

COMMENTS OF THE ATTORNEYS GENERAL OF NEW YORK, CONNECTICUT, ILLINOIS, IOWA, MARYLAND, MASSACHUSETTS, MINNESOTA, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, OREGON, PENNSYLVANIA, RHODE ISLAND, VERMONT, VIRGINIA, WISCONSIN, AND THE DISTRICT OF COLUMBIA, AND THE STATE OF CALIFORNIA AIR RESOURCES BOARD

June 14, 2021

By Electronic Submission to www.regulations.gov

Michael S. Regan
Administrator
U.S. Environmental Protection Agency
Washington, DC 20460

Re: Rescinding the Rule on Increasing Consistency and Transparency in Considering Benefits and Costs in Clean Air Act Rulemakings, Docket ID No. EPA-HQ-OAR-2020-0044, 86 Fed. Reg. 26,406 (May 14, 2021).

Dear Administrator Regan:

The undersigned write to state our support for the U.S. Environmental Protection Agency's ("EPA") interim final rule "Rescinding the Rule on Increasing Consistency and Transparency in Considering Benefits and Costs in Clean Air Act Rulemakings," Docket ID No. EPA-HQ-OAR-2020-0044, 86 Fed. Reg. 26,406 (May 14, 2021). We appreciate EPA's prompt action to rescind the prior administration's unauthorized, unnecessary and problematic Benefit-Cost Rule (85 Fed. Reg. 84,130 (Dec. 23, 2020)).

EPA's methodology for benefit-cost analyses under the Clean Air Act has significant and wide-ranging implications for the agency's regulatory and other decisions affecting public health and welfare and the environment. Many of our state programs rely directly on those decisions. Thus, we have a strong interest in ensuring that EPA's benefit-cost analyses faithfully follow the Clean Air Act, applicable Executive Orders, EPA and Office of Management and Budget guidance documents, and the best available science. Because analyses conducted under the Benefit-Cost Rule would fail to adhere to those long-standing, well-established guideposts, many of the undersigned provided detailed comments in opposition to the proposed versions of the rule¹ and, ultimately, filed a lawsuit to invalidate the final rule (*State of New York, et al. v EPA* (D.C. Circuit Docket No. 21-1026)).

Contrary to the ostensible rationale of "increasing consistency and transparency," the Benefit-Cost rule is unlawfully vague and inconsistent with both economic best practices and EPA's duty to use the best available science in carrying out its regulatory duties under the Clean Air Act. In particular, the rule would mandate flawed benefit-cost analyses by arbitrarily and unlawfully restricting consideration of the benefits of important public health regulations while inflating the costs of those

¹ The two comment letters, which identified numerous flaws in the proposed versions of the rule, are enclosed with this letter.

regulations. This attempt to put a thumb on the scale in favor of less stringent air quality standards flouts fundamental economic precepts and violates EPA's core mission to protect human health and welfare and the environment.

To briefly restate just a few of the Benefit-Cost Rule's major flaws:

- EPA had no legal authority for the rule and unlawfully invoked general rulemaking authority to effect broad changes in benefit-cost analyses across numerous Clean Air Act regulatory programs;
- EPA failed to allow for sufficient public participation, and major provisions of the final rule—including how benefit-cost analyses would be conducted, what rulemakings would be subject to the requirements, and how the analyses would inform regulatory decisions—were unlawfully vague;
- EPA failed to articulate any inconsistency or lack of transparency in existing benefit-cost analyses that would call for the drastic changes the final rule would impose;
- EPA violated numerous Executive Orders by, for example, failing to consult with states on the Benefit-Cost Rule's federalism implications and failing to assess regulatory costs and environmental justice impacts;
- The Benefit-Cost Rule would arbitrarily weaken benefit-cost analyses by, for example, narrowing consideration of benefits, neglecting co-benefits, and minimizing greenhouse gas-related benefit-cost analyses, in violation of EPA's core mission to protect human health and welfare and the environment; and
- Each of the Benefit-Cost Rule's provisions would fail to further EPA's purported goal of increasing consistency or transparency.

For these reasons, we fully support EPA's interim final rule rescinding the Benefit-Cost Rule. We look forward to working with EPA on Clean Air Act rulemaking actions conducted in conformance with the law and the agency's long-standing, well-established processes and guidance on conducting benefit-cost analyses.

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