Week in Regulation

A Muted Start to Fall 2021

DAN GOLDBECK, DAN BOSCH | SEPTEMBER 27, 2021

Last week included the autumnal equinox, the official passing from summer to fall. Federal agencies marked this transition of the seasons with an utterly unexceptional tranche of rulemakings. The most significant action of the week was a Department of Labor (DOL) rule that made changes to a 2020 rule on tipping regulations. Across all rulemakings, agencies published $33.1 million in total net costs and added 279 paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 31
- Final Rules: 67
- 2021 Total Pages: 53,094
- 2021 Final Rule Costs: $17.6 billion
- 2021 Proposed Rule Costs: $177 billion

NOTABLE REGULATORY ACTIONS

The most consequential action of the week was DOL's "Tip Regulations Under the Fair Labor Standards Act (FLSA); Partial Withdrawal" rule. This rule makes a series of specific changes to a 2020 rule regarding tipping practices under the Fair Labor Standards Act, including a clarification "that while managers and supervisors may not receive tips from tip pools or tip sharing arrangements, managers or supervisors are not prohibited from contributing to mandatory tip pools or sharing arrangements." DOL qualitatively discusses some of the rule's wage transfer impacts, but only includes quantified estimates of the "rule familiarization" costs due to apparent data constraints. The agency estimates that it will cost affected employers roughly $15.3 million (or $2.1 million when annualized over 10 years) to review and implement the rule's changes.

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 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 SEPTEMBER 24th

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	160	$17.1B	40.8M
TRUMP 2017	145	$8.1B	695,118
OBAMA 2009	196	$29.5B	12.7M

LAST UPDATED: SEPTEMBER 24TH, 2021 AMERICANACTIONFORUM.ORG

There was little new activity of any real note across any of the three administrations. Interestingly, like the DOL rule discussed above, the most economically impactful rule finalized across any of the administrations was one adjusting the implementation of a prior regulatory action. In this case it was a Trump-era Environmental Protection Agency rule that would postpone a particular compliance deadline, thereby saving affected entities nearly $37 million.

THIS WEEK'S REGULATORY PICTURE

This week, the Biden Administration announces new efforts to deal with extreme heat at work.

On September 20, the White House announced a new initiative to address concerns over workplace injuries, illnesses, and deaths due to extreme heat – incidents that are likely to occur more frequently in the future due to climate change.
The primary component of the new effort will be a forthcoming rule from the Occupational Safety and Health Administration (OSHA) that will establish a workplace heat standard. While the rulemaking is in its earliest stages – OSHA plans to publish an advanced notice of proposed rulemaking in October to gather public input before it develops a proposal – it will likely require some combination of setting heat thresholds that trigger certain precautions, establishing a rest and cooling plan for employees exposed to hot conditions, and monitoring of indoor and outdoor workplace temperatures.

OSHA also established a new enforcement initiative that will prioritize heat-related interventions and inspections of work activities on days when the heat index exceeds 80 degrees Fahrenheit. As part of that initiative, employers "are encouraged to implement intervention methods on heat priority days proactively, including regularly taking breaks for water, rest, shade, training workers on how to identify common symptoms and what to do when a worker suspects a heat-related illness is occurring, and taking periodic measurements to determine workers' heat exposure."

OSHA also announced it would create a National Emphasis Program on heat hazard cases that will develop a list of occupations and industries with high rates of heat issues, which will then be subject to targeted enforcement. Finally, OSHA will form a heat illness prevention work group within its National Advisory Committee on Occupational Safety and Health to ensure that consideration is given to heat-related hazards going forward.

In addition to these steps to address workplace heat exposure, the Biden Administration also announced several other initiatives aimed at providing cooling assistance to households and communities.

TOTAL BURDENS

Since January 1, the federal government has published $194.6 billion in total net costs (with $17.6 billion in new costs from finalized rules) and 45.4 million hours of net annual paperwork burden increases (with 43.5

million hours in increases from final rules).