



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 |

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|-----|----------|--|-----------|--------|
| 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 | |
|------|-------|---|-----------|--|

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

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

| <u>December 2017</u> | | | | |
|----------------------|-----------------------|---|------------|-----------------------------------|
| <u>Agency</u> | <u>Proposed/Final</u> | <u>Rule</u> | <u>RIN</u> | <u>Annual Costs (in millions)</u> |
| 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 |

| <u>Long Term</u> | | | | |
|------------------|-----------------------|--|------------|-----------------------------------|
| <u>Agency</u> | <u>Proposed/Final</u> | <u>Rule</u> | <u>RIN</u> | <u>Annual Costs (in millions)</u> |
| 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

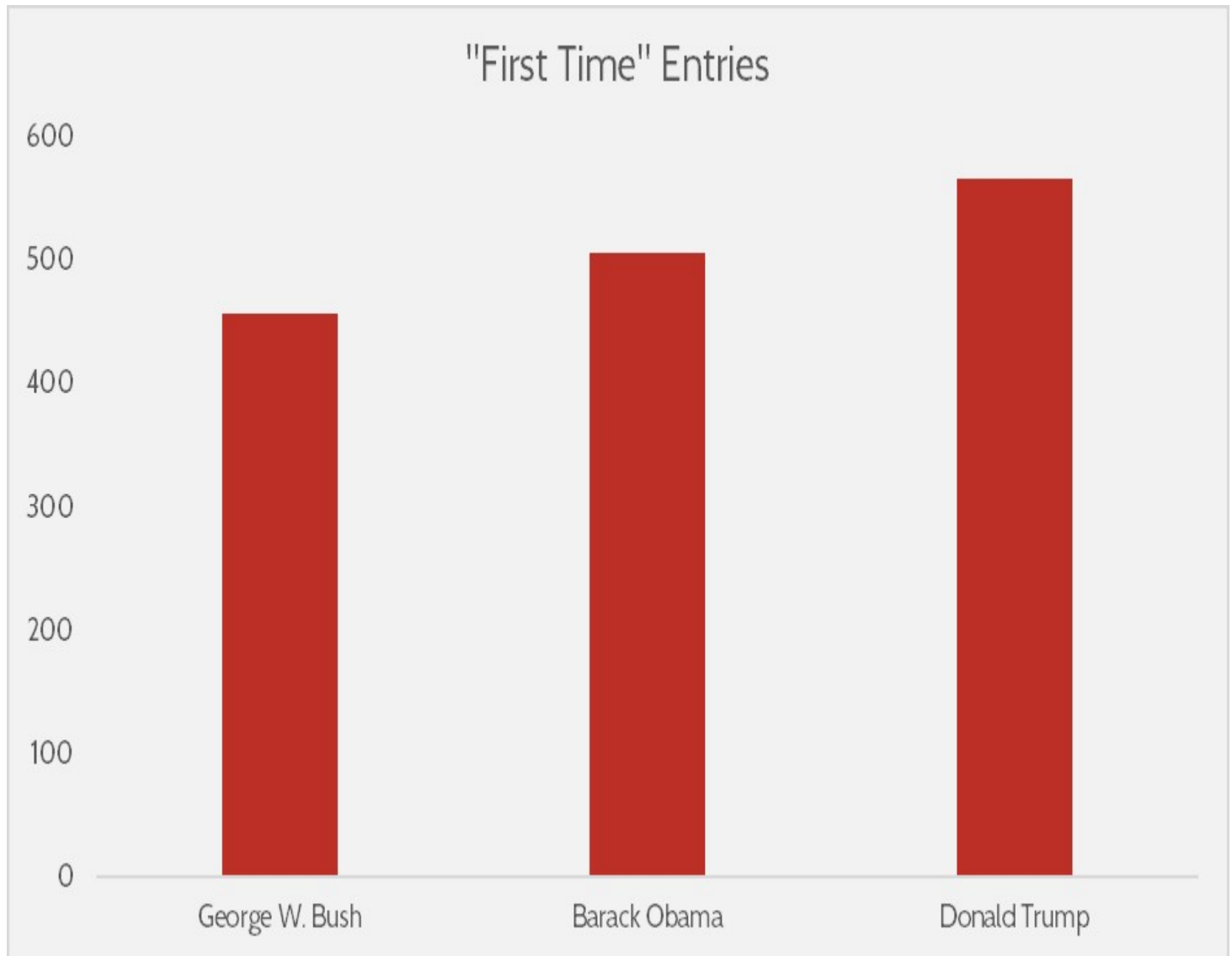
ANALYSIS

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:

| <u>Term</u> | <u>Number of Rulemaking Actions</u> |
|---------------|-------------------------------------|
| “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.