



Asthma and Allergy  
Foundation of America



August 3, 2020

The Honorable Andrew Wheeler, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

*Submitted via Regulations.gov*

**RE: Comments - Docket ID No. EPA-HQ-OAR-2020-00044: Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process**

Dear Administrator Wheeler:

Thank you for the opportunity to provide comments to the U.S. Environmental Protection Agency's (EPA) Notice of Proposed Rulemaking, "Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process" (Docket ID No. EPA-HQ-OAR-2020-00044). The undersigned health and medical organizations strongly oppose the proposed rule as it is unnecessary and raises concerns about EPA's ability to carry out the core principles of the Clean Air Act. We urge you to withdraw the proposal.

**There is no justification provided for the necessity of codifying the cost-benefit analysis.**

We provided comment to the Advanced Notice of Proposed Rulemaking (ANPRM) in August 2018 highlighting many of the concerns we outline in these comments, one being the apparent lack of need for this change in cost-benefit analysis. Two years after the ANPRM, there is still no apparent need or justification for this change.

EPA already has a number of resources detailing best-practices for conducting cost-benefit analysis, notably the White House Office of Management and Budget (OMB) Circular A-4 (which is referenced on multiple occasions throughout the proposed rule) and *Guidelines for Preparing Economic Analysis*. By codifying the cost-benefit analysis as enforceable, it opens the opportunity for regulated industries to challenge regulations, costing time and money and could ultimately leave the health of Americans hanging in the balance.

There are also questions that arise when trying to determine the full scope of the impact that this rulemaking would have on clean air regulations. The proposal insists that finalization would be into a procedural rule that would have little impact on “any person or entity outside the EPA” and would be exempt from the notice and comment requirements set forth in the Administrative Procedure Act.<sup>1</sup> This contradicts statements made indicating that this rule would have a substantial impact on government and industry’s investments.<sup>2</sup> If this rule has the purpose of directing investments made by government and industry, shouldn’t the opportunity for public comment be required? The lack of clarity in what the endgame of this rule would be is concerning to say the least.

**There are invaluable health benefits to cleaning up air pollutants that could be further ignored under this proposed rule.**

In the proposal, EPA repeatedly references comments made to the Agency highlighting the need for this rule because of an assumed tendency to underestimate costs or overestimate benefits. Again, nowhere in the proposal exists justifications for that claim. On the contrary, reducing emissions have consistently exceeded expectations.

Since the implementation of the Clean Air Act in 1970, the United States has seen air quality improve due to the introduction of clean air standards, air quality monitoring, and the enforcement of pollution clean-up programs. Analyses have shown that since the implementation of the Clean Air Act Amendments in 1990, up to 370,000 deaths have been prevented and there have been almost 200,000 fewer hospital admissions for respiratory and cardiovascular illnesses.<sup>3</sup>

In the *2017 Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with Unfunded Mandates Reform Act*, the White House estimated that the 26 air rules adopted under EPA’s Office of Air and Radiation provided benefits valued between \$182 billion and \$684.1 billion with a cost a fraction of that, at \$50.4 billion to \$60.3 billion. That means, that for

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<sup>1</sup> EPA, Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Rulemaking Process, 85 Fed. Reg. (proposed June 11, 2020).

<sup>2</sup> <https://twitter.com/EPAAWheeler/status/1275482123303075840>

<sup>3</sup> <https://www.nrdc.org/resources/clean-air-acts-benefits-map>

each \$1 spent on an air regulation, the White House determined that the benefits ranged from \$3 to \$13.<sup>4</sup> By EPA's own assessment, the Clean Air Act from 1990-2020 has helped to create significant benefits for cleaning up air pollution, exceeding the costs by a factor of more than 30 to 1.<sup>5</sup>

Even with the vast improvements due to the Clean Air Act and EPA's previous commitments to protect public health, Americans are still facing multiple threats to their lung health at once – including from climate change. In April, the American Lung Association released the 21<sup>st</sup> Annual State of the Air Report. The report found that nearly five in ten people – 150 million Americans – live in counties with unhealthy ozone or particle pollution. People of color and low-wealth communities continue to bear a disproportionate burden of air pollution. There is work yet to be done to ensure that reductions in air pollution are widespread, equitable, and consistent.

Calculating the health benefits stemming from a particular regulation is a necessary tool to efficiently work towards a healthier environment for all Americans. We recognize that cost-benefit analysis has many limitations. Far too often, the estimates exceed what the cost of pollution cleanup actually is and, even more frequently, the calculation underestimates or cannot calculate all of 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.

This rule does not seem to meaningfully address those fundamental current weaknesses of cost-benefit analysis, choosing instead to address a problem that doesn't exist, thereby exacerbating a problem that does. Drastically changing the way EPA calculates costs and benefits as this proposal suggests will likely further under-value the multitude of benefits to health that come from cleaning up the air.

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<sup>4</sup>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.

<sup>5</sup> <https://www.epa.gov/clean-air-act-overview/benefits-and-costs-clean-air-act-1990-2020-second-prospective-study>

**The current cost-benefit analysis process is a prime example of EPA working efficiently to accomplish cleaner air.**

The question of whether or not to include so-called “co-benefits” in future cost-benefit analyses or to keep the analysis focused on the directly targeted pollutant flies in the face of efficiency. If efforts to reduce emissions of one pollutant end up reducing the levels of other dangerous pollutants concurrently, those additional benefits should be considered in the cost-benefit-analysis of a particular regulation.

EPA came to a similar conclusion when the issue of “co-benefits” was raised during the review of the Mercury & Air Toxics Standards (MATS) review. EPA agreed that the reductions in air toxics sparked valuable benefits in the reduction of particulate matter and that those benefits stemmed from MATS and therefore should be attributed as benefits of the standard. In fact, studies released after the original MATS cost-benefit analysis noted that the health benefits of reducing mercury air toxics was actually far greater than originally understood, yet EPA failed to update the Regulatory Impact Analysis considering this new information.

