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Report to Congressional Requesters

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REGULATORY ACCOUNTING

Analysis of OMB's Reports on the Costs and Benefits of Federal Regulation

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The Honorable Fred Thompson
Chairman
Committee on Governmental Affairs
United States Senate

The Honorable Ted Stevens
Chairman
Committee on Appropriations
United States Senate

The Honorable Tom Bliley
Chairman
Committee on Commerce
House of Representatives

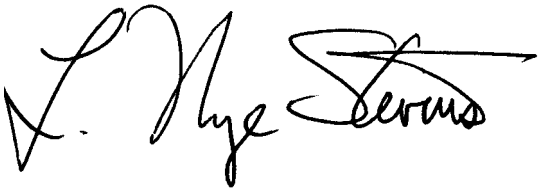
The Honorable David McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs
Committee on Government Reform
House of Representatives

The Honorable John B. Breaux
United States Senate

This report responds to your requests that we provide information on the Office of Management and Budget's (OMB) 1997 and 1998 reports to Congress regarding the costs and benefits of federal regulations. Specifically, we were asked to describe, for each of four statutory requirements, (1) how OMB addressed the requirements in its reports and (2) the views of noted economists in the field of cost-benefit analysis regarding OMB's responses in these reports.

We are sending copies of this report to Senator Joseph I. Lieberman, Senator Robert C. Byrd, Representative John D. Dingell, and Representative Dennis J. Kucinich in their respective capacities as the Ranking Minority Members of the Senate Committee on Governmental Affairs, the Senate Committee on Appropriations, the House Committee on Commerce, and the House Committee on Government Reform's Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs. We are also sending copies to the Honorable Jacob Lew, Director of OMB, and will make copies available to others on request.

If you have any questions about this report or would like to discuss it further, please contact me on (202) 512-8676. Major contributors to this report are listed in appendix V.



L. Nye Stevens
Director, Federal Management
and Workforce Issues

Executive Summary

Purpose

The process of issuing and enforcing regulations is a basic tool of government, but the costs that nonfederal entities pay to comply with federal regulations are not accounted for in the federal budget process. Some researchers have estimated those costs in the hundreds of billions of dollars, and some estimates of aggregate benefits are even higher. Congress decided that it needed more information on regulatory costs and benefits, so it required the Office of Management and Budget (OMB) to submit two successive annual reports to Congress providing (1) estimates of the total annual costs and benefits of federal regulatory programs; (2) estimates of the costs and benefits of each rule likely to have a $100 million annual effect on the economy in increased costs; (3) an assessment of the direct and indirect effects of federal rules on the private sector, state and local governments, and the federal government; and (4) recommendations to reform or eliminate any federal regulatory program or program element that is inefficient, ineffective, or not a sound use of the nation's resources.

GAO conducted this review at the request of several Members of Congress. GAO's objectives were to describe, for each of these four requirements, (1) how OMB addressed the requirements in its 1997 and 1998 reports and (2) the views of noted economists in the field of cost-benefit analysis regarding OMB's responses in these reports.

Background

Conceptually, cost-benefit analysis is a rigorous procedure of weighing the costs and benefits of a proposed action and various alternatives and is generally regarded as an important and useful tool in regulatory decisionmaking. For nearly 20 years, both the executive and legislative branches have required federal agencies to prepare cost-benefit analyses for certain rules. Under Executive Order 12866, OMB reviews agencies' regulations and associated cost-benefit estimates to ensure that the regulations are consistent with applicable laws, the executive order's principles, and the President's priorities.

The statutes requiring OMB to prepare its reports on regulatory costs and benefits do not prescribe how those reports should be prepared, and no clear legislative history exists to describe congressional intent. Some Members of Congress expressed their individual views that OMB should simply compile existing information about regulatory costs and benefits. However, other Members of Congress said that OMB should prepare an independent assessment of regulatory effects, not just report the results of agencies' cost-benefit analyses.

Results in Brief

OMB's 1997 and 1998 reports contained some, but not all, of the elements Congress required. OMB provided estimates of total regulatory costs and benefits and provided estimates for some (but not all) $100 million rules issued within particular 1-year periods. OMB's 1998 estimate of total federal regulatory benefits was 12 times its 1997 estimate, driven almost entirely by a 1998 Environmental Protection Agency (EPA) estimate of the benefits associated with the Clean Air Act. However, OMB did not separately assess the direct and indirect effects of federal regulations on various sectors in either report. Also, although it discussed a proposal for electricity restructuring and some previously announced agency initiatives in its 1998 report, OMB did not provide any new recommendations to reform or eliminate regulatory programs or program elements.

The cost-benefit analysis experts that GAO consulted were generally critical of OMB's performance, with regard to three of the four statutory requirements. The experts said OMB's 1998 upper-bound estimate of total regulatory benefits was questionable or implausible, and they were particularly critical of OMB's unadjusted use of EPA's Clean Air Act benefit estimate. They also said OMB should not have simply accepted agencies' cost and benefit estimates for the "major" and "economically significant" rules and should have provided new regulatory reform recommendations. However, the experts said they understood why OMB could do little to discuss the other statutory requirement regarding indirect regulatory effects on particular sectors. Overall, they said OMB should have been more than a "clerk," transcribing the agencies' and others' estimates of costs and benefits. However, several of the experts also recognized that, as part of the administration, OMB was politically constrained from doing more than it did because providing independent assessments would have required OMB to criticize positions approved by the administration.

OMB has a responsibility to review agencies' estimates of regulatory costs and benefits in rules and reports before they are published. However, after their publication, those rules and reports become statements of administration policy. It is politically difficult for OMB to provide an independent assessment and analysis of the administration's own estimates in a public report to Congress. If Congress wants an independent assessment of executive agencies' regulatory costs and benefits, it may have to look outside of the executive branch or outside of the federal government.

Principal Findings

The first statutory requirement was that OMB provide estimates of the total annual costs and benefits of federal regulatory programs. In its 1997

report, OMB estimated that the annual cost of federal regulations was $279 billion and estimated annual benefits at $298 billion. In its 1998 report, OMB estimated annual regulatory costs at between $170 billion and $230 billion and estimated annual regulatory benefits at between $260 billion and $3.5 trillion. The decrease in the cost estimate between 1997 and 1998 was primarily because OMB did not include efficiency losses from economic regulations in its 1998 summary table. Virtually all of the increase in the benefits estimate was due to the inclusion of an EPA estimate of the benefits associated with the Clean Air Act. The experts that GAO consulted generally said that OMB's 1997 and 1998 cost estimates were reasonable, but most of the experts said the upper-bound benefits estimate in the 1998 report was questionable or implausible. Most of the experts criticized OMB for accepting agencies' cost and benefit estimates without adjustment or standardization and were particularly critical of OMB's unadjusted use of EPA's benefit estimate. However, most of the experts also said that OMB faced political constraints in adjusting agencies' cost and benefits estimates, noting that an independent assessment of those estimates would potentially require OMB to criticize its own administration's policy positions.

The second statutory requirement was that OMB provide estimates of the costs and benefits of each rule likely to have a gross annual effect on the economy of $100 million or more in increased costs. OMB interpreted this requirement broadly to include rules that were "major" or "economically significant," even if they did not necessarily result in $100 million in increased costs. However, OMB narrowly focused on rules issued during specific 1-year periods and did not include rules issued by independent regulatory agencies in its summary tables. Also, OMB did not include all rules that met its criteria and did not provide cost-benefit data for all of the rules it included. Most of the cost-benefit experts that GAO consulted said OMB should have included rules from independent regulatory agencies. Several experts also said OMB should not have simply accepted the cost and benefit estimates provided by the executive agencies, but some of them also recognized that it was politically difficult for OMB to alter agencies' estimates in its report to Congress.

The third statutory requirement was that OMB provide an assessment of the direct and indirect impacts of federal rules on the private sector, state and local governments, and the federal government. Although OMB did not separately assess the direct and indirect effects of federal regulation on these sectors, OMB indicated that it believed it had discussed the direct effects through the overall cost and benefit estimates that it provided in relation to the first statutory requirement. OMB discussed the difficulty in

determining indirect regulatory effects in its first report but did not provide any description of those effects in either report. The cost-benefit analysis experts that GAO consulted were generally sympathetic toward OMB's treatment of this requirement, describing it as a lower priority than the other requirements and difficult for anyone to satisfy.

The fourth statutory requirement was that OMB provide recommendations to reform or eliminate any federal regulatory program or program element that is inefficient, ineffective, or is not a sound use of the nation's resources. OMB's 1997 report contained no such recommendations, with OMB stating that existing data were inadequate. The 1998 report contained an endorsement of 10 previously announced regulatory or statutory changes and a discussion of restructuring the electrical generation industry. All of the cost-benefit experts were dissatisfied with OMB's response to this requirement, and several said sufficient cost-benefit data existed to support making some recommendations. However, several of the experts also said that it was politically difficult for OMB to make recommendations to Congress to eliminate or reform existing administration programs.

Recommendations

GAO is making no recommendations in this report.

Matter for Congressional Consideration

It is politically difficult for OMB to provide Congress with an independent assessment of executive branch agencies' regulatory costs and benefits. If Congress wants an independent assessment, it may wish to consider assigning that responsibility to an organization outside of the executive branch. That organization could include a congressional office of regulatory analysis, which would have to be established, or an organization outside of the federal government.

Comments and GAO's Evaluation

GAO requested comments on a draft of this report from the OMB Director. OMB's Office of Information and Regulatory Affairs (OIRA) said the report raised a number of useful analytical issues regarding how regulatory costs and benefits can most appropriately be estimated and reported. However, OIRA stated that it disagreed fundamentally with several of the statements attributed to the experts in the report, saying their comments reflect a significant misunderstanding of OMB's role in developing, overseeing, and coordinating the administration's regulatory policies. OIRA also said that it had provided original estimates of regulatory costs and benefits, that the EPA estimate of the benefits associated with the Clean Air Act had been peer reviewed, and that it had provided Congress with the estimates that Congress directed it to prepare.

GAO believes OIRA's comments buttress its conclusions and matter for congressional consideration. It is politically difficult for OMB to disagree publicly with agencies' statements of regulatory policy, particularly because OIRA staff typically participates in developing those policies.

GAO also obtained the views of six of the seven cost-benefit experts that it consulted on the draft report. The experts generally said the report accurately reflected their statements, but some of them suggested particular clarifications, which GAO has incorporated into this report where appropriate.

Contents

Executive Summary		4
Chapter 1 Introduction		14
	Background	15
	Objectives, Scope, and Methodology	23
Chapter 2 Experts Questioned OMB's 1998 Estimate of Regulatory Benefits		27
	OMB's 1998 Upper-Bound Benefits Estimate Was 12 Times the 1997 Estimate	27
	Experts Said OMB Should Have Done More, but Political Environment Limits OMB's Role	34
Chapter 3 OMB Did Not Provide Cost-Benefit Estimates for All $100 Million Rules		39
	OMB Provided Data for Only Certain Rules in Both Reports	39
	Experts Suggested Changes in OMB Major Rule Information	44
Chapter 4 OMB Did Not Separately Assess Direct and Indirect Impacts of Rules		47
	OMB Reports Contained Little Discussion of Third Statutory Requirement	47
	Experts Were Sympathetic to OMB's Treatment of Requirement	48
Chapter 5 Experts Criticized Lack of New Recommendations in OMB Reports		49
	OMB Provided No New Recommendations	49
	Experts Criticized OMB, but Noted "Constraints"	51
Chapter 6 Conclusions		53
	Matter for Congressional Consideration	56
	Comments and Our Evaluation	56

Appendixes

Appendix I: Individual Views of Members of Congress Regarding Regulatory Accounting Requirements 60
Appendix II: Biographical Information of Regulatory Experts 65
Appendix III: Rules Meeting Specific Statutory Requirements for OMB's 1997 Report 69
Appendix IV: Rules Meeting Specific Statutory Requirements for OMB's 1998 Report 73
Appendix V: Major Contributors to This Report 76

Tables

Table 2.1: Cost and Benefit Estimates From OMB's 1997 Report (in 1996 dollars) 30
Table 2.2: Cost and Benefit Estimates From OMB's 1998 Report 33
Table 3.1: Rules That Met OMB's Criteria but Were Not in OMB's 1997 Report 42
Table 3.2: Rules Meeting OMB's Criteria But Not Included in the 1998 Report 44
Table III.1: Rules Likely to Have Gross Impact On Economy of $100 Million in Increased Costs 70
Table IV.1: Rules Likely to Have Gross Effect on the Economy of $100 Million in Increased Costs 74

Figures

Figure 2.1: EPA's Section 812 Data Substantially Increased Upper-Bound Benefit Estimate Between 1997 and 1998 34

Abbreviations

AEI	American Enterprise Institute
CORA	Congressional Office of Regulatory Analysis
EPA	Environmental Protection Agency
FCC	Federal Communications Commission
HHS	Department of Health and Human Services
NPRM	notice of proposed rulemaking
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
RISC	Regulatory Information Service Center
SBREFA	Small Business Regulatory Enforcement Fairness Act of 1996
SEC	Securities and Exchange Commission
UMRA	Unfunded Mandates Reform Act of 1995
USDA	United States Department of Agriculture

Introduction

Regulations serve as the means by which statutory requirements are implemented and specific requirements are established. Like taxing and spending, the process of issuing and enforcing regulations is a basic tool of government. Although the cost of operating federal regulatory agencies is captured in the federal budget process, the budget does not reflect the costs that nonfederal entities pay to comply with federal regulations. Some researchers have estimated that the direct cost of complying with all federal regulations is in the hundreds of billions of dollars.[1] Some estimates of the benefits that federal regulations provide to society are even higher than the costs.[2]

Conceptually, cost-benefit analysis is a rigorous procedure that involves weighing the costs and benefits of various alternatives to a proposed action and underlies most if not all attempts to assess the cumulative effects of regulations on society.[3] Both Congress and the executive branch have required certain federal agencies to conduct cost-benefit analyses on their most significant rules. Cost-benefit analysis is generally recognized as an important and useful tool in making decisions about particular regulations. However, applying cost-benefit analysis to major regulations can be a complex and controversial undertaking. Also, there is disagreement regarding the weight that the analyses should receive in the decisionmaking process.

Although cost-benefit analysis for a single rule can be controversial, estimating the costs and benefits of all federal regulations can be even more controversial. Some questions center on whether certain types of regulatory costs or benefits should be included in the totals. Other questions are even more basic, focusing on whether developing accurate estimates of total federal regulatory costs and benefits is feasible or, if so, how policymakers should use those estimates.

Congress decided that it needed more information on total regulatory costs and benefits, so in 1996 and 1997 it required the Director of the Office of Management and Budget (OMB) to submit reports to Congress providing (1) estimates of the total annual costs and benefits of federal

[1]See, for example, Thomas D. Hopkins, Regulatory Costs in Profile, Policy Study 132, Center for the Study of American Business, August 1996.

[2]For example, in "Regulatory Reform: What Do the Government's Numbers Tell Us?" in Risks, Costs, and Lives Saved (Washington, D.C.: The AEI Press, 1996, pp. 208-253), Robert W. Hahn states that "using government agency data, it would appear that there is a present value of about $280 billion in net benefits to government regulation" in the areas of environment, health, and safety.

[3]Cost-benefit analysis is also referred to as benefit-cost analysis and regulatory impact analysis.

regulatory programs; (2) estimates of the costs and benefits of each rule likely to have a gross annual effect on the economy of $100 million in increased costs; (3) an assessment of the direct and indirect effects of federal rules on the private sector, state and local governments, and the federal government; and (4) recommendations to reform or eliminate any federal regulatory program or program element that is "inefficient, ineffective, or is not a sound use of the Nation's resources." On September 30, 1997, OMB published its Report to Congress On the Costs and Benefits of Federal Regulations in response to the 1996 requirement. On February 5, 1999, OMB published its second report to Congress in response to the 1997 requirement. Both the OMB reports and the requirements that generated them have been the subject of considerable controversy.

