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Counting Regulations: An Overview of Rulemaking, Types of Federal Regulations, and Pages in the *Federal Register*

Maeve P. Carey
Specialist in Government Organization and Management

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Summary

Federal rulemaking is an important mechanism through which the federal government implements policy. Federal agencies issue regulations pursuant to statutory authority granted by Congress. Therefore, Congress may have an interest in performing oversight of those regulations, and measuring federal regulatory activity can be one way for Congress to conduct that oversight. The number of federal rules issued annually and the total number of pages in the *Federal Register* are often referred to as measures of the total federal regulatory burden.

Certain methods of quantifying regulatory activity, however, may provide an imperfect portrayal of the total federal rulemaking burden. For example, the number of final rules published each year is generally in the range of 3,000-4,500, according to the Office of the Federal Register. Some of those rules have a large effect on the economy, and others have a significant legal and/or policy effect, even if the direct economic effects of the regulation are minimal. On the other hand, many federal rules are routine in nature and impose minimal regulatory burden, if any. In addition, rules that are deregulatory in nature and those that repeal existing rules are still defined as "rules" under the Administrative Procedure Act (APA, 5 U.S.C. §§551 *et seq.*) and are therefore generally included in counts of total regulatory activity, even though they do not impose a new net regulatory burden.

The *Federal Register* provides documentation of the government's regulatory and other actions, and some scholars, commentators, and public officials have used the total number of *Federal Register* pages and documents each year as a measure for the total amount of regulatory activity. Because the *Federal Register* has been in print since the 1930s, these measures can be useful for cross-time comparisons. However, the total number of *Federal Register* pages may not be an accurate way to measure regulatory activity for several reasons. In addition to publishing proposed and final rules in the *Federal Register,* agencies publish other items that may be related to regulations, such as notices of public meetings and extensions of comment periods. The *Federal Register* also contains many other items related to non-regulatory activities, including presidential documents, notices, and corrections. In 2018, approximately 25% of the total pages in the *Federal Register* were in the "Rules and Regulations" section—the section in which final rules are published—although many of these pages are agencies' responses to comments received and discussion of the basis for each regulation rather than actual regulatory text to be codified in the *Code of Federal Regulations*. Additionally, while the number of pages in the *Federal Register* has generally increased over time, the number of final rule documents published has generally decreased, indicating that there may be other factors involved that these metrics do not capture.

This report serves to inform Congress's understanding of federal rulemaking by analyzing different ways to measure and assess trends in federal rulemaking activity. The report provides data on and analysis of the total number of rules issued each year, as well as information on other types of rules, such as "major" rules, "significant" rules, and "economically significant" rules. These categories have been created by various statutes and executive orders containing requirements that may be triggered if a regulation falls into one of the categories. When available, data are provided on each type of rule. Finally, the report provides data on the number of pages and documents in the *Federal Register* each year and analyzes the content of the *Federal Register*.

Contents

Figures

Tables

Appendixes

Contacts

Introduction

Federal rulemaking is an important mechanism through which the federal government implements policy. Federal agencies issue regulations pursuant to statutory authority granted by Congress.[1] Therefore, Congress may have an interest in performing oversight of those regulations, and measuring federal regulatory activity can be one way for Congress to conduct that oversight. The number of federal rules issued annually and the total number of pages in the *Federal Register* are often referred to as measures of the total federal regulatory burden.

Certain methods of quantifying regulatory activity, however, may provide an imperfect portrayal of the total federal rulemaking burden. For example, the number of final rules published each year is generally in the range of 3,000-4,500, according to the Office of the Federal Register. While some of those rules may have substantial economic, legal, or policy effects, many of them are routine in nature and impose minimal regulatory burden, if any.

This report serves to inform Congress's understanding of federal rulemaking by analyzing different ways to measure federal rulemaking activity. The report begins with a brief overview of how agencies issue rules, identifying the most significant statutory requirements, executive orders, and guidance documents that comprise the rulemaking process and briefly discussing recent deregulatory efforts. The report then provides data on and analysis of the total number of rules issued each year, as well as information on other types of rules, such as "major" rules, "significant" rules, and "economically significant" rules.[2] These categories have been created by various statutes and executive orders containing requirements that may be triggered if a regulation falls into one of the categories. For example, if a rule is designated "economically significant" under Executive Order (E.O.) 12866, the issuing agency is generally required to perform a cost-benefit analysis and submit the rule for review to the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA).[3] When available, data are provided on each type of rule. When data in the report are presented in a graph, a corresponding table containing the same data can be found in the **Appendix**. Finally, the report presents data on the number of pages and documents in the *Federal Register* each year and analyzes the content of the *Federal Register*.

Brief Overview of Federal Rulemaking

When Congress enacts legislation, it frequently delegates rulemaking authority to federal agencies. Regulations issued by agencies are often the means through which specific requirements are then established. Regulations must be issued pursuant to statutory authority, and the process under which agencies issue regulations is governed by numerous statutory requirements and executive orders.[4] In addition, OMB has issued guidance to agencies detailing

[1] The terms *rule* and *regulation* are used interchangeably in this report.

[2] Although there are various categories of federal rules discussed in this report, the categories are not mutually exclusive. A particular regulation could fit into more than one of the categories, or in some cases a regulation may not fit into any of the categories discussed here.

[3] E.O. 12866, "Regulatory Planning and Review," 58 *Federal Register* 51735, October 4, 1993. To view a copy of this order, see https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf. "Independent regulatory agencies" are excepted from this requirement; see discussion later in this report in section on "economically significant" rules.

[4] For an overview of the rulemaking process, see CRS Report RL32240, *The Federal Rulemaking Process: An Overview*, coordinated by Maeve P. Carey; and CRS In Focus IF10003, *An Overview of Federal Regulations and the*

how some of those requirements should be met.[5] This section of the report briefly describes the significant statutory and executive requirements and guidance documents that comprise the rulemaking process.

Statutory Requirements

The most significant statute governing the rulemaking process is the Administrative Procedure Act of 1946 (APA).[6] The APA established standards for the issuance of rules using formal rulemaking and informal rulemaking procedures.[7] Informal rulemaking, also known as "notice and comment" rulemaking or "Section 553" rulemaking, is the most common type of rulemaking.

The APA defines a *rule* as "the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy."[8] The APA defines *rulemaking* as "the agency process for formulating, amending, or repealing a rule," which means that agencies must undertake a regulatory action whenever they are issuing a new rule, changing an existing rule, or eliminating a rule.[9]

When issuing rules under the APA, agencies are generally required to publish a notice of proposed rulemaking (NPRM) in the *Federal Register*, take comments on the NPRM, publish a final rule in the *Federal Register*, and provide for at least a 30-day waiting period before the rule can become effective.[10] The APA specifically authorizes any federal agency to dispense with its requirements for notice and comment if the agency for good cause finds that the use of traditional procedures would be "impracticable, unnecessary, or contrary to the public interest."[11] The APA also provides a good cause exception for the 30-day waiting period between the publication of a final rule and its effective date.[12]

While the APA's notice and comment procedures comprise the general structure of the rulemaking process, a number of other statutory requirements have been added to the APA's requirements in the decades since enactment of the APA.

Rulemaking Process, by Maeve P. Carey.

[5] Many of these OMB guidance documents are discussed in CRS Report R41974, *Cost-Benefit and Other Analysis Requirements in the Rulemaking Process*, coordinated by Maeve P. Carey.

[6] P.L. 79-404; 5 U.S.C. §§551 *et seq*.

[7] When agencies engage in formal rulemaking, the agency must hold a trial-like hearing. Presently, formal rulemaking is a rarely used process, and its requirements are only triggered when Congress explicitly states that the rulemaking proceed "on the record." 5 U.S.C. §553(c); *United States v. Florida East Coast Railway*, 410 U.S. 224 (1973).

[8] 5 U.S.C. §551(4).

[9] 5 U.S.C. §551(5).

[10] 5 U.S.C. §553. Certain rules are exempted from the requirements of Section 553, including rules involving "(1) a military or foreign affairs function of the United States; or (2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts" (5 U.S.C. §553(a)). In addition, certain other rules are exempted from the notice and comment requirements, but are still required to publish a final rule in the *Federal Register*, including "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice" (5 U.S.C. §553(b)(3)(A)).

[11] 5 U.S.C. §553(b)(B). A December 2012 Government Accountability Office (GAO) report found that agencies did not publish an NPRM in about 35% of "major" rules (those with the biggest economic effect) and about 44% of non-"major" rules published from 2003 through 2010. The most common reason agencies cited was the APA's "good cause" exception. Agencies also published rules without an NPRM for other reasons, such as cases in which the statute instructed issuance of a final rule without a prior NPRM.

[12] 5 U.S.C. §553(d)(3). For further information on the APA's good cause exception, see CRS Report R44356, *The Good Cause Exception to Notice and Comment Rulemaking: Judicial Review of Agency Action*, by Jared P. Cole.

