

**REGULATORY PROGRAM
OF THE
UNITED STATES
GOVERNMENT**



APRIL 1, 1991 - MARCH 31, 1992

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**THE REGULATORY MESSAGE OF
THE PRESIDENT**

TO THE CONGRESS OF THE UNITED STATES:

This annual *Regulatory Program of the United States Government*, created pursuant to Executive Order No. 12498, sets forth my Administration's regulatory policies, goals, and objectives for the coming year. This *Regulatory Program*, containing submissions of the most significant regulatory activities planned for the year, increases agency accountability for regulatory actions, facilitates coordinated Federal regulatory policy, helps reduce unjustifiable regulatory burdens, and provides the public and the Congress with better access to the regulatory plans of the executive branch.

Federal regulations to implement the laws that protect Americans' health and safety, environment, and economic system are crucial to the public welfare. But these regulations must be efficient and cost effective. We cannot afford for them to be otherwise.

Americans spend billions of hours and billions of dollars each year dealing with Federal regulations and paperwork. With over 100 agencies implementing thousands of regulations, the Federal Government affects nearly every facet of American life. Although intended to benefit and protect the American public, Government regulations may—through faulty design or clumsy implementation—have an opposite, even harmful, effect. When Federal regulations impose costs that exceed benefits, taxpayers, consumers, and businesses alike are adversely affected—paying both higher prices and higher taxes.

That is why we are committed to regulatory reform and paperwork reduction. This Nation must devote its maximum energies and capital to growth and prosperity, consistent with protection of health and safety and the environment.

To reduce unnecessary regulatory burdens, I have asked the Council on Competitiveness, chaired by Vice President Quayle, in conjunction with the Office of Management and Budget's Office of Information and Regulatory Affairs, to ensure agency adherence to the cost-benefit principles and the regulatory review process outlined in Executive Order No. 12291. At a recent meeting of the Council, the Vice President reaffirmed the Administration's commitment to remove excessive regulatory burdens, and regulatory agencies renewed their commitment, consistent with law, to reduce the amount of regulation and ensure that rules clearly maximize benefits and minimize costs.

By assuring implementation of the basic principles set forth in Executive Order No. 12291, I believe this country can achieve a more rational, more reasonable regulatory policy that both protects health and safety and the environment and benefits American consumers as well as our global competitiveness.

GEORGE BUSH

THE WHITE HOUSE

PART I. OVERVIEW

PART I. OVERVIEW

The Regulatory Program 1991-1992

This Regulatory Program of the United States Government is the second of the Administration of President Bush. It is the sixth to be issued since Executive Order No. 12498, signed by President Reagan, established the Regulatory Program planning process in January 1985. The purpose of the process, established by Executive Order No. 12498, is to promote sound government policy by improving Executive Branch regulatory decisionmaking and coordination. The process also provides Congress and the public with an advance view of the most important regulatory decisions for the forthcoming year.

Part I, entitled "Overview," describes the Regulatory Program and the need for improving the management of the Federal Government's rulemaking process. The overview includes a discussion of the Vice President's Council on Competitiveness, followed by sections on regulatory accountability and regulatory budgeting, the cost-effectiveness of selected Federal rules to reduce health and safety risks, and the Fifth Amendment's Takings Clause in relation to regulatory programs. Part II, entitled "The Regulatory Program by Agency," contains the significant regulatory actions (SRAs) planned by agencies for the next year.

THE REGULATORY PROGRAM AND REGULATORY OVERSIGHT

Executive Order No. 12498 requires the annual publication of the *Regulatory Program of the United States Government*. The document outlines regulatory priorities and describes important actions of Executive Branch regulatory agencies. It also represents a process for planning and coordinating agency actions to ensure that they are consistent with both law and Presidential policies. The Regulatory Program allows Congress and the American people to understand the policy directions of the regulatory agencies and the Executive Branch as a whole. The actions listed in the Program represent the major initiatives of the regulatory agencies. These may, of course, be revised over time, after further data collection and analysis, and through Administration decisions to guide and coordinate these actions.

This year's Regulatory Program, covering the period April 1, 1991, through March 31, 1992, contains

descriptions of 516 significant regulatory actions from 23 agencies. These include significant final rules, proposed rules, and prerulemaking activities that may lead to rulemaking in the future. The descriptions outline the issues agencies see as requiring immediate attention, as well as the steps each agency is taking to ensure the cost-effectiveness of the regulatory approach it proposes.

In addition, this year's Regulatory Program contains economic data on estimated costs and benefits for many SRAs, in cases where such data were available. This initial effort to collect such data annually as part of the Regulatory Program planning process will contribute to a stronger data base on the costs and benefits of Federal regulation.

PRESIDENTIAL REGULATORY OVERSIGHT

We also want to take on the problem of excessive regulation. We all know the strangling effect the red tape and overregulation can have on businesses. Every time we write new laws, we write new regulations. Some of these regulations are needed. Some are not. We must redouble our efforts to free our people from unnecessary regulations.

President George Bush
May 1, 1991

The United States Government faces a continuing dilemma regarding its use of regulation to solve problems. Regulation will in many instances be necessary to reduce public health and safety risks and to protect the effective operation of free markets. In addition, Congress continues to enact legislation that requires extensive regulation, as a response to a wide variety of problems. For example, recent legislation such as the Americans with Disabilities Act, the Clean Air Act Amendments, and the Farm Bill require hundreds of new regulations.

In a society of the size, complexity, and diversity of America's, however, regulations may not achieve intended goals and may not realize benefits that justify their costs. Regulatory costs add to the prices that consumers pay for goods and services and diminish America's international competitiveness. They may also reduce wages, stifle innovation, and

hinder the development of technologies critical to the Nation's future.

President Bush seeks a regulatory structure that appropriately balances the benefits and costs of Federal regulations for the country's long-term well-being, and ensures that the regulatory activity of the Government produces net benefits for its citizens.

Presidential regulatory oversight is a process necessary to ensure that agencies of the United States Government meet these challenges in a manner consistent with law and Administration policies. The Regulatory Program reflects the President's commitment to that process. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) and the Council on Competitiveness, chaired by the Vice President, have been charged by the President to serve as stewards of Presidential regulatory oversight.

Executive Order Nos. 12291 and 12498 establish principles of sound regulatory management for agencies to follow in developing regulations. The Orders combine with the Paperwork Reduction Act of 1980 to ensure that the paperwork and regulatory burdens the Government imposes are necessary, tolerable, and cost-effective.

Both Executive orders are the outgrowth of successive Presidents' efforts since the 1970s to establish procedures for Executive regulatory oversight. Executive Order No. 12291 (see appendix I for the complete

text) sets out fundamental regulatory principles. It directs agencies to justify the need for regulations, weigh their costs and benefits, and choose the most cost-effective regulatory options. It also directs OIRA to review the agencies' rationales and assumptions and to ensure that agency regulations are consistent with Presidential policies and statutory authority. Executive Order No. 12498, as noted above, established the *Regulatory Program of the United States Government* as a vehicle for agency regulatory planning and coordination (see Appendix II for the complete text of the Order).

Taken together, the two Executive orders form a coherent and effective framework for Federal regulation. Congress and the President, through the enactment and approval of agency-enabling legislation, have charged agencies with the ultimate responsibility for regulating within their specific policy areas. Presidential regulatory oversight promotes a careful weighing of such actions, and also seeks to harmonize conflicts between competing agency mandates, fulfilling the President's Constitutional obligation to manage the Executive Branch. The establishment of a formal oversight process during the past decade has provided a method for rationalizing the Federal Government's maze of regulatory requirements, increasing benefits, and lowering costs. In the 1990s this process will guide the continuing evolution of regulations that are both effective and prudent.

The Vice President's Council on Competitiveness

COMPETITIVENESS AND REGULATION

U.S. competitiveness in an increasingly global economy depends on a dynamic and innovative private sector. The Federal Government can foster competitiveness by encouraging a vigorous and competitive market environment, both in this country and in the world economy. One of the more important steps the Federal Government can take in promoting a competitive market environment is to avoid unnecessary regulation.

Government regulation has an important role in advancing certain societal goals—such as public health and safety and protection of the environment—where market forces alone do not always achieve such goals. But regulation can also impose substantial costs on U.S. business, State and local governments, and consumers that hinder U.S. competitiveness both at home and abroad. For example, Federal regulations may directly influence business decisions, such as the production process a company can use, the wages that it can pay to employees, or the markets in which its

goods can be sold. By governing the manner in which business can be conducted, regulation alters the cost structure for producing goods.

The impact of regulation varies substantially across firms and industries, but in some cases regulation may significantly affect the price of U.S. products as compared with similar foreign products. In this age of increased competition for world trade, therefore, it is critical that regulations be as rational and as minimally burdensome as possible in meeting their intended goals.

The costs of Federal regulation are significant. Though estimates vary, current Federal regulations probably impose direct costs on the U.S. economy of several hundred billion dollars per year. The paperwork burden of Federal regulations alone has been conservatively estimated at 5 billion person-hours a year. Because of the magnitude of the effect of regulation on the Nation's economy, it is important to assess, on a continuing basis, the need for both new and existing regulations; to balance the immediate objectives of such regulation with the broader objec-

tives of promoting the Nation's welfare; and to promote a reliance on markets wherever such opportunities exist.

THE ROLE OF THE COUNCIL ON COMPETITIVENESS

To assist regulatory oversight, President Bush announced in *Building a Better America*, on February 9, 1989, that Vice President Quayle would chair the Council on Competitiveness:

The Council will review regulatory issues, and such other issues as may be referred by the President, bearing on competitiveness. In reviewing regulatory matters, the Council will be continuing the work of the former President's Task Force on Regulatory Relief—chaired in the Reagan Administration by then Vice President Bush.

In June 1990 the President reaffirmed the role of the Council, "as the appropriate council to review issues raised in conjunction with the regulatory program under Executive Order 12498." The Council's permanent members, in addition to the Vice President, include Secretary of the Treasury Nicholas Brady, Attorney General Richard Thornburgh, Secretary of Commerce Robert Mosbacher, Chief of Staff John Sununu, Director of the Office of Management and Budget Richard Darman, and Chairman of the Council of Economic Advisors Michael Boskin.

During the past year, the Council has worked to ensure that the burdens of regulation on the Nation are minimized and that America's competitiveness is encouraged, particularly as the country recovers from recession. In a meeting with agency heads this spring, the Vice President reaffirmed the Administration's commitment to remove excessive regulatory burdens on the economy and to stop regulatory "creep."

The Council has worked with agencies, providing advice and direction as they develop regulations both to meet statutory requirements and to minimize burdens on the job-producing sector (including small businesses), State and local governments, and individuals. The Council also coordinates interagency issues associated with regulation, ensuring that significant

regulatory decisions are enriched by the active participation of representatives from across the Executive Branch.

The Council has worked with the Department of the Treasury on ways to simplify the income tax filing process; with the Food and Drug Administration on orphan drugs and the drug approval process; with the Department of Justice on "takings" (that is, regulatory taking of private property under the Fifth Amendment's just compensation clause) and on civil litigation reform; and with the Environmental Protection Agency on such issues as wetlands and lender liability. The Council has also chaired working groups on biotechnology and critical technologies, producing papers that articulate Administration policies in these areas.

In addition, several principles have been adopted by the Council and the agencies to further the goals of minimizing regulatory burdens. In a May 1991 Fact Sheet, the Council stated that the Government should:

- Reduce the amount of regulation, issuing rules only where required by law, and ensuring that rules clearly maximize benefits and minimize costs, based on sound analysis;
- Adhere strictly to the benefit-cost and other regulatory principles established in Executive Order No. 12291;
- Develop the Regulatory Program required by Executive Order No. 12498; in particular, supplying benefit and cost data about new rules as required for the 1991 Regulatory Program; and
- Seek out opportunities to deregulate and reduce, consistent with law, the burdens of existing regulations.

The Council will continue to work closely with OIRA to augment the regulatory review process, to ensure that the benefits of regulations outweigh their costs, and to coordinate development of legislative and administrative initiatives to reduce unnecessary regulatory burdens.

Regulatory Accountability and the Regulatory Budget

INTRODUCTION

Executive Order No. 12291 requires agencies to set regulatory priorities with the aim of maximizing the aggregate net benefits to society. In practice, however, the benefits and costs of regulations are almost always analyzed on an individual basis, with relatively little regard for a regulation's interaction with other regulations and programs. The Regulatory Program

attempts to promote a more coordinated approach by requiring agencies to disclose to the public, other agencies, and the Congress—in one place and at one time—information about their regulatory plans for the next year. The Regulatory Program process also gives the Office of Management and Budget the responsibility for reviewing agencies' draft Regulatory Program entries for proper coordination across agencies and for ensuring consistency with the Administration's poli-

cies and priorities. For this process to work well, agencies must develop information about the benefits, costs, and other effects of the regulations under development, and establish priorities that maximize net benefits to society.

REGULATORY ACCOUNTABILITY

In this year's Regulatory Program OIRA has asked the agencies to begin providing information on the estimated benefits and costs of their significant regulatory actions. These data will be found in a new section in agency SRA entries. Although in many cases it was not possible to develop these data for this Regulatory Program, many agencies made extensive efforts to provide such information, or to begin the process of generating it. In future Regulatory Programs, the Government's ability to describe and quantify the benefits and costs associated with each SRA should improve substantially. This, in turn, will permit estimates of the impact of proposed regulations on various sectors of the economy, as well as the macroeffects of the regulations described in the Regulatory Program on the whole economy.

At present, the total effects of regulation can only be roughly estimated. One crude method has involved counting the number or pages of regulations issued each year in the *Federal Register*. Although information on the number and pages of regulations issued in the *Federal Register* has been published in previous Regulatory Programs and is included again this year (see appendix IV, exhibit 17), this information is clearly not an adequate measure of the effects of regulation.

Another means of estimating the economic impacts of Federal regulation involves analyzing agency regulatory impact analyses (RIAs). Executive Order No. 12291 requires agencies to prepare RIAs, or benefit-cost analyses, when they issue "major" rules. Major rules are those that are likely to result in an annual

effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition (see Executive Order No. 12291 in appendix I for the full definition of "major rule"). Although an analysis of agency RIAs will not give a picture of total regulatory impacts on society, it will give some sense of the impacts of new major rules for any given year.

There are limits to the usefulness of RIAs in measuring Federal regulatory costs and benefits. First, RIAs vary widely in quality, due to inadequate data, limited agency resources to prepare them, or statutory or judicial deadlines that do not allow sufficient time for comprehensive analysis. Second, discussions of benefits in RIAs are generally less analytically developed than cost analyses, making comparison among alternatives or across regulations difficult. Third, RIAs are required only for major rules; although these include the rules with the greatest effects on society, they are only a small percentage of the total number of rules issued each year.

In spite of these limitations, an analysis of the RIAs of major rules that impose off-budget societal costs provides useful information of the costs of Federal regulation. Table 1 displays the annual regulatory costs to society of these major rules for 1987 through 1990. The table indicates that, with the exception of 1988 (when the Environmental Protection Agency's (EPA's) unusually costly Underground Storage Tank final rule was issued), major final rules have cost the economy an *additional* \$2.4 to \$2.9 billion annually. In 1988, largely as a result of the Underground Storage Tank rule, the additional annual regulatory cost of major rules was \$8.6 billion. While giving some sense of the cost of regulation, these figures are clearly understatements, since agencies in general tend to underestimate social costs by focusing almost entirely on direct compliance costs, and since nonmajor rules are not included.

Table 1. Regulatory Costs of Major Rules, 1987-1990
[Annual costs in millions of dollars]¹

	1987	1988	1989	1990	Total
EPA					
Final	\$2,000	\$8,400	\$970	\$1,748	\$13,118
Proposed	\$7,200	\$2,100	\$1,500	\$6,918	\$17,718
DOT					
Final	None	\$50	\$550	\$920	\$1,520
Proposed	None	\$85	\$400	\$500	\$985
DOL					
Final	\$270	\$30	\$1,270	\$80	\$1,650
Proposed	\$280	\$1,200	\$1,080	\$1,320	\$3,880
Other Agencies ²					
Final	³ \$104	\$78	\$147	\$41	\$370
Proposed	None	None	None	\$6,092	\$6,092
Total					
Final	\$2,374	\$8,558	\$2,937	\$2,789	\$16,658
Proposed	\$7,480	\$3,385	\$2,980	\$14,830	\$28,675

¹ Cost estimates are based upon regulatory impact analyses prepared by the agencies for major rules that impose societal (i.e., off-budget) costs. These costs of regulation are understated because not all major rules have quantified cost estimates and the costs of nonmajor rules are not included.

² Other agencies with major rules include the Department of Health and Human Services, the Department of Housing and Urban Development, the Department of Justice, and the Department of Agriculture.

³ Averaged cost estimate from Government Accounting Office Report GGD-90-62.

Various attempts have been made over the years to estimate the total societal costs of regulation. The significance of the costs of regulation was first documented by Weidenbaum and DeFina for 1976.¹ Later estimates by Litan and Nordhaus for 1977 and Hahn and Hird for 1988 confirmed the Weidenbaum and DeFina results and raised their estimates.² The Hahn and Hird study estimates gross societal costs of \$327 billion to \$401 billion, or 29 to 36 percent of 1988 Federal expenditures.³ When various regulatory paperwork costs not already included (about \$90 billion) are added to the Hahn and Hird study as well as the costs of final regulations issued since 1987 (approximately \$17 billion, from table 1 above), the total cost of Federal regulation for 1990 increases to

between \$434 and \$508 billion, or as high as 40 percent of 1990 Federal expenditures.

