

What's Heating Up for Spring – Federal Permitting Policy Update



All Three Branches Influencing Permitting Policy



Legislative



Executive

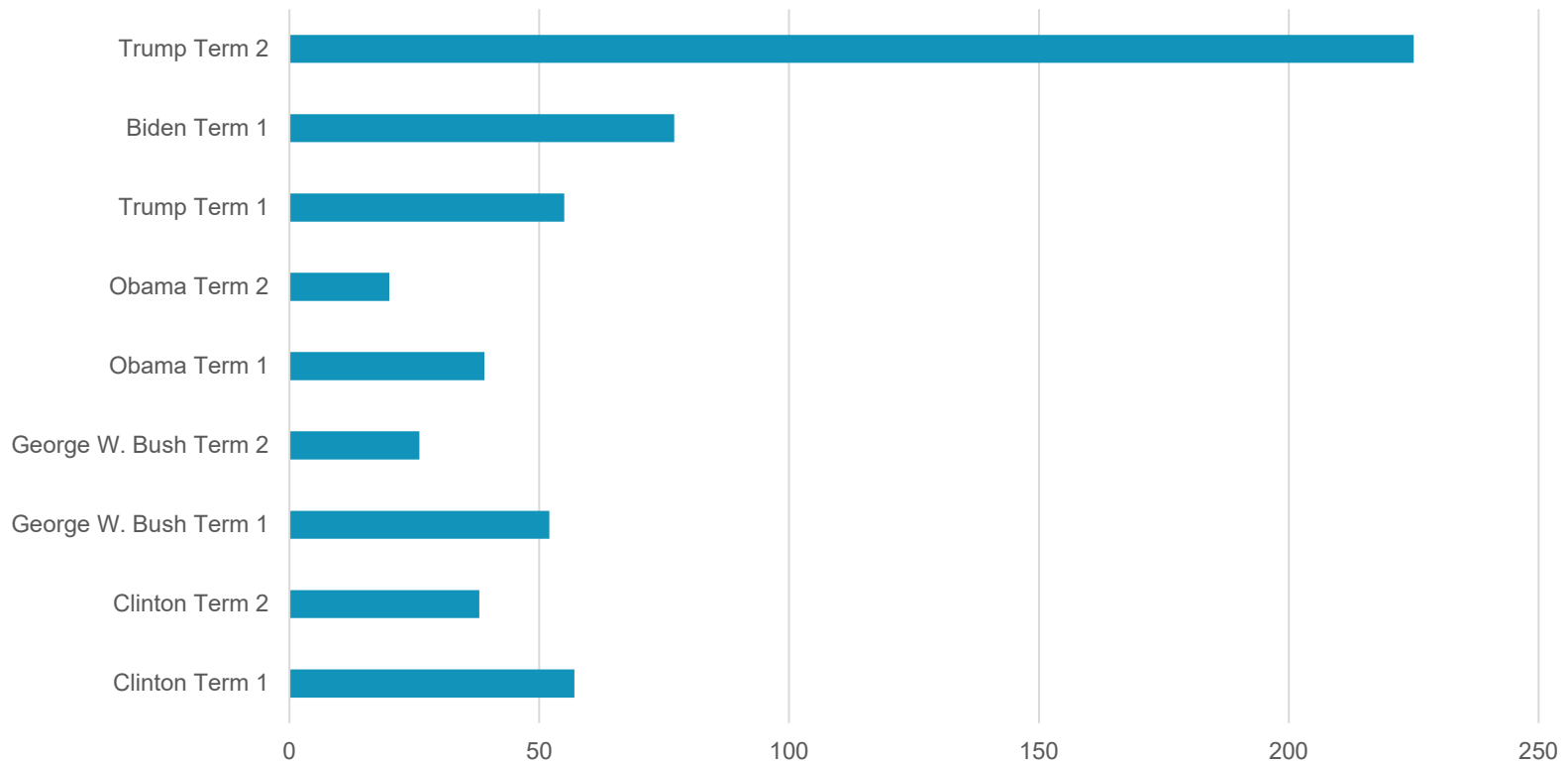


Judicial

Year 1 Executive Orders

Executive Action in Overdrive

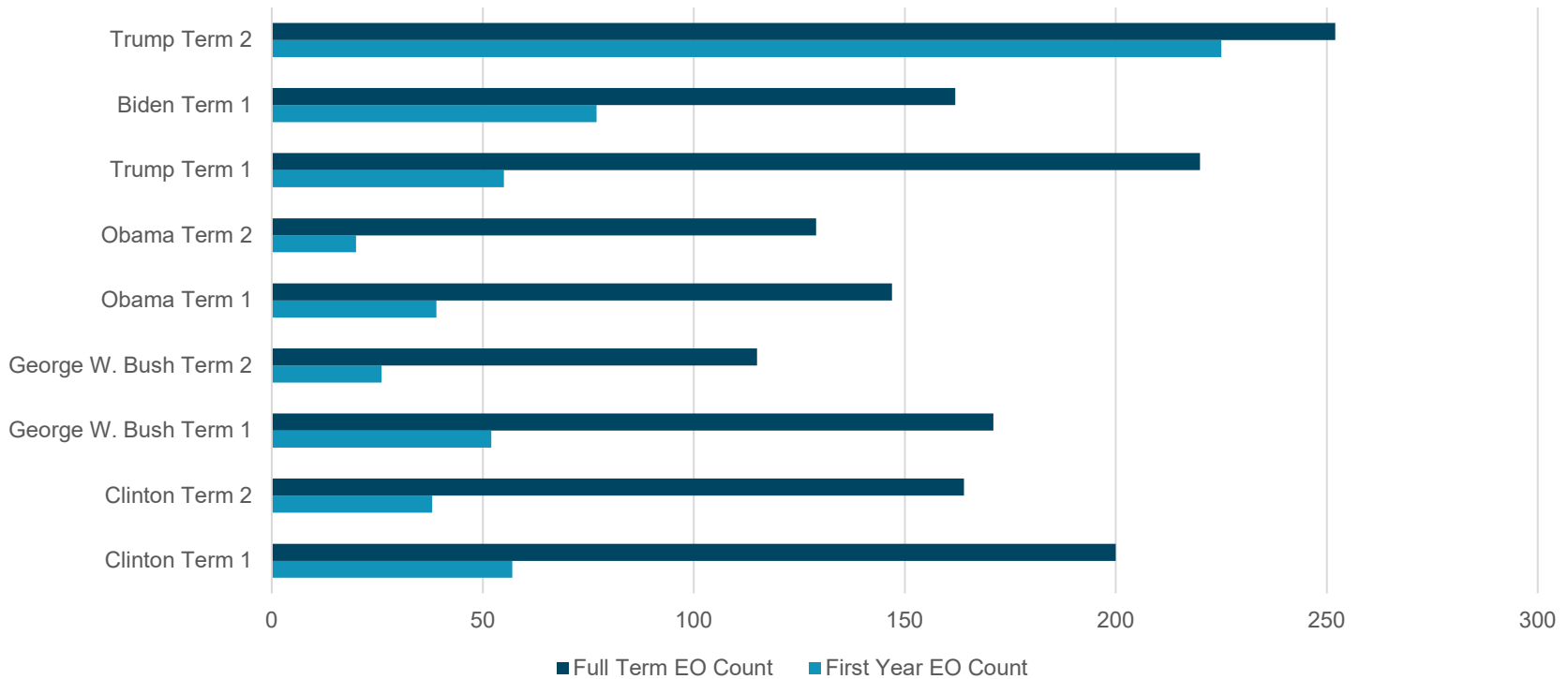
First-Year Executive Orders



Comparative Executive Order Totals

We're only at the beginning of year 2

First Year vs. Full Term



Council on Environmental Quality – Categorical Exclusion (CE) Guidance

Establishing, Revising, Adopting, and Applying Categorical Exclusions Under the National Environmental Policy Act

- Establishing and Revising CEs
- Substantiating CEs
- Revising or Removing CEs
- Joint Establishment of a CE
- Adopting a CE from Another Agency
- Applying CEs to a Particular Agency Action

Updated CE Guidance

Mitigated CEs?

