



Asia-Pacific
Economic Cooperation



2006/SOM3/EC/022

Agenda Item: 3.5

U.S. Response to APEC-OECD Integrated Checklist on Regulatory Reform - Presentation

Purpose: Information

Submitted by: US



**Economic Committee Meeting
Hoi An, Viet Nam
11-12 September 2006**



U.S. Office of Management and Budget Office of Information and Regulatory Affairs

U.S. Response to the APEC-OECD Integrated Checklist for Regulatory Reform

Horizontal Criteria & Regulatory Policy

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APEC-OECD Joint Session: Regulatory Reform
APEC EC Meeting

Hoi An, Vietnam
September 11-12, 2006



Outline of Presentation on U.S. Response to Integrated Checklist

- ❖ I. U.S. Approach to Regulatory Policy
 - ❖ Hallmarks & History
- ❖ II. Regulatory Impact Analysis?
 - ❖ Why & How?
- ❖ III. Drivers of Regulatory Policy
 - ❖ Centralized Management and Leadership in OMB
- ❖ IV. How we do it:
 - ❖ E.O. 12866
 - ❖ Analytical Toolkit
- ❖ V. Lessons & Benefits
 - ❖ U.S. Approach
 - ❖ Self-Assessment



U.S. Approach to Regulatory Policy -- Hallmarks

- ❖ **Centralized Management & Leadership.**
 - ❖ OMB, as advisor to the President, devotes significant effort and resources to regulatory reform.
- ❖ **Regulatory Impact Analysis.**
 - ❖ A systematic process to maximize net benefits to society and promote economic efficiency.
- ❖ **Provisions to Ensure Transparency and Accountability.**
 - ❖ An open process that counters concerns about undue influence and give all interested parties a voice.
 - ❖ All branches of Government involved as well as solicitation of comments from interested parties.
 - ❖ Regulatory Right to Know Act requires the OMB to issue a report to Congress each year estimating the costs and benefits of regulations in the aggregate, by agency and agency program, and by regulation.
- ❖ **Commitment to “Smarter Regulation.”**
 - ❖ Insistence upon sound rules backed by analysis, modified as needed to make rules more cost-effective, and elimination of outmoded rules whose benefits do not justify their costs.



U.S. Approach to Regulatory Policy -- Hallmarks

- ❖ **Definition: Regulatory Impact Analysis (RIA) is a tool to assess systematically the negative and positive impacts of proposed and existing regulations...It is a strategic tool for regulatory management and reform, but not a panacea.”**

Source: OECD Explanatory Note for Survey of RIA Systems in OECD Countries



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U.S. Approach to Regulatory Policy -- Hallmarks

- ❖ **Each Branch of Government has a Role**
 - ❖ **First, Executive Branch** agencies demonstrate to OMB, acting as Advisor to the President, that their regulatory analysis is of high quality and supports a finding that the regulation is likely to maximize net benefits to society.
- ❖ **Provision for Congressional Review.**
 - ❖ Subsequently, after OMB concludes its review of a regulation and it is published in the *Federal Register*, the **Legislative Branch** (Congress) reviews the regulation under Congressional Review Act.
- ❖ **Affected Parties May Also Seek Relief in Courts.**
 - ❖ Finally, after the rule goes into effect, affected parties can bring suit against the agency issuing the rule to have the **Judicial Branch** (courts) reverse or mandate it back to the agency because 1) the agency violated the Administrative Procedures Act (APA)'s process requirements, 2) the rule itself violates the statute that authorized the rule, and/or 3) the rule violates the U.S. Constitution.



U.S. Approach to Regulatory Policy -- History

❖ Presidential Oversight of Federal Regulatory Policy

- ❖ President Ford: Required, for the first time, regulatory impact analysis (RIA) requirement for major regulations (over \$100 million in impact).
- ❖ President Carter: Established the Regulatory Analysis Review Group.
- ❖ President Reagan: Solidified regulatory oversight authority within the White House, issuing Executive Order 11291, which required OMB review and approval of rules.
- ❖ President Clinton: Issued Executive Order 12866, which focused OMB oversight on "significant" rules and increased the disclosure of contacts with outside parties.
- ❖ President George W. Bush: Maintained the Clinton E.O. that requires the agencies to do RIAs and send significant regulations to OMB for review.

6



Regulatory Impact Analysis – Why & How?

❖ History.

- ❖ Sustained, high-level political support for regulatory impact analysis.

❖ Why we do it.

- ❖ Contributes to more informed policy decisions, increases transparency, and promotes efficiency.

❖ How we do it.

- ❖ Centralized management and leadership and rigorous analytic standards.

