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SHOULD AGENCIES BE ALLOWED TO KEEP AMERICANS IN THE DARK ABOUT REGULATORY COSTS AND BENEFITS?

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

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SHOULD AGENCIES BE ALLOWED TO KEEP AMERICANS IN THE DARK ABOUT REGULATORY COSTS AND BENEFITS?

WEDNESDAY, MARCH 24, 1999

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2247, Rayburn House Office Building, Hon. David M. McIntosh (chairman of the subcommittee) presiding.

Present: Representatives McIntosh, Ryan, Terry, Chenoweth, and Kucinich.

Staff present: Marlo Lewis, staff director; Barbara Kahlow and Karen Barnes, professional staff members; Luke Messer, counsel; Andrew Wilder, clerk; Elizabeth Mundinger, minority counsel; and Jean Gosa, minority staff assistant.

Mr. MCINTOSH. The subcommittee will be called to order. Today our hearing is on H.R. 1074, the Regulatory Right-to-Know Act of 1999. This bipartisan, good government bill was first introduced on March 11, 1999, with 17 Democratic and 14 Republican cosponsors.

This bill, which requires an annual report on the costs and benefits of Federal regulatory programs, is the product of the Commerce Committee Chairman Tom Bliley, who has worked very hard in this area, and his leadership over the past several years has really brought the bill to its current status and fruition.

Today's hearing will provide us with an opportunity to hear the administration's views on the legislation, the views of State and local governments which are impacted by the Federal regulatory programs, and the views of experts in analysis of the costs and benefits of Federal regulatory programs.

I want to especially welcome Chairman Bliley and California State Senator Jim Costa, vice president of the National Conference of State Legislatures, who will be representing the State and local government perspective today. The Clinton administration is represented by Mr. Ed DeSeve, who is Deputy Director for Management of the Office of Management and Budget. OMB's Office of Information and Regulatory Affairs reports to him.

I want to also welcome three expert witnesses: Angela Antonelli, who is director of the Thomas Roe Institute for Economic Studies at the Heritage Foundation, and also a former employee of the Office of Information and Regulatory Affairs; Mr. Wayne Crews, who

is the director of competition and regulatory policy at the Competitive Enterprise Institute; and Dr. Thomas Hopkins, interim dean of the College of Business at Rochester Institute of Technology. Dr. Hopkins also was formerly with the Office of Information and Regulatory Affairs. Last, I want to welcome Ms. Lisa Heinzerling, who is a professor of law at Georgetown University Law Center.

The Regulatory Right-to-Know Act and its companion bill on the Senate side, S. 59, build on the provisions of the 1997, 1998, and 1999 Treasury and General Government Appropriations Acts. They were authored by Senators Stevens and Thompson. The stated purposes of both the House and the Senate bills are identical. They are, one, to promote the public right to know about the costs and benefits of Federal regulatory programs; two, increase government accountability; and, three, improve the quality of Federal regulatory programs and rules issued thereunder.

H.R. 1074 requires OMB to prepare an annual accounting statement and associated report. The accounting statement would provide estimates of the costs and benefits of Federal regulatory programs, both in the aggregate and by agency, by agency programs, and by major rule. The associated report would analyze the direct and indirect impacts of Federal rules and paperwork on State and local governments, the private sector, small business, wages, consumer prices and economic growth.

Currently, there is no report that analyzes the cumulative impacts of Federal regulations on these important sectors of our economy and on these factors that directly affect the lives of American citizens. I believe Americans have a right to know the cumulative costs and benefits of Federal regulation on these sectors and factors, and how they will impact their lives.

Current estimates of the off-budget compliance costs imposed on Americans by Federal regulatory programs are close to $700 billion annually, a 25 percent increase from 10 years ago. Broken down, that is approximately $6,900 for a typical family of four in America.

The bill also requires OMB to quantify the net benefits or net costs for each alternative considered in any regulatory impact analysis accompanying a major rule. This information will help the public understand how and why major decisions affecting them were made by the executive branch. It will also disclose if the Federal agencies chose the most effective and least costly regulatory approach.

The bill also requires OMB to identify and analyze overlaps, duplications and potential inconsistencies among Federal regulatory programs, and to offer recommendations to reform inefficient or ineffective regulatory programs. To ensure that the estimates are fair and balanced and present the total picture on the costs and benefits, the bill requires peer review of OMB's draft annual report by two or more expert organizations and an opportunity for the public and those sectors that are impacted to comment. The bill requires OMB to respond to these comments in its final report.

OMB itself has recognized the value of presenting information to the public on costs and benefits of Federal regulations. In its 1998 report to Congress on the costs and benefits of Federal regulations that was issued in February 1999, and required by the Treasury and General Government Appropriations Act, OMB stated, "The

1997 report was our effort to begin an incremental process which we believe will lead to improved information on the effects of regulations."

Unfortunately, OMB's two cost-benefit reports issued to date have been frankly insufficient in several respects. First, the OMB's recommendations for improving regulatory programs were not as comprehensive as those of us in Congress who have been reviewing those programs would like to see. We hear complaints from many about the burden and reasonableness of certain regulatory programs, and had hoped that OMB would be able to address those concerns in that report.

Second, there were problems with OMB's aggregate estimates and other methodological issues. And, third, the report fell short by estimating monetized costs and benefits for only 4 of the 41 major rules issued last year by the independent agencies, presenting incomplete compliance costs and benefits in the 33 regulatory impact analyses prepared last year, and understating the direct and indirect impacts of these Federal regulatory programs. It is not possible to get your hands around the total costs of the Federal regulatory process when only a small percentage of them are analyzed in this methodological manner.

Commenters expressed the view that OMB should independently make its own estimates of costs and benefits of individual rules and regulatory programs, and offered several ideas for improvements in the process, such as for OMB to establish a standardized format for the agencies to present the economic information on their rules. I have always been a strong proponent for OMB exercising independent judgment on this so that they could act as a neutral player among the different competing agencies and their policy preferences.

H.R. 1074 establishes a permanent requirement for OMB to annually prepare this important information. The bill will not impose an undue burden, I don't think, on OMB since much of the needed information is already available in their review process under the Executive order. Since President Reagan's Executive order, the agencies have been required to perform a cost-benefit analysis on major rules, and they have continued through the Bush administration as well as into the Clinton administration. They are required to do that on most of the rules, especially the major rules that constitute the bulk of Federal regulatory costs and benefits.

Also, OMB can use many other sources of information, and that is one of the benefits of having them be a central processing agency for this, because they can reach out and include private regulatory accounting studies as well as other government studies for different agencies.

Mr. Bliley's bill has been endorsed by many organizations, including the seven major State and local interest groups, the National Governors' Association, the National Conference of State Legislatures, the Council of State Governments, the U.S. Conference of Mayors, the National League of Cities, the National Association of Counties, and the International City/County Management Association. In the groups' endorsement letter, the officials wrote, "We applaud your efforts to encourage greater accountability with regard to the burden of costly Federal regulations on State

and local governments. The changes proposed would, we believe, benefit all of our taxpayers and constituents."

Other organizations have also endorsed the bill, including Alliance USA, a coalition of 1,000 business organizations and individual companies, American Farm Bureau Federation, Americans for Tax Reform, the Business Roundtable, the Chamber of Commerce, Citizens for a Sound Economy, the National Association of Manufacturers, the National Federation of Independent Businesses, and the Small Business Survival Committee.

I believe the public does have a right to open and accountable government. OMB's accounting statements and associated reports will provide those new tools to help Americans participate more fully in government decisionmaking.

[The prepared statement of Hon. David M. McIntosh follows:]

Statement of Chairman David McIntosh
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs
on
"Should Agencies Be Allowed To Keep Americans In The Dark
About Regulatory Costs and Benefits?"
March 24, 1999

Today, the Subcommittee is conducting a hearing on H.R. 1074, the "Regulatory Right-to-Know Act of 1999." This bi-partisan, good government bill was introduced on March 11, 1999, with 17 Democratic and 14 Republican cosponsors. This bill, which requires an annual report on the costs and benefits of Federal regulatory programs, is the product of Commerce Committee Chairman Tom Bliley's leadership over the last several years. Today's hearing will provide us with an opportunity to hear the Administration's views on the legislation, the views of State and local governments which are impacted by Federal regulatory programs, and the views of experts in analysis of the costs and benefits of Federal regulatory programs.

I want to especially welcome Chairman Bliley and California State Senator Jim Costa, Vice President of the National Conference of State Legislatures (NCSL), who will be representing the State and local government perspective today. The Clinton Administration is represented by G. Edward DeSeve, who is Deputy Director for Management at the Office of Management and Budget (OMB). OMB's Office of Information and Regulatory Affairs reports to him. I want to also welcome three expert witnesses: Angela Antonelli, Director of the Thomas A. Roe Institute for Economic Studies at The Heritage Foundation; Wayne Crews, Director of Competition and Regulatory Policy at the Competitive Enterprise Institute; and Dr. Thomas D. Hopkins, Interim Dean of the College of Business at the Rochester Institute of Technology. Lastly, I want to welcome Lisa Heinzerling, Professor of Law, Georgetown University Law Center.

The "Regulatory Right-to-Know Act" and its companion bill on the Senate side, S. 59, build on provisions in the 1997, 1998, and 1999 Treasury and General Government Appropriations Acts authored by Senators Stevens and Thompson. The stated purposes for both the House and Senate bills are identical. They are to: (1) promote the public right to know about the costs and benefits of Federal regulatory programs, (2) increase government accountability, and (3) improve the quality of Federal regulatory programs and rules.

H.R. 1074 requires 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 associated report would analyze the direct and indirect impacts of Federal rules and paperwork on State and local governments, the private sector, small business, wages, consumer prices, and economic growth. Currently, there is no report that analyzes the cumulative impacts of Federal regulations on these important sectors of our economy and on these factors that directly affect the lives of American citizens. Americans have a right to know the cumulative costs and benefits of Federal regulation on these sectors and factors. Current estimates of the "off budget" compliance costs

imposed on Americans by Federal regulatory programs are close to $700 billion annually -- a 25 percent increase from ten years before. Broken down, that's approximately $6,900 for a typical family of four.

The bill also requires OMB to quantify the net benefits or net costs for each alternative considered in any regulatory impact analysis accompanying a major rule. This information will help the public understand how and why major decisions affecting them were made by the executive branch. It will also disclose if the Federal agencies chose the most effective, least costly regulatory approach. The bill also requires OMB to identify and analyze overlaps, duplications, and potential inconsistencies among Federal regulatory programs, and to offer recommendations to reform inefficient or ineffective regulatory programs. To ensure balanced and fair estimates of the costs and benefits, the bill requires peer review of OMB's draft annual report by two or more expert organizations and an opportunity for the public and the impacted sectors to comment. The bill requires OMB to respond to these comments in its final report.

OMB itself has recognized the value of presenting information to the public on the costs and benefits of Federal regulations. In its 1998 "Report to Congress on the Costs and Benefits of Federal Regulations" (issued on February 2, 1999), required by the Treasury and General Government Appropriations Act, OMB stated that, "The 1997 report was our effort to begin an incremental process which we believe will lead to improved information on the effects of regulations."

Unfortunately, OMB's two cost-benefit reports issued to date have been insufficient in several respects, including that: (1) OMB's recommendations for improving regulatory programs were not as comprehensive as we had hoped since Congress hears many complaints about the burden and reasonableness of certain Federal regulatory programs; (2) there were problems with OMB's aggregate estimates and other methodological issues; and (3) the report fell short by estimating monetized costs and benefits for only four of the 41 major rules issued last year by the independent agencies, presenting incomplete monetized compliance costs and benefits in the 33 regulatory impact analyses prepared last year, and understating the direct and indirect impacts of Federal regulatory programs. Commenters expressed the view that OMB should independently make its own estimates of the costs and benefits of individual rules and regulatory programs, and offered ideas for improvements in the process, such as for OMB to establish a standardized format for agencies to present economic information on their rules.

H.R. 1074 establishes a permanent requirement for OMB to annually prepare this important information. The bill will not impose an undue burden on OMB since much of the needed information is already available. Since President Reagan's 1981 historic executive order, Federal agencies have been required to perform cost-benefit analyses of major rules, which constitute the bulk of Federal regulatory costs and benefits. Also, OMB can use many other sources of information, including private regulatory accounting studies and government studies.

The Bliley-McIntosh bill has been endorsed by many organizations, including the seven major State and local interest groups: the National Governors' Association, National Conference of State Legislatures, Council of State Governments, U.S. Conference of Mayors, National League of Cities, National Association of Counties, and the International City/County Management Association. In the groups' endorsement letter, the officials wrote: "We applaud your efforts to encourage greater accountability with regard to the burden of costly federal regulations on state and local governments. The changes proposed would, we believe, benefit all of our taxpayers and constituents." Other organizations have also endorsed the bill, including Alliance USA (a coalition of more than 1,000 business organizations and individual companies), American Farm Bureau Federation, Americans for Tax Reform, the Business Roundtable, the Chamber of Commerce, Citizens for a Sound Economy, the National Association of Manufacturers, the National Federation of Independent Business, and the Small Business Survival Committee.

I believe that the public has a right to open and accountable government. OMB's accounting statement and associated report will provide new tools to help Americans participate more fully in government decisionmaking.

Mr. MCINTOSH. With that, let me now turn to the ranking member of the committee, Mr. Kucinich, and ask, did you have any opening statement you would like to make?

Mr. KUCINICH. I do, Mr. Chairman. I thank you.

Mr. Chairman, thank you very much for holding this hearing on H.R. 1074, the Regulatory Right-to-Know Act of 1999. And I certainly want to welcome our colleague, Congressman Bliley, and I look forward to his testimony, and also to welcome the representatives of OMB who are here.

This bill provides for an annual report on the aggregate cost and benefit of Federal regulations, an annual cost-benefit analysis for each agency program, program component, and major rule, and provides for a myriad of additional estimates and reports.

Typically, more information helps us make better decisions. The information required by H.R. 1074 could arguably promote the public's right to know about the costs and benefits of regulatory programs, and provide for greater accountability by the Federal Government, and improve the quality of regulatory programs. However, Mr. Chairman, information which is inaccurate or which would provide a false sense of confidence is not so helpful, and of course we would not want that to happen.

That is why this hearing is so important. We need to be sure that there are adequate safeguards in this bill to ensure that the resulting analyses are useful. One issue that must be addressed is whether it is feasible for OMB to conduct the analyses required by H.R. 1074. In both of its annual reports on the costs and benefits of regulation, OMB has reiterated that there are severe limits to the usefulness of its analysis. I am going to be interested to hear what they have to say about that today. OMB reports that there are, "enormous data gaps," accurate data are "sparse," and agreed upon methods for estimates are, "lacking."

OMB warns against using its analyses when making policy decisions—that is kind of interesting in itself—and states that "aggregate estimates of the costs and benefits of regulation offer little guidance on how to improve the efficiency, effectiveness or soundness of the existing body of regulation."

Now, in order to account for the severe data and methodological limitations, OMB has provided a wide range of estimated costs and benefits. OMB estimates that annual costs for social regulation range from $170 to $230 billion, and annual benefits are between $260 billion and $3.5 trillion.

Fortunately, the range of uncertainty, although it is enormous, does not affect the conclusion that regulatory benefits outweigh regulatory costs. No matter which number you choose within the broad range of estimates, regulations are worth more than they cost. However, H.R. 1074 requires a large number of new analyses, and the final conclusions of these analyses may not always be so clear.

In addition, we need to investigate whether H.R. 1074 is feasible, given budget constraints. Cost-benefit analyses are expensive. In March 1997 the Congressional Budget Office found that conducting comprehensive cost-benefit analyses or regulatory impact analyses for major rules averaged $573,000 per rule and took an average of 3 years to complete. Thus the administration would need about $35

million to analyze the 60 new major rules that are promulgated each year. H.R. 1074 would require a great deal more because it also requires benefit-cost analysis of each agency, program, and program component.

[The information referred to follows:]

Using a CBO analysis of the cost to the agencies (i.e., not a cost to OMB) of 85 major rule RIAs, Mr. Kucinich used a $573,000 average cost and applied that average to an estimate of 60 Regulatory Impact Analyses (RIAs) per year, which totals nearly $35 million. Since agencies have been required to perform RIAs since 1981, there is *no* additional cost for the RIAs under H.R. 1074.

Mr. KUCINICH. I also hope this hearing will shed light on whether H.R. 1074 has adequate safeguards against bias. OMB and others warn that prospective cost-benefit analyses often overstate costs because they do not account for technological advances and industry's ability to adapt. For example, EPA estimated, and we all remember, that it would cost about $600 per ton to comply with the proposed acid rain controls; however, the actual cost today is less than $100 per ton.

Furthermore, many benefits are described in qualitative terms such as lives saved or reduction in illness, not monetary terms. Thus aggregate and necessary benefit analyses may fail to account for the most important benefits of regulation. I would like to explore whether peer review provisions would adequately address that problem, Mr. Chairman. It makes no sense to require expensive analyses unless we can be secure in the objectivity and feasibility of the analysis.

Mr. Chairman, I thank you again for holding this hearing, and all of these hearings that relate to trying to determine the effectiveness of what government is doing. I look forward to the testimony of the witnesses, and I would like to submit for the record documents that address the cost of performing the cost-benefit analyses and other related material.

Thank you very much, Mr. Chairman.

[The prepared statement of Hon. Dennis J. Kucinich follows:]

Opening Statement of Dennis Kucinich
March 24, 1999 Hearing on H.R. 1074
Subcommittee on National Economic Growth

Mr. Chairman, thank you for holding this hearing on H.R. 1074, the Regulatory Right-to-Know Act of 1999.

This bill provides for an annual report on the aggregate cost and benefit of federal regulations, and annual cost/benefit analyses for each agency, program, program component, and major rule. It also provides for a myriad of additional estimates and reports.

Typically, more information helps us make better decisions. The information required by H.R. 1074 could arguably promote the public's right to know about the benefits and costs of regulatory programs, provide for greater accountability by the federal government, and improve the quality of regulatory programs.

However, Mr. Chairman, information that is inaccurate and provides a false sense of confidence is not so helpful. That is why this hearing is so important. We need to be sure that there are adequate safeguards in this bill to ensure that

the resulting analyses are useful and not misleading.

One issue that must be addressed is whether it is feasible for OMB to conduct the analyses required by H.R. 1074. In both of its annual reports on the costs and benefits of regulation, OMB has reiterated that there are severe limits to the usefulness of its analyses. OMB reports that there are, quote, "enormous data gaps," accurate data is, quote, "sparse," and agreed-upon methods for estimating are, quote, "lacking." OMB warns against using its analyses when making policy decisions and states that, quote, "Aggregate estimates of the costs and benefits of regulation offer little guidance on how to improve the efficiency, effectiveness, or soundness of the existing body of regulations."

In order to account for the severe data and methodological limitations, OMB has provided a wide range of estimated costs and benefits. OMB estimates that annual costs for social regulation range from $170 to 230 billion and annual benefits are between $260 billion and $3.5 trillion. Fortunately, the range of uncertainty -- although it is

enormous -- does not affect the conclusion that regulatory benefits outweigh regulatory costs. No matter which number you choose within the broad range of estimates, regulations are worth more than they cost. However, H.R. 1074 requires a large number of new analyses and the final conclusions of these analyses may not always be so clear.

In addition, we need to investigate whether H.R 1074 is financially feasible given expected budget constraints. Cost benefit analyses are very expensive. In March 1997, the Congressional Budget Office (CBO) found that the cost of conducting comprehensive cost/benefit analyses -- or regulatory impact analyses -- for 85 major rules averaged $573,000 per rule and took an average of three years to complete. Thus, the Administration would need about $35 million to analyze the 60 new major rules that are promulgated each year. H.R. 1074 would require a great deal more because it also requires cost/benefit analyses of each agency, program, and program component.

I also hope this hearing will shed some light on whether H.R. 1074 has adequate safeguards against bias. OMB and

others warn that prospective cost/benefit analyses often overstate costs because they do not account for technological advances and industry's ability to adapt. For example, EPA estimated that it would cost $600 per ton to comply with the proposed acid rain controls. However, the actual cost today is less than $100 per ton. Furthermore, many benefits are described in qualitative terms such as lives saved or reduction in illness, not in monetary terms. Thus, aggregate and net benefit calculations may fail to account for the most important benefits of regulation. I would like to explore whether the peer review provisions would adequately address the problem.

It makes little sense to require expensive analyses unless we can be secure in the feasibility and objectivity of the analyses. Thank you, again, Mr. Chairman, for holding this hearing which should help answer these questions. I look forward to hearing the testimony of the witnesses.

Mr. Chairman, I would like to submit for the record a number of documents that address the cost of performing the cost/benefit analyses and other related material.

Mr. MCINTOSH. I appreciate that, Mr. Kucinich. And seeing no objection, we will definitely include those in the record, because I think you point out an important point that this study and the work is not cost-free always, and it needs to be done.

One thing I would note just doing a little bit of math, the $35 million is what it would cost the government to study the possible impact of $7 billion on the private sector. So we may end up saving money in the society if we can do those same regulations more efficiently as a result of it.

Mr. KUCINICH. Of course the offsetting cost to look at is if we don't do the regulations, the impact on society at large, it might be even greater than the cost to the business community.

Mr. MCINTOSH. I agree. Thank you.

Let me turn now to the vice chairman of the committee, who is a new member of the committee and a new Member of Congress, the gentleman from Wisconsin, Mr. Paul Ryan.

Mr. RYAN. Thank you, Mr. Chairman. Thank you for holding this hearing. I thank Chairman Bliley for his leadership on this legislation.

And just before I begin my statement, I would like to add to your comment regarding our colleague from Cleveland. I think the cost to the agency, to OMB and to OIRA and to our agencies to do the analysis, should be compared to the costs that are being borne by the taxpayers, by our private sector and the economy. That is the lens through which we ought to look at these things and view legislation such as this.

But I would like to just quickly address this issue in the bill. The free flow of information is crucial to the effectiveness of our democratic institutions, and if we want the American people to trust their government and participate fully in the democratic process, we must provide them with as much information as we can about the reasoning behind our laws and regulations. And in particular, citizens have the right to know how the actions of the Federal Government will affect their lives.

A good example is the impact of Federal environmental and safety regulations on businesses, jobs, and personal behavior. Studies show that the rules cost American taxpayers and consumers hundreds of billions of dollars each year, and we are going to hear from Dr. Hopkins today, who has done tremendous work on this subject for years. Our constituents have a right to know how much of their hard-earned money is going for Federal regulation.

It is clear that I am not alone in my support for the public's right to know. Some of President Clinton's top officials are very outspoken advocates of these issues. One is Carol Browner, the Administrator of the EPA, and I would like to quote Mrs. Browner, who said that the Clinton administration believes putting information into the hands of the American people is one of the best ways to protect the public health and environment.

I agree. Because I agree, I enthusiastically support H.R. 1074, the Regulatory Right-to-Know Act. This bipartisan legislation is all about putting information in the hands of the American people, as well as the representatives here in Congress and in the executive branch, who can only gain from information about the benefits and costs of Federal regulations and information about the impact those

regulations have on businesses, State and local governments, jobs, wages, prices and economic growth.

Agencies can use this information to begin to focus on costs and benefits when making regulatory choice. Information like this will be a valuable tool that policymakers, lawmakers, and regulators can use to evaluate the benefits and the burden of existing rules and the obligations that proposed rules would impose. In short, this legislation will ensure more openness, more accountability in government. That is what we are here to do. That can only be good for building public trust as we pass laws and the regulations that implement the laws.

Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you Mr. Ryan, I appreciate your joining us today for the hearing and thank you for that statement.

I also want to welcome another member of the committee and new Member of Congress, Mr. Lee Terry, and do you have a statement or anything you would like to put into the record?

Mr. TERRY. Well, I did, but since it is redundant of yours and Paul's, I will just attach my statement to yours and say I am anxious to hear the testimony of Chairman Bliley and the others on the distinguished panel.

[The prepared statement of Hon. Lee Terry follows:]

Regulatory Reform Subcommittee Opening Statement

Mr. Chairman, I am a sponsor of The Regulatory Right-to-Know Act because I believe that the American people have a right to know how government actions affect their jobs and their pocketbooks.

This good-government measure will require the Office of Management and Budget to make public each year the total benefits and costs of federal regulations. It will also require OMB to provide details on those benefits and costs by agency, program, and major rule.

This is not a new idea. OMB has been compiling this information for the past few years under language we attach to annual appropriations bills.

The Regulatory Right-to-Know Act will give us the information we need to do our jobs better. I hope we will act quickly.

Thank you, Mr. Chairman, for your leadership on this issue.

Mr. MCINTOSH. We will definitely include it in the record. I guarantee you it is welcome to have those additional thoughts.

Let me call forward our first witness, then, who is a distinguished leader in this Congress, someone who has worked hard in many of these areas where the regulations are as a result of Federal legislation, someone who I have always looked up to, including before I was a Member of Congress and serving on the Competitiveness Council, Chairman Bliley. Chairman Bliley, thank you for joining us, and feel free to make any remarks and submit anything you would like to for the record.

STATEMENT OF HON. THOMAS J. BLILEY, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. BLILEY. Thank you, Mr. Chairman. Thank you for those kind words. With your permission, I have a somewhat longer written statement that I would like to submit for the record, as well as a set of letters of endorsement.

Mr. MCINTOSH. Seeing no objection, they will be included in the record.

Mr. BLILEY. First of all, the Regulatory Right-to-Know Act is a basic step toward a smarter partnership in regulatory programs. Specifically, it is an important tool to understand the magnitude and impact of the Federal regulatory programs. The act will empower all Americans, including State and local officials, with new information and opportunities to help them participate more fully and improve their government.

More useful information and public input will help regulators make better, more accountable decisions and promote greater confidence in the quality of Federal policy and regulatory decisions. Better decisions and updated regulatory programs will enhance innovation, improve the quality of our environment, secure our economic future, and foster a better quality of life for American families.

I believe accountability in our regulatory programs is important. When programs are smart, such programs help State and local government, businesses and families. When they are ill-formed, out of date, or wasteful, such programs hurt people. Poor regulatory programs stifle the freedom and innovation of our domestic work force. Poor regulatory programs create barriers to redevelopment of abandoned urban sites, leaving a continuing blight in our neighborhoods. As a former mayor, I know that it is true in my own home city of Richmond, and I am sure former mayor Kucinich had many areas of Cleveland that suffer from this.

Mr. KUCINICH. It is true.

Mr. BLILEY. Poor programs hurt small businesses, schools, health care facilities and farms, and these are but a few examples.

You have got a long list of witnesses, so I am going to cut this short. What this bill does not do, it does not interfere with any regulatory agencies proposing a rule or indeed adopting a rule. All it says to the regulators is, "Mr. Regulator, Ms. Regulator, tell us how much it is going to cost." And then the Congress, which has to appropriate the money, and the people who are going to have to comply with the rules, get an idea of, you know, how much it is going to cost, and is it worth the cost? That is the important thing.

I mean, you know, obviously the rule is probably a good idea or has been proposed to accomplish some good. But is it worth the cost? I mean, we make as individuals every day decisions of what we buy, what we do, and we weigh the benefit versus the time it is going to cost us or the money it is going to cost us or both. And I think that is all we want to do here; get to the bottom of it and find out what the cost of compliance is. Most of them probably will be well worth it, but I will give you a classic example.

I am having a battle with the Coast Guard right now because in my city of Richmond we are restoring a canal and are going to have hopefully a canal walk and boats like they have in San Antonio. This canal was laid out by George Washington and it served the very useful function of moving freight and people between the western part of Virginia and the eastern part of Virginia until about 1850, when the railroads replaced it.

In the 1940's it was filled in and it has been filled in ever since. But now the city is restoring it. It will be about 2 feet deep or 3 feet deep and about 25 feet wide, and the Coast Guard comes along and says it is a navigable waterway. I said it has been filled in for 50 years. You know, well, once it is a navigable waterway, it is always a navigable waterway.

Now that is a regulation I think that defies common sense, and that is the kind of thing that this accountability will uncover. And then maybe the Resources Committee will say, "Well, Bliley you are all wet, we think it is a good idea," and keep it. That is the way the system is designed to work. But at least somebody will look at it and have to make that judgment. And that is all I have to say, and I rest my case. If anybody has a question, I will try to answer it.

[The prepared statement of Hon. Thomas J. Bliley follows:]

HONORABLE THOMAS J. BLILEY, JR.
TESTIMONY BEFORE THE SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES AND REGULATORY AFFAIRS

HEARING ON H.R. 1074, THE REGULATORY RIGHT-TO-KNOW ACT

MARCH 24, 1999

Mr. Chairman.

I am pleased to have worked with you, Mr. Condit, Mr. Stenholm and a bipartisan group of cosponsors on the Regulatory Right-to-Know Act of 1999. The Regulatory Right-to-Know Act is a basic step toward a smarter partnership in regulatory programs. It is an important tool to understand the magnitude and impact of Federal regulatory programs. The Act will empower all Americans, including state and local officials, with new information and opportunities to help them participate more fully and improve our government. More useful information and public input will help regulators make better, more accountable decisions and promote greater confidence in the quality of federal policy and regulatory decisions. Better decisions and updated regulatory programs will enhance innovation, improve the quality of our environment, secure our economic future, and foster a better quality of life for every American.

Quality Management and Accountability Matter

There are a number of reasons that this Act is the right step in a drive to enhanced quality and accountability in regulatory programs. Over the past four years, this Congress has changed the direction of Federal Government from the endless burden of more taxes and spending to the new fiscal discipline of balance and accountability. For the past decade America's freedom and innovation has driven businesses a quality and productivity revolution. The result of this drive is an American economy which is the unparalleled envy of the world. Millions of Americans in private businesses have brought incredible improvements to our quality of life, health care, and education. Through the new emphasis on flexibility and innovation, State and local officials have led the way to safer, cleaner and more prosperous places to live.

Congress must first understand the impact of Federal regulatory programs on our economy and innovation. In addition to taxes, the Federal Government imposes tremendous costs and restrictions on innovation on the private sector, State and local governments and,

ultimately, the public through ever increasing Federal regulations. Here too we must drive toward quality, efficiency and accountability.

Professor Hopkins of the Rochester Institute of Technology estimates the compliance costs from Federal regulatory programs at more than $700 billion annually. Many estimates project substantial growth even without new legislation. The Americans for Tax Reform Foundation states that an average American will work about 40 days or eight working weeks a year to pay for these regulations. These costs are often hidden in increased prices for goods and services, loss of competitiveness in the global economy, lack of investment in job growth, and pressure on the ability of State and local governments to fund essential services, such as crime prevention and education. The Act calls on the Executive Branch to identify and inform the public more fully about these impacts. More recently we have heard mayors decry the effect that unwise Federal regulations have on the problems of brownfields redevelopment and preventing reinvestment in our urban areas. As a former Mayor of Richmond I am familiar with, and very sympathetic to, these problems. This bill provides information to help State and local officials be more involved in the process.

Poor regulatory programs stifle the freedom and innovation of our domestic workforce. Poor regulatory programs create barriers to redevelopment of abandoned urban sites, leaving a continuing blight in neighborhoods. Poor programs hurt small businesses, schools, health care facilities, and farms. These are only a few examples of why we must pursue this task.

Unlike the private sector, where freedom of contract and free market competition drive price and quality, Federal programs are primarily accountable through the political process. Over the past few decades both Congress and the Executive Branch have driven growth in Federal regulatory programs, creating layer upon layer of bureaucracy at great cost and often with diminishing returns for the American people. Congress and the Executive Branch must take concrete steps to manage and reform these programs. The Regulatory Right-to-Know Act is a fundamental building block for a smarter partnership in federal regulatory programs. The leadership we show or fail to show will affect the quality of life for ourselves and our children.

The Act is a Long-Term Investment in Better Information

By any measure, the task of responsibly managing federal regulatory programs is large. The current federal regulatory system encompasses more than 50 federal agencies and more than 126,000 workers. Between April 1, 1996 and April 30, 1998 Congress received 8,675 new final rules for review. In 1997 alone the Federal Register had published 64,549 pages. In 1996, the Code of Federal Regulations filled 204 volumes and occupied 19 feet of shelf space. While estimates vary, according to the Americans for Tax Reform the federal government is responsible for imposing more than $2,800 in regulatory costs for every man, woman, and child in America or over $10,000 for a family of four. None of this tells you that any given program has a poor ratio of benefits to costs or otherwise needs reform. We can only understand better management with better information. It is clear, however, that we must undertake the task. Those of us who want to enhance the quality and accountability of

these programs must exercise patience.

On May 2, 1996, the House Committee on Commerce sent a questionnaire to 13 agencies under its jurisdiction. The questionnaire requested a list of documents describing the costs that the agency imposed on other Federal, State and local agencies and the private sector as well as the procedures used to determine such costs. We specifically asked agencies not to create any new documents. In January 1997, the Committee printed a survey of our findings. The results were:

- Agencies did not maintain documents of the administrative costs specifically associated with regulatory activities.

- Agencies had little if any information on any of the costs imposed on Federal, State, and local governments by either new or existing regulations.

- Agencies had no information on many of the costs incurred by the private sector in complying with either new or existing regulations.

Obviously, no overall accounting statement existed for these agencies and no agency exercised the discretion to create one.

Mr. Chairman for the past several years you, I, and others have insisted that we get started on this task by seeking an accounting statement during the appropriations process. Indeed, we have passed such a provision for the past three years. We have also commented on these documents along with a growing number of economists. We know that the effort needs improvement and it will take some time for the product to become more useful. As stated in the last report from the Office of Management and Budget each report has provided an improvement in methodology over the past three years. OMB understands the value of this exercise and states:

> "We hope to continue this important dialogue to improve our knowledge about the effects of regulation on the public, the economy, and American society."

I expect the real impact from this information will be a few years from now when the information base is built up further. The concept of flexibility and improvement for the accounting statement itself is built into the legislation. Through this tool we will harness better methodologies to focus on meaningful questions. No one is saying that, today, such a report will set actual priorities. We should not, however, accept a path where ignorance is bliss. A better future begins with better information.

I should also note that the public and State and local governments have a right to participate in developing this body of knowledge. They should be able to compare Federal programs to understand their purpose and performance. This knowledge should not be hidden in so many Federal bureaucratic shelves or, worse, hidden by a government reluctant to explain its own dealings.

The Act Has Broad, Bipartisan Support

Bipartisan organizations representing the Nation's governors, mayors, professional city managers, county officials and others are unanimous in their support for the Regulatory Right to Know Act. This list includes the National Governors' Association, the National Conference of State Legislatures, the Council of State Governments, the U.S. Conference of Mayors, the National League of Cities, the National Association of Counties, and the International City/County Management Association. It has also been endorsed by the farmers, small businesses and other organizations who agree that the American taxpayers and consumers have the right-to-know the costs and benefits of federal regulations, and have endorsed the Regulatory Right-to-Know Act of 1999. I have attached a number of letters of endorsement to this statement.

I would like to thank Mr. McIntosh, Mr. Condit, Mr. Stenholm and others for their leadership on this bill in the 104th, 105th, and 106th Congresses. The Regulatory Right-to-Know Act of 1999 was introduced with 17 Democrat and 14 Republican original cosponsors. I note that Mr. Ford and Mr. Terry, from your Subcommittee, are cosponsors. Senator Thompson and Senator Breaux have provided leadership in the Senate and have, once again, introduced the analogue to the Regulatory Right-to-Know Act.

In closing, I should note that the Regulatory Right-to-Know Act of 1999 changes no regulatory standard and will not slow down the development of any regulation. It will, however, provide vital information to Congress and the Executive branch so they may fulfill their obligation to ensure wise use of our limited national economic resources and improve our regulatory system. Let's not forget that a tax or consumer dollar spent on a wasteful program is a dollar that cannot be spent on teachers, police officers or health care. If we are serious about, the public's right to know, accountability, and fulfilling our responsibility as managers, we will enact this important piece of legislation.

Mr. MCINTOSH. You make a very powerful case. I know the Chairman has another appointment and that he was gracious enough to come here today. I have no questions for you.

Mr. KUCINICH. I just have two brief questions. And of course the Chairman makes a powerful argument, when someone would surmise that he is all wet but there is no canal.

Mr. BLILEY. When I built a downtown expressway they tried to do the same thing. And the Federal judge said, "Well, the only thing you lacked for a navigable waterway is water."

Mr. KUCINICH. Mr. Chairman, just for a moment, would this bill require agencies or OMB to conduct new studies or analyses or to develop new data?

Mr. BLILEY. It should not. All it requires them to do is to tell us how much it is going to cost. And I am sure that like any piece of legislation, it is not perfect, and I look forward to working with the committee and the other body to get it into proper shape.

And I appreciate the fact that you have brought in, Mr. Chairman, expert witnesses who are far more knowledgeable on the technical details of how this would apply than I am. And as a result of that testimony, hopefully we will refine the legislation to make sure that we do no harm in passing the bill and sending it to the President for his signature.

Mr. MCINTOSH. Thank you, Mr. Chairman.

Mr. KUCINICH. I just wanted to establish that the chairman's intent was not to get them to conduct new analyses.

Mr. BLILEY. No.

Mr. MCINTOSH. And I think the goal here is to marshal the data and the agencies. The Executive orders require almost all of this to be done as it is. The problem has been making sure that it is there and available and published, and the chairman has done a great job of leading this effort. And I know he has had many battles, not only in Richmond but in the national field as well, looking at these regulatory programs.

So thank you, and we look forward to working with you as we carry this bill through the process. Hopefully we can get it down to the President and have it become part of the law of the land.

Thank you very much, Mr. Chairman.

Mr. BLILEY. I hope so. Thank you.

[The information referred to follows:]

ONE HUNDRED SIXTH CONGRESS

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JAMES E. DERDERIAN, CHIEF OF STAFF

U.S. House of Representatives
Committee on Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515–6115

April 6, 1999

The Honorable David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
B-377 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman McIntosh:

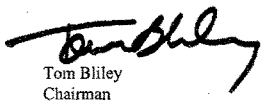
Thank you for the opportunity to testify before your Subcommittee regarding H.R. 1074, the Regulatory Right to Know Act of 1999.

I want to clarify an answer to a question posed by Mr. Kucinich regarding the Office of Management and Budget (OMB) seeking more and better information and analyses in fulfilling the requirements of this legislation. Rather than let any confusion stand on the matter, I will state for the record that part of my answer was in error. The sponsors intend this legislation to provide the American people more and better information about the costs and benefits of regulations. This intention is certainly the thrust of my oral and written statements and the legislation itself.

Because there is a cost to obtaining valuable information, I expect much, but not all, of the bill's requirements to build on existing systems for collecting information. Public comment and peer review is expected to provide more analyses and information. The cost of gathering any new information required by this legislation must be contrasted with the high costs of our current regulatory programs. I believe this legislation will dramatically improve the information we have today.

I look forward to working with you and other Members to make sure that this legislation results in an efficient and effective annual report by OMB to provide a useful tool for managing Federal regulatory programs.

Sincerely,



Tom Bliley
Chairman

cc: The Honorable Dennis J. Kucinich

National Governors' Association
National Conference of State Legislatures
Council of State Governments
The U.S. Conference of Mayors
National League of Cities
National Association of Counties
International City/County Management Association

March 10, 1999

The Honorable Tom Bliley
U.S. House of Representatives
2409 Rayburn House Office Building
Washington, DC 20515

The Honorable Gary Condit
U.S. House of Representatives
2234 Rayburn House Office Building
Washington, DC 20515

Dear Representatives Bliley and Condit:

We are writing on behalf of the nation's Governors, state legislators, and local elected officials to support the "Regulatory Right-to-Know Act of 1999." The proposed legislation would greatly assist state and local governments in assessing the costs and benefits of major regulations. This bill would lead to improved quality of federal regulatory programs and rules, increase federal government accountability, and encourage open communication among federal agencies, state and local governments, the public, and Congress regarding federal regulatory priorities.

This bill calls for an annual report to Congress by the President and the Office of Management and Budget that would analyze the impacts of federal rules on federal, state, and local governments. One of the highest priorities of the state and local interest groups is to prevent costly intergovernmental mandates on state and local governments. With your help, we were successful in preventing legislative mandates through the 1995 Unfunded Mandates Reform Act (UMRA). This new bill seeks to prevent costly mandates from regulatory agencies. While UMRA provides this type of analysis for legislation that creates federal intergovernmental mandates, there is no clear, streamlined process to assess the impact of federal regulations on a regular basis.

We applaud your efforts to encourage greater accountability with regard to the burden of costly federal regulations on state and local governments. The changes proposed would, we believe, benefit all of our taxpayers and constituents. We look forward to working with you in securing enactment of this legislation.

