

August 3, 2020

Andrew Wheeler, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
*Attention: Docket ID No. EPA-HQ-OAR-2020-00044*

*Re: Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process; Notice of Proposed Rulemaking*

Dear Administrator Wheeler:

The Northeast States for Coordinated Air Use Management (NESCAUM) offer the following comments on the U.S. Environmental Protection Agency's (EPA's) proposed "Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process" (Benefit-Cost proposal) [85 Fed. Reg. 35612-35627 (June 11, 2020)].

NESCAUM is the regional association of air pollution control agencies representing Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. Our member agencies have the primary responsibility in their states for implementing clean air programs that achieve the public health and environmental protection goals of the federal Clean Air Act (CAA).

When applied appropriately, cost-benefit analysis can be a valuable tool in developing air quality rules. To protect against a broad set of harms to public health and welfare impacts, cost-benefit analyses must have sufficient breadth to consider costs and benefits associated with a rule in a manner that recognizes the often asymmetric availability of information on monetized benefits relative to costs. EPA's proposal would not do this. Instead, EPA seeks to codify cost-benefit specifications into a one-size-fits-all, fixed regulation, without identifying the problem that the proposed regulation seeks to fix. This is an inappropriate application of an otherwise valuable tool, and NESCAUM requests that EPA withdraw it.

NESCAUM's comments address the following issues:

1. The proposal does not identify a need for this regulation. EPA should withdraw the proposal and should continue to address cost-benefit procedures in guidelines, not in a regulation.
2. Risk assessment procedures should not be codified in a regulation. The risk assessment procedures in the proposal allow EPA to undervalue critical benefits and should not be adopted.

3. Because cost-benefit analyses tend to overestimate costs and underestimate benefits, the results of those analyses should be considered in concert with other cost metrics and information about non-monetized benefits. A cost-benefits analysis should not be the sole determinant of whether a regulation is justified.
4. Cost-benefit analyses must include the co-benefits associated with reductions of the emissions of non-target pollutants that occur as a result of the rule.
5. EPA must conduct an environmental justice analysis before further consideration of this proposed rule.
6. EPA must also assess the impacts of this proposal on children's health.
7. Benefits that occur outside the United States should be included in all cost-benefit analyses and should not be devalued relative to domestic benefits.
8. Expansion of the scope of this proposal would further exacerbate the problems with the regulation and should not be considered.

**1. The proposal does not identify a need for this regulation. EPA should withdraw the proposal and should continue to address cost-benefit procedures in guidelines, not in a regulation.**

EPA is requesting comments on “whether it is appropriate to codify best practices for the development of BCA [benefit-cost analyses] in this rulemaking and, if so, whether specific additional best practices should also be so codified” (page 35623). EPA should withdraw this rule and should continue to address best practices in guidelines, not in a regulation. EPA has not demonstrated that the use of cost-benefits guidelines has compromised the Agency's ability to protect public health and the environment.

To fulfill its CAA mandate “to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare” (42 U.S.C. §7401(b)(1)), EPA must regulate a wide range of pollutants, including criteria air pollutants, hazardous air pollutants (HAPs), precursor substances, radioactive pollutants, visibility impairing pollutants, pollutants contributing to acid deposition, and ozone depleting substances and their substitutes. The Supreme Court has also held that “the Clean Air Act's capacious definition of ‘air pollutant’” includes greenhouse gases [Massachusetts v. EPA, 549 US 497 (2007)].

The CAA mandate also addresses a broad range of harms, including public health impacts and “effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants” (42 U.S.C. §7602(h)).

EPA uses a range of regulatory approaches to address its CAA mandate, each of which presents unique challenges to a cost-benefit analysis. It is essential that in regulatory actions requiring a cost-benefit analysis, those analyses are conducted using procedures that ensure a comprehensive and appropriate evaluation of all pertinent issues, including benefits that cannot be monetized. A “one-size-fits-all” approach, like that specified in this proposal, cannot adequately address the range of costs and benefits associated with disparate regulatory actions. Moreover, best practices

for cost-benefit analyses are continually evolving as new science and improved methodologies become available.

