



Written by [William P. Hoar](#) on February 6, 2017

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## Correction Please!

### Lame Duck Runs Amok With Last-ditch Regulations

**Item:** *After Election Day and before Inauguration Day for the new president, Barack Obama was busy trying to “Trump-proof the White House,” noted an article by the McClatchy news service. Among other actions, as Anita Kumar wrote in the piece dated December 8, 2016, he put appointees on boards and in offices and “churned out rules, regulations and policies several times a week.”*

*Obama has been, as she wrote, “trying to put the people and policies in place that he wants to outlast his presidency in the final weeks before Donald Trump takes over. And his supporters want more, way more. Every president tries to push through last-minute policies before their time in office comes to a close. But this year has a more frantic feel as special interest groups push Obama to do more, not just because the president-elect is of a different party but because few people know what he will do.*

*“‘People are, as you can imagine, they are getting quite desperate,’ said Rena Steinzor, a member of the Center for Progressive Reform, a liberal advocacy group, who is pressing Obama to act. ‘Filling boards and doing whatever he can to establish protections that Trump would have to unwind is a good strategy.’”*

**Item:** *The Boston Globe reported on December 21 that, the day before, Barack Obama “banned millions of acres of federally-owned land in the Arctic and the Atlantic Ocean from offshore oil and gas drilling, a move experts say is likely to be challenged by incoming president Donald Trump, but unlikely to be quickly reversed.*

*“It’s just the latest step the Democratic administration has taken since the election to enact rules and policies in the president’s final days in power, including on key issues where Obama and Trump, a Republican, disagree. Experts told the New York Times this week that it’s not unusual for outgoing presidents to try to enact new measures in their last weeks in office.”*

**Item:** *Anticipating an angry reaction about so many last-minute moves, Obama administration officials told the Washington Times (January 5, 2017) that, as the paper put it, “most of the rules being implemented have been under the development states for months or years.”*

**Correction:** It is scant comfort to be told that bureaucrats have been conniving for a long time, not just for a few months, with their plans on how we should conduct our lives — even if this self-serving contention is true.

Nevertheless, as President Obama was taking his final laps, he did designate more than a million acres of Western lands as national monuments, blocked construction of a segment of the Dakota Access Pipeline, and declared that huge parts of the Atlantic and Arctic oceans were “indefinitely off limits to offshore oil and gas leasing.”

So-called progressives at the *Atlantic* magazine cheered those decrees and hailed earlier pronouncements as well. The latter included expanding, by six-fold, the Pacific Remote Islands Marine National Monument — which now covers 490,000 square miles and is “three times the size of California, and bigger than all the land-based national parks combined,” as well as quadrupling the size of Hawaii’s Papahānaumokuākea Marine National Monument to 583,000 square miles, about twice the size of Texas.



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These diktats, both the older ones and the more recent moves, are costly. Various academic studies have attempted to measure the price tag. Last year, for example, a 22-industry study was released by the Mercatus Center at George Mason University covering the years 1977 through 2012. It gauged the drag of regulations on the American economy, annually and cumulatively. The study determined that government regulations — because they distort the investment choices that lead to innovation — have led to an average reduction in the annual growth rate of the U.S. gross domestic product (GDP) of 0.8 percent.

While that is significant, it gets worse over time. As the study found, if the existing regulations had just been held constant at 1980 levels, the U.S. economy would have been about 25 percent larger than it actually was as of 2012. Specifically, as of 2012, the economy was \$4 trillion smaller than it would have been in the absence of regulatory growth since 1980. Broken down, this amounted to the loss of about \$13,000 per capita. Most Americans would probably like to have that in their bank accounts.

Rather, what we have received are more regulations that hinder us in myriad ways. A piece in *Investor's Business Daily* (May 13, 2016), written by Mark Perry and Thomas Hemphill, both professors at the University of Michigan-Flint, put it this way: "Given the regulatory zeal of Team Obama, it should not be surprising that economic growth has averaged only 1.4% annually over the last seven years. Further, Obama is the only president in modern history whose time in office didn't include at least one year of economic growth at the 3% historical average."

There has been a frenetic flurry of regulations in the last several weeks. Even some activists admit that these impediments are intended to thwart the incoming administration. In a military sense, the objective is roughly analogous to what Islamic State fighters are doing in Mosul, in northern Iraq — leaving behind land mines as they are forced to leave their erstwhile stronghold.

House Judiciary Committee Chairman Bob Goodlatte (R-Va.) is no doubt too gracious to draw such a parallel. Still, as the congressman has observed, "Because outgoing administrations are no longer accountable to the voters, they are much more prone to issue midnight regulations that fly in the face of the electoral mandate the voters just gave the new, incoming administration." He made his comments shortly before a vote passed the House that would give Congress the authority to overturn recently enacted regulations. "Waves of midnight rules can also be very hard for Congress or a new Administration to check adequately," said the congressman.

An analysis of "midnight rules," defined as those between Election Day and Inauguration, was recently released by the American Action Forum (AAF), a free-market think tank. At that point, it covered rules through the New Year, when there was no evidence that the pace would slacken. It included five such major regulations handed down by the Obama Environmental Protection Agency and Obama Department of the Interior.

