

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY
SUBCOMMITTEE ON ENERGY & ENVIRONMENT**

HEARING CHARTER

***EPA's Impact on Jobs and Energy Affordability: Understanding the Real Costs
and Benefits of Environmental Regulations***

Wednesday, June 6, 2012
2:00 p.m. - 4:00 p.m.
2318 Rayburn House Office Building

PURPOSE

On Wednesday, June 6, 2012, at 2:00 p.m. in Room 2318 of the Rayburn House Office Building, the Subcommittee on Energy and the Environment of the Committee on Science, Space, and Technology will hold a hearing titled, *EPA's Impact on Jobs and Energy Affordability: Understanding the Real Costs and Benefits of Environmental Regulations*. The purpose of this hearing is to examine the process used by the Office of Information and Regulatory Affairs (OIRA) and the Environmental Protection Agency (EPA) in evaluating the costs and benefits of federal environmental regulations, including the recently announced Carbon Pollution Standard for New Power Plants.¹

WITNESS LIST

- **The Honorable Cass Sunstein**, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (invited)
- **Dr. Michael Honeycutt**, Chief Toxicologist, Texas Commission on Environmental Quality
- **Mr. Eugene Trisko**, Attorney at Law, On behalf of the American Coalition for Clean Coal Electricity
- **Mr. Tom Wolf**, Executive Director, Energy Council, Illinois Chamber of Commerce
- **Mr. David Hudgins**, Director of Member and External Relations, Old Dominion Electric Cooperative
- **Mr. Richard Trzupsek**, Principal Consultant, Trinity Consultants

Background

The Office of Information and Regulatory Affairs (OIRA), established in the 1980 Paperwork Reduction Act and located within the Office of Management and Budget (OMB), is responsible for reviewing draft regulations and ensuring agency compliance with requirements in several Executive Orders pertaining to the regulatory process.² It is OIRA's responsibility to oversee and coordinate the Administration's regulatory policies and ensure that agency reports, guidelines,

¹ 77 Federal Register 22392.

² http://www.whitehouse.gov/omb/inforeg_administrator.

rules, testimony, and proposed legislation are consistent with Administration policy.³ In this capacity, OMB-OIRA commonly issues memoranda and guidance to agencies regarding the implementation of regulatory policies, actions, and goals. In accordance with these requirements, EPA and other agencies release Regulatory Impact Analyses (RIAs) that examine the costs and benefits of individual, major regulations.

Overall Regulatory Burdens

President Obama’s issuance of Executive Order (EO) 13563 on “Improving Regulation and Regulatory Review” takes a number of steps aimed at improving the cost-effectiveness of regulatory actions. Despite the principles affirmed in this EO, the number of major regulations and their price tag has grown substantially. A March 2012 analysis by the Heritage Foundation found significantly higher regulatory burdens compared to the historical pace, with 106 new major federal regulations with more than \$46 billion in costs having been adopted during the Obama Administration.⁴ In the same time period, federal regulatory agencies have seen their combined budgets grow 16 percent, and regulatory employment rise 13 percent.⁵

Role of EPA Clean Air Act Regulations

EPA regulations are playing a greater role in the overall federal regulatory enterprise as measured in rulemaking and overall costs and benefits. According to OIRA’s Regulatory Review Dashboard, (see Figure 1) EPA has nearly twice as many regulatory actions currently being reviewed than any other part of the federal government.

Figure 1. OIRA’s Regulatory Review Dashboard⁶



³ The White House, Office of Management and Budget, “Office of Management and Budget: Open Government,” <http://www.whitehouse.gov/omb/open>.

⁴ James Gattuso and Diane Katz, “Red Tape Rising: Obama-Era Regulation at the Three-Year Mark,” March 13, 2012, <http://www.heritage.org/research/reports/2012/03/red-tape-rising-obama-era-regulation-at-the-three-year-mark>.

⁵ John Merline, “Regulation Business, Jobs Booming Under Obama,” *Investor’s Business Daily*, August 15, 2011.

⁶ <http://www.reginfo.gov/public/>.

In its *Draft 2012 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*,⁷ OIRA notes the prominence of EPA Clean Air Act rules in the overall regulatory apparatus, disclosing that EPA rules represent 60 to 81 percent of the agency-estimated monetized benefits and 44 to 54 percent of the monetized costs of all federal regulations.

