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108TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPT. 108–490, Part 1

PAPERWORK AND REGULATORY IMPROVEMENTS ACT OF 2004

MAY 14, 2004.—Ordered to be printed

Mr. TOM DAVIS of Virginia, from the Committee on Government Reform, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2432]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 2432) to amend the Paperwork Reduction Act and titles 5 and 31, United States Code, to reform Federal paperwork and regulatory processes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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29–006

AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Paperwork and Regulatory Improvements Act of 2004".

SEC. 2. FINDINGS.

Congress finds the following:

(1) In 1980, in the Paperwork Reduction Act, Congress established the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget. OIRA's principal responsibility is to reduce the paperwork burden on the public that results from the collection of information by or for the Federal Government. In 2002, OIRA estimated that the paperwork burden imposed on the public was 7.7 billion hours, at a cost of $230 billion. The Internal Revenue Service accounted for 83 percent of the paperwork burden.

(2) In 1995, Congress amended the Paperwork Reduction Act and established annual governmentwide paperwork reduction goals of 10 percent for each of fiscal years 1996 and 1997, and 5 percent for each of fiscal years 1998 through 2001, but the paperwork burden increased, rather than decreased, in each of those fiscal years and fiscal year 2002. Both the Office of Management and Budget and the Internal Revenue Service need to devote additional attention to paperwork reduction.

(3) In 2002, the House Report accompanying the Treasury and General Government Appropriations Act, 2003 (House Report 107–575) stated, "The Office of Management and Budget has reported that paperwork burdens on Americans have increased in each of the last six years. Since the Internal Revenue Service imposes over 80 percent of these paperwork burdens, the Committee believes that OMB should work to identify and review proposed and existing IRS paperwork."

(4) One key to success in paperwork reduction is the Office of Management and Budget's systematic review of every new and revised agency paperwork proposal. Recent statutory exemptions from that office's review responsibility, especially those without any stated justification, should be removed.

(5) In 2000, researchers Mark Crain of George Mason University and Thomas Hopkins of the Rochester Institute of Technology, in their October 2001 publication titled "The Impact of Regulatory Costs on Small Firms", estimated that Americans spend $843 billion annually to comply with Federal regulations. Congress has a responsibility to review major rules (as defined by section 804 of title 5, United States Code) proposed by agencies, especially regulatory alternatives and the costs and benefits associated with each of them. In 2000, in the Truth in Regulating Act, Congress established new responsibility within the General Accounting Office to assist Congress with this responsibility.

(6) In 1996, because of the increasing costs and incompletely estimated benefits of Federal rules and paperwork, Congress required the Office of Management and Budget for the first time to submit an annual report to Congress on the total costs and benefits to the public of Federal rules and paperwork requirements, including an assessment of the effects of Federal rules on the private sector and State and local governments. In 1998, Congress changed the annual report's due date to coincide with the due date of the President's budget, so that Congress and the public could be given an opportunity to simultaneously review both the on-budget and off-budget costs associated with the regulatory and paperwork requirements of each Federal agency. In 2000, Congress made this a permanent annual reporting requirement.

(7) The Office of Management and Budget requires agencies to submit annual budget and paperwork burden estimates in order to prepare certain required reports for Congress, but it does not require agencies to submit estimates on costs and benefits of agency rules and paperwork. The Office of Management and Budget needs to require agencies to submit such estimates on costs and benefits to help prepare the annual accounting statement and associated report required under section 624 of the Treasury and General Government Appropriations Act, 2001.

SEC. 3. REDUCTION OF TAX PAPERWORK.

Section 3504 of title 44, United States Code, is amended by adding at the end the following new subsection:

"(i) In carrying out subsection (c)(3), the Director shall (in consultation with the Internal Revenue Service and the Office of Tax Policy of the Department of the

Treasury and the Office of Advocacy of the Small Business Administration) conduct a review of the collections of information conducted by the Internal Revenue Service to identify actions that the Internal Revenue Service can take to reduce the information collection burden imposed on small business concerns, consistent with section 3520(c)(1) of this chapter. The Director shall include the results of the review in the annual report that the Director submits under section 3514 of this chapter for fiscal year 2006.".

SEC. 4. REPEAL OF EXEMPTIONS FROM PAPERWORK REDUCTION ACT, ETC.

(a) REPEALS.—The following provisions of the Farm Security and Rural Investment Act of 2002 (Public Law 107–171) are repealed:

(1) Subparagraphs (A) and (C) of section 1601(c)(2).
(2) Section 1601(c)(3).
(3) Section 2702(b)(1)(A).
(4) Section 2702(b)(2)(A).
(5) Section 2702(c).
(6) Subparagraphs (A) and (C) of section 6103(b)(2).
(7) Section 6103(b)(3).
(8) Subparagraphs (A) and (C) of section 10105(d)(2).
(9) Section 10105(d)(3).

(b) EFFECTIVE DATE.—The repeals of the provisions listed in subsection (a) shall take effect 180 days after the date of the enactment of this Act.

SEC. 5. AMENDMENT OF TRUTH IN REGULATING ACT TO MAKE PERMANENT PILOT PROJECT FOR REPORT ON RULES.

The purpose of this section is to make permanent the authority to request the performance of regulatory analysis to enhance Congressional responsibility for regulatory decisions developed under the laws enacted by Congress. The Truth in Regulating Act of 2000 (Public Law 106–312; 5 U.S.C. 801 note) is amended—

(1) in the heading for section 4, by striking "**PILOT PROJECT FOR**",
(2) by striking section 5 and redesignating section 6 as section 5; and
(3) in section 5 (as redesignated by paragraph (2))—
(A) in the heading, by striking "AND DURATION OF PILOT PROJECT";
(B) in subsection (a), by striking "(a) EFFECTIVE DATE.—"; and
(C) by striking subsections (b) and (c).

SEC. 6. IMPROVED REGULATORY ACCOUNTING.

(a) REQUIREMENT FOR AGENCIES TO SUBMIT INFORMATION ON REGULATIONS AND PAPERWORK TO OMB.—Section 624 of the Treasury and General Government Appropriations Act, 2001 (as enacted into law by Public Law 106–554; 114 Stat. 2763A–161), is amended

(1) by redesignating subsections (b), (c), and (d) as subsection (c), (d), and (e), respectively, and
(2) by inserting after subsection (a) the following new subsection:

"(b) AGENCY SUBMISSIONS TO OMB.—To carry out subsection (a), the Director of the Office of Management and Budget shall require each agency annually to submit to the Office of Management and Budget an estimate of the total annual costs and benefits of Federal rules and paperwork, to the extent feasible—

"(1) for the agency in the aggregate; and
"(2) for each agency program.".

(b) INTEGRATION OF OMB ACCOUNTING STATEMENT AND REPORT INTO PRESIDENT'S BUDGET.—Section 624 of the Treasury and General Government Appropriations Act, 2001 (as enacted into law by Public Law 106–554; 114 Stat. 2763A–161) is further amended in subsection (a), by striking "with the budget" and inserting "as part of the budget".

(c) REGULATORY BUDGETING.—(1) Chapter 11 of title 31, United States Code, is amended by adding at the end the following new section:

"§ 1120. Regulatory budgeting

"(a) The Director of the Office of Management and Budget, after consultation with the head of each agency, shall designate not less than three agencies (or offices within an agency) to participate in a study on regulatory budgeting for fiscal years 2006 and 2007. The designated agencies shall include three regulatory agencies or offices from among the following: the Department of Labor, the Department of Transportation, the Department of Health and Human Services, and the Environmental Protection Agency.

"(b) The study shall address the preparation of regulatory budgets. Such budgets shall include the presentation of the varying estimated levels of benefits that would be associated with the different estimated levels of costs with respect to the regulatory alternatives under consideration by the agency (or office within the agency).

"(c) The Director of the Office of Management and Budget shall include, in the accounting statement and associated report submitted to Congress for calendar year 2006 under section 624 of the Treasury and General Government Appropriations Act, 2001 (as enacted into law by Public Law 106–554; 114 Stat. 2763A–161), a presentation of the different levels of estimated regulatory benefits and costs with respect to the regulatory alternatives under consideration for one or more of the major regulatory programs of each of the agencies designated under subsection (a).

"(d) In the accounting statement and associated report submitted to Congress for calendar year 2009 under section 624 of the Treasury and General Government Appropriations Act, 2001 (as so enacted), the Director of the Office of Management and Budget shall include a report on the study on regulatory budgeting. The report shall—

"(1) assess the feasibility and advisability of including a regulatory budget as part of the annual budget submitted under section 1105;

"(2) describe any difficulties encountered by the Office of Management and Budget and the participating agencies in conducting the study; and

"(3) recommend, to the extent the President considers necessary or expedient, proposed legislation regarding regulatory budgets.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1120. Regulatory budgeting.".

COMMITTEE STATEMENT AND VIEWS

PURPOSE

The purposes of the "Paperwork and Regulatory Improvements Act" are to increase the probability of results in paperwork reduction, assist Congress in its review of agency regulatory proposals, and improve public and Congressional understanding of the true costs and benefits of regulations ("regulatory accounting").

SUMMARY

In brief, the Paperwork and Regulatory Improvements Act is intended to do the following:

A. Require that the Office of Management and Budget (OMB), after consultation with three identified Federal agencies, submit a report to Congress on actions that the Internal Revenue Service (IRS) can take to reduce paperwork burden imposed on small business. Currently, tax paperwork burden accounts for over 80 percent of all federally-imposed paperwork burden on the public.

Section 3 adds a new subsection to §3504 of the Paperwork Reduction Act to require OMB to include the results of its review in its annual report to Congress for Fiscal Year (FY) 2006.

B. Remove statutory exemptions in the Farm Security and Rural Investment Act of 2002 (Pub. Law 107–171) from various paperwork review and regulatory due process requirements. Neither the law nor its legislative history includes a justification for these exemptions to standard good government protections for the public.

Section 4 repeals exemptions from: (a) the Paperwork Reduction Act (44 U.S.C. Chapter 35), including the requirement for OMB review and approval of each proposed and continuing paperwork imposition on the public to ensure practical utility; (b) the Administrative Procedure Act (5 U.S.C. §553), including the requirement for affected parties to have notice and an opportunity to comment on all agency regulatory proposals; and, (c) the Congressional Review Act (5 U.S.C. §808), including a requirement for Congressional review before agency final rules can become effective.

C. Make permanent the authorization for the General Accounting Office (GAO) to respond to requests from Congress for an inde-

pendent evaluation of selective economically significant rules proposed or issued by Federal agencies.

Section 5 amends the Truth in Regulating Act (Pub. Law 106–312) to make permanent the authority to request the performance of regulatory analysis in order to enhance Congressional responsibility for regulatory decisions developed under the laws enacted by Congress. This amendment removes the authorization for a 3–year pilot project.

D. Require OMB to improve its annual regulatory accounting statement and associated report, which are required by law to be submitted in final form with the President's Budget. Under current law, OMB is annually required to submit the total annual costs and benefits for all Federal rules and paperwork in the aggregate, by agency, by agency program, and by major rule, and to include an associated report on the impacts of Federal rules and paperwork on certain groups.

Section 6(a) requires Federal agencies to submit annual estimates of the costs and benefits associated with the Federal rules and paperwork for each of their agency programs.

Section 6(b) requires integration into the President's Budget of OMB's regulatory accounting statement and associated report. Integration will allow Congress and the public to be able to review simultaneously both the on-budget and off-budget costs associated with each Federal agency imposing regulatory or paperwork burdens on the public.

Section 6(c) requires OMB to designate at least three agencies (or offices within an agency) to participate in a study of regulatory budgeting for FYs 2006 and 2007, and then report the results to Congress. This study, in which agencies are to identify regulatory alternatives and prioritize possible regulatory actions, will determine whether agencies can better manage regulatory burdens on the public.

