



Research

Regulators Made 1,829 Errors Since 2001

SAM BATKINS | SEPTEMBER 24, 2015

Generally, regulators exist to address a fundamental market failure. However, American Action Forum (AAF) research has found since 2001 regulators have been forced to make 1,829 corrections to federal rulemakings, an average of 130 annually. In the context of all federal rules, the “regulatory error rate” exceeds 3.5 percent.

Analysis

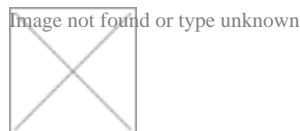
Almost every week, the Federal Register contains documents that address past rulemakings by issuing corrections, sometimes typographical and often substantive. AAF has previously highlighted regulatory mistakes [here](#) and [here](#), documenting the failures of Dodd-Frank and Affordable Care Act implementation. In one instance, the National Credit Union Administration (NCUA) erroneously stated it would impose 43 billion hours of paperwork. After AAF exposed the error, the agency corrected the number to 9.9 million hours, an embarrassment that languished in the regulatory system for months. However, the problem is endemic to the government as a whole, not just with health care or financial regulation.

The chart below tracks the total number of corrective documents contained in the Federal Register from 2001 to 2014.



These raw figures merely tally the number of final rules in the Federal Register that correct previous rulemakings. AAF also examined the data by investigating the “real regulatory error percentage.” That is, what is the number of final rules, less final corrections, divided by the number of regulatory corrections? This method focuses on the actual number of substantive rulemakings and compares them to the regulatory errors annually.

The graph below tracks the error rate over time.



This approach controls for the volume of rules issued annually and simply divides the number of errors by the number of substantive rulemakings. The rate has been fairly constant over time, with an average of 3.5 percent. There was a sharp uptick in 2014, with 141 total corrections and an error rate of 4.1 percent. The Obama

Administration (2009-2014) has averaged an error rate of 3.3 percent, compared to 3.6 percent during the Bush Administration (2001-2008).

That regulators make mistakes is probably not a surprise to many in the policy world. That they continue to make more than 100 annually might shock some. Given the talk of how “ossified” and lengthy the rulemaking process is today, one would imagine that a four-to-five year process might help to eliminate these mistakes. Regulators offer their rulemakings up to public comment for roughly two to three months, submit the measures for review to the Office of Information and Regulatory Affairs (OIRA), and then present for [public inspection](#) before official publication.

Some of the mistakes contained in corrective documents are typographical, but others are substantive. For example, the administration issued 16 corrections to the health exchange final rule. One section noted, “However, one sentence implies that any licensure standards for Navigators would cause Navigators to be agents and brokers, which is inaccurate.” Obviously, the exchanges had other problems during implementation, beyond these corrections.

In addition, there are significant consequences, both legal and economic, for errors in regulatory and statutory text. Indeed, the [Clean Power Plan](#) rests on legal footing that contains a [drafting error](#) from the 1990 Clean Air Act amendments. For a multi-billion regulation that affects 48 states, hundreds of power plants, the electricity grid, and every consumer in the nation, getting it right the first time is paramount.

Conclusion

Perhaps 1,800 corrections should be viewed as a positive development. Regulators were able to identify and correct errors in substantive regulation within the calendar year. Yet, when one out of every 30 rules contains some sort of error, private entities, Congress, and taxpayers should take note. With 141 corrections last year, there are no signs the error rate is declining.