



Insight

Administration's Last "Regulatory Review" Adds \$22 Billion in Costs

SAM BATKINS | SEPTEMBER 21, 2016

President Obama signed executive orders (13,563 and 13,610) as part of an effort to "eliminate red tape." The president told federal agencies to "modify, streamline, expand, or repeal" existing regulations. The final set of "retrospective reports" from the administration, released recently, reveal that executive agencies have added more than \$22 billion in costs, up from \$16 billion in the January 2016 update, and \$14.7 billion in the July 2015 update. In addition to these net costs from an ostensibly deregulatory exercise, paperwork increased by 17.1 million hours.

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

- The updating agencies listed 431 rulemakings and amended paperwork requirements, up from 409 rulemakings in the previous report, with a median of 18 per agency;
- Among the listed rulemakings, net costs increased by more than \$22.3 billion, with just three agencies reducing costs;
- Among the listed rulemakings, there was an increase of 17.1 million paperwork hours, led by the Department of Education and Health and Human Services;
- Once again, the Department of Transportation led the way on reducing burdens, eliminating \$273 million in costs and more than 463,000 hours of paperwork.

Analysis of July 2016 Retrospective Review Plans			
Agency	Number of Rules Reviewed	Cost (in millions)	Burden Hours
Agriculture	16	\$5.8	9,210
Commerce	44	-\$0.06	118,026
Defense	113	\$78	2,084,982
DHS	9	\$64	-47,159
Education	17	\$704	8,283,618
Energy	22		
EPA	29	-\$0.2	-4,333
HHS	47	\$21,257	6,293,412
HUD	11		-122,283
Interior	16		1,507

Justice	20	\$12.3	-51,578
Labor	19	\$522	1,057,543
State	17		10
Transportation	38	-273	-463,472
Treasury	12		-955
Veterans Affairs	1		
Totals	431	\$22,371	17,185,528

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 for imposing new costs, with \$21 billion in net costs and more than 6.2 million paperwork burden hours. HHS was the only agency that imposed a net cost of more than \$1 billion. Amazingly, the agency is responsible for 95 percent of the net cost increase across all cabinet agencies. In addition, it comprised 36 percent of the net paperwork burden. HHS had ten rulemaking updates that quantified costs, but only one actually reduced burdens.

