



Insight

Congress Aims to Freeze Midnight Regulation

SAM BATKINS | APRIL 17, 2016

The American Action Forum (AAF) has [written at length](#) about “midnight regulation” or rules promulgated during presidential election years, but specifically after Election Day and before the next president takes office. Congress has now started to fashion legislative remedies to the potential rush of midnight rules. This rush will depend largely on the results of the next election, but if the [last few weeks](#) are any indication, the administration is busy putting the finishing touches to its (expensive) regulatory legacy.

Congressmen Tom Price and Tim Walberg have introduced legislation aimed at curbing the abuse of midnight regulation, and in the case of Congressman Price, ending all major regulation for the duration of the Obama Administration.

Congressman Walberg’s bill, the “[Midnight Rule Relief Act](#),” prohibits federal agencies from proposing or finalizing a rule during the midnight period unless the Office of Information and Regulatory Affairs (OIRA) certifies that it’s not a major rule (to have an effect on the economy of \$100 million or more). The midnight period is generally defined as Election Day through January 20th “of the following year in which a president is not serving a consecutive term.” There are exceptions to this general prohibition on major rules, including imminent health or safety threats, to enforce criminal laws, or to enforce international trade agreements. There is a final exception for deregulatory actions, allowing those measures to become final if there is a certification in writing.

Congressman Price’s bill, “[End Executive Overreach Act](#) (H.R. 4956),” is more expansive, applying to virtually all major and economically significant regulations promulgated as soon as the law is enacted, with restrictions lapsing on January 21, 2017. The bill also prohibits federal funds to implement executive orders after enactment and until the next president takes office.

For Congress and the American public, the question is how would this legislation affect pending regulatory costs? According to AAF’s [RegRodeo](#) database, there are roughly 16 major regulations in the proposed stage that have not yet been finalized. The total net present value cost of those measures is \$76 billion, with \$8.4 billion in annualized burdens, and \$15.2 billion in benefits. The associated paperwork burden is perhaps more stunning: 33.7 million hours of paperwork. In other words, that’s enough paperwork to force 16,858 employees to comply with regulations full-time (2,000 hours a year) for an entire year.

Here are some of the major pending regulations and their annual costs:

- Requirements for Systemically Important Bank Holding Companies: [\\$1.5 billion](#)
- Federal Policy for Human Subjects: [\\$1.3 billion](#)
- Greenhouse Gas Standards for Trucks II: [\\$1.3 billion](#)
- Head Start Performance Standards: [\\$928 million](#)
- Reform of Requirements for Long-Term Care: [\\$659 million](#)

Some of these regulations will likely be final before Election Day, so they would likely fall outside of official midnight period. In addition, there could be a small sample of major rules not yet proposed, where there is no known cost, that could be finalized before the next president takes office. Given that it normally takes one to two years to finish a major rulemaking, this sample is probably too small to significantly affect the figures mentioned in the above text. The Congressional Review Act also provides a strong incentive for the administration to finalize as many major rules as possible [before June](#).

Specifically focusing on traditional midnight rules, a search of the [Unified Agenda](#) reveals 16 significant rules set for final status between November 2016 and January 2017. This might not appear to be a huge volume, but consider during the “midnight quarter” from 2015 to 2016, regulators managed to finalize rules with \$31.7 billion in total costs and more than \$4.7 billion in annual burdens.

In sum, the administration has several incentives to finalize regulations quickly and to ensure the last remaining pieces of its regulatory legacy are in place before January 20, 2017. Notably, the \$76 billion in pending regulatory costs, which would be halted by laws like these, amounts to [9.8 percent](#) of the total rulemaking activity since 2009.