



Research

The Scott Pruitt Regulatory Record

DAN GOLDBECK | JULY 23, 2018

EXECUTIVE SUMMARY

- Over the course of Environmental Protection Agency (EPA) Administrator Scott Pruitt's tenure, EPA was a net deregulatory agency. Final rules from the agency produced nearly \$350 million in cost savings and cut more than 300,000 hours of paperwork burdens.
- In addition to specific rulemaking actions, Pruitt established the framework for a substantial shift in EPA's mission and practices. The most notable changes included: narrowing the agency's regulatory scope, reforming the practice of "sue and settle," and re-examining the data and analytical processes used to justify rulemakings.
- While EPA's leadership will change, the Pruitt-era policy changes will almost certainly continue. The agency is on track to exceed its deregulatory target for this year, and it is only a matter of time before its most high-profile deregulatory measures (e.g. Clean Power Plan Repeal and adjusted fuel efficiency standards) wind their way through the rulemaking process.

INTRODUCTION

As Oklahoma's Attorney General, Scott Pruitt challenged a variety of the Environmental Protection Agency's (EPA) actions under the Obama Administration. Pruitt seemed a natural fit to implement President Trump's ambitious deregulatory agenda and was nominated and confirmed as EPA Administrator within a month of Trump's inauguration. On July 5, Pruitt resigned his post after a string of ethical concerns and personnel issues. But what was the policy-making record of the Pruitt Era? Examining EPA's actions under his direction reveals \$350 million in total estimated net savings from fully realized rulemakings and a dramatic

shift in the agency's priorities and plans going forward.

ACTIONS UNDER PRUITT

As part of its ongoing [RegRodeo](#) project, the American Action Forum (AAF) tracks all agency rulemakings with some quantified cost or paperwork estimate. To that end, AAF has recorded 14 such final rules from EPA over the course of Pruitt's tenure (February 18, 2017 through July 6, 2018). Those rules are as follows:

<u>Title</u>	<u>Total Costs/Savings (\$ Million)</u>	<u>Annual Costs/Savings (\$ Million)</u>	<u>Paperwork Hours</u>
Effluent Limitations Guidelines and Standards for the Dental Category	61	60	402,000
Risk Evaluation Under the Amended Toxic Substances Control Act	0.282	0.282	419.2
TSCA Inventory Notification (Active-Inactive) Requirements	78.914	11.8	225
Postponement of Certain Compliance Dates for the Effluent Limitations Guidelines	-36.8	-36.8	
NESHAP for Chemical Recovery Combustion Sources	17.2	14.4	124,085
NESHAP: Nutritional Yeast Manufacturing Residual Risk and Technology Review	0.852	0.089	
Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019	8	8	
User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations	-434.27	-66	-865,285

Public Notification Requirements for Combined Sewer Overflows to the Great Lakes Basin	1.371	0.457	10,301
National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations	-39	-4.3	
Additions to List of Categorical Non-Waste Fuels: Other Treated Railroad Ties	-16.248	-0.326	
Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Amendments	-0.0324	-0.024	
Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule	-0.026	-0.026	-2,122
Mercury; Reporting Requirements for the TSCA Mercury Inventory	9.865	1.746	24,189
Net Total	-348.9	-10.7	-306,187.8

Across the board, EPA was a net cost-cutter under Pruitt. For reference, from [2005 through 2016](#), EPA published 294 final rules with some sort of quantified estimates. Those rules cumulatively resulted in \$379.2 billion in costs and 35.7 million hours of paperwork, an average each year of 24.5 rules with \$31.6 billion in costs and approximately 3 million new hours of paperwork. While these figures dwarf the Pruitt-era cuts in scale, the fact that EPA was a net cost-cutter during his tenure is significant. The relatively limited level of action on either the regulatory or deregulatory side of the ledger is generally consistent with the trend across the Trump Administration’s [first year](#) of slowing down and delaying recent rulemakings while waiting for more complicated substantive changes to complete the regulatory [process](#).

