



September 2021

FEDERAL RULEMAKING

Deregulatory Executive Orders Did Not Substantially Change Selected Agencies' Processes or Procedures

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A Century of Non-Partisan Fact-Based Work

GAO Highlights

Highlights of [GAO-21-104305](#), a report to congressional requesters

Why GAO Did This Study

From January 2017, until they were revoked in 2021, three EOs required agencies to reduce the total number of federal regulations and regulatory costs and burden. (1) EO 13771 required agencies to eliminate two deregulatory actions for every new regulatory action; (2) EO 13777 established regulatory reform task forces within the agencies, and (3) EO 13924 directed agencies to identify regulatory actions that may inhibit economic recovery in response to the COVID-19 pandemic.

GAO was asked to review these deregulatory EOs to better understand the processes and procedures agencies used to implement them. This report examines (1) selected agencies' processes and procedures to implement the EOs and achieve and report on their goals; (2) their alternatives to rulemaking used in response to the EOs; and (3) how enforcement activities changed in response to EO 13771.

GAO selected five agencies that collectively implemented more than half of all actions under the deregulatory EOs—Commerce, DHS, Interior, DOT, and EPA—and reviewed their regulatory policies and procedures, and interviewed relevant agency officials. GAO reviewed OIRA's reports and interviewed agency officials. GAO also identified 20 nonfederal entities and interviewed a nongeneralizable selection of representatives from six that reflected a mix of industry groups, environmental policy advocates, and trade organizations.

View [GAO-21-104305](#). For more information, contact Yvonne D. Jones at (202) 512-6806 or jonesy@gao.gov.

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What GAO Found

GAO found that the five selected agencies—the Departments of Commerce, Homeland Security (DHS), the Interior, and Transportation (DOT), and the Environmental Protection Agency (EPA)—implemented deregulatory executive order (EO) requirements, most with limited changes to their existing regulatory processes and procedures. Generally, these EOs required agencies to reduce the total number of regulations and overall regulatory costs. The Office of Information and Regulatory Affairs (OIRA) reported that collectively the federal government met the two primary goals of the EOs by (1) implementing two deregulatory actions for every new regulatory action, and (2) achieving net cost savings (see table). Four of the five selected agencies reported having regulatory cost savings. DHS received a regulatory budget allowance from OIRA for this requirement due to DHS's need to implement priority immigration regulations. However, GAO's analysis of OIRA's data showed the reporting of agencies' deregulatory actions could be overstated partly because OIRA's overall reporting compared all agency deregulatory actions to only significant regulatory actions. A significant regulatory action is one that results in a \$100 million or greater effect on the economy in any given year, or meets certain other criteria.

The Office of Information and Regulatory Affairs' (OIRA) Reported Actions, Projected Costs, and Projected Cost-Savings by Selected Agencies, Fiscal Years 2017-2020

Dollars are net present value in millions

Selected agencies	Non-significant deregulatory actions	Significant deregulatory actions	Significant regulatory actions	Projected Costs and (cost savings)
Commerce	65	4	4	(\$1,144)
Homeland Security	26	8	8	\$37,153
Interior	41	10	0	(\$6,254)
Transportation	47	16	6	(\$100,484)
Environmental Protection Agency	47	22	14	(\$89,196)
Selected agencies' total	226	60	32	(\$159,925)

Source: GAO analysis of OIRA and reginfo.gov data. | GAO-21-104305

Note: OIRA allocated an increase in DHS's regulatory budget to implement priority immigration regulations.

The Office of Management and Budget's guidance implementing EO 13771 allowed agencies to include alternative actions as a means of achieving deregulatory goals. Alternative actions are those that were not promulgated through the notice-and-comment rulemaking process, such as guidance documents, information collection requests, and other directives. GAO found that of the 286 deregulatory actions reported by the five selected agencies, at least 28 (or about 10 percent) were alternative actions.

GAO also found that the five selected agencies did not identify or implement changes to their regulatory enforcement activities in response to EO 13771. For example, officials from some agencies told GAO that any changes in regulatory enforcement activities that occurred while the EO was in effect were not in response to, nor a consequence of, the EO.

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Abbreviations

APA	Administrative Procedure Act
Commerce	Department of Commerce
COVID-19	Coronavirus Disease 2019
DHS	Department of Homeland Security
DOT	Department of Transportation
EO	Executive Order
EPA	Environmental Protection Agency
FY	Fiscal Year
ICR	Information Collection Request
Interior	Department of the Interior
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
RIN	Regulation Identifier Number
ROCIS	Regulatory Information Service Center/Office of Information and Regulatory Affairs Consolidated Information System
RRTF	Regulatory Reform Task Force
TSA	Transportation Security Administration
USPTO	United States Patent and Trademark Office

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September 30, 2021

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
House of Representatives

The Honorable Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform
House of Representatives

Federal regulations are one of many tools that agencies use to implement laws aimed at achieving national goals, such as improving the economy and protecting the health and safety of the public and the environment. While regulations (also called rules) can generate substantial benefits to society, they can also have costs to industry, government, or the public.¹ Over time, without careful oversight, existing regulations can prove to be less effective than expected in achieving their intended goals, become outdated, or create unnecessary burdens. Congress and administrations have implemented many procedural and analytical requirements on the regulatory process, including periodic retrospective reviews, because of the substantial costs and benefits of regulations.²

Executive Order (EO) 13771, issued on January 30, 2017, established a goal of reducing the total number of regulations and regulatory costs and burden, which we refer to as deregulation. This EO required executive agencies to identify at least two existing rules to be repealed whenever they proposed for notice and comment or otherwise promulgated a new

¹Rules are legally binding requirements, and are established by agencies pursuant to statutory authority. The *Code of Federal Regulations* annual edition is the codification of the general and permanent rules published in the *Federal Register* by agencies of the federal government. We use the terms regulations, rules, and actions interchangeably in this report.

²There is no one standard term or definition for the variety of activities that might be considered retrospective regulatory reviews. In different contexts, these have been referred to as look-backs, *ex post* (post regulation) studies, retrospective studies, validation studies, or simply reviews. To identify opportunities to reduce regulatory costs and make necessary updates to existing regulations, as appropriate, agencies are required to use retrospective analysis to periodically review and assess the effectiveness and performance of existing regulations.

rule, unless prohibited by law.³ EO 13777, issued on February 24, 2017, also focused on deregulation and established leadership roles, oversight mechanisms, and performance reporting requirements.⁴ In response to the Coronavirus Disease 2019 (COVID-19) pandemic, EO 13924, issued on May 19, 2020, directed agencies to identify regulatory standards that may inhibit economic recovery and take appropriate action, including to rescind, modify, waive, or provide exemptions from those requirements.⁵

The Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) assessed agencies' EO 13771 regulatory reform progress, including the number of deregulatory and regulatory actions finalized each fiscal year (FY), and estimated cost savings.

You asked us to review recent deregulatory actions to better understand the processes and procedures agencies used to implement EOs 13771, 13777, and 13924. This report examines (1) the policies, procedures, and guidance selected agencies used to implement EOs 13771, 13777, and 13924, and achieve and report on the EOs' intended goals; (2) the alternatives to rulemaking used by selected agencies in response to the EOs; and (3) how enforcement activities at selected agencies changed as a result of EO 13771.

For this review, we selected the five executive branch agencies that collectively reported implementing the majority of EO 13771 deregulatory

³Exec. Order. No. 13771, *Reducing Regulation and Controlling Regulatory Costs*, 82 Fed. Reg. 9339 (Feb. 3, 2017). According to guidance from the Office of Management and Budget, for the purposes of EO 13771, agency means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch, subject to limited exceptions, but does not include independent regulatory agencies. 44 U.S.C. § 3502(1), (5).

⁴Exec. Order. No. 13777, *Enforcing the Regulatory Reform Agenda*, 82 Fed. Reg. 12285 (Mar. 1, 2017). The Office of Management and Budget defines "deregulatory action" in its EO 13771 implementing guidance as an action that has been finalized and has total costs less than zero. The implementing guidance also includes examples of actions that fall under the definition of "deregulatory action." Office of Management and Budget, *Guidance Implementing Executive Order 13771, Titled "Reducing Regulation and Controlling Regulatory Costs,"* M-17-21 (Washington, D.C.: 2017).

⁵Exec. Order. No. 13924, *Regulatory Relief To Support Economic Recovery*, 85 Fed. Reg. 31353 (May 22, 2020).

actions from FY 2017 through FY 2019.⁶ Selected agencies include the Departments of Commerce (Commerce), Homeland Security (DHS), the Interior, and Transportation (DOT), and the Environmental Protection Agency (EPA). To identify selected agencies, we analyzed OIRA's annual Regulatory Reform Reports from FY 2017-2019 and the [reginfo.gov](https://www.reginfo.gov) and [regulations.gov](https://www.regulations.gov) databases.⁷ We excluded independent regulatory agencies and focused on executive branch agencies with the largest number of deregulatory actions and at least one economically significant deregulatory action.⁸ We also met with OIRA given its responsibility and central role in overseeing the implementation of the deregulatory EOs and related guidance.

