

**STATEMENT OF  
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BEFORE THE  
SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES  
AND REGULATORY AFFAIRS  
UNITED STATES HOUSE OF REPRESENTATIVES**

**March 11, 2003**

Mr. Chairman, and Members of this Subcommittee, thank you for inviting me to this hearing. I am John D. Graham, Ph.D., Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget. Prior to joining the Bush Administration, I served as a faculty member at the Harvard School of Public Health, where I founded and directed the Harvard Center for Risk Analysis.

Since I testified last year before this subcommittee, our office has been working to improve the regulatory review process and to produce the reports to Congress required under the Regulatory Right to Know Act, which is the focus of this hearing.

As you know the Regulatory Right-to-Know Act<sup>1</sup>, also known as the Regulatory Accounting Act, requires that:

- (a) For calendar year 2002 and each year thereafter, the Director of the Office of Management and Budget shall prepare and submit to Congress, with the budget, an accounting statement and associated report containing
  - (1) an estimate of the total annual costs and benefits (including quantifiable and nonquantifiable effects) of Federal rules and paperwork, to the extent feasible
    - (A) in the aggregate;
    - (B) by agency and agency program; and
    - (C) by major rule;
  - (2) an analysis of impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth; and
  - (3) recommendations for reform.
  
- (b) The Director of the Office of Management and Budget shall provide public notice and an opportunity to comment on the statement and report under subsection (a) before the statement and report are submitted to Congress.
  
- (c) To implement this section, the Director of the Office of Management and Budget shall issue guidelines to agencies to standardize
  - (1) measures of costs and benefits; and
  - (2) the format of accounting statements.

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<sup>1</sup>Section 624 of the Treasury and General Government Appropriations Act, 2001, 31 U.S.C. ' 1105 note, Pub. L. 106-554, ' 1(a)(3) [Title VI, ' 624], Dec. 21, 2000, 114 Stat. 2763, 2763A-161.

(d) The Director of the Office of Management and Budget shall provide for independent and external peer review of the guidelines and each accounting statement and associated report under this section.

Today I would like to report on the progress we have made in providing the Congress and the public with the regulatory information and accounting statements required by the Act. As promised last year in my March 12<sup>th</sup> testimony before this committee, we published on March 28, 2002 a draft report for comment and peer review. After digesting the comments from the public, agencies and peers, we issued last December, *Stimulating Smarter Regulation: 2002 Report to Congress on the Costs and Benefits of Regulations and Unfunded Mandates on State, Local, and Tribal Entities*. On February 3, 2003, we released this year's draft sixth report to Congress. These two reports, which devote significant attention to regulatory accounting, are the focus of my testimony.

### **OMB's 2002 Final Report to Congress**

The 2002 report, which was our fifth annual report to Congress on this subject, includes information on all major rules issued between April 1, 1999 and September 30, 2001 including details on how the agencies and OMB estimated their costs, benefits, and impacts. The report also contained an analysis of impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth. The four earlier reports contain detailed information on the costs and benefits of major regulations issued between April 1, 1995, and March 31, 1999 as well as on aggregate costs and benefits of regulation and paperwork in total, by type of regulation, and by agency.

Because the Regulatory Right to Know Act requires more than regulatory accounting, the 2002 report devoted considerable attention to recommendations for regulatory reform received from the public. The report provides an overview of how the Administration is pursuing regulatory reforms and discusses comments from the public suggesting ways to improve that pursuit along with 316 specific recommendations for reform.

These public recommendations were forwarded to the federal agencies to which they applied and the agencies are currently working on determining the appropriate responses to the suggestions. We expect that in our sixth annual report we will report on the results of these efforts.

Appendix A of my written testimony summarizes the report in greater detail. The report together with an appendix discussing the nominations from the public and the comments from the public is on our website at [http://www.whitehouse.gov/omb/inforeg/regpol-reports\\_congress.html](http://www.whitehouse.gov/omb/inforeg/regpol-reports_congress.html).

