




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

May 13, 2019

THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Increasing Consistency and Transparency in Considering Benefits and Costs in the Rulemaking Process

FROM: Andrew R. Wheeler 

TO: Assistant Administrators

As the U.S. Environmental Protection Agency works to advance its mission of protecting public health and the environment, the agency should ensure that its regulatory decisions are rooted in sound, transparent and consistent approaches to evaluating benefits and costs. Many EPA statutes contemplate the consideration of benefits and costs as part of regulatory decision-making. However, benefits and costs have historically been treated differently depending on the media office and the underlying authority. This has resulted in various concepts of benefits, costs and other factors that may be considered. This memorandum will initiate an effort to rectify these inconsistencies through statute-specific actions.

The importance of benefit-cost analysis is reflected in Executive Order 13777, "Enforcing the Regulatory Reform Agenda" (82 FR 12285), which directs agencies to identify regulations that "impose costs that exceed benefits." Following this executive order, the EPA opened a public docket to solicit feedback in April 2017. Among the public comments received, a large cross-section of stakeholders identified instances when the agency underestimated costs, overestimated benefits or evaluated benefits and costs inconsistently. Per the executive order and based on these public comments, the EPA decided to take further action to evaluate opportunities for reform.

In June 2018, the EPA issued an Advanced Notice of Proposed Rulemaking to solicit public input on potential approaches for increasing consistency and transparency in how the EPA considers benefits and costs. Informed by the public comments received on that ANPRM, I have determined that the agency should proceed with benefit-cost reforms using a media-specific approach, taking into account the variety of statutory programs. Specifically, I am asking the assistant administrators for the offices of Air and Radiation, Chemical Safety and Pollution Prevention, Land and Emergency Management and Water to develop reforms, including notice-and-comment rulemakings, that outline how benefit-cost considerations will be applied in areas that are in need of greater clarity, transparency and consistency. The rulemaking efforts should not forestall near-term benefit-cost methodological changes for individual regulatory actions.

In developing these regulatory proposals, consistent with applicable laws and regulations, media offices shall be guided by the following principles:

- *Ensuring the agency balances benefits and costs in regulatory decision-making.* The EPA should evaluate and consider both benefits and costs in decision-making.
- *Increasing consistency in the interpretation of statutory terminology.* The EPA media offices should evaluate benefits and costs in a manner that applies consistent interpretations of key terms and concepts for specific statutes (e.g. “practical,” “appropriate,” “reasonable” and “feasible”).
- *Providing transparency in the weight assigned to various factors in regulatory decisions.* Media offices should transparently identify which factors were and were not considered in regulatory analysis and how these factors were weighed to arrive at a particular regulatory outcome.
- *Promoting adherence to best practices in conducting the technical analysis used to inform decisions.* The EPA’s technical analyses should follow sound economic and scientific principles and adhere to existing guidance and best practices for benefit-cost analysis, including the EPA’s *Guidelines for Preparing Economic Analyses* and other peer-reviewed standards of practice that are applicable to rulemaking.

Regulatory proposals implementing the principles outlined above will be developed using the EPA’s Action Development Process for Tier 1 actions. Media offices should coordinate across the agency, including with the Office of Policy and the Office of General Counsel, to ensure consistency. Offices should stagger the development of these proposals and work as expeditiously as possible to promulgate rules accordingly. Specifically, I am asking the Office of Air and Radiation to be the first to issue a proposal later this year, followed by the other offices.

To further support these efforts, I am also asking the Office of Policy to continue to improve and update the EPA’s *Guidelines for Preparing Economic Analyses*. Revisions to the guidelines will help clarify best practices for how to conduct benefit-cost analysis, including guidance on key methodological and modeling choices, assumptions, uncertainties and context around benefits and costs.

With these improvements to our regulatory decision-making, the EPA is taking another step to provide the public with a more open federal government and more effective environmental and public health protection.

cc: Deputy Administrator
General Counsel
Chief of Staff
Associate Administrators