



Week in Regulation

2022 Starts Off With Potential Cost Reductions

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Coming off the [preceding week](#) that brought eye-popping regulatory cost increases, the first week of 2022 rang in the new year in the opposite direction, albeit in less dramatic fashion. There were eight regulatory actions with some measurable economic impact. Most were relatively modest, but a Department of Health & Human Services (HHS) proposed rule included notable cost savings. Across all rulemakings, agencies published \$443.8 million in total net cost savings but added 86,829 annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 17
- Final Rules: 39
- 2022 Total Pages: 1,059
- 2022 Final Rule Costs: \$37.5 million
- 2022 Proposed Rule Costs: -\$481.3 million

NOTABLE REGULATORY ACTIONS

The most significant rulemaking of the week was the [proposed rule](#) from HHS regarding “Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023.” The proposal is the latest iteration of a series of HHS regulations produced each year to set certain parameters for the Exchanges established under the Affordable Care Act. These rules will often involve modest adjustments in the disbursement of relevant transfer payments, but they can also be vehicles for more substantive regulatory policymaking.

This latest edition makes a host of adjustments, but for the purposes of quantified economic impact, there is one notable change. This proposal would remove the requirement that covered Exchanges “conduct random sampling as a verification process for enrollment in or eligibility for employer-based insurance when the Exchange reasonably expects that it will not obtain sufficient verification data.” HHS estimates that the administrative savings from removing this requirement would, when netted out against a series of minor cost increases, produce roughly \$98 million in annual savings (or nearly \$490 million across a five-year period).

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 new 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 7th

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	249	\$201B	131.2M
TRUMP 2017	241	\$5.3B	7.8M
OBAMA 2009	320	\$40.1B	25.8M

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As noted above, the most significant Biden Administration action this past week came on the proposed rule side, so there was minimal change in its final rule totals. The Obama-era tallies were similarly stagnant, but there was some notable movement in the Trump-era numbers. While there were only two final rules in the opening week of 2018, the Trump totals to that point decreased by more than \$430 million and roughly 865,000 hours for costs and paperwork, respectively. An Environmental Protection Agency (EPA) [rule](#) updating hazardous waste reporting requirements provided virtually all of those costs and paperwork reductions.

THIS WEEK'S REGULATORY PICTURE

This week, the EPA adds its first chemical to its list of Hazardous Air Pollutants (HAP) via a public petition process.



FEDERAL REGISTER
The Daily Journal of the United States Government



 Rule

Clean Air Act Section 112 List of Hazardous Air Pollutant: Amendments to the List of Hazardous Air Pollutants (HAP)

A Rule by the [Environmental Protection Agency](#) on 01/05/2022



On January 5, the EPA published a [final rule](#) in the Federal Register formally adding a new chemical, 1-bromopropane (1-BP), to the list of HAP, which means EPA is now required to establish national emission standards for the chemical under the Clean Air Act. 1-BP is a neurotoxin most often used in certain solvents and pesticides. The addition is noteworthy because it is the first addition to the HAP list stemming from a provision of the Clean Air Act Amendments of 1990 that allows the public to petition the agency to add a substance. The 1990 amendments created Section 112(b)(3), which allows the public to petition the EPA to add a substance to the HAP list and spells out how the agency will consider the petition. The agency can go back to the petitioner for additional information until EPA considers the petition “complete,” at which point the agency has 18 months to grant or deny the petition.

The process of adding 1-BP took about a decade. According to background information included by the agency in the final rule, the initial petition was submitted in October 2010 (a subsequent petition from a separate submitter arrived one year later). After supplemental information provided at EPA’s request, the agency finally deemed the petition complete in February 2015. Nearly two years later, EPA published a notice that intended to grant the petition and submitted public input. In June 2020, EPA [granted](#) the petition, yet it still took another year and a half to progress to a final rule. 1-BP will officially be listed as a HAP on February 4, 2022.

While this is the first time the petition process has been used to add a substance to the HAP list, it has previously been used to remove or delist four chemicals originally on the list.

TOTAL BURDENS

Since January 1, the federal government has published \$443.8 million in total net cost savings (with \$37.5 million in new costs from finalized rules) and 86,829 hours of net annual paperwork burden increases (with 22,880 hours in increases from final rules).

