

Tens of Thousands of Pages and Rules in the *Federal Register*

The *Federal Register* is the daily repository of all proposed and final federal rules and regulations.⁴²⁰ Although its number of pages is often cited as a measure of regulation's scope, there are problems with relying on page counts. A short rule may be costly, while a lengthy one may be relatively cheap. The *Federal Register* also contains many administrative notices, corrections, rules relating to the governance of federal programs and budgets, presidential statements, and other material. These all contribute bulk and bear some relation to the flow of regulation, but they are not strictly regulations. Blank pages, skips, and corrections also affect page counts. In previous decades, blank pages numbered into the thousands owing to the Government Publishing Office's imperfect estimation of the number of pages that agencies would require for publishing rules.

While the *Register* has always been known as the primary document cataloging regulations, it has recently chronicled their reduction, although a look at the daily *Federal Register* may not give that impression. Reducing regulations requires writing rules too, which can make the *Federal Register* still grow. Shortcomings notwithstanding, it is worthwhile to track the *Federal Register*'s page counts, and under the Biden administration, offsetting deregulatory rules are no longer part of the bulk.

Federal Register Pages Up 41 Percent between Trump Years One and Four

On December 31, 2021, the *Federal Register* closed out at 74,532 pages, a figure that will

adjust downward slightly in the final National Archives reckoning and be taken into account later.⁴²¹

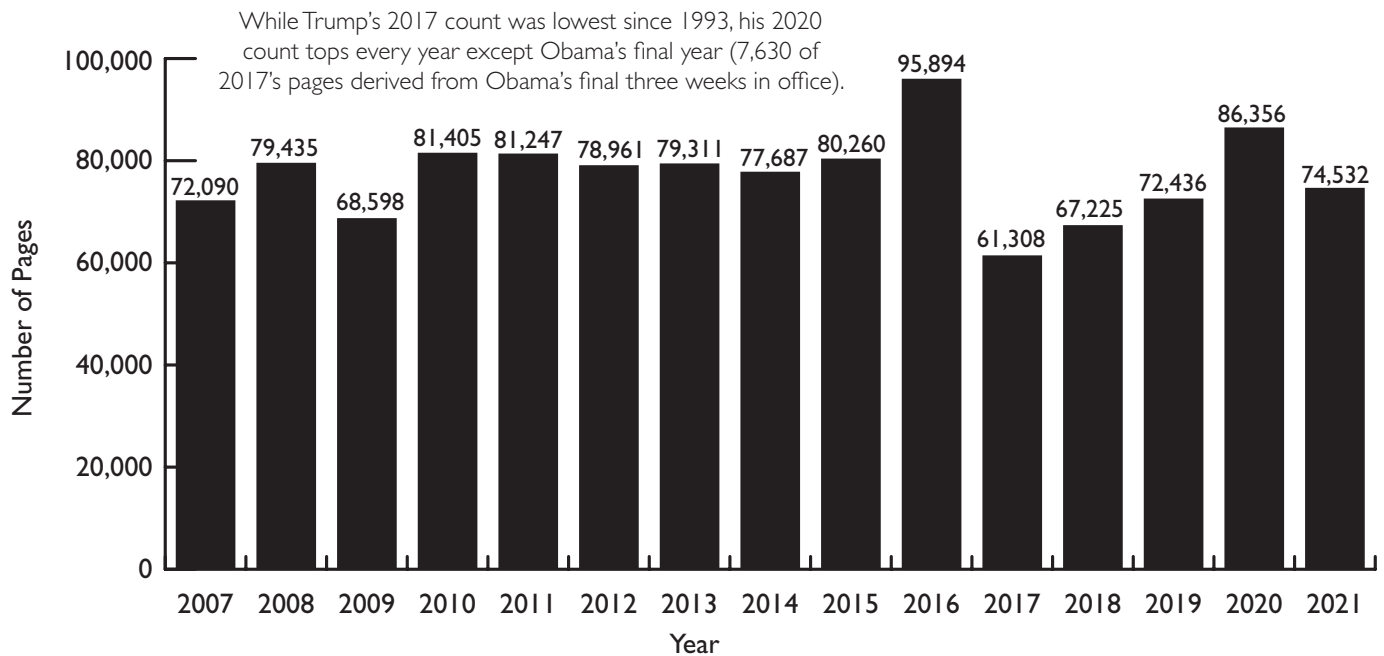
We can compare Biden's first year with two extremes, high and low. At the end of 2016, Obama's final calendar year, the number of *Federal Register* pages stood at 95,854, which at the time was the highest level in the history of the *Federal Register*. Conversely, the first calendar year of the Trump administration finished with 61,308 pages in the *Federal Register* (see Figure 9). The last time the annual page count had been that low was in 1993, at 61,166 pages, during the Clinton administration. By the time Trump was inaugurated on January 20, 2017, the Obama administration had already added 7,630 pages to the *Federal Register*, making Trump's "net" page count 53,678.⁴²²

