



Insight

# Major Rules Ahead in the Fall 2018 Regulatory Agenda

DAN GOLDBECK | OCTOBER 25, 2018

On October 17, the Trump Administration's Office of Information and Regulatory Affairs (OIRA) released the fall edition of its Unified Agenda as well as an update on regulatory budgeting under Executive Order (EO) 13,771. The American Action Forum (AAF) has summarized the general findings of those documents [here](#) and [here](#). The tables below provide a chronological look at "major" actions that could apply to agencies' regulatory budgets going forward and – where possible – their potential impact.

The rulemaking entries included in the following tables are those 1) designated as "major rules" that 2) carry a "regulatory," "deregulatory," or "other" categorization, and that 3) agencies anticipate to be in either the proposed rule or final rule phase over the next year or so. Where possible, AAF has included an agency-based cost or saving estimate. These were either the proposed version's estimates, or, in the case of those deregulatory actions with an asterisk, the original cost estimate of the regulation it seeks to repeal or revise.

Using those estimates, the administration could expect roughly \$27 billion in total net savings from the rules below. This figure is merely illustrative of the kind of impact that could be expected, as these estimates could change significantly upon finalization and this list contains only a small subset of rules that could potentially affect the next regulatory budget tally. But if this estimate is anywhere near correct, the administration is proposing significant regulatory savings.

October 2018					
RIN	AGENCY	TITLE	EO 13771 DESIGNATION	ACTION	POTENTIAL COSTS/SAVINGS (\$M)
0584-AE57	Department of Agriculture	Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents	Regulatory	Proposed Rule	n/a
1990-AA39	Department of Energy	Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation	Regulatory	Proposed Rule	n/a
0938-AT37	Department of Health and Human Services	CY 2020 Notice of Benefit and Payment Parameters	Other	Proposed Rule	n/a
0938-AT59	Department of Health and Human Services	Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2020	Deregulatory	Proposed Rule	n/a

0938-AT90	Department of Health and Human Services	Health Reimbursement Arrangements and Other Account-Based Group Health Plans	Deregulatory	Proposed Rule	n/a
1615-AA22	Department of Homeland Security	Inadmissibility on Public Charge Grounds	Other	Proposed Rule	1,296
1235-AA21	Department of Labor	Tip Regulations Under the Fair Labor Standards Act (FLSA)	Deregulatory	Proposed Rule	n/a
2130-AC46	Department of Transportation	Passenger Equipment Safety Standards Amendments	Deregulatory	Final Rule	-4,600*

November 2018					
<u>RIN</u>	<u>AGENCY</u>	<u>TITLE</u>	<u>EO 13771 DESIGNATION</u>	<u>ACTION</u>	<u>POTENTIAL COSTS/SAVINGS (\$M)</u>
0581-AD54	Department of Agriculture	National Bioengineered Food Disclosure Standard	Other	Final Rule	5,900
0938-AS59	Department of Health and Human Services	Revisions to Requirements for Discharge Planning for Hospitals, Critical Access Hospitals, and Home Health Agencies	Regulatory	Final Rule	1,900
0938-AT28	Department of Health and Human Services	CY 2019 Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System, Quality Incentive Program, Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)	Regulatory	Final Rule	9
0938-AT29	Department of Health and Human Services	CY 2019 Home Health Prospective Payment System Rate Update and CY 2020 Case-Mix Adjustment Methodology Refinements; Value-Based Purchasing Model; Quality Reporting Requirements	Other	Final Rule	-60
0938-AT30	Department of Health and Human Services	CY 2019 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates	Deregulatory	Final Rule	-51.4
0938-AT31	Department of Health and Human Services	CY 2019 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B and the Quality Payment Program	Regulatory	Final Rule	3,319

0945-AA10	Department of Health and Human Services	Protecting Statutory Conscience Rights in Health Care; Delegations of Authority	Regulatory	Final Rule	814.3
0910-AF43	Department of Health and Human Services	Sunscreen Drug Products For Over-The-Counter-Human Use; Tentative Final Monograph	Regulatory	Proposed Rule	n/a
0910-AH04	Department of Health and Human Services	Mammography Quality Standards Act; Amendments to Part 900 Regulations	Regulatory	Proposed Rule	n/a
0938-AT36	Department of Health and Human Services	Requirements for Long-Term Care Facilities: Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction	Deregulatory	Proposed Rule	n/a
0938-AT40	Department of Health and Human Services	Medicaid and CHIP Managed Care	Other	Proposed Rule	n/a
0938-AT55	Department of Health and Human Services	Proficiency Testing Regulations Related to Analytes and Acceptable Performance	Regulatory	Proposed Rule	n/a
0955-AA01	Department of Health and Human Services	21 <sup>st</sup> Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program	Regulatory	Proposed Rule	n/a
1652-AA55	Department of Homeland Security	Security Training for Surface Transportation Employees	Other	Final Rule	157.3
1615-AC15	Department of Homeland Security	Removing H-4 Dependent Spouses from the Class of Aliens Eligible for Employment Authorization	Other	Proposed Rule	n/a
1545-BP03	Department of the Treasury	Capital Gains Invested in Opportunity Zones	Regulatory	Proposed Rule	n/a

