



Risk Assessment and Information Quality

An Empirical Study of Federal Agency Performance: 2010 Update

**Richard B. Belzer
Regulatory Checkbook
Mt. Vernon, VA**

Statute, Guidance, and Procedures



BACKGROUND

Background

- Statute
 - Treasury and General Government Appropriations Act, FY 2001, § 515 (Pub. L. 106–554, 114 Stat. 2763, December 2000)
- Directive to OMB
 - Issue government-wide guidance or rule
 - Define critical terms
 - Direct all agencies to issue conforming directives
 - Establish pre-dissemination review procedures
 - Establish error correction procedures

Why Should We Care?

- Risk analysts
 - Complain about 'bad' data and 'bad' decisions
 - Smarter than the people we work for
 - Selective commitment to IQA principles
- Agencies
 - Complain about political interference by WH, Congress, interest groups, lobbyists
 - Treat the public as a nuisance or an opponent
 - Adherence to IQA principles is a tight defense



Critical Content

- Substance
 - Utility
 - Integrity
 - Objectivity
 - Substantive
 - Presentational
- Process
 - Transparency
 - Reproducibility
 - Post on website
- Procedures
 - Pre-dissemination review
 - Post-dissemination error correction
 - Independent appeal
- Judicial review?

Critical Content

- Substance

- Utility
- Integrity

- Objectivity
 - Substantive
 - Presentational

- Process

- Transparency
- Reproducibility
- Post on website

- Procedures

- Pre-dissemination review
- Post-dissemination error correction
- Independent appeal

- Judicial review?

This Paper

- Substance
 - Utility
 - Integrity
 - Objectivity
 - Substantive
 - Presentational
- Process
 - Transparency
 - Reproducibility
 - Post on website
- Procedures
 - Pre-dissemination review
 - Post-dissemination error correction
 - Independent appeal
- **Judicial review?**

This Paper

- **Substance**

- Utility
- Integrity
- Objectivity
 - Substantive
 - Presentational

- **How do 'affected parties' challenge information?**
- **Who is challenging what?**
- **How do agencies respond?**

- **Process**

- Transparency
- Reproducibility
- Post on website

- **Procedures**

- Pre-dissemination review

- Post-dissemination error correction
- Independent appeal

Judicial review?

This Paper

- **Substance**

- Utility
- Integrity
- Objectivity
 - Substantive
 - Presentational

- **Process**

- Transparency
- Reproducibility
- Post on website

- **Procedures**

- Pre-dissemination review
- Post-dissemination error correction
- Independent appeal

• **Is there any recourse?**
Maybe soon.

Judicial review?

Conventional Wisdom

- Advocates are regulated entities
 - ‘The most far-reaching reform since the Administrative Procedure Act of 1946’
 - ‘If only scientific errors were corrected, policy disputes would evaporate’
- Opponents are environmental, health and safety NGOs
 - ‘Agencies will be paralyzed by mountains of petitions filed by industry lobbyists’
 - ‘Stealth tool for undermining environmental, health and safety protections guaranteed by law’
 - ‘Could be misused to delay, manipulate, and unfairly affect the outcome of federal agencies' activities’

Nothing interferes with a happy conclusion
more than good data.