Trump's page count rose after 2017. Trump's 2020 *Federal Register* tally of 86,356 pages stood a striking 41 percent above his first-year count, and represented the second-highest count of all time (merely 10 percent below Obama's record).⁴²³ The bulk of that was partly attributable to the one-rule-in, two-rules-out program and rewrites of major rules. The expansion of *Register* pages under Trump illustrates the aforementioned shortcomings of employing page numbers as a metric for regulation. Offsetting the typical implication that an increase in *Federal Register* pages implies an increase in regulation is the fact that to eliminate a rule, agencies need to overwrite it with another rule.

Biden's preliminary 2021 count of 74,532 is nearly 14 percent lower than Trump's final count (6,242 pages between January 1 and

*A short rule may
be costly, while a
lengthy one may
be relatively
cheap.*

Figure 9. Number of *Federal Register* Pages, 2007–2021



Source: National Archives and Records Administration, Office of the Federal Register.

A drop in page counts between administrations is typical, as new presidents freeze the pipeline at least temporarily and kick off their own priorities.

Biden's inauguration on January 20 also belong to Trump). The resulting "net" for Biden of 68,290 pages is lower than all but Trump's first year and otherwise the lowest since 2001.

A drop in page counts between administrations is typical, as new presidents freeze the pipeline at least temporarily and kick off their own priorities. Trump's 2017 count had been 36 percent below that Obama record. The last time a drop in *Federal Register* page counts of that magnitude happened was when Ronald Reagan reduced the count from Jimmy Carter's 73,258 in 1980 to 44,812 by 1986, but that 28,446-page drop took five years to materialize.⁴²⁴ Biden's 14 percent decrease from Trump compares blossoming apples of new regulation to the oranges of attempted streamlining.

Figure 9 captures the prior all-time record years of 2010 and 2011, at 81,405 and 81,247, respectively. Of the 10 all-time high *Federal Register* page counts, six occurred during the Obama administration. (For a history of *Federal Register* page totals

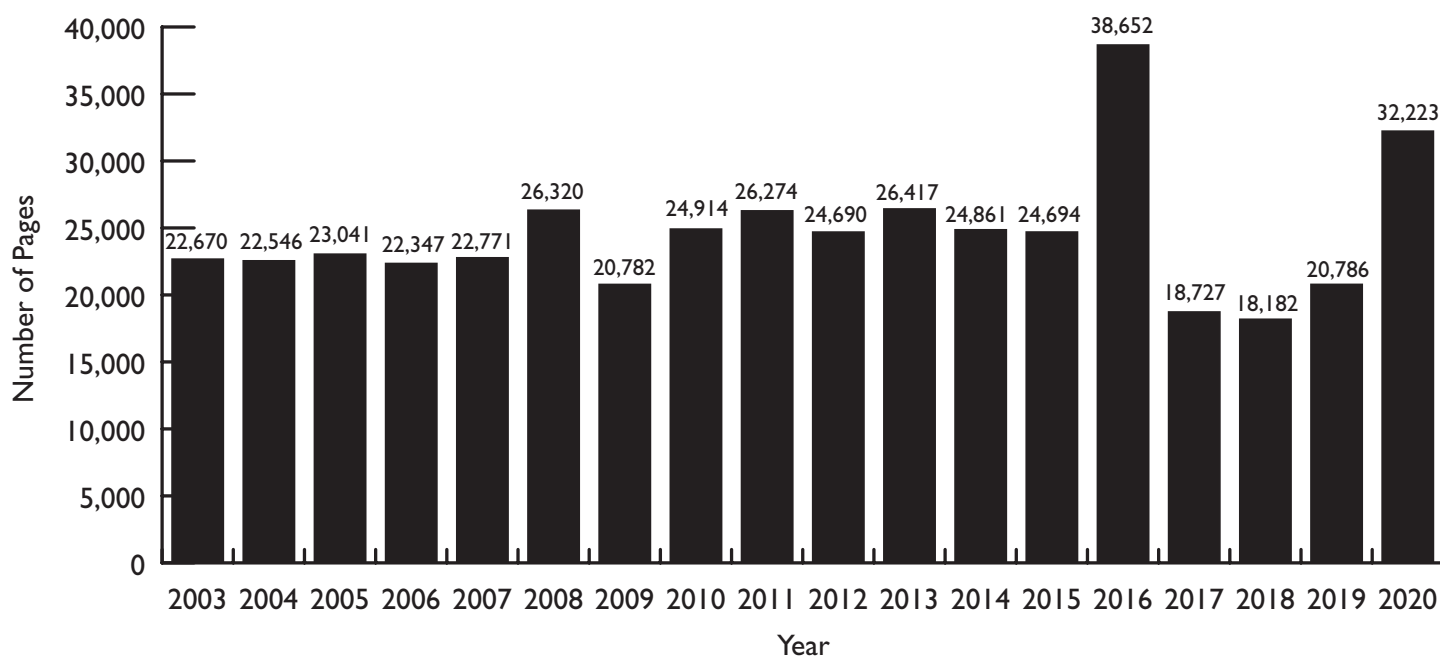
since 1936, see Appendix: Historical Tables, Part A.)

