



Institute for Policy Integrity

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Honorable Howard Shelanski, Administrator
Office of Information and Regulatory Affairs

Subject: Comments on OIRA's Draft 2013 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities, 78 Fed. Reg. 29,780 (May 21, 2013)

The Institute for Policy Integrity at NYU School of Law submits the following comments on OIRA's 2013 draft report to Congress. Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, cost-benefit analysis, and public policy.

Though OIRA's 2013 draft report remains similar to 2012's draft report, OIRA has made some key improvements to the 2012 version. Most notably, OIRA has:

- Added a valuable discussion of co-benefits in the context of particulate matter.¹ Policy Integrity has extensively analyzed the importance of accounting for co-benefits in cost-benefit analyses,² and OIRA properly added this issue to its 2013 draft report.
- Added some discussion of potential weaknesses in job-impact analyses (such as ignoring long-run or indirect impacts)³ and has reworded some of the misleading language surrounding the economic effects of employment.⁴ As discussed below, however, there remains more to do in order to properly address employment analysis.

OIRA can make further improvements to its report to Congress and should pursue the following initiatives and reforms in its final 2013 report:

¹ OIRA, 2013 DRAFT REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND AGENCY COMPLIANCE WITH THE UNFUNDED MANDATES REFORM ACT AT 15 (2013) [hereinafter DRAFT REPORT].

² See, e.g., Combined Brief for Institute for Policy Integrity et al. as Amici Curiae Supporting Respondents, *White Stallion Energy Center, LLC v. Environmental Protection Agency*, No. 12-1100 (D.C. Cir. Jan. 29, 2013), available at http://policyintegrity.org/documents/Policy_Integrity_et_al_amicus_brief_01.29.13_.pdf; Comment Letter from Institute for Policy Integrity to EPA, re: Comments on National Emission Standards for Hazardous Air Pollutants from Coal and Oil Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil Fuel Fired Electric Utility, Industrial Commercial Institutional, and Small Industrial Commercial Institutional Steam Generating Units (Aug. 4, 2011), available at http://policyintegrity.org/documents/Policy_Integrity_Comments_on_UTILITY_MACT.pdf.

³ DRAFT REPORT, *supra* note 1, at 61-62.

⁴ See Comment Letter from Institute for Policy Integrity to Cass Sunstein, Administrator of the Office of Information and Regulatory Affairs, re: Comments on OIRA's 2012 Report to Congress on the Benefits and Costs of Federal Regulation (June 11, 2012) at 5, available at http://policyintegrity.org/documents/Policy_Integrity_Comments_on_Draft_2012_Report_to_Congress.pdf.

- OIRA should recommend the balanced, transparent integration of employment impacts into cost-benefit analysis.
 - Job impact analysis is worthwhile, both to improve agency decisionmaking and to inform what has become a divisive public debate.
 - Job impact analysis is not an alternative to, or substitute for, cost-benefit analysis. Rather employment effects should be incorporated into cost-benefit analysis on the basis of traditional economic principles.
 - The difference between short-term and long-term unemployment should be taken into account when determining the economic costs of layoffs. OIRA has improved on its treatment of this issue, but given the long history of agency inattention to employment and misunderstandings in public debates about the effect of regulation on employment, it needs to address this issue further.
 - The potential for regulations to positively and negatively affect workers should be recognized by agency analysis. OIRA itself should also be careful to avoid any language that reinforces the mistaken belief that regulations inevitably and unidirectionally lead to unemployment.
 - Economic models used to predict employment effects should be well suited to the type of regulatory effect being estimated. Job impact analysis should endeavor, to the extent possible, to model net employment impacts.
 - Uncertainty surrounding model predictions should be acknowledged by analysts and policymakers, and all assumptions and modeling choices should be disclosed.
- OIRA should recommend using retrospective review to pursue balanced, evidence-based, data-driven decisionmaking—not just cost-cutting.
 - Retrospective review is, in part, an opportunity to reduce paperwork burdens and switch to electronic reporting, but those are just the lowest-hanging fruit.
 - As envisioned by executive order, retrospective review is also an opportunity to expand rules where revision could increase efficiency, to evaluate areas of agency inaction, and to update estimates of costs and benefits. Agency plans give little attention to these important goals.
 - To further advance retrospective review, as well as to more broadly support efforts to evaluate regulatory programs based on evidence-based criteria, OIRA should work with other OMB Offices (like E-Government) to promote the collection, interoperability, and sharing of data.
- OIRA should recommend agencies coordinate by standardizing methodological practices, and should address claims of regulatory conflict or incoherence.
 - Scholars and politicians warn about regulatory conflict, but cite few examples of truly incoherent regulation. OIRA should issue a public call for examples. If the problem exists, conflicts can be addressed once identified. If the problem is overstated, concerned parties can turn their attention to more productive matters.
 - OIRA should standardize methodological practices, particularly by harmonizing the value of a statistical life; requiring and establishing best practices for distributional analysis; establishing best practices for labeling rules; and standardizing agency cancer risk assessment practices.

