



Regulatory Lawbreakers: Agencies Fail to Comply with Paperwork Reduction Act

Thu, 2013-07-11 12:08 | Regulation | [Sam Batkins](#) ^[1]
^[2]

Under the Paperwork Reduction Act (PRA), businesses and individuals are required to submit and retain federal forms. Contrary to its name, the Act hasn’t resulted in drastic reductions in paperwork, with the current burden at [10.3 billion](#) ^[3] hours of regulatory compliance. There are penalties, including fines, for failure to comply for individuals. But what happens when federal agencies don’t comply with the PRA?

In the past three fiscal years, dozens of agencies have ignored the PRA, either by collecting information without proper approval or allowing collections to lapse without following the renewal process. The worst offender of the PRA, by far, is the Department of Health and Human Services (HHS), at 31.5 percent of all violations. With more than 150 violations since FY 2009, it has received “Poor” marks from the [Office of Management and Budget](#) ^[4] within the White House. The closest offender to HHS is the Department of Defense, with 88 violations.

Biggest Offenders of PRA (past three fiscal years)

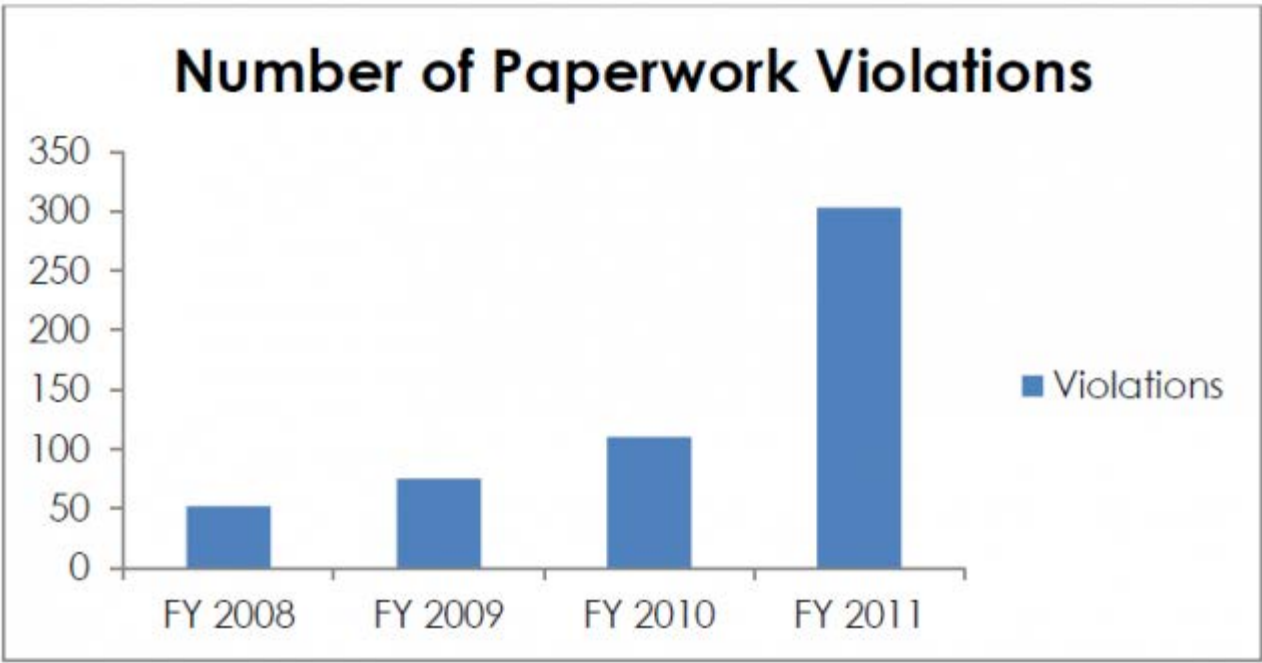
<u>Agency</u>	<u>Total Violations</u>	<u>Average Grade</u>
Health and Human Services	154	Poor
Defense	88	Poor
Housing and Urban Development	35	Needs Improvement
Transportation	34	Needs Improvement
Homeland Security	24	Needs Improvement

Based on grading scale from the [most recent](#) ^[5] OIRA report, issued in 2013.

