Insight

Major Regulatory Plans in Quarter One of 2024

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EXECUTIVE SUMMARY

- Despite its non-binding status, the latest Unified Agenda of Regulatory and Deregulatory Actions provides the opportunity to look at the most notable rulemakings agencies expect to finalize in the coming months.
- The American Action Forum finds that there are four dozen potentially "major" rules scheduled for the first quarter of 2024 that, if the final rules largely match their proposed versions, could yield approximately $250 billion in total costs; this would push the Biden total to roughly $700 billion.
- Moreover, the Biden Administration – cognizant that much of its regulatory agenda put forward later this year could face rescission if the November elections do not turn out favorably for the president – is likely prioritizing timely finalization of its most consequential rulemakings.

INTRODUCTION

As the Biden Administration enters the final calendar year of its current term, it is helpful to consider what the regulatory schedule could soon look like. Timing at this stage of a given administration's term is critical. If the White House changes hands this November, any rulemaking that does not cross the finish line by January 19, 2025, will likely get quashed by the new administration. Additionally, even rules finalized in the second half of 2024 could be subject to recission under the Congressional Review Act (CRA). In examining rulemakings set for finalization during the first quarter of 2024, the American Action Forum (AAF) finds four dozen rulemakings that, if their final versions largely match the proposed iterations,

could bring total costs of roughly a quarter trillion dollars.

REGULATORY SCHEDULE

Each edition of the Unified Agenda (UA) includes details of the potential timeline for a given rulemaking. While the UA itself is not organized in chronological order, AAF has been able to pull the entries scheduled for the first three months of 2024 and assemble a calendar from those data. Given that the latest UA contains more than 2,500 "Active Action" items, cataloguing all of 2024's first-quarter rulemakings would likely produce an unwieldy list.

Thus, to provide the most useful look at what to expect in the opening months of the year, AAF has pared back the data – in a similar fashion to the original look at the Fall 2023 UA – to those entries that are in the final rule stage and carry the designation of "major" or "undetermined" (denoting that the rule either is or could be major). Where applicable, AAF has included data from the RegRodeo project regarding the estimated costs of a rulemaking's proposed version. While the final cost estimate may not exactly match the proposed version, RegRodeo data provides context on the order of magnitude for the rules included.

Additionally, it should be noted that UA timelines are generally informational, non-binding estimates. As such, it is hardly surprising that several such actions remain outstanding from January. One can assume, however, that these rulemakings are set to hit the pages of the Federal Register any day now. To this end, AAF has included them here.

The major and/or potentially major rules for the first quarter of 2024 are as follows:

Agency	**Rule Title**	**Regulation Identifier Number (RIN)**	**Proposed Version Costs**
January 2024			
Multi-Agency	Partnerships With Faith-Based and Neighborhood Organizations	0503-AA73; 1840-AD67; 0991-AC31; 2501-AD98; 1601-AB02	$242 M
Agriculture	Changes Related to Reserve Account Administration in Multi-Family Housing (MFH) Direct Loan Programs–7 CFR 3560, Subpart	0575-AD23	

Energy	Energy Conservation Standards for Small Electric Motors	1904-AF39	
Energy	Determination of Energy Savings for Commercial Buildings based on ANSI/ASHRAE/IES Standard 90.1-2022	1904-AF52	
HHS	Nondiscrimination in Health Programs and Activities	0945-AA17	$2 B
Interior	Waste Prevention, Production Subject to Royalties, and Resource Conservation	1004-AE79	$856 M
Justice	Implementation of the SUPPORT Act: Dispensing and Administering Controlled Substances for Medication-Assisted Treatment	1117-AB55	
Justice	Amending Regulations to Conform to the Controlled Substance Ordering System (CSOS) Modernization	1117-AB79	-$46 M
Transportation	Establishing Safe and Secure Merchant Marine Training (Section 610 Review)	2133-AB99	
Veteran Affairs	Schedule for Rating Disabilities: The Digestive System	2900-AQ90	
Veteran Affairs	Update and Clarify Regulatory Bars to Benefits Based on Character of Discharge	2900-AQ95	$0.4 M
EPA	Asbestos Part 1 (Chrysotile Asbestos); Regulation of Certain Conditions of Use Under the Toxic Substances Control Act	2070-AK86	$470 M
CFTC	Recovery and Wind-down Plans for Derivative Clearing Organizations; Information Necessary for Resolution Planning	3038-AF16	$6 M
NARA	GAO Approval of Records Schedules	3095-AC12	
NARA	Digital Photographs	3095-AC17	
NARA	Digitizing Temporary Federal Records	3095-AC18	
February 2024			

Agriculture	Revision to Electric Program Operating Policies and Procedures	0572-AC64	
Agriculture	Minerals Cost Recovery	0596-AD47	
Energy	Energy Conservation Standards for Single Package Vertical Air Conditioners and Heat Pumps	1904-AE78	
Energy	Test Procedures for Commercial Unitary Air Conditioning and Heating Equipment (Air-Cooled)	1904-AD93	
HHS	Administrative Simplification: Modifications to NCPDP Retail Pharmacy Standards (CMS-0056)	0938-AU19	
HHS	Disproportionate Share Hospital Third Party Payer (CMS-2445)	0938-AV00	
Labor	Black Lung Benefits Act: Authorization of Self Insurers	1240-AA16	
EPA	PFAS National Primary Drinking Water Regulation Rulemaking	2040-AG18	$18.3 B
NASA	Delegations and Designations	2700-AE74	
FTC	Premerger Notification Rules and Report Form	3084-AB46	$1 B
March 2024			
Education	Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams	1870-AA19	$23 M
Energy	Petroleum-Equivalent Fuel Economy Calculation	1904-AF47	
HHS	General and Plastic Surgery Devices: Restricted Sale, Distribution, and Use of Sunlamp Products	0910-AH14	
HHS	Tobacco Product Standard for Characterizing Flavors in Cigars	0910-AI28	$1.5 B

