Regulatory Planning and Review in the U.S.: An Overview

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GWU, Washington D.C.
March 2010
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• Served 4 Presidents while working in 3 federal agencies.
  – CEA 1997-1998,
    • Senior Economist for Environment & Regulation
  – FDA 2003-2009
    • Chief Economist, Associate Commissioner, Deputy Commissioner for Policy

• Economist and researcher
  – AEI and AEI-Brookings Joint Center 1998-2003
  – Numerous papers on health, safety and environmental regulation, e.g., *Science, ES&T, JPE, Economic Inquiry, Energy Journal, Regulation*
How to Achieve Government Policy Goals?

• **Spend** (make federal Budget request, seek Congressional appropriations)
• **Tax** (include in federal Budget, requires Congressional action)
• **Mandate** (may require Congressional action, or if there is already existing statutory authority, may entail issuance of *new regulation*).
Attractions of the Mandate

• “Off-budget”
  – Effects (both costs and benefits) are less transparent.
• If authorizing legislation already exists, a regulation is within President’s authority.
• More appropriate for complicated science-based risk-related issues that are pervasive in modern life, e.g.,
  – food and drug safety,
  – labeling,
  – air pollution.
An Example: Air Pollution: Revising the Ozone Standard

• In January 2010, EPA *proposed* a regulation to set new national ambient air quality standards for ozone, a regulation more stringent than issued by EPA in 2008 (2 years earlier)

• EPA proposed to strengthen the 8-hour “primary” ozone standard, designed to protect public health, to a level within the range of 0.060-0.070 parts per million (ppm).

• “The proposal to strengthen the primary standard places more weight on key scientific and technical information, including epidemiological studies, human clinical studies showing effects in healthy adults at 0.060 ppm, and results of EPA’s exposure and risk assessment.”
An Example: Air Pollution
A Role for Economic Analysis?

• “The costs of reducing ozone to 0.070 ppm would range from an estimated $19 billion to $25 billion per year in 2020. For a standard of 0.060 ppm, the costs would range from $52 billion to $90 billion.”

• “EPA estimates the value of health benefits of reducing ozone to 0.070 ppm would range from about $13 billion to $37 billion per year in 2020. For a standard of 0.060 ppm, the value of benefits would range from about $35 billion to $100 billion per year in 2020.”

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Questions to Address

• How and why did the rule-development process generate such decisions?

• What do such economic estimates mean and how should they be interpreted?

• How protective/stringent are such rules and how receptive was the process to public input?
Regulatory Planning and Review Policy and Practice

• Problem (control and authority)
• Process of Regulatory Planning and Review
  • Who?
  • How?
  • What?
• Role of Economic Analysis
• Strengths and weaknesses
The Problem

• Who makes what regulatory decisions, according to what criteria, and with what level of oversight?
• Regulatory review is important because cabinet and sub-cabinet officers are very rarely fired.
  – Once appointed, firing, or even public admonishment, is embarrassing to the WH.
  – Thus Presidents for decades have sought to retain control by instituting a process of review within the WH, of draft regulatory decisions.
The Process: E.O. 12866

– Signed by President Clinton, October 1993,
  • Replaced E.O. signed by President Reagan.
  • Used by President Bush and so far by President Obama.
– “The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.
– With this Executive Order, the Federal Government begins a program to reform and make more efficient the regulatory process.”
E.O. 12866 Has Twelve “Good Government” Principles, e.g.,

(1) Each agency shall **identify the problem** that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.

(2) Each agency shall **examine whether existing regulations** (or other law) have created, or contributed to, the problem that a new regulation is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.

(3) Each agency shall **identify and assess available alternatives to direct regulation**, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.
E.O. 12866 Has 12 Principles, e.g.,

(4) In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.

(5) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.

(6) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.
Role of Economic Analysis (RIAs)

• Best available comprehensive systematic prospective projections of positive and negative consequences of regulatory actions.

• A-4: “Where all benefits and costs can be quantified and expressed in monetary units, benefit-cost analysis provides decision makers with a clear indication of the most efficient alternative, that is, the alternative that generates the largest net benefits to society (ignoring distributional effects). This is useful information for decision makers and the public to receive. . .”

• RIAs are valuable if done well.
Estimates of Costs and Benefits
Table A-1: Summary of Agency Estimates for Final Rules  
October 1, 2007 - September 30, 2008 (As of Date of Completion of OMB Review)

<table>
<thead>
<tr>
<th>Rule [FR Cite]</th>
<th>Agency</th>
<th>Benefits</th>
<th>Costs</th>
<th>Other Information</th>
</tr>
</thead>
</table>
| Right Whale Ship Strike Reduction [73 FR 60173] | DOC/ NOAA    | Not estimated  | $105 million per year | Benefits: Reduction of right whale mortality which reduces the likelihood of extinction of this endangered species.  
Costs: Total costs include both direct and secondary economic effects.  
The RIA is available online at:  
| Energy Efficiency Standards for Residential Furnaces and Boilers [72 FR 65136] | DOE/ EERE    | $120 - 182 million per year | $33 - 38 million per year | Energy savings of 0.011 quadrillion BTUs of energy from 2015 to 2038.  
The RIA is available online at:  
| Group Health Plans and Health Insurance Issues Under the Newborns and Mothers Health Protection Act [73 FR 62409] | HHS/ CMS, DOL/ EBSA and Treas/ IRS | Not estimated | $119 - 238 million per year | Benefits: Increase in access to health plan coverage for postpartum care and monitoring of mothers and their newborns should reduce the risk of adverse health outcomes.  
Costs: Because the statute does not require a 48 or 96-hour stay, but instead gives the decision-making authority to the attending physician in consultation with the mother, it is expected that not all these births will result in additional hospital time.  
The RIA is available online at:  
http://www.regulations.gov/Edspublic/component/main?main=DocumentDetail&o=090000648076a419 |
Summary of FY 2008 Rules

• 21 economically significant final rules in 12 month interval.

