Week in Regulation

Rules Keep Churning as the Votes Roll In

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The story of the week (and of the year and perhaps even decade) was, of course, the election last Tuesday, the result of which ushers in a return of the Trump Administration and its more deregulatory posture come January 20, 2025. For the time being, however, agencies under the current Biden Administration continue their regulatory programs apace. There were only eight rulemakings this past week that contained some kind of quantified economic impact, but a couple of them packed a punch. The week's main rulemaking items included a Department of Homeland Security (DHS) proposal on cybersecurity standards for certain categories of public infrastructure and a Department of Health and Human Services (HHS) rule that brings sizable administrative burdens. Across all rulemakings, agencies published $3.1 billion in total costs and added 3.5 million annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 37
- Final Rules: 44
- 2024 Total Pages: 88,763
- 2024 Final Rule Costs: $1.33 trillion
- 2024 Proposed Rule Costs: $127.6 billion

NOTABLE REGULATORY ACTIONS

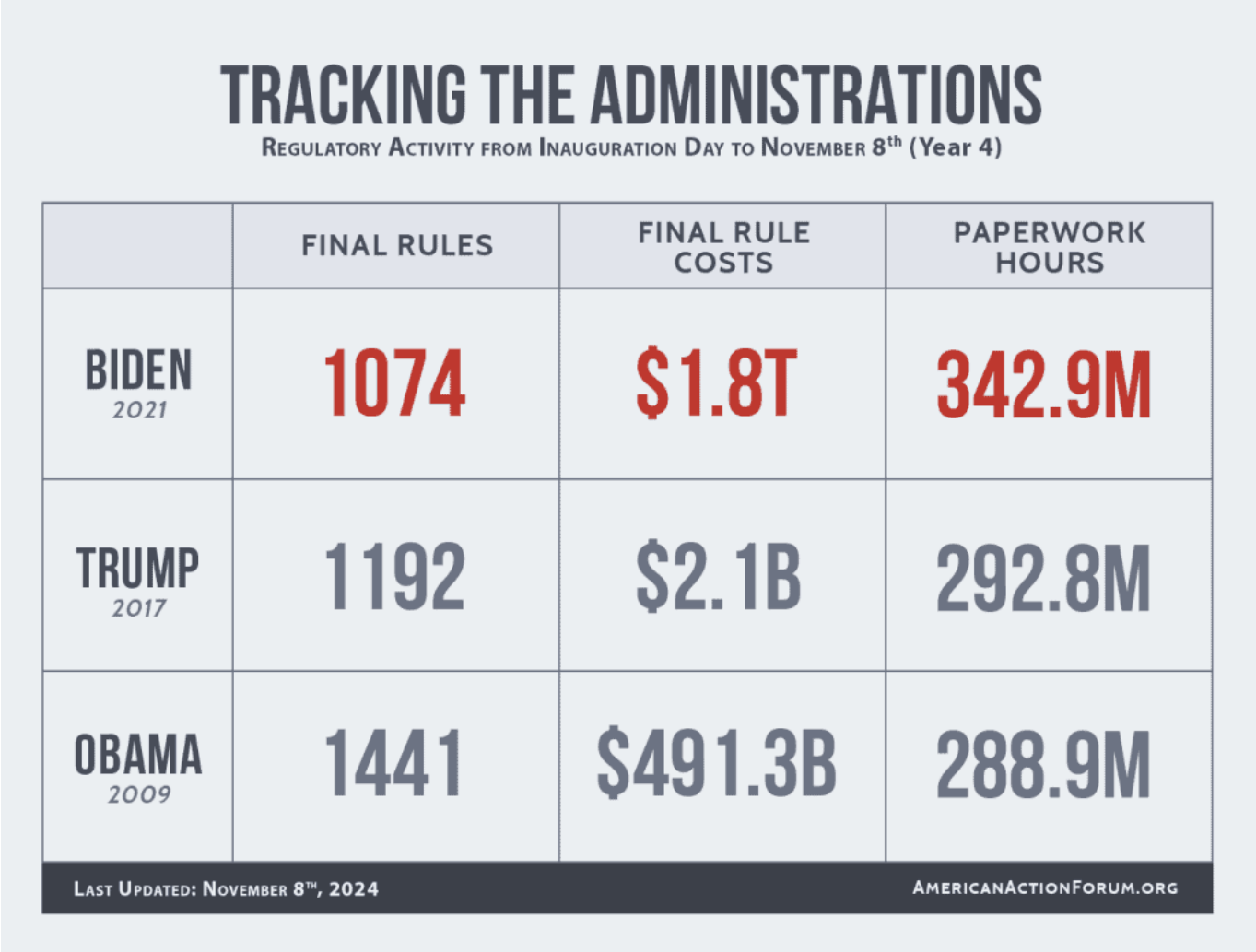
The most consequential rulemaking of the week from a cost perspective was the DHS proposed rule regarding "Enhancing Surface Cyber Risk Management." Specifically, the

proposal seeks “to impose cyber risk management (CRM) requirements on certain pipeline and rail owner/operators and a more limited requirement, on certain over-the-road bus (OTRB) owner/operators, to report cybersecurity incidents.” The measure comes in response to successful and attempted cyber-attacks on such assets conducted over recent years and concerns over potential future attacks. As with other cybersecurity standards, however, such updated protocols and procedures are not cheap. DHS estimates that this set of standards will involve roughly $2.1 billion in costs for the affected industries.

The most significant *final* rule of the week was the HHS rule regarding “Medicare Program; Calendar Year 2025 Home Health Prospective Payment System (HH PPS) Rate Update; HH Quality Reporting Program Requirements; HH Value-Based Purchasing Expanded Model Requirements; Home Intravenous Immune Globulin (IVIG) Items and Services Rate Update; and Other Medicare Policies.” This is yet another of those rules produced each year that, while ostensibly focused on adjusting annual Medicare payment parameters, also includes some notable adjustments to the associated administrative workload. In this case, HHS estimates that certain changes made under this rule will yield nearly 3.3 million hours of new paperwork and $300 million in commensurate costs annually (or roughly $900 million total across a three-year window).

TRACKING THE ADMINISTRATIONS

As we have already seen from executive orders and memos, the Biden Administration has provided plenty of contrasts with the Trump Administration on the regulatory front. And while there have been areas where the current administration has sought to broadly restore Obama-esque regulatory actions, there are also areas where it has charted 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.



The HHS rule discussed above was the primary driver of continued upward movement in the Biden Administration's cost and paperwork totals. The Biden paperwork total now stands at roughly 50 million hours ahead of the respective Trump and Obama totals. That Obama-era total was perhaps the most notable shift of the week. A Commodity Futures Trading Commission rule implementing provisions of Dodd-Frank regarding swaps, and its roughly 7.4 million hours of paperwork, was the main reason for this.

As the Biden Administration concludes, AAF will continue this analytical section for the remainder of its term to provide a complete historical record of its agency activity and how it stacked up against the full first terms of the other included administrations – even if the rulemakings finalized in these waning months may be subject to recission under the incoming administration and Congress. As noted during the campaign, there is little reason to believe this returning Trump Administration regulatory policy will be directionally different from that of his first term. Given, however, that President-elect Trump now stands to join Grover Cleveland as the only president thus far to have a second non-consecutive term, the exact nature and format of this section may undergo some changes once that

second term begins. Stay tuned.

TOTAL BURDENS

Since January 1, the federal government has published $1.46 trillion in total net costs (with $1.33 trillion in new costs from finalized rules) and 138.5 million hours of net annual paperwork burden increases (with 65.7 million hours coming from final rules).