OIRA Should Recommend the Balanced, Transparent Integration of Employment Impacts into Cost-Benefit Analysis

OIRA emphasizes its belief that “it is important for regulatory agencies to attempt, to the extent feasible, to consider the employment effects (whether positive or negative) of their regulations, particularly in view of the potential long-term adverse consequences of reduced employment for affected workers and their families.”⁵ Agencies should develop a routine, rigorous, balanced, and transparent methodology for job impact analysis, both to support agency decisionmaking, and also to inform a public debate that has grown confusing and shrill. Agency analysts, however, must be cognizant of the limitations of available methodologies; they must incorporate their job impact findings into the broader cost-benefit analysis, and not use employment effects as a substitute for cost-benefit analysis; and they must not conflate temporary, regional, or sectoral layoffs and hiring with aggregate employment. To that end, OIRA itself should be careful to avoid language that connects regulatory policies with aggregate employment effects in misleading ways.

For a deeper discussion of these issues, see Policy Integrity’s Report, *The Regulatory Red Herring: The Role of Job Impact Analyses in Environmental Policy Debates* (2012).

The Benefits of Balanced, Transparent Job Impact Analysis:⁶ Regulatory impact analysis is often seen primarily as an internal decisionmaking tool, to be used by agency analysts to improve a rule’s efficiency and to identify distributional concerns. But another crucial, sometimes overlooked benefit of regulatory impact analysis is its positive effect on the public policy debate: it is a tool for transparency, conveying information to the public and providing a forum for stakeholders to engage in the rulemaking process. Making federal agencies’ job impact analyses more routine, rigorous, balanced, and transparent will augment both benefits.

Lately, the policy debate over regulations has been dominated by competing claims about job impacts. Opponents of regulation argue that increasing production costs will lead to layoffs, while proponents of stronger protections counter that rules can result in businesses hiring new workers. To bolster their positions, advocates on both sides have promoted economic studies that purport to examine the employment effects of regulations. More often than not, these economic studies are conducted by outside consultants or the advocates themselves and results are deployed in the policy debate without disclosure of underlying assumptions or the limitations of the models.

As a result, the policy debate about jobs and regulation has grown confusing and shrill. For example, the American Coalition for Clean Coal Electricity estimated that two EPA rules on power plant emissions would trigger a 1.4 million job *loss*; meanwhile, using a different model and different assumptions, the Political Economy Research Institute predicted the same two rules would generate a 1.4 million job *gain*. Anecdotal evidence suggests when such outside economic studies attract enough media and congressional attention, the resulting political pressure on federal agencies can sway their regulatory decisionmaking.

Though federal agencies are increasingly preparing their own job impact analyses, to date these analyses are inconsistently conducted, poorly integrated into the broader cost-benefit analysis, somewhat inaccessible to the public, and ultimately less likely to shape the policy debate. By making their job analyses more routine, rigorous, balanced, and transparent, federal agencies both can ensure their internal decisionmaking is based on accurate and complete information, and simultaneously can enrich the public debate by providing clarity to a controversial issue.

