



Week in Regulation

Cybersecurity Rulemaking Finishes Off 2023 With a Bang

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While the [week preceding](#) it may have seemed like a sizeable surge, the regulatory wave actually crested this past week. It was a small haul by volume – only seven rulemakings with measurable economic impacts – but there were a couple of significant actions to close out 2023. A proposed rule regarding further cybersecurity standards for defense contractors and an interim final rule implementing an expanded summer school meal program were among the featured items. Across all rulemakings, agencies published \$45.6 billion in total costs and added 43.4 million annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 34
- Final Rules: 60
- 2023 Total Pages: 90,267
- 2023 Final Rule Costs: \$129.2 billion
- 2023 Proposed Rule Costs: \$615.9 billion

NOTABLE REGULATORY ACTIONS

The most significant rulemaking of the week from a cost perspective was the Department of Defense (DOD) [proposed rule](#) regarding “Cybersecurity Maturity Model Certification Program.” In particular, the proposal seeks:

To establish requirements for a comprehensive and scalable assessment mechanism to ensure defense contractors and subcontractors have, as part of the Cybersecurity Maturity Model Certification Program, implemented required security measures to expand application of existing security requirements for Federal Contract Information and add new Controlled Unclassified Information security requirements for certain priority programs.

As with other [recent rules](#) regarding defense cybersecurity policy, the volume of contractors and subcontractors effected and the technical complexity of the issues involved lead to costs well into the billions of dollars. In this instance, DOD expects present value costs to covered contractors to be \$42.3 billion over a 20-year period, or nearly \$4 billion on an annualized basis. This makes it the fourth most expensive rulemaking of [2023](#), behind only the latest round of [greenhouse gas emissions](#) and [fuel efficiency](#) standards for passenger vehicles and a Food and Drug Administration [proposal](#) seeking to regulate “Laboratory Developed Tests.”

The most significant [final rule](#) of the week was the interim final rule from the Department of Agriculture

(USDA) entitled “Establishing the Summer EBT Program and Rural Non-Congregate Option in the Summer Meal Programs.” The rule implements provisions of the Consolidated Appropriations Act for 2023 that direct the establishment of an expanded summer meals program for school children through two main prongs: non-congregate meal service and a summer electronic benefit transfers (Summer EBT) program. The former involves setting up pick-up locations for families to receive meals for communities that do not have the capacity to set up sit-down, or “congregate,” facilities during the summer months. The latter expands the EBT program to allow families to purchase food on their own during this period. While the primary impact will be from the millions of meals served and federal transfers to pay for them, these new programs also come with some administrative burdens for state and local governments as well as affected households. USDA expects the various reporting and recordkeeping requirements to add up to \$3.2 billion in costs over nine years, with an annual paperwork burden of roughly 35.7 million hours.

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 DECEMBER 29th (Year 3)

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	743	\$447.3B	277.2M
TRUMP 2017	847	\$25.2B	65.1M
OBAMA 2009	1095	\$273.6B	185.8M

LAST UPDATED: DECEMBER 29TH, 2023 AMERICANACTIONFORUM.ORG

The Summer EBT rule discussed above provided the bulk of the Biden Administration’s final rule total movement from last week. The most notable movement across either of the other two administrations came during the Trump Era. A rule establishing further “program integrity” standards for the Affordable Care Act insurance exchanges was the primary driver of \$2.6-billion and 3-million-hour surge in costs and paperwork during the waning days of 2019.

Last Friday (December 29) marked the final official workday of 2023, thus effectively closing out the calendar year. Because of how the calendar fell on the comparative years of 2011 and 2019, there were a handful of rules for either the 30th or 31st in those years. None of these, however, really moved the needle one way or the other. As such, the Biden Administration heads into 2024 with to-date final rule cost and paperwork totals exceeding those of the Obama Administration by \$173.7 billion and 91.4 million hours, respectively.

THIS WEEK'S REGULATORY PICTURE

Last week, the National Park Service (NPS) finalized changes to how it manages its contracts with concession vendors.



Source: Photo by [Anqi Lu on Unsplash](#)

Last Friday, NPS published a [final rule](#) entitled “Commercial Visitor Services; Concession Contracts.” To be specific, the rule seeks to establish “regulations that govern the solicitation, award, and administration of concession contracts to provide commercial visitor services at National Park System units under the authority granted through the Concessions Management Improvement Act of 1998 and the National Park Service Centennial Act.” The agency expects that these revisions will “reduce administrative burdens and expand sustainable, high quality, and contemporary concessioner-provided visitor services in national parks.”

The relevant regulatory code has apparently not seen a substantive update since the [year 2000](#). The primary thrust of these revisions comes, interestingly enough, from the Trump-era 2018 [Executive Order 13777](#) that

established regulatory reform task forces. NPS has continued the work first spurred by that effort, despite the change in administrations. This final rule includes a dozen specified changes to the concession contracting process. Broadly speaking, most of the changes involve:

- Revising how NPS solicits new contractors and the format of prospectuses involved;
- Adjusting the parameters of capital improvements for new and incumbent contractors to incentivize greater competition; and
- Updating the procedures for how NPS sets “franchise fees” and regulates “concessioner rates” to provide for more flexibility and timely resolution of disputes.

The rule officially goes into effect on December 29, 2024, a year from its publication.

TOTAL BURDENS

Since January 1, the federal government has published \$745.2 billion in total net costs (with \$129.2 billion in new costs from finalized rules) and 251.3 million hours of net annual paperwork burden increases (with 60.5 million hours in coming from final rules).

Year

[Select All]

2023

2022

2021

2020

2019

2018

2017

2016

2015

2014

2013

2012

2011

2010

2009

2008

2007

2006

2005

Total Number of
Regulations
Finalized

236

Total Finalized Cost

\$129.2b

Paperwork Hours

60,473,429