

## **CHAPTER III**

### **WHY DO COSTS VARY SO MUCH?**

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The Congressional Budget Office's review of agencies that have conducted regulatory impact analyses raises an important question: why do costs per RIA vary so much, both among and within agencies? Answering that question definitively would require investigating the subject matter and history of each of the rules associated with the analyses; such an effort is beyond the scope of CBO's study. However, anecdotal evidence from agency staff provides some insight.

### **POLITICAL CONTROVERSY**

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In some instances, intense public controversy leads to a considerably more protracted and expensive rulemaking process. For example, the charged atmosphere surrounding the Office of Air and Radiation's rule on fuel vapor recovery, mentioned in Chapter II, contributed to the 12-year completion time for its RIA. Officials of the Occupational Safety and Health Administration cited an analysis that consumed about four years and \$3.5 million (in nominal dollars) as another example of that phenomenon. The rule involved ergonomic standards in the workplace, and its political profile was such that the Congress voted to stop spending money on analyzing it.

Agency officials sometimes cited consensus on a rule as a major factor in timely completion of its RIA. One of the Office of Air and Radiation's least costly RIAs involved a rule for a national low-emissions vehicle program that would permit cars designed to meet California's emissions standards to be sold in the rest of the country. Automakers wanted the rule and had already moved in that direction. According to the Environmental Protection Agency, the rule was not typical in that it did not set new standards for emissions. Instead, it involved mainly procedural changes to allow the nationwide sale of cars already in production. Because the rule was mainly procedural, its cost-benefit analysis was not as complex, and consensus sped the regulatory process. Consequently, the rule's RIA cost only about \$100,000.

OSHA's rule concerning power industrial trucks also enjoyed a high degree of consensus among all parties and imposed relatively fewer costs on society than other rules. Agency officials attributed the relatively low cost of analysis, an estimated \$150,000, to those factors.

#### THE RULE'S COST TO SOCIETY

In addition to political controversy, the anticipated cost of a rule is likely to increase the resources devoted to preparing its RIA. The less costly rules generally receive

less attention from interest groups, the Office of Management and Budget, or agency staff. That practice is consistent with the interpretation that if the stakes are lower, the cost of an error in rulemaking is less significant to the affected parties, and the benefits from an improvement in the rule are smaller. Viewed broadly, devoting more effort to evaluating rules whose consequences are more substantial and economizing on those whose consequences are smaller may represent an efficient allocation of society's resources.

In an informal discussion with CBO staff, agency personnel indicated that the probable cost to society, or to particular subgroups of society, may increase the level of effort they assign to an analysis. That may be done because of the perceived need to prepare a more detailed analysis before publishing a preliminary notice of rulemaking (so as to better establish the basis for the proposed rule) or because of a desire to better withstand any judicial challenge. Some agencies, notably EPA, have a formal system for classifying rules into three tiers, which range from Tier I (significant) to Tier III (not so significant). Within the agency, Tier I rules are given priority.

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## TECHNICAL DIFFICULTY OF THE ANALYSIS

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Some rules involve very technically complex issues that make determining their costs and benefits expensive and time consuming. The Office of Solid Waste's draft rule on corrective action described in Chapter II—whose RIA has so far cost more than \$6 million—is one example. A second example comes from EPA's Office of Water, whose most costly RIA involved a proposed rule to regulate wastes from metal products and machinery. According to EPA, that rule covers 14 industry sectors with a wide range of processes and thus a wide range of wastes, so extensive information collection was necessary to determine the wastes and processes involved. As a result of that complexity, the proposed rule took about four years to develop, and its RIA cost an estimated \$1 million, including both contract dollars and personnel costs.

A third example involves a regulatory impact analysis at the Office of Air and Radiation on reformulated gas, which took six years and about \$4.9 million to complete. The significant cost resulted from the complexity of the rule, which was designed to change refinery processes so as to create gasoline with fewer evaporative emissions. Refinery operations differ depending on the source of the oil, so each refinery has a somewhat different process. According to EPA, the reformulated-gas rule involved very complex technical changes specific to particular refineries, and costs and benefits were accordingly difficult to estimate. Moreover, the rule was a

negotiated rulemaking, meaning that all parties (including industry, as well as environmentalists and other interest groups) were involved at a very early stage. Early involvement by interest groups tends to result in more scrutiny and more comments on the entire rulemaking, including the RIA, which may have contributed to the costs of the analysis. (Again, those costs are uncertain: about half were personnel costs.)