⁵ DRAFT REPORT, *supra* note 1, at 61.

⁶ The following sections draw from *Regulatory Red Herring: The Role of Job Impact Analyses in Environmental Policy Debates* (Policy Integrity Report 8, 2012), available at http://policyintegrity.org/files/publications/Regulatory_Red_Herring.pdf.

Current Agency Practices and Available Techniques:⁷ Jobs created or lost are often not considered in federal agencies' standard cost-benefit analyses, based on the assumption that labor markets are relatively efficient, meaning the costs associated with layoffs should be transitory. If labor markets operate smoothly, workers laid off as a result of a regulation will move from one firm or sector of the economy to another in response to job openings, and wages will adjust to restore employment levels. Under this assumption, regulation results in reallocation of labor, rather than a benefit or cost.

On the other hand, if the classical assumption of rapid rehiring does not hold, and workers have difficulty finding replacement employment, then the transition costs associated with layoffs—including psychological, emotional, relocation, and training costs, as well as long-term income effects—may be considerable. There are good reasons to be concerned that, in reality, labor markets do not always operate smoothly and that, therefore, cost-benefit analysis should take employment effects into account. Workers who are laid off cannot easily relocate their housing and other region-specific assets like social and family groups. Information barriers to identifying open positions in unfamiliar geographic regions or economic sectors, as well as skill barriers to transitioning into a new field of employment, may further inhibit workers' ability to quickly find new jobs.

At the same time, transition benefits could be associated with regulation. Especially important are instances where wages paid for regulatory compliance are earned by workers who would otherwise be unemployed. In these cases, the social cost of labor—represented by the opportunity cost of those workers' time—is very low. Accurately accounting for the opportunity cost of labor, rather than merely substituting wages as a proxy for those opportunity costs, will lead to more accurate estimates of regulatory costs.

Due to the particular salience of job effects right now, as well as presidential orders that mention the importance of considering job impacts, federal agencies have increasingly been conducting their own job impact analyses for significant new regulations. The practice, however, is still somewhat inconsistent. When performed, job impact analyses are usually kept separate from the more traditional cost-benefit analysis, which can make it hard for both agency decisionmakers and the public to assess the tradeoffs between employment effects and regulatory benefits. And just like the misleading outside economic studies discussed above, agencies' job impact analyses sometimes do not contain sensitivity analyses, do not fully disclose assumptions, do not use the model best suited for the task, and do not present results in the form more easily accessible by the public.

For example, EPA's job impact analyses attempt to forecast the effect of a rule on layoffs and hiring in the regulated industry. The agency sometimes uses the results of its job impact analyses in its feasibility analyses, attempting to determine if the job losses associated with a regulation are too high. This practice has been criticized as inconsistent with the goals of maximizing economic efficiency, because job losses are not compared to the regulatory benefits that are forgone when the regulation is adjusted.

All of the models used to estimate the effect of regulations on layoffs, hiring, and overall employment have limitations, which means that the picture they provide is necessarily incomplete. Currently, most models are best able to examine only part of the picture—like layoffs or hiring in a particular sector—and cannot accurately model the dynamic, economy-wide effects of a policy on aggregate employment levels. Because overall employment responds to large, macroeconomic factors, individual regulations will rarely have lasting effects on aggregate employment. Regulations that do not affect marginal labor productivity in the general economy are more likely to influence only the geographic or sectoral distribution of employment opportunities, rather than

⁷ *Id.*

national employment levels. Current employment models are better suited to measuring these effects than forecasting economy-wide consequences. While this information may be useful for policymakers, especially when designing mechanisms to reduce transition costs and protect against long-term unemployment, it should not be mistaken for an accurate picture of the net effects of a regulatory policy on employment in the economy as a whole.

Developing Better Practices for Job Impact Analysis:⁸ Job impact analysis can and should be used by policymakers and advocates when weighing the costs and benefits of a rule. But it should not serve as a trump card, and both policymakers and advocates must recognize that even the most sophisticated job impact analyses have only limited predictive power in our complex and dynamic economy.

