



# OFFICE OF INFORMATION AND REGULATORY AFFAIRS

## Regulatory Impact Analysis



Improving the Efficiency and Effectiveness of  
Regulation

October 30, 2014

Any view expressed here are solely those of the presenter and do not necessarily reflect the position of the Office of Management and Budget or the Executive Office of the President

# AGENDA

- What is Regulatory Impact Analysis?
- Why Does Regulatory Analysis Matter?
- What are the Key Elements of a Regulatory Analysis?
- Resources

# ∴∴∴ What is RIA?

- Regulatory Impact Analysis (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
- RIA is a flexible and adaptable tool
  - Its underlying analytical approach should always:
    - Be proportional to the situation
    - Follow consistent guidance for complexity and level of analysis

# ∴∴ Why Does Regulatory Analysis Matter?

- Good analysis helps provide a reasonable basis for rulemaking.
- Good analysis is critical to inform:
  - Decision-makers (your bosses!)
  - Interested/Affected Parties
  - The Congress
  - The Public
- Good analysis also helps provide a reasonable basis for rulemaking under the Administrative Procedure Act.

# History of Regulatory Analysis in the U.S.

- OMB has issued guidance on how to conduct regulatory impact analysis in place since the 1980s. Prior to OMB Circular A-4, the most recent guidelines were issued in 1996 and 2000.
- (2011) Executive Order 13563
- (1993) Executive Order 12866
- (1981) Executive Order 12291
- (2003) OMB Circular A-4
- (2000) Guidelines to Standardize Measures of Costs and Benefits and the Format of Accounting Statements
- (1996) “Best Practices”



# OIRA's Role under Executive Order 12866

- ❑ Executive Order 12866 and 13563 on Regulatory Planning and Review governs OMB's oversight of agency rulemaking, requiring OMB review of "significant" agency regulatory actions.
- ❑ Agencies submit draft significant regulations (both proposed and final) to OIRA for a 90-day review before publishing them in the *Federal Register*.
- ❑ OIRA reviews 500-700 proposed and final regulations per year—those we determine to be significant—out of about 6,500 that are issued.
- ❑ About 70-100 of the regulations reviewed are "economically significant" (over \$100 million per year in economic effects).
- ❑ During our review, we examine the RIA and the regulation and make suggestions to improve both the RIA and the rule's cost-effectiveness and to make sure that it comports with the Executive Order's principles and the President's priorities.
- ❑ If we are unable to resolve issues during the review process, or the agency needs more time to make changes, the agency can withdraw the rule or we can return the rule back to the agency for reconsideration.

# Executive Order 13563

## Improving Regulation and Regulatory Review

### Executive Order 13563, issued January 18, 2011

- Reaffirms the principles and structures of EO 12866
- Calls for public participation to promote an open exchange with stakeholders
- Directs agencies to harmonize, simplify, and coordinate rules to reduce costs and to promote simplicity
- Considers flexible approaches that reduce burdens and maintain freedom of choice for the public (e.g., public warnings or provisional information)
- Calls for scientific integrity
- Direct agencies to conduct retrospective analysis of existing rules and produce preliminary plans for periodic review; these plans are due to OIRA within 120 days

### Presidential Memos, issued January 18, 2011:

- Regulatory Compliance
- Regulatory Flexibility, Small Business, and Job Creation

# ∴∴ What is Circular A-4?

- Executive Order 12866 requires agencies to conduct a regulatory analysis for economically significant regulatory actions as defined by Section 3(f)(1).
- OMB has had regulatory analysis guidelines in place since the 1980s. Prior to A-4, the most recent guidelines were issued in 1996 and 2000.
- The “Regulatory Right to Know Act” requires OMB to “issue guidelines to agencies to standardize
  - (1) measures of costs and benefits; and
  - (2) the format of accounting statements.”
- In developing this Circular, OMB first developed a draft that was subject to public comment, interagency review, and peer review.



# What is Regulatory Impact Analysis (RIA)?

- Regulatory Impact Analysis (RIA) assesses the anticipated consequences a regulation and estimates associated benefits and costs.
- Executive Orders 12866 and 13563 require agencies to conduct a regulatory analysis for economically significant regulatory actions as defined by Section 3(f)(1).
- The “Regulatory Right to Know Act” requires OMB to “issue guidelines to agencies to standardize
  - (1) measures of benefits and costs; and
  - (2) the format of accounting statements.”

