



A Guide to Writing Public Interest Comments Using Economic Analysis

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“Wise regulatory decisions depend on public participation and on careful analysis of the likely consequences of regulation. Such decisions are informed and improved by allowing interested members of the public to have a meaningful opportunity to participate in rulemaking.”

—President Barack Obama, Executive Order 13579

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The federal government’s own tips for submitting effective comments in regulatory proceedings note, “A constructive, information-rich comment that clearly communicates and supports its claims is more likely to have an impact on regulatory decision-making.”¹ This guide explains how to prepare a comment on a proposed regulation, using economic analysis that supports each claim. This guide is not intended to promote any particular viewpoint, to advance any specific policy, or to promote the interests of any group. Instead, it is intended to be a resource for any person or organization seeking to write comments that improve regulators’ knowledge of the economic consequences of proposed regulations.²

Comments on proposed regulations require some substantive knowledge about law and policy in addition to economics. But understanding how the regulatory process works, the factors that affect regulatory decisions, and the legal environment regulators face should not be difficult for anyone with an analytical bent. Substantive economic research, presented in the right format, has the potential to alter regulatory decisions in ways that will improve the lives of millions of people. This guide presents six

1. “Tips for Submitting Effective Comments,” accessed May 7, 2013, http://www.regulations.gov/docs/Tips_For_Submitting_Effective_Comments.pdf.

2. For a good general guide to writing comments on regulations that covers aspects other than economic analysis, see Elizabeth Mullin, *The Art of Commenting* (Washington, DC: Environmental Law Institute, 2000).

fundamental actions that will give your comment the maximum advantage:

1. Understand the regulatory process.
2. Appreciate the regulatory agency's definition of "the public interest."
3. Know the key topics that a good economic regulatory analysis should address.
4. Recognize the agency's legal authority and constraints.
5. Write your comment in the appropriate format, language, and tone.
6. Tell other interested parties about your comment.

1. UNDERSTAND THE REGULATORY PROCESS

Federal regulations exist because Congress delegates law-making authority to federal agencies. Agencies exercise this authority by writing regulations. They are required to follow certain procedures as they do so, which often include performing economic analysis of the proposed rules.³ By helping agencies get the economic analysis right, a public interest comment can promote better regulatory decisions.

A BRIEF SYNOPSIS OF THE REGULATORY PROCESS

The origin of every legal regulation is a law passed by Congress. Each spring and fall, the federal government publishes its *Unified Agenda of Federal Regulatory and Deregulatory Actions*, which is supposed to list all the regulations that agencies are either considering or working on.⁴ If you want to start researching a topic before an agency issues a regulation, this document provides some idea of what regulations are under development. Be aware, however, that regulations can remain listed in the *Unified Agenda* for years before they are proposed, and sometimes regulations are

3. For a more extensive explanation of the regulatory process, see Jerry Brito and Susan Dudley, *Regulation: A Primer*, 2nd ed. (Arlington, VA: Mercatus Center at George Mason University, 2012), <http://mercatus.org/publication/regulation-primer>.

4. For further explanation of this document, see Regulatory Information Service Center, "Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions," May 23, 2014, <http://resources.regulations.gov/public/ContentViewer?objectId=0900006481710e86&disposition=attachment&contentType=pdf>.

proposed that were never listed in this document.

The Administrative Procedure Act (APA) normally requires regulatory agencies to publish proposed regulations in the *Federal Register* for public comment. The APA requires that agency decisions not be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”⁵ In part, this requirement means that the agency must support every decision with plausible reasoning based on the public record. Agencies must consider comments from the public before they issue a final regulation. The final regulation is accompanied by a preamble that explains the agency’s responses to arguments raised by commenters, but the agency does not have to respond to each individual comment.

In some cases, an agency may issue an “interim final” regulation that takes effect immediately. Usually, the agency will still solicit comments on an interim final regulation and may revise it later.

Many regulatory agencies, such as the Department of Transportation and the Department of Health and Human Services, are considered part of the executive branch. For executive branch agencies, the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) reviews proposed and final regulations, along with the accompanying economic analysis, before the agency can publish the proposed or final regulation in the *Federal Register*. OIRA can return regulations to agencies for reconsideration, effectively blocking the regulation. However, OIRA does not review regulations from “independent” regulatory agencies unless the agency requests it. An independent regulatory agency is an agency whose head cannot be removed by the president except for cause. Examples include the Federal Communications Commission, the Federal Reserve Board, and the Nuclear Regulatory Commission.

Final regulations may still face two additional hurdles. First, Congress has an opportunity to review final regulations before

5. 5 U.S.C. § 706 (2010), available at Cornell University Law School Legal Information Institute, <http://www.law.cornell.edu/uscode/text/5/706>.

they take effect. Under the Congressional Review Act, Congress can utilize an expedited legislative process to veto final regulations.⁶ Because a congressional resolution disapproving a regulation is a law, it cannot take effect unless the president (whose administration wrote the regulation) also signs it or unless Congress overrides the presidential veto. For this reason, only one regulation has ever been overturned using the Congressional Review Act.

Second, a regulation might undergo judicial review. The regulation may be challenged in court on a variety of grounds. A litigant may claim that the agency overstepped its authority under the law, ignored a factor the law says it had to take into account, or acted arbitrarily or capriciously by failing to provide a reasoned explanation for a decision it made.

THE ROLE OF ECONOMICS IN THE REGULATORY PROCESS

Regulations with large effects are often accompanied by economic analysis. There are several types of legal requirements for economic analysis:⁷

- Executive Order (EO) 12866 requires executive branch agencies to explain the purpose and assess the benefits and costs of “significant” regulations.⁸ A significant regulation is one that has material and adverse effects on the economy, environment, public health, or other levels of government; creates an inconsistency with

6. 5 U.S.C. § 804 (2012).

7. For a comprehensive summary of analytical mandates that apply to federal regulatory agencies, see Curtis W. Copeland, *Regulatory Analysis Requirements: A Review and Recommendations for Reform*, report prepared for the Administrative Conference of the United States (April 23, 2012), <http://acus.gov/sites/default/files/documents/COR-Final-Reg-Analysis-Report-for-5-3-12-Mtg.pdf>.

