# Effective Regulatory Reform: What the United States Can Learn from British Columbia

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## ABSTRACT

In 2017, President Trump signed Executive Order 13771, which required that two regulations be identified for elimination each time a new federal rule is proposed. The order also created, for the first time, a system of annual regulatory budget allocations for federal agencies. On the surface, the policy seems promising, as it resembles a similar program established in the Canadian province of British Columbia in the first decade of the 21st century. That program has widely been viewed as a success and inspired reforms elsewhere in Canada as well as in the United States. This paper compares the regulatory reform efforts in the United States with those in British Columbia as a means to predict whether the US effort is likely to be successful and to identify ways in which the US program might be improved. The article finds that the way in which the US regulatory reform is being implemented is limiting its scope to a degree that will likely undermine its effectiveness. For example, the number of rules that qualify as EO 13771 regulatory actions is narrowed to the extent that vast amounts of new regulations and most policy documents are exempted from the offset requirement. Furthermore, the complicated nature of the two-for-one requirement, whereby different sets of rules are counted as "ins" versus "outs," is making reporting difficult, if not misleading. The authors recommend improving reporting and transparency by creating a system for tracking government-wide regulatory requirements or restrictions over time, as well as changing the two-for-one requirement so that the same sets of rules count as regulatory and deregulatory actions. Although the current reforms are clearly having some immediate impact, expanding the scope of what the reforms cover, adopting a simpler measure, and improving reporting in order to create more transparency would make the reforms more consistent with the reforms in British Columbia, which have a track record of success. This would not be difficult to accomplish, and the article recommends some practical changes that build on the current reforms in the United States.

*JEL* codes: K2, D7, H7

Keywords: regulation, regulatory reform, regulatory budget, red tape, British Columbia



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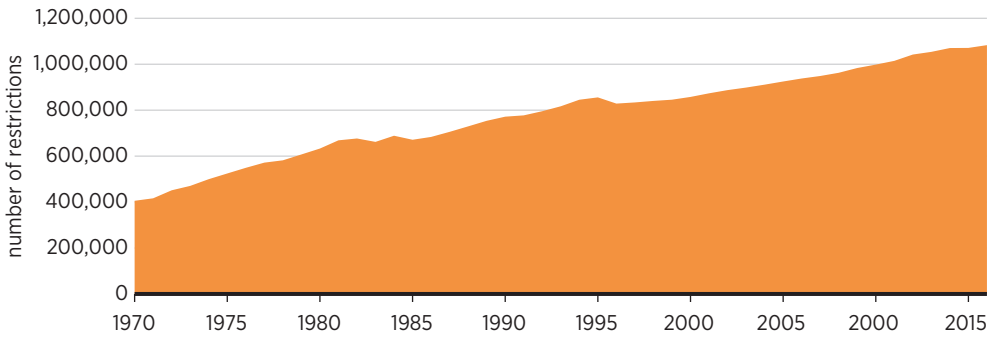
Ten days after taking office, President Trump signed Executive Order 13771, titled *Reducing Regulation and Controlling Regulatory Costs*.[1] The order requires that when executive branch agencies propose a new regulation, they must also identify at least two existing rules for repeal. It also mandates that there be no additional net cost from all regulations promulgated in fiscal year (FY) 2017. Since then, the two-for-one requirement has broadened to three-for-one. Moreover, for the first time, agencies are being assigned regulatory budget allocations for FY 2018, which, combined, aim to achieve $9.8 billion in total cost savings.[2]

Presidential action on regulatory reform is nothing new. Since the 1940s, over 30 federal laws, executive orders, or other presidential actions related to regulatory reform have been implemented at the federal level in the United States.[3] These actions include the creation and modification of formal administrative procedures for the promulgation of new rules, as well as prompts for federal agencies to review existing regulations.[4] Notably, none of these efforts have resulted in long-term reductions in the level of federal regulation,[5] an ostensible goal of some past presidents.[6] Instead, the accumulation of federal regulation

1. Exec. Order No. 13771, 82 Fed. Reg. 9339 (January 30, 2017).
2. Office of Management and Budget (OMB), *Regulatory Reform: Cost Caps Fiscal Year 2018*, December 2017.
3. Argive, "Regulatory Policy Timeline: An Interactive History of Federal Regulatory Reform," accessed February 23, 2018, https://argive.org/reform-timeline/.
4. Two examples of orders for federal agencies to review their existing regulations are Exec. Order No. 12044, *Improving Government Regulations*, 43 Fed. Reg. 12661 (March 24, 1978), and Exec. Order No. 13563, *Improving Regulation and Regulatory Review*, 76 Fed. Reg. 3821 (January 21, 2011).
5. Although there have been occasional short periods where the level of federal regulation has dropped, such episodes have always been more than offset by increases in federal regulation in subsequent years. Even periods associated with deregulation, such as the late 1970s and early 1980s, when airline and trucking pricing and entry systems were deregulated, did not result in significant or lasting reductions in the aggregate level of federal regulation in the United States.
6. For example, President Reagan's Executive Order 12991 includes a declaration that a goal of the order was "to reduce the burdens of existing and future regulations." See Exec. Order No. 12991, 46 Fed. Reg. 13193 (February 17, 1981).

FIGURE 1. REGULATORY RESTRICTIONS IN THE US *CODE OF FEDERAL REGULATIONS,* 1970–2017




Source: Patrick A. McLaughlin and Oliver Sherouse, RegData 3.1 (dataset), QuantGov, Mercatus Center at George Mason University, Arlington, VA, 2017, http://quantgov.org/regdata/.

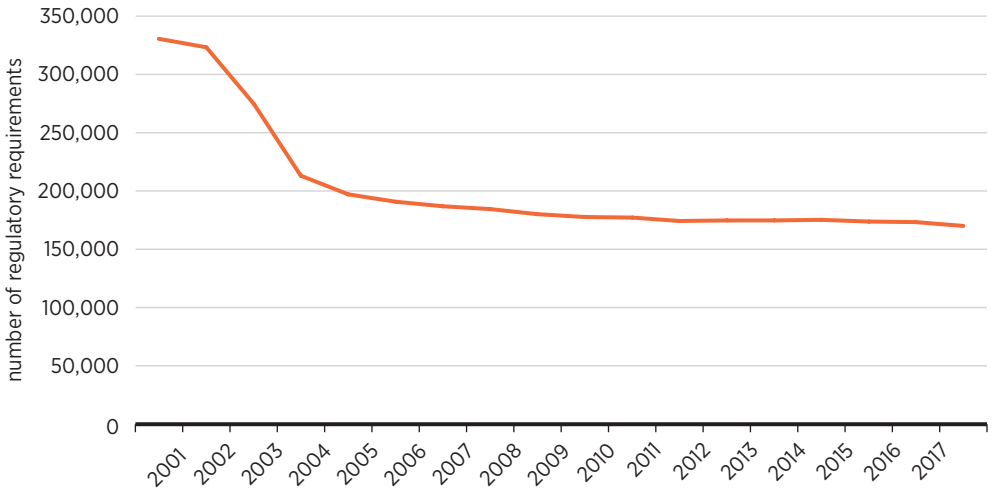
has continued at a steady clip. In 1950, there were fewer than 10,000 pages in the United States *Code of Federal Regulations* (CFR). Today, that number stands at more than 186,000 pages, representing more than an 18-fold increase.[7] The number of regulatory restrictions contained in the CFR stood at more than 1.08 million at the end of 2017, up from about 406,000 in 1970, as illustrated in figure 1.[8]

