Insight

Tracking the Regulatory Record of Recent Administrations at the Halfway Point

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EXECUTIVE SUMMARY

- At its halfway point, the Biden Administration's regulatory burden totals vastly exceed those of its two immediate predecessors and have done so across a markedly lower volume of rules, with $318 billion in total costs and more than 218 million hours of paperwork.
- While certain agencies (such as the Environmental Protection Agency and Department of Health and Human Services) feature prominently across most of the covered administrations' total cost burdens, there is still a high degree of variance in which agencies contributed the most in terms of regulatory impact across the administrations.
- Notably, across all three administrations it generally took at least a year for major regulatory priorities to wind their way through the rulemaking process.

INTRODUCTION

January 20 marked the halfway point of President Biden's current term, during which his administration has promulgated a prodigious number of regulatory actions. From January 21, 2021, through January 20, 2023, final rules from the Biden Administration imposed roughly $318 billion in total costs with more than 218 million hours of annual paperwork. This insight compares the Biden Administration's cost burdens to those of its two immediate predecessors at this point in their respective terms.

The American Action Forum's (AAF) ongoing RegRodeo project allows the examination of the full set of rulemakings with some measurable economic impact from the Biden, Trump, and Obama Administrations. The overarching conclusions drawn from this data are hardly surprising: The Obama and Biden Administrations imposed regulatory burdens in the hundreds of billions of dollars while the Trump Administration was nominally deregulatory. A deeper examination of the data, however, reveals some interesting developments underneath the topline figures that may complicate certain broad assumptions regarding each administration's regulatory focus.

OVERALL TRENDS

State of Play

Loyal readers of AAF's "Week in Regulation" series may be familiar with the "Tracking the Administrations" section. The following table gives the overall final rule totals as of the halfway point of each administration's first term:

Administration	Rules	Costs ($ Billions)	Paperwork (hours)
Biden	517	318.4	218,052,445
Trump	564	-2.0	18,600,331
Obama	740	208.7	131,258,750

There was – somewhat shockingly – little movement in the overall figures from the most recent examination of quarter-over-quarter trends. As such, there are not many significant developments to highlight across the opening weeks of January 2011, January 2019, and January 2023, respectively. Yet the overall picture remains clear: The Biden Administration's regulatory burden totals vastly exceed those of its two immediate predecessors to this point and have done so across a markedly lower volume of rules.

Major Agencies

What were the main drivers of these overall trends from administration to administration? The table below includes a breakout of each cabinet-level agency's total costs or cost savings across the respective administrations. This portion of the analysis includes only cabinet agencies because an administration has direct control over them from the start. While there are, of course, some notable actions from independent agencies in the covered timeframes, independent agencies are not as accurate of a barometer of administration policies because: A) there is typically a greater lag in aligning agency leaders' policy preferences with those of a new administration, and B) they do not take marching orders from the White House as they are technically separate from an administration.

Cabinet Agency Costs ($ Millions)	Obama	Trump	Biden
Agriculture	1,874.43	5,232.18	-3,400.47
Commerce	16.70	1.04	121.66
Defense	57.28	-61.88	49.79
Education	304.67	-36.63	328.83
Energy	53,655.08	-105.26	7,203.00
Environmental Protection Agency	63,910.20	-503.61	174,954.55
Health & Human Services	9,283.91	-5,840.78	20,899.86
Homeland Security	3,726.58	287.20	6,276.29
Housing & Urban Development	0.00	-61.30	0.00
Interior	409.76	-2,287.64	-32.10
Justice	26,453.04	-496.11	5.30
Labor	4,046.51	-2,898.36	8,945.13
Small Business Administration	0.36	0.01	6.37

State	-0.14	0.00	0.00
Transportation	38,383.45	-1,903.99	16,034.23
Treasury	2,040.38	32.82	84,428.97
Veterans Affairs	0.00	-7.04	14.16

Some of the highlights here will not be surprising for those who regularly track rulemaking trends. Agencies such as the Environmental Protection Agency (EPA) and Departments of Energy (DOE), Health and Human Services (HHS), Labor (DOL), and Transportation (DOT) are all natural candidates for the most active agencies in any given administration. There are, however, more surprising dynamics. The Departments of Agriculture (USDA) and Homeland Security also stand out as consistently active, with regulatory impacts totaling in the billions of dollars in each administration. The Departments of Justice (DOJ), Interior, and Treasury stand out in that they have broadly been less active but drove notable spike within each of the administrations covered here.

NOTABLE DEVELOPMENTS

Obama Administration

The main drivers of the major cost spikes in the first two years of the Obama Administration are relatively straightforward. The following table includes the top five rulemakings by cost from that era:

Title	Agency	Total Cost ($ Billions)	Date Published
Light-Duty Vehicle Greenhouse Gas Emission Standards	Environmental Protection Agency	51.8	5/7/2010
Energy Conservation Standards for Residential Water Heaters	Energy	26.6	4/16/2010
Nondiscrimination on the Basis of Disability (Commercial & State/Local Rulemakings Combined)	Justice	25.8	9/15/2010
Positive Train Control Systems	Transportation	22.5	1/15/2010
Energy Conservation Standards: General Service Fluorescent Lamps	Energy	19.9	7/14/2009

The top three agencies (in terms of costs) under Obama – EPA, DOE, and DOT – have their most significant rules included here. DOJ got in on the action as well with a pair of rulemakings that combined to update relevant regulatory standards under the Americans with Disabilities Act.

