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Deregulatory Frenzy

Trump Has Stopped or Delayed More Than 1,500 Rulemakings, Including Those to Protect Workers From Mine Disasters, Combustible Dust Explosions and Backover Accidents

Acknowledgments

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Introduction and Key Findings

In a deregulatory frenzy, the Trump administration has withdrawn or paused more than 1,500 rulemakings. This total vastly exceeds the number under President Obama at this period of his administration, and roughly parallels the number under President George W. Bush. Trump has blocked more rulemakings deemed “significant”¹ due to their economic impact or other factors than Bush.

The Trump administration has bragged that it has eliminated “nearly 1,000 regulations.” This claim is somewhat misleading. In fact, most of the regulations that the administration claims to have scuttled were rulemakings in progress that had yet to be finalized, as opposed to regulations already on the books that have been eliminated.

The status of ongoing rulemakings is reported by the Office of Management and Budget in a document called the Unified Agenda that is published twice a year. The Unified Agenda tracks a rulemaking’s progress, essentially from the proposed or prerule rule stage to its completion. Rulemakings can be categorized as “long term actions,” which generally means that they are not progressing very rapidly. Rulemakings can also be categorized as “withdrawn,” meaning that they have been cancelled prior to completion. (In a somewhat recent development, rulemakings may be put on an “inactive list,” which the Trump administration publishes separately from the Unified Agenda.)

This report examines nearly 20 years of Unified Agenda data to determine how the number of halted or delayed rulemakings on Trump’s first three agendas compares to the number of delayed or withdrawn rulemakings on the first three agendas of the Obama and George W. Bush administrations. It also examines changes to the list of inactive regulations. Rulemakings that have been halted or delayed make up the bulk of regulations to which Trump Press Secretary Sarah Sanders was referring when she bragged about the administration had “gotten rid of 1,000 regulations.”

We count rulemakings that have been halted as those listed as withdrawn on the Unified Agenda. We count as delayed those rulemakings that are listed for the first time on the “long-term actions” stage or moved to the inactive list.

These are our findings at a glance:

¹ Economically Significant rules are those that are expected to have an economic impact of at least \$100 million. Rules are categorized as “Other Significant” if they raise novel policy issues, affect multiple agencies, materially affect federal spending programs or meet other criteria.

- **Withdrawn rulemakings** – The Trump administration has withdrawn more than 780 rulemakings. That is an 85 percent increase compared to the Obama administration’s first three agendas and a 3 percent decrease compared to the first three agendas submitted by the George W. Bush administration.

Of Trump’s withdrawn rulemakings, 279 were deemed “significant.” Rulemakings are given the status of “economically significant” if they are projected to have an economic impact of more than \$100 million and are given “other significant” status if they meet certain criteria, such as raising novel policy issues or affecting multiple agencies.² The Trump administration’s number of significant rulemakings withdrawn by this point in the president’s term was 77 percent more than the Obama administration and 26 percent more than the George W. Bush administration.

- **Active rulemakings moved to long-term** – The Trump administration moved 583 rulemakings to long-term actions over its first three agendas. The total is 28 percent more than the Obama administration but 16 percent less than the Bush administration.

Of these, 209 were significant. That total is 7 percent more than the Obama administration total but 12 percent less than the Bush administration’s.

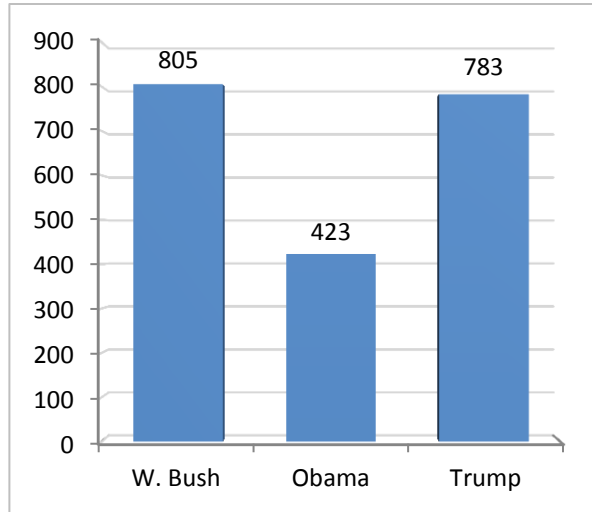
- **Rulemakings moved to inactive** – The Trump administration moved 328 rulemakings to inactive status. Of these, 41 percent were significant.

Because this is a new category, comparisons cannot be made to past administrations.

² Regulatory Planning and Review, Executive Order 12866, 1993, OFFICE OF THE PRESIDENT (Sept. 30, 1993), <http://bit.ly/2zyCyTN>.

