

2021 Regulatory Year in Review

Ten Important Regulatory and Deregulatory Developments

Zhoudan Xie & Mark Febrizio | January 19, 2022

This *Regulatory Insight* recaps ten important developments related to federal regulations that occurred in 2021. With the continued spread of COVID-19, regulatory responses to the pandemic are still an important theme throughout 2021, including several controversial vaccination requirements. The other themes reflect the Biden administration's efforts to halt or undo Trump-era regulations during its initial year.

President Biden issued several notable executive orders reflecting new regulatory priorities and reversing Trump's regulatory agenda. The Biden administration and its allies in Congress repealed many Trump-era rules, through the Congressional Review Act (CRA) or notice-and-comment rulemaking. Those cover changes to immigration policies, actions for facilitating access to medical treatment, regulations implementing the Fair Housing Act, and regulatory activities addressing environmental policy. Nevertheless, these changes were predominantly made using existing regulatory authorities, rather than stemming from new congressional legislation. In some instances, the courts are involved in adjudicating whether agencies have pursued revisions in a legitimate manner.

1. Regulations related to the COVID-19 pandemic

As COVID-19 continued spreading around the world, the Biden administration issued a number of regulations in response to the pandemic in 2021. During his first days in office, President Biden signed [multiple](#) executive orders, [directing](#) the federal government to “act swiftly and aggressively

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to combat” COVID-19. Some of the actions issued last year extend the regulatory responses implemented under the Trump administration, such as Emergency Use Authorizations and travel restrictions. For example, the Department of Homeland Security (DHS) continued limiting travel from [Canada](#) and [Mexico](#) to “essential travel” throughout most of 2021, although the federal government started to relax these travel restrictions toward the end of the year. DHS [lifted](#) the limitations in November to allow non-essential travelers from Canada and Mexico who have been fully vaccinated to enter the United States. This change aligns with the [new international air travel policy](#), which enables the air travel of fully vaccinated travelers beginning in November.

The COVID-19 vaccination requirement is not only imposed on international travelers but also individuals working in certain sectors and occupations. On September 9, President Biden signed Executive Order (EO) 14042, [directing](#) federal contractors to comply with subsequent guidance published by the Safer Federal Workforce Task Force that [requires](#) covered contractor employees to be fully vaccinated by January 18, 2022. On the same day, the president also signed EO 14043, [announcing](#) mandatory vaccination for all federal employees. In November, the Department of Health and Human Services (HHS) issued rules to require COVID-19 vaccination for workers at [Medicare and Medicaid](#) service providers and staff in [Head Start](#) programs. These vaccination rules received legal challenges. The implementation of the vaccine mandate for federal contractors has been on hold due to preliminary injunctions [issued](#) by district courts. While the vaccine requirement for healthcare workers was also [challenged](#) around the country, the Supreme Court announced its [decision](#) to uphold the rule on January 13, 2022.

While many of the vaccination requirements were litigated, the most controversial regulation is the so-called “vaccine-or-test” mandate [issued](#) by the Occupational Safety and Health Administration (OSHA) on November 5. The mandate directs larger employers (i.e., those with 100 or more employees) to either require vaccinations or weekly testing and masks for those who are not vaccinated. The rule caused tremendous debate and immediate litigation. OSHA [received](#) over 120,000 comments for the rulemaking. Members of Congress also [introduced](#) a resolution under the CRA to disapprove the rule—which passed, 52 to 48, in the Senate. Following the lawsuits, the U.S. Court of Appeals for the Fifth Circuit temporarily [paused](#) the implementation of the rule after its publication, but the Sixth Circuit later [lifted](#) the pause in December. After a months-long legal battle, the Supreme Court [blocked](#) the enforcement of the mandate on January 13, 2022.

2. Modernizing regulatory review

On January 20, 2021, President Biden signed a [memorandum](#) on “Modernizing Regulatory Review,” which signaled several of the new administration’s regulatory priorities. The memorandum seeks recommendations for “procedures that take into account the distributional consequences of regulations.” As GW Regulatory Studies Center director Susan Dudley [pointed out](#), analyzing distributional impacts has long been an [important element](#) of regulatory impact

analysis, but it has not been done in a rigorous way. The memorandum noted that understanding the potential benefits and burdens of regulations on different groups of people is particularly important for “[disadvantaged, vulnerable, or marginalized communities](#).” On the same day, President Biden also signed [EO 13985](#) on “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” directing the Office of Management and Budget (OMB) and other agencies to assess whether their policies and regulations equitably serve all eligible individuals and communities. In response to the EO, OMB [published](#) a request for information in May seeking public input “on available methods, approaches, and tools that could assist in this effort.” Other agencies, such as the [Department of Transportation](#) (DOT) and the [Department of Agriculture \(USDA\)](#), followed by soliciting feedback on identifying barriers and opportunities for equity in their policies and programs.

