

F. ASSESSMENT OF THE RIAS AND THE REGULATORY AFFAIRS DIRECTORATE

1. Overview Weaknesses in the Regulatory Impact Analysis Statement

42. The weaknesses in the RIAS go to its heart and impugn its central purpose: making subordinate legislation more efficient and the government more accountable. First, very few cost-benefit analyses (CBAs), or other types of detailed economic analyses, are being done despite the requirement in the RIAS. The quality is questionable in some cases (e.g., pulp and paper regulations in May 1992 do not attempt to quantify the benefits of these costly regulations). It appears that proper CBAs are often beyond the skills of many program branch officials who are usually responsible for preparing the RIAS. They need to get help from economists (but not all economists have expertise in CBA, which is a specialized skill). Further, program branch officials often fail to appreciate the value of economic analysis in the earliest stages of developing new regulations.

43. Second, there is no evidence of enforcement of the policy statement that the benefits to society must exceed total social costs as specified in the 1986 Guiding Principles. Third, RAD lacks the power to force departments to do proper CBAs and does not have the resources to help regulatory departments do proper CBAs. Fourth, the RIAS cannot cope with regulations whose primary objective is to redistribute income because, by their very nature, they will impose a deadweight loss on the economy.¹²

44. Fifth, officials indicate that solutions to policy (political) problems are often chosen before the economic analysis is done. Thus the RIAS is often viewed as a form-filling exercise which is done after the decision has been made to propose new regulations and even after they have been drafted. Thus, what was seen as a tool to assist departments in deciding whether, when, and how extensively to intervene, by focusing on defining the problem, and by generating alternatives and evaluating them, has become in many cases an exercise in ex-post-facto rationalization for decisions taken on other grounds. It should be noted that some officials in some departments have come to see that the RIAS is not a reporting form, but an ex-ante mode of analysis, the end product of which may be a set of specifications for new regulations. In other words, the RIAS's greatest value may lie in determining that the real problem is far less than it was originally perceived, hence no action is justified ("the game is not worth the candle"). Or the product of the RIAS may be a non-regulatory and far less intrusive or costly method of government action, e.g., a set of voluntary guidelines worked out with various stakeholders.

2. Definition of a "Major" Proposed Regulation

45. The importance of what constitutes a "major" proposed regulation lies in the fact that, as the RIAS Writers' Guide makes clear, new regulations and amendments having a major impact¹³ "require a full cost-benefit analysis. In such cases, quantification of costs and benefits is necessary."¹⁴ The 1991 interim procedures manual for new regulations states that "a major impact occurs where there is a significant impact on any sector of the economy or where a minor impact is experienced over

¹² In the U.S., in August 1983, the "Regulatory Policy Guidelines" condemned price, output and entry control regulations as per se violations of Executive Order 12291. See Presidential Task Force on Regulatory Relief, *Reagan Administration Regulatory Achievements* (Washington, D.C.: USGPO, August 11, 1983).

¹³ The *RIAS Writer's Guide* (p. 23) indicates that "roughly speaking, there are three categories of regulations and amendments; those which will have a major impact, those which have some impact and those which have a trivial impact."

¹⁴ *Ibid.*, p. 32.