- The **Paperwork Reduction Act** (PRA), originally enacted in 1980, established a process under which agencies have to consider the paperwork burden associated with regulatory and other actions.[13] Under the PRA, agencies generally must receive approval from OIRA for information collections from 10 or more nonfederal "persons."[14]
- The **Regulatory Flexibility Act** (RFA), also originally enacted in 1980, requires regulatory flexibility analyses for proposed and final rules that will have a "significant economic impact on a substantial number of small entities" (SEISNSE).[15] Other provisions of the RFA require that certain agencies convene advocacy review panels for rules that may have a SEISNSE to solicit feedback from affected entities and that agencies reexamine rules with a SEISNSE to determine whether any changes to or repeal of the rules may be necessary.[16]
- Title II of the **Unfunded Mandates Reform Act** (UMRA) of 1995 added requirements for agencies (other than independent regulatory agencies) to analyze costs resulting from regulations containing federal mandates upon state, local, and tribal governments and the private sector.[17] The analysis requirement in UMRA is triggered when a rule "may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year."[18]
- The **Congressional Review Act** (CRA), enacted in 1996, established a mechanism through which Congress could overturn federal regulations by enacting of a joint resolution of disapproval.[19] The CRA also requires that "major" rules (e.g., those that have a $100 million effect on the economy) have a delayed effective date of at least 60 days, and that agencies submit their rules to both houses of Congress and the Government Accountability Office (GAO) before the rules can take effect. Since it was enacted, the CRA has been used 17 times to overturn a rule: once during the George W. Bush Administration and 16 times during the Trump Administration in the 115th Congress.[20]

[13] 44 U.S.C. §§3501-3520.

[14] *Person*, as defined in the PRA, includes individuals, partnerships, associations, corporations, groups, and any element of a state or local government.

[15] 5 U.S.C. §§601-612. The RFA does not apply to rules issued without an NPRM. For more information about requirements under the RFA, see CRS Report RL34355, *The Regulatory Flexibility Act: Implementation Issues and Proposed Reforms*, coordinated by Maeve P. Carey.

[16] 5 U.S.C. §§609-610.

[17] 2 U.S.C. §§1532-1538. Like the RFA, UMRA does not require an analysis for rules issued without an NPRM. For more information about UMRA, see CRS Report R40957, *Unfunded Mandates Reform Act: History, Impact, and Issues*, by Robert Jay Dilger.

[18] 2 U.S.C. §1532(a).

[19] 5 U.S.C. §§801-808. The CRA provides for expedited consideration of such a resolution in the Senate. For an overview of the CRA, see CRS Report R43992, *The Congressional Review Act (CRA): Frequently Asked Questions*, by Maeve P. Carey and Christopher M. Davis; and CRS In Focus IF10023, *The Congressional Review Act (CRA)*, by Maeve P. Carey and Christopher M. Davis.

[20] For a list of the rules that have been overturned using the CRA, see https://www.gao.gov/legal/other-legal-work/congressional-review-act#faqs.

When issuing a rule, agencies generally address the rule's compliance with these statutory requirements in the preamble of the final rule, which generally constitutes a significant portion of the pages in each rulemaking document published in the *Federal Register*.

Executive Branch Requirements and Guidance

In addition to the statutory requirements Congress has enacted, Presidents have also issued executive orders and OMB has issued guidance regarding additional procedures that agencies must generally follow:

- **E.O. 12866**, issued by President William Clinton in 1993, calls for OIRA to review "significant" regulatory actions at both the proposed and final rule stage.[21] The order also requires agencies to assess potential costs and benefits for "significant" rules, and, for those deemed as "economically significant" regulatory actions, agencies are required to perform a cost-benefit analysis and assess the costs and benefits of "reasonably feasible alternatives" to the planned rule.[22] Furthermore, under E.O. 12866, agencies generally must "propose or adopt a regulation only upon a reasoned determination that the benefits" of the rule "justify its costs."[23] E.O. 12866's requirements for OIRA review and cost-benefit analysis do not apply to independent regulatory agencies.
- To provide guidance to agencies on what to include and consider in their cost-benefit analyses of rules, OMB issued **OMB Circular A-4**, a document that describes "best practices" for agencies' regulatory impact analyses.[24]
- President Barack Obama issued several executive orders on rulemaking, and his Administration issued a number of guidance documents for agencies on how best to issue rules. Most significantly, **E.O. 13563** reaffirmed many of the principles of E.O. 12866 and instructed agencies to conduct a retrospective review of their regulations in order to identify and take action to modify or repeal rules that they deem to be "outmoded, ineffective, insufficient, or excessively burdensome."[25]

[21] E.O. 12866, "Regulatory Planning and Review," 58 *Federal Register* 51735, October 4, 1993. The executive order defines "significant" regulatory actions as those rules that may "(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order" (§3(f)). Rules that fall into the first of these four categories are "economically significant" rules (§3(f)(1)).

[22] Section 6(a) of E.O. 12866.

[23] Section 1(b)(6) of E.O. 12866. E.O. 12866, like its predecessor orders that were issued by President Ronald Reagan (E.O. 12291 and E.O. 12498), does not apply the cost-benefit analysis or OIRA review to independent regulatory agencies such as the Federal Reserve Board and Securities and Exchange Commission. A complete list of the independent regulatory agencies that are exempted from the order is in the Paperwork Reduction Act at 44 U.S.C. §3502(5).

[24] The most recent version of OMB Circular A-4 was issued in September 2003 and can be found on the White House's website at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf. Circular A-4 has been used by OMB and agencies since it was issued in 2003.

[25] Section 6(a) of E.O. 13563, "Improving Regulation and Regulatory Review," 76 *Federal Register* 3821, January 18, 2011. For more information on additional Obama Administration regulatory reform initiatives, see https://obamawhitehouse.archives.gov/omb/international_regulatory_cooperation.

Following the issuance of E.O. 13563, President Obama issued **E.O. 13579**, requesting that independent regulatory agencies also participate in the retrospective reviews.[26]

Deregulatory Efforts in the Trump Administration

President Donald Trump emphasized, during his campaign and while in office, that removing existing regulations and limiting new regulations would be a priority in his Administration. On January 30, 2017—10 days after he was sworn into office—President Trump issued **E.O. 13771**.[27] This executive order established a "one in, two out" policy requiring that for new "incremental costs" resulting from new regulations, equivalent costs associated with two existing regulations must be repealed.[28] In guidance explaining its plan for implementation of the order, OMB specified that this policy would apply only to newly added regulatory actions—including regulations and guidance documents—defined as significant under E.O. 12866.[29] Furthermore, *deregulatory actions* could include the repeal or revision of a wide range of agency actions, regulations, guidance documents, recordkeeping and reporting requirements, and others.[30]

E.O. 13771 also established a "regulatory cost allowance," to be determined by the director of OMB, that places a cap on the total incremental costs of regulations allowed for a given fiscal year.[31] For the remainder of FY2017, FY2018, and FY2019, OMB instructed agencies to meet a net-zero or reduction in regulatory costs.[32]

Difficulties in Quantifying Deregulation

Scholars and commentators have discussed various accounting methods for counting deregulatory actions.[33] However, because agencies must adhere to normal notice and comment rulemaking procedures for deregulatory actions in addition to regulatory actions, isolating deregulatory

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[26] For more information on the retrospective review process, see Joseph Aldy, *Learning from Experience: An Assessment of the Retrospective Reviews of Agency Rules and the Evidence for Improving the Design and Implementation of Regulatory Policy*, report written for the Administrative Conference of the United States, November 18, 2014, https://www.acus.gov/sites/default/files/documents/Aldy%2520Retro%2520Review%2520Draft%252011-17-2014.pdf.

[27] E.O. 13771, "Reducing Regulation and Controlling Regulatory Costs," 82 *Federal Register* 9339, January 30, 2017.

[28] Section 2(a) of E.O. 13771, "Reducing Regulation and Controlling Regulatory Costs," 82 *Federal Register* 9339, January 30, 2017.

[29] Memorandum M-17-21 from Dominic J. Mancini, Acting Administrator of the Office of Information and Regulatory Affairs to Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions, "Guidance Implementing E.O. 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs,'" April 5, 2017, https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21.pdf.

[30] Mancini, "Guidance Implementing E.O. 13771," p. 4.

[31] E.O. 13771, "Reducing Regulation and Controlling Regulatory Costs," §3(d), 82 *Federal Register* 9339, January 30, 2017.

[32] E.O. 13771, §3(d). See also OMB's report on "FY2018 Regulatory Cost Allowances" at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/FY%202018%20Regulatory%20Cost%20Allowances.pdf; and "Regulatory Reform: Regulatory Budget for Fiscal Year 2019" at https://www.reginfo.gov/public/pdf/eo13771/EO_13771_Regulatory_Budget_for_Fiscal_Year_2019.pdf.

[33] For a discussion of some of the methodological challenges in measuring deregulation, see Bridget C. E. Dooling, "Trump Administration Picks up the Regulatory Pace in its Second Year," Regulatory Studies Center, August 1, 2018, pp. 3-6, https://regulatorystudies.columbian.gwu.edu/sites/g/files/zaxdzs1866/f/downloads/Dooling_Trump%27sFirst18Months.pdf.

actions from overall regulatory activity presents challenges.[34] After FY2017 and FY2018, OIRA published statements detailing its completed regulatory and deregulatory actions. The Administration stated that in FY2017 agencies issued 67 deregulatory actions and three regulatory actions. In FY2018, it stated that agencies issued 176 and 14, respectively.[35]

Additionally, OIRA publishes the biannual Unified Agenda of Regulatory and Deregulatory Actions and annual Regulatory Plan, which provide an overview of current and planned regulatory actions in all federal regulatory agencies and include a searchable database of agency actions.[36] Beginning in 2017, the Trump Administration added to the Unified Agenda a separate searchable data element to identify deregulatory actions, providing a more concrete means by which to potentially measure deregulation. Therefore, the Unified Agenda may present another approximate measure of regulatory trends during the Trump Administration.

