

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

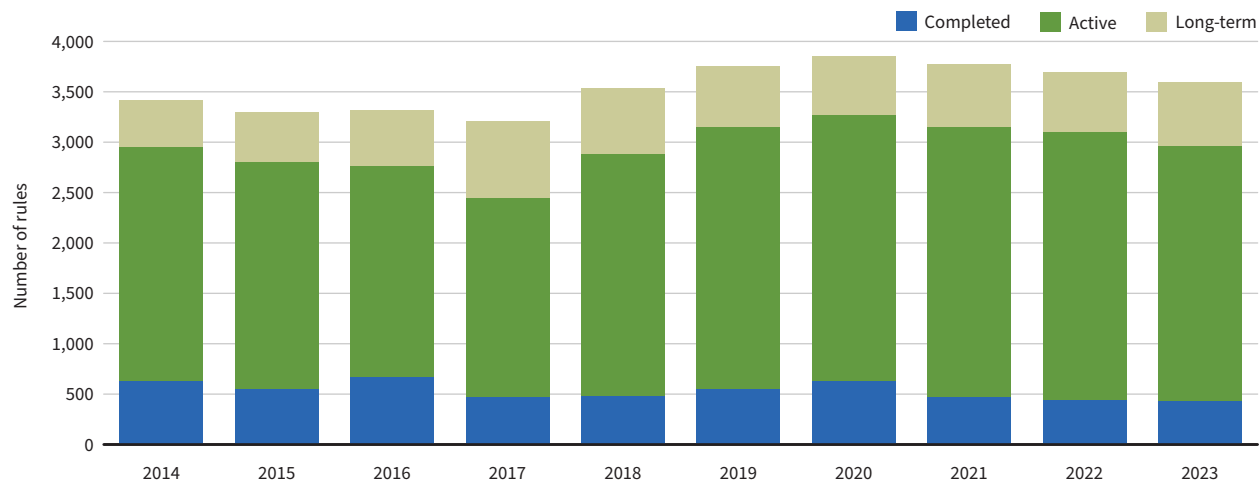
Along with the *Report to Congress*, *Federal Register*, and *Code of Federal Regulations*, another vehicle for regulatory disclosure is the spring and fall editions of the “Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions.” Agencies outline regulatory goals and intentions 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- Completed actions: rules finalized (or withdrawn) during the previous (roughly) six months since the prior Agenda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.¹⁰¹ Agencies are not required to limit their regulatory activity to the material published in the Unified Agenda unless an administration instructs otherwise.¹⁰² 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.”¹⁰³ 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		
TOTAL	3,599	2,524	431	644

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

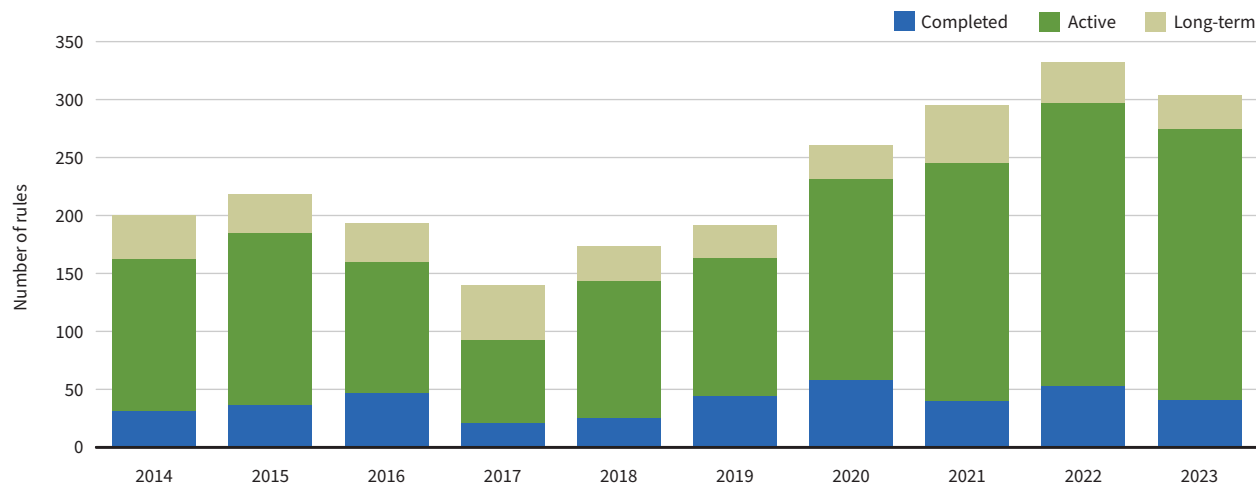
Independent Agency	Number of Rules
1. Federal Communications Commission	103
2. Small Business Administration	68
3. Securities and Exchange Commission	63
4. Nuclear Regulatory Commission	58
5. Federal Reserve System	26
TOTAL	318
% of Total Agenda Pipeline of 3,599	9
Top 5 Executives plus Top 5 Independents	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).¹⁰⁴ 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.¹⁰⁵

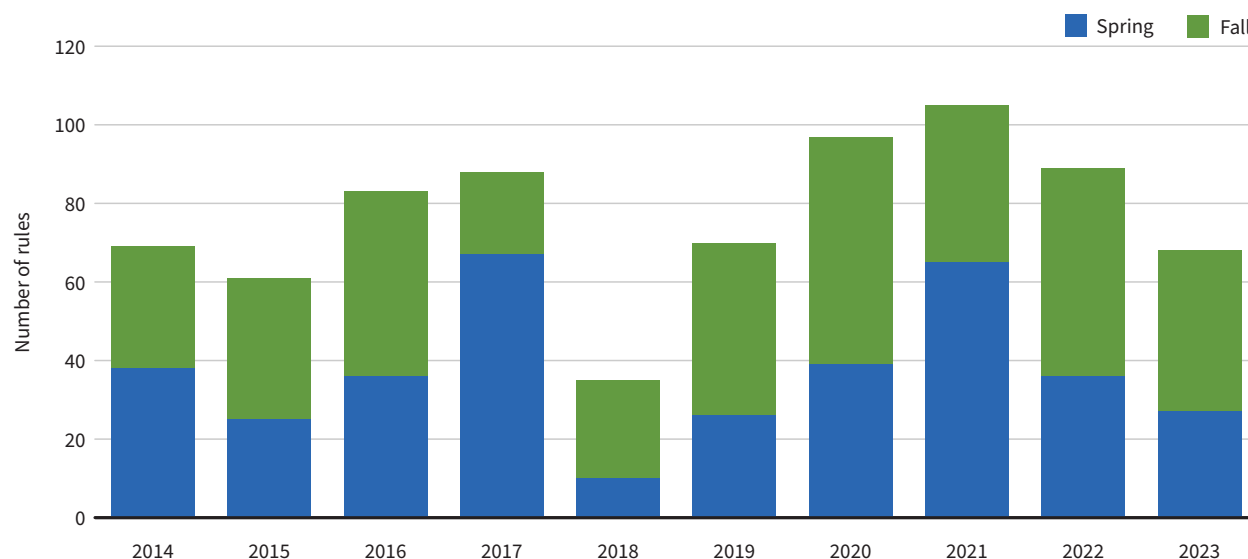
One might have expected a substantial drop in high-significance rules from the spring 2023 Agenda count of 297 economically significant rules when the \$100 million threshold still applied, but the number instead increased. As Figure 19 shows, 304 rules in the pipeline are designated as having \$200 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		
TOTAL	304	5	85	143	41	30

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.¹⁰⁶

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