

Insight



Lame Duck Regulatory Agenda Projects \$44 Billion in Midnight Costs

SAM BATKINS | DECEMBER 2, 2016

Here are the final pieces to President Obama's regulatory legacy. What can the nation expect in the lame duck? What will Congress target for repeal in 2016? With the recent release of the administration's [final regulatory agenda](#), it has largely answered these questions. An American Action Forum (AAF) review of the data found at least \$75.3 billion in planned regulatory costs, including the majority (\$44.1 billion) during the "midnight" regulatory period from November 2016 to January 2017. This would be in addition to the more than [\\$150 billion](#) in final regulatory costs already published in 2016.

With little time to propose and finalize rulemakings by January 20, 2017, the administration listed 20 new economically significant measures, up from 14 in the spring agenda. Here are the notable new measures:

- Department of Energy's (DOE) "[Efficiency Standards for Power Supplies](#)," which the public learned about through a proposed rule on August 5, 2016, well before publication of the Unified Agenda.
- Department of Education's (ED) "[Every Student Succeeds Act Supplement](#)"
- Department of Transportation's (DOT) "[CAFE Standards for MY 2022-2025](#)"

For perspective on timing, the administration listed 30 new significant regulations (not previously published in the agenda) in its fall 2010 agenda, shortly after Dodd-Frank and the Affordable Care Act (ACA) had passed. Likewise, the regulatory agenda the following fall listed 32 new significant actions. Largely, the administration has implemented many of its regulatory priorities: virtually all of the ACA, a majority of Dodd-Frank, and dozens of rules aimed at reducing greenhouse gas emissions. However, as this agenda demonstrates, and recent regulatory output [corroborates](#), there are still key rulemakings left for the waning days of the Obama Administration.

With regard to "[midnight regulation](#)" or rules published after Election Day, but before the next president takes office, there are at least \$44.1 billion in possible midnight regulatory costs, timed mostly for November and December of 2016. At the beginning of the year, the administration forecasted roughly [\\$5.2 billion](#) in regulatory costs for November and December. Although it's not certain the outcome of the recent election changed the calculus for regulators, the output for December alone could top \$24 billion, according to Unified Agenda data.

Below, there are approximately 40 notable rulemakings and their scheduled publication dates. Notice the relative lack of activity after January 2017.

November 2016

<u>Agency</u>	<u>Proposed/ Final</u>	<u>Rule</u>	<u>RIN</u>	<u>Cost (in millions)</u>

DOT	Final	Requirements for Vehicle Operators	2126-AB66	\$5,485
DOE	Final	Efficiency Standards: Housing	1904-AC11	\$4,112
DOT	Final	Commercial Driver's License Clearinghouse	2126-AB18	\$1,634
DOE	Final	Conservation Standards: Ceiling Fans	1904-AD28	\$2,400
SEC	Final	Business Continuity Plans	3235-AL62	\$1,383
DOJ	Final	ADA Guidelines for Passenger Vessels	3014-AA11	\$1,088
DHS	Final	Retention of Immigrant Workers	1615-AC05	\$706
FDIC	Final	Recordkeeping for Deposit	3064-AE33	\$328
HHS	Final	Confidentiality of Patient Records	0930-AA21	\$239
HUD	Final	Smoke-Free Public Housing	2577-AC97	\$212
SEC	Final	Rules for Security Swap Dealers	3235-AL12	\$210
DOE	Final	Conservation Standards: Central Air Conditioners	1904-AD37	

December 2016

<u>Agency</u>	<u>Proposed/ Final</u>	<u>Rule</u>	<u>RIN</u>	<u>Cost (in millions)</u>
HHS	Final	Protection of Human Subjects	0937-AA02	\$13,342
DOE	Final	Efficiency Standards: Power Supplies	1904-AD69	\$4,620

DOE	Final	Efficiency Standards: Heating Equipment	1904-AD34	\$2,500
DOE	Final	Conservation Standards: Boilers	1904-AD01	\$863
DOE	Final	Conservation Standards: Ovens	1904-AD15	\$800
DOT	Final	Pipeline Safety of Gas Transmission	2137-AE72	\$711
EPA	Final	Renewable Fuels Standard	2060-AS72	\$683
DOE	Final	Conservation Standards: Portable A/C	1904-AD02	\$510
Interior	Final	Air Quality Reporting	1010-AD82	\$302
Ag	Final	National Organic Program	0581-AD44	\$256
DOT	Final	Performance Management Measures	2125-AF54	\$224
EPA	Final	Accidental Release Regulations	2050-AG82	\$161

<u>January 2017</u>				
<u>Agency</u>	<u>Proposed/ Final</u>	<u>Rule</u>	<u>RIN</u>	<u>Cost (in millions)</u>

