Insight

# Is Deregulation Faster than Regulation?

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With President Trump's initiative to repeal two regulations for every new rule (EO 13771), attention turns to the logistics and the specifics of how the plan will operate. Guidance released from the administration reveals, "At a minimum, the agency should identify all EO 13771 deregulatory actions, along with cost savings estimates, by the time it submits to OMB … the corresponding EO 13771 regulatory action." Generally, agencies need only identify the two rules for amendment while proposing the new regulation.

However, the process of repealing old regulations follows the same procedural path of implementing new rules. For this study, the American Action Forum (AAF) examined the rulemaking timelines from the largest deregulatory measures from the Obama Administration ($50 million or more in reduced costs) and compared them to the timelines for the most burdensome rules from the administration. The results: the largest rules from the Obama Administration took an average of 2.3 years to complete (median of 1.9) compared to an average of 1.5 years for deregulatory actions (median of 1.2). Although it will take time, deregulation proves to move slightly faster through the regulatory process than imposing new burdens.

## Methodology

AAF's Regulation Rodeo has data on every deregulatory measure from President Obama that generated more than $50 million in annual savings from the date of his executive order on reform. This yielded 16 results. AAF also compiled data on all regulations during that time that imposed more than $50 million in annual burdens (165 total rules). The deregulatory tally in the sample represents 87 percent of President Obama's total cost-cutting agenda. In addition, AAF's sample of burdensome rules represents 67 percent of all regulatory costs imposed during President Obama's Administration. Combined, this yielded a sample of 181 rules, albeit heavily tilted toward rules that imposed costs.

To measure the rulemaking timeline, as AAF has done in the past, it took initial publication in the Unified Agenda as a starting point and final publication in the Federal Register as the end point. Agencies might begin working on rules before publication in the Unified Agenda, but also likely finish work when the administration has approved the final rule and agencies issue the unofficial version. The gap between informal release and formal publication is typically a few weeks, and sometimes a few months. In addition, AAF's measurement of a rulemaking timeline comports with other academic research in the field. Then, AAF merely compared the time between initial Unified Agenda appearance and final publication in the Federal Register.

## Results

President Obama issued 16 deregulatory measures, and on average they took 1.5 years to move through the regulatory process, with a median of 1.2 years. The times for completion ranged from a rule that was published 120 days before initial appearance in the Unified Agenda, meaning the public had no notice until the agency released the final rule, to 5.7 years for a Department of Transportation's deregulatory rule that cut $605 million in costs and 21 million paperwork burden hours.

Generally, there is no correlation between the magnitude of a deregulatory measure and its timeline. The correlation coefficient was actually -0.38, suggesting greater burden reductions lead to a slightly quicker rulemaking life (-1.0 would indicate a perfectly inverse relationship). However, with a sample size of 16, it's difficult to make any firm conclusions.

For regulations that impose costs of greater than $50 million, the average rulemaking timeline was 2.3 years, with a median of 1.9 years. The shortest rulemaking was published 120 days before initial publication in the Unified Agenda, again indicating a "negative" timeline where the public only learned of the rulemaking once the agency released the final rule. The longest rulemaking timeline took more than seven years, the recently-repealed "Stream Protection Rule."

Like deregulatory measures, there is no relationship between the magnitude of total or annual costs and the length of the rulemaking. The correlation coefficient between total costs and length was 0.009, indicating an almost random relationship. For annual costs, the relationship was equally insignificant (-0.004).

For a recent example, the Trump Administration finalized a formal delay to the controversial "Fiduciary Rule." Because this major rule was not published in Unified Agenda, the public first learned of a reexamination of the rule on February 3, 2017. By February 9, the rulemaking was at the White House; it left before the end of the month. A month later, March 28, 2017, the final version was submitted for review. It spent just six days under review and it was published on April 7, 2017. The regulation estimated total cost savings of $123 million; it took just 63 days to wind through the regulatory process, about the average length of a comment period. If the administration works this quickly with all deregulatory actions (somewhat unlikely), the path to achieving the goals of Executive Order 13,771 will become more realistic.

## Prospects for a Regulatory Budget

With this information, we know on average it takes a rule with $50 million costs roughly 828 days to complete. To cut $50 million in costs, however, takes only 547 days on average, with a median of 446 days to repeal costs. Although this information is not conclusive, it does suggest that regulators can frequently pair back burdens faster than they can impose them. To some extent, this makes sense because new, multi-billion dollar rules tend to attract far more scrutiny than deregulatory actions. For example, the average deregulatory measure received 1,982 comments and all cost-cutting measures in the sample received 29,732 comments; of that total, more than 22,000 came from an EPA "Portland Cement" rule that cut $52 million in costs. By contrast, EPA's "Clean Power Plan" received more than 4.3 million comments alone.

Depending on the magnitude of cost-cutting, this trend could change during the Trump Administration. Progressives have expressed their ire against the plan and seem determined that it either be declared unconstitutional or fail. If agencies implement a regulatory budget by making wholesale changes to existing regulatory programs, lawsuits and requests to delay rules will pour in from public interest groups. However, if there are technical and paperwork changes to past rules, not unlike the variety introduced by President Obama, deregulation under President Trump could fly somewhat under the radar. Minor changes will also mute the magnitude of the cost-cutting measures, placing even more of an emphasis on reducing the burdens of new rules.

## Conclusion

With any bold government reform initiative, there could be some implementation hurdles for President Trump's regulatory budget. However, the timing challenges might not be as extreme as first anticipated. With this data, it is somewhat clear that deregulation proceeds about 35 percent faster than implementation of a new rule.