8. Exec. Order No. 12866, 58 Fed. Reg. 190 (October 4, 1993), 51735, § 6(a)(3) (B). Agencies initially designate which regulations are significant, and the OIRA administrator can designate additional regulations as significant after reviewing the agencies' regulatory plans. *Id.* § 6(a)(3)(A).

another agency’s actions; materially alters federal expenditures or revenues; or raises novel legal or policy issues.⁹ “Economically significant” regulations—generally, regulations with costs, benefits, or other economic effects exceeding \$100 million annually—have more extensive requirements for analysis and quantification of results.¹⁰ Economically significant regulations must be accompanied by an analysis that evaluates the nature and significance of the problem that the agency seeks to solve, identifies alternative solutions, and assesses the benefits and costs of those alternatives.¹¹ The economic analysis accompanying significant and economically significant regulations is commonly referred to as a regulatory impact analysis (RIA).¹²

- The Unfunded Mandates Reform Act requires executive branch agencies to assess the benefits and costs of mandated expenditures on state, local, and tribal governments and on the private sector.¹³ In practice, the economic analyses that agencies produce under Executive Order 12866 usually also satisfy the requirements of the Unfunded Mandates Reform Act.¹⁴

9. Id. § 3(f).

10. Id. § 3(f)(1). The term “economically significant” appears nowhere in the executive order, but it has become a term of art in the regulatory community that refers to regulations that are significant under the definition in § 3(f)(1): “Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.”

11. Id. § 6(a)(3)(B) and § 6(a)(3)(C).

12. This term appears nowhere in EO 12866, but it was used in the predecessor, EO 12291, to refer to the economic analysis agencies must submit to OIRA. See Exec. Order No. 12291, 46 Fed. Reg. 13193 (Feb. 19, 1981), § 3(a).

13. 2 U.S.C. §§ 1532–38.

14. “Because of numerous exceptions and exclusions in the Act, the set of rules that are subject to [the Unfunded Mandates Reform Act’s] analytical requirements are a subset of the rules that are subject to the analytical requirements in EO 12866.” Curtis W. Copeland, *Economic Analysis and Independent Regulatory Agencies*,

- The Regulatory Flexibility Act requires independent as well as executive branch regulatory agencies to determine whether a regulation would have a significant impact on a substantial number of small businesses, governments, or nonprofit institutions.¹⁵ If so, the agency must consider alternatives that would minimize the impact on these small entities. An agency's Regulatory Flexibility Act analysis will have information about the incidence of regulatory costs (particularly how they affect entities of different sizes) and alternatives that the agency considered. The Small Business Administration's Office of Advocacy monitors agency compliance with the Regulatory Flexibility Act and assists agencies with the required analysis. The Small Business Regulatory Enforcement Fairness Act allows affected parties to seek judicial review of the agency's Regulatory Flexibility Act analysis and its decisions on whether to grant regulatory relief to small businesses.¹⁶ Any information or analysis you offer on these topics becomes part of the public record that the courts would review.
- The Paperwork Reduction Act requires both independent and executive branch regulatory agencies to estimate the size of the paperwork burden associated with any requests for information from the public, including paperwork burdens created by regulations.¹⁷ OIRA must approve information requests that involve more than nine individuals or entities. An agency's Paperwork Reduction Act analysis provides information about this one particular type of regulatory cost.

report prepared for the Administrative Conference of the United States (April 30, 2013), 20.

15. 5 U.S.C. §§ 601–12.

16. 5 U.S.C. § 611.

17. 44 U.S.C. §§ 3501–20.

- Some agencies have specific requirements to perform economic analysis in their authorizing legislation or in legislation authorizing a particular regulation. The Federal Trade Commission (FTC), for example, must explain the need for and objectives of a rule, describe the alternatives the commission considered, explain why it chose the alternative it did, and assess the benefits and costs of the rule.¹⁸ The Securities and Exchange Commission is required to consider the effects of proposed rules on competition, efficiency, and capital formation, which courts have interpreted as a requirement to conduct benefit-cost analysis.¹⁹ Table 1 shows the most extensive published list of economic analysis requirements for independent agencies. Not all rules issued by these agencies are subject to these statutory requirements.²⁰
- Some agencies are required to consider specific economic factors when they issue regulations. They thus have to conduct an analysis relevant to the required topics even when the legislation does not require a full RIA. For example, when promulgating energy efficiency regulations, the Department of Energy must set standards that achieve the maximum energy savings that are “technologically feasible and economically justified.”²¹ As a result, the department must consider the costs of alternative energy efficiency standards.

18. 15 U.S.C. § 57b-3(b)(2).

19. *Business Roundtable v. SEC*, 647 F.3d 1144 (D.C. Cir. 2011). For an extensive explanation and assessment of the quality of the SEC’s regulatory analysis, see Jerry Ellig and Hester Peirce, “SEC Regulatory Analysis: A Long Way to Go and a Short Time to Get There,” *Brooklyn Journal of Corporate, Financial, and Commercial Law* 8 (2014): 361–437.

20. For a more extensive description of these requirements, see Curtis W. Copeland, *Economic Analysis and Independent Regulatory Agencies*, and Hester Peirce, “*Economic Analysis by Federal Financial Regulators*” (Working Paper No. 12-31, Mercatus Center at George Mason University, Arlington, VA, October 2012), <http://mercatus.org/publication/economic-analysis-federal-financial-regulators>.

21. Copeland, *Regulatory Analysis Requirements*, 43.

TABLE 1. STATUTORY ECONOMIC ANALYSIS REQUIREMENTS FOR CERTAIN INDEPENDENT AGENCIES

Agency	Statutory analytical requirements
Cost-benefit analysis requirements	
Consumer Product Safety Commission (consumer product safety and other rules)	Prepare regulatory analysis describing potential benefits and costs of rule, benefits and costs of alternatives considered, and why alternatives not selected. 15 U.S.C. § 2058(f)(2).
Federal Reserve (electronic fund transfers)	Prepare an analysis of economic impact that considers the costs and benefits to financial institutions, consumers, and other users of electronic fund transfers. 15 U.S.C. § 1693b.
Federal Trade Commission	Include statement of need and objectives, analysis of projected benefits and any adverse effects, and an explanation of why the particular alternative was chosen. 15 U.S.C. § 57b-3(b)(2).
“Consider” requirements	
Securities and Exchange Commission	Consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. E.g., 15 U.S.C. § 77b(b). Also, consider the impact of the rule on competition. 15 U.S.C. § 78w(a)(2).
Commodity Futures Trading Commission	Consider the costs and benefits of the action of the Commission before promulgating a regulation. 7 U.S.C. § 19(a).
Banking agencies (Riegle Act)	Consider any administrative burdens that a rule would place on depository institutions, as well as the benefits of the rule. 12 U.S.C. § 4802(a).
Consumer Financial Protection Bureau (Dodd-Frank Act)	Consider the potential benefits and costs of upcoming rules on consumers and others. 12 U.S.C. § 5512.

