



Public Employees for Environmental Responsibility

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August 13, 2018

Andrew Wheeler,
Acting Administrator
Environmental Protection Agency
William Jefferson Clinton Building, *Mail Code:* 1101A
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: EPA-HQ-OA-2018-0107-0001

Submitted electronically via <https://www.regulations.gov>

Dear Acting Administrator Wheeler,

Thank you for the opportunity to comment on the U.S. Environmental Protection Agency's (EPA's) proposed "Increasing Consistency and Transparency in Considering Costs and Benefits in Rulemaking Process" Rule (hereinafter the "Rule"). Public Employees for Environmental Responsibility (PEER) is a Washington D.C.-based non-profit, non-partisan public interest organization concerned with honest and open government. Specifically, PEER serves and protects public employees working on environmental issues, including those at EPA. PEER represents thousands of local, state and federal government employees nationwide.

Background. EPA conducts a cost-benefit analysis for all of its proposed major regulations, as required by statute and/or Executive Order. These analyses are performed according to specific guidelines issued by both EPA and the Office of Management and Budget (OMB). EPA is seeking comments on how they can improve consistency and transparency in the cost-benefit analyses for federal environmental regulations. Specifically, EPA is asking whether the Agency should promulgate regulations that specify particular analytic approaches for cost-benefit analyses in setting pollution standards. On its face, this sounds reasonable. It is not; it is an attempt to make it easier for EPA to dismiss the economic benefits of regulations. As you are aware, former Administrator Scott Pruitt attempted to manipulate cost benefit analyses to justify the repeal of the 2015 Clean Water Rule. Pruitt zeroed out all the benefits of wetland protection under the 2015 Rule, claiming that they were too speculative to quantify. Knowing Pruitt's misguided approach to cost-benefit analyses, we must be cautious in assuming that this proposed

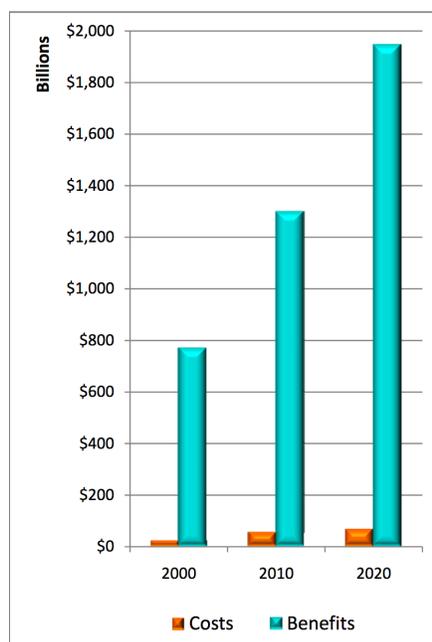
Rule was written with good intentions. As such, we request that you rescind this proposed Rule and consider whether such a Rule is necessary. Our specific comments are set forth below.

The costs and benefits of environmental regulation. Claiming that environmental regulations harm our economy is a mainstay of this Administration,¹ but this is yet another alternative fact. The OMB found that the benefits from environmental regulations far outweighed the costs:

The estimated annual benefits of major Federal regulations reviewed by OMB from October 1, 2006, to September 30, 2016, for which agencies estimated and monetized both benefits and costs, are in the aggregate between \$219 billion and \$695 billion, while the estimated annual costs are in the aggregate between \$59 billion and \$88 billion, reported in 2001 dollars. In 2015 dollars, aggregate annual benefits are estimated to be between \$287 and \$911 billion and costs between \$78 and \$115 billion.²

Similarly, EPA itself found that the benefits associated with the 1990 Clean Air Act Amendments far outweighed the costs (see Figure 1, below).³

Figure 1, costs and benefits of 1990 Clean Air Act Amendments



¹ See, e.g., https://www.washingtonpost.com/news/energy-environment/wp/2016/12/21/trump-says-energy-regulations-are-hurting-economic-growth-the-evidence-says-otherwise/?utm_term=.6e6c276e2db4

² 2017 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act, https://www.whitehouse.gov/wpcontent/uploads/2017/12/draft_2017_cost_benefit_report.pdf

³ <https://www.epa.gov/sites/production/files/2015-07/documents/summaryreport.pdf>

The fact that regulations protecting the environment are also beneficial to the economy is an inconvenient truth for an Administration that wants to roll back all environmental regulations. Nevertheless, the EPA has no choice but to deal with these facts.

