Week in Regulation

Labor Rules Spur on Massive Week

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For the past few weeks and months, there has been a markedly lower level of regulatory activity than some may have expected from the Biden Administration. Last week saw a dramatic break from that trend, however. A pair of Department of Labor (DOL) rulemakings regarding COVID-19 safety standards and tip pooling, respectively, left quite the mark on the current administration's regulatory ledger. Across all rulemakings, agencies published roughly $5.8 billion in total net costs and added 19.4 million annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 41
- Final Rules: 82
- 2021 Total Pages: 33,795
- 2021 Final Rule Costs: $5.9 billion
- 2021 Proposed Rule Costs: -$12.1 billion

NOTABLE REGULATORY ACTIONS

The most consequential rule of the week was the DOL interim final rule regarding "Occupational Exposure to COVID-19; Emergency Temporary Standard." Citing its authority under the Occupational Safety and Health Act, the agency issued an "emergency temporary standard (ETS) to protect healthcare and healthcare support service workers from occupational exposure to COVID-19 in settings where people with COVID-19 are reasonably expected to be present." While the COVID-19 threat largely continues to recede, the broad nature of this ETS – and its roughly 19.3 million hours of recordkeeping and reporting requirements – put its cost at roughly $4 billion. DOL expects this action to potentially prevent nearly 300,000 new cases and 776 subsequent deaths.

The other significant action of DOL last week was its proposed rule regarding "Tip Regulations Under the Fair Labor Standards Act (FLSA); Partial Withdrawal." As the title suggests, the proposal seeks "to withdraw and re-propose one portion of the Tip Regulations Under the Fair Labor Standards Act (FLSA) (2020 Tip final rule) related to the determination of when a tipped employee is employed in dual jobs under the Fair Labor Standards Act of 1938." The 2020 Tip final rule was a Trump Administration action that sought to adjust how employers could manage pooled tips. In particular, the current DOL seeks to establish the standard "that an employer may only take a tip credit when its tipped employees perform work that is part of the employee's tipped occupation." The agency estimates that this partial roll-back of the 2020 Tip final rule will result in roughly $1.8 billion costs to affected employers over a 10-year window.

CONGRESSIONAL REVIEW ACT UPDATE

On March 23, the first joint resolution of disapproval under the Congressional Review Act (CRA) of this term was introduced. CRA resolutions essentially seek to wholly rescind specific final rules within a set timeframe. The significance of these resolutions is discussed further here. In the interest of providing a public accounting of the potential economic impact of these actions should they pass, the American Action Forum (AAF) will provide a regular update of the rules being targeted and a concise summary of each rule's purpose, economic impact, and why opponents may be targeting it.

Toward the end of last week, the three CRA resolutions that had previously passed through the Senate all passed through the House. The one regarding the Equal Employment Opportunity Commission rule on conciliation procedures passed on a straight party-line vote of 219-210. The other two saw some partisan crossover. The "True Lender" CRA resolution received one Republican vote en route to a 218-208 tally, while the resolution concerning the Environmental Protection Agency rule on methane emissions saw a dozen Republican affirmative votes push that total to 229-191.

The Biden Administration has already stated its approval for all three resolutions, making their passage into law simply a matter of time. With the deadline for expedited Senate consideration having long passed, however, these three will be – barring some incredible development – the only CRA resolutions passed this term.

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 JUNE 25th

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	95	$5.4B	26.4M
TRUMP 2017	75	$6.8B	964,966
OBAMA 2009	117	$6.3B	8.3M

