

The Honorable Andrew Wheeler  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

August 3, 2020

**Re: Docket ID 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:

As the executive director of Energy Fairness, I offer the following favorable comments on the EPA's proposed rule regarding cost-benefit analysis undertaken for regulations under the Federal Clean Air Act.

Since our inception more than a decade ago, Energy Fairness<sup>i</sup> has convened policymakers, consumers, and other stakeholders to explore and educate ways to maintain an affordable and reliable supply of energy. We are dedicated to a fact-based, non-partisan approach in accomplishing this mission.

I submit these comments regarding the proposed rule based on more than 20 years of policy experience in the environment and energy sectors.

Besides my time at Energy Fairness, this experience includes my tenure as a senior legislative assistant to U.S. Rep. Greg Walden (R-OR) – a tenure in which I had the opportunity to negotiate significant legislation in the areas of conservation and energy. It also includes a stretch as a government affairs representative for the National Rural Electric Cooperative Association (NRECA).<sup>ii</sup> And, finally, it includes eight years as a senior government affairs representative for Tri-State Generation and Transmission Association, Inc. – a wholesale electric power cooperative serving 1.5 million member-owners over 250,000 square miles in the Intermountain West (Colorado, Wyoming, New Mexico, Nebraska).

During this two-decade plus experience, my professional responsibilities have allowed me to recognize the complexity of balancing a host of diverse perspectives on how to meet our energy needs with due consideration of the environment. Often, each perspective is based on honest interpretations of facts and data. However, without a uniform way of looking at an issue it is hard to reach agreement on effective and balanced policies. This lack of uniformity helps explain why the EPA's cost-benefit analysis has become untenable over the years.

Without a doubt, it has become very difficult to find common ground on what to consider in defining costs and benefits and how these variables should be measured or to establish a transparent and coherent process for resolving differences and evaluating evidence.

The EPA's proposed rule **would address these flaws by creating a process that will balance legitimate and practical questions about the economic and the environmental factors to evaluate.**<sup>iii</sup>

As a general principle, it makes sense to require a cost-benefit analysis for all proposed regulations. Regulations to comply with environmental laws can cost trillions of dollars directly and indirectly annually.<sup>iv</sup> Responsible policymaking requires that such costs are justified by the benefits to the public associated with protecting the environment.

Specifically, it is fully consistent with decades of legislative and regulatory action to stipulate that the EPA must be clear in defining how to measure benefits and costs. Because these formulations rely so heavily on estimates, predictions and models rather than existing empirical data, it is critical to establish sound criteria and codify best practices in a transparent process.

**Put simply, it is the responsibility of government agencies to operate with consistent standards.**

**Yet, it is not uncommon for government agencies to operate without consistent standards.**

An internal EPA review revealed that the offices of Air and Radiation, Chemical Safety and Pollution Prevention, Land and Emergency Management and Water, each had a different approach to communicating this methodology to affected interests.<sup>v</sup> If the EPA or individual offices within the agency cannot articulate the facts, calculations, and assumptions of measuring costs and benefits, it is impossible to have an honest debate within an orderly review process. A hodgepodge of assumptions and a murky process for deciding what factors to consider leads to prolonged legal battles.

**To address this, it is critical to ensure debate centers on a set of common assumptions, as the rule proposes.**

The U.S. Chamber of Commerce's Global Energy Institute recently provided an excellent illustration of the intractable problem created by failing to establish what factors should be measured and how to weigh these factors in a consistent way.<sup>vi</sup>

Referencing a 2015 EPA Fact Sheet surveying the long-term costs and benefits of the Clean Air Act Amendments of 1990,<sup>vii</sup> the Chamber noted the EPA estimated benefits of over \$2 trillion dollars and the prevention of 230,000 deaths from pollutants. Benefits of regulation exceeded its costs by 30-fold, according to the EPA. In contrast, the current chair of EPA's Clean Air Science Advisory Committee, Dr. Anthony Cox, undertook an analysis of the report and found almost the reverse. His findings were published in a Journal of Risk Analysis article titled "Reassessing the Human Health Benefits from Cleaner Air."<sup>viii</sup>

As the Chamber's testimony acknowledged, this contradiction illustrates that honest differences in what variables to include, or what assumptions to apply to predictions about economic activity or public health can lead to very different results.