Federal Register Pages Devoted to Final Rules

Isolating the pages devoted to *final* rules might be more informative than gross page counts, since doing so omits pages dedicated to proposed rules, agency notices, corrections, and presidential documents (although those can also have regulatory effects).

The number of pages devoted to final rules from Biden's first year is not available as of this writing. However, in 2018 it stood at 16,378, the lowest count since 1992. In contrast, Trump's final year set the second-highest count of all time at 32,223. Naturally, some rules are bulkier than others. Trump's streamlining-oriented Safer Affordable Fuel-Efficient, or SAFE, Vehicles Rule for Model Years 2021–2026 alone clocked in at 1,105 pages.⁴²⁵

Figure 10. *Federal Register* Pages Devoted to Final Rules, 2003–2020



Source: National Archives and Records Administration, Office of the Federal Register.

The—perhaps unexpected—55 percent jump between 2019 and 2020 and the 56 percent jump between 2015 to 2016 under Obama stand out in Figure 10. Obama’s 2016 record shattered 2013’s then-peak of 26,417 by 46 percent. Those bursts under both Obama and Trump are consistent with the longstanding bipartisan midnight rule tradition (arguably in part deregulatory in Trump’s case). Also notable is the drop of 51 percent between Obama and Trump; the drop between Trump and Biden remains to be seen.

Although there are more relevant measures than page counts of final rules to account for actual effects or burdens, for page counts to drop so steeply between administrations, or to jump at transition time, is significant.

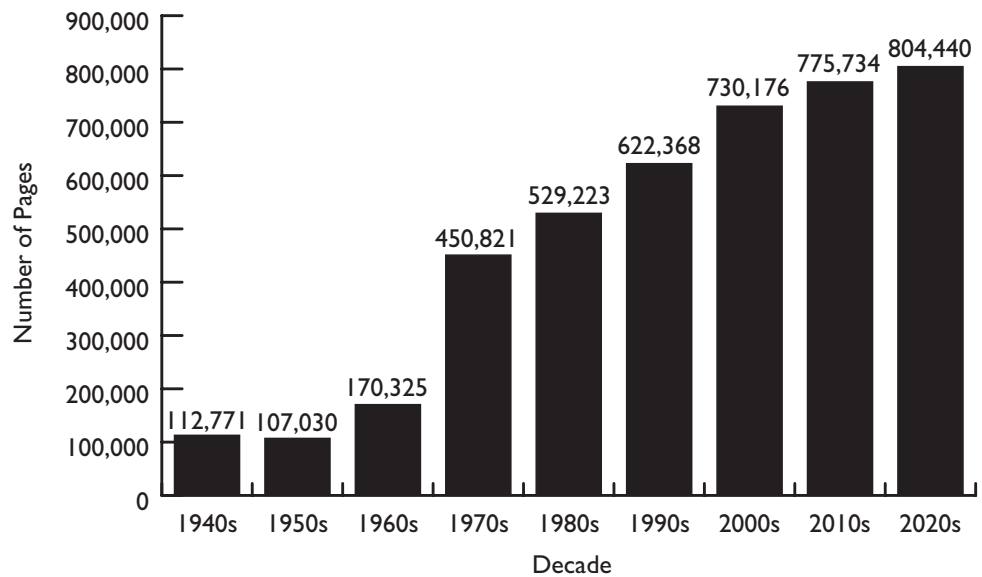
Also relevant to the discussion about monitoring future regulatory costs are the pages of proposed, as opposed to final, rules in the regulatory pipeline. These can be a leading indicator heralding growth or decline in the number of future final rules. While not depicted here, the number of pages devoted

to proposed rules peaked at 23,193 in 2011, while Obama’s final page count of proposed rules was 21,457 in 2016. Under Trump, *Federal Register* pages devoted to proposed rules in 2017 cratered to 10,892—half the level of Obama’s concluding years and the lowest since 1981. These rose to 17,246 in 2018. At the end of 2020, the number of that year’s *Federal Register* pages devoted to proposed rules stood at 19,984. For comparison, all Obama years, apart from the first, exceeded 20,000.

