



Insight

Charting Midnight Regulation Before Dawn: September

SAM BATKINS | OCTOBER 14, 2016

For the first time this year, the Obama Administration did not outpace previous election years with new economically significant rules. The Office of Information and Regulatory Affairs (OIRA) approved eight significant measures in September, one shy of the output from 2004. The output in September of 2016 was also not historic, but the average review time for regulation exceeded other similar election year periods.

Through the first nine months of this year, regulators have approved 112 economically significant rulemakings; the next two closest years were 2008 and 2004, when regulators approved just 89 and 68 significant rules during the first nine months. In other words, the White House has approved 25 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all economically significant measures, the length of time for White House review, the number of rules rejected or withdrawn from the rulemaking process, and the monthly cost of federal regulatory activity.

September 2016

Once again, output in 2016 did not top previous presidential election years, as the highwater mark occurred in 2008, with the approval of 66 regulations; last month the administration approved 44 rules, down from 49 in August. The low-point was 2012, when the White House released just 13 rules. This nadir tracks somewhat with anecdotal reports of a pre-election [regulatory slowdown in 2012](#). The chart below tracks overall regulatory activity during these midnight years.



For economically significant measures, September of 2016 was a close second to 2004. OIRA concluded review of eight significant measures; this compares to nine significant rules in 2004, five in 2000, and three in 2012. Below are just some of the notable regulations released last month:

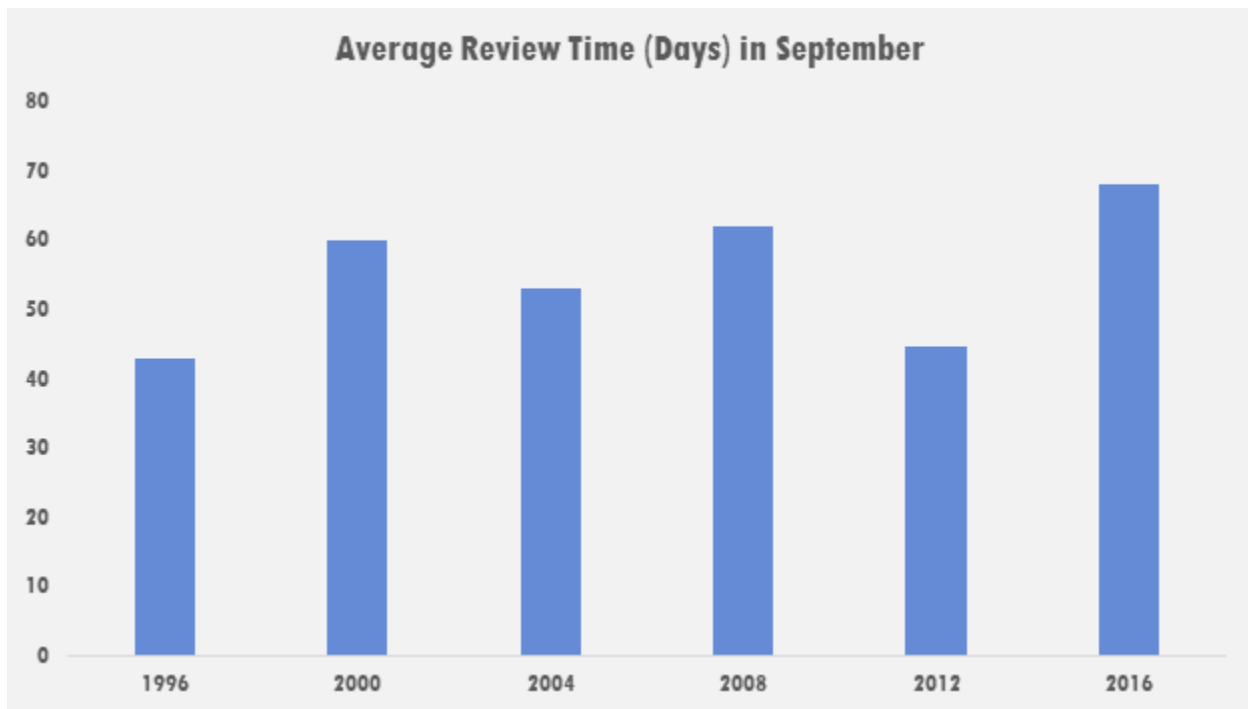
1. [Conservation Standards for Gas Furnaces](#)
2. [Cross-State Air Pollution Rule Update](#)
3. [Paid Sick Leave for Contractors](#)
4. [Requirements for Long-Term Care Facilities](#)

Despite the output of eight significant measures, there are still 31 economically significant measures pending review (as of this writing), so agencies continue to add notable rulemakings at the White House. In September, OIRA received 40 additional measures that are still pending review (including seven significant rules).

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 four rulemakings that had been under review for more than 120 days.

Once again, September surpassed all other similar periods during presidential election years for average review times. The average review time last month was 68 days, down from 86 days in August; this compares to a low mean of 43 days in September of 1996. The median review time in September 2016 was also 68 days.

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 September, one for “Sudan Licensing Policy” and for “USAID Acquisition Regulations.” There were three withdrawn measures in 2000 and 1996, two in 2004, one in 2012, and none in 2008. 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 September 2016, regulators finalized \$10.1 billion in costs, up from [\\$3.5 billion](#) in August. How does this compare to other similar periods? Although not a presidential election year, in September 2015, regulators published \$5.8 billion in costs. In terms of paperwork, regulators published 6.1 million final hours this September, compared to September 2015, with 8.5 million hours.

Finally, there is the ultimate question of President Obama’s regulatory legacy. Through this point in his presidency (September of 2008), President George W. Bush had issued [443 major rules](#). By contrast, President Obama has issued [631](#), or 42 percent more than his predecessor. AAF will continue to publish monthly updates of similar periods in history.