Source: Curtis W. Copeland, *Economic Analysis and Independent Regulatory Agencies*, report prepared for the Administrative Conference of the United States (April 30, 2013), 56.

Some agencies employ economic analysis simply due to the nature of the regulations they issue. The Federal Communications Commission and Federal Energy Regulatory Commission, for example, are economic regulatory agencies. They regulate prices, entry into markets, terms of transactions between businesses, disclosure of contract terms to consumers, and similar concerns. Because their regulations are fundamentally economic in nature, they are likely to be accompanied by some economic analysis so that the agency can demonstrate its decisions are not arbitrary or capricious. However, the analysis required to demonstrate that a decision is not arbitrary or capricious falls far short of a full RIA.

An agency's economic analysis may be sprinkled throughout the notice of proposed rulemaking (NPRM) as part of the agency's justification for the regulation, or it may be in a separate RIA section or document.²²

The comment process for a regulation is supposed to be based on reasoning, discussion, and evidence; it is not a democratic vote. Interest groups sometimes gin up postcard or email campaigns to encourage multiple individuals to submit numerous short, boilerplate comments; these rarely carry much weight. A commenter's skill as an analyst is what counts. Effective comments provide useful information about the likely effects of the proposed regulation and the alternatives.²³ Surveys of agencies receiving comments find that the most useful and effective comments are those that furnish data, analysis, or expertise that the agency did not already have.²⁴ Similarly, a 2011 report prepared for the Administrative

22. More rarely, the economic analysis may appear in a separate document called a Technical Support Document or a Benefit-Cost Analysis.

23. "Tips for Submitting Effective Comments," accessed September 26, 2014, http://www.regulations.gov/docs/Tips_For_Submitting_Effective_Comments.pdf; Mullin, *Art of Commenting*.

24. The Federal Trade Commission has a long history of submitting comments in other government entities' regulatory proceedings. Twice it has surveyed the recipients to gauge the effectiveness of its comments. See Organisation for Economic Co-operation and Development, Directorate for Financial and Enterprise Affairs, Competition Committee, "Roundtable on the Evaluation

Conference of the United States noted, “There is little doubt that comments at times exert fundamental influence over agency decision-making. For the most part, however, significant effects are limited to comments that exhibit high levels of sophistication. Furthermore, there are many instances in which even sophisticated comments are associated with nothing more than marginal changes in agency proposals.”²⁵

You can comment on a proposed regulation, its RIA, or both. The best comments highlight opportunities for improvement in the regulation itself and are supported by economic analysis. In a working paper published by the Mercatus Center at George Mason University, regulatory scholar Stuart Shapiro finds that comments based on economic arguments are more than twice as likely to elicit agreement from agencies than comments related to a rule’s legality. When agencies agree with comments, they are very likely to make changes to regulations based on the information provided in the comments.²⁶

A careful critique of the RIA, combined with knowledge of relevant economic literature, may reveal that the regulation is either completely unnecessary or less effective or more costly than alternatives that the agency considered or could have considered. Alternatively, your analysis may find that the agency correctly diagnosed the problem and picked the most sensible solution available. In that case, the comment (along with citations to

of the Actions and Resources of Competition Authorities: Note of the United States” (May 25, 2007); Arnold C. Celnicker, “The Federal Trade Commission’s Competition and Consumer Advocacy Program,” *St. Louis University Law Journal* 33 (1988–89): 379–405.

25. Steven J. Balla, “Public Commenting on Federal Agency Regulations: Research on Current Practices and Recommendations to the Administrative Conference of the United States” (March 15, 2011), 35, <http://www.acus.gov/sites/default/files/documents/Consolidated-Reports--Memoranda.pdf>.

26. Stuart Shapiro, “When Will They Listen? Public Comment and Highly Salient Regulations” (Working Paper No. 13-15, Mercatus Center at George Mason University, Arlington, VA, September 2013), 15, <http://mercatus.org/publication/when-will-they-listen-public-comment-and-highly-salient-regulations>.

relevant research) can help support the agency's decision in the face of hostile criticism that it may receive from other parties.

The ultimate goal of a public interest comment is to *affect decisions*. The key to a successful comment is not just to point out failures to understand economic theories, but to convince an agency (or sometimes OMB or Congress) that a proposed regulation should be adopted, changed, or dropped.

2. APPRECIATE THE REGULATORY AGENCY'S DEFINITION OF "THE PUBLIC INTEREST"

Any member of the public, whether an individual or a group, can comment on a regulation. What makes a public interest comment different from other types of comments is that it is written from the perspective of the general welfare, rather than representing the interest of a particular group or affected entity.

There are many different definitions of "the public interest," and each definition presupposes certain value judgments and some concept of what constitutes a "good" society. Keep in mind that the economic analysis is not the same thing as the regulatory decision. Analysis is about understanding reality—what is and what is not likely to happen as a result of a regulation. Of course any regulatory analysis will be based on simplifications of reality (models), which abstract away from less important details in order to identify the key causes of the regulation's major effects. The purpose of the analysis is not to automate the decision, but rather to identify the likely consequences of both the regulation and its alternatives. Moving from the analysis to a decision requires a value judgment, an "ought."

Many economists supply the "ought" by assuming that the public interest equates to economic efficiency or consumer welfare. This understanding presumes a particular utilitarian ethical theory. When you support your comment with economic analysis, you should be aware that other commenters, as well as the decision makers who review public comments, may not share your concern for economic efficiency and may hold other ethical

theories. These theories might include the Rawlsian notion that inequalities can only be justified if they maximize the welfare of those who are least well off; the Marxian concept of “from each according to his ability, to each according to his needs”; or a vague notion that the agency serves the public interest when it accomplishes the maximum possible amount of some goal that can be found in (or read into) the authorizing legislation. These theories will often be implicit, rather than explicitly stated in the NPRM.

Your analysis should be useful to everyone, not just to advocates of economic efficiency. It should provide an organized framework for assessing the likely consequences of a regulation and its alternatives. As you critique the agency’s analysis and offer additional literature, data, or insights, try to present your views in a way that is useful to decision makers even if they are not using economic efficiency as their sole criterion.

To make your comments as relevant as possible, you should understand how the agency you are addressing defines the public interest. If the agency appears to share your view of the public interest, you can present your analysis as advice on how the agency can better accomplish the goals you share. You may also want to buttress the agency’s definition of the public interest in case other commenters urge the agency to define the public interest differently.