The primary driver of these cost reductions was one rule in particular: “[Hazardous Waste Management System; User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations](#).” The key regulatory reform included in this rulemaking is moving certain respondents from a paper-based manifest filing system to an electronic one. EPA estimates that this more efficient system will save affected entities approximately \$434 million over six years (\$66 million on an annualized basis). For comparison, the most notable *regulatory* action (on an annualized basis) was a rule on

[“Effluent Limitations Guidelines and Standards for the Dental Category”](#) that still only brought roughly \$60 million in annual costs. And even that rule has a curious record behind it, considering that it actually cleared Office of Management and Budget (OMB) [review](#) under the Obama Administration but did not reach final publication until six months into the Trump Administration.

CHANGE IN CULTURE

Beyond specific rulemaking actions, Pruitt’s tenure at EPA marked a dramatic shift in the agency’s underlying mission and culture – perhaps more so than under any other member of President Trump’s cabinet. Granted, this change is likely in part due to how almost any Republican-led EPA would contrast substantially with the Obama-era EPA. Three initiatives under Pruitt’s leadership in particular, however, illustrate the extent of this philosophical shift: 1) implementing a “Back-To-Basics” plan with the stated purpose of shifting resources away from new rulemaking toward enforcing current rules; 2) curtailing the practice of “sue and settle” rulemakings; and 3) re-evaluating how certain scientific and economic assumptions and data factor into EPA analyses.

In his original [address](#) on the initiative, Pruitt described his vision for the first point as follows: “*Back-to-Basics* means returning EPA to its core mission: protecting the environment by engaging with state, local, and tribal partners to create sensible regulations that enhance economic growth.” EPA’s most recent [budget proposal](#) builds upon that statement by restructuring its programs around three goals: “Core Mission,” “Cooperative Federalism,” and “Rule of Law and Process.” Overall these goals represent a narrowing of EPA’s scope toward primarily addressing statutorily mandated programs.

Lower spending levels further demonstrate this more narrow mission; the most recent [budget plan](#) expects a \$1.86 billion decrease in appropriations. The bulk of these appropriations reductions come from the “Science and Technology” and “Environmental Program Management” areas. Combined, those requested reductions amount to roughly \$1.1 billion. In terms of specific program areas, one of the steepest cuts comes to the “Atmospheric Protection Program” (or, as the proposal notes: “Formerly Climate Protection Program”) which faces an \$89 million reduction – roughly 87 percent of its previous funding level. EPA notes, however, that it is refocusing some expanded resources on infrastructure-oriented purposes. The appropriations areas involving “Buildings and Facilities,” “Hazardous Substance Superfund,” and “Water Infrastructure Finance and Innovation Program” all see requested funding increases that cumulatively amount to nearly \$20 million.

While the “Back-to-Basics” approach concerns itself with a more holistic shift in agency priorities under Pruitt, there were some direct, procedural policy changes as well. One of those was a [directive](#) from Pruitt to reform the practice known as “sue and settle.” The practice involves an outside party bringing a suit against the EPA that alleges that the agency is not fulfilling some statutorily driven regulatory duty. EPA then accepts a settlement that directs it to promulgate a particular regulation, typically on a judicially mandated timeline. An [AAF review](#) of such rules issued by EPA from 2005 to 2016 found that they cumulatively brought nearly \$68 billion in new costs. The Pruitt directive tasked the agency with – when faced with a potential case of this sort – taking further input into such cases and establishing at least some process for determining agency action instead of summarily acquiescing to an expedited consent decree.