***Federal Register* Pages Published by Decade**

Still another way of looking at *Federal Register* trends is by pages per decade (see Figure 11). Even with Trump-era rule reductions, a hefty jump over the prior decade is apparent. The second-to-last bar of Figure 11 shows that the just-ended decade of the 2010s saw 775,734 new *Federal Register* pages, for an average of 77,573 pages added per year.

Figure 11. *Federal Register* Pages per Decade
775,734 Pages Published in the 2010s



Source: National Archives and Records Administration, Office of the Federal Register.

2000–2019 averaged 77,573 annual pages.

The prior decade had yielded 730,176 pages and an average of 73,018 pages per year. Trump’s final year total and Biden’s first year total of *Federal Register* pages averages out to 80,444 pages per year. Figure 11 extrapolates that for the decade, implying that one might expect at least 804,440 pages in the current decade, and perhaps expect them to top a cumulative 1 million, given increases seen over the prior decades. That expectation is reinforced by the shift in federal regulatory policy asserted in Biden’s “Modernizing Regulatory Review” directive,⁴²⁶ “climate crisis” regulatory campaign,⁴²⁷ and Inflation Reduction Act-related spending and regulation.

Number of Final and Proposed Rules in the *Federal Register*

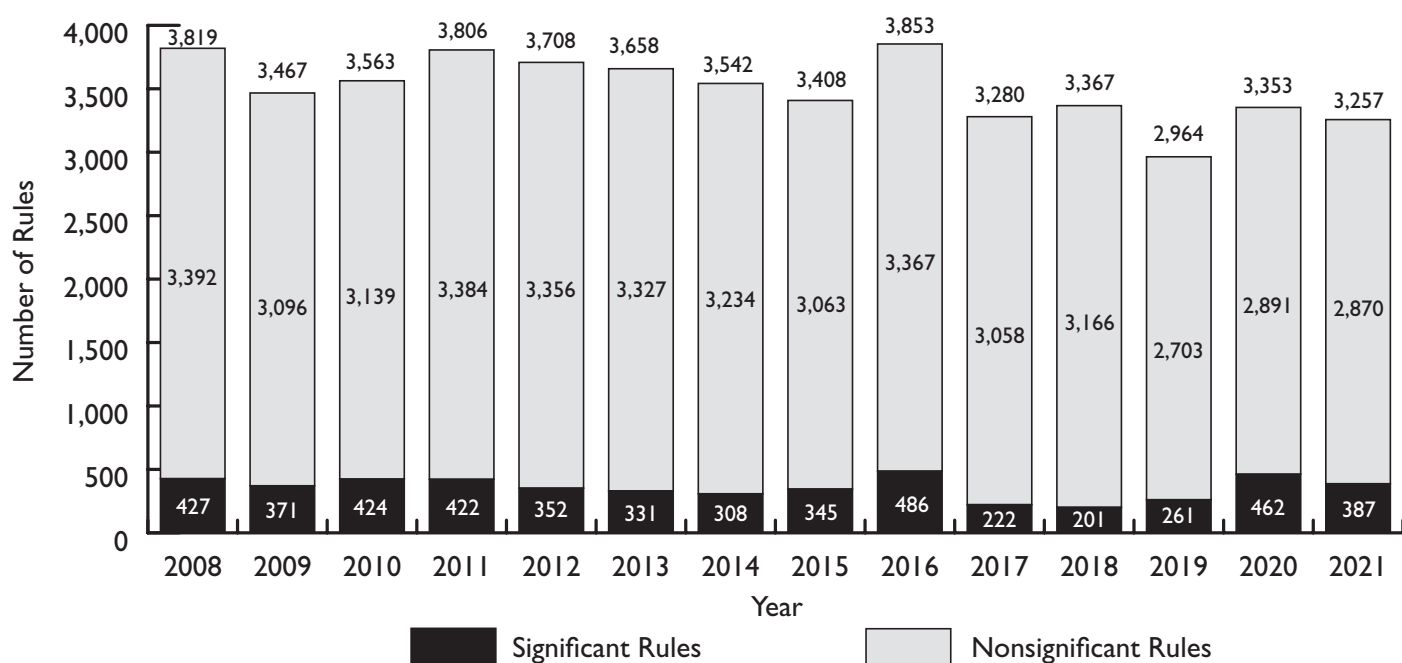
While rules are an important gauge of regulation, they are becoming increasingly less definitive, as guidance documents and sub-regulatory pen-and-phone decrees assume prominence. The 74,532 pages in the *Federal*

Register in 2021 yielded 3,257 final rules, one of the lowest levels ever (see Figure 12). That’s 96 fewer than the 3,353 final rules issued during the Trump administration’s final year.

