



Research

The Trump Administration's Deregulatory Progress and Forecast

DAN BOSCH, DAN GOLDBECK | MAY 21, 2018

EXECUTIVE SUMMARY

- Covered rulemakings in the Unified Agenda have a current deregulatory-to-regulatory ratio of 3.75 to 1, exceeding the Trump Administration's goal of 2-to-1.
- Executive agencies have exceeded the Trump Administration's annualized savings target by \$517.4 million.
- Looking forward, executive agencies are on target to double their annualized savings goal of \$686.6 million.

INTRODUCTION

In releasing the [Spring 2018 Unified Agenda of Regulatory and Deregulatory Actions](#) on May 9th, the Trump Administration stated that the agenda demonstrated its “ongoing commitment to responsible regulatory reform and progress toward eliminating unnecessary regulatory burdens.”

Indeed, the Trump Administration is making substantial deregulatory progress, as [this initial review](#) published by the American Action Forum notes – both in terms of the number of rulemakings and the estimated costs and savings included in published final rules.

While there are 2,226 active rulemakings currently underway at federal agencies, this study focuses on those rules that have received a designation under [Executive Order \(EO\) 13,771](#). That order requires executive agencies to reduce regulatory burden and meet cost savings targets by using deregulatory actions to cancel out costs of new, significant regulatory actions.

According to the Unified Agenda, 499 regulations are designated as deregulatory while 133 are regulatory and significant enough to be covered by EO 13,771. The ratio of 3.75 to 1 exceeds the order's goal of 2 to 1.

AGENCY BY AGENCY EO 13,771 RULEMAKINGS

The table below breaks down the 499 deregulatory rulemakings and 133 regulatory rulemakings by agency.

Agency	Deregulatory Actions	Regulatory Actions
Department of Transportation (DOT)	110	30

Department of Health and Human Services (HHS)	61	22
Department of the Interior (Interior)	46	0
Department of Agriculture (USDA)	43	7
Environmental Protection Agency (EPA)	42	12
Department of Commerce (Commerce)	38	5
Education Department (ED)	25	0
Department of Labor (Labor)	23	12
Department of Homeland Security (DHS)	20	3
Department of the Treasury (Treasury)	20	20
Department of Energy (Energy)	17	4
Department of Defense (Defense)	16	7
Department of Veterans Affairs (VA)	9	1
Department of Justice (Justice)	7	2
Department of Housing and Urban Development (HUD)	6	2
State Department (State)	6	0
Agency for International Development (USAID)	3	1
Federal Acquisition Regulation (FAR)	3	2
Office of Personnel Management (OPM)	2	0
General Services Administration (GSA)	1	0
Office of Management and Budget (OMB)	1	0
Small Business Administration (SBA)	0	3

The Department of Transportation (DOT) tops the list of active deregulatory and regulatory actions, as it did in our review of the [fall 2017 Unified Agenda](#). However, its totals did not remain static. The department increased its number of planned deregulatory actions by 27 and decreased its planned regulatory actions by 21.

The Department of Health and Human Services (HHS) remained second in deregulatory and regulatory actions. It is planning seven more deregulatory actions than in the fall and one less regulatory action.

The Department of the Interior broke a tie for third with the Department of Agriculture by adding three new deregulatory actions. The Department of the Treasury plans the third-most regulatory actions.

To get a better sense of why the numbers for some agencies changed from the fall 2017 agenda, AAF analyzed the active actions of the DOT, since that agency had the most EO 13,771 actions. Forty of the active deregulatory actions in the new agenda were not listed as such in the fall. Of these, 31 appear in the Unified Agenda for the first time, five were on the long-term actions list, three were designated as regulatory actions previously, and one had no designation.

On the regulatory side of the ledger, three actions are new to the active list. Two were previously designated exempt from EO 13,771 under the “other” exemption and one was previously designated as not significant. Twenty-four actions that were planned in the fall 2017 agenda, however, no longer appear as active. Of these, 12 were reclassified from regulatory to the “other” category, three were reclassified to long-term actions, three were reclassified as deregulatory, three were reclassified as fully or partially exempt from EO 13,771, two were completed, and one was reclassified as not significant. The likely reason for all these reclassifications is that further analysis, either by the agency or the Office of Information and Regulatory Affairs (OIRA), produced some sort of divergent conclusion.

AGENCY DEREGULATORY PROGRESS

While the fall 2017 Unified Agenda provided the [regulatory budget framework](#) for agencies during Fiscal Year (FY) 2018 (ending on September 30, 2018), the recent agenda merely updated the list on rulemakings currently underway.

