



Insight

Regulation Day Approaches

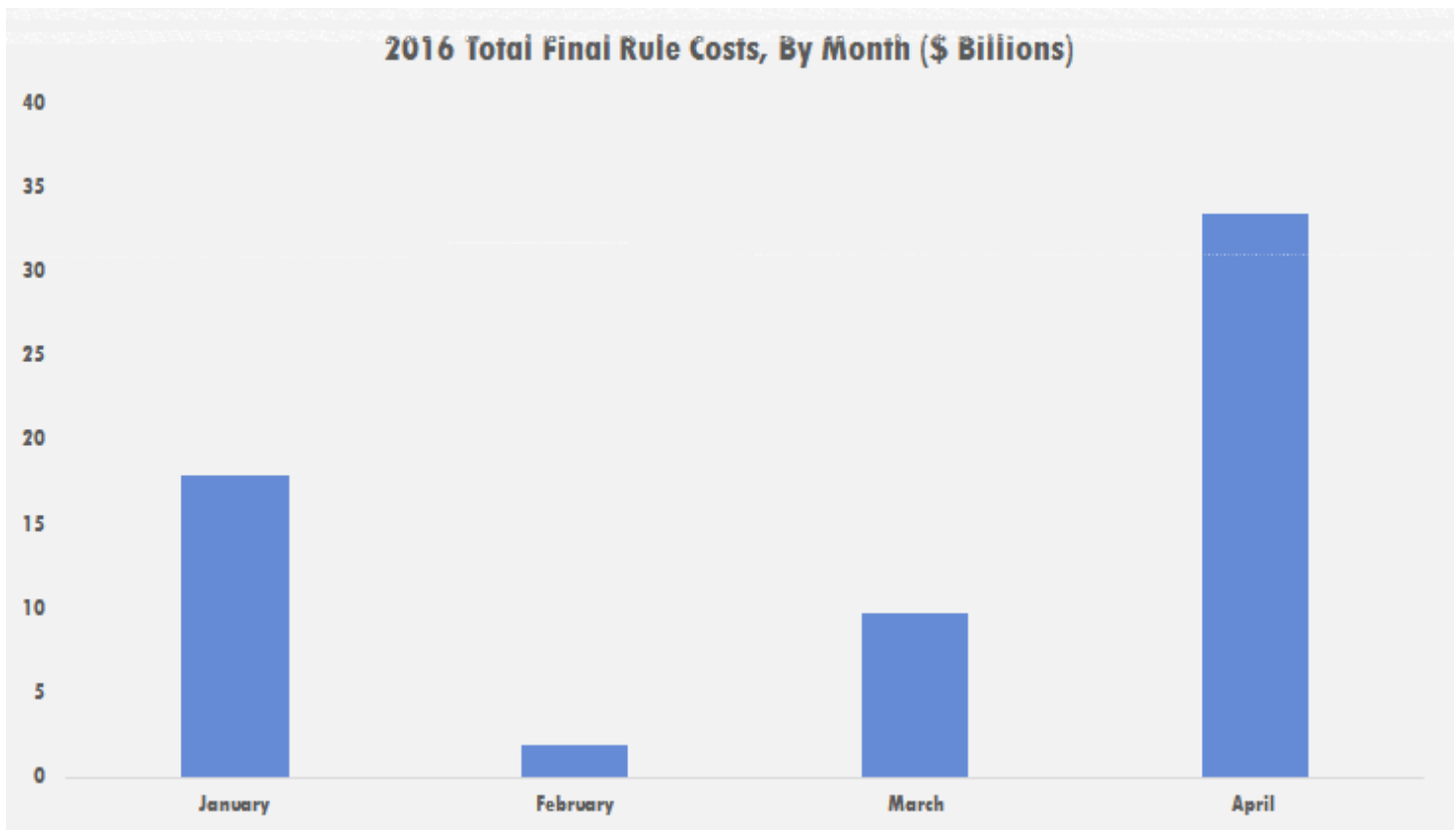
SAM BATKINS | MAY 16, 2016

Late into 2015, the American Action Forum (AAF) wanted to predict how the waning days of the Obama Administration would unfold. AAF calculated that the president would have strong incentives to publish major regulations before [May 17, 2016](#) (“Regulation Day”) based on the House and Senate legislative calendars. Although this date cannot be known until Congress adjourns its session, it was substantiated by the [Congressional Research Service](#) in February. Rules issued after that date could be repealed by the next Congress and the next administration under the Congressional Review Act (CRA). AAF has tracked [all regulations](#) leaving the White House this year and while the pace is not unprecedented, the number of significant rules is notable.