The report further emphasizes that 97 to 98 percent of EPA's claimed benefits come from air quality rules, and that "the large estimated benefits of EPA rules are mostly attributable to the reduction in public exposure to a single air pollutant: fine particulate matter."⁸ While footnoting six major areas of uncertainty about EPA's assumptions about particulate matter (PM) and premature mortality and stating that "further scientific work is important in this domain" and "[m]ore research remains to be done on several key questions," OIRA continues to accept EPA's particulate matter-related benefits claims to justify the costs of air quality regulations on PM as well as other pollutants. The reliance on PM can also be seen in EPA's March 2011 report, *Benefits and Costs of the Clean Air Act from 1990 to 2020*, which focused almost exclusively on ambient PM reductions in claiming that the overall benefits of the Clean Air Act (\$2 trillion) outweighed overall costs (\$65 billion) by a factor of 30 to 1.⁹ In the regulatory analysis accompanying the Agency's December 2011 Mercury and Air Toxics Standards for power plants,¹⁰ PM co-benefits represented over 99 percent of the overall benefits, rather than the air toxics being regulated (see Figure 2).¹¹

Recent environmental regulatory analysis has also increasingly relied on the use of private (as opposed to social) benefits, which allege private financial gain attributable to regulatory actions. For example, in the RIA accompanying the final New Source Performance Standards for the oil and natural gas sector in April of 2012,¹² the Agency claimed that requiring companies to capture methane from drilling operations would lead to "revenue from additional natural gas recovery" that "exceeds the costs" of compliance. Calling this practice "highly suspect," *The Economist* in February of this year described the increasing influence of private benefits and PM co-benefits for new federal rules:

⁷ http://www.whitehouse.gov/sites/default/files/omb/oira/draft_2012_cost_benefit_report.pdf.

⁸ Ibid.

⁹ <http://www.epa.gov/air/sect812/prospective2.html>.

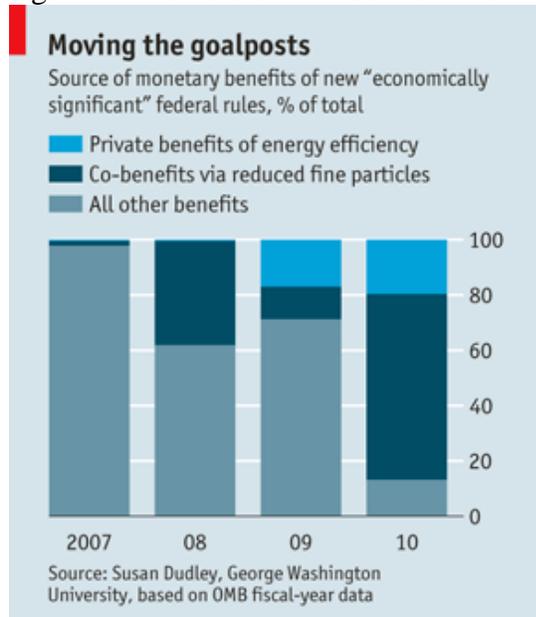
¹⁰ 77 Federal Register 9304.

¹¹ Testimony of Anne Smith, October 4, 2011,

http://science.house.gov/sites/republicans.science.house.gov/files/documents/hearings/100411_smith_0.pdf.

¹² www.epa.gov/airquality/oilandgas/pdfs/20120417finalrule.pdf.

Figure 2. The Role of PM Co-Benefits and Private Benefits¹³



In late March, EPA announced its proposed Carbon Pollution Standard for New Power Plants, despite concerns that the regulation could effectively prevent the construction of new coal-fired power plants.¹⁴ While Executive Order 13563 requires that agencies “propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs,” EPA stated that the rule “will result in negligible CO₂ emission changes, energy impacts, quantified benefits, costs, and economic impacts by 2020.”¹⁵

Executive Order 13563

President Obama issued EO 13563, “Improving Regulation and Regulatory Review,” on January 18, 2011.¹⁶ EO 13563 outlined several imperatives for the federal government’s regulatory system while reiterating the principles, structures, and definitions governing regulatory review established in Executive Orders issued in previous Administrations. The Obama Executive Order stipulates that the regulatory system must protect public health, welfare, safety, and the environment while promoting economic growth, innovation, and competitiveness. It requires the system to be “based on the best available science,” allow for public participation, promote predictability, and reduce uncertainty. It must also identify and use the most innovative and least burdensome tools, take into account benefits and costs, and ensure regulations are accessible, consistent, and easy to understand. Furthermore, the system must measure and seek to improve the results of regulatory requirements.