***If cost-benefit analyses are prone to arbitrary standards and subjective factors rather than a clearly proscribed framework, then interests with a direct stake in a regulation's impacts and the broader public will have little confidence in the public policy.***

Active participants in an unwieldy regulatory process have every incentive to use its opacity to battle in court for years. This kind of uncertainty is a bane to economic interests from agriculture to energy to transportation. It also undermines environmentalists who, likewise, would be better able to make persuasive, science-based arguments if regulatory policy was clearer. Perpetual litigation over terminology and procedure is a poor substitute for consensus on environmental policy.

The proposed rule is not a departure from the 50-year-old, bipartisan consensus that the federal government can and should play a meaningful role in protecting public health and safety and promoting environmental stewardship.

***In fact, the proposed rule is the latest and I believe best proposal to date on how to marshal strong, science-based evidence that regulations will make a meaningful contribution to environmental protection with damaging the economy or hurting job creation.***

Presidents Reagan, Clinton, and Obama each signed executive orders requiring sound analysis to demonstrate that the benefits of a proposed regulation should exceed its costs.

A former administrator of the White House Office of Information and Regulatory Affairs under President Obama, Cass Sunstein, stated last year that Administrator Wheeler's proposed guidance, "...makes terrific sense. In principle, it should improve the EPA's performance – and receive bipartisan applause." <sup>ix</sup>

Given the enormous stakes, it is not surprising that successive presidents and Congresses have struggled to find a workable approach. As it stands, regulatory reform proposals often serve to create talking points for an endless political tug of war but not sound policy.

The proposed rule is a unique opportunity to cut through this Gordian Knot. The rule honors science, best practices, and objectivity creating a process whereby all participants understand at the outset how metrics will be applied and abide by the discipline and efficiency of a process that is fair and transparent.

I am hopeful the final rule will be adopted and implemented as quickly as the rulemaking process allows.

Sincerely,

Paul Griffin  
Executive Director, Energy Fairness

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<sup>i</sup> <https://energyfairness.org/>

<sup>ii</sup> <https://energyfairness.org/about-energy-fairness/>

<sup>iii</sup> <https://www.federalregister.gov/documents/2020/06/11/2020-12535/increasing-consistency-and-transparency-in-considering-benefits-and-costs-in-the-clean-air-act>

<sup>iv</sup> <https://www.uschamberfoundation.org/smallbizregs/>

<sup>v</sup> [https://www.epa.gov/sites/production/files/2019-05/documents/memorandum\\_05\\_13\\_2019\\_increasing\\_consistency\\_and\\_transparency\\_in\\_considering\\_benefits\\_and\\_costs\\_in\\_rulemaking\\_process.pdf](https://www.epa.gov/sites/production/files/2019-05/documents/memorandum_05_13_2019_increasing_consistency_and_transparency_in_considering_benefits_and_costs_in_rulemaking_process.pdf)

<sup>vi</sup> <https://www.regulations.gov/document?D=EPA-HQ-OAR-2020-0044-0059>

<sup>vii</sup> <https://www.epa.gov/sites/production/files/2015-07/documents/factsheet.pdf>

<sup>viii</sup>

[https://www.researchgate.net/publication/51767596\\_Reassessing\\_the\\_Human\\_Health\\_Benefits\\_from\\_Cleaner\\_Air](https://www.researchgate.net/publication/51767596_Reassessing_the_Human_Health_Benefits_from_Cleaner_Air)

<sup>ix</sup> <https://www.bloomberg.com/opinion/articles/2019-05-28/epa-s-wheeler-on-costs-of-clean-air-regulation>