Sincerely,

Governor Thomas R. Carper
State of Delaware
Chairman, National Governors' Association

Representative Dan Blue
North Carolina State House of Representatives
President, National Conference of State Legislatures

Governor Tommy G. Thompson
State of Wisconsin
President, Council of State Governments

Commissioner Betty Lou Ward
Wake County, North Carolina
President, National Association of Counties

Mayor Clarence A. Anthony
South Bay, Florida
President, National League of Cities

Mayor Deedee Corradini
Salt Lake City, Utah
President, The U.S. Conference of Mayors

Bryce Stuart, City Manager
City of Winston-Salem
President, International City/County
Management Association

STATEMENT OF D. LYNN JOHNSON
CHAIRMAN, ALLIANCE USA
TO THE
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES AND REGULATORY AFFAIRS
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES
ON
H.R. 1074, THE REGULATORY RIGHT TO KNOW ACT OF 1999

Mr. Chairman, on behalf of Alliance USA, I am very pleased to express the support of our more than 1,000 organizations and individual businesses for H.R. 1074, the Regulatory Right To Know Act of 1999. We commend Representatives Bliley, McIntosh, Condit, and Stenholm for leading this bipartisan effort in the House and appreciate Chairman McIntosh for his commitment to early committee consideration of this important bill.

Every day, every American family feels the impact of federal regulation, estimated by some studies to cost approximately $700 billion a year. Our members are no different. Alliance USA supports introducing more transparency into the regulatory process, and requiring the use of sharper analytical and scientific tools. We were strong supporters of regulatory improvement legislation in the last Congress. We believe this right-to-know legislation will make a critical contribution to improving federal rules by further opening the rulemaking process and helping both the public and regulators to identify areas where the most good can be done.

Each day, Congress and scores of federal agencies with regulatory responsibilities make choices. Their choices affect the role the federal government plays in our economic and social lives. They determine how agencies implement general legislative directives. We want those choices to be informed to the maximum extent possible. Routine public accounting for regulatory costs and benefits will allow decision-makers at all levels and in all branches to make more informed decisions. That's what regulatory right to know is all about.

Plainly, this legislation does not demand of OMB anything that cannot practically be done: OMB has already prepared similar reports under language Congress has included in past appropriations bills. It would be a mistake not to attain some continuity through continuing these reports, and it would be a loss to the public and the government not to use the reports as occasions to refine, expand, and improve upon the analytical tools available for assessing regulatory costs and benefits.

For those who are concerned about the imperfect nature of the analytical tools that yield data on regulatory costs and benefits, the response should be that we need more, not less analysis and reporting. The lack of certainty in science and medicine, and certainly in economics generally, does not lead us to reject research and analysis because its results may be imperfect.

Our goals must be greater safety, improved health, a cleaner environment, and the fine-tuning of federal regulatory mechanisms to achieve those goals faster and at lower costs. This cannot be done with blinders on or curtains closed.

Regulatory right to know will not change rules or diminish public protection. Nor will it restrict an agency's ability or authority to carry out its statutory mandates. Just as accounting for profits and losses for the past year cannot change business practices already taken, they can inform managers' judgment going forward and contribute to wiser and more effective decisions in the future. Regulatory accounting can have the same impact on government decision-making.

Alliance USA is pleased to join the National Federation of Independent Business, The Business Roundtable, the National Association of Manufacturers, the U.S. Chamber of Commerce, and other national organizations that have endorsed this legislation. That the seven largest organizations representing state and local officials have also endorsed the legislation suggests that it makes sense from a governmental, as well as business, perspective.

The public has a right to open and accountable government. Disclosure of the benefits and burdens of federal regulatory programs will guide Congress and the agencies in assessing the efficacy of regulatory programs. This is crucial for a more responsive and better-managed government.

This is common-sense legislation. It promotes good government. We urge the Committee and the Congress to move quickly to enact H.R. 1074, the Regulatory Right To Know Act of 1999.



March 11. 1999

The Honorable Tom Bliley
U.S. House of Representatives
2409 Rayburn House Office Building
Washington, D.C. 20515-4607

Dear Representative Bliley:

On behalf of Alliance USA, I offer our strong support for quick enactment of the Regulatory Right-to-Know Act of 1999.

Alliance USA is a national coalition of more than 1,000 business organizations and individual companies dedicated to smarter government rulemaking. Every day in their business operations, our members feel the impact of federal regulation, estimated by some studies to total approximately $700 billion a year.

This regulatory right-to-know legislation will improve the rulemaking process by making it more open and transparent. Members of Congress and federal policymakers need the kind of information this measure will provide – in the form of an annual regulatory accounting report prepared by the Office of Management and Budget – in order to make sensible choices.

We believe this legislation takes the right approach, since OMB has already prepared similar reports as a result of language included in appropriations bills. We also recognize that it will in no way change any existing federal rules, nor will it restrict the regulatory authority of any agency.

Thank you for your leadership in promoting good government. We stand ready to help you move forward.

Sincerely,

D. Lynn Johnson
Chairman

The Alliance for **U**nderstandable, **S**ensible and **A**ccountable Government Rules
1317 F St., NW Suite 600 Washington, DC 20004
phone: 202-662-3707 fax: 202-783-0329 email: cmr@conx.com

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March 11, 1999

The Honorable Thomas Bliley
United States House of Representatives
Washington, D.C. 20515

Dear Representative Bliley:

On behalf of the 4.8 million families represented by the American Farm Bureau Federation, we urge you to support the Regulatory Right to Know Act of 1999. This legislation will require that federal agencies must, at least annually, review the costs and benefits of their regulatory and other activities. This kind of self-assessment is long overdue and is a healthy exercise. It is the kind of self-assessment farmers must undertake regularly to remain economically viable in a rapidly changing international economy.

Farmers supported the Federal Agriculture Improvement and Reform (FAIR) Act of 1996 to gain the opportunity to plant for the market and maximize their income without intervention by the government. At the same time, we understood that Congress and the President would continue to work to open international markets for farm products, and stop reducing farm income by over-regulating farmers. Regular self-assessment of government's regulatory burden on agriculture and the rest of the productive sector will hopefully prompt greater interest in refraining from unnecessary future regulation and rationalization of present regulation.

Experts put the cost of federal regulations borne by the private productive economy at $688 billion annually--20 times the size of the projected federal deficit for fiscal year 1997 of $34 billion. This estimate is low because it does not include the cost of lost productivity.

We estimate that the cost of federal regulations on production agriculture exceeds $20 billion annually. This estimate is based on farm production accounting for three percent of gross domestic product and therefore three percent of the overall federal regulatory burden of $688 billion. We believe that the share of total federal regulatory costs borne by production agriculture is probably greater than $20 billion since farmers and ranchers are at the eye of the environmental regulatory storm due to our dependence on land, water and air.

We urge you to support the Regulatory Right to Know Act and do all you can to ensure its passage by the 106th Congress.

Sincerely,

Dean Kleckner
President

AMERICANS FOR TAX REFORM

March 17, 1999

Grover G. Norquist
President

The Honorable David McIntosh
B-377 Rayburn House Office Building
Washington, DC 20515

Dear Chairman McIntosh:

Americans for Tax Reform and its over 90,000 taxpayers and taxpayer advocacy groups across the nation strongly **supports your efforts to champion the public's right to know the costs and benefits of regulatory programs by authoring the Regulatory Right to Know Act of 1999.**

Americans for Tax Reform has been at the forefront of informing the American public about the true costs of government through our Cost of Government Day project. The Cost of Government is calculated by adding the total of the cost of federal, state and local taxation policy to the federal regulatory burden.

Last year, Cost of Government Day was June 25th. That means that Americans spent almost half the calendar year (176 days) working for the government. **The total cost of government for 1998 was estimated at $3.61 trillion, of that $750 billion was due to the costs of federal regulation.**

Your proposal will be a major step forward in getting the government to admit that regulatory policy does have a price to American taxpayers. Also, those who impose mandates through regulation will be held more accountable for their actions. **Finally, and most importantly, elected officials, the media, and the public will begin to understand that there is no such thing as a "free lunch" when it comes to regulation.**

The Regulatory Right to Know Act of 1999 is an important component of reform for our burdensome and inefficient regulatory process. I look forward to working with you in the days and weeks ahead to ensure passage of this important legislation.

Onward,

Grover G. Norquist

1320 18TH STREET NW, SUITE 200, WASHINGTON DC 20036
PHONE (202) 785-0266 FAX (202) 785-0261
EMAIL: atrtreform@AOL.COM http://www.atr.org

ASSOCIATED BUILDERS AND CONTRACTORS, INC.

April 16, 1999

The Honorable Dan Burton
United States House of Representatives
Washington DC 20515

Dear Congressman Burton:

On behalf of Associated Builders and Contractors (ABC) and its more than 20,000 contractors, subcontractors, material suppliers, and related firms across the country I would like to express our support for legislation introduced by Congressman Tom Bliley (R-VA) H.R. 1074, the Regulatory Right to Know Act of 1999. H.R 1074 will be marked up in the Committee on Government Reform and Oversight on Tuesday, April 20, 1999.

ABC strongly supports the goals of this bill which are: to promote the public right-to-know about the costs and benefits of Federal regulatory programs and rules; increase Government accountability; and improve the quality of Federal regulatory programs and rules.

Federal regulations have grown exponentially in the recent years. Over 24,000 final rules have been issued during the past five years. Estimates have placed the total cost of federal regulations for 1998 at $737 billion. These costs are of particular concern to small businesses that simply do not have the resources to comply with the increasing number of demands placed on them. Close to 937 regulations are expected to have significant impact on small businesses this year.

American taxpayers and businesses deserve to know the total costs and benefits of federal regulations. Adoption of this legislation would inject greater accountability into the regulatory process and facilitate better evaluation of regulatory programs. It would help in allocating limited resources where the needs are the greatest.

ABC supports this legislation and strongly encourages you to pass H.R. 1074 out of the Government and Oversight Committee without any weakening amendments.

Sincerely,

Shane C. Downey
Washington Representative

1300 North Seventeenth Street ■ Rosslyn, Virginia 22209 ■ (703) 812-2000

THE BUSINESS ROUNDTABLE

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Tenneco

Cochairmen
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Samuel L. Maury
President

Patricia Hanahan Engman
Executive Director

March 11, 1999

The Honorable Tom Bliley
Chairman, Commerce Committee
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Bliley:

As Chairman of The Business Roundtable's Government Regulation Task Force, I write in strong support of the Regulatory Right-to-Know Act of 1999.

This bipartisan measure fosters openness and accountability in rulemaking. It promotes good government by making sure that Members of Congress, federal policymakers, and the public will have timely information on the benefits, costs, and impacts of regulations.

It neither changes any existing federal rules nor restricts any agency's authority in any way. Rather, it ensures transparency in rulemaking by directing the Office of Management and Budget to prepare an annual regulatory accounting report to Congress as it has done for the past two years under language included in appropriations legislation.

I liken this annual regulatory accounting to a public corporation's annual report to shareholders. Just as our stockholders deserve an open and honest accounting of corporate finances, the public deserves an open and honest accounting of the benefits and costs of regulation. The public has a right to know what regulations cost, and this annual report will tell them.

The Members of The Business Roundtable believe this bill represents a significant improvement to the federal regulatory system. We thank you for your leadership in introducing it and offer our wholehearted support for its prompt enactment.

Sincerely,

John F. Smith, Jr.
Chairman & CEO
General Motors Corporation
Chairman, The Business Roundtable
Government Regulation Task Force



STATEMENT BY:

JOHN F. SMITH, JR.
CHAIRMAN & CEO
GENERAL MOTORS CORPORATION

ON BEHALF OF:

THE BUSINESS ROUNDTABLE

ON:

H.R. 1074, REGULATORY RIGHT-TO-KNOW-ACT

April 1, 1999

The Business Roundtable (BRT) strongly supports *H.R. 1074, The Regulatory Right-to-Know Act of 1999*. The bill would make permanent a regulatory accounting process that the Office of Management and Budget (OMB) has begun to perform under temporary legislation over the past two years.

You and your colleagues are to be commended for this bipartisan effort to inform the public about the benefits and costs of federal regulations. Such transparency is critical to sound, effective government. This reporting requirement has the potential to improve both the quality and cost-effectiveness of new economic and social regulations. As the OMB observes in its most recent *Report to Congress On the Costs and Benefits of Federal Regulations, 1998,* "explicitly quantifying and monetizing benefits and costs significantly enhances our ability to compare alternative approaches to achieving regulatory goals, ultimately producing more benefits with fewer costs."

The executives of The Business Roundtable have a particular interest in this legislation. Our jobs are to ensure that sound, systematic accounting procedures have been followed by all the business units in our companies. We adhere to such systematic approaches because our performance depends upon sound planning and decision-making. The Director of the Office of Management and Budget, of course, has the same sort of ongoing, permanent responsibility to inform the President, the Congress and the public about the benefits and costs of on-budget federal expenditure and tax programs. There is a great need for the same kind of accountability when it comes to off-budget regulatory costs and benefits.

For two years now Congress, under temporary legislation, has required the OMB's Office of Information and Regulatory Affairs (OIRA) to provide estimates of the benefits and costs of federal regulations, both in the aggregate and for recently implemented regulations. Based on its most recent report, economists estimate the direct annual aggregate costs of "social" (mostly environmental, health and safety) and economic regulations (mostly controls on price and entry) at $260 to $320 billion. Adding in OIRA's estimate for the indirect costs of environmental regulations raises the total annual costs of social and economic regulations to roughly $500 to $650 billion per year, or between $5,000 and $6,500 per household.

The two OIRA reports represent an important first step. But much remains to be done. OIRA points out that the information it currently obtains from the various regulatory agencies falls short of what is needed for a coherent accounting system. The analyses conducted by the agencies "vary in quality, methodology, and type of regulatory costs included." They use "different assumptions about baselines and time periods, different discount rates, different valuations for the same attribute, and different concepts of costs and approaches to dealing with uncertainty, to mention a few." (OIRA, Report *to Congress on the Costs and Benefits of Federal Regulations, 1998,* page 10.)

These inconsistencies and lack of transparency have tragic consequences for public health and safety. Professors Tammy Tengs and John Graham of the Harvard Center for Risk Analysis estimate that through careful analysis and more effective regulatory decision-making it would be possible to save tens of thousands of additional lives each year, with no increase in costs to America's workers, consumers and businesses. These additional lives could be saved if money spent on ineffective regulations were spent more wisely. Increased transparency would also enhance environmental quality because, as Professor Robert Repetto of the World Resources Institute points out, if we concentrate efforts more heavily on actions that reduce risks at lower cost, we might achieve much greater overall improvement in the environment for the same total expenditure. These are the reasons The Business Roundtable strongly supports H.R. 1074. We particularly support the following provisions that require OMB to:

- "Estimate the benefits and costs by agency, agency program, and program component and by major rule."
  - OMB points out in its 1998 report that it is the "incremental costs and benefits that are required to be able to make reliable recommendations to improve specific regulatory programs or regulations."

- Recommend reforms in "inefficient or ineffective regulatory programs or program components."
  - As indicated above, there is widespread consensus that many lives could be saved each year through more cost-effective programs. Sound analysis is critical to the identification of such reforms.

- Analyze the "direct and indirect impacts of Federal rules . . . on productivity and economic growth . . . "
  - The most recent OMB report estimates that the aggregate indirect costs of environmental regulations are at least twice the levels of aggregate direct costs. These are costs that relate to how regulations reduce productivity and innovation and thereby reduce economic growth and standards of living. They are critical to any assessment and OMB should make estimates of the indirect costs of other types of regulation.

- Analyze the "impacts of Federal rules . . . on . . . the private sector and distributional effects."
  - The Business Roundtable is especially interested in OIRA's estimates of the employment, income and cost impacts on workers and businesses in particular sectors and regions of the economy.

- Identify "each option for which costs and benefits were included in any regulatory impact analysis issued for any major rule covered by the submission."
  - This is, perhaps, the most critical element of this bill. Far too many regulations are issued without adequate consideration of cost-effective alternatives, which good accounting data should identify.

The Business Roundtable appreciates the substantial time and effort the OMB's Office of Information and Regulatory Affairs has put into preparing the reports for 1997 and 1998. OIRA observes that much additional work remains to be done if the public, the Congress and the regulatory agencies are to get the kind of accounting information they need to make informed decisions about future regulatory options. We are convinced the investment of OIRA's time and human resources in this greater transparency, uniformity and analytical precision will yield extraordinary returns in terms of more effective protection of public health, safety and the environment. To paraphrase Paul Portney of Resources for the Future, how could someone object to spending $100,0000 to better understand regulatory programs that may cost the nation $290 billion per year? This would be analogous to refusing to spend a fraction of a cent for information on vehicle characteristics and ratings prior to buying a $20,000 automobile.

The Regulatory Right-to-Know Act satisfies a basic requirement of any democracy. Officials of the US government have identified the lack of transparent regulations as a major reason for the setbacks in many East Asian economies. Nothing can be more important to the success of a democratic government.

The Business Roundtable greatly appreciates the opportunity to comment on H.R. 1074. This legislation will have a significant, positive influence on the quality and cost-effectiveness of future regulations – a win for everyone who is interested in good government.

CENTER FOR THE STUDY
OF AMERICAN BUSINESS

MURRAY WEIDENBAUM
Chairman and
Mallinckrodt Distinguished
University Professor

March 23, 1999

Honorable David McIntosh, Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
U.S. House of Representatives
B-377 Rayburn HOB
Washington, DC 20515

Dear David,

I offer the following views on H.R.1074, the Regulatory Right-to-Know Act of 1999. I hope that these comments will be useful to the Subcommittee in its deliberations.

In my view, the enactment of H.R.1074 would represent an important advance in the improvement of the federal regulatory system. By making permanent the now-temporary requirement for an annual accounting statement, H.R.1074 would provide the incentive for the Executive Branch to devote substantial resources to the development of a database on regulatory benefits and costs. Such information is vital to decisionmaking on regulatory policies and programs in both the executive and legislative branches.

The peer review envisioned in Section 7 is an intriguing concept. It would help deal with the existing shortcomings in the OMB reports on regulatory costs and benefits. A number of public policy research organizations have the capability of performing the task. Indeed, several of these organizations (including the Center for the Study of American Business) have provided detailed analyses of the first two OMB annual reports on regulatory costs and benefits.

I would be glad to amplify any of these points should you or your staff desire that.

Sincerely,

Murray Weidenbaum

MLW/cm

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CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

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202/463-5310

March 10, 1999

The Honorable Tom Bliley
Chairman
Committee on Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20510

Dear Mr. Chairman:

As a longstanding advocate of regulatory accounting, the U.S. Chamber of Commerce applauds the introduction of your bipartisan legislation, The Regulatory Right-to-Know Act, also sponsored by Representatives McIntosh, Condit, and Stenholm.

Recent studies estimate the compliance costs of federal regulations at more than $700 billion annually and project substantial future growth even without the enactment of new legislation. Congressional mandates impose significant costs on the private sector, particularly small business. These costs are passed along in the form of higher prices and taxes, reduced wages, stunted economic growth, and decreased technological innovation.

A regulatory accounting amendment has been signed into law for the last three years as part of the Treasury/Postal Appropriation Act. The Regulatory Right-to-Know Act would make permanent this accounting statement of the cumulative costs and benefits of federal regulatory programs. Additionally, it would provide an analysis of the direct and indirect impacts of federal rules on the private sector, small business, wages, and economic growth.

The Regulatory Right-to-Know Act promotes greater governmental accountability by providing the American people with much-needed information on regulatory priorities. This legislation would also help to ensure that our nation's limited resources are allocated according to the greatest need. A dollar allocated toward wasteful regulatory programs is a dollar that cannot be allocated toward education, health care, or crime. Additionally, as a result of this Act, improved and updated federal decision-making will improve the quality of our environment, make our work places safer, and help us all as we strive to improve our quality of life.

The U.S. Chamber of Commerce, the world's largest business federation representing more than three million businesses of every size, sector, and region, appreciates your efforts to make the government more accountable to the American people by supporting the Regulatory Right-to-Know Act.

Sincerely,

R. Bruce Josten

CMA
CHEMICAL MANUFACTURERS ASSOCIATION

FREDERICK L. WEBBER
PRESIDENT & CEO

April 1, 1999

The Honorable David McIntosh
United States House of Representatives
1610 Longworth House Office Building
Washington, DC 20515

Dear Representative McIntosh:

The Chemical Manufacturers Association applauds your leadership in promoting the public's right to know more about the benefits and costs of government regulations. We strongly support S. 59, The Regulatory Right-To-Know Act. This sensible, bipartisan legislation will go a long way toward responding to the American public's growing demand for accountable government.

Responsible regulation requires, at a minimum, that federal agencies attempt to understand and explain to the public the benefits associated with their rulemakings and the cost of achieving those benefits. Difficult as it may be, the effort to accomplish this regulatory accounting must be made.

Thanks to your efforts, regulatory accounting reports have been required for the last three years as part of the Treasury/Postal Appropriation Act. As a result, the White House Office of Management and Budget has been forced to seriously address the methodological and other difficulties such analysis faces. Clearly, progress is being made in this area.

The Regulatory Right-To-Know Act would continue this progress by making regulatory cost and benefit statements a permanent feature of accountable government. It would require the government to analyze the direct and indirect impacts of federal rules on the private sector, small business wages, and economic growth. It would provide the American people with crucial information about the government's regulatory priorities.

The Chemical Manufacturers Association is a non-profit trade association whose member companies represent more than 90 percent of the productive capacity of the basic industrial chemicals within this country. CMA deeply appreciates your continuing support for regulatory accountability and your recognition of this issue's vital importance to the American economy and people.

Sincerely,



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March 19, 1999

Honorable Thomas Bliley
Chairman, Commerce Committee
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Bliley:

On behalf of the over 250,000 members of Citizens for a Sound Economy (CSE), a consumer advocacy and research organization, I would like to express our strong support for the "Regulatory Right-to-Know Act of 1999."

Americans are currently burdened with an estimated $700 billion in annual compliance costs for federal regulations — many of which are of doubtful value. Nevertheless, the average American household must bear a regulatory burden of roughly $7,000 a year. Reforming the present rulemaking process is, therefore, important business. CSE endorsed a bipartisan attempt by the 105th Congress to pass similar legislation and believes that the issue of regulatory reform should be a priority for the 106th Congress.

In many instances, government lacks the essential information needed to distinguish between those regulations that are genuinely beneficial and those that are excessive, harmful or simply unnecessary. The "Regulatory Right-to-Know Act of 1999" would increase accountability in the regulatory process by requiring federal agencies to openly and honestly present the costs and benefits of federal regulatory programs to the people's elected representatives. It would also promote a freer exchange of ideas between public and private interests that would improve the overall quality of regulation.

The "Regulatory Right-to-Know Act of 1999" is an important first step in the effort to help our elected officials make more informed decisions while avoiding new burdens on consumers. CSE will work hard in the coming months to ensure that it becomes law.

Sincerely,

Paul Beckner
President

SENT TO FULL U.S. HOUSE OF REPS.

National Association of Manufacturers

Michael Elias Baroody
Senior Vice President
Policy, Communications and Public Affairs

March 15, 1999

The Honorable Thomas J. Bliley, Jr.
Committee on Commerce
U.S. House of Representatives
2409 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the nearly 14,000 members companies of the National Association of Manufacturers, I urge you to cosponsor H.R. 1074, the Regulatory Right-To-Know Act. This legislation was introduced by Reps. Thomas J. Bliley, Jr., David McIntosh, Gary Condit and Charles W. Stenholm.

The Regulatory Right-To-Know Act will require the Office of Management and Budget to issue a report each year noting the costs and benefits (quantitative and non-quantitative) of federal regulatory programs. OMB has issued these reports for each of the past two fiscal years pursuant to one-year directives in its appropriations bills. If these reports were made permanent, as the Regulatory Right-To-Know Act would do, they could be very helpful in setting regulatory priorities. The NAM has long supported efforts, such as this legislation, that would make the regulatory system more rational and efficient.

The Regulatory Right-To-Know Act will provide additional knowledge about the costs and benefits of federal regulatory programs. It will not change any underlying statutes or regulations. Your cosponsorship of this legislation would be very much appreciated.

Sincerely,



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March 5, 1999

The Honorable Thomas Bliley, Chairman
House Commerce Committee
US House of Representatives
Washington, D.C. 20515

Dear Chairman Bliley:

On behalf of the 600,000 members of the National Federation of Independent Business (NFIB), I would like to thank you for introducing the "Regulatory Right-to-Know Act of 1999," which would require the government to account for costs associated with new regulatory requirements.

According to a 1996 NFIB Education Foundation Study, unreasonable government regulations and federal paperwork burdens are ranked as two of the top ten problems facing small business. In fact, "Unreasonable Government Regulations" has risen steadily on the list of business problems since 1986. We strongly believe that holding federal regulators accountable by documenting the costs and benefits of their regulatory decisions will help curb the flow of regulations that overwhelm many small business owners.

The burden of regulatory mandates, estimated at over $600 billion annually, falls disproportionately on the backs of small businesses. According to a 1995 Thomas Hopkins study done for the U.S. Small Business Administration, small businesses employ 53 percent of the business workforce but bear 67 percent of the total regulatory burden. NFIB members, which typically employ five people, will benefit from the more efficient and cost-effective regulatory structure called for in your legislation.

The public has a right to accountable government, and small business can benefit from a better-managed and more responsive government. We look forward to working with you to ensure the success of this important small business legislation.

Sincerely,

Dan Danner
Vice President
Federal Public Policy

National Federation of Independent Business
600 Maryland Avenue S.W., Suite 700 • Washington, DC 20024 • 202-554-9000 • Fax 202-554-0496

Small Business Works FOR AMERICA



THE SENIORS COALITION
Working for a Responsible America

FOR IMMEDIATE RELEASE:

Contact: Nona Wegner
703-591-0663

SENIORS GROUP STRONGLY SUPPORTS REGULATORY RIGHT-TO-KNOW ACT OF 1999

March 16, 1999 [Fairfax, VA]—Mary Martin, Chairman of the Board of The Seniors Coalition, today applauded the introduction of the ***Regulatory Right-to-Know Act of 1999*** **(H.R. 1074)**, sponsored by Representative Tom Bliley (R-VA). The bill would require the executive branch to disclose to the public the annual costs and benefits of all of its federal regulatory programs. H.R. 1074 corresponds to S. 59, introduced by Senator Fred Thompson (R-TN) in January.

Martin emphasized the Right-to-Know Act's ideological strengths. "The very heart of American democracy depends on an educated public. Senator Thompson's and Representative Bliley's Right-to-Know Acts allow for a better educated public and, in turn, a better performing government. Washington ought to respect American democracy enough to show the American people the ramifications of its numerous regulatory programs. Likewise, federal regulators ought to be accountable for the red tape they too freely heap on taxpayers."

"Clearly," Martin added, "The *Regulatory Right-to-Know Act of 1999* is a vital step toward a more responsible government. It will provide lawmakers and the public with the information needed to develop appropriate reforms and make way for a more effective and efficient federal system. We at The Seniors Coalition look forward to its swift passage in both houses of Congress."

###

The Seniors Coalition is a non-profit advocacy organization representing 3 million senior citizens and their families nationwide. We are funded solely by the contributions of our members and supporters and neither solicit nor accept government monies of any kind.

11166 Main Street, Suite 302 Fairfax, Virginia 22030 Fax: (703) 591-0679
www.senior.org

The 60 Plus Association

1655 N. Fort Myer Drive * Suite 355 * Arlington, VA 22209
Phone (703) 807-2070 * Fax (703) 807-2073

Tax Fairness for Seniors * Repeal Unfair Inheritance Taxes!
Guardian of Seniors' Rights Award * Senior Voice Newsletter

Roger H. Zion (R-IN, 1967-75)
Honorary Chairman

James L. Martin
President

April 12, 1999

The Honorable Thomas Bliley, Chairman
House Commerce Committee
U.S. House of Representatives
Washington, D. C. 20515

Dear Chairman Bliley:

On behalf of the half a million seniors represented by the 60 Plus Association, we applaud your effort in introducing the "Regulatory Right-to-Know Act of 1999," which would require the federal government to account for the true costs associated with new regulations.

This legislation will highlight what is presently hidden from the public: the enormous costs of government regulations which burdens our economy, stifles jobs creation, and adds costs to every taxpayer. Seniors are especially concerned with the costs of regulation as it adds to their already heavy burden in trying to meet every day expenses.

I hope the Congress will move expeditiously to pass this essential legislation and all Americans, especially senior citizens, owe you a debt of gratitude for sponsoring the "Regulatory Right-to-Know Act of 1999."

Sincerely,

James L. Martin

60 Plus is a six-year-old non-profit, nonpartisan group with a less government, less taxes approach to seniors' issues. 60 Plus is supported by voluntary donations from its 500,000 citizen lobbyists to print and mail millions of letters, petitions and voting indexes. 60 Plus publishes a newsletter, SENIOR VOICE, and a SCORECARD, bestowing a GUARDIAN OF SENIORS' RIGHTS award on lawmakers in both parties who vote "pro-senior." 60 Plus has been called "an increasingly influential lobbying group for the elderly."



March 11, 1999

Honorable David McIntosh
Chairman
United States House of Representatives
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs
Washington, DC 20515

Dear Chairman McIntosh:

On behalf of the Small Business Survival Committee (SBSC), I applaud your efforts to champion the public's right-to-know the costs and benefits of regulatory programs by authoring the Regulatory Right to Know Act of 1999. Your legislation will also ultimately improve the quality of the regulatory programs and increase the accountability of government to the taxpayers it serves.

For small businesses, government regulation has become just as onerous and burdensome as high taxes and our cumbersome tax code. A Small Business Administration (SBA) study found that in companies with fewer than 20 workers -- which comprise 90 percent of U.S. companies -- the annual cost of red tape per worker is $5,532. By contrast, the per-worker cost for companies with more than 500 workers is $2,979.

If common-sense initiatives, such as your proposal, are enacted they will begin to spell out the costs associated with regulation. Those who impose mandates become more accountable for their actions. And elected officials, the media, and the public will begin to understand that there is no "free lunch" associated with regulation. SBSC strongly believes this will lead to a more thoughtful and deliberate approach to regulation. Such a process makes sense for our modern economy.

As most small businesses will attest, excessive regulations weigh heavily on their bottom lines. A common-sense approach to measure the cost and benefits is not only desired but necessary for many small employers – who are responsible for two-thirds to 100% of net new jobs in the United States -- to ensure their hard work yields success and the opportunity to grow.

The Regulatory Right to Know Act of 1999 is an important component of reform for our disjointed, burdensome, and inefficient regulatory process. I look forward to working with you to ensure that this important bill becomes law.

Sincerely,

Karen Kerrigan
President

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Tel: (202) 785-0238 • Fax (202) 822-8118
www.sbsc.com

Small Business Survival Committee

March 19, 1999

Honorable Tom Bliley
Chairman
United States House of Representatives
United States Committee on Commerce
Washington, DC 20515

Dear Chairman Bliley:

On behalf of the Small Business Survival Committee (SBSC), thank you for your leadership in introducing HR 1074, the Regulatory Right to Know Act of 1999. Your important legislation champions the public's right-to-know the costs and benefits of regulatory programs. This measure will ultimately improve the quality of regulatory programs, and increase the accountability of government to taxpayers.

For small businesses, government regulation has become just as onerous and burdensome as high taxes and our cumbersome tax code. A Small Business Administration (SBA) study found that in firms with fewer than 20 workers -- which comprise 90 percent of U.S. companies -- the annual cost of red tape per worker is $5,532. By contrast, for companies with more than 500 workers the per-worker cost is $2,979. SBSC believes something must be done to better manage and quantify not only existing regulations, but also the more than 4,000 regulations that the federal government considers each year.

If common-sense initiatives, such as your proposal, are enacted they will begin to spell out the costs associated with regulation. Those who impose mandates become more accountable for their actions. Elected officials, the media, and the public will further understand that there is no "free lunch" associated with regulation. SBSC strongly believes this will lead to a more thoughtful and deliberate approach to regulation. Such a process makes sense, especially for our modern entrepreneurial-driven economy.

As most small businesses will attest, excessive regulations weigh heavily on their bottom lines. A common-sense approach that measures regulatory costs and benefits is not only desired but necessary for small employers -- responsible for two-thirds to 100% of net new jobs in the United States -- to ensure their hard work yields success, the opportunity to grow, and the ability to reward their workforce with higher wages and secure benefits. Burdensome regulatory costs on small firms detract from these goals.

HR 1074, the Regulatory Right to Know Act of 1999, is an important component of reform for our disjointed, burdensome, and inefficient regulatory process. I look forward to working with you to ensure that this important bill becomes law.

Sincerely,

Karen Kerrigan
President

1320 18th Street, N.W., Suite 200 • Washington, D.C. 20036
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R·I·T

Rochester Institute of Technology

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April 12, 1999

Congressman David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs
B-377 Rayburn House Office Bilding
Washington, DC 20515

Dear Congressman McIntosh:

I would like to reiterate my strong support for H.R. 1074, the Regulatory Right-to-Know Act of 1999, as expressed initially in my March 24 testimony before the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs. This legislation would represent a substantial step toward fuller accountability and transparency in regulatory policy, which is sorely needed. It would pave the way toward better-targeted and more effective regulation.

As I noted in my testimony, some of the bill's requirements are sufficiently demanding, given current know-how, to warrant phasing them in gradually, in consultation with OMB. Impact analyses, for example, while often useful and important, might best be phased-in rather than immediately required across-the-board.

One concern I did not raise in my testimony now seems to me to warrant some attention as the Committee marks-up the bill. The peer review provision of the bill is silent on any authorization for appropriations, which would seriously constrain the effectiveness of such review. I urge the Committee to explicitly authorize OMB to offer the same type of financial support for peer review that occurs elsewhere in government—expense reimbursement and per diems for outside advisers, who should be selected based on their individual professional competence.

Please let me know if I can be of any further assistance.

Sincerely,

Thomas D. Hopkins
Interim Dean

R·I·T

Rochester Institute of Technology

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Max Lowenthal Building
107 Lomb Memorial Drive
Rochester, New York 14623-5608
716-475-6025 Fax 716-475-7056

April 12, 1999

Congressman Tom Bliley
Chairman, House Commerce Committee
2409 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Bliley:

I would like to reiterate my strong support for H.R. 1074, the Regulatory Right-to-Know Act of 1999, as expressed initially in my March 24 testimony before the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs. This legislation would represent a substantial step toward fuller accountability and transparency in regulatory policy, which is sorely needed. It would pave the way toward better-targeted and more effective regulation.

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Please let me know if I can be of any further assistance.

Sincerely,

Thomas D. Hopkins
Interim Dean

CEI ON POINT

The Competitive Enterprise Institute
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Committed to Advancing the Principles of Free Enterprise and Limited Government

March 18, 1999 No. 31

The Simple ABC's of Regulatory Reform

By Clyde Wayne Crews Jr.[1]

Streaming out of Washington now are sometimes bizarre regulations covering, among other things; workplace ergonomics, flammability rules for upholstered furniture, emission limits for sport utility vehicles, and even energy efficiency standards for consumer goods and lamp ballasts. The 1998 *Federal Register*'s 68,571 pages -- containing 4,899 final rules -- scale record heights not seen since Billy Beer was for sale.[2]

The roughly $700 billion the public pays to comply with regulations, often concealed in prices of goods and services, rivals 1997's pretax corporate profits of $734 billion. High enough to exceed Canada's entire gross national product, regulatory costs might be thought of as a hidden tax on top of the $1.7 trillion of taxpayers' money the federal government spends annually on its various ends.

Quarrelling with federal agencies for producing this torrent however, or requiring that agencies more thoroughly assess benefits before regulating, is largely a wasted effort. Since Congress is responsible in the first place for the underlying statutes that propel most regulation, attempts to force agencies to police themselves may miss the mark.

The key to managing regulation lies in Congress's admitting that the regulatory high tide is, at root, its own handiwork. Too much lawmaking power has been delegated to agencies, over which voters have precious little control. Regulatory reform, rather than being seen as a technocratic cost-benefit campaign demonizing agencies, should instead be understood as *congressional reform*, much like term limits or subjecting Congress to its own laws.

Making costs clearer. The House-passed Mandates Information Act (H.R. 350), now on its way to the Senate, is an example of astute regulatory reform that targets Congress rather than blames agencies. This bill allows any member to invoke a "point of order" against new legislation costing the public more than $100 million annually. The point of order will rarely be invoked, and the simple majority required to waive it is hardly a hurdle for legislation expected to pass anyway. Its innovation is institutionalization of the principle that Congress will always have a chance to explicitly object to excessive regulatory costs before they hit anyone's pocketbook.

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[1] Clyde Wayne Crews Jr. is the Director of Competition and Regulation Policy at the Competitive Enterprise Institute.
[2] Clyde Wayne Crews Jr., *Ten Thousand Commandments: An Annual Policymaker's Snapshot of the Federal Regulatory State*, forthcoming 1999 edition.

Thus, legislation that will lead to costly agency rules regulating lamp ballast energy efficiency may or may not make sense to a congressman who may have to vote directly to approve costs. Congress must set legislative priorities based on more thorough assessments of potential benefits of laws that will later spawn regulation.

Presumably, Congress understands precisely the benefits it is trying to achieve with new legislation: therefore it should be prepared to acknowledge and defend what it expects people to spend to achieve those benefits when agencies issue regulations.

The public's right to know. While Congress must exercise primary control of regulatory growth at its end, disclosure by agencies clearly has a role in making congress more accountable to the public as well. The bipartisan Regulatory Right-to-Know Act, versions of which have been introduced in the House and Senate (H.R. 1074 and S. 59), would require annual reports on the scope of the regulatory state that include historical data and projections.

The Right-to-Know Act does make the mistake of over-emphasizing agency-driven benefit analyses of their own regulations at the expense of easier-to-gather cost & numerical data. (Rare is the agency that will admit the benefits of its rules do not justify the costs.) But the bill would set important new standards for official disclosure in several ways. It would require an annual report on regulatory costs and benefits by the Office of Management and Budget (OMB), allow public comment on OMB's report, and enhance objective critiques of agency rules by requiring OMB to recommend revisions to outdated or wasteful regulatory programs.

Thorough cost analyses should be provided for agency programs and rules in the annual OMB report whenever possible, which admittedly is no easy job. But assembling annual regulatory data need not always be a grueling exercise. Other data will prove very useful to policymakers as well. The Right-to-Know concept should extend well beyond cost and benefit tallies alone, and include current and historical data such as the following:

Items to summarize in an annual "Regulatory Report Card" (Current and prior four years)
• *Federal Register* analysis: total numbers of proposed and final rules issued by each agency during the previous five years
• Numbers of major ($100 million) and minor rules during the previous five years, and in the works at the proposed, and final stages
• Numbers/percentages of major rules featuring and *lacking* cost and benefit estimates
• Numbers of rules impacting agency procedures alone
• Numbers/percentages of rules facing statutory or judicial deadlines
• Numbers/percentages of rules reviewed by OMB, and actions taken
• Regulatory turnover: numbers of proposed rules which are new, vs. carryovers

These and other simple, easy-to-compile-and-summarize statistics should be included in an annual OMB "Regulatory Report Card." This information would help starkly disclose levels of regulatory activity, as well as reveal likely areas where accountability and disclosure can stand

improvement. For example, knowing what we *don't* know in terms of regulatory benefits can sometimes be as important as knowing what we do know, and expanding the Right-to-Know Act to incorporate such non-cost data is an ideal way of getting to the facts.

Institutionalizing regulatory oversight. Congress's scapegoating of agencies and the ensuing unaccountable regulatory drift would be at least partly checked by newfound cost-consciousness, and disclosure provided by such reforms as the Mandates Information and Right-to-Know bills. As Congress becomes seen as more accountable for regulation, it will face increasing incentives to make certain that benefits exceed costs from its own perch, rather than expect agencies to do it. A side effect of newfound incentives to attend to benefits is that Congress may be inspired to try to streamline the subject matter, perhaps by holding annual hearings to assemble yearly packages of reforms or reductions to consider, and on which to hold no-amendments-allowed votes. Institutionalizing such ongoing regulatory oversight probably won't get rid of much regulation, but it would further clarify the regulatory debate and keep regulatory costs illuminated under the same sustained spotlight as ordinary government spending. Plus ongoing oversight might dampen the tendency to overreach in the future.

Making Congress more answerable for regulatory costs and increasing disclosure, as the bipartisan Mandates Information and the Right-to-Know proposals will do, will help ensure that costs and benefits get taken into account far better than spitting more venom at agencies. Accountability and disclosure would begin placing the results of bad regulatory decision-making at Congress's doorstep rather than that of regulated parties alone. That an agency's basic impulse is to overstate benefits will never change: Congress has to take charge here. Only Congress can survey the entire regulatory state and weigh relative cross-agency benefits properly. Accordingly, agencies that now think within their own squares and today rarely admit a rule has negligible benefits, might be inspired to compete with one another to prove in congressional oversight hearings that their least-effective rules save more lives than others'. A newly accountable Congress would be inspired to listen. OMB's annual surveys will help in that critical job.

