belt reminder system
- Carrier safety fitness determination
- Standard for rearview mirrors
- Commercial driver's license drug and alcohol clearing house
- Automotive regulations for car lighting, door retention, brake hoses, daytime running-light glare, and side-impact protection

Department of Transportation

- Quiet car rule; minimum sound requirements for hybrid and electric vehicles⁴⁹³
- Electronic logging device revisions; unique electronic identification of commercial motor vehicles (hours of service, rest, and sleep for truck drivers)
- Refunding fees for delayed checked bags and ancillary services that are not provided⁴⁹⁴

- Federal Railroad Administration passenger equipment safety standards amendments
- Rear-impact guards and others safety strategies for single-unit trucks
- Amendments for positive train control systems
- Aging aircraft safety
- Upgrade of head restraints in vehicles
- Registration and training for operators of propane tank-filling equipment
- Monitoring systems for improved tire safety and tire pressure
- Hazardous materials: transportation of lithium batteries
- The Pipeline and Hazardous Materials Safety Administration rule on safety of onshore gas gathering pipelines⁵⁰²
- Regulatory capital rule: Paycheck Protection Program lending facility and Paycheck Protection Program loans
- Financial Crimes Enforcement Network: cross-border electronic transmittals of funds
- Assessment of fees for large bank-holding companies and other financial entities supervised by the Federal Reserve to fund the Financial Research Fund (which includes the Financial Stability Oversight Council)
- Troubled Asset Relief Program standards for compensation and corporate governance

Architectural and Transportation Barriers Compliance Board

Department of the Treasury

- Prohibition of funding of unlawful Internet gambling
- New grape variety names approved for American wines⁵⁰³
- Small Business Administration Business Loan Program temporary changes; Paycheck Protection Program—additional criteria for seasonal employers
- Business Loan Program temporary changes; Paycheck Protection Program Requirements—loan forgiveness
- Provisions pertaining to certain transactions by foreign persons involving real estate in the United States
- Provisions pertaining to certain investments in the United States by foreign persons
- Anti-money laundering program and suspicious activity report filing requirements for investment advisers
- Prohibitions and restrictions on proprietary trading and certain interests in, and relationships with, hedge funds and private equity funds
- Margin and capital requirements for covered swap entities
- Regulatory capital rule: temporary exclusion of U.S. Treasury securities and deposits at Federal Reserve Banks from the supplementary leverage ratio

- Americans with Disabilities Act accessibility guidelines for passenger vessels
- Information and communication technology standards and guidelines

Consumer Financial Protection Bureau

- Proposed rule regulating business practices on payday and vehicle title loans⁵⁰⁴

Consumer Product Safety Commission

- Regulatory options for table saws
- Flammability standards for upholstered furniture and bedclothes
- Testing, certification, and labeling of certain consumer products
- Banning of certain backyard play sets
- Product registration cards for products intended for children
- Safety standard for children's folding chairs and stools

Environmental Protection Agency

- National primary drinking water regulations for lead and copper: regulatory revisions

- Control of air pollution from new motor vehicles: heavy-duty engine standards: Cleaner Trucks Initiative
- National emission standards for hazardous air pollutants for major sources: industrial, commercial, and institutional boilers and process heaters: amendments
- Review of dust-lead post-abatement clearance levels
- Reclassification of major sources as area sources under Section 112 of the Clean Air Act
- Oil and natural gas sector: emission standards for new, reconstructed, and modified sources reconsideration
- Greenhouse gas emissions and fuel efficiency standards for medium- and heavy-duty engines and vehicles
- Performance standards for new residential wood heaters
- Model trading rules for greenhouse gas emissions from electric utility generating plants constructed before January 7, 2014
- Financial responsibility requirements under Comprehensive Environmental Response, Compensation, and Liability Act Section 108(b) for classes of facilities in the hard-rock mining industry
- Clean air visibility, mercury, and ozone implementation rules
- Effluent limitations guidelines and standards for the steam electric power generating point source category
- Revision of stormwater regulations to address discharges from developed sites
- Formaldehyde emissions standards for composite wood products
- National emission standards for hazardous air pollutants from certain reciprocating internal combustion engines and auto paints
- Review of National Ambient Air Quality Standards for lead, ozone, sulfur dioxide, particulate matter, and nitrogen dioxide
- Revision of underground storage tank regulations: revisions to existing requirements and new requirements for secondary containment and operator training
- Trichloroethylene; rulemaking under Toxic Substances Control Act Section 6(a); vapor degreasing
- Reassessment of use authorizations for polychlorinated biphenyls (PCBs) in small capacitors in fluorescent light ballasts in schools and day care centers
- Rulemakings regarding lead-based paint and the Lead Renovation, Repair, and Painting Program for public and commercial buildings
- Standards for cooling water intake structures
- Standards of performance for municipal solid waste landfills
- Control of emissions from non-road spark-ignition engines, new locomotives, and new marine diesel engines