The application of a single approach for cost-benefit analyses to a wide range of regulatory actions in the name of consistency is not useful or constructive if it leads to a regulatory-proscribed *pro forma* approach. Guidance, rather than rule, can provide a pragmatic path with the needed flexibility to adapt the analysis to the specific circumstances of a pollutant and its harms, and allow for approaches that can change to reflect new science and methods as warranted.

**2. Risk assessment procedures should not be codified in a regulation. The risk assessment procedures in the proposal allow EPA to undervalue critical benefits and should not be adopted.**

NESCAUM strongly opposes the codification of risk assessment procedures in a regulation and urges EPA to continue to address cost-benefit analysis, including risk assessment methodologies, in guidelines. NESCAUM is particularly concerned about the following risk-related provisions in the proposal:

- The proposal limits the analysis to an evaluation of health endpoints for which there is “(a) clear causal or likely causal relationship between pollutant exposure and effect” (§ 83.3(a)(7)(i)), which allows EPA to exclude endpoints that do not meet the Agency’s causality criteria. This is of particular concern in light of the EPA Administrator’s recent use of an interpretation of causality widely condemned by the scientific community to justify his decision to retain the current National Ambient Air Quality Standard (NAAQS) for fine particulate matter (PM<sub>2.5</sub>). This decision was made despite overwhelming scientific evidence of increased mortality and morbidity at levels below that standard and EPA staff recommendations to the contrary. Codifying this provision would allow for a similar disregard or devaluation of benefits associated with reductions in exposure to PM<sub>2.5</sub> and other pollutants.
- § 83.3(a)(8)(iii) of the proposal specifies criteria for selections of studies for establishing concentration-response relationships, which include:
  - “The study was externally and independently peer-reviewed consistent with Federal guidance.” While NESCAUM agrees with the use of peer-reviewed studies, the requirement for independent reviews is problematic. EPA’s recent rulemaking entitled “Strengthening Transparency in Regulatory Science” [85 Fed. Reg. 15396-15406 (March 18, 2020)] delineates specifications for independent reviews in conjunction with regulatory actions that would exclude or devalue crucial studies from consideration if the underlying data, including confidential data, are not available for such reviews.
  - “The pollutant analyzed in the study matches the pollutant of interest in the regulation.” This provision could preclude or devalue consideration of the co-benefits

- of reductions of exposure to non-target pollutants that occur as a consequence of implementation of the rule. This issue is discussed in more detail in Item #4 below.
- “Concentration-response functions must be parameterized from scientifically robust studies.” Because “scientifically robust” is not defined, this provision could be used to exclude important studies from consideration.
  - “When an epidemiological study is used further criteria include that the study must assess the influence of confounders, that the study location must be appropriately matched to the analysis, and that the study population characteristics must be sufficiently similar to those of the analysis.” This provision is particularly problematic in light of the PM<sub>2.5</sub> NAAQS decision, in which the Administrator set an almost impossibly high bar for consideration of epidemiological studies. Note also that epidemiological studies based on “natural experiments” could be excluded if the populations that were affected do not correspond exactly to the population under evaluation in the analysis. Epidemiological studies are essential to environmental regulations, and any restrictions on the use of those studies should be established in conjunction with the scientific community.
  - The proposal stipulates that “(w)hen multiple studies satisfy these criteria the Agency must characterize multiple concentration-response functions, and, if appropriate, combine them as a means of providing a broader representation of the effect estimate” (§ 83.3(a)(8)(iv)). This provision could result in the dilution and devaluation of risk estimates derived from well-run studies and appropriate concentration-response models.
  - § 83.3(a)(8)(v) specifies that EPA “must base decisions about the choice of the number of alternative concentration-response functions quantified for each endpoint on the extent to which it is technically feasible to quantify alternative concentration-response relationships given the available data and resources.” This provision is contrary to scientific principles regarding the modeling. The number of available “technically feasible” models is irrelevant; models are appropriately selected based on their applicability to the study methodology and endpoints, not on whether running them is technically feasible. Although the proposal appears to acknowledge that principle in § 83.3(a)(8)(vi), directing EPA to “select and clearly identify concentration-response functions with the strongest scientific evidence, as well as evidence necessary to demonstrate the sensitivity of the choice of the concentration-response function on the magnitude and the uncertainty associated with air pollution-attributable effects,” the criteria then require, in § 83.3(a)(8)(vii)(A), characterization of, “(t)he variability in the concentration-response functions across studies and models, including plausible alternatives.” This requirement is a mechanism for devaluing risks calculated using the most scientifically defensible models.
  - § 83.3(a)(8)(v) also requires EPA to characterize uncertainties in a number of other areas, including: assumptions and defaults, demographic or health characteristics, differences in response over a range of concentrations, confounders, geographic differences, the age of

