Research

2021: The Year in Regulation

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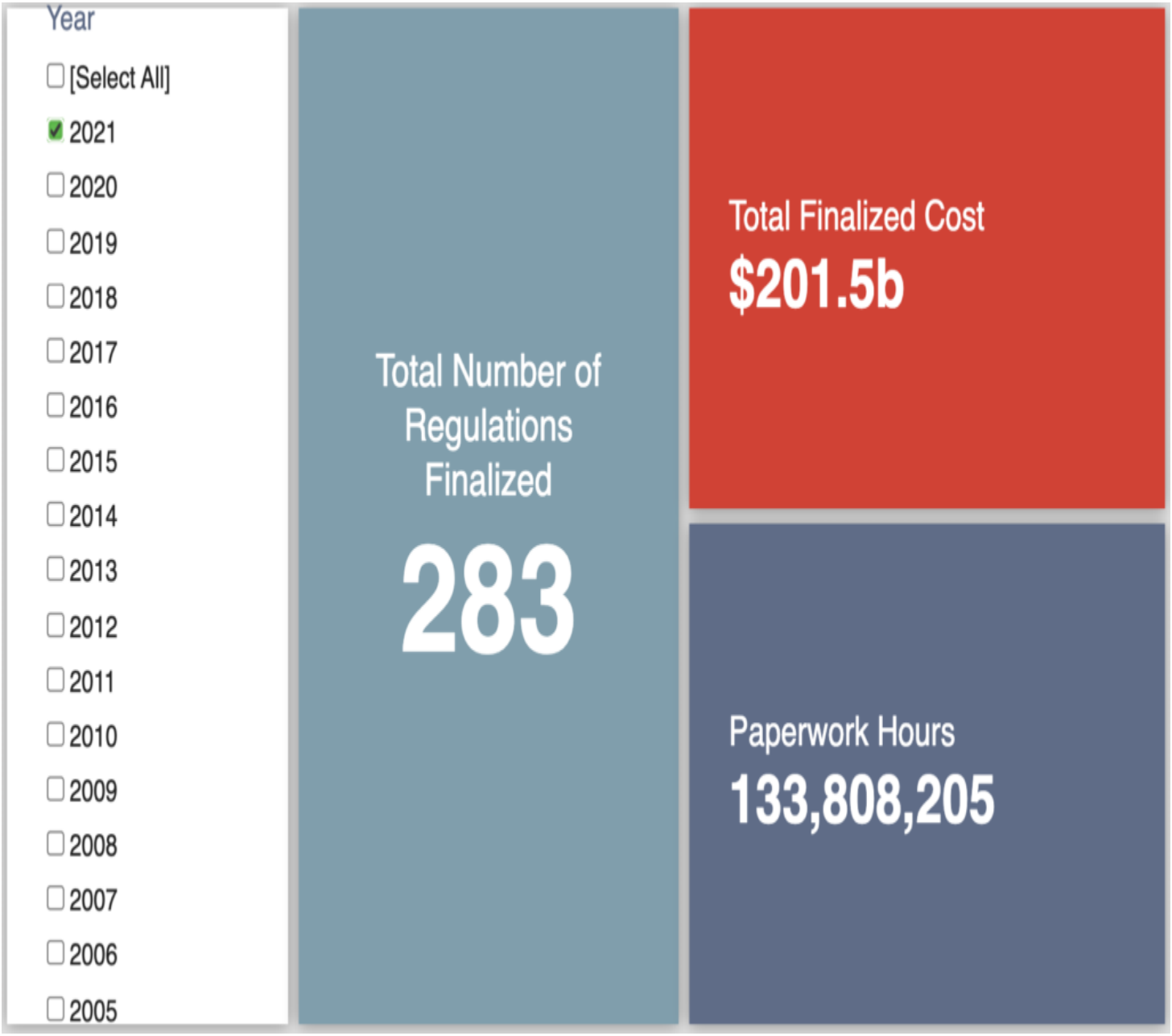
EXECUTIVE SUMMARY

- Federal agencies collectively finalized $201.5 billion in net regulatory costs in 2021, making it the second costliest year since the American Action Forum began tracking regulatory costs.
- Federal agencies collectively finalized 133.8 million new annual hours of paperwork burden.
- The most notable trends of the year were Biden Administration agencies reversing the policies of the Trump Administration and expensive emergency rules aimed at implementing COVID-19 vaccination requirements.