Background

The federal government has long regulated economic activity, often through independent regulatory agencies such as the Securities and Exchange Commission (SEC) and the Federal Communications Commission (FCC). Social regulation in such areas as environmental quality, workplace safety, and consumer protection grew dramatically in the 1960's and 1970's with the creation of such agencies as the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA). However, by the 1980's, concerns began to be raised about whether the benefits that these regulations and regulatory agencies were attempting to achieve were worth the costs associated with compliance.

Executive and Legislative Branch Efforts to Control Regulatory Burden

Every president in recent years has taken steps intended to reduce the burden of federal regulations. Those presidential initiatives often involve OMB, whose stated mission is to help the president carry out his responsibilities. For example, in 1981, President Reagan issued Executive Order 12291, which required executive departments and agencies to prepare cost-benefit analyses identifying the benefits, costs, and alternatives of all proposed and final "major" rules, and to submit those analyses to OMB. A major rule was defined in the executive order as any regulation that was likely to result in (1) an annual effect on the national economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, governments, or geographic regions; or (3) significant adverse effects on competition, employment or investments, productivity, innovation, or the international competitiveness of U.S. enterprises. The executive order also required agencies to submit all of their proposed and final rules to OMB for review before being published in the Federal Register to ensure consistency with administration policies. To the extent permitted by law, the order said agencies should not issue

regulations unless the potential benefits "outweigh" the potential costs to society.

In 1993, President Clinton issued Executive Order 12866 revoking Executive Order 12291 but reaffirming the legitimacy and basic framework of OMB's regulatory review process. Like its predecessor, the executive order explicitly excludes from OMB review regulatory actions issued by independent regulatory agencies such as the FCC or the SEC. The order states that OMB's review is "necessary to ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order," and that OMB's Office of Information and Regulatory Affairs (OIRA) is the "repository of expertise concerning regulatory issues . . . ." The order also says OMB shall provide guidance to the agencies and assist the President, the Vice President, and other regulatory policy advisors to the President. Noting that some costs and benefits are difficult to quantify, the order says agencies should adopt regulations only if the benefits "justify" the costs. Also, one of the order's stated objectives is "to reaffirm the primacy of Federal agencies in the regulatory decision making process."

Executive Order 12866 states that agencies should submit detailed cost-benefit analyses to OIRA for all economically significant regulatory actions. The order defines an "economically significant" regulatory action as one "that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." The agency issuing the regulation must submit an assessment, including the underlying analysis, of the anticipated benefits associated with the action, the anticipated costs, and the costs and benefits of reasonably feasible alternatives to the action (e.g., economic incentives instead of "command and control" regulations).

In January 1996, OMB issued guidance to federal agencies on "best practices" for preparing cost-benefit analyses under Executive Order 12866. Developed by a group that was co-chaired by the OIRA Administrator and a Member of the Council of Economic Advisors, the guidance says cost-benefit analyses should be guided by the principles of full disclosure and transparency regarding their data, models, and assumptions, but it allows analysts to use their professional judgment in precisely how the studies should be conducted. The guidance also says that agencies should focus on incremental changes—i.e., the costs and benefits that are solely attributable to the regulation at issue.

Congress has also taken steps intended to reduce regulatory burden through oversight and increased analytical requirements. For example, Congress passed the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612), which requires federal agencies to analyze the anticipated effects of rules they plan to propose on small entities or they certify that the rules will not have a "significant economic effect on a substantial number of small entities." Also in 1980, Congress passed the Paperwork Reduction Act, which created OIRA within OMB to provide central agency leadership and oversight of governmentwide efforts to reduce unnecessary paperwork burden and improve the management of information resources. The act also made the OIRA Administrator subject to Senate confirmation.

More recently, title II of the Unfunded Mandates Reform Act of 1995 (UMRA) says that, unless otherwise prohibited by law, agencies must assess the costs and benefits of any rule containing a federal mandate that may result in the expenditure of $100 million or more in any 1 year by state, local, and tribal governments, in the aggregate, or the private sector.[4] Also, the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) require agencies to submit all of their rules to Congress and us before they become effective. On the date of submission, SBREFA also requires the agency issuing the rule to submit to us and make available to each House of Congress a copy of any cost-benefit analysis and the agency's actions relevant to certain provisions of UMRA and other analytical requirements. For "major" rules,[5] we are required to provide a report to the committees of jurisdiction in each House within 15 calendar days, assessing the agency's compliance with required procedural rulemaking steps.

Between 1994 and 1998, Congress considered a number of other bills that would have increased requirements for agencies to conduct cost-benefit analyses, but none of them were enacted. For example, the Regulatory Improvement Act of 1998 (S. 981) would have required agencies to prepare, among other things, a cost-benefit analysis and to place that analysis in the rulemaking file before publishing a notice of proposed rulemaking (NPRM) for any major rule. The bill also would have required agencies to prepare a similar analysis before publishing the final rule. (In

[4]However, our analysis of title II indicated that these requirements do not apply to most economically significant rules. See Unfunded Mandates: Reform Act Has Had Little Effect on Agencies' Rulemaking Actions (GAO/GGD-98-30, Feb. 4, 1998).

[5]The statute defined a "major" rule in essentially the same manner as Executive Order 12291. Copies of our major rule reports can be obtained at www.gao.gov.

March 1999, the Regulatory Improvement Act was reintroduced as S. 746, again requiring cost-benefit analysis of major rules.)

Another bill introduced during the 105th Congress (H.R. 1704, 105th Cong. 2d Sess [1998]) would have established a "Congressional Office of Regulatory Analysis" (CORA). The bill would have required CORA to provide a report to the committees of jurisdiction in each House for each major rule that would include an assessment of the issuing agency's compliance with certain analytical requirements and an analysis of the rule's benefits, costs, and net benefits. According to the bill, CORA would allow the legislative branch to obtain accurate and reliable information on which to base its decisions as it carried out its responsibilities for congressional review under SBREFA. CORA would have also been required to issue an annual report including estimates of total costs and benefits of all existing and anticipated federal regulations. The bill's principal sponsor said CORA was needed to provide Congress with independent analyses of regulations and to supplement what she believed to be unreliable information being provided by executive branch agencies. However, critics of the proposal said it would duplicate functions preformed by agencies in the executive branch.

Congress Requires Regulatory Accounting

One of the more recent regulatory reform initiatives has been a series of requirements for an accounting of regulatory costs and benefits. Section 645(a) of the Treasury, Postal Services and General Government Appropriations Act for fiscal year 1997, enacted on September 30, 1996, required OMB to provide a report to Congress by September 30, 1997, that included several specific elements:

(1) estimates of the total annual costs and benefits of federal regulatory programs, including quantitative and nonquantitative measures of regulatory costs and benefits;

(2) estimates of the costs and benefits (including quantitative and nonquantitative measures) of each rule that is likely to have a gross annual effect on the economy of $100 million or more in increased costs;

(3) an assessment of the direct and indirect impacts of federal rules on the private sector, state and local government, and the federal government; and

(4) recommendations from the Director and a description of significant public comments to reform or eliminate any federal regulatory program

that is inefficient, ineffective, or is not a sound use of the nation's resources.

Section 645(b) of the act directed OMB to obtain comments on the draft report before submitting it to Congress. On July 22, 1997, OMB published the draft report for comment, and on September 30, 1997, OMB issued its first Report to Congress on the Costs and Benefits of Federal Regulation.

On October 10, 1997, OMB was required to produce a second report on the cost and benefits of federal programs by September 30, 1998. The requirement was in section 625(a) of the Treasury and General Government Appropriations Act for fiscal year 1998 and contained the same four requirements that were in section 645(a) of the 1997 act. OMB published a draft of the 1998 report in the Federal Register on August 17, 1998, and established a 30-day comment period. Because of requests from both the public and Members of Congress, OMB extended the comment period until October 16, 1998. On February 5, 1999, OMB published its second regulatory accounting report.

On October 21, 1998, legislation was enacted requiring regulatory accounting for another year. Section 638 of the Treasury and General Government Appropriations Act for fiscal year 1999 requires OMB to provide Congress with a regulatory accounting statement and report for calendar year 2000 that is similar to the previous requirements. The statement and report are to be submitted with the budget and the report is to include "an estimate of the total annual costs and benefits . . . of Federal rules and paperwork, to the extent feasible (A) in the aggregate; (B) by agency and agency program; and (C) by major rule." Section 638 also requires OMB to issue guidelines to agencies standardizing agencies' measures of costs and benefits and the format of their accounting statements. Finally, it requires OMB to provide for independent and external peer review of the guidelines and each accounting statement and associated report.

Views of Individual Members Regarding Regulatory Accounting Requirements

The regulatory accounting provisions that required OMB to provide the 1997 and 1998 reports to Congress have limited legislative histories. A Senate Appropriations Committee report for the Treasury, Postal Service, and General Government Appropriations Act for fiscal year 1997 stated that "[r]egulatory costs and benefits should be quantified to the extent feasible and, where applicable, should be based on most plausible estimates. Most of the needed information is already available to the OMB. Executive Order 12866 requires cost-benefit analysis of significant rules, and private studies are available." These general comments are of limited

value in determining how Congress intended OMB to carry out its responsibilities under the provision or what types of regulations OMB should include in its reviews.

During consideration of the provision that established the first of these regulatory accounting requirements, several Members of Congress expressed their individual views regarding OMB's responsibilities to carry out this provision in comments recorded in the Congressional Record. (See app. I for a more complete discussion of these Members' comments.) Some of the Members indicated that OMB should simply compile existing information about regulatory costs and benefits. For example, during Senate consideration of this provision, one Member said the sponsors of the amendment were aware of OMB's resource constraints and intended that the report be based on a compilation of existing information rather than new analysis.

However, other Members indicated that OMB should not simply rely on existing cost and benefit information. For example, the principal sponsor of the first regulatory accounting provision said "OMB should use the valuable information already available, and supplement it where needed" when preparing the estimates of total annual costs and benefits. Subsequently, during the Senate debate, another Member said "(w)here there are gaps, OMB must supplement existing information." He also said OMB should "quantify costs and benefits to the extent feasible, and provide the most plausible estimate."

Several Members of Congress also commented on OMB's final and draft reports in letters to the OMB Director, expressing their view that OMB should not have simply relied on existing information to carry out its responsibilities. For example, on October 29, 1997, the Chairmen of the Senate Committees on Governmental Affairs and Appropriations said that OMB should "exercise leadership to assure the quality and reliability of information reported" by, among other things, providing an "independent assessment" of the information provided by the agencies. They also said OMB staff should be directed to "critique the quality of the estimates provided to them, not to simply compile data presented by the agencies." On the same day, the Chairmen of the House Committees on Commerce and Transportation and Infrastructure and the Chairman of the House Committee on Government Reform and Oversight's Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs wrote that "Congress expected OMB to assure the reporting of meaningful information and provide an independent assessment of regulatory effects,"

not merely to perform the "ministerial function of reporting information provided by other agencies."

Nongovernmental Groups Also Study Federal Regulatory Programs

A number of organizations outside of the federal government are also examining federal regulatory programs and issues. Some of these organizations have taken public stands for or against federal regulatory activity. Other organizations are affiliated with academic institutions or public policy research organizations. For example, Carnegie Mellon University, with the cooperation of the University of Washington, in Seattle, WA, has established a Center for the Study and Improvement of Regulation housed within its Department of Engineering and Public Policy. According to its mission statement, the Center intends to combine studies to obtain a deeper understanding of particular issues and synthesize research to, among other things, (1) elaborate a framework for considering the risks to health, safety, and the environment; and (2) help improve health, safety, and environmental regulation at the federal, state, and local level. The Center is funded by grants from the National Science Foundation and from several corporations, foundations, and trade associations.

In 1998, the American Enterprise Institute (AEI) and the Brookings Institution established a Joint Center for Regulatory Studies with four primary missions:

- to publish timely, objective analyses of a number of important regulatory proposals before they are formally adopted;
- to publish analyses of existing regulations and approaches to regulatory reform, with recommendations for modifications (including proposals to strengthen rules where the benefits appear to justify the costs as well as proposals to eliminate or relax rules where the reverse may be true);
- to publish essays that evaluate the impact of regulatory policies and suggest ways to improve the regulatory process; and
- to publish an annual report on the state of federal regulation, including an independent assessment of both the total and marginal costs and benefits of federal regulation, broken down into useful categories.

According to the Center's mission statement, both AEI and Brookings "believe that the media and the policy community will look to the Joint Center as an objective, highly respected source of information on regulatory policy issues." The Joint Center is funded solely by foundation grants.

Our Previous Reports on Regulatory Costs/Benefits

We have issued a number of reports examining the costs and benefits of agencies' rules and estimates of total regulatory costs. For example, in April 1984, we said that cost-benefit analysis is a useful tool for estimating the costs and benefits of various regulatory actions.[6] We also said that its role might become increasingly critical because complying with federal environmental regulations could mean billions of dollars in costs and benefits. However, we also said that gaps in underlying scientific data, legal restrictions, and EPA's partial implementation of Executive Order 12291 had hampered cost-benefit analysis.

In December 1993, we reported that none of the studies released by the federal banking agencies and several of the major banking industry trade associations provided a comprehensive discussion of regulatory burden or the cost-benefit trade-offs associated with particular regulations.[7] We also found that estimates of regulatory compliance costs reported in the industry were of little value due to serious methodological deficiencies.

In March 1995, we reported that there was a great deal of uncertainty about the costs and benefits of regulations, with estimates varying, depending on assumptions about what constitutes regulatory cost.[8] For example, we noted that many economists argue that economic "transfers," such as the added cost a consumer pays for goods in the marketplace because of agricultural price supports, should not be included in aggregate cost estimates. We also said that some economists are concerned about including process costs because of measurement concerns and because any change associated with this category may be difficult to achieve (since most of the estimate derives from completing tax forms). Finally, although one researcher estimated that total regulatory costs increased between 1977 and 1994, we noted that the percentage of the gross domestic product devoted to the costs of federal regulations decreased during this period.

In November 1996, we concluded that, although perhaps not impossible, it is very difficult to measure the incremental cost of all federal regulations on individual businesses.[9] Therefore, we said, users of aggregate regulatory

[6]Cost-Benefit Analysis Can Be Useful In Assessing Environmental Regulations, Despite Limitations (GAO/RCED-84-62, Apr. 6, 1984).

[7]Regulatory Burden: Recent Studies, Industry Issues, and Agency Initiatives (GAO/GGD-94-28, Dec. 13, 1993).

[8]Regulatory Reform: Information on Costs, Cost-Effectiveness, and Mandated Deadlines for Regulations (GAO/PEMD-95-18BR, Mar. 8, 1995).

[9]Regulatory Burden: Measurement Challenges and Concerns Raised by Selected Companies (GAO/GGD-97-2, Nov. 18, 1996).

cost studies need to be aware of the inherent difficulties and assumptions involved in producing such measures. We said questions need to be raised and answered regarding which regulations are included in such studies and whether they focus on incremental costs before policy makers use them to make decisions.

In May 1998, we reported that some of the 20 economic analyses that we reviewed did not incorporate the best practices set forth in OMB's guidance and often did not disclose why the guidance was not followed.[10] We also found that only 1 of the 20 analyses received an independent peer review. Nevertheless, agency officials said the cost-benefit analyses played a valuable role in regulatory decisionmaking.

Objectives, Scope, and Methodology

Our objectives in this review were to describe, for each of the four statutory requirements underlying OMB's 1997 and 1998 reports to Congress, (1) how OMB addressed the requirements and (2) the views of noted economists in the field of cost-benefit analysis regarding OMB's responses in these reports. As noted previously, Congress required OMB to submit reports in 1997 and 1998 providing (1) estimates of the total annual costs and benefits of federal regulatory programs; (2) estimates of the costs and benefits of each rule likely to have a gross annual effect on the economy of $100 million in increased costs; (3) an assessment of the direct and indirect effects of federal rules on the private sector, state and local governments, and the federal government; and (4) recommendations to reform or eliminate any federal regulatory program or program element that is "inefficient, ineffective, or is not a sound use of the Nation's resources."

