

How to get more complete and consistent information about regulatory costs, benefits, and alternatives

Changing the *Federal Register* to Improve Regulatory Accountability

BY ROBERT W. HAHN

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XPENDITURES ARISING FROM FEDERAL ENVIRONMENTAL, health, and safety regulation have grown dramatically in recent decades and now total several hundred billion dollars annually. As regulatory

activities continue to grow, so does the need to consider their implications more carefully. Yet, the economic effects of regulation receive much less scrutiny than direct, budgeted government spending.

The provision of useful information about the economic effects of regulation is an important first step toward a better understanding of the implications of regulatory activities. This article suggests how to modify the *Federal Register*, a central repository of government information on regulation, to improve regulatory accountability. Although changing the *Federal Register* would improve the flow of information about regulation, it is only one of many changes in the regulatory process necessary to achieve real reform.

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REFORM EFFORTS: PAST AND PRESENT

MY PROPOSAL TO CHANGE THE *FEDERAL REGISTER* TO improve regulatory accountability builds on more than twenty years of efforts to reform the regulatory process. Research suggests that more than half of the federal government's regulations would fail a strict benefit-cost test, even using the government's own numbers. Moreover, we could save more lives with fewer resources simply by reallocating expenditures toward those regulations with the highest payoff to society. (See "Readings" at the end of this article for a list of some relevant research on these issues.) As a result, Congress and the White House have increasingly recognized that the potential gains from regulatory reform are substantial.

The last six presidents have introduced different regulatory oversight mechanisms with varying degrees of success. In 1981, President Reagan was the first president to require formal analyses of the costs and benefits of major regulations, in Executive Order (EO) 12291. In 1993, Pres-

ident Clinton replaced EO 12291 with EO 12866, which requires similar regulatory analyses.

Congress also has become more receptive to using economic analysis in regulatory decisionmaking, especially in the last five years. For example, the Unfunded Mandates Reform Act of 1995 calls for economic assessments of government mandates affecting state governments, local governments, and the private sector. In 1996, 1997, and 1998, Congress also required the Office of Management and Budget (OMB) to produce a report on the benefits and costs of federal regulation. Although those assessments are important, more needs to be done to hold legislators accountable for the implementation of regulations.

A NEXT STEP: IMPROVING THE FEDERAL REGISTER

THE PUBLIC AND INTERESTED PARTIES NEED GREATER ACCESS to information about the costs and benefits of and alternatives to proposed regulations. The *Federal Register* is a poten-

tial source of such information. It carries the text of all federal regulations and sometimes provides summaries of the regulatory analyses required by executive order. In addition, the *Federal Register* can be found in libraries and on the Internet (www.access.gpo.gov/su_docs/aces/aces140.html).

However, in my detailed analysis of *Federal Register* notices that include regulatory analyses, I found that those analyses vary greatly in the kind of information about key economic assumptions, estimates of costs and benefits, and regulatory alternatives. For example, of the 72 notices I reviewed, only 68 percent stated that the costs of a regulation had been assessed, only 50 percent stated that benefits had been assessed, and only 43 percent contained a discussion of regulatory alternatives.

To improve the content of *Federal Register* notices, I have suggested that each agency be required to fill out a Regulatory Impact Summary (RIS) for each significant regulation. Fig-

Figure 1

Regulatory Impact Summary	
I. BACKGROUND ON RULE AND AGENCY	
AGENCY AND DEPARTMENT/OFFICE NAME	
CONTACT PERSON	TELEPHONE NUMBER
TITLE OF THE RULE	
RIN NUMBER	DOCKET NUMBER
TYPE OF RULEMAKING (FINAL/INTERIM/PROPOSED/NOTICE)	TYPE OF RULE (REGULATORY/BUDGET IMPACT)
STATUTORY AUTHORITY FOR THE RULE	RULEMAKING IMPETUS
BRIEF DESCRIPTION OF THE RULE	
II. OVERALL IMPACT	
1. Will the rule have an impact on the economy of \$100 million or more? <input type="checkbox"/> Yes <input type="checkbox"/> No	
2. Best estimate of the present value of quantifiable benefits of the rule \$ _____	
3. Best estimate of the present value of quantifiable costs of the rule \$ _____	
4. Do the quantifiable benefits outweigh the quantifiable costs? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Discuss level of confidence in the benefit-cost estimates and key uncertainties. _____	

