

New Federal Initiatives Project

**Scientific Integrity and the Role of
Science in Developing Regulations**

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SCIENTIFIC INTEGRITY AND THE ROLE OF SCIENCE IN DEVELOPING REGULATIONS

On March 9, 2009, President Obama issued a memorandum¹ for the heads of executive departments and agencies on “scientific integrity.” It “assign[ed] to the Director of the Office of Science and Technology Policy the responsibility for ensuring the highest level of integrity in all aspects of the executive branch’s involvement with scientific and technological processes,” and, in consultation with other agencies, directed him to “develop recommendations for Presidential action designed to guarantee scientific integrity throughout the executive branch” within 120 days.

On April 30, 2009, the House Committee on Science and Technology Subcommittee on Investigations and Oversight held a hearing² on “the Role of Science in Regulatory Reform.” Witnesses included:

- Rick Melberth of OMB Watch
- Caroline Smith DeWaal of the Center for Science in the Public Interest
- Rena Steinzor,³ Center for Progressive Reform
- Wesley Warren,⁴ Natural Resources Defense Council
- Cary Coglianese,⁵ University of Pennsylvania

Chairman Brad Miller and the majority of the witnesses did not focus on the role of science in regulatory reform (the title of the hearing) but rather expressed objections to the Office of Information and Regulatory Affairs’ role in rulemaking. In his testimony, Director of Regulatory Policy for OMB Watch Mr. Rick Melberth summarized a report that was issued in November 2008 entitled *Advancing the Public Interest through Regulatory Reform: Recommendations for President-Elect Obama and the 111th Congress*. Among the recommendations made, Mr. Melberth suggested a new approach “that emphasizes OIRA’s role as coordinator and facilitator of sound agency practices rather than second-guessing agency decisions on individual rules.”⁶ He went further to state that “agencies have the technical, scientific, economic, and social expertise to address the highly complex issues before them. OIRA does not have this range of expertise and should not be approving or rejecting individual rules.” In her testimony, Ms. Caroline DeWaal stated that “as OIRA is staffed by economists, it should avoid a scientific and technical review of regulations.”⁷ Several of the witnesses expressed their commendation for President Obama’s revocation of Executive Order 13422 which according to Chairman Miller “strengthened the influence of OIRA, which is staffed mainly by economists, over the final content of regulations first drafted by regulatory agencies’ scientific and technical experts.” He went further on to say that “the order had the effect of placing in the hands of the president, OIRA, and faceless political operatives in every agency, power over regulatory efforts that was consistent neither with statute nor with the Constitution.”⁸ Professor Coglianese’s testimony⁹ did focus on the role of science in developing regulations. He observed “science is about understanding or predicting what *is*, not about concluding or justifying what a standard *should* be... When regulators purport to rely on science as the sole basis for their policy choices, the real reasons justifying their choices remain hidden from public view.”

¹ Memorandum for the Heads of Executive Departments and Agencies, Subject: Scientific Integrity, released March 9, 2009: http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-9-09/

² Subcommittee on Investigations & Oversight hearing on *April 30, 2009* on the Role of Science in Regulatory Reform: http://science.house.gov/publications/hearings_markup_details.aspx?newsid=2430

³ Testimony By Ms. Rena Steinzor: <http://science.house.gov/publications/Testimony.aspx?TID=15071>

⁴ Testimony By Mr. Wesley Warren: <http://science.house.gov/publications/Testimony.aspx?TID=15074>

⁵ Testimony By Dr. Cary Coglianese: <http://science.house.gov/publications/Testimony.aspx?TID=15073>

⁶ Testimony By Dr. Rick Melberth: <http://science.house.gov/publications/Testimony.aspx?TID=15070>

⁷ Testimony By Ms. Caroline Smith DeWaal:
<http://science.house.gov/publications/Testimony.aspx?TID=15072>

⁸ “Subcommittee Examines Role of Science, Transparency in Regulation,” Press Release, April 30, 2009:
<http://science.house.gov/press/PRArticle.aspx?NewsID=2453>

⁹ Testimony By Dr. Cary Coglianese: <http://science.house.gov/publications/Testimony.aspx?TID=15073>

Related Links:

“Colloquium: Junk Science, the Courts, and the Regulatory State (part I)” by Jeffrey Clark,
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http://www.fed-soc.org/publications/pubID.1477/pub_detail.asp

“Colloquium: Junk Science, the Courts, and the Regulatory State (part II)” by Jeffrey Clark,
Environmental Law & Property Rights Practice Group Newsletter, Volume 2, Issue 1, Spring
1998: http://www.fed-soc.org/publications/pubID.1474/pub_detail.asp

“Independent Peer Review: The Sine Qua Non of Information Quality” by Jeffrey Ladik, *Engage*, April
8, 2004: http://www.fed-soc.org/doclib/20080222_AdLawLadik.pdf