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No. 1274 April 20, 1999

Regulatory Right to Know: Tracking the Costs and Benefits of Federal Regulation

Angela Antonelli

Since fiscal year (FY) 1997, Congress has required the White House's Office of Management and Budget (OMB) to report each year on the costs and benefits of federal regulation as a condition of its annual appropriations. Because of the contributions these reports have made to understanding the effects of federal regulation, bipartisan support in Congress now exists for making this report process permanent and for strengthening it. Toward that end, on January 19, 1999, Senators Fred Thompson (R–TN) and John Breaux (D–LA) introduced the Regulatory Right to Know Act of 1999, S. 59. And, on March 11, 1999, Representatives Tom Bliley (R–VA), David McIntosh (R–IN), Gary Condit (D–CA), Charles Stenholm (D–TX), and 13 other Republicans and 14 other Democrats introduced a companion bill, H.R. 1074.

These legislative proposals reflect Congress's commitment to supporting the "public's right to know about the costs and benefits of federal regulatory programs." Unfortunately, federal regulators have been doing a woefully inadequate job of providing the public with useful information about the scope, scale, and impact of federal regulatory activity. Indeed, the size and frenetic pace at which the federal government produces new regulations strongly suggests the need for accountability and common sense. In FY 1998, some 53 federal departments and agencies—and 126,146 federal employees—spent approximately $17 billion in writing and enforcing federal regulations.

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As Table 1 summarizes, the U.S. General Accounting Office reports that, between April 1, 1996, and March 31, 1999, federal regulatory agencies issued more than 12,925 final rules and sent them to Congress for review. Of these, 188 were major final rules that each carried an estimated cost to the economy of more than $100 million, for a total of at least $18.8 billion in new regulatory taxes in the past three years. And this does not even account for the costs of the remaining 12,737 final rules.

The Regulatory Right to Know Act of 1999 builds on Section 625 of the Treasury and General Government Appropriations Act of 1998 (P.L. 105–61), which directs the OMB to prepare a

regulatory accounting report. Similar reporting requirements also were in the 1996 and 1997 OMB appropriations laws, and these reports have been delivered to Congress. The most recent—the OMB's second annual report—was published on February 5, 1999.

The Regulatory Right to Know Act also builds on important lessons learned from the OMB's two annual reports to Congress. The act would require the OMB to report not only aggregate estimates of costs and benefits, but also the costs and benefits of individual rules because, as the OMB itself notes, the "substance is in the details, not in the total"; it is more useful to assess whether individual regulatory actions in and of themselves generate more benefits than costs. In addition, because agencies lack consistency in their benefit-cost methods of analysis and tend to overestimate benefits and underestimate costs, the OMB would be required to develop methods to standardize measures of costs and benefits, and the OMB's regulatory accounting statement would be subject to both peer review and public comment to make it more difficult for either the agencies or the OMB to engage in vast overstatements of benefits or underestimates of costs. Finally, the act would require the OMB to provide recommendations for the reform of regulatory programs.

The two OMB reports already sent to Congress demonstrate that such accounting not only is possible, but also has the potential to become an extremely useful accountability tool to help Members of Congress to ensure that regulatory investments maximize benefits while minimizing costs and achieve the greatest levels of protection for the money spent. The need for this approach is highlighted in a 1996 study by the Harvard Center for Risk Analysis, which concluded that, if regulatory agencies targeted their efforts more efficiently and reallocated their resources to solve the most serious problems first, as many as 60,000 more lives a year could be saved.

Table 1 B1274

Major Rules Sent to Congress
April 1, 1996–March 31, 1999

Fiscal Year	Major	Minor	Total
1996[1]	35	2,024	2,059
1997	59	3,873	3,932
1998	70	4,666	4,736
1999[2]	24	2,174	2,198
Total	188	12,737	12,925

Note: 1. Figures are from April 1, 1996, to September 30, 1996. GAO did not keep records prior to April 1, 1996.
2. Figures are from October 1, 1998, to March 31, 1999.