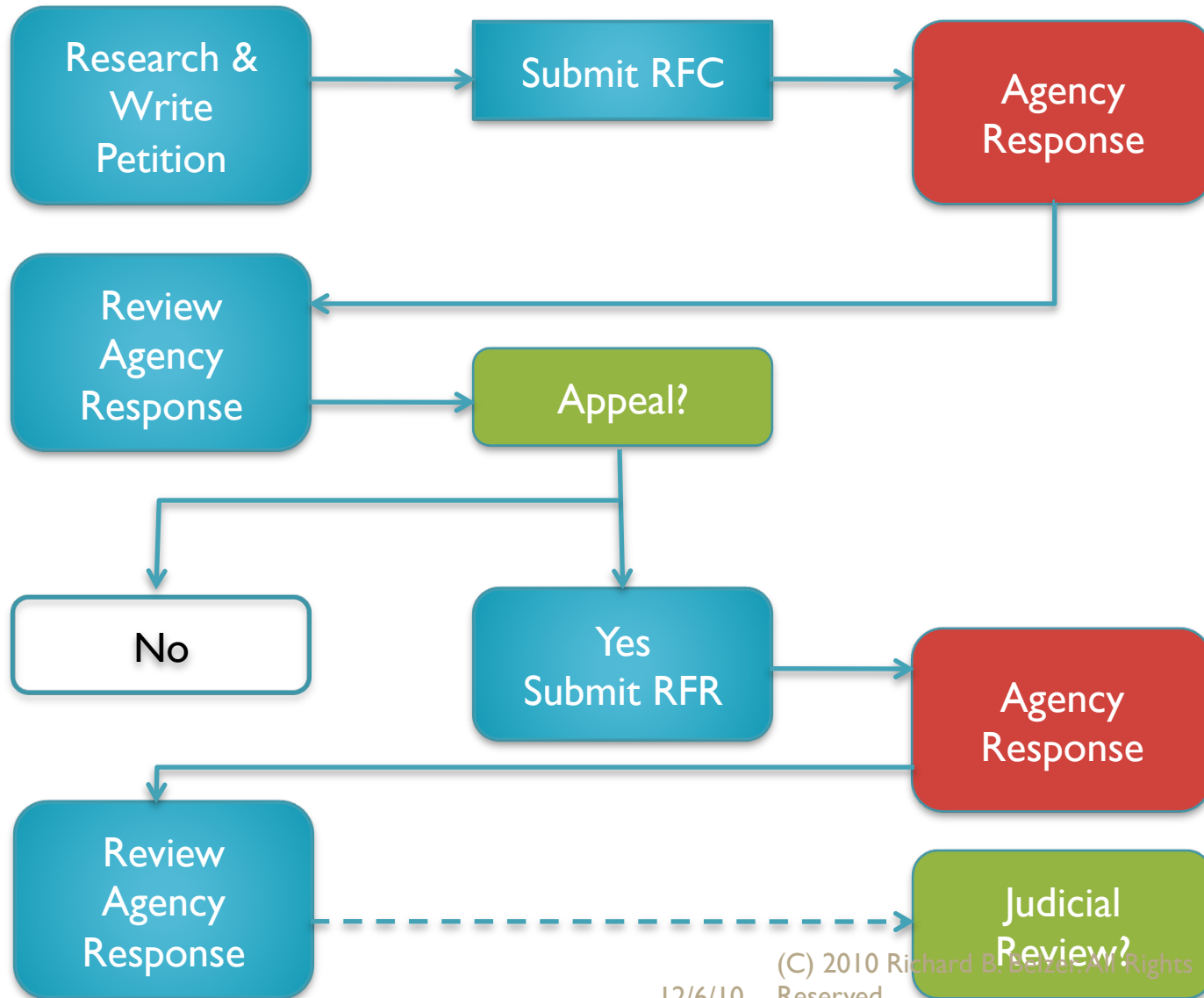


THE DATA SPEAK

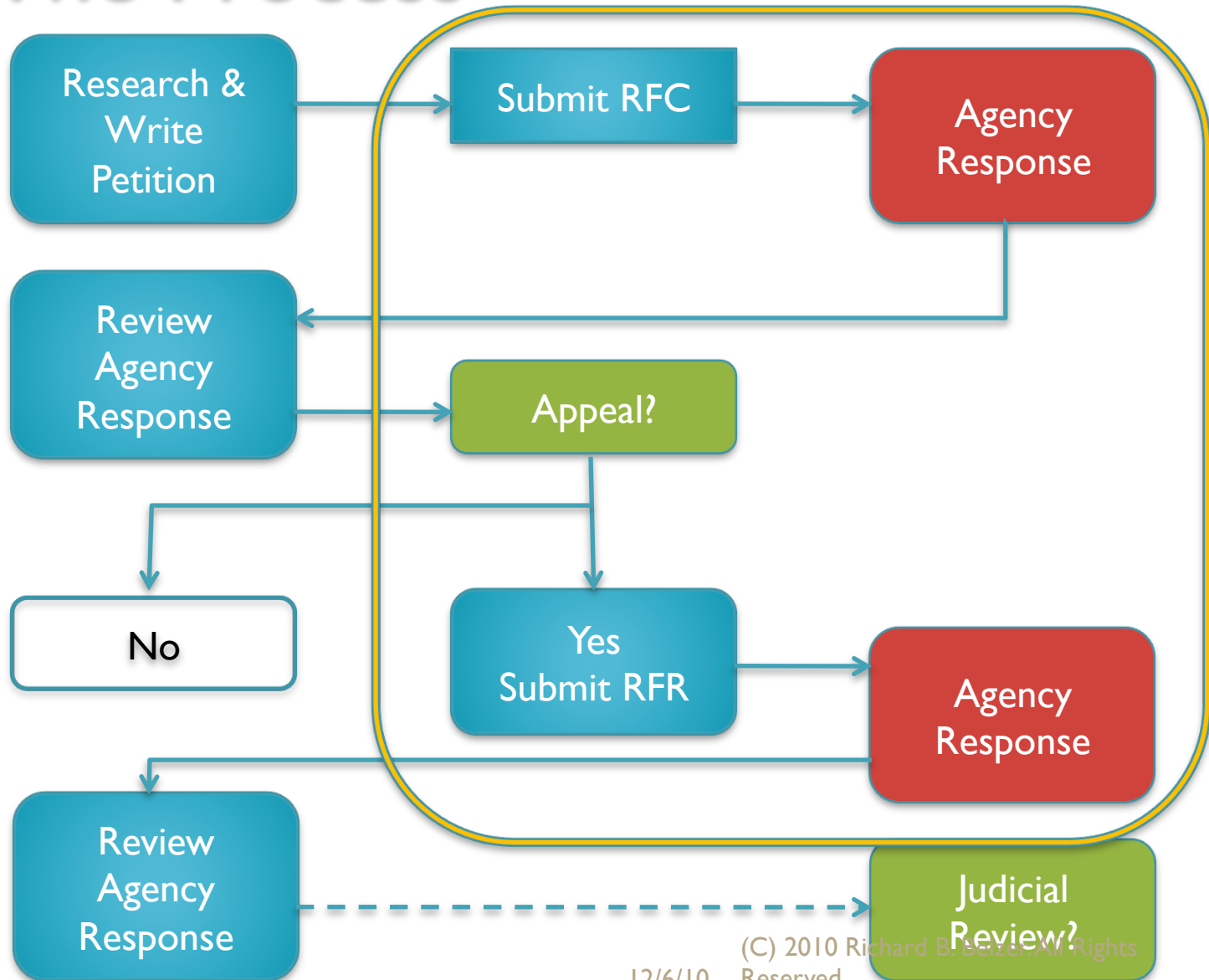
Terminology

- ‘Request for Correction’ (RFC)
 - Any petition for correction of information believed to violate IQA principles
- ‘Request for Reconsideration’ (RFR)
 - Any administrative appeal of a partial or complete denial
- These are agency-invented terms
 - Avoids inference that they have legal standing
 - Avoids implied duty to respond