The current US reform effort is promising for two related reasons. First, putting a limit on the level of regulation with, for example, a one-in-two-out or one-in-three-out requirement for rules is a bolder approach than previous reforms in the United States. Second, the approach seems to be modeled in some respects after the policy of the Canadian province of British Columbia, which is an effort that stands out for its effectiveness and longevity.

British Columbia's experience stands in stark contrast to that of the US federal government, which has been steadily adding regulatory restrictions over the past several decades. As illustrated in figure 2, between 2001 and 2017, British Columbia reduced its regulatory requirements by 48 percent, in part through an initial policy of eliminating two regulatory requirements for every additional one

7. Office of the Federal Register, "Federal Register Statistics," *Federal Register Reader Aids: Insight into FR Publications*, accessed July 3, 2018, https://www.federalregister.gov/reader-aids/understanding-the-federal-register/federal-register-statistics.
8. Regulatory restrictions are instances of the terms "shall," "must," "may not," "prohibited," and "required" found in regulation text. A single regulation can have hundreds or even thousands of regulatory restrictions associated with it. See Patrick A. McLaughlin and Oliver Sherouse, RegData 3.1 (dataset), QuantGov, Mercatus Center at George Mason University, Arlington, VA, 2017, http://quantgov.org/regdata/.

FIGURE 2. BRITISH COLUMBIA'S REGULATORY REQUIREMENT COUNT ESTIMATED TIME SERIES, 2001–2017




Note: All data were collected in March of every year, except in 2001 when they were collected in June.

Source: Regulatory and Service Improvement Branch, Ministry of Jobs, Trade and Technology, British Columbia, Canada.

added—a policy that sounds remarkably similar to the first component of the new US federal reforms, as outlined in Executive Order 13771.[9]

The success of the British Columbia experience bodes well for the new US policy; however, there are also some important differences. One big difference is the scope of government mandates to which the policies apply. British Columbia's two-for-one policy applied broadly to most requirements found in the province's regulations, legislation, forms, and interpretive policies. The US policy, by contrast, requires only that a relatively small number of legally "significant" rules be offset. These rules constitute some of the largest federal rules,

9. B.C.'s Regulatory Reform Initiative, *Achieving a Modern Regulatory Environment: Sixth Annual Report, 2016/2017*, Province of British Columbia, 2017. It is possible that the Trump administration's reform was indirectly inspired by British Columbia's successful experience via a reform effort that began in Kentucky before President Trump took office. The Kentucky Red Tape Reduction Initiative's website explicitly cites the British Columbia experience as an inspiration. See RedTapeReduction.com (accessed November 14, 2017). President Trump and Kentucky governor Matt Bevin have communicated with one another off and on since before Trump took office, and their discussions have included, among other things, cutting red tape. Although Trump had already been touting a two-for-one regulation policy on the campaign trail even before some of these communications took place, it is nonetheless reasonable to think that the efforts in Kentucky may have influenced reforms that would later be implemented in Washington, DC.

about 8 percent of all federal regulations.[10] But all legislation and the vast majority of agency policy documents do not need to be offset under the US program.[11]

Another problem related to the narrow scope of the US reforms is the complex nature of the US approach, which requires sophisticated cost estimates for both new and existing regulations. There are tens of thousands of regulations on the books, many without cost estimates, which makes prioritizing which regulations to eliminate a daunting task. This is likely to make implementation of the policy difficult and slow down efforts to reduce regulatory burdens. The British Columbia model, by contrast, is elegant in its simplicity. It uses a measure of regulation that is easy to quantify—regulatory requirements—and the province tracks this measure over time. This simple metric is likely a key reason for the lasting success of the British Columbia program.[12]

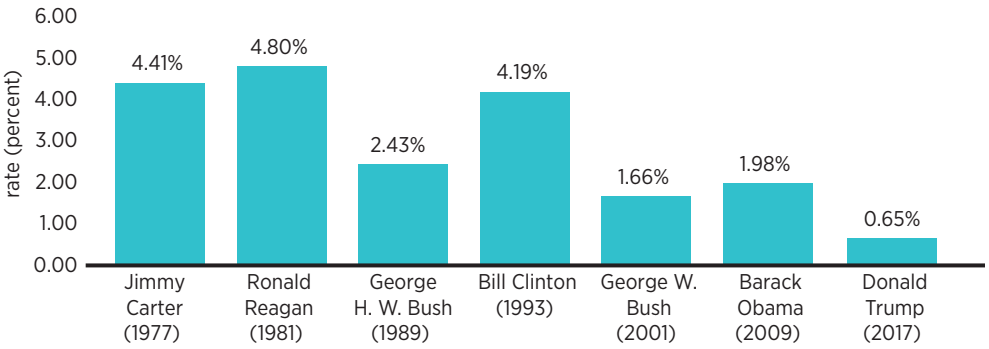
Early evidence shows that US reforms have slowed the pace of regulatory growth to less than the pace set by the past six presidents in their first year in office (see figure 3). However, the reforms have not yet delivered a net regulatory reduction.[13] By contrast, the first year of the British Columbia reform saw a modest reduction in requirements of 2.2 percent. This was followed in subsequent years by double-digit declines, leading to a reduction of one-third in three years. It is an open question what the second year will bring for the US reforms.

## I. BRITISH COLUMBIA'S REGULATORY REFORM MODEL

British Columbia's regulatory reform started in 2001 after a new government was elected. Before being elected, the government promised to reduce the regulatory burden in the province by one-third within three years. The promise was part of a broader set of "New Era of Prosperity" commitments to improve the province's economy. During the previous two decades, economic growth in the province

10. Although only significant rules require offsets under the US program, nonsignificant rules can still be used as offsets for new significant rules.
11. The nature of the parliamentary system in Canada may partly explain why legislation was able to be included in the British Columbia reforms. In a presidential system—like that of the United States—including legislation in efforts to reduce burdens is trickier and could require some cooperation from Congress or, alternatively, a constitutional amendment.
12. The initial count in British Columbia was done by hand in a matter of months with the help of some interns. Today such counts can be done electronically with tools such as RegData. See Laura Jones, "Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?" (Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, 2015).
13. It is somewhat ambiguous whether a reduction in regulation was an intended goal of the US reforms in their first year. The one-in-two-out component of Executive Order 13771 aimed for more rules to be removed from the books than were added, which did not happen. However, the order also aimed to maintain—not reduce—the aggregate cost burden of federal regulation.

