

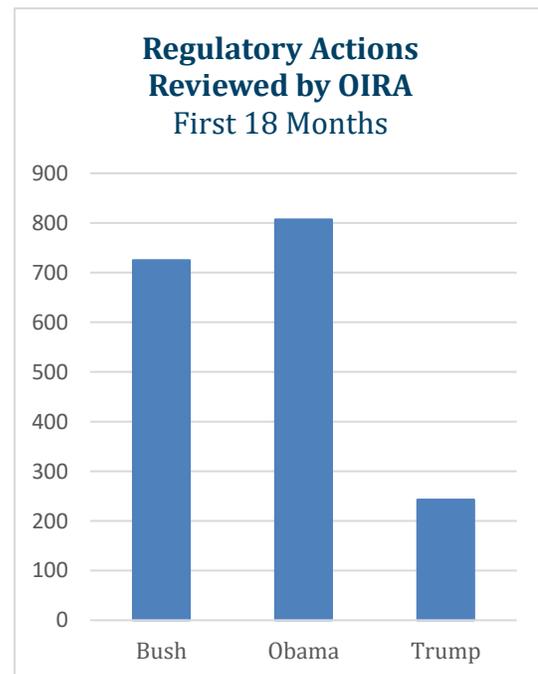
Trump Administration Picks up the Regulatory Pace in its Second Year

Overall Pace Still Dramatically Slower than Prior Administrations

Abstract

Significant regulatory activity declined dramatically – by 74% – during the Trump Administration’s first full year in office, compared to the same period in the Obama Administration. This was a profound disruption to the pace of regulatory activity at executive branch agencies.

The first 6 months of the Trump Administration’s second year reveal a quicker pace, with significant regulatory activity down 63% compared to the same period in the Obama Administration. Overall, however, the Trump Administration’s regulatory pace is 70% less than that of the Obama Administration in its first 18 months. This is a striking result for an administration that has made regulatory reform a signature issue.



Introduction

Just 10 days into his term, President Trump signed an executive order following through on his campaign promise to cut Federal red tape. [Executive Order 13771 imposed new constraints on executive branch regulatory agencies](#), directing them to cut two rules for any new rule issued and to offset any costs imposed by new rules.¹ Now, 18 months into the President’s term, we can check in on his regulatory activities. To do so, this analysis uses data from the regulatory review activities

¹ This paper does not offer an assessment of the relative influence of Executive Order 13771 on agency rulemaking activities. Such an assessment would have to untangle Executive Order 13771’s effects from other policy choices, e.g., selections of political appointee at executive agencies.

This insight reflects the views of the author, and does not represent an official position of the GW Regulatory Studies Center or the George Washington University. The Center’s policy on research integrity is available at <http://regulatorystudies.columbian.gwu.edu/policy-research-integrity>.

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of the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB), which provides unique insight into executive branch efforts to make meaningful policy changes in the regulatory realm.

How Does the Trump Administration Stack Up?

As shown in Chart 1, the number of regulatory actions that OIRA reviewed in Trump’s first presidential year² declined dramatically compared to those of the two prior administrations. It was 74% less than the first year of the Obama Administration and 71% less than the same period in the Bush³ Administration.⁴

