Insight

Charting Midnight Regulation Before Dawn: More Significant Rules

SAM BATKINS | MAY 9, 2016

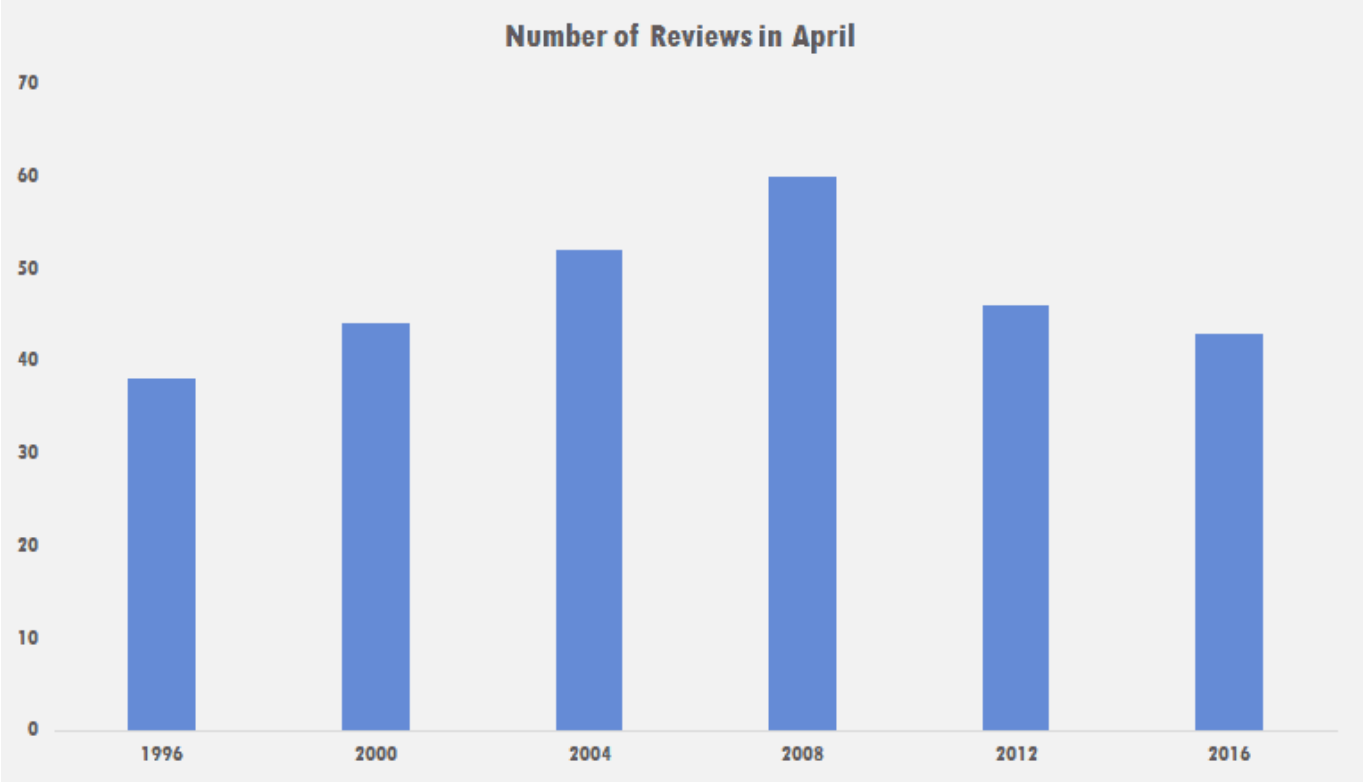
In our series tracking regulation in the final year of the Obama Administration, this month once again proved the administration is on a record pace to issue significant regulation. Although the overall pace is tame, the administration is approving a historic number of economically significant rulemakings (impact of $100 million or more). In March, the White House approved 10 economically significant rulemakings, down from 15 in February. In April, that figure rose substantially, to 16, and was still far more than any comparable April during a presidential election year since 1996. Through the first four months of this year, regulators have approved 44 significant rulemakings; the next two closest years were 2008 and 2012, when regulators approved just 34 and 27 significant rulemakings, respectively. In other words, the White House has approved 29 percent more significant regulatory action than any comparable period since 1996.

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all economically significant measures, the length of time for White House review, the number of rules rejected or withdrawn from the rulemaking process, and the monthly cost of federal regulatory activity.

April 2016

Once again, the aggregate regulatory 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 43 rules, up slightly from 40 rules

in March. In April 2008, by contrast, OIRA reviewed 60 rulemakings. The low point for April activity took place in 1996 when OIRA reviewed just 38 rules. The chart below tracks overall regulatory activity during these midnight years.



However, for economically significant measures, April and March of 2016 blew away the field. OIRA concluded review of 16 measures, 45 percent more than 2008, and 50 percent more than 2012. Below are some of the notable regulations released last month:

1. Fiduciary Rule;
2. Blowout Prevention Systems and Well Control;
3. Conservation Standards for Water Heating Equipment; and
4. Conservation Standards for Portable Air Conditioners.