The Trump Administration has also pursued rescission of regulations through the CRA. The 115th Congress overturned a total of 16 rules using the CRA. Prior to the 115th Congress, the CRA had not been used to overturn a rule since 2001.[37]

Number of Final Rules Published in Recent Years

Figure 1 presents the approximate number of rules by year since 1976, the first year for which the Office of the Federal Register has data available. The number provided in the table for each year is the number of documents published in the final rules section of the *Federal Register*. Corresponding data for **Figure 1** can be found in **Table A-1** in the **Appendix**.

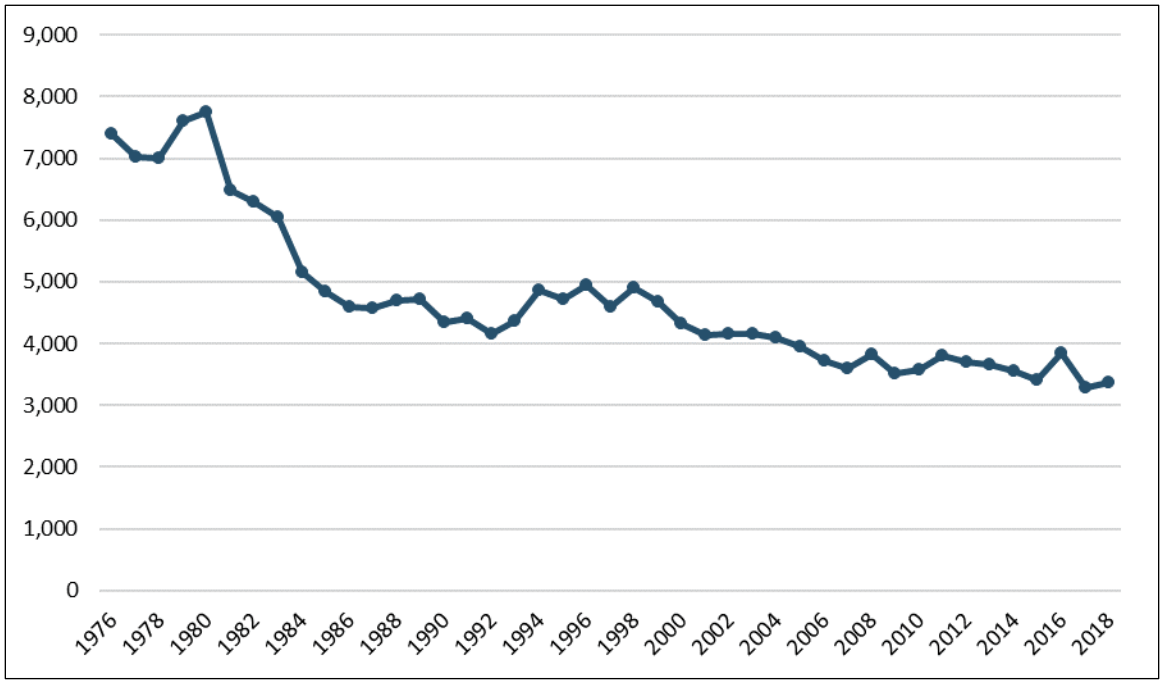
[34] In addition, measuring the *effects* of these deregulatory actions is also highly challenging. Some scholars, commentators, and critics have argued that the deregulatory policies of the Trump Administration have led primarily to slowing the flow of new regulations, citing that many rescinded regulations were recently issued and thus may not have had a significant impact on the economy or administrative operations; that many rescinded regulations were not economically significant; that the decrease in added regulations can be attributed to freezing rules in the pipeline, not rescinding rules that had been in effect already; or that President Trump has tended to follow trends of previous Administrations by halting the production of their predecessors' regulations. See, for example, Connor Raso, "How Has Trump's Deregulatory Order Worked in Practice?," Brookings Institution, September 6, 2018, https://www.brookings.edu/research/how-has-trumps-deregulatory-order-worked-in-practice/; and Cary Coglianese, "Let's Be Real About Trump's First Year in Regulation," *The Regulatory Review*, January 29, 2018, https://www.theregreview.org/2018/01/29/lets-be-real-trumps-first-year-regulation/.

[35] See OIRA, "Regulatory Reform: Completed Actions Fiscal Year 2017," https://www.reginfo.gov/public/pdf/eo13771/FINAL_BU_20171207.pdf; and OIRA, "Regulatory Reform Report: Completed Actions for Fiscal Year 2018," https://www.reginfo.gov/public/pdf/eo13771/EO_13771_Completed_Actions_for_Fiscal_Year_2018.pdf.

[36] The Unified Agenda is available at https://www.reginfo.gov/public/do/eAgendaMain. It provides a list of actions agencies expect to take within the next six to 12 months. The Regulatory Plan is published each year as part of the fall edition of the Unified Agenda, and it identifies regulatory priorities and contains information on what agencies expect to be their most significant regulatory actions in the next year. Agencies are not required to limit their regulatory activity to what they publish in the Unified Agenda, and many actions are designated as "long term." Under the Trump Administration, agencies are generally required to publish notice of intended actions in the Unified Agenda before they may move forward with the action. See E.O. 13771 §3(c): "Unless otherwise required by law, no regulation shall be issued by an agency if it was not included on the most recent version or update of the published Unified Regulatory Agenda as required under E.O. 12866, as amended, or any successor order, unless the issuance of such regulation was approved in advance in writing by the Director [of OMB]."

[37] Seven rules overturned under the CRA were included as deregulatory actions in the 2017 OIRA regulatory reform report mentioned above. For a list of all the rules that were overturned, see https://www.gao.gov/legal/other-legal-work/congressional-review-act#faqs.

Figure 1. Number of Final Rule Documents Published in the *Federal Register*, 1976-2018



Source: Office of the Federal Register, Federal Register Documents Published 1976-2018, https://www.federalregister.gov/uploads/2019/04/stats2018Fedreg.pdf#page=4.

Some context for understanding these numbers may be helpful, as the number of final rule documents is not a precise measurement of the total number of regulations or the total amount of federal regulatory activity.

Although the number of regulations issued each year is generally in the thousands, many of those regulations deal with routine matters. For example, a rule issued on May 23, 2019, by the U.S. Coast Guard provided notice that it would "enforce the annual safety zone for the PUSH Beaver County Fireworks, to provide for the safety of persons, vessels, and the marine environment on the navigable waters of the Ohio River during this event" from "8 p.m. to 10:30 p.m. on June 22, 2019."[38] Because the change was considered a rule but only had a temporary effect, it did not make any changes to the *Code of Federal Regulations* (C.F.R.), which is the comprehensive codification of permanent rules and regulations. Captured under the definition of a rulemaking in the APA, such items are published in the "Rules and Regulations" section of the *Federal Register*.

Occasionally, a document will be published in the final rules section of the *Federal Register* that is not a rule itself but relates to one or more final rules. For example, on April 19, 2018, the Mine Safety and Health Administration published an announcement of public meetings in the final rules section of the *Federal Register*. That particular document was not a final rule, though it related to a previously issued rule. This rule would thus be counted twice in the numbers reflected in **Figure 1**, even though the document announcing the meeting did not constitute separate regulatory activity from the rule it related to, which had been published as a separate document.[39]

[38] U.S. Department of Homeland Security, Coast Guard, "Recurring Safety Zone; PUSH Beaver County, Beaver, PA," 84 *Federal Register* 23720, May 23, 2019.

[39] U.S. Department of Labor, Mine Safety and Health Administration, "Examinations of Working Places in Metal and

For this reason, the total count of the number of final rule documents likely includes some amount of double counting.

The number of regulations issued each year included deregulatory actions and minor amendments that agencies made to existing rules. As discussed earlier in this report, the APA defines *rulemaking* as "the agency process for formulating, amending, or repealing a rule." Therefore, agencies must undertake a rulemaking process when they seek to modify or eliminate a rule.[40] Therefore, not all of the regulations counted in **Figure 1** were necessarily new regulatory actions issued by agencies. Some of them could have been minor amendments, including technical corrections without substantive change, such as a 2018 Department of the Interior final rule that the agency stated repealed an amendment that had never been implemented and restored the original regulatory language.[41] Alternatively, rule documents could include regulatory actions in which agencies removed regulations or attempted to make regulations less burdensome on the public. A December 14, 2018, final rule from the Department of Housing and Urban Development, classified as a significant regulatory action under E.O. 12866, "streamline[d] the inspection requirements for FHA single-family mortgage insurance by removing the regulations for the FHA Inspector Roster" in order to eliminate what the agency considered to be duplicative processes.[42]

"Major" Rules

As mentioned above, the CRA was enacted in 1996 and established procedures for congressional review of agency regulations. Under the CRA, each federal agency is required to send its covered final rules to GAO and to both houses of Congress before the rules can take effect.[43] Section 804(2) of the CRA created a category of rules called "major" rules, which are those that the OIRA administrator determines has resulted in or is likely to result in

> (A) an annual effect on the economy of $100,000,000 or more;
>
> (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
>
> (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.[44]

Nonmetal Mines," 83 *Federal Register* 17293, April 19, 2018 (announcement of public meetings); and U.S. Department of Labor, Mine Safety and Health Administration, "Examinations of Working Places in Metal and Nonmetal Mines," 83 *Federal Register* 15055, April 9, 2018 (final rule).

[40] 5 U.S.C. §551(5).

[41] U.S. Department of the Interior, Office of Natural Resources Revenue, "Repeal of Regulatory Amendment and Restoration of Former Regulatory Language Governing Service of Official Correspondence," 83 *Federal Register* 3075, January 23, 2018.

[42] U.S. Department of Housing and Urban Development, Federal Housing Commissioner, "Streamlining Inspection Requirements for Federal Housing Administration (FHA) Single-Family Mortgage Insurance: Removal of the FHA Inspector Roster," 83 *Federal Register* 31038, July 3, 2018.

