

Opinions

Trump is losing his war on regulations

By Lisa Heinzerling March 27

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President Trump has made deregulation a central goal of his administration, ordering agencies to undo two regulations for every new regulation they issue and to rethink a variety of Obama-era rules. Agencies headed by Trump's appointees have begun to carry out these orders by delaying or suspending dozens of existing rules and policies.

But courts are not receiving the first phase of Trump's deregulatory surge well. Federal courts have rejected the administration's attempt to delay or suspend existing rules on such diverse matters as [lead paint](#), [energy efficiency](#) and [methane emissions from oil and gas facilities](#). Other pending cases may suffer similar fates.

The outcomes of these rulings are notable in their own right, but the reasoning behind the rulings may be more portentous. The courts have found elementary legal mistakes in the Trump administration's approach to agency decisions. Specifically, they have concluded that the administration has misread legal provisions, ignored factual evidence and bypassed required processes. And the courts have done so without breaking a judicial sweat.

In other words, these cases haven't been close, from a legal perspective. For one thing, agencies in the Trump administration have flagrantly misinterpreted statutes to give them power they do not have. For example, the Interior Department [claimed](#) that a provision of the Administrative Procedure Act that gives an agency the authority to stay the "effective date" of a rule also gives it authority to change the date on which parties must comply with the rule — despite long-standing precedent that distinguishes between these kinds of regulatory deadlines. The courts rebuffed this overreach.

Agencies in this administration have also tried to brush past the factual records compiled for rules in the prior administration by insisting that they need state only vague concerns with a rule, not provide new evidence or reasoned explanation indicating that the rule was inappropriate to justify delaying or suspending it. This, too, is an elementary legal mistake for an agency.

Basic administrative law requires careful attention to evidence and explanation of departures from an agency's prior views of the evidence. Just last month, a federal court in California [rejected](#) the Interior Department's attempt to suspend a rule aimed at preventing methane waste on public lands, in part based on the department's failure to engage with the underlying factual record.

Process has also suffered in this first phase of the deregulatory binge, and courts aren't happy about it. In the beginning, agencies headed by Trump appointees [simply skipped the required notice-and-comment process](#) altogether. When they eventually realized this was not a good plan, they started offering fleeting comment periods — [one as short as five days](#) — to show technical compliance with procedural requirements. Even when they began offering somewhat longer comment periods, they nevertheless insisted that public comments relating to the substance of the rule under consideration were irrelevant to their decisions about delays and suspensions. The decision last month in California rejected this view, too, explaining that an agency may not suspend a rule based on the need to reconsider it without explaining why it needs to be reconsidered.

It shouldn't be too difficult for the Trump administration to avoid these kinds of errors. That it has failed to do so, repeatedly, in this first phase of the war on regulation bodes ill for its success in the next phase, which involves not just delaying or suspending existing rules, but actually removing them from the rule books. This effort will require fidelity to statutory requirements, painstaking review of lengthy, complex and technical records, and respectful attention to required processes.

It is not clear yet that the administration has the temperament to undertake this patient work. If it does not, it has more losses to come in the courts.

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