5. Identify benefits or costs that were not quantified. _____	

ure 1 offers a prototype RIS. It is divided into four parts: back-ground on the rule, the overall impact of the rule, a descrip-tion of costs and benefits, and an examination of regulatory alternatives. The information included in an RIS would be sim-ilar to that required by EO 12866, the Unfunded Mandates Reform Act, and the Regulatory Flexibility Act. Congress

could simply pass an amendment requiring that the infor-mation be summarized and produced in the form suggested here. The cost would be trivial; the benefits could be great. The use of a standard form would make it easier for the public, interest groups, and academics to obtain informa-tion about the government's views of the benefits and costs

Figure 1

(continued from previous page)

III. COSTS AND BENEFITS

A. Estimated Incremental Costs or Cost Savings

1. Costs or cost savings and breakdown of quantifiable costs or cost savings by type.

	Annual	Present Value
Total Costs or Cost Savings	_____	_____
Compliance Costs or Cost Savings	_____	_____
Administrative Costs or Cost Savings	_____	_____
Federal Budget Costs or Cost Savings	_____	_____
Local/State Budget Costs or Cost Savings	_____	_____
Other Costs or Cost Savings	_____	_____

Explain. _____

Identify the year(s) in which the costs or cost savings occur. _____

Report the dollar year of the costs or cost savings estimates. _____

Give the discount rate used in the calculations. _____%

2. Will the costs or cost savings be imposed on the: (check one/more)

- Private Sector Small Businesses State or Local Government

Private Sector Impact \$ _____

Small Business Impact \$ _____

State or Local Government Impact \$ _____

B. Estimated Incremental Benefits

1. Benefits and breakdown of quantifiable benefits by type.

	Annual	Present Value
Total Benefits	_____	_____
Health Benefits	_____	_____
Pollution Benefits	_____	_____
Other Benefits	_____	_____

Explain. _____

Identify the year(s) in which the benefits accrue. _____

Report the dollar year of the benefit estimates. _____

Give the discount rate used in the calculations. _____%

2. Give a brief description of who will benefit. _____

IV. ALTERNATIVES TO THE REGULATION

1. List (by number) and briefly describe the alternatives to the rule that were considered and why they were rejected. If no alternatives were considered, explain why not.

2. Summarize the costs and benefits for each alternative considered.

	Costs	Benefits
Alternative 1	\$ _____	\$ _____
Alternative 2	\$ _____	\$ _____
Alternative 3	\$ _____	\$ _____

of regulation. In addition, it would enable interested parties and government agencies to assess the effects of regulations and the quality of agencies' analyses. OMB, for example, could use the information in the statements to prepare its annual report on the benefits and costs of regulations and to score agencies' performance of regulatory analyses.

Critics might argue that what I propose is hardly worth doing because regulation is heavily influenced by politics. The critics would be wrong. Politics does have a strong influence, but analysis can help to make decisionmaking more transparent. Transparency changes the politics and—one hopes—leads to more informed policy judgments.

Critics might also say that making the government's analysis available is not particularly useful because of potential bias in the analysis. An agency may, for example, overestimate the benefits of a regulation. If such bias exists—and I believe it does—making the results of the government's analysis readily available would make it easier for skeptics to refute the analysis or show how it can be improved.

A COMPLEMENTARY ROUTE TO REFORM

REGULATORY REFORM WILL NOT HAPPEN OVERNIGHT. NOR will it happen as the result of a single measure, such as changing the *Federal Register*. Clearly, more can and should be done to improve the government's analysis of regulations. The key to improvement is greater competition with and scrutiny of the government's analysis, both inside and outside the government.

Another important reform, for example, is the establishment of a congressional oversight agency charged with assessing regulations. Last year, in testimony before a subcommittee of the House Committee on Government Reform and Oversight, Robert Litan and I proposed the establishment such an agency. Randall Lutter also argued for such an agency in his recent article, "The Role of Economic Analysis in Regulatory Reform" (*Regulation*, Vol. 22, No. 2). The agency we propose would compete with the exist-

ing oversight office within OMB. Such competition should yield better regulatory analysis and give Congress better information on which make judgments about regulatory policies.

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