HHS	Tobacco Product Standard for Menthol in Cigarettes	0910-AI60	$4.1 B
HHS	Proposed Modifications to the HIPAA Privacy Rule to Support Reproductive Health Care Privacy	0945-AA20	$787 M
HHS	Use of Federal Property to Assist the Homeless	0991-AC14	$0.6 M
Homeland Security	Frequency of Renewal Cycle for Indirect Air Carrier Security Programs	1652-AA72	-$4 M
Treasury	Establishment of the Crystal Springs of Napa Valley Viticultural Area	1513-AC78	
Treasury	Tax Allocation Agreements	1557-AF03	
EPA	Designating PFOA and PFOS as CERCLA Hazardous Substances	2050-AH09	$1 M
EPA	National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations	2060-AU37	$640 M
EPA	Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles	2060-AV49	$180 B
EPA	Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3	2060-AV50	$39 B
EPA	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	$501 M
CFTC	Revisions to Part 17 to Update Format for Market and Large Trader Reporting	3038-AF27	
CFPB	Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders	3170-AB13	
CFPB	Registry of Supervised Nonbank That Use Form Contracts to Impose Terms and Conditions That Seek to Waive or Limit Consumer Legal Protections	3170-AB14	$38 M

FHFA	Suspended Counterparty Program	2590-AB23	
NLRB	Election Protection Rule	3142-AA22	
SBA	Business Loan Program Temporary Changes; Paycheck Protection Program—Assorted Rulemakings	3245-AH44; 3245-AH45; 3245-AH46	
SSA	Omitting Food From In-Kind Support and Maintenance Calculations	0960-AI60	-$17 M

ANALYSIS

In sum there are 48 rulemaking items[1] included in this regulatory calendar. Of these, 22 had a proposed version that included quantified economic cost estimates. If all of these rulemakings became final in the same form as their proposed iterations, the total costs would add up to nearly $250 billion. As of last week, the to-date cost total for rules during the Biden Administration stood at $450 billion. If these rulemakings come due in similar fashion to the proposed versions, it would push the Biden total to roughly $700 billion with just over nine months left to go in this term. For perspective, the accumulated final rule costs for the entirety of the Obama Administration's first term was $493.6 billion.

Beyond the potential top-line cost figures, there is also useful information to be gleaned from the data on a more granular level. In what is perhaps an unsurprising development, the Department of Health and Human Services and the Environmental Protection Agency (EPA) are the most active agencies on this list, with eight and seven items, respectively. The main items on the docket from a cost perspective are EPA greenhouse gas emissions (GHG) rules for both light-duty and heavy-duty vehicles, both currently slated for March. It is notable, however, that both rulemakings are currently under review at the Office of Information and Regulatory Affairs and thus could end up being ahead of schedule. Rules being on- or off-schedule could have especially pronounced implications in 2024.

As AAF noted in the previous examination of the Fall 2023 UA, rules finalized later this year could be vulnerable to rescission under the CRA "lookback" provision depending on the results of the November elections. That previous analysis speculated that, based on recent cycles, the lookback period could involve rules published from the end of July onward. In the interim, however, House leadership has released its projected 2024 calendar. While it is not determinative – the lookback period can only be officially discerned once Congress adjourns sine die – using this projected schedule, the 60-legislative day window[2] that makes up the lookback period extends from the end of the year to May 22. As such, late spring to early summer is likely the cut-off point for agencies to finalize rules in such a way to avoid

potential CRA resolutions of disapproval in 2025.

CONCLUSION

2024 is off to a hot start on the regulatory front, with every rulemaking week to-date racking up a total economic impact in the billions of dollars. AAF's analysis of the likely major rulemakings for the rest of 2024's first quarter suggests that trend is likely to continue apace. A series of consequential rules, including the latest rounds of GHG emissions standards for vehicles, are on their way and will likely put the Biden Administration's regulatory record well above that of even the Obama Administration's first term – with the better part of a year still to go.

[1] THE JANUARY FAITH-BASED ORGANIZATION ENTRY AND THE MARCH SBA PAYCHECK PROTECTION PROGRAM ENTRY TECHNICALLY REPRESENT MULTIPLE RULEMAKINGS. GIVEN THEIR CLOSELY RELATED NATURE, HOWEVER, THIS SCHEDULE CONSOLIDATES EACH INTO A SINGLE ITEM.

[2] THE SIMILAR "WINDOW" FOR THE SENATE EXTENDS TO JUNE 12. GIVEN THE NATURE OF HOW CRA RESOLUTIONS WORK, THE MORE EXPANSIVE WINDOW – IN THIS CASE THE HOUSE – IS THE OPERABLE ONE.