Insight

The First Trump Era Regulatory Agenda

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On July 20th, the Office of Information and Regulatory Affairs (OIRA) released its long-awaited "Unified Agenda of Regulatory and Deregulatory Actions." While the report provides the usual insight into the various agencies' planned rulemakings, this edition is notable for its substantial listing of *deregulatory* initiatives. This shift was to be expected, considering the plethora of regulatory reforms the Trump Administration has put into motion. But as there are still a host of regulatory actions on the horizon, it remains to be seen whether the administration will reach its Executive Order (EO) 13,771 goal of zero net regulatory costs for Fiscal Year 2017 – and constrain costs beyond that. Its success may depend largely on how quickly it can promulgate some of the deregulatory .

SCHEDULE

The following tables provide a chronological sample of some of the most notable rulemakings included in the current edition of the Unified Agenda (UA). Rulemakings that would add regulatory costs are listed in black; ostensibly deregulatory measures (according to either their title or "abstract" found in the corresponding RIN link) are listed in red. Bolded entries represent rulemakings that an agency has already published. Since EO 13,771 measures an agency's "tally" in annual costs or cost savings, and since annual cost estimates help mitigate some of the inconsistencies in measuring past impacts against future ones, the tables below include such estimates in their annualized form (to the extent possible). All "regulatory" figures below come from agency estimates of either that direct action or an earlier phase (such as a proposed rule) of that rulemaking. All "deregulatory" figures come from agency estimates of either that direct action or the estimated annual costs of the original regulatory action it targets.

July 2017				
Agency	Proposed/Final	Rule	RIN	Annual Costs (in millions)
HHS	**Proposed**	**CY 2018 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1678-P)**	**0938-AT03**	**101**
DOI	Proposed	Revision or Rescission of the 2016 Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule	1004-AE53	–279
DOI	Proposed	Rescission of the 2015 BLM Hydraulic Fracturing Rule	1004-AE52	-34
DOL	Pre-Rule	Request for Information Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees	1235-AA20	-304.3

August 2017				
Agency	Proposed/Final	Rule	RIN	Annual Costs (in millions)
HHS	Final	FY 2018 Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities (SNFs) (CMS-1679-P)	0938-AS96	60.4
HHS	Final	Hospital Inpatient Prospective Payment System for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and FY 2018 Rates (CMS-1677-P)	0938-AS98	-.82
DOL	Proposed	Tip Regulations Under the Fair Labor Standards Act (FLSA)	1235-AA21	

EPA	Final	Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Extension of Stay for Certain Requirements	2060-AT59	

September 2017				
Agency	Proposed/Final	Rule	RIN	Annual Costs (in millions)
DOE	Final	Energy Conservation Standards for Commercial Packaged Boilers	1904-AD01	51
DOE	Final	Energy Conservation Standards for Portable Air Conditioners	1904-AD02	30
DOE	Final	Energy Conservation Standards for Residential Conventional Cooking Products	1904-AD15	42.6
DOE	**Final**	**Energy Conservation Standards for Walk-In Coolers and Walk-In Freezers**	**1904-AD59**	**34**
DOE	Final	Energy Conservation Standards for Uninterruptible Power Supplies	1904-AD69	234
USDA	Final	Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements	0584-AE53	

October 2017				
Agency	Proposed/Final	Rule	RIN	Annual Costs (in millions)
DOT	Final	Public Transportation Agency Safety Plans	2132-AB23	71

November 2017				
Agency	Proposed/Final	Rule	RIN	Annual Costs (in millions)
HUD	Final	Streamlining FHA Single Family Mortgage Insurance: 10-Year Protection Plan Requirements	2502-AJ40	

December 2017				
Agency	Proposed/Final	Rule	RIN	Annual Costs (in millions)
EPA	Final	Financial Responsibility Requirements Under CERCLA Section 108(b) for Classes of Facilities in the Hardrock Mining Industry	2050-AG61	171
EPA	Final	Renewable Fuel Volume Standards for 2018 and Biomass Based Diesel Volume (BBD) for 2019	2060-AT04	-70
FDIC	Final	Restrictions on Qualified Financial Contracts of Certain FDIC-Supervised Institutions	3064-AE46	
DOT	NPRM	Unmanned Aircraft Systems Expanded Operations	2120-AL01	
DOT	Final	Passenger Equipment Safety Standards Amendments (RRR)	2130-AC46	157.6

Long Term				
Agency	Proposed/Final	Rule	RIN	Annual Costs (in millions)
DOE	Final	Energy Conservation Standards for Manufactured Housing	1904-AC11	220

HHS	N/A	Updated Standards for Labeling of Pet Food	0910-AG09	
DOT	N/A	Vehicle to Vehicle (V2V) Communication	2127-AL55	5,000
DOT/EPA	N/A	Passenger Car and Light Truck Corporate Average Fuel Economy Standards MYs 2022-2025	2127-AL76	-4,200
DOT	N/A	High-Speed Intercity Passenger Rail (HSIPR) Program; Buy America Program Requirements	2130-AC23	
EPA	N/A	Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act	2050-AG82	-161
EPA	N/A	Review of the Clean Power Plan	2060-AT55	-8,400