In addition, the [memorandum](#) specifically calls for revisions to OMB’s [Circular A-4](#). The Circular describes best practices and provides guidance to federal agencies on the development of regulatory analysis. Since its publication in 2003, Circular A-4 has [served](#) as “[an authoritative source on regulatory analysis](#)” in the United States and throughout the world. Therefore, its revisions would have important implications for the regulatory process. While the revision is likely to include clarified guidance on the analysis of distributional effects, no specific plans have been announced as of the date of this publication.

Another move the Biden administration took to modernize the regulatory process is the emphasis on evidence-based policymaking, reflected in the January 2021 [memorandum](#) titled “Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking.” It directs the White House Office of Science and Technology Policy (OSTP) to convene an interagency task force to “[conduct a thorough review of the effectiveness of agency scientific-integrity policies developed since the issuance of](#)” the 2009 Presidential Memorandum on scientific integrity. Accordingly, OSTP [published](#) a request for information on its assessment in June and [released](#) a Scientific Integrity Task Force Report on January 11, 2022. The memorandum also connects to the Foundations for Evidence-Based Policymaking Act of 2018. On June 30, OMB issued [new guidance](#) related to the implementation of the Evidence Act, affirming the administration’s commitments to evidence-based policymaking.

3. CRA disapprovals and reversals of Trump's executive orders

A major regulatory theme throughout 2021 is the reversal of executive actions and regulations issued during the Trump administration. Although we discuss reversals of specific regulations in the following sections, disapprovals of Trump-era rules through the CRA represent a special mechanism of reversals. The CRA [allows Congress](#) to disapprove a federal agency rule using expedited procedures within a special window of time after the rule is issued. Since an incoming Congress can review the rules issued fewer than 60 legislative days prior to the adjournment of the previous Congress, the CRA disapproval has been used as an [effective tool](#) for a new

administration to reverse rules issued toward the end of the previous administration. As we [highlighted](#) in the 2017 Regulatory Year in Review, President Trump signed resolutions eliminating 15 rules using the CRA after he took office.

In 2021, according to the Center's [CRA Tracker](#), Congress introduced nine resolutions, six of which [target](#) rules issued by agencies during the Trump administration. Three resolutions passed both houses of Congress and were signed by President Biden on June 30. Those include disapprovals of the Equal Employment Opportunity Commission's [update](#) of conciliation procedures, the Environmental Protection Agency's (EPA's) [amendments](#) to the oil and natural gas new source performance standards, and the Department of Treasury's [rule](#) on determination of national banks and federal savings associations as lenders.

In addition to using the CRA and [other mechanisms](#) to reverse Trump's regulatory agenda, President Biden also issued several executive orders to revoke presidential actions from the previous administration. On his first day in office, President Biden signed [EO 13992](#) revoking multiple executive orders concerning federal regulation. It repealed [EO 13771](#), which required agencies to eliminate two regulations for every new one issued and limited the total incremental cost of all new regulations. It also revoked [EO 13777](#), which established a task force in each agency to make recommendations for regulatory reforms, and [EO 13891](#), which addressed the transparency of existing guidance documents and the process for issuing new ones. According to a Center [tracker](#), many agencies had issued regulations to comply with EO 13891 by the end of the Trump administration. Shortly after President Biden signed EO 13992, agencies began rescinding their guidance regulations [at a rapid pace](#).

President Biden also signed [EO 14003](#) on January 22, 2021 to revoke [EO 13957](#) which would create a new Schedule F excepted service category for federal employees. The creation of Schedule F was criticized by various stakeholders. Several [former OIRA administrators](#), along with a number of former OMB career officials and presidential appointees from both parties, wrote a [joint statement](#) in December 2020, pointing out that the Schedule F classification would make the vast majority of OMB career staff subject to removal or appointment by political leadership and thereby cause long-term damage to the institution.