Regulatory Actions Reviewed by OIRA

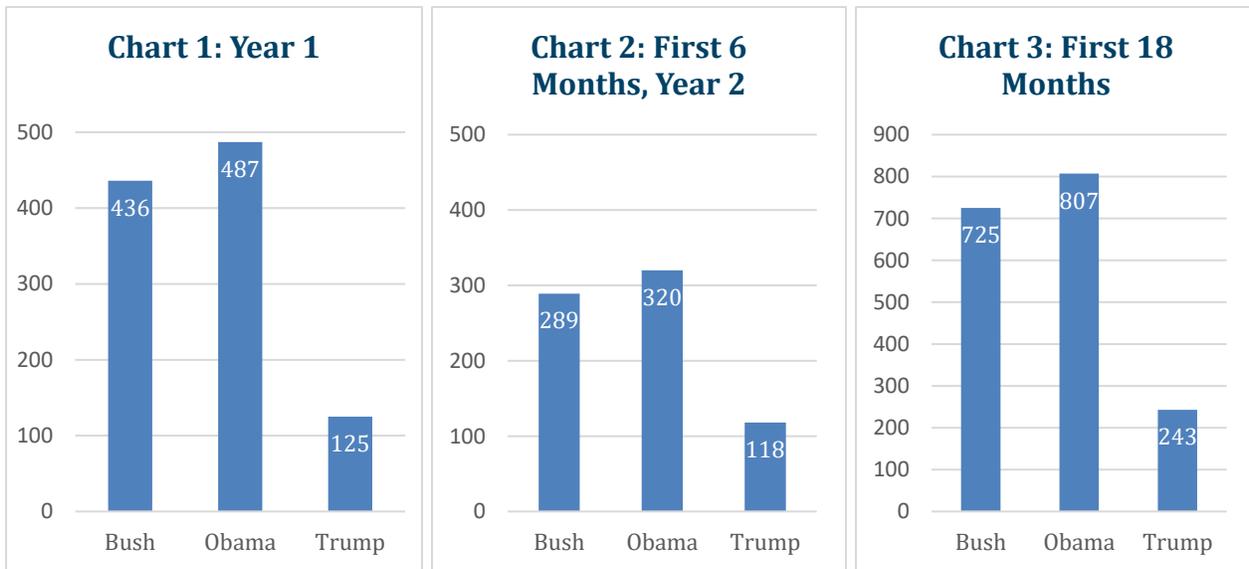


Chart 2 shows that, in the first 6 months of Trump’s second year, OIRA reviewed 118 regulatory actions. Although this was almost as many as it reviewed during his first full year (i.e., 125), it was still 63% fewer regulatory actions than during the same period in the Obama Administration, and 59% fewer than in the Bush Administration. While the relative number of regulatory reviews increased compared to the first year, the Trump Administration’s numbers in this period are still far lower than in the prior two administrations.

² This analysis defines “presidential year” or “year” as 365 days starting from inauguration (e.g., January 20, 2017 – January 19, 2018). Similarly, the first 18 months is measured through July 20 of the year following inauguration (e.g., January 20, 2017 – July 20, 2018).

³ Here and throughout, “Bush” and “Bush Administration” refers to the George W. Bush Administration.

⁴ The terrorist attacks of September 11, 2001 occurred in the first year of the Bush Administration, which prompted several new regulatory actions in his first year and also in the first 18 months. The Obama Administration also had an increase in regulatory actions due to large pieces of legislation – the American Recovery and Reinvestment Act in February 2009 (i.e., in his first year) and the Affordable Care Act in March 2010 (i.e., in his first 18 months).

Combining these two time periods, Chart 3 gives a snapshot of the first 18 months of each administration. During this period, OIRA reviewed 70% fewer regulatory actions in the Trump Administration than in the Obama Administration and 66% fewer than in the Bush Administration.

Comparing these Findings to Other Analyses

This paper's primary finding of a 70% reduction in regulatory actions reviewed by OIRA in the first 18 months of the Trump Administration comports with [prior analysis from the GW Regulatory Studies Center's Daniel R. Pérez](#), which demonstrated a 78% reduction using similar data in the first year. It differs significantly, however, from a [recent report written by Connor Raso](#) as part of a [Brookings series on Regulatory Process and Perspective](#), which showed a first-year decline in non-independent agency rulemaking of only 34% and a first-year decline in "major" non-independent rulemaking of 58%, compared to the Obama Administration. To understand what these figures mean, how they can be used, and why they are so different, we have to dig into the details, starting with the data sources.

The Brookings report relies on data from the Government Accountability Office (GAO) in its [Federal Rules Database](#). Although the Federal Rules Database is a rich resource for data on agency rulemaking, there are a few important caveats that influence its suitability for use in measuring regulatory activity.

