

The Government Shutdown's Effect on Regulatory Output

By: Daniel R. Pérez | February 6, 2019

Last week, previously furloughed federal employees returned to work after a [record-breaking](#) government shutdown of 35 days which began on December 22, 2018. A month ago, RSC [Professor Bridget Dooling predicted](#) that the shutdown would substantially reduce regulatory activity since both the Office of Information and Regulatory Affairs ([OIRA](#)) and the Office of the Federal Register ([OFR](#)) were unfunded. This commentary presents data that show those predictions were valid.

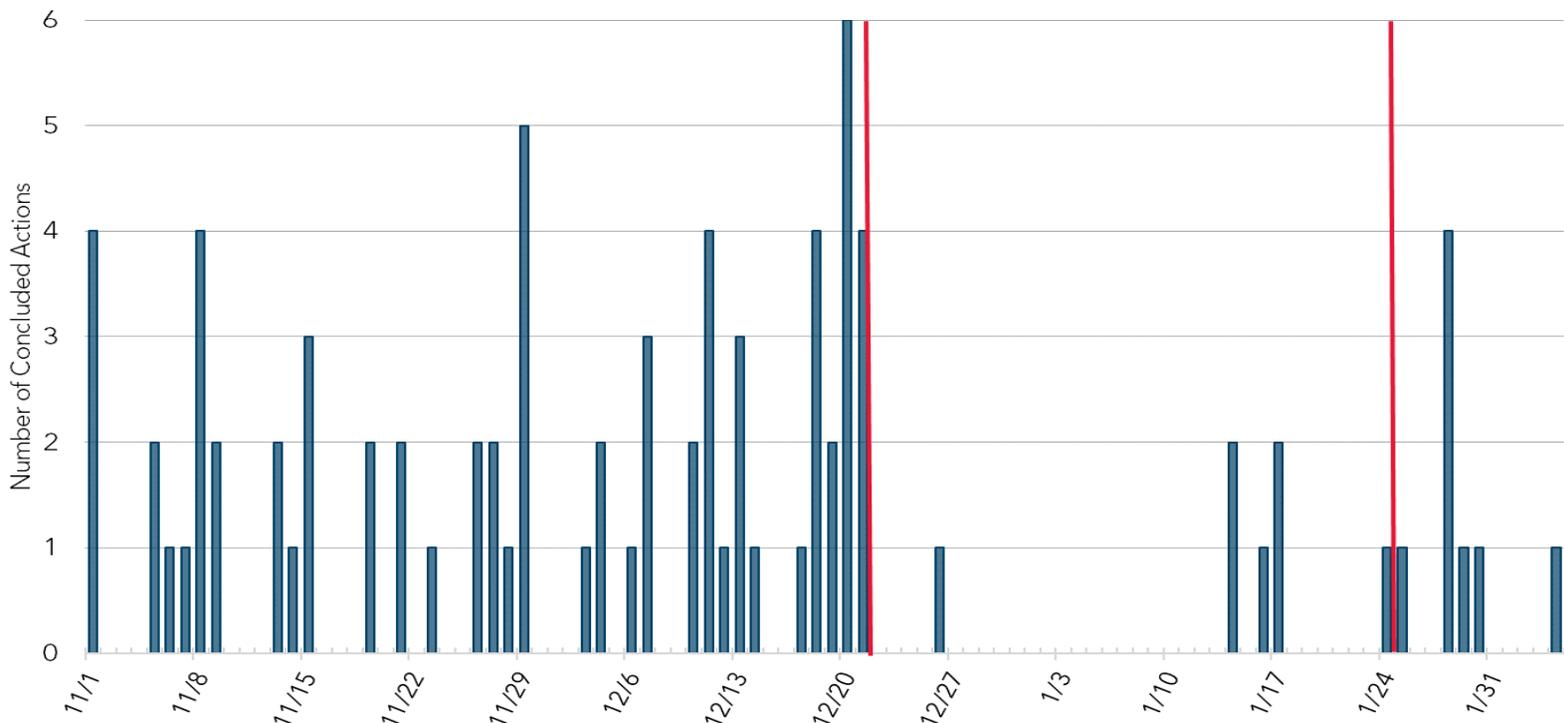
Stalled Oversight at OIRA

[Executive Order 12866](#) requires “significant” regulations to be reviewed by OIRA before regulatory agencies can issue them. However, given its lapse in funding, OIRA limited its oversight during the shutdown to rules classified as “[excepted activities](#)” (e.g., rules deemed necessary to “protect life and property” such as those related to national security, emergency and disaster assistance, etc.).

In brief...

Early data suggests the government shutdown has slowed agency rulemaking activity, which may disrupt President Trump's deregulatory agenda.

Daily Review Counts at OIRA Pre- and Post-shutdown



Up until the shutdown, OIRA conducted approximately 28 reviews per month, on average throughout 2018;¹ OIRA completed just 7 reviews during the shutdown compared to 18 reviews conducted during the same timeframe last year.

Decline in Publications in the Federal Register

In order to invite public comment or complete the rulemaking process, agencies must publish their rules in the *Federal Register*. But OFR was also caught up in the shutdown; it initially announced that it would only publish documents that agencies certified as “necessary to safeguard human life, protect property, or provide other emergency services.” It lowered its standard part-way through the shutdown such that funded agencies would only have to certify that delaying publication until the end of the appropriations lapse “would prevent or significantly damage the execution of funded functions at the agency.”

