



July 31, 2020

via email to <https://www.regulations.gov>

The Honorable Andrew Wheeler
U.S. Environmental Protection Agency
Washington, D.C.

RE: Docket No. EPA-HQ-OAR-2020-0044; Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process

Dear Administrator Wheeler:

The American Highway Users Alliance (the “Highway Users” or “we” or “our”) is very supportive of the proposed rule in this docket. See 85 Federal Register 35612 et seq. (June 11, 2020) (“NPRM”). We recommend that the Environmental Protection Agency (EPA) move promptly, this year, to adopt a final rule in this docket in accord with the proposed rule, with inclusion of a feature regarding the Highway Trust Fund, described below.

The Highway Users serves as the united voice of the motoring public -- promoting safe, uncongested highways and enhanced mobility for people and business. The Highway Users is a non-profit organization comprised of approximately 300 organizations, including companies, trade associations, safety advocacy groups, and motoring clubs. Our members represent millions of road users from the truck, bus, auto, RV, and motorcycling modes. Such users pay the bulk of the user fees deposited into the Highway Trust Fund. Our membership includes manufacturers who not only use the roads, but also manufacture vehicles and automotive equipment, fuel, asphalt, concrete, signage and other products that are essential to or that improve the road user experience, in terms of safety, efficiency, and other ways that improve the economy and the quality of life.

Support for the Overall Direction and Principal Provisions of the Proposed Rule

As an association whose membership represents so many people and businesses and touches a broad portion of the economy, we are vitally interested in ensuring that regulations do not impose inappropriate or unnecessary costs or have adverse impacts on highway safety. This goal is furthered if the benefits and costs of potential regulatory actions are carefully identified and considered in a transparent and consistent manner before a decision is made regarding regulatory actions. We see the proposed rule as a thoughtful effort to ensure that the costs and benefits of proposed and final regulations under the Clean Air Act (CAA) are carefully identified and

considered before regulatory action is taken – and considered in a transparent and consistent manner.

EPA is correct to pursue such an improvement to the regulatory process. We agree with EPA that benefit-cost analysis (BCA) should be required for “significant” rules except in any unusual case where it would be expressly contrary to statute.

More specifically, EPA summarized the proposed rule as follows:

First, the proposed regulation provides that the EPA will prepare a BCA for all future significant proposed and final regulations under the CAA. Second, the EPA proposes that the BCA be developed using the best available scientific information and in accordance with best practices from the economic, engineering, physical, and biological sciences. Third, the EPA proposes additional procedural requirements to increase transparency in the presentation of the BCA results, while maintaining the standard practices of measuring net benefits consistent with E.O. 12866. Together, these requirements would help ensure that the EPA implements its statutory obligations under the CAA in a way that is consistent and transparent.” Id. at 35613.

These points, and a sensible proposed requirement that a BCA include a statement of need, are captured in the proposed rule at proposed 40 CFR 83.3.

Broadly stated, we think these positions and proposals are unassailable and consistent with a long history of Executive Branch actions and orders calling for careful consideration of the costs and benefits of proposed regulations before action is taken to promulgate them, a history well outlined by EPA at 35613 – 17 of the NPRM.

Specific Comments

We will not attempt, in these comments, to discuss all of the specific issues raised in or by the NPRM. But we note the following points, which are consistent with our overall support for the NPRM and the proposed rule.

Compelling Need. Proposed 40 CFR 83.3(a)(2) would require a BCA subject to this rule to include a statement of the “compelling need” for federal government intervention in the market to correct the problem proposed to be addressed. This does not mean that the proposed rule has established a substantive test for a proposed rule or final rule. But the requirement that the agency develop such a statement would help ensure that the agency carefully considers the basis for action.

Recognition of Uncertainty. We support the concept advanced in the NPRM that there is often uncertainty in the estimated benefits and costs of proposed or final rules, and that the BCA should indicate ranges and other indicia of the relative certainty of the components of a BCA.

Co-benefits should be clearly identified as such. The proposed rule is correct to require transparency and some specificity in identifying the particular cost and benefit items that lead to calculation of overall estimated benefits and costs. Proposals to regulate X should not be justified primarily by benefits that result from consequences other than reducing air pollutant X. In this regard we note the July 1, 2020 statement to the docket in this proceeding made by the U.S. Chamber of Commerce as part of an EPA virtual hearing on that date. The Chamber noted, among other things, that a very large portion of benefits from CAA regulations identified by EPA are benefits from reducing PM-2.5, not benefits from reducing some other pollutant that was the subject of a rulemaking. In the NPRM at 35622, EPA properly calls for BCA analysis to break out and separately present claimed benefits that are not a result of reducing the pollutant that is the subject of the rulemaking.

On a related point, we appreciate the statement in the NPRM that the baseline for benefit-cost analysis should be carefully developed and identified to avoid the double counting of benefits. See NPRM at 35618.

Separately identify impacts outside of the United States. In response to the question raised in the NPRM at 35623, we support specifying that a BCA required by the proposed rule must disaggregate estimated benefits and costs outside of the U.S. from those inside the U.S., so it can be understood who would experience the costs and benefits before regulatory action is taken.

EPA should consider the possibility of any adverse impacts on safety and health from any regulatory action under the Clean Air Act that would tend to reduce revenue into the Highway Trust Fund. Federal fuel tax revenues are deposited into the Highway Trust Fund (HTF). It is a matter of public record that, for years, the programs that are funded from the HTF include specific safety programs such as 23 USC 148 and 130, administered by the Federal Highway Administration, and programs under chapter 4 of title 23, administered by the National Highway Traffic Safety Administration. Further, other highway programs have safety benefit even if those programs are not limited to safety investments and programs. For example, all other things being equal, a recently resurfaced or reconstructed road is less likely than a typical road to have a car hit a pothole and result in a fatality or serious injury.

So, we suggest that, as part of any proposed or final significant rulemaking under the Clean Air Act, EPA at least consider the potential for the regulatory action to reduce revenue to the HTF, as any such reduction could have an adverse impact on highway safety. Potentially, such a relationship may be indirect and difficult to monetize. But we think that there is a relationship between the ability of the Highway Trust Fund to support its programs, including safety programs, and safety and health. So, we recommend that this be a required consideration, to be presented as part of a BCA as appropriate.

Conclusion.

The Highway Users is very supportive of the proposed rule in this docket and thanks EPA for the opportunity to comment. We recommend that any further action by EPA in this docket be in accord with these comments.

Respectfully submitted,

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