

## **Oral Testimony on EPA Proposed Appropriate and Necessary Determination**

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Hello, my name is James Goodwin, and I'm a Senior Policy Analyst with the Center for Progressive Reform. The history of this proposal illustrates the myriad theoretical and practical flaws associated with the prevailing approach to using economics to describe the predicted impacts of regulations.

That is what makes this proposal so significant: It offers the EPA a chance at a long-overdue course correction on how it evaluates the advantages and disadvantages of its regulations. On this score, I was pleased to find that the proposal gets a lot of things right, and thus should serve as a model for future economic analyses that the agency performs – whether those analyses are intended to satisfy statutory requirements or presidential directives like Executive Order 12866.

In particular, the totality-of-the-circumstances methodology that the proposal follows consciously avoids two of the worst features of the prevailing approach to economic analysis of regulations, generally referred to as “cost-benefit analysis.”

First, this methodology uses as its analytical framework the relevant authorizing provisions of the Clean Air Act. It's remarkable that something as straightforward as “following the statute” should be regarded as revolutionary in regulatory analysis. But that has not been the case, as for more than 40 years cost-benefit analysis has compelled agencies to instead myopically focus on designing their rules to “maximize net benefits.” Such a decision-making rule has no bearing on this proposal. Indeed, it is irrelevant to or even prohibited by the vast majority of public interest laws.

Second, the proposal also departs from cost-benefit analysis in giving due weight to any aspects of the statutory factors that resist quantification and monetization by describing them qualitatively. Importantly, the proposal also seeks to give appropriate attention to any relevant distributional concerns implicated by the Mercury and Air Toxics Standard, which similarly cannot be captured in strict numerical or monetary terms.

In its future regulatory analyses, the EPA should adopt and adapt the totality-of-the-circumstances approach employed in the proposal in place of the cost-benefit analysis approach that now prevails. In particular, the EPA should follow the methodology's principles of (1) using statutory factors as the analytical framework and (2) giving due weight to qualitative analyses of those factors, and especially distributional concerns. These principles render the totality-of-the-circumstances vastly superior and more useful than cost-benefit analysis.

More broadly, with its Day One Memo on "Modernizing Regulatory Review," the Biden administration is pursuing an executive branch-wide effort to improve economic analysis of regulations. I would urge the Biden administration to use this proposal's totality-of-the-circumstances approach as a model to guide that effort as well.

While the proposal gets much right, it still contains one glaring error – namely, its ongoing commitment to monetizing regulatory impacts that are not bought-and-sold in the marketplace.

The proposal's attempt to monetize the benefits of protecting children's IQ points illustrates why this practice should be abandoned. When I tell people that the EPA bases the monetary value of a lost IQ point solely on the impact it has on a child's lifetime earning potential, they are disturbed. When I tell them that the EPA then applies an "education penalty"

to that already cramped value to account for the additional years of school that children with higher IQs are likely attend, they are outraged.

Nothing in the totality-of-the-circumstances methodology requires these kinds of arithmetic gymnastics; if anything, the methodology discourages them. What's more, the Supreme Court in *Michigan v. EPA* granted the EPA considerable discretion in how it assesses the advantages and disadvantages of regulations. The monetization of things like lost IQ points is unnecessary, irrational, unscientific, and most of all immoral. As such, the EPA would be well justified in using its discretion to refrain from further attempts to assign a monetary value to that or any other benefit category involving non-market goods. I urge the EPA to exercise that discretion as it finalizes this action.

Thank you for your attention.