

MEMORANDUM

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U.S. Office of Management and Budget

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SUBJECT: Review of OMB's *Draft 2013 Report to Congress*

Thank you very much for inviting me to review the *Draft 2013 Report to Congress on the Benefits and Costs of Federal Regulations*. These reports are an exceptionally important resource for those interested in regulatory development and analysis, and provide a wealth of information. Your continued excellent work is highly valued! I first provide some general comments, then some editorial suggestions.

General Comments

1. **Summarizing regulatory activity and analyses:** The tables in Chapter 1 and the appendices are very useful for those interested in identifying the regulations reviewed by OMB and tracking trends over time. OMB's efforts to provide consistent data across regulations and across years, and to clearly communicate any adjustments to the estimates, are greatly appreciated. OMB is also to be commended for increasing the extent to which these reports discuss transfer regulations and regulations not subject to OMB review, which will hopefully increase the attention paid to these regulations and the supporting analyses. My only suggestion on this point is that OMB make the final regulatory impact analyses more easily accessible, developing a centralized repository perhaps on its website. Despite the availability of regulations.gov and other online resources, these analyses are often very difficult to locate.

2. **Defining costs and benefits and presenting net benefits:** By highlighting costs and benefits separately, without defining what belongs in each category, and not providing estimates of net benefits, the tables are unfortunately open to misinterpretation for two reasons.

- a) Agencies do not define benefits and costs consistently, which is not surprising given that there is no principled distinction (e.g., cost-savings can be identified as a positive benefit or a negative cost, without affecting net benefits). However, we tend to think of benefits as the intended outcome of the regulation (e.g., reduced health risks) and costs as the investment (e.g., in pollution abatement) required to achieve that outcome. To improve communication, increase transparency, and promote comparability, OMB should encourage agencies to more consistently define costs and benefits, developing and applying a common definition that is compatible with the public's intuition. How to treat any countervailing impacts should be defined as well. For example, any off-setting risk increases (e.g., from substitution of less safe drugs or less healthy foods for those that are regulated) could be

included in the benefit estimates; any offsetting savings that result from the investments required for regulatory compliance could be included in the cost estimates. When how to best categorize a particular impact is uncertain, this uncertainty could be noted in the agency's analysis and in the tables that appear in the appendices to OMB's annual reports.

- b) It seems somewhat puzzling that OMB cautions readers (on p. 14) about comparing the cost and benefit estimates, but does not include a column that reports net benefits in each of the tables. Adding such a column would clarify the overall impact of the regulations and address the potential for misinterpreting (or inappropriately comparing) the independently-reported cost and benefit ranges.

3. Assessing the distribution of costs and benefits: The discussion of distributional analysis (e.g., under item 4 on p. 9) could be significantly enriched. My review of current practices suggests that distribution receives very little attention in regulatory analyses. To the extent that it is addressed, the discussion focuses on the requirements of the environmental justice and children's health executive orders. This means that attention is paid primarily to disproportionate adverse health effects; the overall distribution of both costs and benefits across different demographic groups is not considered. Such focus is problematic for a variety of reasons. For example, it leads analysts and decisionmakers to ignore potential counterbalancing effects that may be of equal or greater importance, and to disregard the distribution of regulatory costs.

4. Valuing mortality risk reductions: Agency estimates of the value per statistical life (VSL) are an important determinant of the net benefits of the rules described in the report, and deserve more attention. One issue is that the varying values across agencies can be easily misinterpreted. They do not reflect the different values placed on different types of risks; all are derived primarily from studies of job-related risks. Rather, each agency reviewed the literature at different times and thus relies on different studies.

If the agencies continue to rely on studies of job-related risks, more harmonization is desirable, so that all agencies are applying the best estimates currently available. Over the longer term, ideally each agency would instead rely on studies that address the particular types of risks it regulates and the values held by those affected by its regulations. More primary research may be needed to achieve this goal, however.

At the end of this memorandum, I provide examples of recent reviews that could be cited as part of a more comprehensive discussion of these issues.

5. Conducting retrospective analysis: While the emphasis on conducting retrospective analysis is to be applauded, analysts face challenges similar to those faced when conducting prospective analysis. For example, in prospective analysis we must forecast conditions with and without the regulation. In retrospective analysis, we still must estimate conditions without the regulation, and must disentangle the effects of the regulation from the effects of other influencing factors. In both cases, careful assessment of uncertainty is needed. To promote high quality, useful analyses, OMB and/or the agencies should consider developing guidance on how to best conduct these assessments.

6. Assessing employment impacts: Whether and how to assess employment impacts is an important concern given recent economic conditions and Congressional proposals, yet the discussion in Chapter I, section D and Chapter II, section E seems disjointed. In particular, the discussion in Chapter II highlights important issues, while the discussion in Chapter I reads more like a laundry list of related studies. It is

unclear whether some of the studies cited still apply given changing economic conditions; nor is it clear which studies are most useful and relevant. More synthesis of the results along with guidance for analysts seems needed. (Related issues are discussed in *Does Regulation Kill Jobs?*, edited by Cary Coglianese, Adam Finkel, and Chris Carrigan - <http://www.upenn.edu/pennpress/book/15183.html>.)

