

GAO

Fact Sheet for the Chairman of the
Committee on Government Operations,
House of Representatives

July 1989

**REGULATORY
REVIEW**

Information on OMB's
Review Process





General Government Division

B-235937

July 14, 1989

The Honorable John Conyers, Jr.
Chairman, Committee on
Government Operations
House of Representatives

Dear Mr. Chairman:

This fact sheet responds to your June 6, 1989, request for information regarding the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) regulatory review process. The fact sheet provides the following:

- a brief history of executive branch regulatory review, a description of the current regulatory review process, and OIRA's views of the interrelationship of Executive Orders 12291 and 12498 and the Paperwork Reduction Act of 1980 (Public Law 96-511) (appendix I);
- information on OIRA staff, organization, and estimates of staff time spent on the Paperwork Reduction Act as compared to the Executive Orders (appendix II);
- types of actions taken on OIRA regulatory review cases from 1981 to 1989 (appendix III and IV);
- average OIRA review processing time for regulatory review cases by agency and type of rule from 1986 to 1989 (appendix V); and
- background on special disclosure procedures for regulatory reviews that agencies can elect to institute (appendix VI).

In summary, OIRA reviewed 19,984 draft rules between January 1981 and May 1989. Seventy-seven percent of these rules were found to be consistent with the principles of Executive Order 12291 and 16.4 percent of the rules were consistent with the Executive Order after changes were made. The average OIRA review time for proposed major rules has increased from 29 days in 1986 to 51 days in 1989. Similarly, the average review time for final major rules has increased from 30 days in 1986 to 60 days in 1989. The average review time for nonmajor rules remained relatively stable at around 27 days. Most rules are nonmajor. In 1989, for example, 1,005 of the 1,044 reviews were nonmajor rules.


B-235937

To develop this fact sheet, we: (1) met with OIRA officials; (2) reviewed pertinent executive orders, reports and journal articles, and (3) obtained statistical information from OIRA. Due to time constraints, we did not independently verify the accuracy of the information OIRA provided. In addition, statistics on the frequency or nature of comments made to the agency during the course of a regulatory review are not maintained by OIRA, nor does OIRA keep records of the numerous discussions with agency personnel. This situation, coupled with the short review period, prevented us from exploring the nature of the OIRA review process more fully.

As agreed with the Committee, we plan no further distribution of this fact sheet until 5 days after the date of issuance unless you publicly announce its contents earlier. At that time, we will send it to interested parties and make copies available to others upon request.

The major contributors to this report are listed in appendix VIII. If you have any questions on this fact sheet, please call me at 275-8387.

Sincerely yours,

A handwritten signature in cursive script that reads "Earl F. Walter".

Earl F. Walter
Acting Director, General Management Issues

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ABBREVIATIONS

CWPS	Council on Wage and Price Stability
EPA	Environmental Protection Agency
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
PRA	Paperwork Reduction Act of 1980

HISTORY AND DESCRIPTION OF OIRA REGULATORY REVIEW PROCESSHISTORY OF EXECUTIVE BRANCH REGULATORY REVIEW

For the past 20 years, the executive branch has had some form of regulatory review.¹ Presidents Nixon, Ford, and Carter all made efforts to strengthen and centralize regulatory management. In 1971, President Nixon established the "Quality of Life Review," which required that significant proposed rules be submitted to OMB prior to their publication in the Federal Register. OMB then circulated the rules to other agencies for their comments. President Ford's regulatory review process focused on inflationary impacts. Under Executive Order 11821, agencies were required to submit inflationary impact statements to OMB, and OMB was authorized to prescribe procedures for the evaluation of regulations that would have significant inflationary impact. In 1974, he established the Council on Wage and Price Stability (CWPS) and charged CWPS with developing analyses of the economic consequences of proposed regulations.

President Carter continued the emphasis on inflationary impacts and cost-effectiveness. Executive Order 12044 required agencies to develop detailed regulatory analyses of major rules and to establish a process, approved by OMB, for the development of significant regulations. President Carter also created the Regulatory Analysis Review Group. Composed primarily of staff economists of the Council of Economic Advisers, this group prepared analyses of the costs and benefits of major regulations that were filed during the rulemaking public comment period.

President Reagan further centralized regulatory management by establishing the Presidential Task Force on Regulatory Relief and issuing Executive Orders 12291 and 12498. The Task Force, set up to assure that regulatory burdens were reduced wherever possible, was the initial focal point of the administration's regulatory activities. In 1983 the Task Force was abolished and its charge assumed by OMB.

¹A study by the National Academy of Public Administration, "Presidential Management of Rulemaking in Regulatory Agencies," published in January 1987, provides a detailed discussion of the history and issues surrounding regulatory management.

OIRA AND CURRENT EXECUTIVE BRANCH REGULATORY REVIEW

The current regulatory review process is stipulated in President Reagan's Executive Orders 12291 and 12498. OIRA, created by the Paperwork Reduction Act of 1980 (Public Law 96-511), implements regulatory reviews as prescribed by the Executive Orders in addition to its paperwork functions. Whereas under previous administrations OMB's role focused more on enhancing regulatory analyses as conducted by agencies themselves, under the new Executive Orders, a more formalized regulatory review process within OMB was established.

Executive Order 12291

Executive Order 12291, issued in 1981, lays out principles with which every regulation issued by executive agencies must comply. The Order requires, among other things, that the potential benefits of every rulemaking must outweigh the costs, and the agency must choose the alternative involving the least net cost. As experience with Executive Order 12291 accumulated, the Presidential Task Force on Regulatory Relief refined these principles and developed a set of 10 Regulatory Policy Guidelines to assist agency analysis. The Executive Order called for Formal Regulatory Impact Analyses to be submitted to OMB for major rules.² Major rules are ones that are predicted to affect the economy by \$100 million or more each year or those that have major impacts on consumers; industries; geographic regions; or federal, state, and local governments.³

Under Executive Order 12291, the agency submits its proposed rule, accompanied by a Regulatory Impact Analysis if it is a major rule, to OMB 60 days prior to the publication of the Notice of Proposed Rulemaking in the Federal Register. OMB is expected to complete its review within that 60 days. The process is repeated in the final rulemaking stage, with the agency submitting the final rule and the final Regulatory Impact Analysis to OMB 30 days prior to publication of the final rule in the Federal Register. Again, OMB is expected to complete its review within that time frame of 30 days. For nonmajor rules, the agency submits both the Notice of

²Both the "Regulatory Policy Guidelines" and a draft "Regulatory Impact Analysis Guidance" appear in OMB's Regulatory Program of the United States Government, April 1, 1988 -- March 31, 1989.

