

Research



Sue and Settle Reform, SCRUB Act Could Save \$48 Billion, 1.5 Billion Hours

SAM BATKINS | MARCH 2, 2015

The U.S. House is expected to vote soon on two pieces of legislation to streamline and provide increased oversight to the regulatory system. The Sunshine for Regulatory Decrees and Settlements Act would curb practice known as “sue and settle,” where special interests are given a say in significant federal regulations and the SCRUB Act (Searching for and Cutting Regulations that are Unnecessarily Burdensome), which would establish an independent commission with the goal of reducing cumulative regulatory burdens by at least 15 percent. According to research from the American Action Forum (AAF), savings from these bills could total \$48 billion annually and save 1.5 billion paperwork burden hours.

METHODOLOGY

To estimate the regulatory savings from curbing sue and settle regulations, AAF used the White House’s [public database](#) of significant regulations with a judicial deadline. We reviewed all “economically significant” and major final regulations published between January 21, 2009 and January 15, 2014. This yielded 25 total rules, but only 21 regulations with either monetized costs or benefits. The total net present value burden was \$164 billion, with \$23.9 billion in annual costs and more than 5.7 million paperwork burden hours. In the previous five-year window (2004 to 2009) during the Bush Administration, there were 19 major final rules with a judicial deadline.

For the SCRUB Act analysis, AAF divided federal regulatory burdens into cumulative paperwork burdens and annualized cost figures, as compiled by AAF’s “Regulation Rodeo,” our database of regulations compiled from the Federal Register. The [SCRUB Act](#) would charge an independent commission with the goal “to achieve a reduction of at least 15 percent in the cumulative costs of federal regulation.” AAF took this 15 percent goal and applied it to current [paperwork burdens](#) and annual average regulatory burdens since 2008. Obviously, cumulative regulatory burdens predate 2008, but AAF only has quantified figures since that time. However, total paperwork figures do span the history of federal regulation.

THE SUNSHINE FOR REGULATORY DECREES AND SETTLEMENTS ACT

The legislation, “The Sunshine for Regulatory Decrees and Settlements Act,” would require regulatory agencies to give public notice when they learn of a lawsuit that could eventually impose a federal rule. The act would curb this practice by giving outside parties an opportunity to intervene in the court case and it requires federal agencies to publish a notice of the proposed settlement in the Federal Register. In 2014, a version of “The Sunshine for Regulatory Decrees and Settlements Act” passed the U.S. House on a bipartisan vote.

How Sue and Settle Works

“Sue and settle” is a process by which special interest lawyers use the power of the courts and complicit regulators to initiate and expedite pricey rulemakings. A lawsuit is filed against the regulatory agency and is then “settled” out of court through a mutual consent decree, forcing an expedited regulatory process that is legally binding for the agency.

Sue and Settle Findings

The Sunshine for Regulatory Decrees and Settlements Act has the ability to increase public oversight, possibly limiting lawsuits that eventually lead to expensive regulations.

A recent GAO [report noted](#) the somewhat limited nature of sue and settle lawsuits, but the findings only highlighted EPA rulemakings. Examining all recent rules with judicial deadlines reveals seven rules from the Department of Energy (DOE) and one rule from the Department of Transportation (DOT). In fact, the annual burden from DOE rules with judicial deadlines is \$3 billion annually; the DOT’s lone rule would add \$470 million in burdens. These are hardly trivial figures, although they are dwarfed by EPA’s total of \$20.4 billion in annual costs.

In addition to the astronomical direct costs, there are also associated paperwork burdens arising from these lawsuits. The 11 rules that quantified paperwork will impose more than 5.7 million burden hours. To put this in perspective, assuming 2,000 hours a year, it would take 2,866 employees working full-time to complete the new paperwork from these sue and settle rules.

For a local perspective, the map below details how the costs of sue and settle suits would affect states. By examining which industries are impacted by the legislation, and using [Census data](#) on the geographic distribution of industry establishments, AAF is able to approximate which states would be most affected.

THE SCRUB ACT

SCRUB would address cumulative regulatory burdens by establishing an independent commission to evaluate the effectiveness of past rules. The goal would be to reduce 15 percent of the nation’s cumulative regulatory cost burdens.