4. Undoing Trump's immigration policies

Last year, we [highlighted](#) how the Trump administration issued a flurry of proposed and final regulations to further the president's relatively restrictive immigration policies. The Biden administration filled its initial year with efforts to halt or undo many of these Trump-era policies.

First, the Biden administration reversed several Trump-era actions through presidential discretion. Federal agencies, now under the control of new political leadership, withdrew rulemaking proposals that were submitted prior to January 20, 2021 but not finalized. For instance, DHS

withdrew [two](#) 2020 [proposals](#) from the U.S. Citizenship and Immigration Services (USCIS) that one of us critiqued in [public comments](#) for having poor regulatory analysis. DHS [withdrew](#) another 2018 proposal that would have repealed the “international entrepreneur parole program,” which our colleague Daniel Pérez lauded while [arguing](#) the program should be expanded beyond the Obama-era framework. Other notable withdrawals include a [USCIS proposed rule](#) affecting employment eligibility for individuals with a final order of removal and an Immigration and Customs Enforcement [action](#) that would have set fixed time periods and reduced flexibility for individuals on visas for students, scholars, exchange visitors, and foreign media representatives.

Outside the rulemaking process, President Biden issued [EO 14013](#), which repealed two Trump orders and stated the administration’s goal of expanding refugee admissions. However, Biden [initially retained](#) the refugee admissions cap of 15,000 for Fiscal Year 2021 [set by President Trump](#), but expanded the cap to [62,500 admissions](#) after [receiving political backlash](#) on the decision. Despite this change, actual refugee admissions in 2021 were the [lowest on record](#) at 11,411. On October 8, the president [established](#) a ceiling of 125,000 refugee admissions for FY 2022—the highest it has been [since 1993](#).

Second, regulatory agencies [suspended](#) a series of Trump-era rules that were already finalized but had not yet taken effect. Regulatory suspensions—actions that delay the effective or compliance dates of final rules—are a strategy [newly inaugurated presidents](#) use to slow down the implementation of the previous administration’s priorities while they formulate their own policy direction. In the case of immigration, the Biden administration postponed the effective date of several actions, including a final rule on [H-1B visa petitions](#) (which was ultimately [withdrawn](#) following a court vacatur), a joint DHS-Department of Justice (DOJ) [rule](#) that would make it easier to bar individuals from asylum eligibility (delayed [three times](#)), and a Department of Labor [rule](#) governing prevailing wages for individuals on certain visas (delayed [twice](#)).

Third, after suspending a rule’s effective date, agencies often begin working on modifying the regulations through the notice-and-comment process. In Biden’s first year, many immigration-related actions began moving through notice and comment, with most focusing on revising Trump-era regulations rather than engaging in broader reforms. Notably, the [2019 Public Charge rule](#), a [regular contender](#) for our annual year in review, shows up again in 2021. After USCIS [removed its provisions](#) from the regulatory code in March (responding to a court vacatur), the Biden administration began developing its own version of the regulations governing “Inadmissibility on Public Charge Grounds.” USCIS [released](#) an advance notice of proposed rulemaking in August, and the State Department [reopened the comment period](#) for a rule on implementing visa ineligibility on public charge grounds. Other actions that would revise Trump-era policies are at different stages of the notice-and-comment process. For example, agencies are finalizing amendments to [considering](#) asylum claims and [fortifying](#) the Deferred Action for Childhood Arrivals (DACA) program, and DHS and DOJ are working on “significant” proposed rules for [several more asylum-related actions](#).

While most of these actions are [slowly undoing](#) Trump-era policies, relatively few actions seem to be charting a new path. A couple of exceptions include requests for information from USCIS and the State Department that seek input on opportunities for [process improvements](#) and the [identification of unnecessary barriers](#) in the immigration system. 2022 may tell whether these efforts at engaging the public generate proactive policy changes.

5. Reforms to improve access to medical treatment

Federal agencies took actions to reduce barriers to providing telehealth options in response to the COVID-19 pandemic. Part of the effort is providing continued regulatory flexibilities for the use of controlled substances for treating opioid use disorder. As [discussed](#) by our colleagues Bridget Dooling and Laura Stanley, since the beginning of the pandemic, the Drug Enforcement Administration (DEA) and the Substance Abuse and Mental Health Services Administration have provided temporary flexibilities for patient access to critical opioid use disorder medications, such as allowing practitioners to prescribe controlled substances using telemedicine. Both agencies signaled that they plan to make these changes permanent by releasing [related rules](#). Federal agencies also took further steps to provide additional flexibilities last year.

