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# Ten Thousand Commandments

Sizing up the Federal Government's New Rules and Regulations

2024 Edition

By Clyde Wayne Crews Jr.

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# Introduction

The hidden tax of regulation has proved appealing to lawmakers who feel the pressure of a national debt topping \$34 trillion. Off-budget regulations requiring private business outlays and adjustments rather than government spending have grown common despite congressional attempts to limit them. And politicians' appetite for mandates in energy and climate initiatives and equity initiatives, such as family leave and child care, appear to be only increasing.

Off-budget or not, these regulatory costs still exist, and they drag down the economy. Just as consumers shoulder much of the corporate income tax burden, regulatory compliance costs and mandates borne by businesses percolate through the economy and materialize as higher prices, lost jobs, and lower output.

The Congressional Budget Office's 2024 *Budget and Economic Outlook*, covering fiscal year (FY) 2023 with projections for FY 2024 to FY 2034, depicts discretionary, entitlement, and interest spending of \$6.135 trillion in FY 2023. Spending is projected to top \$7 trillion in 2027 and exceed \$10 trillion in 2034. The yearly deficit stood at \$1.695 trillion in

2023. The deficit is expected to top \$2 trillion by 2031 and remain above that level. Total national debt now exceeds \$34 trillion, up from almost \$20 trillion when Donald Trump assumed office in 2017. Interest payments alone for 2024 are projected to reach \$870 billion.

Regulations lack such precise quantification but should set off similar alarms. When the 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 preserve. Even modest liberalizations during the Trump administration have been reversed by Joe Biden, who reoriented the Office of Management and Budget away from oversight and toward the promotion of regulatory initiatives, most of which are now regarded as net beneficial.

Prior editions of *Ten Thousand Commandments* have detailed Trump's streamlining effort (2021) and Biden's reversals (2022, 2023) and framed the latter's pursuit of ambitious whole-of-government spending and regulatory initiatives spanning climate, equity, economic, and social matters, as well as an appetite for censorship and surveillance.

This 2024 edition sets a new high-water mark of \$2.1 trillion. All previous estimates had the annual total cost of federal regulations below \$2 trillion. Previous editions also explained why that figure was almost certainly an undercount.

One reason for that huge figure in past editions and this one is that few people are paying attention. Cost-benefit analyses are few, not aggregated by the government, and self-reported by agencies. Delegation of lawmaking power to this unelected bureaucracy allows Congress to blame its own creations for unpopular spending and rules. For that reason, first among the reforms outlined in the conclusion of this report is mandatory congressional approval of costly or controversial agency rules. If Congress is willing to allow such large regulatory actions, then it needs to own them.

Other reforms include regulatory sunseting and budgeting; a regulatory reduction commission; and the limitation, streamlining, and inventorying of guidance documents. Annual regulatory transparency report cards could document progress.

## Key findings

- Federal regulation's total compliance costs and economic effects are at least \$2.117 trillion annually in *Ten Thousand Commandments'* estimate, and almost certainly higher.
- An October 2023 National Association of Manufacturers (NAM) report models regulatory compliance at \$3.079 trillion annually.
- **US households pay on average \$15,788 annually in a hidden regulatory tax, which consumes 17 percent of income and 22 percent of household expenses.**
- These outlays exceed expenditures on health care, food, transportation, entertainment, apparel, services, and savings. Only the costs of housing, which stand at \$24,298 annually, exceed regulation.
- The higher NAM figure implies \$22,962 per household, or 31 percent of the household expense budget.
- **The regulatory tax of \$2.117 trillion rivals individual income tax costs estimated at \$2.328 trillion for 2023 and stands at nearly four times the corporate income tax of \$546 billion.**
- The NAM cost figure of \$3.1 trillion annually would exceed the sum of both (\$2.9 trillion).
- If it were a country, US regulation would be the world's 10th-largest economy, ranking behind Canada and ahead of Italy.
- If we exclude the US economy from the list, the US regulation economy would be the ninth largest, still behind Canada and ahead of Italy.
- **The 10.34 billion hours Washington says it took to complete federal paperwork in 2022, according to the *Information Collection Budget*, translate to the equivalent of 14,883 human lifetimes.**
- The tally of final rules for 2023 stood at 3,018, which is the second-lowest count since at least 1976.
- On the other hand, the *Federal Register* containing those rules surged to 89,368 pages, the second-highest tally on record and a 12 percent rise over 2022.
- Although we have fewer new rules, they appear to be broader in scope.
- **During calendar year 2023, agencies issued 3,018 rules, whereas Congress enacted 68 laws. Thus, agencies issued 44 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—underlines how much agency lawmaking has replaced that of elected officials. The average ratio over the past 10 years is 23 rules for every law.

- Since the *Federal Register* first began itemizing final rules in 1976, 217,565 have been issued. Since 1993, when the first edition of *Ten Thousand Commandments* appeared, agencies have issued 120,475 final rules.
- A 2023 draft consolidated version of the White House *Report to Congress on the Benefits and Costs of Federal Regulations* caught up on fiscal years 2020–2022. The report for 2023 has still not been released.
- A total of only 31 “major” rules had both benefits and costs quantified, and these add \$13 billion to the annual regulatory cost bill; another 56 rules with costs but not benefits quantified add another \$46 billion to annual costs.
- Employing our lower estimate, regulatory burdens of \$2.1 trillion amount to nearly 8 percent of US gross domestic product (GDP), reported by the Commerce Department at \$27.36 trillion in 2023.
- The NAM regulatory figure implies 11 percent of GDP.
- Regulatory costs stand at over 60 percent of the level of corporate pretax profits of \$3.523 trillion.
- The NAM figure would take that to over 80 percent.
- When regulatory costs of \$2.1 trillion are combined with federal outlays of \$6.135 trillion, the federal government’s share of the \$27.36 trillion economy reaches at least 30 percent. State and local spending and regulation add to these costs.
- Until April 2023, a subset of each year’s 3,000-plus rules was deemed economically significant, referring to annual economic effects of \$100 million or more. Biden’s Executive Order 14094 (“Modernizing Regulatory Review”) eliminated that category and initiated a higher \$200 million Section 3(f)(1) Significant category.
- In the year-end 2023 edition of the twice-yearly *Unified Agenda of Federal Regulatory and Deregulatory Actions*, 69 federal departments, agencies, and commissions present 3,599 regulatory actions flowing through the pipeline as follows:
  - > 2,524 rules in the active (prerule, proposed, final) phase
  - > 431 recently completed rules
  - > 644 long-term rules
- Of the 3,599 regulations in the fall 2023 Unified Agenda’s pipeline, 304 are Section 3(f)(1) Significant category rules (which implies at least \$60 billion in economic impact), as follows:
  - > 233 rules in the active (prerule, proposed, final) phase
  - > 41 completed rules
  - > 30 long-term rules
- **Despite his own higher \$200 million threshold, high-significance rules in the Biden pipeline outnumber the Bush, Obama, and Trump years when the lower \$100 million threshold applied.**
- Major rules as defined in the Congressional Review Act leave a \$100 million threshold intact despite Biden’s executive order. The Government Accountability Office database contains 76 finalized major rules for 2023. The Biden average exceeds those of Bush, Obama, and Trump.
- **Final rules affecting small business appear to be mounting and could generate calls for reform.** Biden’s three years have averaged 870 rules annually in the *Federal Register* affecting small business, compared with 694 and 701 for Obama and Trump, respectively.
- Of the 3,599 rules and regulations in the fall 2023 Unified Agenda pipeline, 690 affect small businesses; of those, 370 required an official “regulatory flexibility analysis.”
- **Biden-era mandates affect state and local governments at heights not seen in over a decade.** Rules in the Unified Agenda pipeline affecting state governments stand at 507, while rules affecting local governments stand at 349.

- The five most active rule-producing executive branch entities in the Unified Agenda—the departments of the Interior, the Treasury, Transportation, Commerce, and Health and Human Services—account for 1,497 rules, or 42 percent of all rules in the pipeline. The five most active independent agencies account for another 318 rules.
- From the nation’s founding through 2022, more than 15,635 executive orders have been issued. Biden issued 24 executive orders in 2023, well below his peak 77 of 2021. Biden’s presidential memoranda continue to outstrip the average of recent predecessors.
- Public notices in the *Federal Register* always exceed 22,000 annually, with uncounted guidance documents and other proclamations that hold potential regulatory effect among them, whereas other guidance documents issued do not appear in the *Federal Register* at all. In 2023, 23,197 notices were issued. There have been 714,563 public notices since 1994 and over a million since the 1970s.

# Biden’s whole-of-government regulatory philosophy

*Let’s be clear, Kamala and I came into office determined to transform how the economy works—change the way it literally functions.*

—Joe Biden, September 23, 2023<sup>1</sup>

Prior editions of *Ten Thousand Commandments* extensively surveyed the Biden administration’s whole-of-government campaigns and the role of executive actions, rules, and memoranda in their pursuit. The whole-of-government philosophy advocates using every possible lever of government to advance certain policy objectives. In practice, that means that agencies, instead of being guided solely by their core missions, must also pursue goals such as equity and fighting climate change. This management approach tends to consolidate power in Washington, which undermines the federalist system of government.

In 2023, Biden’s equity and environmental justice plans from multiple agencies contained a long list of new developments. The Justice40 Initiative

seeks to have 40 percent of federal spending bolster disadvantaged communities.<sup>2</sup> New National Environmental Policy Act guidelines<sup>3</sup> and the launch of the American Climate Corps<sup>4</sup> expanded environmental regulation and activism. A “Modernizing Regulatory Review” executive order raised cost review thresholds and instigated a rewrite of Circular A-4, which contains guidance for cost-benefit analysis. Both of these elements weakened the Office of Management and Budget’s watchdog role.

The Securities and Exchange Commission became an environmental regulator with its proposed climate disclosure rule.<sup>5</sup> New competition policy interventions<sup>6</sup> include price controls, attacks on junk fees,<sup>7</sup> and targeting of online user reviews.<sup>8</sup> Federal subsidies were weaponized to impel compliance actions not demanded in statute<sup>9</sup> and to rationalize even more stringent regulation.<sup>10</sup>

Public-private partnerships expanded in fields ranging from communications to electric vehicle

charging stations, the latter with abysmal rollout.<sup>11</sup> Hundreds of billions of dollars of defense spending<sup>12</sup> was repurposed toward Buy American regulations,<sup>13</sup> foreign investments,<sup>14</sup> and escalation of cross-agency supply-chain interference.<sup>15</sup>

Biden invoked emergency powers to manage supply chains<sup>16</sup> and artificial intelligence.<sup>17</sup> The Federal Reserve launched its FedNow instant payment system<sup>18</sup> in competition with private actors it regulates and is working to undermine the anonymity enabled by cryptocurrencies.<sup>19</sup> Anti-privacy and domestic surveillance escapades are ongoing, via Department of Homeland Security shadowing,<sup>20</sup> data collections on small-business credit applications,<sup>21</sup> heightened screening at airports,<sup>22</sup> and mandates to allow government to remotely disable automobiles.<sup>23</sup>

Censorship continues through funding suppression of what the federal government regards as mis-, dis-, or mal-information<sup>24</sup> and the restriction of access to government databases, such as at the National Institutes of Health, if research is suspected of not adhering to official narratives on health, climate, or other controversial policies.<sup>25</sup>

The list goes on, but alongside these are traditional nanny-style proposals to ban menthol cigarettes, hair relaxers, and food dye Red No. 3. More on where all that comes from is evident in the rules, executive actions, and guidance documents surveyed in the following pages.

Intentionally or not, Congress is enabling Biden's agenda. Biden's consolidations and cartelization are amplified by recent sweeping legislative enactments costing trillions of dollars. Washington boasts of being the world's largest purchaser of goods and services,<sup>26</sup> not infrequently benefiting foreign firms,<sup>27</sup> as well as politically connected

and politically popular groups. Congress and the president also collaborate on an enormous volume of grants-in-aid to states and exploit emergency powers at every opportunity.<sup>28</sup>

In this setting, governance by guidance and nudges can replace much traditional lawmaking. This may explain some of the dips in rulemaking counts, even as regulatory costs grow. By making progressive initiatives so numerous and crosscutting, the whole-of-government approach means that even the demise of an agency would not derail the agenda. The tentacles are such that future administrations and Congresses will be unlikely to eliminate it all. Policymakers must appreciate that minor rollbacks or traditional administrative state reforms are no match for the torrent coming at Americans.

Biden and Congress's regulatory liberalizations have been de minimis by comparison. They include permission for hearing aids to be sold over the counter, the termination of something called the Board of Tea Experts,<sup>29</sup> certain extensions of COVID-19 telemedicine flexibilities for practitioners and patients,<sup>30</sup> potential authorization of ownership of certain nonreleasable or captive-bred migratory birds and eagles for teaching purposes<sup>31</sup> (even amid crackdowns on ownership and display of big cats<sup>32</sup>), the removal of certain restrictions on introducing experimental populations of endangered and threatened species beyond their historical range,<sup>33</sup> and the removal of the Nelson's checker-mallow from the Endangered Species List.<sup>34</sup>

To his credit, Biden signed the Providing Accountability Through Transparency Act of 2023, now Public Law 119-9.<sup>35</sup> This law requires that agencies, "in providing notice of a rulemaking . . . include a link to a 100-word plain language summary of the proposed rule."

# Why we need a regulatory budget

Well before Biden’s unique transformations, policymakers recognized a role for regulatory restraint, transparency, and disclosure. Federal programs are funded either by taxes or by borrowing, with interest, from future tax collections. That disclosure is elemental to holding representatives accountable for spending, plus the public can readily inspect the costs of programs and agencies in Congressional Budget Office publications and in a formal federal budget with historical tables.

Regulation is different. Although spending and regulation are both mechanisms by which governments act or even compel, the costs of regulation are less transparent and less disciplined. That means Congress might sometimes find it attractive to act via off-budget regulation rather than spending or raising taxes. And even when regulatory compliance costs do prove burdensome and attract criticism, Congress can escape accountability by blaming agencies.

Granted, disclosure of federal spending obviously has not restrained deficits and runaway debt. Yet transparency is vital for wrestling the budget back under control. In similar fashion, policymakers should publicly disclose regulatory costs, burdens, and vital information to the fullest extent possible despite leadership that is more open to a carbon budget<sup>36</sup> than a regulatory one. Table 1 provides an overview of the 2023 federal regulatory enterprise discussed in the following pages, as well as a flavor of the kinds of components to embed in a “regulatory report card” and transparency that should come from officialdom.

## About our \$2.1 trillion estimate

A regulatory budget would be a great idea to keep Congress and the executive branch honest about the costs they are offloading to the private sector. However, the reality is that total regulatory costs are immeasurable, often unfathomed, and have not and cannot be truly calculated. It has been

**Table 1. The regulatory state: An overview for 2024**

	Year-end 2023	1-year change (2022–2023)	5-year change (2019–2023)	10-year change (2014–2023)
Total regulatory costs	\$2.117 trillion	n/a	n/a	n/a
Federal outlays	\$6.272 trillion			
Federal deficit	\$1.375 trillion			
Individual income taxes (estimated)	\$2.3 trillion			
Corporate income taxes (estimated)	\$546 billion			
Corporate pretax profits	\$3.523 trillion			
Gross domestic product	\$27.36 trillion			
<i>Federal Register</i> pages	89,368	11.9%	24.6%	15.0%
Devoted to final rules*	26,286	20.9%	26.0%	5.7%
<i>Federal Register</i> final rules	3,018	–4.7%	–1.8%	–4.7%
Significant final rules	289	8.0%	10.0%	–6.0%
<i>Federal Register</i> proposed rules	2,102	2.8%	–1.4%	–11.8%
Significant proposed rules	277	17.0%	–25.0%	–27.0%
<i>Federal Register</i> , small business final rules	782	–14.4%	30.1%	16.7%
Subset of significant final rules	80	13.0%	14.0%	–25.0%
Proposed rules	704	–6.4%	23.3%	15.0%
Subset of significant proposed rules	57	–15.0%	–36.0%	–56.0%
“Notices” in <i>Federal Register</i>	23,197	1.6%	5.1%	–4.4%
<i>Code of Federal Regulations</i> pages	188,346	0.9%	1.0%	7.9%
Total rules in Unified Agenda pipeline	3,599	–2.5%	–4.1%	5.4%
Completed	431	–2.7%	–21.1%	–31.5%
Active	2,524	–4.8%	–3.1%	8.7%
Long term	644	3.2%	–1.7%	44.4%
Section 3(f)(1) significant rules in the year-end pipeline	304	–8.4%	58.3%	52.0%
Completed	41	–22.6%	–6.8%	32.3%
Active	233	–4.5%	95.8%	77.9%
Long term	30	–14.3%	3.4%	–21.1%
“Economically significant” rules completed in spring and fall 2023	68	–23.6%	–2.9%	–1.4%
Rules affecting small business	690	–2.4%	7.1%	2.4%
Regulatory flexibility analysis required	370	6.0%	6.6%	–1.1%
Regulatory flexibility analysis not required	320	–10.6%	7.7%	6.7%

	Year-end 2023	1-year change (2022–2023)	5-year change (2019–2023)	10-year change (2014–2023)
Rules affecting state governments	507	–7.8%	31.3%	28.0%
Rules affecting local governments	349	–9.8%	50.4%	51.1%
GAO Congressional Review Act reports on major rules	76	–1.3%	–2.6%	–12.6%
Executive orders	24	–17.2%	–48.9%	–29.4%
Executive memoranda	34	–26.1%	41.7%	36.0%

Note: n/a = not applicable; GAO = Government Accountability Office. Some years fiscal, some years calendar—see text for more information.  
 \* year-end 2021; 2023 not yet available as of this compilation.

a quarter century since the federal government even tried.

There are no objective metrics to assess, apart from raw outlays on the likes of equipment and personnel.<sup>37</sup> The subjective and internally felt opportunity costs of regulation cannot be calculated by an outsider any more than economies can be centrally planned.<sup>38</sup> Make no mistake: there is no agreement on the costs and benefits of regulation, whether individually or in the aggregate, and there never will be.

Nonetheless, demanding some aggregate regulatory cost baseline is a reasonable ask of officialdom. In the wake of Biden’s Executive Order 14094 on modernizing regulatory review, the official narrative in large part denies that interventions are costs at all, and it makes questionable claims of savings, such as the White House assertion that water heater regulation and forced replacement are “going to help consumers save about \$11 billion a year.”<sup>39</sup>

For purposes of maintaining a conservative accounting, *Ten Thousand Commandments* has employed a roughly \$2 trillion estimate annually for years. This approach is based largely but not entirely on the federal government’s own reckonings that emerged from the mid- to late 1990s reform era encompassing compliance costs, economic and gross domestic product (GDP) losses, and social and

other costs, supplemented with irregular White House updates of select costs and benefits.<sup>40</sup>

The Office of Management and Budget (OMB) estimate of \$954 billion in 2002 (in 2001 dollars) would translate to over \$1.64 trillion now.<sup>41</sup> Of course, a lot has happened since then, including the addition of such rulemaking engines as the Department of Homeland Security, the Dodd-Frank financial law, the Affordable Care Act, federal pushes against fossil fuels<sup>42</sup> and functional household appliances,<sup>43</sup> and more.

The recent four years of lockdown, infrastructure, inflation, and technology spending and control constitute a marked channeling of private-sector resources and energies toward government-chosen ends via direct spending, contracting, procurement, and attendant regulation, all capable of compound ripple effects that, like most regulation, go unquantified.<sup>44</sup>

Notable examples include the Federal Communications Commission’s 2023–2024 resurrection of its net neutrality campaign,<sup>45</sup> as well as broadband social-policy schemes, in particular the Infrastructure Investment and Jobs Act (IIJA)-rooted rule on “Prevention and Elimination of Digital Discrimination”<sup>46</sup> and its build-out mandates and price controls.<sup>47</sup> Similar IIJA-rooted digital-welfare campaigns stem from the Commerce Department’s

**Table 2. Legacy official assessments of federal regulation: Late 20th century, early 21st century (millions of dollars)**

	Hopkins 1992 (1991 dollars)	Government Accountability Office 1995 (1995 dollars)	Hopkins 1995 (1995 dollars)	Small Business Admin. 2001 (2001 dollars)	Office of Management and Budget 2002 (2001 dollars)	Small Business Admin. 2005 (2004 dollars)	Small Business Admin. 2010 (2001 dollars)	National Association of Manufacturers 2014 (2012 dollars)
Environmental	115		168	197	203	221	281	330
Other social	36		55		30			
Transportation					22			
Labor					22			
Economic regulation						591	1,236	1,448
Efficiency	73		80		150			
Transfers	130		147		337			
Efficiency— domestic				101				
Transfers— domestic				202				
Efficiency— international trade				44				
Transfers— international trade				88				
Workplace and homeland security				82		106	75	92
Paperwork/pro- cess/information collection (tax compliance)	189		218	129	190	195	160	159
<b>Totals</b>	<b>\$543.00</b>	<b>\$647.00</b>	<b>\$668.00</b>	<b>\$843.00</b>	<b>\$954.00</b>	<b>\$1,113.00</b>	<b>\$1,752.00</b>	<b>\$2,029.00</b>
<b>Legacy totals, in 2013 dollars</b>		<b>\$1,019.03</b>	<b>\$1,052.10</b>	<b>1,142.27</b>	<b>1,292.67</b>			

Sources: Thomas D. Hopkins, *Costs of Regulation: Filling the Gaps*, Report prepared for the Regulatory Information Service Center, Washington, DC, August 1992. <http://www.thecre.com/pdf/COST%20OF%20REGULATION%20FILLING%20THE%20GAPS.pdf>. General Accounting Office, Briefing Report to the Ranking Minority Member, Committee on Governmental Affairs, US Senate, *Regulatory Reform: Information on Costs, Cost Effectiveness, and Mandated Deadlines for Regulations*, (GAO/PEMD 95 18BR), March 1995. <http://archive.gao.gov/t2pbat1/153774.pdf>. Thomas D. Hopkins, “The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress,” Office of the Chief Counsel for Advocacy, US Small Business Administration, Washington, DC, October 1995. [http://www.sba.gov/advo/laws/archive/law\\_brd.html](http://www.sba.gov/advo/laws/archive/law_brd.html). Office of Management and Budget, “Draft Report to Congress on the Costs and Benefits of Federal Regulations,” *Federal Register*, March 28, 2002, pp. 15037–8. <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/cbreport.pdf>. W. Mark Crain and Thomas D. Hopkins, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, RFP No. SBAHQ-00-R-0027, October 2001, <http://www.sba.gov/advo/research/rs207tot.pdf>. W. Mark Crain, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBHQ-03-M-0522, September 2005, <https://www.sba.gov/sites/default/files/files/rs264tot.pdf>. Nicole V. Crain and W. Mark Crain, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBAHQ-08-M-0466, September 2010, <http://www.sba.gov/advo/research/rs371tot.pdf>. Nicole V. Crain and W. Mark Crain, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBAHQ-08-M-0466, September 2010, <http://www.sba.gov/advo/research/rs371tot.pdf>. Nicole V. Crain and W. Mark Crain, “The Impact of Regulatory Costs on Small Firms,” report prepared for the Small Business Administration, Office of Advocacy, Contract No. SBAHQ-08-M-0466, September 2010, <http://www.sba.gov/advo/research/rs371tot.pdf>. National Association of Manufacturers, “The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business,” W. Mark Crain and Nicole V. Crain, September 10, 2014. <http://www.nam.org/~media/A7A8456F33484E498F40CB46D6167F31.ashx>.

Note: Some figures are here adjusted to 2016 by the change in the consumer price index between 2001 and 2016, and between 1995 and 2016, derived from “CPI Detailed Report Data for January 2017,” Bureau of Labor Statistics, Washington, DC (Table 24. Historical Consumer Price Index for All Urban Consumers, U.S. city average, All items).

National Telecommunications and Information Administration that—alongside endorsing FCC in its “digital discrimination” regulatory proceeding<sup>48</sup>—boasts its own haphazard allocation of over \$42 billion in BEAD (Broadband Equity, Access, and Deployment) funding with social agenda strings not contained in the IIJA legislation itself.<sup>49</sup>

A new National Association of Manufacturers (NAM) report, titled *The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business*, finds regulatory costs of \$3.079 trillion for 2022 (in 2023 dollars).<sup>50</sup> Employing bottom-up approaches and top-down regression modeling rooted in “academic literature finding that macroeconomic performance and living standards are systematically linked to regulatory policies,” the NAM assesses regulatory costs this way:

- Economic: \$2.067 trillion
- Environmental: \$588 billion
- Occupational safety/health and homeland security: \$124 billion
- Tax compliance: \$300 billion

According to the report, the \$2 trillion economic component encompasses rules affecting decision-making in, for example, “markets for final goods and services, markets for physical and human resources, credit markets and markets for the transport and delivery of products and factors of production.” Such interventions “affect who can produce, what can (or cannot) be produced, how to produce, where to produce, where to sell, input and product pricing and what product information must be or cannot be provided.”

Direct compliance outlays by firms, which understate the whole, include “investments in capital equipment, expenditures on O&M [operations and maintenance], payments to outside consultants, in-house employees devoted to compliance

activities and so forth.” For reference, the last column of Table 2 also depicts the NAM’s 2014 estimate of \$2.029 trillion.

Other assessments in recent years find regulatory costs even higher than the NAM’s new reckoning.<sup>51</sup> Others look at components. For example, a report using 2002–2014 data on occupational tasks and firms’ wage spending finds that the “average US firm spends between 1.3 and 3.3 percent of its total wage bill on regulatory compliance” and that the “wage bill devoted to regulatory compliance workers in 2014 was between \$79 billion and \$239 billion, depending on the stringency of the regulatory compliance measure, and up to \$289 billion when equipment is included.”<sup>52</sup>

In law but not in practice, the primary official reckoning citizens receive regarding the scale and scope of regulatory costs is a would-be annual OMB survey of a subset of regulatory costs and benefits, the *Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act*. The report invokes the Regulatory Right-to-Know Act, but the mandatory aggregate reports that law requires have not appeared in two decades. Those had been replaced by a 10-year lookback (thereby conveniently omitting the first years of the 21st century and the entire 20th), which has itself lapsed despite the nearly unlimited resources at the federal government’s command.

**In 2023, the White House released three catch-up draft editions of the *Report to Congress* in a composite format encompassing fiscal years 2020–2022.** FY 2023 has yet to appear.<sup>53</sup> Table 3 depicts 270 major rules over the period reviewed, compared with 9,778 rules—from large to inconsequential—finalized in the *Federal Register* during the same time frame. Like its predecessors, the *Report to Congress* contains a limited overview of

**Table 3. Number of rules with and without cost–benefit analysis (billions of dollars)**

Draft report	# of rules with costs and benefits	Annual costs	# of rules with costs only	Annual costs
FY 2020	9	(\$16.123)	27	\$16.4
FY 2021	8	(\$0.341)	20	\$23.2
FY 2022	14	\$29.463	9	\$6.7
TOTALS	31	\$12.999	56	\$46.3
	Grand total, number of rules with costs	Costs absent	Total rules	“Budget” rules
FY 2020	36	39	75	35
FY 2021	28	30	58	39
FY 2022	23	10	33	30
TOTALS	87	79	166	104
	Total OMB major rule reviews	*Federal Register final rules	“Costed” rules as % of major rule flow	“Costed” rules as % of finalized* rule flow
FY 2020	110	3,353	32.73%	1.07%
FY 2021	97	3,257	28.87%	0.86%
FY 2022	63	3,168	36.51%	0.73%
TOTALS	270	9,778	32.22%	0.89%

Source: Compiled by W. Crews from OMB, various fiscal years’ editions of *Report to Congress on Benefits and Costs of Regulation*, <https://www.whitehouse.gov/omb/information-regulatory-affairs/reports/>.

Note: \*Federal Register final rules are presented by calendar year; other data by fiscal year. Budget rules are “regulations implement[ing] or adjusting Federal budgetary programs, which primarily caused income transfers, usually from taxpayers to program beneficiaries.”

executive agency major rules and partial monetary quantification of some costs and benefits. Only 31 major rules featured both benefits and costs quantified and monetized. This category is what administrations typically point to when touting net benefits of the regulatory enterprise. However, another 56 major rules had costs alone quantified, which historically OMB does not sum up. Although the *Report* covers agencies’ compliance with the Unfunded Mandates Reform Act, the independent agencies, which include formidable regulators such as the FCC and financial regulatory bodies, are exempt from OMB cost–benefit review. Overall, as Table 3 also shows, about 32 percent of the reviewed major rule subset features quantitative cost estimates. Beyond the designated

major rules, the proportion of rules with cost analysis averages less than 1 percent.

The 2022 edition of *Ten Thousand Commandments* employed an estimate of \$1.927 trillion for annual regulatory costs that had incorporated OMB *Report(s) to Congress* through FY 2019, making it a touch-point of sorts now for the first two decades of the 21st century and the incremental costs that OMB is now revealing.<sup>54</sup>

As Table 3 also shows, the first three years of the 2020s had 31 rules with both benefits and costs quantified, adding \$13 billion to annual regulatory costs. The inventory of what those rules are is presented in Appendix A, among which are

familiar examples like vehicle fuel efficiency, building energy conservation, and industrial admissions standards, as well as the presence of the then deregulatory Trump-era moves on “waters of the United States.” That \$13 billion was added during this time frame, when the first two of the three fiscal years represented Trump savings, and is noteworthy, given that the first 20 years of the century found OMB noting \$151 billion in annual costs added, averaging around \$7 billion annually. Although not a trend, increasing rule costs that policymakers might monitor are indicated.

The 56 rules noted in Table 3’s fourth column with costs alone quantified were also impactful, adding \$46 billion to ongoing annual costs. Appendix B details these rules for fiscal years 2020–2023, some of which have also been prominent, such as COVID-19 paid leave. Going back to 2002, there are dozens of such cost-only rule disclosures, with high-end cost estimates that totaled \$53.71 billion.<sup>55</sup> Notably, the first three years of this decade alone have added nearly that amount, indicative yet again of rulemaking costs on the rise.

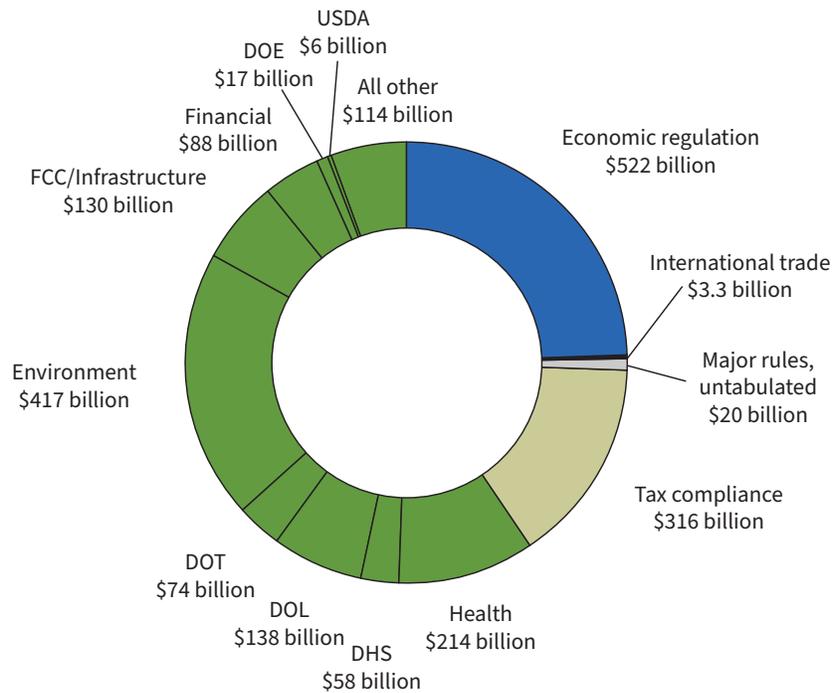
To this incremental \$59 billion in quantified rules of 2020–2023 from the *Report to Congress*, we might also incorporate a small annual paperwork cost component for independent agencies. In addition to the tardy composite *Report to Congress*, five laggard *Information Collection Budget of the U.S. Government* volumes appeared in belated compliance with the Paperwork Reduction Act of 1980. The FY 2022 component reported that 10.34 billion hours were required to complete mandatory paperwork from 40 departments, agencies, and commissions. Paperwork is also tracked online: as of January 22, 2023, OMB’s website reported that government-wide totals for “Active Information Collections” imposed a “total annual cost” of \$143,731,031,418 and take up 10,419,273,111.45 hours. One might note with amusement the \$418

and the three-quarters-of-an-hour precision on time consumed.

