Susan Dudley <sdudley@gmu.edu>
05/28/2002 11:31:35 AM

Record Type: Record

To: John F. **Morrall** III/OMB/EOP@EOP

cc:
Subject: Comments on B-C report

John -- Here are our comments in Word. Let me know if you'd prefer another format.

Susan E. Dudley, Senior Research Fellow, Regulatory Studies Program, Mercatus Center, George Mason University

3401 North Fairfax Drive, Suite 450, Arlington, **VA 22201**-4433. 703-993-4934 (o)
703-995-4835 (fax) 703-754-0304 (h)

www.mercatus.org


- attl.htm


- Mercatus - OMB B-C 2002.doc

MERCATUS CENTER

REGULATORY STUDIES PROGRAM

Public Interest Comment on the Office of Management and Budget's Draft Report to Congress on the Costs and Benefits of Federal Regulation'

The Regulatory Studies Program (RSP) of the Mercatus Center at George Mason University is dedicated to advancing knowledge of regulations and their impacts on society. **As** part of its mission, RSP produces careful and independent analyses of agency rulemaking proposals from the perspective of the public interest. OMB's Report to Congress on the Costs and Benefits of Federal Regulations offers an important opportunity for government policymakers and the public to gain a better understanding of the impact of federal regulations. The program's comments on this report do not represent the views of any particular affected party or special interest group, but are designed to protect the interests of American citizens.

Part I of our comments provides some background on the growth of regulation; Part II reviews the evolution of oversight mechanisms by which Presidents seek to manage regulatory costs and discusses the Bush Administration's achievements and challenges; Part III addresses the aggregate benefit and cost estimates that OMB has included in its report; Part IV responds to OMB's discussion of developments internationally; and Part V concludes the comment. The appendix to this comment offers specific recommendations for regulatory reform based on research conducted by scholars at the Mercatus Center.

I. Background – Regulations impose a hidden tax

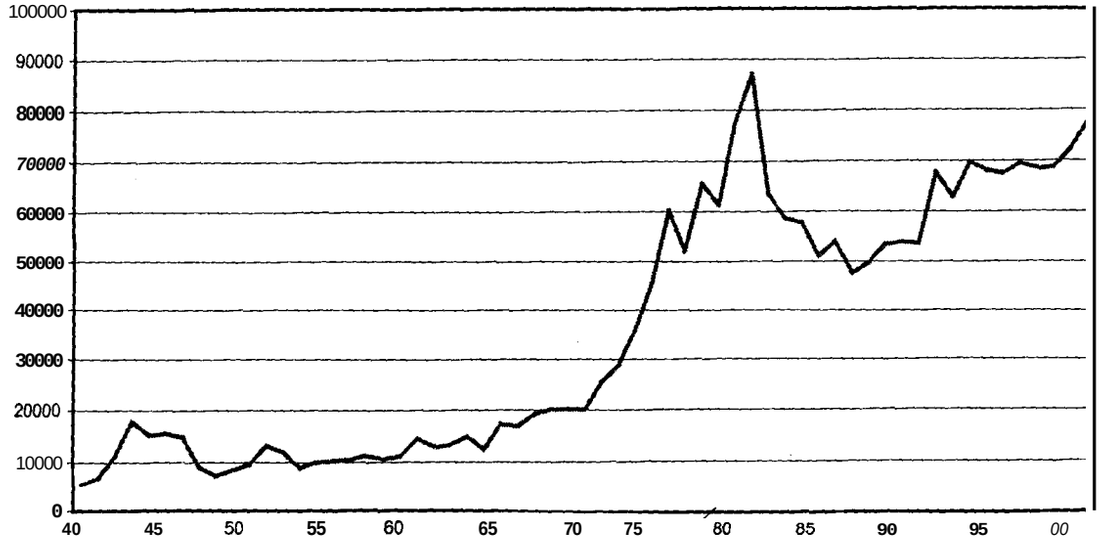
The annual report to Congress on the costs and benefits of federal regulation is important. The federal government has two principal mechanisms **by** which it diverts resources away from private sector uses towards government-mandated goals: taxation (and subsequent spending) and regulation. While tax revenues are measured, tracked through the federal budget, and subjected to Congressional oversight and public scrutiny, there is no corresponding mechanism for keeping track of the costs of regulation. Yet this burden can be considerable and continues to grow. Since the costs of regulation are not paid directly, as taxes are, Americans don't know what this hidden tax actually amounts to each year. And *all* of the burden ultimately falls on individuals—consumers, workers, entrepreneurs, investors, taxpayers, and citizens—and affects the quality of their lives. Businesses (and governments too, for that matter) are merely intermediaries and cannot "absorb" the real costs of regulation. People bear this burden.

[1] Prepared by Susan E. Dudley, Brian F. Mannix, and Jennifer Zambone, Mercatus Center, George Mason University. The views expressed herein do not reflect an official position of George Mason University.

Estimating the size of this hidden tax is not straightforward; policy analysts have resorted to such crude metrics as the number of pages printed in the Federal Register, or the size of the budgets of regulatory agencies. (See Figures 1 and **2.)** While these statistics are informative—they confirm that the number and scope of regulations have grown dramatically over the last three decades—they are only proxies rather than estimates of the extent to which regulations increase the cost of goods and services and limit consumer choices.

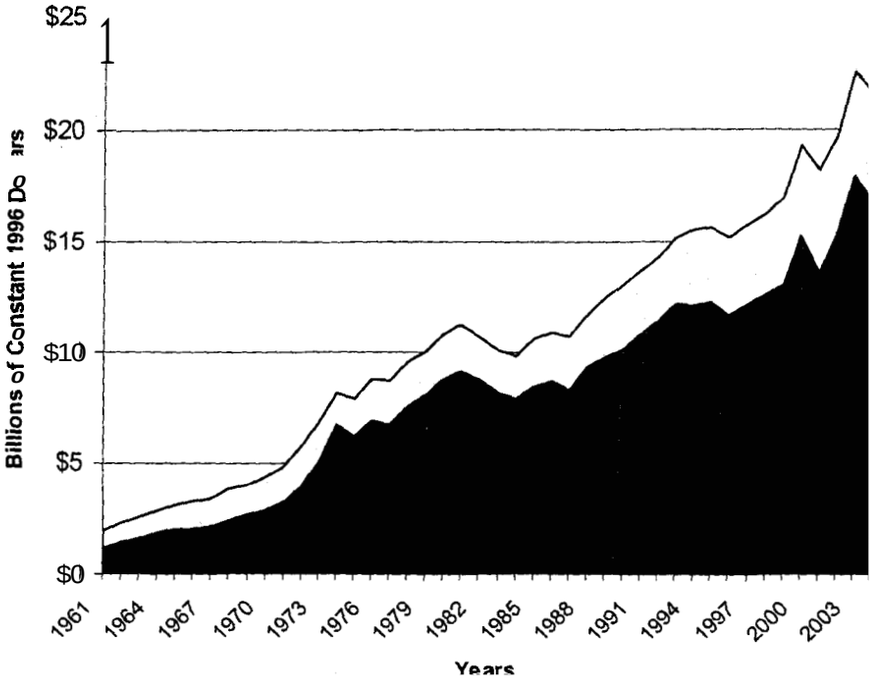
OMB's annual report to Congress has the potential to shed some light not only on the magnitude and impact of the hidden regulatory tax, but also on the benefits Americans are expected to derive from it.

Figure 1. Annual Count of Federal Register Pages, 1940-2001



Source: **Annual** count of Federal Register pages, maintained by the authors.

Figure 2. Annual Budgets for Federal Regulatory Activity 1961-2003



Source: Mercatus Center and Weidenbaum Center, ***2003 Annual Regulatory Budget Report, Regulatory Changes and Trends: An Analysis of the Budget of the United States,*** forthcoming June 2002.

II. The Role of Executive Oversight

A. Executive review of regulatory activity has a long history.

Figures 1 and 2 reveal that the growth in federal regulatory activity accelerated in the 1970s. At about the same time, American presidents began to institute procedures for overseeing the regulatory decisions of different agencies. **As** Table 1 shows, every president since Richard Nixon has maintained, in one form or another, a centralized mechanism for executive branch oversight of regulations proposed by federal agencies. Upon taking office, President Clinton rescinded Executive Order 12291, which had guided regulatory review for the previous **12** years under Presidents Reagan and Bush, and replaced it with Executive Order 12866, which remains in effect today. In many ways the current Executive Order resembles its predecessors: it reinforces the philosophy that regulations should be based on an analysis of the costs and benefits of available alternatives, and that agencies should select the regulatory approach that maximizes net benefits to society unless prevented from doing so by law.

Table 1. 30 Years of Executive Oversight of Regulatory Process

President	Oversight Agency	Cabinet-level Group	Process
Nixon	OMB	None	Quality of Life Review (Agencies should consider alternatives **and** costs of "significant" regulations.)
Ford	Council on Wage & Price Stability	Review Group on Regulatory Reform	E.O. 11821 – "Inflation Impact Statements" E.O. 11949 – "Economic Impact Statement"
Carter	OMB, CWPS, & Council of Economic Advisers	Regulatory Analysis Review Group Interagency Regulatory Liaison Group Regulatory Council	E.O. 12044 – "Regulatory Analysis" made available to public at proposal. "Least burdensome…" Semiannual agenda of forthcoming regulations.
Reagan	OMB (OIRA)	**Task** Force on Regulatory Relief	E.O. 12291 – Benefit-cost criteria; OMB approval required before publication of proposals.
G.H.W. Bush	OMB (OIRA)	Council on Competitiveness	E.O. 12291
Clinton	OMB (OIRA)	Reinventing Government Initiative	E.O. 12866 – Net benefit criteria.
G.W. Bush	OMB (OIRA)		E.O. 12866 – Net benefit criteria.

In recent years, the **Congress** too **has** become interested in providing generic guidance to agencies for sound regulatory decisions, and has sought to enhance **its** oversight of agency performance. Congress has enacted a number of legal requirements governing factors the executive branch must evaluate, information it must provide, and procedures for review of regulations by parties other than the issuing agency.

Some of the most important regulatory review laws are:

- Paperwork Reduction Act (PRA), which established OIRA within OMB to review the paperwork and information collection **burdens** imposed by the federal government.
- Regulatory Flexibility **Act** (RFA), which requires agencies to assess the impact of a regulation on small businesses and provides for review by the ~~Small Business~~ Administration (SBA).

- Small Business Regulatory Enforcement Fairness Act (SBREFA), which enforces requirements for small business impact analyses under RFA.