Limitations of the GAO Federal Rules Database

First, and most importantly, the GAO data set includes a large number of routine, ministerial rules that aren't well suited to serve as a proxy to [measure](#) the influence of a new president. For example, GAO's data includes Federal Aviation Administration's [Airworthiness Directives](#), which are generally very technical issuances (e.g., amending the inspection protocol for the rotor blades of a particular type of aircraft engine), and adjustments to Coast Guard [Safety Zones](#), which are used to create a perimeter around specific hazards (e.g., a fireworks display on a particular date on a specific lake). These routine rules comprise roughly 75% of the data in each of the first years of the Bush, Obama, and Trump Administrations, as shown below in Table 1.

Table 1: Composition of GAO Federal Rules Database

Administration	Routine ⁵		Significant/ Substantive		Total
	Number	% of Total	Number	% of Total	
Bush	2673	74%	933	26%	3606
Obama	2897	75%	977	25%	3874
Trump	1565	77%	469	23%	2034

Although these routine rules are certainly important in their own right, and deserve study for certain kinds of research questions, they are not generally the types of rules that presidents use to make meaningful policy changes. Therefore, to get a handle on the priorities and policies of a new administration, one would probably want to screen these out to avoid swamping the data set with rules that are less relevant. The Brookings report applied a screen for “major” rules, which is a [technical definition](#) that roughly means rules with an annual effect on the economy of \$100 million or more. That screen removes approximately 97% of the data, leaving a much smaller sample size for analysis.

Second, these data are self-reported to GAO by agencies, as required by the Congressional Review Act. With perfect compliance the Federal Rules Database would capture all rules covered by the Act.⁶ Perfect compliance has eluded agencies, however, as noted in a [March 2018 GAO Report](#) that finds gaps in reporting. Analysis of GAO data would ideally control for changes in compliance over time, but that would be difficult to do because compliance is not routinely measured.

Third, the Brookings report focused on issuance of final rules, which is a very good way to measure completed regulatory change, because a regulation is not changed until the agency issues a final rule. A mere proposal does not change an existing rule, as a matter of law. Excluding proposals may understate regulatory *activity*, however, especially at the beginning of a new presidential administration. Rulemaking takes time, and a proposed rule is generally a first and necessary step in the rulemaking process. Although it can make sense to exclude proposed rules for some research questions, omitting them from analysis of a new administration’s overall regulatory activity misses an opportunity to observe that administration taking key regulatory steps.

One Important Benefit of using the GAO Federal Rules Database

On the other hand, the GAO data set gives a broad view into regulatory activity across the executive branch because, in addition to Cabinet agencies and smaller agencies in the executive branch, it also includes independent agencies. This adds greatly to the GAO data set’s richness and led to one of the Brookings report’s most provocative findings: reductions in rulemaking dropped

⁵ The full name of this category is “routine and frequent or informational/administrative/other.”

⁶ The Act doesn’t apply to all rules issued by all agencies.

at independent agencies as much as Cabinet agencies. As Raso notes in the Brookings report, the independent agencies are “generally more insulated from the White House,” which makes it surprising that they would act like Cabinet agencies.

This is an intriguing result that deserves more study, especially in light of [other findings that show independent agencies acting unlike](#) executive agencies in other circumstances.

Overview of OMB’s Regulatory Data

This paper relies, instead, on OMB’s data set at [reginfo.gov](#), which contains data generated from OIRA’s review of draft regulatory actions under [Executive Order 12866](#). That order directs OIRA to review only those rules that it finds “significant,” which is shorthand for rules that have a large effect on the economy or present other novel and important policy issues. By watching what OIRA reviews, you can focus on the most important regulatory actions in the executive branch.⁷

Because the OMB data are administrative data, meaning that they are automatically collected during review, they do not suffer from certain problems of self-reported data. OMB’s data set also includes preliminary actions such as pre-rule documents like requests for information or advance notices of proposed rulemaking, as well as proposed rules and final rules, and is therefore a more comprehensive source for rulemaking activity beyond final rules.⁸ Additionally, because it only contains rules that OIRA determined to be “significant,” it provides a good proxy for those proposed and final regulatory changes that have meaningful policy consequences. It does not measure the full volume of executive branch regulatory activity, however, for that same reason. Another big gap is the lack of independent regulatory agencies, which – at least for now⁹ – are not covered by OIRA review.

