



United States  
General Accounting Office  
Washington, D.C. 20548

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General Government Division

B-279720

April 24, 1998

The Honorable Fred Thompson  
Chairman, Committee on Governmental Affairs  
United States Senate

The Honorable Carl Levin  
United States Senate

The Honorable Sue W. Kelly  
Chairman, Subcommittee on Regulatory  
Reform and Paperwork Reduction  
Committee on Small Business  
House of Representatives

The Honorable David McIntosh  
Chairman, Subcommittee on National Economic  
Growth, Natural Resources, and Regulatory Affairs  
Committee on Government Reform and Oversight  
House of Representatives

Subject: Regulatory Reform: Major Rules Submitted for  
Congressional Review During the First 2 Years

This letter responds to your requests that we provide you with information on the major rules submitted to us and Congress during the first 2 years that the congressional review provisions in the Small Business Regulatory Enforcement Fairness Act (SBREFA) were in effect.<sup>1</sup> Our specific objectives were to identify (1) how many major rules were issued during this period, (2) which agencies issued the rules, (3) how many of the rules had notices of proposed rule making, and (4) which regulatory statutes and executive orders the agencies commonly cite in the reports that SBREFA requires the agencies to submit. We also identified recurring problems with these major rules and the relationship of this information to pending legislation.

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<sup>1</sup>SBREFA's congressional review provisions are codified in sections 801 to 808 of title 5, United States Code.

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The congressional review provisions of SBREFA were enacted to permit Congress to better oversee the federal rule-making process. Our primary role in this process is to provide Congress with quick reports on our reviews of major rules to determine if the agencies promulgating the rules have complied with the procedural steps governing the regulatory process. As we have said in previous testimonies on this issue,<sup>2</sup> congressional oversight of rule making, as contemplated by SBREFA, can be an important and useful tool for balancing and accommodating the concerns of American citizens and businesses with federal agency rule making. It is important to ensure that executive branch agencies are responsive to citizens and businesses about the reach, cost, and impact of regulations, without compromising the statutory mission given to those agencies. SBREFA is intended to accomplish this by giving Congress an opportunity to (1) review rules before they take effect and (2) disapprove those found to be too burdensome, excessive, inappropriate, duplicative, or otherwise objectionable.

To conduct this review, we summarized the information in more than 100 of our reports on federal agencies' major rules.<sup>3</sup> In some cases, we also reviewed the published final rules themselves and other documentation to obtain additional information about the rules and to determine whether we had received all of the major rules issued during this period. At the conclusion of our review, we obtained comments on a draft of this letter from the Acting Administrator of the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA).

We conducted our review between January and April, 1998, in accordance with generally accepted government auditing standards.

#### RESULTS IN BRIEF

Federal agencies sent us 122 rules that they and OIRA said were "major" during the first 2 years that SBREFA's congressional review provisions were in effect. Most of these rules were issued by four executive departments and agencies and two independent regulatory agencies. The rules varied substantially in terms of whether they had notices of proposed rule making and the time elapsed between final rule making and any proposed rules. The agencies indicated that the rules also varied regarding the applicability of certain statutory and executive order rule-making requirements. On several occasions, federal agencies did not delay the effective dates of their major rules for the required 60 days to allow time for congressional review. The information in this letter has a relationship to at least two regulatory reform proposals that Congress is currently considering.

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<sup>2</sup>Congressional Review Act (GAO/T-OGC-97-29, Mar. 6, 1997) and Congressional Review Act: Implementation and Coordination (GAO/T-OGC-98-38, Mar. 10, 1998).

<sup>3</sup>These major rule reports can be obtained by accessing our web site at [www.gao.gov](http://www.gao.gov).

## BACKGROUND

SBREFA was passed on March 29, 1996, and focuses on a number of issues that were designed to improve the rule-making process. Under SBREFA's congressional review provisions, which went into effect upon passage of the act, any executive branch agency promulgating a final rule must submit a copy of the rule and other material to both Houses of Congress and the Comptroller General. SBREFA provides that agencies must also submit to the Comptroller General and make available to each House of Congress other information about the rules, including a complete copy of any cost-benefit analysis; the agencies' actions relevant to certain sections of the Regulatory Flexibility Act (RFA) and the Unfunded Mandates Reform Act of 1995 (UMRA); and "any other relevant information or requirements under any other Act and any relevant Executive orders." The statute also says that the Comptroller General must provide a report on each "major" rule to the committees of jurisdiction in each House of Congress by the end of 15 calendar days after the agency has submitted the rule assessing the agencies' compliance with the procedural rule-making steps previously discussed.

The definition of an "agency" in SBREFA is very broad, including both executive departments and agencies as well as independent regulatory agencies. The statute's definition of a "rule" is also very broad, generally excluding only rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect parties outside of the agencies. SBREFA defines a "major" rule as one that the Administrator of OIRA finds has resulted in or 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, government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets. With certain narrow exceptions, these major rules cannot take effect until 60 days after publication in the Federal Register or submission to Congress and us, whichever is later.

Our reviews of these major rules are based on the information given to us by the promulgating federal agency and any additional information we obtained during the 15-day report preparation period. Because of the time constraints imposed by SBREFA, our role is necessarily limited to a review of the documents produced in the rule-making process under applicable statutory and regulatory mandates. For example, in the area of cost-benefit analysis, we determined whether the federal agency issuing a rule had conducted some type of analysis and, if so, what that analysis indicated the costs and benefits of the rule would be.