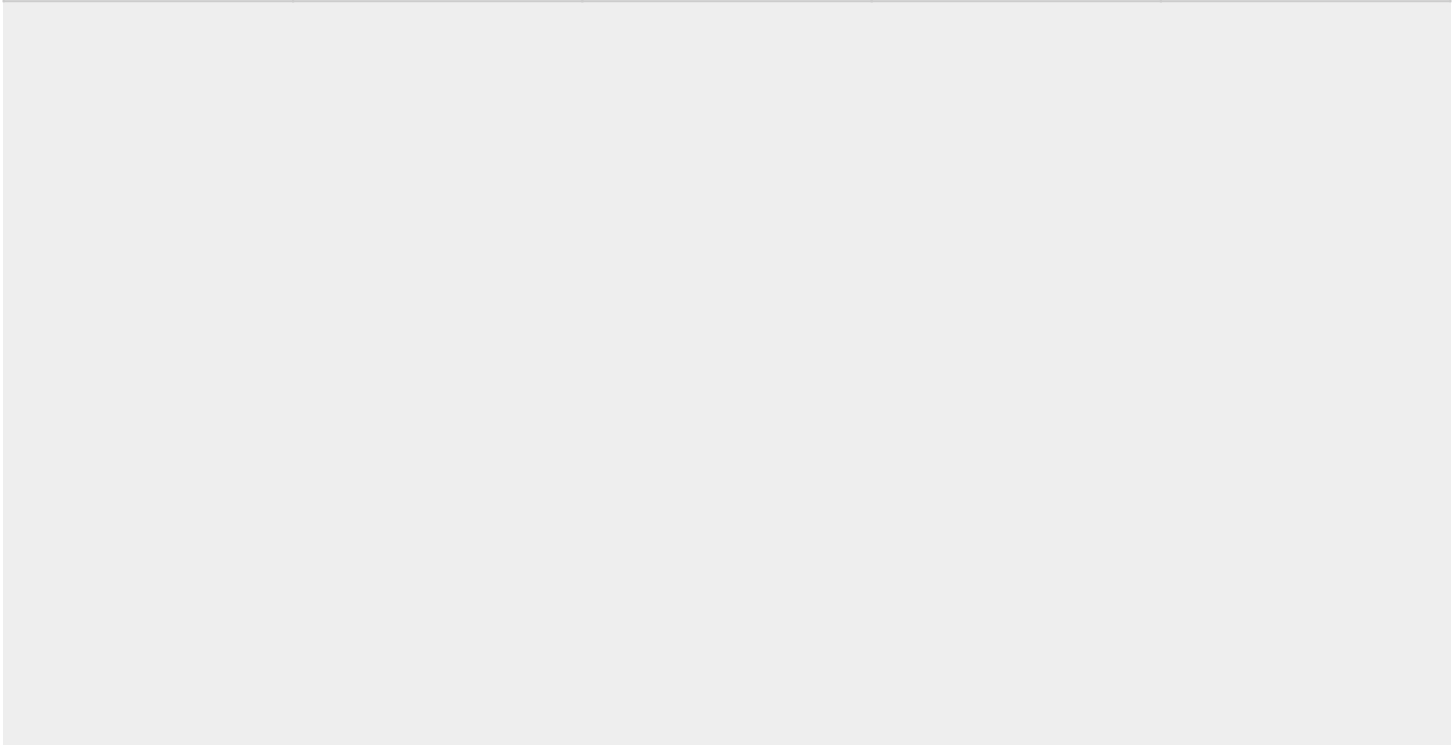
DOT	Final	Public Transportation Safety Plans	2132-AB23	\$1,407
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<u>February 2017</u>				
<u>Agency</u>	<u>Proposed/ Final</u>	<u>Rule</u>	<u>RIN</u>	<u>Cost (in millions)</u>
HHS	Final	Restricted Use of Sunlamp Products	0910-AH14	\$1,126
CFPB	Final	Arbitration Agreements	3170-AA51	\$379

Long-Term

<u>Agency</u>	<u>Proposed/ Final</u>	<u>Rule</u>	<u>RIN</u>	<u>Cost (in millions)</u>
DOE	Final	Conservation Standards: Gas Furnaces	1904-AD20	\$9,200
DOE	Final	Conservation Standards: Dishwashers	1904-AD24	\$7,100
HHS	Final	Medicare and Medicaid Critical Access	0938-AS21	\$5,715
HHS	Final	Requirements for Discharge Plans	0938-AS59	\$1,895
FED	Final	Requirements for SIFIs	7100-AE37	\$1,500
DOE	Final	Conservation Standards: Hearth Products	1904-AD35	\$1,004
HHS	Final	Medicare, CHIP: Program Integrity	0938-AS84	\$819
DOE	Final	Conservation Standards: Freezers	1904-AD59	\$800
Treasury	Final	Assessment of Fees for Large Banks	1505-AC42	
DOT	Final	Speed Limiting Devices	2127-AK92	\$523
Treasury	Final	Liquidity Risk Measurement	1557-AD97	\$519

DOL	Final	Annual Reporting and Disclosure	1210-AB63	\$372
DOT	Final	Safety Management for Airports	2120-AJ38	\$238



Possible Cost: \$75.3 Billion

The \$75 billion estimate contains roughly 40 monetized figures out of what will be hundreds of potential final rules. It is unlikely regulators in the Obama Administration will have the opportunity to enact the full slate listed here. Still, there is a degree of uncertainty. The public does not know the cost of proposed rulemakings not yet published, nor the countless other rules that will be final in the coming weeks. There is the possibility of direct or interim final rules omitted from this agenda, but those measures, if significant, are likely to face legal challenges. Finally, the ultimate costs and benefits of these measures could increase or decrease significantly compared to earlier versions.

This is the final regulatory agenda the administration will release. Its authors know too well that everything not yet final could come [under scrutiny](#) from President-elect Trump and the Republican Congress next year. Although this agenda puts the finishing touches on what was an active eight years for regulators, the fate of many of these measures lies with the next Congress and the incoming administration. The agenda might reveal \$44 billion in midnight regulations today, but they could vanish quickly in a series of votes or executive actions in 2017.