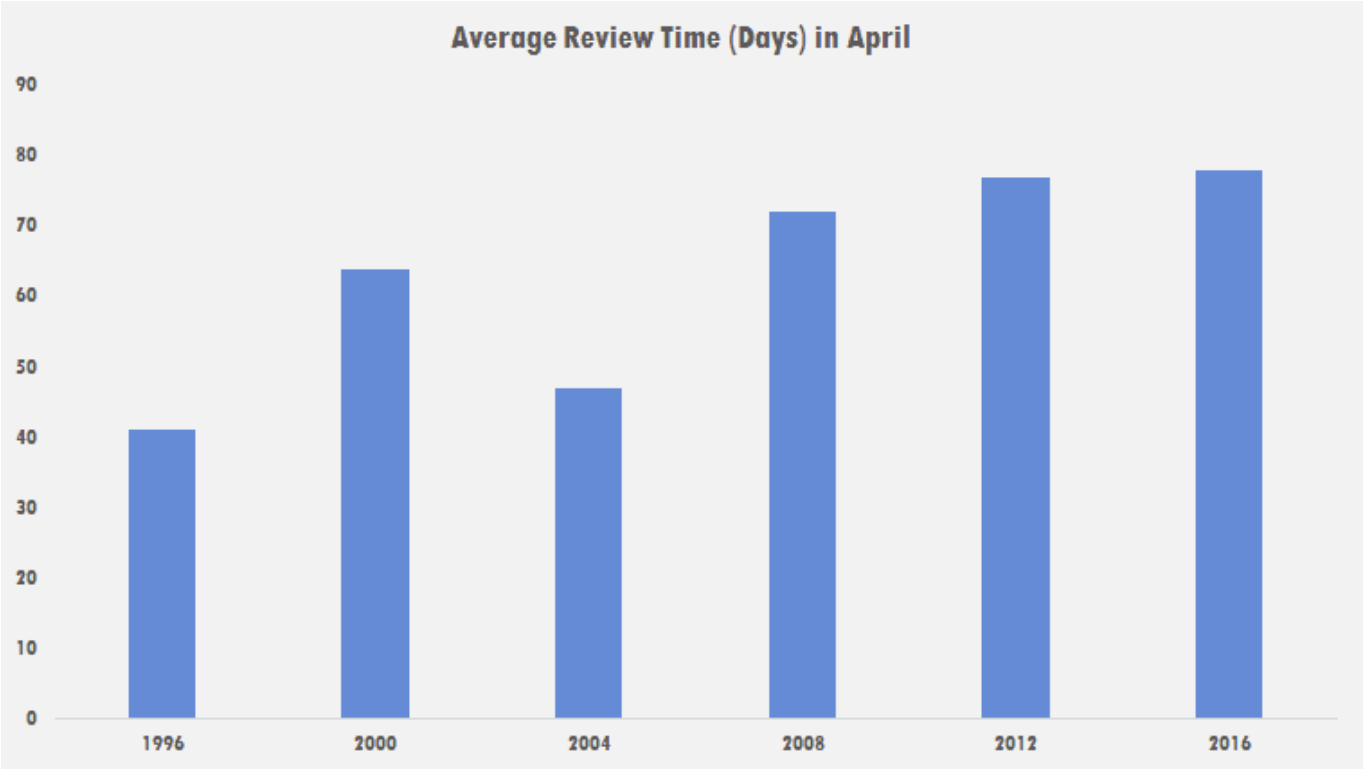
Despite the output of 16 significant measures, there are still 34 economically significant measures pending review (as of this writing), up from 32 measures last month, so agencies continue to pile up notable rulemakings at the White House. In April, OIRA received 16 additional measures, up from the ten new significant rules it received in March.

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 discharged 8 rulemakings that had been under review for more than 120 days, including "Nondiscrimination on the Basis of Disability," which had been under review for 649 days.

In a continuing trend, April eclipsed other similar periods during presidential election years for average review times. The average review time this month was 78 days, compared to 77 in April of 2012. The next closest figure was 72 days during April 2008.

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 were two in April. In contrast, there were four withdrawn measures in 2012, three in 2004, and two in 1996. There is an obvious disincentive for agencies to withdraw rules this late during an administration and the White House has not aggressively pulled back regulations from review, at least compared to other similar periods.

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 April 2016, regulators finalized $33 billion in costs, up from $9.6 billion in March and

$17.8 billion in costs from January. This huge surge was due mostly to final publication of the administration's controversial "Fiduciary" rule. How does this compare to other similar periods? Although not a presidential election year, in April 2015, regulators published $23 billion in costs. In terms of paperwork, regulators published 3.3 million final hours in April, compared to April 2015, with 504,000 hours.

Finally, there is the ultimate question of President Obama's regulatory legacy. Through this point in his presidency (April of 2008), President George W. Bush had issued 408 major rules. By contrast, President Obama has issued 586, or 43 percent more than his predecessor. AAF will continue to publish monthly updates comparing President Obama's last days of regulation to other similar periods in history.