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

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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 a useful 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 2,500-4,500, 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 costs and benefits 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 included in that total.

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 each year as a measure for the total amount of regulatory activity. Because the *Federal Register* has been in print since the 1930s, the number of pages 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 2015, approximately 30% of the total pages in the *Federal Register* were in the "Rules and Regulations" section, the section in which final rules are published.

This report serves to inform the congressional debate over rulemaking by analyzing different ways to measure 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*.

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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 a useful 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 2,500-4,500, 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.

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 each year as a measure for the total amount of regulatory activity. Because the *Federal Register* has been in print since the 1930s, the number of pages 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. For example, the *Federal Register* contains many other items, not all of which are related to regulations.

This report serves to inform the congressional debate over 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. 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 OMB's Office of Information and Regulatory Affairs (OIRA).[3] When available, data are provided on each type of rule.

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

[1] The terms "rules" and "regulations" 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] Executive Order 12866, "Regulatory Planning and Review," 58 *Federal Register* 51735, October 4, 1993. To view a copy of this order, see http://www.whitehouse.gov/omb/inforeg/eo12866.pdf. "Independent regulatory agencies" are excepted from this requirement; see discussion later in this report in section on "economically significant" rules.

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. In addition, OMB has issued guidance to agencies detailing how some of those requirements should be met. This section of the report briefly describes the significant statutory and executive requirements and guidance documents.

Statutory Requirements

The most significant statute governing the rulemaking process is the Administrative Procedure Act of 1946 (APA).[4] 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."[5] The APA established standards for the issuance of rules using formal rulemaking and informal rulemaking procedures.[6] Informal rulemaking, also known as "notice and comment" rulemaking or "Section 553" rulemaking, is the most common type of rulemaking.

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.[7] 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."[8] 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.[9]

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 process in the decades since enactment of the APA.

- 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.[10] Under the PRA, agencies generally must

[4] P.L. 79-404.

[5] 5 U.S.C. §551(4).

[6] 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).

[7] 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)).

[8] 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.

[9] 5 U.S.C. §553(d)(3).

[10] 44 U.S.C. §§3501-3520. For more information about requirements under the PRA, see CRS Report R40636, *Paperwork Reduction Act (PRA): OMB and Agency Responsibilities and Burden Estimates*, by Curtis W. Copeland and Vanessa K. Burrows. The authors of that report are no longer at CRS; questions about the report's content can be directed to the author of this report.

receive approval from OIRA for information collections from 10 or more nonfederal "persons."[11]

- 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).[12] 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.[13]
- 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.[14] 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."[15]
- 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.[16] 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 one time to overturn a rule.[17]

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[11] A "person" is defined in the act as including individuals, partnerships, associations, corporations, groups, and any element of a state or local government.

[12] 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.

[13] 5 U.S.C. §§609-610.

[14] 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 and Richard S. Beth, or CRS Report RS20058, Unfunded Mandates Reform Act Summarized, by Keith Bea and Richard S. Beth.

[15] 2 U.S.C. §1532(a).

[16] 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: Frequently Asked Questions*, by Maeve P. Carey, Alissa M. Dolan, and Christopher M. Davis. For more detailed information about the CRA's expedited procedures, see CRS Report RL31160, *Disapproval of Regulations by Congress: Procedure Under the Congressional Review Act*, by Richard S. Beth.

[17] In 2001, the 107th Congress disapproved a rule on ergonomics in the workplace. See U.S. Department of Labor, Occupational Safety and Health Administration, "Ergonomics Program," 65 *Federal Register* 68261, November 14, 2000. Many observers suggest that the threat of a presidential veto is the reason it has only been used one time; it may be rather unlikely that the President would sign a resolution disapproving a rule from his own Administration. The ergonomics rule that was overturned was issued in the final days of the Clinton Administration, and President Bush signed the disapproval resolution soon after taking office. However, other observers have suggested that although the CRA has only been used to overturn a rule one time, its existence and the potential threat of its use acts as a check on agencies while they are writing rules.

Executive Branch Requirements and Guidance

In addition to the current statutory requirements for the rulemaking process, Presidents also have issued executive orders and OMB has issued guidance providing requirements and guidelines for agencies to follow when issuing rules.