Violations Getting Worse

Due to an expanded methodology to capture more violations, OIRA reported 303 violations of the Paperwork Reduction Act in FY 2011 across all agencies. As previous reports mention, this trend has only accelerated. “OMB is reporting 110 violations during FY 2010. This is an

increase of 34 violations from FY 2009 and an increase of 57 violations from FY 2008.”



This expanded methodology vaulted Defense over HHS in the most recent fiscal year, but as the results show, HHS has been a serial offender. In FY 2010 alone, Secretary Sebelius’s department managed ten times more violations than the second highest offender, the Department of Veterans Affairs.

Top Offenders by Year

	Defense	Health and Human Service	Veterans Affairs
FY 2011	74	68	-
FY 2010	-	65	6
FY 2009	11	21	-

HHS: Late, Wrong, and Unlawful?

HHS has received significant criticism for its implementation of the Affordable Care Act (ACA). With dozens of regulations on the books, it has already created significant delays and errors. The department has made more than [149](#) [6] corrections to ACA regulations. In addition, there are still dozens of [overdue regulations](#) [7], with many more remaining in 2013.

This regulatory backlog has resulted in more than 150 violations of the PRA and a burgeoning regulatory apparatus that now imposes 621 million hours of paperwork, the equivalent of 311,000 employees working 2,000 hours a year. HHS lacked the legal authority to compel the collection of information, but still imposed the paperwork. The White House’s own [FY 2010 report](#) [8] noted that HHS drives a majority of PRA offenses, “This increase is largely driven by the 65 PRA violations from Department of Health and Human Services, which represents

nearly 60 percent of total violations.” The report defensively noted that the violations produce less than one percent of the overall paperwork burden. However, the 65 violations in FY 2010 represented 5.4 percent of HHS’s total, the equivalent of 29.2 million paperwork burden hours that the agency illegally collected.

A few of these illegal collections are associated with ACA implementation. Seven collections of information, including rules for health care exchanges, total more than 707,000 hours of paperwork and \$13.6 million in costs. HHS allowed the collections to lapse but continued to collect information without legal authority.

Illegal Affordable Care Act Collections

<u>Regulation</u>	<u>Hours</u>	<u>Costs</u>
Establishment Grants for Exchanges [9]	262,115	\$13,131,365
ACA Enrollment Opportunity [10]	259,066	N/A
Insurance Web Portal [11]	101,958	N/A
Grandfathered Health Plans under ACA [12]	53,200	\$330,000
Cooperative Agreements for ACA Exchanges [13]	25,698	\$112,177
Disclosure Requirements under ACA [14]	5,100	\$53,700
Dual Eligibles and Medicare Beneficiaries [15]	494	N/A
<u>Totals:</u>	707,631 hours	\$13.6 million

Reform Measures

In the PRA there are certain “[Public Protections](#)” [16] but, of course, no penalties for agencies that fail to comply with the law. Although there are no pending legislative measures intended to enforce compliance among agencies, there are companion bills in the House and Senate that protect small businesses. The “Small Business Paperwork Relief Act” ([S. 97](#) [17]), sponsored by Senator David Vitter, and [H.R. 1321](#) [18], sponsored by Representative Tammy Duckworth, would provide relief for first-time offenders.

Currently, the first offense under the PRA can generate substantial penalties for private businesses. S. 97 and H.R. 1321 would amend the PRA to provide relief against fines for first-time business offenders, “unless there is potential for serious harm to the public interest ... or the violation presents a danger to the public health or safety.”

However, Senator Vitter’s bill currently has no cosponsors and Representative Duckworth’s legislation has only five supporters, all of whom are

in the minority. Thus, it appears unlikely that reform of the PRA will become law in 2013.

There are other legal vehicles in government that could disincentivize agencies from violating the PRA. EPA, for example, is bound by the “Equal Access to Justice Act” (EAJA), which provides financial compensation to groups that successfully challenge a regulation. As the [Government Accountability Office noted](#) [19], “EAJA thus allows payment of the attorney fees and other costs if the organizations sought review of a government action and prevailed.”

