



The Daily Dish

HHS and Regulatory Sunset

DOUGLAS HOLTZ-EAKIN | NOVEMBER 13, 2020

Eakinomics: HHS and Regulatory Sunset

The Trump Administration continues to cover new territory in the world of regulation. Recently the Department of Health and Human Services (HHS) proposed a new [rule](#) that would require agencies in HHS to review existing regulations every 10 years, or else the regulation in question would sunset. In his [analysis](#) of the proposed rule, AAF's Daniel Bosch referred to this as "novel." That's quite the understatement.

Let me say at the outset that some sort of review is a good idea and long overdue. It makes sense during rulemaking to compare benefits and costs to ascertain whether the regulation is a good idea. It makes just as much sense to periodically review the same rule and answer the question: Is it still a good idea? I would have anticipated that such a regime would be applied equally across all the agencies and would be embodied in legislation to ensure that Congress and the executive were comparably committed to the idea. I never anticipated that a single agency would inflict the regime on itself.

As Bosch explains, "This proposed rule by HHS adds language to the department's underlying regulatory code saying that if a covered agency fails to conduct a retrospective assessment under the RFA [Regulatory Flexibility Act] within 10 years of a regulation being issued or undergoing review, the regulation expires. It would then need to be repromulgated. This expiration should incentivize the agency to review all rules as required." It's a big undertaking; HHS estimates that it would take two years to cover the backlog of 2,200 regulations, and would require roughly 125 reviews each year thereafter.

The rule is currently in the 60-day comment period, so it would take a lightning-fast process to finish before Joe Biden is inaugurated. And if they are successful, the rule would be subject to the Congressional Review Act that permits Congress to overturn a rulemaking. This raises the most surprising aspect of the proposal: Why now?