



Week in Regulation

Unexpectedly Short Week Yields Modest Savings

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Due to the rapid [recognition](#) of Juneteenth as a federal holiday – Congress passed the bill and President Biden signed it all within the course of the week – last week only had four days’ worth of published regulatory activity, and not much of note. The most significant action was a proposed Department of Health & Human Services (HHS) rescission of a Trump-era rule regarding access to drugs such as insulin and epinephrine. Across all rulemakings, agencies published roughly \$74.9 million in total net cost savings and cut 187,593 annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 34
- Final Rules: 82
- 2021 Total Pages: 32,306
- 2021 Final Rule Costs: \$1.9 billion
- 2021 Proposed Rule Costs: -\$13.9 billion

NOTABLE REGULATORY ACTIONS

The most significant rulemaking of the week was the “Proposed Rescission of Executive Order 13937, ‘Executive Order on Access to Affordable Life-Saving Medications’” from HHS. The [proposal](#) would rescind a Trump-era [rule](#) published in December 2020 that would require programs that “participate in the 340B Drug Pricing Program (340B Program) ... to provide access to insulin and injectable epinephrine to low-income health center patients at the price the health center purchased these two drugs through the 340B Program.” Given how late in Trump’s term that rule was published, it was one covered under the Biden Administration’s regulatory freeze. After reviewing this rulemaking, the current HHS “has significant concerns regarding health centers needing to divert vital resources to implement this rule.” As such, the agency is moving to rescind the original rule and its nearly \$69 million in estimated administrative costs.

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.

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 18th

| | FINAL RULES | FINAL RULE COSTS | PAPERWORK HOURS |
|----------------------|-------------|------------------|-----------------|
| BIDEN 2021 | 89 | \$1.4B | 7.2M |
| TRUMP 2017 | 70 | \$6.8B | 964,966 |
| OBAMA 2009 | 114 | \$6.3B | 8.3M |

LAST UPDATED: JUNE 18th, 2021

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Since the bulk of the week's action came from a proposed rule, there was only a nominal shift in the Biden Administration's final rule tallies. There was little else of consequence across all three administrations, however. The most significant rule across the covered administrations was a Trump-era Environmental Protection Agency (EPA) [rule](#) regarding "Effluent Limitations Guidelines and Standards for the Dental Category." EPA estimated that the rule could impose \$61 million costs and 402,000 new annual hours of

paperwork.

THIS WEEK'S REGULATORY PICTURE

By Rose Laoutaris, Regulatory Policy Intern

This week, the Department of Justice (DOJ) reverses two Trump Administration asylum policies.

Cite as 28 I&N Dec. 304 (A.G. 2021)

Interim Decision #4018

Matter of L-E-A-, Respondent

Decided by Attorney General June 16, 2021

U.S. Department of Justice
Office of the Attorney General

- (1) *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019) ("*L-E-A- II*"), is vacated in its entirety so as to return the immigration system to the preexisting state of affairs pending completion of the ongoing rulemaking process and the issuance of a final rule addressing the definition of "particular social group."
- (2) Immigration judges and the Board should no longer follow *L-E-A- II* when adjudicating pending and future cases.

BEFORE THE ATTORNEY GENERAL

On Wednesday, June 16, Attorney General Merrick Garland [reversed](#) two Trump Administration orders limiting migrants to the United States through asylum based on domestic and gang violence, *Matter of A-B-* and *Matter of L-E-A-*. This decision came after President Biden's [executive order](#) on "Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border."

In 2016, DOJ's Board of Immigration Appeals found that a woman seeking asylum from El Salvador due to domestic violence was qualified. The 2018 decision by Attorney General Jeff Sessions, *Matter of A-B-*, overruled it, with the [justification](#) that the requirements for asylum were becoming too broad. A federal judge [overturned](#) this decision, however.

In 2019, Attorney General William Barr made a similar decision in *Matter of L-E-A-*, overturning another ruling in favor of granting asylum to a man targeted by a drug cartel in Mexico. This decision was also [overturned](#) by a federal judge.

Those court rulings eased the ability of the Biden Administration to set the new policies this week, though it is likely the policies would have eventually been reversed anyway. In a memorandum to DOJ staff justifying the decisions, Associate Attorney General Vanita Gupta explained that it is the administration's view that asylum laws protecting people fleeing persecution due their belonging to a "particular social group" include those that are suffering from domestic or gang violence, and the Trump Administration's policies unfairly limited access to asylum.

The DOJ and the Department of Homeland Security are currently working on a joint rulemaking "addressing the circumstances in which a person should be considered a member of a 'particular social group.'" A final rule on this definition would require future administrations to go through the rulemaking process to amend the definition, rather than doing so via a policy statement, which is currently the norm.

TOTAL BURDENS

Since January 1, the federal government has published \$12 billion in total net cost savings (with \$1.9 billion in new costs from finalized rules) and 841,043 hours of net annual paperwork burden increases (with 9.6 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

127

Total Finalized Cost

\$1.9b

Paperwork Hours

9,622,082