



Week in Regulation

Brisk, but Active, Flurry of Rulemakings

DAN GOLDBECK | JANUARY 16, 2024

With only eight rulemakings that had some quantifiable economic impact, this past week was a relatively light one in terms of regulatory volume. There were, however, some notable actions in this cohort. The Departments of Health and Human Services (HHS) and Labor (DOL) loomed large with consequential rules on health information technology (health IT) and worker classification. Across all rulemakings, agencies published \$1 billion in total costs and added 208,659 annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 27
- Final Rules: 65
- 2024 Total Pages: 2,474
- 2024 Final Rule Costs: \$1.7 billion
- 2024 Proposed Rule Costs: \$427.5 million

NOTABLE REGULATORY ACTIONS

The costliest rule of the week was the HHS [action](#) regarding “Health Data, Technology, and Interoperability: Certification Program Updates, Algorithm Transparency, and Information Sharing.” The rule implements provisions of the 21st Century Cures Act (Cures Act) that seek to update the standards for the storage and transmission of health IT data across different health care providers to “facilitate interoperability through standardized health information and functionality.” While making the health IT system more interoperable could yield benefits in future patients’ experiences and outcomes, the highly technical nature of these updates will bring some substantial costs in the near term. HHS expects estimated costs of roughly \$784 million over the next decade, or nearly \$112 million on an annualized basis.

The runner-up in terms of cost total for the week was the DOL [rule](#) regarding “Employee or Independent Contractor Classification Under the Fair Labor Standards Act.” While the final rule makes some modifications to the [proposed version](#) issued in 2022, the main goal – updating “how to determine whether a worker is properly classified as an employee or independent contractor under the Fair Labor Standards Act” – remains the same. The American Action Forum (AAF) previously reviewed the broader policy implications of the proposed rule [here](#). The final version sees its direct cost impact increase from \$188.3 million to \$408 million. The primary reason for this change is that DOL now expects potential affected independent contractors – all 22.1 million of them – to take 30 minutes to familiarize themselves with the updated classification standards rather than the originally estimated 15 minutes.

TRACKING THE ADMINISTRATIONS

As we have already seen from [executive orders and memos](#), the Biden Administration will surely provide plenty of contrasts with the Trump Administration on the regulatory front. And while there is a general expectation that the current administration will seek to broadly restore Obama-esque regulatory actions, there will also be areas where it charts its own course. Since the AAF RegRodeo data extend back to 2005, it is possible to provide weekly updates on how the top-level trends of President Biden's regulatory record track with those of his two most recent predecessors. The following table provides the cumulative totals of final rules containing some quantified economic impact from each administration through this point in their respective terms.

TRACKING THE ADMINISTRATIONS

REGULATORY ACTIVITY FROM INAUGURATION DAY TO JANUARY 12th (Year 4)

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	757	\$449.1B	278.9M
TRUMP 2017	860	\$28.1B	65.2M
OBAMA 2009	1109	\$274.4B	189.4M

LAST UPDATED: JANUARY 12th, 2024 AMERICANACTIONFORUM.ORG

The two rules discussed above were the primary reasons for a modest upward shift in the Biden Administration’s final rule cost total. A [rule](#) from HHS regarding “Safeguarding the Rights of Conscience as Protected by Federal Statutes” blunted some of that increase, however. The rule, which rescinds a Trump-era rule on the matter, results in estimated net savings since affected entities will no longer face the administrative burdens of the prior rule’s compliance requirements. For the other two administrations, the most significant cost development was a roughly \$2.3 billion increase under the Trump Administration stemming from a [handful of energy](#)

efficiency rules. The most significant paperwork movement came from an Obama-era rule implementing new standards under the Affordable Care Act for health care electronic funds transfers that involved nearly 3 million hours of paperwork burdens.

THIS WEEK'S REGULATORY PICTURE

This week, the Department of Agriculture (USDA) updates its regulations regarding smoke detectors.



Source: “[hardwired smoke alarm](#)” via *The EnergySmart Academy Flickr page*

Last Monday, the Rural Housing Service (RHS), a sub-agency of USDA, published a [proposed rule](#) regarding “Revisions to the Smoke Alarm Requirements in the Section 515 Rural Rental Housing and Section 514/516 Farm Labor Housing Direct Loan Programs.” One may not typically associate USDA as the kind of federal agency that concerns itself with housing safety standards, but “Title V of the Housing Act of 1949 authorized the USDA to make housing loans to farmers to enable them to provide habitable dwellings for themselves or their tenants, lessees, sharecroppers, and laborers.” RHS is the division of USDA that carries out these loan programs, and, in turn, sets the standards for domiciles involved in the program.

The proposed rule specifically seeks to update the relevant regulatory code to require “each unit...to contain hardwired or 10-year non-rechargeable, sealed, tamper-resistant, battery-powered smoke alarm devices.” The [current language](#) in the Code of Federal Regulation merely states that “The housing project must have smoke alarms which are properly located according to local code and which operate properly.” This change comes because of provisions of the Public and Federally Assisted Housing Fire Safety Act of 2022 incorporated into the Consolidated Appropriations Act of 2023. Per the agency:

This action is intended to: (1) align the smoke alarm requirements with more stringent requirements for federally assisted housing industry standards; (2) increase the safety of tenants and visitors at our properties; (3) reduce the risk of losing available affordable housing units in our rural communities due to uninhabitability caused by smoke and fire damage as a result of outdated smoke alarm devices; and (4) provide the Agency with additional protection from the loss of its security value.

Interested parties, whomever they may be, have until March 8, 2024, to submit comment on the matter.

TOTAL BURDENS

Since January 1, the federal government has published \$2.2 billion in total net costs (with \$1.7 billion in new costs from finalized rules) and 2.3 million hours of net annual paperwork burden increases (with 1.7 million hours in coming from final rules).