the air quality data, and the generalizability of the study population. This emphasis on the uncertainties is of particular concern in light of EPA's invocation of uncertainty in its determination that a residual risk in excess of the range that is generally considered acceptable was instead acceptable [see "National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing Residual Risk and Technology Review" (MON RTR), 84 Fed. Reg. 69182-69269 (December 17, 2019)].

- § 83.3(a)(8)(viii) requires the use of a probability distribution, or if that is not feasible, the central tendency of risk in calculations of expected benefit and stipulates that "(u)pper-bound risk estimates must not be used unless they are presented in conjunction with lower bound and central tendency estimates." Historically, cancer risk estimates have been based on upper bound potency estimates due to the severity of the effects (e.g., death) associated with that endpoint. A central tendency estimate would underestimate that risk. Note that in the MON RTR, EPA used a central risk estimate in the place of an upper bound estimate, even though the critical pollutant in that assessment, ethylene oxide, is a known human carcinogen.

NESCAUM strongly disagrees with the codification of risk assessment procedures, which should continually evolve to reflect the best science available. NESCAUM particularly objects to the specifications discussed above, which provide EPA the latitude to substantially devalue the health benefits associated with a regulatory action.

**3. Because cost-benefit analyses tend to overestimate costs and underestimate benefits, the results of those analyses should be considered in concert with other cost metrics and information about non-monetized benefits. A cost-benefits analysis should not be the sole determinant of whether a regulation is justified.**

The data needed to monetize benefits and costs is typically asymmetrical. While the regulated community has strong incentives and deep resources to estimate compliance costs (and as noted below, typically overestimates costs), it has little incentive to monetize public benefits. While government can help fill this information imbalance, it often lacks the resources to do so. Benefits that are not easily monetized may be artificially set to zero, overly discounted, or completely ignored.

In its Circular A-4, the Office of Management and Budget (OMB) noted that "When important benefits and costs cannot be expressed in monetary units, [cost-benefit analysis] is less useful, and it can even be misleading, because the calculation of net benefits in such cases does not provide a full evaluation of all relevant benefits and costs."<sup>1</sup> EPA's recent finding that the National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units (MATS rule) is not "appropriate and necessary"<sup>2</sup> is an example of the

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<sup>1</sup> Office of Management and Budget, M-03-21, OMB Circular No. A-4, Subject: Regulatory Analysis," September 17, 2003. Available at: [https://obamawhitehouse.archives.gov/omb/circulars\\_a004\\_a-4/](https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/).

<sup>2</sup> U.S. Environmental Protection Agency (USEPA), *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review*, 85 Fed. Reg. 31286-31320 (May 22, 2020).

danger of rulemaking based on rigidly applied cost-benefit techniques that do not adequately consider non-monetized benefits.

