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GAO

Report to the Chairman, Subcommittee  
on Oversight and Investigations,  
Committee on Energy and Commerce,  
House of Representatives

August 1994

# ENVIRONMENTAL REGULATION

## Differences Remain Between EPA and OMB Over Paperwork Requirements



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**Resources, Community, and  
Economic Development Division**

B-257645

August 23, 1994

The Honorable John D. Dingell  
Chairman, Subcommittee on Oversight  
and Investigations  
Committee on Energy and Commerce  
House of Representatives

Dear Mr. Chairman:

In order to monitor and reduce the federal paperwork burden on the public, the Paperwork Reduction Act of 1980 gives the Office of Management and Budget (OMB) broad authority over agencies' data collection activities. Under the act, agencies must submit requests for information collection to OMB for approval before they are carried out, and periodically thereafter in the case of recurring information collection requests. To further protect the public, the act prohibits an agency from assessing penalties against those who fail to maintain or provide the requested information if a currently valid OMB control number is not displayed on the agency's information collection request.

In an internal review that began in February 1993, the Environmental Protection Agency (EPA) found that most of its roughly 500 information collection requests had lapses, or periods of time when EPA did not have approval from OMB to collect the requested information. Also, about half of its information collection request control numbers were not displayed in the Code of Federal Regulations, as called for in OMB's regulations. Responding to your concerns that these problems may have undermined a number of EPA's enforcement actions, this report discusses (1) EPA's problems in managing its information collection request duties and the enforcement fines and penalties affected by these problems and (2) the causes of these problems, including the effect of OMB's oversight on EPA's efforts to collect information. We are also providing information on the status of the two agencies' efforts to resolve these problems.

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**Results in Brief**

EPA officials estimate that the agency lost about \$2 million in enforcement penalties because it allowed OMB's approvals of its information collection requests to lapse before requesting renewals.

EPA officials believe the lapses were caused, in part, because EPA management, which often focused on meeting court-ordered and statutory

deadlines to complete rule-makings, devoted insufficient attention and resources to renewing information collection requests. The officials added, however, that some lapses were partly attributable to disagreements between EPA and OMB staff about the amount of analysis EPA must produce to get an information collection request renewed. OMB officials told us that any additional requests for analysis they made of EPA offices were necessary, given OMB's responsibilities under the Paperwork Reduction Act.

Both EPA and OMB have taken steps to prevent future lapses of approvals for information collection requests. EPA has developed a status report on information collection requests, including their expiration dates and the need for action, which is regularly distributed to program officers. OMB has worked with EPA to rank OMB's reviews of information collection requests and has reduced the time it takes to review these requests. According to EPA officials, as of July 1994 no OMB approvals of EPA's information collection requests have lapsed since the February 1993 review began. As a result, EPA officials told us they do not expect any other enforcement actions to be significantly affected by lapses. Nevertheless, differences remain between EPA and OMB on a number of key issues that, while not causing new lapses, continue to cause confusion and delay in the process of reviewing information collection requests.

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## Background

EPA has roughly 500 information collection requests at any one time, ranging from quarterly industrial facility reports on levels of wastewater discharges to minor activities, such as annual requests for nominations for the President's Environmental Youth Awards Program. Requests for information are central to EPA's enforcement efforts, since the agency relies substantially on self-reporting and recordkeeping by regulated parties to monitor compliance with federal environmental laws.

The Paperwork Reduction Act established the Office of Information and Regulatory Affairs (OIRA) within OMB and gave it authority over federal information functions. In order to either develop or renew an information collection request, EPA program offices prepare request packages that are submitted to the Natural Resources Branch of OIRA. Such a request package typically includes a statement of justification, a brief description of the information itself, a copy of the data collection instrument, and other relevant documentation, such as regulations or statutes mandating data collection.

When submitting an information collection request to OMB, an agency must also forward a notice to the Federal Register for a comment period, stating that OMB's approval is being sought. In each notice, an agency must include (1) the title of the collection of information, (2) a brief description of the agency's need for the information and its planned use, (3) a description of the likely respondents, and (4) an estimate of the total annual reporting and recordkeeping burden that will result from each collection of information. The information collection request packages for major EPA programs can number roughly 200 pages, and it can take EPA staff several months to prepare estimates of the number of respondents and their reporting costs.

The act allows OMB 60 days to complete its review of a submission. With notification to the agency, this review period may be extended to 90 days.<sup>1</sup> OMB may approve, reject, or offer conditional or partial approval of the information collection request. Under the act, OMB can approve an information collection request for no more than 3 years. When an information collection request expires, an agency that wants to continue to collect the information must reapply for an additional approval from OMB.

