

**DRAFT 2012 REPORT TO CONGRESS  
ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND  
UNFUNDED MANDATES ON STATE, LOCAL, AND TRIBAL ENTITIES**

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## EXECUTIVE SUMMARY

In accordance with the Regulatory-Right-to-Know Act,<sup>1</sup> the Office of Management and Budget (OMB) prepared this draft Report to Congress on the Benefits and Costs of Federal Regulations (Report). This is the fourteenth annual Report since OMB began issuing this Report in 1997. The Report summarizes estimates by Federal regulatory agencies of the quantified and monetized benefits and costs of major Federal regulations reviewed by OMB over the last ten years (see page 7, below, for the criteria for identifying “major” regulations for this report).

The principal findings are as follows.

- The estimated annual benefits of major Federal regulations reviewed by OMB from October 1, 2001, to September 30, 2011, for which agencies estimated and monetized both benefits and costs, are in the aggregate between \$141 billion and \$700 billion, while the estimated annual costs are in the aggregate between \$43.3 billion and \$67.3 billion. These ranges reflect uncertainty in the benefits and costs of each rule at the time that it was evaluated.
- Some rules are anticipated to produce far higher net benefits than others. Moreover, there is substantial variation across agencies in the total net benefits produced by rules. The overwhelming majority of rules have net benefits, but a few rules have net costs, typically as a result of legal requirements.
- During fiscal year 2011, executive agencies promulgated 54 major rules, of which the majority (30) were budgetary transfer rules.
  - For the 30 budgetary transfer rules, the issuing agencies quantified and monetized the budgetary transfer amounts. (The budgetary amounts reflect the principal economic consequences of such rules.)
  - For 13 rules, representing the strong majority of the benefits and costs of rules issued in fiscal year 2011, the issuing agencies quantified and monetized both benefits and costs. Those 13 rules were estimated to result in a total of \$34.3 billion to \$98.5 billion in annual benefits and \$5.0 billion to \$10.2 billion in annual costs.
  - For three rules, the issuing agencies (the Department of Treasury and the Department of the Interior) were able to quantify and monetize only benefits. For these three rules, the agencies estimated annual benefits of about \$600 million to \$700 million.
  - For six rules, the issuing agencies were able to quantify and monetize only costs. For these rules, the agencies estimated total annual costs of about \$400 million to \$1.1 billion.

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<sup>1</sup> Section 624 of the Treasury and General Government Appropriations Act of 2001, Pub. L. No. 106-554, 31 U.S.C. § 1105 note.

- For two rules, the issuing agencies were able to quantify and monetize neither benefits nor costs.
- The independent regulatory agencies, whose regulations are not subject to OMB review under Executive Order 12866, issued 17 major final rules. The majority of rules were issued to regulate the financial sector. The Government Accountability Office (GAO) reported that none of the 17 rules assessed both anticipated benefits and costs. The Securities and Exchange Commission monetized costs for five of its ten rules. The Federal Reserve System did not assess benefits and costs for its rules. The joint rule between the Federal Reserve System and the Federal Trade Commission assessed only costs.

It is important to emphasize that the figures here have significant limitations. In some cases, quantification or monetization is not feasible. When agencies have not quantified or monetized the benefits or costs of regulations, or have not quantified or monetized important variables, it is generally because of an absence of relevant information. Many rules have benefits or costs that cannot be quantified or monetized in light of existing information, and the aggregate estimates presented here do not capture those non-monetized benefits and costs. In some cases, quantification of various effects is highly speculative. For example, it may not be possible to quantify the benefits of certain disclosure requirements, even if those benefits are likely to be large, simply because the impact of some such requirements cannot be specified in advance. In other cases, monetization of particular categories of benefits (such as protection of homeland security or personal privacy) can present significant challenges. As Executive Order 13563 recognizes, some rules produce benefits (such as reductions in discrimination on the basis of disability or prevention of rape) that cannot be adequately captured in monetary equivalents. In fulfilling their statutory mandates, agencies must sometimes act in the face of substantial uncertainty about the likely consequences.

In addition, and significantly, prospective estimates may contain erroneous assumptions, producing inaccurate predictions; retrospective analysis, recently required by Executive Order 13563, can be an important way of increasing accuracy. While the estimates in this Report provide valuable information about the effects of regulations, they should not be taken to be either precise or complete. The increasing interest in retrospective analysis, inside and outside of government and fueled by Executive Order 13563, should produce improvements on this count, above all by ensuring careful evaluation of the actual effects of rules. (Note that section 6 of Executive Order 13563 is called “Retrospective Analysis of Existing Rules” and calls for such analysis.) This process should improve understanding not only of those effects, but also of the accuracy of prospective analyses, in a way that can be brought to bear on such analyses when they are originally written.

OMB emphasizes that careful consideration of costs and benefits is best understood as a pragmatic way of ensuring that regulations will improve social welfare, above all by informing the design and consideration of various options so as (1) to help in the assessment whether it is worth proceeding and (2) to identify the opportunities for minimizing the costs of achieving a social goal (cost-effectiveness) and maximizing net social benefits (efficiency). Executive Order 13563 states that to the extent permitted by law, each agency must “propose or adopt a regulation

only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify”). (It should be emphasized that this requirement, like all others in the Executive Order, applies only to the extent permitted by law; many regulations are issued as a result of statutory requirements or court order, which may sharply limit and even eliminate agency discretion.) Improvements in social welfare are the goal; consideration of costs and benefits (both quantitative and qualitative) is an instrument for helping to achieve that goal. OMB and agencies continue to take steps to improve both quantification and monetization.

Consistent with this effort and in compliance with the Regulatory Right-to-Know Act, this Report also offers six recommendations for reform. There are two unifying themes, both of which have clear roots in Executive Order 13563. The first is the importance of ensuring that regulation (including protection of public health, welfare, safety, and our environment) is undertaken in a way that is compatible with the goal of promoting economic growth, innovation, competitiveness, and job creation. By promoting these goals, agencies will be in a better position to avoid excessive regulation, to eliminate unnecessary burdens, and to choose appropriate responses. Well-designed regulations may, for example, increase safety on the highways without having significant adverse effects on growth and competitiveness; poorly designed regulations may have adverse effects on real people, by, for example, increasing prices, discouraging innovation, or decreasing employment.

The second unifying theme is the importance of ensuring that regulation is evidence-based and data-driven, and hence based on the best available work in both science and social science (with full respect for scientific integrity). Public transparency, revealing relevant choices and assumptions (including the analysis of costs and benefits), can be extremely helpful in this regard, in part because it subjects choices, assumptions, and analysis to scrutiny and review. Consideration of flexible, low-cost approaches, preserving freedom of choice, is often important, both as a means of reducing costs and as a reflection of respect for heterogeneity and the fact that often one size does not fit all. (See the emphasis on flexible approaches and freedom of choice in Executive Order 13563, section 4.)

In Chapter II, this Report briefly outlines recent steps and best practices that are consistent with OMB’s recent recommendations for flexible, empirically informed approaches; increased openness about costs and benefits; and the use of simplification and disclosure as regulatory tools. For the future, the Report recommends, among other things, that:

1. Consistent with Executive Order 13563, regulatory decisions and priority-setting should be made in a way that is attentive to the importance of promoting economic growth, innovation, job creation, and competitiveness.
2. Consistent with Executive Order 13563, agencies should promote retrospective analysis of existing significant rules, with careful exploration of their actual effects and, when appropriate, consideration of steps to streamline, modify, improve, or repeal them.
3. Agencies should carefully consider how best to obtain good data about the likely effects of regulation; experimentation, including randomized controlled trials, can complement and inform prospective analysis, and perhaps reduce the need for retrospective analysis.

4. Consistent with Executive Order 13563, agencies should make serious efforts to increase simplicity in the regulatory process by considering, among other things, the use of automatic enrollment and sensible default rules; simpler, clearer, and pre-populated forms; plain, jargon-free language; and greater use of the Internet and electronic reporting.
5. Agencies should give careful consideration to promoting “smart disclosure,” understood as the timely release of complex information and data in standardized, machine-readable formats in ways that enable consumers to make informed decisions, often as a result of creative work, including the design of “apps,” by the private sector. Smart disclosure often helps consumers to see the nature and effects of their own past choices, thus promoting better choices in the future.
6. Consistent with the recently launched Open Government Partnership, agencies should promote transparency and consider initiatives to promote more transparent, effective, and accountable institutions.

Consistent with Executive Order 13563, OMB also invites public suggestions on how best to identify and consider the employment effects, positive or negative, of regulations.

As required by Division C Title II Section 202 of House Report 112-331),<sup>2</sup> Chapter II of this Report also provides information on efforts to implement Executive Order 13563 and in particular on efforts:

- to increase public participation in the rulemaking process and to reduce uncertainty;
- to improve coordination across Federal agencies to eliminate redundant, inconsistent, and overlapping regulations; and
- to identify existing regulations that have been reviewed and determined to be outmoded, ineffective, and excessively burdensome.

In each of these domains, efforts are continuing, and public comments and input continue to be sought about appropriate initiatives and reforms.

Chapter III provides an update on agency implementation of the Information Quality Act (IQA) (Section 515 of the Treasury and General Government Appropriations Act, 2001 (Pub. L. No. 106-554, 31 U.S.C. § 3516 note)). The chapter summarizes (a) the current status of correction requests that were received by agencies in FY 2011, along with an update on the status of requests received during prior years and (b) agency annual reports for the Information Quality Bulletin for Peer Review for FY 2011. In FY 2011, Federal agencies received 16 correction requests and completed 216 peer reviews, 14 of which were highly influential scientific assessments.

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<sup>2</sup> U.S. House. Committee on Appropriations. *Military Construction and Veterans Affairs And Related Agencies Appropriations Act of 2012, Conference Report* (to Accompany H.R. 2055). (H. Rpt. 112-331). Text from: <[http://rules.house.gov/Media/file/PDF\\_112\\_1/HR2055CRbill/pcConferenceDivc-BilloCR.pdf](http://rules.house.gov/Media/file/PDF_112_1/HR2055CRbill/pcConferenceDivc-BilloCR.pdf)>. Available from: Committee on Appropriations; Accessed 1/9/2012.

This Report is being issued along with OMB's Seventeenth Annual Report to Congress on Agency Compliance with the Unfunded Mandates Reform Act (UMRA) (Pub. L. No. 104-4, 2 U.S.C. § 1538). OMB reports on agency compliance with Title II of UMRA, which requires that each agency conduct a cost-benefit analysis and select the least costly, most cost-effective, or least burdensome alternative before promulgating any proposed or final rule that may result in expenditures of more than \$100 million (adjusted for inflation) in any one year by State, local, and tribal governments, or by the private sector. Each agency must also seek input from State, local, and tribal governments.

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# PART I: 2012 REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS

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## CHAPTER I: THE BENEFITS AND COSTS OF FEDERAL REGULATIONS

This chapter consists of two parts: (A) the accounting statement and (B) a brief report on regulatory impacts on State, local, and tribal governments, small business, and wages. Part A revises the benefit-cost estimates in last year's Report by updating the estimates to the end of fiscal year 2011 (September 30, 2011). As in previous Reports, this chapter uses a ten-year lookback. Estimates are based on the major regulations reviewed by OMB from October 1, 2001 to September 30, 2011.<sup>3</sup> For this reason, twelve rules reviewed from October 1, 2000 to September 30, 2001 (fiscal year 2001) were included in the totals for the 2011 Report but are not included in this Report. A list of these fiscal year 2001 rules can be found in Appendix B (see Table B-1). The removal of the twelve fiscal year 2001 rules from the ten-year window is accompanied by the addition of 13 fiscal year 2011 rules.

All estimates presented in this chapter are agency estimates of benefits and costs or transparent modifications of agency information performed by OMB.<sup>4</sup> This chapter also includes a discussion of major rules issued by independent regulatory agencies, although OMB does not review these rules under Executive Orders 13563 and 12866.<sup>5</sup> This discussion is based solely on data provided by these agencies to the Government Accountability Office (GAO) under the Congressional Review Act.

Aggregating benefit and cost estimates of individual regulations—to the extent they can be combined—provides potentially valuable information about the effects of regulations. But the resulting estimates are neither precise nor complete. Four points deserve emphasis.

1. Individual regulatory impact analyses vary in rigor and may rely on different assumptions, including baseline scenarios, methods, and data. To take just one example, all agencies draw on the existing economic literature for valuation of reductions in mortality and morbidity, but the technical literature has not converged on uniform figures, and consistent with the lack of uniformity in that literature, such valuations vary somewhat across agencies. Summing across estimates involves the aggregation of analytical results that are not strictly comparable. While important inconsistencies across agencies have been reduced over time, OMB continues to investigate possible inconsistencies and seeks to identify and to promote best practices. Executive Order 13563 emphasizes the importance of such practices and of quantification, directing agencies to “use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.”

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<sup>3</sup>All previous Reports are available at: [http://www.whitehouse.gov/omb/inforeg\\_regpol\\_reports\\_congress/](http://www.whitehouse.gov/omb/inforeg_regpol_reports_congress/).

<sup>4</sup>OMB used agency estimates where available. The benefit and cost ranges represent lowest and highest agency estimates using both 3 and 7 percent discount rates. If an agency quantified but did not monetize estimates, we used standard assumptions to monetize them, as explained in Appendix A. We adjusted estimates to 2001 dollars, the requested format in OMB Circular A-4, using the latest available Gross Domestic Product (GDP) deflator and all amortizations are performed using a discount rate of 7 percent, unless the agency has already presented annualized, monetized results using a different explicit discount rate. OMB did not independently estimate benefits or costs when agencies did not provide quantified estimates.

<sup>5</sup>Section 3(b) of Executive Order 12866 excludes “independent regulatory agencies as defined in 44 U.S.C. 3502(10)” from OMB’s regulatory review purview.

2. As we have noted, it is not always possible to quantify or to monetize relevant benefits or costs of rules in light of limits in existing information. For purposes of policy, non-monetized benefits and costs may be important. Some regulations have significant non-quantified or non-monetized benefits (such as protection of privacy and equity) and costs that are relevant under governing statutes and that may serve as a key factor in an agency's decision to promulgate a particular rule.
3. Prospective analyses may turn out to overestimate or underestimate both benefits and costs; retrospective analysis can be important as a corrective mechanism.<sup>6</sup> Executive Order 13563 specifically calls for such analysis, with the goal of improving relevant regulations through modification, streamlining, expansion, or repeal. The result should be a greatly improved understanding of the accuracy of prospective analyses, as well as corrections to rules as a result of ex post evaluations. A large priority is the development of methods (perhaps including not merely before-and-after accounts but also randomized trials, to the extent feasible and consistent with law) to obtain a clear sense of the effects of rules. In addition, and importantly, *rules should be written and designed, in advance, so as to facilitate retrospective analysis of their effects.*
4. While emphasizing the importance of quantification, Executive Order 13563 also refers to “values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.” As Executive Order 13563 recognizes, such values may be appropriately considered under relevant law. If, for example, a rule would reduce the incidence of rape, or allow wheelchair-bound workers to have access to bathrooms, a consideration of dignity is involved, and relevant law may require or authorize agencies to take that consideration into account. If a regulation would disproportionately help or hurt those at the bottom of the economic ladder, or those who are suffering from some kind of acute condition or extreme deprivation, relevant law may require or authorize agencies to take that fact into account. (In the recent past, agencies have referred to human dignity, equity, or distributional impacts in the context of proposed or final regulations reducing the risk of prison rape; increasing access by wheelchair-bound people to bathrooms; eliminating the ban on entry into the United States of those who are HIV-positive; barring lifetime limits on health insurance payments; and preventing denial of health insurance to children with preexisting conditions.) So far as we are aware, there is only limited analysis of the distributional effects of regulation in general or in significant domains<sup>7</sup>; such analysis could prove illuminating.

## **A. Estimates of the Aggregated Annual Benefits and Costs of Regulations Reviewed by OMB over the Last Ten Years**

### ***1. In General***

From fiscal year 2002 through fiscal year 2011, Federal agencies published about 38,000 final rules in the *Federal Register*.<sup>8</sup> OMB reviewed 3,262 of these final rules under Executive

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<sup>6</sup> See Greenstone (2009).

<sup>7</sup> See, e.g., Kahn (2001); Adler (2011) offers relevant theoretical discussion.

<sup>8</sup> This count includes all final and interim final rules from all Federal agencies (including Independent agencies).

Order 12866 and 13563.<sup>9</sup> Of these OMB-reviewed rules, 531 are considered major rules, primarily as a result of their anticipated impact on the economy (i.e., estimated benefits or costs were in excess of \$100 million in at least one year). It is important to emphasize that many major rules are budgetary transfer rules, and may not impose significant regulatory costs on the private sector.

We include in our 10-year aggregate of annual benefits and costs of regulations rules that meet two conditions:<sup>10</sup> (1) each rule was estimated to generate benefits or costs of approximately \$100 million in any one year; and (2) a substantial portion of its benefits and costs were quantified and monetized by the agency or, in some cases, monetized by OMB. The estimates are therefore not a complete accounting of all the benefits and costs of all regulations issued by the Federal Government during this period.<sup>11</sup> Table 1-1 presents estimates of the total annual benefits and costs of 106 regulations reviewed by OMB over the ten-year period from October 1, 2001, to September 30, 2011, broken down by issuing agency.

As discussed in previous Reports, OMB chose a ten-year period for aggregation because pre-regulation estimates prepared for rules adopted more than ten years ago are of questionable relevance today. The estimates of the benefits and costs of Federal regulations over the period October 1, 2001, to September 30, 2011, are based on agency analyses conducted prior to issuance of the regulation and subjected to public notice, comments, and OMB review under Executive Order 12866.

In assembling these tables of estimated benefits and costs, OMB applied a uniform format for the presentation to make agency estimates more closely comparable with each other (for example, annualizing benefit and cost estimates). OMB monetized quantitative estimates where the agency did not do so. For example, for a few rulemakings within the ten-year window of this Report, we have converted agency projections of quantified benefits, such as estimated injuries avoided per year or tons of pollutant reductions per year, to dollars using the valuation estimates discussed in Appendix B of our 2006 Report.<sup>12</sup>

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<sup>9</sup> Counts of OMB reviewed rules are available through the “review counts” and “search” tools on OIRA’s regulatory information website ([www.reginfo.gov](http://www.reginfo.gov)). In addition, the underlying data for these counts are available for download in XML format on the website.

<sup>10</sup> OMB discusses, in this Report and in previous Reports, the difficulty of estimating and aggregating the benefits and costs of different regulations over long time periods and across many agencies using different methodologies. Any aggregation involves the assemblage of benefit and cost estimates that are not strictly comparable. In part to address this issue, the 2003 Report included OMB’s new regulatory analysis guidance, OMB Circular A-4, that took effect on January 1, 2004 for proposed rules and January 1, 2005 for final rules. The guidance recommends what OMB defines as “best practices” in regulatory analysis, with a goal of strengthening the role of science, engineering, and economics in rulemaking. The overall goal of this guidance is a more transparent, accountable, and credible regulatory process and a more consistent regulatory environment. OMB expects that as more agencies adopt our recommended best practices, the benefits and costs we present in future reports will become more comparable across agencies and programs. OMB continues to work with the agencies to ensure that their impact analyses follow the guidance.

<sup>11</sup> In many instances, agencies were unable to quantify all benefits and costs. We have conveyed the essence of these unquantified effects on a rule-by-rule basis in the columns titled “Other Information” in Appendix A of this report. The monetized estimates we present necessarily exclude these unquantified effects.

<sup>12</sup> The 2006 Report is available at [http://www.whitehouse.gov/omb/inforeg\\_regpol\\_reports\\_congress/](http://www.whitehouse.gov/omb/inforeg_regpol_reports_congress/). We note that there are ongoing discussions regarding the scientific assumptions underlying the benefits per ton numbers that we

**Table 1-1: Estimates of the Total Annual Benefits and Costs of Major Federal Rules by Agency, October 1, 2001 - September 30, 2011 (billions of 2001 dollars)**

Agency	Number of Rules	Benefits	Costs
Department of Agriculture	5	0.9 to 1.3	0.8 to 1.2
Department of Energy	10	6.5 to 12.0	3.3 to 4.7
Department of Health and Human Services	17	16.0 to 47.6	2.2 to 4.2
Department of Homeland Security	1	< 0.1	0 to 0.1
Department of Housing and Urban Development	1	2.3	0.9
Department of Justice	4	1.8 to 4.0	0.8 to 1.0
Department of Labor	7	6.8 to 19.8	2.1 to 5.0
Department of Transportation (DOT) <sup>13</sup>	27	16.1 to 27.9	7.9 to 15.7
Environmental Protection Agency (EPA) <sup>14</sup>	32	84.8 to 565.0	23.2 to 29.3

use to monetize benefits that were not monetized. If, for instance, assumptions similar to those described at <http://www.epa.gov/air/benmap/bpt.html> were used, these estimates would be somewhat higher.

<sup>13</sup> This total excludes FMCSA's 2010 Electronic On-Board Recorders for Hours-of-Service Compliance rule. The rule was vacated on Aug. 26, 2011 by the court of appeals. To avoid double counting, this total also excludes FMCSA's 2009 Hours of Service rule, which finalized the provisions of the 2005 final rule included in the final count of rules.

<sup>14</sup> This total includes the impacts of EPA's 2005 Clean Air Interstate Rule. On July 11, 2008, the DC Circuit Court vacated the rule; however, in response to EPA's petition, the court on December 23, 2008, remanded the rule without vacatur, which keeps this rule in effect while EPA conducts further proceedings consistent with the Court's July 11 opinion. On July 6, 2011, EPA finalized the Cross-State Air Pollution Rule, which replaced the Clean Air Interstate Rule. The costs incurred under both rules are assumed to be additive. The benefits, however, are not assumed to be additive due to a simplifying assumption invoked by the agency. These totals include EPA's August 2011 final "Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals." On December 30, 2011 the D.C. Circuit stayed the rule pending the court's resolution of petitions for review. This rule, once finalized, will replace the Clean Air Interstate Rule.

These totals include EPA's September 2010 final "NESHAP: Portland Cement Notice of Reconsideration." On December 9, 2011, the D.C. Circuit remanded the rule without vacatur, which keeps it in effect while EPA undertakes further proceedings consistent with the court's opinion.

This total excludes EPA's 2004 —National Emission Standards for Hazardous Air Pollutants: Industrial/Commercial/Institutional Boilers and Process Heaters." On June 19, 2007, the United States Court of Appeals for the District of Columbia Circuit vacated and remanded this rule to EPA. EPA finalized the 2011 National Emission Standards for Hazardous Air Pollutants for Major and Area Sources of Industrial, Commercial, and Institutional Boilers and Process Heaters and the Commercial and Industrial Solid Waste Incineration Units, but announced a delay notice, staying the effective date of these rules. In January 9, 2012, the United States District

Agency	Number of Rules	Benefits	Costs
Joint DOT and EPA	2	6.1 to 20.7	2.0 to 5.2
<b>Total</b>	<b>106</b>	<b>141.0 to 700.6</b>	<b>43.3 to 67.3</b>

The aggregate benefits reported in Table 1-1 are comparable to those presented in the 2011 Report. As with previous Reports, the reported monetized benefits continue to be significantly higher than the monetized costs. (In 2009, 2010, and 2011, the monetized benefits are also far higher than the monetized costs, as detailed below.) Three agencies (the Department of Health and Human Services, the Department of Transportation, and the Environmental Protection Agency) issued a strong majority of total rules — 78 of 106. In addition, the Environmental Protection Agency and the Department of Transportation are responsible for a strong majority of both total benefits and total costs.

Table 1-2 provides additional information on aggregate benefits and costs for specific agency program offices. In order for a program to be included in Table 1-2, the program office must have finalized three or more major rules in the last ten years with monetized benefits and costs. Two of the program offices included (Department of Transportation’s National Highway Traffic Safety Administration and the Environmental Protection Agency’s Office of Air) finalized two overlapping sets of rules pertaining to vehicle fuel efficiency, and these are listed separately.

**Table 1-2: Estimates of Annual Benefits and Costs of Major Federal Rules: Selected Program Offices and Agencies, October 1, 2001 - September 30, 2011 (billions of 2001 dollars)**

Agency	Number of Rules	Benefits	Costs
<b>Department of Agriculture</b>			
Animal and Plant Health Inspection Service	3	0.9 to 1.2	0.7 to 0.9
<b>Department of Energy</b>			
Energy Efficiency and Renewable Energy	10	6.5 to 12.0	3.3 to 4.7
<b>Department of Health and Human Services</b>			
Food and Drug Administration	9	2.1 to 30.9	0.9 to 1.3
Center for Medicare and Medicaid Services	7	13.6 to 16.5	1.3 to 2.8
<b>Department of Labor</b>			
Occupational Safety and Health Administration	4	0.2 to 1.4	0.4

Court for the District of Columbia vacated the delay notice and remanded the notice for further proceedings. The current 10-year aggregate estimates do not include the benefits and costs of these rules. In the future, the costs and benefits may be added to the 10-year aggregate estimates when the agency finalizes proceedings on these rules.

<b>Agency</b>	<b>Number of Rules</b>	<b>Benefits</b>	<b>Costs</b>
Employee Benefits Security Administration	3	6.6 to 18.4	1.7 to 4.5
<b>Department of Transportation</b>			
National Highway Traffic Safety Administration	12	13.3 to 23.9	5.6 to 12.1
Federal Aviation Administration	6	0.3 to 1.2	0 to 0.4
Federal Motor Carriers Safety Administration	3	1.2 to 1.3	1.1 to 1.2
<b>Environmental Protection Agency</b>			
Office of Air	20	82.2 to 556.5	21.8 to 27.7
Office of Water	6	1.2 to 3.7	1.0 to 1.2
Office of Solid Waste and Emergency Response	4	0 to 0.3	-0.3
<b>Department of Transportation/Environmental Protection Agency</b>			
National Highway Traffic Safety Administration/Office of Air	2	6.1 to 20.7	2.0 to 5.2

The ranges of benefits and costs reported in Tables 1-1 and 1-2 were calculated by adding the lower bounds of agencies' estimates for each of the underlying rules to generate an aggregate lower bound, and similarly adding the upper bounds of agencies' estimates to generate an aggregate upper bound.<sup>15</sup> The range reported by the agency for each rule reflects the agency's uncertainty about the likely impact of the rule. In some cases, this range is a confidence interval based on a formal uncertainty analysis. In most cases, however, the ranges are generated using an informal sensitivity analysis in which input parameters are varied across a plausible range.

The benefits and costs presented in Tables 1-1 and 1-2 are not necessarily correlated. In other words, when interpreting the meaning of these ranges, the reader should not assume that when benefits are in fact on the low end of their range, costs will also tend to be on the low end of their range. This is because, for some rules, there are factors that affect costs that have little correlation with factors that affect benefits (and vice-versa). Accordingly, to calculate the range of net benefits (i.e., benefits minus costs), one should not simply subtract the lower bound of the benefits range from the lower bound of the cost range and similarly for the upper bound. It is possible that the true benefits are at the higher bound and that the true costs are at the lower bound, as well as vice-versa. Thus, for example, it is possible that the net benefits of Department of Labor rules taken together could range from about \$1.8 billion to \$17.7 billion per year.

<sup>15</sup> The approach of adding ranges likely overstates the uncertainty in the total benefits and costs for each agency. The actual ranges are probably somewhat tighter than our estimates.

## 2. EPA Air Rules

It should be clear that the rules with the highest benefits and the highest costs, by far, come from the Environmental Protection Agency and in particular its Office of Air. More specifically, EPA rules account for 60 to 81 percent of the monetized benefits and 44 to 54 percent of the monetized costs.<sup>16</sup> The rules that aim to improve air quality account for 97 to 98 percent of the benefits of EPA rules.

It is important to emphasize that the large estimated benefits of EPA rules are mostly attributable to the reduction in public exposure to a single air pollutant: fine particulate matter. Of the EPA's 20 air rules, the rule with the highest estimated benefit is the Clean Air Fine Particle Implementation Rule, issued in 2007, with benefits ranging from \$19 billion to \$167 billion per year. While the benefits of this rule far exceed the costs, the cost estimate for the 2007 Clean Air Fine Particle Implementation Rule is also the highest at \$7.3 billion per year. In addition, the Cross-State Air Pollution Rule (CAIR Replacement Rule (2060-AP50)) has benefits ranging from \$20.5 to \$59.7 billion and costs of approximately \$0.7 billion.<sup>17</sup> Because the estimated benefits and costs associated with the clean air rules provide a majority of the total benefits and costs across the Federal Government and because some of the scientific and economic questions are not resolved, we provide additional information.

With respect to many of these rules, there remains room for continuing research and analysis to resolve uncertainties in benefits estimates; further scientific work is important in this domain. We note that EPA has invested substantial resources to reducing some aspects of that uncertainty over the last few years. EPA continues to improve methods to quantify the degree of technical uncertainty in benefits estimates and to make other improvements to EPA's Regulatory Impact Analyses.<sup>18</sup> Even so, significant uncertainty remains. More generally, the ranges of

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<sup>16</sup>These estimates do not include the joint EPA/DOT CAFE rule as an "EPA" rule.

<sup>17</sup> This report includes benefit and cost estimates for both the CAIR and Cross-State Air Pollution Rule (CAIR Replacement Rule). Because of the difficulty in establishing an appropriate baseline, the agency invoked a simplifying assumption that the regulated entities incurred the pollution abatement cost associated with CAIR but did not operate the purchased equipment, thereby accruing no benefits. Recognizing that the majority of the cost associated with CAIR is associated with equipment purchase, and the duplicative nature of CAIR and the Cross-State Rule, we invoke a simplifying assumption that the benefits of the Cross-State Rule should be apportioned relative to the costs of CAIR and the Cross-State Rule.

<sup>18</sup> For example, a committee of the National Research Council/National Academy of Sciences released the study National Research Council (2002), which recommends improvements to EPA benefits estimates. In addition, we continue to work with EPA to consider recommendations from recent NRC reports, Miller, et al (2006) and National Research Council (2008). See also Environmental Protection Agency (2010).

The wide range of benefits estimates for particle control does not capture the full extent of the scientific uncertainty in measuring the health effects associated with exposure to fine particulate matter and its constituent elements. The six key assumptions in the benefits estimates are as follows:

1. Inhalation of fine particles is causally associated with premature death at concentrations near those experienced by most Americans on a daily basis. EPA has determined that the weight of available epidemiological evidence supports a determination of causality. Potential biological mechanisms for this effect while not completely understood, are supportive of this determination.
2. All fine particles, regardless of their chemical composition, are equally potent in causing premature mortality. This is an important assumption, because particulate matter (PM) produced via transported precursors emitted from electrical generating utilities (EGUs) tends to differ significantly from direct PM

benefits and costs presented in Tables 1-1 and 1-2 should be treated with some caution. If the reasons for uncertainty differ across individual rules, aggregating high and low-end estimates can result in totals that may be misleading. In the case of the EPA rules reported here, however, a substantial portion of the uncertainty is similar across several rules, including (1) the uncertainty in the reduction of premature deaths associated with reduction in particulate matter and (2) the uncertainty in the monetary value of reducing mortality risk.

More research remains to be done on several key questions, including analysis of the health benefits associated with reduction of particular matter, which, as noted, drive a large percentage of aggregate benefits from air pollution controls. Midway through FY 2009, EPA made changes to some underlying assumptions as well as updates to some of the model inputs. These changes are reflected in EPA's more recent Regulatory Impact Analyses. With respect to particulate matter, additional research would be exceedingly valuable to clarify and resolve relevant scientific issues and to make further progress on the relationship between particulate matter and health improvements.

We note in addition that EPA's 2006 National Ambient Air Quality Standards (NAAQS) for particulate matter (PM), with estimated benefits ranging from \$4 billion to \$40 billion per year and estimated costs of \$3 billion per year, is excluded from the 10-year aggregate estimates or the year-by-year estimates. The reason for the exclusion is to prevent double-counting: EPA finalized implementing rules, such as the Cross-State Air Pollution Rule, that will achieve emission reductions and impose costs that account for a major portion of the benefit and cost estimates associated with this NAAQS rule. Once those implementing regulations are finalized, the estimates for the associated NAAQS rulemaking will be adjusted or excluded, and estimates associated with the implementing rules promulgated in subsequent years will be used instead. The benefit and cost estimates for lead NAAQS, SO<sub>2</sub> NAAQS, and 2008 Ozone NAAQS may also be adjusted or dropped in the future reports to avoid double counting to the extent that EPA publishes implementing regulations that would be designed to achieve the emissions reductions required by these NAAQS.

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released from diesel engines and other industrial sources, but EPA has concluded that the scientific evidence is not yet sufficient to allow differentiation of benefits estimates by particle type.

3. The impact function for fine particles is approximately linear within the range of ambient concentrations under consideration, which includes concentrations below the National Ambient Air Quality Standard. Indeed, a significant portion of the benefits associated with more recent rules are from potential health benefits in regions that are in attainment with the fine particle standard.
4. The forecasts for future emissions and associated air quality modeling are valid. These analyses are based on up-to-date assessment tools and scientific literature that has been peer-reviewed. Although we recognize the difficulties, assumptions, and inherent uncertainties in the overall enterprise, we believe the results are highly useful in assessing the benefits of air quality regulations.
5. Some rules apply a national dollar benefit-per-ton estimate of the benefits of reducing directly emitted fine particulates from specific source categories. Because these benefit-per-ton estimates are based on national-level analysis that does not account for local variability in population density, meteorology, exposure, baseline health incidence rates, or other local factors, depending on the analysis and the location, they may over-estimate or under-estimate the actual benefits of controlling directly emitted fine particulates.
6. The value of mortality risk reduction is taken largely from studies of the willingness to accept risk in the labor market and might not necessarily apply to people in different stages of life or health status.

### 3. *Rules that Decrease Compliance Costs*

It is important to note as well that several regulatory actions resulted in a *decrease* in compliance costs. The net cost savings generated by these actions are included as “negative costs” for those years. In 2011, for example, EPA issued a rule that amended its Spill Prevention, Control, and Countermeasure (SPCC) regulations conditionally to exempt milk containers and associated equipment. This amendment produced significant cost savings. Similarly, EPA revised its SPCC regulations in 2009, among other things to tailor requirements to particular industry sectors, and to streamline certain rule requirements, thus producing net cost savings. In 2004, DOT issued a rule that reduced minimum vertical separation for airspace, also producing net cost savings.

Executive Order 13563, with its emphasis on retrospective analysis and streamlining burdensome regulations, is designed to promote decreases in compliance costs, where appropriate. A significant number of recently proposed and finalized rules produce such decreases (see the discussion in chapter II), with total savings in the billions of dollars. Coming reductions in compliance costs will be reflected in future Reports.

### 4. *Qualifications*

In order for comparisons or aggregations to be meaningful, benefit and cost estimates should correctly account for all substantial effects of regulatory actions, some of which may not be reflected in the available data. Any comparison or aggregation across rules should also consider a number of factors that our presentation is not yet able to take into account. While practice is rooted in empirical research and is not widely variable, agencies have adopted somewhat different methodologies—for example, different monetized values for effects (such as mortality<sup>19</sup> and morbidity), different baselines in terms of the regulations and controls already in

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<sup>19</sup> Agencies often design health and safety regulation to reduce risks to life, and valuation of the resulting benefits can be an important part of the analysis. What is sometimes called the “value of a statistical life” (VSL) is best understood not as the “valuation of life,” but as the valuation of *statistical mortality risks*. For example, the average person in a population of 50,000 may value a reduction in mortality risk of 1/50,000 at \$150. The value of reducing the risk of 1 *statistical* (as opposed to known or identified) fatality in this population would be \$7.5 million, representing the aggregation of the willingness to pay values held by everyone in the population. Building on an extensive and growing literature, OMB Circular A-4 provides background and discussion of the theory and practice of calculating VSL. It concludes that a substantial majority of the studies of VSL indicate a value that varies “from roughly \$1 million to \$10 million per statistical life.” Circular A-4 generally reports values in 2001 dollars; if we update these values to 2010 dollars the range would be \$1.2-\$12.2 million. In practice, agencies have tended to use a value above the mid-point of this range (i.e., greater than \$6.7 million in 2010 dollars).

Two agencies, EPA and DOT, have developed official guidance on VSL. In its 2011 update, DOT adopts a value of \$6.2 million (\$2010), and requires all the components of the Department to use that value in their RIAs. EPA recently changed its VSL to an older value of \$6.3 million (\$2000) and adjusts this value for real income growth to later years. In its final rule setting a new primary standard for nitrogen dioxide, for example, EPA adjusted this VSL to account for a different currency year (\$2006) and for income growth to 2020, which yields a VSL of \$8.9 million. EPA stated in this RIA, however, that it is continuing its efforts to update this guidance, and that it anticipated presenting results from this effort to its Science Advisory Board, with draft guidance following soon thereafter. EPA has also published a white paper “to highlight some key topics related to the valuation of mortality risks, and to describe several possible approaches for synthesizing the empirical estimates for mortality risk reductions from existing hedonic wage and stated preference studies for the purpose of valuing mortality risk reductions associated with future EPA policies.” Some of these issues include the possibilities of reporting value estimates in terms of risk

place, different rates of time preference, and different treatments of uncertainty. These differences are reflected in the estimates provided in Tables 1-1 and 1-2. And while we have generally relied on agency estimates in monetizing benefits and costs, and while those estimates have generally been subject both to public and to interagency review, our reliance on those estimates in this Report should not necessarily be taken as an OMB endorsement of all the varied methodologies used by agencies to estimate benefits and costs.

We have noted that many of these major rules have important non-quantified benefits and costs that may have been a key factor in an agency's decision to select a particular approach. In important cases, agencies have been unable to quantify the benefits of rules, simply because existing information does not permit reliable estimates. These qualitative issues are discussed in Table A-1 of Appendix A, agency rulemaking documents, and previous editions of this Report.

Finally, because these estimates exclude non-major rules and rules adopted more than ten years ago, the total benefits and costs of all Federal rules now in effect are likely to be significantly larger than the sum of the benefits and costs reported in Table 1-1. More research would be necessary to produce comprehensive estimates of total benefits and costs by agency and program. And as noted, it is important to consider retrospective, as opposed to *ex ante*, estimates of both benefits and costs; this topic is a continuing theme of this report.

## **B. Trends in Annual Benefits and Costs of Regulations Reviewed by OMB over the Last Ten Years**

Table 1-3 reports the total benefits and costs of rules issued from October 1, 2001 to September 30, 2011 by fiscal year for which reasonably complete monetized estimates of both

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changes, rather than "statistical lives"; adding a "cancer differential" to the standard estimates of mortality risk reduction values for policies expected to reduce carcinogenic pollutants; examining the role of altruism in valuing risk reductions; and, finally, incorporating alternative approaches to benefit transfer techniques. See Environmental Protection Agency (2010).

For the agencies that have not developed binding internal guidelines, we have done a brief review of RIAs and other materials to understand how VSLs have been used in practice. Although the Department of Homeland Security has no official policy on VSL, it recently sponsored a report through its U.S. Customs and Border Protection, and has used the recommendations of this report to inform VSL values for several recent rulemakings. This report recommends \$6.3 million (\$2008) and also recommends that DHS adjust this value upward over time for real income growth (in a manner similar to EPA's adjustment approach).

Other regulatory agencies that have used a VSL in individual rulemakings include DOL's Occupational Safety and Health Administration (OSHA) and HHS' Food and Drug Administration (FDA). In OSHA's rulemaking setting a Permissible Exposure Limit for Hexavalent Chromium, OSHA specifically referred to EPA guidance to justify a VSL of \$7.0 million (\$2003), as the types of air exposure risks regulated in this rulemaking were similar to those in EPA rulemakings. The FDA has consistently used values of \$5.0 and \$6.5 million (\$2002) in several of its rulemakings to monetize mortality risks, but it also uses a monetary value of the remaining life-years saved by alternative policies. This is sometimes referred to as a "Value of a Statistical Life Year" or VSLY. (See Circular A-4 for discussion.)

Our review suggests that in recent years, actual agency practice has avoided significant or puzzling inconsistencies. We have not found recent values below \$5 million or above \$9 million, and hence agency practice suggests a narrower band than that found in the literature review in Circular A-4. For a recent overview by the Congressional Research Service, see Copeland (2010).

benefits and costs are available.<sup>20</sup> For the purposes of showing general trends by fiscal year, Figure 1-1 reports the midpoints of the ranges reported in Table 1-3. As the figure shows, the monetized additional costs of private mandates tend to be around or below \$10 billion per year.

**Table 1-3: Total Annual Benefits and Costs of Major Rules by Fiscal Year, (billions of 2001 dollars)**

Fiscal Year	Number of Rules	Benefits	Costs
2002	2	1.5 to 6.4	0.6 to 2.2
2003	6	1.6 to 4.5	1.9 to 2.0
2004	10 <sup>21</sup>	8.8 to 69.8	3.0 to 3.2
2005	13	27.9 to 178.1	4.3 to 6.6
2006	6 <sup>22</sup>	2.5 to 5.0	1.1 to 1.4
2007	12	28.6 to 184.2	9.4 to 10.7
2008	12	8.6 to 39.4	7.9 to 9.2
2009	15 <sup>23</sup>	8.6 to 28.9	3.7 to 9.5
2010	17 <sup>24</sup>	18.6 to 85.9	6.4 to 12.4
2011	13	34.3 to 98.5	5.0 to 10.2

Variability in benefit estimates appears greater than in cost estimates. Note that the three highest years for benefits (2005, 2007, and 2011) are mostly explained by just three EPA regulations: the 2005 interstate air quality rule, the 2007 clean air fine particulate implementation rule, and the 2011 Cross-State Air Pollution rule.<sup>25</sup> Note also that the benefits exceed the costs in every fiscal year; that the highest benefit year, in terms of point estimates, was 2007; that 2007 was also the highest cost year, in those terms; and that the highest net benefit years, in those terms, were 2005, 2007, and 2011.

<sup>20</sup> This table includes all rules reported in Table 1-1. The ranges will not necessarily match previously reported estimates for a fiscal year in past reports as rules have been dropped over time as described in this and past reports. See Appendix A for a complete list of rules included in these totals.

<sup>21</sup> This total excludes the impacts of EPA's 2004 "National Emission Standards for Hazardous Air Pollutants: Industrial/Commercial/Institutional Boilers and Process Heaters," included in our 10-year aggregate until last year's report. On June 19, 2007, the United States Court of Appeals for the District of Columbia Circuit vacated and remanded the national emission standards for hazardous air pollutants for industrial/commercial/institutional boilers and process heaters.

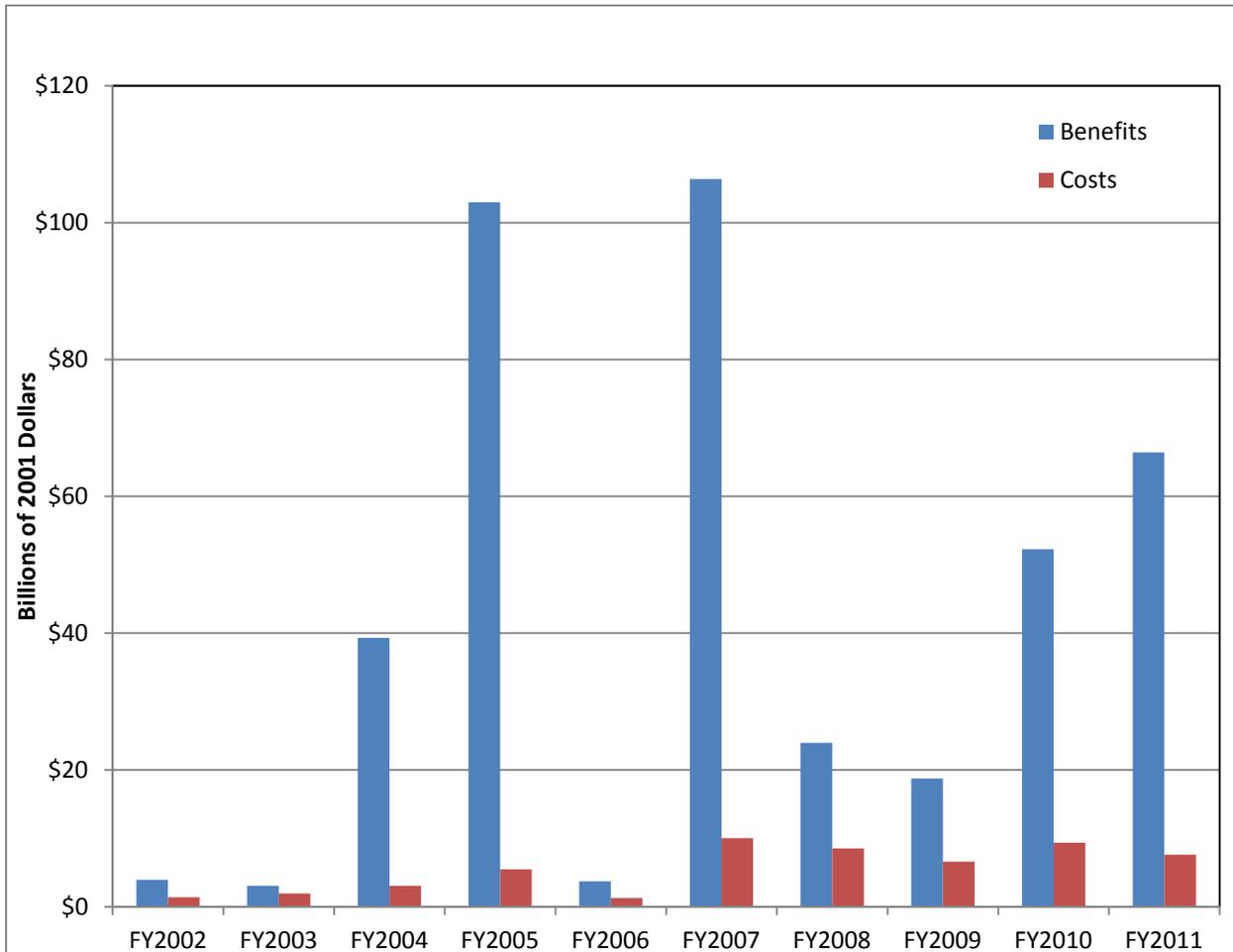
<sup>22</sup> This total does not include the impacts of EPA's 2006 PM NAAQS. Consistent with past practices, the benefit and cost estimates of the NAAQS rulemaking was only included until the implementing regulations were finalized.

<sup>23</sup> This total excludes DOT's 2008 Hours of Service rule which finalized provisions included for an interim final rule included in the 2005 totals.

<sup>24</sup> This total excludes the impacts of DOT's 2010 Electronic On-Board Recorders for Hours-of-Service Compliance rule. This rule was vacated by the U.S. Court of Appeals on Aug. 26, 2011.

<sup>25</sup> This chart includes the impacts of EPA's 2005 Clean Air Interstate Rule, which (as explained in a previous footnote) was vacated and subsequently remanded without vacatur. On July 6, 2011, EPA finalized the Cross-State Air Pollution Rule which replaced the Clean Air Interstate Rule.

**Figure 1-1: Total Annual Benefits and Costs of Major Rules by Fiscal Year<sup>26</sup>**



The estimates we report here are prospective estimates made by agencies during the rulemaking process. As we have emphasized, it is possible that retrospective studies will show (as they sometimes have) that the benefits and costs were either overestimated or underestimated. As discussed elsewhere in this Report (see Appendix A) as well as previous Reports, the aggregate estimates of benefits and costs derived from estimates by different agencies and over different time periods are subject to some methodological variations and differing assumptions.

<sup>26</sup> Based on the mid-point of high and low estimates of annualized costs.

<sup>27</sup> In addition, the groundwork for the regulations issued by one administration is often begun in a previous administration.<sup>28</sup>

### **C. Estimates of the Benefits and Costs of Major Rules Issued in Fiscal Year 2011**

In this section, we examine in more detail the estimated benefits and costs of the 54 major final rules for which OMB concluded review during the 12-month period beginning October 1, 2010, and ending September 30, 2011.<sup>29</sup> (Note that 30 of the 54 rules – a majority – are budgetary transfer rules.) These major rules represent approximately 16 percent of the 337 final rules reviewed by OMB.<sup>30</sup> OMB believes, however, that the benefits and costs of major rules, which have the largest economic effects, account for the strong majority of the total benefits and costs of all rules subject to OMB review.<sup>31</sup>

The monetized costs and benefits estimates, aggregated by agency in Table 1-4 and listed in Table 1-5(a), are included in the ten-year aggregates in Tables 1-1, 1-2, and 1-3..

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<sup>27</sup> This is particularly true for EPA's air pollution regulations. Caution should be used in comparing benefits and costs over time in light of several factors, including new scientific evidence regarding the relationship between pollutants and health endpoints; changes in the EPA's choice of assumptions when uncertainty remains (e.g., regarding the shape of the concentration – response function as low levels); and differences in techniques for monetizing benefits (including changes to the value assigned to a statistical life). Aggregate estimates in the report reflect differences in approaches and assumptions over time. Summing across time does not reflect how EPA would calculate the benefits of prior rules today.

<sup>28</sup> For example, FDA's trans fat rule was proposed by the Clinton administration and issued by the Bush Administration, while the groundwork for EPA's 2004 non-road diesel engine rule was set by the NAAQS rules issued in 1997.

<sup>29</sup> This count excludes rules that were withdrawn from OMB review or rules that were rescinded, stayed, or vacated after publication. It also counts joint rules as a single rule, even if they were submitted to OMB separately for review.

<sup>30</sup> Counts of OMB-reviewed rules are available through the "review counts" and "search" tools on OIRA's regulatory information website ([www.reginfo.gov](http://www.reginfo.gov)).

<sup>31</sup> We discussed the relative contribution of major rules to the total impact of Federal regulation in detail in the "response-to-comments" section on pages 26-27 of the 2004 Report. In summary, our evaluation of a few representative agencies found that major rules represented the vast majority of the benefits and costs of all rules promulgated by these agencies and reviewed by OMB.

**Table 1-4: Estimates, by Agency, of the Total Annual Benefits and Costs of Major Rules: October 1, 2010 - September 30, 2011 (billions of 2001 dollars)**

<b>Agency</b>	<b>Number of Rules</b>	<b>Benefits</b>	<b>Costs</b>
Department of Energy	3	2.5 to 5.1	1.4 to 2.2
Department of Health and Human Services	2	0.9 to 10.2	0.3 to 0.7
Department of Labor	2	6.6 to 18.4	1.8 to 4.6
Department of Transportation	2	1.7 to 2.5	0.6 to 1.5
Environmental Protection Agency <sup>32</sup>	3	20.5 to 59.7	0.7
Joint DOT and EPA	1	2.2 to 2.6	0.3 to 0.5
<b>Total</b>	<b>13</b>	<b>34.3 to 98.5</b>	<b>5.0 to 10.2</b>

Thirty of the rules implement Federal budgetary programs as required or authorized by Congress; these primarily caused income transfers, usually from taxpayers to program beneficiaries. For example, the Department of Treasury has issued a rule implementing the Small Business Lending Fund Refinance Program, and has also issued a rule implementing the Crop Assistance Program. Rules of this kind are promulgated in response to statutes that authorize and often require them. Although rules that affect Federal budget programs are subject to Executive Orders 12866 and 13563 and OMB Circular A-4, and are reviewed by OMB, past Reports have focused primarily on regulations that have effects largely through private sector mandates. (For transfer rules, agencies typically report the estimated budgetary impacts.)

We recognize that markets embed distortions and that the transfers are not lump-sum. Hence, transfer rules may create social benefits or costs; for example, they may impose real costs on society to the extent that they cause people to change behavior, either by directly prohibiting or mandating certain activities, or, more often, by altering prices and costs. The costs resulting from these behavior changes are referred to as the “deadweight losses” associated with the transfer. The Regulatory Right-to-Know Act requires OMB to report the social costs and benefits of these rules, and OMB encourages agencies to report these costs and benefits for transfer rules; OMB will consider incorporating any such estimates into future Reports.