To provide a look at how agencies are fairing at reaching their budget targets so far, this study analyzes the 41 final rules published in the Federal Register (through May 11) that were designated as regulatory or deregulatory under EO 13,771 and included estimated costs or cost savings. The results of this analysis appear in the table below. Agencies in red have not met their budgetary goal yet, while agencies in green have met or exceeded it.

Agency	FY2018 Budget (Annualized Costs/Savings \$millions)	Year to Date (\$millions)	Difference (\$millions)
Interior	-196	-38.6	-157.4
Labor	-137	-324.3	187.3
Energy	-80	0.0	-80.0
Defense	-70.9	-2.6	-68.3
USDA	-56	-87.8	31.8
EPA	-40	-62.2	22.2
DOT	-35	-166.1	131.1
HUD	-29	-31.2	2.2
HHS	-28.7	-316.3	287.6
SBA	-3.6	0.0	-3.6
ED	-3	-18.7	15.7
VA	-2.4	0.0	-2.4

Justice	-2	-156.0	154.0
USAID	-1.2	0.0	-1.2
State	-1.1	0.0	-1.1
Commerce	-0.7	-0.1	-0.6
NASA	0	-0.1	0.1
GSA	0	-0.1	0.1
DHS	0	0.0	0.0
FAR	0	0.0	0.0
OMB	0	0.0	0.0
Treasury	0	0.1	-0.1
Total	-686.6	-1,204.0	517.4

Executive agencies have thus far exceeded their cumulative target by a substantial margin. OIRA set a goal of \$686.6 million in annualized savings. So far, executive agencies have exceeded this goal by 75 percent.

As the table shows, 13 agencies have already met or exceeded their savings target – some by a substantial margin. The Department of Labor currently has published the most savings, primarily due to a delay of the effective date of its Fiduciary Rule (\$291.1 million). HHS comes in a close second on savings from two Medicare rules totaling \$511.5 million. Had HHS not implemented a Medicare rule that cost \$296 million, however, it would be far ahead of all other agencies. DOT and the Department of Justice are currently third and fourth, respectively.

Nine agencies still have some work left to do. The three agencies with the largest shortfalls currently are in the top four of budgeted savings targets: Interior, Energy, and Defense. According to [OIRA guidance](#), agencies that fail to meet their budget target in the current fiscal year must develop a plan to get into compliance, and explain why they failed to do so.

It is important to keep in mind that this analysis is just a snapshot of the present, and there is still plenty of time for agencies to publish rules with costs or savings. OIRA is nevertheless likely pleased with what has been accomplished so far.

REGULATORY BUDGET PROJECTION

The analysis above reveals the progress agencies have made individually over the past year in implementing EO 13,771. The Unified Agenda, however, is still primarily a prospective document that lays out the administration's plans for the near future. To that end, it shows a continuing deregulatory push that could result in cost savings of double their stated goal for FY 2018.

The table below includes general findings for what has happened to-date in FY 2018 and what may happen in its final months. For the prospective part of this analysis, AAF examined Unified Agenda entries in the Final Rule stage with either “Economically Significant” or “Other Significant” designations that agencies expected to act upon by September 2018.

All “regulatory” cost 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. These calculations show some potential, quantified impact. Some of these figures (from either proposed versions or past regulations marked for change) may not be exactly the same after they wind through the regulatory process.

	Regulatory Final Rules	Deregulatory Final Rules	Regulatory Costs (\$ M)	Deregulatory Savings (\$ M)	Net Totals (\$ M)
FY 2018 Through UA Release	5	36	307	-1,511	-1,204
Remaining FY 2018	11	10	296	-468	-172
Potential Total	16	46	603	-1,978	-1,376

COST/SAVING TOTALS MAY NOT MATCH EXACTLY DUE TO ROUNDING.

The most notable finding in this analysis is the potential net total of \$1.376 billion in projected savings. That amounts to almost exactly double the amount of the administration’s goal of \$686.6 million in annualized savings. The relevant agencies arrive at this figure largely on the heels of the progress they’ve already made. Although the next few months are projected to be net-deregulatory, they are not nearly as prodigious as those to-date. The sample included in the table above, however, merely includes those rules with a quantifiable estimate attached. As apparent earlier, there are many rules outside this sample that agencies expect to include in FY 2018’s regulatory budget, and further information regarding their effects may be forthcoming as they reach the final rule stage.

MAJOR RULE SCHEDULE

The following tables provide a chronological sample of major rules that have some attributable cost or cost-saving estimate in the current edition of the Unified Agenda. Rulemakings designated as deregulatory measures are italicized. 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).

As with the projections above, we included an either the relevant proposed rulemaking’s estimate or (in the case of some deregulatory actions) costs of the original regulation it addresses. Therefore, it includes the same caveat that some of the individual estimates may shift as these actions become finalized.