## EPA Allowed Information Collection Requests to Lapse, Reducing Enforcement Penalties

Because EPA allowed information collection requests to lapse, the agency lost about \$2 million in enforcement penalties. The Paperwork Reduction Act generally prohibits a federal agency from collecting information from the public unless the agency's information collection request displays a currently valid OMB control number. The public protection provision of the act states that no person shall be subject to any penalty for failure to furnish requested information if the request does not display the currently valid control number. EPA allowed many of its information collection request approvals to expire. The information collection requests were later renewed after periods of time ranging from a few days to more than 1 year. These expirations created historical gaps or lapses when collection requests did not have a current OMB control number. In some cases, EPA violated the act by collecting information during these lapses.

Also, in many instances EPA did not conform to OMB's regulations to properly display information collection request control numbers once the requests were approved by OMB. In defining the term "display," OMB's regulations require agencies, in the case of collections of information

<sup>1</sup>The Paperwork Reduction Act's implementing regulations stipulate that if OMB has not acted, upon the 91st day of review the agency can request and shall receive approval of its information collection request. However, under these circumstances, the maximum approval period is 1 year.

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published in regulations, to publish the OMB control number in the Federal Register and ensure that it will be included in the Code of Federal Regulations. In roughly half of its information collection requests, EPA published the assigned control number in the Federal Register but did not publish it in the Code of Federal Regulations.

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## Lapsed Approvals Have Affected Enforcement

The lapses in approvals of EPA's information collection requests have adversely affected enforcement actions and levels of penalties. According to EPA officials, the actual impact thus far has been limited to Spill Prevention Control and Countermeasures Plan (SPCC) cases under the Clean Water Act, and Boiler and Industrial Furnace (BIF) Appendix IX cases under the Resource Conservation and Recovery Act (RCRA). Approximately 14 SPCC and BIF enforcement actions—12 administrative and 2 civil judicial cases—were affected because of the historical lapses in approvals. EPA officials estimated, on the basis of standard penalties, that civil judicial and administrative penalties were reduced by about \$2 million in these 14 cases because of the lapsed approvals. At this time, EPA does not anticipate that any other enforcement actions will be significantly affected by lapses in approvals of information collection requests. EPA officials told us that they will continue to conduct lapse reviews on their enforcement cases for the immediate future.

One of the cases referred to above—an SPCC civil judicial case—was dismissed because the information collection request had lapsed. EPA officials said that the agency had sought penalties of \$75,000 in this case. In addition, lapsed approvals prompted EPA to reduce penalties by \$60,000 to \$75,000 in eight administrative cases and one civil judicial case of noncompliance with SPCC plans. Finally, EPA officials said that they had reduced four administrative penalties by a total \$1,856,000 for violations of Appendix IX regulations under RCRA because of lapses in the BIF information collection request.

The estimated losses in enforcement penalties are less than 2 percent of all estimated penalties and fines assessed by EPA in fiscal year 1993. EPA estimated that it had assessed \$29.7 million in criminal fines and \$103.8 million in civil judicial and administrative penalties during the fiscal year. While 12 administrative orders were significantly affected by the lapses, EPA had issued 1,614 administrative orders in fiscal year 1993. While 2 civil judicial case were adversely affected by the lapses, EPA estimated that it had brought 338 civil judicial cases in fiscal year 1993.

## EPA's Competing Priorities and Disputes With OMB Caused Lapses

EPA officials told us that most lapses in approvals of information collection requests occurred because EPA program offices, often behind in meeting statutory and court-ordered deadlines for regulations, gave low priority to renewing information collection requests. For example, according to staff in EPA's Office of Solid Waste and Emergency Response (OSWER), the program office staff devoted most of its time to rule-making because the Office is required to meet statutory and court-ordered deadlines to produce regulations governing the handling and disposal of hazardous and solid wastes under RCRA.

OSWER staff also told us that before EPA's February 1993 internal review, the staff did not appreciate the impact that lapsed approvals could have on enforcement. OSWER staff said that the rule-making priorities of the program office, coupled with a lack of awareness among program staff of the enforcement implications of lapses, created conditions under which approvals of information collection requests would lapse. Staff members in EPA's Office of Air and Radiation added that because approvals for information collection requests may be valid for up to 3 years, staff in program offices often turned over between renewals, and new staff may have been unaware of the need to renew information collection requests or the conditions OMB may have applied to the renewal.