**The 10.34 billion hours Washington says it takes to complete federal paperwork in its *Information Collection Budget* snapshot translates into the equivalent of 14,883 human lifetimes.**<sup>56</sup> For our purposes, executive branch agencies’ paperwork costs are assumed to have been incorporated into the *Report to Congress*. However, since independent agencies’ costs are not, the release of paperwork reports allows the incorporation of a small amount of incremental costs here. Assuming \$35 per hour, costs that were \$22.14 billion at the time of the 2022 *Ten Thousand Commandments* now stand at \$28.05 billion.<sup>57</sup> **Interestingly, in keeping with the OMB shift from regulatory streamlining to greasing the pursuit of net benefits, the new *Information Collection Budget* is packaged as “Tackling the Time Tax,” wherein the thrust is not reducing paperwork burdens on the regulated public but increased access to taxpayer-provided benefits via the likes of automatic eligibilities and partnerships with community-based organizations.**

The paperwork cost increment plus the \$59 billion *Report to Congress* addition brings our placeholder for the cost of regulation to \$1.993 trillion. To this—particularly given the context and framing of the NAM report’s economic cost component and from the legislative interventions of the past two decades—it is appropriate to cautiously recognize the higher economic costs that we have pointedly left flat since OMB referenced some \$487 billion in 2001 dollars (Table 2) in keeping with the imperative to have official federal reports occupy center stage and their own inadequacy spur upgrades and reform. In yet another bow to conservatism, rather than \$487 billion, this report has used a far more cautious \$399 billion baseline in 2013 dollars.<sup>58</sup> Updating that government-rooted but downsized

**Figure 1. Annual cost of federal regulation and intervention, 2024 estimate**



Sources: Clyde Wayne Crews Jr., *Tip of the Costberg: On the Invalidity of All Cost of Regulation Estimates and the Need to Compile Them Anyway*, 2017 Edition, available at [www.tenthousandcommandments.com](http://www.tenthousandcommandments.com), and editions of OMB Reports to Congress on regulatory costs and benefits, <https://www.whitehouse.gov/omb/information-regulatory-affairs/reports>.

Note: DHS = Department of Homeland Security; DOE = Department of Education; DOL = Department of Labor; DOT = Department of Transportation; FCC = Federal Communications Commission; USDA = US Department of Agriculture.

figure to 2023 dollars yields a \$522 billion<sup>59</sup> marker we shall use. That's still far below the NAM's analysis but serves our purpose of setting some baseline.

Incorporating higher economic costs brings the total to \$2.117 trillion, as reflected in Figure 1. We do not here credit four significant figures, but present them in the same spirit as OMB in its paperwork assessments that presented dollar values to the hundreds place, and time-spent precision to the quarter hour. This figure serves as a baseline to compare with metrics such as federal spending, and also a platform to which the FY 2023 and subsequent cost and paperwork revelations may be incorporated as a basis for coaxing and reiterating the administrative state's duty to assess aggregates.

Inflating figures from a quarter century ago is a sketchy exercise, and it is fashionable for critics of cost-benefit analysis to claim that old rules like those in the legacy federal reports no longer impose costs because of technological change or adaptation. The distortions of regulation over time make that untrue, but nonetheless the NAM figures act as a container within which a conservative reckoning keeping government estimates intact can illuminate the inadequacy of official government reporting and spur improvement. For example, this report embeds a \$418 billion annual estimate for environmental costs, also below the NAM \$588 billion tabulation for that category, so we could have also updated that figure and may elect to do so in future editions of this report.

Indeed, much federal economic and social intrusion is not captured as costs of regulation or coercive intervention in any of the formats that purport to address or score them. Even mere numbers of rules were not tabulated before 1976. Like the NAM report, other assessments acknowledge regulatory costs far beyond the official reckonings, such as former White House Council of Economic Advisers chief economist Casey Mulligan's report, "Burden Is Back: Comparing Regulatory Costs between Biden, Trump, and Obama."<sup>60</sup> These exercises to broaden understanding are appropriate since OMB reports do not entail third-party objectivity but, as OMB acknowledges in recent editions of the *Report to Congress*, "All estimates presented . . . are agency estimates of benefits and costs, or minor modifications of agency information performed by OMB."<sup>61</sup>

In that vein, this report's Appendix C presents a work-in-process sampling of omissions that involve more than a century and a half of economic consolidations and administrative state escalations. As the Competitive Enterprise Institute's founder Fred L. Smith Jr. framed this dilemma, "The genius of the Progressives in the late 19th century was to preempt or push large sectors of the emerging future (the environment, schools, electromagnetic spectrum, infrastructure, welfare, the medical world) into the political world."<sup>62</sup>

These outside-the-framework costs include those of antitrust regulation, the predominance of public-private partnerships in large-scale infrastructure projects such as electric vehicle charging networks, clean hydrogen hubs,<sup>63</sup> regional technology hubs,<sup>64</sup> and other top-down cartelization and steering by subsidy, the perpetuation of ill-founded common carriage,<sup>65</sup> resource-use restrictions on western lands, and the "too big to fail" stance toward large financial institutions—just to name a few.

The administrative state routinely disregards political failure, underplays the importance of private property, and fails to appreciate its own role in aggravating inequality.<sup>66</sup> Yet the welfare-industrial complex is booming, extending even to an Internet for All initiative.<sup>67</sup>

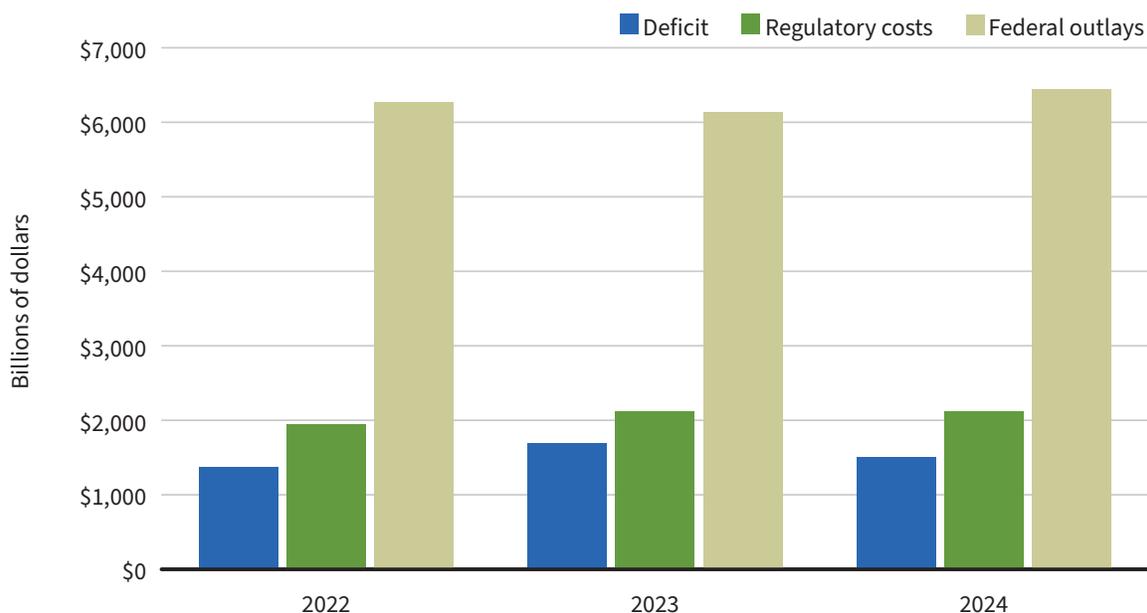
Even transfer and budget rules like the 104 noted in Table 3 can displace what would have been private activity in, for example, retirement and health care funding, distorting those markets in perpetuity. Washington's insatiable appetite for inducing dependency on federal government transfers is as fundamental as social regulation and the custodial administrative state can get, yet it is not counted among costs. And of course, costs of subregulatory materials, such as agency memoranda, guidance documents, bulletins, circulars, and manuals, do not appear in OMB's annual assessments.

**Abundant, therefore, are the routes for getting to \$2 trillion and beyond in costs of regulatory intervention, displacement, and consolidation. Equally abundant is the official inclination to disregard the scale and scope of such encumbrances.** Regulatory costs have only compounded since the government bothered to tabulate aggregate social, environmental, and economic costs two decades ago. Table 3 and Appendixes A and B depict tens of billions of dollars added in only the most recent three years by a handful of the 400 federal agencies and subunits.<sup>68</sup>

## Regulatory cost burdens compared with federal spending and the deficit

Comparing regulatory costs with federal taxation and spending helps provide perspective on the foregoing. According to the newly released Congressional Budget Office (CBO) *Budget and*

**Figure 2. Federal outlays and deficits compared with federal regulation**



Sources: Deficit and outlays and projected outlays from Congressional Budget Office, *The Budget and Economic Outlook*, Table 1-1, “CBO’s Baseline Budget Projections, by Category,” various years, <https://www.cbo.gov>. Deficit and outlays also from White House Office of Management and Budget, Historical Tables, Table 1.1—Summary of Receipts, Outlays, and Surpluses or Deficits (-): 1789–present, <https://www.whitehouse.gov/omb/historical-tables/>. Regulatory cost estimate from Crews, *Tip of the Costberg*.

Note: Federal deficit and outlay numbers are by fiscal year; regulatory costs by calendar year.

*Economic Outlook*, covering FY 2023 and projections for FY 2024–FY 2034, the federal government posted \$6.135 trillion in outlays on revenues of \$4.439 trillion, thus a deficit of \$1.695 trillion.<sup>69</sup>

According to the CBO, outlays are expected to cross the \$7 trillion mark by 2026 and top \$10 trillion annually by 2034. Deficits exceeding \$1.5 trillion annually persist as far as the eye can see, passing \$2 trillion in 2031.

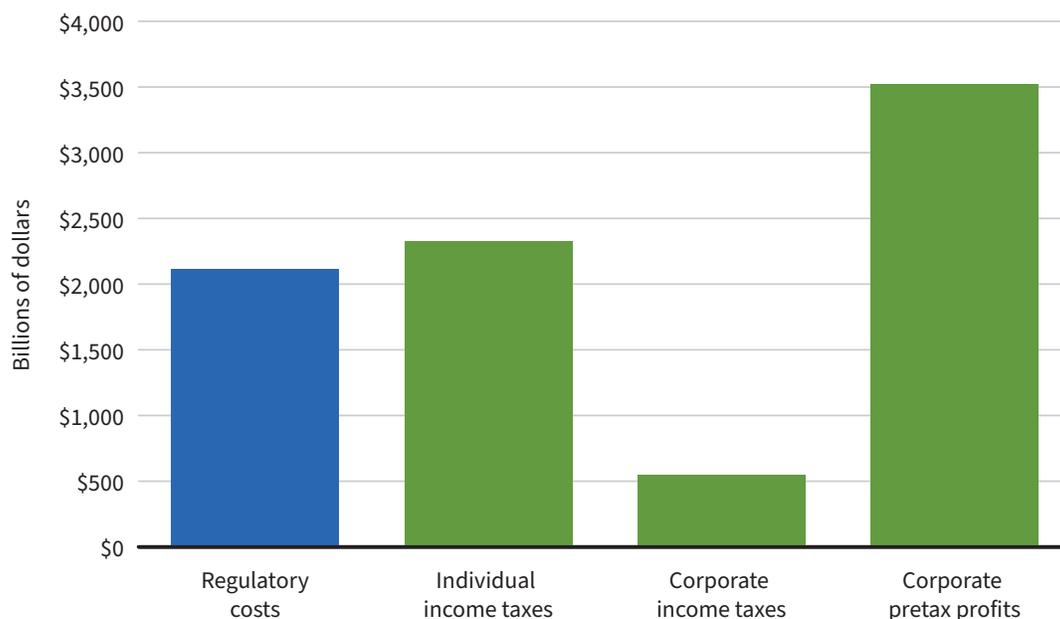
Figure 2 compares deficits and outlays for fiscal years 2022 and 2023, and projected amounts for FY 2024, along with regulation. **Regulation now stands at about 34 percent of outlays and easily exceeds 2023’s \$1.695 trillion deficit. Applying the NAM regulatory aggregate cost figure of \$3.079 trillion means regulation would reach 50 percent of the level of outlays.**

Although spending and debt are tracked, official measurements to capture likely increased regulatory costs generated by highly regulatory legislative enactments are not prioritized. Unremitting projected deficits can also increase pressure to regulate instead of spend.

### Regulatory costs compared with income taxes and corporate profits

Figure 3 provides a snapshot of our regulatory cost estimate of \$2.117 trillion compared with taxes and corporate profits. Income tax collections from individuals stand at an estimated \$2.33 trillion for FY 2023; corporate income taxes collected by the US government are estimated at \$546 billion for FY 2023.<sup>70</sup> Regulatory costs are nearly four times corporate income taxes and approach the level of

**Figure 3. Regulation compared with individual income taxes, corporate income taxes, and corporate pretax profits**



Sources: Regulatory cost estimate from text and Crews, *Tip of the Costberg*; 2023 estimated tax figures from OMB, Historical Tables, Table 2.1, “Receipts by Source,” <https://www.whitehouse.gov/omb/historical-tables/>; 2022 Corporate pretax profits (domestic and international) from Bureau of Economic Analysis, National Income and Product Accounts Tables, Table 6.17D, “Corporate Profits before Tax by Industry.”

individual income taxes. The NAM cost figure of \$3.1 trillion annually would exceed the sum of both (\$2.9 trillion). Meanwhile regulatory costs as depicted here are over 60 percent of corporate pretax profits of \$3.5 trillion. The NAM cost figure of \$3.1 trillion would consume nearly all corporate profits.

### Regulatory costs compared with US gross domestic product

In January 2024, the Commerce Department’s Bureau of Economic Analysis estimated US current-dollar GDP for 2023 at \$27.36 trillion.<sup>71</sup> The regulatory cost figure of \$2.117 trillion annually is equivalent to approximately 8 percent of GDP, or 11 percent if the NAM’s \$3.067 trillion reckoning is used. Combining \$2.1 trillion in regulatory costs with federal FY 2023 outlays of \$6.135 trillion, the federal government’s share of the economy stood

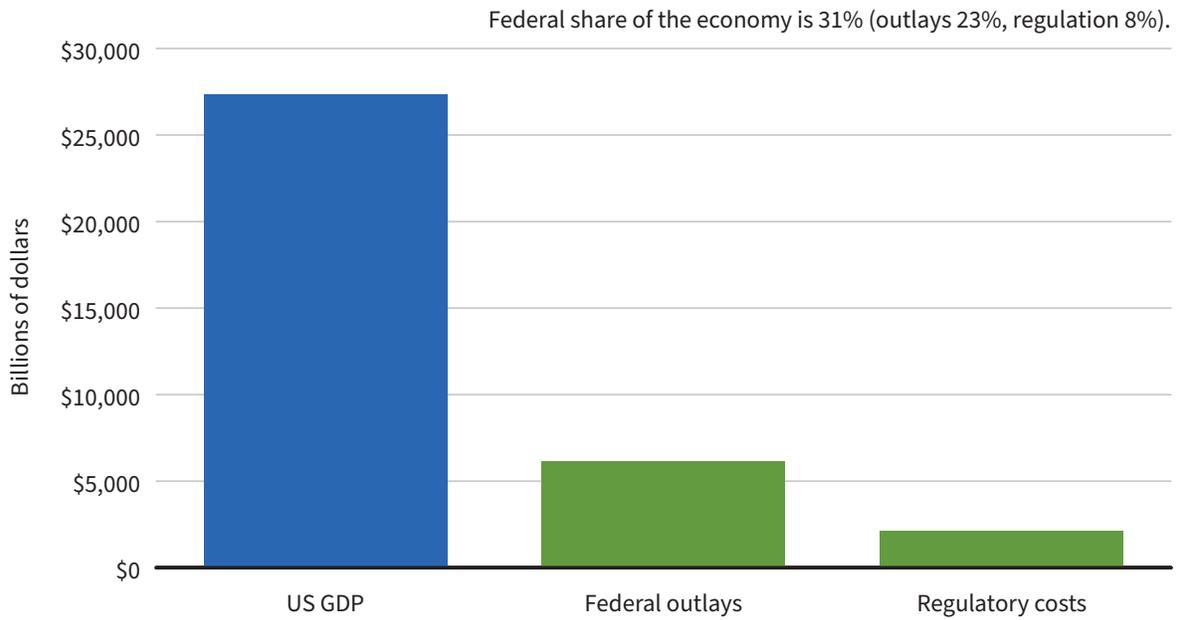
at \$8.2 trillion in 2023, 30 percent of GDP (see Figure 4). None of these metrics include state and local spending and regulation.

### US regulation compared with some of the world’s largest and freest economies

If US regulatory costs of \$2.1 trillion were a country, it would be the world’s ninth-largest economy, ranking just behind Canada, with its 2022 GDP of \$2.14 trillion, and ahead of Italy at \$2.01 trillion (see Figure 5).<sup>72</sup> Using the NAM cost estimate, federal regulation would be the fifth-largest country, just ahead of the United Kingdom’s \$3.071 GDP.

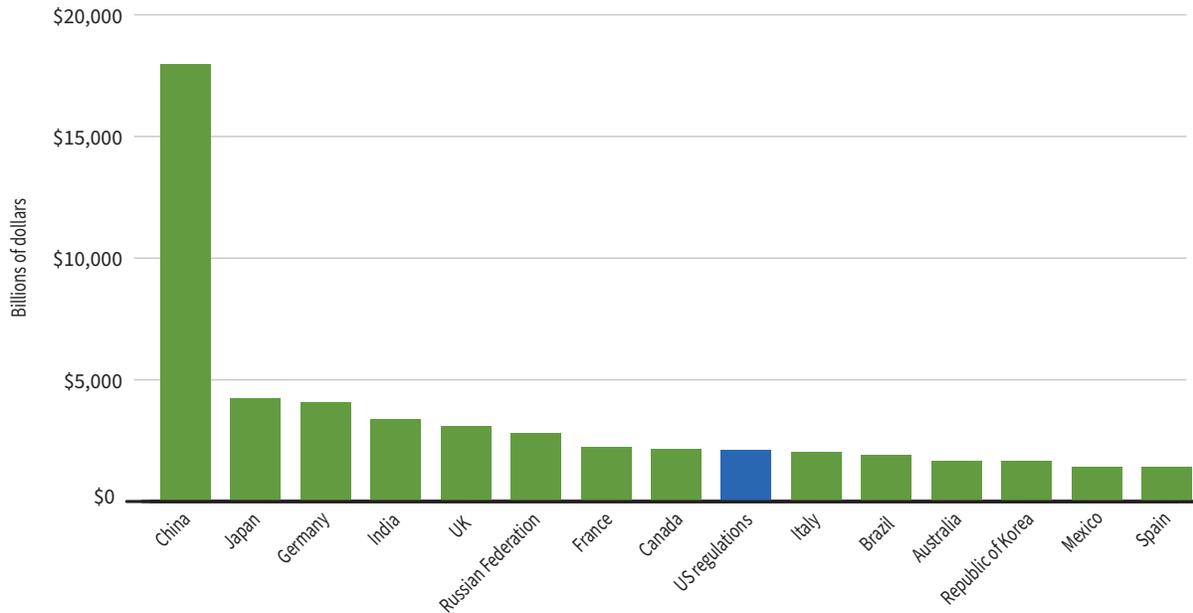
The US regulatory figure of \$2.1 trillion not only exceeds the output of many of the world’s major economies, but also greatly outstrips even those ranked

**Figure 4. Estimated 2023 GDP compared with federal outlays and regulation**



Sources: Crews, *Tip of the Costberg* and 2017–2020 editions of OMB Report to Congress on regulatory costs and benefits as compiled by the author in OMB-Tallied Social Regulation Subset, <http://bit.ly/1wpQTrm>, and Annual Costs of Untabulated Major Rules Reviewed at OMB—by Fiscal Year, <http://bit.ly/1sp0UkH>. GDP from US Department of Commerce, Bureau of Economic Analysis. Outlays from Congressional Budget Office and White House Office of Management and Budget.

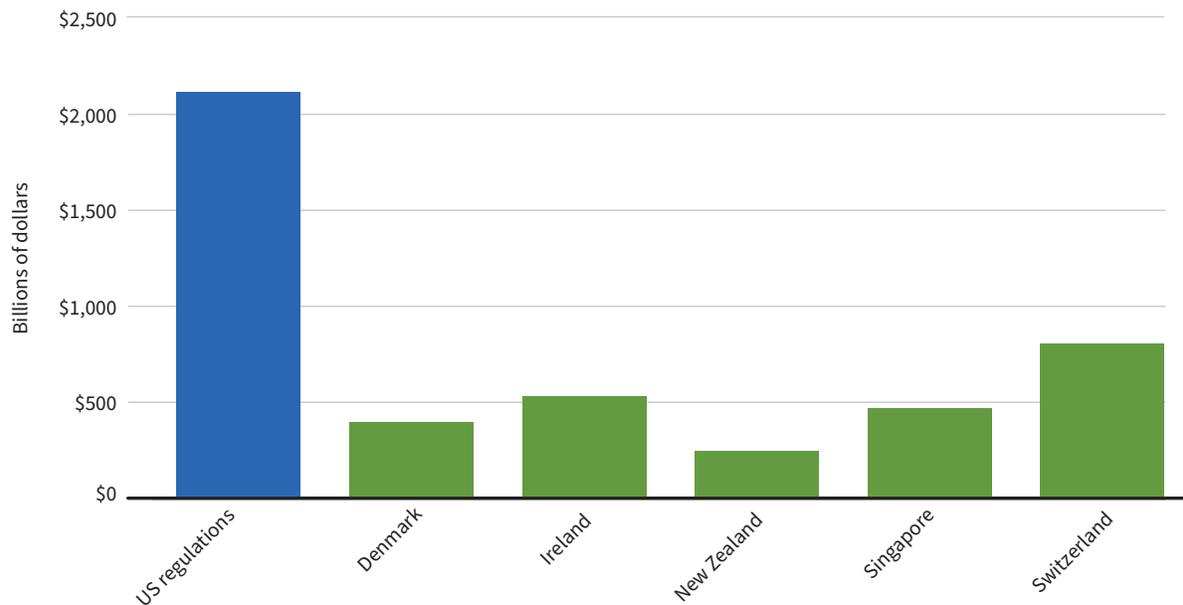
**Figure 5. US regulatory costs compared to 2022 GDP of the world’s largest economies**



Sources: Crews, *Tip of the Costberg*. Gross domestic product data from World Bank, Washington, DC, GDP Data, <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD/countries> and <https://databank.worldbank.org/data/download/GDP.pdf>.

Note: US 2022 GDP of \$25.462 trillion per World Bank not shown.

**Figure 6. US regulation compared with 2022 GDP of world economies regarded as most free**



Sources: Crews, *Tip of the Costberg*. Gross domestic product data from World Bank, Washington, DC, GDP Data, <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD/countries>.

Note: “Free” economies consist of those in the top 10 of both the Heritage Foundation/*Wall Street Journal Index of Economic Freedom* and the Fraser Institute/Cato Institute *Economic Freedom of the World* reports.

as the freest economically by two prominent annual surveys of global economic liberty. Figure 6 depicts the 2022 GDPs of the five nations ranked in the top 10 common to both the Heritage Foundation *Index of Economic Freedom* and the Fraser Institute/Cato Institute *Economic Freedom of the World* report. The Fraser/Cato index ranks the United States 5th, whereas the Heritage report ranks the United States 25th.<sup>73</sup>

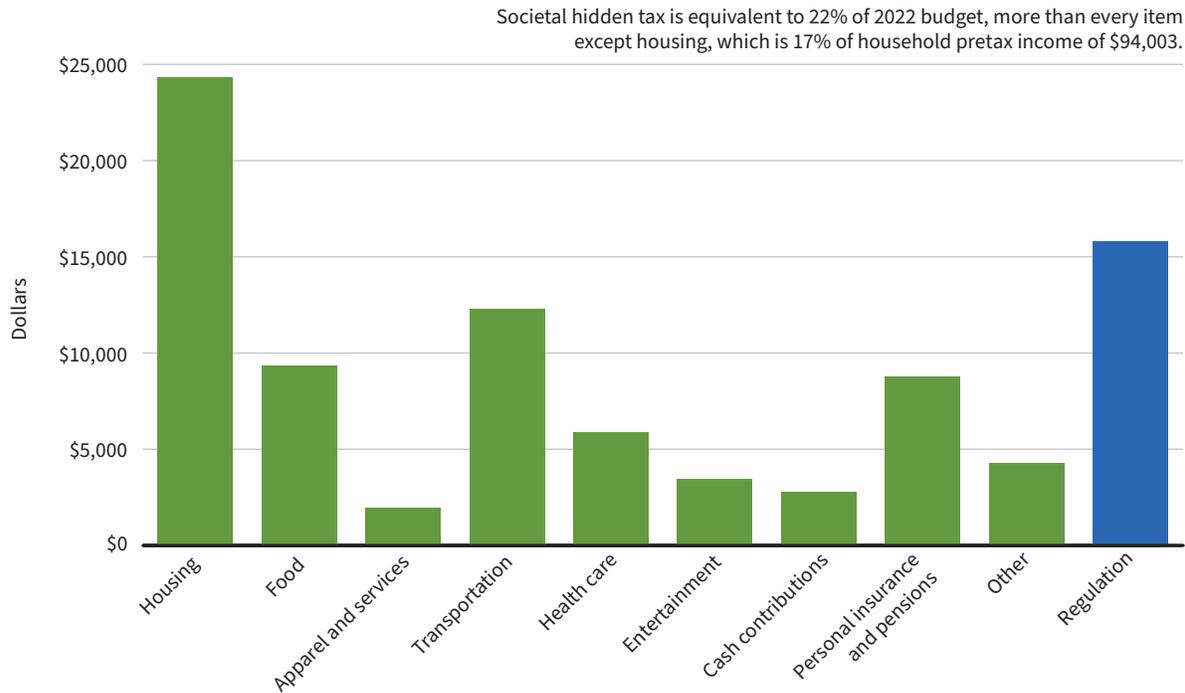
## Regulation: A hidden tax on the household budget

Regulations are sometimes called a “hidden” tax for good reason. Ordinary income taxes are itemized on pay stubs and merit an annual household reckoning, whereas most regulatory costs are embedded in prices of goods and services.

Regulations can affect households directly, or they can occur indirectly, such as when businesses pass on regulatory costs to consumers just as they do the corporate income tax.<sup>74</sup> Other costs of regulation that percolate throughout the economy can find their way to households in their capacities as workers and investors in stock and mutual fund holdings of companies subject to regulation of all stripes.

The true incidence of regulatory costs is of course indeterminate. But by assuming a full pass-through of all regulatory costs to consumers, one can look at American households’ share of regulatory costs and compare it with total annual expenditures at the household level, as those are compiled by the Department of Labor’s Bureau of Labor Statistics.<sup>75</sup>

**Figure 7. US household expense budget compared with regulatory burdens**



Sources: Bureau of Labor Statistics (BLS); author calculations.

Note: Proxy for households here is BLS depiction of 134,090,000 “consumer units,” which comprise “families, single persons living alone or sharing a household with others but who are financially independent, or two or more persons living together who share expenses.” Other consists of “personal care products and services,” “education,” and “all other expenditures.”

For America’s 134.1 million households, the average 2022 pretax income was \$94,003 (compared with the prior year’s \$87,432). If one were to allocate annual regulatory costs, assuming the full pass-through of costs to consumers, US households pay \$15,788 annually in embedded costs (\$2.117 trillion in regulation divided by 134,090,000 consumer units), or 17 percent of an average income before taxes (and of course more as a share of after-tax income). The NAM’s \$3.079 trillion regulatory assessment would imply costs of \$22,962 per household, or 24 percent of income.

Using the \$2.1 trillion baseline, the buried regulatory tax exceeds every annual household

expenditure item except housing (see Figure 7). Regulatory costs amount to up to 22 percent of the typical household’s expenditure budget of \$72,967. That means the average US household spends more on hidden regulation than on health care, food, transportation, entertainment, apparel, services, or savings. The NAM’s \$3.079 trillion regulatory cost of \$22,962 amounts to fully 31 percent of household expenditures, still not exceeding housing costs but coming uncomfortably close.

Costs are one means of assessing the size and scope of the federal regulatory enterprise. Another is to assess the production of paper—the regulatory material that agencies publish each year in sources like the *Federal Register*.

# Page counts and numbers of rules in the *Federal Register*

The *Federal Register* is the daily repository of all proposed and final federal rules and regulations. Although its number of pages is often cited as a measure of regulation's scope, there are obvious shortcomings with relying on page counts as a metric. A short rule may be costly, whereas a lengthy one may be relatively cheap. The *Federal Register* also contains many administrative notices, corrections, rules relating to the governance of federal programs and budgets, presidential statements, and other materials that contribute bulk and bear some relation to the flow of regulation, but are not strictly regulations. Blank pages, skips, and corrections also affect page counts. Shortcomings notwithstanding, it is worthwhile to track the *Federal Register's* page counts.

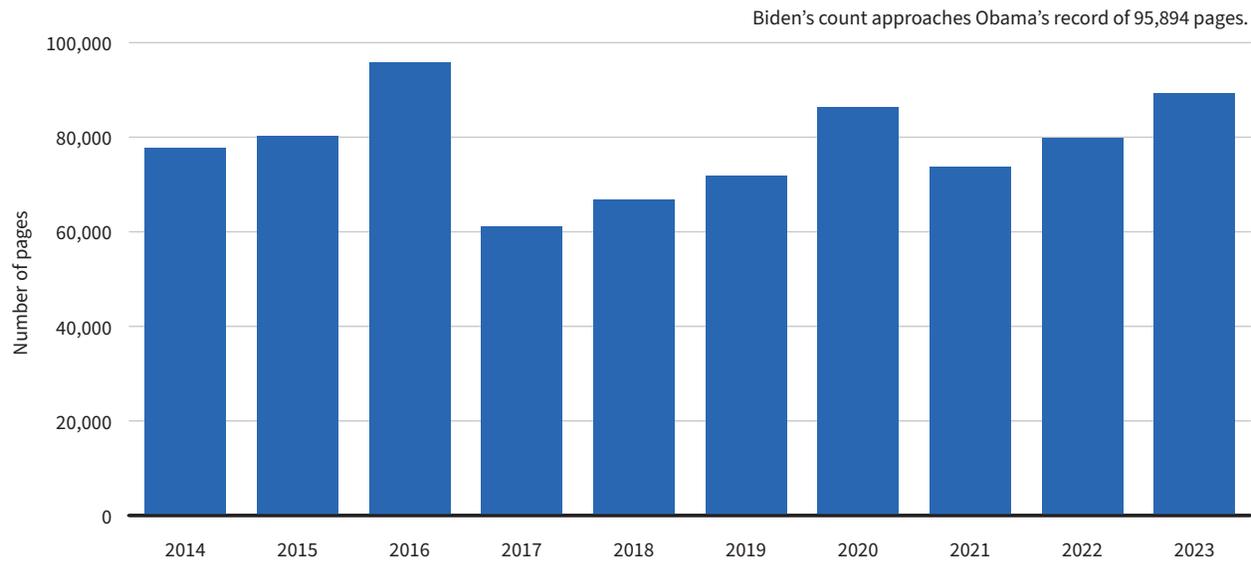
On December 29, 2023, the *Federal Register* closed out at 89,368 pages, the second-highest count ever, and up 12 percent over 2022 (see Figure 8). Counts are up 25 percent over the past 5 years, 15 percent over the past 10 years.

