

Research

The Year in Regulation: EPA, Health Care Rules Drive Burdens

By Sam Batkins
January 11, 2016

The "Clean Power Plan," a new ozone rule, and a ban on trans fats drove regulatory burdens to their second highest levels under President Obama in 2015. Combined, regulatory costs topped \$197 billion, with \$99 billion in final rule burdens. Regulators published 127.9 million paperwork hours, with more than 41 million from final rules.

2015 was the penultimate chapter in President Obama's regulatory legacy. The proposed rules this year (\$98 billion worth) will serve as the final pieces to the president's executive agenda. There will be an obvious push to finalize as many rules as possible before the next president takes office. However, as the American Action Forum (AAF) outlined previously, May 17 may serve as the final chance to cement his regulatory legacy. It is likely any rule issued after late May or early June could be rescinded by the next Congress and a later administration.

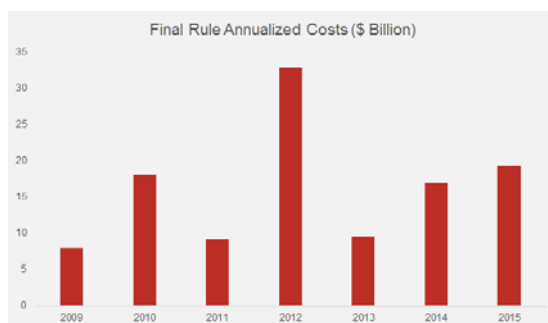
Methodology

AAF has data on costs, benefits, and paperwork burdens for all rulemakings published in the Federal Register from 2006 to present. Every regulation that imposes a private-sector burden, intergovernmental cost, or paperwork burden is recorded and tracked throughout the rulemaking process. Data points include net present value costs, annual costs and benefits at a seven percent discount rate, and paperwork burden hours. Any quantified deregulatory measures were also included and are represented in the figures.

How does \$197 billion in total burdens compare on a personal level?

Per Capita: \$612 Per Voter (18 years and older): \$838 Per Day the Government was Open: \$784 million

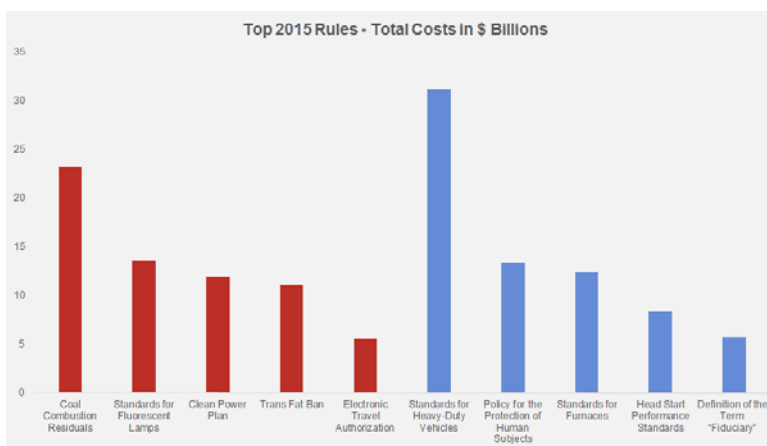
As mentioned, 2015 ranks as the second costliest year under President Obama, with \$19.4 billion in final rule annualized costs; 2012 ranks first, with an amazing \$32.7 billion. For perspective, the chart below tracks annual regulatory burdens from 2009 to 2015.



This year could have easily topped \$200 billion in costs and more than \$100 billion in final net present value burdens had the administration published a rule imposing efficiency standards for furnaces. The White House finished review of the rule on December 11, 2015, but it was not officially published in the Federal Register in 2015.

Largest Rules in 2015

In a year when both the Clean Power Plan and a new ozone rule were published, it should not come as a surprise that EPA imposed many of the priciest regulations in 2015. The ozone measure actually imposed just \$1.4 billion in total costs, easily an "economically significant" measure, but earlier versions of the rule projected burdens up to \$90 billion. The chart below tracks the costliest final rules (in red) and proposed (in blue) from 2015.



By net present value, EPA's "Coal Ash" rule easily topped the list of most expensive final rules of the year. Surprisingly, the ban on trans fats came in as the fourth costliest rule of the year, with \$11 billion in net present value costs. The Clean Power Plan, despite its controversy and breadth - regulating power plants, efficiency, and electricity distribution - was only the third most expensive rule.

