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Environmental Reauthorizations and Regulatory Reform: From the 104th Congress through the 106th

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Summary

The 104th Congress addressed the environmental regulatory process by reviewing regulatory decisionmaking processes and requiring assessments of unfunded mandates and of costs and benefits of selected regulations; attaching specific reforms to funding bills; establishing a House corrections day calendar for bills addressing specific regulatory problems; and incorporating regulatory reforms into individual program reauthorization bills. The Office of Management and Budget (OMB) was directed to prepare a report on the costs and benefits of federal regulations.

The 105th Congress pursued similar regulatory reforms: proposals for comprehensive cost-benefit/risk analysis of regulations; private property "takings" bills; revisions of individual environmental statutes; selected riders on appropriations bills; and oversight of environmental programs. OMB was directed to continue its report on overall regulatory impacts.

The 106th Congress permanently authorized the annual OMB report, and it enacted a 3-year pilot project under which Committee Chairmen or Ranking Members could ask the General Accounting Office (GAO) to evaluate and send reports to Congress on major rules issued by federal agencies. Section 15 of H.R. 5658, enacted by P.L. 106-554, required OMB to issue guidelines for federal data quality and provided for a mechanism for public correction of erroneous data. This report will not be updated.

Introduction

From the beginning of federal environmental programs, the costs they might impose on industry and business, state and local governments, and consumers and taxpayers have generated concern. As a result, the evolution of environmental statutes has been paralleled by efforts to improve cost-benefit analysis and risk assessment to help set priorities and to determine appropriate levels of regulation. But these developments have not been without controversy. Proponents of requiring risk assessment and cost-benefit analyses believe that the resulting data, even if flawed, can usefully inform regulatory decisions; opponents

fear that statutorily requiring such analyses can result in the Environmental Protection Agency (EPA) being compelled to conform its decisions to those data, regardless of flaws. Attention has also focused on costs imposed on state and local governments ("unfunded mandates") and on regulatory limitations affecting private property rights ("takings").

In general, business interests have led support for regulatory reform measures to reduce their costs, while environmental stakeholders have opposed such measures for fear they would diminish environmental protections. Through the 103rd Congress, most legislative initiatives to address these issues were unsuccessful, but the White House imposed administrative requirements for cost-benefit and risk analyses (Executive Order 12866, October 4, 1993, which superseded earlier E.O.s on the subject) and for analysis by agencies of takings resulting from regulatory actions (E.O. 12630, March 15, 1988).

The environmental regulatory reform initiatives followed two primary channels: in one, environmental regulations would be subject to comprehensive regulatory reforms[1]; in the other, environmental regulatory programs would be revised statute-by-statute, as each was reauthorized.[2]

Regulatory Reform in the 104th Congress

With new Republican majorities in the House and Senate, the 104th Congress approached the reform of environmental protection regulations in several ways:

Broad-based Reforms of Regulatory Decisionmaking Procedures. The 104th Congress acted on a number of bills revising regulatory decisionmaking processes. An unfunded mandates bill (P.L. 104-2) provides that points of order may be raised in the House or Senate to ensure congressional consideration of "unfunded mandates" projected to impose costs of more than $50 million on states and cities; it also requires agencies to prepare cost-benefit analyses for regulations costing $100 million or more — in effect codifying a part of E.O. 12866. It was followed by initiatives for paperwork reduction (P.L. 104-13) and small business regulatory reform (Title II of P.L. 104-121). The latter required regulatory flexibility analyses of regulations impacting small business, removed a bar to judicial review of such analyses, and provided for panels comprised of small business representatives to advise on the impact of EPA (and other agencies') regulations. It also included a Congressional Review Act, which requires agencies to submit new regulations to the Congress and the General Accounting Office; GAO assesses the agencies' compliance with procedures, e.g., regarding cost-benefit analysis, and Congress has 60 legislative days to review and disapprove the new regulations, with expedited procedures for Senate action.