One can compare Biden's *Federal Register* tally with two extremes. At the end of 2016, Obama's final calendar year, the number of pages peaked at 95,894. Conversely, the first calendar year of the Trump administration concluded with 61,067 pages.<sup>76</sup>

The last time the annual page count had been lower than 2017 was in 1992 during the Clinton administration, at 57,003 pages. A drop in page counts between administrations is typical, as incoming presidents freeze the pipeline temporarily and launch their own priorities. Figure 8, for example, depicts a substantial drop between Trump and Biden, even though over 6,000 pages between January 1, 2021, and Biden's inauguration on January 20 belonged to Trump.

Of the 20 all-time high *Federal Register* page counts, 7 occurred during the Obama administration as Table 4 shows. For the history of *Federal Register* page totals since 1936, see Appendix D.

**Figure 8. 89,364 Federal Register pages at end of Biden’s third year**



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

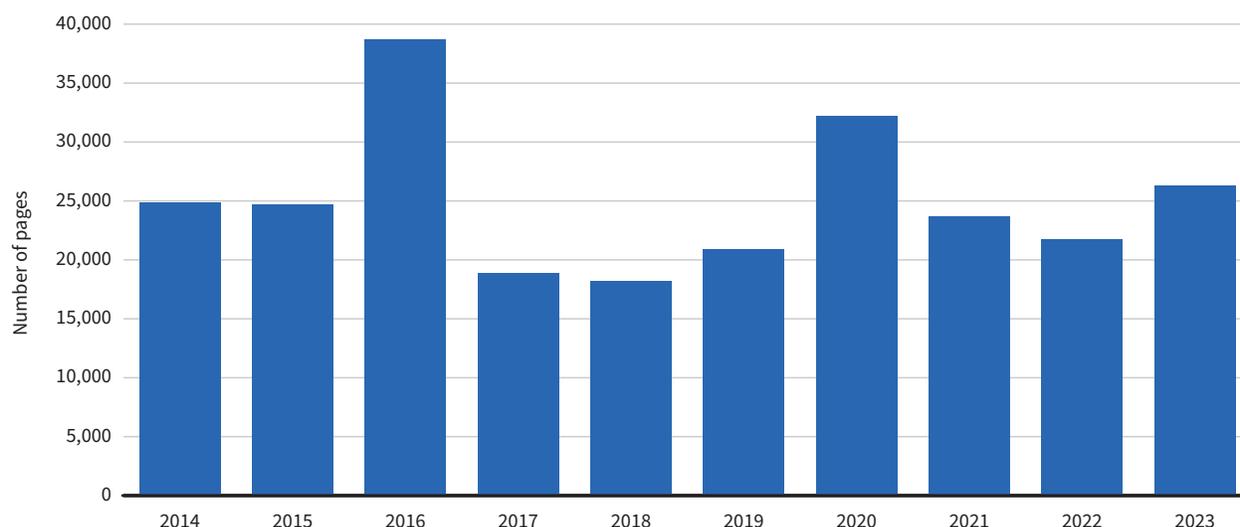
**Table 4. Top 20 Federal Register page counts**

Rank	Year	Count	POTUS	Rank	Year	Count	POTUS
1	2016	95,894	Obama	11	2014	77,687	Obama
2	2023	89,368	Biden	12	2004	75,675	Bush
3	2020	86,356	Trump	13	2002	75,606	Bush
4	2010	81,405	Obama	14	2006	74,937	Bush
5	2011	81,247	Obama	15	2000	74,258	Bush
6	2015	80,260	Obama	16	2005	73,870	Bush
7	2022	79,856	Biden	17	2021	73,771	Biden
8	2008	79,435	Bush	18	1980	73,258	Carter
9	2013	79,311	Obama	19	2007	72,090	Bush
10	2012	78,961	Obama	20	2019	71,726	Trump

Source: Author tallies from National Archives and Records Administration, Office of the Federal Register.

Note: POTUS = president of the United States.

**Figure 9. Number of *Federal Register* pages devoted to final rules**



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

### **Federal Register pages devoted to final rules**

Isolating the pages devoted to final rules rather than gross page counts omits pages dedicated to proposed rules, agency notices, corrections, and presidential documents, although those can also have regulatory effects. Such counts tend to show a surge as presidential terms near their end and “midnight rules” are issued.

Biden’s third year concluded with 26,286 pages devoted to final rules, the fourth-highest on record and a 21 percent increase over 2022. Final-rule page bulk is up 26 percent over 5 years and 6 percent over 10 years (see Figure 9).

The extremes were 18,214 pages devoted to final rules in 2018 marking the lowest count since 1993, and the count of 38,652 in 2016, which was the highest ever (under Obama). Obviously, some rules are bulkier than others and affect tallies like these. Trump’s streamlining-oriented Safer

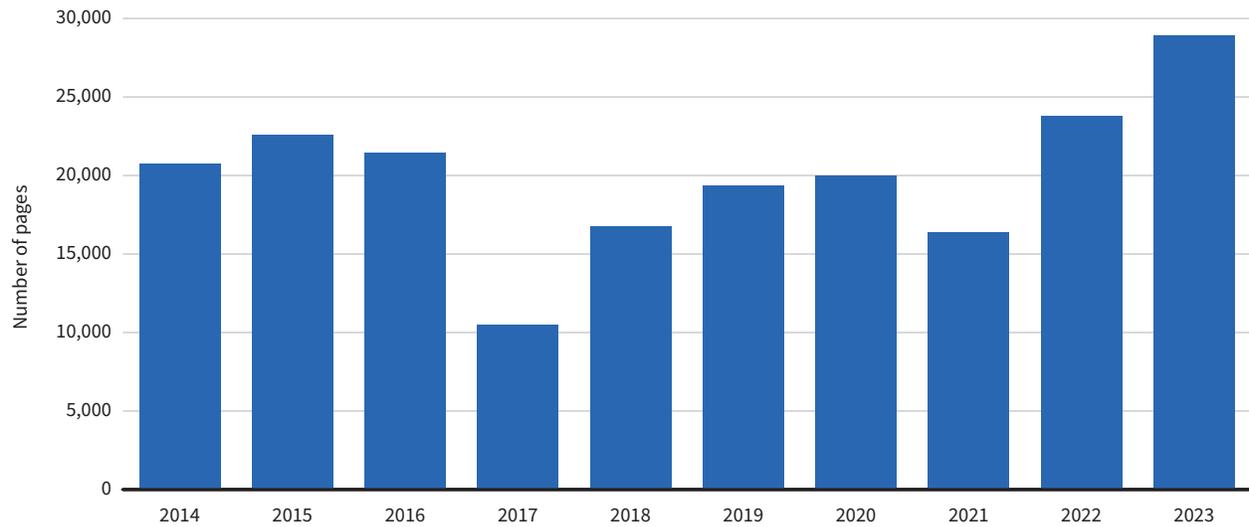
Affordable Fuel-Efficient (SAFE) Vehicles Rule for model years 2021–2026, for example, clocked in at 1,105 pages.

Alongside these final-rule pages, the pages of proposed rules in the regulatory pipeline are noteworthy given their implications for future regulatory costs and their potential as a leading indicator heralding growth or decline in the number of future final rules. *Federal Register* pages devoted to proposed rules surged 21 percent between 2022 and 2023 to an all-time high of 28,892 (see Figure 10), even though, as we’ll see, Biden’s number of proposed rules is relatively low. Before Biden, the number of pages devoted to proposed rules had peaked at 23,193 in 2011 under Obama. The 10,495 in 2017 under Trump was the lowest seen since 1977.

### **Federal Register pages published by decade**

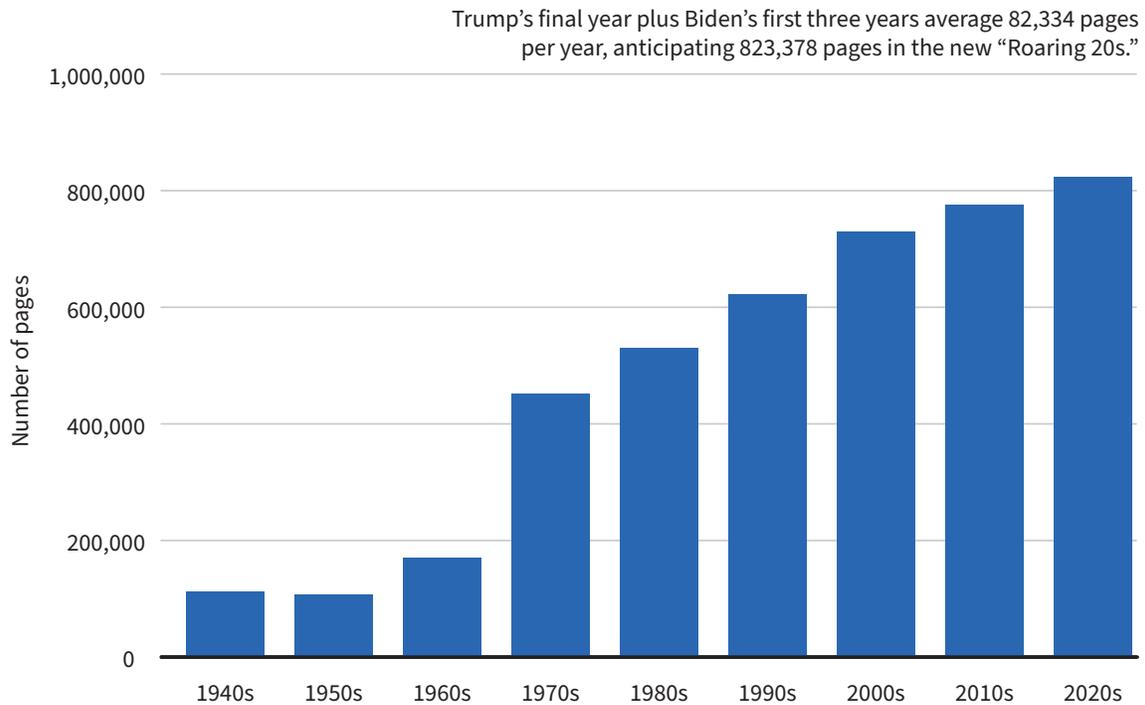
*Federal Register* pages per decade provide one more way to characterize the *Federal Register* and

**Figure 10. Number of *Federal Register* pages devoted to proposed rules**



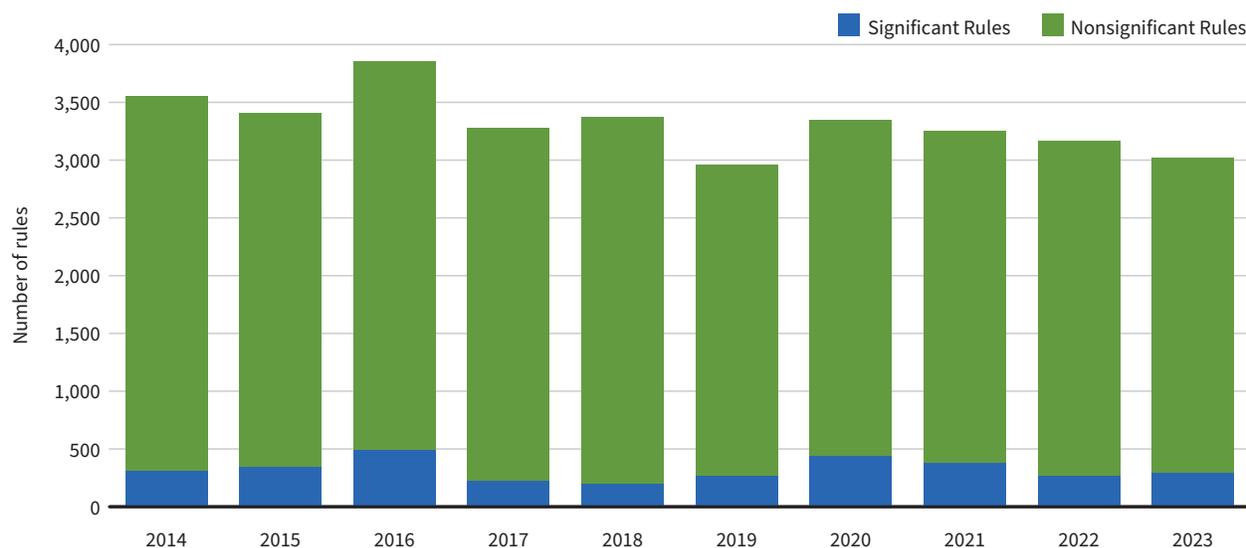
Source: National Archives and Records Administration, Office of the Federal Register.

**Figure 11. *Federal Register* pages per decade**



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

**Figure 12. Number of final and significant final rules in the *Federal Register***



Source: Compiled by the author using the National Archives. Current-year total final rule tally and all years' significant rule tallies from FederalRegister.gov online database, which fluctuates. Prior years' total final rules come from National Archives compilations maintained under "Federal Register Statistics" at <https://www.federalregister.gov/reader-aids/understanding-the-federal-register>.

longer-term trends (see Figure 11), hinting that a million pages per decade may become normal.

During the 2010s, 775,734 pages were added to the *Federal Register*, for an average of 77,573 pages each year. Four years into the 2020s, which includes Trump's final calendar year and Biden's first three, the average is 82,334 annually. Figure 11's extrapolation for the remainder of the 2020s shows an expected inventory of 823,378 pages, approaching twice the level of the 1970s when overregulation was a concern and liberalization in transportation and financial services occurred.

### Number of final (and significant final) rules in the *Federal Register*

For the year 2023, Biden can freely claim that he has the lowest final rule count of any president apart from Trump, but that is not the same as being less of a regulator than predecessors. A

trend toward fewer but costlier larger rules may be underway, perhaps supplemented by guidance documents and subregulatory decrees that can substitute for formal rulemaking as federal consolidation expands, as described in the previous two editions of this report. Biden sports an affinity for antitrust, trade and tech interventions, family leave policies, and other pursuits that may not appear as rules in the *Federal Register* at all and that are not readily tracked in OMB rule reviews.

The 89,368-page *Federal Register* contained 3,018 final rules in 2023, the lowest count on record apart from Trump's 2,964 in 2019 (see Figure 12), which had been the only count below 3,000 since record-keeping began in the 1970s. In 2016, the final full year of the Obama administration, the number of final rules reached 3,853, the highest count since 2005. The average for the 2000–2009 period was 3,945. Rule counts were routinely higher in

the past: before 2005, rule counts exceeded 4,000 for all years. The annual average in the 1990s was 4,596, and even higher in the decades prior. Final rule counts now stand well below these levels. **The seeming paradox of fewer rules but a fatter *Federal Register* may in part be explained by rules getting longer or more detailed**, proposed rules in particular, as may be observed in Appendix E.

The subset of the total final rules deemed significant under Executive Order 12,866 is also presented in Figure 12. Biden had 289 significant final rules in 2023, down from his 375 in 2021. Biden's acknowledged significant rules exceed those of Trump; however, they have not fully resumed heights seen under Barack Obama, when significant rules topped 400 three times, including the peak of 486 in 2016. (See Appendix E for earlier years.)

Recognizing that overlap occurs in transition years, here are calendar-year breakdowns of final and significant final rules published in *the Federal Register* during recent administrations:

- Barack Obama (eight years): 3,037 significant rules, average 380 per year
- Donald Trump (four years): 1,121 significant rules, average 280 per year (some deregulatory)
- Joe Biden (first three years): 932 significant rules, average 311 per year

Box 1 in a later section will inventory the costliest tier of these significant rules for 2023.

## Cumulative final rules in the *Federal Register*

The annual outflow of over 3,000 final rules (except for Trump's 2,964 rules in 2019) has resulted in 120,475 total new rules since 1993, when the first edition of *Ten Thousand Commandments* was published, through the end of 2023. Since 1976, when the *Federal Register* first began itemizing rules, 217,565 final rules have been issued. **Since 1996, the year the Congressional Review Act (CRA) was passed, 101,589 rules have been issued, but fewer than two dozen CRA resolutions of disapproval have succeeded.** (See again Appendix E.)

## Number of proposed (and significant proposed) rules in the *Federal Register*

Proposed rules in the pipeline also sit at historic lows, as Biden's overall proposed rule counts are not yet above pre-Trump levels. The year 2023 concluded with 2,102 proposed rules in the *Federal Register*, of which 277 were deemed significant (see Figure 13). Trump's first year tally of 1,809 is notable as an all-time low, despite including over 150 issued by Obama during the first weeks of 2017. As observable in Appendix E, the average in the 1990s was 3,164 per year. The average from 2000 to 2010 was 2,662 annually.

**Figure 13. Number of proposed and significant proposed rules in the *Federal Register***



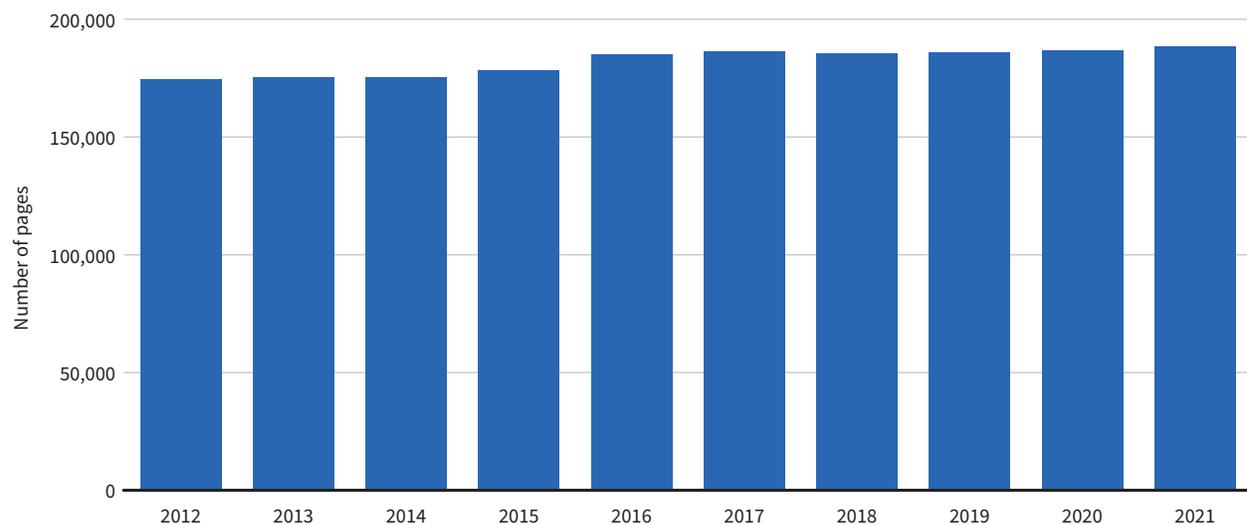
Source: Compiled by the author using the National Archives.

# The expanding *Code of Federal Regulations*

The page count in the *Code of Federal Regulations* (CFR)—where the *Federal Register's* rules come to rest in small print in bound volumes of magenta, teal, and fuchsia—is not as dramatic as the yearly count of tens of thousands of pages in the *Federal Register*, but is still a sight to behold.

In 1960, the CFR contained 22,877 pages. By 1975, that count (including the CFR's index) had surged to 71,224. As of year-end 2021 (2022 and 2023 figures have not been logged yet at the National Archives), the count stood at 188,346, as seen in Figure 14. That is a 165 percent increase in the

**Figure 14.** *Code of Federal Regulations*



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

CFR since 1975. In 2008, when George W. Bush left office, the count stood at 157,972.

The number of CFR bound volumes now stands at 243, compared with 133 in 1975. The expansion since George W. Bush, not including Biden's recent two years, is 19 percent. (For a detailed breakdown of numbers of pages and volumes in the CFR since 1975, see Appendix F.)

The CFR archives agency rulemakings as the *United States Code* does for statutes. But traditional rules and regulations in the CFR are supplemented by executive actions and subregulatory guidance documents with no fixed archive since the revocation of Trump's 2020 Executive Order 13981, "Promoting the Rule of Law through Improved Agency Guidance Documents."

# Regulatory dark matter: Executive orders and memoranda

Although executive actions ostensibly deal with the internal operations of the federal government, they increasingly can have binding effect and influence private behavior. **Executive orders, presidential memoranda, notices, “fact sheets,” and other proclamations make up a substantial component of policymaking, and in part may explain some of the counterintuitive decline in rule counts even as federal scope expands in spending, contracting and procurement, and greater economic intervention,** and public-private partnerships, such as the aforementioned forays into supply chains,<sup>77</sup> hydrogen hubs,<sup>78</sup> and blueprints for artificial intelligence. Presidents of both parties routinely threaten unilateral executive actions if Congress fails to act on their agenda.

## Executive orders

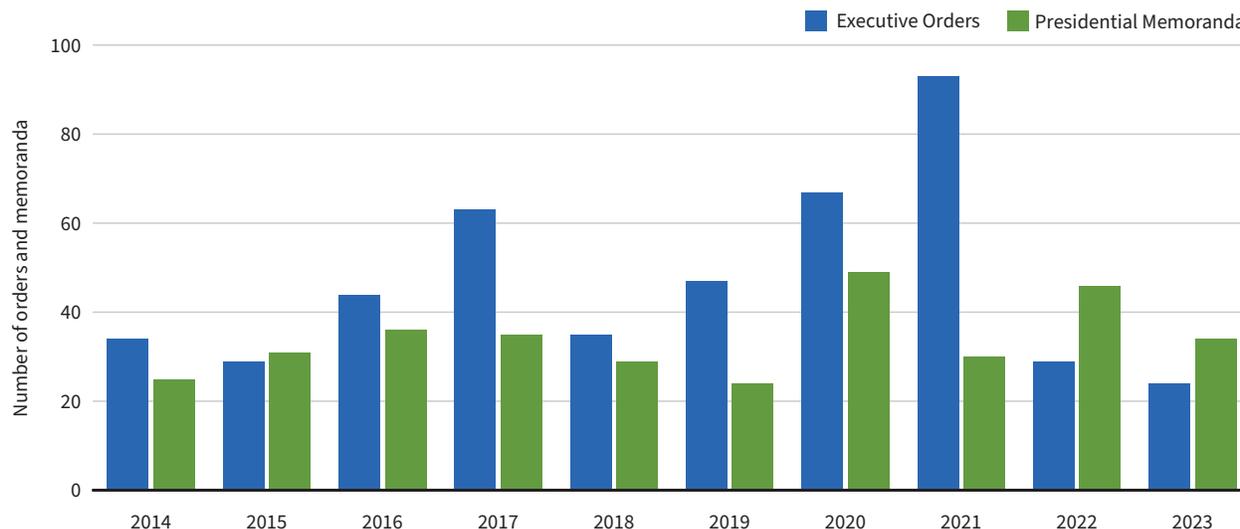
Executive orders (EOs) date back to George Washington’s administration, but their numerical

cataloging and archiving has not been consistent until recent decades. Since the nation’s founding, presidents have issued at least 15,635 of them (see Appendix G).

The United States was several decades old before a president issued more than two dozen executive orders as did President Franklin Pierce (1853–1857). Orders numbered in the single digits or teens until President Abraham Lincoln’s federal consolidations and the subsequent Reconstruction period. President Ulysses S. Grant’s total of 217 set a 19th-century record.

From the 20th century onward, executive orders have numbered over 100 during every presidency and have sometimes soared into the thousands. President Franklin D. Roosevelt—the longest-serving president in history, elected to four terms and serving a full three—issued 3,467 executive orders.

**Figure 15. Number of executive orders and presidential memoranda**



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

The 93 executive orders in 2021 stand out in Figure 15. Joe Biden issued 77 of that total, whereas Trump issued 16. Biden's total fell to 24 in 2023. Recognizing that overlap occurs in transition years, here are calendar-year breakdowns of total and average annual executive orders published in the *Federal Register* during recent administrations:

- Bill Clinton (eight years): 364 executive orders, average 46 per year
- George W. Bush (eight years): 291 executive orders, average 36 per year
- Barack Obama (eight years): 276 executive orders, average 35 per year
- Donald Trump (four years): 220 executive orders, average 55 per year

Biden's three-year average so far is 43. His 24 executive orders from 2023 reflect the aforementioned whole-of-government efforts and include the following:

- Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (EO 13091), February 22, 2023
- Reducing Gun Violence and Making Our Communities Safer (EO 14092), March 17, 2023
- Prohibition on Use by the United States Government of Commercial Spyware That Poses Risks to National Security (EO 14093), March 30, 2023
- Modernizing Regulatory Review (EO 14094), April 11, 2023<sup>79</sup>
- Revitalizing Our Nation's Commitment to Environmental Justice for All (EO 14096), April 26, 2023
- Authority to Order the Ready Reserve of the Armed Forces to Active Duty to Address International Drug Trafficking (EO 14097), May 1, 2023
- Moving Beyond COVID-19 Vaccination Requirements for Federal Workers (EO 14099), May 15, 2023

- Federal Research and Development in Support of Domestic Manufacturing and United States Jobs, August 3, 2023 (EO 14104)<sup>80</sup>
- Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (EO 14110), November 1, 2023<sup>81</sup>

Executive orders sometimes aim at regulatory review in addition to their popularity for implementing policy. Bill Clinton's 1993 Executive Order 12866 retained the Office of Management and Budget (OMB) central regulatory review function established by Ronald Reagan's EO 12291, but sought "to reaffirm the primacy of Federal agencies in the regulatory decision-making process." Joe Biden's "Modernizing Regulatory Review" (EO 14094) noted in the foregoing list eliminated the streamlining of Trump's EO 13771, Reducing Regulation and Controlling Regulatory Costs.<sup>82</sup>

Although superficially retaining the Clinton review structure, Biden's EO 14094 raised the threshold for a significant regulatory action from \$100 million annually to \$200 million, a floor that will ratchet upward alongside increases in GDP. Even more significantly, EO 14094 transformed the OMB's Circular A-4 and subsequent guidance<sup>83</sup> on regulatory review to soften oversight and enlist OMB instead in allegedly net-beneficial regulatory pursuits.

## Presidential memoranda

Presidential memoranda and notices are trickier to tally than executive orders. They may or may not be published in the *Federal Register* or other readily accessible sources depending on a given administration's own determination of "general applicability and legal effect."<sup>84</sup> Nor are memoranda, determinations, notices, proclamations, presidential orders, and other documents reliably classified or numbered the way executive orders are.

These decrees can range from minor declarations celebrating events or people to the more momentous and unilateral like a 2022 continuation of the national emergency concerning COVID-19,<sup>85</sup> proclamations expanding national monuments by hundreds of thousands of acres (thereby prohibiting any form of private industrial or commercial activity in those lands),<sup>86</sup> or actions affecting gun dealers involving background checks and serial numbers.<sup>87</sup>

As Figure 15 shows, Biden issued 46 memoranda in 2022 and 34 in 2023. Apart from Trump's 49 in 2020, 2022 marks the highest single-year count to appear in the *Federal Register* database, which records totals back to 1994. Appendix M (The Unconstitutionality Index) discussed later depicts annual totals of both executive orders and memoranda over the past two decades.

Recognizing that overlap occurs in transition years, here are calendar-year breakdowns of total and average memoranda published in the *Federal Register* by recent administrations:

- George W. Bush (eight years): 129 memoranda, average 16 per year
- Barack Obama (eight years): 255 memoranda, average 32 per year
- Donald Trump (four years): 137 memoranda, average 34 per year
- Joe Biden (first three years): 110 memoranda, average 37 per year.

The following are among Biden's 34 memoranda from 2023:

- Further Efforts to Protect Access to Reproductive Healthcare Services, January 26, 2023
- Supporting Access to Leave for Federal Employees, February 7, 2023

- Presidential Waiver of Statutory Requirements Pursuant to Section 303 of the Defense Production Act of 1950, as Amended, on Department of Defense Supply Chains Resilience, May 2, 2023
- Conserving the Natural and Cultural Heritage of the Pacific Remote Islands, May 30, 2023
- Certification Regarding Disclosure of Information in Certain Records Related to the Assassination of President John F. Kennedy, July 7, 2023
- Restoring Healthy and Abundant Salmon, Steelhead, and Other Native Fish Populations in the Columbia River Basin, October 2, 2023
- Modernizing United States Spectrum Policy and Establishing a National Spectrum Strategy, November 17, 2023
- White House Initiative on Women's Health Research, November 17, 2023

The pertinent question regarding federal intervention is what these executive orders and memoranda do, and the authority or lack thereof used to justify them.

# More than 22,000 agency public notices annually

Along with the few dozen presidential memoranda and other proclamations are the thousands that issue from departments and agencies. Through various species of guidance documents, notices, memoranda, letters, bulletins, action plans, and policy statements, government can signal expectations for, specify parameters for, and influence policy for health care, retirement, education, energy production, finance, land and resource management, science and research, and manufacturing.

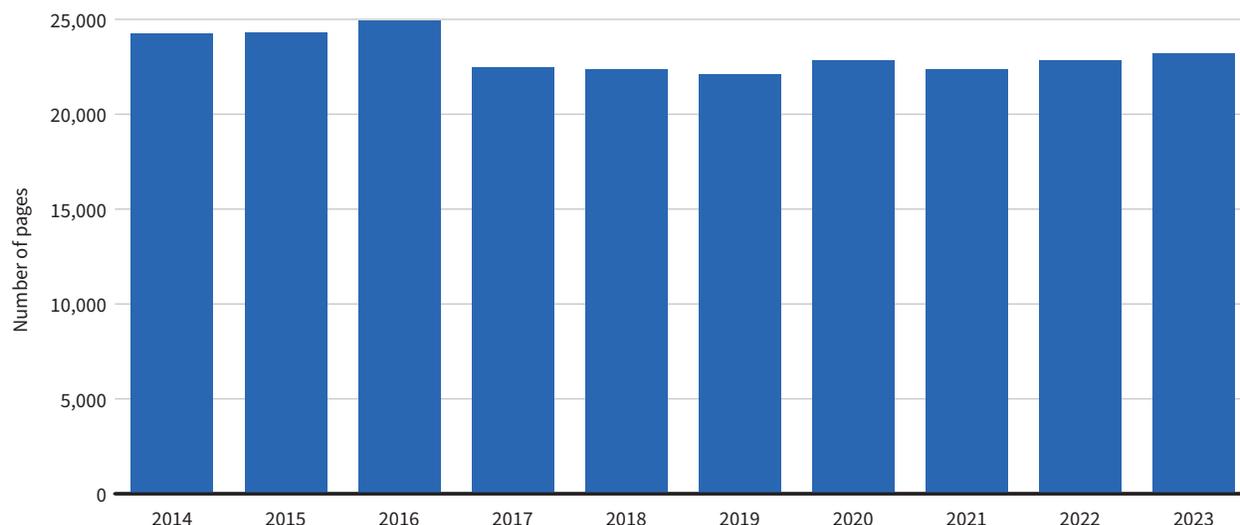
Prominent examples in recent years have included post-CARES Act eviction moratorium extensions by both the Trump and the Biden administrations; Biden's student loan forgiveness and the Department of Education's changing of eligibility rules on a website;<sup>88</sup> Federal Trade Commission guidance on disclosures for social media influencers<sup>89</sup> and its "Policy Statement Regarding the Scope of Unfair Methods of Competition under Section 5 of the Federal Trade Commission Act";<sup>90</sup> and similar "Guidance Regarding Interpretation of Unfair

and Deceptive Practices" from the Department of Transportation.<sup>91</sup>

This past year brought a joint Dear Colleague and Q and A from the Departments of Justice and Education addressing college admissions criteria and navigating "lived experience with race" in the wake of the Supreme Court's decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* and *Students for Fair Admissions, Inc. v. University of North Carolina et al.*, in a manner leveraging investigations into universities' legacy admissions.<sup>92</sup> Another ominous example was the Securities and Exchange Commission's plan revealed in a *Federal Register* notice to allow exchange listing of Natural Asset Companies at the behest of the New York Stock Exchange, that for the moment has been withdrawn.<sup>93</sup>

Some overarching "meta" guidance operates across agency and amplifies Biden's whole-of-government progressive pursuits. Examples in 2023 include the Office of Management and

**Figure 16. Notices in the *Federal Register***



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

Budget’s (OMB’s) recent reworking of Circular A-4 and supporting materials, OMB’s proposed guidance on ecosystem services,<sup>94</sup> the joint Federal Trade Commission and Department of Justice *Merger Guidelines*,<sup>95</sup> emergent artificial intelligence policy,<sup>96</sup> and the social engineering of equity action plans<sup>97</sup> transformed into an annual requirement on the part of federal agencies.