We randomly selected a sample of nine deregulatory actions from selected agencies (a minimum of one from each selected agency) to use as illustrative examples.⁹ In making this selection, we prioritized economically significant deregulatory actions, and excluded non-significant actions and actions under judicial review. For each of our

⁶We excluded the Department of Health and Human Services from consideration given its ongoing role and priority in responding to the COVID-19 national public health emergency. We considered what, if any, impact this exclusion would have on our final report and determined that we did not expect it to have a material impact on our findings. The five selected agencies finalized more than half of all deregulatory actions that were taken during the period EO 13771 was in effect.

⁷[Reginfo.gov](https://www.reginfo.gov) and [regulations.gov](https://www.regulations.gov) are interactive public websites providing the general public with the opportunity to access federal regulatory information and submit or review comments on regulatory and nonregulatory documents published in the *Federal Register*.

⁸Independent regulatory agencies refer to agencies identified as such in the Paperwork Reduction Act of 1995, 44 U.S.C. § 3502(5). We excluded independent agencies, such as the Federal Communications Commission and the Securities and Exchange Commission, because OIRA's responsibility for ensuring federal rules issued follow EO requirements for regulatory analysis does not extend to independent regulatory agencies. Regulations are classified as significant if they may have an annual effect on the economy of \$100 million or more or have a material adverse effect on the economy, raise novel legal or policy issues, or meet certain other criteria. For those rules projected to result in \$100 million or greater adverse effect on the economy (i.e., the subset of significant rules defined as economically significant), agencies must complete a regulatory analysis with an assessment, including the underlying analysis, of anticipated benefits and costs. Exec. Order No. 12866, *Regulatory Planning and Review*, 58 Fed. Reg. 51735 (Oct. 4, 1993).

⁹We originally selected 10 deregulatory actions that included an action from Interior because it was listed in the spring 2020 Unified Agenda. Later, Interior officials informed us that they withdrew the action before it could become a proposed rule. Therefore, we determined that this action did not meet our definition of a deregulatory action. We also confirmed that not including this action would not materially affect our analysis of deregulatory actions or the overall report. Therefore, we did not replace the action in our sample.

objectives, we reviewed these selected rules, OMB guidance documents, relevant agency documents, and conducted semi-structured interviews with selected agency officials on agencies' deregulatory actions, policies, procedures, and guidance for implementing EOs 13771, 13777, and 13924.

We also identified 20 relevant nonfederal entities and interviewed six of them to obtain their perspectives regarding agencies' implementation of the deregulatory EOs and related guidance. To identify these entities, we reviewed: (1) public comments submitted by nonfederal entities in response to proposed deregulatory actions; (2) recommendations from selected agencies regarding nonfederal entities involved in the notice-and-comment process for selected deregulatory actions; (3) nonfederal stakeholders who reported meeting with OIRA to discuss regulations; and (4) literature search results for academic publications on EO 13771 deregulatory actions. We judgmentally chose entities that had multiple interactions with selected agencies during the notice-and-comment review of deregulatory actions. The six nonfederal entities we interviewed represented a mix of industry groups, environmental advocacy groups, and trade organizations. The views of these entities are not generalizable, but provides the perspectives of a range of nongovernmental groups affected by regulations.

For our first objective, we reviewed guidance documents from OMB and selected agencies. We interviewed the selected agencies and nonfederal entities to determine (1) how the selected agencies identified and implemented deregulatory actions and (2) how selected agencies and nonfederal entities were affected by the revocation of these EOs. We reviewed selected deregulatory actions from each selected agency, in part, to describe the processes and procedures used by agencies and their regulatory components to achieve the objectives of the deregulatory EOs and related guidance. We also analyzed OIRA reports and data from reginfo.gov and regulations.gov to assess progress toward the deregulatory EO goals.

For our second objective, we reviewed EOs 13771 and 13924 and related OMB guidance documents to identify the types of alternative actions

selected agencies used.¹⁰ We also reviewed documentary and testimonial evidence from OMB, selected agencies, and nonfederal entities, to determine how agencies applied OMB's guidance, which alternative actions were taken, and any tradeoffs or other considerations made when implementing an alternative action in place of a traditional notice-and-comment rule.¹¹

For our third objective, we requested data used by selected agencies to track their regulatory activities and progress toward regulatory mission goals. To identify any potential effects of deregulatory actions on enforcement activities and goals, we conducted semi-structured interviews with officials from selected agencies and nonfederal entities. In addition, to the extent available, we reviewed agency enforcement data and information from interviews with agencies and nonfederal entities to identify changes in enforcement activities over time and potential impacts on regulatory activities.

We conducted this performance audit from May 2020 to September 2021, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Several executive orders and OMB guidance documents provide agencies with direction and, depending on the type of rule being

¹⁰For the purpose of this report, we define alternative actions as those actions that were not promulgated through the notice-and-comment rulemaking process, or which were assigned a non-traditional (or alternative) regulation identifier number, or did not have an identifier number. An example of an alternative action is a change to a guidance document, or a change to an information collection request that repeals or streamlines recordkeeping and which did not go through the notice-and-comment rulemaking process.

¹¹The Administrative Procedure Act (APA) establishes procedures and broadly applicable federal requirements for rulemaking. The APA describes two types of rulemaking, formal and informal. Formal rulemaking ("on-the-record rulemaking") applies when rules are required by statute to be made on the record after an opportunity for an agency hearing. Most federal agencies, however, use the informal rulemaking ("notice-and-comment rulemaking") procedures outlined in 5 U.S.C. § 553. The rulemaking process described in this report is informal rulemaking.

promulgated, requirements for the development of deregulatory and regulatory analysis. For the purposes of this report, we refer to EOs 13771, 13777, 13924, and corresponding OMB guidance, collectively as deregulatory EOs and guidance.

Deregulatory Executive Orders and Guidance

EO 13771. Issued on January 30, 2017, EO 13771 generally required executive agencies to repeal at least two existing rules for every newly promulgated rule, unless prohibited by law.¹² Under the EO and related guidance, agencies were required to provide their best approximation of the total costs or savings associated with each new rule or repealed regulation each fiscal year.¹³ New rules include those that establish new regulatory requirements, and those that repeal, amend, or delay existing regulatory requirements. In addition, OMB was required to identify to agencies a regulatory budget, which is the total amount of incremental costs allowed for each agency in issuing new regulations and repealing regulations for the next fiscal year. The regulatory budget could either allow for an increase in or require a reduction in total regulatory costs.

On April 5, 2017, OMB issued guidance to agencies for the implementation of the EO.¹⁴ In the guidance, OMB defines an “EO 13771 deregulatory action” as an action that has been finalized and has total costs less than zero. Actions that fall under this definition, according to OMB, include (1) formal, informal, and negotiated rulemaking; (2) guidance documents; (3) some actions related to international regulatory cooperation; and (4) information collection requests that repeal or streamline recordkeeping, reporting, or disclosure requirements. EO 13771 was revoked on January 20, 2021.¹⁵

EO 13777. Issued on February 24, 2017, EO 13777 established new leadership positions, such as Regulatory Reform Officers, to oversee the

¹²Exec. Order No. 13771, § 1.

¹³Exec. Order No. 13771, § 3.

¹⁴Office of Management and Budget, *Guidance Implementing Executive Order 13771, Titled “Reducing Regulation and Controlling Regulatory Costs,”* M-17-21 (Washington, D.C.: 2017).

¹⁵Exec. Order. No. 13992, *Revocation of Certain Executive Orders Concerning Federal Regulation*, 86 Fed. Reg. 7049 (Jan. 25, 2021).

implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms in accordance with applicable law.¹⁶ It also created governance and oversight mechanisms, including agency Regulatory Reform Task Forces (RRTF) which evaluated existing regulations and recommended regulations for repeal, replacement, or modification.¹⁷ As part of the EO 13777 requirement that agencies measure their progress in performing certain requirements in the EO, agencies were also required to incorporate performance indicators into their annual performance plans.¹⁸ Specifically, agencies were to measure progress toward improving implementation of regulatory reform initiatives and policies regarding Regulatory Reform Officers and identifying regulations for repeal, replacement, or modification.¹⁹ This EO was revoked on January 20, 2021.²⁰

EO 13924. In response to the COVID-19 pandemic and subsequent economic downturn, EO 13924, issued on May 19, 2020, directed federal agencies to “identify regulatory standards that may inhibit economic recovery” and consider taking action including issuing proposed rules to rescind, modify, or exempt persons or entities from those requirements, or exercising appropriate temporary enforcement discretion or extension of time.²¹ This order also required agencies to review (1) regulatory standards they temporarily rescinded, suspended, modified, or waived during the COVID-19 pandemic; (2) actions taken pursuant to EO 13924 regarding the rescission and waiver of regulatory standards; and (3) other regulatory flexibilities implemented in response to the COVID-19 pandemic. After conducting the review, the EO required the agency to determine which of the actions would promote economic recovery if made permanent and report the results to OMB.²² In addition, pursuant to OMB

¹⁶Exec. Order No. 13777, § 2. OMB issued guidance to implement EO 13777. Office of Management and Budget, *Guidance on Regulatory Reform Accountability under Executive Order 13777, Titled “Enforcing the Regulatory Reform Agenda”*, M-17-23 (Washington, D.C.: 2017).