The Process



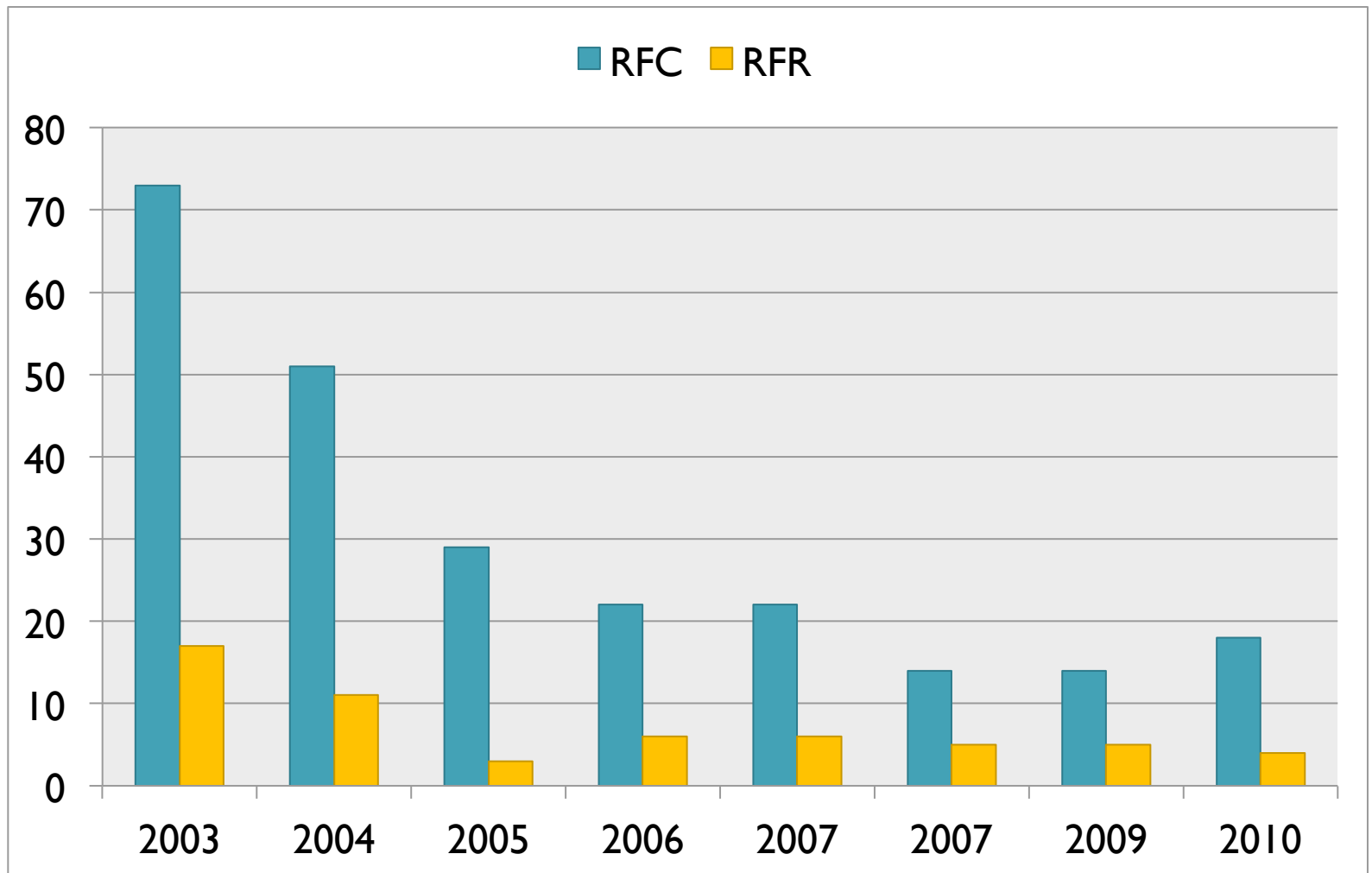
The Process



The Data

- Census, not sample
- All federal agencies that post RFCs/RFRs
 - Some RFCs/RFRs may be missing if not posted
 - Census is affected by agency classification/reclassification decisions
- 2008 SRA Presentation
 - FY 2003-08 (6 years)
- 2010 SRA Presentation
 - FY2003-10 (8 years)
- Diversity across federal agencies
 - All agencies and petitions are not equally 'important'
 - Some agencies centralize IQ process
 - Example: EPA
 - Some agencies delegate to components
 - Department of Labor: 39
 - The Inspectors General problem