NEED FOR LEGISLATION

Since 1995, Congress has changed the direction of the Federal Government from the endless burden of more taxes and spending to a new discipline based on accountability. America's freedom and innovation have produced a quality and productivity revolution and an American economy that is the unparalleled envy of the world. American business has brought incredible improvements to our health care, education, and overall quality of life. Through the new emphasis on flexibility and innovation, State and local governments have worked to create safer, cleaner, and better places to live. Congress recognizes the impact of Federal paperwork and Federal regulatory programs on our economy and innovation. In addition to the burdens arising from taxes, the Federal Government imposes tremendous costs and restrictions on innovation by the private sector and State and local governments through ever increasing Federal regulations. Here, too, we must strive for quality, efficiency, and accountability.

Nevertheless, the burden of Federal regulations on the American public has continued to grow. An October 2001 report, entitled "The Impact of Regulatory Costs on Small Firms," by Drs. W. Mark Crain and Thomas D. Hopkins, commissioned by the Small Business Administration's (SBA) Office of Advocacy, estimated that, in

2000, Americans spent $843 billion to comply with Federal regulations. These off-budget costs to Americans are on top of the costs reflected in the President's fiscal Budget. SBA's report concluded, "Had every household received a bill for an equal share, each would have owed $8,164." The report also found that, in the business sector, those hit hardest by Federal regulations are small businesses. It stated, "Firms employing fewer than 20 employees face an annual regulatory burden of $6,975 per employee, a burden nearly 60 percent above that facing a firm employing over 500 employees." Regulations add to business costs and decrease capital available for investment and job creation.

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

Paperwork reduction

OMB estimates the Federal paperwork burden on the public at over 8 billion hours. In its June 1993 final first-year task force report for the Small Business Paperwork Relief Act, OMB estimated that the price tag for all paperwork imposed on the public is $320 billion a year.

To reduce paperwork imposed on the public, in 1942, Congress established a centralized review function for proposed paperwork. The 1942 Federal Reports Act required the Bureau of the Budget (which became OMB) to review and approve each agency paperwork proposal. In 1980, the Paperwork Reduction Act replaced the Federal Reports Act and established the Office of Information and Regulatory Affairs (OIRA) in OMB, whose principal responsibility is paperwork reduction. The Paperwork Reduction Act was intended principally to "minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and persons resulting from the collection of information by or for the Federal Government."

In 1995, Congress reauthorized the Paperwork Reduction Act and set government-wide paperwork burden reduction goals for FYs 1996 to 2001. After annual increases in paperwork, instead of decreases, in 1998, Congress, in a provision in the 1999 Treasury-Postal Appropriations Act, required OMB to issue a report identifying specific expected paperwork reduction accomplishments in FYs 1999 and 2000. OMB's 1999 report identified only a limited number of specific expected reductions. For example, IRS identified no specific expected reductions in tax paperwork in FY 2000.

As a consequence, in 2000, Congress, in Section 518 of the 2001 Treasury-Postal Appropriations Act, required OMB to issue a report evaluating paperwork imposed by agency regulations ("regulatory paperwork"), including each major rule imposing over 10 million hours of burden, and identifying specific expected reductions in regulatory paperwork in FYs 2001 and 2002. OMB's Au-

gust 2001 report did not fully respond to the statutory requirements. In fact, OMB limited its evaluation to only two major rules—both from the Department of Labor (DOL)—issued since March 1996. This limitation was invented by OMB because the statute did not include a March 1996 starting date for covered major rules. Moreover, the Subcommittee identified an additional 15 non-IRS and 40 IRS covered major rules, which each impose more than 10 million hours of burden. These rules were issued by seven non-IRS agencies.

After OMB's April 2002 Information Collection Budget (ICB) for FY 2002 revealed another year of increases, instead of decreases, in paperwork and did not identify sufficient accomplishments and initiatives to reduce IRS paperwork, the Appropriations Committee, in July 2002, included a directive to OMB in House Report 107–575, which accompanied its 2003 Treasury-Postal Appropriations bill, to focus more of OMB staff attention on reducing IRS paperwork.

Annually, since 1999, proximate to the Federal tax return filing deadlines, the Government Reform Regulatory Affairs Subcommittee has held a hearing to assess progress in paperwork reduction. Under the Chairmanship of Mr. Ose, the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs held four hearings on paperwork reduction on: (a) April 24, 2001, (b) April 11, 2002, (c) April 11, 2003, and (d) April 20, 2004. In addition, from April 2001 to April 2004, the Subcommittee sent 15 oversight letters to OMB on paperwork reduction.

In 1983, after issuance of President Reagan's 1981 Executive Order 12291, which initiated OMB review of agency regulatory proposals, OMB signed a Memorandum of Agreement with the Treasury Department relating to its regulatory reviews. Nothing therein or subsequently limited OMB's statutory responsibility for review and approval of each IRS paperwork requirement.

In March 2004, at OMB's annual House Appropriations Subcommittee hearing, Subcommittee Members emphasized to OMB Director Josh Bolten that mere reduction in the rate of growth of regulatory burden is insufficient. They asserted that OMB must instead do more to examine and reduce the base of existing regulatory and paperwork burden.

In its April 2003 and April 2004 hearings and post-hearing questions, the Government Reform Subcommittee, chaired by Mr. Ose, explored a means for substantial paperwork reduction: IRS's authority to add thresholds administratively (below which reporting is not required) or change the level of thresholds, i.e., independent of a change in statute or regulation. For example, IRS administratively made a threshold change for the Form 1040 Schedule B because the statute provided the IRS Commissioner with discretion to set an appropriate threshold. In a May 2, 2003 post-hearing answer, IRS stated that the Office of Taxpayer Burden Reduction "is reviewing the regulations and all administrative provisions to identify such thresholds, elections, tolerances, etc. that could be adjusted, without requiring legislation, to reduce unnecessary taxpayer burden." During the April 2004 hearing, IRS discussed its not-yet-completed analysis and stated that completion was "several years" away.

In the April 2004 hearing of the Government Reform Subcommittee, Chairman Ose also broached another avenue for substantial paperwork reduction: the IRS's ability to institute changes in periodicity within the Commissioner's administrative discretion, i.e., again, independent of a change in statute or regulation. For example, the IRS is exploring a proposal that would allow certain taxpayers to file a Form 941 annually instead of quarterly.

As evident by its actions, paperwork reduction is of great concern to Congress, especially for tax and regulatory paperwork. Nonetheless, in the Subcommittee's April 2004 hearing, GAO reported that the paperwork burden on the public has increased, not decreased, in each of the last eight years. GAO differentiated between substantive program changes in paperwork (such as those arising from a change from quarterly to annual reporting) and adjustments (such as those stemming from re-estimates of the time necessary to complete a form). The public experiences no relief whatsoever from adjustments.

Congressional responsibility for agency rules

In 2000, Congress enacted the Truth in Regulating Act (Pub. Law 106–312). This statute authorized GAO to perform regulatory analyses for Congress. Under the statute, at the request of Congress, GAO was required to prepare an independent evaluation of selective economically significant rules proposed or issued by Federal agencies. GAO never hired staff for this function since the law only authorized a 3-year pilot project. Instead, GAO intended, after the 3-year pilot project received funding (which never occurred), to use contractors, instead of full-time expert agency staff, to prepare its independent evaluations. To ensure full-time agency expertise within GAO, a change from a pilot approach to permanency is needed.

Fulfillment of GAO's regulatory analysis function would enhance Congressional responsibility for regulatory decisions developed under the laws Congress enacts. A full understanding of the impact of regulations is necessary for Congress to fulfill its Constitutional role as a co-equal branch of government. Just as Congress needs a Congressional Budget Office (CBO) to check and balance the Executive Branch in the budget process, it also needs analytic capability to check and balance the Executive Branch in the regulatory process. The choice of GAO was logical because it already has some regulatory review responsibilities under the Congressional Review Act.

Article I, Section 1 of the U.S. Constitution vests all legislative powers in the U.S. Congress. While Congress may not delegate its legislative functions, it routinely authorizes Executive Branch agencies to issue rules that implement laws passed by Congress. Congress has become increasingly concerned about its responsibility to oversee agency rulemaking, especially because of the escalating costs and impacts of Federal rules.

With GAO's analytic help, Congress would be better equipped to review final agency rules under the Congressional Review Act. More importantly, Congress needs its own, in-house, regulatory analysis capability to provide timely comment on proposed rules, while there is still an opportunity to influence the cost, scope, and content of the final agency action. The regulatory analysis function

would: (a) take into account Congressional intent; (b) examine other, less costly regulatory and nonregulatory alternative approaches besides those in an agency proposal; and (c) identify additional, non-agency sources of data on benefits, costs, and impacts of an agency's proposal. GAO's analysis would include an evaluation of the potential benefits and costs of the rule, alternative approaches in the rulemaking record, and the various impact analyses.

Current law does not require GAO to conduct any new Regulatory Impact Analyses, cost-benefit analyses, or other impact analyses. However, GAO's independent evaluation could lead the agencies to prepare any missing cost-benefit, small business impact, federalism impact, or any other missing analysis.

In recent years, various statutes (such as the Unfunded Mandates Reform Act of 1995 and the Small Business Regulatory Enforcement Fairness Act of 1996) and executive orders (such as President Reagan's 1981 Executive Order 12291, "Federal Regulation," and President Clinton's 1993 Executive Order 12866, "Regulatory Planning and Review") have mandated that Executive Branch agencies conduct extensive regulatory analyses, especially for economically significant rules having a $100 million-or-more effect on the economy or a significant impact on small businesses. Congress, however, does not have the analytical capability to evaluate these analyses independently, fairly, and rigorously. Thus, a permanent office in GAO with expert staff devoted to regulatory analysis is needed.

The best government is a government accountable to the people. For America to have an accountable regulatory system, the people's elected representatives must participate in, and take responsibility for, the rules promulgated under the laws Congress passes.

Regulatory accounting

Because of Congressional concern about the increasing costs and incomplete estimates of benefits of Federal rules and paperwork, in 1996,[1] Congress required OMB to submit its first regulatory accounting report by September 30, 1997. In 1997, Congress continued this requirement. In 1998, Congress changed the report's due date to coincide with the President's Budget so that Congress and the public could review simultaneously both the on-budget and off-budget costs associated with each Federal agency and each Federal agency program imposing regulatory or paperwork burdens on the public. Finally, in 2000, Congress made this a permanent annual reporting requirement. The law requires OMB to estimate the total annual costs and benefits for all Federal rules and paperwork in the aggregate, by agency, by agency program, and by major rule, and to include an associated report on the impacts of Federal rules and paperwork on certain groups, such as small business. These laws were enacted to vindicate the principle that the public has the

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

right to know the costs and benefits of Federal rules and paperwork and the right to open and accountable government.

Access to data on Federal rules and paperwork by agency and by agency program is necessary to enable the public to know the aggregate costs and benefits associated with each agency and each major regulatory program. For example, the public should know what the aggregate costs and benefits are of the requirements imposed by the U.S. Department of Agriculture (USDA) and the Labor Department's Occupational Health and Safety Administration (OSHA). The public should know whether there is an alternative approach for USDA or OSHA to accomplish their intended objectives more effectively, with less burden on and cost to the public.

Under the Chairmanship of Mr. Ose, the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs held three hearings on regulatory accounting on: (a) March 12, 2002, entitled "Regulatory Accounting: Costs and Benefits of Federal Regulation"; (b) March 11, 2003, entitled "How to Improve Regulatory Accounting: Costs, Benefits, and Impacts of Federal Regulations"; and, (c) February 25, 2004, entitled "How to Improve Regulatory Accounting: Costs, Benefits, and Impacts of Federal Regulations—Part II."

