
Toward a More Perfect Union: **Regulatory Analysis and Performance Management**

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Never the twain shall meet?

Performance Management

- Public admin. scholars
- Legislation: GPRA
- Agency CFOs/ managers
- OMB deputy director for management

Regulatory Analysis

- Economists/lawyers
 - Exec. Order 12,866
 - Agency economists or policy shops
 - OMB – Director of Office of Information and Regulatory Affairs
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Our Main Points

Effective performance management of regulatory agencies requires regulatory analysis.

Conversely, regulatory analysis is nothing more than sound strategic planning and performance management applied to regulation.

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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Regulatory Analysis 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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Performance Management

- **Mission/Goals**
 - What are you trying to accomplish? How much?
 - **Strategic Plan**
 - What do you have to do to accomplish it?
 - **Measures**
 - What will you look at to tell you whether and how much of your goal you're accomplishing?
 - **Performance Budgeting**
 - How much outcome will be accomplished by each expenditure? What are the opportunity costs?
 - **Program Evaluation**
 - How do we know we accomplished what we hoped we'd accomplish? How cost-effective was it?
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Parallels

Performance Management

- Mission/goals
- Strategic planning

Regulatory Analysis

- Identify desired outcomes
 - Assess systemic problem
 - Identify federal role
 - Assess alternatives
 - Analyze causality
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Parallels (cont.)

Performance Management

- Identify outcome measures & assess causality
- Performance budgeting
- Program evaluation

Regulatory Analysis

- Identify outcome measures & assess causality
 - Identify costs
 - Compare costs with benefits
 - Retrospective analysis
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Performance Management in Practice

Government Performance and Results Act (1993)

- ❑ Strategic plans with outcome goals and planned program evaluations
- ❑ Annual performance plan
- ❑ Annual performance report
- ❑ Performance budgeting

OMB Program Assessment Rating Tool

- ❑ Includes questions about regulatory analysis for all regulatory agencies
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GPRA flaws

Does not require that plans and reports must

- ❑ Be done well
 - ❑ Be used by agencies
 - ❑ Be used by Congress
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Regulatory Analysis in Practice

- Executive Order 12,866 requires analysis
 - Office of Information and Regulatory Affairs reviews and can hold up “significant” rules
 - Ex ante focus
 - Does not apply to independent agencies
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Other Regulatory Analysis mandates

- **Unfunded Mandates Reform Act**
 - Requires benefit-cost analysis and consideration of alternatives if regulation imposes a cost of \$100 million or more annually
 - **Regulatory Flexibility Act**
 - Requires analysis of impacts on small business
 - **Agency-specific laws**
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Incorporating Performance Management into Regulatory Analysis (EO 12,866)

- Require ALL regulatory agencies to
 - Identify regulation's intended outcome
 - Link outcome to strategic goals in GPRA plan
 - Identify measures/indicators
 - Lay out plan for retrospective evaluation
 - Track and report on progress annually

 - Require annual independent retrospective benefit and cost estimates
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Incorporating Regulatory Analysis into Performance Management (Circular A-11)

- Require GPRA strategic plan and reports to assess benefits and costs of alternatives
 - Require retrospective assessment of benefits and costs of regulation in each agency's annual performance report
 - Require regulatory agencies to report on opportunity costs (eg deadweight losses and other effects of regulation)
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