Source: GAO, *Small Business Regulatory Enforcement Fairness Act Rules Report.*

Americans have as much right to engage in dialogue over regulatory priorities and spending as they have to debate federal budget priorities and spending. The country's governors, mayors, and city and county officials as well as farmers and small businesses all strongly believe they have a right to more and better information to help them to participate more effectively in the process of making regulatory policy. Yet, today, unchecked, unaccountable federal regulators have little incentive to provide information that helps to facilitate such a debate. The Regulatory Right to Know Act of 1999 would begin to bring the hidden costs, benefits, and other less-than-obvious effects of federal regulation into the sunlight so that Congress and the public could assess their effectiveness more accurately and inspire regulators to make more sensible policy choices.

—Angela Antonelli is Director of The Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation.

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REGULATORY RIGHT TO KNOW: TRACKING THE COSTS AND BENEFITS OF FEDERAL REGULATION

ANGELA ANTONELLI[1]

Since fiscal year (FY) 1997, Congress has required the White House's Office of Management and Budget (OMB) to report each year on the costs and benefits of federal regulation as a condition of its annual appropriations. Because of the contributions these reports have made to understanding the effects of federal regulation, bipartisan support in Congress now exists for making this report process permanent and for strengthening it. Toward that end, on January 19, 1999, Senators Fred Thompson (R–TN) and John Breaux (D–LA) introduced the Regulatory Right to Know Act of 1999, S. 59. And, on March 11, 1999, Representatives Tom Bliley (R–VA), David McIntosh (R–IN), Gary Condit (D–CA), Charles Stenholm (D–TX), and 13 other Republicans and 14 other Democrats introduced a companion bill, H.R. 1074.

These legislative proposals reflect Congress's commitment to supporting the "public's right to know about the costs and benefits of federal regulatory programs."[2] Unfortunately, federal regulators have been doing a woefully inadequate job of providing the public with useful information about the scope, scale, and impact of federal regulatory activity. S. 59 and H.R. 1074 would empower the public with such information so that they can hold regulators accountable for what they are doing and demand that they do a better job—including improving efforts to protect public

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1. This paper is adapted from the following works by the author: Statement of Angela Antonelli before the House Committee on Government Reform, Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs, on the Regulatory Right to Know Act of 1999, 106th Cong., 1st Sess., March 24, 1999; Letter to John F. Morrall III, Branch Chief, Human Resources, Office of Information and Regulatory Affairs, Office of Management and Budget, October 8, 1998; and, with Susan Dudley, "Shining A Bright Light on Regulators: Tracking the Costs and Benefits of Federal Regulation," Heritage Foundation *Backgrounder* No. 1142, September 30, 1997.
2. Statement of the Honorable David McIntosh, Chairman, Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs, on the Regulatory Right to Know Act of 1999, 106th Cong., 1st Sess., March 24, 1999.

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health, safety, and the environment. The need for this approach is highlighted in a recently published Harvard Center for Risk Analysis study, which concludes that, if regulatory agencies targeted their efforts more efficiently and reallocated their resources to solve the most serious problems first, as many as 60,000 more lives a year could be saved.[3]

Americans have as much right to engage in dialogue over regulatory priorities and spending as they have to debate federal budget priorities and spending. The country's governors, mayors, and city and county officials as well as farmers and small businesses all strongly believe they have a right to more and better information to help them to participate more effectively in the process of making regulatory policy.[4] Yet, today, unchecked, unaccountable federal regulators have little incentive to provide information that helps to facilitate such a debate. The Regulatory Right to Know Act of 1999 would begin to bring the hidden costs, benefits, and other less-than-obvious effects of federal regulations into the sunlight so that Congress and the public could judge their effectiveness more effectively and hold regulators accountable for making more sensible policy choices.

WHY REGULATORY RIGHT TO KNOW IS IMPORTANT

The Regulatory Right to Know Act represents an important way in which Congress, policymakers, and the public can better understand the magnitude and impact of federal regulatory programs. Empowered with such information, Members of Congress, state and local officials, and many others would be better equipped to participate in setting the country's regulatory priorities and making sure Americans enjoyed the highest levels of protection for dollars spent. Every dollar spent on ineffective, unnecessary, or duplicative regulation is one less dollar that the states, communities, and families have available for other important priorities, such as health care, education, or police and fire services.