Despite the noted emergence of a near-record 2020 *Federal Register*, the Trump administration managed to reduce the annual number of rulemakings in each of its four years to the lowest levels then recorded. Biden’s count is also a record low, although his administration’s rules have had no deregulatory objectives. Even with Trump’s record 86,356 *Federal Register* page count upon exit, until Biden, his 3,353-rule tally (again, some deregulatory) was lower than every other president since record keeping began in the 1970s. Biden’s low count can be regarded as offset by the approximately 202 final rules (some of which were deregulatory) attributable to Trump between New Year’s Day and Inauguration Day in 2021, which, subtracted from Biden’s 3,257, gives Biden a net of 3,055 rules.

Trump’s lower counts and deregulatory intent were major defining elements of his admin-

Figure 12. Number of Final Rules in the *Federal Register*, 2008–2021



Source: Compiled by author using *Federal Register*.

istration, and along with Biden's low tally, stand out in Figure 12. Under Trump, final rules dipped to 3,280 in 2017, the then-lowest count since records began being kept. Additionally, Obama had issued 207 rules in January 2017 before Trump's inauguration, leaving Trump with a "net" of 3,074 at the time.⁴²⁸ Trump's 2,964 rules in 2019 (again, some deregulatory in character that would nonetheless increase final rule counts) made for the lowest rule count ever, and the only count below 3,000 since record keeping began in the 1970s. The midnight rule flurry notwithstanding, even Trump's bloated final tally was exceeded by all other presidents apart from Biden. The *Federal Register* does not distinguish between rules that are regulatory or intended to be deregulatory, nor was there direct mapping between the Unified Agenda's deregulatory items and the *Register* during the Trump years. Trump's slowed pace of traditional rulemaking was offset by his affinity for regulations in antitrust, trade, tech policy, family leave, social policy, and other areas that may not appear as rules in the *Federal Register*, and are not readily tracked in OMB reviews.

The Inflation Reduction Act is similarly apt to be absent or immune from OMB tracking.

The number of final rules currently being published is lower than it was throughout the 1990s, when the average annual total of final regulations was 4,613. The average for the period 2000–2009 was 3,984. A trend toward fewer but larger rules may be underway, perhaps partly supplemented with sub-regulatory guidance.⁴²⁹ In 2016, the final full year of the Obama administration, the number of final rules published in the *Federal Register* reached 3,853. That was the Obama administration's highest total and the highest level since 2005. Even Trump's highest counts, and Biden's first year, fall well below those levels. Of course, not all rules are created equal, and fewer of Obama's rules and even fewer of Biden's would be expected to have been devoted to streamlining like Trump's one-in, two-out directive. (For the numbers of proposed and final rules, "significant" proposed and final rules, and other documents issued in the *Federal Register* since 1976, see Appendix: Historical Tables, Part B.)

Trump's slowed pace of traditional rulemaking was offset by his affinity for regulations in antitrust, trade, tech policy, family leave, social policy, and other areas.

The fact that records of proposed and final rules were not kept until the latter half of the 1970s is indicative of the need for greater regulatory accountability.

Among the thousands of rules each year, a subset designated “economically significant” are those deemed to impose \$100 million in annual effects; these will be addressed in the upcoming discussion of the Unified Agenda of regulations.⁴³⁰ Rules deemed “significant” under Executive Order 12866 are depicted in Figure 12. Among Biden’s 3,257 rules, 387, or 12 percent, were deemed significant. Biden’s significant rule counts appear to be edging back up to the levels seen during the Obama and Bush administrations after the Trump reprieve. The highest count of significant rules over the past two decades was in 2016 under Obama, when, among 3,853 final rules, 486 were deemed “significant.” While several hundred “significant” final rules each year are common, that changed under the Trump administration. Pre-inauguration months aside, Obama’s eight years brought 3,039 significant rules, an annual average of 380, which is close to Biden’s 387 in 2021. Trump, on the other hand, issued a total of 1,146 significant rules, which amounts to an annual average of 287, with 68 percent of them occurring in the final “midnight” year alone.⁴³¹

While the Trump administration’s emphasis was often on significant rules and their removal, such rules were still implemented during Trump’s tenure. Yet a lower base level of rulemaking, significant and non-significant, prevailed that will merit future comparison with not just predecessors but also successors.⁴³²

More detailed analysis of proposed rules, on an ongoing basis, can add some clarity to future expected regulatory cost burdens. Stopping or slowing incomplete proposed rules in the pipeline is easily done, and all recent presidents have done so, which is easier than eliminating existing rules. Figure 13 surveys proposed rules for recent years.

