Research

2020: The Year in Regulation

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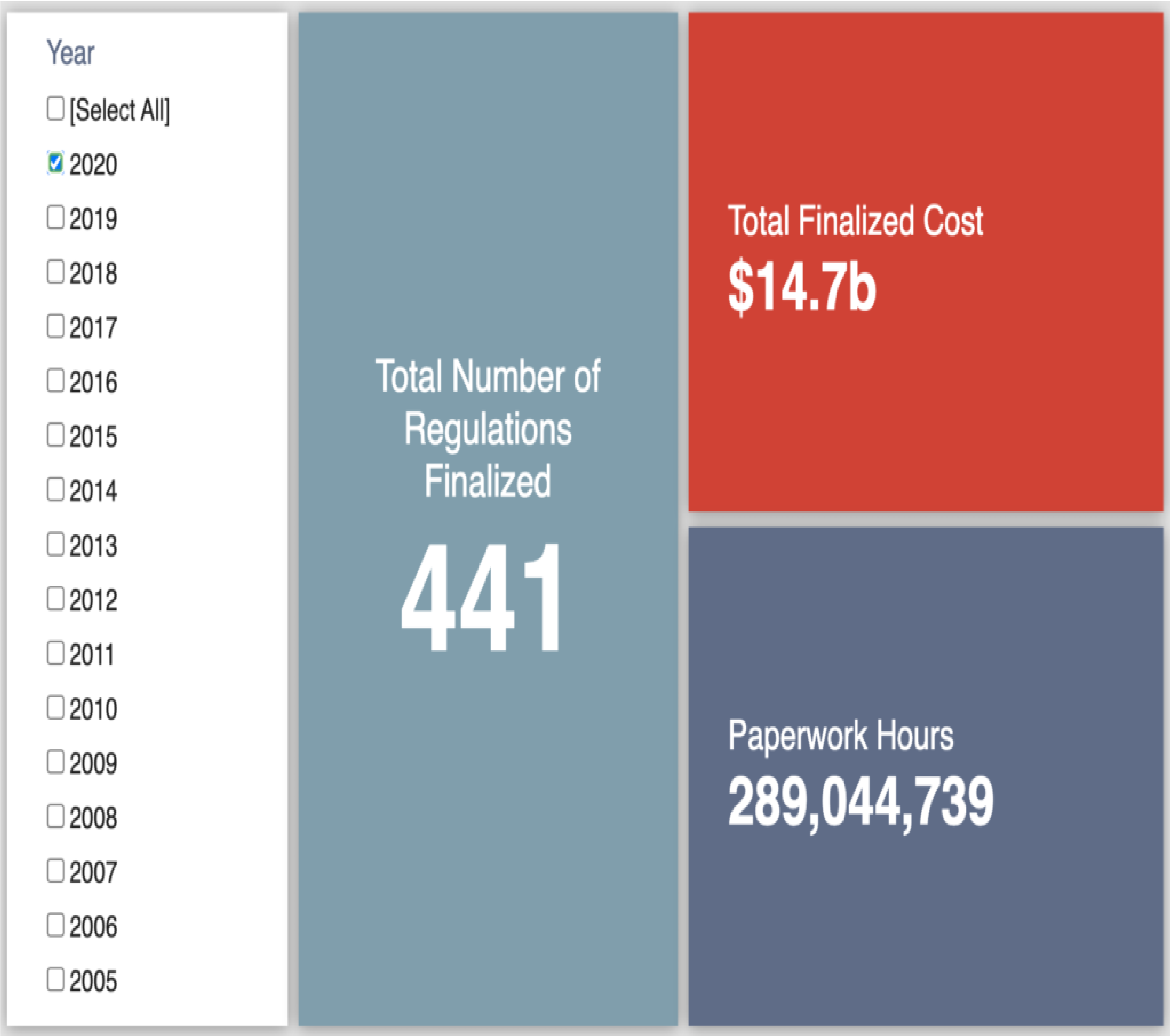
EXECUTIVE SUMMARY

- Federal agencies collectively published $14.7 billion in net regulatory costs in 2020, the second-largest amount of the Trump Administration.
- This net total is remarkable considering the Trump Administration published the largest deregulatory action of its term in 2020, which saved $200 billion.
- Newly added paperwork hours also hit a new high for the administration, topping last year's previous high by more than 600 percent.
- The changing political balance also opens up the possibility that some of the Trump Administration's most significant actions from August 21st onward could be vulnerable to rescission under the Congressional Review Act.