Withdrawn Rulemakings

Figure 1 – Total Withdrawn Rulemakings on the First Three Agendas By Administration



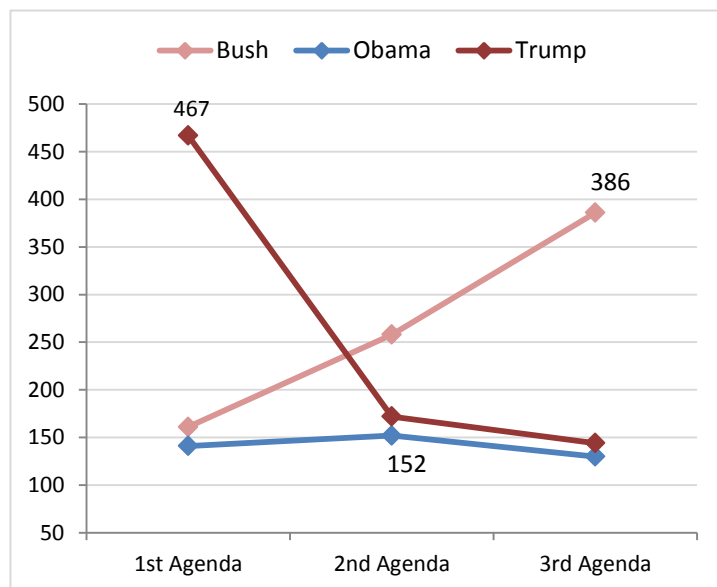
On its first three Unified Agendas, the Trump administration listed more than 780 rulemakings as withdrawn. Trump's total represents an 85 percent increase compared to the Obama administration's first three agendas and a 3 percent decrease compared to the first three agendas submitted by the George W. Bush administration. [Figure 1]

Even though Trump has withdrawn fewer rulemakings in total compared to Bush, Trump withdrew substantially more rulemakings categorized as significant (Economically significant and Other Significant). Trump withdrew 279 significant rulemakings compared

to Bush's 221 (Obama withdrew 158).

The Trump administration withdrew 467 rulemakings on its first agenda, the most rulemakings withdrawn on a single Unified Agenda.³ But the total number of withdrawn rulemakings dropped considerably over the next two agendas [Figure 2].

Figure 2 – Withdrawn Rulemakings on the First Three Agendas By Agenda and Administration



³ MICHAEL TANGLIS, PUBLIC CITIZEN, SACRIFICING PUBLIC PROTECTION ON THE ALTAR OF DEREGULATION, at 10 (November 2017), <http://bit.ly/2J1obNU>.

The Trump Administration Withdrew 279 Significant Rulemakings on Its First Three Agendas

The Trump administration withdrew 279 significant rulemakings on its first three agendas. This total represents a 77 percent increase compared to the Obama administration and a 26 percent increase compared to the Bush administration. The withdrawal of the 279 significant rulemakings by the Trump administration on its first three agendas represents the most significant rulemakings withdrawn over three consecutive agendas on record.

Health and Human Services (HHS) withdrew the most significant rulemakings over the first three agendas published by the Trump administration. HHS is followed by the United States Department of Agriculture (USDA), Department of Justice (DOJ) and the Department of Labor (DOL). [Table 1]

Table 1 – Trump Administration Withdrawn Rulemakings By Agency

Agency	Significant Rulemakings Withdrawn
Health and Human Services	66
United States Department of Agriculture	31
Department of Justice	24
Department of Labor	23
Department of Homeland Security	19
Department of Interior	18
Environmental Protection Agency	16
Department of Transportation	14
Housing and Urban Development	13
Department of Defense	9
Department of Energy	4
Treasury	3
Department of Commerce	2
Department of Education	2
Sub-Agency Only	35
Total	279

Within HHS, the Food and Drug Administration (FDA) withdrew the most of any HHS sub-agency – 28. Centers for Medicare & Medicaid Services (CMS) withdrew the second most with 14.

Five Notable Significant Rulemakings Withdrawn on Trump's First Three Agendas

- In response to the 2010 explosion in the Upper Big Branch coal mine in West Virginia that killed 29 miners,⁴ the DOL's Mine Safety and Health Administration (MSHA) began a rulemaking that sought to address the hazards exposed by Upper Big Branch explosion.⁵ The hazards revealed in Upper Big Branch included the fact that loose coal and dust that exploded should have been removed from the mine and that miners were prohibited from raising safety concerns at the risk of losing their jobs.⁶ The mine was controlled by Massey Energy Company. Massey's CEO, Donald L. Blankenship, was convicted and sentenced to prison for "conspiring to violate federal mine safety standards," according to *The New York Times*.⁷ Regulatory action that would have addressed those hazards was withdrawn in March 2017 by the Trump administration.⁸
- In 2006, the U.S. Chemical Safety and Hazard Investigation Board (CSB), the agency that investigates chemical accidents,⁹ recommended the issuance of standards "designed to prevent combustible dust fires and explosions in general industry."¹⁰ Two years later a combustible dust fire explosion at the Imperial Sugar Company in Port Wentworth, Ga., which killed 14 workers and injured 38 others, prompted renewed calls for action.¹¹ According to CSB, the explosion was caused by "massive accumulations of combustible sugar dust"¹² – the exact type of incident the recently withdrawn rulemaking was proposed to prevent. Since 2009, the DOL's Occupational Safety and Health Administration (OSHA) had been "developing a standard that will comprehensively address the fire and explosion hazards of combustible dust."¹³ When it began the rulemaking, OSHA estimated 16 million workers were employed in 426,000 establishments "in industries for which combustible dust fires or explosions have occurred."¹⁴ The Trump administration withdrew the rulemaking in March 2017.¹⁵

⁴ Alan Blinder, *Donald Blankenship Sentenced to a Year in Prison in Mine Safety Case*, THE NEW YORK TIMES (April 6, 2016), <http://nyti.ms/2zoWUJvr>.

