



# Estimating the Economic Value of Trump Administration Rules Blocked by Legal Action

DAN BOSCH, BERNARD ZAMANINIA | OCTOBER 7, 2020

## EXECUTIVE SUMMARY

- Amid reports that many of the Trump Administration's rules have met resistance through legal challenges, this analysis seeks to determine how much agency-estimated economic impact, either in savings or costs, has been blocked through legal action.
- To date, successful challenges to Trump Administration rules have amounted to blocking an estimated \$1.8 billion in regulatory savings, or less than 2 percent of the total economic savings of all rules finalized by this administration.
- Only two of the Trump Administration's top 10 rules with the most estimated savings have been blocked through legal action.
- In terms of the number of actions blocked, 75 percent were deregulatory in nature, although among actions that included agency-estimated economic impacts, regulatory actions were blocked at a higher rate than deregulatory actions.

## INTRODUCTION

It has been widely reported that the Trump Administration has met unprecedented levels of defeat when its administrative actions face legal challenges. *The Washington Post*, for example, characterized the situation as an “extraordinary record of legal defeat that has stymied large parts of the president’s agenda” in a March 2019 analysis.<sup>[1]</sup>

This analysis seeks to determine how much agency-estimated economic impact, either in savings or costs, has been blocked through legal action by employing the American Action Forum's (AAF) [Regulation Rodeo](#) tool and the Institute for Policy Integrity (IPI) at the New York University School of Law's [Trump Court Roundup](#) (as of September 28, 2020). This research matches rules that are the subject of cases that the IPI roundup counts as a defeat for the Trump Administration with the economic impact of the rule in Regulation Rodeo. Just a fraction of the cases on IPI's roundup match rules in Regulation Rodeo, however. Therefore, a qualitative analysis of the cases in IPI's roundup and whether the regulatory actions had regulatory or deregulatory effects is also included.

The analysis finds that while many of the Trump Administration's actions have indeed been blocked by courts, relatively few of its deregulatory actions with significant economic savings have been halted. In fact, its regulatory actions (those rules with net economic costs) are successfully challenged in court at a higher rate than its deregulatory actions.

## BLOCKED RULES WITH POSITIVE ECONOMIC IMPACTS

AAF removed five unsuccessful cases from IPI's tracker because they were more administrative and budgetary in nature than regulatory. Of the remaining 110 blocked rules, this analysis found 14 had associated estimated economic impacts. The net economic impact of those 14 cases is \$1.8 billion in savings, or less than 2 percent of the net economic impact of all Trump Administration rules (\$108 billion in savings).

The net savings of the four rules held up by courts with estimated net savings is \$5.8 billion.

Two of these are sizable; they are the Bureau of Land Management's (BLM) waste prevention [rule](#) (\$2.1 billion) and a recent Department of Health and Human Services (HHS) [rule](#) on non-discrimination under the Affordable Care Act (\$3.4 billion).

The two rules above are the only deregulatory actions of the administration's top 10 in terms of savings to be blocked by courts. Of the remaining eight largest deregulatory actions, one has survived judicial scrutiny, one is currently being challenged, and six have not been challenged.<sup>[2]</sup> An exact estimate of the cost savings accomplished by the administration remains uncertain due to ongoing litigation of one rule. This is because that deregulatory action currently subject to litigation—an automobile fuel economy [regulation](#)—is the administration's largest deregulatory effort to date, with an estimated \$199.5 billion in compliance savings for the federal government and auto industry. If the administration's most ambitious deregulatory effort survives judicial scrutiny, the total cost savings of the top 10 regulations that survive scrutiny will amount to over \$232 billion in cost savings.<sup>[3]</sup> If the fuel economy regulation is successfully challenged, the administration's total successful deregulatory efforts will still amount to a considerable \$32.6 billion in cost savings.

## BLOCKED RULES WITH NEGATIVE ECONOMIC IMPACTS

This analysis also examines the impact of the most important blocked regulatory efforts of the administration. Of these rules, three are health care related, two are environmental regulations, and the remainder cover immigration, entitlements, education, consumer protection, and methods of accounting for federal and tribal natural resource royalties.

Of note, at least in terms of the number of rules with estimated economic effects, it is these regulatory actions of the Trump Administration that have met more resistance in the courts, even though the administration's focus has been on deregulation. Examining the 10 most costly regulatory actions that have been blocked reveals that \$4 billion in net estimated economic costs have been halted – significantly more, at least from a financial-value perspective, than the four rules with savings that the court has blocked.

The most significant regulation was an [HHS rule](#) that required separate billing and separate payment for abortion services, costing a total \$2.6 billion in additional costs to administer the new billing and payment program. The second most costly regulation was also health care related, a \$900.7 million [regulation](#) that would allow individuals or entities to abstain from participation in procedures, programs, services, or research activities on account of a religious or moral objection.

The third most costly regulation was a [\\$352 million rule](#) changing the Department of Homeland Security's interpretation relating to who is considered a "public charge" and hence inadmissible for a visa or adjustment to immigration status.

In comparison with the blocked regulatory actions that had net savings, those that had a net cost were, as this sample of the top three net-cost blocked rules indicates, slightly more political or politicized in nature. Whether that fact played a role in explaining the lower rate of surviving judicial challenges, however, is outside the scope of this analysis.