Indeed, the size and frenetic pace at which the federal government produces new regulations strongly suggests the need for accountability and common sense. In FY 1998, some 53 federal departments and agencies—and 126,146 federal employees—spent approximately $17 billion in writing and enforcing federal regulations.[5]

As Table 1 summarizes, the U.S. General Accounting Office (GAO) reports that, between April 1, 1996, and March 31, 1999, federal regulatory agencies issued more than 12,925 final rules

3. Tammy O. Tengs and John D. Graham, "The Opportunity Costs of Haphazard Societal Investments in Life-Saving," in Robert W. Hahn, ed., *Risks, Costs and Lives Saved: Getting Better Results from Regulation* (New York, N.Y.: Oxford University Press, 1996).

4. See letters of support for the Regulatory Right to Know Act of 1999 to the Honorable Tom Bliley from the National Governors' Association, the National Conference of State Legislatures, the Council of State Governments, the U.S. Conference of Mayors, the National League of Cities, the National Association of Counties, the International City/County Management Association, Alliance USA, American Farm Bureau Federation, the Business Roundtable, the National Association of Manufacturers, the National Federation of Independent Business, the Small Business Survival Committee, and the U.S. Chamber of Commerce.

and sent them to Congress for review. Of these, 188 were major final rules that each carried an estimated annual cost to the economy of more than $100 million, for a total of at least $18.8 billion in new regulatory taxes in the past three years. And this does not even account for the costs of the remaining 12,737 final rules.

If government truly is accountable to the people, then people would be entirely reasonable in expecting some accounting for the impact of thousands of rules on individuals, consumers, and businesses—and on the economy more generally. Today, many of the costs of regulation remain hidden from public scrutiny. In its 1997 and 1998 reports to Congress on the costs and benefits of regulation, the OMB concluded that the regulations cost approximately $300 billion per year.[6] Other estimates place the direct costs of compliance with regulations at more than $700 billion annually.[7] Regardless of which estimate is more accurate, the reality is that regulations do impose costs, and that these costs are not insignificant. Indeed, put in some context, the costs of regulation could be equal to one-half of the federal annual direct taxes collected by the government, or in a range of $3,000 to $7,000 per household annually.

Although Congress has taken some modest steps toward demanding accountability and common sense from federal regulators, such as the Unfunded Mandates Reform Act (UMRA) of 1995 (P.L. 104–4) and the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (P.L. 104–121), it must take many more.[8] These two statutes fall short because they do not provide the public with much-needed information and analysis about the impact of regulations or regulatory programs that could be used, in effect, to hold regulators accountable for their decisions. A January 1999 GAO report reminds Congress that it cannot escape some blame for creating the burden and complexities of the current system.[9] Congress must take steps to give itself the tools it needs to create a more responsive, better-managed government. The Regulatory Right to Know Act's regulatory accounting system would begin to provide that information and analysis on the impact of regulations—whether it be proposals for new regulations or eliminating or modifying existing regulations—that would help Congress and further empower the public to debate and decide the best allocation of national resources. A more informed, democratic process would enable the federal government to devote *more,* not fewer, resources to the types of policies that would save more lives, improve the quality of life and of the environment for all Americans, and allow all Americans to be more prosperous.