# ⋮⋮ Regulatory Impact Analysis

## □ 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.

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



# What are the Key Elements of a Regulatory Analysis?

- For all Economically Significant Rules:
  - The Need for Federal Regulatory Action
  - Alternative Regulatory Approaches
  - Measuring Benefits and Costs of Alternatives
  - Accounting Statement

# ∴∴ The Need for Federal Regulatory Action

- Market Failure or Other Social Purpose
- Showing That Regulation at the Federal Level Is the Best Way to Solve the Problem
- The Presumption Against Economic Regulation

# Alternative Regulatory Approaches

- Informational Measures Rather than Regulation
- Market-Oriented Approaches Rather than Direct Controls
- Performance Standards Rather than Design Standards
  
- Different Degrees of Stringency
- Different Requirements for Different Sized Firms
- Different Choices Defined by Statute
- Different Compliance Dates
- Different Enforcement Methods
- Different Requirements for Different Geographic Regions



# Measuring Benefits, Costs and Other Effects

- Scope of the analysis
- Timeline of the analysis
- Developing a baseline
- Estimating costs
- Estimating benefits
  - Using revealed preference data
  - Using stated preference data
  - Benefit transfer
- Qualitative Discussion

# ∴∴∴ Baseline Characterization

- Evolution of the market
- Changes in external factors affecting expected benefits and costs
- Changes in regulations promulgated by the agency or other government entities
- The degree of compliance by regulated entities with other regulation
- Potential to develop more than one baseline

## Discount Rates

- When benefits and costs are separated in time all future benefits and costs must be discounted.
- Circular A-4 specifies two separate discount rates to use for this purpose – 3 percent and 7 percent.
- Both rates are “real” net of expected inflation.
- The higher rate reflects the opportunity cost of displaced private capital investment. The lower rate reflects time-related tradeoffs in personal consumption.



# ⋮⋮ Treatment of Uncertainty

- For all economically significant rules:
  - characterize probabilities of the relevant outcomes
    - qualitative discussion of main uncertainties
    - sensitivity analysis of assumptions, input data, etc.
  - assign economic value to the projected outcomes
- For all rules in excess of \$1 billion:
  - formal quantitative analysis of the relevant uncertainties about benefits (e.g., simulation models, use of expert judgment elicitation)
- Where level of scientific uncertainty very high:
  - if probabilistic approach not possible, evaluate discrete alternative scenarios using a range of plausible scenarios
  - if uncertainty due to lack of data, evaluate additional research prior to rulemaking as an explicit regulatory alternative

## ••• Some Specific Suggestions

- Get economists and analysts involved early in the regulatory process. Analysis should drive decision making.
- Evaluate the regulatory analysis against the provisions in the draft rule. Do the costs and benefits adequately capture the effects of each provision? Are the assumptions surrounding the analysis correct?
- Language and organization of the RIA should be comprehensible to a relatively non-technical person.

## ☼☼☼ Some Specific Suggestions

- The Preamble should have a clear “Problem Statement” – and possible alternatives should address the identified problem/s.
- A-4 requires analysis of at least one alternative that is more stringent and at least one alternative that is less stringent than the selected alternative.
- Requests for comment should be clear and well directed.
- Check for citation of sources for data and assumptions.

# Accounting Statement

- Categories of Benefits and Costs
- Quantifying and Monetizing Benefits and Costs
- Qualitative Benefits and Costs
- Treatment of Benefits and Costs over Time
- Treatment of Risk and Uncertainty
- Precision of Estimates
- Separate Reporting of Transfers
- Effects on State, Local, and Tribal Governments, Small Business, Wages and Economic Growth

# References

- ❑ OMB Circular A-4-- [http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory\\_matters\\_pdf/a-4.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf)
- ❑ [RIA checklist: http://www.whitehouse.gov/sites/default/files/omb/inforeg/regpol/RIA\\_Checklist.pdf](http://www.whitehouse.gov/sites/default/files/omb/inforeg/regpol/RIA_Checklist.pdf)
- ❑ [A-4 FAQ: http://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a004/a-4\\_FAQ.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a004/a-4_FAQ.pdf)
- ❑ Administrative Procedure Act (APA) -- <http://www.archives.gov/federal-register/laws/administrative-procedure/>
- ❑ Executive Order 12866 -- <http://www.whitehouse.gov/OMB/inforeg/eo12866.pdf>
- ❑ Executive Order 13563 -- [http://www.whitehouse.gov/sites/default/files/omb/inforeg/eo12866/eo13563\\_01182011.pdf](http://www.whitehouse.gov/sites/default/files/omb/inforeg/eo12866/eo13563_01182011.pdf)
- ❑ Office of Information and Regulatory Affairs -- [http://www.whitehouse.gov/omb/inforeg\\_default](http://www.whitehouse.gov/omb/inforeg_default) and [http://www.whitehouse.gov/omb/inforeg\\_infopoltech](http://www.whitehouse.gov/omb/inforeg_infopoltech)
- ❑ RegInfo.gov, where to find Federal regulatory information. The public can use this site to search the the Unified Agenda of Regulatory and Deregulatory Actions and Regulatory Plan, as well as current and past OIRA regulatory reviews in accordance with EO 12866.
- ❑ Regulations.gov, your one-stop site to comment on Federal regulations. The public can use this site to send their comments electronically to agencies on Federal regulations published for comment in the Federal Register.
- ❑ FederalRegister.gov, the official daily publication for rules, proposed rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents.
- ❑ The “Reg Map” -- <http://www.reginfo.gov/public/reginfo/Regmap/index.jsp>

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