

December 4, 2020

Paul Ray
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Eisenhower Executive Office Building
1650 Pennsylvania Avenue NW
Washington, D.C. 20503

Re: U.S. Environmental Protection Agency Final Rule, "Increasing Consistency and Transparency in Considering Costs and Benefits in the Clean Air Act Rulemaking Process," RIN 2060-AU51.

Dear Administrator Ray:

The California Air Resources Board (CARB) respectfully requests a meeting with you or the appropriate Office of Information and Regulatory Affairs (OIRA) personnel, pursuant to Executive Order 12866, regarding the United States Environmental Protection Agency (U.S. EPA) Final Rule, "Increasing Consistency and Transparency in Considering Costs and Benefits in the Clean Air Act Rulemaking Process," RIN 2060-AU51.

The OIRA website indicates that the draft Final Rule was received by OIRA on October 21, 2020.¹ Because this is a matter of vital importance to individuals, the public health, and the environment, and it is essential that public stakeholders have an opportunity to meet with OIRA, we respectfully request a meeting at the earliest possible time. We are available to meet via phone or videoconference as soon as December 3, 2020.

CARB is the expert agency charged with overseeing all air pollution control efforts in California to attain and maintain health-based air quality standards. CARB's mission is to promote and protect public health, welfare, and ecological resources through effective reduction of air pollutants while recognizing and considering effects on the economy. CARB is committed to fully and objectively estimating anticipated costs and benefits when considering regulatory actions, and has relied on longstanding

¹ See <https://www.reginfo.gov/public/do/eoDetails?rrid=131294>.

guidelines from U.S. EPA,² in conjunction with State-level requirements,³ in the analysis of economic impacts including monetary and non-monetary costs and benefits. Both at CARB and federally, benefit-cost analyses (BCA) are important elements of significant rulemakings.

Longstanding laws, policies, and protocols already result in transparent, comprehensive, and appropriately consistent analyses of significant U.S. EPA actions.⁴ They provide appropriate and necessary flexibility in evaluating costs and benefits across a wide variety of regulatory actions and various air pollutants. Rather than maintaining its reliance on these comprehensive and objective documents, and improving implementation if and as necessary, U.S. EPA's regulation would bind future administrations by codifying arbitrary, unjustified, highly burdensome, and bias-inducing regulatory requirements.

If finalized as proposed, the rule would:

- (1) Mandate an exhaustive and inflexible cost-benefit analysis for all regulations that the administrator deems "significant,"⁵ including regulations for which the agency is prohibited from considering costs.⁶
- (2) Add pointless but burdensome procedural requirements, such as a requirement that analysts evaluate at least three regulatory options, even if these options are not actually under consideration by decision-makers.
- (3) Delay, burden, and likely bias rulemakings by requiring staff to either publish all underlying data (besides data protected from publication by law) from studies used in a BCA, or forego consideration of those studies.

² U.S. EPA Guidelines for Preparing Economic Analyses, National Center for Environmental Economics, Dec. 17, 2010, updated May 2014, available at <https://www.epa.gov/environmental-economics/guidelines-preparing-economic-analyses>.

³ E.g., the California Administrative Procedure Act, Cal. Gov. Code section 11340 et seq.; Cal. Health & Safety Code secs. 38506, 38562.5.

⁴ E.g., the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. §§ 1501 et seq.; Presidential Executive Order (E.O.) 12866, "Regulatory Planning and Review," 58 Fed. Reg. 51,735 (Oct. 4, 1993); E.O. 13563, "Improving Regulation and Regulatory Review," 76 Fed. Reg. 3,821 (Jan. 21, 2011); OMB, Circular A-4, Sept. 17, 2003; U.S. EPA Guidelines for Preparing Economic Analyses, National Center for Environmental Economics, Dec. 17, 2010, updated May 2014, available at <https://www.epa.gov/environmental-economics/guidelines-preparing-economic-analyses>; U.S. EPA Plan for Periodic Retrospective Reviews of Existing Regulations, August, 2011, available at <https://19january2017snapshot.epa.gov/laws-regulations/documents-retrospective-review.html>.

⁵ This non-definition of significance far exceeds the longstanding definition of E.O. 12866, Sec. 3(f).

⁶ E.g., 42 U.S.C. § 7409(b)(1); *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 471 (2001).

(4) Burden and confuse regulatory decision-making by requiring unjustified emphasis on normal scientific uncertainty, requiring each BCA to analyze and characterize a large number of attributes, assumptions, uncertainties, variabilities, influences, and alternatives that have no basis for being standard elements of every BCA.

(5) Perhaps most significantly, the rule would drastically limit the scientific studies that could inform Clean Air Act BCAs, explicitly targeting the use of epidemiological studies. This provision is likely to preclude U.S. EPA from considering high-quality CARB-funded epidemiological or cohort studies that provide critical findings on air pollution exposures and health impacts in U.S. EPA's evaluation and development of benefits endpoints. It is difficult to imagine what rational or appropriate explanation U.S. EPA could provide for drastically limiting such studies, had the agency endeavored to provide a justification.

These drastic and unlawful changes to longstanding practice are entirely without basis. In its Notice of Proposed Rulemaking, U.S. EPA merely assumes and asserts that transparency and consistency are appropriate and useful characteristics of regulatory BCAs under the Clean Air Act; that transparency and consistency are currently insufficient; that codification of some BCA requirements is the appropriate solution (and there exist no less disruptive or burdensome means of increasing transparency and consistency that U.S. EPA could consider); and that codification of these particular BCA requirements and processes would solve the (ostensible) problem. Yet U.S. EPA has not identified any procedural deficiencies resulting in Clean Air Act regulations that may have been unjustified because a Regulatory Impact Analysis did not include all of the elements now proposed. Neither has there been any suggestion that U.S. EPA has relied on flawed economic methods or cost-benefit analyses as the basis for regulatory action, or that any failure to comply with existing requirements and guidelines has resulted in irrational or arbitrary regulations.

To the contrary, numerous analyses – including by this administration – have concluded that Clean Air Act regulations are highly cost-effective. The Trump administration's White House Office of Management and Budget (OMB) concluded, in a report to Congress published on December 9, 2019, "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[,]” and that “the estimated benefits of these rules far

Administrator Paul Ray

December 4, 2020

Page 4

exceed the estimated costs[.]”⁷ A previous, peer-reviewed study of Clean Air Act regulations determined that benefits from 1990 to 2020 would exceed costs by a factor of more than 30 to one.⁸

Rather than improving U.S. EPA’s processes in any way, codification of these baseless, but complex and burdensome, requirements would impede the work of future administrations and provide opportunities for procedural challenges of all future Clean Air Act regulations. Indeed, given U.S. EPA’s failure to articulate any need for this rule, burden, delay, and bias of future rulemakings appear to be its purpose.

We look forward to discussing these concerns with you. Jessica Gordon on my staff can be reached at (916) 324-4581 or Jessica.Gordon@arb.ca.gov regarding meeting arrangements. Thank you for your attention to these important issues.

Sincerely,



Richard W. Corey
Executive Officer
California Air Resources Board

⁷ OMB, 2017 Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act (December 9, 2019), available at https://www.whitehouse.gov/wp-content/uploads/2019/12/2019-CATS-5885-REV_DOC-2017Cost_BenefitReport11_18_2019.docx.pdf, p. 10.

⁸ U.S. EPA, Office of Air and Radiation, *The Benefits and Costs of the Clean Air Act from 1990 to 2020* (April 2011), available at https://www.epa.gov/sites/production/files/2015-07/documents/fullreport_rev_a.pdf, p. 7-1.