Even though rooted in public laws, new initiatives like federally directed electric vehicle charging networks and drone airspace management will likely be significantly governed by guidance. Written guidance increasingly may not even be necessary. Emergent automobile passive monitoring and disengagement, a central bank digital currency, and government-run payment systems are likely to be administered by less formal means as the Internet of Things enables click-and-swipe regulation from a distance.

Tens of thousands of public notices appear in the *Federal Register* every year in addition to annual

final and proposed rules. These typically consist of non-rulemaking documents, such as meeting and hearing announcements and agency organizational material. But they can also include memoranda, bulletins, guidance documents, alerts, and other proclamations that may be more consequential to the public like some of the big-ticket items noted previously. Figure 16 depicts notices published annually between 2014 and 2023. Standing at 23,197 in 2023, notices peaked at over 26,000 in 2010 and 2011 (tallies of notices and the related “other” also appear in Appendixes E and M). Although many notices may rightly be regarded as trivial, there have been 714,563 since 1994 and well over a million since the 1970s.

Isolating substantive guidance amid this bulk remains a challenge. A 2018 House Oversight Committee report titled “Shining Light on Regulatory Dark Matter” found that agencies had issued at least 13,000 guidance documents since 2008, of which at least 536 were significant.<sup>98</sup> Recognizing such concerns, Donald Trump’s 2019’s Executive

Order 13891, “Promoting the Rule of Law through Improved Agency Guidance Documents,” established online portals and inventories at agency websites and required formal rulemakings on public-fairness procedures. Biden reversed these, such that at this point **most of the 32 departments and agencies that adopted formal guidance document public-fairness and transparency procedures before Trump’s departure wrote new rules to affirmatively disavow and eliminate the nascent disclosures**, as shown in Table 5. The haste of repudiation and boilerplate

language conforms well with the vision of the Circular A-4 rewrite.<sup>99</sup>

Surveying what one might regard as remnants of the EO 13891 portals, this author’s 2023 compilation of guidance documents topped 103,000 across departments, agencies, subagencies, and commissions. Although down from 107,000 the year before,<sup>100</sup> the revelations were only possible because of EO 13891, which points to the power of increasing disclosure and shining more such sunlight across the entire administrative state apparatus.

**Table 5. Trump-era final rules on guidance document procedures and Biden revocations**

	<b>32 Final Rules on Guidance (FROGs)</b>	<b>Biden FROG stompings (22 to date)</b>
Department of Agriculture	<a href="https://www.govinfo.gov/content/pkg/FR-2020-06-03/pdf/2020-09886.pdf">https://www.govinfo.gov/content/pkg/FR-2020-06-03/pdf/2020-09886.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2023-05-04/pdf/2023-09531.pdf">https://www.govinfo.gov/content/pkg/FR-2023-05-04/pdf/2023-09531.pdf</a>
Department of Commerce	<a href="https://www.govinfo.gov/content/pkg/FR-2020-09-28/pdf/2020-18604.pdf">https://www.govinfo.gov/content/pkg/FR-2020-09-28/pdf/2020-18604.pdf</a>	
Department of Defense	<a href="https://www.govinfo.gov/content/pkg/FR-2020-05-29/pdf/2020-11551.pdf">https://www.govinfo.gov/content/pkg/FR-2020-05-29/pdf/2020-11551.pdf</a>	
Department of Education	<a href="https://www.govinfo.gov/content/pkg/FR-2020-10-05/pdf/2020-20799.pdf">https://www.govinfo.gov/content/pkg/FR-2020-10-05/pdf/2020-20799.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-09-29/pdf/2021-20992.pdf">https://www.govinfo.gov/content/pkg/FR-2021-09-29/pdf/2021-20992.pdf</a>
Department of Energy	<a href="https://www.govinfo.gov/content/pkg/FR-2021-01-06/pdf/2020-27875.pdf">https://www.govinfo.gov/content/pkg/FR-2021-01-06/pdf/2020-27875.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-06-04/pdf/2021-11753.pdf">https://www.govinfo.gov/content/pkg/FR-2021-06-04/pdf/2021-11753.pdf</a>
Department of Health and Human Services	<a href="https://www.govinfo.gov/content/pkg/FR-2020-12-07/pdf/2020-26832.pdf">https://www.govinfo.gov/content/pkg/FR-2020-12-07/pdf/2020-26832.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2022-07-25/pdf/2022-15567.pdf">https://www.govinfo.gov/content/pkg/FR-2022-07-25/pdf/2022-15567.pdf</a>
Department of Housing and Urban Development	<a href="https://www.govinfo.gov/content/pkg/FR-2020-11-10/pdf/2020-23982.pdf">https://www.govinfo.gov/content/pkg/FR-2020-11-10/pdf/2020-23982.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-07-06/pdf/2021-14019.pdf">https://www.govinfo.gov/content/pkg/FR-2021-07-06/pdf/2021-14019.pdf</a>
Department of the Interior	<a href="https://www.govinfo.gov/content/pkg/FR-2020-10-26/pdf/2020-22238.pdf">https://www.govinfo.gov/content/pkg/FR-2020-10-26/pdf/2020-22238.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-04-15/pdf/2021-07685.pdf">https://www.govinfo.gov/content/pkg/FR-2021-04-15/pdf/2021-07685.pdf</a>
Department of Justice	<a href="https://www.govinfo.gov/content/pkg/FR-2020-10-07/pdf/2020-19030.pdf">https://www.govinfo.gov/content/pkg/FR-2020-10-07/pdf/2020-19030.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-07-16/pdf/2021-14480.pdf">https://www.govinfo.gov/content/pkg/FR-2021-07-16/pdf/2021-14480.pdf</a>
Department of Labor	<a href="https://www.govinfo.gov/content/pkg/FR-2020-08-28/pdf/2020-18500.pdf">https://www.govinfo.gov/content/pkg/FR-2020-08-28/pdf/2020-18500.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-01-27/pdf/2021-01746.pdf">https://www.govinfo.gov/content/pkg/FR-2021-01-27/pdf/2021-01746.pdf</a>
Department of Transportation	<a href="https://www.govinfo.gov/content/pkg/FR-2019-12-27/pdf/2019-26672.pdf">https://www.govinfo.gov/content/pkg/FR-2019-12-27/pdf/2019-26672.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-04-02/pdf/2021-06416.pdf">https://www.govinfo.gov/content/pkg/FR-2021-04-02/pdf/2021-06416.pdf</a>
Department of Veterans Affairs	<a href="https://www.govinfo.gov/content/pkg/FR-2020-11-13/pdf/2020-25121.pdf">https://www.govinfo.gov/content/pkg/FR-2020-11-13/pdf/2020-25121.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-06-07/pdf/2021-11835.pdf">https://www.govinfo.gov/content/pkg/FR-2021-06-07/pdf/2021-11835.pdf</a>
Environmental Protection Agency	<a href="https://www.govinfo.gov/content/pkg/FR-2020-10-19/pdf/2020-20519.pdf">https://www.govinfo.gov/content/pkg/FR-2020-10-19/pdf/2020-20519.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-05-18/pdf/2021-10269.pdf">https://www.govinfo.gov/content/pkg/FR-2021-05-18/pdf/2021-10269.pdf</a>

	<b>32 Final Rules on Guidance (FROGs)</b>	<b>Biden FROG stompings (22 to date)</b>
Agency for International Development	<a href="https://www.govinfo.gov/content/pkg/FR-2021-01-05/pdf/2020-26352.pdf">https://www.govinfo.gov/content/pkg/FR-2021-01-05/pdf/2020-26352.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-04-09/pdf/2021-07314.pdf">https://www.govinfo.gov/content/pkg/FR-2021-04-09/pdf/2021-07314.pdf</a>
Compliance Board (Access Board)	<a href="https://www.govinfo.gov/content/pkg/FR-2020-09-21/pdf/2020-18411.pdf">https://www.govinfo.gov/content/pkg/FR-2020-09-21/pdf/2020-18411.pdf</a>	
Corporation for National and Community Service	<a href="https://www.govinfo.gov/content/pkg/FR-2020-07-23/pdf/2020-13940.pdf">https://www.govinfo.gov/content/pkg/FR-2020-07-23/pdf/2020-13940.pdf</a>	
Council on Environmental Quality	<a href="https://www.govinfo.gov/content/pkg/FR-2021-01-08/pdf/2020-28881.pdf">https://www.govinfo.gov/content/pkg/FR-2021-01-08/pdf/2020-28881.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-04-13/pdf/2021-07398.pdf">https://www.govinfo.gov/content/pkg/FR-2021-04-13/pdf/2021-07398.pdf</a>
Court Sevices/Offender Supervision, DC	<a href="https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-09152.pdf">https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-09152.pdf</a>	
Equal Employment Opportunity Commission	<a href="https://www.govinfo.gov/content/pkg/FR-2020-11-02/pdf/2020-22542.pdf">https://www.govinfo.gov/content/pkg/FR-2020-11-02/pdf/2020-22542.pdf</a>	
Federal Deposit Insurance Corporation	<a href="https://www.govinfo.gov/content/pkg/FR-2021-03-02/pdf/2021-01537.pdf">https://www.govinfo.gov/content/pkg/FR-2021-03-02/pdf/2021-01537.pdf</a>	
Federal Mediation and Conciliation Service	<a href="https://www.govinfo.gov/content/pkg/FR-2020-04-20/pdf/2020-07523.pdf">https://www.govinfo.gov/content/pkg/FR-2020-04-20/pdf/2020-07523.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-06-01/pdf/2021-11204.pdf">https://www.govinfo.gov/content/pkg/FR-2021-06-01/pdf/2021-11204.pdf</a>
National Aeronautics and Space Administration	<a href="https://www.govinfo.gov/content/pkg/FR-2020-03-24/pdf/2020-05675.pdf">https://www.govinfo.gov/content/pkg/FR-2020-03-24/pdf/2020-05675.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-08-09/pdf/2021-16772.pdf">https://www.govinfo.gov/content/pkg/FR-2021-08-09/pdf/2021-16772.pdf</a>
National Archives and Records Administration	<a href="https://www.govinfo.gov/content/pkg/FR-2020-05-28/pdf/2020-09353.pdf">https://www.govinfo.gov/content/pkg/FR-2020-05-28/pdf/2020-09353.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2022-04-11/pdf/2022-07580.pdf">https://www.govinfo.gov/content/pkg/FR-2022-04-11/pdf/2022-07580.pdf</a>
National Endowment for the Arts	<a href="https://www.govinfo.gov/content/pkg/FR-2020-08-28/pdf/2020-18459.pdf">https://www.govinfo.gov/content/pkg/FR-2020-08-28/pdf/2020-18459.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-10-25/pdf/2021-23135.pdf">https://www.govinfo.gov/content/pkg/FR-2021-10-25/pdf/2021-23135.pdf</a>
National Endowment for the Humanities	<a href="https://www.govinfo.gov/content/pkg/FR-2020-09-14/pdf/2020-18481.pdf">https://www.govinfo.gov/content/pkg/FR-2020-09-14/pdf/2020-18481.pdf</a>	
Office of Government Ethics	<a href="https://www.govinfo.gov/content/pkg/FR-2020-08-20/pdf/2020-16474.pdf">https://www.govinfo.gov/content/pkg/FR-2020-08-20/pdf/2020-16474.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-05-11/pdf/2021-09954.pdf">https://www.govinfo.gov/content/pkg/FR-2021-05-11/pdf/2021-09954.pdf</a>
Office of Personnel Management	<a href="https://www.govinfo.gov/content/pkg/FR-2020-10-16/pdf/2020-21393.pdf">https://www.govinfo.gov/content/pkg/FR-2020-10-16/pdf/2020-21393.pdf</a>	
Peace Corps	<a href="https://www.govinfo.gov/content/pkg/FR-2020-11-18/pdf/2020-24915.pdf">https://www.govinfo.gov/content/pkg/FR-2020-11-18/pdf/2020-24915.pdf</a>	
Pension Benefit Guaranty Corporation	<a href="https://www.govinfo.gov/content/pkg/FR-2020-08-26/pdf/2020-17952.pdf">https://www.govinfo.gov/content/pkg/FR-2020-08-26/pdf/2020-17952.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-04-01/pdf/2021-06734.pdf">https://www.govinfo.gov/content/pkg/FR-2021-04-01/pdf/2021-06734.pdf</a>
Railroad Retirement Board	<a href="https://www.govinfo.gov/content/pkg/FR-2020-08-28/pdf/2020-18861.pdf">https://www.govinfo.gov/content/pkg/FR-2020-08-28/pdf/2020-18861.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-04-30/pdf/2021-09036.pdf">https://www.govinfo.gov/content/pkg/FR-2021-04-30/pdf/2021-09036.pdf</a>
Social Security Administration	<a href="https://www.govinfo.gov/content/pkg/FR-2020-08-20/pdf/2020-17878.pdf">https://www.govinfo.gov/content/pkg/FR-2020-08-20/pdf/2020-17878.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-04-21/pdf/2021-08113.pdf">https://www.govinfo.gov/content/pkg/FR-2021-04-21/pdf/2021-08113.pdf</a>
Tennessee Valley Authority	<a href="https://www.govinfo.gov/content/pkg/FR-2020-09-24/pdf/2020-19546.pdf">https://www.govinfo.gov/content/pkg/FR-2020-09-24/pdf/2020-19546.pdf</a>	<a href="https://www.govinfo.gov/content/pkg/FR-2021-05-27/pdf/2021-10059.pdf">https://www.govinfo.gov/content/pkg/FR-2021-05-27/pdf/2021-10059.pdf</a>

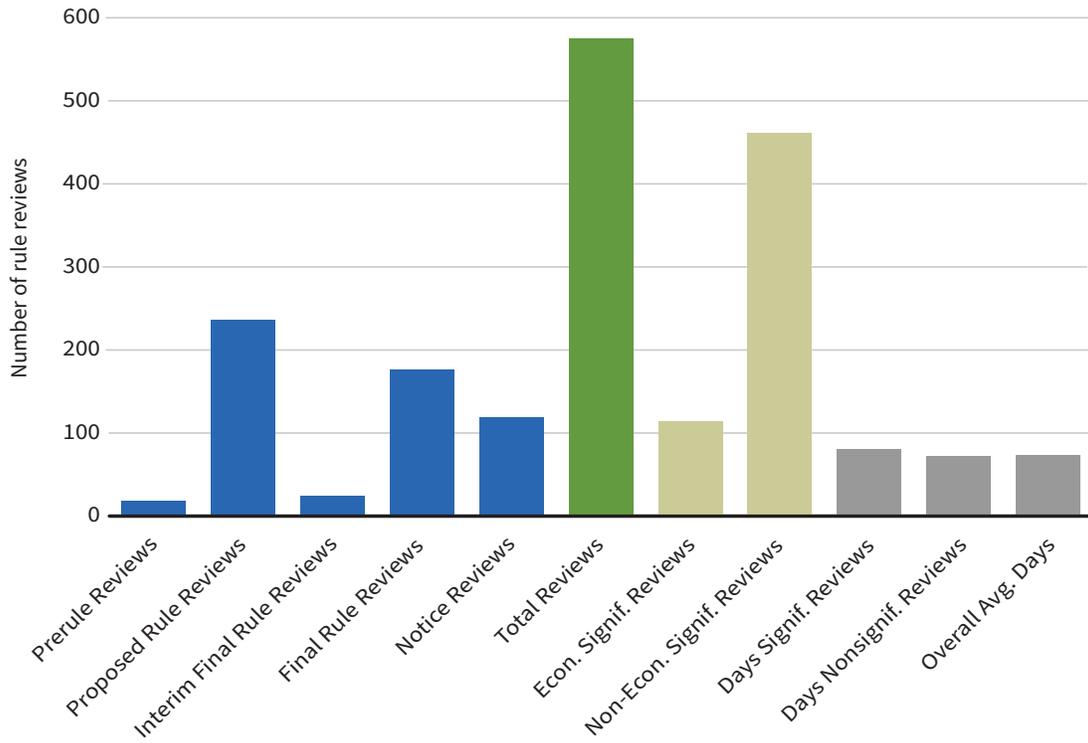
Source: Compiled by the author from agency websites and *Federal Register*.

# A note on rule reviews at OMB's Office of Information and Regulatory Affairs

Yesterday's rule review, where the review authority sought to restrain government intervention and minimize costs, is different from today's rule review. Now the would-be overseer itself pursues regulatory ends. The Office of Management and Budget's (OMB's) shift to regulatory advocacy, particularly since the Circular A-4 rewrite, diminishes what can be gleaned from Executive Order (EO) 12866 rule reviews. Nonetheless, like pages and rule counts, rule review stands among the few variables available to examine. Figure 17 depicts 575 rule reviews conducted by OMB during calendar year 2023, compared with 483 in 2022. These are broken down by stage and by economic significance. There had been 503 total reviews in Biden's first year and 669 in Trump's final year.

Under Biden, economically significant rules have yielded to the higher-threshold Section 3(f)(1) Significant rules (or S3F1 rules for short). There were 114 S3F1 rule reviews, compared with 2022's 161 economically significant rules reviewed. Figure 17 also presents the number of days OMB took to review significant and nonsignificant rules and regulations, a process that tends to take just over two months. During the pre-Executive Order 12866 years of 1991–1993, rule review times were shorter than today, despite considerably higher rule counts then. Of thousands of notices, OMB reviewed 119 during calendar year 2023. A history of the number of rules and notices reviewed annually by type and by average days for review from 1991 through 2023 appears in Appendix H.

**Figure 17. Number of OMB rule reviews and average days under review, 2023**



Source: Author search on RegInfo.gov, “Review Counts” database search engine under Regulatory Review heading.

# The “Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions”

Along with the *Report to Congress*, *Federal Register*, and *Code of Federal Regulations*, another vehicle for regulatory disclosure is the spring and fall editions of the “Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions.” Agencies outline regulatory goals and intentions in the Unified Agenda, particularly in the fall Regulatory Plan component.

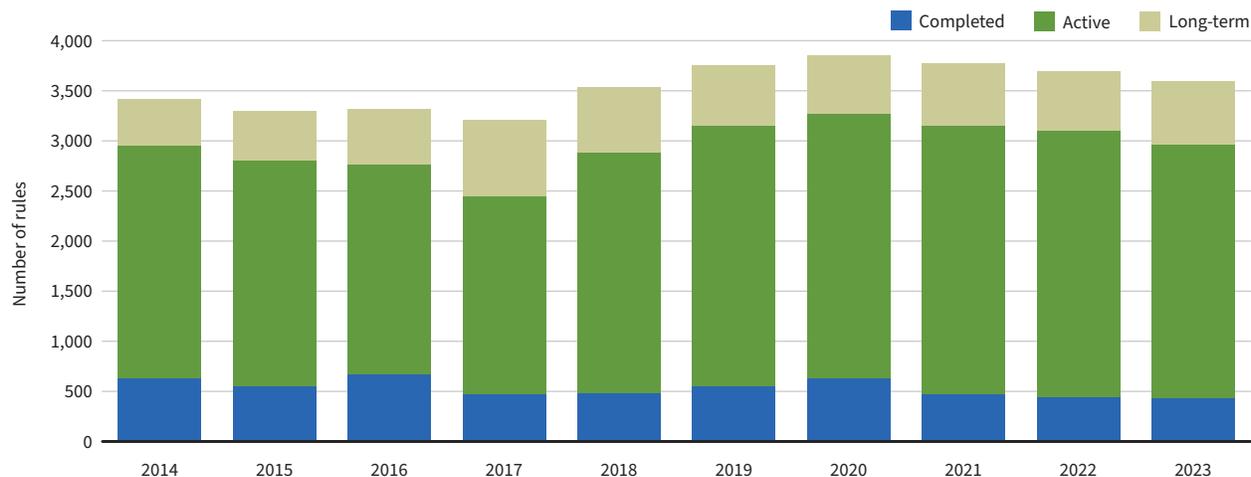
The Unified Agenda is not a complete compendium of all rules like the *Federal Register*, but rather it presents a cross-section of regulatory priorities from over 60 federal departments, agencies, and commissions along three categories:

- Active actions: prerule measures and proposed and final rules in the production process

- Completed actions: rules finalized (or withdrawn) during the previous (roughly) six months since the prior Agenda
- Long-term actions: rulemakings anticipated to take place beyond a 12-month horizon

The Unified Agenda’s contents and bulk reflect the divergent priorities of administrations and political considerations such as rulemaking pause during election years.<sup>101</sup> Agencies are not required to limit their regulatory activity to the material published in the Unified Agenda unless an administration instructs otherwise.<sup>102</sup> Rather, the Agenda “reflect[s] what the agency wants to make public, not necessarily all activity under consideration, and some highly controversial issues may be withheld.”<sup>103</sup> The Biden administration’s

**Figure 18. Agency rules in the fall Unified Agenda pipeline**



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>.

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

pursuit of regulatory net benefits contrasts with the “one-in, two-out” streamlining mindset reflected in the semiannual Agendas between 2017 and 2020, when hundreds of entries were deemed deregulatory.

Most rules in the Unified Agenda are not new but represent carryovers from prior editions as they advance through stages, sometimes slowly. In the fall 2023 edition, 320 active rulemaking actions appeared for the first time, compared with over 400 in both Biden’s first year and Trump’s last.

The fall 2023 “Regulatory Plan and Unified Agenda of Regulatory and Deregulatory Actions” found 69 departments, agencies, and commissions listing 3,599 rules in the active (prerule, proposed, and final), recently completed, and long-term stages, many of which had been in the pipeline for some time. The top bars are comparable to recent years, as seen in Figure 18. Table 6 breaks out by

department, agency, and commission the 3,599 rules in the active, completed, and long-term stages.

Biden continues a longstanding tradition of reporting well over 2,000 rules in the active phase, the exception being a dip to 1,977 in 2017 under Trump that also contained 448 entries deemed deregulatory. Notably, as Figure 18 indicates, **Biden’s long-term rule planning stands well above Obama-era levels.** Historically, the Agenda often exceeded 4,000 active, completed, and long-term rules through 2013. Unified Agenda counts were highest in the 1990s, peaking at 5,119 rules in fall 1994 before a series of mid-1990s regulatory reforms. 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 history of the total numbers of rules in the Unified Agenda from 1983 to the present, see Appendix I.)

**Table 6. Unified Agenda entries by department and agency, fall 2023**

Department and Agency	Number of Rules	Active	Completed	Long Term
Department of Agriculture	159	104	20	35
Department of Commerce	261	160	59	42
Department of Defense	152	103	24	25
Department of Education	40	30	8	2
Department of Energy	121	78	34	9
Department of Health and Human Services	230	177	27	26
Department of Homeland Security	125	81	13	31
Department of Housing and Urban Development	57	53	2	2
Department of the Interior	334	269	42	23
Department of Justice	123	95	7	21
Department of Labor	102	75	7	20
Department of State	54	43	10	1
Department of Transportation	304	241	18	45
Department of Treasury	368	266	13	89
Department of Veterans Affairs	84	67	6	11
Environmental Protection Agency	209	120	35	54
Agency for International Development	16	14	2	
Architectural and Transportation Barriers Compliance Board	6	4	1	1
Committee for Purchase from People Who Are Blind or Severely Disabled	3	3		
Chemical Safety and Hazard Investigation Board	1		1	
Commodity Futures Trading Commission	28	26	2	
Consumer Financial Protection Bureau	14	12	1	1
Consumer Product Safety Commission	29	21	5	3
Corporation for National and Community Service	10	7	3	
Council on Environmental Quality	3	3		
Court Services/Offender Supervision, DC	5		1	4
Defense Nuclear Facilities Safety Board	3	2	1	
Equal Employment Opportunity Commission	10	9	1	
Federal Acquisition Regulation	58	49	6	3
Farm Credit Administration	17	15		2
Federal Communications Commission	103		4	99
Federal Deposit Insurance Corporation	26	22		4
Federal Energy Regulatory Commission	21	16	5	
Federal Housing Finance Agency	21	16		5

Department and Agency	Number of Rules	Active	Completed	Long Term
Federal Maritime Commission	8	4	3	1
Federal Mediation and Conciliation Service	4	4		
Federal Mine Safety and Health Review Commission	1	1		
Federal Permitting Improvement Steering Council	3	3		
Federal Reserve System	26	12	6	8
Federal Trade Commission	24	23	1	
General Services Administration	31	27	1	3
Institute of Museum and Library Services	1		1	
Inter-American Foundation	2			2
National Aeronautics and Space Administration	9	5	4	
National Archives and Records Administration	16	11	2	3
National Credit Union Administration	25	15	2	8
National Endowment for the Arts	5	3	1	1
National Endowment for the Humanities	3	1	2	
National Indian Gaming Commission	4		2	2
National Labor Relations Board	5	1	2	2
National Mediation Board	1	1		
National Science Foundation	5	4	1	
National Transportation Safety Board	11	10	1	
Nuclear Regulatory Commission	58	31	7	20
Office of Government Ethics	11	8	3	
Office of Management and Budget	8	7		1
Office of National Drug Control Policy	3	3		
Office of Personnel Management	46	37	5	4
Office of the US Trade Representative	1		1	
Peace Corps	4	2		2
Postal Regulatory Commission	7		1	6
Pension Benefit Guaranty Corporation	9	7	2	
Railroad Retirement Board	4	4		
Securities and Exchange Commission	63	43	13	7
Selective Service System	5	4	1	
Small Business Administration	68	57	9	2
Social Security Administration	21	11	1	9
Surface Transportation Board	7	1	1	5
US Agency for Global Media	3	3		
<b>TOTAL</b>	<b>3,599</b>	<b>2,524</b>	<b>431</b>	<b>644</b>

**Table 7. Top rule-producing executive and independent agencies, fall 2023**

Executive Agency	Number of Rules
1. Department of the Treasury	368
2. Department of the Interior	334
3. Department of Transportation	304
4. Department of Commerce	261
5. Department of Health and Human Services	230
TOTAL	1,497
% of Total Agenda Pipeline of 3,599	42

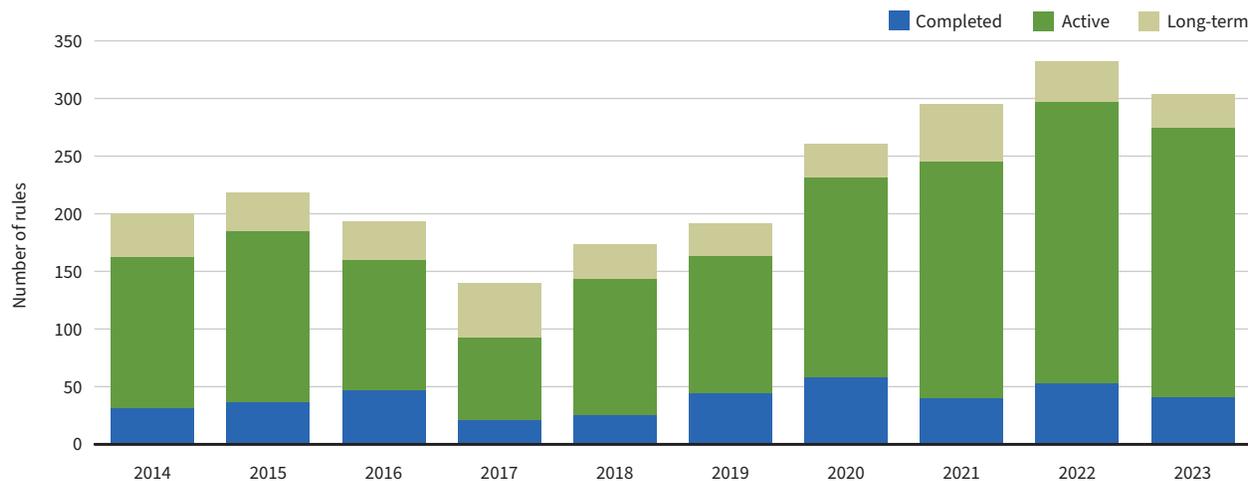
Independent Agency	Number of Rules
1. Federal Communications Commission	103
2. Small Business Administration	68
3. Securities and Exchange Commission	63
4. Nuclear Regulatory Commission	58
5. Federal Reserve System	26
TOTAL	318
% of Total Agenda Pipeline of 3,599	9
Top 5 Executives plus Top 5 Independents	1,815
% 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>.

A relative handful of executive branch agencies each year account for the greatest number of rules in the pipeline. In the fall 2023 Agenda, the Departments of the Treasury, the Interior, Transportation, Commerce, and Health and Human Services are the most active (see Table 7). These top five, with 1,497 rules among them, account for 42 percent of the 3,599 rules in the pipeline. The Environmental Protection Agency, with 209 rules, takes sixth place. The Federal Communications Commission, with 103 rules, leads the pack among the independent agencies.

The top-five independent agencies in the Unified Agenda pipeline by rule count (excluding the multiagency Federal Acquisition Regulations System) are the Federal Communications Commission, Small Business Administration, Securities and Exchange Commission, Nuclear Regulatory Commission, and the Federal Reserve System. Their total of 318 rules accounts for 9 percent of the 3,599 rules in the fall Agenda. Combined, the top-five executive and independent agency components, numbering 1,815, make up 50 percent of the total.

**Figure 19. Section 3(f)(1) significant (S3F1) rules in the fall Unified Agenda**



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

## Biden’s high-significance rules in the Unified Agenda

Until April 2023, and as reflected in the spring 2023 Unified Agenda, a subset of the Agenda’s rules were classified as economically significant, referring to agency and OMB assessments that a rule was accompanied by attendant yearly economic effects of at least \$100 million. Biden’s EO 14094 raised the cost threshold for a significant regulatory action to \$200 million, in the process eliminating the longstanding economically significant designation and replacing it with a Section 3(f)(1) Significant designation (or S3F1).<sup>104</sup> OMB now refers to economically significant in the past tense:

This term [economically significant] was used for regulatory actions reviewed between September 30, 1993, when EO 12866 was issued, and April 6, 2023, when the Modernizing EO was issued. The term referred to a regulatory action as determined under Section 3(f)(1) of EO 12866, that will

have an annual effect on the economy of \$100 million or more or will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.<sup>105</sup>

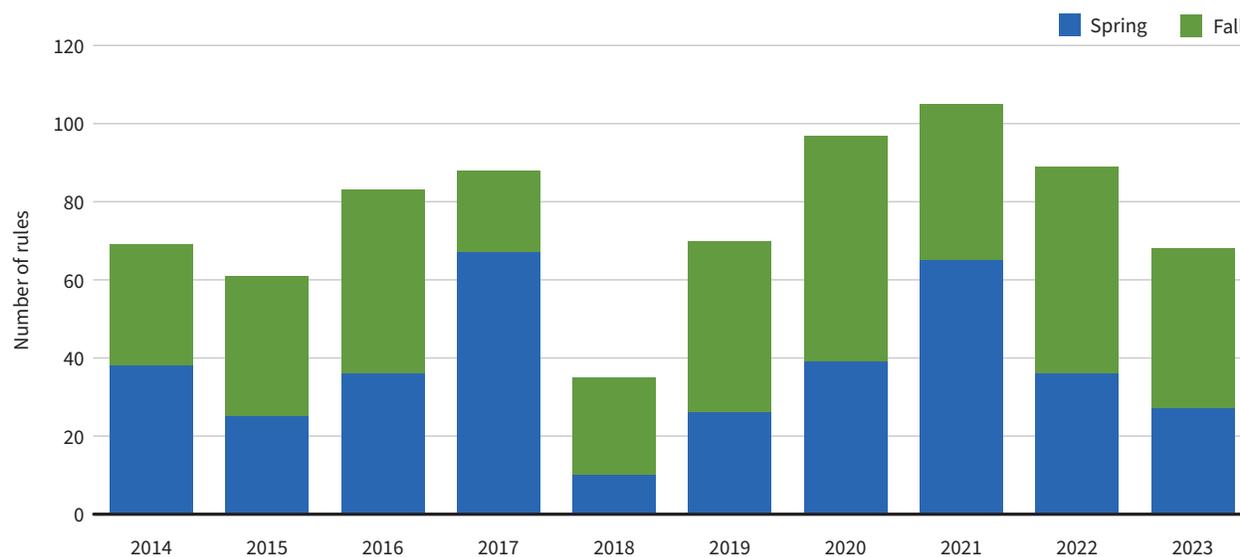
One might have expected a substantial drop in high-significance rules from the spring 2023 Agenda count of 297 economically significant rules when the \$100 million threshold still applied, but the number instead increased. As Figure 19 shows, 304 rules in the pipeline are designated as having \$200 million in annual economic impact. That implies eventual combined annual effects of nearly \$61 billion, which is notable in the context of the \$59 billion in annual regulatory costs being added over the past three fiscal years (Table 3). Of these, 233 are active, 41 recently completed, and 30 long-term. Table 8 presents an inventory of these 304 rules by the 30 issuing departments and agencies.

