



Week in Regulation

The Spring Surge Resumes

DAN GOLDBECK | MAY 13, 2024

Despite the relative lull in the preceding [week](#), this past week saw regulatory costs come surging back in rare form. Typically, when an edition of “Week in Regulation” involves a total in the hundreds of billions of dollars, it has been primarily due to a singular rule (e.g., the various iterations of greenhouse gas emissions standards for vehicles). This past week, however, saw agencies spread the regulatory wealth around, so to speak. There were 36 rulemakings with some quantifiable economic impact – the highest such total in recent memory. Nearly one-third of those actions (11, to be precise) were measured in the billions of dollars, with a Department of Health and Human Services (HHS) measure on long-term care facility staffing requirements being the main standout. Across all rulemakings, agencies published \$157.9 billion in total costs and added 7.3 million annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 20
- Final Rules: 72
- 2024 Total Pages: 41,236
- 2024 Final Rule Costs: \$1.19 trillion
- 2024 Proposed Rule Costs: \$34.9 billion

NOTABLE REGULATORY ACTIONS

The most consequential rulemaking of the week from a cost perspective was the HHS [rule](#) regarding “Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care [LTC] Facilities and Medicaid Institutional Payment Transparency Reporting.” The rule would require covered facilities to have “an RN [registered nurse] to be on site 24 hours per day and 7 days per week (24/7 RN) to provide skilled nursing care to all residents in accordance with resident care plans, with an exemption from 8 hours per day of the onsite RN requirement under certain circumstances,” and a minimum of “3.48 total nurse staffing hours per resident day (HPRD) of nursing care, with 0.55 RN HPRD and 2.45 NA [nurse aide] HPRD.” While HHS plans to have compliance phased in during the early years, it recognizes that the costs of these requirements balloon into the billions over time and estimates that the 10-year total amounts to more than \$43 billion.

As the agency acknowledges, these costs could manifest in myriad ways: “We expect LTC facilities would generally have 3 possible approaches to addressing the increased costs associated with the higher staffing levels: (1) reduce their margin or profit; (2) reduce other operational costs; and (3) increase prices charged to payors.” Furthermore, in its discussion of public comments received regarding the rule’s proposed form, HHS highlights concerns from affected stakeholders:

That nursing homes may lay off non-nurse staff members and cut resident activities, such as bingo

night, which contribute to patients' quality of life, to fund the requirements since nursing homes are already struggling financially with the rising costs of inflation, food, insurance, and an already increased payroll.

As noted earlier, despite being the clear standout, the LTC staffing rule was hardly alone this week. The following actions were also members of the "Billion-dollar Rule Club":

- HHS "Managed Care Access, Finance, and Quality" rule – [\\$27.8 billion](#)
- Department of Energy efficiency standards for "Consumer Water Heaters" – [\\$22 billion](#)
- Environmental Protection Agency (EPA) "Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category" – [\\$15.6 billion](#)
- Food and Drug Administration "Laboratory Developed Tests" rule – [\\$13.6 billion](#)
- EPA "Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments" rule – [\\$9 billion](#)
- EPA "New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule" – [\\$7.5 billion](#)
- Federal Trade Commission "Non-Compete Clause Rule" – [\\$7.2 billion](#)
- HHS "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance" rule – [\\$3.8 billion](#)
- HHS "Nondiscrimination in Health Programs and Activities" rule – [\\$2.7 billion](#)
- Department of Transportation "Federal Motor Vehicle Safety Standards; Automatic Emergency Braking Systems for Light Vehicles" – [\\$1.8 billion](#)

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 MAY 10th (Year 4)

| | FINAL RULES | FINAL RULE COSTS | PAPERWORK HOURS |
|----------------------|-------------|------------------|-----------------|
| BIDEN 2021 | 923 | \$1.6T | 289.7M |
| TRUMP 2017 | 984 | -\$159.4B | 74.6M |
| OBAMA 2009 | 1241 | \$309.2B | 238.8M |

LAST UPDATED: MAY 10th, 2024 AMERICANACTIONFORUM.ORG

With most of this week’s action coming in the form of final rules (only four of the 36 rulemakings included were in the proposed rule stage), the Biden Administration saw its final rule cost and paperwork tallies continue to rise. As noted in last week’s edition of “Tracking the Administrations,” the “country” of Biden Regulatory Costs (BRC) was poised to pass the [gross domestic product](#) (GDP) of Indonesia. Well, with this nearly \$158 billion haul, the BRC has blown past that mark and is now nipping at the heels of Spain. Another \$50 billion or so and it will soon be chasing down South Korea. The only notable action in the other two administrations came

during the Obama Administration where an Affordable Care Act [rule](#) brought \$5.7 billion in increased costs.

TOTAL BURDENS

Since January 1, the federal government has published \$1.22 trillion in total net costs (with \$1.19 trillion in new costs from finalized rules) and 40.6 million hours of net annual paperwork burden increases (with 12.4 million hours coming from final rules).