Beyond the Mandates Information and Right-to-Know proposals, the pinnacle of accountability would be a mandatory vote by Congress to approve agencies' noteworthy rules. As lawmakers, agencies may be part of the assembly line, but our elected Congress should pass the ultimate law. Yet, even if Congress itself approved all substantial agency regulations, the need for more formal disclosure of regulatory data -- the fundamental right to know -- remains. Other than taxing and spending, imposing regulatory costs is the only way that the government accomplishes its ends: That process shouldn't operate on auto-pilot, or under wraps, any more than our fiscal budget should. Mandates Information and Right-to-Know-style legislation subject the government's regulatory activity to the openness the public deserves to see.

Ultimately, regulatory accountability must come, not from merely forcing greater requirements for technical analysis of costs and benefits upon resistant agencies, but from institutional changes. These changes will shine a light on federal regulatory activity, and tightly specify the purpose, and reach of the regulatory powers Congress delegates to agencies in the first place. Then, the incentives to balance costs and benefits will be inescapable, and not something that must be forced.

Mr. MCINTOSH. Our second panel today is also a government official. He is a State Senator from California, Mr. Jim Costa, Senator Jim Costa, who is also vice president of the National Conference of State Legislatures. Welcome, Senator Costa. I appreciate you coming.

Normally we are asked to swear in witnesses. We have a policy of that, but for elected officials, we respect the integrity that you bring to your office and so we will skip by that. But I didn't want anyone else to be offended on that one.

Mr. COSTA. Thank you very much Mr. Chairman.

Mr. MCINTOSH. Mr. Costa, you can submit full testimony and summarize it or present whatever you want to us today on this issue. And I appreciate you traveling all the way from California to come and talk to us about this, and your perspective is very important about this.

STATEMENT OF JIM COSTA, SENATOR, CALIFORNIA STATE LEGISLATURE, AND VICE PRESIDENT, NATIONAL CONFERENCE OF STATE LEGISLATURES

Mr. COSTA. Thank you very much, Mr. Chairman. With your permission, I would like to do both, submit the written testimony and to summarize some of the key points that I think are important.

First of all, Mr. Chairman and members of the subcommittee, I am Senator Jim Costa. I am a member of the California Senate, where I chair the Senate Committee on Agriculture and Water. I am currently serving as the vice president of the National Conference of State Legislatures. I appear before you today on behalf of not only the National Conference of State Legislatures but also the six other organizations of State and local officials that comprise the "big seven" that are supporting H.R. 1074: The National Governors' Association, the Conference of State Legislatures, the Council of State Governments, the U.S. Conference of Mayors, the National Association of Counties, the National League of Cities, along with the International City and County Management Association. So it is my honor to be here on behalf of all of those organizations, wearing many hats this morning.

As you know, I think that my testimony adds a local perspective. It adds the local perspective in terms of where we think this legislation is on point, and I would also like to describe some steps which we have taken in California to accomplish similar goals in H.R. 1074.

For several years NCSL has raised concerns about the developments in relations between Federal and State governments. That is our job. A decade ago State legislators were alarmed about Federal unfunded mandates. We worked hard with members of this subcommittee and others in Congress to pass the Unfunded Mandates Reform Act. On a more recent concern, we have focused on the preemption of State and local authority by the Federal Government and on the Federal regulatory process. We believe the combination of the unfunded mandates along with preemption, and I would describe an archaic regulatory process, in fact curtails innovation and responsiveness of State and local government and, therefore, State and local officials.

The National Conference of State Legislatures views the Regulatory Right-to-Know Act as a part of the package of reforms that, when passed, combined with the others, will largely alleviate problems that we have identified with preemption and the regulatory process. This subcommittee has already approved two other parts of this package, H.R. 409, which streamlines the grant application process, and section 5 of H.R. 350, which makes critical technical corrections to the Mandates Reform Act. We look forward to working with the subcommittee on the fourth part of the package, a bill that would constrain the propensity of Congress to preempt State and local prerogatives.

The Regulatory Right-to-Know Act which is before you, we think contains four important elements, and let me list what they are: They include the annual accounting statement, the cost-benefit analysis, the analysis of duplication, and the notice and comment provision.

Let me quickly state on those four points that on the annual accounting statement, we think it will offer an important power of information to State, local and Federal officials concerned about the impact of agency decisions on State and local governments. We think it will also give Congress an indispensable oversight tool to determine whether or not agencies have exceeded their statutory authority when promulgating rules.

The second area, the cost-benefit analysis required under H.R. 1074, will make agency officials, we think more, accountable for the programs they are implementing. They give the public much more of a sense of how much funding it takes to provide a particular benefit, and we had that discussion just a moment ago.

The third element of H.R. 1074 calls for the analysis of duplications, inconsistencies, and overlaps in regulations. How often have we heard that from our constituents? This, we believe, will streamline the regulatory process, ease the cause of the considerable tension and frustration for State and local officials.

Finally, we are supportive of the bill's notice and comment provision. We think notice and comment is very critical. This element makes the accounting report a dynamic document, giving State and local officials a chance to highlight their most pressing concerns about recent Federal actions.

I am here today to let you know that State legislators try to practice what we preach. For the past 15 years or more—and this is my 21st year in the State legislature—State legislators have throughout the country wrestled with the same problems addressed in the Regulatory Right-to-Know Act. We have tried to make the regulatory process more open, accessible and accountable.

In California I can tell you that I have been involved in the passage of several bills that take similar approaches to H.R. 1074. We have a regulatory review unit in the Department of Trade and Commerce that reviews all rules in California. We require agencies to report unnecessary and conflicting rules, we require that all rules be accompanied by an economic impact statement, and we subject all major rules to regulatory calendar and sunset provisions.

I am pleased with the way that these provisions are working in California, and obviously there is always room for improvement. I

am also pleased that this subcommittee is attempting to take similar action on the Federal level. I believe that the State and Federal Governments have an obligation to our constituencies, to make the regulatory process more accountable and more responsive to those who are regulated, whether they are in the private sector or the public sector. Each step we take on the federalism front, whether it is the Unfunded Mandates Act, curtailing preemption, or making the regulatory process more accountable, is a step toward improving the responsiveness and the credibility of government which we all seek to attain.

It is not an abstract exercise, members of this subcommittee. Rather, it is a critical element in ensuring the public's confidence in our Federal system, confidence that is necessary. I look forward to working with you in passing H.R. 1074 on a bipartisan effort, and the other components of our federalism agenda. Thank you.

[The prepared statement of Mr. Costa follows:]

TESTIMONY OF

SENATOR JIM COSTA

CALIFORNIA STATE SENATE

ON BEHALF OF

THE NATIONAL CONFERENCE OF STATE LEGISLATURES

BEFORE THE HOUSE GOVERNMENT REFORM SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES AND REGULATORY AFFAIRS

MARCH 24, 1999

Mr. Chairman and members of the subcommittee. I am Senator Jim Costa, a member of the California State Senate and chairman of its Agriculture and Water Committee. I appear before you today on behalf of the National Conference of State Legislatures. For 1998-99, I am serving as the Vice President of NCSL and as a member of its Executive Committee.

I want to thank you, Mr. Chairman, for offering NCSL an opportunity to participate in this hearing. The National Conference of State Legislatures represents the state legislatures of the 50 states and the nation's commonwealths and territories. Since its inception, NCSL has been outspoken about the need to maintain and strengthen our federal system of government and to enhance intergovernmental relations. The focus of most of NCSL's policies and advocacy activity is on preserving state authority, providing flexibility to carry out state-federal partnerships, avoiding costly unfunded federal mandates and strengthening intergovernmental relations. Naturally, we are strong supporters of The Regulatory Right to Know Act of 1999, H.R. 1074.

1. NCSL'S AND THE BIG SEVEN'S SUPPORT FOR H.R. 1074. I come before you today not only as NCSL's representative, but also on behalf of all national organizations representing state and local government elected officials. In addition to NCSL, the National Governors' Association, the Council of State Governments, the National Association of Counties, The U.S. Conference of Mayors, the National League of Cities and the International City Managers Association (hereafter, the "Big Seven") have endorsed H.R. 1074, The Regulatory Right To Know Act of 1999. The Big Seven is supporting this bipartisan legislation because H.R. 1074

(1) will strengthen federal regulatory programs and rules, (2) will increase federal government accountability and (3) will foster better communications among federal agencies, state and local governments, the public and Congress. At this point, I would like to ask permission for the Big Seven's letter of March 10, 1999, supporting H.R. 1074, to be inserted into the subcommittee's record.

The Big Seven has also endorsed H.R. 1074 because it represents a critical piece in an agenda we collectively adopted in 1998 to bolster federalism. This agenda was crafted to temper the increasing propensity to preempt state and local authority and to improve communications with and consultations between the federal government and state and local government elected officials. We also identified the need to improve accountability and information regarding federal action and its impact on state and local governments. Finally, we identified numerous lingering problems with federal grant management that have prolonged unnecessary inefficiencies. Therefore, NCSL and its state and local government association partners have endorsed a series of federalism measures, including not only H.R. 1074, but also H.R. 409, section 5 of H.R. 350 and an as-yet-to-be-introduced federalism bill.

The House Government Reform Committee and the House of Representatives have done exemplary work with our federalism agenda this year with the overwhelming and expeditious passage of H.R. 409 and H.R. 350. The former will provide the much-needed streamlining of the federal grant application process. One section of H.R. 350 makes an important technical correction to the Unfunded Mandates Reform Act clarifying the Congressional Budget Office's

scoring responsibilities. I hope that, in the not too distant future, we will come before you again to discuss a federalism bill, including a preemption point of order, that NCSL's President, Representative Dan Blue of North Carolina, suggested to you last year when he testified before this same subcommittee.

2. THE ANNUAL ACCOUNTING STATEMENT. H.R. 1074 will provide an annual report analyzing the direct and indirect impacts of federal rules on federal, state, local and tribal governments. To understand the potential benefit of such a report, it should be compared with the procedures and annual reports now provided by the Congressional Budget Office pursuant to the Unfunded Mandates Reform Act (UMRA). UMRA provides a sound procedural mechanism for assessing the potential fiscal impact of unfunded federal mandates on state and local governments. This process has proven quite successful in limiting costly unfunded mandates on state and local governments. In short, when Congress is well informed about mandates, fewer mandates are imposed and costs to states and localities are limited. Additionally, UMRA requires the Congressional Budget Office to produce an annual report summarizing the analyses it has completed and commenting on congressional activities related to UMRA. This document has proven to be informative, accountable and useful. Without it, neither Congress nor state and local elected officials would have anything but hearsay, perceptions and anecdotes to document the workability and effectiveness of UMRA. Furthermore, the report has helped to identify shortcomings in the UMRA law, such as the one that H.R. 350 will remediate.

A similar reporting mechanism, such as that contemplated in H.R. 1074, is needed to prevent, or at

least to account for, similar mandates imposed through the regulatory process. H.R. 1074 calls on the President and the Office of Management and Budget to provide an annual regulatory statement that will include a summary accounting of annual actions taken by federal regulators. NCSL does not expect it will end the imposition of all unfunded federal mandates, but better, more comprehensive information and more accountability will limit the costs of regulatory mandates. Many regulatory mandates result from legislative directives, in which case agencies would appropriately continue to issue regulations regardless of the enactment of H.R. 1074. Other regulatory mandates, however, result from assumptions and overly broad reading of statutory language made during the rulemaking process. An annual report will go a long way to identifying the true fiscal impacts on state and local governments of promulgated rules, the vast majority of which do not have the same visibility as legislation. This report would give Congress an important tool in its oversight function to help ensure that agencies have not exceeded their statutory authority. The report could also assist with identification of unintended or undesirable consequences of current statutory language. Our hope is that the accounting statements required by H.R. 1074 would prove as useful as UMRA-required fiscal analyses. If so, they could curb the imposition of unfunded mandates that are not based on clear statements of legislative intent. They also would give Congress better information on the cumulative costs to states and localities of regulatory actions.

H.R. 1074 directs that these impacts be reported cumulatively. That is essential and it is critical it be accomplished from the outset. When regulations have a fiscal impact, it is best that state and local government policymakers be made aware of potential costs and benefits so that they can

plan accordingly. The cumulative reports will also lend the public, as well as elected officials, information accounting for both short-term and long-term regulatory action.

3. THE BENEFITS OF COST/BENEFIT REPORTING. The accounting report should also shed an intensive light on the costs and benefits of federal regulations. Lawmakers at all levels in recent years have come to understand the advantages of reasonable cost benefit analyses. H.R. 1074 calls for the same to be accomplished for major federal rules individually and in the aggregate. The cost-benefit analyses we sought and secured in the Safe Drinking Water Act Amendments of 1996 are but one example of the merit of these analyses. It compels those responsible for implementing programs to provide the public with summaries of how much funding it takes to provide particular benefits. NCSL believes these cost-benefit analyses make government officials increasingly accountable for and knowledgeable of the programs they create and carry out. NCSL believes this regulatory accounting report of net costs and benefits is essential. NCSL will volunteer to consult with this subcommittee and the administration on the implementation of this reporting requirement. We will share with you state and local government experience with similar endeavors. It is important, just as it has been with UMRA, to develop a process for preparing the aggregate report that will ensure that it is useful and informative and that it can be developed both efficiently and cost-effectively.

4. STREAMLINING THE REGULATORY PROCESS. One of the critical components of H.R. 409, The Federal Financial Assistance Management Improvement Act, passed unanimously by the House last month, was the section calling for an end to duplication of information. There

are many federal grant programs that essentially seek the same information and have common crosscutting requirements. It is not cost-effective or beneficial to repeatedly submit the same background information to the same agency for different programs. H.R. 409 will remedy that. Regarding duplication, H.R. 1074's Section 4 calls for an identification and analysis of regulatory duplications, inconsistencies and overlaps. These duplications and overlaps will continue to plague us unless, as provided in H.R. 1074, OMB or some similar entity aggressively seeks to identify and resolve these duplications. If faithfully implemented by OMB, H.R. 1074 would provide a good opportunity to weed out inefficiencies and to highlight "best practices" to be shared among all federal regulators.

5. COMMENT AND NOTICE. Finally, let me voice NCSL's support of the critical notice and comment requirement in Section 5. This requirement would avail elected officials and the general public of a final opportunity to comment on the accounting report and to have those remarks incorporated in an appendix along with the critiques of peer review organizations. In this way, more accurate information can be developed and a dialogue opened on the costs and benefits of regulatory actions.

6. NCSL'S FEDERALISM AGENDA. Mr. Chairman, members of the subcommittee, let me return at this point to my earlier references to the federalism agenda developed by NCSL and our state and local government association partners. That agenda is aimed at strengthening the federal-state-local partnership and federalism generally. Its goals are efficiency, accountability, enhanced communications and the protection of state and local government authority. H.R.

1074, H.R. 409 and section 5 of H.R. 350 are all intertwined. We believe you have done an exemplary job in expeditiously moving these bills forward. The next task we hope you will tackle is addressing the increasing propensity for both the Congress and federal regulators to preempt state and local government authority. NCSL's testimony to this subcommittee last year during your federalism hearings strongly noted that preemption has become the most pressing federalism problem in need of a solution. State legislators fervently believe that legislation akin to UMRA, establishing a procedural point of order and explicit preemption statement, will complete the federalism package NCSL believes is essential. If Congress or the Administration is going to preempt and, in effect, nullify state and local laws, then better information about the scope of preemption should be available. Congress should also be accountable for the preemptive effects of federal legislation by making a clear statement of its intent. We are prepared to work with this subcommittee, once you have completed your work on advancing H.R. 1074 to the Senate, on legislation to address our concerns with preemption.

Thank you for this opportunity to appear before you today on behalf of the National Conference of State Legislatures. I welcome your questions on the testimony I have provided today.

Mr. MCINTOSH. Senator Costa, I appreciate that. And Andrew, go ahead and work the light for me, because I have several questions but I don't want to delay our colleagues in having them have a chance to question Mr. Costa, too. So I will come back at the end if I do not get through in 5 minutes.

First of all, let me say thank you for your work, really the NCSL's work with one of our subsequent witnesses, Mr. DeSeve, on the federalism Executive order which I think we were able to, after some hearings here and work by OMB, to resolve the problems there and get that back on track. But the work of the NCSL was very instrumental in that, and I thank you for that.

I have got several questions about this particular bill, and what I may do is come back to those in my second round if they haven't been covered already, but I wanted to ask you two other things while I have got you here.

You mentioned you have a regulatory calendar and sunset on rules. Does that work—we have tried to do that here, and one of the concerns was that rules might lapse and that therefore the regulatory safeguard for health or safety or the environment might be endangered. Have you successfully been able to avoid that using the calendaring and sunset provisions in California?

Mr. COSTA. Well, we believe so, with the oversight process that the legislative body brings to the fore as we produce our budget each year. We have an annual budget in California. Those rules that are in place never pass unnoticed, and the public input is there and it is frequent.

So I think it has worked well in terms of calendaring it. It works both with our legislative calendar as well as with our budget calendar.

Mr. MCINTOSH. Well, a different subject for a different time. But I look forward to talking with you more about that, because that is something that we have been trying to move forward here in Washington, and your experience out in California may be informative to us.

Mr. COSTA. And I would be happy to give you other State experiences as well.

Mr. MCINTOSH. That would be great. Thank you.

Specifically about the bill before us today, you mentioned in your testimony you thought it was important that there be a review of OMB's draft accounting statements for public comment, and I was wondering, wanted to extrapolate on that. How will that be helpful for the State and local officials in terms of the input and the knowledge about the regulatory programs?

Mr. COSTA. Well, let's use most recently the Welfare Reform Act that was passed a little over 2 years ago, I guess, now. We on the State level, in implementing that, a host of States have acted I think very responsibly.

But when you are making changes in significant Federal-State programs, I think it is not only helpful but it is illuminating to have the State perspective in terms of how States are carrying out these Federal mandates and whether or not they are being properly funded or not, and whether or not the regulations are duplicative of what we have occurring on the State level. And so if we have this comment period, I think we can hopefully clear the lay

of the land, so to speak, so that we don't have, you know, more difficulty in terms of implementing new law.

Mr. MCINTOSH. I take it that it would also be important for there to be an appendix in the report reflecting those public comments and OMB's analysis of them?

Mr. COSTA. Yes, and let me emphasize that NCSL, along with the other big seven, strongly supports the appendix that provides us at least once a year to take an assessment, and we think that the annual appendix is really very important part of this legislation.

Mr. MCINTOSH. Great. Let me also ask you, on the impact of Federal rules and paperwork, what is the State and local elected officials' view of the requirement for an analysis of the cumulative not only direct but indirect effects of the Federal rules and paperwork on State and local governments?

Mr. COSTA. Simple is better, in a word. But the fact is that the less paperwork that we can create, I think the better off we all are, both on the Federal as well as on the State and the local level.

I am sure, Congressman, you and your colleagues are like myself. When we go to our districts, usually the second or third thing on the list of folks that we are meeting with, whether they be a county or city government, is, you know, we appreciate your help, we appreciate the changes, but can't you do this in a way that doesn't require us to rewrite the State Constitution?

And so all of this effort is really to I think try to reduce the amount of paperwork, and I think that has to be kept in mind.

Mr. MCINTOSH. I appreciate that. I am going to now turn to my colleagues, as my 5 minutes has lapsed, and we may cover the different questions I have. I also want to acknowledge another new member of our subcommittee is here, one of my classmates, the gentlewoman from Idaho, right?

Mrs. Helen Chenoweth, who we are welcoming as a new member of the subcommittee, and we welcome her perspective.

Mr. Kucinich, do you have any questions for Senator Costa?

Mr. KUCINICH. I did have a chance to read his testimony. I welcome the Senator, having served in the State Senate of Ohio, and I appreciate the work that you do. And California being a State that has such an impact on this country, I appreciate you taking the time to come and testify. Thank you.

Mr. COSTA. Thank you.

Mr. MCINTOSH. I am now going to recognize the vice chairman, Mr. Ryan, both for questions and also if you would take over the Chair. I have got an obligation and I will be back in about 10 minutes.

Mr. RYAN [presiding]. Thank you, Senator Costa. I wanted to ask you about some of the overlapping and duplication issues. What is the State and local officials' view on the requirement for an identification and analysis of overlaps, duplications, and potential inconsistencies among Federal regulatory processes, including processes across agencies which impact State and local governments?

Mr. COSTA. We think it is essential. If this legislation is to be comprehensive, you have to take careful assessment and examination of where these rules are overlapping, where they are duplicative, and where in making that assessment it becomes very clear,

both at the State and local level, that the rule is redundant and therefore unnecessary.

Mr. RYAN. And going on to the State and local's views, recommendations for reform, I wanted to get your assessment on the part of the bill which is section 4(a) in the bill, which requires OMB to present recommendations to reform inefficient and ineffective regulatory programs or program components, including the regs affecting State and local government. Have you taken a look at that part of the bill, and what is your reaction to that?

Mr. COSTA. We are supportive of it.

Mr. RYAN. Thank you.

Ms. Chenoweth.

Mrs. CHENOWETH. No questions.

Mr. RYAN. Well, thank you very much. I appreciate it.

Mr. COSTA. Thank you, and we look forward to working with you as the legislation progresses, and thank you for allowing us to testify this morning.

Mr. RYAN. We will now invite our third panel, Mr. Ed DeSeve, who is the Deputy Director of the Office of Management and Budget.

[Witness sworn.]

Mr. RYAN. I just want to say it is nice to see you again, Ed. It has been quite a while. We talked when I used to work over in the Senate about the District of Columbia provisions of the budget reconciliation bill 2 years ago. It is nice to see you again.

Mr. DESEVE. Thank you, I am delighted to be here. I think that is a bipartisan success. Mr. Davis—and Mr. Kucinich was a part of that, and on your left you have one of the key community activists in the District of Columbia who has been tremendously supportive of community affairs over the years, so I think it is a great success.

Mr. RYAN. Please proceed.

STATEMENT OF G. EDWARD DeSEVE, DEPUTY DIRECTOR FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET

Mr. DESEVE. Good morning. You invited me to discuss H.R. 1074, the Regulatory Right-to-Know Act of 1999. This bill would require the Office of Management and Budget to prepare a report on the costs and benefits of Federal regulations, submitted annually to Congress, accompanying the Federal budget. H.R. 1074 would significantly expand and make permanent what Congress has passed as appropriation riders over the past 3 years with administration support.

First, I would like to discuss the prior legislation and how the Office of Information and Regulatory Affairs implemented it. Second, I would like to discuss how H.R. 1074 differs from this prior legislation, and our serious objections to many of the changes.

As drafted, the administration opposes H.R. 1074. Before you mark up this bill, we would appreciate the opportunity to discuss our serious concerns with you and to suggest possible amendments.

The first two riders which we supported were passed on a bipartisan basis. They called upon OIRA to issue an annual report containing two categories of cost-benefit information: First, aggregate estimates of total annual costs and benefits of Federal regulatory

programs; and, second, estimates of the costs and benefits of major regulations issued during the year. Major regulations are defined as those with economic impact of over $100 million.

OIRA followed the guidance provided by the legislative history in developing these two reports and compiled the information concerning aggregate costs and benefits from economic studies prepared by outside experts or agencies. Much of the information concerning major rules was based on the economic analysis prepared by agencies in the course of each rulemaking. Similarly, relying on studies by outside experts and agencies, OIRA assessed the impacts on the private sector, State and local government, and the Federal Government in general terms. At the end of these reports, OIRA published the recommendations.

OIRA views its development of these reports as an incremental, iterative process designed to improve the quality of economic data. The content of the 1998 report reflected this incremental, iterative approach. The report discussed the progress that had been made and pointed out the need for further improvements in economic analysis. This 1998 report refined cost-benefit estimates prepared in the first report and those for previously issued regulations in order to build a historic data base. The 1998 report also responded to criticism of the first report by taking steps to standardize agency assumptions, monetize estimates where agencies had only quantified them.

Last year Congress passed a third appropriation rider which was broader in scope and more detailed than the first two. I have discussed OIRA's plans to implement the 1999 report in my statement.

H.R. 1074 adds considerable detail to what has been enacted before. We object to a number of its provisions which I would like to summarize. In addition, Mr. Chairman, I would be happy to give you a section-by-section analysis in writing for the record.

Mr. RYAN. Without objection.

Mr. DESEVE. First, provisions in H.R. 1074 appear to misunderstand what is possible and potentially useful. H.R. 1074 could be interpreted to require the compilation of data that are not now available. It does so by eliminating the qualifying phrase "to the extent feasible" from Section 4(a)(1) and by calling for a quantification of cost-benefit analysis where data are not likely to be available.

H.R. 1074 could further be interpreted, in a way inconsistent with previous legislative history, as requiring the creation of a large number of new economic analyses that do not now exist. We strongly object to having the bill require new economic analyses when its purpose, as Senator—I'm going to give him a promotion here—as Chairman Bliley indicated, that its purpose was to codify the reporting requirements of OMB in statute.

Second, H.R. 1074 calls for macroeconomic analysis and legislative recommendations that are not appropriate for this report. H.R. 1074 would establish a ponderous institutional structure. That is hard for somebody from OMB to say: ponderous institutional structure.

Mr. RYAN. Don't say it very often.

Mr. DESEVE. We are opposed to that, and we are opposed to paperwork as well. H.R. 1074 would establish a ponderous institutional structure, given the detailed requirements and many procedures and the serious limitations inherent in cost-benefit analysis. We strongly object to the detail in these procedures and believe their cumulative effect will undermine, not enhance, the timely development of regulations and of an annual report. We see no need to require OIRA to consult with, in statute, CEA and CBO. We regularly work on a staff basis with them.

In conclusion, the bill could be interpreted to limit OIRA's discretion and flexibility to compile a useful report based on academic studies and undertake other initiatives. We support public comment on the report, but we do not support the notion of peer review. It would be very difficult to determine who the peer review selectees should be.

In summary, we urge you to carefully reconsider the complexity of detail, and look forward to working with you as you move forward with this legislation. Thank you very much.

[The prepared statement of Mr. DeSeve follows:]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

STATEMENT OF G. EDWARD DESEVE
DEPUTY DIRECTOR FOR MANAGEMENT
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS
COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
March 24, 1999

Good morning, Mr. Chairman and members of this Subcommittee. You invited me to discuss H.R. 1074, the "Regulatory Right-to-Know Act of 1999." This bill would require that the Office of Management and Budget (OMB) prepare a Report on the Costs and Benefits of Federal Regulations. OMB would submit this report to Congress annually, accompanying the Federal Budget.

H.R. 1074 would significantly expand and make permanent what Congress has passed as appropriation riders over the past three years. First, I would like to discuss the prior legislation and how the Office of Information and Regulatory Affairs (OIRA) implemented it. Second, I would like to discuss how H.R. 1074 differs from this prior legislation, and our serious objections to many of these changes.

As drafted, the Administration opposes H.R. 1074. Before you mark up this bill, we would appreciate the opportunity to discuss our serious concerns with you and to suggest possible amendments.

Legislative Background

The first two riders, which we supported, were passed on a bipartisan basis. They called upon OIRA to issue an annual report containing two categories of cost-benefit information: (1) estimates of the total annual costs and benefits of Federal regulatory programs, in the aggregate; and (2) estimates of the costs and benefits of major regulations issued during the year. Major regulations are those with an economic impact of over $100 million.

OIRA followed the guidance provided by the legislative history[1] in developing these two reports, and compiled the information concerning aggregate costs and benefits from economic studies prepared by outside experts or the agencies. Much of the information concerning major rules was based on the economic analysis prepared by agencies in the course of each rulemaking. Similarly relying on studies by outside experts and agencies, OIRA assessed the impacts of Federal rules on the private sector, State and local government, and the Federal government in general terms. At the end of these reports, OIRA published recommendations.

OIRA views its development of these reports as an incremental, iterative process – a process designed to improve the quality of economic data and cost-benefit analyses over time. The 1997 report detailed gaps and inconsistencies in many of the existing aggregate estimates of costs and benefits. It pointed out that agencies were not using the same assumptions and methodologies in preparing cost-benefit analyses of individual rules. To help correct this, the 1997 report recommended that an interagency group of experts be convened to help develop standardized assumptions and methodologies to be applied more uniformly across regulatory programs.

The content of the 1998 report reflected this incremental, iterative approach. The 1998 report discussed the progress that had been made and pointed out the need for further improvements in improving economic analysis. The 1998 report refined cost-benefit estimates presented in the first

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[1] Senators Glenn and Levin, September 12, 1996, Congressional Record, p. S10397. Chairman Thompson, July 17, 1997, Congressional Record, p. S7701.

report and summarized cost-benefit estimates for previously issued regulations in order to build an historic data base. The 1998 report responded to criticism of the first report by taking steps to standardize agency assumptions and monetize estimates where agencies had only quantified them.

Last year, Congress passed a third appropriation rider that was broader in scope and more detailed than the first two. The cost-benefit report is to accompany the FY 2001 budget. "To the extent feasible," the third appropriation rider calls for additional levels of cost-benefit analysis, grouped by "agency and agency program." It also calls for an assessment of the impacts of Federal rules on "small business, wages, and economic growth."

The only procedural requirement in the first two appropriation riders was publication of the draft report for public comment. The third appropriation rider adds two more procedures: (1) OMB issuance of guidelines to agencies to standardize "measures of costs and benefits; and the format of accounting statements;" and (2) "independent and external peer review" of both the guidelines and the draft report.

OIRA is in the process of developing the guidance requested. This guidance will be based on the "Best Practices" document already issued as the result of an exhaustive, two-year interagency effort.

Following the same incremental, iterative approach OIRA took with the first two reports, OIRA plans to develop a third report that will contain more detail than the previous reports. Consistent with the legislative history, OIRA will review studies prepared by outside experts and the agencies, identify the studies that OIRA believes are most pertinent to the issues addressed in the report, and present a compilation of these existing studies. Based on OIRA's general understanding of the level of detail provided in the existing studies already prepared by outside experts and the agencies, the third report will not provide detailed analysis of each and every agency, nor will it cover each and every

agency program. Nor will OIRA be able, except in very general terms, to discuss the impacts of Federal regulations on local governments, small business, wages, and economic growth.

H.R. 1074, the "Regulatory Right-to-Know Act of 1999."

H.R. 1074 adds considerable detail to what has been enacted before. We object to a number of these provisions.

1. Provisions in H.R. 1074 appear to misunderstand what is possible and potentially useful.

First, H.R. 1074 could be interpreted to require the compilation of data that is not now available.

- Last year's appropriation rider directs OIRA to estimate total annual costs and benefits "(A) in the aggregate; (B) by agency and agency program; and (C) by major rule." The appropriation rider authorized OIRA, in compiling this information, to do so "to the extent feasible." This qualifying phrase permits OIRA to aggregate cost-benefit estimates based on existing academic and peer reviewed agency studies that OIRA thinks appropriate for the report. OIRA will be able to set forth aggregates of subcategories for agencies and agency programs only where data is reasonably available. For major rules, OIRA will be able to rely upon the cost-benefit analyses prepared by the agencies in the course of OIRA's regulatory reviews under E.O. 12866.

  By deleting the qualifier "to the extent feasible," H.R. 1074 could be interpreted as deleting such flexibility. H.R. 1074 could further be interpreted – in a way inconsistent with the previous legislative history – as requiring the creation of a large number of new economic analyses that do not now exist. We strongly object to having H.R. 1074 require new economic analyses

when simply intending to codify OMB's annual reporting requirement.

- Under section 4(b), H.R. 1074 adds provisions calling for OMB to "quantify the net benefits or net costs" of "each program component", "each major rule", and "each option for which costs and benefits were included" in an agency's regulatory impact analysis "to the extent feasible." If an agency's cost-benefit analysis provides OIRA the underlying data of sufficient specificity and reliability to "quantify" both benefits and costs in each of these cases, OIRA would be able to do this. If the agency's analysis lacks such necessary data, OIRA will not be able to quantify it. To the extent this provision applies to a currently existing "program component" – meaning "a set of related rules" – I can only say that no agency regulatory impact analysis and only a few other studies now provide such data.

Second, H.R. 1074 calls for analyses and recommendations that are not appropriate for this report.

- Under section 4(a)(2), H.R. 1074 adds provisions calling for an analysis of "direct and indirect impacts of Federal rules and paperwork" on "consumer prices, productivity, ... and distributional effects." OIRA is unaware of any comprehensive body of economic literature concerning these and other of the topics covered by section 4(a)(2) for specific Federal rules and paperwork. The topics covered by section 4(a)(2) tend to be macroeconomic in scope, and, therefore, are not easily addressed using the available techniques of microeconomic analysis that underlies the cost-benefit analyses of individual rules and paperworks on which the annual report is largely based.

- Under section 4(a)(3), H.R. 1074 adds a provision having OIRA identify and analyze "overlaps, duplications, and potential inconsistencies among Federal regulatory programs." While we all agree that we need to work together to reduce such regulatory problems, we

question the appropriateness of such analysis in this report. This report is basically a compilation of cost-benefit analyses. Overlap, duplication, and potential regulatory inconsistencies are generally more a matter of legislative structure -- matters that are better solved legislatively through established procedures to propose legislative initiatives.

- Under new provisions in section 4(a)(4), OIRA would be asked to make recommendations to "reform inefficient or ineffective regulatory programs or program components." We have the same concerns as with section 4(a)(3). The recommendations that H.R. 1074 calls for appear to have little relation to a compilation of cost-benefit analyses; the basis for such recommendations would have to come from some other source. In which case, we see little need to change the existing procedures by which the Executive interacts with the Legislative branch on legislative initiatives. In any event, this annual cost-benefit report is not the appropriate vehicle to use for this purpose.

2. H.R. 1074 would establish a ponderous institutional structure to create a report that is not administratively justified, given the detailed requirements and many procedures and the serious limitations inherent in cost-benefit analysis.

Let me describe these many procedures. To develop the annual report, OMB is to issue guidelines "to standardize most plausible measures of costs and benefits; and the format of information" that agencies are to provide OMB. OMB is to issue these guidelines after consultation with both the Congressional Budget Office (CBO) and the Council of Economic Advisors (CEA). The draft guidelines are to be subject to 60-day public comment, presumably through publication in the Federal Register. The draft guidelines are to be subject to the peer review of "2 or more organizations that have nationally recognized expertise in regulatory analysis and regulatory accounting and that are independent of and external to the Government." Peer reviewers are to provide written comments "in a timely manner," and OMB is to "use" the peer review comments "in preparing" these guidelines. With

these guidelines, OMB is to include an appendix "addressing the public comments and peer review comments" OMB has received. OMB is to review agency submissions "to assure consistency" with these guidelines, and assemble a draft report. OMB is to repeat all of these consultation, 60-day public comment, and peer review procedures before issuing the final report.

We strongly object to the level of detail in these procedures, and believe their cumulative effect will undermine, not enhance the timely development of the annual report, given the staff resources available to OIRA. I will identify a few examples.

- We see no need in H.R. 1074 for the issuance of guidelines. Under the third appropriation rider, OIRA is already in the process of issuing these guidelines. To include this requirement in H.R. 1074 appears confusing and needlessly duplicative. We also note that H.R. 1074 adds the phrase, "most plausible." We are unaware of what "most plausible" is intended to mean, given that OIRA already plans to issue guidance based on the previously issued "Best Practices" document.

- We see no need to require OIRA to consult with CEA. CEA co-chaired the interagency working group that developed the "Best Practices" document on which OIRA plans to base the guidance called for in the third appropriation rider. OIRA staff already routinely consult with CEA staff on such matters.

- We see no need to require OIRA to consult with CBO. OMB staff have, by long tradition, worked and cooperated with CBO staff. We see no reason to require such coordination by statute.

- We object to the duplicative requirement that OIRA seek both public comment and peer review. For this report, we do not object to having to do one or the other. We prefer public

comment. The public comments that OIRA received on the two reports in fact came from a number of peers, many of whom are individuals at organizations described in section 7 of H.R. 1074. The duplicative requirement to do both would be administratively cumbersome, and would add little to the comments OIRA would otherwise receive as part of the general request for public comments.

We also object to having to seek peer review by organizations, instead of by recognized individuals -- organizations would likely have to come to internal institutional agreement, which could take too much time. We are concerned that H.R. 1074 could be interpreted to require formal peer review, for which OMB does not have appropriations funding. In addition, we do not understand what is mean by OIRA having to "use" peer review comments "in preparing" the guidelines or final report.

In sum, H.R. 1074 could be interpreted to limit OIRA's discretion and flexibility to compile a useful report based on existing agency and academic studies and to undertake its other initiatives to improve agency cost-benefit analysis. To satisfy H.R. 1074, agencies may have to be called upon to compile detailed data that they do not now have, and undertake analyses that they do not now conduct, using scarce staff and contract resources, regardless of any practical analytic need as part of the rulemaking process. On the assumption that the Congress would want cost-benefit analysis to improve and become institutionally more routine, you are not, in H.R. 1074, creating the institutional incentives to do this.

We urge you to carefully reconsider the complexity and detail you have included in H.R. 1074. Thank you for the opportunity to testify, and I welcome any questions you may have.

Mr. RYAN. Thank you. Well, I would like to take your attention to the part of your testimony—you state OMB's objection to a requirement for an analysis of the direct and indirect impacts of Federal rules and paperwork on various sectors of the economy and various factors, the requirement in section 4(a)(2) of the bill, as not appropriate for this report.

What is OMB's view of the value of an impacts analysis for State and local governments, the private sector, small businesses? Would OMB support a phase-in of the requirement for these sectoral impact analyses?

Mr. DESEVE. We would be happy to work with you to try to determine what is possible and what is useful.

Mr. RYAN. Going to peer review, you just mentioned in your testimony and in your verbal testimony your objection to peer review. Given the fact that we have peer review in certain areas today, since agencies have an incentive to low-ball estimates of regulatory costs and exaggerate estimates of regulatory benefits, and since OMB has not provided in its first two reports to Congress an independent assessment and reestimate of agency estimates, wouldn't peer review by expert independent organizations be helpful for you? Wouldn't that be helpful in correcting agency estimates?

Mr. DESEVE. Our problem is, in many cases, choosing who the peer entities are and then following guidance of a third party who is a nongovernmental entity. We prefer to get public comment, including those organizations, and from that public comment use it to guide the regulatory review process. The agencies themselves have taken into account consulting studies and scientific data as they have gone forward, and typically that information is available to outside bodies.

We get a very large number of comments. We are now doing a review on actually an implementation of a piece of legislation for OMB circular A–110. We have gotten over 2,000 comments so far, most of which has been individual entity comments. So we don't think that peer review is really a good idea because it is hard to choose who the peers are. We would have to deselect certain groups and select other groups. We think that the public comment process gives them a chance to do that. We think agencies typically use qualified individuals in developing the data over time.

Mr. RYAN. Well, let me press on that point with you for a second longer. Since no comments are on OMB's draft report to Congress—provided comments on each part of the draft report, and since OMB admits there are methodological problems, wouldn't peer review strengthen OMB's final report?

Mr. DESEVE. We don't think so. We think that the peers themselves would be focusing not necessarily on the overall nature of economic analysis over the overall nature of the process, but rather specific flaws in the legislation that were germane to their own points of view. If I were to select the peers, you might disagree with me not just on their conclusions but also on my process of selection.

The use of peer review in many situations in scientific analysis, I think, is broad and has been used by agencies effectively. The National Science Foundation has peer review of grants. That is appropriate as necessary in a broad context at the agency level.

But when you set it up at the review level, after the agencies have used their judgment to bring in outside experts, if I brought in A and B who were known to be of a particular point of view, you could easily criticize the objectivity of that review.

Mr. RYAN. Noting your concern about that, about tainting the review, you could get peer review from wide ranges of views, people from different view points; and it sounds like since you are already cognizant of that problem possibly occurring couldn't you implement peer review by getting wide-ranging views?

Mr. DESEVE. It is certainly possible to do so. The cost of that, as well as the time it takes to do so—and you always exclude somebody. When you choose a peer, you are always going to say, "Well, I have taken 10 individuals or 10 organizations; and I have left out 2 or 3 who will have very strongly held views on the subject." So I am concerned—we would love to have public comments. We would like to have any of these organizations provide comments. And I assume we are also going to have to pay the peers. They are not going to do it for free. Now, I have got a situation where I choose a contractor. I can essentially sole-source that contractor; I suppose I could bid it as well. I am building both time and cost into the process which is already a long process of regulatory review and economic analysis along the way.

So we are very encouraging of public comment, but we think the approach of public comment and peer review is one that is just going to add complexity to the process.