¹⁷Exec. Order No. 13777, § 3. Specifically, the task force was required to evaluate existing regulations, as defined in section 4 of EO 13771.

¹⁸Exec. Order No. 13777, § 4(a).

¹⁹Exec. Order No. 13777, § 3(g), 4(a).

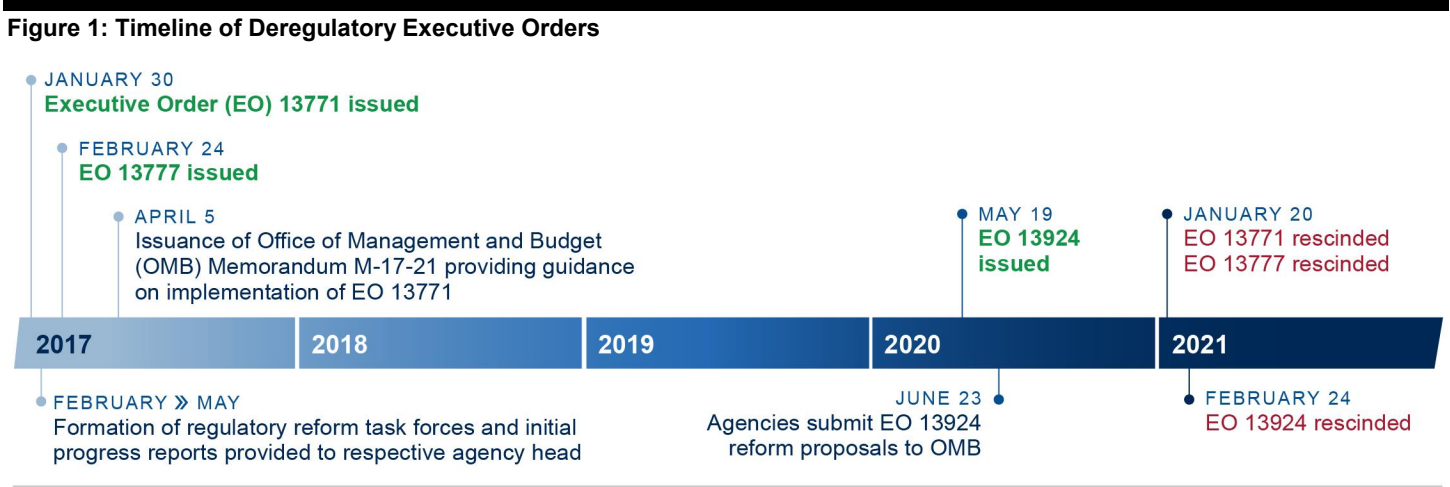
²⁰Exec. Order No. 13992, § 2.

²¹Exec. Order. No. 13924, § 4.

²²Exec. Order. No. 13924, § 7.

guidance for implementing the EO, agencies were asked to provide OMB with a list of final rules, waivers, or other regulatory actions planned for issuance in the following 6 months intended to promote economic recovery; a list of temporary regulatory actions taken in response to the pandemic; a plan for the expeditious issuance of pre-enforcement rulings; and a draft enforcement policy containing a rationale for any changes to enforcement activities. This EO was revoked on February 24, 2021.²³

Figure 1 shows the timeline of these deregulatory executive orders and related actions.



- **EO 13771** required executive agencies to eliminate at least two existing rules whenever they propose for notice and comment or otherwise for every newly promulgated rule, unless prohibited by law. Exec. Order No. 13771, *Reducing Regulation and Controlling Regulatory Costs*, 82 Fed. Reg. 9339 (Feb. 3, 2017).
- **EO 13777** focused on deregulation and established new leadership roles, oversight mechanisms, and performance reporting requirements. Exec. Order No. 13777, *Enforcing the Regulatory Reform Agenda*, 82 Fed. Reg. 12285 (Mar. 1, 2017).
- **EO 13924** directed agencies to identify regulatory standards that may inhibit economic recovery and take appropriate action, including to rescind, modify, waive, or provide exemptions to those requirements. Exec. Order No. 13924, *Regulatory Relief To Support Economic Recovery*, 85 Fed. Reg. 31353 (May 22, 2020).

Source: GAO analysis of OMB documents and executive orders. | GAO-21-104305

Text of Figure 1: Timeline of Deregulatory Executive Orders

Date	Order Issued
JANUARY 30, 2017	Executive Order (EO) 13771 issued
FEBRUARY to MAY, 2017	Formation of regulatory reform task forces and initial progress reports provided to respective agency head
FEBRUARY 24, 2017	EO 13777 issued

²³Exec. Order. No. 14018, *Revocation of Certain Presidential Actions*, 86 Fed. Reg. 11855 (Mar. 1, 2021).

Date	Order Issued
APRIL 5, 2017	Issuance of Office of Management and Budget (OMB) Memorandum M-17-21 providing guidance on implementation of EO 13771
MAY 19, 2020	EO 13924 issued
JUNE 23, 2020	Agencies submit EO 13924 reform proposals to OMB
JANUARY 20, 2021	EO 13771 rescinded EO 13777 rescinded
FEBRUARY 24, 2021	EO 13924 rescinded

Source: GAO analysis of OMB documents and executive orders. | GAO-21-104305

- EO 13771 required executive agencies to eliminate at least two existing rules whenever they propose for notice and comment or otherwise for every newly promulgated rule, unless prohibited by law. Exec. Order No. 13771, *Reducing Regulation and Controlling Regulatory Costs*, 82 Fed. Reg. 9339 (Feb. 3, 2017).
- EO 13777 focused on deregulation and established new leadership roles, oversight mechanisms, and performance reporting requirements. Exec. Order No. 13777, *Enforcing the Regulatory Reform Agenda*, 82 Fed. Reg. 12285 (Mar. 1, 2017).

EO 13924 directed agencies to identify regulatory standards that may inhibit economic recovery and take appropriate action, including to rescind, modify, waive, or provide exemptions to those requirements. Exec. Order No. 13924, *Regulatory Relief To Support Economic Recovery*, 85 Fed. Reg. 31353 (May 22, 2020).

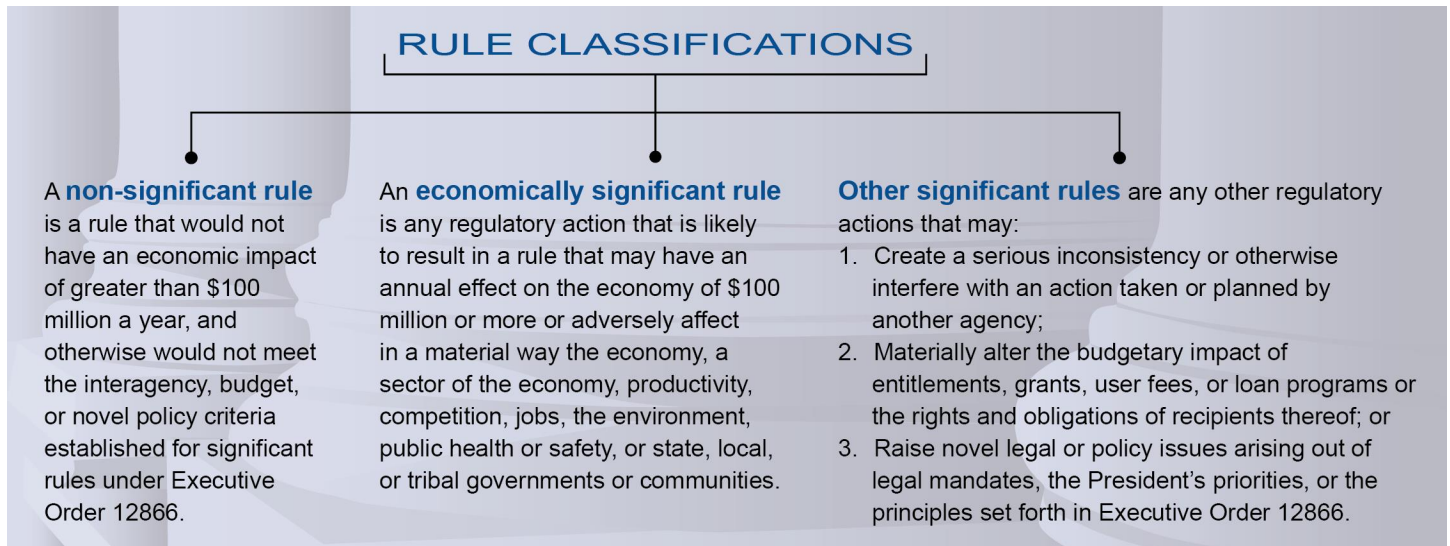
Executive Orders and Guidance Governing Federal Regulations

EO 12866. Issued in 1993, the order sets forth a regulatory philosophy and set of principles that, to the extent permitted by law and where applicable, requires federal agencies to assess benefits and costs of their proposed and final rules.²⁴ As shown in figure 2, this EO defines significant regulatory actions (which includes economically significant and

²⁴Exec. Order. No. 12866, § 1.

other significant rules).²⁵ It also directs agencies to consider available regulatory alternatives in all rules, including the alternative of not regulating, and to the extent permitted by statute, generally to select those alternatives that maximize net benefits. According to this EO, OIRA is to be the repository of expertise concerning regulatory issues. It also assigns OIRA responsibility for ensuring federal rules issued by agencies, other than independent regulatory agencies, follow EO requirements for regulatory analysis. EO 13771 and other deregulatory EOs and related guidance reaffirmed this philosophy and these principles.