Though estimates of the cost of Federal regulation vary widely, these data show that the economic effects of regulation are substantial. What may be needed to supplement and complement the existing regulatory oversight process is a system that forces regulatory decisionmaking to take place within governmentwide constraints on the total costs imposed by Federal regulation, that is, within a regulatory budget.

TOWARD A REGULATORY BUDGET

Earlier in this century, the need for a centralized budget process to manage effectively the programs of the Federal Government led to the development of the fiscal budget process in the United States and the passage of the Budget and Accounting Act of 1921. Through the creation of the President's budget and the appropriation process that follows, Congress and the Executive establish overall budget and program constraints. In spite of arguments about the complexities of this process, it serves its general purpose of requiring the Government to decide how it is going to allocate its resources.

As discussed above, only rough estimates have been made of the total costs imposed by regulation. And so far, neither Congress nor the Executive has felt compelled to create a budget-like process to force tradeoffs to be made among the societal outlays mandated by different regulatory programs. Although concerns regarding the costs of regulation have led to the establishment of the Executive Order Nos. 12291 and 12498 review processes, these concerns have not yet forced the Federal Government to create a process analogous to the budget process to manage societal expenditures required by Federal regulation.

The effects of budgetary and regulatory outlays are analogous in two important ways.

First, the expenditures required by both have many of the same overall economic effects on output, employment, prices, and growth. The Federal Government finances outlays by diverting resources from the private sector through taxation and borrowing. Business firms finance expenditures required by regulation (e.g., for pollution control) by borrowing, increas-

¹ M. Weidenbaum and R. DeFina, *The Cost of Federal Regulation of Economic Activity* (American Enterprise Institute Reprint No. 88, 1978).

² See Robert Litan and William Nordhaus, *Reforming Federal Regulation*, New Haven: Yale University Press, 1983; and Robert Hahn and John Hird, "The Costs and Benefits of Regulation: Review and Synthesis," *Yale Journal of Regulation*, Vol. 8, No. 1, Winter 1991, pp. 233-278. Although these studies also provide estimates of the benefits of regulation, they are not discussed here because this section focuses on the analogy between the regulatory budget and the fiscal budget. Benefits are not accounted for in the fiscal budget.

³ Hahn and Hird provide separate estimates for social costs (the value of opportunities lost to society) and transfers (the value of losses to some members of society offset by equal gains to others) and do not aggregate them as is done here. They are added together to be consistent with fiscal budget practice.

ing prices, reducing other expenditures, and reducing dividends. These, of course, are the same ways in which firms finance taxes, and thus have the same broad effects on the economy. Regulation mandating expenditures may, however, be more analogous in its effects to user fees and excise taxes than to income taxes, since income tax liability is more directly tied to earnings, profits, and interest income.

Second, both regulation and budget outlays divert private resources to public purposes. Furthermore, in many cases, expenditures required by regulation may be an alternative means of achieving the same public-policy objectives as budget outlays or other instruments of government policy such as taxes, tax expenditures, or loan guarantees. For example, firms may be required by regulation to treat their effluents before discharging them into the air or water. Alternatively, public wastewater treatment facilities can be constructed by direct expenditures by the Federal Government or by States and localities with Federal assistance. The basic allocative effects are similar, although economic efficiencies and income distribution implications may vary from one policy instrument to another.

The similarities between fiscal and regulatory expenditures have led a number of observers to look at the fiscal budget process as a source to design a similar oversight process to manage regulatory expenditures. Members of Congress and the last three Administrations have considered developing an accounting framework to track the expenditures that are directly required by regulation. A full accounting framework, however, is still in the developmental stage, and more work needs to be done to solve some practical accounting problems inherent in measuring the private expenditures required by Federal regulation.

One practical accounting problem in establishing a regulatory budget involves the extensive records private firms and individuals would have to keep to validate projected budget estimates. These would not necessarily be accurate and could create an expensive compliance burden.

A second difficulty involves subjectivity in differentiating between expenditures made because of a regulation and those which would have occurred in the absence of regulation. For example, in the absence of regulations for automobile safety, some level of safety would still be built into vehicles, because safety is an attribute consumers desire and value when they consider alternative purchase decisions.

A third problem involves the difficulty of estimating the indirect costs of regulation. These include, for example, the loss to a consumer of opportunities to purchase goods because of higher prices, less desirable

products, or outright bans resulting from regulation. Such indirect costs are relatively more important for regulatory accounting than they are for fiscal budget accounting. Since indirect costs are not directly measurable, and can only be estimated by complicated statistical models, it might be problematic to combine estimates of these indirect costs with measures of the direct costs of regulation. Yet measuring only the direct expenditure costs of regulation could create a bias toward banning substances and products rather than controlling them, since bans primarily give rise to indirect costs.

Although these practical problems make regulatory budgeting significantly more difficult than fiscal budgeting, they should not be insurmountable. For example, the spending forecasts for fiscal budgets do not have to be perfectly precise for the fiscal budget process to be effective in controlling spending. Likewise the spending forecasts for regulatory budgets do not necessarily have to be absolutely accurate for the regulatory budget process to act as a constraining device for regulatory spending.

The second measurement problem concerning the proper baseline to use diminishes if an incremental budget approach is used. For example, since the amount of safety that a firm builds into a car is not likely to change significantly from one year to the next in the absence of new regulations, the baseline changes little.

Finally, the problem that a regulatory budget would create incentives for agencies to ban products and processes to avoid budget constraints on direct spending should be less a problem than the current tendency to impose both direct and indirect costs on the public, with no regulatory budget constraint. Furthermore, simple rules could be agreed upon to create proxies for indirect costs that would mitigate the incentive for bans.

One way to get started is to begin implementation of an accounting system that makes use of what information is available. The fiscal budgetary process evolved from the Treasury Act of 1789 through continual refinement over the years. It was not until the Budget and Accounting Act of 1921 that a comprehensive Federal budget system was established. This Act established the institutional framework for the President to prepare a budget for the United States Government as a whole. The new framework included the Bureau of the Budget, to assist the President in the preparation of the budget, and the General Accounting Office, to assist the Congress in carrying out its legislative and oversight responsibilities. Since 1921, the accounting principles, standards, and forecasting methodologies for the

budget have continued to evolve and improve as a result of both executive and legislative action.

In a similar manner, though on a much smaller scale, the information-collection budget, a mechanism to manage the Federal collection of information from the public, has evolved over time, with refinements to its accounting and estimation procedures. The Federal Reports Act of 1942 first established the requirement for agencies to measure and control their paperwork burdens. Executive Order No. 12174, "Paperwork," issued November 30, 1979, required agencies to plan and budget total paperwork burden in a manner analogous to fiscal resources. The Paperwork Reduction Act of 1980 directed the Office of Management and Budget to establish general policies and procedures for controlling information collections and to report to Congress each year the estimated "burden hours" imposed by each Federal agency. That Act and its 1986 amendments set paperwork-burden reduction goals. Over the last 11 years of administering the information-collection budget, the paperwork-burden measuring and accounting systems have evolved and improved.

REGULATORY COST CEILINGS

One approach to developing a regulatory budget would be to follow the models of the fiscal budget and the information-collection budget and require a "regulatory cost ceiling" in any new legislation that imposes private-sector regulatory costs. Under this approach, each new statute would include a ceiling on the total private-sector, State, and local costs that agencies could impose in implementing the statute through regulation. Agencies would then track the estimated costs imposed by the regulations. Once the statutory ceiling was reached, imposing further regulatory costs would require either additional legislation to raise the ceiling or offsetting changes in other regulations that would keep total private-sector regulatory costs within the ceiling.

Establishing regulatory cost ceilings would give Congress and the agencies more incentive to make accurate estimates of the likely costs of regulation than simply requiring economic impact estimates for proposed rules. Regulatory cost ceilings that were excessively low would frustrate the purpose of the statute, because agencies could not issue implementing regulations. Although Congress might be tempted

to authorize excessively generous amounts, it would have to declare itself willing to impose a specific level of costs on the public. Moreover, estimates developed during the course of congressional debate on legislation would have a real effect on agency decisionmaking, and would give agencies strong incentives to choose regulatory approaches that would produce benefits at the least possible cost.

Throughout the course of developing and debating proposed revisions to the Clean Air Act, the Administration identified the costs of its proposals, and indicated that it would not approve requirements that significantly exceeded these costs. The Administration is now committed to tracking the long-term costs of the 1990 Amendments to ensure that the implementation of the law conforms with these expectations.

In addition, a pilot regulatory budget for several industrial sectors covered by the new Clean Air Act is being tested by the Administration. The Environmental Protection Agency (EPA), the Council of Economic Advisors (CEA), and OMB are working cooperatively to establish nonbinding cost caps for certain industrial categories. EPA, consulting closely with OMB, will attempt to keep the projected costs of proposed regulatory options below the adopted "budget." EPA and OMB will work together to resolve the complex issues of identifying and estimating baseline costs. If this experiment proves successful, it can be expanded, with stronger constraints, to other regulatory areas, or perhaps extended to the legislative arena.

A SUPERBUDGET

If a regulatory budget process is adopted, it could eventually evolve toward structural similarity with the fiscal budget apparatus: the President proposing it; the Congress enacting it into law; and the Executive Branch implementing it and operating within its constraints. Institution of a regulatory budget could then lead to yet another evolutionary stage—integration of the two types of budgets into one "superbudget" that rationalizes and controls both direct government spending and private-sector regulatory spending mandated by the Government. Since the economic tradeoffs between the two types of government spending have similarities, such a superbudget could lead to a more efficient and fair public use of private resources.

Regulating Risk: The Cost-Effectiveness of Federal Efforts To Reduce Health and Safety Risks

Protecting and enhancing human health and welfare has long been an essential purpose of government. The Federal Government has, however, since World War II taken on an ever-expanding list of responsibilities focused on improving public health and reducing risks of death and injury.

As one means of accomplishing these goals, the Federal Government promulgates regulations that compel private parties, including State and local governments, to dedicate resources to the protection of health and safety. It regulates the discharge of pollution that may harm human health and the environment. It administers comprehensive regulatory programs to assure the safety of the food people eat and the pharmaceuticals that they rely on to make them well. It establishes extensive safety standards across the full range of transportation technologies, from automobiles and aircraft to roads and railways. From the shop floors where people work to the consumer products they use, the Federal Government has a visible and authoritative presence that is grounded on the conviction that life and health are highly valued resources.

This rapid expansion of Federal involvement in protecting public health and safety has not been achieved without cost. Indeed, the American people bear a burden that totals billions of dollars each year to obtain these benefits. Although attempts to measure the total costs and benefits of health and safety regulation are necessarily fraught with difficulty, the available estimates are instructive and sobering.

The recent study by Hahn and Hird, mentioned above, which attempted to pull together many individual benefit and cost estimates, places the costs of Federal health and safety regulation at between \$78 billion and \$107 billion as of 1988.⁴ Because signifi-

cant social costs were not counted in this estimate, it is primarily useful as a lower bound.⁵

Figure 1 summarizes the three major categories of aggregate costs and benefits assembled by Hahn and Hird. Logarithmic scales have been used on both the cost (horizontal) and benefit (vertical) axes. Thus, doubling the distance from the origin implies a tenfold increase in benefit or cost. The width of each rectangle represents the range in cost estimates; the height of each rectangle captures the range in benefit estimates.

The elongation of each rectangle indicates the relative magnitude of uncertainty in estimating aggregate benefits and costs. As can be seen from the height of the rectangles along the vertical or benefits axis in figure 1, this uncertainty is particularly great in estimating benefits. More accurate estimation requires the establishment of common units of measurement that enable risk-reduction benefits and costs to be compared across a range of options.

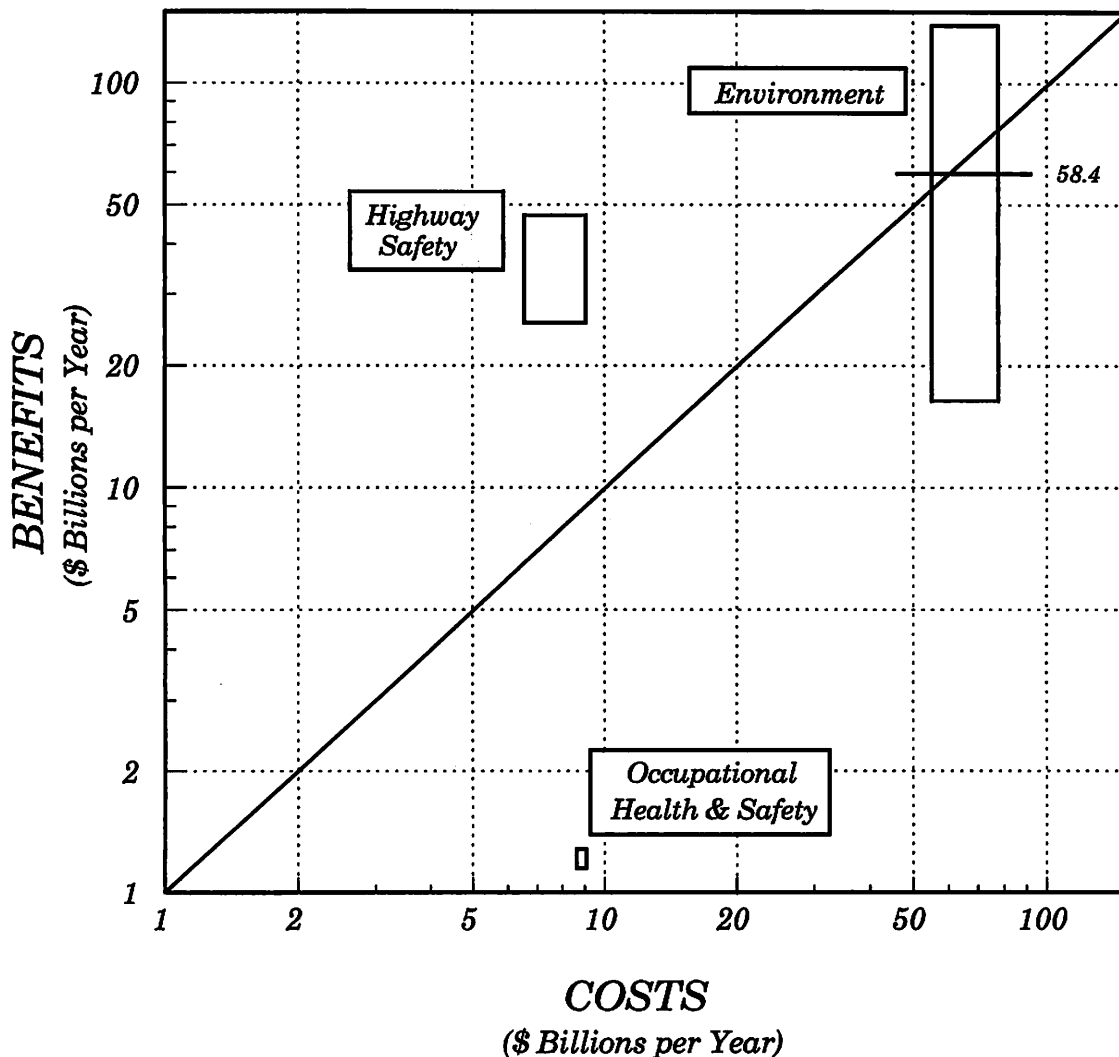
Figure 1 shows that highway safety regulation has, on average, provided substantially more benefits than costs. Hahn and Hird estimate benefits of \$25 billion to \$46 billion per year and costs of \$6 billion to \$9 billion per year. In contrast, Hahn and Hird estimate that regulations aimed at reducing occupational safety and health risks have imposed costs of about \$9 billion per year, but offered negligible risk-reduction benefits. Hahn and Hird's results are mixed for environmental regulations. They estimate costs of \$55 billion to \$78 billion per year and annual benefits of \$16 billion to \$136 billion. The horizontal line in figure 1 represents Hahn and Hird's "best estimate" for annual benefits of \$58.4 billion.

As the demands mount for ever-increasing levels of safety and new or expanded Federal program

⁴ Robert W. Hahn and John A. Hird, "The Costs and Benefits of Regulation: Review and Synthesis," *Yale Journal on Regulation*, Vol. 8, No. 1 (Winter 1991), pp. 233-278. As noted above, Hahn and Hird estimate *total* costs of Federal regulation at between \$327 billion and \$401 billion. The costs of Federal health and safety regulation are, of course, a subset of these costs.

⁵ Hahn and Hird offer several important caveats to guide the interpretation of these data. First, their cost estimates do not include the indirect effects of regulation on innovation, particularly where regulation mandates specified technologies instead of specified performance standards. Second, they recognize that the trend is toward increasing use of regulation to achieve health and safety objectives. Third, aggregation tends to conceal many regulations which do not appear to be cost-effective. See Hahn and Hird, *op. cit.*, p. 259. In addition, the analysis by Hahn and Hird does not include certain important areas of safety regulation (e.g., airline travel) and health regulation (e.g., food additives). Hahn and Hird also acknowledge that their estimates for environmental regulation do not include hazardous waste site cleanup, nor do they include other major regulations under development (e.g., municipal solid waste landfill standards). See Hahn and Hird, *op. cit.*, p. 254, especially footnote 79. Finally, their estimates necessarily exclude regulations expected under significant new statutory enactments (e.g., the Clean Air Act Amendments of 1990, the Americans With Disabilities Act). Hahn and Hird's estimates for environmental regulation differ considerably from other recent figures. For example, the Environmental Protection Agency recently estimated that the annual regulatory costs in the environmental sector alone amounted to \$98 billion in 1987 (1990 dollars). EPA forecast annual costs to grow to \$120 billion per year by 1990, and as much as \$179 billion per year by 2000. See EPA, *Environmental Investments: The Cost of a Clean Environment* (July 1990 draft), p. ES-vi. EPA's cost estimate for 1987 exceeds Hahn and Hird's upper-bound cost estimate by \$20 billion (26%).