The 2002 hearing was intended to be a hearing about the fifth report due February 4th; however, OMB did not publish its draft report until after the hearing (i.e., on March 18th). The 2003 hearing considered OMB's draft sixth report that was published on February 3rd, the same day as release of the President's FY 2004 Budget. It was not, however, part of the various Budget documents; instead, it was published in the Federal Register on the same day as release of the Budget. This approach was not useful to Congress since it precluded a timely side-by-side comparison for analytic purposes of the on-budget and off-budget costs associated with each major regulatory agency (e.g., DOL) and each of its regulatory programs (e.g., DOL's OSHA). For the 2004 hearing, OMB missed the statutory deadline for simultaneous reporting with the February 2nd release of the FY 2005 Budget. As a consequence, in their Views and Estimates on the FY 2005 Budget for the Budget Committees, Congressional Subcommittees were unable to analyze the full impact of the President's Budget for the major regulatory agencies and their programs.

To date, OMB has issued six final and a seventh draft regulatory accounting reports—in September 1997, January 1999 (dated 1998), June 2000, December 2001, December 2002, September 2003, and February 2004. Each of the seven did not meet some or all of the content requirements under the statute. For example, none of the seven was presented as an accounting statement and some of the seven did not include the required associated report on impacts, e.g., on small business.

OMB has, however, made progressive improvements, such as adding agency level detail for eight agencies in March 2002, and adding agency program level detail for seven major regulatory programs in February 2003. For the President's fiscal Budget and OMB's ICB, OMB requires agencies to submit annual budgetary and paperwork estimates, respectively, for each agency bureau and program. In contrast, however, with regard to Federal regulations,

OMB imposes no parallel requirement upon agencies to submit annual cost-benefit estimates for each agency bureau and regulatory program. Therefore, in March 2002, Subcommittee Chairman Ose wrote to OMB recommending that OMB issue annual OMB Bulletins to the agencies for regulatory accounting information. To date, OMB has not done so.

Currently, the huge off-budget expenditures (these are stealth taxes) to comply with Federal regulations receive much less scrutiny than proposed on-budget expenditures and the Federal deficit. Regulatory accounting is a useful way to improve the cost-effectiveness of government. Both Presidents Reagan and Clinton issued executive orders requiring cost-benefit analyses so that policymakers could see the strengths and weaknesses of alternative approaches and could make choices to ensure that benefits to the public are maximized. These requirements ensure that the Government is doing everything it can to minimize the burden of Federal regulations on the American public.

On April 22, 2004, Subcommittee Chairman Ose submitted a 9-page comment letter to OMB on its February 13th draft seventh regulatory accounting report, the final version of which was required by law to be submitted with the President's fiscal Budget on February 2nd. This letter, which is provided herein, comprehensively describes possible improvements to OMB's regulatory accounting reports and makes the case for the regulatory accounting provisions in H.R. 2432.

Subcommittee Chairman Ose's letter addressed: (a) statutory requirements; (b) historical progress in six specific areas, and (c) miscellaneous issues, including the need for OMB to include cost and benefit estimates for non-major rules and major rules still in effect but issued before agencies were required to prepare cost-benefit analyses. The six areas discussed in the historical progress section were: (1) the required annual associated report on impacts, (2) required agency-level detail, (3) required program-level detail, (4) the need for agency input for OMB's annual regulatory accounting statement, (5) the purpose of OMB's including its report as part of the President's fiscal Budget, and (6) the need for enforcing standardized estimation procedures for all agency cost-benefit analyses.

H.R. 2432 was introduced to address matters revealed by the Subcommittee's hearings and oversight. Section 6 of this bill includes requirements to improve regulatory accounting, such as: (a) requiring agencies to submit information for OMB's annual regulatory accounting statements; (b) requiring the annual regulatory accounting statement and associated report to be submitted "as part of" (versus "with") the President's Budget; and (c) requiring OMB to conduct a multi-agency study of regulatory budgeting.

H.R. 2432

On July 22, 2003, the Government Reform Committee held a hearing on H.R. 2432. Witnesses included: Dr. John D. Graham, OMB's OIRA Administrator; Thomas M. Sullivan, SBA's Chief Counsel for Advocacy; Fred L. Smith, Jr., President and Founder of the Competitive Enterprise Institute; Dr. Wendy Lee Gramm, Director of the Regulatory Studies Program at the Mercatus Center of George Mason University and former OIRA Administrator; and organizational witnesses for the National Association of Manufac-

turers (NAM) and the National Small Business Association (NSBA) (Serial No. 108–68).

Dr. Gramm expressed support for Section 4. She stated, "there should not be exemptions from the Paperwork Reduction Act and the time-tested Administrative Procedures Act. There is flexibility enough in the acts themselves. I do not understand why one would want to take protections away from farmers. These exemptions set a bad precedent and should be repealed" (pp. 73–4). Dr. Graham and Mr. Sullivan agreed (see pp. 29, 36 & 57–8). The NAM witness stated, "Unless a compelling case can be made, the NAM opposes exemptions to the Paperwork Reduction Act in the OIRA review of agency regulations, notwithstanding the fact that nearly every agency thinks that its activities should be exempt" (p. 84).

Dr. Gramm expressed support for Section 5. She stated, "I testified in favor of a Congressional Office of Regulatory Analysis and have been very disappointed that it has not yet been funded. It is high time for Congress to put its money where its mouth is. Fund it and make it permanent" (p. 74). The NAM witness stated, "The NAM was a fervent supporter of the Truth in Regulating Act prior to its passage in the 106th Congress. The NAM continues to believe that giving the General Accounting Office the ability to review major rules upon request will allow Congress to have more and better information in reviewing the implementation of legislation" (p. 84). Mr. Sullivan and the NSBA witness also expressed support for Section 5 (see pp. 36 & 97–98).

Dr. Gramm expressed support for Section 6(a), stating, "I believe that all agencies should make those reports" (p. 122). Mr. Smith agreed. Mr. Sullivan elaborated stating, "Advocacy recommends that the bill also require agency submissions to OMB (and OMB's corresponding accounting statements) to identify and analyze regulatory impacts on small entities" (p. 37).

Dr. Gramm and Mr. Smith expressed support for Section 6(b). He stated, "I think that's a very good idea" (p. 130) and "Consolidating the presentation of tax, spending, and regulatory cost information would help clarify the big picture for Congress and the public * * * OMB should begin as soon as possible to integrate the presentation of regulatory cost information with its annual presentation of tax and expenditure information" (p. 71). She added, "I believe [regulatory accounting information] should be provided with the fiscal budget documents for the reasons I stated earlier, but with another one: I think it would get the attention of the OMB Director and the higher-ups in the executive branch and get them to pay more attention to this issue" (p. 130).

With respect to Section 6(c), Dr. Gramm stated, "I strongly support section 6 and believe that section [6(c)], which establishes pilot projects for regulatory budgeting, is perhaps the most important provision of the whole bill. It would begin to do what I have long advocated: bring the off-budget cost of government on budget, expose the hidden costs of regulations that Americans are paying each year, and hold agencies and Congress, where appropriate, accountable for the taxes they impose on citizens and businesses" (p. 74). Dr. Graham expressed support, stating,

> The biggest one is that regulators currently have a big incentive to watch their own budget that they have been appropriated, but there's no limit on how much they can ask

> the private sector or State and local governments to spend because that doesn't count as part of their budget. So what a regulatory budget immediately does is, it asks them to consider that we're only able to do a certain number of these regulations because we have a private sector and State and local government limit on our regulation, so let's pick the most cost-effective ones. That's a huge advantage (p. 57).

Mr. Smith stated, "I think pilots are a good idea. We're going to learn a lot from this, hopefully" (p. 131). Mr. Sullivan and the NSBA witness also expressed support for a study of regulatory budgeting (see pp. 57 & 131). NAM's witness stated, "The NAM supports the pilot program for regulatory budgeting. The pilot program will help determine whether the regulatory budgeting program for the Federal Government as a whole makes sense. The NAM agrees with the agencies included in the text of H.R. 2432 for the pilot project, since the Department of Labor, the Department of Transportation, and the Environmental Protection Agency are the three top sources of rulemaking" (p. 84) and "Both Congress and the Administration should try to direct regulatory dollars where they supply the most benefit and at the least cost" (p. 94).

Dr. Gramm concluded her oral testimony by stating, "I strongly support H.R. 2432 because it takes important steps in bringing accountability and transparency to the regulatory process. My testimony makes clear that I support all sections of H.R. 2432 because it begins to make the treatment of regulatory programs similar to other programs of government" (p. 73). Mr. Sullivan also indicated the support of his office, stating, "We support the bill and believe that it would improve agency accountability in ways that would benefit small business" (p. 33). Lastly, Mr. Smith stated, "CEI strongly supports the 'Paperwork and Regulatory Improvements Act of 2003.' Although the bill is by no means a cure for the defects of the regulatory process, it is a positive step in the right direction" (p. 63).

The Committee has received many letters of support for H.R. 2432, including from the Chamber of Commerce of the United States, National Association of Manufacturers, National Small Business Association, Small Business Survival Committee, Air Conditioning Contractors of America, American Farm Bureau Federation, American Road and Transportation Builders Association, Associated Builders and Contractors, Inc., The Associated General Contractors of America, Consumer Specialty Products Association, IPC Association Connecting Electronics Industries, National Grocers Association, National Paint and Coatings Association, National Pest Management Association, Inc., National Roofing Contractors Association, National Stone, Sand and Gravel Association, Printing Industries of America, Inc., Rubber Manufacturers Association, Society of Glass and Ceramic Decorators, and Synthetic Organic Chemical Manufacturers Association.

As just one example, the Small Business Survival Committee stated: "Another important step under H.R. 2432 would be the integration of regulatory accounting reports by agency within the federal budget. This would give members of Congress and the public a more accurate picture of what the total costs of government actually are."

The American Farm Bureau Federation stated: "We strongly support comprehensive annual regulatory budgeting and believe that these provisions are a positive and necessary first step toward achieving that goal."

The bill will not impose an undue burden on OMB. In fact, CBO estimates that H.R. 2432 would increase OMB's reporting costs by $2 million a year. 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 avail itself of many other existing sources of information, including private regulatory accounting studies and government studies.

The "Paperwork and Regulatory Improvements Act" is a basic step toward achieving a smarter partnership in regulatory programs. It is an important tool for understanding the magnitudes and impacts of Federal regulatory programs. The Act will empower all Americans by providing them with new information and opportunities to help them participate more fully and improve our government. Additional 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 improved regulatory programs will enhance innovation, improve the quality of the environment, secure our economic future, and foster a better quality of life for every American.

SECTION-BY-SECTION

Section 1. Short title

The short title of the bill is the "Paper Work and Regulatory Improvements Act."

Section 2. Findings

Section 2 includes historical information about Congressional direction regarding paperwork reduction—as expressed in the Paperwork Reduction Act, two appropriations acts, and a House Appropriations Report—and inadequate paperwork reduction results in the last eight years. This Section also includes historical information about the statutory requirement for an annual regulatory accounting report, including the impact of Federal rules and paperwork, and the need for improvements in these reports.

Section 2 reports that, in 1980, Congress established OIRA in OMB. OIRA's principal responsibility is to reduce the paperwork burden on the public that results from the collection of information by or for the Federal government. In 1996, because of the increasing cost and incompletely estimated benefits of Federal rules and paperwork, Congress required OMB to submit an annual report to Congress on the total costs and benefits to the public of Federal rules and paperwork requirements, including an assessment of the effects of Federal rules on the private sector and State and local governments. In 1998, Congress changed the annual report's due date to coincide with the due date of the President's budget and, in 2000, made this a permanent annual reporting requirement.