Table 1-5(a-c) lists each of the 24 “non-budget” rules and, where available, provides information on their monetized benefits, costs, and transfers. It is worth noting that the aggregate benefits far exceed the aggregate costs and that with only one exception, the estimated monetized benefits of individual rules exceeded the expected monetized costs in every case. (The

<sup>32</sup> EPA’s Construction and Development Effluent Limitation Guideline published on December 1, 2009 contained estimates of benefits and costs. However, effective January 4, 2011, EPA has stayed the numeric limitation of 280 nephelometric turbidity units (NTU) in the Guideline and will propose a revised limit in a future rulemaking. Therefore, the rule is not included in these estimates.

single exception, Water Quality Standards (Numeric Nutrient Criteria) for Florida's Lakes and Flowing Waters, was required by a consent decree.)

Table 1-6 lists each of 30 “budget” rules and provides information on the estimated income transfers. Unless otherwise noted, OMB simply converts to 2001 dollars agencies’ own estimates of annualized impacts. For all 54 budget and non-budget rules, we summarize the available information on the non-monetized impacts, where available, for these regulations in the “other information” column of Table A-1.

Overall, HHS promulgated the largest number of rules (eighteen). Fifteen of these largely transfer income from one group of entities to another without imposing significant costs on the private sector, while the other three do impose significant costs on the private sector.

**Table 1-5 (a): Major Rules Reviewed with Estimates of Both Annual Benefits and Costs, October 1, 2010 - September 30, 2011 (billions of 2001 dollars)**

Agency	RIN <sup>33</sup>	Title	Benefits	Costs
HHS	0910-AG41	Cigarette Warning Label Statements	0.2 Range: 0-9.0	<0.1
HHS	0938-AQ12	Administrative Simplification: Adoption of Authoring Organizations for Operating Rules and Adoption of Operating Rules for Eligibility and Claims Status (CMS-0032-IFC)	1.0 Range: 0.9-1.1	0.4 Range: 0.3-0.6
DOL	1210-AB07	Improved Fee Disclosure for Pension Plan Participants	1.6 Range: 0.8-3.3	0.3 Range: 0.2-0.4
DOL	1210-AB35	Statutory Exemption for Provision of Investment Advice	10.9 Range: 5.8-15.1	3.0 Range: 1.6-4.2
DOE	1904-AA89	Energy Efficiency Standards for Clothes Dryers and Room Air Conditioners	0.2 Range: 0.2-0.3	0.1 Range: 0.1-0.2
DOE	1904-AB79	Energy Efficiency Standards for Residential Refrigerators, Refrigerator-Freezers, and Freezers	1.8 Range: 1.7-3.0	0.8 Range: 0.8-1.3
DOE	1904-AC06	Energy Efficiency Standards for Residential Furnaces, Central Air Conditioners and Heat Pumps	0.9 Range: 0.7-1.8	0.5 Range: 0.5-0.7
EPA	2040-	Water Quality Standards (Numeric Nutrient	<0.1	0.1

<sup>33</sup> In 2010, OMB issued a memorandum on “Increasing Openness in the Rulemaking Process – Use of the Regulation Identifier Number (RIN)” (available at: [http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/IncreasingOpenness\\_04072010.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/IncreasingOpenness_04072010.pdf)). The memorandum provides that agencies should use the RIN on all relevant documents throughout the entire “lifecycle” of a rule. We believe that this requirement is helping members of the public to find regulatory information at each stage of the process and is promoting informed participation.

Agency	RIN <sup>33</sup>	Title	Benefits	Costs
	AF11	Criteria) for Florida's Lakes and Flowing Waters		Range: 0.1-0.2
EPA	2050-AG50	Oil Pollution Prevention: Spill Prevention, Control, and Countermeasure Rule Requirements - Amendments for Milk Containers	0	(0.1)
EPA	2060-AP50	Cross State Air Pollution Rule (CAIR Replacement Rule)	Range: 20.5-59.7	0.7
DOT	2125-AF19	Real-Time System Management Information Program	0.2	0.1
DOT	2127-AK23	Ejection Mitigation	1.5 Range: 1.5-2.4	0.4 Range: 0.4-1.4
DOT & EPA	2127-AK74; 2060-AP61	Commercial Medium- and Heavy-Duty On-Highway Vehicles and Work Truck Fuel Efficiency Standards	2.6 Range: 2.2-2.6	0.5 Range: 0.3-0.5

( ) indicates negative.

Nine rules partially monetized either benefits or costs and are listed in Table 1-5(b). Three such rules, DOI's Migratory Bird Hunting regulations and Treasury's Management of Federal Agency Disbursements regulation, assessed only benefits. Six rules reported only monetized costs and relevant transfers, without monetizing benefits. The potential transfer effects and non-quantified effects of rules are described in "other information" column of Table A-1.<sup>34</sup>

We continue to work with agencies to improve the quantification of the benefits and costs of these types of regulations and to make progress toward quantifying variables that have thus far been discussed only qualitatively. Executive Order 13563 notes that agencies "may consider (and discuss qualitatively) values that are difficult or impossible to quantify," but firmly states that

<sup>34</sup> In some instances, agencies have been unable to quantify the benefits and costs of rules because existing information does not permit reliable estimates. In these cases, agencies generally have followed the guidance of Circular A-4 and have provided detailed discussions of the nonquantified benefits and costs in their analysis of rules in order to help decisionmakers understand the significance of these factors. For example, DOI promulgates annual Migratory Bird Hunting regulations, which permit hunting of migratory birds. The two potential societal costs are (1) any long-run effect on the bird populations and (2) the cost associated with administering and enforcing the permit program. Evaluating the long-term population effect of annual hunting permits is difficult. Also, State governments administer and enforce the permit program; gathering this information is difficult. In addition, Treasury was unable to monetize the costs of the Management of Federal Agency Disbursements regulation. The major cost of the regulation is the inconvenience to those who did not want to receive federal benefit payments in debit cards and who would prefer to continue to receive these payments in checks; this cost is not easily monetized. DOI could not quantify the benefits of the additional protection provided by the rule involving Increased Safety Measures for Oil and Gas Operations on the Outer Continental Shelf. Instead the agency examined a scenario of avoiding both private and social costs in the event of a catastrophic spill.

“each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.”

**Table 1-5(b): Major Rules Reviewed with Partial Estimates of Annual Benefits or Costs, October 1, 2010 - September 30, 2011 (billions of 2001 dollars)<sup>35</sup>**

Agency	RIN	Title	Benefits	Costs
HHS	0950-AA06	Medical Loss Ratios	Not Estimated	<0.1
DOI	1010-AD68	Increased Safety Measures for Oil and Gas Operations on the Outer Continental Shelf (OCS)	Not Estimated	0.1
DOI	1018-AX34	Migratory Bird Hunting; 2011-12 Migratory Game Bird Hunting Regulations: Early Season	Range: 0.2-0.3	Not estimated
DOI	1018-AX34	Migratory Bird Hunting; 2011-12 Migratory Game Bird Hunting Regulations: Late Season	Range: 0.2-0.3	Not estimated
ED	1840-AD02	Institutional Eligibility Under the Higher Education Act of 1965; Student Assistance General Provisions	Not Estimated	0.1
ED	1840-AD06	Program Integrity: Gainful Employment-Measures	Not Estimated	0.1 <sup>36</sup>
EEOC	3046-AA85	Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act Amendments Act	Not Estimated	0.1-0.2
HUD	2502-AI70	SAFE Mortgage Licensing Act: Minimum Licensing Standards and Oversight Responsibilities (FR-5271-F-03)	Not Estimated	Range: 0.1-0.6
TREAS	1510-AB26	Management of Federal Agency Disbursements	0.1	Not Estimated

The regulatory analyses of two of the 24 “non-budget” rules did not provide an estimate of the incremental benefits or costs of the rule. These rules are provided in Table 1-5(c). The potential transfer effects and non-monetized effects are described in “other information” column of Table A-1.

<sup>35</sup> This table excludes TSA’s Air Cargo Screening final rule (RIN 1652-AA64). Although the overall annualized cost of the regulation was estimated to be about \$178 million at a discount rate of 7% (and \$180 million at a rate of 3%) relative to a pre-IFR baseline, the costs of the IFR were already included in the 2010 Report to Congress (Table 1-4). Relative to a post-IFR baseline, the final rule has annual economic cost savings of less than \$100 million per year, due to some minor reductions in the rule’s requirements. Therefore, the rule was not designated as economically significant at the final rule stage.

<sup>36</sup> The rule may result in additional compliance costs from enhanced career or debt management counseling or other efforts to improve a program's performance on the debt measures included in the regulation. These have not been quantified.

**Table 1-5(c): Additional Non-Budget Major Rules Reviewed, October 1, 2010 - September 30, 2011 (billions of 2001 dollars)**

Agency	RIN	Title
DOL	1205-AB61	Wage Methodology for the Temporary Non-Agricultural Employment H-2B program <sup>37</sup>
TREAS	1545-BH01	Regulations Governing Practice Before the Internal Revenue Service

**Table 1-6 Major Rules Implementing or Adjusting Federal Budgetary Programs, October 1, 2010 - September 30, 2011 (billions of 2001 dollars)**

Agency	RIN	Title	Transfers
USDA	0560-AH92	Biomass Crop Assistance Program	<0.1
USDA	0560-AI11	Crop Assistance Program	0.1-0.4
USDA	0570-AA73	Biorefinery Assistance Program--Section 9003	0.1
USDA	0570-AA75	Rural Business Contracts for Payments for the Bioenergy Program for Advanced Biofuels--Section 9005	0.1
USDA	0572-AC06	Rural Broadband Access Loans and Loan Guarantees	0.3-0.6
USDA	0584-AD60	Direct Certification of Children in Food Stamp Households and Certification of Homeless, Migrant, and Runaway Children for Free Meals in the NSLP, SBP, and SMP	0.1
USDA	0584-AE11	National School Lunch and School Breakfast Programs: School Food Service Account Revenue Amendments Related to the Healthy, Hunger-Free Kids Act of 2010	1.2-1.3
DOD	0720-AB45	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)/TRICARE: Inclusion of TRICARE Retail Pharmacy Program in Federal Procurement of Pharmaceuticals	0.6-0.9
DOD	0790-AI58	Homeowners Assistance Program (HAP)	0.4
HHS	0920-AA44	Implementation of Title I of the James Zadroga 9/11 Health and Compensation Act: WTC Health Program Requirements for Enrollment, Appeals, Certification of Health Conditions, and Reimbursement	0.1
HHS	0938-AP53	Children's Health Insurance Program (CHIP); Allotment Methodology and States' Fiscal Year	10.9

<sup>37</sup> The RIA provides estimates of the transfers between employers and workers. The Department of Labor is delaying the effective date of this rule to October 1, 2012 in response to recently enacted legislation that prohibits any funds from being used to implement the Wage Rule for the remainder of fiscal year (FY) 2012.

Agency	RIN	Title	Transfers
		2009 CHIP Allotments (CMS-2291-F)	
HHS	0938-AP79	Revisions to Payment Policies Under the Physician Fee Schedule and Part B for CY 2011 (CMS-1503-F)	12.8
HHS	0938-AP82	Changes to the Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System for CY 2011 (CMS-1504-F)	0.6
HHS	0938-AP88	Home Health Prospective Payment System Refinements and Rate Update for CY 2011 (CMS-1510-F)	0.8
HHS	0938-AQ00	Revisions to the Medicare Advantage and Medicare Prescription Drug Benefit Programs for Contract Year 2012(CMS-4144-F)	9.9-10.1
HHS	0938-AQ19	Medicaid Recovery Audit Contractors (CMS-6034-F)	0.3
HHS	0938-AQ20	Additional Screening, Application Fees, and Temporary Moratoria for Providers and Suppliers (CMS-6028-F)	<0.1
HHS	0938-AQ23	Inpatient Psychiatric Facilities Prospective Payment System--Update for Rate Year and Fiscal Year Beginning July 1, 2011 (CMS-1346-F)	0.1
HHS	0938-AQ24	Final Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and FY 2012 Rates and to the Long-Term Care Hospital PPS and FY 2012 Rates (CMS-1518-F)	1.2
HHS	0938-AQ28	Prospective Payment System for Inpatient Rehabilitation Facilities for FY 2012 (CMS-1349-P)	0.1
HHS	0938-AQ29	Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities--Update for FY 2012 (CMS-1351-P)	3.1
HHS	0938-AQ53	Enhanced Federal Funding for Medicaid Eligibility Determination and Enrollment Activities (CMS-2346-F)	0.3-0.5
HHS	0938-AQ55	Hospital Value-Based Purchasing Program (CMS-3239-F)	0
HHS	0938-AQ60	Revisions to Medicare Advantage and Part D Prescription Drug Programs; MIPPA-Related Marketing Revisions and Agent/Broker Compensation Plan (CMS-4138-F)	0.1
DOJ	1105-AB39	James Zadroga 9/11 Health and Compensation	0.3-0.4

Agency	RIN	Title	Transfers
		Act of 2010	
TREAS	1505-AC34	Small Business Lending Fund Refinance	2.3
HUD	2502-AI97	Emergency Homeowners' Loan Program	0.6-1.3
VA	2900-AN37	Payment for Inpatient and Outpatient Health Care Professional Services at Non-Departmental Facilities and Other Medical Charges Associated with Non-VA Outpatient Care	0.3
VA	2900-AN94	Caregivers Program	0.1
VA	2900-AO10	Vocational Rehabilitation and Employment Program—Changes to Subsistence Allowance	0.1

## 2. Major Rules Issued by Independent Agencies

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)<sup>38</sup> requires the Government Accountability Office (GAO) to submit to Congress reports on major rules, including rules issued by agencies not subject to Executive Order 12866. In preparing this Report, we reviewed the information contained in GAO reports on benefits and costs of major rules issued by independent agencies for the period of October 1, 2010 to September 30, 2011.<sup>39</sup> GAO reported that five agencies issued a total of 17 major rules during this period. (Rules by independent agencies are not subject to OMB review under Executive Order 13563 and Executive Order 12866.)

Table 1-7 lists each of these major rules and the extent to which GAO reported benefit and estimates for the rule. The majority of rules were issued to regulate the financial sector. Five of the nine rules promulgated by the Securities and Exchange Commission provided monetized cost estimates but did not attempt to monetize benefits. The Federal Reserve System promulgated rules on electronic fund transfer and truth-in-lending along with two rules on debit card fees and routing. These rules generally did not provide information on benefits and costs. Both the Commodity Futures Trading Commission and the Securities and Exchange Commission issued major rules that addressed Whistleblower Incentives and Protection. Given the limited information provided to and by the GAO, the Office of Management and Budget does not know whether the rigor of the analyses conducted by these agencies is similar to that of the analyses performed by agencies subject to OMB review.

The agencies in question are independent under the law, and under existing Executive Orders, OMB generally does not have authority to review their regulations or to require analysis of costs and benefits. We emphasize, however, that for the purposes of informing the public and obtaining a full accounting, it would be highly desirable to obtain better information on the benefits and costs of the rules issued by independent regulatory agencies. The absence of such

<sup>38</sup> Pub. L. No. 104-121.

<sup>39</sup> Footnote 3, above, states the criteria for including rules in the report. In practice, a rule was considered “major” for the purposes of the report if (a) it was estimated to have either annual costs or benefits of \$100 million or more or (b) it was likely to have a significant impact on the economy.

information is a continued obstacle to transparency, and it might also have adverse effects on public policy. Recall that consideration of costs and benefits is a pragmatic instrument for ensuring that regulations will improve social welfare; an absence of information on costs and benefits can lead to inferior decisions.

Executive Order 13563 emphasizes the importance of agency use of “the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” While that Executive Order applies only to executive agencies, independent agencies may wish to consider the use of such techniques. In Executive Order 13573, the President explicitly said that the independent agencies should follow the central principles of Executive Order 13563. In its February 2, 2011, guidance on Executive Order 13563, OMB also encouraged the independent agencies to follow the principles and requirements of the order.<sup>40</sup>

OMB provides in Appendix C of this Report a summary of the information available on the regulatory analyses for major rules by the independent agencies over the past ten years. This summary is similar to the ten-year lookback for regulation included in recent Reports. It examines the number of major rules promulgated by independent agencies as reported to the GAO from 2002 through 2011, which are presented in Table C-1.<sup>41</sup> Information is also presented on the extent to which the independent agencies reported benefit and cost information for these rules in Tables C-2 through C-4.

**Table 1-7: Major Rules Issued by Independent Regulatory Agencies, October 1, 2010 - September 30, 2011**

Agency	Rule	Information on Benefits or Costs	Monetized Benefits	Monetized Costs
Commodity Futures Trading Commission (CFTC)	Whistleblower Incentives and Protection (76 FR 53172)	Yes	No	No
Consumer Product Safety Commission (CPSC)	Safety Standards for Full-Size Baby Cribs and Non-Full Sized Baby Cribs; Final Rule (75 FR 81766)	No	No	No

<sup>40</sup> Memorandum for the Heads of Executive Departments and Agencies, and of Independent Regulatory Agencies, M-11-10, “Executive Order 13563, ‘Improving Regulation and Regulatory Review,’” p. 6, available at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-10.pdf>

<sup>41</sup> OMB did not finalize a Report in 1999; OMB reconstructed the estimates for this period based on GAO reports. Prior to the 2003 Report, OMB did not report on independent agency major rules on a fiscal year basis, but rather on an April-March cycle. Similar to last year, OMB is reporting all of the rules from 2002 through 2011 on a fiscal year basis (see Table C-1). The number of rules presented in earlier Reports may therefore not match the number of rules presented here.

<b>Agency</b>	<b>Rule</b>	<b>Information on Benefits or Costs</b>	<b>Monetized Benefits</b>	<b>Monetized Costs</b>
Federal Reserve System (FRS)	Debit Card Interchange Fees and Routing (76 FR 43394)	No	No	No
Federal Reserve System (FRS)	Debit card Interchange Fees and Routing (76 FR 43478)	No	No	No
Federal Reserve System (FRS)	Electronic Fund Transfers (75 FR 50683)	No	No	No
Federal Reserve System (FRS)	Truth In Lending (76 FR 22948)	No	No	No
Nuclear Regulatory Commission (NRC)	Revision of Fee Schedules; Fee Recovery for Fiscal Year 2011 (76 FR 36780)	Yes	No	Yes
Securities and Exchange Commission (SEC)	Disclosure for Asset Backed-Securities Require by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (76 FR 4489)	Yes	No	No
Securities and Exchange Commission (SEC)	Family Offices (76 FR 37983)	Yes	No	Yes
Securities and Exchange Commission (SEC)	Issuer Review of Assets in Offerings of Asset-Backed Securities (76 FR 4231)	Yes	No	No
Securities and Exchange Commission (SEC)	Large Trader Reporting (76 FR 46960)	Yes	No	Yes

Agency	Rule	Information on Benefits or Costs	Monetized Benefits	Monetized Costs
Securities and Exchange Commission (SEC)	Regulation SHO (75 FR 68702)	No	No	No
Securities and Exchange Commission (SEC)	Reporting of Security-Based Swap Transaction Data (75 FR 64643)	Yes	No	Yes
Securities and Exchange Commission (SEC)	Risk Management Controls for Brokers or Dealers with Market Access (75 FR 69792)	Yes	No	Yes
Securities and Exchange Commission (SEC)	Rules Implementing Amendments to the Investment Advisers Act of 1940 (76 FR 42950)	Yes	No	No
Securities and Exchange Commission (SEC)	Shareholder Approval Compensation and Golden Parachute Compensation (76 FR 6010)	Yes	No	Yes
Securities and Exchange Commission (SEC)	Whistleblowers Incentives and Protections (76 FR 34300)	Yes	No	No

**D. The Impact of Federal Regulation on State, Local, and Tribal Governments, Small Business, Wages, and Economic Growth**

Section 624 (a)(2) of the Regulatory Right-to-Know Act requires OMB to present an analysis of the impacts of Federal regulation on State, local, and tribal governments, small business, wages, and economic growth. In addition, the 2011 Presidential Memorandum: Administrative Flexibility calls for a series of measures to promote flexibility for State, local, and tribal governments; these measures include reduced reporting burdens and streamlined regulation.<sup>42</sup>

<sup>42</sup> President Barack Obama, Memorandum for the Heads of Executive Departments and Agencies, “Presidential Memorandum – Administrative Flexibility,” available at <http://www.whitehouse.gov/the-press-office/2011/02/28/presidential-memorandum-administrative-flexibility>.

## ***1. Impacts on State, Local, and Tribal Governments***

Over the past ten years, only three rules (and none issued in the last three years) have imposed costs of more than \$100 million per year (\$2001) on State, local, and tribal governments (and thus have been classified as public sector mandates under the Unfunded Mandates Reform Act of 1995):<sup>43</sup>

- *EPA's National Primary Drinking Water Regulations: Long Term 2 Enhanced Surface Water Treatment (2005)*: The rule protects against illness due to cryptosporidium and other microbial pathogens in drinking water and addresses risk-risk trade-offs with the control of disinfection byproducts. It requires the use of treatment techniques, along with monitoring, reporting, and public notification requirements, for all public water systems that use surface water sources. The monetized benefits of the rule range from approximately \$260 million to \$1.8 billion. The monetized costs of the rule range from approximately \$80 million to \$130 million.
- *EPA's National Primary Drinking Water Regulations: Stage 2 Disinfection Byproducts Rule (2006)*: The rule protects against illness due to drinking water disinfectants and disinfection byproducts (DBPs).<sup>44</sup> The rule effectively tightens the existing standards by making them applicable to each point in the drinking water distribution system individually, rather than only on an average basis to the system as a whole. EPA has determined that this rule may contain a Federal mandate that results in expenditures by State, local, and tribal governments, and the private sector, of \$100 million or more in any one year. While the annualized costs fall below the \$100 million threshold, the costs in some future years may be above the \$100 million mark as public drinking water systems make capital investments and finance these through bonds, loans, and other means.
- *DHS's Chemical Facility Anti-Terrorism Standards Rule (2007)*: This rule establishes risk-based performance standards for the security of our nation's chemical facilities. It requires covered chemical facilities to prepare Security Vulnerability Assessments (SVAs), which identify facility security vulnerabilities, and to develop and implement Site Security Plans (SSPs), which include measures that satisfy the identified risk-based performance standards. The rule also provides DHS with the authority to seek compliance through the issuance of Orders, including Orders Assessing Civil Penalty and Orders for the Cessation of Operations. DHS has

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<sup>43</sup> We note that EPA's rules setting air quality standards for ozone and particulate matter may ultimately lead to expenditures by State, local, or tribal governments of \$100 million or more. However, Title II of the Unfunded Mandates Reform Act provides that agency statements of compliance with Section 202 must be conducted "unless otherwise prohibited by law." 2 U.S.C. § 1532 (a). The conference report to this legislation indicates that this language means that the section "does not require the preparation of any estimate or analysis if the agency is prohibited by law from considering the estimate or analysis in adopting the rule." H.R. Conf. Rep. No. 104-76 at 39 (1995). EPA has stated, and the courts have affirmed, that under the Clean Air Act, the criteria air pollutant ambient air quality standards are health-based and EPA is not to consider costs in setting the standards.

<sup>44</sup> While causal links have not been definitively established, a growing body of evidence has found associations between exposure to DBPs and various forms of cancer, as well as several adverse reproductive endpoints (e.g., spontaneous abortion).

determined that this rule constitutes an unfunded mandate on the private sector. In the regulatory impact assessment published with this rule, DHS estimates that there are 1,500 to 6,500 covered chemical facilities. DHS also assumes that this rule may require certain municipalities that own and/or operate power generating facilities to purchase security enhancements. Although DHS is unable to determine if this rule will impose an enforceable duty upon State, local, and tribal governments of \$100 million (adjusted annually for inflation) or more in any one year, it has been included in this list for the sake of completeness.

Although these three rules were the only ones over the past ten years to require expenditures by State, local, and tribal governments exceeding \$100 million (adjusted for inflation), they were not the only rules with impacts on other levels of governments. For example, many rules have monetary impacts lower than the \$100 million threshold, and agencies are also required to consider the federalism implications of rulemakings under Executive Order 13132.

## **2. Impact on Small Business**

The Regulatory Right-to-Know Act calls for an analysis of the effects of regulations on small business. Consistent with that direction, Executive Order 12866, “Regulatory Planning and Review,” recognizes the need to attend to such effects. That Executive Order, reaffirmed by and incorporated in Executive Order 13563, “Improving Regulation and Regulatory Review,” directs agencies to tailor their regulations by business size in order to impose the least burden on society, consistent with the achievement of regulatory objectives. It also calls for the development of short forms and other efficient regulatory approaches for small businesses and other entities.

In the findings section of SBREFA, Congress states that “small businesses bear a disproportionate share of regulatory costs and burdens.”<sup>45</sup> When relevant regulations are issued, each firm must determine whether a regulation applies, how to comply, and whether it is in compliance. As firms increase in size, fixed costs of regulatory compliance are spread over a larger revenue and employee base, which often results in lower regulatory costs per unit of output.

In recognition of these principles, many statutes and regulations explicitly attempt to reduce burdens on small businesses, in part to promote economic growth and in part to ensure against unnecessary or unjustified costs and adverse effects on employment and wages. For example, agencies frequently tailor regulations to limit the costs imposed on small business and to offer regulatory relief, including explicit exemptions for small businesses and slower phase-in schedules, allowing adequate periods of transition. Moreover, the Regulatory Flexibility Act (RFA) requires agencies to assess the effect of regulations on small businesses.<sup>46</sup> Under the RFA, whenever an agency concludes that a particular regulation will have a significant economic effect on a substantial number of small entities, the agency must conduct both an initial and final regulatory flexibility analysis. This analysis must include (among other things) an assessment of the likely burden of the rule on small entities and an analysis of alternatives that may afford

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<sup>45</sup> Section 202(2) of Pub. L. No. 104-121.

<sup>46</sup> 5 U.S.C. §§ 601-612.

relief to small entities while achieving the regulatory goals. OMB works closely with agencies to promote compliance with RFA and to tailor regulations to reduce unjustified costs and to create appropriate flexibility.

On January 18, 2011, President Obama issued a memorandum to underline the requirements of the RFA and to direct agencies to offer an explanation of any failure to provide flexibility to small businesses in proposed or final rules. Such flexibility may include delayed compliance dates, simplified reporting requirements, and partial or total exemptions. The President's memorandum emphasizes the relationship between small and new businesses and economic growth and job creation; he directed agencies to ensure, to the extent feasible and consistent with law, that regulatory initiatives contain flexibility for small businesses.<sup>47</sup>

The empirical evidence of the effects of regulation on small business remains less than clear. We have cited in previous Reports research by the Small Business Administration (SBA) Office of Advocacy, suggesting that small entities disproportionately shoulder regulatory and paperwork burdens. The Office of Advocacy has sponsored at least four studies that estimate the burden of regulation on small businesses.<sup>48</sup> In a study sponsored by SBA (and cited in our 2010 Report), Dean, et al., concludes that environmental regulations act as barriers to entry for small firms.<sup>49</sup>

Becker offers a more complex view, focusing on the effect of air pollution regulation on small business.<sup>50</sup> He finds that although "progressively larger facilities had progressively higher unit abatement costs, ceteris paribus,"<sup>51</sup> the relationship between firm size and pollution abatement costs varies depending on the regulated pollutant. For troposphere ozone, the regulatory burden seems to fall substantially on the smallest three quartiles of plants. For SO<sub>x</sub>, the relationship between regulatory burden and the firm size seems to be U-shaped. For total suspended particles, new multi-unit emitting plants in the smallest size class had \$265 more capital expenditure (per \$10,000 of value added) in non-attainment counties than similar plants in attainment counties, while "those in the larger size classes had an additional \$511-687 in expenditure...though the rise was not monotonic."<sup>52</sup>

The evidence in the literature, while suggestive, remains preliminary, inconclusive, and mixed. OMB continues to investigate the evolving literature on the relevant questions in order to obtain a more precise picture. It is clear, however, that some regulations have significant adverse effects on small business and that it is appropriate to take steps to create flexibility in the event that those adverse effects cannot be justified by commensurate benefits. As the President's 2011 memorandum directs, agencies should specifically explain any refusal to take such steps, especially in light of the importance of small businesses and startups for economic growth and job creation.

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<sup>47</sup> Barack Obama, Memorandum for the Heads of Executive Departments and Agencies, "Presidential Memoranda – Regulatory Flexibility, Small Business, and Job Creation," available at <http://www.whitehouse.gov/the-press-office/2011/01/18/presidential-memoranda-regulatory-flexibility-small-business-and-job-cre>.

<sup>48</sup> See Hopkins (1995); Dean, et al. (2000); Crain and Hopkins (2001); Crain (2005).

<sup>49</sup> Dean, et al. (2000).

<sup>50</sup> Becker (2005).

<sup>51</sup> *Id.*, p. 163.

<sup>52</sup> *Id.*, p. 165.

### **3. Impact on Wages and Employment**

Regulations of many different markets and areas of activity can ultimately affect labor markets, producing changes in wages and employment levels. Some regulations can have adverse effects on both dimensions, especially if they significantly increase costs; other regulations might produce benefits, especially if they significantly decrease costs. The relevant effects can be quite complex, since in general equilibrium, regulation in one market can have ripple effects across many markets, making it difficult to generalize. In addition, some regulations require or promote activities that may have beneficial effects on job creation.

We discuss here the effect of labor market regulations, environmental regulations, and economic regulations on wages and employment. OMB continues to investigate the possibility that certain kinds of regulations can have adverse effects on job creation in particular, and is interested both in empirical work and in taking steps to reduce or eliminate such adverse effects. Under Executive Order 13563, job creation is an important consideration in regulatory review. (“Our regulatory system must promote public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.”). In light of Executive Order 13563, a number of recent Regulatory Impact Analyses attempt to identify the likely employment effects of regulation (whether positive or negative).

#### **a. Labor market regulations.**

It is perhaps simplest to analyze the effects of direct regulation of labor markets, as they can be plausibly analyzed using a relatively simple partial equilibrium framework—i.e., one that focuses exclusively on the labor market, ignoring the effects through other markets. There are many different types of labor market regulations. Perhaps the most obvious are direct price controls, such as minimum wage laws.<sup>53</sup> Another form of labor market regulation consists of regulations that mandate particular employer-provided benefits, such as the requirement under the Family and Medical Leave Act (FMLA) to provide unpaid leave to care for a new child; in the same category are rules that affect working conditions, such as workplace safety regulations under the Occupational Safety and Health Act. Another category of labor market regulation is anti-discrimination law, which protects certain classes of workers from discrimination in hiring and wage-setting decisions. Yet another form of labor market regulation governs the ability of workers and firms to bargain collectively; in general, U.S. competition law prohibits collusion among employers and allows collective bargaining by workers.

The effects of these approaches must be analyzed separately. Here we outline the theory and evidence on the effect of mandated benefits regulations on wages and employment levels. To be concrete, consider a workplace safety regulation. Summers provides the standard price-theoretic treatment of such regulations.<sup>54</sup> Such a regulation will shift the labor supply curve down by the amount that workers value the increase in safety, so that workers are willing to supply more labor for a given wage than in the absence of the regulation. Because it imposes compliance costs on employers, the regulation also shifts the labor demand curve down by the amount of the compliance cost.

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<sup>53</sup> Neumark & Wascher (2008).

<sup>54</sup> Summers (1989).

If workers value the mandated benefit at more than it costs employers to provide the benefit, then both the employment level and net wages (i.e., monetary compensation plus the value of non-monetary benefits such as safety) will rise. Under standard assumptions, employers have incentives to provide such benefits, but various market failures may result in suboptimal provision of such benefits. Conversely, if workers value the mandated benefit at less than its cost, then the employment level and net wages will fall. This simple model assumes that wages can indeed perfectly adjust downwards in response to the mandated benefits—but if wages are sticky, then the regulation could result in a decrease in employment levels and an increase in net wages.

In the case of group-specific mandated benefits, which are targeted at identifiable groups of workers in the population, the theoretical analysis is more complicated. Jolls provides the leading account and emphasizes that the interaction of group-specific mandated benefits regulation with anti-discrimination law determines its consequences for labor markets.<sup>55</sup> Consider, for instance, regulations under the Americans with Disabilities Act (ADA) that require that employers accommodate the special needs of disabled employees—a group-specific mandated benefit. The law also forbids employers from discriminating against disabled workers in hiring and compensation decisions. To the extent that it is easier to enforce the prohibition of discrimination in wage setting than in hiring decisions, Jolls argues that the law will result in no reduction in wages for disabled workers but a reduction in their employment level, because employers will prefer to hire (cheaper) non-disabled workers.

In contrast, group-specific mandates that target women, such as maternity leave mandates, are more likely to have an effect on wages because women are disproportionately represented in a few occupations, and hence their wages can more easily be adjusted downward without triggering anti-discrimination enforcement. These mandates can be analyzed in the standard framework provided by Summers described above, and because wages adjust down, are less likely to have a negative effect on employment.

The empirical literature does not offer unambiguous conclusions, but some studies provide support for the predictions of these simple partial equilibrium models. Acemoglu and Angrist find that the ADA resulted in no decrease in relative wages of disabled people but a decrease in employment levels.<sup>56</sup> In contrast, Gruber finds that regulations that require employers to provide comprehensive coverage for childbirth in health insurance plans result in a decrease in women's wages but have no effect on their employment levels.<sup>57</sup> Studies examining the effect of the FMLA in the U.S., however, find little effect on either relative employment levels or wages of women, perhaps because the mandated leave is short and unpaid, and many employers provided maternity leave prior to the law.<sup>58</sup> OMB continues to investigate the growing literature on these topics. The references here are meant to be illustrative rather than exhaustive.

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<sup>55</sup> Jolls (2000).

<sup>56</sup> Acemoglu and Angrist (2001).

<sup>57</sup> Gruber (1994).

<sup>58</sup> Waldfogel (1999) and Baum (2003). Ruhm (1998) examines parental leave mandates in Europe and finds that they are associated with increases in women's relative employment levels and reductions in their relative wages.

## b. Environmental regulation.

The effects of environmental regulation on the labor market can be difficult to assess, in part because those effects are not easy to disentangle from the effects of other economic changes over time and across industries. The underlying questions require careful and continuing conceptual analysis and empirical study, and OMB is following new developments, both conceptual and empirical. In this section we summarize some of the leading articles that are often cited in the academic literature.

Surveying the early studies, Goodstein (1994) finds that seven of nine relevant studies showed increases in employment as a result of environmental regulation, one showed a decrease, and one was inconclusive. He states that “on balance, the available studies indicate that environmental spending ... has probably led to a net increase in the number of jobs in the U.S. economy ... although if it exists, this effect is not large.” A more recent discussion finds that the research thus far has “yielded mixed results” with respect to “the over-all employment effects of environmental regulation” in the short- or medium-term.<sup>59</sup>

In an influential treatment, Morgenstern, Pizer, and Shih (2002) explore four highly polluting, regulated industries to examine the effect of higher abatement costs from regulation on employment.<sup>60</sup> The authors conclude that increased abatement expenditures generally do not cause a significant change in employment. In reaching this conclusion, they provide a general framework, identifying three sources of potential beneficial and adverse effects that regulation could have on employment:

- *Demand effect:* higher production costs raise market prices and hence reduce consumption (and production), thus reducing demand for output, with potentially negative effects on employment; in the authors’ words, the “extent of this effect depends on the cost increase passed on to consumers as well as the demand elasticity of industry output.”
- *Cost effect:* As costs go up, plants add more capital and labor (holding other factors constant), with potentially positive effects on employment; in the authors’ words, as “production costs rise, more inputs, including labor, are used to produce the same amount of output.”
- *Factor-shift effect:* Post-regulation production technologies may be more or less labor intensive (i.e., more/less labor is required per dollar of output); in the authors’ words, “environmental activities may be more labor intensive than conventional production,” meaning that “the amount of labor per dollar of output will rise,” though it is also possible that “cleaner operations could involve automation and less employment, for example.”

Isolating these elements, the authors expect, and find, *positive* employment effects in industries (such as petroleum and plastics) where environmental activities are labor-intensive and demand is relatively inelastic. Where the pollution abatement activities required or encouraged

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<sup>59</sup> Berman and Bui (2001b).

<sup>60</sup> Data include information from 1979, 1980, 1981, 1985, 1988 and 1991.

by regulation are not labor-intensive, and where demand is elastic, positive employment effects would not be expected and negative effects should be anticipated to occur; in such cases, the demand effect will dominate the outcome. But the authors find that in those industries where labor already represents a large share of production costs and where demand is relatively more elastic (such as steel and pulp and paper), there is nonetheless little evidence of any statistically significant employment consequence. They also state that “increased environmental spending generally does *not* cause a significant change in industry-level employment. Our average across all four industries is a net gain of 1.5 jobs per \$1 million in additional environmental spending, with a standard error of 2.2 jobs—an insignificant effect.”

In another study, Berman and Bui (2001) use direct measures of regulation and plant data to estimate the employment effects of sharply increased air quality regulation in Los Angeles. They compare changes in employment in affected plants to those in other plants in the same industries but in regions not subject to the local regulations. The authors find that “while regulations do impose large costs, they have a limited effect on employment” – even when exit and dissuaded entry effects are considered.<sup>61</sup> Their conclusion is that local air quality regulation “probably increased labor demand slightly.” In their view, the limited effects likely arose because (1) the regulations applied disproportionately to capital-intensive plants with relatively little employment; (2) the plants sold to local markets where competitors were subject to the same regulations (so that sales were relatively unaffected); and (3) abatement inputs served as complements to employment.

In a related paper, Cole and Elliott (2007) study the impact of UK environmental regulations on sectoral employment using panel data spanning 27 different industries over 5 years. They find that environmental regulation costs did not have a statistically significant effect on employment, regardless of whether such costs were treated as exogenous or endogenous. The authors suggest that regulation costs could generate “competing effects on employment and cancel each other out” or simply have no discernible impact at all. By contrast, other sectoral studies – focusing on the manufacturing sector – have found negative effects on employment.<sup>62</sup>

The 2010 Report states that OMB is also exploring the risk that domestic regulation might lead companies to do business abroad as a result of domestic regulation in the environmental area, resulting in depressed wages and employment. The economic literature has for some time examined firms’ decisions to locate new plants or relocate existing plants in response to environmental regulations.

In this context, the evidence is both suggestive and mixed. In their review of the literature on the effect of environmental regulation on the manufacturing sector, Jaffe et al. find that “although the long-run social costs of environmental regulation may be significant, including adverse effects on productivity, studies attempting to measure the effect of environmental regulation on net exports, overall trade flows, and plant-location decisions have

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<sup>61</sup> Berman and Bui (2001).

<sup>62</sup> See, e.g., Greenstone (2002); Kahn (1997). See also Walker (2011), for a recent finding of negative effects on employment as a result of environmental regulation.

produced estimates that are either small, statistically insignificant, or not robust to tests of model specification.”<sup>63</sup>

Using 17-year panel data, Keller and Levinson (2002) find the stringency of environmental regulation (expressed in pollution abatement costs) has “small deterrent effects” on states competing for foreign direct investment.<sup>64</sup> Xing and Kolstad find “using instruments for the unobserved variables, the statistical results show that the laxity of environmental regulations in a host country is a significant determinant of F[oreign] D[irect] I[nvestment] from the US for heavily polluting industries and is insignificant for less polluting industries.”<sup>65</sup>

A recent study by Hanna (2010) measured the response of US-based multinationals foreign direct investment decisions to the Clean Air Act Amendments using a panel of firm-level data over the period 1966-1999. Consistent with the theory that regulation causes firms to substitute foreign for domestic production, the authors find that in the environmental area, domestic regulation has led US-based multinational companies “to increase their foreign assets in polluting industries by 5.3 percent and their foreign output by 9 percent.”<sup>66</sup> The authors also find that these results are more robust for firms that manufactured within an industry for which imports had historically accounted for a large percentage of US consumption (see also Greenstone (2002) discussed below). Like Hanna (2010), Brunnermeier and Levinson (2004), using panel data, also find “statistically significant pollution haven effects of reasonable magnitude.”<sup>67</sup> Levinson and Taylor’s (2008) results in examining trade flows and environmental regulation are consistent with these other studies.<sup>68</sup>

### **c. Economic regulation.**

Rate regulations and restrictions on entry in product markets—commonly referred to as “economic regulation”—can have important effects on labor markets. As emphasized by Peoples,<sup>69</sup> restrictions on entry into an industry can make unionization of the industry easier because as a result the industry is dominated by a few large firms, which lowers the cost of organizing workers. The resulting high unionization rates give unions in the regulated industries substantial bargaining power, and as a result wages in regulated industries, which historically include trucking, electricity, and airlines, are higher. Moreover, rate regulations that allow firms in these industries to pass costs on to customers may make it easier for unions to bargain for relatively high wages.

To the extent that economic regulation also results in higher prices in the product market, consumers, including workers, will of course have to pay those prices. Blanchard and Giavazzi show in theoretical terms that the increased markups in the product market caused by widespread economic regulation can result in both lower real wages of workers, measured in terms of

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<sup>63</sup> Jaffe et al, pp. 157-8.

<sup>64</sup> Keller and Levinson (2002), p. 691.

<sup>65</sup> Xing and Kolstad (2002), p. 1.

<sup>66</sup> Hanna (2010), p. 160.

<sup>67</sup> Brunnermeier and Levinson (2004), p. 6.

<sup>68</sup> Levinson and Taylor (2008).

<sup>69</sup> Peoples (1998).

purchasing power, and lower employment levels.<sup>70</sup> The theoretical negative effect of entry regulation on employment was supported empirically by Bertrand and Kramarz,<sup>71</sup> who examine entry restrictions in the French retail industry and find that they have reduced employment growth in France.

#### **4. Impact on Economic Growth**

Measuring the effects of regulation on economic growth is a complex task. The category of “regulation” is of course very large. Some forms of regulation may have a positive effect on growth, perhaps by promoting stable and efficient operation of financial markets, by improving educational outcomes, by promoting innovation, or by upgrading the operation of the transportation system. An absence of regulation, or poorly designed deregulatory initiatives, may have significant adverse effects on growth – if, for example, they undermine the stability and efficiency of financial markets.

Excessive and unnecessary regulations, on the other hand, can place undue burdens on companies, consumers, and workers, and may cause growth and overall productivity to slow. While the evidence remains less than entirely clear, some evidence suggests that domestic environmental regulation has led some U.S.-based multinationals to invest in other nations (especially in the domain of manufacturing), and in that sense, such regulation may have an adverse effect on domestic growth. It is generally agreed that predictability and certainty are highly desirable features of a regulatory system. (We note parenthetically that Executive Order 13563 emphasizes that our regulatory system “must promote predictability and reduce uncertainty”; in certain recent actions and decisions, including the decision not to finalize the EPA’s proposed ozone rule in 2011, the Administration has emphasized the importance of predictability and certainty.) At the same time, the direct impacts of particular regulations, or categories of regulations, on the overall economy may be difficult to establish because causal chains are uncertain and because it is hard to control relevant variables.

##### **a. Some conceptual challenges and the nature of growth.**

One difficulty with measuring the relationship between regulation and economic growth is identifying the appropriate measure of output. Economists frequently look at Gross Domestic Product (GDP), which is also our principal emphasis here (see below), but as a growing technical literature suggests, GDP may not adequately account for the effects of some regulations. For example, GDP does not capture directly relevant benefits of regulation, such as environmental protection, that do not result in increases in goods or services produced.<sup>72</sup> Efforts to expand the national accounts to incorporate omitted factors – such as improvements in environmental quality in satellite accounts – suggest the incompleteness of existing measures.<sup>73</sup>

A detailed literature explores some of the potentially deeper limitations of national income and product accounting. There is a complex and not fully understood relationship between GDP growth and subjective well-being (insofar as a rapidly growing literature suggests

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<sup>70</sup> Blanchard and Giavazzi (2003).

<sup>71</sup> Bertrand and Kramarz (2002).

<sup>72</sup> See Sen (1999a, 1999b), Krueger (2009), Kahneman, et al. (2004), and Stiglitz, et al. (2010).

<sup>73</sup> Nordhaus & Kokkelenberg (1999); Nordhaus (2004).

that the latter may be measured).<sup>74</sup> Two of the most important contributors to this literature are Nobel Prize winner Daniel Kahneman and Council of Economic Advisers Chairman Alan Krueger. Some studies, for example, conclude that, on average, increases in subjective well-being are clearly and consistently associated with rising levels of GDP across different countries.<sup>75</sup> Such studies find that this positive relationship is even stronger when comparing the subjective well-being of richer and poorer members within the same country at a single point in time.<sup>76</sup> Other studies point to cross-country data suggesting that as income per capita increases, subjective well-being increases steeply but only up to a certain threshold. Afterwards, levels of happiness are only weakly correlated with further increases in income per capita; that is, above some threshold level of GDP, income has little effect on subjective well-being.<sup>77</sup> The precise relationship between GDP growth and subjective well-being has yet to be settled.

A more general observation is that there may be a significant difference between self-reported life satisfaction and self-reported day-to-day experience; the measure of “life satisfaction” evidently captures judgments that are not captured in day-to-day experience, and vice-versa.<sup>78</sup> Some studies, for example, find that life satisfaction generally increases with income but that experienced well-being does not.<sup>79</sup>

In this vein, Krueger, et al, offer an alternative measure of well-being—National Time Accounting—that proposes to measure and analyze how people spend and experience their time.<sup>80</sup> One claim is that such measures provide important information that is not fully or adequately captured in GDP or other existing measures. This approach provides an extension to regular time use surveys and uses what the authors call the Day Reconstruction Method (DRM) to ask respondents what they were doing and how they felt at different times during the day.

Federal statistical initiatives are currently underway that are influenced by and build upon this approach. The National Institute on Aging (NIA) is supporting the inclusion of well-being measures in a number of large population-based surveys, both nationally and internationally. Specifically, a module of questions, designed by Krueger with funding from NIA, was fielded in the 2010 American Time Use Survey (ATUS). The ATUS, which is conducted by the U.S. Census Bureau for the Bureau of Labor Statistics (BLS), is a continuous survey about how individuals age 15 and over spend their time doing various activities, such as work, childcare, housework, watching television, volunteering, and socializing. In the module, up to three activities that a respondent reports are randomly selected, and respondents are asked how happy,

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<sup>74</sup> See Krueger (2009) for a discussion of subjective well-being and its measurement. See also Stevenson and Wolfers (2008b) showing movements in happiness inequality that do not parallel movements in income inequality.

<sup>75</sup> See Deaton (2008); Hagerty & Veenhoven (2003); Stevenson & Wolfers (2008a); Inglehart, Foa, Peterson, & Welzel (2008). For a finding of “a clear positive link between average levels of subjective well-being and GDP per capita across countries,” see Stevenson and Wolfers (2008a).

<sup>76</sup> Stevenson and Wolfers (2008a) characterize this conclusion as one that has garnered a “clear consensus in the literature.”

<sup>77</sup> See Inglehart et al. (2008). Lane (2001) claims that once an individual rises above a basic “subsistence level,” the major sources of well-being are not income but rather friends and family life.

<sup>78</sup> Diener et al. (2010); Kahneman (1999).

<sup>79</sup> Krueger & Schkade (2008); Diener et al. (2010).

<sup>80</sup> Krueger, et al (2009). Krueger and Schkade (2008) also have examined the reliability of subjective well-being measures. For a general account, see Diener, et al. (2009). See also Kahneman et al (2004), Kahneman & Krueger (2006), Krueger, ed. (2009).

tired, sad, stressed, and in pain they felt during each of those activities. Data from this module will become available mid-2011. NIA currently intends to fund this module again in 2012, and OIRA continues to support these efforts.

In November 2010, the NIA and the U.K. Economic and Social Research Council also sponsored a workshop that was held at the National Academy of Sciences on the role of well-being measures in public policy. This meeting brought together leading academic and policy experts from the U.S. and U.K. to explore research needs and practical challenges surrounding the integration of subjective well-being measures into policy planning and evaluation process of local and national governments and agencies. The NIA has further commissioned a National Academy of Sciences panel on development of nonmarket satellite National Accounts of Well-being. In addition, NIA, along with the National Center for Complementary and Alternative Medicine, is funding a series of research grants on both experienced and evaluative well-being.

Meanwhile, a rapidly developing literature continues to explore the relationship between economic growth and well-being, and this literature may turn out to have implications for regulatory policy and uses of cost-benefit analysis.<sup>81</sup> It is possible, for example, that a regulatory initiative may have effects on subjective well-being, or actual experience, that cost-benefit analysis does not fully capture. Consider, just for purposes of illustration, a few of many examples from the relevant literature:

- Contributing to the extensive literature on the relevance of relative (as opposed to absolute) economic position, Luttmer reports that higher earnings of neighbors are associated with lower levels of self-reported happiness, suggesting that subjective well-being may be partly a function of relative income.<sup>82</sup> Another study suggests that the impact of relative income levels matters more at higher levels of income.<sup>83</sup>
- Testing for the differences between experienced well-being and life satisfaction, Kahneman and Deaton analyze more than 450,000 responses to the Gallup-Healthways Well-Being Index, a daily survey of 1,000 US residents conducted by the Gallup Organization. They find that income and education are more closely related to life satisfaction, but health, care-giving, loneliness, and smoking are relatively stronger predictors of day-to-day emotions.<sup>84</sup>
- Biswas-Diener et al. compare subjective well-being measures from the U.S. and Denmark. They find that although the Danish claim higher life satisfaction, Americans are higher in both positive and negative affect; they are more “emotional.” Their study also suggests that poor Danes are happier than their American counterparts.<sup>85</sup>
- Kahneman et al. use the Day Reconstruction Method in a study of women conducted concurrently during one day in Columbus, Ohio and Renne, France. The authors find

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<sup>81</sup> See, e.g., Vitarelli (2010); Adler and Posner (2008).

<sup>82</sup> Luttmer (2005).

<sup>83</sup> See Dynan & Ravina (2007).

<sup>84</sup> Kahneman & Deaton (2010).

<sup>85</sup> Biswas-Diener (2010).

that the specific sources from which the women draw happiness vary between the two cities, “reflecting differing cultural norms and social arrangements.”<sup>86</sup>

- Examining changes over time in the United States and Britain, Blanchflower and Oswald find that in the last quarter-century, reported levels of well-being have declined in the United States and remained flat in Britain and are affected by such factors as relative income and age; they estimate the monetary values of events such as unemployment and divorce and find that both impose the welfare equivalent of large losses in monetary terms.<sup>87</sup>
- Expanding their investigation to 31 European countries, Blanchflower and Oswald examine data from the 2007 European Quality of Life Survey and find that the statistical structure of well-being in European nations looks “almost exactly the same as in the United States.”<sup>88</sup> That is, the “same variables enter, and in almost identical ways.” They conclude that, across nations, “[h]appy people are disproportionately the young and old (not middle-aged), rich, educated, married, in work, healthy, exercise-takers, with high fruit-and-vegetable diets, and slim.”
- Responding to critics who claim that subjective well-being measures fail to provide valid measures of well-being, Oswald and Wu examine reported life satisfaction among a recent random sample of 1.3 million U.S. inhabitants. They observe a high (0.6) correlation across states between these measures of subjective well-being and objective quality-of-life rankings (calculated from, among other things, state indicators such as crime, air quality, taxes, and cost-of-living).<sup>89</sup> Oswald and Wu conclude that “subjective well-being data contain genuine information about the quality of human lives.”
- Using African data collected from the Gallup World Poll and African Demographic and Healthy Surveys, Deaton et al. show that the death of an immediate family member has little effect on life evaluation, but a sizeable impact on measures of emotion, such as depression or sadness. They suggest that the amount of money necessary to compensate for the emotional effects of a death is larger than that required to compensate one’s resulting life evaluation.<sup>90</sup>
- Harter and Arora investigate the relationship between hours worked and perceived job fit and their impact on both life satisfaction and experienced measures of well-being.<sup>91</sup> Using data drawn from the Gallup World Poll, they find that perceived job fit was a robust predictor of life satisfaction across various regions and increased in importance as the hours worked increased. This conclusion adds to prior studies they cite, which show meaningful relationships between the subjective experience of work and objective outcomes, such as employee productivity and turnover.<sup>92</sup>

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<sup>86</sup> Kahneman (2010).

<sup>87</sup> See Blanchflower & Oswald (2004).