Figure 1. Benefits and Costs of Federal Social Regulation



commitments, policymakers and the public alike have begun to ask whether the Nation's resources are being invested wisely. Responsible stewardship demands that the Government carefully examine its regulations to ensure that the American people obtain the best possible return on their investment. This means taking a hard look at the objectives of Federal regulations to verify that they are appropriate, and to strive to achieve these objectives in the most cost-effective manner.

This section analyzes the cost-effectiveness of a substantial number of Federal regulatory decisions. In this context, cost-effectiveness refers to the aver-

age amount of societal resources expended to obtain a fixed amount of societal benefit—in this case, the prevention of injuries and premature deaths. This review suggests that the cost-effectiveness of Federal regulation aimed at reducing human health risks varies enormously. These variations can be seen both across and within Federal agencies according to the nature of the risk regulated, and over time.

REASONS FOR GOVERNMENT INTERVENTION TO REDUCE RISK

Risk is an essential part of life. The rewards and penalties that flow from risk-taking are at the heart

of individual choice and the free market. Yet individuals, associations, corporations, and governments take a variety of actions in specific cases to reduce risks where they perceive the potential consequences of risk-taking to outweigh the benefits of choice and the costs of curtailing choice. Individuals may reduce cancer risks by choosing not to smoke, modifying their diets, living at sea level instead of in the mountains, or selecting occupations and workplaces that involve less exposure to carcinogenic substances. Similarly, transportation risks may be reduced by driving more cautiously or, at least for long distances, traveling by air instead. When people choose how and where they live, work, and play, they make implicit or explicit decisions concerning the risks they prefer to reduce or avoid. Businesses and other organized associations of individuals also take actions to avoid or mitigate risk. For example, companies often work to reduce occupational injuries and illnesses because both diminish productivity and profits.

Beyond these individual and corporate actions, government may be called upon to reduce or eliminate certain risks. Risks to health and life are important elements of some market settings, and systematic biases may exist that prevent or inhibit efficient risk-bearing decisions. Such "market failures" justify government intervention as long as government can do better than the imperfect marketplace.⁶ Needless to say, citizens inevitably lose some degree of freedom to make their own choices when government acts to reduce risks. In addition, failures in private markets are more frequently alleged as reason for government intervention than is justified. Considerable analysis is generally necessary to verify claims of market failure, and to determine the form and extent of intervention that is

most appropriate for solving the underlying problem.⁷

The Government also acts to reduce health and safety risks for reasons of equity. Society may decide that government intervention is justified to reduce certain risks because a disproportionate share of the burden falls on identified groups or individuals. Where individual mortality risks are exceptionally high, or where the costs of medical treatment are prohibitively expensive for individual citizens to bear, the public appears willing to share the burden through public funding. This may be particularly evident in cases where individuals face relatively high risks through no fault of their own. For example, the Government helps fund costly neonatal intensive care, burn, and trauma centers, in an effort to save particular lives, especially those of children.

COST-EFFECTIVENESS OF FEDERAL REGULATIONS AIMED AT REDUCING HEALTH AND SAFETY RISKS

In the Fiscal 1992 Budget, table C-2 listed 53 regulatory actions dating back to 1970. For each regulatory action, the baseline risk was identified, measured as the probability of a fatality per million persons exposed, as well as the cost per premature death prevented.⁸ For convenience, this table is reproduced here as table 2.

The table shows that the cost-effectiveness for the regulatory actions listed varies over more than *eight orders of magnitude*, from about \$100,000 (for certain automotive safety features) to more than \$5 trillion per premature death prevented (for treating wood-preserving chemicals as hazardous wastes).⁹ While the regulatory actions captured in table 2 are not a random selection of Federal regulatory decisions, they illustrate the inconsistency of current Federal risk-management practices. On average, spending \$2

⁶ The traditional comparison has been between an *imperfect* marketplace and a *perfect* government program. This bias often leads to an unjustified preference for government intervention. See Charles Wolf, Jr., *Markets or Governments?* (Cambridge, Mass.: MIT Press, 1988).

⁷ It is important to distinguish between genuine instances of market failure and situations in which the mere presence of health and safety risk is alleged to be evidence of such a failure. The existence of risk is evidence of market failure only in the rare instance where properly functioning markets would have resulted in zero risk. The presence of risk also may be a convenient lever for special-interest groups to manipulate for purposes other than genuine societal risk reduction. Government intervention provides an alternative mechanism to generate private rewards which cannot be sustained through unfettered market transactions.

⁸ Many of these regulations offered other health and safety benefits, such as reduced cases of illness or injury. Failing to adjust for illnesses and injuries would cause cost-effectiveness ratios to be biased upward. Thus, illnesses or injuries with fatalities were aggregated to obtain a composite nonmonetized measure of health benefits. All statistical cancer cases were treated as fatalities, which biases the cost-effectiveness ratios downward. Survival rates from cancer vary considerably across cancer types and sites, and according to the stage at which it is detected. See General Accounting Office, *Cancer Patient Survival: What Progress Has Been Made?*, GAO/PMED-87-13, March 1987, table 4.1.

⁹ All cost-effectiveness ratios provided are in constant 1990 dollars. These estimates can be compared to what can be discerned from individual behavior concerning the willingness-to-pay for risk avoidance. A recent survey of this literature found estimates ranging from \$1.6 million to \$8.5 million per statistical death prevented. The authors placed more confidence in the estimates at the lower end of this range. See Ann Fisher, Lauraine G. Chestnut, and Daniel M. Violette, "The Value of Reducing Risks of Death: A Note on the New Evidence," *Journal of Policy Analysis and Management*, vol. 8, no. 1 (1989), pp. 88-100.

million today on highway safety would save at least one life in just a few years. However, the same amount spent regulating the cancer risks posed by wood preserving only prevents one cancer case every 2.9 million years.

Analysis of these data reveal several interesting and provocative features that are missing from the aggregate estimates presented in figure 1.

Variations by Regulatory Agency

Figure 2 shows how the cost-effectiveness of Federal regulations varies by agency.¹⁰ Safety regulations promulgated by the major Department of Transportation (DOT) regulatory agencies—the Federal Aviation Administration (FAA) and the National Highway Traffic Safety Administration (NHTSA)—have remained consistently below \$5 million per premature death prevented. In addition, there is no apparent trend in the cost-effectiveness of rules from these agencies over the past 20 years.

In contrast, regulations promulgated by the Environmental Protection Agency (EPA) and the health standards division of the Occupational Safety and Health Administration (OSHA) are considerably more costly per unit of social benefit obtained. Many of these regulations have cost-effectiveness ratios in the tens of millions per premature death prevented; some have cost-effectiveness ratios that are well into the billions. Furthermore, for both agencies, the trend is clearly upward. Prior to 1985, only one regulatory action from table 2 imposed costs in the neighborhood of \$100 million per statistical life saved. Since that date, however, eight significant regulatory actions have exceeded this threshold.

Variations by Type of Risk

Figure 3 shows that when regulatory actions are separated into health and safety categories, the disparity in cost-effectiveness between the categories becomes self-evident.¹¹ Regulatory actions aimed at reducing safety hazards (represented in figure 3 with open circles) have consistently remained below \$10 million per premature death avoided. There are many recent safety regulations that have stayed below the \$1 million threshold. However, health-related regulations (represented by solid squares) have consistently imposed higher costs per unit of risk reduction obtained. There is no discernible trend over time for

safety-related regulations, but cost-effectiveness ratios appear to have risen significantly for regulations aimed at reducing occupational and environmental health risks.

Finally, it is worth noting that Federal risk-management priorities display a powerful bias toward reducing certain health risks. The scientific evidence strongly suggests that cancer risks from environmental exposures (excluding smoking) are very small relative to other threats to human health. Nevertheless, about half of the significant regulations listed in table 2 (and a much larger percentage of the most expensive actions) are aimed at reducing these very small cancer risks. None of these regulations involves a natural hazard.

From these data, it appears that safety regulation is far more cost-effective at reducing threats to life than regulations directed toward health-related mortality risks—especially cancer risks plausibly attributed to occupational or environmental exposure. If these regulations are representative, aggregate mortality risk would be substantially reduced at considerably less cost by shifting the Federal Government's regulatory focus away from relatively small occupational and environmental cancer, threats toward other health risks and causes of injury.

NEED FOR MORE CAREFUL CONSIDERATION OF COST-EFFECTIVENESS

Cost-effectiveness provides a useful way to compare regulatory actions to determine the extent to which the American people are getting their money's worth from the investments they make in reducing health and safety risks. It is not intended to be an all-purpose arbiter of decisionmaking; there is no magic cost-effectiveness threshold beyond which regulatory actions should be automatically rejected.

Nevertheless, cost-effectiveness analysis forces policymakers and the general public to consider carefully the regulatory choices made by Government. Decisions that have high costs per unit of benefit received deserve careful scrutiny to ensure that the societal benefits obtained are reasonable given the investments that must be made to achieve them. It is in the interest of both the Federal Government and the American people which it serves that costs mandated by Government—like taxes—be reserved for cases where these costs are most warranted.

¹⁰ The vertical axis of the figure incorporates a logarithmic scale. This means that each unit increase in height implies a *tenfold* increase in social cost per premature death prevented.

¹¹ As before, the vertical axis of the figure incorporates a logarithmic scale. Each incremental increase in height implies a *tenfold* increase in social cost per premature death prevented.

Table 2. Risks and Cost-Effectiveness of Selected Regulations
 [From the Budget for Fiscal Year 1992—Table C-2, Part 2, p. 370]

Regulation ¹	Year Issued	Health or Safety?	Agency	Baseline Mortality Risk per Million Exposed	Cost per Premature Death Averted (\$Millions 1990)
Unvented Space Heater Ban	1980	S	CPSC	1,890	0.1
Aircraft Cabin Fire Protection Standard	1985	S	FAA	5	0.1
Auto Passive Restraint/Seat Belt Standards	1984	S	NHTSA	6,370	0.1
Steering Column Protection Standard ²	1967	S	NHTSA	385	0.1
Underground Construction Standards ³	1989	S	OSHA-S	38,700	0.1
Trihalomethane Drinking Water Standards	1979	H	EPA	420	0.2
Aircraft Seat Cushion Flammability Standard	1984	S	FAA	11	0.4
Alcohol and Drug Control Standards ³	1985	H	FRA	81	0.4
Auto Fuel-System Integrity Standard	1975	S	NHTSA	343	0.4
Standards for Servicing Auto Wheel Rims ³	1984	S	OSHA-S	630	0.4
Aircraft Floor Emergency Lighting Standard ³	1984	S	FAA	2	0.6
Concrete & Masonry Construction Standards ³	1988	S	OSHA-S	630	0.6
Crane Suspended Personnel Platform Standard	1988	S	OSHA-S	81,000	0.7
Passive Restraints for Trucks & Buses (Proposed)	1989	S	NHTSA	6,370	0.7
Side-Impact Standards for Autos (Dynamic)	1990	S	NHTSA	NA	0.8
Children's Sleepwear Flammability Ban ⁴	1973	S	CPSC	29	0.8
Auto Side Door Support Standards	1970	S	NHTSA	2,520	0.8
Low-Altitude Windshear Equipment & Training Standards	1988	S	FAA	NA	1.3
Electrical Equipment Standards (Metal Mines)	1970	S	MSHA	NA	1.4
Trenching and Excavation Standards ³	1989	S	OSHA-S	14,310	1.5
Traffic Alert and Collision Avoidance (TCAS) Systems	1988	S	FAA	NA	1.5
Hazard Communication Standard	1983	S	OSHA-S	1,800	1.6
Side-Impact Stds for Trucks, Buses, and MPVs (Proposed)	1989	S	NHTSA	NA	2.2
Grain Dust Explosion Prevention Standards ³	1987	S	OSHA-S	9,450	2.8
Rear Lap/Shoulder Belts for Autos	1989	S	NHTSA	NA	3.2
Standards for Radionuclides in Uranium Mines ³	1984	H	EPA	6,300	3.4
Benzene NESHAP (Original: Fugitive Emissions)	1984	H	EPA	1,470	3.4
Ethylene Dibromide Drinking Water Standard ³	1991	H	EPA	NA	5.7
Benzene NESHAP (Revised: Coke Byproducts) ³	1988	H	EPA	NA	6.1
Asbestos Occupational Exposure Limit ³	1972	H	OSHA-H	3,015	8.3
Benzene Occupational Exposure Limit ³	1987	H	OSHA-H	39,600	8.9
Electrical Equipment Standards (Coal Mines) ³	1970	S	MSHA	NA	9.2
Arsenic Emission Standards for Glass Plants ³	1986	H	EPA	2,660	13.5
Ethylene Oxide Occupational Exposure Limit ³	1984	H	OSHA-H	1,980	20.5
Arsenic/Copper NESHAP	1986	H	EPA	63,000	23.0
Haz Waste Listing for Petroleum Refining Sludge	1990	H	EPA	210	27.6
Cover/Move Uranium Mill Tailings (Inactive Sites)	1983	H	EPA	30,100	31.7
Benzene NESHAP (Revised: Transfer Operations)	1990	H	EPA	NA	32.9
Cover/Move Uranium Mill Tailings (Active Sites)	1983	H	EPA	30,100	45.0
Acrylonitrile Occupational Exposure Limit ³	1978	H	OSHA-H	42,300	51.5
Coke Ovens Occupational Exposure Limit ³	1976	H	OSHA-H	7,200	63.5
Lockout/Tagout ³	1989	S	OSHA-S	4	70.9
Asbestos Occupational Exposure Limit ³	1986	H	OSHA-H	3,015	74.0
Arsenic Occupational Exposure Limit ³	1978	H	OSHA-H	14,800	106.9
Asbestos Ban	1989	H	EPA	NA	110.7
Diethylstilbestrol (DES) Cattlefeed Ban	1979	H	FDA	22	124.8
Benzene NESHAP (Revised: Waste Operations)	1990	H	EPA	NA	168.2
1,2-Dichloropropane Drinking Water Standard	1991	H	EPA	NA	653.0
Haz Waste Land Disposal Ban (1st 3rd)	1988	H	EPA	2	4,190.4
Municipal Solid Waste Landfill Standards (Proposed)	1988	H	EPA	<1	19,107.0
Formaldehyde Occupational Exposure Limit ³	1987	H	OSHA-H	31	86,201.8
Atrazine/Alachlor Drinking Water Standard	1991	H	EPA	NA	92,069.7
Haz Waste Listing for Wood-Preserving Chemicals	1990	H	EPA	<1	5,700,000.0

¹ 70-year lifetime exposure assumed unless otherwise specified.

² 50-year lifetime exposure.

³ 45-year lifetime exposure.

⁴ 12-year exposure period.

NA=Not available.

Agency Abbreviations. CPSC: Consumer Product Safety Commission; MSHA: Mine Safety and Health Administration; EPA: Environmental Protection Agency; NHTSA: National Highway Traffic Safety Administration; FAA: Federal Aviation Administration; FRA: Federal Railroad Administration; FDA: Food and Drug Administration; OSHA-H: Occupational Safety and Health Administration, Health Standards; OSHA-S: Occupational Safety and Health Administration, Safety Standards.

Source: John F. Morrall, III, "A Review of the Record," *Regulation*, Vol. 10, No. 2 (1986), p. 30. Updated by the Author, et. al.

