



Week in Regulation

FTC Rolls Up to the Car Dealer Lot

DAN GOLDBECK, MARIAM CHACHAVA | JULY 18, 2022

Last week was a relatively lively one in the pages of the Federal Register. There were 13 actions with some measurable economic impact covering a variety of issues. Two proposed rules in particular, however, provided the majority of the potential new burdens. The most notable rulemaking of the week involved the Federal Trade Commission (FTC) dusting off authority granted to it by the Dodd-Frank Act to expand the regulation of automobile dealers. The runner-up action of the week was a Department of Labor (DOL) measure that would implement President Biden's executive order regarding "Nondisplacement of Qualified Workers Under Service Contracts." Across all rulemakings, agencies published \$1.9 billion in total net costs and added 8.6 million annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 39
- Final Rules: 72
- 2022 Total Pages: 42,568
- 2022 Final Rule Costs: \$14.1 billion
- 2022 Proposed Rule Costs: \$84 billion

NOTABLE REGULATORY ACTIONS

The most consequential rulemaking of the week was FTC's [proposal](#) entitled "Motor Vehicle Dealers Trade Regulation Rule." Citing its authority under Section 1029 of the Dodd-Frank Act, the agency states that, "many of the problems observed in the motor vehicle marketplace persist in the face of repeated federal and state enforcement actions, suggesting the need for additional measures to deter deceptive and unfair practices." The proposed rule seeks to establish an array of new regulatory requirements for automobile dealerships. In particular, it:

Would prohibit motor vehicle dealers from making certain misrepresentations in the course of selling, leasing, or arranging financing for motor vehicles, require accurate pricing disclosures in dealers' advertising and sales discussions, require dealers to obtain consumers' express, informed consent for charges, prohibit the sale of any add-on product or service that confers no benefit to the consumer, and require dealers to keep records of advertisements and customer transactions.

This extensive new regulatory framework naturally brings extensive compliance burdens, namely \$1.4 billion in total costs and 7.8 million hours of annual paperwork.

The other significant rulemaking action of the week was DOL's [proposal](#) regarding "Nondisplacement of Qualified Workers Under Service Contracts." The proposal seeks to implement the directives of [Executive Order 14,055](#), namely, to establish "a general policy of the Federal Government that service contracts which succeed contracts for the same or similar services, and solicitations for such contracts, shall include a non-displacement clause." This policy, however, would necessarily require a compliance regime covering all relevant contractors. DOL estimates that the administrative burdens faced by these covered contractors could add up to roughly \$41.5 million and 230,000 hours of paperwork annually.

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 JULY 15th (Year 2)

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	377	\$215B	135.5M
TRUMP 2017	390	\$910.8M	8.2M
OBAMA 2009	531	\$165B	69.4M
LAST UPDATED: JULY 15 TH , 2022			AMERICANACTIONFORUM.ORG

The Biden Administration saw a modest increase in its final rule cost tally. A Department of Health and Human Services [rule](#) updating standards for laboratories that participate in Medicare and Medicaid provided the bulk of the roughly \$240 million uptick. The changes in the other two administrations were similar in scale and also followed the preceding week's [trend](#) in which the Trump Administration saw progress on its deregulatory agenda while the Obama Administration saw measurable increases. The Trump-era decreases largely came from

a Securities and Exchange Commission [rule](#) on “Smaller Reporting Company Definition,” while the majority of the Obama-era increase came from a DOL [rule](#) regarding disclosure requirements for “employee pension benefit plan” providers.

THIS WEEK’S REGULATORY PICTURE

By Mariam Chachava, Regulatory Policy Intern

This week, the National Transportation Safety Board (NTSB) redefines an unmanned aircraft accident.



On July 14, the NTSB published a [final rule](#) titled “Amendment to the Definition of Unmanned Aircraft Accident.” The rule requires the NTSB to examine the accidents of all airworthiness-certified aircraft that caused substantial damage. This amendment substitutes the previous requirement of examining accidents only of those aircraft heavier than 300 pounds.

The change in this regulation follows the development of lighter unmanned aircraft systems (UAS) – such as drone delivery and other applications – that are lighter than 300 pounds and often operate in heavily populated or other high-risk areas. Investigating the reasons for the crashes of these aircraft that cause substantial damage (which includes failures that require major repair or even replacement of damaged part of the aircraft) is intended to better prevent future accidents and further improve safety.

The amended rule will affect NTSB operations as the agency may need to examine more accidents than it did under the previously defined rule. Moreover, the change allows NTSB to be informed of, and have faster responses to, UAS damage with significant safety concerns. After all, any significant UAS accident will need to be reported to NTSB immediately. Once notice is received, NTSB will identify the potential reasons for an accident and issue safety recommendations to avoid similar incidents in the future.

NTSB received positive feedback from the public that supported the proposed change in order to improve public safety. Nevertheless, several issues were raised by various stakeholders, mainly those requesting further clarification, which was incorporated in the final version of the rule. For example, the term “substantial damage” was not precisely defined for stakeholders. NTSB clarified that the term does not cover by-design

damage of aircraft, such as damage to frangible (easily broken) components.

Since NTSB is an independent agency, it was not required to perform a cost benefit analysis of the regulatory change. Although NTSB analyzed the magnitude of the impact of regulation on small entities, no significant impact was identified. NTSB also does not anticipate any substantial impact on state and local governments.

The rule goes into effect on August 15, 2022.

TOTAL BURDENS

Since January 1, the federal government has published \$98 billion in total net costs (with \$14.1 billion in new costs from finalized rules) and 79.6 million hours of net annual paperwork burden increases (with 4.3 million hours in increases from final rules).