Lawmakers could apply this concept to the PRA. If a business or individual challenges a collection that has lapsed or was obtained illegally, the agency would have to provide equitable compensation for the time and money spent during compliance. For example, if businesses did spend more than 262,000 hours complying with exchange regulations (noted above) and successfully challenged the illegal collection, HHS would be required to remit \$13.1 million for its violation.

In sum, the list of reform measures to strengthen the PRA might be short, but the parade of violations is hardly brief. Agencies, especially HHS, routinely violate the law. Whether these offenses are willfully committed or innocently result from losing track of thousands of collections, lawmakers should examine agency motives and the nation’s overall paperwork burden.

Attached Image:

 [Sam chart.png](#) [20]

[Sam Batkins](#) [1]

Source URL: <http://americanactionforum.org/topic/regulatory-lawbreakers-agencies-fail-comply-paperwork-reduction-act>

Links:

[1] <http://americanactionforum.org/experts/sam-batkins>

[2] <http://twitter.com/share>

[3] <http://www.reginfo.gov/public/do/PRAReport?operation=11>

[4] http://www.whitehouse.gov/omb/inforeg_infocoll#icbusg

[5] http://www.whitehouse.gov/sites/default/files/omb/inforeg/icb/icb_2012.pdf

[6] <http://americanactionforum.org/topic/riddled-errors-health-care-dodd-frank-implementation-challenges>

[7] <http://americanactionforum.org/topic/health-care-implementation-train-wreck-looming-affordable-care-acts-past-present-and-future>

[8] http://www.whitehouse.gov/sites/default/files/omb/inforeg/icb/2011_icb.pdf

[9] http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201101-0938-004

[10] http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201005-0938-002

[11] http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201105-0938-006

[12] http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201011-0938-010

[13] http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201101-0938-005

[14] http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201006-0938-009

[15] http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201011-0938-014

[16] <http://www.archives.gov/federal-register/laws/paperwork-reduction/3512.html>

[17] <http://www.gpo.gov/fdsys/pkg/BILLS-113s97is/pdf/BILLS-113s97is.pdf>

[18] <http://www.gpo.gov/fdsys/pkg/BILLS-113hr1321ih/pdf/BILLS-113hr1321ih.pdf>

[19] <http://gao.gov/assets/330/322395.pdf>

[20] http://americanactionforum.org/sites/default/files/Sam_chart.png



Weeding Out Regulatory Duplication

Thu, 2013-05-30 09:35 | Regulation | [Sam Batkins](#) ^[1]

^[2]

An American Action Forum (AAF) review of more than 470 paperwork requirements finds there are 642 million hours of regulatory duplication, totaling 990 federal forms, and approximately \$46 billion in costs. In other words, duplicative paperwork would require 321,000 employees working 2,000 hours annually to complete – more employees than Pittsburgh has residents. The massive regulatory regime continues to be cited as a major roadblock to economic and job growth and these areas of overlap make clear that there are opportunities for streamlining the current system.

Senator Tom Coburn and the [Government Accountability Office](#) ^[3] (GAO) have conducted a similar analysis of wasteful, duplicative spending. In fiscal year 2013, the federal government will spend approximately \$3.6 trillion, and Senator Coburn and GAO estimate roughly [\\$95 billion](#) ^[4] in annual spending is duplicative.

To conduct this study, AAF replicated the same areas of overlap that GAO identified in its most recent report: “Actions Needed to Reduce Fragmentation, Overlap, and Duplication.” AAF then searched for those program areas in OIRA’s [information collection review](#) ^[5] database, which displays literal red tape requirements.

This search yielded 470 different paperwork requirements, covering everything from Medicare and Medicaid to catfish inspection. AAF examined regulatory overlap (“occurs when multiple agencies or programs have similar goals, engage in similar activities or strategies to achieve them”), fragmentation (“opportunities exist to improve service delivery”), and duplication (“two or more agencies are engaged in the same activities”).

AAF recorded the paperwork collections associated with the areas of duplication, the number of agencies involved, the paperwork hours, and associated costs and forms. For many regulations, agencies declined to list a quantified cost burden with paperwork hours. However, the average cost for requirements that did quantify burdens was \$73. When AAF applied that figure to collections without quantified cost data, the total burden of duplication jumped to \$46 billion. A more central estimate, using BLS’s average wage for a regulatory [“compliance officer”](#) ^[6] (\$31), yields a total cost of \$20 billion for regulatory duplication.

