

Ten Thousand Commandments

An Annual Snapshot of the Federal Regulatory State

2023 Edition

by Clyde Wayne Crews Jr.

Executive Summary

I don't want to hear any more of these lies about reckless spending. We're changing people's lives!

—Joe Biden at the 29th AFL-CIO
Quadrennial Constitutional
Convention, June 14, 2022

The cost of government extends well beyond what Washington taxes. Federal regulations add another \$1.939 trillion to Americans' annual burden. Federal environmental, safety and health, social, and economic interventions grip the economy. Many crisis regulations become permanent regulations, or last far longer than is warranted. The COVID-19 episode was the third major economic shock of the century, after the September 11, 2001, attacks and the 2008 financial crisis.

There have been no large-scale tax hikes, but the hidden tax of regulation has proved appealing to lawmakers. Unlike on-budget spending, many regulations are hard to quantify. Budgetary pressures can incentiv-

ize off-budget regulations requiring private outlays and adjustments rather than adding more unpopular deficit spending.¹ Mandates like family leave, child care, and job training initiatives could involve either increased observable government spending or new regulations on business. Just as consumers wind up shouldering much of the corporate income tax,² the regulatory compliance costs and mandates borne by businesses will percolate throughout the economy, sneaking their way into consumer prices.

When the U.S. federal administrative state began its march over a century ago, few imagined the tangle of hundreds of thousands of rules and guidance documents it would produce, and the way those would envelop society. Donald Trump's four years brought unique reversals, such as a reduced flow of new rules and some rollbacks of existing ones. Attempts were made to streamline internal departmental and agency processes and speed regulatory approvals for private activities.

Unfortunately, as detailed extensively in the 2021 edition of *Ten Thousand Commandments*, the liberalizations ended with the inauguration of President Joe Biden. He declared the Trump agenda consisted of “harmful policies and directives that threaten to frustrate the Federal Government’s ability to confront ... problems.”³ Biden initiated a progressive “modernization” of the regulatory review process.⁴ He even reoriented the Office of Management and Budget away from regulatory supervision and restraint and toward the promotion of regulatory initiatives.⁵

The Congressional Budget Office’s February 15, 2023, *Budget and Economic Outlook*, covering fiscal year 2022 and projections for 2023 to 2033, shows discretionary, entitlement, and interest spending of \$6.272 trillion in fiscal year 2022, with spending projected to top \$7 trillion in 2026 and hit nearly \$10 trillion by 2033. Unprecedented open-ended deficits now standing at \$1.4 trillion annually⁶ are expected to top \$2 trillion annually by 2030. The national debt will soon top \$32 trillion,⁷ up from almost \$20 trillion when Donald Trump assumed office in 2017.

Biden’s reversals of the Trump gains are explored in great detail in last year’s edition (2022) of *Ten Thousand Commandments*, and the reader is referred to that report for framing and context.⁸ This new edition will update Biden’s progress on a subset of whole-of-government interventions. It will examine Biden’s climate crisis agenda and his “call for bold and ambitious steps to root out inequity from our economy.”⁹ These efforts have accelerated a longstanding process that is replacing self-determination and limited government with top-down behavioral, social, and civil rights codes.¹⁰

The limited cost–benefit analyses currently being undertaken by agencies rely largely on agency self-reporting and cover only a fraction of rules.¹¹ Regulators remain reluctant to acknowledge when a rule’s benefits do not justify costs.

One of the main enablers of regulatory growth is Congress’s delegation of its law-making power to executive branch regulatory agencies. Agencies have much less visibility than members of Congress and do not have to worry about upsetting voters or finding compromises with the other party. Additionally, many members of Congress are happy to have someone else to blame when regulations backfire or prove controversial.

Crises have also created a boom in regulations. Chief among reforms briefly outlined at the end of this report are those that would require congressional approval of significant or controversial agency rules before they become binding on the public.¹² That way, elected officials could no longer hide behind crisis rulemaking.