Expect many of the rules in blue to appear in red when this report is issued next year. EPA's second round of efficiency standards for heavy-duty trucks could impose more than \$31 billion in total costs and significantly raise the price of engines and trucks. Finally, the controversial "Fiduciary Rule," which could limit investment opportunities, will impose more than \$5.5 billion in net present value costs.

Dodd Frank and Affordable Care Act (ACA) in 2015

Five years after the laws were signed, it was hardly a quiet year for Dodd-Frank and Affordable Care Act implementation. Combined, the two laws generated \$11.9 billion in total costs from final rules, in addition to more than 22.1 million paperwork burden hours. Dodd-Frank contributed \$9.3 billion of the total costs and more than half of the paperwork, at 12.9 million hours.

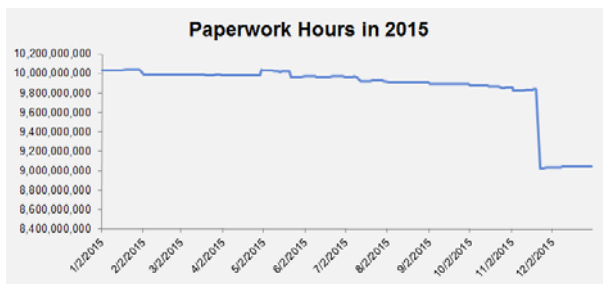
The largest Dodd-Frank rule of the year, as AAF detailed here, was the rule for "Margin and Capital Requirements for Covered Swap Entities." At \$5.2 billion in costs, the initial regulatory analysis projected burdens could actually reach \$46 billion, before settling on a midpoint of \$5.2 billion. On the low-end, regulators estimated burdens of \$672 million, a considerable range considering the impact of the rule on the U.S. financial system.

Another duplicative Dodd-Frank regulation was for "Pay Ratio Disclosure" that requires corporations to calculate the average pay of all employees and compare that figure to executive compensation. This regulation had nothing to do with the financial crisis and will do even less to prevent another recession, but lawmakers and regulators pressed to include the rulemaking into the law. The price for this redundant calculation is \$1.8 billion and the imposition of more than 2.3 million paperwork burden hours.

One of the more notable Affordable Care Act final rules was the "Grandfathered Plans and Preexisting Condition Exclusion" measure. At \$1.4 billion in net present value burdens, it is easily the most expensive ACA rulemaking of 2015. Although there were few individual ACA rulemakings, the cumulative impact of all health care rulemakings was notable. Combined, the Department of Health and Human Services (HHS) published \$53.9 billion in proposed and final rules. The agency's paperwork imposition is perhaps more remarkable, at 83 million hours. This is one reason why HHS's cumulative paperwork burden is at its highest level in history.

Paperwork

Despite the \$197 billion in regulatory costs, paperwork declined by roughly one billion hours, according to the Office of Information and Regulatory Affairs (OIRA). On January 2, 2015, the cumulative regulatory burden was 10.03 billion; on December 31, 2015, it had declined to 9.03 billion hours. The chart below tracks the precipitous drop in late November.



The decreased paperwork in 2015 was driven by major revisions from the IRS and the Department of Transportation (DOT). In November, OIRA approved an IRS request to lower the paperwork burden of the "Bond Tax Credit" from 828 million hours to just 67 hours. There are three reasons for the precipitous drop: 1) based on updated figures, the number of responses the IRS received dropped to 212, from more than 101 million, 2) the reporting format will change from quarterly to as-needed, contributing to a decline of 33.5 million hours, and 3) the amount of time for completing the collection dropped to 19 minutes, from 8.15 hours, decreasing the burden by 794 million hours. In other words, paperwork declined because of updated assumptions and a change in reporting periods.

The DOT also finalized two updated paperwork requirements that eliminated roughly 100 million paperwork hours. Revising "Driver Vehicle Inspection Reports" cut approximately 47 million hours. As AAF outlined previously, drivers no longer need to file no-defect reports; filing is only required now if there is an incident. AAF captured this deregulatory measure in 2014, but it was not recorded at the White House until May 21, 2015. Finally, DOT also revised its "Hours of Service Regulations" for drivers, modifying the burden from 184 million hours to 127 million.

