



## Week in Regulation

# EPA Leads Otherwise Quiet Week

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The first week of December was a rather slow one on the regulatory front. Most rulemakings that had some quantifiable economic impact failed to exceed \$7 million in either the costs or savings column. The most notable actions were a pair of proposed rules from the Environmental Protection Agency (EPA) handling changes to 1) coal ash regulations and 2) the agency's administrative appeal process. Across all rulemakings, agencies published \$632.8 million in total net cost savings but added 205,752 hours of annual paperwork.

## REGULATORY TOPLINES

- New Proposed Rules: 36
- New Final Rules: 40
- 2019 Total Pages: 67,048
- 2019 Final Rule Costs: \$25.6 Billion
- 2019 Proposed Rule Costs: \$53.4 Billion

## TRACKING THE REGULATORY BUDGET

The first [proposed rule](#) from EPA seeks to implement the first aspects of updated “coal combustion residuals” (CCR) standards. This proposal comes as a consequence of a 2018 D.C. Circuit Court decision that vacated portions of an Obama-era rule on the matter. According to EPA, the proposed rule would “decrease costs by extending certain existing compliance deadlines” for affected CCR units. The agency estimates those savings amount to \$39.5 million annually, or \$564 million in present value. Since it is still a proposed rule, these savings do not yet apply to the fiscal year (FY) 2020 regulatory budget.

There was one final deregulatory action that applies to the FY 2020 regulatory budget, but its impact is relatively minimal. The Small Business Administration (SBA) put forward a [rule](#) regarding “Streamlining and Modernizing Certified Development Company Program (504 Loan Program) Corporate Governance Requirements.” That rule's cost savings amount to roughly \$274,000 annually, or nearly \$4 million in net present value.

For FY 2020, agencies have finalized 27 deregulatory actions and 12 regulatory actions, totaling \$1.7 billion in quantified total net *costs*. The Trump Administration released its regulatory budget [update](#) last Friday. Our preliminary analysis can be found [here](#).

## THIS WEEK'S REGULATORY PICTURE

This week, EPA aims to change its permit appeals process.



# FEDERAL REGISTER

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Proposed Rule

## Modernizing the Administrative Exhaustion Requirement for Permitting Decisions and Streamlining Procedures for Permit Appeals

A Proposed Rule by the [Environmental Protection Agency](#) on 12/03/2019



When EPA issues a pollutant permit to a regulated entity, those decisions can be challenged by municipalities or citizens. But before going to a federal court, the decision must first be appealed to EPA's Environmental Appeals Board (EAB). In 2010, the agency introduced a voluntary alternative dispute resolution program — essentially mediation — that has resolved over 90 percent of mediated disputes before litigation, according to EPA.

Looking to build off this success and speed up the appeals process, this week EPA [proposed](#) modifying its regulations to require parties to mutually agree to either to go through mediation or an appeal hearing with an EAB deadline to make a final decision within 60 days. If all parties cannot agree on either option, the approved permit is considered final, at which point litigation may begin. For some context on the number of cases at issue, 50 permit appeals have been filed before the EAB since the beginning of 2016, according to EPA.

It appears the agency has determined that if one or more parties are intent on litigation, there is no use for a drawn-out appeals process at the EAB. This change will provide regulated entities with some assurance that a challenged permit will progress to litigation in a predictable manner, which is not the case presently. In addition, the requirement that parties consider mediation may help resolve some of the cases where a party is initially intent on litigation, and at a lower cost to all involved.

The proposed rule would make other changes to the EAB and its appeals process. EPA proposes setting term limits on members of the EAB at 12 years, eliminating the filing of *amicus curiae* briefs, and narrowing the scope of what the EAB can review. Some of the changes will likely be controversial, which prompted EPA to open a public comment period that runs through January 2, 2020. Under the Administrative Procedure Act, the proposed rule is exempt from typical notice-and-comment requirements since the action pertains to "agency

organization, procedure, or practice,” but EPA is accepting comment regardless.

## TOTAL BURDENS

Since January 1, the federal government has published \$79 billion in total net costs (with \$25.6 billion in finalized costs) and 57.2 million hours of net annual paperwork burden increases (with 45.4 million coming from final rules). [Click here](#) for the latest Reg Rodeo findings.

