

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY**

HEARING CHARTER

Midnight Regulations: Examining Executive Branch Overreach

Wednesday, February 10, 2016
10:00 a.m. – 12:00 p.m.
2318 Rayburn House Office Building

PURPOSE

The Committee on Science, Space, and Technology will hold a hearing entitled *Midnight Regulations: Examining Executive Branch Overreach* on Wednesday, February 10, 2016, in Room 2318 of the Rayburn House Office Building. The hearing will examine the various science and policy issues surrounding the regulatory rulemaking that often occurs toward the end of a Presidential Administration or “midnight regulations.” The hearing will focus on proposed regulations by the U.S. Department of Energy (DOE) and the U.S. Environmental Protection Agency (EPA).

WITNESS LIST

- **Ms. Karen Kerrigan**, President and CEO, Small Business & Entrepreneurship Council
- **Mr. Jerry Bosworth**, President, Bosworth Air Conditioning
- **Ms. Kateri Callahan**, President, Alliance to Save Energy
- **Mr. Sam Batkins**, Director of Regulator Policy, American Action Forum

BACKGROUND

The final year of a Presidential Administration, before the start of a new Administration, has historically been an opportunity for Executive Branch agencies to push through sweeping and oftentimes controversial regulations. The sitting President is free from political constraints and is in a favorable position to push regulations with little oversight and analysis. These last-minute regulations are commonly referred to as “midnight regulations.” Recent studies have concluded that these rules are rushed and suffer from poor analysis, leading to an inefficient use of federal resources. Furthermore, these surges occur regardless of election outcome, and repeal of these finalized regulations is difficult.¹

An example of midnight regulations can be seen in the promulgation of EPA’s Mercury Air Toxics Standard (MATS) for power plants in the final days of the Clinton Administration. Under section 112 of the Clean Air Act, EPA triggered a requirement to propose regulations to control these emissions by December 15, 2003. Therefore, the incoming Bush Administration

¹ <http://mercatus.org/publication/beware-surge-midnight-regulations>

“was under political pressure to formulate a concrete proposal for regulating emissions.”² Due to the short deadline, no serious analysis of the costs and benefits of the proposed regulations was conducted, and key research on the effects of mercury for the standard still had not been clearly conducted.

On March 15, 2005, EPA issued the final Clean Air Mercury Rule, which established “standards of performance” aimed at limiting mercury emissions from new and existing power plants.³ Subsequent litigation vacated the Clean Air Mercury Rule and resulted in the Obama Administration proposing MATS for power plants. In December 2014, EPA announced standards to limit mercury, acid gases and other toxic pollution from power plants. On June 29, 2015, the Supreme Court found flaws in EPA’s analysis of the MATS rules because the agency did not interpret the Clean Air Act correctly when it failed to include costs when it decided that the regulations were appropriate and necessary. In response to the Supreme Court’s decision, EPA is now proposing to find that the consideration of costs does not alter their original determination that it is appropriate to regulate the emissions of toxic air pollution from power plants.^{4,5} In the meantime, the legal and regulatory uncertainty between the Courts and the EPA has unintended consequences for the utility industry and consumers where utilities make investments to comply with regulations that are later overturned, but the costs for these investments are passed down to consumers through higher utility bills.

The history of the MATS rule is indicative of the high cost and uncertainty that occurs when rules are promulgated in this fashion. In 2015, the Obama Administration finalized some of the most broad environmental regulations in the history of the United States – the Waters of the United States, the Clean Power Plan, and Ozone National Ambient Air Quality Standards. In the final year of this Administration, EPA is already undertaking a number of new rules that will have broad ranging impacts on the energy producing sector.

DOE has also seen an increase in promulgated regulations during the Obama Administration, with 17 energy efficiency rules finalized since 2014.⁶ The Administration has released energy efficiency standards for over 40 products since 2009.⁷ These standards play a significant role in achieving the greenhouse gas emissions reductions outlined in the President’s wide-ranging Climate Action Plan, with DOE energy efficiency rules projected to achieve two-thirds of the CAP’s reduction goal of 3 billion metric tons by 2030.⁸ In 2015, DOE proposed 13 energy efficiency rules involving a wide range of consumer products, including residential

² <http://object.cato.org/sites/cato.org/files/serials/files/regulation/2005/6/v28n2-4.pdf>

³ <http://www3.epa.gov/mats/actions.html>

⁴ <http://object.cato.org/sites/cato.org/files/serials/files/regulation/2005/6/v28n2-4.pdf>

⁵ <http://www3.epa.gov/mats/actions.html>

⁶ Regulation Rodeo, “U.S. Regulatory Costs, Department of Energy” Available at <http://regrodeo.com/?year%5B0%5D=2016&year%5B1%5D=2015&year%5B2%5D=2014&agency%5B0%5D=Energy>

⁷ Mooney, Chris, “Obama just released the biggest energy efficiency rule in U.S. history” The Washington Post. Dec, 17, 2015. Available at <https://www.washingtonpost.com/news/energy-environment/wp/2015/12/17/meet-the-biggest-energy-efficiency-rule-the-u-s-has-ever-released/>

⁸ Office of Energy Efficiency and Renewable Energy, “Saving Energy and Money with Appliance and Equipment Standards.” U.S. Department of Energy. Available at http://energy.gov/sites/prod/files/2015/12/f27/Appliance%20and%20Equipment%20Standards%20Fact%20Sheet%202012-11-15_0.pdf

boilers, conventional ovens, vending machines, battery chargers, and ceiling fan lights.⁹ Last December, DOE released new standards for commercial heating and air conditioners.¹⁰ While DOE cites long-term energy savings and greenhouse gas emissions reductions for these rules, little attention is given to the immediate cost to consumers and small business owners. DOE energy efficiency research is also increasingly focused on a systems approach, rather than improving the efficiency of individual components.¹¹ Further, energy efficiency gains under a systems approach means the industry must make significant, costly changes to their products. Those costs will be passed down to the American consumer.

⁹ Office of Energy Efficiency and Renewable Energy, “Current Rulemakings and Notices,” U.S. Department of Energy. Available at <http://energy.gov/eere/buildings/current-rulemakings-and-notice>

¹⁰ U.S. Department of Energy, “Energy Department Announces Largest Energy Efficiency Standard in History” December 17, 2015. Available at <http://energy.gov/articles/energy-department-announces-largest-energy-efficiency-standard-history>

¹¹ Energy Saver. “Whole-House Systems Approach” Available at <http://energy.gov/energysaver/whole-house-systems-approach>