Federal Communications Commission

- Protecting the privacy of customers of broadband and other telecommunications services⁵⁰⁵
- Allocation of Spectrum for Non-Federal Commercial Space Launch Operations⁵⁰⁶
- Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions
- Processing applications in the direct broadcast satellite (DBS) service; feasibility of reduced orbital spacing for provision of DBS service in the United States
- Restoring Internet freedom; protecting and promoting the open Internet
- Broadband for passengers aboard aircraft
- Broadband over power line systems
- Satellite broadcasting signal carriage requirements
- Robocall mitigation strategies⁵⁰⁷

Federal Acquisition Regulation

- Prohibition on contracting with entities using certain telecommunications and video surveillance services or equipment

Federal Deposit Insurance Corporation

- Standardized approach for risk-weighted assets
- Margin and capital requirements for covered swap entities

Federal Energy Regulatory Commission

- Critical infrastructure protection reliability standards

Federal Permit Improvement Steering Council

- Adding land revitalization as a sector of projects eligible for coverage under Title 41 of the Fixing America's Surface Transportation Act

Federal Reserve System

- Exception of certain loans made (Executive Officers, Directors, and Principal Shareholders of Member Banks) through June 30, 2020, that are guaranteed under the Small Business Administration's Paycheck Protection Program from the requirements of the Federal Reserve Act and the associated provisions of the Board's Regulation O⁵⁰⁸

National Transportation Safety Board

- Commercial space tourism regulations⁵⁰⁹

Office of Personnel Management

- Multistate exchanges: implementations for Affordable Care Act provisions
- Paid parental leave and miscellaneous provisions of the Family and Medical Leave Act

Surface Transportation Board

- Reciprocal switching in rail service⁵¹⁰

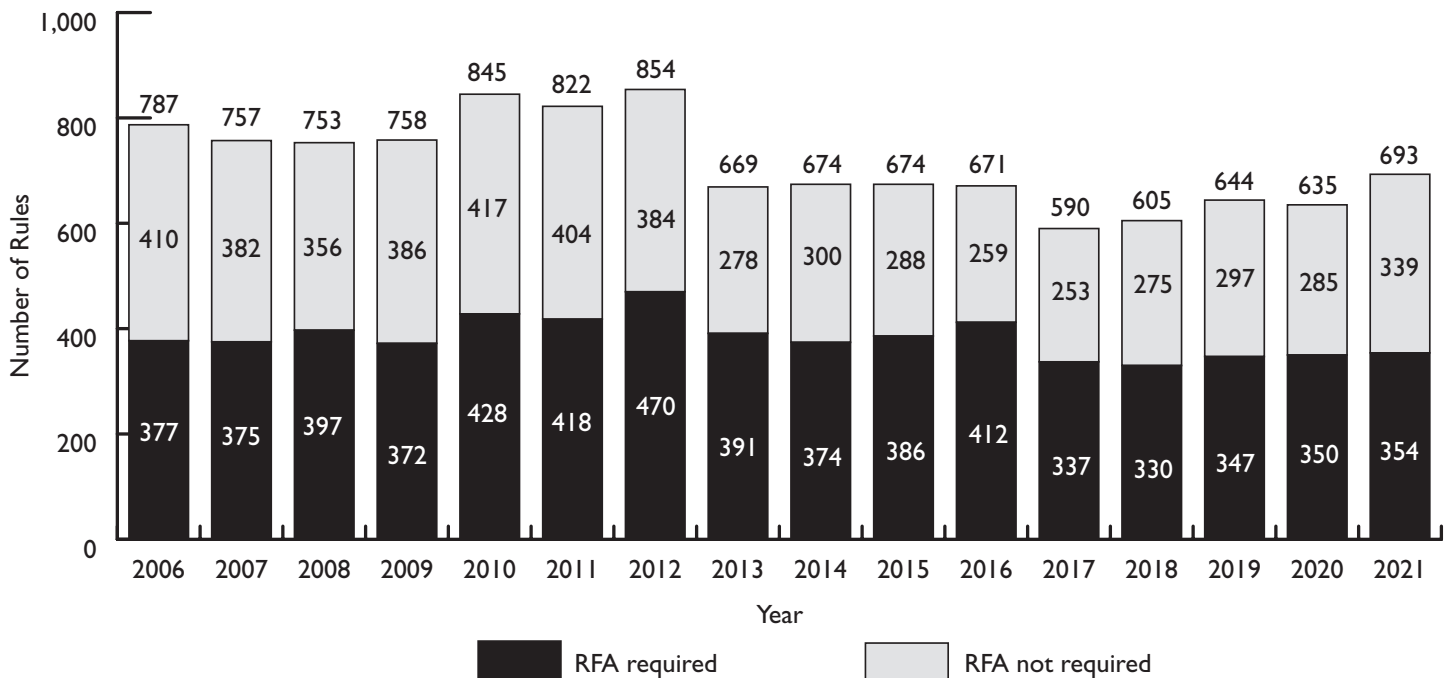
Federal Regulations Affecting Small Business