Figure 2. Cost-Effectiveness of Selected Federal Regulations by Year of Promulgation by Agency

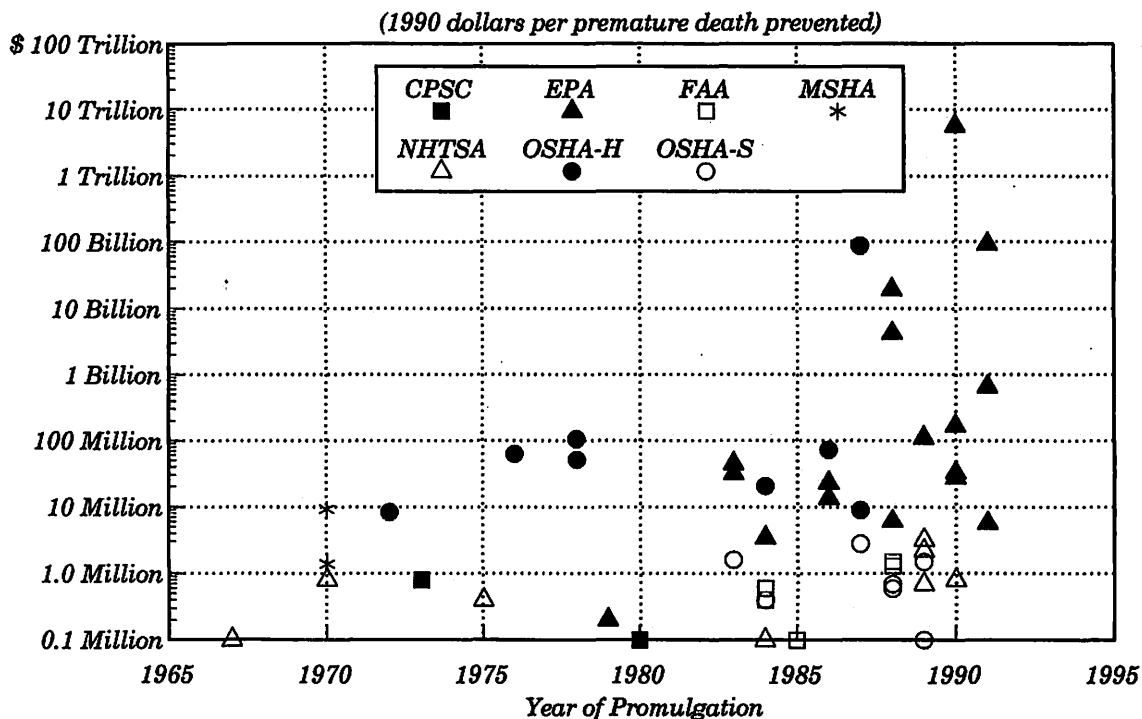
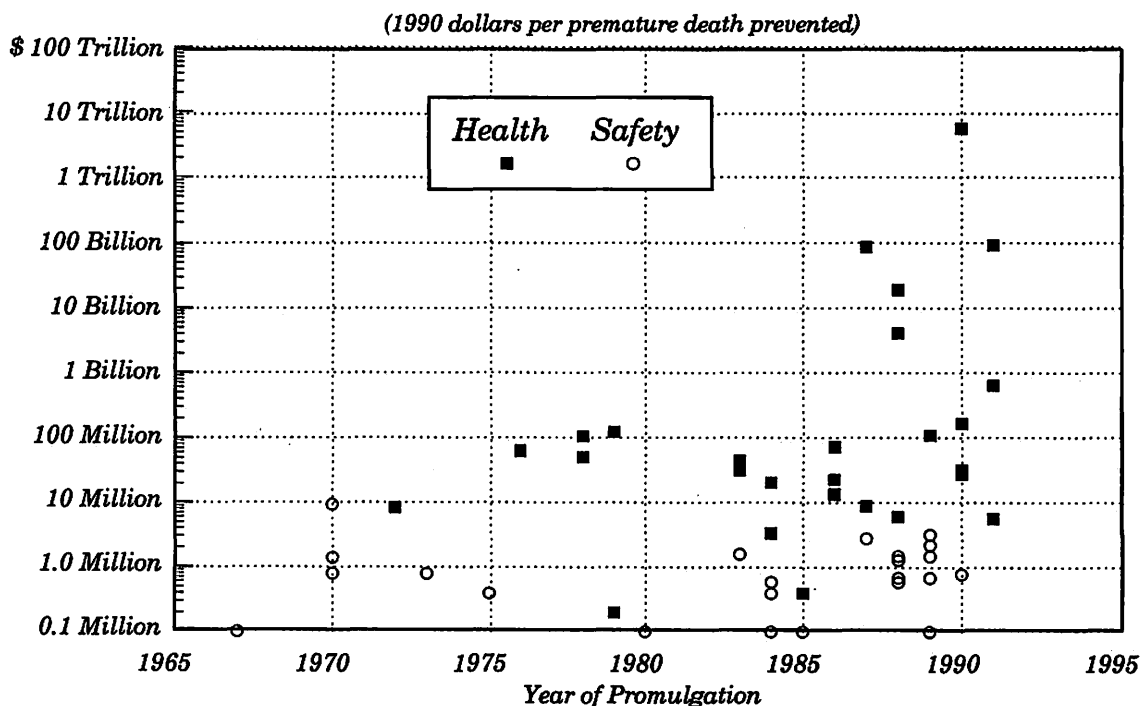


Figure 3. Cost-Effectiveness of Selected Federal Regulations by Year of Promulgation by Type of Risk



Assessing the Impact of Regulation on Constitutionally Protected Economic Interests

The scope and character of Federal regulation frequently implicate private economic interests protected by the Constitution under the Takings Clause of the Fifth Amendment. The Administration seeks to increase agency consideration of such interests, to ensure accountability for agency actions that constitute a deprivation of such interests, and to promote more reasoned regulatory decisions by requiring agencies to consider the costs of regulation that burden such protected interests.

Historically, the budget process has encouraged agencies to consider the implications of their regulatory actions under the Takings Clause only after a regulation has been challenged as a compensable taking of property, because such claims generally are paid from the judgment fund maintained in the Treasury rather than from the budget of the challenged agency or program. This post hoc process of evaluating takings has diminished agency accountability and relieved agencies of the need to consider less burdensome alternatives, and has thus increased the litigation burden on the United States.

The Administration has sought to reform this process by ensuring that agencies consider and account for the effects of regulations on arguably protected property interests, primarily by requiring a prospective assessment of regulations according to the requirements of the Takings Clause. This process is becoming a regularized part of all agency decisions, and will compel due regard for Constitutional protections, more rational regulatory decision, and sound fiscal management.

TAKINGS LAW

The Takings Clause of the Fifth Amendment to the U.S. Constitution reads simply "nor shall private property be taken for public use, without just compensation." Although one commonplace example of a taking would be the Federal Government's assertion of actual control of private property, as where the power of eminent domain is exercised, the Supreme Court has made clear that regulation of particular uses of private property interests, even where the

condemnation power is not invoked, may also constitute a taking within the meaning of the clause. As Justice Holmes declared in an early case upholding a constitutional challenge to a Pennsylvania law restricting subsurface mining, "while property may be regulated to a certain extent, if the regulation goes too far it will be recognized as a taking."¹²

Holmes' formulation has given way to a more elaborate—but perhaps no more certain—three-tier analysis, announced in a series of Supreme Court decisions beginning with *Penn Central Transportation Co. v. New York*, 439 U.S. 883 (1978). Under this analysis, regulation is scrutinized to determine whether compensation is due under the Takings Clause by balancing (1) the character of the action; (2) the extent of its economic impact; and (3) the reasonable investment-backed expectations with which it interferes.¹³

While court analysis of regulation under this standard thus far has been marked by considerable deference to the broad regulatory powers of the Government,¹⁴ potential takings claims and corresponding increases in program costs may be presented by a wide range of regulation, including licensing and permitting schemes that strictly constrain the use of private property. In 1991 alone, Federal courts have upheld claims for compensation arising under the Federal surface-mining program's prohibition of mining on private property in alluvial valley floors,¹⁵ the Federal leasing of Indian tribal resources,¹⁶ and permit denials under the Clean Water Act's section 404 wetlands program.¹⁷

EXECUTIVE ORDER NO. 12630 AND TAKINGS IMPACT ANALYSIS

Recognizing the potential impact of regulatory action on constitutionally protected interests, President Reagan issued Executive Order No. 12630 on March 16, 1988, "in order to ensure government actions are undertaken on a well-reasoned basis with due regard for fiscal accountability, for the financial impact of obligations imposed on the Federal government by the [Takings Clause], and for the Constitu-

¹² *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).

¹³ *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470 (1987); *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987); *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).

¹⁴ E.g., *Keystone Bituminous Coal Ass'n*, 480 U.S. at 485-97.

¹⁵ *Whitney Benefits, Inc. v. United States*, 926 F. 2d 1169 (Fed. Cir.), cert. pet. filed No. 91-195 (July 1991).

¹⁶ *United Nuclear Corp. v. United States*, 912 F. 2d 1432 (1990).

¹⁷ *Florida Rock Indus. v. United States*, 21 Cl. Ct. 153 (1990); *Loveladies Harbor, Inc. v. United States*, 21 Cl. Ct. 161 (1990).

tion. . . ."¹⁸ The primary reform introduced by the order is the requirement that Federal agencies assess whether a proposed policy or action may work a compensable taking of property before they decide on a regulatory course.¹⁹

The order requires the Attorney General to implement governmentwide guidelines. These were issued on June 30, 1988, and direct agencies to undertake an assessment, in light of applicable case law, of the risk that a proposed regulatory action will constitute a compensable taking.²⁰ These guidelines may be augmented and adapted to an agency's particular program with supplemental guidelines. In the past year, the Attorney General has issued supplemental guidelines for the Department of Housing and Urban Development and for the National Aeronautics and Space Administration; supplemental guidelines are also being considered for other agencies, including the Environmental Protection Agency and the Department of Agriculture.

The guidelines provide an analytical outline for agencies and departments in assessing the burden regulation may place on private property interests, and include a review of the "general principles and assessment factors" to determine whether a particular regulatory action creates a takings risk. This analysis is "informed by the general and specific principles of takings case law,"²¹ and an appendix to the guidelines provides an additional, but expressly nonexhaustive, discussion of applicable case law, recognizing that the assessment process will require "close consultation between agency program personnel and agency counsel."²²

Under the guidelines, agencies conduct an inventory of their programs in light of the factors identified by case law that would suggest takings risks. If the agency concludes there is no risk, the order and guidelines permit an express or categorical exclusion. Where the assessment indicates that frequently occurring actions could be treated similarly, the process

provides for a generic takings implication assessment. These tools streamline the process and assure that low-risk areas are treated expeditiously and that areas of greater concern are identified for more thorough examination of whether the proposed agency action has

an effect on private property sufficiently severe as to effectively deny economically viable use of any distinct legally protected property interest to its owner, or [with respect to physical interference] to have the effect of, or result in, a permanent or temporary physical occupation, invasion, or deprivation. . . .²³

When an agency concludes that particular regulatory action does present a takings risk, the decision-maker is alerted.²⁴ If the agency has discretion to modify the program in a manner consistent with statutory obligations, the agency must consider alternatives that may minimize the takings implications. When those implications cannot be wholly avoided, agencies must endeavor to minimize the potential financial impact of the taking.²⁵ The order and guidelines contemplate that, notwithstanding takings risk, agencies will meet the obligations imposed on them by law.²⁶

The assessment of takings risk takes the form of a takings implication assessment (TIA). The form and timing of the TIA is left to the discretion of each agency, but must be provided in a manner that permits the TIA meaningfully to inform the agency's decision process.²⁷ After the TIA is completed, and where an included policy or action presents a takings implication, those implications are to be identified in required submissions to the Office of Management and Budget.²⁸ Notices of proposed rulemakings must address significant takings implications,²⁹ and agencies have a similar obligation for public health and safety actions.³⁰ Legislative proposals having significant takings implications must also include a TIA that presents those implications for consideration in the formal Executive Branch review process.³¹

¹⁸ Exec. Order No. 12630, 53 FR 8859 (1988) ("Governmental Actions and Interference with Constitutionally Protected Property Rights") [hereinafter Exec. Order].

¹⁹ *Id.*, section 1(c).

²⁰ Attorney General's Guidelines for the Evaluation of Risk & Avoidance of Unanticipated Takings (June 30, 1988; promulgated pursuant to Exec. Order 12630) [hereinafter Guidelines], sections 1(c), I(B), V, & V(D).

²¹ Guidelines, section V(A) (5).

²² Appendix to the Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings [hereinafter Appendix], section I.

²³ *Id.* section V(D)(3)(a).

²⁴ Guidelines, sections I(B), VI(A)(2).

²⁵ *Id.*

²⁶ *Id.* section I(A). See also Appendix section II(A).

²⁷ *Id.* section VI(A)(2).

²⁸ Exec. Order, section 5(b); Guidelines, section VI(B)(1).

²⁹ Exec. Order, section 5(b); Guidelines, section VI(B)(2).

³⁰ Exec. Order, section 4(d).

³¹ Guidelines, section VI(B)(3).

To date, agencies have carried out the analysis required by the Executive order for more than 130 Federal regulations. Recent topics have included sale and disposal of national forest system timber;³² oil and gas operations in the Outer Continental Shelf;³³ protection, management, and control of wild free-roaming horses and burros;³⁴ migratory bird permits;³⁵ and marketing of toy, look-alike, and imitation firearms.³⁶

LEGISLATIVE ACTION

The Administration's efforts to ensure due regard for Constitutionally protected property interests have received considerable attention and support in Congress.

On July 10, 1991, Attorney General Thornburgh and Budget Director Darman transmitted to Congress the Judgment Financial Management Act. This bill would require that whenever agency action results in a claim

under the Takings Clause that is satisfied from the judgment fund, the agency "shall reimburse the fund for the full amount paid from annual appropriations available to the . . . agency during the two fiscal years following payment." This legislation would provide agencies with a direct incentive to explore alternatives to regulatory actions that might give rise to takings claims, and would permit Congress to assess the costs and impacts of regulatory programs more accurately.

In addition, many members of Congress have originated proposals to address takings issues. Most notably, the Private Property Rights Act of 1991, S. 50,³⁷ introduced by Senator Steven Symms, and its companion bill in the House, H.R. 1572,³⁸ sponsored by Representative Jim Olin, codifies and augments the agency obligations established by Executive Order No. 12630. The bill has the full support of the Administration,³⁹ as well as broad bipartisan support, and more than 30 cosponsors to date in the Senate.

³² 56 FR 3354 (Jan. 29, 1991; Forest Service).

³³ 56 FR 2678 (Jan. 24, 1991; MMS).

³⁴ 56 FR 786 (Jan. 9, 1991; BLM).

³⁵ 55 FR 47498 (Nov. 14, 1990; FWS).

³⁶ 54 FR 19356 (May 5, 1989; Commerce).

³⁷ 102d Cong., 1st Sess., 137 Cong. Rec. S685 (daily ed., Jan. 14, 1991).

³⁸ 102d Cong., 1st Sess. (1991).

³⁹ See, e.g., Letter from Vice President Dan Quayle to Hon. Steven Symms, United States Senate (Mar. 21, 1991); President's Council on Competitiveness Fact Sheet (Dec. 19, 1990).

APPENDIX IV

Executive Order No. 12291 Annual Report for 1990

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14. <i>Federal Register</i> Analysis: Pages Published 1936–1990	718		
15. <i>Federal Register</i> Analysis: Pages Published February 1977–December 1990	719		
16. <i>Federal Register</i> Analysis: Total Rule Documents for February 1977–December 1990	719		

I. INTRODUCTION

This report provides information on the implementation of Executive Order No. 12291 for the year ending December 31, 1990. It also describes trends in regulatory activity during the past decade.

Executive Order No. 12291, signed on February 17, 1981, established within the executive branch a mechanism for improving Federal regulatory activities. The purposes of the Executive order are to control the growth of Federal regulation and to ensure that individual regulations are well-reasoned, economically sound, and coordinated with the policies of other agencies. In particular, the order requires that all new regulations, to the extent permitted by law, adhere to the following principles:

- Agencies must base regulations upon adequate information concerning the need for and the consequences of the proposed action.
- Agencies must not issue regulations unless the potential benefits to society outweigh the potential costs to society.
- Of the alternative approaches to a given regulatory objective, an agency must select the alternative involving the least net cost to society.

To ensure compliance with these principles, the President ordered executive agencies to submit all proposed and final regulations to the Office of Management and Budget (OMB) for review before publication.

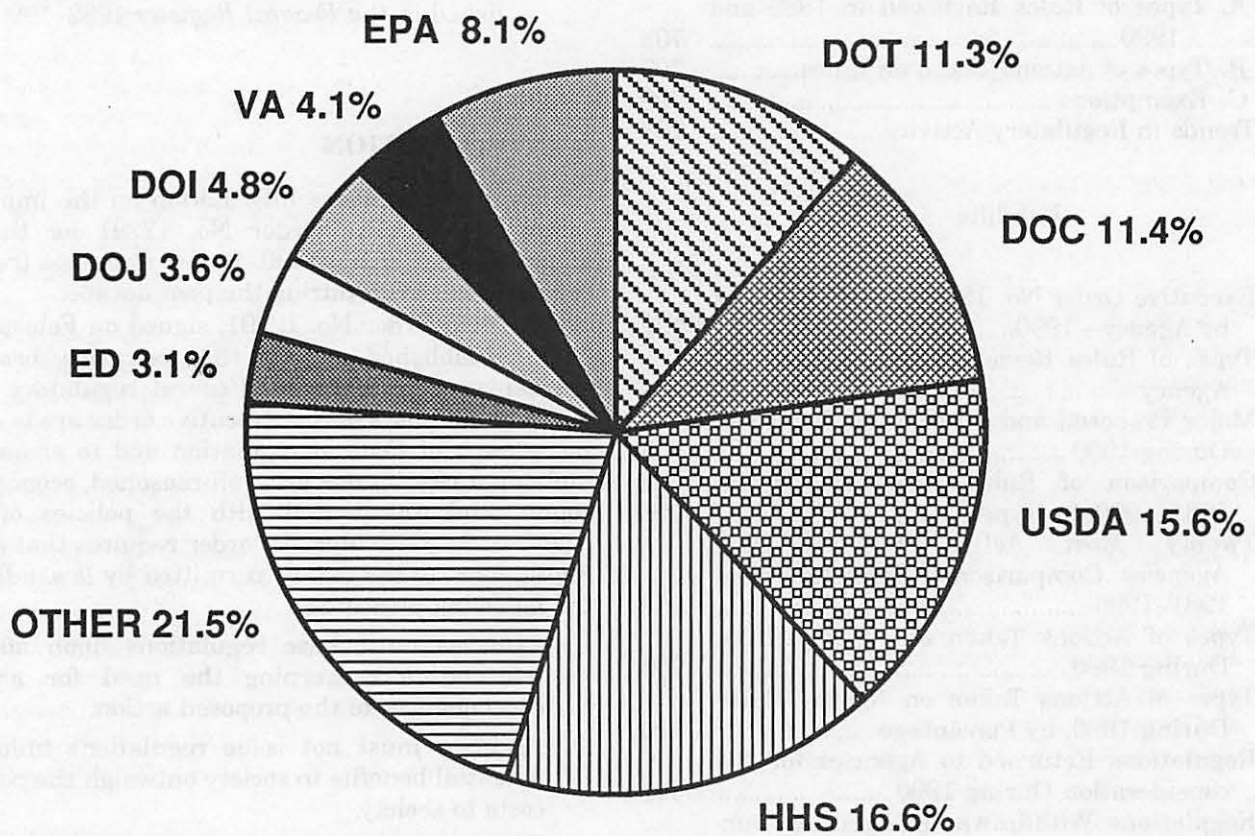
These review policies and procedures are conducted within statutory authorities. The Executive order guides Federal regulatory officials in exercising the discretion given them by statute. This statutory discretion is often very broad, and may be ambiguous or contradictory, but may be exercised only to the extent permitted by law. Where statutes clearly

EXHIBIT 1.