FIGURE 3. GROWTH OF REGULATORY RESTRICTIONS DURING A PRESIDENT'S FIRST YEAR IN OFFICE




Source: Patrick A. McLaughlin, Oliver Sherouse, and Jonathan Nelson, eCFR (dataset), QuantGov, Mercatus Center at George Mason University, Arlington, VA, 2017, http://quantgov.org/data/.

had lagged behind the rest of Canada.[14] The election commitments proved very popular. British Columbia typically resembles a "purple state" in that its elections tend to be very close. However, the 2001 election was not at all close: Liberals won 77 out of the 79 possible seats in the provincial legislature—the largest victory in the province's electoral history.

Once elected, the new premier made regulatory reform a priority and appointed a minister to oversee red tape reduction efforts. The minister's first task was to measure the regulatory burden. The government chose a very simple measure, "regulatory requirement," defined as "an action or step that must be taken, or piece of information that must be provided in accordance with government legislation, regulation, policy or forms, in order to access services, carry out business or pursue legislated privileges."[15] The initial count was completed quickly and revealed 330,812 regulatory requirements.[16]

The metric chosen was notable in that it was comprehensive and included requirements found not just in regulation but also in legislation, interpretive policies, and forms.[17] If the government had chosen to focus more narrowly on the

14. James Broughel, "Can the United States Replicate the British Columbia Growth Model?," Mercatus Center at George Mason University, May 25, 2017.
15. British Columbia Ministry of Small Business and Red Tape Reduction, *Regulatory Reform Policy*, June 2016.
16. Note that 330,000 is the restated baseline. The original count was closer to 380,000 requirements, but this number was later revised to eliminate some double-counting that occurred in the original count.
17. There are, however, some agencies that are delegated the power to regulate by the British Columbia government whose requirements are outside of the count. A good example of this is the recycling rules managed by Recycle BC.

requirements found only in regulation, it would have missed many of the requirements that affect its citizens. In the initial count, only 30 percent of the regulatory requirements were found in regulation. The rest of the requirements were found in legislation (17 percent) and interpretive policies (53 percent).[18] This is not a minor detail of regulatory reform. Many initiatives address only the subset of government mandates or prohibitions found in regulation or a subset of regulation, while many—possibly even the majority—of government requirements fall outside of regulation.

To meet the target of a one-third reduction in three years (by 2004), the British Columbia government mandated that two regulatory requirements be eliminated for every new one introduced. This sounds similar to the language in Executive Order 13771, but there are two important differences. British Columbia's "regulatory requirement" measure is both more granular (because individual regulations can comprise numerous regulatory requirements) and more comprehensive (British Columbia looked at regulatory requirements found in legislation and policy). There is one other difference worth noting: British Columbia set a reduction target—one-third in three years—that was based on the initial requirement count. This helped ensure focus, urgency, and accountability. It helped the government track its progress over time and was also a simple way for the public to understand the magnitude of what was being eliminated.

Executive Order 13771 specifies no net increase in costs in 2017, which is a target with a corresponding time frame, albeit one that is limited to a subset of regulations and is not based on any assessment of the overall level of regulation. A slightly more ambitious reduction target of $9.8 billion has been set for FY 2018.[19] However, given that the US government has no cumulative cost estimate for all US federal regulation, it is impossible to know how large this reduction is as a percentage of the total cost of regulation. In contrast, as was just noted, British Columbia's baseline count of regulatory requirements meant there was clarity about the magnitude of the reduction achieved relative to its starting point.

British Columbia's two-for-one policy worked so well that at one point regulators were identifying five requirements to eliminate for every new one introduced, even though they were only required to identify two. To help identify requirements to cut, the minister responsible asked the business community for suggestions. At the time, examples of excessive regulating in the province were

18. Personal communication between Laura Jones and a previous director of the Deregulation Office (May 11, 2016).
19. OMB, *Regulatory Reform: Cost Caps Fiscal Year 2018*, December 2017.

not hard to find: government rules dictated what size televisions restaurants could have in their establishments and how many par-four holes golf courses must have. Forestry companies were struggling under the weight of rules that added an estimated billion dollars of extra cost for no additional benefit.[20] In addition to consultation with the business community, ministries were asked to come up with recommendations for how to meet the reduction target. The province met its one-third reduction target on time.[21]

A year before the one-third reduction target was achieved, the Canadian Federation of Independent Business (CFIB), an advocacy group dedicated to voicing the concerns of small business, started encouraging the government to continue measuring and public reporting after 2004, when the target was scheduled to be met. CFIB expressed its concern that regulatory creep would quickly set in if the government stopped publishing its regulatory reports and had no target to maintain the one-third reduction. The government agreed to continue publishing regulatory counts regularly, and it has made a series of commitments to maintain the regulatory reduction by requiring the elimination of one regulatory requirement for every one added (i.e., one in, one out). The most current commitment to no net increase in regulatory requirements expires in 2019.[22] It is notable that although government commitments have simply been to maintain the one-third reduction, the actual reduction as of 2017 stands at just over 48 percent. This means regulators have continued to eliminate requirements faster than they have added them and suggests a fundamental change in the regulatory culture within government.

British Columbia's regulatory reduction approach—to create an inventory of its existing rules, put in place a one-in-two-out policy, and create a time-bound reduction target (one-third reduction in three years) based on the inventory—was unique in North America in 2001.[23] It was clearly effective at reducing regulatory requirements. The subsequent policy of requiring one-in, one-out, which has been in place since 2004, has successfully maintained the reduction (and even encouraged some additional regulatory reduction). By contrast, reducing or even

20. Laura Jones, "Cutting Red Tape in Canada."
21. The target was actually met slightly ahead of schedule, and by the 2004 deadline regulatory requirements had been reduced by 37 percent, which exceeded the target.
22. In May 2017, a new government was elected in British Columbia. The new minister responsible for the program committed to keep the reforms in place in a meeting in Vancouver in November 2017.
23. Although the British Columbia reform is very different from past US and Canadian reforms, it is similar in some respects to reforms in some European countries, such as the United Kingdom and the Netherlands.

stabilizing the level of regulation has proven difficult for the US federal government to accomplish.

