

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

creates a Federal Regulatory Cost Accounting System and provides for the implementation of that System.^{*/}

The new subchapter III is divided into five sections.^{**/} The first two of these (Sections 27 and 28) respectively define several terms used in the subchapter and exclude from its provisions some types of rules. Section 29 contains the provisions which together constitute the basis of what is called the Federal Regulatory Cost Accounting System. Two interagency committees to advise the Director of OMB on aspects of the System are provided for in Section 30 and the final section requires the President to submit annually to the Congress a report on the costs of Federal regulation and associated recommendations.

Section 27. Definitions

(1) The term agency is defined by reference to the definition in 5 USC 551(1). As defined there, "agency" means ". . . each authority of the Government of the United States, whether or not it

^{*/} Chapter 1 of 31 USC (together with several other sections of title 31) may be cited as the Budget and Accounting Act of 1921, which created the basic features of the Federal budgetary system as it currently exists. Subchapter I of chapter 1 defines several terms. Subchapter II deals with the budget, including the organization of the Office of Management and Budget, and the present subchapter III is the statutory basis of the General Accounting Office. Title I of the Regulatory Cost Accounting Act of 1980 would redesignate the present subchapter III as subchapter IV and, as indicated, add a new subchapter III.

^{**/} The sections are numbered 27 through 31 to conform with the numbering of the existing subchapter II. Because the present subchapter II ends with section 26, and the present subchapter III begins with section 41, it is not necessary to provide for a renumbering of the sections of the latter.

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.

(4)-(8) Paragraphs (4) through (8) provide definitions of several terms that designate components of the costs of complying with Federal regulations. The key distinction embodied in these definitions is that between "direct" and "indirect" costs of compliance. Effectively, "direct costs of compliance" is defined as expenditures (made by persons, nonprofit organizations, and governmental units, other than the Federal Government) directed to activities required or objectives sought by the rule. "Indirect costs of compliance" is defined as the costs caused by the rule, minus direct costs of compliance and Federal expenditures associated with the rule. Implicit in this definition is the notion that the indirect costs of a rule are those costs due to effects of the rule,^{*/} apart from expenditures directly made in compliance with the rule.^{**/}

Two components of direct costs of compliance are distinguished --capital costs of compliance (paragraph 4) and operating costs of compliance (paragraph 5)--with direct costs of compliance defined

^{*/} For example, environmental rules can lead firms to locate new plants at sites where costs are higher than they would be at sites chosen in the absence of such rules. The added costs due to effects on locational decisions would, then, be a component of the rules' indirect costs.

^{**/} Direct and indirect costs of compliance are intrinsically similar in that both represent (in monetary terms) commitments of real resources. However, the distinction between direct and indirect costs of compliance is important because direct costs of compliance can be measured through conventional reporting techniques, while indirect costs must be inferred from various sorts of data using what will often be complex economic models.

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

System" requires no discussion. The last of the four substantive subsections (e) requires agencies to report annually to OMB measures of compliance costs of designated rules. The two preceding subsections (c and d) direct agencies to create an accounting system capable of meeting these requirements; provide for the implementation of these systems; and contain a mechanism for designating the rules to which the reporting requirements apply. Subsection (b) contains provisions designed to insure that agencies will use substantially the same definitions, accounting conventions and standards in compiling the required data on compliance costs. There follows an elaboration of these points, with the order of the discussion reversed; i.e., running from subsection (b) to (e).

(b) System Manual: Section (b) confronts a circumstance implicit in the decentralized nature of the accounting system that the subchapter would establish. Under the provisions of the subchapter, agencies would be required to create a system to measure the compliance costs of regulations designated in a proscribed manner and to report those cost measurements to OMB, which is charged with preparing a consolidated regulatory cost report to be submitted by the President to the Congress. Clearly, in the absence of a coordinating mechanism, the cost estimates prepared by various agencies and reported to OMB would often be incompatible with one another because of differences in definitions, measurement procedures and assumptions.*

*/ For example, agencies might select different discount rates to transform a capital expenditure into a stream of annual capital costs.

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

that the Agency Systems must possess (paragraph (2)) and the coverage of the Agency Systems in terms of rules included (paragraphs (3) and (4)).

Paragraph (2) requires each of the Agency Systems to include:

- procedures, cost categories, definitions and standards for measuring the capital and operating costs of compliance of designated rules (paragraph (2)(A); and
- procedures for analyzing the effects of designated rules, and the indirect costs of those effects (paragraph (2)(B)).

Paragraph (2)(C) requires each agency subject to the Act to establish an office responsible for the conduct or oversight of the Agency System. Agencies can, then, either choose to centralize the regulatory cost accounting work in a single office or, have this work conducted by various parts of the agency, subject to the oversight of an office charged with this function. Moreover, paragraph (2) leaves agencies with wide flexibility in how the Agency System is structured. The language of paragraphs (2)(A) and (2)(B) simply requires agencies to give some explicit form to various elements of the required Agency System.

Paragraph (3) requires the head of the agency to designate (subject to the concurrence of the Director of OMB) the rules of the

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

rules to be included in the Agency System and authorized to require change necessary to bring the Agency System into conformance with the System Manual. The plan becomes final on its acceptance by the Director.

As new rules are promulgated, circumstances change and experience is gained, there will be a need to revise the Agency Systems and the rules designated for inclusion in those Systems. Such changes can be initiated by the head of the agency. In addition, paragraphs (2) and (3) authorize the Director of OMB to review the Agency Systems, and the rules designated for inclusion in the Systems, from time to time and to require certain changes. In particular, paragraph (2) authorizes the Director to require:

- changes necessary to bring Agency Systems into conformance with the Systems Manual; and
- such changes as reasonably increase the usefulness of the data on compliance costs provided by the Agency Systems.

Paragraph (4) authorizes the Director to review the designations of rules included in the Agency System and to alter those designations in accord with criteria stated in paragraph (4) of subsection (c).

(e) Reporting Requirements: Paragraph (1) of this subsection requires the head of each agency to submit annually (beginning with

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.

The Director of OMB is authorized by paragraph (4) to exempt from these reporting requirements advanced notices of proposed rulemaking, proposed rules and final rules that are of a routine or repetitive character or are of minor economic importance. Such an exemption could be granted specifically for a particular rule or proposed rule, or exemptions could be granted categorically. As an alternative to exemption, paragraph (4) authorizes the Director to consolidate rules and proposed rules for reporting purposes.

Section 30. Regulatory Cost Accounting Standards and Procedures

This section provides for the establishment of two interagency committees, each of which would serve the Director of OMB in an advisory capacity. The Regulatory Accounting Standards Committee (subsection (a)) would advise the Director of OMB on questions of definition, reporting and procedure as they bear on the preparation of Agency Cost Reports. Subsection (b) provides for a Regulatory Cost Report Review Committee. At the request of the Director, this Committee would review the professional quality and completeness of Agency Regulatory Cost Reports.

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

Section 31 provides for the annual submission by the President to the Congress of a Federal Regulatory Cost Report. Subsection (a) requires this report to contain:

- 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.