If job impact analyses are to play a useful role in regulatory decisionmaking, then analysts, advocates, and policymakers should adhere to the following recommendations for best practices:

- Job impact analysis is not an alternative to or substitute for cost-benefit analysis. Rather, employment effects should be incorporated into cost-benefit analysis on the basis of traditional economic principles. If a regulation causes labor transitions resulting in layoffs, any costs of relocation or retraining, long-term productivity effects, and negative health effects associated with unemployment should be calculated. Likewise, if labor transitions result in hiring, especially of underutilized workers, this should be factored into estimates of regulatory costs. Crucially, these employment-related costs and benefits will be just one input into the broader cost-benefit analysis, to be weighed against all traditional compliance costs and the full range of environmental, health, safety, and other social benefits. Employment-related distributional effects may need to be analyzed separately along with other distributional effects.
- The difference between short-term and long-term unemployment should be taken into account when determining the economic costs of layoffs. Short-term unemployment may entail relatively minor costs for job search, relocation, and retraining. Long-term unemployment, by contrast, may entail more substantive costs, such as more intense retraining, long-term income and productivity effects, and negative health consequences. Conflating these two distinct types of consequences in a job impact analysis leads to incorrect cost calculations and misleading rhetoric. OIRA has improved its discussion of short-term and long-term unemployment, but given the long history of agency inattention to employment and misunderstandings in public debates about the effect of regulation on employment, it should explain the issue more clearly.
- The potential for regulations to positively and negatively affect workers should be recognized. In our dynamic labor market, regulations may produce multiple effects simultaneously. Layoffs in one sector or region may be accompanied by hiring in another sector or region. Analysts, as well as advocates on both sides of the debate, should be careful to look at the whole picture and not cherry-pick data or results. OIRA has acknowledged the possibility that regulation may affect workers both positively and negatively, but, as with the issue of short-term versus long-term unemployment, because of the strong potential for public misunderstandings regarding regulation's effects on employment, OIRA should discuss this issue more fully.
- Economic models used to predict employment effects should be well suited to the type of regulatory effect being estimated. Some models are better suited to estimating effects in a single region or industry, while others can better handle multi-sector or nationwide analysis. Where possible, job impact analysis should model net employment effects. While a

⁸ *Id.*

model less suited to the regulatory effect in question may be appealing as a cheaper or less time-consuming option, analysts should strive to select the best tool for the task.

- Uncertainty surrounding model predictions should be acknowledged by analysts and policymakers, and all assumptions and modeling choices should be disclosed. Far too often, data sources and model assumptions are buried in an economic report, or not disclosed at all. Sensitivity analyses are conducted and disclosed inconsistently at best. Advocates then tend to discuss only those studies that most support their positions, without reference to the study's limitations, uncertainty, or the existence of other reliable but contradictory results. For job impact analysis to play a useful role in policy debates, more transparency and disclosure is necessary.

OIRA Should Recommend Using Retrospective Review to Pursue Balanced, Evidence-Based, Data-Driven Decisionmaking—Not Just Cost-Cutting

OIRA extols the benefits of agencies' retrospective analysis work thus far, describing "reforms that will have a significant impact" on regulatory efficiency.⁹ In actuality, the plans fall far short of the goals envisioned by Executive Order 13,563. Most plans, as well as the examples OIRA cites in its report, focus almost exclusively on cost-cutting measures, paperwork reductions, conversions to digital reporting, and the repeal of obsolete provisions. Though worthwhile, such efforts should not distract agencies from other opportunities to enhance net benefits. The plans rarely mention—and OIRA's report all but ignores—the potential for retrospective review to expand rules where revision could increase efficiency; to evaluate areas of agency inaction; to respond to true changes in economic or technological circumstances; and to update estimates of costs and benefits. Improving the collection, interoperability, and sharing of data would also improve agencies' ability to evaluate a rule's actual effectiveness.

