



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

December 31, 1979

TO: REGULATORY REFORM STEERING GROUP
FROM: SUE GRABOWSKI
SUBJECT: A little of this. A little of that.

For your information, please find enclosed a copy of the Regulatory Cost Accounting Act of 1980 along with a Section by Section analysis. The bill has been circulated to the agencies, but the section by section has not. Jim Tozzi is meeting with agencies on the following schedule:

January 7	Commerce EPA CEQ
January 9	DOE DOT Treasury
January 10	HEW Interior Labor Agriculture
January 14	ACUS Justice SBA HUD
January 15	FCC SEC FTC ICC

All meetings will begin at 9:30 a.m. in room 9104 NEOB.

Also, please find enclosed an editorial from today's Wall Street Journal that highlights a couple regulatory issues.

A BILL

To amend chapter 1 (the National Budget and Audit System) of title 31 of the United States Code to establish a Federal Regulatory Cost Accounting System and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Regulatory Cost Accounting Act of 1980."

TITLE I - FINDINGS AND PURPOSE

SEC. 101.(a) The Congress finds and declares that--

(1) In recent years Federal rules and regulations have expanded greatly in number and scope;

(2) While these rules provide benefits to the Nation, they also impose large costs, the magnitude and character of which are understood very imperfectly, on individuals, firms, nonprofit organizations and governmental units other than the Federal Government; and that

(3) Federal regulation can be made responsive to concerns of the Nation and the excessive burdens of regulation can be eliminated only if there is available systematic information on the costs of Federal regulation.

(b) It is accordingly the purpose of this Act to establish a procedure to account for the costs of regulation and to report these costs to the Congress.

TITLE II - FEDERAL REGULATORY COST ACCOUNTING SYSTEM

SEC. 201. Subchapter III of chapter 1 of title 31 of the United States Code is redesignated subchapter IV and the following is added after the present subchapter II:

"Subchapter III - Federal Regulatory Cost Accounting System

"Sec.

"27. Definitions

"28. Applicability

"29. Regulatory Cost Reporting Requirements

"30. Regulatory Cost Accounting Standards and Procedures

"31. The Annual Report to the Congress on the Costs of Federal Regulation

"SEC. 27. Definitions

"For the purposes of this subchapter--

"(1) the term 'agency' means an agency as defined in 5 U.S.C. 551(1);

"(2) the term 'rule' means both rules and regulations issued by agencies, including those which establish conditions for financial assistance; however, for the purposes of this subchapter, closely related, or substantially similar, sets of rules shall be treated together;

"(3) the term 'agency head' means:

"(A) for an agency which is a constituent element of a cabinet department, the Secretary of the Department;

"(B) for a noncabinet, single-headed agency, the head of the agency; and

"(C) for a multimember agency, the chairman of the agency.

"(4) the term 'capital costs of compliance' means with respect to a rule, the expenditures for the acquisition or use of plant, equipment and other long-lived real property which are made by persons, nonprofit organizations and governmental units of the United States other than the Federal Government, and which are directed to activities required or objectives sought by the rule;

"(5) the term 'operating costs of compliance' means, with respect to a rule, the expenditures on wages, salaries and benefits; purchases of inputs, except capital costs of compliance; data collection, recordkeeping, preparation and submission of forms, data and reports; management time; and training costs; which are made by persons, nonprofit organizations, and governmental units of the United States other than the Federal Government and which are directed to activities required or objectives sought by the rule;

"(6) the term 'direct costs of compliance' means, with respect to a rule, the sum of the capital costs of compliance and the operating costs of compliance;

"(7) the term 'indirect costs of compliance' means, with respect to a rule, the costs caused by effects of the rule, except direct costs of compliance and Federal expenditures associated with the rule;

"(8) the terms 'total compliance costs' and 'compliance costs' mean the sum of direct costs of compliance and indirect costs of compliance;

"(9) the term 'Director' means the Director of the Office of Management and Budget.

