



Week in Regulation

DOL Gets Down to Business With Rule Reversals

DAN GOLDBECK, DAN BOSCH, THOMAS O'ROURKE | MARCH 15, 2021

Overall, last week was relatively modest in terms of regulatory activity. There were 13 rulemakings with some quantified economic impact, but most were relatively mundane. The most noteworthy actions of the week came in a pair of proposed rules from the Department of Labor (DOL) seeking to withdraw or rescind Trump Administration rules concerning the employee-employer relationship. Across all rulemakings, agencies published \$153.6 million in total net costs and added 91,380 hours of annual paperwork.

REGULATORY TOPLINES

- Proposed Rules: 63
- Final Rules: 83
- 2021 Total Pages: 14,199
- 2021 Final Rule Costs: \$1.3 billion
- 2021 Proposed Rule Costs: -\$8.3 billion

NOTABLE REGULATORY ACTIONS

In perhaps the most direct fashion to date under the Biden Administration, an agency is going beyond simply freezing late-Trump era rules in place and instead seeking to reverse them. Last week, DOL released two proposals seeking to: 1) [withdraw](#) the [rule](#) on independent contractor status and 2) [rescind](#) the [rule](#) that establishing a new joint employer standard. The semantic difference appears to be largely due to the former never fully going into effect while the latter did (while also facing a [vacatur order](#) on the district court level). The respective cost-benefit analyses include some interesting considerations.

In terms of quantitative analysis, both proposals include an identical estimate of regulatory familiarization costs that essentially boils down to all of the country's private firms taking, on average, 10 minutes to consider the impacts of these proposed rules on their business model. DOL arrives at a range of \$50.7 million to \$66.4 million (depending upon how many firms one includes) in total costs; \$58.5 million is the mid-point of that range. Beyond that, DOL largely falls back to a qualitative discussion of the transfer effects of these reversals. For context, the Trump-era DOL estimated that its independent contractor rule would yield \$4.5 billion in savings and the joint employer rule would impose \$390 million in familiarization costs but yield broad enough qualitative effects to categorize it as "deregulatory." Presumably the final versions of these reversal rulemakings will, perhaps in light of public comments (due by April 12), include more robust analyses addressing these prior estimates.

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's [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 12

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	28	\$854.2M	1.8M
TRUMP 2017	24	\$2.4B	194,212
OBAMA 2009	39	\$1B	3.7M

LAST UPDATED: MARCH 12, 2021 AMERICANACTIONFORUM.ORG

With the week's main items coming in the form of proposed rules, this past week saw minimal shifts in final rule trends. There were seven such rules from agencies last week, but most were relatively mundane, routine actions that yielded merely \$6.5 million in costs and 44,014 annual hours of paperwork. Interestingly, this trend aligns with preceding administrations that had minimal week-over-week shifts at this point as well.

THIS WEEK'S REGULATORY PICTURE

By Thomas O'Rourke, Regulatory Policy Intern

This week, the Centers for Disease Control and Prevention (CDC) issues guidance for individuals that have received the COVID-19 vaccine.



When you've been fully vaccinated

People who are fully vaccinated can start to do some things they stopped doing because of the pandemic.

On March 8, the CDC released a list of guidelines for safe levels of interaction between vaccinated and unvaccinated individuals. The new guidance affirmed the efficacy of the FDA-approved vaccines but reiterated the importance of maintaining mitigation efforts for those who have not yet received the vaccine.

Vaccinated individuals can now safely meet indoors with unvaccinated members of a single household without taking precautions such as mask wearing and physical distancing. The CDC does advise against visitations between vaccinated and unvaccinated individuals from a number of different households and gathering in medium to large sized crowds, however. These sorts of gatherings, the CDC contends, still pose a significant threat to those who are not vaccinated.

Among the most salient updates included in the new guidance are those related to post-acute care facilities, including nursing homes. Fully vaccinated nursing home patients may now have visitors indoors, with the only exceptions stemming from unique circumstances such as an outbreak in the facility. Although unvaccinated visitors are still advised to practice social distancing and mask wearing, this guidance stands in stark contrast to previous recommendations.

The new guidelines also ease quarantining restrictions on fully vaccinated members of the public and nursing homes. That is, those who have received the vaccine are no longer recommended to isolate for 14 days following exposure to COVID-19, assuming that the vaccinated individual is asymptomatic. The same is true for members of nursing homes and health care personnel.

The CDC's guidance did not offer any updates on a number of key issues, such as restrictions on travel and the workplace. Current CDC guidelines on travel dictate that those who are travelling should get tested both before and after their trip. All travelers are still advised to quarantine for a minimum of 10 days, even when both tests are negative. This set of recommendations, however, does not distinguish fully vaccinated individuals from

those who are not protected against the virus.

Moreover, the CDC did not provide any clarity on restrictions for workplaces with both vaccinated and unvaccinated individuals. Given the relatively limited scope of the visitation guidelines and the report's emphasis on holding only small gatherings, it seems unlikely that full returns to workplaces that are capable of conducting telework will come anytime soon.

Although the CDC's guidance did not address a number of important topics, the new set of recommendations did note that "guidance will be updated and expanded based on the level of community spread of SARS-CoV-2, the proportion of the population that is fully vaccinated, and the rapidly evolving science on COVID-19 vaccines."

TOTAL BURDENS

Since January 1, the federal government has published \$7 billion in total net cost savings (with \$1.3 billion in new costs from finalized rules) and 6.5 million hours of net annual paperwork burden reductions (with 4.4 million hours in increases from final rules).

Year

[Select All]

2021

2020

2019

2018

2017

2016

2015

2014

2013

2012

2011

2010

2009

2008

2007

2006

2005

Total Number of
Regulations
Finalized

65

Total Finalized Cost

\$1.3b

Paperwork Hours

4,420,761