RFCs and RFRs by Fiscal Year



Government-wide Descriptive Statistics

	Completed Petitions Only		Appeal Time	Completed + Open Petitions	
	RFC	RFR		RFC	RFR
Mean (days)	148	186	43	217	272
	138	197	43	200	235
SD (days)	134	165	33	308	349
	135	171	31	341	250
N	143	46	54	157	54
	193	61	65	215	66
Max (days)	979	1,896	148	847	2,143
	979	847	148	2,465	1,264
FY2003-08 (2008 Report) FY2003-10 (2010 Report)					

Government-wide Descriptive Statistics

	Completed Petitions Only		Appeal Time	Completed + Open Petitions	
	RFC	RFR		RFC	RFR
Mean (days)	148 138	186 197	43 43	217 200	272 235
SD (days)	134 135	165 171	33 31	308 341	349 250
N	143 193	46 61	54 65	157 215	54 66
Max (days)	979 979	1,896 847	148 148	847 2,465	2,143 1,264
FY2003-08 (2008 Report) FY2003-10 (2010 Report)					

Better Performance

Government-wide Descriptive Statistics

	Completed Petitions Only		Appeal Time	Completed + Open Petitions	
	RFC	RFR		RFC	RFR
Mean (days)	148 138	186 197	43 43	217 200	272 235
SD (days)	134 135	165 171	33 31	308 341	349 250
N	143 193	46 61	54 65	157 215	54 66
Max (days)	979 979	1,896 847	148 148	847 2,465	2,143 1,264
FY2003-08 (2008 Report) FY2003-10 (2010 Report)					

Worse Performance

Who Is Challenging?

Affiliation	N	%
Business/Firm or Related Consultant/Trade Association	92	38
Public, Anonymous, or Redacted by Agency	85	35
Nonprofit Health, Safety or Environmental Group	23	10
Nonprofit (Except HSE)	18	7
Agriculture, Forestry, Mining, Fishing, or Related C6 Nonprofit	15	6
State or Local Agency	7	3
Federal Agency or Official	2	1

What Is Being Challenged?

	N	%
Health Science	95	39
Environmental Science	56	23
Historical/Technical Records	20	8
Safety Science	11	5
Economics/Economic Impacts	11	5
Engineering	9	4
Statistics	8	3
Climate Science	5	2

Who Is Challenging What?

Who	What	Health Science	Env'tl Science	Climate Science
Industry/ Manufacturing		64	8	1
NGOs		13	19	3
Agriculture/ Forestry		0	15	0

