



Obama Unveils Last-Minute Regulatory Agenda

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President Barack Obama is preparing to issue a rash of last-minute “midnight regulations” during the lame-duck period between the beginning of his final year in office and the official start date for Obama’s successor in January 2017.

Obama’s regulatory agenda for his final year in office includes new restrictions on financial advisors, bans on smoking in and around taxpayer-funded housing units, and increased government regulation of grocery food labels.

Public Protection or Politics?

Thomas Firey, managing editor of the Cato Institute’s *Regulation* magazine and a Maryland Public Policy Institute senior fellow, says issuing new regulations at the end of a term is more about politics than public benefit.

“Lame-duck presidents face a tough choice in their final few months in office: Do they push through unfinished business that they’ve been working on for a long time, regulations that are likely controversial and costly?” Firey said. “Moving those regulations could be politically costly to the party’s candidates in the fall election. On the other hand, if the lame-duck president delays the regulations until after the election and his party loses anyway, then the president can try to move them through as ‘stroke of midnight’ regulations, but the incoming president and Congress can reverse those regulations because they’ll be within the window of Congress’ regulatory review power.”

Firey says expanding congressional review of executive rulemaking is a good solution.

“As to the question of how to end this pattern of late-tenure rulemaking, perhaps lengthen the window in which Congress can do regulatory review or [don’t] have a time limit at all,” Firey said.

‘Regulatory Effect’

Wayne Crews, vice president for policy at the Competitive Enterprise Institute, says passing “midnight regulations” are part of a larger problem.

“We have a president who has made it very clear that ‘we’re going to get things done,’ and he has expressed a willingness to go around Congress to look for ways to fulfill the agenda,” Crews said. “The president is so aggressive that the midnight regulations won’t even matter in the transition.”

Crews says executive agencies regularly bypass accountability and oversight by Congress.

“The *Federal Register* for 2015 has topped 80,000 pages,” Crews said. “Every year, Congress passes a few dozen laws—it can be anywhere from 30 to 40—but the agencies every year put out 3,500 regulations. But on top of that, the agencies are issuing what I call ‘dark matter.’ [These are] guidance documents and memoranda, manuals, circulars ... all these things can have regulatory effect.”