

FINAL RULE - INCREASING CONSISTENCY IN CONSIDERING BENEFITS AND COSTS IN THE CLEAN AIR ACT RULEMAKING PROCESS

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Background

- April 2017 - EPA opened a public docket on regulatory reform to solicit feedback on Executive Order 13777, in which the Agency received comments about its consideration of costs and benefits in making regulatory decisions.
- 2018 - EPA issued an Advance Notice of Proposed Rulemaking to solicit public input on whether and how to change the way it considers benefits and costs in making regulatory decisions.
- May 2019 – EPA Administrator issued a memo directing staff to develop rules for notice and comment that outline how benefit-cost considerations will be applied to future rulemakings in a more consistent and transparent manner.
- December 9, 2020 - EPA announced the final rule.

Introduction

- According to EPA, the final rule establishes processes EPA will undertake when promulgating regulations under the CAA to ensure that information regarding the benefits and costs of regulatory decisions are developed in a consistent and transparent manner and considered to the extent allowed by law.
- The goal of this rule is to ensure that all future significant regulations promulgated under the CAA are accompanied by a benefit-cost analysis (BCA) using the best available scientific information, in accordance with best practices from the economic, engineering, physical, and biological sciences, and ensuring transparency of the BCA.
- This rule will ensure a consistent approach to the EPA's CAA benefit-cost analyses and will provide transparency by requiring the generation of relevant information in all significant rulemakings. It will provide clarity for states, local communities, industry, and other stakeholders regarding EPA's rulemaking considerations.



Rule Requirements

The rule consists of three main requirements:

1. EPA will prepare a BCA for all future significant proposed and final regulations under the CAA. EPA anticipates significant regulations will include those with the largest annual impact on the economy (over \$100 million); those that would disproportionately affect an industry, group, or area; or those that are novel or relevant for other policy reasons.
2. The rule requires that BCAs use “best practices” in economic, engineering, physical and biological sciences. These include the requirements set for cost-benefit analysis by the OMB, as well as by EPA’s “Guidelines for Preparing Economic Analyses” (which outlines practices for assessment of the value of reduced health risks and improved environmental quality, appropriate baselines, discounting, cost and benefit allocation, data transparency, and presentation of the results, including non-monetary information).



Rule Requirements

The rule also includes addressing all key elements of a benefit-cost analysis and –to the extent permitted by law – making underlying data available to the public.

3. In order to prevent co-mingling of “benefits” and “co-benefits” to justify a regulation, the rule requires that BCAs, in addition to presenting a proposed rule’s total costs and benefits, separately report the public health and welfare benefits attributable to the specific pollution-reduction or other objectives targeted by the CAA provisions under which the rule is promulgated.

This rule also requires EPA to provide a description in the preamble of future rules of how EPA considered the results of the BCA when the CAA provision(s) under which the future rule is promulgated permit(s) consideration of the BCA.