The proposed Rule decreases consistency and transparency. The name of this proposed Rule is a misnomer: it neither increases consistency or transparency. With regard to consistency, EPA seeks to standardize cost-benefit analyses across all statutes and all pollutants. Requiring a single methodology regardless of the available data, differing pollutants, and unique impacts to human health and the environment is non-sensical. For example, the benefits associated with regulating particulate matter in the air are completely different than the benefits associated with protecting ephemeral streams. Federal environmental laws have different goals: some protect human health; others protect wildlife habitat or fisheries. Current laws and statutes allow EPA the flexibility to assess costs and benefits in a manner best suited to each issue. To force a single methodology on all pollutants would result in inaccurate cost-benefit analyses.

With regard to transparency, EPA appears to be solving an alleged problem that does not exist. Current cost-benefit analyses are comprehensive and transparent, and rely on peer-reviewed studies. This Administration's track record has been to manipulate and obscure - or simply ignore - economic benefits of environmental regulation.⁴ The proposed Rule would not result in more transparent analyses.

EPA must consider co-benefits from reduction of a targeted pollutant. The proposed Rule suggests, allegedly based on comments from past rulemakings, that reductions in pollutants not directly regulated by the action (*i.e.*, "ancillary benefits" or "co-benefits"), should no longer be considered as benefits. There is no plausible reason why co-benefits should not be counted as benefits in the analysis. Co-benefits, while not directly targeted, are still real economic benefits. In addition, "but for" the regulation, these co-benefits would not be realized. Pollutants are typically not isolated compounds, and it is natural that if you reduce one type of pollutant through regulation, others will also decrease. Ignoring the health benefits of these co-pollutants would deny both policy makers and the public all the data they need to make assessments of potential regulations. Specifically, this would result in huge under-estimates of the benefits of environmental regulation. That being said, if the EPA is going to proceed down this ill-advised path, it must also avoid consideration of co-costs. To do otherwise would further skew the results of the analysis.

EPA should apply the precautionary principle to cost-benefit analyses. The precautionary principle states, "When an activity raises threats of harm to the environment or human health, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically."⁵ Scientists do not yet know all the costs of pollution on the environment and human health. For example, emerging contaminants are of concern to EPA, and the Agency fully acknowledges that it is critical to investigate and regulate these compounds.⁶

⁴ See, e.g., <http://environment.law.harvard.edu/2018/06/denying-health-benefits-pollution-reduction/>

⁵ <http://sehn.org/wingspread-conference-on-the-precautionary-principle/>

⁶ See, e.g., <https://www.epa.gov/wqc/contaminants-emerging-concern-including-pharmaceuticals-and-personal-care-products>

Pollution can decrease life expectancy, harm unborn children, result in health-related costs, lost wages and revenue, and even increase crime.⁷ Moreover, pollution can impact keystone species, which in turn could cause the collapse of entire ecosystems. Given this, the EPA should be looking at novel ways to capture ancillary benefits of environmental regulation, not seeking ways to decrease benefits and increase costs.

Conclusion. EPA should not attempt to standardize the methodology used to perform cost-benefit analyses, nor should it ignore the benefits associated with co-benefits. It appears that EPA is searching for a problem that does not exist. Rather, this proposed Rule to allegedly increase transparency and consistency in cost-benefit analyses is a thinly-veiled attempt to artificially decrease the benefits of environmental regulation to support the misguided deregulation agenda of this Administration. We urge you to abandon this Rule.

Thank you for the opportunity to comment.

Cordially,

A handwritten signature in black ink that reads "Kyla Bennett" with a long horizontal flourish extending to the right.

Kyla Bennett, PhD, JD
Science Policy Director
Public Employees for Environmental Responsibility

⁷ See, e.g., Feigenbaum, James J., and Christopher Muller. "Lead Exposure and Violent Crime in the Early Twentieth Century." *Explorations in Economic History* 62 (October 1, 2016): 51–86.
<https://doi.org/10.1016/j.eeh.2016.03.002>.