EO 13563 reaffirms many of the requirements and principles established in the Clinton Administration’s Executive Order 12866; specifically that the benefits of regulatory actions must

¹³ *The Economist*, “The Rule of More: Rule-making is being made to look more beneficial under Barack Obama,” February 18, 2012, <http://www.economist.com/node/21547772/print>.

¹⁴ Robert Bryce, “Is There Still a Case for Coal?” *Manhattan Institute Issues* 2012, No. 13, May 2012, http://www.manhattan-institute.org/html/ir_13.htm.

¹⁵ <http://epa.gov/carbonpollutionstandard/pdfs/20120327proposalRIA.pdf>.

¹⁶ Executive Order 13563, “Improving Regulation and Regulatory Review,” Issued by President Barack Obama, January 18, 2011, <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>.

justify costs; regulations must be tailored to impose the least burden on society and take into account the costs of cumulative regulations; selection of the regulatory approaches that maximize net benefits; specification of performance objectives; and the identification and assessment of available alternatives to direct regulation. However, President Obama's Order also permits agencies to "consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts."

President Obama's Order also includes specific requirements for agencies regarding public participation, integration and innovation, flexible approaches, the use of science, and retrospective analyses of existing rules. The Order asks agencies to coordinate, simplify, and harmonize their regulatory efforts to avoid overlap or redundancies, and identify approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Agencies are also urged to come up with a method to conduct retrospective analyses of existing regulations in order to identify any ineffective or excessively burdensome regulations and later streamline, modify, expand, or repeal those identified. Additionally, each agency must "ensure the objectivity of any scientific and technological information and processes used to support the agencies regulatory action."

Cumulative Effects of Regulation

In response to Executive Order 13563 and recommendations on strengthening regulatory review by the White House Jobs Council,¹⁷ OIRA Administrator Cass Sunstein distributed an OMB Memorandum on March 20, 2012 with the subject "Cumulative Effects of Regulations."¹⁸ The letter identified key recommendations from the executive order, and outlined a list of steps that agencies should consider in order to incorporate consideration of cumulative effects, reduce "redundant, overlapping, and inconsistent requirements" and "identify opportunities to harmonize and streamline multiple rules." Furthermore, the memorandum directed agencies, where appropriate and feasible, to consider "cumulative effects and opportunities for regulatory harmonization" and "carefully assess the appropriate content and timing of rules in light of those effects and opportunities" in the rule analysis process.

The steps outlined in the guidance stipulated ways for agencies to implement and incorporate recommendations, considerations, and principles outlined in the executive order. Issues addressed by the steps included public comment and early engagement of stakeholders in the rulemaking process; specific consideration of cumulative effects vis-à-vis small businesses and start-ups; identification of opportunities to increase net benefits while decreasing costs; consideration of the relationship between proposed and existing regulations; identification of opportunities to eliminate inconsistency and redundancy; coordination of timing, content, and requirements of multiple rulemakings for a particular sector or industry; and incorporating consideration of the interactive and cumulative effects of multiple regulations affecting specific sectors as part of agencies retrospective analysis of existing rules.

Previous Guidance to Agency

Executive Order 12866

¹⁷ <http://www.jobs-council.com/recommendations/summary-of-road-map-to-renewal-report/>.

¹⁸ <http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/cumulative-effects-guidance.pdf>.

In September of 1993, President Clinton issued Executive Order 12866, “Regulatory Planning and Review.”¹⁹ The order established a regulatory planning and review process whereby the OMB generally, and OIRA specifically, was assigned responsibility for review of the agency rulemaking process; furthermore, the Order designated OIRA as “the repository of expertise regarding regulatory issues, including methodologies and procedures that affect more than one agency...” Pursuant to this characterization, the Order proceeded to assign substantial responsibility to OIRA both with regards to the regulatory process in general and the implementation of the Order specifically.

The stated intention of the order was to “reform and make more efficient the regulatory process” and it established a regulatory philosophy and principles for agencies to incorporate or abide by in order to achieve this end. Per the identified principles, agencies would be required, among other things, to assess the costs and the benefits of intended regulations, and propose or adopt a regulation “only upon a reasoned determination that the benefits of an intended regulation justify its costs.”²⁰ The order also established the organization of the regulatory planning and review process, and assigned OMB and OIRA responsibility for ensuring that agencies incorporated the principles in the rulemaking process.