**Table 8. Fall 2023 S3F1 rules breakdown by department, agency, and commission**

	Rules	Active			Completed	Long Term
		Prerule	Proposed	Final		
Department of Agriculture	13		2	6	2	3
Department of Commerce	3			3		
Department of Defense	3		2		1	
Department of Education	15		10	1	4	
Department of Energy	29	1	5	15	7	1
Department of Health and Human Services	67		28	22	13	4
Department of Homeland Security	8		1	2	1	4
Department of the Interior	8		4	2	1	1
Department of Justice	4			3	1	
Department of Labor	18	2	8	4	2	2
Department of State	1		1			
Department of Transportation	17	2	6	4	1	4
Department of Treasury	15		3	12		
Department of Veterans Affairs	13		3	8	1	1
Architectural and Transportation Barriers Compliance Board	1				1	
Consumer Product Safety Commission	2		1	1		
Council on Environmental Quality	1			1		
Environmental Protection Agency	27		5	17	5	
Equal Employment Opportunities Board	1			1		
Federal Acquisition Regulation	4		2	2		
Federal Communications Commission	6					6
Federal Deposit Insurance Corporation	3		1	2		
Federal Energy Regulatory Commission	1			1		
Federal Housing Finance Agency	2			1		1
Federal Trade Commission	3		2	1		
Nuclear Regulatory Commission	3		1		1	1
Office of Personnel Management	2					2
Pension Benefit Guaranty Corporation	1			1		
Small Business Administration	31			31		
Social Security Administration	2			2		
<b>TOTAL</b>	<b>304</b>	<b>5</b>	<b>85</b>	<b>143</b>	<b>41</b>	<b>30</b>

Source: Compiled from “The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions.”

**Figure 20. Annual completed high-significance rules in the Unified Agenda**



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

Figure 19’s depiction of fall 2023’s 304 Section 3(f)(1) Significant (S3F1) rules includes those designated economically significant over the prior nine years. Although the 304 rules in the pipeline mark an 8 percent drop from the previous year (fall 2022) as might be expected given the higher threshold, the new count nonetheless stands well above earlier years depicted. Note particularly the active S3F1 component compared with prior years’ merely economically significant rules. **The 233 active \$200 million rules in play at year-end 2023 stand 95 percent above the corresponding count of five years ago, and 77 percent above the active count of 10 years ago when high-significance meant only \$100 million in costs.** Appendix J contains the full list of S3F1 rules—233 active and 30 long-term—that agencies affirm to be in production right now.

Recognizing that overlap occurs in transition years after elections, here are calendar-year breakdowns of yearly average high-significance active

rules in play under recent administrations in their fall Agendas:

- Barack Obama (eight years): average 133 per year
- Donald Trump (four years): average 120 per year
- Joe Biden (first three years): average 227 per year

Figure 19 represents flows of the fall Agendas. That represents a thorough year-end snapshot as far as active and long-term rules are concerned, but incorporating the spring Agendas is necessary for the full picture when it comes to the completed subset. Figure 20 captures the 27 completed economically significant rules in the spring of 2023, plus the fall of 2023’s 41 completed S3F1 rules. High-significance completed rules are down to 68 from 89 in 2022, perhaps in part due to the new threshold. However, the aforementioned higher number of active rules makes this category important to monitor.

Recognizing that overlap occurs in transition years after elections, here are calendar-year breakdowns of completed highly significant rules under recent administrations. Biden's average is highest at 87 completed per year, even with the shift to the higher \$200 million threshold.

- George W. Bush (eight years): average 49 completed economically significant rules per year
- Barack Obama (eight years): average 69 completed economically significant rules per year
- Donald Trump (four years): average 72 economically significant rules per year (includes over 50 deregulatory during term)

- Joe Biden (first three years): average 87 highly significant rules per year

Box 1 excerpts for examination the combination of the spring economically significant and fall S3F1 completed actions for the year.<sup>106</sup>

The emphasis on the high-cost rule subsets should not distract policymakers and analysts from the remaining bulk of rules in the annual pipeline of over 3,000, many of which can and do have substantial costs or effects in their own right.

## Box 1. Inventory of 68 spring and fall 2023 completed high-significance actions

### SPRING 2023: 27 COMPLETED ACTIONS

#### DEPARTMENT OF AGRICULTURE

1. USDA/AgSEC, Pandemic Assistance Programs, 0503-AA75
2. USDA/FSIS, Maximum Line Speed Under the New Poultry Inspection System, 0583-AD85

#### DEPARTMENT OF DEFENSE

3. DOD/COE, Revised Definition of "Waters of the United States"—Rule 1, 0710-AB40
4. DOD/COE, Revised Definition of "Waters of the United States"—Rule 2, 0710-AB47
5. DOD/DODOASHA, TRICARE, Chiropractic and Acupuncture Treatment Under the TRICARE Program, 0720-AB77

#### DEPARTMENT OF ENERGY

6. DOE/ENDEP, Loan Guarantees for Clean Energy Projects, 1901-AB54
7. DOE/EE, Energy Conservation Standards for Consumer Pool Heaters, 1904-AD49
8. DOE/EE, Energy Conservation Standards for Room Air Conditioners, 1904-AD97

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

9. HHS/FDA, Mammography Quality Standards Act, 0910-AH04
10. HHS/CMS, Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2020; Risk Adjustment Data Validation (CMS-4185), 0938-AT59
11. HHS/CMS, Medicare Secondary Payer and Future Medicals (CMS-6047), 0938-AT85
12. HHS/CMS, Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency; Temporary Increase in Federal Medical Assistance Percentage (FMAP) (CMS-9912), 0938-AU35
13. HHS/CMS, Improving Infection Prevention and Control in Long Term Care Facilities (CMS-3405), 0938-AU58
14. HHS/CMS, Basic Health Program; Federal Funding Methodology for Program Year 2023 and Proposed Changes to Basic Health Program Regulations (CMS-2441), 0938-AU89
15. HHS/CMS, Contract Year 2024 Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Medicare Cost Plan Programs, Medicare Overpayment Provisions of the Affordable Care Act, and PACE (CMS-4201), 0938-AU96
16. HHS/CMS: HHS Notice of Benefit and Payment Parameters for 2024 (CMS-9899), 0938-AU97 (S3F1 rule)

#### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

17. HUD/OH, Increased 40-Year Term for Loan Modifications (FR-6263), 2502-AJ59

#### DEPARTMENT OF LABOR

18. DOL/EBSA, Implement SECURE Act and Related Revisions to Employee Benefit Plan Annual Reporting on the Form 5500, 1210-AB97

#### DEPARTMENT OF STATE

19. STATE, Schedule of Fees for Consular Services—Nonimmigrant and Special Visa Fees, 1400-AF33

#### DEPARTMENT OF TRANSPORTATION

20. DOT/FHWA, National Electric Vehicle Infrastructure Formula Program, 2125-AG10

#### ENVIRONMENTAL PROTECTION AGENCY

21. EPA/RODENVER, Federal Implementation Plan for Oil and Natural Gas Sources; Uintah and Ouray Indian Reservation in Utah, 2008-AA03
22. EPA/OAR, Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards, 2060-AU41

#### CONSUMER PRODUCT SAFETY COMMISSION

23. CPSC, Petition for Rulemaking to Eliminate Accessible Cords on Window Covering Products, 3041-AD31
24. CPSC, Furniture Tip Overs: Clothing Storage Units, 3041-AD65

#### FEDERAL HOUSING FINANCE ADMINISTRATION

25. FHFA, Prior Approval of Enterprise Products, 2590-AA17
26. FHFA, 2023–2024 Multifamily Enterprise Housing Goals, 2590-AB21

#### PENSION BENEFIT GUARANTY CORPORATION

27. PBGC, Special Financial Assistance by PBGC, 1212-AB53

### FALL 2023: 41 COMPLETED ACTIONS

#### DEPARTMENT OF AGRICULTURE

28. USDA/RBS, B&I CARES Act Guaranteed Loan Program—Final Rule 7 CFR 4279, 0570-AB07
29. USDA/AMS, Organic Livestock and Poultry Standards (AMS-NOP-21-0073), 0581-AE06

#### DEPARTMENT OF DEFENSE

30. DOD/OS, National Industrial Security Program Operating Manual (NISPOM), 0790-AK85

#### DEPARTMENT OF EDUCATION

31. ED/OPE, Ability to Benefit, 1840-AD51
32. ED/OPE, Gainful Employment, 1840-AD57
33. ED/OPE, Factors of Financial Responsibility, 1840-AD64
34. ED/OPE, Improving Income Driven Repayment, 1840-AD81

#### DEPARTMENT OF ENERGY

35. DOE/EE, Energy Conservation Standards for ER, BR, and Small Diameter Incandescent Reflector Lamps, 1904-AC15
36. DOE/EE, Energy Conservation Standards for Residential Conventional Cooking Products, 1904-AD15
37. DOE/EE, Energy Conservation Standards for Commercial Water Heating-Equipment, 1904-AD34
38. DOE/EE, Energy Conservation Standards for Consumer Refrigerators, Refrigerator-Freezers, and Freezers, 1904-AD80
39. DOE/EE, Energy Conservation Standards for Electric Motors, 1904-AE63
40. DOE/EE, Energy Conservation Standards for Air Cleaners, 1904-AF46
41. DOE/EE, Energy Conservation Standards for Dedicated-Purpose Pool Pump Motors, 1904-AF27

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

42. HHS/CMS, Treatment of Medicare Part C Days in the Calculation of a Hospital's Medicare Disproportionate Patient Percentage (CMS-1739), 0938-AU24
43. HHS/CMS, Omnibus COVID-19 Health Care Staff Vaccination (CMS-3415), 0938-AU75

44. HHS/CMS, FY 2024 Skilled Nursing Facility (SNF) PPS and Consolidated Billing and Updates to the Value-Based Purchasing and Quality Reporting Programs (CMS-1779), 0938-AV02
45. HHS/CMS, CY 2024 Home Health Prospective Payment System Rate Update and Home Infusion Therapy Services Payment Update (CMS-1780), 0938-AV03
46. HHS/CMS, FY 2024 Inpatient Rehabilitation Facility (IRF) Prospective Payment System Rate Update and Quality Reporting Program (CMS-1781), 0938-AV04
47. HHS/CMS, CY 2024 Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System and Quality Incentive Program (CMS-1782), 0938-AV05
48. HHS/CMS, Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2024 Rates (CMS-1785), 0938-AV08
49. HHS/CMS, FY 2024 Hospice Wage Index, Payment Rate Update, and Quality Reporting Requirements (CMS-1787), 0938-AV10
50. HHS/CMS, CY 2024 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts (CMS-8083), 0938-AV11
51. HHS/CMS, Medicare Part B Monthly Actuarial Rates, Premium Rates, and Annual Deductible Beginning January 1, 2024 (CMS-8085), 0938-AV13
52. HHS/CMS, Medicare Disproportionate Share Hospital (DSH) Payments: Counting Certain Days Associated with Section 1115 Demonstrations in the Medicaid Fraction (CMS-1788), 0938-AV17
53. HHS/CMS, Hospital Outpatient Prospective Payment System: Remedy for 340B-Acquired Drugs Purchased in Cost Years 2018–2022 (CMS-1793), 0938-AV18
54. HHS/ACF, Separate Licensing Standards for Relative or Kinship Foster Family Homes, 0970-AC91

#### **DEPARTMENT OF HOMELAND SECURITY**

55. DHS/FEMA, Hermit's Peak/Calf Canyon Fire Assistance, 1660-AB14

#### **DEPARTMENT OF THE INTERIOR**

56. DOI/FWS, Migratory Bird Hunting; 2023–24 Migratory Game Bird Hunting Regulations, 1018-BF64

#### **DEPARTMENT OF JUSTICE**

57. DOJ/DEA, Partial Filling of Prescriptions for Schedule II Controlled Substances, 1117-AB45

#### **DEPARTMENT OF LABOR**

58. DOL/ETA, Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States, 1205-AC00
59. DOL/WHD, Updating the Davis-Bacon and Related Acts Regulations, 1235-AA40

#### **DEPARTMENT OF TRANSPORTATION**

60. DOT/OST, Accessible Lavatories on Single-Aisle Aircraft, 2105-AE89

#### **DEPARTMENT OF VETERANS AFFAIRS**

61. VA, Presumptive Service Connection for Respiratory Conditions Due to Exposure to Particulate Matter, 2900-AR25

#### **ENVIRONMENTAL PROTECTION AGENCY**

62. EPA/OAR, Renewable Fuel Standard (RFS) Program: Standards for 2023–2025 and Other Changes, 2060-AV14
63. EPA/OAR, Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years, 2060-AV45
64. EPA/OAR, Restrictions on Certain Uses of Hydrofluorocarbons Under Subsection (i) of the American Innovation and Manufacturing Act, 2060-AV46
65. EPA/OAR, Federal “Good Neighbor Plan” for the 2015 Ozone National Ambient Air Quality Standards, 2060-AV51
66. EPA/OCSPP, Toxic Substances Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances, 2070-AK67

#### **ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD**

67. ATBCB, Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way, 3014-AA26

#### **NUCLEAR REGULATORY COMMISSION**

68. NRC, Revision of Fee Schedules: Fee Recovery for FY 2023 [NRC-2021-0024], 3150-AK58

# Federal regulations affecting small business

The aforementioned National Association of Manufacturers (NAM) report found that average annual per-employee regulatory costs to firms vary by firm size in a way that overly affects small businesses. The smaller the firm, the larger the per-employee regulatory costs, particularly in manufacturing. As shown in Table 9, the NAM found that per-employee regulatory costs for firms with fewer than 50 workers can be far greater than those for larger firms—\$50,100 for

smaller firms, compared with \$24,800 for larger ones.

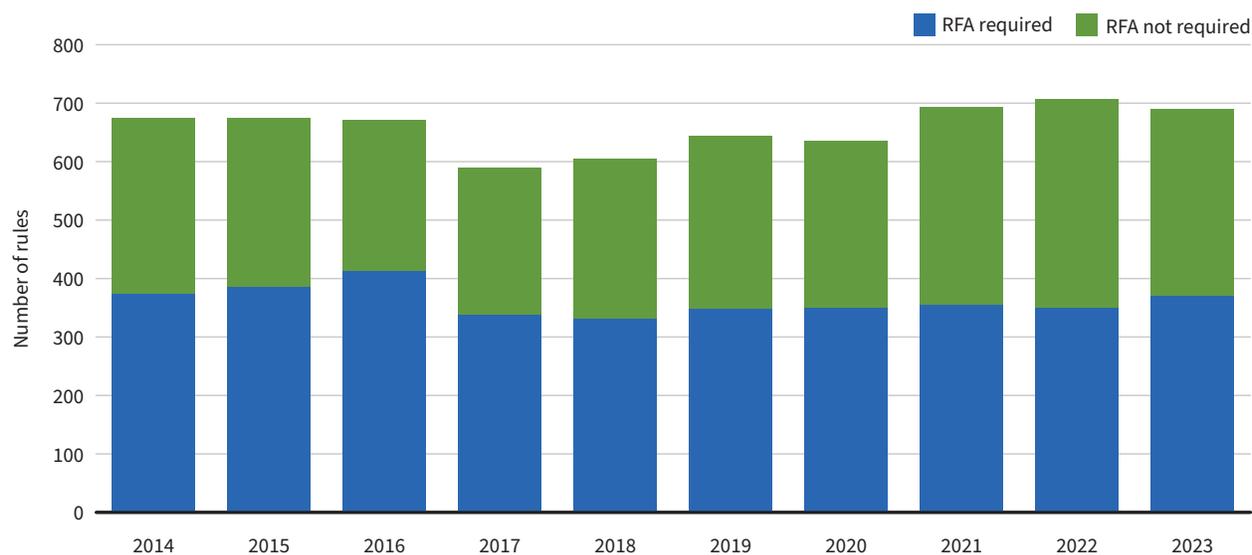
The Regulatory Flexibility Act (RFA) directs federal agencies to consider their rules' effects on small entities.<sup>107</sup> Figure 21 depicts rules in active, completed, and long-term stages in the fall Unified Agenda that require regulatory flexibility analysis, as well as rules that presumably do not rise to the level of requiring an RFA but are nonetheless

**Table 9. Distribution of regulatory costs in small, medium, and large manufacturing firms**

	All firms	< 50 employees	50–99 employees	> 100 employees
All federal regulations	\$29,100	\$50,100	\$28,000	\$24,800
Economic	\$10,400	\$7,600	\$10,900	\$11,000
Environmental	\$17,200	\$40,700	\$15,200	\$12,500
Tax compliance	\$500	\$500	\$800	\$400
Occupational/homeland security	\$1,000	\$1,300	\$1,100	\$900

Source: W. Mark Crain and Nicole V. Crain, “The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business,” National Association of Manufacturers.

**Figure 21. Rules in the Unified Agenda pipeline affecting small business**



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

anticipated by agencies to affect small businesses. Of the 690 rules affecting small business in 2023, 370 required an RFA, a 6 percent increase. Although Figure 21’s 2023 tally does exceed the levels under Obama depicted there, counts did occasionally exceed 800 under Obama.<sup>108</sup> The count fell to 590 in 2017 in the Trump administration.

Recognizing that overlap occurs in transition years following elections, here are calendar-year averages of the number of rules requiring regulatory flexibility analysis during recent administrations:

- George W. Bush (eight years): average 377 rules requiring small-business RFA per year
- Barack Obama (eight years): average 406 rules per year
- Donald Trump (four years): average 341 rules per year (included dozens deemed deregulatory)
- Joe Biden (first three years): average 358 rules per year

Table 10 breaks out the fall 2023 Unified Agenda’s 690 rules affecting small business by department, agency, and commission. The top five—the Federal Communications Commission (FCC); the Departments of Health and Human Services, the Treasury, and Commerce; and the multiagency federal acquisition rules that now include a rule on “Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk”—are the stand-outs, accounting for 351 rules, or 51 percent of the 690 rules affecting small business.

**The FCC alone contributes 80 long-term rules deemed to require RFA analysis.** The overall proportion of total rules affecting small business in the Unified Agenda stands at 19 percent but varies widely among agencies. Of the 690 rules affecting small business, 105 are deemed Section 3(f) (1) Significant, which is broken out at the bottom of Table 10. **The Agenda’s “active” rules subset as they pertain to small business again could be of particular interest to policymakers.**

**Table 10. Rules in the Unified Agenda that affect small business by department, agency, and commission**

	Total Rules	Number Affecting Small Business							Affecting Small Business	Top 5
		RFA Required			RFA Not Required			Total		
		Active	Completed	L-T	Active	Completed	L-T			
Dept. of Agriculture	159	7	6	8	5		3	29	18.2%	
Dept. of Commerce	261	29	9	3	11	12	3	67	25.7%	67
Dept. of Defense	152	2	1		16	4	5	28	18.4%	
Dept. of Education	40		1			1		2	5.0%	
Dept. of Energy	121	6	5		2			13	10.7%	
Dept. of Health and Human Services	230	26	7	4	31	1	6	75	32.6%	75
Dept. of Homeland Security	125	12	2	3			2	19	15.2%	
Dept. of Housing and Urban Development	57							0	0.0%	
Dept. of the Interior	334	5	2	1	11		5	24	7.2%	
Dept. of Justice	123				16	2	1	19	15.4%	
Dept. of Labor	102	12	1		4	1	4	22	21.6%	
Dept. of State	54				11	2		13	24.1%	
Dept. of Transportation	304	7		5	14	1	4	31	10.2%	
Dept. of the Treasury	368	7	2	5	44	3	10	71	19.3%	71
Dept. of Veterans Affairs	84							0	0.0%	
Agency for International Development	16				2			2	12.5%	
Architectural and Transportation Barriers Compliance Board	6							0	0.0%	
CPBSD*	3							0	0.0%	
Chemical Safety and Hazard Investigation Board	1							0	0.0%	
Commodity Futures Trading Commission	28							0	0.0%	
Consumer Financial Protection Bureau	14	2				1		3	21.4%	
Consumer Product Safety Commission	29	2	1	1				4	13.8%	
Corporation for National and Community Service	10							0	0.0%	
Council of Inspector General on Integrity and Efficiency								0	0.0%	
Council on Environmental Quality	3							0	0.0%	

	Total Rules	Number Affecting Small Business							Affecting Small Business	Top 5
		RFA Required			RFA Not Required			Total		
		Active	Completed	L-T	Active	Completed	L-T			
Court Sevices/Offender Supervision, DC	5							0	0.0%	
Defense Nuclear Facilities Safety Board	3								0.0%	
Environmental Protection Agency	209	9	1		12	3	6	31	14.8%	
Equal Employment Opportunity Commission	10				2					
Federal Acquisition Regulation	58	36	4	2	8	1	1	52	89.7%	52
Farm Credit Administration	17							0	0.0%	
Federal Communications Commission	103		4	80			2	86	83.5%	86
Federal Deposit Insurance Corporation	26				2			2	7.7%	
Federal Energy Regulatory Commission	21							0	0.0%	
Federal Housing Finance Agency	21							0	0.0%	
Federal Maritime Commission	8							0	0.0%	
Federal Mediation and Conciliation Service	4				2			2	50.0%	
Federal Mine Safety and Health Review Commission	1							0	0.0%	
Federal Permitting Improvement Steering Committee	3				1			1	33.3%	
Federal Reserve System	26			1				1	3.8%	
Federal Trade Commission	24				21	1		22	91.7%	
General Services Administration	31	11	1	3	14			29	93.5%	
Institute of Museum and Library Services	1							0	0.0%	
Inter-American Foundation	2							0	0.0%	
National Aeronautics and Space Administration	9							0	0.0%	
National Archives and Records Administration	16							0	0.0%	
National Credit Union Administration	25				1			1	4.0%	
National Endowment for the Arts	5				1		1	2	40.0%	
National Endowment for the Humanities	3							0	0.0%	
National Indian Gaming Commission	4							0	0.0%	

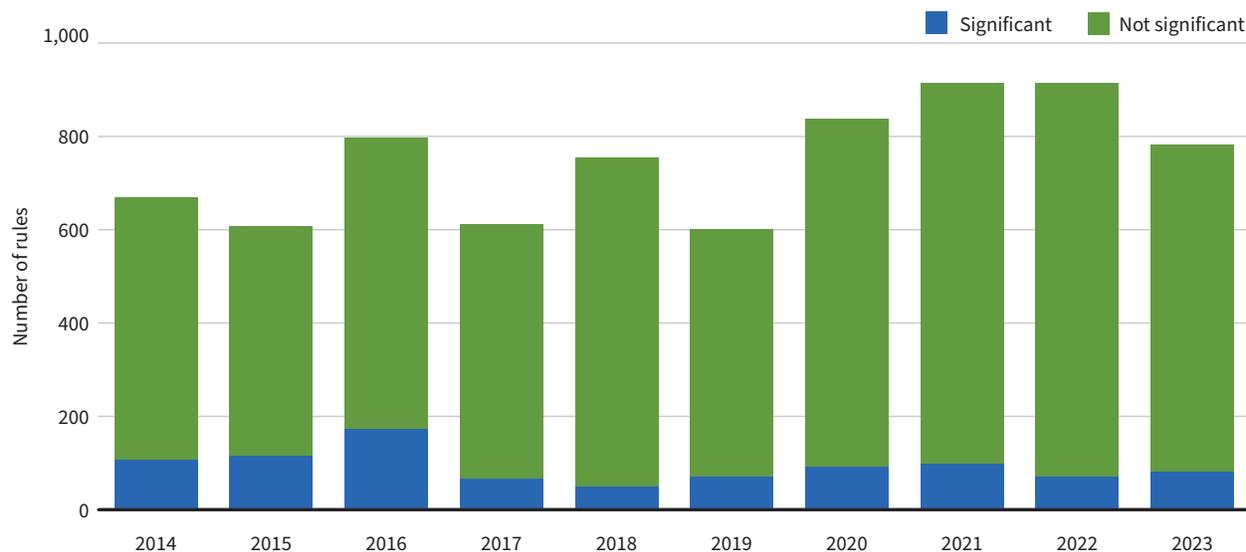
	Total Rules	Number Affecting Small Business							Affecting Small Business	Top 5
		RFA Required			RFA Not Required			Total		
		Active	Completed	L-T	Active	Completed	L-T			
National Labor Relations Board	5		1					1	20.0%	
National Mediation Board	1							0	0.0%	
National Science Foundation	5									
National Transportation Safety Board	11							0	0.0%	
Nuclear Regulatory Commission	58	3	1	2	1			7	63.6%	
Office of Government Ethics	11							0	0.0%	
Office of Management and Budget	8							0	0.0%	
Office of the National Cyber Director	3							0	0.0%	
Office of Personnel Management	46							0	0.0%	
Office of the Intellectual Property and Enforcement Coordinator								0	0.0%	
Office of the US Trade Representative	1									
Peace Corps	4							0	0.0%	
Pension Benefit Guaranty Corporation	9							0	0.0%	
Postal Regulatory Commission	7							0	0.0%	
Railroad Retirement Board	4							0	0.0%	
Securities and Exchange Commission	63	14	4					18	28.6%	
Selective Service System	5									
Small Business Administration	68	6	2		1			9	13.2%	
Social Security Administration	21				1			1	4.8%	
Surface Transportation Board	7			1				1	14.3%	
Tennessee Valley Authority								0	0.0%	
US Agency for Global Media	3							0	0.0%	
<b>TOTAL</b>	<b>3,599</b>	<b>196</b>	<b>55</b>	<b>119</b>	<b>234</b>	<b>33</b>	<b>53</b>	<b>690</b>	<b>19.2%</b>	<b>351</b>
		370			320					51% of total
		RFA Required			RFA Not Required					
		Active	Completed	L-T	Active	Completed	L-T			
“Section 3(f)(1) Significant” subset		53	14	10	22	2	4	105		

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

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

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

**Figure 22. Number of final and significant final rules in the *Federal Register* affecting small business**



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

To complement the fall Unified Agenda snapshots, we return for a moment to the *Federal Register* and its broader depiction of small-business rules. Figure 22 depicts the larger universe of final rules and the “significant” subset completed in the *Federal Register* deemed to affect small business since 2014. Overall counts stand above pre-Trump levels, whereas at the moment the significant subset stands below.<sup>109</sup> However, again rules costing between \$100 million and \$200 million are no longer regarded as significant by the dollar-cost criterion. As it stands, the 2023 *Federal Register* contained 80 significant final small-business rules, which might be compared with the 16 completed small-business rules in the fall Agenda recognized as S3F1 Significant (bottom of Table 10).

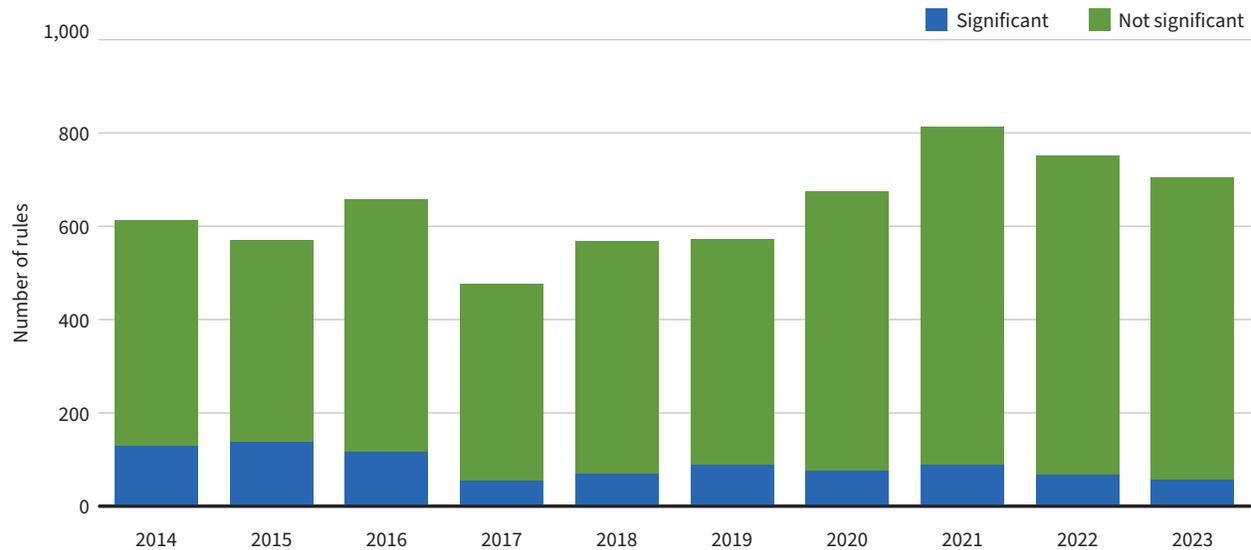
Recognizing that overlap occurs in transition years, here are calendar-year averages of the number of final and final significant rules in the

*Federal Register* affecting small business during recent administrations:

- Barack Obama (eight years): average 694 rules per year affecting small business, 117 significant
- Donald Trump (four years): average 701 rules per year, 70 significant (include deregulatory)
- Joe Biden (first three years): average 870 rules per year, 83 significant

**Biden is taking the averages higher for total final rules affecting small business, and he is doing the same for proposed rules.** Proposed rules in the *Federal Register* affecting small business recently peaked at 812 in 2021. **Despite dropping to 704 in 2023, proposed rules stand well above Obama-era levels**, as seen in Figure 23. The overall count stands 15 percent higher than the 2000–“teens” average of 590. Whereas the significant small-business proposed rule component

**Figure 23. Number of proposed and significant proposed rules in the *Federal Register* affecting small business**



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

stands below pre-Trump levels as it does for final rules, it is noteworthy that 75 active rules affecting small business are deemed S3F1 Significant in the fall 2023 Unified Agenda (bottom of Table 10).

Recognizing that overlap occurs in transition years, here are calendar-year averages of the number of proposed and significant proposed rules affecting small business during recent administrations:

- Barack Obama (eight years): average 612 proposed rules per year affecting small business, 128 significant

- Donald Trump (four years): average 572 proposed rules per year, 72 significant (includes deregulatory)
- Joe Biden (first three years): average 756 rules per year, 71 significant

The legislative foundations of regulations affecting small business are without doubt substantial. Appendix K presents a partial list of non-sector-specific laws whose regulations affect growing businesses.

