Regulation in the United States: A View from the GAO

Presentation to Visiting Fellows
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International Affairs and Trade
U.S. GAO
Presentation Outline

1. Who we are

2. Overview of regulation in the U.S.

3. GAO & the regulatory process
1. Who We Are

Operating guidelines
People and teams
International activities
Performance measures
GAO’s role is to support the Congress in carrying out its constitutional responsibilities and to help improve the performance and assure accountability of government for the benefit of the American people.
Operating Guidelines: Core Values

**Accountability**
Help the Congress oversee federal programs, policies, and operations to ensure accountability to the American people

**Integrity**
Ensure that our work is professional, objective, fact-based, nonpartisan, nonideological, fair, and balanced

**Reliability**
Provide high-quality, timely, accurate, useful, clear, and candid information
Operating Guidelines: GAO’s Independence

The Comptroller General (CG) is the head of GAO:

- confirmed through a joint selection/appointment process involving the Congress and the President
- serves a 15 year term of office
- can only be removed by impeachment or joint resolution of Congress for specified reasons

GAO staff at all levels are civil servants, not political appointees
Operating Guidelines: GAO’s Protocols

Congressional Protocols
Govern GAO’s interactions with our client, the Congress

Agency Protocols
Govern GAO’s interactions with executive branch agencies

International Protocols
Govern GAO’s work that has international components or implications
<table>
<thead>
<tr>
<th>People and Teams: GAO’s Organization</th>
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<tbody>
<tr>
<td><strong>Defense Capabilities Management</strong></td>
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<td><strong>Education, Workforce, and Income Security</strong></td>
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<td><strong>Financial Markets and Community Investments</strong></td>
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<td><strong>Health Care</strong></td>
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<td><strong>Homeland Security and Justice</strong></td>
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<td><strong>International Affairs and Trade</strong></td>
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<td><strong>Natural Resources and the Environment</strong></td>
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<td><strong>Physical Infrastructure</strong></td>
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<td><strong>Acquisitions and Sourcing Management</strong></td>
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<td><strong>Applied Research and Methods</strong></td>
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<td><strong>Financial Management Assurance</strong></td>
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<td><strong>Information Technology</strong></td>
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<td><strong>Strategic Issues</strong></td>
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People and Teams: GAO’s Workforce

3,141 FTE—75% in D.C., 25% in field

Workforce consists primarily of analysts, IT specialists, auditors, attorneys, and economists

GAO has technical chiefs for accounting, actuarial science, economics, statistics, science, and technology

80% of GAO’s resources spent on people
International Activities: GAO in the International Community

GAO’s Comptroller General sits on the International Organization of Supreme Audit Institutions (INTOSAI) Governing Board

GAO facilitates an international auditor fellowship training program

GAO participates in international peer reviews

Current initiatives:

- Donor Funding Initiative
- Global Financial Crisis Task Force
## Performance Measures: Fiscal Year 2009 to 2010

<table>
<thead>
<tr>
<th>Measures</th>
<th>FY 09 Actual</th>
<th>FY 10 Target</th>
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<tbody>
<tr>
<td>Financial benefits (in billions)</td>
<td>$43</td>
<td>$42</td>
</tr>
<tr>
<td>Other benefits</td>
<td>1,315</td>
<td>1,200</td>
</tr>
<tr>
<td>Testimonies</td>
<td>203</td>
<td>220</td>
</tr>
<tr>
<td>Products with recommendations</td>
<td>68%</td>
<td>60%</td>
</tr>
<tr>
<td>Recommendations implemented</td>
<td>80%</td>
<td>80%</td>
</tr>
<tr>
<td>Timeliness (based on client feedback)</td>
<td>95%</td>
<td>95%</td>
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</tbody>
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### Performance Measures: People Measures

<table>
<thead>
<tr>
<th>Retention Rates</th>
<th>FY 09 Actual</th>
<th>FY 10 Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retention rate (incl. retirements)</td>
<td>94%</td>
<td>90%</td>
</tr>
<tr>
<td>Retention rate (ex. Retirements)</td>
<td>96%</td>
<td>94%</td>
</tr>
</tbody>
</table>

### Staff Satisfaction Measures

<table>
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<tr>
<th>Measure</th>
<th>FY 09 Actual</th>
<th>FY 10 Target</th>
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</thead>
<tbody>
<tr>
<td>Staff utilization</td>
<td>78%</td>
<td>75%</td>
</tr>
<tr>
<td>Effective leadership</td>
<td>83%</td>
<td>80%</td>
</tr>
<tr>
<td>Organizational climate</td>
<td>79%</td>
<td>75%</td>
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2. Overview of Regulation In U.S.