British Columbia reduced its rules while maintaining high safety and environmental quality outcomes.[24] Further, the reforms have not been controversial—there have been no serious protests or claims by environmental groups, unions, or others that the red tape–cutting initiative in British Columbia undermined any of the legitimate objectives of regulating. Finally, it is likely that the rule reduction was a factor in the economic turnaround in the province; British Columbia went from being an economic laggard in Canada to a top-performing province.[25]

The British Columbia reform effort was considered so successful that it helped inspire a federal law in Canada that passed on an overwhelmingly multipartisan basis.[26] Canada's Red Tape Reduction Act borrowed from the idea of one in, one out, although in a different form.[27] In 2015, Canada became the first country in the world to require by law that the administrative burdens of each new regulation be offset by amending or repealing at least one existing regulation.[28] The province of Manitoba also recently followed British Columbia's lead with a new law that requires that two regulatory requirements be eliminated for every one introduced until March 31, 2021, and that one requirement be eliminated for every subsequent new one after that.[29]

Ultimately, the British Columbia model is fairly simple, and its success can be attributed to five things.[30] The first is political leadership. The policy was a clear political priority for the premier and his cabinet, which ensured focus on reform widely across government. A second factor is that the policy used the right measure. A broad and simple metric was used to track success. Third, transparency was a feature of the policy. Reporting was publicly available and

24. A British Columbia Progress Board was set up in 2001 to track progress at achieving key indicators, including those in the categories of health and environment. During the entire time the Progress Board was reporting, British Columbia maintained top rankings in Canada in the health and environment categories. The board was disbanded in 2011, but some of its archived reports can be found at http://www.westhawk.com/BCPB/benchmarking_reps.html.
25. Broughel, "Can the United States Replicate the British Columbia Growth Model?"
26. See the Red Tape Reduction Act of 2015, C21, which passed by a margin of 245–1, https://openparliament.ca/votes/41-2/273/.
27. Canada's one-for-one rule is applied only to regulations and uses administrative cost as its metric. British Columbia uses regulatory requirements for its one-for-one rule, and the requirements can be found in regulation, legislation, forms, and policy. British Columbia has not made its one-for-one policy the law.
28. Other jurisdictions, including British Columbia and the United Kingdom, have such policies in place, but Canada was the first country to create a one-in-one-out law.
29. See the Legislative Assembly of Manitoba's Bill 22, Regulatory Accountability Act and Amendments to the Statutes and Regulations Act, https://web2.gov.mb.ca/bills/41-2/b022e.php. This is more similar to British Columbia's approach than it is to the Canadian federal government's one-for-one policy.
30. Jones, "Cutting Red Tape in Canada."

easy to understand.[31] Fourth, regulatory limits were put in place, first in the form of a one-in-two-out rule, followed by a one-in-one-out rule to keep regulations from increasing again. This constraint, coupled with the reduction target of one-third in three years, created a sense of urgency around reducing rules. The new limits were so effective that they promoted a cultural change within government. Civil servants close to the reforms in government speak of how the new approach led staff to think differently about their jobs, exercising caution in proposing new rules and taking stewardship of old rules as they located redundant, overly costly, or unnecessary ones.[32] Fifth, the policy had support from stakeholders. No less crucial for success was the active and vocal cheerleading by the business community that also held the government accountable for sustaining the achievements of reform beyond the initial three-year commitment.[33]

## II. THE NEW US REFORMS

Executive Order 13771 has two central elements: First, it states that for each new executive branch regulation proposed, an agency or department must identify at least two existing regulations for repeal. Second, for FY 2017, the total incremental cost of new regulations must be no greater than zero (for FY 2018 a reduction target of $9.8 billion has been set).[34]

A number of critical questions remained unanswered by the initial order, possibly because the order was drafted in haste after President Trump took office. For example, it was unclear which regulations fell under the purview of the executive order and how regulatory costs would be measured. The White House budget director, through his regulatory review unit, the Office of Information and Regulatory Affairs (OIRA), answered those important questions in two documents guiding the implementation of the executive order.[35]

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31. The government published quarterly reports to track progress toward achieving the one-third reduction. The reports detailed the number of regulatory requirements by ministry. In more recent years, the government has published an annual report with the current state of regulatory requirements. In 2011, the Regulatory Reporting Act made it the law that an annual report detailing regulatory reform progress be published.
32. Jones, "Cutting Red Tape in Canada."
33. For example, the Canadian Federation of Independent Business has given British Columbia seven "A" grades on the annual red tape accountability report card that gets widely covered by the media.
34. The initial zero-net-cost requirement in the order was designed to be flexible. The executive order makes clear that the director of OMB will identify "a total amount of incremental costs" to be allowed for the next fiscal year, which explains why the net cost allowance is negative for FY 2018.
35. OMB, *Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled "Reducing Regulation and Controlling Regulatory Costs,"* February 2, 2017; and OMB, *Guidance Implementing Executive Order 13771, Titled "Reducing Regulation and Controlling Regulatory Costs,"* April 5, 2017.

First, the OIRA guidance states that only "significant" regulatory actions (as defined in an earlier executive order from the Clinton administration)[36] and significant guidance documents qualify as regulatory actions under Executive Order 13771. Significant regulatory actions are, for practical purposes, rules reviewed by OIRA before going into effect.[37] Because OIRA reviews only a small fraction of all regulations—about 8 percent in recent years—the vast majority of new regulatory actions (the nonsignificant ones just noted as well as regulations from independent agencies) face no requirement to be offset.

The scope of which rules require offsets may be even narrower than this, however, for several reasons. OIRA guidance to implement Executive Order 13771 notes that "opportunity cost to society," as defined under earlier Office of Management and Budget (OMB) regulatory analysis guidelines, is the appropriate measure of cost for offset purposes. Each year, only a few dozen "major" regulations (those expected to have an impact of $100 million in at least one year) are required to have a regulatory impact analysis that includes anything approximating an estimate of these opportunity costs.

These major regulations with accompanying economic analysis represent only about 20 percent of the rules reviewed by OIRA each year or about 1 to 2 percent of all regulations finalized in a particular year.[38] Narrowing the scope even further than this, many major regulations are considered "budget" regulations in that they primarily cause income transfers across taxpayers, and OIRA has chosen to generally exempt budget regulations from offset requirements under Executive Order 13771.[39]

There is an additional complexity from the OIRA guidance that is puzzling. The guidance defines Executive Order 13771 regulatory actions and deregulatory actions differently, such that nonsignificant rules can be used as offsets for significant ones, but new nonsignificant rules are not required to be offset

36. See Section 3(f) of Exec. Order No. 12866, Regulatory Planning and Review, 58 Fed. Reg. 51735 (October 4, 1993).
37. Technically, "significant rules" are rules that are expected to have an impact of $100 million or more in a single year, that raise novel legal issues, that materially affect the government's budget, or that create inconsistencies with actions at other agencies. These are the factors that determine which rules OIRA selects for review and are set out in Executive Order 12866. Some rules may meet one or more of these criteria but are exempt from OIRA review and therefore not typically counted as significant regulatory actions, such as rules from independent agencies.
38. OIRA reported monetized estimates of cost for 48 major executive branch regulations for FY 2016. See OMB, *2017 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act*, 2017, 3.
39. Budget regulations often implement federal spending programs, such as Medicare, Medicaid, and Social Security. See OMB, *Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled "Reducing Regulation and Controlling Regulatory Costs,"* 2.

themselves.[40] This creates an odd asymmetry where nonsignificant rules do not count as "ins" but can count as "outs." We return to this confusing issue later.

