Insight

Charting Midnight Regulation Before Dawn: Part 2

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Last month, AAF debuted its series tracking regulation in the final year of the Obama Administration. If last month highlighted the high wait times in rules that the White House discharged, February was marked by the historic output of economically significant rules (measures with an impact of $100 million or more). This February, the White House approved 15 economically significant rulemakings. Compared to Februarys in other presidential election years, 2016 was a record-setter; 2004 came in second, with 11 significant regulations.

With less than a year for President Obama to regulate, this is his midnight year for regulation. Although it's not the official midnight period yet (defined as the period after Election Day, but before the next president takes office), each month the American Action Forum (AAF) will highlight the final regulatory activity of the administration and compare it to similar times in the past. This monthly series will highlight all of the rules leaving the White House scheduled for official publication, all economically significant measures, the length of time for White House review, the number of rules rejected or withdrawn from the rulemaking process, and the monthly cost of federal regulatory activity.

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Compared to other midnight periods dating back to 1996, the overall output last month wasn't notable. The Office of Information and Regulatory Affairs (OIRA), the branch of the White House in charge of reviewing cabinet-agency regulation, concluded review of 42 rules, up from 41 rules in January. In February 2012, by contrast, OIRA reviewed 48 rulemakings. The low point for February activity took place in 1996, when OIRA reviewed just 29 rules. The chart below tracks overall regulatory activity during these midnight years.

However, for economically significant measures, February 2016 blew away the field. OIRA concluded review of 15 measures, compared to just six in 2012, eight in 2008, and 11 in 2004. Below are some of the notable regulations released last month:

1. Energy Conservation Standards for Computers;
2. Energy Conservation Standards for Lamps;
3. Paid Sick Leave for Federal Contractors;
4. Removal of Country of Original Labeling; and
5. Pipeline Safety: Gas Transmission.

Despite the output of 15 significant measures, there are still 26 economically significant measures, pending review (as of this writing). In February, OIRA received five additional measures, including "Blowout Prevention Systems and Well Control" and new efficiency standards for dehumidifiers.

Once again, OIRA concluded review of several rules that had been under review for more than 120 days, which is the generally allowed timeframe for White House review under current executive orders. OIRA concluded review of 16 rulemakings that had been under review for more than 120 days, including the Pipeline Safety regulation, which had been under review for more than 300 days.

Last month, we wrote that this could be OIRA's attempt to clear through some of the languishing rulemakings. However, last month dwarfed other similar periods during presidential election years. The average review time this month was 111 days, up from 86 days in January. The next closest figure was 74 days during February 2000. For the year, the average review time is 99 days, compared to 63 days in 2008, and 76 days in 2000. Combined with the surge in significant rulemaking output, the longer review time could indicate the beginning of an uptick in regulatory activity, but one month hardly establishes a trend.

For comparison, the chart below tracks the average review time since 1996 during midnight years.

With regard to “withdrawn” rulemakings, or measures that agencies and OIRA pull back from review, there was only one in February: “Teacher Preparation.” In contrast, there were two withdrawn measures in 2008, which was the highpoint for regulatory activity during presidential election years. There is a disincentive for agencies to withdraw rules this late during an administration. The teacher preparation rule had already been under review for 157 days and final action was expected by December 2015. In the final rule stage, however, it could easily be finalized by 2017.

THE COST

Thanks to AAF’s Reg Rodeo tool, the public can track regulatory costs and paperwork burdens over time, including data on major rules, Dodd-Frank, and the Affordable Care Act. In February 2016, regulators finalized $5.6 billion in costs, down from $17.8 billion in costs in January. How does this compare to other similar periods? Although not a presidential election year, in February 2015, regulators published $3.3 billion in costs. In terms of paperwork, regulators published 11.4 million final hours in February, compared to February 2015, with just 4.4 million hours.

Finally, there is the ultimate question of President Obama’s regulatory legacy. The Government Accountability Office keeps track of all major regulations. Through this point in his presidency, George W. Bush issued 400 major rules. By contrast, President Obama has issued 568, or 42 percent more. AAF will continue to publish monthly updates comparing President Obama’s last days of regulation to other similar periods in history.