



## Week in Regulation

# SCOTUS Provides the Regulatory Fireworks

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Last week saw 14 rulemakings with some measurable economic impact come across the pages of the Federal Register, but the main story was the Supreme Court dropping a major decision on the final day of its term. The Court's opinion most directly affects executive actions seeking to address climate change but could have broader implications for regulatory policy writ large. Meanwhile, the most notable actual rulemaking of the week was a relatively mundane Health & Human Services (HHS) proposed rule regarding Medicare payments for renal disease care. Across all rulemakings, agencies published \$277.7 million in total net costs and added 5.4 million annual paperwork burden hours.

## REGULATORY TOPLINES

- Proposed Rules: 44
- Final Rules: 90
- 2022 Total Pages: 39,672
- 2022 Final Rule Costs: \$13.8 billion
- 2022 Proposed Rule Costs: \$78.3 billion

## NOTABLE REGULATORY ACTIONS

The Supreme Court's [decision](#) in *West Virginia v. EPA* was the most consequential regulatory policy story of the week. At its core, the opinion blocks the Biden Environmental Protection Agency (EPA) from going forward with its rulemaking framework regarding greenhouse gas emissions from power plants that was largely based on the version designed under the Obama Administration. More broadly, it calls into question how far the executive branch can go in regulating such emissions, barring some new congressional authorization, and also puts other agencies on notice regarding the potential limits of their rulemaking discretion for actions with major political and economic effects. Further details on the ruling and its implications can be found [here](#).

In terms of actual rulemakings, the most significant action was a [proposed rule](#) from HHS regarding “End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury, End-Stage Renal Disease Quality Incentive Program, and End-Stage Renal Disease Treatment Choices Model.” The proposal is the current iteration of HHS's annual updates to its payment policies in this area. Such payment rules primarily focus on adjustments to relevant transfer payments, but they often include administrative changes as well. In this case, HHS estimates that the compliance burden for affected entities under this proposal in the relevant “payment year” sums up to roughly 5.1 million hours of paperwork with \$215 million in associated costs.

## 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 1<sup>ST</sup> (Year 2)

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
<b>BIDEN</b> 2021	<b>366</b>	<b>\$214.8B</b>	<b>135.4M</b>
<b>TRUMP</b> 2017	<b>378</b>	<b>\$958.7M</b>	<b>8.8M</b>
<b>OBAMA</b> 2009	<b>512</b>	<b>\$164.8B</b>	<b>67.6M</b>

LAST UPDATED: JULY 1<sup>ST</sup>, 2022 AMERICANACTIONFORUM.ORG

As noted above, most of last week's action came from a proposed rule. Thus, the Biden Administration's final rule tallies increased only modestly, by roughly \$61 million in costs and 200,000 hours of annual paperwork. Across the three covered administrations, the Obama era saw the largest shift around this time in 2010 with increases in costs and paperwork of \$154 million and 1.9 million hours, respectively. A [rule](#) implementing parts of the Affordable Care Act contributes the bulk of those increases. It is worth noting, however, that the Trump

Administration's final rule cost total did dip back down below the \$1 billion threshold, thanks primarily to a [deregulatory measure](#) regarding aviation training requirements.

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

This week, the Consumer Financial Protection Bureau (CFPB) has questions about credit card late fees.



Source: “[Three Credit Cards](#)”

On June 29, the CFPB published an advanced notice of proposed [rulemaking](#) regarding “Credit Card Late Fees and Late Payments” in the Federal Register. As an advanced notice, the document does not propose new regulatory requirements, but rather is a clear indication the agency plans to impose new restrictions on credit card companies’ ability to levy fees for late payments.

In a [press release](#) issued June 22 when the rule was signed, CFPB Director Rohit Chopra said the action was timely “since current rules might give companies the incentive to impose big hikes based on inflation.”

A 2009 law gave the Federal Reserve responsibility for barring certain fees related to credit cards. In its rule implementing this requirement, the Federal Reserve prohibited late fees that generated more revenue than necessary to cover the costs associated with the late payment. At the same time, it created a safe harbor provision that specified a fee limit companies could impose. That limit is tied to inflation and adjusted annually.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 transferred this regulatory authority from the Federal Reserve to the CFPB. At its most-recent update, the fee limits were set at \$30 for the first late payment and \$41 for any additional late payment over the next six billing periods, according to the CFPB. With current high inflation, the agency is concerned those limits will increase substantially.

To build a rulemaking record that may provide justification for removing the automatic inflation adjustments, and potentially make other significant changes to what credit card companies can do regarding late payments, the advanced notice of proposed rulemaking requests information on current practices.

The notice includes 38 numbered questions (though many have questions within questions), including: whether late fees actually deter late payments, what costs are associated with late payments, and whether the agency should consider making changes to the safe harbor provision.

Submissions are due to the CFPB by July 22.

## **TOTAL BURDENS**

Since January 1, the federal government has published \$92.1 billion in total net costs (with \$13.8 billion in new costs from finalized rules) and 70.8 million hours of net annual paperwork burden increases (with 4.2 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

**121**

Total Finalized Cost

**\$13.8b**

Paperwork Hours

**4,239,915**