## MOST MAJOR RULES CAME FROM SIX AGENCIES

Between March 29, 1996, and March 29, 1998, we received 8,284 rules under SBREFA's congressional review provisions. OIRA and the agencies identified 122 of these rules as major rules. Enclosure I contains a list, by agency, of the 122 major final rules that OIRA

and the agencies identified during the first 2 years of the congressional review requirements.<sup>4</sup>

However, the actual number of major rules issued during this period is not clear. We compared an OIRA-prepared list of important final rules that it reviewed during the first year of the SBREFA congressional review requirements to the list of rules that OIRA and the agencies had identified to us as major during the same period.<sup>5</sup> We found that 12 rules on our list of major rules were not on OIRA's list. OIRA officials said that, in retrospect, they and the agencies should not have identified 7 of those 12 rules as major. (Enc. I identifies the 12 rules that were not on OIRA's list and the 7 rules that OIRA officials said were not major.) The OIRA list also contained 8 rules that were not on our list of 122 major rules. (See enc. II.) Of these, OIRA officials said that all eight should have been identified and submitted to us as major rules. OIRA officials noted that all of these rules were issued in the first year of the congressional review process, and that they and the agencies were still learning how to respond to the statutory requirements. We are following up with OIRA and the agencies that issued these rules to determine whether they should be added to or subtracted from our list of major rules.

These possible discrepancies notwithstanding, this letter focuses on the 122 rules that OIRA and the agencies identified as major during the first 2 years of SBREFA's congressional review requirements. As figure 1 shows, executive departments and agencies issued 78 (64 percent) of these 122 major rules, and independent regulatory agencies issued 44 (36 percent) of the rules. Six of these agencies accounted for 95 (78 percent) of the 122 major rules issued during this period. The agency that issued the most major rules (26) was the Federal Communications Commission (FCC). Other independent regulatory agencies that issued major rules during this period were the Securities and Exchange Commission (SEC) (12 rules) and the Nuclear Regulatory Commission, the Federal Energy Regulatory Commission, and the Federal Reserve System (with 2 rules each).

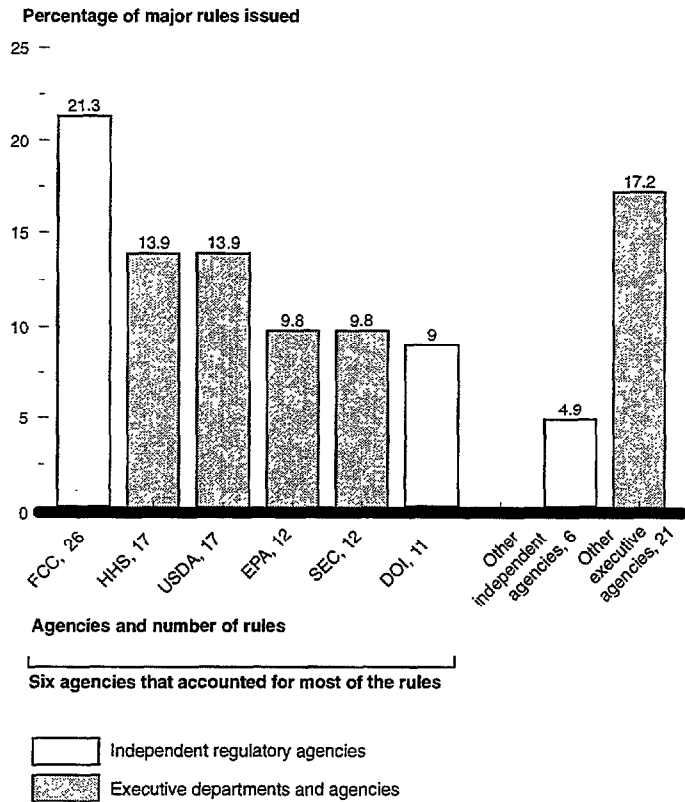
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<sup>4</sup>In this letter, we use the term "issued" to refer to rules that were submitted to us pursuant to the congressional review provisions in SBREFA. However, some rules may have been provided to us but not formally published in the Federal Register until days later.

<sup>5</sup>Report to Congress on the Costs and Benefits of Federal Regulations, Office of Management and Budget, Office of Information and Regulatory Affairs, September 30, 1997. OIRA's report included rules for which OIRA had concluded review between April 1, 1996, and March 31, 1997, that were either (1) considered "economically significant" under section 3(f)(1) of Executive Order 12866, (2) considered "major" under the congressional review provisions of SBREFA, or (3) designated as meeting the economic and other thresholds under title II of UMRA. Although these three definitions are not exactly the same, they are roughly analogous and overlapping.

Among executive departments and agencies, the Departments of Agriculture (USDA) and Health and Human Services (HHS) issued the most rules during this period (17 each), followed by the Environmental Protection Agency (EPA) (12 rules) and the Department of the Interior (DOI) (11 rules). Other executive departments and agencies that issued major rules during this period were the Departments of Commerce (one rule), Energy (two rules), Housing and Urban Development (HUD) (four rules), Justice (two rules), Labor (DOL) (three rules), Transportation (DOT) (three rules), and Veterans Affairs (one rule), and the Social Security Administration (two rules). Three rules were issued jointly by more than one agency.

**Figure 1: Agencies Issuing Major Final Rules in the First 2 Years of SBREFA Congressional Review Requirements**



Source: GAO.

Some of these 122 major rules were extremely contentious. For example, EPA's national ambient air quality standards for ozone and particulate matter generated heated controversy and are currently the subject of litigation.<sup>6</sup> Similarly, DOL's Occupational Safety and Health Administration's (OSHA) rules on occupational exposure to methylene chloride and respiratory protection have also been controversial. However, other rules were administrative in nature (e.g., DOI's 11 rules involving migratory bird hunting that, among other things, established hunting seasons and bag limits for certain types of birds on certain types of lands). Still other rules were intended to prevent or compensate victims of economic loss (e.g., two USDA rules involving a wheat fungus known as karnal bunt). Also, some of the rules were promulgated as a direct result of congressional requirements (e.g., DOT's light truck average fuel economy standard for model year 1998, which Congress said must be established at 20.7 miles per gallon).

### SOME MAJOR RULES HAD NO NOTICE OF PROPOSED RULE MAKING

The Administrative Procedure Act (APA) generally requires agencies to publish notices of proposed rule making (NPRM) before issuing final rules to permit the public an opportunity to comment on upcoming regulations.<sup>7</sup> However, the APA permits agencies to issue final rules without NPRMs when they find, for "good cause," that the requirements are impracticable, unnecessary, or contrary to the public interest. An NPRM is also not required for interpretative rules; general statements of policy; or rules of agency organization, procedures, or practice.