## **OMB's 2003 Draft Report to Congress**

We released the draft version of our sixth report to Congress with the President's budget on February 3, 2003. The draft report expands considerably upon earlier reports, particularly in the area of regulatory accounting. The report presents estimates for the first time of the costs and benefits of major regulations reviewed by OMB between October 1, 1992 and March 31, 1995. With the addition of costs and benefits from rules issued during fiscal year 2002, the report now contains estimates for all major rules issued in the past ten years. The report estimates that the annual quantifiable benefits of major rules issued during this period range between \$135 billion and \$218 billion with their quantifiable costs ranging between \$38 billion and \$44 billion. Nonquantifiable benefits and costs for all major regulations issued during this ten year period are found for the individual regulations in the appropriate annual report. It is our intention to continue to report costs and benefits of major rules on a ten-year rolling basis.

For the first time, the report also describes the costs and benefits over a ten-year period for eight cabinet departments and several agencies and programs. Most notably, the report indicates that the Clean Air Program in the Environmental Protection Agency's Office of Air and Radiation accounts for the majority of regulatory benefits over the past decade (between \$106 billion and \$163 billion). The President's Clear Skies Initiative calls for expanded authority for this program to reduce power plant pollution by 70% over 15 years.

The report also contains our Draft Guidelines for the Conduct of Regulatory Analysis and the Format of Accounting Statements. These draft guidelines were prepared by my staff in collaboration with the President's Council of Economic Advisors. The guidelines are designed to help analysts in the regulatory agencies by encouraging good regulatory impact analysis and standardizing the way that benefits and costs of Federal regulations are measured and reported.

We will be accepting comments from the public on the entire report and the draft guidelines through April 3, 2003. I have also asked expert peer reviewers to give us comments on these guidelines. We are also convening a group of agency experts and practitioners to review and offer suggestions to improve the guidelines. In February, the agencies sponsored a two-day conference of the world's leading experts on benefit-cost analysis and cost-effectiveness analysis at Resources for the Future. The conference was very well attended and much interest was expressed in improving the analysis of regulatory and public health outcomes.

The draft report also asks for public comment on how federal agencies are currently assessing and managing emerging risks to human health, safety, and the environment, particularly those risks that are subject to substantial scientific uncertainty. We are specifically interested in the role of precaution in health, safety, and environmental regulation. For future homeland security regulations, the draft report requests comment on improving the analysis of the benefits and costs of these proposals.

Appendix B of my written testimony summarizes the 2003 draft report and is on our website at [http://www.whitehouse.gov/omb/infoereg/regpol-reports\\_congress.html](http://www.whitehouse.gov/omb/infoereg/regpol-reports_congress.html).

Thank you very much for the opportunity to appear today. I am willing to answer any questions you may have.

## Appendix A: OMB's 2002 Final Report to Congress

The major features and findings of the 2002 Final Report, which was issued on December 19, 2002 include:

- Since September 11<sup>th</sup>, OIRA cleared 58 significant Federal regulations aimed at responding to the terrorist attacks. These rules addressed urgent matters such as homeland security, immigration control, airline safety, and the need for assistance to businesses harmed by the resulting economic disaster.
- OIRA's goals in regulatory oversight include openness, promptness, and analytic rigor. OIRA's website regular updates rules under review, meetings with outside parties, and key letters and memoranda to agencies. The number of OIRA reviews consuming more than the allotted 90 days declined from what had regularly been 15-20 rules at any given time to near zero in the fall. From July 1, 2001, to March 1, 2002, OIRA returned more than 20 rules to agencies for reconsideration, more than the total number of rules returned to agencies during the entire Clinton Administration
- OIRA developed the "prompt letter" for suggesting promising regulatory and informational priorities for agency consideration. OIRA's initial six prompt letters addressed a range of issues at five different agencies, including the use of lifesaving defibrillators in the workplace, food labeling requirements for trans-fatty acids, and better information regarding the environmental performance of industrial facilities. Agencies performed independent assessments of each of these suggestions and adopted reasonable responses.
- Pursuant to statutory mandate, OIRA issued government-wide guidelines to enhance the quality of information that Federal agencies disseminate to the public. OIRA worked with agencies to finalize their guidelines prior to the October 1, 2002, statutory deadline. These guidelines offer a new opportunity for affected members of the public to request corrections when poor quality information is disseminated or used to justify new regulations or other policies. OMB has directed each agency to develop an administrative mechanism to resolve these requests, including an independent appeals mechanism.
- The report summarizes regulatory reform activities now underway in developed countries throughout the world, with special focus on the European Union. The European Commission has recently issued an Action Plan for Better Regulation that includes expanded transparency, consultation with stakeholders, and more rigorous regulatory impact analysis.