EXECUTIVE ORDER 12291

TOTAL REVIEWS BY AGENCY

1990



exclude economic considerations, by their terms, any Executive order policies to the contrary are overridden. The order applies to general policymaking, such as "informal rulemaking" under the Administrative Procedure Act. It does not apply to adjudicatory proceedings.

This is the tenth annual report on the order's implementation. Section II describes the requirements and procedures of the order. Section III presents detailed information on the types of rules reviewed and the types of actions taken by OMB in 1990. Comparisons are then made between 1990 data and those of 1981 through 1989. Section IV examines the nature and extent of regulatory activity since 1977 by analyzing certain statistics of *Federal Register* activity.

II. IMPLEMENTATION OF THE EXECUTIVE ORDER

The Office of Information and Regulatory Affairs (OIRA) in OMB oversees agency compliance with Executive Order No. 12291. OIRA seeks to ensure, on a day-to-day basis, that agency regulatory activity reflects the President's regulatory policies described in the order.

OIRA reviews "major" regulations with special attention. Regulations so designated have economic costs of over \$100 million annually, or are projected to have significant effects on employment, inflation, or industry viability. A regulatory impact analysis (RIA) must accompany major regulations at both proposed and final rulemaking stages. An RIA assesses the costs and benefits of the action and its alternatives. OMB may waive the RIA requirements in special cases; for example, in order to expedite publication of an emergency regulation. Agencies must submit major proposed rules to OMB at least 60 days before publication, and major final rules at least 30 days before publication.

Executive agencies must transmit nonmajor regulations to OMB at least 10 days prior to planned publication. Executive Order No. 12291 does not require agencies to prepare RIAs for nonmajor actions, but it does require agencies to assure that their rules are consistent with the Executive order's principles to the extent permitted by law. Many agencies perform an initial analysis of the economic impact of nonmajor rules if they believe the rule will have a significant effect, or if it will be useful in assessing the impact.

III. REVIEW OF REGULATIONS

A. Types of Rules Reviewed in 1990

OMB reviewed 2,139 agency rules in 1990 under Executive Order No. 12291. Exhibit 1 shows that nine agencies accounted for more than 78 percent of the rules reviewed. These agencies were: the Department of Health and Human Services (354 rules), the Department of Agriculture (333), the Department of Commerce (244), the Department of Transportation (242), the Environmental Protection Agency (173), the Department of the Interior (102), the Department of Veterans Affairs (87), the Department of Justice (78), and the Department of Education (66).

Exhibit 2 shows the number of rules reviewed during 1990 by each agency. Rules are classified as either major or nonmajor, and either proposed (NPRM) or final. Of the rules OMB reviewed in 1990, 38.6 percent were nonmajor proposed rules and 57.6 percent were nonmajor final rules. Major rules constituted only 3.8 percent of all rules. The Environmental Protection Agency and the Department of Agriculture had the largest number of major proposed rules (8 and 9, respectively). The Environmental Protection Agency had the largest number of major final rules (12), followed by the Department of Agriculture (9). Exhibit 3 lists by name all major proposed and final regulations reviewed in 1990.

Exhibit 4 displays changes over the last 10 years in the types of rules reviewed. The total number of rules OMB reviewed in 1990 decreased 3.6 percent from 1989 and was 23.6 percent lower than the number reviewed in 1981. The number of proposed rules in 1990 decreased 9.3 percent from 1989 and 13.2 percent from 1981. The number of final rules reviewed in 1990 increased 0.6 percent from 1989 and dropped 28.0 percent from 1981. The number of major rules in 1990 increased 3.8 percent from the 1989 level and rose 36.7 percent from 1981.

Exhibit 5 shows, by agency, the number of rules reviewed during each of the last 10 years. Comparing 1990 with 1981, the greatest percentage decline in the total number of rules reviewed occurred at the Environmental Protection Agency (-76.4 percent), the Department of Energy (-73.6 percent), and the Department of Agriculture (-49.2 percent). The Small Business Administration experienced the largest percentage increase since 1981 (250 percent), followed by the Department of Health and Human Services (202.6 percent), the Treasury Department (88.2 percent), the National Aeronautics and Space Administration (60 percent), the Federal Emergency Management Agency (56.3 percent), and the Department of Commerce (50.6 percent).

EXHIBIT 2. TYPES OF RULES REVIEWED DURING 1990, BY AGENCY

Agency	Total rules	Nonmajor		Major	
		NPRM	Final	NPRM	Final
Health and Human Services (HHS).....	354	158	182	7	7
Agriculture (USDA).....	333	134	182	8	9
Commerce (DOC).....	244	67	177	0	0
Transportation (DOT).....	242	108	123	5	6
Environmental Protection Agency (EPA).....	173	63	89	9	12
Interior (DOI).....	102	52	47	0	3
Veterans Affairs (VA).....	87	35	52	0	0
Justice (DOJ).....	78	22	56	0	0
Education (ED).....	66	38	28	0	0
Treasury (TREAS).....	64	30	33	1	0
Housing and Urban Development (HUD).....	63	26	36	1	0
Labor (DOL).....	58	20	26	7	5
Office of Personnel Management (OPM).....	52	13	39	0	0
General Services Administration (GSA).....	35	3	32	0	0
Small Business Administration (SBA).....	35	12	21	1	1
Federal Emergency Management Agency (FEMA).....	25	9	16	0	0
Energy (DOE).....	14	6	8	0	0
National Archives and Records Administration (NARA).....	13	4	9	0	0
U.S. International Development Cooperation Agency (USIDCA).....	12	3	9	0	0
National Aeronautics and Space Administration (NASA).....	9	2	7	0	0
State (STATE).....	9	2	7	0	0
Defense (DOD).....	8	5	3	0	0
Office of Government Ethics (OGE).....	7	1	6	0	0
Railroad Retirement Board (RRB).....	7	2	5	0	0
United States Information Agency (USIA).....	7	1	6	0	0
National Science Foundation (NSF).....	6	4	2	0	0
Institute of Museum Services (IMS).....	5	2	3	0	0
Panama Canal Commission (PCC).....	4	0	4	0	0
ACTION.....	3	1	2	0	0
National Endowment for the Arts (NEA).....	2	0	2	0	0
National Endowment for the Humanities (NEH).....	2	0	2	0	0
Navajo Hopi Indian Relocation Commission (NHIRC).....	2	0	2	0	0
Office of Management and Budget (OMB).....	2	1	1	0	0
Peace Corps (PEACE).....	2	0	2	0	0
Pension Benefit Guaranty Corporation (PBGC).....	2	0	2	0	0
African Development Foundation (ADF).....	1	0	1	0	0
Architectural and Transportation Barriers Compliance Board (ATBCB).....	1	0	1	0	0
Commission on Civil Rights (CCR).....	1	0	1	0	0
Export-Import Bank (EIB).....	1	0	1	0	0
Federal Mediation and Conciliation Service (FMCS).....	1	0	1	0	0
Inter-American Foundation (IAF).....	1	0	1	0	0
Office of Science and Technology Policy (OSTP).....	1	1	0	0	0
Office of the U.S. Trade Representative (USTR).....	1	0	1	0	0
Other Temporary Commissions.....	1	0	1	0	0
Overseas Private Investment Corporation (OPIC).....	1	0	1	0	0
Resolution Trust Corporation (RTC).....	1	0	1	0	0
Tennessee Valley Authority (TVA).....	1	0	1	0	0
Equal Opportunity Employment Commission (EEOC).....	0	0	0	0	0
Federal Acquisition Regulations.....	0	0	0	0	0
Federal Credit System Assistance Board.....	0	0	0	0	0
Federal Home Loan Bank Board (FHLBB).....	0	0	0	0	0
Selective Service System (SSS).....	0	0	0	0	0
U.S. Office of Special Counsel.....	0	0	0	0	0
Total.....	2,139	825	1,232	39	43
Percentage of total.....	100.0	38.6	57.6	1.8	2.0

EXHIBIT 3. MAJOR PROPOSED AND FINAL RULES REVIEWED DURING 1990**Major Proposed Rules****UNITED STATES DEPARTMENT OF AGRICULTURE**

Export Enhancement Program
 Targeted Export Assistance Program
 Export Enhancement Program
 Targeted Export Assistance Program
 1990 Common Program Provisions for Wheat, Feed Grains
 Dairy Products
 Animal Welfare (Part 3)
 Animal Welfare Standards

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Respiratory Protective Devices
 Hepatitis B Vaccination Acceptance Among Adolescents
 Medicare Coverage of Adult Liver Transplants
 Inpatient Hospital Prospective Payment System and Fiscal Year
 1991 Rates
 Additional Safe Harbors Provisions
 Food Labeling—Mandatory Status of Nutrition Labeling
 Implementing the Clinical Laboratory Improvement
 Amendments of 1988

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Development Block Grant—State Program

DEPARTMENT OF LABOR

Occupational Exposure to Cadmium
 Occupational Exposure to Asbestos, Tremolite, etc.
 Vehicle Safety
 Process Safety Management of Highly Hazardous Chemicals
 Respiratory Protection Standard
 Hazard Communication

Walking and Working Surfaces

DEPARTMENT OF TRANSPORTATION

Nondiscrimination on the Basis of Handicap in Federally
 Assisted Mass Transit Programs
 Small Airplane Worthiness Review Program, Notice 4
 Extension of Automatic Crash Requirements to Light Trucks
 Light Trucks Average Fuel Economy Standards, Model Years
 1992-1994
 Center High Mounted Stop Lamp on Vehicles Other Than
 Passenger Cars

TREASURY DEPARTMENT

Liability of Common Carriers To Prevent Unmanifested
 Narcotics

ENVIRONMENTAL PROTECTION AGENCY

Drinking Water Regulations, Synthetic Organic Chemicals—
 Phase V
 National Sewage Sludge Study
 Drinking Water, Lead, and Copper
 Effluent Guidelines & Standards, Offshore Subcategory
 VOC Monitoring and Aldicarb MCLGs/MCLs
 Corrective Action for Solid Waste Management Units
 Surface Impoundments
 South Coast Air Basin—Plans for Ozone & Carbon Monoxide
 Surface Impoundments

SMALL BUSINESS ADMINISTRATION

Small Business Investment Companies

Major Final Rules**UNITED STATES DEPARTMENT OF AGRICULTURE**

1990 Upland Cotton Program
 1990 Feed Grains Program
 Wool and Mohair Support Prices for Marketing Year 1990
 Emergency Livestock Assistance
 1990 Program Provisions for Rice
 1990 Crop Sugar Beet and Sugarcane
 1990 Crop Soybean Loan and Purchase Rate
 Community Program Guaranteed Loans
 Egg Research and Promotion Order

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Monthly Supplementary Medical Insurance Premium
 1990 Mid-Year Changes to the Inpatient Hospital Prospective
 Payment System
 Clinical Laboratory Improvement Act: Fee Collection
 Inpatient Hospital Prospective Payments—Fiscal Year 1991
 Determining Disability for a Child Under Age 18
 OIG Anti-Kickback Provisions
 Safe Harbors for Protecting Health Plans

DEPARTMENT OF THE INTERIOR

1990-1991 Migratory Game Bird Hunting Regulations
 Incidental Take of Marine Mammals, Definition of Citizen of the
 United States
 Final Framework for Early-Season Migratory Bird Hunting

DEPARTMENT OF LABOR

Attestation-Health Care Facilities Seeking To Employ Non-
 immigrant Nurses
 Training Wage Provision of the FLSA Amendments of 1989
 Minimum Wage Provisions of FLSA 1989 Amendments in
 Puerto Rico
 Minimum Wage Provisions of FLSA 1989 Amendments in
 Puerto Rico
 Electrical Safety-Related Work Practices

DEPARTMENT OF TRANSPORTATION

Nondiscrimination on the Basis of Handicap
 Light Truck Fuel Economy Standard for Model Year 1992
 Side Impact Protection (Main Notice)
 Reporting Compliance With Phasing In of Dynamic Side Impact
 Requirements
 Side Impact Protection—Anthropomorphic Test Dummy
 Side Impact Protection—Moving Deformable Barrier

ENVIRONMENTAL PROTECTION AGENCY

NPDES Permit Application for Storm Water Discharges
 National Primary & Secondary Water Regulations—35
 Contaminants
 National Oil and Hazardous Substances Pollution
 Contingency Plan
 Toxicity Characteristic
 Land Disposal Restrictions for Third Third Scheduled Wastes
 Hazardous Waste Management System—Reportable Quantities
 Petroleum

EXHIBIT 3 (continued)

Hazardous Waste Management System—Wood Preservatives
 NESHAP for Benzene
 Protect Stratospheric Ozone
 Volatility Regulations for Gasoline and Alcohol Blends Sold in
 Calendar Year 1992 and Beyond

Fuel Quality for Diesel Fuel Sold in 1993 and Later
 Ohio New Source Review

SMALL BUSINESS ADMINISTRATION
 Surety Bond Guarantee Program

EXHIBIT 4. COMPARISON OF RULES REVIEWED DURING 1981-1990, BY TYPE

Type of rule	Number of rules									
	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
Nonmajor	2,705	2,559	2,422	2,055	2,155	1,934	2,246	2,280	2,141	2,057
Proposed	970	1,026	1,045	951	1,050	784	1,056	1,293	921	825
Final	1,735	1,533	1,377	1,104	1,105	1,150	1,190	987	1,220	1,232
Major	60	79	63	60	60	73	70	83	79	82
Proposed	25	29	22	33	21	25	40	43	32	39
Final	35	50	41	27	39	48	30	40	47	43
Total Proposed	995	1,055	1,067	984	1,071	809	1,096	1,336	953	864
Total Final	1,770	1,583	1,418	1,131	1,144	1,198	1,220	1,027	1,267	1,275
E.O. Not Applicable	35	1	0	0	0	0	0	0	0	0
Total	2,800	2,639	2,485	2,115	2,215	2,007	2,316	2,363	2,220	2,139
	Percent change									
	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90	1981-90
Nonmajor	-5.4	-5.4	-15.2	4.9	-10.3	16.1	1.5	-6.1	-3.9	-24.0
Proposed	-5.8	1.9	-9.0	10.4	-25.3	34.7	22.4	-28.8	-10.4	-14.9
Final	-11.6	-10.2	-19.8	0.1	4.1	3.5	-17.1	23.6	1.0	-29.0
Major	31.7	-20.3	-4.8	0.0	21.7	-4.1	18.6	-4.8	3.8	36.7
Proposed	16.0	-24.1	50.0	-36.4	19.0	60.0	7.5	-25.6	21.9	56.0
Final	42.9	-18.0	-34.1	44.4	23.1	-37.5	33.3	17.5	-8.5	22.9
Total Proposed	6.0	1.1	-7.8	8.8	-24.5	35.5	21.9	-28.7	-9.3	-13.2
Total Final	-10.6	-10.4	-20.2	1.1	4.7	1.8	-15.8	23.4	0.6	-28.0
E.O. Not Applicable	-97.1	-100.0	NA	NA	NA	NA	NA	NA	NA	-100.0
Total	-5.8	-5.8	-14.9	4.7	-9.4	15.4	2.0	-6.1	-3.6	-23.6

**EXHIBIT 5. TWENTY MOST ACTIVE RULE-PRODUCING AGENCIES:
COMPARISON OF RULES REVIEWED 1981-1990**

Agency	Number of rules									
	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
HHS.....	117	272	294	199	212	281	315	320	283	354
USDA.....	656	695	552	483	407	418	420	441	405	333
DOC.....	162	147	121	107	113	130	134	145	195	244
DOT.....	283	226	225	218	252	196	203	258	250	242
EPA.....	734	341	268	308	305	197	205	210	201	173
DOI.....	147	249	240	133	161	144	186	152	97	102
VA.....	69	70	69	70	65	62	67	82	95	87
DOJ.....	53	51	72	46	78	46	84	52	100	78
ED.....	77	53	50	106	108	99	174	123	82	66
TREAS.....	34	32	53	44	26	21	29	37	47	64
HUD.....	74	130	112	108	90	68	64	105	78	63
DOL.....	62	49	49	35	38	56	64	77	60	58
OPM.....	38	49	65	45	69	72	97	74	53	52
GSA.....	56	62	85	63	85	41	59	57	61	35
SBA.....	10	16	20	32	19	30	16	37	39	35
FEMA.....	16	6	29	16	26	24	26	30	29	25
DOE.....	53	49	34	25	19	16	20	20	19	14
NARA.....	NA	NA	NA	NA	9	13	9	17	8	13
NASA.....	10	11	13	15	25	15	15	17	16	9
DOD.....	4	9	13	7	17	9	17	12	6	8
	Percent change									
	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90	1981-90
HHS.....	132.5	8.1	-32.3	6.5	32.5	12.1	1.6	-11.6	25.1	202.6
USDA.....	5.9	-20.6	-12.5	-15.7	2.7	0.5	5.0	-8.2	-17.8	-49.2
DOC.....	-9.3	-17.7	-11.6	5.6	15.0	3.1	8.2	34.5	25.1	50.6
DOT.....	-20.1	-0.4	-3.1	15.6	-22.2	3.6	27.1	-3.1	-3.2	-14.5
EPA.....	-53.5	-21.4	13.1	0.7	-35.4	4.1	2.4	-4.3	-13.9	-76.4
DOI.....	69.4	-3.6	-44.6	21.1	-10.6	29.2	-18.3	-36.2	5.2	-30.6
VA.....	1.4	-1.4	1.4	-7.1	-4.6	8.1	22.4	15.9	-8.4	26.1
DOJ.....	-3.8	41.2	-36.1	69.6	-41.0	82.6	-38.1	92.3	-22.0	47.2
ED.....	-31.2	-5.7	112.0	1.9	-8.3	75.8	-29.3	-33.3	-19.5	-14.3
TREAS.....	-5.9	65.6	-17.0	-40.9	-19.2	38.1	27.6	27.0	36.2	88.2
HUD.....	75.7	-13.8	-3.6	-16.7	-24.4	-5.9	64.1	-25.7	-19.2	-14.9
DOL.....	-21.0	0.0	-28.6	8.6	47.4	14.3	20.3	-22.1	-3.3	-6.5
OPM.....	28.9	32.7	-30.8	53.3	4.3	34.7	-23.7	-28.4	-1.9	36.8
GSA.....	10.7	37.1	-25.9	34.9	-51.8	43.9	-3.4	7.0	-42.6	-37.5
SBA.....	60.0	25.0	60.0	-40.6	57.9	-46.7	131.3	5.4	-10.3	250.0
FEMA.....	-62.5	383.3	-44.8	62.5	-7.7	8.3	15.4	-3.3	-13.8	56.3
DOE.....	-7.5	-30.6	-26.5	-24.0	-15.8	25.0	0.0	-5.0	-26.3	-73.6
NARA.....	NA	NA	NA	NA	44.4	-30.8	88.9	-52.9	62.5	NA
NASA.....	10.0	18.2	-15.4	127.3	-40.0	0.0	13.3	-5.9	43.8	60.0
DOD.....	125.0	44.4	-46.2	142.9	-47.1	88.9	-29.4	-50.0	33.3	50.0

B. Types of Actions Taken on Rules

Exhibits 6 through 10 summarize the actions taken on agency rules under Executive Order No. 12291 during 1990. Exhibit 11 compares OMB's actions during 1990 with actions in previous years.