<sup>88</sup> See Blanchflower & Oswald (2010).

<sup>89</sup> Oswald & Wu (2010). In more technical terms, their paper claims to “offer[] a crosscheck on the spatial compensating-differentials theory of economics and regional science.”

<sup>90</sup> Deaton et al (2010).

<sup>91</sup> Harter and Arora (2010).

<sup>92</sup> Isen (1987); Warr (1999).

- Krueger and Mueller examine individual job search activities using a longitudinal data set of weekly surveys from unemployed workers in New Jersey in 2009. They provide the following important conclusions: “job search declines steeply over the spell of unemployment for a given set of individuals; (2) after a period of rapidly rising unemployment, workers who lost their jobs at different times are strikingly different, and comparisons across cohorts that lost their jobs at different times are prone to bias (another source of heterogeneity bias); (3) unemployed workers express much dissatisfaction with their lives, and their self-reported mood worsens the longer they are unemployed while life satisfaction stays relatively constant; (4) the unemployed appear to be particularly sad during the time they spend searching for a job, and, if anything, they find job search more emotionally onerous as the duration of unemployment increases; (5) in the Great Recession the exit rate from unemployment was low at all durations of unemployment, and declined gradually over the spell of unemployment; (6) the choice of job search activities and amount of search time do not bear a straightforward relationship with the likelihood of receiving a job offer but job search time and the reported reservation wage do predict early exits from U[nemployment] I[nurance], although unmeasured characteristics of workers could distort the estimated relationships; and (7) we find little evidence that exhaustion of extended U[nemployment] I[nurance] benefits is associated with an increase in job search activity or in job offers.”<sup>93</sup>
- Though a random-assignment experiment (supported by General Social Survey data), Ifcher and Zarghamee find that individuals in a happier mood are less likely to prefer present over future utility. In other words, compared to neutral effect, mild positive effect significantly decreases time preference over money.<sup>94</sup> According to the authors, one practical implication is that individuals may benefit from awareness that their mood affects their behavior. For example, a new employee may want to postpone pension plan contribution decisions until he or she is in a happy mood.
- Examining data collected from fifty-eight countries, Engelbrecht finds that natural capital per capita across those countries is correlated with subjective life-satisfaction measures, especially in high-income nations.<sup>95</sup> He concludes that debates about sustainable development – which often seek to ensure that future generations will have a similar level of wealth per capita available to them as current generations do – should incorporate subjective well-being measures.

OMB continues to investigate the relevant literature and to explore its possible implications for improving regulatory review and regulatory policy.

#### **b. Regulation and economic activity.**

While identifying the appropriate measure of output is a difficult task, debate also continues about how to evaluate the impact of regulations on the standard indicators of economic activity. Exploration of that impact continues to be centrally important, as Executive Order

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<sup>93</sup> Krueger and Mueller (2011), pp. 3-4.

<sup>94</sup> Ifcher & Zarghamee (2011).

<sup>95</sup> Englebrecht (2009).

13563 makes clear with its clear reference to “economic growth, innovation, competitiveness, and job creation.” At the same time, regulatory impacts on economic growth may be difficult to demonstrate because of other simultaneous changes in the economy. For example, economic growth may be strong while regulatory activity is increasing; even if so, the strength of economic growth may not be caused by such activity.

Many regulations affect economic growth indirectly through their effects on intermediate factors. There is a growing consensus specifying these intermediate drivers of growth, including increased human capital, capital investment, research and development, economic competition, physical infrastructure, and good governance (including good institutions).<sup>96</sup> Some evidence strongly suggests that regulations promoting educational attainment may improve human capital accumulation, thereby increasing economic growth.<sup>97</sup> Ashenfelter and Krueger study the economic returns to schooling using survey data of identical twins and conclude that “each year of school completed increases a worker’s wage rate by 12-16 percent.”<sup>98</sup> Other studies show a positive link between increased life expectancy and growth.<sup>99</sup>

If they are not carefully designed, regulations can also impose significant costs on businesses, potentially dampening economic competition and capital investment. Djankov et al. (2002) find that increased regulations on entry into markets—such as licensing and fees—create higher costs of entry and thus adversely affect economic outcomes.<sup>100</sup> By contrast, van Stel et al. (2007) find that entry regulations actually have little impact on entrepreneurship, but that regulations creating greater labor rigidity have a discernible negative impact.<sup>101</sup>

Relatively few studies attempt to measure the economic impact of regulations in the aggregate; the literature focuses instead on particular regulatory arenas.<sup>102</sup> The literature examining the economic impact of environmental regulations in particular is extensive. Here are a few examples:<sup>103</sup>

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<sup>96</sup> See, e.g., Temple (1999).

<sup>97</sup> For a recent empirical analysis using new OECD data to find a strong positive impact of increased education on economic output, see Cohen & Soto (2007).

<sup>98</sup> Ashenfelter and Krueger (1994), p. 1157. Krueger and Lindahl (2001) provide an overview of two literatures: (1) labor literature on monetary return to schooling and (2) the macro growth literature that investigates the relationship between education in different countries and their subsequent economic growth.

<sup>99</sup> See, e.g., Bloom et al (2004). Bloom et al. survey the existing literature on health and economic outcomes, and find in their own cross-country analysis that a one year increase in life expectancy generates a 4 percent increase in economic output, controlling for other variables.

<sup>100</sup> Djankov et al (2002).

<sup>101</sup> van Stel et al (2007). They also find that regulations improving access to credit have a positive impact on entrepreneurship.

<sup>102</sup> One of the few such studies is an analysis by Hahn and Hird (1991), which estimates the net costs of regulations on the economy to be \$46 billion, with aggregate annual transfer payments between \$172.1 and \$209.5 billion. But the authors note that their estimates have a wide range of uncertainty due to difficulties in estimation methods and available data. Further, this study is likely to be outdated due to major policy and economic developments in the years since its publication.

<sup>103</sup> Berman and Bui (2001a) provide a helpful summary of some of this literature. It should be recalled that many environmental regulations affect provision of non-market goods that are not explicitly reflected in standard measures of economic activity. Thus, in addition to the direct economic costs imposed by environmental regulations, these same regulations have social welfare and other non-market impacts that are not captured in these studies.

- Jorgenson and Wilcoxon modeled dynamic simulations with and without environmental regulation on long-term growth in the U.S. to assess the effects and reported that the long-term cost of regulation is a 2.59% reduction in Gross National Product.<sup>104</sup>
- Berman and Bui find that during a period of aggressive environmental regulation, productivity *increased* among the petroleum refineries located in the Los Angeles from 1987 to 1992, suggesting that “[a]batement costs may severely overstate the true cost of environmental regulation”<sup>105</sup> and that “abatement associated with the SCAQMD regulations was productivity enhancing.”<sup>106</sup>
- Greenstone, List, and Syverson (2011) analyze plant-level production data to estimate the effects of environmental regulations on manufacturing plants’ total factor productivity (TFP) levels. Using the Clean Air Act Amendments’ division of counties into pollutant-specific nonattainment and attainment categories, they find that among surviving polluting plants, a nonattainment designation is associated with a roughly 2.6 percent decline in TFP.
- Gray and Shadbegian examine the investment activity of paper mills from 1979 to 1990,<sup>107</sup> and they find that “plants with relatively high pollution abatement capital expenditures over the period invest less in productive capital. The reduction in productive investment is greater than the increase in abatement investment, leading to lower total investment at high abatement cost plants. The magnitude of this impact is quite large, suggesting that a dollar of pollution abatement investment reduces productive investment by \$1.88 at that plant. This seems to reflect both environmental investment crowding out productive investment within a plant and firms shifting investment towards plants facing less stringent abatement requirements. Estimates placing less weight on within-firm reallocation of investment indicate approximate dollar-for-dollar (\$0.99) crowding out of productive investment.”<sup>108</sup>
- Becker and Henderson<sup>109</sup> find that in response to ground-level ozone regulation, in polluting industries “birth [of plants] fall dramatically in nonattainment counties, compared to attainment counties... This shift in birth patterns induces a reallocation of stocks of plants toward attainment areas. Depending on the interpretation of reduced-form coefficients, net present value for a typical new plant in a nonattainment area could fall by 13-22 percent.”<sup>110</sup>
- Greenstone<sup>111</sup> finds that “in the first 15 years after the [Clean Air Act Amendments] became law (1972-1987, nonattainment counties (relative to attainment ones) lost approximately 590,000 jobs, \$37 billion in capital stock and \$75 billion (1987

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<sup>104</sup> Jorgensen & Wilcoxon (1990).

<sup>105</sup> *Id.*, p. 509.

<sup>106</sup> *Id.*, p. 499. SCAQMD is South Coast Air Quality Management District.

<sup>107</sup> Gray & Shadbegian (1998).

<sup>108</sup> *Id.*, at 254-255.

<sup>109</sup> Becker & Henderson (2000).

<sup>110</sup> *Id.*, at 414-415.

<sup>111</sup> Greenstone (2002).

dollars) of output in polluting industries).”<sup>112</sup> However, Greenstone notes that these impacts remain modest in comparison to the size of the national manufacturing sector. Further, these results indicate statistically significant economic costs associated with carbon monoxide regulations but not with ozone or sulfur dioxide regulations.

- List, et al., examined the effects of air quality regulation stringency and location decisions of new plants in New York State from 1980 to 1990, and found that regulatory stringency and the decision to locate is negatively correlated, and the current parametric estimates of this negative correlation may be understated.<sup>113</sup>
- As noted above, Hanna<sup>114</sup> finds that domestic environmental regulation has had an effect in increasing the outbound foreign direct investment of U.S.-based multinational firms. The results include an increase in foreign investments in polluting industries by 5.3 percent and in foreign output by 9 percent; the results are concentrated in manufacturing.
- Jaffe and Palmer<sup>115</sup> find that increases in compliance costs generated by environmental regulations lead to a lagged effect of increases in research and development expenditures, as measured by patents of new environmental technologies. This corroborates other studies<sup>116</sup> with similar findings. These studies suggest that there may be positive economic effects related to technological innovation in the years following increased environmental regulatory compliance costs. As Jaffe and Palmer argue, “in the aggregate, the disincentives for R&D attributed to a command-and-control approach to environmental regulation may be overcome by the high returns that regulation creates for new pollution-control technology.”<sup>117</sup> These results, however, are noted to be sensitive to the definitions of the time lag and difficulties in specifying research and development models, coding patent types, and linking research and development to overall economic growth.
- Chay and Greenstone<sup>118</sup> find that improvements in air quality induced by Clean Air Act regulations resulted in increased housing values at the county level between 1970 and 1980. This finding suggests possible economic gains in asset values resulting from improved environmental conditions, which may have had longer-term impacts on economic growth. Again, these overall impacts are difficult to quantify.

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<sup>112</sup> *Id.*, at 1213.

<sup>113</sup> List, et al. (2003).

<sup>114</sup> Hanna (2010).

<sup>115</sup> Jaffe and Plummer (1997).

<sup>116</sup> See Lanoie et al (2008).

<sup>117</sup> Jaffe & Plumer (1997), at 618.

<sup>118</sup> Chay & Greenstone (2005). Fullerton (2011) uses a carbon permit system – specifically, the cap-and-trade legislation that passed the U.S. House of Representatives in 2009 (which then stalled in the Senate) – to illustrate six different types of distributional effects: (1) the higher prices of carbon-intensive products, (2) changes in relative returns to factors like labor, capital, and resources, (3) allocation of scarcity rents from a restricted number of permits, (4) distribution of the benefits from improvements in environmental quality, (5) temporary effects during the transition, and (6) capitalization of all those effects into prices of land, corporate stock, or house values. He concludes that, in this particular case, many or all effects may be regressive – that is, the net burden as a fraction of income is higher for the poor than for the rich.

- Kahn examines census and state data and finds that better educated, wealthier populations experienced cleaner air, but that poorer, less educated populations experienced a greater overall improvement in air quality between 1980 and 1998 in California. During this time period, the exposure of the Hispanic population to pollution also fell sharply along with exposure differentials between richer and poorer people. The author concludes that, “[g]iven the overall trend in improvements for certain demographic groups, it appears that regulation under the Clean Air Act has helped, and not economically harmed, the ‘have nots.’”<sup>119</sup>

Outside of the context of environmental regulation, a number of studies find that some regulations have promoted economic growth and otherwise had desirable economic effects. For example, Carpenter (2009) finds that certain approaches to entry regulation – such as the discretionary approval regimes used by the Food and Drug Administration – can actually increase economic activity by establishing credible expectations of fairness and product safety.<sup>120</sup> Similarly, Greenstone et al. (2006) find that disclosure rules in the securities industry can reduce the adverse effects of informational asymmetries and increase market confidence. Their study finds that the 1964 Securities Act Amendments generated \$3-6 billion of asset value for shareholders as a result of increased investment activity. According to their evidence, higher levels of investor protection and disclosure requirements are associated with the higher valuation of equities.<sup>121</sup>

Another body of work focuses more specifically on behaviorally informed approaches to regulation—including setting appropriate default rules, reducing complexity, using disclosure as a regulatory tool, and presenting information so as to promote clarity and salience. The relevant work explores how such approaches might help improve market functioning or reduce economic costs associated with more aggressive regulatory efforts. Regulations aimed at managing risks can also have significant economic benefits by increasing the willingness of market actors to participate in market transactions.<sup>122</sup> These studies suggest that when examining the economic effects of regulation, analysts should be mindful of the importance of considering alternative regulatory approaches, in addition to deregulatory options, as the baseline for comparison.

Executive Order 13563 refers in particular to the importance of flexible approaches, stating that with relevant qualifications, “each agency shall identify and consider regulatory approaches that reduce burdens and that maintain flexibility and freedom of choice for the public.” In some cases, carefully chosen forms of regulation, increasing flexibility, may yield the same social welfare benefits as existing regulatory approaches while imposing significantly lower costs. In other cases, alternative regulatory approaches may actually improve market functioning, increase economic activity, and promote economic growth.<sup>123</sup>

OMB continues to investigate the underlying questions; no clear consensus has emerged

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<sup>119</sup> Kahn (2001).

<sup>120</sup> Carpenter (2009). For more historical and formal modeling approaches to this same argument, see, e.g., Carpenter (2004) and Carpenter & Ting (2007).

<sup>121</sup> *Id.* See also La Porta et al (1999).

<sup>122</sup> On the possible welfare and economic gains from employing alternative regulatory approaches, see generally Moss & Cisternino (2009).

<sup>123</sup> *Id.* See also Balleisen and Moss, eds. (2009).

on all of the answers. Further work of the sort outlined here might ultimately make it possible to connect regulatory initiatives to changes in GDP and also to changes in subjective well-being under various measures.

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## CHAPTER II: RECOMMENDATIONS FOR REFORM AND REPORT ON IMPLEMENTATION OF EXECUTIVE ORDER 13563

Division C, Title II, Section 202 of House Report 112-331<sup>124</sup> requires submission to the Committees on Appropriations of the House and the Senate of a report on implementation of Executive Order 13563. In particular, the report must provide information on:

- increasing public participation in the rulemaking process and reducing uncertainty;
- improving coordination across Federal agencies to eliminate redundant, inconsistent, and overlapping regulations; and
- identifying existing regulations that have been reviewed and determined to be outmoded, ineffective, and excessively burdensome.

This chapter consists of that report, along with recommendations for reform, many of which are designed to promote successful implementation of Executive Order 13563.

In recent years, a great deal has been learned about regulation – about what works and what does not. Far more is known than during the New Deal period and the Great Society; indeed, far more is known than in the 1980s and 1990s.

Consider, for example, the following:

1. State-of-the-art techniques are available for anticipating, cataloguing, quantifying, and monetizing the consequences of regulation, including both benefits and costs. Though significant challenges remain, new tools are available for estimating the likely effects of regulation, and they continue to improve.
2. Risks are understood to be part of systems. Efforts to reduce a certain risk may increase other risks, perhaps even deadly ones, thus producing ancillary harms. At the same time, efforts to reduce a certain risk may reduce other risks, perhaps even deadly ones, thus producing ancillary benefits.
3. Flexible, choice-preserving approaches, respecting heterogeneity and acknowledging that one size may not fit all, are often desirable, both because they preserve liberty and because they cost less (sometimes a great deal less).
4. Large benefits can come from seemingly modest and small steps – including significant simplification of regulatory requirements, provision of information (in plain language), electronic rather than paper reporting, and sensible default rules, such as automatic enrollment for retirement savings.
5. It is important to promote public participation in the design of rules, because members of the public will often have valuable and dispersed information about

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<sup>124</sup> U.S. House. Committee on Appropriations. *Military Construction and Veterans Affairs And Related Agencies Appropriations Act of 2012, Conference Report* (to Accompany H.R. 2055). (H. Rpt. 112-331). Text from: <[http://rules.house.gov/Media/file/PDF\\_112\\_1/HR2055CRbill/pcConferenceDivc-BilloCR.pdf](http://rules.house.gov/Media/file/PDF_112_1/HR2055CRbill/pcConferenceDivc-BilloCR.pdf)>. Available from: Committee on Appropriations; Accessed 1/9/2012.

likely effects, existing problems, creative solutions, and possible unintended consequences.

6. If carefully designed, disclosure policies can promote informed choices and save both money and lives. Consider, for example, the substitution of the clear Food Plate for the confusing Food Pyramid and the recently redesigned fuel economy label (drawing attention to the concrete economic consequences of differences in miles per gallon).
7. Intuitions and anecdotes, however compelling they may seem, are often unreliable, and advance testing of the effects of rules, as through pilot programs or randomized controlled experiments, can be highly illuminating.
8. It is exceedingly important to explore the effects of regulation in the real-world, to learn whether rules are having beneficial consequences or producing unintended harm. In short, careful assessments are necessary before rules are issued, and continuing scrutiny is needed afterwards – sometimes even in the short-term.
9. Some sectors and industries are faced with redundant, conflicting, or overlapping requirements, and unnecessary costs and burdens can be eliminated by eliminating redundancy, conflict, and overlaps. Cumulative burdens can be quite challenging, especially for small businesses and startups, and steps should be taken to reduce those burdens.

Of course it is true that people's values differ, and in some cases, the relevant values will lead in a certain direction even if the evidence is clear. But there is a different possibility: When the evidence is clear, it will often lead in a certain direction even if there are differences with respect to underlying values. If, for example, a regulation would save numerous lives and cost very little, it is likely to receive widespread support; and if a regulation would produce little benefit but impose large costs, citizens are unlikely to favor it. At least this is so if we engage on the facts.

On January 18, 2011, President Obama established a new approach to Federal regulation – an approach that reflects all of the previous points. The very first paragraph of Executive Order 13563 emphasizes the importance of “economic growth, innovation, competitiveness, and job creation.” It states that our regulatory system “must promote predictability and reduce uncertainty.” In a key sentence, it adds that our regulatory system “must measure, and seek to improve, the actual results of regulatory requirements.”

Among other things, the President called for an unprecedentedly public, and an unprecedentedly ambitious, government-wide “lookback” at Federal regulation. The lookback requires all executive agencies to reexamine their significant rules and to streamline, reduce, improve, or eliminate them on the basis of that examination. Continuing efforts are being made to ensure that reassessment of rules becomes a routine part of Federal regulatory activity. We discuss the lookback in more detail below.

The Executive Order also provides a series of new directives to govern future rulemaking. Those directives are consistent with, and informed by, what has been learned about regulation in recent years.

Five points are especially noteworthy:

1. **Quantification.** The Executive Order firmly stresses the importance of quantification. It directs agencies “to use the best available techniques to quantify anticipated present and future benefits as accurately as possible” – and to proceed only on the basis of a reasoned determination that the benefits justify the costs.
2. **Public participation.** The President made an unprecedented commitment to promoting public participation in the rulemaking process – with a central goal of ensuring that rules will be informed, and improved, by the dispersed knowledge of the public. Agencies are not merely required to provide the public with an opportunity to comment on their rules; they must also provide timely online access to relevant scientific and technical findings (including economic findings), thus allowing them to be scrutinized and improved. We provide a number of details below on recent developments.
3. **Advance consultation.** The Executive Order directs agencies to act, even in advance of rulemaking, to seek the views of those who are likely to be affected. This group explicitly includes “those who are likely to benefit from and those who are potentially subject to such rulemaking.” Among other things, this emphasis on early involvement is an effort to acquire relevant information and to avoid unintended harmful consequences (including unnecessary cumulative burdens). Such involvement might be provided through informal consultation or through more formal methods, such as advanced notices of proposed rulemaking and requests for information. For unusually complex or costly rules, formal methods of this kind are often especially helpful.
4. **Simplification, coordination, and harmonization.** The Executive Order specifically directs agencies to take steps to harmonize, simplify, and coordinate rules. It emphasizes that some sectors and industries face redundant, inconsistent, or overlapping requirements. In order to reduce costs and to promote simplicity, it requires greater coordination. The order explicitly connects the goal of harmonization with the interest in innovation, directing agencies to achieve regulatory goals in ways that promote that interest.
5. **Flexibility.** The Executive Order directs agencies to identify and to consider flexible approaches that reduce burdens and maintain freedom of choice for the public. Such approaches may include, for example, public warnings, appropriate default rules, or provision of information “in a form that is clear and intelligible.” As noted, simplification of existing requirements can often promote compliance and participation, and complexity can have serious unintended consequences. Sensible default rules, making certain outcomes automatic rather than difficult and time-consuming, can be a valuable tool. Similarly, flexible performance objectives are often better than rigid design standards, because performance objectives allow the private sector to use its own creativity to identify the best means of achieving social goals. In many domains, it is a priority to design regulatory requirements and to achieve regulatory goals in a way that maximizes freedom of choice for the private sector.

The goal of Executive Order 13563 is not modest. It is to change the regulatory culture, first by requiring careful analysis of anticipated consequences, including unintended ones, and

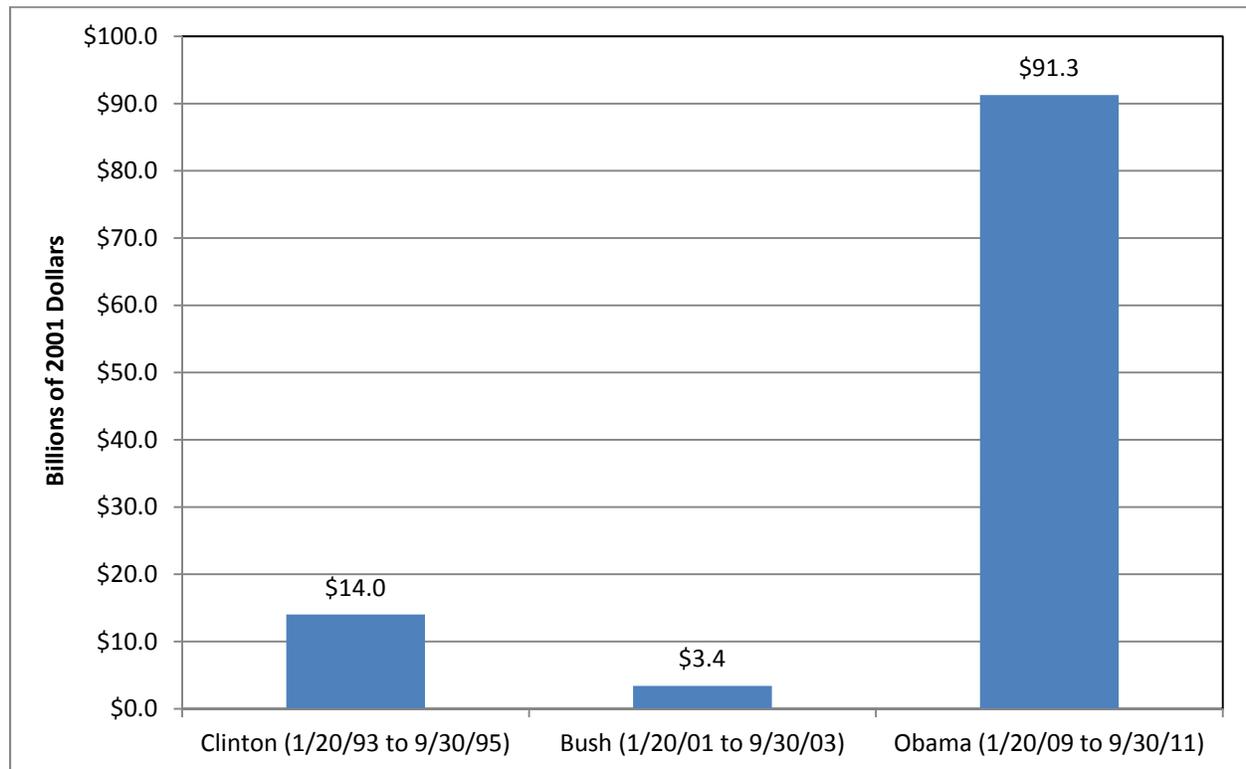
second by constantly exploring what is working and what is not, with careful attention to the importance of growth, innovation, competitiveness, and job creation. The relevant analysis and exploration are meant to include consideration of appropriate tools, including those that retain flexibility and promote freedom of choice.

The simplest method for beginning to promote the central goals of Executive Order 13563 is to continue to engage in careful analysis of both costs and benefits, with reference to the points outlined above and, as a general rule and to the extent permitted by law, to proceed only if the benefits justify the costs. To achieve that goal, it is important to ensure careful analysis in advance and also to explore the actual effects of significant rules now on the books, to see if their benefits justify their costs, and to explore whether they might be simplified, streamlined, or otherwise improved.

In the past three years, agencies and OMB have worked together to issue a number of rules for which the benefits exceed the costs and by a large margin. Consider the following figure and tables (see Appendix D for more detailed information):

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**Figure 2-1: Total Net Benefits of Major Rules Through the Third Fiscal Year of an Administration<sup>125</sup>**



**Table 2-1: Annual Benefits and Costs of Major Rules through the Third Fiscal Year of an Administration (billions of 2001 dollars)<sup>126</sup>**

Administration	Benefits	Costs
Obama (1/20/09-09/30/11)	\$56.9 to \$200.7	\$13.2 to \$26.7
Bush (1/20/01-09/30/03)	\$3.5 to \$11.9	\$3.3 to \$5.3
Clinton (1/20/93-09/30/95)	\$10.0 to \$32.6	\$6.9 to \$7.6

<sup>125</sup> For the purposes of showing general trends by Administration, totals are computed by summing annualized net benefits for rules from the first three years of an administration. Net benefits are based on primary estimates of costs and benefits, or on the midpoints of high and low cost and benefit estimates if only ranges are reported. Totals include some rules that were later vacated. To avoid double counting, the 1994 Acid Rain NOX Regulation rule (which was vacated and replaced by an IFR in 1995) was excluded.

<sup>126</sup> Estimates are based on a range of values reported in previous Reports. See Appendix D and Table 1-5(a) for a list of rules included in the totals.

**Table 2-2: Major Rules with the Highest Net Benefits through the Third Fiscal Year of the Obama Administration (billions of 2001 dollars)<sup>127</sup>**

Agency	Rule	Net Benefits
EPA/AR	Cross-State Air Pollution Rule (CAIR Replacement Rule)	\$39.4
EPA/AR	Portland Cement Notice of Reconsideration	\$10.3 <sup>128</sup>
EPA/AR	Review of the National Ambient Air Quality Standards for Sulfur Dioxide	\$9.9
DOT/NHTSA & EPA/AR	Passenger Car and Light Truck Corporate Average Fuel Economy Standards MYs 2012 to 2016	\$8.6
DOL/EBSA	Statutory Exemption for Provision of Investment Advice	\$7.9

**Table 2-3: Major Rules with the Highest Benefits through the Third Fiscal Year of the Obama Administration (billions of 2001 dollars)<sup>129</sup>**

Agency	Rule	Benefits
EPA/AR	Cross-State Air Pollution Rule (CAIR Replacement Rule)	\$40.1
DOT/NHTSA & EPA/AR	Passenger Car and Light Truck Corporate Average Fuel Economy Standards MYs 2012 to 2016	\$11.9
EPA/AR	Portland Cement Notice of Reconsideration	\$11.2 <sup>130</sup>
DOL/EBSA	Statutory Exemption for Provision of Investment Advice	\$10.9
EPA/AR	Review of the National Ambient Air Quality Standards for Sulfur Dioxide	\$10.5

<sup>127</sup> Table 2-2 reports the top five rules with highest net benefits – benefits minus costs – based on the primary agency estimates, or midpoints if only ranges are reported. The relevant benefits include economic savings, lives saved, and more. For example, the Passenger Car and Light Truck Corporate Average Fuel Economy Standards MYs 2012 to 2016 Rule is estimated to save about 61 billion gallons of gas over the lifetimes of the vehicles covered by the rule, saving consumers about \$112 billion in fuel costs, as well as a reduction of 655 million metric tons of CO<sub>2</sub>. EPA estimates that the Cross-State Pollution Rule will result in a reduction of 13,000 to 34,000 particulate-matter and ozone-related premature mortalities, 15,000 non-fatal heart attacks, 19,000 cases of acute bronchitis, 400,000 cases of aggravated asthma, 51,000 school absences, and 1.7 million lost work days.

<sup>128</sup> This value was reported incorrectly in the 2011 report.

<sup>129</sup> Table 2-3 reports the top five rules with highest benefits based on the primary agency estimates, or midpoints if only ranges are reported.

<sup>130</sup> This value was reported incorrectly in the 2011 report.

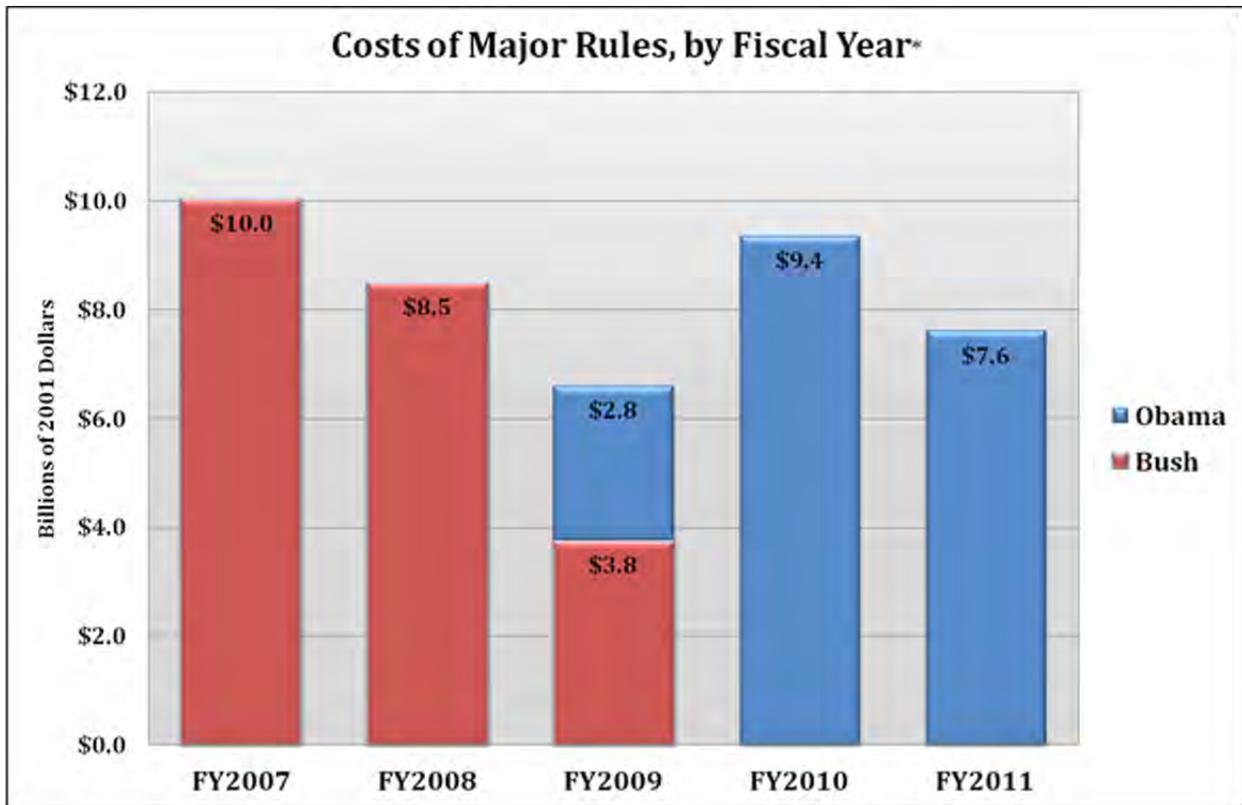
**Table 2-4: Major Rules with the Highest Costs through the Third Fiscal Year of the Obama Administration (billions of 2001 dollars)<sup>131</sup>**

<b>Agency</b>	<b>Rule</b>	<b>Costs</b>
DOT/NHTSA & EPA/AR	Passenger Car and Light Truck Corporate Average Fuel Economy Standards MYs 2012 to 2016	\$3.3
DOL/EBSA	Statutory Exemption for Provision of Investment Advice	\$3.1
DOE/EE	Energy Efficiency Standards for Pool Heaters and Direct Heating Equipment and Water Heaters	\$1.1
DOT/NHTSA	Passenger Car and Light Truck Corporate Average Fuel Economy Model (2011)	\$1.0
DOT/NHTSA	Roof Crush Resistance	\$0.9

**Figure 2-2: Costs of Final, Economically Significant Rules through Last Five Fiscal Years (billions of 2001 dollars)<sup>132</sup>**

<sup>131</sup> Table 2-4 reports the top five rules with highest costs based on the primary agency estimates, or midpoints if only ranges are reported.

<sup>132</sup> Based on the mid-point of high and low estimates of costs. Excludes two DoT rules-- the FY2010 Electronic Onboard Recorder rule which was recently vacated and the FY2009 Hours-of-Services rule which finalized the provisions of an interim final rule included in FY2005.



The Regulatory Right-to-Know Act charges OMB with making “recommendations for reform.” In its 2009 Report, OMB made three principal recommendations.

*First*, OMB recommended careful consideration of behaviorally informed approaches to regulation – approaches that are informed by an understanding of human behavior and choice. For example, properly designed disclosure policies, appropriate default rules (as in the context of savings), and simplification (as in the context of the Free Application for Federal Student Aid) may have significant and beneficial results. Recent social science research, including work in behavioral economics, provides valuable insight into the design of effective, low-cost methods for achieving regulatory goals. In some contexts, small, inexpensive, seemingly modest steps can produce significant benefits.<sup>133</sup> Simplification of regulatory requirements has important potential on this count.

*Second*, OMB recommended that significant regulations should be accompanied with clear, tabular presentations of both benefits and costs, including both quantifiable and nonquantifiable variables; that the analysis should take account, where relevant, of the effects of the regulation on future generations and the least well-off; and that continuing efforts should be made to meet some difficult challenges posed by regulatory impact analysis, including treatment of variables that are difficult to quantify and monetize. These recommendations are designed both to promote transparency and to produce better choices, including elimination of unjustified costs.

<sup>133</sup> See, e.g., Banerjee and Duflo (2011).

*Third*, OMB recommended that regulatory impact analysis should be seen and used as a central part of open government. If the analysis of both qualitative and quantitative effects is subject to public scrutiny and review, it can be improved by reference to the dispersed knowledge of the public. The relevant improvements can help, in turn, to improve the content of rules.

In its 2010 Report, OMB recommended four additional reforms that might improve regulatory policy and analysis. *First*, OMB identified several measures designed to meet analytical challenges, largely involving increased transparency. *Second*, OMB offered a brief discussion of disclosure as a regulatory tool, with particular emphasis on the need to attend to how people process information and on the importance of empirical testing of disclosure strategies.<sup>134</sup> *Third*, and with an emphasis on disclosure, OMB recommended exploration of certain low-cost approaches to the problem of childhood obesity; those approaches offer potential lessons for other programs and problems. *Fourth*, OMB drew on principles of open government to invite public suggestions about improvements in existing regulations, with particular reference to economic growth. With each of these recommendations, OMB offered concrete suggestions for possible improvements.

OMB's 2011 Report expanded on many of the previous themes and provided six recommendations, drawing directly from Executive Order 13563. A central goal of these recommendations was to ensure that regulatory choices are compatible with the economic recovery and do not compromise growth and job creation. In brief:

1. Most generally, regulatory decisions and priority-setting should be made in a way that is attentive to the importance of promoting economic growth, innovation, job creation, and competitiveness.
2. Agencies should promote retrospective analysis of existing significant rules, with careful exploration of their actual effects and, when appropriate, consideration of steps to streamline, modify, expand, or repeal them.
3. In order to promote transparency, agencies should, as stated in previous Reports, accompany all economically significant regulations with (1) a tabular presentation, placed prominently and offering a clear statement of qualitative and quantitative benefits and costs of the proposed or planned action, together with (2) a presentation of uncertainties and (3) similar information for reasonable alternatives to the proposed or planned action.
4. Agencies should carefully explore how best to treat nonquantifiable variables and should continue to use "breakeven analysis" when quantification is not possible, with such analysis defined as the specification of how high the unquantified or unmonetized benefits would have to be in order for the benefits to justify the costs.
5. Agencies should consider the use of cost-effectiveness analysis for regulations intended to reduce mortality risks and should specifically consider the development of estimates for the "net cost per life saved." Such estimates can provide instructive

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<sup>134</sup> For recent discussion, see Kamenica et al. (2011).

comparisons and encourage the use of public resources in domains in which they will do the most good.

6. Agencies should bring rulemaking into the twenty-first century by promoting public participation and transparency through the use of Regulations.gov and other technological means.
7. In order to promote trade and exports, and thus to increase job creation, agencies should promote regulatory cooperation initiatives with key trading partners.

OMB continues to support the recommendations from its 2009, 2010, and 2011 reports. In recent years, significant progress has been made with respect to each of them. (See, for example, chapter II of the 2010 report for a preliminary catalogue.)

In the remainder of this Chapter, our main emphasis, consistent with Division C, Title II, Section 202 of House Report 112-331,<sup>135</sup> is on implementation of Executive Order 13563, which is designed to reconcile regulatory goals with objectives associated with economic growth and job creation in general and the economic recovery in particular. We also offer brief discussions of (1) the importance of promoting a genuine culture of retrospective review (as opposed to a particular exercise); (2) simplification of regulatory requirements, including the need to simplify paperwork requirements and language; (3) “smart disclosure”; and (4) the Open Government Partnership and National Action Plan, as well as other international efforts to promote transparency, participation, and collaboration.

#### **A. A Culture of Retrospective Review: Recent Achievements and Future Progress**

Prospective analysis of costs and benefits is an indispensable means of obtaining an understanding of the likely consequences of regulation. At the same time, that analysis, even if done carefully and subject to public scrutiny, may rest on speculative assumptions. To be empirically informed, regulations should be revisited and reviewed retrospectively, to ensure that they are promoting their intended functions and are not producing excessive costs or unintended adverse side effects. Executive Order 13563 expressly recognizes this point in requiring “retrospective analysis” of existing significant rules and in requiring agencies to produce preliminary plans for such analysis. In this section, we outline the rationale for that requirement and, as directed by Division C, Title II, Section 202 of House Report 112-331, offer a report on progress to date.

There are several independent reasons why retrospective analysis is important. Sometimes the analysis can show that the rule was flawed, in whole or in part, at the inception. Sometimes the analysis can show that a rule that was well-designed at the inception is now excessive, redundant, or producing unintended harm (perhaps as a result of changed circumstances, such as new technologies or new regulations). Sometimes private adaptation, or improvements in private behavior, will mean that the rule is in need of streamlining or even repeal. Sometimes the analysis can reveal a need for reform several decades after the rule was

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<sup>135</sup> U.S. House. Committee on Appropriations. *Military Construction and Veterans Affairs And Related Agencies Appropriations Act of 2012, Conference Report* (to Accompany H.R. 2055). (H. Rpt. 112-331). Text from: <[http://rules.house.gov/Media/file/PDF\\_112\\_1/HR2055CRbill/pcConferenceDivc-BillOCR.pdf](http://rules.house.gov/Media/file/PDF_112_1/HR2055CRbill/pcConferenceDivc-BillOCR.pdf)>. Available from: Committee on Appropriations; Accessed 1/9/2012.

originally promulgated; sometimes it can reveal, within a short period after promulgation, that a change would be desirable. Retrospective review is most naturally understood as a way of assessing rules that have been in operation and on the books for a sufficient period to allow careful study. But in some cases, such review can and should occur relatively promptly, to test whether unanticipated problems have arisen.

Executive Order 13563, issued on January 18, 2012, required executive agencies to develop preliminary plans, and to submit them to OIRA, within 120 days. Over two dozen agencies produced such plans. In those plans, often informed by public input and in some cases by meetings held nationwide,<sup>136</sup> agencies identified hundreds of reforms, candidate rules for review, and initiatives already underway. In clear recognition of the emphasis in Executive Order 13563 on public participation in the rulemaking process, agencies made these preliminary plans publicly available and requested public comments and suggestions.

The final agency plans, released under that Executive Order, span more than 800 pages and highlight over 500 initiatives. A small fraction of those initiatives, some of them already finalized or formally proposed to the public, promise to produce billions of dollars of annual savings and millions of hours of reductions in annual paperwork and reporting requirements. All of the final plans can be viewed on the White House's website, and those plans provide the most detailed account of progress to date.<sup>137</sup> As the plans are implemented, far larger savings are expected.

To offer just a few of many examples:

- The Department of Health and Human Services (HHS) has proposed or finalized three rules that will remove unnecessary regulatory and reporting requirements now imposed on hospitals and other healthcare providers, potentially saving more than \$5 billion over the next five years.<sup>138</sup>
- A final HHS rule reduces costs and improves access to care in rural areas by permitting hospitals to use telemedicine to obtain services from a practitioner credentialed at a distant hospital (so long as that hospital is also a Medicare-participating entity and there is a written telemedicine agreement in place between the hospitals). This rule is anticipated to save \$65 million over the next five years.
- The Department of Labor (DOL) has finalized a rule eliminating 1.9 million burden hours formerly imposed on employers; in monetary terms, that rule is expected to save over \$200 million in the next five years.

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<sup>136</sup> See, for example, Environmental Protection Agency, Improving Our Regulations: A Preliminary Plan for Periodic Retrospective Reviews of Existing Regulations 34 (May 24, 2011), online at <http://www.whitehouse.gov/files/documents/2011-regulatory-action-plans/EnvironmentalProtectionAgencyPreliminaryRegulatoryReformPlan.pdf> (“Verbal comments were solicited at a series of twenty public meetings. . . . Additionally, EPA held nineteen more town halls and listening sessions targeting specific program areas (e.g. solid waste and emergency response) and EPA Regions.”).

<sup>137</sup> The White House, Regulation Reform, online at <http://www.whitehouse.gov/21stcenturygov/actions/21st-century-regulatory-system>.

<sup>138</sup> Department of Health and Human Services, Plan for Retrospective Review of Existing Rules 3, 8–17 (Aug 22, 2011), online at <http://www.whitehouse.gov/sites/default/files/other/2011-regulatory-action-plans/healthandhumanservicesregulatoryreformplanaugust2011.pdf>.

- DOL is also finalizing a rule to simplify and to improve hazard warnings for workers, likely saving \$2.5 billion over the next five years and increasing safety.<sup>139</sup>
- The Department of Transportation proposed a rule that will eliminate unnecessary regulation of the railroad industry, saving up to \$340 million in the near future, and avoiding the risk that regulatory costs will be passed on to consumers.<sup>140</sup>
- The EPA plans to propose a rule to reduce burdens on hazardous waste generators by moving from paper-based to electronic reporting, saving up to \$124 million annually.<sup>141</sup>
- Since the 1970s, milk has been defined as an “oil” and subject to costly rules designed to prevent oil spills. In response to objections from the agriculture community and the President’s directive, EPA concluded that the rules placed unjustifiable burdens on dairy farmers and exempted them. The projected five year savings are over \$600 million.<sup>142</sup>
- The EPA has proposed to eliminate the obligation for many states to require air pollution vapor recovery systems at local gas stations, on the ground that modern vehicles already have effective air pollution control technologies. The anticipated annual savings are about \$87 million.<sup>143</sup>
- The Departments of Commerce and State are undertaking a series of steps to eliminate unnecessary barriers to exports, including duplicative and unnecessary regulatory requirements, thus reducing the cumulative burden and uncertainty faced by American companies and their trading partners.<sup>144</sup>
- To reduce administrative burdens and increase certainty, the Department of the Interior is reviewing outdated regulations under the Endangered Species Act of

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<sup>139</sup> Department of Labor, Plan for Retrospective Analysis of Existing Rules 10–11 (Aug 2011), online at <http://www.whitehouse.gov/files/documents/2011-regulatory-action-plans/DepartmentofLaborPreliminaryRegulatoryReformPlan.pdf>.

<sup>140</sup> The plan to propose this rule is described in Department of Transportation, Plan for Implementation of Executive Order 13563: Retrospective Review and Analysis of Existing Rules 2, 21 (Aug 2011), online at <http://www.whitehouse.gov/sites/default/files/other/2011-regulatory-action-plans/departmentoftransportationregulatoryreformplanaugust2011.pdf>. For the announcement of the proposed rule, with an emphasis on the commitment to regulatory streamlining, see [http://www.fra.dot.gov/roa/press\\_releases/fp\\_FRA%2019-11.shtml](http://www.fra.dot.gov/roa/press_releases/fp_FRA%2019-11.shtml)

<sup>141</sup> Environmental Protection Agency, Improving Our Regulations: Final Plan for Periodic Retrospective Reviews of Existing Regulations 35–36 (Aug 2011), online at <http://www.whitehouse.gov/sites/default/files/other/2011-regulatory-action-plans/environmentalprotectionagencyregulatoryreformplanaugust2011.pdf>.

<sup>142</sup> Environmental Protection Agency, Improving Our Regulations at 5, 14.

<sup>143</sup> *Id.* at 32–33.

<sup>144</sup> Department of Commerce, Plan for Retrospective Analysis of Existing Rules 3–6 (Aug 18, 2011), online at <http://www.whitehouse.gov/sites/default/files/other/2011-regulatory-action-plans/departmentofcommerceregulatoryreformplanaugust2011a.pdf>.

1973<sup>145</sup> to streamline the process, to reduce requirements for written descriptions, and to clarify and expedite procedures for approval of conservation agreements.<sup>146</sup>

All of these actions, and the various plans, come from the executive agencies. On July 11, 2011, President Obama issued Executive Order 13579, which asked the independent regulatory agencies, including the Consumer Product Safety Commission, the Federal Trade Commission, and the Federal Communications Commission, to produce plans to reassess and to streamline their existing regulations, and to disclose those plans for public scrutiny. In addition, the President asked the independent agencies to follow the general regulatory principles in Executive Order 13563. (Executive Order 13579 can be found in Appendix E.)

Nearly all independent agencies prepared plans consistent with Executive Order 13579 and many asked for public comments on them, including the Federal Communications Commission, the Federal Trade Commission, and the Consumer Product Safety Commission.<sup>147</sup> Sixteen plans have been released. For example, the Federal Communications Commission announced a plan that included the following highlights:

- Since the issuance of the Executive Order, FCC had eliminated over 120 overly burdensome or unnecessary regulations as well as a number that reflect changes in technology – thereby promoting greater competition, investment, and job creation.
- As a result of its Data Innovation Initiative and consistent with the President’s Executive Order, the FCC identified 25 data collections for potential elimination. It

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<sup>145</sup> Pub L No 93-205, 87 Stat 884, codified as amended at 16 USC § 1531 et seq.

<sup>146</sup> Department of the Interior, Plan for Retrospective Regulatory Review 11–12 (Aug 19, 2011), online at <http://www.whitehouse.gov/sites/default/files/other/2011-regulatory-action-plans/departmentoftheinteriorregulatoryreformplanaugust2011.pdf>.

<sup>147</sup> As of publication, other agencies that published plans or requested public comment on them include: Commodity Futures Trading Commission (CFTC), available at <http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/oirastatusreport110711.pdf>; Consumer Financial Protection Bureau, available at [http://www.consumerfinance.gov/wp-content/uploads/2011/11/Streamlining\\_Notice\\_1129.pdf](http://www.consumerfinance.gov/wp-content/uploads/2011/11/Streamlining_Notice_1129.pdf); Consumer Product Safety Commission (CPSC), available at <http://www.cpsc.gov/businfo/frnotices/fr12/regreview.pdf>; Federal Trade Commission (FTC), available at <http://www.ftc.gov/ftc/regreview/index.shtml>; Federal Maritime Commission (FMC), available at [http://www.fmc.gov/assets/1/News/Retrospective%20Review\\_Plan\\_Public\\_Announcement\\_11\\_4\\_2011.pdf](http://www.fmc.gov/assets/1/News/Retrospective%20Review_Plan_Public_Announcement_11_4_2011.pdf); Federal Reserve, available at <http://www.federalreserve.gov/generalinfo/foia/regulatory-burden-reduction-111115.pdf>; National Labor Relations Board (NLRB), available at [https://nrlb.gov/sites/default/files/documents/2901/nrlb\\_plan\\_for\\_retrospective\\_analysis\\_of\\_existing\\_rules.pdf](https://nrlb.gov/sites/default/files/documents/2901/nrlb_plan_for_retrospective_analysis_of_existing_rules.pdf); Farm Credit Administration, available at <http://www.fca.gov/Download/RetrospectiveAnalysisOfExistingRules.pdf>; Federal Energy Regulatory Commission (FERC), available at <http://www.ferc.gov/legal/maj-ord-reg/retro-analysis/ferc-eo-13579.pdf>; Federal Communications Commission (FCC), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-310874A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-310874A1.doc); Federal Deposit Insurance Corporation (FDIC), available at <http://www.fdic.gov/regulations/laws/plans/index.html>; Federal Housing Finance Agency, available at <http://www.gpo.gov/fdsys/pkg/FR-2011-09-23/html/2011-24405.htm>; National Credit Union Administration (NCUA), available at <http://www.ncua.gov/News/Documents/NW20111110EO-13579.pdf>; Nuclear Regulatory Commission (NRC), available at <http://www.nrc.gov/about-nrc/plans-performance/initial-plan-for-retrospective-analysis-of-existing-rules-ml112690277.pdf>; Railroad Retirement Board, available at <http://www.rrb.gov/pdf/blaw/EO13579.pdf>; Surface Transportation Board (STB), available at <http://www.stb.dot.gov/decisions/ReadingRoom.nsf/WEBUNID/6C0D4C27C150D6D28525792100534402?OpenDocument>.

had already taken steps to eliminate seven of them and was evaluating the remaining 18 with the goal of reducing unjustified burdens.

- The FCC proposed to reduce regulatory burdens and streamline the foreign ownership review process for U.S. companies with common carrier radio licenses (e.g., wireless phone companies) and certain aeronautical radio licenses. The proposals would ensure that the Commission continues to receive the information it needs to serve the public interest while reducing the number of required filings by more than 70%.
- The FCC unanimously and on a bipartisan basis approved a historic overhaul of the Universal Service Fund and intercarrier compensation system – a system of subsidies to bring basic telephone service to areas where private companies have found it difficult to profitably invest in network infrastructure. These reforms will likely eliminate billions of dollars in hidden subsidies on consumers’ wireless and phone bills, promote more robust wireless service and cheaper long-distance calling, and remove obstacles to modern, digital, efficient networks and the increased innovation they enable.
- Given that roughly one in five Americans with cell phone plans have experienced “bill shock” in the past year, last month, the FCC announced that all mobile carriers would send consumers alerts when they are close to exceeding their monthly limits or about to get hit with roaming charges. These alerts would be free, automatic, and with no opt-in required – a simple but powerful disclosure mechanism.

Retrospective analysis has long been recommended by those interested in empirical assessment of regulations, including Michael Greenstone, former chief economist at the Council of Economic Advisers: “The single greatest problem with the current system is that most regulations are subject to a cost–benefit analysis only in advance of their implementation. This is the point when the least is known and any analysis must rest on many unverifiable and potentially controversial assumptions.”<sup>148</sup> By contrast, retrospective analysis can help show what works and what does not, and in the process can promote the repeal or streamlining of less effective rules and the strengthening or expansion of those that are. Greenstone thus urges a series of reforms designed to “instill a culture of experimentation and evaluation.”<sup>149</sup> One of Greenstone’s principal themes is the importance of experimentation with respect to the likely effects of regulation.