³See Section 1 (b) of Executive Order 12291 in appendix VII for definition of "major" rule.

Proposed Rulemaking and the final rule to OMB 10 days prior to publication, and OMB is expected to complete its review within those 10 days. The Executive Order instructs the agency to refrain from publishing its final rule until the agency has responded to the OMB Director's concerns and incorporated those views and the agency's response in the rulemaking file. OMB or the agency may take the issue to an appropriate Cabinet body or the President in the case of a disagreement.

Executive Order 12498

To improve executive regulatory oversight, President Reagan issued Executive Order 12498 in 1985. The Order established a regulatory planning process by which each executive agency is required to send to OMB (1) an overview of regulatory policies, goals, and objectives; and (2) information on all significant regulatory actions planned or in process. The Reagan Administration said that more should be done to improve executive regulatory oversight advance planning. Executive Order 12291 reviews, they said, often came late in the regulatory process, after huge investments of agency time and resources and often after agency staff commitments to constituents had made it extremely difficult to consider any acceptable, but previously ignored, regulatory alternative.

Executive Order 12498 gives OMB the opportunity to review the most important pre-rulemaking activities of agencies and to determine whether or not they are consistent with the administration's policies and priorities before significant agency resources are invested toward their development. In designing a regulatory program, agencies are advised to follow the same principles to which regulations must adhere under Executive Order 12291. OIRA's review involves identifying regulatory or deregulatory actions that may be necessary in order to achieve consistency with the administration's program. According to OIRA, it never disapproves of an agency's proposed regulatory program; rather, it describes the process as one of consultation and negotiation between OIRA and the agency. Any change, however, in an agency's regulatory activity that is not consistent with the plan requires OMB clearance; and unless required by statute, court proceedings, or emergencies, an agency is instructed not to move on a proposed regulatory action until OMB completes its review. The same appeal process exists under the two Executive Orders in that disagreements under Executive Order 12498 may be brought, just as with Executive Order 12291, before the appropriate Cabinet body or the President by either the agency head or OMB. The approved plans are compiled and published in the annual Regulatory Program of the United States.

Paperwork Reduction Act

One of the purposes of the Paperwork Reduction Act is to minimize the information burden imposed on the public by the federal government and the cost to the government of collecting, maintaining, using, and disseminating information. The act gave OMB broad clearance authority: executive and independent agencies are required to submit all proposed information collection and recordkeeping requirements to OMB for approval. The act sets information burden reduction targets, and OMB developed the Information Collection Budget to place a limit on individual agency demands.

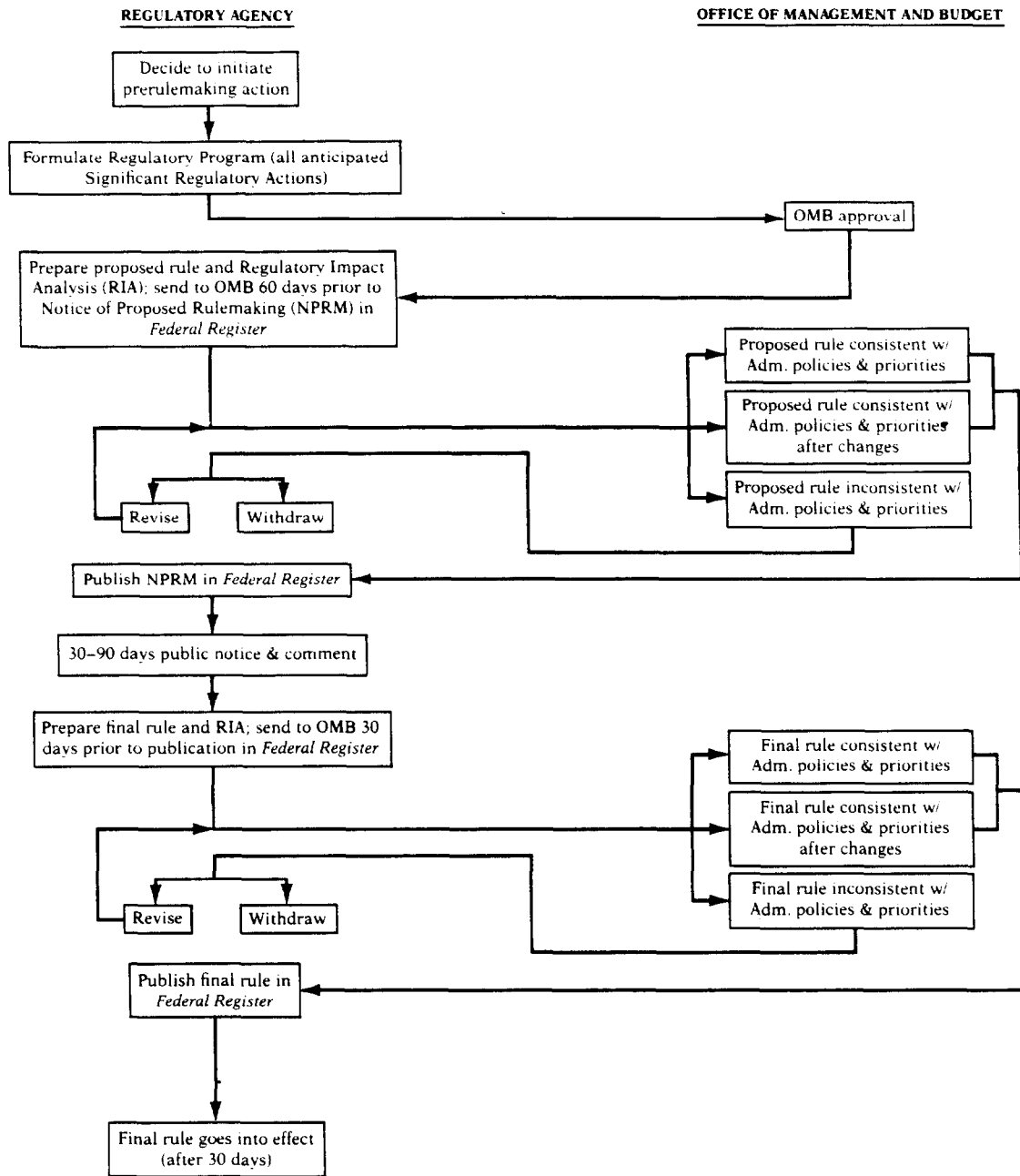
When information collection requests are contained in regulations, OIRA submits public comments after the Notice of Proposed Rulemaking is published in the Federal Register. The agency is required to respond to OIRA's concerns when it publishes the final rule, including why the agency has rejected OIRA's concerns if this is the case. If OIRA is not satisfied with the agency's rationale for rejecting OIRA's concerns, OIRA does have the authority, under the Paperwork Reduction Act, to disapprove any collection of information requirement within 60 days of its publication as a final rule.

