

EPA Clean Air Act ‘Benefits-Busting’ Rule: Topline Analysis

The “benefits-busting” rule would defeat the EPA’s efforts to implement the Clean Air Act’s protections in a timely and effective manner.

The proposal seeks to impose an excessively burdensome set of procedures for completing cost-benefit analysis that would be practically impossible to satisfy and prohibitively costly to complete.

The benefits-busting rule’s provisions are conspicuously aimed at rigging the EPA’s cost-benefit analysis even more against robust environmental and public health protections.

This suggests that the real purpose of the proposal is to advance the Trump administration’s broader effort to weaken the EPA – much like the “censored science” rule – rather than a good-faith effort to improve the agency’s regulatory impact analysis.

- Opponents of regulatory safeguards have long championed cost-benefit analysis as a weapon for killing new safeguards. The proposal seeks to build on this strategy by changing the EPA’s methodology for conducting cost-benefit analysis in ways that would either (1) make it harder to use these analyses’ results to support stronger regulations or (2) make it easier for regulated industry to challenge stronger regulations on the basis of those analyses.
- The proposal would likely prevent the EPA from using high-quality, cutting-edge scientific studies to support its estimates of public health benefits. The proposal would mandate that these studies meet arbitrary and impossible-to-satisfy standards before they could be considered.
- The proposal ignores obvious opportunities for improving the EPA’s cost-benefit analysis when those improvements would have the effect of supporting stronger rules, such as better accounting of qualitatively described benefits or by giving greater attention to cumulative burdens suffered by historically marginalized groups and other similar distributional concerns.

The benefits-busting rule would provide regulated industries with a powerful new tool for tying up future Clean Air Act regulations in costly and time-consuming litigation.

Not only does the proposal create rigid cost-benefit analysis procedures, it would codify them in the form of judicially enforceable regulations. If the EPA were serious about improving the quality of the cost-benefit analyses for its Clean Air Act regulations, this could be effectively accomplished through non-enforceable internal guidance, which would also ensure that the agency retain sufficient flexibility for performing these analyses.

The benefits-busting rule unrealistically assumes the availability of unlimited data and flies in the face of the precautionary approach Congress wrote into the Clean Air Act.

At the heart of the proposal's provisions is the unrealistic assumption that the EPA has ready access to extensive comprehensive and granular data on the precise impacts to human and ecological health caused by each of the hundreds of pollutants it regulates. This assumption has no grounding in reality, however. Because Congress was well aware of these gaps, it deliberately chose to build the Clean Air Act around a distinctly precautionary approach to risk reduction.

The preamble for the benefits-busting rule does not and cannot identify concrete examples of deficient or flawed cost-benefit analyses that the EPA has produced in the past.

In the more than the three years that the EPA has devoted to developing the proposal, it is revealing that the agency is unable to identify any of its past cost-benefit analyses that merit this regulatory response – indeed, that there is any “problem” that the proposal would actually solve. To the contrary, among federal agencies, the EPA is generally recognized, as the “gold standard” for the quality of its regulatory cost-benefit analyses.

The EPA's compliance with the benefits-busting rule would not meaningfully improve the quality of EPA's Clean Air Act rules.

Assuming that the proposal's purpose is to improve the quality of the EPA's decision-making for future Clean Air Act regulations, any benefits that might result from following its provisions would be miniscule compared to the costs of complying with those provisions. *In short, the benefits-busting rule itself would not pass a cost-benefit test.*

While it is important for the EPA to understand the impact of its Clean Air Act regulations, the benefits-busting rule takes the wrong approach.

The proposal seeks to reduce complex analytical issues – such as defining baselines or characterizing scientific evidence that underlies the benefits analysis – to a rigid, one-size-fits-all formula. Instead, greater flexibility in addressing these kinds of issues would enable the EPA to produce better analyses that would appropriately account for the unique circumstances presented by each rulemaking.

The benefits-busting rule is redundant and a waste of scarce agency resources.

The EPA already has several existing resources available that outline best practices for conducting cost-benefit analyses for its Clean Air Act regulations, including the White House Office of Management and Budget's (OMB) Circular A-4 and the agency's own *Guidelines for Preparing Economic Analysis*. Both of these resources can be updated to account for new developments in the methodology, and indeed, the EPA is currently in the process of updating its *Guidelines*. It is not clear what value this proposal would add to those existing resources. Given the many pressing challenges that the EPA faces that implicate its mission under the Clean Air Act, and given the historically low budgetary resources that the agency now struggles with, the pursuit of this rulemaking now, of all times, is absurd.