There has been a great deal of recent interest in the use of randomized controlled trials as a means of learning the effects of policy initiatives.<sup>150</sup> In the regulatory area, the use of such trials remains in a preliminary state, but it is easy to imagine projects that would test the effects of potential rules by examining their consequences in this way or the design of regulations that would facilitate such tests in the future. Such projects might, for example, explore the effects of disclosure requirements and efforts to reduce distracted driving.<sup>151</sup> More generally,

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<sup>148</sup> See Greenstone (2009), p. 113.

<sup>149</sup> *Id.*, p. 14.

<sup>150</sup> See generally Banerjee and Duflo (2011). See also Ludwig, et. al (2011).

<sup>151</sup> See, e.g., U.S. Department of Transportation, “Traffic Safety Facts: Research Note, High Visibility Enforcement Demonstration Programs in Connecticut and New York Reduce Hand-Held Phone Use,” available at <http://www.distraction.gov/files/for-media/2010.09.17-7268-TSF-RN-HighEnforcementCT-NY.pdf>

experimentation might take the form of advance testing of regulatory alternatives, followed by study of their consequences, at least if the law authorizes such approaches.<sup>152</sup>

Of course there are constraints—involving not merely law but also resources and feasibility—in using randomized control trials in the regulatory context, but in some cases, they might be both appropriate and highly useful. The plans released under Executive Order 13563 offer relevant discussions. For example, the Department of Treasury states that it will work to “develop and incorporate experimental designs into retrospective analysis, when appropriate.”<sup>153</sup> The Department of Labor states that it “is contemplating how to incorporate the use of experimental designs to determine the impact of various regulations.”<sup>154</sup> The Department of Interior states that it “will consider” the use of “experimental or quasi-experimental designs, including randomized controlled trials.”<sup>155</sup>

In 2011, a great deal was done to promote retrospective review of regulations, but it is important to ensure that this process is not a one-time endeavor. All of the plans state that agencies will continue to seek suggestions about potential reforms. In the future, it will be important to add initiatives to the lists included on the existing plans. In addition, it is important to ensure continued reporting, both to OIRA and to the public, about implementation, including recent achievements and coming initiatives. To that end, OIRA issued guidance in October 2011 calling for regular reporting and priority-setting and offering a suggested template for agency use. (The guidance is attached as Appendix F.) Initial reports were received from agencies in January 2012. OIRA has also called for public participation in continuing efforts to review existing regulations.

In this way, OIRA seeks to create a culture of retrospective analysis, in which existing rules (whether issued in the very recent past or decades ago) are subject to assessment and continuing evaluation, with public input. We recommend, in short, 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. We emphasize that such reevaluation should be applied both to rules long on the books and also to recently issued rules when experience reveals that improvements can be made. It is not unusual for agencies to issue rules with at least a degree of uncertainty about one or another provision. In some cases, that uncertainty might be informed in the short-run by experience, or relevant reactions, and in such cases, changes might turn out to be desirable.

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<sup>152</sup> See Greenstone (2009), p. 113 and, in other contexts, Banerjee and Duflo (2011).

<sup>153</sup> Department of the Treasury, Plan for Retrospective Analysis of Existing Rules at 20.

<sup>154</sup> Department of Labor, Plan for Retrospective Analysis of Existing Rules at 22.

<sup>155</sup> Department of the Interior, Plan for Retrospective Regulatory Review at 20. See also US Department of Agriculture, Final Plan for Retrospective Analysis Pursuant to Executive Order 13563 23 (Aug 18, 2011), available at <http://www.whitehouse.gov/sites/default/files/other/2011-regulatory-action-plans/departmentofagricultureregulatoryreformplanaugust2011.pdf> (“[The USDA] may consider the use of experimental or quasi-experimental designs, including randomized controlled trials, when promoting the empirical testing of the effects of rules.”).

## **B. Simplification, Coordination, and Reduction of Uncertainty**

Division C, Title II, Section 202 of House Report 112-331<sup>156</sup> requires reporting on efforts to reduce uncertainty and on coordination across agencies. In the recent past, a number of steps have been taken to achieve these goals, above all through greater clarity and transparency, which reduces uncertainty. A longstanding complaint about Federal regulation is that many rules are too complicated and hard to understand. The concern is bipartisan. It comes from small and large businesses, public interest groups, State and local governments, and countless individual citizens. Significant recent efforts have been made to address that concern.

### ***1. Accessibility, Clarity, and Certainty***

Executive Order 13563 requires rules to be “accessible, consistent, written in plain language, and easy to understand.” The order also states that regulations “shall be adopted through a process that involves public participation,” including an “open exchange of information and perspectives.” That open exchange cannot occur if proposed rules, presented for public comment, are complex and obscure. And if people are being asked to comply with rules, they are entitled to have a clear sense of what they are being asked to do. Without such clarity, there can be undue complexity and uncertainty.

In January 2012, the Office of Information and Regulatory Affairs directed agencies to provide the public with brief, straightforward executive summaries of all complex and lengthy rules. These summaries will include separate descriptions of all key provisions and policy choices. They will explain the need for the rule and offer a succinct statement of its legal basis. The summaries will also include a table describing the costs and benefits of the rule. The use of clear, simple executive summaries will make it far easier for members of the public to understand and to scrutinize proposed rules – and thus help to improve them. And for final rules, such summaries will make it far easier for people to understand what they are being asked to do. This action is closely connected to many other administration efforts, such as requiring the use of plain language in government documents [<http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-15.pdf>] and calling for simplification and reduction of red-tape [[http://www.whitehouse.gov/sites/default/files/omb/inforeg/icb/2011\\_ICB\\_Data\\_Call.pdf](http://www.whitehouse.gov/sites/default/files/omb/inforeg/icb/2011_ICB_Data_Call.pdf)].

Simplification of regulatory requirements, and in some cases dramatic change in the direction of greater simplicity, is a high priority. In some cases, rules should be shorter as well as clearer. With respect to rules in general, Executive Order 13563 directs agencies to promote “coordination, simplification, and harmonization” and to “identify and consider regulatory approaches that reduce

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<sup>156</sup> U.S. House. Committee on Appropriations. *Military Construction and Veterans Affairs And Related Agencies Appropriations Act of 2012, Conference Report* (to Accompany H.R. 2055). (H. Rpt. 112-331). Text from: <[http://rules.house.gov/Media/file/PDF\\_112\\_1/HR2055CRbill/pcConferenceDivc-BilloCR.pdf](http://rules.house.gov/Media/file/PDF_112_1/HR2055CRbill/pcConferenceDivc-BilloCR.pdf)>. Available from: Committee on Appropriations; Accessed 1/9/2012.

burdens and maintain flexibility and freedom of choice for the public.”<sup>157</sup> These approaches “include appropriate default rules.”<sup>158</sup>

## 2. Coordination

There have been a number of recent examples of coordination and harmonization between and among agencies. As part of OIRA’s review process, a high priority is placed, during interagency scrutiny, on the need to avoid inconsistency and redundancy. Consider the following examples.

As requested by the President and in the interest of maximizing regulatory harmonization, NHTSA and EPA worked together closely and with the California Air Resource Board (CARB) and all stakeholders throughout the development of EPA and DOT’s Joint Fuel Economy and GHG Emissions NPRM for Model Years 2017-2025. The NPRM was published in fall of 2011. CARB plans to release a proposal for MY 2017-2025 GHG emissions standards which are consistent with the standards being proposed by EPA and NHTSA. A central goal of this coordinated effort is to reduce the risk of redundancy and inconsistency and thus to promote the harmonization goals of Executive Order 13563.

Similarly, EPA and DOT/NHTSA’s joint Fuel Economy Label final rule harmonized revisions to the existing fuel economy label and incorporated greenhouse gas emissions ratings. A key goal of this rulemaking was to promote consistency and coordination and to avoid redundancy. Consistent with the emphasis in Executive Order 13563, section 4, on “provision of information to the public in a form that is clear and intelligible,” the new labels will for the first time provide:

- New ways to compare energy use and cost between new-technology cars that use electricity and conventional cars that are gasoline-powered.
- Useful estimates on how much consumers will save or spend on fuel over the next five years compared to the average new vehicle.
- Easy-to-read ratings of how a model compares to all others for smog emissions and emissions of pollution that contribute to climate change.
- An estimate of how much fuel or electricity it takes to drive 100 miles.
- Information on the driving range and charging time of an electric vehicle.
- A QR Code® that will allow users of smartphones to find online information about how various models compare on fuel economy and other environmental and energy factors. This tool will also allow consumers to enter information about their typical commutes and driving behavior in order to get a more precise estimate of fuel costs and savings.

Because this was a joint rulemaking, there was a sustained effort to square the legal authorities of DOT and EPA and to provide a harmonized label.

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<sup>157</sup> Executive Order 13563, available at

[http://www.whitehouse.gov/sites/default/files/omb/inforeg/eo12866/eo13563\\_01182011.pdf](http://www.whitehouse.gov/sites/default/files/omb/inforeg/eo12866/eo13563_01182011.pdf).

<sup>158</sup> *Id.*

Additional efforts at promoting coordination, and reducing the risk of inconsistent and redundant regulation, can be found in efforts toward increased regulatory cooperation. For example, the United States has worked closely with Canada to produce a plan for increasing regulatory coordination, thus eliminating unnecessary and unjustified inconsistency. The Regulatory Cooperation Council Joint Action Plan can be found at: [http://www.whitehouse.gov/omb/oira\\_irc\\_north\\_america#canada](http://www.whitehouse.gov/omb/oira_irc_north_america#canada). Regulatory cooperation efforts are also ongoing with Mexico, and significant achievements have been made in that domain as well. More information about these efforts are available at: [http://www.whitehouse.gov/omb/oira\\_irc\\_north\\_america#canada](http://www.whitehouse.gov/omb/oira_irc_north_america#canada). OIRA continues to work with agencies to avoid unjustified inconsistencies and redundancies.

### **3. *Simplification of Regulatory Requirements***

With respect to simplification, recent reports have emphasized the potential value of reducing regulatory burdens and of using default rules, which can greatly simplify choices and reduce burdens and costs by making certain outcomes automatic. In some domains, “automaticity” can produce valuable improvements.

In the domain of savings, automatic enrollment programs have shown considerable promise. There are many other examples. For example, the Department of Homeland Security has changed the default setting for payroll statements to electronic from paper, thus reducing costs.<sup>159</sup> In general, changes of this kind promise to save significant sums of money for both private and public sectors. In addition, the National School Lunch Act<sup>160</sup> takes steps to allow “direct certification” of eligibility, thus reducing complexity and introducing what can be seen as a form of automatic enrollment. Under the program, children who are eligible for benefits under certain programs will be “directly eligible” for free lunches and free breakfasts, and hence will not have to fill out additional applications.<sup>161</sup> To promote direct certification, the USDA has issued an interim final rule that is expected to provide up to 270,000 children with school meals.<sup>162</sup>

Where it is not possible or best to change the default, significant benefits might be obtained merely by simplifying and easing people’s choices. For example, recent research suggests that merely simplifying the choice presented to individuals with respect to retirement savings plans can increase plan enrollment rates by as much as 10 to 20 percentage points.<sup>163</sup> Complexity can have serious unintended effects (including indifference, delay, and confusion),

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<sup>159</sup> Peter Orszag, Director, OMB, *SAVEings* (Mar 29, 2010), online at <http://www.whitehouse.gov/omb/blog/10/03/29/SAVEings/>.

<sup>160</sup> Healthy, Hunger-Free Kids Act of 2012, Pub L No 111-296, 124 Stat 3183.

<sup>161</sup> Healthy, Hungry-Free Kids Act of 2012 § 101, 42 USC § 1758(b)(4).

<sup>162</sup> US Department of Agriculture, Direct Certification and Certification of Homeless, Migrant and Runaway Children for Free School Meals, 76 Fed Reg 22785-02, 22793 (2011).

<sup>163</sup> See Beshears et al. (2011) (evaluating “Quick Enrollment,” which gives employees a mechanism to enroll in their employer’s savings plan at an asset allocation and contribution rate pre-selected by the employer – allowing “individuals to psychologically collapse a complex, multidimensional savings and investment problem into a simpler binary choice: remain at their status quo, or accept the pre-selected alternative”).

potentially imposing high costs and undermining regulatory goals by reducing compliance or by decreasing the likelihood that people will benefit from various policies and programs.<sup>164</sup>

#### 4. *Simplifying Paperwork Requirements*

With respect to forms and paperwork in particular, undue complexity can severely discourage applications, thus compromising important programs. Simplification can have surprisingly large benefits. For some public programs, take-up rates are relatively low even though the cost of participation is small.<sup>165</sup> Behavioral factors, including inertia, are contributing factors, and some form of simplification or automatic enrollment might help.

For example, a series of steps have been taken recently toward simplifying the Free Application for Federal Student Aid (FAFSA), reducing the number of questions through skip logic (a survey method that uses previous responses to determine subsequent questions) and allowing electronic retrieval of information.<sup>166</sup> Use of a simpler and shorter form is accompanied by a pilot initiative to permit online users to transfer data previously supplied electronically on their tax forms directly into their FAFSA applications.<sup>167</sup>

These steps are intended to simplify the application process for financial aid and thus to increase access to college. There is good reason to believe that such steps will enable many students to receive aid when they previously could not do so. Additional steps might be taken, and are being considered, in this domain. Similar initiatives might be undertaken in many other domains. Considerable thought should be given to the question of whether complexity is having unintended adverse effects and undermining regulatory programs.

In 2010, the Treasury Department took several steps to increase simplicity by moving to electronic systems. Perhaps most importantly, the department finalized a rule to provide electronic payments to people receiving Social Security, Supplemental Security Income, Veterans, Railroad Retirement, and Office of Personnel Management benefits.<sup>168</sup>

It is estimated that these steps will save over \$400 million in the first five years.<sup>169</sup> The initiatives from the Treasury Department are in line with a 2010 request from OMB asking agencies for initiatives that would promote electronic reporting through “fillable fileable” forms, substitute electronic for paper signatures, increase administrative simplification, and reduce

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<sup>164</sup> See, e.g., Kling, et. al (2011) (discussing insight in relation to Medicare Part D prescription drug insurance programs).

<sup>165</sup> See Devoto, et al. (2011); Congdon, et al. (2011), p. 11-12.

<sup>166</sup> See Office of Information and Regulatory Affairs, Office of Management and Budget, Information Collection Budget of the United States Government 22, 32–33 (2010), online at [http://www.whitehouse.gov/sites/default/files/omb/info/foreg/icb/icb\\_2010.pdf](http://www.whitehouse.gov/sites/default/files/omb/info/foreg/icb/icb_2010.pdf).

<sup>167</sup> For discussion of the importance of such steps, see Eric P. Bettinger, et al, *The Role of Simplification and Information in College Decisions: Results from the H&R Block FAFSA Experiment* \*26–29 (NBER Working Paper No 15361, Sept 2009), online at <http://www.nber.org/papers/w15361> (visited May 31, 2011); Council of Economic Advisers, National Economic Council, *Simplifying Student Aid: The Case for a Easier, Faster, and More Accurate FAFSA* (Sept 2009), online at [http://www.whitehouse.gov/assets/documents/FAFSA\\_Report.pdf](http://www.whitehouse.gov/assets/documents/FAFSA_Report.pdf) (visited Oct 23, 2011).

<sup>168</sup> 29 CFR § 1926.

<sup>169</sup> See 31 CFR § 208; Department of Treasury, Press Release, *Treasury Goes Green, Saves Green: Broad New Initiative Will Increase Electronic Transactions, Save More Than \$400 Million, 12 Million Pounds of Paper in First Five Years Alone* (Apr 19, 2010), online at <http://www.treasury.gov/press-center/press-releases/Pages/tg644.aspx>.

burdens on small business.<sup>170</sup> That request in turn produced seventy-two initiatives from various agencies, all designed to reduce burdens and to increase simplification.<sup>171</sup> In total, those initiatives are expected to eliminate millions of hours of paperwork and reporting burdens each year.

In 2011, OMB followed the 2010 request with a new one, also emphasizing simplification and focusing on small business and benefit programs.<sup>172</sup> The request drew particular attention to the potential harms of complexity, noting that “the process of renewing or applying for benefits can be time-consuming, confusing, and unnecessarily complex, thus discouraging participation and undermining program goals. Sometimes agencies collect data that are unchanged from prior applications; in such circumstances, they might be able to use, or to give people the option to use, pre-populated electronic forms.”

In response, agencies submitted 57 new burden reduction initiatives, many of which will benefit businesses (both small and large) and beneficiaries of Federal programs.<sup>173</sup> For example, an initiative from USDA would relieve small and large businesses in the livestock, meat packing, and poultry industries of over 60,000 annual paperwork burden hours. It would do so by allowing for the electronic submission of the Grain Inspection, Packers, and Stockyards Administration’s (GIPSA) fair trade reporting requirements. Another initiative from USDA would reduce 20.7 million burden hours now imposed on recipients of Supplemental Nutrition Assistance by allowing clients to certify eligibility for the program electronically or by telephone, thus reducing burdensome visits to the local program office.

There is good reason to believe that imperfect take-up of existing benefit programs, including those that provide income support, is partly a product of behavioral factors such as procrastination and inertia.<sup>174</sup> It follows that efforts to increase simplicity, including automatic enrollment, greater use of the Internet and electronic reporting, and pre-populated forms may have substantial benefits and reduce unnecessary or overlapping information collection burdens.<sup>175</sup> OMB recommends that in many domains, such efforts should be given high priority and careful consideration.

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<sup>170</sup> See Memorandum for Chief Information Officers, Data Call for the 2010 Information Collection Budget 1–2 (Apr 20, 2010), available at [http://www.whitehouse.gov/omb/assets/inforeg/2010\\_icb\\_datacall.pdf](http://www.whitehouse.gov/omb/assets/inforeg/2010_icb_datacall.pdf).

<sup>171</sup> For a list of these initiatives, see Office of Information and Regulatory Affairs, Information Collection Budget at 23–123 (cited in 166). For a subsequent list in the 2011 report, including reduced burdens on small businesses and simplification efforts for Federal benefits programs, see Office of Information and Regulatory Affairs, Office of Management and Budget, Information Collection Budget of the United States Government 16–79 (2011), online at [http://www.whitehouse.gov/sites/default/files/omb/inforeg/icb/2011\\_icb.pdf](http://www.whitehouse.gov/sites/default/files/omb/inforeg/icb/2011_icb.pdf)

<sup>172</sup> See Cass R. Sunstein, Administrator, OIRA, Memorandum for Chief Information Officers, Minimizing Paperwork and Reporting Burdens 1 (Feb 23, 2011), online at [http://www.whitehouse.gov/sites/default/files/omb/inforeg/icb/2011\\_ICB\\_Data\\_Call.pdf](http://www.whitehouse.gov/sites/default/files/omb/inforeg/icb/2011_ICB_Data_Call.pdf). For the results of this request, see generally Office of Information and Regulatory Affairs, Information Collection Budget.

<sup>173</sup> See *id.*

<sup>174</sup> See, e.g., Congdon, et al. (2011), p. 11-12, 158.

<sup>175</sup> *Id.* at 160 (“[M]aking it easier for individuals to qualify for and perceive the terms of benefits may have high returns in terms of take-up rates. Simplifying the application process—requiring fewer forms, using automatic or default enrollment, and so on—could have large effects on take-up.”).

## 5. *Simplifying language*

Executive Order 12866 provides that agencies “shall draft” their “regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.”<sup>176</sup> As noted, Executive Order 13563 states that regulations must be “accessible, consistent, written in plain language, and easy to understand.”<sup>177</sup> In his January 21, 2009, Memorandum on Transparency and Open Government, President Obama emphasized the importance of establishing “a system of transparency, public participation, and collaboration.” Plain writing is indispensable to achieving these goals.

In the domain of regulation, clear and simple communication has many benefits. Indeed, plain writing promotes the rule of law. Avoiding vagueness and unnecessary complexity makes it easier for members of the public to understand what is required and to apply for important benefits and services for which they are eligible. In addition, plain writing assists the public in complying with applicable requirements simply because people better understand what they are supposed to do. Plain writing is thus more than a mere formal requirement; it is essential to the successful achievement of legislative and administrative goals.

Experience has shown that plain writing can improve public understanding of government communications; save money and increase efficiency; reduce the need for the public to seek clarification from agency staff; improve public understanding of agency requirements and thereby assist the public in complying with them; reduce resources spent on enforcement; improve public understanding of agency forms and applications and thereby help the public in completing them; and reduce the number of errors that are made and thus the amount of time and effort that the agency and the public need to devote to correcting those errors.

The Plain Writing Act of 2010<sup>178</sup> calls for writing that is clear, concise, and well-organized. The Act should produce significant improvements in the interactions between citizens and the Federal Government. On April 13, 2011 OMB issued guidance to implement the Plain Writing Act. (The guidance is available as Appendix G.<sup>179</sup>) Under the Act, starting October 13, 2011, agencies must use plain writing when issuing new or substantially revised documents. This requirement applies to “covered documents,” which the Act defines as those documents that:

- are necessary for obtaining any Federal Government benefit or service, or filing taxes (e.g., tax forms or benefit applications);
- Provide information about any Federal Government benefit or service (e.g., handbooks for Medicare or Social Security recipients); or

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<sup>176</sup> “Regulatory Planning and Review,” Section 1(b)(12) available at <http://www.archives.gov/federal-register/executive-orders/pdf/12866.pdf>.

<sup>177</sup> available at <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>.

<sup>178</sup> Pub. L. 111-274.

<sup>179</sup> OMB Memorandum, M-11-15, “Final Guidance on Implementing the Plain Writing Act of 2010,” available at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-15.pdf>.

- Explain to the public how to comply with a requirement that the Federal Government administers or enforces (e.g., guidance on how to prepare required reports or comply with safety requirements).

The Act also requires agencies to use plain writing in every paper or electronic letter, publication, form, notice, or instruction. When an agency prepares a specialized or technical publication, the agency is directed to take into account the subject expertise of the intended audience. For purposes of the Act, the “public” means anticipated readers or recipients, including any external stakeholders affected by an agency’s mission or with whom an agency is seeking to communicate. While the Act exempts regulations from covered documents, rulemaking preambles are not exempted, and long-standing policies currently in effect require regulations to be written in a manner that is “simple and easy to understand.”<sup>180</sup>

OIRA continues to recommend that agencies should communicate with the public in a way that is clear, simple, meaningful, and jargon-free.<sup>181</sup> It is especially important to see that plain writing is associated with both open government and regulatory reform. A lack of clarity may prevent people from becoming sufficiently aware of programs or services, and the prospect of confusing or complex forms may discourage people from applying for benefits and services for which they are eligible. Similarly, a lack of clarity may make it difficult for people to understand whether particular requirements apply to them, and if so, what they are supposed to do.

### C. Smart Disclosure

Well-designed disclosure policies can significantly improve the operation of markets, helping people to make more informed decisions.<sup>182</sup> Consumers will frequently be able to make better choices when they have accurate and specific information about the economic consequences of those choices, including their own past decisions and those of others. The best product for a particular consumer, such as an insurance plan, will often depend on that consumer’s distinctive situation. For consumers to make informed decisions, they must be able to engage in comparison-shopping and evaluate a menu of options in order to identify the one that most cost-effectively matches their preferences.<sup>183</sup> In some cases, consumers lack ready access to the nature or effects of their own decisions; providing that information can produce large benefits by promoting informed choices.

Simply making relevant information formally available, moreover, does not ensure that consumers will use it effectively. In some cases, consumers must take into account many details

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<sup>180</sup> Executive Order 12866, “Regulatory Planning and Review.” Section 1(b)(12) (“Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty”), available at <http://www.archives.gov/federal-register/executive-orders/pdf/12866.pdf>. More recently, Executive Order 13563, “Improving Regulation and Regulatory Review,” states that regulations must be “accessible, consistent, written in plain language, and easy to understand,” available at <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>.

<sup>181</sup> See Memorandum for the Heads of Executive Departments and Agencies, “Disclosure and Simplification as Regulatory Tools,” available at [http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/disclosure\\_principles.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/disclosure_principles.pdf).

<sup>182</sup> See Fung et al. (2007).

<sup>183</sup> See Kamenica et al. (2011), p. 1.

about their own current circumstances when selecting a product.<sup>184</sup> In addition, they must often make predictions about their future circumstances. When information is available, the difficulty of making effective comparisons has been described as “comparison friction,” meaning the “wedge between the availability of comparative information and consumers’ use of it.”<sup>185</sup> Recent studies suggest that comparison friction can be substantial even when the initial cost of acquiring information is low.<sup>186</sup> Effective disclosure policies attempt to reduce that friction and thus to enable consumers to make clear comparisons. Other factors such as psychological anchors – “arbitrary and irrelevant numbers” that “bias people’s judgments” – can also adversely affect individual judgment.<sup>187</sup> In practice, it is often time-consuming and difficult for consumers to track and analyze the complex information they need to make informed decisions.

Executive Order 12866 provides that “[e]ach agency shall identify and assess available alternatives to direct regulation, including... providing information upon which choices can be made by the public.”<sup>188</sup> Executive Order 13563 also directs agencies “[w]here relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law” to “identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible.”<sup>189</sup>

On September 8, 2011, OIRA issued a Memorandum on Informing Consumers through Smart Disclosure<sup>190</sup> (see Appendix H). “Smart disclosure” refers to the “timely release of complex information and data in standardized, machine readable formats in ways that enable consumers to make informed decisions.” Smart disclosure can help consumers to find and use relevant data, including data about the effects of their own past choices and those of others, to make decisions that reflect their individualized needs, and to revise and improve those decisions over time or as new circumstances arise.<sup>191</sup>

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<sup>184</sup> See Kling et al. (2012)

<sup>185</sup> See *id.* See also Hastings and Weinstein (2008); Ellison and Ellison (2009).

<sup>186</sup> See Kling et al. (2012).

<sup>187</sup> See, e.g., Stewart (2009). See also Tversky and Kahneman (1974); Chapman and Johnson (2002)..

<sup>188</sup> Executive Order 12866, available at <http://www.whitehouse.gov/sites/default/files/omb/inforeg/eo12866.pdf>.

<sup>189</sup> Executive Order 13563, Sec. 4., available at <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>.

<sup>190</sup> Memorandum for the Heads of Executive Departments and Agencies, “Informing Consumers through Smart Disclosure,” available at <http://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/informing-consumers-through-smart-disclosure.pdf>. This memorandum is built upon OIRA’s previous Memorandum on Disclosure and Simplification as Regulatory Tools, which set out guidance to “inform the use of disclosure in the regulatory context.” See Memorandum for the Heads of Executive Departments and Agencies, “Disclosure and Simplification as Regulatory Tools,” available at [http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/disclosure\\_principles.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/disclosure_principles.pdf). Among other things, that memorandum stated that “[w]ell-designed disclosure policies attempt to convey information clearly and at the time when it is needed and note the “difference between making a merely technical disclosure — that is, making information available somewhere and in some form, regardless of its usefulness — and actually informing choices.”

<sup>191</sup> See Memorandum for the Heads of Executive Departments and Agencies, “Informing Consumers through Smart Disclosure,” available at <http://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/informing-consumers-through-smart-disclosure.pdf>.

Such disclosures will typically take the form of providing individual consumers of goods and services with direct access to relevant information and data sets.<sup>192</sup> Smart disclosure make information not merely available but also accessible and usable, by structuring the relevant data in standardized, machine readable formats. Machine readable data are “digital information stored in a format enabling the information to be processed and analyzed by computer.”<sup>193</sup> These data should also be timely, interoperable, and adaptable to market innovation, as well as disclosed in ways that fully protect consumer privacy.<sup>194</sup>

There are two primary ways that agencies typically authorize or promote the disclosure of consumer information to members of the public. First, agencies may require or allow companies or other entities to make information (including individualized disclosures) directly available to consumers, such as when consumers log on to company websites. Second, agencies may collect the information from those entities and then make the information available, sometimes in modified form, to the public. Recent examples include:

- “The “Green Button” initiative is an Administration-led effort designed to provide electricity customers with easy access to their energy usage data in a consumer-friendly and computer-friendly format via a “Green Button” on electric utilities’ websites. With this information in hand, customers can take advantage of innovative energy apps to help them understand their energy usage and find ways to reduce electricity consumption and to shrink bills, all while ensuring they retain privacy and security. As a result of early adoption by two of California’s largest electrical utilities and numerous innovative companies, several million Americans now have access to a Green Button. In the future, many more millions are expected to have access. Consumers will be able to achieve significant savings as a result.
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- “Blue Button” is a web-based feature through which patients may easily download their health information and share it with health care providers, caregivers, and others they trust.<sup>195</sup> In August 2010, the Administration announced the formal launch of Blue Button for Veterans and Medicare beneficiaries. Veterans who log onto My HealtheVet at [www.myhealth.va.gov](http://www.myhealth.va.gov) and click the Blue Button can save or print information from their own health records. Using a similar Blue Button, Medicare beneficiaries who are registered users of [www.mymedicare.gov](http://www.mymedicare.gov) can log onto a secure site where they can save or print their Medicare claims and self-entered personal information. Data from of each site can be used to create portable medical histories that will facilitate dialog with Veterans’ and beneficiaries’ health care providers, caregivers, and other trusted individuals or entities.
- The Department of Transportation (DOT) issued a rule requiring airlines to disclose to consumers the entire price they will pay for a ticket and to make immediately

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<sup>192</sup> Such information might involve, for example, the range of costs associated with various products and services, including costs that might not otherwise be transparent.

<sup>193</sup> Memorandum for the Heads of Executive Departments and Agencies, “Informing Consumers through Smart Disclosure,” p. 5. available at <http://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/informing-consumers-through-smart-disclosure.pdf>.

<sup>194</sup> *Id.*

<sup>195</sup> See <http://bluebuttondata.org/about.php>.

available on their own Web sites information on any fees for optional services (such as baggage, advance seat selection, and in-flight food and entertainment).<sup>196</sup>

- Each year, most private pension and many private welfare benefit plans satisfy their annual reporting requirement by filing a Form 5500 Annual Return/Report regarding their financial condition, investments, and operations with the Department of Labor, Internal Revenue Service, and the Pension Benefit Guaranty Corporation. The unedited, machine-readable data is provided through the EBSA FOIA Web page while a pension research sample and a health data set are also available for download from DOL in multiple, useable formats.

Agencies have also released data sets directly to promote informed choices by consumers. Data.gov is a government-wide platform established on May 21, 2009, as a flagship Open Government initiative, to facilitate access to Federal data from across government. The platform houses over 390,000 diverse data sets, many of them relevant to consumer markets, and these can be used to disseminate smart disclosure data sets going forward. Other examples include a website that provides consumers with up-to-date product recall information<sup>197</sup> and another that releases information about automobile safety and crash ratings, along with data rating child safety seats.<sup>198</sup> Posting such data sets can promote regulatory goals, often at low cost, by fostering transparency and increasing accountability. In addition to posting such data sets, agencies are encouraged to collaborate with other agencies and the public to ensure the usefulness of the data sets and to increase awareness of their availability.

Agency use of smart disclosure, to the extent consistent with law and government-wide policies, also promotes the goals of OMB's Open Government Directive.<sup>199</sup> The Directive is intended in part to ensure that high-value government data sets are placed online. Indeed, many high-value data sets count as such because their publication helps agencies to further their statutory missions.

In some cases, agencies or third-party intermediaries may also create tools that use these data sets to provide services that support consumer decision-making.<sup>200</sup> Smart disclosure enables third parties to analyze, repackage, and reuse information to build such tools. When individuals have access to their own consumer data, these tools can help them track their own information and analyze it to make better and more tailored choices and also promote well-informed comparisons. Moreover, these tools can greatly reduce the cost to consumers of seeking out relevant information from individual companies. They can also help individuals search efficiently based on very specific criteria that would be burdensome and time-consuming to extract from traditional print disclosures. Examples include comparison-shopping websites and

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<sup>196</sup> See Final Rule, "Enhancing Passenger Protections," Department of Transportation (April 25, 2011), available at <http://www.federalregister.gov/articles/2011/04/25/2011-9736/enhancing-airline-passenger-protections>

<sup>197</sup> See, e.g., [www.recalls.gov](http://www.recalls.gov).

<sup>198</sup> See, e.g., [www.safercar.gov](http://www.safercar.gov).

<sup>199</sup> Office of Management and Budget, Memorandum for the Heads of Executive Departments and Agencies, "Open Government Directive," M-10-06, available at [http://www.whitehouse.gov/omb/assets/memoranda\\_2010/m10-06.pdf](http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf).

<sup>200</sup> As noted, such decision-making might be improved, for example, by informing consumers about the nature and effects of their own past decisions (including, for example, the costs and fees they have already incurred).

mobile phone applications that help people to identify and compare local providers of many relevant goods and services.<sup>201</sup>

Smart disclosure initiatives can promote innovation, economic growth, and job creation in the market for consumer tools. Smart disclosure of consumer data yields other benefits, including allowing consumers to monitor more easily the accuracy and use of the information that companies hold on them. To the extent permitted by law, and where appropriate in light of government-wide policies,<sup>202</sup> including those designed to protect privacy, OIRA recommends that agencies give careful consideration to whether and how best to promote smart disclosure.

#### **D. Public Participation, Open Government Partnership, and National Action Plan**

Division C Title II Section 202 of House Report 112-331 2 requires provision of information on efforts to increase public participation in the rulemaking process. Such efforts have been a high priority. The 2011 Report provides a detailed discussion of recent efforts, and previous discussion in this Chapter offers relevant illustrations. We begin by drawing on, and updating, the 2011 discussion.

Under Executive Order 13563, agencies are directed to promote public participation and in particular to provide the public with “timely online access to the rulemaking docket on Regulations.gov, including relevant scientific and technical findings, in an open format that can be easily searched and downloaded.” OIRA remains committed to using technology to improve transparency and to increase public participation in the regulatory process. Among other things, OIRA has issued a series of memoranda to provide agencies with practical guidance for improving access to regulatory actions and their supporting justifications. These memoranda should be seen as a beginning of more ambitious efforts, consistent with Executive Order 13563, to promote public understanding of and participation in rulemaking, with the ultimate goal of improving the substance of rules through tapping the diverse perspectives and dispersed knowledge of the American people.

- In April 2010, OMB published “Increasing Openness in the Rulemaking Process – Use of the Regulation Identifier Number (RIN),” a memorandum that aims to promote greater openness by requiring Federal agencies to use the Regulation Identifier Number (RIN) on all relevant documents throughout the entire “lifecycle” of a rulemaking.<sup>203</sup> By using the RIN as the key identifier on all related docket materials, the government will be better able to use technology to assemble electronic dockets and will help the public to have easier and more comprehensive access to regulatory information.

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<sup>201</sup> See, e.g., [www.kayak.com](http://www.kayak.com) or [www.mint.com](http://www.mint.com).

<sup>202</sup> See, e.g., Office of Management and Budget

Circular A-130, “Management of Federal Information Resources,” available at [http://www.whitehouse.gov/omb/circulars\\_a130\\_a130trans4](http://www.whitehouse.gov/omb/circulars_a130_a130trans4). See also Memorandum for the Heads of Executive Departments and Agencies, “Information Collection under the Paperwork Reduction Act,” available at [http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer\\_04072010.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer_04072010.pdf)

<sup>203</sup> Available at

[http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/IncreasingOpenness\\_04072010.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/IncreasingOpenness_04072010.pdf). Executive Order 12866, Sec. 4(b) requires each regulatory action in the Unified Regulatory Agenda—a semiannual compendium of all regulations under development or review—to contain, among other things, a RIN.

- In May 2010, OMB published “Increasing Openness in the Rulemaking Process – Improving Electronic Dockets,” to improve public access to regulatory information by requiring Federal agencies to compile and maintain comprehensive electronic regulatory dockets on Regulations.gov.<sup>204</sup> This memorandum states that to the extent that they are part of rulemaking, supporting materials (such as notices, significant guidance documents, environmental impact statements, regulatory impact analyses, and information collections) should be made available during the notice-and-comment period by being uploaded and posted as part of the electronic docket. These materials should be in machine-readable format to enable the public to perform full-text searches of the documents and to extract information. (This memorandum is consistent with Executive Order 13563, which specifically emphasizes the importance of providing the public with relevant information, including scientific and technical findings, on Regulations.gov, with an opportunity for comment.)
- In November 2010, OIRA worked with the eRulemaking Program Management Office (PMO) and Federal agencies to publish a best practices document, titled “Improving Electronic Dockets on Regulations.gov and the Federal Docket Management System – Best Practices for Federal Agencies.” The document outlines strategic goals and best practices to improve agency use of the Federal Docket Management System (FDMS) and Regulations.gov. The document also seeks to establish a common taxonomy and adoption of data protocols for the various rulemaking and non-rulemaking docket and document types.<sup>205</sup>

The two memoranda and the best practices document establish a new commitment to improving the public’s ability to find regulatory documents and inclusive docket information—thus promoting public participation in the Federal regulatory process and collaboration between the Federal agencies and the public. Efforts to measure compliance with these initiatives continue. An ultimate goal of this emphasis on participation is to improve the content of rules by bringing diverse perspectives to bear. In his Memorandum on Open Government, President Obama noted, “Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge.” A central purpose of increased participation is to tap that widely dispersed knowledge in the rulemaking process. If, for example, a proposal would create special hardships for small business, or deliver important benefits to disadvantaged groups, it is important for officials to obtain that information.

OIRA’s work with the Regulatory Information Service Center (RISC) has also led to many recent improvements to Reginfo.gov, a website that displays regulatory actions and information collections currently at OIRA for review. In February 2010, RISC launched an OIRA “dashboard” and redesigned Reginfo.gov. The OIRA dashboard uses an interactive display to present information about rulemakings under review and allows the public to sort rules

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<sup>204</sup> Available at [http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/edocket\\_final\\_5-28-2010.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/edocket_final_5-28-2010.pdf)

<sup>205</sup> These strategic goals include 1) increasing the public’s access to regulatory content; 2) building a common taxonomy and protocols for managing dockets and regulatory documents; and 3) compiling comprehensive electronic dockets and increasing agency efficiency. The document also details plans for system enhancements to FDMS and Regulations.gov, as well as new interfaces the RISC/OIRA Consolidated Information System (ROCIS) to reduce agency burdens in managing regulatory dockets by pre-populating electronic dockets in FDMS based on existing information in the Unified Agenda.

by agency, length of review, stage of rulemaking, and economic significance. During the 2010 calendar year, Reginfo.gov received a cumulative total of nearly one million page views; since the addition of the OIRA dashboard, the website has seen a 28 percent increase in the number of site visitors, totaling 169,549 visitors.<sup>206</sup>

There have also been significant efforts to improve Regulations.gov. As a result of such improvements, Regulations.gov provides the public with easier access to regulatory documents and the regulatory process. The improvements include the ability to conduct searches within a docket, a regulatory topics index, and posting of public comments, as well as a link to helpful videos on the YouTube channel and other sites.<sup>207</sup> In May 2009, and again in January 2010, the eRulemaking Project Management Office launched Regulations.gov/Exchange, an on-line forum to promote interaction with the public and to foster open dialogue among all users, including industry, public interest groups, trade associations, and State and local governmental entities. During the 2010 calendar year, Regulations.gov received a cumulative total of 123 million page views; since the addition of these new site features and functions, the site has seen a 31 percent increase in the number of site visitors, totaling 190 million. The site also received approximately 306,000 web form comments in 2010.<sup>208</sup>

In 2011, Regulations.gov has launched a major redesign, including innovative new search tools, social media connections, and better access to regulatory data. The result is a significantly improved website that will help members of the public to engage with agencies and ultimately to improve the content of rules. For example, users are now able to browse by categories of regulations. The ten new categories include:

1. Aerospace and Transportation
2. Agriculture, Environment, and Public Lands
3. Banking and Financial
4. Commerce and International
5. Defense, Law Enforcement, and Security
6. Education, Labor, Presidential, and Government Services
7. Energy, Natural Resources, and Utilities
8. Food Safety, Health, and Pharmaceutical
9. Housing, Development, and Real Estate
10. Technology and Telecommunications

As a result of changes in the search functionality and results page, Regulations.gov also includes more user-friendly sorting and filtering tools. Users can now sort by “Comment Due Date” and “newly posted regulations” and can filter by “Category.” A new feature called “Document Spotlight” allows users to hover their cursors over the documents listed in the search result page, and view additional information about a specific document without having to go first to the docket. Information like the RIN, highlighted keyword search matches, and whether the

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<sup>206</sup> Reginfo.gov site statistics for site visitors were measured by comparing March 1-December 31, 2010 data sets to March 1-December 31, 2009 data sets.

<sup>207</sup> In March 2010, the U.S. Department of Agriculture was the first Federal agency to use the homepage link to host an introductory video for the “Let’s Move” Campaign, featuring First Lady Michelle Obama.

<sup>208</sup> Regulations.gov site statistics for site visitors were measured by comparing January 1-December 31, 2010 data sets to January 1-December 31, 2009 data sets.

comment period is open or closed can be viewed quickly and easily from the Search Results page. In addition, a new “Learn” section offers an interactive explanation of the regulatory process.

OMB continues to support these and other efforts to use technological advances to facilitate transparency and increase public participation in the regulatory process. We recommend continued efforts to improve them, with the central goal of improving the understanding and substance of rules.

Since the first day of his Administration, President Obama has made Open Government a high priority. OMB’s Memorandum on Transparency and Open Government was the first executive action to bear the President’s signature, and the President has pledged his Administration to work toward “an unprecedented level of openness in Government.”<sup>209</sup> On December 8, 2009, OMB issued an Open Government Directive requiring Federal agencies to take immediate, specific steps to achieve key milestones in transparency, participation, and collaboration. As a result, over the past three years, Federal agencies have done a great deal to make government more transparent and more accessible, to provide people with information that they can use in their daily lives, to solicit public participation in government decision-making, and to collaborate with all sectors of the economy on new and innovative solutions.

In 2011, the Administration’s Open Government efforts entered a new phase, as the United States has collaborated with other countries in the global Open Government Partnership (OGP).<sup>210</sup> This global initiative supports efforts to promote more transparent, effective, and accountable institutions around the world. The United States and Brazil co-chaired this effort in its inaugural year.

As a part of the United States’ membership in the OGP, the President launched the U.S. Open Government National Action Plan (“National Plan”). In the process, OIRA, with White House officials, engaged in extensive consultations with external stakeholders, including a broad range of civil society groups and members of the private sector, to gather ideas on open government. On September 20, 2011, President Obama launched the U.S. National Plan in front of more than 40 heads of state in a meeting on the margins of the United Nations. The National Plan consists of twenty-six initiatives designed to 1) increase public integrity, by tackling corruption and enhancing citizen access to information; 2) improve the management of public resources in the United States; and 3) improve public services and spur private sector innovation.

Highlights include:

- As part of the National Plan, the United States announced its commitment to implementing the Extractive Industries Transparency Initiative (EITI). EITI is a voluntary framework under which governments publicly disclose their revenues from oil, gas, and mining assets, and companies make parallel disclosures regarding payments that they are making to obtain access to publicly owned resources.

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<sup>209</sup> Found at [http://www.whitehouse.gov/the\\_press\\_office/TransparencyandOpenGovernment/](http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment/).

<sup>210</sup> For more information on the Open Government Partnership, see <http://www.opengovpartnership.org/>.

The United States collects approximately \$10 billion in annual revenues from the development of oil, gas, and minerals on Federal lands and offshore and disburses the bulk of these revenues to the U.S. Treasury, with smaller portions disbursed to five Federal agencies, 35 states, 41 American Indian tribes, and approximately 30,000 individual Indian mineral owners. By signing on to the global standard that EITI sets, the U.S. Government will help ensure that American taxpayers are receiving every dollar due for the extraction of these valuable public resources. This will foster greater transparency and accountability in government. On October 25, the White House announced Secretary of the Interior Ken Salazar as the Administration's senior official responsible for oversight of implementation of EITI.<sup>211</sup>

- The White House announced its plans to publish the source code of the recently announced “We the People” petition platform so that it is available to any government around the world that seeks to solicit and respond to the concerns of the public. This step will foster greater participation in government.
- The Administration announced its intention to launch a platform called ExpertNet that will enable government officials to search for and communicate with citizens who have expertise on a pertinent topic. ExpertNet will foster greater collaboration within government.
- The Administration announced that it will continue work on a new civil service personnel category (or job series) for officials who specialize in administering FOIA and other information programs. In addition, the Administration stated its intention to expand the use of technology to achieve greater efficiencies in FOIA administration, including use of technology to assist in searching for and processing records.
- As part of the National Plan, the President has issued a memorandum to reform and improve records management practices across government.<sup>212</sup> (The memorandum is available as Appendix I.) The memorandum calls for a review of current policies and practices, which will inform a subsequent Records Management Directive that will lay out a new framework for better managing Federal records, both physical and digital, in a cost effective manner. The Directive aims to reform a decades-old framework while improving and promoting accountability and performance.

The Open Government efforts of the U.S. Government have advanced the President's goals of fostering public and private accountability; providing people with information that they can readily find and use, often in their daily lives; and allowing the Federal Government to benefit from the dispersed knowledge of the American people. OIRA continues to support and recommend the implementation of these and other Open Government initiatives.

## **E. Soliciting Public Recommendations on Regulation and Employment Effects**

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<sup>211</sup> See Press release at <http://www.whitehouse.gov/the-press-office/2011/10/25/white-house-announces-secretary-ken-salazar-administrations-senior-offic>

<sup>212</sup> Barack Obama, Memorandum for the Heads of Executive Departments and Agencies, “Presidential Memorandum – Managing Government Records,” available at <http://www.whitehouse.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>.

Executive Order 13563 states that our “regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and *job creation*” (emphasis added). Executive Order 13563 and Executive Order 12866 require regulatory impact analyses to include an “assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as...adverse effects on the efficient functioning of the economy [and] private markets (including productivity, *employment*, and competitiveness”) (emphasis added).

Chapter I of this report offers a summary of the empirical literature on the relationship between regulation and employment. As the summary makes clear, no simple assessment is easy to defend; any conclusions about the employment effects of a regulation depend on what, exactly, that regulation does. There is also a complex relationship between standard economic analysis of costs and benefits and assessment of employment effects. For example, a rule that effectively requires the employment of new workers (for example, to install equipment) will have positive employment effects (at least in the short term), but will for that very reason impose costs. Similarly, a rule may have benefits far in excess of costs but have a negative effect on employment – if, for example, it leads to the replacement of labor-intensive work with capital-intensive work.

Some economists believe that the best approach is to assess costs and benefits and not to focus on employment effects, on the theory that under circumstances of full employment, workers who are displaced by regulation will end up with other jobs. A finding of a negative employment effect of a particular rule may be misleading if the job loss is temporary. For this reason, some economists conclude that employment effects should not be part of the analysis of the costs and benefits of regulation. On the other hand, this view has been criticized on two grounds.<sup>213</sup>

First, in a period of high unemployment, it is not the case that displaced workers will necessarily find other jobs, especially if job search and retraining costs are high,<sup>214</sup> or if those out of work lose relevant skills and become discouraged workers.<sup>215</sup> This effect, of course, will depend on a number of factors, including the timing of job loss during periods of rapidly rising unemployment,<sup>216</sup> the availability of unemployment insurance,<sup>217</sup> the mobility of workers’ skills across industries, and more general macroeconomic conditions.<sup>218</sup>

Second, workers who lose their jobs have been found to suffer a significant long-term income loss,<sup>219</sup> as well as declines in subjective well-being and life satisfaction (especially

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<sup>213</sup> See Masur and Posner (2011).

<sup>214</sup> *Id.*, at 21-22. See also Krueger and Mueller (2011) (finding that job search declines steeply over spells of unemployment for given set of individuals, for example, those with different levels of average earnings or education).

<sup>215</sup> See Krueger and Mueller (2011).

<sup>216</sup> See *id.* (positing that “calendar time” may help explain the duration of unemployment, perhaps due to evolving seasonal or business cycle conditions).

<sup>217</sup> *Id.*, at pp.

<sup>218</sup> Masur and Posner (2011), at p. 22.

<sup>219</sup> *Id.*, at pp. 18-19. See also Jacobson et. al (1993); von Wachter et al. (2009); Davis and von Wachter (2011) (examining longitudinal Social Security records for U.S. workers from 1974 to 2008 and finding that “[i]n present value terms, men lose an average of 1.4 years of pre-displacement earnings if displaced in mass-layoff events that

during job search activities).<sup>220</sup> One explanation for the former finding is that a worker's earlier wages may have reflected firm-specific human capital, "skills that worker possesses which earn returns only at the firm at which they were acquired."<sup>221</sup> When an industry contracts or a plant is closed, that industry- or plant-specific human capital is no longer of value, and this loss is reflected in lower subsequent wages.<sup>222</sup> This income loss can be counted as a social cost. Davis and Wachter estimate that "men lose an average of 1.4 years of pre-displacement earnings if displaced in mass-layoff events that occur when the national unemployment rate is below 6 percent. They lose a staggering 2.8 years of pre-displacement earnings if displaced when the unemployment rate exceeds 8 percent."<sup>223</sup> In addition to the loss of consumption, there are losses in terms of health (increased mortality rates), and the emotional well-being of the family.

In light of these two points, it has been urged that agencies should attempt to quantify the adverse employment effects (if any) of regulations and turn those effects into monetary equivalents for purposes of cost-benefit analysis.<sup>224</sup> Consistent with Executive Order 13563, OIRA recommends consideration of this view. But there are cautionary notes. In some cases, it may be difficult to make the relevant empirical projections. For example, quantification of job effects may be not be feasible in some cases. Moreover, there is no consensus in the technical literature on how to turn any such losses into "costs" for purposes of cost-benefit analysis.

OMB does agree that in a challenging economic period with significant unemployment, it is important for regulatory agencies to attempt, to the extent feasible, to include with their analysis of the costs and benefits of economically significant regulations an assessment of the employment effects (whether negative or positive) of those regulations, particularly in view of the potential long-term adverse consequences of reduced employment for affected workers and their families. Indeed, many recent regulatory analyses contain such assessments. Consistent with Executive Order 13563 and Executive Order 12866, OIRA requests public comment on whether and how agencies should provide, for economically significant regulations, a quantitative or qualitative assessment of the impacts over time of proposed and final regulations on employment. OMB will carefully consider these suggestions.

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occur when the national unemployment rate is below 6 percent. They lose a staggering 2.8 years of pre-displacement earnings if displaced when the unemployment rate exceeds 8 percent.").

<sup>220</sup> See Krueger and Mueller (2011), at p. 21-22; Masur and Posner (2011), at p. 24.

<sup>221</sup> *Id.*, at p. 18.

<sup>222</sup> See *id.*, at 18-19, 21-23.

<sup>224</sup> *Id.*

### CHAPTER III: UPDATE ON THE IMPLEMENTATION OF OMB'S INFORMATION QUALITY INITIATIVES

Objective and high-quality analysis can improve regulatory decisions. OMB and the regulatory agencies have taken a number of steps to improve the rigor and transparency of analysis supporting public policy decisions. Of particular importance in the context of regulatory analysis is OMB's Circular A-4, "Regulatory Analysis," which was issued in 2003 after public comment, interagency review, and peer review. Circular A-4 defines good regulatory analysis and standardizes how benefits and costs of Federal regulatory actions are measured and reported.<sup>225</sup>

In this chapter of the Report, we highlight recent developments in OMB's continuing efforts to improve government information quality and transparency, as well as provide a brief update on the 2011 Agency reporting under the Government-Wide Information Quality Guidelines ("IQ Guidelines") and the Information Quality Bulletin for Peer Review ("Peer Review Bulletin"). The Government-Wide Information Quality Guidelines, issued in 2002 after an extensive public comment process, provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality of the information they disseminate.<sup>226</sup> The Information Quality Bulletin for Peer Review, issued in 2004 after an extensive public comment process, provides further guidance for pre-dissemination review of influential scientific information.<sup>227</sup>

#### A. Continuing Commitment to Information Quality

President Obama's March 9, 2009 Memorandum on Scientific Integrity<sup>228</sup> refers to the need for each agency to:

- Have appropriate rules and procedures to ensure the integrity of the scientific process within the agency;
- Use scientific and technological information that has been subject to well-established scientific processes such as peer review when considered in policy decisions;
- Appropriately and accurately reflect scientific and technological information in complying with and applying relevant statutory standards; and
- Make available to the public the scientific or technological findings or conclusions considered or relied upon in policy decisions.