- **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.[18] It 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.[19] 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."[20] 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.[21] OMB, under President George W. Bush, also provided guidelines for agencies to follow when issuing guidance documents.[22]
- President Barack Obama has issued several executive orders on rulemaking, and his Administration has issued a number of guidance documents for agencies on how best to issue rules. Most importantly, **E.O. 13563** reaffirmed many of the principles of E.O. 12866 and instructed agencies to conduct a retrospective review of their regulations.[23] Following the issuance of E.O. 13563, President

[18] Section 6 of E.O. 12866. The E.O. 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)).

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

[20] 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).

[21] 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 http://www.whitehouse.gov/omb/circulars_a004_a-4/. Circular A-4 has been used by OMB and agencies since it was issued in 2003.

[22] Guidance documents are non-binding and are issued by agencies to inform the public and/or agency staff on the implementation of regulations and statutes. For guidelines on issuing guidance documents that were issued by the Bush Administration, see Memorandum from Rob Portman, Director of the Office of Management and Budget to Heads of Executive Departments and Agencies on Issuance of OMB's Final Bulletin for Agency Good Guidance Practices, January 17, 2007, http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-07.pdf.

[23] Executive Order 13563, "Improving Regulation and Regulatory Review," 76 *Federal Register* 3821, January 18, 2011. For more information on additional Obama Administration regulatory reform initiatives, see http://www.whitehouse.gov/omb/inforeg_regmatters.

Obama issued **E.O. 13579**, requesting that independent regulatory agencies also participate in the retrospective reviews.

Number of Final Rules Published in Recent Years

Table 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.[24] The number provided in the table for each year is the number of documents published in the final rules section of the *Federal Register*.[25]

Table 1. Final Rule Documents Published in the *Federal Register*, 1976-2015

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

[24] A previous version of this report relied upon the GAO Federal Rules Database for the total number of rules published each year. However, GAO informed CRS in a telephone conversation on November 20, 2014, that in recent years, the number of rules that agencies submitted to GAO has decreased, so the numbers from 2012 and after are no longer comparable to the numbers for prior years. The decrease in the number of rules that appear in GAO's database does not appear to apply to "major" rules, which are still reported below in **Table 2**.

[25] Occasionally, a document will be published in the final rules section of the Federal Register that is not an actual rule itself but does relate to a final rule(s). For example, on February 1, 2012, the Coast Guard published a notice of a public meeting and a request for comments in the final rules section of the *Federal Register*. That particular document was not a final rule, though it related to a previously issued proposed rule. U.S. Department of Homeland Security, Coast Guard, "Security Zone; Escorted Vessels in Captain of the Port Ohio Valley Zone," 77 *Federal Register* 4900, February 1, 2012.

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

Source: Office of the Federal Register, Federal Register & CFR Publications Statistics, at https://www.federalregister.gov/uploads/2016/05/docsPercentageChange2015.pdf.

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 April 2, 2013, by the U.S. Coast Guard provided notice of a "temporary deviation from the operating schedule that governs the Third Street Drawbridge across the China Basin, mile 0.0, at San Francisco, CA. The deviation is necessary to allow the public to cross the bridge to participate in the scheduled CycleSF, a community event."[26] Because the change is considered a rule but only has a temporary effect, it does 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*.

The number of regulations issued each year includes both new regulations as well as deregulatory actions. Under the APA, a "rulemaking" is defined as "the agency process for formulating, amending, or repealing a rule," which means that agencies must undertake a regulatory action

[26] U.S. Department of Homeland Security, Coast Guard, "Drawbridge Operation Regulations; China Basin, San Francisco, CA," 78 *Federal Register* 19585, April 2, 2013.

whenever they are issuing a new rule, changing an existing rule, or eliminating a rule.[27] Therefore, not all of the regulations counted in the table above are necessarily new regulatory actions issued by agencies. Some of them could be minor amendments, including technical corrections without substantive change, or they could even include regulatory actions in which agencies are getting rid of regulations or attempting to make regulations less burdensome on the public.

"Major" Rules

As mentioned above, the CRA was enacted in 1996 and established procedures for the 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. Section 804(2) of the CRA also created a category of rules called "major" rules, which are those that the Office of Information and Regulatory Affairs 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.[28]

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. 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. 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.[29]

Table 2 presents the total number of major rules published during each calendar year since 1997, as reported by GAO.[30] 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.

[27] 5 U.S.C. §551(5).

[28] 5 U.S.C. §804(2).

[29] The major rule reports are located at http://www.gao.gov/legal/congressact/majrule.html.

[30] 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.

