



Insight

# Administration's First 2016 "Regulatory Review" Adds \$16 Billion in Costs

SAM BATKINS | MARCH 31, 2016

President Obama signed executive orders ([13,563](#) and [13,610](#)) as part of an effort to "eliminate red tape." Federal agencies were told to "modify, streamline expand, or repeal" existing regulations. The recent "retrospective reports" from the administration reveal that executive agencies have added more than \$16 billion in regulatory costs, up from \$14.7 billion in the previous update, and 6.5 million paperwork hours. Too often for this administration, regulations are regularly expanded and rarely repealed or modified.

The American Action Forum (AAF) reviewed the most recent [publicly released plans](#) from cabinet agencies. AAF found that the plans contain new regulations instead of ways to streamline or eliminate redundant regulations. Key findings include:

- The updating agencies listed 409 rulemakings and amended paperwork requirements, up from 397 rulemakings in the previous report, with a median of 20 per agency;
- Among the listed rulemakings, net costs increased by more than \$16.4 billion, with just two agencies reducing costs, and
- Among the listed rulemakings, there was an increase of 6.5 million paperwork hours, led by EPA and Health and Human Services (HHS) (25.2 million hours);
- Once again, the Department of Transportation led the way on reducing burdens, eliminating \$847 million in costs and more than 21 million hours of paperwork.

Analysis of January 2016 Retrospective Review Plans			
<u>Agency</u>	<u>Number of Rules Reviewed</u>	<u>Cost (in millions)</u>	<u>Burden Hours</u>
Agriculture	16	\$2.5	-22,073
Commerce	47	-\$0.02	53,197
Defense	106		
DHS	9		
Education	15	\$87	-35,959

Energy	21	\$300	
EPA	29	\$110	2,661,493
HHS	23	\$16,682	25,289,345
HUD	10		
Interior	22	\$2	12,009
Justice	17		-263
Labor	20	\$160	175,741
State	19		10
Transportation	43	-847	-21,567,847
Treasury	11		-4,245
Veterans Affairs	1		
<b>Totals</b>	<b>409</b>	<b>\$16,498</b>	<b>6,561,408</b>

## Results

As with virtually every report, there is one agency that shines by reducing burdens and one that imposes a majority of the costs under the guise of retrospective review. Once again, HHS is the runaway leader by imposing \$16 billion in net costs and more than 25 million paperwork burden hours. The agency is, amazingly, responsible for 101 percent of the net cost increase, due to cost-cutting measures from other agencies. In addition, it comprises 380 percent of the net paperwork burden, again, because of measures to reduce paperwork by other agencies. HHS had five rulemaking updates that quantified costs, but only one actually reduced burdens.

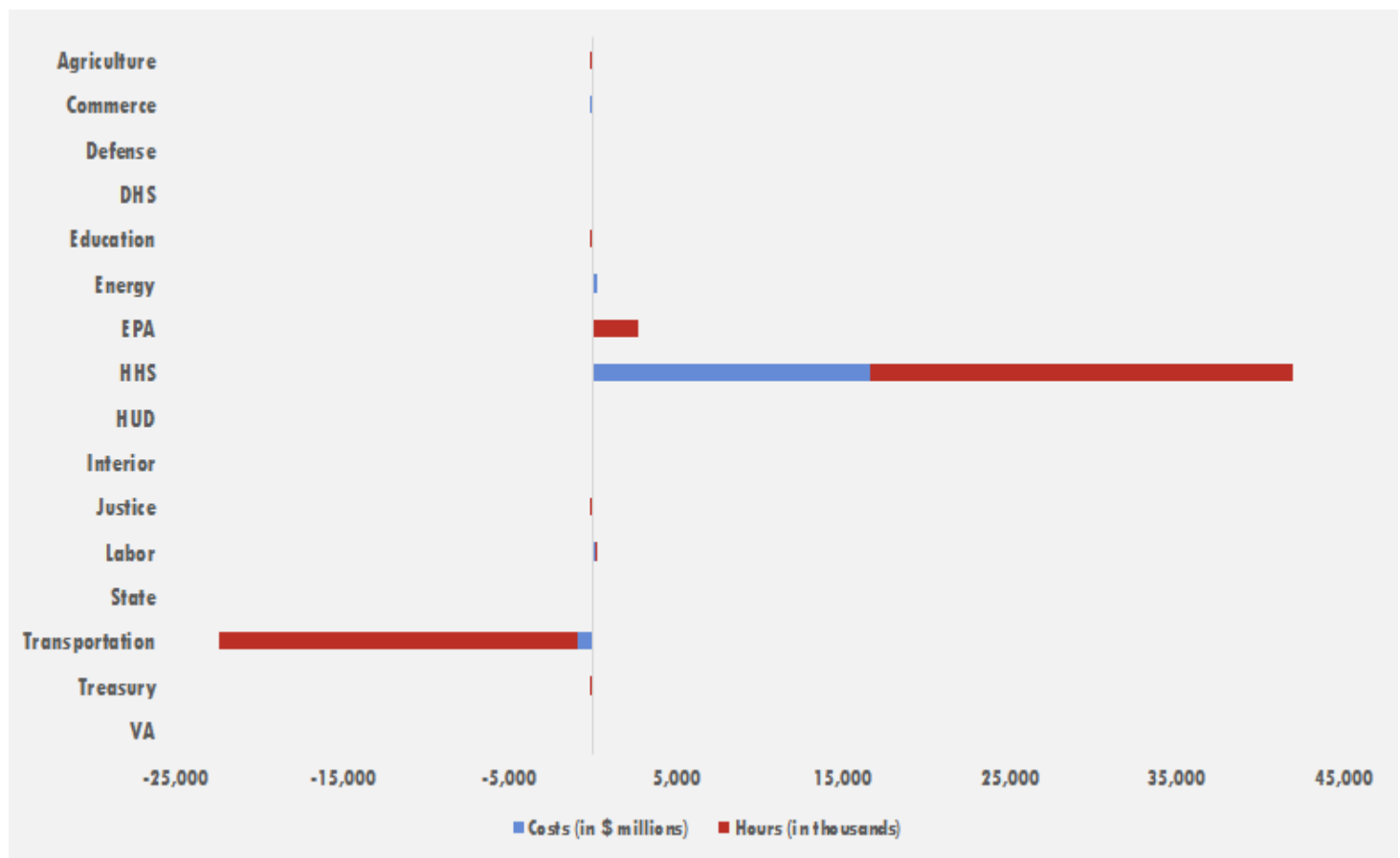
Incredibly, the administration included an Affordable Care Act (ACA) rule in its retrospective review plan. HHS explains that “Covered Outpatient Drugs” was included even though, “We are not able at this time to provide updated cost and benefit estimates.” This is odd since HHS released the proposed rule’s [burdens](#) and [here](#) are the final rule’s costs. If we can find that this questionable “retrospective review” only implements the ACA and adds more than [3.1 million](#) hours of paperwork, why can’t HHS?