Of the 122 major final rules issued during the first 2 years of the congressional review requirements, 23 were issued without a previous NPRM.<sup>8</sup> Nine of these rules were interim final rules in which the agencies said that the rules would take effect immediately because of exigent circumstances, but also said that they would collect public comments and would later issue a final rule. Eight other rules were final rules that were based on previous interim final rules. Two of the rules were direct final rules. One of the agencies provided a 60-day public comment period on its direct final rule. Both agencies said that they did not issue NPRMs for these direct final rules because of the specific nature of the underlying statutory requirements. The remaining four final rules without NPRMs were notices published by HHS related to the medicare program for which the agency contended that the statutes provided no discretion.

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<sup>6</sup>See American Trucking Associations, Inc., et. al., v. United States Environmental Protection Agency (97-1441, July 18, 1997).

<sup>7</sup>The APA's rule-making requirements are codified in section 553 of title 5, United States Code.

<sup>8</sup>In a forthcoming report, we will examine the agencies' rationales for not issuing NPRMs for these final rules.

Of the 99 major rules issued with previous NPRMs, the time elapsed between proposed and final rule making varied substantially both within and across agencies. (See table 1.) One of the rules took more than 5 years between the two rule-making stages; another rule took just more than a month. Some of the differences in the time elapsed between proposed and final rule making appear to be a function of the nature of the rules being issued. For example, DOI's migratory bird-hunting rules took much less time between proposed and final rule making (a median of 173 days) than OSHA's methylene chloride and respiratory protection rules (1,891 and 1,150 days, respectively).

Table 1: Days Elapsed Between Proposed and Final Rule Making for Major Rules

| Department or agency               | Number of major rules with NPRMs | Days between proposed and final rule making |         |        |
|------------------------------------|----------------------------------|---|---------|--------|
|                                    |                                  | Minimum                                     | Maximum | Median |
| USDA                               | 10                               | 63  | 779     | 326    |
| HHS                                | 11                               | 88  | 1,049   | 308    |
| DOI                                | 11                               | 34  | 201     | 173    |
| EPA                                | 12                               | 217   | 1,966   | 614    |
| FCC                                | 26                               | 88  | 1,522   | 339    |
| SEC                                | 12                               | 104   | 1,308   | 370    |
| All other departments and agencies | 17                               | 62  | 1,891   | 242    |

Source: GAO.

AGENCIES REPORTED VARYING APPLICABILITY OF REGULATORY STATUTES AND EXECUTIVE ORDERS

The agencies indicated that the regulatory statutes and executive orders that SBREFA requires the agencies to report on applied only to some of the 122 major rules. The statutes and order that the agencies most commonly discussed were the RFA, UMRA, the Paperwork Reduction Act of 1995 (PRA), and Executive Order 12866.

### Agencies Said the RFA Applied to Less Than One-Third of the Major Rules

The RFA requires agencies to prepare an initial regulatory flexibility analysis before publishing an NPRM for a rule that it believes will have a significant economic impact on a substantial number of small entities. Agencies must prepare a final regulatory flexibility analysis before publishing any final rule with such an impact and for which an NPRM was required.

The agencies indicated that they conducted regulatory flexibility analyses for 76 (62 percent) of the 122 major rules, but the agencies said that they did not do regulatory flexibility analyses for the remaining 46 rules (38 percent). They said that 36 of these 46 rules would not have a significant economic impact on a substantial number of small entities and, therefore, did not require a regulatory flexibility analysis. The agencies indicated that RFA's analytical requirements did not apply to the remaining 10 rules for a variety of reasons. For example, the agencies said that they did not conduct RFA analyses for 6 of the 10 rules because they did not publish an NPRM.

### Agencies Said UMRA's Written Statement Requirements Applied to Few Major Rules

Section 202 of UMRA generally requires agencies to prepare "written statements" containing specific descriptions and estimates for certain rules, including information on the costs and benefits of the rules. However, the agencies reported that only 14 (11 percent) of the 122 major rules issued during the first 2 years of the congressional review requirements were subject to the UMRA written statement requirements. As we noted in our February 1998 report, many economically significant rules are not subject to these written statement requirements.<sup>9</sup> For example, the requirements do not apply to any rules issued by independent regulatory agencies. Neither do they apply to any final rules issued by an executive department or agency unless an NPRM was published for the rule; the rule requires \$100 million, or more, in expenditures in any 1 year by state, local, and tribal governments in the aggregate or the private sector; and the rule involves an "enforceable duty" separate from any condition of federal financial assistance or a voluntary program. The agencies indicated that the remaining 108 rules were not subject to the UMRA written statement requirements for a variety of reasons: (1) they were promulgated by an independent agency (44 rules), (2) they did not require \$100 million in expenditures in any one year (42 rules), (3) no NPRM was published (14 rules), and (4) other reasons (8 rules).

As we noted in our major rule report and in our February 1998 UMRA report, we disagree with EPA's interpretation of UMRA's requirements in one respect, and believe that EPA

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<sup>9</sup>Unfunded Mandates: Reform Act Has Had Little Effect on Agencies' Rulemaking Actions (GAO/GGD-98-30, Feb. 4, 1998).



should have prepared an UMRA written statement for its national ambient air quality standards for ozone and particulate matter.<sup>10</sup> However, the agency appears to have satisfied the substantive UMRA written statement requirements for these rules.

#### Most Major Rules Contained an Information Collection Requirement Covered by the PRA

The PRA requires agencies to obtain OIRA approval before implementing any covered collection of information.<sup>11</sup> The agencies reported that 81 of the 122 major rules (66 percent) contained a new information collection requirement that was covered by the PRA. In 60 of these cases, the agencies said that they had obtained OIRA approval for those information collections before publishing the final rule. In the remaining 21 cases, the agencies said that they had not obtained OIRA's approvals for the information collections at the time the rules were submitted to us. However, they expected to have those approvals by the time that the rules took effect, and said that they would publish notices in the Federal Register when they obtained OIRA's approvals.