The information collection requests contained in regulations are also subject to OIRA reviews under Executive Order 12291. Because many of the federal forms, surveys, reports, and other information collection mechanisms subject to OMB clearance under the Paperwork Reduction Act involve pre-rulemaking or are actually parts of rules, the review of rules under both authorities is commonplace. OIRA said that the Paperwork Reduction Act and the two Executive Orders "create mutually supportive, interactive Presidential oversight mechanisms that focus on the paperwork and regulatory impacts of Federal programs" and "go hand-in-hand with OMB's oversight of other aspects of Federal programs."

The Mechanics of the OIRA Regulatory Review Process

Agencies submit proposed and final regulations to OIRA. OIRA desk officers, organized by federal department or agency, review the regulations as specified in the Executive Orders. For regulations that include an information-collection component, OIRA desk officers review the regulation under procedures for both Executive Order 12291 and the Paperwork Reduction Act. The regulatory review process under Executive Orders 12291 and 12498 is depicted in the attached flow chart. Copies of the Executive Orders appear in appendix VII.

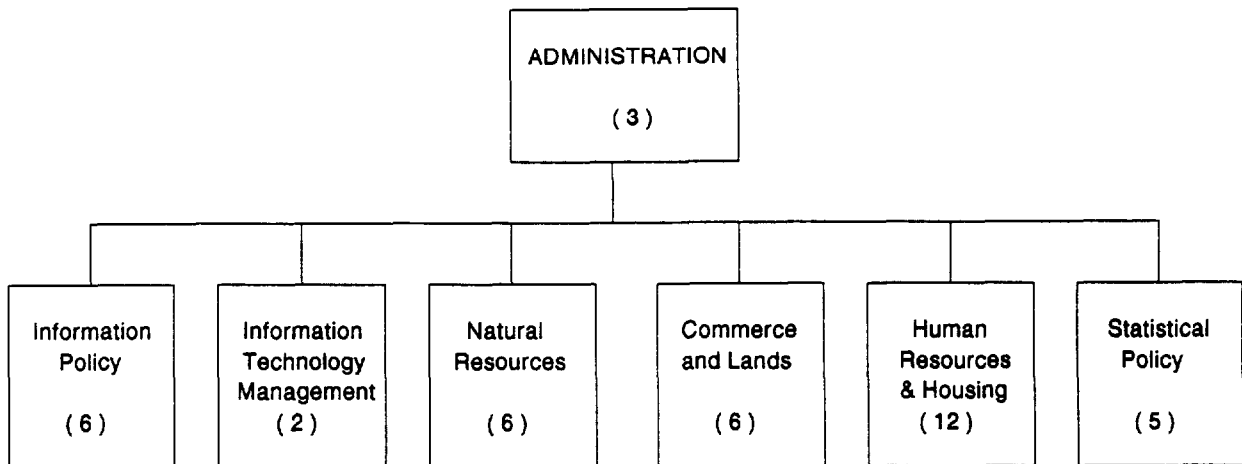
Figure I.1: Executive Branch Regulatory Management Process



INFORMATION ON OIRA STAFF AND ACTIVITIES

As of June 1989, OIRA had a total of 56 staff, 16 of whom were clerical or support staff. OIRA staff make reviews of regulations under Executive Orders 12291 and 12498, as well as activities related to the Paperwork Reduction Act of 1980 (PRA). Three of OIRA's branches--Information Policy, Information Technology Management, and Statistical Policy--devote almost all of their efforts to carry out certain provisions of PRA. The three other branches--Natural Resources, Human Resources, and Commerce and Lands--were staffed largely by desk officers, who spend their time on implementation of PRA paperwork burden activities and regulatory review. OIRA's organizational structure is shown below. The numbers in parentheses indicate the number of staff in each branch, excluding the clerical/support staff.

Figure II.1: OIRA Organization Chart



OIRA does not maintain staff time records separately for activities under PRA and the Executive Orders. To determine the relative staff workload, OIRA periodically surveys its six branches. On the basis of these surveys, OIRA estimated that approximately 75 to 80 percent of its total efforts (and budget) supports and carries out the provisions of PRA. The remaining 20 to 25 percent was attributed to regulatory and other review functions that did not involve PRA. Because of the overlapping nature of duties under PRA and the Executive Orders, OIRA officials said it was difficult to determine the precise time spent on each. We did not independently verify these estimates.

Table II.1: Background Statistics on OIRA Employees
as of June 1989

WORK EXPERIENCE:	Number of employees with experience in		
	OMB	Other govt.	Private sector
	Years of experience		
No experience	0	10	20
Less than one year	3	2	4
1 to 3 years	12	7	10
More than 3 years	25	21	6
Average years	5.98	5.19	1.88
Range (in yrs)	0.2-17	0-24	0-26

GRADE STRUCTURE:	
Grade	No. of employees
GS 9-11	5
GS 12	6
GS 13	6
GS 14	5
GS 15	12
SES and above	6

TYPE OF DEGREE:	
(highest degree)	No. of employees
Bachelor	5
Master	20
Law (JD, LL.M, LL.B)	5
Doctorate	10

FIELD OF STUDY	
Type of major	No. of employees
Public Policy/ Admin.	15
Economics/Finance	8
Law	5
Science/Math	5
Other	7

UNIVERSITIES GRADUATED FROM:	
(highest degree)	
University	No. of employees
Harvard Univ.	7
Univ. of Chicago	3
Princeton Univ.	2
Univ. of Pennsylvania	2
Univ. of Maryland	3
Univ. of Washington	2
George Washington Univ.	2
Univ. of California at Berkeley	2
Columbia Univ.	2
Univ. of Wisconsin	2
Other	13

Note: All tables have a total of 40 staff. The 16 clerical/support staff were not included.