Response Times by Agency

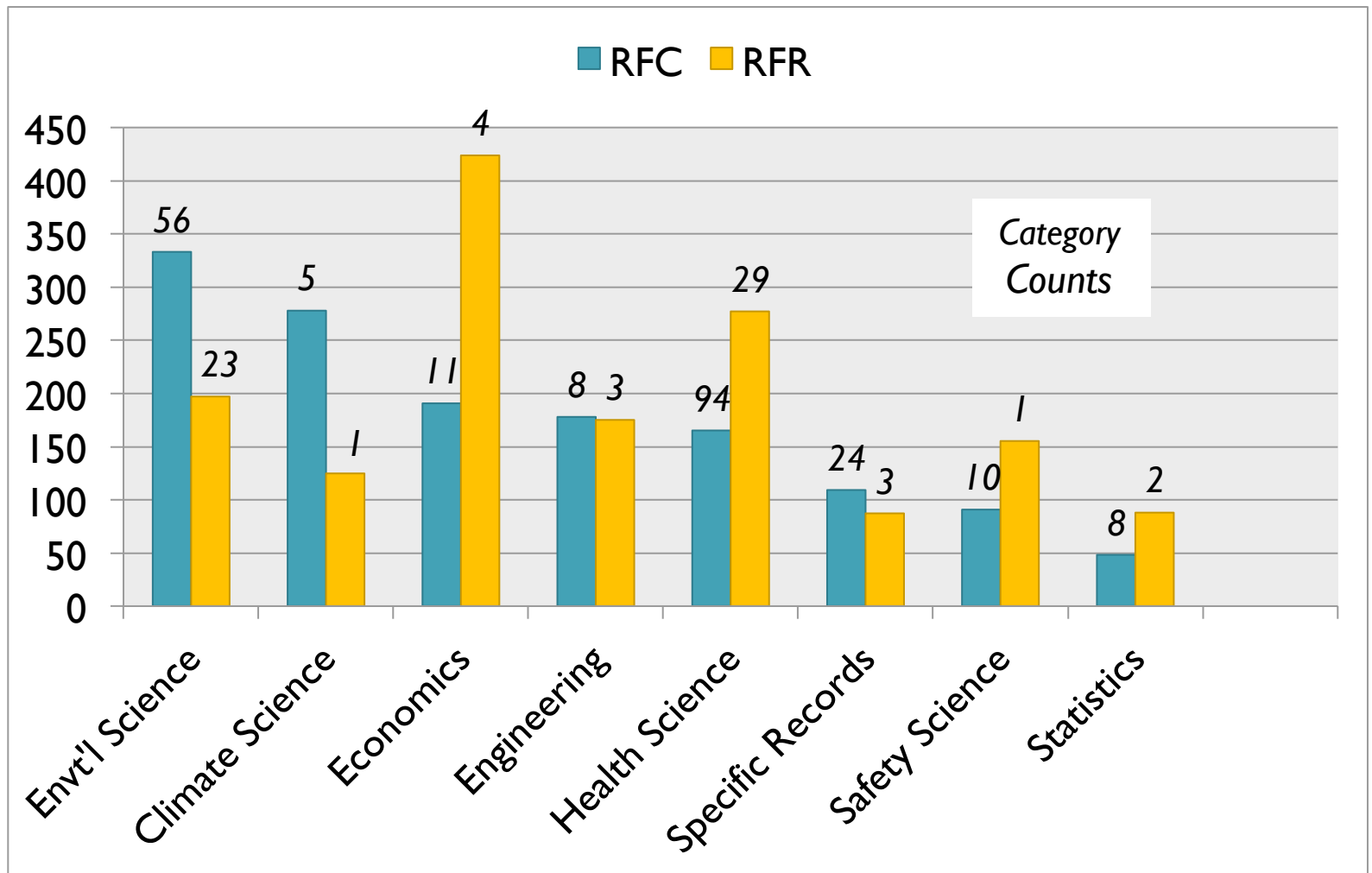
RFCs

Agency	Mean	SD	N _F /N _O
USACE	1,480	847	2/6
USDA	183	227	15/0
HHS	180	131	34/3
DOI	135	148	26/1
EPA	166	106	44/11
DOC	119	88	15/0
CSPC	100	117	6/0
DOL	75	59	29/0
FCC	49	23	5/0

RFRs

Agency	Mean	SD	N _F /N _O
USACE	1,155		0/1
USDA	127	44	11/0
HHS	204	152	16/0
DOI	179	122	8/2
EPA	316	242	15/1
DOC	128	126	5/0
CSPC			0/0
DOL	78	69	3/0
FCC	1,264		0/1

Avg Response Time by Subject



Agency responses cannot be challenged.
Or can they?



JUDICIAL REVIEW

What Do We Know?

- A cacophony of silence
 - The law
 - OMB's government-wide IQG
- Determined rejection
 - All agency IQGs deny judicial review
- Most cases litigated have been weak
 - Non-regulatory
 - No final agency action = lack of standing
 - Transparently intended to change policy
- Until March 2010, courts have said 'no'

What Would Make a Strong Case ?

- Statutory linkage to information quality
- Substantive merit
 - Information is crucial to a major rulemaking
 - Absent error, the law requires a different decision
- Procedural merit
 - Agency committed itself to IQA objectives
 - Agency did not fulfill its commitment
 - Agency-prescribed procedures yielded no relief
- Bonus points
 - Agency was dilatory
 - Agency response was missing or dismissive
 - Plaintiff arouses sympathy or is politically favored

A game-changing legal opinion?



