Insight

New Regulatory Review Plans Impose New Costs, Cut Paperwork

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Recently, Howard Shelanski, Administrator of the Office of Information and Regulatory Affairs (OIRA), testified before a Senate Homeland Security and Government Affairs subcommittee and promised that cabinet agencies would release updated retrospective regulatory reports. The American Action Forum (AAF) reviewed all publicly released plans and found:

- The updates are two months behind schedule, violating Executive Order 13,610.
- The updating agencies listed 442 rulemakings and amended paperwork requirements, with a median of 18 per agency.
- Among the listed rulemakings, net costs increased by more than $43.8 billion, with three agencies reducing burdens.
- Among the listed rulemakings, paperwork hours declined by 31.3 million hours, led by the Department of Transportation (DOT), which proposed to eliminate more than 43.8 million hours.

Analysis of March Retrospective Review Plans			
Agency	Number of Rules Reviewed	Cost (in millions)	Burden Hours
Agriculture	27	$8	992,436
Commerce	4		
Defense	48		2,985
DHS	20	$381	-229,953
Education	13	-$169	-4,186,661
Energy	18	$10,570	-166,858
EPA	18	$25,112	-476,916

Analysis of March Retrospective Review Plans			
HHS	75	$10,169	14,229,874
HUD	17	-$14	3,797,494
Interior	18		221,862
Justice	10		-64,629
Labor	15		-613,000
State	43		-294,680
Transportation	94	-$2,199	-43,829,483
Treasury	16		16,321
Veterans Affairs	6		-797,323
Totals	**442**	**43,859**	**-31,398,531**

As noted, many of the reviews are several weeks, or several months late. The Department of Labor just posted its update in April. However, under President Obama's Executive Order 13,610, "Agencies shall submit draft reports to OIRA … on the second Monday of January and July…. Agencies shall make final reports available to the public within a reasonable period (not to exceed three weeks from the date of the submission of draft reports to OIRA)." Under the executive order, all reports should have been public by February 3. It is clear from the dates on review plan files that many plans were submitted in March, a month after the deadline. For example, this screenshot displays DOL's retrospective review plans as of February 9, 2014, past the President's deadline.

As a caveat to the data above, although there were 442 listed reviews, only 58 rulemakings contained quantified cost data. Some agencies provided a comprehensive list of past reviews and pending proposed rules. On the contrary, others simply listed possible proposed regulations. At present, AAF has no cost or paperwork data for pending proposals.

The significant paperwork cuts above are largely due to one DOT rule. However, if DOT totals were excluded above, retrospective review plans would increase paperwork by 12.4 million hours and there would be more than $46 billion in new costs.

Furthermore, even though these reports contained paperwork reductions, the nation's aggregate paperwork burden has continued to climb. In 2010, the nation's total paperwork burden was 8.8 billion hours; today, it's more than 10.3 billion hours, an increase of 1.5 billion hours, despite the attempt at regulatory reform. For perspective, it would take 786,000 individuals working full-time to complete the new paperwork added since 2010.

Perhaps most surprising from the results, the Department of Treasury only listed 16 rulemakings, compared to 94 from DOT and 75 from Health and Human Services (HHS). Ideally, Treasury should have the easiest time

cutting paperwork. It imposes more than 7.8 billion hours of paperwork, 75 percent of the federal government's total. However, with ACA implementation, aggregate cuts in paperwork appear nearly impossible for the agency. For the paperwork it did list, the net result would add more than 16,000 burden hours.

WHAT IS RETROSPECTIVE?

The administration has made several claims about the success of regulatory reform and retrospective review. In his testimony, Administrator Shelanski wrote, "These efforts are already saving more than $10 billion in regulatory costs in the near term, with more savings to come." In AAF's last analysis, we rated this claim, "at least somewhat plausible," depending on the methodology. However, in the updated plans, only three agencies reduced cost burdens, and DOT has proposed the vast majority of all cabinet-level savings.

DOT is one of the few agencies that is actually "looking back" to modify, streamline, expand, or repeal existing regulations. Too many agencies treat these retrospective reports as a modified Unified Agenda, simply listing new regulations, and not retrospectively analyzing old rules. For example, in its retrospective update, the Department of Energy listed four new efficiency rulemakings that impose costs, and failed to quantify a single cost-cutting measure. One proposal imposing conservation standards for battery chargers and external power supplies dates back to 2006, well before Executive Order 13,563. Furthermore, the rulemaking actually imposes more than $250 million in annual costs and it does not mention that it is revising a past rule

EPA's retrospective report suffers from the same flaws as the Department of Energy. It listed 18 rulemakings, but more rules impose new costs, compared to regulations that reduce burdens. EPA lists two rules that are hardly regulatory lookbacks: new fuel efficiency standards for automobiles and sulfur emissions standards for vehicles. Combined, these two rules will impose more than $12.3 billion in annual costs, enough to easily eclipse the purported $10 billion in regulatory savings.

HHS is perhaps the most egregious example of implementing new regulation under the guise of "retrospective review." Their update listed 23 rulemakings with monetized cost burdens and 22 paperwork measures. Only four regulations cut costs and one lone measure reduced paperwork. HHS claims that a 2012 interim final rule implementing section 1104 of the Affordable Care Act (ACA) is somehow retrospective. The rule would impose up to $333 million in annual costs and more than 140,000 burden hours. It also makes no mention of a regulatory lookback and does not explain how the regulation could reduce costs or eliminate redundancy.

Combined, there are 15 ACA regulations listed as "retrospective," totaling $5.9 billion in total costs and 11.4 million paperwork burden hours. None of the ACA rulemakings cut costs, paperwork hours, or explain how they are designed to reduce redundancy.

The lone bright spot from these retrospective review updates is from DOT. The agency revised two previous regulations that many, including DOT, viewed as overly burdensome. One final rule, "Positive Train Control," would have imposed more than $1.2 billion in annual costs, compared to just $37 million in benefits (in 2001 dollars). DOT revised the rule to reduce costs by approximately $450 million by allowing companies to forgo certain equipment installations along 10,000 miles of track.

Perhaps the most notable retrospective review would reduce DOT's total paperwork burden by roughly 15 percent. The revised regulation would allow truck drivers to submit trip reports only after an incident, instead of every trip. The agency estimates the rule would save $1.7 billion annually and cut more than 46.6 million paperwork burden hours. Unfortunately, this example of an agency reviewing and updating past regulations is an outlier, and not the norm from an administration that wants to instill a "culture of retrospective review."

CONCLUSION

Reviewing 442 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 only increases regulatory burdens, by an astounding $43.8 billion. Aside from a few DOT reforms, these retrospective measures aren’t retrospective and they don’t streamline, repeal, or modify redundant regulations.