“By watching what OIRA reviews, you can focus on the most important regulatory actions in the executive branch.”

⁷ Professor Jennifer Nou and other scholars have pointed out that [agencies face incentives](#) to try to [avoid OIRA review](#). This may mean that OIRA does not, in practice, review *every* significant regulatory action.

⁸ It is important to avoid problematic double-counting when combining data on both proposed and final rules. In this analysis, each time OIRA reviewed a regulatory action (e.g., proposed rule) it counts as “activity.” If the analysis was looking, instead, at “completed” rules or “changed” rules, it would need to screen out the proposed rules as they do not have legal effect.

⁹ Administrator Neomi Rao has spoken publicly about her views on OIRA review of independent agencies regulatory actions. *E.g.*, Transcript of “What’s Next for Trump’s Regulatory Agenda: A Conversation with OIRA Administrator Neomi Rao” at 19-23 (Jan. 26, 2018), https://www.brookings.edu/wp-content/uploads/2018/01/es_20180126_oira_transcript.pdf. After that event, the U.S. Department of Treasury and the Office of Management and Budget signed a Memorandum of Agreement subjecting more IRS actions to OIRA review. Charles S. Clark, Treasury and White House Regulatory Chief Agree to Vet IRS Rules (Apr. 12, 2018), <https://www.govexec.com/oversight/2018/04/treasury-and-white-house-regulatory-chief-agree-vet-irs-rules/147408/>.

In summary, the differences between OMB and GAO regulatory data sets are shown in Table 2. Although the GAO data set is a rich source for regulatory data, this analysis relies on OMB’s data set because it hones in on the current and last two administrations’ efforts to make meaningful policy changes using regulatory actions.

Table 2: Comparison of OMB and GAO Regulatory Data

	OMB’s Reginfo.gov	GAO’s Federal Rules Database
Rulemaking Content	Influential policy changes only	Broader; most final rules
Source	OIRA’s regulatory review	Agency reports
Rulemaking Stage	All	Final only
Agencies	Executive branch agencies, minus independent regulatory agencies	Executive branch agencies, including independent regulatory agencies

Additional Choices in this Analysis

In addition to using OMB data rather than GAO data, the following actions were included or excluded in an effort to present a clearer picture of meaningful regulatory activities:

- Pre-rule actions (e.g., advance notices of proposed rulemakings, requests for information) are not included, because they do not have legal effect and they are not generally a necessary part of the rulemaking process.
- In contrast, proposed rules are included. Although they do not create regulatory change on their own, they are generally a necessary step in the rulemaking process and therefore they represent important rulemaking activity for purposes of this analysis.
- The small number of “notices” that are not exactly rules but which OIRA determined to be significant regulatory actions are included.
- Rules that merely extended effective dates or compliance dates were excluded, because these actions do not meaningfully change policy for the indefinite future.
- Any regulatory action that an agency withdrew from OIRA’s review, or which OIRA returned to the agency for further consideration, was excluded.

Putting it all Together

President Trump has promised deep cuts to regulation, but it generally takes a new rule to undo an old rule. The deep reductions in regulatory activity shown above suggest that, while the Trump Administration has staunchly the flow of new regulations, it has not taken all necessary steps to remove old regulations from the books. Future study could dive deeper into the data to evaluate how much of the Trump Administration’s regulatory activity, in different periods, was actually deregulatory. Until then, two main points emerge from the analysis above.

Regulatory Insight

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First, the Trump Administration's dramatic slowdown in regulatory activity, a hallmark of its first year, has continued into year 2. In the first six months of the second year, the Trump Administration's rulemaking activity has increased but not nearly to the level of the Bush or Obama Administrations over that same period.

Second, the Brookings report and this analysis provide two different ways of measuring rulemaking activity. Both show significant declines in comparison to the two prior administrations, with the most meaningful policy actions facing the steepest declines.

As the Trump Administration continues, regulatory statistics like this help paint a picture of how the President's regulatory agenda is unfolding. At this point, 18 months in, if he wants to keep his promise to make a significant dent in the stock of existing regulations, he might need to pick up the pace.