To summarize, the OIRA guidance documents for Executive Order 13771 narrow the offset requirement's scope considerably, such that OIRA-reviewed major regulations that are not budget regulations are most likely to be those counted as new 13771 regulatory actions.[41] These constitute the small number of significant rules with accompanying cost estimates that have not been exempted for one reason or another.[42] This tiny slice of rules represents about 1 percent of all federal regulations finalized each year. To illustrate, counts of the different types of regulations are presented for a 10-year period in table 1.

The narrow scope of what is required to be offset means that, while the $9.8 billion reduction target may be met for roughly 1 percent of rules, costs from other regulations may continue to rise. This would not be in keeping with the spirit of Executive Order 13771 (which seems to suggest an overall regulatory cap or even a reduction) but would meet the standards set forth by OIRA in its implementation guidance. Of course, nothing prevents additional regulatory reductions beyond those required by the OIRA guidance documents. Indeed, the emphasis the president has put on making regulatory reduction a priority encourages this. But a lack of alignment between the spirit of the executive order and the guidance that goes with it is less than ideal.

The way OIRA is administering the reforms under Executive Order 13771 makes sense from the perspective of leveraging existing processes. For example, the reforms rely on cost estimates that are already being produced as part of existing regulatory analysis requirements. However, fitting the new reforms into the existing analysis and OIRA review processes limits the reforms' comprehensiveness and, therefore, ultimately their effectiveness.

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40. Specifically, under Executive Order 13771, a deregulatory action "is an action that has been finalized and has total costs less than zero," and a regulatory action is a "significant regulatory action" or a "significant guidance document."

41. Recent reporting from the Trump administration appears to confirm that this small subset of regulations is what is being counted as new regulatory actions under Executive Order 13771, at least for some reporting purposes. See OMB, *Regulatory Reform: Completed Actions Fiscal Year 2017*, December 2017.

42. OIRA guidance includes other exemptions. For example, independent agency rules are exempt from Executive Order 13771, although these agencies are encouraged to identify regulations that, if repealed or revised, would achieve cost savings. OIRA has also made clear that, although significant guidance documents fall under the purview of Executive Order 13771, "significant guidance or interpretive documents will be addressed on a case-by-case basis," meaning these policies will not be addressed comprehensively.

TABLE 1. COUNTS OF VARIOUS TYPES OF REGULATIONS, FISCAL YEARS 2007–2016

| Type of rule | Count | Percentage of all final rules |
|---|---|---|
| Final rules published in the *Federal Register* | 36,255 | 100 |
| Significant executive branch regulations (i.e., rules reviewed by OIRA) | 2,670 | 7.4 |
| Major regulations (those with annual impact > $100 million) reviewed by OIRA | 609 | 1.7 |
| **Rules likely to be offset: OIRA-reviewed "major" regulations, excluding budget regulations** | **390*** | **1.1*** |

*This is an estimate based on the fraction of major regulations reviewed by the Office of Information and Regulatory Affairs (OIRA) that were budget regulations in fiscal year (FY) 2016. In FY 2016, 31 out of 85 OIRA-reviewed major regulations (36 percent) were budget regulations.

Source: Office of Management and Budget, *2017 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act*, 2017, 2, 8.

Trump also signed Executive Order 13777, *Enforcing the Regulatory Reform Agenda,* on February 24, 2017.[43] That order created Regulatory Reform Task Forces and Regulatory Reform Officers within executive branch departments under the president. These task forces are required to "evaluate existing regulations" and "make recommendations to the agency head regarding their repeal, replacement, or modification." These task forces, along with the OIRA administrator and her staff, are the primary personnel tasked with overseeing and implementing Executive Order 13771.

There is nothing to stop the task forces or OIRA from identifying areas for regulatory reduction that go beyond the requirements set forth under Executive Order 13771 and OIRA's implementation guidance documents. Indeed, the slowdown in the growth of regulation, as illustrated in figure 3, suggests this very well could be happening. Reducing regulation is clearly a priority for this administration.

## III. ARE THE KEY ELEMENTS OF THE BRITISH COLUMBIA REFORM IN PLACE IN THE UNITED STATES?

Earlier we noted five characteristics of the British Columbia reform that played an important role in its success: political leadership, the right measure of regulation, transparency, regulatory limits in the form of a one-in-two-out policy and an accompanying reduction target (followed by a maintenance target), and support from stakeholders, particularly from the small-business community. In this section, we review these factors and assess whether they are present in the regulatory reform being implemented in the United States.

43. Exec. Order No. 13777, 82 Fed. Reg. 12285 (March 1, 2017).

## A. Political Leadership

Trump made regulatory relief a priority of his campaign and also emphasized it during his transition to office.[44] As president, he has reaffirmed his desire to reduce regulation, as evidenced by the executive orders he has issued related to regulatory relief. In some notable cases, he has made good on promises to reduce regulatory burdens.[45] In addition, the task forces created under Executive Order 13777 have similar objectives to a task force that British Columbia relied on as part of its reforms. These actions are consistent with the high-level leadership shown in British Columbia by the premier to make the issue of regulatory reform a priority across government.

However, the US reforms face some important challenges relative to their British Columbia counterparts in the leadership category. In British Columbia, the premier appointed a minister for the reduction of red tape to be exclusively devoted to regulatory reform.[46] The counterpart in the United States is the administrator of OIRA, who oversees only significant executive branch regulations. The regulatory reform officers at agencies have broad responsibilities at individual agencies, but none of them oversee regulatory reduction efforts across all agencies, and independent agencies are not required to set up these task forces (although they are "encouraged" to do so).[47] There is no quarterback, so to speak, who works under the president and directs the regulatory effort across all federal agencies.

Furthermore, there is a gap between some of Trump's communications around reducing regulation and what is actually happening with respect to the

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44. For example, a two-for-one regulatory policy was included as part of Trump's Contract with the American Voter, which described an action plan for the first 100 days of his administration, available at https://assets.donaldjtrump.com/_landings/contract/O-TRU-102316-Contractv02.pdf; and as part of a video made shortly after being elected—see Clyde Wayne Crews Jr., "Donald Trump Promises to Eliminate Two Regulations for Every One Enacted," *Forbes*, November 22, 2016, https://www.forbes.com/sites/waynecrews/2016/11/22/donald-trump-promises-to-eliminate-two-regulations-for-every-one-enacted/#4e38be334586.