A provision of the FY1997 omnibus appropriations bill (P.L. 104-208) directed the Office of Management and Budget to submit annual reports estimating total annual costs

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[1] See (name redacted),*Federal Regulatory Reform: An Overview*, CRS Issue Brief IB95035.

[2] Authorizations for appropriations for most environmental statutes had expired by the end of the 104th Congress, so those seeking change anticipated the opportunity to amend them. (A House rule requires a current authorization before an appropriation bill can be considered, although requirement is often waived. Permanent program authorities do not expire.)

and benefits of federal regulations. OMB published the first *Report to Congress on the Costs and Benefits of Federal Regulations* on September 30, 1997.

Other comprehensive regulatory reform bills received congressional action but were not enacted. The House passed H.R. 9, derived from the House Republicans' "Contract with America," which addressed risk assessment, cost-benefit analysis, and regulatory "takings." The Senate extensively debated a similar bill, S. 343, reported by the Judiciary Committee. A regulatory reform package was attached to a bill raising the debt ceiling, H.R. 2586, which the President vetoed. Disagreements that stymied these efforts to change regulatory decisionmaking procedures included whether to make cost-benefit analysis just one factor informing regulatory decisions (as under the unfunded mandates law and E.O. 12866), or to impose a net-benefit test (benefits justify costs) before a regulation could go forward (as required by H.R. 9 and S. 343); whether to apply new criteria only to new regulations, or also existing ones; the costs and impacts of "takings" compensation; and the extent of judicial review.

Appropriations Riders. Numerous regulatory reform riders were attached to FY1996 appropriations bills for EPA and other agencies. This effort peaked in House passage of H.R. 2099, the FY1996 VA-HUD-Independent Agencies appropriations bill. The House approved 17 major riders prohibiting EPA from spending FY1996 funds on a number of regulatory and enforcement activities. While such riders are not unusual, the number attached to H.R. 2099, and their content and perceived breadth of impact, generated much controversy. After legislative skirmishes, many riders were dropped or softened; in the end, the White House vetoed the bill primarily because of objections to funding amounts, but also cited "legislative riders that were tacked onto the bill without any hearings or adequate public input...." EPA's funding ultimately came through the Omnibus FY1996 Appropriations Act (P.L. 104-134), which included only narrowly targeted riders. For FY1997, fewer riders were directed at environmental regulations.

Corrections Day Calendar. Corrections day, an innovation of the 104th Congress, established a special procedure in the House for taking up bills to correct or repeal particularly troublesome or obsolete regulatory provisions. A number of bills directed at environmental regulations appeared on the corrections day calendar, and several passed.

Program-Specific Reforms: Amendments and Reauthorizations. The first environmental reauthorization bill considered by the 104th Congress was H.R. 961, amendments to the Clean Water Act (CWA). After a contentious debate, H.R. 961 passed the House 240-185; however, the Senate took no action on the bill. With H.R. 961 (and H.R. 9 and S. 343) stalled in the Senate (and vetoes having blocked many regulatory riders), momentum shifted toward negotiated reforms directed at individual programs. These negotiations led to reform of the pesticide regulatory program, enacted as the Food Quality Protection Act (FQPA), P.L. 104-170, and to amendment and reauthorization of the Safe Drinking Water Act, P.L. 104-182. With broad agreement that the bills increased future cost-effectiveness and gave EPA flexibility to address high-priority risks, both measures passed the House and Senate by wide margins.

In a related area, Congress enacted the Accountable Pipeline Safety and Partnership Act of 1996 (P.L. 104-304), which requires the Secretary of Transportation to issue pipeline safety regulations "only upon a reasoned determination that the benefits of the

intended standard justify its costs." Environmental groups opposed the bill, saying, inter alia, that this language set a precedent for imposing a net-benefit test on environmental regulations.

Regulatory Reform in the 105th Congress

The 105th Congress continued regulatory reform efforts, including comprehensive bills emphasizing risk- and cost-benefit analyses; private property "takings" reforms; and reauthorization and amendment of individual statutes, notably Superfund. It also focused oversight on several environmental program activities — particularly a November 1996 EPA proposal to tighten air quality standards for ozone and particulates.

