

National President and CEO
Harold P. Wimmer

August 13, 2018

The Honorable Andrew Wheeler, Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004
Submitted via Regulations.gov

Re: Comments on the ANPRM for Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process, Docket ID No. EPA-HQ-OA-2018-0107

Dear Acting Administrator Wheeler:

The American Lung Association appreciates the opportunity to submit comments for the Advance Notice of Proposed Rulemaking for “Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process.” The Lung Association urges U.S. Environmental Protection Agency to withdraw this unnecessary advance notice.

Changes to the current system are not needed.

EPA has a long history of examining the costs and benefits of proposed and implemented regulations. As noted in the ANPRM, EPA follows the requirements under OMB’s Circular A-4 and EPA’s own Guidelines for Preparing Economic Analyses, which provide peer-reviewed and vetted guidelines for EPA to follow. EPA recognizes that these guidelines provide excellent, well-vetted and updated tools:

“EPA’s Guidelines establish a scientific framework for analyzing the benefits, costs, and economic impacts of regulations and policies, including assessing the distribution of costs and benefits among various segments of the population. They incorporate recent advances in theoretical and applied work in the field of environmental economics.”¹

Instead, EPA argues that EPA may need to reconsider the role these guidelines play in the regulatory process:

“In this ANPRM, EPA is taking comment on the role that regulatory analysis or aspects of that analysis play in decision making consistent with statutory direction, not what these existing guidance documents recommend about how best to conduct the underlying analysis of regulatory actions.”²

Advocacy Office:

1331 Pennsylvania Avenue NW, Suite 1425 North
Washington, DC 20004-1710
Ph: 202-785-3355 F: 202-452-1805

Corporate Office:

55 West Wacker Drive, Suite 1150 | Chicago, IL 60601
Ph: 312-801-7630 F: 202-452-1805 info@Lung.org

However, EPA fails to identify any real problems that exist with the current system. EPA does not explain why the current role that these analyses play in current implementation of the Clean Air Act does not provide sufficient, appropriate information that interferes with or limits the protection of public health.

Instead, EPA cites examples of comments from industry that reflect their frustrations with having to install cleanup technologies that have far-reaching, proven benefits to public health. The sample industry complaints reported in the ANPRM focus on some issues that this Administration has raised separately, concerns that have been addressed in the OMB Circular and the EPA Guidelines.

The current system is transparent.

EPA implies that the current system lacks transparency, requesting comments on the need for increased transparency. However, EPA provides no examples of opaqueness, and instead asks for examples from the public. EPA searches for a problem that does not exist. The process for cost-benefit analysis in the work EPA has done on the Clean Air Act has historically been extremely open. The analyses are completed on peer reviewed models, using peer-reviewed studies. They are open to public comments. They have survived multiple judicial reviews.

EPA's specific questions for comments on transparency echoes the troubling proposals in EPA's "Strengthening Transparency in Regulatory Science." That proposed rule is built on a similar inaccurate argument that some landmark studies available for use today should not be used, a conclusion that the scientific community robustly condemns.

Furthermore, EPA raises options for increased transparency that would bog down the existing system while adding no real value. The suggestion that EPA might require a "systematic retrospective review element" in new regulations would—at best—add burdensome work to already challenging tasks for the Agency. Such examination during that regulatory perspective could also bias the consideration of impacts. Carrying out these reviews would be impossible in an agency that already has inadequate funding.

One especially troubling and erroneous example referenced in the ANPRM is the footnote that this step could "supplement existing statutory requirements for periodic review of the adequacy of standards or guidelines (e.g. CAA 42 U.S.C. § 109(d)(1); CWA 33 U.S.C. § 304(b).)" That cited example from Clean Air Act is the provision requiring the regular review of the National Ambient Air Quality Standards (NAAQS). Under the unanimous *American Trucking* Supreme Court decision in 2001, costs cannot be a consideration in setting the NAAQS; EPA may only consider whether the level protects public health with an adequate margin of safety.³

Evidence shows that the benefits of reducing air pollution far exceed the costs.

EPA has annually provided public accountability for the costs and benefits of their regulations in the as part of the White House Office of Management and Budget (OMB) *2017 Report to Congress*

on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act. In the latest draft report posted in February 2018, the White House calculates that the costs and benefits for all rules in place in the prior ten years. Just looking at the air rules alone, the White House estimated that the costs of the 26 rules adopted under the EPA Office of Air and Radiation provided benefits valued between \$182.0 billion and \$684.1 billion, while costing the nation only \$50.4 billion to \$60.3 billion. That means that for every \$1 spent in costs, the White House OMB itself determined that the benefits ranged from \$3 to more than \$13 dollars.⁴ The 2017 draft report echoes similar findings under both Republican and Democratic presidents.

EPA has found similar evidence of the overwhelming benefits of reduced air pollution in the detailed analyses that EPA completes for proposed rules that implement the Clean Air Act. The evaluation of these costs and benefits employs peer-reviewed research and modeling.

In fact, the available research on the economic benefits of reducing air pollution *underestimates* the benefits. For example, the modeling EPA uses to assess the impacts on human health includes many endpoints that are determined to be causally or likely causally-related to air pollution, such as premature deaths, hospitalization or days missed at school from childhood asthma attacks. However, these models do not provide an assessment of other similar endpoints, such as new onset lung cancer or low birthweight babies, because cost-relevant studies are not available or have not been incorporated into these models. Given the evidence, the value of the benefits to the health of millions of Americans is significantly undercounted.

Co-benefits must remain in the cost-benefit analysis.

As part of the justification for this ANPRM, EPA cites commenters' concerns about the inclusion of co-benefits. The commenter argued that including the co-benefits from Mercury and Air Toxics Standards (MATS) made the benefits overstated compared to the costs. That complaint reflects a narrow, unrealistically limited assessment that would ignore much of the benefits that came from the reduction in particulate matter produced by reducing air toxics, including acid gases. However, this complaint is not a problem that needs fixing. The issue was raised during the review of the MATS and EPA appropriately considered and rejected it then. EPA offers no justification to reopen the door to such settled issues.

Ignoring the impact of particulate matter produced from the acid gases emitted from those power plants would deny complete information for policy makers and the public. Excluding the co-benefits of reducing particulate matter would have misled and misinformed those decision-makers and would have greatly underestimated the actual benefits of the MATS rule.

EPA must fully assess the direct and the co-benefits of reduced air pollution to follow the science. Air pollutants pose multiple threats to human health; all should be examined in the assessment of risk and in the estimate of benefits.

EPA should withdraw this advance notice.

In closing, no tangible evidence of a problem with the current processes exists. The current process offers a well-vetted, transparent process for evaluating costs and benefits of each EPA action. Decades of prior analyses document the overwhelming benefits of cleaner air compared to the costs to clean up.

The American Lung Association urges EPA to withdraw this advance notice.

Sincerely,



Deb Brown
Chief Mission Officer
American Lung Association

¹ Federal Register Vol. 83 p. 27525.

² Federal Register Vol. 83 p. 27525.

³ *Whitman v. American Trucking Associations, Inc.* 531 U.S. 457, 471 (2001).

⁴ White House Office of Management and Budget. [2017 Draft Report of Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act](#). February 18, 2018. P. 11.