

August 8, 2018

BOARD OF DIRECTORS

Co-Presidents

Bart A. Sponseller
Wisconsin

Sam Rubens
Akron, OH

Co-Vice Presidents

Ali Mirzakhali
Oregon

Richard A. Stedman
Monterey, CA

Co-Treasurers

Rick Brunetti
Kansas

Charlene Albee
Reno, NV

Past Co-Presidents

David Klempe
Montana

Craig T. Kenworthy
Seattle, WA

Directors

Robert H. Colby
Chattanooga, TN

Richard Corey
California

Michael G. Dowd
Virginia

Steven E. Flint
New York

Jayne Graham
Pittsburgh, PA

Heidi Hales
Vermont

Michelle Walker Owenby
Tennessee

Eddie Terrill
Oklahoma

Erik C. White
Auburn, CA

Executive Director

Miles Keogh

U.S. Environmental Protection Agency
EPA Docket Center
Mail Code: 28221T
1200 Pennsylvania Ave., NW
Washington, DC 20460

Attention Docket ID No. EPA-HQ-OA-2018-0107

To Whom It May Concern:

On behalf of the National Association of Clean Air Agencies (NACAA), we are submitting the following comments on U.S. Environmental Protection Agency's (EPA's) advance notice of proposed rulemaking (ANPRM), entitled "*Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process*," which was published in the *Federal Register* on June 13, 2018 (83 Fed. Reg. 27,524). NACAA is the national, non-partisan, non-profit association of 156 local and state air pollution control agencies in 41 states, the District of Columbia and four territories. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the U.S. These comments are based on that experience. The views expressed do not represent the positions of every state and local air pollution control agency in the country.

This ANPRM seeks help identifying potential consistency- or transparency-based concerns with EPA's current cost-benefit analysis practices, suggestions for approaches to improve consistency and transparency and guidance on whether and how to develop new regulations that govern how the agency performs cost-benefit analyses. For the reasons outlined below such a rulemaking is unnecessary and may even have harmful results. If, however, EPA decides to pursue a rulemaking or otherwise modify its approach to cost-benefit analyses, the changes should focus on improving the agency's ability to comprehensively identify and assess public health benefits, must not eliminate or diminish any consideration of co-benefits and should be based on a set of more clearly defined goals.

I. A rulemaking to alter the existing cost-benefit analysis framework is unnecessary and could distort future cost-benefit analyses.

The ANPRM notes that EPA conducts cost-benefit analyses across many different regulatory programs and environmental statutes, including the Clean Air Act. The various Clean Air Act programs for which state and local air agencies are responsible for implementing rely on different regulatory approaches, target different categories of sources and address pollutants with different health impacts. Mandating a single cost-benefit approach for all Clean Air Act programs would ignore these important distinctions, conflict with statutory directives and eliminate important flexibilities that can be used to account for these differences. Such an approach would threaten to distort the results of many cost-benefit analyses.

The ANPRM itself recognizes distinctions across regulatory programs, noting that not all statutory provisions require a cost-benefit analysis and acknowledging without providing examples that some prohibit the consideration of costs.¹ Even among the Clean Air Act programs where EPA is authorized to consider costs and benefits, the ANPRM concedes that the agency does not have uniform discretion to do so. In many cases, these variations were carefully tailored by Congress to address differences in the types of public health concerns that arise from different categories of emission sources (e.g., mobile sources versus stationary sources; new sources versus existing sources) and air pollutants (e.g., criteria pollutants, hazardous air pollutants and other air pollutants). The reductive approach to cost-benefit analyses suggested by the ANPRM's emphasis on consistency would violate important Clean Air Act design principles.

Just as these statutory differences grant federal, state and local regulators a more effective set of tools to address different types of air pollution, flexibility in the cost-benefit analysis also provides its own set of benefits. A flexible analytical framework respects that not all sources of air pollution respond to the same control technologies, not all types of air pollution cause the same types of harms and not all public health impacts are distributed uniformly across communities. These distinctions present challenges to any cost-benefit analyses that cannot be solved with forced uniformity and are best met with a flexible framework that can accommodate these distinctions. A rigid approach across all Clean Air Act programs would blunt EPA's analytical capacity and may distort the results of future cost-benefit analyses. NACAA urges EPA to preserve its current methodology, which seeks consistency within individual programs and avoids the singular set of regulatory directives suggested by the ANPRM.

¹ The National Ambient Air Quality Standards are one example of a program where EPA may not consider costs when setting the standard. See *Whitman Trucking v. EPA*, 531 U.S. 457 (2001).

II. Potential changes to EPA's cost-benefit framework should prioritize a broader accounting of public health benefits.

Any cost-benefit analysis is incomplete if it excludes benefits while comprehensively cataloguing costs. In the case of clean air programs, the costs of regulations are often easier to identify and estimate than the resulting public health benefits. This makes it even more important that potential health benefits be comprehensively identified and carefully analyzed to provide EPA and the public with a complete and full understanding of both costs and benefits. Without a more sophisticated approach from EPA, many significant public health benefits may remain excluded from future analyses.² Aside from a brief discussion suggesting that co-benefits should not be considered, the notice's discussion focuses almost entirely on the cost column of the cost-benefit ledger. The ANPRM should have also asked whether EPA's present approach to benefits assessments sufficiently captures the benefits of environmental regulations. Instead, the ANPRM gives the impression that EPA is singularly fixated on costs, when the undercounting of avoided public health harms and of public health benefits should be further addressed. Balanced consideration of both costs and benefits is necessary.

