

Week in Regulation



Most Costly Rule of Trump Administration Drops at Awkward Time

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Last Thursday, President Trump addressed the nation and highlighted his administration’s deregulatory record – centered around an historic update to environmental review procedure that is the focus of This Week’s Regulatory Picture. In a week where the Trump Administration celebrated its record of cost-cutting, however, it also saw the single most expensive rulemaking of the president’s term hit the pages of the Federal Register. While this rule does not officially factor into the regulatory budget picture due to its national security implications, it does bring billions of dollars in potential administrative costs. Across all rulemakings, agencies published \$42.9 billion in total net costs and added 117.5 million hours of annual paperwork.

REGULATORY TOPLINES

- Proposed Rules: 41
- Final Rules: 71
- 2020 Total Pages: 43,620
- 2020 Final Rule Costs: -\$126.4 billion
- 2020 Proposed Rule Costs: \$7.5 billion

TRACKING THE REGULATORY BUDGET

The most consequential regulation of the week was the [rule](#) published jointly by the Department of Defense, General Services Administration, and National Aeronautics and Space Administration (FAR agencies) regarding: “Federal Acquisition Regulation: Prohibition on Contracting With Entities Using Certain Telecommunications and Video Surveillance Services or Equipment.” The rule implements provisions of the fiscal year (FY) 2019 National Defense Authorization Act that seek to prohibit government contracts with any entity that utilizes technology “produced or provided by Huawei Technologies Company or ZTE Corporation” due to national security concerns over the ability of China to compromise such technology.

Given the scope of the rule – it could affect roughly 390,000 entities initially and 80,000 on an ongoing basis – it is perhaps unsurprising that the administrative costs involved in this process add up rather quickly. The FAR agencies estimate that the various compliance requirements could impose roughly \$3 billion in annualized costs (using a 7 percent discount rate), or nearly \$43 billion in net present value terms. While this makes it far and away the most costly regulation issued during the Trump era, the FAR agencies state that is not a part of the FY 2020 regulatory budget “because the benefit-cost analysis demonstrates that the regulation is anticipated to improve national security as its primary direct benefit.”

The Trump Administration expected to reach \$51.6 billion in cumulative net savings in [FY 2020](#). To date in the fiscal year, agencies have officially published 110 deregulatory actions and 36 regulatory actions, totaling \$171.2 billion in quantified total net cost savings.

THIS WEEK'S REGULATORY PICTURE

This week, the Council on Environmental Quality (CEQ) finalizes new implementing rules for the National Environmental Policy Act (NEPA).



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UPDATED CEQ NEPA IMPLEMENTING REGULATIONS

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CEQ published a [final rule](#) in the July 16 edition of the Federal Register that finalized the implementing regulations for NEPA. NEPA is the federal law that requires agencies to consider the impacts of their decisions on the environment, such as permitting decisions on infrastructure projects. All agencies must now update their own NEPA regulations to reflect what is in CEQ's implementing regulations.

The final rule largely hews to the [proposed rule](#) published in January 2020. The purpose of the rule, according to the Trump Administration, is to streamline the environment review process and minimize the scope of projects

subject to review – which had expanded over time. According to CEQ data, the average length of time had grown to 4.5 years for reviews completed between 2010 and 2017 and 25 percent of reviews took more than six years to complete.

The final rule adopts a two-year time limit for environmental impact statements and a 300-page limit, though it does allow extensions for some projects. The rule also aims to limit the exposure of environmental reviews to legal action, which can greatly lengthen review times.

The main benefit of the rule is greater certainty in the environmental review process, which should encourage more investment in infrastructure projects. Some argue, however, that the rule goes too far and runs afoul of the NEPA statute itself. Accordingly, litigation over the rule is a certainty.

Because of the timing of the final rule, it is also well within the [window](#) for a Congressional Review Act resolution of disapproval in 2021, should November's election lead to unified Democratic control of the House of Representatives, the Senate, and the White House.

TOTAL BURDENS

Since January 1, the federal government has published \$118.9 billion in total net cost savings (with \$126.4 billion from finalized rules) and 152.5 million hours of net annual paperwork burden increases (with 134.7 million hours due to final rules). [Click here](#) for the latest Reg Rodeo findings.

Year

[Select All]

2020

2019

2018

2017

2016

2015

2014

2013

2012

2011

2010

2009

2008

2007

2006

2005

Total Number of
Regulations
Finalized

195

Total Finalized Cost

\$-126.4b

Paperwork Hours

134,725,091