INTRODUCTION

2020 marks the final full year of the Trump Administration's deregulatory push. Despite the well-publicized goals, the administration managed to increase net regulatory costs for the second consecutive year. Across all agencies, including independent agencies, $14.7 billion in costs was added to the regulatory code. It marks the second-highest total of the Trump Administration, trailing only last year's total of $27.3 billion. The administration also hit its highest paperwork burden increase of its term. Depending on the use of the Congressional Review Act (CRA) in 2021 once the Biden Administration is inaugurated, however, some of the rules described here could be repealed.

SNAPSHOT



Other Notable Points

- Final Annualized Costs: $8.1 billion
- Total Final Costs per Person: $44.50
- Total Proposed Costs: $20.5 billion
- Proposed Paperwork Hours: 66.2 million

COSTLIEST RULES

The costliest rules of 2020 centered around defense contracting, health care, and immigration. Four of the five costliest rules of the Trump Administration were published last year. The largest of these, a rule increasing cybersecurity requirements on defense contractors, is the second-costliest rule the American Action Forum has tracked in its RegRodeo database, which looks back through 2005.

Top 10 Costliest Final Rules

Regulation	Agency	Cost ($ billions)
Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019-D041)	Defense	92.9
Prohibition on Contracting With Entities Using Certain Telecommunications and Video Surveillance Services or Equipment	Defense	42.9
Transparency in Coverage	Health & Human Services	34.5
Asylum Application, Interview, and Employment Authorization for Applicants	Homeland Security	24.0
21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program	Health & Human Services	12.0
Environmental Quality Incentives Program	Agriculture	4.5
Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency	Health & Human Services	4.5
Strengthening the H-1B Nonimmigrant Visa Classification Program	Homeland Security	4.2
Removal of 30-Day Processing Provision for Asylum Applications	Homeland Security	3.6
Fund of Funds Arrangements	Securities and Exchange Commission	2.3

BIGGEST SAVINGS

The Trump Administration finalized the largest deregulatory action of its term, based on savings, with its Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule. Its savings are more than 20 times greater than the rule with the second-most savings. In all, the administration finalized six rules with total net savings of more than $1 billion, driven primarily by environmental rules.

Top 10 Final Rules with the Greatest Savings

Regulation	Agency	Savings ($ billions)
The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks	Environmental Protection Agency/Transportation	199.50
Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA	Labor	4.56
Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority	Health & Human Services	3.43

The Navigable Waters Protection Rule: Definition of "Waters of the United States"	Environmental Protection Agency	3.25
Hours of Service of Drivers	Transportation	3.13
Steam Electric Reconsideration Rule	Environmental Protection Agency	1.84
Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act	Environmental Protection Agency	0.86
Passenger Carrier No-Defect Driver Vehicle Inspection Reports	Transportation	0.77
Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration	Environmental Protection Agency	0.75
Tolerance Crop Grouping Program V	Environmental Protection Agency	0.74

NOTABLE AGENCIES

True to the regulations in the table of the costliest rules, the agencies with the most regulatory costs were the Departments of Defense, Health and Human Services (HHS), and Homeland Security. On the savings side, only three agencies achieved more than $1 billion in savings – the Environmental Protection Agency, and the Departments of Transportation (DOT) and Labor.

Agencies with More Than $1 Billion in Costs or Savings

Agency	Total Net Costs/Savings ($ billions)
Defense	134.52
Health & Human Services	49.44
Homeland Security	31.55
Agriculture	4.12
Securities and Exchange Commission	3.56
Energy	2.18
Federal Communications Commission	1.21
Food & Drug Administration	1.19
Treasury	1.11
Veterans Affairs	1.01
Labor	-1.84
Transportation	-104.95
Environmental Protection Agency	-108.30

PAPERWORK

The number of new paperwork hours among final rules hit a new high under the Trump Administration last year. The 289 million hours of new paperwork added annually in 2020 is more than six times the previous high from 2019, when 46.6 million hours were added. In 2018, 9.9 million hours were added. In 2017, paperwork was *reduced* by 15.6 million hours.

The top three hour-adders in 2020 all came from the 10 costliest rules. The most hours were added by the Defense Department rule prohibiting contracting with entities using certain telecommunications equipment (primarily Huawei and ZTE), at 119.8 million annually. The second and third-most paperwork was added by HHS, with 93.3 million and 57.2 million from its COVID-19 and Transparency in Coverage rules, respectively.

Three final rules cut more than 1 million hours of paperwork. The largest was a Federal Communications Commission rule "Bridging the Digital Divide" that cut 2.44 million hours annually. That edged out the 2.4 million hours trimmed by DOT's rule on vehicle inspection reports. The third rule was from an HHS Medicare Part B rule, with 1.5 million hours reduced.