Other needed legislative reforms include regulatory sunseting and budgeting; a regulatory reduction commission; and reforms to limit, streamline, and inventory guidance documents. That should be topped off with annual regulatory transparency report cards, perhaps similar in presentation to *Ten Thousand Commandments*.¹³ This report contains six major elements:

1. Bulleted highlights to put key findings in one location
2. A Year 2 update of Biden’s escalation of “helicopter government”
3. An overview of the federal regulatory state, including a taxonomy of categories of unmeasured costs of regulation, and depictions of its size compared with federal budgetary components and gross domestic product
4. An analysis of trends in the numbers of rules and regulations issued by agencies, based on information provided in the Federal Register and in “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions” (Unified Agenda) and a brief survey of executive branch memoranda, notices, and the like
5. Recommendations for reform that emphasize disclosure and holding Con-

gress accountable for the rulemaking under which people live

6. An appendix containing historical tables of regulatory trends over past decades

For the health and stability of any nation, but especially one confronting inflation, supply-chain disruptions, and unprecedented debt, the lawmaking process should be made as transparent as possible and subjected to renewed accountability with restored constitutional norms. Some highlights from the report follow:

- Biden has escalated his whole-of-government campaigns on equity, climate, and other progressive ends.
- Biden's repudiation of the Trump agenda of regulatory cost freezes and streamlining has been thorough. Biden has unleashed Trump-resistant agencies. They quickly moved to remove guidance document portals and now collude on the assorted whole-of-government campaigns.
- Overall final rule counts stood at 3,168 at the conclusion of Biden's second calendar year. That number marks a nearly 29 percent drop from Biden's first-year count of over 4,429, according to the National Archives (which contained 105 Trump midnight rules among them).
- Trump's total of 2,964 final rules in 2019 was the lowest count since record-keeping began in the 1970s and is the only tally below 3,000. In the 1990s and early 2000s, rule counts regularly exceeded 4,000 annually. Trump's rule counts contained some concerted deregulatory elements, for an even lower net.
- Biden's significant final rules—265 at the end of his second year—appear headed to pre-Trump levels, with the costlier subset deemed economically significant already the highest in decades.
- The *Report to Congress* on regulatory costs and benefits and the Unified Agenda provide only partial overviews and are chronically late. Much economic and social intervention in the modern era will never be captured as costs of regulation in the formats that purport to address or score them.
- Given the federal government's failure to provide a regularly updated estimate of the aggregate costs of regulation, this report uses an estimate for regulatory compliance and economic effects of federal intervention of at least \$1.939 trillion annually. This method allows a rudimentary comparison with federal spending and other economic metrics. This report also outlines other interventions that belong in any tally but are typically disregarded.
- Regulatory burdens of \$1.939 trillion amount to nearly 7.4 percent of U.S. gross domestic product, which was \$26.14 trillion in 2022.
- When regulatory costs are combined with federal outlays of \$6.27 trillion, the federal government's share of the entire economy reaches 31.4 percent. State and local spending and regulation would add to these costs.
- If it were a country, U.S. regulation would be the world's ninth-largest economy (not counting the United States itself), ranking behind Canada and ahead of South Korea.
- The hidden regulatory "tax" rivals individual income tax revenues, estimated at \$2.263 trillion for 2022.
- Regulatory costs stand at nearly two-thirds the level of corporate pretax profits of \$3.138 trillion (which have surged from \$2.18 trillion). They greatly exceed estimated corporate income tax revenues of \$382 billion.
- U.S. households pay \$14,514 annually on average in a hidden regulatory tax. This amount exceeds every item in the household budget except housing. A typical American household spends more on embedded regulation than on health care, food, transportation, entertainment, apparel, services, or savings.
- A subset of each year's 3,000-plus rules is deemed "economically significant," which Executive Order 12866 defines as having annual economic effects of \$100 million or more. There were 386

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and 265 rules in calendar years 2021 and 2022, respectively, compared with 463 in 2020 (some deregulatory) in Trump's final calendar year. Trump's three other years produced record-low levels of significant rules. The dip in 2022 notwithstanding, a likely sustained return by Biden to pre-Trump significant rule levels will bear monitoring.