The Director of the Executive Office's Office of Science and Technology Policy (OSTP) issued a Memorandum to the Heads of Departments and Agencies that provides further guidance to Executive Branch leaders as they implement Administration policies on scientific integrity.<sup>229</sup> The OSTP Director's December 17, 2010, memorandum emphasizes that "the accurate presentation of scientific and technological information is critical to informed decision making

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<sup>225</sup> This guidance is available at: <http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf>.

<sup>226</sup> These guidelines are available at: <http://www.whitehouse.gov/omb/fedreg/reproducible2.pdf>.

<sup>227</sup> This Bulletin is available at: <http://www.whitehouse.gov/omb/memoranda/fy2005/m05-03.pdf>.

<sup>228</sup> Available at <http://www.whitehouse.gov/the-press-office/memorandum-heads-executive-departments-and-agencies-3-9-09>.

<sup>229</sup> Available at <http://www.whitehouse.gov/sites/default/files/microsites/ostp/scientific-integrity-memo-12172010.pdf>.

by the public and policymakers.” Several passages in the memorandum specifically reinforce the goals of OMB’s ongoing information quality initiatives. Specifically:

- Consistent with the Bulletin on Peer Review, the OSTP Director’s Memorandum asks that agencies develop policies to ensure that data and research used to support policy decisions undergo independent peer review by qualified experts, where feasible and appropriate, and consistent with law (Sec I.2(b)).
- Consistent with the emphasis on transparency in the Information Quality Guidelines (as well Circular A-4), the OSTP Director’s Memorandum asks agencies to develop policies that:
  - Expand and promote access to scientific and technical information by making it available online in open formats. Where appropriate, this should include data and models underlying regulatory proposals and policy decisions (Sec I.3).
  - Communicate scientific findings by including a clear explication of underlying assumptions; accurate contextualization of uncertainties; and a description of the probabilities associated with both optimistic and pessimistic projections, including best-case and worst-case scenarios where appropriate (Sec I.4).

Consistent with our efforts to ensure the quality of information on which public policy is based OMB will continue to work with executive departments and agencies over the next year to ensure that they have in place comprehensive processes for pre-dissemination review of information quality, including the independent peer review of scientific information. We note that such efforts may be especially important in agencies where staff turnover may have affected agency familiarity with the types of internal processes necessary to implement the IQ Guidelines and the Peer Review Bulletin.

## **B. Government-Wide Information Quality Guidelines**

Section 515 of the Treasury and General Government Appropriations Act, 2001 (Pub. L. No. 106-554, 44 U.S.C. § 3516 note), commonly known as the “Information Quality Act” (IQA), requires OMB to develop government-wide standards “for ensuring and maximizing” the quality of information disseminated by Federal agencies.

To implement the IQA, OMB issued final government-wide guidelines on February 22, 2002 (67 FR 8452), and each Federal agency is charged with promulgating its own Information Quality Guidelines. OMB has facilitated the development of these agency guidelines, working with the agencies to ensure consistency with the principles set forth in the government-wide guidelines. By October 1, 2002, almost all agencies released their final guidelines, which became effective immediately. The OMB government-wide guidelines require agencies to report annually to OMB providing information on the number and nature of complaints received by the agency and how such complaints were resolved.

In August 2004, the OIRA Administrator issued a memorandum to the President's Management Council requesting that agencies post all Information Quality correspondence on

agency web pages to increase the transparency of the process.<sup>230</sup> In their FY 2004 Information Quality Reports to OMB, agencies provided OMB with the specific links to these web pages and OMB began providing this information to the public in our 2005 update on Information Quality.<sup>231</sup> This increase in transparency allows the public to view all correction requests, appeal requests, and agency responses to these requests. The web pages also allow the public to track the status of correction requests that may be of interest. An updated list of agency web pages is provided in Appendix I of this Report.

In our 2003 Report, OMB presented a detailed discussion of the IQA and its implementation, including a discussion of perceptions and realities, legal developments, methods for improving transparency, suggestions for improving correction requests, and the release of the OMB Information Quality Bulletin for Peer Review.<sup>232</sup>

This section of the chapter provides a summary of the current status of correction requests received in FY 2011, as well as an update on the status of requests received in FY 2004, FY 2005, FY 2006, FY 2007, FY 2008, FY 2009 and FY 2010. A discussion of legal interpretations of the Information Quality Act is also provided. Our discussion of the individual correction requests and agency responses is minimal because all correspondence between the public and agencies regarding these requests is publicly available on the agencies' Information Quality web pages.

## ***1. Request for Correction Process***

### *a. New Correction Requests and Appeal Requests Received by the Agencies in FY 2011*

Table 3-1 below lists the departments and agencies that received requests for correction in FY 2011. In FY 2011, a total of 16 requests for correction were sent to seven different departments and agencies. In addition, four appeals associated with these 16 requests were filed in FY 2011. One appeal was sent to the US Patent and Trade Office (USPTO) within the Department of Commerce, one was sent to the Department of Education (ED), and two were sent to the Department of the Interior (DOI). Within DOI one appeal was sent to the National Park Service (NPS) and the other appeal was sent to the Bureau of Land Management (BLM). FY 2011 was the first year that USPTO, ED and NPS received an appeal. As some of the agencies' 16 responses to initial correction requests were sent at the end of FY 2011, or were still pending at the end of FY 2011, there is a possibility that additional appeals may have since been filed or will be filed in the future.

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<sup>230</sup> See OMB, *Memorandum for the President's Management Council (2004)* [http://www.whitehouse.gov/omb/infoereg/info\\_quality\\_posting\\_083004.pdf](http://www.whitehouse.gov/omb/infoereg/info_quality_posting_083004.pdf).

<sup>231</sup> See OMB, *Validating Regulatory Analysis: 2005 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities (2005)*, available at [http://www.whitehouse.gov/omb/infoereg/2005\\_cb/final\\_2005\\_cb\\_report.pdf](http://www.whitehouse.gov/omb/infoereg/2005_cb/final_2005_cb_report.pdf).

<sup>232</sup> See OMB, *Information Quality, a Report to Congress FY 2003*, (2003), [http://www.whitehouse.gov/omb/infoereg/fy03\\_info\\_quality\\_rpt.pdf](http://www.whitehouse.gov/omb/infoereg/fy03_info_quality_rpt.pdf), and OMB, *Validating Regulatory Analysis: 2005 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities (2005)*, available at [http://www.whitehouse.gov/omb/infoereg/2005\\_cb/final\\_2005\\_cb\\_report.pdf](http://www.whitehouse.gov/omb/infoereg/2005_cb/final_2005_cb_report.pdf).

**Table 3-1: Departments and Agencies that Received Information Quality Correction Requests in FY 2011**

<b>Agency</b>	<b>Number of FY11 Correction Requests</b>
Department of Commerce	4
Department of Education	1
Department of Health and Human Services	3
Department of the Interior	5
Environmental Protection Agency	1
Department of Labor	1
Federal Communication Commission	1
<b>Total</b>	<b>16</b>

Further, as shown below in Table 3-2, two additional appeals were filed in FY 2011 that related to correction requests from FY 2009 and FY 2010. One was sent to the National Toxicology Program (NTP), within the Department of Health and Human Services (HHS), regarding a background document on styrene science. HHS responded to this appeal in FY2011. The other request was sent to the Environmental Protection Agency (EPA) regarding a website discussing coal partnerships. This response was still pending at the close of FY2011.

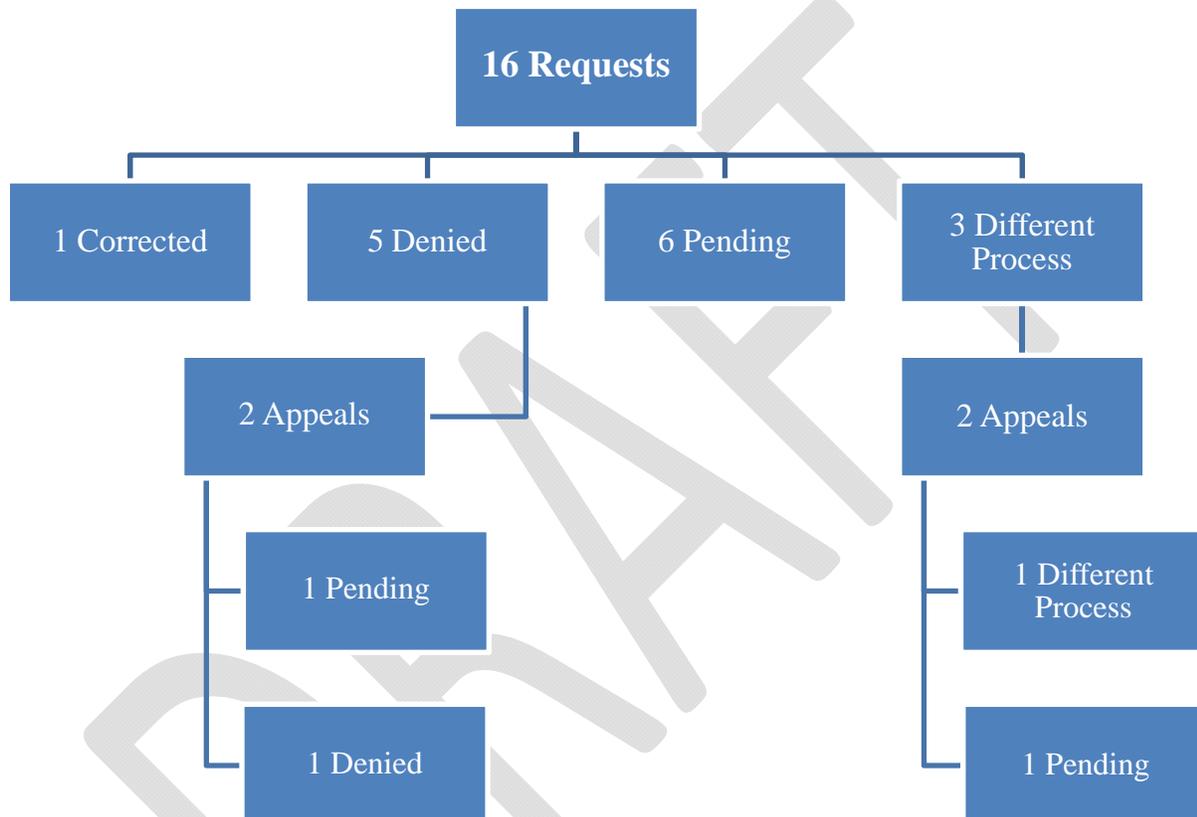
**Table 3-2: Departments and Agencies that Received Information Quality Appeals Requests in FY 2011, Following Responses to Requests Initiated in FY 2009 and FY 2010**

<b>Agency</b>	<b>Number of FY11 Appeals</b>
Department of Health and Human Services	1
Environmental Protection Agency	1
<b>Total</b>	<b>2</b>

The correction requests received in FY 2011 were quite diverse. For instance, the Association of Propriety Colleges requested that ED withdraw a proposed regulation related to gainful employment due to concerns with the analysis that was presented; the International Premium Cigar and Pipe Retailers Association asked the National Institutes of Health, within HHS, to correct a fact sheet on cigar smoking and cancer; and Public Employees for Environmental Responsibility requested that the NPS rescind a 2010 Big Cypress National Preserve Addition Wilderness Eligibility Assessment or re-issue it in draft form subject to rigorous peer review in order to allow public involvement.

Figure 3-1 shows the status of the 16 FY 2011 correction requests and four appeals. For further details, links to all the correction requests, and the complete agency responses, we encourage readers to visit the agency Information Quality web pages.<sup>233</sup> OMB continues to use the “different processes” category to describe responses that were handled by other pre-existing processes at the agencies. For instance, comments sent to BLM regarding the SunZia Transmission Line Project were handled as public comments under another existing review process related to the preparation of a final Environmental Impact Statement.

**Figure 3-1: Status of IQ Correction Requests Received in FY 2011**



As noted in previous reports, OMB cautions readers against drawing any conclusions about trends or year-to-year comparisons. However, we note that in FY 2003 there were 48 correction requests; in FY 2004, there were 37 correction requests; in FY 2005, there were 24 correction requests; in FY 2006, there were 22 correction requests; in FY 2007, there were 21 correction requests; in FY 2008, there were 14 correction requests; in FY 2009, there were 17 correction requests; and in FY 2010 there were 27 correction requests.

*b. Status of Outstanding Correction Requests Received by the Agencies in FY 2003-2010*

At the close of FY 2010, 26 Information Quality correction request responses and 3 appeal responses remained pending from the agencies. The pending correction requests were

<sup>233</sup> As mentioned, a listing of webpages for Agency IQ correspondence is available in Appendix I of this report.

initiated in FY 2004 through FY 2010. Figure 3-2 shows the status of those outstanding correction request responses at the close of FY 2011. Agencies responded to 16 of these correction requests and continued to work on responses to the remaining 10 at the end of FY 2011. Five of the pending requests are requests to the Army Corps of Engineers, within the Department of Defense, four are requests to EPA, and one of the pending requests is to the Department of Housing and Urban Development. As is shown below, two appeals that were sent after the agencies responded. One went to EPA and is still pending while the other appeal request, sent to NTP, was denied.

**Figure 3-2: FY 2010 Status of Pending Correction Requests from FY 2004 through FY 2010**

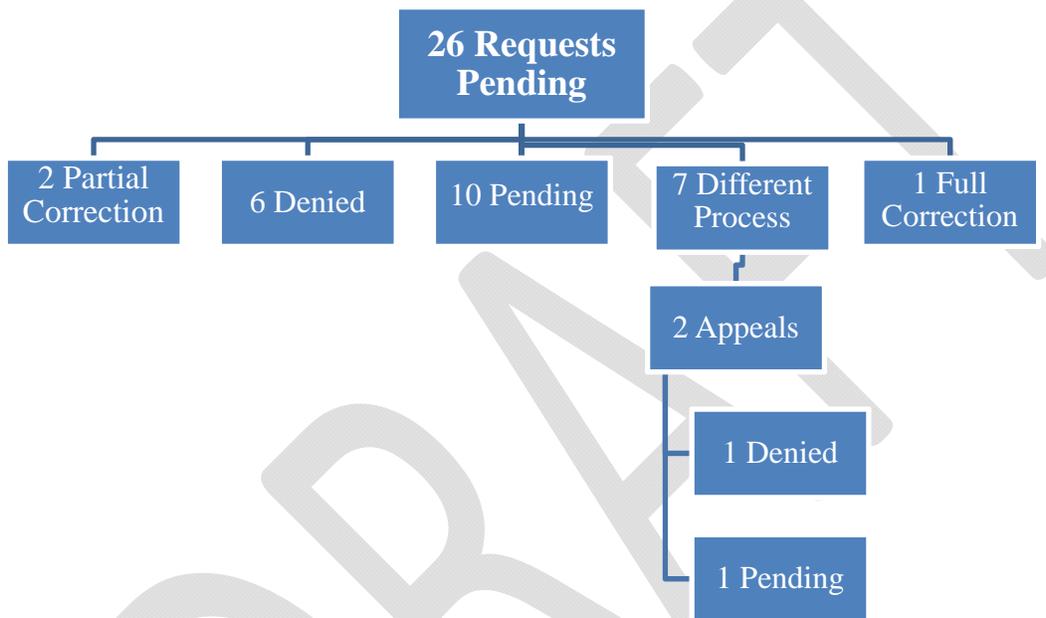
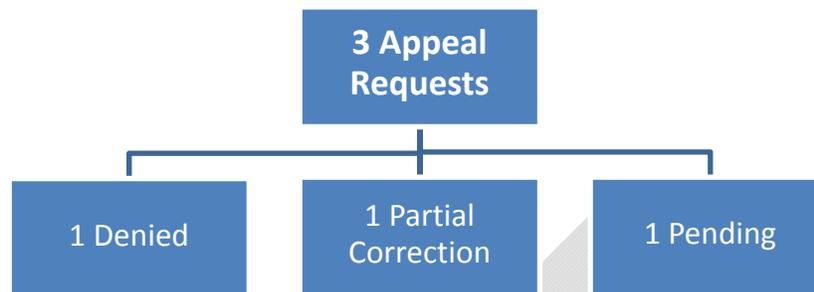


Figure 3-3 below gives the status of the three appeal requests pending at the close of FY 2010. The National Oceanic and Atmospheric Administration, within DOC, denied an outstanding appeal regarding information relating to a 2006 assessment of potential Tsunami impacts for Pearl Harbor. In responding to an outstanding appeal requesting correction of information in a report relating to the biological and management profiles for nine large species of pythons, anacondas and the boa constrictor, U.S. Geological Survey provided a partial correction and made more supporting information publicly available. In addition, the Federal Communications Commission continued to work on the appeal it received in FY 2007 regarding line charges. Correspondence showing the agencies' responses to these requests is publicly available on the agencies' Information Quality web pages.

**Figure 3-3: FY 2011 Status of Pending Appeal Requests from FY 2010**



## **2. Legal Discussion**

As discussed in previous reports, there has been litigation under the Information Quality Act (IQA), as well as regarding the scope of judicial review under the Administrative Procedure Act (APA) in those challenges. In the most recent litigation, the United States Court of Appeals for the Ninth Circuit affirmed the district court’s dismissal of the case for lack of jurisdiction under the APA. See *Americans for Safe Access v. United States Dep’t of Health and Human Servs.*, 399 Fed. App. 314, 316 (9th Cir. 2010) (holding that HHS’s decision was not a reviewable final agency action). Second, the United States Court of Appeals for the District of Columbia Circuit declined to find that the IQA had been violated based on its determination that OMB’s interpretation regarding “dissemination” (and, in particular, the exclusion from the definition of dissemination of documents “prepared and distributed in the context of adjudicative proceedings”) was a reasonable interpretation of the statute. *Prime Time v. Vilsack*, 599 F.3d 678, 685 (D.C. Cir. 2010). These decisions followed other cases that dismissed IQA challenges, including on other grounds. See, e.g., *Salt Institute v. Leavitt*, 440 F.3d 156, 159 (4th Cir. 2006); *In re Operation of the Missouri River System Litigation*, 363 F. Supp. 2d 1145, 1174-75 (D. Minn. 2004), vacated in part and aff’d in part on other grounds, 421 F.3d 618 (8th Cir. 2005).

### **C. Information Quality Bulletin for Peer Review**

In keeping with the goal of improving the quality of government information, on December 16, 2004, OMB issued the Final Information Quality Bulletin for Peer Review (the “Peer Review Bulletin”).<sup>234</sup> The Peer Review Bulletin requires executive agencies to ensure that all “influential scientific information” they disseminate after June 16, 2005, is peer-reviewed.

“Influential scientific information” is defined as “scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important

<sup>234</sup> See OMB, Memorandum for the Heads of Departments and Agencies, M-05-03, “Issuance of OMB’s ‘Final Information Quality Bulletin for Peer Review,’” available at <http://www.whitehouse.gov/omb/memoranda/fy2005/m05-03.pdf>.

public policies or private sector decisions.”<sup>235</sup> The term “influential” is to be interpreted consistently with OMB’s government-wide Information Quality Guidelines and the information quality guidelines of each agency.

One type of scientific information is a scientific assessment. For the purposes of the Peer Review Bulletin, the term “scientific assessment” means an evaluation of a body of scientific or technical knowledge, which typically synthesizes multiple factual inputs, data, models, assumptions, and/or applies best professional judgment to bridge uncertainties in the available information.<sup>236</sup>

The Peer Review Bulletin describes the factors that should be considered in choosing an appropriate peer review mechanism and stresses that the rigor of the review should be commensurate with how the information will be used. It directs agencies to choose a peer review mechanism that is adequate, giving due consideration to the novelty and complexity of the science to be reviewed, the relevance of the information to decision making, the extent of prior peer reviews, and the expected benefits and costs of additional review. When deciding what type of peer review mechanism is appropriate for a specific information product, agencies should consider at least the following issues: individual versus panel review, timing, scope of the review, selection of reviewers, disclosure and attribution, public participation, disposition of reviewer comments, and adequacy of prior peer review.

The Peer Review Bulletin specifies the most rigorous peer review requirements for “highly influential scientific assessments,” which are a subset of “influential scientific information.” To ensure that implementation of the Peer Review Bulletin is not too costly, these requirements for more intensive peer review apply only to the more important scientific assessments disseminated by the Federal Government – those that could have a potential impact of more than \$500 million in any one year on either the public or private sector, or are novel, controversial, or precedent-setting, or have significant interagency interest.

Under the Peer Review Bulletin, agencies are granted broad discretion to weigh the benefits and costs of using a particular peer review mechanism for a specific information product. In addition to the factors noted above, agencies also have the option of employing “alternative processes” for meeting the peer review requirement (e.g., commissioning a National Academy of Sciences’ panel). Moreover, to ensure that peer review does not unduly delay the release of urgent findings, time-sensitive health and safety determinations are exempted from the requirements of the Peer Review Bulletin. There are also specific exemptions for national security, individual agency adjudication or permit proceedings, routine statistical information, and financial information. The Peer Review Bulletin does not cover information disseminated in connection with routine rules that materially alter entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof.

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<sup>235</sup> The Bulletin notes that information dissemination can have a significant economic impact even if it is not part of a rulemaking. For instance, the economic viability of a technology can be influenced by the government’s characterization of its attributes. Alternatively, the Federal Government’s assessment of risk can directly or indirectly influence the response actions of state and local agencies or international bodies.

<sup>236</sup> These assessments include, but are not limited to, state-of-science reports; technology assessments; weight-of-evidence analyses; meta-analyses; health, safety, or ecological risk assessments; toxicological characterizations of substances; integrated assessment models; hazard determinations; or exposure assessments.

The Peer Review Bulletin provides two mechanisms for monitoring the progress of the agencies in meeting these peer-review requirements: a transparent peer review planning process and annual reporting, described below.

The good science and good government requirements of the Peer Review Bulletin should assist in improving the accuracy and transparency of agency science. Additionally, the peer review planning process described in the Peer Review Bulletin, which includes posting of plans on agency websites, enhances the ability of the government and the public to track influential scientific disseminations made by agencies.

On June 16, 2005, the Peer Review Bulletin became effective for all influential scientific information, including highly-influential scientific assessments. The peer review planning component of the Bulletin, discussed below, became fully effective on December 16, 2005.

### ***1. Peer Review Planning***

The Peer Review Planning component of the Peer Review Bulletin (Section V) requires agencies to engage in a systematic process of peer review planning for influential scientific information (including highly influential scientific assessments) that the agency plans to disseminate in the foreseeable future.

A key feature of the agency's peer review plan is a web-accessible listing (an "agenda") of forthcoming influential scientific disseminations that is updated on a regular basis. These postings are designed to allow the public to participate in the peer review process by providing data and comments to the sponsoring agencies, as well as to external peer reviewers. By making these agendas publicly available, agencies increase the level of transparency in their peer review processes, and also have a mechanism to gauge the extent of public interest in their proposed peer reviews.

The agenda is designed to encourage planning for peer review early in the information-generation process. Thus, the agenda should cover all information subject to the Peer Review Bulletin that the agency plans to disseminate in the foreseeable future. For instance, once an agency has established a timeline for the generation of a scientific report, the agency should include that report in its agenda. Thus, although the Peer Review Bulletin specifies that agencies should update their peer review agendas every six months, the agenda is not a six-month forecast (i.e., it should not be limited to information (documents) that the agency plans to peer review in the next six months).

Readers are encouraged to visit the agendas for agencies of interest. OMB asks agencies to ensure that there is an easily identifiable hyperlink to the peer review agenda from the agency's Information Quality home page. For cabinet-level departments that have a central information quality page but do not have a central peer review agenda, OMB requests that a hyperlink to each agency agenda be provided. Section B in Appendix K provides the URLs for most agencies' peer review agendas.

Several agencies have determined that they do not currently produce or sponsor information subject to the Peer Review Bulletin. Most of these agencies produce primarily financial information or routine statistical information for which the Bulletin provides specific

exemptions. Others primarily engage in management, oversight, or granting activities. A list of these agencies can be found in Section C in Appendix K.

**Table 3-3: Peer Reviews Conducted Subject to the Bulletin in FY 2011**

<b>Department/ Agency**</b>	<b>Total Peer Reviews Completed</b>	<b>Reviews of Highly Influential Scientific Assessments</b>	<b>Waivers, Deferrals, or Exemptions</b>	<b>Potential Reviewer Conflicts</b>
Department of Agriculture	81	3	None	None
Department of Commerce	22	0	None	None
Department of Energy	1	0	None	None
Department of Health and Human Services	16	3	None	None
Department of the Interior	63	2	4 (Waiver)	None
Department of Labor	2	2	None	None
Department of Transportation	1	0	None	None
Environmental Protection Agency	28	4	None	None
Consumer Products Safety Commission	2	0	None	None

**Table Details**

- The Department of Agriculture agencies reporting peer reviews in FY 2011 were the Food Safety Inspection Service, the Animal and Plant Health Inspection Service, Center for Nutrition Policy and Promotion, Food and Nutrition Service, the Agricultural Research Service, the Economic Research Service, and the Forest Service.
- The Department of Commerce agency reporting peer reviews in this fiscal year was the National Oceanic and Atmospheric Administration.
- The Department of Energy peer review reported in this fiscal year was associated with the Energy Efficiency & Renewable Energy, Biomass Program.
- The Department of Health and Human Services agencies reporting peer reviews in FY 2011 were the Centers for Disease Control and Prevention, the Food and Drug Administration, and the National Toxicology Program at the National Institute for Environmental Health Sciences.
- The Department of the Interior agencies reporting peer reviews in FY 2011 were the Fish and Wildlife Service, the Geological Survey, the National Park Service, and the Bureau of Ocean Energy Management, Regulation, and Enforcement.

- The Department of Labor agency reporting peer reviews in FY 2011 was the Occupational Health and Safety Administration.
- The Department of Transportation agency reporting peer reviews in FY 2011 was the National Highway Traffic Safety Administration.

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**PART II: SIXTEENTH ANNUAL REPORT  
TO CONGRESS ON AGENCY COMPLIANCE  
WITH THE UNFUNDED MANDATES  
REFORM ACT**

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## Introduction

This report represents OMB's sixteenth annual submission to Congress on agency compliance with the Unfunded Mandates Reform Act of 1995 (UMRA). This report on agency compliance with the Act covers the period of October 2010 through September 2011; the rules published before October 2010 are described in last year's report.

In recent years, this report has been included along with our final Report to Congress on the Benefits and Costs of Federal Regulations. This is done because the two reports together address many of the same issues, and both highlight the need for regulating in a responsible manner that accounts for the benefits and costs of rules and takes into consideration the interests of our intergovernmental partners. This year, OMB is again publishing the UMRA report with the Report to Congress on the Benefits and Costs of Federal Regulations.

State and local governments have a vital constitutional role in providing government services. They have the major role in providing domestic public services, such as public education, law enforcement, road building and maintenance, water supply, and sewage treatment. The Federal Government contributes to that role by promoting a healthy economy and by providing grants, loans, and tax subsidies to State and local governments. However, over the past two decades, State, local, and tribal governments increasingly have expressed concerns about the difficulty of complying with Federal mandates without additional Federal resources.

In response, Congress passed the Unfunded Mandates Reform Act of 1995 (UMRA, or "the Act"). Title I of the Act focuses on the Legislative Branch, addressing the processes Congress should follow before enactment of any statutory unfunded mandates. Title II addresses the Executive Branch. It begins with a general directive for agencies to assess, unless otherwise prohibited by law, the effects of their rules on the other levels of government and on the private sector (Section 201). Title II also describes specific analyses and consultations that agencies must undertake for rules that may result in expenditures of over \$100 million (adjusted annually for inflation) in any year by State, local, and tribal governments in the aggregate, or by the private sector.

Specifically, Section 202 requires an agency to prepare a written statement for intergovernmental mandates that describes in detail the required analyses and consultations on the unfunded mandate. Section 205 requires that for all rules subject to Section 202, agencies must identify and consider a reasonable number of regulatory alternatives, and then generally select from among them the least costly, most cost-effective, or least burdensome option that achieves the objectives of the rule. Exceptions require the agency head to explain in the final rule why such a selection was not made or why such a selection would be inconsistent with law.

Title II requires agencies to "develop an effective process" for obtaining "meaningful and timely input" from State, local and tribal governments in developing rules that contain significant intergovernmental mandates (Section 204). Title II also singles out small governments for particular attention (Section 203). OMB's guidelines assist Federal agencies in complying with the Act and are based upon the following general principles:

- Intergovernmental consultations should take place as early as possible, beginning before issuance of a proposed rule and continuing through the final rule stage, and be integrated explicitly into the rulemaking process;
- Agencies should consult with a wide variety of State, local, and tribal officials;
- Agencies should estimate direct benefits and costs to assist with these consultations;
- The scope of consultation should reflect the cost and significance of the mandate being considered;
- Effective consultation requires trust and significant and sustained attention so that all who participate can enjoy frank discussion and focus on key priorities; and
- Agencies should seek out State, local, and tribal views on costs, benefits, risks, and alternative methods of compliance and whether the Federal rule will harmonize with and not duplicate similar laws in other levels of government.

Federal agencies have been actively consulting with states, localities, and tribal governments in order to ensure that regulatory activities were conducted consistent with the requirements of UMRA (see Appendix L for a description of agency consultation activities).

The remainder of this report lists and briefly discusses the regulations meeting the Title II threshold and the specific requirements of Sections 202 and 205 of the Act from October 1, 2010 to September 30<sup>th</sup>, 2011.

## CHAPTER IV: REVIEW OF SIGNIFICANT REGULATORY MANDATES

In FY 2011, Federal agencies issued thirteen final rules that were subject to Sections 202 and 205 of the Unfunded Mandate Reform Act of 1995 (UMRA), as they require expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of at least \$100 million in any one year (adjusted annually for inflation). The Environmental Protection Agency has four, Department of Energy has three, Department of Transportation has two, Department of Education has one, Department of Health and Human Services has one, Department of Homeland Security has one, Department of the Treasury has one, and the Environmental Protection Agency and Department of Transportation issued one joint rule.<sup>237</sup>

OMB worked with the agencies to ensure that the selection of the regulatory options for these rules fully complied with the requirements of Title II of the Act. Descriptions of the rules in addition to agency statements regarding compliance with the Act are included in the following section.

### ***1. Environmental Protection Agency Cross-State Air Pollution Rule (CAIR Replacement Rule)***

This final rule limits emissions of nitrogen oxides and sulfur dioxide from electricity generators in 27 Eastern and Midwestern states to reduce the transport of those emissions to downwind states.

EPA estimates \$810 million in annual costs. This final rule does not contain mandates under UMRA on State, local, and tribal governments. The overall impact on the private sector does exceed the \$100 million threshold in the aggregate. Consequently, the provisions of this rule constitute a private sector mandate under the UMRA.

### **A. Department of Energy**

#### ***1. Energy Efficiency Standards for Clothes Dryers and Room Air Conditioners***

This final rule establishes energy conservation standards for residential clothes dryers and room air conditioners.

DOE estimates \$160 million in annual costs. This final rule does not contain mandates under UMRA on State, local, and tribal governments. The overall impact on the private sector does exceed the \$100 million threshold in the aggregate. Consequently, the provisions of this rule constitute a private sector mandate under the UMRA.

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<sup>237</sup> Interim final rules were not included in this chapter since “Section 202 [of the Unfunded Mandates Reform Act]. . . does not apply to interim final rules or non-notice rules issued under the ‘good cause’ exemption in 5 U.S.C. 553(b)(B).” See OMB, Memorandum for the Heads of Executive Departments and Agencies, M-95-09, “Guidance for Implementing Title II of S.1,” 1995, available at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/m95-09.pdf>.

## ***2. Energy Efficiency Standards for Residential Furnaces, Central Air Conditioners and Heat Pumps***

This final rule establishes energy conservation standards for residential furnaces, central air conditioners and heat pumps.

DOE estimates \$650 million in annual costs. This final rule does not contain mandates under UMRA on State, local, and tribal governments. The overall impact on the private sector does exceed the \$100 million threshold in the aggregate. Consequently, the provisions of this rule constitute a private sector mandate under the UMRA.

## ***3. Energy Efficiency Standards for Residential Refrigerators, Refrigerator-Freezers, and Freezers***

This final rule establishes energy conservation standards for residential refrigerators, refrigerator-freezers, and freezers.

DOE estimates \$1,167 to \$1,569 million in annual costs. This final rule does not contain mandates under UMRA on State, local, and tribal governments. The overall impact on the private sector does exceed the \$100 million threshold in the aggregate. Consequently, the provisions of this rule constitute a private sector mandate under the UMRA.

## **B. Department of Transportation**

### ***1. Ejection Mitigation***

This final rule established a new motor vehicle performance standard to reduce partial and complete occupant ejections (where occupants are ejected from vehicles) mostly in rollover crashes. The standard applies to the side windows next to the first three rows of seats, and to a portion of the cargo area behind the first or second rows in motor vehicles weighing less than 10,000 lbs. The agency anticipates that manufacturers will meet the standard by modifying existing side air bag curtains.

DOT estimates \$507 million in annual costs. This final rule does not contain mandates under UMRA on State, local, and tribal governments. The overall impact on the private sector does exceed the \$100 million threshold in the aggregate. Consequently, the provisions of this rule constitute a private sector mandate under the UMRA.

## **C. Department of Education**

### ***1. Program Integrity: Gainful Employment-Measures***

This final rule establishes measures for determining whether certain postsecondary educational programs lead to gainful employment in recognized occupations, and the conditions under which those educational programs remain eligible for the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended.

Education estimates \$138.50 million in annual costs. This final rule does not contain mandates under UMRA on State, local, and tribal governments. The overall impact on the private sector does exceed the \$100 million threshold in the aggregate. Consequently, the provisions of this rule constitute a private sector mandate under the UMRA.

## **D. Department of Health and Human Services**

### ***1. Cigarette Warning Label Statements***

Required Warnings for Cigarette Packages and Advertisements.” The rule is required by the Family Smoking Prevention and Tobacco Control Act, which directed FDA to “issue regulations that require color graphics depicting the negative health consequences of smoking.” When finalized, the warnings will be mandatory and occupy 50% of all cigarette packages and 20% of all advertisements. The images will accompany nine different warning statements prescribed by the statute (e.g. “WARNING: Cigarettes are addictive.”). FDA may revise the warning statements by regulation if it determines that doing so “would promote greater public understanding of the risks associated with the use of tobacco products.” Costs to industry are \$529 million initially, with recurring costs of \$6.2 million thereafter.<sup>238</sup>

HHS estimates \$136 million in annual costs. This final rule does not contain mandates under UMRA on State, local, and tribal governments. The overall impact on the private sector does exceed the \$100 million threshold in the aggregate. Consequently, the provisions of this rule constitute a private sector mandate under the UMRA.

## **E. Department of Homeland Security**

### ***1. Air Cargo Screening***

Section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007 mandated 100 percent screening of all air cargo transported on passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation. To meet this mandate, the Transportation Security Administration (TSA) issued an Interim Final Rule (IFR), on September 16, 2009, that established the voluntary Certified Cargo Screening Program. The IFR has since been implemented by TSA, and TSA is screening 100 percent of all domestic air cargo on passenger aircraft. This final rule responds to comments and finalizes certain provisions in the IFR, including certification procedures for cargo screening facilities, and adherence to other physical and access control measures for the storing and handling of cargo. The changes in the final rule are expected to reduce costs of screening air cargo from the provisions implemented in the IFR.

DHS estimated \$178 million in annual costs. This final rule does not contain mandates under UMRA on State, local, and tribal governments. The overall impact on the private sector does exceed the \$100 million threshold in the aggregate. Consequently, the provisions of this rule constitute a private sector mandate under the UMRA.

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<sup>238</sup> The rule is currently enjoined by order of a District court judge and is not currently in effect.

## **F. Department of Treasury**

### ***1. Regulations Governing Practice Before the Internal Revenue Service (IRS)***

This final rule increases oversight of paid tax preparers by extending ethical rules and continuing education requirements –to all paid tax preparers, including currently unregistered tax return preparers that would be required to register and obtain a Preparer Tax Identification Number (PTIN). The final rule would create a new class of tax practitioners, the “registered tax return preparer”, and would now allow the IRS to suspend or otherwise discipline tax return preparers who engage in unethical or disreputable conduct.

IRS has quantified some, but not all, of the costs associated with the rule. IRS estimates at a minimum the rule will have \$137,512,500 in annual costs on the private sector. This final rule does not contain mandates under UMRA on State, local, and tribal governments. The overall impact on the private sector does exceed the \$100 million threshold in the aggregate. Consequently, the provisions of this rule constitute a private sector mandate under the UMRA.

## **G. Joint Rulemakings**

### ***1. EPA/DOT Commercial Medium- and Heavy-Duty On-Highway Vehicles and Work Truck Fuel Efficiency and Greenhouse Gas Emissions Standards***

This rule established fuel economy and GHG emissions standards for medium and heavy duty trucks for the first time. DOT’s fuel efficiency standards and EPA’s GHG emissions standards are tailored to each of three regulatory categories of medium and heavy-duty vehicles: (1) Combination Tractors; (2) Heavy-duty Pick-up Trucks and Vans; and (3) Vocational Trucks. EPA’s GHG emissions standards under the Clean Air Act (CAA) begin with model year 2014. DOT’s fuel consumption standards under the Energy Independence and Security Act of 2007 (EISA) would be optional in model years 2014 and 2015 due to statutory constraints, but they become mandatory with model year 2016 for most regulatory categories.

The agencies have determined that these final rules do not contain mandates under UMRA on State, local, and tribal governments. The agencies have determined that these rules contain a Federal mandate that may result in expenditures of \$134 million or more for the private sector in any one year. Consequently, the provisions of this rule constitute a private sector mandate under the UMRA.

## APPENDIX A: CALCULATION OF BENEFITS AND COSTS

Chapter I presents estimates of the annual benefits and costs of selected major final regulations reviewed by OMB between October 1, 2001 and September 30, 2011. OMB presents more detailed explanation of these regulations in several documents.

- Rules from October 1, 2001 to September 30, 2002: Table 19 of the 2003 Report.
- Rules from October 1, 2002 to September 30, 2003: Table 12 of the 2004 Report.
- Rules from October 1, 2003 to September 30, 2004: Tables 1-4 and A-1 of the 2005 Report.
- Rules from October 1, 2004 to September 30, 2005: Tables 1-4 and A-1 of the 2006 Report.
- Rules from October 1, 2005 to September 30, 2006: Tables 1-4 and A-1 of the 2007 Report.
- Rules from October 1, 2006 to September 30, 2007: Tables 1-4 and A-1 of the 2008 Report.
- Rules from October 1, 2007 to September 30, 2008: Tables 1-4 and A-1 of the 2009 Report.
- Rules from October 1, 2008 to September 30, 2009: Tables 1-4 and A-1 of the 2010 Report.
- Rules from October 1, 2009 to September 30, 2010: Tables 1-4 and A-1 of the 2011 Report.
- Rules from October 1, 2010 to September 30, 2011: Tables 1-4 and A-1 of this Report.

In assembling estimates of benefits and costs presented in Table 1-4, OMB has:

1. Applied a uniform format for the presentation of benefit and cost estimates in order to make agency estimates more closely comparable with each other (for example, annualizing benefit and cost estimates); and
2. Monetized quantitative estimates where the agency has not done so (for example, converting agency projections of quantified benefits, such as estimated injuries avoided per year or tons of pollutant reductions per year, to dollars using the valuation estimates discussed below).

All benefit and cost estimates are adjusted to 2001 dollars using the latest Gross Domestic Product (GDP) deflator, available from the Bureau of Economic Analysis at the Department of Commerce.<sup>239</sup> In instances where the nominal dollar values the agencies use for their benefits and costs is unclear, we assume the benefits and costs are presented in nominal dollar values of the year before the rule is finalized. In periods of low inflation such as the past few years, this assumption does not affect the overall totals. All amortizations are performed

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<sup>239</sup> See *National Income and Product Accounts*, <http://www.bea.gov>.

using a discount rate of 7 percent unless the agency has already presented annualized, monetized results using a different explicit discount rate.

OMB discusses, in this Report and in previous Reports, the difficulty of estimating and aggregating the benefits and costs of different regulations over long time periods and across many agencies. In addition, where OMB has monetized quantitative estimates where the agency has not done so, we have attempted to be faithful to the respective agency approaches. The adoption of a uniform format for annualizing agency estimates allows, at least for purposes of illustration, the aggregation of benefit and cost estimates across rules; however, agencies have used different methodologies and valuations in quantifying and monetizing effects. Thus, an aggregation involves the assemblage of benefit and cost estimates that are not strictly comparable.

To address this issue in part, the 2003 Report included OMB’s new regulatory analysis guidance, also released as OMB Circular A-4, which took effect on January 1, 2004 for proposed rules and January 1, 2005 for final rules. The guidance recommends what OMB considers to be “best practices” in regulatory analysis, with a goal of strengthening the role of science, engineering, and economics in rulemaking. The overall goal of this guidance is a more competent and credible regulatory process and a more consistent regulatory environment. OMB expects that as more agencies adopt these recommended best practices, the benefits and costs presented in future Reports will become more comparable across agencies and programs. The 2006 Report was the first report that included final rules subject to OMB Circular A-4. OMB will continue to work with the agencies to ensure that their impact analyses follow the new guidance.

Table A-1 below presents the unmodified information on the impacts of 54 major rules reviewed by OMB from October 1, 2010 through September 30, 2011, and includes additional explanatory text on how agencies calculated the impacts for these rulemakings. Unless otherwise stated, the estimates presented in Table A-1 are annualized impacts in 2001 dollars, which is the requested format in OMB Circular A-4.

Table 1-4 in Chapter I of this Report presents the adjusted impact estimates for the 13 rules finalized in 2010-2011 that were added to the Chapter I accounting statement totals. Table A-2 below presents the benefits and costs of previously reported major rules reviewed by OMB from October 1, 2001 through September 30, 2010 that are also included in the Chapter I accounting statement totals.

**Table A-1: Summary of Agency Estimates for Final Rules October 1, 2010 - September 30, 2011 (As of Date of Completion of OMB Review)<sup>240</sup>**

RIN	Title	Benefits (2001\$)	Costs (2001\$)	Other Information
<i>Department of Agriculture</i>				

<sup>240</sup> Please note that for budgetary transfer rules, benefits and costs are not estimated because agencies typically estimate budgetary impacts instead.

<b>RIN</b>	<b>Title</b>	<b>Benefits (2001\$)</b>	<b>Costs (2001\$)</b>	<b>Other Information</b>
0560-AH92	Biomass Crop Assistance Program [76 FR 56949]	Not estimated	Not estimated	Transfers: \$28-36 million  The full RIA is available from agency upon request.
0560-AI11	Crop Assistance Program [75 FR 65423]	Not estimated	Not estimated	Transfers: \$111-439 million  The full RIA is available from agency upon request.
0570-AA73	Biorefinery Assistance Program--Section 9003 [76 FR 8403]	Not estimated	Not estimated	Transfers: \$69-74 million  The Interim Rule would benefit potential applicants considering applying for financial assistance under this program. Benefits accruing to the publication of the Interim Rule included making the program more accessible to lenders and their potential borrowers, aligning more of the provisions to the corresponding provisions of the Business and Industry Guaranteed Loan program, and clarifying any ambiguities conveyed in the NOFAs implementing the program prior to the Interim Rule. Additional benefits stem from the ability of the public and interested parties to comment on the Interim Rule. Benefits of developing and publishing a Final Rule would be further improvements to the program based on public comments on the Interim Rule and any relevant Agency experience since the publication of the Interim Rule.  The full RIA is available from agency upon request.

<b>RIN</b>	<b>Title</b>	<b>Benefits (2001\$)</b>	<b>Costs (2001\$)</b>	<b>Other Information</b>
0570- AA75	Rural Business Contracts for Payments for the Bioenergy Program for Advanced Biofuels--Section 9005 [76 FR 7936]	Not estimated	Not estimated	<p>Transfers: \$63-65 million</p> <p>The Interim Rule would benefit potential applicants considering applying for payments under this program. Benefits accruing to the publication of the Interim Rule include clarifying the process, payments, eligibility, and any ambiguities conveyed in the NOCPs implementing the program prior to the Interim Rule. Additional benefits stem from the ability of the public and interested parties to comment on the Interim Rule. Benefits of developing and publishing a Final Rule would be further improvements to the program based on public comments on the Interim Rule and any relevant Agency experience since the publication of the Interim Rule. Implementation costs estimated to total \$4 million across four years. (2009 dollars)</p> <p>The full RIA is available from agency upon request.</p>
0572- AC06	Rural Broadband Access Loans and Loan Guarantees	Not estimated	Not estimated	<p>Transfers: \$246-573 million</p> <p>The full RIA is available from agency upon request.</p>
0584- AD60	Direct Certification of Children in Food Stamp Households and Certification of Homeless, Migrant, and Runaway Children for Free Meals in the NSLP, SBP, and SMP	Not estimated	Not estimated	<p>Transfers: \$55-58 million</p> <p>Improved access to NSLP meals by low income children; eliminate application burden for households.</p> <p>Local School Food Authorities will incur food, labor, and administrative costs to comply with new NSLP and SBP meal requirements. State education agencies will incur additional training, technical assistance, and SFA monitoring and compliance costs.</p> <p>The full RIA is available from agency upon request.</p>
0584- AE11	National School Lunch and School Breakfast Programs: School Food Service Account Revenue Amendments Related to the Healthy, Hunger-Free Kids Act of 2010	Not estimated	Not estimated	<p>Transfers: \$1,244-1,264 million</p> <p>Students and households, the USDA, and non-Federal sources will transfer resources to SFAs and the State Governments that administer the NSLP &amp; SBP. Dollar values include FY 2011-2015. Annualized administrative costs estimated to equal \$1.7-1.8 million.</p> <p>The full RIA is available from agency upon request.</p>

*Department of Defense*

<b>RIN</b>	<b>Title</b>	<b>Benefits (2001\$)</b>	<b>Costs (2001\$)</b>	<b>Other Information</b>
0720- AB45	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)/TRICARE: Inclusion of TRICARE Retail Pharmacy Program in Federal Procurement of Pharmaceuticals	Not estimated	Not estimated	Transfers: \$607-918 million
0790- AI58	Homeowners Assistance Program (HAP)	Not estimated	Not estimated	Transfers: \$426-444 million  The RIA is available from agency upon request.
<b><i>Department of Education</i></b>				
1840- AD02	Institutional Eligibility Under the Higher Education Act of 1965; Student Assistance General Provisions	Not estimated	Not estimated	The RIA is included in the preamble.
1840- AD06	Program Integrity: Gainful Employment-Measures	Not estimated	Not estimated	The RIA is included in the preamble.
<b><i>Department of Energy</i></b>				
1904- AA89	Energy Efficiency Standards for Clothes Dryers and Room Air Conditioners	\$191 million	\$132 million	The RIA is included in the preamble.
		Range: \$169-310 Million	Range: \$129-182 million	
1904- AB79	Energy Efficiency Standards for Residential Refrigerators, Refrigerator-Freezers, and Freezers	\$1,837 million	\$840 million	The RIA is included in the Technical Support Document as Chapter 17 and is available at: <a href="http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/refrig_finalrule_tsd.pdf">http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/refrig_finalrule_tsd.pdf</a>
		Range: \$1,660- \$3,034 million	Range: \$803- \$1,281 million	
1904- AC06	Energy Efficiency Standards for Residential Furnace, Central Air Conditioners and Heat Pumps	\$940 Million	\$538 Million	The RIA is included in the Technical Support Document as Chapter 17 and is available at: <a href="http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/hvac_ch_17_ria_2011_06_08final.pdf">http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/hvac_ch_17_ria_2011_06_08final.pdf</a>
		Range: \$719- \$1,766 million	Range: \$475- \$724 million	
<b><i>Department of Health and Human Services</i></b>				

<b>RIN</b>	<b>Title</b>	<b>Benefits (2001\$)</b>	<b>Costs (2001\$)</b>	<b>Other Information</b>
0910- AG41	Cigarette Warning Label Statements	\$183 million  Range: \$0- \$9,028 million	\$31 million	<p>The RIA is included in the preamble.</p> <p>Many of the health benefits included in the totals are realized after 2031 (as far out as 2113), but the smoking preventions that generate these benefits are estimated only for the period from 2012-2031.</p> <p>All quantified benefits are also monetized.</p> <p>One-time costs to change cigarette package labels and remove point-of-sale promotions that do not comply with the new restrictions, smaller ongoing costs for equal random display and for government activities.</p> <p>Some of the transfers included in the totals occur after 2031 (as far out as 2113), but the smoking preventions that generate these transfers are estimated only for the period from 2012-2031. Numbers reflect the assumption that the federal cigarette excise tax will rise, on average, at the rate of inflation from 2012-2113. Numbers also include effects on Medicare, Social Security, Medicaid, other government insurance programs and income taxes.</p>
0920- AA44	Implementation of Title I of the James Zadroga 9/11 Health and Compensation Act: WTC Health Program Requirements for Enrollment, Appeals, Certification of Health Conditions, and Reimbursement	Not estimated	Not estimated	<p>Transfers: \$84-113 million</p> <p>The RIA is included in the preamble.</p>
0938- AP53	Children's Health Insurance Program (CHIP); Allotment Methodology and States' Fiscal Year 2009 CHIP Allotments (CMS-2291-F)	Not estimated	Not estimated	<p>Transfers \$10,935-10,962 million</p> <p>The RIA is included in the preamble.</p>
0938- AP79	Revisions to Payment Policies Under the Physician Fee Schedule and Part B for CY 2011 (CMS-1503-F)	Not estimated	Not estimated	<p>Transfers: \$12,804 million</p> <p>The RIA is included in the preamble.</p>
0938- AP82	Changes to the Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System for CY 2011 (CMS-1504-F)	Not estimated	Not estimated	<p>Transfers: \$573 million</p> <p>The RIA is included in the preamble.</p>

<b>RIN</b>	<b>Title</b>	<b>Benefits (2001\$)</b>	<b>Costs (2001\$)</b>	<b>Other Information</b>
0938-AP88	Home Health Prospective Payment System Refinements and Rate Update for CY 2011 (CMS-1510-FC)	Not estimated	Not estimated	Transfers: \$786 million  These transfers reflects the final distributional effects of an updated wage index, the 1.1 percent home health market basket update, the 3.79 percent case-mix adjustment applicable to the national standardized 60-day episode rates, as well as the 2.5 percent returned from the outlier provisions of the ACA.  The RIA is included in the preamble.
0938-AQ00	Revisions to the Medicare Advantage and Medicare Prescription Drug Benefit Programs for Contract Year 2012(CMS-4144-F)	Not estimated	\$30 million	Transfers: \$9,862-10,106 million  The RIA is included in the preamble.
0938-AQ12	Administrative Simplification: Adoption of Authoring Organizations for Operating Rules and Adoption of Operating Rules for Eligibility and Claims Status (CMS-0032-IFC)	\$1,034 million	\$438 million	The RIA is included in the preamble.
		Range: \$930-\$1,138 million	Range: \$260-\$616 million	
0938-AQ19	Medicaid Recovery Audit Contractors (CMS-6034-F)	Not estimated	Not estimated	Transfers: \$335-343 million  The RIA is included in the preamble.
0938-AQ20	Additional Screening, Application Fees, and Temporary Moratoria for Providers and Suppliers (CMS-6028-F)	Not estimated	\$2 million	Transfers: \$47-48 million  The RIA is included in the preamble.
0938-AQ23	Inpatient Psychiatric Facilities Prospective Payment System-- Update for Rate Year and Fiscal Year Beginning July 1, 2011 (CMS-1346-F)	Not estimated	Not estimated	Transfers: \$97 million  The RIA is included in the preamble.
0938-AQ24	Final Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and FY 2012 Rates and to the Long-Term Care Hospital PPS and FY 2012 Rates (CMS-1518-F)	Not estimated	Not estimated	Transfers: \$1,209 million  The RIA is included in the preamble.
0938-AQ28	Prospective Payment System for Inpatient Rehabilitation Facilities for FY 2012 (CMS-1349-P)	Not estimated	Not estimated	Transfers: \$121 million  The RIA is included in the preamble.
0938-AQ29	Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities-- Update for FY 2012 (CMS-1351-P)	Not estimated	Not estimated	Transfers: \$3,129 million  The RIA is included in the preamble.