Section 3. Reduction of tax paperwork

Section 3 requires that OMB, after consultation with the IRS and two other Federal agency offices, submit a report to Congress on actions the IRS can take to reduce paperwork burden imposed on small business.

In 1995, 1998, 2000, and 2002, Congress enacted legislation and issued a House Report with the objective of decreasing paperwork burden. Nonetheless, paperwork has increased in each of the last eight years. Currently, tax paperwork burden accounts for over 80 percent of all federally-imposed paperwork burden on the public. Nonetheless, OMB continues to devote less than 1 full-time equivalent staff to IRS paperwork reduction.

Section 3 adds a new subsection to § 3504 of the Paperwork Reduction Act that requires OMB, after consultation with IRS, Office of Tax Policy of the Department of the Treasury, and SBA's Office of Advocacy, to conduct a review of the collections of information conducted by the IRS to identify actions that the IRS can take to reduce the information collection burdens imposed on small business concerns. OMB shall include the results of its review in the annual report for FY 2006 that OMB submits to Congress under section § 3514 of the Paperwork Reduction Act.

Section 4. Repeal of exemptions from Paperwork Reduction Act, etc.

Section 4 removes statutory exemptions in the Farm Security and Rural Investment Act of 2002 (Pub. Law 107–171) from various paperwork review and regulatory due process requirements. Neither the law nor its legislative history includes a justification for these exemptions to standard good government protections for the public.

Section 4 repeals exemptions from: (a) the Paperwork Reduction Act (44 U.S.C. Chapter 35), including the requirement for OMB review and approval of each proposed and continuing paperwork imposition on the public to ensure practical utility; (b) the Administrative Procedure Act (5 U.S.C. § 553), including the requirement for affected parties to have notice and an opportunity to comment on all agency regulatory proposals; and, (c) the Congressional Review Act (5 U.S.C. § 808), including a requirement for Congressional review before agency final rules can become effective. This repeal is effective 180 days after enactment.

The current exemptions to be repealed are in the following sections of the Farm Security and Rural Investment Act: Title I, Commodity Programs, Subtitle F, Administration, Sec. 1601, Administration generally; Title II, Conservation, Subtitle H, Funding and Administration, Sec. 2702, Regulations; Title VI, Rural Development, Subtitle B, Rural Electrification Act of 1936, Sec. 6103, Enhancement of access to broadband service in rural areas; and, Title X, Miscellaneous, Subtitle B, Disaster Assistance, Sec. 10105, Market loss assistance for apple producers.

OMB's implementing rules for the Paperwork Reduction Act include "Emergency processing" provisions (5 C.F.R. § 1320.13). These rules are available in various situations, such as when the collection of information is "essential to the mission of the agency" or when "public harm is reasonably likely to result if normal clearance procedures are followed." In addition, the Administrative Procedure Act authorizes an agency to issue an interim final rule (in-

stead of a proposed rule) upon an agency finding of "good cause" (5 U.S.C. § 553(b)(3)(B)). Lastly, the Congressional Review Act provides that a rule may take effect without Congressional review under certain circumstances (5 U.S.C. § 801(c)). With these identified provisions already in place, funds intended for immediate distribution under the Farm Security and Rural Investment Act or future farm legislation can be promptly distributed without need for specific statutory exemptions from these good government laws.

Section 5. Amendment of Truth in Regulating Act to make permanent pilot project for report on rules

Section 5 makes permanent the authorization for GAO to respond to requests from Congress for an independent evaluation of selective economically significant rules proposed or issued by Federal agencies.

Section 5 amends the Truth in Regulating Act (Pub. Law 106–312) to make permanent the authority to request the performance of regulatory analysis in order to enhance Congressional responsibility for regulatory decisions developed under the laws enacted by Congress. This law was enacted to: increase the transparency of important agency rules; promote effective Congressional oversight to ensure that agency rules fulfill statutory requirements in an efficient, effective, and fair manner; and, increase the accountability of Congress and the agencies to the people they serve. This amendment removes the authorization for a 3-year pilot project.

GAO never hired staff for this function since the law only authorized a 3-year pilot project. Instead, GAO intended, after the 3-year pilot project received funding (which never occurred), to use contractors instead of full-time expert agency staff to prepare its independent evaluations. To ensure full-time agency expertise within GAO, a change from a pilot approach to permanency is needed.

To assume oversight responsibility for Federal regulations, Congress needs to be armed with an independent evaluation. With this analytic help, Congress will be better equipped to review final agency rules under the Congressional Review Act. More importantly, Congress will be better equipped to submit timely and knowledgeable comments on proposed rules during the public comment period.

Section 6. Improved regulatory accounting

Section 6 requires OMB to improve its annual regulatory accounting statement and associated report, which are required by law to be submitted in final form with the President's Budget. In 1996, Congress required OMB to submit its first regulatory accounting report. In 1998 and 2000, Congress enacted additional legislation to make OMB's regulatory accounting reports more useful. OMB is annually required to submit the total annual costs and benefits for all Federal rules and paperwork in the aggregate, by agency, by agency program, and by major rule, and to include an associated report on the impacts of Federal rules and paperwork on certain groups.

OMB's seventh draft and six final regulatory accounting reports have not met some of the statutorily-required content requirements. Part of the reason is that OMB has not requested agency estimates for each agency bureau and program. OMB does this an-

nually with respect to its ICB (paperwork budget) and for the President's Budget (fiscal budget). Section 6(a) extends this practice of requiring agency input for OMB's annual regulatory accounting statements.

Section 6(a) requires Federal agencies annually to submit estimates of the costs and benefits associated with the Federal rules and paperwork for each of their agency programs. As OMB does for its Information Collection Budget and the fiscal Budget, OMB shall require each agency to submit annual estimates. This section includes a "to the extent feasible" qualifier to ensure no further burden on or cost to the agencies, i.e., for their submissions to include all available data.

Section 6(b) requires integration into the President's Budget of OMB's regulatory accounting statement and associated report. Current law requires submission "with the budget." Section 6(c) requires submission "as part of the budget." Currently, the economic impacts of Federal regulation receive much less scrutiny than programs in the fiscal Budget. Integration will allow Congress and the public to be able to review simultaneously both the on-budget and off-budget costs associated with each Federal agency imposing regulatory or paperwork burdens on the public.

Section 6(c) requires OMB to designate at least three agencies (or offices within an agency)—from among the following four major regulatory agencies: the Department of Labor, the Department of Transportation, the Department of Health and Human Services, and the Environmental Protection Agency—to participate in a study of regulatory budgeting for fiscal years 2006 and 2007, and then report the results to Congress.

This study, in which agencies are to identify regulatory alternatives and prioritize possible regulatory actions, will determine whether agencies can better manage regulatory burdens on the public. The study will set forth the preparation of regulatory budgets, including the presentation of varying estimated levels of benefits associated with different estimated levels of costs with respect to the regulatory alternatives under consideration.

EXPLANATION OF AMENDMENTS

The provisions of the substitute are explained in this report.

COMMITTEE CONSIDERATION

The bipartisan "Paperwork and Regulatory Improvements Act" (H.R. 2432) was introduced on June 11, 2003 by Rep. Doug Ose, Chairman, Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, and Rep. Tom Davis, Chairman, Committee on Government Reform. There were 5 other original co-sponsors, including 3 Democrats and 2 Republicans.

After introduction, the bill was referred to the Committee on Government Reform. On July 22, 2003, the Committee on Government Reform held a hearing on H.R. 2432. On May 12, 2004, the Government Reform Committee considered the bill in open session. The Committee ordered the bill favorably reported, as amended, to the full House by voice vote.

ROLLCALL VOTES

Amendment to the Amendment in the Nature of a Substitute to H.R. 2432
Offered by Mr. Waxman
Amendment No. 1
An Amendment to Establish the Independent Commission on Politicization of Science in the Regulatory Process

COMMITTEE ON GOVERNMENT REFORM
108TH CONGRESS – **2nd SESSION**
ROLL CALL

Rep.	Yeas	Nays	Present	Dem.	Yeas	Nays	Present
MR. DAVIS (VA) (CHAIRMAN)		X		MR. WAXMAN	X		
MR. SHAYS				MR. LANTOS			
MR. BURTON		X		MR. OWENS			
MS. ROS-LEHTINEN		X		MR. TOWNS			
MR. MCHUGH		X		MR. KANJORSKI			
MR. MICA		X		MR. SANDERS	X		
MR. SOUDER		X		MRS. MALONEY			
MR. LATOURETTE		X		MR. CUMMINGS	X		
MR. OSE		X		MR. KUCINICH	X		
MR. LEWIS (KY)		X		MR. DAVIS (IL)	X		
MRS. DAVIS (VA)		X		MR. TIERNEY			
MR. PLATTS		X		MR. CLAY	X		
MR. CANNON		X		MS. WATSON			
MR. PUTNAM		X		MR. LYNCH	X		
MR. SCHROCK		X		MR. VAN HOLLEN	X		
MR. DUNCAN		X		MS. SANCHEZ	X		
MR. DEAL				MR. RUPPERSBERGER	X		
MRS. MILLER (MI)		X		MS. NORTON	X		
MR. MURPHY				MR. COOPER	X		
MR. TURNER (OH)		X					
MR. CARTER		X					
MRS. BLACKBURN		X					
MR. TIBERI		X					
MS. HARRIS		X					

Totals: Yeas ___12___ Nays ___21___ Present ____

Amendment to the Amendment in the Nature of a Substitute to H.R. 2432
Offered By: Mr. Tierney
Amendment No. 1
Public Accountability in Regulatory Review

COMMITTEE ON GOVERNMENT REFORM
108TH CONGRESS – **2nd SESSION**
ROLL CALL

Rep.	Yeas	Nays	Present	Dem.	Yeas	Nays	Present
MR. DAVIS (VA) (CHAIRMAN)		X		MR. WAXMAN	X		
MR. SHAYS				MR. LANTOS			
MR. BURTON		X		MR. OWENS			
MS. ROS-LEHTINEN		X		MR. TOWNS			
MR. MCHUGH		X		MR. KANJORSKI	X		
MR. MICA		X		MR. SANDERS	X		
MR. SOUDER		X		MRS. MALONEY	X		
MR. LATOURETTE		X		MR. CUMMINGS	X		
MR. OSE		X		MR. KUCINICH	X		
MR. LEWIS (KY)		X		MR. DAVIS (IL)	X		
MRS. DAVIS (VA)		X		MR. TIERNEY			
MR. PLATTS		X		MR. CLAY	X		
MR. CANNON		X		MS. WATSON			
MR. PUTNAM		X		MR. LYNCH	X		
MR. SCHROCK		X		MR. VAN HOLLEN	X		
MR. DUNCAN		X		MS. SANCHEZ	X		
MR. DEAL				MR. RUPPERSBERGER	X		
MRS. MILLER (MI)		X		MS. NORTON	X		
MR. MURPHY				MR. COOPER	X		
MR. TURNER (OH)		X					
MR. CARTER		X					
MRS. BLACKBURN		X					
MR. TIBERI		X					
MS. HARRIS		X					

Totals: Yeas ___14___ Nays ___21___ Present ____

Amendment to the Amendment in the Nature of a Substitute to H.R. 2432
Offered By: Mr. Tierney
Amendment No. 2
Strike subsection (c) of section 6 (page 8, line 8, through the end of the amendment).