To describe how OMB addressed each of these four requirements, we analyzed the reports' contents and interviewed officials from OIRA. Specifically, to determine how OMB addressed the first statutory requirement, we reviewed chapter II of the 1997 report and chapter I of the 1998 report, focusing on such issues as the data sources and methodology used to prepare the two reports. To determine how OMB addressed the second statutory requirement, we reviewed chapter III of the 1997 report and chapter II of the 1998 draft report as well as relevant tables and appendixes. In both reports, OMB interpreted the statutory requirements to include all final rules on which OIRA concluded its review in the 1-year time periods that OMB specified and that were either (1) "economically significant" under Executive Order 12866, (2) "major" under the

[10]Regulatory Reform: Agencies Could Improve Development, Documentation, and Clarity of Regulatory Economic Analyses (GAO/RCED-98-142, May 26, 1998).

congressional review requirements of SBREFA, or (3) met the threshold under title II of the Unfunded Mandates Reform Act of 1995. To determine whether OMB reported cost/benefit information on all rules that met its own criteria, we compared OMB's list to (1) our database of major rules submitted pursuant to the congressional review provisions of SBREFA and (2) a list of economically significant rules provided by the Regulatory Information Service Center (RISC) for the same time periods.[11] To determine which rules were "likely to have a gross annual effect on the economy of $100,000,000 or more in increased costs," we identified only those rules in either databases that the agencies indicated had an annual estimated cost of $100 million or more (excluding those rules that were either "economically significant" or "major" because they had benefits of $100 million or for other reasons).

To determine how OMB addressed the third requirement, we reviewed chapter II from OMB's 1997 report and chapter I of its 1998 report. In both reports, OMB stated that the direct impacts of the regulations were accounted for in the total annual cost and benefit estimates, so we also reviewed those sections of the reports. To determine how OMB addressed the fourth requirement, we reviewed chapter IV of both the 1997 report and 1998 reports. We also examined the Unified Agenda of Federal Regulatory and Deregulatory Actions to determine when the agency initiatives listed in OMB's 1998 report were first announced.[12]

To describe the views of noted economists in the field of cost-benefit analysis regarding OMB's 1997 and 1998 reports and the four statutory requirements, we first selected the experts with whom we wanted to consult. We made our selections based on how frequently authors were cited in the bibliographies of OMB's 1997 report and its August 1998 draft report and in a computer-generated literature search of books and articles on cost-benefit analysis. Then, based on a suggestion from OMB officials, we noted which authors on this list participated on EPA's Science Advisory Board and in developing the AEI publication, "Benefit-Cost Analysis in Environmental, Health, and Safety Regulation: A Statement of

[11]RISC works closely with OMB to provide information to the President, Congress, and the public about federal regulatory policies. Its primary role is to coordinate the development of the Unified Agenda of Federal Regulatory and Deregulatory Action, a comprehensive listing of proposed and final regulations.

[12]The Unified Agenda is compiled by RISC for OIRA and has been published twice each year since 1983. It is used to satisfy the requirements in the Regulatory Flexibility Act and other requirements that agencies identify rules that they expect to propose or promulgate.

Principles,"[13] and the AEI-Brookings Institution publication "An Agenda for Federal Regulatory Reform."[14]

We developed a preliminary list of 12 experts, based on those who had the most citations in the OMB reports and the literature search, had served on the EPA panel, and/or had helped develop the AEI and Brookings publications. However, five of these experts declined to participate because of time constraints or because they said they did not have expertise in the areas covered by the OMB reports. The remaining seven experts that we interviewed and their affiliations were the following:

- Robert W. Crandall, Senior Fellow, Brookings Institution, Washington, D.C.;
- Robert W. Hahn, Director, AEI-Brookings Joint Center for Regulatory Studies, Washington, D.C.;
- Thomas D. Hopkins, Professor of Economics, Rochester Institute of Technology, Rochester, NY;
- Lester B. Lave, Professor of Economics, Carnegie Mellon University, Pittsburgh, PA;
- Robert E. Litan, Co-Director, AEI-Brookings Joint Center for Regulatory Studies, Washington, D.C.;
- Paul R. Portney, President, Resources for the Future, Washington, D.C.; and
- Murray L. Weidenbaum, Chairman, Center for the Study of American Business, Washington University, St. Louis, MO.

Biographical information of these experts and citations of some of their relevant work are provided in appendix II of this report.

OMB officials reviewed our final list of cost-benefit analysis experts and had no objections to those included. The officials did not suggest additional experts that they believed we should consult and said that the experts we consulted are among the leading economists in the field of cost-benefit analysis research. However, the list of experts that we contacted is not the only such list that could have been developed. At the direction of the requesters, we focused on economists and did not include experts in other professions that have examined cost-benefit issues (e.g., legal experts or statisticians). Also, we focused our literature search on those economists who are knowledgeable about cost-benefit analysis in

[13]Kenneth J. Arrow, et. al., 1996.

[14]Robert W. Crandall, et. al., 1997.

the federal government. Therefore, other experts with an extensive background in cost-benefit analysis were not included in our initial list.

We first obtained the experts' comments in late 1998 on OMB's 1997 report and on OMB's August 1998 draft report and obtained additional information from them after the final 1998 report was published in February 1999. We also consulted with them during the preparation of our report to ensure that we had accurately characterized their views. The views attributed to them are their own and do not necessarily reflect those of the organizations with which they are affiliated or our views.

We conducted our work between June 1998 and March 1999 at OMB in Washington, D.C., and at the sites of our interviews with the cost-benefit experts (Washington, D.C.; Rochester, NY; Pittsburgh, PA; and St. Louis, MO), in accordance with generally accepted government auditing standards. At the end of our review, we sent a draft of this report for comments to the Director of OMB. On April 7, 1999, we met with the Acting Administrator of OIRA to obtain OMB's comments, which are presented in chapter 6, along with our evaluation.

Experts Questioned OMB's 1998 Estimate of Regulatory Benefits

OMB said in both its 1997 and 1998 reports that it had to confront a number of intractable problems in developing estimates of the total annual costs and benefits of federal regulatory programs. Those problems included (1) determining the baseline against which regulatory costs and benefits should be measured (i.e., what costs and benefits would have occurred if the regulations had not been issued) and (2) the "apples and oranges" problem of adding together the diverse (and sometimes dated) set of previously conducted regulatory studies. OMB qualified the estimates in both reports by stating that "it remains difficult, if not impossible, to estimate the actual total costs and benefits of all existing Federal regulations with any degree of precision."

In its 1997 report, OMB estimated federal regulatory costs at $279 billion, and benefits at $298 billion. In its 1998 report, OMB estimated regulatory costs at between $170 billion and $230 billion, and estimated regulatory benefits at between $260 billion and $3.5 trillion. The increase in the benefits estimate between 1997 and 1998 was almost entirely due to the inclusion of an EPA estimate of the benefits associated with the Clean Air Act. The decrease in the cost estimate was primarily because OMB did not include efficiency losses from economic regulations in its 1998 summary table.[1] The experts we consulted generally said that OMB's 1997 and 1998 cost estimates were reasonable but said the upper-bound benefits estimate in the 1998 report was questionable or implausible. All of the experts criticized OMB for accepting agencies' cost and benefit estimates without adjustment or standardization and were particularly critical of OMB's use of EPA's benefit estimate. However, most of the experts also said that OMB faced "political constraints" in adjusting agencies' cost and benefits estimates, noting that an independent assessment of those estimates would require OMB to criticize its own administration's policy positions.

OMB's 1998 Upper-Bound Benefits Estimate Was 12 Times the 1997 Estimate

OMB used similar but, somewhat different, data sources and methods of presentation in its 1997 and 1998 reports. The 1997 report presented the cost and benefit estimates in four categories, but in its 1998 report OMB used somewhat different categories of regulation. In the 1997 report, OMB included costs associated with paperwork and disclosure requirements, whereas in the 1998 report that information was reported separately without an estimate. However, the biggest difference between the reports was OMB's use of an EPA study on the costs and benefits of the Clean Air Act, which increased OMB's upper-bound benefit estimate in its 1998 report to 12 times what it had been in the 1997 report.

[1]OMB said efficiency losses associated with economic regulations result from higher prices and inefficient operations that often occur when competition is prevented from developing.

OMB's 1997 Report

In its 1997 report, OMB presented its estimates of federal regulatory costs and benefits in four categories and in total.[2] The four categories were:

- Environmental regulations that focus on improving the quality of the environment and include those issued by EPA (which has issued the vast majority of these regulations) and the Departments of Transportation, Energy, and the Interior;
- Other Social regulations that are designed to advance the health and safety of consumers and workers, promote social goals such as equal opportunity, equal access to facilities, and protect the public from fraud and deception. They also include the disclosure of information about a product, service or manufacturing process where inadequate information might place consumers or workers at a disadvantage;
- Economic regulations that directly restrict business' pricing and output decisions as well as limit the entry or exit of businesses into or out of certain types of industries. These regulations often affect the agriculture, trucking or communications industries; and
- Process regulations that involve paperwork, such as filling out income tax forms and immigration papers.

In its table summarizing the cost and benefits estimates, OMB did not include estimates for one other category of regulation—the "transfer" costs and benefits of economic regulations. Transfers refer to regulations that move payments from one group in society to another, (e.g., federal Social Security payments and agricultural price supports). OMB estimated those transfers at $140 billion in costs and benefits but said it did not include these estimates in its totals because it considered transfers to be payments that reflect a redistribution of wealth rather than social costs to society as a whole.[3]

OMB used a variety of academic and agency studies to develop estimates of the costs and benefits associated with the four regulatory categories included in the 1997 report. Those sources were

- a 1991 article by Robert W. Hahn and John A. Hird that reviewed and synthesized the work of more than 25 prior studies assessing the impact of

[2]These categories had been previously used in a series of studies of federal regulatory costs by Thomas D. Hopkins of the Rochester Institute of Technology. For the most recent of these studies, see Thomas D. Hopkins, "Regulatory Costs in Profile," Policy Sciences, 31 (Dec. 1998), pp. 301-320).

[3]OMB noted that its 1996 "best practices" guidance states that transfers should not be added to the cost and benefit totals included in cost-benefit analyses but should be discussed and noted for policymakers.

regulations. [4] The authors refined the results of these studies and created their own estimates of the costs and benefits of regulation. OMB said its review of the literature indicated that this was the only comprehensive study that attempted to estimate the total costs and benefits of all federal regulations. However, OMB pointed out in its 1998 report (p. 14) that there are gaps and weaknesses in underlying studies that Hahn and Hird rely on for their estimates and that not all the costs and benefits of social regulation are captured in these estimates;

- a 1990 EPA report (known as the Cost of Clean report) responding to requirements in section 312(a) of the Clean Air Act and section 516(b) of the Clean Water Act that presented data on environmental pollution control costs between 1972 and 1987.[5] The data used in this report were based primarily on surveys of actual spending conducted by the Department of Commerce and others;
- agencies' cost-benefit analyses (1987 through 1996) prepared pursuant to Executive Orders 12291 and 12866;
- a 1996 study by Hahn estimating the cost and benefits of major environmental, health, and safety regulations from 1990 through mid-1995;[6] and
- a 1992 study of the costs associated with economic regulations, prepared by Thomas D. Hopkins.[7]

To develop its cost estimates, OMB first established an estimate of the cost of environmental regulations and other social regulations, as of 1988 based on information contained in the Cost of Clean report and the 1991 Hahn and Hird article, respectively. OMB then updated those figures with the results of agencies' cost-benefit analysis conducted between 1987 and 1996 to develop the total environmental and other social cost and benefit estimates. To develop the cost estimate for economic regulations, OMB used the results of Hopkins' 1992 study ($81 billion) but reduced the Hopkins estimate by $10 billion to take into account the deregulation of financial services and telecommunications that occurred after Hopkins'

[4] Robert W. Hahn and John A. Hird , "The Costs and Benefits of Regulations: Review and Synthesis," Yale Journal on Regulation, 8 (Winter 1991), pp. 233-278.

[5] "Environmental Investments: The Cost of a Clean Environment, Report of the Administrator of the Environmental Protection Agency to the Congress of the United States." (1990).

[6] "Regulatory Reform: What Do the Government's Numbers Tell Us?" in Risks, Costs, and Lives Saved: Getting Better Results From Regulation (Washington, D.C.: The AEI Press, 1996, pp. 208-253).

[7] "Cost of Regulation: Filling the Gaps," Report Prepared for the Regulatory Information Service Center, Washington, D.C., (Aug. 1992).

estimate.[8] OMB's estimate for the cost of federal paperwork and disclosure requirements focused only on those costs imposed by independent regulatory agencies because it said the costs associated with other agencies' paperwork was already included in the environmental and other social estimates. Estimates of the independent agencies' paperwork costs were drawn from their burden-hour estimates (390 million hours at the end of fiscal year 1997) multiplied by an estimate of the cost per hour to complete the paperwork ($26.50 per hour).[9]

To estimate the benefits of environmental and other social regulations in the 1997 report, OMB used data from the 1991 Hahn and Hird article as the 1988 baseline and updated that baseline with information from Hahn's 1996 article. OMB did not provide estimates of the benefits of economic regulations or of federal paperwork and disclosure requirements, saying "significant benefits remain to be quantified."

Table 2.1 presents the cost and benefit estimates that OMB presented in its 1997 report in total and for each of the four categories of regulation. OMB noted that "other social" regulations have large net benefits (i.e., benefits minus costs) and said most of these net benefits were produced by highway safety regulations.

Table 2.1: Cost and Benefit Estimates From OMB's 1997 Report (in 1996 dollars)

Type of Rule	Costs (billions of dollars)	Benefits (billions of dollars)
Environmental	$144	$162
Other social	54	136
Economic (efficiency costs)	71	[a]
Paperwork/disclosure for independent regulatory agencies	10	[a]
Total	279	298

[a]OMB said that the benefits of economic and paperwork/disclosure "remain to be quantified."

Source: Report to Congress on the Costs and Benefits of Federal Regulations, OMB, 1997.

As noted previously, OMB did not include $140 billion in estimated transfer costs and benefits in these totals. OMB also excluded (1) tax paperwork costs (also estimated at $140 billion) because, OMB said, "the burden of filling out income tax forms . . . are not what one usually thinks about when worrying about the cost of regulation;" and it excluded (2) the costs of regulations issued between 1987 and 1996 with impacts on the economy

[8]Hopkins, in turn, had updated an estimate of the cost of economic regulations in Hahn and Hird's 1991 article.

[9]Burden-hour estimates were presented in OMB's Fiscal Year 1998 Information Collection Budget of the U. S. Government.

of less than $100 million (and therefore were not covered by the executive order's cost-benefit analysis requirements).

OMB's 1998 Report

OMB presented regulatory cost and benefit information somewhat differently in its 1998 report, and also used some additional data that it had not used in preparing the 1997 report. For example, OMB broke out the costs and benefits of the "other social" category of regulations into three separate categories for the 1998 report: labor, transportation, and other social regulations (mainly regulations from the Departments of Health and Human Services, Energy, and Agriculture). However, OMB dropped two categories of regulations from its summary table in 1998 that it had used in its 1997 report—economic regulations and paperwork/disclosure requirements. OMB said that including the indirect costs of economic regulations with the direct costs of social regulations in its 1997 report was "more misleading than helpful." OMB listed estimates of disclosure costs ($7 billion) and benefits ("expected to be significant") with other types of regulations that it did not consider "true regulations" or did not believe should be considered in the same category as social regulations.

