

Congress of the United States
House of Representatives

COMMITTEE ON GOVERNMENT REFORM
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March 4, 2003

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

FROM: Doug Ose 

SUBJECT: Briefing Memorandum for March 11, 2003 Hearing, "How to Improve Regulatory Accounting: Costs, Benefits, and Impacts of Federal Regulations"

On Tuesday, March 11, 2003, 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, "How to Improve Regulatory Accounting: Costs, Benefits, and Impacts 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).

An October 2001 report, entitled "The Impact of Regulatory Costs on Small Firms," by Drs. 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. In September 2002, Dr. Crain co-authored a study entitled "Compliance Costs of Federal Workplace Regulations: Survey Results for U.S. Manufacturers." This paper revealed that, in 2000, manufacturers spent an average of \$2.2 million per firm (or \$1,700 per employee) to comply with Federal workplace regulations. Also, in September 2002, Dr. Joseph M. Johnson published a study entitled "A Review and Synthesis of the Costs of Workplace Regulation." This paper compiled available estimates of the costs of different workplace regulations, totaling at least \$91 billion annually.

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).

On March 12, 2002, this Subcommittee held a hearing entitled "Regulatory Accounting: Costs and Benefits of Federal Regulations." It was intended to be a hearing about the fifth report due February 4th; however, OMB failed to publish its draft report until after the hearing (i.e., on March 18th).

To date, OMB has issued five final and a sixth draft regulatory accounting reports - in September 1997, January 1999 (dated 1998), June 2000, December 2001, December 2002, and a draft on February 3, 2003, which was the same day as release of the President's Budget (see attached chart). All six have failed to meet some or all of the statutorily-required content requirements. For example, all six were not presented as an accounting statement and the February 2003 draft did not include the required associated report on impacts.

However, OMB has progressively made improvements, such as adding agency level detail for eight agencies in March 2002, and adding agency program level detail for seven major regulatory programs in February 2003. For the Budget and for paperwork reduction, OMB requires agencies to annually provide detail by agency program. In March 2002, I wrote OMB stating, "To assist OMB in preparing estimates by agency and by agency program, I recommend that OMB issue annual OMB Bulletins to the agencies like it does for paperwork reduction. ... OMB's regulatory accounting Bulletins should require each agency to submit estimates of its aggregate and new regulatory burden for the agency as a whole and for each of the agency's major regulatory programs." To date, OMB has not done so.

In January 1996, OMB issued "Best Practices Guidances" to help standardize agency cost-benefit measures. This government-wide guidance described "best practices" for preparing an agency cost-benefit analysis of a significant regulatory action, as required by President Clinton's regulatory reviews Executive Order (E.O.) 12866. 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. As a consequence, as part of its February 2003 draft report, OMB proposed a new OMB Circular, which includes refined "best practices." The Circular, when finalized, would govern agency cost-benefit analysis required under E.O. 12866 and provide standardized agency cost-benefit information on each new major final rule -- for OMB to use in its annual regulatory accounting statement.

The invited witnesses for the March 12, 2002 hearing are: Dr. John D. Graham, Administrator, Office of Information and Regulatory Affairs (OIRA), OMB; Dr. James C. Miller III, former OMB Director and first OIRA Administrator and current Chairman, CapAnalysis Group; Dr. Jim J. Tozzi, former OIRA Deputy Administrator and current Advisory Board Member, The Center for Regulatory Effectiveness; Dr. Robert W. Hahn, Director, AEI-Brookings Joint Center for Regulatory Studies; Lisa Heinzerling, Professor of Law, Georgetown University Law Center; and Rabbi Daniel J. Swartz, Executive Director, Children's Environmental Health Network.

Attachment

Laws Requiring Regulatory Accounting Reports and OMB Issuances

Date of Law	Due Date for OMB Report	Date of OMB Report	Required Content for OMB
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
10/10/97	9/30/98	1/99	same as prior year
10/21/98	with the President's 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 small business, State/locals, etc. (3) recommendations for reform also: (4) OMB guidelines to agencies to standardize cost/benefit measures & format of accounting statements
9/29/99	with the Budget (4/9/01)	12/21/01	same as prior year
12/21/00	permanently with the Budget (2/4/02)	draft 3/18/02 final 12/18/02	same as prior year
	with the Budget (2/3/03)	draft 2/3/03	same as prior year

Prepared for Congressman Doug Ose