The Regulatory Flexibility Act (RFA) directs federal agencies to assess their rules' effects on small businesses.⁵¹¹ Figure 22 depicts the number of rules requiring such annual regulatory flexibility analysis. It also portrays other rules anticipated by agencies to affect small businesses, but do not require a regulatory flexibility analysis. The number of rules acknowledged to significantly affect small business dropped substantially after 2012 during the Obama administration, likely in part reflecting reporting changes noted, but they dropped even more substantially under Trump, amplified by some rules comprising rollbacks. Under Biden, the count is approaching 700 again, but without a deregulatory designation affecting the count.

As Figure 22 shows, at the end of 2021, the total number of rules affecting small business stood at 693, of which 354 required RFA analysis and another 339 that agencies deemed to affect small business but not require RFA analysis.⁵¹² This represents a 9 percent increase over Trump in 2020, when there had been 635 rules affecting small business, of which 83 were deemed "Deregulatory." (Earlier deregulatory counts for small business rules under Trump were 102 in both 2019 and 2018, and 83 in 2017). If Trump's deregulatory rules for small business in 2020 are netted out, Biden's increase in rules affecting small business in 2021 is 25 percent.

For comparison, there had been 671 rules affecting small business in Obama's final year. The number of rules with small-business impacts during the Obama administration at times exceeded 800, a level not seen since 2003. The average number of rules affecting small business during Obama's eight years, 406, exceeded George W. Bush's eight-year average of 377. Trump's average annual number of

Figure 22. Rules in the Pipeline Affecting Small Business, 2006–2021



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

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

rules affecting small business was lower than either Bush or Obama, at 341, dozens of which were also deemed deregulatory each year.

Table 8 breaks out the 2021 fall Unified Agenda’s 693 rules affecting small business by department, agency, and commission. The top five—the Departments of Health and Human Services, Commerce, and the Treasury, along with the Federal Communications Commission and the multiagency Federal Acquisition Regulations—accounted for 316, or 46 percent, of the 693 rules affecting small business.

The overall proportion of total rules affecting small business stands at 18 percent, but varies widely among agencies (see Table 9). (For the numbers of rules affecting small business broken down by department and agency for fall Agenda editions since 1996, see Appendix: Historical Tables, Part H.)

Box 4 depicts a partial list of the basic, non-sector-specific laws and regulations that affect small business, stacking as these firms grow.

