



Week in Regulation

Savings Inch Along

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In the penultimate week of fiscal year (FY) 2019, the regulatory ledger ticked toward the deregulatory side – but just barely. In terms of the rulemakings in the Federal Register, a rule updating employment standards for migrant agricultural workers led an otherwise-forgettable week. There was, however, a notable development in the Trump Administration’s ongoing tussle with California concerning fuel efficiency standards. Across all proposed and final rules, agencies published \$136.8 million in total net cost savings and cut 688,375 hours of annual paperwork.

REGULATORY TOPLINES

- New Proposed Rules: 39
- New Final Rules: 43
- 2019 Total Pages: 49,545
- 2019 Final Rule Costs: \$38.6 Billion
- 2019 Proposed Rule Costs: -\$791.8 Million

TRACKING THE REGULATORY BUDGET

The only rule affecting the FY 2019 regulatory budget under Executive Order (EO) 13,771 was a Department of Labor (DOL) measure, “Modernizing Recruitment Requirements for the Temporary Employment of H-2A Foreign Workers in the United States.” The [rule](#) removes the requirement that prospective H-2A employers advertise listings in local media, and instead the government itself will list such job offerings on a central posting. DOL estimates that, on net, this change will save affected employers nearly \$121 million (in present value when discounted at 3 percent).

So far in FY 2019 (which began on October 1, 2018), there have been 63 deregulatory actions (per the rubric created by EO 13,771 and the administration's subsequent [guidance document](#)) against 35 rules that increase costs and fall under the EO's reach. Combined, these actions yield quantified total net costs of roughly \$11.4 billion. This total, however, includes the caveat regarding the baseline in the Department of Agriculture's "[National Bioengineered Food Disclosure Standard](#)." If one considers that rule to be deregulatory, the administration-wide net total is approximately \$4.7 billion in net costs. The administration's cumulative savings goal for [FY 2019](#) is approximately \$18 billion. The end of the fiscal year is one week away.

THIS WEEK'S REGULATORY PICTURE

This week, the federal government revokes California's waiver to set vehicle fuel mileage standards.

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Final Rule: One National Program on Federal Preemption of State Fuel Economy Standards

In a [final rule](#) announced September 19, the Environmental Protection Agency and the Department of Transportation (the agencies) revoked a waiver that allowed California to set its own standards for greenhouse gas (GHG) emissions from automobiles. Accordingly, the waiver allowed despite a federal law preventing states from setting such standards.

How did California get such a waiver to begin with? The Clean Air Act allowed California to set its own, stricter standards on tailpipe emissions of harmful pollutants because its standards predated federal action and it had a remarkable air quality problem. Regulating these smog-causing pollutants () could be done at the state level without affecting other states because the pollutants could be controlled relatively inexpensively through catalytic converters and other similar equipment that could be added onto vehicles as needed. In 2013, when the Obama Administration began regulating GHG emissions from cars through

vehicle fuel mileage standards, it granted the state a waiver to set its own standards – though California adopted the standards the federal government set through 2026. The waiver was notable because, unlike the pollutants originally covered by the Clean Air Act language, improving fuel efficiency affects the design and engineering of an entire vehicle fleet – and thus of vehicles across the country.

An issue arose last year when the Trump Administration [proposed](#) to cancel mandated vehicle mileage improvements from model years (MY) 2022-2026, keeping in place the MY 2021 standards through MY 2026. If California maintained the Obama-era mandates through its waiver, then California would be setting the *de facto* national standard. To prevent two different standards, the agencies simultaneously proposed to revoke the state’s waiver as it relates to GHG emissions.

In announcing the final rule this week, the agencies pulled the California waiver provision out of the larger vehicle fuel mileage standards rule and made it its own separate action. The agencies justified the revocation by finding that California does not face “compelling and extraordinary conditions” that would require separate standards, in part because the emissions that would be regulated are not unique to the state. There are no estimated savings from the deregulatory action.

Not surprisingly, California is unhappy with losing its waiver. Following [tweets](#) from President Trump announcing forthcoming agency action on September 18, California officials promised legal action to block the agencies’ action, contending that the agencies lack authority to revoke a waiver once it has been granted.

TOTAL BURDENS

Since January 1, the federal government has published \$37.8 billion in total net costs (with \$38.6 billion in finalized costs) and 42.1 million hours of net annual paperwork burden increases (with 37.2 million coming from final rules). [Click here](#) for the latest Reg Rodeo findings.

