



## Research

# One Month Out: A One-In, Two-Out Program Status Report

DAN GOLDBECK | SEPTEMBER 19, 2017

From almost any perspective, President Trump's [Executive Order \(EO\) 13,771](#), "Reducing Regulation and Controlling Regulatory Costs," marked one of the most significant developments in regulatory policy in decades. While the EO is conceptually similar to previous efforts in the United Kingdom and Canada, it is the first time in United States history that the executive branch has established a "regulatory budget." Known mostly for its one-in, two-out mechanism, the primary goal of the order's first phase is to achieve \$0 or less in new, net regulatory costs across the various executive agencies by the end of Fiscal Year (FY) 2017. That deadline hits at the end of this month. While there have been some hiccups, overall the Trump Administration is on track to finish the first phase with \$645 million in net annual regulatory savings.

## EXECUTIVE ORDER BACKGROUND

While the Executive Order set the broad goals and directions, a [guidance memo](#) from the Office of Management and Budget (OMB) spelled out the rules affected by the order. The core parameters are as follows:

- Agencies only need to tally up final rules published after noon on January 20, 2017.
- The EO only applies to executive agency rules that the Office of Information and Regulatory Affairs (OIRA) deem to be "significant" under [EO 12,866](#).
- It exempts rules related to direct national security or emergency concerns and those explicitly directed by a judicial or statutory mandate.
- Agencies can, via written requests to OMB, transfer savings from other agencies.
- Agencies can include savings from legislatively repealed or revised rules. Thus, they can use savings from such actions as the [14 rules repealed](#) by under the Congressional

Review Act (CRA) earlier this year.

- If an agency is not in compliance by the end of the fiscal year, they must submit a report to OMB detailing how they plan on coming into compliance. There do not appear to be any significant sanctions for non-compliance thus far.

## REGULATORY BUDGET

The following tables lay out the number of final rules through August 31 deemed applicable to EO 13,771 that included a quantified cost-benefit analysis, and the annualized costs or savings agencies can ascribe to their regulatory tally under the order (as well as those from rules rescinded under the CRA).

<u>Agency</u>	<u>13771 Deregulatory Actions</u>	<u>13771 Regulatory Actions</u>
Agriculture		
Commerce		
Defense		
Education		
Energy		
EPA		1*
HHS	4	2*
Homeland Security		
HUD		
Interior	2	1
Justice		
Labor	1	
Transportation		
Treasury		
VA	1	
<b>Total</b>	<b>8</b>	<b>4</b>

<u>Agency</u>	<u>CRA Annual Cost Savings (\$ Million)</u>	<u>EO 13771 Rule Savings (\$ Million)</u>	<u>EO 13771 Rule Costs (\$ Million)</u>	<u>Total Net Costs (\$ Million)</u>
Agriculture				0
Commerce				0
Defense	-400.9			-400.9
Education	-100.9			-100.9
Energy				0
EPA			0.3*	0.3
HHS	-0.02	-22.8	36.7*	13.9
Homeland Security				
HUD				0
Interior	-81.0	-0.4	3.9	-77.5
Justice				0
Labor		-78.0		-78.0
Transportation				0
Treasury				0
VA		-2.0		-2.0
<b>Total</b>	<b>-582.8</b>	<b>-103.2</b>	<b>40.9</b>	<b>-645.1</b>

**\* DENOTES THE INCLUSION OF DE MINIMIS RULEMAKINGS**

Overall, the Administration is well on its way to meeting, and even exceeding, the EO's FY 2017 goal. Most of the agencies have not published actions with quantifiable economic estimates. However, if the goal under EO 13,771 is to get to net annual costs "no greater than zero" by the end of the fiscal year, then agencies doing nothing clearly still achieves that goal. Across the various agencies, two of the actions included were regulatory actions that, per agency claims, impose only *de minimis* costs. If those actions are excluded, the cumulative deregulatory/regulatory action ratio exceeds two to one.

While there has been a sparse level of activity on an agency-by-agency basis, cumulatively executive agencies have essentially achieved a one-in, two-out flow while banking \$645 million in net annual savings. The vast majority of these savings come from CRA rescissions, but even on a purely administrative level, savings from deregulatory actions exceed new regulatory costs by more than two to one. The two *de minimis* rules bring annual costs of \$7.7 million and \$282,000, respectively, and thus barely affect the overall tally. However, it is curious that the Department of Health and Human Services claimed *de minimis* status on the former since its impact is greater than all but one regulatory action and three deregulatory actions. OMB’s guidance does not give an explicit *de minimis* threshold, thus it is difficult to discern whether the relevant agencies properly categorized these rules.