Table 2. Total Number of "Major" Final Rules Published, 1997-2015

Calendar 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	81
2015	76

Source: Government Accountability Office's Federal Rules http://www.gao.gov/legal/congressional-review-act/overview#fedRulesForm; accessed on September 8, 2016. 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).

A 2011 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.[31] For example, 37 of the rules appeared to be 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. Ten other rules appeared to be major 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). Thirty-nine rules appeared to be major because they were expected to result in at least $100 million in annual benefits, costs, or both.

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

"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.[32]

Under E.O. 12866, agencies (other than independent regulatory agencies) are required to submit rules to OIRA for centralized review that are identified by agencies or determined by OIRA to be "significant." 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."[33]

While the number of major rules is accessible on GAO's Federal Rules Database, 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 receives for review under E.O. 12866.[34] The number of "significant" rules reviewed each year is not 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 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 may give some idea of annual regulatory activity.[35]

Table 3 lists the total number of reviews at OIRA annually from 1994 to 2015, including prerules, proposed rules, interim final rules, final rules, and notices.[36] Data begin in calendar year 1994 because E.O. 12866 was issued near the end of 1993.

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[32] E.O. 12866, §3(f).

[33] E.O. 12866, §6(a)(3)(B).

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

[35] 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 3** do not include any rules issued by independent regulatory agencies.

[36] 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 the Office of Management and Budget, to Heads and Acting Heads of Executive Departments and Agencies, March 4, 2009, http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_fy2009/m09-13.pdf, stating that policy and guidance documents are "subject to OIRA's review under Executive Order 12866."

Table 3. Total Number of Reviews at OIRA, 1994-2015

Calendar Year	Prerule Reviews	Proposed Rule Reviews	Interim Final Rule Reviews	Final Rule Reviews[a]	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
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

Source: The Office of Information and Regulatory Affairs' website, http://www.reginfo.gov/public/do/eoCountsSearchInit?action=init; data were retrieved on September 8, 2016.

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. 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.

a. The numbers in the column entitled "Final Rules Reviewed" include those rules categorized on OIRA's website as "Final Rule No Material Change," which is what agencies use to indicate to OIRA that the rule has been submitted previously under a separate action (as a proposed rule, for example) but has not had any changes since the previous submission.

"Economically Significant" Rules

"Economically significant" rules are those rules that fall into category (1) of "significant" rules, or those 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.[37]

Although the definition of an "economically significant" rule is very similar to the definition of a major rule, the definition of a 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 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.[38]

Table 4 lists the total number of "economically significant" reviews and non-"economically significant" reviews by OIRA each calendar year from 1994 to 2015.[39]

Table 4. Total Number of "Economically Significant" and Non-"Economically Significant" Reviews at OIRA, 1994-2015

Calendar 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

[37] OMB Circular A-4, "Regulatory Analysis," September 17, 2003, http://www.whitehouse.gov/omb/assets/regulatory_matters_pdf/a-4.pdf.

[38] Memorandum from Jacob J. Lew, Director, Office of Management and Budget, to Heads of Departments, Agencies, and Independent Establishments, March 30, 1999, "Guidance for Implementing the Congressional Review Act," p. 5, at http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m99-13.pdf. For further information on the distinction between economically significant and major rules, see the Office of Management and Budget, *Regulatory Impact Analysis: Frequently Asked Questions (FAQs)*, February 7, 2011, pp. 1-2, http://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a004/a-4_FAQ.pdf.

[39] 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.

Calendar Year	"Economically Significant" Reviews	Non-"Economically Significant" Reviews	Total Reviews
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

Source: The Office of Information and Regulatory Affairs' website, http://www.reginfo.gov/public/do/eoCountsSearch; data were retrieved on September 8, 2016.

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, 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.

The table refers to reviews, not just rules, because OIRA also reviews some agency guidance documents. In some cases, agencies may submit a single rule to OIRA for review more than one time in a year.

Finally, **Table 5** lists the average review times for "economically significant" and non-"economically significant" reviews from 1994 to 2015. Under E.O. 12866, OIRA has the responsibility to meet certain timelines for review of regulatory actions. For notices of inquiry, advanced notices of proposed rulemaking, or other "preliminary" regulatory actions, OIRA must respond to the agency within 10 working days.[40] For other regulatory actions such as proposed and final rules, OIRA has 90 calendar days in which to review rules.[41] However, there are no consequences in the order if OIRA fails to meet the deadline for review.