Comprehensive Regulatory Reform. Efforts to accomplish comprehensive regulatory reform centered on a bipartisan Senate bill, S. 981, the Regulatory Improvement Act of 1997, introduced by Senators Thompson and Levin. The bill would have required regulatory agencies to perform cost-benefit analyses and risk assessments on major new rules — those having an economic impact of more than $100 million per year. Business and industry groups supported the bill, claiming that it would reduce the cost of regulation without endangering the environment or the public's health or safety. Labor, environmental, and other groups opposed the bill, claiming that it would undermine existing health, safety, and environmental regulations. S. 981 was reported by the Governmental Affairs Committee on May 11,1998. Proposed amendments, released July 15, 1998, contained revised language addressing various Administration and public interest group concerns with the original bill; for example, the proposal raised the threshold for peer review of cost-benefit analyses to $500 million per year. The Administration gave qualified support, but no floor action occurred.

For FY1998 and FY1999, Congress continued language in appropriations bills (P.L. 105-61 and P.L. 105-277) that required OMB to report to Congress estimates of the annual costs and benefits of federal regulatory programs and of major rules; the FY1999 language also directed OMB to issue guidelines to agencies to standardize measures of costs and benefits and to issue guidance for agencies in meeting their obligations under the Congressional Review Act, the Regulatory Flexibility Act, and the Unfunded Mandates Act.

In another initiative, the House Committees on Judiciary and on Government Reform and Oversight reported H.R. 1704, which would have created a Congressional Office for Regulatory Analysis to help oversee activities of the Office of Information and Regulatory Affairs of OMB, to review agency rulemakings and agency compliance with regulatory review requirements, and to prepare an annual report estimating the total cost and benefits of all existing federal regulations. No floor action on H.R. 1704 occurred.

Private Property "Takings" Reform.[3] Private property "takings" concerns arise primarily from actions under the Endangered Species Act and the wetlands protection provision (§404) of the Clean Water Act. In the 105th Congress, initiatives to address private property "takings" split off from more comprehensive reform proposals. The House passed a bill, H.R. 1534, that would have simplified and expedited access to the

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[3] (name redacted), *The Property Rights Issues,* CRS Report 95-200.

federal courts for parties alleging private property "takings." The Senate Judiciary Committee reported H.R. 1534 but no floor action occurred.

Reforming Environmental Programs. The success in the 104th Congress in finding tradeoffs in both the SDWA amendments and the FQPA suggested that negotiations could lead to agreements on amending other environmental authorizing statutes. Potential tradeoffs included (1) exchanging more flexibility in a few specific high-cost requirements (desired by states and localities, industry and business) for procedures to inform the public of remaining risks (desired by environmental stakeholders) and (2) bringing down regulatory costs by using market-based management incentives and disincentives, which many believe achieve environmental goals more cost-effectively than regulation. Throughout the 105th Congress, Superfund was a focal point of efforts to achieve compromise reform, but negotiations among stakeholders to resolve disagreements both on which issues to address and on how to solve them proved unsuccessful.

Oversight of Implementation. In November 1996, EPA proposed tightening ozone and particulate standards under the Clean Air Act, which requires EPA to set National Ambient Air Quality Standards on the basis of health. The proposals generated much controversy. Opponents charged that EPA's decisions were not supported by adequate scientific evidence, that costs would be excessive, and that EPA did not follow proper procedures in proposing them — by failing to comply with requirements of the Small Business Regulatory Enforcement Fairness Act (SBREFA), the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act. During the 105th Congress, some 28 days of oversight hearings addressed these issues.

On July 18, 1997, EPA published its final decisions on the standards, to become effective in September. This triggered the new SBREFA review authority by which Congress could consider a joint resolution of disapproval, with special procedures in the Senate to ensure floor consideration within 60 legislative days. Bills to delay the new standards were introduced, including H.R. 1984 and S. 1084, with a hearing held on the latter. Neither of these bills was reported from committee, however.