- Congressional Review Act (CRA), contained in SBREFA, which requires rule-issuing agencies to send all mandated documentation that is submitted to OMB to both houses of Congress as well, and allows Congress to overturn regulations within a specified time with a Congressional Resolution of Disapproval.

- Unfunded Mandates Reform Act (UMRA), which limits the ability of regulatory agencies to place burdens on state, local, and tribal governments.

- Section 624 of the FY2001 Treasury and General Government Appropriations Act, which requires OMB to provide this report to Congress yearly on the costs and benefits of regulations and recommendations for reform.

- Truth in Regulating Act of 2000 gives Congress the authority to order GAO to conduct an evaluation of the impact of economically significant rules.

B. Regulatory oversight under the Bush administration continues and enhances past policies.

George W. Bush's Office of Information and Regulatory Affairs (OIRA) operates under the same Executive Order 12866 issued by President Clinton. OMB's draft report to Congress and other memoranda issued by OIRA Administrator, John **Graham,** have highlighted and reinforced key aspects of E.O. 12866. For example, they have emphasized the importance of Regulatory Impact Analyses (RIAs) and the principle that "in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits." OIRA memoranda have also stressed the importance of basing regulatory action on "objective, realistic, and scientifically balanced" assessments of risk or environmental hazard.

The draft report notes concerns that during the Clinton Administration "the sound principles and procedures in [Executive Order 12866] were not always implemented and enforced by OIRA."[2] It highlights the six elements that must accompany a significant regulatory action as identified in a September 20, 2001 memorandum. These elements are important, but a review of the major rules issued between April 1999 and September 2001 suggest that agencies are still not complying with E.O. 12866 and OMB memoranda. Inconsistencies in agency analyses are discussed below.

OMB gives itself a well-earned pat on the back for improving the transparency of the oversight process under President Bush. The draft report highlights OIRA's "open approach to centralized regulatory oversight."[3] Though OIRA has long operated under procedures for minimizing communications with interested parties, and for disclosing

[2] **67** FR 60, **p.** 15018

[3] **67 FR** 60, p. **15017**

those that do take place, allegations of *ex parte* communications have sometimes overshadowed the substance of its reviews. Making OIRA concerns transparent through public return letters, prompt letters, and post-review letters to agencies may dispel some criticism and encourage a more open dialog regarding rulemaking principles and procedures.

The discussion of OIRA's experience with the first five prompt letters[4] is revealing, and illustrates a fundamental tension in OIRA's mission. While openness and public debate are essential to the process of rulemaking and its oversight; internal communication, coordination, and deliberation are also essential for the Executive branch to operate effectively. OIRA must foster both. It is neither possible nor desirable to get all of the Executive branch speaking with one voice; open discussion and debate is healthy. On the other hand, it is not helpful when intramural debates degenerate into political contests between competing interests. The influence of politics on policymaking is mostly benign, as long as it is electoral. In the Legislature, that may sometimes mean a gloves-off free-for-all; in the Executive it means that policy officials at the various agencies all need to be accountable to the President. Thus Executive oversight of regulation will involve a blend of internal deliberation and public debate. OIRA seems to be seeking the right balance between the two.

C. Despite renewed efforts, compliance with sound regulatory principles remains uneven.

In this draft report, OMB indicates it has "initiated a process of refinement to its formal analytic guidance documents," and identifies certain issues it plans to address. These issues (including discount rate, latency, life-year, central estimates, etc.) are important, but the most careful and detailed guidelines are will be useless if they are not followed.

In January 1996, an interagency group co-chaired by the OIRA Administrator and a member of the Council of Economic Advisers developed a document that describe "best practices" for preparing the economic analysis of significant regulatory action as required by E.O. **12866. These** guidelines state that regulatory analyses "should contain three elements: (1) a statement of the need for the proposed action, **(2)** an **examination of** alternative approaches, and (3) an analysis of benefits and costs."[5] **An** examination of the rules issued between April 1999 and September 2001 against the key elements of the 1996 guidelines reveals significant deviations fi-om "best practices." We illustrate these deviations with highlights of several regulations that Mercatus Center scholars have studied.[6]

[4] **67** FR *60*, **p.** 15020

[5] *Economic Analysis* of ***Federal Regulations Under Executive Order*** 12866, U.S. Office of Management **and** Budget, **January,** 1996. http://www.whitehouse.gov/omb/inforeg/riaguide.html

[6] The original studies are available on the Mercatus Center's web site, www.Mercatus.org.

1. Statement of the need for the proposed action

> *In order to establish the need for the proposed action, the analysis should discuss whether the problem constitutes a significant market failure. ...In particular, the analysis should distinguish actual market failures from patential market failures that can be resolved at relatively low cost by market participants.*[7]

Despite this requirement several final rules contain no realistic discussion at all of market failures that might justify government action.

For example, the **Department of Energy** issued three **energy conservation standards** for different appliances during this period. Our review of the clothes washer standards finds no evidence of a market failure. Energy efficient machines are available, but most consumers choose less expensive machines. DOE implies market failure by suggesting consumers lack adequate knowledge about the operating costs of appliances, and calculates that consumers would save money by purchasing a higher-cost machine; on that basis, it sets standards that radically limit consumer choice. DOE does not seriously consider the possibility that consumers value attributes in addition to price and operating costs when purchasing clothes washers. Adjusting for other attributes would likely reveal consumers to be well informed. Nor does DOE recognize that, at most, its argument would justify the yellow Energy Efficiency labels that the Federal Trade Commission already requires on appliances. And DOE fails to recognize that consumers have vastly more information about their own preferences than any government agency could ever acquire, so that mandatory government standards are bound to suffer from an information deficiency far worse than the one that DOE attributes to consumers.

Similarly, the **Department of Transportation** does not justify the need for its **advanced air bags** rule with any evidence of market failure. Both the costs and benefits of different vehicle components, including safety features, are borne by individual consumers, who in recent years, have become increasingly aware of the benefits and potential dangers of air bags.

The **Environmental Protection Agency** attempts to justify its rule lowering the **toxic chemical release reporting threshold for lead and lead compounds** with a discussion of imperfect information. Without knowledge of the likelihood of exposure to health hazards, families may **pay** more than they would otherwise to live in certain areas, or might take fewer precautions than they would with more infomation. However, this does not argue that any information on chemical releases is desirable. **As** the "Best Practices" guidelines observe, "the appropriate level of information is not necessarily perfect or full information because information, like other goods, is costly." EPA does not address the fundamental questions of *what* information will enhance the public's understanding of the risks they face, *how much* information should be disseminated, and *to whom.*

---

[7] *Economic Analysis of Federal Regulations Under Executive Order 12866, **op.** cit.,* I.A.

The guidelines also note:

> *Even where a market failure exists, there may be no need for Federal regulatory intervention if other means of dealing with the market failure would resolve the problem adequately or better than the proposed Federal regulation would. ... [An] important factor to consider in assessing the appropriateness of a Federal regulation is regulation at the State or local level, if such an option is available. In some cases, the nature of the market failure may itself suggest the most appropriate governmental level of regulation..*[8]

This principle applies to **EPA's** approach to its **water quality "TMDL" regulations.** Centralizing decision making with EPA for hundreds of thousands of river segments, lakes, and coastal zone regions complicates and delays decision making about matters that are inherently local. The regulatory framework issued by EPA, with its combination of command-and-control, technology-based regulation with offsets and trading has not succeeded in meeting water quality goals in the past and is not likely to succeed now.

EPA's Tier 2 vehicle emission and fuel standards do not adequately recognize that ground level ozone concentrations that exceed national ambient air quality standards are regional. Individual state efforts (California vehicle and gasoline standards), regional efforts (actions of the ozone transport assessment group region of the east), and voluntary public-private sector agreements (the voluntary national low-emission vehicle program, and proposed sulfur controls) are all evidence that non-federal solutions to these localized problems exist. Our analysis, using EPA data, reveals that consumers in certain regions of the country (particularly in the west) will pay as much as a ten times more per ton of NOx emissions removed than EPA's estimated national average. Furthermore, these very consumers will receive no benefit (and may actually experience an increase in ozone levels) as a result of these emission reductions. This clearly suggests that a regional, rather than a national, approach to the fuel standard is more appropriate.

2. Examination of alternative approaches

> *The EA should show that the agency has considered the most important alternative approaches to the problem and provide the agency's reasoning for selecting the proposed regulatory action over such alternatives.*[9]

The **Forest Service,** in its **Roadless Area Conservation** rules, failed to consider alternatives that could comply with President Clinton's directive without the high environmental risks or economic costs associated with the rule as issued. One such alternative would be to prohibit permanent roads but allow low-impact temporary roads needed for forest health or ecosystem restoration. Such roads could be closed when no longer needed, thus minimizing economic and environmental costs.

---

[8] *Ibid.* I.B.

[9] *Ibid.* II.

EPA examined **arsenic standards** for drinking water ranging from 3 parts per million (ppm) to 20 ppm. Because the estimated costs of each standard exceeded the estimated benefits, **EPA** should have examine alternatives that either set a higher standard (greater than 20 ppm) or tailored the requirements to different types of water systems.

EPA's aggregate cost-effectiveness estimate for the **Tier 2** rules hides important information on the cost-effectiveness of individual components of the proposal. Our analysis of the cost-effectiveness of different components of the rule reveal that more targeted approaches to meeting the ozone NAAQS would be superior to EPA's approach.

3. Analysis of benefits and costs

> *The proposed action will maximize net benefits to society (including potential economic, environmental, public health and safety, and other advantages; distributional impacts; and equity), unless a statute requires another regulatory approach.*[10]

OMB notes the range of compliance with this requirement. Agencies quantified at least some benefits for 19 of the **34** rules issued over the period. For 26 of the 34 rules, agencies estimated costs.

Even the analyses that OMB highlights as most complete, such as EPA's analysis of vehicle emission standards, have serious flaws. **EPA's** Regulatory Impact Analysis for its **Tier 2 motor vehicle** and **heavy duty engine emission standards** calculated costs and benefits as of 2030. This snapshot of costs is not as meaningful as a net present value, nor does it reflect true annual costs, and it is particularly misleading when used in benefit-cost comparisons. The long run benefits to which EPA compares these long-term costs are at their predicted peak (reflecting a nationwide fleet of vehicles and trucks composed entirely of low-emission vehicles running on low-sulfur fuel) yet the costs are at their lowest point." By relying on these year 2030 estimates in its Table 14, OMB appears to have understated costs and overstated benefits.

