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July 22, 2020

U.S. Environmental Protection Agency
EPA Docket Center
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Docket ID: EPA-HQ-OAR-2020-0044-0001

Proposed Rule: Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process

Introduction

Citizens Against Government Waste (CAGW) is a private, nonpartisan, nonprofit organization representing more than one million members and supporters nationwide. CAGW's mission is to eliminate waste, mismanagement, and inefficiency in the federal government. CAGW was founded in 1984 by the late industrialist J. Peter Grace and syndicated columnist Jack Anderson to implement the recommendations of President Ronald Reagan's Private Sector Survey on Cost Control, also known as the Grace Commission.

Background

Businesses often use a cost-benefit analysis to determine the best course of action to achieve a goal. *Entrepreneur Magazine* stated it is "a process by which you weigh expected costs against expected benefits to determine the best (or most profitable) course of action." For example, a company's sales director must decide whether or not to implement a new computer-based system for management and sales processing. The sales force has a minimal understanding of computers, there are few computers in the office, and an extensive training program would have to be implemented for the system to work efficiently. By doing an analysis on the cost of purchasing, installing, training the sales force, and lost productivity compared to what the system would do to increase sales capacity, enhance customer service and retention, the sales director finds the benefit would be \$90,000 annually compared to cost of \$55,800 to install, train the employees, and lost productivity. Clearly, the payback time of less than a year is worth the investment.

Federal agencies, which issue thousands of regulations a year, are also required to assess expected costs and benefits for a "few hundred of these rules deemed to be significant" and for those rules that would have the greatest economic impact, "agencies must also include an

assessment of alternatives,” according to a September 11, 2014 Government Accountability Office (GAO) report. The study looked at the compliance of agencies with “broadly applicable directives and guidance related to significant federal rulemaking.”

The GAO discovered that of the 203 rules they reviewed, most of the economically significant rules contained some monetized costs, as did most of the major rules and some of the significant rules. Most agency officials tried to monetize costs and benefits whenever possible, regardless of whether it was a significant rule, but found determining the value of the regulation’s benefit was difficult compared to determining its cost.

The GAO reported that the rulemaking process was not as transparent as it could be, since 72 percent of the rules had no language to explain why it was designated as significant. Some agency officials suggested that the Office of Management and Budget’s (OMB) Office of Information and Regulatory Affairs (OIRA) did not consistently provide a reason to make the rule significant. The GAO recommended that the rulemaking process could be more transparent if the significance designation was better explained and communicated.

The importance of undertaking cost-benefit analyses for government regulations, in particular at the Environmental Protection Agency (EPA), was recognized by the Supreme Court in 2015 in *Michigan v. EPA*. The Court held that the agency was unreasonable when it deemed cost irrelevant to regulate power plants and that, “It is not rational, never mind ‘appropriate,’ to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits. Statutory context supports this reading.” As a result, the EPA “strayed well beyond the bounds of reasonable interpretation in concluding that cost is not a factor relevant to the appropriateness of regulating power plants” and that “EPA must consider cost – including cost of compliance – before deciding whether regulation is appropriate and necessary. It will be up to the Agency to decide (as always, within the limits of reasonable interpretation) how to account for cost.”

One of President Trump’s first actions was to sign Executive Order (EO) 13771 on January 30, 2017, which required every time an agency proposes a notice and comment period for a new regulation, the agency shall also identify at least two regulations to be repealed. The goal of the EO was to make the government more “prudent and financially responsible in the expenditure of funds, from both public and private sources.” In other words, in addition to managing tax dollars through the budget process, it was also important to “manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.”

On March 28, 2017, President Trump signed EO 13783, which set a national policy “to promote clean and safe development of our Nation’s vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation. Moreover, the prudent development of these natural resources is essential to ensuring the Nation’s geopolitical security.” The EO required all agencies to “immediately review existing regulations that potentially burden the development or use of

domestically produced energy resources and appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law.”