TYPES OF ACTIONS TAKEN ON AGENCY RULES
FOR 1988 AND 1989

Table III.1: Types of Actions Taken on Agency Rules in 1988

Agency	Total reviews	Percent of govt. total	Actions taken on rule reviews (numbers show percent of total reviews)					
			Consistent without change	Consistent with change	With-drawn by agency	Returned for reconsideration	Statutory or judicial deadline	Other
Agriculture	441	18.7	82.5	12.7	1.1	2.3	0.2	1.1
HHS	320	13.5	65.3	31.6	1.6	0.9	0.3	0.3
Transportation	257	10.9	65.8	30.7	1.2	0.8	1.2	0.4
EPA	210	8.9	51.0	27.6	2.9	3.3	14.8	0.5
Interior	152	6.4	86.8	9.2	3.3	0.7	0.0	0.0
Commerce	145	6.1	66.2	13.1	1.4	0.7	15.9	2.8
HUD	105	4.4	54.3	29.5	10.5	0.0	5.7	0.0
Education	123	5.2	66.7	31.7	1.6	0.0	0.0	0.0
VA	82	3.5	82.9	14.6	1.2	1.2	0.0	0.0
Labor	77	3.3	48.1	46.8	2.6	1.3	1.3	0.0
OPM	74	3.1	83.8	14.9	0.0	0.0	0.0	1.4
GSA	57	2.4	73.7	21.1	1.8	1.8	1.8	0.0
Justice	52	2.2	84.6	15.4	0.0	0.0	0.0	0.0
SBA	37	1.6	54.1	32.4	5.4	2.7	2.7	2.7
Treasury	37	1.6	86.5	13.5	0.0	0.0	0.0	0.0
FEMA	30	1.3	60.0	23.3	16.7	0.0	0.0	0.0
Energy	20	0.8	70.0	20.0	0.0	5.0	5.0	0.0
Other agencies	143	6.1	84.6	9.8	4.9	0.0	0.7	0.0
All government	2,362	100.0	70.9	21.9	2.4	1.2	3.0	0.6

Notes: Data is for reviews completed during calendar year 1988.

"Consistent without change" means the proposed rule is consistent with the principles of Executive Order 12291 as submitted by the agency.

"Consistent with change" means the proposed rule is consistent with the Executive Order after the agency adopted changes suggested by OIRA during the review period.

Agencies can withdraw regulations or OIRA can also return a regulation to the agency for reconsideration.

Rules that have statutory or judicial deadlines are reviewed by OIRA if time permits; however, such regulations may be published without the OIRA review process.

Source: Office of Information and Regulatory Affairs; however percentages were calculated by GAO.

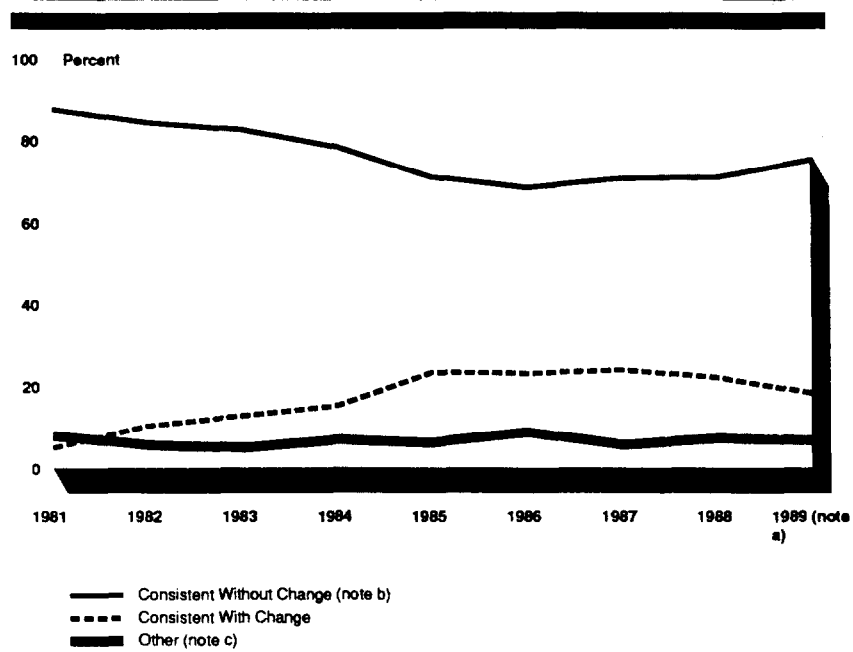
Table III.2: Types of Actions Taken on Agency Rules in 1989

Agency	Total reviews	Percent of govt. Total	Actions taken on rule reviews (numbers show percent of total reviews)					
			Consistent without change	Consistent with change	With-drawn by agency	Returned for Reconsideration	Statutory or judicial deadline	Other
Agriculture	213	20.4	84.5	13.6	0.9	0.5	0.0	0.5
HHS	139	13.3	64.7	29.5	2.2	3.6	0.0	0.0
Transportation	98	9.4	78.6	20.4	1.0	0.0	0.0	0.0
EPA	94	9.0	52.1	26.6	2.1	6.4	12.8	0.0
Interior	48	4.6	85.4	10.4	4.2	0.0	0.0	0.0
Commerce	89	8.5	89.9	6.7	2.2	0.0	0.0	1.1
HUD	35	3.3	42.9	22.9	28.6	2.9	2.9	0.0
Education	50	4.8	70.0	28.0	2.0	0.0	0.0	0.0
VA	34	3.3	88.2	11.8	0.0	0.0	0.0	0.0
Labor	22	2.1	50.0	50.0	0.0	0.0	0.0	0.0
OPM	28	2.7	75.0	7.1	7.1	7.1	3.6	0.0
GSA	27	2.6	74.1	22.2	3.7	0.0	0.0	0.0
Justice	37	3.5	83.8	5.4	0.0	0.0	5.4	5.4
SBA	25	2.4	76.0	20.0	0.0	0.0	4.0	0.0
Treasury	13	1.2	84.6	15.4	0.0	0.0	0.0	0.0
FEMA	14	1.3	71.4	21.4	7.1	0.0	0.0	0.0
Energy	13	1.2	76.9	0.0	7.7	0.0	7.7	7.7
Other agencies	66	6.3	83.3	10.6	1.5	0.0	3.0	1.5
All government	1,045	100.0	75.1	18.2	2.8	1.4	1.9	0.6

Note: Data is for January 1 through May 31, 1989.