7. Improving available guidance: Throughout the report, OMB identifies several analytic challenges in addition to those noted above; e.g., related to the NRC reports identified at the top of p. 17. It may be time to update OMB Circular A-4 to address these and other issues. While the Circular continues to be an important and useful resource, it is now over 10 years old and increasingly outdated. In addition, it provides very little guidance on estimating costs; more guidance is needed to ensure the conduct of high quality analyses. It would also be useful to clarify which requirements are mandatory rather than discretionary, and to drop those requirements that are not followed or enforced.

8. Recommending reforms: The recommended reforms at the beginning of Chapter II (pp. 53-54) are laudable. However, achieving the goals related to the use (and usefulness) of both prospective and retrospective analysis requires continual efforts to improve the analytic approach as well as the communication of the results, which in turn requires more work to define and update best practices, as discussed above.

9. Promoting substantive as well as procedural reform: Many of the FY 2012 regulatory reforms discussed in Chapter II address program administration and communication. While these reforms are very important, it seems curious that less attention is paid to more substantive changes in the overall regulatory approach to various problems.

Editorial Notes

1. The report contains a lot of redundant information, which makes it dense and difficult to read in places. It would be helpful to look for opportunities to streamline and consolidate the discussion. For example, the regulations excluded from the tables are noted in several places, and it is unclear whether an identical set of regulations is excluded in all cases. Consolidating the discussion under a separate subheading, then referring to that subsection throughout the report, would make the report easier to follow.

2. Adding “all other” and “total” at the bottom of Table 1-2 on pp. 13-14 would aid the reader in understanding the relative importance of the programs and offices excluded from that table but included in Table 1-1.

3. The term “co-benefits” should be defined on p. 15; this topic is worthy of more discussion. The reference to “accounting” practices rather than to “benefit-cost analysis” also seems confusing, since financial accounting differs in significant respects from the benefit-cost analysis framework.

4. Footnote 19 on p. 16 is in need of minor corrections.

a) The statement about changes in the EPA VSL seems confusing, since it is unclear whether it refers to changes in the basis for the VSL estimates or updating of existing estimates. EPA’s Office of Air and Radiation used a different basis (i.e., selected meta-analyses) for its VSL estimates from roughly 2003 to 2007, while the remainder of the agency continued to rely on the agency-wide guidance (issued in

2000 and updated in 2010) which is based on a review by Viscusi (1992, 1993). In contrast, EPA and other agencies routinely adjust their estimates for inflation and real income growth over time, without changing the basis of the estimates. EPA's VSL continues to be based on the Viscusi (1992, 1993) reviews, although EPA is now considering changes to its approach.

b) The DHS VSL of \$6.3 million should be referenced as 2007 rather than 2008 dollars, consistent with its derivation in Robinson (2008).

5. While the inclusion of Figure 1-1 on p. 20 is useful, it is hard to read and interpret in its current format, particularly since the bars for the ranges under \$20 billion are so small that they are easy to overlook. More generally, the reporting of ranges wherever possible should be encouraged, to aid readers in understanding the degree of (quantified) uncertainty.

6. The discussion of the well-being literature (pp. 45 - 48) would be more useful if, rather than simply providing a long list studies, the results of the highest quality and most relevant studies were synthesized.

7. The attribution of rules to particular Administrations adds a more partisan (and somewhat jarring) note to what otherwise reads as a more objective and technical report. It is not always clear who deserves the credit for individual regulations given that many take numerous years to develop, crossing Administrations.

8. Recent reviews of the VSL literature include the following.

- Cropper, M., J.K. Hammitt, and L.A. Robinson. 2011. "Valuing Mortality Risk Reductions: Progress and Challenges." *Annual Review of Resource Economics*. 3: 313-336.
- Kling, C.L. et al. 2011. "Review of 'Valuing Mortality Risk Reductions for Environmental Policy: A White Paper' (December 10, 2010)." Memorandum to Lisa P. Jackson, EPA Administrator, from the EPA Science Advisory Board and Environmental Economics Advisory Committee. EPA-SAB-11-011.
- Lindhjem, H., S. Navrud, N.A. Braathen, and V. Biaisque. 2011. "Valuing Mortality Risk Reductions from Environmental, Transport, and Health Policies: A Global Meta-Analysis of Stated Preference Studies." *Risk Analysis*. 31(9): 1381-1407.
- Robinson, L.A. and J.K. Hammitt. 2011. "Valuing Health and Longevity in Regulatory Analysis: Current Issues and Challenges," (In the *Handbook on the Politics of Regulation* (D. Levi-Faur, ed.), Cheltenham and Northampton: Edward Elgar), available at www.regulatory-analysis.com.
- Robinson, L.A. and J.K. Hammitt. 2013. "Skills of the Trade: Valuing Health Risk Reductions in Benefit-Cost Analysis," *Journal of Benefit-Cost Analysis*. 4(1): 107-130.
- U.S. Environmental Protection Agency. 2010. Valuing Mortality Risk Reductions for Environmental Policy: A White Paper (Review Draft). Prepared by the National Center for Environmental Economics for consultation with the Science Advisory Board – Environmental Economics Advisory Committee.
- Viscusi, W.K. 2013. "Estimating the Value of a Statistical Life Using Census of Fatal Occupational Injuries (CFOI) Data" Vanderbilt University Law School Law and Economics Working Paper Number 13-17.