The EO also focused on the EPA’s role with energy by stating it is “the policy of the United States that, to the extent permitted by law, all agencies should take appropriate actions to promote clean air and clean water for the American people, while also respecting the proper roles of the Congress and the States concerning these matters in our constitutional republic” and that “necessary and appropriate environmental regulations comply with the law, are of greater benefit than cost, when permissible, achieve environmental improvements for the American people, and are developed through transparent processes that employ the best available peer-reviewed science and economics.”

Within 45 days of the EO, each agency head was required to develop and submit to the OMB director a plan to carry out a review of all existing regulations, orders, guidance documents, polices and other similar actions that “potentially burden the development or use of domestically produced energy” and within 120 days submit a draft final report of “specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency actions that burden domestic energy production.”

These EOs played a significant role in revitalizing and growing the U.S. economy, leading to one of the lowest unemployment rates in history. Those foundational building blocks still remain and should help economy rebound after COVID-19.

On June 7, 2018, then-EPA Administrator Scott Pruitt announced the agency would issue an Advance Notice of Proposed Rulemaking (ANPRM) for “Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process,” to solicit public input on whether and how to change the way the EPA considers costs and benefits in making regulatory decisions. CAGW agreed with Administrator Pruitt’s remarks that the Obama administration had inflated the benefits and underestimated the cost of its regulations through “questionable cost-benefit analysis.” Thus, the purpose of the ANPRM and following notice and comment periods would provide more clarity and “real-world accuracy” on the impact of the EPA’s decision making on the economy and the nation.

Comment

While presidents have issued EOs to evaluate cost-benefit analyses of regulations for some time, they can be enforced differently by succeeding administrations. A more ideal situation would be for Congress to codify principles for a cost-benefit analysis. Until that occurs, a regulation with specific direction and requirements should provide more consistency and transparency in conducting these important procedures.

The purpose of the June 11, 2020 proposed rule is to make sure any significant rules written under the Clean Air Act “ensure that information regarding the benefits and costs of regulatory decisions is provided and considered in a consistent and transparent manner.” According to a 2017 “Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency

Compliance with the Unfunded Mandates Reform Act,” across the federal government, “the rules with the highest estimated benefits as well as the highest estimated costs come from the Environmental Protection Agency and in particular its Office of Air and Radiation. Specifically, EPA rules account for over 80 percent of the monetized benefits and over 70 percent of the monetized costs.”

The proposed cost-benefit rule is composed of the following three elements:

- The EPA must prepare a cost-benefit analysis for all future significant proposed and final rules under the Clean Air Act.
- Any cost-benefit analysis must be developed using the best scientific information in accordance with best practices from the economic, engineering, physical, and biological sciences.
- Additional methodological requirements are required to increase transparency providing cost-benefit results and at the same time continue the standard practices of measuring net benefits consistent with President Clinton’s October 1993 [EO 12866](#). That EO required that significant regulatory actions be submitted for review at OIRA. These requirements include having an annual effect on the economy of \$100 million or more; adversely affect the economy or sectors of the economy in a material way; interfere with another with action taken by another agency; alter the budgetary impacts of entitlements, grants, user fees, etc.; and, raise novel legal or policy issues.

It is important that the EPA develops a clear, understandable, consistent methodology to cost-benefit analysis. A uniform approach when promulgating a regulation and considering cost-benefit analyses should occur for all statutes and especially with the Clean Air Act, considering its scope, complexity, and use of technology-based standards.

The agency must be fully transparent in its analysis and not utilize entrenched policy beliefs to measure a benefit or cost without considering other scientific data, no matter the source. For example, in his March 9, 2011 [testimony](#) before the House Oversight and Government Reform Subcommittee on Regulatory Affairs, Stimulus Oversight, and Government Spending, American Chemistry Council Vice-President of Regulatory and Technical Affairs Michael Walls said,

For regulations that aim to reduce risks, effective cost-benefit analysis requires objective risk assessments. A typical chemical risk assessment requires numerous default assumptions to address uncertainty (e.g., assuming a particular impact of a chemical at human exposures below the lowest dose tested in laboratory animals). Sometimes, the Agency must choose between its default assumption and actual data that contradict the chosen assumption. Unfortunately, EPA often chooses to maintain a default assumption even in cases where the weight of scientific evidence would suggest otherwise. Such decisions create a disincentive for the collection and use of data and undermine the scientific credibility of the regulatory process. This problem occurs across program offices at EPA, but most notably in the Integrated Risk Information System (IRIS) program under the Office of Research and Development (ORD).

