

Are We Witnessing a Regulatory Drawback?

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The role of regulation in the economy is getting a lot of attention this election year, with warnings of a [regulatory tsunami](#) if President Obama is reelected or [deregulation](#) if Governor Romney wins. Government data on regulatory trends can help cut through the rhetoric and offer interesting insights into what to expect depending on the outcome of the November elections.

For one thing, contrary to conventional wisdom, [data](#) show that over their respective terms, Presidents George H. W. Bush, Bill Clinton, and George W. Bush each published major new regulations at the exact same pace – an average of 45 major rules per year. This is illustrated in the graph below of the number of final “economically significant” regulations (those with impacts of \$100 million or more per year) published between 1982 and the first half of 2012.

Another similarity across administrations (also visible in the graph) is that regulatory activity tends to peak in the last year of a presidential term, usually concentrated in the post-election quarter. This “[midnight regulation](#)” phenomenon is not dependent on party; every modern president has issued more regulations between election day and inauguration day than in other quarters of his term.

Ronald Reagan and Barack Obama are outliers. Reagan issued a mere 23 major regulations per year, on average, and his midnight regulatory blip was smaller than his predecessor or successors.

While the clock has not yet struck “midnight” on President Obama’s term, and may not for another 4 years, his regulatory activity to date appears not to fit recent patterns either. His administration published a record-setting average of 63 economically-significant final rules in its first 2 years. However, the pace of new regulations slowed to an average of 44 major rules annually after the 2010 mid-term elections, and more recently to a trickle.

One sign that a tsunami is approaching is a lengthy retreat or “drawback” of water from the beach, and several indications point to a regulatory drawback now.

Does this recent period of regulatory restraint undercut warnings of a coming [regulatory tidal wave](#), as [some have suggested](#)? Perhaps not. One sign that a tsunami is approaching is a lengthy retreat or “[drawback](#)” of water from the beach, and several indications point to a regulatory drawback now.



The [Office of Information and Regulatory Affairs](#) (OIRA), which reviews all significant executive branch regulations before they are published, has a backlog of regulations under review. While historically OIRA reviews regulations in under 60 days, on average, currently over 70 percent of the regulations under review have been sitting at OIRA for longer than 90 days (the default review time established by executive order), and 10 percent have been there for over a year. This is unprecedented.

Not only are fewer regulations emerging from OIRA review, but fewer are being submitted. Over the past few months, agencies are submitting new drafts for review at a pace that is about half of that during the first three years of President Obama's term.

Now these statistics could indicate an administration that has accomplished its regulatory goals, and has little need for further regulation. But the administration's official agenda of upcoming regulations suggests that is not the case. The fall 2011 [agenda](#) anticipated publication of 55 major final rules by now, but one-third of those with significant private-sector impacts now appear to be on hold until after November. Despite commitments to greater transparency, the White House has yet to publish its spring 2012 agenda ([now six months overdue](#)).

While the midnight regulation phenomenon can be easily explained as the typical behavior of people working against a deadline, the current pre-election pause seems to have no explanation other than a political one.

Tsunami experts [warn](#), "if you witness a drawback, seek high ground immediately." This may be advice worth heeding regardless of the outcome of the election. If Governor Romney wins, history suggests we will likely see a torrent of midnight regulations in the last quarter of the President's term. If President Obama wins a second term, however, his track record and agenda portend a longer and larger tidal wave of new regulations.

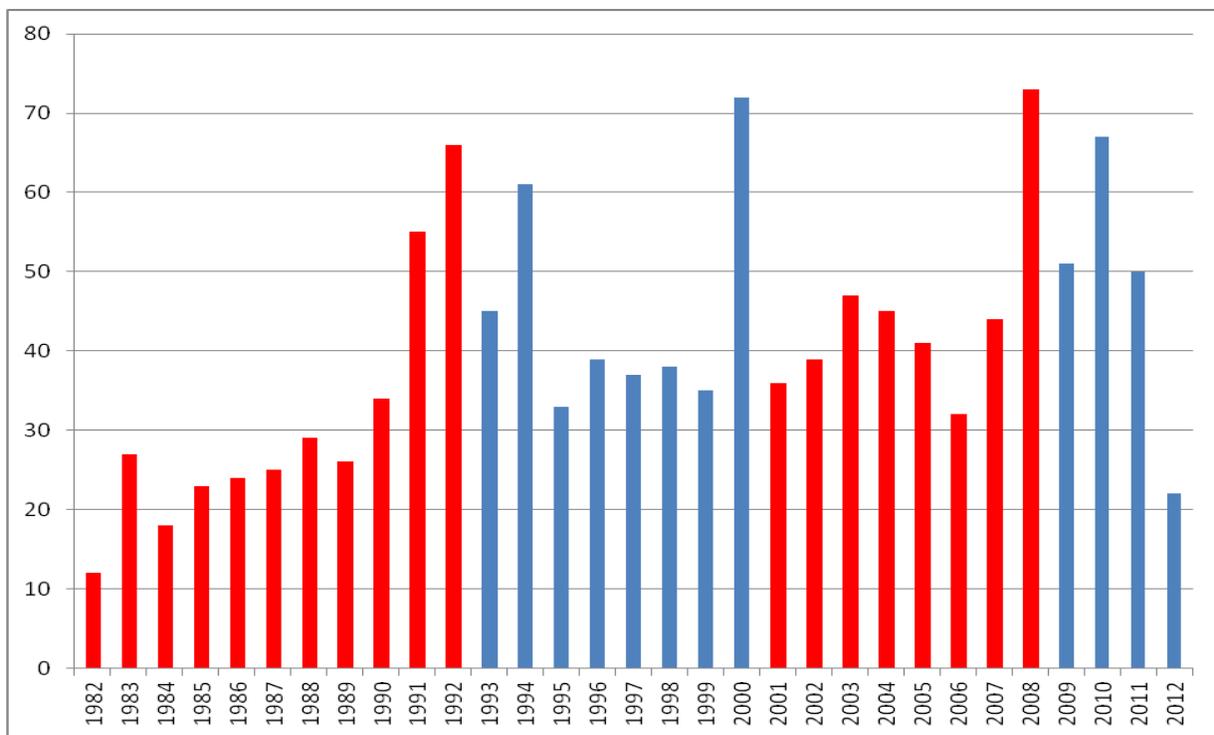
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Number of Economically-Significant Final Rules Published by Year (Red = Republican President; Blue = Democratic President)



These data on economically significant published final rules can be derived from RegInfo.gov, which provides information on executive branch regulations reviewed by the Office of Management and Budget. In this chart, each year begins at the end of January, to reflect presidential terms. 2012 is partial, and does not include the post-election November to January “midnight” quarter in which regulatory actions tend to surge, regardless of which party holds the White House.



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