
Are We Safe Yet?

Homeland Security and Regulatory Analysis

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It's Security – Why Bother with Analysis?

- Effectiveness is a matter of life and death
 - Resources are finite; we choose which risks to accept
 - “High-impact” citizen interfaces with govt. (airport security, border crossing, IDs, etc.)
 - Cost
 - \$4-5 billion annual cost of major regs issued since DHS was created thru end of 2007
 - Other values: liberty, privacy
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Key Steps in Regulatory Analysis

1. Identify the desired outcomes
 2. Assess evidence of market failure or other systemic problem
 3. Identify federal government's unique role
 4. Assess effectiveness of alternative approaches
 5. Identify costs
 6. Compare costs with outcomes
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... Or, in Plain English:

1. Figure out what you're trying to do and how you'll know you did it
 2. Figure out why government needs to do it
 3. Figure out what level of government needs to do it
 4. Think about different ways to do it and find the most effective one
 5. Figure out what you have to give up to do whatever you're trying to do
 6. Weigh the pros and cons
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DHS Must do Regulatory Analysis

- **Unfunded Mandates Reform Act**

 - Requires cost-benefit analysis of any mandate on other levels of govt. or the private sector exceeding \$100 million

- **Regulatory Flexibility Act**

 - Requires analysis of effects on small entities

- **Executive Order 12866**

 - Regulatory Planning and Review

- **Circular A-4**

 - Regulatory Analysis

Scoring the Regulatory Analyses

(6 elements, max. 30 possible points)

0: No discussion of the element

1: Perfunctory statement

2: Some discussion and documentation

3: Reasonably thorough analysis of some aspects

4: Reasonably thorough analysis of most aspects

5: Complete analysis, 1 or more best practices

Note: We evaluated the completeness and quality of analysis,
NOT the policy choice DHS made

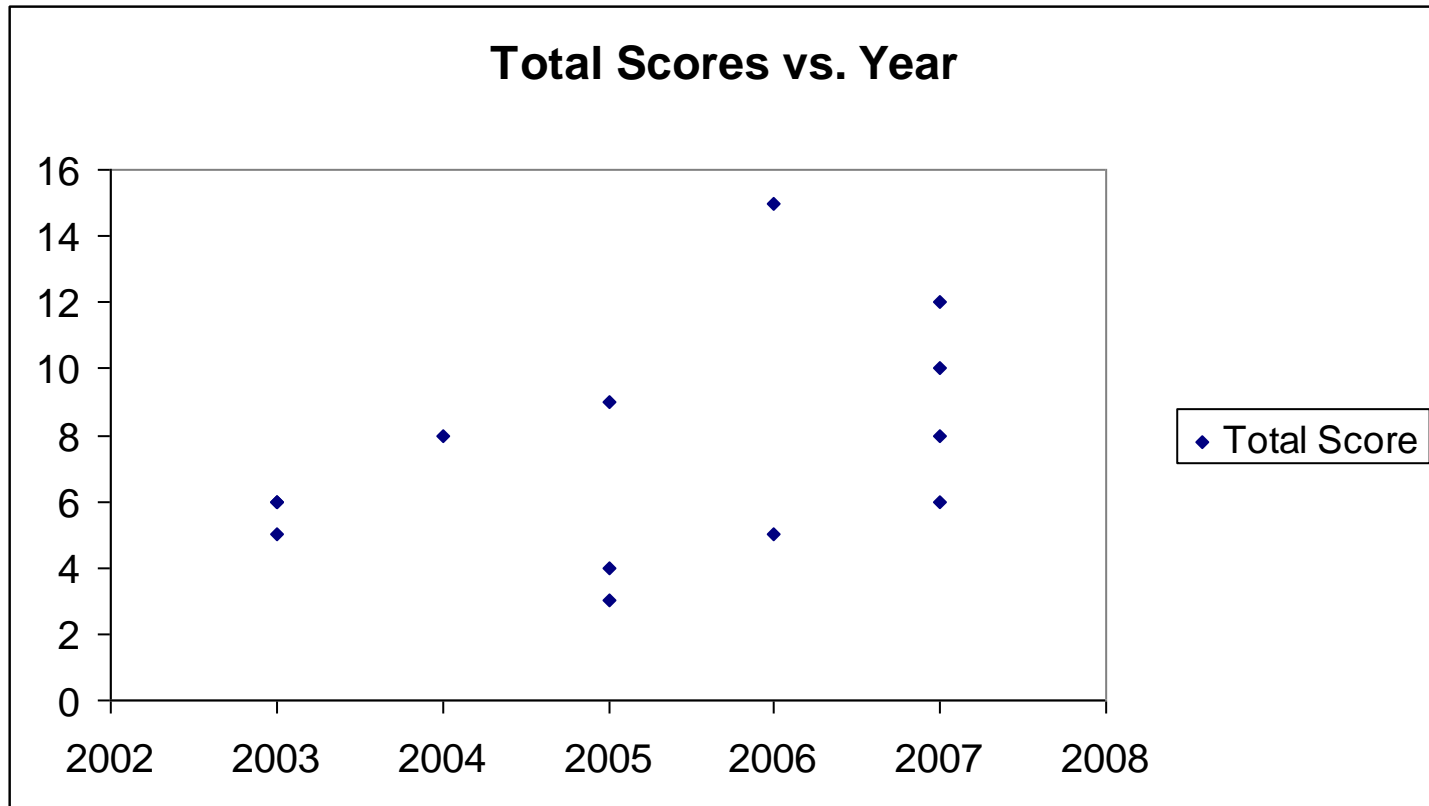
13 economically significant regulations

Regulation	Year Final	Annual Cost
Area Maritime Security	2003	\$47.7 million
Vessel Security	2003	\$137 million
Maritime Facility Security	2003	\$540 million
Biometric Data	2004	Unclear
Community Disaster Loans	2005	Unclear
H1-B Visa Allocation	2005	\$125 million
Automated Passenger Info. System	2005	\$100 million
Air Cargo	2006	\$206 million
Travel Documents	2006	\$206 million
Transportation Worker ID Credential	2007	\$250 million
Immigration Benefit Application	2007	\$1.1 billion
Chemical Facilities	2007	\$1.36 billion
Passenger Manifests	2007	\$61-190 million

How they scored ...