BUILDING ON LESSONS LEARNED FROM OMB REPORTS

The Regulatory Right to Know Act of 1999 builds on Section 625 of the Treasury and General Government Appropriations Act of 1998 (P.L. 105–61), which directs the OMB to prepare a regulatory accounting report.[10] Similar reporting requirements also were in the 1996 and 1997

5. See Melinda Warren and William F. Lauber, 'Regulatory Changes and Trends: An Analysis of the 1999 Federal Budget," Center for the Study of American Business *Regulatory Budget Report* No. 21, November 1998.
6. See Office of Management and Budget, Office of Information and Regulatory Affairs, *Report to Congress on the Costs and Benefits of Federal Regulation,* 1998, and *Report to Congress on the Costs and Benefits of Federal Regulation,* September 30, 1997.
7. See Thomas Hopkins, "Regulatory Costs in Profile," *Policy Sciences,* Vol. 31, No. 4 (December 1998), pp. 301–320.
8. For background on these statutes, see Angela Antonelli, "Regulation: Demanding Accountability and Common Sense," in Stuart M. Butler, Ph.D., and Kim R. Holmes, Ph.D., eds., *Issues '98: The Candidates Briefing Book* (Washington, D.C.: The Heritage Foundation, 1998), "Promises Unfulfilled: Unfunded Mandates Reform Act of 1995," Cato Institute *Regulation* No. 2 (1996), and "Needed: Aggressive Implementation of the Congressional Review Act," Heritage Foundation *F.Y.I.* No. 131, February 19, 1997.
9. U.S. General Accounting Office, "Regulatory Burden: Some Agencies' Claims Regarding Lack of Rulemaking Discretion Have Merit," January 1999, GAO/GGD–99–20.

OMB appropriations laws, and these reports have been delivered to Congress.[11] The most recent—the OMB's second annual report—was published on February 5, 1999.[12]

These OMB reports demonstrate that such accounting not only is possible, but also has the potential to become an extremely useful accountability tool to help Members of Congress to ensure that regulatory investments maximize benefits while minimizing costs and achieve the greatest levels of protection for the money spent.

As Members of Congress contemplate whether to make permanent the annual requirement that the OMB track costs and benefits of federal regulation, they should consider some of the important lessons learned from the first two OMB reports.

Lesson #1: Aggregate costs and benefits of rules are not nearly as important as the assessment of the costs and benefits of individual rules. Although aggregate estimates provide a general context for understanding the impact of regulation, the OMB itself notes that the "substance is in the details, not in the total,"[13] which means examining individual regulations. Studies may suggest that, in the aggregate, benefits outweigh costs but even more useful to the public and policymakers are studies that also examine individual regulations and determine whether each regulatory action in and of itself generates more benefits than costs.

The OMB's 1998 aggregate cost and benefit estimates differ significantly from its 1997 estimates. The primary reason for the difference is the OMB's decision to include a report by the Environmental Protection Agency (EPA) under Section 118 of the Clean Air Act (the "Section 812 report"). Many public commenters have expressed serious reservations about the OMB's use of these estimates because of serious methodological deficiencies.[14] The OMB, to its credit, actually does suggest that problems exist with the inclusion of the EPA estimates in its 1998 report. For example, because of the inclusion of the EPA's Section 812 Clean Air Act report, the OMB notes that the "monetized benefit estimates associated with reducing exposure to fine particulate matter (PM) account for 90 percent of the total estimated benefits."[15] This leads to two observations: (1) much of the EPA's stated benefit of the

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10. "For calendar year 2000, the Director of the Office of Management and Budget shall prepare and submit to Congress, with the budget...(1) 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; (2) an analysis of impacts of Federal regulation on State, local and tribal government, small business, wages, and economic growth; and (3) recommendations for reform."

11. See Office of Management and Budget, *Report to Congress on the Costs and Benefits of Federal Regulation,* 1998, and *Report to Congress on the Costs and Benefits of Federal Regulation*, September 30, 1997. In these reports, Congress directs the OMB to provide "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 $100,000,000 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 or program element that is inefficient, ineffective, or is not a sound use of the Nation's resources."

12. See Office of Management and Budget, *Report to Congress on the Costs and Benefits of Federal Regulation,* 1998.

13. Office of Management and Budget, *Report to Congress on the Costs and Benefits of Federal Regulation,* September 30, 1997, p. 21.