DOE's benefit estimate for its **clothes washer standards** is based on annual operating savings of $30 over the lifetime of each energy-efficient front-loading machine purchased, but this assumes the average household washes 392 loads per year, or 7.5 loads per week. We conducted a survey of households to determine, among other things, their clothes washer usage. Less than 15 percent of survey respondents operate their clothes washer as frequently as DOE assumes on average. Moreover, over 69 percent of respondents wash 5 or fewer loads a week. According to our analysis, a household that washed 5 or fewer loads per week would lose money, as well as convenience, with the imposition of DOE's mandate. Rather than conferring net benefits of $1.2 billion per year, as OMB estimates in Table 14, these standards will likely impose net costs on

---

[10] *Ibid.* Introduction.

[11] Our comment to **EPA** on this rule identified other flaws in the cost and benefit analyses. See Mercatus Center Public Interest Comment Series RSP 1999-7, (http://www.mercatus.org/research/RSP 19997.htm) and RSP 2000-16 (http://www.mercatus.org/research/rsp200016.html)

American consumers. Those households that would have purchased a front-loading machine without the standard (which DOE estimates at about 15 percent of the population[12]) will incur net benefits from their purchase, though they would be no better off than without the standard. Those who would not have purchased a front-loading machine if DOE had not restricted their choices will be worse off.

The **Occupational Safety and Health Administration** estimated that its **ergonomics** standard, which was overturned by Congress under the Congressional Review Act, would have cost **$4.5** billion per year, but offered benefits of $9.1 billion per year. That point estimate implies more certainty than OSHA's data support, however. Our sensitivity analysis suggests that annualized costs would range from $3.0 billion to $11.0 billion, with a conservative best (most likely) estimate of $5.8 billion. We estimated annualized benefits to range from $0 to $2.3 billion. Since OSHA estimates that the rule will cause ergonomic injuries to decline at a rate ***lower*** than recent historical trends, our most likely estimate is that the proposed rule would produce no benefits beyond those that would occur without the rule.

The **Department of Health and Human Services' Standards for Privacy of Individually Identifiable Health Information** rely on postulated, but largely unsubstantiated causal linkages between increased privacy and earlier diagnosis and medical treatment to estimate present value benefits of $19 billion. Our analysis suggests its present value costs of $11.8 billion are understated, and will be closer to $16.1 billion.

Table 7 of the OMB report lists estimated costs of **EPA's TMDL program** at $23 million per year. However, a more recent EPA report estimates that the cost of development and implementation of the TMDL program will range from $986 million to **$4.4** billion per year.[13] After adjusting for some missing costs in this estimate, Mercatus scholars find that the costs of the "Least Flexible" scenario will be between $2.45 billion and $5.26 billion per year.

D. Refinements to OMB's formal analytical guidance should address key issues.

The report states:

> OIRA has initiated a process of refinement to its formal analytic guidance documents. This activity, to be co-chaired by the OIRA Administrator and a member of the Council of Economic Advisors (CEA), will be supported by public comment, agency comments, and external peer review. In this draft report, OMB is seeking comment on the particular analytic issues that should be addressed in the refinement of OMB's analytic guidelines.[14]

---

[12] DOE states that "without a standard, we'd expect **a** leveling off at around **15%** saturation." DOE, *65* FR ***59567***.

[13] *The National Costs of **the** Total Maximum Daily Load Program (Draft Report)*, Environmental Protection Agency. EPA 841-D-01-003, August 1, 2001.

[14] **67** FR 15021

Refining the guidance for economic analysis of regulations is an excellent idea, and it is entirely appropriate for this project to be conducted with the benefit of public comment and peer review. We have comments on a few of the issues to be examined.

1. The 7 percent real discount rate.

This discount rate has long been controversial, striking some observers as obviously too high because it exceeds the social rate of time preference, and others as obviously too low because it is less than the hurdle rate of return for private investments (even those with minimal **risk).** Both criticisms are right. The 7 percent solution is a compromise, a simplification, and a second-best approach, because it attempts to conflate into one calculation both the social rate of time preference and the shadow price of capital. The preferred practice is to use a discount rate (probably closer to **4** percent) to account for the social rate of time preference, and a separate multiplier (something like a factor of three) for costs that diminish private investment to account for the shadow price of capital.[15] Circular **A-94** already acknowledges that this method is analytically preferable, but does not give any guidance on what the shadow price of capital is, nor how to apply it. The Circular already gives an estimate of the multiplier for the excess burden of taxation. Since the shadow price of capital is primarily a distortion caused by the structure of taxation, it would also be appropriate for OMB to provide an estimate of this multiplier—either in Circular **A-94** or in supplementary guidance applying to the analysis of regulations.

Note that it makes sense to use a risk-free rate of time preference for discounting if and only if the estimates of benefits and costs are unbiased central estimates. OMB needs to provide, and enforce, clear guidance on how uncertainty and risk should, and should not, be presented in a regulatory analysis.

2. Quality Adjusted Life Years.

OMB can make huge improvements in the practice of regulatory analysis by replacing the "lives saved" measure of benefits with a "life-years" metric. In addition to the technical advantages that are described in the literature, the change should make the practice of benefit-cost analysis more transparent to the general public. Most people can understand longevity as a suitable measure of health benefit, and can appreciate that longevity can be affected by regulatory costs as well as benefits, by mechanisms both intended and unintended. Note that using life-years will also make it easier for the public to understand how discount rates apply to health and safety programs. With life-years as the measure of benefits, there is no need to discount. Instead, the costs of the program can simply be amortized over the life-years saved. Most people understand the notion of amortizing costs, and understand that it includes a provision for interest—the cost of financing long-term investments. The result is mathematically identical to discounting, but it is far easier for non-economists to understand. **A** similar methodology can be used

[15] ***See*** Robert Lind, ed. *Discounting for* ***Time and Risk in*** *Energy Policy.* Washington, Resources for the Future, 1982.

to simplify the adjustment for the shadow price of capital. Two different interest rates can be used: a lower rate (the social rate of time preference) to amortize costs that represent foregone consumption, and a higher rate (the SRTP times the shadow price of capital) to amortize costs that represent foregone capital investment. Again, this is mathematically identical to the standard method described in Lind, but it is far easier to explain to a lay person.

While life-years may be a better metric for the benefits of health and safety regulation, there are serious disadvantages in using *quality adjusted* life-years. There is a substantial literature extolling the analytical virtues of QALYs. However; in the context of making public decisions about regulations, it will be difficult to persuade the public that it should accept age-based or health-based "quality adjustments." We do not ordinarily make such quality adjustments when using value-of-life as the measure of benefits. A strong case can be made for quality adjustments, particularly when they are empirically derived (from people's own preferences) and not provided by "medical experts." But our advice to OMB would be to first begin using simple longevity as the measure of benefit, and to leave the question of quality adjustment for another year.

III. The Costs and Benefits of Federal Regulations

A. Estimates of the Total Costs and Benefits of Regulations Reviewed by OMB

As noted above, the costs of regulations are **a** tax on American citizens, but unlike taxes, they are not accounted for in any systematic way. That is why Congress, through Section **624** of the FY2001 Treasury and General Government Appropriations Act, asked OMB to report each year "an estimate of the total annual costs and benefits (including quantifiable and nonquantifiable effects) of Federal rules and paperwork, to the extent feasible:

> **(A)** in **the aggregate;**
>
> (B) by agency and agency program; and
>
> (C) by major rule."

There are admittedly numerous methodological and conceptual problems with developing reliable estimates of the total costs and benefits of regulation. However, OMB is in the best position to develop such estimates. Its approach of building the estimate by major rule and agency is appropriate, but the principles of transparency and openness that guides other aspects of its work could be applied more enthusiastically here.

First, OMB should not relegate this important part of the report to an appendix.

Second, it should provide more transparent explication of how the figures were derived, as well as tabulate benefits and costs agency by agency and area by area.

Third, OMB should continue to build a regulation-by-regulation estimate of costs and benefits for rules issued before 1995. For its 1998 report to Congress, OMB examined economic impact analyses for all major rules going back to April 1995. We commended OMB for this significant undertaking, and anticipated, based on commitments in the 1998 report, a continuation of this retrospective examination of major rules going back even further (before 1995). It is disappointing, therefore, that subsequent reports, including this one, present no more historic analysis than were made available in 1998.

Fourth, since several analyses have estimated regulatory costs since OMB issued its last report, it should provide a summary of those.

Probably the most reliable estimate of the total costs of regulation is presented in a recent report for the Small Business Administration, by Professors Mark Crain and Thomas Hopkins. They estimate that Americans spent $843 billion in 2000 to comply with federal regulations.[16] This figure is higher than OMB's estimate of $521 billion to $617 billion in 2001 dollars as reported in the draft report.

In September 2001, the Mercatus Center released a working paper on the costs of workplace regulation.[17] Based on a careful review of available literature, including academic studies, agency regulatory impact analyses, and private sector analyses on the costs associated with 25 major statutory and executive provisions, the study conservatively estimates that workplace regulations cost at least $91 billion per year in 2000 dollars. In contrast, OMB's estimate of the costs of labor regulations is $20 to $22 billion in 2001 dollars. The OMB report does not make clear what actions are included in the OMB estimate, but we think it is likely that the Mercatus estimate is more comprehensive and encourage OMB to consider incorporating it in future reports.

B. Estimates of Benefits and Costs of this Year's "Major" Rules

Table 7 of OMB's report presents information on each of the "major rules" issued in final form between April 1, 2000 through September 30, 2001. This table illustrates the range of approaches and the degree of analytical rigor used by agencies in estimating the benefits and costs of economically significant rules pursuant to E.O. 12866. **As** we highlighted with some examples in Section II.C above, agency estimates of benefits and costs may not reliably estimate the real impacts of these rules. OMB's estimate of benefits and costs of regulations during this period (Table 14 of the draft report) are based on these agency analyses.

Scholars in the Regulatory Studies Program of the Mercatus Center at George Mason University have commented on nine of the 33 regulations summarized in Table 7, and three of the rules OMB has labeled "transfer rules." These comments raised questions

[16] W. Mark Crain and Thomas D. Hopkins, ***The*** *Impact of Regulatory Costs on Small Firms,* Office of Advocacy, U. **S.** Small Business Administration, RFP No. SBAHQ-00-R-0027

[17] Joseph M. Johnson, ***A Review*** *and Synthesis of the Cost of Workplace Regulations,* Mercatus Center at George Mason University, Working Paper Series, September 2001.

about the benefit and cost estimates developed in the draft Regulatory Impact Analyses and relied on in OMB's table. Some of these are summarized above in Section II.C. The table below lists these rules with links to the relevant Public Interest Comment submitted to the issuing agency during the public comment period.