OMB Circular A-4

Circular A-4, issued by the Office of Management and Budget to the heads of executive agencies and establishments on September 17, 2003, provides guidance to Federal agencies on the development of regulatory analysis and regulatory accounting statements as required by Executive Order 12866 and the Regulatory Right-to Know Act.²¹ This circular served as a replacement for OMB’s 1996 “Best Practices” document and the subsequent guidance issued in 2000. Circular A-4 defines “good regulatory analysis” and also helps standardize the manner in which the benefits and costs of Federal regulatory action are measured and reported. It also incorporated and elaborated on the regulatory philosophy and principles outlined in Clinton’s order.

Per the circular, regulatory analyses should contain a statement of the need for the proposed action, which would include an identification of the problems to be addressed and specific authority to do so. An examination of alternative approaches based on several factors and variables must also be undertaken, followed by an evaluation of benefits and costs, both qualitative and quantitative, of the proposed action and identified alternatives. The circular provides instructions for agencies on how to perform a cost-benefit analysis, identifying key components and characteristics, such as establishment of a scope and baseline, evaluation of alternatives, and the transparency and reproducibility of results. Furthermore, the circular identifies opportunity cost as a key measure in estimating costs and benefits; OMB identifies “willingness-to-pay,” or what individuals are willing to forgo to enjoy a particular benefit, as the most appropriate metric, although “willingness-to-accept,” an individual’s willingness to accept

¹⁹ <http://www.whitehouse.gov/sites/default/files/omb/inforeg/eo12866.pdf>.

²⁰ This is a departure from a prior executive order, issued by President Reagan in 1981, which stipulated, “Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society...the alternative involving the least net cost to society shall be chosen...” Executive Order 12291, “Federal Regulation” issued by President Ronald Reagan. February 17, 1981. Accessible at: <http://www.archives.gov/federal-register/codification/executive-order/12291.html>

²¹ The White House, Office of Management and Budget, “Circular A-4,” September 17, 2003, http://www.whitehouse.gov/omb/circulars_a004_a-4/.

compensation, is also included as a possible measure in some circumstances. The circular directs agencies to take into account ancillary benefits and countervailing risks in addition to simply examining direct benefits and costs.

OMB Final Information Quality Bulletin for Peer Review

The general authority granted to OMB allows the office to oversee the quality of agency information, analyses, and regulatory action. Thus, as part of a larger effort to improve the quality of scientific information upon which policy decisions are based, OMB issued its “Final Information Quality Bulletin for Peer Review” in December of 2004.²² This bulletin, applicable to all departments and agencies, established “government-wide guidance aimed at enhancing the practice of peer review of government science documents” in order to increase the quality and credibility of scientific information generated by the federal government.

The guidance addressed several questions fundamental to the peer review process such as what information is subject to peer review, the selection of appropriate reviewers, opportunities for public participation in the process, and additionally defined a planning process that would allow for dialogue between the agency, the public, and the scientific community. It also established definitions and government wide standards concerning when peer review is required and what type of peer review should be considered in various circumstances.

EPA’s Guidelines for Preparing Economic Analyses

In order to meet the requirements of Executive Order 12866 and OMB Circular A-4, the Environmental Protection Agency undertook internal efforts to develop a framework for economic analyses that would both “inform the policy making process and satisfy OMB’s requirement for regulatory review.” This process resulted in the agency’s publication of *Guidelines for Preparing Economic Analyses*,²³ which established a scientific framework for performing economic analyses of environmental regulations and policies.

The document provides guidance for conducting cost-benefit and economic impact analyses, how to perform distributional analyses, and a review and explanation of discounting procedures to be used in evaluating environmental regulatory actions. The guideline also attempts to ensure that issues inherent in assessing benefits and costs, such as uncertainty, timing, and valuation, are treated in a consistent manner in economic analysis throughout the Agency and across all program offices.

²² <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2005/m05-03.pdf>.

²³ US Environmental Protection Agency, Office of the Administrator “Guidelines for Preparing Economic Analyses,” December 2010. Accessible at: [http://yosemite.epa.gov/ee/epa/erm.nsf/vwAN/EE-0568-51.pdf/\\$file/EE-0568-51.pdf](http://yosemite.epa.gov/ee/epa/erm.nsf/vwAN/EE-0568-51.pdf/$file/EE-0568-51.pdf)