Week in Regulation

Immigration Proposals Bring Massive New Costs

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Up until this week, the costliest regulation from an executive branch agency under the Trump Administration was a tax rule that brought roughly $9.6 billion in total compliance costs. Two proposed rules from the Department of Homeland Security (DHS) could – if finalized without significant changes – blow right past that mark. And, as noted in This Week's Regulatory Picture below, they could do so with limited regard for the regulatory budget. Across all rulemakings, agencies published $59 billion in total net costs but cut 6,284 hours of annual paperwork.

REGULATORY TOPLINES

- New Proposed Rules: 37
- New Final Rules: 64
- 2019 Total Pages: 63,455
- 2019 Final Rule Costs: $25.1 Billion
- 2019 Proposed Rule Costs: $54.1 Billion

TRACKING THE REGULATORY BUDGET

Despite their significance, the two DHS proposals do not yet factor into the fiscal year (FY) 2020 regulatory budget under Executive Order (EO) 13,771. There were, however, a couple of notable offerings on that front – both deregulatory.

The first is also an immigration-related measure out of DHS. That rule replaces the requirement that employers actively advertise H-2B visa employment opportunities on their own dime with a DHS-facilitated website. It is similar to a rule regarding H-2A visas finalized in September. DHS estimates that this change will save affected employers roughly $7.6 million annually, or $108 million in net present value.

The second deregulatory measure of the week comes from the Environmental Protection Agency (EPA). That rule finalizes amendments to the "Standards of Performance for Stationary Compression Ignition Internal Combustion Engines," primarily with regards to Alaskan engines. EPA estimates that such a revision could save affected operators $7.8 million on an annualized basis, or more than $111 million in net present value.

For FY 2020, agencies have finalized 22 deregulatory actions and six regulatory actions, totaling $1.2 billion in quantified total net *costs*. The Trump Administration has yet to release its regulatory budget goal for FY 2020, though it is expected soon.

THIS WEEK'S REGULATORY PICTURE

This week, DHS seemingly forgets about EO 13,771 and the regulatory budget in issuing two costly regulatory proposals.



DHS published two proposed rules in the November 14 edition of the Federal Register that gained media attention for their policy effects. One proposes to increase fees on many of the forms and applications associated with the immigration process. A second proposes to double the length of time an asylum seeker must wait before applying for work authorization.

But for those interested in regulatory policy — and the Trump Administration's regulatory budget — the proposals were notable for another reason. Neither contained any reference to EO 13,771, the document that created the regulatory budget, even though each could be amongst the most-costly regulatory actions promulgated during this administration. The notices include estimated total costs of $11.4 billion and $45.1 billion, respectively.

Though proposed rule estimates do not count for purposes of the regulatory budget, agencies typically acknowledge the potential impact of proposals. That DHS failed to mention the EO is curious.

Both proposed rules are listed in the most recent Unified Agenda as "other" for the purposes of EO 13,771. This listing typically means preliminary information does not allow for designation or circumstances reasonably preclude another designation. An updated Unified Agenda is expected in the near term, so perhaps it will offer more insight on the proposals. The hope here is that the failure to reference the EO was an oversight and not an intentional avoidance.

TOTAL BURDENS

Since January 1, the federal government has published $79.1 billion in total net costs (with $25.1 billion in finalized costs) and 50.6 million hours of net annual paperwork burden increases (with 44.3 million coming from final rules). Click here for the latest Reg Rodeo findings.

