

Insight



Three Years of Regulatory Reform: Did the President's Executive Orders Work?

SAM BATKINS | JANUARY 21, 2014

Three years ago, President Obama issued Executive Order 13,563 ([Order 13,563](#)) attempting to reduce “redundant, inconsistent, or overlapping” regulations. The Office of Information and Regulatory Affairs (OIRA) Administrator at the time, Cass Sunstein, hailed the measure as “unprecedented.” He and President Obama took to the op-ed [pages](#) to trumpet this new effort at deregulation.

However, upon careful inspection, Order 13,563 isn't unprecedented; it hasn't cut red tape, and many of the touted reforms were recycled from the previous administration. For example, President Jimmy Carter issued an executive order in [1978](#) urging retrospective review, 33 years before President Obama's efforts: “Agencies shall periodically review their existing regulations to determine whether they are achieving the policy goals of this Order.”

Has Washington actually cut red tape? On net, final rules from Order 13,563 have *added* more than \$10.2 billion in costs, mostly from new regulations labeled as “retrospective.” Final rules have cut 7.9 million hours of paperwork, but Dodd-Frank and the Affordable Care Act have easily outpaced those deregulatory gains.

For example, when the President issued Order 13,563, the Department of Health and Human Services imposed [518 million hours](#) of paperwork; today its total eclipses [653 million hours](#), a 26 percent jump. As for the aggregate level of red tape, in fiscal year 2010, the federal government imposed [8.8 billion hours](#) of paperwork. Today, that figure is [10.3 billion hours](#), a 17 percent increase (1.5 billion hours), despite this “unprecedented reform.” It would take more than 750,000 employees working full-time to complete the new annual paperwork added since 2010.

The figures below detail the notable deregulatory measures that cut costs or paperwork, although some rules that cut costs still resulted in millions of hours of new paperwork. There are also significant new burdens claimed as “retrospective review.”

Notable Cost Cutting Final Rules		
<u>Rule</u>	<u>Cost (in millions)</u>	<u>Paperwork Hours</u>
Medicare, Medicaid Hospital Reform	(-) \$940	(-) 9,896,005
Positive Train Control	(-) \$645.7	3,851,312

Notable Cost Cutting Final Rules		
NESHAP: Reciprocating Engines	(-) \$520.5	101,772
Oil Spill Prevention for Milk	(-) \$143	
Refueling Vapor Recovery	(-) \$122	

Notable “Deregulatory” Measure Adding Costs		
<u>Rule</u>	<u>Cost (in millions)</u>	<u>Paperwork Hours</u>
Energy Standards for Transformers	\$5,220	58,320
Energy Standards for Battery Chargers	\$4,257	600
Hours of Service of Drivers	\$470	
Oil and Gas; Including Hydraulic Fracturing	\$377	28,560
Changes to Medicare Advantage	\$102.4	979,957

\$10 BILLION?

The summer after Order 13,563, the White House publicly claimed **\$10 billion** in regulatory saving from “hundreds of initiatives.” On net, proposed and final rules under this reform have added \$13.7 billion in new burdens, but counting only regulations that cut costs, the administration has cut at least \$8.7 billion in burdens, making the \$10 billion claim at least somewhat plausible.

The Department of Transportation (DOT) proposed the largest deregulatory measure that has received little public attention, and for some reason, no boasting from the White House. The administration proposed to remove the requirement that certain truck drivers file reports after every trip. Under the new regime, drivers would only be required to file **defect reports**. This regulation would save the industry \$1.7 billion, generate \$12.8 billion in benefits, and cut 46.6 million hours of paperwork, 15 percent of the DOT’s paperwork budget—all significant reductions.

However, DOT's proposal is dwarfed by countless other initiatives that the administration claims as retrospective, but instead added billions of dollars in new costs. For example, the Department of Energy (DOE) recently completed a rule to improve energy efficiency for distribution transformers. It will impose more than \$5.2 billion in long-term costs and more than 58,000 burden hours; yet, the administration [claims the rule](#) is retrospective and will "minimize" the burden on manufactures.

The administration also issued a direct final rule, without public comment, that would impose up to \$880 million in long-term burdens on dishwasher manufacturers. In its retrospective review plan, under "anticipated savings in costs," the administration claimed only that the regulation would minimize the manufacturer burden.

Finally, the administration's fracking proposal for federal lands is perhaps the most egregious example of a retrospective deregulatory measure. The \$377 million proposed rule is not the result of a "regulatory lookback," but an initiative to address groundwater contamination from fracking. Yet, the administration nevertheless [claims](#) the regulation as a "retrospective review [effort]."

RECYCLING REGULATIONS

Many of the claimed deregulatory measures not only predate Order 13,563, but also the current administration. For example, the \$5.2 billion transformer standards are hardly novel and retrospective. DOE first proposed them in [2009](#), two years before Order 13,563.

In fact, there are at least 39 proposed or final rules that predate Order 13,563, and 15 from the previous administration. Of course, no White House [speech](#) or [op-ed](#) will mention the recycled rules as part of this "unprecedented" effort.

Perhaps no rule has received the public relations push as the deregulatory attempt to remove milk from the definition of "oil." Shortly after Order 13,563, Administrator Cass Sunstein took to the [op-ed](#) pages, [writing](#), "We are also giving new meaning to the phrase, 'Don't cry over spilled milk.'" President Obama reprised the joke in his [2012](#) State of the Union Address, "With a rule like that, I guess it was worth crying over spilled milk."

However, the administration's [own records](#) reveal that the spilled milk rule precedes Order 13,563. And according to Small Business Administration records, the American Chemistry Council and the National Paint and Coatings Association [nominated](#) the spilled milk rule for repeal in 2008, three years before Administrator Sunstein and President Obama trumpeted its deregulatory and comedic virtues.

FAILING TO IMPLEMENT REFORMS

Cass Sunstein [intended](#) for Order 13,563 to result in a "culture of retrospective review." Order 13,563 noted that ongoing efforts should be conducted "periodically," but Administrator Sunstein's [implementation memo](#) requested agencies to "submit such reports to OIRA ... on the second Monday of January and July for each year."

The results? There were two updates in 2012, but there were [no updates in 2013](#) according to the central White House website tracking reform, missing two deadlines, and the administration once again missed the January 2014 target. In addition, Cass Sunstein urged, "[R]egulations should be designed and written in a ways that facilitate evaluation of their consequences and thus promote retrospective analysis." There is little evidence that new regulations are designed to foster more efficient retrospective analysis.

Finally, when President Obama issued [Executive Order 13,579](#), he knew that there were few requirements

legally binding independent agencies to comply with the directive. Evidence from three years after the Order, however, reveals that independent agencies have largely ignored it. According to the White House [website](#) tracking reform, only four independent agencies have submitted retrospective plans, and none has finalized a plan. For example, the National Labor Relations Board's "plan" is a [one-page](#) memo outlining its process for future review; it listed no redundant or outdated regulations.

CONCLUSION

The White House has repeatedly claimed that Order 13,563 is unprecedented, but a cursory review of the record proves there is nothing unique about their efforts. [Every](#) President since Jimmy Carter has issued an executive order on regulatory reform, and even President Carter urged agencies to "periodically review" existing regulations. President Obama's deregulatory measures have actually resulted in more than 1.5 billion hours of paperwork and \$10.2 billion in new net costs. The only aspect of recent regulatory reform that is unprecedented is that the administration has the temerity to recycle old regulations and claim them as part of a historic "retrospective review."