Mr. RYAN. I hope you rethink that and look at it a little further. Winston Churchill said that democracy is the worst form of government, except all the other forms of government. So it is a sloppy process. But I think that peer review will help you do your job, will help you get all of the input that you need. And you can go out and get diverse points of view. So I hope you rethink that one and take a look at it, and I would ask you to make that consideration.

Mr. DESEVE. We will be happy to talk to the committee about it further.

Mr. RYAN. My time has expired. I turn it over to the chairman.

Mr. MCINTOSH. Thank you, Mr. Ryan; and thank you for chairing in my absence and continuing to do so. Mr. DeSeve, first, welcome. I understand that you are moving on from OMB and want to wish you the best in the next phase of your career and take this moment to thank you for your work on the federalism Executive order. You were here before us when it was in limbo and that matter was resolved, and I appreciate the work that you did on that.

Mr. DESEVE. Mr. Chairman, I guess I ought to be clear. I think there are still ongoing discussions between the big seven and the administration to perfect a substitute. I think that is still happening—ah-hah, a note from the trenches. That is exactly what I thought. The order was withdrawn, which I think was your recommendation; and there is continuing conversation between the big seven and the administration as to what a substitute might look like.

Mr. MCINTOSH. So we may still be doing some work on that.

Mr. DESEVE. That's correct. But I think it is consistent with the concerns that you had about not having the Executive order in

place. It was withdrawn, and at the same time we are continuing to negotiate.

Mr. MCINTOSH. Good. Good. And we will continue to watch that and have our say as well.

Let me ask you on some of your comments here, it is my understanding that in the reports that OMB has prepared there has been public comments to that. Was that process for those reports beneficial?

Mr. DESEVE. We believe it was very beneficial, and we would like to continue the public comment process in all aspects of the report.

Mr. MCINTOSH. OK. Good. And picking up a little bit on the peer review, although I think you stated your position well, I have to say I am skeptical of that, because my experience from government—and it is human nature. Nobody wants to have somebody looking over their shoulder questioning their work, but it is also healthy. And so I would hope that we could, as Mr. Ryan asked you, to continue to think about that and find ways where maybe you all could find constructive ways of making that process work, and we could get the constructive benefit of that outside input.

The overlaps and duplications and inconsistency and your comments there you were concerned that what the report would end up focusing on in many cases would be statutory problems that the agencies have to deal with, where Congress has legislated over the years and created requirements that create those overlaps and duplications and inconsistencies. And I am confident that you are correct that a lot of that problem comes from the nature of the process with legislation and different committees, but also different times in which bills were passed.

But do you see a role where, perhaps, bringing those to focus in one area, even if it ends up pointing out that we cannot change it by the regulatory process because we are mandated by law to do these inconsistent things or overlapping things, that it might then help us be able to sort them out here and go to the appropriate committees?

One of the things that Chairman Bliley mentioned was his view was very much that this would help the committees in their work as a report on the underlying legislation. And so that perhaps we could keep that in there; but allow you all, essentially, to focus where it is legislative versus regulatory in nature.

Mr. DESEVE. Our concern here is that we are breaking new ground. The economic costs and benefits have been dealt with over the last 2 years in riders. Now the 3rd year. As we think about having to codify for a historical base of regulations duplication and then having to go back and examine where those duplications and overlaps exist, it is terra incognito for us. It is new territory for us. We are concerned that it is a very deep requirement that we haven't thought through before.

Also in identifying what is an overlap and what is redundancy, we are going to have to exercise some judgment. One man's overlap may be another man's support in some circumstances. So rendering that kind of judgment is something that we are concerned about.

We do, under the Executive order, examine the body of regulatory statutes or other regulations surrounding a particular new regulation as it comes forward. So if regulation A shows up, we do

look and examine the other regulations. We could certainly, in examining those regulations, indicate the other regulations in that family that we examined as we do that. That is something that we could do in that regulatory process. If you mix that into the cost-benefit report, you get an apple and an orange, or at least an apple and a kumquat of some sort. You get a blending that, again, adds in a layer of complexity.

So we would like to talk about achieving the purpose of making sure that there is an understanding of the other regulations that surround this one, without forcing us to use either independent judgment of what is an overlap and what is a duplication or what is reinforcing. So, again, transparency is certainly something that we could do, but then to have an analytic judgment requires a much greater level of work on our part than simply displaying those overlaps or those reinforcements.

Mr. MCINTOSH. Well, let me say I think it would be helpful to us in Congress for the executive to go ahead and exercise some of that judgment; and we may disagree—and certainly the committees who have written the different legislation may have different opinions—but I think it would be, in general, helpful in the process.

Let me also take a moment to say—and I talked to Chairman Bliley after his testimony. He wanted me to mention that his goal was not to create a lot of new burdens for you. You have identified one that was. And he said he did realize that there may be some additional things in the legislation; but he was wanting to indicate a willingness to work with everybody in making sure that that was not a large additional burden and that his view of the legislation was that on the whole, it should not be a tremendously new area of burdens for OMB. There may technically be some new information that you are being requested to provide in this report. So he wanted me to clarify the record on that, based on your question to him.

Mr. KUCINICH. Will the gentleman yield? I believe that what Mr. Bliley said is that there would be no new analysis.

Mr. MCINTOSH. Right. And that is what he is asking me to clarify, that there may be a couple of areas the way the legislation is drafted that might, in fact, be new. I think Mr. DeSeve has pointed out one here.

Mr. KUCINICH. Does Mr. Bliley intend to correct his testimony?

Mr. MCINTOSH. That is what he asked me to do, correct the record. That the intent was that there not be a large new burden coming from those and that he wanted to work with you and me; that as the legislation went forward, if that was an area of concern, that we could work together on it.

Mr. KUCINICH. Well, it is an area of concern. I wish that Chairman Bliley could have had a little bit more time so that he wasn't feeling rushed and, therefore, gave a one-word answer to a question which has enormous import. Because certainly what underpins this whole debate is that question about is there going to be new analysis. And so I certainly take the Chair at his word in relating Mr. Bliley's account, but I do think that somehow complicates our deliberations here.

Mr. MCINTOSH. What I might do, if it is all right with Mr. Kucinich, is ask him if he has further things that he wanted to put in the record addressing that in particular.

Mr. KUCINICH. First of all, I would have no objection of doing that, provided that we could also put in some additional questions so we can carry the debate.

Mr. MCINTOSH. Let me know what your questions are and, we will make sure that we get the answers for them in the record.

Mr. KUCINICH. I would like to see his statement, and then I would add my questions, not my questions first and then his statement. That would be too much like Lewis Carroll, and my name is Kucinich.

Mr. MCINTOSH. We will work with you to make sure any concerns you have got based on what is in the record get answered so that we can have a complete record on the bill. We will work with you on that.

Mr. KUCINICH. I am sure we will work together.

Mr. MCINTOSH. My time has expired. I will turn it back to Mr. Ryan, who is going to continue chairing the hearing.

Mr. RYAN. Mr. Kucinich.

Mr. KUCINICH. Thanks very much. I appreciate it.

Welcome. H.R. 1074 requires a number of new analyses, including cost-benefit analyses for each agency program and program component, Mr. DeSeve. Another new requirement provides that reports cover costs and benefits for 2 previous years for the following 4 years. In addition, the bill adds that, to the extent feasible, OMB must quantify net benefits and costs for each program, major rule, and option discussed in any regulatory impact analysis for any major rule.

So the question comes, does OMB have the resources to adequately conduct such analyses?

Mr. DESEVE. No, sir, not at this time.

Mr. KUCINICH. Why not?

Mr. DESEVE. The budget process didn't give them to us. This is a new set of requirements that were not anticipated previously, and we just don't have the money for them. It is just not in our budget.

Mr. KUCINICH. OK. And also if you were to have that imposed on you, what would be the effect?

Mr. DESEVE. You have to make a calculation, which I have not reviewed, on the cost of $35 million. To give you an order of magnitude, that would be an increase in the OMB budget in the order of magnitude of 70 percent to the overall OMB budget. Our budget is about—roughly $50 million a year. We have roughly 512 employees, FTE.

Mr. KUCINICH. Let me turn it around now. It is my understanding that most of the analyses is done by agencies and not by OMB.

Mr. DESEVE. And we also rely on third parties who are published experts in the area and will tend to bracket their opinions. If you have a published expert over here and everybody agrees published expert over there, we will show what their estimates would do in a particular area, as well as relying on the work the agency has done in terms of the regulation.

We try to avoid a centralized bureaucracy that in the first instance, de novo, prepares analysis that already has been done by the agency. We try to avoid that level of overlap and duplication. We do do quality control. We do the review. We do coordination of those, but we don't do the initial de novo analysis ourselves.

Mr. KUCINICH. Are you familiar with the testimony of Dr. Seeker of the EPA Science Advisory Board? He testified before the Committee on Science a few days ago.

Mr. DESEVE. I am not familiar.

Mr. KUCINICH. He stated that the new requirement for cost-benefit analyses on regulatory programs, "Will a new program in research to address the knowledge gaps which inhibit comprehensive cost analyses." So the question I have: Do agencies currently have the resources needed to provide adequate H.R. 1074 analyses?

Mr. DESEVE. The problem really is—in his case goes beyond resources. There doesn't exist a body of work or a body of knowledge in each program area, in each program component, that would allow an individual to determine the cost and benefit with the kind of precision that seems to be called for here. So I think what he was suggesting is you would have to have a new body of knowledge created, a new data base, a new set of experiments over a fairly long period of time. If you are talking about a regulation——

Mr. KUCINICH. Otherwise, we wouldn't know what we wouldn't know?

Mr. DESEVE. That is correct. If you are talking about a regulation that might affect the health of children when they were in middle age, for example, you would have to have a longitudinal study over a time period to be able to assess what the benefit of that regulation was. We just simply don't know that now.

Mr. KUCINICH. You mentioned before when we were talking about estimates you really didn't have one. Could you get—I know this might do violence to the whole concept of this bill. Could you give me an estimate of what this would cost?

Mr. DESEVE. Would you like to have it peer reviewed? That was a joke, I am sorry. I apologize. We will be happy——

Mr. KUCINICH. We take jokes here as long as you don't turn them into law.

Mr. DESEVE. We will be happy to try to prepare such a recommendation and get it back to you. I think we can do that without increasing our staff.

Mr. KUCINICH. OK. Thanks a lot. Thank you.

Mr. RYAN. Mrs. Chenoweth.

Mrs. CHENOWETH. Thank you, Mr. Chairman. In your testimony, you state that OMB's view that some of the analytical requirements of the bill are not doable and that OMB's preference really is a guideline from the Congress that says "to the extent feasible." Isn't such a qualifier an invitation for OMB and the agencies to do less than their very best in this analysis?

Mr. DESEVE. That is a good question, Mrs. Chenoweth; and we appreciate the fact that Congress has seen fit to give us that guidance in the riders that we have had. They have put that "to the extent feasible" in the riders. This bill in this particular section removes that.

The difficulty with feasibility issue here is that you can only do what you can do. And this creates an expectation that you have the capability or that there exists the body of knowledge to do something that is not possible. Albert Einstein tried for years to find the unified theory of matter, and at the end of his life he realized that it was impossible for anyone to find a unified theory of matter. But he spent years and years trying to do that.

We are suggesting that many of the analyses that this bill, as it goes into greater detail, would have us do, are simply not possible to be done. And we could spend a lot of money demonstrating the fact that you can't do what the bill requires. If you let us exercise our judgment with public comment in how we exercised our judgment with congressional oversight in hearings such as today and continuing to try to improve the way we do our work over time, if you give us the option of trying to use that judgment to determine what is currently feasible, and then trust but verify. Verify what we have done is an honest effort. Senator Stevens has looked very carefully at our reports, as have others. If it is not an honest effort, then excoriate us for it; and we would hope the public would do the same.

Mrs. CHENOWETH. See, our concern is that which is being reflected by our constituents. And our concern, for example, is that various budget projections by OMB sometimes are off hundreds of millions of dollars and sometimes billions. And so we are not asking you to have your staff project into Einstein's theories, which are esoteric in large part to some of us who are on-the-ground analyzers. But what our constituents are asking us is to push to make sure that we tighten up the accountability.

If we don't have language that is very clear and we give the agency time to develop and do their best job, which I know—I mean, I know the sincerity in which you offer the comments, but time has not lent itself to the fact that agencies will get better. By nature, they tend to get a little more lax; and that is one of the reasons why the language in the bill is as it is. And I hope you can join us and appreciate the reason why.

Mr. DESEVE. We do have experience of agency laxity. All of our agencies are superior. It is like Lake Wobegon. They are all above average. But we do have to, from time to time, remind them of the rigor with which they have to do their work; and we do try to set those standards and set those patterns for agencies where we can.

Mrs. CHENOWETH. Also you stated that OMB's objections to various provisions in the bill is we strongly object to having H.R. 1074 require new economic analyses when simply intending to codify OMB's annual reporting requirement. The intent of the bill is not simply to codify an annual reporting requirement, but since the additional analysis required are each individually important and needed for public understanding of the impact. And that is what we need together to get. That is our goal. The Federal regulatory programs, what vehicle would OMB prefer for imposition of these requirements?

Mr. DESEVE. Again, I think I would like to stand with Chairman Bliley, and he is going to extend his comments; but our point is that an enormous amount of analysis is currently done by the agencies in the regulatory process. We then take that body of data,

and we review it at OMB. From time to time, we ask for augmentation of that.

What we don't do is start de novo ourselves, making a new analysis based on the facts of the regulation. We don't go out and look at the impact of particulate matter in ozone, to take one that has been very controversial. We rely on the scientific analysis done by EPA. We then look at that, and we get public comment on that. We talk to the EPA folks about it. We use our judgment in probing that analysis.

That is the process we think is appropriate. If you create a centralized bureaucracy that itself will be doing the economic analysis, it will so stymie the work of agencies, because it is analysis that will have to be done twice. We think the right place to do the analysis, and the people to hold accountable, are the people in EPA, the people in the energy department, and others who are doing the analysis in the first place, rather than having us be required to do it.

Mrs. CHENOWETH. I see my time is up, but I would like to work with the Chair in submitting more questions.

Mr. RYAN. Without objection. Mr. DeSeve, I would like to continue on the train of thought you were just on. One of the things that I think is very beneficial about OMB is the fact that you are the budgeter for the Federal Government; that you, Ed DeSeve and the OMB, take the numbers from the Federal agencies on spending programs; you analyze the data, you analyze what appropriate spending levels, and you actually cut spending, and you increase spending, and do your own independent analysis about what kind of spending levels we have in discretionary spending. You do your own independent review of the Federal budget, so to speak, and add your own auditors; and your own staff do independent auditing fresh from the start. That is a wonderful process that I think helps us inject fiscal discipline into our Federal budgeting process. Why not do the same thing for our Federal regulatory process?

One of the greatest things that the OMB has brought to enable our Federal budget is some type of fiscal discipline, independent analysis by trained economists and budget specialists to get that kind of discipline. Why not do the same thing for the Federal regulatory process?

Mr. DESEVE. That is a good question. Let me try to use the analogy, and I hope I will do it properly.

What we try to do at OMB is first get the aggregates right. We look at the potential productivity, along with Treasury, of the tax system; and we make projections out into the future with Treasury about what that might yield. We then, once we have done that, look at what the agencies' expenditure requests are; and within the context of our agreement with Congress as to the balanced budget caps, we ask the agencies to submit their budgets. We don't prepare the budgets for them, just as we don't prepare economic analysis for rules. We don't look at the level of the WIC program or the level of the highway program. That is done by the agencies. We then analyze that and review it and see, together with Treasury, together with the Council of Economic Advisers, under the statutes how that fits.

We then make independent judgments of our own and pass those back to the agencies. The agencies typically erupt and reject those judgments, and back and forth we negotiate with the agencies based on their budget. The aggregate amount of money that will move in any year will not be enormous. I hate to characterize it—but it will be a small amount compared to the work the agencies have done in preparing their base budgets.

I think the analogy carried forward is that is the way we try to do rules. We try to set a general framework, a general template. We try to look at all of the general information; and then as rules come forward, we work with the agencies who prepared the specific analysis to fit those in that framework, giving them our best judgment and we fight with them. We sit down—it is not hand-to-hand combat, but there is a significant amount of tension both with an individual agency and among a group of agencies who may have disparate views about a regulation.

Mr. RYAN. I think you just made a perfect point, in that the agencies are going to ask for the best funding possible. You know, the most funding for WIC or any discretionary program, and it is within their interest to push for higher funding. You serve as a control over that mechanism, over that process. The same, I would think, would work with the regulatory process.

You talk about the regulations being promulgated by the agencies which have the same kind of incentive built in, which is probably something that goes beyond cost-benefit analysis, beyond sound science research. Where we are going to promulgate regulations that may be promulgated through a narrower viewpoint, OMB can serve as a control to that. And you have this give and take. Wouldn't this bill, in my opinion, and peer review and accounting, wouldn't that supplement your ability to be that independent control over the process?

And one of the things I did want to ask you about that—and that was more of a statement, I know—do you keep a running list of problem regulatory provisions reported to OMB by the public? I know you mentioned earlier in your testimony that you think that the public comment is a wonderful vehicle and something that you encourage. Do you keep a running list of these things?

Mr. DESEVE. I would have to ask Mr. Arbuckle because I don't keep that list. Do we keep a running list?

Mr. ARBUCKLE. Yes.

Mr. DESEVE. I thought we did. In fact, I think we make them available without a FOIA even in many cases.

Mr. RYAN. It sounds like that would be very, very important for you to put in the forefront of your mind so that you know the answer to these things.

Mr. DESEVE. I thought I was right, but I wanted to check with the expert back here.

Mr. RYAN. Well, using this running list, in your 1999 report to Congress on the cost and benefits of Federal regulation, you included few recommendations for reform. Given the fact that you are keeping the running list, you are serving as the control for regulations, what process did OMB use to assemble recommendations for its first and second reports to Congress?

Mr. DESEVE. I guess I would like to go back to my testimony and say that in addition to having dialog with people on the Hill who had put those riders in place, we ourselves talked with the agencies, we consulted experts who had provided other background and testimony, and we looked at the public comments as we assembled our recommendations. And at end of the day they were recommendations of the OIRA staff. I don't believe I have left anything out in that process, but let me check. Yeah.

Mr. RYAN. Do you believe you are going to have more recommendations in the forthcoming report?

Mr. DESEVE. I think I'm trying to make improvements in each report. We would be happy to talk to the committee about the nature of those recommendations as well.

Mr. RYAN. And you have a process in place that sort of vets the public complaints and the independent analysis?

Mr. DESEVE. Yes, we do.

Mr. RYAN. OK. Mr. Chairman?

Mr. MCINTOSH. A couple more. I just wanted to followup, Mr. DeSeve, on your testimony regarding the impacts of the Federal rules on different sectors. And I think the prepared statement said that they were not appropriate for this type of report.

But let's take each of them separately and try to look at that more closely. For the State and local governments—and I think the statement says generally, nor will OIRA be able, except in very general terms, be able to discuss the impacts on State and local governments. Since this requirement we heard earlier today from the Senator from California is important for the State and local government community and they look forward to having the appendix with the different comments on those particular areas that affect their level of government, wouldn't it be better if OMB could prepare the impact analysis and perhaps reach out to the State and local representative government agencies and work with them to develop a way in which that impact analysis could be done that would be meaningful to them and let—I think, as I understood it, not only to get a heads-up of what will be coming but also what is happening and what analysis the government has on why they want to impose the different regulatory burdens on the State and local governments so that they can then do their jobs in trying to comply with those different requirements.

Mr. DESEVE. I think that what we are concerned about and I think you are referring to the same section I am, 4(a)(2), which requires an analysis—and this is the expansion that we are concerned about—an analysis of "direct and indirect impacts" without defining indirect impact. I don't know what an indirect impact is "of Federal rules and paperwork on Federal, State, local, tribal, private sector, small businesses, wage, consumer prices productivity, economic growth and distributional effects."

If you think of that in terms of matrix, if you were trying to do a matrix of that, and if then you put on top of that matrix not just by agency, by department, but if you went back to 402(a)(1)(B), where it is agency, program, and program component, and you delete the reference "to the extent feasible," you begin to develop an aggregate process where the matrix has agency, program, program component; and then it has the categories that we have discussed

here, direct and indirect, Federal, State, local, and so on. We are concerned that the complexity that you bring—essentially there is no discretion on our part to try to aggregate some data as we have tried in the past—imposes a work burden on us that is undoable and doesn't add, particularly, in the value.

First of all, the agencies have typically gone through a process of posting the regulation for comment and have received comments from State and local governments, which they take into account and we take into account, as the regulation comes forward. And we also try to explain the process we use each year in analyzing the burden.

Our problem here is with the complexity of this tool to provide a distinction as to the costs and benefits. That is our concern.

Mr. MCINTOSH. But given that there is a problem—and I think we have heard over and over again that the State and local governments, in particular, as well as the private sector, I think that there is a problem of the cumulative impact on much of these regulations—wouldn't it make sense to have that type of matrix and disaggregate the analysis to figure out, OK, the overall burden is too great; and we are hearing that over and over and over again from different sectors. Let's figure out where we get the most benefit for the cost and where we get the least benefit for the cost.

And, presumably, some people would argue in some cases you get more cost than benefit. And target the effort for reform there. But to get to that, I think you need to have that matrix that you described so that you can have the disaggregated data and the analysis; and then as a policy matter, both in the executive branch and in the legislative branch, be able to focus the attention on those areas where we could do better essentially.

Mr. DESEVE. Our grave concern is twofold. It is one that we literally don't have the resources for that. Mr. Kucinich has given us an estimate. We will develop an estimate for what that would cost.

And second, for many of the regulations, the uncertainty of the information with which we deal, especially if you try to begin disaggregating it down to the lower levels on the indirect costs to a tribal government of an air quality regulation, if we have no "to the extent feasible" language, we literally would have to do—again, I realize I am taking this to a place that you don't intend; but you see my concern about clarity—we would be required, if there was a tribal government that was potentially in the air path of a particular plant, to analyze the cost and benefit on that tribal government of the regulation. They would have a right to expect under this legislation that we did that. We just think that that is a level of detail that would create grave difficulty for us.

Mr. MCINTOSH. Given that—and I appreciate your willingness to provide that analysis of the cost—would OMB be more amenable or willing to consider, perhaps, phasing in those requirements?

Mr. DESEVE. We have indicated a willingness to talk to the committee about how the bill might be modified in those regards, yes.

Mr. MCINTOSH. OK. And then the other thing, would it perhaps be helpful if you could be given explicit authority in this bill to essentially require the agencies to undertake some of that disaggregate analysis so that you are not having to create—perhaps they are doing it already. Perhaps they need to be directed

to use some of their discretionary resources in that way—so that we don't have to buildup as large a body at OMB?

Mr. DESEVE. We certainly expect them to do it. In fact, I think in the Executive order of the President, we require them to do it.

Mr. MCINTOSH. And I understand how these things go. They have different priorities, and you are telling them we need to do these. Perhaps by putting it in the law, we can give OMB a little extra muscle in getting those priorities done. Because I do think it is helpful, is what it comes down to in the end. And the more detailed information, I have found, the better able to reach a consensus. Because if we start looking at the large picture, then you get battle lines drawn between, well, they are trying to attack the environment and we say, you are trying to impose too much cost. And if we can get down to some detailed areas, then I have found in the past, yes, consensus can be developed OK. We can do a better job, to use your example, without knowing what would be the tribal impact on air regulations; and people may be willing to say we can find a way to solve that unusual cost.

So my view is it would be beneficial, and let's work together with you on a way to figure out what the cost would be to OMB and if there are ways to reduce that by empowering you to have the agencies do the work for you.

Mr. DESEVE. We are always pleased to work with the committee, especially in those areas.

Mr. MCINTOSH. Great. Thank you. I have no other questions.

Mr. RYAN. Thank you very much, Mr. DeSeve.

Mr. DESEVE. Thank you, Mr. Ryan.

Mr. RYAN. We will now call our fourth panel. Thomas Hopkins, interim dean of College of Business at the Rochester Institution of Technology; Angela Antonelli, director of the Thomas A. Roe Institute for Economic Studies from the Heritage Foundation; Wayne Crews, director of competition and regulatory policy from the Competitive Enterprise Institute will be joining us, as well as Lisa Heinzerling, professor of law at Georgetown University Law Center. We will now turn this over to the chairman, the real chairman.

Mr. MCINTOSH [presiding]. Thank you, Mr. Ryan. It is also a delight to know that the committee is in capable hands when I have to step out of the room.

Welcome to this panel. I appreciate all of you coming. We do ask our witnesses to be sworn in, so if you would please rise.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you. Let the record reflect that each of the witnesses answered in the affirmative.

Today, we will hear first from Dr. Hopkins, who is the interim dean at the College of Business at Rochester Institute of Technology. And, Dr. Hopkins, I am familiar with some of your early research in the 1980's on the cost of regulation. That was one of the first that I saw where someone in the academic community tried to tackle the question for us, and so I appreciate that and your background and welcome you here today before our subcommittee.

And all the witnesses are welcomed to submit their full testimony for the record and I would ask each of you to perhaps sum-

marize it for 5 minutes or so, or whatever time you end up taking; but we will kind of speed it along that way. Dr. Hopkins.

STATEMENTS OF THOMAS D. HOPKINS, INTERIM DEAN, COLLEGE OF BUSINESS, ROCHESTER INSTITUTE OF TECHNOLOGY; ANGELA ANTONELLI, DIRECTOR, THOMAS A. ROE INSTITUTE FOR ECONOMIC STUDIES, THE HERITAGE FOUNDATION; CLYDE WAYNE CREWS, JR., DIRECTOR OF COMPETITION AND REGULATORY POLICY, COMPETITIVE ENTERPRISE INSTITUTE; AND LISA HEINZERLING, PROFESSOR OF LAW, GEORGETOWN UNIVERSITY LAW CENTER

Mr. HOPKINS. Thank you, Mr. Chairman and members of the committee. I am pleased to have this opportunity to present my views; and with the chairman's permission, I would like to submit my written statement for the record and to simply discuss some of its highlights here.

Mr. MCINTOSH. Great.

Mr. HOPKINS. I am here to speak in support of the proposed Regulatory Right-to-Know Act, which I think would be a major step toward meeting the need for accountability and transparency in regulatory policy. I commend the Members for considering this bill.

This proposed legislation builds upon Public Law 105–61, which directed the Office of Management and Budget to prepare a regulatory accounting report with many elements now incorporated in H.R. 1074. OMB's resulting report, its second such undertaking, was published February 5, 1999. H.R. 1074 would establish the important principle that a report of this nature, with improvements, should be a regular part of the annual cycle of government reporting, rather than an ad hoc and intermittent exercise.

The existence of OMB's initial two reports indicates that such a task can be accomplished, although considerable improvement is needed. The 1998 OMB report overstates benefits and sidesteps costs in a way that H.R. 1074 would preclude, thanks in part to the peer-review provisions in section 7 of the bill.

Certainly in any consideration of ways to improve government operation and effectiveness, spending programs and regulatory programs should receive more parallel and balanced attention; and H.R. 1074 would foster such possibilities. Several years ago, OMB began moving in this direction by linking regulatory spending with fiscal spending in the unified budget documents. Such practice should be reestablished. Indeed, OMB then articulated a strong case for a regulatory budget, somewhat comparable to our fiscal budget. H.R. 1074 would set the stage for just such a budget, and OMB's archives provide compelling justification.

In my view, the single most valuable contribution of H.R. 1074 appears in section 6(a), which calls for standardization of the cost and benefit data which agencies would be required to provide. The value of this requirement is further enhanced by its applicability to all Federal regulatory agencies and to paperwork. Fortunately, section 3's definition, as I read it, does not exempt the so-called independent agencies; and section 4 specifically includes paperwork, much of which, particularly tax paperwork, OMB would prefer to exclude. The peer review of section 7 would provide much-needed quality assurance.

Every President since Richard Nixon has issued Executive orders directing regulatory agencies to estimate likely benefit and cost before adding major new regulations. Regrettably, agencies, especially the independent agencies, routinely either have ignored such requirements or have provided estimates that lack comparability in important respects, such as discounting practices. OMB guidance to agencies, while generally sound, has not called for common data formats and methods, unlike such guidance documents issued by other countries. Agencies are not given discretion to utilize varying accounting practices in reporting their fiscal outlays, and neither should they in reporting regulatory effects.

In my view, the paramount need is for sound and timely estimates of incremental effects of every major new regulation and of the most prominent components of each relative to alternatives. Armed with such information, it would be far easier to avoid inefficient regulatory action. This would be no small accomplishment, given the finding of the American Enterprise Institute's Robert Hahn that half of all environmental, health and safety regulations adopted since 1990 are producing annual costs that exceed their benefits. This is, of course, not inconsistent with OMB's conclusion that net benefits of all such regulations as a group are positive. Some particular regulations are remarkably efficient, but many are quite unproductive. The Federal Government routinely by regulation mandates inefficient uses of resources. If we truly want to continue shooting ourselves in our feet, collectively, I think it only fair that we have a count of the bullet holes. This H.R. 1074 would accomplish. The bill's definitions of benefit and cost in section 3 are sound and exactly what the accounting statement of section 4(a)(1) should be based upon.

I do not mean to imply that the other provisions of H.R. 1074 lack merit. Indeed, each would foster progress toward better regulatory outcomes. Aggregate measures, in particular, would help citizens gauge the overall intrusiveness of government mandates relative to taxation. It makes little sense, for example, to advocate tax reduction if, as sometimes happens, we then get what amounts to an offsetting increase in budget requirements. If budget constraints cause the government to step back from spending tax revenues on some new initiative, it now is all too easy for the same initiative to be accomplished through government regulation that forces business or state-local government to pick up the tab. A water treatment plant can be built either with Federal funds or with federally mandated use of local funds, for example, we have no analogous constraints or even consistent measures on overall regulatory spending.

I thank you for the opportunity to participate in this hearing. H.R. 1074 is a most promising initiative, and I hope the committee finds my suggestions constructive and supportive.

[The prepared statement of Mr. Hopkins follows:]

Statement of
Thomas D. Hopkins
Rochester Institute of Technology
Rochester, New York

Before the
Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs
Committee on Government Reform
House of Representatives
Congress of the United States

March 24, 1999

Mr. Chairman and Members of the Committee, I am pleased to have this opportunity to present my views on the regulatory issues facing the Subcommittee, and in particular on H.R. 1074, the proposed Regulatory Right-to-Know Act of 1999. My name is Thomas D. Hopkins; I am Interim Dean of the College of Business and Arthur J. Gosnell Professor of Economics at the Rochester Institute of Technology. I also am Adjunct Fellow, Center for the Study of American Business, Washington University in St. Louis. My work on the issues now before the Subcommittee began with my service, 1975-84, in the Executive Office of the President, where my chief responsibility was regulatory analysis; it has continued through consulting assignments with the U.S. Small Business Administration, the Organization for Economic Cooperation and Development (OECD) in Paris, and the Regulatory Information Service Center.

Government regulation, however well-intentioned and effectively designed, necessarily imposes burdens on those who are regulated. When a burden is imposed without an accounting of its consequences, government operates with neither accountability nor transparency. Most of the costs associated with regulatory compliance are hidden from public view. The annual federal budget does include as an explicit cost of government the amount of tax revenues that our 61 federal regulatory agencies use to implement and enforce regulation; that explicit cost is expected to reach nearly $18 billion this year, according to a Washington University report.[1] However, this annually reported portion of total regulatory compliance costs is dwarfed by those expenditures that business, state-local government, and families are required by regulation to make.

My own estimates, published December 1998 in the journal *Policy Sciences*, put this hidden additional spending on regulatory compliance at just over $700 billion for 1999.[2] Expressed differently, the hidden burden of regulation will be roughly half as large as the federal government's entire tax receipts for the year. If an "informational invoice" were mailed to each American family for its share of spending on regulatory

[1] Melinda Warren and William F. Lauber, *Regulatory Changes and Trends: An Analysis of the 1999 Federal Budget* (St. Louis: Center for the Study of American Business, Washington University, 1998).
[2] Thomas D. Hopkins, "Regulatory Costs in Profile," *Policy Sciences*, Vol. 31, No. 4, December 1998, pp. 301-320

compliance, the average family would "owe" some $7,000 annually, over and above all taxes. As we near April 15, our government should keep its citizens more fully informed, and in a more balanced and understandable manner, about all important obligations of citizenship. The much-publicized fiscal budget reveals only part of the story and thereby complicates efforts to achieve the best results with the nation's available resources.

My initial point, in other words, has nothing to do with allegations of over-regulation or overly-intrusive regulation, although such matters do warrant more attention than they now receive by the Congress. Rather, my objective is to highlight what I see as an inadequately-met need for systematic and usable information about the regulatory dimension of government activity. I am here to speak in support of the proposed Regulatory Right-to-Know Act, which I think would be a major step toward meeting this need. I commend the Members of the Subcommittee for considering this bill, although I also have some suggestions for changes I believe would increase the odds of its success.

This proposed legislation builds upon Section 625 of the Treasury and General Government Appropriations Act of 1998 (P.L. 105-61), which directed the Office of Management and Budget (OMB) to prepare a regulatory accounting report with many elements now incorporated in H.R. 1074. OMB's required report, its second such undertaking, was published February 5, 1999.[3] That report focuses on regulatory activity occurring prior to March 31, 1998. H.R. 1074 would establish the important principle that a report of this nature, with improvements, should be a regular part of the annual cycle of government reporting, rather than an ad hoc and intermittent exercise.

The existence of OMB's initial two reports indicates that such a task can be accomplished, although considerable improvement is needed. My assessment of OMB's 1997 report identified a number of specific changes that I think would strengthen such an accounting.[4] The 1998 report represents a step forward in some respects, although several experts have called attention to serious shortcomings that remain.[5] I understand that the U.S. General Accounting Office presently will issue its own evaluation of OMB's 1998 report.

An especially noteworthy assertion in OMB's 1998 report is that one important class of regulation—generally termed "social regulation"—alone produces net annual benefits in the range of $30 billion to $3.3 trillion, reflecting annual costs of $170-230 billion and annual benefits of $260-3,500 billion.[6] Were these estimates credible, which experts such as Washington University's Dr. Richard Belzer and I question, regulation would warrant far greater public attention and scrutiny than it normally receives, since the report portrays regulation as a great source of efficiency gains. That is, if investments

[3] *1998 Report to Congress on the Costs and Benefits of Federal Regulations*, Office of Management and Budget, Executive Office of the President. OMB's initial such report appeared September 1997.
[4] Thomas D. Hopkins, *OMB's Regulatory Accounting Report Falls Short of the Mark*, Policy Study Number 142, November 1997, Center for the Study of American Business, Washington University.
[5] One particularly useful critique of the 1998 report, when it was in draft form, was submitted to OMB on October 15, 1998, by Richard B. Belzer, Center for the Study of American Business, Washington University.
[6] *1998 OMB Report*, Table 3, p. 17.

in regulatory compliance have such vast payback, perhaps we should look more aggressively at ways to secure additional net benefits through expanded regulation. Unfortunately, however, I think a quite different conclusion is warranted. The 1998 OMB report overstates benefits and side-steps costs in a way that H.R. 1074 would preclude, thanks in part to the peer review provisions in Section 7 of the bill.

Certainly in any consideration of ways to improve government operation and effectiveness, spending programs and regulatory programs should receive more parallel and balanced attention, and H.R. 1074 would foster such possibilities. Several years ago, OMB began moving in this direction, by linking regulatory spending with fiscal spending in the Unified Budget documents.[7] Such practice should be reestablished. Indeed, OMB at that time articulated a strong case for a regulatory budget somewhat comparable to our fiscal budget. H.R. 1074 would set the stage for just such a budget, and OMB's archives provide compelling justification.

In my view, the single most valuable contribution of H.R. 1074 appears in Section 6(a), which calls for standardization of the cost and benefit data that agencies would be required to provide. The value of this requirement is further enhanced by its applicability to all federal regulatory agencies and to paperwork; fortunately, Section 3's definition of coverage does not exempt the so-called independent agencies, and Section 4 specifically includes paperwork much of which, particularly tax paperwork, OMB would prefer to exclude. The peer review of Section 7 would provide much-needed quality assurance.

Every President since Richard Nixon has issued Executive Orders directing regulatory agencies to estimate likely benefit and cost before adding major new regulation. Regrettably, agencies (especially the independent agencies) routinely either have ignored such requirements or have provided estimates that lack comparability in fundamentally important respects such as discounting practices. OMB guidance to agencies, while generally sound, has not called for common data formats and methods, unlike such guidance documents issued by other countries.[8] Agencies are not given discretion to utilize varying accounting practices in reporting their fiscal outlays, and neither should they in reporting regulatory effects.

The most prominent provisions of H.R. 1074, of course, are those calling for annual reporting of regulatory costs and benefits, both in the aggregate and incrementally (Section 4). This is an ambitious set of requirements as now formulated, one considerably more demanding than that placed on agency spending programs, where costs but not benefits typically must be documented. Indeed, I would be delighted with consistent achievement of only a limited subset of what now is prescribed in Section 4(a)(1) and 4(a)(2).

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[7] See, for example, three OMB reports issued earlier this decade that called for development of a regulatory budget: *Budget Baselines, Historical Data, and Alternatives for the Future*, January 1993, pp. 114-115; *Mid-Session Review: the President's Budget and Economic Growth Agenda*, July 1992, pp. 396-401; *Regulatory Program of the U.S. Government, April 1, 1991—March 31, 1992*, pp. 5-7.

[8] At the request of the OECD, I compared and evaluated such practices in seven countries, and my findings appear in "Progress in Developing Standards for Review of Government Regulations: An International Comparison," *Business & the Contemporary World*, Vol. 9, No. 4, 1997, pp. 675-693.

In my view, our paramount need is for sound and timely estimates of incremental effects of every major new regulation, and of the most prominent components of each relative to alternatives. Armed with such information, it would be far easier to avoid inefficient regulatory action. This would be no small accomplishment, given the finding of the American Enterprise Institute's Robert Hahn that half of all environmental, health and safety regulations adopted since 1990 are producing annual costs that exceed benefits.[9] This is of course not inconsistent with OMB's conclusion that net benefits of all such regulation as a group are positive; some particular regulations are remarkably efficient, but many are quite unproductive. The federal government routinely through regulation mandates inefficient uses of resources. If we truly want to continue shooting ourselves in our feet, collectively, I think it only fair that we have a count of the bullet holes. This H.R. 1074 would accomplish. The bill's definitions of benefit and cost in Section 3 are sound and exactly what the accounting statement of Section 4(a)(1) should be based upon.

I do not mean to imply that the other provisions of H.R. 1074 lack merit. Indeed each would foster progress toward better regulatory outcomes. Aggregate measures, in particular, would help citizens gauge the overall intrusiveness of government mandates relative to taxation. It makes little sense, for example, to advocate tax reduction if, as sometimes happens, we then get what amounts to an offsetting increase in regulatory requirements. If budget constraints cause the government to step back from spending tax revenues on some new initiative, it now is all too easy for the same initiative to be accomplished through government regulation that forces business or state-local government to pick up the tab. A water treatment plant can be built either with federal funds or with federally-mandated use of local funds, for example. We have no analogous aggregate constraints on, or even consistent measures of, overall regulatory spending.

Turning to another feature of Section 4 that I think useful but less attainable, as well as less valuable for policy purposes, the requirement of Section 4(a)(2) to identify indirect effects, as well as a substantial array of specified effects, goes beyond what I would advocate, given current analytical capability. The one such particularized target that I find most practicable is effects on small business, in part because the U.S. Small Business Administration has much to contribute here.[10] An overly demanding set of requirements runs the risk of overwhelming the system's ability to comply. I favor an approach that phases in analytical requirements using some judgment about how adequately and how soon the agencies can meet them. Naturally neither the agencies nor OMB will be eager to embrace any of the provisions of H.R. 1074, since they do represent additional demands for improved performance. So perhaps a peer group drawn from experts not now part of the government might be called upon to advise the Subcommittee on practicable phase-in options, much as Section 7(a) would have OMB rely upon such peer review in carrying out its responsibilities under this Act.

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[9] Robert W. Hahn, "Regulatory Reform," in Hahn (editor), *Risks, Costs, and Lives Saved* (New York: Oxford University Press, 1996), p. 219.

[10] See, for example, Office of Advocacy, U.S. Small Business Administration, "The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business: A Report to Congress," October 1995.

My final point concerns the cycle of deadlines contained within H.R. 1074. The Section 4(a) linkage of the annual OMB accounting report to the release of the annual fiscal budget makes good sense. But working backward from that endpoint, I suspect some adjustment may be prudent in the other timing specifications. To allow sufficient time for the OMB guidance of Section 6 to be completed and implemented, the February 2001 initial report deadline might not be practicable if H.R. 1074 becomes a statute much later than March 31, 1999. This is because a draft report would need to be released by November 1, 2000 to accommodate the necessary review process, and work on that report should await completion of the guidance. This looks like tight timing to me.

