Week in Regulation

A Very Cars-oriented Week to Start Off 2024

DAN GOLDBECK | JANUARY 8, 2024

The first week of the new year was relatively understated compared to how 2023 finished off, but it was hardly a nothing-burger. There were 10 rulemakings with some quantified economic impact. The main action of the week was a final rule from the Federal Trade Commission (FTC) setting expansive new regulations for automobile dealers. Across all rulemakings, agencies published $1.1 billion in total costs and added 2.1 million annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 19
- Final Rules: 38
- 2024 Total Pages: 854
- 2024 Final Rule Costs: $1.1 billion
- 2024 Proposed Rule Costs: $0

NOTABLE REGULATORY ACTIONS

The most consequential rulemaking of the week was the "Combating Auto Retail Scams Trade Regulation Rule" (CARS Rule) from FTC. Specifically, the rule:

> *Among other things, prohibits motor vehicle dealers from making certain misrepresentations in the course of selling, leasing, or arranging financing for motor vehicles, requires accurate pricing disclosures in dealers' advertising and sales communications, requires dealers to obtain consumers' express, informed consent for charges, prohibits the sale of any add-on product or service that confers no benefit to*

> *the consumer, and requires dealers to keep records of certain advertisements and customer transactions.*

Back in September 2022, when FTC released the proposed version of the rule, the American Action Forum (AAF) examined some of the critical flaws in the agency's cost-benefit assumptions – particularly an overestimate of expected benefits. FTC apparently heard such concerns (from multiple commentors, to be sure) during the comment consideration process and adjusted its primary estimates accordingly. The expected benefit-cost balance went from roughly $31 billion vs. $1.4 billion in the proposed version to $13.4 billion vs. $1.1 billion in this final edition.

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 5th (Year 4)

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	752	$448.5B	278.8M
TRUMP 2017	854	$25.8B	65.2M
OBAMA 2009	1101	$274.2B	185.8M

LAST UPDATED: JANUARY 5TH, 2024 AMERICANACTIONFORUM.ORG

The CARS rule provided most of the upward movement in the Biden Administration's final rule cost and paperwork totals. Neither of the other administrations had as dramatic an increase as Biden's to begin their respective election years, but there were some items that stood out. The start of January 2020's most notable rule was a Federal Communications Commission order designating Huawei and ZTE as national security threats. Meanwhile, the main action that rang in 2012 for the Obama Administration was a Federal Aviation Administration rule regarding "Flight-crew Member Duty and Rest Requirements."

THIS WEEK'S REGULATORY PICTURE

Last week, the Department of Transportation (DOT) took a major step toward requiring future passenger vehicles to have some pre-installed device or apparatus to prevent impaired driving.

Source: Photo by Rio Space on Unsplash

Last Friday, DOT published an Advanced Notice of Proposed Rulemaking (ANPRM) entitled "Advanced Impaired Driving Prevention Technology." As the succinct title suggests, the action "initiates rulemaking that would gather the information necessary to develop performance requirements and require that new passenger motor vehicles be equipped with advanced drunk and impaired driving prevention technology." This new rulemaking is implementing a provision of the Infrastructure Investment and Jobs Act that directs the agency to finalize such a rule by November 2024.

This deadline puts DOT on a fairly tight rulemaking timeline, although the only real consequence of not meeting the deadline is that DOT will have to submit reports to Congress on why it did not. Part of the reason the agency seems to be taking a more deliberative approach despite this looming decline is that it recognizes that this is a much more complex issue than perhaps lawmakers anticipated. For instance, DOT notes that "technological challenges, such as distinguishing between different impairment states, avoiding false positives, and determining appropriate prevention countermeasures, remain."

Additionally, there are varying degrees and causes of impaired driving including intoxication, distraction, and exhaustion. Requiring an in-vehicle device or apparatus that reliably addresses all of that becomes a complicated proposition. As such, DOT is formally soliciting greater input on the issue. Across the entirety of the ANPRM, the agency poses direct questions to the public regarding 63 issues, ranging from the state of testing technology to how best to "intervene" and prevent an impaired driver from operating the vehicle to privacy and security concerns.

Interested parties have until March 5, 2024, to submit comments on the rulemaking.

TOTAL BURDENS

Since January 1, the federal government has published $1.1 billion in total net costs (with $1.1 billion in new costs from finalized rules) and 2.1 million hours of net annual paperwork burden increases (with 1.6 million hours in coming from final rules).