Figure 2: Rule Classifications



Source: Executive Order No. 12866, § 3(f). | GAO-21-104305

Text of Figure 2: Rule Classifications

RULE CLASSIFICATIONS

- A non-significant rule is a rule that would not have an economic impact of greater than \$100 million a year, and otherwise would not meet the interagency, budget, or novel policy criteria established for significant rules under Executive Order 12866.

²⁵A regulatory action is “economically significant” if it results in a \$100 million or greater effect on the economy in any given year, or is “other significant” if it raises novel, legal or policy issues, or meets certain other criteria. EO 12866 requires agencies to include additional information in their assessments of economically significant rules. Exec. Order No. 12866, § 3(f).

- An economically significant rule is any regulatory action that is likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.
- Other significant rules are any other regulatory actions that may:
 - Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
 - Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
 - Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Source: Executive Order NO. 12866, Section 3(f). | GAO-21-104305

OMB Circular A-4. This circular, issued in 2003, provides guidance and best practices to federal agencies for determining the potential effects (i.e., benefits and costs) of new rules.²⁶ Circular A-4 offers a framework for how agencies can analyze the benefits and costs of a proposed rule, but generally does not prescribe the specific assumptions or values to be used in analyzing the potential effects of rules. This requirement applies to rulemakings that rescind or modify existing rules as well as to rulemakings that establish new requirements. This flexibility also allows agencies to apply the framework to their particular rules and regulated entities.²⁷ OIRA uses Circular A-4 as the primary guidance in reviewing agencies' regulatory analyses.

Selected Agencies Made Limited Changes to Existing Regulatory Processes and Procedures

²⁶Office of Management and Budget, *Circular A-4: Regulatory Analysis*. (Washington, D.C., 2003).

²⁷One exception to this general flexibility, however, is the discount rate, where Circular A-4 specifies that agencies use rates of 3 percent and 7 percent.

and Met Deregulatory Executive Order Requirements

Agencies Adapted Processes to Report Progress to OIRA

Selected agencies' officials reported that their respective agencies largely used existing processes and procedures to implement the deregulatory EOs. For example, officials from all selected agencies told us they relied on existing rulemaking procedures established under the Administrative Procedure Act and EO 12866 to identify deregulatory actions and related regulatory processes for conducting retrospective reviews. In addition, DOT officials said they issued several internal documents establishing revised regulatory procedures to address the EOs' requirements.

EO 13771 required agencies to identify, for each rule that increases incremental costs, the offsetting regulation, and estimate the total costs or savings for each new or repealed regulation.²⁸ Officials from two of the five selected agencies we spoke with, Commerce and DHS, told us that complying with the requirement to perform cost-savings calculations posed some resource challenges. For example, officials at both agencies told us that calculating the cost-savings included additional spreadsheets, paperwork, and economic analyses. Officials at DHS's Coast Guard told us that while the deregulatory EO did not affect their overall regulatory operations, it did affect their regulatory agenda. For example, according to the officials, in response to the deregulatory EOs, the Coast Guard's Marine Safety and Security Council de-prioritized 13 projects that would have otherwise gone forward. These projects included developing regulations on outer continental shelf activities and commercial fishing vessels. However, officials at the other three agencies said that complying with this EO requirement generally did not affect their overall regulatory operations or agenda.

EPA, Commerce, and DHS officials used OMB's guidance and templates to develop tools to assist with calculating the cost savings of deregulatory actions. For example, EPA, DHS, and Commerce developed a worksheet to assist with calculating the perpetual regulatory cost savings to meet the reporting requirements under EO 13771. DHS officials said these worksheets helped agencies distinguish between the cost-benefit

²⁸Exec. Order No. 13771, § 3.

analyses required for significant rules and the separate cost savings calculations required by the EOs.

DHS officials told us that they adapted and annotated OMB's cost calculation template and trained components on how to use it. DOT also promulgated a rule that revised its rulemaking process that included many of the aspects that would allow the agency to comply with the deregulatory orders.²⁹ For example, the rule established agency procedures for evaluating all DOT deregulatory rulemakings that included economic analyses for quantifiable cost savings of both significant and non-significant actions.

Officials from two selected agencies told us that they coordinated with OIRA when determining which actions should be considered deregulatory for the purposes of EO 13771. In some cases, OIRA reviewed actions from selected agencies and changed their categorization based on the definitions and instructions outlined in the deregulatory EOs and related OMB guidance. For example, according to agency officials, there could be instances in which a regulation included some actions that were deregulatory in nature, such as a reductions in paperwork burden or administrative efficiencies that resulted in estimated costs savings.

According to selected agency officials, eight of the nine selected deregulatory actions that we reviewed, and which were implemented when the EOs were in effect, would likely have been finalized regardless of the EOs' directives.³⁰ Three of the five selected agencies told us that pursuing the goals of the EOs did not require them to postpone planned regulatory actions that were underway prior to the publication of the deregulatory EOs.

Specifically, DHS officials said that the deregulatory EOs did not prevent them from finalizing new rules that were either required by statute or flowed from immigration EOs. Also, while the EOs provided an impetus for agencies to update or eliminate outdated regulations, selected agency officials stated that, in many cases, the deregulatory actions they finalized were underway prior to the issuance of the EOs. However, officials at DHS told us that the EOs did affect their regulatory agenda.

²⁹*Administrative Rulemaking, Guidance, and Enforcement Procedures*, 84 Fed. Reg. 71714 (Dec. 27, 2019).

³⁰See appendix I for a list of the selected deregulatory actions we reviewed.

All of the selected agencies established and staffed their RRTFs, as required under EO 13777, without making major revisions to their regulatory operations. According to officials from four of the selected agencies (Commerce, DHS, EPA, and Interior) agencies generally did not realign personnel (such as attorneys, economists, analysts, and information collection specialists) to fulfill the deregulatory executive orders' requirements. In most cases, they assigned staff new responsibilities, or part-time assignments, to fulfill these requirements, such as through participation in agencies' RRTFs and other positions established under EO 13777. However, agency officials said these new responsibilities and assignments did not have a significant impact on normal operations or mission goals. For example, EPA officials told us that their RRTF membership was comprised of appointed political leaders. Thus the agency did not need to reassign career staff to participate on the RRTF or other positions related to the implementation of EO 13777. Only DHS officials reported that the agency had to divert staffing resources from existing mission objectives to work on deregulatory actions and regulatory reform reporting.

The selected agencies used different methods to communicate with the public on regulatory reform and their deregulatory processes. Officials from two agencies told us that they published notices in the Federal Register requesting suggestions from the public on opportunities to eliminate or update any outdated or unnecessary regulations.³¹ Nonfederal entities we spoke with, along with other private entities, provided suggestions to regulatory agencies in response to the agencies' notices of deregulatory actions. In addition, EPA created a regulatory reform webpage listing its deregulatory actions that were under development or completed, and related agency memorandums on deregulatory actions and regulatory reform.³² According to DOT, it also published a rule in the Federal Register to implement the specific

³¹For example, EPA requested comments from the public on a proposed rule it issued to streamline its existing fuel quality regulations by removing expired provisions, eliminating redundant compliance provisions, removing unnecessary and out-of-date requirements, and replacing them with a single set of provisions and definitions that will apply across certain fuel programs that EPA regulates. *Fuel Regulatory Streamlining*, 85 Fed. Reg. 29034 (May 14, 2020). DOT also requested public comment on existing rules and other agency actions that are good candidates for repeal, replacement, suspension, or modification. *Notification of Regulatory Review*, 82 Fed. Reg. 45750 (Oct. 2, 2017).

