



The Daily Dish

The Outlook for Regulation and the Biden Administration

DOUGLAS HOLTZ-EAKIN | DECEMBER 15, 2021

Mea culpa. I confess that when the president took office I expected him to preside over a tsunami of regulatory costs that would make even the Obama era look like a sea of tranquility. I've been watching the AAF Week in Regulation closely for evidence on this front, but in the [latest](#), the Biden Administration has finalized fewer rules with less costs (but a lot more paperwork hours) than the Obama Administration at a comparable point in year. So, at least to this point, I was wrong.

(Minor digression. At least when I am badly wrong, I just admit it. The labor market “experts” can’t seem to land on the same continent as the monthly jobs report, so the Guild of Guesstimators ginned up a [puff piece](#) in the *Wall Street Journal* explaining how tough their job is. Give me a break.)

Anyway, the past is the past. What will 2022 bring us in the regulatory sphere? Fortunately, the administration just released (snuck out at 3:30 p.m. this past Friday) its second [Unified Agenda of Regulatory and Deregulatory Actions](#) (UA). The UA is the list of regulatory actions the administration plans to work on over the next year. Dan Bosch provides a complete [analysis](#) of the UA. The new UA continues the previous focus on reversing many notable Trump Administration rules, but also has newly listed rules that include the environment, labor, and immigration.

Bosch points out: “The UA contains 2,678 total ‘active actions,’ or those expected to be worked on over the next 12 months. That total is a small increase over the 2,550 active actions in the Biden Administration’s first agenda. The difference is made up by a net increase of 142 actions in the proposed rule stage, as one would expect as the first-year administration begins working on its rulemaking plan in earnest.”

On the environment, the Environmental Protection Agency expects to implement policies from the [executive order](#) aimed at addressing climate change and other environmental issues. It includes new rules on carbon dioxide emissions from power plants and a joint effort with the U.S. Army Corps of Engineers to “[once again](#) alter the definition of Waters of the United States. The agencies will do so via two rulemakings. The [first](#), [proposed](#) earlier this month, returns the definition to its pre-2015 version but would modify it to give it broader reach. The [second](#), anticipated in February 2022, will rely in part on public comments from the first proposal to make further changes regarding ‘implementation considerations, scientific developments, and environmental justice values.’” Finally, there will be rules on [particulate matter](#) and emissions limits from new [heavy-duty vehicles](#).

The labor agenda consists mainly of reruns of some oldies but goodies. Up first is employees who are eligible for [overtime pay](#), followed by the [joint employer standard](#). In both, the Biden Administration will seek to undo a Trump-era decision, which reversed an Obama-era decision.

Finally, it is clear from the UA that “a point of emphasis for the Biden Administration will be reversing policies adopted by the Trump Administration that made claiming asylum in the United States more difficult. The Department of Homeland Security and Department of Justice will reconsider a 2020 final rule governing [credible fear determinations](#) for asylum seekers, with a proposal expected in August 2022.” The remaining

immigration agenda is to [propose](#) that immigration judges “conduct an evidentiary hearing before denying an application for asylum, withholding of removal, or protection under the Convention Against Torture” and to amend regulations on [visa fees](#) to provide exemptions for certain applicants.