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Trump administration writes dozens of “midnight regulations” undermining health and environmental protections

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A last minute flurry of regulations by the Trump administration includes dozens of hard-to-undo rules that experts say would increase pollution, raise health costs, lower nutritional standards, and restrict the use of scientific evidence in government decision making.

The latest rule, finalised on 9 December, will bar the Environmental Protection Agency from considering illnesses and deaths avoided as benefits to be set against the financial cost of curbing air pollutants when writing regulations under the Clean Air Act.¹

Earlier this week, another rule froze current restrictions on fine particulate pollution for at least five years to come, disregarding expert advice which said that continuing to tighten limits would save thousands of lives a year.

Passing what are known as “midnight regulations” is a common practice among administrations in their last days, but the Trump administration has been unusually active and swift. Many of the rules were only proposed after election day and were finalised after slashing the normal 60 day public comment period to 30 days, 14 days, or even zero days.

Other rules finalised in recent days reduced the independence of agencies like the Food and Drug Administration from White House oversight, freed polluting industries from the duty to provide funds to clean up their waste, and empowered companies to contest regulations imposed by US agencies.

The administration also tightened the criteria to obtain disability benefits for spinal injuries or amputations. Another rule ended Medicare drug rebates, a step likely to raise health insurance premiums, and another—passed with no public comment period—pegged US drug prices to an international index, a move which could raise drug prices in Europe and other countries but which may not survive court challenges.²

There are also rules targeting immigrants, and dozens loosening environmental standards. Many remove consumer protections and protections for endangered species. One rule allows the federal government to execute prisoners by means other than lethal injection.³ Another—not yet finalised—lowers efficiency standards for shower heads, a long time obsession of the president.

One proposed rule aims to lower nutritional standards for school meals, allowing more salt, white flour, and flavoured milk, a policy the Trump administration has already lost in court. But even with a truncated comment period, that rule is unlikely to pass before Biden’s inauguration.

Another proposed rule would prevent the use of fetal tissue obtained from elective abortions in federally funded research. Another rule would purge all healthcare regulations after 10 years unless a government agency decides to actively preserve them after a time consuming review. The result could be an end to the strict regulation of healthcare provision.

But the rule most feared by many scientists—which is expected to be finalised before inauguration day—would exclude the use of scientific studies from environmental policy making unless all their raw data are completely public.⁴ Most of the studies that guide health and environmental policy—like the Six Cities study that underpins many pollution control efforts—include confidential patient data, and this rule would bar those studies from being consulted, a key goal of coal industry lobbyists.⁵

The American Lung Association (ALA) was one of dozens of scientific associations to condemn the rules passed this week. Noting the mounting evidence that air pollution and adverse covid-19 outcomes are linked, the association called on president elect Biden to “restore sound science as the foundation of policymaking.”

“The science is very clear that particle pollution makes people sick and causes premature death at levels the Trump administration says are safe,” said ALA president Harold Wimmer.

1 Environmental Protection Agency. Proposed rule: increasing consistency and transparency in considering benefits and costs in the Clean Air Act rulemaking process. 11 June 2020. <https://beta.regulations.gov/document/EPA-HQ-OAR-2020-0044-0001>.

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3 Dyer O. New rule allows US government to execute prisoners by means other than lethal injection. *BMJ* 2020;371:m4674. doi: 10.1136/bmj.m4674 pmid: 33246944

4 Environmental Protection Agency. Proposed rule: strengthening transparency in regulatory science. 2020. www.reginfo.gov/public/do/eAgencyViewRule?pubid=202004&RIN=2080-AA14.

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