You need to know when your view of the public interest conflicts with the agency’s view because, in some cases, you will have no alternative other than to argue as diplomatically as possible that the agency ought to take your concept of the public interest into account. If the agency has a different underlying theory of the public interest, you may still be able to explain why the agency needs to understand your points if it wants to accomplish its goals.

In some cases, the comment process will involve explicit arguments about the definition of “the public interest” because it appears in the statute as a criterion the agency must employ when making decisions. In other cases, the term may not appear in the statute, but various parties’ concepts of the public interest will

affect how they choose to interpret other statutory criteria the agency is supposed to use to make decisions. Four factors influence regulatory decisions by shaping an agency's concept of the public interest:

1. *Enabling law(s)*. The agency must base its regulation on an underlying statute. The statute may be the "organic" statute that created the agency and defined its mission, or it may be a statute requiring or empowering the agency to issue a specific regulation. Often an agency will also cite other evidence of congressional intent, such as committee reports or legislative debate, that it believes support its interpretation of congressional intent.

Some statutes include a requirement that the agency perform economic analysis or consider economic factors when making decisions. Check to see if the statute authorizing the regulation you are commenting on includes any economic analysis requirements; if so, you will have additional leverage to persuade the agency to pay attention to your analysis.

2. *Past court decisions*. The agency will strive to write the regulation in a way that is consistent with past court decisions in order to help ensure that courts will uphold the regulation if it is challenged.
3. *Explicit presidential direction*. This is derived primarily from executive orders but also from speeches and memoranda. Executive Order 12866 requires much more evidence than the APA does to show that decisions are rational. That is, the APA can be satisfied with an anecdote; the executive order's requirement that a regulation's benefits justify its costs requires much more rigorous analysis.

Courts do not review compliance with executive orders. But since OIRA can return regulations, it has leverage to

encourage agencies to improve their economic analysis and consider the results of the analysis more seriously when making decisions. For example, a 2012 regulation mandating hours of service for airline flight crews was rewritten during the review period to exempt cargo-only airlines. The revised benefit-cost analysis revealed that the incremental benefits of covering cargo airlines were very small compared to the incremental costs.²⁷ More generally, a Mercatus Center working paper found that longer OIRA review times are associated with higher-quality RIAs and better explanations of how RIAs informed agency decisions.²⁸

4. *Policy preferences of the administration and its appointees.* Presidents normally try to appoint regulators who will carry out their policies, to the extent that the law allows the agency to make discretionary decisions. In executive branch agencies, political appointees can be removed if they make significant regulatory decisions with which the president disagrees. Presidents have less control over their appointees at independent agencies, but they still try to appoint decision makers who share their views. Regulators have discretion to consider benefits, costs, or other economic factors when making regulatory decisions unless a statute prohibits them from doing so.

27. See US Department of Transportation, Federal Aviation Administration, “Federal Aviation Administration Compliance with E.O. 12866—Flight Crew Duty and Rest Requirements,” RIN 2120-AJ58, marked-up draft of *Federal Register* notice showing changes in the final rule introduced during OMB review, available in the docket for this regulation at www.regulations.gov.

28. Jerry Ellig and Rosemarie Fike, “Regulatory Process, Regulatory Reform, and the Quality of Regulatory Impact Analysis” (Working Paper No. 13-13, Mercatus Center at George Mason University, Arlington, VA, July 2013), <http://mercatus.org/publication/regulatory-process-regulatory-reform-and-quality-regulatory-impact-analysis>.

3. KNOW THE KEY TOPICS THAT A GOOD ECONOMIC REGULATORY ANALYSIS SHOULD ADDRESS

For several decades, executive orders and OMB guidance documents have outlined the principal factors that a thorough economic analysis of a proposed regulation should include.²⁹ Consider the following topics as you review the agency’s analysis and what points you want to make.³⁰ You will not necessarily address all these issues in your comment; in fact, to do so would be quite unusual. But this list will help you assess whether the agency has done its homework and identify any missing pieces of its analysis.

SYSTEMIC PROBLEM

The first and most fundamental question to consider when analyzing a regulation is whether the agency has identified and proven the existence of a significant, systemic problem that the regulation might solve. Indeed, this is the first principle of regulation listed in EO 12866.³¹

29. The presidential directive requiring executive branch agencies to consider these factors is Executive Order 12866. For more extensive guidance, see Office of Management and Budget, *Circular A-4*, “Regulatory Analysis” (2003). Independent regulatory agencies are not currently subject to the executive order on regulatory analysis. Nevertheless, it would be difficult to believe that an agency did a thorough economic analysis if it did not cover the topics listed here.

30. You may also find useful the list of criteria and questions employed in the Mercatus Center’s Regulatory Report Card, available at <http://www.mercatus.org/reportcard>.

31. Exec. Order No. 12866, § 1(b)(1).

Does the RIA or NPRM identify a market failure, government failure, or overriding social need that is a systemic problem—that is, a problem that could be solved by changing the rules of the game—or does it attempt to address a problem caused by a few bad actors? The benefits analysis should demonstrate how the regulation solves all or part of the systemic problem. Does the agency offer a coherent theory, consistent with economic behavior, that explains why the problem exists? Is the agency’s understanding of the problem based on inappropriate application of behavioral economics, dismissal of the rationality postulate, or dismissal of consumer sovereignty?³² Does the agency present empirical evidence (not just anecdotes) that the problem exists and is widespread?

If the agency cannot present a coherent theory and clear evidence of a systemic problem, you should explain why the regulation may not be necessary. Alternatively, government action may be justified, but if the agency has not diagnosed the systemic problem, the proposed regulation may not be the most appropriate or effective solution. Finally, if the agency does analyze the systemic problem, check to see whether the proposed solution is appropriate to the problem. For example, if the agency says the problem is that consumers lack information, does the regulation make it easier for consumers to obtain the missing information, or is it much broader than necessary to address the information problem? If the problem is significant but exists only in some states, is federal regulation necessary?

Statutes sometimes direct agencies to issue specific regulations. In some cases, agencies will simply say that the regulation’s purpose is to comply with the statute and presume that no fur-

32. For recent analyses of the use of behavioral economics as a justification for regulation, see Ted Gayer and W. Kip Viscusi, “Overriding Consumer Preferences with Energy Regulations” (Working Paper No. 12-21, Mercatus Center at George Mason University, Arlington, VA, July 2012), <http://mercatus.org/publication/overriding-consumer-preferences-energy-regulations>; and Michael L. Marlow and Sherzod Abdulkadirov, “Fat Chance: An Analysis of Anti-Obesity Efforts” (Working Paper No. 12-10, Mercatus Center at George Mason University, Arlington, VA, March 2012), <http://mercatus.org/publication/fat-chance>.

ther analysis of the systemic problem is necessary. But common sense, as well as section 1(b)(1) of Executive Order 12866, suggests that regulators ought to understand, articulate, and analyze the problem the regulation seeks to solve, even when Congress has directed the agency to issue the regulation. The purpose of analyzing the problem is not simply so the agency can assert a plausible rationale for the regulation that will satisfy courts. Agencies should analyze the problems they seek to solve because that is the critical first step in crafting a regulation that will actually promote the public interest. If regulators do not understand the systemic problem, they are flying blind.

