



Insight

The Unified Agenda and Regulatory Reform

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EXECUTIVE SUMMARY

- Of the 2,399 active actions listed in the latest Unified Agenda of Regulatory and Deregulatory Actions, 514 are designated as deregulatory (21 percent) versus 163 designated regulatory (7 percent).
- Among agencies, the Department of Transportation is working on the most deregulatory actions, while the Department of Health and Human Services is working on the most regulatory actions.
- The Unified Agenda provides evidence the Trump Administration aims to continue instilling a deregulatory culture in executive agencies.

INTRODUCTION

The Fall 2018 [Unified Agenda of Regulatory and Deregulatory Actions](#), released by the Office of Information and Regulatory Affairs (OIRA) on October 17th, offers a snapshot of the federal government's current regulatory activity.

Administrations have issued Unified Agendas for decades, but since President Trump entered office in January 2017, the agenda has taken on a new role indicating the administration's regulatory reform efforts, as created by [Executive Order \(EO\) 13,771](#). This piece will focus mostly on the data available from the fall agenda to put that effort into context. The American Action Forum (AAF) covered the regulatory budget's role in that effort in a recent [Insight](#).

EO 13,771 DESIGNATIONS

EO 13,771 created a new layer of classification for items included in the Unified Agenda. Every active action included must be labeled with a designation under the executive order. Those designations, first articulated in a [2017 OIRA memorandum](#), are as follows:

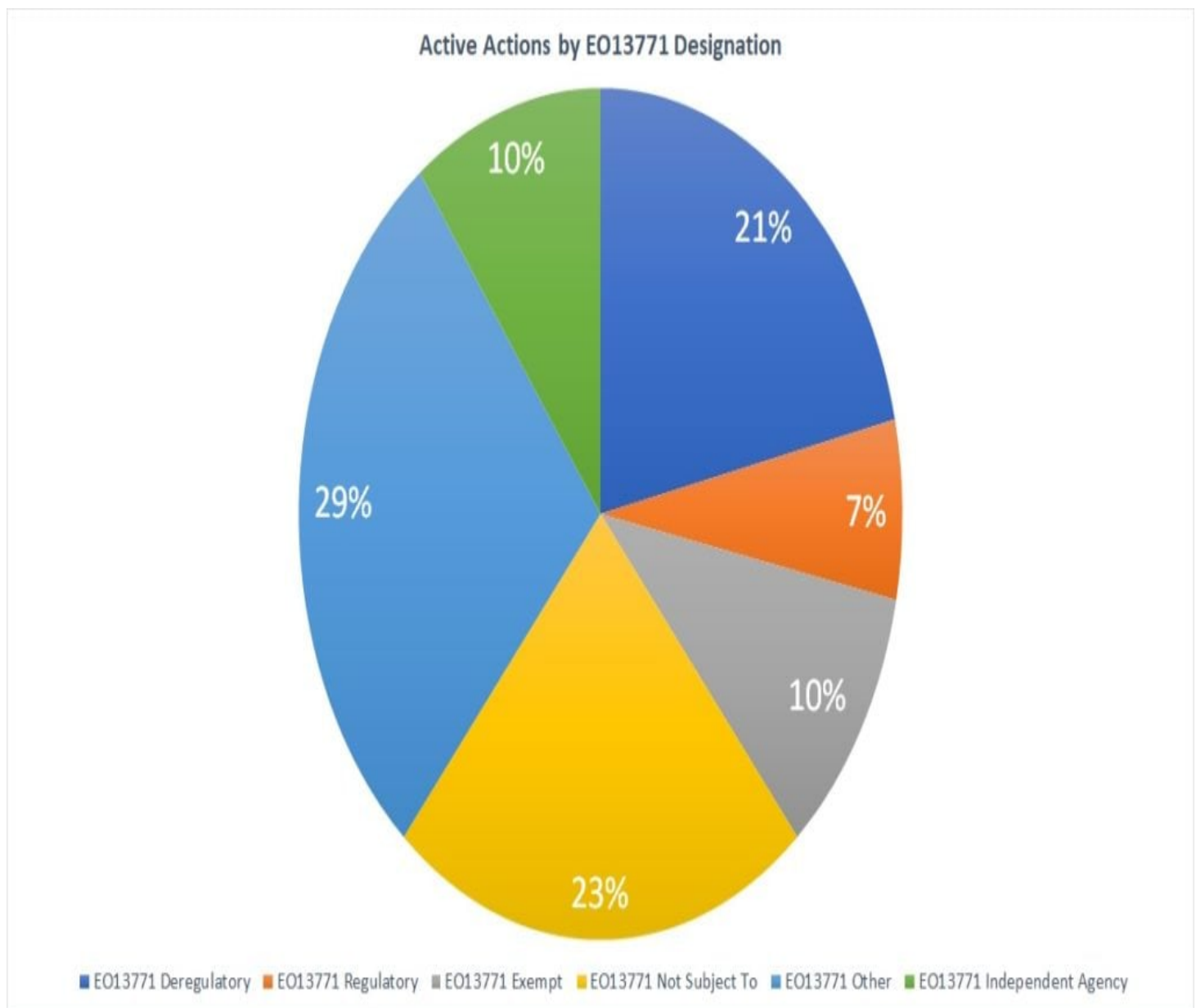
- Deregulatory – actions with total costs less than zero;
- Regulatory – actions that both impose costs greater than zero *and* qualify as “significant” under [Executive Order 12,866](#);
- Full or partially exempt – actions expected to be given a waiver from OIRA under one of four conditions: expressly exempt by text of EO 13,771, emergency need, required by statute, or generates *de minimis* costs;
- Not subject to, not significant – a proposed or final rule that is not a deregulatory or regulatory action under EO 13,771;
- Other – preliminary information does not allow for designation or circumstances reasonably preclude another designation; and

