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Good morning, Mr. Chairman and members of this Committee. You invited me to discuss S. 59 and H.R. 1074, the "Regulatory Right-to-Know Act of 1999." These bills would expand the current requirement that the Office of Management and Budget (OMB) prepare an annual Report on the Costs and Benefits of Federal Regulations. You also asked for our views on the "Congressional Office of Regulatory Analysis Act" (S. 1675 in the last Congress).

S. 59 and H.R. 1074 would make permanent what Congress has passed as an appropriation rider each of the past three years. First, I would like to discuss the prior legislation and how the Office of Information and Regulatory Affairs (OIRA) has implemented it. Second, I would like to discuss how S. 59 and H.R. 1074 differ from this prior legislation, and our concerns with these bills.

As drafted, the Administration opposes both S. 59 and H.R. 1074. However, we believe that S. 59 is preferable to the House version of the "Regulatory Right-to-Know Act" (H.R. 1074). If the Committee believes it is necessary to codify the current reporting process into permanent law, we would recommend using the appropriations language that created the report in the first place, and would welcome an opportunity to work with the Committee to do so.

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, in general, 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.

We have learned a great deal in the course of preparing these two reports. We have learned how difficult and labor intensive this task is and how uneven and limited the existing data. In addition, we describe the many, significant methodological problems associated with aggregating

estimates of the costs and benefits of regulation. We detail gaps and inconsistencies in many of the existing aggregate estimates. We point out that agencies have not been using the same assumptions and methodologies in preparing cost-benefit analyses of individual rules. We emphasize that not all costs and benefits can be measured in dollars or other quantitative means, but need to be described qualitatively.

We have underlined in both reports that progress in improving our ability to estimate costs and benefits is an incremental, iterative task. We believe we have made substantial progress in the 1997 and 1998 reports. The 1998 report, for example, refined cost-benefit estimates presented in the first report and summarized cost-benefit estimates for previously issued regulations in order to build an historic data base. The 1998 report also responded to criticism of the first report by taking steps to standardize agency assumptions and monetize estimates where agencies had only quantified them.

We believe that these reports have been useful by compiling and explaining what we know regarding the costs and benefits of regulations. They have also been useful, however, in pointing out what we do not know, and the difficulties inherent in developing this knowledge. We have tried to emphasize in both reports, for example, that there are many methodological problems that are still being explored and argued within the economics profession. We have also underlined the relative paucity of data on the costs and benefits of regulatory program currently on the books, and the enormity of the task of developing such data.

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 appropriations 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." Following the same incremental, iterative approach OIRA took with the first two reports, we plan to develop a third report building on 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.

The only procedural requirement in the first two appropriations riders was publication of the draft report for public comment. The third appropriations 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.

Our experience in preparing these reports leads us to several comments relevant to your consideration of S. 59 and H.R. 1074. These first reports have been developed under clear guidance in legislative history that OIRA serve as a *compiler* of *existing* agency analyses. The

drafters of the legislation recognized that the task of filling the data gaps and resolving methodological difficulties was one that OIRA and the Executive agencies could not reasonably be expected to accomplish in the near term.

Nevertheless, some commenters on our reports appear to have overlooked this essential legislative history and expect much more. We are concerned that the new requirements of the third rider, as well as the more extensive new provisions of S. 59 and H.R. 1074, reflect a belief that there is more information available than we believe is the case, that this information can be produced by the agencies without significant diversion of resources, and that OIRA could expand these efforts without damaging effect on its other regulatory oversight. We are concerned that the new provisions will create unreasonable expectations, and neither resolve nor even acknowledge the methodological and data collection difficulties inherent in this task.

S. 59 and H.R. 1074, the "Regulatory Right-to-Know Act of 1999

Both S. 59 and H.R. 1074 add significant burdens to what has been enacted before. In the discussion below, I am referring to H.R. 1074, as it was marked up in Subcommittee on April 20, 1998. We object to a number of these provisions. In general, they require production of data that is not now available; in some cases, they require creation of estimates for which there is no basis for consensus even in the academic community. They specify processes and require recommendations that do not take into account what the Executive branch already does. In short, these provisions -- despite having the admirable intention of making sure there is progress in regulatory analysis and oversight -- themselves overregulate.

1. S. 59 and H.R. 1074 appear 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 to the extent feasible. OIRA does this by aggregating cost-benefit estimates based on existing academic and peer reviewed agency studies and by detailing aggregates for agencies and agency programs 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.