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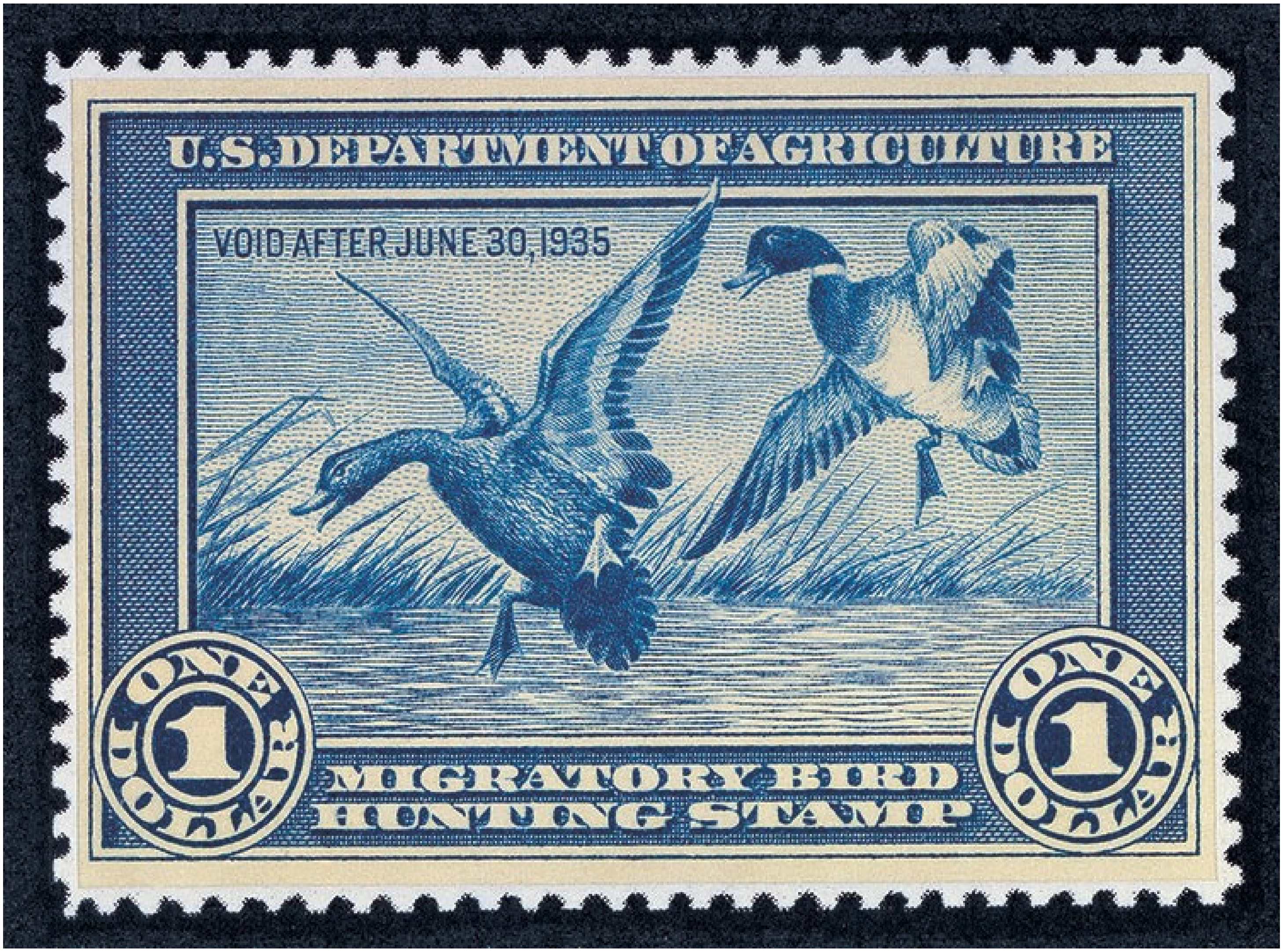
This past week saw a dramatic spike in estimated regulatory impact under President Biden compared to almost negligible movement across similar weeks in the Trump and Obama administrations. As noted earlier, DOL’s COVID-19 ETS made the biggest splash into terms of the Biden regulatory tally. The nearly $4 billion in costs push this administration into closer contention with its predecessors on that metric. The 19.3 million additional hours of paperwork has the Biden total blowing way past the other two in that regard.

THIS WEEK'S REGULATORY PICTURE

This week, the Biden Administration proposes to roll back a Trump Administration rule on…the image used for the Federal Duck Stamp.

One of the pillars of the Biden Administration's first five months has been reversing regulations from the Trump Administration, which is not unlike the Trump Administration's reversing Obama Administration rules. While these actions have typically been high profile reversals of rules from the Environmental Protection Agency, Department of Labor, and Department of Housing and Urban Development, this week saw the extension of that philosophy to the U.S. Fish and Wildlife Service's (FWS) regulations regarding how the image used on the agency's annual Federal Duck Stamp is chosen.



Waterfowl hunters aged 16 and above are required to purchase a Federal Duck Stamp annually. The stamp was authorized by a 1934 law and proceeds from the stamp are used to fund waterfowl conservation efforts. In 1949, the federal government decided to hold a contest each year to determine the image on the following year's stamp. According to FWS, the contest is "the only art competition of its kind sponsored by the federal government." While winners receive no compensation, they do hold the copyright and can sell copies of their

work – which according to FWS are sought after by some art collectors and waterfowl enthusiasts. The inaugural stamp issued in 1934 is shown above.
In May 2020, the Trump Administration's FWS published a final rule regarding the contests regulations that required submissions to include a "waterfowl hunting related scene" in order to "celebrate our waterfowl hunting heritage." According to FWS, since the 2020 rule was published many artists are upset with the requirement. Hence, the agency is proposing to remove the requirement from future contests, citing the need to allow artists to have more freedom of expression in their designs.

A public comment period on the proposed rule is open until July 23.

TOTAL BURDENS

Since January 1, the federal government has published $6.2 billion in total net cost savings (with $5.9 billion in new costs from finalized rules) and 20.3 hours of net annual paperwork burden increases (with 29 million hours in increases from final rules).