³²EPA officials reported the webpage is no longer on the agency web site due to the revocation of the deregulatory EOs.

procedural changes DOT made in response to the EOs, as discussed previously.³³

When we spoke with representatives from some nonfederal entities, they told us deregulatory actions did not alleviate regulatory burden for them. For example, a representative from an aviation non-profit organization told us its members anticipated revisions and relief from what they view as outdated federal regulations. However, a representative from the organization stated the entity's membership was disappointed with the limited efforts to issue more deregulatory actions while the executive orders were in effect. Some entities also told us they submitted comments in response to the Federal Register notices asking for public input on regulations. While their comments were accepted, they told us their suggestions generally were not adopted or did not result in the desired regulatory changes.

Selected Agencies Reported That the Revocation of the Deregulatory Executive Orders Likely Will Not Affect Their Regulatory Processes

Officials at all five selected agencies told us that because the deregulatory EOs did not result in substantive changes to the agencies' normal regulatory processes and procedures, the revocations of these EOs would not result in disruptions or major changes going forward.

- **Commerce.** According to an official, the agency does not anticipate significantly changing its regulatory processes and procedures in response to the revocations of deregulatory EOs. In addition, the official told us that the revocation of the EOs would reduce reporting burden going forward.
- **DHS.** As of March 2021, officials said they were processing all of the requirements of EOs 13992 and 14018, which revoked the deregulatory EOs. Agency officials told us they were disbanding their RRTF, removing related regulatory reform performance goals from their annual performance plans, and removing components' regulatory roles and responsibilities that were required under the deregulatory EOs.
- **DOT.** In February 2021, officials explained that they were reviewing procedural rules, guidance documents, and enforcement processes to

³³84 Fed. Reg. 71714.

ensure that the agency and its components remove all references and requirements related to the deregulatory EOs. Specifically, DOT officials planned to disband their RRTF and remove all obsolete regulatory language and processes related to EOs 13771 and 13777, such as through modification of its regulations.³⁴

- **EPA.** Officials said that following the deregulatory EOs' revocation, the agency discontinued all processes associated with them, including taking down its regulatory reform website, which had included information and guidance about the orders and the status of related regulatory and deregulatory actions.
- **Interior.** According to officials, the only actions taken by the agency were to discontinue its adherence to the deregulatory EO requirements, such as through dissolution of the agency's RRTF.

Selected Agencies Identified Lessons Applicable to Future Regulatory Reform Efforts

Officials at all of the selected agencies we spoke with emphasized the importance of following applicable statutes and corresponding guidance when assessing existing regulations and identifying potential deregulatory opportunities. For examples, selected agency officials referred to provisions of the APA, the Regulatory Flexibility Act, the Paperwork Reduction Act of 1995, the Small Business Regulatory Enforcement Fairness Act, and related OMB guidance, including EO 12866 and Circular A-4, among others.³⁵ According to the officials, adhering to these

³⁴*Administrative Rulemaking, Guidance, and Enforcement Procedures*, 86 Fed. Reg. 17292 (Apr. 2, 2021).

³⁵The APA governs the process by which federal agencies develop and issue regulations. 5 U.S.C. §§ 551-59, 701-06, 1305, 3105, 3344, 4301, 5335, 5372, 7521. In addition to the requirements under the APA, an agency may also need to comply with requirements related to rulemaking imposed by other statutes. The Regulatory Flexibility Act requires federal agencies, including financial regulators, to provide an assessment known as a regulatory flexibility analysis of a rule's potential impact on small entities and consider significant alternatives that may minimize any significant economic impact on small entities. 5 U.S.C. §§ 601-612. The Paperwork Reduction Act was originally enacted into law in 1980. Pub. L. 96-511, 94 Stat. 2812 (1980). It was reauthorized in 1986, Pub. L. 99-500, 100 Stat. 1783 (1986), and was reauthorized a second time in 1995. Pub. L. 104-13, 109 Stat. 163 (1995), *codified at* 44 U.S.C. §§ 3501-3519, 3521. One of the purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 is to encourage the effective participation of small businesses in the federal regulatory process. 5 U.S.C. § 601 note.

and other foundational statutes and guidance were mandatory for implementing deregulatory EOs.

However, officials at EPA pointed out examples in which EO directives intentionally departed from Circular A-4 report on EO objectives. For example, EPA officials told us that the cost benefit analysis supporting deregulatory actions did not always adhere to OMB Circular A-4 or the best practices documented in EPA's Guidelines for Performing Economic Analysis.³⁶ Some of these difference are discussed in more detail below.

Leveraging effective practices for retrospective reviews. Officials from DHS, DOT, and EPA told us that it is important to leverage effective practices and leadership commitment to regularly undertake retrospective reviews and engage with regulated entities and the public to improve and refine regulations. This can help agencies (1) prepare for any future regulatory reforms, and (2) more rapidly conduct the analysis needed to identify outdated or unnecessary regulations, as appropriate.³⁷

Moreover, DOT officials told us that their agency and leadership have long demonstrated a commitment to retrospective reviews of their regulatory portfolios in order to ensure the country's transportation system remains safe, efficient, and modern. In 2014, we reported that when compared to other executive branch agencies, DOT had the largest number of planned and completed retrospective regulatory analyses between January 2011 and August 2013.³⁸ According to DOT officials, even though most, if not all, of the deregulatory actions implemented in

³⁶Environmental Protection Agency, Office of Policy, National Center for Environmental Economics. *Guidelines for Preparing Economic Analyses*. December 17, 2010 (updated May 2014).

³⁷GAO, *Reexamining Regulations: Opportunities Exist to Improve Effectiveness and Transparency of Retrospective Reviews*, [GAO-07-791](#) (Washington D.C.: July 16, 2007). We have previously reported that in order to facilitate retrospective reviews, agencies, to greater and lesser extents, should develop written procedures, processes, and standards to guide how they select which rules to review, conduct analyses of those rules, and report the results. Given the multiple purposes and uses of reviews, we recognize that there is no "one size fits all" approach. While we have reported that employing lessons learned may improve the effectiveness of agencies' retrospective reviews, we acknowledge that the review of regulations is only one of the tools that agencies will need to fully understand the implications of their regulatory activities. In order to fully assess the performance of regulatory activities, agencies will need to consider the performance of the programs that implement their regulations and the statutes that underlie the regulations.

³⁸GAO, *Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals*, [GAO-14-268](#) (Washington D.C.: Apr. 11, 2014).

FYs 2017 through 2020 would likely have been finalized regardless of the deregulatory EOs, DOT's implementation of the EOs provided a mechanism for promulgating those actions.

Setting regulatory goals and targets. According to DHS officials, developing government-wide and agency-specific goals and targets requires agencies to take into account their unique regulatory environment and statutory responsibilities. They said that, when appropriate, regulatory reform requirements should be less prescriptive and allow agencies to participate in setting realistic yet ambitious goals.

Identifying roles and responsibilities. According to DOT officials, establishing the RRTF and identifying the roles and responsibilities of regulatory reform officers and RRTF members provided a governance structure and the leadership commitment needed to implement the new deregulatory EO requirements. EPA officials also told us that implementing the requirements for the deregulatory EOs identified additional opportunities for the agency to be more transparent and communicate more frequently with the public, particularly with regard to future retrospective reviews.

OIRA Reported That Agencies Met the Goals of Deregulatory Executive Orders, but the Analysis of the Data Could Overstate the Results

According to OIRA's report, *Final Accounting for Fiscal Year 2020*, collectively the federal government met the two primary goals established and defined in EO 13771 by (1) implementing more than the established goal of two deregulatory actions for every new regulatory action, and, (2) achieving net savings.³⁹ OIRA reported that the selected agencies implemented 286 deregulatory actions (for a ratio of 9:1 deregulatory to regulatory actions), and that these actions were estimated to have annual savings in perpetuity of almost \$160 billion.⁴⁰ However, this analysis reflects some methodological decisions that may have overstated the reported results of the deregulatory EOs.

³⁹OIRA, *Regulatory Reform under Executive Order 13771: Final Accounting for Fiscal Year 2020*.

⁴⁰Net perpetual savings is the difference between expected benefits and expected costs of regulatory and deregulatory actions assuming these actions are permanent and that the impacts of regulations continue in perpetuity.

Table 1 provides the data reported by the selected agencies to OIRA for publication in its *Final Accounting for Fiscal Year 2020*, and the reginfo.gov database.

Table 1: Office of Information and Regulatory Affairs (OIRA) Reported Actions, Estimated Costs, and Projected Cost-Savings by Selected Agencies and All Other Agencies, Fiscal Years 2017-2020

Selected agencies	All deregulatory actions ^a	Non-significant deregulatory actions	Significant deregulatory and regulatory actions		Projected costs and (cost savings)
			Significant deregulatory actions	Significant regulatory actions	Dollars are present value in millions
Department of Commerce	69	65	4	4	(\$1,144)
Department of Homeland Security	34	26	8	8	\$37,153 ^b
Department of the Interior	51	41	10	0	(\$6,254)
Department of Transportation	63	47	16	6	(\$100,484)
Environmental Protection Agency	69	47	22	14	(\$89,196)
Selected Agencies' Total	286	226	60	32	(\$159,925)
All Other Agencies – Net	252	119	133	65	(\$38,655)
Total	538	345	193	97	(\$198,580)

Source: GAO analysis of OIRA and reginfo.gov data. | GAO-21-104305

^aAll deregulatory actions consist of significant and non-significant deregulatory actions.