The agencies reported that 27 of the remaining 41 major rules had no information collection requirements covered by the PRA. They reported that 12 of the 41 rules contained information collection requirements that had already been approved by OIRA, and therefore did not need to be resubmitted to OIRA. For the remaining two rules (EPA's ozone and particulate matter standards), agency officials said that EPA had convened panels to determine the information collection requirements, if any, for each of the rules.

#### Most Major Rules Were Covered by Executive Order 12866's OIRA Review and Cost-Benefit Analysis Requirements

Executive Order 12866 requires federal agencies (other than independent regulatory agencies) to submit "significant" regulatory actions to OIRA for review. The executive order generally defines a significant regulatory action as one that (1) has an annual effect of \$100 million, or more, on the economy or affects a sector of the economy, productivity, competition, jobs, the environment, public health and safety, or state, local, or tribal governments; (2) creates a serious inconsistency or interferes with an action by another agency; (3) materially alters the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raises novel legal or policy issues. The executive order also says

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<sup>10</sup>For a full discussion of this issue, see Environmental Protection Agency: National Ambient Air Quality Standards for Particulate Matter; Final Rule and National Ambient Air Quality Standards for Ozone: Final Rule (GAO/OGC-97-56, Aug. 4, 1997).

<sup>11</sup>The PRA generally defines a "collection of information" as "obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format."

that agencies must conduct a cost-benefit analysis for any regulatory action that meets the first of these criteria.

Because Executive Order 12866 does not apply to independent regulatory agencies, none of the 44 major rules that those agencies issued in the first 2 years of the congressional review provisions were reviewed by OIRA. Of the remaining 78 rules, all but 1 HUD rule (single-family mortgage insurance) were reviewed by OIRA. In that case, HUD said that the rule was not subject to OIRA's review under the executive order because it had been previously reviewed as an interim final rule.

The agencies indicated that they had prepared cost-benefit analyses for 80 (66 percent) of the 122 major rules. Thirty-six of the 42 rules for which cost-benefit analyses were not prepared were issued by independent regulatory agencies and, therefore, were not covered by Executive Order 12866's cost-benefit analysis requirements.<sup>12</sup> For three of the six remaining rules (DOT's light truck average fuel economy standards for 1998 and 1999 and HHS' medicare program rule), the agencies said no cost-benefit analyses were needed because of the underlying statutes' specific requirements and limitations. HHS indicated that one of its actions (physician fee schedules and volume performance standard rates of increase for 1997) was a notice, not a rule, and therefore was not covered by the cost-benefit requirements in the executive order. HUD said that it had submitted cost-benefit information for one of its rules (single-family mortgage insurance) when it was published as an interim final rule; therefore, it was not resubmitting the information with the final rule. In one rule issued jointly by DOI and HHS (contracts under the Indian Self-Determination and Education Assistance Act), the agencies said that they had submitted some cost information to OIRA, but, (with OIRA's permission), they had not conducted cost-benefit analyses.

#### SOME MAJOR RULES' EFFECTIVE DATES WERE LESS THAN 60 DAYS

In 8 of the 122 major rules, the issuing agencies did not delay the effective dates for 60 days to permit Congress to review the rules, as generally required by section 801(a)(3)(A) of SBREFA. Five of the eight rules were from USDA. We believe that some of the agencies are not budgeting enough time into their regulatory timetable to allow for the delay and are misinterpreting the "good cause" exception to the 60-day delay period found in section 808(2).

Section 808(2) of the act states that "any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public [comment] procedure thereon are impracticable, unnecessary, or contrary to the public interest" shall take effect at such time as the federal agency promulgating the rule determines. This language mirrors the language in section

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<sup>12</sup>As previously noted, independent regulatory agencies issued 44 major rules during this period. The agencies prepared cost-benefit analyses for eight of these rules.

553(b)(3)(B) of the APA that permits an agency to issue a final rule without notice and comment. In our opinion, SBREFA's good cause exception to providing the 60-day delay is only available if an NPRM was not published and public comments were not received. Some agencies stated in the preamble to the final major rule that good cause existed for not providing the 60-day delay, and the reasons cited included the following: (1) Congress was not in session and thus could not act on the rule, (2) a delay would result in a loss of savings that the rule would produce, and (3) there was a statutorily mandated effective date.

The former administrator of OIRA disagreed with our interpretation of the good cause exception. She believed that our interpretation of the exception would result in less public participation in rule making because agencies would forgo issuing an NPRM and receipt of public comments to be able to invoke the good cause exception in SBREFA. OIRA contends that the proper interpretation of good cause should be the standard employed for invoking section 553(d)(3) of the APA, "as otherwise provided by the agency for good cause found and published with the rule," for avoiding the 30-day delay in a rule's effective date as required under the APA.

Because SBREFA's congressional review provision's section 808(2) mirrors the language in section 553(b)(3)(B), not section 553(d)(3), we believe that it is clear that the drafters intended the good cause exception to be invoked only when an NPRM has not been published and comments have not been received.

#### RELATIONSHIP OF INFORMATION TO PENDING LEGISLATION

The information in this letter has a relationship to at least two regulatory reform initiatives—S. 981 and H.R. 1704—currently pending before Congress. S. 981, the "Regulatory Improvement Act of 1998," would require agencies to prepare a cost-benefit analysis when they publish NPRMs for their "major" rules. The definition of a major rule in S. 981 is similar to the definition used in the congressional review provisions of SBREFA—that is, rules that the OIRA Administrator determines are likely to have an annual effect of \$100 million or more on the economy or determines are major for other reasons. The bill defines "agency" to include both executive departments and agencies as well as most independent regulatory agencies.<sup>13</sup> As previously noted, the cost-benefit analysis requirements in Executive Order 12866 and in UMRA do not cover independent regulatory agencies and those agencies issued a total of 44 major rules in the first 2 years of the congressional review requirements. Therefore, S. 981 would extend the requirements for cost-benefit analysis to the major rules issued by independent regulatory

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<sup>13</sup>S. 981's definition of a "rule" does not include, among other things, rules relating to monetary policy proposed or promulgated by the Board of Governors of the Federal Reserve System; rules relating to the operations, safety, or soundness of federally insured depository institutions; or rules issued by the FCC under sections 312(a)(7) and 315 of the Communications Act of 1934.

agencies that are not covered by existing orders and statutes and not expressly excluded in the bill.