14. See Angela Antonelli, Letter to John F. Morrall III, October 8, 1998; Susan Dudley, "Comments on OMB's Draft Report to Congress on the Costs and Benefits of Federal Regulations," Regulatory Studies Center, Mercatus Center, George Mason University; and Randy Lutter, "An Analysis of the Use of EPA's Clean Air Benefit Estimates in OMB's Draft Report on the Costs and Benefits of Regulation," American Enterprise Institute and the Brookings Institution, Joint Center for Regulatory Studies, *Comment* No. 98–2 (October 1998).

Clean Air Act over the past 20 years (and of regulatory activity overall) now is to be derived only from its rulemaking on fine particulate matter;[16] and (2) by extension, many of the other Clean Air Act regulations issued over the past 20 years often had costs that far exceeded their benefits. Even though it recognizes problems with the EPA's estimates, however, the OMB still incorporates those estimates in its assessment.

The EPA's review of the costs and benefits of the Clean Air Act between 1970 and 1990 would have greater credibility and value if it examined individual regulations to determine which regulatory actions had produced significant benefits and which had been less successful. For this reason, the findings of a study by Robert W. Hahn of the American Enterprise Institute are much more useful to policymakers than the EPA's Clean Air Act study. The Hahn study, also used by the OMB, reviews 106 regulations and, as the OMB notes, concludes that

> not all agency rules provided net benefits. In fact, less than half of all final rules provided benefits greater than costs...a few rules provided most of the net benefits.[17]

What the Right to Know Act Would Do. As Professor Thomas Hopkins observes in recent congressional testimony, "If we want to continue shooting ourselves in the feet, collectively, I think it only fair that we have a count of the bullet holes."[18] The Regulatory Right to Know Act would require the OMB to report not just the aggregate costs and benefits of rules, but also the costs and benefits of individual rules. This is precisely the type of detailed information that regulators and policymakers need as they strive to make better decisions in the future.

Lesson #2: Regulators have incentives to understate costs and overstate benefits. In its second annual report the OMB includes some retrospective cases studies. They highlight the importance that agencies be held accountable for reevaluating individual regulations and regulatory programs to determine whether they achieve the benefits intended as well as their cost. The OMB reports that, if such agencies as the Occupational Safety and Health Administration and the National Highway and Traffic Safety Administration were to step back and look at how their regulations are being implemented, they could find that some rules had not produced the benefits predicted or that the agencies could have had significantly underestimated or overestimated the benefits and costs of rules.[19] Indeed, one should not find it surprising that when an agency is interested in justifying a regulatory action, overstated benefits and understated cost estimates often are the result. Congress should expect agencies routinely to undertake such retrospective studies and use their findings in future decision-makings, including whether it is necessary to reform or eliminate any existing programs.

What the Right to Know Act Would Do. By requiring aggregate estimates of costs and benefits, as well as estimates for individual rules, the proposed Regulatory Right to Know Act would require, by necessity, the OMB to consider and incorporate data from any retrospective studies done by agencies or any other

15. Office of Management and Budget, *Report to Congress on the Costs and Benefits of Federal Regulation,* 1998, p. 29.
16. See Angela Antonelli, "Can No One Stop the EPA?" Heritage Foundation *Backgrounder* No. 1129, July 8, 1997.
17. Office of Management and Budget, *Report to Congress on the Costs and Benefits of Federal Regulation,* 1998, p. 25.
18. See statement of Thomas D. Hopkins, Rochester Institute of Technology, before the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs, Committee on Government Reform, U.S. House of Representatives, 106th Cong., 1st Sess., March 24, 1999.
19. See Office of Management and Budget, *Report to Congress on the Costs and Benefits of Federal Regulation,* 1998, pp. 35–43.

credible source. Congress could strengthen this requirement by making sure that the OMB specifically summarizes in its report each retrospective study it uses, as it did in its 1998 report.