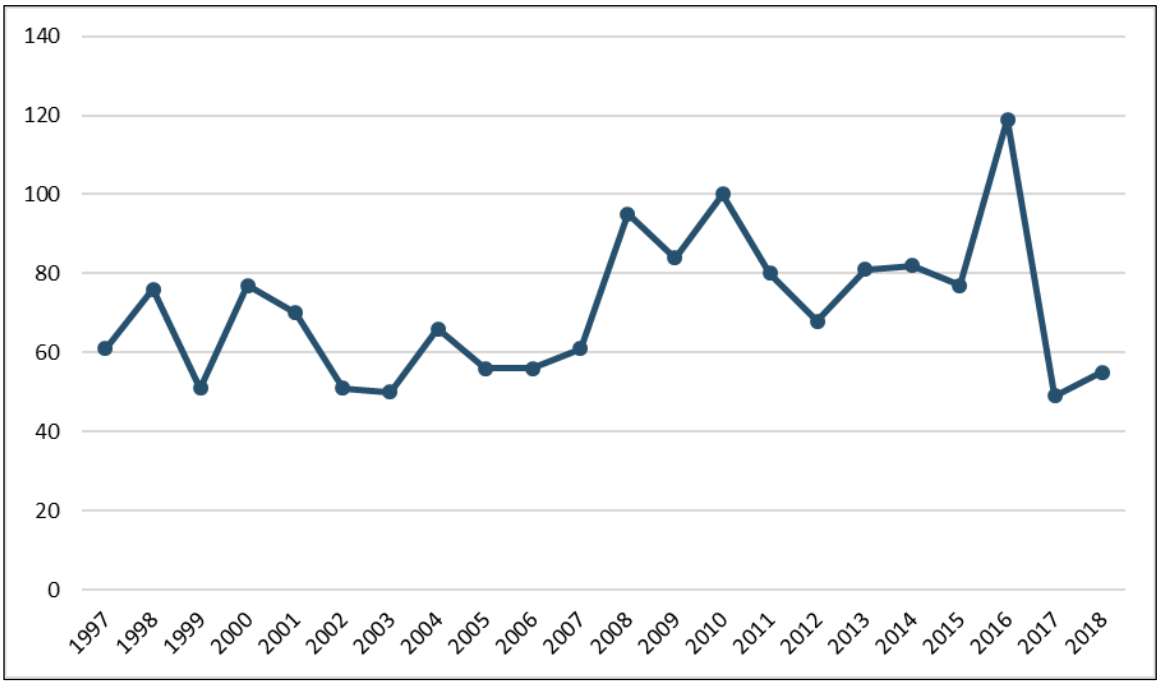
[43] See CRS Report R43992, *The Congressional Review Act (CRA): Frequently Asked Questions*, by Maeve P. Carey and Christopher M. Davis.

[44] 5 U.S.C. §804(2).

The CRA contains two requirements for major rules. First, agencies are generally required to delay the effective dates of "major" rules until 60 days after the rule is submitted to Congress or published in the *Federal Register*, whichever is later.[45] Second, the Comptroller General must provide a report on each major rule to the appropriate congressional committees of jurisdiction within 15 days of when a rule is submitted or published.[46] The report must include a summary of the agency's compliance with various rulemaking requirements (such as regulatory impact analyses that agencies may be required to perform while undergoing a rulemaking action). These reports are posted on GAO's website.[47]

Figure 2 presents the total number of major rules published during each calendar year since 1997, as reported by GAO.[48] Rules in the GAO database are those that have been submitted to GAO under the CRA (5 U.S.C. §801(a)(1)(A)(i)). Data begin in 1997 because the CRA was enacted in 1996, making 1997 the first full year for which data are available. Corresponding data for **Figure 2** can be found in **Table A-2** in the **Appendix**.

Figure 2. Number of "Major" Final Rules, 1997-2018



Source: Government Accountability Office's Database of Rules, https://www.gao.gov/legal/other-legal-work/congressional-review-act#database, accessed on July 1, 2019. Data provided are the numbers of major rules published each year in the *Federal Register* and submitted to GAO under Section 801 of the Congressional Review Act, which requires that agencies submit their rules to GAO and to both houses of Congress before they can take effect (5 U.S.C. §801(a)(1)(A)).

[45] 5 U.S.C. §801(a)(3).

[46] 5 U.S.C. §801(a)(2)(A).

[47] The major rule reports are located at https://gao.gov/legal/other-legal-work/congressional-review-act.

[48] Because the CRA was enacted in 1996, complete data are available starting in 1997. As mentioned earlier in this report, starting in 2012, agencies submitted fewer rules to GAO under the CRA, and as a result, the total number of rules included in the GAO Federal Rules Database after 2012 is not comparable to years before 2012. However, this decrease in rules submitted did not occur for "major" rules, according to GAO.

One advantage of measuring the number of major rules each year, rather than measuring the total number of rules, is that this counting approach does not include rules that are relatively minor in effect, unlike the total number of rule documents presented above in **Figure 1**. In addition, this counting approach measures only rules and not other types of documents that are related to rules, such as notices of public meetings related to a rule.

A previous CRS report examined the 100 major rules published in 2010 and concluded that rules are determined to be "major" for a variety of reasons, not just due to compliance costs.[49] For example, rules have been classified as major because they involved transfers of funds from one party to another, most commonly the transfer of federal funds through programs such as grants, Medicare or Medicaid funds, special pay for members of the military, and crop subsidy payments; because they prompted consumer spending or because they established fees for the reimbursement of particular federal functions (e.g., issuance of passports and oversight of the nuclear power industry); or because the rules result in cost savings for consumers and taxpayers.

The number of major rules, however, is only a partial portrayal of overall regulatory activity, as it captures only the small number of rules issued each year that have the greatest economic impact. It does not capture rules that are of lesser economic impact but still potentially have some significant legal or policy effects, nor does it capture the large number of administrative and routine rules that federal agencies issue each year.

OIRA Review of "Significant" Rules

The definition of a "significant" rule, found in E.O. 12866, is a rule that is likely to

> (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
>
> (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
>
> (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
>
> (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.[50]

Under E.O. 12866, most agencies are required to submit rules that OIRA determines to be "significant" to OIRA for centralized review.[51] Upon submission, the agency must provide specific information to OIRA, including the text of the action; a detailed description of the need for the action; an explanation of how the action will meet that need; an assessment of the potential costs and benefits of the regulatory action; and an assessment of how the regulation "promotes the President's priorities and avoids undue interference with State, local, and tribal governments."[52]

[49] CRS Report R41651, *REINS Act: Number and Types of "Major Rules" in Recent Years*, by Maeve P. Carey and Curtis W. Copeland.

[50] E.O. 12866, §3(f).

[51] This requirement for OIRA review does not apply to the independent regulatory agencies, which are listed in Title 44, Section 3502(5), of the *United States Code*.

[52] E.O. 12866, §6(a)(3)(B).

While the number of major rules is accessible on GAO's Database of Rules, the number of significant rules issued each year is not readily available. No requirement currently exists for agencies or other entities to keep track of how many significant rules are issued each year. However, data are available for the number of reviews at OIRA each year, because OIRA logs on its website each rule it received for review under E.O. 12866.[53] Notably, the number of "significant" rules reviewed each year would not be the same as the number of "significant" rules *issued* each year: For example, a rule could be reviewed at OIRA late in one calendar year but not actually issued (i.e., published in the *Federal Register*) until the next calendar year. In addition, because OIRA reviews proposed and final rules, the total number of reviews is much higher than final rules issued each year. However, the number of reviews at OIRA each year can still give some idea of annual regulatory activity.[54]

Table 1 lists the total number of reviews at OIRA annually from 1994 to 2018 by category, including prerules, proposed rules, interim final rules, final rules, and notices.[55] The table refers to reviews, not just rules, because OIRA also reviews some agency guidance documents (which are generally included under "prerule" or "notice" categories). It should be noted that a single rule may be counted more than once in the table if it was reviewed at multiple stages during the same calendar year. Data begin in calendar year 1994 because E.O. 12866 was issued near the end of 1993.

Table 1. Total Number of Reviews at OIRA, 1994-2018

Calendar Year	Prerule Reviews	Proposed Rule Reviews	Interim Final Rule Reviews	Final Rule Reviews	Notice Reviews	Total Reviews
1994	16	317	68	302	128	831
1995	8	225	64	270	53	620
1996	28	160	56	232	31	507
1997	20	196	64	174	51	505
1998	15	192	58	182	40	487
1999	19	247	71	214	36	587
2000	13	210	66	253	40	582
2001	9	274	95	285	37	700
2002	23	261	81	249	55	669
2003	23	232	92	309	59	715
2004	26	237	64	241	58	626
2005	18	221	66	247	59	611

[53] The reviews are logged on OIRA's website at https://www.reginfo.gov/public/do/eoCountsSearchInit?action=init.

[54] As discussed above, independent regulatory agencies are not subject to the requirements under E.O. 12866 for OIRA review, so the numbers provided in **Table 1** do not include any rules issued by independent regulatory agencies.

[55] Prerules are rules that are in the earliest stages of rulemaking, and may include actions agencies are considering that may or may not ever become actual rules. Interim final rules are one particular use of the APA's "good cause" exception in which agencies publish rules without prior notice and comment; see section below entitled "Interim Final Rules" for more discussion. OIRA does review some agency notices, which are non-binding documents issued by agencies and are sometimes referred to as guidance documents. See Memorandum from Peter R. Orszag, Director of OMB, to Heads and Acting Heads of Executive Departments and Agencies, March 4, 2009, https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2009/m09-13.pdf, stating that policy and guidance documents are "subject to OIRA's review under E.O. 12866."