We note that several major rules included in OMB's Table 7 do not appear to be included in its Table 14 or its estimate of regulatory costs and benefits. For example, the costs and benefits of EPA's lead TRI rule and its TMDL rule should be included in OMB's totals. Though the economic analysis EPA issued with the TMDL rule was incomplete, it has since issued a draft report on the national cost of the program.

We also question the classification of the impacts of some of the rules in OMB's "transfer" category. Rules issued by the Securities and Exchange Commission and Federal Communications Commission, for example, have real economic impacts, and do not merely transfer costs from one group of individuals to another.

Table 2. Public Interest Comments on Table 7 Rules"

Agency	Rule	Link to Mercatus Comment
USDA	Roadless Area Conservation	http://www.mercatus.org/research/rsp200014.html
DOE	Energy Conservation Standards for Clothes Washers	http://www.mercatus.org/research/RSP200022.html http://www.mercatus.org/research/RSP200023.html
HHS	Standards for Privacy of Individually Identifiable Health Information	http://www.mercatus.org/research/RSP20005.htm
DOL	Ergonomics	**http://www.mercatus.ordreseardl/RSP20006.htm**
DOT	Advanced Airbags	http://www.mercatus.org/research/RSP19984.htm
EPA	Lead and Lead Compounds: Lowering of Reporting Thresholds; Community Right-to-Know Toxic Chemical Release Reporting	http://www.mercatus.org/research/RSP 199913.htm
EPA	Revisions to the Water	http://www.mercatus.org/research/RSP20001.htm

[18] For a complete list of regulations on which scholars at the Mercatus Center have commented, go to www.Mercatus.org and click on Regulatory Studies.

	Quality Planning and Management Regulation	
EPA	Arsenic and Clarifications to Compliance and new Source Contaminants Monitoring	http://www.mercatus.ordresearch/RSP2004.htm http://www.inercatus.org/research/RSP2005.htm http://www.1nercatus.org/research/rsp200018.html
EPA	Heavy-Duty Engine and Vehicle Standards	http://www.mercatus.org/research/rsp200016.html
DOL	"Helpers"	http://www.mercatus.org/research/RSP19995.htm
SEC	Disclosure of Mutual Fund After-Tax Returns	http://www.mercatus.org/research/rsp200013.html
SEC	Disclosure of Order Execution and Routing Practices	http://www.mercatus.org/research/rsp200019.html
Federal Reserve	Privacy of Consumer Financial Information	http://www.mercatus.org/research/RSP20008.html

IV. Regulatory Governance Abroad

It is helpful to compare regulatory practices, and results, internationally. Too often, international gatherings of regulatory authorities focus only on "harmonization" of rules, to the point where regulatory competition **is** suppressed and regulation takes place on a global scale. Instead the object should be to identify best practices. The OECD checklist is a good example of this.

Item **5,** for example, asks "What is the appropriate level (or levels) of government for this action?" With a federal form of government, the United States should always keep this question in mind when formulating regulatory policy. The draft report mentions "state, local, and tribal governments" in several places, but generally as an interest group that needs to be consulted during the development of a federal regulation. Instead, OMB should be asking what justifies a federal agency taking action when lower levels of government are competent to do so? There are four common answers to this question: 1) Federal law requires federal action; 2) The states *want* us to take this out of their hands; 3) Industry prefers a single standard; and **4)** This is a nationwide problem. These answers are, at best, incomplete. OMB should give greater recognition to the benefits of federalism, including regulatory competition among states as well as among nations.

V. Recommendations for Reform

For next year's report, OMB should consider a somewhat broader interpretation of "recommendations for reform." Several commentators have suggested the development of a regulatory budget, and that is part of the rationale for this annual report to Congress on the Benefits and Costs of Federal Regulations. What other changes in regulatory procedures might provide more accountability to the public? For example, Supreme Court Justice Stephen Breyer once suggested that agency-issued regulations should not have the force of law until enacted into law by the Congress. Others have suggested that some regulatory standards could be developed as recommendations by federal agencies, to be enacted by state legislatures. The Toxic Substances Control Act of 1976 asked the EPA to consider whether the government should compensate individuals for the costs imposed by EPA's regulatory programs.[19] It would be useful for OIRA to assemble a catalog of ideas for generic regulatory reform, including some that have been tried in other nations, and begin a public discussion of their merits and weaknesses. Even if some of the ideas seem impractical, such a discussion would help advance our understanding of the nature of government regulation and the pathologies that afflict it.

Meanwhile, as we did in response to last year's request for regulatory reform suggestions, we limit our suggestions to rules which we have researched and on which we have submitted comments to the issuing agency during the formal rulemaking process. Rather than repeating recommendations for rules issued since 1997, when our Public Interest Comment project began, we focus on (1) final regulations issued between April 1999 and September 2001, the time period covered in the OMB report, (2) guidance documents issued during that period, and **(3)** proposals issued during that period that have not yet been issued in final form. We continue to encourage OMB and relevant agencies to consider the regulatory reform suggestions we made in our comments on OMB's 2001 report.

Tables **3, 4** and **5** below list the rules and guidance documents we are recommending for review. The appendix provides more detail on recommendations in the format requested in the draft report, including a discussion of the rationale for each recommendation.

[19] Section 25(a).

Rule	Agency	Public Interest Comment Reference
Tier *2* Motor Vehicle Emission Standards	EPA	RSP 1999-07 RSP 1999-11
2000-2001		
Roadless Area Conservation	USDA USFS	RSP 2000-14
Energy Conservation Standards for Clothes Washers	DOE	RSP 2000-22 RSP 2000-23
Standards for Privacy of Individually Identifiable Health Information	HHS	RSP 2000-05
Advanced Airbags	DOT	RSP 1998-04
Arsenic and Clarifications	EPA	RSP 2000-18 RSP 2001-05 RSP 2001-14
Heavy Duty Engine and Vehicle Standards	EPA	RSP 2000-16
Lead and Lead Compounds: Lowering of Reporting Thresholds; Community Right-to-Know Toxic Chemical Release Reporting	EPA	RSP 1999-13
Revisions to the Water Quality Planning and Management Regulation	EPA	RSP 2000-01 RSP 2001-15
Disclosure of Mutual Fund After-Tax Returns	SEC	RSP 2000-13
Disclosure of Order Execution and Routing: Practices	SEC	RSP 2000-19
Privacy of Consumer Financial Information	Federal Reserve	RSP 2000-08

Table 4. Guidance and Policy Documents

Guidance and Policy	Agency	Public Interest Comment Reference
Guidance for Improving Air Quality Using Economic Incentive Programs	EPA	RSP 1999-12
Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases (Ben)	EPA	RSP 1999-9

Table 5. Proposed Regulations Issued Between April 1999 and September 2001

Rule	Agency	Public Interest Comment Reference
Energy Conservation Standards for Residential Central Air Conditioners and Heat Pumps	DOE	RSP 2001-13 RSP 2000-24
Concentrated Animal Feeding Operations	EPA	RSP 2001-11
Registration of Security Futures Broker-Dealers	SEC	RSP 2001-9
Rule Changes of Self-Regulatory Organizations	SEC	RSP 2001-4
Retail Electricity Competition Plans	FERC	RSP 2001-2
Snowmobile Use in National Parks	DOI, NPS	RSP 2001-1
High Speed Access to the Internet Over Cable and Other Facilities	FCC	RSP 2000-21
Hours of Service for Truckers	DOT	RSP 2000-20
National Primary Drinking Water Regulations: Ground Water Rule	EPA	RSP 2000-15
Securities Market Fragmentation	SEC	RSP 2000-11

VI. Conclusions

In conclusion, we applaud OMB's invigorated approach to regulatory review. The openness and transparency with which OIRA is conducting its reviews should encourage a more open and constructive debate on regulatory policies and processes.

We strongly support efforts by OMB and the respective agencies to assess regulatory costs and benefits. However, the data as presented are still inconsistent and fragmentary and may not offer the American public an accurate picture of the benefits and costs of regulation. **As** illustrated above with rules Mercatus scholars have studied, individual estimates are not made in accordance with the Administration's Best Practices. Moreover total cost and benefit estimates are not based on a consistent and objective review of available information.

Regulations impose a hidden tax on Americans, a tax that ultimately falls on individuals-consumers, workers, entrepreneurs, investors, taxpayers, and citizens—and affects the quality of their lives. In order for the Legislative and Executive branches to understand better the effects of regulations on society, a sober and rigorous analysis of regulatory costs and benefits is vital. We therefore urge OMB to continue this process and include the refinements to it that we have suggested.

Appendix: Suggested Regulatory Reform Improvements

As we did in response to last year's request for regulatory reform suggestions, we limit our suggestions to rules which we have researched and on which we have submitted comments to the issuing agency during the formal rulemaking process. Rather than repeating recommendations for rules issued since 1997, when our Public Interest Comment project began, we focus on (1) final regulations issued between April 1999 and September 2001, the time period covered in the OMB report, **(2)** proposals issued during that period that have not yet been issued in final form, and (3) guidance documents issued during that period. We continue to encourage OMB and relevant agencies to consider the regulatory reform suggestions we made in our comments on OMB's 2001 report.

This appendix summarizes the problem, proposed solution, and economic impacts of each rule or guidance, according to the format requested by OMB. We encourage readers interested in a more in-depth analysis of any of these rules to read our public interest comments, available at www.mercatus.org.

Rule	Agency	Public Interest Comment Reference
Tier 2 Motor Vehicle Emission Standards	EPA	RSP 1999-07 RSP 1999-11
2000-2001		
Roadless Area Conservation	USDA USFS	RSP 2000-14
Energy Conservation Standards for Clothes Washers	DOE	RSP 2000-22 RSP 2000-23
Standards for Privacy of Individually Identifiable Health Information	HHS	RSP 2000-05
Advanced Airbags	DOT	RSP 1998-04
Arsenic and Clarifications	EPA	RSP 2000-18 RSP 2001-05 RSP 2001-14
Heavy Duty Engine and Vehicle Standards	EPA	RSP 2000-16
Lead and Lead Compounds: Lowering of Reporting Thresholds; Community Right-to-Know Toxic Chemical Release Reporting	**EPA**	RSP 1999-13
Revisions to the Water Quality Planning and Management Regulation	**EPA**	RSP 2000-01 RSP 2001-15
Disclosure of Mutual Fund After-Tax Returns	SEC	RSP 2000-13
Disclosure of Order Execution and Routing Practices	SEC	RSP 2000-19
Privacy of Consumer Financial Information	Federal Reserve	RSP 2000-08

Regulation: **Tier 2 Motor Vehicle Emission Standards**

Agency: Environmental Protection Agency

Description of Problem:

> The Tier 2 rule is driven by ground-level ozone, which is expected to pose health threats to certain individuals with pre-existing respiratory conditions in a few urban areas on certain summer days when atmospheric conditions combine to create elevated ozone levels. EPA's own analysis predicts that a national proposal would actually increase ozone levels in parts of the nation. Regional, or even state, programs could target any health concerns more cost-effectively, and avoid imposing unnecessary costs on all parts of the country throughout the entire year.