While EPA officials could not specify how many, they noted that some approvals had lapsed because OMB, dissatisfied with EPA's analysis of the time and cost burdens on respondents of an information collection request, would occasionally grant conditional approval of requests for 1 year or less. The conditional approvals would require EPA program staff to undertake additional analysis of an information collection request, such as surveying respondents to determine if the reporting requirement duplicated another reporting requirement, in order to receive the maximum 3-year approval. According to EPA officials, these more frequent renewals and the staff's efforts to try to satisfy the extra analytic mandates overburdened EPA program staff already facing statutory and court-ordered mandates for new regulations, resulting in delays in EPA's submitting renewal packages. OMB officials noted that any additional requests for information they made of EPA offices were necessary, given OMB's responsibilities under the Paperwork Reduction Act to ensure that EPA justifies the utility of the information it wants to collect and makes the proper effort to avoid duplication with other reporting requirements.

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## Impact of Display Problem on Enforcement Remains Undetermined

EPA's display problem has not affected enforcement actions or levels of penalties. However, EPA officials said that not displaying information collection request control numbers in the Code of Federal Regulations could affect enforcement actions and levels of penalties if courts determine this constitutes a violation of the Paperwork Reduction Act. EPA, the OMB General Counsel, and the Department of Justice concur that an agency meets its obligations under the Paperwork Reduction Act by publishing OMB control numbers in the Federal Register and that publication in the Code of Federal Regulations is not necessary. However, this issue is in litigation.<sup>2</sup> Despite the federal government's interpretation of the Paperwork Reduction Act, EPA has taken steps to ensure that current and future control numbers for EPA's information collection requests are displayed in the Code of Federal Regulations.

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## EPA and OMB Have Made Changes to Improve Management of Information Collection Requests

Since the February 1993 review began, OMB and EPA have taken actions to improve both their working relationship and their approach to managing their respective responsibilities for information collection requests. According to both OMB and EPA officials, OIRA staff have, on the basis of input from EPA, adopted a policy of ranking information collection requests. This strategy enables information collection requests that are about to expire to be reviewed ahead of others. According to EPA, as of July 1994 no information collection requests have lapsed since the February 1993 review, and OMB has generally limited its issuance of short-term approvals.

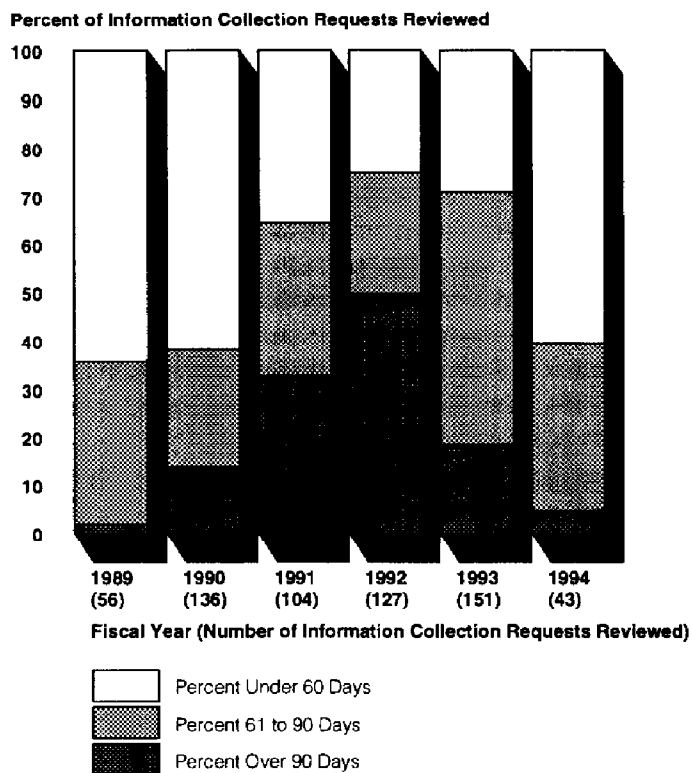
OMB has also reduced the time it takes to review EPA's information collection requests. One measure of OMB's management of EPA's information collection requests is the number of days OMB takes to review EPA's submissions for information collection. According to information available from EPA's Paperwork Reduction Act Management System data base, and as shown in figure 1, OMB's review times increased from fiscal years 1989 to 1992 and decreased thereafter.

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<sup>2</sup>United States v. Amoco Oil Co., Civil No. 92 CV 1038J (D. Wyo. filed Oct. 14, 1992).