Also, S. 981 would extend the requirement in Executive Order 12866 that agencies submit their significant regulatory actions to OIRA for review. Currently, this review requirement does not apply to independent regulatory agencies. Because S. 981 applies to most independent regulatory agencies, the number of rules subject to OIRA review would also increase if the bill were enacted.

S. 981 provides that the definition of a "rule" does not include any rule exempt from the APA's notice and public comment procedures. Also, section 623(b)(1)(A) of S. 981 states that agencies must prepare a cost-benefit analysis "[w]hen an agency publishes a notice of proposed rule making for a major rule." As previously discussed, 23 of the 122 major final rules issued in the first 2 years of the congressional review provisions were issued without associated proposed rules. Therefore, the analytical requirements in S. 981 that are contingent upon the issuance of a proposed rule would not apply to these rules.

H.R. 1704, the proposed "Congressional Office of Regulatory Analysis Creation Act," would establish an office in the legislative branch that would analyze agencies' rules in a manner similar to the function performed by OIRA in the executive branch. The bill would transfer to that office the functions that we currently perform under section 801 of title 5, and would require the office to provide a report on each major rule to the committees of jurisdiction in each House of Congress within 30 days of the rule's submission or publication date. The report is to include an analysis of the rule's potential benefits, costs, and net benefits and alternative approaches that could achieve the same goal at a lower cost—essentially an analysis of the agency's cost-benefit analysis. The report also is to summarize how the office's results differ from the results that the promulgating agency received when conducting similar analyses.

However, regulatory agencies did not prepare cost-benefit analyses for 42 of the major rules submitted in the first 2 years of the congressional review provisions—most commonly because the rules were issued by independent regulatory agencies not covered by the cost-benefit analysis requirements in Executive Order 12866 or UMRA. Therefore, no agency analysis would have been available for these rules to be studied or compared with the congressional office of regulatory analysis' results. However, if S. 981 were enacted and the scope of the agencies' cost-benefit analysis requirements was broadened to include independent regulatory agencies, the scope of the congressional office's analytical responsibilities would also be broadened.

#### AGENCY COMMENTS AND OUR EVALUATION

We obtained comments on a draft of this letter from the Acting OIRA Administrator. He agreed in principle with the report's message but suggested several changes, which we incorporated as appropriate.

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We are sending copies of this letter to the Director of OMB and will make copies available to others on request. Major contributors to this letter were Curtis Copeland, Assistant Director, and Joseph Santiago, Evaluator-in-Charge. Please contact me at (202) 512-8676 if you have any questions.

A handwritten signature in black ink that reads "L. Nye Stevens". The signature is written in a cursive, flowing style.

L. Nye Stevens  
Director, Federal Management  
and Workforce Issues

MAJOR RULES ISSUED DURING THE FIRST 2 YEARS  
OF SBREFA'S CONGRESSIONAL REVIEW REQUIREMENTS

| Major rule by department/agency   | Date final rule appeared in the <u>Federal Register</u> | Final rule's <u>Federal Register</u> citation |
|---|---|---|
| Department of Agriculture (17 rules)  |   |   |
| Dairy Tariff-Rate Import Quota Licensing  | 09-Oct-96   | 61 FR 53001                                   |
| Reengineering and Reinvention of the Direct Section 502 and 504 Single Family Housing Program <sup>a</sup>    | 22-Nov-96   | 61 FR 59762                                   |
| Child and Adult Care Food Program: Improved Targeting of Day Care Home Reimbursements                         | 07-Jan-97   | 62 FR 889                                     |
| Certification Provisions of the Mickey Leland Childhood Hunger Relief Act                                     | 17-Oct-96   | 61 FR 54270                                   |
| Catastrophic Risk Protection Endorsement  | 20-Aug-96   | 61 FR 42979                                   |
| General Administrative Regulations; Federal Crop Insurance Reform Act of 1994, Regulations for Implementation | 20-Aug-96   | 61 FR 42970                                   |
| Food Stamp Program: Child Support Deduction <sup>b</sup>  | 17-Oct-96   | 61 FR 54282                                   |
| Amendments to the Peanut Poundage Quota Regulations   | 09-May-97   | 62 FR 25433                                   |
| Environmental Quality Incentives Program  | 22-May-97   | 62 FR 28258                                   |
| Importation of Beef From Argentina  | 26-Jun-97   | 62 FR 34385                                   |
| Karnal Bunt; Compensation for 1995-1996 Crop Season   | 06-May-97   | 62 FR 24746                                   |
| Conservation Reserve Program - Long Term Policy   | 19-Feb-97   | 62 FR 7601                                    |
| Importation of Pork From Sonora, Mexico   | 09-May-97   | 62 FR 25439                                   |
| Karnal Bunt Disease; Domestic Plant-related Quarantine  | 04-Oct-96   | 61 FR 52190                                   |

| Major rule by department/agency   | Date final rule appeared in the <u>Federal Register</u> | Final rule's <u>Federal Register</u> citation |
|---|---|---|
| Child and Adult Care Food Program: Improved Targeting of Day Care Home Reimbursements   | 24-Feb-98   | 63 FR 9087                                    |
| Child Nutrition and WIC Reauthorization Act Amendments  | 26-Feb-98   | 63 FR 9721                                    |
| Pathogen Reduction: Hazard Analysis and Critical Control Point (HACCP) Systems  | 25-Jul-96   | 61 FR 38805                                   |
| Department of Commerce (1 rule)   |   |   |
| Encryption Items Transferred From the U.S. Munitions List to the Commerce Control List  | 30-Dec-96   | 61 FR 68572                                   |
| Department of Energy (2 rules)  |   |   |
| Energy Conservation Program for Consumer Products: Final Rule Regarding Energy Conservation Standards for Room Air Conditioners   | 24-Sep-97   | 62 FR 50122                                   |
| Energy Conservation Program for Consumer Products: Energy Conservation Standards for Refrigerators, Refrigerator-Freezers and Freezers                                    | 28-Aug-97   | 62 FR 23102                                   |
| Department of Health and Human Services (17 rules)  |   |   |
| Medicare Program; Limit on the Valuation of a Depreciable Asset Recognized as an Allowance for Depreciation and Interest Capital Indebtedness After a Change of Ownership | 09-Jan-98   | 63 FR 1379                                    |
| Medicare: Physician Fee Schedule for Calendar Year 1998; Payment Policies and Relative Value Unit Adjustments and Clinical Psychologist Fee Schedule                      | 31-Oct-97   | 62 FR 59048                                   |
| Quality Mammography Standards   | 28-Oct-97   | 62 FR 55852                                   |