Proposed Solution:

> Given state and regional track records for instituting necessary controls (including reformulated gasoline and inspection and maintenance programs), EPA should leave decisions regarding the sulfur content of gasoline to individual states, perhaps with the cooperation of, or recommendations from, OTAG. If EPA feels compelled to issue federal regulations governing gasoline sulfur content, it should seriously evaluate a petroleum industry proposal whereby low-sulfur gasoline would be provided only for the eastern half of the nation.

California's low emission vehicle rules, and the NLEV program initiated by the OTAG states offer evidence that even vehicle standards do not need to be mandated at the federal level.

Estimate of Economic Impacts

> Our results, **using EPA** data, reveal that consumers in certain regions of the country (particularly in the west) will pay as much as a ten times more per ton of NOx emissions removed than EPA's estimated national average. Furthermore, these very consumers will receive no benefit (and may actually experience an increase in ozone levels) as a result of these emission reductions. This clearly suggests that a regional, rather than a national, approach to the fuel standard is more appropriate.

Regulation: **Roadless Area Conservation**

Agency: **USDA –** Forest Service

Description of Problem:

The Forest Service has failed to show that a blanket, nationwide prescription is needed for roadless lands. It provides little data and what data it does provide indicate that a blanket, no-roads rule will cost more than it will benefit in at least some roadless areas. And it fails to consider important alternatives, including alternatives built around incentives rather than proscriptions, and alternatives that would allow temporary, low-impact roads in roadless areas when needed for forest health or ecosystem restoration.

Proposed Solution:

The Forest Service could consider an alternative that would ban permanent roads but allow temporary, low-impact roads in certain areas for forest health or ecosystem restoration. This would eliminate most of the objections to the rule while retaining most, if not all, of the benefits.

Estimate of Economic Impacts:

The rule will impose unnecessary economic and environmental costs on the national forests. The economic cost will be high because a ban on roads will increase the cost of improving forest health or restoring ecosystems in some roadless areas. The environmental cost will be high because, without such improvements, many roadless area ecosystems will continue to deteriorate and may even suffer unnaturally catastrophic fires.

Regulation: **Energy Conservation Standards for Clothes Washers**

Agency: Department of Energy, Office of Energy Efficiency and Renewable Energy

Description of Problem:

DOE's standards for clothes washers would take away consumer choice by eliminating the most popular (vertical-axis) washing machine models. The standards would force Americans to buy washing machines that DOE estimates will be significantly more expensive than machines today, with fewer of the attributes consumers seek. DOE claims that mandating washing machine specifications is necessary to save consumers money through lower operating costs over the life of the machine. Yet, manufacturers currently offer energy- and water-efficient washing machines that would meet the new standards (and, by DOE's calculus, save consumers money), but only five percent of consumers choose to buy them.

> DOE bases its estimated operating savings on an assumption that a household will operate a washer 392 times a year, however, less than 15 percent of consumers who responded to a survey we commissioned operate their clothes washer that frequently. More than two-thirds of households surveyed wash 5 or fewer loads a week, which DOE's data reveal would not be enough to recoup the higher purchase price of the mandated washing machines.

Proposed Solution:

If, as DOE suggests, consumers pass up energy efficient washers because they are "misinformed" about operating costs, it should provide consumers with information to make a more informed decision. Cost is only one factor influencing consumer preferences for clothes washers, and eliminating the machines that 95 percent of consumers prefer will not make consumers better off.

Estimate of Economic Impacts:

DOE's economic analysis focuses purely on the cost savings, without considering the value consumers place on the convenience or other attributes that vertical axis machines offer over horizontal-axis machines. It estimates annual operating savings of $30 over the lifetime of a machine, but this is based on washing 392 loads per year, or 7.5 loads per week. Consumers who use the machine less frequently will achieve much lower benefits. According to our analysis, a household that washed 5 or fewer loads per week would lose money, as well as convenience, if DOE imposes the proposed mandate. Even if annual savings were as high as $50.55, households running fewer than 3.5 loads of laundry per week would lose money. Thus, the evidence collected by DOE suggests that the proposed standards will harm the vast majority of consumers without helping the remainder.

Regulation: **Standards for Privacy of Individually Identifiable Health Information**

Agency: Department of Health & Human Services

Description of Problem:

Our analysis suggests that the rule could cost American health care consumers roughly one billion dollars per year. If the rule conferred tangible benefits in the form of increased privacy, as its preamble suggests, these costs might be worth incurring. However, the rule offers limited tangible benefits for medical privacy protection, and in fact erodes the few protections that do exist.

Given limited benefits and high costs, this rule may ultimately damage the long-term health of Americans. Indeed, it is quite possible that the rule may generate the perverse result of ***less*** privacy—owing to the pervasive availability of medical information combined with increased access by government agencies to that information. A less healthy citizenry may be one consequence, as individuals reduce prevention and treatment visits because of increased costs and reduced levels of medical privacy.

Proposed Solution:

A more constructive approach may rest in clearly delineating ownership rights in the information and then clearly protecting those rights (including the use and disposal of that information). In this way, the Department could avoid imposing a costly, one-size-fits-all approach to medical privacy protections, while at the same time allowing individuals to seek—and plans and providers to offer—privacy protections that more closely parallel the desires and budgets of those concerned.

Estimate of Economic Impacts:

> Using the OMB standard seven percent discount rate, our analysis suggests a present value costs $16.1 billion (in contrast to HHS's present value estimate of **$9.86** billion).

Regulation: **Advanced Airbags**

Agency: Department of Transportation, National Highway Traffic Safety Administration

Description of Problem:

Regardless of how sophisticated NHTSA makes its tests, or how sophisticated manufacturers make air bags, this one-size-fits-all approach will not meet the preferences or protect the safety of all consumers under all conditions. Both the costs and benefits of different vehicle components, including safety features, are borne by individual consumers, who in recent years, have become increasingly aware of the benefits and potential dangers of air bags. Moreover, the risk tradeoffs air bags pose are particular to the characteristics and behavior of vehicle occupants. Yet, NHTSA's regulation would not allow consumers to make their own decisions regarding these tradeoffs. Air bags continue to provide disproportionate benefits to occupants who are not wearing seat belts and they are actually likely to increase the chance of severe injury for properly belted occupants.

Proposed Solution:

Rather than requiring air bags to pass additional elaborate crash tests, which can never fully reflect real world conditions, NHTSA should consider options that allow informed consumers to make their own personal risk tradeoff decisions. One option would be to permit manufacturers to offer manual on-off switches for air bags in any vehicle. That would allow consumers (rather than a complex computer algorithm in the vehicle) to deactivate an air bag if necessary to reduce the risk to certain occupants or under certain driving conditions.

> If NHTSA is concerned that, in the absence of federal standards, consumers will not be adequately informed as to the safety of different options, it could better focus its efforts on providing information about the characteristics **and** effectiveness of different occupant safety systems under different conditions. Such an approach would allow consumers to pay for what they need, not what government analysts believe they should have.

Estimate of Economic Impacts:

NHTSA carefully quantifies the costs of its proposal, and the value associated with property damage avoided by suppressed air bag deployment, in addition to the number of fatalities avoided. NHTSA's estimates of the cost-effectiveness of its proposal are well documented and generally reasonable, however, the individual nature of occupant restraint decisions highlights the problem with evaluating cost-effectiveness based on averages. Unlike some other areas in which the federal government takes action, both the costs and benefits of occupant restraints are borne by the same individual—the occupant.

Regulation: **Arsenic and Clarifications**

Agency: Environmental Protection Agency

Description of Problem:

Regulation of arsenic in drinking water presents the most compelling case to date for EPA to use its authority to rely on benefit-cost analysis, granted in the 1996 Amendments to the Safe Drinking Water Act.

Yet, according to EPA's estimates, which are based on flawed scientific and economic analysis, the costs of meeting a 10 ug/l standard are significantly greater than the health benefits the communities would receive. Meeting a 10 ug/l or lower standard will drain community and individual resources that could, if used elsewhere, achieve much greater health protection benefits.

Proposed Solution:

Requiring communities to reduce arsenic takes money that could be used to protect against bio-terrorism threats, or to buy better schools, new emergency response equipment, or increased traffic safety. Before requiring those expenditures, it is important that **EPA** recognize the variation in costs and benefits across systems sizes, and regions of the country. While it should share information about arsenic levels and hazards, it should not impose its judgment, based on national average costs and benefits, on individual communities as to how best to invest in their own public health.

Estimate of Economic Impacts:

After correcting for significant flaws in EPA's benefit and cost estimates, our analysis conservatively estimates that the 10 ug/L standard would impose net costs on communities (over and above benefits) of $600 million per year.

Regulation: **Heavy Duty Engine and Vehicle Standards**

Agency: Environmental Protection Agency

Description of Problem:

EPA's rationale for the "system" approach of tying together the engine emission controls and the diesel sulfur limits presumes that fuel sulfur will irreversibly damage the ability of engines to reduce emissions. Yet, EPA did not substantiate this assertion, and certainly has insufficient evidence to support the dramatic sulfur levels reductions it imposed (from a current cap of 500 ppm to a cap of 15 ppm). EPA's own analysis indicates that tightening the sulfur cap all the way to 15 ppm will have a relatively tiny impact on PM emissions and no impact on NO_x emissions.

Proposed Solution:

> EPA should examine the impact of the rule on ozone and PM concentrations and actual health effects—rather than focusing just on tons of pollutants removed, regardless of location or probability of providing health benefits. A focus on actual benefits will eliminate the need to allocate costs arbitrarily among tons of NO_x, NMHC, and PM emission reductions.

