Week in Regulation

Contractors and Outsourced Advisers Highlight Week in the Billions

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Last week was a relatively busy one in the pages of the Federal Register with 14 rulemakings that had some quantifiable economic impact. A pair of hefty proposed rules, however, brought the cost total up by billions of dollars. These two proposals in question, respectively, seek to restrict the outsourcing of investment adviser duties and require climate impact disclosures from federal contractors. Across all rulemakings, agencies published $13.1 billion in total costs and added 5.2 million annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 41
- Final Rules: 77
- 2022 Total Pages: 70,698
- 2022 Final Rule Costs: $108.5 billion
- 2022 Proposed Rule Costs: $139.1 billion

NOTABLE REGULATORY ACTIONS

The most consequential rulemaking of the week was a proposed rule from the Securities and Exchange Commission (SEC) regarding “Outsourcing by Investment Advisers.” As the brief title suggests, SEC is seeking to implement further regulatory requirements for firms that outsource certain duties to outside parties. Broadly speaking, the proposal would require covered advisers to monitor and examine the work these outside parties provide back to the advisers and their clients far more rigorously. SEC estimates that establishing the kind of monitoring and compliance framework the proposal puts forward would cost affected firms roughly $10 billion.

The second most significant rulemaking of the week was a proposed rule from the Federal Acquisition Regulation (FAR) agencies (namely: Department of Defense, General Services Administration, and National Aeronautics and Space Administration) regarding “Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk.” Similar to the controversial SEC rulemaking on climate risk disclosures for publicly traded companies, this proposal would seek “to implement a requirement to ensure certain Federal contractors disclose their greenhouse gas emissions and climate-related financial risk and set science-based targets to reduce their greenhouse gas emissions.” The FAR agencies estimate that such a requirement would impose roughly $3.3 billion in total costs (or $465 million on an annualized basis) on affected contractors.

TRACKING THE ADMINISTRATIONS

As we have already seen from executive orders and memos, the Biden Administration will surely provide plenty of contrasts with the Trump Administration on the regulatory front. And while there is a general expectation that the current administration will seek to broadly restore Obama-esque regulatory actions, there will also be areas where it charts its own course. Since the AAF RegRodeo data extend back to 2005, it is possible to provide weekly updates on how the top-level trends of President Biden's regulatory record track with those of his two most recent predecessors. The following table provides the cumulative totals of final rules containing some quantified economic impact from each administration through this point in their respective terms.



With last week's most significant actions coming in the form of proposed rules, there was limited movement in the Biden Administration's final rule totals. The Biden final rule cost total actually decreased by roughly $214 million. A Centers for Medicare and Medicaid (CMS) payment rule that included some reductions in administrative burdens provided the bulk of that shift.

For the other two administrations covered here, the major story was on the paperwork side. The Trump Administration saw its paperwork total decline by nearly 850,000 hours, due primarily to another CMS payment rule published at that time. In contrast, the Obama Administration's paperwork total increased by more than one million hours. An SEC rule provided the largest chunk of that spike.

THIS WEEK'S REGULATORY PICTURE

This week, the Federal Motor Carrier Safety Administration (FMCSA) scraps an inspection rule – for the second time.



On November 15, FMCSA published a notice in the Federal Register that it was withdrawing an advanced notice of proposed rulemaking (ANPRM) regarding "State Inspection Programs for Passenger-Carrier Vehicles." The action marked the second time since 2017 the agency found no path forward for the rule. A 2012 law, the Moving Ahead Progress for the 21st Century Act, required FMCSA to consider establishing a nationwide "program for annual inspections of commercial motor vehicles designed or used to transport passengers." Such vehicles include buses and large passenger vans.

In 2016, FMCSA issued its first ANPRM on the subject. It was clear from the notice that the agency was unsure how it would design or implement such a standard. States already have their own inspection requirements for passenger-carrying commercial motor vehicles. Further, the federal government cannot compel such a program under the Constitution. FMCSA noted that it assumed Congress intended the agency to restrict federal transportation from funds that failed to meet a nationwide standard, but there was no obvious federal funding tied to the program requirement.

In 2017, the agency withdrew the ANPRM. FMCSA noted they were not aware of data to support a rulemaking and that it did "not foresee the availability of Federal funding to incentivize the States to adopt such programs under its existing grant programs."

Despite the withdrawal, some in Congress wanted to revisit the matter. Last year's Infrastructure Investment and Jobs Act required FMCSA to ask for more public comments on the original ANPRM, which the agency did in May 2022. The agency received 21 comments, none of which offered a compelling reason to pursue a rulemaking. Accordingly, FMCSA found that its reasoning for the 2017 withdrawal was sound and re-withdrew the action.

TOTAL BURDENS

Since January 1, the federal government has published $247.6 billion in total net costs (with $108.5 billion in new costs from finalized rules) and 151 million hours of net annual paperwork burden increases (with 70.7 million hours in increases from final rules).


Year
[Select All]
2022
2021
2020
2019
2018
2017
2016
2015
2014
2013
2012
2011
2010
2009
2008
2007
2006
2005
Total Number of Regulations Finalized
221
Total Finalized Cost
$108.5b
Paperwork Hours
70,665,860