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2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051
TTY (202) 225-6852

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MEMORANDUM FOR MEMBERS OF THE SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS

FROM: Doug Ose



SUBJECT: Briefing Memorandum for March 12, 2002 Hearing, "Regulatory Accounting: Costs and Benefits of Federal Regulations"

On Tuesday, March 12, 2002, at 2:00 p.m., in Room 2154 Rayburn House Office Building, the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs will hold a hearing on the annual regulatory accounting report required to be submitted with the President's Budget. The hearing is entitled, "Regulatory Accounting: Costs and Benefits of Federal Regulations."

In 1996¹, Congress required the Office of Management and Budget (OMB) to submit its first regulatory accounting report by September 30, 1997. In 1997, Congress continued this requirement. In 1998, Congress changed the report's due date to coincide with the President's Budget. Congress established this simultaneous deadline so that Congress and the public could be given an opportunity to simultaneously review both the on-budget and off-budget costs associated with each Federal agency and each Federal agency program imposing regulatory or paperwork burdens on the public. Finally, in 2000, Congress made this a permanent annual reporting requirement. The law requires OMB to estimate the total annual costs and benefits for all Federal rules and paperwork in the aggregate, by agency, by agency program, and by major rule. The philosophy behind these laws was the belief that the public has the right to know the costs and benefits of Federal rules and paperwork and the right to open and accountable government.

¹The requirements for OMB's regulatory accounting reports were enacted as: Sec. 645 of the Treasury, Postal Services and General Government Appropriations Act for 1997 (P.L. 104-208); Sec. 625 of the Treasury and General Government Appropriations Act for 1998 (P.L. 105-61); Sec. 638 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (P.L. 105-277); Sec. 628 of the Treasury and General Government Appropriations Act for 2000 (P.L. 106-58); and Sec. 624 of the Treasury and General Government Appropriations Act for 2001 (P.L. 106-554).

On March 24, 1999, this Subcommittee held a hearing entitled "Should Agencies Be Allowed To Keep Americans In The Dark About Regulatory Costs and Benefits?" As a result, on July 26, 1999, the House passed H.R. 1074, the bi-partisan "Regulatory Right-to-Know Act," by a 254-157 vote. It built on provisions in the 1997, 1998, and 1999 Treasury and General Government Appropriations Acts. H.R. 1074 required OMB to prepare an annual accounting statement and an associated report. The accounting statement would provide estimates of the costs and benefits of Federal regulatory programs in the aggregate, by agency, by agency program, and by major rule. The accounting statement would include data for the same 7-year time series as the President's Budget (current year, 2 preceding years, and 4 following years). The associated report would analyze the impacts of Federal rules and paperwork on various sectors (e.g., small business) and functional areas (e.g., public health). The Senate Governmental Affairs Committee failed to report out its companion bill.

To date, OMB has issued four regulatory accounting reports - in September 1997, January 1999 (dated 1998), June 2000, and December 21, 2001 (for the report statutorily due April 9, 2001) (see attached chart). All four have failed to meet some or all of the statutorily-required content requirements and the last was submitted over eight months late. This untimely submission was too late to be useful in the appropriations process. Additionally, OMB's December 2001 report was not presented as an accounting statement, did not include any estimates by agency or by agency program, and did not include updated estimates from its prior annual report. Lastly, OMB failed to submit its regulatory accounting report on February 4, 2002. Since then, OMB has alerted the Subcommittee that it expects to issue a draft report in mid-March 2002.

In January 1996, OMB issued "Best Practices Guidances" to help standardize agency cost-benefit measures. This government-wide guidance represented "the results of an exhaustive two-year effort by the [interagency] group [co-chaired by the Council of Economic Advisers and including the major regulatory agencies] to describe 'best practices' for preparing the economic [costs and benefits] analysis of a significant regulatory action called for by the [regulatory review] Executive Order" (p. 1). Unfortunately, OMB has not enforced agency compliance; as a consequence, agency practices continue to substantially deviate from OMB's guidance, with some agencies not even estimating costs or benefits.

An October 2001 report by W. Mark Crain and Thomas D. Hopkins, commissioned by the Small Business Administration's (SBA) Office of Advocacy, estimated that, in 2000, Americans spent \$843 billion to comply with Federal regulations. This equates to 8 percent of the U.S. Gross Domestic Product (GDP). These off-budget costs to Americans are on top of the costs reflected in the President's Budget.

The invited witnesses for the March 12, 2002 hearing are: Dr. John D. Graham, Administrator, Office of Information and Regulatory Affairs (OIRA), OMB; James C. Miller III, former OMB Director and first OIRA Administrator and current Counselor to Citizens for a Sound Economy; Dr. Thomas D. Hopkins, former OIRA Deputy Administrator and current

Dean, College of Business, Rochester Institute of Technology; Susan Dudley, Deputy Director, Regulatory Studies Program, Mercatus Center, George Mason University; and Thomas M. Sullivan, Chief Counsel for Advocacy, SBA.

Attachment

Laws Requiring Regulatory Accounting Reports and OMB Issuances

Law	Report Due	OMB Issuance	Required Content for OMB
Sec. 645 PL 104-208 (9/30/96)	9/30/97	9/97	(1) annual costs & benefits of Federal regulatory programs & of each major rule (2) impacts on private sector & State/locals (3) recommendations to reform/eliminate
Sec. 625 PL 105-61 (10/10/97)	9/30/98	1/99	same as prior year
Sec. 638 PL 105-277 (10/21/98)	with the budget (2/7/00)	6/00	(1) accounting statement with annual costs & benefits of Federal rules & paperwork in the aggregate, by agency & agency program, & by major rule (2) associated report with impacts on State/locals, small business, etc. (3) recommendations for reform also: (4) OMB guidelines to agencies to standardize cost/benefit measures & format of accounting statements
Sec. 628 PL 106-58 (9/29/99)	with the budget (4/9/01)	12/21/01	same as prior year
Sec. 624 PL 106-554 (12/21/00)	permanently with the budget (2/4/02)	not yet issued	same as prior year