Research

Assessing the FY 2020 Regulatory Budget at the Midway Point

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EXECUTIVE SUMMARY

- A review of the 91 federal rules subject to the regulatory budget that were finalized between October 1, 2019, and March 31, 2020, shows that covered agencies have saved a net present value of $195.9 billion.
- The totality of the savings comes from the recently finalized Safer, Affordable Fuel-Efficient Vehicles rule, which has an estimated savings of $199.5 billion.
- The agencies with the most savings finalized, by a wide margin, are the Environmental Protection Agency and the Department of Transportation, while the agencies with the most costs finalized are the Department of Health and Human Services and the Department of Labor.
- While the administration will exceed its goal of $51.6 billion in budgeted savings at the end of the regulatory budget year on September 30, the federal government's coronavirus response could alter the scope of regulatory and deregulatory activity during the rest of the year.

INTRODUCTION

Amid the uncertainty of the coronavirus pandemic, the federal government hit the midway point of its fiscal year (FY) on March 31, meaning the government is halfway through the Trump Administration's regulatory budget year. As it happens, the day was also significant to the FY 2020 regulatory budget for another reason – the administration finalized its single largest deregulatory measure. That one rule took the administration from being well off the pace needed to hit its year-long savings goal to exceeding it nearly four times over.

A review of federal rules since October 1, 2019, shows the administration will easily achieve its cumulative goal for FY 2020. An agency-by-agency review, however, finds that only half of those agencies expected to be net savers in FY 2020 are on pace to meet their budget target.

This study analyzes the 91 final actions tagged by the Office of Information and Regulatory Affairs (OIRA) as "Regulatory" or "Deregulatory" for the purposes of implementing Executive Order 13,771 – the order that put in place the regulatory budget – that were published in the Federal Register on or after October 1, 2019, or finalized through March 31, 2020.

ADMINISTRATION-WIDE PROGRESS REPORT

The Trump Administration established a target of $51.6 billion in net present value (NPV) savings for FY 2020, calculated using the agency's own estimate of its action. Through six months, agencies have finalized $195.9 billion in savings, meaning the administration will easily achieve its goal.

The FY 2020 target is very ambitious; it is more than the savings of the administration's first three years, combined. The reason for the lofty goal is the Safer Affordable Fuel-Efficient (SAFE) Vehicles rule: The rule, the NPV of which is split between the Environmental Protection Agency (EPA) and the Department of Transportation (DOT), was anticipated to have about $80 billion in total savings, based on the budget target of those agencies. When finalized on March 31, however, the agencies estimated NPV savings of $199.5 billion. The rule has nearly $190 billion more savings than the rule that previously was the most deregulatory by NPV.

If one sets aside the SAFE Vehicles rule's effects, the Trump Administration would remain short of NPV savings as FY 2020 hits the mid-point. Executive agencies have published 90 other final rules tagged as being either regulatory or deregulatory for the purposes of the regulatory budget. The cumulative NPV of those actions is $3.6 billion in costs. As far as the 2-for-1 component of the budget, the administration is well on track. Agencies have issued 69 deregulatory actions compared to 22 significant regulatory actions, a ratio of 3 to 1.

AGENCY-BY-AGENCY PROGRESS REPORT

According to the regulatory budget caps released by OIRA in the fall of 2019, eight of the 25 covered agencies were expected to realize NPV savings in FY 2020. To date, four are on pace to meet their target, or are at least halfway to their savings total. When it comes to the regulatory budget, however, one or two large actions tend to shift NPV substantially (as is obvious with the SAFE Vehicles rule), meaning that agencies have plenty of opportunity to make up savings deficits.

The table shows each agency's budget cap, FY to date (FYTD) NPV costs or savings, and covered actions. Actions that are split between agencies are shown as half values. Agencies included in the budget but that have yet to register an action are excluded.