Exhibit 6 shows the number of rules by type of OMB action during 1990. Of the 2,139 rules reviewed during

1990, OMB found that 71.8 percent were consistent with the principles of the Executive order as submitted, 19.3 percent were consistent with the order after the agency adopted changes during the review period, 1.0 percent were inconsistent with the order and returned to the agency for reconsideration, another 2.5 percent were withdrawn by agencies, and

2.7 percent were suspended. Emergency rules and rules subject to statutory or judicial deadlines constituted 2.6 percent of all 1990 rules, and 0.2 percent were sent improperly or were exempt.

Exhibit 7 shows the percentage of rules in each category for the 21 most active rulemaking agencies in 1990.

Exhibit 8 lists by name each of the 21 rules returned for reconsideration in 1990. Exhibit 9 lists by name each of the 54 rules withdrawn by agencies during OMB review in 1990. OMB may return regulations for reconsideration if it finds them to be inconsistent with the principles of the Executive order. Agencies may withdraw rules during review because they have concluded that the rules are inconsistent with the Executive order or for other reasons. An agency may, for example, wish to incorporate newly acquired information into a rule.

Exhibit 10 lists by name each of the 58 rules suspended in 1990. OMB may suspend rules, if agencies have not responded in a timely fashion to requests for information needed to complete a review.

Exhibit 11 compares OMB actions on agency rules during the past 10 years. The percentage of rules OMB found consistent with the Executive order declined rather steadily from 87.3 percent in 1981 to 68.3 percent in 1986 but has increased slightly since 1986. At the same time, the percentage of rules OMB found consistent after change increased sharply from 4.9 percent in 1981 to 23.7 percent in 1987 and declined to 19.3 percent in 1990. The percentage of rules that agencies withdrew through 1985 increased to 3.1 percent from 1.8 percent in 1981, then declined to 2.4 percent in 1988 and was 2.5 in 1989. The percentage of rules that OMB returned for agency reconsideration has fluctuated over the years but reached a low point of 0.4 percent in 1987 compared to a high of 2.7 percent in 1984. In 1990 the number returned for reconsideration moderated to 1.0 percent. The percentage of rules suspended in 1990 was 2.7 percent. The percentage of rules issued by agencies under emergency, statutory, or judicial deadlines has varied from 1.2 in 1985 to 4.3 the following year; in 1990 it was 2.5 percent.

Exhibit 12 shows OMB's average regulatory review time by agency from 1981 to 1990 for all major and nonmajor rules. Generally, review time for major rules is longer than for nonmajor rules because of their greater complexity and importance. In 1981 OMB's average review time for all major rules was 13 days; in 1990 it was 56 days. OMB's average review time in 1981 for nonmajor rules was 9 days, as compared with an average of 27 days in 1990. The 1990 average review time for all rules was 28 days.

C. Exemptions

Executive Order No. 12291 authorizes the Director of OMB to exempt classes of regulations from any or all of the requirements of the order. The exemptions granted by OMB fall into four broad categories: (1) rules that are essentially nonregulatory; (2) rules that delegate regulatory authority to States; (3) rules that largely or entirely affect individual entities and that do not involve broader policy issues; and (4) rules for which a delay of even a few days could impose substantial costs and that are unlikely to involve significant policy issues.

At the end of 1990, OMB had granted a total of 29 exemptions (some covering more than one of the categories above) to eight agencies. Exhibit 13 lists these exemptions. Most of the exemptions were established during the initial years of the operation of the Executive order. In each case, OMB determined that the exempted regulations, as a class, were consistent with the goals and requirements of the Executive order. OMB continues to review all "major" rules as defined by the Executive order regardless of class exemptions. OMB may request that agencies submit specific rules within an exempt class and may revoke exemptions at any time.

IV. TRENDS IN REGULATORY ACTIVITY

Because there are no precise or agreed-upon measures of regulatory activity, the precise effect Executive Order No. 12291 has had on regulatory activity cannot be measured. It is useful, however, to compare the number of pages and the number of total rule documents (proposed rule documents plus final rule documents) published in the *Federal Register* during different time periods.

Exhibit 14 shows the number of pages published in the *Federal Register* from its inception in 1936 through 1990. There was little year-to-year change until the 1970s when the size of the *Federal Register* increased dramatically. But in 1981, the year Executive Order No. 12291 went into effect, the growth in the *Federal Register* ended.

In fact, the exhibit shows that from 1981 to 1986 the size of the *Federal Register* declined steadily on an annual basis. From 1981 through 1984, the number of pages published in the *Federal Register* decreased—there were 41.4 percent fewer pages in the *Federal Register* in 1984 than in 1980. In 1985 the number of pages rose modestly by 4.87 percent over 1984 levels. But in 1986 the number of *Federal Register* pages declined 11.3 percent to its lowest level since 1974. The number of published pages increased in the years 1987 through 1989 before declining modestly in 1990.

Nevertheless, the overall trend of the past 9 years is downward.

Exhibit 15 further depicts the effects of Executive Order No. 12291 on the size of the *Federal Register*. It does this by showing the number of pages published in the *Federal Register* each month since 1977. The dramatic break with the upward trend in the 1970s is clearly evident.

Exhibit 16 depicts the total number of proposed and final rule documents published since 1977. This chart parallels the exhibit for pages published. It also indicates that since Executive Order No. 12291 was issued, Federal regulatory activity as represented by documents issued has decreased.

Exhibits 17, 18, and 19 provide various measures of regulatory activity since 1980.

EXHIBIT 6. TYPES OF ACTIONS TAKEN ON AGENCY RULES DURING 1990

Agency	Total reviews	Found consistent without change	Found consistent with change	Withdrawn by agency	Returned for reconsideration	Returned, sent improperly	Suspended	Emergency	Statutory or judicial deadline
HHS.....	354	231	94	7	2	0	17	1	2
USDA.....	333	248	58	7	5	3	6	0	6
DOC.....	244	203	21	2	2	0	1	11	4
DOT.....	242	211	22	3	1	0	0	1	4
EPA.....	173	86	45	6	4	0	12	1	19
DOI.....	102	79	13	5	2	0	2	0	1
VA.....	87	70	13	3	1	0	0	0	0
DOJ.....	78	67	8	2	0	0	0	0	1
ED.....	66	21	37	3	2	0	3	0	0
TREAS.....	64	46	9	6	1	0	2	0	0
HUD.....	63	38	19	2	0	0	4	0	0
DOL.....	58	28	21	2	1	0	3	0	3
OPM.....	52	43	9	0	0	0	0	0	0
GSA.....	35	25	8	0	0	0	2	0	0
SBA.....	35	30	5	0	0	0	0	0	0
FEMA.....	25	9	13	3	0	0	0	0	0
DOE.....	14	8	3	2	0	0	1	0	0
NARA.....	13	12	0	1	0	0	0	0	0
USIDCA.....	12	8	4	0	0	0	0	0	0
NASA.....	9	8	0	0	0	0	1	0	0
STATE.....	9	7	2	0	0	0	0	0	0
DOD.....	8	4	3	0	0	0	1	0	0
Office of Government Ethics.....	7	6	1	0	0	0	0	0	0
Railroad Retirement Board.....	7	6	0	0	0	0	1	0	0
USIA.....	7	7	0	0	0	0	0	0	0
NSF.....	6	3	1	0	0	1	1	0	0
IMS.....	5	4	1	0	0	0	0	0	0
PCC.....	4	2	1	0	0	1	0	0	0
ACTION.....	3	3	0	0	0	0	0	0	0
Navajo Hopi Indian Relocation Commission.....	2	0	1	0	0	0	1	0	0
NEA.....	2	2	0	0	0	0	0	0	0
NEH.....	2	2	0	0	0	0	0	0	0
OMB.....	2	2	0	0	0	0	0	0	0
PBGC.....	2	2	0	0	0	0	0	0	0
PEACE.....	2	2	0	0	0	0	0	0	0
ADF.....	1	1	0	0	0	0	0	0	0
ATBCB.....	1	1	0	0	0	0	0	0	0
CCR.....	1	1	0	0	0	0	0	0	0
EIB.....	1	1	0	0	0	0	0	0	0
FMCS.....	1	1	0	0	0	0	0	0	0
IAF.....	1	1	0	0	0	0	0	0	0
OST.....	1	1	0	0	0	0	0	0	0
Other Temporary Commissions.....	1	1	0	0	0	0	0	0	0
OPIC.....	1	1	0	0	0	0	0	0	0
RTC.....	1	1	0	0	0	0	0	0	0
TVA.....	1	1	0	0	0	0	0	0	0
Trade Representative.....	1	1	0	0	0	0	0	0	0
Total.....	2,139	1,535	412	54	21	5	58	14	40
Percentage of total.....	100.0	71.8	19.3	2.5	1.0	0.2	2.7	0.7	1.9*

*Because percentages are rounded, they do not add up to 100 percent.

EXHIBIT 7. TYPES OF ACTIONS TAKEN ON AGENCY RULES DURING 1990, BY PERCENTAGE

Agency	Number of total reviews	Found consistent without change (%)	Found consistent with change (%)	Withdrawn by agency (%)	Returned for reconsideration (%)	Returned, sent improperly (%)	Suspended (%)	Emergency or statutory/judicial deadline (%)
HHS.....	354	65.3	26.6	2.0	0.6	0.0	4.8	0.3
USDA.....	333	74.5	17.4	2.1	1.5	0.9	1.8	0.0
DOC.....	244	83.2	8.6	0.8	0.8	0.0	0.4	4.5
DOT.....	242	87.2	9.1	1.2	0.4	0.0	0.0	0.4
EPA.....	173	49.7	26.0	3.5	2.3	0.0	6.9	0.6
DOI.....	102	77.5	12.7	4.9	2.0	0.0	2.0	0.0
VA.....	87	80.5	14.9	3.4	1.1	0.0	0.0	0.0
DOJ.....	78	85.9	10.3	2.6	0.0	0.0	0.0	0.0
ED.....	66	31.8	56.1	4.5	3.0	0.0	4.5	0.0
TREAS.....	64	71.9	14.1	9.4	1.6	0.0	3.1	0.0
HUD.....	63	60.3	30.2	3.2	0.0	0.0	6.3	0.0
DOL.....	58	48.3	36.2	3.4	1.7	0.0	5.2	0.0
OPM.....	52	82.7	17.3	0.0	0.0	0.0	0.0	0.0
GSA.....	35	71.4	22.9	0.0	0.0	0.0	5.7	0.0
SBA.....	35	85.7	14.3	0.0	0.0	0.0	0.0	0.0
FEMA.....	25	36.0	52.0	12.0	0.0	0.0	0.0	0.0
DOE.....	14	57.1	21.4	14.3	0.0	0.0	7.1	0.0
NARA.....	13	92.3	0.0	7.7	0.0	0.0	0.0	0.0
USIDCA.....	12	66.7	33.3	0.0	0.0	0.0	0.0	0.0
NASA.....	9	88.9	0.0	0.0	0.0	0.0	11.1	0.0
STATE.....	9	77.8	22.2	0.0	0.0	0.0	0.0	0.0
All Other.....	71	84.1	7.9	0.0	0.0	3.2	4.8	0.0
Total.....	2,139	71.8	19.3	2.5	1.0	0.2	2.7	2.5

EXHIBIT 8. REGULATIONS RETURNED TO AGENCIES FOR RECONSIDERATION DURING 1990

Agency/Title of regulation	Type	Received	Reviewed
UNITED STATES DEPARTMENT OF AGRICULTURE			
Food Stamp Program: Outcome-Based Performance Standards	NPRM	11/06/90	12/03/90
Export Credit Guaranty Program	NPRM	01/19/90	05/02/90
Farmland Protection Act	Final	02/06/90	07/11/90
Civil Rights Compliance Requirements	NPRM	02/26/90	06/01/90
Animal Welfare—Guinea Pigs, Hamsters, and Rabbits	Final	03/02/90	04/17/90
DEPARTMENT OF COMMERCE			
Advanced Technology Program	NPRM	02/06/90	03/01/90
Inquiries on Applicability or Jurisdiction of Export Administration Regulations.....	Final	05/10/89	04/03/90
DEPARTMENT OF EDUCATION			
Computer-Based Instruction Program: Fiscal Year '91 Funding Priority	NPRM	06/25/90	09/06/90
Centers for Independent Living Program	NPRM	09/26/90	11/05/90
DEPARTMENT OF HEALTH AND HUMAN SERVICES			
AFDC Automobile Exclusion Limit	NPRM	09/18/90	11/15/90
PRO Sanctions Notification Process	NPRM	11/20/89	06/04/90
DEPARTMENT OF THE INTERIOR			
Gas Sales Under Percentage-of-Proceeds Contracts	Final	07/02/90	07/30/90
Solid Waste Disposal: Recreation and Public Purposes Act	Final	10/30/90	12/06/90
DEPARTMENT OF LABOR			
Occupational Exposure to Formaldehyde, Response to Court Remand.....	NPRM	08/29/90	11/29/90
DEPARTMENT OF TRANSPORTATION			
Improved Access to Type III Exits.....	NPRM	08/29/90	11/19/90
DEPARTMENT OF THE TREASURY			
Liability of Common Carriers for Failure To Exercise the Highest Degree of Care and Diligence.....	NPRM	07/03/90	10/05/90
DEPARTMENT OF VETERANS AFFAIRS			
Dependency and Income.....	NPRM	08/16/90	11/21/90
ENVIRONMENTAL PROTECTION AGENCY			
Standards Applicable to Generators of Hazardous Waste	Final	10/26/90	11/14/90
NSPS Permitting Program.....	Final	07/09/90	07/30/90
NSPS for Small Industrial-Commercial-Institutional Steam Generating.....	Final	08/07/90	08/24/90
Offshore Subcategory: Effluent Guidelines.....	NPRM	11/16/90	11/16/90

