



Notes on “Reducing Regulation and Controlling Regulatory Costs” Executive Order
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Jan. 30, 2017

1. The executive order (EO) directs consideration of costs but not benefits of rules. There is no conceivable rational justification for such an approach. In fact, [using conservative accounting methodologies](#), the U.S. Offices of Information and Regulatory Affairs (OIRA) of the last two administrations – Republican and Democrat – found that benefits of their major rules consistently outdistanced costs by at least 2-1 and as much as 14-1 (depending on high- and low-end estimates). Benefits significantly outweigh costs for virtually every individual major rule.
2. The executive order instructs the director of the U.S. Office of Management and Budget (OMB) to standardize the measurement and estimate of regulatory costs, but we already know that these estimates dramatically overestimate future cost. (See discussion [here](#), beginning on page 29).
 - a. These estimates rely heavily on industry, which routinely exaggerates costs.
 - b. The estimates typically fail to account for technological dynamism, economies of scale and reduced costs over time.
 - c. Generally, costs do not continue in perpetuity, but are absorbed, often as one-time expenses. One sign of this is that industry generally does not complain about long-standing rules, only about future-oriented ones. (Note this fact creates special problems in satisfying the executive order’s command to offset costs – costs attributed to old rules diminish dramatically over time.)
3. The idea that two rules should be eliminated for each one adopted has no rational basis. Rules should be considered on their own merits. Existing rules were adopted through a deliberative notice-and-comment process, subject in many cases to challenging litigation. Absent a showing that they are no longer justified, there’s just no rationale for why they should be eliminated to clear the way for new ones.
4. Making it even harder for agencies to eliminate offsetting rules is the Obama administration’s regulatory lookback project, which pushed agencies to eliminate rules no longer serving a public interest purpose. As a result, easily voidable rules – of which there were not many -- have already been eliminated.

5. It is unclear if the EO applies to independent agencies. There is a single reference to “executive department[s] and agenc[ies]” (Section 2(a)).
6. For FY 2017, the EO establishes that net regulatory cost shall be zero. The EO will therefore capture all rules that have been frozen pursuant to the Priebus memorandum, likely including finalized rules not yet published in the Federal Register. It may capture finalized rules that have not yet been implemented. It may even capture rules finalized during the Obama administration in the current fiscal year.
7. For future years, the EO creates a fiscal cost budget, but does not set an amount. The fiscal cost budget may continue to be zero, it could conceivably be negative. That the director of OMB will create a fiscal cost budget for each agency underscores the irrationality of this move and the likely crippling effect it will have.
8. The executive order applies very broadly, not setting any minimum cost and applying to guidance documents adopted through notice-and-comment (Section 4). Since so much of the day-to-day business of government is carried out through rulemaking and guidance documents, this executive order will be paralyzing, unless and until the director of OMB grants broad exemptions under Section 4. Because there is no director yet in place, and no administrator for OIRA, this executive order if implemented by its terms will at minimum create short-term chaos.
9. Section 4(c) gives the director of OMB unbridled discretion to exempt regulations from the executive order, which is a pathway to exempting rules that benefit preferred corporations and industries, including potentially rules benefiting the Trump Organization.