Calendar Year	Prerule Reviews	Proposed Rule Reviews	Interim Final Rule Reviews	Final Rule Reviews	Notice Reviews	Total Reviews
2006	12	229	43	270	46	600
2007	22	248	44	250	25	589
2008	17	276	39	313	28	673
2009	28	214	67	237	49	595
2010	36	261	84	232	77	690
2011	24	317	76	262	61	740
2012	12	144	33	195	40	424
2013	11	177	33	160	37	418
2014	17	201	43	145	46	452
2015	8	178	29	165	35	415
2016	14	231	28	305	45	623
2017	13	84	12	104	24	237
2018	25	168	11	124	32	360

Source: Office of Information and Regulatory Affairs' website, https://www.reginfo.gov/public/do/eoCountsSearchInit?action=init; data were retrieved on July 1, 2019.

Note: The number of "significant" rules reviewed by OIRA in each year is not the same as the number of "significant" rules *issued* in each year. Significant rules are reviewed at OIRA pursuant to E.O. 12866, issued by President Clinton in September 1993. During the review process, OIRA examines the content of the rule; the cost-benefit analysis conducted by the agency, if any; and whether the rule is consistent with the President's priorities.

Data from the last column in this table can also be viewed in **Figure 3** below, which groups the data into "economically significant" reviews and non-"economically significant" reviews.

OIRA Review of "Economically Significant" Rules

"Economically significant" rules are those rules that fall into category (1) of "significant" rules—that is, those rules that may

> (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

For rules that are considered "economically significant," agencies are required to complete a detailed cost-benefit analysis under Section 6(a)(3)(C) of E.O. 12866.[56]

Although the definition of *economically significant rule* is similar to the definition of *major rule*, OMB has suggested that the definition of *major rule* is a bit broader. Both definitions have a similar $100 million threshold, but the definition of *major rule* also includes other categories (see

[56] In conducting the cost-benefit analysis, agencies are required to follow guidance OMB issued in 2003. See OMB Circular A-4, "Regulatory Analysis," September 17, 2003, https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.

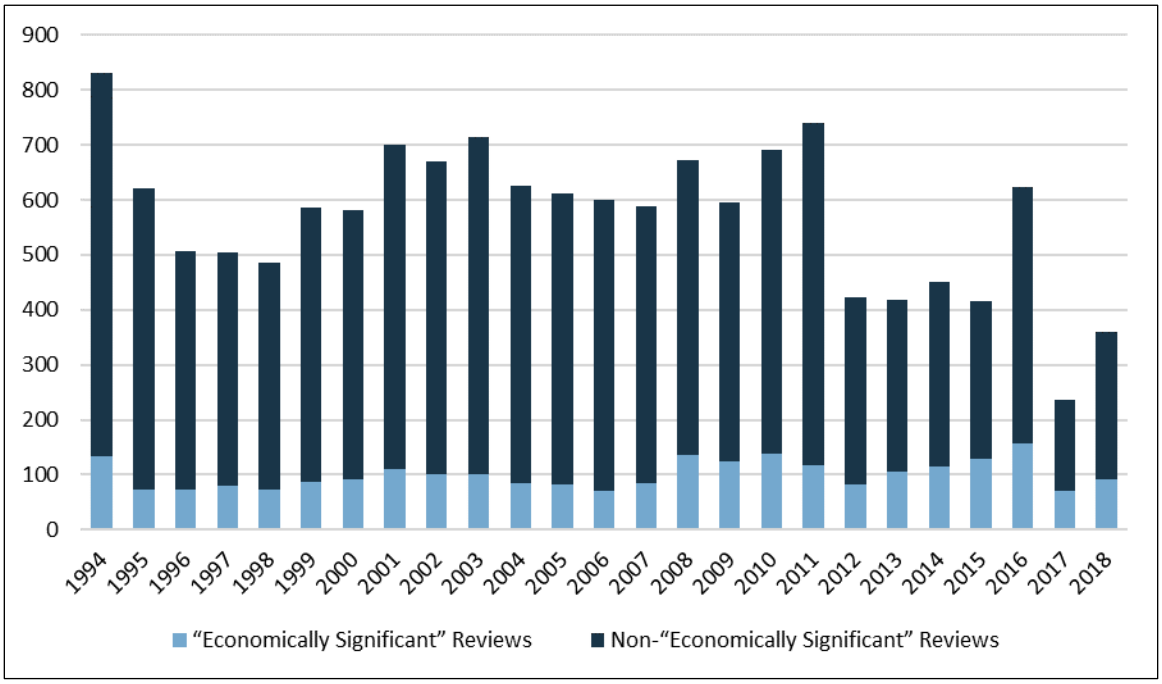
section entitled ""Major" Rules" above). As stated in OMB's guidance on implementing the Congressional Review Act,

> the main difference is that some additional rules may be captured by the CRA definition that are not considered "economically significant" under E.O. 12866, notably those rules that would have a significant adverse effect on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[57]

Despite these differences, however, the number of economically significant rules and major rules each year is likely almost identical. As was mentioned above for significant rules, however, no authoritative count exists for the number of economically significant rules issued each year. Rather, the data available are the counts of economically significant rules reviewed at OIRA.

Figure 3 lists the total number of economically significant reviews and non-economically-significant reviews by OIRA each calendar year from 1994 to 2018.[58] Note that the totals portrayed in **Figure 3** correspond to the final column above in **Table 1**. Corresponding data for **Figure 3** can be found in **Table A-3** in the **Appendix**.

Figure 3. Total Number of "Economically Significant" and Non-"Economically Significant" Reviews at OIRA, 1994-2018



Source: Office of Information and Regulatory Affairs' website, https://www.reginfo.gov/public/do/eoCountsSearchInit?action=init; data were retrieved on July 1, 2019.

[57] Memorandum from Jacob J. Lew, Director, OMB, to Heads of Departments, Agencies, and Independent Establishments, March 30, 1999, "Guidance for Implementing the Congressional Review Act," p. 5, https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/1999/m99-13.pdf. For further information on the distinction between economically significant and major rules, see OMB, *Regulatory Impact Analysis: Frequently Asked Questions (FAQs)*, February 7, 2011, pp. 1-2, https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/OMB/circulars/a004/a-4_FAQ.pdf.

[58] Data are provided beginning in 1994 because E.O. 12866 was issued in September 1993. Prior to 1993, the requirement was for all rules to be reviewed, not just "significant" rules. Therefore, data on the number of OIRA reviews in years prior to 1993 are not directly comparable to data after 1993.

Note: The number of "economically significant" rules reviewed by OIRA in each year is not the same as the number of "economically significant" rules *issued* in each year. Rules are reviewed at OIRA pursuant to E.O. 12866, which was issued by President Clinton in September 1993. During the review process, OIRA examines the content of the rule; the cost-benefit analysis conducted by the agency, if any; and whether the rule is consistent with the President's priorities.

As was noted above for the data in **Table 1**, in some cases, agencies may submit a single rule to OIRA for review more than one time in a year. Thus, a single rule could be counted more than once by appearing in different categories.

Timelines for OIRA Review

Under E.O. 12866, OIRA must meet certain timelines for its review of regulatory actions. For notices of inquiry, advanced notices of proposed rulemaking, or other "preliminary" regulatory actions (generally referred to in the database as "prerules"), OIRA must respond to the agency within 10 working days.[59] For other regulatory actions such as proposed and final rules, OIRA has up to 90 calendar days for review.[60] The order establishes a possible extension of the review process: Upon the written approval of the director of OMB, review can be extended by 30 days, or, alternatively, the agency head can request to extend the review process for an unspecified length of time.[61] However, there are no consequences in the order if OIRA fails to meet the deadline for review.

Figure 4 lists the average review times for economically significant rules compared to the average for all its reviews from 1994 to 2018.[62] Corresponding data for **Figure 4** can be found in **Table A-4** in the **Appendix**.

In general, since 1996, with the exception of 2016, the average time to review economically significant rules has been shorter than the average for all of its reviews. One possible explanation for this trend is that economically significant rules might generally be of higher salience and/or political importance, therefore warranting higher priority from OIRA. Another potential reason is that OIRA frequently engages in informal reviews, collaborating with the regulatory agency in advance of the official receipt of the rule. As a result, much of the work that goes into reviewing economically significant rules may take place in advance.[63]

[59] E.O. 12866, §6(b)(2)(A).