Rulemaking steps

Applicable laws & Executive Orders

Regulatory Oversight

Congressional role
### Rulemaking Steps

#### Proposed Rule Stage
- Agency identifies issues and gathers data
- Proposed rule undergoes internal and external reviews
- Agency publishes proposed rule in the Federal Register for public comment

#### Final Rule Stage
- Agency considers public comments and finalizes rule
- Final rule undergoes internal and external reviews
- Agency publishes final rule in the Federal Register
  - Responds to comments,
  - Amends Code of Federal Regulations
  - Sets effective date

#### Congressional Review
- Agency submits rule and related materials to Congress
- Agency submits rule to GAO for review
The APA provides for both formal and informal rulemaking.

Formal rulemaking is used in ratemaking proceedings and in other cases when rules are required by statute to be made “on the record” after an opportunity for a trial-type agency hearing.

Informal or “notice and comment” rulemaking is used much more frequently and requires agencies to publish a notice of proposed rulemaking and allow interested persons an opportunity to comment.
Key Applicable Laws: Paperwork Reduction Act

Requires agencies to justify any collection of information from the public to minimize the paperwork burden they impose on the public to carry out their missions. Agencies are required to submit all proposed information collections to the Office of Management and Budget (OMB) for approval.

The PRA established the Office of Information and Regulatory Affairs (OIRA) within OMB to provide central agency leadership and oversight of government efforts and to reduce unnecessary paperwork.
Key Applicable Laws: Regulatory Flexibility Act

Requires agencies to prepare an initial regulatory flexibility analysis on the impact the rule could have on small entities, unless the proposed rule would not have a “significant economic impact upon a substantial number of small entities.”

Section 610 requires agencies to review those rules that have or will have a significant impact on small entities within 10 years of their promulgation to determine whether they should be continued without change or should be amended or rescinded to minimize their impact on small entities.
Key Applicable Laws: 
Congressional Review Act

The CRA requires federal regulatory agencies to file final rules with both Congress and GAO before the rules can become effective.

– If rule has a $100 million impact on the economy, within 60 legislative or session days, a Member can introduce a resolution of disapproval that, if adopted by both Houses and signed by the President, can nullify the agency’s rule.

– Under the CRA, GAO provides Congress with a report on each major rule concerning an agency’s compliance with the procedural steps required.
Applicable Laws:
Other Legislation

Other relevant statutes
– Unfunded Mandates Reform Act
– Paperwork Elimination Act
– E-Government Act
– National Environmental Policy Act
– Federal Advisory Committee Act
– Trade Agreements Act
– Negotiated Rulemaking Act
– National Technology Transfer & Advancement Act
– Regulatory Right-to-Know Act
Executive Order 12866 (Clinton) requires non-independent regulatory agencies to submit their “significant” rules to OIRA before publishing them in the Federal Register (proposed and final rulemaking stages) along with an assessment of the potential costs and benefits of the action.

Executive Order 12866 also requires agencies to periodically review their existing significant regulations to determine whether they should be modified or eliminated.
Applicable Executive Orders:
#13132: Federalism

Executive Order 13132 (Clinton) is related to the Unfunded Mandates Reform Act

– prohibits new rules with direct compliance costs on state and local governments
– prohibits rules that preempt state or local laws

Unless:
– the federal government provides funds for direct compliance costs, or
– agencies consulted with state or local officials early in rulemaking process
Regulatory Oversight

Office of Management and Budget (OMB)
- Roles and responsibilities
- Recent initiatives to improve OMB oversight

Judicial Review

Congress
- Authorizing Committees
- Oversight Committees
- Appropriations Committees
OIRA, Office of Information and Regulatory Policy within OMB, Executive Office of the President.

- reviews draft regulations under EO 12866
- reviews information under Paperwork Reduction Act,
- oversees government-wide policies regarding
  - information technology
  - information policy
  - privacy
  - statistical policy
Office of Management and Budget: Initiatives to Improve Oversight

Recent Memoranda related to open government:

- Information collection under the Paperwork Reduction Act, April 7, 2010.
- Social Media, Web-Based Interactive Technologies and the PRA, April 7, 2010
- Increasing Openness in the Rulemaking Process—Use of the Regulation Identifier Number, April 7, 2010.
- Disclosure and Simplification as a Regulatory Tool, June 18, 2010.
Some of the applicable laws enacted by Congress provide for judicial review of agencies’ regulatory actions, other are covered under the APA.