For a deeper discussion of these issues, see the comments submitted by Policy Integrity to EPA on its preliminary plan for retrospective review (2011),¹⁰ as well as the letter from Policy Integrity to OMB on data interoperability (2012)¹¹ and Policy Integrity's regulatory report on data interoperability (2012).¹²

Moving Beyond Cost-Cutting and Paperwork:¹³ OIRA highlights retrospective review as an opportunity to amend rules that are "redundant," "outmoded, ineffective, and excessively burdensome," or generally in need of "modification, streamlining, expansion, or repeal."¹⁴ Such language, as well as the examples OIRA cites, reflects an anti-regulatory focus in the approach to retrospective review. Executive Order 13,563 was not so narrow in its goals. The Order specifically called for agencies to identify "insufficient" rules as well as excessively burdensome ones, and to develop proposals to "expand" rules that work in addition to streamlining those that do not.¹⁵ The

⁹ DRAFT REPORT, *supra* note 1, at 55.

¹⁰ Comments from Policy Integrity to EPA, on EPA's Preliminary Plan for Periodic Retrospective Reviews of Existing Regulations (June 27, 2011), *available at* http://policyintegrity.org/documents/Policy_Integrity_Final_Comments_on_EPA_Retro_Plan.pdf.

¹¹ Letter from Policy Integrity to OMB on Data Interoperability and Social Service Programs: Toward Better Evidence and Evaluation (June 11, 2012), *available at* http://policyintegrity.org/documents/IPI_Letter_to_OMB_re_Data_Interoperability.pdf.

¹² *Regulatory Report: Interagency Data Interoperability* (Policy Integrity Report, June 26, 2012), *available at* http://policyintegrity.org/files/publications/62512_Regulatory_Report_Data_Interoperability.pdf

¹³ This section draws on Policy Integrity's comments to federal agencies on their retrospective review plans, *see e.g., supra* note 14.

¹⁴ DRAFT REPORT, *supra* note 1, at 9, 53.

¹⁵ Exec. Order No. 13,563 § 6, 76 Fed. Reg. 3,821, 3,822 (Jan. 18 2011).

Order also broadly called for agencies to “measure, and seek to improve, the actual results of regulatory requirements.”¹⁶

The goal of enhancing net benefits suggests two appropriate contexts for conducting retrospective review. First, rules should be selected for review if changed circumstances indicate a rule no longer functions efficiently or effectively. New technology may drastically reduce compliance costs, indicating a stronger rule might better deliver net social benefits; new economic circumstances may have raised compliance costs, perhaps pointing to the need for more flexibility to restore efficiency; or new legislation may make a rule obsolete. Second, new data on the costs and benefits of rules may raise the opportunity for retrospective review. If the original analysis underestimated the costs, the rule may need to be restructured to ensure that benefits once again justify costs; if the original analysis underestimated the benefits, the rule may not be fully capturing the potential for effective performance, and a stronger rule could be justified. When enough time has passed, this type of reevaluation based on new data is possible. Additionally, the retrospective review process offers agencies a valuable chance to assess areas of inaction. Inaction has been historically overlooked by the existing system of regulatory impact analysis, which suggests that there may be significant missed opportunities for cost-effective regulation that maximizes social benefits.

The bulk of the agencies’ retrospective review efforts to date focus on streamlining paperwork requirements and harnessing the latest digital technologies to reduce compliance costs. These are worthwhile goals that should be pursued. However, the appeal of these low-hanging fruit should not monopolize the agencies’ attention or distract them from other opportunities to use retrospective review to enhance net benefits. Paperwork reduction opportunities should definitely be included in the rule selection process, but such regulations should only be prioritized for review when the agency believes these rules represent the best opportunity to enhance net benefits. Other rule changes, including rule expansions justified by new data or changed circumstances, should not be ignored simply because analyzing their effects may be more difficult.

Moreover, the retrospective review plans do not adequately develop concrete proposals for how agencies will build data collection into their future rules, or how agencies will study ex-post costs and benefits systematically. If OIRA wants to be able to utilize retrospective analysis to “greatly improve[] prospective analyses,”¹⁷ agencies will need to gather more data to continue evaluating the effectiveness of rules on an ongoing basis.