It's important to note that while paperwork declined in 2015 according to OIRA, this is a lagging, not a predictive indicator. For example, AAF recorded a significant drop in paperwork in 2014. Often, it takes several months for paperwork changes in final rules to be reflected on OIRA's database. Given the new paperwork impositions in 2015, it is unlikely there will be another year of decreases in 2016. As an example, on January 4, 2016, the paperwork burden jumped by more than 2.5 billion hours, to 11.5 billion hours:

Office of Information and Regulatory Affairs (OIRA)
Inventory of Currently Approved Information Collections
 January 04, 2016

Government-Wide Totals for Active Information Collections

ACTIVE OMB CONTROL NOS.	TOTAL ANNUAL RESPONSES	TOTAL ANNUAL HOURS	TOTAL ANNUAL COST
9,372	78,115,581,364	11,508,930,050.5	\$68,995,002,694

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Although three significant paperwork revisions dropped the cumulative paperwork burden in 2015, the number of paperwork requirements actually increased in 2015. Measured as "OMB Control Numbers," the chart below displays the specific paperwork requirements that were approved or discontinued in 2015. On January 2, there were 9,223 requirements and by the end of the year, this ballooned to 9,347.



These control numbers represent specific collections of information. For example, the U.S. Individual Income Tax is represented by control number 1545-0074. It currently imposes 2.6 billion hours of paperwork and \$33.6 billion in direct costs. A change in the income tax burden won't affect the total number of paperwork collections. Since AAF has been tracking paperwork in 2012, the number of paperwork requirement is at the highest level. It has grown from 9,114 requirements in July of 2012 to 9,373 today, an increase of 2.8 percent.

Benefits

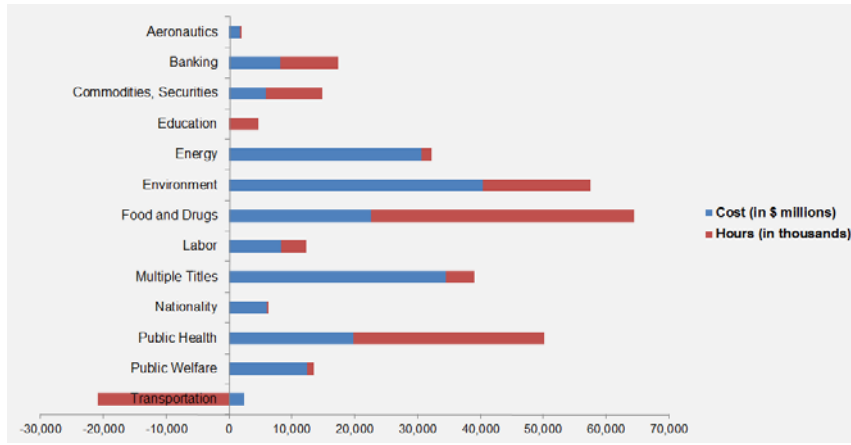
2015 was not a year without considerable regulatory benefits as well, due in large part to EPA estimates from the Clean Power Plan. AAF recorded \$89.6 billion in proposed and final rule annual benefits, compared to \$32.3 billion in annual rulemaking costs.

The Clean Power Plan easily topped the benefit figures, with roughly \$42 billion in annual clean air and climate contributions. Its proposed rule setting a second round of efficiency standards for heavy-duty trucks ranked second, with \$11.5 billion in benefits. FDA's trans fat ban was the only non-EPA measure that cracked the top five in benefits; FDA estimates banning trans fats could generate \$9.4 billion in benefits through improved health. EPA's final rule on heaters and furnaces could produce \$5 billion in benefits, slightly more than its revised ozone standards, which estimated \$4.4 billion in annual health and environmental benefits.

There were also several notable deregulatory measures that could produce \$2 billion in costs savings for individuals and businesses. There were approximately \$1 billion in final cost-cutting measures in 2015, compared to an additional \$1 billion in proposed measures. On an annual basis, the figures are a bit more pedestrian, with \$178 million in proposed cuts and \$717 million in final rescissions. Paperwork associated with these rulemakings declined by 24 million hours. The largest deregulatory measure of the year was a Department of Interior rule for well control in the outer continental shelf; it estimates more than \$650 million in reduced costs. Finally, DOT issued a final rule revising "Electronic Logging Devices;" it should save \$650 million annually and reduce paperwork by 21 million hours. Yet, compared to DOT's overall regulatory tab in 2015, net costs grew by \$2.6 billion, despite deregulatory measures.