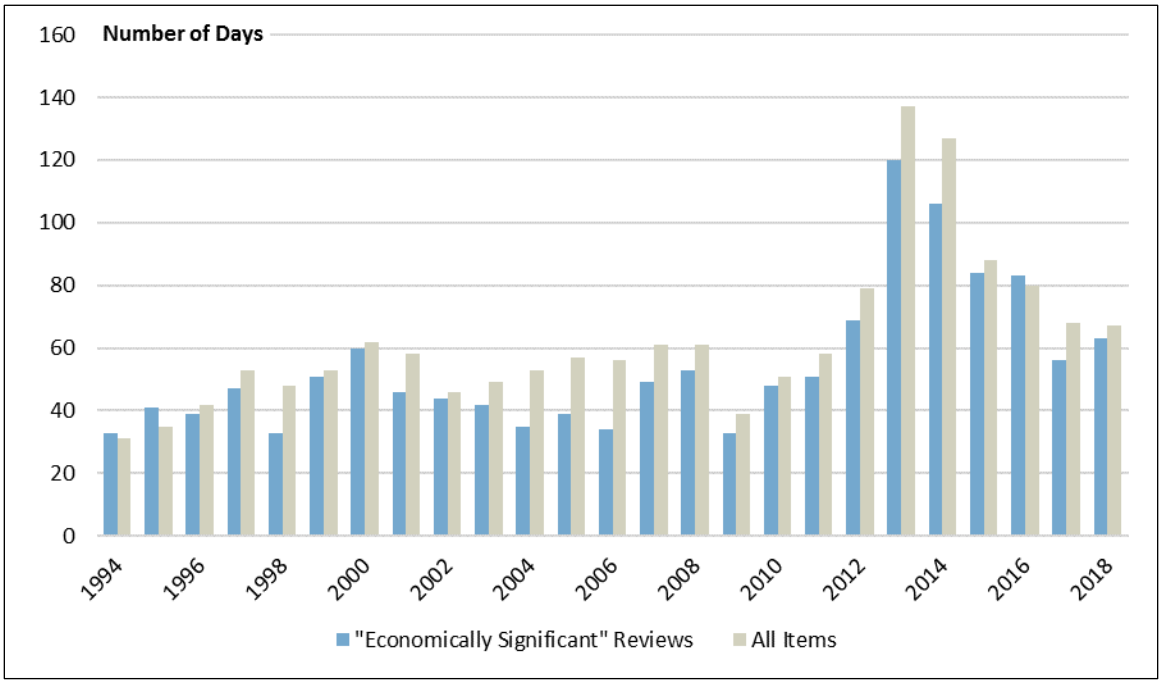
[60] E.O. 12866, §6(b)(2)(B). If OIRA has previously reviewed an action and there has been "no material change" in the rule or in the "facts and circumstances upon which the regulatory action is based," then OIRA must complete its review of the action within 45 days.

[61] Section 6(b)(2)(B) of E.O. 12866.

[62] In this section, the reference to "all reviews" or "all items" refers to all the various types of items that OIRA reviews, including prerules, proposed rules, interim final rules, final rules, and notices. The broad "all reviews" categories includes all of these items, regardless of whether they are also deemed "economically significant."

[63] For further discussion of the informal review process at OIRA, see Curtis W. Copeland, "Length of Rule Reviews by the Office of Information and Regulatory Affairs," report written for the Administrative Conference of the United States, October 7, 2013, p. 35, at https://www.acus.gov/sites/default/files/documents/Copeland%20Report%20CIRCULATED%20to%20Committees%20on%2010-21-13.pdf.

Figure 4. Average Number of Days for OIRA Reviews, 1994-2018



Source: Office of Information and Regulatory Affairs' website; https://www.reginfo.gov/public/do/eoCountsSearchInit?action=init; data were retrieved on July 1, 2019.

Rules Issued Without Notice and Comment Under "Good Cause"

As described above, under the APA, agencies are generally required to undergo certain procedures when issuing a rule. Those steps include the publication of a proposed rule in the *Federal Register*; the opportunity for interested persons to submit comments on the proposed rule; publication of a final rule that includes a "concise general statement" of the "basis and purpose" of the rule; and at least a 30-day waiting period before the rule can take effect.[64]

The APA allows for an exception to two of these requirements in limited circumstances if an agency has "good cause": the agency can issue a rule without notice and comment,[65] or it can waive the 30-day waiting period before the rule can take effect.[66] Proper use of the good cause exception must reflect that following the typical notice-and-comment procedures is "impracticable, unnecessary, or contrary to the public interest." The agency must give supporting reasons for invoking the good cause exception, and its invocation of good cause is subject to judicial review.[67]

[64] 5 U.S.C. §553.

[65] 5 U.S.C. §553(b)(3)(B).

[66] 5 U.S.C. §553(d)(3).

[67] For more information about the good cause exception, see CRS Report R44356, *The Good Cause Exception to Notice and Comment Rulemaking: Judicial Review of Agency Action*, by Jared P. Cole. For information about rulemaking and judicial review more generally, see CRS Report R41546, *A Brief Overview of Rulemaking and Judicial*

As a matter of practice, agencies have developed two types of rulemaking that, while invoking the good cause exception, still allow for public input. Those two types of rules are discussed below.

"Interim Final" Rules

One use of the good cause exception allows agencies to issue "interim final" rules.[68] When issuing an interim final rule, an agency invokes good cause, issues a rule, and then holds a post-promulgation comment period. If the agency is persuaded by any of the comments and so chooses, the rule can be amended in light of those comments.

This category of rule is also sometimes referred to as "interim rule" or "final rule, request for comment" in the *Federal Register* or by other similar terms. For example, the Fish and Wildlife Service published an "interim rule" on April 3, 2019, citing "unforeseen time constraints" as the rationale for invoking the good cause exception. The rule, which established regulations governing migratory bird subsistence harvest regulations in Alaska for the 2019 season, became effective the same day it was issued, but the service accepted comments until May 3, 2019.[69]

Available sources of data on rulemaking cited throughout this report do not contain a means for tracking agencies' use of good cause. This lack of data and inconsistent terminology makes it difficult, if not impossible, to track the use of interim final rules over time.

"Direct Final" Rules

Another potential use of the good cause exception allows agencies to engage in "direct final" rulemaking.[70] "Direct final" rulemaking is used when an agency deems a rule to be routine or noncontroversial but still allows for the public to comment on a rule. Under "direct final" rulemaking, an agency will issue a final rule without prior notice and comment and then generally establish a time period during which the agency is open to receiving comments. The rule may take effect unless at least one adverse comment is received by the agency, in which case the agency will withdraw the rule and proceed with the normal notice and comment procedures. If no adverse comments are received, the rule will become effective. For example, a January 26, 2018, direct final rule issued by the Food and Drug Administration that revised regulations relating to time and duties of inspection requirements received "significant adverse comment" and was

Review, by Todd Garvey.

[68] For an overview of interim final rules, see Michael R. Asimow, "Interim-Final Rules: Making Haste Slowly," *Administrative Law Review*, vol. 51, no. 3 (Summer 1999).

[69] U.S. Department of the Interior, Fish and Wildlife Service, "Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2019 Season," 84 *Federal Register* 12946, April 3, 2019. The agency then followed up on July 30 to affirm that it was adopting the interim rule and would not be making changes pursuant to the three comments received. U.S. Department of the Interior, Fish and Wildlife Service, "Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2019 Season," 84 *Federal Register* 36840, July 30, 2019.

[70] For more information on direct final rules, see Ronald M. Levin, "Direct Final Rulemaking," *George Washington Law Review*, vol. 64, no. 1 (November 1995), pp. 1-34. For a discussion of the use of direct final rules during the Trump Administration, see Philip A. Wallach and Nicholas W. Zeppos, "Contestation of Direct Final Rules during the Trump Administration," Brookings Institution, October 9, 2018, https://www.brookings.edu/research/contestation-of-direct-final-rules-during-the-trump-administration/.

withdrawn on May 7, 2018. It was reissued as a final rule on April 2, 2019, including discussion of comments received, and became effective May 2, 2019.[71]

Number of Pages and Documents in the *Federal Register*

Since the enactment of the APA in 1946, agencies have been required to publish their proposed and final rules in the *Federal Register*.[72] Agencies also publish other items related to regulations in the *Federal Register*, such as notices of meetings and the extension of comment periods, as well as many other items related to non-regulatory governmental activities. Because the *Federal Register* provides documentation of the government's regulatory and other actions, some scholars, commentators, and public officials have used the total number of *Federal Register* pages each year, which has increased substantially since its creation, as an approximate measure for the total amount of regulatory activity.[73] The number of pages in the *Federal Register,* however, may not be an accurate measure for regulatory activity or regulatory burden for several reasons. This section discusses the history and content of the *Federal Register* and why it may not provide an accurate measure of regulatory activity.

The Federal Register Act

The Federal Register Act created the *Federal Register* in 1935 in response to the increasing number of administrative actions, laws, and regulations associated with the New Deal.[74] During the New Deal, the role of federal agencies changed substantially—as one scholar noted, the federal government was entering new realms of public policy as a result of laws passed under the New Deal, such as agriculture, assistance for the aged and disadvantaged, housing and home ownership, and banking and securities.[75] Many statutes that Congress passed granted rulemaking and other authorities to these new federal agencies. To create a centralized mechanism for documenting the increasing number of rules and administrative actions, and to provide a means for public access to government information more generally, Congress created the *Federal Register*. Since the 1930s, the *Federal Register* has been the vehicle for notifying the public of the federal government's actions.

Content of the *Federal Register*

As noted above, the number of pages in the *Federal Register* may be only a rough approximation of regulatory activity each year for several reasons. First, the section of the *Federal Register* devoted to publishing final rules is relatively small, because the *Federal Register* documents

[71] U.S. Department of Health and Human Services, Food and Drug Administration, "Removal of Certain Time of Inspection and Duties of Inspector Regulations for Biological Products," 84 *Federal Register* 12505, April 2, 2019.

[72] For more information about exceptions to the APA's notice and comment requirements, see CRS Report R41546, *A Brief Overview of Rulemaking and Judicial Review*, by Todd Garvey.

[73] See, for example, Clyde Wayne Crews Jr., *Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State*, Competitive Enterprise Institute, Washington, DC, 2012, http://cei.org/sites/default/files/Wayne%20Crews%20-%2010,000%20Commandments%202012_0.pdf.

[74] P.L. 74-220.