⁵ DOL/MSHA, *Request for Information to Improve the Health and Safety of Miners and to Prevent Accidents in Underground Coal Mines*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Update 2017), <http://bit.ly/2yE2bjO>.

⁶ *Upper Big Branch Mine-South - Fatal Accident Report - Executive Summary*, MINE SAFETY AND HEALTH ADMINISTRATION, <http://bit.ly/2mc0xmP>.

⁷ Office of Public Affairs, *Former Massey Energy CEO Sentenced to a Year in Federal Prison*, DEPARTMENT OF JUSTICE (April 6, 2016), <http://bit.ly/2LmCqJM>.

⁸ DOL/MSHA, *Request for Information to Improve the Health and Safety of Miners and to Prevent Accidents in Underground Coal Mines*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Update 2017), <http://bit.ly/2yE2bjO>.

⁹ *Memorandum of Understanding*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Nov. 24, 1998), <http://bit.ly/2gV4zuE>.

¹⁰ *Id.*

¹¹ Investigation Information, *Imperial Sugar Company Dust Explosion and Fire*, UNITED STATE CHEMICAL SAFETY BOARD (Sept. 2009), <http://bit.ly/2xU7mdo>.

¹² *Id.*

¹³ Proposed Rule, *Combustible Dust*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Oct. 21, 2009), <http://bit.ly/2goYWEEx>.

¹⁴ Proposed Rule, *Combustible Dust*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Oct. 21, 2009), <http://bit.ly/2goYWEEx>.

¹⁵ DOL/OSHA, *Combustible Dust*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Update 2017), <http://bit.ly/2i9j7uk>.

- The Bureau of Labor Statistics reported that in 2011, 75 workers were killed at work after being backed over by vehicles, while many others sustained “serious injury to the back and pelvis, fractured bones, concussions, amputations, and other injuries.”¹⁶ OSHA found that workers “struck-by” injuries and “caught-between” injuries are two of the four leading causes of workplace fatalities.¹⁷ As such, since 2010 OSHA had been working on a rulemaking proposed to develop standards to address workplace hazards associated with backovers.¹⁸ The Trump administration withdrew the rulemaking in March 2017.¹⁹
- According to OSHA, creating an Injury and Illness Prevention Program is “a proactive process to help employers find and fix workplace hazards before workers are hurt.”²⁰ Workplaces that have adopted these programs have experienced “dramatic decreases in workplace injuries,” reduced employee turnover, and have saved money, while enjoying improved productivity, according to OSHA.²¹ Since 2010, OSHA had been working on a rulemaking proposed to require “employers to implement an Injury and Illness Prevention Program.”²² The proposed rule would have built on the voluntary OSHA programs many workplaces follow today and required them to institute such programs. The Trump administration withdrew the rulemaking in March 2017.²³
- Methane is a potent greenhouse gas and is the second most common greenhouse gas emitted in the United States, according to the Environmental Protection Agency (EPA).²⁴ While methane makes up a much smaller percentage of U.S. greenhouse gas emission than carbon dioxide,²⁵ each ton of emitted methane gas is significantly more harmful to the climate than an equivalent amount of carbon dioxide.²⁶ Therefore, reducing methane emissions, which occur during oil, coal, natural gas, and livestock production,²⁷ is an effective tool in combating climate change. In 2016, the EPA’s Office of Air and Radiation began a rulemaking that would have regulated methane emissions from existing oil and natural gas resources.²⁸ The Trump administration withdrew the rulemaking in June 2017.²⁹

¹⁶ *Id.*

¹⁷ DOL/OSHA, *Preventing Backover Injuries and Fatalities*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Spring 2016), <http://bit.ly/2yCKrXL>.

¹⁸ *Id.*

¹⁹ DOL/OSHA, *Preventing Backover Injuries and Fatalities*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Spring 2017), <http://bit.ly/2zlyHqN>.

²⁰ Injury and Illness Prevention Programs White Paper, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (Jan. 2012), <http://bit.ly/2gxFL8Y>.

²¹ *Id.*

²² DOL/OSHA, *Injury and Illness Prevention Program*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Update 2017), <http://bit.ly/2xDyqlV>.

²³ *Id.*

²⁴ Overview of Greenhouse Gases, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <http://bit.ly/2z1hTFD>.

²⁵ *Id.*

²⁶ Understanding Global Warming Potentials, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <http://bit.ly/2z0bsFz>.