In general, since 1996, the average time to review "economically significant" rules has been shorter than for non-"economically significant" rules. One possible explanation for this trend is that "economically significant" rules might be of higher salience and 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

[40] Section 6(b)(2)(A) of E.O. 12866.

[41] Section 6(b)(2)(B) of E.O. 12866. 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. Section 6(b)(2)(B) of E.O. 12866 establishes a possible extension of the review process. Upon the written approval of the Director of OMB, such review can be extended by 30 days. Alternatively, the agency head can request to extend the review process for an unspecified length of time.

receipt of the rule. As a result, much of the work that goes into reviewing economically significant rules may take place in advance.[42]

Table 5. Average Number of Days for "Economically Significant" and Non-"Economically Significant" Reviews, 1994-2015

Calendar 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

Source: The Office of Information and Regulatory Affairs' website; http://www.reginfo.gov/public/do/eoCountsSearch; data were retrieved on September 8, 2016.

[42] 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," 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.

Rules Issued Without Notice and Comment Under "Good Cause"

As described above, under the APA, agencies are generally required to undergo some basic steps 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.[43]

The APA allows for an exception to two of these requirements if an agency has "good cause": the agency can issue a rule without notice and comment,[44] or it can waive the 30-day waiting period before the rule can take effect.[45] The agency must give supporting reasons for invoking the good cause exception, and its use of good cause is subject to judicial review.[46] Proper use of the good cause exception must reflect that following the typical notice-and-comment procedures are "impracticable, unnecessary, or contrary to the public interest."

"Interim Final" Rules

One use of the good cause exception allows agencies to issue "interim final" rules. 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.

"Direct Final" Rules

Federal agencies sometimes invoke another use of the good cause exception to engage in "direct final" rulemaking. "Direct final" rulemaking is used when an agency deems a rule to be routine or noncontroversial. Under "direct final" rulemaking, an agency will issue a final rule without prior notice and comment. The rule may take effect unless at least one adverse comment is received by the agency, in which case the agency must withdraw the rule and proceed with the normal notice and comment procedures. If no adverse comments are received, the rule will become effective.[47]

Number of Pages and Documents in the *Federal Register*

Under the APA, agencies are required to publish proposed and final rules in the *Federal Register*.[48] Agencies also publish other items related to regulations in the *Federal Register*, such

[43] 5 U.S.C. §553.

[44] 5 U.S.C. §553(b)(3)(B).

[45] 5 U.S.C. §553(d)(3).

[46] For more information about rulemaking and judicial review, see CRS Report R41546, *A Brief Overview of Rulemaking and Judicial Review*, by Todd Garvey and Daniel T. Shedd.

[47] For more information on direct final rules, see Administrative Conference of the United States (ACUS) Recommendation 95-4, available at http://www.law.fsu.edu/library/admin/acus/305954.html.

[48] 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 and Daniel T. Shedd.

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 a proxy measure for the total amount of regulatory activity.[49] The number of pages in the *Federal Register,* however, may not be an accurate proxy for regulatory activity or measure of 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 as a result of the increasing number of administrative actions, laws, and regulations associated with the New Deal. 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.[50] Many statutes that Congress passed granted rulemaking authority to these new federal agencies. To create a centralized mechanism for documenting the increasing number of rules and administrative actions, 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.

The 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 other non-regulatory activities as well. For example, in 2015, approximately 30% 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, these additional sections typically have little, if anything, 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.

Second, while the *Federal Register* provides a compilation of governmental activity that occurs each year, including new regulations that are issued, 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

[49] 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.

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

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 January 25, 2013, by the Department of Health and Human Services pursuant to the Affordable Care Act modifying Health Insurance Portability and Accountability Act (HIPAA) and other regulations was 137 pages in total.[51] Of the 137 pages, 121 pages comprised the preamble and 16 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 and a list of the associated information collections.

