



Week in Regulation

Sizeable Immigration Rulemaking Leads Off 2023

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In terms of regulatory activity at least, 2023 has started off on a brisk and noteworthy week. There were seven actions that had some quantifiable economic impact, a majority of which exceeded the \$100 million threshold. The main event of the week, however, came in a proposed rule regarding immigration from the Department of Homeland Security (DHS) that includes costs in the billions of dollars. Across all rulemakings, agencies published \$4.3 billion in total costs and added 2.8 million annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 23
- Final Rules: 41
- 2023 Total Pages: 1,131
- 2023 Final Rule Costs: -\$9.2 million
- 2023 Proposed Rule Costs: \$4.3 billion

NOTABLE REGULATORY ACTIONS

The most consequential rulemaking of the week was the DHS [proposed rule](#) regarding “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements.” As the title suggests, the main focus of the rulemaking is updating the fees involved in various aspects of the immigration process. These fees are generally considered transfer payments and thus fall outside the purview of RegRodeo accounting. Among the various changes in the proposal, however, are some adjustments to certain administrative requirements. Those actions can either impose or relieve costs on applicants. DHS estimates that such actions – in particular, a new asylum application requirement – net out to roughly \$532 million in annual costs, or \$3.7 billion over a 10-year period.

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 6th (Year 3)

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	510	\$318.1B	217.4M
TRUMP 2017	563	-\$2B	18.6M
OBAMA 2009	731	\$208.1B	131.2M

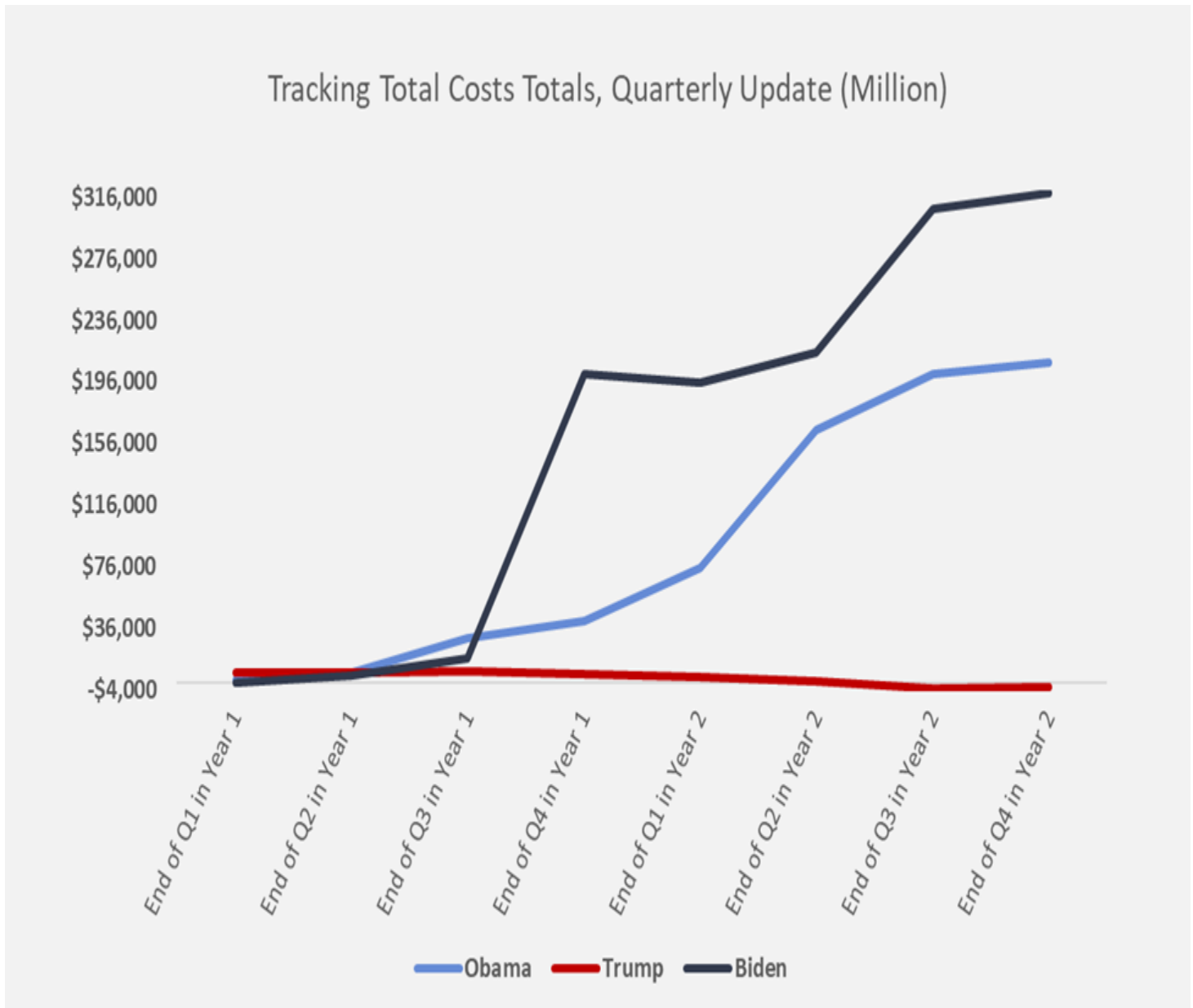
LAST UPDATED: JANUARY 6th, 2023 AMERICANACTIONFORUM.ORG

