



# Overview of EPA's Proposed Rule, *"Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process"*

Presentation to the EPA Science Advisory Board

August 11, 2020

# Summary



- This action proposes to establish procedural requirements governing the development and presentation of benefit-cost analyses (BCA) for significant rulemakings conducted under the Clean Air Act (CAA).
- These requirements would help ensure that the EPA implements its statutory obligations under the CAA, and describes its work in implementing those obligations, in a way that is consistent and transparent.
- Schedule:
  - The proposed rule was published in the Federal Register on June 11.
  - A virtual public hearing was held on July 1. The 45-day comment period closed on August 3.
  - A final rule is expected by the end of the year.

# Background



- Response to E.O. 13777: In April 2017, EPA opened a docket to solicit feedback and identify regulations that “impose costs that exceed benefits”. The Agency received comments about its consideration of costs and benefits. Per the E.O. and based on these public comments, EPA decided to take further action to evaluate opportunities for reform.
- June 2018 ANPRM: EPA requested comment on: (a) the nature of any consistency/transparency problems, (b) recommendations on approaches for addressing these problems, and (c) whether to achieve improvements through rulemakings or other means.
  - Received >3,200 comment letters; 142 included substantive comments pertaining to how EPA *quantifies* benefits and costs and/or how EPA *weighs* benefits or costs in decisions.

# Background



- May 2019 Administrator's Memo:
  - Directed program offices to develop Tier 1 statute-specific rulemakings that outline how consistency and transparency concepts will be implemented in future rules, starting with CAA.
  - Outlined 4 principles for developing these rulemakings:
    1. ensuring the Agency balances benefits and costs in regulatory decision-making;
    2. increasing consistency in the interpretation of statutory terminology;
    3. providing transparency in the weight assigned to various factors in regulatory decisions; and,
    4. promoting adherence to best practices in conducting the technical analysis used to inform decisions.
- Status of statute-specific rulemakings:
  - Air office rule is expected to be finalized by the end of the year.
  - Other program offices are starting analogous rulemakings as reflected in EPA's Regulatory Agenda.

# Proposed Requirements



1. Prepare a BCA for all significant CAA proposed and final regulations.
2. Adhere to best practices for the development of the BCA.
3. Provide a transparent presentation of the BCA results in the rule preamble.

# Proposed Requirements



1. Prepare a BCA for all significant CAA proposed and final regulations.
  - Defines significant regulation as:  
*“a proposed or final regulation that is determined to be a “significant regulatory action” pursuant to E.O. 12866 or is otherwise designated as significant by the Administrator”.*
  - The current practice is to prepare a BCA for all proposed and final regulations that are “economically significant” pursuant to E.O. 12866, which is those that have annual costs, benefits, or impacts of over \$100 million.

# Proposed Requirements



2. Adhere to best practices for development of the BCA.
  - Proposes best practices consistent with EPA’s *Guidelines for Preparing Economic Analyses* and OMB *Circular A-4*, and also proposes that risk assessments to support BCAs should follow best methodological practices for risk characterization/assessment.
    - Regulatory text includes high-level elements of *Guidelines* and *Circular A-4*, requiring explanations throughout for analytic choices made.
    - Material on definitions and other best practices (e.g., on statement of need, analysis of regulatory options, relevant factors for baseline development, treatment of uncertainty) came from the *Guidelines* and *A-4* (even though the guidance documents are not cited directly in the regulatory text).
  - Also includes additional requirements related to criteria for including/quantifying changes in health endpoints in a BCA.

# Proposed Requirements



## 3. Provide a transparent presentation of BCA results in rule preamble

Preamble will include a section that contains:

- a. A summary presentation of the overall BCA results for the rule, including total costs, benefits, and net benefits;
- b. An additional reporting of the public health and welfare benefits that pertain to the specific objective(s) of the CAA provision(s) under which the rule is promulgated; and
- c. A transparent presentation of how specific costs contemplated in the CAA provision(s) under which the rule is promulgated (to the extent specified), relate to total costs, to the extent possible.

# Additional Requests for Comment



- Specifying how BCA results should inform regulatory decisions
  - Weighting of BCA results in decision making? E.g., require benefits justify costs?
- Applicability
  - Limit to economically significant rules only? Adjust \$100mil threshold for inflation?
- Additional best practices for the development of BCA?
- Additional presentational requirements to increase transparency?
- Other topics – e.g., retrospective analysis, definitions

# Coordination with EPA's *Guidelines* Update



- EPA is in the process of a periodic update to the *Guidelines for Preparing Economic Analyses*
  - Building on earlier guidance issued in 1983, EPA issued the first edition of the *Guidelines* in 2000; last comprehensive revision in 2010.
  - EPA's *Guidelines* complement OMB Circular A-4 by providing greater detail and coverage of analytic challenges faced by EPA analysts.
  - The revisions in the current update of the *Guidelines* have gone through internal review and are now under review by the SAB.
- The *Guidelines* provide greater detail than the proposed rule, but the proposed requirements pertaining to conducting BCA are consistent with the current iteration of the *Guidelines* (previously reviewed by the SAB) and the draft update under SAB review.
- EPA will ensure that this consistency is maintained as both the *Guidelines* update and the CAA Benefit-Cost rule are finalized.