Week in Regulation

SEC Dominance Continues as "Quarter One" Cutoff Nears

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Last week marked the penultimate week of the first quarter of 2022. Publicly traded companies are likely all too familiar with what goes into preparing their quarterly "10-Q" reports for the Securities and Exchange Commission (SEC). Interestingly enough, if one were to prepare a "regulatory cost 10-Q" for 2022's first quarter to this point, SEC's activities would dominate the balance sheet. This past week's haul of regulations only added to that trend. Across all rulemakings, agencies published $9.9 billion in total net costs and added 1.3 million annual paperwork burden hours.

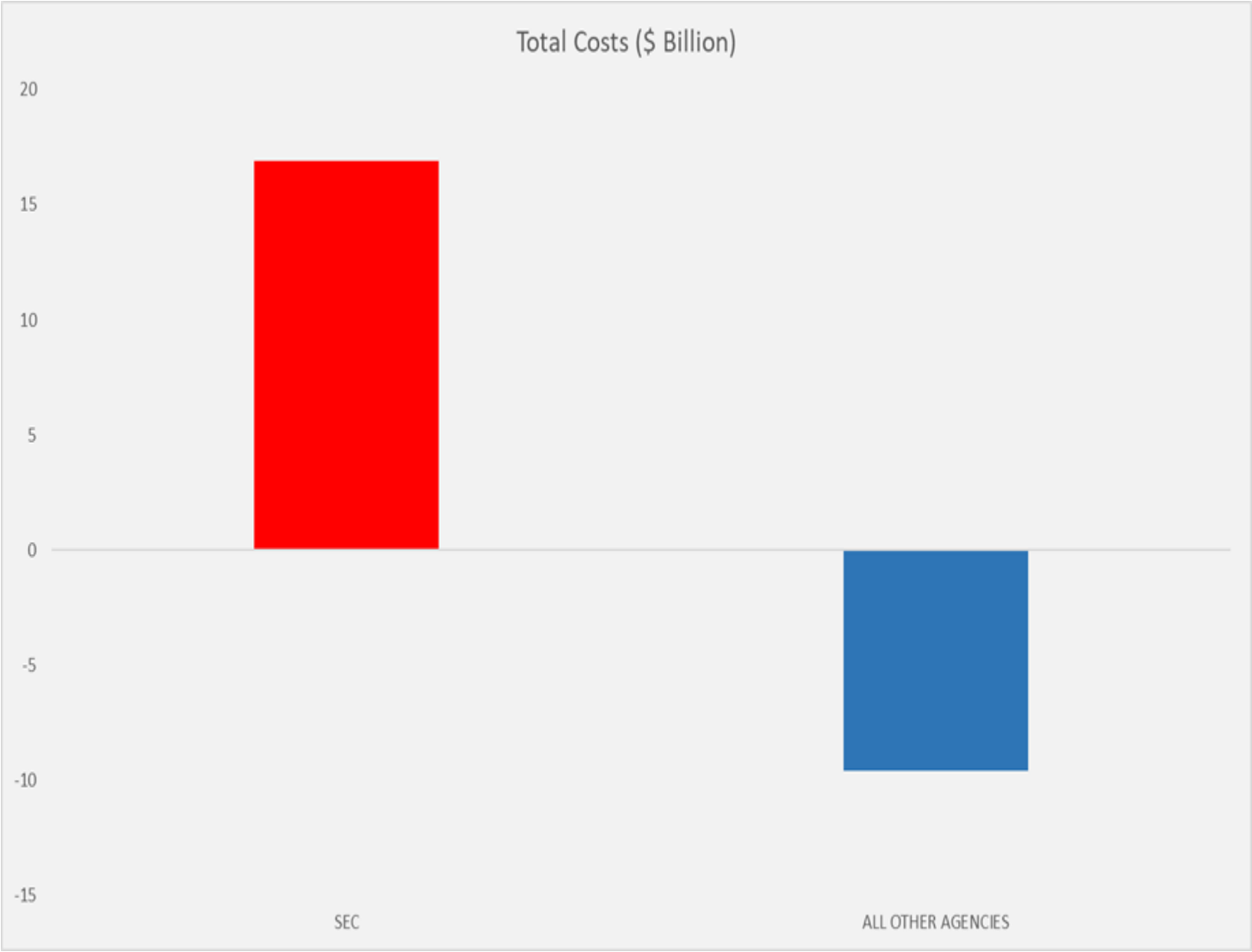
REGULATORY TOPLINES

- Proposed Rules: 66
- Final Rules: 52
- 2022 Total Pages: 17,113
- 2022 Final Rule Costs: -$4.4 billion
- 2022 Proposed Rule Costs: $11.7 billion