Even should this not be an insuperable problem, the reporting requirements might be more manageable, and yet still quite valuable, if the bill specified a moving four-year focus for the report rather than the seven years now envisioned. The report due February 5, 2001, for example, could focus on costs and benefits anticipated during fiscal years 2001 and 2002 for all those regulations promulgated during fiscal years 1999 and 2000, along with those whose promulgation is contemplated for fiscal years 2001 and 2002. That report, released in draft form on November 1, 2000, would address completed actions of the preceding 25 months and likely actions of the succeeding 23 months.

Thank you for the opportunity to participate in this hearing. H.R. 1074 is a most promising initiative, and I hope the Committee finds my suggestions to be constructive and supportive.

Mr. MCINTOSH. Thank you, and I look forward to the question-answer period to explore some of those suggestions with you. Our next witness will be Ms. Antonelli from the Heritage Foundation. Thank you and welcome as a fellow former alumni of OIRA to both you and Dr. Hopkins in that regard.

Ms. ANTONELLI. Thank you, Mr. Chairman. And thank you for allowing me to testify on the Regulatory Right-to-Know Act of 1999. As a member of the public, as an interested citizen, and as a former employee of the office that has produced these kinds of reports in the past, I have submitted comments to OMB on both the first and second annual draft reports before they were submitted to Congress; and I believe these reports provide important information and must be preserved and enhanced. I will present some brief remarks, but ask that my full statement be placed in the hearing record.

Mr. MCINTOSH. Seeing no objection.

Ms. ANTONELLI. I want to applaud you, Mr. Chairman, for your continued commitment to making the Federal regulatory system, its more than 55 agencies, 125,000 rule writers, and $17 billion in annual spending, accountable to the American people for the more than 4,000 final rules they produce each and every year.

Since 1995 Congress has taken a number of important steps to demand accountability and common sense in how the Federal Government regulates and empowers the public to play a more informed role in shaping Washington's regulatory priorities. Indeed, the Heritage Foundation reported in a report released last summer in examining the implementation of the Congressional Review Act, we were able to show that more than 8,625 final rules were issued by Federal agencies in a 24-month period; 125 of those rules during that 2-year period alone were major rules. That means that at a minimum they cost the economy $12.5 billion.

But as we know, one rule alone, the PM and ozone rule, costs significantly more than that, somewhere on the order of $60 billion. So if we look at new regulatory taxes imposed on the public in just a 2-year period, thanks to the Congressional Review Act, we now know that somewhere on the order of $60 billion to $100 billion in new regulatory taxes were imposed on the economy during that time. That is valuable information we didn't have before.

Similarly, in studies that the Heritage has done since 1996 on the Unfunded Mandates Reform Act, which were subsequently confirmed by the Congressional Budget Office, has shown the benefits of providing information on the economic impact of proposed new mandates. The result of this information, confirmed by CBO, has indicated that Congress has saved several hundreds of millions of dollars in the costs of mandates that it might otherwise have imposed on the public. So this information is valuable to the public.

The Regulatory Right-to-Know Act continues providing the public this type of information. It proposes to make permanent a report by the White House Office of Management and Budget that Congress has asked for in each of the last 3 fiscal years. Congress has asked for these reports because the public has a right to know about the costs and benefits of Federal regulatory programs. It is also entirely reasonable to demand that agencies work harder and

smarter, not necessarily having to spend more money, so that taxpayers don't have to.

The health of our Nation's economy and even more importantly a desire to achieve the highest levels of investment in public health, safety, and environmental protection demands that Congress empower itself and the public with the information analysis about the benefits and consequences of Federal regulations and Federal regulatory programs.

As one recent study noted, regulations can become an obstacle to achieving the very economic and social well-being for which they are intended. Until the Congress and the public demand more information and accountability from regulators in order to engage them in a debate about regulatory priorities and spending the same way we do about the annual Federal budget, not much change can or should be expected. A proposal like the Regulatory Right-to-Know Act represents an effort to bring the costs and benefits of regulation out into the sunshine so that the public and its representatives can be better informed about the less-than-obvious impacts of regulation and do a better job establishing priorities in spending.

Indeed, it brings out into the sunshine the types of value judgments that unelected regulators make on behalf of the public every day and bring them out into the sunshine so that everybody may see the value judgments that these unelected regulators make; and these judgments will be held up to the critical eye of economic and scientific expertise and best practices to ensure that they are not simply judgments based on political expediency.

Environmental consumer groups and others will, like Chicken Little, cry that the sky will fall because of this proposal. Ironically, they will conveniently argue that the public's right to know in this instance, to have more information rather than less, actually threatens the public health and well-being. Indeed, many of these groups are interested in preserving and defending the current system. But what are they really defending? Bureaucracies that are accountable to no one, that demand and spend resources as if they are unlimited and that fail to set priorities.

And what are the real costs? As a 1994 Harvard University study that examined 500 life-saving interventions concluded, we could save 60,000 more lives a year if we were able to more effectively set priorities to protect the public from the most serious risks they face. So the real costs are lives that could have been saved but are not because we are denied information that helps us to see what must be done versus what it feels good to do.

As Representative Ryan and others have noted, information is good and it empowers people; and I strongly believe that a more informed democratic process ultimately will give us a Nation that can devote more, not less, resources to the types of policies that will save lives, improve the quality of our lives and environment, and allow us to be more prosperous.

The Regulatory Right-to-Know Act of 1999 is a good proposal; and it builds on a number of important and valuable lessons, as Dr. Hopkins has pointed out, that Congress has learned more recently through these two reports but also through the work of OMB in the past. Some of the elements that the Regulatory Right-to-

Know Act builds on, as I noted previously, it recognizes the importance of aligning regulatory spending and priorities with the Federal budget; it recognizes that assessments in costs and benefits of individual rules is as important, if not more important than, aggregate costs and benefits; it recognizes that agencies lack consistency in their benefit-cost methods; it recognizes that regulators are inherently self-interested, so more independent review is essential; it recognizes that OMB and the regulators have the responsibility for developing recommendations for regulatory reform; and it recognizes that OMB and the regulators are not necessarily interested in presenting information to Congress and the public in a way that will be useful or helpful, as Representative Chenoweth underscored.

Mr. Chairman, let me just conclude by, again, congratulating you and your colleagues on both sides of the aisle for understanding the importance of the public's right to know more about the benefits and costs of regulation. The Regulatory Right-to-Know Act is a good step in the right direction because, one, it builds on previous accounting statements; two, it makes such accounting statements permanent so that Federal regulators start taking it seriously and they know they will be held accountable each year by Congress and the public; and most importantly, three, it empowers the public to more effectively debate regulatory priorities and spending in the same way they debate Federal budget priorities and spending each year, by linking these two together. I hope Congress will continue to build and effectively oversee the implementation of this framework in the years to come.

Thank you, Mr. Chairman, and I would be happy to answer any questions.

[The prepared statement of Ms. Antonelli follows:]



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United States House of Representatives

Committee on Government Reform
Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs

March 24, 1999

Testimony on the Regulatory Right to Know Act of 1999

By
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THE HERITAGE FOUNDATION
Washington, DC 20002

Mr. Chairman, Members of the Committee, thank you for inviting me to testify on the Regulatory Right to Know Act of 1999 (H.R. 1074). I am Angela Antonelli, Director of the Roe Institute for Economic Policy Studies at The Heritage Foundation. The Heritage Foundation is a privately supported non-profit educational, public policy research organization, and receives no funds from any government at any level. My testimony before you today reflects my own views and does not necessarily reflect the views of The Heritage Foundation.

I will present some brief remarks, but ask that my full statement with appendix be placed in the hearing record.

Mr. Chairman, I want to applaud you for your continued commitment to making the federal regulatory system – its more than 55 agencies, 125,000 rule-writers, and $17 billion budget – accountable to the American people for the more than 4,000 final rules they produce each and every year. Since 1995, Congress has taken a number of important steps to demand accountability and common sense in how the federal government regulates and empower the public to play a more informed role in shaping Washington's regulatory priorities. But, as a January 1999 report by the General Accounting Office recently reminded you, Congress cannot escape some blame for creating the burden and complexities of the current system. Such a report simply underscores the need for Congress to give itself and the public more and better information on the need for and consequences of regulation.

The Regulatory Right to Know Act of 1999 represents an important step in that direction. It proposes to make permanent a report by the White House Office of Management and Budget that Congress has asked for in each of the last three fiscal years (FY 1997-FY 1999). Congress has asked OMB to report on the total costs and benefits of federal regulation, provide estimates of the costs and benefits of major rules (annual economic impact of $100 million or more), examine the direct and indirect impact of rules on the private sector and State and local governments, and provide recommendations for the reform or elimination of federal regulatory programs.

Congress has asked for these reports because "the public has a right to know about the costs and benefits of federal regulatory programs" and empowered with that information could more effectively hold regulators accountable for improving efforts to protect the public health, safety and the environment. Indeed, after three years and two reports to Congress, those who have long supported the need for some basic system of regulatory accounting can take comfort in knowing that OMB's reports to date demonstrate that such accounting is not only possible, but also has the potential to become an extremely useful tool for policymakers who seek to make regulatory investments in a way that maximizes benefits while minimizing costs, thereby achieving the greatest levels of protection possible for the money spent.

Why Regulatory Right to Know Is Important

The health of our nation's economy, and, even more importantly, a desire to achieve the highest levels of investments in public health, safety and environmental protections demands that Congress empower itself and the public with the information and analysis about the benefits and consequences of

new federal regulations or regulatory programs. As one recent study noted, "regulations can become an obstacle to achieving the very economic and social well-being for which they are intended." Until Congress and the public demand more information and accountability from regulators in order to engage them in a debate about regulatory priorities and spending in the same way we do about the annual federal budget, not much change can or should be expected. A proposal such as the Regulatory Right to Know Act of 1999 represents an effort to bring the hidden costs and benefits of regulation out into the sunshine so that the public and its representatives can be better informed about the less than obvious impacts of regulations and do a better job establishing regulatory priorities and spending.

Environmental, consumer groups and others will, like Chicken Little, cry that the sky will fall because of this proposal. Ironically, they will now conveniently argue that public's right to know, to have more information rather than less, actually threatens the public's health and well-being. Indeed, many of these groups are interested in preserving and defending the current system. But what are they really defending? Bureaucracies that are accountable to no one, that demand and spend resources as if they are unlimited, and that fail to set priorities. But what are the real costs? A 1994 Harvard University study examined 500 life saving interventions and concluded that we save 60,000 lives a year *less* than we should because of our inability to set priorities to protect the public from the most serious risks they face. The real costs are the lives that could have been saved, but are not, because we are denied information that helps us to see what must be done versus what feels good to do.

More information and analysis of the impact of regulations, whether it be proposals to add new regulations or eliminate or modify existing regulations (and the information and analysis required must be identical for all of these types of proposals), will help the Congress and further empower the public to debate and decide the best allocation of national resources. I strongly believe that a more informed, democratic process ultimately will give us a nation that can devote *more*, not less, resources to the types of policies that will save more lives, improve the quality of our lives and our environment, and allow us to be more prosperous.

Proposals such as the Regulatory Right to Know Act are intended to give Congress and the public the very best information and analysis available about important decisions affecting our health and prosperity. I think most Americans would consider it risky and dangerous to the future of their children if you reject research, analysis, and information that would empower the Congress and American families to work smarter and achieve higher levels of protection and a better quality of life for every dollar spent.

Regulatory Right to Know: Building on Lessons Learned

The Regulatory Right to Know Act of 1999 is a good proposal that responds to a number of important and valuable lessons learned by Congress and the public based on two annual OMB reports on the costs and benefits of regulation:

Lesson #1: Aggregate costs and benefits are not nearly as important as the assessment of the costs and benefits of individual rules. As OMB itself has noted, "the devil is in the details" and this means examining individual regulations. While all studies may suggest that in the aggregate benefits outweigh

costs, what is more useful is the study that not only reviews the aggregate but also contributes to an understanding of individual regulations and whether each regulatory action in and of itself generated more benefits than costs. In the case of EPA's Section 812 Clean Air Act report, as OMB points out, "the monetized benefit estimates associated with reducing exposure to fine particulate matter (PM) account for 90 percent of the total estimated benefits" (p.29). What this suggests is twofold:

(1) much of the benefit of the Clean Air Act over the past 20 years is now to be derived from EPA's latest and most controversial rulemaking on particulate matter; and
(2) by extension, many of the other Clean Air Act regulations issued over the last 20 years often had costs than far exceeded their benefits.

EPA's study of the Clean Air Act over the last 20 years would have been of far greater credibility and value if it made an effort to accomplish the very thing the Administration has repeatedly indicated is more important than just producing aggregate cost and benefit estimates -- an examination of individual regulations to determine what regulatory actions produced significant benefits and which were less successful. It is precisely for this reason that the findings of a study by Robert Hahn of the American Enterprise Institute are much more useful to policymakers than the EPA Section 812 study. The Hahn updated study included by OMB reviews 106 regulations and, as OMB notes, concludes that "not all agency rules provided net benefits. In fact, less than half of all final rules provided benefits greater than costs...a few rules provided most of the net benefits" (p.25). This is precisely the type of detailed information that regulators and policymakers need to have if they strive to make better decisions in the future.

Lesson #2: The independent regulatory agencies issue rules that have costs (and benefits) even if OMB does not review them. In response to public comment, OMB included in its second report a review of economically significant rules covered by the Congressional Review Act and the Unfunded Mandates Reform Act. In doing so, OMB was forced to acknowledge that independent regulatory agencies such as the Federal Communications Commission and the Securities and Exchange Commission issue major rules. Indeed, during 1997, approximately one-third of the major rules issued were from these two agencies alone. OMB does not currently review rules issued by independent regulatory agencies, regardless of their costs and benefits. Nevertheless, the purpose OMB's report on the costs and benefits of regulation is to address both in the aggregate and individually the costs and benefits of *all* federal regulations. To the extent that many independent agencies fail to do benefit-cost analysis, OMB should develop its own estimates and not continue to ignore the economic impact of such rules as it did in its second annual report with the statement "Since we have used a criterion of using only agency or academic peer reviewed estimates, we conclude that the 41 GAO reports contain no information useful for estimating the aggregate costs and benefits of regulation (p.62)." If OMB continues to refuse to provide the analysis, Congress should make sure that independent agencies develop the capabilities to systematically evaluate the costs and benefits of their rules before imposing them on an unsuspecting public.

Lesson #3: Agencies lack consistency in their benefit-cost methods. While it is true that it is no easy task to go about estimating "the impact of regulations on society and the economy," many of the estimation challenges that OMB faces reflect the huge inconsistencies in methods used across federal agencies in benefit-cost analyses. A May 1998 GAO report confirmed the wide variation in agency

economic analyses. If OMB's current Best Practices guidelines for benefit-cost analysis were enforced, many of these problems would have long ago been mitigated. Congress should do nothing to interfere with efforts to promote greater, more consistent use of the Best Practices guidelines. There is no reason why agencies cannot follow one set of guidelines. The continuing inconsistency in benefit-cost methods reflects the fact that neither the President nor Congress has demanded any better from the agencies.

Lesson #4: Regulators have incentives to understate costs and overstate benefits. In its second annual report, OMB included some retrospective cases studies. They highlight how important it is for agencies to be held accountable for reevaluating individual regulations and regulatory programs to see if they achieved the benefits intended and at what cost. One should not find it surprising that when an agency is interested in justifying a regulatory action, overstated benefits and understated cost estimates are often the result. What this suggests is that agencies must undertake such retrospective studies more routinely and use them to inform future decisionmakings and to consider reforming or eliminating some existing programs.

Lessons #5: Because regulators are self-interested, independent review is essential. OMB must do what Congress intended when its assigned this report to it, and offer its own independent, professional judgment about the consistency, quality and validity of agency benefit and cost estimates. In addition, the absence of agency estimates, OMB should provide its own estimates and/or incorporate any third party studies on the direct or indirect impact of such rules. However, as part of the White House, it may never be possible for OMB to offer an independent review of agency analyses, thus it is necessary to ensure that any OMB report be subject to outside, independent review as well as public comment. Bo the comments of the any independent reviewer(s) and the public must be thoroughly summarized and presented by OMB in any final report to Congress. There has been concern about the failure of OMB to be sufficiently responsive to public comments in the issuance of its final reports.

Lesson #6: OMB and the regulators have the responsibility for developing recommendations for regulatory reform. In response to public comments, OMB's second annual report included recommendations for the reform of certain regulatory programs, such as food safety, airbags, drug labeling, etc. Initially, OMB took the position of only including recommendations suggested to it by the public. The only problem with that is that OMB and the agencies have far more expertise and experience that the average American about how effectively regulatory programs function. OMB and the agencies must continue to take lead responsibility for providing the public with policy recommendations for public comment. In addition, I would also suggest that there is no particular reason why Congress also would not want the public to know not only about efforts to reform or eliminate regulatory programs or rules, but also any initiatives on the part of agencies to expand or add new regulatory programs and provide the public with an opportunity to comment on those proposals as well.

Lesson #7: OMB and the regulators are not necessarily interested in presenting information to Congress in a way that will be useful or helpful. Not surprisingly, just as self-interested agencies have incentives to understate costs and overstates benefits, they also have incentives to avoid accountability whenever possible. Thus, it should comes as not surprise that OMB's reports to Congress have not presented information in the most easy to digest manner. For example, in its second annual report, OMB makes no real effort to

1) summarize net benefits (that is, to do the math) for most of their aggregate estimates or the estimates of individual rules;
2) present a summary table of that compares trends from year to year (would not put 1998 estimates side by side with 1997 estimates of the costs and benefits of regulation); and
3) give little, if any, economic context to the either the costs or the benefits of regulation. This last omission is perhaps the most serious flaw. Because put in its proper context, such as relative to gross domestic product, the EPA 812 benefit estimates suggest that the annual economic benefits of the Clean Air Act alone exceeds that of the economic output of America's agriculture, forestry, fishing and health care industries. To its credit, OMB in its second annual final report did point out that "the expected value of the estimated monetized benefit for 1990 is $1.25 trillion per year. This estimate implies that the average citizen was willing to pay over 25 percent of her personal income per year to attain the monetized benefits of the Clean Air Act." (p.26). These types of estimates do not even pass a laugh test.

Congress must work with OMB to ensure that the information provided is as easily digestable and understandable to the average American as it can be. Regulators, serving as employees of the American people, have a fundamental responsibility to explaining how rules impact individuals, households, businesses, state and local governments in ways understandable so that ultimately it is the American people who can decide what their national priorities and spending will be.

Mr. Chairman, let me conclude by again congratulating you and your colleagues on both sides of the aisle for understanding the importance of the public's right to know more about the benefits and costs of regulation. The Regulatory Right to Know Act is a good step in the right direction because it 1) builds on the previous accounting statements; 2) makes such an accounting statement permanent so that the federal regulators start taking it seriously and know they will be held accountable each year; and, most importantly, 3) empowers the public to more effectively debate regulatory priorities and spending in the same way they debate federal budget priorities and spending each year by more effectively linking the two together. I hope Congress will continue to build on this framework in the years to come. The public will only stand to benefit by improving the ability of our federal regulatory system to more effectively establish regulatory priorities to improve our nation's investments in public health, safety and the environment while maintaining a strong economy.

Thank you, Mr. Chairman. I would be happy to answer any questions.

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Mr. MCINTOSH. Thank you, Ms. Antonelli. Our third witness on this panel is Mr. Wayne Crews who is the director of competition and regulatory policy at the Competitive Enterprise Institute. And I am familiar, Mr. Crews, with your work for many, many years now in terms of analyzing what those costs and benefits are in the Federal regulations. Feel free to summarize your testimony and share with us a summary of that, and we will include the full testimony into the record.

Mr. CREWS. Good morning, Mr. Chairman. Thank you very much for the invitation to speak. And these comments are limited to 5 minutes, so I would ask permission to insert my full comments and charts into the record.

Mr. MCINTOSH. Seeing no objection.

Mr. CREWS. I appreciate the opportunity to appear today. CEI is a nonpartisan, nonprofit public interest group that educates journalists, policymakers, and other opinion leaders on the free market alternatives to political programs and regulations. Among CEI's goals are regulatory process reforms, of which the Regulatory Right-to-Know Act is a perfect example, as well as reforms in such areas as antitrust and electricity reform.

One key CEI product is the annual report called "10,000 Commandments: An Annual Survey of Regulatory Trends." The 1999 edition will be released this week. This report is an effort to consolidate the mounds of regulatory data, facts, and figures from government and other sources in a simple, straightforward fashion. Many of these elements are the very stones and mortar whose reporting the Right-to-Know Act would make mandatory and official.

To put the case for the Right-to-Know Act in some perspective in my handouts and in my written testimony, figures 1 and 2 present the information on the costs of regulations and the numbers of regulations across the various agencies, the numbers of regulations affecting small businesses and State and local governments. So I would refer you to that for some excerpts.

In our view, though, too much legislative power is delegated to agencies in the first place. That allows Congress to simultaneously take credit for popular legislation while scapegoating agencies for compliance costs. So rather than solely denounce OMB or agencies or scold OMB for failing to properly audit regulators, regulatory reform ultimately must institute greater congressional accountability, too.

But even if Congress were required to approve every agency regulation, the Right-to-Know Act's disclosure provisions would still be essential. The Right-to-Know Act reemphasizes the role of central regulatory review and makes permanent—takes permanent regulatory disclosure to its next logical level, given recent reforms addressing paperwork, unfunded mandates, congressional review of regulations, and small business regulatory relief.

A modification of the Right-to-Know Act that would be of immense value would be to summarize and assemble the data that are already available, but scattered across agencies and in reports like the "Unified Agenda of Federal Regulations," which is published twice annually and the former regulatory program that contained an annual report on Executive Order 12291 that summarizes considerable data on agency activities.

Figure 5 in my testimony suggests report card information that could be summarized in the annual Federal budget including—and this is very simple to gather—numbers of major and minor rules by agency; rules featuring and lacking cost tallies; major rules reported on by the GAO in its regulatory data base; rules with statutory and judicial deadlines; and rules impacting small businesses and State and local governments.

A report card would help emphasize that Congress put in place many of the statutory deadlines that hinder analysis in the first place; and knowing the percentages of rules without benefit calculations would alone help reveal whether or not we can truly say regulations overall do more harm than good.

Focusing on regulatory costs alone rather than benefits does not mean benefits can be ignored, rather they should simply be addressed differently. Congress presumably knows the benefits it is seeking when it passes legislation, and it must set regulatory priorities on that basis. As a practical matter, OMB will probably never come close to reviewing all the agency benefit estimates anyway. Cost estimates are a different matter.

The Right-to-Know bill assumes benefit estimates are there for review in the first place, but they really won't be until legislation mandating cost-benefit analysis and risk assessment is enacted. In the 1998 report to Congress, the OMB reviewed less than 1 percent of agency final rule documents. Moreover, since the OMB monetizes benefit estimates primarily where an agency has already quantified them, agencies may learn quickly to avoid scrutiny by not quantifying benefits at all. Furthermore, the Right-to-Know Act's own calls for inclusion of nonquantifiable benefits may invite more yawning canyons like OMB's $30 million to $3 trillion net benefit estimate, which makes impossible the kind of point estimate for regulatory benefits that some commenters on OMB's reports have advocated.

Relieving agencies of benefit calculation responsibilities avoids these problems and leaves agencies free to fully address the direct and indirect costs of their regulatory programs. In keeping with regulatory cost disclosure, today's $100 million major rule threshold which allows $99 million rules to escape scrutiny to be lowered to, for example, $25 million, and major rules could be broken up into separate categories representing increasing costs, as figure six in my written testimony shows. That is one example.

But as long as the Right-to-Know Act does require benefit calculations, the OMB must be more willing to criticize agency benefit claims. OMB has the experience and the know-how to create a benefit yardstick of its own, so to speak. OMB could present questionable rules by comparing them to the alternative benefits that could be gained if compliance costs went, instead, toward hiring policemen or firemen or buying smoke detectors or simply buying buckets of white paint to paint lines down the center of rural roads.

Simplifying steps such as producing uncomplicated report cards, emphasizing costs, and creating multiple classes of major rules could help maximize OMB disclosure and solidify the Regulatory

Right-to-Know Act's success. And figure seven in my testimony recaps some of those steps and provides thoughts for future reforms. And I think the Right-to-Know Act is a great step forward, and I appreciate the opportunity to testify. Thank you very much.

[The prepared statement of Mr. Crews follows:]

The Regulatory Right-to-Know Act
Making Regulatory Disclosure Work

Testimony of
Clyde Wayne Crews Jr.

Director of Competition and Regulation Policy
Competitive Enterprise Institute

Before the:
Subcommittee on National Economic Growth, Natural Resources &
Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives

March 24, 1999

The Regulatory Right-to-Know Act:
Making Regulatory Disclosure Work

Regulations in Perspective, 1999

- Costs of Regulations
- Numbers of Regulations – 4,899 rules in 1998
- Numbers of Regulations – 4,560 rules in the Works
- Numbers of Regulations – EPA Spotlight

Overview: Why improved disclosure as provided in the Right-to-Know Act (H.R. 1074) is essential

Themes to guide successful regulatory reform: accountability and disclosure

Ensuring the Right-to-Know Act's Success

- OMB should compile a simplified "Regulatory Report Card" of available regulatory statistics for publication in the *Federal Budget* or the *Economic Report of the President*
- The Right-to-Know Act should lower the threshold for "economically significant" or "major" rules, and have OMB designate multiple classes of them
- Agencies should emphasize costs rather than benefits
- As long as Right-to-Know retains benefit calculation requirements, the OMB must be more willing to criticize agency benefit claims
- In aggregate and annual cost estimates, the Right-to-Know Act should separately categorize economic, social/environmental administrative, and "agency only" rules
- The Right-to-Know Act properly acknowledges indirect impacts of regulations
- The Right-to-Know Act should ask the OMB to aggressively recommend rules for revision or elimination

Further advancing the public's right-to-know

Conclusion

The Regulatory Right-to-Know Act:
Making Regulatory Disclosure Work

Good Morning, Mr. Chairman, my name is Clyde Wayne Crews Jr., and I am the director of Competition and Regulation Policy at the Competitive Enterprise Institute. I appreciate the opportunity to appear before the subcommittee today. It is a great pleasure for me and for my organization. CEI is a Washington-based public interest group established in 1984, with a current annual budget of about $3 million and a staff of 35. CEI works to educate and inform policymakers, journalists and other opinion leaders on market-based alternatives to political programs and regulations. CEI also engages in public interest litigation to protect property rights and economic liberty.

The Competitive Enterprise Institute's Regulatory Reform Project seeks to promote policies that maximize the disclosure of information on regulatory costs and numbers and types of regulations, and that ultimately make regulators accountable to the voter. Among the Project's goals are procedural regulatory reforms -- of which Regulatory Right-to-Know is a prime example – as well as reforms in specific categories of regulation such as antitrust and electricity. Few Americans believe they should be bound by "laws" enacted by people they didn't elect. Appreciating the power of that fundamental tenet of democracy will provide the grounding and moral legitimacy for remounting a successful bipartisan overhaul of the non-representative regulatory state. The uniqueness of CEI's regulatory project is employing congressional accountability and regulatory disclosure as the fundamental principles of regulatory reform.

A key product of CEI's regulatory reform project is the annual report *Ten Thousand Commandments: An Annual Policymaker's Snapshot of the Federal Regulatory State*, the 1999 edition of which will be released the week of March 22, 1999. The publication is an effort to highlight regulatory data, facts and figures in a simple, straightforward fashion. Many of these elements are the very stones and mortar whose disclosure the Regulatory Right-to-Know Act (H.R. 1074) would make *mandatory* and *official*. CEI would be delighted to see *Ten Thousand Commandments* and reports like it made superfluous by the official annual reporting that would result from the Regulatory Right-to-Know Act.

To lay the groundwork for the need for Regulatory Right-to-Know, some highlights from the 1999 edition of *Ten Thousand Commandments* follow:

Regulations in Perspective, 1999

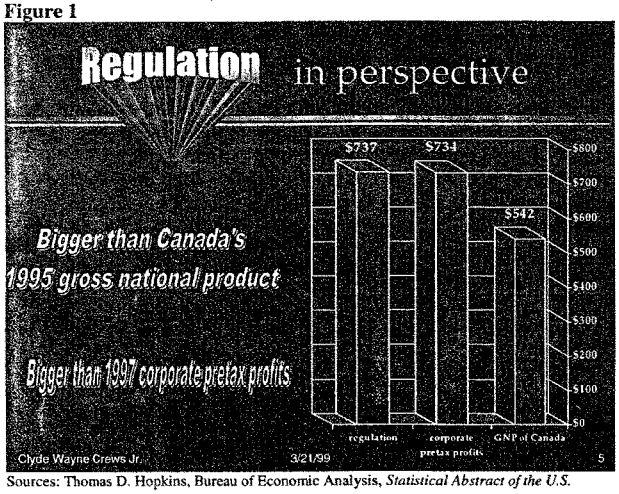
• Costs of Regulations

The total costs of complying with off-budget social regulations total up to $230 billion according to the Office of Management and Budget. A more broadly constructed

competing estimate by Thomas D. Hopkins that includes economic regulatory costs and paperwork costs pegs regulatory expenditures (updated for inflation) at $737 billion in 1998.

If Dr. Hopkins is right, 1998's regulatory costs amounted to 44 percent the size of all federal outlays of $1.6 trillion. In other words, the off-budget government is approaching half the size of the budgeted one, and is bigger than Canada's GNP ($542 billion in 1995), and larger than corporate pretax profits ($734 billion last year). (See Figure 1)

Figure 1



Sources: Thomas D. Hopkins, Bureau of Economic Analysis, *Statistical Abstract of the U.S.*

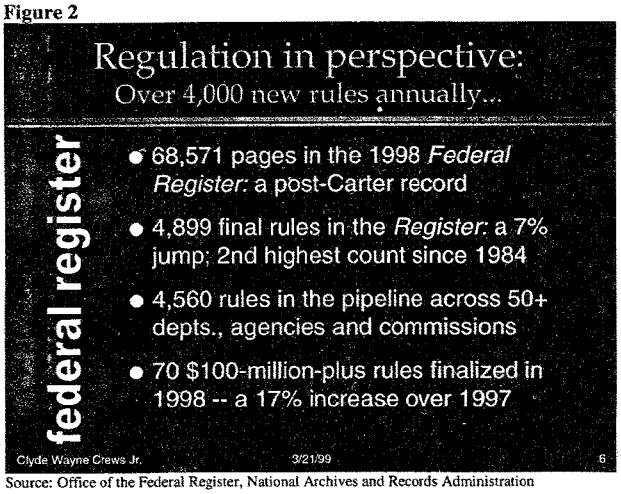
Other information about regulatory costs:

- ✓ Regulatory costs absorb 9 percent of U.S. gross domestic product, $8,499 billion last year.
- ✓ Agencies spent $17.5 billion to manage the regulatory state in 1998. Counting the $737 billion in off-budget costs, that brings the total regulatory burden to $754 billion.
- ✓ The average family of four's 1997 after-tax income of $36,423 contained $7,239 in hidden regulatory costs. Thus regulatory costs consume 20 percent of the after-tax family budget.

- Numbers of Regulations -- 4,899 rules in 1998

- ✓ The 1998 *Federal Register* contained 68,571 pages, the highest level since Jimmy Carter's presidency and a 6 percent jump over 1997. (Figure 2 summarizes *Federal Register* data.)
- ✓ Agencies issued 4,899 final rules in 1998's *Federal Register*, a 7 percent jump over the year before, and the second-highest count since 1984.
- ✓ According the General Accounting Office's database, 70 final rules costing at least $100 million each were issued by agencies in 1998, a 17 percent increase over the 60 issued the year before.
- ✓ Agencies have issued over 21,000 final rules over the past five years.

Figure 2



Source: Office of the Federal Register, National Archives and Records Administration

• Numbers of Regulations – 4,560 rules in the works

- ✓ According to the October 1998 *Unified Agenda of Federal Regulations*, 4,560 regulations are now in the pipeline throughout the 50-plus federal departments, agencies and commissions (at either the pre-rule, proposed, final, completed or long-term stages).
- ✓ Of the 4,560 regulations now in the works, 117 are "economically significant" rules that will cost at least $100 million apiece annually. That indicates that new regulations to impose at least $11.7 billion yearly in future off-budget costs are in the pipeline.
- ✓ The top five rule-producing agencies account for 2,152 rules, or 47 percent of all rules under consideration. (The agencies are: the Department of Transportation, the

Environmental Protection Agency, the Department of the Treasury, the Department of Agriculture and the Department of Health and Human Services.)

✓ Rules affecting small businesses have increased 37 percent over the past five years, from 686 in 1994, to 930 in 1998.

• Numbers of Regulations - EPA spotlight

✓ The Environmental Protection Agency (EPA) alone expects to issue 462 of the 4,560 planned rules.

✓ The EPA's rules now in the pipeline will cost at least $3.5 billion annually.

✓ Fewer than half of the EPA's planned $100 million rules are accompanied by quantitative benefit estimates, according to CEI's review of the EPA's 1998 *Regulatory Plan*.

Overview: Why improved disclosure as provided in the Right-to-Know Act (H.R. 1074) is essential

The Regulatory Right-to-Know Act (H.R. 1074) is important also because it makes disclosure of the regulatory state and inherent part of running the federal government, and because it re-emphasizes the important policing role of central review of regulations. Some research suggests that centralized review helps level the playing field for consumers by increasing the rate of return to lobbying for dispersed groups (like consumers) relative to concentrated special interests, since they need to influence one entity rather than a host of them.[9] So Right-to-Know may also enhance fairness in addition to increasing disclosure.

The Right-to-Know Act takes regulatory disclosure to its next logical level given the recent reforms Congress has already put into place. Since 1994, bills implementing paperwork reduction reform, unfunded mandates reform, a requirement that Congress get the opportunity to review new regulations before they are effective, and small business regulatory relief, have passed. The Right-to-Know bill, with its wide bipartisan sponsorship, is likely to pass. Members shouldn't discount the merits of keeping the analysis simple, however. The Act could easily report data such as that appearing above, all in such a way that it is easily graspable by the public rather than merely by regulatory policy specialists, policymakers and academics.

The need for greater analysis of regulatory impacts was made clear in the 105th Congress's *Survey of Federal Agencies on Costs of Federal Regulations* (Committee Print 105-A), prepared by staffers of Commerce Committee Chariman Tom Bliley. Recognizing that regulations are fundamentally interventions in the marketplace, the Commerce Committee sent 13 federal agencies questionnaires in compiling its report, intending to learn how agencies consider and document the costs of the regulations they issue. Among the report's conclusions, the committee noted "We have found that the agencies have little, if any idea of how their regulations affect the American people."[1]

The queries sought the paperwork documenting the regulatory costs the agencies imposed, the procedures used to determine those costs, and comparisons of actual and anticipated costs.

Significantly, the agencies were specifically asked *not* to prepare new documents. The intent was to determine if agencies - as guardians of public health, safety and economic well being -- exercised rudimentary benefit-cost assessments of their own accord.

Alas, agencies seemingly were not to be bothered. The Committee regarded as "disturbing" the "pattern across practically all regulatory agencies of neglect of the documentation and consideration of regulatory costs." The report found that "none of the agencies under the Commerce Committee jurisdiction has a basis to make fully informed or defensible decisions about the promulgation and review of regulations; agencies cannot possibly know whether they are doing more good than harm."

And as for the sweeping, big-picture questions that ought to engage mighty agencies wielding all-embracing power -- such as regulation's impact on consumer prices, its contribution to U.S. job loss, and to the delay of life-improving inventions and technologies; "Federal agencies never answer these questions - they never even ask them." The Regulatory Right-to-Know bill's requirement that OMB report on the impacts of regulation on the federal and lower-level governments, the private sector, small business, wages, prices and productivity would remedy this lapse. Greater disclosure and accountability are warranted and readily attainable.

Themes to guide successful regulatory reform: accountability and disclosure

Regulatory costs – such as those posed by pollution controls, workplace regulations and consumer product regulations -- sap the economy of hundreds of billion of dollars each year by any estimate. The traditional responses have been calls for enhanced cost-benefit analysis and risk assessment, reviews of new and existing regulations, and reducing paperwork. All are important, but their limitations must be recognized as well.

In making the case for significant reforms of the regulatory state, the laudable goals of ensuring that benefits exceed costs and that regulated risks are significant have unfortunately failed to inspire, as evidenced by the 104th and 105th Congress' unsuccessful comprehensive regulatory reform efforts, as well as the relative lack of consensus on the format and content of such reports at the Office of Management and Budget (OMB) for nearly two decades. Although policymakers have long called for precisely such agency cost-benefit analyses and risk assessments of federal health and

safety rules, even today, no coherent, enforceable, publicly understandable regulatory monitoring policy exists.

One problem with emphasizing cost-benefit analyses and risk assessments of health and safety rules has been the ease with which such demands gets misrepresented by pro-regulation demagoguery. As Competitive Enterprise Institute President Fred Smith noted, last year's regulatory reform effort was characterized by opponents and the media as: "Mad-dog Republican ideologues join with robber-baron capitalists to regain the right to add poison to baby food bottles." The fact that ill-conceived regulations themselves actually cause harm got lost in the sound-bite sewer.

Last year's comprehensive regulatory reform bill, opponents claimed, would bog agencies down in tedious cost-benefit analyses, and its judicial review provisions would tie up the courts with frivolous lawsuits against agencies.

There is considerable reason to doubt these claims. Yet even if cost-benefit analysis were perfected, fundamental regulatory reforms would still await. OMB, as a watchdog of federal agencies, can do only so much on its own: agencies issue most significant regulations because they are required to by Congress in the first place – thus they can police themselves only to a limited extent. Since Congress itself is the source of overregulation, Congress must become the target of regulatory reform in the final analysis -- just as Congress is the target of popular proposals like term limits, committee reform, and other reforms aimed at reining in government over-reach. Regulatory reform, rather than being seen solely as a technocratic cost-benefit campaign, should be understood also as *congressional reform*. Rather than solely denounce derivative agencies or scold OMB for failing to properly "audit" the regulatory state, regulatory reform must institute congressional accountability and curtail the excessive delegation of power to unelected federal agency employees in the first place. The Congressional Review Act of 1996, which gave Congress an expedited procedure to enact disapprovals of inappropriate legislation, was an important acknowledgement of this principle.

In the meantime, the bipartisan Right-to-Know Act, by establishing an annual report on regulations and keeping the report simple and digestible, can lay the groundwork for greater success by laying bare the scope of the regulatory state. (See Figure 3.)

Figure 3



Other than curtailing the delegation of excessive legislative power to unelected agencies -- which is the fundamental source of regulatory excess -- the only response to agency excess is to aggressively monitor and audit what agencies do. This is why a review function and an annual assessment of regulatory impacts by the Office of Management and Budget (OMB) like that laid forth in OMB's 1998 *Report to Congress to Congress on the Costs and Benefits of Federal Regulations*, and made permanent with the Regulatory Right-to-Know Act, matters so much. Since regulation and taxes are both means of achieving governmental ends -- and since both have impacts on aggregate output, prices and employment -- policy should avoid unacknowledged government-caused expenses, whether fiscal or regulatory. The Right-to-Know bills disclosure provisions will ultimately help provide incentives for Congress itself to ensure that regulatory benefits exceed costs.

Ensuring the Right-to-Know Act's Success

The OMB must do the best job of reviewing and documenting the regulatory state that it possibly can, and continuing the *Report to Congress* as the Right-to-Know bill will do is the essential step because it ensures that *disclosure* spearheaded by the OMB orients future regulatory reform. Right-to-Know recognizes that OMB stands in a unique position to maximize "truth in regulation" by enhancing its report, thereby helping ensure that OMB's oversight efforts succeed and continually improve every year. Following are some of the ways -- such as emphasizing simplicity, creating more informative, user-friendly "Report Cards," and calling for more boldness from OMB -- that the Right-to-

Know Act can put regulatory costs on a par with taxes in terms of public disclosure. (See Figure 4).

Figure 4



- OMB should compile a simplified "Regulatory Report Card" of available regulatory statistics for publication in the *Federal Budget* or the *Economic Report of the President*

Reformers are handicapped by the relative lack of official *concise* presentation of known information about regulatory trends and costs. The popular and often-cited "number of *Federal Register* pages" is a tired gauge, and one that reveals little about actual regulatory burdens. In the new *Report to Congress*, OMB did a commendable job outlining the bulk of the costliest, "economically significant" rules for the period April 1, 1997 through March 31, 1998. OMB's summaries in the *Report to Congress* of the available cost-benefit data provided by the agencies for these rules is a giant step above the standard presentation of this information -- scattered across more than 4,000 separate rule entries in the 1,000-plus pages of the *Unified Agenda of Federal Regulations*, with nary a digestible summary table in sight.