Source: Office of Information and Regulatory Affairs; however percentages were calculated by GAO.

TYPES OF ACTIONS TAKEN ON AGENCY RULES
1981 - 1989



Note a: All data is for the calendar year, except 1989 data is for January 1 through May 31, 1989.

Note b: Definitions of actions are shown in the notes to appendix III.

Note c: Other includes: withdrawn by agency; returned for reconsideration; statutory or judicial deadline; and other.

Note d: From January 1981 through May 31, 1989, 19,984 draft rules were reviewed by OIRA; 77 percent were consistent without change and 16.4 percent were consistent with change.

Source: Office of Information and Regulatory Affairs.

AVERAGE OIRA REVIEW TIME BY AGENCY
BY TYPE OF RULE, 1986-1989

Table V.1: Number of and Average Review Time for Proposed Major Rules

Agency	1986		1987		1988		1989	
	No. of reviews	Days	No. of reviews	Days	No. of reviews	Days	No. of reviews	Days
Agriculture	3	12	11	25	10	18	8	37
Commerce	1	127	0	NA	1	144	0	NA
DOD	0	NA	2	4	0	NA	0	NA
Energy	2	34	0	NA	1	125	1	12
HHS	6	9	2	225	5	40	1	1
HUD	2	60	3	56	2	30	0	NA
Interior	1	5	1	5	2	65	1	1
Justice	0	NA	1	4	0	NA	0	NA
Labor	1	9	3	162	5	138	2	140
Transportation	3	11	2	19	5	83	0	NA
EPA	5	45	12	49	10	64	3	83
Other agencies	1	51	3	66	2	102	1	19
All government	25	29	40	48	43	65	17	51

Table V.2: Number of and Average Review Time for Final Major Rules

Agency	1986		1987		1988		1989	
	No. of reviews	Days	No. of reviews	Days	No. of reviews	Days	No. of reviews	Days
Agriculture	19	13	8	11	14	11	12	49
Commerce	0	NA	0	NA	0	NA	1	6
DOD	1	30	1	6	0	NA	0	NA
Energy	0	NA	0	NA	0	NA	0	NA
HHS	9	28	1	36	3	79	0	NA
HUD	1	14	2	4	3	15	2	83
Interior	4	7	2	4	2	2	0	NA
Justice	0	NA	1	1	0	NA	0	NA
Labor	2	110	3	102	4	103	3	91
Transportation	4	40	2	24	4	16	2	121
EPA	2	30	7	46	6	28	0	NA
Other agencies	6	62	3	19	3	43	2	20
All government	48	30	30	27	39	31	22	60

Note: See notes and source on the next page.

Table V.3: Number of Reviews and Average Processing Time for Proposed and Final Nonmajor Rules

Agency	1986		1987		1988		1989	
	No. of reviews	Days	No. of reviews	Days	No. of reviews	Days	No. of reviews	Days
Agriculture	396	18	401	19	417	19	193	17
Commerce	128	15	134	19	144	35	88	13
DOD	8	28	14	12	12	22	2	4
Energy	14	15	20	24	19	42	12	42
HHS	266	37	311	36	312	32	138	39
HUD	65	32	59	21	100	31	33	19
Interior	139	11	183	20	148	22	47	27
Justice	46	8	82	6	52	17	37	13
Labor	53	47	58	46	68	84	17	42
Transportation	189	19	198	32	248	41	95	28
EPA	190	41	196	35	194	48	91	48
Other agencies	440	21	598	17	566	29	252	27
All government	1,934	24	2,246	25	2,280	32	1,005	27

Notes: Major rules are defined as ones that are predicted to affect the economy by \$100 million or more each year; those that have major impacts on consumers, industries, state and local governments, or other federal agencies; or those that have adverse impacts on competition, employment, the ability of U.S. firms to compete with foreign companies, or other factors.

All other rules are defined as nonmajor rules.

Notices of proposed rulemaking (proposed rules) are reviewed by OIRA prior to their publication in the Federal Register. OIRA also reviews the rule in final form after publication of the proposed rule in the Federal Register and the public comment period. (See flow chart in appendix I.)

Days indicate the number of days from receipt in OIRA until returned to the agency.

Data is for calendar year; 1989 data is from January 1 through May 31, 1989.

Source: Office of Information and Regulatory Affairs.

AGENCIES ELECTING TO INSTITUTE THE
EPA DISCLOSURE PROCEDURES

The Environmental Protection Agency (EPA) disclosure procedures refer to a subset of procedures contained in a June 1986 memorandum from OIRA to heads of departments and agencies that lays out OIRA's disclosure procedures under Executive Orders 12291 and 12498.⁴ The intent of the disclosure procedures was to address EPA's concern that it be apprised of information OIRA received from individuals or groups outside of the federal government that might have bearing on OIRA's review of a regulation. For example, if OIRA was meeting with industry representatives who would have substantial interest in the scope of a particular regulation, EPA--under these procedures--is to be advised of, and invited to, such meetings. Furthermore, EPA wanted additional assurance that all information pertaining to its rulemaking activities is included in the rulemaking dockets. The EPA disclosure procedures provide the following:

- OIRA will send EPA copies of all written material concerning EPA's rules that OIRA receives from persons who are not employees of the federal government.
- OIRA will advise EPA of all oral communications concerning EPA's rules (e.g., meetings, telephone calls) that OIRA has with persons who are not employees of the federal government. (Only the OIRA Administrator and Deputy Administrator, or other specifically authorized person, are permitted to meet or talk with members of the public regarding regulatory reviews under Executive Orders 12291 and 12498).
- OIRA will invite EPA to all scheduled meetings with such persons concerning EPA's rules.

OIRA will extend these procedures to any agency that elects to institute them. As of June 1989, five agencies have elected to institute these procedures. They are: Department of Housing and Urban Development, Department of Labor, Department of Transportation, Department of the Treasury, and the Environmental Protection Agency.

⁴The June 1986 memorandum appears in OMB's Regulatory Program of the United States Government, April 1, 1988 -- March 31, 1989. In addition to the EPA disclosure procedures, the memorandum includes other procedures that require OIRA to make available, upon written request and after their publication, copies of draft regulations and regulatory plans, as well as correspondence concerning draft rules between OIRA and the agency head.

