
THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

Public Interest Comment¹ on

The Environmental Protection Agency's Advanced Notice of Proposed Rulemaking

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

Docket ID No. EPA-HQ-OA-2018-0107; FRL-9980-45-OA

RIN: RIN 2010-AA12

August 13, 2018

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The George Washington University Regulatory Studies Center improves regulatory policy through research, education, and outreach. As part of its mission, the Center conducts careful and independent analyses to assess rulemaking proposals from the perspective of the public interest. This comment on the Environmental Protection Agency's advanced notice of rulemaking (ANPRM) on "increasing consistency and transparency in considering costs and benefits in the rulemaking process" does not represent the views of any particular affected party or special interest, but is designed to evaluate the effect of EPA's rulemaking process on the welfare implications of future regulations.

Introduction

The EPA is "soliciting comment on whether and how EPA should promulgate regulations that provide a consistent and transparent interpretation relating to the consideration of weighing costs and benefits in making regulatory decisions in a manner consistent with applicable authorizing

¹ This comment reflects the views of the author, and does not represent an official position of the GW Regulatory Studies Center or the George Washington University. Note that multiple scholars from the Center may file comments in this docket; in each case reflecting his or her own views. The Center's policy on research integrity is available at <http://regulatorystudies.columbian.gwu.edu/policy-research-integrity>.

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statutes. EPA is also soliciting comment on whether and how these regulations, if promulgated, could also prescribe specific analytic approaches to quantifying the costs and benefits of EPA regulations. EPA does not propose any regulatory requirements. In particular, EPA seeks comment on the “perceived inconsistency and lack of transparency in how the Agency considers costs and benefits in rulemaking, potential approaches for addressing these concerns, and the scope for issuing regulations to govern EPA’s approach in future rulemakings.”³

I offer these comments from the perspective of someone who has taught benefit-cost analysis to working government professionals for more than 20 years, and as a past president of the Society for Benefit Cost Analysis.⁴ I will comment on the following points: (1) the value-added of using benefit-cost analysis in the regulatory process; (2) the extent to which guidance is presently available on the application of benefit-cost analysis to regulatory analysis; (3) the specific issue of which stakeholders should receive standing in benefit-cost analysis; and (4) the inclusion of indirect effects, also referred to as co-benefits, in benefit-cost calculations.

Value Added of Benefit-Cost Analysis in Regulatory Analysis

The ANRPM asks: “to what extent should standard benefit-cost analysis principles (e.g., setting a standard to maximize net benefits) guide the selection of specific statutorily required metrics and thresholds (e.g., “reasonableness”) against which to measure the effects of a proposed regulation?” In principle, because environmental regulations involve using the coercive power of the government to compel private parties to undertake what are often costly actions, such regulations should be designed at minimum to provide social benefits that are comparable to the costs, and ideally, should maximize net benefits – the difference between social benefits and social costs. The fact that it may be challenging to achieve this ideal in practice does not gainsay the value of using net social benefit maximization as an important criterion for evaluating both the design and the impact of environmental regulations.

As is discussed in both OMB Circular A-4 and Executive Order 12866, benefit-cost analysis is the widely accepted economic framework for assessing the social benefits and costs of government regulations, as well as many spending programs. In particular, benefit-cost analysis (BCA) provides a consistent set of principles and best-practices for identifying, measuring, and aggregating social benefits and costs. Although considerable judgment is frequently required to estimate social benefits and costs, the existence of these principles and best-practices makes it possible to judge the quality of an individual BCA against a common benchmark. The use of a common economic approach to evaluate regulations also contributes to the overall transparency of the regulatory process.

³ 83 FR 27527

⁴ The comments are my own and do not represent those of the Society for Benefit Cost Analysis.

Does Sufficient Guidance Exist for Applying Benefit-Cost Analysis to Environmental Regulation?

In seeking comment on whether “specific analytic approaches to quantifying the costs and benefits of EPA regulations” should be prescribed, the ANRPM suggests that perhaps there is insufficient guidance for how to properly undertake BCA of environmental regulations. I do not agree.

There are basically three sources of information that already provide guidance about the use of analytical approaches.