That action reversed EPA’s earlier 2016 “Supplemental Finding That It Is Appropriate and Necessary To Regulate Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units.”<sup>3</sup> Rather than relying on a traditional cost-benefit analysis, the 2016 action analyzed several independent metrics to determine the cost-reasonableness of the required controls and concluded that:

The evaluations across each of the different metrics reveal that the cost of complying with MATS—compared to historical annual revenues, annual capital expenditures, and impacts on retail electricity prices—is well within the range of historical variability. The EPA further finds that the power sector is able to comply with the rule’s requirements while maintaining its ability to perform its primary and unique function—the generation, transmission, and distribution of reliable electricity at reasonable cost to consumers. The EPA thus concludes that under every metric examined, the cost of MATS is reasonable. [page 24420]

Those costs were weighed against both monetized and non-monetized benefits associated with the HAP reductions in the MATS rule, as explained in the 2016 supplemental finding:

She [the EPA Administrator] prefers—and the CAA supports—this approach because, in addition to cost, it places value on the statutory goals of achieving prompt, permanent, and ongoing reductions in significant volumes of HAP emissions and on the important, and, in many cases, unquantifiable advantages of reducing the significant hazards to public health posed by such emissions, including addressing the risk to the most exposed and most sensitive members of society. [page 24421]

The Regulatory Impact Analysis (RIA) for the 2011 MATS rule identified a number of health and environmental impacts associated with mercury and other HAPs emitted by this source category, but monetized benefits for only one HAP-related health endpoint in one specific population, the loss of intelligence quotient (IQ) points in children who were exposed prenatally to methylmercury (MeHg) via maternal ingestion of self-caught freshwater fish. The RIA stated that it focused on that endpoint because of “the availability of thoroughly-reviewed, high-quality epidemiological studies assessing IQ or related cognitive outcomes suitable for IQ estimation, and the availability of well-established methods and data for economic valuation of avoided IQ deficits.”<sup>4</sup>

The 2011 MATS RIA did not quantify the benefits associated with reducing exposures of other HAPs, reducing mercury exposures via other routes, or other health and environmental endpoints. Due to the large number of highly significant but unmonetizable health benefits associated with reductions of emissions of mercury and other HAPs from power plants, the

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<sup>3</sup> USEPA, *Supplemental Finding That It Is Appropriate and Necessary To Regulate Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units*, 81 Fed. Reg. 24420–24452 (April 25, 2016).

<sup>4</sup> USEPA, *Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards*, EPA-452/R-11-011 (December 2011), Chapter 4. Available at: <https://www3.epa.gov/ttnecas1/regdata/RIAs/matsriafinal.pdf>.

EPA's 2016 supplemental finding used a "reasonable costs" approach, rather than a strict monetized cost-benefit analysis, as its preferred method for determining that controls on emissions of air toxics from this source category are appropriate and necessary. However, in the recently finalized reconsideration of that finding, EPA dismissed that approach and instead based its determination solely on a monetized cost-benefit analysis that essentially assigned a value of zero to difficult-to-monetize benefits from reductions in air toxics. EPA further asserted that the co-benefits of PM<sub>2.5</sub> reductions should not be considered.

In addition to the problems associated with monetizing health and environmental benefits, retrospective evaluations of the impacts of CAA regulations have determined that cost-benefit analyses conducted prior to rulemaking have consistently overestimated costs of compliance.<sup>5</sup> NESCAUM's 2000 retrospective review of several air pollution programs found a repeated pattern of high EPA cost estimates and much higher industry cost projections (often by a factor of two or more) when rules were promulgated, as compared to actual the compliance costs incurred when the programs were implemented.<sup>6</sup> NESCAUM identified several factors that contributed to the lower actual costs and are difficult to forecast in advance, including technological innovation and lower fuel costs.

The proposal solicits comments on how much weight the results of a benefits-costs analysis should be given in future rulemakings and "whether and under what circumstances the EPA could or should determine that a future significant CAA regulation be promulgated only when the benefits of the intended action justify its costs" or "whether and under what circumstances the EPA could determine that a future significant CAA regulation be promulgated only when monetized benefits exceed the costs of the action" (page 35623).

