

“Modernizing” Regulatory Impact Analyses in the Biden Administration

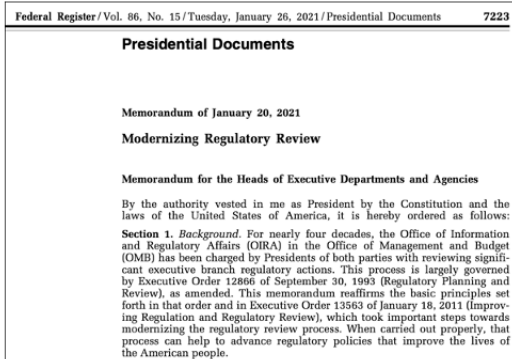
Richard B. Belzer

Society for Benefit-Cost Analysis
2022 Annual Meeting
March 22, 2022

rbelzer@post.harvard.edu

Modernizing Regulatory Review

86 FR 7223



Richard B. Belzer
rbbelzer@post.harvard.edu

1. Issued January 20, 2021.
2. Modifies but does not supplant EO 12866.
 - a. 'Reaffirms' its "basic principles"
 - b. Directs OIRA to make still-undefined regulatory review process changes.
 - c. OIRA may (or may not) consult with the public.
 - d. OIRA may (or may not) make consultations public.

Sec. 2(b)(i)

(i) identify ways to modernize and improve the regulatory review process, including through revisions to OMB's *Circular A-4, Regulatory Analysis*, 68 FR 58,366 (Oct. 9, 2003), to ensure that the review process promotes policies that reflect new developments in scientific and economic understanding, fully accounts for regulatory benefits that are difficult or impossible to quantify, and does not have harmful anti-regulatory or deregulatory effects;

Richard B. Belzer
rbelzer@post.harvard.edu

- Includes both revised process and revised regulatory analysis.
- Process changes include multiple *non sequiturs*, namely, that “the review process promotes policies that--
 - reflect ‘new developments in scientific and economic understanding’ [i.e., methods of regulatory analysis, not new process developments].
 - ‘fully accounts for [i.e., process] for regulatory benefits that are difficult or impossible to quantify’ [i.e., analysis].
- The one process change required is awful – review process ‘does not have harmful anti-regulatory or deregulatory effects [i.e., must be biased against deregulation and for regulation].’

Sec. 2(b)(ii)

(ii) propose procedures that take into account the distributional consequences of regulations, including as part of any quantitative or qualitative analysis of the costs and benefits of regulations, to ensure that regulatory initiatives appropriately benefit and do not inappropriately burden disadvantaged, vulnerable, or marginalized communities;

Richard B. Belzer
rbelzer@post.harvard.edu

- The potentially beneficial provision: a call for distributional analysis of benefits and costs!
- Except it's conditional. Distributional analysis is to be promoted only if it 'appropriately benefit[s] and do[es] not inappropriately burden' DVMs.

Sec. 2(b)(ii): New requirements that politicize regulatory BCA and OIRA

1. '[F]ully account[] for regulatory benefits that are difficult or impossible to quantify'
2. Ensure that regulations 'not have harmful anti-regulatory or deregulatory effects'

Richard B. Belzer
rbelzer@post.harvard.edu

- These two provisions fatally politicize regulatory BCA and OIRA.
- BCA practitioners risk permanent reputational harm if they comply.
- BCA faculty ensure permanent reputational harm if they teach this.

Sec. 2(b)(i): New requirements that could improve RIAs

3. '[T]ake into account the distributional consequences of regulations, including as part of any quantitative or qualitative analysis of the costs and benefits of regulations, to ensure that regulatory initiatives appropriately benefit and do not inappropriately burden disadvantaged, vulnerable, or marginalized communities'

Richard B. Belzer
rbelzer@post.harvard.edu

1. DVMs are not defined. Candidates include:
 1. "Low-income and minority populations" (EO 12898, Clinton 1994). But if so, why not cross-reference the EO??
 2. "Children" (EO 13045, Clinton 1997). Also not cross-referenced.
 3. Victims of "systemic racial inequity." But:
 1. "Inequity" is not defined.
 2. "Systemic" is not defined.
 4. Could it be a stalking horse for something more pernicious? There is considerable evidence for that.
 1. Without any evidence, FDA deemed race and ethnicity as "risk factors" for COVID and imposed racial allocation of supply. This did not fully materialize because minorities were more skeptical.
 2. Northeastern Tennessee has a lot of poor people but few minorities. So it receives smaller allocations.
 5. Through its rhetoric and actions, the Administration has created a DVM: "the unvaccinated." According to MRR, agencies are obligated to conduct special distributional analyses for them.

Agency actions through 03/15/2022

- ⊙ 490 rules (167 ES) reviewed by OIRA
- ⊙ 7 proposed or final rules cite MRR
- ⊙ 0 define DVM
- ⊙ 0 include relevant distributional analysis

Richard B. Belzer
rbelzer@post.harvard.edu

- A review of regulatory actions to date indicates that distributional analysis is not a serious proposal.

Changes implicitly required in economic assumptions and defaults

⊙ DVM discount rates

- Much higher than 7% (Circular A-4)
- Effect on aggregate net benefits depends on how benefits and costs are distributed

⊙ DVM WTPs

- Lower for some benefits (e.g., chemicals, pesticides, DW contaminants, climate change)
- Higher for other benefits (e.g., public safety, K-12 school quality, 'affordable' housing)

Richard B. Belzer
rbelzer@post.harvard.edu

1. Taking account of effects on DVMs requires estimating benefits and costs specifically for them.
2. DVMs will have much higher discount rates.
 1. They will be higher than A-4's 7%, and of course much higher than the 3% discount rate some agencies routinely use because 7% doesn't yield net benefits.
 2. We can't say a priori whether accounting for distributional impacts will raise or lower net benefits. This depends on how benefits and costs are distributed.
3. DVMs will have different WTPs (including different VSLs).
 1. WTPs will be lower for regulatory benefits that are especially important to the rich.
 2. But WTPs will be higher for regulatory benefits of special interest to DVMs.

These changes will undermine the administration's stated priorities

Our Nation today faces serious challenges, including a massive global pandemic; a major economic downturn; systemic racial inequality; and the undeniable reality and accelerating threat of climate change. It is the policy

- ⊙ Pandemic (e.g., lockdowns, mandates)
- ⊙ 'Economic downturn' (?)
- ⊙ 'Systemic racial inequality' (?)
- ⊙ Climate change (i.e., CAFE, GHG, energy policies)

Richard B. Belzer
rbbelzer@post.harvard.edu

PANDEMIC

1. Lockdowns, school closures, etc. hardest on the poor.
2. The Administration has created a new DVM: "the unvaccinated".

ECONOMIC DOWNTURN

1. Unclear what was intended. GDP growth in 2020:Q4 incompatible with 'downturn'.

Questions?

Richard B. Belzer, Ph.D.
PO Box 5486
Johnson City, TN 37602

(703) 200-4260
rbbelzer@post.harvard.edu