Courts generally review:

– compliance with the procedures
– support created in the process
– statutory authority of the agency

Example: National Mining Association Sues EPA over Limits on Mountaintop Mining
http://www.ombwatch.org/node/11169
Congressional Committees

Authorizing Committees—committees with jurisdiction over the subject matter of those laws, or parts of laws, that set up or continue federal operations.

Oversight Committees—the congressional committees charged with general oversight of federal operations. In most cases, the oversight committee for an agency or program is also its authorizing committee.

Appropriations Committees—committees responsible for “appropriations made by law” prior to the expenditure of any money from the Federal treasury.
3. GAO & the Regulatory Process: Three Types of Input

Subject Matter Teams—may address regulatory issues involving a particular agency or industry (for example, telecommunications, energy, financial markets) such as compliance, oversight, and enforcement.

Strategic Issues—responsible for cross-cutting implications (for example, rulemaking policies and processes, paperwork reduction, etc).

Office of General Counsel — reviews “major” rules and submits a report to Congress within 15 days of issuance; maintains database of rules.
Subject Matter Teams: Reports Related to Federal Rules

Natural Resources and Environment
• Clean Air Act: Mercury Control Technologies at Coal-Fired Power Plants Have Achieved Substantial Emissions Reductions, GAO-10-47.

Financial Institutions and Market Issues
• Financial Regulation: Recent Crisis Reaffirms the Need to Overhaul the U.S. Regulatory System, GAO-09-1049T.

Physical Infrastructure
Strategic Issues:
Summary Reports on Regulation


Reexamining Regulations: Opportunities Exist to Improve Effectiveness …, GAO-07-791.

Federal Rulemaking: Perspectives on 10 Years of Congressional Review Act …, GAO-06-601T.

Federal Rulemaking: Past Reviews and Emerging Trends Suggest Issues …, GAO-06-228T.

Rulemaking: OMB’s Role in Reviews of Agencies’ Draft Rules …, GAO-03-929.
Office of General Counsel: Responsibilities Under CRA

Reviews “major” rules and issues a report to Congress

• summarizes cost/benefit analysis

• certifies compliance with laws
  o Regulatory Flexibility Act
  o Unfunded Mandates Reform Act
  o Administrative Procedures Act
  o Paperwork Reduction Act

• certifies compliance with executive orders
  o Regulatory Planning and Review (#12866)
  o Federalism (#13132)
## Office of General Counsel: GAO Rulemaking Database

<table>
<thead>
<tr>
<th>Issuing Agency</th>
<th>Total Rules</th>
<th>Major Rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homeland Security</td>
<td>1291</td>
<td>2</td>
</tr>
<tr>
<td>Transportation</td>
<td>782</td>
<td>5</td>
</tr>
<tr>
<td>Independent Agencies (SEC, FRB, EPA, etc.)</td>
<td>707</td>
<td>26</td>
</tr>
<tr>
<td>Commerce</td>
<td>322</td>
<td>0</td>
</tr>
<tr>
<td>Agriculture</td>
<td>150</td>
<td>6</td>
</tr>
<tr>
<td>Defense</td>
<td>107</td>
<td>3</td>
</tr>
<tr>
<td>Health &amp; Human Services</td>
<td>84</td>
<td>25</td>
</tr>
<tr>
<td><strong>Total (Oct. 09 to Oct. 10)</strong></td>
<td><strong>3725</strong></td>
<td><strong>96</strong></td>
</tr>
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Selected References

Websites:
GAO Publications Database:  http://gao.gov/fedrules/
OMB Watch:  http://www.ombwatch.org/
AEI/Brookings Center on Regulation: http://www.reg-markets.org/

Books:
Nudge: Improving Decisions about Health, Wealth, and Happiness  
(Richard Thaler and Cass Sunstein—current director of OIRA)
Breaking the Vicious Circle: Toward Effective Risk Regulation  
(Stephen Breyer—current U.S. Supreme Court Justice)
Retaking Rationality: How Cost Benefit Analysis Can Better Protect the Environment and Our Health (Revesz and Livermore)