December 2018					
<u>RIN</u>	<u>AGENCY</u>	<u>TITLE</u>	<u>EO 13771 DESIGNATION</u>	<u>ACTION</u>	<u>POTENTIAL COSTS/SAVINGS (\$M)</u>
1840-AD31	Department of Education	Program Integrity; Gainful Employment	Other	Final Rule	-209

0938-AT38	Department of Health and Human Services	Adoption of Standards for Health Care Attachments Transactions, Acknowledgments Transactions, Electronic Signatures, and Modification to Referral Certification and Authorization Standard	Other	Proposed Rule	n/a
0938-AT79	Department of Health and Human Services	Interoperability and Patient Access	Regulatory	Proposed Rule	n/a
1651-AB06	Department of Homeland Security	Western Hemisphere Travel Initiative (WHTI)—Noncompliant Traveler Fee	Regulatory	Proposed Rule	n/a
1140-AA52	Department of Justice	Bump-Stock-Type Devices	Regulatory	Final Rule	298.1
1014-AA39	Department of the Interior	Revisions to the Blowout Preventer Systems and Well Control Rule	Deregulatory	Final Rule	-946.2
1515-AE23	Department of the Treasury	Modernized Drawback	Other	Final Rule	58.4
1545-BO69	Department of the Treasury	Guidance Under Section 199A (Anti-Abuse)	Regulatory	Proposed Rule	n/a
1545-BO70	Department of the Treasury	Guidance Under Section 199A for Cooperatives	Regulatory	Proposed Rule	n/a
1545-BO71	Department of the Treasury	Guidance Under Section 199A	Regulatory	Proposed Rule	1,317
1545-BP04	Department of the Treasury	Qualified Opportunity Funds	Regulatory	Proposed Rule	n/a
2132-AB30	Department of Transportation	Protecting Transit Operators From the Risk of Assaults	Regulatory	Proposed Rule	n/a
2900-AQ42	Department of Veterans Affairs	Economic Growth, Regulatory Relief, and Consumer Protection Act	Other	Final Rule	n/a

January 2019					
<u>RIN</u>	<u>AGENCY</u>	<u>TITLE</u>	<u>EO 13771 DESIGNATION</u>	<u>ACTION</u>	<u>POTENTIAL COSTS/SAVINGS (\$M)</u>
0584-AE62	Department of Agriculture	Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)	Regulatory	Proposed Rule	n/a
1840-AD26	Department of Education	Institutional Accountability	Other	Final Rule	1.2

1904-AD34	Department of Energy	Energy Conservation Standards for Commercial Water Heating Equipment	Regulatory	Final Rule	2,500
1904-AD20	Department of Energy	Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces	Regulatory	Proposed Rule	9,200
0938-AT66	Department of Health and Human Services	Patient Protection and Affordable Care Act; Adoption of the Methodology for the HHS-Operated Permanent Risk Adjustment Program for the 2018 Benefit Year Proposed Rule	Other	Final Rule	n/a
1082-AA01	Department of the Interior	Revisions to the Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf	Deregulatory	Proposed Rule	-2,050*
1506-AB01	Department of the Treasury	Financial Crimes Enforcement Network: Cross-Border Electronic Transmittals of Funds	Regulatory	Proposed Rule	n/a
2137-AF06	Department of Transportation	Pipeline Safety: Amendments to Parts 192 and 195 to Require Valve Installation and Minimum Rupture Detection Standards	Regulatory	Proposed Rule	n/a
2900-AQ26	Department of Veterans Affairs	VA Claims and Appeals Modernization	Deregulatory	Final Rule	-6.3
2060-AU28	Environmental Protection Agency	Renewable Fuel Standard Program Modification of Applicable Volumes, 2020 Standards, and Other Changes	Regulatory	Proposed Rule	n/a