As discussed above, while it is difficult to monetize all critical health and environmental benefits associated with a regulation, the costs of complying with regulations are often overestimated. Therefore, cost-benefit analyses should be only one factor used in an overall evaluation of the need for or reasonableness of a regulation. The weight of that a cost-benefit analysis is given in a regulatory decision should be determined by the degree to which that analysis is able to account quantitatively for benefits and the consistency of cost findings in the analysis with other metrics analyzed.

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<sup>5</sup> Chestnut, L.G. and D.M. Mills. "A fresh look at the benefits and costs of the US acid rain program." *J. Environ. Mgmt.* 77: 252–266 (2005), doi: 10.1016/j.jenvman.2005.05.014; Small Business Majority and The Main Street Alliance. *The Clean Air Act's Economic Benefits: Past, Present and Future* (October 2010), <https://grist.files.wordpress.com/2010/10/benefits-of-caa-literature-review-final-10-04-2010.pdf>; Harrington, W., R. Morgenstern, and P. Nelson. *How Accurate Are Regulatory Cost Estimates?*, Resources for the Future (March 5, 2010), [https://grist.files.wordpress.com/2010/10/harringtonmorgensternnelson\\_regulatory\\_estimates.pdf](https://grist.files.wordpress.com/2010/10/harringtonmorgensternnelson_regulatory_estimates.pdf).

<sup>6</sup> Northeast States for Coordinated Air Use Management (NESCAUM), *Environmental Regulation and Technology Innovation: Controlling Mercury Emissions from Coal- Fired Boilers* (September 2000), [http://www.nescaum.org/documents/rpt000906mercury\\_innovative-technology.pdf](http://www.nescaum.org/documents/rpt000906mercury_innovative-technology.pdf).

**4. Cost-benefit analyses must include the co-benefits associated with reductions of the emissions of non-target pollutants that occur as a result of the rule.**

As discussed above, § 83.3(a)(8)(iii) of the proposed rule stipulates that concentration-response relationships in risk assessments within cost-benefit analyses must be based on studies for which “the pollutant analyzed in the study matches the pollutant of interest in the regulation.” NESCAUM is concerned that this language is an attempt to codify the lack of consideration of co-benefits associated with pollutants that are not the target of the regulation, as was done in the recent MATS reconsideration. Such action is in direct contradiction with OMB guidance, which states that, “(t)he consideration of co-benefits, including the co-benefits associated with reduction of particulate matter, is consistent with standard accounting practices and has long been required under OMB Circular A-4.”<sup>7</sup>

The proposal discusses the need to avoid double counting of emissions reductions achieved by other regulations. NESCAUM does not advocate double counting. However, disregarding reductions in emissions of non-target pollutants that occur as a direct consequence of the regulation (e.g., reductions of PM<sub>2.5</sub> that occur when control equipment is installed to comply with the MATS HAPS requirement) leads to an unconscionable underestimation of the regulation’s benefits. Reductions of criteria pollutant emissions that occur in areas that are attaining the NAAQS for that pollutant are still relevant to cost-benefit analyses, because the NAAQS are not set at levels associated with zero risk of public and environmental harm. This is particularly important for PM<sub>2.5</sub> and ozone, as recent health research continues to show the lack of a threshold for the health effects associated with exposure to these pollutants.<sup>8</sup>

**5. EPA must conduct an environmental justice analysis before further consideration of this proposed rule.**

EPA’s proposal states that an environmental justice review of this regulation was not conducted in the belief that “(t)his proposed action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) [*Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*] because it does not establish an environmental health or safety standard” (page 35625). That Executive Order, however, is broader than EPA’s narrow focus on setting standards, and instead encompasses an agency’s “programs, policies, and activities.” It provides for the following:

1–101. Agency Responsibilities. To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions[.]

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<sup>7</sup> Office of Management and Budget (OMB), 2017 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act, 2017, p. 13.

<sup>8</sup> Di, Q., *et al.* “Air pollution and mortality in the Medicare population.” *New England Journal of Medicine* 376: 2513-2522 (2017), doi: 10.1056/NEJMoa1702747.