- In response to an open, invitational process of regulatory reform proposals, OIRA received public suggestions on 316 regulations and guidance documents covering 26 Federal agencies. This number of public nominations is over four times larger than the 71 nominations received in 2001 and covers a broader range of topics. The 2002 commenters are also more diverse in organizational affiliation. The 2002 public reform nominations include suggestions to review existing paperwork requirements and guidance documents, as well as to add, modify, or rescind regulations. The 2002 final report provides a summary of these nominations and describes a review process in which agencies should consider the nominations and identify those that are worthy reforms. This year's review process is different from last year's process, when OIRA identified high priority reform candidates. Rather than suggest any specific agency priorities, OIRA forwarded all of the public's suggestions, with the expectation that agencies will make decisions about which, if any, reforms to pursue based on their assessment of the prospects and practicality of achieving regulatory improvements.
- The Bush Administration is concerned about unfunded mandates that impact State and local governments. The scope of consultation activities undertaken by Federal agencies such as Agriculture and Justice demonstrate the Bush Administration's commitment to building strong relationships with our governmental partners. Federal agencies are now actively consulting with States, localities, and tribal governments.
- Small businesses play a vital role in creating jobs and stimulating growth despite their disproportionate share of regulatory costs and burdens. The 2002 final report contains numerous constructive suggestions on how agencies can reduce unnecessary regulations and paperwork requirements that impose especially large burdens on small business.

## Appendix B: OMB's 2003 Draft Report to Congress

The major features and findings of the 2003 Draft Report, which was published in the Federal Register on February 3, 2003 include:

- The report will be published in its final form after revisions to draft report are made based on public comment, external peer review, and interagency review.
- Major federal regulations cleared by OMB from October 1, 1992 to September 30, 2002 were examined to determine their quantifiable benefits and costs. The estimated annual benefits range from \$135 billion to \$218 billion while the estimated annual costs range from \$38 billion to \$44 billion.
- The draft report also describes the costs and benefits over a ten year period for eight cabinet departments and several agencies. For the first time, the report includes programmatic information on costs and benefits. The seven programs with three or more major regulations are listed separately. The report indicates that the Clean Air Program in the Environmental Protection Agency's Office of Air and Radiation accounts for the majority of regulatory benefits over the past decade (between \$106 billion and \$163 billion) as well as costs (between \$18 billion and \$ 21 billion).

OMB is seeking public comment on all aspects of the draft report. Comments are due no later than April 3, 2003. OMB is specifically interested in public comment in the following three areas:

- *Guidelines for Regulatory Analysis.* In order to make continued improvements in the quality of the regulatory analyses prepared by agencies, OIRA initiated in 2002 a process to refine the OMB guidelines for regulatory analysis. The OIRA Administrator and a member of the Council of Economic Advisors (CEA) are serving as co-chairs of this effort.
- *Analysis and management of emerging risks.* An Interagency Work Group on Risk Management, co-chaired by the OIRA Administrator and the Chairman of the White House Council on Environmental Quality has been formed to foster Administration-wide dialogue and coordination on the management of emerging risks to public health, safety and the environment. The Group will summarize the role of precaution in US regulatory decision making. OMB requests comments on current US approaches to analysis and management of emerging risks.
- *Improving analysis of regulations related to homeland security.* In light of the significant interest in regulations related to homeland security, OMB is seeking public comment on how to more effectively evaluate the benefits and costs of these proposals, including how agencies might better forecast the anti-terrorism benefits and the direct and indirect costs of such rules, including time, convenience, privacy, and economic productivity

