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Thank you very much for the opportunity to review the *2006 Draft Report to Congress on the Costs and Benefits of Federal Regulation*. I found the report informative and marvel at the improvements that have been made over the years in these reports. The factual information that is presented is useful and thorough and valuable to researchers interested in regulatory costs and benefits.

There are several general areas that OIRA should work on improving in the report however. I mention them briefly below and then go into greater detail in my specific comments attached. My specific comments also contain minor editorial suggestions (once a desk officer, always a desk officer!) The most significant points:

- OMB's charge from Congress is to report on the costs and benefits of federal regulations. If I recall the Congressional mandate correctly, there is nothing in it about comparing regulatory performance across administrations. I fear attempts to make such comparisons in this draft reports have compromised OIRA's ability to conduct objective analysis. I would recommend eliminating all such comparisons. However if such comparisons are required I make specific suggestions to correct misrepresentations in my attached comments. This is particularly relevant for Chapter 2 and the Executive Summary.
- This may be a suggestion for the 2007 report more than this one but OMB needs to revisit the issue of homeland security rules. Acknowledging the difficulty of measuring the benefits of homeland security becomes less of a solution as more and more such rules are promulgated. Many environmental rules have benefits that are difficult to measure but OMB would never tolerate this difficulty as an excuse for no analysis. This is my main comment on Chapter 1.
- I learned a great deal from Chapter 3 which compared the U.S. and E.U. but found myself wanting more. If possible, I would suggest including comparisons on the most difficult issues surrounding cost benefit analysis. How do the U.S. and E.U. compare in how they handle questions such as the proper discount rate and the treatment of uncertainty.

I hope that these comments prove to be helpful to OIRA in completion of this report. It was my pleasure to serve as a reviewer.

Executive Summary

Page 1: Using only average yearly benefits and costs to compare the regulatory performance of administrations is misleading. A simple example will suffice to demonstrate this.

Suppose there are three possible regulations, 1, 2, and 3 with benefits and costs as follows.

<u>Regulation</u>	<u>Benefits</u>	<u>Costs</u>
1	30	10
2	25	15
3	21	19

The “B” administration promulgates rules 1 and 2. The “C” administration promulgates rules 1,2, and 3. An average benefit, average cost, and average net benefit metric will show a superior performance for the B administration. However in declining to promulgate regulation 3, the B administration has taken an action that has negative net benefits.

There is no foolproof mechanism for comparing regulatory performance across administrations. However if OMB is going to make such comparisons, they need to use metrics in addition to averages. These could include other metrics such as total net benefits or the number of regulations with net benefits (and net costs) promulgated. Both of these metrics deal with the problematic example given above.

Chapter 1

Page 4: First paragraph, Table C-33 only has 10 rules in it.

Page 4: Footnote 5: The issues over the correct discount rate to use are well worn and do not need to be rehashed here. I refer OMB (if they ever do wish to engage these issues again) to the 2004 article “Just Give Me a Number: Practical Values for the Social Discount Rate” *Journal of Policy Analysis and Management* 23:789.

Page 6: First paragraph I think OMB can be stronger here and say that the costs and benefits of all rules **will** be larger than in Table 1-1 since this table just reflects the past 10 years.

Page 7: Does the NAS book contain information on all of the bullet points? Other citations may be helpful.

Page 8: A table listing the rules for which benefits and costs are not given would be helpful.

Page 8: OMB did a good job in the 2003 report discussing the difficulties associated with homeland security regulations. However I hope that the 2003 report is not the final word on the issue. These regulations are among the most costly being promulgated and eventually the public needs to be able to evaluate them. I do not have any easy solutions

but it would be good to know that OMB is still pursuing the evaluation of the benefits of homeland security regulations.

Page 9: The claim that the percentage of regulations presenting monetized benefits and costs is higher under the Bush Administration is not very revealing. A possible cause for this is a reluctance by agencies to promulgate rules for which benefits and costs are difficult to monetize. This should be acknowledged here.

Page 13, Table 1-6: Why is the allocation of H-1B visas a transfer?

Page 14: Last paragraph, the rules promulgating homeland security should remain in the denominator of the percentages listed here. This is the equivalent of saying, "Rules protecting endangered species are difficult to monetize benefits for so we are not counting them when trumpeting the extent of monetization."

Page 18: Paragraph after bullets, why are we still using data from the April 2001 Agenda? Isn't anything more current available.

Chapter 2

Page 26: Last paragraph, what about benefits in the first two years of the Reagan Administration?

Page 26: Last paragraph, The treatment of the ergonomics rule is extremely disingenuous. If it is to be counted at all, there should be some counting of the benefits of the rule as well as the costs. While the OSHA estimate was highly problematic (\$9.3 billion), if OMB is including agency estimates for other rules it should include this # for the ergonomics rule as well. One could reduce the benefit number using some defensible methodology but to ignore benefits entirely artificially inflates the net benefits of Bush administration rules and deflates the net benefits of Clinton Administration rules.

Page 27: Last paragraph. The first part of this paragraph calls into question the second part. Indeed there is a notable increase in regulatory costs in the last year of a presidency. Since we have not yet seen the last year of the Bush presidency, comparisons between costs of Bush rules and those of previous administrations are necessarily incomplete. This needs to be acknowledged.

Page 28: See the comment on the executive summary. Average values are very misleading. I recommend the inclusion of other metrics such as total net benefits and number of rules with net benefits and net costs if metrics comparing administrations are going to be included.

Page 29: Ditto.

All of the comments in this chapter point to the hazards of comparing regulatory performance across administrations. I recommend the elimination of these comparisons.

Chapter 3

This chapter is not my area of expertise. I however have one significant comment. As OMB knows, issues on how to conduct a regulatory analysis are fraught with challenges

and controversy. The proper discount rate to use (and whether to discount at all in some circles) is one example. I would have liked this chapter to inform us about how the US and EU compare in issues like the use of discounting, the treatment of uncertainty, and valuing life saving interventions.

Appendix C

The heading to table C-1 should read “Five” major rules, not “Nine”