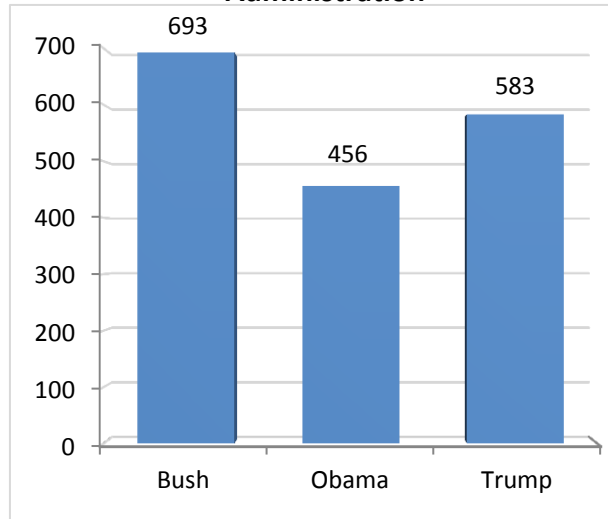
²⁷ Overview of Greenhouse Gases, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <http://bit.ly/2z1hTFD>.

²⁸ EPA/OAR, *Emission Guidelines for the Existing Oil and Natural Gas Sector*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Update 2017), <http://bit.ly/2i2LflO>.

²⁹ *Id.*

Rulemakings Moved to Long-Term

Figure 3 –Active Rulemakings Moved to Long-Term on First Three Agendas By Administration



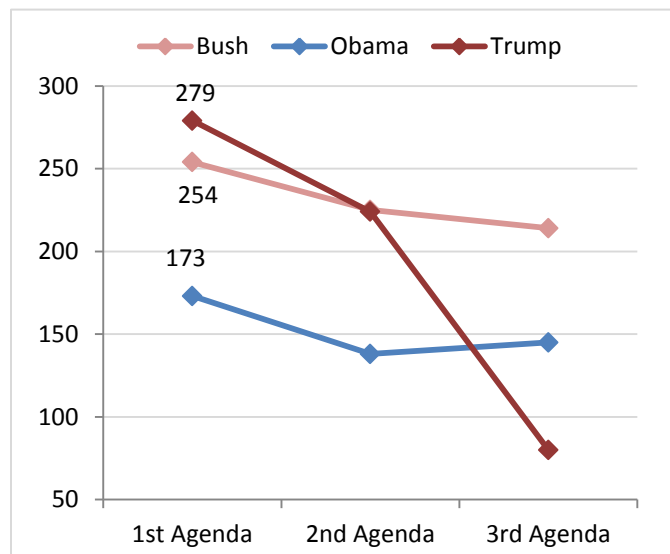
On each Unified Agenda, hundreds of rulemakings are listed in the “long-term actions” (hereinafter long-term) rule stage. Rulemakings are listed in the long-term rule stage when no action related to the rulemaking is expected within a year of the publication of the agenda.³⁰

For the purposes of this analysis, Public Citizen chose to isolate rulemakings for which the move to long-term clearly represented a delay. To do so, rulemakings were defined as “moved to long-term” only if the rulemaking’s appearance in long-term rule stage was immediately preceded by an agenda appearance in which the rulemaking was listed as in an active rule stage (e.g., prerule, proposed rule, or final rule stage).

This analysis revealed that the Trump administration moved 583 rulemakings to the long-term. The total is 28 percent more than the Obama administration but 16 percent less than the Bush administration.

Rulemakings moved to long-term do not necessarily stay in the long-term stage. For example, 50 percent of the rulemakings moved to long-term on Trump’s first two agendas remained in long-term on his third agenda. The remainder were either added back to the agenda to a more advanced rule stage (31 percent), withdrawn (9 percent), moved to inactive (8 percent), or finalized (2 percent).

Figure 4 –Active Rulemakings Moved to Long-Term By Agenda and Administration



³⁰ Neomi Rao, *Regulatory Policy Officers at Executive Department and Agencies and managing and Executive Directors of Other Agencies and Commissions*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Aug. 18, 2017), <http://bit.ly/2oQpRgY>.

The Trump Administration Moved 209 Active Significant Rulemakings to Long-Term

The Trump administration moved 209 significant active rulemakings to long-term for the first time on its first three Unified Agendas. The total is 7 percent more than the Obama administration total but 12 percent less than the Bush administration total.

The Department of Transportation (DOT) moved the most active rulemakings to long-term over the Trump administration's first three agendas, followed by the Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS). [See Table 2]

Table 2 – Trump Administration Long-Term Rulemakings By Agency

Agency	Significant Rulemakings Moved to Long-Term
Department of Transportation	29
Department of Homeland Security	23
Department of Health and Human Services	23
Department of Housing and Urban Development	19
Department of Energy	15
Environmental Protection Agency	14
Department of Justice	14
Department of Labor	12
Department of the Treasury	6
Department of Commerce	3
Department of the Interior	3
Sub-Agency Only*	48
Total	209

Five Notable Significant Rulemakings Moved to Long-Term on Trump's First Three Agendas

- According to the Food and Drug Administration (FDA), tanning devices, such as ultraviolet lamps, as well tanning beds and booths, may cause “400,000 cases of skin cancer per year,” including 6,000 cases of melanoma.³¹ The FDA also estimates the devices are responsible for at least 3,000 emergency room visits each year.³² Currently, there is no age restriction on

³¹ HHS/FDA, *General and Plastic Surgery Devices: Sunlamp Products*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Spring 2017), <http://bit.ly/2kH3VTI>.

