A GUIDE TO FEDERAL AGENCY RULEMAKING
FIFTH EDITION
Section of Administrative Law and Regulatory Practice and Government and Public Sector Lawyers Division
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Since OMB began to keep records in 1981, there have been 109,710 final rules published in the Federal Register by federal agencies. Of these published rules, 20,029 were formally reviewed by OMB prior to publication. Of the OMB-reviewed rules, 1,073 were considered “major” or “economically significant” rules, primarily because they were estimated to have an economic impact greater than $100 million in any one year.97

More recently, OMB reported that “[b]etween fiscal years 2001 and 2010, Federal agencies published over 38,000 final rules in the Federal Register. OMB reviewed 3,325 of these final rules under Executive Order 12866. Of these OMB-reviewed rules, 540 are considered major rules.”98 Note that the percentage of rules reviewed by OMB dropped from 18.3% in the earlier period to less than 8.8% in the most recent one. Moreover, the number of total rules and major rules per year, as reported by OMB, also has dropped significantly in the more recent period.

1. The Development of Presidential Review

Presidential oversight of regulation is not a recent innovation. It has been in effect, in one form or another, since 1971,99 and it accompanied a major expansion in the scope and complexity of federal regulation that occurred in the 1960s and 1970s when Congress enacted a number of important social and environmental regulatory statutes.100

In June 1971, President Nixon established a “Quality of Life Review” program, under which all “significant” draft proposed and final rules were submitted to OMB, which circulated them to other agencies for comment.101 Agencies were required to

101. See the papers archived by Jim Tozzi, the career official in charge of Quality of Life Review in the Nixon Administration, for the Center for Regulatory Effectiveness at http://www.thecre.com/ombpapers/centralrev.html. These include “Quality of Life Review #1”: Memorandum to Heads of Department and Agencies from George P. Schultz, Director, OMB, Agency Regulations, Standards and Guidelines Pertaining to Environmental Quality, Consumer Protection, Occupational and Public Health and Safety (Oct. 5, 1971).