Addressing air pollution and the health risks associated with it is going to take a multi-faceted approach and EPA should fully consider efforts that are effective at reducing multiple risks to health, and credit those reductions as direct benefits of the rule.

**Emphasizing monetized benefits ignores important qualitative health benefits of clean air regulations.**

In asking about how cost-benefit analysis can best be used in Clean Air Act rulemaking, EPA has asked under what circumstances the Agency could determine a future Clean Air Act regulation “only when monetized benefits exceed costs.”<sup>6</sup> Approaching Clean Air Act rulemaking in this way will undercount qualitative health benefits that don’t have monetary value attached. Only acting to clean up air pollution if the monetized benefits exceed costs would so clearly favor industry interests over fulfilling EPA’s legal duty of protecting public health. How do you monetize the benefits of kids being able to play outside?

Especially during a time where the ability to safely be outside with family and close friends is a precious escape from taking precautions and staying indoors during a pandemic, this approach

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<sup>6</sup> EPA, Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Rulemaking Process, 85 Fed. Reg. (proposed June 11, 2020).

seems tone-deaf to the mental health benefits that arise from being able to breathe fresh air, see and experience green grass and plants, and feeling the warmth of the sun.

**The benefits of clean air and the cost of inaction on climate change stretch beyond our national borders.**

There are no physical borders in the air. Reductions in emissions – like climate-warming greenhouse gases – within the United States serves the American people and the greater good by slowing the pace of climate change. According to the Intergovernmental Panel on Climate Change, the next 11 years are critical to reducing emissions of greenhouse gases to slow climate change and protect us from the worst impacts to human health that will arise with increased global temperatures.<sup>7</sup> We strongly caution against ignoring non-domestic benefits stemming from a regulation.

The economic costs of not reducing greenhouse gas emissions – referred to as the social cost of carbon – is the best tool we have to measure the full cost of inaction on the climate crisis, but this Administration has changed the methodology for how it is calculated, vastly understating the costs. A recent report from the Government Accountability Office showed that this Administration has undercounted the costs of climate change in recent regulatory rollbacks. Prior estimates placed the social cost of carbon in the year 2050 at \$82 per metric ton while most recent estimates under this Administration place the cost far lower at \$11 per metric ton.<sup>8</sup>

The interconnectedness of climate change is similar to what we're seeing play out during the COVID-19 pandemic. We are too far advanced in our global economy to think that our country's actions are in isolation. Small changes in clerical methodology, like ignoring the global effects of what gets put into the air (or what gets taken out) can have largescale effects on the progress towards cleaning up the air and staving off the worst impacts of climate change.

**The proposed rule is another example of EPA placing restrictive requirements on which studies can be considered when determining rulemaking.**

During the public comment periods for another EPA regulation, *Strengthening Transparency in Regulatory Science*, public health experts raised serious opposition around changes in how peer-reviewed scientific studies are used in rulemaking. By restricting consideration only to studies that

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<sup>7</sup> [https://www.ipcc.ch/pdf/assessment-report/ar5/syr/AR5\\_SYR\\_FINAL\\_All\\_Topics.pdf](https://www.ipcc.ch/pdf/assessment-report/ar5/syr/AR5_SYR_FINAL_All_Topics.pdf)

<sup>8</sup> <https://www.gao.gov/products/GAO-20-254>

make underlying data public (as that rule would do if finalized), EPA is restricting the use of key health studies that would show the impact of air pollution on health.

Similarly, in this proposal, EPA is proposing that all information used in calculating benefits and costs – including data and modeling – be made publicly available. Even though the rule commits to “[continue] to protect information claimed as confidential business information (CBI), personally identifiable information (PII), and other privileged, non-exempt information”, as we noted in our public comments to the *Science* proposal, no level of protection could fully prevent patient data from being discovered.<sup>9</sup>

This provision is simply another attempt to pick and choose which studies offer a favorable result for the Administration and we continue to oppose any such attempts.

**Retrospective analysis of clean air regulations will put unneeded stress on an already cash-strapped agency.**

The suggestion that EPA would require a retrospective analysis of significant Clean Air Act rulemakings not only adds a burdensome task for an Agency that is already underfunded, it is even more troubling after reading that the procedural rule would be exempt from the public notice and comment period mandated by the Administrative Procedure Act.

Codifying the cost-benefit analysis into an enforceable regulation and then conducting retrospective analysis of clean air regulations will create the opportunity for regulated industries to challenge certain regulations that have been in place for years. This provision would add unnecessary additional administrative tasks and could end with regulated industries being permitted to emit more air pollution, harming health.

**Conclusion**

Two years after the comment period for the ANPRM for this rule, EPA still has yet to show a tangible need for this proposal. The current process of calculating the benefits and costs of clean air regulations is already well-vetted and transparent. In proposing this rule, EPA is actually opening up the opportunity for *less* protective air pollution standards and leaving the health of the American public hanging in the balance.

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<sup>9</sup> <https://www.lung.org/getmedia/1b777975-87cc-433b-9259-dd719a8502e5/final-american-lung-association-comments-snprm-science.pdf>

The undersigned health and medical organizations urge EPA to withdraw this proposal.

Sincerely,

Allergy & Asthma Network

Alliance of Nurses for Health Environments

American Lung Association

Association of Schools and Programs of Public Health

Asthma and Allergy Foundation of America

Health Care Without Harm

International Society for Environmental Epidemiology -- North American Chapter

National Association of Pediatric Nurse Practitioners