INTRODUCTION

The year ended on a very expensive note. The costliest final rule the American Action Forum (AAF) has ever tracked was published in 2021's last edition of the Federal Register. That single rule made a relatively typical year in terms of economic impact the second costliest since AAF began tracking regulatory cost in 2005. Only 2012 and its $218 billion in total final rule costs outpaced 2021. Overall, the most notable trends were the Biden Administration's aggressive reversal of the Trump Administration's regulatory record and expensive COVID-19 vaccination mandates.

SNAPSHOT OF FINAL RULES WITH ESTIMATED ECONOMIC IMPACTS



Other Notable Points

- Final Annualized Costs: $27.2 billion
- Total Final Costs per Person: $606.24
- Proposed Rules with Estimated Economic Impacts: 226
- Total Proposed Costs: $205.2 billion
- Proposed Paperwork Hours: 26 million
- Federal Register Pages: 74,414
- Total Final Rules: 3,258
- Total Proposed Rules: 2,066

COSTLIEST RULES

The costliest final rule of 2021 was published in the year's final edition of the Federal Register. The Environmental Protection Agency's (EPA) Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards reversed a Trump Administration rule scaling back the annual increases in standards for greenhouse gas emissions from cars and light-duty trucks. Since the Trump-era rule resulted in estimated total savings of nearly $200 billion, it makes sense that a rule reversing it would have a massive economic impact. Indeed, at $180 billion in total costs, the new EPA rule is the most expensive final rule ever tracked in AAF's RegRodeo database. As shown in the table below, that rule was the most expensive by a wide margin.

Top 10 Costliest Final Rules

Regulation	Total Cost ($ Millions)
Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards	180,000.0
Requirements Related to Surprise Billing; Part I	10,593.6
Occupational Exposure to COVID-19; Emergency Temporary Standard	3,969.6
National Primary Drinking Water Regulations: Lead and Copper Rule Revisions	3,855.7
Requirements Related to Surprise Billing; Part II	3,620.0
COVID-19 Vaccination and Testing; Emergency Temporary Standard	2,981.3
Tip Regulations Under the Fair Labor Standards Act (FLSA); Partial Withdrawal	1,819.9
Good Faith Determinations of Fair Value	1,676.6
Prescription Drug and Health Care Spending	1,534.7
Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination	1,382.0

On the proposed side of the ledger, the costliest rule is the same as the final rule list: EPA's proposed revised 2023 emissions standards, published in August. While it is not unheard of for a final rule to be issued less than five months after a proposed rule, it is certainly unique for a rule of such economic impact. Only two rules are on both the final and proposed list – suggesting more expensive final rules are coming in 2022 and beyond.

Top 10 Costliest Proposed Rules

Regulation	Proposed Total Cost ($ Millions)
Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards	150,000.0
Corporate Average Fuel Economy Standards for Model Years 2024-2026 Passenger Cars and Light Trucks	33,700.0
Deferred Action for Childhood Arrivals	8,000.0

Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review	6,300.0
Energy Conservation Program: Backstop Requirement for General Service Lamps	5,340.0
Energy Conservation Program: Energy Conservation Standards for Manufactured Housing	4,700.0
Revised Definition of “Waters of the United States”	3,890.0
Beneficial Ownership Information Reporting Requirements	3,400.0
Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Protection Claims by Asylum Officers	3,200.0
Tip Regulations Under the Fair Labor Standards Act (FLSA); Partial Withdrawal	1,819.9

NOTABLE AGENCIES

True to the regulations in the tables of the costliest rules, the agencies with the most net regulatory costs were EPA, the Department of Health and Human Services (HHS), and the Department of Labor. The Department of Transportation, for what it’s worth, managed to achieve $1 billion in net *savings* in 2021 – one of only five agencies to finish the year in the black. That distinction, however, is only due to the fact that it did not finalize its Corporate Average Fuel Economy rule in 2021, though is expected to do so soon. As proposed, that rule added $33.7 billion on top of EPA’s proposed vehicle emissions standards (the two rules are usually issued jointly since they achieve the same result).