During the last week of the Trump administration, HHS announced a [prepublication version](#) of practice guidelines for prescribing buprenorphine, a controlled substance and effective drug for treating opioid use disorder. The guidelines [would](#) allow physicians to prescribe buprenorphine to treat a limited number of patients without seeking an otherwise required waiver from HHS. The Biden administration expressed [concerns](#) about HHS's legal authority and [did not issue](#) the guidelines immediately. The [final guidelines](#) were published in the Federal Register on April 28, with several changes from the initial announcement. According to the guidelines, a practitioner is exempted from training, counseling, and other ancillary services requirements but still needs to obtain a waiver by submitting a notice of intent to prescribe buprenorphine. However, the final guidelines expand the eligibility of the exemption to include physicians, physician assistants, nurse practitioners, and others, while the prepublication version released under the Trump administration only applied the exemption to physicians.

DEA also issued a [final rule](#) in June to increase access to another controlled substance for treating opioid use disorder—methadone. As Laura Stanley [explained](#) in a commentary, clinics dispensing methadone are subject to strict regulatory restrictions, creating substantial barriers for patients to receive the medication, especially for those in rural and underserved urban areas. DEA previously allowed clinics to operate a mobile component which could provide patients easier access to methadone, but it halted the approval of any new methadone vans in 2007. The June final rule lifts the moratorium and allows registered clinics to begin a mobile component without obtaining a separate registration. Relatedly, in November, DEA [published](#) an advance notice of proposed rulemaking, announcing its intent to promulgate regulations for a special or modified telepharmacy registration, as many telepharmacies may dispense controlled substances.

6. Revisiting Fair Housing Act regulations

The Department of Housing and Urban Development (HUD) reversed several regulations implementing the Fair Housing Act issued during the Trump administration. First, HUD [withdrew](#) the [2020 proposed rule](#) “Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs.” The rule would allow providers under HUD programs to place and accommodate individuals in single-sex facilities based on their biological sex, without regard to their gender identity. Pursuant to President Biden’s [directive](#), HUD reviewed the proposed rule and determined that it is inconsistent with the president’s executive orders for advancing equity and preventing sex discrimination ([EO 13985](#) and [EO 13988](#)). The department therefore will not pursue the rulemaking.

Second, HUD published an [interim final rule](#) in June to restore certain definitions and certifications implementing the Fair Housing Act’s affirmatively furthering fair housing (AFFH) mandate. The interim final rule repeals a Trump-era [rule](#) promulgated in 2020 which withdrew the department’s prior definitions related to the AFFH requirements established in a [2015 rule](#). In the interim final rule, HUD states that the 2020 rule “did not interpret the AFFH mandate in a manner consistent with statutory requirements, HUD’s prior interpretations, or judicial precedent,” and it therefore reinstates the relevant definitions promulgated in the 2015 rule.

Third, HUD [proposed](#) to recodify its 2013 rule implementing the Fair Housing Act’s discriminatory effects standard. In 2020, the department published a [final rule](#) making several changes to the 2013 regulation, such as amending pleading standards, changing the burden shifting framework, and creating new defenses. However, the 2020 rule never took effect due to a preliminary injunction issued by a court prior to its effective date. Pursuant to President Biden’s [memorandum](#) on redressing discriminatory housing practices and policies, HUD [reconsidered](#) the 2020 rule last year and determined that the 2020 rule’s changes “[will at the very least introduce unnecessary confusion and will at worst make discriminatory effects liability a practical nullity.](#)”

7. Climate consciousness in regulatory actions

Quite a number of noteworthy regulatory developments from 2021 are related to environmental policy. In the four remaining sections, we group these environment-related actions into categories that seek to illuminate their unique implications. The first category focuses on regulatory actions that demonstrate a degree of “[climate consciousness](#)”—i.e., regulatory activity that primarily makes greenhouse gas (GHG) emissions and the impacts of climate change more visible.