^bCosts not in parentheses reflect that the agency incurred cumulative regulatory costs for its actions rather than cumulative regulatory cost savings. According to DHS officials, even though DHS did not report net regulatory cost savings during this time the deregulatory executive orders were in effect, the agency remained in compliance with the EO because OMB granted the agency a regulatory budget/cost allowance to cover the increased costs.

As shown in table 1, between January 2017 and the end of FY 2020, OIRA reported that executive agencies implemented 538 significant and non-significant deregulatory actions and finalized 97 new significant regulations. Selected agencies were responsible for implementing 286 of these deregulatory actions, accounting for more than half of all completed deregulatory actions during this period.

The Effect of Deregulatory Actions is Unknown

OIRA’s EO 13771 progress reports do not provide a complete accounting for the comparison of deregulatory actions and new regulatory actions for the period the deregulatory EOs were in effect. Specifically, OMB’s guidance defines an “EO 13771 regulatory action” as including only significant regulatory actions, but defines an “EO 13771 deregulatory action” as including any finalized action, including significant and non-significant deregulatory actions, with total costs less than zero. As a

result, agencies are directed to report both non-significant and significant deregulatory actions, but only significant regulatory actions.

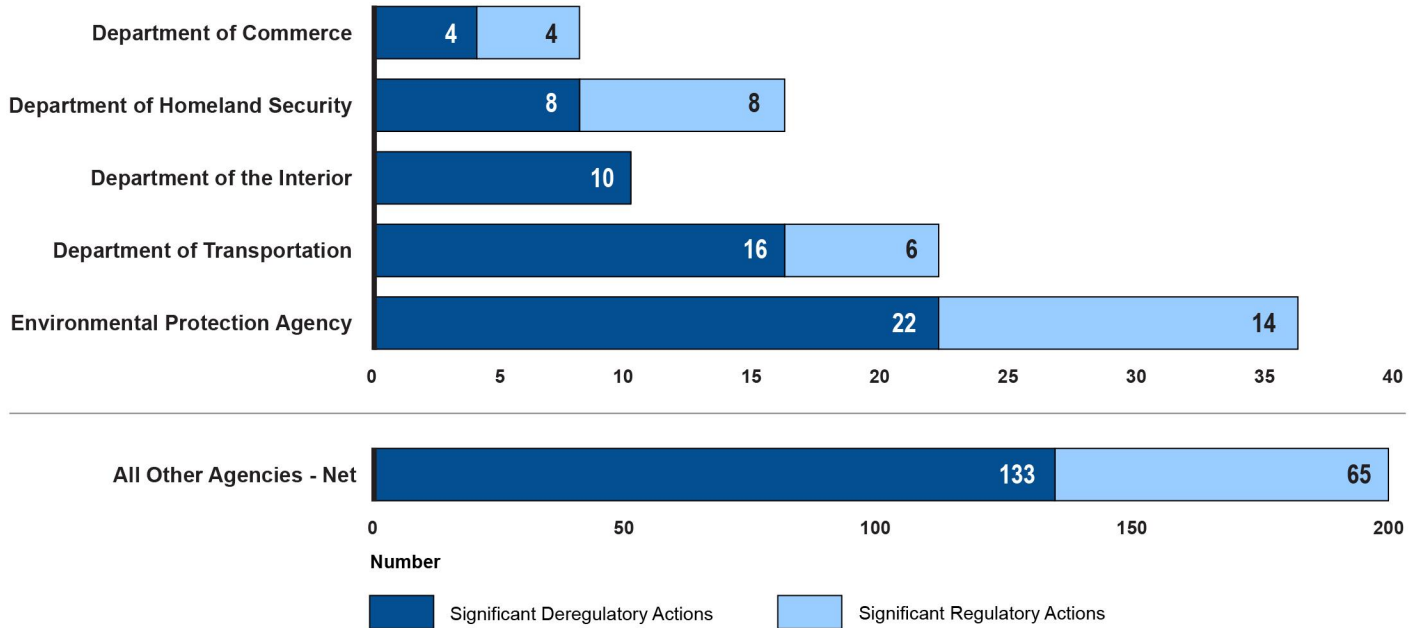
In some years, OIRA distinguished between significant and non-significant deregulatory actions in its reports, which allow for direct comparisons during those years. OIRA did not provide a complete summary and comparison of these actions in FY 2017 nor for the FY 2020 report. In those reports, OIRA did not provide information or comparisons of the number of significant deregulatory actions. As the deregulatory EOs were withdrawn between January and February 2021, OIRA suspended its assessments and reporting of agencies' compliance with the EOs. OIRA staff said that no further comparison of agencies' deregulatory and regulatory actions will be made.

Additionally, OIRA's progress reports include actions listed as under judicial review, or not fully promulgated, among other factors. As such, OIRA's progress reports do not provide an overall assessment of the effect of the EOs on the relative proportion of regulatory and deregulatory actions issued by Executive Branch agencies during the period the EOs were in effect. Ultimately, however, the revocation of EOs 13771 and 13777 has rendered such continued assessment moot.

Figure 3 compares selected agencies' deregulatory actions that were significant in each FY to make a more direct comparison to significant regulatory actions. While the deregulatory EOs were in effect, selected agencies implemented 60 significant deregulatory actions and 32 significant regulatory actions, for a ratio of 1.9 deregulatory actions for every regulatory action. We also used data from [reginfo.gov](https://www.reginfo.gov) to determine the number of significant deregulatory actions taken by the government as a whole. During this period, the federal government implemented 193 significant deregulatory actions, and 97 significant regulatory actions, for a similar ratio of about 2 significant deregulatory actions for every significant regulatory action in line with the goal of the EOs.

Figure 3: Significant Deregulatory and Regulatory Actions Implemented, Fiscal Years (FY) 2017- 2020

Selected Agencies in FY17-20



Source: GAO analysis of OMB documents. | GAO-21-104305

Data table for Figure 3: Significant Deregulatory and Regulatory Actions Implemented, Fiscal Years (FY) 2017- 2020

Selected Agencies in FY17-20	Significant Deregulatory Actions	Significant Regulatory Actions
Department of Commerce	4	4
Department of Homeland Security	8	8
Department of the Interior	10	0
Department of Transportation	16	6
Environmental Protection Agency	22	14
All Other Agencies - Net	133	65

Source: GAO analysis of OMB documents. | GAO-21-104305

OIRA’s annual progress reports defined deregulatory actions more broadly than regulatory actions. For example, deregulatory EO 13771 actions included withdrawals of proposed regulations that were not finalized, or delays in the effective date of regulations that did not result in rescissions or roll-backs. However, counting withdrawals of proposed

rules as deregulatory actions overstates the magnitude of deregulatory actions in proportion to regulatory actions. For example, DHS's Transportation Security Administration (TSA) withdrew a rule concerning the proposed establishment of a large aircraft security program. In October 2008, TSA published a proposed rule that would create security standards for non-commercial, large aircraft operations, and reviewed more than 7,000 comments on the proposal. According to DHS officials, in 2018, TSA withdrew the rulemaking in light of risk-based principles and the prioritization of other rules with statutory mandates and specific deadlines.⁴¹

EO 13771 deregulatory actions, as reported by OIRA in its annual regulatory reform report, also included rules that were under judicial review, and are therefore subject to being amended or overturned. For example, OIRA reported that EPA had implemented a total of four economically significant EO 13771 deregulatory actions in FYs 2019 and 2020. As of June 28, 2021, all of these actions were under judicial review and therefore subject to being vacated by the courts. Because a number of EO 13771 deregulatory actions are under judicial review it is impossible to determine if these actions will result in fewer regulations or an overall reduction in regulatory burden or cost.

