



Week in Regulation

Propane Deregulation Proposal and Not Much Else

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There was not much exciting in last week's issues of the Federal Register – except if you're Hank Hill. The one notable action was a proposed rule from the Department of Transportation (DOT) that would provide “regulatory relief and a reduction in the requalification-related costs for propane marketers, distributors, and others in non-corrosive gas service.” A handful of annual Medicare and Medicaid rulemakings filled out the rest of the week. Across all proposed and final rules, agencies published \$147.9 million in total net cost savings but added 301,178 hours of paperwork.

REGULATORY TOPLINES

- New Proposed Rules: 39
- New Final Rules: 67
- 2019 Total Pages: 39,649
- 2019 Final Rule Costs: \$38.4 Billion
- 2019 Proposed Rule Costs: -\$2 Billion

TRACKING THE REGULATORY BUDGET

The DOT's proposed rule was the most notable rulemaking overall this past week. The [proposal](#) is a “Response to an Industry Petition to Reduce Regulatory Burden for Cylinder Requalification Requirements.” The measure would update the “requalification” process for certain gas cylinders. DOT estimates that such changes could provide affected entities roughly \$209 million in net present value savings. Since this is still only a proposed rule, however, these savings do not affect the fiscal year (FY) 2019 regulatory budget under Executive Order (EO) 13,771. They will most likely be a part of the FY 2020 budget.

So far in FY 2019 (which began on October 1, 2018), there have been 56 deregulatory actions (per the rubric created by EO 13,771 and the administration's subsequent [guidance document](#)) against 32 rules that increase costs and fall under the EO's reach. Combined, these actions yield quantified net *costs* of roughly \$11.4 billion. This total, however, includes the caveat regarding the baseline in the Department of Agriculture's “[National Bioengineered Food Disclosure Standard](#).” If one considers that rule to be deregulatory, the administration-wide net total is approximately \$4.7 billion in net costs. The administration's cumulative savings goal for [FY 2019](#) is approximately \$18 billion.

THIS WEEK'S REGULATORY PICTURE

This week, a Senate proposal to define Waters of the United States (WOTUS).

A BILL

to provide a definition of navigable waters, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled

SECTION 1. SHORT TITLE.

This Act may be cited as the “Define WOTUS Act of 2019”.

Prior to leaving Washington, D.C. for August recess, Sens. Mike Braun (R-IN) and Joni Ernst (R-IA) introduced the straightforwardly named [Define WOTUS Act](#). The bill would essentially codify the WOTUS definition [proposed](#) by the Environmental Protection Agency and the Army Corps of Engineers (the agencies) in February. A final rule regarding WOTUS is currently under review at the Office of Information and Regulatory Affairs. When Congress enacted the Clean Water Act, it directed the agencies to define the term WOTUS, with the mission of protecting the navigable waters of the United States. The term is important because it determines where the federal government can prohibit or require permits for certain discharges or activities, such as land

development. The definition, however, has been the subject of litigation for decades due to the challenge of clearly delineating which waters affect the downstream quality of navigable waters, as well as how far Congress intended the federal government's reach to extend.

As has become typical in today's political environment, Democrats have accused the Trump EPA of "gutting" the CWA — just as Republicans were outraged at the "land grab" of the Obama Administration's 2015 rule (which the Trump rule will replace). In addition to the partisan discord that has been a mainstay of the WOTUS regulatory process, courts are unclear on exactly what Congress wanted when it enacted the CWA, exemplified by a series of U.S. Supreme Court [decisions](#) since the mid-1980s that have all changed how the rule is enforced.

It is clear a legislative definition is needed. Since the Define WOTUS Act codifies the Trump vision of WOTUS, it is unlikely to get the 60 votes necessary to pass the Senate or get even get a vote in the House of Representatives under current leadership. The hope here is that it can serve as a starting point for Republicans and Democrats to agree on a legislative definition that provides the clarity that is desperately needed by landowners and the regulated community.

TOTAL BURDENS

Since January 1, the federal government has published \$36.4 billion in net costs (with \$38.4 billion in finalized costs) and 42.9 million hours of net paperwork burden increases (with 35.8 million coming from final rules). [Click here](#) for the latest Reg Rodeo findings.

Year

[Select All]

2019

2018

2017

2016

2015

2014

2013

2012

2011

2010

2009

2008

2007

2006

2005

Total Number of
Regulations
Finalized

149

Total Finalized Cost

\$38.4b

Paperwork Hours

35,828,485