45. For example, more than a dozen regulations have been repealed under the Congressional Review Act process. See the Congressional Review Act Tracker, George Washington University Regulatory Studies Center. The Trump administration has also withdrawn or delayed more than 1,500 regulatory actions and repealed, or initiated repeal, of several high-profile rules, including an Obama-era Federal Communications Commission regulation related to "net neutrality" and controversial environmental rules, such as the Clean Power Plan and Waters of the United States rules from the Environmental Protection Agency.

46. The first minister responsible had the title of minister of deregulation. Once the initial reduction target was met, the term "deregulation" was dropped in favor of terms like "regulatory reform" and "red tape reduction initiative."

47. See OMB, *Guidance on Regulatory Reform Accountability under Executive Order 13777, Titled "Enforcing the Regulatory Reform Agenda."*

reforms. For example, he has made several off-the-cuff statements with respect to cutting regulations by 75 percent or reducing regulation to 1960 levels.[48] An immediate and fair reaction might be to question whether the magnitude of the reductions he envisions is too large to be realistic. But his comments highlight another fundamental challenge with the reforms: they are complicated to communicate. The president may be reaching for a simple and clear message, but he risks misleading people because neither a 75 percent reduction nor cutting regulations to 1960 levels represents the objectives of the current reforms. This brings us to an important point discussed more fully in the next section: a simple measure will be most effective for the purpose of communicating and tracking the success of the reform.

## B. The Right Measure

Regulatory reform should be comprehensive. This requires a measure of regulation that is simple enough to be replicable, hard to manipulate for political purposes, and, as noted above, easy to communicate. There are, of course, tradeoffs when it comes to choosing a regulatory measure.[49] In theory, using a measure such as the "opportunity cost to society" suggested by OIRA is desirable because regulatory costs and benefits, not counts, are ultimately what matter for citizens' quality of life. However, in practice, opportunity cost measures are more difficult and expensive to manage, and they narrow the scope of reforms to such a degree that reforms become significantly less meaningful. In addition, assumptions are made in cost analysis that make such measures easy to manipulate for political purposes. Finally, opportunity cost can be a difficult concept to communicate to the public.

To illustrate the problem of managing a complicated measure, consider that strict adherence to OIRA's guidance to use opportunity cost as the appropriate measure of cost savings could limit the number of regulations requiring offsets to just a handful of "major" regulations each year—that is, those with

48. Chris Arnold, "President Trump to Cut Regulation by '75 Percent'—How Real Is That?," *NPR Morning Edition*, January 24, 2017; Juliet Eilperin, "Trump Pledges to Cut Regulations Down to 1960 Levels—but That May Be Impossible," *Washington Post*, December 14, 2017.
49. For more discussion of these tradeoffs, see Marcus Peacock, *Implementing a Two-for-One Regulatory Requirement in the U.S.* (Washington, DC: George Washington University Regulatory Studies Center, 2016); Ted Gayer, Robert Litan, and Philip Wallach, *Evaluating the Trump Administration's Regulatory Reform Program* (Washington, DC: Brookings Institution, 2017); and Robert Hahn and Andrea Renda, *Understanding Regulatory Innovation: The Political Economy of Removing Old Regulations before Adding New Ones* (Washington, DC: Technology Policy Institute, 2017).

available estimates of opportunity cost that are reviewed by OIRA and have not been exempted from Executive Order 13771 requirements for one reason or another. This underscores how complexity in measurement narrows the comprehensiveness of what can be covered by a regulatory reform.

A useful way to consider the dilemma and tradeoffs involved in measurement may be to choose the measure of regulation that best fits the task at hand. Measures such as opportunity cost may make sense when analyzing the biggest regulations one at a time as part of a regulatory impact analysis. But this measure is less well suited for tracking and achieving reductions in the overall level of regulation. Meanwhile, counts of regulatory requirements or restrictions may not be especially useful in a regulatory impact analysis but, based on British Columbia's experience, may prove very useful for tracking aggregate regulation levels and setting targets for where that level should move over time.

Also problematic is that agency analysts are often tasked with producing analysis to justify regulations,[50] when instead they should be trying to objectively evaluate the likely consequences of rules. Because agency regulatory analysis is often compromised by political factors, these analyses are sometimes referred to as "advocacy documents."[51] On top of this, even if agency cost estimates were comprehensive and credible, they are not up to date. OMB guidance states that past cost estimates cannot generally be used when determining cost savings from eliminated regulatory actions.[52] This creates new work for agency analysts and could slow down the process.

British Columbia used a simple, comprehensive approach to measuring: counting the number of regulatory requirements in government legislation, regulation, and associated policies. By contrast, OMB instructs agencies to use the far more challenging measure of opportunity cost when offsetting new actions under Executive Order 13771, but the vast majority of US federal regulations do not have such cost estimates. British Columbia's simple measure

50. Interviews with agency economists reveal that analysts are sometimes asked to produce benefit and cost estimates that are favorable to a regulation. See Stuart Shapiro, *Analysis and Public Policy Successes, Failures and Directions for Reform* (Cheltenham: Edward Elgar, 2016); and Richard Williams, "The Influence of Regulatory Economists in Federal Health and Safety Agencies" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2008).
51. E. Donald Elliott, "Rationing Analysis of Job Losses and Gains: An Exercise in Domestic Comparative Law," in *Does Regulation Kill Jobs?*, ed. C. Coglianese, C. Carrigan, and A. Finkel (Philadelphia: University of Pennsylvania Press, 2014); and Christopher Carrigan and Stuart Shapiro, "What's Wrong with the Back of the Envelope? A Call for Simple (and Timely) Benefit–Cost Analysis," *Regulation and Governance* 11, no. 2 (2017): 203–12.
52. OMB, *Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled "Reducing Regulation and Controlling Regulatory Costs,"* 4.

allowed for a wide scope, while OIRA's more complex measure has narrowed it significantly.

A simpler measure would also make it possible to establish a baseline of regulatory levels and therefore to understand the relative magnitude of what is reduced. The US government has no such baseline estimate for its opportunity cost measure, while British Columbia can credibly say it cut regulatory requirements by 48 percent relative to 2001 levels.

## C. Transparency

British Columbia issued quarterly reports that were made public to demonstrate progress on its reforms, which was a simple way to make departments across government accountable for progress, or lack thereof, toward meeting the reduction target. The reports clearly tracked the number of regulatory requirements by government ministry. During the first phase of the reforms, reduction numbers were discussed at every cabinet meeting.