From November 1st to December 21st, OFR published an average of 329 pages per day; during the shutdown, it published an average of 114 per day—approximately a 65 percent decrease. During the Obama administration shutdown in 2013, the Federal Register published 45 percent fewer pages per day.

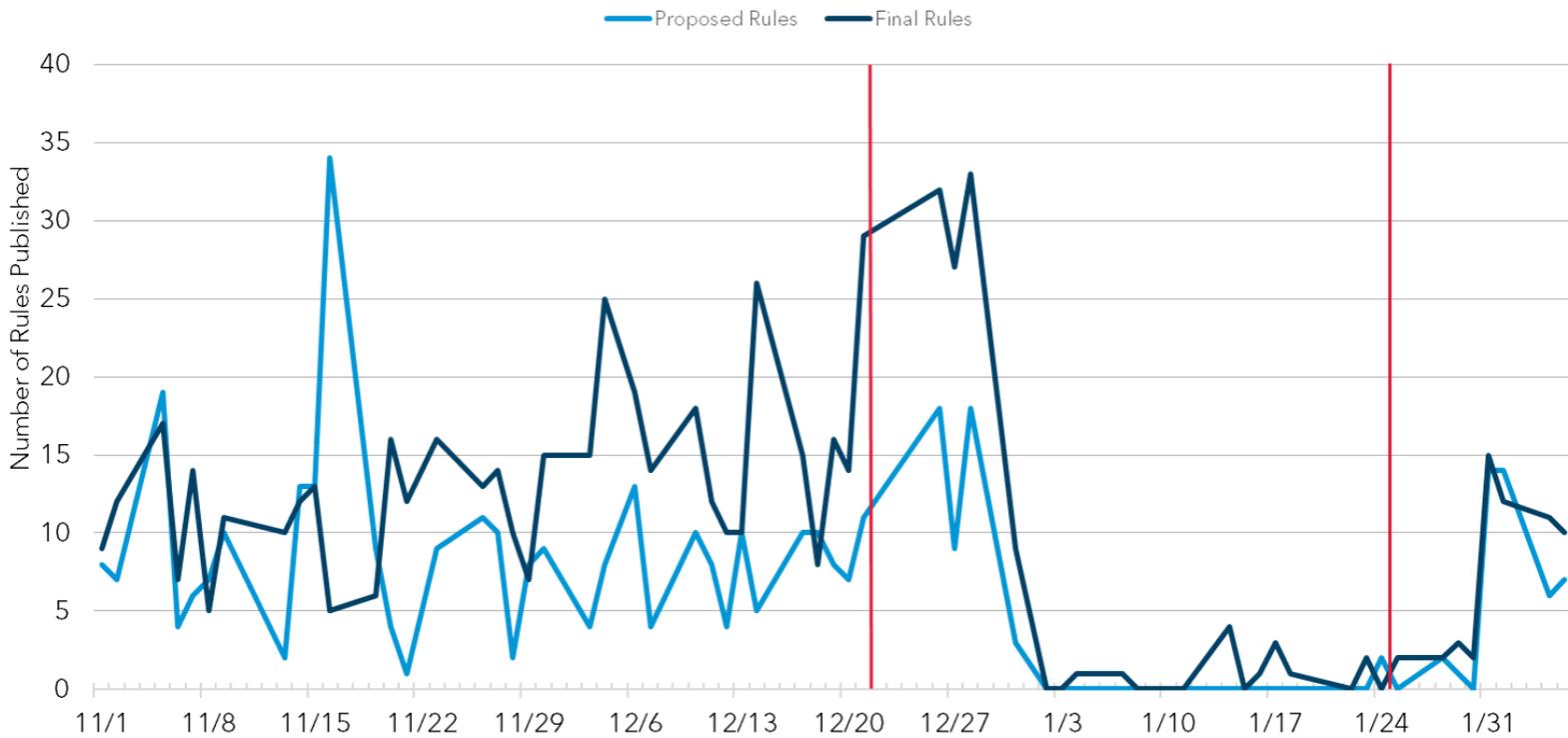
Pages Published in the Federal Register Pre- and Post-shutdown



The *Federal Register* also publishes other items that are not necessarily related to regulation (e.g., notices, presidential documents); observing changes in the number of published proposed and final rules provides a more precise illustration of the shutdown’s effect on regulatory output. From November 1 until the shutdown, the *Federal Register* printed an average of 22 rules per day. During the shutdown,

¹ Data obtained from Reginfo.gov by searching concluded regulatory reviews including the following regulatory actions: prerules, proposed rules, and all final and interim final rules.

Rules Published in the Federal Register Pre- and Post-shutdown



OFR published slightly less than 8 rules daily. This amounts to a 64 percent reduction in rules published during the shutdown. OFR published 408 proposed and final rules during the same period last year (compared to a total of 166 during this shutdown).

Interestingly, despite the end of the shutdown on January 25, the regulatory pace has not yet returned to prior levels. Some significant regulations signed before or during the shutdown have [still not been published](#). This stall in regulatory output has substantial [implications](#) for President Trump’s deregulatory agenda. Since regulations take months to years to move through the notice-and-comment process, the administration may be running [short on time](#) to get through the items on the president’s agenda.

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