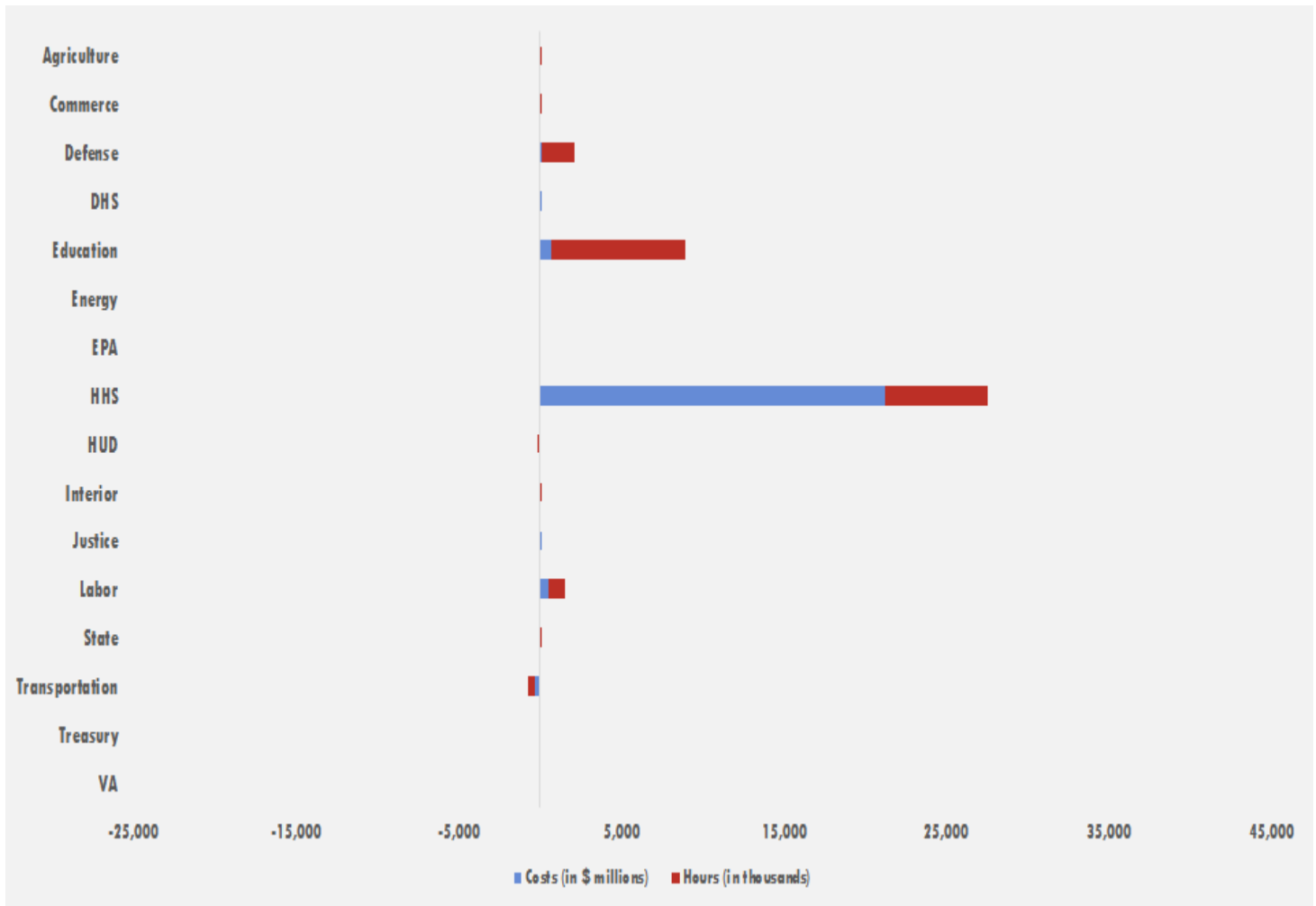
Incredibly, the administration included an Affordable Care Act (ACA) rule in its retrospective review plan. HHS explains that its “Hospital and Critical Access” rulemaking was included even though, “The impact of the rule as proposed lies primarily with the estimated costs (approximately \$773 million to \$1.1 billion).” The long-term burdens of this ACA rule top \$5.7 billion, and while the agency estimates \$1 billion in annual benefits, there are more than 50 rules with quantified benefits in 2016 alone, yet many of them are omitted from these retrospective reports. Why? If a new ACA rule that adds billions of dollars in costs and 150,000 paperwork hours is “retrospective,” then surely the administration can justify including any rule in these reports.

That new ACA regulation was just the start. The administration also included revisions to food safety labels. This can be justified as these rules are modifying a past regulation, but virtually all new regulations modify past rules. These revisions, however, add up to \$8.6 billion in total costs and more than two million paperwork hours.

When Office of Information and Regulatory Affairs (OIRA) Administrator Howard Shelanski [touted the benefits](#) of the president’s executive orders, he highlighted the regulations removed, burden hours reduced, and costs eliminated. Yet, his post neglected to mention the dozens of burdensome regulations contained in these reports, like the \$8.6 billion nutritional labeling change that erases many of these savings. If the goal of retrospective review is to remove “duplicative and burdensome regulatory provisions from the book,” why include superfluous rules that only add to regulatory duplication and burdens?

The final HHS big-ticket inclusion implemented “Head Start Performance Standards.” Although the laudable goal of the regulation is to improve school readiness for young children, this “retrospective” rule imposes \$5.3 billion in new long-term costs. It might modify the current program, but it does nothing to streamline or eliminate existing burdens and even [estimates](#), “as many as 7,372 teachers, assistant teachers, and home visitors could no longer be employed.” In this rule, streamlining paperwork gave way to imposing one million additional burden hours.