By contrast, it is harder to assess whether the US two-for-one policy is being followed consistently. Regulatory agencies are required under Executive Order 13771 to identify two regulations for repeal "whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation." However, individual significant regulations are being proposed that do not identify offsets in their accompanying documentation,[53] and there is no public reporting that clearly shows whether the two-for-one rule is being followed beyond the relatively narrow subset of rules reviewed by OIRA.

The Unified Agenda, a recurring document that lists regulatory actions agencies are working on, has been released several times since Executive Order 13771 was signed, and these reports do list many deregulatory actions, but they do not clearly identify which offsets are specifically linked to which new regulations. One Unified Agenda was accompanied by an Executive Order 13771 status report.[54] The status report did not link new regulatory actions with their deregulatory offsets, but it did clearly lay out the number of new regulatory and deregulatory actions in FY 2017 by department or agency.

The status report claims, for example, that the Trump administration issued 22 deregulatory actions for each new one regulatory action, generating about $8.1 billion in total savings in the first eight months of the Trump administration. This

53. Sofie Miller, "Missing Offsets: EPA and DOE Rules May Not Comply with One-in-Two-out E.O." (George Washington University Regulatory Studies Center, Washington, DC, July 19, 2017).
54. OMB, *Regulatory Reform: Two-for-One Status Report and Regulatory Cost Caps*, December 2017.

is based on a total count of 67 deregulatory actions compared with three new regulatory actions. It is important to highlight the asymmetry we mentioned previously again here. The OIRA guidance defines regulatory and deregulatory actions differently, so this 22-to-1 ratio is not making an apples-to-apples comparison.

The confusing reporting stems from the complicated nature of the offset requirement. Only significant regulatory actions need to be offset, whereas any existing regulation with a positive cost can be used to offset new significant regulatory actions. The fact that different sets of regulations count as "ins" versus "outs" makes reporting difficult and, worse, misleading.

To address these challenges, OIRA guidance should be updated to ensure that Executive Order 13771 regulatory and deregulatory actions are redefined to measure the same things. This would make the offset requirement itself less confusing and would allow for apples-to-apples comparisons in reporting. For example, all major nonbudget regulations reviewed by OIRA could be required to be offset by eliminating another regulation of this kind of equal or greater cost.

More important is our recommendation that all agencies be required to report a much simpler measure—total requirement or restriction counts—to OIRA.[55] Ideally, the count should include requirements found in both regulation and guidance documents, and OIRA would compile and publish this information annually or semiannually by agency (perhaps as part of the Unified Agenda). Independent agencies should be included in the reporting, and OIRA could produce a tally that covers requirements found in legislation. This would give the public a much clearer sense of what is actually happening to total levels of regulation and which departments and agencies are adding rules and which are subtracting them (and if an agency failed to report, that would also be noted). The "regulatory quarterback" we suggested earlier should be a champion of these reports.

Such a reporting system could be ordered via a new executive order, or by other means, and could coexist alongside current mechanisms. In other words, the process that OIRA has created for offsetting significant regulations based on their opportunity cost could continue in largely the same form (with some minor tweaking) for the biggest federal regulations. Meanwhile, a regulatory requirement or restriction database would be created and updated over time to allow the two-for-one requirement to be extended to a much broader swath of regulatory requirements, as we discuss below.

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55. Data that could be used for this purpose are available from the Mercatus Center. See Patrick A. McLaughlin and Oliver Sherouse, RegData 3.1 (dataset), QuantGov, Mercatus Center at George Mason University, Arlington, VA, 2017, http://quantgov.org/regdata/.

## D. Regulatory Limits

The US reform includes a two-for-one requirement. This is certainly a limit placed on the ability of regulators to promulgate new rules, but as noted previously, the scope of this limit is significantly narrower than the requirement imposed in British Columbia. Additionally, the United States has set a target of finding $9.8 billion in cost savings in FY 2018. However, British Columbia began its regulatory reform efforts by establishing a baseline, or initial count, of requirements on the books.[56] From this starting point, it was possible to understand how much progress was made. In contrast, as has been noted several times, no such baseline has been established for the US reform.

If agencies and departments start reporting as we suggested earlier, a baseline can be created that relies on a simpler measure, such as requirement or restriction counts. Without a baseline, it is impossible to know whether what is reduced is a lot or too little. In fact, the Mercatus Center's RegData project already includes an estimate of federal regulatory restrictions, as seen in figure 1, that can be used for this purpose. Once a baseline estimate is available, the two-for-one requirement can be significantly expanded. This would make the US reforms much more consistent with those in British Columbia and much more transparent, as well as easier to communicate.

## E. Stakeholder Backing

A key element of the British Columbia reform was vocal support from the small-business community. Although the business community in the United States in general has been supportive of regulatory relief, support for structural reforms such as a broad regulatory count, comprehensive measurement, and realistic reduction targets has been weaker or missing altogether.

Instead, there has been a narrow focus in the administration on eliminating recently finalized regulations, as well as on withdrawing rules that have yet to be finalized. This focus on recent and forthcoming regulations may be stemming from the influence of the business community. It has played out through the use of Congressional Review Act resolutions to repeal a number of regulations

56. Also problematic is that the $9.8 billion target was set after the OIRA administrator requested information from agencies about their plans for FY 2018. In other words, it appears the regulatory budget allowances are based on what agencies were already planning on doing, rather than on how much of the cumulative burden of regulation the administration wants to reduce. This implies that the budget constraint may not be binding. See OMB, *FY2018 Regulatory Cost Allowances, Memorandum for Regulatory Reform Officers at Executive Branch Departments and Agencies*, September 7, 2018.

finalized in the final days of the Obama administration, the withdrawal of many regulatory actions from the Unified Agenda, as well as additional early efforts at regulatory agencies to undo rules from the last administration.

The business community, and especially small businesses, should push for longer-term institutional changes that will result in lasting improvements to the regulatory system. In table 2, we summarize the degree to which the factors that contributed to success in British Columbia are present in the US reforms.

## IV. CONCLUSION

Reducing or even just stabilizing the burden of government rules is difficult to achieve. British Columbia's regulatory reduction is notable for its simplicity, objectivity, transparency, comprehensiveness, and ultimately its result of reducing regulatory requirements by 48 percent from 2001 levels. It also stands out for its longevity—17 years to date. British Columbia's track record has inspired reform at the national level in Canada, as well as in individual US states, most notably Kentucky.

The US federal regulatory reform, in contrast, is substantially less comprehensive, more complicated, and less transparent. The complicated nature of Executive Order 13771 and its accompanying OIRA guidance documents, particularly with respect to the narrow and asymmetric offset requirement, is likely to hinder its success.

If the current implementation architecture remains unchanged, the number of rules eliminated may be insufficient to offset the new rules that continue to be added, even if new rules are added at a slower rate than under previous administrations. Indeed, early evidence suggests this is exactly what happened in 2017. However, it is still possible for the US reforms to gain momentum. The growth rate of new regulatory activity has fallen in a historic fashion, and regulatory reductions may speed up, as evidenced by the acceleration experienced in British Columbia in year two of the reforms, as illustrated in figure 4.