Lesson #3: Independent regulatory agencies issue rules that have costs (and benefits) that should be counted. In response to public comment, the OMB expanded the scope of economically significant rules, including, for example, rules sent to Congress as required by the Congressional Review Act. In doing so, the OMB acknowledged that independent regulatory agencies whose rules the OMB does not review under Executive Order No. 12866, such as the Federal Communications Commission and the Securities and Exchange Commission, also issue major rules. During 1997, approximately one-third of the major rules issued had come from these two agencies alone.[20]

When it comes to providing the public with information about their regulatory activities, the independent regulatory agencies and the OMB appear to interpret "independent" as "without need to be held accountable." Unfortunately, the OMB does not include the benefits or costs of these agencies' rules in aggregate totals or provide any estimates of economic impact in the absence of such estimates from the agencies. The purpose of the OMB's report on the benefits and costs of regulation is to address both the aggregate and individual benefits and costs of *all* federal regulations. To the extent that many independent agencies fail to do benefit-cost analyses, the OMB should develop its own estimates. It should not continue to ignore the economic impact of such rules—as it did in its second annual report with the statement,

> Since we have used a criterion of using only agency or academic peer reviewed estimates, we conclude that the 41 GAO reports contain no information useful for estimating the aggregate costs and benefits of regulation.[21]

If the OMB continues to refuse to provide the analysis, Congress should make sure that independent agencies develop capabilities to evaluate the costs and benefits of their rules systematically before imposing them on an unsuspecting public.

What the Right to Know Act Would Do. The Regulatory Right to Know Act would not exempt the regulations of independent agencies from regulatory accounting or accountability. The proposal would do nothing, however, to change the fact that regulations issued by independent regulatory agencies are not subject to review by the OMB and thus the agencies make little or no effort to estimate their benefits and costs. Until independent regulatory agencies are expected to estimate the costs and benefits of their rules, or until the OMB offers its own estimates, little additional useful information about the costs of rules from independent agencies can or should be expected.

Lesson #4: Agencies lack consistency in their benefit-cost methods of analysis. Although it is true that it is no easy task to estimate the impact of regulations on society and the economy, the OMB acknowledges that the estimation challenges it faces reflect the huge inconsistencies in methods used by the various federal agencies in benefit-cost analysis. A May 1998 GAO report confirms this wide variation in agency economic analyses.[22]

The continuing inconsistency in benefit-

20. Angela Antonelli, "Two Years and 8,600 Rules: Why Congress Needs an Office of Regulatory Analysis," Heritage Foundation *Backgrounder* No. 1192, June 26, 1998.

21. Office of Management and Budget, *Report to Congress on the Costs and Benefits of Federal Regulation,* 1998, p. 62.

22. See U.S. General Accounting Office, *Regulatory Reform: Agencies Could Improve Development, Documentation and Clarity of Regulatory Economic Analyses,* GAO/RCED–98–142, May 1998.

cost methods reflects the fact that neither the President nor Congress has demanded better from the agencies. If the OMB's current "Best Practices" guidelines for benefit-cost analysis[23] were enforced, many of the problems in estimating benefits and costs would have been mitigated long ago. There is no reason that agencies cannot follow one set of guidelines. Congress's efforts to promote accountability should do nothing to interfere with efforts to promote greater, more consistent use of these guidelines.

What the Right to Know Act Would Do. The Regulatory Right to Know Act would help to move agencies toward the standardization of their benefit-cost data by requiring that the OMB, in consultation with the Council of Economic Advisers, issue guidelines to standardize measures of costs and benefits.

Lessons #5: Because regulators and even the OMB have self-interest, independent reviews are essential. Because the OMB maintains a centralized regulatory review function and regulatory experts, it made sense for Congress to ask the OMB to track the benefits and costs of regulation across the government. In assigning this reporting power to the OMB, however, Congress also reasonably expected to see some of the OMB's own expertise in the report, providing its own independent, professional judgment about the consistency, quality, and validity of agency benefit and cost estimates.

In its 1998 report, the OMB does a better job by conducting its own review of agency economic analyses for rules issued between April 1995 and March 1998. Nevertheless, in many cases, the OMB fails to critique or offer its own estimates (and/or incorporate any third-party studies) of the direct or indirect impact of rules, such as the EPA's Clean Air Act estimates or the lack of benefit estimates for the EPA's Toxic Release Inventory rulemaking.[24] As part of the executive branch, the OMB may not be able to offer a truly independent review of agency analyses; thus, it is necessary to ensure that any OMB report be subject to outside independent reviews and made available for public comment. Both the comments of independent reviewers and of the public should be thoroughly summarized and presented by the OMB in any final report to Congress.

