



Insight

May 17, 2016: Regulation Day for Obama Administration

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At what point will President Obama's regulations become eligible for repeal by the next administration? As the American Action Forum (AAF) has [previewed in the past](#), the Congressional Review Act (CRA) gives Congress the power to rescind federal regulations through an expedited procedure. Since it's unlikely President Obama will want to sign legislation repealing his administration's own rules, Congress might have to wait until the next president takes office. The CRA provides for a "carryover" period when rules are issued toward the end of each session. Now that tentative House and Senate calendars have been released, AAF predicts President Obama will have until May 17, 2016 to issue regulations without fear the next Congress and the succeeding administration will use the CRA to repeal his regulatory priorities.

The CRA has been used [sparingly](#) during President Obama's [tenure](#). Because of party divisions between the House and Senate, the president has been forced to veto [just one](#) "resolution of disapproval" for a federal rule. Curiously, this measure didn't technically originate from the Obama Administration, but the National Labor Relations Board (an independent agency). The rule on "[Representation Case Procedures](#)," or "ambush" elections, did not estimate significant economic burdens, but it would expedite union elections.

Regardless of the frequency of CRA votes and likely vetoes from the president, it is unlikely any disapproval resolution will become law in 2015 or 2016, unless more than a handful of Senate Democrats begin to vote with a unified group of Republicans. This changes the narrative to what the next president can do with President Obama's regulatory slate. The CRA provides a "carryover" period of 60 legislative days in the House or 60 session days in the Senate. Essentially, counting backward from the end of the session, the previous 60 days (the earlier of House or Senate days) would be subject to the carryover period and allow the next Congress and administration to review those regulations.

The day that initiates the carryover period can vary widely. For example, it was as early as May 12, 2004 and as late as July 30, 2001. Using the preliminary House and Senate calendars for 2016, AAF predicts May 18, 2016 as the first day the CRA carryover period applies to federal rules. Any regulation after that will likely be subject to resolutions of disapproval in 2017. However, this date has an asterisk. It cannot be known until Congress actually adjourns its session, likely at the end of December. If Congress packs more days in its session later in the year, the carryover period will also stretch later into 2016, giving President Obama more of a cushion for his rules. Thus, May 17, 2016 is likely the current safe harbor day for federal regulators, but that date could easily stretch into June with a busy Congressional calendar after the elections.

CANDIDATES FOR PRE-MAY 17 RULES

The "[Clean Power Plan](#)" and [ozone](#) rules are already final and published, so unless a court strikes them down, there is little Congress can do to rescind these controversial measures. There are other candidates, however, for what might amount to a mini-rush of rules before the CRA conceivably becomes a worry in 2017.

The chart below tracks the rules that could evade any successful CRA resolution of disapproval.

<u>Rule</u>	<u>Annual Cost</u>	<u>Possible Publication Date</u>
Efficiency Standards for Residential Furnaces	\$741 Million	January 2016
Unified and Combined State Plans	\$147 Million	January 2016
Exploratory Drilling in the Arctic	\$135 Million	January 2016
Exposure to Silica	\$657 Million	February 2016
Revision of Nutrition Labels	\$177 Million	March 2016
Serving Sizes of Foods	\$177 Million	March 2016

As noted above, there is a large amount of uncertainty for regulatory schedules, as even target publication dates are unlikely. As of this writing, none of these rules are even under review at the White House. However, given the historic rush of “[midnight regulation](#),” and the CRA looming, there are incentives for the administration to process and publish these rulemakings swiftly. Yet, when OIRA Administrator Howard Shelanski [testified earlier this year](#), he pledged that there would be no rush of regulation in 2016. So, there are certainly competing factors in play: cementing the administration’s regulatory priorities versus a desire to critically analyze each regulation moving through OIRA.

RULES POSSIBLY ELIGIBLE FOR REPEAL IN 2017

What’s more unknown is the rules that will likely be published in late summer or the winter of 2016, easily within the carryover period of the CRA. The administration has provided some hints in the Unified Agenda of regulation, but these measures could be rushed or on the contrary, not completed at all during the Obama Administration.

The following represents several rules likely to fall within the carryover period and thus give the next Congress and president an opportunity to review.

<u>Rule</u>	<u>Annual Cost</u>	<u>Possible Publication Date</u>
Head Start Performance Standards	\$928 Million	June 2016

<u>Rule</u>	<u>Annual Cost</u>	<u>Possible Publication Date</u>
Emissions Standards for Fracking	\$420 Million	June 2016
Emissions Guidelines for Landfills	\$46 Million	July 2016
GHG Standards for Heavy-Duty Trucks II	\$1.3 Billion	July 2016
Expanding Paid Overtime	\$265 Million	July 2016
Efficiency Standards for Dishwashers	\$413 Million	August 2016
Definition of the Term “Fiduciary”	\$570 Million	TBD

Again, these dates are hardly concrete and it’s possible the rulemakings could be finalized at any time in 2016. However, the emissions standards for fracking and landfills were published in September and August, respectively. It’s unlikely EPA will process comments, revise the rulemakings, and navigate OIRA review in less than a year. Yet, EPA plans to at least provide a draft final rule to OIRA by July 2016. Depending on the review times, both rules could navigate the most difficult part of the rulemaking process in less than a year and perhaps sooner if the administration wants to avoid the critique that it’s rushing regulations through the door.

CONCLUSION

Next year will offer not one but two periods for a rush in regulation. The traditional “midnight” term, after the election and before the next administration takes office and submitting rules before the CRA carryover period. Based on the current congressional calendars, it appears the administration will have until May 17, 2016 to regulate without fear that next president and Congress will rescind notable rulemakings. After that date, emissions rules, efficiency standards for trucks, and expanding overtime will likely undergo scrutiny in 2017.