Research

Phase 1 of the One-In, Two-Out Order: A Final Update

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Last month, the American Action Forum (AAF) found that, through the end of August, the Administration had made significant progress under President Trump's Executive Order (EO) 13,771 establishing a "one-in, two-out" regulatory program. The first phase of that EO – directing agencies to achieve $0 or less in net annual regulatory costs – ended this past weekend with the closing of Fiscal Year (FY) 2017. The final month of FY 2017 saw net savings under the EO of only about $37 million. Taking a full accounting of the actions likely covered under the EO, however, the Trump Administration can claim more than $560 million in overall net annual savings as it now moves on to FY 2018.

SEPTEMBER ACTIONS

The only notable action under EO 13,771 for September was an Environmental Protection Agency (EPA) rule extending the compliance dates for a previous power plant run-off rule. That action could yield savings of up to $36.8 million per year. That would bring the final net annual savings from rules explicitly referencing the EO to $682 million. In terms of final *regulatory* rules, the only items AAF recorded in September were a series of Federal Aviation Administration "airworthiness directives" that bring cumulative compliance costs of approximately $42 million per year. However, given their routine nature and relatively low costs individually, these actions are likely exempt from the EO consideration per the Administration's guidance.

FINAL TALLY

In a previous report, AAF had two sets of accounting: one counting rules that clearly addressed EO 13,771 and one counting all final rules from executive agencies that had an annual cost estimate. The more definitive regulatory tally may lie somewhere in between those categories as there are some rules in the latter that – while not explicitly discussing

the order – could fall under the scope of the former. The following tables provide an accounting of final rules with some annual cost estimate that do not have any clear claim to the Administration's stated exemptions, and thus could potentially count as EO 13,771 actions.

Agency	13771 Deregulatory Actions	13771 Regulatory Actions
Agriculture		
Commerce		
Defense		
Education		
Energy		1
EPA	1	1
HHS	4	1
Homeland Security		
HUD		
Interior	2	1
Justice		
Labor	1	1
Transportation		
Treasury		
VA	1	
SBA		
Total	**9**	**5**

Agency	EO 13771 Rule Savings ($ Millions)	EO 13771 Rule Costs ($ Millions)
Agriculture		

Commerce		
Defense		
Education		
Energy		34
EPA	-36.8	60
HHS	-22.8	29
Homeland Security		
HUD		
Interior	-0.4	3.9
Justice		
Labor	-78	34.5
Transportation		
Treasury		
VA	-2.0	
SBA		
Total	**-140.0**	**161.4**

Under this count, the cumulative "action count" barely misses the two-to-one ratio and net annual costs come out to $21.4 million. However, this tally differs from the previous one primarily due to the exclusion of two rules under the *de minimis* exemption and the addition of three rules that potentially meet the parameters of a "regulatory action" that clearly shift the balance. Those three rules are the following:

- Department of Energy's (DOE) Energy Conservation Standards for Walk-In Cooler and Freezer ($34 million in annual costs)
- EPA's Effluent Limitations Guidelines and Standards for the Dental Category ($60 million in annual costs)
- Department of Labor's (DOL) Examinations of Working Places in Metal and Nonmetal Mines ($34.5 in annual costs)

Combined, these rules bring $128.5 million in annual costs. AAF has previously examined the curious circumstances of the first two here and here, respectively. DOL's mine safety rule was published on January 23, 2017 and thus it technically falls within EO 13,771's timeframe. However, it concluded its review process under the Obama Administration on January 11. Since January 23 was the first post-inauguration edition of the Federal Register, it may have already been in the pipeline for publication and barely slipped in before the deadline. Additionally, DOL recently published a proposed rule addressing this area that could save $27.6 million annually – although those savings do not count towards FY 2017.

While the above count may make it seem like the Trump Administration came up short in its goal, it is important to reiterate that the above rules only include executive agency final rules *that also* included some quantified estimate of costs or savings. In terms of actions, there are three rules with a "deregulatory" designation under the order that do not include a quantified estimate of their savings (found here, here, and here). Adding these three to the action count would push the cumulative total of deregulatory actions to 12 versus 5 regulatory actions, a ratio exceeding one-in, two-out. In terms of costs, this tally doesn't include the more than $580 million in savings from the Congressional Review Act (CRA) rescissions. When one factors those in, the cumulative net annual savings under the EO's parameters add up to $561.4 million. The CRA savings plus the net costs of all final rules (including those "exempt" from the order) yields net savings of $155 million.

IMPLEMENTATION GOING FORWARD

Some of these categorization issues can – and likely will – be resolved as the agencies move forward into the FY 2018 phase under the executive order. For one, there seems to have been a lag in agencies formally acknowledging the order in their rulemaking analyses. The first mention of EO 13,771 came in the March 20 Food and Drug Administration (FDA) rule. The first rule with an explicit EO 13,771 designation came on April 7. Considering the final guidance came on April 5, this lag in incorporating the EO's implications into their analyses is relatively understandable. Although, the three questionable rules mentioned above are good examples of actions requiring greater clarity moving ahead. Designating actions as one way or another from the start – as called for in this Office of Information and Regulatory Affairs (OIRA) memo – will likely solve this issue.

Another area that could use some refinement is simply the mechanical aspects of compliance. Per the above tables, some agencies are likely out of compliance on an individual level. The guidance document does allow agencies to transfer savings from another agency, but they must "submit a written request to the Director of OMB," to do so. While the Administration may clarify this soon, these requests did not appear to be publicly available as of this writing. The repercussions of non-compliance are not particularly steep

though; an agency simply needs to report to and work with the Office of Management and Budget on ways to achieve compliance.

Outside of some of these hiccups, it will be interesting to see what FY 2018 holds as agencies reveal more of their plans. This OIRA memo from early September states, "OMB expects that each agency will propose a net reduction in total incremental regulatory costs for FY 2018." Assuming agencies meet that expectation, the next target will shift from net $0 costs to some more ambitious net savings figure. Since further significant action on the CRA front (at least for executive agencies) seems unlikely, agencies will generally need to be more aggressive in their administrative actions to meet those targets.

CONCLUSION

As the Trump Administration transitions into the new fiscal year and next phase of EO 13,771, it can reasonably claim net regulatory savings of roughly $560 million under the EO's first phase. There have been some new regulatory costs, but activity on that front remains at a historically low level. Furthermore, savings from CRA resolutions have dwarfed any new costs. Such legislative measures may not factor in as much, but with clearly ambitious targets and likely a better understanding on how to implement such programs, the Trump Administration's deregulatory push does not appear to be slowing down.