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 Department of Education (ED) imposed the second highest total, with

\$700 million in costs and more than 8.2 million paperwork hours. A final rule for “Workforce Innovation and Opportunity” imposed the vast majority of ED’s totals: \$600 million in costs and 8.3 million new paperwork hours. For comparison, it would take more than 4,100 employees working full-time (2,000 hours annually) to complete a year of this paperwork; [more than half](#) of the burden will fall on state and local governments. The administration justified this rule’s inclusion in the retrospective report by simply noting, “Estimates of the costs and benefits of these regulations are set forth in the final regulations.” Yes, but the estimates added costs and

millions of hours of additional paperwork.

Once again, the Department of Transportation (DOT) appears to be the only agency to emphasize the “repeal” portion of the president’s executive order on reform. In all but one report AAF has studied, the DOT has reduced compliance costs and has reported roughly 100 million fewer hours of paperwork in its retrospective reports. This version was little changed, with \$273 million in cost reductions and 430,000 fewer hours.

DOT’s reductions were driven largely by allowing pilots to gain licensing through “aviation training devices,” in lieu of formal air time. The proposed rule will reduce costs for pilots and the industry by \$112 million during the next five years.

The next largest DOT cost-cutting measure would amend the Hours of Service regulation for railroads. It would allow certain small entities to log signatures and records electronically, saving roughly 194,000 hours a year; costs would decline by \$81 million.

Legacy 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.

<u>Updates from Previous Reports</u>		
<u>Agency</u>	<u>Number of New Reviews</u>	<u>Percentage of Old Rules</u>
Agriculture	0	100%
Commerce	17	61.4%
Defense	8	92.9%
DHS	2	77.8%
Education	7	58.8%
Energy	2	90.9%
EPA	0	100%
HHS	14	70.2%
HUD	4	63.6%
Interior	0	100%
Justice	3	85%
Labor	0	100%
State	2	88.2%
Transportation	2	94.7%

Treasury	2	83.3%
Veterans Affairs	0	100%
Totals	61	Average: 85%

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 3.9 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 Environmental Protection Agency, one of the most active regulators in the federal government, proposed zero new measures to 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."

Presumably, this is the final set of retrospective reports the administration will release. What is the legacy of Executive Order 13,563? The administration has touted \$37 billion in costs savings and "tens of millions of hours" in savings from reduced paperwork. It's unclear why the administration quantified the cost figure while concurrently leaving the paperwork figure vague.

AAF has tracked every deregulatory measure from the administration and found \$26 billion in final cost savings, with another \$2.7 billion in proposals, for roughly \$29 billion in total savings. This is still \$8 billion short of what the administration touts and there does not appear to be an itemized list leading directly to the \$37 billion figure.

For paperwork, AAF has recorded more than 97 million hours of reduced reporting and recordkeeping, with an additional 25 million in proposed paperwork cuts. The largest, by far, was an amendment to DOT's Driver-Vehicle Inspection Report, which eliminates 46 million paperwork hours and \$12.8 billion in long-term costs. AAF did record an IRS regulation that cut 3.2 million hours and \$121 million in costs, but for some reason it was not included in these retrospective reports.

However, as discussed above, these savings are dwarfed by new measures included in the administration's retrospective reports. Somehow, the most expensive regulation President Obama ever issued was included, 2017 to 2025 CAFE standards, at a total cost of \$156 billion. The administration also included more than \$13 billion in energy efficiency standards and dozens of ACA regulations.

If this retrospective review effort were successful, the administration would report sharply declining overall paperwork burdens, but it does not. Its "Reports to Congress" would detail net burden reductions, instead of record new costs. Many of these regulations were justified by claiming that the benefits exceeded the costs, but this is not a novel idea. President Jimmy Carter embraced the idea more than a generation ago. There's retrospective review and then there's the status quo regulatory state. The administration has relied almost entirely on the latter in its reports while touting the occasional deregulatory measures. These cost-cutting rules are laudable, but they are dwarfed by dozens of other major rules that add burdens.

In sum, consider President Obama's overall regulatory record: 624 major rules (as of this writing) and on track to approach 650 major regulations, 31 percent more than his predecessor. Regulators have added more than \$760 billion in net costs since 2010, with 485 million in net paperwork burden hours. The executive orders were an encouraging sign, but the deregulatory efforts of this administration couldn't withstand efforts to fundamentally transform the health care, financial services, and energy industries. The president's legacy on regulatory reform is marred by what could have been, against an unprecedented tide of major regulations.