Insight

Midnight at EPA and Interior

SAM BATKINS | DECEMBER 21, 2016

Last month, the *Wall Street Journal* reported that the Obama Administration was readying five significant "midnight" regulations from the Environmental Protection Agency (EPA) and the Department of Interior (Interior). According to research from the American Action Forum (AAF), these five measures alone could impose $5.1 billion in costs and more than 350,000 paperwork burden hours. In addition, three other rules in proposed form could add $898 million in burdens and 146,000 paperwork hours, for a cumulative total of nearly $6 billion in potential midnight costs and nearly 500,000 burden hours from the two agencies. Consider, EPA and Interior have already imposed $349 billion in previous burdens since 2009.

The Pending Five

Based on reporting from Amy Harder of the Wall Street Journal, the administration is planning for a, "flurry of environmental rules" during the midnight period, which is defined as the period after Election Day, but before the next president takes office. Typically, the midnight period is defined by a significant uptick in regulatory output. According to reports, this winter will be no different, with the administration approving at least five last-minute environmental regulations.

Based on reports, here are the five recently-finalized regulations, four from Interior and one from EPA:

- Methane Production on Public Lands: $2.4 billion and 82,170 hours
- Renewable Fuels Standard: $1.5 billion
- Stream Protection: $1.2 billion and 218,000 paperwork hours
- Offshore Oil and Gas Leasing: 7,056 hours
- Renewable Development on Federal Lands: 47,112 hours

Combined, these rules could impose $5 billion in costs and more than 350,000 paperwork burden hours, based on initial cost estimates. In addition, at least two measures do not have monetized cost or benefit figures. However, the largest regulation, at $2.4 billion, aims to reduce natural gas waste from flaring and venting. The analysis estimates an average small entity could bear costs up to $37,500. The second largest rule, and perhaps the most controversial, would establish another round of renewable fuel standards. At $1.5 billion in costs, it ranks as the second most expensive EPA rule of 2016, behind the second phase of heavy-duty truck efficiency standards ($29.3 billion).

Timing

With publication of these regulations, it's instructive to determine whether these rules were rushed, delayed, or were simply planned to be published during the midnight period. The methane production rule, when originally conceived, was scheduled for final action in April of 2016, which then led to final publication a week after Election Day. The Renewable Fuels Standard, published in December, was originally scheduled for a final rule by December of 2016, so EPA hit its predicted mark. The Steam Protection rule was slated for final publication by August of 2016, so Interior was several months late. The offshore oil and gas measure was also scheduled for a summer 2016 publication, but was not published until November 4, 2016. Finally, regulators originally planned for the renewable development rule to be published by October of 2015. Thus, it appears the timing of many of these rules is the result of delay, not necessarily a rush to publish before the next Inauguration Day. Nevertheless, the magnitude, $5 billion in long-term costs, and timing could raise suspicion in Congress.

Other Notable EPA and Interior Regulations

In addition to the five rules outlined here, there are three other regulations from EPA and Interior in proposed form that would impose notable costs:

- Federal Implementation Plan (FIP) for Utah: $435 million in costs
- Air Quality Reporting and Compliance: $302 million and 146,000 hours
- Risk Management Program: $161 million

Combined, they could add nearly $900 million in costs and 146,000 paperwork hours. All were proposed between January and April of this year and therefore they could be finalized by the end of President Obama's term. However, only the Risk Management rule is currently under review, so it would take a "rush" at OIRA to get the other two officially published

soon. There does seem to be a general trend in the pace of midnight rules. The average review time in 2016 for an economically significant measure is 81 days, but 16 went through White House review in less than two weeks.

Conclusion

After nearly eight years, 39 major rules from EPA, and 50 major rules from Interior, the administration is placing the final touches on at least five more notable rules. Combined, the remaining pieces of the president's domestic policy agenda could impose $5 billion in costs and more than 350,000 paperwork burden hours. Given the pending legislation in Congress, members of the House and Senate will surely scrutinize these last regulatory actions during the administration's waning days.