| Major rule by department/agency  | Date final rule appeared in the <u>Federal Register</u> | Final rule's <u>Federal Register</u> citation |
|--|---|---|
| Medicare Program; Revisions to Payment Policies and Five-Year Review of and Adjustments to the Relative Value Units Under the Physician Fee Schedule for CY 1997 | 22-Nov-96   | 61 FR 59490                                   |
| Physician Fee Schedule Update for Calendar Year 1997 and Physician Volume Performance Standard Rates of Increase for Federal Fiscal Year 1997 <sup>b</sup>       | 22-Nov-96   | 61 FR 59717                                   |
| Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 1998                                  | 26-Jan-98   | 63 FR 3752                                    |
| Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 1997 <sup>b</sup>                                | 04-Nov-96   | 61 FR 56690                                   |
| Medical Devices; Current Good Manufacturing Practice (CGMP) Final Rule; Quality System Regulation  | 07-Oct-96   | 61 FR 52601                                   |
| Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents  | 28-Aug-96   | 61 FR 44395                                   |
| Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates   | 29-Aug-97   | 62 FR 45966                                   |
| Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1997 Rates   | 30-Aug-96   | 61 FR 46166                                   |
| Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or After October 1, 1997                      | 02-Jan-98   | 63 FR 89                                      |
| Food Labeling; Nutrition Labeling, Small Business Exemption  | 07-Aug-96   | 61 FR 40963                                   |



| Major rule by department/agency   | Date final rule appeared in the <u>Federal Register</u> | Final rule's <u>Federal Register</u> citation |
|---|---|---|
| Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed  | 05-Jun-97   | 62 FR 30936                                   |
| Medicaid Program; Coverage of Personal Care Services  | 11-Sep-97   | 62 FR 47896                                   |
| Individual Market Health Insurance Reform: Portability From Group to Individual Coverage; Federal Rules for Access in the Individual Market; State Alternative Mechanisms to Federal Rule                             | 08-Apr-97   | 62 FR 16985                                   |
| Medicare and Medicaid Programs; Salary Equivalency Guidelines for Physical Therapy, Respiratory Therapy, Speech Pathology, and Occupational Therapy Services  | 30-Jan-98   | 63 FR 5106                                    |
| Department of Housing and Urban Development (4 rules)   |   |   |
| Single Family Mortgage Insurance; Loss Mitigation Procedures  | 03-Jul-96   | 61 FR 35014                                   |
| Amendments to Regulation X, the Real Estate Settlement Procedures Act: Withdrawal of Employer/Employer and Computer Loan Origination Systems Exemptions; and Policy Statements 1996-1; 1996-2 and 1996-3 <sup>a</sup> | 07-Jun-96   | 61 FR 29238                                   |
| Sale of HUD-Held Single Family Mortgages  | 24-Jan-97   | 62 FR 3766                                    |
| Single Family Mortgage Insurance; Loss Mitigation Process   | 06-Nov-97   | 62 FR 60124                                   |
| Department of Justice (2 rules)   |   |   |
| Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens, Conduct of Removal Proceedings; Asylum Procedures  | 06-Mar-97   | 62 FR 10312                                   |
| Affidavits of Support on Behalf of Immigrants   | 20-Oct-97   | 62 FR 54346                                   |

| Major rule by department/agency   | Date final rule appeared in the <u>Federal Register</u> | Final rule's <u>Federal Register</u> citation |
|---|---|---|
| Department of Labor (3 rules)   |   |   |
| Occupational Exposure to Methylene Chloride   | 10-Jan-97   | 62 FR 1493                                    |
| Service Contract Act; Labor Standards for Federal Service Contracts   | 30-Dec-96   | 61 FR 68647                                   |
| Respiratory Protection  | 08-Jan-98   | 63 FR 1152                                    |
| Department of the Interior (11 rules)   |   |   |
| Migratory Bird Hunting: Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds <sup>a</sup>                                    | 27-Sep-96   | 61 FR 50738                                   |
| Migratory Bird Hunting; Final Rule on the Establishment of a Youth Waterfowl Hunting Day for the 1996-97 Migratory Bird Hunting Season <sup>a</sup> | 18-Sep-96   | 61 FR 49231                                   |
| Migratory Bird Hunting; Seasons and Bag Limits for the 1996-97 Youth Waterfowl Hunting Day <sup>a</sup>   | 20-Sep-96   | 61 FR 49637                                   |
| Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting   | 26-Sep-96   | 61 FR 50661                                   |
| Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations   | 26-Sep-97   | 62 FR 50660                                   |
| Migratory Bird Hunting: Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1997-98 Late Season                              | 29-Sep-97   | 62 FR 50986                                   |
| Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds   | 30-Sep-97   | 62 FR 51298                                   |
| Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1997-98 Early Season      | 02-Sep-97   | 62 FR 46420                                   |