[75] Cornelius M. Kerwin, *Rulemaking: How Government Agencies Write Law and Make Policy*, 3rd ed. (Washington, DC: CQ Press, 2003), pp. 9-12.

other non-regulatory activities as well. For example, in 2018, approximately 25% of the total pages were in the "Rules and Regulations" section, which is where final rules are published. The other portions of the *Federal Register* are used for such items as presidential documents, proposed rules, notices, and corrections. Other than the proposed rules, documents published in these additional sections may have little to do with federal regulations. Over 1,000 pages each year are blank pages or skips, which are designed to leave room for other materials and to maintain the integrity of the individual sections.[76]

Second, while the *Federal Register* provides a compilation of governmental activity that occurs each year, including new regulations, many of the final rules are amending rules that have been previously issued and therefore may not accurately be considered to be *new* rules. Similarly, as mentioned above, if an agency eliminates an already existing rule, this is considered a "rulemaking" action under the APA and would be published in the rules and regulations section of the *Federal Register*, even if it is a deregulatory action.

Third, when agencies publish proposed and final rules in the *Federal Register*, they include a preamble along with the text of the rule. The preamble often includes such information as statements of the statutory authority for the rule; information and history which the agency deems to be relevant; a discussion of the comments received during the comment period; an explanation of the agency's final decision; and in some cases, information about certain analyses that may have been required during the rulemaking process. It is possible, therefore, that the actual regulatory text provided in a rule could be relatively small compared to the size of the entire rulemaking document in the *Federal Register*. For example, a rule issued on April 16, 2018, by the Department of Health and Human Services pursuant to the Comprehensive Addiction and Recovery Act and the 21st Century Cures Act, which modified Medicare Part C and D regulations, was 318 pages in total.[77] Of the 318 pages, 282 pages comprised the preamble and 36 pages actually amended the *Code of Federal Regulations.* Much of the preamble discussed the comments received following the NPRM, as well as estimates of costs and benefits, associated data, and justifications of the agency's decisions while crafting the rule.

The number of pages in the *Federal Register* may also not be an accurate reflection of the amount of regulatory burden that stems from a rule. For example, a short rule could impose a large burden on a large number of regulated entities. On the other hand, a lengthy rule could contain less burdensome requirements but greater detail and only apply to a small number of entities. Because the preamble to the rule contains detailed information about the rule itself and the agency's response to the comments it received, the number of pages of a particular rule in the *Federal Register* could be related to other factors such as a large number of comments received or an in-depth cost-benefit analysis completed by an agency.

Figure 5 documents the change in the number of pages in the *Federal Register* over time. Corresponding data for **Figure 5** can be found in **Table A-5** in the **Appendix**. As the data show, the number of pages has increased since publication of the *Federal Register* began. After a decades-long increasing trend, the number of pages reached a peak in 1980 at 87,012 pages; decreased to 47,418 pages in 1986; then began to increase again. After being approximately between 65,000 and 85,000 pages for the past two decades, the number of pages reached an all-

[76] For further information on reading and using the *Federal Register*, see this link on the Office of the Federal Register's website: https://www.federalregister.gov/reader-aids.

[77] U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, "Medicare Program; Contract Year 2019 Policy and Technical Changes to the Medicare Advantage, Medicare Cost Plan, Medicare Fee-for-Service, the Medicare Prescription Drug Benefit Programs, and the PACE Program," 83 *Federal Register* 16440, April 16, 2018.

time high of 97,069 in 2016 before falling in 2017—the first year of the Trump Administration—to 61,950.

Figure 5. Total Pages Published Annually in the *Federal Register*, 1936-2018

Source: Office of the Federal Register, Federal Register Statistics, "Federal Register Pages Published 1936-2018," at https://www.federalregister.gov/uploads/2019/04/stats2018Fedreg.pdf.

Figure 6 provides a more rulemaking-specific examination of the total page count provided in **Figure 5** by providing the number of pages in the two rulemaking sections in the *Federal Register*. In addition, **Figure 6** provides data on the number of proposed and final rulemaking documents in the *Federal Register*. Corresponding data for **Figure 6** can be found in **Table A-6**. Data for **Figure 6** begin in 1976 because the Office of the Federal Register's statistics resources begin counting documents by section in 1976.[78]

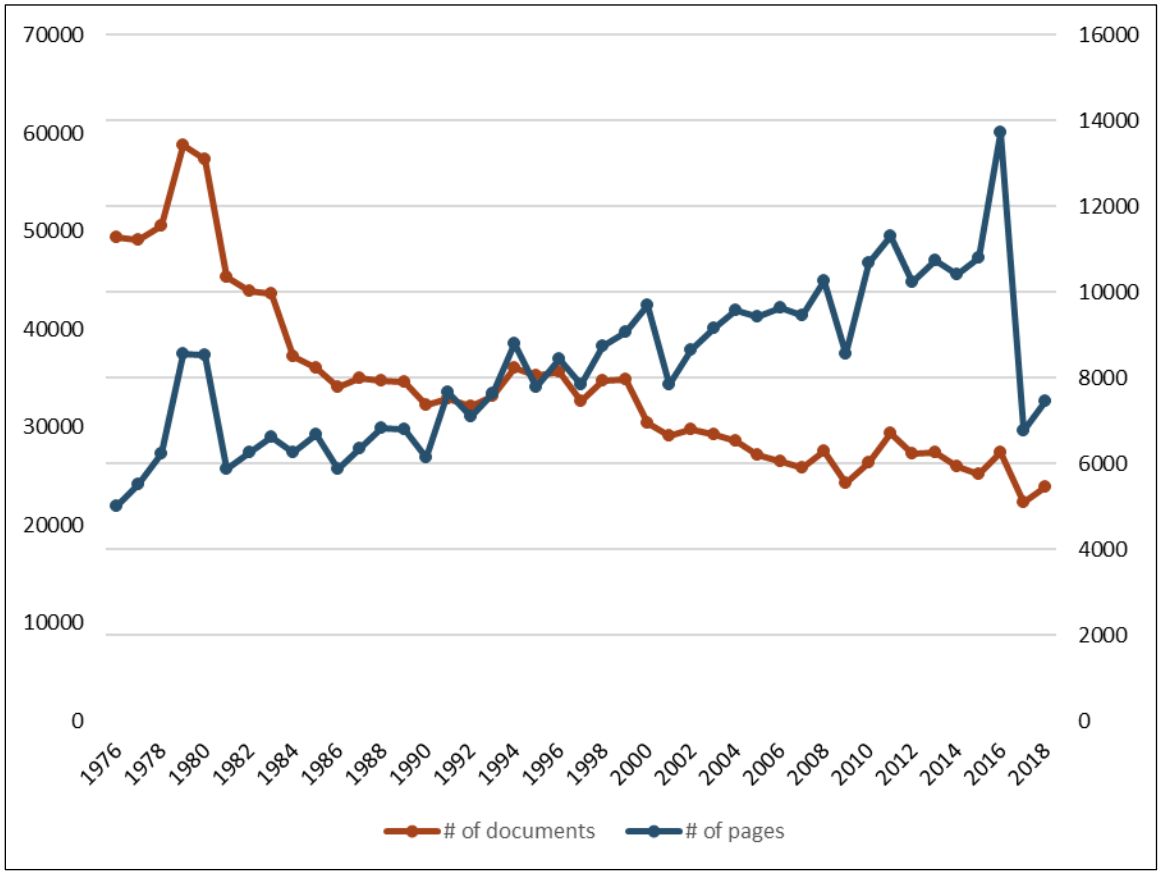
The number of documents published in the proposed rule and final rule sections of the *Federal Register* can be useful for cross-year comparisons. However, as mentioned above, not all of the documents in each of these sections are rules, so these data may not provide a precise indication of how many rules are issued each year or of the total regulatory burden each year. In addition, other types of documents may be included in the proposed and final rules sections of the *Federal Register,* as mentioned above. For example, on May 18, 2018, in the final rules section, the Transportation Security Administration issued a two-page notice that it was "reopening the comment period for the interim final rule … that established the Alien Flight Student Program."[79]

[78] See Office of the Federal Register, Federal Register Statistics, "Federal Register Pages Published 1936-2018," https://www.federalregister.gov/uploads/2019/04/stats2018Fedreg.pdf.

[79] U.S. Department of Homeland Security, Transportation Security Administration, "Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees; Reopening of Comment

Because this action was related to a regulation, the document was published in the final rules section, but the document itself is not a regulation. Finally, as previously mentioned in this report, under the APA's definition of *rulemaking*, an amendment or repeal of a rule is considered a rule.[80] Therefore, some of the pages and documents counted below could be reducing the burden associated with a previously issued rule by amending or repealing the rule.

Figure 6. Number of Pages and Documents of Proposed and Final Rules Published Annually in the *Federal Register*, 1976-2018



Source: Office of the Federal Register, Federal Register Statistics, "Federal Register Pages Published 1936-2018," https://www.federalregister.gov/uploads/2019/04/stats2018Fedreg.pdf.

The general trends for the number of pages and the number of documents appear to be divergent during much of the time for which data are available: The number of pages has generally gone up, while the number of rulemaking documents has gone down, with some exceptions.[81] That these

Period," 83 *Federal Register* 23238, May 18, 2018.

[80] 5 U.S.C. §551(5).