<b>RIN</b>	<b>Title</b>	<b>Benefits (2001\$)</b>	<b>Costs (2001\$)</b>	<b>Other Information</b>
0938-AQ53	Enhanced Federal Funding for Medicaid Eligibility Determination and Enrollment Activities (CMS-2346-F)	Not estimated	Not estimated	Transfers: \$283-518 million  The RIA is included in the preamble.
0938-AQ55	Hospital Value-Based Purchasing Program (CMS-3239-F)	Not estimated	Not estimated	The RIA is included in the preamble.
0938-AQ60	Revisions to Medicare Advantage and Part D Prescription Drug Programs; MIPPA-Related Marketing Revisions and Agent/Broker Compensation Plan (CMS-4138-F)	Not estimated	Not estimated	Transfers: \$68-69 million  The RIA is included in the preamble.
0950-AA06	Medical Loss Ratios	Not estimated	\$31 million  Range: \$19-\$47 million	Transfers: \$762 million  One-time costs to develop methods for capturing data, and annual costs related to reporting data to the Secretary and providing rebate notifications and payments.  The RIA is included in the preamble.
<b><i>Department of Housing and Urban Development</i></b>				
2502-AI97	Emergency Homeowners' Loan Program	\$868 million  Range: \$767-\$1,563 million	\$88 million  Range: \$79-\$106 million	Transfers: \$623-\$1,261 million  All benefits result from a single-years activity under the rule. Benefits are higher with a greater program participation and lower program foreclosure rate.  All costs result from a single-years activity under the rule. Costs are higher with a greater program participation and higher program foreclosure rate. Thus, the high (and low) estimates for costs and benefits are not for the same scenario.  The RIA is available at: <a href="http://portal.hud.gov/hudportal/documents/huddoc?id=ia-emrgncyhmownerslp.pdf">http://portal.hud.gov/hudportal/documents/huddoc?id=ia-emrgncyhmownerslp.pdf</a>
2502-AI70	SAFE Mortgage Licensing Act: Minimum Licensing Standards and Oversight Responsibilities (FR-5271-F-03)	Not estimated	\$96-649	The principal benefits of the SAFE Act include the enhanced protection of consumers and of the housing finance system as a whole by ensuring that covered loan originators meet minimum standards for integrity and competence nationwide. A fuller discussion of the qualitative benefits is provided in the analysis prepared for the rule.  The RIA is included in the preamble.
<b><i>Department of the Interior</i></b>				

<b>RIN</b>	<b>Title</b>	<b>Benefits (2001\$)</b>	<b>Costs (2001\$)</b>	<b>Other Information</b>
1010-AD68	Increased Safety Measures for Oil and Gas Operations on the Outer Continental Shelf (OCS)	Not estimated	\$150 million	The RIA is available at: <a href="http://www.boemre.gov/federalregister/PDFs/C_BAnalysisAD68.pdf">http://www.boemre.gov/federalregister/PDFs/C_BAnalysisAD68.pdf</a>
1018-AX34	Migratory Bird Hunting; 2011-12 Migratory Game Bird Hunting Regulations	Not estimated	Not estimated	Information about the RIA is available at: <a href="http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs">http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs</a>
1018-AX34	Migratory Bird Hunting; 2011-12 Migratory Game Bird Hunting Regulations	Not estimated	Not estimated	Information about the RIA is available at: <a href="http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs">http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs</a>
<b>Department of Justice</b>				
1105-AB39	James Zadroga 9/11 Health and Compensation Act of 2010	Not estimated	\$5 million	Transfers: \$333-353 million The RIA is available at: <a href="http://www.justice.gov/civil/docs_forms/911%20VCF%20Final%20Rule%20to%20OLP-%2008%2026.pdf">http://www.justice.gov/civil/docs_forms/911%20VCF%20Final%20Rule%20to%20OLP-%2008%2026.pdf</a>
<b>Department of Labor</b>				
1210-AB07	Improved Fee Disclosure for Pension Plan Participants	\$1,627 million Range: \$780-\$3,255 million	\$290 million Range: \$217-362 million	The regulation's disclosure requirements are expected to reduce participants' time otherwise used for searching for fee and other investment information.  Plans are likely to incur administrative burdens and costs in order to comply with the requirements of the regulation. The quantified cost estimate includes costs due to legal review of the regulation, consolidation of fee information, creation and maintenance of a website, record keeping, production and distribution of disclosures, and material and postage costs.  The RIA is available at: <a href="http://www.dol.gov/ebsa/pdf/frparticipantfeerule.pdf">http://www.dol.gov/ebsa/pdf/frparticipantfeerule.pdf</a>
1205-AB61	Wage Methodology for the Temporary Non-Agricultural Employment H-2B program	Not estimated	Not estimated	Transfers: \$685 million

RIN	Title	Benefits (2001\$)	Costs (2001\$)	Other Information
1210- AB35	Statutory Exemption for Provision of Investment Advice	\$10,916 million  Range: \$5,789- \$15,134 million	\$3,060 million  Range: \$1,571- \$4,218 million	The regulation is anticipated to extend quality, expert investment advice to a significantly greater number of participants. This will improve aggregate investment results, reflecting reductions in investment errors (including poor trading strategies and inadequate diversification).  In addition to the quantified benefits, the Department anticipates that the regulation will improve aggregate investment results, reflecting reduced participants' investment related expenses, and will improve the welfare of participants by better aligning participant investments and their risk tolerance.  The RIA is included in the preamble
<b>Department of Transportation</b>				
2125- AF19	Real-Time System Management Information Program	\$152 million  Range: \$152- \$166 million	\$137 million  Range: \$132- \$137 million	The RIA is available at: <a href="http://www.regulations.gov">http://www.regulations.gov</a> Document ID: FHWA-2010-0156-0001
2127- AK23	Ejection Mitigation	\$1,500 million  Range: \$1,500- \$2,375 million	\$419 million  Range: \$419- \$1,373 million	The primary estimate was based on the 20 km/h curtain; the high estimate was based on the 20 km/h curtain with advanced glazing. Costs start with effective date around September 2013. Benefits start to occur also at that time but occur over the lifetime of the vehicle. Benefits go on potentially forever. With a 25 year passenger car and 36 year light truck lifetime, the period covered would be 2013 to 2049. Benefits are annualized over the 36 year period.  The RIA is available at: <a href="http://www.nhtsa.gov/staticfiles/rulemaking/pdf/Ejection_mitigation_FR_Jan2011.pdf">http://www.nhtsa.gov/staticfiles/rulemaking/pdf/Ejection_mitigation_FR_Jan2011.pdf</a>
<b>Department of Transportation and Environmental Protection Agency</b>				

<b>RIN</b>	<b>Title</b>	<b>Benefits (2001\$)</b>	<b>Costs (2001\$)</b>	<b>Other Information</b>
2127- AK74 ; 2060- AP61	Commercial Medium- and Heavy-Duty On-Highway Vehicles and Work Truck Fuel Efficiency Standards	\$2,564 million  Range: \$2,150- 2,564 million	\$496 million  Range: \$331-496 million	<p>These annualized benefits represent total benefits (including fuel savings, the social cost of carbon, energy security, and other economic impacts) from EPA's calendar year analysis. The calendar year benefits presented here are also based on an average social cost of carbon (SCC) value derived using a 3% discount rate. Annualized benefits from EPA's model year analysis are as follows: \$3.1 billion (7% DR) or \$2.6 billion (3% DR). These values use the same SCC assumption and include the benefits from fuel savings. More details regarding the benefits can be found in the Preamble Sections VII and VIII.</p> <p>DOT's RIA is available at: <a href="http://www.nhtsa.gov/staticfiles/rulemaking/pdf/cafe/FR-EO12866_GHG+Fuel_Stds_Med-Heavy_Vehicles.pdf">http://www.nhtsa.gov/staticfiles/rulemaking/pdf/cafe/FR-EO12866_GHG+Fuel_Stds_Med-Heavy_Vehicles.pdf</a></p> <p>EPA's RIA is available at: <a href="http://www.epa.gov/otaq/climate/regulations/hd-preamble-regs.pdf">http://www.epa.gov/otaq/climate/regulations/hd-preamble-regs.pdf</a></p>
<b><i>Department of the Treasury</i></b>				
1510- AB26	Management of Federal Agency Disbursements	\$96 million	Not estimated	The RIA is included in the preamble
1545- BH01	Regulations Governing Practice Before the Internal Revenue Service	Not estimated	Not estimated	The RIA is included in the preamble
1505- AC34	Small Business Lending Fund Refinance	Not estimated	Not estimated	Transfers: \$2,264 million  The RIA is included in the preamble
<b><i>Department of Veterans Affairs</i></b>				
2900- AN37	Payment for Inpatient and Outpatient Health Care Professional Services at Non-Departmental Facilities and Other Medical Charges Associated with Non-VA Outpatient Care	Not estimated	Not estimated	Transfers: \$284-297 million  The RIA is available at: <a href="http://www.va.gov/ORPM/docs/RegMgmt_RegulatoryImpactAnalysisAN37Final_20101202.doc">http://www.va.gov/ORPM/docs/RegMgmt_RegulatoryImpactAnalysisAN37Final_20101202.doc</a>
2900- AN94	Caregivers Program	Not estimated	Not estimated	Transfers: \$107-113 million  The RIA is available at: <a href="http://www.regulations.gov">http://www.regulations.gov</a> Document ID: VA-2011-VHA-0012-0002 Also available at: <a href="http://www.va.gov/ORPM/docs/RegMgmt_ImpactAnalysisAN94InterimFinal_20110428.doc">http://www.va.gov/ORPM/docs/RegMgmt_ImpactAnalysisAN94InterimFinal_20110428.doc</a>

RIN	Title	Benefits (2001\$)	Costs (2001\$)	Other Information
2900- AO10	Vocational Rehabilitation and Employment Program—Changes to Subsistence Allowance	Not estimated	Not estimated	Transfers: \$126-133 million  The RIA is available at: <a href="http://www.regulations.gov">http://www.regulations.gov</a> Document ID: VA-2011-VBA-0021-0002  Also available at: <a href="http://www.va.gov/ORPM/docs/RegMgmt_RegulatoryImpactAnalysisAO10InterimFinal_20110720.docx">http://www.va.gov/ORPM/docs/RegMgmt_RegulatoryImpactAnalysisAO10InterimFinal_20110720.docx</a>
<b><i>Environmental Protection Agency</i></b>				
2040- AF11	Water Quality Standards (Numeric Nutrient Criteria) for Florida's Lakes and Flowing Waters	\$23 million	\$140 million  Range: \$111-169 million	The RIA is included in the preamble.
2050- AG50	Oil Pollution Prevention: Spill Prevention, Control, and Countermeasure Rule Requirements - Amendments for Milk Containers	Not estimated	(\$121 million)  Range: (\$118-121 million)	The RIA is available at: <a href="http://www.regulations.gov">http://www.regulations.gov</a> Document ID: EPA-HQ-OPA-2008-0821-0004
2060- AP50	Cross-State Air Pollution Rule (CAIR Replacement Rule)	\$20,467- \$59,697 million	\$691 million	The RIA is available at: <a href="http://www.epa.gov/crossstaterule/pdfs/TR_070611_WEB.pdf">http://www.epa.gov/crossstaterule/pdfs/TR_070611_WEB.pdf</a>
<b><i>Equal Employment Opportunity Commission</i></b>				
3046- AA85	Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act Amendments Act	Not estimated	\$107 million  Range: \$53-161 million	The RIA is included in the preamble

**Table A-2: Estimates of Annual Benefits and Costs of Major Final Rules October 1, 2001 - September 30, 2010<sup>241</sup>**  
(millions of 2001 dollars)

RIN	Title	Completed	Published	Benefits	Costs	Source of Estimate
<b><i>Department of Agriculture</i></b>						
0579- AB73	Bovine Spongiform Encephalopathy: Minimal Risk Regions and Importation of Commodities	12/29/04	1/4/05	572-639	557-623	2006 Report: Table 1-4

<sup>241</sup> Based on date of completion of OMB review.

<b>RIN</b>	<b>Title</b>	<b>Completed</b>	<b>Published</b>	<b>Benefits</b>	<b>Costs</b>	<b>Source of Estimate</b>
0579-AB81	Mexican Hass Avocado Import Program	11/23/04	11/30/04	122-184	71-114	2006 Report: Table 1-4
0579-AC01	Bovine Spongiform Encephalopathy; Minimal-Risk Regions and Importation of Commodities	9/14/07	9/18/07	169-340	98-194	2008 Report: Table 1-4
0583-AC46	Performance Standards for Ready-To-Eat Meat and Poultry Products	5/30/03	6/6/03	43-152	17	2004 Report: Table 12
0583-AC88	Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle	6/29/07	7/13/07	0	87-221	2008 Report: Table 1-4
<b><i>Department of Energy</i></b>						
1904-AA78	Energy Efficiency Standards for Residential Furnaces and Boilers	11/6/07	11/19/07	120-182	33-38	2009 Report: Table 1-4
1904-AA90	Energy Efficiency Standards for Pool Heaters and Direct Heating Equipment and Water Heaters [75 FR 20112]	3/30/10	4/16/10	1,274-1,817	975-1,122	2011 Report: Table A-1
1904-AA92	Energy Efficiency Standards for General Service Fluorescent Lamps and Incandescent Lamps	6/26/09	7/14/09	1,111-2,886	192-657	2010 Report: Table 1-4
1904-AB08	Energy Efficiency Standards for Electric Distribution Transformers	9/27/07	10/12/07	490-865	381-426	2008 Report: Table 1-4
1904-AB59	Energy Efficiency Standards for Commercial Refrigeration Equipment	12/18/08	1/9/09	186-224	69-81	2010 Report: Table 1-4
1904-AB70	Energy Conservation Standards for Small Electric Motors [75 FR 10874]	2/25/10	3/9/10	688-827	218	2011 Report: Table A-1
1904-AB93	Energy Efficiency Standards for Commercial Clothes Washers [75 FR 1122]	12/23/09	1/8/10	46-67	17-21	2011 Report: Table A-1
<b><i>Department of Health and Human Services</i></b>						
0910-AB66	Food Labeling: Trans Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims	7/2/03	7/11/03	230-2,839	9-26	2004 Report: Table 12
0910-AB76	CGMPs for Blood and Blood Components: Notification of Consignees and Transfusion Recipients Receiving Blood and Blood Components at Increased Risk of Transmitting HCV Infection (Lookback)	8/14/07	8/24/07	28-130	11	2008 Report: Table 1-4

<b>RIN</b>	<b>Title</b>	<b>Completed</b>	<b>Published</b>	<b>Benefits</b>	<b>Costs</b>	<b>Source of Estimate</b>
0910-AB88	Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Ingredients and Dietary Supplements	5/8/07	6/25/07	10-79	87-293	2008 Report: Table 1-4
0910-AC14	Prevention of Salmonella Enteritidis in Shell Eggs	7/2/09	7/9/09	206-8,583	48-106	2010 Report: Table 1-4
0910-AC26	Bar Code Label Requirements for Human Drug Products and Blood Products	2/17/04	2/26/04	1,352-7,342	647	2005 Report: Table 1-4
0910-AC34	Amendments to the Performance Standard for Diagnostic X-Ray Systems and Their Major Components	5/27/05	6/10/05	87-2,549	30	2006 Report: Table 1-4
0910-AC48	Applications for FDA Approval To Market a New Drug Patent Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent...	6/9/03	6/18/03	226	10	2004 Report: Table 12
0910-AF19	Declaring Dietary Supplements Containing Ephedrine Alkaloids Adulterated Because They Present an Unreasonable Risk of Illness or Injury (Final Rule)	2/5/04	2/11/04	0-130	7-89	2005 Report: Table 1-4
0919-AA01	Patient Safety and Quality Improvement Act of 2005 Rules	11/14/08	11/21/08	69-136	87-121	2010 Report: Table 1-4
0938-AH99	Health Insurance Reform: Standard Unique Health Care Provider Identifier -- CMS-0045-F	1/13/04	1/23/04	214	158	2005 Report: Table 1-4
0938-AM50	Updates to Electronic Transactions (Version 5010) (CMS-0009-F)	1/9/09	1/16/09	1,114-3,194	661-1,449	2010 Report: Table 1-4
0938-AN25	Revisions to HIPAA Code Sets (CMS-0013-F)	1/9/09	1/16/09	77-261	44-238	2010 Report: Table 1-4
0938-AN49	Electronic Prescribing Standards (CMS-0011-F)	11/1/05	11/7/05	196-660	82-274	2007 Report: Table 1-4
0938-AN79	Fire Safety Requirements for Long-Term Care Facilities: Sprinkler Systems (CMS-3191-F)	8/6/08	8/13/08	53-56	45-56	2009 Report: Table 1-4
0938-AN95	Immunization Standard for Long Term Care Facilities (CMS-3198-P)	9/30/05	10/7/05	11,000	6	2006 Report: Table 1-4
<b><i>Department of Homeland Security</i></b>						

<b>RIN</b>	<b>Title</b>	<b>Completed</b>	<b>Published</b>	<b>Benefits</b>	<b>Costs</b>	<b>Source of Estimate</b>
1651-AA72	Changes to the Visa Waiver Program To Implement the Electronic System for Travel Authorization (ESTA) Program	5/30/08	6/9/08	20-29	13-99	2009 Report: Table 1-4
<b><i>Department of Housing and Urban Development</i></b>						
2502-AI61	Real Estate Settlement Procedures Act (RESPA); To Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Costs (FR-5180)	11/7/08	11/17/08	2,303	884	2010 Report: Table 1-4
<b><i>Department of Justice</i></b>						
1117-AA60	Electronic Orders for Schedule I and II Controlled Substances	3/18/05	4/1/05	275	108-118	2006 Report: Table 1-4
1117-AA61	Electronic Prescriptions for Controlled Substances [75 FR 16236]	3/10/10	3/31/10	348-1,320	35-36	2011 Report: Table A-1
1190-AA44	Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities [75 FR 56164]	7/22/10	9/15/10	980-2,056	549-719	2011 Report: Table A-1
1190-AA46	Nondiscrimination on the Basis of Disability in State and Local Government Services [75 FR 56236]	7/22/10	9/15/10	151-304	122-172	2011 Report: Table A-1
<b><i>Department of Labor</i></b>						
1210-AB06	Revision of the Form 5500 Series and Implementing Regulations	8/30/07	11/16/07	0	(83)	2008 Report: Table 1-4
1218-AB45	Occupational Exposure to Hexavalent Chromium (Preventing Occupational Illness: Chromium)	2/17/06	2/28/06	35-862	263-271	2007 Report: Table 1-4
1218-AB77	Employer Payment for Personal Protective Equipment	11/2/07	11/15/07	40-336	2-20	2009 Report: Table 1-4
1219-AB46	Emergency Mine Evacuation	12/5/06	12/8/06	10	41	2008 Report: Table 1-4
1218-AC01	Cranes and Derricks in Construction [75 FR 47906]	6/22/10	8/9/10	172	123-126	2011 Report: Table A-1
<b><i>Department of Transportation</i></b>						
2120-AH68	Reduced Vertical Separation Minimum in Domestic United States Airspace (RVSM)	10/8/03	10/27/03	(60)	(320)	2005 Report: Table 1-4
2120-AI17	Washington, DC, Metropolitan Area Special Flight Rules Area	12/3/08	12/16/08	10-839	89-382	2010 Report: Table 1-4
2120-AI23	Transport Airplane Fuel Tank Flammability Reduction	7/9/08	7/21/08	21-66	60-67	2009 Report: Table 1-4
2120-AI51	Congestion and Delay Reduction at Chicago O'Hare International Airport	8/18/06	8/29/06	153-164	0	2007 Report: Table 1-4

RIN	Title	Completed	Published	Benefits	Costs	Source of Estimate
2120-AI92	Automatic Dependent Surveillance--Broadcast (ADS-B) Equipage Mandate to Support Air Traffic Control Service [75 FR 30160]	5/20/10	5/28/10	144-189	148-284	Internal database <sup>242</sup>
2120-AJ01	Part 121 Pilot Age Limit	6/8/09	7/15/09	30-35	4	2010 Report: Table 1-4
2126-AA23	Hours of Service Drivers; Driver Rest and Sleep for Safe Operation	4/9/03	4/28/03	690	1,318	2004 Report: Table 12
2126-AA59	New Entrant Safety Assurance Process	11/26/08	12/16/08	472-602	60-72	2010 Report: Table 1-4
2126-AA90	Hours of Service of Drivers	8/16/05	8/25/05	19	(235)	2006 Report: Table 1-4
2126-AB14	Hours of Service of Drivers <sup>243</sup>	11/13/08	11/19/08	Not included	Not included	2010 Report: Table 1-4
2127-AG51	Roof Crush Resistance	4/30/09	5/12/09	374-1,160	748-1,189	2010 Report: Table 1-4
2127-AH09	Upgrade of Head Restraints	11/23/04	12/14/04	111-139	83	2006 Report: Table 1-4
2127-AI10	Advanced Air Bags: Response to Petitions Federal Motor Vehicle Safety Standards; Occupant Crash Protection	12/5/01	12/18/01	140-1,600	400-2,000	2002 Report: Table 19
2127-AI33	Tire Pressure Monitoring Systems <sup>244</sup>	5/29/02	6/5/02	Not Included	Not Included	2003 Report: Table 19
2127-AI70	Light Truck Average Fuel Economy Standards, Model Years 2005-2007	3/31/03	4/7/03	255	220	2004 Report: Table 12
2127-AI91	Rear Center Lap/Shoulder Belt Requirement--Standard 208	11/30/04	12/8/04	188-236	162-202	2006 Report: Table 1-4
2127-AJ10	Side Impact Protection Upgrade--FMVSS No. 214	8/28/07	9/11/07	736-1,058	401-1,051	2008 Report: Table 1-4
2127-AJ23	Tire Pressure Monitoring Systems	3/31/05	4/8/05	1,012-1,316	938-2,282	2006 Report: Table 1-4

<sup>242</sup> The benefits and costs of this rule were misreported in Table A-1 of the *2011 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local and Tribal Entities*. The correct estimates are drawn from the OMB internal database, "ROCIS."

<sup>243</sup> As explained in the 2010 Report, the benefits and costs of this rule are not included in the benefit and cost totals for the 10-year aggregate. This interim final rule reestablished policies on the maximum time truck drivers were able to drive per day and per week, and the minimum period before which truck drivers could restart the count of their weekly driving time. These policies were put in place through previous rulemakings on the same subject, but were vacated in 2007 by the United States Court of Appeals for the DC Circuit, which held that the Agency had failed to provide an opportunity for public comment on certain aspects of their Regulatory Impact Analysis. Furthermore, the analysis accompanying this interim final rule analyzed the impact of maintaining these policies relative to the disruptive impact of their prompt removal, not relative to previous fully-implemented policies. Since OMB already reported and attributed the benefits and costs of the Hours of Service Regulations to other rulemakings, and those policies were maintained by this interim final rule, we felt that including the benefits and costs of this rulemaking in the ten-year totals would constitute double counting.

<sup>244</sup> Superseded by the 2005 final rule (RIN 2127-AJ23).

<b>RIN</b>	<b>Title</b>	<b>Completed</b>	<b>Published</b>	<b>Benefits</b>	<b>Costs</b>	<b>Source of Estimate</b>
2127-AJ37	Reduced Stopping Distance Requirements for Truck Tractors	7/16/09	7/27/09	1,250-1,520	23-164	2010 Report: Table 1-4
2127-AJ61	Light Truck Average Fuel Economy Standards, Model Year 2008 and Possibly Beyond	3/28/06	4/6/06	847-1,035	666-754	2007 Report: Table 1-4
2127-AJ77	Electronic Stability Control (ESC)	3/23/07	4/6/07	5,987-11,282	913-917	2008 Report: Table 1-4
2127-AK29	Passenger Car and Light Truck Corporate Average Fuel Economy Model Year 2011	3/24/09	3/30/09	857-1,905	650-1,910	2010 Report: Table 1-4
2130-AC03	Positive Train Control [75 FR 2597]	12/30/09	1/15/10	34-37	519-1,264	2011 Report: Table A-1
2137-AD54	Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines)	11/26/03	12/15/03	154	288	2005 Report: Table 1-4
2137-AE15	Pipeline Safety: Distribution Integrity Management [74 FR 63906]	11/6/09	12/4/09	97-145	92-97	2011 Report: Table A-1
2137-AE25	Pipeline Safety: Standards for Increasing the Maximum Allowable Operating Pressure for Gas Transmission Pipelines	10/2/08	10/17/08	85-89	13-14	2010 Report: Table 1-4
2130-AB84	Regulatory Relief for Electronically Controlled Pneumatic Brake System Implementation	8/29/08	10/16/08	828-884	130-145	2009 Report: Table 1-4
<b><i>Department of Transportation and Environmental Protection Agency</i></b>						
2060-AP58; 2127-AK50	Light-Duty Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards [75 FR 25323]	3/31/10	5/7/10	3.9-18.2 thousand	1.7-4.7 thousand	2011 Report: Table 1-5(a)
<b><i>Environmental Protection Agency</i></b>						
2040-AD19	National Pollutant Discharge Elimination System Permit Regulation and Effluent Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs)	12/14/02	2/12/03	204-355	360	2004 Report: Table 12
2040-AD37	National Primary Drinking Water Regulations: Long Term 2 Enhanced Surface Water Treatment Rule	6/22/05	1/5/06	262-1,785	80-132	2006 Report: Table 1-4
2040-AD38	National Primary Drinking Water Regulations: Stage 2 Disinfection Byproducts Rule	11/23/05	1/4/06	598-1,473	74-76	2007 Report: Table 1-4

<b>RIN</b>	<b>Title</b>	<b>Completed</b>	<b>Published</b>	<b>Benefits</b>	<b>Costs</b>	<b>Source of Estimate</b>
2040-AD56	Effluent Guidelines and Standards for the Meat and Poultry Products Point Source Category (Revisions)	2/26/04	9/8/04	0-10	41-56	2005 Report: Table 1-4
2040-AD62	Establishing Location, Design, Construction, and Capacity Standards for Cooling Water Intake Structures at Large Existing Power Plants (Final Rule)	2/16/04	7/9/04	72	383	2005 Report: Table 1-4
2050-AG16	Revisions to the Spill Prevention, Control, and Countermeasure (SPCC) Rule [74 FR 58784]	10/23/09	11/13/09	0	(78-85)	2011 Report: Table A-1
2050-AG23	Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Requirements--Amendments	11/15/06	12/26/06	0	(86-148)	2008 Report: Table 1-4
2050-AG31	Definition of Solid Wastes Revisions	9/17/08	10/30/08	16-285	14	2009 Report: Table 1-4
2060-AG52	Plywood and Composite Wood Products	2/26/04	7/30/04	152-1,437	155-291	2005 Report: Table 1-4
2060-AG63	National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines	2/26/04	6/15/04	105-1,070	270	2005 Report: Table 1-4
2060-AG69	National Emission Standards for Hazardous Air Pollutants: Industrial/Commercial/Institutional Boilers and Process Heaters <sup>245</sup>	2/26/04	9/13/04	Not Included	Not Included	2005 Report: Table 1-4
2060-AI11	Emissions From Nonroad Spark-Ignition Engines and Standards for Recreational Spark-Ignition Engines	9/13/02	11/8/02	1,330-4,818	192	2003 Report: Table 19
2060-AI44	Review of the National Ambient Air Quality Standards for Particulate Matter	9/21/06	10/17/06	3,837-39,879	2,590-2,833	2007 Report: Table 1-4
2060-AJ31	Clean Air Visibility Rule	6/15/05	7/6/05	2,302-8,153	314-846	2006 Report: Table 1-4
2060-AJ65	Clean Air Mercury Rule--Electric Utility Steam Generating Units <sup>246</sup>	3/15/05	5/18/05	Not Included	Not Included	2006 Report: Table 1-4

<sup>245</sup> On June 19, 2007, the United States Court of Appeals for the District of Columbia Circuit vacated and remanded the national emission standards for hazardous air pollutants for industrial/commercial/institutional boilers and process heaters. Thus, we exclude this rule from the 10-year aggregates in previous reports. (Benefits: \$3,752-\$38,714 million; Costs: \$876 million)

<sup>246</sup> On February 8, 2008, the D.C. Circuit vacated EPA's rule removing power plants from the Clean Air Act list of sources of hazardous air pollutants. At the same time, the Court vacated the Clean Air Mercury Rule. Thus, we exclude this rule from the 10-year aggregates. (Benefits: \$1-2 million; Costs: \$500 million)

<b>RIN</b>	<b>Title</b>	<b>Completed</b>	<b>Published</b>	<b>Benefits</b>	<b>Costs</b>	<b>Source of Estimate</b>
2060-AK27	Control of Emissions of Air Pollution From Nonroad Diesel Engines and Fuel (Final Rule)	5/7/04	6/29/04	6,853-59,401	1,336	2005 Report: Table 1-4
2060-AK70	Control of Hazardous Air Pollutants From Mobile Sources	2/8/07	2/26/07	2,310-2,983	298-346	2008 Report: Table 1-4
2060-AK74	Clean Air Fine Particle Implementation Rule	3/28/07	4/25/07	18,833-167,408	7,324	2008 Report: Table 1-4
2060-AL76	Clean Air Interstate Rule Formerly Titled: Interstate Air Quality Rule <sup>247</sup>	3/10/05	5/12/05	11,947-151,769	1,716-1,894	2006 Report: Table 1-4
2060-AM06	Control of Emissions from New Locomotives and New Marine Diesel Engines Less Than 30 Liters per Cylinder	2/14/08	5/6/08	4,145-14,550	295-392	2009 Report: Table 1-4
2060-AM34	Control of Emissions From Nonroad Spark-Ignition Engines and Equipment	8/18/08	10/8/08	899-4,762	196-200	2009 Report: Table 1-4
2060-AM82	Standards of Performance for Stationary Compression Ignition Internal Combustion Engines	6/28/06	7/11/06	679-757	56	2007 Report: Table 1-4
2060-AN24	Review of the National Ambient Air Quality Standards for Ozone <sup>248</sup>	3/12/08	3/27/08	Not Included	Not Included	2009 Report: Table 1-4
2060-AN72	Petroleum Refineries--New Source Performance Standards (NSPS)--Subpart J	4/30/08	6/24/08	176-1,669	27	2009 Report: Table 1-4
2060-AN83	Review of the National Ambient Air Quality Standards for Lead	10/15/08	11/12/08	455-5,203	113-2,241	2010 Report: Table A-1
2060-AO15	NESHAP: Portland Cement Notice of Reconsideration [75 FR 54970]	8/6/10	9/9/10	6.1-16.3	839-861	2011 Report: Table A-1
2060-AO48	Review of the National Ambient Air Quality Standards for Sulfur Dioxide [75 FR 35519]	6/2/10	6/22/10	2.9-38.6 thousand	334-2,019	2011 Report: Table A-1
2060-AP36	National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines (Diesel) [75 FR 9647]	2/17/10	3/3/10	709-1,920	296-311	2011 Report: Table A-1

<sup>247</sup> On July 11, 2008, the DC Circuit Court vacated the rule; however, in response to EPA's petition, the Court, on December 23, 2008, remanded the rule without vacatur, which keeps this rule in effect while EPA conducts further proceedings consistent with the Court's July 11 opinion. On August 2, 2010, EPA published in the Federal Register the proposed rule titled "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone." This rule, once finalized, will replace the Clean Air Interstate Rule.

<sup>248</sup> Even though this rule was finalized and has not been overturned by a court, on January 19, 2010, EPA published a proposed reconsideration and tightening of the primary and secondary ozone standards. Therefore, for the purposes of this Report, we did not consider the latest round of ozone rulemakings finalized. (Benefits: \$1,581-\$14,934 million; Costs: \$6,676-\$7,730 million)

<b>RIN</b>	<b>Title</b>	<b>Completed</b>	<b>Published</b>	<b>Benefits</b>	<b>Costs</b>	<b>Source of Estimate</b>
2060-AQ13	National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines--Existing Stationary Spark Ignition (Gas-Fired) [75 FR 51569]	8/10/10	8/20/10	380-992	202-209	2011 Report: Table A-1
2070-AC83	Lead-Based Paint; Amendments for Renovation, Repair and Painting	3/28/08	4/22/08	657-1,611	383-417	2009 Report: Table 1-4
2070-AJ55	Lead; Amendment to the Opt-out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program [75 FR 24802]			723-2,698	267-290	Internal database <sup>249</sup>

( ) indicates negative.

<sup>249</sup> The benefits and costs of this rule were misreported in Table A-1 of the *2011 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local and Tribal Entities*. The correct estimates are drawn from the OMB internal database, "ROCIS."

## APPENDIX B: THE BENEFITS AND COSTS OF 2000-2001 MAJOR RULES

Table B-1 lists the rules that were omitted from the ten-year running totals presented in Chapter I of our Report to Congress. It consists of the annualized and monetized benefits and costs of rules for which OMB concluded review between October 1, 2000 and September 30, 2001. These rules were included in Chapter I of the 2011 Report as part of the ten-year totals, but are not included in the 2012 Report.

While we limit the Chapter I accounting statement to regulations issued over the previous ten years, we have included in this Appendix the benefits and cost estimates provided for the economically significant rulemakings that have been covered in previous Reports in order to provide transparency. These estimates were first included in the 2002 Report (see Table 19 in that report), except for Energy Efficiency Standards for Central Air Conditioners and Heat Pumps, which was included in the 2003 Report (Table 19).

**Table B-1: Estimates of Annual Benefits and Costs of Twelve Major Federal Rules  
October 1, 2000 - September 30, 2001**  
(millions of 2001 dollars)

Agency	RIN	Title	OMB Review Completed	Benefits	Costs
USDA/Forest	0596-AB77	Special Areas; Roadless Area Conservation -- 36 CFR Part 294	1/5/01	0	184
HHS/FDA	0910-AA43	Hazard Analysis and Critical Control Point (HACCP); Procedures for the Safe and Sanitary Processing and Importing of Juice	1/10/01	150	30
HHS/FDA	0910-AB30	Food Labeling: Safe Handling Statements, Labeling of Shell Eggs; Refrigeration of Shell Eggs Held for Retail Distribution	11/29/00	261	15
HHS/CMS	0991-AB08	Standards for Privacy of Individually Identifiable Health Information	12/19/00	2,700	1,680
DOL/OSHA	1218-AA65	Safety Standards for Steel Erection	1/8/01	167	78
DOE/EE	1904-AA67	Energy Efficiency Standards for Clothes Washers	1/2/01	2,150	940
DOE/EE	1904-AA76	Energy Efficiency Standards for Water Heaters	1/9/01	680	510
DOE/EE	1904-AA77	Energy Efficiency Standards for Central Air Conditioners and Heat Pumps	1/17/01	1,233	1,132
EPA/Water	2040-AB75	National Primary Drinking Water Regulations, Arsenic, and Clarifications to Compliance and New Source Contaminants Monitoring	1/10/01	140-198	206
EPA/AR	2060-AI34	National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion	12/15/00	293-393	32

		Sources at Kraft, Soda, Sulfit, and Stand-Alone Semichemical Pulp Mills			
EPA/AR	2060-AI69	Heavy-Duty Engine Emission Standards and Diesel Fuel Sulfur Control Requirements 2007	12/21/00	13,000	2,400
EPA/OPPTS	2070-AD38	Lead and Lead Compounds; Lowering of Reporting Thresholds; Community Right-to-Know Toxic Chemical Release Reporting	1/8/01	1,750-6,840	2,700

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**APPENDIX C: INFORMATION ON THE REGULATORY ANALYSES FOR MAJOR RULES BY  
INDEPENDENT AGENCIES**

**Table C-1: Total Number of Major Rules Promulgated by Independent Agencies, October 1, 2002 – September 30, 2011**

Agency	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Commodity Futures Trading Commission (CFTC)	--	--	--	--	--	--	--	--	--	1
Consumer Product Safety Commission (CPSC)	--	--	--	--	1	--	--	--	--	1
Federal Communications Commission (FCC)	4	--	1	4	2	2	4	--	--	--
Federal Energy Regulatory Commission (FERC)	--	--	--	--	--	--	1	--	--	--
Federal Reserve System	--	1	1	--	--	--	--	3	7	4
Federal Trade Commission (FTC)	--	--	--	1	--	--	--	--	1	--
National Credit Union Administration (NCUA)	--	--	--	--	--	--	--	--	--	--
Nuclear Regulatory Commission (NRC)	1	1	1	1	1	1	2	2	1	1
Pension Benefit Guaranty Corporation (PBGC)	--	--	--	--	--	--	--	--	--	--
Securities and Exchange Commission (SEC)	3	5	1	5	--	7	4	8	9	10
<b>Total</b>	<b>8</b>	<b>7</b>	<b>4</b>	<b>11</b>	<b>4</b>	<b>10</b>	<b>11</b>	<b>13</b>	<b>17</b>	<b>17</b>

**Table C-2: Total Number of Major Rules with Some Information on Benefits or Costs Promulgated by Independent Agencies, October 1, 2002- September 30, 2011<sup>250</sup>**

Agency	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Commodity Futures Trading Commission (CFTC)	--	--	--	--	--	--	--	--	--	1
Consumer Product Safety Commission (CPSC)	--	--	--	--	1	--	--	--	--	0
Federal Communications Commission (FCC)	0	0	1	0	0	0	0	--	--	--
Federal Energy Regulatory Commission (FERC)	--	--	--	--	--	--	1	--	--	--
Federal Reserve System	--	0	1	--	--	--	--	0	2	0
Federal Trade Commission (FTC)	--	--	--	0	--	--	--	--	1	--
National Credit Union Administration (NCUA)	--	--	--	--	--	--	--	--	--	--

<sup>250</sup> Table C-2 excludes all fee assessment rules promulgated by independent agencies. FCC promulgated six fee assessment rules from 1997 through 2002. NRC promulgated 13 statutorily mandated fee assessment rules from 1997 through 2011.

Nuclear Regulatory Commission (NRC)	--	--	--	--	--	--	1	1	--	1
Pension Benefit Guaranty Corporation (PBGC)	--	--	--	--	--	--	--	--	--	--
Securities and Exchange Commission (SEC)	3	5	1	5	--	7	4	8	9	9
Total	3	5	3	5	1	7	6	8	11	11

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**APPENDIX D: THE BENEFITS AND COSTS OF MAJOR RULES BY ADMINISTRATION**

Chapter II presents estimates of the annual benefits and costs of major final regulations reviewed by OMB during the first two complete fiscal years of three Administrations. The totals presented in chapter II are based on aggregation of estimates presented in previous reports. Table D-1 includes major final rules OMB completed review between January 20, 1993 to September 30, 1995 where both benefit and cost estimates were previously reported. Table D-2 includes major final rules OMB completed review between January 20, 2001 to September 30, 2003 where both benefit and cost estimates were previously reported. Table D-3 includes major final rules OMB completed review between January 20, 2009 to September 30, 2011 where both benefit and cost estimates were previously reported. OMB presents more detailed explanation of these regulations in several previous documents as noted in the “source” column of the tables.

**Table D-1: Estimates of Annual Benefits and Costs of Major Federal Rules, January 20, 1993 to September 30, 1995<sup>251</sup>**  
(millions of 2001 dollars per year)

Agency	RIN	Title	OMB Review Completed	Published	Benefits	Costs
EPA	2060-AC65	Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines, Regulations Requiring on-Board Diagnostic Systems on 1994 and Later Model Year Light-Duty Vehicles	1/28/93	2/19/93	\$2,062.3	\$226.0
HUD	2502-AE66	Manufactured Housing Construction and Safety Standards	9/21/93	10/21/93	\$103.0	\$63.0
EPA	2060-AD91	Accelerated Phaseout of Ozone Depleting Chemicals and Listing and Phaseout of Methyl Bromide	11/29/93	12/10/93	\$2,626.5	\$1,681.0
EPA	2060-AD27	Fuel and Fuel Additives: Standards for Reformulated Gasoline	12/15/93	2/16/94	\$534.5	\$1,240.0
EPA	2060-AC64	Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines, Refueling Emission Regulations for Light-Duty Vehicles and Trucks and Heavy-Duty Vehicles	1/22/94	4/6/94	\$463.5	\$33.0
DOT	2125-AC85	Controlled Substances and Alcohol Use and Testing	1/25/94	2/15/94	\$1,539.0	\$114.0
DOT	2105-AE43	Prevention of Alcohol Misuse in the Aviation, Transit, Motor Carrier, Railroad, and Pipeline Industries, Common Preamble	1/25/94	2/15/94	\$107.0	\$37.0
EPA	2060-AD45	Acid Rain NOX Regulations under Title IV of the Clean Air Act Amendments of 1990	2/25/94	3/22/94	\$2,439.5	\$297.0
EPA	2060-AC19	Hazardous Organic NESHAP (HON) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and	2/28/94	4/22/94	\$1,610.5	\$314.0

<sup>251</sup> Based on date of completion of OMB review.

Other Processes Subject to the Negotiated Regulation for Equipment Leaks						
EPA	2060-AD54	Determination of Significance for Nonroad Sources and Emission Standards for New Nonroad Compression Ignition Engines At or Above 37 Kilowatts, Control of Air Pollution -- SAN 3112	5/26/94	6/17/94	\$3,734.0	\$49.5
DOL	1218-AB25	Occupational Exposure to Asbestos	7/1/94	8/10/94	\$92.0	\$448.0
EPA	2050-AD89	Land Disposal Restrictions Phase II, Universal Treatment Standards and Treatment Standards for Organic Toxicity, Characteristic Wastes, and Newly Listed Wastes	7/29/94	9/19/94	\$26.0	\$256.0
EPA	2060-AD71	Interim Requirements for Deposit Control Gasoline Additives, Regulations of Fuels and Fuel Additives	10/14/94		\$1,045.0	\$197.0
EPA	2040-AC35	Bay/Delta Water Quality Standards	12/13/94		\$14.0	\$142.5
DOT	2115-AD61	Double Hull Standards for Vessels Carrying Oil in Bulk	1/20/95		\$17.0	\$583.0
DOT	2127-AA00	FMVSS: Stability and Control of Medium and Heavy Vehicles During Braking	2/13/95		\$2,094.5	\$694.0
EPA	2060-AD45	Acid Rain Nitrogen Oxides Emission Reduction Programs	3/20/95		\$2,439.5	\$297.0
EPA	2060-AD02	Federal Standards for Marine Tank Vessel Loading and Unloading Operations and NESHAP for Marine Tank Vessel Loading and Unloading Operations	7/28/95	9/19/95	\$507.0	\$153.0
EPA	2060-AD94	National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries	7/28/95		\$412.5	\$105.5
DOT	2127-AB85	Head Impact Protection	8/10/95	8/18/95	\$1,855.0	\$633.0

**Table D-2: Estimates of Annual Benefits and Costs of Major Federal Rules, January 20, 2001 to September 30, 2003<sup>252</sup>**  
(millions of 2001 dollars per year)

Agency	RIN	Title	OMB Review Completed	Published	Benefits	Costs
DOT	2127-AI10	Advanced Air Bags: Response to Petitions Federal Motor Vehicle Safety Standards; Occupant Crash Protection	12/5/01	12/18/01	\$870.0	\$1,200.0
DOT	2127-AI33	Tire Pressure Monitoring Systems	5/29/02	6/5/02	\$676.5	\$977.5

<sup>252</sup> Based on date of completion of OMB review.

EPA	2060-AI11	Emissions From Nonroad Spark-Ignition Engines and Standards for Recreational Spark-Ignition Engines	9/13/02	11/8/02	\$3,074.0	\$192.0
EPA	2040-AD19	National Pollutant Discharge Elimination System Permit Regulation and Effluent Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs)	12/14/02	2/12/03	\$279.5	\$360.0
DOT	2127-AI70	Light Truck Average Fuel Economy Standards, Model Years 2005-2007	3/31/03	4/7/03	\$255.0	\$220.0
DOT	2126-AA23	Hours of Service Drivers; Driver Rest and Sleep for Safe Operation	4/9/03	4/28/03	\$690.0	\$1,318.0
USDA	0583-AC46	Performance Standards for Ready-To-Eat Meat and Poultry Products	5/30/03	6/6/03	\$97.5	\$17.0
HHS	0910-AC48	Applications for FDA Approval To Market a New Drug Patent Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent...	6/9/03	6/18/03	\$226.0	\$10.0
HHS	0910-AB66	Food Labeling: Trans Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims	7/2/03	7/11/03	\$1,534.5	\$17.5

**Table D-3: Estimates of Annual Benefits and Costs of Major Federal Rules, January 20, 2009 to September 30, 2011<sup>253</sup>**  
(millions of 2001 dollars per year)

Agency	RIN	Title	OMB Review Completed	Published	Benefits	Costs
DOT	2127-AK29	Passenger Car and Light Truck Corporate Average Fuel Economy Model Year 2011	3/24/09	3/30/09	\$1,665.0	\$979.0
DOT	2127-AG51	Roof Crush Resistance	4/30/09	5/12/09	\$652.0	\$896.0
DOT	2120-AJ01	Part 121 Pilot Age Limit	6/8/09	7/15/09	\$35.0	\$4.0
DOE	1904-AA92	Energy Efficiency Standards for General Service Fluorescent Lamps and Incandescent Lamps	6/26/09	7/14/09	\$1,924.0	\$486.0
HHS	0910-AC14	Prevention of Salmonella Enteritidis in Shell Eggs	7/2/09	7/9/09	\$1,284.0	\$74.0
DOT	2127-AJ37	Reduced Stopping Distance Requirements for Truck Tractors	7/16/09	7/27/09	\$1,250.0	\$46.0
EPA	2050-AG16	Revisions to the Spill Prevention, Control, and Countermeasure (SPCC) Rule	10/23/09	11/13/09	\$0.0	-\$80.8
DOT	2137-AE15	Pipeline Safety: Distribution Integrity Management	11/6/09	12/4/09	\$97.4	\$96.6
DOE	1904-AB93	Energy Efficiency Standards for Commercial Clothes Washers	12/23/09	1/8/10	\$50.7	\$19.5

<sup>253</sup> Based on date of completion of OMB review.

DOT	2130-AC03	Positive Train Control	12/30/09	1/15/10	\$34.3	\$745.3
EPA	2060-AP36	National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines	2/17/10	3/3/10	\$1,314.4	\$311.3
DOE	1904-AB70	Energy Conservation Standards for Small Electric Motors	2/25/10	3/9/10	\$707.2	\$218.2
DOJ	1117-AA61	Electronic Prescriptions for Controlled Substances	3/10/10	3/31/10	\$348.2	\$35.6
DOT	2126-AA89	Electronic On-Board Recorders for Hours-of-Service Compliance	3/18/10	4/5/10	\$165.0	\$126.0
DOE	1904-AA90	Energy Efficiency Standards for Pool Heaters and Direct Heating Equipment and Water Heaters	3/30/10	4/16/10	\$1,386.0	\$1,062.6
DOT/EPA	2127-AK50; 2060-AP58	Passenger Car and Light Truck Corporate Average Fuel Economy Standards MYs 2012 to 2016	3/31/10	5/7/10	\$11,939.3	\$3,325.9
EPA	2070-AJ55	Lead; Amendment to the Opt-out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program	4/22/10	5/6/10	\$1,869.2	\$290.1
DOT	2120-AI92	Automatic Dependent Surveillance--Broadcast (ADS-B) Equipage Mandate to Support Air Traffic Control Service	5/20/10	5/28/10	\$166.6	\$216.0
EPA	2060-AO48	Review of the National Ambient Air Quality Standards for Sulphur Dioxide	6/2/10	6/22/10	\$10,534.9	\$684.8
DOL	1218-AC01	Cranes and Derricks in Construction	6/22/10	8/9/10	\$171.5	\$126.3
DOJ	1190-AA44	Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities	7/22/10	9/15/10	\$1,123.1	\$611.0
DOJ	1190-AA46	Nondiscrimination on the Basis of Disability in State and Local Government Services	7/22/10	9/15/10	\$173.3	\$137.9
EPA	2060-AO15	NESHAP: Portland Cement Notice of Reconsideration	8/6/10	9/9/10	\$11,195.3	\$850.3
EPA	2060-AQ13	National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines--Existing Stationary Spark Ignition (Gas-Fired)	8/10/10	8/20/10	\$686.4	\$209.2
DOL	1210-AB07	Improved Fee Disclosure for Pension Plan Participants	10/5/10	10/20/10	\$1,627.0	\$289.8
DOT	2125-AF19	Real-Time System Management Information Program	10/13/10	11/8/10	\$152.0	\$136.6
EPA	2040-AF11	Water Quality Standards (Numeric Nutrient Criteria) for Florida's Lakes and Flowing Waters	11/18/10	12/6/10	\$23.1	\$139.9
DOT	2127-AK23	Ejection Mitigation	12/23/10	1/19/2011	\$1,500.2	\$419.3

DOE	1904-AA89	Energy Efficiency Standards for Clothes Dryers and Room Air Conditioners	4/8/11	4/21/2011	\$191.4	\$132.3
EPA	2050-AG50	Oil Pollution Prevention: Spill Prevention, Control, and Countermeasure Rule Requirements - Amendments for Milk Containers	4/8/11	4/18/2011	\$0.0	-\$120.7
DOE	1904-AC06	Energy Efficiency Standards for Residential Furnace, Central Air Conditioners and Heat Pumps	6/6/11	6/27/2011	\$939.9	\$537.5
HHS	0910-AG41	Cigarette Warning Label Statements	6/9/11	6/22/2011	\$183.2	\$30.6
HHS	0938-AQ12	Administrative Simplification: Adoption of Authoring Organizations for Operating Rules and Adoption of Operating Rules for Eligibility and Claims Status (CMS-0032-IFC)	6/30/11	7/8/2011	\$1,033.7	\$437.9
EPA	2060-AP50	Cross-State Air Pollution Rule (CAIR Replacement Rule)	7/1/11	8/8/2011	\$40,081.9	\$690.8
DOT	2127-AK74	Commercial Medium- and Heavy-Duty On-Highway Vehicles and Work Truck Fuel Efficiency Standards	8/8/11	9/15/2011	\$2,563.7	\$496.2
DOE	1904-AB79	Energy Efficiency Standards for Residential Refrigerators, Refrigerator-Freezers, and Freezers	8/25/11	9/15/2011	\$1,836.7	\$840.2
DOL	1210-AB35	Statutory Exemption for Provision of Investment Advice	9/29/11	10/25/2011	\$10,916.2	\$3,059.8

## **APPENDIX E: EXECUTIVE ORDER 13579: REGULATION AND INDEPENDENT REGULATORY AGENCIES**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve regulation and regulatory review, it is hereby ordered as follows:

Section 1. Policy. (a) Wise regulatory decisions depend on public participation and on careful analysis of the likely consequences of regulation. Such decisions are informed and improved by allowing interested members of the public to have a meaningful opportunity to participate in rulemaking. To the extent permitted by law, such decisions should be made only after consideration of their costs and benefits (both quantitative and qualitative).

(b) Executive Order 13563 of January 18, 2011, "Improving Regulation and Regulatory Review," directed to executive agencies, was meant to produce a regulatory system that protects "public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation." Independent regulatory agencies, no less than executive agencies, should promote that goal.

(c) Executive Order 13563 set out general requirements directed to executive agencies concerning public participation, integration and innovation, flexible approaches, and science. To the extent permitted by law, independent regulatory agencies should comply with these provisions as well.

