

Regulatory Priorities Under the Biden Administration

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Gone are the days...

- Within hours of his inauguration, President Biden executed three regulatory actions which provide a roadmap of what to expect under his Administration
 1. Issued a regulatory freeze memo to temporarily stop the regulatory and guidance pipeline
 2. Revoked President Trump's Executive Order establishing the regulatory two-for-one requirement and a cost-based regulatory agenda
 - a. This also impacts the use of federal guidance
 3. Direct the Office of Information and Regulatory Affairs (OIRA) to modernize regulatory policy



Impacts to Regulatory Policy

- President Biden, through his Executive Orders (EO) focused on regulatory policies, has reverted to Clinton and Obama-era focused policies with additional areas of emphasis
 - Supports an analytical approach to rulemaking, including cost-benefit analyses
 - Biden EO added new provisions for more complete consideration of benefits
 - Emphasis on more benefits which are difficult to define/quantify
 - Distributional and equity effects
 - Directs a broader review of OIRA/OMB role which has not been updated since 2003
 - Encourages a more proactive approach for OIRA to get involved earlier on in rulemaking process
 - Practical limitations to this but could be impactful over the course of an Administration



Regulation in Action



- Previous regulatory actions driven purely by Executive Action are more easily 'undone'
 - Example – definition of 'Joint Employer' at the Department of Labor
- Regulation based in statute can take longer but is more difficult to rescind from one Administration to another
 - Example – various TSCA regulations at EPA
- Desire for accelerated rulemaking at independent agencies
 - Example – congressional intent to bypass existing CPSC rulemaking procedures

Contributing Factors to Active Regulatory Agenda



