



Week in Regulation

A Busy, Up-and-down Start to February

DAN GOLDBECK | FEBRUARY 6, 2023

Last week was a fairly busy one in the pages of the Federal Register. There were 10 rulemakings with some quantifiable economic impact – six of which had economic effects of at least \$100 million. Additionally, four of the actions provided cost *savings*. A Department of Justice (DOJ) rule on firearms regulations led the way in net costs while a Department of Interior (DOI) rule updating how renewable energy projects can operate around the Outer Continental Shelf (OCS) provided the most significant savings. Across all rulemakings, agencies published \$1.6 billion in total costs and added 2.2 million annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 52
- Final Rules: 63
- 2023 Total Pages: 7,544
- 2023 Final Rule Costs: \$41.2 billion
- 2023 Proposed Rule Costs: \$15.4 billion

NOTABLE REGULATORY ACTIONS

The most consequential rulemaking of the week was the [final rule](#) from DOJ regarding “Factoring Criteria for Firearms With Attached ‘Stabilizing Braces.’” The primary purpose of the rule is to amend the official categorization of certain firearms that include a “stabilizing brace” to determine whether the firearms in question qualify as handguns or

rifles. This taxonomy has important implications for the legal requirements involved in the registration and/or sale and transfer of such arms. Under this new definition, a number of firearms will no longer be in compliance with relevant statutory and regulatory code. There are costs to individuals in possession of such arms in terms of either bringing them into full compliance, relinquishing them, or destroying them. DOJ estimates that such costs add up to roughly \$263 million annually, or nearly \$1.9 billion over a 10-year period.

The most noteworthy rulemaking on the cost-saving side of the ledger was the [proposed rule](#) from DOI on “Renewable Energy Modernization.” As the title suggests, the proposal seeks to update the regulations surrounding the deployment of renewable energy projects, particularly around the OCS. Specifically, the actions that will provide the most concrete savings to project developers include: loosening the amount of pre-project capital that a developer must devote toward eventual decommissioning, streamlining the deployment of “meteorological buoys,” and providing greater flexibility in how a developer undertakes their “geotechnical survey.” DOI estimates that these changes would amount to total net savings of approximately \$1 billion, or \$94.5 million on an annualized basis.

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 FEBRUARY 3th (Year 3)

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	525	\$359.3B	219.8M
TRUMP 2017	570	-\$2.7B	17.1M
OBAMA 2009	749	\$208.9B	133.6M

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The DOJ rule discussed above provided much of the upward movement in the Biden final rule totals. The current administration continues to widen the gap between itself and the preceding administrations - now exceeding even the Obama-era totals by more than \$150 billion in costs and roughly 86 million hours of annual paperwork. There was, however, some notable movement in the Trump and Obama paperwork totals. The Trump Administration saw a 1.4-million-hour decrease, due mostly to a [rule](#) adjusting the process for H-1B visas. Meanwhile, the Obama paperwork total grew by roughly 1.3 million hours, driven mostly by a [rule](#) on Medicare and Medicaid screening requirements.

THIS WEEK'S REGULATORY PICTURE

This week, the Department of Transportation (DOT) continues to develop its regulatory framework for automated trucks.



Source: *“Container trucks on an American highway”* by [Futureatlas.com/](https://www.futureatlas.com/)

In a development that for some may call to mind the classic Simpsons episode, [“Maximum Homerdrive,”](#) DOT published a “supplemental advance notice of proposed rulemaking” ([SANPRM](#)) regarding “Safe Integration of Automated Driving Systems (ADS)-Equipped Commercial Motor Vehicles (CMVs).” That is a lot of words and acronyms to say that DOT is soliciting further input on what sort of regulatory requirements it will need to put in place for highly or fully automated freight trucks.

This SANPRM follows on the heels of an original “advanced notice of proposed rulemaking” (ANPRM) from [2019](#). DOT is issuing this supplemental version now in order to gather even more information regarding the implications for vehicles that involve full or virtually full automation. As noted in the [2019 ANPRM](#), there is a spectrum of levels of automation, ranging from “Level 0” that involves no automation to “Level 5” that involves full automation. DOT seeks further information on levels 4 [High Driving Automation] and 5 “because it is only at those levels that an ADS can control all aspects of the dynamic driving task without any expectation of an intervention from a human driver.”

The SANPRM focuses on three main issue areas and includes a series of follow-up questions

for each. The first issue area raised involves “Notification by Motor Carriers Operating Level 4 or 5 ADS-Equipped CMVs,” or essentially, what degree of communication and reporting must take place between relevant operators and DOT on route details of a given ADS haul. The second issue area focuses on how much or how little operational safety requirements (involving items such as impaired or distracted driving) for a “remote assistant” monitoring a vehicle’s progress should mirror those expected of a typical, in-vehicle human driver. The final area DOT seeks to address is the level of standards it will need to establish on the regular maintenance and inspection of the ADS mechanism as a component of the vehicle itself (a la current standards of checking items such as brakes, lights, etc.).

Interested parties have until March 20, 2023, to [submit comments](#) on the matter.

TOTAL BURDENS

Since January 1, the federal government has published \$56.6 billion in total net costs (with \$41.2 billion in new costs from finalized rules) and 7.2 million hours of net annual paperwork burden increases (with 2.4 million hours in increases from final rules).