The editors of *Investor's Business Daily*, citing the AAF report, pointed out that these new rules, by themselves,

will cost about \$5.1 billion a year and require at least 350,000 hours of paperwork from companies.

In addition, three other lesser rules will add an estimated \$898 million to the regulatory tab, and another 146,000 hours of paperwork. The bottom line: These new rules that Obama is making the law of the land with little fanfare and no input from Congress will cost us \$6 billion a year and nearly half a million hours of paperwork. We pay for these, by the way, not companies.



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The impact of this kind of rule-making is cumulative. Since 2009, when Obama took office, the EPA and Interior have added \$349 billion in regulatory costs....

As we reported in October, regulatory burdens now rank No. 2 among small-business concerns, according to the National Federation of Independent Business, the nation's main small-business advocacy group. That's up from being ranked No. 5 just four years ago.

In an earlier study, the AAF said that since 2009, the Obama regulatory siege on business had brought 600 major new rules and over \$813 billion in added costs. If Obama is concerned about the job losses, closed businesses, depressed communities and lost economic opportunities that his regulatory siege has wrought, he's shown no signs of it. Far from it. He's doubling down in the final days of his last term.

The AAF has, as noted, been keeping an eye on this phenomenon for some time. Sam Batkins, the group's director of regulatory policy, recently pointed out that in just one December night the Obama administration released more than \$7.4 billion of regulations in the *Federal Register*. (The feds meanwhile keep a close eye on us. Those regulations cover dedicated-purpose pool pumps, commercial packaged boilers, walk-in coolers and walk-in freezers, portable air-conditioning units, and uninterruptable power supplies.)

The growth in the number of pages in the *Federal Register* is one way to measure the impact of the central government on Americans who are trying to make a living. It turns out that the Obama administration has been very adept when it comes to hampering businesses. For 2016, the page count in the *Register* set a new record, at 97,110. This, commented Ryan Young of the Competitive Enterprise Institute (CEI), is more than "15,000 pages above the previous record, set in 2010. The difference is more than 19 percent, no small feat for a document that has been published since 1936." The various federal regulatory agencies, went on Young, "issued 3,853 regulations, more than a 13 percent increase over last year, and the highest total since 2005. As my colleague Wayne Crews noted, this exceeds the number of bills Congress passed by a factor of 18."

The *Wall Street Journal* also has picked up on the American Action Forum analysis, saying that the belated regulatory binge was "astonishing even by the feverish rule-writing of the Obama administration. "Team Obama," wrote the editors on January 5, 2017, issued

39 new rules in March 2016, 55 in May and 57 in November. Someone must have called this pace slacking off, because in December the number soared to 99.

The last-minute push is an effort to complicate life for the Republican agenda, but Congress is considering legislation that would allow it to undo large swaths of Mr. Obama's new regulations at one time. Under the 1996 Congressional Review Act, Congress can kill new federal regulations on a simple majority vote within 60 working days of being final.

The new bill that passed the House on a 238-184 vote on Wednesday would expand that authority by allowing Congress to nix multiple midnight regulations in a single vote rather than having to hold individual votes to repeal a series of recent regulations. This is a useful efficiency if Congress wants to spend the first 100 days of the Trump Administration doing anything on other issues like, say, health care or judicial nominations.

When it comes to examining its own regulations, the federal government — perhaps understandably, considering the potential political ramifications — is not particularly thorough. At the end of the year,



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for example, the White House Office of Management and Budget (OMB) put out a report whose title alone is snooze-inducing: the “2016 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance With the Unfunded Mandates Reform Act.”

The study picked its targets carefully. And the OMB chose over a decade, as noted by Clyde Wayne Crews, Jr. in *Forbes*, the “cumulative benefits of a selection of 181 major regulations issued between 2005 and 2015 at between \$269 billion and \$872 billion.... Meanwhile, the estimated range for the decade’s costs is pegged at \$74 to \$110 billion.”

Crews, the policy director of the CEI, has looked more deeply at the price tag. He has observed that, in contrast to OMB’s few dozen billion in costs over ten years, other estimates consider the broader aggregates. A 2014 National Association of Manufacturers modeled 2012 total annual regulatory costs in the economy of \$2.028 trillion in 2014 dollars. My own reckoning using largely government data is \$1.9 trillion annually. A Mercatus Center study finds GDP could be \$4 trillion higher if regulation had frozen in place a few decades ago.

The Trump administration has promised to freeze regulations and roll back rules for new rules issued. Beefing up the annual cost report will help.

Correcting the situation does not necessarily require extreme action — though it would certainly be a departure for Washington in recent years. In essence, Congress should assume its constitutional role of legislating. Lawmakers should be held accountable for doing their own job, not so keen to delegate their role to unelected regulators and then complain about the outcome.

In some sense, however, this does call for a radical change — meaning to return to our roots. The “sum of good government,” as Thomas Jefferson said in his first Inaugural Address, is one that “shall restrain men from injuring one another” and “shall leave them otherwise free to regulate their own pursuits of industry and improvement.” That was a time when the presumption was that American citizens would not be bound by the shackling rules of the central government, but rather would live under freedom.

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