Figure 4 shows OIRA reported that four of the five selected agencies projected net estimated savings through the implementation of deregulatory actions between FYs 2017 and 2020. DHS did not project a net estimated savings during this period and reported a net estimated cost increase of about \$37 billion.⁴² DHS officials told us that the added costs were largely attributable to priority administration immigration regulations. In addition, DHS officials said they often did not have certainty that an action was regulatory or deregulatory until it was finalized and reviewed by OIRA. DHS officials said this uncertainty made it difficult for the agency to estimate regulatory costs and cost saving opportunities in advance. Overall, DHS officials explained that almost all of their highest-cost regulations were statutorily required security regulations. Thus the agency had limited flexibility to develop and

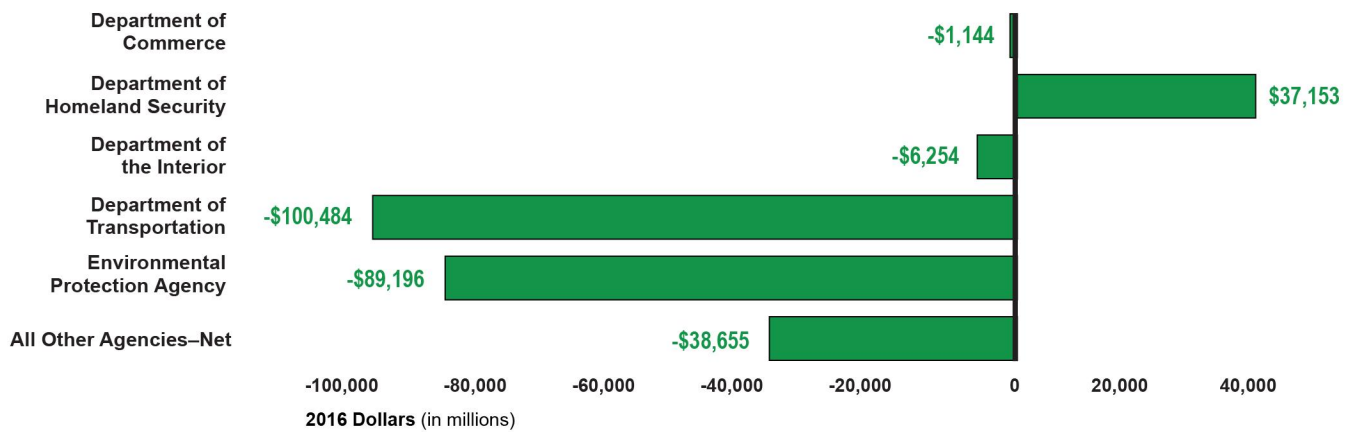
⁴¹Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Security Program; Withdrawal. 83 Fed. Reg. 11667 (Mar. 16, 2018).

⁴²According to DHS officials, even though DHS did not project a net estimated savings during this time the deregulatory EOs were in effect, the agency remained in compliance with the EO because OMB granted the agency a regulatory cost allowance to cover the increased costs.

implement a greater number of deregulatory actions with large cost savings.

Figure 4: Office of Information and Regulatory Affairs Reported Estimated Deregulatory Costs and Cost-Savings, Fiscal Years 2017- 2020

Selected Agencies in Fiscal Years 2017-2020



Source: GAO analysis of Office of Management and Budget documents. | GAO-21-104305

Data table for Figure 4: Office of Information and Regulatory Affairs Reported Estimated Deregulatory Costs and Cost-Savings, Fiscal Years 2017- 2020

Selected Agencies in Fiscal Years 2017-2020	2016 Dollars (in millions)
Department of Commerce	\$-1,144
Department of Homeland Security	\$37,153
Department of the Interior	\$-6,254
Department of Transportation	\$-100,484
Environmental Protection Agency	\$-89,196
All Other Agencies - Net	\$-38,655

Source: GAO analysis of OMB documents. | GAO-21-104305

OMB provided guidance to agencies on EO 13771 regarding the method for calculating the estimated costs and cost savings of deregulatory and regulatory actions. According to this guidance, EO 13771 does not change the requirements of EO 12866, which remains the primary governing EO regarding regulatory review and planning. However, the guidance augments some of the cost accounting methodologies outlined

in OMB's Circular A-4.⁴³ Specifically, OMB's EO 13771 guidance provides additional clarification for choosing the appropriate time horizon for calculating the present value of costs and savings of deregulatory actions.⁴⁴

In contrast to setting a specific time horizon, Circular A-4 provides a general guideline that the number of years in an analysis "should cover a period long enough to encompass all the important benefits and costs likely to result from the rule." Moreover, Circular A-4 does not formally apply to non-significant actions, whereas OMB's EO 13771 guidance allows agencies to calculate savings based on these types of deregulatory actions.⁴⁵ As a result of these and other differences, the projected savings reported by OIRA may overstate projected savings from deregulatory actions relative to estimates developed based solely on the guidance in Circular A-4.

Selected Agencies Implemented Few Alternative Deregulatory Actions

While OMB's guidance allowed agencies to include alternative actions to meet deregulatory goals, most of the deregulatory actions issued by the selected agencies were conducted via informal rulemaking. OMB issued guidance, including defining key terms, to assist agencies when implementing the deregulatory EOs. According to OMB guidance, deregulatory actions encompassed a wide range of categories, including, but not limited to:

- informal, formal, and negotiated rulemaking;

⁴³According to OMB Circular A-4, the purpose of the circular is to assist analysts in the regulatory agencies by defining good regulatory analysis, called either "regulatory analysis" or "analysis" for brevity, and standardizing the way benefits and costs of Federal regulatory actions are measured and reported.

⁴⁴According to OIRA guidance on accounting methods under EO 13771, agencies used the same dollar year (2016) to reflect differences due to inflation, and applied the same perpetual time horizon to all regulatory and deregulatory actions. The perpetual time horizon reflected a general presumption, for the purposes of accounting under the EO that regulatory and deregulatory actions are permanent and that the impacts of regulations continue in perpetuity.

⁴⁵Agencies are not required by EO 12866 to conduct a cost benefit analysis for non-significant rules.

- guidance and interpretative documents;
- actions related to international regulatory cooperation; and,
- information collection requests (ICR) that repeal or streamline recordkeeping, reporting, or disclosure requirements.

For the purpose of this report, we define alternative actions as those actions that were not promulgated through the notice-and-comment rulemaking process, or which were assigned a non-traditional regulation identifier number (RIN), or did not have an identifier number.⁴⁶ These actions generally consisted of guidance documents, ICRs, instruction memorandums, and other directives. Our analysis of deregulatory activity during FYs 2017-2020 indicated that the majority of EO 13771 deregulatory actions finalized by selected agencies were notice-and-comment rules. Based on OIRA's EO 13771 regulatory tracking conventions, and our analysis of deregulatory actions reported by OIRA, we found that selected agencies implemented at least 28 alternative actions, or about 10 percent of the total of 286 deregulatory actions taken during the period the EO was in effect.⁴⁷

When deciding whether to pursue an alternative deregulatory action, selected agencies said they considered factors such as statutory authority, burden imposed on regulated entities, urgency stemming from public health emergencies such as the COVID-19 pandemic, and potentially outdated or unnecessary ICRs and agency guidance.

Although infrequent, three of the five selected agencies implemented EO 13771 alternative deregulatory actions. Commerce and DOT did not finalize any EO 13771 alternative actions during the period the EO was in

⁴⁶According to agency officials we spoke with, EO 13771 alternative actions were often given a unique RIN beginning with the letter Z, (also called ZRINs), an alternative RIN, or did not designate an identifier number to these actions. According to OIRA, ZRINs are used for deregulatory and regulatory actions taken by agencies that are not published in the Federal Register, such as guidance documents. Alternative RINs include OMB control numbers, order numbers, memorandum numbers, or other non-RIN tracking numbers.

⁴⁷In some cases, the information provided by selected agencies and OIRA's annual Regulatory Reform Reports was insufficient to determine if an action went through the notice-and-comment rulemaking process. For example, OIRA's annual Regulatory Reform Reports included a number of deregulatory actions that reflected changes to ICRs that were promulgated through the notice-and-comment process. Due to this limitation in the information reported, we relied on OMB's guidance, definitions, tracking conventions, and our judgment to identify alternative actions.

effect. Examples of selected agency deregulatory alternative actions include the following:

- **EPA.** EPA reported implementing two alternative actions, including one related to withdrawing certain ICRs for oil and gas operators.⁴⁸
- **Interior.** In March 2017, the Secretary of the Interior revoked an Interior guidance document, or Director's order, related to use of non-toxic ammunition and fishing tackle.⁴⁹ The Secretary stated that the order was not mandated by any existing regulatory requirement, that the agency had not consulted with stakeholders, and the order therefore, should be withdrawn.

All five of the selected agencies reported using alternative actions as part of their response to the COVID-19 pandemic. OIRA and selected agencies described methods being used to track broader COVID-19 related regulatory actions; however they did not track all EO 13924 actions. For example, selected agency officials told us that the Regulatory Information Service Center/Office of Information and Regulatory Affairs Consolidated Information System (ROCIS) added a new field that allowed agencies to identify and track COVID-19 related actions. According to reginfo.gov, as of August 3, 2021, four of the five selected agencies had completed regulatory review for a total of 13 regulations in response to the COVID-19 pandemic. EPA had not yet finalized a COVID-19-related action but did provide us information on a number of interim and alternative actions it had taken in response to the pandemic.

- **Commerce.** Commerce officials told us that their agency uses the same process and ROCIS reporting for tracking all regulatory and deregulatory actions that OIRA reviews. In FY 2020, Commerce's Patent and Trademark Office (USPTO) issued a notice establishing a process to provide application and review extensions for businesses and individuals affected by the COVID-19 pandemic.⁵⁰

⁴⁸Notice Regarding Withdrawal of Obligation To Submit Information, 82 Fed. Reg. 12817 (Mar. 7, 2017).