Agency	FY20 Budget ($ millions)	FYTD NPV ($ millions)	Deregulatory Actions	Regulatory Actions
EPA	-40,000.0	-101,546.6	11	1
Transportation	-40,000.0	-100,273.3	9.5	2
Treasury	0.0	-684.5	2	2
Defense	-374.2	-671.4	0.5	0
Small Business Administration	-267.4	-175.4	4	2
Agriculture	0.0	-173.2	11	1
Housing and Urban Development	-327.4	-99.6	2	0
Homeland Security	35,230.2	-75.9	1.5	0
Commerce	0.0	-19.0	9	2
Energy	0.0	-8.0	1	0
General Services Administration	0.0	-0.7	1	0
Interior	-2,058.1	0.0	3	0
Justice	0.0	0.0	0	0

NASA	0.0	0.0	1	0
Social Security Administration	3,741.9	90.0	0	1
Federal Acquisition Regulation	0.0	170.6	1	1
State	0.0	205.5	1	1
Education	0.0	228.6	1	0
Labor	-5,706.4	750.6	3.5	2
Health and Human Services	-1,871.0	6,369.8	6	7

Total	**-51,632.4**	**-195,912.5**	**69**	**22**

Of the 20 agencies to register an action, 11 have so far published NPV savings, including six with targets of zero dollars or net costs.

EPA and DOT lead the way so far with more than $100 billion in NPV savings each. Aside from the SAFE Vehicles rule, EPA's biggest savings contributions come from its revised definition of Waters of the United States ($671 million, its share of $1.3 billion split with the Department of Defense) and making its Clean Air Act risk management program more performance-based ($617 million).

Other rules contributing to DOT's savings are a rule extending the compliance deadline for commercial truck driving training ($478 million) and a measure to provide a more flexible means to ensure safety standards for underground natural gas storage facilities ($157 million).

The Department of the Treasury has the third-most NPV savings so far despite having a zero-dollar target, with all of its savings due to the removal of Obama-era documentation requirements under Section 385 of the tax code ($685 million).

On the other side of the ledger, a surprise agency has thus far issued the most costs. The Department of Health and Human Services (HHS), which led all agencies in NPV savings in FYs 2018 and 2019, has published NPV costs of $6.4 billion, including three rules with more than $1 billion in costs. Those rules are a $2.6 billion action regarding the integrity of Affordable Care Act exchanges, a $2.4 billion Medicare and Medicaid rule on home health programs, and a $1 billion rule from the Food and Drug Administration requiring tobacco manufacturers to include graphic depictions of ailments on packages.

The Department of Labor (DOL) has so far issued the second-most NPV costs, despite having the third-highest savings target for FY 2020. It has issued $750 million in costs, mostly due to a rule enabling apprenticeships ($553 million) and a rule on joint employer status ($390 million). Of note, the latter is technically tagged as deregulatory since it produces unquantifiable savings from reduced litigation that outweigh the regulatory familiarization costs, according to DOL.

Four other regulatory budget divisions have published NPV costs to date: the Department of Education ($229 million), the Department of State ($206 million), the Federal Acquisition Regulations ($171 million), and the Social Security Administration ($90 million).

OUTLOOK FOR THE REST OF FY 2020

While the administration's ability to reach its goal for the FY 2020 regulatory budget is no longer in doubt thanks to the estimated economic impact of the SAFE Vehicles rule, an unforeseen phenomenon will play a role in the final numbers. The coronavirus pandemic has led many agencies to issue emergency deregulatory measures in an effort to help the federal response. Since these actions were on an emergency basis, no regard was taken to their regulatory budget impact when they were published. Once the crisis is over, OIRA may go back and review these measures to determine their estimated impacts.

The coronavirus may also impact previously planned rulemakings. A memorandum issued by the Office of Management and Budget on March 17 outlines several ways in which agencies should identify non-critical activities and direct those resources toward the response to the coronavirus. Time will tell what expected rulemakings, both regulatory and deregulatory, lose priority as the federal response continues.