One tweak of the Right-to-Know bill that would be of immense value in the ongoing reform effort to Congress, scholars and the very third party reviewers whose input is stressed in the bill would be to *more fully summarize the regulatory data already*

provided but scattered across government agencies. This information includes, but is not limited to: total numbers of major and minor rules; available cost tallies for the current year's rules; numbers of major rules reported on by the GAO in its database; numbers of rules with statutory and judicial deadlines; the top rule-making agencies; and *Unified Agenda* data on rules impacting small businesses, and state and local government. Such data could be easily condensed and published as a part of OMB's Right-to-Know report or as a chapter in either the Federal Budget, the *Economic Report of the President*, or the *Unified Agenda of Federal Regulations.* A simplified "Regulatory Report Card" has the advantage that it does not immediately require enactment of more stringent cost-benefit requirements, while Right-to-Know as it currently stands certainly will.

In other words a significant amount of the "non-cost" information not currently assembled intelligibly in one location, easily could be. Much of it would be of immense value, just as hard cost numbers would be. It would be remarkably informative in telling us about the extent of the regulatory state, primarily because it would help policymakers determine whether it does more good than harm. OMB could summarize all quantitative and non-quantitative data into a handful of charts, and provide historical tables as well. Trends in this data will prove vital information, facilitating cross-agency comparisons over time.

Figure 5 provides a sampling of dispersed data already compiled that should be officially published annually in summary form *by program, agency,* and *grand total*:

Figure 5



Requiring annual publication of such summary information would acknowledge and validate its status as an important component of the disclosure process, and quickly reveal to what extent Congress itself is responsible for the regulatory burden. For example, it would help emphasize that Congress put in place many of the statutory deadlines that make vigorous regulatory analysis impossible. And so long as agencies continue to calculate benefits, presenting the percentages of rules with and *without* benefit calculations would reveal whether or not we can truly say the regulatory enterprise is doing more harm than good.

As OMB is aware, the presentation of some of this data would not be a new exercise. Portions of this information, such as numbers of proposed and final rules and number of reviews, was formerly collected and published in a "sister" document to the Budget -- the *Regulatory Program of the United States Government* -- but that process has since been abandoned. This report specified what actions a then-more-aggressive Office of Information and Regulatory Affairs took on proposed and final rules it reviewed, with data going back 10 years. The report also included comparisons of the most active rule-producing agencies, detailed the specific regulations that were sent back to agencies for reconsideration, listed rules withdrawn, and provided analysis of pages and types of documents in the *Federal Register*. Reinstating the *Regulatory Program*'s "Annual Report" would be an easy step for the Right-to-Know bill. As part of the presentation, OMB should also present the top five or 10 rule makers in both number and in cost. Tallying costs is important, but where costs aren't available, the percentage of each agency's significant rulemakings lacking estimates can be ascertained. That would help highlight the best and worst agency efforts at getting a handle on costs. As years pass, cumulative reporting also will help uncover any efforts to circumvent the regulatory review process, such as any proliferation of "minor rules" to avoid the "economically significant" or "major" rule label.

As the Figure 5 suggests, breaking out information on numbers and types of rules impacting small business would be important as well, and easy to achieve by using the annual *Unified Agenda*. According the Small Business Administration, small businesses account for 50 percent of employment in the United States, 44 percent of sales, and 39 percent of GDP. The Regulatory Flexibility Act requires federal agencies to assess the impacts of their regulations on small business, and it explicitly recognizes that fixed regulatory burdens are greater relative burdens for small firms than for large ones (since such firms have less output over which to spread costs, and since such costs absorb a greater share of a small firm's operating budget). Since data on which rules impact small business are available in the *Unified Agenda*, the Right-to-Know Act should require that it be summarized as well.

Non-cost data clearly isn't useless: it can be made quantitative by revealing the percentage of rules for which benefits are and are not known, for example. Plus it would make Right-to-Know legislation more meaningful by officially reporting hard facts and numbers, not solely "net benefit" analyses guaranteed to be controversial and continually debated. While OMB's *Report to Congress* estimate of the regulation's aggregate and

annual incremental costs becomes the annual fixture it should, the Right-to-Know Act should combine it with assorted Regulatory Report Card-style information. Together they would constitute the best ongoing official disclosure of the regulatory state ever published.

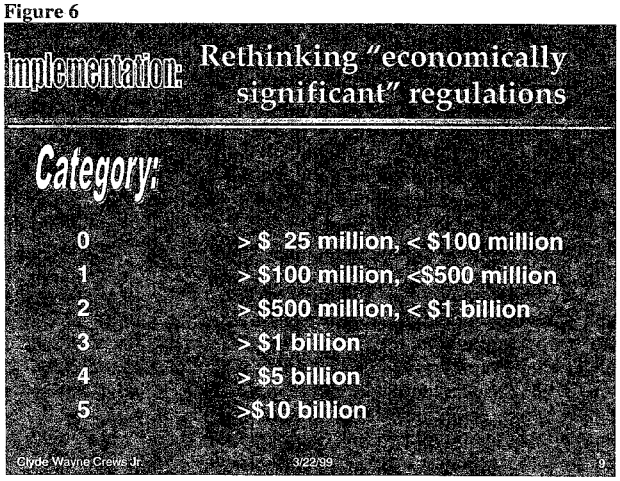
• The Right-to-Know Act should lower the threshold for "economically significant" or "major" rules, and have OMB designate multiple classes of them

If OMB and agencies concern themselves primarily with disclosing regulatory *costs* rather than benefits, as they should, then that presents an opportunity to improve and present far more meaningful cost analyses than anything available today. Today, regulations are usually loosely broken into those that are "economically significant" (over $100 million in annual costs), and those that are not. But that threshold only tells us the *minimum* level of costs. For example, given the definition of what an economically significant rule is, we can ascertain only that the 117 major rules in the October 1998 *Unified Agenda* will, if implemented, cost *at least* $11.7 billion ($100 million times 117 rules) annually. But outsiders can't glean any more than that without combing tediously through the *Agenda*. The recent *Report to Congress* improved over the prior year's edition by including tables listing economically significant rules individually, along with their cost estimates (although the costs estimates were not added up.) But a better shorthand to refer to classes of costly rules would be worthwhile.

The "major" designation would be far more informative if expanded slightly in the Right-to-Know Act. The problem with today's definition of economically significant or major rules is that the bulk of rules can escape close scrutiny by the OMB, because they can cost up to $99 million and yet dodge the "significant" label. The remedy is to alter the threshold to, for example, $25 million annually -- which is still a huge amount of costs. Disclosing a wider range of costs is fairer to the public, plus if agencies are directed to focus principally on costs of rules rather than benefits (for reasons described below) the reporting burden becomes much more manageable as well as more informative.

To that end, OMB should develop simple guidelines and recommend that agencies break economically significant rules up into separate categories that represent increasing costs, to be presented in the Regulatory Report Card. The following chart offers a suggested breakdown:

Figure 6



The Figure 6 particular breakdown is merely one workable suggestion. OMB should select permanent categories based upon a review of costs of major rules over the past decade or so. It is apparent that the "economically significant" designation could be made substantially more meaningful: knowing that a rule is or is not economically significant simply tells us too little unless we dig up a regulatory impact analysis or peruse the copious *Unified Agenda*. For example, some cost estimates of the EPA ozone-particulate matter rule suggest that by the year 2010, the ozone portion will cost at least $1.1 billion, and that the particulate matter portion will cost $8.6 billion annually at that time.[2] Knowing that EPA imposed "Category 3" and "Category 4" rules would be far more informative shorthand than merely knowing that both rules are "economically significant."

- Agencies should emphasize costs rather than benefits

The previous sections mentioned shifting emphasis to cost disclosure rather than cost-benefit analysis. There are good reasons for the approach. It is well understood that the typical agency faces nontrivial incentives to overstate the benefits of its activities and to enlarge its scope. Benefit estimates can be highly subjective, and if an agency is allowed to offset costs of a regulation with benefits, as is currently the case in "net-benefit" reporting, rarely will any regulation fail to qualify from an agency's point of view. For example, benefits of such programs as energy conservation requirements will never be agreed upon, because some regard such programs as harmful rather than beneficial.

Indeed, even OMB is unwilling to say in its *Report to Congress* that it is prepared to recommend any revision or elimination of existing regulations. Despite the fact that it is the Office of Management and Budget and has been reviewing regulations for 20 years, OMB says that "At this stage we do not believe we have enough information to make definitive recommendations on specific regulatory programs."[3] Indeed, the OMB merely endorses a few reform initiatives that agencies came up with their own. In spite of its unique knowledge of the regulatory state, it takes cover behind the comments by Senator Glenn during debate over the legislation that led to the creation of the *Report to Congress* that "OMB will not have to engage in extensive analyses of its own, but rather is expected to use existing information."[4] The OMB also notes that "[I]t is the agencies that have the responsibility to prepare these analyses, and it is expected that OIRA will review (but not redo) this work.[5]

Along with the lack of enough aggressiveness toward agency rules, the OMB reports a huge range of possible net benefits. The OMB reports that "health, safety and environmental regulation produces between $30 billion and $3.3 trillion of net benefits per year."[6] That tremendous range makes it difficult to draw any conclusions about the effectiveness of the regulatory state. But the real problem with being too accepting of "net benefit" numbers applied to the entire regulatory enterprise is that, of the thousands of regulations that up to now exist, just a handful may be responsible for the bulk of benefits, leaving the rest of the regulatory state's benefits questionable. In a letter to OMB Director Jacob J. Lew, Sens. Fred Thompson (R-Tenn.) and Ted Stevens (R-Alaska) on the draft version of the OMB's now-final report, noted that "[T]he estimates in the draft report of the total annual benefits of social regulations range from $93 billion to $3.3 trillion. Most of this is attributed to two major regulations on lead and particulate matter."[7]

As a practical matter, it also happens to be the case that OMB will never review all agency benefit estimates anyway, especially if the definition of "economically significant" rules remains as it is, at $100 million annually. For the 1998 *Report to Congress*, the OMB reviewed less than 1% of the 4,720 final rule documents from agencies.[8] Moreover, the OMB often includes and monetizes annual estimates only for those rules for which agencies have already quantified benefits.[9] Agencies may learn quickly to avoid scrutiny by not quantifying benefits. Moreover, the Right-to-Know Act itself calls for inclusion of "non-quantifiable" benefits. That's an invitation to more yawning gulfs like OMB's $30 billion to $3 trillion one, and makes impossible the kind of "point estimate" for regulatory benefits and costs that some commenters on the OMB's annual reports have advocated. Plus the Right-to-Know bill assumes the benefit estimates from agencies will be there for OMB to review in the first place -- but they won't be until Thomson-Levin-style comprehensive regulatory reform legislation stipulating cost-benefit analysis and risk assessment, is enacted.

Additionally, the problem exists that independent agencies "provide relatively little quantititative information on the costs and benefits of regulations for major rules, especially compared to the agencies subject to E.O. 12866."[10]

Given the nearly intractable problems surrounding any such notion as objective regulatory net benefits, any annual accounting statement intended to accurately portray the scope of the regulatory state should relieve agencies of benefit calculation responsibilities altogether. Agencies and OMB should concentrate solely on assessing as fully and as accurately as possible the costs of their initiatives, which would allow them to more fully analyze far more rules. This approach would also parallel our fiscal budget, which focuses only on the amounts of taxes, not their benefits. Properly, the benefits of regulations are Congress's worry -- it presumably knows the benefits it is seeking when it passes legislation that agencies later implement with regulatory directives. Congress therefore should be prepared to specify what it thinks it is reasonable to expect people to spend to achieve those benefits. Agencies should then seek to attain those benefits at least cost.

Laying bare the extent of the regulatory state is essential despite its difficulty, but leaving out benefit calculations would help OMB (and agencies') devote more resources to cost disclosure. Agencies already do a reasonable job assessing costs for $100 million rules through the preparation of Regulatory Impact Analyses, which face public comment, and through the requirements of Executive Order 12866. That work can be credibly built upon. It happens to be the case, of course, that the legislation that required OMB to produce the *Report to Congress*, as well as the Right-to-Know Act, call for cost *and* benefit calculations, and therefore OMB must comply to the best of its abilities until that approach is changed.

Of course, focusing on costs doesn't mean benefits can be ignored. They should simply be addressed differently. As with the tax code, *Congress* should make the "grand judgments" about where regulatory benefits lie and take responsibility for the benefits or lack thereof implied in the regulatory priorities that prevail across the agencies. Congress already "sets" priorities implied by the potential benefits that the various agencies might provide, given their purview. Allowing agencies to focus on costs could prod them toward maximizing benefits within those bounds. Rather than simply claim net benefits for every rule, agencies should "compete" to prove that they save the most lives at least cost when compared to other agencies. Ultimately, that dynamic would allow Congress to reapportion regulatory authority based on results achieved or unachieved. For example, if it is determined that OSHA saves more lives than EPA, Congress's future lawmaking and the resulting allocation of regulatory authority could reflect that.

Leaving off benefit calculations would also offer more of a chance for agencies to grapple with *indirect* costs – themselves a immense calculation problem -- and also avoid the intellectual chaos of trying to speak coherently about "net benefits" when such benefits are subjective, wildly disagreed upon, and often measured best on different metrics and thus rarely discernible by third parties. Consider that we don't offset the *taxes* individuals pay with the benefits those taxes provide to others to arrive at a *net* tax burden. Abuses could result from the fact that persons enjoying the benefits of regulations and persons paying for those benefits are not always, or perhaps rarely, the same people.

Even benefits of federal on-budget activities are difficult to compare with costs: How does one for example, trade off benefits of federal outlays on Amtrak versus money spent on welfare? Such ambiguities would become greatly magnified in a regulatory regime that left benefit assessments up to agencies alone. Moreover, while OMB stated in an earlier version of the *Report to Congress* that "The advantage of regulation is that it can improve resource allocation or help obtain other societal benefits," that begs the question of *whose* resources, or *whose* societal benefits: society doesn't speak with one voice.

Grasping costs fully in preparing any annual regulatory survey will be fraught with difficulties and uncertainties enough. The Right-to-Know Act should keep the OMB's job more manageable by concentrating on cost disclosure, and would likely be much more useful than several more years of the kind of reports OMB is doing now.

- As long as Right-to-Know retains benefit calculation requirements, the OMB must be more willing to criticize agency benefit claims.

Until OMB and agencies shift their focus to cost calculations alone, a proper attitude toward agency benefit claims is essential. And indeed, OMB appears skeptical of some EPA claims of the benefits of its clean air regulatory programs, for which the EPA's "estimate implies that the average citizen was willing to pay over 25 percent of her personal income per year to attain the monetized benefits."[11]

An unspoken presumption underlying regulatory activism is that markets are not perfect but that political decisionmaking somehow can be. Indeed, the fount of regulation is the belief that government actors are non-self-interested, that political markets are fairer than private markets. The OMB remarked in an earlier year's Steven's *Draft Report* that "It is...difficult to imagine a world without health, safety and environmental regulation. Could a civil society even exist without regulation?"[12] While getting to the bottom of such deeply philosophical discussions as whether markets and the common law better protect the public than regulation is well beyond the scope of this report,[13] it is important for OMB to be more willing to acknowledge the ease with which regulation can do more harm than good.

OMB appears too comfortable granting the benefit of the doubt to regulators. By placing the burden of proof on those who would remove a rule rather than on those who would impose it in the first place, OMB ultimately fails to recommend any reductions or elimination of rules, but merely restates and supports some reforms that agencies are already undertaking. Interestingly, in the face of the prevailing, unquestioning acceptance of the benefits of "social" regulation, our society is on the other hand engaged in widespread dismantling of economic regulations (electricity, telecommunications) because of a realization that such regulation does more harm than good. It has become clear that economic regulation often merely serves special interests. For example, price

regulation has not been shown to work for consumers, but it has been shown to increase prices and aid some producers.

Thus it is not the case that "businesses generally are not in favor of regulation."[14] Business not only generally favors regulations that transfer wealth to them, but often seeks the regulation in the first place. Consumers did not ask for the Interstate Commerce Commission, for example, or for the state regulation of utilities: such regulation was sought by the regulated to protect profits. But if economic regulatory agencies are subject to capture by special interest groups, it is no great leap to conclude that much of what is considered "social" regulation may likewise be quite self-centered.

Indeed, health and safety regulation can tend to aid the regulated, and potentially produce a bad deal for consumers. For example, food labeling restrictions that limit health claims may benefit entrenched food producers that already enjoy healthy reputations. Upstart companies are less able to compete on the basis of health characteristics thanks to restrictions, and thus may emphasize less-important features like convenience, microwaveability, and taste. As a result, the health characteristics of newly introduced food products may be caused to decline -- the opposite of regulation's alleged intent. Since regulation can easily be exploited to protect profits, many examples of "social" or "safety" regulations must be carefully considered as well. Butter producers tried to portray margarine as unsafe and filthy at the dawn of the margarine industry, for example. Likewise, examples of environmental regulations being abused to transfer wealth or protect profits abound.

There are other reasons OMB should recognize benefits may not always be as high as agencies claim as it carries out the directives of the Right-to-Know Act:

- ✓ Benefits may be less because of agencies incentives to overstate them (the flip side of the incentive of businesses to overstate costs).
- ✓ Benefits are selectively expressed: for example, structurally safer cars may induce some to drive more recklessly, placing *others* at risk (the moral hazard problem).
- ✓ The benefits of a particular regulation are rarely compared with benefits that could be secured in another agency or by state and local regulatory authorities.
- ✓ Regulations serve as *lower bounds*: once in compliance, there may be no competitive edge gained by a firm that exceeds a particular rule's requirements. In this sense, regulatory "benefits" are actually imposing costs by removing safety as a competitive feature.

OMB should temper the inclination to give the benefit of the doubt to agency benefit claims, and recognize that environmental and social regulation is subject to the same political failure and regulatory "pork barreling" that often accompanies economic regulation. It is, however, heartening to see that OMB has acknowledged that health and safety are *competitive* features and that businesses will strive to provide them without regulation.[15] The Right-to-Know Act should emphasize OMB's role in ensuring that regulators do not take credit for the benefits that business would provide anyway.

- In aggregate and annual cost estimates, the Right-to-Know Act should separately categorize economic, social/environmental administrative, and "agency only" rules.

OMB properly distinguishes between economic and environmental/social regulation in its aggregate cost estimates. Moreover, OMB's willingness to conclude that the benefits of economic regulation are "expected to be small"[16] is a dramatic official development.

There seems to exist an emerging recognition that that the weakest excuse for government interference in the economy is that of economic intervention. This seems to be the case whether the issue is grand-design government intervention -- such as "fine-tuning" of the macro economy -- or whether the issue is direct government management of an specific industry's output and prices (such as agricultural quotas or electricity generation prices) or entry into an industry (such as the trucking industry). Even if motives are pure, such economic interventions fail. More ominously, many now recognize that motives for regulation aren't necessarily always rooted in the "public interest" at all, that regulation often works in the interests of the regulated parties themselves rather than in the public interest. That's a certain recipe for regulatory failure.

Since the role of health and safety regulation is so utterly different from economic regulation, separate presentation of them required by the Right-to-Know Act would make sense from the standpoint of comparing relative merits of regulations as the scope of OMB's surveys of annual regulatory costs grows. There are obvious conceptual differences that make meaningless comparisons of, for example, purported economic benefits from a trade regulation with lives saved by a safety regulation. To the extent that analyses such as the *Report to Congress* help discredit economic regulation, such regulations can be removed from the purview of government altogether (admittedly a utopian thought), leaving Congress and OMB the smaller task of controlling and documenting costs of environmental, health, and safety regulations. And of course, where health and safety rules reveal that they too have "private interest" origins, they can be jettisoned.

Paralleling an official distinction between "economic" and "social" regulation, the *Unified Agenda* and future regulatory cost studies (or Report Cards) prepared by OMB should further distinguish both these variants of these "interventionist" regulations from those that merely affect the public's dealings with the government. In other words, rulings such as those on benefit eligibility standards, use and leasing requirements for federal lands, and revenue collection standards and such, should appear separately in OMB reports from the economic and environmental and social regulations that normally represent the focus of regulatory reform. This separate category could simply be called "administrative." OMB could also separately present those rules that affect agency procedures only.

- The Right-to-Know Act properly acknowledges indirect impacts of regulations.

The OMB agrees on the importance of assessing indirect effects of regulation and seeks to do more investigating for next year's report.[17] Acknowledging indirect costs is simply a matter of fairness and accountability in government. If government doesn't regard compliance itself as too complex, then how can the government claim that merely assessing the costs of compliance is too cumbersome? Likewise, if indirect costs are too difficult to compute, then how can government credibly argue that compliance is a simple matter?

Ignoring indirect costs would lead to massive understatements of regulatory burdens. Thus, some explicit recognition of indirect costs imposed by regulations is necessary even though precise measurement will be impossible. (It bears mentioning that some types of indirect costs generated by certain regulations are reasonably well known. The documented negative effects of such interventions as the Corporate Average Fuel Economy standards, "drug lag," and the Endangered Species Act are all evidence of the need to monitor indirect costs.) Recognizing and somehow incorporating indirect costs in a reasonable way represents a critical, ongoing problem. Luckily, opportunity costs apply even to the economists at OMB: by avoiding benefit assessments as suggested earlier, manpower resources remain available to better assess indirect regulatory costs.

Another way of dealing with the dilemma of tabulating indirect costs, is to require Congress itself to vote on significant final agency rules where indirect costs are a significant component but difficult to tabulate. Under such a framework, handwringing over indirect costs wouldn't be quite as worrisome. The key contribution of an annual Right-to-Know regulatory accounting is not its accuracy alone, but its role in making Congress more accountable for the regulatory state. Today, no one is held directly accountable to voters for regulatory excess. Thus, one could clearly do worse than settle for rough indirect cost estimates that nonetheless help allocate regulatory dollars in loose correspondence with where an *accountable* Congress believes benefits to lie.

- The Right-to-Know Act should ask the OMB to aggressively recommend rules for revision or elimination.

As noted, OMB is too timid about recommendations for eliminating past-year regulations. Although OMB has said that "Before supportable recommendations are made to eliminate existing regulatory programs or elements of programs, empirical evidence based on analytical techniques... must be developed,"[18] many of the cost-benefit analyses are as good as they ever are going to be. If agency analyses under Executive Order 12866 or if independent analyses appear not to justify a rule, then OMB should be

forthright and say so. Nor should OMB shy away from making recommendations about modifying regulatory programs based on plain common sense. OMB might, for example, note the cost of a presumably beneficial regulation, then compare that benefit to the alternative benefits that could be secured if the compliance costs went instead toward hiring policemen or firemen, or simply toward buying buckets of white paint to paint lines down the centers of dangerous rural blacktop roads.

In other words, OMB has the experience and know-how to create a "benefit yardstick" of its own, so to speak, by which it can objectively critique *all* high cost, low benefit rules in an annual Report Card, if the Right-to-Know Act will simply require that it do so. Additionally, the Right-to-Know Act should stipulate that OMB ask *agencies* to propose rules to cut. Or, OMB could have agencies rank their regulations and show how their least effective rules are superior to another agency's rules. Results of such questionnaires could be presented in the Regulatory Report Card.

Further advancing the public's right-to-know

The very fact that OMB -- the *Office of Management and Budget* of all entities -- must rely on outside estimates of the costs imposed by the government it helps administer speaks volumes about the lack of accountability for regulatory costs.

To improve accountability over regulatory costs, the 104th Congress passed the Congressional Review Act (CRA). That law sets up a 60-day period following agency publication of a regulation during which the rule will not take effect. That 60-day pause affords Congress an opportunity, should it desire, to pass a resolution of disapproval to halt the regulation. This law was an important step toward enshrining the all-important notion of congressional accountability for regulations. However, the CRA has the disadvantage that it effectively requires a 2/3 supermajority to strike a rule if the president decides to veto a disapproval resolution. The superior approach to ensuring congressional accountability would be to enact a bill stipulating that no major agency rule becomes law *until* it receives an *affirmative* vote by Congress. This is in keeping with the Constitutional requirement that "All legislative Powers herein granted shall be vested in a Congress of the United States." (An expedited approval process along with en bloc voting on regulations may be employed to approve rules.)

Policing agency cost-benefit analyses clearly becomes less important if we instead require Congress - our elected representatives -- to approve new agency rules before they are binding on the public. If Congress then does a poor job ensuring net regulatory benefits, we have recourse at the ballot box. We will always lack that leverage with agencies.

In other words, cost-benefit analysis merely stresses *agency* accountability. Far better is stressing *congressional* accountability for all regulations. Today, Congress can take credit for popular legislation like the Clean Air Act while scapegoating "out of control" federal agencies when regulatory compliance costs later spiral. But the agency

bureaucrats that Congress blames aren't accountable to voters. In delegating these powers to bureaucrats, Congress has created a disconnect between the power to establish regulatory programs and *responsibility* for the results of those programs.

Making Congress more accountable for regulations would avoid much of the problem of agency tunnel vision: agencies by their nature cannot make the cross-agency comparisons of rules that would aid in the setting of government-wide priorities. Congress itself would become answerable for government-wide priorities, thus producing greater incentives to achieve maximum benefits than cost-benefit requirements imposed on agencies. Ending "regulation without representation" would also lessen the problems caused by the fact that for many regulations, agencies' "understandable response is not to quantify or monetize."[19] In such cases, the rule, like all others, goes back to a Congress that will answer for its efficacy or lack thereof. As long as accountability rules the day, even where cost (or cost-benefit) analyses cannot be conducted, or appear impossible to conduct, the public will have less reason to be concerned about regulatory excess because every elected representative will be on record as either in favor of or opposed to a particular regulation.

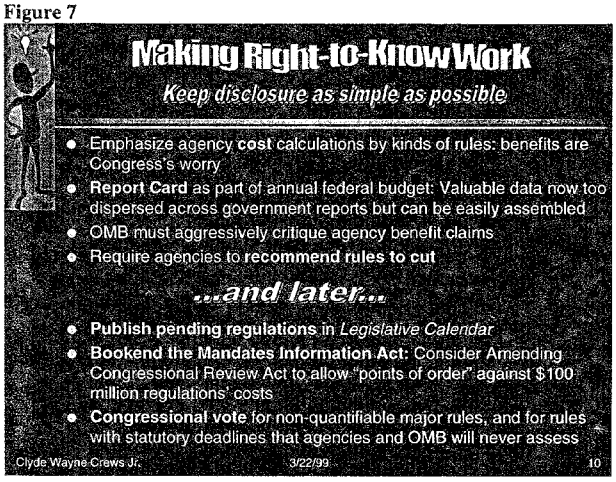
OMB's yearly efforts at presenting a snapshot of the regulatory burden as stipulated in the Right-to-Know bill would be aided by enhanced congressional accountability. A Congress directly accountable for regulatory costs would be less likely to approve questionable rules, therefore, agencies would be more inspired to ensure that their rules met a reasonable cost-benefit benchmark before sending them to Congress. Where today there is little incentive to perform cost-benefit analysis, accountability would "force" agencies and Congress to take those considerations into account.

Even if Congress were required to approve every agency regulation, cost tallies like those the Right-to-Know Act will provide would remain essential for the same reasons it is essential that the U.S. formally budget tax revenues and outlays. Moreover, since imposing taxes and imposing regulations can be substitutes for one another, today's pressures to maintain a balanced budget could increase pressures to regulate, underscoring the urgency of accounting for regulatory costs as the Right-to-Know bill will require.

Conclusion

The Right-to-Know Act offers a supremely useful tool for coming to grips with the regulatory state. Accountability and disclosure are the keys to guaranteeing that the regulatory enterprise always does more good than harm, and OMB has a significant oversight role to play. Other steps to maximize disclosure -- such as preparing summary "Regulatory Report Cards" for prominent presentation in the fiscal budget, focusing on costs rather than benefits, and creating multiple classes of major rules -- could further help ensure that annual status reports on regulation continue to improve and provide the public with the information it deserves. Figure 7 illustrates some of these steps and provides thoughts for future reforms.

Figure 7


Making Right-to-Know Work
Keep disclosure as simple as possible
• Emphasize agency cost calculations by kinds of rules: benefits are Congress's worry
• Report Card as part of annual federal budget: Valuable data now too dispersed across government reports but can be easily assembled
• OMB must aggressively critique agency benefit claims
• Require agencies to recommend rules to cut
...and later...
• Publish pending regulations in Legislative Calendar
• Bookend the Mandates Information Act: Consider Amending Congressional Review Act to allow "points of order" against $100 million regulations' costs
• Congressional vote for non-quantifiable major rules, and for rules with statutory deadlines that agencies and OMB will never assess
Clyde Wayne Crews Jr.
3/22/99
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Endnotes

[0] James C. Miller III, William F. Shughart II and Robert D. Tollison, "A Note on Centralized Regulatory Review," *Public Choice*, 1984, 43, p. 83.
[1] See *Survey of Federal Agencies on Costs of Regulations*, Staff Report Prepared for the Committee on Commerce, U.S. House of Representatives, 105th Congress, 1st Session, Committee Print 105-A, Washington: U.S. Government Printing Office, 1997.
[2] "Costs of Ozone Standard Outweigh Benefits, Final Impact Analysis Shows," *BNA Daily Environment Report*, No. 142, July 24, 1997.
[3] *Report to Congress*, 1998, p. 84.
[4] *Report to Congress*, 1998, p. 102.
[5] *Report to Congress*, 1998, p. 45.
[6] *Report to Congress*, 1998, p. 16.
[7] Letter to the Honorable Jacob J. Lew, Director, Office of Management and Budget, from Sen. Fred Thompson (R-Tenn.), Chairman, Senate Committee on Governmental Affairs, and Sen. Ted Stevens (R-Alaska), Chairman, Senate Committee on Appropriations, October 10, 1998, p. 2.
[8] *Report to Congress*, 1998, p. 44.
[9] *Report to Congress*, 1998, p. 68.
[10] *Report to Congress*, 1998, p. 60.
[11] *Report to Congress*, 1998, p. 26.
[12] *Draft Report*, 1997, p. 21.
[13] The Competitive Enterprise Institute would argue that much environmental regulation is "necessary" because of the failure to define property or use rights over resources in the first place. Thus, regulation is required due to government failure rather than market failure.
[14] *Draft Report*, 1997, p. 21.
[15] *Draft Report*, 1997, p. 22-23.
[16] *Report to Congress*, 1998, p. 20.
[17] *Report to Congress*, 1998, p. 92.
[18] *Draft Report*, 1997.
[19] *Draft Report*, 1997, p. 4.

The Regulatory Right-to-Know Act

Making Regulatory Disclosure Work

(charts accompanying testimony, March 24, 1999)

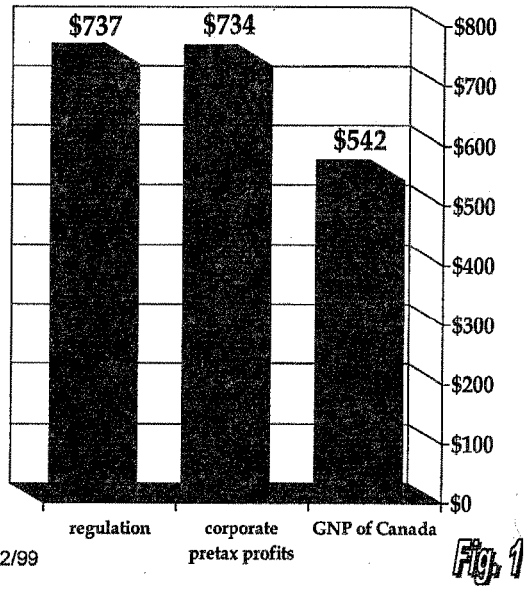
Clyde Wayne Crews Jr.
Director of Competition and Regulation Policy
Competitive Enterprise Institute



Regulation in perspective

Bigger than Canada's 1995 gross national product

Bigger than 1997 corporate pretax profits



Clyde Wayne Crews Jr. 3/22/99

Fig. 1

Regulation in perspective:
Over 4,000 new rules annually...



- 68,571 pages in the 1998 *Federal Register:* a post-Carter record
- 4,899 final rules in the *Register:* a 7% jump; 2nd highest count since 1984
- 4,560 rules in the pipeline across 50+ depts., agencies and commissions
- 70 $100-million-plus rules finalized in 1998 -- a 17% increase over 1997

Why should RTK emphasize simpler reporting?

- Calls for cost-benefit analysis since the 1970s remain unfulfilled
- Well-meaning reformers easily painted as coldhearted: "dollars for lives!"
- Recognizing reality: Agencies cannot police themselves. But a Congress accountable to voters will face proper incentives for cost-benefit analysis

Clyde Wayne Crews Jr. 3/22/99

Fig. 3

Disclosure: RTK puts regulatory costs on a par with taxes

- Requires regulatory costs, OMB criticisms and analysis



should also include...

- Other descriptive "Report Card" items such as...
  - » Tabular summaries of trends in:
    - *Federal Register*
    - *Unified Agenda*
    - *GAO database*
  - » Historical tables

Clyde Wayne Crews Jr. 3/22/99 Fig. 4

What might be featured in the [redacted]

Numbers of "Economically significant" rules and minor rules...

...all flagged as follows, with 5-year historical tables...

- **numbers impacting small business and lower-level governments**
- **numbers/percentages featuring numerical, descriptive only, or no cost estimates**
- **tallies of existing cost estimates, with subtotals by agencies and grand total**
- **short explanation of ratio and primary reason for lack of cost estimates**
- **rules that are deregulatory rather than regulatory**
- **rules that affect agency procedure alone**
- **Rollover: Which rules are appearing in the *Unified Agenda* for the first time?**
- **major and minor rules required by statute**
- **major and minor rules that are discretionary**
- **rules facing statutory or judicial deadlines**
- **rules for which cost calculations are statutorily prohibited**
- **percentages of rules reviewed at the OMB and action taken**

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Fig. 5



[redacted] Rethinking "economically significant" regulations

Category:

0	> $ 25 million, < $100 million
1	> $100 million, <$500 million
2	> $500 million, < $1 billion
3	> $1 billion
4	> $5 billion
5	>$10 billion

Clyde Wayne Crews Jr. 3/22/99 Fig. 6



Making Right to Know Work

Keep disclosure as simple as possible

- Emphasize agency **cost** calculations by kinds of rules: benefits are Congress's worry
- **Report Card** as part of annual federal budget: Valuable data now too dispersed across government reports but can be easily assembled
- OMB must aggressively critique agency benefit claims
- Require agencies to **recommend rules to cut**

...and later...

- **Publish pending regulations** in *Legislative Calendar*
- **Bookend the Mandates Information Act:** Consider Amending Congressional Review Act to allow points of order against $100 million regulations' costs
- **Congressional vote** for non-quantifiable major rules, and for rules with statutory deadlines that agencies and OMB will never assess

Mr. MCINTOSH. Thank you Mr. Crews, I appreciate you coming today. Our final witness on this panel is Professor Lisa Heinzerling, who is from Georgetown University Law School; and I appreciate your coming, Professor. You, too, please feel free to summarize your testimony; and we will include the entire document into the record.

Ms. HEINZERLING. Thank you very much. That is what I would like to do.

H.R. 1074 is called the Regulatory Right-to-Know Act. The problem with this name and with this bill is that the public will likely know less rather than more about Federal regulation if this bill is passed.

The reason is that the bottom-line estimates of costs and benefits required by this bill will necessarily reflect moral judgments which many members of the public will not know are reflected in the numbers, judgments with which many Americans may disagree.

This problem famously plagues cost-benefits analysis in general. It is compounded, I believe, by the mammoth cost-benefit analysis required by this bill, which will incorporate hundreds, if not thousands, of judgments that will be invisible to the person who simply reviews the numbers that the bill produces.

I will give just one example here in my oral remarks this morning of such a judgment. It concerns the calculations of the benefits of Federal rules that are designed to save human lives. Specifically, this judgment involves the relative value of present and future lives.

Now, many of you—you may know that Federal rules save lives over different time periods. For example, a rule that requires air bags in cars may immediately save the life of a person who otherwise would have died in a car accident. On the other hand, a rule reducing exposures to arsenic may prevent a person from being diagnosed with cancer some years after the exposures would have occurred.

A person analyzing the benefits of lifesaving rules must, therefore, decide how to treat lives saved in the future as compared to lives saved today. In previous reports on the cost benefits of Federal regulation, including reports by OMB and by private analysts, the estimates of costs and benefits have incorporated a technique called discounting, which effectively assumes that lives in the future are worth less than those saved today. The study cited this morning by Ms. Antonelli, for example, the Harvard study cited by her, incorporated the technique of discounting in reaching its conclusions.

Discounting subtracts from future benefits a fixed percentage for every year that passes before benefits accrue. In my example, it would mean that we should spend less to save a person from cancer than from death in an auto accident merely due to the passage of time between the harmful event and death.

In effect, discounting devalues lives saved in the future, even, for example, the lives of our own children, compared to lives that will be saved today. My own research has found that widely circulated estimates of costs per life saved are heavily influenced by discounting. Reported regulatory costs have been up to 1,000 times higher if one discounts than they are if one does not.

It would surprise me to learn that most members of the public are aware of the influencing of discounting on existing estimates of benefits. And, therefore, this is just one illustration of the way in which estimates of benefits and costs that are highly aggregated may mislead the public.

Highly aggregated estimates like those required by H.R. 1074 embody hundreds of assumptions like the ones I have described. These are assumptions about which ordinary people, not experts, likely have opinions and legitimate opinions. These assumptions are buried in a cascade of seemingly objective numbers in reports like those required by this bill.

In my own work on cost-benefit analysis, I have found that it is necessary to trace factual claims back through four or more references before I finally find the original source. And unless one does such excavation, the numbers that are reported cannot be evaluated; and the numbers themselves threaten to become the central concern, rather than the values and the assumptions that underlie them.

In conclusion, therefore, when it comes to numbers, less can be more. Thank you very much.

[The prepared statement Ms. Heinzerling follows:]

TESTIMONY OF LISA HEINZERLING

BEFORE THE SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES AND REGULATORY AFFAIRS

MARCH 24, 1999

My name is Lisa Heinzerling. I am a Professor of Law at the Georgetown University Law Center. I have also taught at the Yale Law School. I am a graduate of the University of Chicago Law School, where I served as editor-in-chief of the University of Chicago Law Review. After law school I clerked for Judge Richard Posner on the U.S. Court of Appeals for the Seventh Circuit, and then for Justice William Brennan of the U.S. Supreme Court. I was an Assistant Attorney General in the Environmental Protection Division of the Massachusetts Attorney General's Office for several years before coming to Georgetown. My expertise is in environmental and administrative law.

It is ironic that H.R. 1074 is called the "Regulatory Right-to-Know Act." It is ironic because, if this bill is passed, the public will likely know less rather than more about federal regulation. The bottom-line estimates of costs and benefits required by this bill hide moral and political judgments behind a mask of technical expertise. The public is likely to mistake the estimates' precision for accuracy and their technicality for objectivity. In that case the numbers generated as a result of this bill will be worse than useless. They will threaten the very public awareness the bill purports to embrace.

The danger of public confusion is illustrated by previous reports on the costs and benefits of federal regulation. Previous aggregate and individual estimates of the costs and benefits of federal regulations reflect moral judgments which many Americans may not know are reflected therein – judgments with which many Americans may disagree. They also rely on dated empirical studies

whose only role appears to be to place regulation in the worst possible light. I will highlight only a handful of the crucial but nonobvious assumptions underlying previous reports on the costs and benefits of federal regulation.

Relative worth of present and future lives: Previous reports produced both by the Office of Management and Budget and by private parties have attempted to calculate the benefits of federal rules designed to save human lives. These reports have relied on – and their conclusions critically depend on – a technique called discounting. For example, a 1996 study by Robert Hahn of the American Enterprise Institute calculated the costs and benefits of 106 federal rules. OMB, in turn, relied heavily on Hahn's study in its most recent report on the costs and benefits of federal regulation. Hahn's study, and thus by extension OMB's, "discounted" future lives saved by 5 percent per year. In other words, the study assumed that the value of saving a life declines 5 percent every year, or that a life saved in the future is worth less than a life saved today. A 5 percent discount rate implies that the death of one billion people 500 years from now is less important than the death of one person today. The logic of discounting also implies that saving the lives of your children in the future is worth less than saving your own life in the present. It would surprise me to learn that most members of the public were aware of this feature of the OMB and Hahn reports. It would also surprise me to learn that most members of the public agreed with the moral judgments embodied in the reports' seemingly technical references to discount rates.

In my own research, I have found that estimates of the costs per life saved of federal regulations increase by as much as 1,000 times just as a result of discounting future lives saved. I have also found that few people – even scholars at the top of the regulatory field – seem to be aware of the influence of discounting on widely circulated estimates of regulatory costs.

