



Week in Regulation

A Ho-hum Start to Spring

DAN GOLDBECK | MARCH 27, 2023

Between the March equinox and “[peak bloom](#)” of the cherry blossoms, last week marked the beginning of spring in Washington, D.C. In the pages of the Federal Register, however, there was not much regulatory fanfare. There were 10 rulemakings with some measurable economic impact, but only two exceeded \$10 million in potential costs. A Department of Transportation (DOT) action regarding breathing apparatuses on freight trains was the most notable measure of the week. Across all rulemakings, agencies published \$142.2 million in total costs and added 647,365 annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 45
- Final Rules: 68
- 2023 Total Pages: 17,955
- 2023 Final Rule Costs: \$41.8 billion
- 2023 Proposed Rule Costs: \$33.5 billion

NOTABLE REGULATORY ACTIONS

The most significant rulemaking of the week was a supplemental [proposed rule](#) from DOT regarding “Emergency Escape Breathing Apparatus Standards.” Specifically, the proposal seeks “to require any freight railroad transporting a hazardous material that would pose an inhalation hazard if released during an accident to provide certain employees an appropriate atmosphere-supplying EEBA [emergency escape breathing apparatuses] when occupying a locomotive cab.” Despite [recent events](#) involving hazardous materials on freight rail, this rulemaking’s history goes all the way back to the [late 2000s](#). In this action, DOT provides affected operators [three options](#) to achieve compliance that average out to roughly \$66 million in total costs against \$43,000 in total benefits. In the words of DOT, “cost associated with implementation of the proposed rule would almost certainly exceed the benefits.” But since the action comes as a direct requirement of the Rail Safety Improvement Act of 2008 (some 15 years later), consideration of cost-benefit balance is outside the agency’s control.

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 MARCH 24th (Year 3)

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	551	\$359.9B	220.1M
TRUMP 2017	611	\$6.6B	42.8M
OBAMA 2009	794	\$209.1B	134.5M

LAST UPDATED: MARCH 24th, 2023

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In terms of final rules from last week, there was only a pair of very minor Federal Aviation Administration airworthiness directives. As such, there was virtually no movement in the Biden Administration's running final

rule tallies. Its two predecessor administrations did not have much else to report either. The Trump Administration saw costs and paperwork drop by \$97 million and 2,600 hours, respectively, mostly due to a deregulatory [measure](#) regarding “Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption; Extension of Compliance Dates for Subpart E.” Meanwhile, it took 16 rules to push Obama-era costs and paperwork up by nearly \$77 million and 100,000 hours, respectively.

THIS WEEK’S REGULATORY PICTURE

This week, there was some regulatory action that could potentially affect high-tech entities with dubious connections to foreign rivals of the United States – just probably not the one you are expecting.



Source: Photo by [L N](#) on [Unsplash](#)

Last week's main event in Washington was the blockbuster House Energy and Commerce Committee [hearing](#) on TikTok. While Capitol Hill was abuzz in scrutinizing various aspects of the popular video app, a rulemaking hit the Federal Register that very same day addressing other aspects of technology, national security, and international economic issues. On Thursday, the Department of Commerce (DOC) published its [proposed rule](#) on "Preventing the Improper Use of CHIPS [Creating Helpful Incentives to Produce Semiconductors] Act Funding."

The CHIPS Act passed into law last August. While there are concerns about its [scope](#) and [effectiveness](#) as a policy framework, agencies are now tasked with implementing its provisions. One such area is its "Incentives Program" that authorizes the release of \$39 billion "to incentivize investment in facilities and equipment in the United States for the fabrication, assembly, testing, advanced packaging, production, or research and development of semiconductors." Since the CHIPS Act writ large seeks to bolster U.S. semiconductor production to contend with international competitors, one of the obvious aspects of such a policy involves placing restrictions on firms that accept the Incentives Program funding so that they do not simply take the taxpayer dollars and invest them in operations that ultimately redound to foreign adversaries.

That is where this rulemaking comes in. In the main, it requires firms that receive this funding to "enter into an agreement (required agreement) with the Department restricting engagement by the funding recipient or its affiliates in any significant transaction involving the material expansion of semiconductor manufacturing capacity in foreign countries of concern." DOC does provide some exceptions involving older operations that are essentially grandfathered in, as well as on some case by case the discretion of the agency. Firms that do not comply with this framework will be subject to a "clawback" process whereby DOC forces such firms to return their funding.

While DOC expects the parameters of this rulemaking to affect only a few firms, the scale of the economic impacts involved merits further attention going forward. It involves billions in federal outlays flowing to a potentially [trillion-dollar industry](#). Furthermore, while this rulemaking does not directly affect, for instance, TikTok (except, perhaps, some downstream impact on the chip in a given TikTok user's smartphone), one could easily see how any potential regulatory framework established to mitigate or restrict the influence of foreign interests on an app such as TikTok could have some similar dynamics involved.

TOTAL BURDENS

Since January 1, the federal government has published \$75.3 billion in total net costs (with \$41.8 billion in new costs from finalized rules) and 10.8 million hours of net annual paperwork burden increases (with 2.7 million hours in increases from final rules).

Year

☐ [Select All]

☒ 2023

☐ 2022

☐ 2021

☐ 2020

☐ 2019

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☐ 2005

Total Number of
Regulations
Finalized

42

Total Finalized Cost

\$41.8b

Paperwork Hours

2,700,490