



TEST-DRIVING SOME REGULATORY PROCESS REFORMS

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Commentators and legislators have proposed numerous regulatory process reforms that would require federal agencies to conduct more thorough Regulatory Impact Analysis (RIA) for proposed regulations and expand the resources and responsibilities of the Office of Information and Regulatory Affairs (OIRA), which currently reviews executive branch agencies' regulations. In a recent Mercatus working paper, Jerry Ellig and Rosemarie Fike assess the likely effects of regulatory process reforms by examining whether analogous efforts currently undertaken by agencies and OIRA are associated with better regulatory impact analysis and more extensive use of analysis in agency decisions.

Below is a summary of the study's findings. To read the entire paper, see "Regulatory Process, Regulatory Reform, and the Quality of Regulatory Impact Analysis."

SUMMARY

Policy commentators and congressional regulatory reformers have proposed a variety of regulatory process reforms intended to improve the quality and use of regulatory impact analysis by federal agencies. These reforms include:

1. Expanded use of advance notices of proposed rulemaking before the agency writes the regulation
2. Formal rulemaking hearings for regulations whose economic impact exceeds \$1 billion annually
3. Requiring the agency to develop a plan for retrospective review of a regulation at the time the regulation is promulgated
4. Requiring agencies to meet with stakeholders before a regulation is proposed
5. Expanding OIRA's budget and staff
6. Requiring independent agencies to conduct regulatory impact analysis and submit their regulations and analysis to OIRA for review

Currently, agencies sometimes do the first four things or undertake analogous efforts. OIRA reviews regulations from executive branch agencies but not from independent agencies. The study assesses how these reforms might affect the quality and use of regulatory impact analysis by testing to see whether current, analogous efforts are associated with higher-quality analysis or greater use of analysis in decisions. The authors measure the quality and use of analysis with 2008–10 scores from the Mercatus Center's Regulatory Report Card, which assesses the quality and use of regulatory impact analysis for economically significant, prescriptive federal regulations.

The study found that:

- Several types of agency efforts that expand pre-proposal information gathering are associated with higher-quality RIAs and greater claimed use of analysis in decision making. These include a prior Notice of Proposed Rulemaking (NPRM) in the same regulatory proceeding, a public request for information by the agency, and consultation with state, tribal, or local governments.
- Two other pre-proposal efforts—public meetings and advisory committees—do not appear to improve the quality and use of analysis and may even diminish them.
- An agency’s commitment to hear feedback on the regulation at a hearing or other public meeting in the future is associated with more extensive explanation of how the agency used the analysis in its decisions.
- Regulations resulting from a legislative requirement that the agency review a previous rule are accompanied by higher-quality analysis.
- The longer OIRA’s review time, the higher the quality and use of regulatory analysis by the agency. The greater OIRA’s influence in the administration (measured by whether the administrator is a political appointee or acting administrator), the higher the claimed use of regulatory analysis.

CONCLUSION

Based on this analysis of recent experience, the authors conclude that it is likely that expanded use of advance notices of proposed rulemakings, formal public hearings, and requirements that agencies articulate a plan for retrospective review would produce higher-quality analysis and increase the use of analysis in decisions. Expanding OIRA’s resources and role would also likely improve the quality and use of analysis. Mandatory public meetings with stakeholders before a regulation is written, however, may not improve the quality or use of analysis.

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