Therefore, OMB presented cost and benefit information for four categories of regulations in its summary table: environmental, labor, transportation, and other social rules. OMB reported other types of regulatory costs and benefits separately, including

- efficiency costs of economic regulations (estimated at $71 billion but benefits "not estimated but expected to be small");
- tax compliance costs (estimated at $140 billion in the August 1998 draft report but not estimated in the final report);
- transfer costs and benefits (estimated at $140 billion in costs and benefits); and
- federal expenditures for social regulations (estimated costs of $13 billion, benefits of between $30 billion and $3.3 trillion) and economic regulations (estimated costs of $3 billion, benefits "likely to be significant").

The data and methodology that OMB used to develop its 1998 estimates in these categories were similar in some respects to the way OMB prepared the 1997 report. For example, OMB again used Hahn and Hird's 1991 study and the EPA Cost of Clean report to establish a 1988 baseline for the cost estimate. However, OMB changed its methodology in some other ways. For example, it used new estimates of the regulations that OMB reviewed between 1995 and 1998 to update the baseline and presented the cost and benefit information in terms of ranges rather than the point estimates used in the 1997 report. OMB developed the new estimates by "monetizing" (i.e.,

converting to dollars) some of the quantified benefits in the agencies' cost-benefit analyses (e.g., the number of lives expected to be saved as a result of the regulations).

EPA's Section 812 Report

A notable change in OMB's methodology in the 1998 regulatory accounting report was its use of data from EPA's 1997 report on The Benefits and Costs of the Clean Air Act, 1970 to 1990. Prepared because of requirements in section 812 of the 1990 Clean Air Act Amendments, the EPA report (hereinafter referred to as the "Section 812 report") estimated that the monetized benefits of the Clean Air Act from 1970 to 1990 were between $6 trillion and $50 trillion (present value in 1990 dollars). The report estimated direct compliance expenditures, research and development costs, and government costs were roughly $0.5 trillion during this period.

OMB noted that EPA's Section 812 report was the result of a 6-year effort and was peer reviewed by EPA's Science Advisory Board's Council on Clean Air Act Compliance Analysis and that the Council said that the report's findings "are consistent with the weight of available evidence." OMB also noted that the Council's review closure letter stated that the report "is a serious, careful study and employs sound methods along with the best data available. However, OMB also described several elements of the analysis that it said "deserve further discussion in order to understand the basis for the benefit estimates." For example,

- OMB noted that the Section 812 report "assumed that no additional air pollution controls would have been imposed by any other level of government or voluntarily initiated by private entities after 1970. OMB said that "considerable uncertainty" surrounds this assumption and that any attempt to construct aggregate benefit and cost estimates are "somewhat speculative;"[10]
- OMB also noted that although the monetized benefit estimates associated with reducing exposure to fine particulate matter accounts for 90 percent of the report's total benefits estimate, there is "little discussion" in the report about the uncertainty associated with the presumed causal relationship between particulate matter levels and mortality; and
- OMB noted that the Section 812 report assumed that reductions in particulate matter yields contemporaneous reductions in the mortality and chronic health risks associated with long-term exposure. However, OMB noted that it is "quite possible" that there is a lag in these health effects and

[10]OMB noted that the Section 812 report acknowledge that this is an obvious oversimplification and that state and local governments and the private sector were responsible for an important fraction of the estimated benefits and costs between 1970 and 1990.

mortality, and that other researchers have assumed that these effects require 15 years of exposure. Applying a 15-year lag to the report's calculations and a 5-percent discount rate would, OMB said, reduce the estimated present value of the report's mortality benefits by a factor of two.

In summary, OMB said the results of the Section 812 report, like other studies, appeared to be "sensitive to choices made concerning the baseline for the analysis and the translation of the reduction of air pollution into human health benefits." OMB also noted in a footnote that "several agencies held different views pertaining to several key assumptions" in the study, but that these concerns were not resolved because of a court deadline. Therefore, OMB said the Section 812 report "reflects the findings of EPA and not necessarily other agencies in the Administration."

Table 2.2 presents the cost and benefit estimates from OMB's 1998 report. The ranges in OMB's estimates of total regulatory costs and benefits reflect substantial uncertainty regarding the estimates of environmental costs and benefits. Over 95 percent (or $3,200 billion) of the environmental category's upper-bound benefit estimate was drawn from EPA's Section 812 report.

Table 2.2: Cost and Benefit Estimates From OMB's 1998 Report

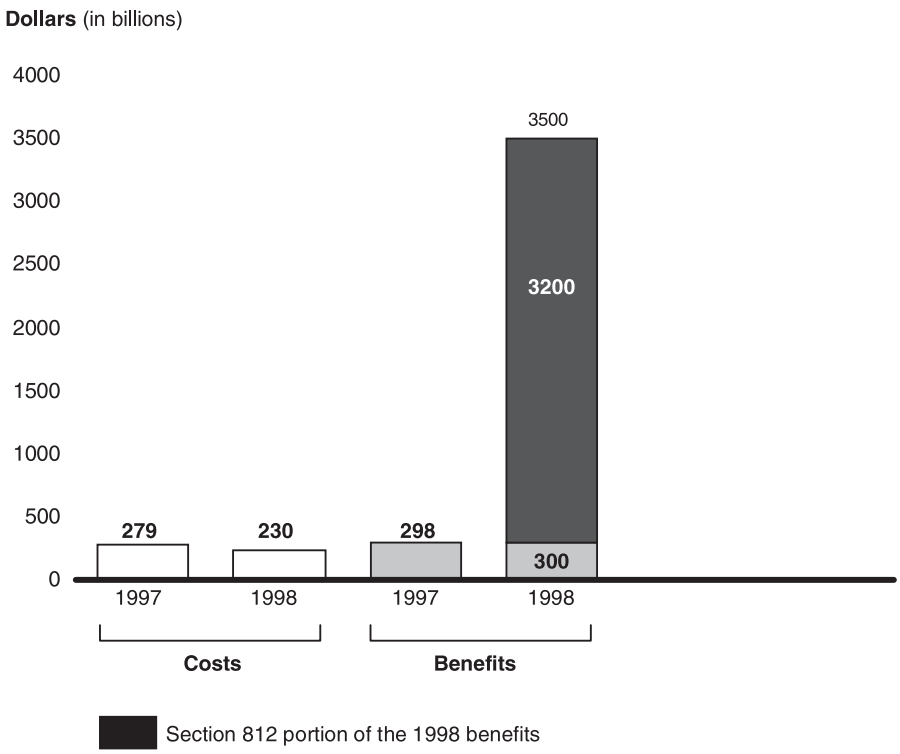
Type of Regulation	Costs (in billions)		Benefits (in billions)	
	Lower-bound	Upper-bound	Lower-bound	Upper-bound
Environmental	$120	$170	$93	$3,300
Transportation	15	18	84	110
Labor	18	19	28	30
Other	17	22	53	58
Total	170	230	260	3,500

Note: Numbers are as reported in OMB's report.

Source: Report to Congress on the Costs and Benefits of Federal Regulations, OMB, 1998.

OMB' s estimate of the cost of federal regulations declined by between $49 billion and $109 billion between its 1997 and 1998 reports. This decline was largely because OMB excluded $71 billion in costs associated with economic regulations that had been in the 1997 summary table and presented it in a separate table in the 1998 report. As figure 2.1 shows, OMB's upper-bound benefit estimate increased by about $3.2 trillion between 1997 and 1998, virtually all of which was because of the inclusion of estimates from EPA's Section 812 report.

Figure 2.1: EPA's Section 812 Data Substantially Increased Upper-Bound Benefit Estimate Between 1997 and 1998



Source: Report to Congress On the Costs and Benefits of Federal Regulations,OMB, 1997 and 1998.

Experts Said OMB Should Have Done More, but Political Environment Limits OMB's Role

According to most of the cost-benefit analysis experts that we consulted, OMB should have done more than simply record the costs and benefits from the various sources it consulted. Most of the experts expressed particular concern about OMB's unadjusted use of the Section 812 report's benefit estimate. However, the experts also said that OMB faced political constraints in adjusting agencies' estimates. Most of the experts agreed with OMB's decision to report the costs and benefits of transfers and tax paperwork separately from the summary tables but differed as to whether economic benefits and federal expenditures should have been included in the totals.

Experts Said OMB Should Not Be "Clerk," but Doing More Is Politically Difficult

The experts that we consulted all indicated that OMB faced a daunting task estimating the costs and benefits of all federal regulation. Most of the experts said that OMB's general approach of aggregating the results from diverse studies was the only real option available. For example, Hopkins

said that although one would ideally like to have consistency in the studies aggregated, he also said he did not think that consistency was obtainable. However, Crandall said using different studies to derive a total figure is "problematic," and that the data in some of the studies forming the basis of OMB's estimates was "pretty thin" and unreplicated. Lave expressed similar concerns, saying that OMB should have used studies with uniform approaches.

Several of the experts said that OMB's cost estimates were reasonable—in Litan's words, "in the ballpark." However, most of the experts said that OMB's upper-bound benefits estimate in the 1998 report was questionable or even "implausible." Lave said the major increase in the benefits estimate between the 1997 and 1998 reports "is an indication that these numbers are not very good." Weidenbaum said that when the benefits of regulations are so large in comparison to the costs, "it stretches that credibility of the report."

Noting that the 1998 benefits estimate was driven, in large part, by the inclusion of data from EPA's Section 812 report, many of the experts voiced specific concerns about that report's assumptions and conclusions. Virtually all of those concerns were similar to the concerns that OMB discussed in its report—(1) the assumption that air quality would have deteriorated significantly between 1970 and 1990 in the absence of the Clean Air Act, (2) the assumed health effects from limiting exposure to particulate matter, and (3) the methods used to estimate the value that individuals would place on reducing health and mortality risks. Therefore, all of the experts said they believed that the benefits estimate in the Section 812 report (and therefore in the OMB report for 1998) was too high. For example, Portney said that although he believed that the benefits of the Clean Air Act are greatly in excess of its costs, EPA's (and OMB's) assertion that those benefits are as much as one-sixth of the gross domestic product "doesn't pass the common sense test." Weidenbaum said OMB's use of the Section 812 report's upper-bound benefits estimate "makes a mockery of the whole exercise."

Because of these concerns about the accuracy of the benefits estimate, most of the experts said they believed that OMB should have adjusted the Section 812 report's benefits estimates before including them in its report. For example, Hahn said that OMB could have followed the procedure it outlined in its report and accounted for the likely time lag between reducing particulate matter and any health effects (which he said would have reduced the benefits by a factor of two).

The experts' views regarding adjustment of the Section 812 report's benefits estimate were part of an overall view by most of the experts that OMB should have played a more assertive and independent role in the preparation of its aggregate benefit and cost estimate. Several of the experts said that OMB had simply played the role of "clerk," transcribing the estimates from previous studies by academicians and agencies without adjustment. For example, Weidenbaum said that agencies would naturally emphasize the good that their regulations are doing and that OMB should have done a "serious evaluation" of the agencies' figures before including them in its report. He said the "spirit" of the statutory requirement was for OMB to come up with its own estimates of regulatory costs and benefits and the absence of independent review of the benefit estimate of the Clean Air Act by OMB "puts a cloud over the report." Similarly, Litan said he believed the intent of the statutory requirements was for OMB to be more than a "clerk," and that Congress was asking for OMB's "own judgment" regarding regulatory costs and benefits. Hopkins said OMB should encourage agencies to provide independent assessments, and make adjustments where needed to account for "overblown" estimates. Lave said OMB should have monetized those benefits and costs that the agencies did not monetize (e.g., when agencies provided quantified, but not monetized, estimates of lives saved).[11]

Despite their view that OMB be more than a "clerk" and exercise independent judgment in adjusting agencies' cost and benefit estimates, many of the experts also indicated that it was politically difficult if not impossible for OMB to make such adjustments. In general, they indicated that agencies' regulations are ultimately approved by agency heads and, in some cases, the President or the Vice President. OMB's responsibility in the rule-review process is to ensure that agencies' regulations are consistent with applicable law, the President's priorities, and the principles in Executive Order 12866, including the cost-benefit analysis requirements. Although there may be great deliberation within and among agencies during their development, once a rule is promulgated it becomes a public statement of the administration's policy. At that point, OMB's responsibility is to support and defend that statement of policy. Therefore, requiring OMB to provide an "independent" view of those rules and their associated estimates of costs and benefits, altering those estimates when appropriate, would significantly change OMB's current role of supporting the administration's position and initiatives. In general, the experts said that it was politically difficult to ask OMB to criticize the administration of which it is a part.

[11] As noted previously, OMB did monetize some of the agencies' quantified estimates.

Hahn said that he did not believe the report reflects the collective wisdom that resides at OMB on these issues. Although OMB staff had the technical expertise needed to develop its own "best estimate" of the effects of the Clean Air Act, he said it would be politically very difficult to publish such an estimate. Hahn also said that it would be more likely for OMB staff to say what they think if there were competition from some other group that would also examine agencies' cost and benefit estimates.

Litan said adjustment of the Section 812 report's benefit estimate was a "dicey issue," and that OMB was in "an inherently difficult position" on whether to use EPA's widely varying estimate. He said the reality of the situation is that the President and the Vice President are ultimately responsible for anything that comes from an executive branch agency and that "OMB will always be politically constrained in this process." Crandall said that OMB "responds within a political environment," and was not in a position to make an independent judgment contrary to that of EPA. Likewise, Hopkins said it was politically difficult for OMB to adjust the cost-benefit estimates "if OMB is supposed to be representing a President, a unified administration, a common party line." He said this is true regardless of which party occupies the White House.

Experts Differed Regarding Inclusion of Certain Costs and Benefits in Summary Tables

All but one of the experts we consulted believed that OMB's exclusion of transfer costs and benefits from the summary tables was appropriate. For example, Portney said that transfers should be presented separately because they are not a social cost like environmental, health, and safety regulations. Hahn said such transfers should not be included in regulatory cost or benefit totals but said estimating the size of such transfers can be useful for other reasons.[12] Hopkins said that although basic economic logic says efficiency and transfer costs should not be mixed, he believes OMB should have included transfer costs in the totals to illustrate the magnitude of federal regulatory activity.

The experts also generally agreed with OMB that tax paperwork should not be included in the summary tables. Portney said including such costs would have been inappropriate and said he does not think of IRS as a regulatory agency. Weidenbaum said he believes that tax paperwork should be reported separately because the taxing power of the federal government is separate from its power as a regulator. Hahn said such costs should not be included because one cannot talk about the costs of the

[12]See Robert W. Hahn, "Government Analysis of the Benefits and Costs of Regulation," Journal of Economic Perspectives, 12 (Fall 1998), pp. 201-210 for a complete discussion of Hahn's views on this issue.

current tax system without knowing the alternative to that system. However, Hopkins said the costs of tax paperwork should have been included in OMB's report. He indicated that the alternate to the current tax system could be a flat tax system and that OMB claimed in an earlier report that "[w]hen people speak of regulatory burden, they are usually referring to record keeping or reporting requirements—i.e., paperwork."[13]

The experts were divided about whether the costs and benefits of economic regulations should have been included in the OMB report's total cost and benefit estimates. Crandall said it does not make sense to include economic regulations with the total. Similarly, Lave said that these regulations differ from the social regulation should be reported separately. However, Hopkins and Litan said economic regulations should be included. Litan said that if economic regulations constitute a "deadweight efficiency loss, then it is a cost." He said it is particularly important that they be included "when we know the benefits are likely to be zero." Hahn said that estimating the costs and benefits of economic regulations was useful, but whether they are combined with social regulations "depends on what you want to do." Although price and entry regulations are generally considered different from social regulations, he said there is "no right or wrong way to go." Still others cited difficulties associated with these rules. For example, Portney said that it is difficult to measure the effect of regulations that affect the entrance to a market or, in the case of FCC regulation, to measure the benefits of public airwaves. Crandall said it was difficult for OMB to include these effects in its reports when agencies are not conducting the analyses.

