

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

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

Since this is my first oversight hearing before this subcommittee, I would like to say a few words about my objectives as OIRA Administrator in the field of regulatory policy and then proceed to some remarks about OIRA's implementation of the Regulatory Right-to-Know Act, the primary topic of this hearing.

#### OVERALL APPROACH

The Bush Administration supports regulations that are sensible and based on sound science and economics. My role, on behalf of the President, is to oversee the activities of regulators throughout the federal government. Since my Senate confirmation last July, my priorities have been to (1) establish more openness and transparency about how the Office does its work, (2) stimulate more analytic rigor in the process of regulatory analysis throughout the federal government, and (3) suggest promising regulatory reforms to the agencies – some of these reforms call for more or stricter regulation for public benefit; other reforms call for less intrusive or less costly regulation for consumers and taxpayers. In doing our work we have sought to respect the expertise of the agencies and the substantive laws governing the activities of federal regulatory agencies.

#### OPENNESS AND TRANSPARENCY

On the subject of openness and transparency, we have deployed our web site as a vehicle to provide the public an unprecedented amount of information about the Office. Each day our web site provides new information about regulations that have been submitted to the Office, cleared for publication, returned for reconsideration by agencies or withdrawn by agencies. The web site also provides basic information about our meetings with the public (names, affiliations, date and topic) concerning rules under review, copies of return and post-clearance letters, copies

of my speeches and annual reports from the Office. We have also added a basic “question and answer” section about my Office, so that the public can learn the basic facts about the Office of Information and Regulatory Affairs. OMB is committed to this more open posture because we believe it will facilitate greater public understanding of our analytic approach to regulatory oversight.

## ANALYTIC RIGOR

Since July of last year, I have attempted to send clear signals to agencies that the Bush Administration expects regulatory proposals to be supported by formal analyses of high quality. In my September 20<sup>th</sup> memorandum to the President’s Management Council (which is posted on our web site), I described in some detail the procedures and criteria we shall use at OIRA to review the work of agencies.

There is a change underway at OIRA compared to previous Administrations. For example, in the last three years of the previous Administration, OIRA returned to agencies exactly zero rules. Since my confirmation in July, I have returned over twenty rules to agencies under the authority of Executive Order 12866, the most common reason being poor quality analysis (see our web site for a copy of these letters). A return does not necessarily stop a rulemaking forever. In six cases thus far, agencies have resubmitted improved analyses and we have cleared those rules for publication in the FEDERAL REGISTER. We have also encouraged agencies to make greater use of formal, independent peer review of their technical analyses. We have offered more deferential OMB review in those cases where agencies have voluntarily subjected their analyses to open, competent, and credible procedures of peer review.

## SUGGESTING REGULATORY PRIORITIES

Historically, OIRA has been primarily a reactive institution that responds to the regulatory initiatives of agencies. In the Bush Administration, OIRA has taken a more proactive role in suggesting regulatory priorities for agency consideration.

One device we have used has been called the “prompt” letter. In each of the five prompt letters that I have issued since last September, the Office has suggested actions by agencies that can save lives, improve health or protect the environment in a cost-effective manner. The prompt letter is not an edict from a czar or even a Presidential directive. It is a public request designed to stimulate agency and public deliberation. Final decisions about priorities remain in the hands of the agencies. These prompt letters, and the initial agency responses, are also on our web site.

The prompt letters issued to date have emerged primarily from discussions with my professional staff. However, there is no reason that members of the public should not suggest ideas for prompt letters. Although we are not yet receiving first-class mail due to the events of September 11<sup>th</sup>, ideas for prompt letters can also be faxed to my office at (202) 395-3047.

Alternatively, ideas for regulatory priorities can be submitted to the Office during the annual public comment process under the Regulatory Right-to-Know Act. And that brings me to the major topic of this hearing, our annual regulatory accounting report as mandated in the Regulatory Right-to-Know Act.

#### OIRA's 2001 REPORT TO CONGRESS

On December 17<sup>th</sup> of last year we submitted to Congress the 2001 Report to Congress under the regulatory accounting law. Entitled "Making Sense of Regulation", the 2001 report provides both our annual Report to Congress on Unfunded Mandates on State, local and tribal governments and the regulatory accounting information on costs and benefits. Given the change in Administrations and the timing of my confirmation, it was not feasible to complete this report in February, when the budget was released.

A unique feature of this report was the request for public nomination of specific regulatory reforms for consideration by OIRA and the agencies. We received 71 nominations from 33 commenters involving 17 agencies. My Office made a preliminary evaluation of these 71 nominations and identified 23 as high priority for agency consideration. In fact, many of these 23 reform ideas were already Administration priorities. We are now in the process of discussing these nominations with the relevant agencies and final decisions about whether to enact these specific reforms will be made by the them through notice-and-comment rulemaking.

My assessment is that this public nomination process was only partly successful because I have learned that many academics, business groups, state and local groups, and public interest groups were not fully aware of this nomination opportunity. Obviously, publication in the *Federal Register* is not adequate to inform everyone. For this year's report, we intend to increase outreach efforts in order to potentially expand and diversify the public commenters. Those citizens and groups that choose to participate can be assured that their efforts will be taken seriously by OIRA.

#### OIRA's 2002 REPORT TO CONGRESS

We will soon be publishing the 2002 regulatory accounting report in the *Federal Register* for public comment and peer review, as required by the Act. I know that over the last several years, members of the Subcommittee have expressed concern that OMB has issued the Report after the budget has been released. In future years, we intend to cover the costs and benefits of all major rules published during the previous year and then release the draft regulatory accounting report at the same time that the budget is released. It may be difficult to publish the final report with the budget due to the statutory requirements for external peer review and public comment.

As directed by the Act, the 2002 report shall contain estimates of the total annual costs and benefits of Federal Rules and paperwork (a) in the aggregate; (b) by agency and agency

program; and (c) by major rule. We shall also provide, as called for by the Act, analyses of impacts of Federal regulations on State, local, and tribal government, small business, wages, and economic growth as well as recommendations for reform. Moreover, the 2002 Report shall also include additional information in the spirit of the Regulatory Right-to-Know Act about the Administrations's efforts to make its centralized approach to federal regulatory policy more open, transparent, and accountable to the public.

Since we hope to issue the draft report within a week or two, I would like to describe some of its major features and findings:

1. In the last six months, OMB has cleared 41 significant federal regulations aimed at responding to the terrorist attacks of September 11<sup>th</sup>. These rules address urgent matters such as homeland security, immigration control, airline safety, and assistance to businesses harmed by the resulting economic disaster experienced in several regions of the country.
2. We examined major U.S. federal regulations cleared by OMB from April 1, 1995 to September 30, 2001 to determine their quantifiable benefits and costs. The estimated annual benefits ranged from \$49 billion to \$68 billion while the estimated costs ranged from \$51 billion to \$54 billion. Our estimates of the total benefits and costs of *all* federal regulations currently in effect are less reliable because they are based substantially on figures that the agencies did not produce and OMB did not review. The estimates of total benefits, which are highly uncertain, range from about one-half to three times the total costs, which are pegged at \$520 billion to \$620 billion per year. Total cost figures are roughly comparable to the federal government's total discretionary budget authority in FY 2001. The report acknowledges that these rules also have many non-quantifiable costs and benefits that need to be considered by policy makers and the public.

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