



Insight

Administration's "Retrospective Review" Adds \$23 Billion in Burdens

SAM BATKINS | SEPTEMBER 23, 2014

Despite attempts to reduce red tape and “promote economic growth,” recent regulatory reform plans from the administration actually added more than \$23 billion in costs and 8.9 million paperwork burden hours. Only three agencies managed to reduce costs.

The American Action Forum (AAF) reviewed all publicly released plans from cabinet agencies and found:

- The updating agencies listed 529 rulemakings and amended paperwork requirements, with a median of 22.5 per agency;
- Among the listed rulemakings, net costs increased by more than \$23.3 billion, with just three agencies reducing burdens, and
- Among the listed rulemakings, there was an increase of 8.7 million paperwork hours, led by the Department of Education's 6.8 million-hour proposed increase.

Analysis of August Retrospective Review Plans

<u>Agency</u>	<u>Number of Rules Reviewed</u>	<u>Cost (in millions)</u>	<u>Burden Hours</u>
Agriculture	27	\$25	191,204
Commerce	46		-88,512
Defense	57	\$166	-73,371
DHS	24	\$1	810,399
Education	13	\$2,363	6,815,694
Energy	18	\$3,300	-318,998
EPA	21	\$14,409	-537,044

Analysis of August Retrospective Review Plans			
HHS	85	-\$2,784	2,060,205
HUD	17		
Interior	17		-8,510
Justice	12	-\$0.07	-4,500
Labor	13	\$11	228,664
State	31		-44,892
Transportation	98	\$5,745	-110,013
Treasury	31	-\$5	15,128
Veterans Affairs	19		
Totals	529	\$23,231	8,935,454

RESULTS

Biannually, all cabinet agencies are required to submit reports detailing their compliance with Executive Order 13,610, which requires agencies to engage in a “periodic review of existing significant regulations.” In the past, AAF has found that not all regulations are “streamlined” or “repealed,” but rather many are expanded. In fact, that’s the main reason why many cabinet agencies are actually adding regulatory burdens in these biannual plans.

For example, the Department of Education included its controversial [“Gainful Employment”](#) proposal in its plan, even though it will cost \$2.3 billion and add more than 6.9 million paperwork burden hours. The regulation, [previously struck down](#) by an Obama appointee, would not streamline the current regulatory environment; it would single out for-profit education for onerous new rules. In the rule’s brief acknowledgement of the President’s Executive Order, it notes, “We are issuing these regulations only on a reasoned determination that their benefits justify their costs.” However, despite billions in total costs, the administration fails to provide a single benefit figure.

For perspective, if the administration does finalize this supposedly “retrospective” regulation on gainful employment, it will add [6.9 million](#) hours to the Department of Education’s [paperwork total](#), or an 8.2 percent hike for a rule that does nothing to “promote economic growth.”

Education is not the only agency that believes more regulation satisfies the standards of appropriate retrospective review. The Department of Energy (DOE) proposed or finalized \$10 billion in new burdens in its January update. DOE’s August plan included \$3.3 billion in new costs and no rules that cut costs. For example,

the agency claimed that a new efficiency standard for “external power supplies,” which will cost [\\$3.3 billion](#), is somehow designed to streamline red tape. However, DOE states that the rule was adopted “upon a reasoned determination that its benefits justify its costs.” That requirement didn’t originate with the President’s Executive Order, however. It’s been in place for more than [a generation](#).

Finally, the Department of Transportation (DOT), which was the runaway winner from earlier this year, when it proposed to cut \$2.1 billion in costs and more than 43 million paperwork hours, faltered in these updates. Although DOT did propose to modify the “Safe Transportation of Bulk Explosives,” saving more than \$100 million, several new requirements dwarfed this deregulatory measure. The agency decided that new standards for tank cars, which will cost more than \$5 billion, are retrospective. On net, DOT’s new “reform measures” will increase costs by more than \$5.7 billion.

WHAT IS RETROSPECTIVE?

As with previous reports, there is nothing but uncertainty surrounding genuine retrospective review that streamlines existing rules and new regulations pretending to “lookback” at the regulatory slate. Under the President’s Executive Orders, agencies can “expand” regulations under the guise of retrospective review. Thus, even a new onerous regulation can pretend to be retrospective in these biannual reports.

Virtually every agency is guilty of this practice. For example, EPA considers its “Tier 3” rule that reduces the sulfur content in gasoline to be a retrospective review. In the sense that it looks back at an existing standard and tightens it, then it is retrospective, but under that rubric, every new regulation is retrospective.

EPA’s Tier 3 rule will cost consumers, refiners, and automobile manufacturers more than \$14 billion and impose 150,000 paperwork burden hours. In its analysis, EPA claims that simplified reporting requirements are in response to “Executive Orders 13563 and 13610, which directs government agencies to simplify rules and to achieve reductions in paperwork and reporting burdens.” However, those executive orders also call on agencies to “repeal” regulations and it appears EPA has been expanding regulations at a faster pace than its desire to repeal them.

Although not yet final, DOT’s examination of its “Driver-Vehicle Inspection Report” (DVIR) is [an example](#) of an agency revisiting its regulatory slate and making substantive revisions, rather than simply adding another layer of rules and pretending that the measure is “retrospective.” If finalized, this rule would save \$1.7 billion in costs and eliminate more than 46 million hours of paperwork, or roughly 15 percent of DOT’s paperwork burden. Sadly, this action is more of an outlier than the norm among other retrospective reviews.

LANGUISHING REGULATIONS

Over six months ago, agencies submitted their last reports, identifying hundreds of rules that needed to be reviewed. The January reports contained 442 rules that agencies should review and reconsider. AAF has found that barely one third of the rules have been reviewed.

For example, there are 33 rulemakings that HHS published in its January report that it has yet to update in the Federal Register. The chart below details the new review that agencies included since January and the number of languishing rulemakings since the last report.

Updates from January to August Reports

<u>Agency</u>	<u>Number of New Reviews</u>	<u>Languishing Rules</u>
Agriculture	5	4
Commerce	42	2
Defense	11	34
DHS	0	7
Education	2	4
Energy	0	5
EPA	3	10
HHS	10	33
HUD	9	8
Interior	6	8
Justice	2	1
Labor	1	8
State	9	38
Transportation	4	63
Treasury	15	9
Veterans Affairs	13	3
Totals	132	237

As shown above, the Departments of Homeland Security and Energy failed to provide a single new rule to review, compared to their January report; the Department of Labor had just one new rule. On the other side of the chart, DOT failed to update 63 rulemakings, the vast majority of its report. The Departments of State and Health and Humans Services also have dozens of rulemakings stalled in the regulatory process.

Six months in the regulatory world might be a fraction of a second in real time, but there have been dozens of updates since the January report. By this time next year, if there are still several retrospective rulemakings awaiting action, the seriousness of this effort must be called into question. Expanding rules instead of repealing them might fit a certain ideological framework, but letting hundreds of rulemakings languish is simply apathy.

CONCLUSION

Reviewing 529 regulations might sound like an accomplishment, until you examine each rule to find little, to no retrospective review. On net, this latest round of reports finds only increases in regulatory burdens-by an astonishing \$23.2 billion. Aside from a few reforms, these retrospective measures aren't retrospective and they don't streamline, repeal, or modify redundant regulations.