Federal Regulations Affecting State and Local Governments

Ten Thousand Commandments primarily emphasizes regulations imposed on the private sector. However, state and local officials’ realization during the 1990s that their own priorities were being overridden by federal mandates generated demands for reform. As a result, Congress passed the Unfunded Mandates Act in 1995 to require the Congressional Budget Office to produce cost estimates of mandates affecting state, local, and tribal governments above the then-threshold of \$50 million. The pandemic and recent infrastructure legislation that have affected the relationship between the federal and state governments (and individuals) have raised the saliency of federal encroachment on state roles and of the regulatory effects of federal spending on local concerns.

As Figure 23 shows, agencies report that 325 of the 3,777 rules in the fall 2021 Agenda pipeline will affect local governments, an in-

Table 8. Unified Agenda Entries Affecting Small Business by Department, Agency, and Commission, Fall 2021

	Total Rules	Number Affecting Small Business						Total	Affecting Small Business	Top 5
		RFA Required			RFA Not Required					
		Active	Completed	L-T	Active	Completed	L-T			
Dept. of Agriculture	175	15		13	9	3	2	42	24.0%	
Dept. of Commerce	269	28	7	1	20	7	1	64	23.8%	64
Dept. of Defense	219	4		2	34	1	6	47	21.5%	
Dept. of Education	42	1						1	2.4%	
Dept. of Energy	138	5			3			8	5.8%	
Dept. of Health and Human Services	235	29	6	5	30	1	2	73	31.1%	73
Dept. of Homeland Security	160	7	4	4			5	20	12.5%	
Dept. of Housing and Urban Development	51							0	0.0%	
Dept. of the Interior	363	4	1	3	15			23	6.3%	
Dept. of Justice	118				17	1		18	15.3%	
Dept. of Labor	98	8			9		3	20	20.4%	
Dept. of State	70				21	2	1	24	34.3%	
Dept. of Transportation	301	8	1	6	13	1	6	35	11.6%	
Dept. of the Treasury	360	15	1	1	35	1	7	60	16.7%	60
Dept. of Veterans Affairs	85							0	0.0%	
Agency for International Development	16				1			1	6.3%	
Architectural and Transportation Barriers Compliance Board	5							0	0.0%	
CPBSD*	9							0	0.0%	
Commodity Futures Trading Commission	18							0	0.0%	
Consumer Financial Protection Bureau	9	1	1		3	1	2	8	88.9%	
Consumer Product Safety Commission	22	5	4	1				10	45.5%	
Corp. for National and Community Service	11							0	0.0%	
Council of Inspector General on Integrity and Efficiency	1									
Council on Environmental Quality	5							0	0.0%	
Court Services/Offender Supervision, D.C.	7							0	0.0%	
Environmental Protection Agency	226	3			6	1	3	13	5.8%	
Federal Acquisition Regulation	58	39	7	4	5		1	56	96.6%	56
Farm Credit Administration	14							0	0.0%	
Federal Communications Commission	87		1	60			2	63	72.4%	63

	Total Rules	Number Affecting Small Business						Total	Affecting Small Business	Top 5
		RFA Required			RFA Not Required					
		Active	Completed	L-T	Active	Completed	L-T			
Federal Deposit Insurance Corporation	29				5			5	17.2%	
Federal Energy Regulatory Commission	22							0	0.0%	
Federal Housing Finance Agency	14							0	0.0%	
Federal Maritime Commission	5							0	0.0%	
Federal Mediation and Conciliation Service	5					1		1	20.0%	
Federal Mine Safety and Health Review Commission	2							0	0.0%	
Federal Permitting Improvement Steering Committee	2				1			1	50.0%	
Federal Reserve System	31	1								
Federal Trade Commission	19				15	2		17	89.5%	
General Services Administration	43	14			17	9		40	93.0%	
Institute of Museum and Library Services	1							0	0.0%	
Inter-American Foundation	2							0	0.0%	
National Aeronautics and Space Administration	5							0	0.0%	
National Archives and Records Administration	8							0	0.0%	
National Credit Union Administration	30							0	0.0%	
National Endowment for the Arts	6				1		1	2	33.3%	
National Endowment for the Humanities	7							0	0.0%	
National Indian Gaming Commission	16				2			2	12.5%	
National Labor Relations Board	4	1						1	25.0%	
National Mediation Board	1							0	0.0%	
National Science Foundation	3									
National Transportation Safety Board	7							0	0.0%	
Nuclear Regulatory Commission	61	3	1	1				5	71.4%	
Office of Government Ethics	13							0	0.0%	
Office of Management and Budget	8		1					1	7.7%	
Office of National Drug Control Policy	1							0	0.0%	
Office of Personnel Management	48	1								