Promoting Data Interoperability:¹⁸ Different regulatory programs, overseen by different agencies, often perform similar functions or have similar goals. For instance, many social services programs distribute financial assistance to reduce poverty or homelessness, or administer services aimed at enhancing access to health care or education. These social services programs also often serve or interface with overlapping populations. The efficacy and cost-effectiveness of these programs is hard to assess for a number of reasons, including that multiple programs contribute to the same output (for instance, better health or educational outcomes). However, one of the main reasons that evaluations and comparisons are difficult is because of insufficient or incompatible data. Data from one program may not be compatible with data from another, or a program may not collect information that evaluators of that program or other programs would find useful. Improving data collection and interoperability would enhance the government’s ability to evaluate the success of these programs, both individually and comparatively. These evaluations, in turn, can

¹⁶ *Id.* at § 1.

¹⁷ DRAFT REPORT, *supra* note 1, at 9.

¹⁸ This section draws from a letter from Policy Integrity to OMB on data interoperability (attached), which will also be released as a forthcoming Policy Integrity Regulatory Report.

inform funding allocations and regulatory decisions to help better ensure policies will return the greatest net benefits.

Data interoperability is defined as the compatibility between different data sets, often from different organizations. Data that is not collected to maximize sharing and data that is unable to be shared for nontechnical reasons are deemed “not fully interoperable.” Given the difficulty in assessing the ongoing effectiveness of regulatory programs, OIRA—together with other OMB actors like the Office of E-Government—should develop and implement a new data interoperability plan, with the twin goals of improving interagency data collection and data sharing practices.

OIRA Should Recommend Agencies Coordinate by Standardizing Methodological Practices, and Should Address Claims of Regulatory Conflict or Incoherence

OIRA calls for agencies to “seek to align their priorities...across all levels of internal hierarchy” as well as “across agencies.”¹⁹ OIRA also notes the ongoing variation across agencies in the calculation of the value of mortality reductions,²⁰ as well as the lack of guidance on consistent distributional analysis.²¹ In line with these goals and observations, OIRA should investigate claims of regulatory conflict and should help agencies standardize methodological practices.

For a deeper discussion of these issues, see Policy Integrity’s letter to OIRA on agency coordination (2012).²²

Addressing Claims of Regulatory Conflict and Incoherence:²³ Many academic scholars have warned about regulatory conflict and incoherence. Some scholars argue that the problem is so prevalent that the government should be reformed to avoid conflicting regulations. Others have argued that the fear of inconsistent regulations has already influenced the shape of government by leading to more centralized review. Political actors have also frequently criticized the regulatory system for producing conflicting or incoherent rules.

This criticism of the regulatory system appears to be based on the number of rules and regulators. It is well known that government programs have inefficient overlaps and that administrative agencies have overlapping delegations of regulatory authority. Moreover, there are some examples of directly conflicting rules—two rules that were impossible to comply with simultaneously—but they are often decades old. For example, in the early 1980s, certain chocolate manufacturers faced a situation in which OSHA rules required the use of porous insulation that could not be kept clean enough to meet FDA standards. However, when academics and political actors assert that such conflicts persist, they either lack ready examples or only give examples of burdensome regulations or programmatic issues. Therefore, this problem may be overstated. Critics may be correct that regulations create significant burdens and that agency jurisdictions often overlap, but may be wrong that these overlaps actually create burdens through conflict or incoherence.

To uncover the severity of the problem of conflicting and incoherent regulations, OIRA should survey academic literature, consult with agencies, and solicit and analyze comments from the public. Regulated entities are interested in reducing their regulatory burdens. Therefore, they are

¹⁹ DRAFT REPORT, *supra* note 1, at 54. In this year’s report, OIRA also seeks to increase international regulatory coordination. *Id.* at 58-60.

²⁰ *Id.* at 8.

²¹ *Id.* at 9.

²² Letter from Policy Integrity to OIRA, on Recommendations to Promote Interagency Coordination (May 10, 2012), *available at* http://policyintegrity.org/documents/IPI_Letter_on_Interagency_Coordination.pdf.