ALTERNATIVES

Executive Order 12866 states, “Each agency shall identify and assess available alternatives to direct regulation.”³³ OMB Circular A-4, which outlines best practices in regulatory analysis, explicitly directs agencies to analyze alternatives outside the scope of their current legal authority if such alternatives “best satisf[y] the philosophy and principles of Executive Order 12866.”³⁴ Circular A-4 also directs regulators to consider

- information measures rather than regulation,
- market-oriented approaches rather than direct controls,
- performance standards rather than design standards,
- different requirements for different geographic regions,
- different requirements for different-sized firms,
- different degrees of stringency,
- different enforcement methods,
- different compliance dates, and
- different choices defined by statute.

33. Exec. Order No. 12866, § 3.

34. OMB, *Circular A-4*, 17.

Do the RIA and NPRM elaborate and assess a wide variety of alternatives to the chosen regulatory approach? Or are the alternatives merely tweaks on the same basic solution? Even if the agency claims that Congress gave it very little flexibility on how to write the regulation, OMB expects agencies to point out better alternatives that would require a change in the law. Do you see regulatory alternatives that the agency missed (e.g., more targeted regulation that imposes fewer mandates, less costly mandates, or mandates that affect fewer firms, consumers, or other regulated entities)? Where possible and applicable, does the regulation use performance standards rather than design standards?

MARGINS

Most proposed regulations will consist of multiple requirements or parts (“margins” in econospeak). For example, a 2011 Department of Homeland Security proposal to regulate purchases of ammonium nitrate defined the mixtures containing ammonium nitrate that are subject to the rule, exemptions for certain products, registration requirements and processes for buyers and sellers, verification requirements for buyers, and recordkeeping and reporting requirements.³⁵ Decisions along each of these margins could alter the rule’s benefits and costs. There are often different ways of crafting each piece of the rule, so you should check to see that the agency considered alternatives along each margin. If it has failed to do so, you might be able to offer helpful suggestions.

If the analysis does not assess the regulation’s different margins separately, it is quite possible that one or more parts that produce significant benefits exceeding their costs are hiding other parts with costs far exceeding their benefits. In that case, the agency has probably failed to produce the most efficient regulation, but without a separate analysis of each margin, we cannot know.

35. Department of Homeland Security, Office of the Secretary, “Ammonium Nitrate Security Program: Proposed Rule,” 76 Fed. Reg. 149 (August 3, 2011), 46908–57.

BENEFITS

Agencies (and external observers) often fail to distinguish activities, outputs, or processes from the beneficial outcomes that the agency hopes will occur as a result of them. Does the agency identify benefits (or other desired outcomes) in terms that are clearly relevant to citizens' quality of life (e.g., injuries or premature deaths prevented)? Or does it try to define activities, outputs, or processes as benefits? For example, emissions reductions or improved enforcement might *lead* to improved health or other outcomes that clearly benefit citizens, but these activities are not themselves outcomes.

Does the agency present a causal theory and evidence that the regulation will actually produce the intended benefits? Or does it present statistical analysis that demonstrates only correlation, not causation? Does the RIA analyze benefits as thoroughly for the alternatives as for the proposed regulation, so that the benefits of the regulation and its alternatives can clearly be compared? Does the RIA assess the benefits associated with each separate (marginal) requirement in the regulation?

If the agency fails to do any of these things, the first and most useful step you can take is to point that out. But evidence and analysis will be more persuasive and useful than mere naysaying. If you find fault with some aspect of the benefits analysis, cite literature or data that would make the analysis more accurate. If possible, do the analysis you think the agency should have done, and tell the agency how this new knowledge should affect its decisions.

COSTS

Economists know well that cost is “opportunity cost”—the value of the most important alternative given up in order to pursue the chosen course of action. This simple (but often overlooked) insight gives you a powerful tool for assessing the agency's cost estimates.

Does the RIA consider all costs of the regulation—not just outlays for paperwork or compliance, but also private opportunity costs (e.g., opportunity costs of managerial or employee time) and social opportunity costs (e.g., deadweight loss resulting from reduced output because regulation increases prices or reduces product quality)? Does each separate (marginal) requirement in the regulation have a separate cost estimate? Does the regulation have any effect on competition, consumer choice, innovation, entrepreneurship, US global competitiveness, productivity, wages, employment, or economic growth? Does the RIA analyze costs as thoroughly for the alternatives as for the proposed regulation, so that the costs of the regulation and its alternatives can clearly be compared? Does the cost analysis account for countervailing risks (risks that increase with the proposed policy option) that represent an increase in costs (or a decrease in benefits)? As with benefits, if the RIA fails to do any of these things, it is helpful to point that out, but even more helpful to supply your own analysis that might help correct the deficiency.

UNCERTAINTY

The size and significance of the systemic problem, the size of the benefits, and the size of the costs usually cannot be known with certainty. Does the RIA acknowledge uncertainties about these factors? Does the analysis estimate a range of possible benefits and costs, indicate which outcomes are most likely, and explain why? Does the agency identify and acknowledge uncertainties that might reverse important results (e.g., when the maximum possible costs exceed benefits, even if the most likely value of benefits exceeds the most likely value of costs)? If the agency seems unaware of key uncertainties, you can provide information that documents the uncertainties and shows how they might affect the results of the analysis.

DISTRIBUTION

EO 12866 permits agencies to consider distributional effects. When an agency bases its decision on distributional effects, equity, or fairness, you can play a valuable role by checking to see how well the RIA actually assessed these effects. Does the RIA identify who pays the costs and who receives the benefits of the regulation under consideration? If these parties are different, does the RIA show which people (and how many people) receive benefits exceeding their costs and which people (and how many people) pay costs exceeding their benefits? If the agency lacks this information, you can help the agency understand which subgroups benefit and which subgroups pay the costs. If the regulation has unintended regressive effects, you can alert the agency to this shortcoming.³⁶

USE OF ANALYSIS

EO 12866 directs agencies to “select those approaches that maximize net benefits . . . unless a statute requires another regulatory approach”³⁷ and to “propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.”³⁸ The executive orders explicitly allow agencies to consider unquantified benefits or costs, as well as other values that are neither benefits nor costs, including “equity, human dignity, fairness, and distributive impacts.”³⁹

Thus, it should be possible to discern from the RIA and NPRM which alternative maximizes net benefits and whether the agency chose that option. If the agency chose a different option, it should

36. For more information, see Diana Thomas, “Regressive Effects of Regulation,” working paper, Mercatus Center at George Mason University, Arlington, VA (November 2012), <http://mercatus.org/publication/regressive-effects-regulation>.

