

Opening Statement of Representative F. James Sensenbrenner, Jr. for House Science and Technology's Investigation and Oversight Subcommittee Hearing on "Amending Executive Order 12866: Good Governance or Regulatory Usurpation?"

Welcome Mr. Miller to the Chair.

Although this is the first Investigation & Oversight hearing since 1995, the record of oversight under my Chairmanship speaks for itself. From monitoring the status of the Spallation Neutron Source at the Department of Energy to evaluating the proposal to bring Russia into the International Space Station Program, the Science and Technology Committee's vigilant oversight produced better programs and policies, and I look forward to returning to this Committee and continuing the same rigorous oversight.

Having been Chairman of both the Science and Technology Committee and the Judiciary Committee, I am uniquely aware of the topic before us. I am glad to see my colleagues on the Judiciary Committee have taken an interest as well, as their expertise is certainly appreciated.

As for the Executive Order and the OMB Bulletin, I am inclined to think that the issues that will be brought up today have less to do with their policy implications, and more to do with *who* issued them. While I do get concerned when any Administration (be it Republican or Democratic) asserts too much control over the Regulatory Process, it is important to note that organizing that process is not a partisan endeavor, and it certainly didn't start with the current President.

President Clinton, just like several Presidents before him, used the regulatory process to advance his own agenda in the waning years of his Presidency. Ultimately, these policies last only as long as the current Administration allows them to, and the best way to ensure their longevity is to include the Legislative Branch. To quote a recent article on the topic in CQ Weekly, “while Executive power is mighty, it is also ephemeral.”

Most of the issues that the E.O. and the OMB Bulletin address are simple clarifications and organizational changes to President Clinton’s E.O. (12866) and will ultimately help OMB better coordinate the regulatory process. None of the amendments call for additional hurdles to be overcome; they simply require the reporting of work that has already been done. Additionally, none of these issues or changes are anything new - all of them have either been released for public comment (like the OMB Bulletin on Guidance Documents) or are clarifications to President Clinton’s Executive Order.

For example, the OMB Bulletin was issued in draft form over a year ago. While 31 comments were received, only three or four were negative. It’s also interesting to note that none of our witnesses here today chose to issue comments on that Bulletin other than Mr. Kovacs. But OMB will have an opportunity to defend their document at the next hearing before the Judiciary Committee, and I am told we will be inviting them back before us at a later time as well.

Right now I am more concerned with the impact that these guidance documents and regulations have on the American economy, particularly small businesses that can’t afford high-priced counsels to monitor the thousands of guidance documents and rules Agencies issue a year.

The increased use of guidance documents by Agencies to circumvent the regulatory process has been diligently documented. They often conflict with each other, are not subject to public notice and comment, and rarely receive Agency approval (not to mention OMB review).

While I am concerned about the impact that Presidential Appointees may have on the regulatory process, just as in the issue of Market Failure, these issues have all been addressed previously under other Administrations as well. In reality, the E.O. and the OMB Bulletin simply formalize many of the principles derived under those previous Administrations. That being said, as part of the Committee's day-to-day oversight, I will certainly follow how these changes are implemented to ensure that public health and safety is preserved, and that there is transparency and accountability in our regulatory process.

I look forward to our witnesses' testimony today.