EXHIBIT 9. REGULATIONS WITHDRAWN BY AGENCIES DURING 1990

Agency/Title of regulation	Type	Received	Withdrawn
UNITED STATES DEPARTMENT OF AGRICULTURE			
Oil and Gas Analyses on Lands Being Studied for Wilderness Recommendation.....	NPRM	07/31/90	10/17/90
REA Policy on Audits of Electric and Telephone Borrowers	NPRM	07/02/90	10/03/90
Special Uses Rules Regarding First Amendment Rights	NPRM	02/23/90	05/29/90
Intermediary Relending Program.....	Final	03/01/90	04/04/90
Small or Limited Resource Farmers' Initiative.....	NPRM	03/29/90	09/13/90
Conservation Easement Clarification—Options.....	NPRM	11/02/89	02/22/90
Change in Disease Status of Chile Because of Foot-and-Mouth Disease.....	Final	06/21/90	09/15/90
DEPARTMENT OF COMMERCE			
National Marine Sanctuary Permits—Monterey Bay.....	NPRM	02/13/90	02/23/90
Exports of Medical Equipment Containing Controlled Parts and Components	Final	05/07/90	06/21/90
DEPARTMENT OF EDUCATION			
Jacob Javits Gifted and Talented Students Education Program	NPRM	08/24/90	11/06/90
General Administrative Regulations—State-Administered Programs.....	NPRM	03/16/90	07/02/90
Immigration Status Confirmation.....	NPRM	09/19/90	11/09/90
DEPARTMENT OF ENERGY			
Standard Contract for Disposal of Spent Nuclear Fuel.....	NPRM	08/29/90	10/02/90
Determining Eligibility for Access to Classified Matter	Final	09/13/90	11/20/90
DEPARTMENT OF HEALTH AND HUMAN SERVICES			
Optional Ingredients in Standardized Foods.....	NPRM	11/02/90	11/14/90
AIDS Drug Reimbursement Program	Final	02/01/90	04/12/90
Inpatient Hospital Fiscal Year 1989 Prospective Payment System Rates	Final	11/06/89	01/30/90
Schedule for Skilled Nursing Facility Inpatient Routine Service Costs	Final	12/07/89	03/15/90
Optional Payment System for Low Medicare Volume Skilled Nursing	NPRM	03/13/90	09/06/90
Standards for Consultative Examinations and Existing Medical Evidence.....	Final	03/27/90	07/05/90
Head Start Appeals Procedures.....	NPRM	10/17/90	10/29/90
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT			
Mortgage Insurance for Single Room Occupancy Projects	NPRM	05/29/90	06/18/90
Uniform Relocation Assistance and Real Property Acquisition	Final	10/22/90	11/29/90
DEPARTMENT OF THE INTERIOR			
Facilities on the Outer Continental Shelf Adjacent to California.....	NPRM	12/12/89	11/08/90
Utah Prairie Dog Special Rule	NPRM	01/29/90	01/31/90
Bond Guaranty.....	NPRM	04/19/90	07/16/90
Indian Electric Power Utilities	NPRM	05/04/90	06/11/90
Law and Order on Indian Reservations.....	Final	10/26/90	12/02/90
DEPARTMENT OF JUSTICE			
Judicial Recommendations Against Deportation-Controlled Substances	Final	03/07/90	03/19/90
Nonimmigrant Classes—Pilot F-1 Student Work-Study Program.....	Final	03/28/90	04/06/90
DEPARTMENT OF LABOR			
Participant-Directed Individual Account Plans.....	Final	05/04/90	06/27/90
Process Safety Management of Highly Hazardous Chemicals.....	NPRM	03/23/90	04/07/90
DEPARTMENT OF TRANSPORTATION			
Double Hull Standards for Tank Vessels Carrying Oil.....	Final	09/04/90	11/21/90
Prohibit Slack-Introducing Devices on Safety Belts	NPRM	05/22/90	10/29/90
Cargo Preference—Prompt Payment.....	NPRM	05/07/90	12/04/90
DEPARTMENT OF THE TREASURY			
Increase the Charges for Stale Dated and Undated Federal Tax Deposits	NPRM	01/16/90	03/01/90
Marginal Capital.....	NPRM	10/31/89	02/22/90
Regulatory Capital: Interest Rate Risk Component	NPRM	11/03/89	02/22/90
Required Capital Levels for Savings Associations	NPRM	11/03/89	02/22/90
Capital Distributions by Savings Associations.....	Final	03/29/90	05/16/90
Regulatory Capital: Interest Rate Risk Component	NPRM	07/18/90	11/01/90

EXHIBIT 9. REGULATIONS WITHDRAWN BY AGENCIES DURING 1990—Continued

Agency/Title of regulation	Type	Received	Withdrawn
DEPARTMENT OF VETERANS AFFAIRS			
Compliance With Civil Rights Requirement	NPRM	04/19/90	05/22/90
Suspension of Real Estate Brokers and Agents	Final	06/07/90	06/20/90
Group Memorial Monuments.....	NPRM	10/03/90	11/21/90
ENVIRONMENTAL PROTECTION AGENCY			
Secondary Treatment Requirements for Discharge Into Marine Waters	NPRM	10/24/89	02/02/90
Public Water System Supervision	Final	07/26/90	08/16/90
Drinking Water: Lead and Copper.....	NPRM	08/17/90	08/23/90
Elements of a Waste Minimization Program.....	Final	10/09/90	11/29/90
"No Migration Variances".....	NPRM	11/15/90	11/28/90
Chemical Fate and Health Effects Test Guidelines	Final	11/06/89	02/23/90
FEDERAL EMERGENCY MANAGEMENT AGENCY			
Emergency Health and Medical Occupations.....	Final	11/13/89	01/31/90
National Security Emergency Exercise Program	NPRM	06/26/90	10/10/90
Machine Tool Trigger Order Program Guidance	NPRM	06/29/90	10/10/90
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION			
Photographing and Filming NARA Facilities in the Washington, DC, Area ...	Final	05/31/90	06/12/90

EXHIBIT 10. REGULATIONS SUSPENDED DURING 1990

Agency/Title of regulation	Type	Received	Reviewed
UNITED STATES DEPARTMENT OF AGRICULTURE			
Grants and Cooperative Agreements With Academic and Nonprofit Research	NPRM	08/14/90	10/15/90
Export Enhancement Program	NPRM	01/30/90	03/26/90
Targeted Export Assistance Program.....	NPRM	02/01/90	03/26/90
Farmer Program Account Servicing Policy.....	NPRM	05/17/90	08/09/90
Stop Interest Accrual After a Specific Period.....	NPRM	08/15/90	10/19/90
Child and Adult Care Food Program—Overclaims Authority.....	NPRM	08/17/90	11/21/90
DEPARTMENT OF COMMERCE			
Add Surimi to Label Designations—Fishery Products	NPRM	04/12/90	06/12/90
DEPARTMENT OF DEFENSE			
Grants and Cooperative Agreements With Academic and Nonprofit Research	NPRM	08/14/90	10/17/90
DEPARTMENT OF EDUCATION			
Guaranteed Student Loan Programs	NPRM	11/29/89	02/13/90
Perkins Loan Program—College Work Study	NPRM	01/19/90	04/05/90
Guaranteed Student Loan Programs	NPRM	03/28/90	04/24/90
DEPARTMENT OF ENERGY			
Research Assistance Common Rule.....	NPRM	08/14/90	10/25/90
DEPARTMENT OF HEALTH AND HUMAN SERVICES			
National Health Service Corporation Loan Repayment.....	Final	07/26/90	09/28/90
National Data Bank for Adverse Data on Physicians	NPRM	08/10/90	12/03/90
Radiation-Emitting Electronic Products	NPRM	05/23/90	10/12/90
New Animal Drug Application: Supplemental Applications.....	Final	05/23/90	10/12/90
Retention of Bioavailability, Testing Samples.....	Final	07/03/90	10/12/90
Investigational New Drug, Treat Life-Threatening Diseases.....	Final	07/26/90	12/04/90
Respiratory Protective Devices	NPRM	02/05/90	09/11/90
AIDS Prevention Education Formula Grants	NPRM	10/05/90	10/18/90
Home Dialysis	Final	02/15/90	06/18/90
PRO Review of Surgical Procedures—Second Opinions	NPRM	04/23/90	09/27/90
OBRA '87 Conforming Amendments	Final	07/26/90	12/04/90

EXHIBIT 10. REGULATIONS SUSPENDED DURING 1990—Continued

Agency/Title of regulation	Type	Received	Reviewed
State Legalization Impact Assistance Grant.....	NPRM	03/02/90	07/06/90
Eligibility, Recruitment . . . in Head Start.....	NPRM	11/20/89	05/22/90
Head Start Appeals Procedures	NPRM	08/06/90	10/05/90
OIG Anti-Kickback Provisions.....	Final	08/03/90	11/01/90
Safe Harbors for Protecting Health Plans	Final	08/03/90	11/01/90
Additional Safe Harbors	NPRM	08/03/90	11/05/90
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT			
Prepayment of a HUD-Insured Mortgage	Final	12/27/89	02/20/90
Authority To Refinance Mortgages—Nursing Homes.....	Final	11/06/90	12/21/90
Community Development Block Grants—State's Program.....	NPRM	04/17/90	07/27/90
Public and Indian Housing—Ceiling Rents	NPRM	03/28/90	04/07/90
DEPARTMENT OF THE INTERIOR			
Solid Waste Disposal.....	Final	08/15/89	01/04/90
Land Acquisitions.....	NPRM	08/28/90	11/08/90
DEPARTMENT OF LABOR			
Respiratory Protection Standard.....	NPRM	06/11/90	09/11/90
Assessment of Civil Penalties	NPRM	07/31/90	09/21/90
Flame-Resistant Conveyor Belt.....	NPRM	10/10/90	12/04/90
DEPARTMENT OF THE TREASURY			
Section 504 of the Rehabilitation Act of 1973.....	Final	04/02/90	06/04/90
Common Carrier Liability—Unmanifested Narcotics	NPRM	12/06/89	06/28/90
ENVIRONMENTAL PROTECTION AGENCY			
Application, Reporting, and Recordkeeping Requirements for Indian Tribes ..	NPRM	09/21/90	12/24/90
Off-Site Response Actions	Final	04/10/90	08/22/90
Off-Site Response Actions	Final	09/12/90	11/28/90
Lender Liability Under CERCLA	Final	09/21/90	12/21/90
Inactive Uranium Tailing Sites.....	Final	03/14/89	01/09/90
Low-Level Radioactive Waste.....	NPRM	05/01/89	01/09/90
Surface Impoundments	NPRM	12/08/89	08/17/90
Surface Impoundments	NPRM	08/22/90	12/24/90
Chicago and East St. Louis Sulfur Dioxide.....	NPRM	09/07/90	12/17/90
Peoria Sulfur Dioxide.....	NPRM	09/07/90	12/17/90
Classifying Pesticides—Groundwater Concerns	NPRM	02/02/90	09/05/90
Sunset of Toxic Release Inventory	NPRM	06/25/90	09/06/90
GENERAL SERVICES ADMINISTRATION			
Governmentwide Real Property Asset Management.....	NPRM	01/08/90	03/20/90
Assignment and Utilization of Space.....	Final	06/12/90	10/22/90
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION			
Grants and Cooperative Agreements With Academic and Nonprofit Research	NPRM	08/14/90	12/05/90
NATIONAL SCIENCE FOUNDATION			
Grants and Cooperative Agreements With Academic and Nonprofit Research	NPRM	08/14/90	10/25/90
NAVAJO HOPI INDIAN RELOCATION COMMISSION			
New Lands Grazing Regulations	Final	03/23/90	07/24/90
RAILROAD RETIREMENT BOARD			
Determining Disability	Final	03/23/90	07/06/90

**EXHIBIT 11. TYPES OF ACTIONS TAKEN ON AGENCY RULES—PERCENTAGE COMPARISON
1981-1990**

Action taken	Percentage									
	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
Found consistent, without change.....	87.3	84.1	82.3	78.0	70.7	68.3	70.5	70.9	73.8	71.8
Found consistent, with change.....	4.9	10.3	12.7	15.1	23.1	22.9	23.7	21.9	19.4	19.3
Withdrawn by agency	1.8	1.2	1.6	2.4	3.1	2.8	2.5	2.4	2.7	2.5
Returned for reconsideration.....	1.6	2.1	1.3	2.7	1.5	1.4	0.4	1.2	1.3	1.0
Suspended.....	NA	NA	NA	NA	NA	NA	NA	NA	0.7	2.7
Sent improperly or exempt	3.1	0.9	0.0	0.0	0.3	0.2	0.2	0.1	0.4	0.2
Emergency, statutory, or judicial deadline.....	1.4	1.4	2.0	1.7	1.2	4.3	2.5	3.5	1.6	2.5
Total*	100.1	100.0	99.9	99.9	99.9	99.9	99.8	100.0	99.9	100.0
	Percentage change									
	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1981-90	1981-90
Found consistent, without change.....	-3.2	-1.8	-4.3	-7.3	-2.4	2.2	0.4	2.9	-2.0	-15.5
Found consistent, with change.....	5.4	2.4	2.4	8.0	-0.2	0.8	-1.8	-2.5	-0.1	14.4
Withdrawn by agency	-0.6	0.4	0.8	0.7	-0.3	-0.3	-0.1	0.3	-0.2	0.7
Returned for reconsideration.....	0.5	-0.8	1.4	-1.2	-0.1	-1.0	0.8	0.1	-0.3	-0.6
Suspended.....	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Sent improperly or exempt	-2.2	-0.9	0.0	0.3	-0.1	0.0	-0.1	0.3	-0.2	-2.9
Emergency, statutory, or judicial deadline.....	0.0	0.6	-0.3	-0.5	3.1	-1.8	1.0	-1.9	0.9	1.1

*Percentages may not add up to 100 percent due to rounding.

NA: Not applicable.

EXHIBIT 12. AVERAGE REVIEW TIME OF RULES UNDER EXECUTIVE ORDER 12291
(in days)

Agency	1981-90			1990			1989			1988		
	Major	Non-major	All	Major	Non-major	All	Major	Non-major	All	Major	Non-major	All
USDA	22	16	16	65	27	29	31	18	19	13	19	19
DOC	46	15	16	NA	16	16	6	15	15	144	35	36
DOD	11	31	30	NA	62	52	NA	92	92	NA	22	22
ED	42	20	20	NA	39	39	NA	33	33	NA	32	32
DOE	41	19	20	NA	28	28	52	98	92	125	42	47
HHS	46	31	31	50	39	40	46	36	36	48	32	33
HUD	34	22	22	57	34	34	83	29	31	21	31	31
DOJ	10	17	17	3	23	23	3	30	29	32	22	23
DOJ	2	10	10	NA	11	11	1	12	12	NA	17	17
DOL	104	43	49	75	38	46	179	71	86	133	84	87
STATE	28	12	12	NA	14	14	NA	11	11	NA	20	20
DOT	38	22	23	20	19	19	71	23	24	58	41	41
TREAS	51	18	18	204	28	31	NA	28	28	NA	17	17
VA	NA	22	22	NA	20	20	NA	17	17	NA	30	30
EPA	68	27	28	65	36	40	104	49	52	51	48	49
Other agencies	45	20	21	13	24	24	28	25	25	66	28	28
All government	42	21	22	56	27	28	59	28	29	44	32	32
	1987			1986			1985			1984		
USDA	19	19	19	13	18	18	15	19	19	11	19	19
DOC	NA	19	19	127	15	15	NA	12	12	316	14	17
DOD	4	12	11	30	28	28	NA	30	30	NA	30	30
ED	NA	15	15	14	13	13	NA	16	16	39	18	19
DOE	NA	24	24	34	15	17	30	7	8	77	9	12
HHS	162	36	37	19	37	36	74	46	47	3	33	33
HUD	35	21	22	44	32	33	NA	27	27	10	18	17
DOJ	4	20	19	7	11	11	5	19	19	7	17	17
DOJ	2	6	6	NA	8	8	NA	9	9	NA	10	10
DOL	132	46	54	76	47	49	173	55	61	NA	43	43
STATE	NA	12	12	NA	5	5	NA	16	16	NA	5	5
DOT	21	32	31	32	19	19	80	34	36	42	20	21
TREAS	NA	16	16	NA	7	7	16	13	13	17	18	18
VA	NA	38	38	NA	44	44	NA	23	23	NA	15	15
EPA	49	35	37	41	41	41	78	33	35	58	30	31
Other agencies	42	26	26	74	24	25	105	23	25	26	20	20
All government	29	24	24	29	24	24	64	26	27	31	22	22
	1983			1982			1981					
USDA	15	13	13	17	10	10	22	8	8			
DOC	5	11	11	22	9	10	8	8	8			
DOD	NA	16	16	NA	6	6	NA	9	9			
ED	NA	11	11	32	12	13	NA	8	8			
DOE	45	7	9	26	6	7	7	7	7			
HHS	35	18	19	21	10	11	8	7	7			
HUD	12	15	15	NA	11	11	NA	14	14			
DOJ	12	17	17	13	10	10	6	8	8			
DOJ	NA	14	14	NA	7	7	NA	6	6			
DOL	121	18	29	37	10	12	26	6	9			
STATE	28	10	16	NA	7	7	NA	9	9			
DOT	24	15	15	37	12	12	8	8	8			
TREAS	NA	12	12	60	13	14	1	8	8			
VA	NA	15	15	NA	11	11	NA	10	10			
EPA	14	22	22	88	17	19	12	9	9			
Other agencies	35	14	14	40	13	14	5	10	10			
All government	28	15	16	28	11	12	13	9	9			

NA: Not Applicable.

EXHIBIT 13. AGENCY RULES EXEMPTED FROM REVIEW PROCEDURES

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service—Special Nutrition program notices that revise reimbursement rates and eligibility criteria for the School Lunch, Child Care Food, and other nutrition programs.

Food and Nutrition Service—Food Stamp program notices that set eligibility criteria and deduction policies.

Agricultural Marketing Service—Regulations that establish voluntary standards for grading the quality of food.

Animal and Plant Health Inspection Service—Rules and notices concerning quarantine actions and related measures to prevent the spread of animal and plant pests and diseases.

Animal and Plant Health Inspection Service—Rules affirming actions taken on an emergency basis if no adverse comments were received.

Rural Electrification Administration—Rules concerning standards and specifications for construction and materials.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration—Certain time-sensitive preseason and inseason Fishery Management Plan regulatory actions that set restrictions on fishing seasons, catch size, and fishing gear.

DEPARTMENT OF ENERGY

Power Marketing Administrations—Regulations issued by various power administrations relating to the sale of electrical power that they produce or market.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining—Actions to approve, or conditionally approve, State regulatory mining actions or amendments to such actions.

Office of Surface Mining—Approval of State mining reclamation plans or amendments.

Office of Surface Mining—Cooperative agreements between OSM and States.

United States Fish and Wildlife Service—Certain parts of the annual migratory bird hunting regulations.

