



Week in Regulation

A Mid-September Dud

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The recent streak of [billion-dollar weeks](#) has come to an end, and it did so in rather dramatic fashion. There were 10 rulemakings last week that contained some quantified estimate of economic impact. Only one of them brought estimated effects that exceeded \$10 million, however. Across all rulemakings, agencies published \$4.3 million in total net cost savings but added 128,696 annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 40
- Final Rules: 50
- 2022 Total Pages: 57,042
- 2022 Final Rule Costs: \$23.4 billion
- 2022 Proposed Rule Costs: \$127.6 billion

NOTABLE REGULATORY ACTIONS

The most significant rulemaking of the week was a [proposed rule](#) promulgated jointly by the Departments of Labor and Education (the Departments) regarding “Workforce Innovation and Opportunity Act Effectiveness in Serving Employers Performance Indicator.” The proposal is the most recent stage of The Departments’ implementation of the Workforce Innovation and Opportunity Act (WIOA), which was signed into law in 2014. Essentially, in the intervening years, the Departments have been running a pilot program to understand how to measure “effectiveness in serving employers” under WIOA and this proposed rule seeks to formalize regulatory provisions on the matter based upon findings made during this pilot period. The core finding from the Departments is that certain categories of data collected under the pilot program are unnecessary and thus states no longer need to undertake the work of recording such metrics. As such, the proposal would provide nearly \$14 million in total net savings to these states.

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 SEPTEMBER 16th (Year 2)

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	411	\$224.4B	139M
TRUMP 2017	454	-\$182M	537,423
OBAMA 2009	585	\$201.1B	77.3M

LAST UPDATED: SEPTEMBER 16TH, 2022

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With only one final rule last week, there was limited movement in the Biden Administration's totals. In fact, the only change was a roughly 84,000-hour increase in paperwork from a [rule](#) on procedures for immigration lawyers. The most significant movement in paperwork across any of the administrations was a 582,000-hour increase from a Trump-era trade [rule](#) that pushed that administration's paperwork total back into net-positive territory. The Obama Administration saw the most significant shift in the cost column, with a [pair](#) of [rules](#)

updating regulatory standards under the Americans with Disabilities Act for commercial and state or local government facilities bringing nearly \$26 billion in new costs. That surge brought the Obama-era cost total through the middle of September 2010 past the \$200 billion threshold.

THIS WEEK'S REGULATORY PICTURE

This week, the Department of Transportation (DOT) signals forthcoming changes to regulations regarding electronic logging devices (ELDs).



Source: “[Trailer Truck](#)” by Brian Staler

On September 16, the Federal Motor Carrier Safety Administration (FMCSA) published an advanced notice of proposed rulemaking ([ANPRM](#)) seeking public input on potentially revising its ELD rule.

The rule was [finalized](#) in 2015 and stemmed from the [Moving Ahead for Progress in the 21st Century Act](#), a 2012 law. It required commercial motor vehicle (CMV) drivers subject to [Hours of Service](#) rules to install and maintain an ELD, which is an electronic device that automatically records driving time and captures data on a vehicle’s usage, including the number of miles driven. The rule also set minimum specifications for approved devices.

According to the preamble of the ANPRM, the agency “believes that the lessons learned by agency staff, state enforcement personnel, ELD providers, and industry over the last few years can be used to streamline and improve the clarity of the regulatory text.”

The ANPRM indicates FMCSA is likely to pursue modifying the rule in five areas. The first area is whether FMCSA should change the rule to require CMVs with engines built before 2000 to use ELDs. The second area of interest is whether and how to more precisely define an ELD malfunction that would allow a driver to temporarily transition to paper logs.

A third area of focus asks for feedback on requiring ELD providers to notify FMCSA within 30 days if they cease operations or no longer provide ELDs. A fourth subject seeks input on several potential technical specification changes, including under what circumstances an ELD should automatically turn on “driving mode” and adding certain data elements to the list of required readings. The fifth area is whether FMCSA should establish a process for certifying ELDs.

Comments on the ANPRM are due by November 15.

TOTAL BURDENS

Since January 1, the federal government has published \$151 billion in total net costs (with \$23.4 billion in new costs from finalized rules) and 81.7 million hours of net annual paperwork burden increases (with 7.8 million hours in increases from final rules).

Year

☐ [Select All]

☒ 2022

☐ 2021

☐ 2020

☐ 2019

☐ 2018

☐ 2017

☐ 2016

☐ 2015

☐ 2014

☐ 2013

☐ 2012

☐ 2011

☐ 2010

☐ 2009

☐ 2008

☐ 2007

☐ 2006

☐ 2005

Total Number of
Regulations
Finalized

166

Total Finalized Cost

\$23.4b

Paperwork Hours

7,838,257