- Independent agency – action from an independent agency not covered by EO 13,771.

Of note, any action that is not designated as deregulatory is technically regulatory, unless it is designated as an independent agency action. These regulatory actions, however, may not be significant enough to rise to the definition of a “regulatory” designation under EO 13,771. Actions from independent agencies could be either deregulatory or regulatory in nature but not in designation, as costs or savings estimates are not reviewed by OIRA.

BREAKDOWN BY EO 13,771 DESIGNATION

The fall 2018 agenda contains 2,399 active actions, or actions listed in the prerule, proposed rule, or final rule stage. Deregulatory actions make up 21 percent. The largest share of the actions is designated as “other,” followed by actions “not subject to, or not significant.” The chart below shows the full break down.



Based on the data, the administration's emphasis on deregulation can seem overblown. After all, nearly four of every five actions are not deregulatory. But further context is necessary.

EO 13,771 did not aim to stop regulation. It sought to limit new, high-cost regulation while simultaneously inducing agencies to develop a deregulatory culture. When viewed in this light, the fall agenda shows continued progress. Deregulatory actions outnumber EO 13,771 regulatory actions three to one. As AAF's recent [Insight](#) on the regulatory budget showed, nearly all the net savings (costs minus savings) reported by OIRA in fiscal year 2018 came from these two types of designated actions. Therefore, deregulatory actions outweigh significant regulatory actions both in number and impact on the economy.

At the same time, the data shows regulation is not stopping entirely. Many of the other types of actions are either relatively minor in terms of costs or likely essential to the proper functioning of the federal government. Those actions exempt from the executive order typically deal with emergencies and national security issues or comply with statutes and judicial deadlines. Examples of nonsignificant regulatory actions in the latest Unified Agenda include rules to adjust civil penalties with inflation for several agencies, rules to prescribe Medicare rates for fiscal year 2020, and more than two dozen actions regarding Social Security implementation.

One unfortunate aspect of the Unified Agenda is that it is not set up to provide any detail on why actions are designated a particular way. Such explanations would be helpful for understanding why actions are given either the "exempt," "not subject to," or "other" designations, especially since these definitions make up the bulk of all regulatory activity (62 percent).

There are 683 actions designated as "other," the largest group of all actions. Using the designation's definition and the fact that 70 percent of these actions are in either the prerule or proposed rule stage, it is possible many of these will eventually receive a deregulatory or regulatory designation, but for now there is not enough information.

EO 13,771 DESIGNATIONS BY AGENCY

As in past Unified Agendas, the Department of Transportation's (DOT) agenda contains the most activity designated as deregulatory under EO 13,771. The activity comes from across the department's many agencies responsible for the nation's transportation and infrastructure. DOT's 108 deregulatory actions are 35 more than the number from the second-highest department, Health and Human Services (HHS). The Department of the Interior, the Department of Commerce, and Environmental Protection Agency (EPA) round out the top five. The 10 departments or agencies with the highest number of deregulatory actions are listed in the table below.

Department/Agency	EO13771 Deregulatory Actions
Transportation	108
Health & Human Services	73
Interior	53

Commerce	43
Environmental Protection Agency	38
Treasury	35
Agriculture	32
Labor	31
Homeland Security	19
Energy	19

On the regulatory side of the ledger, HHS switches places with DOT. The Department of the Treasury places third, with most of its activity coming from the Internal Revenue Service. EPA and the Department of Labor have the fourth- and fifth-highest number of regulatory actions, respectively. Comparing the tables below and above indicates that deregulatory actions substantially outnumber regulatory actions.

Department/Agency	EO13771 Regulatory Actions
Health & Human Services	43
Transportation	30
Treasury	20
Environmental Protection Agency	15
Labor	15
Commerce	8
Agriculture	6
Energy	6
Defense	6

**Listed in the Unified Agenda as its own entity, the FAR are government contracting actions issued jointly by the Department of Defense, NASA, and the General Services Administration.*

CONCLUSION

The Unified Agenda has taken on a new purpose in the wake of EO 13,771 by shedding further light on the Trump Administration's regulatory reform progress. While it provides a snapshot of the current state of federal rulemaking, it does have some limitations, as it is not a firm schedule of regulatory activity and does not explain why regulations are categorized a specific way.

What it does show is revealing, however. The data in the latest issue show the administration is still firmly intent on establishing a deregulatory culture within executive agencies, while limiting new, high-cost regulatory actions.