| Major rule by department/agency  | Date final rule appeared in the <u>Federal Register</u> | Final rule's <u>Federal Register</u> citation |
|--|---|---|
| Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations   | 20-Aug-97   | 62 FR 44229                                   |
| Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico and the Virgin Islands | 29-Aug-97   | 62 FR 46152                                   |
| Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1996-97 Late Season <sup>a</sup>   | 27-Sep-96   | 61 FR 50940                                   |
| Department of Transportation (3 rules)   |   |   |
| Federal Motor Vehicle Safety Standards; Occupant Crash Protection  | 19-Mar-97   | 62 FR 12960                                   |
| Light Truck Average Fuel Economy Standard, Model Year 1999   | 03-Apr-97   | 62 FR 15859                                   |
| Light Truck Average Fuel Economy Standard, Model Year 1998   | 03-Apr-96   | 61 FR 14680                                   |
| Department of Veterans Affairs (1 rule)  |   |   |
| Compensation for Disability Resulting From Hospitalization, Treatment, Examination, or Vocational Rehabilitation <sup>b</sup>  | 23-May-96   | 61 FR 25787                                   |
| Departments of the Interior and Health and Human Services (1 rule)   |   |   |
| Contracts Under the Indian Self-Determination and Education Assistance Act <sup>a</sup>  | 24-Jun-96   | 61 FR 32482                                   |
| Departments of the Treasury, Labor, and Health and Human Services (2 rules)  |   |   |
| Interim Rules for Health Insurance Portability for Group Health Plans  | 08-Apr-97   | 62 FR 16894                                   |
| Interim Rules for Mental Health Parity   | 22-Dec-97   | 62 FR 66932                                   |

| Major rule by department/agency   | Date final rule appeared in the <u>Federal Register</u> | Final rule's <u>Federal Register</u> citation |
|---|---|---|
| Environmental Protection Agency (12 rules)  |   |   |
| Final Regulations for Revisions to the Federal Test Procedure for Emissions From Motor Vehicles   | 22-Oct-96   | 61 FR 54851                                   |
| Addition of Facilities in Certain Industry Sectors, Revised Interpretation of Otherwise Use; Toxic Release Inventory; Community Right-to-Know     | 01-May-97   | 62 FR 23834                                   |
| National Ambient Air Quality Standards for Particulate Matter   | 18-Jul-97   | 62 FR 38652                                   |
| National Ambient Air Quality Standards for Ozone  | 18-Jul-97   | 62 FR 38856                                   |
| New Motor Vehicles and New Motor Vehicles Engines Air Pollution Control: Voluntary Standards for Light-Duty Vehicles                              | 06-Jun-97   | 62 FR 31192                                   |
| Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7)  | 20-Jun-96   | 61 FR 31668                                   |
| Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Hospital/Medical/ Infectious Waste Incinerators | 15-Sep-97   | 62 FR 48348                                   |
| Control of Emissions of Air Pollution From Highway Heavy-Duty Engines   | 21-Oct-97   | 62 FR 54694                                   |
| Regulation of Fuels and Fuel Additives: Certification Standards for Deposit Control Gasoline Additives  | 05-Jul-96   | 61 FR 35309                                   |
| Nitrogen Oxides Emission Reduction Program  | 19-Dec-96   | 61 FR 67111                                   |
| Financial Assurance Mechanisms for Local Government Owners and Operators of Municipal Solid Waste Landfill Facilities                             | 27-Nov-96   | 61 FR 60327                                   |

| Major rule by department/agency  | Date final rule appeared in the <u>Federal Register</u> | Final rule's <u>Federal Register</u> citation |
|--|---|---|
| Control of Air Pollution: Final Rule for New Gasoline Spark-Ignition Marine Engines; Exemptions for Non Nonroad Compression-Ignition Engines At or Above 37 Kilowatts and New Nonroad Spark-Ignition Engines at or Below 19 Kilowatts <sup>b</sup> | 04-Oct-96   | 61 FR 52087                                   |
| Social Security Administration (2 rules)   |   |   |
| Cycling Payment of Social Security Benefits  | 11-Feb-97   | 62 FR 6114                                    |
| Supplemental Security Income; Determining Disability for a Child Under Age 18  | 11-Feb-97   | 62 FR 6407                                    |
| Federal Communications Commission (26 rules)   |   |   |
| Ka-Band Satellite Application and Licensing Procedure  | 18-Nov-97   | 62 FR 61448                                   |
| Non-Voice, Non-Geostationary Mobile Satellite Service  | 03-Nov-97   | 62 FR 59293                                   |
| Competitive Bidding Procedures   | 15-Jan-98   | 63 FR 2315                                    |
| Service and Auction Rules for the 38.6-40.0 GHz Frequency Band   | 06-Feb-98   | 63 FR 6079                                    |
| Reallocation of TV Channels 60-69, the 746-806 MHz Band  | 10-Feb-98   | 63 FR 6669                                    |
| Non-U.S.-Licensed Satellites Providing Domestic and International Service in the United States   | 04-Dec-97   | 62 FR 64167                                   |
| International Settlement Rates   | 29-Aug-97   | 62 FR 45758                                   |
| The Local Multipoint Distribution Service  | 17-Sep-97   | 62 FR 48787                                   |
| Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services and Implementation of Section 601(d) of the Telecommunications Act of 1996   | 03-Dec-97   | 62 FR 63864                                   |

| Major rule by department/agency   | Date final rule appeared in the <u>Federal Register</u> | Final rule's <u>Federal Register</u> citation |
|---|---|---|
| Foreign Participation in the U.S. Telecommunications Market   | 09-Dec-97   | 62 FR 64741                                   |
| Flexible Service Offerings in the Commercial Mobile Radio Services  | 29-Aug-96   | 61 FR 45339                                   |
| Provision of Roaming Services by Commercial Mobile Radio Services Providers   | 27-Aug-96   | 61 FR 43977                                   |
| Policies and Rules Concerning Children's Television Programming/Revision of Programming Policies for Television Broadcast Stations  | 27-Aug-96   | 61 FR 43981                                   |
| Unlicensed NII Devices in the 5 GHz Frequency Range   | 31-Jan-97   | 62 FR 4649                                    |
| Broadcast Services; Television Broadcast Stations; TV Transmission Standards  | 25-Mar-97   | 62 FR 14006                                   |
| Redesignating the 27.5-29.5 GHz Frequency Band, Reallocating the 29.5-30.0 GHz Frequency Band, and Establishing Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services | 28-Aug-96   | 61 FR 44177                                   |
| Assessment and Collection of Regulatory Fees for Fiscal Year 1996   | 12-Jul-96   | 61 FR 36629                                   |
| Amendment of Parts 2 and 15 of the Commission's Rules to Deregulate the Equipment Authorization Requirements for Digital Devices  | 19-Jun-96   | 61 FR 31044                                   |
| Amendment to the Commission's Rules Regarding a Plan for Sharing the Cost of Microwave Relocation   | 12-Jun-96   | 61 FR 29679                                   |
| Access to Telecommunications Equipment and Services by Persons With Disabilities  | 14-Aug-96   | 61 FR 42181                                   |
| Revision of the Commission's Rules to Ensure Compatability With Enhanced 911 Emergency Calling Systems  | 02-Aug-96   | 61 FR 40348                                   |