NOTABLE REGULATORY ACTIONS

The most significant rulemaking of the week was the proposed rule from SEC regarding "Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews." The proposal seeks to establish a series of new requirements for "registered investment advisers to private funds" to disclose myriad details of their practices for the purposes of greater transparency. SEC estimates that the administrative burdens involved with these new requirements would impose 1.2 million hours of annual paperwork with nearly $3.3 billion in associated annual costs (or $9.8 billion in total costs across the three-year period in which paperwork requirements are officially approved).

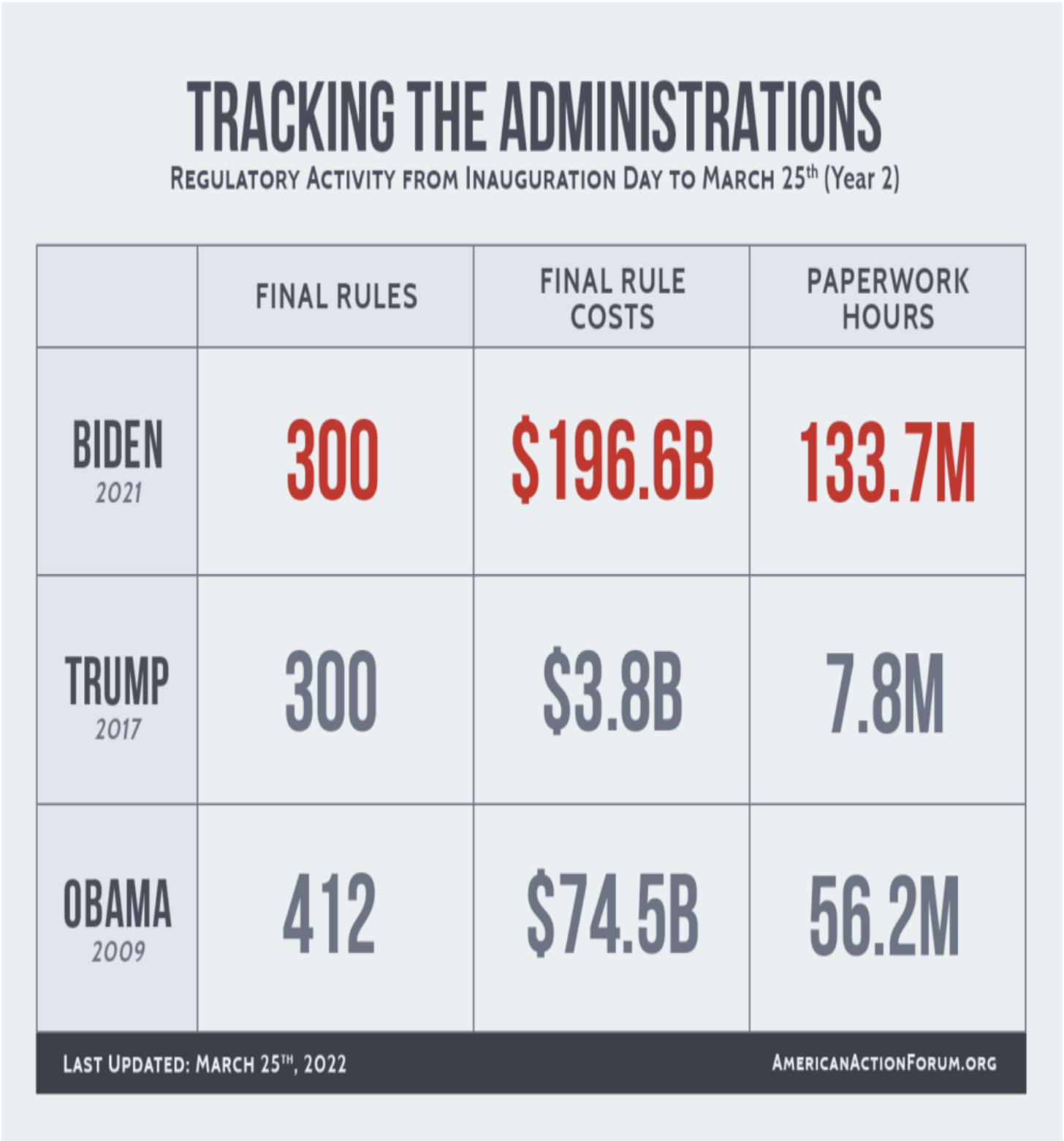
With one week left in 2022's first quarter, these substantial costs only add to a trend that has been building for weeks. As the following graph illustrates, SEC's total proposed and final rule costs ($16.9 billion) thus far into the year vastly overshadow the net cost reductions produced by all other federal agencies combined (-$9.6 billion).