[81] One explanation for this change over time is that agencies are providing increasingly longer discussions to accompany their rules. See, for example, the ossification literature (e.g., Thomas O. McGarity, "Some Thoughts on Deossifying the Rulemaking Process," *Duke Law Journal*, vol. 41, no. 6 (June 1992), pp. 1385-1462; Jason Webb Yackee and Susan Webb Yackee, "Testing the Ossification Thesis: An Empirical Examination of Federal Regulatory Volume and Speed, 1950-1990," *George Washington Law Review*, vol. 80, no. 5 (July 2012), pp. 1414-1492; Richard J. Pierce Jr., "Rulemaking Ossification Is Real: A Response to 'Testing the Ossification Thesis,'" *George Washington Law Review*, vol. 80, no. 5 (July 2012), pp. 1492-1503); and Alec Webley, "Seeing Through a Preamble, Darkly: Administrative Verbosity in an Age of Populism and Fake News," *Administrative Law Review*, vol. 70, no. 1 (Winter 2018), pp. 1-52.

two methods of measuring regulatory content in the *Federal Register* appear to be contradicting one another arguably reflects the fact that such measures are best viewed with caution and not necessarily as an accurate measure of overall regulatory activity.

Appendix. Data and Tables

Table A-1. Final Rule Documents Published in the *Federal Register*, 1976-2018

Year	Final Rule Documents Published in the *Federal Register*
1976	7,401
1977	7,031
1978	7,001
1979	7,611
1980	7,745
1981	6,481
1982	6,288
1983	6,049
1984	5,154
1985	4,843
1986	4,589
1987	4,581
1988	4,697
1989	4,714
1990	4,334
1991	4,416
1992	4,155
1993	4,369
1994	4,867
1995	4,713
1996	4,937
1997	4,584
1998	4,899
1999	4,684
2000	4,313
2001	4,132
2002	4,167
2003	4,148
2004	4,101
2005	3,943
2006	3,718
2007	3,595
2008	3,830

Year	Final Rule Documents Published in the *Federal Register*
2009	3,503
2010	3,573
2011	3,807
2012	3,708
2013	3,659
2014	3,554
2015	3,410
2016	3,853
2017	3,281
2018	3,368

Source: Office of the Federal Register, Federal Register Documents Published 1976-2018, https://www.federalregister.gov/uploads/2019/04/stats2018Fedreg.pdf#page=4.

Table A-2. Number of "Major" Final Rules Published, 1997-2018

Year	Number of "Major" Final Rules
1997	61
1998	76
1999	51
2000	77
2001	70
2002	51
2003	50
2004	66
2005	56
2006	56
2007	61
2008	95
2009	84
2010	100
2011	80
2012	68
2013	81
2014	82
2015	77
2016	119
2017	49

Year	Number of "Major" Final Rules
2018	55

Source: Government Accountability Office's Database of Rules, https://www.gao.gov/legal/other-legal-work/congressional-review-act#database, accessed on July 1, 2019. Data provided are the numbers of major rules published each year in the *Federal Register* and submitted to GAO under Section 801 of the Congressional Review Act, which requires that agencies submit their rules to GAO and to both houses of Congress before they can take effect (5 U.S.C. §§801-808).

Table A-3. Total Number of "Economically Significant" and Non-"Economically Significant" Reviews at OIRA, 1994-2018

Year	"Economically Significant" Reviews	Non-"Economically Significant" Reviews	Total Reviews
1994	134	697	831
1995	74	546	620
1996	74	433	507
1997	81	424	505
1998	73	414	487
1999	86	501	587
2000	92	490	582
2001	111	589	700
2002	100	569	669
2003	101	614	715
2004	85	541	626
2005	82	529	611
2006	71	529	600
2007	85	504	589
2008	135	538	673
2009	125	470	595
2010	138	552	690
2011	117	623	740
2012	83	341	424
2013	105	313	418
2014	114	338	452
2015	130	285	415
2016	156	467	623
2017	70	167	237
2018	91	269	360

Source: Office of Information and Regulatory Affairs' website, https://www.reginfo.gov/public/do/eoCountsSearchInit?action=init; data were retrieved on July 1, 2019.

Notes: The number of economically significant rules reviewed by OIRA in each year is not the same as the number of economically significant rules *issued* in each year. Rules are reviewed at OIRA pursuant to E.O. 12866, issued by President Clinton in September 1993. During the review process, OIRA examines the content of the rule, the cost-benefit analysis conducted by the agency, and whether the rule is consistent with the President's priorities.

Table A-4. Average Number of Days for "Economically Significant" and Non-"Economically Significant" Reviews, 1994-2018

Year	Average Number of Days for "Economically Significant" Reviews	Average Number of Days for Non-"Economically Significant" Reviews	Average Number of Days for Review of All Items
1994	33	30	31
1995	41	35	35
1996	39	42	42
1997	47	54	53
1998	33	50	48
1999	51	53	53
2000	60	62	62
2001	46	60	58
2002	44	46	46
2003	42	50	49
2004	35	55	53
2005	39	59	57
2006	34	59	56
2007	49	64	61
2008	53	63	61
2009	33	40	39
2010	48	51	51
2011	51	60	58
2012	69	81	79
2013	120	143	137
2014	106	134	127
2015	84	90	88
2016	83	79	80
2017	56	74	68
2018	63	68	67

Source: Office of Information and Regulatory Affairs' website, https://www.reginfo.gov/public/do/eoCountsSearchInit?action=init; data were retrieved on July 1, 2019.

Table A-5. Total Number of Pages Published Annually in the *Federal Register*, 1936-2018

Year	Number of Pages
1936	2,620
1937	3,450
1938	3,194
1939	5,007
1940	5,307
1941	6,877
1942	11,134
1943	17,553
1944	15,194
1945	15,508
1946	14,736
1947	8,902
1948	9,608
1949	7,952
1950	9,562
1951	13,175
1952	11,896
1953	8,912
1954	9,910
1955	10,196
1956	10,528
1957	11,156
1958	10,579
1959	11,116
1960	14,479
1961	12,792
1962	13,226
1963	14,842
1964	19,304
1965	17,206
1966	16,850
1967	21,088
1968	20,072
1969	20,466
1970	20,036

Year	Number of Pages
1971	25,447
1972	28,924
1973	35,592
1974	45,422
1975	60,221
1976	57,072
1977	65,603
1978	61,261
1979	77,498
1980	87,012
1981	63,554
1982	58,494
1983	57,704
1984	50,998
1985	53,480
1986	47,418
1987	49,654
1988	53,376
1989	53,842
1990	53,620
1991	67,716
1992	62,928
1993	69,688
1994	68,108
1995	67,518
1996	69,368
1997	68,530
1998	72,356
1999	73,880
2000	83,294
2001	67,702
2002	80,332
2003	75,798
2004	78,852
2005	77,777
2006	78,724
2007	74,408

Year	Number of Pages
2008	80,700
2009	69,643
2010	82,480
2011	82,415
2012	80,050
2013	80,462
2014	78,796
2015	81,402
2016	97,069
2017	61,950
2018	64,582

Source: Office of the Federal Register, Federal Register Statistics, "Federal Register Pages Published 1936-2018," https://www.federalregister.gov/uploads/2019/04/stats2018Fedreg.pdf.

Table A-6. Annual Content of the *Federal Register*: Number of Pages and Number of Proposed and Final Rule Documents, 1976-2018

	Number of Pages Published in the *Federal Register*		Number of Documents Published in the *Federal Register*	
Year	Proposed Rules	Final Rules	Proposed Rules	Final Rules
1976	9,325	12,589	3,875	7,401
1977	9,620	14,572	4,188	7,031
1978	11,885	15,452	4,550	7,001
1979	18,091	19,366	5,824	7,611
1980	16,276	21,092	5,347	7,745
1981	10,433	15,300	3,862	6,481
1982	12,130	15,222	3,729	6,288
1983	12,772	16,196	3,907	6,049
1984	11,972	15,473	3,350	5,154
1985	13,772	15,460	3,381	4,843
1986	11,816	13,904	3,185	4,589
1987	14,181	13,625	3,423	4,581
1988	13,883	16,042	3,240	4,697
1989	13,220	16,489	3,194	4,714
1990	12,692	14,179	3,041	4,334
1991	16,761	16,792	3,099	4,416
1992	15,156	15,921	3,170	4,155
1993	15,410	18,016	3,207	4,369

	Number of Pages Published in the *Federal Register*		Number of Documents Published in the *Federal Register*	
Year	Proposed Rules	Final Rules	Proposed Rules	Final Rules
1994	18,183	20,385	3,372	4,867
1995	15,982	18,047	3,339	4,713
1996	15,369	21,622	3,208	4,937
1997	15,309	18,984	2,881	4,584
1998	18,256	20,029	3,042	4,899
1999	19,447	20,201	3,281	4,684
2000	17,943	24,482	2,636	4,313
2001	14,666	19,643	2,512	4,132
2002	18,640	19,233	2,638	4,167
2003	17,357	22,670	2,538	4,148
2004	19,332	22,546	2,430	4,101
2005	18,260	23,041	2,257	3,943
2006	19,794	22,347	2,346	3,718
2007	18,611	22,771	2,308	3,595
2008	18,648	26,320	2,475	3,830
2009	16,681	20,782	2,044	3,503
2010	21,844	24,914	2,439	3,573
2011	23,193	26,274	2,898	3,807
2012	20,096	24,690	2,517	3,708
2013	20,619	26,417	2,594	3,659
2014	20,731	24,861	2,383	3,554
2015	22,588	24,694	2,342	3,410
2016	21,457	38,652	2,419	3,853
2017	10,892	18,727	1,834	3,281
2018	16,207	16,378	2,098	3,368

Source: Office of the Federal Register, Federal Register Statistics, "Federal Register Pages Published 1936-2018," https://www.federalregister.gov/uploads/2019/04/stats2018Fedreg.pdf.

Author Contact Information

Maeve P. Carey
Specialist in Government Organization and Management
[redacted]@crs.loc.gov, 7-....

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