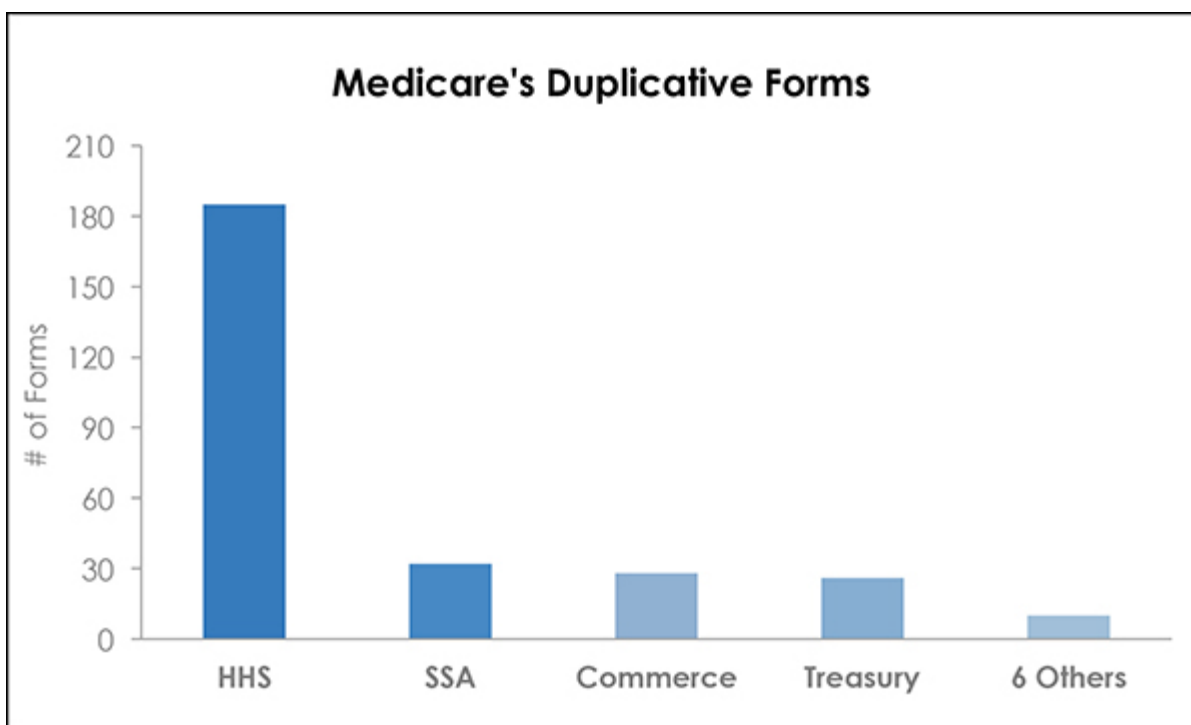
<u>Program</u>	<u>Agencies</u>	<u>Hours</u>	<u>Costs</u>	<u>Forms</u>
Asset Forfeiture	2	6,945	\$511,082	2
Catfish Inspection	3	2 million	\$146 million	11

Crop Insurance	2	33 million	\$2 billion	12
Drug Abuse Prevention	17	6 million	\$297 million	122
Export Promotion	4	286,627	\$18 million	67
Field-Based Information Sharing	2	384,766	\$28 million	4
Higher Education Assistance	9	47 million	\$3 billion	66
Homeland Security R & D	1	319,191	\$23 million	46
Information Technology	11	319,466	\$10 million	19
Medicaid	9	47 million	\$3 billion	125
Medicare	10	486 million	\$36 billion	281
Renewable Wind Energy	10	3 million	\$177 million	96
Rural Water Infrastructure	2	1 million	\$93 million	14
Tobacco	6	3 million	\$176 million	101
Veterans Employment	4	12 million	\$892 million	24
<u>Totals: 642 million hours, \$46 billion in costs, and 990 forms</u>				

Medicare

GAO found two major areas of duplication and fragmentation within Medicare. AAF's results show ten

different agencies handle Medicare forms, generating 486 million hours of paperwork, and a maddening 281 different forms. A high-end estimate of costs for this paperwork is \$36 billion. One regulation, “Additional Quality Measures and Procedures for Hospital Reporting,” imposes 6.7 million hours of paperwork and 21 different forms. The chart below displays the distribution of federal agencies and more than 280 different forms associated with Medicare.