# Federal regulations affecting state and local governments

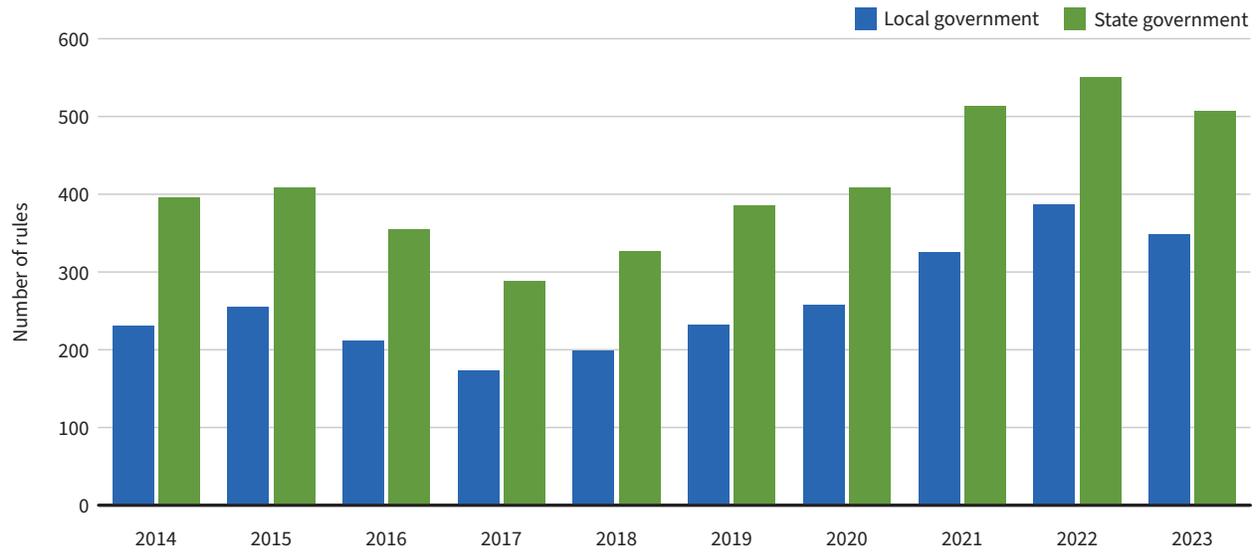
State and local officials' concerns over federal mandates' overriding their own priorities and prerogatives resulted in the Unfunded Mandates Reform Act of 1995, the requirements of which included Congressional Budget Office cost estimates for mandates affecting state, local, and tribal governments above the then-threshold of \$50 million. Post-COVID-19 spending and regulation affecting states and localities may lead to a new alignment for streamlining, but as yet localities primarily pursue more federal money to expand functions like housing, education, and infrastructure.<sup>110</sup>

As Figure 24 shows, agencies report that 349 of the 3,599 rules in the fall 2023 Unified Agenda pipeline (active, completed, and long-term) affect local governments and 507 affect state governments.<sup>111</sup> Although a decline from 2022, Figure 24 shows that **rules affecting state and local governments mark substantial increases over 5 and 10 years ago.**

Of the 2,524 active rules in the fall 2023 Unified Agenda, only 8 of them (5 from the Department of Health and Human Services and 2 from the Environmental Protection Agency) are acknowledged to inflict unfunded mandates on state, local, or tribal governments, whereas only one long-term action is so reckoned (the Department of Labor's "COVID-19 Vaccination and Testing Emergency Temporary Standard").

So long as money flows unimpeded from Washington, lower-level governments may remain content and eagerly seek directives. However, it is the case that Section 3(f)(1) (S3F1) rules affect state and local governments, too, and federal rulemaking will affect the flexibility for local decision-making as such strictures have done before, whether or not they are unfunded. Nine S3F1 rules have been completed since the spring Unified Agenda; across all lower-level governments, 60 S3F1 rules are in the active phase, with 10 planned for the longer term.

**Figure 24. Rules affecting state and local governments**



Source: Compiled by the author 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>.

# Government Accountability Office database on rules and major rules

The federal government’s regulatory reports and databases serve different purposes. The *Federal Register* presents all proposed and final rules affecting the private sector, as well as those involving internal government procedures or programs along with numerous presidential documents and notices. The Unified Agenda presents agency priorities with details about rules at various stages in the production pipeline and their economic significance.

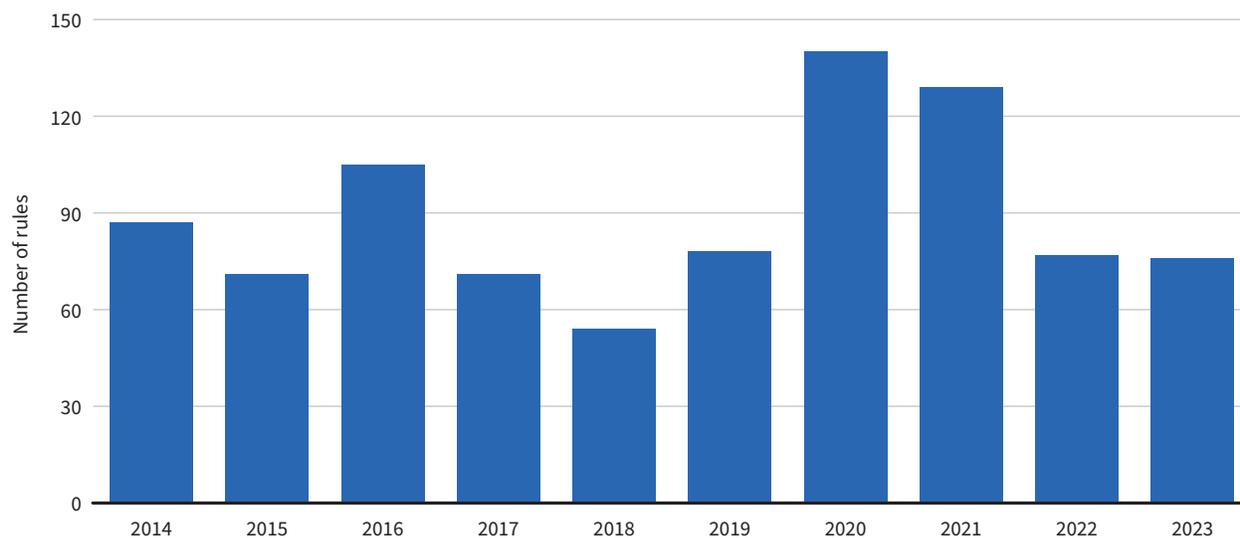
Important information is compiled by the Government Accountability Office (GAO) as well. The 1996 Congressional Review Act (CRA) requires that agencies submit rules to both houses of Congress, as well as to the GAO, and for the GAO to prepare reports to Congress on the major ones—typically those with annual estimated effects of \$100 million or more. Major rules can add burdens, reduce burdens, delay policy implementation,

or set rates and standards for major government programs like Medicaid. Major guidance documents are also subject to the CRA but are rarely presented to the GAO or to Congress in a readily trackable way, and the submission form provided to agencies makes no note of them apart from an “Other” checkbox.<sup>112</sup>

**Interestingly for policymakers, given the CRA, the \$100 million threshold that prevailed before Biden’s “Modernizing Regulatory Review” executive order in a certain sense remains intact; therefore, congressional monitoring of the major rule subset may assume added importance.**

The CRA provides Congress a window of 60 legislative days to review a received rule and pass a resolution of disapproval.<sup>113</sup> Despite the issuance of thousands of rules since the CRA’s passage, only one had been rejected before the Trump

**Figure 25. Major rules in the GAO database**



Source: Government Accountability Office.

administration (a Department of Labor rule on workplace repetitive-motion injuries in 2001). Currently, just 20 have been overturned, the bulk of them during the Trump administration.

Owing to the CRA, one can monitor the thousands of final rules archived at the GAO each year, as well as track reports on those regarded as major. The comprehensive GAO database contained 88,730 rules through year-end 2023. Comparatively, as noted, the *Federal Register* and National Archives repository indicate 101,589 rules since the CRA's passage. The database is important, but partial, as **it appears that a failure to properly report final rules to both the GAO and to Congress as the CRA requires persists**, a lapse that policymakers should address.<sup>114</sup>

For the year 2023, the GAO database contains 2,129 rules received from departments and agencies,<sup>115</sup> and 76 reports on major rules. Figure 25 depicts

the number of major rule reports between 2014 and 2023 that policymakers might compare with final significant and completed S3F1 rules presented earlier. This report's Appendix L presents agency detail on these rules back to 2003.

Recognizing that overlap occurs in transition years, totals and calendar-year averages of the number of major rules during recent administrations follow. **Biden's average annual number of major rules exceeds those of his three predecessors.**

- George W. Bush (eight years): 492 major rules, average 62 rules per year
- Barack Obama (eight years): 675 major rules, average 84 rules per year
- Donald Trump (four years): 343 major rules, average 86 rules per year (includes deregulatory)
- Joe Biden (first three years): 282 major rules, average 94 rules per year

# The 2024 Unconstitutionality Index: 44 rules for every law

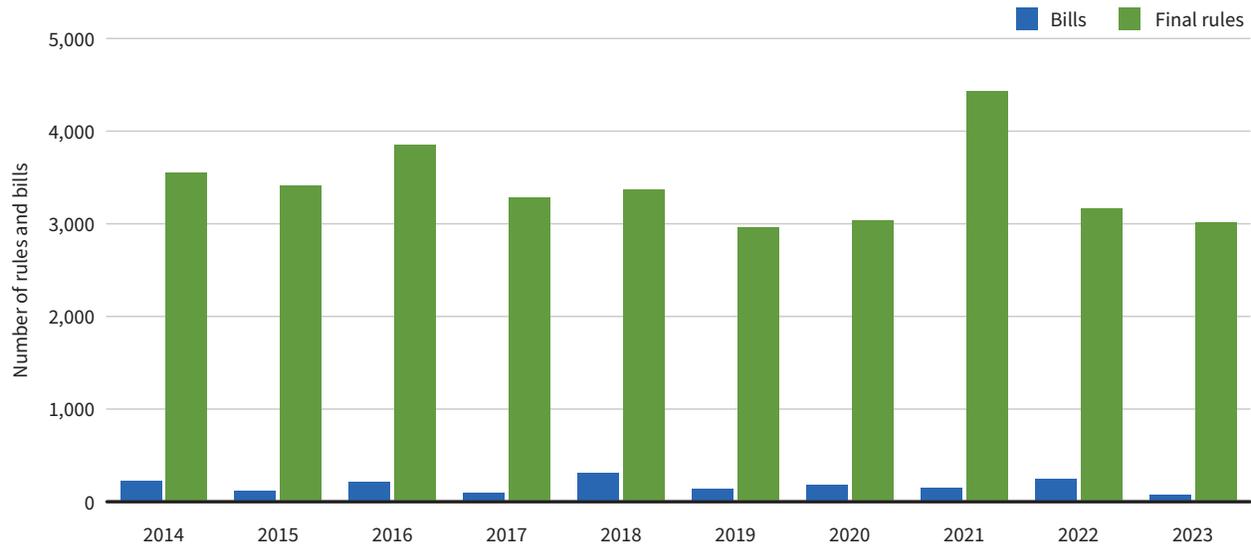
Article I of the Constitution notwithstanding, administrative agencies rather than Congress do most of the lawmaking in the United States.<sup>116</sup> Congress enacts weighty legislation but then delegates substantial lawmaking power to agencies to flesh out details that can exceed intended bounds. From an agency's perspective, the primary measure of its productivity is the body of regulation it produces, so Congress's willingness to delegate is welcomed and adds to the incentives for expansion.<sup>117</sup>

This imbalance gives rise to the Unconstitutionality Index, the ratio of rules issued by agencies relative to laws passed by Congress and signed by the president during a calendar year. During 2023, federal regulatory agencies issued 3,018 final rules, compared with Congress's passing 68 bills (34 each from the outgoing 117th Congress during January 2023, and the 118th Congress since then).

That means 44 rules were issued for every law passed in 2023. The ratio obviously can and does easily fluctuate with changes in the numerator or denominator; however, 44 is uncharacteristically high for the Index owing to the unusually small number of laws passed (see Figure 26 for the 2024 Unconstitutionality Index). The average over the past decade has been 23 rules issued by federal agencies for every law passed by Congress.

Federal agency rules in any given year are not likely to be associated with laws passed that same year; for example, regulations coming to the fore now are and will be the fruit of legislation like the inflation and infrastructure laws passed in recent years. Appendix M provides a look-back over the past three decades of rules and laws, and also depicts executive orders and memoranda for comparison and that may for some purposes be incorporated into a future Index.

**Figure 26. The 2024 Unconstitutionality Index**



Sources: *Federal Register* data from National Archives and Records Administration and from author calculations at <http://www.tenthousandcommandments.com>. Public laws data compiled by the author from Government Printing Office, Public and Private Laws, <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=PLAW> and from <https://www.congress.gov/public-laws/>. Figures also available at National Archives, Previous Sessions: Public Law Numbers, <http://www.archives.gov/federal-register/laws/past/index.html>.

# Needed: An agenda for rightsizing Washington

Rule counts regularly topped 4,000 in the 1990s. That is the wrong comparison for Biden's lower rule counts. His fewer rules have higher costs, are less transparent, have less congressional oversight, and coordinate multiple agencies on whole-of-government campaigns having little to do with their missions.

The near future will likely be even more active. There is a surge in active rules in the Unified Agenda, and the number of rules meeting the doubled \$200 million Section 3(f)(1) (S3F1) threshold is roughly on par with the \$100 million rules from 2022. Further upticks in rules affecting small business and lower-level governments are likely, while guidance document proliferation remains a concern.

We close with an appeal to restore enumerated powers, action items to set Congress back above a de minimis administrative state, and a Regulatory Report Card template. Such reporting transparency and disclosure are a necessary if not

sufficient requirement, much like the role the federal budget itself plays.

**Overdelegation is rampant but a secondary concern compared with recent debt-fueled legislative transformations that flout Congress's own enumerated powers.** The CARES Act, Families First Coronavirus Act, American Rescue Plan, Infrastructure Investment and Jobs Act, Inflation Reduction Act, CHIPS and Science Act, and even lesser-known new laws like the Airport and Airway Extension Act reaffirm the top-down stance toward major productive sectors. As the inventories of Box 1 (completed high-significance actions of 2023) and Appendix J (active and long-term actions in the pipeline) are already revealing, much of tomorrow's rulemaking and guidance will be rooted in the actions of the 117th and 118th Congresses. So a streamlining job awaits the 119th.

Congress should make it hard to both spend and regulate. And it should do this with the zeal it once showed about requirements for a two-thirds

majority vote for revenue increases.<sup>118</sup> Had that effort succeeded, Washington may have been rightsized by now.

In today's setting, rightsizing will require Congress to repeal or amend statutes that sustain the massive regulatory enterprise and abolish, downsize, slash the budgets of, and deny appropriations to agencies, subagencies, and programs. Much of the antitrust regulatory apparatus should be repealed,<sup>119</sup> for example, along with the Federal Trade Commission's and Federal Communications Commission's acts in their current form. Abuses of crises and national emergency declarations require sweeping privatization and localization of federal functions and ending grants and subsidies of all kinds that fuel regulation.<sup>120</sup> Such steps are necessary to abolish the custodial state's whole-of-government forays into climate, equity, competition policy, censorship, and social engineering now undermining the nation's stability, productivity, and fairness.

The 2023 edition of this report surveyed the 118th Congress's primary regulatory reform bills,<sup>121</sup> so here we recap some of the underlying concepts and newer options, which can be carried out—to a lesser extent if Congress fails to act—by an administration committed to administrative streamlining that goes well beyond one-in, two-out.

Foremost, Congress should enforce the regulatory controls now ignored, such as the absence of a timely annual *Information Collection Budget*, the cost-benefit *Report to Congress*, and the accompanying aggregate cost assessment required by the 1999 Regulatory Right-to-Know Act. Congress needs to verify and document that rules and guidance are submitted to both houses of Congress and to the Government Accountability Office (GAO) as required by the Congressional Review Act, and to affirm a stance that rules and guidance not reported are void.

Federal agencies cannot reliably perform cost-benefit analysis, for the same reason that students should not grade their own tests. Creative regulators, now with Office of Management and Budget (OMB) support, can alternate between maximizing suspect net benefits as the new Circular A-4 allows, or they can simply claim that benefits justify costs, as specified in Executive Order 12866. Congress must stop the Circular A-4 regime's fueling of indefinite regulatory expansion and redefine oversight guardrails in such a way that the executive branch cannot erode them again.

If OMB is compromised in such a way that it can no longer perform its supervisory function, it needs to be reformed or replaced.<sup>122</sup> Alternatively, a tough and skeptical Congressional Office of Regulatory Analysis should be established.<sup>123</sup> One was instituted at the turn of the century but was subsequently defunded.

Congress should take direct responsibility and approve all costly or controversial regulations before they are binding. Along with reaffirming constitutional norms, that approach forces Congress to internalize costs of nonquantifiable interventions like those outlined in Appendix C. The current incarnation of this principle is the REINS Act (Regulations from the Executive in Need of Scrutiny Act). The forerunner is the better-named Congressional Responsibility Act, which would “prohibit a regulation from taking effect before the enactment of a bill comprised solely of the text of the regulation.”<sup>124</sup> A related step toward democratic accountability is requiring a Senate-confirmed official to sign off on new rules.

Routine review and rule purging could be enabled by a Regulatory Reduction Commission modeled after the military Base Realignment and Closure Commission to assemble regular reports on outdated, unnecessary, and duplicative rules that

Congress would eliminate by joint resolution.<sup>125</sup> In a related development that might open the door to some cross-fertilization, the House Budget Committee is now mulling a bipartisan Fiscal Commission Act to address the national debt.<sup>126</sup> With containments like the foregoing in place, a limited regulatory budget could help assess, disclose, and cap costs of regulations and guidance documents individually and in the aggregate.

Congress must address guidance document abuse, starting with requiring that guidance documents uniformly attest to their nonbinding nature.<sup>127</sup> No *Code of Federal Regulations*-style database exists for guidance, and even the nascent portals Trump established by executive order were cast aside by the current administration (see Table 5).

Congress needs to formalize guidance document disclosure. The Guidance Out of Darkness (GOOD) Act to establish public portals where agencies post their guidance documents is the primary vehicle here, and it has strong bipartisan support—passing the House Committee on Oversight and Accountability with a 41–0 vote in summer 2023. Further steps beyond the GOOD Act are needed, such as requiring a single portal rather than individual agency portals and implementing a “GIN” or Guidance Information Number classification system mirroring the Regulation Identifier Number for rules.<sup>128</sup> Guidance has risen in significance and should be coordinated and cross-referenceable with *Federal Register* and Unified Agenda rule reporting. As noted earlier, even numerical cataloging for rules and executive orders is relatively new, and guidance can catch up.

Online databases like Regulations.gov make it far easier than in the pre-internet era to learn about regulatory trends and acquire information on rules, but more can be done to reinforce the foregoing reforms. Vital information should be summarized for the public, researchers, and Congress in annual regulatory transparency report cards and historical tables, components of which might resemble Box 2. Possible venues include the federal budget, the Unified Agenda, and the *Economic Report of the President*; Regulations.gov; or as part of a resurrected Regulatory Program of the US Government.

Large-scale rules boast a bewildering terminology encompassing such species as significant, major, S3F1 Significant and until April 2023, economically significant, not counting guidance documents. A report card might inspire some consolidation and easier mapping between the Unified Agenda, the GAO, and the *Federal Register*. In addition to revealing burdens, impacts, and trends, a report card can help reveal what policymakers do not know or appreciate about the regulatory state, such as making more obvious the high percentage of rules for which cost or benefit quantifications do not exist.

Congress needs to take regulatory policy at least as seriously as it takes fiscal policy. It needs to emphasize regulatory oversight and transparency, and clamp down on guidance document abuse and other regulatory dark matter that dodges protections against rogue executive rulemaking. Congress needs to limit not only executive power, but its own power as well. It has increasingly ignored those limits, but it does not have to be that way.

## Box 2. Regulatory transparency report card: Suggested official summary data by program, agency, and grand total

- Tallies of high-significance rules and minor rules by department, agency, and commission, by cost tier (an ALERT Act component)

### Breakdown of High-Significance Rules

Category 1	> \$50 million, < \$500 million
Category 2	> \$500 million, < \$1 billion
Category 3	> \$1 billion
Category 4	> \$5 billion
Category 5	>\$10 billion

- Tallies of regulatory and guidance cost estimates, including subtotals by agency and grand total by category. These could include paperwork hours, economic costs, and social, health and safety, environmental costs
- Aggregate cost estimates of regulation and guidance
- Numbers and percentages of regulations that contain these numerical cost estimates
- Numbers and percentages of rules lacking cost estimates, with explanations
- Number and percentage of interim final rule enactments and reviews
- Tallies of significant and other guidance documents, memoranda, and other regulatory dark matter by department, agency, and commission
- Rankings of most active rule-making agencies
- Identification of which agencies most increased rule output in absolute and percentage terms
- Numbers and percentages of executive and independent agency rules deemed deregulatory
- Numbers and percentages of rules affecting small business by significance, with RFA-required and non-required; deregulatory component
- Depictions of how regulations and guidance accumulate as small businesses grow
- Traditional *Federal Register* analysis, including number of pages and proposed and final rule breakdowns by agency, and reconciliations with other reporting vehicles, such as numbers of rules new to the Unified Agenda; numbers that carry over from previous years
- Number of major rules reported on by the GAO in its database of reports on regulations
- Number and percentage of agency rules and guidance documents presented properly to Congress in accordance with the Congressional Review Act
- Assessment of rules that purportedly affect internal agency procedures alone
- Numbers and percentages of rules facing statutory or judicial deadlines that limit executive branch ability to restrain them, or for which weighing costs and benefits is statutorily prohibited
- Percentages of rules and guidance documents reviewed, and not reviewed, by the OMB, and any actions taken

# Appendixes

## Appendix A. Estimated incremental annual costs of major rules, FY 2020–22 (subset for which OMB presented both costs and benefits)

RIN	Title of rule	2022 \$		
DEPARTMENT OF AGRICULTURE				
0581-AD82	(AMS) Establishmnet of a Domestic Hemp Program			0.021
	USDA 2020(b) increment	0.021		
0581-AD82	(AMS) Establishmnet of a Domestic Hemp Program			0.004
	USDA 2021 increment	0.004		
TOTAL - Department of Agriculture			\$0.025	
DEPARTMENT OF ENERGY				
1904-AC11	(EE) Energy Conservation Standards for Manufactured Housing			\$0.247
1904-AE44	(EE) Energy Efficiency Standards for New Federal Commercial and Multi-Family High-Rise Residential Buildings Baseline Standards Update			-\$0.037
1904-AF09	(EE) Backstop Requirement for General Service Lamps			\$0.199
1904-AF22	(EE) Definitions for General Service Lamps			\$0.230
	Dept. of Energy 2022 increment	\$0.639		
TOTAL—Department of Energy			\$0.639	
DEPARTMENT OF HEALTH AND HUMAN SERVICES				
0955-AA01	(ONC & CMS) Interoperability and Patient Access (CMS-9115-F)			\$0.138

RIN	Title of rule	2022 \$		
0938-AT79	(ONC & CMS) 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program			\$1.027
	HHS 2020(b) increment	\$1.165		
0938-AT97	(CMS) Contract Year 2022 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicaid Program, Medicare Cost Plan Program, and PACE (CMS-4190)			\$0.025
0938-AU02	(CMS) Organ Procurement Organizations (OPOs) (CMS-3380)			\$0.012
0955-AA02	(ONC) Information Blocking and the ONC Health IT Certification Program: Extension of Compliance Dates and Timeframes in Response to the COVID-19 Public Health Emergency			-\$0.057
	HHS 2021 increment	-\$0.020		
0910-AI21	(FDA) Medical Devices; Ear, Nose and Throat Devices; Establishing Over-the-Counter Hearing Aids and Aligning Other Regulations			\$0.001
0970-AC90	(ACF) Head Start COVID-19 Vaccine Mandate			\$0.055
	HHS 2022 increment	\$0.056		
TOTAL—Department of Health and Human Services			\$1.201	
DEPARTMENT OF TRANSPORTATION				
2126-AC25	(FMCSA) Extension of Compliance Date for Entry Level Driver Training			-\$0.226
2127-AL76	(NHTSA) The Safer Affordable Fuel-Efficient (Safe) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks			-\$16.599
	DOT 2020(b) increment	-\$16.825		
2127-AK95	(NHTSA) Establish Side Impact Performance Requirements for Child Restraint Systems (MAP-21)			\$0.008
2127-AM06	(NHTSA) Occupant Protection for Automated Driving Systems			\$0.069
2127-AM34	(NHTSA) Passenger Car and Light Truck Corporate Average Fuel Economy Standards			\$7.954
	DOT 2022 increment	\$8.031		
TOTAL—Department of Transportation			-\$8.794	
DEPARTMENT OF HOMELAND SECURITY				
1615-AC64	(USCIS) Deferred Action for Childhood Arrivals			\$0.537
	DHS 2022 increment	\$0.537		
Total—Department of Homeland Security			\$0.537	
ENVIRONMENTAL PROTECTION AGENCY				
2040-AF75	(OW) Revised Definition of “Waters of the United States” (Step 2)			-\$0.126
2040-AF77	(OW) Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category—Reconsideration			-\$0.176

RIN	Title of rule	2022 \$	
2060-AU48	(OAR) NESHAP: Coal- and Oil-Fired Electric Utility Steam Generating Units—Review of Acid Gas Standards for Certain Existing Eastern Bituminous Coal Refuse-Fired Units		-\$0.049
2060-AT54	(OAR) Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration		-\$0.132
	EPA 2020(b) increment	-\$0.483	
2040-AF15	(OW) National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions		\$0.201
2060-AU84	(OAR) Cross-State Air Pollution Rule (CSAPR) Update Remand for the 2008 Ozone NAAQS		\$0.030
2060-AV17	(OAR) Phase Down of Hydrofluorocarbons under the American Innovation and Manufacturing Act		-\$0.559
2070-AK50	(OCSP) Review of Dust-Lead Post-Abatement Clearance Levels		\$0.003
	EPA 2021 increment	(\$0.325)	
2008-AA03	(RODENVER) Federal Implementation Plan for Oil and Natural Gas Sources; Uintah and Ouray Indian Reservation in Utah		\$0.100
2060-AU20	(OAR) National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters: Amendments		\$0.053
2060-AV11	(OAR) Renewable Fuel Standard (RFS) Program: RFS Annual Rules		\$3.907
2060-AV13	(OAR) Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards		\$16.138
	EPA 2022 increment	\$20.198	
TOTAL—Environmental Protection Agency			\$19.390
GRAND TOTAL, ALL DEPARTMENTS AND AGENCIES, Third Decade, 20th Century			\$12.998
			\$12.998

Source: OMB Draft Reports to Congress; OMB had issued two reports cover-dated 2020, first for FY2019; hence the “(b)” designation herein. Online updates at <http://tinyurl.com/2ayaybp5>.

Note: OMB “primary” estimate at 7 percent.

## Appendix B. Estimated incremental annual costs of major rules, FY 2020–2023 (subset for which OMB presented costs only)

OMB 2020(b), table 1-6(b), 27 rules (2022 \$)		
ED 1870-AA14	Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance	\$14
HHS 0910-AI39	Required Warnings for Cigarette Packages and Advertisements	\$132
HHS 0938-AT68	CY 2020 Home Health Prospective Payment System Rate Update and Quality Reporting Requirements (CMS-1711-F)	\$196
HHS 0938-AU22	CY 2020 Hospital Outpatient PPS Policy Changes: Price Transparency Requirements for Hospitals to Make Standard Charges Public (CMS-1717-F2)	\$45
HHS 0938-AT53	Exchange Program Integrity (CMS-9922-F)	\$344
HHS 0938-AU33 <sup>^</sup>	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 (CMS-3401)	\$870
HHS 0945-AA11	Nondiscrimination in Health and Health Education Programs or Activities	(\$285)
DOJ 1117-AB55	Implementation of the SUPPORT Act: Dispensing and Administering Controlled Substances for Medicated-Assisted Treatment	(\$653)
DOL 1205-AB85	Apprenticeship Programs, Labor Standards for Registration, Amendment of Regulations	\$54
DOL 1210-AB90	Default Electronic Disclosures by Employee Pension Benefit Plans under ERISA	(\$414)
DOL 1210-AB20	Pension Benefit Statements—Disclosure Regarding Lifetime Income, SECURE Act	\$14
DOL 1235-AA26 <sup>^</sup>	Joint Employer Status under the Fair Labor Standards Act	\$49
DOL 1235-AA35	Paid Leave under the Families First Coronavirus Response Act	\$638
TREAS 1545-BP04	Qualified Opportunity Funds	\$0
DOC 0648-BB38 <sup>^</sup>	Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico	\$35
CEQ 0331-AA03	Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act	(\$94)
DHS 1615-AC19	Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications	\$433
DHS 1615-AC27	Asylum Application, Interview, and Employment Authorization for Applicants	\$2,533

EPA 2040-AF77	Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category—Reconsideration	(\$176)
EPA 2060-AM75	Reclassification of Major Sources as Area Sources under Section 112 of the Clean Air Act	(\$80)
DOT 2126-AC19	Hours of Service of Drivers	(\$315)
VA 2900-AQ48	Program of Comprehensive Assistance for Family Caregivers Amendments under the VA MISSION Act of 2018	\$96
ED 1840-AD38	Ensuring Student Access to High Quality and Innovative Postsecondary Educational Programs	\$0
DoD 0750-AJ81	Defense Federal Acquisition Regulation Supplement: Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019-D041)	\$7,819
FAR 9000-AN65	FAR Case 2018-004; Increased Micro-Purchase and Simplified Acquisition Thresholds	(\$243)
FAR 9000-AN92	FAR Case 2019-009, Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment	\$6,483
FAR 9000-AN92	FAR Case 2019-009, Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment	(\$1,118)
	Fiscal year total:	\$16,377

<b>OMB 2021, table 1-6(b), 20 rules (second column 2022 \$)</b>		
DOC/ADMIN 0605-AA51	Securing the Information and Communications Technology and Services Supply Chain	\$11,599
DOC/NOAA 0648-BB38	Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico	\$35
DOC/NOAA 0648-BK51	Framework Adjustment 33 to the Atlantic Sea Scallop Fishery Management Plan	\$116
DOD/OS 0790-AK85	National Industrial Security Program Operating Manual (NISPOM)	\$17
HHS/OIG 0936-AA08	Removal of Safe Harbor Protection for Rebates to Plans or PBMs Involving Prescription Pharmaceuticals and Creation of New Safe Harbor Protection	\$425
HHS/CMS 0938-AU04	Transparency in Coverage (CMS-9915)	\$4,561
HHS/CMS 0938-AU12	CY 2021 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1736)	\$134
HHS/CMS 0938-AU57	COVID-19 Vaccine Immunization Requirements for LTC Residents and Staff (CMS-3414)	\$178
HHS/CMS 0938-AU60	Patient Protection and Affordable Care Act; Updating Payment Parameters and Improving Health Insurance Markets for 2022 and Beyond (CMS-9906)	(\$300)
HHS/CMS 0938-AU63	Requirements Related to Surprise Billing; Part I (CMS-9909)	\$2,409
HHS/CMS 0938-ZB64	Basic Health Program; Federal Funding Methodology for Program Year 2022 (CMS-2438)	(\$270)
DOJ/DEA 1117-AB55	Implementation of the SUPPORT Act: Dispensing and Administering Controlled Substances for Medicated-Assisted Treatment	(\$653)
DOL/EBSA 1210-AC00	Requirements Related to Surprise Billing, Part 2	\$392

DOL/EBSA 1210-ZA29	Improving Investment Advice for Workers & Retirees Exemption	\$91
DOL/OSHA 1218-AD36	Subpart U—Emergency Temporary Standard—COVID-19	\$4,281
DOL/WHD 1235-AA34	Independent Contractor Status under the Fair Labor Standards Act	\$502
TREAS/IRS 1545-BO67	Rules for Denial of Deduction for Certain Fines, Penalties, and Other Amounts	(\$84)
TREAS/IRS 1545-BO99	Section 4960 Excise Tax on Tax-Exempt Organization Compensation	\$4
DOT/FAA 2120-AK85	Operations of Small Unmanned Aircraft Over People	(\$88)
DOT/PHMSA 2137-AF36	Pipeline Safety: Gas Pipeline Regulatory Reform	(\$147)
	Fiscal year total:	\$23,202

OMB 2022, table 1-6(b), 9 rules (second column 2022 \$)		
USDA/FNS 0584-AE81	Child Nutrition Programs: Temporary Standards for Milk, Whole Grains, and Sodium	(\$928)
HHS/CMS 0938-AU65	HHS Notice of Benefit and Payment Parameters for 2023 (CMS-9911)	(\$127)
HHS/CMS 0938-AU66	Prescription Drug and Health Care Spending (CMS-9905)	\$392
HHS/CMS 0938-AU75	Omnibus COVID-19 Health Care Staff Vaccination (CMS-3415)	\$1,543
DOL/WHD 1235-AA21	Tip Regulations under the Fair Labor Standards Act (FLSA); Partial Withdrawal	\$208
TREAS/FINCEN 1506-AB49	Section 6403. Corporate Transparency Act	\$8,482
DHS/USCIS 1615-AC67	Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal and Cat Protection Claims by Asylum Officers	\$504
DHS/USCIS 1615-AC78	Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants	(\$3,454)
DOT/FAA 2120-AL41	Flight Attendant Duty Period Limitations and Rest Requirements	\$72
	Fiscal year total:	\$6,692
FY 2020(b)—22 total check:		\$46,271
<b>TOTAL</b>		<b>\$46,271</b>

Source: OMB Draft Reports to Congress; OMB had issued two reports cover-dated 2020, first for FY2019; hence the “(b)” designation herein. Online updates at <http://tinyurl.com/2ayaybp5>.