❖ Results.

- ❖ Higher regulatory benefits and lower costs, and ultimately stronger economic growth.

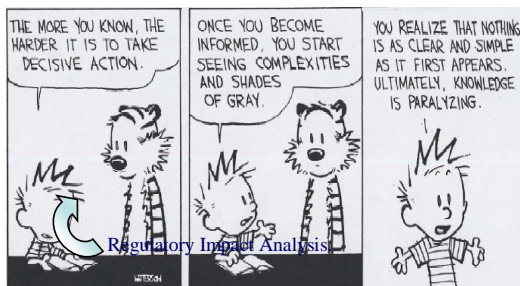
❖ Lessons.

- ❖ What we have learned.

7



Why do Regulatory Impact Analysis? *Too Much Knowledge Can Be Paralyzing ...*

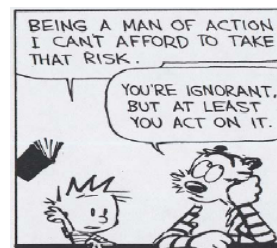


Regulatory Impact Analysis

8



Why do Regulatory Impact Analysis? -- *...More often than not, the problem is not too much analysis, but rather too little*



9



Why Regulatory Impact Analysis?

❖ Inform policy-makers, help them make decisions.

- ❖ Rationalization?
- ❖ The need to analyze impacts early in the process.

❖ Inform Congress and the public.

- ❖ Contributes to regulatory transparency and accountability.

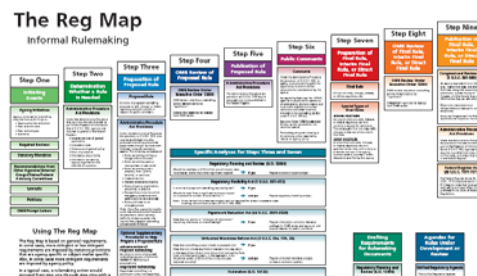
❖ Promote efficiency, greatest net benefits to society.

- ❖ However, net benefits sometimes is an impermissible consideration.

10



How We Do It -- U.S. Process of 'Informal Rulemaking'



11



Drivers of Regulatory Policy – Centralized Management and Leadership

- ❖ **OMB assists the President in the development and implementation of budget, program, management, and regulatory policies.**
 - ❖ Develops the President's annual budget submission to Congress.
 - ❖ Assists the President in managing the Executive Branch, developing the Administration's position on legislation before Congress and executing the law.
 - ❖ Provides high quality regulatory analysis.
- ❖ **History**
 - ❖ 1921: Bureau of the Budget (BoB) established within the Treasury Department.
 - ❖ 1939: BoB moved from Treasury to the Executive Office of the President.
 - ❖ 1970: BoB reorganized into the Office of Management and Budget.

12



Drivers of Regulatory Policy— Centralized Management and Leadership

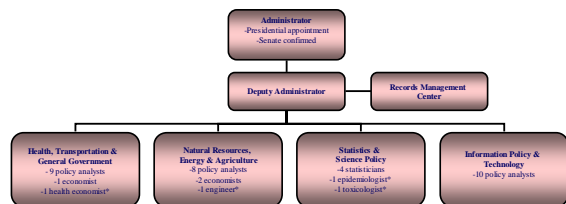
- ❖ **Role of Office of Information and Regulatory Affairs**
 - ❖ The Office of Information and Regulatory Affairs (OIRA) was established by Paperwork Reduction Act of 1980, partially in response to the explosion in regulation that occurred in the 1970s and earlier in the U.S.
 - ❖ As part of the Office of Management and Budget, OIRA is a central body that has special standing with the agencies.
 - ❖ OIRA manages and coordinates Federal rulemaking, and oversees Federal information management, statistical policy, and information technology policy.

13



Drivers of Regulatory Policy— Centralized Management and Leadership

Office of Information and Regulatory Affairs



*Recent additions to OIRA's staff.

14



How We Do It: E.O. 12866 (guides reviews)

- ❖ **Presidential Executive Order 12866**
 - ❖ Executive Order 12866 on Regulatory Planning and Review governs OMB's oversight of agency rulemaking, requiring OMB review of "significant" agency regulatory actions.
 - ❖ Agencies submit draft significant regulations (both proposed and final) to OIRA for an up-to-90-day review before publishing them.
 - ❖ OIRA reviews 500-700 proposed and final regulations per year—those we determine to be significant—out of about 8,000 that are issued.
 - ❖ About 70-100 of the regulations reviewed are "economically significant" (over \$100 million per year in economic effects).
 - ❖ During our review, we examine the RIA and the regulation and make suggestions to improve both the RIA and the rule's cost-effectiveness and make sure that it comports with the Executive Order's principles and the President's priorities.
 - ❖ If the agency refuses to make changes or needs more time to make the changes, we can return the rule to the agency for reconsideration.