Estimate of Economic Impacts:

EPA's cost-effectiveness analysis was based on faulty analysis and biased assumptions. Making some straightforward adjustments, the cost-per-ton of PM removed by the proposed approach ranges from EPA's estimate of $1,850 to over $80,000 (for going from 25 ppm to 15 ppm). This is far greater than the $10,000 per ton ceiling that President Clinton committed to for implementing NAAQS rules.

Regulation: **Lead and Lead Compounds: Lowering of Reporting Thresholds; Community Right-to-Know Toxic Chemical Release Reporting**

Agency: Environmental Protection Agency

Description of Problem:

Despite extensive information on lead and lead compounds, the reporting thresholds are not based on any quantitative analysis of the magnitude of releases that will be accounted for under different thresholds, nor the **risks** posed by releases.

> The goal of TRI, to inform the public about hazards in their community, is intuitively desirable. However, since chemical releases are not equivalent to health or environmental hazards, TRI data on pounds of chemicals released fail to provide communities relevant information on *risks* that may be present. Furthermore, EPA data quality reviews reveal that the database contains such large errors as to make it unreliable for site-specific analysis, or as a comprehensive database.

Proposed Solution:

> EPA should conduct a review and overhaul of the TRI reporting system. An honest evaluation of the benefits and costs of the program may reveal that less data, targeted at higher risk chemicals and facilities, would provide more useful information than more data on more chemicals. For example, since EPA's examination of past reports reveal that year-to-year changes in estimated releases at facilities are more likely to reflect "estimation technique changes" and "other factors" than physical, engineering and production changes, reducing the frequency of reporting should not change the value of the information available to potential users. EPA examinations also raise serious questions about reporting accuracy. Perhaps modifying thresholds to capture large releases from large facilities might actually improve the quality of the inventory. **EPA** should also examine the impact, in terms of both quantities reported and reporting burden, of targeting TRI reporting requirements at sources that comprise the majority of releases. This could take the form of exempting certain sources from reporting lead releases or establishing a *de minimis* exemption for lead and lead compounds.

Estimate of Economic Impacts:

EPA expects the cost of the reporting required by the rule to be $992 million in present value terms. Evidence that every $15 million in regulatory costs results in one statistical death suggests that these costs alone translate to more than ***66*** additional deaths. Yet, EPA offers no evidence of direct benefits from this rule.

Regulation: **Revisions to the Water Quality Planning and Management Regulation**

Agency: Environmental Protection Agency

Description of Problem:

While EPA's revisions to how it regulates state Total Maximum Daily Load (TMDL) programs for managing water quality reflects a welcome shift from federally-mandated technology-based controls to controls based on the characteristics of individual watersheds, its prescriptive, procedural rule is likely to undermine the benefits of a watershed approach.

Centralizing decision making with EPA for hundreds of thousands of river segments, lakes, and coastal zone regions complicates and delays decision making about matters that are inherently local. Under these revisions, EPA would obtain nearly unlimited authority to overrule state decisions, and impose any standard it chooses on any body of water under any circumstance. The costs to states, just to develop TMDL plans under the new rules, could reach into the billions.

Proposed Solution:

River basins, watersheds, and coastal regions are natural units for managing water quality. EPA's approach must allow for and encourage the recognition of alternate geographic governance units that minimize the environmental cost of achieving improvements in water quality.

A water quality management system based on the rule of law and protection of environmental rights can be devised so that the goals of TMDL can be achieved. The system must include accountability and responsibility for actions that affect environmental quality. The system must allow for flexibility in the development of regulatory institutions and processes so that regional differences in benefits and costs can be taken into account, **and** innovative local solutions can be implemented to bring about real improvements in water quality.

Estimate of Economic Impacts:

In the *National Costs of the Total **Maximum** Daily Load Program (Draft Report)*, EPA estimates that the cost of development and implementation of the TMDL program ranges from a minimum of $986 million to a high of **$4.4** billion per year, the majority of which is borne by the private sector. However, these estimates ignore some important costs.

Using a relatively straightforward approach to estimate some of the missing costs, our analysis suggests that the costs of the "Least Flexible" scenario will be $2.45 billion to ***$5.26*** billion per year.

Regulation: **Disclosure of Mutual Fund After-Tax Returns**

Agency: Securities and Exchange Commission

Description of Problem:

Concerned that investors are not receiving the information they need regarding the tax consequences of investing in mutual funds, the SEC required mutual funds to report standardized after-tax returns along with the standardized pre-tax returns they already report. The rule, however, is inferior to the current market response and is unlikely to generate net benefits to investors.

The SEC's only stated criterion in developing the rule is that the information be deemed "helpful" to investors in making investment decisions. But the SEC has no way of identifying information that meets this standard except by observing what information is brought forth by the private sector. It has not identified any market failure that would warrant regulatory action. On the contrary, the SEC's proposal *is an* attempt to mimic the successes of the market.

The private sector has already responded to demand by investors for information on after-tax returns, and the SEC's one-size-fits-all standard cannot supplant the response of the market to investor demands. Not only does this approach weaken the incentives to produce different kinds of information that could be of value to certain investors, it may also limit the development of more and better information to meet investors' ever changing needs and desires. **As** a result, the proposed disclosure requirement will offer no benefits not already provided by market participants, but will impose real costs on investors.

Proposed Solution:

More and more Americans are investing in mutual funds; however, the standardized information proposed in this rule will not make them better off. Market participants are responding to the varied information and investment needs of different investors more efficiently than these requirements would. The SEC should withdraw this rule.

Estimate of Economic Impacts:

The net benefits that could be attributed to the new disclosure requirement are zero at best, and that would only be the case if the new disclosure requirement were completely redundant. In fact, the benefits appear to be non-existent and the costs positive. The net benefits, therefore, can only be negative.

Regulation: **Disclosure of Order Execution and Routing Practices**

Agency: Securities and Exchange Commission

Description of Problem:

This rule requires greater disclosure regarding order flow because the SEC is concerned that payment for order flow prevents investors from getting the best possible prices and contributes to "market fragmentation" that makes prices in the major stock markets less accurate. However, our analysis reveals that these concerns are unfounded. Firms receiving payment for order flow offer their customers lower trading commissions, greater price certainty, faster executions, and other benefits that could offset any higher spreads that these customers pay.

Furthermore, payment for order flow is part of a pricing strategy that moves the trades of smaller and less-informed investors to dealers and stock markets that can handle these trades at lower total cost to the customer. There is no evidence that this market segmentation reduces the ability of stock prices to incorporate relevant information.

Proposed Solution:

Mandatory disclosure is only desirable if its benefits exceed its costs. This occurs if the mandate remedies a "market failure," but the SEC provides no evidence of market failure. The markets for retail brokerage and order execution are highly competitive. Brokers, dealers, and market centers already have strong incentives to disclose any information whose value to customers exceeds its costs. Therefore, the SEC should not impose rules that could discourage payment for order flow.

Estimate of Economic Impacts:

If it succeeds in discouraging payment for order flow, the SEC will force smaller and less-informed investors to subsidize the trading costs of larger and better-informed investors, thereby harming the very investors disclosure is intended to protect.

Regulation: **Privacy of Consumer Financial Information**

Agency: Federal Reserve

Description of Problem:

In general, the rule strikes a reasonable balance between efficient business operations of financial institutions, and a growing desire for individual privacy on the part of consumers.

We remain concerned, however, that the agencies responsible for rule making have needlessly complicated the interpretation of "nonpublic personal information," in spite of Congress' rather clearly stated definition of the term. The interpretation of this term has significant effects on the scope of the rule, and a stricter interpretation than Congress intended may have long-run negative consequences.

The implicit premise of the rule is that individuals and firms cannot come to a mutually satisfactory agreement as far as privacy is concerned without resort to government assistance. Indeed, if individuals truly value their privacy, and firms desire to maximally satisfy their customers, then a meeting of the minds ought to be achievable without resort to compulsory regulations.

Proposed Solution:

A more constructive approach to the entire issue of information privacy may rest in clearly delineating ownership rights in the information and then clearly protecting those rights. In this way, individuals and financial institutions can develop approaches to privacy that are more closely tailored to individual circumstances.

Estimate of Economic Impacts:

Our analysis suggests that the proposed rule could cost American producers and consumers of financial products at least $220 million per year in ongoing compliance costs, which translates into long-run costs of more than $3.2 billion.

Guidance and Policy	Agency	Public Interest Comment Reference
Guidance for Improving Air Quality Using Economic Incentive Programs	EPA	RSP 1999-12
Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases (Ben)	EPA	RSP 1999-9

Regulation: **Guidance for Improving Air Quality Using Economic Incentive Programs**

Agency: Environmental Protection Agency

Description of Problem:

We strongly support EPA's goal of encouraging states to rely on economic incentive programs, such as emissions trading and effluent fees, to achieve air quality standards. However, we are concerned that EPA's approach is too prescriptive, and will actually hinder, rather than encourage, the development of innovative state programs.

EPA identifies three fundamental principles that must apply to all EIPs: integrity, equity, and environmental benefit. These three principles inappropriately trump objectives of cost-effectiveness, efficiency, flexibility, and innovation.

Emission fees and trading programs offer cost-effective alternatives to traditional command-and-control approaches largely because they permit facilities for which the cost of reducing emissions is high to compensate those for which the costs are lower. The "equity principle" may prevent high-control-cost facilities from taking advantage of such opportunities and thus halt any viable efforts at cost-effective programs. The "environmental benefit principle" would prevent states from developing innovative programs that cut costs of compliance significantly, if they cannot demonstrate that the new program is not just equivalent to, but more environmentally beneficial than traditional programs.

Proposed Solution:

EPA should not impose unnecessary restrictions on states' efforts to develop innovative and efficient economic incentive programs for meeting air quality standards, and to encourage economic development in low-income and minority areas. It should remove from the guidance the three fundamental principles which are overly prescriptive and may hinder the development of flexible programs that will benefit all communities.

Estimate of Economic Impacts:

Contrary to the assumption implicit in the guidance, such restrictions may well harm the very people they are intended to protect. If denied access to lower-cost environmental solutions, facilities located near communities of concern will be more likely to fail, reducing jobs and tax revenues that benefit the community. Since wealthier populations tend to be healthier populations, the economic decline caused by such restrictions may hurt communities of concern more than economically. Case studies reveal that the economic growth in low-income and minority communities are far more effective at improving public health than pollution control efforts.

Regulation: **Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases (Ben)**

Agency: Environmental Protection Agency

Description of Problem:

EPA's civil penalty policy requires that penalties capture the economic gain a violator derives from noncompliance. An approach that based penalties on the social cost of a violation, rather than the private gain, as envisioned in the law and economics literature, would be more likely to induce the optimal level of deterrence. The economic benefit approach can encourage precautionary measures that are not in the public interest.