COMMITTEE ON GOVERNMENT REFORM
108TH CONGRESS – **2nd SESSION**
ROLL CALL

Rep.	Yeas	Nays	Present	Dem.	Yeas	Nays	Present
MR. DAVIS (VA) (CHAIRMAN)		X		MR. WAXMAN	X		
MR. SHAYS				MR. LANTOS			
MR. BURTON		X		MR. OWENS			
MS. ROS-LEHTINEN		X		MR. TOWNS			
MR. MCHUGH		X		MR. KANJORSKI	X		
MR. MICA		X		MR. SANDERS	X		
MR. SOUDER		X		MRS. MALONEY	X		
MR. LATOURETTE		X		MR. CUMMINGS	X		
MR. OSE		X		MR. KUCINICH	X		
MR. LEWIS (KY)		X		MR. DAVIS (IL)	X		
MRS. DAVIS (VA)		X		MR. TIERNEY			
MR. PLATTS		X		MR. CLAY	X		
MR. CANNON		X		MS. WATSON	X		
MR. PUTNAM		X		MR. LYNCH	X		
MR. SCHROCK		X		MR. VAN HOLLEN	X		
MR. DUNCAN		X		MS. SANCHEZ	X		
MR. DEAL				MR. RUPPERSBERGER		X	
MRS. MILLER (MI)		X		MS. NORTON	X		
MR. MURPHY		X		MR. COOPER		X	
MR. TURNER (OH)		X					
MR. CARTER		X					
MRS. BLACKBURN		X					
MR. TIBERI		X					
MS. HARRIS		X					

Totals: Yeas ___13___ Nays ___23___ Present ____

Amendment to the Amendment in the Nature of a Substitute to H.R. 2432
Offered By: Mr. Waxman
Amendment No. 2
Amendment on Paperwork Findings

COMMITTEE ON GOVERNMENT REFORM
108TH CONGRESS – **2nd SESSION**
ROLL CALL

Rep.	Yeas	Nays	Present	Dem.	Yeas	Nays	Present
MR. DAVIS (VA) (CHAIRMAN)		X		MR. WAXMAN	X		
MR. SHAYS				MR. LANTOS	X		
MR. BURTON		X		MR. OWENS			
MS. ROS-LEHTINEN		X		MR. TOWNS	X		
MR. MCHUGH		X		MR. KANJORSKI	X		
MR. MICA		X		MR. SANDERS	X		
MR. SOUDER		X		MRS. MALONEY	X		
MR. LATOURETTE		X		MR. CUMMINGS	X		
MR. OSE		X		MR. KUCINICH	X		
MR. LEWIS (KY)		X		MR. DAVIS (IL)	X		
MRS. DAVIS (VA)		X		MR. TIERNEY	X		
MR. PLATTS		X		MR. CLAY	X		
MR. CANNON		X		MS. WATSON	X		
MR. PUTNAM		X		MR. LYNCH	X		
MR. SCHROCK		X		MR. VAN HOLLEN	X		
MR. DUNCAN		X		MS. SANCHEZ	X		
MR. DEAL		X		MR. RUPPERSBERGER	X		
MRS. MILLER (MI)		X		MS. NORTON	X		
MR. MURPHY		X		MR. COOPER	X		
MR. TURNER (OH)		X					
MR. CARTER		X					
MRS. BLACKBURN		X					
MR. TIBERI		X					
MS. HARRIS		X					

Totals: Yeas __18__ Nays __23__ Present ____

Amendment to the Amendment in the Nature of a Substitute to H.R. 2432
Offered By: Mr. Waxman
Amendment No. 3
Amendment on Regulatory Costs Findings

COMMITTEE ON GOVERNMENT REFORM
108TH CONGRESS – **2nd SESSION**
ROLL CALL

Rep.	Yeas	Nays	Present	Dem.	Yeas	Nays	Present
MR. DAVIS (VA) (CHAIRMAN)		X		MR. WAXMAN	X		
MR. SHAYS				MR. LANTOS			
MR. BURTON		X		MR. OWENS			
MS. ROS-LEHTINEN		X		MR. TOWNS	X		
MR. MCHUGH		X		MR. KANJORSKI	X		
MR. MICA		X		MR. SANDERS	X		
MR. SOUDER		X		MRS. MALONEY	X		
MR. LATOURETTE		X		MR. CUMMINGS	X		
MR. OSE		X		MR. KUCINICH	X		
MR. LEWIS (KY)		X		MR. DAVIS (IL)	X		
MRS. DAVIS (VA)		X		MR. TIERNEY			
MR. PLATTS		X		MR. CLAY	X		
MR. CANNON		X		MS. WATSON	X		
MR. PUTNAM		X		MR. LYNCH	X		
MR. SCHROCK		X		MR. VAN HOLLEN	X		
MR. DUNCAN		X		MS. SANCHEZ	X		
MR. DEAL				MR. RUPPERSBERGER	X		
MRS. MILLER (MI)		X		MS. NORTON	X		
MR. MURPHY		X		MR. COOPER	X		
MR. TURNER (OH)		X					
MR. CARTER		X					
MRS. BLACKBURN		X					
MR. TIBERI		X					
MS. HARRIS		X					

Totals: Yeas __16__ Nays __22__ Present ____

CORRESPONDENCE

APRIL 22, 2004.

By facsimile

Hon. JOSHUA B. BOLTEN,
Director, Office of Management and Budget,
Washington, DC.

DEAR DIRECTOR BOLTEN: I am writing to state my views on the Office of Management and Budget's (OMB's) February 13, 2004 draft seventh regulatory accounting report, the final version of which was required by law to be submitted with the President's fiscal Budget on February 2nd. OMB published a Notice of availability and request for comments on February 20th (34 FR 7987).

As the Government Reform Subcommittee Chairman responsible for oversight over OMB's regulatory functions, this is my seventh letter to OMB on its draft and final regulatory accounting reports. Also, on February 25th, my Subcommittee held a hearing, entitled "How to Improve Regulatory Accounting: Costs, Benefits, and Impacts of Federal Regulation—Part II," on OMB's draft seventh report. I regret to report to you that OMB's draft not only again fails to respond to many of the concerns raised in my previous comment letters but also again fails to meet some of the specific statutory requirements.

I. STATUTORY REQUIREMENTS

The law requires OMB to annually submit with the President's fiscal Budget: (a) a regulatory accounting statement, (b) an associated report on impacts of Federal rules and paperwork, and (c) recommendations for regulatory reform. OMB's draft report includes partial regulatory accounting information, an inadequate associated report on impacts, and no specific reform recommendations. I remain concerned about the noncompliance or incomplete compliance with the specific statutory mandates.

For the accounting statement, the law requires OMB to estimate the total annual costs and benefits of all Federal rules and paperwork (1) in the aggregate, (2) by agency, (3) by agency program, and (4) by major rule. OMB's 2004 draft report was still not presented as an accounting statement and it includes information on only nine agencies (p. 5) and only six agency regulatory programs (p. 7). Moreover, OMB's draft includes only aggregate data on major rules issued in a rolling 10-year period instead of for all Federal rules and paperwork, as required by law. Furthermore, it excludes many categories of rules from its aggregation, e.g., all "transfer" rules that implement Federal budgetary programs. This omission is problematic for many reasons, among which is the fact that many of these rules impose huge costs on State and local governments. Nothing in the statute authorizes OMB to exclude any category of rules.

In her written statement for the Subcommittee's February 25th hearing, the Director of the Regulatory Studies Program at the Mercatus Center, in a section captioned "The estimates cover a small fraction of federal regulation," stated, "The benefits and costs for fiscal year 2003 are based on agency estimates for only six reg-

ulations, or one-tenth of one percent of the final rules published in the Federal Register during the year" (p. 2).

In fact, non-OMB estimates of the aggregate costs of all Federal rules and paperwork far exceed OMB's estimates. OMB's draft seventh report estimates that annual costs of the major rules issued in its rolling 10-period range from $34 billion to $39 billion. In contrast, in Fall 2001, the Small Business Administration (SBA) estimated that, in 2000, Americans spent $843 billion to comply with Federal regulations.

In my March 27, 2002 comment letter on OMB's draft fifth report, I stated,

> To assist OMB in preparing estimates by agency and by agency program, I recommend that OMB issue annual OMB Bulletins to the agencies like it does for paperwork reduction. In fact, agency proposed estimates of aggregate and new paperwork burden help OMB prepare a government-wide Information Collection Budget to manage paperwork burden on the public. OMB's regulatory accounting Bulletins should require each agency to submit estimates of its aggregate and new regulatory burden for the agency as a whole and for each of the agency's major regulatory programs.

In my January 3, 2003 comment letter on OMB's final fifth—and incomplete—report, I stated, "I now request that OMB promptly issue such a Bulletin." To date, OMB has not done so. Bi-partisan legislation (H.R. 2432, Paperwork and Regulatory Improvements Act), which I introduced on April 3rd, would require OMB to do so in the future. To improve upon its incomplete draft regulatory accounting report, OMB should promptly ask each agency for any available information for the agency as a whole or for one or more of its agency regulatory programs.

II. HISTORICAL PROGRESS

I am enclosing a chart that summarizes comments submitted to OMB by the Subcommittee from 1997 to present, i.e., not only from me but also from my predecessor. The chart includes six areas relating to OMB's regulatory accounting reports and OMB's progress in addressing each of these areas: (1) the statutorily-required annual associated report on impacts of Federal rules and paperwork; (2) the statutorily-required annual estimates of the total annual costs and benefits of all Federal rules and paperwork by agency; (3) the statutorily-required annual estimates of the total annual costs and benefits of all Federal rules and paperwork by agency program; (4) my request for OMB to issue an OMB Bulletin to the agencies calling for all available cost-benefit data to be submitted to OMB; (5) my recommendation for OMB's annual report to be submitted "as part of" the Budget instead of "with" the Budget; and (6) and the need for standardized agency estimation so that OMB is aggregating comparable numbers (i.e., apples and apples instead of apples and oranges).

A. Associated Report on Impacts

The first column includes comments on the required associated report on impacts of Federal rules and paperwork in certain sec-

tors, e.g., on small business and State and local government. You will note that OMB's fourth and sixth reports did not include the required associated report and OMB's other reports inadequately addressed the impacts of Federal rules and paperwork, especially on small business (e.g., its draft seventh report includes only 2 pages on impacts on small business).

On October 24, 2003, Small Business Subcommittee Chairman Edward Schrock submitted comments on resources that OMB could use to include a full impacts report on small business in its future regulatory accounting reports. He stated, "By law, every regulation that is certified to have a significant impact on a substantial number of small entities is required to develop a Regulatory Flexibility Analysis. Within each of the initial and final versions of this agency analysis is a statement of the potential impact of the rule on small business." Unfortunately, OMB did not follow Chairman Schrock's recommendation, i.e., it did not incorporate estimates from available agency Regulatory Flexibility Analyses (RFAs). In his written statement for the Subcommittee's February 25, 2004 hearing, SBA's Chief Counsel for Advocacy stated, "From the Office of Advocacy's perspective, the Draft OMB Report would also benefit from small business impact analyses that should be prepared for rules reviewed by OIRA" (p. 4).

In my March 4th post-hearing questions, I asked whether OMB had reviewed the agencies' RFAs. In its March 26th answer, OMB stated that OMB "has not aggregated information on these rules in the 2004 draft report. OMB is open to discussing this type of review with the SBA Office of Advocacy" (p. 6). OMB also pointed to a report issued by SBA. SBA's report does not override a statutory requirement for OMB to submit an annual associated report on impacts. In fact, this mandatory element is extremely important to the regulated community and deserves a more concerted effort by OMB, including OMB's systematically seeking input from the agencies and outside groups.

B. Agency Detail

The second column contains comments on the required agency level detail. You will note that OMB's fifth report was its first to include any agency detail but it did so for only eight agencies. Its draft seventh report includes only partial data for eight departments (Agriculture, Education, Energy, Health and Human Services (HHS), Homeland Security, Housing and Urban Development, Labor, and Transportation) and one independent agency (Environmental Protection Agency (EPA)). In fact, data are missing for several key regulatory agencies, such as for three key independent regulatory commissions: the Federal Communications Commission, the Federal Trade Commission, and the Securities and Exchange Commission. I encourage OMB to expand its database for its seventh final report and its future reports.