What the Right to Know Act Would Do. The proposals in the Regulatory Right to Know Act would make sure that future regulatory accounting statements are subject to public comment and peer review to make it considerably more difficult for either the agencies or the OMB to engage in the vast overstatement of benefits or underestimation of costs.

Lesson #6: The OMB and regulators have a responsibility to develop recommendations for regulatory reform. In response to public comments, the OMB's second annual report includes recommendations for the reform of certain regulatory programs, such as food safety, airbags, and drug labeling (see Appendix).[25] Initially, the OMB took the position of only including recommendations suggested to it by the public, but many commenters found this unacceptable. The only problem is that the OMB and other regulatory agencies have far more expertise and experience than average Americans in determining how effectively regulatory programs are functioning. The OMB and the other regulatory agencies must take the responsibility to provide the public with policy recommendations for public comment. Congress also should demand that that

23. The OMB developed, through an interagency process, a document explaining "Best Practices," which it issued on January 11, 1996. "Best Practices" sets the standard for high-quality economic analysis of regulation, whether in the form of a prospective regulatory impact analysis of a proposed regulation or a retrospective evaluation of a regulatory program.

24. Office of Management and Budget, *Report to Congress on the Costs and Benefits of Federal Regulation,* 1998, Table 9.

25. See Office of Management and Budget, *Report to Congress on the Costs and Benefits of Federal Regulation,* 1998, Chapter IV.

OMB report not only about efforts to reform or eliminate regulatory programs or rules, but also any initiatives on the part of agencies to expand or add new regulatory programs, and provide the public with an opportunity to comment on those proposals as well.

What the Right to Know Act Would Do. The Regulatory Right to Know Act would require the OMB to continue to provide recommendations to reform inefficient or ineffective regulatory programs or program elements.

Lesson #7: The OMB and the regulators may not present information to Congress and the public in a way that will prove useful or helpful. Not surprisingly, just as self-interested agencies have incentives to understate costs and overstate benefits, they also have incentives to avoid accountability whenever possible. Thus, it should come as no surprise that the OMB's reports to Congress do not present information in the most easy-to-digest manner. For example, in its second annual report, the OMB makes no real effort to

- Summarize net benefits (that is, do the math) for most of its aggregate estimates or estimates of individual rules;
- Present a summary table comparing trends from year to year (that is, does not compare 1998 estimates with 1997 estimates of the benefits and costs of regulation); and
- Provide much, if any, economic context to the either the benefits or the costs of regulation.

This last omission is perhaps the most serious flaw. For example, when put in its proper context, such as relative to gross domestic product, the EPA 812 benefit estimates suggest that the annual economic benefits of the Clean Air Act alone exceed the combined economic output of the U.S. agriculture, forestry, fishing, and health care industries .

To its credit, the OMB does point out in its second annual final report that

> the expected value of the estimated monetized benefit for 1990 is $1.25 trillion per year. This estimate implies that the average citizen was willing to pay over 25 percent of her personal income per year to attain the monetized benefits of the Clean Air Act.[26]

When put in this context, the reason is clear that such estimates should be subject to more critical evaluation.

Congress must work to ensure that the information provided by the OMB and agency regulators be easily digestible and understandable to the average American. Regulators, serving as employees of the American people, have the fundamental responsibility to explain the ways in which rules impact individuals, households, businesses, and state and local governments in understandable terms so that, ultimately, it is Americans who decide what national priorities and spending levels should be.

What the Right to Know Act Would Do. The Regulatory Right to Know Act proposals would require the OMB to determine the net benefits for aggregate estimates and the estimates of individual rules, and to present such information for previous years. H.R. 1074 goes beyond S. 59, however, to make the presentation of the data more similar to the way the OMB already presents information in its annual federal budget—reporting four years of projected estimates of benefits and costs as well as the two previous years.