Though EPA's policy of capturing economic gains embodies serious flaws from a social welfare perspective, its economic benefit model does have the advantage of being objective and easy to apply. This notice proposed several changes that will result in improvements to the economic benefit model.

The notice also proposed to develop guidance to expand EPA's approach to estimating private economic benefit to include "illegal competitive advantage." We caution that some of the scenarios EPA presents under this heading reflect benefits that are already captured by EPA's existing model. Further, they do not really reflect "competitive advantage'' in the standard use of that term because they do not depend on, or necessarily affect, competition.

Proposed Solution:

Ideally, EPA should shift from an approach of capturing economic gain to one based on the social cost of the violation.

If it continues to rely on an economic benefit approach, the model could be improved by using a risk-free rate to bring all cash flows to the penalty payment date on the recognition that the cash flows in question do not exhibit systematic risks (which would command a higher rate of return).

We encourage EPA to use a different term for the type of benefits it referred to in the notice as "illegal competitive advantage" and to limit consideration of them to ***ex ante*** rather than *ex post* private gains, as it does in the avoided cost methodology.

Estimate of Economic Impacts:

A penalty that reflected the environmental damage caused by the violation, not the avoided cost to the violator, could ameliorate some of the rigidity of more traditional regulations, and provide net social benefits.

Table A-3. Proposed Regulations

Rule	Agency	Public Interest Comment **Reference**
Energy Conservation Standards for Residential Central Air Conditioners and Heat Pumps	DOE	RSP 2001-13 **KSP 2000-24**
Concentrated Animal Feeding Operations	EPA	RSP 2001-11
Registration of Security Futures Broker-Dealers	SEC	RSP 2001-9
Rule Changes of Self-Regulatory Organizations	SEC	RSP 2001-4
Retail Electricity Competition Plans	FERC	RSP 2001-2
Snowmobile Use in National Parks	DOI, NPS	RSP 2001-1
High Speed Access to the Internet Over Cable and Other Facilities	FCC	RSP 2000-21
Hours of Service for Truckers	DOT	RSP 2000-20
National Primary Drinking Water Regulations: Ground Water Rule	EPA	RSP 2000-15
Securities Market Fragmentation	SEC	RSP 2000-11

Regulation: **Energy Conservation Standards for Residential Central Air Conditioners and Heat Pumps**

Agency: Department of Energy, Office of Energy Efficiency and Renewable Energy

Description of Problem:

DOE's proposal would require all central residential air conditioners and heat pumps sold after July 25, 2006 to consume less energy. It estimates that these new standards will increase the installed cost of new air conditioners and heat pumps by $144 to $213.

Proposed Solution:

DOE should not go forward with the proposed standards. Since DOE believes that consumers pass up energy efficient appliances because they are "misinformed" about operating costs, the Department should seriously consider constructing a permanent program that can correct this deficiency. Preserving the market option of less expensive air conditioners and heat pumps that meet the existing (1992) standards will clearly benefit those consumers who would lose under the proposed standards.

Estimate of Economic Impacts:

The proposed standards will make consumers worse off. DOE's analysis focuses purely on the cost savings to the average consumer, without adequately considering either different usage patterns, or the value consumers place on reliability, performance (especially dehumidification), or esthetics. Thus, the standards would require consumers in northern states to purchase high-cost air conditioners, and residents of southern states to purchase high-cost heat pumps, even though they would not likely recoup those up-fi-ont costs in lower energy bills over the life of the unit. DOE's static comparison of up-front costs to operating costs also ignores the fact that once the initial investment is made, lower operating costs will encourage more usage of the unit, possibly leading to increased energy use (less conservation).

Making air conditioners more expensive would decrease the proportion of elderly able to afford them. Furthermore, the lengthy payback periods for the more efficient air conditioners and heat pumps preferred by DOE discriminate against elderly consumers who possess limited life expectancies. Our analysis of DOE's data reveals that low-income consumers will be the hardest hit by the new standards, and the least likely to be able to afford to purchase new units.[20]

[20] See Mercatus Center, Regulatory Studies Program, ***Public Interest Comment on*** *DOE's* ***Proposed Energy Conservation Standards for Residential Central Air Conditioners and Heat Pumps,*** December 4, 2000.

Regulation: National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations

Agency: Environmental Protection Agency

Description of Problem:

Most point sources of water pollution are highly regulated. Further tightening of point source discharge regulations would add substantial costs while providing only small marginal improvements in water quality. Therefore, it makes sense for EPA to address runoff from nonpoint sources such as CAFOs. However, EPA's proposed approach to address runoff pollution from CAFOs is unlikely to yield cost-effective improvements in water quality. While **EPA** does report incidents that reveal CAFO-caused water quality problems in certain watersheds, these do not support uniform nationwide regulation.

Proposed Solution:

The EPA should turn to community-based water management of the U.S. watersheds. In order to do so it must overcome legal and technical barriers. Some of these can be accomplished by taking the following steps:

1. Conduct a comparative cost-benefit analysis of the 1994 strategy of the Clinton Administration to reduce runoff pollution with the strategy proposed in the proposed new CAFO regulations.

2. Challenge the legal mandate requiring that only regulatory alternatives can be analyzed and implemented to address CAFO water pollution.

3. Increase efforts to promote community-based water quality management in **U.S.** watersheds affected by CAFO pollutants.

4. Address the scientific deficiencies that currently inhibit the development of more efficient and effective CAFO pollutant prevention and reduction strategies.

Economic Analysis:

EPA's own analysis indicates the regulations, if promulgated, would impose net social costs of between $664.2 million and $803.9 million annually on the U.S. public, and even these figures may understate net social costs. EPA's scientific data do not show confined animal feeding operations are major contributors to water pollution nationwide. The water quality data EPA uses to suggest that CAFOs are a significant nationwide problem are neither comprehensive nor accurate enough to support the conclusions EPA draws.

Regulation: **Registration of Broker-Dealers Pursuant to Section 15(b)(11) of the Securities Exchange Act of 1934**

Agency: Securities and Exchange Commission

Description of Problem:

Despite the intent of the Commodity Futures Modernization Act of 2000 (CFMA) to expedite the registration process, the SEC has proposed a registration format that would result in time-consuming duplication of registration procedures for futures commission merchants and introducing brokers already duly registered with the CFTC. In addition, the proposed procedure denies these futures intermediaries the ability to obtain notice registration if their intention is to trade security futures products on a registered national securities exchange. The SEC proposes that futures registrants who intend to trade security futures products should register as full broker-dealers with the SEC subject to all the costs and regulations thereof, or otherwise effect and clear their transactions through a full broker-dealer registered on the securities exchange. By subjecting futures intermediaries to redundant and burdensome registration requirements, the proposal will increase their costs, those of their customers, and the public.

Proposed Solution:

In order to pass the cost-benefit test and satisfy the intent of the CFMA, the SEC should amend its rule change proposals to allow for a less costly and more inclusive registration process for futures intermediaries.

Estimate of Economic Impacts:

While the CFMA directs that the notice registration process should not duplicate the registration process already accomplished by the registrant, Form BD is both long (24 pages), complex, and obviously duplicative of Form 7-R, the form required to have been filed with the National Futures Association (NFA) (as delegated by the CFTC) as a condition for registration as an introducing broker or FCM. Since forms filed with the NFA are stored electronically, a detailed database containing registration information is available to the SEC. Consequently, much of the information that the SEC envisions as necessary or appropriate has already been collected as part of the futures registration process and is readily available to the SEC electronically and instantaneously.

If the SEC deems that there is information necessary that is not collected by the NFA when it registers the futures intermediaries, then that information could be obtained at a much lower cost in time and effort. If Form BD only re-collects previously reported information, then requiring the completion of the entire form raises the costs of complying with federal regulation without any marginal benefit.

Regulation: **Proposed Rule Changes of Self-Regulatory Organizations**

Agency: Securities and Exchange Commission

Description of Problem:

The Securities and Exchange Commission (SEC) has proposed to modify its Rule 19(b) implemented under the Securities Exchange Act of 1934, requiring self-regulatory organizations (SROs) to file proposed rule changes with the Commission before implementing them. Essentially, the rule changes the SEC is proposing will maintain the regulatory status quo, with only slight modifications. Since the SROs must still file documentation justifying any proposed changes under the new rule, and must certify that the proposed changes meet the requirements of Section 19(b)(6), the SRO preparation phase of a proposed rule change will be unchanged (and in fact may increase slightly).

Proposed Solution:

Within the past few years, the Commodity Futures Trading Commission (CFTC) has gradually moved toward a more flexible regulatory approach that culminated in self-certification by SROs. Although the proposed SEC rule contains aspects of self-certification, extending the self-certification process to cover a wider variety of potential rule changes, as the CFTC did, would likely increase the benefits that the SEC claims to be seeking with its proposed changes. The SEC, therefore, should evaluate whether the more flexible and less prescriptive approach of the CFTC may not also be appropriate for the securities SROs, especially since both regulatory agencies have some overlapping authority over these entities.

Estimate of Economic Impacts:

Since the proposed rule only affects a few possible SRO rule changes the costs and benefits of the proposed changes are likely to be minimal However, there will be some learning curve related costs, as the SROs adjust to the new forms and requirements of the modified rule. Learning curve costs though should taper off quickly. Indeed, the SEC estimates that the newly modified 19(b)(6) forms should be less burdensome than the forms that are being replaced—leading it to estimate a reduction in compliance time of **2** hours—from an old total of 35 hours to new total of 33 hours. **As** stated above and in the SEC release letter, the new rule is expected to cover less than 20 percent of all SRO rule changes. While this is better than nothing, it remains an insignificant change in the regulatory structure surrounding the SROs. It is unlikely therefore, that major innovations will result from this proposed rule change.[21]

[21] This is not meant to suggest the proposed changes are worthless; rather, it simply suggests that to expect, as the SEC does, significant innovation because of this rule change is not reasonable.

Regulation: **Notice Requesting Comments on Retail Electricity Competition Plans**

Agency: Federal Trade Commission

Description of Problem:

The Federal Trade Commission seeks information that will assist it in (1) assessing the advantages and disadvantages of different approaches to restructuring and (2) recommending what, if any, further federal action is desirable. The Commission's notice requesting comments notes that substantial price increases and reliability problems have occurred in some states that have restructured their electricity markets with the goal of promoting retail competition.