CAGW agrees with Mr. Wall, as well as the statement by the U.S. Chamber of Commerce in its August 2018 comments to the June 2018 ANPRM, that the EPA is often not clear or concise when it summarizes its cost-benefit analysis and often presents results in a deceptive manner. The Chamber noted that the EPA often claims there is a health benefit from a regulation and that it will save a certain number of lives. But, in truth the “regulation will reduce risks for exposed populations, often in a very non-uniform manner geographically, and often these risk reductions are very minute and occur over long time spans.”

Another example of a failure in the EPA’s cost-benefit analysis process was discussed in a June 6, 2018 *Wall Street Journal (WSJ)* editorial, which noted that during the Obama administration, the EPA introduced “social costs” and “social benefits” and speculated how regulatory inaction would affect all sorts of events, from rising sea levels to pediatric asthma. The EPA also claimed that domestic-based regulations would have global impacts and, snubbing OMB’s best practices, speciously raised the cost of carbon emissions. Just before introducing the Clean Power Plan, the EPA raised the social cost of a ton of carbon emissions from an average of \$21 to \$36. The agency also declared the social cost of methane was \$1,100 per ton just before releasing new oil and gas regulations.

The Trump administration recalculated these figures to include only provable domestic benefits. According to the *WSJ*, “The social cost estimates dropped to an average of \$5 per ton of carbon and \$150 per ton of methane. That made a big difference in the cost-benefit analysis. While the Obama Administration claimed the Clean Power Plan would yield up to \$43 billion in net benefits by 2030, the Trump EPA concluded it would carry a \$13 billion net cost.”

CAGW also asks that the EPA takes into consideration the costs for small businesses. The following points were made in a March 2017 Chamber of Commerce report, “The Regulatory Impact on Small Business: Complex. Cumbersome. Costly”:

- Government regulations have a sizable impact on free enterprise in America, disproportionately impacting small businesses.
- Federal regulations alone are estimated to cost the American economy as much as \$1.9 trillion a year in direct costs, lost productivity, and higher prices. The costs to smaller businesses with 50 employees or fewer are nearly 20% higher than the average for all firms.
- Every \$1 increase in per capita regulatory expenditures are directly correlated with decreases in the smallest firms (those employing between one and four persons) by 0.0156%, a figure whose burden quickly adds up.
- Based on the current regulatory climate, nearly one in three chamber executive researchers spoke with as a part of this project say they would not actively encourage new business establishment and relocation in their regions. More than two-thirds reported that federal regulations have become “more” or “much more” significant over the past several years.

These costs either are absorbed by the business, passed along to the consumer, or a combination of both.

The National Federation of Independent Business (NFIB) pointed out in its June 28, 2018 comments to the EPA concerning the ANPRM that regulatory costs on small businesses are often overlooked and the agency does not include “the value of a small business owner’s own time needed to gain an understanding of and to comply with a rule, which is a real and substantial cost to a small business.” NFIB wrote that many small businesses do not have the ability to hire a lawyer, an accountant, or other experts to provide advice and ensure compliance with EPA rules. They must spend much of their own time, which is often limited, to educate themselves about the regulation and follow it correctly.

Considering small businesses represent 44 percent of the U.S. economy, it is important that the EPA does not impose costs that are disproportionately cumbersome and expensive compared to larger companies.

Numerous members of Congress, state officials, and stakeholders agree that the EPA must ensure that the Clean Air Act rules proposed under the ANPRM must provide consistent and high quality cost-benefit analyses for significant rules. The rules must be objective, clear, transparent, and consider all the best scientific data in cost-benefit determinations. Doing so will live up to the EPA’s desire to provide a “honest accounting standard to improve future Clean Air Act rules.”

Sincerely,

Handwritten signature of Thomas Schatz in black ink.