	Total Rules	Number Affecting Small Business						Total	Affecting Small Business	Top 5
		RFA Required			RFA Not Required					
		Active	Completed	L-T	Active	Completed	L-T			
Peace Corps	5									
Pension Benefit Guaranty Corporation	10						0	0.0%		
Postal Regulatory Commission	5						0	0.0%		
Railroad Retirement Board	7						0	0.0%		
Securities and Exchange Commission	74	9	2	3	2		16	21.6%		
Small Business Administration	76	11			1		12	15.8%		
Social Security Administration	22						0	0.0%		
Surface Transportation Board	8			1			1	12.5%		
Tennessee Valley Authority	1					1	1	100.0%		
U.S. Agency for Global Media	3						0	0.0%		
U.S. Commission on Civil Rights	1						0	0.0%		
TOTAL	3,777	212	37	105	265	32	42	693	18.3%	316
		354			339					46% of total

Source: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” and from online edition at www.reginfo.gov.

RFA = regulatory flexibility analysis; L-T = long term.

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

crease of 26 percent over Trump’s last year count of 258. That includes all stages—active, completed, and long-term.⁵¹³ In Trump’s fall 2020 Agenda, 46 of 258 local actions had been deemed deregulatory for Executive Order 13771 purposes across the active, completed, and long-term categories, which brings Biden’s to 53 percent over Trump’s “net” 212 local rules. Since the passage of the Unfunded Mandates Act, the number of rules affecting local governments is down 39 percent.

Turning to the total number of regulatory actions affecting state governments, we find 514, also a 26 percent increase over Trump’s 409 state actions a year earlier, of which 72 were deemed deregulatory for Executive Order 13771 purposes, across the active, completed, and long-term categories.

Unfunded federal mandates on state and local governments could influence regulatory reform measures. At the 2016 Legisla-

tive Summit of the National Conference of State Legislatures (NCSL) in Chicago, the NCSL Standing Committee on Budgets and Revenue issued a resolution on unfunded mandates asserting: “The growth of federal mandates and other costs that the federal government imposes on states and localities is one of the most serious fiscal issues confronting state and local government officials.”⁵¹⁴ The NCSL called for “reassessing” and “broadening” the 1995 Unfunded Mandates Reform Act. Likewise, several state attorneys general in 2016 wrote to House and Senate leadership over federal agencies’ “failing to fully consider the effect of their regulations on States and state law,” and called for strengthening the Administrative Procedure Act.⁵¹⁵

The Congressional Budget Office reports that since 2006, 190 laws have imposed intergovernmental mandates on states and localities, with 420 mandates within these laws.⁵¹⁶ Regulatory mandates can derive

Box 4. Federal Workplace Regulations Affecting Growing Businesses

Assumes nonunion, nongovernment contractor, with interstate operations and a basic employee benefits package. Includes general workforce-related regulation only. Omitted are (a) categories such as environmental and consumer product safety regulations and (b) regulations applying to specific types of businesses, such as mining, farming, trucking, or financial firms.

I EMPLOYEE

- Fair Labor Standards Act (overtime and minimum wage)
- Social Security matching and deposits
- Medicare, Federal Insurance Contributions Act
- Military Selective Service Act (allowing 90 days' leave for reservists, rehiring of discharged veterans)
- Equal Pay Act (no sex discrimination in wages)
- Immigration Reform Act (eligibility that must be documented)
- Federal Unemployment Tax Act (unemployment compensation)
- Employee Retirement Income Security Act (standards for pension and benefit plans)
- Occupational Safety and Health Act
- Polygraph Protection Act

4 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Immigration Reform Act (no discrimination with regard to national origin, citizenship, or intention to obtain citizenship)

15 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Civil Rights Act Title VII (no discrimination with regard to race, color, national origin, religion, or sex; pregnancy-related protections; record keeping)

- Americans with Disabilities Act (no discrimination, reasonable accommodations)