- (1) Executive Order 12866 outlines the process and inputs for undertaking regulatory review.
- (2) OMB Circular A-4 provides guidance and principles and best practices for undertaking benefit-cost analysis in the federal government.
- (3) EPA’s Guidelines for Preparing Economic Analyses <https://www.epa.gov/environmental-economics/guidelines-preparing-economic-analyses> which: “(1)...assist policy makers in developing regulations that achieve the highest environmental quality and human health standards at the lowest costs; (2) provide analysts with information needed to prepare high quality economic analyses; (3) develop an overarching framework for economic analyses throughout the Agency and across EPA Program Offices; and (4) ensure that important subjects such as uncertainty, timing, and valuation of costs and benefits, are treated consistently in all economic analyses at EPA. EPA will use the Guidelines to evaluate the economic consequences of its regulations and policies to insure that they contribute to a safe environment and a healthy economy.”

Although these documents do not provide a “cookbook” that literally prescribes how to proceed in doing a BCA, taken together the documents provide adequate guidance to economic analysts about how to proceed in doing benefit-cost analysis. To be sure, professional judgment is required to measure social benefits and costs of specific regulations; and the EPA Guidelines should be seen as a document subject to periodic review and updating. However, to suggest as the ANRPM does, that additional procedures, above and beyond those already contained both in OMB Circular A-4 and the EPA Guidelines should be prescribed, seems unfounded.

Which Stakeholders Should Have Standing in Environmental Benefit-Cost Analysis?

One critical issue in any benefit-cost analysis is that of standing. That is, whose benefits and costs should count?

An important input into many environmental benefit-cost analyses is the social cost of carbon emissions. As noted in the EPA Guidelines for economic analyses, the value of the social cost of carbon used by EPA are based on estimates of the social cost of carbon derived by a 2009 interagency workgroup composed of members from six federal agencies and various White House

offices. A key feature of these estimates is that they “reflect the global damages caused by CO².” (emphasis added)

Guidance in OMB Circular A-4 states that the “...analysis should focus on benefits and costs that accrue to citizens and residents of the United States.” In the case where a regulation is evaluated that “is likely to have effects beyond the borders of the United States, these effects should be reported separately.” Thus, while the implicit inclusion of benefits and costs beyond the borders of the United States in the Social Cost of Carbon is not necessarily at odds with OMB guidance, it is somewhat at variance with the default position stated in OMB Circular A-4.

Although much of the scholarly literature on benefit-cost analysis presumes that such analysis should be limited to national effects that “stop at the “waters’ edge,” there is legitimate debate about how to treat “global social benefits and/or costs” particularly in the case of environmental problems whose scope is global rather than national. If one accepts the premise that the relevant social benefits should be based on the willingness to pay for environmental improvement of U.S. citizens, the question can be reframed as follows: (1) to what extent do U.S. citizens have a positive willingness to pay for environmental benefits that accrue to citizens in other countries, and if so, (2) How should this willingness to pay be estimated? Scholarly research suggests that the answer to the first question is “yes”, while the answer to the second question is that \$1 of environmental benefit accruing to citizens of other countries would be valued at less than \$1 of benefit accruing to U.S. citizens.⁵ Thus, perhaps consideration should be given to (a) including global estimates of the Social Cost of Carbon separately as recommended in OMB Circular A-4, and (b) applying an appropriate discount to such values to represent the willingness to pay of American citizens.

Inclusion of Indirect Effects of Co-Benefits in EPA Regulatory Analysis

The ANPRM also notes that some commenters have questioned the inclusion of benefits from indirect effects, or co-benefits of certain environmental regulations. The concerns expressed can be summarized as follows. A number of EPA regulations whose direct, or primary purpose is to reduce emissions of, say, CO², also have the indirect effect of reducing emissions of other airborne particulates. The economic benefits of such indirect effects often substantially exceed the primary economic benefits; and it is argued that for this and other reasons, indirect or co-benefits should either not be counted at all in benefit-cost analysis, or their impact should be reduced.

Several points are worth emphasizing with regard to the inclusion of indirect or co-benefits. First, and perhaps foremost, there is no disagreement in the extensive literature on benefit-cost analysis about the appropriateness of counting indirect effects or co-benefits. To the extent that indirect benefits or costs are true joint products of a regulation or program, and not merely different

⁵ Dana, David A., 2010. “Valuing Foreign Lives and Settlements.” *Journal of Benefit Cost Analysis*, 1(1) 2010, pp. 1-24.

manifestations of the primary benefit or cost, such effects should legitimately be included as a social cost or benefit. Indeed, OMB Circular A-4 is quite clear on this point.