III. EPA should not diminish or abandon its consideration of co-benefits.

In its discussion of co-benefits, the ANPRM hints that EPA is considering a reduction of the kinds of co-benefits that may be included in future regulatory impacts assessments. If EPA decides to move forward with changes to its cost-benefit analysis guidance or to pursue a rulemaking, NACAA would oppose any effort to eliminate the consideration of co-benefits or otherwise diminish them. Systematically overlooking known benefits in cost-benefit analyses would deviate from basic accounting principles and would overemphasize program costs to regulated industries while profoundly understating the health benefits for the public. EPA and its co-regulators at state and local air agencies have examined and relied on the co-benefits of air pollution regulations for decades. Excluding them from future impacts analyses would depart dramatically from past practice and artificially ignore some of the real public health and environmental benefits of EPA's programs that are most readily quantifiable.

The elimination or restriction of co-benefits would also harm air quality planning efforts. State and local air agencies rely on co-benefits for compliance planning, and they are often included as compliance strategies within State Implementation Plans for the National Ambient Air Quality Standards. Access to the co-benefits information in EPA's regulatory impacts analysis are an important tool for state and local air pollution control officials, and eliminating or reducing them in future EPA regulatory impacts analyses would make it harder for state and local air agencies to meet their federal air quality obligations.

² Many expenses borne by the public that are more challenging – but possible – to quantify are currently excluded from cost-benefit analyses. For example, ambulance deployments that do not result in hospital stays have important cost impacts to those who experience them and are excluded from EPA's cost-benefit accounting.

IV. The ANPRM's vagueness limits opportunities for stakeholder comment.

NACAA supports transparency in all EPA public processes. The scope of the questions raised in the ANPRM suggests EPA may be considering substantial revisions to its approach to cost-benefit analyses. While we appreciate the opportunity to comment as well as the agency's decision to extend the comment period,³ significant portions of the ANPRM are vaguely defined and do not give stakeholders sufficient information to make informed comments. For example, though the ANPRM's title indicates that a primary goal of the notice is to improve transparency in EPA's consideration of costs and benefits during rulemakings, there is no substantive discussion of the word "transparency" anywhere in the ANPRM. The word "transparency" appears only in the title, a list of subject headings and in a restatement of the ANPRM's purpose before being deployed without further explanation or discussion in the questions for public input. Though EPA has expressed more specific concerns with transparency in other regulatory contexts,⁴ its interest in transparency here seems opaque. EPA also states that the ANPRM's main purpose is to "request more information about the nature and extent of issues raised by stakeholders," but the ANPRM presents only two examples of issues raised by stakeholders and does not describe how either illustrates a need for transparency reform. If EPA has received or developed such concerns, they should be expressly stated in the ANPRM so stakeholders have a clear opportunity to respond. As written, the ANPRM does not provide enough context for state and local air agencies to meaningfully comment on EPA's unstated transparency concerns.

V. Conclusion

NACAA does not see a need for major changes to EPA's approach to cost-benefit analysis to improve consistency and transparency as presented in the ANPRM. In fact, revisions that force all Clean Air Act programs to take the same approach will conflict with the statute's design and could eliminate flexibilities that enhance the quality of EPA's analyses. If in spite of this EPA decides to move forward, it should also focus on improving its understanding and inclusion of under-considered benefits of its programs, avoid stepping away from its longstanding and essential consideration of co-benefits and provide additional clarity regarding its transparency concerns.

Given the potential magnitude of an effort to change how EPA conducts cost-benefit analyses and our role as EPA's partners in the protection of clean air and public health, we urge the agency to consider these comments as it decides whether and how to proceed and to provide ample opportunity for additional stakeholder comment if it decides to move forward.

³ On June 26, 2018, NACAA joined with a group of associations representing state and local environmental agencies to request a 90-day extension to the ANPRM comment period and ask that the agency schedule three hearings to collect public comments on the advance notice. EPA has subsequently afforded commenters an additional 30 days to comment but has not scheduled any public hearings. The letter is available here: <http://www.4cleanair.org/sites/default/files/Documents/CostBenefitCommentExtension-06262018.pdf>

⁴ See Strengthening Transparency in Regulatory Science, 83 Fed. Reg. 18,768 (April 30, 2018).

If you have any questions about these comments, please do not hesitate to contact me or Phil Assmus at NACAA. We can be reached by phone at (202) 624-7864 or by email at mkeogh@4cleanair.org and passmus@4cleanair.org.

Thank you,

A handwritten signature in black ink, appearing to read 'Miles Keogh', with a large, stylized flourish at the end.

Miles Keogh
Executive Director
National Association of Clean Air Agencies