



## Week in Regulation

# Another Modest Yet Cross-Cutting Week

DAN GOLDBECK | FEBRUARY 27, 2023

With a dozen rulemakings that produced some discernable economic impact, last week was a relatively busy one in the pages of the Federal Register. It was, however, a limited one with respect to the overall magnitude of those impacts. Some of the key items covered such topics as updating the ability to access nutrition benefits online, establishing further airport safety standards, and revising the filing process for certain employee retirement account reports. Across all rulemakings, agencies published \$95.6 million in total costs but cut 2.2 million annual paperwork burden hours.

## REGULATORY TOPLINES

- Proposed Rules: 34
- Final Rules: 39
- 2023 Total Pages: 12,112
- 2023 Final Rule Costs: \$41.3 billion
- 2023 Proposed Rule Costs: \$17.1 billion

## NOTABLE REGULATORY ACTIONS

The most significant rulemaking of the week – at least in terms of shifting paperwork totals – was the [proposed rule](#) from the Department of Agriculture (USDA) regarding “Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Online Ordering and Transactions and Food Delivery Revisions To Meet the Needs of a Modern, Data-Driven Program.” As the title suggests, the measure “proposes to remove barriers to online ordering and internet-based transactions” in the WIC program. In terms of costs and savings, the proposal will impose some costs on state agencies administering WIC benefits in order for them to set up the framework for a more online system, but yield savings in the form of reducing administrative burdens for both state agencies as well as relevant “WIC Vendors.” On net, this comes out to a nominal \$11.7 million increase in costs but notable time savings to the tune of nearly 1.4 million fewer hours of paperwork compared to current practice.

The costliest rulemaking of the week was the Department of Transportation’s (DOT) [rule](#) establishing an “Airport Safety Management System (SMS).” Per the agency, the SMS framework is one in which covered entities “develop decision-making processes and procedures and use effective safety risk controls to proactively identify and mitigate or address any detected noncompliant or unsafe conditions in their operations.” Citing the approval levels and safety records of those operations that have voluntarily implemented it, DOT seeks to establish an “aviation-wide approach.” The agency, however, expects the implementation costs for those

airports not currently operating under an SMS to be relatively restrained at roughly \$139 million over a 10-year window.

The other notable burden-reducing measure of the week was a pair of [related rules](#) led by the Department of Labor (DOL) regarding the filing process for “Form 5500 Annual Return/Report of Employee Benefit Plan and Form 5500-SF Short Form Annual Return/Report of Small Employee Benefit Plan.” The forms in question act “as the primary public disclosure document for participating employers, plan participants and beneficiaries, and the public to monitor the operations” of relevant retirement plans. DOL is the primary agency involved, but since there are implications for tax issues and certain “multiple-employer pension plans,” the Internal Revenue Service and Pension Benefit Guaranty Corporation are also involved. DOL expects the changes under these rules to yield nearly \$95 million in cost savings and 915,000 fewer paperwork hours, due mostly to narrowing the pool of firms that need to report such data.

## 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 FEBRUARY 24<sup>th</sup> (Year 3)

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	539	\$359.4B	218.9M
TRUMP 2017	595	\$6.8B	42.7M
OBAMA 2009	768	\$208.9B	134.3M

UPDATED: FEBRUARY 24<sup>th</sup>, 2023

AMERICANACTIONFORUM

Two of the rules discussed above provided the main movement in the Biden Administration's final rule totals. The costs of the Airport SMS rule combined with the burden reductions of the DOL Annual Report rules net out to \$77.3 million in increased costs against an 883,000-hour cut in paperwork. For the other administrations, there were similarly noticeable but modest shifts. A handful of rules under Trump nudged his administration's final rule cost total up by \$68.2 million. Meanwhile, for Obama, the most significant change was a nearly

735,000-hour spike in paperwork, due primarily to a Department of Treasury [rule](#).

## **THIS WEEK'S REGULATORY PICTURE**

This week, federal employees (including those of regulatory agencies, of course) get a potential set of updates to regulations governing their conduct.

---

STANDARDS  
OF  
ETHICAL



*Source: Photo from “Summary of the Standards of Conduct” from Office of Government Ethics*

Early last week, the Office of Government Ethics (OGE) officially published its [proposed rule](#) entitled “Modernization Updates to Standards of Ethical Conduct for Employees of the Executive Branch.” Per the title, this action is meant to be a refresh of the “Standards of Ethical Conduct for Employees of the Executive Branch” (Standards). The current overall collection of Standards was formally codified in 1992 and, under relevant statute, OGE “is responsible for periodically reviewing, evaluating, and updating the rules and

regulations that pertain to ethics in the executive branch.” The last such update was nearly seven years ago in 2016 and was rather limited in scope.

For this round, OGE seeks to update the following subparts of the Standards:

- Subpart A: General Provisions
- Subpart B: Gifts From Outside Sources
- Subpart C: Gifts Between Employees
- Subpart D: Conflicting Financial Interests
- Subpart E: Impartiality in Performing Official Duties
- Subpart F: Seeking Other Employment
- Subpart G: Misuse of Position
- Subpart H: Outside Activities

For most of the subparts, many of the changes are simply stylistic in nature. For instance, OGE is broadly updating the document “to add appropriate punctuation and modernize language by using consistent capitalization of ‘Government,’ removing gendered language and language that unnecessarily focuses on marital status, and updating the words ‘shall’ and ‘where.’” The areas with the most interesting substantive changes include subparts C, E, and H.

The main changes in subpart C focus on clarifying the dynamic between a “superior” and “subordinate” employee for the purposes of determining proper gift giving. These changes largely involve adjusting certain definitions to more modern understandings. The item in subpart E entails removing “the limitation in the current regulation that a relevant payment under this section must be received ‘prior to entering Government service.’” As OGE notes, payment received after an employee “begins Government service” could effectively be as improper as one received before that time; this update seeks to plug that vulnerability. Finally, the issues addressed under subpart H focus on clarifying particular terminology in the section regarding “Teaching, Speaking, and Writing” arrangements that OGE identifies as “one of the most complicated provisions in the Standards.”

Interested parties have until April 24 to submit comments on the proposed updates.

## TOTAL BURDENS

Since January 1, the federal government has published \$58.4 billion in total net costs (with \$41.3 billion in new costs from finalized rules) and 5.9 million hours of net annual paperwork burden increases (with 1.5 million hours in increases from final rules).