37. Exec. Order No. 12866, § 1(a).

38. Exec. Order No. 12866, § 1(b)(6).

39. Exec. Order No. 13563, § 1(c).

offer a clear explanation of the reason. If the alternatives' net benefits are not clear, or if it is not clear why the agency chose the option it did, those are major problems you should point out. Sometimes an agency will assert that the regulation's benefits justify the costs, but it may not be clear how the agency reached that conclusion based on the information in the RIA and NPRM. That lack of clarity is another major problem you should point out.

If the agency's discussion of any of these factors is incomplete or erroneous, furnish your own analysis, citations to relevant literature, or data that will help make the analysis more complete and accurate. If the agency cited fairness or equity as the primary reason for its regulatory decisions, make sure that the agency defined what it means by fairness or equity and presented evidence that the regulation will actually improve fairness or equity. Good intentions cannot take the place of evidence! If you believe the agency should make a different decision once it takes your analysis into account, say so and explain why.

4. RECOGNIZE THE AGENCY'S LEGAL AUTHORITY AND CONSTRAINTS

This guide is primarily for authors who want to comment on proposed regulations from an economic point of view. Hence, it does not claim to offer a comprehensive approach to legal analysis in a regulatory comment. However, there are several aspects of legal analysis that authors of economics-oriented public interest comments must understand.

UNDERSTAND THE AUTHORITY FOR THE REGULATION

You will want to understand the agency's authority to issue the regulation so you will know how much discretion the agency has in writing the regulation. To be legal, a regulation must be based on some grant of authority by Congress. The authority can be very broad, such as the Federal Trade Commission's mandate to prevent "unfair and deceptive trade practices." The authority can also be very narrow. For example, the Fairness to Contact Lens Consumers Act explicitly directed the FTC to issue a regulation requiring eye doctors to furnish their customers with a copy of their contact lens prescriptions.⁴⁰ The agency will explain the law that authorizes the regulation in the NPRM's background section.

A regulation must also be constitutional. Constitutional litigation often involves direct legal challenges to the law authorizing

40. Federal Trade Commission, *The Strength of Competition in the Sale of Rx Contact Lenses: An FTC Study* (Washington, DC: Federal Trade Commission, 2005), 1.

the regulation, rather than to the regulation itself. In some cases, however, the proposed regulation might exceed the federal government's constitutional authority, even though a less restrictive regulation based on a narrower interpretation of the statute could be constitutional. Such a scenario provides a powerful argument for a less restrictive alternative.⁴¹

To understand the agency's authority, consider the following questions:

- Does the agency have to issue a regulation, or is that decision up to the agency's judgment?
- Does legislation require the agency to issue the regulation if it finds that certain conditions exist?
- What scope of alternatives could the agency adopt?
- When it makes decisions about the regulation, is the agency required to take—or prohibited from taking—into consideration certain factual matters such as costs, effects on competition, or effects on the quality of a product or service?
- Does the law itself specify particular analyses that the agency must conduct and consider before it writes the regulation?
- Is there any significant controversy regarding whether the regulation is so broad that it is unconstitutional?

41. For example, the Food and Drug Administration lost a series of cases in which plaintiffs argued that its regulations requiring prior approval of health claims for dietary supplements violated the First Amendment. When the FDA sought comment on alternatives, the Federal Trade Commission explained how its less restrictive (and constitutional) approach to regulating health claims in food, drug, and dietary supplement advertising led to better economic and health outcomes. See "In the Matter of Request for Comment on First Amendment Issues," Comments of the Staff of the Bureau of Economics, the Bureau of Consumer Protection, and the Office of Policy Planning of the Federal Trade Commission (September 13, 2002), <http://www.ftc.gov/os/2002/09/fdatextversion.pdf>.

Agencies sometimes change a proposed regulation in response to public comments. If you present a sensible idea backed by solid evidence, the agency might consider it if it is within the scope of discretion granted by existing law. For this reason, you should understand what the agency can or cannot do under existing law.

KNOW WHETHER THE AGENCY CAN IMPLEMENT YOUR SUGGESTIONS WITHOUT LEGISLATIVE CHANGES

Nothing will get your comment ignored sooner than a recommendation that the agency do something outside the scope of its authority. If the law requires the agency to issue a regulation, you cannot credibly recommend that the agency not issue a regulation (but you may be able to show that the agency needs to do further analysis before issuing the regulation). If the law specifies that the regulation must be of a certain type (such as a technology required to limit emissions), you cannot credibly recommend that the agency instead adopt a regulation that the law does not permit it to adopt (such as an emissions tax). If the law says that the agency cannot consider costs, you cannot credibly recommend that the agency should reject the regulation because it is too costly. (For example, the Environmental Protection Agency is prohibited from considering costs when setting air quality standards, and the Nuclear Regulatory Commission is prohibited from considering costs when determining whether a proposed regulation produces the “adequate” level of protection of public health and safety.⁴²)

However, the agency’s inability to adopt an alternative does not mean that the agency cannot study it and possibly recommend a change in the law. OMB Circular A-4 explicitly directs agencies to consider alternatives outside the scope of current law if a better alternative would require a change in the law when it states, “If legal constraints prevent the selection of a regulatory action that

42. Copeland, *Regulatory Analysis Requirements*, 73; Copeland, *Economic Analysis at Independent Agencies*, 109–10.

best satisfies the philosophy and principles of Executive Order 12866, you should identify these constraints and estimate their opportunity cost. Such information may be useful to Congress under the Regulatory Right-to-Know Act.”⁴³

If your analysis and evidence suggest that there is an alternative outside the scope of existing law that the agency should have considered, there is no reason you cannot urge the agency to analyze your alternative in the final RIA. The information may be important to Congress if it considers a resolution of disapproval under the Congressional Review Act. If the alternative is clearly superior, you could also recommend that the agency delay action on the regulation until Congress has had a chance to consider the alternative.