This trend shows little sign of abating heading into "Quarter Two." The SEC recently released – but has not officially published – its controversial proposed rule on climate-risk disclosures. According to that proposal's analysis, it could bring nearly 25 million hours of new paperwork annually with roughly $6.5 billion 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 new administration will seek to broadly restore Obama-esque regulatory actions, there will also be areas where it charts its own course. Since the American Action Forum (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.



Since the only final rule of last week was a routine airworthiness directive with minimal estimated costs, the Biden Administration's final rule totals remained virtually unchanged. There was also only nominal movement on Trump-era tallies. In an interesting coincidence, however, both of those administrations find themselves aligned in terms of the volume of regulatory activity with 300 final rules (with some measurable economic impact) apiece through this point in their second years. The Obama Administration outpaces them by more than

100 rules in this regard. The Obama Administration was also the only one to see significant movement in examination with a defense acquisition rule bringing roughly half a million hours of new paperwork.

THIS WEEK'S REGULATORY PICTURE

This week, a dairy dustup over yogurt acidity.

Source: "Yogurt Parfait and Berries" by Tim Sullivan

On March 23, the Food and Drug Administration (FDA) published a notice in the Federal Register that it had decided to stay the effectiveness of some provisions of a final rule published last year. That rule was the succinctly titled "Milk and Cream Products and Yogurt Products; Final Rule To Revoke the Standards for Lowfat Yogurt and Nonfat Yogurt and To Amend the Standard for Yogurt."

The 2021 rule, as the name describes, revoked "standards of identity" for low-fat and non-fat yogurt and amended the standards of identity for yogurt "in numerous respects." FDA argued the final rule would "allow for technological advances while preserving the basic nature and essential characteristics of yogurt."

The 2021 rule was issued, in part, in response to a petition filed by National Yogurt Association (NYA) in

February 2000. As part of its petition, the NYA argued that FDA should establish a titratable acidity (the total concentration of acid in food) requirement of at least 0.7 percent *prior* to the addition of optional ingredients, measured as a pH of 4.6 or lower. NYA said the requirement, along with others it was recommending, would ensure that consumers receive yogurt that is a standardized product.

Alas, the rule left a sour taste in some yogurt makers' mouths. Following the publication of the 2021 final rule, the International Dairy Foods Association (IDFA) objected under a clause in the final rule that allowed objections by anyone "adversely affected." The IDFA contested the titratable acidity requirement "because it is simply not practical for flavored yogurts and does not reflect consumer taste preferences or current industry practice in the U.S. and internationally." IDFA argued the standard should be changed to consider acidity *after* all optional ingredients are added. It also objected to a few other requirements related to additional ingredients.

Because of the objection, some of the requirements of the 2021 final rule – including titratable acidity – are paused from going into effect until the FDA reconsiders the matter.

TOTAL BURDENS

Since January 1, the federal government has published $7.3 billion in total net costs (with $4.4 billion in new cost savings from finalized rules) and 18.8 million hours of net annual paperwork burden increases (with 2.5 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
55
Total Finalized Cost
$-4.4b
Paperwork Hours
2,483,869