PROPOSED RULES

The Trump Administration anticipated $20.5 billion in new regulatory costs from rules it proposed in 2020, which would add 66.2 million new hours of paperwork. Most of these are unlikely to be finalized, however, as the Trump Administration winds down, and the incoming Biden Administration is likely to put all these planned actions on hold or take them off the agenda entirely.

CONGRESSIONAL REVIEW ACT IMPLICATIONS

With President Trump's term coming to a close, there is yet another opportunity for the CRA to become a central part of the nation's regulatory policy debate. The CRA is a law that, among other items, allows a new Congress to vote to directly repeal rules promulgated within the last 60 legislative days of the preceding Congress. One of the key aspects of a CRA repeal vote is that it can avoid a Senate filibuster, and thus pass on the narrowest of margins in that chamber.

This provision has not been successfully utilized often because it requires a delicate political balance involving: A) a partisan change in administration and B) majorities of the same party in both chambers of Congress (on, at the very least, the CRA vote at hand). In 2017, President Trump and Republican majorities in Congress successfully passed a historic series of rescissions under this exact arrangement. While the exact balance in the Senate is still unknown with the Georgia run-offs, there is potential for a similar – albeit narrower – dynamic to arise early in the Biden Administration.

So which rules from 2020 may be vulnerable to such a fate? In examining last Congress's legislative days, the earlier of the two chambers' potential 60-day "look-back" periods is the House's, with the cut-off date falling on August 21, 2020. Any rule from then through the end of the year could face a CRA resolution. Given the still-shifting balance of power and narrow majorities in each chamber regardless of final result, it is difficult to discern *exactly* which rules will face such scrutiny, but it is worth exploring some potential targets.

The largely deregulatory posture of the Trump Administration has been one of its most notable aspects, but it has also been a major source of derision from his Democratic opponents. One could reasonably expect Democrats to focus on some of the more high-profile deregulatory actions in their CRA plans. The following table includes the top 10 rules in terms of total estimated savings that fall within the "look-back" window.

Top 10 CRA-Eligible Rules with the Greatest Savings

Rule	Agency	Savings ($ Millions)
Steam Electric Reconsideration Rule	Environmental Protection Agency	-1,839
Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act	Environmental Protection Agency	-860
Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration	Environmental Protection Agency	-750
Tolerance Crop Grouping Program V	Environmental Protection Agency	-740
Miscellaneous Amendments to Brake System Safety Standards and Codification of Waivers	Transportation	-503
Fuels Regulatory Streamlining	Environmental Protection Agency	-479
Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; A Holistic Approach to Closure Part A: Deadline to Initiate Closure	Environmental Protection Agency	-373
Removal of Emerald Ash Borer Domestic Quarantine Regulations	Agriculture	-269
Hazardous Materials: Response to an Industry Petition To Reduce Regulatory Burden for Cylinder Requalification Requirements	Transportation	-207
Implementation of the Substance Use-Disorder Prevention That Promotes Opioid Recovery and Treatment for Patients and Communities Act of 2018: Dispensing and Administering Controlled Substances for Medication-Assisted Treatment	Justice	-182

Collectively, these rules yield roughly $6.2 billion in total savings. Purely quantified economic impact, however, is not the only determinant of a rule's CRA salience. For instance, in 2017, there were CRA resolutions for rules on such topics as drug testing for unemployment applicants and the effects of Social Security Disability Insurance categorization on firearm ownership that may not have had an outsized direct economic impact but had some subjective political importance. One can imagine qualitatively contentious rules on topics such as asylum procedure, cost-benefit analysis in environmental regulations, and federal funding to faith-based organizations being potential targets going forward.

There are, however, important items to consider in utilizing the CRA. The clock for consideration of a "look-back" CRA resolution starts on the 15th session day of a chamber. In the Senate, though, there is only a 60-legislative day window where such a resolution can receive expedited, filibuster-proof consideration. To the extent that other legislative efforts crowd out scarce floor time, this limitation may force those pushing CRA resolutions to prioritize which rules they truly want to target. It is also worth remembering that a CRA resolution wholly rescinds a rule. Thus, in instances where Congress and the incoming administration may merely want to revisit and significantly amend a given rule, addressing it via further rulemaking or direct legislation may be preferable to the blunt force of the CRA.

CONCLUSION

In a year as topsy-turvy as 2020, it is fitting that there were many ups and downs in the final year of the Trump Administration's regulatory efforts. On one hand, the year brought one of his administration's deregulatory lodestars in the SAFE Vehicles Rule. Yet, on the other, a series of rules largely involving national security, immigration, and health care issues made it a net-regulatory year across all agencies. It does, however, mark the end of a very distinct period in regulatory policy. How the incoming administration and Congress's actions in coming months will further affect this legacy remains to be seen.