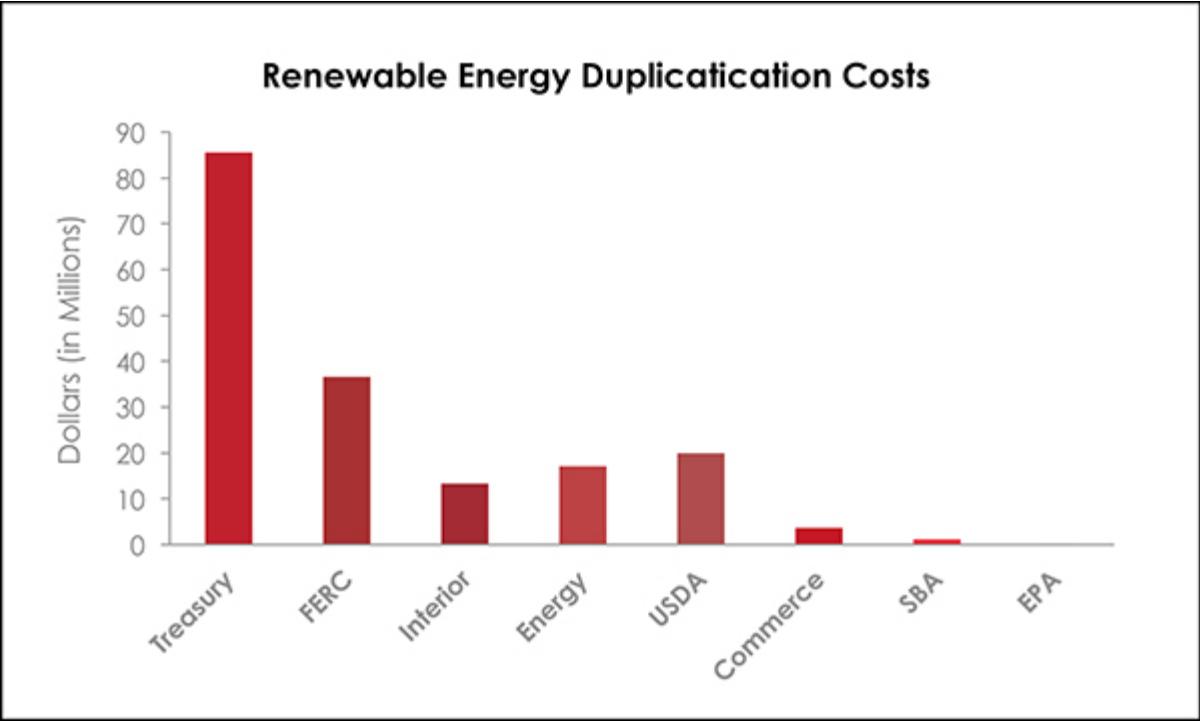


Renewable Energy

Not surprisingly, several different federal agencies regulate renewable energy. According to GAO, renewable energy programs significantly overlap, with dozens of agencies issuing hundreds of different initiatives.

The regulatory side of renewable energy is just as fragmented and duplicative. Ten agencies impose renewable energy paperwork, totaling 38 different collections of information. This duplication produces 2.7 million hours of paperwork, \$177 million in costs, and 96 federal forms. For example, the “Repowering Assistance Program” contains 18 separate forms; the hours are modest (13,000), but there are obviously opportunities for simplification.

The costliest requirement for renewable energy on a per hour basis covers activities on the Outer Continental Shelf. The regulation produces 31,000 hours of paperwork, with an hourly cost of \$122. The chart below displays the distribution of federal agencies imposing duplicative costs on renewable energy.

