



July 27, 2020

*Submitted via* [www.regulations.gov](http://www.regulations.gov)

Hon. Andrew Wheeler  
Administrator  
U.S. Environmental Protection Agency  
USEPA Headquarters  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

***RE: Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process; Docket ID No. EPA-HQ-OAR-2020-00044***

Dear Administrator Wheeler:

On behalf of the Association of Battery Recyclers and Battery Council International, we write in support of the Environmental Protection Agency's notice of proposed rulemaking: *Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process*, 85 Fed. Reg. 35,612, 35,621 (June 11, 2020).

The Association of Battery Recyclers, Inc. ("ABR") is a non-profit trade association of companies that are involved in recycling spent lead batteries and other lead-bearing materials. Members of the ABR include companies that own and/or operate battery manufacturers, lead chemical manufacturers, secondary lead smelters, lead fabricators, and consultants and vendors to the lead recycling industry.

Battery Council International ("BCI") is a not-for-profit trade association formed in 1924 to represent the interests of the lead battery industry. BCI has member companies worldwide engaged in every facet of the industry: lead battery manufacturers and recyclers, marketers and retailers, suppliers of raw materials and equipment, and expert consultants. BCI members represent over 98% of U.S. lead battery production and recycling capacity.

Due to the efforts of ABR and BCI's members and other participants in the lead recycling industry, approximately 99% of all lead batteries are recycled annually.<sup>1</sup>

ABR and BCI's members are committed to meeting their obligations to operate in a responsible manner to avoid adversely impacting the environment and public health and safety. Both lead itself and the production of lead are extensively regulated by the EPA, including under the Clean Air Act. As a result of these programs and other actions taken by industry, the United

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<sup>1</sup> *National Recycling Rate Study*, Battery Council International, <https://batteryCouncil.org/page/RecyclingStudy>.

States has made tremendous progress in reducing ambient lead concentrations in the outdoor air, reductions of more than 90 percent since 1980,

In this respect, it is critical that the investments that the regulated community makes—and those required by regulators—are wise ones. A benefit cost analysis that is more transparent and more consistent will lead to a regulatory process that is more efficient and more predictable. EPA’s proposal will do just that and ABR and BCI therefore support EPA’s proposal.

In *Michigan v. EPA*, the Supreme Court observed that “[c]onsideration of cost reflects the understanding that reasonable regulation ordinarily requires paying attention to the advantages and disadvantages of agency decisions.” 135 S. Ct. 2699, 2707 (2015). In this respect, “consideration of cost reflects the understanding that reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions” and “the reality that too much wasteful expenditure devoted to one problem may well mean considerably fewer resources available to deal effectively with other (perhaps more serious) problems.” *Id.* at 2707–08 (cleaned up).

The EPA’s regulatory costs are among the greatest of any federal agency and those compliance costs constitute substantial investments for the regulated community. ABR and BCI’s members are regulated under multiple Clean Air Act programs, including under multiple NESHAP programs and NAAQS-implementation programs. They are also subject to the NSPS and PSD programs. Each of these programs authorizes consideration of costs and benefits in determining the form and incidence of regulation. *See, e.g.*, 42 U.S.C. §§ 7411(a)(1) (directing EPA to set NSPS by “taking into account the cost of achieving such [emission] reduction”); 7412(d)(2) (authorizing EPA to take “into consideration the cost of achieving such emission reduction” in establishing MACT floors for the NESHAP program), 7412(d)(6) (authorizing EPA to revise emission standards “as necessary (taking into account developments in practices, processes, and control technologies,” which authorizes consideration of costs); 7479(3) (directing EPA or SIP-approved states to consider “costs” in establishing best available control technology limits under the PSD program for new or modified sources), *National Ambient Air Quality Standards for Lead*, 73 Fed. Reg. 66,964, 67,035–38 (Nov. 12, 2008) (explaining how EPA considers costs and benefits in Pb NAAQS implementation).

In this regard, EPA’s proposal would regularize benefit-cost analysis in a way that promotes two fundamental values: transparency and consistency. A transparent process allows stakeholders to engage with the EPA in an informed, honest way, with full understanding of the costs and benefits *before* the rule becomes binding. Informed dialogue between the government and public stakeholders will in turn result in smarter, more efficient regulation. The proposed rule’s principles of transparency will enhance the dialogue. The EPA proposes that the “benefits, costs, and net benefits of each regulatory option...be presented in a manner designed to be objective, comprehensive, and easily understood by the public.” 85 Fed. Reg. at 35,621. Further, the EPA proposes greater transparency in both its modeling and the assumptions made for its modeling, which will allow for more informed understanding of those models. ABR and BCI support these principles because they will benefit the dialogue between the EPA and stakeholders.

Likewise, the proposal correctly moves to address a lack of consistency in benefit-cost analysis across EPA's Clean Air Act programs. In the past, EPA has applied inconsistent standards when conducting various BCAs under the CAA, leading to inconsistent analyses and unpredictable outcomes. *Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process*, 85 Fed. Reg. at 35,623. Such inconsistency and unpredictability results in increased costs and a less stable regulatory environment. ABR and BCI thus support the EPA's plan to establish requirements for consistent EPA evaluation of costs and benefits of significant CAA regulations.

ABR and BCI appreciate the opportunity to comment and look forward to working with the EPA to improve transparency and consistency in the rulemaking process.

Sincerely,

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Roger Miksad  
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Battery Council International