C. Program Detail

The third column contains comments on the statutorily-required annual estimates of the total annual costs and benefits by agency program. You will note that OMB's sixth report was its first to include any program-level detail but it did so for only seven agency programs. OMB's draft seventh report includes only partial data

for six agency programs: one in the Energy Department, one in HHS, the Occupational Safety and Health Administration (OSHA) in the Labor Department, one in the Transportation Department, and two in EPA.

For the last two Budgets, OMB used a Program Assessment Rating Tool (PART) to review 40 percent of all agency programs. Many agency programs were categorized as "regulatory based" programs. For example, in the Labor Department, besides OSHA, OMB categorized five other programs as regulatory based: Davis-Bacon Wage Determination Program, Employee Benefits Security Administration (EBSA), Mine Safety and Health Administration (MSHA), Office of Federal Contract Compliance Programs (OFCCP), and Pension and Welfare Benefits Administration (PWBA). OMB's draft report does not include program-level detail for any of these five regulatory programs. I encourage OMB to expand its database for its seventh final report and its future reports.

D. Agency Input

The fourth column arises out of my recommendation that OMB issue an annual Bulletin requesting input from the agencies so that OMB will eventually be able to provide complete agency detail and program detail. In my March 18, 2003 comment letter on OMB's draft sixth report, I stated, "I recognize that, in the first few years, agency submissions will be incomplete; nonetheless, this discipline will result in more complete and better data in time."

I also stated, "Witnesses at my Subcommittee's March 11, 2003 hearing, entitled 'How to Improve Regulatory Accounting: Costs, Benefits and Impacts of Federal Regulations,' expressed support for a pilot test of regulatory budgeting. More complete and better agency data are essential to pursue such an approach." My bi-partisan legislation (H.R. 2432) includes pilot tests of regulatory budgeting. OMB's witness at our March 11, 2003 and February 25, 2004 hearings expressed support for such pilot tests. At the latter, he stated, "You know that I am very optimistic and enthusiastic about the concept of a regulatory budget. You know that I am enthusiastic about the idea of trying to move forward for a pilot project, to try to actually demonstrate and study the potential promise of this type of activity" (transcript, pp. 23–4).

E. Budget Submission

The fifth column contains comments on the statutorily-required submission "with" the President's fiscal Budget. You will note that OMB's draft sixth report was the first to be submitted on time. Unfortunately, it was published in the *Federal Register* instead of with the Budget documents. As a consequence, it was harder for Congress to simultaneously review both the on-budget and off-budget costs associated with each Federal agency and each Federal agency program imposing regulatory or paperwork burdens on the public. Even though OMB's September 2003 final sixth report stated, "OMB's objective is to publish the draft 2004 report as part of the President's FY 2005 budget submission to Congress, which will be released in February 2004" (p. 4), OMB did not do so. Instead, OMB submitted its draft report to Congress 11 days late and published it for public comment 18 days late. This late submission pre-

vented Congressional Subcommittees from preparing fully informed recommendations for this year's Budget Resolution.

On March 4, 2004, I sent OMB post-hearing questions after the Subcommittee's February 25th hearing. At the outset, I noted that, "Current law (codified as 31 U.S.C. 1105 Note for 'Budget contents and submission to Congress,' USCA pp. 219–237) requires that the Office of Management and Budget (OMB) submit its annual regulatory accounting statement and associated report on impacts 'with' the President's Budget." I then discussed my bi-partisan bill (H.R. 2432) that would require submission "as part of" (vs. "with") the President's Budget and stated, "This provision provides OMB with considerable flexibility regarding in which of the various Budget documents it will present this information." In its March 26th post-hearing answer, OMB stated, "We are concerned about this proposed change to current law for several reasons. First, this would impose a mandate on the President with respect to what information the President must include in his Budget submission to Congress" (p. 2). In fact, as indicated in my question, there are already nearly 20 pages of detailed specifications in law and, unlike some of the existing detailed specifications, my bill provides considerable flexibility to OMB.

OMB further argued, "Second, under existing law, the draft cost-benefit report that OMB issues in February, with the Budget, is subject to public comment, interagency review, and peer review" (p. 2). The problem is that OMB's regulatory accounting reports have been issued off-cycle. OMB's draft report should be issued several months earlier so that its final report can be submitted with the Budget, as the law requires.

Lastly, OMB argued that its report covers only "a series of years." In fact, the law does not authorize OMB to limit its report to only a series of years. As stated earlier in this letter, OMB's draft only includes aggregate data for a rolling 10-year period instead of for all Federal rules and paperwork, as required by law.

The Chamber of Commerce witness at the Subcommittee's February 25th hearing stated his support for including the regulatory accounting report as part of the Budget. He stated, "We would like to see it as part of a submittal, because what the agencies are going to do as part of their budget is certainly going to have an impact on regulation" (transcript, pp. 75–6). The Mercatus Center witness elaborated by saying, "I would agree, and I think the analogy to the Government Performance and Results Act is helpful there. We have seen that in recent years that [it] has been part of the budget; not alongside the budget, but part of the budget, and I think it is helping improve accountability and performance" (transcript, p. 76). In her written testimony, in a section captioned "The annual reports could be integrated more fully into the fiscal budget process," she stated, "integrating OMB's Regulatory Accounting Report will allow policymakers and appropriators to allocate our nation's resources more efficiently and effectively to achieve greater benefits from our regulatory programs" (pp. 1–2).

F. Standardized Estimation

The last column contains comments about the absence of any mandatory systematic and standardized procedure agencies must use to collect and report data to OMB on the impacts of all exist-

ing, revised, and new regulations. The Subcommittee repeatedly commented,

With respect to the absence of standard procedures for collecting and reporting data by the agencies, implementing such procedures are critical to the credibility of future government-wide analyses. Accordingly, we expect OMB to require all executive branch agencies to follow uniform systematic standardized procedures for collecting and reporting data to OMB and to request that the independent regulatory agencies do the same. At a minimum, there must be a standardized procedure for collecting and reporting data on the costs and benefits for all existing rules.

I am pleased that OMB issued a new OMB Circular A–4, Regulatory Analysis, as part of its sixth final report. In my first comment letter on regulatory accounting, I stated, "During OMB's review of individual agency regulatory proposals, the Subcommittee recommends that OMB return to the agencies any regulatory proposal that does not present costs and benefits estimates that fully conform with OMB's standards" (5/4/01). Our February 25, 2004 witnesses agreed. SBA's Chief Counsel for Advocacy stated, "My office recommends that OMB issue return letters on a rule-by-rule basis to enforce agency compliance" (transcript, p. 10). The Mercatus Center witness stated, "OMB should be able to hold agencies accountable for these new guidelines. And, if they do not comport, they should return regulations to agencies" (transcript, p. 55). In addition, OMB's witness stated, "we intend to use all the available authorities we have to make sure that agencies comply with Circular A–4" (transcript, p. 35).

I am heartened by OMB's March 26th post-hearing answer that stated, "It is the Administration's policy that all regulatory impact analyses for economically significant proposed rules must comply with Circular A–4 after January 1, 2004, and that all regulatory impact analyses for economically significant final rules must comply with Circular A–4 after January 1, 2005. A regulatory impact analysis that is not-compliant with Circular A–4 will be a basis for returning rules to agencies" (emphases added, p. 5).

My March 4, 2004 post-hearing question asked not only whether OMB will return for revision all agency cost-benefit analyses that are non-compliant with Circular A–4 but also whether OMB will adjust agency cost-benefit estimates in OMB's future annual regulatory accounting reports to ensure more consistent and reliable aggregate information. OMB's post-hearing answer for the latter is not reassuring. OMB stated,

> OMB expects that these new disclosure requirements and the new guidelines in general will lead to estimates that are more comparable across agencies. We are aware of this issue, however, and will continue to monitor the comparability of estimates across agencies and the effect of the new Circular on comparability. As the Subcommittee points out, a goal of our Circular is to encourage the standardization of the way that benefits and costs of rules are measured and reported" (emphases added, pp. 5–6).

OMB needs to do more than monitor and encourage; it needs to adjust all inconsistent agency estimates.

III. OTHER COMMENTS

In OMB's response to other public comments in its September 2003 sixth final report, OMB stated, "Two commenters (307, 327) recommended that the report should include estimates of the benefits and costs of regulations issued prior to 1992. OMB does not believe that the estimates of the costs and benefits of regulations issued over ten years ago are very reliable or very useful for informing current policy decisions" (p. 17). I agree with these commenters. The Subcommittee has repeatedly asked OMB to include all regulations. In my first comment letter on regulatory accounting, I stated,

> The Subcommittee believes that OMB's accounting statement and associated report should include all regulations, including those issued prior to 1990. Since there was no executive order in place mandating such analysis prior to 1981, the Subcommittee recognizes the difficulty of estimating these data. Nonetheless, they are essential to appreciate the full impact of Federal regulatory and paperwork requirement on the public (5/4/01).

In my March 4, 2004 post-hearing questions, I quoted the following from OMB's draft report, "Based on information contained in this and previous reports, the total costs and benefits of all Federal rules now in effect (major and non-major, including those adopted more than 10 year ago) could easily be a factor of ten or more larger than the sum of the costs and benefits reported" herein (emphasis added, p. 6). Then, I asked OMB, "What steps, if any, has OMB taken to include available data for the still active major rules issued from 1981 (under President Reagan's E.O.) to 1993 (February 17, 1981 to September 30, 1993), and estimates for the still active major rules issued before 1981?" In its March 26th reply, OMB stated that, for the 2005 Report, OMB "has assembled a time series of new Federal regulatory costs for the past 17 years, from 1987–2003" (p. 8). This is encouraging. Data for a 17-year period is clearly more desirable than data for only a rolling 10-year period.

OMB's sixth final report also stated, "One commenter (327) believed that the report should include benefit and cost estimates for non-major rules. OMB believes that major (economically significant) rules account for the vast majority of the total costs of Federal regulation, even though most Federal rules are not considered major" (p. 17). I agree with the commenter and request that OMB, in its future reports, use statistical procedures to include estimates for these benefits and costs. In his written statement for the Subcommittee's February 25, 2004 hearing, the Chamber of Commerce witness stated,

> * * * some methodological approach should be established that can enable OMB to more reliably gauge the impact of all federal rules that are in effect, not just those major rules promulgated over the previous ten years or some other arbitrarily established timeframe that fails to capture the full cost and benefit impacts of regulations on the public (p. 6).

As stated earlier, non-OMB estimates of the aggregate costs of all Federal rules and paperwork far exceed OMB's estimates. OMB's draft seventh report estimates that annual costs of the major rules issued in its rolling 10-period range from $34 billion to $39 billion, which pales in comparison to SBA's estimate that, in 2000, Americans spent $843 billion to comply with Federal regulations, including both major and non-major rules. The cumulative impact of all rules in the aggregate, by agency, and by agency program is critical for informed Congressional and public debate.

Thank you for your attention to my concerns.

Sincerely,

DOUG OSE,
Chairman, Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs.

Enclosure.