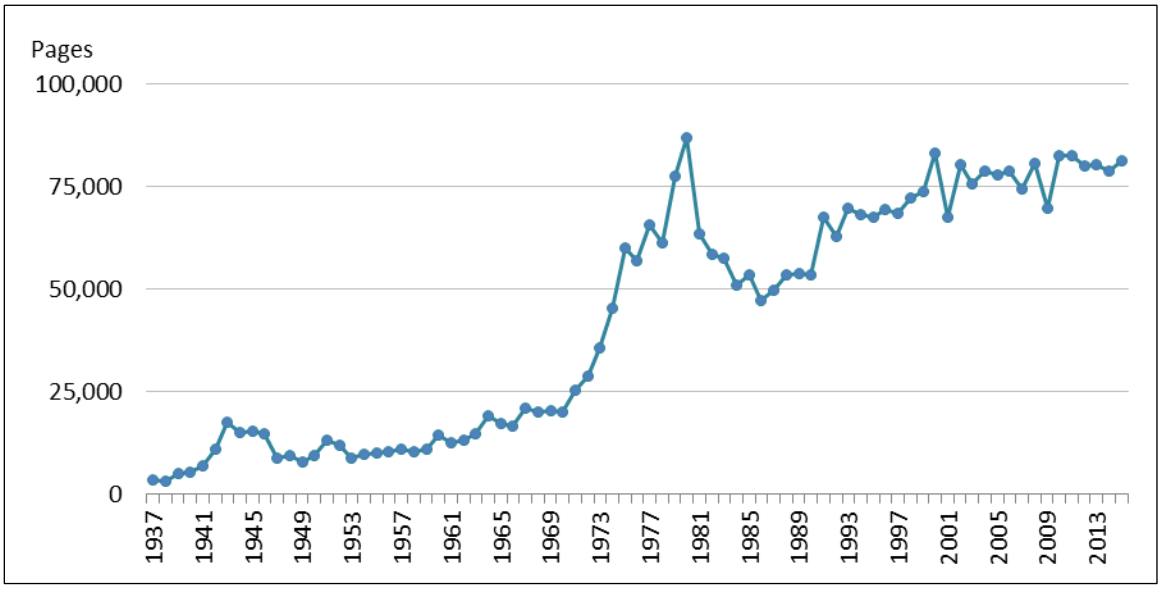
Finally, the number of pages in the *Federal Register* may also not be an accurate reflection of the amount of regulatory burden that stems from a rule. For example, a short rule could impose a very large burden on a large number of regulated entities. On the other hand, a lengthy rule could contain 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 1 documents the change in the number of pages in the *Federal Register* over time. As the data show, the number of pages has increased since publication of the *Federal Register* began.[52] The number of pages reached a peak in 1980 at 87,012 pages; decreased to 47,418 pages in 1986; then increased again and has been approximately between 65,000 and 85,000 pages for the past two decades.

[51] Department of Health and Human Services, "Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules," 78 *Federal Register* 5566, January 25, 2013.

[52] Office of the Federal Register, Federal Register & CFR Publications Statistics, at https://www.federalregister.gov/uploads/2016/05/stats2015Fedreg.pdf.

Figure 1. Number of Pages Published Annually in the *Federal Register*, 1937-2015



Source: Office of the Federal Register, Federal Register & CFR Publications Statistics, at https://www.federalregister.gov/uploads/2016/05/stats2015Fedreg.pdf.

Table 6 provides a more detailed examination of the total page count provided in **Figure 1** and provides information on the number of pages in each rulemaking section in the *Federal Register*. In addition, **Table 6** provides data on the number of rulemaking documents in each section of the *Federal Register*. Data were obtained from the Office of the Federal Register and, at the time of writing of this report, were available from 1976 through 2015.

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 count of how many rules are issued each year or of the total regulatory burden each year.

Other types of documents may also be included in the proposed and final rules sections of the *Federal Register,* as mentioned above. For example, on August 6, 2012, in the final rules section, the Federal Motor Carrier Safety Administration issued a two-page "Notice of public listening sessions and extension of comment period."[53] 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 previous mentioned in this report, under the APA's definition of "rulemaking," an amendment or repeal of a rule is considered a rule.[54] 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.

[53] Department of Transportation, Federal Motor Carrier Safety Administration, "Notice of Public Listening Sessions and Extension of Comment Period: House of Service of Drivers of Commercial Motor Vehicles; Regulatory Guidance for Oil Field Exceptions," 77 *Federal Register* 46640, August 6, 2012.

[54] 5 U.S.C. §551(5).

Table 6. Annual Content of the *Federal Register*: Number of Pages and Number of Documents, 1976-2015

	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
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

	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**
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

Source: Office of the Federal Register, Federal Register & CFR Publications Statistics, at https://www.federalregister.gov/uploads/2016/05/stats2015Fedreg.pdf.

Author Information

Maeve P. Carey
Specialist in Government Organization and Management

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