In the days following his inauguration, Biden issued two directives—[EO 13990](#) and [EO 14008](#)—pushing federal agencies to take specific regulatory actions to address the climate crisis. For instance, EO 13990 [established](#) an “Interagency Working Group on the Social Cost of Greenhouse Gases” that would convene on matters related to monetized estimates of the effects of GHG

emissions—specifically, the “social cost of carbon” (SCC), “social cost of nitrous oxide” (SCN), and “social cost of methane” (SCM). As instructed by the president, the working group [published](#) interim estimates of the SCC, SCN, and SCM in February (and then [requested](#) public comments in May). Although the order requests final estimates be published by January 2022, those data are not [publicly available](#) as of the date of this publication. Relatedly, under the [direction](#) of EO 13990, the Council on Environmental Quality (CEQ) rescinded its 2019 draft guidance on considering GHG emissions in National Environmental Policy Act (NEPA) analyses, and the agency is working to replace it with a revised version of its 2016 final guidance that was [withdrawn](#) in 2017. EO 14008 followed by directing the creation of the White House Office of Domestic Climate Policy and a National Climate Task Force, prioritizing the integration of addressing climate change into policymaking and budgeting, and requesting amendments to federal procurement policies. Several months later, [EO 14030](#) pushed financial regulators to assess climate-related financial risks.

Agency responses to these EOs are numerous, so we only highlight a few here. Often, agencies request public input as an initial (and sometimes final) step. USDA [sought comments](#) on a “climate-smart agriculture and forestry strategy” and later requested [additional input](#) on a partnership program that could encourage adoption of the strategy and its practices. DOT [invited](#) public input on existing regulations that need to be made consistent with the goals of EO 13990. In response to EO 14008, HHS [established](#) the Office of Climate Change and Health Equity to address the health effects of climate change and pursue environmental justice.

At the direction of [EO 14030](#), the Financial Stability Oversight Council [released a report in October](#) identifying climate change as a threat to the U.S. financial system. Agencies like the Treasury Department and Defense Department also requested information on climate-related financial risks. Most notably, the [Federal Acquisition Regulatory Council](#) issued an [advance notice of proposed rulemaking](#) in October to consider how federal procurement and acquisitions can mitigate the financial risks of climate change (the council subsequently [extended](#) the deadline into January 2022). EO 14008 [requested](#) a report analyzing climate risk from the Defense Department, which was also [produced](#) in October.

8. Regulations controlling GHG emissions

In tandem with raising awareness of the impacts of climate change, Biden’s executive orders also directed agencies to take actions that address climate change by directly regulating GHG emissions. EO 13990 [requested review](#) of EPA’s rule on methane emissions in the oil and gas sector and EPA and DOT’s joint Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule, among others, which both elicited regulatory action in 2021.

First, EPA [published](#) a proposed rule in November covering three actions under the Clean Air Act that would reduce GHG emissions and pollutants from the oil and gas sector. On December 17,

EPA [extended](#) the comment period for the rule, and the agency has received [over 50,000](#) public comments as of the date of this publication.

Second, EPA and DOT's National Highway Traffic Safety Administration (NHTSA) were both working on distinct revisions to the SAFE Vehicles Rule in 2021 (historically, the agencies have collaborated on rulemakings). NHTSA [proposed](#) to repeal the preemption of state and local laws related to fuel economy standards in May, [published](#) a proposal to revise corporate average fuel economy (CAFE) standards for model years 2024-2026 in September, and [held](#) a virtual public hearing on the proposed standards in October. The agency [finalized](#) the repeal of the preemption at the end of December, while the substantive revisions to the fuel economy standards are still underway. Separately, EPA [proposed](#) revisions to its GHG emissions standards in August and [finalized changes](#) to the standards for model year 2023 and later in December.

In all likelihood, efforts related to this theme will continue into 2022. According to the [Fall 2021 Unified Agenda](#), EPA is planning to propose revisions to performance standards for GHG emissions from [new](#) and [existing](#) power plants. The U.S. Supreme Court has also [agreed to hear](#) a consolidated case challenging the D.C. Circuit ruling that vacated the Trump administration's standards for existing power plants. Further, EO 14037 of August 5 [directed](#) EPA and DOT to work on the next set of emissions and fuel economy standards for model years 2027 and beyond.

9. Regulations on environmental quality

The next category of environment-related developments focuses on regulations centered on environmental quality and human health, excluding those that are primarily aimed at restricting GHG emissions contributing to climate change.