"SEC. 28. Applicability

"The provisions of this subchapter shall not apply to--

"(1) rules issued with respect to a military or foreign affairs function of the United States;

"(2) matters related to agency management or personnel;

"(3) rules related to Federal Government procurement;

"(4) rules that are issued in response to an emergency or which are governed by short-term statutory or judicial deadlines, in which cases, the agency shall publish in the Federal Register a statement of the reasons why it is impracticable or contrary to the public interest for the agency to observe the requirements of this subchapter and the name of the policy official responsible for this determination.

"SEC. 29. Regulatory Cost Reporting Requirements

"(a) The reporting requirements and procedures established in this subchapter may be referred to collectively as the Federal Regulatory Cost Accounting System (hereinafter the 'System').

"(b) (1) To insure that the compliance cost estimates required by subsection (e) of this section are stated on substantially the same basis by all agencies subject to the provisions of this subchapter, and that reasonable professional standards are observed in preparing these estimates, the Director shall prepare a Federal Regulatory Cost Accounting System Manual (hereinafter the 'System Manual'), which shall include:

"(A) guidelines for the measurement of direct costs of compliance;

"(B) guidelines for the analysis of the effects of regulations and the indirect costs of compliance caused by those effects; and

"(C) such other accounting conventions, definitions, procedures, guidelines, and standards for measurement as reasonably promote the effectiveness of the System.

"(2) The Director may, from time to time, revise the System Manual in order to improve the functioning of the System, and shall consider revisions which respond to changes in relevant economic and social circumstances and advances in branches of knowledge pertinent to the System.

"(c) (1) Each agency subject to the provisions of this subchapter shall establish an Agency Regulatory Cost Accounting System (hereinafter

'Agency System') with the capability of complying with the reporting requirements of subsection (e) of this section.

"(2) Each Agency System shall include:

"(A) procedures, cost categories, definitions, and standards for making estimates annually of the capital costs of compliance and operating costs of compliance of those rules of the agency included in the Agency System;

"(B) procedures for analyzing the effects, and the indirect costs of compliance caused by those effects, of those rules of the agency included in the Agency System; and

"(C) an office responsible for the conduct or oversight of the Agency System.

"(3) The head of the agency shall designate, with the concurrence of the Director, the rules of the agency to be included in the Agency System.

"(4) In designating rules to be included in the Agency System, the head of the agency shall consider:

"(A) the magnitude of the capital and operating costs of compliance of the rule;

"(B) the likely magnitude of indirect costs of compliance of the rule; and

"(C) the likely magnitude of the impacts of the rule on particular regions of the Nation and individual sectors of the economy.

"(d) (1) By October 1, 1981, the head of each agency subject to the provisions of this subchapter shall submit to the Director a plan for establishing an Agency System.

"(A) The plan submitted to the Director shall include:

"(i) the designations, made by the head of the agency, of those rules in force on October 1, 1981, and rules that the agency has under development and plans to promulgate by March 31, 1983, that are to be included in the Agency System;

"(ii) a description of those features of the proposed Agency System required by paragraph (2) of subsection (c) of this section; and

"(iii) such other information permitted by law as the Director may require to evaluate the reasonableness of the plan.

"(B) The Director is authorized to:

"(i) review the designations made by head of the agency of rules to be included in the Agency System and to require such changes in these designations as are in accord with the criteria stated in paragraph (4) of subsection (c) of this section; and to

"(ii) review the plan submitted by the agency and to require such changes in the plan as are necessary to make it consistent with the cost categories, definitions, guidelines, procedures, standards, and accounting conventions in the System Manual.

"(C) The plan becomes final on its acceptance by the Director.

"(2) The Director may from time to time review the Agency Systems and is authorized to:

"(A) require such changes as are necessary to bring Agency Systems into conformance with the cost categories, definitions, guidelines, procedures, standards, and accounting conventions in the System Manual; and to

"(B) require such changes as reasonably increase the accuracy, reliability, timeliness, detail, or relevance of the data on compliance costs provided by Agency Systems.