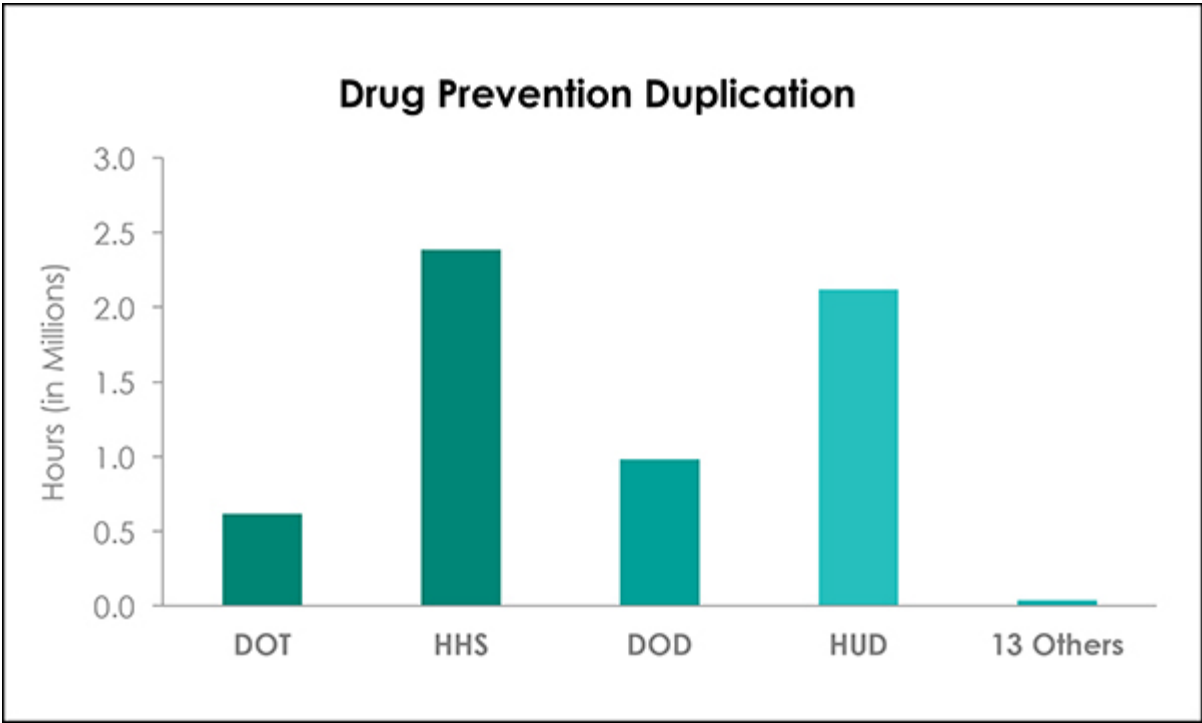


Duplication in Drug Abuse and Prevention

Drug Abuse and Prevention was also a duplicative program area that GAO and Senator Coburn identified. According to the GAO report, there are 76 federal drug abuse and prevention treatment programs. AAF’s research revealed 41 separate information collections, spread among 17 different agencies. Combined, they generated 6.1 million hours of paperwork, almost \$300 million in costs, and 122 forms.

For example, four different agencies within HHS administer drug abuse programs. The largest, “Mandatory Guidelines for Federal Workplace Drug Testing Programs,” imposes 1.7 million hours of paperwork and 16 forms, but estimates an hour of paperwork at only \$1.23.

The Department of Housing and Urban Development (HUD) handles the largest single drug abuse paperwork burden; HUD’s “Screening and Eviction for Drug Abuse” imposes 2.1 million hours of paperwork. The chart below displays the distribution of federal agencies imposing duplicative drug prevention paperwork hours.



Conclusion

In his [letter](#) [4] to the White House, Senator Coburn urged, “While we should be looking under every rock for ways to save, digging deep into agency budgets, the very *minimum* we should be doing is implementing reforms that are right in front of us.” As with federal spending, regulatory duplication is a tired fact of life for businesses and individuals. Even many agencies acknowledge their regulatory burden should decline, but last year the federal government still added more than [355 million](#) [7] hours of paperwork. The President’s Executive Order 13563 urged agencies to modify and streamline their regulations, but with 642 million hours of regulatory duplication, it is clear agencies can do much more.