20 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Age Discrimination Act (no discrimination on the basis of age against those 40 and older)
- Older Worker Benefit Protection Act (benefits for older workers to be commensurate with younger workers)
- Consolidated Omnibus Budget Reconciliation Act (continuation of medical benefits for up to 18 months upon termination)

25 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Health Maintenance Organization (HMO) Act (HMO option required)
- Veterans' Reemployment Act (reemployment for persons returning from active, reserve, or National Guard duty)

50 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Family and Medical Leave Act (12 weeks of unpaid leave or care for newborn or ill family member)

100 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Worker Adjustment and Retraining Notification Act (60-day written notice of plant closing)—Civil Rights Act (annual EEO-1 form)

from such laws, as well as from agencies acting unilaterally. According to official data, few have imposed costs on states and localities exceeding the noted statutory threshold (aggregate direct costs during any of the mandate's first five years of \$50 million in 1996; \$77 million now).

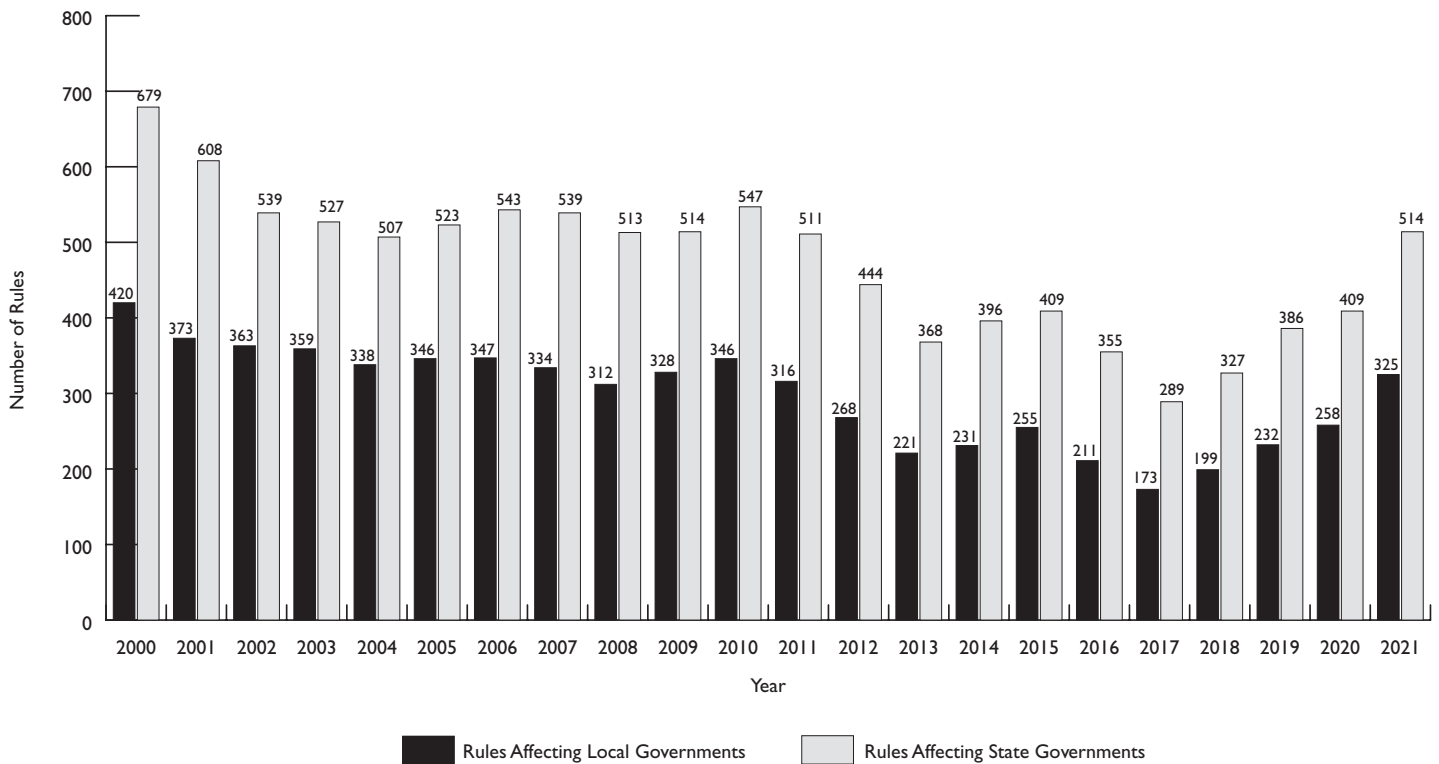
Agencies claim that very few of the rules affecting states and localities impose unfunded mandates on them, but that may be because the Unfunded Mandates Reform Act is not applicable to many rules and programs.⁵¹⁷ Nonetheless, the following are