(the) analysis should look beyond the direct benefits and direct costs of (the) rulemaking and consider any important ancillary benefits and countervailing risks. An ancillary benefit is a favorable impact of the rule that is typically unrelated or secondary to the statutory purpose of the rulemaking (e.g., reduced refinery emissions due to more stringent fuel economy standards for light trucks) while a countervailing risk is an adverse economic, health, safety, or environmental consequence that occurs due to a rule and is not already accounted for in the direct cost of the rule (e.g., adverse safety impacts from more stringent fuel-economy standards for light trucks).

Like other benefits and costs, an effort should be made to quantify and monetize ancillary benefits and countervailing risks. If monetization is not feasible, quantification should be attempted through use of informative physical units. If both monetization and quantification are not feasible, then these issues should be presented as non-quantified benefits and costs. The same standards of information and analysis quality that apply to direct benefits and costs should be applied to ancillary benefits and countervailing risks.

Second, although there is no dispute about the need to include secondary/indirect benefits and/or costs, it is important that these co-benefits or co-costs be measured with reference to the proper baseline. In other words, co-benefits associated with the reduction in primary emission A, should not also be counted as co-benefits again in other benefit-cost analyses. There is no evidence that the EPA has engaged in such double-counting of co-benefits, but it is important that the analyst be vigilant to avoid double-counting.

Finally, the treatment of co-benefits and co-costs should be symmetric.⁶ That is, while it is important to include co-benefits when they occur, analysts should also make sure that any indirect costs are also included.

⁶ Dudley, S., Belzer, R., Blomquist, G., Brennan, T., Carrigan, C., Cordes, J., Cox, L.A., Fraas, A., Graham, J., Gray, G., Hammitt, J., Krutilla, K., Linquti, P., Lutter, R., Mannix, B., Shapiro, S., Smith, A., Viscusi, W.K., Zerbe, R. (2017). Consumer's Guide to Regulatory Impact Analysis: Ten Tips for Being an Informed Policymaker. *Journal of Benefit-Cost Analysis*, 8(2), 187-204. doi:10.1017/bca.2017.11. https://www.cambridge.org/core/services/aop-cambridge-core/content/view/FAF984595B822A70495621AEA7EF7DEB/S2194588817000112a.pdf/consumers_guide_to_regulatory_impact_analysis_ten_tips_for_being_an_informed_policymaker.pdf

Conclusion

As other commenters on this ANPRM have concluded, benefit-cost analysis is an important tool of regulatory analysis.⁷ Proper use of this tool does require guidance.⁸ However, the concern expressed in the ANPRM that more guidance is needed is not well founded. Moreover, there is no rationale, either in economics, or in OMB guidance for not fully counting indirect benefits and costs of EPA regulations when appropriate in addition to direct or primary benefits or costs. Proper inclusion of environmental co-benefits, however, does require that attention be paid to how the baseline is defined, and to symmetric treatment of indirect costs as well as indirect benefits.

⁷ See, for example, comments of my GW Regulatory Studies Center colleague, Susan Dudley. <https://regulatorystudies.columbian.gwu.edu/public-interest-comment-increasing-consistency-and-transparency-epas-benefit-cost-analysis>

⁸ See also, Dudley, S., Belzer, R., Blomquist, G., Brennan, T., Carrigan, C., Cordes, J., Cox, L.A., Fraas, A., Graham, J., Gray, G., Hammitt, J., Krutilla, K., Linquti, P., Lutter, R., Mannix, B., Shapiro, S., Smith, A., Viscusi, W.K., Zerbe, R. (2017). Consumer's Guide to Regulatory Impact Analysis: Ten Tips for Being an Informed Policymaker. *Journal of Benefit-Cost Analysis*, 8(2), 187-204. doi:10.1017/bca.2017.11. https://www.cambridge.org/core/services/aop-cambridge-core/content/view/FAF984595B822A70495621AEA7EF7DEB/S2194588817000112a.pdf/consumers_guide_to_regulatory_impact_analysis_ten_tips_for_being_an_informed_policymaker.pdf