Attached Image:

- [Regulations 1.jpg](#) [8]
- [Regulations 2.jpg](#) [9]
- [Regulations 3.jpg](#) [10]

[Sam Batkins](#) [1]

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- [1] <http://americanactionforum.org/experts/sam-batkins>
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- [3] <http://www.gao.gov/products/GAO-13-279SP#mt=summary&st=1>
- [4] http://www.coburn.senate.gov/public/index.cfm?a=Files.Serve&File_id=662d6a78-7217-4767-8e81-d80e5cd54247
- [5] <http://www.reginfo.gov/public/do/PRASearch>
- [6] <http://www.bls.gov/oes/current/oes131041.htm>
- [7] http://www.whitehouse.gov/sites/default/files/omb/inforeg/icb/icb_2012.pdf
- [8] http://americanactionforum.org/sites/default/files/Regulations_1.jpg
- [9] http://americanactionforum.org/sites/default/files/Regulations_2.jpg
- [10] http://americanactionforum.org/sites/default/files/Regulations_3.jpg



The House on Regulation: REINS Act 2.0

Tue, 2013-07-30 15:17 | Regulation | [Sam Batkins](#) ^[1]
^[2]

Bill Could Save \$50 Billion in Regulatory Costs

Later this week, the House of Representatives will vote on [H.R. 367](#) ^[3], the “Regulations From the Executive in Need of Scrutiny Act” (REINS Act), sponsored by Representative Todd Young (R-IN). H.R. 367 provides Congress with the ability to conduct oversight of major rulemakings by regulators. The legislation is being considered at a time when regulators have pending rules that cost more than \$50 billion. This represents an increase of approximately \$10 billion since the House passed a similar measure [two years ago](#) ^[4].

Currently, one of the few effective checks Congress holds over final rules is the ability to pass a joint resolution of disapproval under the Congressional Review Act (CRA). Under this framework, Congress can only overturn a regulation after a rule is final. Congress has only used this tool once when it successfully overturned an ergonomics regulation from the Occupational Safety and Health Administration.

The REINS Act would require that Congress pass a joint resolution of approval before any major rule (those with an annual economic effect of more than \$100 million) takes effect. Introducing a legislative check before a rule becomes effective could produce greater oversight of the regulatory process. It could even potentially enhance collaboration between the legislators that authorize certain actions and the administration.

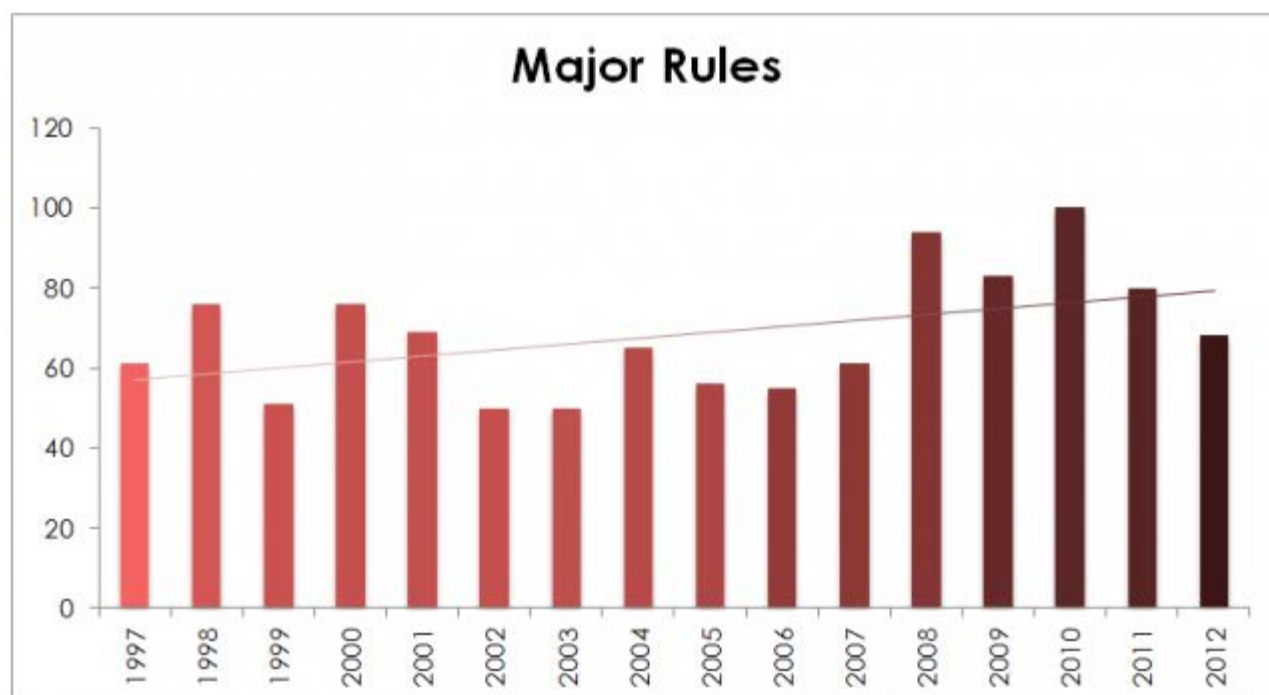
Looking at 2013 alone, the top five major proposed rules to-date cost \$47.5 billion and impose nearly 11 million paperwork burden hours. To put that in perspective, these five rules alone account for roughly 90 percent of the total costs of proposed rulemakings so far in this year. Excluding deregulatory measures that cut costs, the total burden of pending regulations is \$52 billion and 31 million paperwork burden hours.