³² *Radiation-Emitting Products, Sunlamps and Sunlamp Products (Tanning Beds/Booths)*, U.S. FOOD AND DRUG ADMINISTRATION (Viewed on June 1, 2018), <http://bit.ly/2svTuW8>.

who can use these devices. In 2014 the FDA began a rulemaking that would have, among other things, restricted the use of such devices to individuals age 18 or older.³³ A proposed rule was published in December 2015.³⁴ The rulemaking was listed as in the final rule stage on the Obama administration's final agenda – fall 2016 – which estimated a final action in February 2017.³⁵ The rulemaking was moved to long-term on the spring 2017 agenda³⁶ and has remained there for the two subsequent agendas.³⁷ The FDA under the Trump administration now estimates a final rule will not be published until December 2019.³⁸

- On December 14, 2016, the Obama administration published an HHS Centers for Medicare & Medicaid Services (CMS) interim final rule that would ensure coverage decisions in Medicare-certified dialysis were made with the best financial and health interests of the patients, not the dialysis facilities.³⁹ The regulation was set to take effect on January 13, 2017. On the spring 2017 agenda, the rulemaking was moved to the long-term rule stage.⁴⁰ The rulemaking was moved to the proposed rule stage on its fall 2017 agenda⁴¹ and remained in the proposed rule stage on the spring 2018 agenda.⁴²
- In 2012, the DOT's National Highway Traffic Safety Administration (NHTSA) began a rulemaking proposed to make using child restraint systems easier in order to reduce the number of injuries sustained by children during accidents. The proposed rulemaking would require manufactures to create lower restraint anchorages that are easier to access and connect to, standardizing the type and location of tether anchorages and standardize the symbol used to identify anchorages.⁴³ The rulemaking had been in the final rule stage on the fall 2015 agenda through the fall 2016 agenda. The rulemaking was moved to long-term on the spring 2017 agenda⁴⁴ and it remained there on the fall 2017 and spring 2018 agendas.⁴⁵

³³ Proposed Rule, *General and Plastic Surgery Devices: Restricted Sale, Distribution, and Use of Sunlamp Products*, U.S. FOOD AND DRUG ADMINISTRATION (Dec. 22, 2015), <http://bit.ly/2Leavvw>.

³⁴ Proposed Rule, *General and Plastic Surgery Devices: Restricted Sale, Distribution, and Use of Sunlamp Products*, U.S. FOOD AND DRUG ADMINISTRATION (Dec. 22, 2015), <http://bit.ly/2Leavvw>.

³⁵ HHS/FDA, *General and Plastic Surgery Devices: Sunlamp Products*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Fall 2016), <http://bit.ly/2HapDru>.

³⁶ HHS/FDA, *General and Plastic Surgery Devices: Sunlamp Products*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Spring 2017), <http://bit.ly/2LKeOA1>.

³⁷ HHS/FDA, *General and Plastic Surgery Devices: Sunlamp Products*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Spring 2017), <http://bit.ly/2LKeOA1> and HHS/FDA, *General and Plastic Surgery Devices: Sunlamp Products*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Spring 2018), <http://bit.ly/2kH3VTI>.

³⁸ HHS/FDA, *General and Plastic Surgery Devices: Sunlamp Products*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Spring 2017), <http://bit.ly/2kH3VTI>.

³⁹ Interim Final Rule, *Medicare Program; Conditions for Coverage for End-Stage Renal Disease Facilities-Third Party Payment*, CENTERS FOR MEDICARE & MEDICAID SERVICES (Dec. 14, 2016), <http://bit.ly/2J5SkvL>.

⁴⁰ HHS/CMS, *Conditions for Coverage for End-Stage Renal Disease Facilities*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Spring 2017), <http://bit.ly/2LMBg74>.

⁴¹ HHS/CMS, *Third Party Payments for Coverage Under Qualified Health Plans*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Fall 2017), <http://bit.ly/2Jqb4W9>.

⁴² HHS/CMS, *Third Party Payments for Coverage Under Qualified Health Plans*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Spring 2018), <http://bit.ly/2JlMWUf>.

⁴³ Proposed Rule, *Federal Motor Vehicle Safety Standards; Child Restraint Systems, Child Restraint Anchorage Systems; Incorporation by Reference*, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (Jan. 23, 2015), <http://bit.ly/2H8Sexq>.

⁴⁴ DOT/NHTSA, *Upgrade of LATCH Usability Requirements (MAP-21)*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Spring 2017), <http://bit.ly/2kKiHsx>.