The year 2021 concluded with 2,094 proposed rules in the *Federal Register*, 272 of them deemed significant. Some of these appeared through January 19, the Trump administration’s last day, giving Biden a lower net mirroring the 2009 drop seen in Figure 13 during Obama’s first year. In Obama’s final year of 2016, 2,391 proposed rules ap-

peared in the *Federal Register* (Figure 13). In Trump’s first year, the proposed rule count fell to 1,837 (including the approximately 156 issued by Obama during the first three weeks of 2017), a tally that remains the lowest since record keeping began in the 1970s.

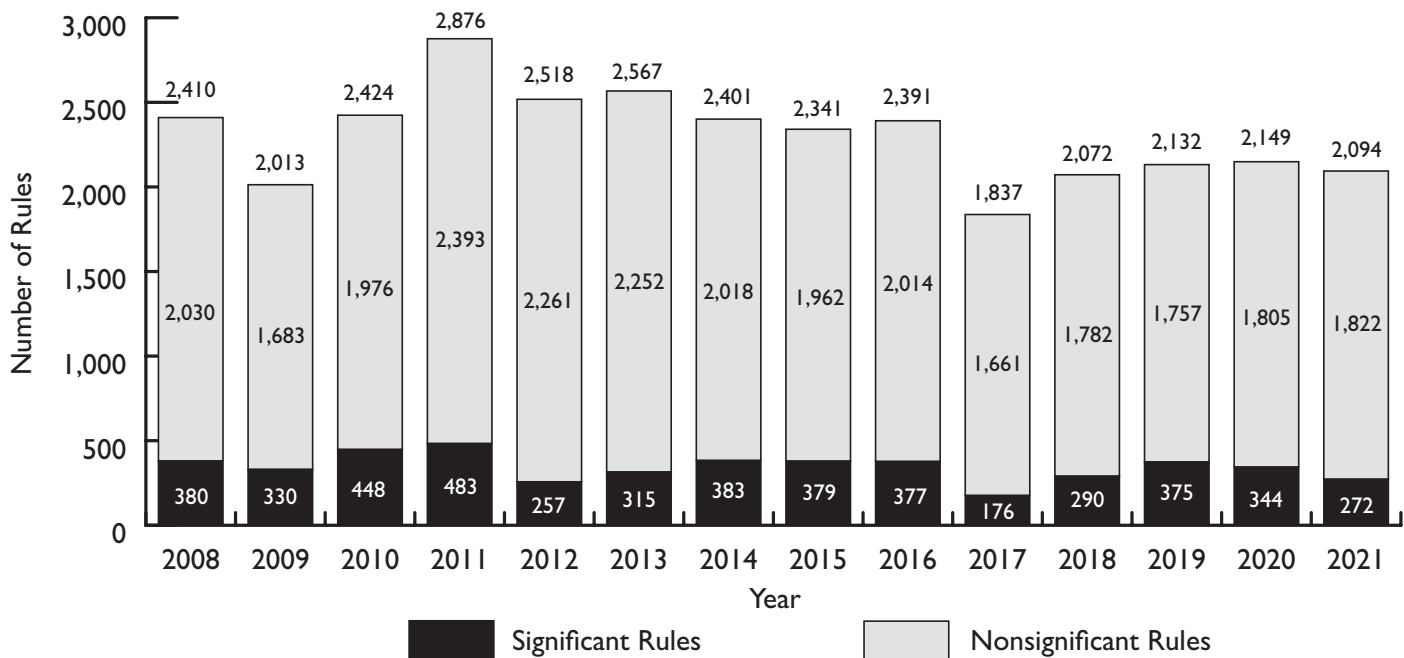
Significant proposed rules in the Trump years made up a hefty percentage of the total proposed, as did those of other administrations, but these did not materialize as higher numbers of final regulatory rulings for Trump, as the foregoing discussion on final rules covered.⁴³³ Trump’s midnight rule activity in 2020 notwithstanding, his levels of proposed rules, which averaged 2,048 annually, never attained the heights of the earlier Obama and Bush years depicted in Figure 13 (apart from the 2009 Obama count of 2013). Indeed, in previous decades, considerably greater numbers of proposed rules appeared in the annual pipeline. The average in the 1990s was 3,150 per year; the average in the 2000s was 2,689 annually (see Appendix: Historical Tables, Part B). Based on agencies’ Unified Agenda contributions in 2021, the Heritage Foundation notes the presence of dozens of noteworthy rules anticipated but not yet proposed and with variable timelines in five common categories: (a) education, (b) energy and environment, (c) financial, (d) labor and housing, and (e) miscellaneous.⁴³⁴ Some of these seek fulfillment of progressive aims like student loan debt relief; corporate board diversity; financial institution lending disclosures; housing policy; energy efficiency mandates; restrictions on coal, oil, and gas leasing; and other environmental regulations.