To accomplish more meaningful and permanent change, the program created by Executive Order 13771 should be both simplified and expanded. This process could begin by updating the OIRA Executive Order 13771 implementation guidance documents to define regulatory and deregulatory actions consistently. A baseline count of all federal rules should be created using a simpler measure of regulatory burden, such as regulatory restrictions or requirements. This would allow for more transparent reporting and for the two-for-one or three-for-one requirement to be expanded much more broadly.

TABLE 2. PRESENCE OF KEY BRITISH COLUMBIA SUCCESS FACTORS IN US REGULATORY REFORM

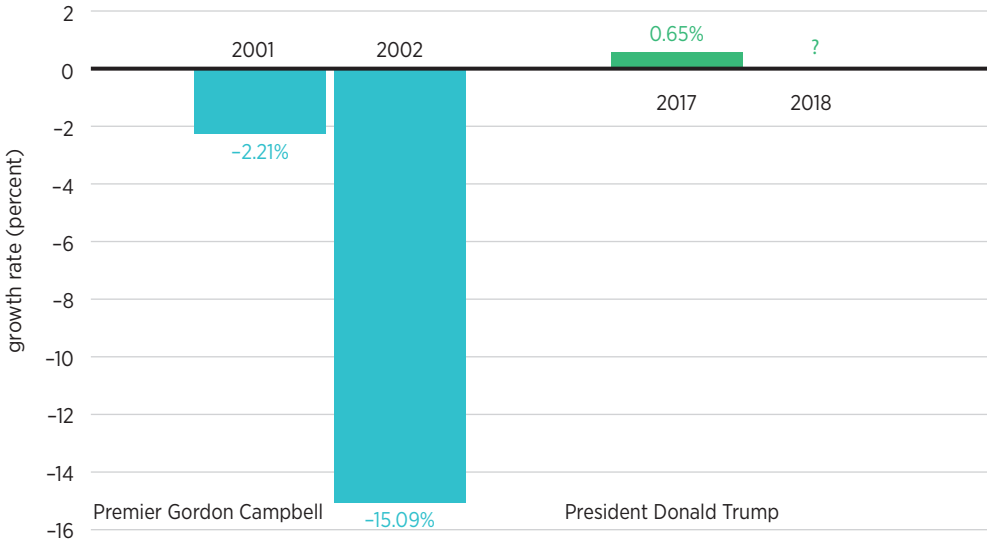
| Key factor | Assessment | Recommendation |
|---|---|---|
| Political leadership | No presidential appointee in the US government is exclusively devoted to regulatory reform and oversees the effort across all federal agencies and departments. | Appoint a "quarterback" for red tape reduction whose only priority is implementing regulatory reform. This person should work with the OIRA administrator, agency heads, and agency task forces to coordinate reform efforts across the entire federal government. A key priority for the quarterback should be increasing transparency on the total level of regulation through better reporting. |
| Right measure | The current US metric is hard to measure and narrows the requirement that a rule be offset to fewer than 8 percent of new regulations, and possibly to as little as 1 percent. Statutes and most policy documents and forms are exempt from the offset requirement. | Broaden the scope of the reforms so that independent agency rules and most nonsignificant rules and policy documents require offsets; and estimate a baseline. This will require a simpler metric, such as the number of regulatory requirements or restrictions. The use of opportunity cost as a measure could continue for the largest federal regulations. |
| Transparency | Current reporting is unclear. There is a danger these reports will turn out to be little more than advocacy documents. | Order all agencies to submit counts of regulatory requirements or restrictions to OIRA. Publish this information annually or semiannually. Ideally, the requirement count will include regulation, guidance documents, and legislation. |
| Regulatory limits | Executive Order 13771 includes the requirement to eliminate two regulations for every new one introduced (recently updated to three-for-one), and agency regulatory budget allocations are setting time-bound cost targets. But the two-for-one system allows for different accounting for "ins" and "outs." | Update Executive Order 13771 implementing guidance to define regulatory and deregulatory actions consistently so that the same types of rules count as "ins" and "outs." Set a separate reduction target based on a simpler, more comprehensive regulatory baseline estimate, and, as noted above, report progress regularly by agency and department. |
| Stakeholder support | The US business community has expressed support for regulatory reform in general, but support for structural reforms has been weaker. | The business community and small businesses in particular should rally for long-term institutional changes to improve the regulatory system. |

Source: Authors' assessment.

The government should also establish simpler time-bound reduction targets, such as a one-third reduction in three years that would apply to the baseline count of all rules. The reduction target should be based on a comprehensive count of the current aggregate regulatory level, and there should be a commitment to track this level going forward. Such an approach would prove easier to communicate and execute than the present policy, and it need not interfere with the current reforms that OIRA has been implementing. More importantly, it is likely to provide real regulatory relief for businesses and citizens.

In the United States, Congress may need to play a larger role, given that many of the requirements on the books are likely to be in legislation and given

FIGURE 4. GROWTH OF REGULATORY COUNTS, FIRST AND SECOND YEARS IN OFFICE, BRITISH COLUMBIA AND UNITED STATES




Note: The British Columbia measure is over 9 months between June 2001 and March 2002. British Columbia data are more comprehensive and are based on regulatory requirements, whereas US data are based on regulatory restrictions found in the US *Code of Federal Regulations*.

Sources: Patrick A. McLaughlin, Oliver Sherouse, and Jonathan Nelson, QuantGov—A Policy Analytics Platform, eCFR Database; Regulatory and Service Improvement Branch, Ministry of Jobs, Trade and Technology, British Columbia, Canada.

that many regulations are in place because legislation requires them to be there. In this regard, the parliamentary system in Canada may have made it easier to apply regulatory caps to legislation in British Columbia. The US House and Senate could set rules for themselves, requiring offsets for requirements mandated in new legislation. Or more practically, the executive branch could choose to impose on itself a mandate that new legislative requirements imposed by Congress be offset by eliminating discretionary executive branch regulatory requirements. Such a move would extend a regulatory cap to legislation without requiring any immediate action from Congress. Regular reporting on legislative requirements would also create a new level of transparency and accountability with respect to the requirements that Congress is adding through legislation. This transparency in and of itself could be a powerful motivator to keep the growth of regulation in check.

Despite their limitations, current reforms in the United States are among the most ambitious regulatory changes in a generation. Early evidence shows they are doing a better job at curtailing regulatory growth than many previous

attempts. However, it is not yet clear whether they will gain momentum and have staying power. The transparency allowing citizens to understand what is happening to the total regulatory level is missing. Here, the lessons from a Canadian province, the reforms of which have lasted the better part of two decades, should prove useful.

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