Sec. 2–2. Federal Agency Responsibilities for Federal Programs. Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin[.]

3–301. Human Health and Environmental Research and Analysis. (a) Environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority populations, low-income populations and workers who may be exposed to substantial environmental hazards. (b) Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures. (c) Federal agencies shall provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.

EPA’s argument that this regulation is not subject to Executive Order 12898 because it does not establish an environmental health or safety standard is specious, because this regulation, if adopted, would dramatically impact the development of a wide range of environmental health and safety regulations. And the proposed prescribed cost-benefit analysis approach certainly would be an EPA policy if finalized.

Failure to conduct an environmental justice analysis for this regulation is particularly egregious in view of the numerous studies that demonstrate disproportionate air pollutant health impacts in the very populations that the Executive Order is designed to protect. Note also that the proposal does not include requirements to identify and quantify risks to sensitive subpopulations, including the “minority populations, low-income populations and workers who may be exposed to substantial environmental hazards” that are identified in the Executive Order. If EPA plans to proceed with adoption of this regulation, it must first conduct a thorough environmental justice analysis to determine whether the provisions will cause “disproportionately high and adverse human health or environmental effects ... on minority populations and low-income populations.”

## **6. EPA must also assess disproportionate impacts of this proposal on children.**

EPA further asserts that “(t)his proposed action is not subject to Executive Order 13045 [62 FR 19885, April 23, 1997] because it does not concern an environmental health risk or safety risk” (page 35625). That Executive Order, which is entitled “Protection of Children from Environmental Health Risks and Safety Risk,” states:

1-101. A growing body of scientific knowledge demonstrates that children may suffer disproportionately from environmental health risks and safety risks. These risks arise because: children’s neurological, immunological, digestive, and other bodily systems are still developing; children eat more food, drink more fluids, and breathe more air in proportion to their body weight than adults; children’s size and weight may diminish their protection from standard safety features; and children’s behavior patterns may make them more susceptible to

accidents because they are less able to protect themselves. Therefore, to the extent permitted by law and appropriate, and consistent with the agency's mission, each Federal agency:

(a) shall make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children; and (b) shall ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks.

Executive Order 13045 stipulates the following requirements for rulemaking actions by Federal agencies:

5-501. For each covered regulatory action submitted to OMB's Office of Information and Regulatory Affairs (OIRA) for review pursuant to Executive Order 12866, the issuing agency shall provide to OIRA the following information developed as part of the agency's decisionmaking process, unless prohibited by law:

(a) an evaluation of the environmental health or safety effects of the planned regulation on children; and

(b) an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

As with the environmental justice analysis discussed above, EPA's argument that the proposed regulation is not subject to Executive Order 13045 because it does not establish an environmental health or safety standard is specious. This regulation, if adopted, would dramatically alter the development of a wide range of environmental health and safety regulations, including those that have disproportionate impacts on children and other sensitive populations. Further, the proposed prescribed cost-benefit analysis, if finalized, would clearly constitute an EPA policy.

If EPA plans to proceed with adoption of this regulation, it must first conduct "an evaluation of the environmental health or safety effects of the planned regulation on children" and must provide "an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives," as required in Executive Order 13045.

**7. Benefits that occur outside the United States should be included in all cost-benefit analyses and should not be devalued relative to domestic benefits.**

The proposal solicits comments on "whether non-domestic benefits and costs of regulations, when examined, should be reported separately from domestic benefits and costs of such regulations." (page 35623). While NESCAUM does not specifically object to an identification of the geographical areas impacted by a regulation, such a presentation should in no way be used to devalue benefits accrued outside the of the United States as a result of reductions in air pollutant emissions within the United States. As noted above, the CAA takes a broad view of air pollutant impacts, including its expansive language that defines welfare effects to specifically include global considerations such as climate (42 U.S.C. §7602(h)). EPA also regulates additional air pollutants that have global implications, including greenhouse gases, mercury, PM<sub>2.5</sub>, and ozone. Failure to consider impacts outside of the United States also invites adverse reciprocity by

providing a disincentive to other countries to reduce their air pollutant emissions that adversely affect the United States.