The fact that records of proposed and final rules were not kept until the latter half of the 1970s—three decades after the Administrative Procedure Act became law—is indicative of the need for greater regulatory accountability.

Cumulative Final Rules in the *Federal Register*

As noted, Biden’s recent 2021 final rule count of 3,257 was lower than Trump’s final

Figure 13. Number of Proposed Rules in the *Federal Register*, 2008–2021



Source: Compiled by author using *Federal Register*.

year flurry, while Trump’s 2019 final rule count of 2,964 is the only rule count below 3,000. The annual outflow of over 3,000 final rules has resulted in the issuance of 114,821 rules since 1993—when the first edition of *Ten Thousand Commandments* was published—through the end of 2021 (see Figure 14). Since 1976, when the *Federal Register* first began itemizing rules, 211,911 have been issued (see Appendix: Historical Tables, Part B). Since 1996, the year the Congressional Review Act was passed, 95,848 rules have been issued. The 20 rules repealed thus far by Congressional Review Act resolutions of disapproval represent only 0.02 percent of the total number of rules issued to date.⁴³⁵

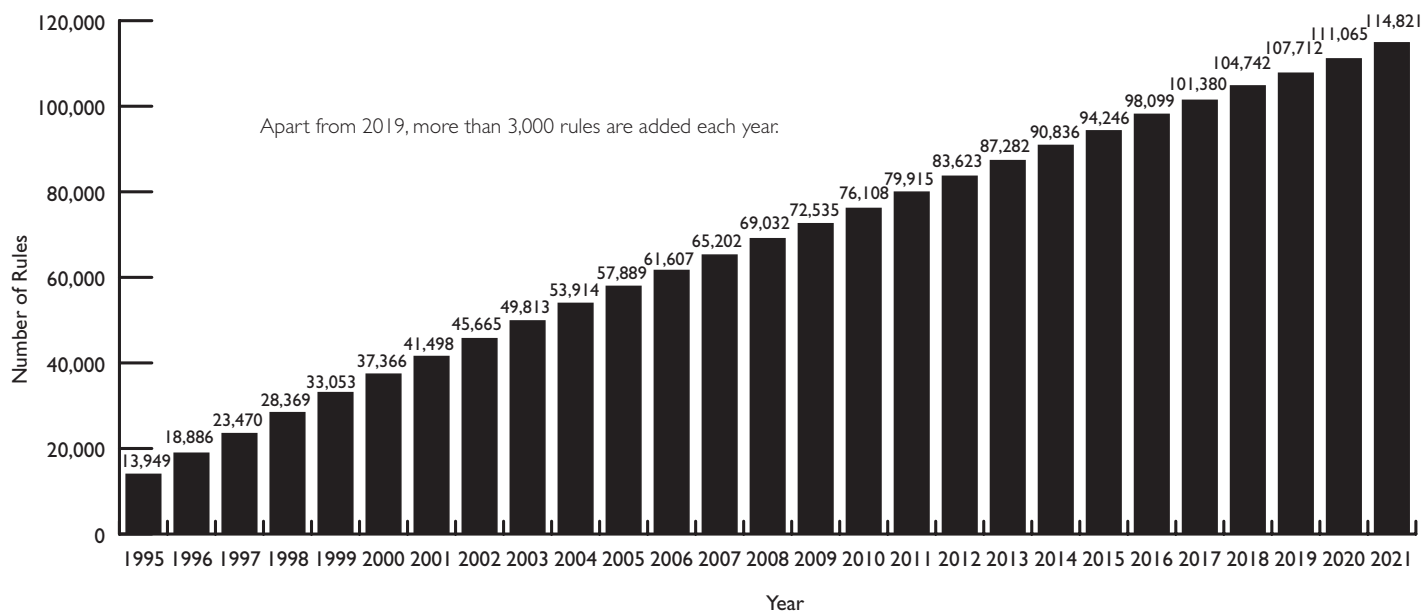
The Expanding Code of Federal Regulations