⁴⁹Department of the Interior, Office of the Secretary; Order No. 3346: *Revocation of the United States Fish and Wildlife Service Director's Order No. 219 (Use of Nontoxic Ammunition and Fishing Tackle)* (Washington, D.C. Mar. 2, 2017).

⁵⁰USPTO, *USPTO Announces Extension of Certain Patent and Trademark-Related Timing Deadlines under the Coronavirus Aid, Relief, and Economic Security Act*, USPTO Press Release 20-25, (Mar. 31, 2020). USPTO issued this notice pursuant to authority granted in the CARES Act. Pub. L. No. 116-136, § 12004, 134 Stat. 281, 517 (2020).

- **DHS.** As of March 5, 2021, DHS reported it had implemented at least 63 regulatory actions in response to the COVID-19 pandemic. Actions DHS reported included notifications of temporary travel restrictions; prioritization and allocation of certain scarce medical resources; and arrival restrictions applicable to flights from certain countries, among others. According to TSA, the agency also provided relief for certain operations during the public health emergency and delays to compliance dates for certain regulations, among other actions. Additionally, as of September 24, 2020, DHS reported they had developed at least 32 guidance documents in response to the COVID-19 pandemic. Actions DHS reported included an advisory recommending prioritization for raw materials; a fact sheet for procurement of gowns and coveralls; and guidance documents about multi-cooker decontamination of N95 respirators, among other actions.
- **DOT.** As of March 10, 2021, DOT reported it had issued eight final rules, and three interim final rules in response to the COVID-19 pandemic. The rules DOT reported included relief for certain persons and operations during the public health emergency, contracts for federal-aid construction, and delays to compliance dates for certain regulations, among other actions.
- **EPA.** EPA shared a number of COVID-19 related actions it is taking but also explained that the agency does not systematically track all actions related to the pandemic and economic recovery. For example, EPA provided temporary relief for emission monitoring and related quality assurance requirements during the COVID-19 national emergency. Under this action, regulated entities are required to complete any delayed tests as soon as practicable after relevant emergency-related restrictions no longer apply.⁵¹
- **Interior.** In response to EO 13924, Interior provided OIRA a spreadsheet listing 12 upcoming actions to provide economic relief as directed by the OMB guidance implementing the EO. These actions included a number of waivers, revisions to guidance, and administrative relief for regulated entities. For example, Interior's Bureau of Land Management proposed a rule that would streamline, among other things, certain timber salvage projects.⁵² According to the Bureau, the new rule would provide economic value, contribute to

⁵¹Continuous Emission Monitoring; Quality-Assurance Requirements During the COVID-19 National Emergency, 85 Fed. Reg. 22363 (Apr. 22, 2020).

⁵²National Environmental Policy Act Implementing Procedures for the Bureau of Land Management, 85 Fed. Reg. 79517 (Dec. 10, 2020).

rural economies, accelerate reestablishment of native tree species, and reduce future wildfire hazards.

- **OIRA.** In June 2020, OMB requested that agencies provide it a copy of all rules, waivers, or other regulatory actions that they intended to issue over the following six months to promote economic recovery, including a list of temporary regulatory actions the agency intended to take in response to the COVID-19 pandemic. OIRA and selected agency officials we spoke with told us the selected agencies provided this information to OIRA. OIRA staff told us they did not track the actions agencies took in response to EO 13924; and agency officials we spoke with confirmed that they were not required to take further action to track EO 13924 or related COVID-19 actions.

Selected Agencies Reported that Executive Order 13771 Did Not Affect Their Regulatory Enforcement Activities

Officials from each of our selected agencies said they neither identified nor implemented changes in regulatory enforcement activities in response to EO 13771. For example, officials from DOT said they did not identify trends or substantive changes to DOT's regulatory enforcement activities because they had not analyzed regulatory enforcement activities since the issuance of EO 13771. Similarly, Interior officials told us that they were unaware of any regulatory enforcement trends that resulted from EO 13771 and did not study enforcement related impacts because they were not required to do so for the EO.

Agency officials we spoke with told us that any changes in regulatory enforcement activities that occurred while EO 13771 was in effect were neither in response to nor a consequence of the order. For example, EPA officials told us that in 2015 the agency shifted its priority from enforcement to compliance activities.⁵³ Additionally, officials from DHS told us they made a number of enforcement changes based on

⁵³For additional information see GAO, *Environmental Protection: Action Needed to Ensure EPA's Enforcement and Compliance Activities Support Its Strategic Goals*, [GAO-21-82](#) (Washington, D.C.: Dec. 9, 2020). In 2020, we recommended that EPA improve its communication of related enforcement and compliance guidance, incorporate lessons learned on state coordination, and document assessment of regional enforcement and compliance activities.

immigration-related EOs and new immigration policies, which they said were not related to EO 13771.

Representatives from some nonfederal entities we spoke with told us they noticed changes in agencies' enforcement activities during the period the deregulatory EOs were in effect; however, none of these entities provided evidence to tie these changes directly to the EOs. For instance, representatives from an environmental non-profit organization said that overall enforcement of regulations had decreased because agencies reduced enforcement activities for certain environmental regulations. We also heard from a transportation industry group that enforcement became more burdensome for small businesses during the period the deregulatory EOs were in effect. Specifically, a representative of this group told us that some smaller transportation operators had incurred maximum fines for violations instead of the discounts previously offered to qualified small businesses. A representative from one of these nonfederal entities said it would be difficult to determine the direct relationship between any changes in enforcement and the deregulatory EOs.

Agency Comments

We provided a draft of this report to Commerce, DHS, DOT, EPA, Interior, and OMB for review and comment. DHS, DOT, Interior, and OMB provided technical comments, which we incorporated as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees; Secretaries of Commerce, Homeland Security, the Interior, and Transportation; the Administrator of the Environmental Protection Agency; the Acting Director of the Office of Management and Budget; and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-6806 or JonesY@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix II.

Letter

A handwritten signature in black ink that reads "Yvonne D. Jones". The signature is written in a cursive style with a large initial 'Y' and a distinct 'D'.

Yvonne D. Jones
Director, Strategic Issues

Appendix I: Overview of Selected Rules

Table 2: Selected Actions Issued by Selected Agencies While the Deregulatory Executive Orders Were in Effect: Fiscal Years 2017–2020

	Federal Register Citation	Rule type	Title
Department of Commerce	83 Fed. Reg. 15240 (Apr. 9, 2018)	Final rule	Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Essential Fish Habitat
	85 Fed. Reg. 17847 (Mar. 31, 2020)	Withdrawal	Shipping Act, Merchant Marine, and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Acts) Provisions; Fishing Vessel, Fishing Facility and Individual Fishing Quota Lending Program
Department of Homeland Security	82 Fed. Reg. 32987 (July 19, 2017) ^a	Temporary rule	Exercise of Time-Limited Authority to Increase the Fiscal Year 2017 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program
	83 Fed. Reg. 11667 (Mar. 16, 2018)	Withdrawal	Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Security Program; Withdrawal
Department of the Interior	84 Fed. Reg. 44976 (Aug. 27, 2019) ^b	Final rule	Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation
Department of Transportation	84 Fed. Reg. 34281 (July 18, 2019)	Interim Final rule ^c	Revision to Automatic Dependent Surveillance-Broadcast (ADS-B) Out Equipment and Use Requirements
	83 Fed. Reg. 59182 (Nov. 21, 2018)	Final rule	Passenger Equipment Safety Standards, Standards for Alternative Compliance and High-Speed Trainsets
Environmental Protection Agency	84 Fed. Reg. 3324 (Feb. 12, 2019)	Final rule	National Pollutant Discharge Elimination System (NPDES): Applications and Program Updates
	83 Fed. Reg. 5317 (Feb. 7, 2018)	Final rule	Additions to List of Categorical Non-Waste Fuels; Other Treated Railroad Ties

Source: GAO analysis of data from the Office of Information and Regulatory Affairs' Regulatory Reform Reports: Completed Actions Fiscal Years 2017 to Fiscal Year 2020 | GAO-21-104305

^aThis is a joint rule with the Department of Labor. We only communicated with the Department of Homeland Security on this specific rule.

^bThis is a joint rule with the Department of Commerce. We only communicated with the Department of the Interior on this specific rule.

^cAn interim final rule is issued when an agency finds that it has good cause to issue a final rule without first publishing a proposed rule. This type of rule becomes effective immediately upon publication. In most cases, the agency stipulates that it will alter an interim rule if warranted by public

Appendix I: Overview of Selected Rules

comments. If there are no changes, the agency will generally publish a brief final rule in the Federal Register.

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

Yvonne D. Jones, (202) 512-6806 or JonesY@gao.gov

Staff Acknowledgments

In addition to the contact named above, Danielle Novak (Assistant Director), Peter Beck (Analyst-in-Charge), Jacqueline Chapin, Joseph Fread, Timothy Guinane, Samantha Lalisan, Terence Lam, Steven Putansu, Joseph Santiago, and Alicia White made key contributions to this report.

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