It is worth noting that, at least according to the Administration’s parameters, many rulemakings do not necessarily count towards an agency’s tally under EO 13,771. The following tables show the *overall* number of final rules that include some kind of quantified cost-benefit analysis and the annualized costs or savings agencies can ascribe to these various actions.

<u>Agency</u>	<u>Deregulatory Actions</u>	<u>Regulatory Actions</u>
Agriculture		
Commerce		1
Defense		
Education		
Energy		1
EPA		3
HHS	4	2
Homeland Security		2
HUD		
Interior	2	1
Justice		
Labor	1	2
Transportation		82

Treasury		
VA	1	
<b>Total</b>	<b>8</b>	<b>94</b>

<u>Agency</u>	<u>Overall Savings (\$ Million)</u>	<u>Overall Costs (\$ Million)</u>	<u>Overall Net Cost (\$ Million)</u>
Agriculture			0
Commerce		0.1	0.1
Defense			0
Education			0
Energy		34.0	34.0
EPA		72.1	72.1
HHS	-22.8	36.7	13.9
Homeland Security		8.6	8.6
HUD			0
Interior	-0.4	3.9	3.5
Justice			0
Labor	-78.0	35.1	-42.9
Transportation		343.0	343.0
Treasury			0
VA	-2.0		-2.0
<b>Total</b>	<b>-103.2</b>	<b>533.4</b>	<b>430.3</b>

Including this more expansive set of rules leads to regulatory actions exceeding deregulatory actions by more than ten to one and net annual costs of roughly \$430 million. Much of this difference comes from the 81 “airworthiness directives” from the Federal Aviation Administration. These routine safety regulations are not subject to EO 13,771 because they are not considered “significant” (on average, their annual costs are

approximately \$4.4 million). Even when one includes the CRA savings, however, this pool of apparent costs nets out to roughly \$150 million in annual savings.

There are other aspects of the nation's regulatory costs that the EO does not directly address. Since it only covers rulemakings from President Trump's inauguration onwards, it does not cover President Obama's final few months. If the timeframe included the part of FY 2017 under President Obama (October 1, 2016 - January 19, 2017), the roughly \$12.7 billion in cumulative annual costs would clearly outweigh the savings presented above.

Reassessing those costs - and those from even older rules - involves an even broader retrospective review effort, such as that found in these other [executive orders](#). And since it is an executive order, it inherently has no direct hold on independent agencies. As such, it does not affect the nearly \$6.5 billion in new annual costs from independent agencies since President Trump's inauguration. Addressing those costs will generally require legislative action.

## LOOKING AHEAD

The overall picture through August has trended towards a clearly deregulatory period under the first phase of this EO, but there may be some headwinds ahead. An examination of the [Administration's Unified Agenda](#) suggests there may be more substantial regulatory actions in the immediate future. There is a set of [energy efficiency standards](#) that, if the proposed cost estimates hold, could bring approximately \$357 million in new costs onto the Department of Energy's regulatory ledger. Even so, it would put the cumulative EO 13,771 tally at \$288 million in savings.

Beyond this deadline at the end of September, there is more to come on the deregulatory front with some notable proposed rules bringing additional cost savings. At the end of July, the Environmental Protection Agency and Army Corps [jointly proposed](#) a "recodification" of the "Waters of the United States" rule. That analysis claims annual savings of \$314 million. At the end of August, the Department of Labor proposed an extension of the compliance timeline for its [2016 Fiduciary Rule](#) while the agency reviews the rule's overall framework. This extension could bring more than [\\$291 million](#) in annualized savings. While neither measure will become final before the end of FY 2017, they represent two of the boldest deregulatory actions under this Administration to date.

## CONCLUSION

EO 13,771 is more of a framework for reorienting agency priorities than a precisely crafted, hard and fast set of requirements. The road to even more pronounced reforms will [take](#)

time. Even in its first stage, however, the Administration's regulatory agenda spurred \$645 million in net savings, with at least another \$600 million more on the way. By any measure, it has been a significant period for regulatory reform.