- During calendar year 2022, while agencies issued 3,168 rules, Congress enacted 247 laws. Thus, agencies issued 13 rules for every law enacted by Congress. This "Unconstitutionality Index"—the ratio of regulations issued by agencies to laws passed by Congress and signed by the president—highlights the entrenched delegation of lawmaking power to unelected agency officials. The average ratio over the past 10 years is 22 rules for every law.
- The preliminary 2022 *Federal Register* page count of 80,756 is a 10 percent rise over 73,321 in 2021. Trump's 86,208 pages in 2020 is the second-highest count ever. However, Trump's rollbacks of rules—and historically, there were fewer final rules overall—also added pages to the *Register*.
- By comparison, in 2017, Trump's first year, the *Federal Register* finished at 61,308 pages, the lowest count since 1993 and a 36 percent drop from President Barack Obama's 95,894 pages, which remains the highest-ever count.
- Since 1993, when the first edition of *Ten Thousand Commandments* was published, agencies have issued 118,315 final rules (not including guidance documents). Since the *Federal Register* first began itemizing final rules in 1976, 215,405 have been issued.
- Of 99,429 final rules issued since the Congressional Review Act passed in 1996 during the Clinton administration, just 20 rules have been revoked, including one guidance document.
- The Weidenbaum Center at Washington University in St. Louis and the George Washington University Regulatory Studies Center in Washington, DC, jointly estimate that agencies spent \$81.7 billion in fiscal year 2021 to administer and police the federal administrative apparatus. Embedded in the federal budget, these amounts are separate from compliance, economic, and other burdens of federal intervention.
- During calendar year 2022, 2,044 proposed rules (267 deemed significant) were published in the *Federal Register*, up from 1,780 in 2021 (an all-time low compared with the surge in final rules to over 4,000). A count of 2,131 proposed rules in 2019 was Trump's highest, whereas Trump's 1,834 in 2017 is the second-lowest tally. Obama's lowest count was 2,013 in 2009, his first year in office.
- In addition to 3,168 final rules in 2022, there are future rules to consider. According to the fall 2022 edition of the twice-yearly "Unified Agenda of Federal Regulatory and Deregulatory Actions," 69 federal departments, agencies, and commissions have 3,690 upcoming regulatory actions in the pipeline. This number is down slightly from 3,777 in 2021. Those rules are at various stages of implementation:
 - 2,651 rules in the active phase (pre-rule, proposed, final)
 - 443 recently completed rules
 - 596 long-term rules
- The active rule count in the Unified Agenda under Biden is the highest it has been since 2011.
- By contrast, Trump's final Unified Agenda contained a higher count of 3,852 rules, but 653 of them had been deemed deregulatory via Trump's now-repealed Executive Order 13771 for a lower net. The breakdown was as follows:
 - 2,636 rules in the active phase, of which 496 were deemed deregulatory
 - 630 completed rules, 101 deemed deregulatory
 - 586 long-term rules, 56 deemed deregulatory
- Of the 3,690 regulations in the fall 2022 Unified Agenda's pipeline, 332 are economically significant rules, up 12 percent from 295 in 2021, as follows:

- 244 rules in the active phase (pre-rule, proposed, final)
 - 53 completed rules
 - 35 long-term rules
 - The 332 economically significant rules in Biden’s fall 2022 Unified Agenda regulatory pipeline far outstrip the Obama years, and they represent a 27 percent increase over the gross count of 261 in Trump’s final calendar year of 2020. Thirty-six of the economically significant rules in 2020 were deemed deregulatory for Trump’s net regulatory count of 225, which Biden tops by 47 percent.
 - Economically significant regulations are a special category of significant regulations. These rules each have at least \$100 million of economic impact. The Biden administration’s spring and fall 2022 editions of the Unified Agenda contained a combined 89 (compared with 105 in 2021) completed economically significant rules. Even taking the dip into account, Biden’s count of completed economically significant rules is higher than anything seen in the Bush, Obama, and Trump years.
 - Of the 97 completed economically significant rules presented in the spring and fall 2020 editions of the Unified Agenda under Trump, 21 were deemed deregulatory. The yearly average for Obama’s eight years was 69; President George W. Bush’s average over his term was 49. Trump’s average was 72, but his Unified Agendas are the first and only to contain rules expressly designated deregulatory, a designation removed by Biden.
 - For calendar year 2022, the Government Accountability Office (GAO) reveals 76 finalized major rules—yet another category similar to the economically significant tally in the Unified Agenda, but slightly broader. George W. Bush’s administration issued 492 major rules for an average of 61 major rules annually, whereas Obama’s administration accounted for 675, an annual average of 84. Trump’s four-year total was 343 for an average of 86, but a significant portion were deemed deregulatory.
- These tallies emphasize calendar year and therefore ignore preinaugural days attributable to a predecessor in transition years. They also reflect retroactive changes that have occurred in the GAO’s online database.
- Final rules affecting small business appear to be mounting and could serve as a source of calls for reform. Outstripping both Trump and Obama, Biden’s administration saw 915 and 916 final rules, respectively, far higher than any other year during the past decade. The significant subset, however, has not reattained pre-Trump heights and so bears monitoring.
 - Of the 3,690 rules and regulations in the fall 2022 Unified Agenda pipeline, 707 affect small businesses. This count is up from 635 in 2020 under Trump, of which 83 had been deemed deregulatory. Of Biden’s 707, 349 required a regulatory flexibility analysis, which is an official assessment of small-business impacts. An additional 358 were otherwise noted by agencies to affect small businesses in some fashion.
 - Many federal rules affect state and local governments. Rules in the Unified Agenda pipeline affecting state governments stand at 550 and rules affecting local governments at 387, levels not seen since 2001.
 - The five most active rule-producing executive branch entities—the departments of the Interior, the Treasury, Transportation, Commerce, and Health and Human Services—account for 1,501 rules, or 41 percent of all rules in the Unified Agenda pipeline. The five most active independent agencies account for another 322 rules.
 - Biden issued just 29 executive orders in 2022, after issuing 77 in 2021. This reduction reflects a change in strategy, rather than a more modest view of executive power. Biden’s memoranda continue to outstrip recent predecessors; these typically escape formal review. Trump issued 16 executive orders before Biden’s inauguration, for a total of 93 in 2021. For comparison, Trump issued

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69 executive orders in 2020. Trump had issued 47 executive orders in 2017, 35 in 2018, and 63 in 2019.

- From the nation's founding through 2022, more than 15,611 executive orders have been issued. Trump issued 220 in only four years, whereas Obama issued a total of 276 over eight years, similar to George W. Bush's 291. Before the 20th century, most presidents had issued no more than a few dozen. In contrast, Woodrow Wilson issued 1,803, Calvin Coolidge issued 1,204, and Franklin D. Roosevelt issued 3,467.
- Forty-six presidential memoranda appeared in the *Federal Register* database in 2022, compared with 30 in 2021, 26 of which were from Biden, and four from

Trump. This number compares with 49 from Trump in 2020, after having issued 35, 29, and 24 from 2017 to 2019, respectively. George W. Bush issued 129 memoranda during his presidency that were published in the *Federal Register*, and Barack Obama issued 255.

- Public notices in the *Federal Register* always exceed 21,000 annually, with uncounted guidance documents and other proclamations with potential regulatory effect among them (other guidance documents are issued that do not appear in the *Register* at all). In 2022, 22,505 notices were issued according to the *Federal Register* database. There have been 683,595 public notices since 1994 and over 1 million since the 1970s.