PRIME TIME V. VILSACK

Court of Appeals for the District of Columbia Circuit,
No. 09-5099, Decided March 26, 2010



Case Synopsis [I]

- Fair and Equitable Tobacco Reform Act levies assessments on manufacturers and importers based on market share
- Prime Time used IQA to petition to correct factual inaccuracies in the assessment procedure
- USDA did not respond to the petition

Case Synopsis [2]

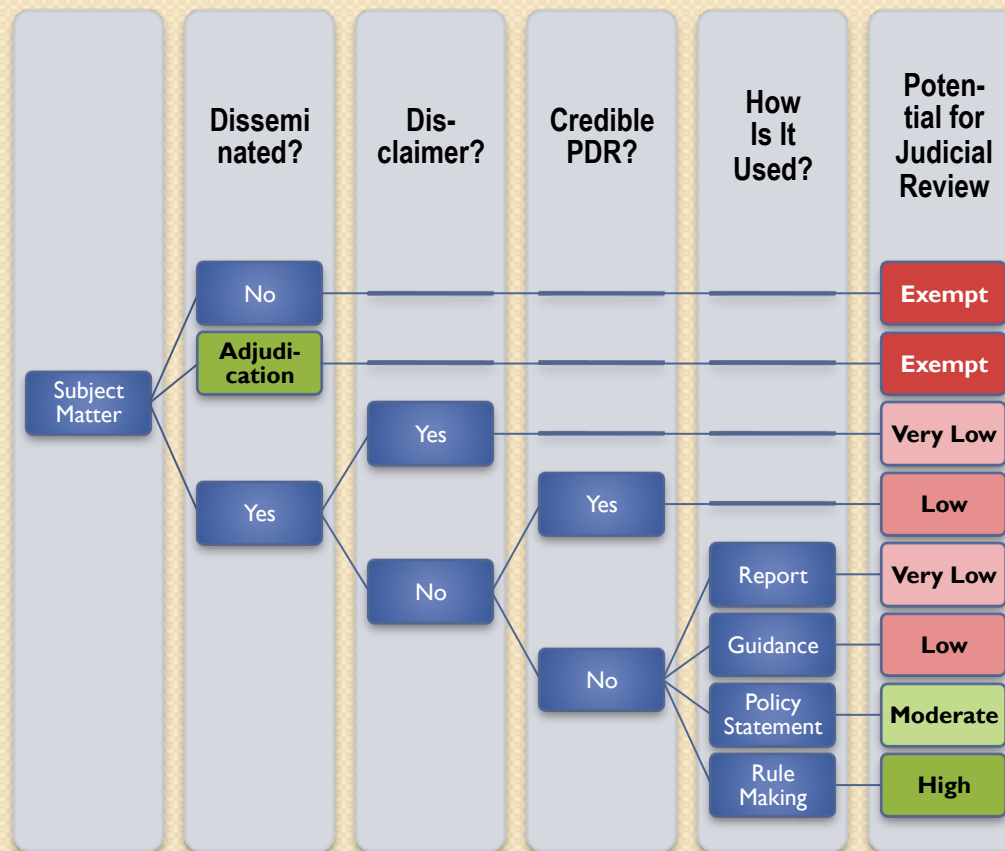
- Prime Time sued on multiple grounds including IQA violations
- District Court granted summary judgment to the government
- CADC reversed, ruling that--
 - OMB's guidelines deserved *Chevron* deference
 - Prime Time's IQA claim was barred by OMB's exclusion of adjudications from the definition of information 'dissemination' (§ V.8)

Case Implications

- *Chevron* deference to OMB IQG would give them the force of law in any case where standing can be established, such as the APA
- Material agency noncompliance with OMB's IQG (or its own IQG) may be arbitrary and capricious conduct under the Administrative Procedure Act
- High-quality cases of material agency noncompliance are pending at the CADC
- IQA compliance may soon become mandatory

PATHWAYS TO JUDICIAL REVIEW

Assumes all administrative remedies in agency's IQG have been exhausted



Acknowledgements and Caveat

- Acknowledgements
 - Thanks to donors for unrestricted grants
- Caveat
 - All information quality errors in this presentation are mine

Richard B. Belzer
Regulatory Checkbook
Belzer@RegulatoryCheckbook.Org
(703) 780-1850