"(3) The Director is authorized to review the designations, made by the head of the agency, of rules to be included in the Agency System and is authorized to alter those designations in accord with the criteria stated in paragraph (4) of subsection (c) of this section.

"(e) (1) On March 31, 1983, and on March 31 of each subsequent year, the head of each agency subject to the provisions of this subchapter shall submit to the Director an Agency Regulatory Cost Report that provides data and analysis for all rules included in the Agency System and for rules for which the agency plans to issue an advanced notice of proposed rulemaking, a proposed rule or a final rule during the upcoming fiscal year.

"(2) For each such rule, the Agency Regulatory Cost Report shall contain:

"(A) estimates of the capital costs of compliance and operating costs of compliance for each of the upcoming three fiscal years; and

"(B) analysis of the effects of the rule, including to the extent reasonable and practicable, quantitative estimates of the indirect costs of compliance of the rule.

"(3) The Director may also require of the agency timely submission of such other information permitted by law as he may require to evaluate the reasonableness of the Agency Regulatory Cost Report.

"(4) The Director may exempt from the reporting requirements of this subsection such advanced notices of proposed rulemaking, proposed rules and final rules, which would otherwise be subject to those requirements, as are of a routine or repetitive character or are of minor economic significance. The Director may instead require that such rules be consolidated in a reasonable and analytically relevant manner for the reporting purposes of this section.

"SEC. 30. Regulatory Cost Accounting Standards and Procedures

"(a) (1) There is established a Regulatory Accounting Standards Committee, to be comprised of the designees of:

"(A) the heads of all agencies subject to the provisions of this subchapter;

"(B) the Director of the Office of Management and Budget;

"(C) the Chairman of the Council of Economic Advisors;

"(D) the Director of the Council on Wage and Price Stability;

"(E) the Chairman of the Council on Environmental Quality; and

"(F) the Chairman of the Administrative Conference of the United States.

"(2) The Director of the Office of Management and Budget shall designate as Chairman one of the members of the Regulatory Accounting Standards Committee.

"(3) The Regulatory Accounting Standards Committee shall advise the Director on questions of definition, reporting and procedure as they bear on the preparation of Agency Regulatory Cost Reports.

"(c) (1) There is established an Agency Regulatory Cost Report Review Committee, to be comprised of the designees of:

- "(A) the Secretary of the Treasury;
- "(B) the Attorney General of the United States;
- "(C) the Secretary of Commerce;
- "(D) the Director of the Office of Management and Budget;
- "(E) the Chairman of the Council of Economic Advisors; and
- "(F) the Chairman of the Council of Wage and Price Stability.

"(2) The Director of the Office of Management and Budget shall designate as Chairman one of the members of the Agency Cost Report Review Committee.

"(3) The Agency Cost Report Review Committee shall receive from the Director Agency Regulatory Cost Reports and, shall review

such Agency Cost Reports as the Director requests and transmit to the Director the views of the Committee on the professional quality and completeness of those reports.

"SEC. 31. The Annual Report to the Congress on the Costs of Federal Regulation

"(a) On May 31, 1983, and on each May 31 thereafter, the Director, after review and analysis of the Agency Regulatory Cost Reports, shall produce a consolidated Federal Regulatory Cost Report. This report shall include:

"(1) for each agency that is subject to the provisions of this subchapter, estimates of the capital costs of compliance and the operating costs of compliance for each rule included in the Agency Regulatory Cost Report;

"(2) summaries of descriptions of the indirect effects of rules included in the Agency Systems;

"(3) summary tables of compliance costs, and the various components of compliance costs, arrayed in terms of agencies and functionally-related rules.

"(b) Within 30 days of the completion of the Regulatory Cost Report, the President shall submit this report, together with his suggestions for changes in regulatory statutes and reorganization or consolidation of regulatory programs to the Congress."

