



Week in Regulation

The Run of Notable SEC Proposals Continues

DAN GOLDBECK, DAN BOSCH | MARCH 21, 2022

A trend has developed over the past month. Since the [middle of February](#), one agency has regularly provided some of the most notable [regulatory actions](#). That trend continued this past week as that agency, the Securities and Exchange Commission (SEC), once again provided the bulk of the activity across the dozen rulemakings that had some quantifiable impact. Across all rulemakings, agencies published \$587.1 million in total net costs and added 5.1 million annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 30
- Final Rules: 69
- 2022 Total Pages: 15,813
- 2022 Final Rule Costs: -\$4.4 billion
- 2022 Proposed Rule Costs: \$1.8 billion

NOTABLE REGULATORY ACTIONS

The most significant rulemaking of the week was SEC's [proposed rule](#) regarding "Short Position and Short Activity Reporting by Institutional Investment Managers." With this proposal, the agency seeks "to provide greater transparency through the publication of short sale related data to investors and other market participants." In order to provide this "greater transparency," SEC would impose a series of new reporting requirements for relevant investment entities. Per the proposal's analysis, the administrative burden of these

new requirements would add up to more than five million hours of new paperwork each year, with \$497 million in total 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.

TRACKING THE ADMINISTRATIONS			
REGULATORY ACTIVITY FROM INAUGURATION DAY TO MARCH 18 th (Year 2)			
	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	299	\$196.6B	133.7M
TRUMP 2017	295	\$3.8B	7.8M
OBAMA 2009	411	\$74.5B	55.7M
LAST UPDATED: MARCH 18 th , 2022		AMERICANACTIONFORUM.ORG	

With last week's main action coming on the proposed rule side, there was minimal movement on the Biden Administration's to-date final rule totals. In fact, save for one

category, there was not much action across any of the three administrations. That one exception, however, was the Trump Administration's cost total, which decreased by nearly half a billion dollars. The vast majority of that shift came from the Department of Agriculture (USDA) [withdrawing a prior rule](#) on organic livestock and poultry practices that was published on January 19, 2017 – the last full day of the Obama Administration. In its analysis of the withdrawal action, USDA estimated that clearing these updated standards would yield roughly \$492 million in savings for affected entities.

THIS WEEK'S REGULATORY PICTURE

This week, the Biden Administration's social cost of carbon (SCC) lives on.

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 16, 2022

Lyle W. Cayce
Clerk

No. 22-30087

THE STATE OF LOUISIANA, *by and through its Attorney General, Jeff Landry*; THE STATE OF ALABAMA, *by and through its Attorney General, Steve Marshall*; THE STATE OF FLORIDA, *by and through its Attorney General, Ashley Moody*; THE STATE OF GEORGIA, *by and through its Attorney General, Christopher M. Carr*; THE COMMONWEALTH OF KENTUCKY, *by and through its Attorney General, Daniel Cameron*; THE STATE OF MISSISSIPPI, *by and through its Attorney General, Lynn Fitch*; THE STATE OF SOUTH DAKOTA, *by and through its Governor, Kristi Noem*; THE STATE OF TEXAS, *by and through its Attorney General, Ken Paxton*; THE STATE OF WEST VIRGINIA, *by and through its Attorney General, Patrick Morrisey*; THE STATE OF WYOMING, *by and through its Attorney General, Bridget Hill*,

On March 16, the U.S. Court of Appeals for the Fifth Circuit stayed a district court injunction that prevented the Biden Administration from using its SCC value in regulatory analyses. The ruling allows federal agencies to continue considering the SCC in its rulemakings while the case proceeds.

In February 2021, the Biden Administration [adopted](#) a value of about \$51 as the cost to

society per ton of carbon emitted into the atmosphere, up from the roughly \$7 used by the Trump Administration. The value is important – the higher the SCC, the more benefits agencies can claim from rules that reduce carbon emissions.

Almost immediately, several states sued to block the SCC value from being used. These states argued that the value would be used to justify costly rulemakings, and that the importance of the SCC is such that the executive branch cannot unilaterally determine its value without authority from Congress. A district court agreed with the plaintiffs, issuing an injunction last month that prohibited agencies from using the SCC in rulemakings while the case played out.

In this week's ruling, the appeals court disagreed. The court ruled that because the value has yet to be used in any final rules, the states were premature to challenge, as the harm imposed from future rules is "merely hypothetical." Therefore, there is no real harm in allowing the SCC to remain at this point. In contrast, the appeals court found that the administration *would* be immediately harmed by not being able to use the SCC in its analyses.

Whatever the outcome of the case, it is likely to be just the beginning of legal challenges to the SCC. If this case ultimately works out in the administration's favor, then states can be expected to challenge the first final rule using the value that emerges.

TOTAL BURDENS

Since January 1, the federal government has published \$2.6 billion in total net cost savings (with \$4.4 billion in new cost savings from finalized rules) and 17.5 million hours of net annual paperwork burden increases (with 2.5 million hours in increases from final rules).

