Regulation Review

Final Ozone Rule

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After years of acrimonious fights between industry, states, environmentalists, and the administration, EPA has issued final ozone standards. The revised measure lowers the current threshold from 75 parts per billion (ppb) to 70 ppb. Environmentalists had called for a figure as low as 60, which

would have cost up to $39 billion. Today's final rule will impose "just" $1.4 billion in annual costs, exclusive of California. Here's a look at the 627-page final rule and 480-page "Regulatory Impact Analysis."

BREAKDOWN

- Costs: $1.4 billion ($3.9 billion in proposed)
- Benefits: $2.9 to $5.9 billion ($6.4 to $13 billion in proposed)
- Paperwork: 339,930 hours

ANALYSIS

EPA predicts 241 counties currently do not meet the 70 ppb standard, a majority of them in the northeast and west. Despite ten years of regulation and other measures that will reduce ozone, EPA still acknowledges that 14 counties outside of California will fail to meet the standards by 2025. California has until 2037 to meet these standards. For the number of counties currently in noncompliance, $1.4 billion in annual costs seems like a bargain, especially considering the 2011 version of the regulation contained costs as high as $90 billion, which is one reason why the White House might have spiked the measure.

On the cost-benefit ledger, the figures aren't cumulative or net present value figures, but

just a snapshot of where they are expected to be in 2025. In other words, expect costs to easily exceed $10 billion cumulatively, although EPA would probably never acknowledge this reality. On the benefits side, EPA was able to monetize reduced mortality and morbidity because of the rule, through fewer hospital admissions, emergency room visits, and school absences.

One area that makes this rule a complicated endeavor is the reliance on "unknown technology." The final rule shuns the word "unknown" and focuses on "unidentified" controls or technologies. For example, the east coast of the U.S. will need to conjure 47,000 tons of fewer Nitrogen Oxide emission reductions from unidentified sources by 2025. It's not clear how states will achieve these reductions, hence the unidentified label.

EPA stressed that unidentified does not mean that controls do not yet exist. They might, but EPA does not have sufficient data to estimate the costs. The agency does, however, project that some new technology might have to come online to meet the revised standards. As EPA notes, "there is a positive correlation … between environmental innovations … and specific regulations imposed on an industry." In other words, states and businesses can thank EPA for forcing them to innovate new products that will meet federal standards.

Another complicated issue is "background" or transported ozone. In some areas, ozone is naturally occurring and not the product of local fossil-fuel emissions. In the west, pollutants can be transported from as far away as China. EPA provide a fact-sheet addressing the issue and reiterated that states are not responsible for background emissions. There are also "exceptional event" exclusions for wildfires and other uncontrollable factors. In other instances, ozone that typically blocks harmful rays from the sun can settle close to the ground and cause health problems for some individuals. Given the complex, global nature of pollution, EPA will hold a workshop to discuss the problem.

SMALL BUSINESS IMPACTS

EPA has certified that the action won't have a significant economic impact on a substantial number of small entities. The agency claims there are no direct requirements on small entities, just national standards that states and localities must implement. Likewise, EPA claims the measure does not trigger the Unfunded Mandates Reform Act because it imposes no strict duty on states or private entities.

EMPLOYMENT IMPLICATIONS

As it typically does with rules of this magnitude, EPA punted on a quantitative discussion of

employment scenarios. “[E]conomic theory alone cannot predict the direction or magnitude of a regulation’s employment impact.” In fairness to the agency, ozone regulation is unlike any other criteria pollutant, save greenhouse gases, which technically aren’t a criteria pollutant. There are typically no direct emissions of ozone, but emissions of other pollutants, when combined with volatile organic compounds and sunlight, produce ozone. The state and county implementation hurdles associated with the rule make predicting specific employment numbers difficult. However, that hasn’t stopped outside groups from making estimates.

CONCLUSION

Although $1.4 billion in costs might seem trivial in the context of the “Clean Power Plan’s” $8.4 billion imposition, there is so much to unpack with ozone. This “Regulation Review” is just a snippet of the issues and implementation hurdles contained in the regulation. The employment implications of ozone in general will be discussed in a later post. In sum, this regulation will hardly be fleeting; it will be an issue for hundreds of counties across the U.S. for the next generation.