Insight

2023: The Year in Regulation

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EXECUTIVE SUMMARY

- Federal agencies collectively finalized $129.2 billion in net regulatory costs in 2023, displacing 2022 as the fifth-most expensive year since 2005.
- Federal agencies also collectively finalized 60.5 million new annual hours of paperwork burden.
- Both trends, however, pale in comparison to the roughly $616 billion in costs and 191 million hours from proposed rules that portend a potentially record-breaking 2024 for the Biden Administration.

INTRODUCTION

Last year was a live one on the regulatory front. The Biden Administration's energy and environmental rulemakings continued to be the most significant actions, but there were also notable measures pertaining to financial services, health care, and social benefits programs. Across the federal government, agencies finalized more than 236 rules with estimated economic impacts totaling $129.2 billion, with an average per-rule cost of roughly $547 million. That amounts to roughly $100 million more per rule than the rate seen from 2022's regulatory haul. Of perhaps even greater note, the administration also proposed 365 rules that, if finalized as is, could add another $615.9 billion in costs. Considering that the most expensive year (2012) currently recorded in the American Action Forum's (AAF) RegRodeo project added up to $218 billion in final rule costs, there's a legitimate chance that the Biden Administration takes over that top spot in this upcoming election year.

SNAPSHOT OF FINAL RULES WITH ESTIMATED ECONOMIC IMPACTS



Other Notable Points

- Final Annualized Costs: $23.9 billion
- Total Final Costs per Person: $389.27
- Proposed Rules with Estimated Economic Impacts: 365
- Total Proposed Costs: $615.9 billion
- Proposed Paperwork Hours: 190.9 million
- Federal Register Pages: 90,267
- Total Final Rules: 3,004
- Total Proposed Rules: 2,084

COSTLIEST RULES

The Environmental Protection Agency (EPA) reclaimed the top spot among agencies in terms of final rules after a relatively "down" year in 2022. This past year's most expensive final rule was a set of emissions standards for heavy-duty vehicles. While many of the most notable EPA rules have focused on greenhouse gas (GHG) emissions, this year's costliest final rule focuses instead on so-called criteria pollutants, such as ozone and particulate matter. Overall, this year's Top 10 costliest final rules included a fair amount of variety in terms of issue areas. Measures regarding financial adviser disclosures, health care, and benefits programs addressing education and food security were all part of the mix.

Top 10 Costliest Final Rules

Regulation	Total Cost ($ Billions)
Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards	39
Renewable Fuel Standard Program: Standards for 2023–2025 and Other Changes	23
Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews	16.7
Federal "Good Neighbor Plan" for the 2015 Ozone National Ambient Air Quality Standards	9.4
Streamlining Medicaid; Medicare Savings Program Eligibility Determination and Enrollment	6.2
Energy Conservation Program: Energy Conservation Standards for Consumer Furnaces	4.5
Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way	4.4
Financial Value Transparency and Gainful Employment	3.5
Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2024	3.4
Establishing the Summer EBT Program and Rural Non-Congregate Option in the Summer Meal Programs	3.2

As with the above list of final rules, 2023's proposed rules also saw vehicular emissions rise to the top of the chart. In this instance, it was the pair of related-but-separate rulemakings from EPA and the Department of Transportation regarding, respectively, GHG emissions and average fuel economy standards for passenger vehicles in model years 2027 and beyond. The pair of proposed rules currently combines for nearly $270 billion in total costs. EPA also put forward its latest set of GHG emissions standards for heavy-duty vehicles. All told, only three of the top 10 proposed rules from this past year addressed issues beyond energy efficiency or environmental protections. Nevertheless, said proposals bring potentially sizeable effects to the fields of health care and cybersecurity.

Top 10 Costliest Proposed Rules

Regulation	Total Cost ($ Billions)
Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles	180
Corporate Average Fuel Economy Standards for Passenger Cars and Light Trucks for Model Years 2027–2032 and Fuel Efficiency Standards for Heavy-Duty Pickup Trucks and Vans for Model Years 2030–2035	88
Medical Devices; Laboratory Developed Tests	62.2
Cybersecurity Maturity Model Certification Program	42.3
Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting	40.8
National Primary Drinking Water Regulations for Lead and Copper: Improvements	39.3
Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3	39
Energy Conservation Program: Energy Conservation Standards for Consumer Water Heaters	19
PFAS National Primary Drinking Water Regulation Rulemaking	18.3

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	10

NOTABLE AGENCIES

Given the trends identified above, the mix of agencies with the greatest share of regulatory impact is hardly surprising. EPA and the Department of Energy create a sandwich around the Securities and Exchange Commission. Various agencies charged with delivering health care and other social benefits round out this year's crowd. The Departments of Education and Agriculture stand out as relative newcomers to this list.

Agencies With More Than $1 Billion in Final Rule Costs

Agencies	Total Cost ($ Billions)
Environmental Protection Agency	70.6
Securities and Exchange Commission	19.6
Energy	11.7
Health & Human Services	9
Agriculture	4.1
Transportation	3.7
Education	3.5
Treasury	2.2

PAPERWORK

With merely 60.5 million hours of new paperwork emanating from final rules this past year, 2023 was actually middle-of-the-pack in this regard. According to AAF's RegRodeo data, that total is good for ninth place in the category of highest paperwork burden going back to 2005. While the aggregate total was not earth-shattering – at least as compared to some prior years – there was a steady stream of rules that will involve substantial administrative burdens. Swooping in during the year's final week, the Department of Agriculture rule

implementing an expanded school lunch program during summer months claimed the number one slot. From there, topics ran the gamut from additional business and employment reporting requirements to environmental safety disclosures to rulemakings addressing certain health care concerns.

Final Rules With at Least 1 Million Annual Hours of Paperwork Burden

Regulation	Annual Hours
Establishing the Summer EBT Program and Rural Non-Congregate Option in the Summer Meal Programs	35,748,276
Wagner-Peyser Act Staffing	10,677,416
Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)	7,052,552
Beneficial Ownership Information Access and Safeguards	4,642,327
Toxic Substances Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances	3,878,744
Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews	3,731,010.9
Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury, End-Stage Renal Disease Quality Incentive Program, and End-Stage Renal Disease Treatment Choices Model	2,771,943.5
Factoring Criteria for Firearms With Attached “Stabilizing Braces”	1,746,573
Asbestos; Reporting and Recordkeeping Requirements Under the Toxic Substances Control Act	1,520,466
Optional Alternatives to the Physical Document Examination Associated With Employment Eligibility Verification (Form I-9)	1,505,900
Transfer of Electronic Prescriptions for Schedules II-V Controlled Substances Between Pharmacies for Initial Filling	1,250,000
Mammography Quality Standards Act	1,240,170
Investment Company Names	1,064,420

CONCLUSION

As the calendar flips from 2023 to 2024, the Biden Administration enters the final year of its current term. This past year marked a steady but relatively middling year in terms of regulatory output. While it outpaced 2022 in terms of certain costs measures, it was still far behind the administration's peak year of 2021. This comparative calm, however, belies the potential magnitude of what may come over the next 12 months. Proposed rules from 2023 bring a currently estimated $616 billion in total costs. Between the time constraints involved in the rulemaking process and the political pressures inherent to campaign season, expect a motivated Biden Administration to do what it can to get much of this regulatory load across the finish line.