

RESEARCH SUMMARY

Improving Regulatory Impact Analysis: Implementation by the Agencies, Enforcement by the Courts

Congress is currently considering a comprehensive regulatory reform called the Regulatory Accountability Act. The legislation would

- require all federal agencies to conduct regulatory impact analysis—analysis of the problem the agency seeks to solve, development of alternative solutions, and estimation of the benefits and costs of alternatives; and
- permit the courts to review the quality of the economic analysis.

If the analysis fails to use the best available scientific and economic evidence, the courts may invalidate a regulation.

Reeve T. Bull and Jerry Ellig conclude that this approach is likely to improve the quality of analysis that informs decisions made by regulatory agencies. They set forth their evidence-based assessment in “[Statutory Rulemaking Considerations and Judicial Review of Regulatory Impact Analysis](#).”

The authors examine the effects of economic analysis requirements already on the books—how the courts interpret and enforce them and how well the regulatory agencies carry them out.

IMPACT ON THE COURTS

Bull and Ellig review 33 cases in which federal appeals courts assessed the quality of the economic analysis accompanying a regulation. They find that courts scrutinize agencies’ analysis much more closely when the relevant statute either

- provides a detailed list of economic costs and benefits the agency must consider; or
- calls for the selection of a particular regulatory alternative based on the findings of the regulatory impact analysis.

IMPACT ON THE REGULATORY AGENCIES

The authors examine 130 economically significant regulations proposed by executive branch agencies between 2008 and 2013. They find that when the statute authorizing the regulations provides more specific guidance on the economic factors the agency must consider, agencies tend to

- produce higher-quality analysis; and
- offer more thorough explanations of how they used the analysis in their decisions.

The threat of judicial review is a key element that induces agencies to respond to analytical requirements written into statutes.

KEY TAKEAWAY

If Congress seeks to improve regulatory agencies' economic analysis, statutes should specify the topics the analysis must cover and allow courts to review the quality of the analysis. This will likely produce superior results than will vague instructions like "consider benefits and costs" or "adopt an economically feasible regulation."