Regulation	Year Final	Total Score
Travel Documents	2006	15
Passenger Manifests	2007	12
Chemical Facilities	2007	10
Automated Passenger Info. System	2005	9
Biometric Data	2004	8
Immigration Benefit Application	2007	8
Vessel Security	2003	6
Maritime Facility	2003	6
Transportation Worker ID Credential	2007	6
Area Maritime Security	2003	5
Air Cargo	2006	5
H1-B Visa Allocation	2005	4
Community Disaster Loans	2005	3

Uneven improvement over time



Do some agencies do better analysis?

Regulation	Year Final	Agency	Total Score
Travel Documents	2006	Customs & Border Prot., State	15
Passenger Manifests	2007	Customs & Border Prot.	12
Chemical Facilities	2007	DHS	10
Automated Passenger Info. System	2005	Customs & Border Prot.	9
Biometric Data	2004	Border/Transp. Security	8
Immigration Benefit Application	2007	Citizenship/Immigration	8
Vessel Security	2003	Coast Guard	6
Maritime Facility	2003	Coast Guard	6
Transportation Worker ID Credential	2007	Coast Guard	6
Area Maritime Security	2003	Coast Guard	5
Air Cargo	2006	TSA	5
H1-B Visa Allocation	2005	Citizenship/Immigration	4
Community Disaster Loans	2005	FEMA	3

Average scores by element

	Avg. Score	# of 0's
Analyze Costs	2.15	0
Identify/Measure Outcome	1.46	0
Compare Costs & Outcomes	1.38	1
Analyze Alternatives	1.15	5
Identify Systemic Problem	0.77	7
Unique Federal Role	0.54	6

5 Cost Analysis: Travel Documents (2006)

Identified most major monetary costs	\$206 million annually
Estimated effects on prices	\$149 monetary and time cost of obtaining passport
Estimated behavioral changes	652,000 forego travel
Examined forgone opportunities	\$104 million maximum
Included sensitivity analysis	\$147-733 million first year cost
Included analysis of uncertainty	\$601-717 million highly likely

3 Outcomes: Passenger Manifests

Strengths	Weaknesses
2 outcomes: Keep risky people off planes, and avoid costs of flight delay/diversion	Intermediate outcomes; risk reduction not measured
Avoided costs measured (\$10 million annually)	Safety outcome not measured
Coherent theory: automated query prevents issue of boarding pass	Arbitrary assumption for airlines not using automated query system
Acknowledges rule won't be 100% effective	Reasons for assumption of 90% effectiveness not explained

3 Systemic Problem: Immigration Benefit Application (2007)

Strengths	Weaknesses
Identifies systemic problem: costs exceed fees, leading to processing backlogs	Narrow definition of problem presumes rest of policy and operations are optimal
Theorizes insufficient funding causes backlogs	Does not assess <i>how much</i> of backlog stems from \$ shortfall
Cites historical experience that increased funding (appropriations) reduces backlogs	Could have presented actual numerical evidence
Activity-based costing demonstrates costs of specific services exceed fees	Takes current costs of activities as given and unchangeable

In summary ...

- None are complete
 - Some recent ones are better
 - Cost-benefit analysis is strongest
 - Discussion of alternatives, systemic problem, and federal role are weakest
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Why?

- Circular A-4 issued Sept. 2003
 - Shortage of regulatory economists at DHS to complete adequate analysis for each rule
 - Statutory deadlines impose unrealistic timelines for such a small staff (7 began as interim final rules with statutory deadlines)
 - Little discretion delegated from Congress to DHS
(Better analysis of alternatives where DHS has more discretion)
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A note on analytical capabilities...

	Employees	Economists	Ratio
EPA	18,000	200	90:1
FDA	10,000	20	500:1
USDA	103,000	220	468:1
CPSC	400	9	44:1
FCC	1,926	60	32:1
FTC	1,074	70	15:1
DHS	159,000	10	15,900:1

Haste makes waste?

	Transparency Score	Reg. Analysis Score
Interim Final Rules	2.86	6.00
Final Rules	3.50	9.17

What can DHS do?

- Hire more economists
 - Make objective analysis their job
 - Get ahead of the curve
 - Research solutions which can be used by DHS to inform debate prior to legislation.
 - Precedents: USDA Economic Research Service, FTC Bureau of Economics
 - As a policy, examine regulatory alternatives that fall outside of the scope of specific mandates
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What can OMB do?

- Critique analysis of alternatives, market failure, and analysis of federal role
 - Revise EO 12,866 to emphasize analysis of alternatives outside the scope of legislation
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What can Congress do?

- Legislate goals, not means
 - (“Steer, don’t row!”)
 - If DHS discretion is limited, Congress should arrange for analysis
 - Set realistic deadlines
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