Cost-Benefit Analysis in Issue Advocacy

Presented by: Michael Livermore, Executive Director & Jason Schwartz, Legal Director
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What is the Regulatory Process?

The Reg Map
Informal Rulemaking

Step One
Initiating Events
- Agency initiatives
- Administrative Procedure Act provisions

Step Two
Determination Whether a Rule Is Needed
- Agency priorities and plans
- New scientific data
- New technologies
- Accidents

Step Three
Preparation of Proposed Rule
- Administrative Procedure Act provisions
- Public Notice
- Proposed Rule

Step Four
OMB Review of Proposed Rule
- OMB Review Under Executive Order 12866

Step Five
Publication of Proposed Rule
- The Administrative Procedure Act requires that a proposed rule be published in the Federal Register.

Step Six
Public Comments
- Comments received and all material

Step Seven
Preparation of Final Rule, Interim Final Rule, or Direct Final Rule
- Final Rule
- Interim Final Rule
- Direct Final Rule

Step Eight
OMB Review of Final Rule, Interim Final Rule, or Direct Final Rule
- OMB Review Under Executive Order 12866

Step Nine
Publication of Final Rule, Interim Final Rule, or Direct Final Rule
- Congressional Review Act (5 U.S.C. 801-808)

Special Types of Final Rules
- Interim Final Rule
- Final Rule

Judicial Review

Step 10

Retrospective

Step 11
What is the Regulatory Process?

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.
What is the Regulatory Process?

What the Executive Order Requires:

• For All Rules:
  – Assess the need, alternatives, costs & benefits
  – Use best information
  – Provide meaningful public participation

• For “Significant” Rules, a full CBA:
  – Full benefits assessment & analysis
  – Full costs assessment & analysis
  – Full alternatives assessment & analysis
What is the Regulatory Process?

(f) “Significant regulatory action” means any regulatory action that is likely to result in a rule that may:

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;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive order.

“Economically significant”

“Other” significant

“major”
What is the Regulatory Process?

**Best Reasonably Obtainable Information**

(7) Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

**Consideration of Alternatives**

(iii) An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including im-

**Public Input**

(a) *Agency Responsibilities*. (1) Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and
What is the Regulatory Process?

Cases Involving Review of CBAs:

- **CBD v. NHTSA:** “cannot put a thumb on the scale”

- **Public Citizen v. FMCSA:** “troubling,” “questionable,” “dubious”

- **Advocates for Highway & Auto Safety v. FMCSA:** “blithely”

- For more, see Policy Integrity’s Amicus in Public Citizen v. FMCSA
What is the Regulatory Process?

**Regulatory Review**

Executive Order 12868 directs agencies to follow certain principles in rulemaking, such as consideration of alternatives and analysis of benefits and costs, and describes OIRA's role in the rulemaking process.

- Regulations Under EO 12868 Review
- Regulatory Reviews Completed In Last 30 Days

**UNIFIED AGENDA and REGULATORY PLAN**

The Unified Agenda and Regulatory Plan provide uniform reporting of data on regulatory and deregulatory actions under development throughout the Federal government, covering over 60 departments, agencies, and commissions.

- The 2011 Fall Agenda was published on 10/20/2011

**ICR DASHBOARD**

Information Collections Review Pending By Type
September 18, 2001
The Honorable Tommy G. Thompson
Secretary of Health and Human Services

Dear Mr. Secretary:

The purpose of this letter is to request that the Department of Health and Human Services and the Food and Drug Administration (FDA) consider giving greater priority to an existing rulemaking concerning the trans fatty acid content of foods. There is a growing body of scientific evidence...

...FDA's preliminary Regulatory Impact Analysis estimated that, 10 years after the effective date, the rule would prevent 7,600 to 17,100 cases of CHD and avert 2,500 to 5,600 deaths per year. Over a 20-year period, FDA estimated the benefits of the proposed rule would range from $25 to $59 billion, while the costs were only $400 million to $850 million.

In light of these estimates and the recent scientific findings, OMB believes there may be an opportunity here to pursue cost-effective rulemaking that provides significant net benefits to the American people. At the time OMB reviewed the proposed rule, OMB was impressed with the magnitude of the potential net benefits estimated by the underlying analysis....

Sincerely,
John D. Graham
Administrator
Office of Information and Regulatory Affairs
What is the Regulatory Process?
What is Cost-Benefit Analysis?

- Benefits – Costs = Net Benefits
What is Cost-Benefit Analysis?

• Benefits – Costs = Net Benefits
  – (improved health, safety, environment, etc.) - (compliance costs + administrative costs)
What is Cost-Benefit Analysis?

- Benefits – Costs = Net Benefits
What is Cost-Benefit Analysis?

- Benefits – Costs = Net Benefits
  - (improved health, safety, environment, jobs, etc.) - (compliance costs + administrative costs)
- Monetization is a metric, not a price tag
  - VSL is NOT a valuation of an individual life
  - Aggregate sum of willingness-to-pay to avoid very small risks to life

This is NOT what cost-benefit analysis is about.
What is Cost-Benefit Analysis?
What is Cost-Benefit Analysis?

- Cultural: $88,700
- Resources: $1,100
- Eco-Services: $26,000
- Genetic Diversity: $13,000
What is Cost-Benefit Analysis?

- **Benefits – Costs = Net Benefits**
- **Breakeven Analysis:**
  \[ \text{Benefits (Value/Benefit} \times \text{Incidence of Benefits)} - \text{Costs} > 0 \]

<table>
<thead>
<tr>
<th>Costs of Rape</th>
<th>US</th>
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<tbody>
<tr>
<td>Medical Care</td>
<td>$600</td>
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<tr>
<td>Mental Health Care</td>
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<tr>
<td>Lost Work</td>
<td>$2,500</td>
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<tr>
<td>Property Damage</td>
<td>$100</td>
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<tr>
<td>Suffering and Lost Quality of Life</td>
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<tr>
<td>Sexually Transmitted Diseases</td>
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<td>Pregnancy</td>
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<td>Suicide Acts</td>
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<td>Substance Abuse</td>
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<td>Victim Services/Out of Home Placement</td>
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<td><strong>Criminal Justice:</strong></td>
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<td>Investigation/Adjudication</td>
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<tr>
<td>Sanctioning</td>
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<tr>
<td>Earning Loss While Confined</td>
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<tr>
<td><strong>Total (Rounded)</strong></td>
<td><strong>$126,800</strong></td>
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</table>
What is Cost-Benefit Analysis?

Different Varieties of Analysis

• Cost-benefit optimization
  – Choose the most efficient alternative; maximize net benefits

• Cost-benefit justification
  – Sometimes more a communications tool than a decision-making tool

• Fiscal versus economic versus social costs and benefits
  – 43 states do fiscal analysis; only 21 analyze social costs and benefits

• Cost-effectiveness analysis
  – E.g., HUD’s affirmatively furthering fair housing rule

• Distributional Analysis
  – Small entity analysis, environmental justice analysis, jobs analysis
Key Topics in Cost-Benefit Analysis

- Distributional Analysis
- Behavioral Law & Economics
- Retrospective Review
- Valuations: VSL, SCC, and others