**Figure 1: OMB's Review of EPA's Information Collection Requests, Fiscal Years 1989 Through 1994**



As figure 1 shows, of the 56 EPA information collection requests that OMB reviewed over the last three quarters of fiscal year 1989, only 2 percent exceeded the 90-day limit that OMB is given to complete its review.<sup>3</sup> By fiscal year 1992, when OMB reviewed 127 EPA information collection requests, 50 percent of the reviews exceeded the 90-day limit. However, after fiscal year 1992, OMB's review times improved. As figure 1 shows, the percentage of information collection requests taking over 90 days for review decreased from 50 percent in fiscal year 1992 to 18 percent in fiscal year 1993 and to only 5 percent thus far in fiscal year 1994.

According to OMB officials, review times may have improved, in part, as OIRA's Natural Resources Branch staff gained experience in reviewing information collection requests. Also, before 1993 OIRA had an acting

<sup>3</sup>As noted earlier, the act allows OMB 60 days to complete its review of a submission. With notification to the agency, usually an oral request to a program office, OMB may extend this review period to 90 days.

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rather than a permanent administrator. Both EPA and OMB officials indicated to us that the designation of a permanent administrator in 1993 allowed OMB and EPA program staff to elevate and more easily resolve conflicts over approval times and conditions. Taken together, these factors likely helped reduce OMB's review times for EPA's information collection requests in fiscal years 1993 and 1994.

While OMB's review times have decreased, EPA has also taken actions to improve its management of information collection requests. In order to prevent future lapses in OMB's approvals, EPA's Office of Policy, Planning, and Evaluation developed a status report on information collection requests, including their expiration dates and the need for action. EPA distributes the status report to program officers every 2 weeks.

EPA also created a Quality Action Team to address some of the agency's compliance problems with the Paperwork Reduction Act. The team has developed training materials to make program staff more aware of information collection request requirements and has developed a strategy to address the display problems by consolidating all EPA information collection request citations and their accompanying OMB control numbers in a table created in a new part of the Code of Federal Regulations. On May 10, 1993, EPA created this new part of the Code of Federal Regulations entitled "OMB Approvals Under the Paperwork Reduction Act." The new part is to appear in every volume of the Code of Federal Regulations that contains EPA regulations.

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## Despite Improvements, Problems Remain

Despite the improvements that the two agencies have made in preventing new lapses in approvals of EPA's information collection requests, EPA and OMB continue to disagree about OMB's use of partial and conditional approvals, as well as about the calculations that EPA uses to determine the burden on respondents of an information collection request. According to EPA officials, these disagreements may continue to cause delays and confusion in the review process for information collection requests. In particular, EPA officials contend that some of OMB's conditional and partial approvals pare back reporting and monitoring requirements that had been previously reviewed by OMB in its examination of the underlying rule. According to these officials, such paring back alters the substance of regulations that OMB has already reviewed and thus constitutes an unwarranted extension of OMB's authority under the Paperwork Reduction Act.

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On the other hand, OMB officials told us they have stayed within their authority under the Paperwork Reduction Act to review information collection requests issued under regulations. OMB officials state that the act gives OMB authority to review collections of information specifically called for in regulations.

EPA officials provided us with a number of examples of partial approvals of information collection requests that change monitoring requirements that appear in regulations. In one case in 1988, OMB concluded a review of EPA's regulations on performance standards for new residential wood heaters. Under the regulation, EPA requires manufacturers to inspect and report on at least 1 of every 150 wood heaters produced to ensure that the heaters are within tolerances for heater components, such as the firebox, gas exit, and outer coverings, that may affect emissions of particulate matter. However, in 1991 OMB denied EPA's request to collect information on wood heater inspections, stating that EPA had failed to justify the need for the quality assurance emission test. OMB did approve other parts of the information collection request, and its use is approved through August 31, 1994.

EPA officials also contend that conditional approvals, which may require EPA program staff to undertake an extensive analysis of an information collection request in order to get it reapproved, place unreasonable burdens on small program staffs already facing backlogs of court-ordered mandates to produce regulations. For instance, beginning in 1990, EPA and OMB negotiated for more than 3 years over OMB's conditional clearances of EPA's information collection requests from hazardous waste treatment, storage, and disposal facilities. In July 1990, OMB approved these information collection requests on the condition that EPA consult with respondents (in this case, the owners and operators of hazardous waste treatment, storage, and disposal facilities and the states) and prepare an information analysis of any duplicative, similar, or unnecessary reporting requirements. OMB also directed EPA to change, if necessary, the current regulations to eliminate any unnecessary requirements.