February 2019					
<u>RIN</u>	<u>AGENCY</u>	<u>TITLE</u>	<u>EO 13771 DESIGNATION</u>	<u>ACTION</u>	<u>POTENTIAL COSTS/SAVINGS (\$M)</u>
1904-AD15	Department of Energy	Energy Conservation Standards for Residential Conventional Cooking Products	Regulatory	Proposed Rule	800
0970-AC73	Department of Health and Human Services	Head Start Service Duration Requirements	Deregulatory	Proposed Rule	n/a
1653-AA77	Department of Homeland Security	Visa Security Program Fee	Other	Proposed Rule	n/a

2900-AQ47	Department of Veterans Affairs	Veterans Community Walk-in Care	Other	Proposed Rule	n/a
-----------	--------------------------------	---------------------------------	-------	---------------	-----

#### March 2019

<u>RIN</u>	<u>AGENCY</u>	<u>TITLE</u>	<u>EO 13771 DESIGNATION</u>	<u>ACTION</u>	<u>POTENTIAL COSTS/SAVINGS (\$M)</u>
1904-AC11	Department of Energy	Energy Conservation Standards for Manufactured Housing	Regulatory	Proposed Rule	4,100
0938-AS84	Department of Health and Human Services	Program Integrity Enhancements to the Provider Enrollment Process	Regulatory	Final Rule	819.7
0930-AA32	Department of Health and Human Services	Coordinating Care and Information Sharing in the Treatment of Substance Use Disorders	Deregulatory	Proposed Rule	n/a
0938-AT88	Department of Health and Human Services	Medicare Coverage of Innovative Technologies	Other	Proposed Rule	n/a
2137-AE72	Department of Transportation	Pipeline Safety: Safety of Gas Transmission Pipelines, MAOP Reconfirmation, Expansion of Assessment Requirements and Other Related Amendments	Regulatory	Final Rule	711
2060-AT55	Environmental Protection Agency	Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units	Deregulatory	Final Rule	-51,600
2060-AT67	Environmental Protection Agency	Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program	Regulatory	Final Rule	-6,400

#### April 2019

<u>RIN</u>	<u>AGENCY</u>	<u>TITLE</u>	<u>EO 13771 DESIGNATION</u>	<u>ACTION</u>	<u>POTENTIAL COSTS/SAVINGS (\$M)</u>
0910-AI08	Department of Health and Human Services	Institutional Review Boards; Cooperative Research	Deregulatory	Proposed Rule	n/a

0938-AT67	Department of Health and Human Services	FY 2020 Inpatient Rehabilitation Facility (IRF) Prospective Payment System Rate Update and Quality Reporting Requirements	Other	Proposed Rule	n/a
0938-AT71	Department of Health and Human Services	FY 2020 Hospice Wage Index, Payment Rate Update, and Quality Reporting Requirements	Other	Proposed Rule	n/a
0938-AT73	Department of Health and Human Services	Hospital Inpatient Prospective Payment System for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and FY 2020 Rates	Other	Proposed Rule	n/a
0938-AT75	Department of Health and Human Services	FY 2020 Skilled Nursing Facility (SNFs) Prospective Payment System Rate Update and Quality Reporting Requirements	Other	Proposed Rule	n/a
1545-BO97	Department of the Treasury	MEPs and the Unified Plan Rule	Regulatory	Proposed Rule	n/a

#### May 2019

<u>RIN</u>	<u>AGENCY</u>	<u>TITLE</u>	<u>EO 13771 DESIGNATION</u>	<u>ACTION</u>	<u>POTENTIAL COSTS/SAVINGS (\$M)</u>
1545-BO99	Department of the Treasury	Section 4960 Excise Tax on Tax-Exempt Organization Compensation	Other	Proposed Rule	n/a
2127-AL37	Department of Transportation	Rear Seat Belt Reminder System	Regulatory	Proposed Rule	n/a
2900-AQ45	Department of Veterans Affairs	Veterans Care Agreements	Other	Interim Final Rule	n/a
2900-AQ46	Department of Veterans Affairs	Veterans Community Care Program	Other	Interim Final Rule	n/a

#### June 2019

<u>RIN</u>	<u>AGENCY</u>	<u>TITLE</u>	<u>EO 13771 DESIGNATION</u>	<u>ACTION</u>	<u>POTENTIAL COSTS/SAVINGS (\$M)</u>
1840-AD36	Department of Education	State Authorization and Related Issues	Other	Proposed Rule	n/a
1840-AD37	Department of Education	Accreditation and Related Issues	Other	Proposed Rule	n/a