Valuation of health-related benefits: Another "stealth" issue in previous reports on the costs and benefits of federal regulation has been the valuation of the benefits of health-protective federal rules. For example, OMB's most recent report incorporated an estimate of the benefits of reducing lead in gasoline. These benefits included the prevention of IQ loss in children. This benefit was measured by considering how much future income a child would have lost as a result of the loss in IQ. Few parents, I think, would regard their child's loss of IQ due to air pollution as adequately captured by the child's loss of future earning capacity. Yet this is one of the many judgments buried in the numbers presented in OMB's report. In this and many other cases, one must read the fine print not only of the OMB report, but also of the reports on which OMB relied, in order to learn what judgments are reflected in the bottom-line estimates of costs and benefits.

Valuation of human life: Previous reports on the costs and benefits of federal regulation have also had to grapple one of the central questions of the modern regulatory state: how much is it worth to save a human life? Analysts at both OMB and private institutions appear to be converging on a range of about $3 to 7 million for the value of a statistical life. I think it unlikely that most members of the public are aware that existing numerical estimates of the costs and benefits of federal regulation embody a precise figure for the value of a human life. I also think it unlikely that they are aware that OMB has suggested, bizarrely, that the value of a life may go *down* as the involuntary risks of death go *up*. Finally, I think it even more unlikely that members of the public realize how the current "consensus" value of a human life has been calculated – that is, based on the increased wages workers supposedly accept, voluntarily, in return for increased on-the-job risks, despite research suggesting that people understand risks only poorly, if at all, and despite the fact that many of the risks prevented by federal regulation are imposed involuntarily from without rather than

accepted voluntarily from within.

Dated empirical studies: In its reports on the costs and benefits of federal regulation, OMB has relied on a 1991 study by Robert Hahn and John Hird. For its estimates of the costs and benefits of environmental regulation, the Hahn and Hird study itself relied on earlier studies. Specifically, it relied on studies by a researcher named Myrick Freeman. Freeman's studies were based on empirical work done in the late 1970s – 20 years ago. The Hahn and Hird study therefore does not reflect scientific knowledge developed in the last two decades concerning the human and ecological effects of air pollution. It also reflects a value for human life that OMB acknowledges is 50 percent too low; it includes costs but not benefits for some regulatory programs; and it assumes that air quality would not have gotten any worse than it was in 1970 if Congress had never passed the Clean Air Act. Based on this dated and problematic study, OMB suggested in its most recent report that the net benefits of environmental regulation may be negative – implying, it seems, that we would have been better off during the last three decades if no environmental law had ever been passed in this country. The only support for this striking suggestion is a single report based on data that are 20 years old.

The quantitative analysis required by H.R. 1074 will not increase public understanding of federal regulation. Just the opposite is true. The danger that public misunderstanding will result if H.R. 1074 becomes law is compounded by the bill's provision for "peer review" of OMB's estimates of costs and benefits. The submission of these estimates to peer review would encourage the false impression that the estimates belong in the province of experts, and that they are generated through a technical, objective, even scientific process. But these estimates contain numerous judgments about who in our society is worth saving, and at what cost. These are not scientific judgments.

Mr. MCINTOSH. Thank you professor. I appreciate your coming today. Let me now turn to the question and answer section that we want to do on this area. And, first, direct these questions to each of the witnesses and perhaps you can give brief yes-or-no answers if that is possible so we can cover most of the territory.

But the first one is what is your view, positive or negative, on peer review by two or more expert organizations for the report, and do you think such peer review would improve OMB's analysis and their report? If you don't mind, I am just going to go down the line starting with Dr. Hopkins and have you comment briefly on that.

Mr. HOPKINS. Thank you, Congressman McIntosh. Peer review is an established part of the science of regulation, and in my own view neither the physical nor the biological sciences are vastly less uncertain than economic analysis. I think peer review which has proven to be useful in the scientific aspects of regulation would also prove to be quite useful in the economic aspects of regulation.

Mr. MCINTOSH. Thank you. Ms. Antonelli.

Ms. ANTONELLI. I echo Dr. Hopkins's statements. I would add again that peer review is critical. I think the number of organizations that are involved is less important to me than it is to ensure that the organizations are truly independent and the reviewers have established credentials in regulatory analysis, cost-benefit methods, and so on. It is also extremely important that there be no conflicts of interest with those who are participating as peer reviewers and that any peer-reviewing organization ideally does not receive any government money from any of the Federal regulatory agencies.

Mr. MCINTOSH. Mr. Crews.

Mr. CREWS. I think peer review of the agency analysis is important as well. I think the biggest debate you had here today is over who is going to pick who does the review, how many reviews like that will be done, and whether the review is needed on top of the public comment process that already takes place.

I think doing the peer review, once the public comment process has taken place and you have a final report, makes a lot of sense, even if that peer review doesn't get incorporated into that report. What it will really address is the way the next year's report is going to look. And that, I think, is very important.

So the peer review does matter a lot. It should be done. Getting over the question of who decides who does the peer review may be something that you address the way you sometimes appoint congressional commissions, you have the minority and minority side each appoint, or pick, who you want to do a review and have it done that way.

Mr. MCINTOSH. Professor Heinzerling.

Ms. HEINZERLING. My view of peer review is negative in this context. Peers cannot produce numbers that are not available. And a large part of the problem with this bill is that it requires the production of numbers that are not available. Or if those numbers are produced, then that will mean the systematic undercounting of certain benefits. In the environmental context, for example, in many cases the benefits of rules cannot be quantified. Peers will not aid in the development of those data.

In addition, my opinion is that many of the most fundamental questions that underlie these analyses are not scientific questions. They are not questions that experts are entitled to address.

Finally, I would say that peer review is most useful when it can serve as a credible tie breaker. In the case of OMB's most recent report, for example, the estimates for the—net benefits of environmental regulation ranged from, I believe, a negative $70 billion to a positive $300 trillion, something like that. The estimates were incredibly wide ranging, in other words. And yet the EPA report on which the high estimate was based was peer reviewed. And so that you might end up with a situation in which you ask a credible sampling of experts what their opinions are and you end up with the same wide range as before.

Mr. MCINTOSH. My understanding of peer review in the scientific context is not that it breaks ties, but it just makes sure that the methodology is standard in producing the analysis of the data. And I think we should be careful and not expect too much from this bill or this report.

And you are correct, Professor. There are some policy judgments that are infused with it. But the idea would be to provide data that would then let the policymakers who, perhaps, have differing views in Congress and in the executive work on a common set of data in making their policy judgments on that.

Let me ask also the requirement for OMB to include an appendix in its report addressing comments from the public and the peer reviewers. If we have that, is that something that you all would view as valuable? Dr. Hopkins.

Mr. HOPKINS. Yes, I think it would be quite valuable for OMB to need to confront and address all serious comments from outsiders.

Mr. MCINTOSH. Ms. Antonelli.

Ms. ANTONELLI. Yes, I think it is absolutely critical that this information be provided in an appendix. I think maximizing full disclosure is absolutely critical.

Mr. MCINTOSH. In your experience, by the way, you indicated that you did submit comments. How thoroughly did OMB respond and adopt changes in response to those comments?

Ms. ANTONELLI. I would say that between the first and second annual report, the second report was an improvement over the first report. There is still a long way to go. And I think, depending on what your expectations are—how much more there is for them to do.

In terms of the comments that I submitted—and I am aware of the comments that a lot of other folks have submitted to OMB when it issued its draft report—there are a lot of concerns. One of the most significant concerns is the degree to which OMB exercises any of its own judgments on the numbers that are provided by the agencies.

Other issues get to the types of costs that are included and the inclusion of indirect costs, for example. Another example is the inclusion of rules by independent agencies, and that is an example where a lot of independent agencies don't analyze the costs and benefits of their own rules. And that would be a nice instance

where OMB could probably, given its expertise, offer some insight into things like that.

And then another big issue, controversial issue, with the report has been EPA section 812 report, and lots of comments with regards to how those benefit estimates were derived. Because if you put them in some type of context like the size of our economy and our output every year, as OMB even pointed out in that report, it is somewhere on the order of—I can't remember the exact number—$1.2 trillion in output attributable to the Clean Air Act annually. And that is the equivalent of saying that every year people decide that 25 percent of their personal income is going to be devoted to simply focusing on the benefits of clean air. And I think when you put the size of that annual benefit estimate into the overall input and then break it down into individual households and how much of their own income they are devoting to this, it raises a critical eye because it really doesn't seem to make a lot of sense. And so there are problems with those kinds of benefit estimates that got a lot of attention but not a lot of response.

Another criticism of the report is the extent to which, while they say they look at academic and peer-reviewed cost and benefit estimates that are out there, in the case of EPA 812, the George Mason University, the Reason Foundation, other organizations have weighed in heavily along with a lot of other people on those very controversial PM and ozone rules. That was not acknowledged in the report. So there couldn't be selective omission on controversial rulemakings of analysis that is done by an independent third-party organization.

Mr. MCINTOSH. So what Mr. Crews pointed out, the benefit of the public comments is sometimes improvement in the next year's report.

Ms. ANTONELLI. Absolutely.

Mr. MCINTOSH. You saw that, but the specific response in the report was lacking in some of these areas?

Ms. ANTONELLI. Yes. I think in some instances they were not fully responsive to comments. And while the report has been an improvement and hopefully the next report will be an improvement over this one, there are certainly some issues that remain of concern.

Mr. MCINTOSH. Great. I will ask unanimous consent to let the panel finish answers, and then I will turn to you, Dennis, for questions. Mr. Crews.

Mr. CREWS. I will quickly say that the appendix to the report is one of the most valuable sections because there we learned exactly how OMB responded to earlier comments, what it contained in his report, what it intended to do, particularly on net benefits or net estimates, for example, or indirect costs.

OMB indicated that it has seen a study from one of the commenters on indirect costs of regulations; but that study wasn't conclusive, so it was searching further. It was looking for more information. And so that means that we can expect in the next year's report to see a little bit more information on what OMB really thinks about including indirect effects of regulations. And so that is one of the key uses of the appendix. It lets us know what to expect.

Mr. MCINTOSH. Thank you. Professor.

Ms. HEINZERLING. Yes. If numbers like these are going to be produced, I think the more that we can know about the assumptions and reasoning that underlies them the better.

Mr. MCINTOSH. The better. OK. Mr. Kucinich do you have a question for this panel?

Mr. KUCINICH. Something occurred to me, Mr. Chairman, and that is that I think we are going to need to get further into this issue of peer review by organizations. In some way it almost seems oxymoronic to speak of organizations doing peer review. And would we know who the individuals are making the valuations so that we could actually have some accountability? Because the only thing that makes peer review work is the accountability for the people making the analyses. And if it is basically an analyses by the name of an organization, no matter now praiseworthy that work or that organization may be, the organization is reduced to just being a simple front group.

And so I am very concerned that we don't diminish the value of peer review and through this process come up with a mutation of the peer-review process that would not be constructive toward being able to analyze the result and to have some kind of a dialog about the result.

I have a question for Professor Heinzerling. And, again, I want to thank all the witnesses for testifying today and thank you, Professor. Your comments that I have had a chance to read help me better understand the serious limitation of using cost-benefit analyses as required by H.R. 1074. Now, although H.R. 1074 requires a discussion of the nonquantifiable costs and benefits of regulation, as we see here today, many summarize the results by citing only the monetary estimates; yet many of the most important benefits of regulation cannot be monetized, such as saving lives, reducing illnesses, protecting civil rights.

Therefore, I am concerned about the monetary estimates that are cited so often that they would greatly underestimate regulatory benefits. Do you agree with that?

Ms. HEINZERLING. Yes, I do. In environmental law, which is my area of expertise, this problem is particularly acute. In many cases, Federal estimates of costs and benefits of Federal rules quantify, for example, only the risk of cancer because that is the only risk that can be quantified. But in many cases the rules prevent many other illnesses—respiratory, reproductive, neurological and blood disorders, and so forth—that cannot be counted and yet, since cancer is the only benefit that can be counted, that is the only benefit that is counted in the analysis. Then when it comes to trying to place a dollar value on those benefits, the problems are even more severe.

So that in many cases you might find a cost-benefit analysis that reaches a conclusion that most people would agree is absurd on its face. Let me take the example of EPA's cost-benefit analysis of its lead rule. In that case, if you look at the chart showing the costs and benefits of that rule, you would have to conclude that rule was primarily beneficial because of its effect on cars rather than people. And that is because its effects on people are hard to quantify. And

so I would agree with you that that is a severe limitation of this kind of analysis.

Mr. KUCINICH. Well, there are so many different possible methodologies and monetary valuations of benefits. I don't know how any of us could be surprised that there is different estimates for the costs and benefits of regulations.

Dr. Hopkins has one way of looking at it, OMB has another. For example, Dr. Hopkins, you know, I would just be interested to know, do you have any idea about what number OMB should use in quantifying the monetary value of saving a life?

Mr. HOPKINS. Congressman Kucinich, the OMB itself has in its own guidance documents provided a very careful, a very thorough, a very intellectually honest discussion of how agencies can go about trying to put a dollar value on such risk-reduction efforts. And I applaud the work that OMB has done in that area. I think that they have been exactly on target.

There are ranges that they have been able to point to, both in earlier publications and in current publications, that I have no trouble with whatsoever. So I am in no sense putting myself up as a proposer of some alternative valuation figure to what OMB itself has in its own research.

If I may——

Mr. KUCINICH. Would you pretty much then agree that that should be the matrix for that determination?

Mr. HOPKINS. The matrix?

Mr. KUCINICH. That OMB's determination should be something that would be a coordinating principle for someone who is determining a value of a human life.

Mr. HOPKINS. I think it makes good sense to have coordinating principle, a body of solid, academic-based research which OMB is relying upon, have that peer reviewed to make sure that they are not overlooking any better data that exists; and then I think all agencies should be encouraged to go with that. Yes.

Mr. KUCINICH. Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you, Mr. Kucinich. Let me try to elucidate that point a little bit and then ask unanimous consent that we keep the record open for 10 days. I may have a few other questions that we would want to ask the witnesses and certainly put in some documents that they have brought with them.

Mr. Condit had a statement that he wanted to include in the record, so I ask unanimous consent that it be included in the record as well.

[The prepared statement of Hon. Gary A. Condit follows:]

Statement by
Congressman Gary A. Condit

House Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs

The Regulatory Right-to-Know Act of 1999

March 24, 1999

I want to thank Chairman McIntosh and the subcommittee for holding this important hearing on H.R. 1074, the Regulatory Right To Know Act of 1999. This bill is a bipartisan effort to hold the government accountable for how it spends the American consumers' and taxpayers' money.

I would also like to welcome a close personal friend of mine California State Senator Jim Costa. Jim is from Fresno, California and is the current Chairman of the State Senate Agriculture and Water Committee. We served together in the State Assembly and I would like to welcome him today before your subcommittee.

The Regulatory Right-to-Know Act of 1999 was introduced with 17 Democrat and 14 Republican original cosponsors. Last month, Senators Thompson, Breaux, Lott and Stevens introduced a bipartisan analogue to this bill (S. 59). A similar accounting statement requirement was also enacted in the last three Treasury-Postal Appropriations Acts.

The Act has been endorsed by the National Governors Association, the National Conference of State Legislatures, the Council of State Governments, The U.S. Conference of Mayors, the National League of Cities, the National Association of Counties, the International City, County Management Association. It has also been endorsed by the U.S. Chamber of Commerce, Citizens for a Sound Economy, the Business Roundtable, the National Federation of Independent Businesses, and the American Farm Bureau Federation, among others.

The Regulatory Right to Know Act requires the President to provide an accounting statement of all federal regulatory programs every year, outlining the cost of regulations to the federal government, state and local governments, and American taxpayers.

The bill also requires the President to submit an associated report to Congress that includes: analyses of impacts (both positive and negative) of regulations on society (e.g. small business, technological innovation, consumer prices for goods and services); identification of bureaucratic duplications and inconsistencies; and recommendations for reform. The federal government currently does not publicly report the costs or benefits of regulatory programs.

Some recent estimates place the compliance costs from Federal regulatory programs at over $680 billion annually and project a substantial increase in costs. These costs are passed on to consumers in the form of higher priced goods and services, and loss of competitiveness and

jobs.

This bipartisan legislation would provide needed information regarding the national economic costs and benefits of Federal regulatory programs and an associated report on the impact of these programs on Federal, State, local, and tribal governments; businesses; wages, jobs, consumer prices, economic growth and distributional effects. The legislation also requires public notice and comment and asks for recommendations to reform inefficient or ineffective regulatory programs.

This legislation falls under the "good government" mantra by making the regulatory process transparent. It neither changes any Federal regulation nor restricts any Federal agency's authority in any way.

I want thank you again for allowing me the time to submit this statement and look forward to working with you on moving H.R. 1074 forward.

Mr. MCINTOSH. On this question of human life, it is my understanding that the OMB position, which I think Dr. Hopkins agrees with, is that we shouldn't try to do that. What we should do is ask the question, given that there are various programs that affect human life and risk to human life—and Professor Heinzerling has pointed out that that spans different timeframes as well, if not all in the immediate. How do we analyze the use of a given dollar of cost, whether it is in the private sector, whether it is government spending, to determine have we gotten the most benefit for human life out of that so that—all of us can agree you want to treat human life as being priceless, but for each incremental dollar that we spend or cause to be spent in the regulations, how can we try to judge whether we are getting the most out of that dollar in terms of benefiting human lives? And that, I think, is the difficulty that we are grappling with.

One of the things that I wanted to ask the professor about—and you pointed out concerns about the discounting on the life. But you wouldn't disagree that if we reached—everybody had the same agreement on the moral value that human life is priceless, say—and I believe that—but that if we could use a cost-effectiveness analysis to maximize the benefit to human life, that that would be a helpful tool for policymakers to have in making judgments about the effectiveness of programs?

Ms. HEINZERLING. Indeed, that is what led to a large amount of my own research. I had been impressed by figures on cost per life saved that reached into the hundreds of millions, sometimes billions, of dollars; and it seemed to me that those figures indicated that we could do better, and indeed if those were correct, that we could be spending our resources differently.

That research tended to indicate that we should be moving our resources to safety regulation, things like Mr. Crews mentioned, putting fire extinguishers in airplanes, putting smoke alarms in houses and so forth, rather than engaging in environmental regulation.

What I found in this research is that those numbers were, in my view, inflated by discounting so that the discounting reflects an assumption that future lives are worth less than present lives and, therefore, that environmental regulation that tends to produce benefits in the remote future will, by necessity, be devalued compared to safety regulation which produces benefits immediately.

What I am trying to get at is that I agree with you that cost-effectiveness is important. What I am saying is that in many cases the numbers on cost-effectiveness embody the same conclusions that you are trying to reach when you look at cost-effectiveness. That is an assumption about where our priorities should be. Therefore, to rely on the numbers to get to those conclusions is circular.

Mr. MCINTOSH. Is your concern that there is any discounting or that the discounting doesn't accurately reflect—embodies a moral judgment that may not be the same as yours or other people's? In other words, should there be no discounting, or have they got the wrong discount factor for those future lives?

Ms. HEINZERLING. I think those are two very good questions and I think they are separate questions, obviously. My main concern is that discounting is not transparent; that many, many scholars, I

believe, have not known that discounting so heavily influences estimates of cost-effectiveness. And so that my first concern is that most people don't know about it, and they may not agree with it if they did know about it.

The second concern is with any discounting. And I am troubled by a practice that assumes that lives should be discounted just like dollars.

Mr. MCINTOSH. But another way of looking at it would be if we could spend $100 today to save a life today, versus spending that same $100 to save a life 10 years from now, if you spent it on the life today, that person would have at least 10 years—I mean, it is difficult because you are trying to compare lives. But there is that time—I think we would all accept that if you could help somebody today to live longer, that that is an important thing; and if you had to choose—now some people would argue spend both and maybe that is the more appropriate debate we have. But if you have to focus on it—and I could see where there would be ample disagreement about how much you want to discount it—you may not want to discount it that much, the 10 years, knowing that someone, if you did not spend that $100, would die in 10 years. That is not all that comforting in terms of a policy choice.

Ms. HEINZERLING. Well, first of all, I think that that is exactly the kind of discussion that we should be having. And in my view, numbers like those required by this bill prevent us from having it because they divert attention from this kind of discussion to the numbers themselves. That is my view.

The second point would be that it may be that the nature of the risks tends to differ depending on when the risk is going to materialize in death, that is, in many cases immediate risks are obvious. They are voluntary in some sense, whereas exposure to a chemical that will cause cancer in 20 years is not. It is not visible, and in many cases it is not voluntary. So to look at time alone seems to be misleading.

Mr. MCINTOSH. And I agree, and it has been my experience that people—and human nature causes you to have more concern about an invisible risk, even though it may be less than a visible risk because you are used to dealing with it in your life as you make decisions. Do you go in an elevator knowing that there is some risk that it might malfunction? Well, yes, I am used to it. It is visible, versus being exposed to a chemical substance that you are not really knowing that you are being exposed to because it is in the food that you eat and you do not focus on its being there. And that is human nature. The risk preferences change based on the familiarity with it, I think.

But let me ask Dr. Hopkins, does OMB's guidance address this question on the discounting?

Mr. HOPKINS. I think it is a quite sophisticated discussion that has a lot of subtlety to it, recognizing some of these important ethical and moral issues. My own view is that it is far better to have quantitative analysis that explores various alternative assumptions about the proper role of discounting and the proper rate of discounting for various kinds of hazards than to throw up one's hands and say because there are some moral and ethical issues associated with discounting, we are not going to do discounting; we are not

going to look at numbers; we are going to base decisions on guesses or feelings, as opposed to any basic data that exist.

I would also add that I was asked a few years ago by the Organization for Economic Cooperation and Development in Paris to review the guidance that OECD member governments give their regulators on a variety of fronts. And almost every Western European and OECD member government believes that discounting is a valuable analytical tool, that the kind of benefit cost analysis embodied in this bill is very important; and so the fact that there are some important moral and philosophical questions about discounting is not, in my mind, grounds for avoiding it. Certainly, other countries have not felt that it is.

Mr. MCINTOSH. But if we could make it more transparent so that people could clearly see what was going on?

Mr. HOPKINS. Clearly see—that is right.

Mr. MCINTOSH. So you wouldn't disagree with the professor's statement that we should make it more transparent?

Mr. HOPKINS. We should make it more transparent, but we should do it.

Mr. MCINTOSH. One thing we essentially came down to doing when I was back at the Competitiveness Council, at least, was having different things that were easier to compare head to head. So where there was a human life involved, you would compare the cost-effectiveness to other rules that involved that. Where it was simply a cost to the economy and there wasn't a safety factor or health factor involved, then you could compare more on a quantitative dollars-to-dollars analysis.

Perhaps what the professor's research, in terms of that, or question about the judgment on discounting is we should also maybe subdivide the human life category and be conscious of looking at comparisons of different possible rules that affect people immediately, the safety rules coming to mind, and compare different rules that address longer-term risks. And even within that, I suspect that the quantitative analysis would let us say, Gosh, if we focus on this particular carcinogen, the cost is a lot less; and we get a lot more benefits in 20 years than if we focus on a different carcinogen that also could affect people in 20 years.

And I want to check with the professor. Would that be an improvement, in your mind, in terms of how we use this type of data?

Ms. HEINZERLING. If I take your question correctly, you are assuming a limited pool of money and the question would be whether we should regulate one chemical or another and we should look at which one is the most harmful, I would agree with that.

Mr. MCINTOSH. Or even if we have to make priorities in the pool of money as to which things we do first to try to address it in that way. I think that is a limited one, but even if you argued, well, we should spend more, you would still want to prioritize what you did first.

Ms. HEINZERLING. Yes, I would look at the quantitative risks as well as the nature of the risk.

Mr. MCINTOSH. OK. One last question, if I may, and that is what are your views of the requirement for an analysis of the direct and indirect benefits of Federal rulemaking on the various sectors,

small business, State and local government, private sector, wages consumers, prices and economic growth?

And, actually, I am going to request that you guys submit that in writing after the hearing, if you would. And in particular, Professor Hopkins, in your testimony, you noted that the requirements are useful but less attainable and that oftentimes there is a problem with the system's ability to comply. Would you support a phase-in for some of these new analytical requirements? Maybe all of you could address that too, just the mechanics of getting there, if there are suggestions that you would have.

Mr. HOPKINS. Yes, definitely it should be phased in.

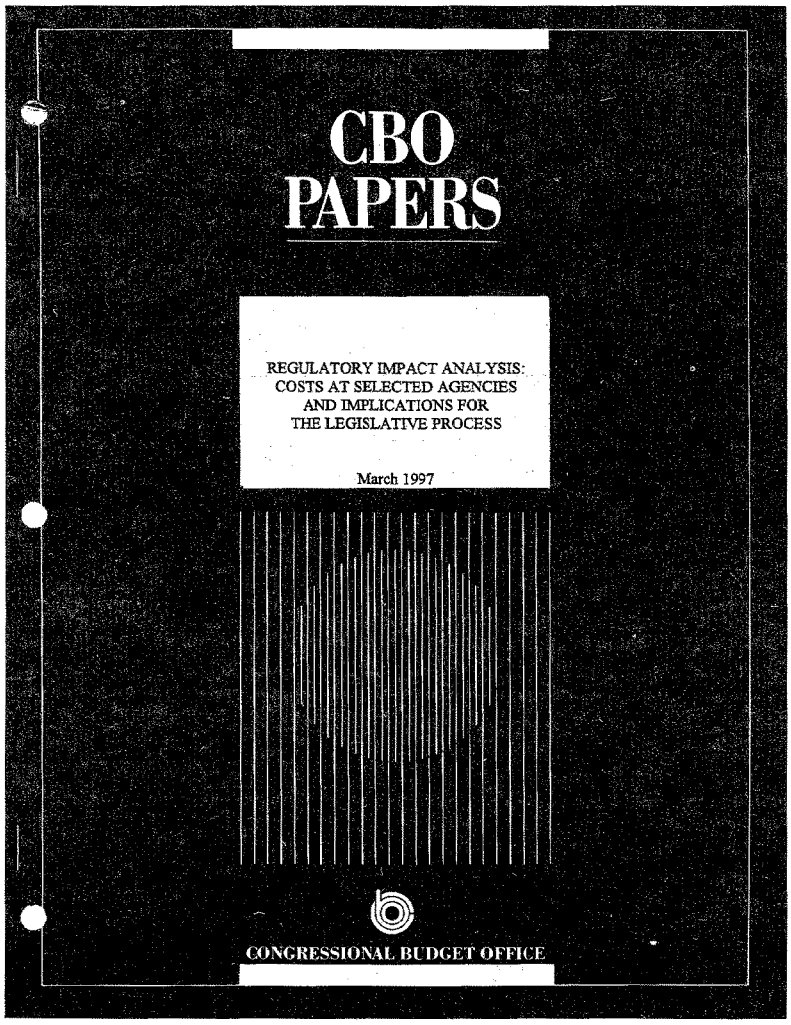
Mr. MCINTOSH. Thank you. I appreciate your coming, and I appreciate the diverse views that we get. And I would ask that each of you, if you could, help us with spending some additional time on that question; and we may have a couple more that I ask all of you to look at for us.

I think—and was pleased to see that OMB indicated some willingness to work with us on these questions and moving forward; and so your input there will help us focus with them on some of the key ways of trying to get this done.

Thank you. With that, the committee is adjourned. And I appreciate everybody's input today.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]


CBO
PAPERS
REGULATORY IMPACT ANALYSIS:
COSTS AT SELECTED AGENCIES
AND IMPLICATIONS FOR
THE LEGISLATIVE PROCESS
March 1997
CONGRESSIONAL BUDGET OFFICE

PREFACE

Under President Clinton's Executive Order 12866 and the Unfunded Mandates Reform Act of 1995, federal agencies are required to analyze the costs, benefits, and other effects of proposed regulations. In many cases, those regulatory impact analyses (RIAs) cost agencies significant time, money, and staff effort. Recent proposals to extend such analysis to the legislative process could impose similar analytic and reporting requirements on Congressional committees, the Congressional Budget Office (CBO), and other support agencies of the legislative branch.

This CBO paper—prepared at the request of the House Committee on Commerce—examines the personnel, contracting, and other costs associated with recent RIAs, as well as the time required to prepare them. It focuses on a sample of federal agencies whose regulations have some of the largest impacts on the U.S. economy. The paper also looks at the implications of extending such analytic requirements to the legislative process. In keeping with CBO's mandate to provide objective, impartial analysis, the paper makes no recommendations.

Barbara Johnson, formerly of CBO's Natural Resources and Commerce Division, prepared the paper under the supervision of Jan Paul Acton. Carl Muehlmann wrote Appendix B and provided statistical support. The authors are grateful for the cooperation and comments of various federal employees who prepare RIAs, including Bret Snyder, Neil Patel, Carl Kessler, Ron Evans, Gary Ballord, Barnes Johnson, Lyn Luben, Sue Stendebach, Janice Wagner, and Judy Lebowich of the Environmental Protection Agency; Paul Larson of the Federal Aviation Administration; Bob Shelton and Jim Simmons of the National Highway Traffic Safety Administration; and agency staff at the Coast Guard and the Occupational Safety and Health Administration. In addition, Perry Beider, Jim Blum, Kim Cawley, Arlene Holen, Elliot Schwartz, and Bruce Vavrichek of CBO provided helpful comments on earlier drafts of the paper. (Despite the help of those individuals, responsibility for the final content rests solely with the authors.)

Sherry Snyder and Christian Spoor edited the paper, and Marlies Dunson provided editorial assistance. Angela McCollough prepared it for publication.

June E. O'Neill
Director

March 1997

SUMMARY

Recent proposals for regulatory reform would subject the regulations that federal agencies issue to increased cost-benefit analysis. Various laws and executive orders already require such analyses (known as regulatory impact analyses, or RIAs) for any "significant" rule—defined as one that would cost more than $100 million a year or have adverse effects on the U.S. economy or the federal budget. Some recent legislative proposals would also have the Congressional Budget Office (CBO) or other Congressional support agencies perform similar work.

Many studies have explored whether the benefits of regulation justify its costs, but few have examined the nature and level of resources necessary for the government to conduct cost-benefit analyses. CBO has tried to fill that gap by studying the costs of 85 RIAs from six offices in four agencies: the Environmental Protection Agency (EPA), the Coast Guard, the Federal Aviation Administration (FAA), and the National Highway Traffic Safety Administration. CBO chose those agencies because they are frequently cited as imposing significant regulatory costs on the economy.

CBO also examined cost data on regulatory analyses from the Occupational Safety and Health Administration, but OSHA was unable to distinguish RIAs from other analyses. Thus, OSHA's analyses are not included in the final RIA count, but

[redacted] information is presented for purposes of comparison. Examining other regulatory agencies, such as the Food and Drug Administration and the Department of Agriculture, would also have been instructive, but CBO was unable to do so because of time limitations.

The majority of the RIAs in CBO's study date from 1990 through 1996, although some of the analyses are still going on, and five were published before 1990. (The FAA submitted some RIA data from 1988 and 1989.) CBO reviewed that seven-year period to capture the most recent analyses and to account for the fact that RIAs can take years to complete.

Based on the sample of 85 analyses, the average cost per RIA was about $570,000, with a range of $14,000 to more than $6 million per analysis. The median cost (the value below which half of the costs per RIA are found) was $270,000, indicating that a few relatively expensive analyses were skewing the average upward. When the four RIAs that cost more than $2 million were excluded, the average and median costs were about $390,000 and $270,000, respectively. (All values are stated in 1995 dollars.)

The RIAs in CBO's study also varied considerably in the amount of time they took to complete, with an average of three years and a range of six weeks to more than 12 years. For agencies that use outside contractors (all EPA offices and the

Coast Guard), in-house personnel costs—salary, fringe benefits, and estimated overhead—accounted for about one-third of all RIA costs; spending on outside contractors accounted for the remaining two-thirds.

Although CBO's study represents a best attempt to collect and verify original data from a sample of agencies that conduct RIAs, it leaves many questions unanswered. The most difficult is why the costs of analyses vary so much, both among agencies and within them. CBO identified several possible reasons based on anecdotal evidence from agency staff. A thorough exploration would require investigating the history of each rule, which was beyond the scope of CBO's review.

Despite those limitations, the Congressional Budget Office identified several features of regulatory impact analyses and similar analytic efforts by federal agencies:

- There Is No Such Thing as a Typical RIA. The cost of the analyses and the time needed to complete them varied tremendously in CBO's survey. Anecdotal evidence suggests several reasons for that variability, including the scope and complexity of the rule being analyzed, the nature of the information required to perform the RIA, and the degree of political consensus surrounding the rule. The costs and time needed to perform similar regulatory analysis in the future will probably also vary—both at executive agencies and at CBO or other

parts of the legislative branch that might be required to undertake similar analysis.

- Agencies Do Not Track Costs Separately for Each RIA. Although agencies employ both government personnel and outside contractors to perform RIAs, none of the agencies that CBO reviewed keep track of the total contract and personnel costs incurred for each regulatory impact analysis. In addition, estimates of the time that government personnel spend on RIAs are imprecise because agencies do not keep time sheets by activity. Estimates of contractor costs are more reliable because they can be traced through billing records. However, even contractor costs can be hard to allocate if one contract includes work on several RIAs. As a result, accurately projecting the costs that another office might experience in undertaking regulatory analysis is difficult because the components of the baseline costs are not well documented.

- Reported RIA Costs Do Not Reflect the Cost of Some Supporting Analysis. Agencies routinely perform economic analysis on proposed rules. Some of that analysis is included in the RIA and some is not, but even analysis excluded from the final document plays a role in the decisionmaking process. Moreover, agencies often need to perform

other types of analysis—such as risk analyses or engineering studies —to determine the costs and benefits of a regulation. Although those studies are necessary precursors to the RIA, they are not included in the costs attributed to preparing it. By excluding the costs of those studies, the agencies in CBO's survey may underestimate the costs of performing regulatory impact analyses. Other agencies—including CBO—would therefore probably need to establish some added analytic infrastructure to support a regular program of regulatory analysis.

- Determining What Constitutes an RIA Is Difficult. Although the term "regulatory impact analysis" usually signifies a cost-benefit analysis performed for a significant rule, other working definitions exist. Some officials define an RIA as any analysis that considers benefits as well as costs, or that considers alternatives as well as the preferred option, even if it is not for a significant rule. Also, some RIAs are never published because the rules they are associated with are never finished and put into effect. Consequently, although much work has gone into the analysis, the RIA will never show up on any list of published analyses. Given all of those difficulties, it can be hard to define and isolate the universe of RIAs. That problem will be compounded if such analysis is moved to the legislative stage, because the form the potential

regulations might take and whether they will be significant or minor are generally even more uncertain at that point.

In sum, regulatory impact analyses generally require a considerable amount of resources and time. Conducting comparable analysis within the current legislative process would be difficult even if sufficient resources were made available. The Congress has the ability to consider and vote on a bill the same day the bill is reported by a committee if it chooses to do so, and normal rules permit a bill to be considered in as few as three days. By contrast, even the quickest analysis in CBO's review took six weeks. Furthermore, the average duration per analysis—three years—is longer than the two-year session of Congress between national elections.

heavily on regulation, for example, without considering costs that can significantly burden businesses, State and local governments, or individuals.

Our task in regulatory reform is to address the excesses and weaknesses of our regulatory system without undermining the protections it has provided. As I said many times during the regulatory reform debate of this Congress, true regulatory reform must strike a balance between the public's concern over too much government and the public's strong support for regulations to protect the environment, public health and safety.

A necessary element of true regulatory reform is the development of objective information on which to base and question regulatory decisions. The amendment before us today should assist in this regard.

The proposal for an estimate of the costs and benefits of all Federal regulation was first made this Congress in our bipartisan Governmental Affairs Committee regulatory reform bill (S. 291). It was also in subsequent bills. A modified version was most recently added to the Treasury, Postal appropriations bill (H.R. 3756) during the Senate Appropriations Committee markup. Senator STEVENS' floor amendment—amendment No. 5226—refines that language, revising section 648 of H.R. 3756. The revised language reflects a collaborative effort by Senator STEVENS, Senator LEVIN, and me to craft a practical requirement for a useful report on Federal regulation.

Under the amendment, OMB will compile in a one-time report existing analyses and estimates of regulatory costs and benefits, both in terms of estimates of the total annual costs and benefits of all Federal regulation and in terms of specific major rules—these would be the significant rules that have gone through OMB regulatory review with a cost-benefit analysis. OMB will also provide a discussion of those costs and benefits as direct and indirect impacts of sectors of our Nation. This assessment should encompass not only various estimates of impacts, but also alternative approaches to making such estimates.

In each of these steps, OMB will not have to engage in extensive analyses of its own, but rather is expected to use existing information. The sponsors of this amendment are aware of OMB's resource constraints and intend that the report be based on a compilation of existing information, rather than new analysis. OMB should insure, of course, that all considerations of costs and benefits take into account relevant quantifiable and nonquantifiable impacts. For example, visibility over the Grand Canyon is important to our country, yet is difficult to value as an economic benefit. Thus, to be useful in regulatory decisionmaking, cost/benefit analyses must be able to address both quantifiable and nonquantifiable impacts.

Finally, the amendment requires OMB to provide recommendations for reforming existing regulatory programs along with a description of significant public comments made on its report before submission to Congress. The recommendations for reform should include programs that should be eliminated or altered because, for example, they are too burdensome or are obsolete, as well as programs that should be strengthened to more effectively implement public policy.

While the study of regulatory costs and benefits is far from an exact science, and definitely does not provide the detail or accuracy of financial accounting, it is an area of study in which we do need to develop more widely accepted measures and methodologies. The OMB report should highlight areas in which analysis is clear and productive and those areas in which more work is needed to refine analytic techniques. It should also suggest approaches for analyzing non-quantitative impacts and for integrating them with economic analyses. In these ways, the OMB report should provide an important service by informing agencies, Congress, and the public about evaluating the costs and benefits of Federal regulation.

REGULATORY ACCOUNTING

Mr. LEVIN. Mr. President, the managers of the bill have accepted an amendment by Senator STEVENS which would require the Office of Management and Budget to submit, no later than September 30, 1997, a report to Congress that provides estimates of the total costs of Federal regulatory programs currently in place. I have agreed to support this amendment because of a number of changes Senator STEVENS was willing to make to the amendment.

* * *

As many of us know, there are several figures that are routinely used to decry the cost of regulation. Some reference a study that say regulation costs each of us $6,000 a year. Others reference studies that say the total cost of regulation is some $600 billion. These numbers are bandied about in an effort to drive home the message that regulation is expensive and to push for legislation to limit regulation.

Senator GLENN recently had GAO look at one of these studies to determine whether it used appropriate and reasonable methods. The GAO analysis was critical of the private study and highlighted several points at which the assumptions used were inappropriate or highly questionable.

Robert Hahn, an economist at the American Enterprise Institute, issued a report earlier this year in which he attempted to ascertain whether Federal regulation results in net benefits. Mr. Hahn concluded that, taken in aggregate, the net benefits from Federal environmental, health and safety regulations from 1990-1995 are $230 billion. This figure is calculated as total benefits minus total costs.

However, when Mr. Hahn examined individual regulations, he found that less than 50 percent do not pass a cost-benefit test (total benefits less total costs). But since most of those regulations giving net costs were in the $1-10 billion dollar range, while most of those giving net benefits were in the $10-100 billion range, in the aggregate the regulations give a large net benefit.

This finding suggests that any aggregate number may not be as useful in understanding the quality of our Federal regulatory programs as analysis of each individual program. For example, Mr. Hahn found that safety regulations pass cost-benefit analyses more often than health regulations and that the Clean Air Act regulations give significantly larger benefits than any other program.

This amendment would ask the Office of Management and Budget to come up with its best estimate of not only the costs of our Federal regulatory programs, but also the benefits of such programs. It would put to use the best information the Federal agencies have about the impact of the various Federal regulatory programs.

The amendment does not, and this is why I am able to support it, does not require OMB to conduct new studies or analyses or develop new data or information. That would be a time-consuming, and expensive use of taxpayer money. Rather that the OMB staff use its time and money to help make new regulations follow the dictates of common sense and be cost-effective regulations.

No, this amendment simply directs OMB to put together the already available information that it has on existing Federal regulatory programs and use that to estimate the total annual costs and benefits of each. If information is unavailable, or such estimates are not possible, then the OMB should tell us in the report what is not available and why and describe the extent to which the OMB estimates are or are not reliable.

In doing his analysis, Mr. Hahn found that if cost-benefit analysis is to play a greater role in agency rule making, the quality of the analysis should be improved dramatically. Changes that he thinks would improve the quality of analysis include standardizing and summarizing key economic assumptions; using best estimates and appropriate ranges to reflect uncertainty; and introducing peer review of the analyses and putting more weight on peer-reviewed scholarship. He recommends that OMB develop a standard format for presenting results in a clear and succinct manner. The report required by this amendment could be helpful in achieving that goal.

