Regulatory Impact Analysis in the United States

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Agenda

Why does Regulatory Impact Analysis Matter?

What is Regulatory Impact Analysis (RIA)?

When is it Appropriate to Regulate?

Why Does Regulatory Analysis Matter?

- Helps to ensure that regulations are as effective and efficient as possible.
  - RIAs help to (1) identify the underlying policy problem and (2) focus specifically on how to address that problem at the lowest total cost to society.
- Good analysis helps provide a reasonable basis for rulemaking.
- Leads to regulations that are less restrictive of business and more effectively protects consumers.
  - Inappropriate regulation can stifle economic growth by putting obstacles in the way of doing business and by creating perceptions of a negative environment.

Why Does Regulatory Analysis Matter?

- Good analysis is critical to inform stakeholders:
  - Decision-makers
  - Interested/Affected Parties (regulated entities and stakeholders)
  - Lawmakers (Congress)
  - The Public

History of Benefit-Cost Analysis in the United States

Benefit-cost analysis in the United States started in the 1930s with the U.S. Army Corps of Engineers.

President Reagan formalized the use of benefit-cost analysis in Executive Order (EO) 12291 in 1981.

President Clinton developed regulatory principles agencies should adhere to, and the analysis they must conduct, when they develop regulations in EO 12866 in 1993.

Executive Order 12866: “Regulatory Planning and Review”

Issued by President Clinton in October 1993.

- Governs OIRA’s centralized, interagency review of draft regulations.

Establishes principles of regulation.

- Regulation must be consistent with law.
- Regulations must identify nature and significance of problem.
- Alternatives to address the problem must be identified and assessed.
- The costs and benefits of each alternative must be assessed.
- The alternative selected should maximize net benefits to society.

These principles guide OIRA’s review of regulations.

Regulatory Impact Analysis (RIA)

Basic Goals

- Maximize net benefits to society—or at least ensure that benefits justify costs.
- Promote economic efficiency by regulating only where markets fail, and when regulating, by using cost-effective and market-based approaches.
- Increase the transparency of the regulatory system.

RIA assesses the anticipated consequences a regulation and estimates associated benefits and costs.

- Helps to organize and consolidate all the possible impacts and elements for decisions at various stages of policy development.
- Provides clear and transparent methodologies and criteria for new or existing regulations.

What is a Regulatory Impact Analysis?

Elements of a Regulatory Impact Analysis

- Statement of need for the proposed rule that identifies the nature and significance of the problem (e.g., identification of the market failure).
- Examination of alternative approaches to addressing the problem.
- Analysis of the costs and benefits of each alternative.

RIA is a flexible and adaptable tool that should always:

- Be proportional to the situation.
- Follow consistent guidance for complexity and level of analysis.

OMB Circular A-4: Guidelines for the Conduct of Regulatory Analysis (September 2003)

Steps - Regulatory Impact Analysis

Regulatory Impact Analysis

Defining the policy problem → Identifying the policy objective → Thinking about policy options → Conducting an impact analysis → Consulting with stakeholders → Presenting a conclusion and a way forward → Enforcing and reviewing the proposed option

World Bank, “Making it Work: ‘RIA Light’ for Developing Countries:
http://regulatoryreform.com/wp-content/uploads/2015/02/World-Bank-RIALightNov2009.pdf.

When and Why is it Appropriate to Regulate?

- What is the need for regulation - what is the problem you are trying to address?
  - Market failure or some other compelling public interest
  - Should describe the failure both qualitatively and quantitatively, where feasible
- What is the market failure?
  - Externality, common property resource and public good
  - Market power
  - Inadequate or asymmetric information
  - Other social purposes
- Presumption against Economic Regulation

Externality, common property resource and public good

- An externality occurs when one party's actions impose uncompensated benefits or costs on another party

- For example, the smoke from a factory may adversely affect the health of local residents while soiling the property in nearby neighborhoods

Market Power

- Firms exercise market power when they reduce output below what would be offered in competitive industry in order to obtain higher prices
  - This may be performed unilaterally or collectively
- Abuse of market power could be a justification to regulate.
  - May be certain situations where a monopoly is preferred (e.g., utilities)

Inadequate or Asymmetric Information

Many market transactions occur under conditions of incomplete information, in which one or more parties to a market transaction cannot determine with certainty all of the important attributes of a market or a particular good.

Why does this occur?

- Information is costly to produce or disseminate
- People may also process information incorrectly

Classic example: Used car market - seller knows more about the quality of the car he is selling than does the buyer.

- How does the market address this information gap?
- How does this relate to conformity assessment and standards?