With regard to federal regulatory expenditures, both Lave and Crandall said the amount involved is so small in comparison to other regulatory costs and benefits that it doesn't make much difference whether the costs are included in OMB's summary totals. However, Weidenbaum and Litan said federal expenditures should be included as regulatory costs. Weidenbaum said such costs are the "hardest" data available—straight out of the federal budget. However, he said OMB's presentation of the benefits of these expenditures (up to $3.3 trillion) was already captured in the other categories, so presenting them as OMB did could be double counting. Hopkins, however, said it makes more sense to show federal expenditures as part of the fiscal budget, not in an accounting of off-budget regulatory costs.

[13]OMB, OIRA, More Benefits Fewer Burdens: Creating A Regulatory System that Works for the American People, Dec. 1996, p. 28.

OMB Did Not Provide Cost-Benefit Estimates for All $100 Million Rules

The second statutory requirement was that OMB provide estimates of the costs and benefits of each rule likely to have a gross annual effect on the economy of $100 million or more in increased costs. OMB interpreted the requirement broadly to include rules that were "major" or "economically significant" even if they did not necessarily have $100 million in increased costs. However, OMB narrowly focused on rules issued during specific 1-year periods and did not provide cost or benefit data for rules issued by independent regulatory agencies. Also, OMB did not include all rules that met its criteria and did not provide cost-benefit data for all of the rules it included. Most of the cost-benefit experts that we consulted said OMB should have included rules from independent regulatory agencies and several said OMB should not have simply accepted the cost and benefit estimates provided by the executive agencies. Nevertheless, several of the experts also noted that it was politically difficult for OMB to alter agencies' estimates in its report to Congress.

OMB Provided Data for Only Certain Rules in Both Reports

The statutory provisions mandating both the 1997 and 1998 reports required OMB to provide "estimates of the costs and benefits (including quantitative and non-quantitative measures) of each rule that is likely to have a gross annual effect on the economy of $100,000,000 or more in increased costs." The requirements did not exempt rules issued by independent regulatory agencies or only apply to rules issued within a specific time frame. However, the requirements only applied to rules with expected regulatory effects of $100 million or more in increased costs.

In the 1997 and 1998 reports, OMB interpreted these statutory requirements to include all final rules promulgated by executive departments and agencies and reviewed by OIRA under Executive Order 12866 during 1-year time frames that met any of the following criteria:

- Rules designated as economically significant under Executive Order 12866;
- Rules designated as major under the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (SBREFA)1; or
- Rules designated as meeting the threshold under title II of the Unfunded Mandates Reform Act of 1995 (UMRA).[2]

[1]The congressional review provisions of SBREFA define a major rule as one that the Administrator of OIRA finds has resulted in or is likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.

For the 1997 report, the 1-year time frame was between April 1, 1996, and March 31, 1997; for the 1998, report the time frame was between April 1, 1997, and March 31, 1998. OMB did not include any rules issued by independent regulatory agencies because those agencies' rules are not reviewed by OIRA pursuant to Executive Order 12866. Neither did OMB include any rules that were issued outside of the specific 1-year time frames it established. Therefore, in these respects, OMB's criteria were narrower than those set forth in the statute. In other respects, OMB's criteria were broader than the statute's requirements because they included rules that were economically significant or major for reasons other than requiring $100 million in increased costs. For example, a rule may be economically significant or major because it has $100 million in benefits to the economy or because it adversely affects in a material way a sector of the economy, productivity, competition, jobs, or state and local governments, not because it requires $100 million in increased costs.

OMB's 1997 Report

In its 1997 report, OMB identified 41 rules that met its criteria, of which it said 21 were social rules and 20 were transfer rules. The Department of Agriculture (USDA) issued the largest number of these rules (12), followed by the Department of Health and Human Services (HHS) (8), and the Environmental Protection Agency (EPA) (7). OMB reported the cost and benefits data that the issuing agencies included in the 21 social rules but did not provide any cost or benefit information for the 20 transfer rules. OMB said it did so because these transfers represent payments from one group to another that redistribute wealth and are not social costs. Although OMB recognized that these rules may have some associated costs and benefits, it said estimates of those costs and benefits are typically not available.

OMB noted in the report that there was "a wide variety in the type, form, and format of the data generated and used by the agencies" in their cost-benefit analyses for the social rules. For example, some of the analyses contained monetized cost and benefit estimates, some contained quantified but not monetized estimates (e.g., the number of deaths or injuries expected to be avoided or tons of a particular pollutant expected to be eliminated), and some contained qualitative estimates (e.g., increased efficiency or improved product quality). OMB said most of the analyses contained a combination of these estimates. OMB also said that agencies used a variety of reporting formats within these categories, including

[2]The threshold under title II is for any proposed rule or any final rule for which a proposed rule was published that included any federal mandate that may result in the expenditure of $100 million or more in any one year by state, local, and tribal governments, in the aggregate, or the private sector.

annualized values, present values, and constant annual values.[3] To present the information in a more consistent way, OMB made some basic adjustments to the agencies' data. However, OMB did not adjust the underlying information in the agencies' estimates and did not impose uniform assumptions across the agencies.

As noted previously, OMB did not include any rules in its report that had been issued by independent regulatory agencies. OMB said it did not believe the exclusion of independent agencies' rules was significant because "we believe that few of their individual regulations meet the statutory criteria of section 645(a)(2)." However, between April 1, 1996, and March 31, 1997, independent regulatory agencies submitted a total of 23 major rules to us pursuant to the congressional review provisions of SBREFA. The FCC issued the largest number of these major rules (13 rules), followed by the SEC (5 rules), and the Federal Energy Regulatory Commission and the Federal Reserve Board (each with 2 rules). Independent regulatory agencies are not covered by the cost-benefit requirements in Executive Order 12866, and the agencies did not conduct cost-benefit analyses for 20 of these 23 rules. However, in one SEC rule, the agency estimated that the rule would have nearly $160 million in benefits.

To determine whether OMB had identified all of the rules that met its criteria, we obtained a list from the Regulatory Information Service Center of economically significant final rules on which OMB had completed its review between April 1, 1996, and March 31, 1997. We also developed a list of final major rules that agencies submitted to us pursuant to our review responsibilities under SBREFA that OMB reviewed during this period. We did not attempt to identify rules that met the UMRA threshold because those rules are a subset of economically significant rules.[4] We identified nine rules that met OMB's criteria but were not in OMB's 1997 report—five social rules and four transfer rules. Those nine rules are listed in table 3.1.

[3]According to OMB, "annualized values" spread out variable effects into yearly sums that are financially equivalent to the actual temporal schedule. "Present values" convert effects over time into an immediate lump sum. "Constant annual values" reflect effects that have been estimated (or are assumed) to be fixed each year over the time horizon in which the regulation applies.

[4]See Unfunded Mandates: Reform Act Has Had Little Effect on Agencies' Rulemaking Actions (GAO/GGD-98-30, Feb. 4, 1998).

Table 3.3.1: Rules That Met OMB's Criteria but Were Not in OMB's 1997 Report

Type of rule	Department or Agency	Rule
Social rules	Department of the Interior	Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds
		Migratory Bird Hunting; Final Rule on the Establishment of a Youth Waterfowl Hunting Day for the 1996-1997 Migratory Bird Hunting Season
		Migratory Bird Hunting; Seasons and Bag Limits for the 1996-1997 Youth Waterfowl Hunting Day
		Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1996-97 Late Season
	Environmental Protection Agency	Control of Air Pollution: Final Rule for New Gasoline Spark-Ignition Marine Engines; Exemptions for New Nonroad Compression-Ignition Engines at or Above 37 Kilowatts and New Nonroad Spark-Ignition Engines at or Below 19 Kilowatts
Transfer rules	Department of Agriculture	Food Stamp Program; Child Support Deduction
	Department of Health and Human Services	Medicare Program; Physician Fee Schedule Update for Calendar Year 1997 and Physician Volume Performance Standard Rates of Increase for Federal Fiscal Year 1997
		Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 1997
	Department of Veterans Affairs	Compensation for Disability Resulting From Hospitalization, Treatment, Examination, or Vocational Rehabilitation

Source: OMB's 1997 Report to Congress on the Costs and Benefits of Federal Regulations (OMB, September 30, 1997); Regulatory Reform: Major Rules Submitted for Congressional Review During the First 2 Years (GAO/GGD-98-102R, Apr. 24, 1998); and Economically Significant Rules (RISC).

We then reviewed the agencies' cost and benefit estimates for all 50 of the rules issued during the 1-year period that met OMB's criteria and determined that 20 rules met the specific requirements of the statute—i.e., rules that the agencies believed were likely to have a gross annual effect on the economy of $100 million in increased costs. Ten of these 20 rules were social rules and 10 were transfer rules. (App. IV lists these 20 rules by agency with their cost and benefit estimates.)

OMB's 1998 Report

OMB used essentially the same criteria to identify rules for its 1998 report as it had in its 1997 report—rules on which OMB concluded its review during a 1-year period that were either "economically significant" under Executive Order 12866, "major" under the congressional review provisions of SBREFA, or that met the threshold under title II of UMRA. The 1-year period that OMB focused on in its 1998 report was from April 1, 1997, until March 31, 1998.

As was the case in its 1997 report, OMB did not provide cost or benefit data for rules that were issued by independent regulatory agencies because OMB did not review them under the executive order. However,

OMB included in its 1998 report a discussion of major rules issued by these agencies between April 1, 1996, and March 31, 1998, based on data provided to us under the congressional review provisions of SBREFA. Citing our report on the major rules submitted under SBREFA,[5] OMB noted that independent regulatory agencies submitted 44 major rules to us during this period, 41 of which were issued by 5 agencies (FCC, SEC, the Federal Reserve Board, the Nuclear Regulatory Commission, and the Federal Energy Regulatory Commission).[6] Of these 41 rules, OMB said 12 had some discussion of costs or benefits, 4 had monetized cost information, and 1 had monetized benefit information. Because only one of these rules contain an estimate of costs or benefits exceeding $100 million (an SEC rule allowing electric storage for brokers or dealer reporting, which the industry estimated would reduce costs by $160 million), OMB concluded that our reports on the 41 rules contained "no information useful for estimating the aggregate costs and benefits of regulations." However, OMB relied on the information in our major rules reports; it did not ask these agencies if they had any other information about the costs or benefits of these rules.

OMB identified 33 rules that met its criteria—22 social rules and 11 transfer rules. EPA issued the largest number of the social rules (nine), followed by USDA and HHS (three each). As it did in its 1997 report, OMB reported the cost and benefits data that the issuing agencies included for the 22 social rules but did not report cost or benefit information for the transfer rules.

To determine whether OMB identified all of the rules that met its criteria, we obtained a list of economically significant rules on which OMB concluded its review between April 1, 1997, and March 31, 1998, and developed a list of major rules that OMB reviewed during the same period of time. We identified five rules that met OMB's criteria but were not in OMB's 1998 report—four social rules and one transfer rule. Those rules are shown in table 3.2.

[5]Regulatory Reform: Major Rules Submitted for Congressional Review During the First 2 Years (GAO/GGD-98-102R, Apr. 2, 1998).

[6]Actually, all 44 rules were issued by these 5 agencies.

Table 3.2: Rules Meeting OMB's Criteria But Not Included in the 1998 Report

Type of rule	Department or agency	Rule
Social rules	Department of the Interior	Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands
		Migratory Bird Hunting; Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1997-1998 Early Season
		Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Birds
		Migratory Bird Hunting; Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1997-1998 Late Season
Transfer rules	Department of Agriculture	Child Nutrition and WIC Reauthorization Act Amendments

Source: OMB's 1998 Report to Congress on the Costs and Benefits of Federal Regulation; our 1998 report, Regulatory Reform: Major Rules (GAO/GGD-98-102R, Apr. 24, 1998); and RISC.

We then reviewed the agencies' cost-benefit estimates for all 38 of the rules issued during the 1-year period that met OMB's criteria and determined that 22 rules met the specific requirements of the statute—rules that the agencies estimated were likely to have a gross annual effect on the economy of $100 million in increased costs. Thirteen of these 22 rules were social rules and 9 were transfer rules. (App. V lists these 22 rules by agency with their cost and benefit estimates.)

Experts Suggested Changes in OMB Major Rule Information

Most of the cost-benefit analysis experts that we consulted had few comments about OMB's listings of individual rules in relation to the second statutory objective. They most frequently said that OMB should have included rules issued by independent regulatory agencies in its listings. Several also indicated that OMB should have made adjustments to the agencies' cost-benefit estimates, particularly to provide a consistent monetary estimate of the value associated with the reduction of mortality rates. However, they also recognized political difficulties associated with adjusting agencies' estimates.

Experts Said Include Independent's Rules, Adjust Agencies Estimates

Most of the experts that we consulted indicated that OMB should have included cost and benefit estimates in its reports for the major rules issued by the independent regulatory agencies. For example, Weidenbaum said there was no reason to exclude these agencies' rules, and described their exclusion as a "shortcut." However, several of the experts noted that Executive Order 12866 does not cover these agencies, thereby limiting the information that OMB receives from them and what could be included in OMB's reports. Similarly, Hopkins and Hahn said that if Congress wanted OMB to include independent regulatory agency's rules in its reports,

Congress could require those agencies to produce cost and benefit analyses. Weidenbaum said that despite the limitations in the statutes and the executive order, OMB interacts with independent regulatory agencies through the budget process and through its responsibilities in carrying out the Paperwork Reduction Act. Therefore, he said, OMB could have gone to these agencies and asked them to provide their best estimates of the costs and benefits associated with their major rules.

Similar to their comments on OMB's response to the first statutory requirement, several of the experts that we consulted indicated that OMB should have conducted more independent analysis of the agencies' cost and benefit estimates instead of simply performing as a "clerk" and including the estimates without adjustment. These experts said that OMB should have provided its own analysis and adjusted those estimates that it considered to be in need of refinement. In particular, Hopkins, Lave, Litan, and Weidenbaum said OMB should have monetized some of the data when the agencies did not do so (e.g., converting the number of lives saved into monetized estimates). Weidenbaum said it did not make sense for some agencies to provide monetized estimates of the benefits associated with reductions in mortality while other agencies do not. Hopkins said that if OMB were to make its own critical judgements regarding the agencies' estimates, the agencies would be more likely to provide good estimates in the first place. He said OMB should place its own critical appraisals of agencies' estimates in the public record. As a result, he said, the agencies would improve their estimates because they do not want to be publicly criticized for overstating regulatory benefits.

However, Hahn, Hopkins, and Weidenbaum also noted political and organizational difficulties associated with OMB adjusting agencies' cost or benefit estimates. Hopkins said OMB's "clerical" function in this regard was driven by OMB's organizational placement within the Executive Office of the President and the interplay between the President, OMB leadership, and the political appointees in the executive agencies. He said that OMB could have been more aggressive regarding agencies' cost and benefit estimates if the President wanted an energetic OMB pressing on the agencies. In the absence of such direction, Hopkins said those wanting a critical analysis of agencies' cost or benefit estimates will need to look outside of OMB. Weidenbaum said that OMB is trapped between two roles—one in which it challenges agencies to do better cost-benefit estimates and the other in which it is forced to defend those agencies' estimates after they have been approved. Hahn said that the report does not reflect the collective wisdom that OMB staff has regarding regulatory

costs and benefits, and the problem is "how do you get them to really tell you what they think."

Several of the experts also questioned why OMB limited its presentation of major rules to those it reviewed within selected 1-year periods. For example, Weidenbaum said he did not interpret the statutory requirement to be limited to 1-year's worth of regulations. However, he said OMB may have done so because of data limitations and because including all $100 million rules would have been a "big chore." Hopkins said it was "curious" that OMB established a time frame for these rules despite the absence of any such time limits in the statute. Lave said it would have been better to include more data than for just 1 year, but he added that this issue was "not high on my list of concerns" about OMB's report.

