

Echols, Mabel E.

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To: FN-OMB-OIRA-Submission
Subject: Response to [74 FR 5977]

In response to the request for comments [74 FR 5977] on the federal regulatory review process, these comments are focused on methods ensuring that regulatory review doesn't cause undue delay and the role of cost-benefit analysis. These are illustrated by taking lessons learned with the implementation of regulations for perchlorate in the Safe Drinking Water Act and ozone NAAQS for the Clean Air Act.

In 2008 the EPA had stated that it would not set maximum contaminant levels for perchlorate in drinking water stating that there wasn't meaningful opportunity for health risk reduction. This action was a clear illustration of the Agency's unwillingness to critically look at the science and apply it in a manner consistent with the public's best interest. While the agency admitted that perchlorate in drinking water was an issue affecting pregnant women and very young children, they had brought up that the gap in the scientific literature has made it difficult to assess the levels necessary to protect this susceptible population's health. It is this kind of thinking that is causing undue delay in the setting of regulation important to the public's health. In contrast, we have seen Massachusetts and California implement a more proactive approach when it comes to the health of its susceptible populations. Massachusetts and California have set standards of 2ppb and 6ppb, respectively. They have taken the same suggestive evidence and used a precautionary philosophy to provide adequate safety for their entire public with particular concern to those most at risk by erring on the side of caution as opposed to erring on the side of negligence caused by unwarranted delay.

With regards to application of cost-benefit analysis in the sphere of public health, the Risk Impact Assessment (RIA) for the Clean Air Act (CAA) stands as an example of how the OMB's Circular A-4 suggests methodologies that obfuscate the real intent of the analysis and in doing so poorly assess the uncertainty of the net benefits in a tractable way. The RIA compiled by the EPA for the ozone NAAQS which was published in its final form in March 2008 contained a cost benefits analysis for a range of potential reductions in ozone from 0.070 to 0.079 ppm. The methods seemed to efficiently estimate Total-Costs with relatively small ranges of expected values. This was in stark contrast to the range of values estimated for the benefits. For the average total costs dollar-value, the average reported uncertainty was approximately 10%; for the average total benefits dollar-value, the average reported uncertainty was approximately 66%. In the end, this translated to an unbelievably large range of values – for one such iteration of the net benefits, the outcome was \$-5 billion to \$11 billion. For anyone this would be incredibly hard to interpret. At the one end of the estimated range, a clear benefit of \$11 billion dollars is outlined while at the other we see a negative benefit/positive cost. This negative benefit could be conversely interpreted as a net monetary gain to let people die. I believe that OMB's Circular A-4 as it relates to cost-benefits analysis and implementation of the Value of a Statistical Life (VSL) to monetize benefits serves to conceal what we are really trying to compare. Placing a dollar value on a life is incredibly difficult and depending on how it is done can vary a large amount. In fact, the EPA has published a list of values to be used for a VSL – in 2008 dollars their list varies from \$0.93 to \$21.6 million. While I understand the need for some 'number' which can be used in the end to help regulators make decisions, when health and life is on the bottom line, obfuscating that with a dollar amount gives a spurious impression to regulators that these kinds of decisions can be made strictly by looking at a single number on the bottom line. As an example of how this process could be changed we need look no further than the cost-benefit analysis conducted for the setting and implementation of perchlorate drinking water standards in California. The cost-benefit analysis there entirely bypassed the notion of a VSL and put lives affected on one side of the balance against cost of implementation. What essentially came out of this analysis was a cost per unit. Compared to monetized benefits as per the OMB's Circular A-4, this is transparent to both regulators and the public.

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