

TESTIMONY OF ROY GAMSE
AT THE EPA TELECONFERENCE HEARING ON THE PROPOSAL ON
“INCREASED CONSISTENCY AND TRANSPARENCY IN CONSIDERING BENEFITS
AND COSTS IN THE CLEAN AIR ACT RULEMAKING PROCESS
JULY 1, 2020

I am Roy Gamse. I served at EPA in the Nixon, Ford, Carter, and Reagan Administrations. I was EPA’s Director of Economic Analysis and Deputy Assistant Administrator, responsible for overseeing EPA’s regulation development process and its economic analysis in support of regulation development.

The title of my comments today is
“EPA Is Combatting Over-Regulation By Over-Regulating Itself (Again).”

The Trump Administration has been publicly committed in words and actions to reducing the number and the impact of regulations. In fact, the President’s Executive Order 13771 directs that executive branch departments must eliminate two regulations for every one promulgated, with a net reduction of the costs imposed by regulations.

It is very clear that the Administration wants to promulgate fewer regulations and that those issued should be necessary to implement statutes and should provide net benefit to the public. Unfortunately, this proposed regulation does not meet the test of being necessary to implement the Clean Air Act. Here’s why.

EXECUTIVE ORDERS 12291, 12866, ETC.

A series of Presidential Executive Orders on regulatory impact analysis and cost-benefit analysis have been issued requiring such analyses of regulations with significant impacts, including particularly Executive Order 12291 issued by President Reagan in 1981 and Executive Order 12866 issued by President Clinton in 1993. These Executive Orders apply to all significant regulations issued by EPA and all other Executive Branch departments and agencies. They spell out at a high level the kinds of analyses required, with implementation overseen by a rigorous staff of economists and analysts in OMB’s Office of Information and Regulatory Affairs (OIRA).

OMB CIRCULAR A-4

OMB Circular A-4 on Regulatory Analysis was issued in 2003 by OMB’s Office of Information and Regulatory Affairs, then headed by Professor John Graham. It prescribes in 30 detailed pages how regulatory analysis, including cost-benefit analysis, should be done. It spells out how to deal with a wide range of issues in quantifying, monetizing, and discounting costs and benefits of regulations, including unquantifiable impacts.

EPA ECONOMIC ANALYSIS GUIDELINES

EPA itself has adopted its own guidelines, specifying how regulatory analysis and cost-benefit analysis should be done for proposed environmental regulations, spelling out in much greater detail how the analytical issues and documentation should be done for EPA's rules.

EPA's first Economic Analysis Guidelines were adopted in 2000, and they were updated in 2008 and 2010. These guidelines are currently being updated once more, with a proposed draft in the last stages of an intensive review by an expert economics panel of EPA's Science Advisory Board. That panel is headed by the same John Graham who headed OMB's OIRA when it issued OMB Circular A-4, the guiding document on Federal regulatory and economic impact analysis. And it includes a former staff member of OIRA itself.

The EPA guidelines draft under review is a 430-page document. If this hearing were in person, you'd see a document one-and-a-half inches thick! It provides exhaustive prescriptive detail on costs, benefits, discounting, and economic impacts, much more so than the regulation under discussion today.

SO (WHY) IS THIS REGULATION NECESSARY?

With techniques of economic analysis and cost-benefit analysis spelled out in detail by Executive Orders, OMB guidance, and in great detail in EPA's own internal guidelines, what is the purpose of writing this regulation?

- It is not required by the Clean Air Act (and the Agency's assertion that Section 301(a)(1) provides authority is a stretch, an attempt to find permission, but no indication of a requirement).
- Section II.B. of the proposal's Federal Register Notice says *"This proposed procedural rule would not regulate any person or entity outside the EPA and would not affect the rights or obligations of outside parties."*

So if it would not reduce a pound of pollution or cause any governmental entity to do anything, the only effect is on how EPA develops regulations. It is self-regulation by EPA, which already has 30 pages of OMB instructions and 430 pages of its own guidelines reviewed by a panel of national regulatory economics experts.

Is Administrator Wheeler afraid that he cannot get his own people to follow the EPA guidelines that his people are just now updating? Obviously not.

The one and only purpose of this rule is to tie the hands of future EPA Administrators with a legally binding requirement, with the implicit assumption that future OMB reviewers won't be able to do the job that their predecessors in all Administrations of the past 40 years have done.

By turning OMB and EPA guidelines into a legal requirement, **this rule would encourage litigation over future rules to stop them, not because they don't comply with the Clean Air**

Act statute, but rather because in someone's opinion they don't meet the requirements for economic analyses that are not even required by the Clean Air Act.

That is not a reason to regulate. In an Administration that professes to want to simplify and reduce regulation, this self-regulation is just plain silly. Developing it has been a waste of resources for an Administration that professes a desire to reduce spending and government waste.

Ironically, as I said at the outset: **EPA Is Combatting Over-Regulation By Over-Regulating Itself (Again).** Why "Again?" Just as with the so-called "Science Transparency Rule," EPA is wasting resources by regulating only itself in a transparent attempt to limit or stop future regulation.

Thank you for your attention.