

How to Avoid Regulatory Analysis Stage Fright – Tips, Approaches, Lessons Learned

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Annual Interagency Rulemaking Seminar

October 20, 2026

What is a Regulatory Analysis?

- Heart of the SONAR
- Most directly addresses the need and reasonableness for a proposed rule
- Assessment of the costs and benefits of the rule
- Compares two future scenarios:
 - Reference scenario (future with the rule)
 - Policy scenario (future without the rule)
- Who is the audience?
 - All interested stakeholders
 - The Administrative Law Judge

What's in a Regulatory Analysis?

Minnesota Statute ([Minn. Stat. § 14.131](#)) – 8 questions to answer about the proposed rule

1. Who will be affected?
2. What are the probable costs to the rulemaking agency or any other agency and what are effects on state revenues?
3. Are there less costly methods or less intrusive methods for achieving the rule's purpose?
4. What alternatives for achieving the rule's purpose were considered any why were they rejected?
5. What are the probable costs of complying to the regulated community?
6. What are the probably costs or consequences of not adopting the proposed rule? (What are the **benefits** of the rule?)
7. Are there differences between the proposed rule and existing federal regulations and what is the need for and reasonableness of each difference?
8. What is the cumulative effect of the rule with other federal and state regulations related to the rule's purpose?

Approaches to answering the Regulatory Analysis questions

- Collaborative/team effort
- In comparing future scenarios with and without the proposed rule, keep the analysis narrowed to just the rule
- Cast a wide net at first and then narrow it down
- Quantitative vs qualitative analysis – just because something cannot (easily) be quantified, does not mean it should be left out
- Whenever possible draw on the work of other states who have enacted similar rules
- Statute requires a reasonable effort; perfection is not the goal

Who will be affected by the rule?

Statute language:

Description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

Common themes:

- Who tends to be affected by our rules: Manufacturers, Related Industries, Retailers, General Public, various MN sub-populations depending on the rule
- Discuss any stakeholders that could be affected by the proposed rule in that they bear costs or receive benefits as a result of the rule

Example: Clean Cars Minnesota

Agency costs and impacts on state revenues?

The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

Common themes:

- Often how much can be spent to implement and enforce a rule has already been determined by legislative decision
- Allocating this budget across agency programs (and potentially other agencies)
- Current full cost of an FTE = \$175,000/year
- Impact on state revenues?
 - Any fees to be paid by regulated community?
 - Could rule have an impact on business (production) or consumer (purchasing) decisions in MN and thus impact state tax revenues?

Example: Clean Cars Minnesota

Less costly ways to achieve rule's purpose?

A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

Common themes:

- Need to justify why other methods are infeasible, ineffective, or more costly to achieve the rule's purpose

Example: Cumulative Impacts rule

Alternatives considered for achieving the rule's purpose?

A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.

Common themes:

- Extension of the previous question
- Can restate the alternatives brought up in the previous section
- How were they assessed and why do they fall short of achieving the rule's purpose?

Continued example: Cumulative Impacts rule

Compliance costs to the regulated community?

The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

Common themes:

- Costs are usually easier to quantify than benefits
- Surveying the regulated community can be useful, but should be supplemented by agency's own analysis, especially with the incentive to overestimate costs
- OK to use ranges, averages and to acknowledge uncertainty
- We cannot estimate likely costs for any single regulated party

Example: Air Toxics Regulatory rule

Costs of not adopting the rule?

The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

Common themes:

- What are the benefits of the rule? (Costs of non-adoption are forgoing these benefits.)
- Often hard to quantify, but that does not mean they should not be mentioned
- Be sure to address all the affected classes of people identified in the first section of the Regulatory Analysis

Example: Clean Cars Minnesota

Differences from existing regulations?

An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

Common themes:

- Why do we need the rule given the context of existing federal regulations?
- Is adopting the rule in Minnesota compliant with existing federal regulations?

Cumulative effect with other federal/state regulations

An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

Common themes:

- “Cumulative effect” is “the impact that results from incremental impact of the proposed rule in addition to the other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time. ”
- Describe the collective regulatory results from adding the incremental impact of the proposed rule to other state and federal rules related to the same specific purpose.

Example: PFAS Currently Unavoidable Use rule

What about equity?

MPCA Environmental Justice Framework – requires an equity analysis as part of every rulemaking to ensure that rule is fair and equitable and addresses any disparities in exposures and impacts

Common themes:

- Does the rule reduce disproportionate exposures and impacts?
- Does the rule allow for meaningful involvement of those that will be affected by the rule?

Example: Clean Cars Minnesota

One last issue: Impact on small businesses over first year

Minnesota Statute § 14.127: An agency must determine if the cost of complying with a proposed rule in the first year after the rule take effect will exceed \$25,000 for a small business or municipality.

- Small business: less than 50 FTEs
- Small municipality: less than 10 FTEs
- If cannot show this is the case, then legislative approval is required.

Thank you!

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