Agencies with More than $1 Billion in Costs

Agency	**Total Finalized Costs ($ Millions)**
Environmental Protection Agency	178,057.6
Health & Human Services	15,658.8
Labor	4,342.1
Securities and Exchange Commission	2,259.3
Agriculture	1,192.8

PAPERWORK

Federal agencies combined to add more than 133.8 million annual hours of paperwork burden from final rules published in 2021. While that is less than half of last year's total of 289 million, it is still good enough to be the second highest since 2005. The two largest rules, in terms of annual paperwork burden, were rules from the Occupational Safety and Health Administration (OSHA) related to COVID-19 vaccination and testing requirements. Of the 16 rules will more than 1 million hours of paperwork, only those two rules each added more than 10 million hours.

Final Rules with More than 1 Million Hours of Annual Paperwork Burden

Regulation	Burden Hours
COVID-19 Vaccination and Testing; Emergency Temporary Standard	79,720,444
Occupational Exposure to COVID-19; Emergency Temporary Standard	19,260,202
USMCA Implementing Regulations Related to the Marking Rules, Tariff-Rate Quotas, and Other USMCA Provisions	8,470,120
Requirements Related to Surprise Billing; Part I	5,903,311
Requirements Related to Surprise Billing; Part II	4,981,604
Prescription Drug and Health Care Spending	2,806,800
Revision of Annual Information Return/Reports	2,445,335
Employment and Training Opportunities in the Supplemental Nutrition Assistance Program	2,069,983
American Rescue Plan Act Elementary and Secondary School Emergency Relief Fund	2,037,956
Investment Adviser Marketing	1,772,746
Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination	1,555,487
Eligibility To Receive Emergency Financial Aid Grants to Students Under the Higher Education Emergency Relief Programs	1,306,588
Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions, Implementation of Vacatur	1,211,560
Good Faith Determinations of Fair Value	1,062,494
Medicare and Medicaid Programs; COVID-19 Vaccine Requirements for Long-Term Care (LTC) Facilities	1,003,678
Coronavirus State and Local Fiscal Recovery Funds	1,001,850

NOTABLE TRENDS

Two notable trends stand out among the regulatory activity of 2021. The first is that the Biden Administration spent much of its time developing rules that reverse or significantly change several Trump Administration rules. This trend was more apparent among proposed rules than final ones in 2021, which makes sense given that regulatory changes need to go the same exact process as the rules they reverse. Among the 10 costliest proposed rules, six directly affect Trump Administration rules. This trend is also true beyond rules with estimated economic impacts. Of the 43 actions included in the Brookings Institution's Biden-Era Regulatory Tracker by the end of 2021 (which tracks significant administration actions beyond just rules), 25 actions either rescinded,

overturned, or delayed Trump Administration actions. With several proposed rules from 2021 yet to be finalized, it is a certainty that 2022 and beyond will see final rules that continue to overturn Trump-era policies.

The other notable trend from the year was expensive COVID-19 vaccination requirements from OSHA and HHS. Those rules – an OSHA vaccine mandate for health care workers, an OSHA vaccine or testing requirement for employers with 100 or more employees, and two HHS vaccine requirements for all workers of facilities participating in Medicare and Medicaid – combined to impose $8.5 billion in costs and 101.5 million new hours of paperwork burden.

CONCLUSION

The publication of the most expensive rule ever tracked by AAF in the year's final Federal Register made 2021 the second most expensive year for final rules on record. While that rule was singular in its size—making it unlikely that 2022 will reach such levels—the proposed rules from the year make it likely that we will continue to see soaring regulatory costs in the new year.