That new ACA regulation was also just the tip of the iceberg for HHS's costs. For some reason, the agency included a rulemaking that costs more than \$13.3 billion and imposes 12.1 million paperwork hours. The "Protection of Human Subjects" proposed rule doesn't even pretend to streamline or eliminate redundant costs. HHS's report simply reads, "Present costs, 13,342 Million; Present benefits, 2,662 Million." Why is this massive rule, which supposedly imposes more costs than benefits, contained in a retrospective report that was initially designed to modify and eliminate regulation?

For the agency's final indignation, HHS included a food safety rule for human food. The rule, which has notable merits, is not retrospective. It implements the Food Safety Modernization Act of 2011, the same year as the president's executive order on retrospective review. It also doesn't eliminate or streamline regulatory costs. It adds \$3.2 billion in costs and more than six million paperwork burden hours. HHS made no attempt to explain how this was a retrospective rulemaking.

The Department of Energy (DOE) took home the silver medal, imposing \$300 million in net costs as part of its retrospective review plan. In the past, its reports have contained \$461 million, \$3.3 billion, and \$10.5 billion in regulatory costs. This is because DOE routinely includes new energy efficiency rulemakings in its retrospective reports. This time, it included a final rule for efficiency standards for pumps, which will cost \$300 million.

Below is a snapshot of just how much of a burden HHS plans to add compared to other agencies (The blue bar represents costs, with the red bar representing paperwork.)



The glaring outlier above is, once again, the Department of Transportation (DOT). It has consistently been one of the few agencies to reduce costs and paperwork burdens. This time was no different, with \$846 million in fewer costs and more than 21 million hours in reduced paperwork. The driver of this deregulation was a revision

to “Hours of Service” recordkeeping. The amendment of these standards will save **\$605 million annually**; the rule contains some new costs, but savings from paperwork alone (-21.3 million hours) will top \$2.4 billion, yielding net savings of just slightly more than \$600 million.

Historically, DOT’s cost-cutting record dwarfs all other agencies. Since AAF began keeping records on each biannual report, DOT has removed \$847 million, \$2.2 billion, and \$2.1 billion in costs. There was one outlier report for the agency (July 2014), but it has consistently reduced both costs and hours. For a broader example, in 2011, the year of the executive order on regulatory reform, DOT imposed **305 million** paperwork hours on states and the private sector; today that figure stands at 213 million, a drop of 30 percent. If every cabinet agency had followed DOT’s lead, executive branch agencies would *only* impose 5.9 billion hours today, instead of the reality of 10.7 billion hours.

## A Culture of Retrospective Review?

Current Harvard law professor and former regulatory czar, Cass Sunstein, wanted to instill a “**consistent culture of retrospective review**” when he helped to advance the president’s executive orders. Looking at the number of new initiatives in the retrospective reviews reveals that many agencies simply “cut and paste” from their previous work.

For example, a vast majority of agencies recycle past rulemakings from one report to the next. On average, 85 percent of the regulations contained in the most recent report were listed in past reports. See below.

Updates from Previous Reports		
<u>Agency</u>	<u>Number of New Reviews</u>	<u>Percentage of Old Rules</u>
Agriculture	1	<b>93%</b>
Commerce	9	80%
Defense	18	83%
DHS	1	88%
Education	3	80%
Energy	1	<b>95%</b>
EPA	1	<b>96%</b>
HHS	1	<b>95%</b>
HUD	2	80%
Interior	4	81%

Justice	6	64%
Labor	4	80%
State	5	73%
Transportation	4	90%
Treasury	1	90%
Veterans Affairs	0	100%
<b>Totals</b>	<b>61</b>	<b>Average: 85%</b>

The administration might defend this record, noting that rulemakings can take many years to complete. True, but some agencies aren't proposing any new initiatives and the average agency report contains just 3.8 novel regulatory reforms. With all of the problems at the Department of Veterans Affairs, it couldn't manage to develop a single new reform initiative? The Department of Energy, one of the most active regulators in the federal government, proposed just one new measure that doesn't even cut costs or paperwork? This culture of retrospective review is little more than an attempt to promote additional regulation under the veil of “[eliminating red tape](#).”

## Conclusion

Out with the old, in with the new. This might be a sensible aphorism to use when cleaning out the regulatory thicket, but instead this administration has simply piled new rules on top of old. Despite, DOT's strong efforts, the administration has added \$16.4 billion in costs from its most recent “retrospective reports.”