#### HIGH PUBLIC PROFILE OF THE RULE

Sometimes a regulation not only is controversial among the affected industries but also draws national attention. One recent example is a rule by the Federal Aviation Administration, which received so much national and Congressional scrutiny that it placed an extra burden on the FAA's regulatory analysis office. That rule, Commuter Operations and General Certification and Operations Requirements, was published in March 1995.<sup>1</sup> It was designed to bring small commuter planes up to the standards applied to larger planes; the rule grew out of a series of accidents involving planes with fewer than 30 passengers that drew national media attention and generated

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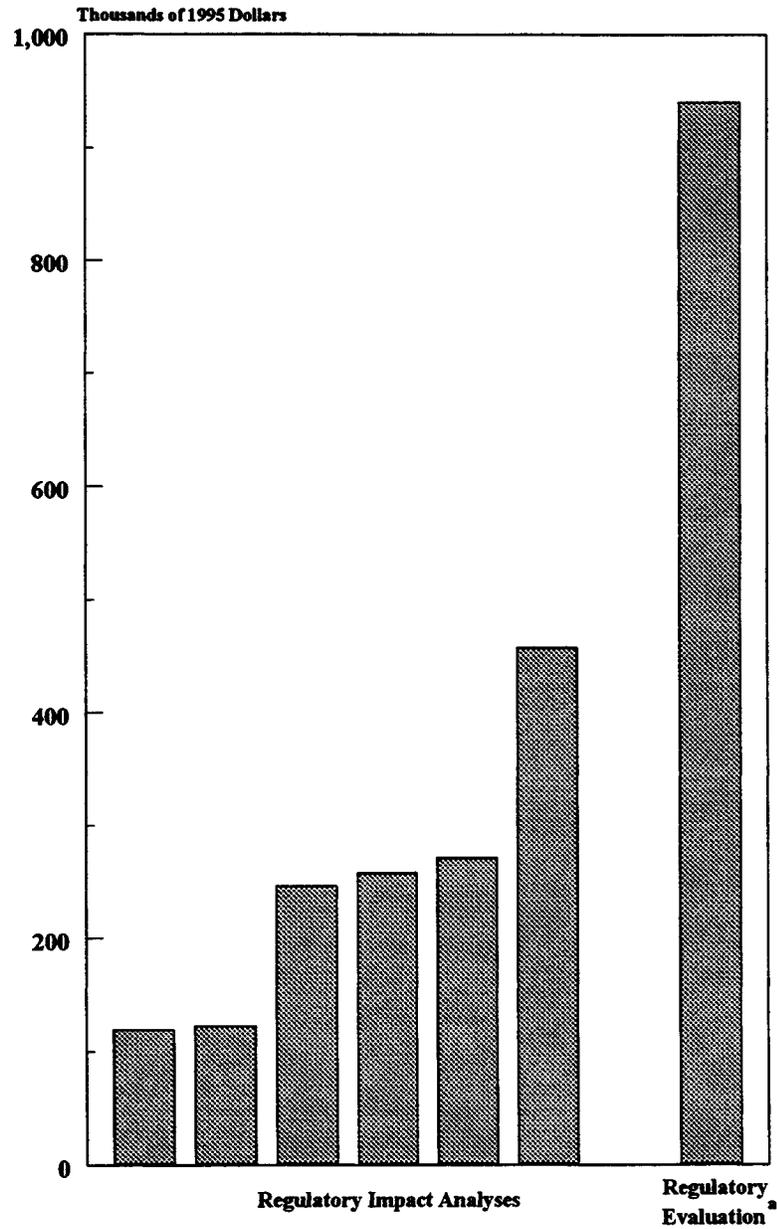
1. Department of Transportation, "Notice of Proposed Rulemaking for Commuter Operations and General Certification and Operations Requirements," *Federal Register*, vol. 60, no. 60 (March 29, 1995), p. 16230. All history on this rule is drawn from the *Federal Register* notice and personal communication with FAA staff.

Congressional hearings in February 1994. The testimony at those hearings and the evidence presented in a 1994 study by the National Transportation Safety Board prompted Secretary of Transportation Federico Pena to make the rule a political imperative, promising that it would be promulgated within a year. As a result, the FAA's Regulation and Organizational Analysis Division employed 10 of its 12 staff on the analysis for one year. That large staff effort drove the cost of the analysis to about \$960,000, although the rule's cost to society was estimated at about \$21 million in its highest year.

That single regulatory evaluation (the FAA's name for a cost-benefit analysis of a rule that is not "significant") cost more than any RIA performed by the agency during CBO's study period (see Figure 8). Although the cost of that evaluation is not included in CBO's figures, it is mentioned here to illustrate that the analysis for a nonsignificant rule can sometimes be more expensive than for a significant one.

National attention has also brought extra work to other agencies. Most of the major rules issued by the Coast Guard in recent years—and six of the seven RIAs it reported to CBO—stem from the Oil Pollution Act of 1990, which the Congress passed in response to the Exxon Valdez accident the previous year.

FIGURE 8. COSTS OF REGULATORY IMPACT ANALYSES AND A REGULATORY EVALUATION AT THE FEDERAL AVIATION ADMINISTRATION



SOURCE: Congressional Budget Office using data from the Federal Aviation Administration.

NOTE: Data reflect costs of agency personnel (full-time equivalents) only.

a. The evaluation was performed in 1995; nominal and real costs are the same.