15



How We Do It -- Rigorous Analytic Standards

- ❖ **EO 12866 requires agencies to conduct regulatory analysis for "economically significant" regulatory actions.**
 - ❖ Costs or benefits greater than \$100 million annually.
- ❖ **OMB has had guidelines for regulatory analysis since the 1980s.**
 - ❖ Revisions were made in 1996, 2000, and "Circular A-4" was issued in 2003.
- ❖ **The Guidelines were developed in a rigorous and open manner**
 - ❖ Subject to public review and comment.
 - ❖ Interagency review process.
 - ❖ Reviewed by a panel of leading academic experts in economics, decision science, public health, and law.

16



What is a Good Regulatory Analysis?

- ❖ **A good regulatory analysis will answer these three questions (and do so in a transparent manner):**
 - (1) **What is the need** for the proposed action?
 - ❖ Market failure or other social purpose.
 - ❖ Federalism and global considerations.
 - (2) **What are the alternative regulatory options?**
 - (3) **What are the benefits and costs** of the proposed action and the primary alternatives?
 - ❖ Benefit-cost analysis (BCA)
 - ❖ Cost-effectiveness analysis (CEA)
 - ❖ Uncertainty analysis

17



BCA and CEA

Benefit-Cost Analysis BCA	Cost-Effectiveness Analysis CEA
Cost: \$ Benefit: \$	Cost: \$ Effect: QALYs, premature fatalities avoided, tons of emissions avoided, etc. Result: CE ratio (\$/QALY)
Results: Net Benefits = \$B-\$C	
An absolute measure	A relative measure; need a benchmark for comparison
Can be used to integrate many impacts into a common metric (\$); can make comparisons across rules with disparate impacts	Can be used to compare rules with the same outcome measure
Required for all rules (to the extent possible)	For rules where the primary benefits relate to public health and safety

18



Uncertainty Analysis

- ❖ For all economically significant rules:
 - ❖ Characterize probabilities of the relevant outcomes.
 - ❖ Qualitative discussion, sensitivity analysis.
- ❖ For rules with impacts > \$1 billion in any one year:
 - ❖ Formal quantitative analysis of the relevant uncertainties about benefits and costs (e.g., simulation models, use of expert judgment elicitation).
- ❖ Where level of scientific uncertainty very high:
 - ❖ Evaluate discrete alternative scenarios using a range of plausible assumptions.
 - ❖ Consider additional research prior to rulemaking as an explicit regulatory alternative.

19



APEC-OECD Checklist: Match Ups

To Review: Horizontal Criteria Checklist:

- ❖ A1. Integrated Policy? = E.O. 12866 setting basic regulatory principles.
- ❖ A2. Senior Support for Reform? = OMB, President, and the Congress.
- ❖ A3. Accountability? = Regulatory Right to Know Act annual reports.
- ❖ A4. Avoidance of Discrimination? = Circular A-4's high hurdles for:
 - ❖ Price controls or quotas when applied in competitive markets.
 - ❖ Uniform quality standards, if disclosure or voluntary standards an option.
 - ❖ Employment or production controls, unless for health or safety reasons, or for protection of common property.
 - ❖ Small firms have legal protections against "disproportionate or undue burden."
- ❖ A5. Coordination of reform? = E.O. 12866, Unfunded Mandates, E.O. 13132.

20



APEC-OECD Checklist: Match-Ups

To Review: Horizontal Criteria Checklist:

- ❖ A6. Transparency? = Administrative Procedures Act (APA), Code of Federal Regulations (CFR) codification and availability.
- ❖ A7. Coherent timing and sequencing? = OIRA, Congressional monitoring.
- ❖ A8. Interministerial mechanisms? = E.O. 12866, interagency coordination.
- ❖ A9. Human and technical resources? = OIRA, USTR, DOJ, and FTC.
- ❖ A10. Training & capacity building? = Training on Circular A-4, other.
- ❖ A11. Legal Framework? = Congress legislates, agencies draft rules, OIRA reviews, Courts offer a further avenue for lawsuits (once rules come into effect).