Proposed Solution:

Retail competition in electricity has the potential to produce significant price and nonprice benefits for consumers. These consumer benefits reflect both the static efficiency that results from the elimination of market power and the dynamic efficiency that results from innovation.

The consumer benefits arise not just because prices are likely to be lower, but because deregulated, competitive markets tend to produce prices that are more accurate signals of real resource scarcities. Retail competition would facilitate innovative price structures that would reward customers for shifting consumption away from peak times. If regulation holds prices below the levels that would exist in a competitive market, then short-term price increases induced by deregulation would actually benefit consumers by channeling scarce resources to their most highly-valued uses in the short run and providing incentives to increase capacity in the long run.

Electric restructuring has the potential to create net benefits, but not all restructuring plans are equally effective at moving from monopoly to competition. In particular, California's restructuring plan has hampered the development of a competitive retail market, while Pennsylvania's restructuring plan has been the most successful at promoting competition and producing consumer savings

Estimate of Economic Impacts:

Experience in a variety of other deregulated industries shows that competition and deregulation tend to produce price reductions of between 10 percent and 25 percent, along with service quality improvements whose value to consumers sometimes exceeds the value of the price reductions.

Regulation: **Proposal to Amend Snowmobile Use Regulations in Rocky Mountain National Park**

Agency: Department of Interior, National Park Service

Description of Problem:

The National Park Service (NPS) proposes to close Rocky Mountain National Park to snowmobiles except for a 2-mile stretch of the North Supply Access Trail. Currently, 18 linear miles of snowmobile trails exist within the 414 square miles in the Park. The NPS justifies this proposal with Executive Orders 11644 and 11989, which state that recreational snowmobile use should be disallowed within a national park if it causes adverse impacts on park resources. However, the NPS does not present any data on adverse impacts to justify the prohibition. Instead, the proposal seems driven by a conflict between use by snowmobiles and non-motorized recreationists. The park was created in 1915 "for the benefit and enjoyment of the people of the United States…with regulations being primarily aimed at the *freest* use *of* said park *for* recreation purposes *by the public* and for the preservation of the natural conditions and scenic beauties…" (38 Stat. 798). (Emphasis added.) EO 11644 also requires agencies to minimize conflicts among competing users of public lands. Eliminating one type of use from the park seems to violate these requirements.

Proposed Solution:

The NPS should conduct a better benefit-cost analysis that takes into account all of the park's constituents, not just the non-motorized users. In addition, the NPS might consider requesting authority from Congress to charge differential fees based on the type of use so that there could be a market test of the value of "noisy" and "natural quiet" days in the park. At the very least, the Park should experiment with ways of reducing conflicts between users instead of simply claiming one set of users is superior to another set.

Estimate of Economic Impacts:

The Environmental Assessment (EA) conducted to examine potential adverse impacts did not discover any data to justify the NPS preferred alternative. Some preliminary data on soil and sediment contamination from snowmobile use have been gathered but are insufficient to determine any effects. The EA did not identify any impacts on endangered, threatened, or rare species. It did raise concerns about potential effects on bighorn sheep, elk, moose or deer. It noted, however, that the current trails are not in areas where there is winter forage for these species. Air quality issues are a significant concern with snowmobiles because fuel-inefficient, two-stroke engines power them. There are no data, however, that show that using snowmobiles on the 18 miles of trail within the 414 square mile park has any adverse effect on air quality in the park.

Regulation: **In the Matter of Inquiry Concerning High-speed Access to the Internet Over Cable and Other Facilities**

Agency: Federal Communications Commission

Description of Problem:

The fundamental question raised by the Commission's Notice of Inquiry is whether the Commission should continue the market-based approach to open access it has employed in regard to cable broadband, or intervene to require some form of open access.

Proposed Solution:

Our economic analysis suggests that continuation of the Commission's market-based approach to open access will best promote consumer welfare. In theory, open access mandates can improve consumer welfare when the facilities subject to the mandate are monopolized. The broadband market, however, is anything but a monopoly, and so there is no consumer welfare justification for imposing open access in broadband. In a competitive broadband market, providers have strong incentives to offer whatever form of access maximizes the value of broadband Internet service to consumers. Therefore, the Commission's market-based approach to broadband open access is appropriate for all broadband providers.

Estimate of Economic Impacts:

> Even if a broadband provider possesses significant market power that is likely to last for a long time, there is no guarantee that regulation will improve on an unregulated monopoly. **A** vast literature in economics and political science documents that regulation itself can impose significant costs. These costs include the cost of compliance, the costs of litigation and lobbying to shape or circumvent the regulation, and the perverse incentives created by many forms of price regulation. The costs are likely to be greater the more extensive the regulation.

Mandatory open access is likely to improve consumer welfare only if there is a single broadband supplier, no potential entrants, significant barriers to entry, no significant potential for further innovation, and the benefits of regulation outweigh the accompanying costs. After taking all of these factors into consideration, our analysis concludes that mandatory open access would not improve consumer welfare.

Regulation: **Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations**

Agency: Department of Transportation, Federal Motor Carrier Safety Administration

Description of Problem:

DOT's proposal is based on a concern that fatigued truck drivers cause fatal highway accidents. It would limit the number of allowed driving hours per day, per week, and per time of day, and would also require electronic on-board recording devices to monitor compliance. DOT does not present data to support its assertion that fatigue systematically contributes to highway fatalities, nor that its proposed solutions will address either driver fatigue or accidents. Depending on the causes of accidents, the approach proposed by DOT may actually increase, rather than reduce fatal accidents.

Proposed Solution:

Before proceeding, DOT should gather more evidence on the causes of serious and fatal highway accidents. The focus of this rule on reducing driver fatigue is not based on reliable evidence that fatigue is a significant contributor to fatal accidents. Perhaps road congestion, road quality, or other vehicle, driver, or infrastructure considerations are more important factors in accidents involving commercial motor vehicles.

The real reduction of accidents involving trucks, and other vehicles as well, is clearly a desirable aim. Restrictions on hours and driver flexibility as proposed in all five options will not, however, achieve those goals. The proposed work hour caps cannot effectively mandate reductions in sleep debt, and DOT's proposal to eliminate alternatives and flexibility in a system with as large and diverse a work force as trucking will not address the sleep deficit problem, if indeed one exists. The one-size-fits-all assumptions of the proposal cannot possibly fit every driver and every situation. Better enforcement of current **rules** and built-in flexibility and common sense rules would appear to present a better field for improving highway safety.

Estimate of Economic Impacts:

DOT's estimates of benefits are inflated and its costs are underestimated. The benefits are almost exclusively due to savings on paperwork (log keeping and firm accounting costs). DOT's fatality-reduction benefits are overstated, and sensitive to key assumptions. Its cost estimates ignore important costs, such as the cost of new trucks, and understate others, such as the cost of hiring new drivers. **After** adjusting for these flaws, we estimate that the proposal would impose net costs ranging from over $1 billion per year if paperwork benefits are included, to almost $5 billion per year when paperwork benefits are excluded.

Regulation: **National Primary Drinking Water Regulations: Ground Water Rule**

Agency: Environmental Protection Agency

Description of Problem:

The Ground Water Rule is an attempt to provide users of ground-water-based public drinking water systems with protection from the risks of potential fecal contamination. **EPA** estimates that waterborne pathogens cause approximately 170,000 viral illnesses each year, and 15 premature fatalities. **EPA** has tried to embrace several good regulatory design practices into its construct for the proposed rule, including elements of targeting based on risk, and a set of flexible compliance strategies. Nevertheless, EPA's preferred approach—the proposed multiple barrier option—may generate benefits that fall short of anticipated costs. In addition to the problems apparent in the benefit-cost comparison, there may be more fundamental problems with the rule as proposed. The most significant is the over-reliance on disinfection over other elements of the rule. While disinfection can be a highly valuable component of the Ground Water Rule, it is not a panacea, and it is over emphasized in the proposed approach at the expense of other needs.

Proposed Solution:

The focus must remain on using safe water sources and simple yet sound sanitary practices including well construction and siting. Especially for the smaller systems, EPA should consider a more basic approach; one that more carefully weighs what can be achieved through disinfection against the costs, and targets treatment accordingly.

Estimate of Economic Impacts:

EPA's preferred approach—the proposed multiple barrier option—may generate benefits that fall short of anticipated costs. Even without making any adjustment to EPA's benefit and cost data, the routine monitoring required by this option is likely in total to impose more costs than benefits on water systems and (ultimately) on their consumers. Moreover, transient non-community water systems and smaller systems will be particularly burdened by the proposed requirements, suggesting that they will be the least likely to enjoy benefits while sharing disproportionately in the costs *of* the rule. Therefore, it is unlikely that the proposed rule can be justified on a benefit-cost basis unless it is better targeted (e.g., not on transient, non-community water systems and perhaps not on the smallest systems).

Regulation: **Request for Comment on Issues Relating to Market Fragmentation**

Agency: Securities and Exchange Commission

Description of Problem:

The Securities and Exchange Commission (SEC) is concerned that when the same security trades in multiple locations, "market fragmentation" might prevent investors from getting the best possible terms of trade. However, to the extent that fragmentation poses problems, they are government-created, and would not be solved with additional regulations, centrally mandated linkages, or uniform and cumbersome disclosure systems. There is little evidence that the problems the Commission fears from fragmentation are significant. Some alleged sources of fragmentation, such as internalization and payment for order flow, also possess offsetting benefits, because they allow brokerages to lower trading costs for themselves and their customers. Far from creating "fragmentation," competition among market centers and market participants encourages low trading costs, price discovery, transparency, market efficiency and innovation.

Proposed Solution:

We believe that the Commission can best minimize the downside of market fragmentation by maximizing reliance on competition to promote price transparency and intermarket linkages. To ensure that investors have the most affordable, useful, responsive, and innovative stock price data, the Commission should work to replace the monopoly in market data with competition. Such a move is the most effective way the Commission can promote the type of price transparency that links markets and gives all investors access to the best bids and offers available. Alternatively, the Commission could foster competition within a system of property rights more like those that exist currently, in which market data are essentially a common pool resource.

There are two ways the Commission can foster experimentation with multiple approaches to intermarket ***linkage:***

- Refrain from pressing the industry to develop a monolithic replacement for ITS.

- Approve proposals from individual market centers and dealers to create their own links to other market centers and dealers.

Estimate of Economic Impacts:

Market fragmentation probably creates net benefits. Even if it creates net costs, they are likely small. The benefits of the regulatory options the Commission considers are unlikely to outweigh the associated, substantial costs.