Note: OMB “primary” estimate at 7 percent.

## Appendix C. A partial compilation of unmeasured and disregarded costs of federal intervention<sup>129</sup>

### I. Unmeasured costs of shortcomings in Administrative Procedure Act oversight

#### A. Rule cost categories prone to escaping measurement and disclosure

- Costs of high-significance rules that agencies do not classify as such
- Costs of independent agency regulations
- Costs of unfunded mandates on states and localities
- Costs of interpretive rules and guidance documents
- Indirect costs
- Jobs lost and not created because of regulation<sup>130</sup>

#### B. Process/oversight shortcomings generating unknown financial and societal costs<sup>131</sup>

- Costs of abandonment of formal rulemaking
- Costs of agencies' failure to issue a notice of proposed rulemaking for a significant portion of rules
- Costs of agency-gamed notice-and-comment processes
- Costs of agencies' undermining the Congressional Review Act by failing to submit final

rules to Congress and to the Government Accountability Office for consideration

- Costs of pro-regulatory bias
- Costs of economically disruptive policy uncertainty
- Costs of regulation by sue-and-settle agreements
- Costs of regulatory accumulation
- Costs of differential effects of rules on businesses

### II. Unmeasured costs of the loss of liberty<sup>132</sup>

- Costs of regulatory takings and property value destruction<sup>133</sup>
- Costs of abandoning negative rights for a positive rights framework that treats citizens unequally under the law<sup>134</sup>
- Costs of delegation of lawmaking power to the executive branch and to unelected administrators<sup>135</sup>
- Costs of lack of agency accountability to Congress through agency self-funding<sup>136</sup>
- Costs of normalizing dependency
- Costs of imposing regulation based on secret or creatively leveraged data<sup>137</sup>
- Costs of abandoned federalism<sup>138</sup>
- Costs of overcriminalization<sup>139</sup>
- Costs of loss of anonymity owing to state surveillance<sup>140</sup>

### III. Costs of spending and legislative programs with sweeping regulatory effect

- Costs of top-down national plans, agendas, and treaties<sup>141</sup>
- Costs of distortions created by ordinary federal spending, subsidies, and stimulus<sup>142</sup>
- Costs of deadweight effects of federal spending<sup>143</sup>
- Costs and distortions of government spending to steer investment in science and technology

### IV. Costs of the derailment of market institutions

- Costs of the false presumption of agency expertise<sup>144</sup>
- Costs of disregard of government failure
- Costs of interference with price, distribution, and access mechanisms
- Costs of antitrust regulation and the institutionalization of raising competitors' costs<sup>145</sup>
- Costs of blurring corporate and government roles with government-sponsored enterprises and public-private partnerships<sup>146</sup>

- Costs of government steering by direct ownership or control of resources<sup>147</sup>
- Costs of eroded property rights and failure to extend them into new sectors
- Costs of regulatory public utility, siloed-infrastructure models
- Costs of top-down approaches to environmental amenities and concerns<sup>148</sup>
- Costs of permission-seeking and excessive occupational licensing
- Costs of cronyism through rent-seeking<sup>149</sup>
- Costs of permanent bureaucracy<sup>150</sup>

### V. Costs of lethality

- Costs of the precautionary principle and the derailment of normal evolutionary risk-management innovation
- Costs of selective expression of benefits
- Costs of wealth and health loss induced by regulation
- Health costs of rent-seeking
- Costs of undermining markets in information

## Appendix D. Federal Register page history

Year	Unadjusted page count	Jumps/blanks	Adjusted page count
1936	2,620	n/a	2,620
1937	3,450	n/a	3,450
1938	3,194	n/a	3,194
1939	5,007	n/a	5,007
1940	5,307	n/a	5,307
1941	6,877	n/a	6,877
1942	11,134	n/a	11,134
1943	17,553	n/a	17,553
1944	15,194	n/a	15,194
1945	15,508	n/a	15,508
1946	14,736	n/a	14,736
1947	8,902	n/a	8,902
1948	9,608	n/a	9,608
1949	7,952	n/a	7,952
1950	9,562	n/a	9,562
1951	13,175	n/a	13,175
1952	11,896	n/a	11,896
1953	8,912	n/a	8,912
1954	9,910	n/a	9,910
1955	10,196	n/a	10,196
1956	10,528	n/a	10,528
1957	11,156	n/a	11,156
1958	10,579	n/a	10,579
1959	11,116	n/a	11,116
1960	14,479	n/a	14,479
1961	12,792	n/a	12,792
1962	13,226	n/a	13,226
1963	14,842	n/a	14,842

Year	Unadjusted page count	Jumps/blanks	Adjusted page count
1964	19,304	n/a	19,304
1965	17,206	n/a	17,206
1966	16,850	n/a	16,850
1967	21,088	n/a	21,088
1968	20,072	n/a	20,072
1969	20,466	n/a	20,466
1970	20,036	n/a	20,036
1971	25,447	n/a	25,447
1972	28,924	n/a	28,924
1973	35,592	n/a	35,592
1974	45,422	n/a	45,422
1975	60,221	n/a	60,221
1976	57,072	6,567	50,505
1977	65,603	7,816	57,787
1978	61,261	5,565	55,696
1979	77,498	6,307	71,191
1980	87,012	13,754	73,258
1981	63,554	5,818	57,736
1982	58,494	5,390	53,104
1983	57,704	4,686	53,018
1984	50,998	2,355	48,643
1985	53,480	2,978	50,502
1986	47,418	2,606	44,812
1987	49,654	2,621	47,033
1988	53,376	2,760	50,616
1989	53,842	3,341	50,501
1990	53,620	3,825	49,795
1991	67,716	9,743	57,973
1992	62,928	5,925	57,003
1993	69,688	8,522	61,166
1994	68,108	3,194	64,914
1995	67,518	4,873	62,645
1996	69,368	4,777	64,591
1997	68,530	3,981	64,549
1998	72,356	3,785	68,571

Year	Unadjusted page count	Jumps/blanks	Adjusted page count
1999	73,880	2,719	71,161
2000	83,294	9,036	74,258
2001	67,702	3,264	64,438
2002	80,332	4,726	75,606
2003	75,798	4,529	71,269
2004	78,852	3,177	75,675
2005	77,777	3,907	73,870
2006	78,724	3,787	74,937
2007	74,408	2,318	72,090
2008	80,700	1,265	79,435
2009	69,644	1,046	68,598
2010	82,480	1,075	81,405
2011	82,415	1,168	81,247
2012	80,050	1,089	78,961
2013	80,462	1,151	79,311
2014	78,796	1,109	77,687
2015	81,402	1,142	80,260
2016	97,069	1,175	95,894
2017	61,703	636	61,067
2018	67,593	815	66,778
2019	72,566	840	71,726
2020	87,349	993	86,356
2021	74,532	761	73,771
2022	80,757	901	79,856
2023	90,402	1,034	89,368

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

Note: Publication of proposed rules was not required before the Administrative Procedures Act of 1946. Preambles to rules were published only to a limited extent before the 1970s. n/a = not available at time of writing.

## Appendix E. Number of documents by type published in the Federal Register

Year	Final rules	Significant subset	Proposed rules	Significant subset	Other*	Total	Final rule pages	Average pages per final rule	Proposed rule pages	Average pages per proposed rule
1976	7,401		3,875		27,223	38,499	12,589	1.7	9,325	2.4
1977	7,031		4,188		28,381	39,600	14,572	2.1	9,620	2.3
1978	7,001		4,550		28,705	40,256	15,452	2.2	11,885	2.6
1979	7,611		5,824		29,211	42,646	19,366	2.5	18,091	3.1
1980	7,745		5,347		33,670	46,762	21,092	2.7	16,276	3.0
1981	6,481		3,862		30,090	40,433	15,300	2.4	10,433	2.7
1982	6,288		3,729		28,621	38,638	15,222	2.4	12,130	3.3
1983	6,049		3,907		27,580	37,536	16,196	2.7	12,772	3.3
1984	5,154		3,350		26,047	34,551	15,473	3.0	11,972	3.6
1985	4,843		3,381		22,833	31,057	15,460	3.2	13,772	4.1
1986	4,589		3,185		21,546	29,320	13,904	3.0	11,816	3.7
1987	4,581		3,423		22,052	30,056	13,625	3.0	14,181	4.1
1988	4,697		3,240		22,047	29,984	16,042	3.4	13,883	4.3
1989	4,714		3,194		22,218	30,126	16,489	3.5	13,220	4.1
1990	4,334		3,041		22,999	30,374	14,179	3.3	12,692	4.2
1991	4,416		3,099		23,427	30,942	16,792	3.8	16,761	5.4
1992	4,155		3,170		24,063	31,388	15,921	3.8	15,156	4.8
1993	4,369		3,207		24,017	31,593	18,016	4.1	15,410	4.8
1994	4,867		3,372		23,669	31,908	20,385	4.2	18,183	5.4
1995	4,713		3,339	222	23,133	31,185	18,047	3.8	15,982	4.8
1996	4,937	309	3,208	252	24,485	32,630	21,622	4.4	15,369	4.8
1997	4,584	267	2,881	226	26,260	33,725	18,984	4.1	15,309	5.3
1998	4,899	242	3,042	264	26,313	34,254	20,029	4.1	18,256	6.0
1999	4,684	232	3,281	335	26,074	34,039	20,201	4.3	19,447	5.9
2000	4,313	290	2,636	254	24,976	31,925	24,482	5.7	17,943	6.8

Year	Final rules	Significant subset	Proposed rules	Significant subset	Other*	Total	Final rule pages	Average pages per final rule	Proposed rule pages	Average pages per proposed rule
2001	4,132	297	2,512	206	25,392	32,036	19,643	4.8	14,666	5.8
2002	4,167	282	2,638	306	26,250	33,055	19,233	4.6	18,640	7.1
2003	4,148	335	2,538	314	25,168	31,854	22,670	5.5	17,357	6.8
2004	4,101	320	2,430	296	25,846	32,377	22,546	5.5	19,332	8.0
2005	3,943	257	2,257	197	26,020	32,220	23,041	5.8	18,260	8.1
2006	3,718	162	2,346	212	25,429	31,493	22,347	6.0	19,794	8.4
2007	3,595	180	2,308	308	24,784	30,687	22,771	6.3	18,611	8.1
2008	3,830	427	2,475	380	25,708	32,013	26,320	6.9	18,648	7.5
2009	3,503	371	2,044	330	25,218	30,765	20,782	5.9	16,681	8.2
2010	3,573	424	2,439	448	26,543	32,555	24,914	7.0	21,844	9.0
2011	3,807	422	2,898	483	26,296	33,001	26,274	6.9	23,193	8.0
2012	3,708	353	2,517	257	24,652	30,877	24,690	6.7	20,096	8.0
2013	3,659	331	2,594	316	24,517	30,770	26,417	7.2	20,619	7.9
2014	3,554	308	2,383	385	24,257	30,194	24,861	7.0	20,731	8.7
2015	3,410	345	2,342	381	24,294	30,046	24,694	7.2	22,588	9.6
2016	3,853	486	2,419	369	24,912	31,184	38,652	10.0	21,457	8.9
2017	3,280	224	1,809	176	22,441	27,530	18,831	5.7	10,495	5.8
2018	3,368	199	2,044	292	22,338	27,750	18,214	5.4	16,761	8.2
2019	2,964	262	2,132	370	22,072	27,168	20,857	7.0	19,365	9.1
2020	3,353	436	2,149	344	22,806	28,308	32,223	9.6	19,984	9.3
2021	3,257	375	2,094	264	22,361	27,712	23,634	7.3	16,392	7.8
2022	3,168	268	2,044	236	22,821	28,033	21,750	6.9	23,791	11.6
2023	3,018	289	2,102	277	23,197	28,317	26,286	8.7	28,892	13.7

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

Note: There continues to be periodic minor discrepancies between online *Federal Register* database and NARA pdf archive. \* “Other” documents are presidential documents, agency notices, and corrections.

## Appendix F. Code of Federal Regulations page counts and number of volumes

Year	Actual pages published (includes text, preliminary pages, and tables)				Unrevised CFR volumes**	Total pages complete CFR	Total CFR volumes (excluding index)
	Titles 1–50 (minus title 3)	Title 3 (POTUS docs)	Index*	Total pages published			
1975	69,704	296	792	70,792	432	71,224	133
1976	71,289	326	693	72,308	432	72,740	139
1977	83,425	288	584	84,297	432	84,729	141
1978	88,562	301	660	89,523	4,628	94,151	142
1979	93,144	438	990	94,572	3,460	98,032	148
1980	95,043	640	1,972	97,655	4,640	102,295	164
1981	103,699	442	1,808	105,949	1,160	107,109	180
1982	102,708	328	920	103,956	982	104,938	177
1983	102,892	354	960	104,206	1,448	105,654	178
1984	110,039	324	998	111,361	469	111,830	186
1985	102,815	336	1,054	104,205	1,730	105,935	175
1986	105,973	512	1,002	107,487	1,922	109,409	175
1987	112,007	374	1,034	113,415	922	114,337	185
1988	114,634	408	1,060	116,102	1,378	117,480	193
1989	118,586	752	1,058	120,396	1,694	122,090	196
1990	121,837	376	1,098	123,311	3,582	126,893	199
1991	119,969	478	1,106	121,553	3,778	125,331	199
1992	124,026	559	1,122	125,707	2,637	128,344	199
1993	129,162	498	1,141	130,801	1,427	132,228	202
1994	129,987	936	1,094	132,017	2,179	134,196	202
1995	134,471	1,170	1,068	136,709	1,477	138,186	205
1996	129,386	622	1,033	131,041	1,071	132,112	204
1997	128,672	429	1,011	130,112	948	131,060	200
1998	132,884	417	1,015	134,316	811	135,127	201
1999	130,457	401	1,022	131,880	3,052	134,932	202

Year	Actual pages published (includes text, preliminary pages, and tables)				Unrevised CFR volumes**	Total pages complete CFR	Total CFR volumes (excluding index)
	Titles 1-50 (minus title 3)	Title 3 (POTUS docs)	Index*	Total pages published			
2000	133,208	407	1,019	134,634	3,415	138,049	202
2001	134,582	483	1,041	136,106	5,175	141,281	206
2002	137,373	1,114	1,039	139,526	5,573	145,099	207
2003	139,550	421	1,053	141,024	3,153	144,177	214
2004	143,750	447	1,073	145,270	2,369	147,639	217
2005	146,422	103	1,083	147,608	4,365	151,973	221
2006	149,594	376	1,077	151,047	3,060	154,107	222
2007	149,236	428	1,088	150,752	5,258	156,010	222
2008	151,547	453	1,101	153,101	4,873	157,974	222
2009	158,369	412	1,112	159,893	3,440	163,333	225
2010	152,455	512	1,122	154,089	11,405	165,494	226
2011	159,129	486	1,136	160,751	8,544	169,295	230
2012	164,884	472	1,154	166,510	8,047	174,557	235
2013	166,352	520	1,170	168,042	7,454	175,496	235
2014	165,016	538	1,170	166,724	12,657	179,381	236
2015	170,278	495	1,170	171,943	6,334	178,277	237
2016	174,769	570	1,170	176,509	8,544	185,053	242
2017	178,628	846	1,170	180,644	5,730	186,374	242
2018	170,952	608	1,170	172,730	12,718	185,448	242
2019	172,022	1,092	1,170	174,284	11,700	185,984	242
2020	172,134	575	1,254	173,963	12,682	186,645	242
2021	180,495	789	1,277	182,561	5,785	188,346	243

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

Note: CFR = Code of Federal Regulations; POTUS = president of the United States.

\*General Index and Finding Aids volume for 1975 and 1976. \*\* Unrevised CFR volumes page totals include those previous editions for which a cover only was issued during the year or any previous editions for which a supplement was issued.

## Appendix G. Executive orders by administration

	Sequence number		Total number of executive orders
	Ending	Beginning	
George Washington	n/a	n/a	8
John Adams	n/a	n/a	1
Thomas Jefferson	n/a	n/a	4
James Madison	n/a	n/a	1
James Monroe	n/a	n/a	1
John Quincy Adams	n/a	n/a	3
Andrew Jackson	n/a	n/a	12
Martin van Buren	n/a	n/a	10
William Henry Harrison	n/a	n/a	0
John Tyler	n/a	n/a	17
James K. Polk	n/a	n/a	18
Zachary Taylor	n/a	n/a	5
Millard Fillmore	n/a	n/a	12
Franklin Pierce	n/a	n/a	35
James Buchanan	n/a	n/a	16
Abraham Lincoln	n/a	n/a	48
Andrew Johnson	n/a	n/a	79
Ulysses S. Grant	n/a	n/a	217
Rutherford B. Hayes	n/a	n/a	92
James Garfield	n/a	n/a	6
Chester Arthur	n/a	n/a	96
Grover Cleveland - I	n/a	n/a	113
Benjamin Harrison	n/a	n/a	143
Grover Cleveland - II	n/a	n/a	140
William McKinley	n/a	n/a	185
Theodore Roosevelt	n/a	n/a	1,081
William Howard Taft	n/a	n/a	724

	Sequence number		Total number of executive orders
	Ending	Beginning	
Woodrow Wilson	n/a	n/a	1,803
Warren G. Harding	n/a	n/a	522
Calvin Coolidge	n/a	n/a	1,203
Herbert Hoover	6,070	5,075	996
Franklin D. Roosevelt	9,537	6,071	3,467
Harry S. Truman	10,431	9,538	894
Dwight D. Eisenhower	10,913	10,432	482
John F. Kennedy	11,127	10,914	214
Lyndon B. Johnson	11,451	11,128	324
Richard Nixon	11,797	11,452	346
Gerald R. Ford	11,966	11,798	169
Jimmy Carter	12,286	11,967	320
Ronald Reagan	12,667	12,287	381
George H. W. Bush	12,833	12,668	166
William J. Clinton	13,197	12,834	364
George W. Bush	13,488	13,198	291
Barack Obama	13,764	13,489	276
Donald Trump	13,984	13,765	220
Joe Biden	14,114	13,985	130
<b>Total Number of Executive Orders</b>			<b>15,635</b>

Source: Author's tabulations; Executive Orders Disposition Tables Index, Office of the Federal Register, National Archives, <http://www.archives.gov/federal-register/executive-orders/disposition.html>; "Executive Orders," The American Presidency Project, ed. John T. Woolley and Gerhard Peters (Santa Barbara, CA: 1999–2014), <http://www.presidency.ucsb.edu/data/orders.php>.

Note: n/a = not applicable or not available.

## Appendix H. Number of regulatory reviews at the Office of Information and Regulatory Affairs

Year	Prerule reviews	Proposed rule reviews	Interim final rule reviews	Final rule reviews	Notice reviews	Total reviews	ES reviews	Non-ES reviews	Average days review time		
									Days ES reviews	Days non-ES reviews	Overall average days
1991		1,201		1,322		2,523	142	2,381	39	29	29
1992		970		1,315		2,285	121	2,164	44	39	39
1993	2	976	6	1,155	28	2,167	106	2,061	53	42	43
1994	16	317	68	302	128	831	134	697	33	30	31
1995	8	225	64	270	53	620	74	546	41	35	35
1996	28	160	56	232	31	507	74	433	39	42	42
1997	20	196	64	174	51	505	81	424	47	54	53
1998	15	192	58	182	40	487	73	414	33	50	48
1999	19	247	71	214	36	587	86	501	51	53	53
2000	13	210	66	253	40	582	92	490	60	62	62
2001	9	274	95	285	37	700	111	589	46	60	58
2002	23	261	81	249	55	669	100	569	44	46	46
2003	23	232	92	309	59	715	101	614	42	50	49
2004	26	237	64	241	58	626	85	541	35	55	53
2005	18	221	66	247	59	611	82	529	39	59	57
2006	12	229	43	270	46	600	71	529	34	59	56
2007	22	248	44	250	25	589	85	504	49	64	61
2008	17	276	39	313	28	673	135	538	53	63	61
2009	28	214	67	237	49	595	125	470	33	40	39
2010	36	261	84	232	77	690	138	552	48	51	51
2011	24	317	76	262	61	740	117	623	51	60	58
2012	12	144	33	195	40	424	83	341	69	81	79
2013	11	177	33	160	37	418	104	314	121	143	137
2014	17	201	43	144	46	452	114	338	106	134	127
2015	8	178	29	164	35	415	130	285	84	90	88

Year	Prerule reviews	Proposed rule reviews	Interim final rule reviews	Final rule reviews	Notice reviews	Total reviews	ES reviews	Non-ES reviews	Average days review time		
									Days ES reviews	Days non-ES reviews	Overall average days
2016	14	231	28	303	45	623	156	467	83	79	80
2017	13	84	12	103	24	237	70	167	56	74	68
2018	25	168	11	124	32	360	91	269	63	68	67
2019	26	234	25	147	41	474	117	357	77	80	79
2020	14	213	77	257	104	669	199	470	57	75	70
2021	30	170	58	173	72	503	172	331	58	60	59
2022	18	191	24	147	103	485	161	324	75	72	73
2023	19	236	24	177	119	575	114	461	81	72	74

Source: Author search on RegInfo.gov, "Review Counts" database search engine under Regulatory Review heading.

Note: ES = economically significant.

## Appendix I. Unified Agenda rules history

1980s		
1983	April	2,863
	October	4,032
1984	April	4,114
	October	4,016
1985	April	4,265
	October	4,131
1986	April	3,961
	October	3,983
1987	April	4,038
	October	4,005
1988	April	3,941
	October	4,017
1989	April	4,003
	October	4,187

2010s		
2010	December	4,225
2011	December	4,128
2012	Year-End*	4,062
2013	November	3,305
2014	November	3,415
2015	November	3,297
2016	November	3,318
2017	December	3,209
2018	October	3,534
2019	October	3,752

1990s		
1990	April	4,332
	October	4,470
1991	April	4,675
	October	4,863
1992	April	4,186
	October	4,909
1993	April	4,933
	October	4,950
1994	April	5,105
	October	5,119
1995	April	5,133
	October	4,735
1996	April	4,570
	October	4,680
1997	April	4,417
	October	4,407
1998	April	4,504
	October	4,560
1999	April	4,524
	October	4,568

2020s		
2020	December	3,852
2021	December	3,772
2022	January 4, 2023	3,690
2023	December 6, 2023	3,599

2000s		
2000	October	4,699
2001	October	4,509
2002	October	4,187
2003	December	4,266
2004	December	4,083
2005	October	4,062
2006	December	4,052
2007	December	3,882
2008	December	4,004
2009	December	4,043

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

\*Spring edition skipped in 2012.

## Appendix J. Inventory of 263 “Section 3(f)(1) Significant” active and long-term rules in the pipeline (from fall 2023 Unified Agenda of Federal Regulations)

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

Note: The “Regulation Identifier Number” or RIN appears at the end of each entry below. For additional information see “How to Use the Unified Agenda,” [http://www.reginfo.gov/public/jsp/eAgenda/StaticContent/UA\\_HowTo.jsp](http://www.reginfo.gov/public/jsp/eAgenda/StaticContent/UA_HowTo.jsp).

### ACTIVE RULEMAKINGS (233 actions)

#### DEPARTMENT OF AGRICULTURE

1. USDA/AgSEC, Final Rule Stage, Partnerships with Faith-Based and Neighborhood Organizations, 0503-AA73
2. USDA/RBS, Proposed Rule Stage, Higher Blends Infrastructure Incentive Program, 0570-AB11
3. USDA/APHIS, Proposed Rule Stage, AQI User Fees, 0579-AE71
4. USDA/FNS, Final Rule Stage, Supplemental Nutrition Assistance Program: Standard Utility Allowances Based on the Receipt of Energy Assistance Payments, 0584-AE43
5. USDA/FNS, Final Rule Stage, Supplemental Nutrition Assistance Program (SNAP): Stan-

dardization of State Heating and Cooling Standard Utility Allowances, 0584-AE69

6. USDA/FNS, Final Rule Stage, Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages, 0584-AE82
7. USDA/FNS, Final Rule Stage, Child Nutrition Programs: Revisions to Meal Patterns Consistent with the 2020 Dietary Guidelines for Americans, 0584-AE88
8. USDA/FNS, Final Rule Stage, Interim Final Rule—Implementing Provisions from the Consolidated Appropriations Act, 2023: Establishing the Summer EBT Program and Non-Congregate Option in the Summer Food Service Program, 0584-AE96

#### DEPARTMENT OF COMMERCE

9. DOC/ADMIN, Final Rule Stage, Securing the Information and Communications Technology and Services Supply Chain, 0605-AA51
10. DOC/ITA, Final Rule Stage, Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord with Presidential Proclamation 10414, 0625-AB21
11. DOC/NIST, Final Rule Stage, Preventing the Improper Use of CHIPS Act Funding, 0693-AB70
12. DOD/DARC, Proposed Rule Stage, Assessing Contractor Implementation of Cybersecu-

rity Requirements (DFARS Case 2019-D041), 0750-AK81

## DEPARTMENT OF DEFENSE

13. DOD/OS, Proposed Rule Stage, Cybersecurity Maturity Model Certification (CMMC) Program, 0790-AL49

## DEPARTMENT OF EDUCATION

14. ED/OPE, Proposed Rule Stage, Accreditation and Related Issues, 1840-AD82
15. ED/OPE, Proposed Rule Stage, State Authorization, 1840-AD83
16. ED/OPE, Proposed Rule Stage, Return to Title IV, 1840-AD85
17. ED/OPE, Proposed Rule Stage, Cash Management, 1840-AD86
18. ED/OPE, Proposed Rule Stage, Third-Party Servicers and Related Issues, 1840-AD87
19. ED/OPE, Proposed Rule Stage, Improving Use of Deferments and Forbearances, 1840-AD88
20. ED/OPE, Proposed Rule Stage, Distance Education, 1840-AD92
21. ED/OPE, Proposed Rule Stage, Student Loan Relief, 1840-AD93
22. ED/OPE, Final Rule Stage, Partnerships with Faith-Based and Neighborhood Organizations, 1840-AD67
23. ED/OPEPD, Proposed Rule Stage, EDGAR Revisions, 1875-AA14
24. ED/OS, Proposed Rule Stage, Debt Collection Practices, 1894-AA12

## DEPARTMENT OF ENERGY

25. DOE/ENDEP, Prerule Stage, Advanced Technology Vehicles Manufacturing Incentive Program, 1901-AB55
26. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Walk-In Coolers and Freezers, 1904-AD79

27. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Commercial Refrigerators, Freezers, and Refrigerator-Freezers, 1904-AD82
28. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Dehumidifiers, 1904-AE61
29. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Consumer Furnaces, 1904-AF19
30. DOE/EE, Proposed Rule Stage, Energy Conservation Standards for Expanded Scope Electric Motors, 1904-AF55
31. DOE/EE, Final Rule Stage, Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces, 1904-AD20
32. DOE/EE, Final Rule Stage, Energy Conservation Standards for Circulator Pumps and Small Vertical In-Line Pumps, 1904-AD61
33. DOE/EE, Final Rule Stage, Energy Conservation Standards for Consumer Water Heaters, 1904-AD91
34. DOE/EE, Final Rule Stage, Energy Conservation Standards for Consumer Clothes Washers, 1904-AD98
35. DOE/EE, Final Rule Stage, Energy Conservation Standards for Clothes Dryers, 1904-AD99
36. DOE/EE, Final Rule Stage, Energy Conservation Standards for Distribution Transformers, 1904-AE12
37. DOE/EE, Final Rule Stage, Energy Conservation Standards for Dishwashers, 1904-AE32
38. DOE/EE, Final Rule Stage, Energy Conservation Standards for Battery Chargers, 1904-AE50
39. DOE/EE, Final Rule Stage, Energy Conservation Standards for Consumer Boilers, 1904-AE82
40. DOE/EE, Final Rule Stage, Energy Conservation Standards for Ceiling Fans, 1904-AE99
41. DOE/EE, Final Rule Stage, Energy Conservation Standards for Miscellaneous Residential Refrigeration, 1904-AF00

42. DOE/EE, Final Rule Stage, Energy Conservation Program: Energy Conservation Standards for General Service Lamps, 1904-AF43
43. DOE/EE, Final Rule Stage, Energy Conservation Standards for Consumer Refrigerators, Freezers, and Refrigerator-Freezers, 1904-AF56
44. DOE/EE, Final Rule Stage, Energy Conservation Standards for Consumer Conventional Cooking Products, 1904-AF57
45. DOE/EE, Final Rule Stage, Clean Energy for New Federal Buildings and Major Renovations of Federal Buildings, 1904-AB96

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

46. HHS/FDA, Proposed Rule Stage, Medication Guide; Patient Medication Information, 0910-AH68
47. HHS/FDA, Proposed Rule Stage, Tobacco Product Standard for Nicotine Level of Certain Tobacco Products, 0910-AI76
48. HHS/FDA, Proposed Rule Stage, Front-of-Package Nutrition Labeling, 0910-AI80
49. HHS/FDA, Proposed Rule Stage, Medical Devices; Laboratory Developed Tests, 0910-AI85
50. HHS/FDA, Proposed Rule Stage, Registration of Commercial Importers of Drugs; Good Importing Practice, 0910-AI87
51. HHS/FDA, Final Rule Stage, General and Plastic Surgery Devices: Restricted Sale, Distribution, and Use of Sunlamp Products, 0910-AH14
52. HHS/FDA, Final Rule Stage, Medical Devices; Quality System Regulation Amendments, 0910-AH99
53. HHS/FDA, Final Rule Stage, Nutrient Content Claims, Definition of Term: Healthy, 0910-AI13
54. HHS/FDA, Final Rule Stage, Tobacco Product Standard for Characterizing Flavors in Cigars, 0910-AI28
55. HHS/FDA, Final Rule Stage, Prohibition of Sale of Tobacco Products to Persons Younger Than 21 Years of Age, 0910-AI51
56. HHS/FDA, Final Rule Stage, Tobacco Product Standard for Menthol in Cigarettes, 0910-AI60
57. HHS/CMS, Proposed Rule Stage, Alternative Payment Model Updates; Increasing Organ Transplant Access (IOTA) Model (CMS-5535), 0938-AU51
58. HHS/CMS, Proposed Rule Stage, Healthcare System Resiliency and Modernization (CMS-3426), 0938-AU91
59. HHS/CMS, Proposed Rule Stage, Mental Health Parity and Addiction Equity Act and the Consolidated Appropriations Act, 2021 (CMS-9902), 0938-AU93
60. HHS/CMS, Proposed Rule Stage, Independent Dispute Resolution Operations (CMS-9897), 0938-AV15
61. HHS/CMS, Proposed Rule Stage, HHS Notice of Benefit and Payment Parameters for 2025 (CMS-9895), 0938-AV22
62. HHS/CMS, Proposed Rule Stage, Contract Year 2025 Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, and Medicare Cost Plan Programs, and PACE (CMS-4205), 0938-AV24
63. HHS/CMS, Proposed Rule Stage, Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting (CMS-3442), 0938-AV25
64. HHS/CMS, Proposed Rule Stage, CY 2025 Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System and Quality Incentive Program (CMS-1805), 0938-AV27
65. HHS/CMS, Proposed Rule Stage, CY 2025 Home Health Prospective Payment System Rate Update and Home Infusion Therapy and Home IVIG Services Payment Update (CMS-1803), 0938-AV28
66. HHS/CMS, Proposed Rule Stage, FY 2025 Hospice Wage Index, Payment Rate Update,