In terms of timing, the first of these top five was the set of DOE efficiency standards for general service fluorescent lamps that hit the books within six months of Obama's inauguration. This is likely due in part to DOE having the proposed version ready to go in April 2009. The rest of these core rules were spread out across 2010. Their year-plus schedule comports more with a typical rulemaking timeline. It is worth noting that while legislation such as the Affordable Care Act and Dodd-Frank constituted major parts of the overall Obama regulatory picture, since the underlying laws were signed in March and July 2010, respectively, there was only a limited subset of actions implementing either law that had reached the final rule stage by this point in January

2011.

Trump Administration

The key regulatory story of the Trump Administration was its implementation of Executive Order (EO) 13,771 to restrain and ultimately reduce regulatory costs via a "regulatory budget." With roughly $2 billion in overall net savings in the first two years, Trump Administration agencies clearly made some short-term progress in achieving that objective. The following table includes the five most notable deregulatory actions through January 2019:

Title	Agency	Total Cost Savings ($ Billions)	Date
Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2019	Health & Human Services	-2.7	11/23/2018
18-Month Extension of Transition Period and Delay of Applicability Dates; Fiduciary	Labor	-2.2	11/29/2017
Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements	Interior	-2.1	09/28/2018
Medicare Program; Contract Year 2019 Policy and Technical Changes to the Medicare Advantage	Health & Human Services	-1.5	04/16/2018
Hazardous Materials: Response to Petitions From Industry To Modify, Clarify, or Eliminate Regulations	Transportation	-1.0	11/07/2018

Much as with the Obama Administration, it is clear that this handful of rules provided the most significant economic impacts. Unlike the Obama Administration, however, these actions had a deregulatory effect. Timing-wise, the first rulemaking out of the gate was DOL's action on fiduciary standards. One can ascribe its expedited nature to DOL leveraging its authority to delay the implementation of an Obama-era rule rather than take on a full reversal of the policy. The Trump Administration's other, more substantive deregulatory measures took longer as they had to undergo the full rulemaking process. Notably, at this point in the Trump Administration, USDA was the one cabinet agency with billions of dollars in net *costs* – due almost entirely to a rule on bioengineered food disclosures.

Biden Administration

As discussed above, the Biden Administration has produced substantially more consequential rules in its first two years than its immediate predecessors. (AAF's "Year in Regulation" series has the highlights for 2022 and 2021.) The top five most expensive Biden final rules through the two-year mark are:

Title	Agency	Total Cost ($ Billions)	Date
Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards	Environmental Protection Agency	180.0	12/30/2021

Beneficial Ownership Information Reporting Requirements	Treasury	84.1	09/30/2022
Corporate Average Fuel Economy Standards for Model Years 2024-2026 Passenger Cars and Light Trucks	Transportation	15.6	05/02/2022
Requirements Related to Surprise Billing; Part I	Health & Human Services	10.6	07/13/2021
Deferred Action for Childhood Arrivals	Homeland Security	9.4	08/30/2022

Familiar items such as vehicle emissions standards (issued as related-but-separate rules from EPA and DOT) have been among the main drivers of the past two years' overall trajectory. Yet Treasury's rule on "Beneficial Ownership" – and its mounds of compliance requirements – finally put that agency center stage. The first of the five rules to become final was the HHS rule on surprise billing. This is hardly surprising, however, since it is directly implementing bipartisan legislation on the surprise billing issue as an "interim final rule," which basically allowed it to bypass most of typical rulemaking process.

CONCLUSION

In examining this sample of trends from the Biden, Trump, and Obama Administrations, one can draw important inferences about the regulatory outlook for the remainder of the Biden Administration. The first takeaway is that – outside of some exceptional cases – rules take time to produce under the Administrative Procedure Act, often at least a year. As such, any rule that isn't at least proposed by the end of this year faces the distinct risk of dying on the regulatory vine if Biden is not re-elected. Recent press reports suggest that interested parties are well aware of the coming time-crunch and there may be greater motivation to make sure certain big-ticket items get across the finish line.

Relatedly, whether an administration gets one or two terms has significant bearing on the size of its regulatory legacy. The Obama Administration had imposed nearly $900 billion in regulatory costs by the end of its second term. In President Trump's single term, his EO 13,771 yielded only about $150 billion in net savings – although rules outside of the EO's reach led to overall net costs during his term. Clearly, being a one-term president diminishes the scope of what one can accomplish. The Biden Administration's regulatory legacy is off to a simmering start, but its ultimate horizon will be determined roughly 22 months from now.