**8. Expansion of the scope of this proposal would further exacerbate the problems with the regulation and should not be considered.**

In the proposal, EPA requests comments on the possible expansion of the applicability requirements and other specifications of the regulation. These include:

- “(W)hether requirements related to risk assessments used in BCAs [benefit-cost analyses] should be applied more broadly than as described in the proposed rulemaking and, in particular, whether such requirements should apply to all risk assessments used in CAA significant rulemakings” (page 35623).
- Additional risk assessment requirements, such as “requirements for best practices related to any weight-of-evidence (WOE) frameworks that the Agency uses in the developments of CAA significant rulemakings” and “additional requirements to ensure consistency and transparency in the assessment of bias and uncertainty in risk analyses” (page 35623).
- “(W)hether ... the EPA should require a detailed disaggregation of both benefit and cost categories ... that summarizes the overall results of the BCA in the preamble of future significant CAA rulemakings” (page 35624).
- “Whether the EPA should require a separate presentation of all factors (e.g., particular benefit or cost categories, or other impacts) that are specifically listed as factors that the Administrator must consider in making a regulatory decision pursuant to the statutory provision(s) under which the regulation is being promulgated” (page 35624).
- “(W)hether EPA should include a requirement for conducting retrospective analysis of significant CAA rulemakings” (page 35624).

NESCAUM urges EPA to withdraw this rule and is strongly opposed to the expansion of applicability and other requirements listed above. Risk assessment requirements and other procedures related to cost-benefit analyses should be specified in guidance specific to the action that is being evaluated, not in a regulation. Further, in light of EPA’s justifications of several recent regulatory actions, a detailed prominent presentation of disaggregated costs and benefits could be inappropriately used to devalue certain benefits, including those associated with non-target air pollutant reductions and those that accrue outside of the United States. Finally, conducting a retrospective review of air pollution regulations that have previously been implemented is already a requirement of CAA §812 (codified at 42 U.S.C. §7612),<sup>9</sup> therefore a

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<sup>9</sup> See, e.g., USEPA, *The Benefits and Costs of the Clean Air Act from 1990 to 2020*, Final Report (March 2011) (finding that the benefits (central estimate) of the 1990 Clean Air Act Amendments exceeded costs by a factor of more than 30 to 1). Available at <https://www.epa.gov/clean-air-act-overview/benefits-and-costs-clean-air-act-1990-2020-report-documents-and-graphics>.

duplicative regulatory requirement in this proposal would be redundant, a waste of resources, and needlessly divert efforts from EPA's mission to protect public health and welfare.

### **Conclusion**

While cost-benefit analysis is an important part of the regulatory process, codification of prescriptive and constrained procedures diminishes the utility of those analyses. Therefore, EPA should withdraw this regulation and instead update guidance for conducting those analyses, as necessary. The guidance should:

- Be tailored to address the full range of pollutants, public health and welfare effects, types of regulations, and availability of data assessed by the analyses;
- Be based on best practices and best science, and updated frequently to reflect current scientific data and methods;
- Use approaches that appropriately account for the often asymmetrical information available for quantifying benefits compared to costs;
- Detail nonmonetized benefits;
- Evaluate effects on populations impacted by environmental justice considerations and other sensitive subpopulations;
- Include co-benefits associated with emissions reductions of non-target pollutants; and
- Include benefits that occur outside of the United States.

EPA states that the purpose of this regulation is “to ensure that information regarding the benefits and costs of regulatory decisions is provided and considered in a consistent and transparent manner” (page 35612). The proposed rulemaking provides no additional transparency and no constructive consistency. Rather, it compromises the integrity of EPA's regulatory decisions without clear benefits, placing the public's health and welfare at unnecessary risk. EPA should withdraw the proposal from further consideration.

Sincerely,



Paul J. Miller  
Executive Director