Congress did include a provision in the Transportation Equity Act for the 21st Century (P.L. 105-178) to codify implementation dates for the new ozone and particulate air quality standards and also to mesh implementation of a related regional haze regulatory program proposed by the Agency on July 31, 1997. Some appropriations riders were enacted, as well. For example, by bipartisan agreement, a rider in the Omnibus Consolidated and Emergency Appropriations Act, 1999 (P.L. 105-277) extended a deadline for phasing out methyl bromide, a pesticide.

Regulatory Reform in the 106th Congress

Although EPA administrative reforms addressed some complaints about regulatory costs and inflexibility, congressional oversight of regulatory actions continued and regulatory reform efforts persisted.

Comprehensive Regulatory Reform. In the first session, a provision in P.L. 106-58, the Treasury, Postal, and General Government Appropriations Act for FY2000, repeated language from earlier years directing OMB to assess total costs and

benefits of federal regulations. In the second session, this requirement was made permanent by a provision (§ 624 of H.R. 5658) enacted by the Consolidated Appropriations Act, 2001 (P.L. 106- 554). The same legislation (§ 515 of H.R. 5658) directed OMB to write guidelines for federal agencies to follow in "ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies in fulfillment of the purposes and provisions of chapter 35 of title 44, United States Code, commonly referred to as the Paperwork Reduction Act." The provision further requires agencies to "establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines." Also in the second session Congress passed the Truth in Regulating Act (P.L. 106-312, 114 Stat. 1248), which establishes a 3-year pilot project for the General Accounting Office to evaluate and send reports to Congress on major rules issued by federal agencies. Specifically, when a new rule is issued, the statute authorizes the chairman or ranking member of a committee of jurisdiction of either House of Congress to request GAO to assess the benefits and costs of the rule and to evaluate the agency's analysis of alternative approaches.

The House passed H.R. 1074, the Regulatory Right-to-Know Act; H.R. 350, amending the Unfunded Mandates Act to require a Congressional Budget Office estimate of impacts; H.R. 391, amending the Small Business Paperwork Reduction Act to limit the authority of regulators to impose civil fines on small businesses for first-time paperwork offenses; and H.R. 2372, allowing private property holders to go directly to federal courts to seek compensation in land "takings" disputes. The Senate took no action on these bills; its comprehensive reform effort was S. 746, the Regulatory Improvement Act of 1999. It would have required agencies to prepare cost-benefit analysis and risk assessment of major new rules. S. 746 was reported from committee but no floor action occurred.

Environmental Programs. A number of narrowly drawn provisions were enacted (primarily concerning water quality); none of the environmental statutes was reauthorized. Oversight continued. And in the absence of broader reforms, Congress passed several appropriations riders addressing a variety of particularly contentious regulatory issues. For example, one rider, to EPA's FY2001 appropriations bill (P.L. 106-377), prohibited EPA from designating areas not in attainment with the new 8-hour ozone air quality standard prior to a decision by the Supreme Court in *American Trucking v. EPA*, which challenged the standard, or June 15, 2001, whichever occurs earlier. A second target was EPA's Total Maximum Daily Load (TMDL) program to restore polluted waters. The FY2001 Military Construction and emergency supplemental appropriations law (P.L. 106-246) included a provision to prevent EPA from spending any funds in FY2000 or FY2001 to finalize or implement the TMDL program; but EPA finalized the regulations before the prohibition took effect. EPA's funding bill for FY2001 (P.L. 106-377) included report language requiring studies by the National Academy of Sciences and EPA on the scientific basis of the TMDL rule and on the potential costs of implementing the program. Another target was the Kyoto Protocol to reduce emissions of greenhouse gases, which has not been submitted to the Senate for ratification. Language to prohibit actions that would implement or prepare for implementation of the Kyoto Protocol appeared in FY2000 and/or FY2001appropriations bills for EPA and the Departments of Energy, Agriculture, Interior, Commerce, and State.