  S. 59 and H.R. 1074, by deleting the qualifying phrase "to the extent feasible," could require the creation of a large number of new economic analyses that do not now exist. This would divert efforts to analyze the consequences of new policies and turn them instead to review of policies and programs that have been in existence for years, sometimes decades -- programs for which there have already been multiple opportunities to review and suggest changes.
- Under section 4(b), S. 59 adds provisions requiring OMB to "quantify the net benefits or net costs" of Federal regulatory programs. H.R. 1074 has a similar, but even more prescriptive provision. If an agency is able to provide data of sufficient specificity and reliability to quantify both costs and benefits, OIRA would be able to do this. If the

necessary data are unavailable to the agency, however, OIRA will not be able to quantify it. To the extent this provision could be interpreted to apply to a currently existing "program component" - meaning "a set of related rules" - it is our understanding that no agency regulatory impact analyses and only a few other studies are able to provide such data. Furthermore, for some types of benefits, there is no consensus even in the academic community as to the appropriate method for quantification.

- Under section 4(b)(1), H.R. 1074 adds provisions calling for an analysis of the "impacts of Federal rules and paperwork" on "consumer prices, and economic growth." OIRA is unaware of any comprehensive body of economic literature concerning these and other of the topics covered by section 4(b)(1) for specific Federal rules and paperwork. The topics covered by section 4(b)(1) 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.

2. Both S. 59 and H.R. 1074 appear to change the standards under which regulations are to be developed.

- Both S. 59 and H.R. 1074 call for "*most plausible* measures of costs and benefits." It appears that adding "most plausible" is intended in part to give policy guidance concerning risk assessments and cost-benefit analyses, directing agencies to choose particular assumptions over others, thus oversimplifying a complex analytic process. The insertion of "*most plausible*" appears to be short-hand for the more detailed provisions relating to risk assessment found in Sections 624(c), (e), and (f) of S. 746, on which you heard testimony yesterday. As "*most plausible*" appears less flexible than the counterpart provisions in S. 746, we object to including "most plausible" in S. 59 and H.R. 1074.
- Both S. 59 and H.R. 1074 require OIRA to issue guidelines. Under the third appropriation rider, OIRA is already in the process of issuing these guidelines. We are concerned that including this requirement in S. 59 or H.R. 1074 is either duplicative or intended to change rulemaking standards.

3. S. 59 and H.R. 1074 would require OIRA and OMB to recommend policies or program changes, rather than rely on the President's existing policymaking processes.

In addition to requiring a report on the costs and benefits of regulations, both bills call for recommendations for modification of current regulatory programs. The Administration has a long record of suggesting changes in regulatory policies and procedures when appropriate, ranging from the Safe Drinking Water Act amendments and the Food and Drug Administration Modernization Act, to the Food Quality Protection Act. All of them were developed in an interagency policy process, generally coordinated by one of the President's policy councils. They require extensive work throughout the Executive branch, including in-depth review and evaluation of current statutes, program administration, budget priorities, and agency resources. It is neither feasible nor appropriate to require creation of a separate and additional policy process as part of this report.

4. S. 59 and H.R. 1074 would establish a ponderous institutional structure that is not administratively justified and that will delay the report and reduce OIRA's flexibility in preparing it.

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 Council of Economic Advisors (CEA) and Comptroller General of the United States (under the Senate version) or the Congressional Budget Office (under the House version). The draft guidelines are to be subject to a public comment period (60 days under the House version, unspecified under the Senate version), presumably through publication in the Federal Register. The draft guidelines are to be subject to the peer review of one nationally recognized public policy research organizations with expertise in regulatory analysis and regulatory accounting (Senate version) or two or more persons with a similar expertise in regulatory matters (House version). 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 implement all of these consultations, public comment, and peer review procedures before issuing the final report.

These detailed procedures prescribe how and when OMB and OIRA are to consult concerning the costs and benefit calculations for each regulation described in each report. While we do consult and seek outside review when it is constructive to do so, S. 59 and H.R. 1074 take a one-size-fits-all approach that is a textbook example of overregulation. We believe the cumulative effect of all of these procedures will undermine, not enhance the timely development of the annual reports, and urge their deletion.

In sum, S. 59, and its counterpart in the House, 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 other initiatives to improve agency cost-benefit analysis. To satisfy S. 59 or 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. We are concerned that if Congress wants cost-benefit analysis to improve and become institutionally more routine, S. 59 or H.R. 1074 do not create the institutional incentives to do this. In fact, they may delay it.

Before completing my testimony, I would like briefly to discuss the "Congressional Office of Regulatory Analysis Creation Act" (S. 1675 as introduced in the last Congress). As is tradition, the Administration defers to Congress on matters of internal organization of the Legislative branch. However, we believe it is important to clarify that no Congressional office should be involved in the Executive branch's development of new regulations prior to their formal publication. Legislation which would directly involve Congress during the development of

regulations would undermine the candid exchange of views within the Executive branch, and could jeopardize the careful rulemaking process established through the Administrative Procedure Act over the past 50 years. Congress has established a workable regulatory review process in which it oversees Executive branch regulatory decisions after those decisions are made in accordance with established statutory administrative procedures, and we believe that process should be maintained.

This concludes my testimony. Thank you for the opportunity to appear before you, and I welcome any questions you may have.

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