Mr. President, in a way, this is an experiment to see what we already have available to us, if it were put together in a useable format. It is a one-time only report which we can then use to determine the utility of continuing the requirement.

The report by OMB is also to include the estimates of the costs and benefits of the major rules that are in effect, an

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
POLICY, PLANNING AND EVALUATION

The Honorable Henry Waxman
United States House of Representatives
Washington, D.C., 20515

Dear Congressman Waxman:

Thank you for the opportunity to provide the Environmental Protection Agency's (EPA) views on H.R. 1074, the "Regulatory Right to Know Act of 1999." As you know, the Agency has worked with the Office of Management and Budget (OMB) to issue an annual report providing benefit and cost information on federal regulations. EPA has worked hard to improve our analyses for major rules, and is committed to working with OMB to provide improved, useful analyses to inform the public of the benefits and costs of health and environmental regulations. However, H.R. 1074 significantly expands upon the existing requirements in a manner that could yield unreliable estimates (especially estimates of benefits), and potentially adds significant new analytical and data collection burdens that may fall, in part, on regulated entities, or state and local governments. The bill would also potentially undermine our current efforts to improve these analyses. For these reasons, we oppose the bill.

The requirements of H.R. 1074 significantly broaden the scope of analytical work beyond that which can be accomplished even using state-of-the art economic analytical techniques. Foremost among these is the requirement to include estimates of indirect impacts of health and environmental regulations. Methods to conduct such analyses are currently limited and often unreliable, particularly in the area of benefits. EPA is unaware of any comprehensive body of economic literature concerning indirect impacts, wages, consumer prices, productivity, economic growth, and distributional effects for specific Federal rules and paperwork. These effects tend to be macroeconomic in scope, and, therefore, are not easily addressed using the available techniques of microeconomic analysis that underlies the cost-benefit analyses of individual rules and paperwork on which the annual report is largely based. Additionally, short of a massive data collection effort, a report on indirect impacts could lead to a sense of false precision, and work against the goal of better informing the public.

H.R. 1074 also adds to current analytical requirements by calling for analyses that could lead to an inconsistent comparison of federal rules and program components. EPA is concerned that this requirement would lead agencies to quantify and monetize benefits to a degree currently beyond commonly accepted economic analysis practices. Although the Agency has attempted to identify methods to quantify and monetize certain benefit categories, the results are often very

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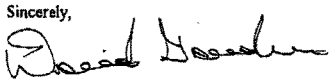
broad ranges of benefit estimates, meaning the estimates are highly uncertain. If the intent of H.R. 1074 is to require a report that compares all the monetized benefits and costs of federal regulations, the conclusions drawn from such a report will be biased against unquantified but real effects. For example, in cases where we can only provide a description of adverse chronic health effects or damage to the ecosystem due to exposure to pollution, these effects will not be reflected in dollar terms or equivalent units for comparison purposes. This problem could lead to an inconsistent comparison of various regulatory actions (as is envisioned in H.R. 1074) because many benefits are likely to be excluded from dollar-driven benefit-cost comparisons. The Agency is especially concerned that inconsistent comparisons of regulatory rules and programs may lead to mistaken policy conclusions.

A third reason for our concern with H.R. 1074 is the issue of how best to use our resources. Beyond the potential burdens for state and local governments, EPA is concerned about our internal ability to continue to improve the quality of benefit-cost analyses while struggling to meet significant new requirements envisioned under H.R. 1074. The Agency recently completed a comprehensive analysis of the benefits and costs of the Clean Air Act (i.e., the section 812 Report). This report represents a state-of-the-art approach by making use of the leading experts in relevant areas of research. The total cost of conducting this report reached $2 million and required 20 staff years. Despite the significant resource investment, the report did not give the detail that would be required by H.R. 1074 (wages, prices, productivity, and distributional effects), and the report relied on simplified assumptions to establish baseline conditions. The report covered only one program and did not provide disaggregation by rule as called for in the bill. The effort required to prepare the 812 report offers one observation point from which to extrapolate to a larger set of EPA programs. A comprehensive analysis that provided aggregate and rule-by-rule estimates for each program would cost the Agency several million dollars more than our current analyses and require significant staff years. This significant investment of resources would do little to reduce the level of uncertainty associated with such an exercise.

While we support an accounting of benefits and costs of national health and environmental regulations and would applaud genuine efforts to improve benefit-cost analysis, H.R. 1074 would not move us toward those goals and may undermine the timely development of our analyses. Discretion and flexibility are important if we are to compile meaningful benefit-cost reports. For example, not all agency actions covered by H.R. 1074 (rules, paperwork requirements) will equally affect prices, wages, and productivity. Given a world of limited resources and our commitment to provide meaningful information, we need the flexibility to perform analyses at varying levels of detail depending on each action's degree of regulatory intervention. We are committed to improving our analytical methods and the quality of information provided in our reports. The passage of H.R. 1074 would cause us to redirect our resources to activities that would do little to improve the quality of information provided to the public or to advance the science of benefit-cost analysis.

I hope that you will find this information useful as you consider the impacts of H.R. 1074. Thank you for this opportunity to provide you with EPA's concerns on this bill. If you have further questions, you can reach me at (202) 260-4332.

Sincerely,



David Gardiner
Assistant Administrator

cc: Chairman Dan Burton, Committee on Government Reform
Chairman David McIntosh, Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs
Congressman Dennis Kucinich, Ranking Member on Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs

United States Environmental Protection Agency | Science Advisory Board (1400) Washington, DC | EPA-SAB-RSAC-98-012 March 1998 www.epa.gov/sab

EPA AN SAB REPORT: REVIEW OF THE FY2000 PRESIDENTIAL SCIENCE AND TECHNOLOGY BUDGET REQUEST FOR THE ENVIRONMENTAL PROTECTION AGENCY

A REVIEW BY THE RESEARCH STRATEGIES ADVISORY COMMITTEE (RSAC) OF THE SCIENCE ADVISORY BOARD

research priorities during the budget development process. This exercise will not only impro communication and understanding of the budget process for RSAC and others outside the Agency, but will also assist EPA in making its internal decision process more efficient.

4.6.3 Moving toward evaluations of research programs by outcomes rather than outputs

The ORD Annual Performance Goals and Associated Key Annual Performance Measures constitute a useful tool for the evaluation of outputs resulting from research activities, and EPA should be commended for moving in this direction. However, this evaluation process is incomplete, and there is a need to evaluate the outcomes of research program activities, particularly addressing the question of how specific ORD's programs contribute to EPA's mission. It is recommended that the Agency develop criteria and measures for evaluating the outcomes of its research programs.

4.6.4 Meeting Thompson Report requirements

EPA, along with other government regulatory agencies, is charged under the 1998 Omnibus Appropriations Act with contributing to an OMB report (the "Thompson Report") that details the costs and benefits of rules and regulations. The requirement is intended to include the costs of research and other science activities contributing to the development of these rules and regulations. This interpretation alone would suggest that the Agency turn towards outcome measures of program performance. However, it brings with it several difficulties that will require development of economic techniques to deal with the reporting requirements. First, almost half of the ORD budget is devoted to core research that is by definition not directly related to any one specific rule or regulation, instead contributing to several or even most regulatory efforts. How to allocate the costs of core research among the rules and regulations for any one year is a daunting question. Second, the Thompson language calls for "an estimate of the total annual costs and benefits (*including quantifiable and nonquantifiable effects*) (emphasis added). How to estimate nonquantifiable effects, let alone add them to the quantifiable effects to arrive at a total, is by no means clear. EPA has a head start on this process because of its experience in meeting Section 812 of the Clean Air Act Amendments of 1990. Finally, monetizing the distribution of environmental benefits and costs is different from analyses carried out under the economic efficiency criterion implied by the cost-benefit accounting requirement.

4.6.5 Revisiting the recommendations on the FY1999 budget request

In its review of the FY1999 proposed budget, RSAC issued a set of recommendations to improve upon the GPRA structure to communicate research plans, priorities, research requirements, and planned outcomes. Three of these recommendations focused on the need for developing criteria to evaluate the quality and impact of its extramural and intramural research program, i.e.: a) program effectiveness; b) quality of the science and relevancy of the research to policy development, regulatory decision-making, and prioritization of emerging environmental issues and concerns; and, c) value of products of short-term and long-term problem-focused research. EPA has made some progress towards these recommendations, but they remain largely

Abstracts of GAO Reports and Testimony, FY97

GGD-97-2, Nov. 18, 1996 (128 pages). Regulatory Burden: Measurement Challenges and Concerns Raised by Selected Companies. [Text] [PDF]

Measuring the effects of federal regulation on the economy is often imprecise and controversial. Some analysts claim that federal regulations cost the economy hundreds of billions of dollars annually, while others argue that regulations yield even greater benefits. Working with a small group of companies, GAO sought to investigate the cumulative impact of federal regulations on those businesses. GAO asked the companies to identify which regulations applied to them, the costs and other impacts of those regulations, and the regulations that were most problematic. GAO also gathered information from regulatory agencies. GAO found that comprehensive data on the cost of regulatory compliance were hard to obtain and that any attempt to measure the incremental impact of all federal regulations is extremely difficult.

EXECUTIVE SUMMARY
========== Chapter 0

PURPOSE
---------- Chapter 0:1

The process of issuing and enforcing regulations is one of the basic tools of government. However, measurement of the effects of regulation on the economy is imprecise and controversial. Some analysts have claimed that federal regulations cost the economy hundreds of billions of dollars each year. However, others question these claims or assert that regulations provide even greater benefits.

Because of their interest in regulatory issues, five Members of Congress asked GAO to investigate the cumulative impact of federal regulations on a limited number of businesses. In this report, GAO attempted to identify the impact of federal regulations on those businesses by asking the businesses to identify which regulations applied to them, the costs and other impacts of those regulations, and the regulations that were most problematic. GAO also attempted to gather information from regulatory agencies regarding the regulations applicable to the businesses and the regulations the businesses viewed as problematic. Although the businesses did not provide all of the information GAO requested, the results illustrated the inherent difficulties associated with measuring aggregate regulatory burden.

BACKGROUND
---------- Chapter 0:2

Regulations generally start with an act of Congress. They are issued by executive or independent agencies as the means by which statutes are transformed into specific requirements. Today, federal regulations in such areas as the environment, public health, the economy, consumer protection, and workplace safety affect virtually everyone's lives.

Some business groups and individual companies have complained that the cumulative impact of these requirements at the company level has imposed too great a burden on business operations. Congress has responded to these complaints through passage of the Paperwork Reduction Acts of 1980 and 1995, the Regulatory Flexibility Act of 1980, the Unfunded Mandates Reform Act of 1995, and the Small Business Regulatory Enforcement Fairness Act of 1996, which provides an expedited procedure by which Congress can review and possibly disapprove agencies' regulations. The executive branch has also initiated several efforts to make the federal regulatory process less

burdensome on business.

RESULTS IN BRIEF

Most of the business associations and other groups that GAO contacted did not nominate companies to participate in its review of the impact of federal regulations. Also, most of the companies that GAO contacted on its own declined to participate in the study. Ultimately, GAO worked with 15 companies that were willing to provide information.

None of the 15 companies developed a complete list of regulations that were applicable to them. Time and resource constraints and the difficulty of disentangling federal regulatory requirements from those of other jurisdictions and other nonregulatory procedures proved to be major obstacles for the companies. Most federal regulatory agencies also said that they could not detail which regulations applied to a particular company without a great deal of company-specific information and the expenditure of a substantial amount of resources.

Likewise, none of the companies provided comprehensive data on the cost of regulatory compliance. This inability to provide such data was partially a function of the difficulty companies faced in identifying all applicable regulations. Companies also found it difficult to identify their incremental compliance costs, i.e., costs that would not have been borne in the absence of federal regulation. No company had a database capable of capturing incremental costs, probably because there is no regular business use for such data.

GAO's work suggests that measuring the incremental impact of all federal regulations on individual companies, although perhaps not impossible, is an extremely difficult endeavor. Therefore, decisionmakers using studies that attempt to measure total current regulatory costs to guide public policy need to be aware of those studies' conceptual and methodological underpinnings.

Many of the 15 participating companies recognized that regulations provide benefits to society and their own businesses. However, all of the companies provided GAO with a varied list of concerns about regulatory costs and the regulatory process. These concerns included perceptions of high compliance costs; unreasonable, unclear, and inflexible demands; excessive paperwork; and a tendency of regulators to focus on deficiencies.

The agencies responsible for the regulations the companies viewed as problematic often said that the companies misinterpreted the regulatory requirements, indicating that communications between regulators and the companies GAO reviewed had not always been effective. The agencies and some Members of Congress do not always agree on the extent to which problematic regulations are statutorily driven. This suggests that opportunities exist for improved communication between Congress and the agencies about the statutory basis of agencies' rules. Recently enacted congressional review procedures in the Small Business Regulatory Enforcement Fairness Act have the potential to improve those communications. Finally, the agencies also said that they were aware of and were responding to a number of the companies' concerns.

On the Accuracy of Regulatory Cost Estimates

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Discussion Paper 99-18

January 1999



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ON THE ACCURACY OF REGULATORY COST ESTIMATES

Winston Harrington, Richard D. Morgenstern,
and Peter Nelson[1]

I. INTRODUCTION

Reflecting increasing concerns about the accuracy of cost estimates of environmental and occupational safety regulations, the Office of Management and Budget (1998) recently observed that, "industry representatives and think tanks assert...that [government] estimates understate costs...while public interest groups and Federal agencies generally assert...that [government] estimates overstate costs." A great deal of debate has focused on the normative question of how (if at all) cost information should be used in regulatory decision-making. Curiously, though, beyond the occasional anecdotes, little serious attention has been devoted to assessing the overall accuracy of the cost information that is generated by and available to regulators. Is there evidence of systematic errors in these so-called *ex ante* cost estimates? If so, are the estimates too high or too low? What lessons are suggested for reform of rulemaking processes?

There is an interesting ideological divide in the types of evidence brought to bear in addressing these questions. Those who believe costs are underestimated often have in mind the costs of an entire program or legislative initiative. Superfund is Exhibit A. Critics argue that the program, originally designed to clean up Love Canal and a few other big sites, expanded its scope and became a "behemoth, towering over American environmental policy" (Cairncross, 1993). Other critics have focused on the discrepancy between the initial objectives of U.S. environmental laws, e.g., the Clean Air Act (1970), and the progress toward meeting those objectives (Downing and Brady, 1980). The National Ambient Air Quality Standards, for example, were originally thought to be achievable within a decade. Yet, even today we still are still unsure how, when, or even if the original goals will be met.

Another argument made by those who believe costs are understated is that the *ex ante* estimates leave out some important cost categories, e.g., regulatory-induced job losses, claims on management attention, discouraged investment, and retarded innovation. Dynamic general equilibrium analyses, which attempt to account for the indirect effects of price increases in one sector of the U.S. economy on purchasing and production decisions throughout the

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[1] The authors are Senior Fellow, Visiting Scholar, and Research Assistant, Resources for the Future, Washington, D.C. (Morgenstern is also Associate Assistant Administrator, Office of Policy, U.S. Environmental Protection Agency (on leave)). This project was partially funded by a grant from the Office of Policy, U.S. Environmental Protection Agency. We would like to thank Dallas Burtraw, John Chamberlin, George Eads, Art Fraas, Quindi Franco, Thomas Gillis, James Hammitt, Michael Huguenin, Randall Lutter, Bill Pedersen, Paul Portney, Kate Probst, Lisa Robinson, and Byron Swift for helpful comments on an earlier draft. We are also very grateful to the researchers and government officials who generously responded to our appeals for case study information. Of course, any remaining errors are our responsibility.

economy, suggest that the long run social costs of regulation exceed direct compliance expenditures by 30-50 percent (Hazilla and Kopp, 1990; Jorgenson and Wilcoxen, 1990). However, such models are not generally used in analyses of individual regulations.

In contrast to such concerns, those who believe costs are overestimated prefer to look at the direct costs of complying with specific regulations. The most often cited example involves reductions of sulfur dioxide emissions mandated under the Clean Air Act Amendments (1990). In that case, the huge discrepancy between the early industry cost estimates (as high as $1500 per ton) and recent allowance prices (currently about $150 per ton, up from $75 per ton in 1997), is taken as evidence of a problem of government overestimates (e.g., Browner, 1997). Particularly in the environmental community, unforeseen innovations are credited with driving down the costs.

In this paper we avoid the broader and more contentious question of whether environmental programs grow far beyond their initial legislative intent: That issue is more difficult to deal with, in part because of the challenge of even stating the question in an empirically testable way. We also avoid the question of indirect costs, largely because of the inability to obtain *ex post* (or *ex ante*) cost information for individual regulations. Although claims that regulatory costs are overestimated do not always distinguish between agency and industry estimates, we consider industry estimates only as possible influences on agency forecasts, rather than as *per se* estimates of *ex ante* costs.

While finding bias in the cost estimates from industry (or environmental) sources is perhaps to be expected, the existence of systematic errors in cost estimates prepared by the regulatory agency itself has potentially significant implications. If costs are regularly overestimated, thereby making potential new regulations appear more costly, rulemakings would generally favor the selection of less stringent emission control options (and, conversely, if costs are consistently underestimated). Large discrepancies would lead not only to bad decisions, but would misrepresent the true burden of regulation on the society and undermine the public confidence in the regulatory process. Not surprisingly, the belief held by many environmentalists that costs tend to be overestimated (and benefits underestimated) by regulatory agencies underlies many of their concerns about allowing cost information, and particularly benefit-cost analysis, to play a prominent role in regulatory decisions. The only sure way of assessing systematic errors in regulatory cost estimates is to compare *ex ante* cost estimates, prepared at the time the regulation is issued, with actual costs, determined *ex post*. However, *ex post* studies of the costs of regulation are quite scarce in the literature on regulatory policy assessment. Rulemaking agencies have neither a legislative mandate nor a bureaucratic incentive to perform such analyses.[2] In fact, the conduct of *ex post* studies may detract from an agency's mission not only by using limited resources, but by generating

[2] Recently Congress has shown greater interest in *ex post* information. For example, the Clean Air Act Amendments (1990) required EPA to develop a retrospective assessment of the overall benefits and costs of the first twenty years of the Act.

outcomes that may prove embarrassing. Not surprisingly, most detailed *ex post* studies have been carried out by independent researchers.

While uncommon, some interesting and useful *ex post* estimates of the cost of environmental health and safety regulation have been prepared. In our examination of these studies we find evidence of both underestimation and overestimation, although overestimation appears in our sample to be more common. At least for national regulations in the U.S., the overestimation of total costs is often caused by forecasting errors in the quantity of emission reductions achieved by the rule. This, in turn, suggests that the benefits of the rule may also be overstated. In addition, much of the overestimation can be attributed to technical innovations unanticipated at the time the rule is issued. However, we also find that costs can be mis-estimated--and usually overestimated--for other reasons. Sometimes there are simply errors of analysis. Sometimes the cost estimate is not intended to be an accurate estimate of costs, but an upper bound of what the costs could be. And sometimes the regulation as implemented is not the same as the regulatory proposal for which the cost estimate was prepared.

The plan of the paper is as follows. Section II reviews the limited literature on the subject. Section III defines some key terms and presents an analytical framework for thinking about *ex ante/ex post* comparisons. Section IV surveys the results of those comparisons. Section V develops some possible explanations for our findings. Section VI presents our conclusions and directions for further research.

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Stop the Bliley Regulatory Accounting Bill

For the past three years, Congress has passed an appropriations rider mandating that the Office of Management and Budget (OMB) conduct a cumulative cost-benefit analysis for the entire regulatory system. OMB completed its first such report in September of 1997, and the second was just released this February. Now Rep. Tom Bliley (R-VA) is pushing more comprehensive freestanding legislation (H.R. 1074, the Regulatory Right-to-Know Act, introduced on March 11), that would make the regulatory accounting report a permanent yearly requirement.

Summary of the 'Regulatory Right-to-Know Act' (H.R. 1074)

Bliley's bill requires OMB to prepare an accounting statement every year (the first to be completed by February 5, 2001) that estimates the annual costs and benefits of rules and paperwork: (a) in the aggregate; (b) by agency, agency program, and program component; and (c) by major rule. In addition, an associated report is to be submitted at the same time including an analysis of direct and indirect impacts of federal rules and paperwork on state, local and tribal governments, small business, wages, economic growth, and distributional effects, along with "recommendations to reform inefficient or ineffective regulatory programs or program components."

OMB is to quantify the net benefits or costs, to the extent feasible for each program component and major rule covered by the submission, as well as "each option for which costs and benefits were included in any regulatory impact analysis issued for any major rule..."

OMB is to provide public notice and an opportunity to comment on the accounting statement and associated report before they are submitted to Congress. OMB is also required to establish agency guidelines to standardize the measures of costs and benefits, and the format of accounting statements.

The guidelines along with the accounting statement and report are to each be subjected to peer review by two or more organizations that are independent of government. This peer review is explicitly excluded from the Federal Advisory Committee Act (FACA), which contains requirements for openness.

Analysis of H.R. 1074

During the effort to pass the first regulatory accounting rider, the underlying assumption of its chief proponents was clear: Regulatory costs have been increasing dramatically over time and need to be reigned in. OMB's report, they hoped, would provide them with concrete proof.

It didn't turn out that way however. Instead, OMB's first regulatory accounting study found $298 billion in annual benefits and $208 billion in annual costs for social — i.e., health and safety — and environmental regulation; the second found $258 billion to $3.55 trillion in annual benefits and $170 billion to $224 billion in annual costs (expressed in ranges to underscore the uncertainty of such an endeavor).

The findings drew fire from opponents of federal safeguards, who continue to search for the proverbial smoking gun, something to point to as evidence of a regulatory system out of control. This, of course, would bolster their push for regulatory "reform," which has been stymied by a suspicious public that values health, safety, and environmental protections. Bliley's bill, with its new expanded and slanted requirements, is clearly an attempt to build such a political weapon.

There are many reasons not to go forward with this legislation:

It is of limited usefulness. Just ask OMB. In its first accounting report, OMB states, "Real economic improvement comes from expanding those significant regulatory programs that provide benefits that are greater than the costs and contracting those programs that provide benefits that are less than costs. The substance is in the details, not in the total." The second report echoes this, saying "... we still believe that the limitations of these estimates for use in making recommendations about reforming or eliminating regulatory programs are severe. Aggregate estimates of the costs and benefits offer little guidance on how to improve the efficiency, effectiveness, or soundness of the existing body of regulations."

In other words, rulemaking decisions are made on a case by case basis, as they must be. Throwing all of the government's diverse regulations, from environmental standards to economic controls, into the same pot has little real utility for public policy.

It is extremely unreliable. A study of this kind must rely on Regulatory Impact Analyses (RIAs) that are done before rules are even on the books. To produce its figures for both studies, OMB used RIAs from 1987-1996, which without question overstate costs.

It is well documented that regulatory costs decrease over time for a host of reasons (e.g., regulated entities adapt to new rules and learn to comply in more cost-effective ways; and technological advances improve the ability of regulated entities to comply with rules). But RIAs are conducted before these adaptive effects take hold. Thus, an RIA conducted in 1990 is almost guaranteed to have cost estimates greater than the actual cost of compliance in 1996. EPA's impact analysis of acid rain controls is one of the most frequently cited examples of this. EPA estimated that it would cost about $600 per ton; the actual cost today is less than $100 per ton, billions of dollars less than what was initially anticipated.

Moreover, agencies often evaluate benefits using qualitative factors, such as the reduction in health or safety risks to children, while costs are more easily stated in monetary terms. This discrepancy is only accentuated when you attempt to add up all federal regulation at once in a monetized study, producing numbers that are greatly misleading.

Still another problem is that the Bliley bill applies to all regulations, including minor rules for which an RIA is not done. As a result, there may not be specific cost-benefit numbers that OMB can use.

In short, a cumulative cost-benefit analysis will not lead to smarter decisions, as Bliley has stated is his hope, since the very nature of such a study will always dramatically deflate benefits — something OMB also concludes — and produce misleading results.

It greatly expands analysis for paperwork requirements. The bill requires cost-benefit analysis of paperwork requirements, both on the whole and specifically on state, local and tribal governments, small business, and other sub-categories. This is currently not required by the Paperwork Reduction Act — nor would it be used in policymaking. Thus, agencies would be required to generate an entirely new analytic process for all government paperwork.

It requires a standardized system of cost-benefit analysis. H.R. 1074 requires OMB to provide guidance to agencies on how to standardize cost-benefit analysis. But agencies already have specific methods for doing cost-benefit estimates of major rules. These methodologies differ from agency to agency, applied appropriately to the specific rule in question. The Bliley bill seems to assume that there must be uniform approaches to the cost-benefit calculation, which would inevitably put a greater emphasis on the monetization of benefits, such as the saving of human life. This would require agencies to either modify their existing methods or do two cost-benefit calculations. Both outcomes are unacceptable.

It grants a few organizations enormous power through an exclusive peer review process. The bill instructs OMB to arrange for two or more organizations that are independent of government and "have nationally recognized expertise in regulatory analysis and regulatory accounting" to peer review the OMB study and associated report, as well as the guidance to standardize cost-benefit analysis. There are only a handful groups who would qualify under this language, and virtually all, from the AEI-Brookings Joint Center for Regulatory Studies to the Heritage Foundation, are on the right of the ideological spectrum and have been highly critical of OMB's first two reports. Bliley's bill, which exempts the peer review from sunshine requirements, states that OMB "shall use the peer review comments in preparing the final statements, associated reports, and guidelines." Clearly the few privileged organizations that are lined up for peer review will have an enormous and disproportionate amount of influence over the direction of the report, as well as the future of agency cost-benefit analysis.

It gives no consideration to new burdens on agencies. During debate over the first regulatory accounting rider, there was a colloquy between Sen. Carl Levin (D-MI) and its sponsor, Sen. Ted Stevens (R-AK), clarifying that OMB did not need to generate extensive new analyses in order to provide the accounting statement. OMB could rely on existing information, through the RIAs, to make its calculations. Further, Stevens said at the time, "I expect a rule of reason will prevail: Where the agencies can produce detail that will be informative to the Congress and the public, they should do so. Where it is extremely burdensome to provide such detail, broader estimates should suffice."

But Bliley's bill goes well beyond this, requiring information that does not exist, including cost-benefit of non-major rules, cost-benefit of paperwork, and analyses of regulation and paperwork by major rule and by agency and program. This will require costly and time-consuming new data generation and analysis.

It is constructed as a political weapon. The fact is that many who are pushing for a regulatory accounting system simply don't care about new burdens on agencies. What they really want is a rhetorical tool to bolster their case for overhauling federal rulemaking and rolling back regulation.

As stated earlier, OMB's first two regulatory accounting reports have been the subject of a great deal of criticism from conservatives and quickly dismissed by those looking for higher estimates of costs. However, another regulatory accounting study (by Thomas D. Hopkins, who will be testifying at next Wednesday's hearing) that yielded very high estimates of costs is quickly embraced — and in fact was alluded to by Bliley when introducing H.R. 1074 — despite a methodology that was refuted by OMB. (Among its many problems, the Hopkins study includes process costs that are not normally considered a part of the regulatory reform debate, such as the burden of filling out income tax forms or doing the necessary paperwork to obtain visas, passports, small business loans, and veterans benefits. This does two things, according to OMB: "It produces large numbers and it creates confusion.")

Citing this one obviously flawed report over and over again, as conservative leaders have done, contradicts the stated desire of the proponents of regulatory accounting to provide better information, and instead seems to be an attempt to mislead the public. Not surprisingly, OMB's two reports are hardly ever cited because they do not support the view of regulatory reformers. Bliley's bill, with its slanted analytical requirements, is an attempt to forcibly boost OMB's cost estimates to fit with his ideological leanings.

It seeks to inappropriately elevate cost considerations in the regulatory process. The Bliley bill instructs OMB to conduct a host of sub-analyses in assessing regulatory burden, including impacts on state, local, and tribal government, small business, wages, and economic growth. Yet no such specificity is called for in evaluating benefits. And no doubt, there are subcategories of benefits worth considering — including effects on vulnerable populations, such as children, the elderly and the disabled.

The associated report required by the bill is similarly slanted. It calls for further analyses of costs and "recommendations to reform inefficient or ineffective regulatory programs," while ignoring benefits entirely. Yet certainly there are areas in which the government is not doing enough to ensure health and safety. Shouldn't we be concerned about that too?

This predetermined elevation of costs cuts against many underlying statutes that place health and safety as the preeminent factors in agency rulemakings, not to mention a Supreme Court ruling that worker health and safety must be the determining factor for OSHA standards.

It represents a step in the direction of a regulatory budget. The idea of a regulatory budget, which was first offered during the Reagan Administration and re-emerged as part of the Contract with America, is to cap regulatory costs at a certain percentage of our GDP; if costs exceed that cap, agency rules have to be eliminated and no new regulations can be issued. But to institute this approach, you must first have a system that aggregates regulatory expenditures on an ongoing basis, and that's where Bliley's bill comes in. If H.R. 1074 is enacted, opponents of federal safeguards are halfway to their final goal.

Opposition to H.R. 1074 - A Permanent Federal "Regulatory Accounting" Mandate

Background

"Regulatory accounting," reinvented by anti-government think tanks and embraced by corporate opponents of tough public health, safety and environmental standards, uses value-laden assumptions and pseudo-scientific methodology to produce a mega-number that purportedly represents the total cost burden that government imposes on the private sector. For fiscal years 1997 and 1998, appropriations riders directed the Office of Management and Budget (OMB) to produce a "regulatory accounting" report adding up the total costs - and total benefits - of federal regulations. To the great displeasure of the proponents of regulatory accounting, OMB found in both years that the benefits of government protections outweighed their costs.

H.R. 1074 is intended to "fix" this problem. In making permanent an annual "regulatory accounting" it would also dictate that OMB use assumptions and methodologies designed to guarantee the "right answer" - i.e., that government protections cost more than they are worth.

Politically Motivated Waste of Time and Resources

H.R. 1074 would do ***double damage*** to the federal government's ability to protect consumers, workers, public health and the environment by creating a:

> ***"Big Lies with Big Numbers"*** measurement of government effectiveness, designed to provide corporate/conservative opponents of tough public protections with the worst pseudo-scientific tool - big numbers - to attack public protections; and by flooding federal agencies with paperwork.
>
> ***"Make Work Paperwork Deluge"*** - New safeguards to protect consumers from preventable food-borne illness spread by deadly microbes; tough enforcement of nursing home safety standards to protect the frail elderly from harm and abuse; rules to stop factory farms from continuing to pollute our rivers and lakes - these are just a few of the urgently needed public protections from which scarce resources would be diverted to hire armies of accountants, lawyers and desk-job bureaucrats to comply with H.R. 1074's gargantuan bean-counting mandate.

Garbage In/Garbage Out

The problem with regulatory accounting is not the concept in the abstract, it is the complete lack of objective data or science-based methodology that would permit computation of an accurate and objective regulatory accounting statement. Instead the entire exercise relies on value-based assumptions which, when converted into numbers, take on the aura of scientific precision.

H.R. 1074 Changes the Equation to Exaggerate Costs

Proponents of regulatory accounting reject the results of OMB's first two regulatory accounting reports - not on the logical ground that this value-driven exercise is an absurd waste of time, but because OMB got the answer wrong. In 1997, OMB's report found the benefits of government regulations outweighed the costs by $20 billion. In 1998, using a new EPA study documenting the value of the Clean Air Act, OMB found an even greater tilt toward value over cost with net benefits ranging from $30 billion to $3.3 trillion.

H.R. 1074 aims to correct that by stacking the deck on the costs side. The bill's new requirements include:

- a separate computation of the amounts spent on complying with all federal paperwork, record keeping and reporting requirements - e.g., the cost of all individuals and businesses complying with the entire Internal Revenue Service code;
- a separate calculation of costs for every major rule, agency, agency program, and program component;
- computation of the direct and indirect impacts of federal rules and paperwork on state, local and tribal governments, small business, wages, economic growth and distributional effects.

The clear - and politically motivated - reason behind the changes H.R. 1074 makes in previous regulatory accounting process are not hard to uncover. Two industry-funded think tanks - the Center for Study of American Business and the Heritage Foundation - calculate the cost of federal regulations at $708 billion and $810 billion - $1.7 trillion, respectively. Their assumptions and methodologies produce cost estimates that are four to eight times higher than OMB's 1998 result. The new requirements of H.R. 1074 are intended to increase OMB's cost totals.

Conflict of Interest Review Added to the Process

H.R. 1074 does not rely solely on mandating assumptions and calculations that stack the deck on the cost side. To ensure that OMB gets it right, the bill also requires the agency to contract out its regulatory accounting report for "peer review" to two organizations with experience and expertise in regulatory accounting that are independent of government. This appears to be written to require government to fund the critics of government protections - think tanks and academicians with close ties to conservative and corporate interests - to perform this function. "Independent" of government will not necessarily mean free from conflict of interest. The likelihood of - and adverse consequences from - biased peer reviewers with a conflict of interest are increased by the bill's exemption of this peer review process from the open government provisions (balanced composition; public meetings; written record; conflict of interest rules) of the Federal Advisory Committee Act.

H.R. 1074's mandate to perform a costly, complex regulatory accounting report is an enormous, costly waste of time and resources. Its "stacked deck" is designed to provide political ammunition - masquerading as "scientific numbers" - for conservative and corporate interests to use to attack vital environmental, workplace safety, public health, and food safety protections.

For more information: Maura Kealey 546-4996 ex. 371 or Nicole Alt ex. 317 March 24, 1999

Citizens for Sensible Safeguards

May 18, 1999

U.S. House of Representatives
Washington, D.C. 20515

Dear Representative:

On behalf of Citizens for Sensible Safeguards, a broad-based coalition of more than 300 public interest organizations, **we are writing to express our strong opposition to "The Regulatory Right-to-Know Act" (H.R. 1074)**, which is the subject of a May 20 markup in the Government Reform Committee. H.R. 1074 would require OMB to conduct an undoable analytical report on the entire federal regulatory system that we believe would only drain scarce agency resources and create confusion over important health, safety, and environmental protections.

Congress has required OMB to conduct a cumulative cost-benefit analysis of agency rules — referred to as regulatory accounting — through appropriations riders over the last three years, and in its two completed reports, OMB has made a special point to underscore the inherent uncertainty of such an endeavor. "... we still believe that the limitations of these estimates for use in making recommendations about reforming or eliminating regulatory programs are severe," OMB stated in its second report, released in February. "Aggregate estimates of the costs and benefits offer little guidance on how to improve the efficiency, effectiveness, or soundness of the existing body of regulations."

Yet despite these warnings, H.R. 1074 seeks to dramatically expand analytical requirements contained in the previous appropriations riders and has removed language requiring analysis only "to the extent feasible." Specifically, the legislation calls for OMB to estimate the annual costs and benefits of rules and paperwork (a) in the aggregate, (b) by agency, agency program, and program component, and (c) by major rule. In addition, OMB would have to assess the direct and indirect impacts of federal rules and paperwork on state, local and tribal governments, small business, wages, economic growth, and distributional effects.

One glaring problem here is that much of the information called for is not currently generated during agency rulemakings. When the first appropriations rider was passed, a colloquy in the Senate made clear that the intent was not to generate new data or studies, but rather to pull together existing information. That would no longer be the case under H.R. 1074. For instance, agencies are not currently required to conduct cost-benefit analyses for paperwork under the Paperwork Reduction Act; rather, the agency is to assess "practical utility" and burdens imposed. Testifying against the legislation, OMB Deputy Director Ed DeSeve explained, "To satisfy H.R. 1074, agencies may have to be called upon to compile detailed data that they do not now have, and undertake analyses that they do not now conduct, using scarce staff and contract resources, regardless of any practical analytic need as part of the rulemaking process."

But even if resources were not a problem, there would always be the problem of reliability. In

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order to meet the requirements of the regulatory accounting report, OMB has, not surprisingly, found it necessary to put cumulative costs and benefits in terms of dollars and cents. And indeed, H.R. 1074 puts a premium on monetization, asking OMB to show "net benefits."

However, agencies often evaluate benefits using qualitative factors, such as the reduction in health or safety risks to children, while costs are more easily stated in monetary terms. Such an analytical discrepancy is only accentuated when you attempt to add up all federal regulation at once in a monetized study, producing numbers that are greatly misleading.

When seemingly qualitative factors are converted to monetized figures — as OMB has begun to do to fulfill its regulatory accounting obligations — value judgements become hidden behind a mask of technical expertise. For instance, OMB's most recent report incorporated the estimated benefits of reducing lead in gasoline, including the prevention of IQ loss in children. Although it's hard to imagine a parent who would regard their child's drop in IQ as adequately captured by an estimated loss of future earning capacity, this is actually one of the many value judgements buried in OMB's numbers.

Other problems with reliability exist as well, many of which are elaborated on in OMB's two reports. Perhaps most significant, a study of this kind must rely on agency Regulatory Impact Analyses (RIAs) that are done before rules are actually on the books — even though it is well documented that regulatory costs decrease over time as a result of technological advances, "learning by doing," and other factors. (EPA, for example, estimated in 1990 that acid rain controls would cost electrical utilities about $750 per ton of sulfur dioxide emissions; yet the actual cost today is less than $100 per ton, billions of dollars less than what was initially anticipated.) Adding to the problem that "net benefits" are likely to be understated is the whole series of new subanalyses (listed above) mandated by H.R. 1074, all aimed at elevating cost considerations.

Moreover, H.R. 1074 requires OMB to subject its findings to peer review (on top of a public notice and comment period) by "two or more organizations" that are independent of government and "have nationally recognized expertise in regulatory analysis and regulatory accounting." There are only a handful of groups who would qualify under this language, and virtually all are more concerned with the cost side of the regulatory equation. Given that the bill instructs that OMB "shall use the peer review comments" in preparing its report, this could allow a select and privileged few to greatly bias results.

In sum, by allowing crucial value judgments to be masked by monetized figures, we believe a report of this kind implies a sort of detached objectivity that simply doesn't exist, and in doing so creates less transparency, not more, as proponents suggest. Moreover, the slanted analysis required by H.R. 1074 appears to be intended as a political weapon to undermine critical health, safety, and environmental standards. Certainly such a regulatory accounting has no real utility for public policy, as OMB has pointed out. And yet, as constructed by this legislation, it could prove extremely burdensome for already cash-strapped federal agencies.

For these reasons, we strongly urge you to oppose H.R. 1074, "The Regulatory Right-to-Know Act." If you have any questions on this bill or would like to meet with coalition members, please contact Reece Rushing at 202-234-8494.

Sincerely,

AFL-CIO
AFSCME
Alton Park/Piney Woods Neighborhood Improvement Corp (TN)
American Lung Association
American Lung Association of Tennessee
American Nurses Association
American Public Health Association
Americans for Democratic Action
Center for Marine Conservation
Center for Science in the Public Interest
Citizen Action of Southern Tier (NY)
Citizens Committee to Complete the Refuge
Citizen's Environmental Coalition (NY)
Citizen's Environmental Coalition of Western New York
Clean Air Council (PA)
Clean Water Council
Coalition Organized to Protect the Environment (NY)
Consumers Union
Community Nutrition Institute
Cook Inlet Keeper
Defenders of Wildlife
Earth Concerns of Oklahoma
Earthjustice Legal Defense Fund
Environmental Advocates (NY)
Environmental Defense Fund
Environmental Working Group
Friends of the Earth
Green Congress Campaign, Tennessee Environmental Council
Hudson River Sloop Clearwater
Kentucky Resources Council, Inc.
League of Women Voters of Nashville
Long Island Progressive Coalition
Mining Impact Coalition of Wisconsin
National Campaign for Pesticide Policy Reform
National Citizens' Coalition for Nursing Home Reform
National Environmental Trust
Natural Resources Council of Maine
Natural Resources Defense Council
New Jersey Environmental Lobby
New York City Environmental Justice Alliance
New York Public Interest Research Group
New York Rivers United
New York Statewide Senior Action
New World Energy Systems (NM)
Northwoods Wilderness Recovery (MI)
OMB Watch
Physicians for Social Responsibility
Professionals Network for Social Responsibility
Public Citizen
Sierra Club
Staten Island Citizens for Clean Air

Tennessee Citizen Action
Tennessee Environmental Council
Tennessee Industrial Renewal Network
The Arc of the United States
The Lake Superior Alliance
Tip of the Mitt Watershed Council (Petoskey, MI)
UAW
United Church of Christ, Office for Church in Society
United Steelworkers of America
U.S. PIRG
Westchester People's Action Coalition (NY)
Western N.Y. Council on Occupational Safety & Health