CONCLUSION

Congress's experience to date with the OMB's regulatory accounting report shows that it is an extremely valuable tool for showing the way to achieve longer-term regulatory improvements. Congress must act now to make such accounting

26. See Office of Management and Budget, *Report to Congress on the Costs and Benefits of Federal Regulation,* 1998, p. 26.

reports, and the regulatory accountability that comes with them, permanent.

The Regulatory Right to Know Act would take a good step in this direction because it would (1) build on the previous OMB accounting statements; (2) make such an accounting statement permanent; (3) tie it to the federal budget so that federal regulators take it seriously and know they would be held accountable annually for their priorities and spending; and, most important, (4) empower the public with information to debate regulatory priorities and spending more effectively, just as they debate federal budget priorities and spending each year.

Congress should continue to build and improve on this framework in the years to come. The public stands only to benefit by improving the ability of the federal regulatory system to determine the effectiveness of its programs and to do a better job establishing regulatory priorities—in order to ensure America's national resources are allocated in ways that maximize public health and well-being.

—Angela Antonelli is Director of The Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation.

APPENDIX: REGULATORY REFORM RECOMMENDATIONS ENDORSED BY THE OMB'S 1998 REPORT TO CONGRESS

Section 625 of the Treasury and General Government Appropriations Act, 1998 (P.L. 105–61), directed the OMB to issue a second regulatory accounting report that, among other things, would include

> recommendations from the Director and a description of significant public comments 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 following is a summary of the recommendations "endorsed" by the OMB in its second report to Congress. Unless otherwise noted, the descriptions are extracted directly from Chapter IV of the report.

NEW INITIATIVES

Electricity Restructuring. The Clinton Administration has transmitted a bill to Congress to restructure the electricity industry. Under electricity restructuring, competition would replace regulation as the primary mechanism for setting prices for generating electricity. Utilities would be required to open up their distribution and transmission wires to all qualified sellers. The transmission and distribution of electricity would continue to be regulated, however, because they would remain under monopolies for the foreseeable future; the system would be restructured, not completely deregulated.

EXISTING PROGRAMS

Department of Agriculture, Food Safety and Inspection Service. To convert current "command-and-control" regulations governing the production of cooked beef products, uncured meat patties, and certain poultry products to performance standards.

Department of Health and Human Services, Food and Drug Administration. To make over-the-counter drug labels more informative and understandable to consumers.

Department of Housing and Urban Development. To provide consumers with increased disclosure concerning mortgage brokers' function and fees, and to clarify for mortgage brokers the application of the Real Estate Settlement Procedures Act to mortgage broker fees.

Department of the Interior. To delist or downlist (reclassify from endangered to threatened), where appropriate, approximately 40 species that have been so identified, to ease the burden created by the Endangered Species Act.

Department of Transportation, National Highway Traffic and Safety Administration. To review and evaluate the actual benefits, costs, and overall effectiveness of existing standards and regulations for improving the safety performance of air bags (Standard 208), the dynamic side-impact requirements (Standard 214), and the reflective marking on heavy truck trailers to enhance their detectability at night or under other conditions of reduced visibility (Standard 108).

Department of Labor, Occupational Safety and Health Administration. To revise and simplify its injury and illness reporting and recordkeeping system in order to improve the quality and utility of the data and exempt small businesses in low-hazard industries.

Department of Labor, Office of Federal Contract Compliance Programs. To streamline, clarify, and reduce the paperwork burden of regulations that govern the nondiscrimination and affirmative action obligations for federal contractors and subcontractors.

Environmental Protection Agency, Office of Solid Wastes and Emergency Response. To exempt low-risk wastes from the full management requirements designed for high-risk hazardous wastes.

Pension Benefit Guaranty Corporation. To continue its proposal for a new simplified defined benefit plan that removes some of the obstacles that discourage small businesses from adopting such plans and look at ways to revitalize defined-benefit systems for larger employers and their workers.