• Some with no (quantitative) estimates of
  – Costs (1 rule: Migratory Bird Hunting Regulations)
  – Benefits (6 rules: e.g., Right Whale Ship Strike Reduction)
  – Cost or benefits (1 rule: Default Investment Alternatives for Participant Directed Individual Account Plans)
OIRA / OMB 2009 Report to Congress

Recommendations for Reform

• emphasizes the potential value of behaviorally informed approaches to regulation, including disclosure policies, prudent use of default rules, and simplification.

• suggests that regulatory impact analysis should be improved by increased clarity about costs and benefits, by greater use of retrospective analysis, and by taking account, where relevant, of the interests of future generations, of distributional effects, and of fairness.

• suggests the importance of using regulatory analysis as a tool of transparency and open government, by allowing public scrutiny of rules with reference to their anticipated and actual consequences.
The Process

• OIRA professional analysts evaluate draft agency analyses to see whether
  – Draft regulations comport with the principles in the EO &
  – Supporting analyses follow methods outlined in OMB circulars, regarding both process (e.g., peer-review) and substance (e.g., discount rates).

• OMB accepts requests from outside parties to meet to hear concerns with pending draft regulations, but these meetings are
  – in presence of representatives of regulatory agencies
  – held without disclosing the content of the draft rule to outsiders
  – disclosed officially to the public.

• Agency and OMB officials discuss (negotiate) over text of regulation.
Three Roles for Economic Analysis

• To inform government policy makers about efficiency implications.
• To comply with statutory requirements.
• To provide for public accountability.
RIAs: Informing Government Policy Makers About Efficiency Implications

• RIAs are well suited. If the people in charge care about getting better RIAs they can ask agencies to conduct further analysis.

• But improving economic analysis as a management aid has an effect on efficiency only to the extent that decision-makers are committed to efficiency as an important objective.

• Evidence here is mixed.
RIAs: Complying with Statutory Requirements

• Agencies take seriously legal requirements for economic analysis under SBREFA or UMRA, or even under CWA BAT program, for example.

• Successful challenge of rules for inadequate economic analysis is rare.

• But statutorily mandated economic analysis of rules is rarely directly related to efficiency.
RIAs: Informing Congress and the Public

• Benefit-cost analysis when well done yields perhaps the best available summary of the effects of a regulation on national welfare.
• But how to judge “quality” of RIAs?
• There are two approaches:
  – review the results,
  – review the process.
RIAs: Informing Congress and the Public

• 1) Review results
  – Low hurdles of general applicability
    • assess different regulatory options (or alternatives),
    • discount benefits that occur later than the associated costs, and
    • use the same baseline to assess costs and benefits.
RIAs: Informing Congress and the Public

• 1) Review results
  – Medium hurdles
    • Did the analysis assess an adequate set of alternatives? ·
    • Did the analysis use an economically defensible discount rate or set of discount rates? ·
    • Did the analysis use an appropriate baseline to describe the world that would occur in the absence of the regulation?

    • Did the analysis assess all significant categories of benefits and costs?
    • Did it provide quantitative estimates of benefits and costs for all such categories?
    • Did it take risk and uncertainty into account in an appropriate way? For example, did it present best or most likely estimates of outcomes as well as other points on the distribution of outcomes?
RIAs: Informing Congress and the Public

• 1) Review results
  – High hurdles of general applicability.
    • Does reanalysis of the same data with the same techniques give the same results?
    • Would other closely related estimation techniques provide similar results?
    • Did the analysis use the best available analytic techniques?
  – But these hurdles are incomplete because they are of (nearly) universal applicability.
RIAs: Informing Congress and the Public

• 2) Review process: Are there incentives for quality and good procedures for quality control?

  • Public comment
  • External independent qualified peer-review
  • Competition among institutions
  • Independence from political pressure
Strengths and Weaknesses

• Strengths:
  – Institutionalized commitment to economic analysis of regulations through transparent process open to public comment and according to established rules.
  – Acceptance within the Executive Branch and the policy community
  – Frequently good, credible analysis
Strengths and Weaknesses

• Weaknesses
  – Weak incentives or controls to ensure quality analysis and plenty of examples of quality inadequate for public accountability.
Suggestions / Recommendations

• The quality of economic analysis is likely to be higher if there are competing estimates.
• Insulation of analysts from political pressures is important.
• Some administrative arrangements may promote good analysis.
  – Public commitments to abide by best practices for RIAs.
  – Public commitments to complete analysis before decision-making.
• Some analysis, or some oversight of analysis, could be delegated to independent agencies.
Questions?

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Selected References