DEPARTMENT OF TRANSPORTATION

All Offices of DOT—Amendments that postpone the compliance dates of regulations already in effect.

Coast Guard—Regatta regulations, safety zone regulations, and security zone regulations.

Coast Guard—Anchorage, drawbridge operations, and inland waterways navigation regulations.

Coast Guard—Regulations specifying amount of separation required between cargoes containing incompatible chemicals.

Federal Aviation Administration—Standard instrument approach procedure regulations, en route altitude regulations, routine air space actions, and airworthiness directives.

National Highway Traffic Safety Administration—Federal Motor Vehicle Safety Standard 109 table of tire sizes.

DEPARTMENT OF THE TREASURY

Internal Revenue Service, Bureau of Alcohol, Tobacco, and Firearms, and Customs Service—Revenue rulings and procedures, Customs decisions, legal determinations, and other similar ruling documents. Major legislative regulations are covered fully.

ENVIRONMENTAL PROTECTION AGENCY

Office of Pesticides and Toxic Substances—Actions regarding pesticide tolerances, temporary tolerances, tolerance exemptions, and food additives regulations, except those that make an existing tolerance more stringent.

Office of Pesticides and Toxic Substances—Unconditional approvals of TSCA section 5 test marketing exemptions, and of experimental use permits under FIFRA.

Office of Pesticides and Toxic Substances—Decision documents defining and establishing registration standards; decision documents and termination decisions for the RPAR process; and data call-in requests made under section 3(c)(2)(B) of FIFRA.

Office of Air, Noise, and Radiation—Rules that unconditionally approve revisions to State Implementation Plans.

Office of Air, Noise, and Radiation—Unconditional approvals of equivalent methods for ambient air quality monitoring and of NSPS, NESHAPS, and PSD delegations to States; approvals of carbon monoxide and nitrogen oxide waivers; area designations of air quality planning purposes; and deletions from the NSPS source categories list.

Office of Water—Unconditional approvals of State Water Standards.

Office of Water—Unconditional approval of State underground injection control programs; delegations of NPDES authority to States; deletions from the 307(a) list of toxic pollutants; and suspensions of Toxic Testing Requirements under NPDES.

Office of Solid Waste and Emergency Response—Unconditional approvals of State authorization under RCRA of State solid waste management plans and of hazardous waste delisting petitions under RCRA.

PENSION BENEFIT GUARANTY CORPORATION

Interest Rates—Changes in interest rates on late premium payments and delinquent employer liability payments under sections 6601 and 6621 of the Internal Revenue Code as amended by the Tax Equity and Fiscal Responsibility Act of 1982.

GOVERNMENTWIDE

Office of Federal Procurement Policy—All regulations, except those concerning acquisition of automatic data processing and telecommunications equipment; those implementing and supplementing Federal Acquisition Regulation subparts 15.6 (Source Selection) and 32.5 (Progress Payments Based on Costs); and those implementing and supplementing the Competition in Contracting Act of 1984 (Public Law 98-3691), the Defense Procurement Reform Act of 1984 (Title XII, Public Law 98-525), and the Small Business and Federal Procurement Competition Enforcement Act of 1984 (Public Law 98-577).

EXHIBIT 14

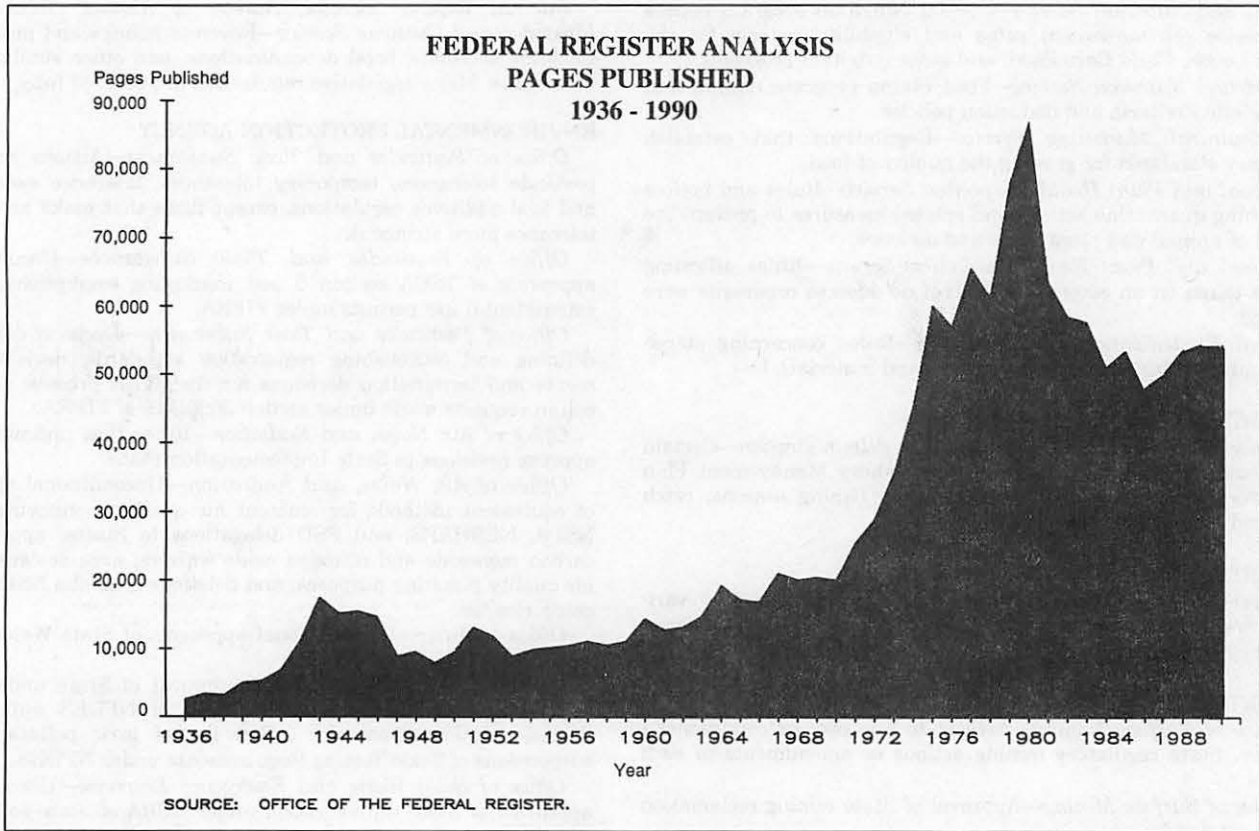


EXHIBIT 15

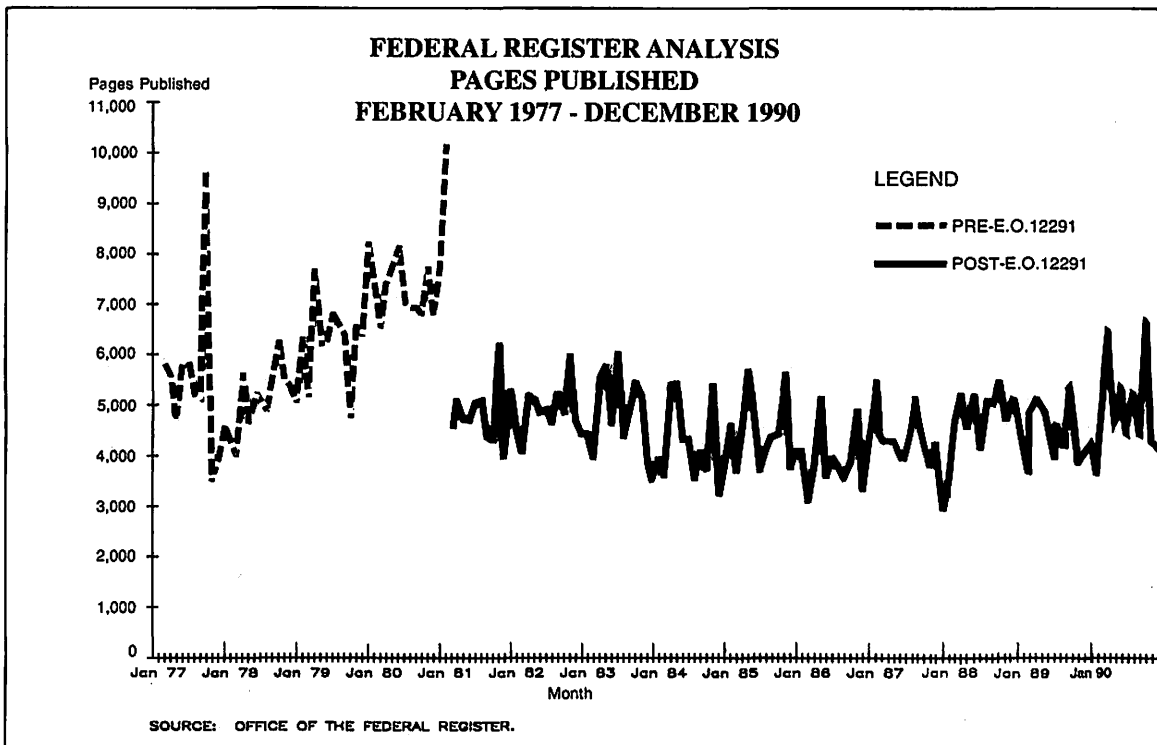
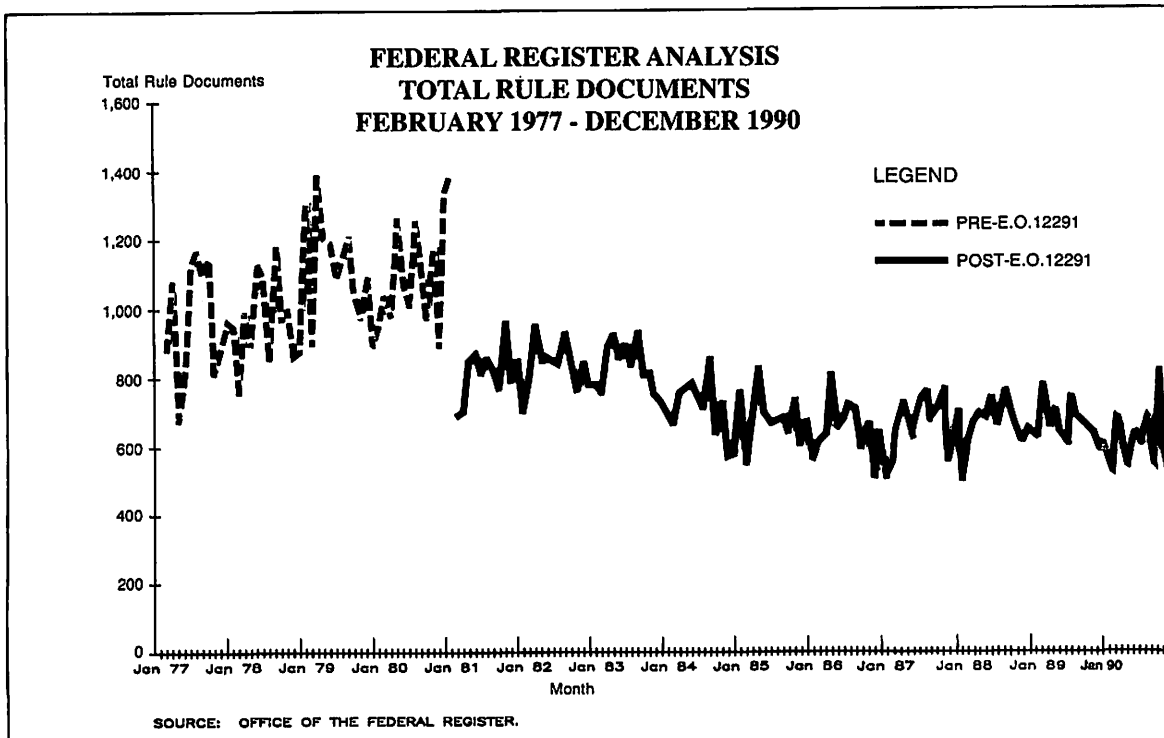


EXHIBIT 16



**EXHIBIT 19. FINAL RULE DOCUMENTS BY AGENCY PUBLISHED IN THE *FEDERAL REGISTER*
1982-1990**

Agency	Number of documents									Percentage of documents								
	1990	1989	1988	1987	1986	1985	1984	1983	1982	1990	1989	1988	1987	1986	1985	1984	1983	1982
USDA.....	535	604	625	556	554	611	684	638	674	11.2	11.7	12.2	11.3	11.1	11.8	12.9	10.5	10.6
DOC.....	289	260	264	285	292	254	202	213	205	6.1	5.0	5.1	5.8	5.9	4.9	3.8	3.5	3.2
DOD.....	120	155	163	172	198	113	102	109	111	2.5	3.0	3.2	3.5	4.0	2.2	1.9	1.8	1.8
ED.....	30	69	48	68	51	40	35	25	36	0.6	1.3	0.9	1.4	1.0	0.8	0.7	0.4	0.6
DOE.....	37	22	23	15	21	14	27	37	52	0.8	0.4	0.4	0.3	0.4	0.3	0.5	0.6	0.8
HHS.....	329	343	337	380	405	450	422	573	561	6.9	6.7	6.6	7.7	8.1	8.7	8.0	9.5	8.9
HUD.....	55	80	103	89	95	96	141	128	124	1.2	1.6	2.0	1.8	1.9	1.9	2.7	2.1	2.0
DOI.....	240	218	254	246	240	258	320	461	477	5.0	4.2	4.9	5.0	4.8	5.0	6.0	7.6	7.5
DOJ.....	89	105	100	122	116	108	113	159	102	1.9	2.0	1.9	2.5	2.3	2.1	2.1	2.6	1.6
DOL.....	73	83	75	56	55	68	56	63	63	1.5	1.6	1.5	1.1	1.1	1.3	1.1	1.0	1.0
STATE.....	13	17	20	18	12	7	7	8	15	0.3	0.3	0.4	0.4	0.2	0.1	0.1	0.1	0.2
DOT.....	1,100	1,076	978	859	923	903	748	865	908	23.1	20.9	19.0	17.4	18.5	17.4	14.1	14.3	14.3
TREAS.....	184	193	204	184	236	219	247	244	180	3.9	3.7	4.0	3.7	4.7	4.2	4.7	4.0	2.8
VA.....	66	67	69	49	51	49	54	53	54	1.4	1.3	1.3	1.0	1.0	0.9	1.0	0.9	0.9
EPA.....	416	539	441	438	487	518	624	605	805	8.7	10.5	8.6	8.9	9.8	10.0	11.8	10.0	12.7
EEOC.....	7	12	5	18	8	13	14	16	7	0.1	0.2	0.1	0.4	0.2	0.3	0.3	0.3	0.1
FEMA.....	98	95	106	66	71	84	91	261	398	2.1	1.8	2.1	1.3	1.4	1.6	1.7	4.3	6.3
GSA.....	79	98	77	83	74	107	74	95	80	1.7	1.9	1.5	1.7	1.5	2.1	1.4	1.6	1.3
NASA.....	38	50	39	33	36	28	15	20	18	0.8	1.0	0.8	0.7	0.7	0.5	0.3	0.3	0.3
OMB.....	2	0	1	2	0	0	1	2	1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
OPM.....	46	34	58	74	44	39	38	43	25	1.0	0.7	1.1	1.5	0.9	0.8	0.7	0.7	0.4
SBA.....	36	43	28	14	34	26	39	26	26	0.8	0.8	0.5	0.3	0.7	0.5	0.7	0.4	0.4
Other.....	249	259	273	257	275	241	261	335	337	5.2	5.0	5.3	5.2	5.5	4.7	4.9	5.5	5.3
CFTC.....	18	23	20	25	19	32	38	51	19	0.4	0.4	0.4	0.5	0.4	0.6	0.7	0.8	0.3
CPSC.....	6	4	10	8	9	17	30	22	25	0.1	0.1	0.2	0.2	0.2	0.3	0.6	0.4	0.4
FCC.....	412	420	437	444	306	400	405	359	393	8.6	8.1	8.5	9.0	6.1	7.7	7.7	5.9	6.2
FDIC.....	18	22	13	16	16	14	20	24	17	0.4	0.4	0.3	0.3	0.3	0.3	0.4	0.4	0.3
FERC.....	30	40	92	95	82	127	139	156	120	0.6	0.8	1.8	1.9	1.6	2.5	2.6	2.6	1.9
FHLBB....	0	28	37	30	29	39	32	41	53	0.0	0.5	0.7	0.6	0.6	0.8	0.6	0.7	0.8
FMC.....	13	10	14	17	6	9	43	19	26	0.3	0.2	0.3	0.3	0.1	0.2	0.8	0.3	0.4
FRS.....	41	33	47	32	28	40	37	66	75	0.9	0.6	0.9	0.6	0.6	0.8	0.7	1.1	1.2
FTC.....	24	38	58	49	77	84	82	116	80	0.5	0.7	1.1	1.0	1.5	1.6	1.6	1.9	1.3
ICC.....	20	35	35	48	51	59	53	103	127	0.4	0.7	0.7	1.0	1.0	1.1	1.0	1.7	2.0
NRC.....	31	48	42	47	36	49	42	55	51	0.7	0.9	0.8	1.0	0.7	0.9	0.8	0.9	0.8
SEC.....	21	34	45	40	54	66	54	65	84	0.4	0.7	0.9	0.8	1.1	1.3	1.0	1.1	1.3
Total*.....	4,765	5,157	5,141	4,935	4,991	5,182	5,290	6,056	6,329	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

*Totals include final rules documents issued jointly by two or more agencies.