Summary of Key GRC Subcommittee Comments
on OMB's Draft & Final Regulatory Accounting Reports

Comment & Report	Impacts Report	Agency Detail	Program Detail	OMB Bulletin	With Budget	Standardize Estimation
10/29/97 final 1st	wholly deficient	-	missing	-	-	no
8/28/98 draft 2nd	incomplete compliance	incomplete compliance	incomplete compliance	-	-	no
1/11/00 draft 3rd	wholly inadequate	missing	missing	-	to be late	no
5/4/01 draft 4th	missing	missing	missing	-	no	no
1/24/02 final 4th	missing	missing	missing	-	no	-
3/27/02 draft 5th	only 2 pp. on small bus	8 agencies only	missing	Ose proposed	no	no
1/3/03 final 5th	only 6 pp. in toto	8 agencies only	missing	none	no	no
3/18/03 draft 6th	missing	8 agencies only	7 programs only	none	timely but separate	draft OMB Circular
9/25/03 final 6th	missing	8 agencies only	7 programs only	none	no	final OMB Circular effective 1/1/04 for NPRMs & 1/1/05 for final rules
4/22/04 draft 7th	only 2 pp. on small bus	9 agencies only	6 programs only	none	no	not yet effective

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May 14, 2004

The Honorable Tom Davis
Chairman
House Committee on Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

This correspondence is in regard to H.R.2432, the Paperwork and Regulatory Improvements Act of 2003. As you are aware, the Committee on Agriculture was granted a sequential referral of H.R. 2432 because of its jurisdictional interest in agriculture commodity programs created and reauthorized in the Farm Security and Rural Investment Act of 2002.

Section 4 of H.R. 2432 amends the Farm Security and Rural Investment Act of 2002 (Public Law 107-171) by eliminating provisions that were inserted to ensure the farm bill programs and payments would apply to the crops of the 2002 crop year.

Knowing of your interest in expediting this legislation, I will discharge H.R. 2432 from further consideration by the Committee on Agriculture. I do so with the understanding that by discharging the bill the Committee on Agriculture does not waive any future jurisdictional claim over this or similar measures. In addition, in the event a conference with the Senate is requested on this matter, the Committee on Agriculture reserves the right to seek appointment of conferees, if one should become necessary.

Thank you very much for your courtesy in this matter and I look forward to continued cooperation between our Committees as we deal with these issues in the future.

Sincerely,

Bob Goodlatte

Bob Goodlatte
Chairman

agriculture.house.gov
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May 14, 2004

The Honorable Bob Goodlatte
Chairman
Committee on Agriculture
1301 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your recent letter regarding the Agriculture Committee's jurisdictional interest in H.R. 2432, *the Paperwork and Regulatory Improvements Act*. Section 4 of H.R. 2432 repeals eight provisions within the *Farm Security and Rural Investment Act of 2002* (P.L. 107-171). Those eight provisions exempted certain farm programs from the requirements of the *Paperwork Reduction Act*.

I agree that the Committee on Agriculture does not waive its jurisdiction over H.R. 2432 or P.L. 107-171 by waiving further consideration of the bill. In addition, I will support your request for conferees from the Agriculture Committee should a House-Senate conference on this or similar legislation be convened.

I will include a copy of your letter and this response as part of the Government Reform Committee's report and the *Congressional Record* during consideration of the legislation on the House floor. Thank you for your cooperation as we work towards the enactment of H.R. 2432.

Sincerely,

Tom Davis

Tom Davis
Chairman

cc: The Honorable J. Dennis Hastert, Speaker
The Honorable Henry A. Waxman
Mr. Charles W. Johnson, III, Parliamentarian

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of reported bills to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill increases the probability of results in paperwork reduction, assists Congress in its review of agency regulatory proposals, and improves regulatory accounting. To the extent that this bill reduces paperwork burdens this benefit would apply equally to employees of the legislative branch.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(2) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Because this bill does not authorize funding, a statement of general performance goals pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives is not required.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 2432. Article I, Section 8, Clause 18 of the Constitution of the United States grants the Congress the power to enact this law.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 2432. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the

Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2432 from the Director of Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 14, 2004.

Hon. TOM DAVIS,
Chairman, Committee on Government Reform,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed estimate for H.R. 2432, the Paperwork and Regulatory Improvements Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

ELIZABETH ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 2432—Paperwork and Regulatory Improvements Act of 2004

Summary: H.R. 2432 would amend the Truth In Regulating Act and other provisions of current law concerned with the cost of government regulations and the burden of federal reporting requirements. H.R. 2432 would grant the General Accounting Office (GAO) permanent authority to evaluate economically significant agency rules. The bill also would direct the Office of Management and Budget (OMB) to expand its regulatory accounting process, require OMB to review the burden of information collection requirements imposed by the Internal Revenue Service (IRS) on small business, and repeal the exemption granted in the Farm Security and Rural Investment Act of 2002 from certain regulatory review requirements for specific Department of Agriculture programs.

CBO estimates that implementing H.R. 2432 would cost about $10 million a year, assuming the appropriation of the necessary amounts. Enacting the bill would not affect direct spending or revenues. H.R. 2432 contains no intergovernmental private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2432 is shown in the following table. The costs of this legislation fall within budget function 800 (general government).

	By fiscal year, in million of dollars—				
	2005	2006	2007	2008	2009
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
GAO Analysis of Major Rules:					
Estimated Authorization Level	8	8	8	8	8
Estimated Outlays	7	8	8	8	8
Regulatory Accounting Reporting and Studies:					
Estimated Authorization Level	2	2	2	2	2
Estimated Outlays	2	2	2	2	2

	By fiscal year, in million of dollars—				
	2005	2006	2007	2008	2009
Total Proposed Changes:					
Estimated Authorization Level	10	10	10	10	10
Estimated Outlays	9	10	10	10	10

Basis of estimate: For this estimate, CBO assumes that H.R. 2432 will be enacted near the end of fiscal year 2004, that the necessary amounts will be provided each year, and that spending will follow historical patterns for similar activities.

General Accounting Office analysis of major rules

H.R. 2432 would grant permanent authority to continue a pilot project that required GAO to independently evaluate and report on certain regulatory rules issued by federal agencies. The authority for this pilot project expired on January 15, 2004.

The rules subject to review by GAO would include those that could have an annual effect on the U.S. economy of at least $100 million or those that could adversely affect the economy, environment, public health and safety, or state, local, or tribal governments. Each GAO analysis would include an evaluation of the potential costs and benefits of implementing a particular rule, alternative approaches for achieving the goal of the rule at a lower cost, and an evaluation of the regulatory impact analysis or other assessment performed by the agency issuing the rule. Based on information from GAO, CBO estimates that those activities would cost about $8 million annually, subject to the availability of appropriated funds.

Regulatory accounting

Under current law, OMB is required to submit with the President's budget an accounting statement that includes an estimate of the total annual costs and benefits of all federal rules and reporting requirements. Additionally, OMB must report on the impact of federal rules and reporting requirements on state, local, and tribal governments and small business.

H.R. 2432 would require OMB to designate three regulatory agencies or offices for a pilot project to prepare a regulatory budget for fiscal years 2006 and 2007. The regulatory budget would present varying estimated levels of benefits that would be associated with different estimated levels of costs for alternative agency regulations. A full study on the value of a regulatory budget and issues involved in its preparation would be submitted to the Congress in 2009. In addition, the legislation would require agencies, to the extent feasible, to submit to OMB the total annual costs and benefits of federal rules and reporting requirements. This material would be presented as part of the President's budget submission to the Congress. CBO estimates that those additional reporting requirements and the study would cost federal agencies about $2 million annually beginning in fiscal year 2005.

Other provisions

H.R. 2432 would require a study by OMB, in consultation with the IRS, to reduce the information collection burden imposed on small businesses by the IRS. The legislation also would repeal the

exemption from the Paperwork Reduction Act and other regulatory review requirements for certain specific Department of Agriculture programs. CBO estimates that those provisions would cost less than $500,000 to implement.

Intergovernmental and private-sector impact: H.R. 2432 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Matthew Pickford; Impact on State, Local, and Tribal Governments: Sarah Puro; and Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 3504 OF TITLE 44, UNITED STATES CODE

§ 3504. Authority and functions of Director

(a) * * *

* * * * * * *

(i) In carrying out subsection (c)(3), the Director shall (in consultation with the Internal Revenue Service and the Office of Tax Policy of the Department of the Treasury and the Office of Advocacy of the Small Business Administration) conduct a review of the collections of information conducted by the Internal Revenue Service to identify actions that the Internal Revenue Service can take to reduce the information collection burden imposed on small business concerns, consistent with section 3520(c)(1) of this chapter. The Director shall include the results of the review in the annual report that the Director submits under section 3514 of this chapter for fiscal year 2006.

FARM SECURITY AND RURAL INVESTMENT ACT OF 2002

* * * * * * *

TITLE I—COMMODITY PROGRAMS

* * * * * * *

Subtitle F—Administration

SEC. 1601. ADMINISTRATION GENERALLY.

(a) * * *

* * * * * * *

(c) REGULATIONS.—

(1) * * *

(2) PROCEDURE.—The promulgation of the regulations and administration of this title shall be made without regard to—

[(A) chapter 35 of title 44, United States Code (commonly know as the "Paperwork Reduction Act");]

* * * * * * *

[(C) the notice and comment provisions of section 553 of title 5, United States Code.

[(3) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—In carrying out this subsection, the Secretary shall use the authority provided under section 808 of title 5, United States Code.]

* * * * * * *

TITLE II—CONSERVATION

* * * * * * *

Subtitle H—Funding and Administration

* * * * * * *

SEC. 2702. REGULATIONS.

(a) * * *

(b) APPLICABLE AUTHORITY.—The promulgation of regulations under subsection (a) and administration of this title—

(1) shall—

[(A) be carried out without regard to chapter 35 of title 44, United States Code (commonly known as the Paperwork Reduction Act); and]

* * * * * * *

(2) may—

[(A) be promulgated with an opportunity for notice and comment; or]

[(c) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—In carrying out this section, the Secretary shall use the authority provided under section 808(2) of title 5, United States Code.]

* * * * * * *

TITLE VI—RURAL DEVELOPMENT

* * * * * * *

Subtitle B—Rural Electrification Act of 1936

* * * * * * *

SEC. 6103. ENHANCEMENT OF ACCESS TO BROADBAND SERVICE IN RURAL AREAS.

(a) * * *

(b) REGULATIONS.—

(1) * * *

(2) PROCEDURE.—The promulgation of the regulations shall be made without regard to—

[(A) the notice and comment provisions of section 553 of title 5, United States Code;]

* * * * * * *

[(C) chapter 35 of title 44, United States Code (commonly known as the "Paperwork Reduction Act").

[(3) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—In carrying out this subsection, the Secretary shall use the authority provided under section 808 of title 5, United States Code.]

TITLE X—MISCELLANEOUS

* * * * * * *

Subtitle B—Disaster Assistance

* * * * * * *

SEC. 10105. MARKET LOSS ASSISTANCE FOR APPLE PRODUCERS.

(a) * * *

* * * * * * *

(d) REGULATIONS.—

(1) * * *

(2) PROCEDURE.—The promulgation of the regulations and administration of this section shall be made without regard to—

[(A) the notice and comment provisions of section 553 of title 5, United States Code;]

* * * * * * *

[(C) chapter 35 of title 44, United States Code (commonly known as the "Paperwork Reduction Act").

[(3) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—In carrying out this subsection; the Secretary shall use the authority provided under section 808 of title 5, United States Code.]

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TRUTH IN REGULATING ACT OF 2000

SEC. 4. [PILOT PROJECT FOR] REPORT ON RULES.

(a) * * *

* * * * * * *

[SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated to the General Accounting Office to carry out this Act $5,200,000 for each of fiscal years 2000 through 2002.]

SEC. [6]. *5.* EFFECTIVE DATE [AND DURATION OF PILOT PROJECT].

[(a) EFFECTIVE DATE.—]This Act and the amendments made by this Act shall take effect 90 days after the date of enactment of this Act.

[(b) DURATION OF PILOT PROJECT.—The pilot project under this Act shall continue for a period of 3 years, if in each fiscal year, or portion thereof included in that period, a specific annual appropriation not less than $5,200,000 or the pro-rated equivalent thereof shall have been made for the pilot project.