Total Potential Costs: $6.2 Billion

Total Potential Cost Savings: $13.5 Billion

ANALYSIS

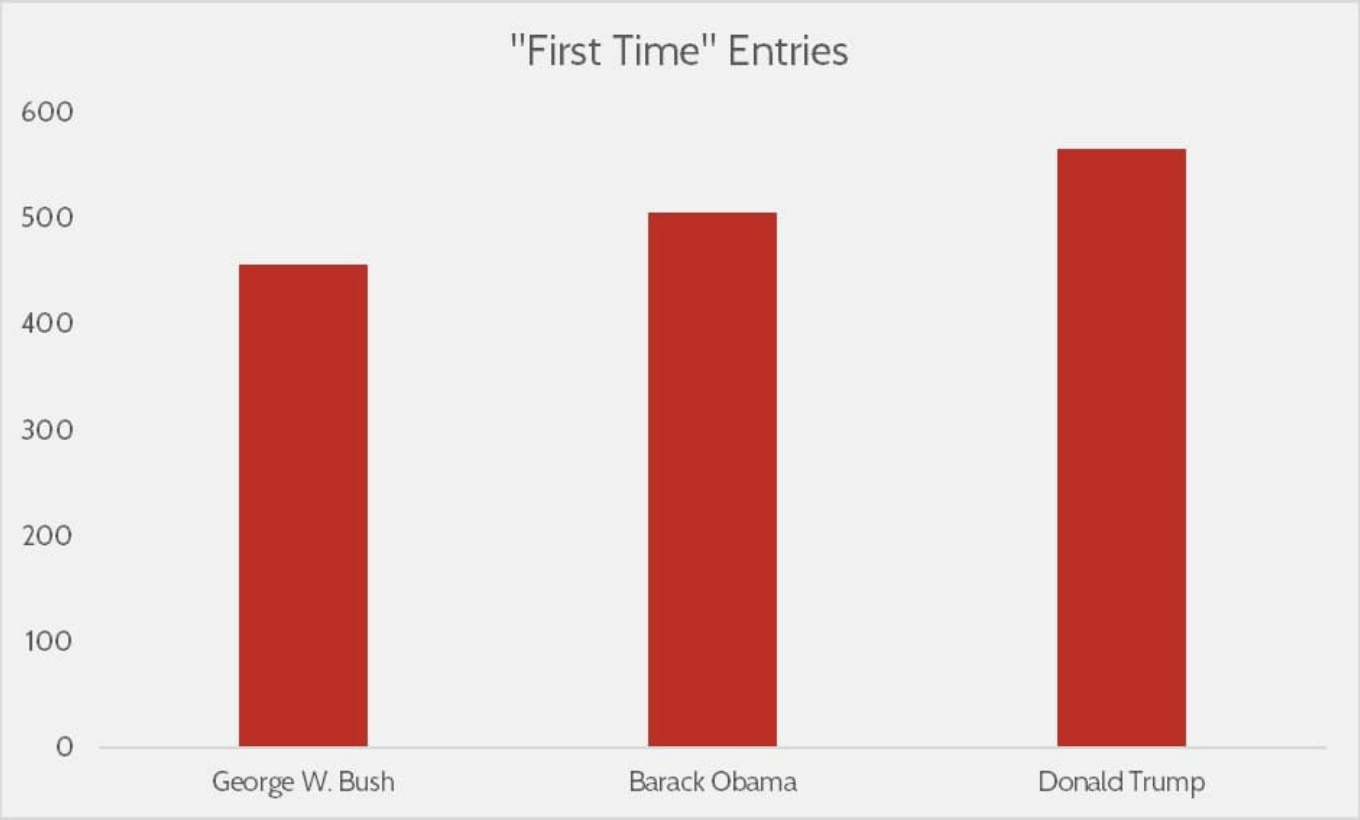
In this report, the administration repeatedly highlights its focus on deregulation, noting that "economically significant regulations fell to 58, or about 50 percent less than Fall 2016," and claims it is "eliminating 16 old rules for every new one." Unfortunately, in its current format, the UA does not provide a clear, definitive, uniform, or easily searchable indicator of which actions are regulatory and which are deregulatory. There are, however, other ways to illustrate such categories. For perspective, the following table includes the amount of planned rulemaking actions that include presumptively "deregulatory" terms:

Term	Number of Rulemaking Actions
"Revise"	163
"Remove"	103
"Streamline"	32
"Eliminate"	32
"Rescind"	17

“Delay”	14
“Withdraw”	14
“Consolidate”	12
“Repeal”	11

Perhaps the most interesting aspect of this breakdown is how “revised” rules seem to dominate the relative data pool. This suggests that, while the administration may be targeting *some* rules for full repeal, many of the deregulatory actions seek only to re-tool current rules.

Another way to help illustrate the relative novelty of this administration’s approach is to look at rulemaking actions for which this is the “First Time Published in The Unified Agenda.” The following graph highlights how, relative to the first Spring UA for the two preceding administrations (the only others for which data is digitally available), the Trump Administration has the highest count of “new” actions – with presumably many of them being deregulatory in nature:



One other tool the Trump Administration is using to rein in regulatory requirements is to

simply stop proposals – most still in their formative stages under past agendas – from moving forward. To this end, OIRA notes how agencies have withdrawn 469 actions and placed 391 on either "long term" or "inactive" status. That makes for a total of 860 actions in the pipeline that will likely see little, *if any*, progress under this administration – nearly 300 more than the various "first time" actions it is proposing.

CONCLUSION

The UA provides a resource for determining what agencies plan to do in the near future. Each administration's inaugural edition is particularly important as it helps illustrate the broad regulatory trends it intends to promote. In this regard, the first Trump UA is particularly significant. At least amongst a sample of its most notable planned actions, there appears to be a potential road to annual cost savings exceeding new costs by more than two-to-one – clearly synergistic with the one-in, two-out goal established by EO 13,771. From simple revisions to full repeals to simply squashing still-in-development regulations, the administration appears poised to utilize a variety of tools toward this end. Whether it achieves such goals in a timely fashion will be a matter of actual implementation.