EXECUTIVE ORDERS 12291 AND 12498

EXECUTIVE ORDER NO. 12291 OF FEBRUARY 17, 1981

Federal Regulation

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to reduce the burdens of existing and future regulations, increase agency accountability for regulatory actions, provide for presidential oversight of the regulatory process, minimize duplication and conflict of regulations, and insure well-reasoned regulations, it is hereby ordered as follows:

Section 1. *Definitions.* For the purposes of this Order:

(a) "Regulation" or "rule" means an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of an agency, but does not include:

(1) Administrative actions governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code;

(2) Regulations issued with respect to a military or foreign affairs function of the United States; or

(3) Regulations related to agency organization, management, or personnel.

(b) "Major rule" means any regulation that is likely to result in:

(1) An annual effect on the economy of \$100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(c) "Director" means the Director of the Office of Management and Budget.

(d) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), excluding those agencies specified in 44 U.S.C. 3502(10).

(e) "Task Force" means the Presidential Task Force on Regulatory Relief.

Sec. 2. General Requirements. In promulgating new regulations, reviewing existing regulations, and developing legislative proposals concerning regulation, all agencies, to the extent permitted by law, shall adhere to the following requirements:

(a) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action;

(b) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society;

(c) Regulatory objectives shall be chosen to maximize the net benefits to society;

(d) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and

(e) Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

Sec. 3. Regulatory Impact Analysis and Review.

(a) In order to implement Section 2 of this Order, each agency shall, in connection with every major rule, prepare, and to the extent permitted by law consider, a Regulatory Impact Analysis. Such Analyses may be combined with any Regulatory Flexibility Analyses performed under 5 U.S.C. 603 and 604.

(b) Each agency shall initially determine whether a rule it intends to propose or to issue is a major rule, *provided that*, the Director, subject to the direction of the Task Force, shall have authority, in accordance with Sections 1(b) and 2 of this Order, to prescribe criteria for making such determinations, to order a rule to be treated as a major rule, and to require any

set of related rules to be considered together as a major rule.

(c) Except as provided in Section 8 of this Order, agencies shall prepare Regulatory Impact Analyses of major rules and transmit them, along with all notices of proposed rulemaking and all final rules, to the Director as follows:

(1) If no notice of proposed rulemaking is to be published for a proposed major rule that is not an emergency rule, the agency shall prepare only a final Regulatory Impact Analysis, which shall be transmitted, along with the proposed rule, to the Director at least 60 days prior to the publication of the major rule as a final rule;

(2) With respect to all other major rules, the agency shall prepare a preliminary Regulatory Impact Analysis, which shall be transmitted, along with a notice of proposed rulemaking, to the Director at least 60 days prior to the publication of a notice of proposed rulemaking, and a final Regulatory Impact Analysis, which shall be transmitted along with the final rule at least 30 days prior to the publication of the major rule as a final rule;

(3) For all rules other than major rules, agencies shall submit to the Director, at least 10 days prior to publication, every notice of proposed rulemaking and final rule.

(d) To permit each proposed major rule to be analyzed in light of the requirements stated in Section 2 of this Order, each preliminary and final Regulatory Impact Analysis shall contain the following information:

(1) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits;

(2) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, and the identification of those likely to bear the costs;

(3) A determination of the potential net benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms;

(4) A description of alternative approaches that could substantially achieve the same regulatory goal at lower cost, together with an analysis of this potential benefit and costs and a brief explanation of the legal reasons why such alternatives, if proposed, could not be adopted; and

(5) Unless covered by the description required under paragraph (4) of this subsection, an explanation of any legal reasons why the rule cannot be based on the requirements set forth in Section 2 of this Order.

(e)(1) The Director, subject to the direction of the Task Force, which shall resolve any issues raised under this Order or ensure that they are presented to the President, is authorized to review any preliminary or final Regulatory Impact Analysis, notice of

proposed rulemaking, or final rule based on the requirements of this Order.

(2) The Director shall be deemed to have concluded review unless the Director advises an agency to the contrary under subsection (f) of this Section:

(A) Within 60 days of a submission under subsection (c)(1) or a submission of a preliminary Regulatory Impact Analysis or notice of proposed rulemaking under subsection (c)(2);

(B) Within 30 days of the submission of a final Regulatory Impact Analysis and a final rule under subsection (c)(2); and

(C) Within 10 days of the submission of a notice of proposed rulemaking or final rule under subsection (c)(3).

(f)(1) Upon the request of the Director, an agency shall consult with the Director concerning the review of a preliminary Regulatory Impact Analysis or notice of proposed rulemaking under this Order, and shall, subject to Section 8(a)(2) of this Order, refrain from publishing its preliminary Regulatory Impact Analysis or notice of proposed rulemaking until such review is concluded.

(2) Upon receiving notice that the Director intends to submit views with respect to any final Regulatory Impact Analysis or final rule, the agency shall, subject to Section 8(a)(2) of this Order, refrain from publishing its final Regulatory Impact Analysis or final rule until the agency has responded to the Director's views, and incorporated those views and the agency's response in the rulemaking file.

(3) Nothing in this subsection shall be construed as displacing the agencies' responsibilities delegated by law.

(g) For every rule for which an agency publishes a notice of proposed rulemaking, the agency shall include in its notice:

(1) A brief statement setting forth the agency's initial determination whether the proposed rule is a major rule, together with the reasons underlying that determination; and

(2) For each proposed major rule, a brief summary of the agency's preliminary Regulatory Impact Analysis.

(h) Agencies shall make their preliminary and final Regulatory Impact Analyses available to the public.

(i) Agencies shall initiate reviews of currently effective rules in accordance with the purposes of this Order, and perform Regulatory Impact Analyses of currently effective major rules. The Director, subject to the direction of the Task Force, may designate currently effective rules for review in accordance with this Order, and establish schedules for reviews and Analyses under this Order.

Sec. 4. Regulatory Review. Before approving any final major rule, each agency shall:

(a) Make a determination that the regulation is clearly within the authority delegated by law and consistent with congressional intent, and include in the Federal Register at the time of promulgation a memorandum of law supporting that determination.

(b) Make a determination that the factual conclusions upon which the rule is based have substantial support in the agency record, viewed as a whole, with full attention to public comments in general and the comments of persons directly affected by the rule in particular.