Worth mentioning first is a regulation that has been a regular inclusion in our year in review lists—revisions to the definition of “[waters of the United States](#)” (WOTUS). EO 13990 directed EPA and the Army Corps of Engineers to revisit their joint regulations defining WOTUS. The agencies [announced](#) their intention to pursue revisions to WOTUS in June, [organized](#) several public meetings in subsequent months, and [requested public input](#) on where to hold regional roundtables that will likely take place in 2022. In December, the agencies released a [proposed rule](#) that would generally [restore the pre-2015 definition](#) of WOTUS and act as a foundation for [subsequent rulemaking](#). Also related to the Clean Water Act, EPA issued a [notice of intent](#) to revise implementing regulations for water quality certification after a 2020 final rule modified them. Rather than returning to the regulations in effect prior to 2020, EPA [is planning](#) on undertaking more substantial revisions.

In 2021, EPA proposed two actions related to regulating toxic chemicals under the Toxic Substances Control Act (TSCA). The [first proposal](#) requested comments on final rules from January 2021 that addressed five persistent, bioaccumulative, and toxic chemicals. The [second](#)

[proposal](#) covered reporting and recordkeeping requirements for Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS), chemicals found in some consumer and industrial products that have gained [legislative and regulatory](#) attention in the [21st century](#). In addition, EPA [announced](#) a strategic roadmap for dealing with PFAS in October, which established timelines for further agency actions.

Unsurprisingly, many Biden administration actions on environmental quality are likely to continue into 2022. For instance, EO 13990 requested revisions to EPA’s National Emission Standards for Hazardous Air Pollutants for coal- and oil-fired power plants (specifically related to this [2020 final rule](#)), which are [still underway](#) according to the Fall 2021 Unified Agenda.

10. Reorienting procedural rules related to the environment

The last theme focuses on the Biden administration adjusting several procedural regulations that have a substantial effect on environmental policy. The first two regulations—the Department of Energy’s (DOE’s) energy conservation standards and CEQ’s NEPA implementing regulations—are proceeding through typical notice-and-comment procedures, with the agencies publishing and accepting comment on proposed rules before finalizing them. By contrast, EPA issued the third, a repeal of its 2020 Benefit-Cost Rule, as an interim final rule—a rarer and less conventional option in informal rulemaking that is only justified in limited instances.

EO 13990 [requested](#) that DOE revisit its procedures for carrying out its energy conservation program for appliance standards (often called the “Process Rule”), which was revamped during the Trump administration (as we highlighted in our [2019 Regulatory Year in Review](#)). One of the most significant changes, which one of us [commented on](#) favorably at the proposal stage, was making the Process Rule [binding](#) on DOE. In April, the agency [proposed](#) revisions to the procedures, including returning discretion to the agency by removing the mandatory application of the Process Rule. These provisions were [finalized](#) in mid-December. DOE also issued a [second NPRM in July](#) proposing additional revisions, which have [not yet](#) been finalized. In general, DOE plans to return to its previous practices established in 1996.

As DOE continues to evaluate revisions to its Process Rule, the agency may need to take into account a December 2021 [National Academies of Sciences report](#) that reviewed the analytical methods of setting standards for appliances and equipment. The [Committee’s Consensus Report](#) (co-authored by Susan Dudley) includes explicit recommendations for the agency, which DOE has not yet considered in the course of this rulemaking. DOE may conclude that the availability of the report [justifies](#) reopening the public comment period for the Process Rule’s NPRM, acknowledging the importance of integrating peer review into DOE’s energy conservation program.

CEQ is revisiting its NEPA implementing regulations after [updating](#) them in 2020 for the first time in several decades. CEQ's regulations guide federal agencies as they promulgate and carry out their own respective provisions for complying with NEPA. Notably, these revisions are not a wholesale rescission, but in some places may retain changes made in 2020. CEQ is reviewing its regulations in a two-stage process. The Phase 1 rulemaking published in October [proposed](#) three main changes to provisions that CEQ considered to be essential for near-term implementation of NEPA. It received [nearly 95,000](#) public comments (including a comment [submitted](#) by one of us). The Phase 2 rulemaking is [forthcoming](#) and likely to be proposed in 2022, according to the Unified Agenda.

Lastly, at the [direction](#) of President Biden, EPA [rescinded](#) its final [Benefit-Cost Rule](#) from late 2020. The rescission was undertaken through an [interim final rule](#) that was open for comment for 30 days. Using this accelerated process, the rescission concluded that EPA did not have the authority to issue the initial action, [arguing](#) that the agency lacked a rational basis under the Clean Air Act to establish the procedural rule.