None of the experts expressed concerns about OMB including economically significant and major rules that did not have $100 million in increased costs. Weidenbaum and Hopkins said they preferred the inclusive definition that OMB used because it included a larger set of rules than would have been included by sticking strictly to the statutory language. Lave said he also agreed with OMB's approach.

Overall, Hopkins said it was "astonishing" how little information executive branch agencies had on regulatory costs and benefits despite 17 years of executive orders requiring agencies to provide such information. Crandall said that a "selection bias" might be in operation here, with agencies not conducting cost-benefit analysis or not placing a value on certain elements in the analyses when doing so would demonstrate that the rule would not pass a cost-benefit test. In order to overcome this problem, he said, OMB would need a lot of expertise in each of the regulatory areas—expertise that he doubted OMB possessed.

OMB Did Not Separately Assess Direct and Indirect Impacts of Rules

The third statutory requirement was that OMB provide an assessment of the direct and indirect impacts of federal rules on the private sector, state and local governments, and the federal government. OMB indicated that it believed it had satisfied the "direct" portion of this requirement through the overall cost and benefit estimates that it provided in relation to the first statutory requirement. OMB discussed the difficulty in determining indirect regulatory effects in its first report but did not provide any description of those effects in either report. The cost-benefit analysis experts that we consulted were generally sympathetic toward OMB's treatment of this requirement, describing it as a lower priority than the other requirements and perhaps impossible for anyone to satisfy.

OMB Reports Contained Little Discussion of Third Statutory Requirement

Unlike the first two statutory requirements, OMB did not have a separate chapter of its 1997 report devoted to the third requirement on the direct and indirect costs and benefits of federal rules on the private sector, state and local governments, and the federal government. Instead, OMB included a brief discussion of this requirement within the chapter that addressed the first requirement on total regulatory costs and benefits. OMB indicated that its estimates of the direct costs and benefits of all rules in relation to the first requirement satisfied the portion of the third requirement regarding an assessment of direct impacts. The report then discussed indirect effects by first noting that several studies have found those effects to be significant, and then describing several problems associated with using those studies (e.g., they only examine indirect costs, and it is impossible to validate models or view their assumptions). Overall, OMB emphasized the methodological difficulties associated with determining the indirect effects of federal rules.

OMB had less discussion of the third statutory requirement in its 1998 report. In the introduction to the report, OMB said that the first chapter on the total annual costs and benefits of federal regulatory programs also discusses such factors as economic efficiency losses, federal on-budget regulatory expenditures, and "the possible indirect effects of regulation on the economy as directed by Section 625(a)(3)." For example, in that chapter OMB explained that it did not include the "indirect, mostly consumer surplus, losses of economic regulation" in its summary table because it concluded that those indirect losses may have significantly different long term effects than direct compliance costs. However, other than these types of references, OMB did not specifically discuss the direct or indirect effects of federal regulations on the private sector, state and local government, or the federal government in its 1998 report.

In its response to comments on the first report, OMB acknowledged that its summary of the literature on the direct and indirect effects of regulation on the economy "did raise more questions than it answered," but said that it was a fair summary of the existing knowledge in the area. OMB also noted that Executive Order 12866 calls on agencies to examine and consider the distributional and equity effects of regulations and said that both OMB and the agencies could do a better job in estimating those effects. Responding to comments on the second report, OMB again said that more information about indirect effects is needed and said it planned to do more searching for next year's report.

Experts Were Sympathetic to OMB's Treatment of Requirement

Most of the cost-benefit analysis experts we consulted were generally sympathetic to OMB's admittedly sketchy treatment of this statutory requirement. For example, Litan said that it would be "horrendously difficult" to obtain any other data besides direct compliance costs from the private sector. Although Hahn said this requirement was useful, he said OMB "punted" with regard to the requirement because data on indirect costs by sector are extremely limited, and suggested that this analysis be completed for only a select number of regulations to increase this requirement's usefulness and feasibility. Hopkins said that it would be difficult to be literally responsive to the requirement, but said more work needed to be done in this area. Several of the experts said that this requirement was a low priority and/or should not have been required of OMB. For example, Weidenbaum said he would not have included it in the legislation because the requirement itself "probably would not now pass a cost-benefit test." Portney said OMB's treatment was the best it could do given the time and resources available and said he was not sure how reasonable it was to impose this requirement. Crandall said that OMB's lack of response to this requirement "does not seem to be a bad trade-off given their resources."

However, Lave said OMB's approach to this requirement was "clearly not right," and did not believe that OMB had satisfied this requirement. He said determining the distributional effects (who bears the costs, who receives the benefits) of some types of regulations is very important and noted that studies already conducted on provisions of the Clean Air Act indicated that it is possible to make these types of estimates.

Experts Criticized Lack of New Recommendations in OMB Reports

The fourth statutory requirement was that the OMB Director provide recommendations to reform or eliminate any federal regulatory program or program element that is inefficient, ineffective, or is not a sound use of the nation's resources. The 1997 report contained no such recommendations, but the 1998 report contained an endorsement of 10 previously announced regulatory or statutory changes and a discussion of restructuring the electrical generation industry. All of the cost-benefit experts disagreed with OMB's response to the requirement, and several said sufficient cost-benefit data existed to support making some recommendations. However, several of the experts also said that it was politically difficult for OMB to make recommendations directly to Congress to eliminate or reform existing administration programs.

OMB Provided No New Recommendations

In its 1997 report, OMB concluded that it could not make any recommendations that would meet the statutory requirement. In explanation, OMB said

> "[W]e do not…believe that the existing evidence on aggregate costs and benefits rises to the level that would support a recommendation to eliminate any regulatory program. Virtually all of the evidence . . . is based either on dated studies of existing regulation or on estimates for proposed regulations. These data are not appropriate for determining whether existing regulations should be repealed or significantly modified because of the sunk costs and rising baseline problems discussed above. Before supportable recommendations are made to eliminate existing regulatory programs or elements of programs, empirical evidence based on analytical techniques designed to solve the methodological problems discussed above must be developed."

However, OMB did include in the report a number of recommendations to improve the quality of regulatory data and analysis, including (1) that OIRA lead an effort to improve agencies' regulatory analysis by promoting greater use of its January 1996 "best practices" guidance, (2) that an interagency group conduct a peer review of a selected number of agency regulatory analyses, and (3) that OIRA continue to develop a database on the costs and benefits of major rules.

In its 1998 report, OMB again indicated that data quality problems prevented it from making definitive recommendations on specific regulatory programs. However, OMB said it had identified some general themes during its review of the academic literature and analysis of data on the economic impacts of regulations and noted the general success of large scale procompetitive regulatory reforms. Within that theme, OMB then described the Clinton Administration's legislative recommendation for reform of electricity generation. OMB said this electricity restructuring proposal was an illustration of how regulatory reform can achieve "the

economic benefits of competition in a manner that is fair and improves the environmental performance of the electricity industry."

OMB also said that agencies continue to reform their regulatory programs, which are described in the Regulatory Plan located in the fall edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions. OMB said these initiatives were important to the administration and then listed nine such efforts that it endorsed in its 1998 report. We examined the Unified Agenda and discovered that many of these initiatives had been announced by the agencies years before the issuance of the OMB report. For example,

- the Department of Agriculture's Food Safety and Inspection Service first indicated that it was determining whether to convert some of its "command and control" regulations to performance standards in 1995 and issued an NPRM to convert those regulations to performance standards in May 1996;
- HUD issued an NPRM to provide consumers with increased disclosure concerning mortgage brokers' function and fees, and to provide greater clarity regarding the application of the Real Estate Settlement Procedures Act to mortgage broker fees in September 1995;
- the Department of Transportation began reviews of its side impact protection and heavy truck conspicuity regulations in October 1994 and September 1995, respectively; and
- the Department of Labor's Office of Federal Contract Compliance Programs issued an advance notice of proposed rulemaking in July 1981 to streamline, clarify, and reduce the paperwork burden of the regulations that govern the nondiscrimination and affirmative action obligations of federal contractors, and issued an NPRM in May 1996.

OMB also noted in its 1998 report that the Clinton Administration offered "Remediation Waste Legislative Specifications" in early 1998 to provide changes to the Resource Conservation and Recovery Act land disposal restrictions, minimum technology requirements, and permitting requirements for hazardous remediation waste. Although this appeared to be a new legislative proposal, EPA issued an NPRM related to this issue in May 1992. However, OMB officials told us during this review that the administration determined that EPA could not take this action administratively, so additional statutory authority was needed.

Experts Criticized OMB, but Noted "Constraints"

All the experts that we consulted indicated that OMB's responses to this statutory requirement did not adequately address the requirement. For example, Weidenbaum said he was "amazed" that OMB could not come up with a single program or regulation that it believed needed changing. Similarly, Portney said the lack of any recommendations "strains credulity." Hopkins said OMB's practice of citing the lack of perfect data is "a recipe for complete inaction." He said government always has incomplete and uneven data but that does not stop it from preparing fiscal budgets or implementing the tax laws.

Several of the experts specifically said that they did not believe OMB's endorsement of agencies' previously announced regulatory reform initiatives in its 1998 report addressed the statutory requirement. For example, Weidenbaum said that it was difficult to see how initiatives put forward by the agencies can be seen as recommendations from the OMB Director. Because these initiatives had already been proposed by the agencies, he said they should not be considered recommendations. Hahn said OMB needs to use its own expertise and institutional knowledge to help reform regulations, not simply rely on agencies for initiatives.

Some experts were also critical of the report's discussion of electricity restructuring in the 1998 report. For example, Hopkins said this discussion was "ridiculous," and found it interesting that OMB would include this proposal regarding an issue over which it has very little influence or data after asserting that it could not make recommendations with regard to issues that it can exert influence and has at least some data.

Several of the experts also said that enough cost-benefit data existed to support the reform or elimination of particular regulations or regulatory programs. For example, Hahn pointed to one of his recent articles in which he suggested a number of laws and regulations that could be eliminated, including certain international trade restrictions, USDA milk, average fuel economy standards, marketing orders, and the Davis-Bacon Act.[1] Weidenbaum suggested reform of agricultural marketing orders and the Maritime Commission. Portney said current regulations on coal-fired power plants should be replaced with performance standards. Portney noted that some regulations are in place in which the costs exceed the benefits because of statutory requirements that only Congress can change.

[1]Robert W. Hahn, "Government Analysis of the Benefits and Costs of Regulation," Journal of Economic Perspectives , 12 (Fall 1998), pp. 201-210.

Although most of the experts were critical of the lack of recommendations in OMB's reports, several of them also indicated that OMB may be unable to make recommendations for the reform or elimination of existing regulatory programs because of the previously discussed "political constraints." For example, Lave said he believed that OMB staff would have relished making recommendations to reform some of the programs they review, but were unable to do so because of the political environment that exists within OMB. "In the end," he said, "these are political issues and it lies with the President to make these political decisions."

Conclusions

Although the precise dimensions of federal regulatory costs and benefits are unclear, there is general agreement that, in the aggregate, federal regulations have a substantial impact on the economy. Measuring the costs and benefits associated with a single rule can be extremely difficult, and developing accurate estimates of the effects of all federal regulations is even more complex. OMB's two reports on regulatory costs and benefits are notable initial attempts to provide Congress with information that it needs to gauge the extent of federal regulatory activity and to determine whether the benefits associated with federal regulations justify the related costs.

OMB addressed some, but not all, of the specific statutory requirements in its 1997 and 1998 reports. In both reports, OMB provided estimates of the costs and benefits of federal regulations both in total and for most (but not all) major or economically significant rules issued within particular 1-year time frames. To develop its estimates of total regulatory costs, OMB relied on previous estimates published in the professional literature, the agencies' published estimates for particular rules, and (in the 1998 report) EPA's Section 812 report estimate.

However, OMB's reports did not fully address other statutory requirements. First, OMB did not, as directed, discuss the direct and indirect effects of federal rules on particular sectors of the economy. In OMB's defense, most of the experts we consulted indicated that OMB's reluctance was understandable given the lack of data clearly documenting those effects. Some of the experts said this requirement was a lower priority than the other requirements. Second, OMB had no recommendations in its 1997 report and, although it discussed a number of previously announced agency and administration initiatives, it did not provide any new recommendations to eliminate or reform federal regulations or regulatory programs in its 1998 report.

Most of the cost-benefit analysis experts that we consulted during our review indicated they would have preferred that OMB provide an independent estimate of regulatory costs and benefits and not simply transcribe the estimates provided by federal agencies and others. In particular, the experts believed OMB should have adjusted EPA's Section 812 report estimate of the benefits associated with the Clean Air Act instead of using the unadjusted estimate that dominated the benefits estimate in OMB's 1998 report. Although the legislative history of the statutory provisions that established the reporting requirements is limited and does not demonstrate the intent of Congress in enacting these provisions, the comments of some individual Members of Congress

indicated that they wanted OMB to provide an independent regulatory accounting statement. Specifically, they said OMB should adjust published estimates of benefits and costs where necessary to reflect the agency's best professional judgment regarding those estimates.

In some cases, OMB used its professional judgment and adjusted the published estimates that it used to produce its estimates of total regulatory costs and benefits. For example, in the 1997 report, OMB subtracted $10 billion from Hopkins' $81 billion estimate of the efficiency losses associated with economic regulations to account for deregulatory actions that took place after the estimate was published. OMB performed the same adjustment in its 1998 report but did not include the efficiency loss estimate in its summary of total regulatory costs. OMB also monetized some of the agencies' quantified estimates for individual rules before using them to develop the total cost and benefit estimates for the 1998 report.

However, OMB did not materially adjust any of the published cost or benefit estimates from federal agencies—most notably EPA's Section 812 report estimates and the agencies' estimates for individual rules. Although many of the cost-benefit analysis experts said OMB should have adjusted the agencies' estimates, they also recognized that OMB faced political constraints in doing so. Specifically, they noted that OMB is part of the administration that issued those estimates and therefore would find it politically difficult if not impossible to disagree with those estimates in a report to Congress.

OMB has a responsibility under Executive Order 12866 to review the agencies' estimates of the costs and benefits of proposed and final rules before they are published in the Federal Register. Similarly, with the Executive Order establishing OIRA as the "repository of expertise on regulatory issues," OMB had a responsibility to provide EPA with its expert opinions during the development of the cost and benefit estimates in EPA's Section 812 report. However, after their publication, those rules and reports (and their associated estimates of costs and benefits) represent the administration's policy positions. OMB, as part of the administration and particularly as the staff office to the President responsible for regulatory policy, cannot realistically be expected to alter or dispute the administration's own estimates of regulatory costs and benefits in a public report to Congress. Doing so would also unilaterally substitute OMB's judgment for the mutually agreed upon results of its consultations with the agencies during the review process or, in the case of the section 812 report, reverse the judgment of EPA's Science Advisory Board.

If Congress wants a truly independent analytic perspective on executive branch agencies' regulatory costs and benefits, it may have to assign that responsibility to individuals or organizations located outside of the executive branch. One such organization could be the Congressional Office of Regulatory Analysis (CORA) that Congress considered establishing last year. Under that proposed legislation (H.R. 1704), CORA would provide a report to Congress on each major rule providing an independent perspective on the rules' costs, benefits, and net benefits. The proposed legislation also would have required CORA to provide an annual report including estimates of the total costs and benefits of all existing federal regulations. Although the proposed legislation would not have required CORA to assess the direct and indirect costs and benefits of federal regulation on particular sectors of the economy or to provide recommendations for reform or elimination of existing rules, such additional responsibilities could be added to future legislation if Congress believes them desirable.

