

Review of Draft OMB 2012 Report to Congress on the Benefits and Costs.....

By Richard Morgenstern

This is a very solid report, covering both Congressionally mandated topics and a series of discretionary issues especially timely to regulatory analysis. Overall, I give the report high marks. In regard to your specific questions, I respond as follows.

1. the substance and format of the report;

Response: this is fine

2. the report's recommendations, which are as follows:

- a) OMB continues to recommend that retrospective analysis should become a routine part of agency rulemaking and that formal mechanisms should be maintained regularly to reevaluate rules that may be unjustified, excessive, insufficient, or unduly complex;

Response: this is an excellent recommendation, although it would be helpful if it was accompanied by some specific guidelines for performing the retrospective analysis. For example, it would be helpful to provide an example or two of some high quality retrospective studies that agencies can use as a model. Also, it would be helpful if OMB established a more precise expectation about the number of retrospective analyses it expected agencies to produce per year. Are we talking about all major regulations? Half, ten percent? Are there some regulatory areas where such analyses would be most helpful? Perhaps OMB could establish some priorities. Further, a number of commentators, e.g. Harrington (2006), have raised concerns about the limitations on retrospective analyses posed by the Paperwork Reduction Act. It would be helpful if OMB could provide some further insight into how they might treat retrospective-oriented data requests under the PRA.

- b) In many areas OMB believes agencies should make it a high priority and careful consideration should be given to those efforts to simplify paperwork requirements;

N/C

- c) OMB continues to recommend that agencies should communicate with the public in a way that is clear, simple, meaningful, and jargon-free;

N/C

- d) OMB continues to recommend that agencies give careful consideration to whether and how best to promote smart disclosure;

N/C

- e) OMB supports the ongoing efforts to improve technological advances to facilitate transparency and increase public participation in the regulatory process;

N/C

- f) OMB continues to support and recommend the implementation of Open Government initiatives; and

N/C

2. the report's requests for comments, including our solicitation of public suggestions on how best to identify and consider the employment effects, positive or negative, of regulations.

Response: This is an important issue, one which has been discussed extensively in this and prior Reports to Congress. OMB is on strong grounds in asking for additional research on the number of jobs lost or gained as a result of regulation, as well as the impact on wages, and potentially other socially relevant measures such as alcoholism, family stability, etc. One step that might be useful is the development of guidelines for preparing quality studies on these topics. Hopefully, the existence of such guidelines would result in a more responsible set of analyses to inform decision making and the public debate.

My specific comments follow:

1. P 3, L 3: reference is made to the fourteenth annual report. I believe this is the fifteenth report (1997, 1998, 2000-2012)
2. P 9, last para: attributing cross-agency difference in valuation of mortality and morbidity to the limits of the technical literature is an overstatement. Certainly there are other factors at work here. As I understand it, individual agencies set VSL on the basis of their quantitative/qualitative assessments of the relevant literature, including the degree of

voluntarism involved in the underlying exposures and other judgmental factors. It's hard to imagine that agency policies don't play a role in these assessments. The observed differences in VSL clearly involve judgments that go beyond the purely technical.

3. P 10, first para: the emphasis on non-quantified and non-monetized benefits or costs is excellent. However, it would be helpful to go a bit further in recommending specific steps agencies could take to improve the situation, e.g., listing potentially important or significant categories of non-quantified or non-monetized benefits or costs in their RIAs, as is occasionally done at present. A further step might involve OMB or the individual agencies issuing guidelines on what constitutes 'potentially important or significant' effects.
4. P 10, second para: recommending that rules should be written and designed, in advance, so as to facilitate retrospective analysis of their effects is an excellent point. It would be helpful to take it a bit further by identifying, perhaps, barriers to implementation of such an approach, e.g., the Paperwork Reduction Act. A further step might involve being more specific in the recommendation for retrospective analysis, e.g., establishing a quantitative goal for agencies to meet in developing such analyses and/or indicating how OMB might be more flexible in PRA implementation in support of the analyses. It would also be helpful if OMB identified examples of best practices in retrospective analysis.
5. P 37-8: generally nice treatment of employment and environmental regulation (and I'm pleased to see my study with Pizer and Shih given such prominence) but it appears that the more negative studies are given short shrift. For example, the papers by Greenstone, Kahn, and Walker are all important too. They all deserve more attention, although I do note several of these papers are discussed in the subsequent section on regulation and economic activity (p 46-7).
6. P 59, last para: retrospective analysis is cast in this paragraph as a potential element of regulatory relief. For example, the sentence that begins 5 lines from the bottom of the page focuses exclusively on the idea that the rule may be 'excessive, redundant, etc. In fact, rules can be either excessive or inadequate. This point should be made.
7. P 63, last para: This discussion of using randomized trials is quite interesting but it would be strengthened by a discussion of some of the constraints to using such an approach, especially in the area of environmental, health or safety. It is, perhaps, not a coincidence that the greatest use of the technique is in cases where the government is initiating a new beneficial or subsidized activity. In the case of environmental regulation it is more difficult for the federal government to discriminate against some areas. Some of the benefits of such an approach can be achieved through different requirements across states, but then the trials are hardly random. I'm simply suggesting some further discussion of the issues. One possible area where it might be practical to do randomized trials is in the area of information disclosure. Some years ago Kip Viscusi did work on the observed behavioral change associated with labeling pesticides in different ways.

Similarly, Ann Fisher worked on radon. Perhaps these or other examples could be discussed.

8. P 64, first full para (and elsewhere in the report): as noted, the recommendation for retrospective analysis is excellent, as is the issuance of E.O. 13563. However, as discussed my comment number 4, the absence of incentives or requirements for agencies to perform such analyses is a serious limits to this recommendation.
9. P 80-81: the section soliciting public recommendations on regulations and employment is excellent. However, there are two problems here: 1) the small number and limited nature of the high quality studies; and 2) the large and growing number of lowr quality studies. In a sense, we have a Say's Law situation where the bad studies are undermining the good ones. Perhaps OMB or the individual agencies should consider issuing guidelines on the elements to be included in a good study. In a sense you have gone part of the way in that direction by laying out the framework used by Morgenstern, Pizer, and Shih. But that's not the whole story either, as job gains/losses outside the industry boundaries are not included in that analysis. Further comment on the elements of a good study would be quite useful, either in this section or elsewhere.