The page count for final rules in the *Code of Federal Regulations* (CFR) is not as dramatic

as the yearly count of tens of thousands of pages in the *Federal Register*, but it is still considerable. In 1960, the CFR contained 22,877 pages. Since 1975 until the end of 2019, its total page count had grown from 71,224 to 185,984, including the index—a 161 percent increase. As of the end of 2019, the number of CFR bound volumes stood at 242, compared with 133 in 1975. (See Figure 15. For the detailed breakdown numbers of pages and volumes in the CFR since 1975, see Appendix: Historical Tables, Part C.)

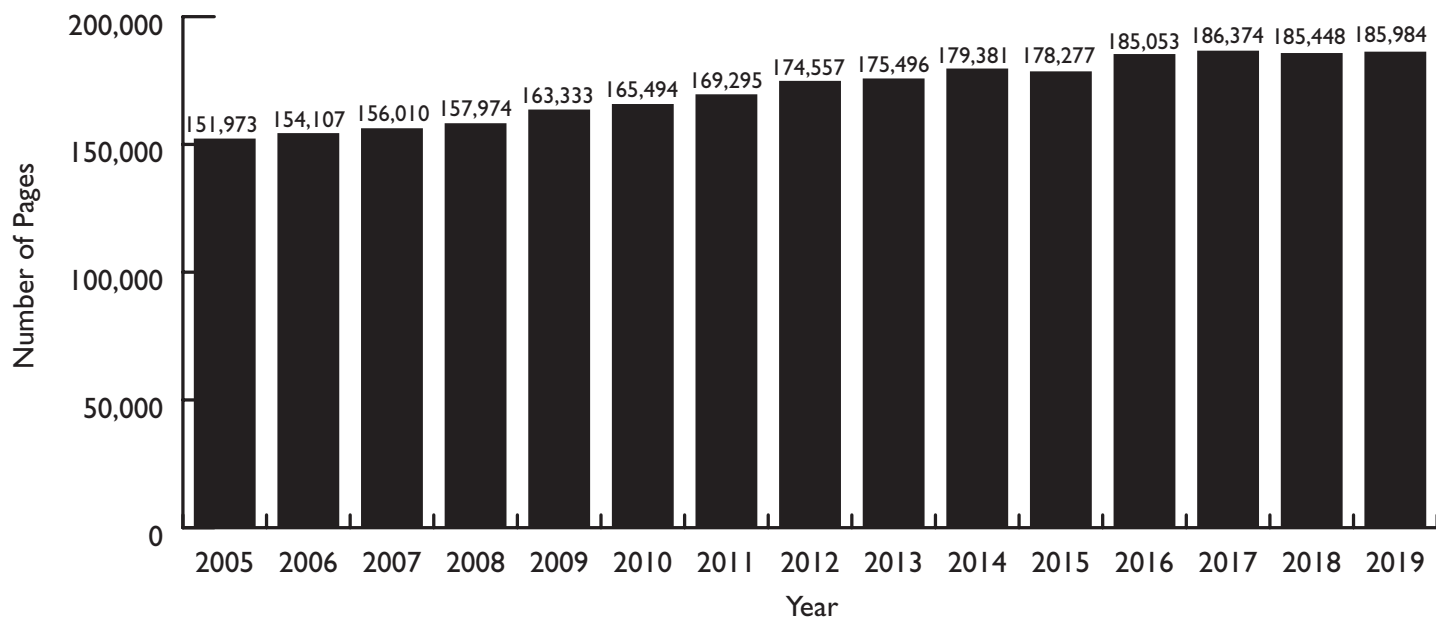
As noted, in recent years, traditional rules and regulations have been supplemented in significant part by various forms of executive actions and regulatory guidance documents. Those are important to track, but there is no CFR-style repository for them. Trump’s 2020 Executive Order 13981, “Promoting the Rule of Law through Improved Agency Guidance Documents,” began the process of creating an inventory, but Biden interrupted that effort.⁴³⁶

Figure 14. Accumulation of Final Rules Published in the *Federal Register*, 1995–2021



Source: National Archives and Records Administration, Office of the Federal Register.

Figure 15. *Code of Federal Regulations*, 185,984 Total Pages in 2019, 2005–2019



Source: National Archives and Records Administration, Office of the Federal Register.