Sec. 5. Regulatory Agendas.

(a) Each agency shall publish, in October and April of each year, an agenda of proposed regulations that the agency has issued or expects to issue, and currently effective rules that are under agency review pursuant to this Order. These agendas may be incorporated with the agendas published under 5 U.S.C. 602, and must contain at the minimum:

(1) A summary of the nature of each major rule being considered, the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any major rule for which the agency has issued a notice of proposed rulemaking;

(2) The name and telephone number of a knowledgeable agency official for each item on the agenda; and

(3) A list of existing regulations to be reviewed under the terms of this Order, and a brief discussion of each such regulation.

(b) The Director, subject to the direction of the Task Force, may, to the extent permitted by law:

(1) Require agencies to provide additional information in an agenda; and

(2) Require publication of the agenda in any form.

Sec. 6. The Task Force and Office of Management and Budget.

(a) To the extent permitted by law, the Director shall have authority, subject to the direction of the Task Force, to:

(1) Designate any proposed or existing rule as a major rule in accordance with Section 1(b) of this Order;

(2) Prepare and promulgate uniform standards for the identification of major rules and the development of Regulatory Impact Analyses;

(3) Require an agency to obtain and evaluate, in connection with a regulation, any additional relevant data from any appropriate source;

(4) Waive the requirements of Sections 3, 4, or 7 of this Order with respect to any proposed or existing major rule;

(5) Identify duplicative, overlapping and conflicting rules, existing or proposed, and existing or proposed rules that are inconsistent with the policies underlying statutes governing agencies other than the issuing agency or with the purposes of this Order, and, in each such case, require appropriate inter-agency consultation to minimize or eliminate such duplication, overlap, or conflict;

(6) Develop procedures for estimating the annual benefits and costs of agency regulations, on both an aggregate and economic or industrial sector basis, for purposes of compiling a regulatory budget;

(7) In consultation with interested agencies, prepare for consideration by the President recommendations for changes in the agencies' statutes; and

(8) Monitor agency compliance with the requirements of this Order and advise the President with respect to such compliance.

(b) The Director, subject to the direction of the Task Force, is authorized to establish procedures for the performance of all functions vested in the Director by this Order. The Director shall take appropriate steps to coordinate the implementation of the analysis, transmittal, review, and clearance provisions of this Order with the authorities and requirements provided for or imposed upon the Director and agencies under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Paperwork Reduction Plan Act of 1980, 44 U.S.C. 3501 *et seq.*

Sec. 7. Pending Regulations.

(a) To the extent necessary to permit reconsideration in accordance with this Order, agencies shall, except as provided in Section 8 of this Order, suspend or postpone the effective dates of all major rules that they have promulgated in final form as of the date of this Order, but that have not yet become effective, excluding:

(1) Major rules that cannot legally be postponed or suspended;

(2) Major rules that, for good cause, ought to become effective as final rules without reconsideration. Agencies shall prepare, in accordance with Section 3 of this Order, a final Regulatory Impact Analysis for each major rule that they suspend or postpone.

(b) Agencies shall report to the Director no later than 15 days prior to the effective date of any rule that the agency has promulgated in final form as of the date of this Order, and that has not yet become effective, and that will not be reconsidered under subsection (a) of this Section:

(1) That the rule is excepted from reconsideration under subsection (a), including a brief statement of the legal or other reasons for that determination; or

(2) That the rule is not a major rule.

(c) The Director, subject to the direction of the Task Force, is authorized, to the extent permitted by law, to:

(1) Require reconsideration, in accordance with this Order, of any major rule that an agency has issued in final form as of the date of this Order and that has not become effective; and

(2) Designate a rule that an agency has issued in final form as of the date of this Order and that has not yet become effective as a major rule in accordance with Section 1(b) of this Order.

(d) Agencies may, in accordance with the Administrative Procedure Act and other applicable statutes, permit major rules that they have issued in final form as of the date of this Order, and that have not yet become effective, to take effect as interim rules while they are being reconsidered in accordance with this Order, *provided that*, agencies shall report to the Director, no later than 15 days before any such rule is proposed to take effect as an interim rule, that the rule should appropriately take effect as an interim rule while the rule is under reconsideration.

(e) Except as provided in Section 8 of this Order, agencies shall, to the extent permitted by law, refrain from promulgating as a final rule any proposed major rule that has been published or issued as of the date of this Order until a final Regulatory Impact Analysis, in accordance with Section 3 of this Order, has been prepared for the proposed major rule.

(f) Agencies shall report to the Director, no later than 30 days prior to promulgating as a final rule any proposed rule that the agency has published or issued as of the date of this Order and that has not been considered under the terms of this Order:

(1) That the rule cannot legally be considered in accordance with this Order, together with a brief explanation of the legal reasons barring such consideration; or

(2) That the rule is not a major rule, in which case the agency shall submit to the Director a copy of the proposed rule.

(g) The Director, subject to the direction of the Task Force, is authorized, to the extent permitted by law, to:

(1) Require consideration, in accordance with this Order, of any proposed major rule that the agency has published or issued as of the date of this Order; and

(2) Designate a proposed rule that an agency has published or issued as of the date of this Order, as a major rule in accordance with Section 1(b) of this Order.

(h) The Director shall be deemed to have determined that an agency's report to the Director under subsections (b), (d), or (f) of this Section is consistent with the purposes of this Order, unless the Director advises the agency to the contrary:

(1) Within 15 days of its report, in the case of any report under subsections (b) or (d); or

(2) Within 30 days of its report, in the case of any report under subsection (f).

(i) This Section does not supersede the President's Memorandum of January 29, 1981, entitled "Postponement of Pending Regulations," which shall remain in effect until March 30, 1981.

(j) In complying with this Section, agencies shall comply with all applicable provisions of the Administrative Procedure Act, and with any other procedural requirements made applicable to the agencies by other statutes.

Sec. 8. Exemptions.

