August 3, 2020

Andrew Wheeler
Administrator
United States Environmental Protection Agency

Re: **Comments on Notice of Proposed Rulemaking on Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process, Docket Number EPA–HQ–OAR–2020–00044**

Dear Administrator Wheeler:

We are a diverse group of eight public interest, labor, and grassroots organizations, and we write to urge you to withdraw the Environmental Protection Agency's (EPA) Notice of Proposed Rulemaking on "Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process" (RIN: 2060-AU51) [hereinafter "proposal"].

The EPA's implementation of the Clean Air Act has been one of the most successful regulatory programs in history. Clean Air Act safeguards have saved lives, improved health nationwide, and protected the integrity of our natural environment by reducing pollution in the air. EPA implementation of these safeguards has coincided with significant economic growth and job creation. Between 1970 and 2011, the U.S. Gross Domestic Product (GDP) increased 212 percent, and the number of private sector jobs increased by 88 percent.[1] The most comprehensive effort to date to compare the quantified and monetized benefits and costs of EPA's Clean Air Act regulations demonstrates that their implementation has delivered significant net benefits by a margin of 25 to 1. This study found that these rules saved 164,300 adult lives in 2010 and will save 237,000 lives annually by 2020.

In short, the United States is much better off because of EPA Clean Air Act rules adopted over the past half century.

The proposal ignores this successful track record. Instead, its provisions are conspicuously aimed at defeating the effective implementation of Clean Air Act rules in the future. It seeks to do this subtly and insidiously by rigging the cost-benefit analyses that the EPA performs so that they are even more biased against the kind of robust environmental and public health protections that Congress has charged the agency with implementing under the Clean Air Act. In this regard, the proposal would build on a decades' long strategy devised by opponents of regulations to use the cost-benefit analysis methodology as a tool for blocking or weakening vital safeguards.

Nearly all of the proposal's provisions are aimed at creating an elaborate and excessively burdensome set of procedures for completing cost-benefit analysis that would be practically impossible for the agency to satisfy and would be prohibitively costly to complete. Some of the more objectionable provisions in this regard are those relating to defining the analytical baseline and characterizing uncertainty in the analysis. Another set of concerning provisions relate to the

[1] Envtl. Protection Agency, *The Clean Air Act and the Economy*, https://www.epa.gov/clean-air-act-overview/clean-air-act-and-economy#_ednref6 (last visited July 24, 2018).

issue of quantifying health endpoints. By mandating that the scientific studies meet arbitrary and impossible-to-satisfy standards before they are eligible to be considered by the agency, these provisions would likely prevent the EPA from using high-quality, cutting-edge science to support its estimates of public health benefits. All of these provisions would have the effect, if not the intent, of changing the EPA's methodology for conducting cost-benefit analysis in ways that would either (1) make it harder to use these analyses' results to support stronger regulations or (2) make it easier for regulated industry to challenge stronger regulations on the basis of those analyses.

At the same time, the proposal ignores obvious opportunities for improving the EPA's cost-benefit analysis when those improvements would have the effect of supporting stronger rules. Such "best practices" might include better accounting tools for qualitatively described benefits or new analytic approaches that would give greater attention to cumulative burdens suffered by historically marginalized groups and other similar distributional concerns.

At the heart of the proposal's provisions is the unrealistic assumption that the EPA has ready access to extensive comprehensive and granular data on the precise impacts to human and ecological health caused by each of the hundreds of pollutants it regulates. This assumption has no grounding in reality, however. Indeed, a close review of the EPA's past cost-benefit analyses makes immediately apparent the large data gaps under which the agency must operate. Despite these clear data gaps, the proposal nonetheless blithely assumes that complete quantification and monetization is the norm and that departures are the rare exception.

Indeed, Congress was well aware of the data gaps the EPA will face in measuring regulatory impacts when it wrote the original Clean Air Act, as well as the law's later updates. That is why Congress chose to build the statute around a distinctly precautionary approach.[2] By adopting its myopic focus on quantification and monetization, the proposal thus flies in the face of that conscious policy choice by Congress and undermines the precautionary approach embedded in the Clean Air Act.

Tellingly, the proposal's preamble does not and cannot identify any concrete examples of the EPA's previous cost-benefit analyses that were so fundamentally deficient or flawed as to threaten the agency's effective and efficient achievement of the Clean Air Act's goals. Over the course of several *Federal Register* pages, the preamble lays out the familiar legal and policy arguments in support of performing cost-benefit analyses as part of regulatory development. Yet, nowhere does it explain how any of the EPA's previous cost-benefit analyses have fallen short of any applicable legal requirements or failed to deliver on their purported policy benefits. Nor does it attempt to make the case that such shortcomings are so widespread among the EPA's cost-benefit analysis practices that the proposal is necessary and would succeed as a corrective measure.

More to the point, nowhere does the preamble make the case that there has been any pattern of *inconsistency* or *inadequate transparency* actually plagues the EPA's historic practice of cost-benefit analysis, which one might expect to see in a rule that is entitled "Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process."

[2] *See* Ethyl Corp. v. EPA, 541 F.2d 1 (D.C. Cir. 1976).

In the more than the three years that the EPA has devoted to developing this rulemaking, it is revealing that the agency is unable to identify any of its cost-benefit analyses that merit this regulatory response – indeed, that there is any "problem" that this proposal would actually solve. To the contrary, among its sister agencies, the EPA is generally regarded as the "gold standard" for the quality of its regulatory cost-benefit analyses.

All of this makes clear that the real purpose of the proposal is to advance the Trump administration's broader effort to weaken the EPA rather than a good-faith effort to improve the agency's regulatory impact analysis. Even assuming the proposal did represent a good faith effort at pursuing the otherwise admirable goal of improving the EPA's ability to understand the impacts of its future Clean Air Act regulations, the approach it takes is fundamentally misguided. It is unlikely that compliance with the proposal's procedures would appreciably improve the quality of the EPA's Clean Air Act rules. And even if the procedures did lead to better quality regulatory decision-making, the benefits that result would be minuscule compared to the costs of complying with this rule's procedures. *In short, the proposal itself would not pass a cost-benefit test.* In addition, such analysis cannot be reduced to a rigid one-size-fits-all formula that lends itself to easy codification as the proposal attempts to do. Instead, maximum flexibility is needed to enable the agency to fit the analysis to the unique circumstances presented by each rulemaking.

A better approach to accomplishing the proposal's purported goals would be through the use of a guidance document. But such a guidance document would be clearly redundant of the other existing resources that are already available to the agency, including the White House Office of Management and Budget's *Circular A-4* and the agency's own *Guidelines for Preparing Economic Analysis*, both of which outline best practices for conducting regulatory cost-benefit analyses. Both of these resources can be updated to account for new developments in cost-benefit analysis techniques, and indeed, the EPA is currently in the process of updating its *Guidelines* for this purpose. So, even if the EPA were to pursue this proposal in the form of guidance instead of a legislative rulemaking, it is not clear what value, if any, that would add on top of the other existing resources.

As the forgoing makes clear, the proposal solves no real problem. Thus, in light of the other pressing challenges that the EPA faces related to accomplishing its statutory mission under the Clean Air Act, and in light of the significant and persistent resource constraints under which the EPA must operate, the agency should abandon this unnecessary and wasteful rulemaking altogether.

We appreciate your attention to these comments.

Sincerely,

Alaska Community Action on Toxics
Breast Cancer Prevention Partners
Center for Auto Safety
Center for Progressive Reform
Data for Justice

Institute for Agriculture and Trade Policy
Public Citizen
Union of Concerned Scientists