## **QUALITATIVE ANALYSIS OF ALL BLOCKED RULES**

Since relatively few of the 110 actions covered by IPI's tracker have estimated economic impact, a qualitative analysis can also help to indicate the overall impact of judicial action on the administration's regulatory agenda. This analysis looks at whether actions have a positive or negative economic impact – if they freed up private resources – and whether they were administratively regulatory or deregulatory. The analysis found three types of actions: positive deregulatory actions, negative regulatory actions, and positive regulatory actions.

Of the 110 actions blocked in some fashion by courts, 81 actions, or 75 percent, could be classified as positive deregulatory actions. Examples of major deregulatory actions include BLM's methane flaring rule, delays of ozone rules by the Environmental Protection Agency (EPA), and a Mine Safety and Health Administration rule that increased flexibility in administering health and safety programs. Outside of three actions, no other deregulatory measure that included an estimated economic impact exceeded \$20 million in net total savings, underscoring the point that the majority of these decisions are on smaller, less economically consequential rules and agency actions. So, while the number of blocked deregulatory actions is relatively large, the impact is mostly limited. Of the 81 total deregulatory actions, only six had estimated impacts, and two of those actually added net costs to the economy despite being deregulatory.

Twenty-four of the successfully challenged actions, or 22 percent, could be classified as negative regulatory actions. The most notable of these are several rules that limit immigration opportunities, a rule requiring drug prescription drug manufacturers to add further disclosures to their advertising, and a rule that tightened Supplemental Nutrition Assistance Program requirements. Nearly a third of these rules had economic impacts.

Five actions, or 4 percent, could be classified as positive regulatory actions. These actions, while technically regulatory, actually free up resources for private investment. Such actions include an EPA rule that would have grandfathered certain chemicals from new reviews and an Army Corps of Engineers nationwide permitting scheme that would have streamlined the permitting process for utility line construction.

## **CONCLUSION**

To date, successful challenges to Trump Administration rules have amounted to blocking an estimated \$1.8 billion in regulatory savings, or less than 2 percent of the total economic savings of all rules finalized by this administration.

Of the cases tracked by IPI as defeats of the Trump Administration's regulatory actions, 75 percent can be considered deregulatory. But as mentioned, only two of the top 10 rules with the most estimated savings have been successfully defeated by the courts. These overturned rules tend to be smaller in scope and include many individual permitting decisions.

The administration's rules with regulatory costs have been met with defeat at a higher rate than those with measurable deregulatory savings. Forty-two percent of regulatory rules blocked have had economic estimates, while just 5 percent of deregulatory rules fall into that category.

[1] Barbash, Fred and Paul, Deanna. *"The real reason the Trump Administration is constantly losing in court."* The Washington Post. Accessed September 18, 2020. [https://www.washingtonpost.com/world/national-security/the-real-reason-president-trump-is-constantly-losing-in-court/2019/03/19/f5ffb056-33a8-11e9-af5b-b51b7ff322e9\\_story.html](https://www.washingtonpost.com/world/national-security/the-real-reason-president-trump-is-constantly-losing-in-court/2019/03/19/f5ffb056-33a8-11e9-af5b-b51b7ff322e9_story.html)

[2] AAF identified the ten most significant deregulatory actions from 2016–2020, and then utilized the online research service Westlaw to determine whether any of the top ten actions have been challenged in a concluded court case. Six of the ten actions did not have concluded court cases that challenged the regulations. AAF then used the online research service Bloomberg Law to determine whether any of those six regulations are currently undergoing litigation. The Bloomberg Law docket search did not populate any results for any of the six identified regulations.

[3] The \$232 billion cost savings estimate was arrived at by totaling cost savings from the following successfully challenged regulations: 85 Fed. Reg. 24,174 (2020) – The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks (\$-199.5 billion); 84 Fed. Reg. 51,732 (2019) – Medicare and Medicaid Programs; Regulatory Provisions To Promote Program Efficiency, Transparency, and Burden Reduction; Fire Safety Requirements for Certain Dialysis Facilities; Hospital and Critical Access Hospital (CAH) Changes To Promote Innovation, Flexibility, and Improvement in Patient Care (\$-9.2 billion); 84 Fed. Reg. 51,230 (2019) – Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees (\$-7.6 billion); 85 Fed. Reg. 31,884 (2020) – Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA (\$-4.6 billion); 85 Fed. Reg. 22,250 (2020) – The Navigable Waters Protection Rule: Definition of “Waters of the United States” (\$-3.2 billion); 85 Fed. Reg. 33396 (2020) – Hours of Service of Drivers (\$-3.1 billion); 83 Fed. Reg. 59,452 (2018) – Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2019; Medicare Shared Savings Program Requirements; Quality Payment Program; Medicaid Promoting Interoperability Program; Quality Payment Program—Extreme and Uncontrollable Circumstance Policy for the 2019 MIPS Payment Year; Provisions From the Medicare Shared Savings Program—Accountable Care Organizations—Pathways to Success; and Expanding the Use of Telehealth Services for the Treatment of Opioid Use Disorder Under the Substance Use-Disorder Prevention That Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act (\$-2.7 billion); 82 Fed. Reg. 56,545 (2017) – 18-Month Extension of Transition Period and Delay of Applicability Dates; Best Interest Contract Exemption (PTE 2016–01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (PTE 2016–02); Prohibited Transaction Exemption 84–24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, and Investment Company Principal Underwriters (PTE 84–24) (\$-2.2 billion).