“[T]he extent of the agency’s substantiation record should be proportionate with the reasonably foreseeable impacts of the actions covered. For example, actions that inherently have negligible or minimal environmental effects may require only a brief discussion compared to a more extensive discussion for actions that, for example, **require mitigation measures to be incorporated into the description and requirements of the categorical exclusion to avoid significant effects.**”

Updated CE Guidance

Key Takeaways



Mitigated CEs

Extraordinary Circumstances

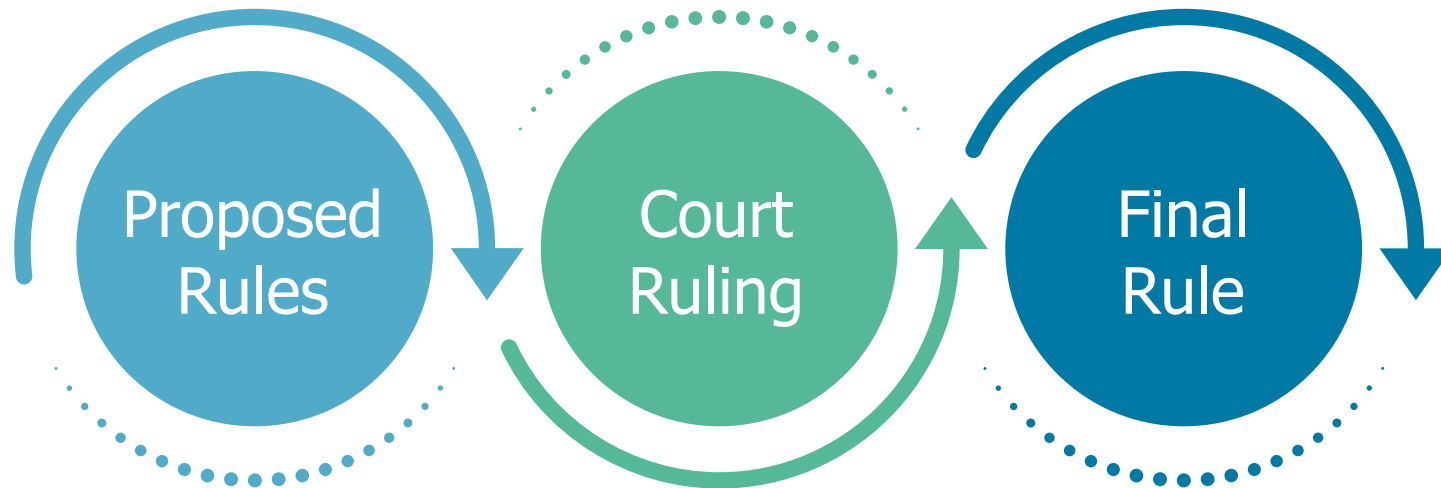
Multiple CEs for a
Single Agency Action

NEW TOOL:
ESA's Virtual CE Assistant



Pending Rulemakings

Endangered Species Act



- "Harm"
- Section 7
- Critical Habitat

- Vacatur
- Pre-2019 Reinstated

- Outcome Unknown

MORE INFORMATION:
ESA blog on FESA Changes



Pending Rulemakings

Waters of the United States

“[we are] getting out of the business of regulating wetlands”

Lee Forsgren, deputy assistant secretary of the Army for Civil Works

“The point [Forsgren] was making is that the law... gives us responsibility relating to permitting activities in WOTUS and [that] does not include all wetlands.”

Adam Telle, assistant secretary of the Army for Civil Works

Renewable Energy Development

Department of the Interior
Secretarial Orders targeting
wind and solar

- Limited use of IPAC for Section 7 Consultations
- Slowed reviews and approvals
- Forced developers off federal lands

Environmental NGOs and
Developers challenged

U.S. District Court issued
injunction, blocking
implementation of orders

- Plaintiffs
are likely
to succeed

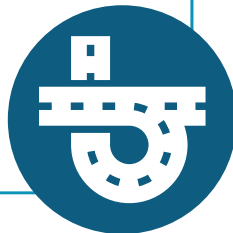


Congress Has Work to Do

Legislative Calendar

Surface Transportation Reauthorization

- Expires September 30
- Markup pushed back
- Negotiations focused on topline budget
- “Highway bill”
- Project delivery?



Permitting Reform

- CERTAIN Act
- SPEED Act
- Endangered Species Act Amendments
- Clean Water Act Amendments
- Clean Air Act Amendments
- National Historic Preservation Act