The only final rule to start off 2023 was a Department of Health and Human Services [measure](#) regarding “Mitigating the Spread of COVID-19 in Head Start Programs.” The rule, which updates a prior interim rule, yields \$9.2 million in net cost savings, due largely to removing “the requirement for universal masking for all individuals ages 2 and older.” As such, the Biden Administration’s totals saw only a marginal shift. That trend held true across the other administrations as well. There was virtually no movement for the Trump

Administration, and the Obama Administration had a handful of relatively minor rules increase costs by a mere \$23.5 million and paperwork by nearly 60,000 hours.

Quarterly Update

To better illustrate these general trends over time, AAF will provide a look at where each of the covered administrations stands at the end of each quarter in terms of regulatory costs. The graph below provides the latest installment of this series, tracking each administration through December 31 of its second calendar year.

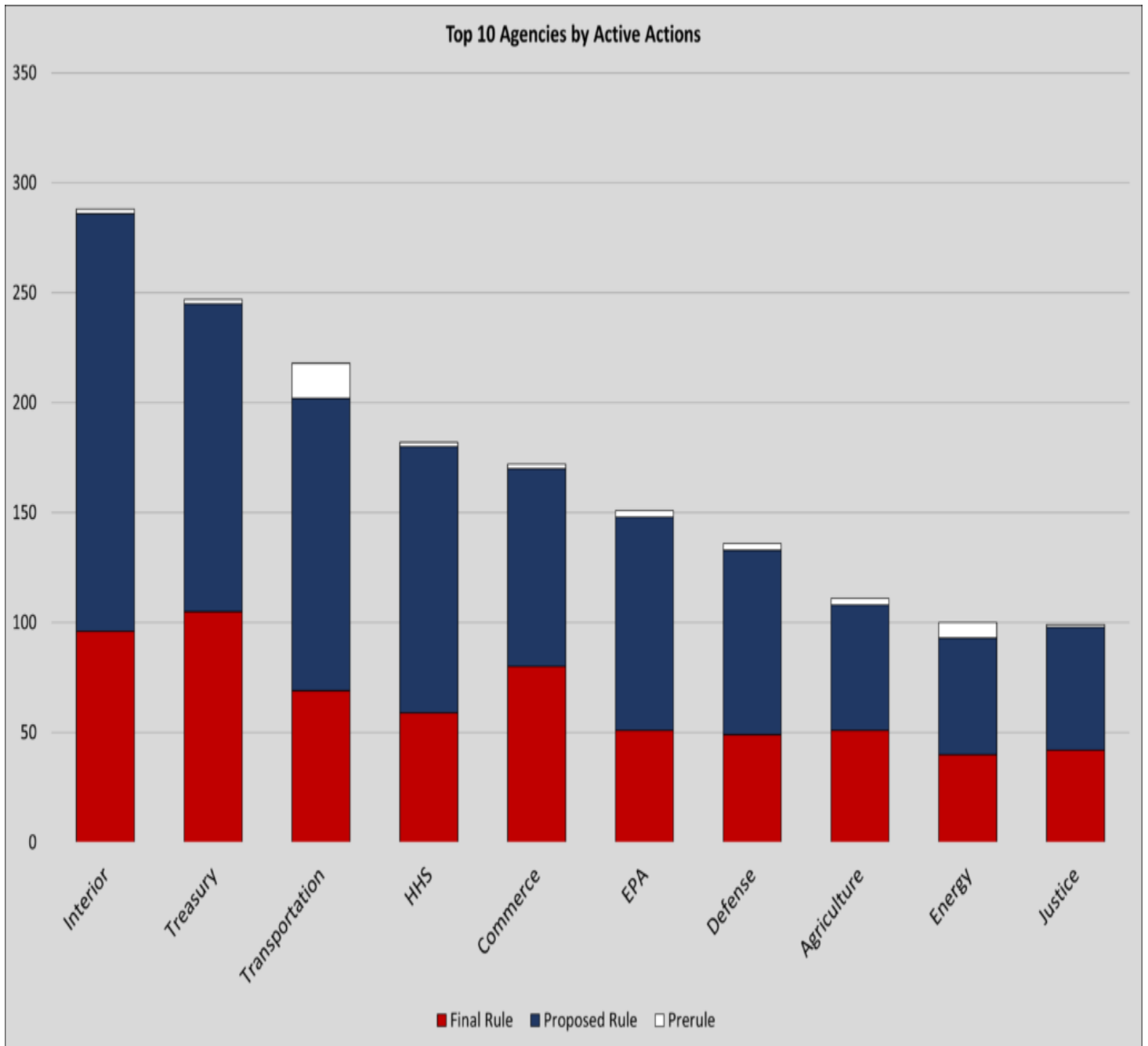


As the graph illustrates, there were no dramatic shifts across any of the administrations. In fact, perhaps the most remarkable aspect is how each of the trend lines remained so similarly stagnant. As highlighted in AAF's [Year in Regulation](#) wrap-up of 2022, however, one can expect to see at least some notable shifts in the Biden Administration's chart over coming quarters with nearly \$200 billion in proposed rule costs sitting in the hopper.

THIS WEEK'S REGULATORY PICTURE

This week, the “fall” regulatory agenda finally emerges.

On January 4, the Office of Information and Regulatory Affairs, the office within the White House that coordinates regulatory activity among the agencies, finally [released](#) the “Fall 2022 Unified Agenda of Regulatory and Deregulatory Actions.” The regulatory agenda, as it is commonly known, contains lists of rules that agencies expect to work on over the next year (active actions), over the next several years (long-term actions), and those recently finished (completed actions).