- and Quality Reporting Requirements (CMS-1810), 0938-AV29
67. HHS/CMS, Proposed Rule Stage, FY 2025 Skilled Nursing Facility (SNFs) Prospective Payment System and Consolidated Billing and Updates to the Value-Based Purchasing and Quality Reporting Programs (CMS-1802), 0938-AV30
  68. HHS/CMS, Proposed Rule Stage, FY 2025 Inpatient Rehabilitation Facility (IRF) Prospective Payment System Rate Update and Quality Reporting Program (CMS-1804), 0938-AV31
  69. HHS/CMS, Proposed Rule Stage, FY 2025 Inpatient Psychiatric Facilities Prospective Payment System Rate and Quality Reporting Updates (CMS-1806), 0938-AV32
  70. HHS/CMS, Proposed Rule Stage, CY 2025 Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1807), 0938-AV33
  71. HHS/CMS, Proposed Rule Stage, Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2025 Rates (CMS-1808), 0938-AV34
  72. HHS/CMS, Proposed Rule Stage, CY 2025 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1809), 0938-AV35
  73. HHS/CMS, Final Rule Stage, Administrative Simplification: Adoption of Standards for Health Care Attachment Transactions and Electronic Signatures, and Modification to Referral Certification and Authorization Standard (CMS-0053), 0938-AT38
  74. HHS/CMS, Final Rule Stage, Streamlining the Medicaid, CHIP, and BHP Application, Eligibility Determination, Enrollment, and Renewal Processes (CMS-2421), 0938-AU00
  75. HHS/CMS, Final Rule Stage, Administrative Simplification: Modifications to NCPDP Retail Pharmacy Standards (CMS-0056), 0938-AU19
  76. HHS/CMS, Final Rule Stage, Misclassification of Drugs, Program Administration and Program Integrity Updates under the Medicaid Drug Rebate Program (CMS-2434), 0938-AU28
  77. HHS/CMS, Final Rule Stage, Short-Term, Limited-Duration Insurance; Independent, Noncoordinated Excepted Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance (CMS-9904), 0938-AU67
  78. HHS/CMS, Final Rule Stage, Medicaid and Children's Health Insurance Program (CHIP) Managed Care Access, Finance, and Quality (CMS-2439), 0938-AU99
  79. HHS/CMS, Final Rule Stage, Disproportionate Share Hospital (DSH) Third Party Payer (CMS-2445), 0938-AV00
  80. HHS/CMS, Final Rule Stage, CY 2024 Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1784), 0938-AV07
  81. HHS/CMS, Final Rule Stage, CY 2024 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1786), 0938-AV09
  82. HHS/CMS, Final Rule Stage, Clarifying Eligibility for a Qualified Health Plan Through an Exchange, Advance Payments of the Premium Tax Credit, Cost-sharing Reductions, A Basic Health Program and Medicaid and CHIP (CMS-9894), 0938-AV23
  83. HHS/CMS, Final Rule Stage, CY 2025 Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts (CMS-8086), 0938-AV36
  84. HHS/OCR, Proposed Rule Stage, Rulemaking on Discrimination on the Basis of Disability in Health and Human Services Programs or Activities, 0945-AA15
  85. HHS/OCR, Proposed Rule Stage, Proposed Modifications to the HIPAA Security Rule to

- Strengthen the Cybersecurity of Electronic Protected Health Information, 0945-AA22
86. HHS/OCR, Final Rule Stage, Nondiscrimination in Health Programs and Activities, 0945-AA17
  87. HHS/OCR, Final Rule Stage, Safeguarding the Rights of Conscience as Protected by Federal Statutes, 0945-AA18
  88. HHS/OCR, Final Rule Stage, Proposed Modifications to the HIPAA Privacy Rule to Support Reproductive Health Care Privacy, 0945-AA20
  89. HHS/ONC, Proposed Rule Stage, Health Data, Technology, and Interoperability: Patient Engagement, Information Sharing, and Public Health Interoperability, 0955-AA06
  90. HHS/ONC, Final Rule Stage, Health Data, Technology, and Interoperability: Certification Program Updates, Algorithm Transparency, and Information Sharing, 0955-AA03
  91. HHS/ACF, Proposed Rule Stage, Foster Care Legal Representation, 0970-AC89
  92. HHS/ACF, Proposed Rule Stage, Unaccompanied Children Program Foundational Rule, 0970-AC93
  93. HHS/ACF, Proposed Rule Stage, Strengthening Temporary Assistance for Needy Families (TANF) as a Safety Net Program, 0970-AC97
  94. HHS/ACF, Proposed Rule Stage, Supporting the Head Start Workforce and Other Quality Improvements, 0970-AD01
  95. HHS/ACF, Final Rule Stage, Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF), 0970-AD02

## DEPARTMENT OF HOMELAND SECURITY

96. DHS/USCIS, Final Rule Stage, US Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 1615-AC68

97. DHS/FEMA, Proposed Rule Stage, National Flood Insurance Program: Standard Flood Insurance Policy, Homeowner Flood Form, 1660-AB06
98. DHS/FEMA, Final Rule Stage, Individual Assistance Program Equity, 1660-AB07

## DEPARTMENT OF THE INTERIOR

99. DOI/BOEM, Final Rule Stage, Renewable Energy Modernization Rule, 1010-AE04
100. DOI/BOEM, Final Rule Stage, Risk Management and Financial Assurance for OCS Lease and Grant Obligations, 1010-AE14
101. DOI/FWS, Proposed Rule Stage, Migratory Bird Permits; Authorizing the Incidental Take of Migratory Birds, Proposed Rule, 1018-BF71
102. DOI/FWS, Proposed Rule Stage, Migratory Bird Hunting; 2024–25 Migratory Game Bird Hunting Regulations, 1018-BG63
103. DOI/FWS, Proposed Rule Stage, Migratory Bird Hunting; 2025–26 Migratory Game Bird Hunting Regulations, 1018-BH65
104. DOI/ASLM, Proposed Rule Stage, Carbon Sequestration, 1082-AA04

## DEPARTMENT OF JUSTICE

105. DOJ/DEA, Final Rule Stage, Implementation of the SUPPORT Act: Dispensing and Administering Controlled Substances for Medication-Assisted Treatment, 1117-AB55
106. DOJ/EOIR, Final Rule Stage, Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal and CAT Protection Claims by Asylum Officers, 1125-AB20
107. DOJ/CRT, Final Rule Stage, Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Government Entities, 1190-AA79

## DEPARTMENT OF LABOR

- 108. DOL/ETA, Proposed Rule Stage, Temporary Employment of H-2B Foreign Workers in the United States, 1205-AB93
- 109. DOL/ETA, Proposed Rule Stage, National Apprenticeship System Enhancements, 1205-AC13
- 110. DOL/EBSA, Proposed Rule Stage, Retirement Security Rule: Definition of an Investment Advice Fiduciary, 1210-AC02
- 111. DOL/EBSA, Proposed Rule Stage, Mental Health Parity and Addiction Equity Act and the Consolidated Appropriations Act, 2021, 1210-AC11
- 112. DOL/EBSA, Proposed Rule Stage, Short-Term Limited Duration Insurance; Update, 1210-AC12
- 113. DOL/OSHA, Prerule Stage, Process Safety Management and Prevention of Major Chemical Accidents, 1218-AC82
- 114. DOL/OSHA, Prerule Stage, Heat Illness Prevention in Outdoor and Indoor Work Settings, 1218-AD39
- 115. DOL/OSHA, Proposed Rule Stage, Infectious Diseases, 1218-AC46
- 116. DOL/OSHA, Proposed Rule Stage, Emergency Response, 1218-AC91
- 117. DOL/OSHA, Final Rule Stage, Occupational Exposure to COVID-19 in Healthcare Settings, 1218-AD36
- 118. DOL/MSHA, Final Rule Stage, Respirable Crystalline Silica, 1219-AB36
- 119. DOL/WHD, Proposed Rule Stage, Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees, 1235-AA39
- 120. DOL/WHD, Final Rule Stage, Nondisplacement of Qualified Workers under Service Contracts, 1235-AA42

- 121. DOL/WHD, Final Rule Stage, Employee or Independent Contractor Classification under the Fair Labor Standards Act, 1235-AA43

## DEPARTMENT OF STATE

- 122. STATE, Proposed Rule Stage, Exchange Visitor Program—Au Pair, 1400-AF12

## DEPARTMENT OF TRANSPORTATION

- 123. DOT/FMCSA, Proposed Rule Stage, Heavy Vehicle Speed Limiters, 2126-AB63
- 124. DOT/FMCSA, Final Rule Stage, Automatic Emergency Braking Systems, 2126-AC49
- 125. DOT/NHTSA, Prerule Stage, Advanced Impaired Driving Technology, 2127-AM50
- 126. DOT/NHTSA, Prerule Stage, Side Under-ride Guards on Trailers and Semitrailers, 2127-AM54
- 127. DOT/NHTSA, Proposed Rule Stage, Seat Belt Reminder Systems, 2127-AL37
- 128. DOT/NHTSA, Proposed Rule Stage, Fuel Efficiency and Greenhouse Gas Standards for Medium- and Heavy-Duty Engines and Vehicles, 2127-AM39
- 129. DOT/NHTSA, Proposed Rule Stage, Rear Designated Seating Position Alert, 2127-AM49
- 130. DOT/NHTSA, Final Rule Stage, Heavy Vehicle Automatic Emergency Braking, 2127-AM36
- 131. DOT/NHTSA, Final Rule Stage, Light Vehicle Automatic Emergency Braking (AEB) with Pedestrian AEB, 2127-AM37
- 132. DOT/NHTSA, Final Rule Stage, Light Vehicle CAFE Standards Beyond MY 2026, 2127-AM55
- 133. DOT/PHMSA, Proposed Rule Stage, Pipeline Safety: Gas Pipeline Leak Detection and Repair, 2137-AF51
- 134. DOT/PHMSA, Proposed Rule Stage, Pipeline Safety: Safety of Gas Distribution Pipelines and Other Pipeline Safety Initiatives, 2137-AF53

## DEPARTMENT OF THE TREASURY

135. TREAS/DO, Final Rule Stage, Small Business Administration Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Criteria for Seasonal Employers, 1505-AC67
136. TREAS/DO, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Loan Forgiveness, 1505-AC69
137. TREAS/DO, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Loan Forgiveness, 1505-AC70
138. TREAS/DO, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules, 1505-AC71
139. TREAS/DO, Final Rule Stage, Business Loan Program Temporary Changes; Extension of and Changes to Paycheck Protection Program, 1505-AC74
140. TREAS/DO, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Loan Forgiveness Requirements and Loan Review Procedures as Amended by Economic Aid Act, 1505-AC75
141. TREAS/DO, Final Rule Stage, Emergency Capital Investment Program—Restrictions on Executive Compensation, Share Buybacks, and Dividends, 1505-AC76
142. TREAS/DO, Final Rule Stage, Coronavirus State and Local Fiscal Recovery Funds, 1505-AC81
143. TREAS/FINCEN, Proposed Rule Stage, Section 6101. Establishment of National Exam and Supervision Priorities, 1506-AB52
144. TREAS/FINCEN, Final Rule Stage, Beneficial Ownership Information Access and Safeguards, 1506-AB59
145. TREAS/CUSTOMS, Proposed Rule Stage, Entry of Low-Value Shipments, 1515-AE84
146. TREAS/CUSTOMS, Final Rule Stage, Automated Commercial Environment (ACE) Required for Electronic Entry/Entry Summary (Cargo Release and Related Entry) Filings, 1515-AE03
147. TREAS/IRS, Proposed Rule Stage, Independent Dispute Resolution Operations, 1545-BQ55
148. TREAS/IRS, Final Rule Stage, Mental Health Parity and Addiction Equity Act and the Consolidated Appropriations Act, 2021, 1545-BQ29
149. TREAS/IRS, Final Rule Stage, Federal Independent Dispute Resolution Fees, 1545-BQ94

## DEPARTMENT OF VETERANS AFFAIRS

150. VA, Proposed Rule Stage, Schedule for Rating Disabilities—Neurological Conditions and Convulsive Disorders, 2900-AQ73
151. VA, Proposed Rule Stage, Updating VA Adjudication Regulations for Disability or Death Benefit Claims Related to Herbicide Exposure, 2900-AR10
152. VA, Proposed Rule Stage, Amendments to the Caregivers Program, 2900-AR96
153. VA, Final Rule Stage, Schedule for Rating Disabilities—Ear, Nose, Throat, and Audiology Disabilities; Special Provisions Regarding Evaluation of Respiratory Conditions; Respiratory System, 2900-AQ72
154. VA, Final Rule Stage, Schedule for Rating Disabilities; Mental Disorders, 2900-AQ82
155. VA, Final Rule Stage, Post-9/11 Improvements, Fry Scholarship, and Interval Payments Amendments, 2900-AQ88
156. VA, Final Rule Stage, Schedule for Rating Disabilities: The Digestive System, 2900-AQ90

- 157. VA, Final Rule Stage, Update and Clarify Regulatory Bars to Benefits Based on Character of Discharge, 2900-AQ95
- 158. VA, Final Rule Stage, Reevaluation of Claims for Dependency and Indemnity Compensation Based on Public Law 117-168, 2900-AR76
- 159. VA, Final Rule Stage, Reimbursement for Emergency Treatment, 2900-AQ08
- 160. VA, Final Rule Stage, Supportive Services for Veterans Families, 2900-AR15

## ENVIRONMENTAL PROTECTION AGENCY

- 161. EPA/OW, Proposed Rule Stage, National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI), 2040-AG16
- 162. EPA/OW, Final Rule Stage, Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, 2040-AG23
- 163. EPA/OW, Final Rule Stage, PFAS National Primary Drinking Water Regulation Rulemaking, 2040-AG18
- 164. EPA/OLEM, Final Rule Stage, Accidental Release Prevention Requirements: Risk Management Program under the Clean Air Act; Safer Communities by Chemical Accident Prevention, 2050-AH22
- 165. EPA/OLEM, Final Rule Stage, Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy Surface Impoundments, 2050-AH14
- 166. EPA/OLEM, Final Rule Stage, Designating PFOA and PFOS as CERCLA Hazardous Substances, 2050-AH09
- 167. EPA/OAR, Proposed Rule Stage, NSPS for GHG Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired EGUs; Emission Guidelines for GHG Emissions from Existing Fossil Fuel-Fired EGUs; and Repeal of the ACE Rule, 2060-AV09
- 168. EPA/OAR, Proposed Rule Stage, Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes under Subsection (h) of the American Innovation and Manufacturing Act of 2020, 2060-AV84
- 169. EPA/OAR, Proposed Rule Stage, Methane Emissions and Waste Reduction Incentive Program for Petroleum and Natural Gas Systems, 2060-AW02
- 170. EPA/OAR, Final Rule Stage, National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations, 2060-AU37
- 171. EPA/OAR, Final Rule Stage, New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review, 2060-AV16
- 172. EPA/OAR, Final Rule Stage, Revisions to the Air Emission Reporting Requirements (AERR), 2060-AV41
- 173. EPA/OAR, Final Rule Stage, Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles, 2060-AV49
- 174. EPA/OAR, Final Rule Stage, Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3, 2060-AV50
- 175. EPA/OAR, Final Rule Stage, Reconsideration of the National Ambient Air Quality Standards for Particulate Matter, 2060-AV52
- 176. EPA/OAR, Final Rule Stage, NESHAP: Coal and Oil-Fired Electric Utility Steam Generating Units-Review of the Residual Risk and Technology Review, 2060-AV53
- 177. EPA/OAR, Final Rule Stage, NSPS for the Synthetic Organic Chemical Manufacturing Industry and NESHAP for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry, 2060-AV71

- 178. EPA/OCSPP, Proposed Rule Stage, Decabromodiphenyl Ether and Phenol, Isopropylated Phosphate (3:1); Revision to the Regulations of Persistent, Bioaccumulative, and Toxic Chemicals under the Toxic Substances Control Act (TSCA), 2070-AL02
- 179. EPA/OCSPP, Final Rule Stage, Methylene Chloride (MC); Regulation under the Toxic Substances Control Act (TSCA), 2070-AK70
- 180. EPA/OCSPP, Final Rule Stage, Perchloroethylene (PCE); Regulation under the Toxic Substances Control Act (TSCA), 2070-AK84
- 181. EPA/OCSPP, Final Rule Stage, Asbestos Part 1 (Chrysotile Asbestos); Regulation of Certain Conditions of Use under the Toxic Substances Control Act (TSCA), 2070-AK86
- 182. EPA/OCSPP, Final Rule Stage, Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post Abatement Clearance Levels, 2070-AK91

## CONSUMER PRODUCT SAFETY COMMISSION

- 183. CPSC, Proposed Rule Stage, Regulatory Options for Table Saws, 3041-AC31
- 184. CPSC, Final Rule Stage, Portable Generators, 3041-AC36

## COUNCIL ON ENVIRONMENTAL QUALITY

- 185. CEQ, Final Rule Stage, National Environmental Policy Act Implementing Regulations Revisions Phase 2, 0331-AA07

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

- 186. EEOC, Final Rule Stage, Regulations to Implement the Pregnant Workers Fairness Act, 3046-AB30

## FEDERAL ACQUISITION REGULATION

- 187. FAR, Proposed Rule Stage, Federal Acquisition Regulation (FAR); FAR Case 2017-016, Controlled Unclassified Information (CUI), 9000-AN56
- 188. FAR, Proposed Rule Stage, Federal Acquisition Regulation (FAR); FAR Case 2021-017, Cyber Threat and Incident Reporting and Information Sharing, 9000-AO34
- 189. FAR, Federal Acquisition Regulation (FAR); FAR Case 2021-015, Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk, 9000-AO32
- 190. FAR, Final Rule Stage, Federal Acquisition Regulation (FAR); FAR Case 2019-009, Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment, 9000-AN92

## FEDERAL DEPOSIT INSURANCE CORPORATION

- 191. FDIC, Proposed Rule Stage, Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions, 3064-AF86
- 192. FDIC, Final Rule Stage, Community Reinvestment Act, 3064-AF81
- 193. FDIC, Final Rule Stage, Special Assessments Pursuant to Systemic Risk Determination, 3064-AF93

## FEDERAL ENERGY REGULATORY COMMISSION

- 194. FERC, Final Rule Stage, Improvements to Generator Interconnection Procedures and Agreements, 1902-AG00

## FEDERAL HOUSING FINANCE ADMINISTRATION

- 195.** FHFA, Final Rule Stage, Enterprise Regulatory Capital Framework Amendments—Commingled Securities, Multifamily Government Subsidy, Derivatives, and Other Enhancements, 2590-AB27

## FEDERAL TRADE COMMISSION

- 196.** FTC, Proposed Rule Stage, Motor Vehicle Dealers Trade Regulation Rule, 3084-AB72
- 197.** FTC, Proposed Rule Stage, Non-Compete Clause Rule, 3084-AB74
- 198.** FTC, Final Rule Stage, Premerger Notification Rules and Report Form, 3084-AB46
- 199.** NRC, Proposed Rule Stage, Revision of Fee Schedules: Fee Recovery for Fiscal Year 2024 [NRC-2022-0046], 3150-AK74

## PENSION BENEFIT GUARANTY CORPORATION

- 200.** PBGC, Final Rule Stage, Actuarial Assumptions for Determining an Employer's Withdrawal Liability, 1212-AB54

## SMALL BUSINESS ADMINISTRATION

- 201.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program, 3245-AH34
- 202.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program, 3245-AH35
- 203.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Eligibility Criteria and Requirements for Certain Pledges of Loans, 3245-AH36
- 204.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protec-

tion Program—Requirements—Promissory Notes, Authorizations, Affiliation, and Eligibility, 3245-AH37

- 205.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Disbursements, 3245-AH38
- 206.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders, 3245-AH39
- 207.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Nondiscrimination and Additional Eligibility Criteria, 3245-AH40
- 208.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan Request, 3245-AH41
- 209.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Loan Increases, 3245-AH42
- 210.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Eligibility of Certain Electric Cooperatives, 3245-AH43
- 211.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Treatment of Entities with Foreign Affiliates, 3245-AH44
- 212.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Second Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan and Lender Reporting, 3245-AH45
- 213.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection

- Program—Requirements—Loan Forgiveness, 3245-AH46
- 214.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—SBA Loan Review Procedures and Related Borrower and Lender Responsibilities, 3245-AH47
- 215.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Eligibility of Certain Telephone Cooperatives, 3245-AH48
- 216.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to First Interim Final Rule, 3245-AH49
- 217.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Revisions to First Interim Final Rule, 3245-AH50
- 218.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to the Third and Sixth Interim Final Rules, 3245-AH51
- 219.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules, 3245-AH52
- 220.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Eligibility Revisions to First Interim Final Rule, 3245-AH53
- 221.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Certain Eligible Payroll Costs, 3245-AH54
- 222.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Treatment of Owners and Forgiveness of Certain Nonpayroll Costs, 3245-AH56
- 223.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Consolidation of Interim Final Rules, 3245-AH58
- 224.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules, 3245-AH59
- 225.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program as Amended by Economic Aid Act, 3245-AH62
- 226.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program Second Draw Loans, 3245-AH63
- 227.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Loan Forgiveness Requirements and Loan Review Procedures as Amended by Economic Aid Act, 3245-AH65
- 228.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to Loan Amount Calculation and Eligibility, 3245-AH67
- 229.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program as Amended by American Rescue Plan Act, 3245-AH77
- 230.** SBA, Final Rule Stage, Business Loan Program Temporary Changes; Paycheck Protection Program—COVID Revenue Reduction Score, Direct Borrower Forgiveness Process, and Appeals Deferment, 3245-AH79
- 231.** SBA, Final Rule Stage, Disaster Loan Program Changes, 3245-AH80

## SOCIAL SECURITY ADMINISTRATION

- 232.** SSA, Final Rule Stage, Expand the Definition of a Public Assistance (PA) Household, 0960-AI81

- 233.** SSA, Final Rule Stage, Intermediate Improvement to the Disability Adjudication Process, Including How We Consider Past Work

## LONG-TERM ACTIONS (30 actions)

### DEPARTMENT OF AGRICULTURE

- 234.** USDA/FNS, Technical Changes for Supplemental Nutrition Assistance Program (SNAP) Benefit Redemption Systems, 0584-AE37
- 235.** USDA/FNS, Strengthening Integrity and Reducing Retailer Fraud in the Supplemental Nutrition Assistance Program (SNAP), 0584-AE71
- 236.** USDA/FNS, Supplemental Nutrition Assistance Program Requirement for Interstate Data Matching, 0584-AE75

### DEPARTMENT OF ENERGY

- 237.** DOE/OGC, Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation, 1990-AA39

### DEPARTMENT OF HEALTH AND HUMAN SERVICES

- 238.** HHS/FDA, Protection of Human Subjects and Institutional Review Boards, 0910-AI07
- 239.** HHS/FDA, Institutional Review Boards; Cooperative Research, 0910-AI08
- 240.** HHS/FDA, Investigational New Drug Application Annual Reporting, 0910-AI37
- 241.** HHS/CMS, Interoperability and Prior Authorization for MA Organizations, Medicaid and CHIP Managed Care and State Agencies, FFE QHP Issuers, MIPS Eligible Clinicians, Eligible Hospitals and CAHs (CMS-0057), 0938-AU87

### DEPARTMENT OF HOMELAND SECURITY

- 242.** DHS/USCIS, Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants, 1615-AC78
- 243.** DHS/USCIS, Exercise of Time-Limited Authority to Increase the Numerical Limitation for FY 2023 for the H-2B Temporary Non-agricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change, 1615-AC82
- 244.** DHS/USCBP, Collection of Biometric Data From Noncitizens Upon Entry to and Exit from the United States, 1651-AB12
- 245.** DHS/FEMA, Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program, 1660-AA99

### DEPARTMENT OF THE INTERIOR

- 246.** DOI/BSEE, Revisions to Decommissioning Requirements on the OCS, 1014-AA53

### DEPARTMENT OF LABOR

- 247.** DOL/ETA, Temporary Non-Agricultural Employment of H-2B Nonimmigrants in the United States, 1205-AB76
- 248.** DOL/OSHA, COVID-19 Vaccination and Testing Emergency Temporary Standard Rulemaking, 1218-AD42

### DEPARTMENT OF TRANSPORTATION

- 249.** DOT/NHTSA, Heavy Vehicle Speed Limiters, 2127-AK92
- 250.** DOT/NHTSA, Federal Motor Vehicle Safety Standard (FMVSS) 150—Vehicle to Vehicle (V2V) Communication, 2127-AL55

- 251. DOT/NHTSA, Retroreflective Tape and Underride Guards for Single Unit Trucks, 2127-AL57
- 252. DOT/PHMSA, Pipeline Safety: Class Location Requirements, 2137-AF29

## DEPARTMENT OF VETERANS AFFAIRS

- 253. VA, Loan Guaranty: Revisions to VA-Guaranteed or Insured Interest Rate Reduction Refinancing Loans, 2900-AR58

## FEDERAL COMMUNICATIONS COMMISSION

- 254. FCC, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions (GN Docket No. 12-268), 3060-AJ82
- 255. FCC, Parts 2 and 25 to Enable GSO FSS in the 17.3-17.8 GHz Band, Modernize Rules for 17/24 GHz BSS Space Stations, and Establish Off-Axis Uplink Power Limits for Extended Ka-Band FSS (IB Doc. No. 20-330), 3060-AL28
- 256. FCC, Facilitating Shared Use in the 3100-3550 MHz Band, 3060-AL57
- 257. FCC, Restoring Internet Freedom (WC Docket No. 17-108); Protecting and Promot-

ing the Open Internet (GN Docket No. 14-28), 3060-AK21

- 258. FCC, Implementation of the National Suicide Improvement Act of 2018, 988 Suicide Prevention Hotline (WC Docket 18-336, PS Docket No. 23.5, PS Docket No. 15-80), 3060-AL01
- 259. FCC, Establishing a 5G Fund for Rural America; GN Docket No. 20-32, 3060-AL15

## FEDERAL HOUSING FINANCE ADMINISTRATION

- 260. FHFA, Enterprise Liquidity Requirements, 2590-AB09

## NUCLEAR REGULATORY COMMISSION

- 261. NRC, Revision of Fee Schedules: Fee Recovery for FY 2025 [NRC-2023-0069], 3150-AK95

## OFFICE OF PERSONNEL MANAGEMENT

- 262. OPM, Prescription Drug and Health Care Spending, 3206-AO27
- 263. OPM, Paid Parental Leave and Miscellaneous Family and Medical Leave Act, 3206-AN96

## Appendix K. Federal workplace regulation affecting growing businesses

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

### 1 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)
- Genetic Information Nondiscrimination Act (GINA) (prohibits genetic information discrimination)

### 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 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)
- Affordable Care Act employer mandate

## 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)





	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003
Nuclear Regulatory Commission	2	1				2	1	1	1	1	3	1	1	1	2	1	2	1	1	1	1
Office of Management and Budget																					
Office of Personnel Management	1					1					1										1
Pension Benefit Guaranty Corporation	1	1	1							1											
Securities and Exchange Commission	9	2	12			5	1	10	6	5	5	3	8	9	7	7	5	3	4	2	5
Small Business Administration			6																	1	
Social Security Administration			1													2		2	1		
(Unallocated independent agencies)				37	18																
<b>TOTAL</b>	<b>76</b>	<b>76</b>	<b>98</b>	<b>90</b>	<b>80</b>	<b>55</b>	<b>49</b>	<b>119</b>	<b>77</b>	<b>82</b>	<b>81</b>	<b>68</b>	<b>80</b>	<b>100</b>	<b>84</b>	<b>95</b>	<b>60</b>	<b>56</b>	<b>56</b>	<b>66</b>	<b>50</b>
<b>Controlling TOTALS (using January 2024 search)</b>	<b>76</b>	<b>77</b>	<b>129</b>	<b>140</b>	<b>78</b>	<b>54</b>	<b>71</b>	<b>105</b>	<b>71</b>	<b>87</b>	<b>65</b>	<b>76</b>	<b>78</b>	<b>100</b>	<b>93</b>	<b>84</b>	<b>55</b>	<b>53</b>	<b>68</b>	<b>54</b>	<b>49</b>
<b>Controlling TOTALS (using January 2023 search)</b>		<b>76</b>	<b>129</b>	<b>140</b>	<b>78</b>	<b>54</b>	<b>71</b>	<b>105</b>	<b>71</b>	<b>87</b>	<b>65</b>	<b>76</b>	<b>78</b>	<b>100</b>	<b>93</b>	<b>84</b>	<b>55</b>	<b>53</b>	<b>68</b>	<b>54</b>	<b>49</b>
<b>TOTAL MAJOR RULES</b>		<b>1,984</b>																			

Source: Table compiled by the author from GAO at <https://www.gao.gov/legal/other-legal-work/congressional-review-act> (employing search fields as follows: Rule Type/Major; Rule Priority/All; and "Rule Effective Date" rather than "Date Received by GAO" to maximize total).

Note: Like some counts in the *Federal Register* database, prior years' rule counts may change in subsequent years.

## Appendix M. The Unconstitutionality Index

Year	Final rules	Public laws	The Index	Notices	Executive orders	Executive memos
1993	4,369	210	21			
1994	4,867	255	19			
1995	4,713	88	54	23,175	40	
1996	4,937	245	20	24,413	50	
1997	4,584	153	30	26,059	38	
1998	4,899	241	20	26,211	38	
1999	4,684	170	28	25,516	35	
2000	4,313	410	11	25,462	39	13
2001	4,132	108	38	24,824	67	12
2002	4,167	269	15	25,736	32	10
2003	4,148	198	21	25,418	41	14
2004	4,101	300	14	25,310	46	21
2005	3,943	161	24	25,351	27	23
2006	3,718	308	12	25,026	26	18
2007	3,595	188	19	24,559	33	16
2008	3,830	285	13	25,273	30	15
2009	3,503	125	28	24,868	44	38
2010	3,573	221	16	26,173	43	42
2011	3,807	118	32	26,161	34	19
2012	3,708	157	24	24,377	39	32
2013	3,659	117	31	24,261	24	32
2014	3,554	224	16	23,970	34	25
2015	3,410	115	30	23,959	29	31
2016	3,853	213	18	24,557	44	36
2017	3,281	98	33	22,137	63	35
2018	3,368	313	11	22,025	35	29
2019	2,964	137	22	21,804	47	24
2020	3,038	177	17	22,480	67	49

Year	Final rules	Public laws	The Index	Notices	Executive orders	Executive memos
2021	4,429	143	31	22,361	93	30
2022	3,168	247	13	22,821	29	46
2023	3,018	68	44	23,197	24	34

Sources: Final rules, notices, and executive orders compiled from database at National Archives and Records Administration, Office of the Federal Register, <https://www.federalregister.gov/documents/search#advanced>; public laws from Government Publishing Office, Public and Private Laws, <https://www.govinfo.gov/app/collection/PLAW/>.

# Endnotes

1. White House, “Remarks by President Biden and Vice President Harris at the 2023 Congressional Black Caucus Phoenix Awards,” September 23, 2023, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/09/23/remarks-by-president-biden-and-vice-president-harris-at-the-2023-congressional-black-caucus-phoenix-awards/>.
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3. Council on Environmental Policy, “National Environmental Policy Act Implementing Regulations Revisions Phase 2,” *Federal Register*, Vol. 88, No. 145, July 31, 2023, pp. 49924–49988, <https://www.govinfo.gov/content/pkg/FR-2023-07-31/pdf/2023-15405.pdf>.
4. White House, “Fact Sheet: Biden-Harris Administration Launches American Climate Corps to Train Young People in Clean Energy, Conservation, and Climate Resilience Skills, Create Good-Paying Jobs and Tackle the Climate Crisis,” September 20, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/20/fact-sheet-biden-harris-administration-launches-american-climate-corps-to-train-young-people-in-clean-energy-conservation-and-climate-resilience-skills-create-good-paying-jobs-and-tackle-the-clima/>.
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2008	106
2009	107
2010	115
2011	121
2012	96
2013	103

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