some notable completed or pending regulations over the past decade that federal agencies have acknowledged in the Unified Agenda as unfunded mandates (with their Regulation Identifier Number provided).⁵¹⁸

Department of Agriculture

- USDA/FNS: National School Lunch and School Breakfast Programs: Nutrition Standards for All Foods Sold in School, as Required by the Healthy, Hunger-Free Kids Act of 2010 (0584-AE09)

Figure 23. Rules Affecting State and Local Governments, 2000–2021



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

- USDA/RBS: Debt Settlement—Community and Business Programs (0570-AA88)

Department of Health and Human Services

- HHS/FDA: Revising the National Drug Code Format and Drug Labeling Barcode Requirements (0910-AI52)
- HHS/FDA: Combinations of Bronchodilators with Expectorants; Cold, Cough, Allergy, Bronchodilator, and Anti-Asthmatic Drug Products for Over-the-Counter Human Use (0910-AH16)
- HHS/CMS: CY 2016 Notice of Benefit and Payment Parameters (CMS-9944-P) (0938-AS19)
- HHS/FDA: Over-the-Counter Drug Review—Internal Analgesic Products (0910-AF36)

- HHS/CDC: Establishment of Minimum Standards for Birth Certificates (0920-AA46)
- HHS/FDA: Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents (0910-AG33)

Department of Justice

- DOJ/LA: Supplemental Guidelines for Sex Offender Registration and Notification (1105-AB36)
- DOJ/CRT: Nondiscrimination on the Basis of Disability in State and Local Government Services (1190-AA46)

Department of Labor

- DOL/OSHA: COVID-19 Vaccination and Testing Emergency Temporary Standard Rulemaking (1218-AD42)

- DOL/OSHA: Occupational Exposure to Crystalline Silica (1218-AB70)

Department of Transportation

- DOT/PHMSA: Hazardous Materials: Real-Time Emergency Response Information by Rail (2137-AF21)
- DOT/FHWA: Real-Time System Management Information Program (2125-AF19)

Architectural and Transportation Barriers Compliance Board

- ATBCB: Americans with Disabilities Act Accessibility Guidelines for Transportation Vehicles (3014-AA38)

Environmental Protection Agency

- EPA/OW: National Primary Drinking Water Regulations (2040-AA94, 2040-AF15)
- EPA/OCSPP: Polychlorinated Biphenyls; Reassessment of Use Authorizations for PCBs in Small Capacitors in Fluorescent Light Ballasts in Schools and Day Cares (2070-AK12)
- EPA/WATER: Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category (2040-AF14)
- EPA/SWER: Revising Underground Storage Tank Regulations—Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training (2050-AG46)
- EPA/SWER: Standards for the Management of Coal Combustion Re-

siduals Generated by Commercial Electric Power Producers (Coal Ash) (2050-AE81)

- EPA/AR: Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards (2060-AQ86)
- EPA/AR: National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; Reconsideration (2060-AR13)
- EPA/AR: National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Electric Utility Steam Generating Units (2060-AP52)
- EPA/AR: National Emission Standards for Hazardous Air Pollutants (NESHAP) from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Electric Utility Steam Generating Units—Appropriate and Necessary Finding (2060-AR31)
- EPA/AR: NESHAP for Area Sources: Industrial, Commercial, and Institutional Boilers (2060-AM44)
- EPA/AR: NESHAP for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (2060-AQ25)
- EPA/AR: NESHAP: Portland Cement Notice of Reconsideration and New Source Performance Standards for Portland Cement (2060-AO15)

Nuclear Regulatory Commission

- NRC: Revision of Fee Schedules (3150-AI93)