The chart above shows the 10 agencies with the most active actions and the number of rules at each stage of the process. The top five remain in the same order as the spring 2022 [agenda](#). The Environmental Protection Agency has swapped places with the Department of Defense, the Department of Agriculture likewise has swapped spots with the Department of Energy, and the Department of Justice knocked out the Department of Homeland Security to claim the number 10 position.

At this point in an administration’s term, most of the regulatory work is spent on completing priority rulemakings that started earlier on. Accordingly, there are not many remarkable additions among the 461 newly listed rules. Those worth noting include a Department of Labor rule to define independent contractor status (which was [proposed](#) back in October, so not a surprise), a Federal Trade Commission rule on disclosures from motor vehicle dealers (similarly already [proposed](#)), and a Department of Health and Human Services [rule](#) that

would “strengthen the Temporary Assistance for Needy Families (TANF) program as a safety net and a work preparation program.”

The regulatory agenda is more helpful for updated timing on previously known high profile rules. These include a new [effort](#) to regulate greenhouse gas emissions from existing power plants (a proposed rule is due in April 2023), yet *another* new [definition](#) of the term “Waters of the United States” (a proposed rule is planned for November 2023), and a proposed [rule](#) to set a new salary threshold – and other factors – for determining employees eligible for overtime pay.

In total, federal agencies are actively working on more than 2,600 rules, of which more than 1,000 are classified as significant either because of their economic effects or their policy implications.

TOTAL BURDENS

Since January 1, the federal government has published \$4.3 billion in total net costs (with \$9.2 million in new cost savings from finalized rules) and 2.8 million hours of net annual paperwork burden increases (with 12,832 hours in increases from final rules).

