

COMMENTS OF ROY GAMSE
ON THE EPA SCIENCE ADVISORY BOARD PUBLIC TELECONFERENCE ON THE PROPOSED RULE
"INCREASING CONSISTENCY AND TRANSPARENCY IN CONSIDERING BENEFITS AND COSTS
IN THE CLEAN AIR ACT RULEMAKING PROCESS"
SEPTEMBER 15, 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 the economic analyses used in regulation development.

I appreciate your diligent review of this proposal, but I fear that EPA is leading you astray. There is no reason for this proposal to be a rule rather than guidance. It is not required by the Clean Air Act. EPA's assertion that Section 301(a)(1) provides authority is a stretch, a feeble attempt to find permission, but no indication of a requirement. EPA's Federal Register Notice says, *"This proposed procedural rule would not regulate any person or entity outside of EPA and would not affect the rights or obligations of outside parties."*

So the rule won't reduce a pound of pollution or cause any government entity other than EPA to do anything in the future. Why issue it? To get EPA to do the right analysis? Is such a rule needed? No, it isn't.

OMB Circular A-4, issued in 2003 by Professor Graham when he managed OMB's Office of Information and Regulatory Affairs (OIRA) provides 30 pages of detailed instructions on doing these analyses. OMB for decades has overseen a very rigorous mandatory interagency review process that every significant proposed regulation is required to pass through.

Moreover, EPA's own Economic Analysis Guidelines contain 430 pages of even more detailed instructions on how to do them. Professor Graham is currently leading an update of those guidelines that is nearing completion. If EPA or the SAB has identified things missing from or requiring change in those guidelines, I'm sure Professor Graham and his SAB panel colleagues will be gladly incorporate them in their current review. I'm also sure that OMB and Administrator Wheeler are capable of ensuring that OMB's and EPA's guidelines are implemented properly.

Which leaves the obvious question, why promulgate a rule if it doesn't affect anyone but EPA? The one and only purpose of this self-regulation is to tie the hands of future EPA Administrators with a requirement that is not based in any environmental statute, with the implicit assumption that future OMB reviewers and EPA Administrators won't be able to do their jobs.

Does the Administrator think that without this rule he cannot get his own staff to do proper analysis spelled out in voluminous OMB and EPA guidelines and enforced by OIRA staff? Does he think that a regulation is necessary to get future Administrators to do so? Does he think that such a regulation would allow opponents of future rules such as primary NAAQS to delay or

block them based on failure to do the analysis properly (even if the statute does not allow such analysis to affect the decision!)? (I'm told it would not do so).

EPA is wasting resources, including theirs and yours, by regulating only itself.

My advice is to compile your recommendations for benefit-cost analysis today, feed them into the EPA economic analysis guidelines that Professor Graham's panel is completing, and advise the Administrator that in an Administration that is trying to reduce unnecessary regulations, this is a prime example of one that isn't needed.