Regulation by Industry

In addition to cataloging which agency imposes regulatory burdens, AAF tracks where regulations are codified in the Code of Federal Regulations. This will give a picture of which industries or what parts of government are affected by new regulations. The graph below details burdens on affected industries by costs and paperwork burdens.

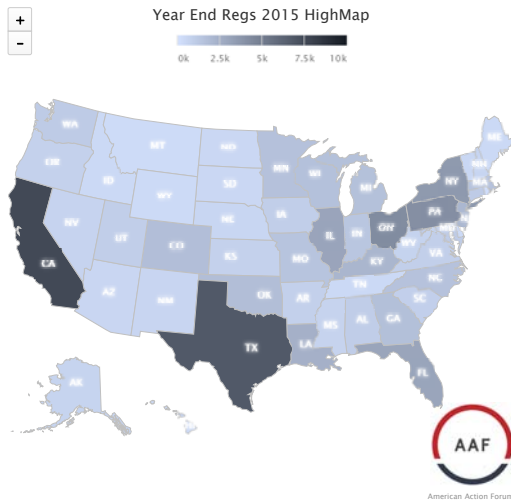


"Food and Drugs" takes the top spot because of one outsized paperwork burden (32 million hours) for sunlamp products. However, the combined costs of EPA regulations easily outpace the other categories (\$40.3 billion for "Environment, compared to \$30.6 billion for "Energy"). As noted above, "Transportation" paperwork is shown as negative on the left side of the graph because of its electronic logging rule.

Regulation by State

When regulators publish their analysis of rules, they often list the affected industries. For example, when EPA issued its greenhouse gas emissions from existing power plants rule, it listed "Fossil Fuel Electric Power Generating Units" as the affected industry. Census data detailing the geographic distribution of industries nationwide allows AAF to apportion regulatory burdens by state.

The map below represents the cost distribution of the largest final rules in 2015. Regulators targeted industries in California (\$7.6 billion), Texas (\$6.8 billion), and Ohio (\$4.2 billion) more than any other state.



[Embed This Map](#)

Looking at the per capita burdens during the course of the Obama Administration, Vermont actually tops the list, with \$4,469 in costs per person. North Dakota is second at \$4,077, followed by Indiana at \$3,735. During the Obama Administration, the average person has incurred a regulatory burden of \$1,991.

Regulatory Reform Takes Shape

Both the House and the Senate placed regulatory reform at the forefront in 2015. AAF experts testified twice on regulatory reform last year and four additional times on regulatory oversight. The Senate started serious discussions on a regulatory budget by holding a pair of hearings in June and December, including hearing perspectives from Canada's successful implementation of a regulatory budget.

The House also passed legislation to allow Congress to review significant regulations. The "REINS Act" passed overwhelmingly in late July. In addition, with 250 votes, the House passed the "Regulatory Accountability Act," which would fundamentally overhaul the Administrative Procedure Act and heighten the scrutiny for billion-dollar regulations. None of these measures passed the Senate, but expect regulatory reform discussions to continue in both chambers in 2016. For example, the House has already overwhelmingly passed the "SCRUB Act," which would establish an independent commission to evaluate past regulations and make recommendations for reform. AAF testified twice during Judiciary Committee deliberations of the bill.

Conclusion

A year of federal regulation can produce a numbers-rich discussion: \$197 billion in costs, 82,036 pages of regulation, and 127 million paperwork burden hours. But beyond these topline numbers, there are real impacts for individuals, businesses, and local governments. Tighter efficiency standards inevitably mean more expensive goods for consumers. More paperwork might mean a business must decide between an expansion or devoting more time to regulatory compliance. New federal rules might place even more of a strain on state budgets. There is always a human element behind these numbers. Although the per capita burden was \$612 this year, the individual costs can sometimes involve more profound personal impacts. With significant proposed rules waiting to be finalized and a rush to issue rules before the next administration takes office, it appears AAF's report next year will catalogue record regulatory burdens once again.

Disclaimer



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Sam Batkins is director of regulatory policy at the American Action Forum. Batkins focuses his research on examining the rulemaking efforts of administrative agencies and Congress. His work has appeared in *The Wall Street Journal*, *The New York Times*, *The Hill*, *Reuters*, and *The Washington Post*, among other publications. He has testified before the U.S. House, Senate, and state legislatures across the country.

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