May 2018				
RIN	Agency	Title	Action Stage	Potential Cost/Savings (\$ M)
0910-AH92	HHS	<i>Food Labeling: Revision of the Nutrition and Supplement Facts Labels and Serving Sizes of Foods</i>	<i>Final (Completed)</i>	<i>-61</i>

0938-AT24	HHS	FY 2019 Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities	Proposed (Completed)	-186.88
0938-AT25	HHS	Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2019	Proposed (Completed)	-53.10
July 2018				
<u>RIN</u>	<u>Agency</u>	<u>Title</u>	<u>Action Stage</u>	<u>Potential Cost/Savings (\$ M)</u>
1004-AE53	DOI	Waste Prevention, Production Subject to Royalties, and Resource Conservation; Revision or Rescission of Certain Requirements	Final	-227
August 2018				
<u>RIN</u>	<u>Agency</u>	<u>Title</u>	<u>Action Stage</u>	<u>Potential Cost/Savings (\$ M)</u>
1235-AA21	DOL	Tip Regulations Under the Fair Labor Standards Act (FLSA)	Proposed	0.456 ^L
1601-AA34	DHS	Collection of Alien Biometric Data Upon Exit From the United States at Air and Sea Ports of Departure (Withdrawal)	Proposed	-366.9
September 2018				
<u>RIN</u>	<u>Agency</u>	<u>Title</u>	<u>Action Stage</u>	<u>Potential Cost/Savings (\$ M)</u>
0945-AA10	HHS	Protecting Statutory Conscience Rights in Health Care; Delegations of Authority	Final	168.1
1140-AA52	DOJ	Bump-Stock-Type Devices	Final	36.3
2130-AC46	DOT	Passenger Equipment Safety Standards Amendments	Final	-157.6
October 2018				
<u>RIN</u>	<u>Agency</u>	<u>Title</u>	<u>Action Stage</u>	<u>Potential Cost/Savings (\$ M)</u>
1904-AD34	DOE	Energy Conservation Standards for Commercial Water Heating Equipment	Final	144
2127-AK95	DOT	Establish Side Impact Performance Requirements for Child Restraint Systems	Final	3.7
1082-AA01	DOI	Revisions to the Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf	Proposed	-174
November 2018				
<u>RIN</u>	<u>Agency</u>	<u>Title</u>	<u>Action Stage</u>	<u>Potential Cost/Savings (\$ M)</u>

0938-AS59	HHS	Revisions to Requirements for Discharge Planning for Hospitals, Critical Access Hospitals, and Home Health Agencies	Final	420
December 2018				
<u>RIN</u>	<u>Agency</u>	<u>Title</u>	<u>Action Stage</u>	<u>Potential Cost/Savings (\$ M)</u>
2060-AT55	EPA	<i>Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units</i>	Final	-33,300
March 2019				
<u>RIN</u>	<u>Agency</u>	<u>Title</u>	<u>Action Stage</u>	<u>Potential Cost/Savings (\$ M)</u>
0938-AS84	HHS	Program Integrity Enhancements to the Provider Enrollment Process	Final	289.8
2137-AE72	DOT	Pipeline Safety: Safety of Gas Transmission Pipelines, MAOP Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments	Final	39.8
June 2019 and Beyond				
<u>RIN</u>	<u>Agency</u>	<u>Title</u>	<u>Action Stage</u>	<u>Potential Cost/Savings (\$ M)</u>
0938-AS21	HHS	Hospital and Critical Access Hospital (CAH) Changes to Promote Innovation, Flexibility, and Improvement in Patient Care	Final	998
2050-AG88	EPA	<i>Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residues From Electric Utilities: Amendments to the National Minimum Criteria (Phase 1)</i>	Final	-100
0910-AH14	HHS	General and Plastic Surgery Devices: Sunlamp Products	Final	107.2
0938-AT08	HHS	<i>Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2019</i>	Final (Completed)	-365.5

¹ THE ONLY QUANTIFIED ESTIMATE PROVIDED IN THE PROPOSED RULE WAS FOR “REGULATORY FAMILIARIZATION” COSTS. HOWEVER, DOL ANTICIPATES THE FINAL RULE TO BE PRIMARILY DEREGULATORY FOR THE PURPOSES OF EO 13,771.

CONCLUSION

The Unified Agenda’s release usually comes and goes with little fanfare, but it is still an illuminating document for discerning an administration’s regulatory – or deregulatory – priorities. This update is now the third from the Trump Administration, and its rulemaking record is becoming more fully formed. The administration is prioritizing deregulation, and it is set to double its goals of a two-for-one deregulatory-to-regulatory ratio and

\$686.6 million in net savings.