REGULATORY COST ACCOUNTING ACT OF 1980

Summary

Regulatory reform should not mean the same thing for all agencies, because the objectives sought by regulation, the magnitude and character of the problems with regulation and, hence, the directions in which reform is reasonably sought vary from one agency to the next. At the same time, there is a need for a searching and general review of Federal regulation.

Accommodating these two considerations requires an approach that both recognizes the distinctive aspects of regulatory programs and provides a background against which individual programs can be viewed. The Regulatory Cost Accounting Act of 1980 would create a set of procedures and reporting requirements--called the Federal Regulatory Cost Accounting System--which would satisfy these requirements. In particular, the Act would create a systematic body of data on the costs of complying with Federal regulations which would identify key problems of regulation, and in this way, would facilitate action through the political process on regulatory reform.

Under the Act, agencies would be responsible for compiling data on the costs which their more important rules impose on the private sector and State and local governments. OMB would provide the guidance on definitions, accounting conventions and standards necessary to insure that the cost measurements of the agencies are mutually compatible. The head of each agency would be responsible for designating, with the concurrence of the Director of OMB, the rules for which compliance costs would be measured. For these rules, the agency would submit to OMB, annually, a report detailing each rule's direct compliance costs and describing the rule's effects. After review and analysis of the reports submitted by agencies, OMB would prepare a consolidated Federal Regulatory Cost Report. The President would transmit this report to the Congress together with his recommendations for changes in regulatory statutes and reorganization on consolidation of regulatory programs.

There are three features of the Act that are worth particular note because they respond to the key practical and organizational problems involved in setting up procedures to systematically measure the costs of complying with Federal regulation.

- The system would be decentralized. Agencies would be responsible for measuring the costs of compliance with their own regulations and the Act allows agencies substantial flexibility in meeting its requirements. Moreover, because the system would

REGULATORY COST ACCOUNTING ACT OF 1980

Section-by-Section Analysis

TITLE I - FINDINGS AND PURPOSE

The Act would establish a system to measure the costs of the more important Federal regulations and annually report those measurements to the Congress, together with the President's recommendations for changes in regulatory statutes and reorganization or consolidation of regulatory programs.

Title I bases this action on two broad factual considerations. First, in recent years, Federal rules and regulations have expanded greatly in number and scope. Second, while Federal regulation provides benefits to the Nation, it also imposes large costs, the magnitude and character of which are understood very imperfectly. Title I contains a finding by the Congress that, in these circumstances, Federal regulation can be made responsive to the concerns of the Nation and the excessive burdens of regulation can be eliminated only if there is available systematic information on the costs of Federal regulation. Accordingly, the purpose of the Act is to establish a procedure to account for the costs of regulation and to report these costs to the Congress.

TITLE II - FEDERAL REGULATORY COST ACCOUNTING SYSTEM

This title amends chapter 1 of title 31 of the United States code by adding a new subchapter (designated subchapter III) which

is subject to review by another agency. . .", with certain exceptions, the most important of which are the Congress and the Federal courts.

(2) The term rule is defined to include both rules and regulations issued by agencies. However, the definition provides that for the purposes of the subchapter, closely related or substantially similar, sets of rules are to be treated together. This provision is important because it offers a reasonable and practical way of handling regulatory policies or programs which are affected through a large number of individual rules. In these cases, analyses of compliance costs should focus on the policy or program at issue, rather than on the many specific decisions by the agency. It also should be noted that, while "rule" is defined very broadly, later sections exclude some classes of rules from the requirements of the subchapter and provide a mechanism for exempting individual rules and sets of rules from these requirements.

(3) For agencies that are a constituent part of a cabinet department, "agency head" is defined as the Secretary of the department. This definition is prompted by the fact that most of the cabinet departments contain several component organizations which carry on different but related regulatory functions. In these cases, the work on measurement of compliance costs of the various units of the department should be coordinated and, for this reason, "agency head" must be defined as the Secretary of the department. For an agency headed by a multimember commission (or board) "agency head" is defined as the chairman of the commission.

as the sum of these two components (paragraph 6). No such distinction is made for indirect costs of compliance, which are defined (in paragraph 7) as indicated above. The "total costs of compliance" and "compliance costs" are defined as the sum of direct and indirect costs of compliance (paragraph 8).