If the administration has decided to rush major regulations before the May 17th deadline, what is the cost? According to AAF data compiled from government agencies, since April 2016 agencies have imposed \$39.3 billion in regulatory costs, from proposed and final measures. Final rule burdens are an overwhelming share of this total at \$37.5 billion; \$31.5 billion of the cost is driven mainly by the Department of Labor’s “[Fiduciary](#)” rule for investment advisors. However, that wasn’t the only notable aspect of rulemakings leading up to “Regulation Day.” These measures would also impose more than 13.9 million paperwork burden hours. On a per capita basis, final rules from this stretch will add \$116 to every individual’s regulatory tab. Below are some of the other expensive regulations published during the last month:

- Diligence for Financial Institutions: [\\$2.5 billion](#)
- Regulation of Smokeless Tobacco: [\\$1.1 billion](#)
- Transportation of Human and Animal Food: [\\$998 million](#)
- Blowout Preventer Systems: [\\$890 million](#)
- “Medicaid Mega Rule:” [\\$471 million](#)

The chart below indicates April was far busier than any other month this year, at least in regard to final regulatory costs. In 2016, the administration has proposed or finalized more than \$85 billion in total costs, in addition to 44 million paperwork burden hours. Whether this is because of a concerted rush to avoid CRA scrutiny or other factors, only the administration knows.



Since April, the administration has also proposed several notable regulations, that if rushed, could easily be final before the next president takes office. A new pipeline safety rule ([\\$711 million](#)), an air quality reporting measure ([\\$302 million](#)), and the “National Organic Program” ([\\$256 million](#)) have all entered the public comment phase of the regulatory process. However, barring some extreme procedural move, their final versions won’t likely avoid “Regulation Day,” allowing the next Congress to review their efficacy.

As AAF mentioned, the volume of regulations released from the White House isn’t extraordinary, but the price tags are significant. For example, through the first four months of this year, the administration has released 44 significant rulemakings, far more than any presidential election year since 1996. Here is a snapshot for significant activity in previous years (January through April):

- 2012: 28 rules
- 2008: 32 rules
- 2004: 27 rules
- 2000: 23 rules
- 1996: 14 rules

As shown above, President Obama has already released 37 percent more significant regulations than any comparable period since 1996. Indeed, the administration has also approved three times as many economically significant rulemakings as were approved in 1996.

These regulatory costs essentially represent unchecked power for the president. Absent an intervention from the

federal courts or a surprising supermajority in Congress, these rules will likely persist indefinitely. Perhaps Congress and future policymakers are more interested in what they could control through the CRA. In other words, what regulations haven't been finalized yet?

As of this writing, there are 35 “economically significant” (impact on the economy of \$100 million or more) rulemakings that have not yet been officially published. These include revised [food labeling standards](#), the 2017 [renewable fuels standard](#), final [fracking standards](#) from the EPA, and final [overtime rules](#) for professionals. Combined, the three final rules [could impose \\$4.4 billion](#) in additional economic burdens, and more than 2.5 million paperwork burden hours. This is to say nothing of the other 32 rules under review, or the dozens of significant measures that will be approved before President Obama leaves office.

Conclusion

President Obama is moving into a phase where many significant regulatory decisions could be checked by the next Congress. To this point, he has happily vetoed attempts to undo controversial measures. Once Regulation Day passes, the next Congress will have an opportunity to review the administration's *Lame Duck* rules. Whether they repeal these expensive regulations depends on the partisan composition of Congress, and a willing president.