The Trump administration is no longer estimating when a final rule will be published, but rather lists the next action as undetermined.⁴⁶

- In accordance with the Water Resources Reform and Development Act (WRRDA), the EPA's Office of Land and Emergency Management under the Obama administration set out in 2015 to revise its Spill Prevention Control and Countermeasures (SPCC) rule.⁴⁷ According to the EPA, the SPCC rule helps prevent oil discharge from polluting water and shorelines used by ships and boats (navigable waters).⁴⁸ Under WRRDA, after completing a 2015 report on the risks of oil discharge and based on the findings,⁴⁹ the EPA was required to promulgate a rulemaking to adjust the SPCC rule by December 2016.⁵⁰ That deadline was missed. After being listed as in the proposed rule stage from fall 2015 through fall 2016 agendas, the rulemaking was moved to long-term on the spring 2017 agenda⁵¹ and remained there on the fall 2017 and spring 2018 agendas.⁵²
- With the advances in train control technology, the Federal Railroad Administration (FRA) has become concerned that railroads would "expand use of less than two-person crews on operations without considering safety risks or implementing risk mitigating actions."⁵³ While data was limited on the safety of one-person crews, the FRA did not want to wait for an accident to act. In 2014, the FRA began a rulemaking proposed to establish standards for train crew staffing based on the safety risks posed. The rulemaking was in the final rule stage on the fall 2016 agenda. It remained in the final rule stage on both of the Trump administration's first two agendas – spring and fall 2017. On the spring 2018 agenda, the rulemaking was moved to long-term.⁵⁴

⁴⁵ DOT/NHTSA, *Upgrade of LATCH Usability Requirements (MAP-21)*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Fall 2017), <http://bit.ly/2lqd9Br> and DOT/NHTSA, *Upgrade of LATCH Usability Requirements (MAP-21)*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Spring 2018), <http://bit.ly/2HaMxyV>.

⁴⁶ DOT/NHTSA, *Upgrade of LATCH Usability Requirements (MAP-21)*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Fall 2017), <http://bit.ly/2lqd9Br>.

⁴⁷ EPA/OLEM, *Water Resources Reform Development Act Farm Amendments to the Spill Prevention Control and Countermeasures Rule*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Fall 2015), <http://bit.ly/2svluYT>.

⁴⁸ *Oil Spills Prevention and Preparedness Regulations*, ENVIRONMENTAL PROTECTION AGENCY (Viewed on June 1, 2018), <http://bit.ly/2sEpk39>.

⁴⁹ OIL STORAGE ON U.S. FARMS: RISKS AND OPPORTUNITIES FOR PROTECTING SURFACE WATERS, ENVIRONMENTAL PROTECTION AGENCY (June 30, 2015), <http://bit.ly/2jmc7pH>.

⁵⁰ EPA/OLEM, *Water Resources Reform Development Act Farm Amendments to the Spill Prevention Control and Countermeasures Rule*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Fall 2017), <http://bit.ly/2szw1Dc>.

⁵¹ EPA/OLEM, *Water Resources Reform Development Act Farm Amendments to the Spill Prevention Control and Countermeasures Rule*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Spring 2017), <http://bit.ly/2snF0Z2>.

⁵² EPA/OLEM, *Water Resources Reform Development Act Farm Amendments to the Spill Prevention Control and Countermeasures Rule*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Fall 2017), <http://bit.ly/2szw1Dc> and EPA/OLEM, *Water Resources Reform Development Act Farm Amendments to the Spill Prevention Control and Countermeasures Rule*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Spring 2018), <http://bit.ly/2l9Vryq>.

⁵³ Proposed Rule, *Train Crew Staffing*, FEDERAL RAILROAD ADMINISTRATION (March 15, 2016), <http://bit.ly/2Lbumes>.

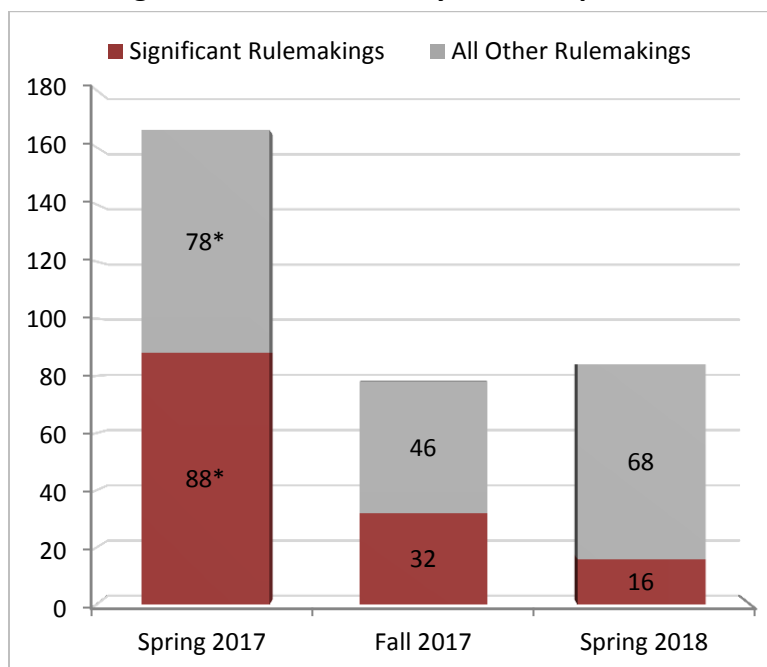
⁵⁴ DOT/FRA, *Train Crew Staffing and Location*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Spring 2018), <http://bit.ly/2l4lz4Y>.