(9) The term Director is used in the subchapter to refer to the Director of the Office of Management and Budget.

Section 28. Applicability

Section 28 exempts several classes of rules from the provisions of the subchapter. In particular, the following are exempted:

- rules issued with respect to a military or foreign affairs function of the United States;
- matters related to agency management or personnel;
- rules related to Federal Government procurement; and
- rules issued in response to an emergency or which are governed by short-term statutory or judicial deadlines.

Section 29. Regulatory Cost Reporting Requirements

Section 29 is divided into five subsections. Subsection (a), which simply designates the reporting requirements and procedures of the entire subchapter as the "Federal Regulatory Cost Accounting

Subsection (b) is designed to provide the necessary coordinating mechanism. This is done (in paragraph 1) by requiring the Director of OMB to prepare a "Federal Regulatory Cost Accounting System Manual," which would contain guidelines for the measurement of direct costs of compliance and for the analysis of indirect costs of compliance, along with accounting conventions, definitions, procedures, and standards. The role that the System Manual would play in coordinating and directing the agency's work in measuring compliance costs is specified in later sections [esp. subparagraph (B)(ii) of subsection (d)(1) and subparagraph (A) of subsection (d)(2)]. Paragraph (2) of section (b) recognizes that changes in the System Manual will be necessary as experience reveals the details of the problems of definition, measurement and analysis that must be addressed and that the System Manual should be revised to incorporate advances in statistical technique, accounting practice and economic analysis. Accordingly, this paragraph authorizes the Director of OMB to revise the System Manual to improve the System and requires the Director to revise the System Manual in response to changes in relevant economic and social circumstances and advances in the branches of knowledge pertinent to the System.

(c) Agency Systems: Paragraph (1) of this subsection requires each agency subject to the provisions of the subchapter to establish an Agency Regulatory Cost Accounting System capable of meeting the reporting requirements imposed by a later subsection (esp. subsection (e)). The other three paragraphs of the section deal with features

agency that will be included in the Agency System. It is only these designated rules for which compliance costs must be measured. Paragraph (4) states criteria which the head of the agency is required to consider in designating rules for inclusion in the System. In general, these criteria identify rules with large direct compliance costs, large indirect effects, or large impacts on particular regions of the Nation or individual sectors of the economy.

(d) Implementation of the Agency Systems: Subsection (d) deals with the implementation and revision of the Agency Systems and review by the Director of OMB of designations made by agency heads of rules to be included in the various agency systems.

Paragraph (1) requires heads of agencies to submit to the Director of OMB, by October 1, 1981, a plan for establishing a Regulatory Cost Accounting System for the agency. The plan is required to provide the agency head's designations of rules to be included; a description of the procedures, definitions, and accounting conventions that the agency proposes to adopt in meeting its responsibilities to measure the compliance costs of the designated rules; and a description of the office responsible for the conduct or oversight of the Agency System. The Director of OMB is also authorized to request from the agency such other information permitted by law as he requires to evaluate the reasonableness of the agency's plan.

The Director is authorized to alter (in accord with the criteria in paragraph (4) of subsection (c)) the designations of

1983) to the Director of OMB an Agency Regulatory Cost Report. This Report is required to contain certain cost data and analysis for:

- all rules designated for inclusion in the Agency System; and
- subject to possible exemptions identified below, all rules for which the agency plans to issue an advanced notice of proposed rulemaking, a proposed rule or a final rule during the upcoming fiscal year.

For each rule or class of rules covered, the Agency Cost Report is required by paragraph (2) to contain:

- estimates of the capital and operating costs of compliance with the rule for each of the upcoming three fiscal years; and
- analysis of the effects of the rule, including to the extent reasonable and practicable, quantitative estimates of the indirect costs of compliance of the rule.