| Major rule by department/agency   | Date final rule appeared in the <u>Federal Register</u> | Final rule's <u>Federal Register</u> citation |
|---|---|---|
| Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services   | 24-Jul-96   | 61 FR 38399                                   |
| Provision for the Use of the 220-222 MHz Band by Private Land Mobile Radio Service  | 03-Apr-97   | 62 FR 15978                                   |
| Assessment and Collection of Regulatory Fees for Fiscal Year 1997   | 11-Jul-97   | 62 FR 37408                                   |
| Facilitate Future Development of Paging Systems and Implementation of Section 309(j) of the Communications Act; Competitive Bidding | 12-Mar-97   | 62 FR 11616                                   |
| Use of the 28 GHz and 31 GHz Bands for Local Multipoint Distribution Service  | 29-Apr-97   | 62 FR 23148                                   |
| Federal Energy Regulatory Commission (2 rules)  |   |   |
| Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities                    | 10-May-96   | 61 FR 21540                                   |
| Open Access Same-Time Information System and Standards of Conduct   | 10-May-96   | 61 FR 21737                                   |
| Federal Reserve System (2 rules)  |   |   |
| Securities Credit Transactions; Review of Regulation T, "Credit by Brokers and Dealers"   | 06-May-96   | 61 FR 20386                                   |
| Bank Holding Companies and Change in Bank Control (Regulation Y)  | 28-Feb-97   | 62 FR 9290                                    |
| Nuclear Regulatory Commission (2 rules)   |   |   |
| Revision of Fee Schedules; 100% Fee Recovery, FY 1997   | 29-May-97   | 62 FR 29194                                   |
| Revision of Fee Schedules; 100% Fee Recovery, FY 1996   | 12-Apr-96   | 61 FR 16203                                   |

| Major rule by department/agency   | Date final rule appeared in the Federal Register | Final rule's Federal Register citation |
|---|--|--|
| Securities and Exchange Commission (12 rules)   |  |  |
| Registration Form Used by Open-End Management Investment Companies  | 23-Mar-98  | 63 FR 13916                            |
| New Disclosure Options for Open-End Management Investment Companies   | 23-Mar-98  | 63 FR 13968                            |
| Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate    | 07-Aug-97  | 62 FR 42401                            |
| Offshore Offers and Sales   | 25-Feb-98  | 63 FR 9632                             |
| Anti-manipulation Rules Concerning Securities Offerings   | 03-Jan-97  | 62 FR 519                              |
| Revision of Holding Period Requirements in Rules 144 and 145  | 28-Feb-97  | 62 FR 9242                             |
| Reporting Requirements for Brokers or Dealers Under the Securities Exchange Act of 1934                     | 12-Feb-97  | 62 FR 6469                             |
| Disclosure of Accounting Policies for Derivative Financial Instruments and Derivative Commodity Instruments | 10-Feb-97  | 62 FR 6044                             |
| Rules Implementing Amendments to the Investment Advisers Act of 1940 (Rule 203A-2)                          | 22-May-97  | 62 FR 28112                            |
| Privately Offered Investment Companies  | 09-Apr-97  | 62 FR 17512                            |
| Rule 11 AC1-4 (Limit Order Display Rule) and Amendments to Rule 11 AC1-1 (Quote Rule)                       | 12-Sep-96  | 61 FR 48290                            |
| Technical Revisions to the Rules and Forms Regulating Money Market Funds                                    | 09-Dec-97  | 62 FR 64968                            |

<sup>a</sup> These rules were not listed in OIRA's September 1997 Report to Congress on the Cost and Benefits of Federal Regulations, and OIRA officials said these rules were not major.

<sup>b</sup> These rules were not listed in OIRA's September 1997 Report to Congress on the Cost and Benefits of Federal Regulations, and OIRA officials said these rules were major.

Source: GAO.



RULES THAT OIRA BELIEVES SHOULD HAVE BEEN  
IDENTIFIED AS MAJOR

| Rule by department or agency                                     | Date final rule appeared in the <u>Federal Register</u> | Final rule's <u>Federal Register</u> citation |
|--|---|---|
| Department of Agriculture (4 rules)                              |   |   |
| CCC Supplier Credit Guarantee Program                            | 01-Jul-96   | 61 FR 33825                                   |
| 1995 Crop Sugarcane and Sugar Beet Price-Support Loan Rates      | 10-Apr-96   | 61 FR 15881                                   |
| Farm Program Provisions of the 1996 Farm Bill                    | 18-Jul-96   | 61 FR 37543                                   |
| Peanut Poundage Quota Regulations—7 CFR Part 729                 | 16-Jul-96   | 61 FR 36997                                   |
| Department of Health and Human Services (2 rules)                |   |   |
| Limits on Aggregate Payments to Disproportionate Share Hospitals | 05-Sep-96   | 61 FR 29418                                   |
| Requirements for Physician Incentive Plans in Prepaid HCOs       | 31-Dec-96   | 61 FR 69034                                   |
| Department of the Interior (1 rule)                              |   |   |
| Migratory Bird Hunting; Final Frameworks Early Season            | 29-Aug-96   | 61 FR 45835                                   |
| Environmental Protection Agency (1 rule)                         |   |   |
| Lead-Based Paint Activities in Target Housing                    | 29-Aug-96   | 61 FR 45777                                   |

Source: OMB.

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