Rulemakings Moved to Inactive

From about 2011 through 2016, agencies internally categorized rulemakings that they did not intend to pursue in the coming year as “pending,” and the agencies did not include them on the Unified Agenda. According to *Bloomberg*, agencies were hesitant to completely eliminate the rulemakings because they would have to start over completely if they decided to take up that rulemaking again.⁵⁵

The Obama administration did not make its pending list public. The Trump administration began listing Obama’s pending rulemakings on an “inactive” list that is published separately from the Unified Agenda. The inactive lists published during the Trump administration include hundreds of rulemakings that were listed on one of the Obama administration’s pending lists (i.e., the Trump administration is not responsible for the delay). Figure 5 below includes the rulemakings added to the each Trump administration inactive list. In total, the Trump administration moved 328 rulemakings to the inactive list over its first three agendas. [Table 5]

Figure 5 – Rulemakings Moved to Inactive by the Trump Administration By Priority



*The Trump administration indicated it moved 109 rulemakings total to inactive in spring 2017.⁵⁶ Though, when the fall 2017 agenda was published, the administration took credit for all 166 rulemakings moved to inactive on the spring 2017 agenda.⁵⁷

⁵⁵ Cheryl Bolen, *From the Old and Cold Files: Obama’s ‘Secret’ List*, BLOOMBERG BNA (July 20, 2017), <http://bit.ly/2lyCiil>.

⁵⁶ *Current Unified Agenda of Regulatory and Deregulatory Actions*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Update 2017 Via Wayback Machine), <http://bit.ly/2ITTexU>.

⁵⁷ *Current Unified Agenda of Regulatory and Deregulatory Actions*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Fall 2017 Via Wayback Machine), <http://bit.ly/2xoLPhT>.

Nearly a quarter of the significant rulemakings moved to the inactive list by the Trump administration over its first three agendas had been listed as in the final rule stage on its most recent agenda listing. The majority – 70 percent – of the rulemakings moved to inactive are still listed as inactive, according to the spring 2018 list.⁵⁸

The Trump Administration Moved 136 Significant Rulemakings to Inactive

The USDA had the most significant rulemakings moved to inactive on one of the three Trump inactive lists – 32. USDA is followed by EPA (19) and DOJ (16).

Table 3 – Trump Administration Moved to Inactive Rulemakings By Agency

Agency	Significant Rulemakings Moved to Inactive
United States Department of Agriculture	32
United States Environmental Protection Agency	19
Department of Justice	16
Department of Homeland Security	12
Department of Energy	6
Health and Human Services	3
Treasury	2
Department of Labor	2
Sub-Agency Only*	44
Total	136

Five Notable Significant Rulemakings Moved to Inactive on Trump’s First Three Agendas

- Since 2009, the Department of Energy’s Office Energy Efficiency and Renewable Energy has been working on a rulemaking proposed to reduce fossil fuel consumption during the construction of new federal buildings as well as federal buildings undergoing major renovations.⁵⁹ This rulemaking indicates a final statutory deadline of December 2008. The Obama administration published an NPRM on October 2010.⁶⁰ After moving the rulemaking to long-term and indicating the next action was “undetermined” on the spring 2017 agenda,

⁵⁸ The remaining rulemakings were either added back the agenda and withdrawn (11 percent), added back to the agenda where they remain (18 percent), or were added back to the agenda and finalized (<1 percent).

⁵⁹ DOE/EE, *Fossil Fuel-Generated Energy Consumption Reduction for New Federal Buildings and Major Renovations of Federal Buildings*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Spring 2017), <http://bit.ly/2sxls3D>.

⁶⁰ Proposed Rule, *Fossil Fuel-Generated Energy Consumption Reduction for New Federal Buildings and Major Renovations of Federal Buildings*, OFFICE OF ENERGY EFFICIENCY AND RENEWABLE ENERGY (Oct. 15, 2010), <http://bit.ly/2l8k1z0>.

the Trump administration removed the rulemaking from the agenda and added it to the fall 2017 inactive list. It remained on the spring 2018 inactive list.

- In 2016, the Department of Energy’s Office of Energy Efficiency and Renewable Energy began work on a rulemaking that would “set energy conservation standards for types of pumps, including circulator pumps.”⁶¹ The rulemaking is proceeding under the “negotiated rulemaking” process, which is intended to reach consensus among stakeholders (i.e., a rule that industry supports). Currently, there is no energy efficiency standard for circulator pumps.⁶² On the Obama Administration’s final agenda, the agency listed the rulemaking as nonsignificant, characterized it as in the proposed rule stage, and estimated a proposed rule would be published in January 2017, which did not happen.⁶³ On the spring 2017 agenda, the rulemaking was prioritized as significant with an estimated proposed rule publication date of July 2017.⁶⁴ It was moved to inactive by the Trump administration in fall 2017 and remained there in spring 2018.
- In 2011, the Department of Energy’s Office of Energy Efficiency and Renewable Energy began work on a rulemaking that would create energy conservation standards for commercial and industrial fans and blowers.⁶⁵ The rulemaking has included many comment periods and public meetings.⁶⁶ The rulemaking concluded its fifth comment period weeks before Trump’s inauguration.⁶⁷ It was moved to long-term on the spring 2017 agenda and then made inactive in fall 2017. It remained inactive in spring 2018.
- Since 2008 and 2016, the EPA’s Office of Chemical Safety and Pollution Prevention began two rulemakings proposed to regulate Polychlorinated Biphenyls (PCBs).⁶⁸ Manufacturing PCBs was banned in 1979, but PCBs can still be found in products produced before 1979, including but not limited to, caulking, plastics, motor oil, oil-based paint, and fluorescent light systems.⁶⁹ PCBs are likely to cause cancer, harm newborn children whose mother was exposed to them during pregnancy, and cause learning deficits.⁷⁰ The rulemaking that began in 2008 was proposed to assess whether the EPA should phase out or end the instances where PCBs were allowed to be distributed related to “large capacitors, transformers and

⁶¹ DOE/EE, *Energy Conservation Standards for Circulator Pumps*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Spring 2016), <http://bit.ly/2xyLYQ3>.