In addition, paragraph (3) authorizes the Director to require that an agency submit such other information permitted by law as he requires to evaluate the reasonableness of the Agency Regulatory Cost Report.

- estimates of the capital and operating costs of compliance of each rule (or class of rules) included in an Agency Regulatory Cost Report;
- summaries of descriptions of the indirect effects of rules included in the Agency Systems; and
- summary tables which give cost data arrayed in terms of agencies and functionally-related rules.

Subsection (b) requires that the President shall submit, within 30 days of its completion, the Regulatory Cost Report to the Congress along with his suggestions for changes in regulatory statutes and reorganization or consolidation of regulatory programs.

The people of Westfield are at work on two almost identical sewer projects. But, writes Milton B. Reach of the Springfield Daily News, one is being financed wholly by the city and the other is receiving federal money.

The locally financed project is on the verge of going out for bid, and construction is expected to start in early spring. But the federally financed por-

quired before Washington even approves the funding. For step three, the city has to mail a questionnaire to every one of its homeowners and businesses asking if they use a septic tank or sewer line, how effective it is, and so forth. In the meantime, the cost of the original master plan has almost quintupled.

12/31/79
WSJ

Dismembering the Octopus

Most businessmen are painfully aware of the costs, in terms of money, manpower and reduced efficiency, of needless government regulation. Now, some Senators are trying to dismember, in part, the regulatory octopus they and their fellows have created over the last decade or so.

Two bills that could go some way in easing business regulation were introduced in the Senate, with bipartisan support, just before Congress adjourned for the year. One would further restrict the activities of the Labor Department's Occupational Safety and Health Administration (OSHA), which over nine years has been a particular annoyance to business with very little measurable impact on worker safety.

Congress has already exempted an estimated 1.5 million companies with 10 or fewer employes from OSHA safety checks until next September 30. The new Senate bill would extend the exemption to all firms with good safety records. Supporters, who include Senator Williams, one of the authors of the law that created OSHA, say that 85% of the nation's five million work places fall in that category.

The other Senate bill would require federal agencies to analyze the impact of rule proposals in terms of costs,

benefits and the effect on small businesses. It would require agencies to minimize the anti-competitive effect of economic rules and would urge a presidential review of the regulations over a 10-year period.

The two bills are, of course, mainly a response to the significant voting power of small business operators, who have plenty of things to be unhappy about as a result of the costs imposed on them by federal rules. Even for small business they are only a beginning and there is very little sign yet of congressional attention to the enormous costs imposed on consumers by the rules imposed on large corporations. The large businesses, unlike the small ones, don't command many votes and the so-called "consumerist" lobbyists have mainly pushed for regulation rather than against it.

But it is at least encouraging that some start is being made in rolling back the regulatory tide, and it is much to be hoped that this is not just a bit of election-year fluff. The accretion of needless and counter-productive rules and laws that impose enormous costs is one of the nation's foremost political and economic problems and must somehow be dealt with by Congress.



Pepper... and Salt

THE WALL STREET JOURNAL

Over the Speed Limit?

I think life was more
In line with my likes
When I had ten speeds
Instead of my bikes!

- Ruth M. Walsh.

Stick Shifty

When buying yourself a new
car,

There's something you have
little luck with.

I refer to the sticker price
Which is less than the price
you get stuck with.

- Richard Armour.

Reluctant Housewives

A recent survey disclosed
that many do-it-yourself
projects are done these days



Malcolm Muggeridge, the British journalist, recalling his days as a Manchester Guardian correspondent in Stalin's Russia, in a talk at a Center for Constructive Alternatives seminar at Hillsdale College, Hillsdale, Michigan, as quoted in IMPRIMIS, journal of the Center:

The thing that impressed me, and the thing that touched off my awareness of the great liberal death wish, my sense that Western man was, as it were, sleep-walking into his own ruin, was the extraordinary performance of the liberal intelligentsia, who, in those days, flocked to Moscow like pilgrims to Mecca. And they were one