Largest Pending Regulations

<u>Regulation</u>	<u>Cost</u>	<u>Paperwork Hours</u>
Tier 3: Control of Air Pollution from Vehicles	\$35.1 billion	160,942
Importation of Food: Supplier Verification	\$4.7 billion	N/A
Preventive Controls for Human Food	\$3.3 billion	8,823,932
Standards for Growing, Harvesting Human Food	\$3.2 billion	1,287,580
Reporting of Security-Based Swap Information	\$1.1 billion	654,300
Totals: \$47.5 billion and 10.9 million hours		

In theory, if REINS became law, Congress would have the chance to vote on these measures once the rule is deemed “major.” Nothing would compel Congress to reject all expensive regulations, but they would have the opportunity to review every major rule.

As demonstrated by the graph below, there is reason to believe major rules will continue to weigh heavily on the country’s regulatory burden. Since 1997, there has been a steady overall increase in the pace of major rulemaking, with record-breaking activity in 2010.





The spike in 2010 is partially due to implementation of the Affordable Care Act and Dodd-Frank. The “major rule” designation is particularly important with regard to Dodd-Frank because many of its rulemakings emanate from independent agencies. As such, they escape the “economically significant” designation (despite the fact that both it and a “major” designation are very similar), and avoid review from the Office of Regulatory and Information Affairs.

Earlier this month marked the third anniversary of Dodd-Frank, and AAF examined the Act’s [regulatory cost](#) [5]. With costs already exceeding \$15 billion dollars and nearly one third of its directed rulemakings still un-proposed, it is an area worthy of additional oversight.

The House is likely to pass REINS this week but it is unlikely that these \$52 billion in regulatory proposals will receive significant oversight. A majority of the lawmaking today resides with federal agencies, and absent a legislative overhaul like REINS, regulators will continue to wield enormous power.

Attached Image:

 [Marisol_Chart_.png](#) [6]

 [Marisol2.png](#) [7]

[Sam Batkins](#) [1]

Source URL: <http://americanactionforum.org/topic/house-regulation-reins-act-20>

Links:

[1] <http://americanactionforum.org/experts/sam-batkins>

[2] <http://twitter.com/share>

[3] <http://www.gpo.gov/fdsys/pkg/BILLS-113hr367rh/pdf/BILLS-113hr367rh.pdf>

[4] <http://americanactionforum.org/topic/bipartisan-regulatory-reform-could-save-billions-55000-jobs>

[5] <http://americanactionforum.org/topic/dodd-frank-turns-3-what-has-it-wrought>

[6] http://americanactionforum.org/sites/default/files/Marisol_Chart_.png

[7] <http://americanactionforum.org/sites/default/files/Marisol2.png>