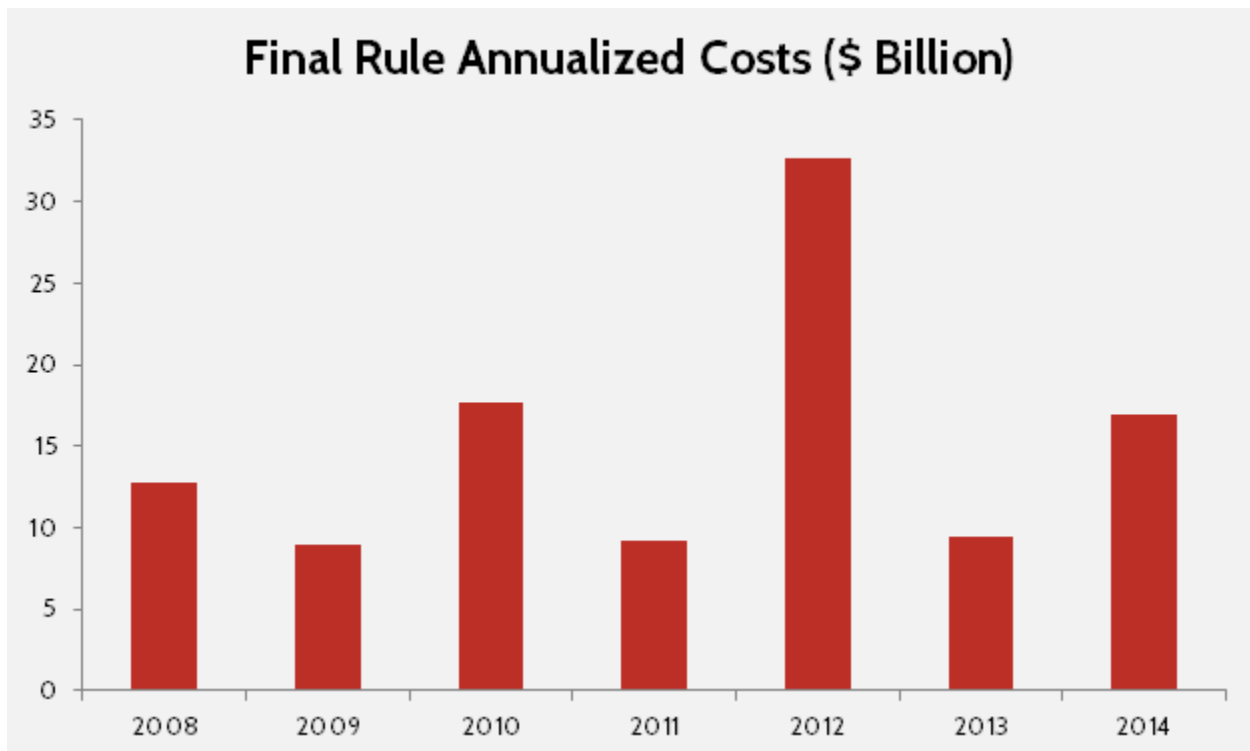
SCRUB Act Findings

Depending on the perspective, a 15 percent reduction in regulatory burdens is either a historic victory or simply a first step. Regardless, of the paperwork savings and regulatory cost reductions, the numbers are significant. Currently, the government imposes more than [9.9 billion](#) paperwork burden hours. A 15 percent reduction in those hours would result in almost 1.5 billion hours in savings for taxpayers and American businesses. For comparison, the U.S. individual income tax generates [2.6 billion hours](#) of paperwork. A reduction of 1.5 billion hours would reduce the nation’s paperwork burden to the lowest level [since 2004](#).

If we were to quantify the timesavings, there are two main metrics: the hourly cost of a regulatory compliance officer (\$32.10) and Gross Domestic Product (GDP) per hour worked (\$60.59 in 2011 dollars). Assuming the

compliance officer figure, 1.5 billion hours translates to \$48.1 billion in regulatory savings. That figure is larger than the GDP of Paraguay. The GDP per hour worked figure yields more than \$90.8 billion in possible savings. For the purposes of this study, AAF used the lower figure of \$48.1 billion in savings.

For more recent numbers, AAF has data on every regulation since 2008. The graph below displays annualized regulatory costs for final rules from 2008 to 2014.



During this period, annualized regulatory costs have average \$15 billion. A 15 percent reduction in average new burdens would save Americans \$2.25 billion. During a ten-year period, this amounts to \$22.5 billion in savings. In total, the goal of saving 15 percent in regulatory burdens is hardly radical in the context of overall regulatory costs.

CONCLUSION

Adopting The Sunshine for Regulatory Decrees and Settlements Act and SCRUB won't completely transform the regulatory state, but it will provide needed oversight of a regulatory system that some view as opaque. The results of possible savings from reform are crystal clear, however: \$48 billion in annual burdens and 1.5 billion paperwork burden hours.