SUGGEST REGULATORY LANGUAGE THAT IMPLEMENTS YOUR PROPOSALS

An agency is more likely to adopt your proposal if you make the process easy for the people writing the regulation. Where possible, provide specific language that implements your ideas, or suggest specific changes to the wording of the proposed regulation, together with justification for why your idea is an improvement (e.g., it increases net benefits).

For example, in 2004 the FTC issued a regulation requiring optometrists to provide patients with copies of their contact lens prescriptions so that patients could shop around instead of having to buy lenses from the optometrist. Some commenters urged the FTC to apply the regulation to cosmetic lenses that did not affect the user’s vision—effectively requiring these users to pay for eye exams when they previously had not had to do so. This suggestion effectively placed a competition and consumer protection agency in the position of making a medical decision about whether eye exams were necessary for these lenses. A Mercatus Center public

43. OMB, *Circular A-4*, 17.

interest comment suggested that the FTC should apply the regulation to “any contact lens for which state or federal law requires a prescription,” thus allowing the FTC to avoid creating a new prescription requirement for cosmetic lenses. The FTC adopted the suggestion and credited the Mercatus Center for the idea.⁴⁴

IF THE AGENCY HAS INSUFFICIENTLY ANALYZED THE SYSTEMIC PROBLEM, ALTERNATIVES, BENEFITS, OR COSTS, RECOMMEND FURTHER STUDY

For some regulations, it will be obvious that the agency’s analysis is insufficient, but you may not have sufficient background information to suggest what the agency should do instead. In these cases, you can still play a productive role by pointing out the problems in the agency’s analysis and recommending that the agency undertake further study before making a decision. You may be able to suggest that if further study reveals X, then the agency should do Y, but if further study finds Z, then the agency should do A.

44. Federal Trade Commission, “Contact Lens Rule: Final Rule,” 69 Fed. Reg. 127 (July 2, 2004), 40487.

5. WRITE YOUR COMMENT IN THE APPROPRIATE FORMAT, LANGUAGE, AND TONE

A public interest comment should have at least four main sections:

1. *Introduction.* This section explains who you are, why you are interested in the regulation, what expertise you have that should give your comment more weight, and whether the views in the comment are solely your own or represent those of an organization.
2. *Background.* This section explains the major issues you intend to address, summarizes your principal arguments or findings, and lists your specific recommendations. People at agencies who read comments (as well as other commenters) will expect to see your recommendations listed up front; they will not want to search for them elsewhere in the document. Be sure to put your specific recommendations up front where people can easily find them. It is okay if this list is repeated later.
3. *Analysis.* This section lays out your detailed arguments and evidence that support your recommendations. This section can be organized in many different ways (see *Organization of Your Analysis Section*, below).
4. *Conclusion.* This section recaps your main argument and lists your principal recommendations. The list of recommendations should match the list in the background section. You need to list your recommendations in both places

for the benefit of people who might first flip to the conclusion to find a summary of your points. It is okay if your comment is repetitive. You are trying to make your recommendations easy to find, not win points for literary style.

ORGANIZATION OF YOUR ANALYSIS SECTION

There are many ways to organize the content in your analysis section. Below are four possible methods. Each has a footnote that points to one or more examples available on the Mercatus Center's website.

- ◆ Provide analysis and explanation:⁴⁵
 - economic analysis of the major issue or issues in the regulation
 - explanation of its application(s) to the regulation
- ◆ Organize based on your major concerns:⁴⁶
 - systemic problem
 - alternatives
 - benefits or other outcomes
 - costs
- ◆ Organize by different provisions of the regulation:⁴⁷
 - issue 1
 - issue 2
 - issue 3

45. For an example, see “Public Interest Comment on Extending Period of Optional Practical Training,” http://mercatus.org/sites/default/files/publication/Extension_of_Optional_Practical_Training.pdf.

46. For an example, see “Public Interest Comment on Average Fuel Economy Standards,” http://mercatus.org/sites/default/files/publication/PICPDF_DOT_CAFE_PIC20080701.pdf.

47. For an example, see “Public Interest Comment on Contact Lens Rule: Notice of Proposed Rulemaking,” http://mercatus.org/sites/default/files/publication/MC_RSP_PIC2004-03FTCCContactLens_040405.pdf.

- ◆ Organize based on questions the agency asked for comments on:⁴⁸
 - question 1
 - question 2
 - question 3

CITATIONS AND REFERENCES

A comment should include full source citations for all the information and research you relied on. The most effective comments provide data or analysis that the agency did not have previously. Agency analysts and decision makers will want to scrutinize any data, studies, or other materials you reference, so give them citations that will allow them to find the information. Better yet, provide links, or provide the actual studies, datasets, facts, or figures in an appendix if doing so won't violate confidentiality agreements or infringe copyright law.

Since lawyers are usually the authors of comments on regulations, most comments you read will likely be footnoted in legal *Bluebook* style. Fortunately, though, it is not necessary to learn *Bluebook* style to write an effective comment! Agencies do not require source notes to be in any particular format. The most important elements of any citation are completeness and consistent format. Mercatus publications normally follow the citation format of the *Chicago Manual of Style*, a time-tested format that makes it easy for readers to find bibliographic information.

Do avoid using the in-text, parenthetical author-date referencing format. While this is the format most familiar to trained economists, it will look awkward to all the noneconomists you hope will read your comment. Put full bibliographic information into foot-

48. For an example, see "Public Interest Comment in Response to the Securities and Exchange Commission's Request for Comment on the Definition of Accredited Investor in Certain Private Investment Vehicles," http://mercatus.org/sites/default/files/publication/PIC_-_Hedge_Fund_Investor.pdf.

notes or endnotes. There is no need to put a bibliography or list of works cited at the end of your comment, unless you want to make it look as if you don't know the difference between a comment to an agency and a research paper! (However, if you have a research paper of your own that you want to submit as a supporting exhibit in an appendix, you do not need to reformat the reference style of the research paper.)

LANGUAGE AND TONE

As with any other type of writing, public comments in regulatory proceedings have an appropriate language and tone that readers will expect. The tips below should prove especially helpful after you have prepared to write your comment by poring over documents written in legalese and econospeak.

Write in plain English. Your audience in the agency is one or more individuals who are familiar with the regulation, but they may not be economists. More importantly, your audience is broader than just the people in the agency who worked on the regulation. Other commenters, journalists, bloggers, consultants, researchers, and congressional staffers may read your comment. If the regulation is challenged in court, your comment is part of the public record, so judges or their law clerks may read it. Most readers outside the agency will not be economists. Therefore, you should avoid economics jargon wherever possible and explain it when you cannot avoid it.