The third major shift is the reorientation of how EPA collects and analyzes scientific and economic data to justify particular rulemakings. The two most direct actions on this front are a pair of proposed rules on “[Strengthening Transparency in Regulatory Science](#)” and “[Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process](#).” Pruitt personally signed each proposal. The former would direct the agency to focus on research where the data and conclusions are readily available and replicable. Some [critics](#) of this proposal argue that it will effectively exclude research that bolsters public health concerns due to the confidential nature of the underlying data. EPA counters that other agencies demonstrate how to handle the confidentiality issue. Interested parties have until August 16 to weigh in via comments. The latter proposed rule seeks to update how EPA takes this underlying data and weighs the costs and benefits in its justification for a given rule. The advanced notice of proposed rulemaking largely solicits input on three main issues: consistency in cost-benefit analysis, transparency in cost-benefit analysis, and the implications of expanding the use of retrospective review. Additionally, EPA is interested in how best to implement such procedural changes. Interested parties have until August 13 to comment.

While the second proposal does not yet include any exact changes to EPA process, perhaps one of the best case studies illustrating where the agency is heading comes in what many consider its most high profile action: the [repeal of the Clean Power Plan](#) (CPP), another rulemaking directly from Pruitt’s desk. In that proposed rule from last fall, EPA provided an array of analyses to consider and comment upon, but the possible shifts in justification come into focus. On the benefits side, EPA narrowed the scope of forgone benefits by limiting the level of co-benefits attributable to the original rule and bringing the scope of impact regarding carbon emissions from a global level to a domestic level. On the cost side, EPA re-examined the 2015 rule’s cost estimates but also included an alternative approach using 2017 projections from the Energy Information Administration comparing a non-CPP future

against a CPP baseline. The final rule, expected to come at [the end of this year](#), will provide the exact analytical approach the agency used to justify its action, but these alternative approaches demonstrate potential paths EPA could take in this and other rulemakings.

EPA GOING FORWARD

Upon Pruitt’s resignation, President Trump named then-Deputy Administrator Andrew Wheeler as Acting Administrator. Acting Administrator Wheeler will hold the post until the president formally nominates a permanent replacement; there is some speculation that that nominee could be Wheeler himself. Given the overall political tenor of nominee confirmation disputes since the start of the Trump Administration and the administration’s most immediate concern of navigating a Supreme Court nomination, however, one would expect Wheeler to occupy this Acting post for the foreseeable future.

At least initially, an Andrew Wheeler-led EPA appears to be less haphazard in its execution while maintaining relatively similar policy goals. [Early reports](#) indicate that Wheeler is more proactive in reaching out to career EPA staff and taking steps to avoid some of the transparency issues that brought such scrutiny upon Pruitt’s tenure. Also, given Wheeler’s background (including stints at EPA, on Capitol Hill, and as a lobbyist) many expect he will be more adept than Pruitt at executing the administration’s environmental policy. Some of the most notable EPA rulemakings still in the works include:

<u>Title</u>	<u>Progress</u>	<u>Expected Finalization</u>
Repeal of Clean Power Plan	Proposed Rule (10/16/2017)	December 2018
Recodification of “Waters of the United States”	Supplemental Proposed Rule (7/12/2018)	November 2018
Revised 2022-2025 CAFE Standards	Mid-Term Evaluation (4/13/2018)	February 2019
Accidental Release Prevention Requirements Reconsideration	Proposed Rule (5/30/2018)	February 2019
Repeal of Emission Requirements for Gliders	Proposed Rule (11/16/17)	May 2018 (already passed)

In terms of relatively near-term goals, EPA is generally on track to continue the cost-cutting trend. EPA’s [deregulatory target](#) under the regulatory budget established by Executive Order (EO) 13,771 was \$40 million in annualized costs savings. As of July 6, EPA was

already \$20 million ahead of that goal. One would expect that EPA will at the very least hold steady at that level, if not wildly exceed it if some of the more significant proposals become final in coming months.

CONCLUSION

With Pruitt departing, one can expect from the new EPA leadership a more muted style but similar policy substance. In fact, there is already [another notable deregulatory measure](#) crossing the finish line. The political gravity and implicit controversy involved in so many of EPA's actions - regulatory *or* deregulatory - will always lead to a high degree of scrutiny. While he received a lot of attention for his personal actions, Scott Pruitt's tenure at EPA moved the agency in a very different direction substantively than under the previous administration.