²³ The following sections draw from *id.*

likely to participate in a comment process that would eliminate rules that are impossible to comply with.

OIRA should include in its final 2013 report to Congress a public call for examples of existing regulatory conflicts or incoherence. If few genuine examples are submitted and the alleged problem appears to be overstated, then regulators and regulated entities can work together on more substantial concerns about regulation, such as cost-effectiveness. If conflicting rules are still a problem, then soliciting comments would be a low-cost way to find existing conflicts, which is the only way to resolve them.

Standardizing Methodological Practices:²⁴ Rule development frequently requires multiple agencies to confront a similar set of methodological issues. If agencies do not coordinate on common issues, they will be unable to use the accumulated knowledge of other agencies, and systematic inefficiencies will result. Methodological standardization makes it easier to compare the effects of regulations across agencies, and it equalizes the marginal costs of regulation, leading to a more efficient regulatory system.

For complex issues, particularly where agencies have important subject matter expertise that will help shape a more accurate result, interagency groups may be the most appropriate vehicle to achieve harmonization. Interagency groups may also be superior where agencies are hesitant to change their established practices—agencies may comply with the result more readily where they had a role in its creation. The Social Cost of Carbon (SCC) working group succeeded in altering the way agencies do regulatory impact analysis, in part because it came about through an interagency process.

OIRA should continue to standardize aspects of agency rulemaking through interagency working groups. While there are many areas where standardization would be highly beneficial, OIRA and the regulatory agencies do not have the resources to approach all important issues at once. High-impact issues that OIRA should consider include:

- harmonizing the Value of a Statistical Life;
- requiring and establishing best practices for distributional analysis;
- establishing best practices for labeling rules; and
- standardizing agency cancer risk assessment practices.

For instance, the monetized value of incremental mortality risk reduction, often referred to as the Value of a Statistical Life (VSL), is one of the most important numbers in cost-benefit analysis: an increase or decrease in the VSL will often determine whether a regulation is cost justified or how stringently a regulatory standard should be set.

Agencies use disparate VSLs. For example, in rules published in recent years, the Federal Motor Carrier Safety Administration (FMCSA) set the VSL at \$6 million, the Food and Drug Administration (FDA) at \$7.9 million, and the Environmental Protection Agency (EPA) at \$8.7 million. While this range is smaller than it once was, it still represents an unexplained 45% variance—large enough to have significant practical implications.

Any significant disparity in agencies' VSLs without a unifying rationale suggests that agencies may be approving or rejecting regulatory alternatives when another agency's methodological assumptions would result in the opposite outcome. This methodological divergence also makes it difficult to compare the value of life-saving regulations across agencies. Dissonant agency VSLs may account in part for the dramatic variation in the cost effectiveness of final rules and may contribute

²⁴ *Id.*

to a regulatory system that, on the whole, devotes too many resources to regulations that have small net benefits.

An interagency working group could be especially useful in harmonizing the VSL. The simplest approach would be to establish a single federal VSL. This is possible given that each agency that has approached the issue has established a single VSL across all of their rules. Alternatively, the working group might find it desirable to allow for multiple VSLs, in which case the group could either create a set of acceptable values based on willingness to pay variations or it could create a guidance document for determining the VSL. Any of these approaches would facilitate more accurate comparison of rules across agencies and would equalize the marginal costs of regulation, resulting in a more harmonious regulatory system.

Conclusion

OIRA's annual report to Congress on the benefits and costs of federal regulation is certainly an opportunity to inform Congress and the public about the results of existing practices for regulatory analysis. But it is also an opportunity to reassess those practices and explore options for improving them. OIRA should use its 2013 report to Congress to recommend the balanced, transparent integration of employment impacts into cost-benefit analysis; to recommend the use of retrospective review to pursue balanced, evidenced-based, data-driven decisionmaking that goes beyond just cost-cutting; more broadly to promote data interoperability; to address claims of regulatory conflict or incoherence, seeking the public's assistance to identify examples; and to help agencies coordinate by standardizing their methodological practices.

Sincerely,

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