Sec. 2. Retrospective Analyses of Existing Rules. (a) To facilitate the periodic review of existing significant regulations, independent regulatory agencies should consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data and evaluations, should be released online whenever possible.

(b) Within 120 days of the date of this order, each independent regulatory agency should develop and release to the public a plan, consistent with law and reflecting its resources and regulatory priorities and processes, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

Sec. 3. General Provisions. (a) For purposes of this order, "executive agency" shall have the meaning set forth for the term "agency" in section 3(b) of Executive Order 12866 of September 30, 1993, and "independent regulatory agency" shall have the meaning set forth in 44 U.S.C. 3502(5).

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) Authority granted by law to a department or agency, or the head thereof; or

(ii) Functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

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## APPENDIX F: IMPLEMENTATION OF RETROSPECTIVE REVIEW PLANS



ADMINISTRATOR  
OFFICE OF  
INFORMATION AND  
REGULATORY AFFAIRS

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

October 26, 2011

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Cass R. Sunstein *CRS*  
Administrator

SUBJECT: Implementation of Retrospective Review Plans

Executive Order 13563, "Improving Regulation and Regulatory Review," emphasizes that our "regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation." To promote this goal, Executive Order 13563 requires agencies to develop plans to review their existing significant regulations in order to explore "whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives."

In response to this requirement, this Administration has taken steps to save billions of dollars in regulatory costs and to eliminate millions of hours in annual paperwork burdens. Over two dozen agencies have produced retrospective review plans, now available for public review, outlining hundreds of reform proposals.

Executive Order 13563 calls not for a single exercise, but for a continuing process of scrutiny of existing rules, with careful attention to existing evidence. As stated in that Order, our regulatory system "must measure, and seek to improve, the actual results of regulatory requirements." This statement points to the need for empirical assessment of the consequences of rules. In the current economic period, it is especially important for regulatory agencies to continue their commitment to periodic review of existing regulations, with careful attention to economic consequences and regular input from members of the public.

When implementing their retrospective review plans, agencies should give high priority to those reforms that will promote economic growth, innovation, competitiveness, and/or job creation. These high-priority reforms should include those with the greatest potential to produce significant quantifiable cost savings and significant quantifiable reductions in paperwork burdens. Agencies should give special consideration to reforms that would reduce, simplify, or harmonize regulatory or reporting requirements imposed on small businesses.

Because members of the public, including those affected by regulations, are likely to have important information and perspectives, agencies shall regularly seek the views of the public and invite suggestions on possible reforms. In accordance with Section 6(a) of Executive Order

13563, retrospective analyses of regulations, including supporting data, should be released online whenever possible.

In addition, agencies shall regularly report on the status of their retrospective review efforts to the Office of Information and Regulatory Affairs (OIRA). Agency reports should describe past progress, anticipated accomplishments, and proposed timelines for relevant actions, with an emphasis on high-priority reforms. Agencies shall submit such reports to OIRA on the second Monday of January, May, and September for the period of a year from the date of this memorandum, and semi-annually on the second Monday of January and July for each year thereafter. Agencies shall make these reports available to the public within a reasonable period (not to exceed two weeks from submission). It is recommended that agencies publish their reports online on the agency's Open Government Webpage ([www.agency.gov/open](http://www.agency.gov/open)).<sup>1</sup>

A suggested template for agency reports is attached.

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<sup>1</sup> See Memorandum for the Heads of Executive Departments and Agencies, M-10-06, Open Government Directive (Dec. 8, 2009) (requiring each agency to create an "open" webpage), available at [http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda\\_2010/m10-06.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-06.pdf).

**Suggested Template for Agency Retrospective Review Plan Reports**

Agency/ Sub- agency	RIN /OMB Control Number	Title of Initiative/ Rule/ICR	Brief Description	Actual or Target Completion Date	Anticipated savings in costs and/or information collection burdens, together with any anticipated changes in benefits (please quantify, to the extent feasible, and also specify baseline, time horizon, and affected groups)	Progress updates and anticipated accomplishments	Notes

**RIN/OMB Control Number:** Regulation Identifier Number (RIN) for regulatory actions<sup>2</sup> or Office of Management and Budget (OMB) Control Number for information collection requests<sup>3</sup>

**ICR:** Information Collection Request under the Paperwork Reduction Act<sup>4</sup>

**Anticipated savings:** Agencies should describe, and to the extent feasible, should quantify and monetize anticipated savings in terms of dollars, burden-hours, or both. (Burden reduction estimates should use currently approved burden estimates associated with the ICR.) In doing so, agencies should specify the baseline used to calculate the numbers. For example, are these estimates based on full compliance/implementation or actual real-world enforcement/compliance/implementation of the existing rule? If self-implementing statutes are involved, are the estimates based on a pre-statute or post-statute baseline?<sup>5</sup> Agencies are also encouraged to specify the relevant time horizon of their estimates. For example, are the savings expected to occur annually or only once? Finally, whom does the agency expect to benefit from the cost-savings or burden reductions (e.g., small businesses, specific sub-populations, the government, society as a whole)?

**Notes:** Any explanatory notes the agency deems appropriate with respect to any of the previous columns

<sup>2</sup> See Memorandum for the President’s Management Council, “Increasing Openness in the Rulemaking Process – use of the Regulation Identifier Number (RIN)” (April 7, 2010), available at [http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/IncreasingOpenness\\_04072010.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/IncreasingOpenness_04072010.pdf).

<sup>3</sup> The OMB Control Number is two four-digit codes separated by a hyphen. The first four digits identify the sponsoring agency and bureau, and the second four digits identify the particular information collection. The public can find OMB’s inventory of currently approved collections, with OMB control numbers, online at <http://www.reginfo.gov>.

<sup>4</sup> See Memorandum for the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies, “Information Collection under the Paperwork Reduction Act” (April 7, 2010), available at [http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer\\_04072010.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer_04072010.pdf)

<sup>5</sup> See p. 4 of “Regulatory Impact Analysis: Frequently Asked Questions,” available at [http://www.whitehouse.gov/sites/default/files/omb/circulars/a004/a-4\\_FAQ.pdf](http://www.whitehouse.gov/sites/default/files/omb/circulars/a004/a-4_FAQ.pdf) (“What is a baseline and how do I identify it?”).



**APPENDIX G: FINAL GUIDANCE ON IMPLEMENTING THE PLAIN WRITING ACT OF 2010  
COMPLIANCE**

M-11-15

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Cass R. Sunstein  
Administrator, Office of Information and Regulatory Affairs

SUBJECT: Final Guidance on Implementing the Plain Writing Act of 2010

In his January 21, 2009, Memorandum on Transparency and Open Government, President Obama emphasized the importance of establishing “a system of transparency, public participation, and collaboration.” Plain writing is indispensable to achieving these goals. The Plain Writing Act of 2010 (the Act) (Public Law 111-274), which the President signed into law on October 13, 2010, calls for writing that is clear, concise, and well-organized.<sup>254</sup> This memorandum provides final guidance on implementing the Act and is designed to promote the goals of the President’s Open Government Initiative.

As defined in the Act, plain writing is writing that is clear, concise, well-organized, and consistent with other best practices appropriate to the subject or field and intended audience. Such writing avoids jargon, redundancy, ambiguity, and obscurity.

Clear and simple communication has many benefits. Avoiding vagueness and unnecessary complexity makes it easier for members of the public to understand and to apply for important benefits and services for which they are eligible. Plain writing can also assist the public in complying with applicable requirements simply because people better understand what they are supposed to do. Plain writing is thus more than just a formal requirement; it can be essential to the successful achievement of legislative and administrative goals, and it also promotes the rule of law.

Experience has also shown that plain writing can:

- improve public understanding of government communications;
- save money and increase efficiency;
- reduce the need for the public to seek clarification from agency staff;
- improve public understanding of agency requirements and thereby assist the public in complying with them;
- reduce resources spent on enforcement;
- improve public understanding of agency forms and applications and thereby assist the public in completing them; and

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<sup>254</sup> <http://www.gpo.gov/fdsys/pkg/PLAW-111publ274/pdf/PLAW-111publ274.pdf>. The Act is also found at 5 U.S.C. § 301.

- reduce the number of errors that are made and thus the amount of time and effort that the agency and the public need to devote to correcting those errors.

This Memorandum rescinds and replaces OMB Memorandum M-11-05, “Preliminary Guidance for the Plain Writing Act of 2010,” issued on November 22, 2010. This final guidance does not make significant substantive changes from the preliminary guidance, but it does provide further clarification of key issues. Actions that agencies have taken under the preliminary guidance will provide the foundation for the agencies’ implementation of this final guidance and of the Act’s requirements.

## **Implementing the Plain Writing Act of 2010**

### **A. Overview.**

**(1) Applicability.** The Act and this guidance apply to all “executive agencies” as defined under 5 U.S.C. § 105.<sup>255</sup>

**(2) Deadlines.** The Act contains the following specific deadlines and requirements:

- By July 13, 2011 (nine months after enactment), each agency must:
  - designate one or more Senior Officials for Plain Writing who will be responsible for overseeing the agency’s implementation of the Act and this guidance;
  - create a plain writing section of the agency website;
  - communicate the Act’s requirements to agency employees and train agency employees in plain writing;
  - establish a process by which the agency will oversee its ongoing compliance with the Act’s requirements; and
  - publish an initial report, on the plain writing section of the agency’s website, that describes the agency’s plan for implementing the Act’s requirements.
- By October 13, 2011 (one year after enactment), agencies must write all new or substantially revised documents in plain writing.
- By April 13, 2012 (eighteen months after enactment), and annually thereafter, each agency must publish a report that describes its continuing compliance with the Act.

### **B. Getting started.**

**(1) Official interagency working group.** The Plain Language Action and Information Network (PLAIN) is the official interagency working group designated to assist in issuing plain writing guidance. As a first step, you should consult with PLAIN to determine if your agency has a representative on this group who can help you to carry out your plain writing

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<sup>255</sup> Section 105 defines “executive agency” as an “Executive department, a Government corporation, and an independent establishment.” The definitions for “executive department,” “government corporation” and “independent establishment” are found in 5 U.S.C. §§ 101, 103, and 104.

efforts. You can contact PLAIN's co-chairs, Amy Bunk and Kathryn Catania, at amy.bunk@nara.gov and kathryn.catania@dhs.gov to make this determination. You can learn more about PLAIN at [www.plainlanguage.gov](http://www.plainlanguage.gov).

**(2) Federal plain writing guidelines.** When drafting covered documents, your agency should follow the Federal Plain Language Guidelines available at <http://www.plainlanguage.gov/howto/guidelines/bigdoc/TOC.cfm>. If your agency chooses to use or create its own guidelines, you may base them on the "Federal Plain Language Guidelines" and modify them to make them more relevant to your agency by, for example, changing the specific examples.

**(3) Implementation strategies.** When implemented appropriately, plain writing will help your agency achieve its mission better by improving service to the public. To implement plain writing and the requirements of the Act most effectively, agencies should:

- consider using incentives such as challenges and prizes to encourage greater use of plain writing;
- engage and collaborate with the public; and
- identify performance goals by which to measure the progress and impact of plain writing.

**(4) Training.** Under the Act, Senior Officials for Plain Writing are responsible for overseeing the plain-writing training that the agency provides to its employees.

- Your agency should design a plan to determine which employees would benefit the most from training in plain writing, and to what degree.
- Employees who regularly write or edit documents covered by the Act should initially be the primary recipients of this training.
- Your agency should provide training in plain writing to new employees.
- If your agency has questions on whether a particular training course appropriately addresses plain writing principles, contact your Senior Official for Plain Writing. PLAIN has training materials posted on its website [www.plainlanguage.gov](http://www.plainlanguage.gov).

**C. Meeting deadlines.** The following provides additional guidance with respect to your agency's implementation of the Act's requirements.

**(1) By July 13, 2011, designate one or more Senior Officials for Plain Writing.** By July 13, 2011, your agency must designate one or more senior officials who are responsible for overseeing the agency's implementation of the Act and this guidance. Because these Senior Officials will be called on periodically to brief OMB and White House officials on your agency's efforts to implement plain writing, they should:

- have cross-cutting responsibilities within the agency;
- oversee agency programs, personnel, technology, regulations, or policy; and
- be involved in agency communications.

Under the Act, Senior Officials for Plain Writing are also responsible for overseeing your agency's implementation of the additional July 13, 2011 requirements to:

- communicate the Act's requirements to agency employees;
- train employees of the agency on plain writing; and
- establish a process for the agency to oversee its ongoing compliance with the Act's requirements.

By July 13, 2011, please send an email to [infopolicy-oira@omb.eop.gov](mailto:infopolicy-oira@omb.eop.gov) with the name(s) and title(s) of your Senior Official(s) for Plain Writing. A list of these Senior Officials will be published on [www.plainlanguage.gov](http://www.plainlanguage.gov).

**(2) By July 13, 2011, establish a plain writing webpage.** Under the Act, by July 13, 2011, your agency must create and maintain a plain writing section of your website that is accessible from your agency's homepage. Consistent with the goals of open government, this section must inform the public of your agency's compliance with the requirements of the Act and allow you to receive and respond to public comments and suggestions.

- This section on your webpage must either be located on or be accessible from your open government webpage located at [www.\[agency\].gov/open](http://www.[agency].gov/open).<sup>256</sup>
- You may use a model plain writing web template and obtain information on best practices for this webpage from the Federal Web Managers Council at <http://www.howto.gov>.
- Your plain writing webpage must let the public comment on your agency's efforts to implement the Act and to nominate specific unclear documents for revision.

**(3) By July 13, 2011, publish an implementation report.** The Act requires each agency to publish an initial implementation report by July 13, 2011, that describes your plan for implementing the requirements of the Act. You should consider using the report template found on <http://www.plainlanguage.gov/plLaw/law/index.cfm> for your agency's initial and annual reports. Each of these reports must be published on your agency's plain writing webpage, with a means for stakeholders and the public to comment on it.

**(4) By October 13, 2011, agencies shall use plain writing when issuing "covered documents."** Under the Act, starting October 13, 2011, agencies must use plain writing when issuing new or substantially revised documents. This requirement applies to "covered documents," which the Act defines as those documents that:

- are necessary for obtaining any Federal Government benefit or service, or filing taxes (e.g., tax forms or benefit applications);

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<sup>256</sup> See the Memorandum from the OMB Director of December 8, 2009, on Open Government Directive (M-10-06) (requiring each agency to create a "open" webpage), at [http://www.whitehouse.gov/omb/assets/memoranda\\_2010/m10-06.pdf](http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf). In the case of an independent regulatory agency that chose not to implement the Open Government Directive, the agency's plain writing webpage must be located on a site that is easily accessible from your agency's homepage.

- provide information about any Federal Government benefit or service (e.g., handbooks for Medicare or Social Security recipients); or
- explain to the public how to comply with a requirement that the Federal Government administers or enforces (e.g., guidance on how to prepare required reports or comply with safety requirements).

The Act also requires agencies to use plain writing in every paper or electronic letter, publication, form, notice, or instruction. When an agency prepares a specialized or technical publication, the agency should take into account the subject expertise of the intended audience. For purposes of the Act, the “public” means anticipated readers or recipients, including any external stakeholders affected by your agency’s mission or with whom your agency is seeking to communicate.

It is important to emphasize that agencies should communicate with the public in a way that is clear, simple, meaningful, and jargon-free.<sup>257</sup> A lack of clarity may prevent people from becoming sufficiently aware of programs or services, and the prospect of confusing or complex forms may discourage people from applying for benefits and services for which they are eligible. Similarly, a lack of clarity may make it difficult for people to understand whether particular requirements apply to them, and if so, what they are supposed to do.

While the Act exempts regulations from covered documents, rulemaking preambles are not exempted, and long-standing policies currently in effect require regulations to be written in a manner that is “simple and easy to understand.”<sup>258</sup>

**(5) By April 13, 2012, submit the first annual compliance report.** By April 13, 2012, and annually thereafter, each agency must publish on its website a report that describes the agency’s continuing compliance with the Act. Prior to publication, agencies are encouraged to solicit feedback from the public and stakeholders on their implementation of the Act in the previous year, to post written comments on the agency’s plain writing webpage, and to respond to substantive comments in the annual report.

#### **D. Encouraging public participation.**

You should, on an ongoing basis, obtain direct feedback from the public and your stakeholders on how to improve your implementation of the Act and how to identify those documents that require plain writing improvements. You can use your plain writing webpage for this purpose, along with other interactive online tools and social media. The following guidance documents can help you with the public feedback process:

<sup>257</sup> See the Memorandum from the OIRA Administrator of June 18, 2010, on Disclosure and Simplification as Regulatory Tools, at [http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/disclosure\\_principles.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/disclosure_principles.pdf).

<sup>258</sup> Executive Order 12866, “Regulatory Planning and Review.” Section 1(b)(12) (“Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty”), at <http://www.archives.gov/federal-register/executive-orders/pdf/12866.pdf>. More recently, Executive Order 13563, “Improving Regulation and Regulatory Review,” states that regulations must be “accessible, consistent, written in plain language, and easy to understand,” at <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>.

- Memorandum from the OIRA Administrator of April 7, 2010, on Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act<sup>259</sup>
- Memorandum from the OIRA Administrator of May 28, 2010, on Paperwork Reduction Act – Generic Clearances<sup>260</sup>
- Memorandum from the OMB Director of June 25, 2010, on Guidance for Online Use of Web Measurement and Customization Technologies (M-10-22)<sup>261</sup>
- Memorandum from the OMB Director of June 25, 2010, on Guidance for Agency Use of Third-Party Websites and Applications (M-10-23)<sup>262</sup>

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For agency questions on plain writing, please contact your Senior Official for Plain Writing or the PLAIN co-chairs mentioned above.

For other agency questions on this Memorandum, please contact OMB's Information Policy Branch, located in the Office of Information and Regulatory Affairs, at [infopolicy-oira@omb.eop.gov](mailto:infopolicy-oira@omb.eop.gov).

Thank you.

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<sup>259</sup> [http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/SocialMediaGuidance\\_04072010.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/SocialMediaGuidance_04072010.pdf)

<sup>260</sup> [http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRA\\_Gen\\_ICRs\\_5-28-2010.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRA_Gen_ICRs_5-28-2010.pdf)

<sup>261</sup> [http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda\\_2010/m10-22.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-22.pdf)

<sup>262</sup> [http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda\\_2010/m10-23.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-23.pdf)

## APPENDIX H: INFORMING CONSUMERS THROUGH SMART DISCLOSURE

### MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Cass R. Sunstein  
Administrator  
SUBJECT: Informing Consumers through Smart Disclosure

In the Memorandum on Transparency and Open Government, issued on January 21, 2009, the President called for the establishment of “a system of transparency, public participation, and collaboration.”<sup>263</sup> The Memorandum required the Office of Management and Budget (OMB) to issue an Open Government Directive “that instructs executive departments and agencies to take specific actions implementing the principles set forth in this memorandum.” Following the President’s Memorandum, OMB’s Open Government Directive requires a series of concrete measures to implement the commitments to transparency, participation, and collaboration.<sup>264</sup>

Section 4 of the Directive specifically instructs the Administrator of the Office of Information and Regulatory Affairs (OIRA) to “review existing OMB policies . . . to identify impediments to open government and to the use of new technologies and, where necessary, issue clarifying guidance and/or propose revisions to such policies, to promote greater openness in government.” On June 18, 2010, OIRA issued a Memorandum on Disclosure and Simplification as Regulatory Tools, which set out guidance to “inform the use of disclosure . . . in the regulatory context.”<sup>265</sup>

Executive Order 13563 directs agencies “[w]here relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law” to “identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible.”<sup>266</sup> Executive Order 12866 provides that “[e]ach agency shall identify and assess available alternatives to direct regulation, including . . . providing information upon which choices can be made by the public.”<sup>267</sup>

The purpose of this Memorandum is to set out guidance for agencies to inform and facilitate the use of disclosure, specifically “smart disclosure.” As used here, the term “smart

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<sup>263</sup> President Barack Obama, Memorandum for the Heads of Executive Departments and Agencies, “Memorandum on Transparency and Open Government,” available at <http://www.gpoaccess.gov/presdocs/2009/DCPD200900010.pdf>.

<sup>264</sup> Office of Management and Budget, Memorandum for the Heads of Executive Departments and Agencies, “Open Government Directive,” M-10-06, available at [http://www.whitehouse.gov/omb/assets/memoranda\\_2010/m10-06.pdf](http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf).

<sup>265</sup> See, e.g., Memorandum for the Heads of Executive Departments and Agencies, “Disclosure and Simplification as Regulatory Tools,” available at [http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/disclosure\\_principles.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/disclosure_principles.pdf)

<sup>266</sup> Executive Order 13563, Sec. 4., available at <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>.

<sup>267</sup> Executive Order 12866, available at <http://www.whitehouse.gov/sites/default/files/omb/inforeg/eo12866.pdf>.

disclosure” refers to the timely release of complex information and data in standardized, machine readable formats in ways that enable consumers to make informed decisions. Smart disclosure will typically take the form of providing individual consumers of goods and services with direct access to relevant information and data sets. Such information might involve, for example, the range of costs associated with various products and services, including costs that might not otherwise be transparent. In some cases, agencies or third-party intermediaries may also create tools that use these data sets to provide services that support consumer decision-making. Such decision-making might be improved, for example, by informing consumers about the nature and effects of their own past decisions (including, for example, the costs and fees they have already incurred).

To the extent permitted by law, and where appropriate in light of government-wide policies,<sup>268</sup> including those designed to protect privacy, agencies should give careful consideration to whether and how best to promote smart disclosure. This Memorandum was informed by input from, among others, the National Science and Technology Council’s Task Force on Smart Disclosure, which continues its efforts to promote smart disclosure.

## **I. The Benefits of Smart Disclosure**

Under relevant statutes, disclosure is one of the chief tools that agencies can use to improve the operation of consumer markets. To be effective, disclosures should be designed in recognition that “[p]eople have limited time, attention, and resources for seeking out new information, and it is important to ensure that relevant information is salient and easy to find and understand.”<sup>269</sup>

Smart disclosure makes information not merely available, but also accessible and usable, by structuring disclosed data in standardized, machine readable formats. Such data should also be timely, interoperable, and adaptable to market innovation, as well as disclosed in ways that fully protect consumer privacy. In many cases, smart disclosure enables third parties to analyze, repackage, and reuse information to build tools that help individual consumers to make more informed choices in the marketplace.

Consumers will frequently be able to make better choices when they have accurate information about the economic consequences of those choices (including their own past choices and those of others). The best product for a particular consumer, such as an insurance plan, will often depend on that consumer’s distinctive situation. In some cases, consumers must take into account many details about their own current circumstances when selecting a product. In addition, they must often make predictions about their future circumstances. In practice, it is often time-consuming and difficult for consumers to track and analyze the complex information they need to make these judgments. Smart disclosure can help consumers to find and use relevant data, including data about the effects of their own past choices and those of others, to

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<sup>268</sup> See, e.g., Office of Management and Budget Circular A-130, “Management of Federal Information Resources,” available at [http://www.whitehouse.gov/omb/circulars\\_a130\\_a130trans4](http://www.whitehouse.gov/omb/circulars_a130_a130trans4). See also Memorandum for the Heads of Executive Departments and Agencies, “Information Collection under the Paperwork Reduction Act,” available at [http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer\\_04072010.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer_04072010.pdf)

<sup>269</sup> See *supra* note 3.

make decisions that reflect their individualized needs, and to revise and improve those decisions over time or as new circumstances arise.

Third parties can also use smart disclosure to create tools that help consumers to make informed choices. When individuals have access to their own consumer data, these tools can help them track their own information and analyze it to make better and more tailored choices. Such tools can also promote well-informed comparisons. Examples include comparison-shopping websites and mobile phone applications that help people to identify and compare local providers of many relevant goods and services. These tools can greatly reduce the cost to consumers of seeking out relevant information from individual companies. They can also help individuals search efficiently based on very specific criteria that would be burdensome and time-consuming to extract from traditional print disclosures.

Smart disclosure initiatives can help promote innovation, economic growth, and job creation in the market for consumer tools. Smart disclosure of consumer data yields other benefits, including allowing consumers to monitor more easily the accuracy and use of the information that companies hold on them.

## **II. Disseminating Smart Disclosure Data**

There are two primary ways that agencies typically authorize or promote the disclosure of consumer information to members of the public. First, agencies may require or allow companies or other entities to make information (including individualized disclosures) directly available to consumers, such as when consumers log on to company websites. Second, agencies may collect the information from those entities and then make the information available, sometimes in modified form, to the public.

In many cases, agencies have released data sets to promote informed choices by consumers. Data.gov is a government-wide platform established on May 21, 2009, as a flagship Open Government initiative, to facilitate access to Federal data from across government. The platform houses numerous and diverse data sets relevant to consumer markets and can be used to disseminate smart disclosure data sets going forward. Other examples include a website that provides consumers with up-to-date product recall information,<sup>270</sup> and another that releases information about automobile safety and crash ratings, along with data rating child safety seats.<sup>271</sup>

Agency use of smart disclosure, to the extent consistent with law and government-wide policies, promotes the goals of OMB's Open Government Directive.<sup>272</sup> The Directive is intended in part to ensure that high-value government data sets are placed online. Indeed, many high-value data sets count as such because their publication helps agencies to further their statutory missions. In addition to posting such data sets, agencies are encouraged to collaborate with other

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<sup>270</sup> See, e.g., [www.recalls.gov](http://www.recalls.gov).

<sup>271</sup> See, e.g., [www.safercar.gov](http://www.safercar.gov).

<sup>272</sup> Office of Management and Budget, Memorandum for the Heads of Executive Departments and Agencies, "Open Government Directive," M-10-06, available at [http://www.whitehouse.gov/omb/assets/memoranda\\_2010/m10-06.pdf](http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf).

agencies and the public to ensure the usefulness of the data sets and to increase awareness of their availability. Posting such data sets can also facilitate regulatory goals, often at low cost, by fostering transparency and promoting accountability.

In some cases, agencies may wish to create their own tools for consumers using smart disclosure. Agencies may build their own tools for a number of reasons. For example, there may be instances when it is not possible or preferable to make the underlying data sets public (e.g., for proprietary or privacy-related reasons). Alternatively, an agency tool might meet a consumer need that is not readily addressable by making data available to third parties. One example of such a tool is a searchable database of product information on an agency website. After a careful analysis of the likely effects, agencies are encouraged to consider whether there are appropriate opportunities to create their own smart disclosure tools for consumers, particularly when the underlying data sets will not be released to the public.

Agencies are also encouraged to consult with the public and relevant stakeholders, as well as to work collaboratively with other agencies, in identifying further opportunities for smart disclosure.

### **III. Types of Smart Disclosure Data**

Below are different types of information that agencies are encouraged, to the extent appropriate, to help make available in the form of smart disclosures.

- A. *Product or service data.* Such data are comprehensive information on the products and services being offered. Examples include full pricing information, geographic availability, and complete listings of features, terms, and conditions of products. This type of information is often disclosed directly by providers to consumers.
- B. *Data on providers.* Consumers may need to know relevant information about providers to make informed choices. For example, before they do business with a company, consumers may be interested in the financial position of the company, or whether other consumers have complained about that company.
- C. *Individualized consumer data.* Such data are information pertaining to a particular consumer that is made available directly to that consumer. Such information can help inform a consumer's choices in the marketplace. Examples of this kind of information include an individual's past purchases and product usage history. In some contexts, Congress might require or permit agencies to make such individualized data available to consumers. In other cases, agencies might require, encourage, or permit companies or other entities to do so. In addition, agencies may be required or permitted to make individualized information available that is not directly related to a consumer product but can nonetheless be valuable in informing future consumer decisions (including investment decisions). For example, a consumer may want to know her expected Social Security benefits in order to determine what retirement products best meet her needs.

#### IV. Characteristics of Smart Disclosure

There are a number of characteristics agencies should consider when formulating smart disclosure initiatives.

- A. *Accessibility.* Smart disclosure should generally make information as accessible as possible to the consumer, which ordinarily means that such information should be made available on the Internet (e.g., through government websites or directly on the websites of providers), to the extent permitted by law and government-wide policies. Agencies should also consider other ways to make relevant information as accessible as possible, for example by making it available through Application Programming Interfaces (APIs), a set of specifications that allow software programs more readily to communicate with each other.
- B. *Machine readability.* Machine readable data are digital information stored in a format enabling the information to be processed and analyzed by computer. These formats allow electronic data to be as usable as possible. Examples of machine readable data include formats that may be readily imported into spreadsheet and database applications. In contrast, computer files that are simply image reproductions of print disclosures or that contain only unstructured narrative text generally do not represent machine readable formats.
- C. *Standardization.* In order for consumers and third parties to process information cheaply and efficiently, such information should be available in standardized vocabularies and formats. Standardized vocabularies and formats allow for meaningful comparisons and other analyses across datasets. For example, smart disclosure data on pricing for products in the same category should be comparable across providers, so that third parties can efficiently create accurate price comparison tools for consumers. In some cases, standard vocabularies and formats already exist (e.g., XML languages such as XBRL are used to share standardized information among private entities and to report information to regulators). In other cases, agencies may wish to develop new standards when no appropriate industry-based or other widely-accepted standards exist.

A potential challenge for standardization regimes is the diversity of consumer markets, many of which contain highly differentiated products and services. To the extent feasible and appropriate, standardization should occur in a way that promotes useful comparisons. Agencies should also consider mechanisms to combat attempts to evade standards (e.g., attempts to conceal the true price by hiding or shrouding fees or by categorizing them under misleading headings).

- D. *Timeliness.* Smart disclosures should be available in a timely manner in order to achieve the goal of promoting transparency for consumers. For example, product disclosures should be updated as new products are released, just as many print disclosures are required to be updated today. To the extent possible, smart disclosure data should be time-stamped and updated as rapidly as necessary, which will sometimes be in real time or near-real time.

- E. *Market adaptation and innovation.* Many consumer products and services evolve rapidly over time to include new features, pricing models, and product categories. In light of these innovations, agencies should periodically consult with user communities, including consumers, developers, and entrepreneurs, to review and adapt smart disclosure regimes so that the information conveyed remains accurate and relevant.
- F. *Interoperability.* Smart disclosure data sets will often be more valuable to consumers if they can be linked to other sources of data. For example, a consumer may be interested in linking required product disclosures, information on providers collected by a government body (e.g., administrative actions taken against a provider), and third-party product reviews.

One mechanism to promote interoperability is the use of common identifiers that can link disparate data sets. Another mechanism is to harmonize data standards across different contexts, such as by using consistent vocabulary (e.g., defining “late fee” the same way across similar product categories). To the extent possible and consistent with law and government-wide policies, agencies should design smart disclosures to be interoperable with public and private data sets that can enhance their impact.

- G. *Personally identifiable information and protecting privacy.* With respect to any disclosure policies, agencies must comply with all applicable privacy laws, regulations, and policies. In particular, agencies must comply with laws, regulations, and policies that protect against disclosure of personally identifiable information (PII).<sup>273</sup>

Consistent with applicable laws, regulations, and policies, agencies are encouraged to look for opportunities to disclose useful information in a form that cannot be used to distinguish or trace any individual’s identity. Even when information does not contain direct identifiers, it can often be used to identify an individual by extrapolation or through combination with other available information. In general, however, privacy laws, regulations, and policies may allow agencies or companies to disclose information that does not identify individuals (e.g., information about consumer products), or to disclose an individual’s PII to the individual himself. Whenever an agency is considering smart disclosure of PII, the agency should consult with its legal counsel and the Senior Agency Official for Privacy.<sup>274</sup>

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<sup>273</sup> For the definition of “personally identifiable information,” see Office of Management and Budget, Memorandum for the Heads of Executive Departments and Agencies, “Guidance for Agency Use of Third-Party Websites and Applications,” M-10-23, available at [http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda\\_2010/m10-23.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-23.pdf).

<sup>274</sup> See Office of Management and Budget, Memorandum for the Heads of Executive Departments and Agencies, “Designation of Senior Agency Officials for Privacy,” M-05-08, available at <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/fy2005/m05-08.pdf>.

## **APPENDIX I: PRESIDENTIAL MEMORANDUM – MANAGING GOVERNMENT RECORDS**

Presidential Memorandum -- Managing Government Records

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Managing Government Records

Section 1. Purpose. This memorandum begins an executive branch wide effort to reform records management policies and practices. Improving records management will improve performance and promote openness and accountability by better documenting agency actions and decisions. Records transferred to the National Archives and Records Administration (NARA) provide the prism through which future generations will understand and learn from our actions and decisions. Modernized records management will also help executive departments and agencies (agencies) minimize costs and operate more efficiently. Improved records management thus builds on Executive Order 13589 of November 9, 2011 (Promoting Efficient Spending), which directed agencies to reduce spending and focus on mission critical functions.

When records are well managed, agencies can use them to assess the impact of programs, to reduce redundant efforts, to save money, and to share knowledge within and across their organizations. In these ways, proper records management is the backbone of open Government.

Decades of technological advances have transformed agency operations, creating challenges and opportunities for agency records management. Greater reliance on electronic communication and systems has radically increased the volume and diversity of information that agencies must manage. With proper planning, technology can make these records less burdensome to manage and easier to use and share. But if records management policies and practices are not updated for a digital age, the surge in information could overwhelm agency systems, leading to higher costs and lost records.

We must address these challenges while using the opportunity to develop a 21st-century framework for the management of Government records. This framework will provide a foundation for open Government, leverage information to improve agency performance, and reduce unnecessary costs and burdens.

Sec. 2. Agency Commitments to Records Management Reform. (a) The head of each agency shall:

- (i) ensure that the successful implementation of records management requirements in law, regulation, and this memorandum is a priority for senior agency management;
- (ii) ensure that proper resources are allocated to the effective implementation of such requirements; and
- (iii) within 30 days of the date of this memorandum, designate in writing to the Archivist of the United States (Archivist), a senior agency official to supervise the review required

by subsection (b) of this section, in coordination with the agency's Records Officer, Chief Information Officer, and General Counsel.

(b) Within 120 days of the date of this memorandum, each agency head shall submit a report to the Archivist and the Director of the Office of Management and Budget (OMB) that:

(i) describes the agency's current plans for improving or maintaining its records management program, particularly with respect to managing electronic records, including email and social media, deploying cloud based services or storage solutions, and meeting other records challenges;

(ii) identifies any provisions, or omissions, in relevant statutes, regulations, or official NARA guidance that currently pose an obstacle to the agency's adoption of sound, cost effective records management policies and practices; and

(iii) identifies policies or programs that, if included in the Records Management Directive required by section 3 of this memorandum or adopted or implemented by NARA, would assist the agency's efforts to improve records management.

The reports submitted pursuant to this subsection should supplement, and therefore need not duplicate, information provided by agencies to NARA pursuant to other reporting obligations.

Sec. 3. Records Management Directive. (a) Within 120 days of the deadline for reports submitted pursuant to section 2(b) of this memorandum, the Director of OMB and the Archivist, in coordination with the Associate Attorney General, shall issue a Records Management Directive that directs agency heads to take specific steps to reform and improve records management policies and practices within their agency. The directive shall focus on:

(i) creating a Government wide records management framework that is more efficient and cost effective;

(ii) promoting records management policies and practices that enhance the capability of agencies to fulfill their statutory missions;

(iii) maintaining accountability through documentation of agency actions;

(iv) increasing open Government and appropriate public access to Government records;

(v) supporting agency compliance with applicable legal requirements related to the preservation of information relevant to litigation; and

(vi) transitioning from paper-based records management to electronic records management where feasible.

(b) In the course of developing the directive, the Archivist, in coordination with the Director of OMB and the Associate Attorney General, shall review relevant statutes, regulations, and official

NARA guidance to identify opportunities for reforms that would facilitate improved Government wide records management practices, particularly with respect to electronic records. The Archivist, in coordination with the Director of OMB and the Associate Attorney General, shall present to the President the results of this review, no later than the date of the directive's issuance, to facilitate potential updates to the laws, regulations, and policies governing the management of Federal records.

(c) In developing the directive, the Director of OMB and the Archivist, in coordination with the Associate Attorney General, shall consult with other affected agencies, interagency groups, and public stakeholders.

Sec. 4. General Provisions. (a) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 5. Publication. The Archivist is hereby authorized and directed to publish this memorandum in the *Federal Register*.

**APPENDIX J: CLARIFYING REGULATORY REQUIREMENTS: EXECUTIVE SUMMARIES**

January 4, 2012

**MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES**

**FROM:** Cass R. Sunstein  
Administrator

**SUBJECT:** Clarifying Regulatory Requirements: Executive Summaries

On January 18, 2011, the President issued Executive Order 13563, "Improving Regulation and Regulatory Review," which states that regulations must be "accessible, consistent, written in plain language, and easy to understand." Executive Order 13563 also directs that regulations "shall be adopted through a process that involves public participation," including an "open exchange of information and perspectives." Public participation cannot occur if the requirements of rules are unduly complex and if members of the public are unable to obtain a clear sense of the content of those requirements.

In accordance with Executive Order 13563 and OMB Circular A-4, regulations should be written clearly and simply. To promote public understanding and to ensure an "open exchange of information and perspectives," regulatory preambles for lengthy or complex rules (both proposed and final) should include straightforward executive summaries. These summaries should separately describe major provisions and policy choices. Such executive summaries should generally be placed at the start of regulatory preambles. A suggested template is attached to this memo as an appendix.

This guidance is effective immediately.

## Appendix

**Suggested Template for Executive Summaries (generally 3-4 pages of a double-spaced Word document maximum, although unusually complex or lengthy regulatory actions may require longer executive summaries)**

### **I. Purpose of the Regulatory Action**

- a. The need for the regulatory action and how the action will meet that need
- b. Succinct statement of legal authority for the regulatory action (explaining, in brief, the legal authority laid out later in the preamble)

### **II. Summary of the Major Provisions of the Regulatory Action In Question**

(Each major provision should be described clearly and separately, along with a brief justification)

### **III. Costs and Benefits**

(For economically significant regulatory actions, please include a table summarizing the assessment of costs and benefits, both quantitative and qualitative<sup>1</sup>)

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<sup>1</sup> See *2010 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, 52, available at [http://www.whitehouse.gov/sites/default/files/omb/legislative/reports/2010\\_Benefit\\_Cost\\_Report.pdf](http://www.whitehouse.gov/sites/default/files/omb/legislative/reports/2010_Benefit_Cost_Report.pdf) ("For all economically significant regulatory actions, we recommend that agencies should clearly and prominently present, in the preamble and in the executive summary of the regulatory impact analysis, one or more tables summarizing the assessment of costs and benefits required under Executive Order 12866 Section 6(a)(3)(C)(i)-(iii). The tables should provide a transparent statement of both quantitative and qualitative benefits and costs of the proposed or planned action as well as of reasonable alternatives. The tables should include all relevant information that can be quantified and monetized, along with relevant information that can be described only in qualitative terms. It will often be useful to accompany a simple, clear table of aggregated costs and benefits with a separate table offering disaggregated figures, showing the components of the aggregate figures. To the extent feasible in light of the nature of the issue and the relevant data, all benefits and costs should be quantified and monetized. To communicate any uncertainties, we recommend that the table should offer a range of values, in addition to best estimates, and it should clearly indicate impacts that cannot be quantified or monetized. If nonquantifiable variables are involved, they should be clearly identified. Agencies should attempt, to the extent feasible, not merely to identify such variables but also to signify their importance.")

## APPENDIX K: INFORMATION QUALITY AND PEER REVIEW

### A. Links for Agency Information Quality Correspondence

#### 1. *Links to Agencies that Received Correction Requests in FY 2011:*

**Department of Commerce:**

[http://ocio.os.doc.gov/ITPolicyandPrograms/Information\\_Quality/index.htm](http://ocio.os.doc.gov/ITPolicyandPrograms/Information_Quality/index.htm)

**Department of Education:**

<http://www.ed.gov/policy/gen/guid/infoqualguide.html>

**Department of Health and Human Services:**

<http://aspe.hhs.gov/infoquality/requests.shtml>

**Department of the Interior:**

<http://www.doi.gov/ocio/iq>

**Department of Labor:**

<http://www.dol.gov/cio/programs/InfoGuidelines/IOCR.htm>

**Environmental Protection Agency:**

<http://epa.gov/quality/informationguidelines/iqg-list.html>

**Federal Communications Commission:**

<http://www.fcc.gov/omd/dataquality/welcome.html>

#### 2. *Links to All Agencies' IQ Correspondence Web Pages:*

**Access Board:**

<http://www.access-board.gov/about/policies/infoquality.htm>

**Chemical Safety and Hazard Investigation Board:**

<http://www.csb.gov/UserFiles/file/legal/FinalDataQualityGuidelines.pdf>

**Commodity Futures Trading Commission:**

<http://www.cftc.gov/About/CFTCReports/bulletinpeerreview.html>

**Consumer Product Safety Commission:**

<http://www.cpsc.gov/library/correction/correction.html>

**Corporation for National and Community Service:**

[http://www.nationalservice.gov/home/site\\_information/quality.asp](http://www.nationalservice.gov/home/site_information/quality.asp)

**Defense Nuclear Facilities Safety Board:**

[http://www.dnfsb.gov/about/information\\_quality.php](http://www.dnfsb.gov/about/information_quality.php)

**Department of Agriculture:**

[http://www.ocio.usda.gov/qi\\_guide](http://www.ocio.usda.gov/qi_guide)

Department of Agriculture, Forest Service:

<http://www.fs.fed.us/qoi>

**Department of Commerce:**

[http://ocio.os.doc.gov/ITPolicyandPrograms/Information\\_Quality/index.htm](http://ocio.os.doc.gov/ITPolicyandPrograms/Information_Quality/index.htm)

**Department of Defense:**

<http://www.defenselink.mil/pubs/dodiqguidelines.html>

Department of Defense, Army Corps of Engineers:

<http://www.usace.army.mil/ceci/iqa/pages/mission.aspx>

**Department of Education:**

<http://www.ed.gov/policy/gen/guid/infoqualguide.html>

**Department of Energy:**

<http://www.cio.energy.gov/infoquality.htm>

**Department of Health and Human Services:**

<http://aspe.hhs.gov/infoquality/requests.shtml>

**Department of Housing and Urban Development:**

<http://www.hud.gov/offices/adm/grants/qualityinfo/qualityinfo.cfm>

**Department of Homeland Security:**

<http://www.dhs.gov/xabout/compliance/>

**Department of Justice:**

[http://www.usdoj.gov/iqpr/iqpr\\_disclaimer.html](http://www.usdoj.gov/iqpr/iqpr_disclaimer.html)

**Department of Labor:**

<http://www.dol.gov/cio/programs/InfoGuidelines/IOCR.htm>

**Department of State:**

<http://www.state.gov/misc/49492.htm>

**Department of the Interior:**

<http://www.doi.gov/ocio/iq>

Department of the Interior, Bureau of Land Management:

[http://www.blm.gov/wo/st/en/National\\_Page/Notices\\_used\\_in\\_Footer/data\\_quality.html](http://www.blm.gov/wo/st/en/National_Page/Notices_used_in_Footer/data_quality.html)

Department of the Interior, Fish and Wildlife Service:

<http://www.fws.gov/informationquality>

Department of the Interior, National Park Service:

<http://www.nps.gov/policy/infoqualcorrect.htm>

Department of Transportation, Surface Transportation Board:

<http://www.stb.dot.gov/stb/InformationQualityGuidelines.htm>

**Department of Transportation:**

<http://docketsinfo.dot.gov/Dataquality.cfm>

**Department of Veterans Affairs:**

[http://www.rms.oit.va.gov/Information\\_Quality.asp](http://www.rms.oit.va.gov/Information_Quality.asp)

**Environmental Protection Agency:**

<http://epa.gov/quality/informationguidelines/iqg-list.html>

**Equal Employment Opportunity Commission:**

<http://www.eeoc.gov/eeoc/plan/informationquality/index.cfm>

**Farm Credit Administration:**

[http://www.fca.gov/FCA-Web/fca%20new%20site/home/info\\_quality.html](http://www.fca.gov/FCA-Web/fca%20new%20site/home/info_quality.html)

**Federal Communications Commission:**

<http://www.fcc.gov/omd/dataquality/welcome.html>

**Federal Deposit Insurance Corporation:**

<http://www.fdic.gov/about/policies/#information>

**Federal Energy Regulatory Commission:**

<http://www.ferc.gov/help/filing-guide/file-correct.asp>

**Federal Maritime Commission:**

[http://www.fmc.gov/about/information\\_quality\\_guideline\\_details.aspx](http://www.fmc.gov/about/information_quality_guideline_details.aspx)

**Federal Reserve Board:**

[http://www.federalreserve.gov/iq\\_correction.htm](http://www.federalreserve.gov/iq_correction.htm)

**Federal Trade Commission:**

<http://www.ftc.gov/ogc/sec515/index.htm>

**General Services Administration:**

<http://www.gsa.gov/portal/content/104725>

**Institute of Museum and Library Services:**

<http://www.imls.gov/about/guidelines.shtm>

**Internal Revenue Service:**

<http://www.irs.gov/irs/article/0,,id=131585,00.html>

**Merit Systems Protection Board:**

<http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=251846&version=252119&application=ACROBAT>

**National Aeronautics and Space Administration:**

<http://www.sti.nasa.gov/qualinfo.html>

**National Archives:**

<http://www.archives.gov/about/info-qual/requests/index.html>

**National Credit Union Administration:**

<http://www.ncua.gov/resources/RegulationsOpinionsLaws/ProposedRegulations.aspx>

**National Endowment for the Arts:**

<http://www.arts.gov/about/infoquality.html>

**National Endowment for the Humanities:**

<http://www.neh.gov/howeare/dissemination.html>

**National Labor Relations Board:**

[http://www.nlr.gov/about\\_us/public\\_notices/information\\_on\\_quality\\_guidelines.aspx](http://www.nlr.gov/about_us/public_notices/information_on_quality_guidelines.aspx)

**National Science Foundation:**

<http://www.nsf.gov/policies/infoqual.jsp>

**National Transportation Safety Board:**

<http://www.nts.gov/info/quality.htm>

**Nuclear Regulatory Commission:**

<http://www.nrc.gov/public-involve/info-quality.html>

**Nuclear Waste Technical Review Board:**

<http://www.nwtrb.gov/plans/plans.html>

**Occupational Safety & Health Review Commission:**

<http://www.oshrc.gov/infoquality/infoquality.html>

**Office of Federal Housing Enterprise Oversight:**

<http://www.fhfa.gov/Default.aspx?Page=56>

**Office of Government Ethics:**

[http://www.usoge.gov/management/info\\_quality.aspx](http://www.usoge.gov/management/info_quality.aspx)

**Office of Management and Budget:**

[http://www.whitehouse.gov/omb/inforeg/info\\_quality/information\\_quality.html](http://www.whitehouse.gov/omb/inforeg/info_quality/information_quality.html)

**Office of Personnel Management:**

<http://www.opm.gov/policy/webpolicy/index.asp>

**Office of Special Counsel:**

<http://www.osc.gov/InfoQuality.htm>

**Overseas Private Investment Corporation:**

<http://www.opic.gov/publications/quality-guidelines>

**Peace Corps:**

<http://www.peacecorps.gov/index.cfm?shell=pchq.policies.docs>

**Pension Benefit Guaranty Corporation:**

<http://www.pbgc.gov/res/other-guidance/information-quality-guidelines.html>

**Small Business Administration:**

<http://www.sba.gov/information/index.html>

**Social Security Administration:**

<http://www.ssa.gov/515/requests.htm>

**Tennessee Valley Authority:**

<http://www.tva.gov/infoquality/>

**US International Trade Commission:**

[www.usitc.gov/documents/infoqualgdl.pdf](http://www.usitc.gov/documents/infoqualgdl.pdf)

**USAID:**

[http://www.usaid.gov/policy/info\\_quality/](http://www.usaid.gov/policy/info_quality/)

**B. Links for Agency Peer Review Agendas**

**1. Cabinet-Level Departments**

**Department of Agriculture:**

[http://www.ocio.usda.gov/qi\\_guide/qoi\\_officer\\_lst.html](http://www.ocio.usda.gov/qi_guide/qoi_officer_lst.html)

[http://www.ocio.usda.gov/qi\\_guide/scientific\\_research.html](http://www.ocio.usda.gov/qi_guide/scientific_research.html)

Agricultural Research Service:

<http://www.ars.usda.gov//docs.htm?docid=19203&dropcache=true&mode=preview>

Animal and Plant Health Inspection Service:

[http://www.aphis.usda.gov/peer\\_review/peer\\_review\\_agenda.shtml](http://www.aphis.usda.gov/peer_review/peer_review_agenda.shtml)

Economic Research Service:

<http://www.ers.usda.gov/AboutERS/peerreview.htm>

Food Safety Inspection Service:

[http://www.fsis.usda.gov/Information\\_Quality/Peer\\_Review/index.asp](http://www.fsis.usda.gov/Information_Quality/Peer_Review/index.asp)

Forest Service:

<http://www.fs.fed.us/qoi/peerreview.shtml>

Office of the Chief Economist:

[http://www.usda.gov/oce/peer\\_review](http://www.usda.gov/oce/peer_review)

**Department of Commerce:**

[http://ocio.os.doc.gov/ITPolicyandPrograms/Information\\_Quality/index.htm](http://ocio.os.doc.gov/ITPolicyandPrograms/Information_Quality/index.htm)

National Oceanic and Atmospheric Administration:

[http://www.cio.noaa.gov/Policy\\_Programs/prplans/PRsummaries.html](http://www.cio.noaa.gov/Policy_Programs/prplans/PRsummaries.html)

**Department of Defense:**

<http://www.defenselink.mil/pubs/dodiqguidelines.html>

**Department of Education:**

<http://www.ed.gov/policy/gen/guid/iq/peerreview.html>

**Department of Energy:**

<http://energy.gov/cio/information-quality>

**Department of Health and Human Services:**

<http://aspe.hhs.gov/infoquality/peer.shtml>

Center for Disease Control:

<http://www.cdc.gov/od/science/quality/support/peer-review.htm>

Food and Drug Administration:

<http://www.fda.gov/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/default.htm>

National Toxicology Program:

<http://fmp-8.cit.nih.gov/sif/agenda.php>

Office of Public Health and Science:

<http://aspe.hhs.gov/infoquality/guidelines/ophspeer.html>

**Department of Homeland Security:**

<http://www.dhs.gov/xutil/notices.shtm>

**Department of Housing and Urban Development:**

[http://www.huduser.org/about/pdr\\_peer\\_review.html](http://www.huduser.org/about/pdr_peer_review.html)

**Department of the Interior:**

[http://www.doi.gov/ocio/iq\\_1.html](http://www.doi.gov/ocio/iq_1.html)

Bureau of Land Management:

[http://www.blm.gov/wo/st/en/National\\_Page/Notices used in Footer/data quality.html](http://www.blm.gov/wo/st/en/National_Page/Notices_used_in_Footer/data_quality.html)

Bureau of Reclamation:

<http://www.usbr.gov/main/qoi/peeragenda.html>

Fish and Wildlife Service:

[http://www.fws.gov/informationquality/peer\\_review/index.html](http://www.fws.gov/informationquality/peer_review/index.html)

Bureau of Ocean Energy Management, Regulation and Enforcement:

<http://www.boemre.gov/qualityinfo/PeerReviewAgenda.htm>

National Park Service:

<http://www.nps.gov/policy/peerreview.htm>

Office of Surface Mining:

[http://www.osmre.gov/guidance/osm\\_info\\_quality.shtm](http://www.osmre.gov/guidance/osm_info_quality.shtm)

US Geological Society:

[http://www.usgs.gov/peer\\_review](http://www.usgs.gov/peer_review)

**Department of Justice:**

[http://www.usdoj.gov/iqpr/iqpr\\_disclaimer.html](http://www.usdoj.gov/iqpr/iqpr_disclaimer.html)

**Department of Labor:**

<http://www.dol.gov/asp/peer-review/index.htm>

Employee Benefits Security Administration:

<http://www.dol.gov/ebsa/regs/peerreview.html>

Occupational Safety and Health Administration:

[http://www.osha.gov/dsg/peer\\_review/peer\\_agenda.html](http://www.osha.gov/dsg/peer_review/peer_agenda.html)

Mine Safety and Health Administration

<http://www.msha.gov/REGS/PEERReview/PEERreview.asp>

**Department of State:**

<http://www.state.gov/misc/49492.htm>

**Department of Transportation:**

<http://www.dot.gov/peerreview/>

**Department of Veterans Affairs:**

[http://www.rms.oit.va.gov/Peer\\_Review.asp](http://www.rms.oit.va.gov/Peer_Review.asp)

## 2. Other Agencies

**Consumer Product Safety Commission:**

<http://www.cpsc.gov/library/peer.html>

**Environmental Protection Agency:**

[http://cfpub.epa.gov/si/si\\_public\\_pr\\_agenda.cfm](http://cfpub.epa.gov/si/si_public_pr_agenda.cfm)

**Federal Communications Commission:**

<http://www.fcc.gov/omd/dataquality/peer-agenda.html>

**Federal Energy Regulatory Commission:**

<http://www.ferc.gov/help/filing-guide/file-correct.asp>

**Federal Trade Commission:**

<http://www.ftc.gov/ogc/sec515/>

**National Aeronautics and Space Administration:**

<http://www.nasa.gov/offices/ocio/qualityinfo/index.html>

**Nuclear Regulatory Commission:**

<http://www.nrc.gov/public-involve/info-quality.html>

**Office of Management and Budget:**

[http://www.whitehouse.gov/omb/inforeg/info\\_quality/information\\_quality.html](http://www.whitehouse.gov/omb/inforeg/info_quality/information_quality.html)

**Small Business Administration:**

<http://www.sba.gov/content/sba-information-quality-peer-review-agenda>

**Tennessee Valley Authority:**

<http://www.tva.gov/infoquality>

### **C. Agencies that Do Not Produce or Sponsor Information Subject to the Bulletin**

See website links in section A of this Appendix.

