



Research

Administration has Published \$21.7 Billion in Regulation Since Election Day

SAM BATKINS | JANUARY 5, 2017

Since the results of the 2016 Presidential Election were determined, through the New Year, the Obama Administration has released more than \$21.7 billion in regulatory costs, including \$16.4 billion in final rules. In addition, the administration has published more than 21 million hours of final federal paperwork requirements since November 8. At the current pace, the Obama Administration is going to be the most active “midnight” (period from Election Day to Inauguration Day) regulator in more than a generation.

There have been 36 working days since the Presidential election and the Obama Administration has released 145 regulations, including 31 “economically significant” measures (rules with an impact of \$100 million or greater). For comparison, in a period also stretching 36 days, only starting in January, the administration only released 77 rulemakings. Once the administration’s midnight period is complete, it could easily impose more than \$30 billion in regulatory costs. For perspective, that’s more than regulators produced in [all of 2013](#).

Largest Rules

In the last two months, regulators have implemented ten “economically significant” rules with annual costs exceeding \$100 million. Below is a snapshot of the largest rules.

<u>Rule</u>	<u>Cost</u>	<u>Paperwork</u>
Requirements for Commercial Vehicle Operators	\$3.6 billion	59,030
Natural Gas Flaring on Public Lands	\$2.37 billion	82,170
Renewable Fuels Standard	\$1.55 billion	
Drug and Alcohol Clearinghouse	\$1.35 billion	1.8 million
Stream Protection Rule	\$1.2 billion	218,457
Liquidity Risk Management Programs	\$855 million	292,453

Unsurprisingly, many of these measures are related to energy and the environment. The natural gas flaring rule

would impose new rules on production facilities on federal land and subject certain activities to increased federal royalties. EPA's "Renewable Fuel Standard for 2017 and 2018" would impose [\\$1.5 billion](#) in costs, mainly on producers and consumers, but that estimate also excludes the job and investment impacts. Finally, Senators have already [called to repeal](#) the "Stream Protection Rule" as soon as the new Congress and President-Elect Trump are sworn in to office. The annual costs of that measure increased by 55 percent from the proposed version to final rule.

Regulatory Output

What's most striking about this midnight period is the sheer volume of regulations leaving the Office of Information and Regulatory Affairs (OIRA). Since November 8, OIRA has concluded review of 145 regulations, or roughly four per day. During the year, average daily output was around 2.2. Although November set a record for regulatory output in 2016, it was December that shattered records. The administration released 99 regulations last month, including 19 economically significant measures, both easily records for 2016. December's regulatory output eclipsed every December in more than a generation, since 1993.

The pace in December has increased to 4.5 regulations per day, or roughly double the average daily output from OIRA. On both December 2 and 16, the administration released nine regulations, including four total economically significant measures. Critics of the term "midnight regulation" note that President Obama [should still](#), "take care that the laws be faithfully executed." He is still President, but if Congress, after passing one to two laws per month, suddenly passed five to six laws during the Lame Duck session, after many had been voted out of office or retired, members of the public would surely protest.

President Obama has every right to regulate as usual during the waning days of his administration. However, why is there a statistically significant difference between the regulatory output in December, compared to any other month during his presidency? Is this due to politics or good public policy? If the former, why do those who reject the politicization of regulation at all other times, suddenly embrace the practice during the midnight period? From January to November of 2016, the average monthly regulatory output was 46. It has more than doubled in December, despite holiday work schedules. This is a result of politics and the desire to cement as many regulatory priorities as possible, not the status quo policy of the preceding 11 months.

Conclusion

In just 36 days, the administration has released more than \$21.7 billion in costs and 21 million paperwork burden hours. It has also broken records for regulatory output during a December midnight period. Why? Because the next administration does not share the same political views of the current one. For opponents of this regulatory output, however, there are several options: the [Congressional Review Act](#), [appropriations riders](#), and using the administrative process to formally repeal rules. Given the output of the last few weeks, it appears Congress and the next administration will be as busy reviewing regulation as the Obama Administration was implementing new rules.