

Regulatory hurdles taking shape are significant

The votes have been cast. The ballots have been counted. And for most Americans, the day-to-day attention paid to the political process — free of the spectacle of a presidential election — fades into the background.

But what exactly is poised to happen within the government now that the spotlight has dimmed?

After one of the most polarizing election cycles in recent memory, we find ourselves right where we started.

Democrats retain control of the Senate by a slightly larger margin, a major disappointment for Republicans who just months ago dreamed of big pickups. The House remains in Republican hands, but not without some bumps and bruises for the majority party after having lost senior members in key committee positions, from Cliff Stearns of Florida to Mary Bono Mack of California.

Most importantly, President Barack Obama won a decisive second term in office. After having governed with one hand tied behind his back by re-election concerns, the Obama administration is now free to pursue desired policy without the encumbrances that have kept many of the party's favored agenda items in the barn for the past two years.

Perhaps nowhere will the effect of this mandate be more abundantly and immediately clear than on the pages of the Federal Register, where the EPA and its sister agencies are poised to take meaningful and immediate steps forward on costly priorities that were kept under wraps by election-minded liaisons in the White House. Many of the initiatives pursued by the EPA and others will be headline-drivers. Others are poised to slide under the radar. But this lower profile doesn't mean the effect will be any less significant.

Take the EPA's push to gain greater authority over chemicals through "voluntary programs" that don't outwardly restrict the use of specific chemicals, but implement nonbinding standards that simply serve as de facto regulations — encouraging de-selection in the marketplace.

Highlighting this effort will be a push for increased authority under the Toxic Substances Control Act. Observers expect that the newly unencumbered EPA will more freely use its authority under Section 6a, which allows it to ban or restrict chemicals. Previously, this process has been dependent on thorough review and political input. With a new mandate, however, rule-makings are likely to be initiated far in advance of the science inherent to the process being settled. Where direct rule-making fails or cannot be applied, the aforementioned “voluntary” initiatives provide the EPA with a backdoor regulatory opportunity — establishing controls on out-of-favor substances without going through the rigors of the rule-making process or in-depth scientific analysis.

The EPA’s Design for the Environment, for instance, is a voluntary program that does not employ established, consistent and rigorous scientific criteria, is not authorized by statute and follows no formal regulatory process or guidelines, making it challenging for manufacturers to effectively engage and push for standards consistent with a risk-based regulatory approach. The result is that chemicals that have been proved safe in scientific review must seek additional voluntary endorsement or be deemed inferior. This unscientific, shoot-from-the-hip means of regulation is a severe stretch of the EPA’s mandate — and presents a real threat to the ability of this industry and others to plan and compete.

Of course, the EPA’s ire is focused on more than just the chemical industry. Economically massive initiatives — delayed for political reasons in the president’s first term — are expected to slam the economy in the early days of his second term. The implications stand to be severe.

Perhaps most prominently, a fresh revision of the EPA’s ozone standards was famously shelved in 2011, to the disdain of environmentalists. The decision to punt on the revision was politically expedient, as stricter ozone standards threaten to carry massive economic costs not just for industry, but for countless cities, counties, municipalities and states that would suddenly find themselves out of compliance. According to the EPA itself, this new standard would cost the economy about \$90 billion annually by 2020.

Not exactly a strong talking point for a candidate focused on touting his plan for economic recovery.

The regulatory hurdles taking shape, in other words, are significant. But as this second term

commences, there may be some hope. Officials on both sides have expressed a seemingly sincere interest in finding solutions that work for both sides. Efforts to avert the coming fiscal cliff will provide a first test for this burgeoning bipartisanship.

Where we go from there, though, remains to be seen.

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