21



APEC-OECD Checklist: Match-Ups

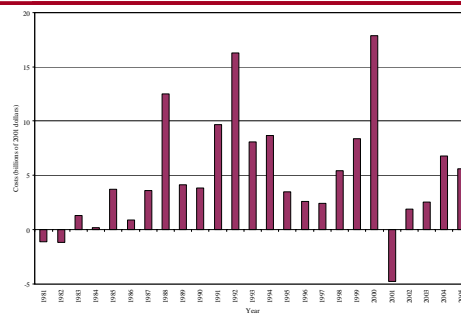
To review: Regulatory Policy Checklist:

- ❖ B1. Consistent, coherent principles? = OIRA under E.O. 12866.
- ❖ B2. Review of basis for regulations? = E.O. 12866, Circular A-4, and OIRA reviews.
 - ❖ Benefits-cost, cost-effectiveness, and other analyses provide justifications.
- ❖ B3. Legal basis for existing regs? = PART, PMA are a beginning.
- ❖ B4. Transparent, clear, predictable rules? = APA, requiring Federal Register comments.
- ❖ B5. Public consultative mechanisms? = Small business protections, OIRA's 'open door'.
- ❖ B6. Clear, transparent methodologies? = RIA for regulations with over \$100m impact.
- ❖ B7. Alternatives to regulations? = Written into all OIRA reviews.
- ❖ B8. Compliance with and enforcement of regulations? = decentralized; agency-monitored.

22



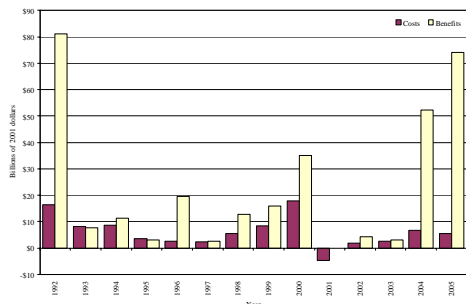
Benefits of U.S. Approach: Costs of Major Rules (1981-2005)



23



Costs and Benefits of Major Rules (1992-2005)



24



Benefits -- Improving Regulatory Quality Leads to Strong Macro Performance

- ❖ Was the original justification for the U.S. regulatory reform program during the stagflation days of the mid 1970s and has been a Presidential priority since then.
- ❖ Since the mid 1980s, U.S. economic performance (per capita growth, inflation, and employment) has been one of the best in the industrialized world, contrary to the per capita income convergence theory.
- ❖ Studies by the World Bank (*Doing Business in 2005*), the OECD, Heritage Foundation, and the Fraser Institute found that countries with flexible and efficient regulatory systems coupled with strong property rights have the best record on per capita income, economic growth, life expectancy, and the UN Human Development Index.
- ❖ According to the World Bank study, moving from the bottom three quartiles to the top quartile of the 145 countries adds **1.7% to annual economic growth** – even after controlling for other growth factors such as education, investment, and income.

25



Benefits -- Improving Regulatory Quality Leads to Strong Macro Performance

Top Twenty Economies on the Ease of Doing Business Scale

- | | |
|---------------------|-----------------|
| 1. New Zealand | 11. Switzerland |
| 2. United States | 12. Denmark |
| 3. Singapore | 13. Netherlands |
| 4. Hong Kong, China | 14. Finland |
| 5. Australia | 15. Ireland |
| 6. Norway | 16. Belgium |
| 7. United Kingdom | 17. Lithuania |
| 8. Canada | 18. Slovakia |
| 9. Sweden | 19. Botswana |
| 10. Japan | 20. Thailand |

Source: World Bank, *Doing Business 2005*

26



Lessons -- U.S. Experience with Regulatory Impact Analysis

- ❖ A program for rigorous regulatory impact analysis requires strong **political support from the center of government.**
- ❖ Analysis can improve **decision making, increase transparency, and promote economic efficiency.**
- ❖ Rigorous analytic standards must be enforced through **strong centralized oversight.**
- ❖ **RIAs can increase the net benefits of regulation, which contributes to economic growth.**

27



Closing Thoughts on: APEC-OECD Checklist

- ❖ U.S. experience with Checklist proved a **favorable, interagency effort coordinated** by our OMB.
- ❖ Self-assessment may provide a **useful tool for learning and capacity building...**
- ❖ **... and perhaps lead to best practices exchange** among APEC Members?

28



References

- ❖ **Executive Order 12866 – Regulatory Planning and Review** (October 4, 1993): www.whitehouse.gov/omb/inforeg/eo12866.pdf
- ❖ **OMB Guidance to Agencies on Regulatory Analysis** (September 17, 2003): www.whitehouse.gov/omb/circulars/a004/a-4.pdf
- ❖ **2005 Report to Congress on the Costs and Benefits of Federal Regulations** (December 2005): www.whitehouse.gov/omb/inforeg/2005_cb/final_2005_cb_report.pdf

29



Thank You!

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