According to EPA officials, these information collection requests later lapsed in 1992 because OMB and EPA could not agree on which reporting and recordkeeping requirements were duplicative and whether the capital costs of reporting, such as the capital investment needed to gather the information (for example, installing monitoring wells), and recordkeeping costs should be separated in determining the actual burden of the information collection requests. These information collection requests

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were eventually approved by OMB for the maximum 3-year period in September 1993, despite these disagreements.

As a result of these problems, EPA's Quality Action Team identified in its work plan of June 7, 1993, several long-term issues needing resolution, including (1) the circumstances under which OMB grants partial and conditional approvals, (2) the relationship between OMB's reviews of information collection requests and OMB's reviews of rule-makings, (3) procedures for handling disagreements between OMB and EPA, and (4) general criteria for approving information collection requests, such as the calculations of cost burdens on respondents. According to Quality Action Team officials, however, little progress has been made to date on these longer-term and more substantive issues. For their part, OMB officials told us that they do not plan to initiate any discussions with EPA on these issues but would be willing to examine with EPA ways to improve the approval process for information collection requests.

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## Conclusions

A number of EPA's enforcement actions have been undermined—resulting in the loss of roughly \$2 million in forgone revenues from previously assessed penalties—because of the agency's problems in sending information collection requests to OMB for review. In recent months, however, greater EPA management attention to these problems, together with closer cooperation between EPA and OMB on the issue, have helped address the main causes of EPA's problems with information collection requests.

However, we believe that continuing disagreement over the longer-term policy and legal issues raised by EPA's Quality Action Team can have undesirable consequences, even though these consequences may be less tangible than the lost revenues produced by lapsed approvals. As noted above, for instance, in the absence of clear guidelines on what capital costs should be included in determining the burden of an information collection request, OMB and EPA staff spent months trying unsuccessfully to reach agreement on this issue.

Unless EPA and OMB reach some understanding on these issues, this type of inefficient use of limited OMB and EPA resources will likely continue, as officials from each agency devote substantial effort to resolving their differences on a case-by-case basis. Accordingly, we believe that management attention within both agencies to these outstanding issues

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now would go a long way toward preventing potentially time-consuming and costly problems later.

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## Recommendations

We recommend that the Director, Office of Management and Budget, and the Administrator, Environmental Protection Agency, address the differences between the two agencies on the remaining substantive policy and legal issues relating to the Paperwork Reduction Act's requirements on information collection requests. In particular, we recommend that they describe in writing (1) the conditions under which partial and conditional approvals are used, (2) procedures for handling disagreements, and (3) general criteria for approving information collection requests, such as the calculations of cost burdens on respondents.

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## Agency Comments

We discussed the information in this report with the Director of EPA's Regulatory Management Division in the Office of Regulatory Management and Evaluation. The Director generally agreed with the facts presented in the report. In addition, we discussed the information in this report with the Branch Chief and Assistant Branch Chief of OMB's Natural Resource Branch in the Office of Information and Regulatory Affairs. These officials generally agreed with our presentation of OMB's views on this subject, and on the basis of comments from these officials, we made clarifications in the report where appropriate. As agreed with your office, we did not obtain written agency comments on a draft of this report.

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## Scope and Methodology

The information contained in this letter was obtained through interviews with the Chief of the Information Policy Branch, EPA Office of Regulatory Management and Evaluation; the Director, Policy Analysis and Regulatory Management Staff, EPA Office of Solid Waste and Emergency Response; the Deputy Enforcement Counsel for RCRA, EPA Office of Enforcement and Compliance Assurance; and Senior Policy Analysts in EPA's Office of Air and Radiation. We also interviewed the Natural Resources Branch Chief and Assistant Branch Chief of OMB's Office of Information and Regulatory Affairs. In addition, we examined a number of documents from EPA and OMB, including EPA's internal review of information collection requests, OMB's report on EPA's lapsed approvals, and OMB's guidance to its desk officers on their information collection request review responsibilities. Information on OMB's review times for EPA's information collection requests was obtained from EPA's Paperwork Reduction Act Management System data base.

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We conducted our review in Washington, D.C., from December 1993 to July 1994 in accordance with generally accepted government auditing standards.

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As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the Administrator, Environmental Protection Agency, and the Director, Office of Management and Budget.

This work was performed under the direction of Steven Elstein, Assistant Director, Environmental Protection Issues, who can be reached on (202) 512-6501 if you or your staff have any questions. Major contributors to this report included Timothy L. Minelli, Evaluator-in-Charge; Eileen Larence, Adviser; and Richard P. Johnson, Attorney Adviser.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Peter F. Guerrero', written in a cursive style.

Peter F. Guerrero  
Director, Environmental Protection  
Issues

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