Agency for International Development  
Corporation for National and Community Service  
Council on Environmental Quality  
Defense Nuclear Facilities Safety Board  
Department of the Treasury  
Equal Employment Opportunity Commission  
Farm Credit Association  
Federal Maritime Commission  
Federal Reserve  
General Services Administration  
Institute of Museum and Library Services  
International Trade Commission  
Merit Systems Protection Board  
National Archives  
National Credit Union Administration  
National Endowment for the Arts  
National Endowment for the Humanities  
National Labor Relations Board  
National Science Foundation  
Nuclear Waste Technical Review Board  
Office of Federal Housing Enterprise Oversight  
Office of Government Ethics  
Office of Personnel Management  
Overseas Private Investment Corporation  
Patent and Trade Office

Peace Corps  
Pension Benefit Guaranty Corporation  
Railroad Board  
Securities and Exchange Commission  
Selective Services System  
Social Security Administration  
Surface Transportation Board  
US Occupational Safety and Health Review Commission

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## APPENDIX L: AGENCY CONSULTATION ACTIVITIES UNDER THE UNFUNDED MANDATES REFORM ACT OF 1995

Sections 203 and 204 of the Act require agencies to seek input from State, local and tribal governments on new Federal regulations imposing significant intergovernmental mandates. This appendix summarizes selected consultation activities by agencies whose actions affect State, local and tribal governments.<sup>275</sup>

Four agencies (the Departments of Agriculture, Commerce, Energy, and Health and Human Services) have provided examples of consultation activities that involved State, local and tribal governments not only in their regulatory processes, but also in their program planning and implementation phases. These agencies have worked to enhance the regulatory environment by improving the way in which the Federal Government relates to its intergovernmental partners. In general, many of the departments and agencies not listed here (including the Departments of Justice, State, Treasury, and Veterans Affairs, the Small Business Administration, and the General Services Administration) do not often impose mandates upon States, localities or tribes, and thus have fewer occasions to consult with these governments.

As the following descriptions indicate, Federal agencies conduct a wide range of consultations. Agency consultations sometimes involve multiple levels of government, depending on the agency's understanding of the scope and impact of the rule. OMB continues to work with agencies to ensure that consultation occurs with the appropriate level of government.

### A. Department of Agriculture

#### *The Substantially Underserved Trust Areas (SUTA) Provision*

The Substantially Underserved Trust Areas (SUTA) provision of the last Farm Bill, once implemented, will increase opportunities to provide affordable financing for infrastructure on trust lands through the USDA Rural Development's Rural Utilities Programs. Specifically, the Secretary of Agriculture (with delegation to the Administrator for Rural Utilities Service) would be granted the discretionary authority to:

- Make loans and issue loan guarantees with interest rates as low as two percent and with extended repayment terms;
- Waive non-duplication restrictions, matching fund requirements, or credit support requirements from any loan or grant program to facilitate construction, acquisition or improvements of infrastructure; and
- Give highest priority to designated projects on a Substantially Underserved Trust Area

The affected parties include Native American and Pacific Islander communities throughout the United States as well as in trust areas in Alaska, Hawaii, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands.

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<sup>275</sup> The consultation activities described in this appendix are illustrative of intergovernmental consultations conducted by Federal agencies and are not limited to consultations on regulations meeting the UMRA threshold for an unfunded mandate. Similarly, this should not be considered an exhaustive list of Federal consultation activities.

To develop the proposed rule, USDA Rural Development conducted seven USDA regional consultations, conducted sixteen SUTA specific consultations and hosted three internet and toll free teleconference based webinars consultations with tribal leaders and native communities throughout the United States as well as in trust areas in Alaska, Hawaii, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands. Additionally USDA convened several meetings with Federal agencies – the Departments of Interior, Veterans Affairs, Energy, Commerce, Health and Human Services, Homeland Security, the Environmental Protection Agency, the Federal Communications Commission and the Office of Management and Budget – to determine how best to implement the SUTA provision.

A transcript was the result of each consultation with discussions, proposals, and insights from the participating tribes, stakeholders, and Federal officials. Several written responses on SUTA were also received by RUS from stakeholders and treated like these transcripts. The transcripts represent the raw data that were further reviewed, analyzed, and categorized for considerations for implementing the provisions of the SUTA authorities. A complete set of this administrative record is preserved digitally and hard copies are maintained at the RUS offices for later use if necessary. The top two topics that were commented on with the highest frequency were concerns regarding the definition of High Need/Substantially Underserved (80 comments) and concerns regarding the definition of Trust Areas (51 comments). Below is a chart that summarizes those main concerns:

<b>Topics Discussed by Tribes</b>	<b># of Comments By Tribal Participants</b>	<b>Major Concerns Raised by Tribes</b>
High Need Definition	80	Define high need using local/regional tribal data instead of national economic metrics (on poverty rate, per capita income, median household income, unemployment rate, number of residents on government assistance): national data may present an incomplete view of tribal economic conditions; local/regional data, though dated in some instances, should more accurately reflect current economic conditions within the tribal community; aim for the least restrictive definition of high need; level of existing service by incumbent providers is inadequate for tribal needs; State utilities laws and/or local governments' hesitance to extend service may negatively impact tribal service levels
Trust Area Concern	51	Checker-boarded reservation lands (trust lands and non-trust lands); reservation land is not currently in trust, or partially in trust; for many tribes, trust lands do not adequately encompass all of the reservation lands; trust lands are under application to DOI for designation; fee

Topics Discussed by Tribes	# of Comments By Tribal Participants	Major Concerns Raised by Tribes
		land v. land in trust; concern about the impact of <i>Carcieri v. Salazar</i> , 129 S. Ct. 1058 (2009) on trust lands

A Proposed Rule for the SUTA Provision was published in the Federal Register on October 14, 2011. Comments are due December 13, 2011 with a Final or Interim Final rule to follow.

***Rural Energy for America Program—Section 9007***

Expansion of the definition of rural businesses in the Rural Energy for America Program (REAP) to include Tribal Section 17 Corporations and other similar Tribal Corporations chartered under tribal law. The REAP program provides grants and guaranteed loans to help finance renewable energy systems, energy efficiency improvements, energy audits, feasibility studies and renewable energy assistance to businesses and agricultural producers.

This regulation impacts tribal governments, tribal leaders, tribal professionals and other interested stakeholders.

This rule was included in the USDA Joint Agency Regional Consultations that consolidated consultation efforts of 70 rules across USDA from the 2008 Farm Bill. USDA Rural Development sent senior level agency staff to seven regional locations and reached out to tribal leadership in each region to consult on this proposed rule. Upon completion of the consultation process, USDA Rural Development analyzed the feedback and incorporated input from the consultation into this regulation.

For example, with the intent to increase tribal participation in the program the definition of a small business in this rule now includes tribal business entities formed as Section 17 Corporations as determined by the Secretary of the Interior - or other tribal business entities that have similar structures and relationships with their tribal governments as determined by the Rural Development.

Eligibility for the REAP Program is restricted to rural small businesses and agricultural producers. No governmental entities - including tribes - are eligible for assistance under this program. Many comments received through the consultation process requested that tribes be made eligible for the benefits of this program. A legislative change would be necessary to make tribal governments directly eligible for the REAP program. Consequently, the agency made regulatory changes to create a clear path for tribally owned for-profit corporations to access these funding streams.

The REAP Interim Final instituting this change was published in the Federal Register on April 14, 2011.

**B. Department of Commerce**

### ***Expansion of Fagatele Bay National Marine Sanctuary, Regulatory Changes, and Sanctuary Name Change***

The National Oceanic and Atmospheric Agency (NOAA) recently released a new draft management plan for the Fagatele Bay National Marine Sanctuary (FBNMS), which is a planning document guiding the management of the sanctuary for the next five to ten years. This proposed action includes the expansion of the FBNMS to include five additional discrete units around the American Samoa Archipelago, including the Rose Atoll Marine National Monument.

NOAA has worked closely with the Office of the Governor, the Office of Samoan Affairs, the American Samoa Department of Marine and Wildlife Resources, and a number of the village chiefs and families who currently use the areas proposed for expansion of the sanctuary. The proposal was also developed with the Fagatele Bay National Marine Sanctuary Advisory Council (SAC), which is made up of 20 members representing relevant local Federal agencies, the American Samoa Government, and representatives from various ocean user groups including fishing, recreation, education, and research.

NOAA conducted a public scoping period in February and March of 2009 to identify issues and gauge interest within American Samoa for possible sanctuary expansion and designation of additional sanctuary units. After an initial list of nine potential sites was developed, the SAC established a Site Selection Working Group consisting of members of the SAC and of the public, assisted by sanctuary staff. The working group utilized criteria set forth in the National Marine Sanctuaries Act to evaluate the ecological, cultural, and economic value of the areas proposed. Based on this evaluation the areas were ranked in order. These locations were then further analyzed by NOAA through a biogeographic assessment of the Samoan Archipelago. Since the two Ta'u sites under consideration were so close geographically, they were combined into one proposed site, as recommended by the Governor. The sites at Nu'uli Pala, Leone, and Outer Banks were considered but eliminated for various reasons described in the draft environmental impact statement.

The draft management plan, draft environmental impact statement and proposed regulations were available for public comment until January 6, 2012. To facilitate public comment, NOAA hosted public meetings on the proposal during the period of November 17-21, 2011, on Tutuila, Ta'u, and Ofu.

Scoping revealed wide support for the protection of additional areas throughout the archipelago, as well as some opposition to additional sites. Some expressed concern over the expansion of FBNMS into a network of sites across the territory. The primary concerns reflected in the public comments were: (1) the Territory already has a process for establishing marine protected areas (MPAs); and (2) a Federal presence would not allow for community-driven marine resource management. NOAA is currently receiving a wide spectrum of public comments on the draft proposal.

As a result of the concerns raised during public scoping and NOAA's intention to respect the Samoan culture, NOAA chose each of the proposed units carefully taking into consideration the wishes of the communities as well as the criteria from the NMSA for designating a new

national marine sanctuary and the results of a biogeographic assessment of the American Samoa Archipelago. After determining which units would be considered for inclusion, NOAA held multiple meetings with each of the communities associated with the units to foster consensus and collaboration with regard to how the unit would be managed. The development of location-specific regulations occurred through a collaborative process during community meetings between NOAA and village representatives. Issues addressed during the meetings included potential gear restrictions, fishing restrictions, and co-management of the sanctuary unit.

Now that the public comment period is underway, NOAA is continuing to meet with village chiefs and the community regarding the details of the proposal. NOAA is dedicated to a continued dialog with the people of American Samoa on the final shape of this proposal.

### ***Olympic Coast National Marine Sanctuary***

NOAA recently released a new management plan for the Olympic Coast National Marine Sanctuary (OCNMS), which is a planning document guiding the management of the sanctuary for the next five to ten years.

The Coastal Treaty Tribes have treaty-protected fishing rights and share co-management responsibilities for fishing activities within the sanctuary with the State of Washington and Federal government. These common interests and joint authorities led the Coastal Treaty Tribes, the sState of Washington and the Office of National Marine Sanctuaries (ONMS) to create the Olympic Coast Intergovernmental Policy Council (IPC) in 2007. The first of its kind in the nation, the IPC provides a regional forum for resource managers to exchange information, coordinate policies, and develop recommendations for resource management within the sanctuary. NOAA consulted with the IPC extensively in the development of the revised management plan from 2008 until the publication of the final management plan in November 2011.

NOAA also relied on community and stakeholder involvement in developing the management plan primarily through the 21-seat Sanctuary Advisory Council (SAC). The SAC consists of representatives from four Coastal Treaty Tribes, nine State and Federal agencies, local governments, and a variety of local user and interest groups who provide advice to the sanctuary superintendent. All SAC meetings are open to the public with agendas providing opportunity for public comment.

The management plan review process resulted in an unprecedented level of coordination between NOAA and the coastal treaty tribes. The IPC and the SAC were involved in developing preliminary priority topics that were presented to the public for feedback during the public scoping period of the management plan review. Due to the sovereign nature of the Coastal Treaty Tribes, NOAA sent letters to each of the Tribes requesting government-to-government consultation on the proposed action on multiple occasions during the management plan review process. In addition, NOAA consulted in person with the Makah Tribe.

During the public scoping and issues analysis stage of the management plan review, NOAA encouraged public involvement by:

- Hosting seven public scoping meetings in Port Angeles, Neah Bay, La Push, Westport, Ocean Shores, Olympia and Seattle;

- Holding a 60-day public comment period during which members of the public could submit Management Plan Review (MPR) comments via e-mail, fax or letter;
- Hosting 23 additional public meetings related to MPR, including AC meetings, workshops and working group meetings;
- Posting approximately 20 updates to OCNMS' MPR Current Status website (<http://olympiccoast.noaa.gov/>) to keep the public informed about the MPR process;
- Sending approximately 20 updates to the OCNMS MPR listserv, which has over 1,000 members; and
- Making all MPR documents available on the OCNMS MPR Documents webpage in a timely manner (<http://olympiccoast.noaa.gov/>).

Throughout the management plan review process, NOAA informed the public about MPR-related meetings by sending out press releases and listserv e-mails, and posting notices on its website in advance of every public meeting. Additionally, NOAA actively sought out opportunities to present information about the process at various public events and meetings. NOAA also produced and publicized numerous documents detailing each step in the management plan review process so the public could stay informed as progress was made.

During public review of the draft management plan, NOAA announced its availability in a *Federal Register* notice, newspaper articles, web site updates and listserv e-mails. In addition, two public meetings were held in Port Angeles and Forks to provide opportunity for public comment.

The Makah tribe's main concern had to do with a proposed change to the category of sanctuary permits that can be obtained for the purpose of "tribal welfare". They interpreted our proposed change to restrict the opportunity for tribes to obtain permits for activities directly related to tribal welfare.

During government-to-government consultation, NOAA and the Makah were able to agree on some changes to the final rule that address the Makah's concerns and clarify that the changes were not intended to restrict the Tribe's ability to obtain permits. In addition, changes were made to the environmental assessment at the request of the Makah Tribe to provide more in-depth context on the history of the relationship between the Tribe and the OCNMS management.

### **C. Department of Energy**

DOE published one proposed rule and three final rules during the October 2010-September 2011 period that contain a Federal mandate covered by the Act. DOE complied with the analytical requirements of the Act for each of these rules and discusses its compliance in the preamble of each rule.

Below is a description of the establishment of the Tribal Summit held by the Office of Indian Energy Policy and Programs (OIEPP), or "Office of Indian Energy," within DOE. The summit was held on May 5, 2011 to engage in interactive government-to-government dialogue and forge a new era of Department of Energy and tribal relations.

### ***Tribal Summit***

The summit provided a historic opportunity for the Department of Energy and tribal leaders to discuss a broad range of critical energy and environmental issues in Indian Country.

The Department welcomed the participation of all Native Americans and Alaska Natives in the Tribal Summit. More than 350 people, including representatives from 54 tribes across the continental United States, participated in the summit and pre-summit roundtable held the day prior to the summit. In addition, 260 tribal leaders and representatives from around the country, representing over 200 tribal governments, communities, and nongovernmental organizations and associations, also participated in a number of roundtables leading up to the summit in the early spring of 2011.

The Tribal Summit was held in Arlington, VA on May 5, 2011. Opening remarks were made by Secretary Chu. White House Deputy Assistant to the President for Energy & Climate Change Heather Zichal and White House Special Advisor on Native American Affairs Kimberly Teehee provided policy remarks, as did other Administration officials active in Indian energy, including EPA Administrator Lisa Jackson, Secretary of Agriculture Tom Vilsak, and Secretary of the Interior Ken Salazar. Legislative staff, Majority Staff Director and Chief Counsel for the U.S. Senate Committee on Indian Affairs Loretta Tuell and Republican Staff Director and Chief Counsel for the U.S. Senate Committee on Indian Affairs David A. Mullan Jr., also gave remarks.

Panels were held to allow for dialogue between Federal officials and tribal participants.

Panels included a Tribal Leader Panel on Indian Energy Development and an Interagency Panel on Federal Opportunities in Indian Country. In the first panel, tribal leaders from across the country discussed various energy projects under development, as well as their experiences in working with the Department on energy and environmental issues. In the second panel, program leaders from Federal agencies discussed the type of energy development programs available to tribes and tribal organizations, as well as opportunities to coordinate Federal efforts to support energy development in Indian Country. A DOE Leadership Programs Panel was also held to discuss DOE involvement in Indian energy issues.

The day prior to the panel, pre-summit programmatic roundtables were held with tribal leadership on the following topics: Nuclear, Defense Waste, Waste Legacy, Revitalization, Education, Contracting, Business Development, Energy Efficiency and Renewable Energy, and Transmission, Electrical Infrastructure, and Reliability, as well as an open roundtable discussion with Tribal Leaders, Tribal Organizations, and Alaska Native and Tribal Corporations.

In the early spring of 2011, DOE also hosted roundtables with tribal leaders nationwide. The DOE Office of Indian Energy Policy and Programs provided information on working with tribal governments, Federal agencies, and non-governmental tribal organizations. Tribal leaders, representatives, and participants also provided information on Indian energy priorities and feedback on current and future DOE energy policies and programs, as well as to solicit comments on Federal agency coordination and suggestions for future tribal policies and programs. Roundtable participants included: officials from the White House, DOE, U.S.

Department of Agriculture, Department of the Interior (DOI), and State agencies, tribal leaders and representatives from tribal energy and environmental programs, representatives from the U.S. Senate Select Committee on Indian Affairs as well as numerous Senate and House staff members, representatives from tribal organizations, tribal non-governmental organizations, and associations, and representatives from the energy industry and public universities.

Tribal Energy Priorities were discussed, including the need to protect tribal sovereignty and environmental, natural, and cultural resources, support energy project and economic development, provide affordable energy access in rural tribal communities, access, coordinate, and secure a broad range of funding resources for large and small scale tribal energy projects, develop renewable energy projects, including wind, solar, hydro, and biomass energy production, and work with Federal agencies and Congress to streamline various energy policies and regulations, particularly where multiple Federal agencies are involved in tribal energy projects.

Feedback on DOE Tribal Policies and Programs was also provided, including the need to increase tribal access and inclusion in energy transmission planning and capacity, provide flexibility within tribal energy policies and grants across Federal agencies to meet the unique needs of tribal governments and communities on a case-by-case basis, streamline program, policy, and regulatory requirements, re-examine, develop, and adapt tax laws and policies to provide an incentive for tribal governments and the energy industry to develop tribal energy projects within tribal lands, and ensure policies and programs continue to develop and expand tribal technical capacity.

Federal Government-wide Energy Issues and Coordination was also discussed, including the need to engender coordination, leadership, and flexibility among agencies involved in tribal energy projects, support Federal Government and agency preference for buying energy from tribal governments, and coordinate tribal consultation.

Suggestions for Future DOE Office of Indian Energy Roles/Programs/Support were also introduced, including the need to expand programs that encourage and fund energy efficiency projects within tribal lands, provide DOE Guidance and recommendations for tribal inclusion in transmission development projects, design programs with a training focus for tribal technical capacity building on energy development – particularly including financing and best practices in project development, increase regulatory interaction of and with local energy co-ops to help build better relationships for energy development collaboration, and establish a clearinghouse for federal agencies and tribal governments on energy policies, programs, funding, notices, and projects.

As stated by Secretary Chu, the Department of Energy will work together with tribal governments to promote economic development and help many more tribes and villages seize the clean energy opportunity.

As part of this effort, Secretary Chu announced two new energy initiatives at the summit. He declared the intent to form an Indian clean energy and infrastructure working group -- which will provide a forum to survey, analyze and provide viewpoints on real-time obstacles that tribes face in deploying clean energy as well as potential solutions. He also announced that the

Department is planning to develop guidance that will direct the Department of Energy to, when possible, buy renewable energy from tribal lands.

#### **D. Department of Health and Human Services**

##### ***Revision of State Applications for Substance Abuse and Prevention Block Grants***

The Department had for some time been preparing rules to codify criteria for expedited approvals of states' applications for funding under the Substance Abuse and Prevention Block Grant Program. However, a way was found to move forward in this area within 3 months and without imposing the rigidities on stakeholders that codified rules may have brought about.

Having developed a revised application, HHS's Substance Abuse and Mental Health Services Administration (SAMHSA), on April 11, 2011, issued a Federal Register Notice (FRN) requesting comments under the Paperwork Reduction Act on the collection of information that would be entailed if the revised application were to be used. 772 comments from 522 individuals or organizations were received. The comments were: (1) supportive of the changes proposed to the application, (2) requested clarification regarding certain areas, or (3) requested specific changes to the application.

During the 60 day review period SAMHSA conducted 14 teleconferences to review the proposed changes with State Substance Abuse authorities, State Mental Health Authorities and other stakeholders. SAMHSA also conducted a public outreach effort, to solicit comments on the revised application through announcements in various periodicals and trade association materials; the agency also displayed the Notice and the application on its web site.

Based on the comments received, SAMHSA made changes to the revised block grant application. These changes include:

- Clarifying which sections of the application are required to be submitted as part of the State Plan and which sections SAMHSA is requesting, but not requiring states to submit. SAMHSA continues to strongly encourage states to submit this information. This will allow SAMHSA to understand the applicant state's efforts and identify how it can assist the applicant state meet its goals in a changing environment.
- Clarifying to states that not submitting the optional information will not change SAMHSA's approval of their Plan or payment, although states are strongly encouraged to submit as much as they can so the nation as a whole will have a complete picture of the needs of individuals with behavioral health conditions as well as the innovative approaches states are undertaking in these areas as well as the barriers they encounter to design and implement important policies and programs.
- Requiring information on state's Maintenance of Effort to be included in the plan rather than the reporting section. States provided this information in their plans in previous years.
- Providing some additional clarity regarding specific sections of the plan in the following areas: Data and Information Technology, Consultation with Tribes, Support of State Partners, and State Behavioral Health Advisory Council.

A second FRN was published on June 17, 2011. The 30-day comment period was completed on July 16. Comments were compiled by OMB and forwarded to SAMHSA. The Uniform Application was approved by OMB on July 19, 2011, 3 months after the publication of the first Notice.

### ***Manufactured Food Regulatory Program Standards***

The food safety regulatory system in the United States is a tiered system that involves Federal, State, and local governments. The Food and Drug Administration (FDA) is responsible for ensuring that all foods moving in interstate commerce, except those under United States Department of Agriculture jurisdiction, are safe, wholesome, and labeled properly. State agencies conduct inspection and regulatory activities that help ensure food produced, processed, or sold within their jurisdictions is safe. Many State agencies also conduct food plant inspections under contract with FDA. These inspections are performed under the States' laws and authorities, the provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act), or both. To maximize the use of resources among the FDA and the States, particularly when their jurisdictions overlap, their inspection programs should be equivalent.

To that end, FDA, along with selected state program managers, have developed a set of standards to be used by states as a guide for continuous improvement of state food manufacturing programs. These program standards were established to protect the public from foodborne illness and injury. The goal of this program is to implement a risk-based food safety program by establishing a uniform basis for measuring and improving the performance of manufactured food regulatory programs in the United States.

The manufactured food regulatory program standards affect all 50 states, US consumers, and the various food manufacturing facilities throughout the country.

This program is optional. States may elect to implement the Manufactured Food Regulatory Standards as an option under their State food contracts with FDA. Currently, States are paid \$5,000 a year to implement this program.

This program was developed in concert with selected States to promote equivalency among the Federal and State food safety inspection and enforcement practices.

This program has bolstered State food regulatory programs with the Federal legal authority and regulatory provisions to protect the public health by ensuring the safety and security of the food supply. It's also provided the regulated industry with consistent standards and requirements throughout the country and reduced redundancies.

### ***Cost-allocation rule exceptions***

In August 2011, HHS announced time limited exceptions to standard cost-allocation rules. Under these exceptions, states making IT investments in eligibility-determination systems for the new health-insurance Exchanges, Medicaid, and the Children's Health Insurance Program, could leverage those investments to support the determination of eligibility in human services programs such as the Temporary Assistance for Needy Families (TANF) program.

Under standard cost allocation rules, all programs that benefit from a shared IT service – such as elements of an eligibility determination system – must share in the cost of building that shared service based on the relative benefit to each program. However, the Affordable Care Act (ACA) requires States to build eligibility systems to support health-insurance Exchanges, Medicaid, and CHIP programs. To the degree that those investments can be leveraged to improve eligibility-determination processes for other programs, there are advantages to States, the Federal Government, and families.

OMB granted an exception to standard cost allocation rules, to allow States that, at their option, choose to create integrated eligibility systems to leverage ACA-based investments for use by other programs. All incremental costs that States incur to add the eligibility determination functionality for human services programs must be paid for by those human services programs, but the costs that States would have incurred to build their health-related eligibility system would be paid for through the health-related funding streams. This time-limited exception to standard cost allocation procedures has been well-received by States and will foster greater interest on the part of States in creating interoperable eligibility systems that can help families access both health and human services benefits and services. Over time, it will result in more efficient systems as the Federal Government will be supporting a single, modern eligibility system rather than paying to maintain one eligibility system for health and another for other programs. And, there could be program integrity benefits as well, as a single system maintains current information about families' circumstances and changed circumstances get captured across programs.

## APPENDIX M: REFERENCES

- Acemoglu, Daron and Joshua D. Angrist. "Consequences of Employment Protection? The Case of the Americans with Disabilities Act." *Journal of Political Economy*, 2001, 109(5), 915-957.
- Adler, Matthew and Eric A. Posner. "Happiness Research and Cost-Benefit Analysis." *Journal of Legal Studies*, 2008, 37(S2), S253-S292.
- Ashenfelter, Orley and Alan Krueger. "Estimates of the Economic Return to Schooling from a New Sample of Twins." *The American Economic Review*, 1994, 84(5).
- Balleisen, Edward and David Moss. *Government and Markets: Toward a New Theory of Regulation*, 2009, Cambridge, U.K.: The Tobin Project.
- Banerjee, Abhijit V. and Esther Duflo. *Poor Economics: A Radical Rethinking of the Way to Fight Global Poverty*. Public Affairs, 2011.
- Banerjee, Abhijit V. and Esther Duflo. "The Experimental Approach to Development Economics." *Annual Review of Economics*, 2009, 1:151-178.
- Baum, Charles L. "The Effect of State Maternity Leave Legislation and the 1993 Family and Medical Leave Act on Employment and Wages." *Labour Economics*, 2003, 10(5), 573-596.
- Becker, Randy and Vernon Henderson. "Effects of Air Quality Regulation on Polluting Industries." *Journal of Political Economy*, 2000, 108(2), 379-421.
- Berman, Eli and Linda T.M. Bui. "Environmental Regulation and Labor Demand: Evidence from the South Coast Air Basin." *Journal of Public Economics*, 2001, 79: 265-295.
- Berman, Eli and Linda T.M. Bui. "Environmental Regulation and Productivity: Evidence from Oil Refineries." *The Review of Economics and Statistics*, 2001, 83(3), 498-510.
- Bertrand, Marianne and Francis Kramarz. "Does Entry Regulation Hinder Job Creation? Evidence from the French Retail Industry." *The Quarterly Journal of Economics*, 2002, 117(4), 1369-1413.
- Beshears, John, James J. Choi, David Laibson, and Brigitte C. Madrian. "Simplification and Saving," available at <http://www.economics.harvard.edu/faculty/laibson/files/Simplification%2Band%2BSaving%2B100802.pdf>.
- Biswas-Diener, Robert, Joar Vitterso, J., & Ed Diener. "The Danish Effect: Beginning to Explore High Well-Being in Denmark." *Social Indicators Research*, 2010, 97, 229-246.

Blanchard, Olivier and Francesco Giavazzi. "Macroeconomic Effects of Regulation and Deregulation in Goods and Labor Markets." *The Quarterly Journal of Economics*, 2003, 118(3), 879-907.

Blanchflower, David G. and Andrew J. Oswald. "Well-Being Over Time in Britain and the USA." Hypertension and Happiness Across Nations. NBER Working Paper No. 12935. Cambridge, Mass.: National Bureau of Economic Research, 2007.

Blanchflower, David G. and Andrew J. Oswald. "International Happiness," 2010. National Bureau of Economic Research Working Paper Series, available at <http://www.nber.org/papers/w16668.pdf>

Bloom, David; Canning, David and Jaypee Sevilla. "The Effect of Health on Economic Growth: A Production Function Approach," *World Development*, 2004, 32:1: 1-13.

Brunnermeier, Smita B., and Arik Levinson. "Examining the Evidence on Environmental Regulations and Industry Location." *The Journal of Environment and Development*, 2004, 13:1, 6-41.

Carpenter, Dan. "Confidence Games: How Does Regulation Constitute Markets?" in Edward Balleisen and David Moss, eds., *Government and Markets: Toward a New Theory of Regulation*, (New York: Cambridge University Press, 2009).

Carpenter, Dan. "Protection without Capture: Dynamic Product Approval by a Politically Responsive, Learning Regulator," *American Political Science Review*, 2004, 98:4, 613-631

Carpenter, Dan and M.M. Ting. "Regulatory Errors with Endogenous Agendas," *American Journal of Political Science* 51:4 (2007), pp. 835-853.

Chapman, Gretchen B. and Eric Johnson. "Incorporating the Irrelevant: Anchors in Judgments of Belief and Value." In *Heuristics and Biases: The Psychology of Intuitive Judgment*. Eds. Thomas Gilovich, Dale Griffin, and Daniel Kahneman, Cambridge University Press, 2002: 120-38.

Chay, Kenneth and Greenstone, Michael. "Does Air Quality Matter? Evidence from the Housing Market," *Journal of Political Economy*, 2005, 113(2): 376-424.

Clark, Andrew E., Paul Frijters, and Michael A. Shields. "Relative Income, Happiness and Utility: An Explanation for the Easterlin Paradox and Other Puzzles." *Journal of Economic Literature*, 2008, 46(1): 95-114.

Crain, W. Mark and Thomas D. Hopkins. *The Impact of Regulatory Costs on Small Firms*. Report to the Office of Advocacy, United States Small Business Administration, 2001.

Crain, Nicole V. and Mark W. Crain. *The Impact of Regulatory Costs on Small Firms*. Report to the Office of Advocacy, United States Small Business Administration, 2010. Available at <http://archive.sba.gov/advo/research/rs371tot.pdf>

Cohen, Daniel and Marcelo Soto. "Growth and Human Capital: Good Data, Good Results," *Journal of Economic Growth*, 2007, 12: 51-76.

Cole, Matthew A. and Rob J. Elliot. "Do Environmental Regulations Cost Jobs? An Industry-Level Analysis of the UK." *The B.E. Journal of Economic Analysis & Policy*, 2007, 7(1).

Congdon, William J., Jeffrey P. Kling, and Sendhil Mullainathan. *Policy and Choice: Public Finance through the Lens of Behavioral Economics*. Brookings Institution Press, 2011.

Copeland, Curtis W. *How Agencies Monetize "Statistical Lives" Expected to Be Saved By Regulations*, CRS Report for Congress, Congressional Research Service, March 24, 2010.

Dale, Larry; Camille Antinori; Michael McNeil and James McMahon. 2002. "Retrospective Evaluation of Declining Prices for Energy Efficient Appliances." Proceedings of the ACEEE 2002 Summer Study on Energy Efficiency in Buildings. August 18-23, Pacific Grove, CA. Available at [http://eec.ucdavis.edu/ACEEE/2002/pdfs/panel09/05\\_311.pdf](http://eec.ucdavis.edu/ACEEE/2002/pdfs/panel09/05_311.pdf).

Deaton, Angus. "Income, Health, and Well-Being Around the World: Evidence from the Gallup World Poll," *Journal of Economic Perspectives*, 2008, 22(2): 53-72

Dean, Thomas J.; Brown, Robert L, and Stango, Victor. "Environmental Regulation as a Barrier to the Formation of Small Manufacturing Establishments: A Longitudinal Examination." *Journal of Environmental Economics and Management*, 2000, 40, 56-75.

Deaton, Angus; Fortson, Jane and Tortora, Robert. "Life (Evaluation), HIV/AIDS, and Death in Africa." In *International Differences in Well-Being*, eds. Ed Diener, John F. Helliwell, and Daniel Kahneman. New York and Oxford: Oxford University Press, 2010: 105-36.

Devoto, Florencia, Esther Duflo, Pascaline Dupas, Vincent Pons, and William Pariente. "Happiness on Tap: Piped Water Adoption in Urban Morocco." Available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1803576&download=yes](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1803576&download=yes).

Diener, John F. Helliwell, and Daniel Kahneman. *International Differences in Well-Being*. New York and Oxford: Oxford University Press, 2010: 16-33.

Diener, Ed; Richard Lucas; Ulrich Schimmack; and Oliver Helliwell. *Well-Being for Public Policy*. Oxford University Press, 2009.

Diener, Ed; Daniel Kahneman, Daniel; William Tov and Raksha Arora. "Income's Association with Judgments of Life Versus Feelings." In *International Differences in Well-Being*, eds. Ed Diener, John F. Helliwell, and Daniel Kahneman. New York and Oxford: Oxford University Press, 2010: 3-15.

Djankov, Simeon; Rafael La Porta; Florencio Lopez-de-Silanes and Andrei Shleifer. "The Regulation of Entry," *Quarterly Journal of Economics*, 2002, 107:1: 1-37

Dynan, Karen E. and Enrichetta Ravina. "Increasing Income Inequality, External Habits, and Happiness." *American Economic Review*, 2007, 97(2): 226-231.

Easterlin, Richard. "Does Economic Growth Improve the Human Lot? Some Empirical Evidence." In P. David and M. Reder, eds. *Nations and Households in Economic Growth: Essays in Honour of Moses Abramovita*. New York and London: Academic Press, 1974.

\_\_\_\_\_. "The Economics of Happiness." *Daedalus*, 2004, 133(2): 26-33.

\_\_\_\_\_. "A Puzzle for Adaptive Theory." *Journal of Economic Behavior & Organization*, 2005, 56: 513-521.

Ellison, Glenn, and Sara Fisher Ellison. "Search, Obfuscation, and Price Elasticities on the Internet," *Econometrica*, 2009, 77 (2): 427-452.

Engelbrecht, Hans-Jürgen. "Natural Capital, Subjective Well-Being, and the New Welfare Economics of Sustainability: Some Evidence from Cross-Country Regressions." *Ecological Economics*, 2009, 69: 380-388.

Environmental Protection Agency. "Valuing Mortality Risk Reductions for Environmental Policy: A White Paper." Dec. 10, 2010. Available at: [http://yosemite.epa.gov/ee/epa/erm.nsf/vwAN/EE-0563-1.pdf/\\$file/EE-0563-1.pdf](http://yosemite.epa.gov/ee/epa/erm.nsf/vwAN/EE-0563-1.pdf/$file/EE-0563-1.pdf).

Frey, Bruno S. and Alois Stutzer. "Happiness and Economics: How the Economy and Institutions Affect Human Well-Being." Princeton, N.J.: Princeton University Press, 2002.

Fullerton, Don. "Six Distributional Effects of Environmental Policy." NBER Working Paper 16703. Cambridge, Mass.: National Bureau of Economic Research, 2011. Available at: <http://www.nber.org/papers/w16703> NBER Working Paper No. 12935.

Fung, Archon, Mary Graham and David Weil. *Full Disclosure: The Perils and Promise of Transparency*, Cambridge University Press, 2007.

Gabaix, Xavier and David Laibson, "Shrouded Attributes, Consumer Myopia, and Information Suppression in Competitive Markets," *Quarterly Journal of Economics*, 2006, 121: 505.

Gilbert, Daniel. *Stumbling on Happiness*. New York: Alfred A. Knopf, 2006.

Goodstein, E.B. *Jobs and the Environment: the Myth of a National Trade-Off*. Economic Policy Institute, Washington, D.C., 1994.

Gray, Wayne B. and Ronald Shadbegian. "Environmental Regulation, Investment Timing, and Technology Choice." *The Journal of Industrial Economics*, 1998, 46(2), 235-256.

Greenstone, Michael. "The Impacts of Environmental Regulations on Industrial Activity: Evidence from the 1970 and 1977 Clean Air Act Amendments and the Census of Manufacturers." *Journal of Political Economy*, 2002, 110(6), 1175-1219.

Greenstone, Michael. "Toward a Culture of Persistent Regulatory Experimentation and Evaluation." In *New Perspectives on Regulation*, David Moss and John Cisternino (Eds.). Cambridge, MA: The Tobin Project, Inc., 2009.

Greenstone, Michael; John A. List and Chad Syverson. "The Effects of Environmental Regulation on the Competitiveness of U.S. Manufacturing." U.S. Census Bureau Center for Economic Studies Discussion Paper (February 2011).

Grossman, Gene M. and Alan B. Krueger. "Economic Growth and the Environment." *The Quarterly Journal of Economics*, 1995, 110(2), 353-377.

Gruber, Jonathan. "The Incidence of Mandated Maternity Benefits." *American Economic Review*, 1994, 84(3), 622-641.

Hagerty, Michael and Ruut Veenhoven. "Wealth and Happiness Revisited – Growing National Income Does Go with Greater Happiness." *Social Indicators Research*, 2003, 64, 1-27.

Hahn, Robert and John Hird, "The Costs and Benefits of Regulation: Review and Synthesis," *Yale Journal on Regulation* 8 (1991), pp. 233-278.

Hanna, Rema. "US Environmental Regulation and FDI: Evidence from a Panel of US-Based Multinational Firms, *American Economic Journal: Applied Economics*, 2010, 2(3), 158-189.

Harrington, Winston. "Grading Estimates of the Benefits and Costs of Federal Regulation: A Review of Reviews," 33 *tbl.7* (Res.For the Future, Discussion Paper No. RFF DP 06-39, Sept. 2006), available at <http://ssrn.com/abstract=937357>.

Harrington, Winston. "Grading Estimates of the Benefits and Costs of Federal Regulation: A Review of Reviews," 33 *tbl.7* (Res.For the Future, Discussion Paper No. RFF DP 06-39, Sept. 2006), available at <http://ssrn.com/abstract=937357>.

Harrington, Winston, Richard D. Morgenstern, and Peter Nelson. "On the Accuracy of Regulatory Cost Estimates." Available at: <http://www.rff.org/documents/RFF-DP-99-18.pdf>

Harter, James K. and Raksha Arora. "The Impact of Time Spent Working and Job fit on Well-Being Around the World." In *International Differences in Well-Being*, eds. Ed Diener, John F. Helliwell, and Daniel Kahneman. New York and Oxford: Oxford University Press, 2010: 398-430.

Hastings, Justine S., and Jeffrey M. Weinstein. "Information, School Choice, and Academic Achievement: Evidence from Two Experiments," *Quarterly Journal of Economics*, 2008, 123 (4): 1373-1414.

Hopkins, Thomas D. *Profiles of Regulatory Cost*, Report to the Office of Advocacy, United States Small Business Administration, 1995.

Ifcher, John and Homa Zarghamee, "Happiness and Time Preference: The Effect of Positive Affect in a Random-Assignment Experiment," *American Economic Review*, 2011 (forthcoming). Available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1491247](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1491247).

Inglehart, Ronald, Roberto Foa, Christopher Peterson, and Christian Welzel. "Development, Freedom, and Rising Happiness: A Global Perspective (1981-2007)." *Perspectives on Psychological Science*, 2008, 3, 264-285.

Isen, A.M. "Positive Affect, Cognitive Processes, and Social Behavior." In Berkowitz (Ed.), *Advances in Experimental Social Psychology*. New York: Russell Sage foundation, 1987.

Jaffe, Adam B., et al. "Environmental Regulation and the Competitiveness of U.S. Manufacturing: What Does the Evidence Tell Us?" *Journal of Economic Literature*, 1995, 33(1), 132-163.

Jaffe, Adam and Karen Plumer, "Environmental Regulation and Innovation: A Panel Data Study," *Review of Economics and Statistics* 1997, 610-9.

Jaffe, Adam B. and Robert N. Stavins, "The Energy Paradox and the Diffusion of Conservation Technology," *Resource and Energy Economics*, 1994 16: 91, 92-94.

Jacobson, Louis, Robert LaLonde and Daniel Sullivan, "Earnings Losses of Displaced Workers," *American Economic Review*, 83, 1993.

Jolls, Christine. "Accommodation Mandates." *Stanford Law Review*, 2000, 53, 223-306.

Jorgenson, Dale W. and Peter J. Wilcoxon. "Environmental Regulation and U.S. Economic Growth." *RAND Journal of Economics*, 1990, 21(2), 314-340.

Kahn, Matthew E. "The Beneficiaries of Clean Air Act Regulation." *Regulation Magazine*, 2001 24(1).

Kahn, Matthew E. "Particulate Pollution Trends in the United States." *Journal of Regional Science and Urban Economics*, 1997, 27: 87-107.

Kahneman, Daniel. "Objective Happiness." In D. Kahneman, E. Diener, & N. Schwarz (Eds.). *Well-being: the foundations of hedonic psychology*. New York: Russell Sage Foundation, 1999.

Kahneman, Daniel. *Thinking Fast and Slow*. Farrar, Straus and Giroux, 2011.

Kahneman, Daniel and Angus Deaton. "High Income Improves Evaluation of Life But Not Emotional Well-Being." *Proceedings of the National Academy of Sciences*, 2010, 107(38) (2010).

Kahneman, Daniel, Alan Krueger, David Schkade, Nobert Schwarz and Arthur Stone. "Toward National Well-Being Accounts." *American Economic Review*, 2004, 94(2), 429-434.

Kahneman, Daniel; David A. Schkade, Claude Fischler, Alan B. Krueger, and Amy Krilla. "The Structure of Well-Being in Two Cities: Life Satisfaction and Experienced Happiness in Columbus, Ohio; and Rennes, France." In *International Differences in Well-Being*, eds. Ed Diener, John F. Helliwell, and Daniel Kahneman. New York and Oxford: Oxford University Press, 2010: 398-430.

Kahneman, Daniel, Amos Tversky and Paul Slovic. *Judgment Under Uncertainty: Heuristics and Biases*. Cambridge University Press, 1982.

Kamenica, Emir, Sendhil Mullainathan, and Richard Thaler. "Helping Consumers Know Themselves." *American Economic Review: Papers & Proceedings*, 2011, 101, 417-422.

Kaplow, Louis and Steven Shavell. *Fairness vs. Welfare*. Cambridge: Harvard University Press, 2002.

Keller, Wolfgang, and Arik Levinson. "Pollution Abatement Costs and Foreign Direct Investment Inflows to U.S. States." *The Review of Economics and Statistics*, 2002, 84(4), 691-703.

Kling, Jeffrey R., Sendhil Mullainathan, Eldar Shafir, Lee Vermeulen, and Marian Wrobel. "Comparison Friction: Experimental Evidence from Medicare Drug Plans," *Quarterly Journal of Economics*, 2012, (forthcoming). Available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1931181](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1931181).

Krueger, Alan B., ed. *Measuring the Subjective Well-Being of Nations: National Accounts of Time Use and Well-Being*. The University of Chicago Press, 2009.

Krueger, Alan B., et al. "National Time Accounting: The Currency of Life." *Measuring the Subjective Well-Being of Nations: National Accounts of Time Use and Well-being*, Alan B. Krueger, ed. Chicago: The University of Chicago Press, 2009, 9-86.

Krueger, Alan B. and Mikael Lindahl. "Education for Growth: Why and For Whom?" *Journal of Economic Literature*, 2001, XXXIX, 1101-1136, available at <http://www.krueger.princeton.edu/krueger.pdf>

Krueger, Alan B. and Andreas Mueller. "Job Search, Emotional Well-Being and Job Finding in a Period of Mass Unemployment: Evidence from High-Frequency Longitudinal Data." *Brookings Papers on Economic Activity*. Available at [http://www.brookings.edu/~media/Files/Programs/ES/BPEA/2011\\_spring\\_bpea\\_papers/2011\\_spring\\_bpea\\_conference\\_krueger.pdf](http://www.brookings.edu/~media/Files/Programs/ES/BPEA/2011_spring_bpea_papers/2011_spring_bpea_conference_krueger.pdf).

Krueger, Alan B., and David A. Schkade. "The Reliability of Subjective Well-Being Measures." *Journal of Public Economics*, 2008, 92(8-9), 1833-1845.

- La Porta, Rafael, Florencio Lopez-de-Silanes, and Andrei Shleifer, "Corporate Ownership around the World," *Journal of Finance*, 54 (1999), pp. 471–517.
- Lane, Robert E. *The Loss of Happiness in Market Democracies*. New Haven: Yale University Press, 2001.
- Lanoie, Paul, Michel Patry, Richard Lajeunesse, "Environmental Regulation and Productivity: Testing the Porter Hypothesis," *Journal of Productivity Analysis*, 2008, 30, 121-8.
- Levinson, Arik, and M. Scott Taylor. "Unmasking the Pollution Haven Effect." *International Economic Review*, 2008, 49:1, 223-254.
- List, John A., Daniel L. Millimet, Per G. Fredriksson, and W. Warren McHone. "Effects of Environmental Regulations on Manufacturing Plant Births: Evidence from a Propensity Score Matching Estimator." *The Review of Economics and Statistics*, 2003, 85(4), 944-952.
- Ludwig, Jens, Jeffrey R. Kling, and Sendhil Mullainathan. "Mechanism Experiments and Policy Evaluations." *Journal of Economic Perspectives*, 2011, 25(3), 17-38.
- Luttmer, Erzo F. P. "Neighbors as Negatives: Relative Earnings and Well Being." *The Quarterly Journal of Economics*, 2005, 120(3), 963-1002.
- Masur, Jonathan S. and Eric A. Posner. "Regulation, Unemployment, and Cost-Benefit Analysis," *Virginia Law Review*, 2012 (forthcoming). Available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1920441](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1920441).
- Miller, Wilhelmine, Lisa Robinson, and Robert S. Lawrence, eds. *Valuing Health for Regulatory Cost-Effectiveness Analysis*. National Academies Press, 2006.
- Morgenstern, Richard D., William A. Pizer, and Jhih-Shyang Shih. "Jobs Versus the Environment: An Industry-Level Perspective." *Journal of Environmental Economics and Management*, 2002, 43, 412-436.
- Moss, David and John Cisternino, eds., *New Perspectives on Regulation*, 2009. Cambridge, U.K.: The Tobin Project.
- National Research Council. *Estimating the Public Health Benefits of Proposed Air Pollution Regulations*. National Academies Press, 2002.
- National Research Council. *Estimating Mortality Risk Reduction and Economic Benefits from Controlling Ozone Air Pollution*. National Academies Press, 2008.
- Neumark, David and William L. Wascher. *Minimum Wages*. Cambridge: The MIT Press, 2008.

Nordhaus, William D. "Principles of National Accounting For Non-Market Accounts." National Bureau of Economic Research Paper (February 6, 2004). Available at <http://www.nber.org/CRIW/CRIWs04/nordhaus.pdf>.

Nordhaus, William D. and Edward C. Kokkelenberg. *Nature's Numbers: Expanding the National Economic Accounts to Include the Environment*. National Academies Press, 1999.

Oswald, Andrew J. and Stephen Wu. "Measures of Human Well-Being: Evidence from the U.S.A." *Science*, 2010, 327: 576-579.

Peoples, James. "Deregulation and the Labor Market." *Journal of Economic Perspectives*, 1998, 12(3), 111-130.

Ruhm, Christopher. "The Economic Consequences of Parental Leave Mandates: Lessons From Europe." *The Quarterly Journal of Economics*, 1998, 113(1), 285-317.

Sen, Amartya. *Development as Freedom*, Oxford University Press, 1999.

Sen, Amartya. *Commodities and Capabilities*, Oxford University Press, 1999.

Stiglitz, Joseph, Amartya Sen, and Jean-Paul Fitoussi. *Mismeasuring Our Lives: Why GDP Doesn't Add Up*, The New Press, 2010.

Stewart, Neil. "The Cost of Anchoring on Credit-Card Minimum Repayments." *Psychological Science*, 20(39), 2009.

Stevenson, Betsey and Justin Wolfers. "Economic Growth and Happiness: Reassessing the Easterlin Paradox." *Brookings Papers on Economic Activity*, Spring 2008a, 1-87.

Stevenson, Betsey and Justin Wolfers. "Happiness Inequality in the United States." *Journal of Legal Studies*, 2008b, 37(S2), S33-S80.

Stiglitz, Joseph, Amartya Sen, and Jean-Paul Fitoussi. *Mismeasuring Our Lives: Why GDP Doesn't Add Up*, The New Press, 2010.

Stone, Arthur A., Saul Schiffman, Joseph E. Schwartz, Joan Broderick, and Michael Hufford. "Patient Non-Compliance with Paper Diaries." *British Medical Journal*, 2002, 324, 1193-94.

Summers, Lawrence. "Some Simple Economics of Mandated Benefits," *The American Economic Review*, 1989, 79(2), 177-183.

Temple, Jonathan, "The New Growth Evidence," *Journal of Economic Literature*, 1999, 37:1, 112-156.

van Stel, Andre, David Storey, and A. Roy Thurik, “The Effect of Business Regulations on Nascent and Young Business Entrepreneurship,” *Small Business Economics* 28 (2007), pp. 171-186.

Vitarelli, Anthony. “Behavioral Economics in Federal Regulation”, *27 Yale Journal on Regulation*, 2010, 27(1).

von Wachter, Till, Jae Song, and Joyce Manchester, “Long-Term Earnings Losses due to Mass Layoffs During the 1982 Recession: An Analysis Using U.S. Administrative Data from 1974 to 2004,” 2009. Available at [www.columbia.edu/~vw2112/papers/mass\\_layoffs\\_1982.pdf](http://www.columbia.edu/~vw2112/papers/mass_layoffs_1982.pdf)

Waldfogel, Jane. “The Impact of the Family and Medical Leave Act.” *Journal of Policy Analysis and Management*, 1999, 18(2), 281-302.

Walker, W. Reed. “Environmental Regulation and Labor Reallocation: Evidence from the Clean Air Act.” *American Economic Review: Papers & Proceedings*, 2011, 101, 442-447.

Warr, P. “Well-Being and the Workplace.” In D. Kahneman, E. Diener, and N. Schwarz (Eds.). *Well-Being: The Foundations of Hedonic Psychology*. New York: Russell Sage Foundation, 2003.

Xing, Yuqing, and Charles D. Kolstad. “Do Lax Environmental Regulations Attract Foreign Investment?” *Environment and Resource Economics*, 2002, 21, 1-22.