0938-AS21	Department of Health and Human Services	Hospital and Critical Access Hospital (CAH) Changes to Promote Innovation, Flexibility, and Improvement in Patient Care	Regulatory	Final Rule	5,700
0938-AT68	Department of Health and Human Services	CY 2020 Home Health Prospective Payment System Rate Update and Quality Reporting Requirements	Other	Proposed Rule	n/a
0938-AT70	Department of Health and Human Services	CY 2020 Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System, Quality Incentive Program, Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)	Other	Proposed Rule	n/a
0938-AT72	Department of Health and Human Services	CY 2020 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B	Other	Proposed Rule	n/a
0938-AT74	Department of Health and Human Services	CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates	Other	Proposed Rule	n/a
1515-AE03	Department of the Treasury	Automated Commercial Environment (ACE) Required for Electronic Entry/Entry Summary (Cargo Release and Related Entry) Filings	Deregulatory	Final Rule	n/a
2120-AK77	Department of Transportation	Requirements to File Notice of Construction of Meteorological Evaluation Towers and Other Renewable Energy Projects	Regulatory	Proposed Rule	n/a

September 2019					
<u>RIN</u>	<u>AGENCY</u>	<u>TITLE</u>	<u>EO 13771 DESIGNATION</u>	<u>ACTION</u>	<u>POTENTIAL COSTS/SAVINGS (\$M)</u>
0938-AT85	Department of Health and Human Services	Miscellaneous Medicare Secondary Payer Clarifications and Updates	Regulatory	Proposed Rule	n/a
1545-BO18	Department of the Treasury	Treatment of Certain Interests in Corporations as Stock or Indebtedness	Deregulatory	Proposed Rule	n/a

2127-AK95	Department of Transportation	Establish Side Impact Performance Requirements for Child Restraint Systems (MAP-21)	Regulatory	Final Rule	3.7
-----------	------------------------------	---	------------	------------	-----

## AMBIGUOUS RULEMAKINGS

There are also a handful of rulemaking entries within the scope of analysis for which it is difficult to discern their near-term impact (at least based strictly upon the Unified Agenda’s projections).

<u>RIN</u>	<u>AGENCY</u>	<u>TITLE</u>	<u>EO 13771 DESIGNATION</u>	<u>ACTION</u>	<u>TIME</u>
2127-AL76	Department of Transportation	The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks	Deregulatory	Analyzing Comments	Nov 2018
1601-AA52	Department of Homeland Security	Ammonium Nitrate Security Program	Other	Notice of Availability	February 2019
0938-AT45	Department of Health and Human Services	Medicare Shared Savings Program; Accountable Care Organizations (CMS-1701-F)	Deregulatory	Final Rule	August 2021
0938-AT23	Department of Health and Human Services	Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction (CMS-3346-F)	Deregulatory	Final Rule	September 2021

The first entry, the “SAFE Rule,” lists its next action merely as “Analyzing Comments.” The [proposed rule](#) was published this past August and includes total possible estimated savings in excess of half a trillion dollars. In fact, the deregulatory measure’s effect is so monumental that the administration [notes](#) that it may be best to consider its impact outside the scope of the regulatory budget. The administration also notes that it anticipates the rule’s final version will come in the next year, despite the Unified Agenda’s ambiguity.

The other three ambiguous rules are notable for their own uncertainties. The “Ammonium Nitrate Security Program” has a rulemaking history going back roughly a decade, and according to the Unified Agenda, the next action involving it is the release of “technical research, testing, and findings related to the feasibility of weaponizing commercially available products containing ammonium nitrate.” The pair of rulemakings from the Department of Health and Human Services (HHS) have a projected finish date in 2021. Given that HHS has a fiscal year (FY) 2019 goal of nearly \$9 billion in total savings and these are two [recently proposed](#) deregulatory measures, it would not be surprising to see these become final ahead of schedule.

## CONCLUSION

The Unified Agenda is hardly a set-in-stone schedule, but it can be helpful in determining the rough timeframe of rulemaking activity. The rules listed above include some of the administration’s most significant actions (e.g.

repeal of the Clean Power Plan). Coming out of FY 2018, this administration appears to be building upon its historic deregulatory trend with even more ambitious goals. The actions listed here will undoubtedly play a substantial part in agencies meeting – or exceeding – those goals.