[(c) REPORT.—Before the conclusion of the 3-year period, the Comptroller General shall submit to Congress a report reviewing the effectiveness of the pilot project and recommending whether or not Congress should permanently authorize the pilot project.]

* * * * * * *

SECTION 624 OF THE TREASURY AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2001

SEC. 624. (a) IN GENERAL.—For calendar year 2002 and each year thereafter, the Director of the Office of Management and Budget shall prepare and submit to Congress, [with the budget] *as part of the budget* submitted under section 1105 of title 31, United States Code, an accounting statement and associated report containing—

(1) * * *

* * * * * * *

(b) AGENCY SUBMISSIONS TO OMB.—To carry out subsection (a), the Director of the Office of Management and Budget shall require each agency annually to submit to the Office of Management and Budget an estimate of the total annual costs and benefits of Federal rules and paperwork, to the extent feasible—

(1) for the agency in the aggregate; and

(2) for each agency program.

[(b)] *(c)* NOTICE.—The Director of the Office of Management and Budget shall provide public notice and an opportunity to comment on the statement and report under subsection (a) before the statement and report are submitted to Congress.

[(c)] *(d)* GUIDELINES.—To implement this section, the Director of the Office of Management and Budget shall issue guidelines to agencies to standardize—

(1) * * *

* * * * * * *

[(d)] *(e)* PEER REVIEW.—The Director of the Office of Management and Budget shall provide for independent and external peer review of the guidelines and each accounting statement and associated report under this section. Such peer review shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

TITLE 31, UNITED STATES CODE

* * * * * * *

SUBTITLE II—THE BUDGET PROCESS

* * * * * * *

CHAPTER 11—THE BUDGET AND FISCAL, BUDGET, AND PROGRAM INFORMATION

Sec.
1101. Definitions.
* * * * * * *
1120. Regulatory budgeting.
* * * * * * *

§ 1120. Regulatory budgeting

(a) The Director of the Office of Management and Budget, after consultation with the head of each agency, shall designate not less than three agencies (or offices within an agency) to participate in a study on regulatory budgeting for fiscal years 2006 and 2007. The designated agencies shall include three regulatory agencies or offices from among the following: the Department of Labor, the Department of Transportation, the Department of Health and Human Services, and the Environmental Protection Agency.

(b) The study shall address the preparation of regulatory budgets. Such budgets shall include the presentation of the varying estimated levels of benefits that would be associated with the different estimated levels of costs with respect to the regulatory alternatives under consideration by the agency (or office within the agency).

(c) The Director of the Office of Management and Budget shall include, in the accounting statement and associated report submitted to Congress for calendar year 2006 under section 624 of the Treasury and General Government Appropriations Act, 2001 (as enacted into law by Public Law 106–554; 114 Stat. 2763A–161), a presentation of the different levels of estimated regulatory benefits and costs with respect to the regulatory alternatives under consideration for one or more of the major regulatory programs of each of the agencies designated under subsection (a).

(d) In the accounting statement and associated report submitted to Congress for calendar year 2009 under section 624 of the Treasury and General Government Appropriations Act, 2001 (as so enacted), the Director of the Office of Management and Budget shall include a report on the study on regulatory budgeting. The report shall—

(1) assess the feasibility and advisability of including a regulatory budget as part of the annual budget submitted under section 1105;

(2) describe any difficulties encountered by the Office of Management and Budget and the participating agencies in conducting the study; and

(3) recommend, to the extent the President considers necessary or expedient, proposed legislation regarding regulatory budgets.

* * * * * * *

MINORITY VIEWS

H.R. 2432 is portrayed by its sponsors as an attempt to improve federal regulations and reduce red-tape and paperwork. Unfortunately, the substance of this bill and the timing of its consideration make clear it is more public relations than public policy. This bill was rushed through the Committee without a Subcommittee markup. It will be featured as part of a partisan effort, entitled the "Hire Our Workers" plan, which highlights measures claimed to increase jobs and revive the economy. H.R. 2432 would weaken, rather than improve, the process of developing federal regulations, and it does nothing to stem the sharp rise in paperwork burden that has occurred since President Bush took office. This bill also fails to address real current problems in federal regulation, such as the pressure on agencies to misuse or ignore science for political ends. As such, H.R. 2432 will have no positive effect on employment or the economy.

During full Committee markup, we proposed amendments to H.R. 2432 to better align the bill with its intended purposes. An amendment by Representative Henry A. Waxman would have established an independent commission on politicization of science in the regulatory process. An amendment by Representative John F. Tierney would have enhanced transparency in the rule-making process by requiring comments and other communications from the White House Office of Management and Budget (OMB) to be made public. Both of these measures would have significantly enhanced the federal regulatory process and the quality of the regulations issued. Democratic members offered other amendments that would have corrected or ameliorated some of the flaws in the bill discussed below. This included an amendment by Representative Dennis Kucinich that would have changed the provision in the bill permanently requiring the General Accounting Office (GAO) to respond to requests from Congress to evaluate economically significant agency rules to a three-year pilot project. All of the Democratic members' amendments were rejected.

REGULATORY BUDGETS

Section 6(c) of H.R. 2432 requires targeted agencies to participate in a study on regulatory budgeting. This requirement is ambiguous and the concept is misguided. H.R. 2432 does not define "regulatory budget" and it is unclear what agencies participating in the "study" would be required to do. As described by Subcommittee Chairman Ose and witnesses in prior hearings, a regulatory budget is actually a "regulatory cap," which limits the total costs that an agency's combined regulations can impose on the public. This is a deeply flawed concept, which should not be pursued.

A budget ensures that spending does not exceed income. However, in the context of regulations to enhance public welfare there

is no equivalent to income, so any numeric cap set on regulatory costs is inherently arbitrary. A regulatory budget also by definition does not take benefits into account. The cap on regulations would be based solely on the costs of the regulations, not on their net benefits. Once an agency reached its cost cap, it would not be allowed to issue further regulations, even if the benefits of each regulation far exceeded the costs. Moreover, the cost estimates for regulations that would be used for a regulatory budget are inherently inaccurate and generally biased upward. The cost estimates are based on prospective projections of regulatory costs, with no validation after the regulation has been implemented.

We believe resources should be directed toward increasing the transparency and integrity of the regulatory process rather than studying how to limit public protections.

AGENCY COST BENEFIT SUBMISSIONS TO OMB

Section 6(a) of H.R. 2432 requires each agency annually to submit to OMB "the total annual costs and benefits of Federal rules and paperwork, to the extent feasible" for the entire agency and each agency program. This requirement significantly expands the universe of rules for which agencies must submit cost and benefits estimates to OMB. Currently, agencies must submit such estimates to OMB only for "significant regulatory actions," which are generally those that impose annual costs of $100 million or more. Agencies should not be required to conduct any additional analysis beyond what is currently required. Majority staff has informed us that this provision is not intended to require the agencies to conduct any additional analyses beyond what they would already prepare.

In addition, because cost-benefit estimates have so many uncertainties, limitations, and flaws, expanding the use of these estimates will not add value or improve the quality of decision-making in the regulatory process. It also would do nothing to further the fundamental goals of our system of laws and regulations, such as protecting public health and the environment.

SUBMISSION OF REGULATORY ACCOUNTING REPORT AS PART OF THE BUDGET

Section 6(b) of H.R. 2432 requires OMB to submit its annual regulatory accounting report as part of the President's budget. OMB's regulatory accounting report is not a budget document and therefore it does not make sense to require this document to be included in the President's budget. Moreover, OMB has expressed concerns this could conflict with the requirement to submit the report to public comment, interagnecy reviews, and peer reviews.

OMB's Office of Information and Regulatory Affairs (OIRA) Administrator John Graham expressed OMB's opposition to this provision in a March 26, 2004, letter to Subcommittee Chairman Doug Ose. Dr. Graham stated:

> [U]nder existing law, the draft cost-benefit report that OMB issues in February, with the Budget, is subject to public comment, interagency review, and peer review. Then, in response to comment and reviews OMB receives,

> OMB revises the report and issues the final version of the report later in the year. If the cost-benefit report were made "a part of" the President's Budget, we have concerns about how the public comment and review procedures would work and how they could be incorporated into the development of the President's Budget.

OMB's regulatory accounting report must continue to be subject to public review and comment. Majority staff has informed minority staff that this provision is not intended to preclude OMB from providing an opportunity for public review and comment on a draft report. The majority staff believes that this section requires the draft regulatory accounting report be used at a time well before the issuance of the President's Budget ensuring that the report would subject to public comment, interagency review, and peer review.

REQUIREMENT ON GAO TO RE-EVALUATE AGENCY COST BENEFIT ANALYSES

Section 5 of H.R. 2432 unwisely makes permanent the pilot program created in the Truth in Regulating Act (TIRA) of 2000. TIRA established a three-year pilot program in which GAO, if asked by a chairman or ranking minority member, would report on economically significant proposed and final rules within a mandated timeframe. That law states that the pilot would only go forward if GAO received TIRA-earmarked appropriations and that the pilot would be reviewed for effectiveness to determine permanency. To this date, Congress has failed to provide GAO with funding for TIRA.

GAO currently does not have the resources to comply with section five, and more troubling, cannot accept all of its current congressional requests. In fact, GAO is in the process of revising its congressional protocols and is considering prohibiting individual member requests and taking on work only from committees. As it is, member requests are at the bottom of the priority chain. GAO should be taking on member requests and members are not requesting TIRA reviews. GAO Comptroller General Walker, in a letter sent yesterday, states, "if Congress wants TIRA to continue, we believe it should do so as a pilot project rather than as permanent authority." We agree; TIRA should not be made permanent until we see if it is worthwhile.

FINDINGS

H.R. 2432 cites in its findings an estimate for the paperwork burden for fiscal year 2001, as calculated by OIRA in 2002. Rep. Waxman offered an amendment to supplement this information by including OIRA's paperwork burden estimate for fiscal year 2002, and GAO's estimate for fiscal year 2003. These estimates reveal that the paperwork burden increase for fiscal year 2002 was a record 570 million hours. They also show that the annual paperwork burden for fiscal year 2003 rose by another 72 million hours, excluding adjustments to paperwork burden estimates. Overall, since fiscal year 2000, OIRA's figures show that the paperwork burden has increased by 70 million hours.

As the bill is intended to address the paperwork burdens in place today, it is appropriate that the findings refer to the most recent

estimates. To the extent that the Committee is concerned about ongoing increases in paperwork burden, information on recent trends is critical context.

The findings in H.R. 2432 also cite to an estimate of the total costs incurred annually in the United States to comply with federal regulations. However, this estimate, and the study that produced it, has been strongly critiqued. For example, in testimony before the Committee last July, Dr. John Graham, Administrator of OIRA, made the following statement regarding this estimate:

> The estimate * * * is based on a previous estimate by Hopkins done in 1995, which itself was based on summary estimates done in 1991 and earlier, as far back as the 1970s. The underlying studies were mainly done by academics using a variety of techniques, some peer reviewed and some not. Most importantly, they were based on data collected ten, twenty, and even thirty years ago. Much has changed in those years and those estimates may no longer be sufficiently accurate or appropriate for an official accounting statement. Moreover, the cost estimates used in these aggregate estimates combine diverse types of regulations, including financial, communications, and environmental, some of which impose real costs and others that cause mainly transfers of income from one group to another. Information by agency and by program is spotty and benefit information is nonexistent. These estimates might not pass OMB's information quality guidelines. In particular, many of the studies they relied upon for these aggregate estimates are not sufficiently transparent about the data and methods to facilitate the reproducibility of the information by qualified third parties.

We do not believe that a figure so discredited should be cited in legislation or used as the basis for Congress' decision making.

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