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**TYPE OF INFORMATION NEEDED FOR THE ANALYSIS**

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The diversity of information needed for a regulatory impact analysis can also increase the cost of preparing it. The nature of the information and the ease with which it can be retrieved vary considerably. In some agencies, such as the Federal Aviation Administration, officials may already have access to detailed information on the equipment they may be regulating and the inventory of equipment in use. In other agencies, such as EPA or OSHA, the inventory of plant equipment and equipment in use may not be readily available, and a substantial data collection effort may be needed to establish a baseline before any alternatives can be considered. For example, within EPA's Office of Water, the diverse set of contaminants that may be involved in rulemaking increases the costs of the office's RIAs. Similarly, the corrective action program often involves a diverse set of processes or substances, which in turn leads to more expensive analysis.

## **CHAPTER IV**

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### **CONCLUSIONS**

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The Congressional Budget Office's study looked at primary data on the costs and time associated with preparing regulatory impact analyses at a sample of agencies that have considerable experience with the process. Although there are important qualifications to the study concerning the definition of an RIA, the accuracy of agencies' records, and the representativeness of the sample, the analysis seems to support four general conclusions.

#### **THERE IS NO SUCH THING AS A TYPICAL RIA**

All agencies in CBO's study exhibit a wide range of costs for their regulatory impact analyses, although most RIAs cost less than \$1 million. Costs vary depending on the scope and complexity of the rule, the type of information needed to analyze it, and the likely cost that the proposed regulation would impose on society.

The public attention and controversy surrounding a rule may be significant. At least one regulation (the Federal Aviation Administration's rule on standards for small planes) was accelerated by the attention it received from the Congress and the media. Other rules, such as the Environmental Protection Agency's regulation on vapor

recovery, seem to have been delayed by the controversy that surrounded them. In still other cases, the technical difficulty of the rule required a great deal of effort to estimate its costs and benefits. CBO's study did not examine the impact of deadlines for rules, whether statutory or judicial (resulting from litigation of the rule), but they may also have an impact.

#### AGENCIES DO NOT SEPARATELY TRACK COSTS FOR EACH RIA

Agencies do not track costs by project. Instead, they track contractor costs by contract; and each contract may contain more than one project. To obtain estimates of contractor costs, agency officials often had to trace RIA costs through successive contracts. Estimates of contractor costs are generally more reliable than those of the costs of agency personnel, which rely mostly on employees' memories. The personnel estimates provided here are a rough approximation.

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**RIA COSTS DO NOT REFLECT SOME  
NECESSARY SUPPORTING ANALYSIS**

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In many cases, an agency must conduct an engineering study, a risk assessment, or other technical analysis to determine the effects of a rule. Studies such as those conducted by the National Highway Traffic Safety Administration (for example, to determine effects of new safety regulations) or by EPA (for example, to determine how industry will comply with a rule) are typically not included in the reported costs of a regulatory impact analysis. Thus, CBO's study may underestimate the cost of RIAs.

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**ISOLATING THE UNIVERSE OF RIAs IS DIFFICULT**

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Two factors make isolating the exact number of RIAs performed difficult. First, more than one working definition of the term "regulatory impact analysis" is in use. Some agencies consider an analysis that looks at benefits or alternatives as well as costs of an RIA even if the rule is not "significant." Second, some RIAs are completed but never published—generally because their regulation is withdrawn—and thus are hard to track.

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## IMPLICATIONS FOR EXTENDING REGULATORY ANALYSIS TO THE LEGISLATIVE PROCESS

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Many observers of the regulatory process—both supporters and opponents—have raised the possibility of expanding some aspects of regulatory analysis at the stage in which legislation is being developed and approved by the Congress. However, having the same type of analysis at the legislative and rulemaking stages is usually not possible. Legislation generally states broad principles and goals for achieving a particular outcome. It may specify the entities covered or the activities subject to regulation, but it usually does not state the technical details and standards that are envisioned. Rulemaking, in contrast, typically states very specific regulations concerning the entities covered, the processes or activities involved, the permissible activities or outcomes, and so forth. That level of detail may not be known without substantial information collection and analysis. Nevertheless, some legislative proposals call for an identification and quantitative description of economic, social, or environmental costs and benefits that is much more specific than current practice and at a level that approaches the requirements of some regulatory impact analyses.

Depending on its form, a new analytic requirement at the legislative stage could present a significant challenge to lawmakers and their support staff, as well as to the agencies involved, for at least three reasons. First, no single definition of a regulatory

analysis exists; even when carrying out analysis under the same executive order, offices and agencies vary considerably in the amount of information they develop and provide.

Second, CBO's study found that some analysis proceeded relatively quickly and easily if a good database was available and the technical information was well understood and not controversial. In many cases, however, the agencies had to develop a substantial amount of original information in the course of preparing the regulatory analysis. Producing similar comparisons of costs and benefits as part of the legislative process would probably require a similar effort.

Third, regulatory impact analyses take significant amounts of resources and time. Although there was wide variation among the RIAs in CBO's study, the average cost was about \$570,000 and the average time was about three years. The quantitative estimates of benefits and costs necessary for an RIA in turn require specific values for the details of the proposed regulation (such as the firms affected, the level of emissions permitted, or the technological process to be modified). Depending on the stage in the legislative process at which the Congress tried to undertake such analysis, those features could add substantially to the time needed to prepare legislation.