Be direct. The late Alfred Kahn, a noted regulatory economist and chairman of the Civil Aeronautics Board under President Carter, offered some advice on directness and clarity that is worth repeating:

One of my peculiarities which I must beg you to indulge if I am to retain my sanity (possibly at the expense of yours!) is an abhorrence of the

artificial and hyper-legal language that is sometimes known as bureaucratese or gobbledegook. May I ask you, please, to try very hard to write . . . in straightforward, quasi-conversational, humane prose—as though you were talking to or communicating with real people.

I once asked a young lawyer who wanted us to say “we deem it inappropriate” to try that kind of language out on his children—and if they did not drive him out of the room with their derisive laughter to disown them.⁴⁹

Use the active voice. An excellent guide to using active voice is Richard Lanham’s *Revising Prose*.⁵⁰ Lanham presents what he calls the “paramedic method” for revising one’s own writing: circle every form of the verb “to be” and every preposition, then rewrite using active verbs and eliminating as many prepositions as possible. It really works! This simple method will likely reduce the length of your writing by 20 to 40 percent while making it much more direct and understandable.

Avoid acronyms. Clarity demands that you avoid inflicting unfamiliar acronyms on the reader. This advice is difficult to follow when you have just read an NPRM and an RIA that may well suffer from TMA (Too Many Acronyms). It is also tempting to try to show your readers in the agency that you are an “insider” who understands the regulation by imitating the agency’s use of acronyms. Resist this sophomoric temptation. Acronyms are fine if they are well known (e.g., EPA for Environmental Protection Agency) or if they are defined on first use as a substitute for lengthy proper names. But do not use acronyms as substitutes for

49. Thomas K. McCraw, *Prophets of Regulation* (Boston: Harvard University Press, 1984), 271.

50. Richard A. Lanham, *Revising Prose* (New York: Charles Scribner’s Sons, 1979).

regular nouns, verbs, adjectives, documents, processes, systems, short names, or names of things familiar only to insiders.

Watch your language. If you feel a need to scream, make witty or sarcastic comments, or lampoon the agency’s proposal, write an op-ed, blog, or magazine article after you write your comment. A public comment to the agency is not the appropriate place to do these things. As Elizabeth Mullin notes in *The Art of Commenting*, “Even if the document is ill-conceived, unintelligible gibberish, a real human being with feelings worked to prepare it, and a real human being with feelings (probably the same one) now has to deal with your comments. It is not in your interest to alienate this person. . . . Be firm, dignified, and respectful in your comments on any document.”⁵¹

51. Mullin, *Art of Commenting*, 63.

6. TELL OTHER INTERESTED PARTIES ABOUT YOUR COMMENT

Your comment is addressed to the agency that proposed the regulation. But numerous other players in the regulatory process may be interested in your findings and recommendations, so you should tell them. Other interested entities include:

- **Congressional committees.** One or more House and Senate committees oversee every regulatory agency. Committee members often track major rulemakings. They let the agency know how they think rules should be written via letters, hearings, and informal communications.
- **OIRA.** Before the agency can issue a final regulation, OIRA must review and approve that regulation. Since much of Executive Order 12866 is concerned with economic analysis, a comment from an independent expert that focuses on the economics of the regulation and/or the quality of the agency's economic analysis could be very helpful to OIRA staff. You can submit your comments and concerns about the regulation by email: oir_submission@omb.eop.gov. If you have major concerns about the regulation, you can even request a meeting with OIRA staff to explain your point more fully.
- **Small Business Administration Office of Advocacy.** In addition to monitoring and assisting with agency Regulatory Flexibility Act analyses, the Office of

Advocacy can submit its own comments on proposed regulations. If your comment identifies effects on small businesses, assesses whether small businesses contribute materially to the problem the regulation seeks to solve, or simply provides a more accurate assessment of costs, the staff of this office may find it useful.

- **Stakeholders.** Regulated entities or organizations concerned about the regulation may find your analysis interesting or useful. This is why it is often a good idea to submit your comment well before the comment period closes so that others can see your findings while they are working on their own comments.
- **News media.** Op-eds, blogs, tweets, and other media can help bring your comment to the attention of all of the above audiences.

CONCLUSION

Economic analysis can make unique contributions to regulatory debates. Executive orders and OMB guidance require that, before implementing major regulations, executive branch agencies answer the same key questions economists would ask when considering whether a regulation is justified. Independent agencies are not subject to the executive orders, but some (such as the Securities and Exchange Commission) have requirements for economic analysis written into their authorizing legislation, and others (such as the Federal Communications Commission) deal with economic regulatory issues that make economic research highly relevant to the substance of their decisions.

Understanding how the public comment process works, appreciating the regulatory agency's definition of the public interest, knowing the key topics that a good economic analysis of a regulation should address, understanding the agency's legal authority and constraints, writing your comment in appropriate format and tone, and letting other people know about your findings will all help you as you strive to make your comment as effective as possible.

ADDITIONAL RESOURCES

The federal regulatory portal, Regulations.gov, has a three-page list of helpful tips for writing comments at http://www.regulations.gov/docs/Tips_For_Submitting_Effective_Comments.pdf. It is a very short read and definitely worthwhile.

One of the best guides to writing public interest comments is Elizabeth Mullin's *The Art of Commenting* (Washington, DC: Environmental Law Institute, 2000). The book is a guide to commenting on environmental regulations, but most of its content is equally relevant to any other kind of public interest commenting.

OMB's most extensive guidance to executive branch agencies on regulatory impact analysis can be found in Circular A-4. It is a good source of ideas for evaluating an agency's regulatory analysis. You can also cite Circular A-4 for persuasive value if the agency failed to address a topic covered in the circular that you think is important. The circular is available at http://www.whitehouse.gov/omb/circulars_a004_a-4/.

To learn more about the federal regulatory process, read Jerry Brito and Susan Dudley's *Regulation: A Primer*, 2nd ed. (Arlington, VA: Mercatus Center at George Mason University, 2012), <http://mercatus.org/publication/regulation-primer>.

To find out more about common pitfalls in regulations and regulatory analysis, see Richard Williams, "Regulation Checklist: Common Pitfalls in Regulations" (Working Paper, Mercatus Center at George Mason University, Arlington, VA, January 2010), <http://mercatus.org/publication/regulation-checklist>.

Scholars affiliated with the Mercatus Center at George Mason University have submitted several hundred comments on virtually every type of federal regulation imaginable. These examples are available at <http://mercatus.org/all-publications/public-interest-comments>.

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