



Week in Regulation

EPA Proposals Rule the Week

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Nearly a month in now, the start of 2024 continues to see a steady flow of significant regulatory actions. There has, so far, not been a week with less than a billion dollars in total estimated costs. Last week brought a dozen rules that contained some quantifiable economic impact. Two of these actions, both from the Environmental Protection Agency (EPA), crossed the billion-dollar threshold in terms of potential costs. Across all rulemakings, agencies published \$4.6 billion in total costs and added 126,161 annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 32
- Final Rules: 72
- 2024 Total Pages: 5,409
- 2024 Final Rule Costs: \$6.9 billion
- 2024 Proposed Rule Costs: \$9.3 billion

NOTABLE REGULATORY ACTIONS

The most consequential rulemakings of the week were EPA's two proposed regarding "Clean Water Act Effluent Limitations Guidelines and Standards for the Meat and Poultry Products Point Source Category" and "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Large Municipal Waste Combustors Voluntary Remand Response and 5-Year Review." The [former](#) focuses on waste run-off emanating from meat-processing facilities and the agency currently estimates that it will involve roughly \$3 billion in lifetime costs. The [latter](#) seeks to update emissions standards for certain trash incinerator facilities and brings an estimated \$1.2 billion in total costs.

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 26th (Year 4)

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	766	\$454.2B	279.9M
TRUMP 2017	873	\$28.5B	65.2M
OBAMA 2009	1117	\$277.7B	189.8M

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The most significant actions of the week came in the form of proposed rules. As such, there was minimal movement in the Biden Administration’s final rule cost and paperwork totals. For the other two administrations, the only real shift in the totals came in the Obama-era cost tally. A Department of Agriculture [rule](#) regarding “Nutrition Standards in the National School Lunch and School Breakfast Programs” provided the bulk of the roughly \$3.2 billion cost increase during late January 2012.

THIS WEEK'S REGULATORY PICTURE

This week, the Federal Aviation Administration (FAA) has a proposed rule on airplane safety disclosure requirements that has some curious timing implications.



Source: Photo by [Calle Macarone](#) on [Unsplash](#)

Last Thursday, FAA published a [proposed rule](#) entitled “Disclosure of Safety Critical Information.” As the rulemaking’s summary details, the proposal seeks to “implement certain mandates in the Aircraft Certification, Safety, and Accountability Act of 2020 by requiring applicants for, and holders of, new and amended transport

category airplane type certificates to submit, and subsequently continue to disclose, certain safety critical information to the FAA.” In particular, the relevant statutory language calls for the disclosure of the following aspects of safety information:

- (1) Details, functions, and failure modes of any system that, without being commanded by the flightcrew, could command the operation of a function or feature that is necessary for control of the airplane, or could affect its flight path or airspeed.
- (2) Details, functions, failure modes, and mode annunciations about the transport category airplane's autopilot and autothrottle systems.
- (3) Failures or operating conditions that the TC applicant or holder anticipates or has concluded would result in a hazardous or catastrophic outcome.
- (4) Any adverse handling quality that, without adding flight control augmenting software to the airplane design, would result in a failure to meet the requirements of FAA regulations.
- (5) A system safety assessment with respect to any system described in one of the first two categories (i.e., flight controls, and autothrottle/autopilot), or with respect to a system or component whose failure or erroneous operation could result in a hazardous or catastrophic outcome. □

Given the [recent news](#) regarding airliner safety issues, this may seem like a timely regulatory response. In fact, the underlying statute and rulemaking in question stem from incidents involving Boeing 737 MAX safety failures. The catch, however, is that these instigating events did not happen in recent weeks, but rather [years ago](#) . Recall again that the statutory directives came by way of the Aircraft Certification, Safety, and Accountability Act of 2020.

One may then think that perhaps these more recent developments have directly spurred FAA into action on regulatory items that time simply forgot. A cursory examination of the agency’s regulatory agenda also complicates that narrative. FAA had [plans](#) to propose this rulemaking last year. The agency’s most recent [projection](#) had this proposal scheduled for publication this coming March. These Unified Agenda entries suggest that such a rulemaking has actively been in the works for some time now.

Now, perhaps these recent Boeing 737 MAX issues have provided *additional* incentive to FAA to act more expeditiously on such items. And to be sure, it is difficult to say how such a rulemaking would have materially affected how recent events unfolded. If anything, though, this proposal stands as another [example](#) (in the transportation sector, no less) of how policymakers – particularly on the administrative side – should make sure currently required safety programs are fully implemented in a timely fashion before using the crisis of the day to justify any number of new regulatory dictates.

Interested parties have until March 25, 2024, to submit comments on the proposal.

TOTAL BURDENS

Since January 1, the federal government has published \$16.2 billion in total net costs (with \$6.9 billion in new costs from finalized rules) and 4.8 million hours of net annual paperwork burden increases (with 2.6 million hours coming from final rules).