Another way to obtain an independent perspective of executive branch agencies' regulatory costs and benefits is to look to organizations outside of government that are already engaged in the types of analyses that Congress envisioned. For example, according to the AEI-Brookings Joint Center for Regulatory Studies' mission statement, the Joint Center will publish an annual report that will include "an independent assessment of both the total and marginal costs and benefits of federal regulation, broken down into useful categories." The Joint Center also intends to publish objective analyses of selected forthcoming regulations, and recommendations for modifications or elimination of existing rules based on their benefits and costs.

An independent perspective on regulatory costs and benefits from outside of the executive branch could be either a substitute for the current OMB requirement or a supplement to that requirement. Requiring an independent perspective in addition to the existing OMB requirement could be a considerable duplication of effort, with both organizations obtaining information from regulatory agencies. However, a somewhat similar dual-track process is currently in place in the federal budgetary process, with both OMB and the Congressional Budget Office providing independent estimates of federal revenues, spending, and budget deficits or surpluses. Federal regulatory agencies and OMB may be prompted to develop better estimates knowing that another entity outside of the administration will be providing an independent perspective.

Regardless of which entity provides those estimates, agreement is needed among all parties regarding the types of regulations that should be included and other methodological issues. Agreement on these issues can prevent (or at least lessen) disputes regarding the accuracy of such estimates after they are developed. For example, the experts we consulted generally suggested focusing on the costs and benefits of health, safety, environmental, and other social regulations, and tallying economic and transfer rules separately. Other issues in need of agreement include whether (and if so, how) reductions in mortality risks should be monetized, whether agencies' assumptions should be standardized to permit interagency and interrule comparisons of regulatory costs and benefits and the degree to which regulatory costs and benefits should be disaggregated to allow the relative net benefits of regulatory programs to be compared. Also, although cost-benefit analysis is conceptually a valuable tool in regulatory decisionmaking, the results of any such analyses must be carefully examined to ensure that the estimates are properly developed, and care must be exercised in using any such estimates in public policy decisionmaking. Finally, whatever entity is charged with the responsibility of providing this kind of independent analysis of regulatory costs and benefits, those analyses will be most useful to policymakers if the entity has sufficient resources to do a proper job.

Matter for Congressional Consideration

It is politically difficult for OMB to provide Congress with an independent assessment of executive branch agencies' regulatory costs and benefits. If Congress wants an independent assessment, it may wish to consider assigning that responsibility to an organization outside of the executive branch. That organization could include a congressional office of regulatory analysis, which would have to be established, or an organization outside of the federal government.

Comments and Our Evaluation

On April 7, 1999, we met with the Acting Administrator of OIRA and other OMB staff to discuss a draft of this report, and we had subsequent discussions with OIRA regarding its views on the draft report. OIRA stated that the draft report reflected a substantial amount of work on our part, and that it raised a number of useful analytical issues regarding how regulatory benefits and costs can most appropriately be estimated and reported.

However, OIRA stated that it disagreed fundamentally with several of the statements attributed to the experts in the report. OIRA particularly noted that, at a number of points throughout the draft report, we quoted one or more experts who expressed strong opinions about what they believe

OMB should have done in reviewing and evaluating agencies' cost-benefit analyses. OIRA fundamentally disagreed with these statements, which it said reflect a significant misunderstanding of OMB's role in developing, overseeing, and coordinating the administration's regulatory policies. OIRA said it analyzes and evaluates agency work products and works with them to develop better quality analyses, evaluations, and policies. It said the role of OMB is not to play "gotcha" with the agencies but to work cooperatively with them, ensuring that their economic estimates are accurate and that administration policies and programs are faithfully executed.

We believe that OIRA's comments regarding OMB's role buttresses our conclusions and our matter for congressional consideration. It is politically difficult for OMB to disagree publicly with agencies' statements of regulatory policy, particularly because OIRA staff typically participate in developing those policies. The experts that we consulted indicated that, to be responsive to the statutory requirement, OMB should have adjusted agency cost-benefit estimates that it believed were in error. However, the experts also recognized the political constraints inherent in OMB's role of supporting the administration's position and initiatives, particularly when operating under an executive order that has as one of its stated objectives "to reaffirm the primacy of Federal agencies in the regulatory decision making process."

OIRA also pointed out that it had provided original, updated, and more refined estimates of the costs and benefits of regulations and regulatory programs, which the experts had evidently overlooked. In addition, OIRA noted that EPA's Section 812 report had been peer reviewed by the EPA Science Advisory Board's Council on Clean Air Act Compliance Analysis and that OMB had reported its concerns with some of the assumptions behind the estimates and had used the benefits estimate to establish an upper bound for the governmentwide estimate.

OIRA's statement that the experts overlooked original, updated, and more refined estimates of the costs and benefits for regulations and regulatory programs is not entirely correct. As we noted in the draft report, OMB did make some changes to published cost or benefit estimates to derive the governmentwide estimate in its 1998 report. However, OMB did not adjust the benefits estimate in the Section 812 report that constituted more than 90 percent of the governmentwide estimate. Neither did OMB adjust any of the agencies' cost or benefit estimates in relation to the second statutory requirement regarding rules with $100 million in increased costs. Also, we noted in the draft report that EPA's Section 812 report had been peer

reviewed by EPA's Science Advisory Board and that OMB reported its concerns with some of the assumptions behind the report's estimates.

OIRA stated that Congress recognized, when it directed OMB to prepare these reports, that OMB would be relying for the most part on existing, available information, including the agencies' cost-benefit analyses. OIRA therefore believes that OMB presented Congress with the estimates that Congress had directed it to prepare. However, OIRA did not specifically comment on our matter for congressional consideration.

Contrary to OIRA's assertion, neither the statutory language that required OMB to provide the 1997 and 1998 reports to Congress nor the limited legislative history of these provisions specifies that Congress expected OMB to rely on existing information to prepare its reports on the costs and benefits of federal rules. Although some individual Members of Congress indicated that OMB should simply compile existing information about regulatory costs and benefits, other Members said OMB should supplement that information where needed and provide an "independent assessment" of the effects of federal regulation.

OIRA offered comments on several additional points in the draft report. For example, OIRA disagreed that the recommendations that OMB provided in the 1998 report were simply a recitation of initiatives that had previously been put forward by the agencies. OIRA said they were major administration initiatives and met the statutory requirement that OMB provide recommendations. OIRA also offered suggestions to improve the presentation of certain issues, which we incorporated into this report as appropriate. For example, OIRA noted that some of the experts were critical of OMB for not assigning a dollar value to the costs and benefits of certain rules, but pointed out that OMB had, in fact, monetized some of the agencies' estimates. We agreed to add a footnote to the experts' comments noting that OMB had assigned monetary values to some of these estimates.

We also obtained comments on the draft report from six of the seven cost-benefit analysis experts that we consulted on the draft report. (Portney said he was unable to review the draft because of time constraints.) In general, the experts said the report accurately reflected their statements. However, some of them suggested particular clarifications or modifications to their statements and bibliographic references, which we incorporated where appropriate.

Individual Views of Members of Congress Regarding Regulatory Accounting Requirements

As pointed out in the body of this report, the legislative history of the regulatory accounting provisions that required OMB to provide the 1997 and 1998 reports is of limited value in determining how Congress intended for OMB to carry out its responsibilities. However, several Members of Congress expressed their individual views regarding these requirements during floor consideration of the legislation. For example, on September 11, 1996, Senator Ted Stevens (the sponsor of the first regulatory accounting provision) said "OMB should use the valuable information already available, and supplement it where needed" when preparing the estimates of total annual costs and benefits called for in subsection 645(a)(1). He also said that "(w)here agencies have, or can produce, detailed information on the costs and benefits of individual programs, they should use it. I expect a rule of reason will prevail."

On September 12, 1996, Senators John Glenn and Carl Levin also discussed their views regarding subsection 645(a)(1). Senator Glenn said OMB should compile "existing analyses and estimates of regulatory costs and benefits." He said that the sponsors of the amendment "are aware of OMB's resource constraints and intend that the report be based on a compilation of existing information, rather than new analysis." Senator Levin said the amendment would ask OMB to "come up with its best estimate" of the costs and benefits of regulatory programs, but he noted that the amendment

> "does not require OMB to conduct new studies or analyses or develop new data or information. That would be a time-consuming, and expensive use of taxpayer money. . . . (T)his amendment simply directs OMB to put together the already available information that it has on existing Federal regulatory programs and use that to estimate the total annual costs and benefits of each."

Similarly, on September 30, 1996, Senator William V. Roth, Jr. said OMB "should draw upon the wealth of studies and reports already done" to generate the estimate of total costs and benefits. However, he also said that "(w)here there are gaps, OMB must supplement existing information. To conserve its resources, OMB should issue guidelines to the agencies to gather the needed information, as OMB does for the fiscal budget process." He also said OMB should "quantify costs and benefits to the extent feasible, and provide the most plausible estimate."

In relation to the requirements in subsection 645(a)(2), Senator Levin said that "reporting on the costs and benefits of major rules is expected to require no more than reporting, in an organized and readable manner, the cost-benefit analyses of the major rules in effect that were already done prior to promulgation." However, he also said that "(t)o the extent there is

updated information that would change the estimates in those analyses, such updates should be included in this part of the report if it is available."

Regarding the requirements in subsection 645(a)(3) for an assessment of the direct and indirect impact of the rules on different sectors, Senator Stevens said he believed that regulation "creates a drag on real wages, economic growth, and productivity," and that OMB "should discuss the serious problem of unfunded Federal mandates and inform Congress" about the problem. However, he also said that "OMB should use available information, where relevant, to assess the direct and indirect effect of federal rules." Senator Levin said the assessment of impacts

> "is intended to be a narrative discussion of OMB's opinion on this subject. It does not require additional information gathering; rather, the intent, here, is that the Director use the information contained in the report on the costs and benefits of Federal regulatory programs and describe the expected impacts of such programs on State and local governments, business, and individuals."

Senator Glenn said the recommendations for reform required by subsection 645(a)(4) should include programs that should be eliminated or altered because they are too burdensome "as well as programs that should be strengthened to more effectively implement public policy." Senator Roth said that OMB should "highlight those programs or program elements that are inefficient, and it should provide recommendations to reform them."

Overall, Senator Stevens said he expected OMB to produce "a credible and reliable picture of the regulatory process—a picture that highlights the costs and benefits of regulatory programs and that allows Congress to determine which programs and program elements are working well, and which are not." Likewise, Senator Roth said OMB "must provide Congress with a credible and reliable accounting statement on the regulatory process.

The legislative history accompanying the second set of reporting requirements in section 625 of the fiscal year 1998 appropriations act is even more limited than for the first requirements. However, during Senate consideration of the legislation on July 17, 1997, Senator Fred Thompson expressed his support for the new requirements and suggested that certain information sources be used (e.g., existing studies by nonfederal experts and agencies' cost-benefit analyses conducted under Executive Orders 12291 and 12866). He said "regulatory accounting should not create a resource drain for OMB. OMB should issue guidelines requiring the agencies to compile needed information, just as OMB does in the fiscal budget process." In relation to the requirement in subsection 625(a)(1) that

OMB estimate total annual costs and benefits, Senator Thompson said OMB should "do its best to estimate and quantify that figure on the cost side," and explain what benefits are being achieved for those costs. Where agencies such as EPA can provide detailed information on particular programs, he said OMB should make full use of this information. In relation to subsection 625(a)(3) requirement to assess the direct and indirect effect of federal rules, Senator Thompson said OMB need not "devote vast resources" to the development of complex economic models, but rather "may use available reports, studies, and other relevant information. . . ." In particular, he said OMB should discuss the "serious problems posed by unfunded federal mandates for State, local and tribal governments."

Senator Thompson also offered some specific suggestions regarding what costs and data should be included in OMB's reports. First, he said OMB should estimate the total costs of paperwork, including tax paperwork. Second, he said OMB's estimate of indirect effects should include costs associated with product bans and marketing limitations; the benefits associated with preservation of endangered species; and the impact of regulation on wages, innovation, employment, and income distribution. To do these analyses, he said, OMB could leverage the expertise and resources of other agencies, especially the President's Council of Economic Advisors. Finally, Senator Thompson said OMB's recommendations to improve the regulatory process and particular programs and regulations "do not have to be based on perfect empirical data."

Congressional Responses to OMB's Initial Regulatory Accounting Reports

On October 29, 1997, Senator Thompson and Senator Stevens, acting as the Chairmen of the Senate Committees on Governmental Affairs and Appropriations, respectively, sent a letter to the Director of OMB saying that the first regulatory accounting report was "an important foundation for improving the regulatory system." However, they also said they believed there were several opportunities for improvement. First, they recommended that the report adhere to the specific statutory requirements by recommending improvements and assessing the indirect impacts of federal regulation. Second, they said the report should more fully implement the legislation, breaking down costs and benefits by program or program element where feasible and estimating transfer costs and the costs of all paperwork requirements, including tax paperwork. Finally, the Chairmen said OMB should "exercise leadership to assure the quality and reliability of information reported" by, among other things, providing an "independent assessment" of the information provided by the agencies. They said OMB staff should be directed to "critique the quality of the

estimates provided to them, not to simply compile data presented by the agencies."

On the same day, Representatives Thomas J. Bliley, Jr. and David McIntosh, the Chairmen of the House Committee on Commerce and the House Committee on Government Reform and Oversight's Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, respectively, wrote a similar letter to the OMB Director. They said the OMB report fell short of their expectations in that it (1) did not fully comply with specific statutory requirements (e.g., lacked recommendations); (2) reflected a narrow interpretation of the congressional mandate (e.g., provided estimates for only a small number of major rules issued during the previous fiscal year); (3) revealed the lack of any systematic approach to collecting, analyzing, and reporting data on regulatory impacts; and (4) failed to reflect the leadership role that Congress intended OMB to play. In relation to the last point, they said "Congress expected OMB to assure the reporting of meaningful information and provide an independent assessment of regulatory effects," not merely to perform the "ministerial function of reporting information provided by other agencies.

On August 28, 1998, Representative McIntosh provided his Subcommittee's comments on OMB's August 1998 draft report. He said the Subcommittee continued to have some of the same concerns mentioned in its October 1997 letter and said it was difficult to believe that OMB could not recommend any regulatory programs for reform or elimination other than electricity restructuring. He also said that OMB should have monetized costs for all rules issued by independent regulatory agencies and should have sought out research or reports on the direct and indirect impacts of federal rules on the private sector, state and local governments, and the federal government.

On October 10, 1998, Senators Thompson and Stevens, again acting as the Chairmen of the Senate Committees on Governmental Affairs and Appropriations, respectively, also provided comments on OMB's August 1998 draft report. They said they remained concerned that OMB had "not sufficiently used its expertise" in the draft report, and said OMB should not simply compile data presented by the agencies but should synthesize and evaluate the information "and provide an independent assessment." They indicated that OMB should prepare its best estimates of costs and benefits in the aggregate and for individual rules and programs and compare those estimates with agency estimates. In particular, they noted that OMB did not provide an independent assessment of EPA's estimates of the costs

and benefits of the Clean Air Act. They also said that OMB should have done more to provide recommendations for the reform or elimination of federal rules, and "provide guidance on programs where the costs outweigh the benefits using its best judgment and input from regulatory scholars.

Biographical Information of Regulatory Experts

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Robert W. Crandall is a senior fellow in the Economic Studies Program at the Brookings Institution, Washington, D.C., where he has worked since 1978. He is a former deputy director of the Council on Wage and Price Stability during the Ford and Carter administrations, and a former faculty member at the Massachusetts Institute of Technology, the University of Maryland, and George Washington University. He also has been a consultant to the Environmental Protection Agency (EPA), the Antitrust Division of the Federal Trade Commission, and the Treasury Department. He has written widely in such fields as antitrust, the automobile industry, competitiveness, deregulation, environmental policy, mergers, regulation, and telecommunications policy.

Selected Publications

An Agenda For Federal Regulatory Reform, with Christopher DeMuth, Robert W. Hahn, Robert E. Litan, Pietro S. Nivola, and Paul R. Portney (Washington, D.C.: American Enterprise Institute for Public Policy Research and the Brookings Institution, 1997).

