



Week in Regulation

Agencies See Plenty of Action During Short Week

DAN GOLDBECK | SEPTEMBER 11, 2023

Despite the holiday-shortened week, federal agencies posted a substantial amount of regulatory activity. There were 14 rulemakings with some quantifiable economic impact last week, three of which crossed the billion-dollar cost threshold. The most significant of the bunch was a Department of Health and Human Services (HHS) proposed rule regarding long-term care (LTC) facilities. Across all rulemakings, agencies published \$49.5 billion in total costs and added 4.4 million annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 38
- Final Rules: 35
- 2023 Total Pages: 62,184
- 2023 Final Rule Costs: \$85.2 billion
- 2023 Proposed Rule Costs: \$411.3 billion

NOTABLE REGULATORY ACTIONS

The most consequential rulemaking of the week – by a fairly wide margin – was the HHS [proposal](#) regarding “Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting.” The rulemaking would, over the course of the next decade, “require an RN [registered nurse] to be on site 24 hours per day and 7 days per week to provide skilled nursing care to all residents in accordance with resident care plan” in covered LTC facilities, as well as set a minimum time commitment for care by RNs and nursing assistants per resident each day. While implementation is staggered in the opening years, the eventual costs would be significant. As HHS notes: The proposal “would result in an estimated cost of approximately for \$32 million in year 1; \$246 million in year 2; \$4 billion in year 3; with costs increasing to \$5.7 billion by year 10. We estimate the total cost over 10 years will be \$40.6 billion, which was derived from *FY 2021 Part V* of the Medicare Cost Report.” Additional reporting requirements would add approximately \$200 million in further costs across that span.

The runner-up of the week cost-wise was the Department of Labor’s (DOL) latest [proposed rule](#) regarding “Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees.” The proposal stands as the latest iteration of a long-winding thread of DOL rulemaking that goes back to the Obama Administration. The American Action Forum (AAF) reviewed the details and labor market implications of this latest version [here](#). DOL estimates that the rulemaking will involve direct costs to employers of roughly \$6.5 billion over a 10-year window, or \$663 million on an annualized basis.

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 8th (Year 3)

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	658	\$403.3B	232.7M
TRUMP 2017	740	\$36.7B	55.6M
OBAMA 2009	969	\$228.1B	161.8M

LAST UPDATED: SEPTEMBER 8th, 2023 AMERICANACTIONFORUM.ORG

With most of the week's action coming on the proposed rule side of the ledger, there was very little movement in the Biden final rule totals. The other two administrations, however, each saw at least some modest changes in their respective tallies. A deregulatory [measure](#) from the Department of Energy was the primary reason for a roughly \$190 million reduction in costs during the Trump Administration. Meanwhile, a [rule](#) on electronic prescriptions in Medicare provided the bulk of a roughly 433,000-hour bump in Obama-era paperwork.

THIS WEEK'S REGULATORY PICTURE

This week, the Department of Transportation (DOT) has a proposal that seeks to update its standards regarding crash test dummies and has a curious acronym involved.



Source: Photo by [Ravi Palwe](#) on [Unsplash](#)

Last Thursday, DOT published a [proposed rule](#) entitled, “Anthropomorphic Test Devices; THOR 50th Percentile Adult Male Test Dummy; Incorporation by Reference.” The rulemaking seeks to update the relevant regulatory code “to include an advanced crash test dummy, the Test Device for Human Occupant Restraint

(THOR) 50th percentile adult male (THOR–50M)” as a testing option. In short, the Department “has tentatively concluded that the THOR–50M is sufficiently biofidelic, exhibits repeatable and reproducible performance, and is sufficiently durable.”

Contrary to the mythological and/or comic book connotations that acronym may inspire, “The dummy represents an adult male of roughly average height and weight.” This rather mundane description belies the kind of technical specificity that apparently goes into the design of crash test dummies. Across the 54-page rulemaking, DOT lays out the various technical details that go into its design. From the “Head and Face” down to the “Lower Leg,” each anatomical facsimile involves a serious degree of precision.

There are no real costs imposed by this update since DOT is simply allowing for relevant entities to utilize the THOR-50M as a potential test device going forward. DOT estimates that for those that choose to utilize this category of device, the cost “has been approximately \$550,000 to \$750,000 depending on whether an in-dummy DAS [data acquisition system] is installed and the level of instrumentation.” While that may seem somewhat pricey, DOT notes a [series of attributes](#) of the THOR-50M model that likely make it a more accurate predictor of collision effects on a potential body.

Interested parties have until November 6 to provide comment on the matter.

TOTAL BURDENS

Since January 1, the federal government has published \$496.5 billion in total net costs (with \$85.2 billion in new costs from finalized rules) and 176.9 million hours of net annual paperwork burden increases (with 15.4 million hours in increases from final rules).

Year

[Select All]

2023

2022

2021

2020

2019

2018

2017

2016

2015

2014

2013

2012

2011

2010

2009

2008

2007

2006

2005

Total Number of
Regulations
Finalized

149

Total Finalized Cost

\$85.2b

Paperwork Hours

15,364,689