

Oral Testimony on EPA CBA Rule Repeal

Hello, my name is James Goodwin and I'm a Senior Policy Analyst with the Center for Progressive Reform, where I've been tracking the misuse of economic analysis in the rulemaking process for over thirteen years. The Trump EPA's "benefits-busting" rule ranks among the greatest such abuses I've observed during that time.

It was clear on its face that the benefits-busting rule was never intended as a good faith policy reform. As the preamble to the rescission point out, the benefits-busting rule "did not explain how the existing [Clean Air Act] rulemaking process had created or was likely to create inconsistent or non-transparent outcomes, *i.e.*, that an actual or theoretical problem existed." It was the proverbial solution in search of a problem.

Instead, the real intention of the benefits-busting rule was to further rig the EPA's regulatory analysis procedures against robust environmental and public health safeguards.

In this regard, the rule should be seen as the culmination of a decades-long campaign to promote a distorted form of cost-benefit analysis that was designed with almost Swiss watch-like precision to defeat popular regulatory safeguards. Derived from the ideology of welfare economics with the pretext of maximizing efficiency in policymaking, this version of cost-benefit analysis demands an elaborate set of procedures for converting non-market goods like lives saved and ecosystems preserved into dollars-and-cents terms. It then forces agencies like the EPA to balance those calculations – that is, to morally equate them – with the costs of promoting the public welfare.

The real innovation of the Trump benefits-busting rule – such as it is – was to codify these requirements as judicially enforceable regulations. Because many of its requirements were

designed to be impossible to satisfy, the rule would thus empower polluting industries to block or delay future environmental safeguards.

Congress was well aware of this pro-polluter form of cost-benefit analysis when it wrote the Clean Air Act and subsequent amendments. It recognized the myriad practical and theoretical flaws that this form of analysis entailed. That is why Congress consistently rejected adopting it as the decision-making standard for the provisions of the Clean Air Act.

Instead, recognizing the important public health and environmental goals at issue, Congress even forbade consideration of costs in one of the most consequential Clean Air Act programs. For other programs, as the preamble notes, Congress provided “a vast array of instructions about whether and how the EPA may consider benefits, costs, or other economic factors.”

Accordingly, the preamble rightly takes as its north star for conducting regulatory analysis the need for “flexibility . . . to conduct the type of analysis warranted by a particular rulemaking.” Such flexibility is particularly essential in the context of the Clean Air Act’s diverse rulemaking standards. This approach may permit (though not require) limited use of certain tools and methodologies of cost-benefit analysis in a few cases. But in the vast majority of circumstances, such tools and methodologies will have no legitimate place.

Given that the Trump administration’s benefits-busting rule would have thwarted this flexibility with its legally required one-size-fits-all mandates, the EPA is correct as both a legal and policy matter to finalize its rescission.

But the EPA must do more than simply reinstate the pre-Trump status quo with regard to its regulatory analysis procedures. There still remain existing requirements or analytical approaches that improperly foreclose flexibility in assessing regulatory impacts. The EPA must

work to identify them and eliminate them. Current analytical procedures can also serve to obscure important social justice impacts of the EPA's rules. The EPA must seek out reforms that will elucidate those impacts instead.

While it is discouraging that the EPA has to now expend the resources and time on this rescission effort, there still can be a silver lining: This rescission should serve as a foundation for building a new and better approach for how the EPA assesses the impacts of its rules.

Thank you for your attention.