Regulating the Automobile, with Howard Gruenspecht, Ted Keeler and Lester Lave (Washington, D.C.: Brookings Institution, 1986).

"What Ever Happened to Deregulation?" in David Boaz (ed.) Assessing the Reagan Years (Washington, D.C.: Cato Institution, 1988).

Economic Deregulation and Customer Choice: Lessons for the Electric Industry, with Jerry Ellig (Center for Market Processes, George Mason University, 1997).

Robert W. Hahn

Robert W. Hahn is director of the American Enterprise Institute (AEI)-Brookings Joint Center for Regulatory Studies, Washington, D.C. He is also a resident scholar at AEI and a research associate at Harvard University. He also served as a senior staff member of the President's Council of Economic Advisers for 2 years and has served as a consultant to government and industry on a variety of issues involving regulation and privatization. His research interests include the reform of regulation in developed and developing countries and the design of new institutions for reforming regulation.

Selected Publications

"The Costs and Benefits of Regulation: Review and Synthesis," with John A. Hird, Yale Journal on Regulation (Vol. 8, No.1 (Winter 1991)).

Improving Regulatory Accountability, with Robert E. Litan, (Washington, D.C.: AEI and the Brookings Institution, 1997).

Risks, Costs, and Lives Saved: Getting Better Results from Regulation (ed.), (Washington, D.C.: Oxford University Press and AEI Press, 1996).

"Regulatory Reform: Assessing the Government's Numbers" in Revising Regulatory Reform: A Global Perspective, (AEI-Brookings Institution, forthcoming).

"Policy Watch: Government Analysis of the Benefits and Costs of Regulation," Journal of Economic Perspectives (Vol.12, No. 4 (Fall 1998)).

Thomas D. Hopkins

Thomas D. Hopkins is Interim Dean of the College of Business and Arthur J. Gosnell Professor of Economics at the Rochester Institute of Technology in Rochester, NY. He is also Adjunct Fellow for the Center for the Study of American Business, Washington University, St. Louis, MO. From 1975 to 1984, he served on the staff of the Council on Wage and Price Stability and as Deputy Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget. His published work includes a series of policy projects for the Organization for Economic Cooperation and Development, the Regulatory Information Service Center, and the Small Business Administration.

Selected Publications

"Regulatory Costs in Profile," Policy Study 132 (St. Louis: Washington University, Center for the Study of American Business, Aug. 1996).

"Progress in Developing Standards for Review of Government Regulations," Business & the Contemporary World (Vol. IX, No. 4 (1997)).

"OMB's Regulatory Accounting Report Falls Short of the Mark," Policy Study 142, (St. Louis: Washington University, Center for the Study of American Business, Nov. 1997).

"Regulatory Costs in Profile," Policy Sciences (Vol. 31, No. 4 (Dec. 1998)).

Lester B. Lave

Lester B. Lave is University Professor and the Higgins Professor of Economics in the Graduate School of Industrial Administration and professor of engineering and public policy in the College of Engineering and Public Policy at Carnegie Mellon University, Pittsburgh, PA. He has consulted to EPA, the Office of Safety Administration, and other federal agencies on the theory and application of cost-benefit analysis.

Selected Publications

Benefit-Cost Analysis in Environmental, Health, and Safety Regulation: A Statement of Principles, with Kenneth J. Arrow, Maureen L. Cropper, George C. Eads, Robert W. Hahn, Lester B. Lave, Roger G. Noll, Paul R.

Portney, Milton Russell, Richard Schmalensee, V. Kerry Smith, and Robert N. Stavins (Washington, D.C.:AEI, 1996).

"Benefit-Cost Analysis: Do The Benefits Exceed the Costs?" in Robert W. Hahn, ed., Risks, Costs, and Lives Saved: Getting Better Results from Regulation (Washington, D.C.: Oxford University Press and AEI Press, 1996).

Robert E. Litan

Robert E. Litan is the codirector of the AEI-Brookings Joint Center for Regulatory Studies and serves as director of Economic Studies Program and Cabot Family Chair in Economics at the Brookings Institution. He has served as deputy assistant attorney general in the Antitrust Division of the Department of Justice, as Associate Director of the Office of Management and Budget, and as a regulatory and legal staff specialist for the President's Council of Economic Advisors. He has also consulted for numerous organizations, public and private, and testified as an expert witness in a variety of legal and regulatory proceedings.

Selected Publications

Reforming Federal Regulation, with William D, Nordhaus (New Haven, Ct.: Yale University Press, 1983).

An Agenda For Federal Regulatory Reform, with Robert W. Crandall, Christopher DeMuth, Robert W. Hahn, Pietro S. Nivola, and Paul R. Portney (Washington, D.C.: American Enterprise Institute for Public Policy Research and the Brookings Institution, 1997).

Paul R. Portney

Paul R. Portney is president of Resources for the Future, Washington, D.C. He was previously the organization's vice president and director of its Center for Risk Management and its Quality of the Environment Division. He also has been a visiting professor at the graduate school of public policy at the University of California at Berkeley and a visiting lecturer at Princeton University's Woodrow Wilson School. He previously served as chief economist at the Council of Environmental Quality in the Executive Office of the President, as a member of the Board on Environmental Studies and Toxicology of the National Research Council, and as a member of the National Oceanic and Atmospheric Administration's Panel on Contingent Valuation. From 1994 to 1997, he was a member of the Executive Committee on EPA's Science Advisory Board and was chairman of the Board's Environmental Economics Advisory Committee.

Selected Publications

"Economics and the Clean Air Act," Journal of Economic Perspectives (Vol. 4 (1990), pp. 173-181).

Benefit-Cost Analysis in Environmental, Health, and Safety Regulation: A Statement of Principles, with Kenneth J. Arrow, Maureen L. Cropper, George C. Eads, Robert W. Hahn, Lester B. Lave, Roger G. Noll, Milton Russell, Richard Schmalensee, V. Kerry Smith, and Robert N. Stavins (Washington, D.C.: AEI, 1996).

Murray Weidenbaum

Murray Weidenbaum is the Mallinckrodt Distinguished University Professor and Chairman of the Center for the Study of American Business at Washington University in St, Louis, MO. Before joining Washington University, he served as Corporate Economist at the Boeing Company. He was Assistant Secretary of the Treasury for Economic Policy during the Nixon administration. In 1980, he chaired the Task Force on Regulatory Reform for President-Elect Ronald Reagan. In 1981 and 1982, he was Chairman of the Council of Economic Advisers, and subsequently served as a member of the President's Economic Policy Advisory Board.

Selected Publications

Government-Mandated Price Increases (Washington, D.C.: AEI, 1975).

The Cost of Federal Regulation of Economic Activity, with Robert DeFina (Washington, D.C.: AEI, 1978).

"Regulatory Process Reform," Regulation (Winter 1997).

A New Approach to Regulatory Reform (St. Louis: Washington University, Center for the Study of American Business, 1998).

Rules Meeting Specific Statutory Requirements for OMB's 1997 Report

Section 645(a) of the Treasury, Postal Services and General Government Appropriations Act for fiscal year 1997 required the Office of Management and Budget (OMB) to estimate the costs and benefits of each rule "that is likely to have a gross annual effect on the economy of $100,000,000 or more in increased costs" in a report to Congress. In its September 30, 1997, report, OMB interpreted this requirement broadly to include all final rules promulgated by an executive branch agency and reviewed by OMB's Office of Information and Regulatory Affairs (OIRA) between April 1, 1996, and March 31, 1997, that met any of the following:

- Rules designated as "economically significant" under section 3(f)(1) of Executive Order 12866;
- Rules designated as "major" under 5 U.S.C. 804(2); and
- Rules designated as meeting the threshold under title II of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538).

A rule could meet one or more of these criteria and not have a gross annual effect on the economy of $100 million or more in increased costs. For example, a rule may be economically significant because it has a $100 million beneficial effect on the economy, or because it has material effect on a sector of the economy, the environment, or state or local governments.

Table III.1 lists the 20 rules that OIRA reviewed during the 1-year time frame that we determined had met the specific requirements of the statute—i.e., rules that the agencies believed were likely to have a gross annual effect on the economy of $100 million in increased costs. Ten of the rules were "social" regulations (which include environmental, health and safety rules) and 10 were "transfer" rules (which involve payments from one group to another that redistribute wealth).

Two of these rules were not included in OMB's 1997 report to Congress but met OMB's criteria for inclusion in its report: (1) the Department of Veterans Affairs' rule on disability compensation and (2) EPA's rule on control of air pollution for new gasoline spark-ignition marine engines.

Table III.1: Rules Likely to Have Gross Impact On Economy of $100 Million in Increased Costs

Type of rule	Department or agency	Rule	Costs (millions/year)	Benefits (millions/year)
Social rules	Department of Agriculture	Conservation Reserve Program—Long Term Policy	$970	$2,200
		Pathogen Reduction: Hazard Analysis and Critical Control Point (HACCP) Systems	$100-$120	$70-$2,800
	Department of Health and Human Services	Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents	$180	$9,900-$11,000
	Department of Labor	Occupational Exposure to Methylene Chloride	$110	$90
	Environmental Protection Agency	Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7)	$100	$170
		Regulation of Fuels and Fuel Additives: Certification Standards for Deposit Control Gasoline Additives	$150	$120-$350
		Acid Rain Program; Nitrogen Oxides Emission Reduction Program	$190	$430-$2,000
		Motor Vehicle Emissions Federal Test Procedure Revisions	$200-$250	$130-$760
		Control of Air Pollution From New Motor Vehicles and New Motor Vehicles Engines: Voluntary Standards for Light-Duty Vehicles	$640	$230-$1,000
		Control of Air Pollution: Final Rules for New Gasoline Spark-Ignition Marine Engines; Exemptions for New Nonroad Compression-Ignition Engines at or Above 37 Kilowatts and Nonroad Spark-Ignition Engines at or Below 19 Kilowatts	$270	$$150-$680

Transfer rules[a]	Department of Agriculture	Food Stamp Program: Certification Provisions of the Mickey Leland Childhood Hunger Relief Act	$7-$207
		Food Stamp Program; Child Support Deduction	$125-$145
	Department of Health and Human Services	Medicaid Program: Limitations on Aggregate Payments to Disproportionate Share Hospitals; Federal Fiscal Year 1996	$1,105
		Individual Market Health Insurance Reform; Portability From Group to Individual Coverage; Federal Rules for Access in the Individual Market; State Alternative Mechanisms to Federal Rules	$50-$200
		Medicare Program; Physician Fee Schedule Update for Calendar Year 1997 and Physician Volume Performance Standard Rates of Increase for Federal Fiscal Year 1997	$250
		Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 1997	$610
	Department of Justice	Inspection and Expedited Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures	$205
	Department of Veterans Affairs	Compensation for Disability Resulting From Hospitalization, Treatment, Examination, or Vocational Rehabilitation	$166.5-$504.3
	Departments of Health and Human Services, Labor and the Treasury	Interim Rules for Health Insurance Portability for Group Health Plans	$50-$200

Social Security Administration	Supplemental Security Income; Determining Disability for A Child Under Age 18	$90-$185

[a]According to OMB, transfer rules are payments from one group to another that redistribute wealth. Therefore, OMB said, there are no real costs to society as a whole; the "benefits" of these rules are equal to the "costs."

Source: Regulatory Information Service Center and Federal Register.

Rules Meeting Specific Statutory Requirements for OMB's 1998 Report

Section 625(a) of the Treasury and General Government Appropriations Act for fiscal year 1998 required OMB to estimate the costs and benefits of each rule "that is likely to have a gross annual effect on the economy of $100,000,000 or more in increased costs" in a report to Congress. In its February 5, 1999, report, OMB interpreted this requirement broadly to include all final rules promulgated by an executive branch agency and reviewed by OIRA between April 1, 1997, and March 31, 1998, that met any of the following:

- Rules designated as "economically significant" under section 3(f)(1) of Executive Order 12866;
- Rules designated as "major" under 5 U.S.C. 804(2); and
- Rules designated as meeting the threshold under title II of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538).

A rule could meet one or more of these criteria and not have a gross annual effect on the economy of $100 million or more in increased costs. For example, a rule may be economically significant because it has a $100 million beneficial effect on the economy or because it has material effect on a sector of the economy, the environment, or state or local governments.

Table IV.1 lists the 22 rules that OIRA reviewed during the 1-year time frame that we determined had met the specific requirements of the statute—i.e., rules that the agencies believed were likely to have a gross annual effect on the economy of $100 million in increased costs. Thirteen of the rules were "social" regulations (which include environmental, health and safety rules) and nine were "transfer" rules (which involve payments from one group to another that redistribute wealth).

Table IV.1: Rules Likely to Have Gross Effect on the Economy of $100 Million in Increased Costs

Type of rule	Department or agency	Rule	Costs (in millions)	Benefits (in millions)
Social rules	Department of Agriculture	Environmental Quality Incentives Program	$200	$290
	Department of Energy	Energy Conservation Program for Consumer Products: Energy Conservation Standards for Refrigerators, Refrigerator-Freezers, and Freezers	$260	$700-$760
	Department of Health and Human Services	Quality Mammography Standards[a]	$40	$200-$280
	Department of Labor	Respiratory Protection	$120	$590-$2,700
	Departments of Health and Human Services, Labor and the Treasury	Interim Rules for Mental Health Parity	$464	Not estimated
	Environmental Protection Agency	Emission Standards for Locomotives and Locomotive Engines[b]	$80	$230-$900
		Control of Emissions of Air Pollution from Highway Heavy-Duty Engines	$140	$220-$990
		Effluent Limitations Guidelines: Pulp and Paper	$250	$10-$250
		National Emission Standards for Hazardous Air Pollutants for Sources Category: Pulp and Paper Production	$120	($970)-$1,100
		Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Hospital/Medical/Infectious Waste Incinerators	$71-$146	Not estimated
		National Ambient Air Quality Standards for Particulate Matter	$17,000	$11,000-$59,000
		National Ambient Air Quality Standards for Ozone	$4,500	$770-$4,300

		Addition of Facilities in Certain Industry Sectors, Toxic Chemical Release Reporting, Community Right-to-Know	$143-$226	Not estimated
Transfer rules[c]	Department of Agriculture	Child and Adult Care Food Program: Improved Targeting of Day Care Home Reimbursement	$857-$876	
		Amendments to the Peanut Poundage Quota Regulations[d]		
	Department of Health and Human Services	Medicaid Program; Coverage of Personal Care Services	$340-$1,540	
		Medicare Program; Changes to the Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates	$6,000	
		Medicare Program; Fee Schedule for Calendar Year 1998; Payment Policies and Relative Unit Adjustments	$160-$780	
		Medicare Program; Limit on the Valuation of a Depreciable Asset Recognized as an Allowance for Depreciation and Interest After Change of Ownership	$91-$114	
		Medicare Program: Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or after October 1, 1997	$570	
		Medicaid Program: State Allotment for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 1998	$200-$400	
	Department of Justice	Affidavit of Support on Behalf of Immigrants	$301-$1,701	

[a]Although the annualized costs for this rule is less than $100 million, according to the agency, initial costs will exceed $100 million and then decrease. This rule is also an unfunded mandate.

[b]Although the annualized costs for this rule are less than $100 million, according to the agency there are a number of years where the associated costs will be more than $100 million. In addition, this rule is an unfunded mandate.

[c]According to OMB, transfer rules are payments from one group to another that redistribute wealth. Therefore, OMB said, there are no real cost to society as a whole; the "benefits" of the rules are equal to the "costs."

[d]The cost estimate for this rule is reported only in the aggregate. The total cost associated with the Amendments to the Peanut Poundage Quota Regulations are $1.75 billion (1996-2002). In order to compare and summarize the annual costs of all the rules, the cost associated with this rule will not be included.

Source: Regulatory Information Service Center and Federal Register.

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