⁶² *Appliance and Equipment Standards Rulemakings and Notices, Circulator Pumps*, ENERGY EFFICIENCY & RENEWABLE ENERGY (Viewed on June 1, 2018), <http://bit.ly/2I8sh20>.

⁶³ DOE/EE, *Energy Conservation Standards for Circulator Pumps*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Fall 2016), <http://bit.ly/2LgmrgD>.

⁶⁴ DOE/EE, *Energy Conservation Standards for Circulator Pumps*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Spring 2017), <http://bit.ly/2szDsuc>.

⁶⁵ DOE/EE, *Energy Conservation Standards for Fans and Blowers*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Spring 2017), <http://bit.ly/2lc0iPy>.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ EPA/OPPTS, *Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations and Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations for PCBs in Small Capacitors in Fluorescent Light Ballasts in Schools and Daycares*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, <http://bit.ly/2xFiaBs>.

⁶⁹ *Id.*

⁷⁰ *Id.*

other electrical equipment.”⁷¹ The second PCB rulemaking that began in 2016 was similar but covered “small capacitors in fluorescent light ballasts,” with a focus on equipment in schools and daycares.⁷² The 2016 rulemaking was in part in response to the fact that the EPA had recently found that the PCB levels of products used in schools and other commercial buildings built before the ban to be in excess of the current limit. Both rulemakings appeared on the fall 2016 agenda and were then moved to inactive in spring 2017. They remained inactive in fall 2017 and spring 2018.

- Since 2009, the DOJ’s Executive Office for Immigration Review has been working on a rulemaking proposed to establish procedures for the adjudication of motions to reopen immigration decisions such as deportation or removal based on ineffective assistance of counsel.⁷³ The rulemaking began when Attorney General Eric Holder vacated⁷⁴ a decision by his predecessor, Michael Mukasey, which found there to be no “constitutional right to effective assistance of counsel in removal proceedings.”⁷⁵ An NPRM was published in July 2016⁷⁶ and the rulemaking had been in the final rule stage on the Obama Administration’s final agenda – fall 2016.⁷⁷ The rulemaking was moved to inactive in spring 2017. It remained there in fall 2017 and spring 2018.

Conclusion

The data in this report show that Trump has already scuttled hundreds public protections. The data are telling. But what the data do not convey is the human cost. As a result of the administration’s deregulatory fervor, there will be no combustible dust standard anytime soon. The hazards exposed in the Upper Big Branch mine disaster won’t be addressed. Efforts to prevent backover deaths in the workplace, to make trains safer, and to reduce greenhouse gases have all been blocked, for now. This regulatory inaction will lead to preventable death and disease. While we may not yet know the names of those needlessly killed or injured by the administration’s determined inaction, we do know that people will die and suffer needlessly.

⁷¹ EPA/OCSPP, *Fossil Fuel-Generated Energy Consumption Reduction for New Federal Buildings and Major Renovations of Federal Buildings Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Fall 2016), <http://bit.ly/2xzfUJO>.

⁷² EPA/OCSPP, *Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations for PCBs in Small Capacitors in Fluorescent Light Ballasts in Schools and Daycares*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Fall 2016), <http://bit.ly/2LeqUjO>.

⁷³ Proposed Rule, *Motions To Reopen Removal, Deportation, or Exclusion Proceedings Based Upon a Claim of Ineffective Assistance of Counsel*, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (July 28, 2016), <http://bit.ly/2ssLvci>.

⁷⁴ Interim Decision #3643 25 I&N Dec. 1, *Matter of COMPEAN, BANGALY, J-E-C, et al.*, DEPARTMENT OF JUSTICE (June 3, 2009), <http://bit.ly/2j1DKFf>.

⁷⁵ Interim Decision #3632 25 I&N Dec. 710, *Matter of COMPEAN, BANGALY, J-E-C, et al.*, DEPARTMENT OF JUSTICE (Jan. 7, 2009), <http://bit.ly/2j9CjXY>.

⁷⁶ Proposed Rule, *Motions To Reopen Removal, Deportation, or Exclusion Proceedings Based Upon a Claim of Ineffective Assistance of Counsel*, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (July 28, 2016), <http://bit.ly/2ssLvci>.

⁷⁷ DOJ/EOIR, *Motions To Reopen Removal, Deportation, or Exclusion Proceedings Based Upon a Claim of Ineffective Assistance of Counsel*, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (Fall 2016), <http://bit.ly/2lm41xq>.