

## REGULATIONS

### **Trump's 'interesting' order could be 'showpiece' — analysts**

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Supporters and opponents of President Trump's order on regulations are trying to figure out how it will work. Photos by Gage Skidmore (Trump) and U.S. EPA, courtesy of Flickr.

President Trump yesterday signed an executive order that combines two regulatory reform measures that have seldom been paired and, until now, have mostly been theoretical concepts in the United States.

The executive order combines a regulatory "pay-go" approach with a regulatory budget, said Sofie Miller, senior policy analyst at the George Washington University Regulatory Studies Center.

"It's interesting," Miller said. "Typically we don't think about doing those types of reforms at once."

The "pay-go" or "one in, two out" section of the order, would require agencies to slash two rules for every new one. The regulatory budget would allow the president to cap regulations at a certain dollar amount per year.

Trump's regulatory budget for 2017 is zero dollars. If agencies want to issue new rules, they would be required to offset the costs by axing old ones .

The executive order cannot override statutory demands, however. If an agency is required by law to issue a rule, the order cannot prevent it from doing so. For example, the National Ambient Air Quality Standards must be revisited every five years.

The mandates of the order will therefore be most applicable to discretionary rulemaking, or rules agencies voluntarily promulgate. Trump has made it clear, though, that he intends to scale back regulations and is not likely to direct discretionary regulating.

Stuart Shapiro, a former Office of Information and Regulatory Affairs employee who served under both Presidents Clinton and George W. Bush, said for this reason, the executive order may not have such a huge impact on the rulemaking process.

"The number of things that this is going to apply to is relatively small — not zero, but small," he said. "He promised it during the campaign, and he wants to be able to say that he did it."

Cary Coglianese, director of the Penn Program on Regulation at University of Pennsylvania Law School, noted that a future president could easily overturn the order on her or his first day in office.

"This may well be a nice showpiece at the end of the day for this administration," he said.

Coglianese said the order is also vague with the specifics of how the pay-go and regulatory budget would be implemented.

"There are a lot of details still to be filled in," he said. "I'm quite frankly no more sure what this will mean than I was two weeks ago."

The order does not stipulate whether all rules will be counted or only major or high-impact ones. It does not lay out how the costs of rules will be calculated. Nor does it delineate the retrospective review process.

The order also leaves a number of details to be filled in by the director of the Office of Management and Budget. Two Senate committees are slated to vote on Trump's pick, Rep. Mick Mulvaney (R-S.C.), tomorrow

The OMB director will have the authority to exempt rules as he sees fit. He will be in charge of directing agencies to conduct reviews, standardizing the mechanism by which regulatory costs are determined, decide which regulations will be included in the regulatory agenda and set the amount agencies can spend on rules each year.

Shapiro said the order could force agencies to do a better job reviewing old regulations, as they're supposed to do.

"On the good government side, and here's the optimist in me, maybe it does force us to pursue that with more rigor," he said.

Coglianese, on the other hand, said the order focuses too much on the cost of regulations without factoring in the benefits.

"It's important we don't increase public health risks while trying to implement executive orders aimed at reducing costs," he said. "This executive order is aimed at minimizing costs without giving any consideration, it appears, to maximizing benefits."

'As dumb as it gets'

Kieran Suckling, executive director of the Center for Biological Diversity, slammed the order, calling the policy "as dumb as it gets."

"How does this 'one-step-forward-two-steps-back' order work? So you'll protect my drinking water but only in exchange for allowing oil drilling in national parks and more lead in my paint?" he said in a statement.

Jim Tozzi, a longtime government employee who helped develop the regulatory budget idea during the Carter administration, said people are so focused on the "one in, two out" aspect of the order that they're missing the point.

"A regulatory budget sets a limit on the total cost of regulation that the EPA can impose," he said. "That's a huge change in the way the government operates."

**"The bottom line is we've been proposing this for 37 years," he said.**

Administrations have in fact flirted with the idea of a regulatory budget for years but have yet to try it out.

Tozzi said that going forward, OMB employees will set not just the fiscal budget but also a regulatory one. However, Congress approves the fiscal budget. Under the executive order, the regulatory budget would be set by the executive branch.

This, he said, may inspire Congress to take up legislation that would transfer that power to lawmakers. Sen. Mike Lee (R-Utah) has already introduced such a bill.

"If you pass regulatory budget law, it will move a huge amount of power that the executive has taken back to the Congress," Tozzi said.

Such a move would also codify regulatory budgeting, dramatically altering the regulatory system.

**"It would be the most major thing since [President] Nixon issued the Quality of Life Review. All environmental health and safety regulations have to go through OMB for review," he said. "That was huge because it was the first time a president took control of the rulemaking process."**

Clyde Wayne Crews, the Competitive Enterprise Institute's vice president for policy, stressed the importance of working with Congress.

"It is important for the executive branch to also work with Congress to ensure this effort is long-lasting and that it works in conjunction with other regulatory reforms," he said in a statement.

"Federal agencies in 2016 issued 18 rules and regulations for every law Congress passed, a daunting statistic given how massive America's regulatory state is already."

While Crews said the "pay-go" plan is a bipartisan one, environmentalists have slammed the move.

"Trump's executive order is a drastic reversal of how creating our environmental and other safeguards currently works, potentially leaving our communities vulnerable to dire health and environmental problems if agencies like the Environmental Protection Agency and Centers for Disease Control can't do their jobs," Earthjustice Vice President of Policy & Legislation Martin Hayden said in a statement.

"The order will also spark chaos in the federal government in the months ahead as agencies work to create regulations they are legally mandated to produce by bedrock laws like the Clean Air Act," Hayden said.

Trump's order directs agencies to repeal regulations pursuant to the Administrative Procedure Act, which means rules must undergo a potentially lengthy review before they can be repealed.

Sen. Jim Inhofe (R-Okla.) said he didn't think it would take too long to repeal the Water of the U.S. rule or a few others he has in mind.

"If it does take a long time, it's worth it because we got to get rid of the overregulation," he told reporters. "I spent 20 years developing, and the biggest problem I had was overregulation by the EPA."

Reporter Geof Koss contributed.