



March 01, 2016

The Honorable Jason Chaffetz  
Chairman  
House of Representatives  
Oversight & Government Reform Committee  
Washington, DC 20515

The Honorable Elijah Cummings  
Ranking Member  
House of Representatives  
Oversight & Government Reform Committee  
Washington, DC 20515

RE: Midnight Rule Relief Act of 2016 (H.R. 4612)

The Coalition for Sensible Safeguards (CSS), which includes more than 150 diverse labor, consumer, public health, food safety, financial reform, faith, environmental and scientific integrity groups representing millions of Americans, urges members of the committee to oppose the Midnight Rule Relief Act of 2016 (H.R. 4612) which would impose a blanket moratorium on any new proposed or final major regulations during the final months of this and future presidential administrations.

This bill would jeopardize public protections affecting public health and safety and the environment that often are years, if not decades, in the making. Worse, it would exempt attempts in the final days of an administration, through rulemaking, to “undo” or weaken existing regulations.

The proposed legislation is based on a fatally flawed premise: that regulations proposed or finalized during the so-called “midnight” rulemaking period – the period following the election and before the inauguration of the new president - are rushed and inadequately vetted.

In fact, the very opposite is true. There are currently dozens of public health and safety regulations that have been in the regulatory process for years or decades, including many that date from the Obama Administration’s first term or implement laws passed in the first term. Indeed many regulations predate this Administration entirely. Many of these regulations were mandated by Congress and have missed rulemaking deadlines prescribed by Congress. Referring to regulations that have been under consideration by federal agencies for years, and in some instances decades, as “rushed” simply is not true.

A small sampling of long-delayed regulations that could be blocked by this moratorium illustrates the harmful impact of the bill.

- The pending Occupational Safety and Health Administration regulation protecting workers from exposure to the toxic carcinogen silica has been in the regulatory process for nearly *twenty* years and the current silica standard dates from 1971.
- Critical pipeline safety regulations have yet to be completed under the 2011 Pipeline Safety Act, an issue of urgent bipartisan concern given recent pipeline ruptures and leaks.

- The Food and Drug Administration has yet to implement regulations under the 2009 Tobacco Control Act to safeguard the public and particularly young people, from new and potentially dangerous tobacco products such as electronic cigarettes.
- Approximately a quarter of required rulemakings under the Dodd-Frank Wall Street Reform Act have yet to be implemented over five and a half years after the law was enacted and nearly eight years since the financial crash. Among those rules are important measures to bring transparency to bank executive compensation and limits on excessive speculation that drive up energy prices for consumers.
- The Interior Department has yet to finalize the “blowout preventer” rule that was a primary factor in leading to the massive British Petroleum oil spill in the Gulf almost six years ago.

Prominent administrative law experts have concluded that the concerns regarding these regulations are not borne out by the evidence. For example, in 2012 the Administrative Conference of the United States (ACUS) conducted an extensive study of regulations finalized near the end of previous presidential terms and found that many “midnight regulations” either were “relatively routine matters not implicating new policy initiatives by incumbent administrations,”<sup>1</sup> or “the result of finishing tasks that were initiated before the Presidential transition period or the result of deadlines outside the agency’s control (such as year-end statutory or court-ordered deadlines).” **In the end, ACUS concluded, “the perception of midnight rulemaking as an unseemly practice is worse than the reality.”**

As the ACUS study points out, there is little to no empirical evidence supporting claims that regulations finalized near the end of presidential terms were rushed or did not involve diligent compliance with mandated rulemaking procedures. In fact, it is likely that compliance with the current and too lengthy regulatory process prevents agencies from finalizing new regulations efficiently, and thus earlier in presidential terms.

This is because many of the regulations that Congress intended to provide the greatest benefits to the public’s health, safety, financial security, and the environment currently take several years, decades in some instances, for agencies to implement due to the extensive and, in many cases, redundant procedural and analytical requirements that comprise the rulemaking process. Indeed, CSS maintains that the inherent inefficiency of the current regulatory process, leading to a broken system of regulatory delays and paralysis across agencies, is the primary area in most of need of urgent attention and reform by this Committee.

Making matters worse, H.R. 4612 establishes a flagrant and unjustifiable double-standard in the regulatory process by exempting deregulatory rules from the moratorium, thereby prioritizing deregulation over pro-protection measures. The practical effect of this exemption is to ensure that the legislation will only apply to administrations that favor pro-regulatory measures and thus creating a permanent loophole for administrations that favor deregulatory measures. This one-sided application betrays foundational administrative law principles that require regulatory procedural mandates to apply to both deregulatory and pro-regulatory actions in a neutral and fair fashion.

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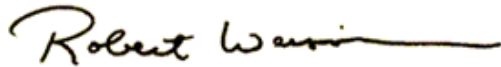
<sup>1</sup> Administrative Conference Recommendation 2012-2, Midnight Rules, Adopted June 14, 2012, pp. 1-2, at <http://www.acus.gov/wp-content/uploads/downloads/2012/06/Final-Recommendation-2012-2-Midnight-Rules.pdf>

Taking the claims of “midnight regulation” critics at face value, there is simply no principled basis for allowing deregulatory measures to be “rushed” through the process without “adequate vetting” while at the same time preventing agencies finalizing and implementing public protections by falsely claiming that they did not receive adequate consideration.

This Administration ends on January 20, 2017. It is incumbent on them to do their constitutional duty to implement the laws of Congress until that date.

CSS urges members of the committee to reject both the Midnight Rule Relief Act of 2016 (H.R. 4612) and false and misleading rhetoric that bears no reality to the real problems of excessive and systemic delay in the regulatory process.

Sincerely,

A handwritten signature in black ink that reads "Robert Weissman". The signature is written in a cursive, flowing style with a long horizontal line extending from the end of the name.

Robert Weissman, President  
Public Citizen  
Chair, Coalition for Sensible Safeguards

*The Coalition for Sensible Safeguards is an alliance of consumer, labor, scientific, research, good government, faith, community, health, environmental, and public interest groups, as well as concerned individuals, joined in the belief that our country’s system of regulatory safeguards provides a stable framework that secures our quality of life and paves the way for a sound economy that benefits us all.*