(a) The procedures prescribed by this Order shall not apply to:

(1) Any regulation that responds to an emergency situation, *provided that*, any such regulation shall be reported to the Director as soon as it is practicable, the agency shall publish in the *Federal Register* a statement of the reasons why it is impracticable for the agency to follow the procedures of this Order with respect to such a rule, and the agency shall prepare and transmit as soon as is practicable a Regulatory Impact Analysis of any such major rule; and

(2) Any regulation for which consideration or reconsideration under the terms of this Order would conflict with deadlines imposed by statutes or by judicial order, *provided that*, any such regulation shall be reported to the Director together with a brief explanation of the conflict, the agency shall publish in the *Federal Register* a statement of the reasons why it is impracticable for the agency to follow the procedures of this Order with respect to such a rule, and the agency, in consultation with the Director, shall adhere to the requirements of this Order to the extent permitted by statutory or judicial deadlines.

(b) The Director, subject to the direction of the Task Force, may, in accordance with the purposes of this Order, exempt any class or category of regulations from any or all requirements of this Order.

Sec. 9. *Judicial Review.* This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person. The determinations made by agencies under Section 4 of this Order, and any Regulatory Impact Analyses for any rule, shall be made part of the whole record of agency action in connection with the rule.

Sec. 10. *Revocations.* Executive Orders No. 12044, as amended, and No. 12174 are revoked.

RONALD REAGAN

THE WHITE HOUSE
February 17, 1981

EXECUTIVE ORDER NO. 12498 OF JANUARY 4, 1985

Regulatory Planning Process

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to create a coordinated process for developing on an annual basis the Administration's Regulatory Program, establish Administration regulatory priorities, increase the accountability of agency heads for the regulatory actions of their agencies, provide for Presidential oversight of the regulatory process, reduce the burdens of existing and future regulations, minimize duplication and conflict of regulations, and enhance public and Congressional understanding of the Administration's regulatory objectives, it is hereby ordered as follows:

Section 1. *General Requirements.* (a) There is hereby established a regulatory planning process by which the Administration will develop and publish a Regulatory Program for each year. To implement this process, each Executive agency subject to Executive Order No. 12291 shall submit to the Director of the Office of Management and Budget (OMB) each year, starting in 1985, a statement of its regulatory policies, goals, and objectives for the coming year and information concerning all significant regulatory actions under way or planned; however, the Director may exempt from this order such agencies or activities as the Director may deem appropriate in order to achieve the effective implementation of this order.

(b) The head of each Executive agency subject to this Order shall ensure that all regulatory actions are consistent with the goals of the agency and of the Administration, and will be appropriately implemented.

(c) This program is intended to complement the existing regulatory planning and review procedures of agencies and the Executive branch, including the procedures established by Executive Order No. 12291.

(d) To assure consistency with the goals of the Administration, the head of each agency subject to this Order shall adhere to the regulatory principles stated in Section 2 of Executive Order No. 12291,

including those elaborated by the regulatory policy guidelines set forth in the August 11, 1983, Report of the Presidential Task Force on Regulatory Relief, "Reagan Administration Regulatory Achievements."

Sec. 2. *Agency Submission of Draft Regulatory Program.* (a) The head of each agency shall submit to the Director an overview of the agency's regulatory policies, goals, and objectives for the program year and such information concerning all significant regulatory actions of the agency, planned or under way, including actions taken to consider whether to initiate rulemaking; requests for public comment; and the development of documents that may influence, anticipate, or lead to the commencement of rulemaking proceedings at a later date, as the Director deems necessary to develop the Administration's Regulatory Program. This submission shall constitute the agency's draft regulatory program. The draft regulatory program shall be submitted to the Director each year, on a date to be specified by the Director, and shall cover the period from April 1 through March 31 of the following year.

(b) The overview portion of the agency's submission should discuss the agency's broad regulatory purposes, explain how they are consistent with the Administration's regulatory principles, and include a discussion of the significant regulatory actions, as defined by the Director, that it will take. The overview should specifically discuss the significant regulatory actions of the agency to revise or rescind existing rules.

(c) Each agency head shall categorize and describe the regulatory actions described in subsection (a) in such format as the Director shall specify and provide such additional information as the Director may request; however, the Director shall, by Bulletin or Circular, exempt from the requirements of this order any class or category of regulatory action that the Director determines is not necessary to review in order to achieve the effective implementation of the program.

Sec. 3. Review, Compilation, and Publication of the Administration's Regulatory Program. (a) In reviewing each agency's draft regulatory program, the Director shall (i) consider the consistency of the draft regulatory program with the Administration's policies and priorities and the draft regulatory programs submitted by other agencies; and (ii) identify such further regulatory or deregulatory actions as may, in his view, be necessary in order to achieve such consistency. In the event of disagreement over the content of the agency's draft regulatory program, the agency head or the Director may raise issues for further review by the President or by such appropriate Cabinet Council or other forum as the President may designate.

(b) Following the conclusion of the review process established by subsection (a), each agency head shall submit to the Director, by a date to be specified by the Director, the agency's final regulatory plan for compilation and publication as the Administration's Regulatory Program for that year. The Director shall circulate a draft of the Administration's Regulatory Program for agency comment, review, and inter-agency consideration, if necessary, before publication.

(c) After development of the Administration's Regulatory Program for the year, if the agency head proposes to take a regulatory action subject to the provisions of Section 2 and not previously submitted for review under this process, or if the agency head proposes to take a regulatory action that is materially different from the action described in the agency's final regulatory program, the agency head shall immediately advise the Director and submit the action to the Director for review in such format as the Director may specify. Except in the case of emergency situations, as defined by the Director, or statutory or judicial deadlines, the agency head shall refrain from taking the proposed regulatory action

until the review of this submission by the Director is completed. As to those regulatory actions not also subject to Executive Order No. 12291, the Director shall be deemed to have concluded that the proposal is consistent with the purposes of this Order, unless he notifies the agency head to the contrary within 10 days of its submission. As to those regulatory actions subject to Executive Order No. 12291, the Director's review shall be governed by the provisions of Section 3(e) of the Order.

(d) Absent unusual circumstances, such as new statutory or judicial requirements or unanticipated emergency situations, the Director may, to the extent permitted by law, return for reconsideration any rule submitted for review under Executive Order No. 12291 that would be subject to Section 2 but was not included in the agency's final Regulatory Program for that year, or any other significant regulatory action that is materially different from those described in the Administration's Regulatory Program for that year.

Sec. 4. Office of Management and Budget. The Director of the Office of Management and Budget is authorized, to the extent permitted by law, to take such actions as may be necessary to carry out the provisions of this Order.

Sec. 5. Judicial Review. This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person.

RONALD REAGAN

THE WHITE HOUSE
January 4, 1985

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