Week in Regulation

Hydrofluorocarbons Proposal Yields Sizable Savings

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Last week was a relatively modest one on the regulatory front, but with at least one notable exception. An Environmental Protection Agency (EPA) proposed rule regarding hydrofluorocarbons (HFCs) provided a cache of estimated cost savings totaling in the billions of dollars. Across all rulemakings, agencies published $5.6 billion in total net cost savings but added 1.1 million annual paperwork burden hours.

REGULATORY TOPLINES

- Proposed Rules: 38
- Final Rules: 53
- 2021 Total Pages: 27,752
- 2021 Final Rule Costs: $1.8 Billion
- 2021 Proposed Rule Costs: -$14 billion

NOTABLE REGULATORY ACTIONS

The most consequential rulemaking of the week was clearly EPA's proposed rule regarding "Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing [AIM] Act." As per the title, the proposal seeks to implement provisions of the AIM Act (enacted as part of the omnibus bill at the very end of 2020) that establishes a framework for reducing the usage of HFCs in various appliances such as refrigerators and freezers. While EPA estimates that there will be some upfront costs in transitioning toward acceptable HFC substitutes, it also projects that this shift away from HFCs will yield savings going forward since the expected substitutes involved reduced energy consumption (and thus costs) and are less costly to maintain over the long term. EPA estimates that, by 2050, the present value net cost savings will be $5.8 billion (or roughly $500 million on an annualized basis).

CONGRESSIONAL REVIEW ACT UPDATE

On March 23, the first joint resolution of disapproval under the Congressional Review Act (CRA) of this term was introduced. CRA resolutions essentially seek to wholly rescind specific final rules within a set timeframe. The significance of these resolutions is discussed further here. In the interest of providing a public accounting of the potential economic impact of these actions should they pass, the American Action Forum (AAF) will provide a regular update of the rules being targeted and a concise summary of each rule's purpose, economic impact, and why opponents may be targeting it. This past week, S. J. Res. 13, a CRA resolution addressing an Equal Employment Opportunity Commission rule regarding "Update of Commission's Conciliation Procedures," passed in the Senate by a vote of 50-48. It is now the third CRA resolution to successfully pass through the Senate during this term, but it is the first one to pass on a straight party-line vote.

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 new 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.

TRACKING THE ADMINISTRATIONS

REGULATORY ACTIVITY FROM INAUGURATION DAY TO MAY 21st

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	70	$1.3B	6.5M
TRUMP 2017	46	$6.6B	562,966
OBAMA 2009	98	$6.2B	4.5M

LAST UPDATED: MAY 21ST, 2021 AMERICANACTIONFORUM.ORG

Building off of the prior week's trend, this past week once again saw renewed activity from the Biden Administration in contrast to its predecessors. Thanks largely to the Department of the Treasury rule on the dispersal of "Coronavirus State and Local Fiscal Recovery Funds," the Biden Administration added another million hours of paperwork to its final rule total. Meanwhile, there was once again zero movement from the Trump Administration and only a relatively minor change in the Obama Administration's total during a similar timeframe.

THIS WEEK'S REGULATORY PICTURE

This week, the Biden Administration sets a course for incorporation of climate change impacts into future financial regulation.

On May 20, President Biden signed the Executive Order (EO) on Climate-Related Financial Risk. The order is the clearest signal yet that the Biden Administration will aim to make agencies account for costs and risks associated with climate change in their regulatory actions.
The EO is broad in coverage and calls on the administration to create a national strategy on climate-related financial risk, develop recommendations to change accounting standards for federal financial management and reporting, and to incorporate climate risk into the long-term federal budget outlook.

The EO also has specific directives dealing with regulation. The most wide-ranging of these directs the Department of the Treasury to complete a top-to-bottom assessment of its regulations to see how they might be modified to account for climate risk. In addition, it calls on Treasury's Office of Financial Research to consider new or expanded data collections to get more data to, among other things, assist in rulemaking efforts.

It also calls on the Department of Labor to propose rules suspending, rescinding, or modify two Trump Administration rules that limited how fiduciaries can factor in environmental, social, and governance (ESG) factors into their investment decisions. Those rules were issued late in 2020.

The EO is the strongest signal yet to agencies to incorporate climate risk into their regulatory actions, but it is not the first. In March, the Securities and Exchange Commission created a Climate and ESG task force to assess "material gaps or misstatements" in publicly traded companies climate disclosures.

TOTAL BURDENS

Since January 1, the federal government has published $12.2 billion in total net cost savings (with $1.8 billion in new costs from finalized rules) and 2.5 million hours of net annual paperwork burden reductions (with 9.1 million hours in increases from final rules).